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Attorneys for Plaintiff, JOHNNY ELIJAH STINSON, as an aggrieved employee, and on behalf of all other aggrieved employees

[*Additional counsel on following page*]

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF ALAMEDA

JOHNNY ELIJA STINSON, as an aggrieved employee, and on behalf of all other aggrieved employees under the Labor Code Private Attorneys General Act of 2004,

Plaintiff,

v.

PERFECT 85 DEGREES C, INC., a California corporation; and DOES 1 through 100, inclusive,

Defendants.

CASE NO.: 24CV070989

[Assigned for all purposes to the Hon. Keith Fong in Dept 517]

DECLARATION OF KEATON MENDOZA IN SUPPORT OF PLAINTIFFS' MOTION FOR APPROVAL OF REPRESENTATIVE ACTION SETTLEMENT; MEMORANDUM OF POINTS AND AUTHORITIES

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Attorneys for Plaintiff, ARTURO GANDARA, as an aggrieved employee, and on behalf of all other aggrieved employees

DECLARATION OF KEATON MENDOZA

1. I am an attorney at law, duly licensed to practice before all the Courts of the State of California, an attorney at Bibiyan Law Group, P.C., counsel for Plaintiff Johnny Elija Stinson ("Plaintiff Stinson") and Arturo Gandara ("Plaintiff Gandara" together referred to as "Plaintiffs") and all others aggrieved. As such, I am familiar with the file in this matter and, if called as a witness, I could and would competently testify to the following facts of my own personal knowledge.

2. I submit this declaration in support of Plaintiffs' Motion for Approval of Representative Action Settlement. I believe that the Settlement is fair, reasonable and adequate in light of the probable outcome of further litigation relating to liability and damage issues.

Introduction

3. Plaintiff Johnny Elija Stinson, ("Plaintiff Stinson") and Plaintiff Arturo Gandara ("Plaintiff Gandara" together referred to as "Plaintiffs") on the one hand, and defendant Perfect 85 Degrees C, Inc. ("Perfect 85" or "Defendant") on the other hand (collectively the "Parties"), have agreed to settle Plaintiffs' claims under the Private Attorneys General Act ("PAGA"), fully resolving this case pursuant to the PAGA Settlement Agreement ("Settlement," or "Agreement" or "Settlement Agreement"). A true and correct copy of the Settlement Agreement is attached as Exhibit "1" hereto.

4. The approximately 426 "Aggrieved Employees" who are covered by the Settlement Agreement are all of Perfect 85's current and former non-exempt employees who worked for Perfect 85 in California during the period from September 15, 2022, to December 31, 2025 ("PAGA Period").

5. The Settlement Agreement provides that Defendant pays $210,000.00 as the Gross Settlement Amount. From this amount, Plaintiffs request an award of $5,430.00 in administration costs, attorneys' fees in the amount of up to thirty-five percent (35%) of the Gross Settlement Amount, $87,500.00 (as the same may be escalated pursuant to the Settlement Agreement), reimbursement of not more than $30,000.00 in litigation costs (Plaintiffs' Counsel apply for reimbursement of $27,856.78 in litigation costs as more fully detailed in the Declarations of David

D. Bibiyan and Arsiné Grigoryan filed herewith). Of the remaining sum (hereinafter, the "Net Settlement Amount), and pursuant to the PAGA statute, seventy-five percent (75%) shall be paid to the California Labor and Workforce Development Agency ("LWDA") and twenty-five percent (25%) of which will be paid to Aggrieved Employees.

6. These penalties are genuine and meaningful and fulfill PAGA's underlying purpose to benefit the public. Accordingly, Plaintiffs request that the Court approve the Settlement as such awards are reasonable and also warrant approval.

7. Perfect 85 represents that there are no more than 10,000 pay periods worked during the PAGA period. In the event the number of pay periods during the PAGA Period increases by more than 10%, or 1,000 pay periods, then the GSA shall be increased proportionally by the pay periods in excess of 11,000 multiplied by the pay periods value. The pay period value shall be calculated by dividing the GSA by 10,000. The Parties agree that the pay period value amounts to $21.00 per pay period ($210,000 / 10,000 pay periods). Thus, for example, should there be 12,000 pay periods in the PAGA Period, then the GSA shall be increased by $21,000. (12,000 pay periods – 11,000 pay periods x $21/pay period.).

8. Plaintiffs' Counsel, comprised of David D. Bibiyan, and Vedang J. Patel of Bibiyan Law Group, P.C. believes these penalties are genuine and meaningful and fulfill PAGA's underlying purpose to benefit the public. Accordingly, Plaintiffs' Counsel requests that the Court approve the Settlement as such awards are reasonable and also warrant approval.

Factual and Procedural Background

The Parties

9. I understand Plaintiff Stinson was a non-exempt hourly paid employee employed by Defendant from approximately April 20, 2023 through approximately July 19, 2023.

10. I understand Plaintiff's duties included, but were not limited to, baking bread and cookies, checking orders, sending orders on time, organizing the stuff, and shipping the cakes.

11. I understand Plaintiff Gandara was a non-exempt hourly paid employee employed by Defendant from approximately September 2020 through approximately February 2, 2024.

12. I understand Plaintiff's duties included, but were not limited to, shipping and receiving and transporting and warehousing Defendant's products.

13. Based on information provided by Defendants' counsel, Plaintiff believes there are approximately 426 Aggrieved Employees in the Settlement Period.

Procedural History

14. On or around September 15, 2023, Plaintiff Stinson provided written notices pursuant to Labor Code section 2699.3 to the Labor and Workforce Development Agency ("LWDA") and to Defendant of various Labor Code violations ("Stinson PAGA Notice"). A true and correct copy of the PAGA Notice is attached hereto as Exhibit "3."

15. On or around September 15, 2023, Plaintiff Stinson brought an individual and class action against Perfect 85, which is pending as *Johnny Elijah Stinson v. Perfect 85 Degrees C, Inc., et al.*, Superior Court of the State of California, County of Alameda Case No.: 23CV044101 (the "Individual Claim"). In the Individual Claim, Plaintiff Stinson asserts claims for numerous wage and hour violations including: (1) failure to pay overtime wages; (2) failure to pay minimum wages; (3) failure to provide meal periods; (4) failure to provide rest periods; (5) waiting time penalties; (6) wage statement violations; (7) failure to timely pay wages; (8) failure to indemnify; (9) failure to pay interest on deposits; and (10) unfair competition.

16. On or around December 29, 2023, Plaintiff Stinson and Perfect 85 stipulated to the dismissal of Plaintiff Stinson's class action allegations, and he agreed to submit his remaining individual causes of action to arbitration. The Court issued an Order granting the stipulation on February 6, 2024.

17. On or around October 6, 2025, Plaintiff Stinson filed a demand for arbitration, which is pending as *Stinson, Johnny v. Perfect 85 Degrees C, Inc.*, JAMS Ref. No.: 5220011038 (the "Individual Claims Arbitration"). In the Individual Claims Arbitration, Plaintiff Stinson reasserts his individual claims for numerous wage and hour violations including: (1) failure to pay overtime wages; (2) failure to pay minimum wages; (3) failure to provide meal periods; (4) failure to provide rest periods; (5) waiting time penalties; (6) wage statement violations; (7) failure to

timely pay wages; (8) failure to indemnify; (9) failure to pay interest on deposits; and (10) unfair competition.

18. On or around April 9, 2024, Plaintiff Stinson commenced the Stinson Action by filing a Complaint alleging causes of action against Perfect 85 for representative claims under PAGA on behalf of the State of California for violations suffered by all non-exempt employees of Perfect 85.

19. On or around May 21, 2024, Plaintiff Gandara provided written notices pursuant to Labor Code section 2699.3 to the Labor and Workforce Development Agency ("LWDA") and to Defendant of various Labor Code violations ("Gandara PAGA Notice").

20. On or around May 21, 2024, Plaintiff Gandara brought the Gandara Action. In the Gandara Action, Plaintiff Gandara asserts claims for numerous wage and hour violations including: (1) failure to pay minimum wages and for all hours worked; (2) failure to pay wages and overtime; (3) meal period liability; (4) rest break liability; (5) violation of Labor Code section 226(a); (6) violation of Labor Code section 221; (7) violation of Labor Code section 204; (8) violation of Labor Code section 203; (9) failure to maintain records required under Labor Code sections 1174 and 1174.5; (10) failure to reimburse necessary business expenses; (11) failure to maintain reasonable work area temperatures under the wage orders; and (12) violations of the Business and Professions Code section 17200, et seq.

21. On or around July 29, 2024, Plaintiff Gandara filed his First Amended Complaint adding a thirteenth cause of action for penalties under PAGA.

22. On or around April 3, 2025, Plaintiff Gandara and Perfect 85 stipulated to the dismissal of Plaintiff Gandara's class action allegations, and he agreed to submit his remaining individual causes of action to arbitration. The County of Orange Superior Court issued an Order granting the stipulation on May 20, 2025.

23. On or around September 25, 2025, Plaintiff Gandara filed a demand for arbitration, which is pending as *Arturo Gandara v. Perfect 85 Degrees C, Inc.*, et al., JAMS Ref. No.: 5220010928 (the "Gandara Arbitration"). In the Gandara Arbitration, Plaintiff Gandara reasserts his individual claims for numerous wage and hour violations including: (1) failure to pay

minimum wages and for all hours worked; (2) failure to pay wages and overtime; (3) meal period liability; (4) rest break liability; (5) violation of Labor Code section 226(a); (6) violation of Labor Code section 221; (7) violation of Labor Code section 204; (8) violation of Labor Code section 203; (9) failure to maintain records required under Labor Code sections 1174 and 1174.5; (10) failure to reimburse necessary business expenses; (11) failure to maintain reasonable work area temperatures under the wage orders; and (12) violations of the Business and Professions Code section 17200, et seq.

24. On or around September 19, 2025, counsel for Plaintiff Stinson and Perfect 85 participated in an all-day mediation presided over by Mediator Monique Ngo-Bonnici. Perfect 85 and Plaintiff Stinson did not come to a settlement agreement at the mediation.

25. Through continued negotiations, the Parties accepted a mediator's proposal to resolve all PAGA claims that were or could have been brought against Perfect 85, including the Gandara Action, so that this settlement agreement covers all potential PAGA claims described herein.

26. The Parties agreed to stipulate to filing a First Amended Complaint in the Stinson Action. On September 8, 2026, Plaintiffs filed a First Amended Complaint in this action which will be deemed the "Operative Complaint," and includes Plaintiffs Stinson and Gandara, all causes of action alleged in the Stinson Action, the Gandara Action, and the respective PAGA Notices.

Discovery and Investigation

27. In the leadup to mediation, Plaintiffs' Counsel investigated Plaintiffs' claims, performed legal research regarding Defendant's defenses, and engaged in informal discovery.

28. The above information and sampling yielded sufficient information to determine, for the PAGA Period, the total number of Aggrieved Employees, the total number of shifts and PAGA pay periods, the average length of shifts for Aggrieved Employees, average rates of pay, detailed analyses of meal period and rest period violations, the number of Aggrieved Employees eligible for waiting time penalties and wage statement penalties, and the policies and practices in play during the PAGA Period. The documents and information produced enabled Plaintiffs' Counsel to analyze the law and facts relating to Plaintiffs' claims. Plaintiffs' Counsel also retained

an expert to review and analyze the time and payroll records and prepare a model setting forth Defendant's potential exposure for civil penalties for use in mediation. The documents and information shared also enabled Plaintiffs to evaluate the potential hurdles to recovery, including in connection with the merits of the claims and manageability. Based on this investigation and discovery, Plaintiffs were able to act intelligently and effectively in negotiating the proposed Settlement.

29. Plaintiffs' Counsel have conducted significant investigation of the law and facts relating to the claims asserted in the Action, and have concluded that the Settlement set forth herein is fair, reasonable, adequate and in the best interests of the Aggrieved Employees, and, to the extent permitted by law, the State of California, taking into account the sharply contested issues involved, the expense and time necessary to litigate the Action through trial and any appeals, the risks and costs of further litigation, the risk of an adverse outcome, the uncertainties of complex litigation, the information learned through informal discovery regarding Plaintiff's allegations, and the substantial benefits to be received by the Aggrieved Employees.

30. Defendant denies each of the allegations and claims asserted against them in the Action. However, Defendant agreed to settle the Action for the purpose of avoiding the burden, expense, and uncertainty of continuing litigation.

Mediation

31. On or around September 19, 2025, the Plaintiff Stinson and Defendant participated in an all-day mediation presided over by Mediator Monique Ngo-Bonnici. Although, parties failed to come to a settlement agreement at the mediation but through continued negotiations between Plaintiff Stinson and Defendant, they reached an agreement to resolve all PAGA claims that were or could have been brought against defendant, including the Gandara Action, so that settlement agreement covers all potential PAGA claims from both Actions.

32. The Settlement negotiations were at arm's length and, although conducted in a professional manner, were adversarial. The Parties went into mediation, willing to explore the potential for a settlement of the Action, but each side was also prepared to litigate their position through trial and appeal if a settlement had not been reached. After several exchanges of draft

settlement agreements, the Parties fully executed the Settlement Agreement, a copy of which is attached hereto as Exhibit "1" thereto.

33. Based on Plaintiffs' investigation, informal discovery, and evaluation of Plaintiffs' claims, Defendant's defenses regarding the merits of the claims and the manageability of a trial thereon, Defendant's potential exposure, the expense and time necessary to pursue this action through trial, the risks and costs of further prosecution of this action, the uncertainties of complex litigation and developing law, and the benefits that will accrue to the LWDA and the Aggrieved Employees, the Parties and their counsel believe that a settlement on the terms set forth herein is fair, reasonable, adequate, and in the best interests of Plaintiffs, Aggrieved Employees, the LWDA, and Defendant.

Summary of Settlement

The Aggrieved Employees

34. The "Aggrieved Employees" who are covered by the Settlement Agreement are all of Perfect 85's current and former non-exempt employees who worked for Perfect 85 in California during the period from September 15, 2022, to December 31, 2025 ("PAGA Period"). Based on information provided by Defendant prior to mediation, Plaintiffs believe there are approximately 426 Aggrieved Employees in the PAGA Period.

Settlement Terms

35. The Settlement provides for a Gross Settlement Amount ("GSA") of $210,000.00, as the same may be escalated pursuant to the Parties' Settlement Agreement, to be paid by Defendant. The GSA shall be allocated as follows:

Net Settlement Amount

36. The amount of the GSA that remains after deducting the Settlement Administration Costs (5,430.00), Plaintiffs' Counsel's Attorneys' Fees ($87,500.00), and Plaintiffs' Counsel's Attorneys' Costs $27,856.78) will be designated as the Net Settlement Amount ("NSA"). If the Court approves those allocations, the total estimated amount of the Net Settlement Amount is $89,213.22 as the same may be escalated pursuant to the Settlement Agreement. Pursuant to the Settlement Agreement and Labor Code section 2699(i), 75% of the Net Settlement Amount, or

$66,909.91 (as the same may be escalated pursuant to the Settlement Agreement) will be paid to the LWDA, and the remaining 25%, or $22,303.31 as the same may be escalated pursuant to the Settlement Agreement) of the Net Settlement Amount will be paid to the Aggrieved Employees on a *pro rata* basis using their respective number of Pay Periods worked during the Settlement Period. The estimate average payment to Aggrieved Employees is approximately $52.35 ($22,303.31 / 426 Aggrieved Employees).

