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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES

CAIN GARCIA, individually, and on behalf of all
others similarly situated,

Plaintiff,

vs.

CRUNCH, LLC, a limited liability company; and
DOES 1 through 10, inclusive,

Defendants.

Case No.: 22STCV30481

[Honorable Elaine Lu, Department 26]

**PRIVATE ATTORNEYS GENERAL ACT
SETTLEMENT AGREEMENT**

Complaint Filed: September 19, 2022

PRIVATE ATTORNEYS GENERAL ACT SETTLEMENT AGREEMENT

This Private Attorneys General Act Settlement Agreement (“Settlement” or “Agreement”) is made by and between Plaintiff Cain Garcia (“Plaintiff”) and Defendant Crunch, LLC (“Defendant”) (Plaintiff with Defendant, the “Parties”).

1. DEFINITIONS

1.1. “Action” means *Garcia, Cain v. Crunch, LLC*, Superior Court of the State of California for the County of Los Angeles, Case Number 22STCV30481.

1.2. “Administrator” means APEX Class Action Administration, the neutral entity the Parties have agreed to appoint to administer the Settlement.

1.3. “Administration Expenses Payment” means \$15,000.00, the amount allocated to the Administrator from the Gross Settlement Amount for reimbursement of its reasonable fees and expenses, in accordance with the “not to exceed” bid submitted to the Court in connection with the approval of this Settlement.

1.4. “Aggrieved Employee” means all persons who worked for Defendant in California as an hourly paid or non-exempt employee during the PAGA Period.

1.5. “Aggrieved Employee Data” means the Aggrieved Employee identifying information in Defendant’s possession, including the name, last-known mailing address, and Social Security number of the Aggrieved Employee and the number of PAGA Pay Periods that the Aggrieved Employee worked during the PAGA Period.

1.6. “Aggrieved Employee Address Search” means the Administrator’s investigation and search for current Aggrieved Employee mailing addresses using all reasonably available sources, methods, and means, including, but not limited to, the National Change of Address database, skip traces, and direct contact with Aggrieved Employees.

1.7. “Approval Order” means the Court’s Order Granting Approval of the Settlement.

1.8. “Court” means the Superior Court of the State of California for the County of Los Angeles.

1.9. “Defendant” means Crunch, LLC.

1.10. “Defense Counsel” means Mia Farber, Shannon B. Nakabayashi, and Isabella L. Shin of Jackson Lewis, P.C.

1.11. "Effective Date" means the date by when each of the following has occurred: (a) the Court enters Judgment on its Approval Order, (b) the Judgment is final, and (c) sixty-five (65) days have passed since the Court entered Judgment. The Judgment is final as of the day the Court enters the Judgment.

1.12. "Gross Settlement Amount" means \$750,000.00, the total amount Defendant agrees to pay under the Settlement, except as provided in Section 7 herein. The Gross Settlement Amount will be used to pay the Individual PAGA Payments, LWDA PAGA Payment, PAGA Counsel Expenses Payment, PAGA Counsel Fees Payment, PAGA Representative Enhancement Payment, and Administration Expenses Payment.

1.13. "Individual PAGA Payment" means an Aggrieved Employee's *pro rata* share of 25% of the PAGA Penalties, calculated according to the number of PAGA Pay Periods of the Aggrieved Employee and pursuant to Labor Code section 2699, subd. (m).

1.14. "Judgment" means the Judgment entered by the Court based on its Approval Order.

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

1.16. "LWDA PAGA Payment" means the LWDA's 75% share of the PAGA Penalties, calculated pursuant to Labor Code section 2699, subd. (m).

1.17. "Net Settlement Amount" means the Gross Settlement Amount less the following payments in the amounts approved by the Court: the LWDA PAGA Payment, PAGA Counsel Expenses Payment, PAGA Counsel Fees Payment, PAGA Representative Enhancement Payment, and Administration Expenses Payment. The remainder is to be paid to Aggrieved Employees as Individual PAGA Payments.

1.18. "PAGA Counsel" means Kane Moon, Allen Feghali, and Jacquelyne VanEmmerik of Moon Law Group, P.C.

1.19. "PAGA Counsel Expenses Payment" means \$29,000.00, the amount allocated to PAGA Counsel for reimbursement of their reasonable expenses incurred to prosecute the Action.

1.20. "PAGA Counsel Fees Payment" means one third of the Gross Settlement Amount, the amount allocated to PAGA Counsel for their reasonable fees incurred to prosecute the Action.

