

## CLASS ACTION AND PAGA SETTLEMENT AGREEMENT

This Class Action and PAGA Settlement Agreement (“Agreement”) is made by and between plaintiff Angela Garcia (“Plaintiff”) and defendants Sunderstorm Inc. and Sunderstorm Bay LLC (“Defendants”). The Agreement refers to Plaintiff and Defendants collectively as the “Parties,” or individually as “Party.”

### 1. DEFINITIONS

In addition to other terms defined in this Agreement, the terms below have the following meaning in this Agreement:

- 1.1. “Action” means the First Amended Class and Representative Action Complaint filed on June 27, 2023 that incorporates all of the allegations of the following: (a) Plaintiff’s original Class Action lawsuit alleging wage and hour violations against Defendants captioned *Angela Garcia v. Sunderstorm Inc., Sunderstorm Bay LLC*, Case No. 22CV001827, initiated on June 29, 2022, pending in Superior Court of the State of California, County of Monterey; (b) Plaintiff’s PAGA Representative Action Complaint against Defendants captioned *Angela Garcia v. Sunderstorm Inc., Sunderstorm Bay LLC*, Case No. 22CV001855, initiated on June 30, 2022, pending in Superior Court of the State of California, County of Monterey; and (c) the PAGA Notice dated February 21, 2022.
- 1.2. “Administrator” means ILYM Group, Inc., the neutral entity the Parties have agreed to appoint to administer the Settlement.
- 1.3. “Administration Expenses Payment” means the amount the Administrator will be paid from the Gross Settlement Amount to reimburse its reasonable fees and expenses in accordance with the Administrator’s “not to exceed” bid submitted to the Court in connection with Preliminary Approval.
- 1.4. “Aggrieved Employees” means all individuals who were employed by Defendants in California and classified as a non-exempt employee at any time during the PAGA Period.
- 1.5. “Class” means all individuals who were employed by Defendants in California and classified as a non-exempt employee at any time during the Class Period.
- 1.6. “Class Counsel” means Norman B. Blumenthal, Kyle R. Nordrehaug, Aparajit Bhowmik, Nicholas J. De Blouw, Jeffrey S. Herman, and Sergio J. Puche of Blumenthal Nordrehaug Bhowmik De Blouw LLP.
- 1.7. “Class Counsel Fees Payment” and “Class Counsel Litigation Expenses Payment” mean the amounts to be paid to Class Counsel for fees and expenses, respectively, as approved by the Court, to compensate Class Counsel for their legal work in connection with the Action, including their pre-filing investigation, their filing of the Action, all related litigation activities, all Settlement work, all post-Settlement

compliance procedures, and related litigation expenses billed in connection with the Action.

- 1.8. “Class Data” means Class Member identifying information in Defendants’ possession including the Class Member’s name, last-known mailing address, Social Security number, email address (if known and available to Defendants), and number of Workweeks and PAGA Pay Periods.
- 1.9. “Class Member” means a member of the Class, as either a Participating Class Member or Non-Participating Class Member (including a Non- Participating Class Member who qualifies as an Aggrieved Employee).
- 1.10. “Class Member Address Search” means the Administrator’s investigation and search for current Class Member mailing addresses using all reasonably available sources, methods and means including, but not limited to, the National Change of Address database, skip traces, and direct contact by the Administrator with Class Members by use of available email addresses, phone numbers, social security numbers, credit reports, LinkedIn and Facebook.
- 1.11. “Class Notice” means the COURT APPROVED NOTICE OF CLASS ACTION SETTLEMENT AND HEARING DATE FOR FINAL COURT APPROVAL, to be mailed to Class Members in English in the form, without material variation, attached as Exhibit A and incorporated by reference into this Agreement.
- 1.12. “Class Notice Packet” means the Class Notice to be provided to the Class Members by the Administrator in the form set forth as Exhibit A to this Agreement (other than formatting changes to facilitate printing by the Administrator).
- 1.13. “Class Period” means the period of time from June 29, 2018 through July 1, 2023.
- 1.14. “Class Representative” means the named Plaintiff in the Operative Complaint in the Action seeking Court approval to serve as a Class Representative.
- 1.15. “Class Representative Service Payment” means the service payment made to the Plaintiff as Class Representative in order to compensate for initiating the Action, performing work in support of the Action, undertaking the risk of liability for Defendants’ expenses, and for the general release of all claims by the Plaintiff.
- 1.16. “Court” means the Superior Court of California, County of Monterey.
- 1.17. “Defendants” collectively means Sunderstorm Inc. and Sunderstorm Bay LLC.
- 1.18. “Defense Counsel means Michael J. Nader and Alexandra M. Asterlin of Ogletree Deakins Nash Smoak & Stewart, P.C. .

- 1.19. “Effective Date” means the date by when both of the following have occurred the Court enters a Judgment on its Order Granting Final Approval of the Settlement; and (b) the Judgment is final. The Judgment is final as of the latest of the following occurrences: (a) if no Participating Class Member objects to the Settlement, the day the Court enters Judgment; (b) if one or more Participating Class Members objects to the Settlement, the day after the deadline for filing a notice of appeal from the Judgment; or if a timely appeal from the Judgment is filed, the day after the appellate court affirms the Judgment and issues a remittitur.
- 1.20. “Final Approval” means the Court’s order granting final approval of the Settlement substantially in the form attached hereto as Exhibit C to this Agreement and incorporated by reference into this Agreement.
- 1.21. “Final Approval Hearing” means the Court’s hearing on the Motion for Final Approval of the Settlement to determine whether to approve finally and implement the terms of this Agreement and enter the Judgment.
- 1.22. “Gross Settlement Amount” means Six Hundred Thousand Dollars (\$600,000) which is the total amount to be paid by Defendant as provided by this Agreement except as provided in Paragraph 9 below. The Gross Settlement Amount will be used to pay Individual Class Payments, Individual PAGA Payments, the LWDA PAGA Payment, Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment, Class Representative Service Payment, and the Administration Expenses Payment. This Gross Settlement Amount is an all-in amount without any reversion to Defendants, and excludes any employer payroll taxes, if any, due on the portion of the Individual Class Payments allocated to wages which shall not be paid from the Gross Settlement and shall be the separate additional obligation of Defendants.
- 1.23. “Individual Class Payment” means the Participating Class Member’s pro rata share of the Net Settlement Amount calculated according to the number of Workweeks worked during the Class Period.
- 1.24. “Individual PAGA Payment” means the Aggrieved Employee’s pro rata share of 25% of the PAGA Penalties calculated according to the number of PAGA Pay Periods worked during the PAGA Period.
- 1.25. “Judgment” means the judgment entered by the Court based upon Final Approval substantially in the form attached hereto as Exhibit C to this Agreement and incorporated by reference into this Agreement.
- 1.26. “LWDA” means the California Labor and Workforce Development Agency, the agency entitled, under Labor Code section 2699, subd. (i).

- 1.27. “LWDA PAGA Payment” means the 75% of the PAGA Penalties paid to the LWDA under Labor Code section 2699, subd. (i).
- 1.28. “Net Settlement Amount” means the Gross Settlement Amount, less the following payments in the amounts approved by the Court: Individual PAGA Payments, the LWDA PAGA Payment, Class Representative Service Payment, Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment, and the Administration Expenses Payment. The Net Settlement Amount is to be paid to Participating Class Members as Individual Class Payments.
- 1.29. “Non-Participating Class Member” means a Class Member who opts out of the Class Settlement by submitting a valid and timely Request for Exclusion to the Administrator.
- 1.30. “PAGA Pay Period” means any Pay Period during which an Aggrieved Employee worked for Defendants for at least one day during the PAGA Period.
- 1.31. “PAGA Period” means the period of time from February 21, 2021 through July 1, 2023.
- 1.32. “PAGA” means the Private Attorneys General Act (Labor Code §§ 2698. et seq.).
- 1.33. “PAGA Notice” means the Plaintiff’s February 21, 2022 letter to Defendants and the LWDA providing notice pursuant to Labor Code section 2699.3, subd.(a).
- 1.34. “PAGA Penalties” means the total amount of PAGA civil penalties to be paid from the Gross Settlement Amount, allocated 25% to the Aggrieved Employees (\$6,000) and the 75% to LWDA (\$18,000) in settlement of PAGA claims.
- 1.35. “Participating Class Member” means a Class Member who does not submit a valid and timely Request for Exclusion.
- 1.36. “Plaintiff” means Angela Garcia., the named plaintiff in the Action.
- 1.37. “Preliminary Approval” means the Court’s Order Granting Preliminary Approval of the Settlement, substantially in the form attached hereto as Exhibit B to this Agreement and incorporated by this reference herein.
- 1.38. “Released Class Claims” means all claims and causes of action that were alleged, or reasonably could have been alleged, based on the facts stated in the Operative Complaint, including all of the following: (a) all class claims stated in the Operative Complaint alleging violations of sections 201, 202, 203, 204, 210, 218, 221, 226 et seq, 226.7, 233, 246, 246.5, 510, 512, 1194, 1194.2, 1197, 1197.1, 1198, 2802; (b) all claims for unpaid wages, including claims for minimum, overtime, and double-time

wages, the alleged failure to pay for all time worked, the alleged failure to pay for off the clock work, the alleged failure to pay for drug testing and other required testing and examinations, the alleged failure to pay for temperature checks and symptom questionnaires for Covid-19, the alleged failure to pay for all hours worked at correct rates, including overtime at the correct rates, the alleged improper rounding of time entries, and the alleged unlawful deductions from earned wages; (c) all claims for meal period violations, including claims for late, short, interrupted, rounded, and missed meal periods and the failure to pay premiums at all, or at the correct regular rates, and the alleged failure to properly record meal periods; (d) all claims for rest break violations, including claims for late, short, interrupted, missed, or otherwise improperly controlled rest breaks and the failure to pay premiums at all or at the correct regular rates; (e) all claims for unreimbursed expenses, including, but not limited to, expenses incurred for personal cell phone usage, mileage, and home office expenses; (f) all claims for improper or inaccurate itemized wage statements, including any alleged violations of Labor Code Section 226(a)(1)-(9) based on the facts and legal theories contained in the Operative Complaint, including the allegation that the wage statements lacked the total number of hours worked and corresponding rates and the proper legal entity of the employer, and including claims for injuries suffered therefrom; (g) all claims for the untimely payment of wages, including regular, overtime, premium wages, paid sick leave, and reporting time pay to employees under sections 204 and 210 of the Labor Code; (h) all claims for the untimely payment of final wages and associated waiting time penalties under sections 201 to 203 of the Labor Code Section; (i) all claims for unpaid sick leave, including claims that paid sick leave was not paid at the correct regular rate of pay; (j) all claims for civil penalties for the alleged failure to pay employees for reporting time pay; and (k) all claims under the Business & Professions Code (including Section 17200 et seq.) premised on the facts, claim, and causes of action alleged in the Operative Complaint. Except as expressly set forth in this Agreement, Participating Class Members do not release any other claims, including claims for vested benefits, wrongful termination, violation of the Fair Employment and Housing Act, discrimination, unemployment insurance, disability, social security, workers' compensation, or Class claims based on facts occurring outside the Class Period.

- 1.39. "Released PAGA Claims" means all claims for PAGA penalties that were alleged, or reasonably could have been alleged, based on the facts stated in the Operative Complaint and the PAGA Notice, which occurred during the PAGA Period, including the following: (a) All class claims stated in the Operative Complaint alleging violations of sections 201, 202, 203, 204 et seq., 210, 221, 226(a), 226.7, 227.3, 246 et seq., 510, 512, 558(a)(1)(2), 1194, 1197, 1197.1, 1198, 2802, California Code of Regulations, Title 8, Section 11040, Subdivision 5(A)-(B), California Code of Regulations, Title 8, Section 1 1070(14) (Failure to Provide Seating), and applicable Industrial Welfare Commission Wage Order(s) including Industrial Wage Order 7(A)(3); (b) All claims for civil penalties for violations of unpaid wages, including unpaid minimum, overtime, and double-time wages, the alleged failure to pay for all

time worked, the alleged failure to pay for off the clock work, the alleged failure to pay for drug testing and other required testing and examinations, the alleged failure to pay for temperature checks and symptom questionnaires for Covid-19, the alleged failure to pay for all hours worked at correct rates, including overtime at the correct rates, the alleged improper rounding of time entries, and the alleged unlawful deductions from earned wages; (c) All claims for civil penalties for meal period violations, including late, short, interrupted, rounded, and missed meal periods and the failure to pay premiums at all, or at the correct regular rates, and the alleged failure to properly record meal periods; (d.) All claims for civil penalties for rest break violations, including late, short, interrupted, missed, or otherwise improperly controlled rest breaks and the failure to pay premiums at all or at the correct regular rates; (e) All claims for civil penalties for unreimbursed expenses, including, but not limited to, expenses incurred for personal cell phone usage, mileage, and home office expenses; (f) All claims for civil penalties for inaccurate itemized wage statements, including any alleged violations of Labor Code Section 226(a)(1)-(9) based on the facts and legal theories contained in the PAGA Notice, including the allegation that the wage statements lacked the total number of hours worked and corresponding rates and the proper legal entity of the employer; (g) All claims for civil penalties for the untimely payment of wages, including regular, overtime, premium wages, paid sick leave, and reporting time pay to employees under sections 204 and 210 of the Labor Code; (h) All claims for civil penalties for the untimely payment of final wages and associated waiting time penalties under sections 201 to 203 of the Labor Code Section; (i) All claims for civil penalties for unpaid sick leave, including claims that paid sick leave was not paid at the correct regular rate of pay; (j) All claims for civil penalties for failing to provide suitable seating; (k) All claims for civil penalties for alleged violations of Industrial Wage Order 7(A)(3) for failure to keep time records showing when employees began and ended each shift and meal period; (l) All claims for civil penalties for the alleged failure to pay employees for reporting time pay; and (m) All claims for civil penalties for alleged violations of section 227.3 of the Labor Code. The Released PAGA Claims do not include other PAGA claims, underlying wage and hour claims, claims for wrongful termination, violation of the Fair Employment and Housing Act discrimination, unemployment insurance, disability, social security, worker's compensation, and PAGA claims outside of the PAGA Period.