Settlement Administrator and Costs of Administering the Settlement

37. The Parties have agreed that the Settlement Administrator will be Apex Class Action Administration ("Apex"). The cost of administering the Settlement, including but not limited to, mailing the Individual PAGA Payments to the Aggrieved Employees, shall not exceed 5,430.00 and will be paid to the Settlement Administrator from the Gross Settlement Amount.

Plaintiffs' Counsel's Attorneys' Fees and Costs

38. An award of attorneys' fees is requested to Plaintiffs' Counsel in an amount of up to (35%) of the Gross Settlement Amount, which unless escalated pursuant to the Settlement Agreement, will be $87,500.00 as well as reimbursement of litigation costs reasonably incurred in an amount of $27,856.78. A fully detailed cost bifurcation is in the Declarations of David D. Bibiyan and Arsiné Grigoryan filed herewith.

Settlement Administration

39. Within 14 days of the Effective Date, Defendants will deliver the Aggrieved Employee Data to the Administrator in the form of a Microsoft Excel spreadsheet and a declaration from Defendant's data expert attesting to the number of Pay Periods and the method by which the Pay Periods were determined for each Aggrieved Employee and all Aggrieved Employees in the aggregate. The "Aggrieved Employee Data" means Aggrieved Employee's identifying information in Perfect 85's possession including the Aggrieved Employee's name, last-known mailing address, Social Security number, and number of PAGA Pay Periods.

40. Defendant shall fully fund the Gross Settlement Amount by transmitting the funds to the Administrator no later than fourteen (14) calendar days after the Effective Date. Within 14 days after Defendant funds the Gross Settlement Amount, the Administrator will mail checks for all

Individual PAGA Payments, the LWDA PAGA Payment, Administration Expenses Payment, PAGA Counsel Fees Payment and PAGA Counsel Litigation Expenses Payment. Disbursement of the PAGA Counsel Fees Payment and the PAGA Counsel Litigation Expenses Payment shall not precede disbursement of Individual PAGA Payments. The Administrator will issue checks for the Individual PAGA Payments and send them to the Aggrieved Employees via First Class U.S. Mail, postage prepaid, along with the PAGA Payment Letter, the substance of which is attached hereto as Exhibit "2."

41. The face of each check shall prominently state the date (not less than 180 days after the date of mailing) when the check will be voided. The Administrator will cancel all checks not cashed by the void date. Before mailing any checks, the Settlement Administrator must update the recipients' mailing addresses using the National Change of Address Database. Distribution of the Individual PAGA Payments shall be accompanied by the Notice of PAGA Settlement. The Administrator must conduct an Aggrieved Employee Address Search for all Aggrieved Employees whose checks are returned undelivered without USPS forwarding address. Within 3 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 Aggrieved Employee Address Search.

Taxes

42. The Parties do not expect there to be any employer side taxes arising from this Settlement because this is a settlement of a representative action for civil penalties. If it is determined that employer side taxes exist on the Gross Settlement Amount, such taxes will be funded by the Gross Settlement Amount.

Release

43. Upon the Effective Date, subject to the Court's continuing jurisdiction to monitor compliance by Perfect 85 with settlement terms, Plaintiff Stinson, Plaintiff Gandara, the State of California, and all Aggrieved Employees will release the Released Parties from any and all civil penalties claims that were alleged, or that reasonably could have been alleged, based on the facts alleged in the Operative Complaint and/or the PAGA Notices, including, but not limited to, any claims for civil penalties arising from Defendant's alleged violations of the California Labor Code,

et seq. for, inter alia, failure to provide compliant meal periods and/or timely pay premiums; failure to provide rest periods and/or timely pay premiums; failure to timely pay all wages, including but not limited to minimum, regular, and overtime wages (including based on allegations of pre-shift/post-shift/meal period off-the-clock work claims; rounding; auto deducted time; and regular rate of pay issues); failure to provide separate rest period compensation for nonproductive work; failure to provide accurate itemized wage statements; failure to reimburse for business expenses; and failure to pay all wages due during and upon separation of employment, and including but not limited to PAGA claims predicated on or that could have been predicated on alleged violations of Cal. Lab. Code sections 90.5, 96, 98.6, 200, 201, 202, 203, 204, 204b, 204.1, 205, 205.5, 210, 218.5, 218.6, 221, 223, 225.5, 226, 226.3, 226.4, 226.6, 226.7, 227.3, 232, 232.5, 245, et seq., 404, 432, 432.3, 432.7, 432.8, 510, 511, 512, 558, 558.1, 1102.5, 1174, 1174.5, 1182.12, 1185, 1194, 1194.2, 1197, 1197.1, 1197.5, 1198, 1198.5, 1199, 1527, 2698, et seq., 2802, 2810.5, 2926, 2927, 3366, 3457, 6400, et seq., 6720, 8397.4, Cal. Code Regs., title 8, section 11000, et seq., Business and Professions Code sections 16600, 16700, and 17200-17208, Government Code section 12952, and the provisions within the governing IWC Wage Order.

Escalator Provision

44. Perfect 85 represents that there are no more than 10,000 pay periods worked during the PAGA period. In the event the number of pay periods during the PAGA Period increases by more than 10%, or 1,000 pay periods, then the GSA shall be increased proportionally by the pay periods in excess of 11,000 multiplied by the pay periods value. The pay period value shall be calculated by dividing the GSA by 10,000. The Parties agree that the pay period value amounts to $21.00 per pay period ($210,000 / 10,000 pay periods). Thus, for example, should there be 12,000 pay periods in the PAGA Period, then the GSA shall be increased by $21,000. (12,000 pay periods – 11,000 pay periods x $21/pay period.)

Uncashed Checks

45. For any Aggrieved Employee whose Individual PAGA Payment check is uncashed and cancelled after the void date, the Administrator shall distribute the value of the uncashed check to the California State Controller's Office in the name of the Aggrieved Employee.

Argument

The PAGA Penalties Secured by the Settlement are Genuine and Meaningful, and Fulfill PAGA's Underlying Purpose to Benefit the Public

46. Here, Plaintiffs' Counsel believe the Settlement penalizes Defendant for its alleged violation of California's labor laws, provides a significant benefit of $66,909.91 (as the same may be escalated pursuant to the Settlement) to the State and also provides relief to the Aggrieved Employees that is genuine and meaningful, consistent with the underlying purpose of the statute to benefit the public. Lastly, the Gross Settlement Amount of $210,000.00, as the same may be escalated pursuant to the Settlement Agreement, is significant enough to deter Defendant from future violations. Accordingly, the Settlement fulfills the underlying purpose of the statute and confers a substantial benefit on the public.

The Settlement is Reasonable Given the Risks of Further Litigation

47. I understand that, because, in this instance, there was no evidence that Defendant were provided notice that they were in violation of the Labor Code, initial violation rates were used to calculate penalties.

48. At the time of mediation and based on the records produced by Defendant, Plaintiffs understood there to be 10,000 pay periods through mediation. While Plaintiffs' Counsel is informed and believes that reasonable minds differ with regard to calculation of PAGA penalties, Plaintiffs' Counsel believes one reasonable calculation of Defendant's maximum exposure in PAGA penalties is as follows:

(1) Minimum Wage Violations: Labor Code section 1197.1 prescribes penalties of $100 for an initial violation and $200 for each subsequent violation. Using the initial pay period rate for all violations, and a violation of every single pay period for every single non-exempt employee in the PAGA Period, this amounts to a maximum exposure of $1,000,000 (10,000 pay periods x $100).

(2) Overtime Violations: Labor Code section 558 prescribes penalties of $50 for an initial violation and $100 for each subsequent violation. Using the initial pay period rate for all violations, and a violation every single pay period for every single non-exempt employee in

the PAGA Period, this amounts to a maximum exposure of $500,000 (10,000 pay periods x $50).

(3) Meal Period Violations: Labor Code section 558 prescribes penalties of $50 for an initial violation and $100 for each subsequent violation. Using the initial pay period rate for all violations, and a violation every single pay period for every single non-exempt employee in the PAGA Period, this amounts to a maximum exposure of $500,000 (10,000 pay periods x $50).

(4) Rest Period Violations: Labor Code section 558 prescribes penalties of $50 for an initial violation and $100 for each subsequent violation. Using the initial pay period rate for all violations, and a violation every single pay period for every single non-exempt employee in the PAGA Period, this amounts to a maximum exposure of $500,000 (10,000 pay periods x $50).

(5) Waiting Time Penalties: Labor Code section 558 prescribes penalties of $50 for an initial violation and $100 for each subsequent violation. Because this violation is merited only at separation of employment, a 100% violation rate would likely include be just one violation per employee. Plaintiffs' Counsel contends that there were approximately 426 Aggrieved Employees separated from the company during the relevant time period. This amounts to a maximum exposure of $42,600 (426 Aggrieved Employees x $100).

(6) Wage Statement Violations: According to *Gunther v. Alaska Airlines, Inc.* (2021) 287 Cal.Rptr.3d 229, in this instance, Labor Code section 2699 would be the appropriate penalty for wage statement violations that are inaccurate, which prescribes penalties of $100 for an initial violation and $200 for each subsequent violation. (*Id.* at 247-248.) Using the initial pay period rate for all violations, and a violation every single pay period for every single Aggrieved Employee in the PAGA Period, this amounts to a maximum exposure of $1,000,000 (10,000 pay periods x $100).

In sum, Plaintiffs' Counsel calculated Defendant's total maximum exposure for PAGA violations if the Court were to find a 100% violation rate for every Aggrieved Employee every pay period, allow "stacking" of PAGA Penalties (i.e. multiple penalties for different Labor Code

violations in the same pay period), and not exercise its discretion to reduce any of those penalties to be $3,542,600.00.

On the other hand, Plaintiffs' Counsel understands that Defendant argued the following in connection with this claim: Defendant contends that no PAGA penalties are likely to be awarded and, even if they were, the maximum exposure calculated by Plaintiffs are vastly overstated. First, Defendant defends that PAGA penalties cannot and should not be stacked, specifically including penalties arising from violations of Labor Code sections 201-203, 204, and 226, and that, even if they could, very few Courts have ever exercised discretion to stack them. Second, Defendant denies that a violation for each pay period can be established. Third, Defendant contends that a Court is unlikely to exercise its discretion to award civil penalties under PAGA where, as here, Defendant contends there is no conduct that would show any Labor Code violations by Defendant, if any, is knowing and intentional that would justify PAGA penalties. Finally, Defendant asserts that individualized issues predominate PAGA claims, making the claims unmanageable for trial. Thus, Defendant contends that the Court cannot, should not, and will not exercise its discretion to award any penalties under PAGA.

While Plaintiffs are confident in the merits of the case, a legitimate controversy exists as to each predicate Labor Code violation. For example, Plaintiffs contend that the Aggrieved Employees were subjected to, *inter alia*, not being paid for all time under Defendant's control, unlawful meal and rest break policies, and were denied meal and rest break premiums. Defendant refutes these contentions, claiming, for example, that everyone was paid for all time worked, they authorized and permitted rest breaks, and provided meal periods.

Plaintiffs also considered the fact that continued litigation would be expensive, time-consuming and an uncertain proposition, involving a trial and possible appeals, and would delay any recovery to the State and the Aggrieved Employees. There is also a substantial risk that the Court would reduce the award even if Plaintiffs successful or otherwise exercises its discretion not to award penalties at all even if Labor Code violations are found. In contrast, if the Court approves the Settlement, the Aggrieved Employees will receive timely relief and avoid the risk of unfavorable judgment. Plaintiffs objectively and knowledgably balanced the strengths and weaknesses of their

claims, the likelihood of reaching a trial, and the likelihood of success at trial against the risk of continued litigation and were able to determine a realistic range of settlement recovery for PAGA penalties.

49. As such, Plaintiffs' Counsel believes a 25% valuation off of this theoretical maximum exposure, resulting in **$885,650.00** to be a reasonable estimate of the likelihood of what Plaintiffs may potentially recover at trial for PAGA penalties ($3,572,350 x 0.25). In all, Plaintiffs' Counsel obtained a Gross Settlement Amount of $210,000.00. *See also Carrington v. Starbucks Corp*., 30 Cal.App.5th 504, 529 (2018) (upholding trial courts 90% reduction in maximum penalties, from $50 to $5 per initial violation).

50. Thus, when the risks of litigation, including, without limitation, the burdens of proof necessary to establish liability, and the mixed case law on manageability, that no recovery may have been possible whatsoever, as well as the probability of appeal of a favorable judgment are considered, it is clear that the Settlement is reasonable and in the best interest of the State and the public. The Settlement therefore accomplishes PAGA's objectives by imposing sufficient civil penalties "to punish and deter" Defendant from future alleged Labor Code violations, while also ensuring that the penalties are not "unjust, arbitrary and oppressive, or confiscatory." (Lab. Code, § 2699, subd. (e)(2); *Iskanian,* 59 Cal.4th at 384.)

Plaintiffs' Counsel's Hourly Rates are Reasonable

51. Bibiyan Law Group, P.C.'s hourly rates for attorneys are: $1200, $1,000, $800, $750, $700, $450, and $425, with paralegal and legal assistant's hourly rates of $200 and $95, respectively. D. Law's hourly rates for attorneys are: $1,687, $1,345, $1,325, $1,042, $1,019, $992, and $750.

52. A survey conducted by the National Law Journal for the year 2002 provides a sample of a billing rate for California Lawyers. In that survey, six California firms provided their hourly billing rates. Of those six firms, five regularly charge in excess of $500.00 per hour for their partners. In fact, four of the firms charge as high as $600.00, $620.00, $650.00, and up to $850.00 per hour. These firms are located in Orange County, Los Angeles County, San Francisco County and San Diego County and are the types of firms that Plaintiff's Counsel regularly opposes in these class action cases. (*See* National Law Journal Survey, attached as Exhibit "4" to the Declaration of

Keaton Mendoza). The only difference is that these defense attorneys are paid on a monthly basis and do not have to advance any costs on a case.

53. Finally, attached hereto is the Declaration of Richard Pearl in support of the Motion for Final Approval in the case of *Rosa Cantu, et al v. Pacific Bell Telephone Company*, Los Angeles Superior Court Case No. BC441237, dated January 4, 2011. (*See* Declaration of Richard Pearl attached as Exhibit "5" hereto). Mr. Pearl specializes in issues related to cost-award attorney's fees, including the representation of parties in fee litigation and appeals, serving as an expert witness, mediator and arbitrator in disputes concerning attorney's fees and related issues. Mr. Pearl is also the author of California Attorney's Fee Awards (3d ed. Cal. CEB 2010), as well as the author of the Second Edition, years 1994 through 2008. He has also authored numerous other publications on attorney's fees, as set forth in his Declaration.