1.21. "PAGA Pay Period" means any Pay Period in which an Aggrieved Employee engaged in any productive work activity for which he or she was paid as an hourly paid or non-exempt employee.

1.22. "PAGA Period" means September 17, 2021, through the earlier of when the PAGA Pay Periods exceed 41,800 or the date on which the Court issues the Approval Order.

1.23. "PAGA Notice" means the Notice of Labor Code Violations and PAGA Penalties that Plaintiff submitted to the LWDA and sent via certified mail to Defendant on September 17, 2022, 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. The PAGA Penalties will be allocated 75% to the LWDA and 25% to the Aggrieved Employees, pursuant to Labor Code section 2699, subd. (m).

1.25. "PAGA Representative" or "Plaintiff" means Cain Garcia, the named Plaintiff in the Action.

1.26. "PAGA Representative Enhancement Payment" means \$10,000.00, the total amount allocated to Plaintiff for his role, services, and risks undertaken as PAGA Representative and for his general release, as set forth in Paragraph 5.1 herein.

1.27. "Released Claims" means the claims being released by the Aggrieved Employees, as described in Paragraph 5.2 herein.

1.28. "Released Parties" means Defendant and each of its former and present directors, officers, shareholders, owners, members, attorneys, insurers, predecessors, successors, assigns, subsidiaries, affiliates, employees, agents, and any other individual or entity that could be liable for any of the Released Claims.

2. RECITALS

2.1. On September 17, 2022, Plaintiff submitted to the LWDA and sent via certified mail to Defendant, a Notice of Labor Code Violations and PAGA Penalties, pursuant to Labor Code section 2699.3, subd. (a).

2.2. On September 19, 2022, Plaintiff filed a Class Action Complaint against Defendant, which alleged eight individual and class causes of action under the California Labor Code ("Labor Code") and Business and Professions Code.

2.3. On January 3, 2023, Plaintiff filed a First Amended Class and Representative Action Complaint against Defendant, which alleged a ninth cause of action for civil penalties under PAGA.

2.4. On January 27, 2023, Plaintiff filed a Request for Dismissal of Individual and Class Allegations based on the arbitration agreement Plaintiff signed at the commencement of his employment with Defendant.

2.5. In or around May 2023, the Parties agreed to attempt to resolve the matter through private mediation, and on July 24, 2023, the Parties filed a Joint Stipulation to stay the Action pending mediation.

2.6. Between March 2023 and July 2024, in preparation for mediation, the Parties agreed to an informal exchange of data and documents, which included, but was not limited to, a fifteen percent sample of time and corresponding payroll records of the putative Class and the employee handbooks and policies in effect during the PAGA Period.

2.7. On August 12, 2024, the Parties participated in private mediation with experienced wage-and-hour mediator, Steven Rottman, Esq. The mediation session resulted in a settlement in principle, the terms of which are encompassed in this Agreement.

3. MONETARY TERMS

3.1. *Gross Settlement Amount.* The Gross Settlement of \$750,000.00 is the total amount Defendant agrees to pay under the Settlement, except as provided in Section 7 herein. Defendant has no obligation to pay the Gross Settlement Amount prior to the deadline stated in Paragraph 4.2 of this Agreement. The Administrator will disburse the entire Gross Settlement Amount without asking or requiring Aggrieved Employees to submit a claim as a condition of payment. None of the Gross Settlement Amount will revert to Defendant. The Administrator will make and deduct the following payments from the Gross Settlement Amount in the amounts specified by the Court in its Approval Order:

3.1.1. *To PAGA Counsel:* A PAGA Counsel Expenses Payment of not more than \$29,000.00 for reimbursement of their reasonable expenses incurred to prosecute the Action; and a PAGA Counsel Fees Payment of not more than one third of the Gross Settlement Amount, or \$250,000.00, for their reasonable fees incurred to prosecute the Action. Defendant will not oppose requests for Court approval of these payments provided such payments do not exceed these amounts. Plaintiff and/or PAGA Counsel will file a Motion for Court approval of the PAGA Counsel Expenses Payment and PAGA Counsel Fees Payment. If the Court approves a PAGA Counsel Expenses Payment and/or a PAGA Counsel Fees Payment in amounts less than requested, the Administrator will allocate the remainder to the

Net Settlement Amount. Released Parties shall have no liability to PAGA Counsel arising from any claim to any portion of any PAGA Counsel Expenses Payment or PAGA Counsel Fees Payment. The Administrator will pay the PAGA Counsel Expenses Payment and PAGA Counsel Fees Payment using one or more IRS 1099 Forms. PAGA Counsel assume full responsibility and liability for taxes owed on the PAGA Counsel Expenses Payment and PAGA Counsel Fees Payment, and hold Defendant harmless, and indemnify Defendant, from any dispute or controversy regarding any division of any of these Payments.