- 1.40. "Released Parties" means: Defendants Sunderstorm Inc. and Sunderstorm Bay LLC and their past, present and/or future, direct and/or indirect, owners, officers, directors, members, managers, employees, agents, representatives, attorneys, insurers, parent companies, subsidiaries, affiliates, successors, and assigns.
- 1.41. "Request for Exclusion" means a Class Member's submission of a written request to be excluded from the Class Settlement signed by the Class Member.
- 1.42. "Response Deadline" means forty-five (45) calendar days after the Administrator

mails Class Notice Packet to Class Members and Aggrieved Employees and shall be the last date on which Class Members may: (a) submit Requests for Exclusion from the Settlement, or (b) submit his or her Objection to the Settlement. Class Members to whom Class Notice Packets are resent after having been returned undeliverable to the Administrator shall have an additional 14 calendar days beyond the Response Deadline has expired.

1.43. “Settlement” means the disposition of the Action and all related claims effectuated by this Agreement and the Judgment.

1.44. “Workweek” means any week during the Class Period in which a Class Member worked for Defendants as a Class Member for at least one day.

## **2. RECITALS**

### **Plaintiff’s Class Action**

2.1. On June 29, 2022, Plaintiff commenced this Action by filing a Class Action Complaint against Defendants in the Superior Court of the State of California, County of Monterey (“Plaintiff’s Class Action”). Plaintiff’s Class Action Complaint asserted several wage and hour claims against the Defendants, including, but not limited to, the following claims that Defendants:

- (a) Violated California Business and Professions Code § 17200 et seq.;
- (b) Failed to pay minimum wages in violation of California Labor Code §§ 1194, 1197, & 1197.1;
- (c) Failed to pay overtime wages in violation of California Labor Code § 510, et seq.;
- (d) Failed to provide required meal periods in violation of California Labor Code §§ 226.7 & 512 and the applicable IWC Wage Order;
- (e) Failed to provide required rest periods in violation of California Labor Code §§ 226.7 & 512 and the applicable IWC Wage Order;
- (f) Failed to reimburse employees for required expenses in violation of California Labor Code § 2802.
- (g) Failed to provide accurate itemized wage statements in violation of California Labor Code § 226;
- (h) Failed to provide wages when due in violation of California Labor Code §§ 201, 202 and 203; and,
- (i) Failed to pay sick wages in violation of §§ 201-204, 233 & 246

2.2. On September 21, 2022 Defendants filed an Answer to Plaintiff’s Class Action Complaint, asserting twenty-three (23) affirmative defenses.

### **Plaintiff’s PAGA Action**

- 2.3. On June 30, 2022, Plaintiff filed a separate Representative Action Complaint against Defendants in the Superior Court of the State of California, County of Monterey. (Plaintiff's "PAGA Action") Plaintiff's Complaint against Defendants alleged one cause of action for Civil Penalties Pursuant to Labor Code §§ 2699, *et seq.* for various alleged wage and hour violations of the Labor Code, including, but not limited to the following: Labor Code §§ 201, 202, 203, 204 *et seq.*, 210, 221, 226(a), 226.7, 227.3, 510, 512, 558(a)(1)(2), 1194, 1197, 1197.1, 1198, 2802, California Code of Regulations, Title 8, Section 11040, Subdivision 5(A)-(B), and the applicable Wage Order(s).
- 2.4. On September 21, 2022 Defendants filed an Answer to Plaintiff's Representative Action Complaint, asserting twenty-one (21) affirmative defenses.

### **Consolidation/Pleading Amendment**

- 2.5. As part of this Agreement, the Parties agreed to stipulate to leave for Plaintiff to file a First Amended Class and Representative Action Complaint in the Class Action that adds the claims and parties alleged in the PAGA Action, and thereafter dismiss the separate PAGA Action without prejudice. Plaintiff's First Amended Class and Representative Action Complaint was filed on June 27, 2023. The First Amended Class and Representative Action Complaint in the Class Action is the operative complaint in the Action (the "Operative Complaint").
- 2.6. Defendant denies any liability or wrongdoing of any kind associated with the claims asserted in the Action. Defendants also dispute the damages and penalties claimed by the Plaintiff, and further contend that, for any purpose other than settlement, Plaintiff's claims are not appropriate for class or representative treatment. This Settlement is a compromise of disputed claims. Nothing contained in this Settlement, no documents referred to herein, and no action taken to carry out this Settlement, shall be construed or used as an admission by or against Defendants as to the merits or lack thereof of the claims asserted in the Actions. Defendants contend that at all times it has complied with all applicable state, federal and local laws related to the Class Members' employment. Nevertheless, Defendants have entered into this Settlement to avoid the cost, risk and inconvenience of further litigation. Nothing contained in this Settlement, nor the fact of this Settlement itself, shall be construed or deemed as an admission of liability, or wrongdoing on the part of any of the Defendants collectively or individually, or an admission that class or representative action treatment would be allowed outside the settlement context. The Parties agree that this Settlement cannot be used to support any claim for subsequent penalty violation rates under the PAGA in any subsequent litigation. Pursuant to California Evidence Code sections 1152 and 1154, this Settlement shall not be admissible in evidence in any proceeding; except that the Settlement may be filed and used in this litigation or any related litigation as necessary to approve, interpret, or enforce this Settlement, or in any subsequent action against or by Defendants to support a stay of such subsequent action, or to establish a defense of res judicata, collateral estoppel, release, good faith settlement, judgment



bar, or reduction, or any other theory of claim preclusion or issue preclusion or similar defense or counterclaim.

### **Mediation and Settlement**

- 2.7. On May 1, 2023, the Parties participated in an all-day mediation presided over by Hon. Carl J. West (Ret.), a respected mediator of wage and hour representative and class actions. The mediator facilitated an agreement among the Parties that was memorialized in the form of a Memorandum of Understanding. This Agreement replaces and supersedes the Memorandum of Understanding and any other agreements, understandings, or representations between the Parties.
- 2.8. Prior to mediation, Plaintiff obtained sufficient documents and information to sufficiently investigate the claims such that Plaintiff's investigation was sufficient to satisfy the criteria for court approval set forth in *Dunk v. Foot Locker Retail, Inc.* (1996) 48 Cal.App.4th 1794, 1801 and *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 129-130 ("*Dunk/Kullar*").
- 2.9. This Agreement represents a compromise and settlement of highly disputed claims. Nothing in this Agreement is intended or will be construed as an admission by Defendants that the claims in the Action of Plaintiff or the Class have merit or that Defendants bear any liability to Plaintiff or the Class on those claims or any other claims, or as an admission by Plaintiff that Defendants' defenses in the Action have merit. The Parties agree to certification of the Class for purposes of this Settlement only. If for any reason the settlement does not become effective, Defendants reserve the right to contest certification of any class for any reason and reserves all available defenses to the claims in the Action.
- 2.10. The Parties, Class Counsel and Defense Counsel represent that they are not aware of any other pending matter or action asserting claims that will be extinguished or affected by the Settlement.

### **3. MONETARY TERMS**

- 3.1. Gross Settlement Amount. Except as otherwise provided by Paragraph 9 below, Defendants promise to pay \$600,000 and no more as the Gross Settlement Amount. This amount is all-inclusive of all payments contemplated in this resolution, excluding any employer-side payroll taxes on the portion of the Individual Class Payments allocated to wages which shall be separately paid by Defendants to the Administrator. Defendants have no obligation to pay the Gross Settlement Amount (or any payroll taxes) prior to the deadline stated in Paragraph 4.3 of this Agreement. The Administrator will disburse the entire Gross Settlement Amount without asking or requiring Participating Class Members or Aggrieved Employees to submit any claim as a condition of payment. None of the Gross Settlement Amount will revert to Defendants.

3.2. Payments from the Gross Settlement Amount. Subject to the terms and conditions of this Agreement, the Administrator will make the following payments out of the Gross Settlement Amount, in the amounts specified by the Court in the Final Approval.

- (a) To Plaintiff: Class Representative Service Payment to the Class Representative of not more than \$10,000 (in addition to any Individual Class Payment and any Individual PAGA Payment the Class Representative is entitled to receive as a Participating Class Member). Defendants will not oppose Plaintiff's request for a Class Representative Service Payment that does not exceed this amount. As part of the motion for Class Counsel Fees Payment and Class Litigation Expenses Payment, Plaintiff will seek Court approval for any Class Representative Service Payments no later than 16 court days prior to the Final Approval Hearing. If the Court approves a Class Representative Service Payment less than the amount requested, the Administrator will retain the remainder in the Net Settlement Amount. The Administrator will pay the Class Representative Service Payment using IRS Form 1099. Plaintiff assumes full responsibility and liability for employee taxes owed on the Class Representative Service Payment.
- (b) To Class Counsel: A Class Counsel Fees Payment of not more than one-third (1/3) of the Gross Settlement Amount, which is currently estimated to be \$200,000, and a Class Counsel Litigation Expenses Payment of not more than \$15,000. Defendants will not oppose requests for these payments provided that they do not exceed these amounts. Plaintiff and/or Class Counsel will file a motion for Class Counsel Fees Payment and Class Litigation Expenses Payment no later than 16 court days prior to the Final Approval Hearing. If the Court approves a Class Counsel Fees Payment and/or a Class Counsel Litigation Expenses Payment less than the amounts requested, the Administrator will allocate the remainder to the Net Settlement Amount. Released Parties shall have no liability to Class Counsel or any other Plaintiff's Counsel arising from any claim to any portion any Class Counsel Fee Payment and/or Class Counsel Litigation Expenses Payment. The Administrator will pay the Class Counsel Fees Payment and Class Counsel Expenses Payment using one or more IRS 1099 Forms. Class Counsel assumes full responsibility and liability for taxes owed on the Class Counsel Fees Payment and the Class Counsel Litigation Expenses Payment and holds Defendants harmless, and indemnifies Defendants, from any dispute or controversy regarding any division or sharing of any of these payments. This Settlement is not contingent upon the Court awarding Class Counsel any particular amount in attorneys' fees and costs and, in the event that the Court reduces or does not approve the requested Class Counsel Fees Payment, Plaintiffs and Class Counsel shall not have the right to modify or revoke the Settlement, or to appeal such order, nor will Plaintiffs or Class Counsel seek, request, or demand an increase to the Gross Settlement Amount on that basis.
- (c) To the Administrator: An Administration Expenses Payment not to exceed \$7,000 except for a showing of good cause and as approved by the Court. To the extent the

Administration Expenses Payment is less or the Court approves payment less than \$7,000, the Administrator will retain the remainder in the Net Settlement Amount for distribution to Participating Class Members.

- (d) To the LWDA and Aggrieved Employees: PAGA Penalties in the amount of \$24,000 to be paid from the Gross Settlement Amount, with 75% (\$18,000) allocated to the LWDA PAGA Payment and 25% (\$6,000) allocated to the Individual PAGA Payments.
  - i. The Administrator will calculate each Individual PAGA Payment by (a) dividing the amount of the Aggrieved Employees' 25% share of PAGA Penalties (\$6,000) by the total number of PAGA Period Pay Periods worked by all Aggrieved Employees during the PAGA Period and (b) multiplying the result by each Aggrieved Employee's PAGA Period Pay Periods. Aggrieved Employees assume full responsibility and liability for any taxes owed on their Individual PAGA Payment.
  - ii. If the Court approves PAGA Penalties of less than the amount requested, the Administrator will allocate the remainder to the Net Settlement Amount. The Administrator will report the Individual PAGA Payments on IRS 1099 Forms.
- (e) To Each Participating Class Member: An Individual Class Payment calculated by (a) dividing the Net Settlement Amount by the total number of Workweeks worked by all Participating Class Members during the Class Period and (b) multiplying the result by each Participating Class Member's Workweeks.
  - i. Tax Allocation of Individual Class Payments. 20% of each Participating Class Member's Individual Class Payment will be allocated to settlement of wage claims (the "Wage Portion"). The Wage Portions are subject to tax withholding and will be reported on an IRS W-2 Form. 80% of each Participating Class Member's Individual Class Payment will be allocated to settlement of claims for non-wages, expense reimbursement, interest and penalties (the "Non-Wage Portion"). The Non-Wage Portions are not subject to wage withholdings and will be reported on IRS 1099 Forms. Participating Class Members assume full responsibility and liability for any employee taxes owed on their Individual Class Payment.
  - ii. Effect of Non-Participating Class Members on Calculation of Individual Class Payments. Non-Participating Class Members will not receive any Individual Class Payments. The Administrator will retain amounts equal to their Individual Class Payments in the Net Settlement Amount for distribution to Participating Class Members on a pro rata basis.