54. Mr. Pearl has reviewed the comparable hourly rates of attorney fees in California. He confirms that courts have approved hourly rates of attorneys as follows:

- Rates of up to $875.00 in *Savaglio, et al. v. Wal-Mart*, Alameda County Superior Court, Case No. C-835687-7 (before applying a 2.36 multiplier);
- Rates of up to $750.00 in *Kashmiri et al. v. Regents of UC*, San Francisco County Superior Court (before applying a 3.7 multiplier); and
- Rates of up to $750.00 in *Environmental Law Foundation v. Laidlaw Transit, Inc.*, San Francisco Superior Court, Case No. CGC-06-451832 (before applying a 1.25 multiplier). *Id* at pages 4 and 5.

55. Additionally, Mr. Pearl has reviewed numerous declarations, depositions, and surveys of legal rates on a non-contingent basis for the year 2009 and found hourly rates of up to $775.00, $795.00, $800.00, $855.00, $950.00, etc. (*Id.* at pp. 6-12). These are non-contingent rates where payment in full is expected promptly upon billing. (*Id.* at p. 13).

56. I believe Plaintiff's Counsel are experienced litigators who specialize in employment law, with a substantial PAGA and wage-and-hour class action practice. Moreover, similar rates for the attorneys and staff of Plaintiffs' Counsel have been approved by various California Superior Courts, including just this month. Given the skill and experience of Plaintiffs' Counsel in this case,

and the excellent result achieved for the State and other Aggrieved Employees, the requested rates are reasonable.

The Settlement Administrator Costs are Reasonable

57. The Settlement Administrator's request for costs of not more than $5,430.00 is reasonable, given the tasks to be performed by the Settlement Administrator, including but not limited to: receiving and processing the Aggrieved Employees data; establishing a settlement fund; calculating and mailing Individual PAGA Payments to the Aggrieved Employees along with the Notice of Settlement to Aggrieved Employees via First Class U.S. Mail, postage prepaid; providing the Parties' counsel reports regarding administration of the Settlement Agreement as needed or requested; if a Notice of Settlement to Aggrieved Employees and check for Individual PAGA Payment from the initial mailing is returned as undeliverable during the check-cashing period, the Settlement Administrator will attempt to obtain a current address for the Aggrieved Employee to whom the returned Notice of Settlement to Aggrieved Employees and check for Individual PAGA Payment had been mailed within three (3) calendar days of receipt of the returned Notice of Settlement to Aggrieved Employees and/or Individual PAGA Payment check, by: (a) contacting the Aggrieved Employee by phone, if possible, (b) undertaking all reasonable efforts to identify the Aggrieved Employee's correct address, and (c) undertaking skip tracing; if the Settlement Administrator is successful in obtaining a new address, it will promptly remail the Notice of Settlement to Aggrieved Employees and Individual PAGA Payment check to the Aggrieved Employee at his or her updated address within three (3) business days; providing necessary reports and declarations; and performing other such duties as the Parties and/or the Courts direct. Thus, the Settlement Administrator's costs should be approved.

Submission to the LWDA

58. On October 6, 2026, Bibiyan Law Group, P.C., submitted a copy of the Settlement Agreement to the California Labor and Workforce Development Agency ("LWDA") in compliance with Labor Code section 2699, subdivision (l)(2). A true and correct copy of the confirmation from the LWDA in connection with Plaintiffs is attached hereto as Exhibit "6."

I declare under penalty of perjury under the laws of the state of California that the foregoing is true and correct this October 6, 2026, at Los Angeles, California.

/s/ Keaton D. Mendoza
KEATON MENDOZA

EXHIBIT 1

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PAGA SETTLEMENT AGREEMENT

This Labor Code Private Attorneys General Act ("PAGA") Settlement Agreement ("Settlement") is made by and between the State of California acting through its agents, Plaintiff Johnny Elija Stinson, ("Plaintiff Stinson") and Plaintiff Arturo Gandara ("Plaintiff Gandara" together referred to as "Plaintiffs") and Defendant Perfect 85 Degrees C, Inc., ("Perfect 85"). The Settlement refers to Plaintiffs and Perfect 85 collectively as the "Parties," or individually as "Party."

1. DEFINITIONS.

1.1. "Stinson Action" means Plaintiff Stinson's PAGA lawsuit alleging wage and hour violations against Perfect 85 captioned *Johnny Elijah Stinson v. Perfect 85 Degrees C, Inc., et al.* (Alameda County Superior Court, Case No. 24CV070989), initiated on April 9, 2024, pending in the Alameda County Superior Court.

1.2. "Gandara Action" means Plaintiff Arturo Gandara's individual and PAGA lawsuit alleging wage and hour violations against Perfect 85 captioned *Arturo Gandara v. Perfect 85 Degrees C, Inc., et al.* (Orange County Superior Court, Case No. 30-2024-01402016-CU-OE-CXC), initiated on May 21, 2024[1], pending in the Orange County Superior Court.

1.3. "Actions" means both the Stinson Action and the Gandara Action.

1.4. "Administrator" means Apex Class Action Administration ("Apex"), the neutral entity the Parties have agreed to appoint to administer the Settlement.

1.5. "Administration Expenses Payment" means the amount the Administrator will be paid from the Gross Settlement Amount to reimburse for its reasonable fees and expenses in accordance with the Administrator's "not to exceed" bid submitted to the Court in connection with approval of the Settlement.

1.6. "Aggrieved Employee" means all of Perfect 85's current and former non-exempt employees who worked for Perfect 85 in California during the PAGA Period.

1.7. "Aggrieved Employee Data" means Aggrieved Employee's identifying information in Perfect 85's possession including the Aggrieved Employee's name, last-known mailing address, Social Security number, and number of PAGA Pay Periods.

1.8. "Court" means the Superior Court of the State of California, County of Alameda.

1.9. "Defense Counsel" means Jackson Lewis P.C., including Karin M. Cogbill and Omar Mustafa.

1.10. "Effective Date" shall mean the date the Court issues its Order approving this Settlement and entered Judgment thereon, if no objections are filed. If there are objections to the

[1] Plaintiff Gandara filed his First Amended Complaint in the Gandara Action on July 29, 2024, adding a thirteenth cause of action for penalties under PAGA.

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Settlement, "Effective Date" means the date when the later of the following events occurs: (a) the period for filing any appeal, writ, or other appellate proceeding opposing the settlement approval has elapsed without any appeal, writ, or other appellate proceeding having been filed; (b) any appeal, writ, or other appellate proceeding opposing the settlement approval has been dismissed finally and conclusively with no right by any appellant or objector to pursue further remedies or relief; or (c) any appeal, writ, or other appellate proceeding has upheld the settlement approval with no right by any appellant or objector to pursue further remedies or relief. The occurrence of the Effective Date is a prerequisite to any obligation of Defendant to pay the Gross Settlement Amount and for any release to become valid and enforceable.

1.11. "Gross Settlement Amount" ("GSA") means $210,000.00 (Two Hundred Ten Thousand Dollars and Zero Cents) which is the total amount Perfect 85 agrees to pay under the Settlement. The Gross Settlement Amount will include the following payments to: (i) aggrieved employees; (ii) payment of the State of California of its share under the Labor Code Private Attorneys' General Act of 2004 ("PAGA, codified at Labor Code section 2698, et seq.); (iii) administration costs; and (iv) attorneys' fees and costs. The LWDA PAGA Payment and Individual PAGA Payments shall collectively be referred to as the Net Settlement Amount.

1.12. "Individual PAGA Payment" means the Aggrieved Employee's pro rata share of 25% of the PAGA Penalties calculated according to the number of Qualified Pay Periods the Aggrieved Employee worked during the PAGA Period.

1.13. "Judgment" means the Court adopting and approving the terms of this settlement agreement, entering the Final Order, and retaining jurisdiction over the enforcement, implementation, construction, administration, and interpretation of this settlement agreement.

1.14. "LWDA" means the California Labor and Workforce Development Agency, the agency entitled, under Labor Code section 2699, subd. (i).

1.15. "LWDA PAGA Payment" means the 75% of the PAGA Penalties paid to the LWDA under Labor Code section 2699, subd. (i).

1.16. "Net Settlement Amount" means the Gross Settlement Amount, less the following payments in the amounts approved by the Court: i) PAGA Counsel Fees Payment; ii) the PAGA Counsel Litigation Expenses Payment; and iii) the Administration Expenses Payment. The remainder shall be paid to the LWDA and the Aggrieved Employees as the LWDA PAGA Payment and the Individual PAGA Payments, respectively and collectively as the PAGA Penalties.

1.17. "Operative Complaint" means the First Amended Complaint to be filed in the Stinson Action.

1.18. "PAGA" means the Labor Code Private Attorneys General Act of 2004 (Labor Code section 2698. et seq.).

1.19. "PAGA Counsel" means Bibiyan Law Group, P.C., and D. Law, Inc.

1.20. "PAGA Counsel Fees Payment" means the amount allocated to PAGA Counsel as payment for attorney's fees.

1.21. "PAGA Counsel Litigation Expenses Payment" means the amounts allocated to PAGA Counsel for reimbursement of their reasonable expenses incurred in the Actions.

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1.22. "PAGA Explanatory Letter" means the letter the Administrator will send to the Aggrieved Employees along with the Individual PAGA Payment explaining the claims released in the Actions, a copy of which is attached herein as **Exhibit A**.

1.23. "PAGA Notices" means Plaintiff Stinson's September 15, 2023, LWDA letter to Perfect 85 and the LWDA, and Plaintiff Gandara's May 21, 2024, LWDA letter to Perfect 85 and the LWDA providing notice pursuant to Labor Code section 2699.3, subd.(a).

1.24. "PAGA Penalties" means the total amount of PAGA civil penalties to be paid from the Gross Settlement Amount, allocated 25% to the Aggrieved Employees and 75% to the LWDA in settlement of PAGA claims.

1.25. "PAGA Period" means the period from September 15, 2022, to December 31, 2025.

1.26. "Qualifying Pay Period" means any payroll period in which an Aggrieved Employee was paid regular wages during the PAGA Period.

1.27. "Released PAGA Claims" means the claims being released by the Aggrieved Employees as described in Section 5 below.

1.28. "Released Parties" means Perfect 85, any potential joint employer or alter ego, and any and all of Perfect 85's affiliated companies and its respective parent companies, subsidiaries, affiliates, shareholders, members, employees, officers, agents, predecessors, successors, and assigns.

2. PROCEDURAL HISTORY.

2.1. On September 15, 2023, Plaintiff Stinson brought an individual and class action against Perfect 85, which is pending as *Johnny Elijah Stinson v. Perfect 85 Degrees C, Inc., et al.*, Superior Court of the State of California, County of Alameda Case No.: 23CV044101 (the "Individual Claim"). In the Individual Claim, Plaintiff Stinson asserts claims for numerous wage and hour violations including: (1) failure to pay overtime wages; (2) failure to pay minimum wages; (3) failure to provide meal periods; (4) failure to provide rest periods; (5) waiting time penalties; (6) wage statement violations; (7) failure to timely pay wages; (8) failure to indemnify; (9) failure to pay interest on deposits; and (10) unfair competition;

2.2. On December 29, 2023, Plaintiff Stinson and Perfect 85 stipulated to the dismissal of Plaintiff Stinson's class action allegations, and he agreed to submit his remaining individual causes of action to arbitration. The Court issued an Order granting the stipulation on February 6, 2024;

2.3. On October 6, 2025, Plaintiff Stinson filed a demand for arbitration, which is pending as *Stinson, Johnny v. Perfect 85 Degrees C, Inc.*, JAMS Ref. No.: 5220011038 (the "Individual Claims Arbitration"). In the Individual Claims Arbitration, Plaintiff Stinson reasserts his individual claims for numerous wage and hour violations including: (1) failure to pay overtime wages; (2) failure to pay minimum wages; (3) failure to provide meal periods; (4) failure to provide rest periods; (5) waiting time penalties; (6) wage statement violations; (7) failure to timely pay wages; (8) failure to indemnify; (9) failure to pay interest on deposits; and (10) unfair competition;

2.4. On April 9, 2024, Plaintiff Stinson commenced the Stinson Action by filing a Complaint alleging causes of action against Perfect 85 for representative claims under PAGA on

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behalf of the State of California for violations suffered by all non-exempt employees of Perfect 85.

2.5. On August 23, 2024, Perfect 85 filed an Answer to the Complaint in the Stinson Action. Perfect 85 denies the allegations in the Operative Complaint, denies any failure to comply with the laws identified in the Operative Complaint and denies any and all liability for the causes of action alleged.

2.6. On January 20, 2026, the Court issued an order staying the Stinson Action, pending the resolution of the Individual Claims Arbitration.

2.7. On May 21, 2024, Plaintiff Gandara brought the Gandara Action. In the Gandara Action, Plaintiff Gandara asserts claims for numerous wage and hour violations including: (1) failure to pay minimum wages and for all hours worked; (2) failure to pay wages and overtime; (3) meal period liability; (4) rest break liability; (5) violation of Labor Code section 226(a); (6) violation of Labor Code section 221; (7) violation of Labor Code section 204; (8) violation of Labor Code section 203; (9) failure to maintain records required under Labor Code sections 1174 and 1174.5; (10) failure to reimburse necessary business expenses; (11) failure to maintain reasonable work area temperatures under the wage orders; and (12) violations of the Business and Professions Code section 17200, et seq.

2.8. On July 29, 2024, Plaintiff Gandara filed his First Amended Complaint adding a thirteenth cause of action for penalties under PAGA.

2.9. On April 3, 2025, Plaintiff Gandara and Perfect 85 stipulated to the dismissal of Plaintiff Gandara's class action allegations, and he agreed to submit his remaining individual causes of action to arbitration. The County of Orange Superior Court issued an Order granting the stipulation on May 20, 2025.

2.10. On September 25, 2025, Plaintiff Gandara filed a demand for arbitration, which is pending as *Arturo Gandara v. Perfect 85 Degrees C, Inc.*, et al., JAMS Ref. No.: 5220010928 (the "Gandara Arbitration"). In the Gandara Arbitration, Plaintiff Gandara reasserts his individual claims for numerous wage and hour violations including: (1) failure to pay minimum wages and for all hours worked; (2) failure to pay wages and overtime; (3) meal period liability; (4) rest break liability; (5) violation of Labor Code section 226(a); (6) violation of Labor Code section 221; (7) violation of Labor Code section 204; (8) violation of Labor Code section 203; (9) failure to maintain records required under Labor Code sections 1174 and 1174.5; (10) failure to reimburse necessary business expenses; (11) failure to maintain reasonable work area temperatures under the wage orders; and (12) violations of the Business and Professions Code section 17200, et seq.

2.11. On September 19, 2025, counsel for Plaintiff Stinson and Perfect 85 participated in an all-day mediation presided over by Mediator Monique Ngo-Bonnici. Perfect 85 and Plaintiff Stinson did not come to a settlement agreement at the mediation.

2.12. Through continued negotiations, the Parties accepted a mediator's proposal to resolve all PAGA claims that were or could have been brought against Perfect 85, including the

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Gandara Action, so that this settlement agreement covers all potential PAGA claims described herein.

2.13. The Parties agree to stipulate to filing a First Amended Complaint in the Stinson Action. This First Amended Complaint will be deemed the "Operative Complaint." The Operative Complaint shall include Plaintiffs Stinson and Gandara, all causes of action alleged in the Stinson Action, the Gandara Action, and the respective PAGA Notices.