3.1.2. *To the PAGA Representative:* A PAGA Representative Enhancement Payment of not more than \$10,000.00 for Plaintiff's role, services, and risks undertaken as PAGA Representative of the State of California and for his general release of claims, as described in Paragraph 5.1 herein.

3.1.3. *To the Administrator:* An Administration Expenses Payment of not more than \$15,000.00 for reimbursement of the Administrator's reasonable fees and expenses. To the extent the Administration Expenses Payment is less or the Court approves payment less than \$15,000.00, the Administrator will retain the remainder in the Net Settlement Amount. APEX Class Action Administration has been mutually selected as the Administrator.

3.1.4. *To the LWDA and Aggrieved Employees:* PAGA Penalties to be paid from the Gross Settlement Amount equal to the Gross Settlement Amount less the PAGA Counsel Expenses Payment, PAGA Counsel Fees Payment, PAGA Representative Enhancement Payment, and Administration Expenses Payment. PAGA Penalties will be allocated 75% to the LWDA ("LWDA PAGA Payment") and 35% to the Aggrieved Employees ("Individual PAGA Payments"), pursuant to Labor Code section 2699, subd. (m).

3.1.4.1. The Administrator will calculate each Individual PAGA Payment by (a) dividing the amount of the Aggrieved Employees' 25% share of PAGA Penalties (i.e., the Net Settlement Amount) by the total number of PAGA Pay Periods worked by all Aggrieved Employees during the PAGA Period and (b) multiplying the result by each Aggrieved Employee's PAGA Pay Periods. Aggrieved Employees assume full responsibility and liability for any taxes owed on their Individual PAGA Payment. The Administrator will report the Individual PAGA Payments on IRS 1099 Forms. The Individual PAGA Payments shall be allocated 100% as penalties.

1 **4. SETTLEMENT FUNDING AND PAYMENTS**

2 4.1. *Aggrieved Employee Data.* No later than thirty (30) calendar days after the Judgment is final,
3 Defendant shall deliver the Aggrieved Employee Data to the Administrator in the form of a Microsoft
4 Excel spreadsheet. To protect Aggrieved Employees' privacy rights, the Administrator must maintain the
5 Aggrieved Employee Data in confidence, use the Aggrieved Employee Data only for purposes of the
6 Settlement and for no other purpose, and restrict access to the Aggrieved Employee Data to Administrator
7 employees who need access to the Aggrieved Employee Data to effect and perform under this Agreement.
8 Defendant has a continuing duty to immediately notify PAGA Counsel if it discovers that the Aggrieved
9 Employee Data omitted employee identifying information and to provide corrected or updated Aggrieved
10 Employee Data as soon as reasonably feasible. Without any extension of the deadline by which Defendant
11 must send the Aggrieved Employee Data to the Administrator, the Parties and their counsel will
12 expeditiously use best efforts, in good faith, to reconstruct or otherwise resolve any issues related to
13 missing or omitted Aggrieved Employee Data.

14 4.2. *Funding of Gross Settlement Amount.* No later than fourteen (14) calendar days after the
15 Effective Date, Defendant shall fully fund the Gross Settlement Amount by transmitting the funds to the
16 Administrator.

17 4.3. *Payments from the Gross Settlement Amount.* No later than fourteen (14) calendar days after
18 Defendant fully funds the Gross Settlement Amount, the Administrator shall mail checks for all Individual
19 PAGA Payments, the LWDA PAGA Payment, the PAGA Counsel Expenses Payment, the PAGA
20 Counsel Fees Payment, the PAGA Representative Enhancement Payment, and the Administration
21 Expenses Payment. Disbursement of the PAGA Counsel Expenses Payment and PAGA Counsel Fees
22 Payment shall not precede disbursement of Individual PAGA Payments.