#### **4. SETTLEMENT FUNDING**

- 4.1. Class Workweeks and Aggrieved Employee Pay Periods. Based on its records during the time of the mediation, Defendants represented that the Class consists of approximately 193 Class Members who collectively worked a total of 10,296 Workweeks from June 29, 2018 to May 1, 2023 (the “Mediation Period”), and approximately 109 Aggrieved Employees who worked a total of 2,750 PAGA Pay Periods.
- 4.2. Class Data. Not later than 20 days after the Court grants Preliminary Approval of the Settlement, Defendants will deliver the Class Data to the Administrator, in the form of a Microsoft Excel spreadsheet. To protect Class Members’ privacy rights, the Administrator must maintain the Class Data in confidence, use the Class Data only for purposes of this Settlement and for no other purpose, and restrict access to the Class Data to Administrator employees who need access to the Class Data to effect and perform under this Agreement. Defendants have a continuing duty to immediately notify Class Counsel if it discovers that the Class Data omitted Class Member identifying information and to provide corrected or updated Class Data as soon as reasonably feasible. The Parties recognize that because the operations of a third-party timekeeping and payroll vendor for the Defendants ceased in 2019, Defendants lost the timekeeping, payroll and HRIS data of its employees for the Fourth Quarter of 2018 and for the First Quarter of 2019. After the mediation date, Defendant was able to reconstruct the Class Data for the Fourth Quarter of 2018 and the First Quarter of 2019, and will provide the Class Data to the Administrator following Preliminary Approval. Based on that reconstructed Class Data, Defendants represented that there are approximately 8,884 Workweeks during the Mediation Period.
- 4.3. Funding of the Gross Settlement Amount. Defendants shall fully fund the Gross Settlement Amount, and also fund the amounts necessary to fully pay Defendants’ share of payroll taxes by transmitting the funds to the Administrator no later than twenty (20) days after the Effective Date.

## **5. PAYMENTS FROM THE GROSS SETTLEMENT AMOUNT**

- 5.1. Within 14 days after Defendants funds the Gross Settlement Amount, the Administrator will mail checks for all Individual Class Payments, all Individual PAGA Payments, the LWDA PAGA Payment, the Administration Expenses Payment, the Class Counsel Fees Payment, the Class Counsel Litigation Expenses Payment, and the Class Representative Service Payment.
- 5.2. The Administrator will issue checks for the Individual Class Payments and/or Individual PAGA Payments and send them to the Class Members via First Class U.S. Mail, postage prepaid. The face of each check shall prominently state the “void date”, which is 180 days after the date of mailing, when the check will be voided. Before checks are mailed, the Administrator shall update address information through the National Change of Address database. The Administrator will cancel all checks not

cashed by the void date. The Administrator will send checks for Individual Class Payments to all Participating Class Members (including those for whom Class Notice was returned undelivered). The Administrator will send checks for Individual PAGA Payments to all Aggrieved Employees including Non-Participating Class Members who qualify as Aggrieved Employees (including those for whom Class Notice was returned undelivered). Before mailing any checks, the Administrator must update the recipients' mailing addresses using the National Change of Address Database. If a Participating Class Member's or Aggrieved Employee's check is not cashed within 120 days after its last mailing to the affected individual, the Administrator will also send the individual a notice informing him or her that unless the check is cashed by the void date, it will expire and become non-negotiable, and offer to replace the check if it was lost or misplaced but not cashed.

- 5.3. The Administrator must conduct a Class Member Address Search for all other Class Members whose checks are returned undelivered without USPS forwarding address. Within 7 days of receiving a returned check the Administrator must re-mail checks to the USPS forwarding address provided or to an address ascertained through the Class Member Address Search. The Administrator need not take further steps to deliver checks to Class Members whose re-mailed checks are returned as undelivered. The Administrator shall promptly send a replacement check to any Class Member whose original check was lost or misplaced, requested by the Class Member prior to the void date.
- 5.4. For any Class Member whose Individual Class Payment check or Individual PAGA Payment check is uncashed and cancelled after the void date, the Administrator shall transmit the funds represented by such checks to the California Controller's Unclaimed Property Fund in the name of the Class Member thereby leaving no "unpaid residue" subject to the requirements of California Code of Civil Procedure Section 384, subd. (b).
- 5.5. The payment of Individual Class Payments and Individual PAGA Payments shall not obligate Defendants to confer any additional benefits or make any additional payments to Class Members (such as 401(k) contributions or bonuses) beyond those specified in this Agreement.
6. **RELEASE OF CLAIMS.** Effective on the date when Defendants fully funds the entire Gross Settlement Amount and funds all employer payroll taxes owed on the Wage Portion of the Individual Class Payments, Plaintiff, Participating Class Members, Aggrieved Employees and the LWDA will release claims against all Released Parties as follows:
  - 6.1. Plaintiff's Release. Plaintiff and his or her respective former and present spouses, representatives, agents, attorneys, heirs, administrators, successors, and assigns generally, release and discharge Released Parties from all claims, transactions, or occurrences that occurred through the Effective Date, including, but not limited to: all known and unknown claims against the Released Parties, including any Released Class

Claims and Released PAGA Claims as well as all other wage and hour claims, claims under California Business & Professions Code section 17200, claims under the Labor Code, including, but not limited to, claims under the Private Attorneys General Act (“PAGA”), claims under the Fair Labor Standards Act (“FLSA”), and all claims for indemnity or reimbursement of business expenses, overtime compensation, minimum wages, penalties, liquidated damages, and interest, and all other claims under state, federal, and local laws, including, without limitation, Title VII of the Civil Rights Act of 1964, the Family and Medical Leave Act, the Americans with Disabilities Act, the Fair Credit Reporting Act, the Employee Retirement Income Security Act of 1974, and all of their implementing regulations and interpretive guidelines, as well as the common law, including laws related to discrimination, harassment, or retaliation, whether known or unknown, and whether anticipated or unanticipated, arising from or relating to Plaintiff’s relationship, or termination of relationship, with any Released Party through the date of Final Approval for any type of relief. Plaintiff further covenants that he will not become a member of any other legal actions against the Released Parties asserting any of Plaintiff’s Released Claims and will opt out of any such actions if necessary. For the avoidance of doubt, this is a complete and general release to the maximum extent permitted by law. The scope of this release does not include claims for unemployment insurance, disability, social security, and workers' compensation (except for claims pursuant to Labor Code Sections 132a and 4553).

- (a) Plaintiff’s Waiver of Rights Under Civil Code Section 1542. For purposes of Plaintiff’s Release, Plaintiff expressly waives and relinquishes the provisions, rights, and benefits, if any, of section 1542 of the California Civil Code, which reads:

A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release, and that if known by him or her would have materially affected his or her settlement with the debtor or Released Party.

Plaintiff may hereafter discover claims or facts in addition to, or different from, those which he now knows or believes to exist, but Plaintiff expressly agrees to fully, finally and forever settle and release any and all claims against the Released Parties, known or unknown, suspected or unsuspected, which exist or may exist on behalf of or against the other at the time of execution of this Agreement, including, but not limited to, any and all claims relating to or arising from Plaintiff’s employment with Defendants.

- 6.2. Release by Participating Class Members. All Participating Class Members, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, release Released Parties from the Released Class Claims.

6.3. Release of PAGA Claims. All Aggrieved Employees and the LWDA are deemed to release, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, the Released Parties from the Released PAGA Claims.

**7. MOTION FOR PRELIMINARY APPROVAL.** The Parties agree to jointly prepare and file a motion for preliminary approval (“Motion for Preliminary Approval”) that complies with the Court’s procedures and instructions.

7.1. Plaintiff’s Responsibilities. Plaintiff will prepare and deliver to Defense Counsel all documents necessary for obtaining Preliminary Approval, including: (i) a draft of the notice, and memorandum in support, of the Motion for Preliminary Approval that includes an analysis of the Settlement under *Dunk/Kullar* and a request for approval of the PAGA Settlement under Labor Code Section 2699, subd. (f)(2)); (ii) a draft proposed Order Granting Preliminary Approval and Approval of PAGA Settlement; (iii) a draft proposed Class Notice; (iv) a signed declaration from the Administrator attaching its “not to exceed” bid for administering the Settlement and attesting to its willingness to serve; competency; operative procedures for protecting the security of Class Data; amounts of insurance coverage for any data breach, defalcation of funds or other misfeasance; all facts relevant to any actual or potential conflicts of interest with Class Members; and the nature and extent of any financial relationship with Plaintiff, Class Counsel or Defense Counsel; (v) a signed declaration from Plaintiff confirming willingness and competency to serve and disclosing all facts relevant to any actual or potential conflicts of interest with Class Members, and/or the Administrator; (vi) a signed declaration from each Class Counsel firm attesting to its competency to represent the Class Members; its timely transmission to the LWDA of all necessary PAGA documents (initial notice of violations (Labor Code section 2699.3, subd. (a)), Operative Complaint (Labor Code section 2699, subd. (l)(1)), this Agreement (Labor Code section 2699, subd. (l)(2)); (vi) a redlined version of the parties’ Agreement showing all modifications made to the Model Agreement ready for filing with the Court; and (vii) all facts relevant to any actual or potential conflict of interest with Class Members, the Administrator. In their Declarations, Plaintiff and Class Counsel Declaration shall aver that they are not aware of any other pending matter or action asserting claims that will be extinguished or adversely affected by the Settlement, and that Class Counsel does not currently represent any employees of the Defendants other than the Plaintiff.

7.2. Responsibilities of Counsel. Class Counsel and Defense Counsel are jointly responsible for expeditiously finalizing and filing the Motion for Preliminary Approval no later than 30 days after the full execution of this Agreement; obtaining a prompt hearing date for the Motion for Preliminary Approval; and for appearing in Court to advocate in favor of the Motion for Preliminary Approval. Class Counsel is responsible for delivering the Court’s Preliminary Approval to the Administrator.

7.3. Duty to Cooperate. If the Parties disagree on any aspect of the proposed Motion for Preliminary Approval and/or the supporting declarations and documents, Class Counsel and Defense Counsel will expeditiously work together on behalf of the Parties by meeting in person or by telephone, and in good faith, to resolve the disagreement. If the Court does not grant Preliminary Approval or conditions Preliminary Approval on any material change to this Agreement, Class Counsel and Defense Counsel will expeditiously work together on behalf of the Parties by meeting in person or by telephone, and in good faith, to modify the Agreement and otherwise satisfy the Court's concerns.

## **8. SETTLEMENT ADMINISTRATION**

8.1. Selection of Administrator. The Parties have jointly selected ILYM Group, Inc. to serve as the Administrator and verified that, as a condition of appointment, ILYM Group, Inc. agrees to be bound by this Agreement and to perform, as a fiduciary, all duties specified in this Agreement in exchange for payment of Administration Expenses. The Administrator's duties will include preparing, printing, and mailing the Class Notice Packet to all Class Members; conducting a National Change of Address search to update Class Member addresses before mailing the Class Notice Packets; re-mailing Class Notice Packets that are returned to the Class Member's new address; setting up a toll-free telephone number and email and a fax number to receive communications from Class Members; receiving and reviewing for validity completed Requests for Exclusion; providing the Parties with weekly status reports about the delivery of Class Notice Packets and receipt of Requests for Exclusion, objections and disputes; calculating Individual Class Payments and Individual PAGA Payments; issuing the checks to effectuate the payments due under the Settlement; issuing the tax reports required under this Settlement; and otherwise administering the Settlement pursuant to this Agreement. The Parties and their Counsel represent that they have no interest or relationship, financial or otherwise, with the Administrator other than a professional relationship arising out of prior experiences administering settlements.

8.2. Employer Identification Number. The Administrator shall have and use its own Employer Identification Number for purposes of calculating payroll tax withholdings and providing reports state and federal tax authorities.

8.3. Qualified Settlement Fund. The Administrator shall establish a settlement fund that meets the requirements of a Qualified Settlement Fund ("QSF") under US Treasury Regulation section 468B-1.

8.4. Notice to Class Members.

- (a) No later than three (3) business days after receipt of the Class Data, the Administrator shall notify Class Counsel that the list has been received and state the



number of Class Members, PAGA Members, Workweeks, and Pay Periods in the Class Data.

- (b) Using best efforts to perform as soon as possible, and in no event later than 14 days after receiving the Class Data, the Administrator will send to all Class Members identified in the Class Data, via first-class United States Postal Service (“USPS”) mail, the Class Notice substantially in the form attached to this Agreement as Exhibit A. The first page of the Class Notice shall prominently estimate the dollar amounts of any Individual Class Payment and/or Individual PAGA Payment payable to the Class Member, and the number of Workweeks and PAGA Pay Periods (if applicable) used to calculate these amounts. Before mailing Class Notices, the Administrator shall update Class Member addresses using the National Change of Address database.
  - (c) Not later than 7 days after the Administrator’s receipt of any Class Notice returned by the USPS as undelivered, the Administrator shall re-mail the Class Notice using any forwarding address provided by the USPS. If the USPS does not provide a forwarding address, the Administrator shall conduct a Class Member Address Search, and re-mail the Class Notice to the most current address obtained. The Administrator has no obligation to make further attempts to locate or send Class Notice to Class Members whose Class Notice is returned by the USPS a second time.
  - (d) The deadlines for Class Members’ written objections, Challenges to Workweeks and/or Pay Periods, and Requests for Exclusion will be extended an additional 14 days beyond the Response Deadline provided in the Class Notice for all Class Members whose notice is re-mailed. The Administrator will inform the Class Member of the extended deadline with the re-mailed Class Notice.
  - (e) If the Administrator, the Parties, Defense Counsel or Class Counsel is contacted by or otherwise discovers any persons who believe they should have been included in the Class Data and should have received Class Notice, the Parties will expeditiously meet and confer in person or by telephone, and in good faith, in an effort to agree on whether to include them as Class Members. If the Parties agree, such persons will be Class Members entitled to the same rights as other Class Members, and the Administrator will send, via email or overnight delivery, a Class Notice requiring them to exercise options under this Agreement not later than 14 days after receipt of Class Notice, or the deadline dates in the Class Notice, which ever are later.
- 8.5. Requests for Exclusion (Opt-Outs). Class Members who wish to exclude themselves (opt-out of) the Class Settlement must send the Administrator, by fax, email, or mail, a signed written Request for Exclusion not later than the Response Deadline (plus an additional 14 days for Class Members whose Class Notice is re-mailed). A Request for Exclusion is a letter from a Class Member or his/her representative that must: (1)

contain the name, address and telephone number of the Class Member requesting exclusion; (2) contain a statement expressing that the Class Member elects to be excluded from the Settlement; (3) be signed by the Class Member; and (4) be postmarked by the Response Deadline and returned to the Settlement Administrator at the specified address. The date of the postmark on the return mailing envelope on the Request for Exclusion shall be the exclusive means used to determine whether a Request for Exclusion has been timely submitted. Class Members who fail to submit a valid and timely Request for Exclusion on or before the Response Deadline shall be bound by all terms of the Settlement and any Final Judgment entered in this Action. Any Class Member who requests to be excluded from the Class will not be entitled to any recovery under the Settlement and will not be bound by the terms of the Settlement or have any right to object to or appeal the class settlement. A Request for Exclusion has no effect to the PAGA portion of this Settlement; Aggrieved Employees cannot request exclusion from the Settlement and will receive an Individual PAGA Payment regardless of whether they submit a Request for Exclusion.