3. MONETARY TERMS.

3.1. Gross Settlement Amount. Except as otherwise provided by this Settlement, Perfect 85 promises to pay $210,000.00 (Two Hundred and Ten Thousand Dollars and Zero Cents) and no more as the Gross Settlement Amount. The GSA shall be on a common fund basis, there will be no claim form or claims process, and there will be no reversion to Perfect 85.

3.1.1. **Escalator Clause**. Perfect 85 represents that there are no more than 10,000 pay periods worked during the PAGA period. In the event the number of pay periods during the PAGA Period increases by more than 10%, or 1,000 pay periods, then the GSA shall be increased proportionally by the pay periods in excess of 11,000 multiplied by the pay periods value. The pay period value shall be calculated by dividing the GSA by 10,000. The Parties agree that the pay period value amounts to $21.00 per pay period ($210,000 / 10,000 pay periods). Thus for example, should there be 12,000 pay periods in the PAGA Period, then the GSA shall be increased by $21,000. (12,000 pay periods – 11,000 pay periods x $21/pay period.)

3.2. Deductions from the Gross Settlement Amount. Subject to Court approval, the Administrator will make and deduct the following payments from the GSA:

3.2.1. **PAGA Counsel Attorney's Fees:** PAGA Counsel may request Court approval of PAGA Counsel of up to 35% of the GSA, currently estimated to be $87,500.00 (Eighty-Seven Thousand Five Hundred Dollars and Zero Cents).

3.2.2. **PAGA Counsel Litigation Expenses Payment:** PAGA Counsel may request reimbursement of actually incurred litigation costs not to exceed $30,000.

3.2.3. The Released Parties shall have no liability to PAGA Counsel or an other Plaintiffs' counsel arising from any claim to any portion of any PAGA Counsel Attorneys' Fees payment or PAGA Counsel Litigation Expenses Payment. PAGA Counsel assume full responsibility and liability for taxes owed on the PAGA Counsel Attorneys' Fees payment and PAGA Counsel Litigation Expenses payment and agrees to indemnify Defendants and hold it harmless for any responsibility, liability, claim, complaint, damages, penalties, interest or any other actual or potential damages arising from Plaintiffs' obligations to pay taxes owed on these Payments or from any dispute or controversy regarding any division or sharing of any of these Payments

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3.2.4. There will be no additional charge of any kind to either the Aggrieved Employees or request for additional consideration from Defendants for such work unless, Defendants materially breach this Agreement, including any term regarding funding, and further efforts are necessary from PAGA Counsel to remedy said breach, including, without limitation, moving the Court to enforce the Agreement. Any request for additional fees must be reasonable, and are subject to Court approval. Any PAGA Counsel Attorneys' Fees or PAGA Counsel Litigation Expenses that are not awarded by the Court will be allocated to the Net Settlement Amount.

3.2.5. **The Administrator's Costs:** The Administrator's Cost will not exceed $5,430.00 (FIVE THOUSAND FOUR HUNDRED THIRTY and Zero Cents) except for a showing of good cause and as approved by the Court. To the extent the Administration Costs are less or the Court approves payment less than [$5,430.00], the remainder will be allocated to the Net Settlement Amount.

3.3. Released Parties shall have no liability to PAGA Counsel or any other Plaintiffs Counsel arising from any claim to any portion of any PAGA Counsel Fee Payment and/or PAGA Counsel Litigation Expenses Payment. The Administrator will pay the PAGA Counsel Fees Payment and PAGA Counsel Expenses Payment using one or more IRS 1099 Forms. PAGA Counsel assumes full responsibility and liability for taxes owed on the PAGA Counsel Fees Payment and the PAGA Counsel Litigation Expenses Payment and holds Perfect 85 harmless, and indemnifies Perfect 85, from any dispute or controversy regarding any division or sharing of any of these Payments.

3.4. Individual PAGA Payments. the Individual PAGA Payments will be calculated as follows:

3.4.1. The Administrator will calculate each Individual PAGA Payment by (a) dividing the Individual PAGA Payments amount by the total number of Qualifying Pay Periods worked by all Aggrieved Employees during the PAGA Period and (b) multiplying the result by each Aggrieved Employee's Qualifying Pay Periods.

3.4.2. The Administrator will report the Individual PAGA Payments on IRS 1099 Forms, if required under the law, for all amounts paid as penalties. Aggrieved Employees assume full responsibility and liability for any taxes owed on their Individual PAGA Payment.

4. SETTLEMENT ADMINISTRATION

4.1. Settlement Administrator. The Parties agree that Apex Class Action Administrators ("Apex") will manage the administration of this Settlement. The Parties have verified that Apex, as a condition of appointment, agrees to be bound by this Settlement and to perform, as a fiduciary, all duties specified in this Settlement in exchange for payment of the Administration Costs. The Parties and their Counsels represent that they have no interest or relationship, financial or

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otherwise, with the Settlement Administrator other than a professional relationship arising out of prior experiences administering settlements.

4.2. Aggrieved Employee Data. Within fifteen (15) calendar days of service on Perfect 85's counsel of record of the Court's Order of Judgment in connection with approval of this settlement and the date the Administrator provides secure file transfer instructions to Perfect 85 and its Counsel (whichever is later), Perfect 85 will deliver the Aggrieved Employee Data to the Administrator in the form of a Microsoft Excel spreadsheet. To protect Aggrieved Employee' privacy rights, the Administrator must maintain the Aggrieved Employee Data in confidence, use the Aggrieved Employee Data only for purposes of this Settlement and for no other purpose, and restrict access to the Aggrieved Employee Data to Administrator employees who need access to the Aggrieved Employee Data to effect and perform under this Settlement. PAGA Counsel shall not be provided with the Aggrieved Employee Data without Perfect 85's express written consent. Perfect 85 has a continuing duty to immediately notify PAGA Counsel if it discovers that the Aggrieved Employee Data omitted employee identifying information and to provide corrected or updated Aggrieved Employee Data as soon as reasonably feasible. Without any extension of the deadline by which Perfect 85 must send the Aggrieved Employee Data to the Administrator, the Parties and their counsel will expeditiously use best efforts, in good faith, to reconstruct or otherwise resolve any issues related to missing or omitted Aggrieved Employee Data.

4.3. Funding of Gross Settlement Amount. Perfect 85 shall have fourteen (14) calendar days to fully fund the GSA after approval of the PAGA settlement (assuming there are no objections, appeals, etc.). The Parties do not expect any taxes to be paid by Perfect 85 in this matter. However, should there be any employer taxes owed, they shall be paid by Perfect 85 separate and apart from the GSA.

4.4. 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.

4.5. Aggrieved Employee Totals. The Administrator shall have the final authority in calculating the total of the Qualified Pay Periods worked by the Aggrieved Employees during the PAGA Period.

4.5.1. If the total of Qualified Pay Periods exceeds by 10% the estimated amounts, the Administrator shall notify the Parties within 10 calendar days of receipt of the Aggrieved Employee Data. Perfect 85 shall have ten (10) business days to decide whether to cap the PAGA Period or to make any additional settlement payments in accordance with the Escalator Clause in this Settlement.

4.5.2. Within 10 calendar days of receipt of the Aggrieved Employee Data, the Administrator will circulate to the Parties' counsel a spreadsheet containing the Individual PAGA Payments to each Aggrieved Employee and the data used to calculate said payments. The Aggrieved Employees, except for the Plaintiffs, shall be identified by their employee id number or last four of their social security number, and whichever method is by the Administrator to identify the Aggrieved

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Employees. The Settlement Administrator shall obtain approval of the calculations from the Parties.

4.6. Payment of the LWDA PAGA Payment. Within 14 calendar days after obtaining approval from the Parties of the Individual PAGA Payments calculation, the Administrator will pay the Administration Costs, the PAGA Counsel's Fees Payment, PAGA Counsel Litigation Expenses Payment, and the LWDA PAGA Payment.

4.7. Mailing of Individual PAGA Payments. Within 14 calendar days after obtaining approval from the Parties of the Individual PAGA Payments calculation, the Administrator will issue checks for the Individual PAGA Payments and mail the PAGA Explanatory Letter (attached hereto as Exhibit A) along with the Individual PAGA Payments to all Aggrieved Employees by first-class U.S. mail. Prior to mailing, the Settlement Administrator shall perform a National Change of Address (NCOA) search and an Accurint®, (or substantially similar) in-depth skip trace to obtain the best possible address for the Aggrieved Employee.

4.7.1. The face of each Individual PAGA Payment check shall prominently state the date (not less than 180 days after the date of mailing) when the check will be voided. The Administrator will cancel all checks not cashed by the void date.

4.8. Undeliverable checks. The Administrator shall promptly send a replacement check to any Aggrieved Employee whose original check was lost or misplaced, or as requested by the Aggrieved Employee prior to the void date.

4.8.1. If an Individual PAGA Payment is returned as undeliverable with a forwarding address provided by the United States Postal Service before the void date, the Administrator will promptly resend the Explanatory Letter and Individual PAGA Payment to that forwarding address. If any Individual PAGA Payment is returned from any mailing and/or re-mailed, the Administrator will note for its own records and notify the Parties' Counsel of the date of such re-mailings as part of a status report provided to the Parties every 30 days after the original mailing date until the check void date.

4.8.2. If an Individual PAGA Payment is returned as undeliverable without a forwarding address from its first mailing, the Administrator shall undertake all reasonable efforts to locate a current address, including performing an Experian (or substantially similar) in-depth skip trace or mass search on LexisNexis databases based on set criteria. If the Administrator obtains a more current address, the Settlement Administrator shall resend the Explanatory Letter and the Individual PAGA Payment to that address. No further action by the Settlement Administrator shall be required regarding undeliverable Class Notices.

4.9. Uncashed Funds. Any moneys remaining after all Individual PAGA Payments are made resulting from any returned or uncashed checks shall be sent to the California State Controller's Office in the name of the Aggrieved Employee.

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4.10. Accounting. The Settlement Administrator will provide an accounting under oath to PAGA Counsel and Defense Counsel of the amounts paid from the Settlement prior to any final accounting hearing set by the Court, or in case no such hearing is required, no later than nine (9) months after the Individual PAGA Payments have been disbursed, or 60 (days) from the settlement checks void date, whichever is later.

5. RELEASES OF CLAIMS.

5.1. Release by Aggrieved Employees. Upon the Effective Date, subject to the Court's continuing jurisdiction to monitor compliance by Perfect 85 with settlement terms, Plaintiff Stinson, Plaintiff Gandara, the State of California, and all Aggrieved Employees will release the Released Parties from any and all civil penalties claims that were alleged, or that reasonably could have been alleged, based on the facts alleged in the Operative Complaint and/or the PAGA Notices, including, but not limited to, any claims for civil penalties arising from Defendant's alleged violations of the California Labor Code, *et seq.* for, inter alia, failure to provide compliant meal periods and/or timely pay premiums; failure to provide rest periods and/or timely pay premiums; failure to timely pay all wages, including but not limited to minimum, regular, and overtime wages (including based on allegations of pre-shift/post-shift/meal period off-the-clock work claims; rounding; auto deducted time; and regular rate of pay issues); failure to provide separate rest period compensation for nonproductive work; failure to provide accurate itemized wage statements; failure to reimburse for business expenses; and failure to pay all wages due during and upon separation of employment, and including but not limited to PAGA claims predicated on or that could have been predicated on alleged violations of Cal. Lab. Code sections 90.5, 96, 98.6, 200, 201, 202, 203, 204, 204b, 204.1, 205, 205.5, 210, 218.5, 218.6, 221, 223, 225.5, 226, 226.3, 226.4, 226.6, 226.7, 227.3, 232, 232.5, 245, et seq., 404, 432, 432.3, 432.7, 432.8, 510, 511, 512, 558, 558.1, 1102.5, 1174, 1174.5, 1182.12, 1185, 1194, 1194.2, 1197, 1197.1, 1197.5, 1198, 1198.5, 1199, 1527, 2698, et seq., 2802, 2810.5, 2926, 2927, 3366, 3457, 6400, et seq., 6720, 8397.4, Cal. Code Regs., title 8, section 11000, et seq., Business and Professions Code sections 16600, 16700, and 17200-17208, Government Code section 12952, and the provisions within the governing IWC Wage Order.

6. MOTION OR APPLICATION FOR APPROVAL OF SETTLEMENT.

6.1. Within ten (10) calendar days of executing this Agreement, Plaintiffs will prepare a Stipulation to Amend the Complaint in the Stinson Action in order to add Gandara as a named plaintiff and each of the additional claims asserted in the Gandara Action. The Settlement is contingent upon the filing of the Amended Complaint, which is the Operative Complaint. Defendant shall not be required to file an answer to the Amended Complaint. Once the Amended Complaint is filed in the Stinson Action, Plaintiff Gandara shall file a Request for Dismissal of the Gandara Action.

6.2. Within thirty (30) calendar days of filing the Amended Complaint in the Stinson Action, Plaintiff shall file a motion for approval of this Settlement.

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6.3. At least five (5) calendar days prior to filing, Plaintiffs will prepare and deliver to Defense Counsel all documents necessary for obtaining approval of this Settlement under Labor Code section 2699, subd. (f)(2)) including (i) a draft proposed Order Granting Approval of PAGA Settlement; (ii) a signed declaration from the Administrator attaching its quote for administering the Settlement and attesting to its willingness to serve; competency; operative procedures for protecting the security of Aggrieved Employee 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 Aggrieved Employees or the LWDA; and the nature and extent of any financial relationship with Plaintiff, PAGA Counsel or Defense Counsel; (iii) a signed declaration from PAGA Counsel attesting to 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 Settlement (Labor Code section 2699, subd. (l)(2)); and (iv) all facts relevant to any actual or potential conflict of interest with Aggrieved Employees and/or the Administrator.

6.4. PAGA Counsel is responsible for expeditiously finalizing and filing the application or motion for approval of this Settlement no later than 60 days after the full execution of this Settlement and, if necessary, obtaining a prompt hearing date for the motion and appearing in Court to advocate in favor of the motion. PAGA Counsel is responsible for delivering the Court's approval order to the Administrator.

6.5. Duty to Cooperate. If the Parties disagree on any aspect of the proposed application or motion for approval of this Settlement and/or the supporting declarations and documents, PAGA 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 the motion for approval of this Settlement or conditions its approval on any material change to this Settlement, PAGA 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 Settlement and otherwise satisfy the Court's concerns.

7. CONTINUING JURISDICTION OF THE COURT.

7.1. The Parties agree that, after entry of Judgment, the Court will retain jurisdiction over the Parties, the Actions, and the Settlement solely for purposes of (i) enforcing this Settlement and Judgment, (ii) addressing settlement administration matters, and (iii) addressing such post-Judgment matters as are permitted by law.

8. ADDITIONAL PROVISIONS.

8.1. No Admission of Liability. This Settlement represents a compromise of highly disputed claims. Nothing in this Settlement is intended or should be construed as an admission by Perfect 85 that any of the allegations in the Operative Complaint have merit or that Perfect 85 has any liability for any claims asserted; nor should it be intended or construed as an admission by Plaintiffs that Perfect 85's defenses in the Actions have merit. If, for any reason the Court does not approve this Settlement, Perfect 85 reserves all available defenses to the claims in the Actions, and Plaintiff Stinson and Plaintiff Gandara reserve the right to contest Perfect 85's defenses. The Settlement, and the Parties' willingness to settle the Actions will have no bearing on, and will not

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be admissible in connection with, any litigation (except for proceedings to enforce or effectuate the Settlement).