23 4.3.1. The Administrator will issue checks for the Individual PAGA Payments and send
24 them to the Aggrieved Employees via First Class U.S. Mail, postage prepaid, along with the Notice of
25 PAGA Settlement Agreement attached hereto as **Exhibit A**. The face of each check shall prominently state
26 the date (180 days after the date of mailing) when the check will be voided. The Administrator will cancel
27 all checks not cashed by the void date. Before mailing any checks, the Administrator must update the
28 recipients' mailing addresses using the National Change of Address Database.

1 4.3.2. The Administrator must conduct an Aggrieved Employee Address Search for all
2 Aggrieved Employees whose checks are returned undelivered without USPS forwarding address. The
3 Administrator must re-mail checks to the USPS forwarding address provided or to an address ascertained
4 through the Aggrieved Employee Address Search within seven (7) business days of receiving a returned
5 check. The Administrator need not take further steps to deliver checks to Aggrieved Employees whose re-
6 mailed checks are returned as undelivered. The Administrator shall promptly send a replacement check to
7 any Aggrieved Employee whose original check was lost, misplaced, or requested by the Aggrieved
8 Employee prior to the void date.

9 4.3.3. For any Aggrieved Employee whose Individual PAGA Payment check is uncashed
10 and cancelled after the void date, the Administrator shall transmit the funds represented by such checks to
11 the California Controller's Unclaimed Property Fund in the name of the Aggrieved Employee.

12 4.3.4. The payment of Individual PAGA Payments shall not obligate Defendant to confer
13 any additional benefits or make any additional payments to the Aggrieved Employees (such as 401(k)
14 contributions or bonuses) beyond those specified in this Agreement.

15 **5. RELEASE OF CLAIMS**

16 Pursuant to the requirements of Labor Code sections 2698, et seq., Plaintiff is the designated agent
17 of the LWDA and is proceeding as a private attorney general by bringing this enforcement action to
18 recover civil penalties on behalf of the LWDA and Aggrieved Employees. The Parties and Plaintiff agree
19 that, effective on the date Defendant fully funds the entire Gross Settlement Amount, the LWDA shall
20 release the Released Parties from any claim for civil penalties arising out of the Released Claims. As
21 consideration for this release, the LWDA shall receive 75% of the PAGA Penalties and the Aggrieved
22 Employees shall receive 25% of the PAGA Penalties, consistent with the requirements of the Labor Code
23 sections 2698, et seq.

24 5.1. *Plaintiff's Release.* Effective on the date Defendant fully funds the Gross Settlement Amount,
25 Plaintiff and his former and/or present spouses, representatives, agents, attorneys, heirs, administrators,
26 successors, and assigns, will be deemed to release the Released Parties from all claims, transactions, or
27 occurrences that occurred during his employment with Defendant, including, but not limited to all claims
28 that were, or reasonably could have been, alleged based on the facts contained in the operative Complaint

1 and PAGA Notice, which shall include, but not be limited to, claims for civil penalties under PAGA for
2 violations of the California Labor Code based on Defendant's alleged failure to pay all wages due
3 (including minimum wages, straight time wages, regular rate wages, sick pay, vacation wages, and
4 overtime wages), failure to provide compliant meal periods, failure to authorize and permit compliant
5 rest periods, failure to provide accurate and itemized wage statements, failure to factor bonus, incentive
6 or other payments into regular rate of pay, failure to timely pay all wages due during employment and at
7 the time of termination, failure to reimburse employees for all business-related expenses, failure to keep
8 adequate records, violation of the Wage Orders, and all damages, interest, penalties, attorneys' fees,
9 costs, and other amounts recoverable under said representative causes of action ("Plaintiff's Release").

10 5.1.1. Plaintiff's Release does not extend to any claims or actions to enforce this
11 Agreement, or to any claims for vested benefits, unemployment benefits, disability benefits, social security
12 benefits, workers' compensation benefits that arose at any time, or based on occurrences outside the
13 PAGA Period. Plaintiff acknowledges that he may discover facts or law different from, or in addition to,
14 the facts or law Plaintiff now knows or believes to be true but agrees, nonetheless, that Plaintiff's Release
15 shall be and remain effective in all respects, notwithstanding such different or additional facts or Plaintiff's
16 discovery of them.

17 5.1.2. Plaintiff specifically stipulates and agrees that, upon the date on which the Judgment
18 becomes final, he shall be deemed to have expressly waived and relinquished, to the fullest extent
19 permitted by law, the provisions, rights, and benefits of Section 1542 of the California Civil Code, or any
20 other similar provision under federal or state law, which provides:

21 **A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE**
22 **CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT**
23 **TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE**
24 **RELEASE AND THAT, IF KNOWN BY HIM OR HER WOULD HAVE**
MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE
DEBTOR OR RELEASED PARTY.