8.6. Challenges to Calculation of Workweeks. Each Class Member shall have until the Response Deadline (plus an additional 14 days for Class Members whose Class Notice is re-mailed) to challenge the number of Class Workweeks and PAGA Pay Periods (if any) allocated to the Class Member in the Class Notice. The Class Member may challenge the allocation by communicating with the Administrator via fax, email or mail. The Administrator must encourage the challenging Class Member to submit supporting documentation. In the absence of any contrary documentation, the Administrator is entitled to presume that the Workweeks contained in the Class Notice are correct so long as they are consistent with the Class Data. The Administrator's determination of each Class Member's allocation of Workweeks and/or Pay Periods shall be final and not appealable or otherwise susceptible to challenge. The Administrator shall promptly provide copies of all challenges to calculation of Workweeks and/or Pay Periods to Defense Counsel and Class Counsel and the Administrator's determination as to the challenges

8.7. Objections to Settlement.

- (a) Only Participating Class Members may object to the class action components of the Settlement and/or this Agreement, including contesting the fairness of the Settlement, and/or amounts requested for the Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment and/or Class Representative Service Payment.
- (b) Participating Class Members may send written objections to the Administrator, by fax, email, or mail. In the alternative, or in addition to a written objection, Participating Class Members may appear in Court (or hire an attorney to appear in Court) to present verbal objections at the Final Approval Hearing. A Participating Class Member who elects to send a written objection to the Administrator must do

so not later than the Response Deadline (plus an additional 14 days for Class Members whose Class Notice was re-mailed).

- (c) Non-Participating Class Members have no right to object to any of the class action components of the Settlement.

8.8. Administrator Duties. The Administrator has a duty to perform or observe all tasks to be performed or observed by the Administrator contained in this Agreement or otherwise.

- (a) Website, Email Address and Toll-Free Number. The Administrator will establish and maintain and use an internet website to post information of interest to Class Members including the date, time and location for the Final Approval Hearing and copies of the Settlement Agreement, Motion for Preliminary Approval, the Preliminary Approval, the Class Notice, the Motion for Final Approval, the Motion for Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment and Class Representative Service Payment, the Final Approval and the Judgment. The Administrator will also maintain and monitor an email address and a toll-free telephone number to receive Class Member calls, faxes and emails.
- (b) Request for Exclusion (Opt-Outs) and Exclusion List. The Administrator will promptly review on a rolling basis Requests for Exclusion to ascertain their validity. Not later than 7 days after the expiration of the deadline for submitting Requests for Exclusion, the Administrator shall email a list to Class Counsel and Defense Counsel containing (a) the names and other identifying information of Class Members who have timely submitted valid Requests for Exclusion (“Exclusion List”); (b) the names and other identifying information of Class Members who have submitted invalid Requests for Exclusion; (c) copies of all Requests for Exclusion from Settlement submitted (whether valid or invalid).
- (c) Workweek and/or Pay Period Challenges. The Administrator has the authority to address and make final decisions consistent with the terms of this Agreement on all Class Member challenges over the calculation of Workweeks and/or Pay Periods. The Administrator’s decision shall be final and not appealable or otherwise susceptible to challenge.
- (d) Weekly Reports. The Administrator must, on a weekly basis, provide written reports to Class Counsel and Defense Counsel that, among other things, tally the number of: Class Notices mailed or re-mailed, Class Notices returned undelivered, Requests for Exclusion (whether valid or invalid) received, objections received, challenges to Workweeks and/or Pay Periods received and/or resolved, and checks mailed for Individual Class Payments and Individual PAGA Payments (“Weekly Report”). The Weekly Reports must include providing the Administrator’s

assessment of the validity of Requests for Exclusion and attach copies of all Requests for Exclusion and objections received.

- (e) Administrator's Declaration. Not later than 7 days before the date by which Plaintiff is required to file the Motion for Final Approval of the Settlement, the Administrator will provide to Class Counsel and Defense Counsel, a signed declaration suitable for filing in Court attesting to its due diligence and compliance with all of its obligations under this Agreement, including, but not limited to, its mailing of Class Notice, the Class Notices returned as undelivered, the re-mailing of Class Notices, attempts to locate Class Members, the total number of Requests for Exclusion from Settlement it received (both valid or invalid), the number of written objections and attach the Exclusion List. The Administrator will supplement its declaration as needed or requested by the Parties and/or the Court. Class Counsel is responsible for filing the Administrator's declaration(s) in Court.
- (f) Final Report by Administrator. Within 10 days after the Administrator disburses all funds of the Gross Settlement Amount, the Administrator will provide Class Counsel and Defense Counsel with a final report detailing its disbursements by employee identification number only of all payments made under this Agreement. At least 7 days before any deadline set by the Court, the Administrator will prepare, and submit to Class Counsel and Defense Counsel, a signed declaration suitable for filing in Court attesting to its disbursement of all payments required under this Agreement. Class Counsel is responsible for filing the Administrator's declaration in Court. If a second declaration attesting to the distribution of uncashed checks is required, the Administrator shall provide this second declaration at least 7 days before any deadline for a second declaration and Class Counsel shall be responsible for filing the second declaration with the Court.

**9. CLASS SIZE MODIFICATION AND ESCALATOR CLAUSE.** At the mediation, Defendants represented that an extrapolation of the workweeks is 10,296 from June 29, 2018 to May 1, 2023 (the "Mediation Period"). The Parties agree that if, once the data covering the Mediation Period is reviewed by the Administrator, and the actual number of workweeks during the Mediation Period is calculated to be more than ten percent (10%) greater than 10,296 (or greater than 11,326 workweeks), then the Gross Settlement Amount shall increase by \$58.28 for each additional workweek. For example, if the actual number of workweeks during the Mediation Period is 11,336, then the Gross Settlement Amount will increase in the amount of \$582.80.

**10. DEFENDANTS' RIGHT TO WITHDRAW.** If the number of valid Requests for Exclusion identified in the Exclusion List exceeds 5% of the total of all Class Members, Defendants may, but are not obligated, elect to withdraw from the Settlement. The Parties agree that, if Defendants withdraw, the Settlement shall be void ab initio, have no force or effect whatsoever, and that neither Party will have any further obligation to perform under this Agreement; provided, however, Defendants will remain responsible for paying all

Administration Expenses incurred as of the date Defendants makes this election to withdraw. Defendants must notify Class Counsel and the Court of its election to withdraw not later than 7 days after the Administrator sends the final Exclusion List to Defense Counsel. Invalid Requests for Exclusion will have no effect on this threshold for an election.

**11. MOTION FOR FINAL APPROVAL.** Unless otherwise ordered by the Court, not later than 16 court days before the calendared Final Approval Hearing, Plaintiff will file in Court, a motion for final approval of the Settlement that includes a request for approval of the PAGA settlement under Labor Code section 2699(l), a Proposed Final Approval Order and a proposed Judgment (collectively “Motion for Final Approval”). Plaintiff shall provide drafts of these documents to Defense Counsel not later than 7 days prior to filing the Motion for Final Approval. Class Counsel and Defense Counsel will expeditiously meet and confer and in good faith, to resolve any disagreements concerning the Motion for Final Approval.

11.1. Response to Objections. Each Party retains the right to respond to any objection raised by a Participating Class Member, including the right to file responsive documents in Court no later than 5 court days prior to the Final Approval Hearing, or as otherwise ordered or accepted by the Court.

11.2. Duty to Cooperate. If the Court does not grant Final Approval or conditions Final Approval on any material change to the Settlement (including, but not limited to, the scope of release to be granted by Class Members), the Parties will expeditiously work together in good faith to address the Court’s concerns by revising the Agreement as necessary to obtain Final Approval. The Court’s decision to award less than the amounts requested for a Class Representative Service Payment, Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment and/or Administration Expenses Payment shall not constitute a material modification to the Agreement within the meaning of this paragraph.

11.3. Continuing Jurisdiction of the Court. The Parties agree that, after entry of Judgment, the Court will retain jurisdiction over the Parties, Action, and the Settlement under C.C.P. section 664.6 solely for purposes of (i) enforcing this Agreement and/or Judgment, (ii) addressing settlement administration matters, and (iii) addressing such post-Judgment matters as are permitted by law.

11.4. Appellate Court Orders to Vacate, Reverse, or Materially Modify Judgment. If the reviewing Court vacates, reverses, or modifies the Judgment in a manner that requires a material modification of this Agreement (including, but not limited to, the scope of release to be granted by Class Members), this Agreement shall be null and void. The Parties shall nevertheless expeditiously work together in good faith to address the appellate court’s concerns and to obtain Final Approval and entry of Judgment, sharing, on an equal basis, any additional Administration Expenses reasonably incurred at the time of remittitur. An appellate decision to vacate, reverse, or modify the Court’s award

of the Class Representative Service Payment or any payments to Class Counsel shall not constitute a material modification of the Judgment within the meaning of this paragraph, as long as the Gross Settlement Amount remains unchanged.

**12. AMENDED JUDGMENT.** If any amended judgment is required under Code of Civil Procedure section 384, the Parties will work together in good faith to jointly submit and a proposed amended judgment.

### **13. ADDITIONAL PROVISIONS**

13.1. **No Admission of Liability, Class Certification or Representative Manageability for Other Purposes.** This Agreement represents a compromise and settlement of highly disputed claims. Nothing in this Agreement is intended or should be construed as an admission by Defendants that any of the allegations in the Operative Complaint have merit or that Defendants have any liability for any claims asserted; nor should it be intended or construed as an admission by Plaintiff that Defendants' defenses in the Action have merit. The Parties agree that class certification and representative treatment is for purposes of this Settlement only. If, for any reason the Court does not grant Preliminary Approval, Final Approval or Judgment pursuant to this Agreement, Defendants reserve the right to contest certification of any class for any reasons, and Defendants reserve all available defenses to the claims in the Action, and Plaintiff reserves the right to move for class certification on any grounds available and to contest Defendants' defenses. The Settlement, this Agreement and Parties' willingness to settle the Action will have no bearing on, and will not be admissible in connection with, any litigation (except for proceedings to enforce or effectuate the Settlement and this Agreement).

13.2. **Confidentiality.** The Parties and their counsel agree that they will not issue any press releases or initiate any contact with the media about the fact, amount, or terms of the Agreement. Unless required by applicable law, neither Plaintiff nor his counsel shall publicize the terms of this Agreement in any medium or initiate or issue any press release or have any communications with the press or media concerning the settlement prior to approval of the settlement. If counsel receives an inquiry about the settlement from the media prior to final approval of the settlement, counsel may respond only after the motion for final approval of the settlement has been filed and only by confirming the terms of the settlement in the Agreement that are publicly available..

13.3. **No Solicitation.** The Parties separately agree that they and their respective counsel and employees have not and will not solicit any Class Member to opt out of or object to the Settlement, or appeal from the Judgment. Nothing in this paragraph shall be construed to restrict Class Counsel's ability to communicate with Class Members in accordance with Class Counsel's ethical obligations owed to Class Members.