8.2. Integrated Agreement. Upon execution by all Parties and their counsel, this Settlement, together with its attached Exhibit A, shall constitute the entire agreement between the Parties, superseding any and all oral representations, warranties, covenants, or inducements made to or by any Party, except as to individual settlement agreements signed by each respective Plaintiff.

8.3. Attorney Authorization. PAGA Counsel and Defense Counsel separately warrant and represent that Plaintiff Stinson and Plaintiff Gandara and Perfect 85 authorize them, respectively, to take all appropriate action required or permitted to be taken by such Parties pursuant to this Settlement to effectuate its terms, and to execute any other documents reasonably required to effectuate the terms of the Settlement, including any amendments.

8.4. 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 it, 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 that may become necessary to implement the Settlement, the Parties will seek the assistance of a mediator and/or the Court for resolution.

8.5. No 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.

8.6. Modification of Agreement. This Settlement, 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.

8.7. Agreement Binding on Successors. This Settlement will be binding upon, and inure to the benefit of, the successors and assigns of each of the Parties.

8.8. Applicable Law. All terms and conditions of this Settlement and its Exhibit A will be governed by and interpreted according to the internal laws of the state of California, without regard to conflict of law principles.

8.9. Cooperation in Drafting. The Parties have cooperated in the drafting and preparation of this Settlement. This Settlement will not be construed against any Party on the basis that the Party was the drafter or participated in the drafting.

8.10. Use and Return of Aggrieved Employee Data. Information provided to PAGA Counsel pursuant to Cal. Evid. Code section1152, and all copies and summaries of the PAGA Data provided to PAGA Counsel by Perfect 85 in connection with the mediation, other settlement

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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 Administrator discharges its obligation to pay out of all Settlement funds, Plaintiff Stinson and Plaintiff Gandara shall destroy all paper and electronic versions of any confidential data received from Perfect 85 unless, prior to the Administrator's payment of all Settlement Funds, Perfect 85 makes a written request to PAGA Counsel for the return, rather than the destructions, of Aggrieved Employee Data.

8.11. Headings. The descriptive heading of any section or paragraph of this Settlement is inserted for convenience of reference only and does not constitute a part of this Settlement.

8.12. Calendar Days. Unless otherwise noted, all reference to "days" in this Settlement shall be to calendar days. In the event any date or deadline set forth in this Settlement falls on a weekend or federal legal holiday, such date or deadline shall be on the first business day thereafter.

8.13. Notice. All notices, demands or other communications between the Parties in connection with this Settlement 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:

8.14. Execution in Counterparts. This Settlement may be executed in one or more counterparts by facsimile, electronically (i.e. DocuSign), or email which for purposes of this Settlement 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 Settlement.

To Plaintiff Stinson:

BIBIYAN LAW GROUP, P.C.
David D. Bibiyan
david@tomorrowlaw.com
Vedang J. Patel, Esq.
vedang@tomorrowland.com
1460 Westwood Blvd.,
Los Angeles, CA 90024
Telephone: (310) 438-5555

To Plaintiff Gandara:

D. LAW, INC.
Arsiné Grigoryan, Esq.
A.Grigoryan@d.law.com
Aram Boyadijan, Esq.
A.Boyadijan@d.law.com
250 N. Madison Ave., 2nd Floor,

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Pasadena, CA 91101
Telephone: (818) 962-6465

To Defendant:

JACKSON LEWIS P.C.
Karin M. Cogbill, Esq.
Karin.cogbill@jacksonlewis.com
Omar Mustafa, Esq.
Omar.mustafa@jacksonlewis.com
160 West Santa Clara St., Suite 400
San Jose, California 95113
Telephone: (408) 579-0404

[SIGNATURE PAGE TO FOLLOW]

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Dated:

Johnny Elijah Stinson

Dated: 9/8/2026

Signed by:
70079BB0B687404...

Arturo Gandara

Dated:

Name: Ming-Hua Kuo
Title: CEO
Authorized Representative of Perfect 85 Degrees C, Inc.

AGREED AS TO FORM ONLY:

David D. Bibiyan
Vedang J. Patel
Keaton D. Mendoza
Counsel for Plaintiff Johnny Elijah Stinson

Arsiné Grigoryan
Aram Boyadijan
Counsel for Plaintiff Arturo Gandara

Karin M. Cogbill
Omar Mustafa
Counsel for Defendant Perfect 85 Degrees C, Inc.

Johnny Stinson

Dated: 08/24/2026

Johnny Elijah Stinson

Dated:

Arturo Gandara

Dated:

Name: Diane Bolose
Title: Director of Human Resources
Authorized Representative of Perfect 85 Degrees C, Inc.

AGREED AS TO FORM ONLY:

David Bibiyan

David D. Bibiyan
Vedang J. Patel
Keaton D. Mendoza
Counsel for Plaintiff Johnny Elijah Stinson

Arsiné Grigoryan
Aram Boyadijan
Counsel for Plaintiff Arturo Gandara

Karin M. Cogbill
Omar Mustafa
Counsel for Defendant Perfect 85 Degrees C, Inc.

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EXHIBIT A

[Date]

[INSERT SETTLEMENT ADMINISTRATOR NAME]
[INSERT SETTLEMENT ADMINISTRATOR ADDRESS]

Re: PAGA Settlement Payment

Dear Current or Former Employee of Perfect 85 Degrees C, Inc.,

You are receiving this notice because Perfect 85 Degrees C, Inc.'s records indicate that you worked for the company in California as a non-exempt employee between September 15, 2022, to December 31, 2025. This letter concerns the settlement of two actions filed against Perfect 85 Degrees C, Inc. entitled: (1) Johnny Elijah Stinson v. Perfect 85 Degrees C, Inc., et al. (Alameda County Superior Court, Case No. 24CV070989), initiated on April 9, 2024, pending in the Alameda County Superior Court; and (2) Arturo Gandara v. Perfect 85 Degrees C, Inc., et al. (Orange County Superior Court, Case No. 30-2024-01402016-CU-OE-CXC), initiated on May 21, 2024, pending in the Orange County Superior Court. In these cases, the Plaintiffs sought civil penalties under the California Private Attorneys General Act (PAGA) on behalf of the State of California and other non-exempt employees in California based on alleged wage and hour violations.

Perfect 85 Degrees C, Inc., has disputed these claims and believes it has consistently paid employees in compliance with the law. The Courts have not made any determinations regarding the claims.

To avoid the costs and time associated with litigation, the parties agreed to settle the matter, and this settlement has been approved by the Court. As part of the settlement, funds have been allocated for penalties under PAGA, with 75% designated for the State of California and 25% for eligible employees like yourself.

The enclosed settlement check represents your portion of the PAGA Settlement. You are protected from retaliation for cashing this check. Please note that checks not cashed within 180 days of issuance will be voided, with unclaimed funds transferred to the [INSERT RECIPIENT] in your name.

Regardless of whether you cash the check, by law, this settlement releases claims for penalties under PAGA as outlined in the case.

If you have any questions about this notice or the settlement, please contact the Settlement Administrator at [INSERT SETTLEMENT ADMINSITRATOR NUMBER].

Thank you.

EXHIBIT 2

NOTICE OF SETTLEMENT OF PAGA REPRESENTATIVE ACTION

Johnny Elijah Stinson V. Perfect 85 Degrees C, Inc., et al.
Superior Court of the State of California, County of Alameda Case No. 24CV070989

[Aggrieved
Employee] [Address]
[Address]

You are receiving this notice in connection with a Court-approved settlement (the "Settlement") in the lawsuit entitled *Johnny Elijah Stinson V. Perfect 85 Degrees C, Inc., et al.*, filed in Superior Court of the State of California for the County of Alameda, Case No. 24CV070989 (the "Action"), brought on a representative basis under the Labor Code Private Attorneys' General Act of 2004 codified at California Labor Code section 2698, *et seq*. ("PAGA"). The plaintiff in the lawsuit is Johnny Elijah Stinson ("Plaintiff") and the defendant is Perfect 85 Degrees C, Inc. ("Defendant"). The Settlement provides for recovery of civil penalties for alleged violations of the California Labor Code on behalf of all Aggrieved Employees, defined as all persons currently or formerly employed by Perfect 85 Degrees C, Inc., as non-exempt, hourly-paid employees, during the period from September 15, 2022 through December 31, 2025 ("PAGA Period") in the State of California. The PAGA statute provides that 75% of any recovery pursuant to the Settlement be paid to the State of California and 25% of any recovery be paid to the PAGA Members.

Defendant denies all claims and allegations in the Action, denies that it owes any penalties and asserts that it has fully complied with all applicable Labor Code provisions. Nevertheless, to avoid further costs and time in defending the Action, Defendant has settled the Action. By settling the lawsuit, Defendant is not admitting that he has done anything wrong.

Effective on the date when Defendant fully funds the entire Gross Settlement Amount, Plaintiff and all Aggrieved Employees are deemed to release, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, Released Parties from all claims, rights, demands, liabilities and causes of action that arose during the PAGA Period for civil penalties under PAGA that were alleged, or reasonably could have been alleged, based on the facts stated in the Operative Complaint and the PAGA Notice for PAGA civil penalties, including, but not limited to, pursuant to Labor Code sections 210, 226.3, 558, 1174.5, 1197.1 and 2699, in connection with alleged violations of Labor Code sections 201, 202, 203, 204, 226, 226.3, 226.7, 246, et seq., 432, 510, 512, 558, 1174, 1194, 1194.2, 1197, 1197.1, 1198.5, 2699 and 2810.5, among others.

"Released Parties" means Defendant and each of their former and present directors, officers, shareholders, owners, members, attorneys, insurers, predecessors, successors, assigns, subsidiaries, and affiliates.

By an Order dated [Approval Date], the Superior Court of California approved the Settlement of the Released Claims. By approving the Settlement, the Court did not decide in favor of either Plaintiff or Defendant.

According to Defendant's records, you are an Aggrieved Employee and are therefore entitled to a share of the Settlement based upon the Court-approved allocation. Enclosed with this Notice is your settlement check for your share. The settlement check shall remain valid for one hundred eighty (180) days. Thereafter, the settlement check shall be canceled and funds associated with such checks shall be transmitted to the State Controller's Unclaimed Property Fund in your name.

Defendant's records indicates that you worked [Eligible Workweeks] Workweeks as a non-exempt, hourly-paid employee in California during the PAGA Period. Based on these records, your estimated payment as a PAGA Member would be [$Estimated Award].

Please Note: One hundred percent (100%) of the payment you are receiving in connection with the Settlement will be considered penalties reported on IRS Form 1099, and may be subject to local, state or federal tax withholdings and will be reported to the IRS and state tax authorities. You should rely on your own tax advisors as to the tax consequences of your settlement payment. Neither Plaintiff nor Defendant have made any representations or warranties regarding the taxation of your settlement payment. Nothing in this Notice or any other communication shall constitute or be construed or relied upon as tax advice.

PLEASE DO NOT CALL OR WRITE THE COURT OR OFFICE OF THE CLERK TO ASK QUESTIONS ABOUT THE SETTLEMENT. IF YOU HAVE ANY QUESTIONS, YOU MAY CALL OR WRITE TO THE SETTLEMENT ADMINISTRATOR AT:

INSERT NAME OF ADMINISTRATOR
WEBSITE
Phone:

EXHIBIT 3

BIBIYAN LAW GROUP, P.C.

8484 Wilshire Blvd., Suite 500
Beverly Hills, California, 90211
310.438.5555 T
310.300.1705 F
www.employmentlawyerla.com

September 15, 2023

PAGA NOTICE FILED ELECTRONICALLY

Re: *Notice Letter of Johnny Elijah Stinson on Behalf of Himself and Aggrieved Employees Under California Labor section 2699.3*

Employer: Perfect 85 Degrees C, Inc.
1415 MOONSTONE
BREA, CA 92821

To Whom It May Concern:

This letter shall constitute notice under Labor Code section 2699.3 (hereinafter "PAGA Notice"). The $75 filing fee for the PAGA Notice was paid online by credit card at the time this PAGA Notice was submitted online to the Department of Industrial Relations.

This PAGA Notice concerns Johnny Elijah Stinson ("Employee") employment with Employee's former employers: Perfect 85 Degrees C, Inc. Employee was employed as a non-exempt employee of Perfect 85 Degrees C, Inc. at, without limitation, 35201-V, Newark Blvd, Newark, CA 94560, with duties that included, but were not limited to, baking bread and cookies, checking orders, sending orders on time, organizing the stuff, and shipping the cakes from approximately April 20, 2023 through approximately July 19, 2023. In connection with the alleged claims for failure to comply with Labor Code section 6400, *et seq.*, Labor Code section 2810.5, Labor Code section 203, Labor Code section 226, Labor Code section 245, *et seq.*, Labor Code section 432, Labor Code section 1198.5, Labor Code section 2802, restraints on competition, whistleblowing and freedom of speech, Employee seeks to represent all employees of Perfect 85 Degrees C, Inc., and each of them, as well as their parents, subsidiaries and affiliates (hereinafter, collectively, "Employer"). On all other claims mentioned herein, Employee seeks to represent only non-exempt employees of Employer.

Employee and other aggrieved employees are covered by Labor Code section 510 and applicable Wage Orders. Employee is informed and believes, and based thereon alleges, that Employer had and has a policy or practice of requiring its employees to work more than eight (8) hours per day, forty (40) hours per week, and/or seven (7) straight workdays in a workweek without paying them proper overtime wages, as a result of, without limitation, failing to accurately track and/or pay for all minutes actually worked; engaging, suffering, or permitting employees to work off the clock, including, without limitation, by requiring employees: to come early to work and leave late work without being able to clock in for all that time, to suffer under Employer's control

due to long lines for clocking in, to complete pre-shift tasks before clocking in and post-shift tasks after clocking out, to clock out for meal periods and continue working, to clock out for rest periods, to don and doff uniforms and/or safety equipment off the clock, to attend company meetings off the clock, to make phone calls or drive off the clock, and/or go through security screenings and/or temperature checks off the clock; failing to include all forms of remuneration, including non-discretionary bonuses, incentive pay, meal allowances, mask allowances, gift cards and other forms of remuneration into the regular rate of pay for the pay periods where overtime was worked and the additional compensation was earned for the purpose of calculating the overtime rate of pay; detrimental rounding of employee time entries, editing and/or manipulation of time entries to show less hours than actually worked, and for paying straight pay instead of overtime pay to the detriment of Employee and other aggrieved employees. Consequently, Employee is informed and believes, and based thereon alleges, that Employer violated Labor Code sections 510, 1194, and applicable Wage Orders based on its practice of providing total compensation that is less than the required legal overtime compensation for the overtime worked, entitling Employee and other aggrieved employees to damages. Employer would also be liable for civil penalties pursuant to Labor Code sections 558 and 2699.