25 5.2. *Release by Aggrieved Employees.* Effective on the date Defendant fully funds the Gross
26 Settlement Amount, the Aggrieved Employees and their respective former and present representatives,
27 agents, attorneys, heirs, administrators, successors, and assigns, will be deemed to release the Released
28 Parties from (i) all PAGA claims asserted in the operative Complaint and PAGA Notice, (ii) all PAGA

claims that could have reasonably been asserted in the operative Complaint and PAGA Notice, and (iii) all PAGA claims arising out of the same operative facts, including claims for civil penalties under PAGA for violations of the California Labor Code based on Defendant's failure to pay all wages due (including minimum wages, straight time wages, regular rate wages, sick pay, vacation wages, and overtime wages), failure to provide compliant meal periods, failure to authorize and permit compliant rest periods, failure to provide accurate itemized wage statements, failure to factor bonus, incentive or other payments into regular rate of pay, failure to timely pay all wages due during employment and at the time of termination, failure to reimburse employees for all business-related expenses, failure to keep adequate records, violation of the Wage Orders and all damages, interest, penalties, attorneys' fees, costs, and other amounts recoverable under said representative causes of action under California law, to the extent permissible ("Released Claims").

5.3. *Release by PAGA Counsel.* Effective on the date Defendant fully funds the Gross Settlement Amount, PAGA Counsel and their present and former attorneys, employees, agents, successors, and assigns, will be deemed to release the Released Parties from all claims for fees or expenses incurred in connection with the claims alleged in the operative Complaint and the facts stated in the operative Complaint and PAGA Notice.

6. SETTLEMENT ADMINISTRATION

6.1. *Selection of Administrator.* The Parties have jointly selected APEX Class Action Administration to serve as the Administrator and verified that, as a condition of appointment, APEX Class Action Administration agrees to be bound by this Agreement and to perform, as a fiduciary, all duties specified in this Agreement in exchange for payment of any administration expenses. The Parties and their Counsel represent that they have no interest or relationship, financial or otherwise, with the Administrator other than a professional relationship arising out of prior experiences administering settlements.

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

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

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

7. **AGGRIEVED EMPLOYEE SIZE ESTIMATES**

Defendant represents that the estimated total biweekly pay periods worked by an estimated 475 Aggrieved Employees from September 17, 2021 to August 12, 2024 was 38,000. If the number of biweekly pay periods during the PAGA Period is more than 10% greater than this figure (*i.e.*, if there are approximately 41,801 or more biweekly pay periods worked by Aggrieved Employees) as of the date the Court issues its order approving this Agreement, the PAGA Period will end when the biweekly pay periods exceed 41,800.

8. **CONTINUING JURISDICTION OF THE COURT**

8.1. *Continuing Jurisdiction.* The Parties agree that, after entry of Judgment, the Court shall retain jurisdiction over the Parties, Action, and Settlement for purposes of (i) enforcing this Agreement and/or the Judgment, (ii) addressing settlement administration matters, and (iii) addressing such post-Judgment matters as are permitted by law. This Agreement shall be binding and enforceable pursuant to California Code of Civil Procedure section 664.6.

8.2. *Waiver of Right to Appeal.* Provided the Judgment is consistent with the terms and conditions of this Agreement, specifically including the PAGA Counsel Expenses Payment and PAGA Counsel Fees Payment, the Parties and their respective counsel waive all rights to appeal from the Judgment, including all rights to post-judgment and appellate proceedings, the right to file motions to vacate judgment, motions for new trial, extraordinary writs, and appeals. The waiver of appeal does not include any waiver of the right to oppose such motions, writs, or appeals. If another party appeals the Judgment, the Parties' obligations to perform under this Agreement will be suspended until such time as the appeal is finally resolved and the Judgment becomes final, except as to matters that do not affect the amount of the Net Settlement Amount.

1 **9. ADDITIONAL PROVISIONS**

2 9.1. *Duty to Cooperate.* If the Parties disagree on any aspect of the proposed stipulation or motion
3 for approval of the Settlement, PAGA Counsel and Defense Counsel will expeditiously work together on
4 behalf of the Parties by meeting in person or by telephone, and in good faith, to resolve the disagreement.
5 If the Court does not grant the motion for approval of the Settlement or conditions its approval on any
6 material change to this Agreement, PAGA Counsel and Defense Counsel will expeditiously work together
7 on behalf of the Parties by meeting in person or by telephone, and in good faith, to modify the Agreement
8 and otherwise satisfy the Court's concerns.