- 13.4. Integrated Agreement. Upon execution by all Parties and their counsel, this Agreement together with its attached exhibits shall constitute the entire agreement between the Parties relating to the Settlement, superseding any and all oral representations, warranties, covenants, or inducements made to or by any Party.
- 13.5. Attorney Authorization. Class Counsel and Defense Counsel separately warrant and represent that they are authorized by Plaintiff and Defendants, respectively, to take all appropriate action required or permitted to be taken by such Parties pursuant to this Agreement to effectuate its terms, and to execute any other documents reasonably required to effectuate the terms of this Agreement including any amendments to this Agreement.
- 13.6. Cooperation. The Parties and their counsel will cooperate with each other and use their best efforts, in good faith, to implement the Settlement by, among other things, modifying the Settlement Agreement, submitting supplemental evidence and supplementing points and authorities as requested by the Court. In the event the Parties are unable to agree upon the form or content of any document necessary to implement the Settlement, or on any modification of the Agreement that may become necessary to implement the Settlement, the Parties will seek the assistance of a mediator and/or the Court for resolution.
- 13.7. Prior Assignments. The Parties separately represent and warrant that they have not directly or indirectly assigned, transferred, encumbered, or purported to assign, transfer, or encumber to any person or entity and portion of any liability, claim, demand, action, cause of action, or right released and discharged by the Party in this Settlement.
- 13.8. Tax Advice. Neither Plaintiff, Class Counsel, Defendants nor Defense Counsel are providing any advice regarding taxes or taxability, nor shall anything in this Settlement be relied upon as such within the meaning of United States Treasury Department Circular 230 (31 CFR Part 10, as amended) or otherwise.
- 13.9. Modification of Agreement. This Agreement, and all parts of it, may be amended, modified, changed, or waived only by an express written instrument signed by all Parties or their representatives, and approved by the Court.
- 13.10. Agreement Binding on Successors. This Agreement will be binding upon, and inure to the benefit of, the successors of each of the Parties.
- 13.11. Applicable Law. All terms and conditions of this Agreement and its exhibits will be governed by and interpreted according to the internal laws of the state of California, without regard to conflict of law principles.
- 13.12. Cooperation in Drafting. The Parties have cooperated in the drafting and preparation of this Agreement. This Agreement will not be construed against any Party on the basis that the Party was the drafter or participated in the drafting.

- 13.13. Confidentiality of Information. To the extent permitted by law, all agreements made, and orders entered during Action and in this Agreement relating to the confidentiality of information shall survive the execution of this Agreement.
- 13.14. Use and Return of Class Data. Information provided to Class Counsel pursuant to Cal. Evid. Code §1152, and all copies and summaries of the Class Data provided to Class Counsel by Defendants in connection with the mediation, other settlement negotiations, or in connection with the Settlement, may be used only with respect to this Settlement, and no other purpose, and may not be used in any way that violates any existing contractual agreement, statute, or rule of court. Not later than 90 days after the date when the Court discharges the Administrator's obligation to provide a Declaration confirming the final pay out of all Settlement funds, Plaintiff shall destroy, all paper and electronic versions of Class Data received from Defendants.
- 13.15. Headings. The descriptive heading of any section or paragraph of this Agreement is inserted for convenience of reference only and does not constitute a part of this Agreement.
- 13.16. Calendar Days. Unless otherwise noted, all reference to "days" in this Agreement shall be to calendar days. In the event any date or deadline set forth in this Agreement falls on a weekend or federal legal holiday, such date or deadline shall be on the first business day thereafter.
- 13.17. Representation by Class Counsel. Class Counsel represents that they do not currently represent any employees of Defendants other than Plaintiff.
- 13.18. Notice. All notices, demands or other communications between the Parties in connection with this Agreement will be in writing and deemed to have been duly given as of the third business day after mailing by United States mail, or the day sent by email or messenger, addressed as follows:

*To Plaintiffs and the Class:*

Norman B. Blumenthal  
Kyle R. Nordrehaug  
Blumenthal Nordrehaug Bhowmik De Blouw LLP  
2255 Calle Clara  
La Jolla, CA 92037  
Tel.: (858) 551-1223  
Fax: (858) 551-1232  
E-Mail: [norm@bamlawca.com](mailto:norm@bamlawca.com)  
[kyle@bamlawca.com](mailto:kyle@bamlawca.com)

*To Defendant:*



Michael J. Nader  
Alexandra M. Asterlin  
Ogletree Deakins Nash Smoak & Stewart, P.C.  
500 Capital Mall, Suite 2500  
Sacramento, CA 95814  
Tel: (916) 840-3140  
Fax: (916) 640-3159  
Emails: [michael.nader@ogletree.com](mailto:michael.nader@ogletree.com)  
[alexandra@ogletree.com](mailto:alexandra@ogletree.com)

13.19. Execution in Counterparts. This Agreement may be executed in one or more counterparts by facsimile, electronically (e.g. DocuSign), or email which for purposes of this Agreement shall be accepted as an original. All executed counterparts and each of them will be deemed to be one and the same instrument if counsel for the Parties will exchange between themselves signed counterparts. Any executed counterpart will be admissible in evidence to prove the existence and contents of this Agreement.

13.20. Stay of Litigation. The Parties agree that upon the execution of this Agreement, the Parties will jointly notify the Court and request that the Court stay the litigation except to effectuate the terms of this Agreement. The Parties further agree that upon the signing of this Agreement that pursuant to CCP section 583.330 to extend the date to bring a case to trial under CCP section 583.310 for a period of not less than one (1) year starting from the date of the signing of the Memorandum of Understanding by all parties until the entry of the final approval order or if not entered, the date this Agreement shall no longer be of any force or effect.

13.21. Fair Settlement. The Parties, Class Counsel and Defense Counsel believe and warrant that this Agreement reflects a fair, reasonable, and adequate settlement of the Action and have arrived at this Agreement through arms-length negotiations, taking into account all relevant factors, both current and potential.

#### 14. EXECUTION BY PARTIES AND COUNSEL

The Parties and their counsel hereby execute this Agreement.

Dated: Aug 24, 2023

  
Angela Augustina Carranza (Aug 24, 2023 16:05 PDT)  
Plaintiff Angela Garcia

Dated: \_\_\_\_\_

\_\_\_\_\_  
Authorized Agent for Defendant Sunderstorm Inc.

Michael J. Nader  
Alexandra M. Asterlin  
Ogletree Deakins Nash Smoak & Stewart, P.C.  
500 Capital Mall, Suite 2500  
Sacramento, CA 95814  
Tel: (916) 840-3140  
Fax: (916) 640-3159  
Emails: [michael.nader@ogletree.com](mailto:michael.nader@ogletree.com)  
[alexandra@ogletree.com](mailto:alexandra@ogletree.com)

13.19. Execution in Counterparts. This Agreement may be executed in one or more counterparts by facsimile, electronically (e.g. DocuSign), or email which for purposes of this Agreement shall be accepted as an original. All executed counterparts and each of them will be deemed to be one and the same instrument if counsel for the Parties will exchange between themselves signed counterparts. Any executed counterpart will be admissible in evidence to prove the existence and contents of this Agreement.

13.20. Stay of Litigation. The Parties agree that upon the execution of this Agreement, the Parties will jointly notify the Court and request that the Court stay the litigation except to effectuate the terms of this Agreement. The Parties further agree that upon the signing of this Agreement that pursuant to CCP section 583.330 to extend the date to bring a case to trial under CCP section 583.310 for a period of not less than one (1) year starting from the date of the signing of the Memorandum of Understanding by all parties until the entry of the final approval order or if not entered, the date this Agreement shall no longer be of any force or effect.

13.21. Fair Settlement. The Parties, Class Counsel and Defense Counsel believe and warrant that this Agreement reflects a fair, reasonable, and adequate settlement of the Action and have arrived at this Agreement through arms-length negotiations, taking into account all relevant factors, both current and potential.

#### 14. EXECUTION BY PARTIES AND COUNSEL

The Parties and their counsel hereby execute this Agreement.

Dated: \_\_\_\_\_

\_\_\_\_\_  
Plaintiff Angela Garcia

Dated: 8/23

Keith C. Cich  
Authorized Agent for Defendant Sunderstorm Inc.

KEITH CICH, President

Dated: 8/23

Keith Cich  
Authorized Agent for Defendant Sunderstorm Bay LLC  
KEITH CICH, President

APPROVED AS TO FORM AND CONTENT ON BEHALF OF THE NAMED PLAINTIFF,  
AND AS A SUBSTANTIVE RECOMMENDATION TO THE COURT ON BEHALF OF THE  
SETTLEMENT GROUP:

Dated: \_\_\_\_\_

\_\_\_\_\_  
Kyle Nordrehaug  
Blumenthal Nordrehaug Bhowmik De Blouw LLP  
Attorney for Plaintiff

APPROVED AS TO FORM AND CONTENT ON BEHALF OF THE DEFENDANTS:

Dated: 8/22/23

Michael J. Nader  
Michael J. Nader  
Alexandra M. Asterlin  
Ogletree Deakins Nash Smoak & Stewart, P.C.  
Attorney for Defendants

Dated: \_\_\_\_\_

\_\_\_\_\_  
Authorized Agent for Defendant Sunderstorm Bay LLC

APPROVED AS TO FORM AND CONTENT ON BEHALF OF THE NAMED PLAINTIFF,  
AND AS A SUBSTANTIVE RECOMMENDATION TO THE COURT ON BEHALF OF THE  
SETTLEMENT GROUP:

Dated: 8/24/23

Kyle Nordrehaug  
\_\_\_\_\_  
Kyle Nordrehaug  
Blumenthal Nordrehaug Bhowmik De Blouw LLP  
Attorney for Plaintiff

APPROVED AS TO FORM AND CONTENT ON BEHALF OF THE DEFENDANTS:

Dated: \_\_\_\_\_

\_\_\_\_\_  
Michael J. Nader  
Alexandra M. Asterlin  
Ogletree Deakins Nash Smoak & Stewart, P.C  
Attorney for Defendants

**EXHIBIT A**

[NOTICE OF PROPOSED SETTLEMENT OF CLASS ACTION AND HEARING DATE FOR  
FINAL COURT APPROVAL]

**EXHIBIT “A”**

**COURT APPROVED NOTICE OF CLASS ACTION SETTLEMENT  
AND HEARING DATE FOR FINAL COURT APPROVAL**

***Garcia v. Sunderstorm Inc., Superior Court of the State of California,  
County of Monterey, Case No. 22CV001827***

***The Superior Court for the State of California authorized this Notice. Read it carefully!  
It's not junk mail, spam, an advertisement, or solicitation by a lawyer. You are not being sued.***

**YOUR LEGAL RIGHTS MAY BE AFFECTED WHETHER YOU ACT OR DO NOT  
ACT. PLEASE READ THIS NOTICE CAREFULLY.**

**You may be eligible to receive money** from an employee class action lawsuit (“Action”) against Defendants Sunderstorm Inc. and Sunderstorm Bay LLC (“Defendants”) for alleged wage and hour violations. The Action was filed by Plaintiff Angela Garcia (“Plaintiff”) and seeks payment of (1) wages and other relief on behalf of all individuals who were employed by Defendants in California and classified as a non-exempt employee at any time during the Class Period (June 29, 2018 through July 1, 2023) (“Class Members”), and (2) penalties and other relief on behalf of all individuals who were employed by Defendants in California and classified as a non-exempt employee at any time during the PAGA Period (February 21, 2021 through July 1, 2023) (“Aggrieved Employees”).

The proposed Settlement has two main parts: (1) a Class Settlement requiring Defendants to fund Individual Class Payments to Class Members, and (2) a PAGA Settlement requiring Defendants to fund the PAGA Penalties to pay penalties to the California Labor and Workforce Development Agency (“LWDA”) and to Aggrieved Employees.

Based on Defendants’ records, and the Parties’ current assumptions, **your Individual Class Payment is estimated to be <<\$\_\_\_\_\_>> (less withholding), and your share of the PAGA Penalties is estimated to <<be \$\_\_\_\_\_>>.** The actual amount you may receive might be different and will depend on a number of factors.

The above estimates are based on Defendants’ records showing that **you worked <<\_\_\_\_\_>> workweeks** during the Class Period and **you worked <<\_\_\_\_\_>> pay periods** during the PAGA Period. If you believe that these numbers need correction, you can submit a challenge by the deadline date. See Section 5 of this Notice below.

The Court has already preliminarily approved the proposed Settlement and approved this Notice. The Court has not yet decided whether to grant final approval. Your legal rights are affected whether you act or do not act. Read this Notice carefully. You will be deemed to have carefully read and understood it. At the Final Approval Hearing, the Court will decide whether to finally approve the Settlement and how much of the Settlement will be paid to Plaintiff and Plaintiff’s attorneys (“Class Counsel”). The Court will also decide whether to enter a judgment that requires Defendants to make payments under the Settlement and requires Class Members and Aggrieved Employees to give up their rights to assert certain claims against Defendants.

If you worked for Defendants during the Class Period and/or the PAGA Period, you have two basic options under the Settlement:

- (1) **Do Nothing and receive your share of the Settlement amount.** You don't have to do anything to participate in the proposed Settlement and be eligible for an Individual Class Payment, and/or a share of the PAGA Penalties.
- (2) **Opt-Out of the Class Settlement and not receive a Settlement payment.** You can exclude yourself from the Class Settlement (opt-out) by submitting the written Request for Exclusion or otherwise notifying the Administrator in writing. If you opt-out of the Settlement, you will not receive an Individual Class Payment and you will keep your right as an individual to sue Defendants separately about the same legal claims that are being settled. If you are an Aggrieved Employee, you remain eligible for a share of the PAGA Penalties. You cannot opt-out of the PAGA portion of the proposed Settlement.

**Defendants will not retaliate against you for any actions you take with respect to the proposed Settlement.**

<b>SUMMARY OF YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT:</b>	
<b>You Don't Have to Do Anything to Participate in the Settlement</b>	If you do nothing, you will be a Participating Class Member, eligible for an Individual Class Payment and a share of the PAGA Penalties (if any).
<b>You Can Opt-out of the Class Settlement but not the PAGA Settlement</b>  <b>The Opt-out Deadline is _____.</b>	<p>If you don't want to fully participate in the proposed Settlement, you can opt-out of the Class Settlement by sending the Administrator a written Request for Exclusion. Once excluded, you will be a Non-Participating Class Member and no longer eligible for an Individual Class Payment. Non-Participating Class Members cannot object to any portion of the proposed Settlement. See Section 7 of this Notice.</p> <p>However, you cannot opt-out of the PAGA portion of the proposed Settlement. If you are also an Aggrieved Employee and exclude yourself, you will still be paid your share of the PAGA Penalties and will remain bound by the release of the Released PAGA Claims regardless of whether you submit a request for exclusion.</p>
<b>Participating Class Members Can Object to the Class Settlement</b>  <b>Written Objections Must be Submitted by the Response Deadline _____</b>	If you think that the Settlement is not fair, and you don't opt out of the Settlement, then you can object to the Settlement in writing as explained in Section 8 of this Notice.