Employee is informed and believes, and based thereon alleges, that Employer had and has a practice or policy of failing to compensate Employee and other aggrieved employees with minimum wages for all hours worked or otherwise under Employer's control as a result of, without limitation, failing to accurately track and/or pay for all minutes actually worked; engaging, suffering, or permitting employees to work off the clock, including, without limitation, by requiring employees: to come early to work and leave late work without being able to clock in for all that time, to suffer under Employer's control due to long lines for clocking in, to complete pre-shift tasks before clocking in and post-shift tasks after clocking out, to clock out for meal periods and continue working, to clock out for rest periods, to don and doff uniforms and/or safety equipment off the clock, to attend company meetings off the clock, to make phone calls or drive off the clock; detrimental rounding of employee time entries; editing and/or manipulation of time entries to show less hours than actually worked; and failing to pay split shift premiums. In addition, Employee and other aggrieved employees were required to report to work, and did report, but were not put to work and/or were furnished less than half their usual or scheduled day's work without being paid for half the usual or scheduled work at their regular rate of pay. As such, Employee is informed and believes, and based thereon alleges, that Employer violated, without limitation, Labor Code sections 221, 223, 1197, 1182.12, Cal. Code Regs, title 8, section 110404(5)(A), and applicable Wage Orders based on its continued failure to pay minimum wages for all hours worked, entitling Employee and other aggrieved employees to actual and liquidated damages under, without limitation, Labor Code sections 1194 and 1194.2. Employer would also be liable for civil penalties pursuant to Labor Code sections 558, 1197.1, and 2699.

Employee is informed and believes, and based thereon alleges, that Employer had and has a policy or practice of compelling its employees to work in excess of five (5) and ten (10) hours per day without being afforded uninterrupted, timely, and complete 30-minute meal periods or compensation in lieu thereof including, without limitation: by interrupting meal periods; not providing timely meal periods; failing to provide first and second meal periods; providing short

meal periods; requiring that employees carry cellular telephones or walkie-talkies during meal periods; not permitting employees to leave the premises; otherwise requiring on-duty/on-call meal periods; and auto-deducting meal periods that could not be auto-deducted by law or during which employees worked. Consequently, Employee is informed and believes, and based thereon alleges, that Employer violated Labor Code section 512, entitling Employee and other aggrieved employees to premium payments under Labor Code section 226.7. However, Employee is informed and believes that those premium payments under Labor Code section 226.7 were not made, either, for these non-compliant meal periods, either at all or at the proper regular rate of pay. Employer would thus be liable for civil penalties pursuant to Labor Code sections 558 and 2699 for both failing to authorize the taking of compliant meal periods, as well as for failing to provide premium pay under Labor Code section 226.7.

Employee is informed and believes, and based thereon alleges, that Employer maintains policies or practices of compelling its non-exempt employees, including, without limitation, Employee, to work over four-hour periods (or major fractions thereof) without authorizing and permitting Employee and other aggrieved employees to take uninterrupted, timely, and complete ten-minute rest periods in which the employees are completely relieved of all of their duties, including, without limitation: by failing to provide rest periods all together; requiring that they be bundled together and/or with meal periods; interrupting them; requiring that employees carry cellular telephones or walkie-talkies during rest periods not providing them in a timely fashion; and not permitting employees to leave the premises; and otherwise requiring on-duty/on-call rest periods. As such, Employee is informed and believes, and based thereon alleges, that Employee and other aggrieved employees are entitled to relief under, without limitation, Labor Code section 226.7. However, Employee is informed and believes that those premium payments under Labor Code section 226.7 were not made, either, for these non-compliant rest periods, either at all or at the proper regular rate of pay. Employer would thus be liable for civil penalties pursuant to Labor Code sections 558 and 2699 for both failing to authorize the taking of compliant rest periods, as well as for failing to provide premium pay under Labor Code section 226.7.

In addition to the above, Employee is informed and believes, and based thereon alleges that Employer failed and continue to fail to keep adequate or accurate time records including wage statements and similar payroll documents under Labor Code section 226, documents signed to obtain or hold employment under Labor Code section 432, personnel records under Labor Code section 1198.5, and time records under Labor Code section 1174, making it difficult for Employee and other aggrieved employees to calculate their unpaid wages and/or premium payments. Employer also failed to provide these documents to Employee and other aggrieved employees upon request. This would entitle Employee and other aggrieved employees to penalties prescribed by Labor Code sections 226 and 1198.5. Employer would also be liable for civil penalties pursuant to Labor Code sections 558, 1174.5 and 2699.

As a result of, among other things, Employer's herein-described policy or practice of failing to: accurately record time; failing to pay overtime and minimum wages; provide meal periods; provide rest periods; and provide compensation in lieu of meal or rest periods; as

described above, Employee is informed and believes, and based thereon alleges, that Employer also intentionally failed and continues to fail to furnish aggrieved employees, including, without limitation, Employee, with itemized wage statements that accurately reflect: gross wages earned; total hours worked by the employee; net wages earned; all deductions; all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee; the legal name and address of the other; and other such information as required by Labor Code section 226, subdivision (a). Specifically, Employer intentionally failed to furnish employees with itemized wage statements that accurately reflect the hours worked by Employee and other aggrieved employees and the rates of pay at which they were or should have been paid (including due to failure to pay at the proper regular rate), thus resulting in a failure to reflect gross and net wages earned and paid at each rate, as well. Consequently, since Employer would have failed to comply with Labor Code section 226, subdivision (a), Employee and other aggrieved employees would be entitled to recover penalties under, without limitation, Labor Code section 226, subdivision (e). Employer would also be liable for civil penalties pursuant to Labor Code sections 226.3, 558, and 2699.

Employee is informed and believes, and based thereon alleges, that Employer also failed and refused, and continue to fail and refuse, to timely pay compensation to Employee and other terminated or resigned employees, including but not limited to, all overtime wages owed; all minimum wages owed; and all premium pay owed as set out above, including, without limitation, for failure to pay at the proper regular rate of pay, among other things. Consequently, Employer would be liable for waiting time penalties for having violated California Labor Code sections 201, 202, and 203. Employer would also be liable for civil penalties pursuant to Labor Code sections 558 and 2699.

Employee is further informed and believes, and based thereon alleges that Employer failed and refused, and continues to fail and refuse, to comply with the notice requirements of Labor Code section 2810.5 (*i.e.*, the Wage Theft Protection Act of 2011) by, among other things, failing to provide Employee and other aggrieved employees with the rates of pay and overtime rates of pay applicable to their employment, allowances claimed as part of the minimum wage, the regular payday designated by Employer, the name of the employer, including any "doing business as" names used, the name, address and telephone number of the workers' compensation insurance carrier, information regarding paid sick leave, and other pertinent information required to be disclosed by Employer under Labor Code section 2810.5. Employee is informed and believes that failure to provide such information, including rates of pay that are in effect, has permitted Employer to pay employees at rates of pay that were not agreed upon and violate minimum wage and overtime wage laws in California. Employee is additionally informed and believes that the notice requirement of Labor Code section 2810.5 involves a mandatory payroll or workplace injury reporting. Among other relief, employees may collect from Employer in connection with these violations' civil penalties pursuant to Labor Code sections 558 and 2699.

Employee is informed and believes, and based thereon alleges that Employer also failed and refused, and continues to fail and refuse, to reimburse employees, including, without limitation, Employee and other aggrieved employees, with their costs incurred for driving personal

vehicles (*i.e.*, mileage and gas), purchasing uniforms, providing uniform and other deposits, separately laundering mandatory uniforms, for the purchase of tools and safety equipment, and for the purchase and maintenance of cellular phones and cellular phone plans, in direct consequence of the discharge of their duties, or of their obedience to the directions of Employer, as required by Labor Code section 2802, and other statutory and common law offenses. As a result, Employer are liable to reimburse Employee and other aggrieved employees for these costs incurred in furtherance of work duties. In addition, Employer would be liable for civil penalties pursuant to Labor Code sections 558 and 2699.

Employee is further informed and believes, and based thereon alleges, that Employer has or had a policy or practice of failing to reimburse deposits made, including uniform deposits together with all interest owed at the separation of employment in violation of Labor Code section 404, entitling Employee and other aggrieved employees to damages in the amount of the deposit and accrued interest. Employer would also be liable for civil penalties under Labor Code sections 558 and 2699.

Employee is further informed and believes, and based thereon alleges, that Employer has or had a policy or practice of failing to provide Employee and other aggrieved employees with all rights afforded to them under the Healthy Workplace Heathy Families Act of 2014, codified at Labor Code section 245, *et seq.,* including, without limitation, the amount of paid sick leave required to be provided pursuant to California and local laws. Employee is further informed and believes that the sick pay was not provided at the proper regular of pay as required under California law due to failure to properly calculate the regular rate. Employee is further informed and believes that Employer also did not permit its use upon request by Employee and other aggrieved employees as contemplated under California and local laws. Employee is additionally informed and believes that the notice requirement of Labor Code section 245 *et seq.* involves a mandatory payroll or workplace injury reporting. As such, Employer would be liable for civil penalties for violation of the paid sick leave regulations under Labor Code section 2699, as well as equitable, injunctive, or restitutionary relief, and reasonable attorneys' fees and costs.

Employee is informed and believes, and based thereon alleges that Employer had and has a policy or practice of failing to pay aggrieved employees their paid time off and vacation time owed upon separation of employment as wages at their final rate of pay in violation of Labor Code section 227.3 and applicable Wage Orders. As such, Employer would be liable for civil penalties for violation of Labor Code section 227.3 under Labor Code section 558 and 2699.

Employee is informed and believes, and based thereon alleges that Employer had and has a policy or practice of failing to pay aggrieved employees their wages in accordance with Labor Code Section 204, which requires that: "[l]abor performed between the 1st and 15th days, inclusive, of any calendar month shall be paid for between the 16th and 26th day of the month during which the labor was performed, and labor performed between the 16th and the last day, inclusive of any calendar month, shall be paid for between the 1st and 10th day of the following month." Employee is informed and believes and based thereon alleges that Employer did not and do not pay Employee and other aggrieved employees in accordance with Labor Code Section 204.

As such, Employee is informed and believes, and based thereon alleges that Employer violated Labor Code section 204. Employer would be liable for civil penalties pursuant to Labor Code sections 210, 558 and 2699.

Employee is informed and believes, and based thereon alleges that Employer had and has a policy of failing to provide all temporary workers with owed wages weekly by not later than the regular payday of the following week. As a result, pursuant to Labor Code section 201.3, Employer would be liable for civil penalties pursuant to Labor Code sections 201.3.

Employee is informed and believes, and based thereon alleges that Employer had and has a policy or practice of failing to provide all working employees with suitable seats when the nature of the work reasonably permits the use of seats. Employee is further informed and believes, and based thereon alleges that Employer has failed to place an adequate number of seats in reasonable proximity to the work area and/or permitted employees to use such seats when it does not interfere with the performance of their duties when employees are not engaged in the active duties of their employment and the nature of their work requires standing.

Employee is informed and believes, and based thereon alleges that Employer had and has a policy or practice of preventing Employee and/or other aggrieved employees from using or disclosing the skills, knowledge and experience they obtained at Employer for purposes of competing with Employer, including, without limitation, preventing Employees from disclosing their wages in negotiating a new job with a prospective employer, and from disclosing who else works at Employer and under what circumstances that they might be receptive to an offer from a rival employer. As such, Employee is informed and believes that this violates Business and Professions Code sections 17200, 16600 and 16700, and, by virtue thereof, various provisions of the Labor Code, including Labor Code sections 232, 232.5, and 1197.5, subdivision (k). Employer would be liable for civil penalties pursuant to Labor Code section 2699.

Employee is informed and believes, and based thereon alleges that Employer had and has a policy or practice of preventing Employee and/or other aggrieved employees from disclosing violations of state and federal law, either within Employer to their managers or outside Employer to private attorneys or government officials, among others, in violation of Business and Professions Code section 17200, and, thus, in violation of Labor Code section 1102.5. In addition, Employee is informed and believes that these policies and/or practices prevent Employee and/or other aggrieved employees from disclosing information about unsafe or discriminatory working conditions, or about wage and hour violations in violation of Labor Code section 232 and 232.5. These violations of the Labor Code would expose Employer to liability for civil penalties pursuant to Labor Code section 2699.

Employee is informed and believes, and based thereon alleges that Employer had and has a policy or practice of preventing Employee and/or other aggrieved employees from engaging in lawful conduct during non-work hours, thus violating state statutes entitling employees to disclose wages, working conditions, and illegal conduct, including, without limitation, Labor Code sections 96, subdivision (k), 98.6, 232, 232.5, and 1197.5, subdivision (k). Employee is informed and

believes that this lawful conduct includes the exercise of Employee and/or other aggrieved employee's constitutional rights of freedom of speech and economic liberty and would thus expose Employer to liability for civil penalties pursuant to Labor Code section 2699.

Employee is informed and believes, and based thereon alleges that Employer had and has a policy or practice of failing to furnish and use safety devices and safeguards. And adopt and use practices, means, methods, operations and processes which are reasonably adequate to render such employment and place of employment safe and healthful, pursuant to, including but not limited to, Labor Code section 6401. Employee is informed and believes, and based thereon alleges that Employer had and has a policy or practice of requiring or permitting employees to go or be in any employment or place of employment which is not safe and healthful, pursuant to Labor Code section 6402. Employee is informed and believes, and based thereon alleges that Employer had and has a policy or practice of failing or neglecting to: provide and use safety devices and safeguards reasonably adequate to render the employment and place of employment safe; adopt and use methods and processes reasonably adequate to render the employment and place of employment safe; and do every other thing reasonably necessary to protect the life, safety, and health of employees, pursuant to Labor Code section 6403. Employee is informed and believes, and based thereon alleges that these failures include, without limitation, failing to disinfect time clocks and other surfaces after use by Employee and/or other aggrieved employees; failing to provide adequate protection equipment to Employee and/or other aggrieved employees; and failing to provide adequate distance in working conditions between Employee and/or other aggrieved employees.

Employee is informed and believes, and based thereon alleges that Employer violated section 1527, 3366, 3457 and 8397.4 by failing to provide adequate and readily accessible sanitation facilities; a regular schedule for servicing, cleaning, and supplying each facility to ensure it is maintained in a clean, sanitary and serviceable condition; an adequate supply of suitable cleansing agents, water, single-use towels or blowers; and a sufficient number of toilets to be used by each sex of employee.

Employee is informed and believes, and based thereon alleges, that Employer had and has a practice or policy of conducting unlawful background checks on prospective and current employees prior to making a conditional offer. Employee is informed and believes, and based thereon alleges, that Employer violated applicable laws by, without limitation: requiring job applicants and employees to disclose their conviction history before Employer made a conditional offer of employment; inquiring into or considering the conviction history of applicants before Employer made any conditional offers of employment; considering, distributing, or disseminating information about arrests not followed by conviction, referrals to or participation in a pretrial or posttrial diversion program, convictions that have been sealed, dismissed, expunged, or statutorily eradicated pursuant to law, or any conviction for which the convicted person has received a full pardon or has been issued a certificate of rehabilitation, while conducting conviction history background checks in connection with any applications for employment; intending to deny an applicant a position of employment solely or in part because of the applicant's conviction history; and asking applicants for employment to disclose, through any written form or verbally,

information concerning or related to an arrest, detention, processing, diversion, supervision, adjudication, or court disposition that occurred while the person was subject to the process and jurisdiction of the juvenile court, to the detriment of Employee and other aggrieved employees. As such, Employee is informed and believes, and based thereon alleges, that Employer violated, without limitation, Labor Code section 432.7 and Government Code section 12952, entitling Employee and other aggrieved employees to damages. Employer would also be liable for civil penalties pursuant to Labor Code sections 432.7, 432.8, and 2699.

