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

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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]

PAGA REPRESENTATIVE ACTION

[PROPOSED] **ORDER GRANTING MOTION FOR APPROVAL OF REPRESENTATIVE ACTION SETTLEMENT**

Action Filed: April 9, 2024
Trial Date: None Set

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

This Court, having considered the Motion of Plaintiff Johnny Elija Stinson ("Plaintiff Stinson") and Arturo Gandara ("Plaintiff Gandara" together referred to as "Plaintiffs") for Approval of Representative Action Settlement ("Motion"), the Declarations of David D. Bibiyan, Arsiné Grigoryan, Keaton Mendoza, Plaintiffs, Sean Hartranft, and the PAGA Settlement Agreement ("Settlement" or "Settlement Agreement" or "Agreement"), the PAGA Payment Letter, and good cause appearing therefore, the Court hereby **ORDERS, ADJUDGES AND DECREES THAT**:

1. The definitions set out in the Settlement Agreement are incorporated by reference into this Order; all terms defined therein shall have the same meaning in this Order.

2. The Motion concerns Plaintiffs' action under the Private Attorneys General Act of 2004 ("PAGA") against defendant Perfect 85 Degrees C, Inc. ("Perfect 85" or "Defendant"). Hereinafter, Plaintiffs and Defendant will be collectively referred to as "the Parties."

3. The Settlement resolves the representative action brought on behalf of Aggrieved Employees, defined as: 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").

4. "Qualifying Pay Period" means any Pay Period during which an Aggrieved Employee was paid regular wages during the PAGA Period.

5. 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.)

6. The Court appoints David D. Bibiyan, and Vedang J. Patel of Bibiyan Law Group, P.C., as Plaintiffs' Counsel for the Aggrieved Employees for settlement purposes only.

7. Plaintiffs' Counsel investigated the claims alleged, performed legal research, and conducted analysis of the time and payroll data with the aid of expert data consultants. They also attended mediation, which after further negotiations, resulted in the Settlement Agreement that was fully executed.

8. Pursuant to Labor Code § 2698, et seq., the Court finds that the Settlement of the Action is fair, adequate, and reasonable and that it furthers PAGA's objectives.

9. The Court appoints Plaintiffs Johnny Elija Stinson and Arturo Gandara as the PAGA Representatives for Settlement purposes only.

10. The Court appoints Apex Class Action Administration, as the Settlement Administrator.

11. The Court approves, as to form and content, the PAGA Payment Letter attached as Exhibit A to the Settlement Agreement.

12. The Court approves the Gross Settlement Amount of $210,000.00, as the same may be escalated pursuant to the Settlement Agreement, and orders it to be distributed as follows:

a. Thirty-five percent (35%) thereof shall be allocated as reasonable attorneys' fees for Plaintiffs' Counsel which, unless escalated pursuant to the Settlement Agreement, shall amount to $87,500.00;

b. The sum of $27,856.78 shall be allocated as reasonable litigation costs and paid to Plaintiffs' Counsel.

c. The sum of $5,430.00 shall be paid to the Settlement Administrator, Apex Class Action Administration, for its services in administering the Settlement.

d. After deducting the above amounts, the Court approves the estimated remaining PAGA Penalties of $89,213.22 (as the same may be escalated pursuant to the Settlement Agreement) and orders 75%, or $66,909.91, of that sum to be paid to the California Labor and Workforce Development Agency ("LWDA"), and 25%, or $$22,303.31 to be paid to the Aggrieved Employees pursuant to Labor Code § 2699(i).

13. "Effective Date" means 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 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.

14. Within 14 days of the Effective Date, Defendant 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 identifying information in Defendant's possession, including the Aggrieved Employee's name, last-known mailing address, the number of pay periods worked during the PAGA Period, and other information sufficient for the Administrator to determine the number of PAGA Pay Periods.

15. To protect Aggrieved Employees' privacy rights, the Administrator must maintain the Aggrieved Employee Data in confidence, use the Aggrieved Employee Data only for purposes of the 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 the Agreement. Defendant 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 Defendant 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.

16. 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.

17. 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.

18. 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. 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.

19. 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. The Administrator need not take further steps to deliver checks to Aggrieved Employees whose re-mailed checks are returned as undelivered. The Administrator shall promptly send a replacement check to any Aggrieved Employee whose original check was lost or misplaced, requested by the Aggrieved Employee prior to the void date.

20. 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 Controller's Office Unclaimed Property Fund in the name of the Aggrieved Employee.

21. Because this is a PAGA action, based on the Parties' understanding of the PAGA statutory scheme, the Parties agree that no Aggrieved Employee can exclude himself or herself from the Settlement or object to the terms of the Settlement Agreement. All Aggrieved Employees will be bound by the Settlement Agreement, upon its approval by the Court, regardless of whether he or she negotiates his or her settlement check.

22. Pursuant to PAGA, seventy-five percent (75%) of the PAGA Penalties will be paid to the LWDA, and the remaining twenty-five percent (25%) will be paid to all Aggrieved Employees.

23. The Court finds the Gross Settlement Amount, the PAGA Penalties and the methodology used to calculate and pay the Aggrieved Employees' Individual PAGA Payments are fair and reasonable and authorizes the Settlement Administrator to pay the Individual PAGA Payments to the Aggrieved Employees in accordance with the terms of the Settlement Agreement. The Court also authorizes the Settlement Administrator to make the LWDA Payment to the LWDA.

24. The Court finds that Plaintiffs' Counsel's request for attorneys' fees in the amount of thirty-five percent (35%) of the Gross Settlement Amount, which, unless increased pursuant to the Settlement Agreement, amounts to $87,500.00, is reasonable. The Court awards Plaintiffs' Counsel fees to be paid from the Gross Settlement Amount.

25. The Court finds that Plaintiffs' Counsel has incurred a total of $27,856.78 in litigation costs and expenses. Such costs and expenses were reasonably incurred in prosecuting this Actions. The Court awards $27,856.78, from the Gross Settlement Amount to be paid to Plaintiffs' Counsel in litigation costs and expenses.

26. 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.

27. The "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.

28. The Parties are ordered to carry out the Settlement according to the terms of the Settlement Agreement.

29. Without affecting the finality of the Judgment in any way, pursuant to California Rules of Court Rule 3.769, et seq. and California Code of Civil Procedure section 664.6, this Court hereby retains continuing jurisdiction over the interpretation, implementation and enforcement of the Settlement and all orders and judgments entered in connection therewith.

IT IS SO ORDERED.

Dated: _____, 2026

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Judge of the Superior Court