<b>You Can Participate in the _____ Final Approval Hearing</b>	<p>The Court’s Final Approval Hearing is scheduled to take place on _____ at _____ [a.m./p.m.], at the Monterey County Superior Court, located at 1200 Aguajito Road, Monterey, CA 93940, in Department 15 before Judge Thomas W. Wills. This hearing may change as explained below in Section 9.</p> <p>You don’t have to attend but you do have the right to appear (or hire an attorney to appear on your behalf at your own cost), in person, by telephone or by using the Court’s virtual appearance platform. Participating Class Members can verbally object to the Settlement at the Final Approval Hearing. See Section 9 of this Notice</p>
<b>You Can Challenge the Calculation of Your Workweeks / Pay Periods</b>  <b>Witten Challenges Must be Submitted by the Response Deadline (_____)</b>	<p>The amount of your Individual Class Payment depends on how many workweeks you worked at least one day during the Class Period. The amount of your share of the PAGA Penalties (if any) depends on how many pay periods you worked at least one day during the PAGA Period. The number of Class Period workweeks and number of PAGA Period pay periods you worked according to Defendants’ records is stated on the first page of this Notice. If you disagree with either of these numbers, you must challenge it by _____. See Section 5 of this Notice</p>

## 1. What is action about?

Plaintiff Angela Garcia is a former employee of Defendants. The Action alleges that Defendants failed to pay minimum and overtime wages, failed to provide meal and rest breaks and related premiums, failed to provide accurate itemized wage statements, failed to reimburse expenses, failed to provide timely wage payments, and unfair competition. Plaintiff also seeks civil penalties under the Private Attorneys General Act (“PAGA”).

Defendants deny that they have done anything wrong and dispute all the claims in the Action. After good-faith negotiations, in which both sides recognized the substantial risk of an uncertain outcome, Plaintiff and the Defendants agreed to settle the Action pursuant to the terms and conditions of the Settlement. The Settlement represents a compromise and settlement of highly disputed claims. Nothing in the Settlement is intended or will be construed as an admission by Defendants that Plaintiff’s claims in the Action have merit or that Defendants have any liability to Plaintiff or the proposed class on those claims. Defendants deny any and all such liability.

The parties and their counsel have concluded that the Settlement is advantageous, considering the risks and uncertainties to each side of continued litigation. The parties and their counsel have determined that the Settlement is fair, reasonable, and adequate and is in the best interests of the members of the Class.

Consistent with Defendants’ policies, there will be no retaliation or adverse action taken against any Class Member who participates in the Settlement or opts out of the Settlement.



## **2. What does it mean that the action has settled?**

This settlement does not involve any decision by the Court on the merits of the Action. Plaintiff and Defendants have negotiated a proposed Settlement that is subject to the Court's Final Approval. Both sides agree the proposed Settlement is a compromise of disputed claims. By agreeing to settle, Defendants do not admit any violations or concede the merit of any claims. Plaintiff and Class Counsel strongly believe the Settlement is a good deal for you because they believe that: (1) Defendants have agreed to pay a fair, reasonable and adequate amount considering the strength of the claims and the risks and uncertainties of continued litigation; and (2) Settlement is in the best interests of the Class Members. The Court preliminarily approved the proposed Settlement as fair, reasonable and adequate, authorized this Notice, and scheduled a hearing to determine Final Approval.

## **3. What are the terms of the Settlement?**

**Gross Settlement Amount.** Defendants has agreed to pay an “all in” amount of **Six Hundred Thousand Dollars (\$600,000) (the “Gross Settlement Amount”)** to fund the settlement of the Action. The Gross Settlement Amount includes all payments of Individual Class Payments, Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment, Class Representative Service Payment, the Administration Expenses Payment, and the PAGA Penalties for civil penalties under PAGA. Any employer-side payroll taxes on the portion of the Individual Class Payments allocated to wages shall be separately paid by Defendants. Defendants shall fund the Gross Settlement Amount, and also fund the amounts necessary to fully pay Defendants' share of payroll taxes, by transmitting the funds to the Administrator no later than 20 days after the Effective Date. The “Effective Date” means the date the Judgment is entered unless there are objections in which case the “Effective Date” means when the Judgment is no longer subject to appeal. Within 14 days after Defendants fund the Gross Settlement Amount, the Administrator will mail checks for all Individual Class Payments to Participating Class Members.

**Court Approved Deductions from Gross Settlement Amount.** The proposed payments, subject to Court approval, will be deducted from the Gross Settlement Amount before payments of Individual Class Payments are made to Class Members who do not request exclusion (“Participating Class Members”). At the Final Approval Hearing, Plaintiff and/or Class Counsel will ask the Court to approve the following deductions from the Gross Settlement, the amounts of which will be decided by the Court at the Final Approval Hearing:

- **Administration Expenses Payment.** Payment to the Administrator, estimated not to exceed \$7,000, for expenses, including expenses of notifying the Class Members of the Settlement, processing opt outs, and distributing settlement checks and tax forms.
- **Attorneys' Fees and Costs.** Payment to Class Counsel of reasonable attorneys' fees not to exceed one-third (1/3) of the Gross Settlement Amount, which presently equals \$200,000, and an additional amount to reimburse actual litigation costs incurred by the Plaintiff not to exceed \$15,000. Class Counsel has been prosecuting the Action on behalf of Plaintiff and the Class on a contingency fee basis (that is, without being paid any money to date) and has been paying all litigation costs and expenses. The amounts stated

are what Class Counsel will be requesting and the final amounts to be paid will be decided at the Final Approval Hearing.

- Class Representative Service Payment. A Class Representative Service Payment in an amount not more than \$10,000 to the Plaintiff as a service award, or such lesser amount as may be approved by the Court, to compensate her for services on behalf of the Class in initiating and prosecuting the Action, and for the risks she undertook. The amount stated is what Plaintiff will be requesting and the final amount to be paid will be decided at the Final Approval Hearing.
- PAGA Penalties. A payment of \$24,000 relating to Plaintiff's claim under PAGA, \$18,000 of which will be paid to the State of California's Labor and Workforce Development Agency ("LWDA"). The remaining \$6,000 will be distributed to the Aggrieved Employees as Individual PAGA Payments. The Administrator will calculate each Individual PAGA Payment by (a) dividing the amount of the Aggrieved Employees' 25% share of PAGA Penalties (\$6,000) by the total number of PAGA Period Pay Periods worked by all Aggrieved Employees during the PAGA Period and (b) multiplying the result by each Aggrieved Employee's PAGA Pay Periods. Aggrieved Employees assume full responsibility and liability for any taxes owed on their Individual PAGA Payment. "PAGA Pay Period" means any Pay Period during which an Aggrieved Employee worked for Defendant for at least one day during the PAGA Period, which is February 21, 2021 through July 1, 2023.

Participating Class Members have the right to object to any of these deductions. The Court will consider all objections.

Calculation of Payments to Class Members. After all of the payments of the court-approved Attorneys' Fees and Costs, the Class Representative Service Payment, the PAGA Penalties, and the Administration Expenses Payment are deducted from the Gross Settlement Amount, the remaining portion, the "Net Settlement Amount", shall be distributed as Individual Class Payments to the Participating Class Members. The Net Settlement Amount is estimated to be at least \$344,000. The Administrator will pay an Individual Class Payment from the Net Settlement Amount to each Participating Class Member. The Individual Class Payment for each Participating Class Member will be calculated by (a) dividing the Net Settlement Amount by the total number of Workweeks worked by all Participating Class Members during the Class Period and (b) multiplying the result by each Participating Class Member's Workweeks. "Workweek" means any week during the Class Period in which a Class Member worked for Defendant as a Class Member for at least one day.

**If the Settlement is approved by the Court and you do not exclude yourself, you will automatically be mailed a check for your Individual Class Payment to the same address as this Class Notice. You do not have to do anything to receive a payment.** If your address has changed, you must contact the Administrator to inform them of your correct address to ensure you receive your payment.

Conditions of Settlement. This Settlement and your receipt of the Individual Class Payment is conditioned upon the Court entering an order granting final approval of the Settlement and entering judgment.

Need to Promptly Cash Payment Checks. The front of every check issued will show the date when the check expires (the void date). If you don't cash it by the void date, your check will be automatically cancelled, and the funds represented by such checks to the California Controller's Unclaimed Property Fund in the name of the individual who failed to cash their check.

Administrator. The Court has appointed a neutral company, \_\_\_\_\_ (the "Administrator") to send this Notice, calculate and make payments, and process Class Members' Requests for Exclusion. The Administrator will also decide Class Member Challenges over Workweeks, mail and re-mail settlement checks and tax forms, and perform other tasks necessary to administer the Settlement. The Administrator's contact information is contained in Section 9 of this Notice.

#### **4. What Do I Release Under the Settlement?**

Released Class Claims. As of the Effective Date and upon full finding of the Gross Settlement Amount and all employer payroll taxes owed on the Wage Portion of the Individual Class Payments, all Participating Class Members, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, release Released Parties from the Released Class Claims. The "Released Class Claims" are all claims and causes of action that were alleged, or reasonably could have been alleged, based on the facts stated in the Operative Complaint, including all of the following: (a) all class claims stated in the Operative Complaint alleging violations of sections 201, 202, 203, 204, 210, 218, 221, 226 et seq, 226.7, 233, 246, 246.5, 510, 512, 1194, 1194.2, 1197, 1197.1, 1198, 2802; (b) all claims for unpaid wages, including claims for minimum, overtime, and double-time wages, the alleged failure to pay for all time worked, the alleged failure to pay for off the clock work, the alleged failure to pay for drug testing and other required testing and examinations, the alleged failure to pay for temperature checks and symptom questionnaires for Covid-19, the alleged failure to pay for all hours worked at correct rates, including overtime at the correct rates, the alleged improper rounding of time entries, and the alleged unlawful deductions from earned wages; (c) all claims for meal period violations, including claims for late, short, interrupted, rounded, and missed meal periods and the failure to pay premiums at all, or at the correct regular rates, and the alleged failure to properly record meal periods; (d) all claims for rest break violations, including claims for late, short, interrupted, missed, or otherwise improperly controlled rest breaks and the failure to pay premiums at all or at the correct regular rates; (e) all claims for unreimbursed expenses, including, but not limited to, expenses incurred for personal cell phone usage, mileage, and home office expenses; (f) all claims for improper or inaccurate itemized wage statements, including any alleged violations of Labor Code Section 226(a)(1)-(9) based on the facts and legal theories contained in the Operative Complaint, including the allegation that the wage statements lacked the total number of hours worked and corresponding rates and the proper legal entity of the employer, and including claims for injuries suffered therefrom; (g) all claims for the untimely payment of wages, including regular, overtime, premium wages, paid sick leave, and reporting time pay to employees under sections 204 and

210 of the Labor Code; (h) all claims for the untimely payment of final wages and associated waiting time penalties under sections 201 to 203 of the Labor Code Section; (i) all claims for unpaid sick leave, including claims that paid sick leave was not paid at the correct regular rate of pay; (j) all claims for civil penalties for the alleged failure to pay employees for reporting time pay; and (k) all claims under the Business & Professions Code (including Section 17200 et seq.) premised on the facts, claim, and causes of action alleged in the Operative Complaint. Except as expressly set forth in this Agreement, Participating Class Members do not release any other claims, including claims for vested benefits, wrongful termination, violation of the Fair Employment and Housing Act, discrimination, unemployment insurance, disability, social security, workers' compensation, or Class claims based on facts occurring outside the Class Period.