Employee is informed and believes, and based thereon alleges, that Employer had and has a practice or policy of relying on the salary history information of an applicant for employment as a factor in determining whether to offer employment to an applicant or what salary to offer the applicant in violation of Labor Code section 432.3 by including, on Employer's application for employment, an inquiry regarding current and/or former salary history information, including, without limitation, compensation and benefits of the applicant for employment. As such, Employee is informed and believes, and based thereon alleges, that Employer violated, without limitation, Labor Code section 432.3 entitling Employee and other aggrieved employees to damages. Employer would also be liable for civil penalties pursuant to Labor Code sections 432.3 and 2699.

Pursuant to Labor Code section 2699.3, subdivision (a)(2)(A), please advise within sixty-five (65) calendar days of the postmarked date of this notice whether the LWDA intends to investigate the violations alleged above. Our office understands that if we do not receive a response within sixty-five (65) calendar days of the postmark date of this PAGA Notice that the LWDA intends to investigate these allegations, Employee may immediately thereafter file a civil complaint against Employer to allege causes of action for civil penalties under the Private Attorney General Act for the herein-described alleged violations of the Labor Code.

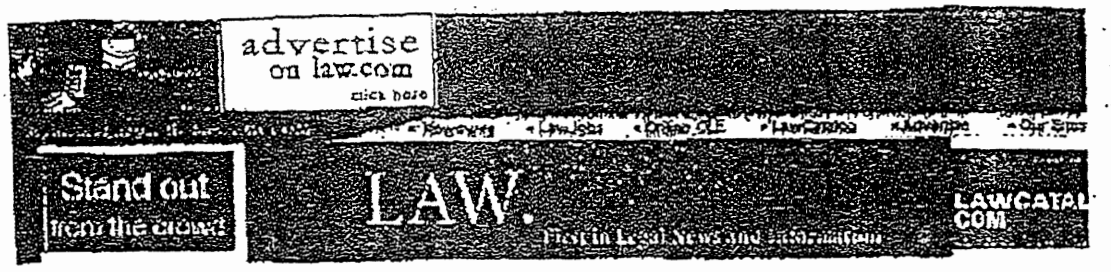
Very truly yours,

BIBIYAN LAW GROUP, P.C.

/s/ Randal Oakley
Randal Oakley

cc: Perfect 85 Degrees C, Inc. (via U.S. Certified Mail, Return Receipt Requested)

EXHIBIT 4



A Firm-by-Firm Sampling of Billing Rates Nationwide

The National Law Journal asked the respondents to its 2002 survey of the nation's 250 largest law provide hourly billing rate information for partners and associates firmwide. The firms that supplie information -- including some firms that are not in the NLJ 250 -- are listed below in alphabetical or number after a firm's name indicates the total number of attorneys at that firm. The city listed bel name of a firm is the location of the firm's principal office or largest office.

A | B | C | D | E | F | G | H | I | J | K | L | M | N | O | P | Q | R | S | T | U | V | W | X | Y | Z

A B C D

Akin, Gump, Strauss, Hauer & Feld (1,017)
(Washington, D.C.)
Partners $350-$600
Associates $170-$330

Alston & Bird (674)
(Atlanta)
Partners $330-$575
Associates $170-$500

Altheimer & Gray (361)
(Chicago)
Partners $220-$525
Associates $115-$360

Andrews & Kurth (375)
(Houston)
Partners $310-$595
Associates $170-$400

Arent Fox Kintner Plotkin & Kahn (249)
(Washington, D.C.)
Partners $315-$560
Associates $165-$360

Armstrong Teasdale (230)
(St Louis)
Partners $210-$310
Associates $105-$240

Arter & Hadden (273)
(Cleveland)
Partners $215-$450
Associates $150-$285

Baker, Donelson, Bearman & Caldwell (249)
(Memphis, Tenn.)
Partners $175-$480
Associates $110-$275

Ballard Spahr Andrews & Ingersoll (441)
(Philadelphia)

Kelley Drye & Warren (358)
(New York)
Partners $300-$590
Associates $180-$375

Kramer Levin Naftalis & Frankel (285)
(New York)
Partners $440-$625
Associates $210-$440

L M N

Lane Powell Spears Lubersky (175)
(Seattle)
Partners $225-$380
Associates $175-$260

Lewis, Rice & Fingersh (170)
(St. Louis)
Partners $360-$355
Associates $210-$270

Littler Mendelson (395)
(San Francisco)
Partners $220-$440
Associates $135-$350

Locke Liddell & Sapp (498)
(Houston)
Partners $300-$595
Associates $150-$340

Loeb & Loeb (175)
(Los Angeles)
Partners $350-$650
Associates $185-$325

Lord, Bissell & Brook (325)
(Chicago)
Partners $255-$510
Associates $140-$285

Lowenstein Sandler (193)
(Roseland, N.J.)

Partners $240-$525
Associates $145-$300

Bell, Boyd & Lloyd (226)
(Chicago)
Partners $250-$550
Associates $200-$275

Blackwell Sanders Peper Martin (301)
(Kansas City, Mo.)
Partners $165-$410
Associates $110-$210

Blank Rome Comisky & McCauley (398)
(Philadelphia)
Partners $285-$565
Associates $175-$360

Boult, Cummings, Conners & Berry (89)
(Nashville, Tenn.)
Partners $185-$375
Associates $138-$235

Bracewell & Patterson (362)
(Houston)
Partners $210-$600
Associates $125-$325

Bradley, Arant, Rose & White (181)
(Birmingham, Ala.)
Partners $205-$365
Associates $150-$275

Brinks Hofer Gilson & Lione (138)
(Chicago)
Partners $295-$500
Associates $165-$290

Bryan Cave (841)
(St. Louis)
Partners $225-$720
Associates $135-$410

Buchalter, Nemer, Fields & Younger (137)
(Los Angeles)
Partners $310-$450
Associates $160-$350

Buchanan Ingersoll (382)
(Pittsburgh)
Partners $225-$720
Associates $135-$360

Buckingham, Doolittle & Burroughs (135)
(Akron, Ohio)
Partners $295-$360
Associates $135-$260

Burns, Doane, Swecker & Mathis (97)
(Alexandria, Va.)
Partners $300-$550
Associates $175-$300

Burr & Forman (169)
(Birmingham, Ala.)
Partners $205-$365
Associates $140-$225

Butzel Long (204)
(Detroit)
Partners $205-$380
Associates $135-$215

Partners $285-$525
Associates $140-$295

Luce, Forward, Hamilton & Scripps (202)
(San Diego)
Partners $310-$500
Associates $150-$300

Manatt, Phelps & Phillips (244)
(Los Angeles)
Partners $375-$600
Associates $200-$355

Marshall, Dennehey, Warner, Coleman & Goggin (288)
(Philadelphia)
Partners $130-$255
Associates $115-$180

Matthews and Branscomb (51)
(San Antonio)
Partners $175-$325
Associates $125-$195

McCarter & English (270)
(Newark, N.J.)
Partners $250-$495
Associates $140-$285

McGuireWoods (558)
(Richmond, Va.)
Partners $210-$575
Associates $85-$325

Michael Best & Friedrich (349)
(Milwaukee)
Partners $180-$425
Associates $130-$240

Miller, Canfield, Paddock and Stone (302)
(Detroit)
Partners $220-$475
Associates $125-$230

Miller & Chevalier (123)
(Washington, D.C.)
Partners $320-$650
Associates $175-$340

Miller Nash (140)
(Portland, Ore.)
Partners $210-$350
Associates $125-$225

Nelson Mullins Riley & Scarborough (282)
(Columbia, S.C.)
Partners $200-$390
Associates $145-$270

Nutter, McClennen & Fish (170)
(Boston)
Partners $330-$480
Associates $175-$300

O - R

Obermayer Rebmann Maxwell & Hippel (110)
(Philadelphia)
Partners $300-$475
Associates $145-$325

Ogletree, Deakins, Nash, Smoak & Stewart
(162)

Jenkens & Gilchrist (573)
(Dallas)
Partners $275-$525
Associates $165-$380

Jenner & Block (390)
(Chicago)
Partners $350-$625
Associates $185-$350

Jones, Walker, Waechter, Poitevant, Carrère & Denègre (217)
(New Orleans)
Partners $170-$335
Associates $110-$185

Womble Carlyle Sandridge & Rice (437)
(Winston-Salem, N.C.)
Partners $190-$500
Associates $125-$265

Wyatt, Tarrant & Combs (201)
(Louisville, Ky.)
Partners $150-$310
Associates $100-$190

(*The National Law Journal*, December 2002)

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EXHIBIT 5

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Attorneys for Plaintiffs ROSA CANTU and SANDRA CHU

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF LOS ANGELES

ROSA CANTU AND SANDRA CHU, individually and on behalf of others similarly situated,

Plaintiffs,

vs.

PACIFIC BELL TELEPHONE COMPANY d/b/a AT&T CALIFORNIA, and Does 1 through 100, inclusive,

Defendants.

Case No.: BC441237

CLASS ACTION [Code Civ. Proc. § 382]

REPRESENTATIVE ACTION [Labor Code § 2698, *et seq.*]

DECLARATION OF RICHARD M. PEARL IN SUPPORT OF PLAINTIFFS' MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT AND AN AWARD OF REASONABLE ATTORNEYS' FEES AND COSTS

Date: February 4, 2011
Time: 9:00 a.m.
Dept: 324
Judge: Emilie H. Elias

I, Richard M. Pearl, declare:

1. I make this Declaration of my own personal knowledge, and if called to testify, I could and would testify competently to the matters stated herein.

A. Background

2. I am a member in good standing of the California State Bar. I am in private practice as the principal of my own law firm, the Law Offices of Richard M. Pearl. I specialize in issues related to court-awarded attorneys' fees, including the representation of parties in fee litigation and appeals, serving as an expert witness, and serving as a mediator and arbitrator in disputes concerning attorneys' fees and related issues. In this case, I have been asked by Plaintiffs' counsel to express my expert opinion regarding their claim for reasonable attorneys' fees.

3. Briefly summarized, my background is as follows: I am a 1969 graduate of Boalt Hall School of Law, University of California, Berkeley, California. After graduation, I spent fourteen years in federally-funded legal services programs before going into private practice in 1982. From 1977 to 1982, I was Director of Litigation for California Rural Legal Assistance, Inc., a statewide legal services program with more than fifty attorneys. Since April 1987, I have been a sole practitioner in the San Francisco Bay Area. Martindale Hubbell rates my law firm "AV." I also have been selected as a Northern California "Super Lawyer" in Appellate Law for 2005, 2006, 2007, 2008, and 2010. A copy of my Resume is attached hereto as Exhibit A.

4. Since 1982, my practice has been a general civil litigation and appellate practice, with an emphasis on cases and appeals involving court-awarded attorneys' fees. I have lectured and written extensively on court-awarded attorneys' fees. I have been a member of the California State Bar's Attorneys Fees Task Force and have testified before the State Bar Board of Governors and the California Legislature on attorneys' fee issues. I am the author of California Attorney Fee Awards, (3d ed Cal. CEB 2010). I also was the author of California Attorney Fee Awards, 2d Ed. (Calif. Cont. Ed. of Bar 1994), and its 1995, 1996, 1997, 1998, 1999, 2000, 2001, 2002, 2003, 2004, 2005, 2006, 2007, and 2008 Supplements. This treatise has been cited by the California appellate courts on more than 35 occasions. I also authored the 1984, 1985, 1987, 1988, 1990, 1991, 1992, and 1993 Supplements to its predecessor, CEB's California Attorney's Fees Award Practice. In addition, I authored a federal

manual on attorneys' fees entitled Attorneys' Fees: A Legal Services Practice Manual, published by the Legal Services Corporation. I also co-authored the chapter on "Attorney Fees" in Volume 2 of CEB's Wrongful Employment Termination Practice, 2d Ed. (1997).

5. More than 90% of my practice is devoted to issues involving court-awarded attorney's fees. I have been counsel in over 140 attorneys' fee applications in state and federal courts, primarily representing other attorneys. I also have briefed and argued more than 40 appeals, at least 25 of which have involved attorneys' fees issues. In the past ten or so years, I have successfully handled four cases in the California Supreme Court involving court-awarded attorneys' fees: (1) *Delaney v. Baker* (1999) 20 Cal. 4th 23, which held that heightened remedies, including attorneys' fees, are available in suits against nursing homes under California's Elder Abuse Act; (2) *Ketchum v. Moses* (2001) 24 Cal. 4th 1122, which held, inter alia, that contingent risk multipliers remain available under California attorney fee law, despite the United States Supreme Court's contrary ruling on federal law (note that in Ketchum, I was primary appellate counsel in the Court of Appeal and "second chair" in the Supreme Court); (3) *Flannery v. Prentice* (2001) 26 Cal. 4th 572, which held that in the absence of an agreement to the contrary, statutory attorneys' fees belong to the attorney whose services they are based upon; and (4) *Graham v. DaimlerChrysler Corp.* (2004) 34 Cal. 4th 553, which I handled, along with trial counsel, in both the Court of Appeal and Supreme Court. I also successfully represented the plaintiffs in a previous attorneys' fee decision in the Supreme Court, *Maria P. v. Riles* (1987) 43 Cal. 3d 1281, and represented amicus curiae, along with Richard Rothschild, in the Supreme Court's most recent fee decision, *Vasquez v. State of California* (2009) 45 Cal. 4th 243. I also have handled several Ninth Circuit attorneys' fees matters, including *Davis v. City & County of San Francisco* (9th Cir. 1992) 976 F.2d 1536, *Mangold v. CPUC* (9th Cir. 1995) 67 F.3d 1470, *Velez v. Wynne* (9th Cir. 2007) 2007 U.S. App. LEXIS 2194, and *Camacho v. Bridgeport Financial, Inc.* (9th Cir. 2008) 523 F.3d 973. *See* Exhibit A.

B. **Plaintiffs' Counsel's Rates**

6. I have been asked by Plaintiffs' counsel to submit this declaration in support of Plaintiffs' Motion for Final Approval of Class Action Settlement and an Award of Reasonable Attorneys' Fees and Costs. I submit this declaration to provide the Court information concerning

hourly rates for attorneys in the San Francisco Bay Area, and in particular to provide information demonstrating that the hourly rates requested by Plaintiffs' counsel in this matter are within the range of market rates being charged in the San Francisco Bay Area and the San Diego market for similar services, i.e. handling and trying complex class actions on behalf of employees against large employers like Pacific Bell Telephone Company in this case.