Released PAGA Claims. Effective on the date when Defendant fully funds the entire Gross Settlement Amount and funds all employer payroll taxes owed on the Wage Portion of the Individual Class Payments, all Aggrieved Employees and the LWDA are deemed to release, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, the Released Parties from the Released PAGA Claims. The "Released PAGA Claims" are all claims for PAGA penalties that were alleged, or reasonably could have been alleged, based on the facts stated in the Operative Complaint and the PAGA Notice, which occurred during the PAGA Period, including the following: (a) All class claims stated in the Operative Complaint alleging violations of sections 201, 202, 203, 204 et seq., 210, 221, 226(a), 226.7, 227.3, 246 et seq., 510, 512, 558(a)(1)(2), 1194, 1197, 1197.1, 1198, 2802, California Code of Regulations, Title 8, Section 11040, Subdivision 5(A)-(B), California Code of Regulations, Title 8, Section 11070(14) (Failure to Provide Seating), and applicable Industrial Welfare Commission Wage Order(s) including Industrial Wage Order 7(A)(3); (b) All claims for civil penalties for violations of unpaid wages, including unpaid minimum, overtime, and double-time wages, the alleged failure to pay for all time worked, the alleged failure to pay for off the clock work, the alleged failure to pay for drug testing and other required testing and examinations, the alleged failure to pay for temperature checks and symptom questionnaires for Covid-19, the alleged failure to pay for all hours worked at correct rates, including overtime at the correct rates, the alleged improper rounding of time entries, and the alleged unlawful deductions from earned wages; (c) All claims for civil penalties for meal period violations, including late, short, interrupted, rounded, and missed meal periods and the failure to pay premiums at all, or at the correct regular rates, and the alleged failure to properly record meal periods; (d.) All claims for civil penalties for rest break violations, including late, short, interrupted, missed, or otherwise improperly controlled rest breaks and the failure to pay premiums at all or at the correct regular rates; (e) All claims for civil penalties for unreimbursed expenses, including, but not limited to, expenses incurred for personal cell phone usage, mileage, and home office expenses; (f) All claims for civil penalties for inaccurate itemized wage statements, including any alleged violations of Labor Code Section 226(a)(1)-(9) based on the facts and legal theories contained in the PAGA Notice, including the allegation that the wage statements lacked the total number of hours worked and corresponding rates and the proper legal entity of the employer; (g) All claims for civil penalties for the untimely payment of wages, including regular, overtime, premium wages, paid sick leave, and reporting time pay to employees under sections 204 and 210 of the Labor Code; (h) All claims for civil penalties for the untimely payment of final wages and associated waiting time penalties under sections 201 to 203 of the

Labor Code Section; (i) All claims for civil penalties for unpaid sick leave, including claims that paid sick leave was not paid at the correct regular rate of pay; (j) All claims for civil penalties for failing to provide suitable seating; (k) All claims for civil penalties for alleged violations of Industrial Wage Order 7(A)(3) for failure to keep time records showing when employees began and ended each shift and meal period; (l) All claims for civil penalties for the alleged failure to pay employees for reporting time pay; and (m) All claims for civil penalties for alleged violations of section 227.3 of the Labor Code. The Released PAGA Claims do not include other PAGA claims, underlying wage and hour claims, claims for wrongful termination, violation of the Fair Employment and Housing Act discrimination, unemployment insurance, disability, social security, worker's compensation, and PAGA claims outside of the PAGA Period.

**Released Parties.** The Released Parties are: Defendants Sunderstorm Inc. and Sunderstorm Bay LLC and their past, present and/or future, direct and/or indirect, owners, officers, directors, members, managers, employees, agents, representatives, attorneys, insurers, parent companies, subsidiaries, affiliates, successors, and assigns.

#### **5. How much will my payment be?**

**Individual Class Payments.** The Administrator will calculate Individual Class Payments by (a) dividing the Net Settlement Amount by the total number of Workweeks worked by all Participating Class Members during the Class Period and (b) multiplying the result by each Participating Class Member's Workweeks.

**Defendants' records reflect that you worked <<\_\_\_\_\_>> Workweeks during the Class Period (June 29, 2018 through July 1, 2023).**

**Based on this information, your estimated Individual Class Payment from the Net Settlement Amount is <<\_\_\_\_\_>>.**

**Defendants' records reflect that you worked <<\_\_\_\_\_>> PAGA Pay Periods during the during the PAGA Period (February 21, 2021 through July 1, 2023). Based on this information your estimated Individual PAGA Payment is <<\_\_\_\_\_>>.**

If you wish to challenge the information set forth above, then you must submit a written, signed dispute challenging the information along with supporting documents, to the Administrator at the address provided in this Class Notice no later than the Response Deadline, which is \_\_\_\_\_ [forty-five (45) days after the mailing of the Class Notice or an additional 14 days in the case of re-mailing]. You may also fax the dispute to \_\_\_\_\_ or email the dispute to \_\_\_\_\_ by no later than the Response Deadline. Any dispute should include credible written evidence and will be resolved by the Administrator.

You need to support your challenge by sending copies of pay stubs or other records. The Administrator will accept Defendants' calculation of Workweeks based on Defendants' records as accurate unless you send copies of records containing contrary information. You should send copies rather than originals because the documents will not be returned to you. The

Administrator will resolve Workweek challenges based on your submission and on input from Class Counsel (who will advocate on behalf of Participating Class Members) and Defendants' Counsel. The Administrator's decision is final. You can't appeal or otherwise challenge its final decision.

#### **6. How can I get a payment?**

To get money from the Settlement, you do not have to do anything. A check for your Individual Class Payment will be mailed automatically to the same address as this Class Notice.

**Your check will be sent to the same address as this Class Notice. If you change your address, be sure to notify the Administrator as soon as possible. Section 9 of this Class Notice has the Administrator's contact information.**

#### **7. What if I don't want to be a part of the Settlement?**

If you do not wish to participate in the Settlement, you may exclude yourself from the Class portion of the Settlement or "opt out." **If you opt out, you will not receive an Individual Class Payment from the Settlement, and you will not be bound by its terms, which means you will retain the right to sue Defendants for the Released Class Claims.** However, Aggrieved Employees who opt out will still be paid their allocation of the PAGA Penalties and will remain bound by the release of the Released PAGA Claims regardless of whether they submit a request for exclusion.

To opt out, you must submit to the Administrator a written, signed and dated request to opt-out postmarked no later than the Response Deadline which is \_\_\_\_\_. You may also fax your request to opt out to \_\_\_\_\_ or email the dispute to \_\_\_\_\_ by no later than the Response Deadline. The request to opt-out should state in substance that you wish to be excluded from the class settlement in the *Garcia v. Sunderstorm Inc.* lawsuit. The request to opt-out should state the Class Member's full name, address and email address or telephone number. Please include the name and number of the case, which is *Garcia v. Sunderstorm Inc.*, Case No. 22CV001827. The request to opt-out must be completed and signed by you. No other person may opt-out for a living member of the Class.

The address for the Administrator is \_\_\_\_\_. Written requests for exclusion that are postmarked after \_\_\_\_\_, or are incomplete or unsigned will be rejected, and those Class Members will remain bound by the Settlement and the release described above.

#### **8. How do I Object to the Settlement?**

Only Participating Class Members have the right to object to the Settlement. Before deciding whether to object, you may wish to see what Plaintiff and Defendants are asking the Court to approve. At least sixteen (16) court days before the Final Approval Hearing, scheduled for \_\_\_\_\_, Class Counsel and Plaintiff will file in Court (1) a Motion for Final Approval that includes, among other things, the reasons why the proposed Settlement is fair, and (2) a Motion for Fees, Litigation Expenses and Service Award stating (i) the amount Class Counsel is

requesting for attorneys' fees and litigation expenses; and (ii) the amount Plaintiff is requesting as Class Representative Service Payment. Upon reasonable request, Class Counsel (whose contact information is below) will send you copies of these documents at no cost to you. You can also view them on Class Counsel's website at [www.bamlawca.com](http://www.bamlawca.com) under "Class Notices" for *Garcia v. Sunderstorm Inc.* or on the Court's website (<https://portal.monterey.courts.ca.gov/>) and entering the Case No. 22CV001827.

A Participating Class Member who disagrees with any aspect of the Agreement, the Motion for Final Approval and/or Motion for Fees, Litigation Expenses and Service Award may wish to object, for example, that the proposed Settlement is unfair, or that the amounts requested by Class Counsel or Plaintiff are too high or too low. **The Response Deadline for sending written objections to the Administrator is \_\_\_\_\_** [forty-five (45) days after the date of the Notice or an additional 14 days after the Notice in the case of re-mailing]. You may also fax the dispute to \_\_\_\_\_ or email the dispute to \_\_\_\_\_ by no later than this Response Deadline. Be sure to tell the Administrator what you object to, why you object, and any facts that support your objection. Make sure you identify the Action, *Garcia v. Sunderstorm Inc.*, Case No. 22CV001827, and include your name, current address, email or telephone number, and approximate dates of employment for Defendants and sign the objection. The Administrator's contact information is as follows:

**Administrator:**

Name of Company: \_\_\_\_\_

Email Address: \_\_\_\_\_

Mailing Address: \_\_\_\_\_

Telephone Number: \_\_\_\_\_

Fax Number: \_\_\_\_\_

Alternatively, a Participating Class Member can object (or personally retain a lawyer to object at your own cost) by attending the Final Approval Hearing. You (or your attorney) should be ready to tell the Court what you object to, why you object, and any facts that support your objection. You also have the option to appear at the hearing remotely. Instructions on how to do so are available on the Court's website at <https://www.monterey.courts.ca.gov/online-services/remote-appearance>. Check the Court's website for the most current information. See Section 9 of this Notice (immediately below) for specifics regarding the Final Approval Hearing

The addresses for Class Counsel are as follows:

**CLASS COUNSEL:**

Kyle Nordrehaug

Blumenthal Nordrehaug Bhowmik DeBlouw LLP

2255 Calle Clara

La Jolla, CA 92037

Tel.: (858) 551-1223

Fax: (858) 551-1232

E-Mail: [kyle@bamlawca.com](mailto:kyle@bamlawca.com)

## 9. Can I Attend the Final Approval Hearing?

You can, but don't have to, attend the Final Approval Hearing at \_\_\_\_\_ (Pacific Standard Time) on \_\_\_\_\_, in Department 15 of the Superior Court of California, County of Monterey, Monterey Courthouse, 1200 Aguajito Road, Monterey, California 93940, before Judge Thomas W. Wills. At this hearing, the Court will consider whether the Settlement is fair, reasonable, and adequate. The purpose of this hearing is for the Court to determine whether to grant final approval to the Settlement and to fix the amounts to be paid as attorneys' fees and costs to Class Counsel and as a service payment to Plaintiff. If there are objections, the Court will consider them. **You are not required to attend** the Final Approval Hearing, although any Class Member is welcome to attend the hearing remotely or in person. Check the Court's website for the most current information concerning appearances and procedures at the Court - <https://www.monterey.courts.ca.gov/online-services/remote-appearance>. For assistance in making an appearance at the Final Approval Hearing, please contact Class Counsel below

It's possible the Court will reschedule the Final Approval Hearing. If the hearing is continued, notice will be posted on Class Counsel's website at [www.bamlawca.com](http://www.bamlawca.com) under "Class Notices" for *Garcia v. Sunderstorm Inc.* In addition, hearing dates are posted on the Internet via the Case Search page for the California Superior Court for the County of Monterey (<https://portal.monterey.courts.ca.gov/>) and entering the Case No. 22CV001827.

## 10. How Can I Get More Information?

You may call the Administrator at \_\_\_\_\_ or write to *Garcia v. Sunderstorm Inc.* Administrator, c/o \_\_\_\_\_.

This Class Notice summarizes the proposed settlement. More details are in the Settlement Agreement. You may receive a copy of the Settlement Agreement, the Judgment, the motion for attorneys' fees, costs and service award, the motion for final approval or other Settlement documents by going to Class Counsel's website at [www.bamlawca.com](http://www.bamlawca.com) under "Class Notices" for *Garcia v. Sunderstorm Inc.*. You may get more details by examining the Court's file on the Internet via the Case Search page for the California Superior Court for the County of Monterey (<https://portal.monterey.courts.ca.gov/>) and entering the Case No. 22CV001827. If you wish to view the Court files in person, you must make an appointment with the Clerk's Office at the Monterey Courthouse, 1200 Aquajito Road, Monterey, CA 93940.

**PLEASE DO NOT CALL THE COURT ABOUT THIS NOTICE.**

### IMPORTANT:

- **What if Your Address Changes** - To receive your check, you should immediately notify the Administrator if you move or otherwise change your mailing address.
- **What if You Fail to Cash a Check** - Settlement checks will be null and void 180 days after issuance if not deposited or cashed, and this expiration date is printed on the check. In such events, the Administrator shall direct all unclaimed funds to be paid to the



California Controller's Unclaimed Property Fund in the name of and for the benefit of the individual who did not cash their check. The funds may be claimed at [https://www.sco.ca.gov/upd\\_msg.html](https://www.sco.ca.gov/upd_msg.html).

- **What if You Lose Your Check** - If your check is lost or misplaced, you should contact the Administrator immediately to request a replacement.

**EXHIBIT B**

[ORDER GRANTING PRELIMINARY APPROVAL]

**EXHIBIT "B"**

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] PRELIMINARY  
APPROVAL ORDER**

Hearing Date: \_\_\_\_\_  
Hearing Time: \_\_\_\_\_

Judge: Hon. Thomas W. Wills  
Dept: 15

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

This matter came before the Honorable Thomas W. Wills of the Superior Court of the State of California, in and for the County Monterey, on \_\_\_\_\_[DATE], for hearing on the unopposed motion by Plaintiff Angela Garcia ("Plaintiff") for preliminary approval of the Settlement with Defendants Sunderstorm Inc. and Sunderstorm Bay LLC ("Defendants"). The

PRELIMINARY APPROVAL ORDER

1 Court, having considered the briefs, argument of counsel and all matters presented to the Court  
2 and good cause appearing, hereby GRANTS Plaintiff's Motion for Preliminary Approval of Class  
3 Action Settlement.

4  
5 **IT IS HEREBY ORDERED:**

6 1. The Court preliminarily approves the Class Action and PAGA Settlement  
7 Agreement ("Agreement") attached as Exhibit \_\_\_\_ to the Declaration of Kyle Nordrehaug in  
8 Support of Plaintiff's Motion for Preliminary Approval of Class Action Settlement. This is based  
9 on the Court's determination that the Settlement set forth in the Agreement is within the range of  
10 possible final approval, pursuant to the provisions of Section 382 of the California Code of Civil  
11 Procedure and California Rules of Court, rule 3.769.

12 2. This Order incorporates by reference the definitions in the Agreement, and all  
13 terms defined therein shall have the same meaning in this Order as set forth in the Agreement.

14 3. The Gross Settlement Amount that Defendant shall pay is Six Hundred Thousand  
15 Dollars (\$600,000). It appears to the Court on a preliminary basis that the settlement amount and  
16 terms are fair, adequate and reasonable as to all potential Class Members when balanced against  
17 the probable outcome of further litigation and the significant risks relating to certification, liability  
18 and damages issues. It further appears that investigation and research have been conducted such  
19 that counsel for the Parties are able to reasonably evaluate their respective positions. It further  
20 appears to the Court that the Settlement will avoid substantial additional costs by all Parties, as  
21 well as avoid the delay and risks that would be presented by the further prosecution of the Action.  
22 It further appears that the Settlement has been reached as the result of serious and non-collusive,  
23 arm's-length negotiations.

24 4. The Court preliminarily finds that the Settlement appears to be within the range of  
25 reasonableness of a settlement that could ultimately be given final approval by this Court. The  
26 Court has reviewed the monetary recovery that is being granted as part of the Settlement and  
27 preliminarily finds that the monetary settlement made available to the Class is fair, adequate, and  
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1 reasonable when balanced against the probable outcome of further litigation and the significant  
2 risks relating to certification, liability, and damages issues.

3         5.       The Agreement specifies for an attorneys' fees award not to exceed one-third of the  
4 Gross Settlement Amount, an award of litigation expenses incurred, not to exceed \$15,000, and  
5 proposed Class Representative Service Payment to the Plaintiff in an amount not to exceed  
6 \$10,000. The Court will not approve the amount of attorneys' fees and costs, nor the amount of  
7 any service award, until the Final Approval Hearing. Plaintiff will be required to present evidence  
8 supporting these requests, including lodestar, prior to final approval.

9         6.       The Court recognizes that Plaintiff and Defendants stipulate and agree to  
10 representative treatment and certification of a class for settlement purposes only. This stipulation  
11 will not be deemed admissible in this or any other proceeding should this Settlement not become  
12 final. For settlement purposes only, the Court conditionally certifies the Class which consists of  
13 "all individuals who were employed by Defendants in California and classified as a non-exempt  
14 employee at any time during the Class Period." The "Class Period" is June 29, 2018 through July  
15 1, 2023.

16         7.       The Court concludes that, for settlement purposes only, the Class meets the  
17 requirements for certification under section 382 of the California Code of Civil Procedure in that:  
18 (a) the Class is ascertainable and so numerous that joinder of all members of the Class is  
19 impracticable; (b) common questions of law and fact predominate, and there is a well-defined  
20 community of interest amongst the members of the Class with respect to the subject matter of the  
21 litigation; (c) the claims of the Plaintiff are typical of the claims of the members of the Class; (d)  
22 the Plaintiff will fairly and adequately protect the interests of the members of the Class; (e) a class  
23 action is superior to other available methods for the efficient adjudication of this controversy; and  
24 (f) counsel for the Class is qualified to act as counsel for the Class and the Plaintiff is an adequate  
25 representative of the Class.

26         8.       The Court provisionally appoints Plaintiff as the representatives of the Class. The  
27 Court provisionally appoints Norman B. Blumenthal, Kyle R. Nordrehaug, Aparajit Bhowmik,  
28

1 Nicholas J. De Blouw, Jeffrey S. Herman, and Sergio J. Puche of Blumenthal Nordrehaug  
2 Bhowmik De Blouw LLP as Class Counsel for the Class.

3           9.       The Agreement provides for a PAGA Penalties out of the Gross Settlement  
4 Amount of \$24,000, which shall be allocated \$18,000 to the Labor & Workforce Development  
5 Agency (“LWDA”) as the LWDA’s 75% share of the settlement of civil penalties paid under this  
6 Agreement pursuant to the PAGA and \$6,000 to the Aggrieved Employees. “Aggrieved  
7 Employees” are all individuals who were employed by Defendants in California and classified as a  
8 non-exempt employee at any time during the PAGA Period (February 21, 2021 through July 1,  
9 2023). Pursuant to Labor Code section 2699, subdivision (l)(2), the LWDA will be provided  
10 notice of the Agreement and these settlement terms. The Court finds the PAGA Penalties to be  
11 reasonable.

12           10.      The Court hereby approves, as to form and content, the Class Notice attached to the  
13 Agreement as Exhibit A. The Court finds that the Class Notice appears to fully and accurately  
14 inform the Class of all material elements of the proposed Settlement, of the Class Members’ right  
15 to be excluded from the Class by submitting a written opt-out request, and of each member’s right  
16 and opportunity to object to the Settlement. The Court further finds that the distribution of the  
17 Class Notice substantially in the manner and form set forth in the Agreement and this Order meets  
18 the requirements of due process, is the best notice practicable under the circumstances, and shall  
19 constitute due and sufficient notice to all persons entitled thereto. The Court orders the mailing of  
20 the Class Notice by first class mail pursuant to the terms set forth in the Agreement. If a Class  
21 Notice Packet is returned because of an incorrect address, the Administrator will promptly search  
22 for a more current address for the Class Member and re-mail the Class Notice Packet to any new  
23 address for the Class Member no later than seven (7) days after the receipt of the undelivered  
24 Class Notice.

25           11.      The Court hereby appoints ILYM Group as the Administrator. No later than  
26 twenty (20) days after this Order, Defendants will provide the Class Data to the Administrator.  
27 The Administrator will perform address updates and verifications as necessary prior to the first  
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1 mailing. Using best efforts to mail it as soon as possible, and in no event later than fourteen (14)  
2 days after receiving the Class Data, the Administrator will mail the Class Notice Packet to all  
3 Class Members via first-class regular U.S. Mail to their last known address.

4       12.     The Court hereby preliminarily approves the proposed procedure for exclusion  
5 from the Settlement, as set forth in Section 8.5 of the Settlement Agreement. Any Class Member  
6 may individually choose to opt out of and be excluded from the Class as provided in the Class  
7 Notice by following the instructions for timely requesting exclusion from the Class that are set  
8 forth in the Class Notice. All requests for exclusion must be postmarked or received no later than  
9 forty-five (45) calendar days after the date of the mailing of the Class Notice (“Response  
10 Deadline”). If a Class Notice Packet is re-mailed, the Response Deadline for requests for  
11 exclusion will be extended an additional fourteen (14) days. A Request for Exclusion may also be  
12 faxed or emailed to the Administrator as indicated in the Class Notice. Any such person who  
13 chooses to opt out of and be excluded from the Class will not be entitled to any recovery under the  
14 Class Settlement and will not be bound by the Class Settlement or have any right to object, appeal  
15 or comment thereon. Class Members who have not requested exclusion, or failed to request  
16 exclusion on a timely basis, shall be bound by all determinations of the Court, the Agreement and  
17 the Judgment. A request for exclusion may only opt out that particular individual, and any attempt  
18 to effect an opt-out of a group, class, or subclass of individuals is not permitted and will be  
19 deemed invalid.

20       13.     Any Class Member who has not opted out may appear at the final approval hearing  
21 and may object or express the Member’s views regarding the Settlement and may present evidence  
22 and file briefs or other papers that may be proper and relevant to the issues to be heard and  
23 determined by the Court as provided in the Class Notice. Class Members will have until the  
24 Response Deadline to submit their written objections to the Administrator. Written objections  
25 may also be faxed or emailed to the Administrator as indicated in the Class Notice. If a Class  
26 Notice Packet is re-mailed, the Response Deadline for written objections will be extended an  
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1 additional fourteen (14) days. Alternatively, Class Members may appear at the Final Approval  
2 Hearing to make an oral objection.

3 14. A final approval hearing shall be held before this Court on \_\_\_\_\_  
4 \_\_\_\_\_ at \_\_\_\_\_ in Department 15 at the Monterey Courthouse of the Monterey  
5 County Superior Court to hear the motion for final approval and the motion for attorneys' fees and  
6 costs, and to determine all necessary matters concerning the Settlement, including: whether the  
7 proposed settlement of the Action on the terms and conditions provided for in the Agreement is  
8 fair, adequate and reasonable and should be finally approved by the Court; whether the Final  
9 Approval Order and Judgment should be entered herein; whether the plan of allocation contained  
10 in the Agreement should be approved as fair, adequate and reasonable to the Class Members; and  
11 to finally approve attorneys' fees and costs, service award, and the fees and expenses of the  
12 Administrator. All papers in support of the motion for final approval and the motion for attorneys'  
13 fees, costs and service award shall be filed with the Court and served on all counsel no later than  
14 sixteen (16) court days before the hearing and both motions shall be heard at this final approval  
15 hearing.

16 15. Neither the Settlement nor any exhibit, document, or instrument delivered  
17 thereunder shall be construed as a concession or admission by Defendants in any way that the  
18 claims asserted have any merit or that this Action was properly brought as a class or representative  
19 action, and shall not be used as evidence of, or used against Defendants as, an admission or  
20 indication in any way, including with respect to any claim of any liability, wrongdoing, fault or  
21 omission by Defendants or with respect to the truth of any allegation asserted by any person.  
22 Whether or not the Settlement is finally approved, neither the Settlement, nor any exhibit,  
23 document, statement, proceeding or conduct related to the Settlement, nor any reports or accounts  
24 thereof, shall in any event be construed as, offered or admitted in evidence as, received as or  
25 deemed to be evidence for any purpose adverse to the Defendants, including, but not limited to,  
26 evidence of a presumption, concession, indication or admission by Defendants of any liability,  
27 fault, wrongdoing, omission, concession or damage.



16. In the event the Settlement does not become effective in accordance with the terms of the Agreement, or the Settlement is not finally approved, or is terminated, canceled or fails to become effective for any reason, this Order shall be rendered null and void and shall be vacated, and the Parties shall revert to their respective positions as of before entering into the Agreement, and expressly reserve their respective rights regarding the prosecution and defense of this Action, including all available defenses and affirmative defenses, and arguments that any claim in the Action could not be certified as a class action and/or managed as a representative action . In such an event, the Court's orders regarding the Settlement, including this Order, shall not be used or referred to in litigation for any purpose. Nothing in this paragraph is intended to alter the terms of the Agreement with respect to the effect of the Agreement if it is not approved.

17. The Court reserves the right to adjourn or continue the date of the final approval hearing and all dates provided for in the Agreement without further notice to Class Members and retains jurisdiction to consider all further applications arising out of or connected with the proposed Settlement.

**IT IS SO ORDERED.**

Dated: \_\_\_\_\_

HON. THOMAS W. WILLS  
JUDGE OF THE SUPERIOR COURT OF CALIFORNIA

**EXHIBIT C**

[FINAL APPROVAL ORDER AND JUDGMENT]

**EXHIBIT "C"**

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: \_\_\_\_\_  
Hearing Time: \_\_\_\_\_

Judge: Hon. Thomas W. Wills  
Dept: 15

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

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FINAL APPROVAL ORDER AND JUDGMENT

1 The unopposed motion of Plaintiff Angela Garcia (“Plaintiff”) for an order finally  
2 approving the Class Action and PAGA Settlement Agreement (“Agreement”) with Defendants  
3 Sunderstorm Inc. and Sunderstorm Bay LLC (“Defendants”), attorneys’ fees and costs, service  
4 payment, and the expenses of the Administrator duly came on for hearing on \_\_\_\_\_  
5 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 \_\_\_\_\_, 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.

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 \_\_\_\_\_. 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 \_\_\_\_\_, which for re-mailings was extended by fourteen (14) days. There  
15 was an adequate interval between notice and the deadline to permit Class Members to choose what  
16 to do and to act on their decision. A full and fair opportunity has been afforded to the Class  
17 Members to participate in this hearing, and all Class Members and other persons wishing to be  
18 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  
27  
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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. \_\_\_\_  
8 objections were received. \_\_\_\_\_ requests for exclusion were received.

9           e.       The participation rate was high. \_\_\_\_\_ Class Members will be mailed a  
10 settlement payment, representing \_\_\_\_% 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 \$\_\_\_\_\_ for attorneys' fees, representing one-third of the  
20 Gross Settlement Amount, and \$\_\_\_\_\_ for litigation costs and expenses, is reasonable,  
21 in light of the contingent nature of Class Counsel's fee, the hours worked by Class Counsel, and  
22 the results achieved by Class Counsel. The requested award has been supported by Class  
23 Counsel's lodestar 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 \$\_\_\_\_\_ to the Plaintiff is reasonable in  
28

1 light of the risks and burdens undertaken by the Plaintiff in this litigation and for his time and  
2 effort in 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 \$ \_\_\_\_\_ in fees and expenses, and this amount is reasonable in  
9 light 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 [INSERT REFERENCE TO IDENTIFY ANY OPT OUTS].

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 \$\_\_\_\_\_ and  
10 costs in the amount of \$\_\_\_\_\_. Class Counsel shall not seek or obtain any other  
11 compensation or reimbursement from Defendants, Plaintiff or members of the Class.

12 19. The payment of Class Representative Service Payment in the amount of \$\_\_\_\_\_

13 to the Plaintiff is approved.  
14 20. The payment of \$\_\_\_\_\_ to the Administrator for its fees and expenses is  
15 approved.

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

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

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



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

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

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

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

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

24         27. The Court shall retain jurisdiction to construe, interpret, implement and enforce the  
25 Agreement, to hear and resolve any contested challenge to a claim for settlement benefits, and to  
26 supervise and adjudicate any dispute arising from or in connection with the distribution of  
27 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  
28

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 California Controller's  
12 Unclaimed Property Fund in the name of the Class Member thereby leaving no "unpaid residue"  
13 subject to the requirements of California Code of Civil Procedure Section 384, subd. (b).

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.**

20  
21 Dated: \_\_\_\_\_

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