7. I understand that Plaintiffs' counsel are requesting an award of attorneys' fees at the following rates:

a. **Goldstein Demchak Baller Borgen & Dardarian, Oakland, CA**

Name	Grad Year	Billing Rate
Roberta L. Steele	1993	$600
Laura L. Ho	1994	$600
Joseph E. Jaramillo	1995	$550
Senior Paralegal		$195
Paralegal		$150

b. **GraceHollis LLP, San Diego, CA**

Name	Grad Year	Billing Rate
Graham S.P. Hollis	1985	$600
Marta Manus	2008	$375
Senior Paralegal		$170

8. Through my writing and practice, I have become familiar with the non-contingent market rates charged by attorneys in California and elsewhere. This familiarity has been obtained in several ways: (1) by handling attorneys' fee litigation; (2) by discussing fees with other attorneys; (3) by obtaining declarations regarding prevailing market rates in cases in which I represent attorneys seeking fees; and (4) by reviewing attorneys' fee applications and awards in other cases, as well as surveys and articles on attorney's fees in the legal newspapers and treatises.

9. The information I have gathered, some of which is summarized below, shows that the rates requested by Plaintiffs' counsel in this case are well in line with the non-contingent market rates charged by litigation attorneys of similar qualifications and experience in San Francisco, San Diego, and similar markets.

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c. Rates found reasonable in other cases.

Set forth below are rates that were awarded by the courts in the following cases:

2010 Rates

(1) *Savaglio, et al. v. WalMart*, Alameda County Superior Court No. C-835687-7, Order Granting Class Counsel's Motion for Attorneys' Fees, filed September 10, 2010, a wage and hour class action, in which the court found the following hourly rates reasonable (before applying a 2.36 multiplier):

Years of Experience	Rate
51	$875
39	$750
38	$600
33	$775
25	$550
23	$650
21	$625
19	$610
18	$600
17	$585
16	$570
15	$560
14	$550
13	$525
12	$515
11	$510
10	$505
9	$500
7	$460
4	$435
Law Clerks	$125-$260

2009 Rates

(1) *Center for Biological Diversity v. California Fish & Game Commission, San Francisco Superior Court* No. CPF-08-508759, Order Granting Petitioners' Motion for Attorneys' Fees, filed December 1, 2009, in which the court found reasonable the following hourly rates:

Years of Experience	Rate
25	$650
8	$375
4	$250
Law Clerks	$150

(2) *Kashmiri et al v. Regents of U.C.*, San Francisco Superior Court, Order Granting Plaintiffs' Motion for Common Fund Attorneys' Fees and Expenses, filed September 30, 2008, in which the court found the following rates reasonable, plus a 3.7 lodestar multiplier:

Years of Experience	Rate
40	$750
22	$690
14	$590
7	$420
4	$345
2	$295
Law Clerks	$200
Paralegals	$195

(4) *Environmental Law Foundation v. Laidlaw Transit, Inc.*, San Francisco Superior Court No. CGC-06-451832, Order Granting Motion for Court Approval of Parties Joint Stipulated Judgment, filed September 22, 2008, in which the court found the following hourly rates reasonable in a Proposition 65 action, plus a 1.25 multiplier:

Years of Experience	Rate
29	$750
26	$700
24	$700
23	$650
18	$650
16	$625
14	$600
10	$560
9	$495-$575
8	$475
7	$450
6	$395
4	$325
2	$300
1	$250
Paralegals	$145-$175
Interns	$125

(5) *Gardner v. Schwarzenegger*, Alameda County Superior Court No. RG06-278911, Order After Hearing filed April 20, 2009, aff'd by unpublished opinion, 2010 Cal. App. Unpub. LEXIS 1240, in which the court found the following 2008 rates reasonable, plus a 1.75 multiplier:

Years of Experience	Rate
17	$640
14	$590
8	$445
Paralegal	$170

a. Rate Information from Surveys and Other Cases:

I have reviewed numerous declarations and depositions filed in other cases, as well as various surveys of legal rates. These include the Westlaw CourtExpress Legal Billing Reports for May, August, and December 2009 (attached hereto as Exhibit B). These sources show the hourly rates for litigation undertaken on a non-contingent basis by the following California law firms, listed in alphabetical order:

Altshuler Berzon LLP

2009 Rates:

Years Experience	Rate
32	$775
15	$625
8	$475
Law Clerks	$200
Paralegals	$195

2007 Rates:

Years Experience	Rate
23	$700
15	$550
5	$325
Paralegals	$155-$190

Cooley Godward Kronish LLP

2008 Rates:

Years Experience	Rate
Partners	$525-$980
Associates	$285-$570

2007 Rates:

Years Experience	Rate
Partners	$470-$875 (average $673)
Associates	$250-$555 (average $403)

Coughlin Stoia Geller Rudman & Robbins, LLP

2007 Rates:

Years Experience	Rate
42	$700
19	$650
14	$650
14	$600
13	$585
11	$510
6	$460
5	$285

Duane Morris LLP

2009 Rates:

Years Experience	Rate
Partners	$325-$795
Associates	$225-$450

Epstein Becker & Green LLP

2009 Rates:

Years Experience	Rate
Partners	$350-$855
Associates	$180-$475

Fenwick & West

2007 Rates:

Years Experience	Rate
Partners	$500-$775 (average $590)
Associates	$245-$500 (average $370)

Hadsell Stormer

2009 Rates:

Years Experience	Rate
35	$775
20	$575

Howard, Rice, Nemerovski, Canady, Falk & Rabkin

2008 Rates:

Years Experience	Rate
Partners	$515-$795
Associates	$275-$510

2007 Rates:

Years Experience	Rate
Partners	$495-$775
Associates	$275-$485

Litt, Estuar, Harrison & Kitson, LLP

2009 Rates:

Years Experience	Rate
39	$800
16	$550
3	$320
2	$285
Paralegals	$125-$235
Law Clerks	$225

Loeb & Loeb

2009 Rates:

Years Experience	Rate
Partners	$475-$950
Associates	$285-$450

2008 Rates:

Years Experience	Rate
Partners	$450-$925
Associates	$260-$500

2007 Rates:

Years Experience	Rate
Partners	$475-$875 (average $606)
Associates	$240-$500 (average $400)

Manatt, Phelps & Philips

2009 Rates:

Years Experience	Rate
Partners	$495-850
Associates	$250-$505

2008 Rates:

Years Experience	Rate
Partners	$495-$850
Associates	$290-$505

2007 Rates:

Years Experience	Rate
Partners	$520-$785 (average $600)
Associates	$265-$480 (average $395)

Morrison Foerster

2009 Rates:

Years Experience	Rate
24	$750

2008 Rates:

Years Experience	Rate
45	$675
36	$725
33	$785
14	$650
12	$600
9	$560
7	$535
5	$485
1	$520
Paralegals	$185-$230

2007 Rates:

Years Experience	Rate
44	$675
11	$550
8	$520
6	$475
3	$250

O'Melveny & Myers

2009 Rates:

Years Experience	Rate
36-37	$860-$950
21	$820
16-18	$700-$710.
14	$595-$675
10	$590
8	$565
7	$540-$565
5-6	$480-$520
2-4	$395-450
Paralegals	$225-310

Reed Smith

2008 Rates:

Years Experience	Rate
Partners	$375-$900 (average $626)
Associates	$235-$580 (average $423)

2007 Rates:

Years Experience	Rate
Partners	$350-$825 (average $558)
Associates	$200-$510 (average $374)

Rudy, Exelrod & Zieff

2009 Rates:

Years Experience	Rate
Partners	
31	$700
Associates	
3	$305

2007 Rates:

Years Experience	Rate
Partners	
29	$700
12	$500
Associates	
10	$400
8	$330
Law Clerk	$200
Paralegal	$150

Schonbrun, DeSimone, Seplow, Harris & Hoffman

2009 Rates:

Years Experience	Rate
33	$750
25	$625
24	$625
8	$375
6	$370
Paralegals	$125

Sheppard, Mullin, Richter & Hampton

2008 Rates:

Years Experience	Rate
Partners	$475-$795
Associates	$275-$455

2007 Rates:

Years Experience	Rate
Partners	$425-$795
Associates	$260-$550

Townsend and Townsend and Crew

2009 Rates:

Years Experience	Rate
Partners	$480-$750
Associates	$260-$460

Winston & Strawn

2009 Rates:

Years Experience	Rate
Partners	$400-$995
Associates	$210-$670

10. The hourly rates set forth above pertain largely to law firms headquartered in the San Francisco Bay Area and Los Angeles. To the extent those law firms handle cases in other jurisdictions, like San Diego, they almost always charge the same rates that they do for litigation in the Bay Area. To the extent Plaintiffs' claim is based upon San Diego rates, however, I also am of the opinion that they are in line with the rates charged by lawyers of comparable skill, experience, and reputation for comparable work, *i.e.*, complex representative litigation in San Diego. I base that opinion on the following facts:

a. In a report filed with the California Public Utilities Commission (attached as Exhibit C), the San Diego Gas & Electric Co. reported that in 2003, it hired outside counsel at rates of from $477-625 per hour for partners with 13 or more years experience, $435 per hour for partners with 8-12 years of practice, and $239-425 per hour for associate attorneys with up to 7 years of practice. Hourly rates have increased significantly since then.

b. San Diego law firm Luce, Forward, Hamilton & Scripps reports that in 2010, its partner rates ranged from $350 to $670 per hour, and its associate rates ranged from $245 to $445 per hour. In 2009, its partner rates ranged from $360 to $650 per hour, and its associate rates ranged from $240 to $540 per hour.

11. My research regarding attorneys' fees in California has indicated a consistent increase in fees over the last several years. Most firms increased their rates over these periods. Consistent with this market, I raised my rates in 2009 and 2010, and will raise it again in 2011, to reflect both the

demand for my services and inflation in costs and legal rates; my rate is still significantly less than many attorneys with comparable experience, expertise, and skills at other firms.

12. The hourly rates set forth above are those charged where full payment is expected promptly upon the rendition of the billing and without consideration of factors other than hours and rates. If any substantial part of the payment were to be deferred for any substantial period of time, for example, or if payment were to be contingent upon outcome or any other factor, the fee arrangement would be adjusted accordingly to compensate the attorneys for those factors.

13. In my experience, fee awards are almost always determined based on current rates, i.e., the attorney's rate at the time a motion for fees is made, rather than the historical rate at the time the work was performed. This is a common and accepted practice to compensate attorneys for the delay in being paid.

C. **Plaintiffs' Counsel's Requested Percentage Fee**

14. I understand that Plaintiffs request an award of fees under the common fund doctrine as a percentage of the fund recovered in this litigation sufficient to provide them with a reasonable fee. This is an appropriate request because this is a fully-paid, non-reversionary settlement in which the value of the class recovery is fully monetized at $2,000,000, inclusive of fees, expenses, and settlement administration costs. Under these circumstances, courts award fees as percentages of the common fund where they are in line with the range of fees freely negotiated in the legal marketplace in comparable litigation.

15. Based on the information I have gathered and my own experience and expertise, it is my opinion that the 33 1/3% common fund fee recovery requested by Class Counsel is, in the circumstances of this case, reasonable and consistent with awards approved by other California state courts reviewing class action settlements, based on the factors discussed below.

16. My opinion is based in part on the fact that, as a common fund case with the fund consisting of $2 million, Plaintiffs' claimed fee of 33 1/3% is entirely consistent with the legal marketplace for attorneys' services in contingency fee cases involving similar financial recoveries. In the course of my practice, I have become familiar with the contingency fee percentages charged by law firms to sophisticated institutional clients in large damage cases. Based on that knowledge and my

experience in the attorneys' fees field generally, it is my opinion that if competent and experienced attorneys and a sophisticated client were to negotiate a contingency fee agreement under the circumstances where (a) a high risk, complex case was being contemplated, (b) it is anticipated that the opposition would be vigorous, and (c) the attorneys would not be paid unless and until they were able to obtain significant relief for the client, the sophisticated client would be more than willing to enter into a retainer agreement under which the client would pay only the litigation out-of-pocket costs, and the attorneys could reasonably expect to recover 5% to 35% of the total value of any recovery as fees.

17. An award of 33 1/3% of the common fund requested by Class Counsel here is consistent with legal marketplace for attorneys' services in contingency fee cases because of (a) the high risk involved in litigating an incentive compensation plan case on behalf of nearly 100 California employees; (b) the vigorous defense presented by the large defense firm that represents Defendant here; (c) the relatively small size of the common fund, which weighs toward a higher percentage; and (d) the fact that here, unlike in the paradigm market practices situation described in the previous paragraph, Class Counsel were obligated to advance the substantial litigation costs on a contingent basis with risk of delay in repayment as well as possible non-repayment, and to represent Plaintiffs through appeal of any judgment in this case. This award would also be appropriate to encourage settlement, reward counsel for maximizing their clients' recoveries, and promote the private enforcement of the wage and hour laws Plaintiffs allege were violated.

D. Plaintiffs' Counsel's Lodestar Multiplier

18. Courts often cross-check a percentage-based fee against a lodestar based fee to determine if it is reasonable. I understand that Plaintiffs' lodestar here is $332,383.88 on non-fees work. The $666,667 fee award requested represents a 2 multiplier on the non-fees lodestar.

19. The expense and risk of public interest litigation has not diminished over the years; to the contrary, these cases are in many ways more difficult than ever. As a result, fewer and fewer attorneys and firms are willing to take on such litigation, and the few who are willing to do so can only continue if their fee awards reflect true market value. Attorneys who litigate on a wholly or partially contingent basis expect to receive significantly higher effective hourly rates in cases where compensation is contingent on success. As the case law recognizes, this does not result in any

"windfall" or undue "bonus." In the legal marketplace, a lawyer who assumes a significant financial risk on behalf of a client rightfully expects that his or her compensation will be significantly greater than if no risk was involved (i.e., if the client paid the bill on a monthly basis), and that the greater the risk, the greater the "enhancement." Adjusting court-awarded fees upward in contingent fee cases to reflect the risk of recovering no compensation whatsoever for hundreds of hours of labor simply makes them competitive in the legal marketplace, helping to ensure that meritorious cases will be brought to enforce important public interest policies and that clients who have meritorious claims will be more likely to obtain qualified counsel.

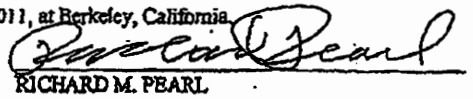
20. In my experience, lodestar multipliers of 2 to 4 are typical for class actions such as this case. Plaintiffs' requested fee falls well within this range.

E. Plaintiffs' Counsel's Out-of-Pocket Expenses.

21. I have reviewed the billing practices of hundreds of attorneys in California. Based on my experience and knowledge of these billing practices, I am aware that it is a common practice for firms to bill their clients for out-of-pocket expenses incurred in litigation on a monthly basis as they are incurred. Such expenses include, but are not limited to, charges incurred for copying, long-distance telephone calls, postage, messengers, travel, deposition and hearing transcripts, legal and non-legal computer research services, mediation services, and expert witnesses. I am informed that Plaintiffs expended $16,258.08 in out-of-pocket litigation expenses in this case, including $8,000 for the services of an experienced and skilled mediator, David Rotman, who brokered the settlement in this case. Based on my knowledge and experience of such costs and billing practices, it is my opinion that these expenses are reasonable given the complex nature of this case.

If called as a witness, I could and would competently testify from my personal knowledge to the facts stated herein. I declare under penalty of perjury under the laws of the state of California the foregoing is true and correct.

Executed this 4th day of January, 2011, at Berkeley, California.



RICHARD M. PEARL

EXHIBIT 6