9 9.2. *No Admission of Liability or Representative Manageability for Other Purposes.* This
10 Agreement represents a compromise and settlement of highly disputed claims. Nothing in this Agreement
11 is intended or should be construed as an admission by Defendant that any of the allegations in the
12 operative Complaint have merit or that Defendant has any liability for any claims asserted; nor should it be
13 intended or construed as an admission by Plaintiff that Defendant's defenses in the Action have merit. The
14 Parties agree that representative treatment is for purposes of this Settlement only. If, for any reason the
15 Court does not approve the Settlement, Defendant reserves all available defenses to the claims in the
16 Action, and Plaintiff reserves the right to contest Defendant's defenses. The Settlement, this Agreement,
17 and the Parties' willingness to settle the Action will have no bearing on, and will not be admissible in
18 connection with, any litigation, except for proceedings to enforce or effectuate the Settlement and this
19 Agreement.

20 9.3. *Integrated Agreement.* Upon execution by all Parties and their counsel, this Agreement,
21 together with its attached Exhibits, shall constitute the entire agreement between the Parties relating to the
22 Settlement, superseding any and all oral representations, warranties, covenants, or inducements made to or
23 by any Party.

24 9.4. *Attorney Authorization.* PAGA Counsel and Defense Counsel separately warrant and
25 represent that they are authorized by Plaintiff and Defendant, respectively, to take all appropriate action
26 required or permitted to be taken by such Parties pursuant to this Agreement to effectuate its terms, and to
27 execute any other documents reasonably required to effectuate the terms of this Agreement including any
28 amendments to this Agreement.

1 9.5. *Cooperation.* The Parties and their counsel will cooperate with each other and use their best
2 efforts, in good faith, to implement the Settlement by, among other things, modifying the Settlement
3 Agreement, submitting supplemental evidence and supplementing points and authorities as requested by
4 the Court. In the event the Parties are unable to agree upon the form or content of any document necessary
5 to implement the Settlement, or on any modification of this Agreement that may become necessary to
6 implement the Settlement, the Parties will seek the assistance of a mediator and/or the Court for resolution.

7 9.6. *No Prior Assignments.* The Parties separately represent and warrant that they have not directly
8 or indirectly assigned, transferred, encumbered, or purported to assign, transfer, or encumber to any person
9 or entity and portion of any liability, claim, demand, action, cause of action, or right released and
10 discharged by the Party in this Settlement.

11 9.7. *No Tax Advice.* Neither Plaintiff, PAGA Counsel, Defendant nor Defense Counsel are
12 providing any advice regarding taxes or taxability, nor shall anything in this Settlement be relied upon as
13 such within the meaning of United States Treasury Department Circular 230 (31 CFR Part 10, as
14 amended) or otherwise.

15 9.8. *Modification of Agreement.* This Agreement, and all parts of it, may be amended, modified,
16 changed, or waived only by an express written instrument signed by all Parties or their representatives, and
17 approved by the Court.

18 9.9. *Agreement Binding on Successors.* This Agreement will be binding upon, and inure to the
19 benefit of, the successors of each of the Parties.

20 9.10. *Applicable Law.* All terms and conditions of this Agreement and its Exhibits will be
21 governed by and interpreted according to the internal laws of the State of California, without regard to
22 conflict of law principles.

23 9.11. *Cooperation in Drafting.* The Parties have cooperated in the drafting and preparation of this
24 Agreement. This Agreement will not be construed against any Party on the basis that the Party was the
25 drafter or participated in the drafting.

26 9.12. *Confidentiality.* Plaintiff and PAGA Counsel agree they will not make any public disclosure
27 of the Settlement until after this Settlement is approved by the Court. PAGA Counsel will take all steps
28 necessary to ensure Plaintiff is aware of, and will encourage him to adhere to, the restriction against any

1 public disclosure of this Settlement until after this Settlement is approved by the Court. PAGA Counsel
2 will not include or use the Settlement for any marketing or promotional purposes. PAGA Counsel further
3 agree not to use Defendant's name in any statements for marketing purposes. In the event PAGA Counsel
4 inadvertently violate this provision, they may cure such violation by withdrawing all marketing or
5 promotional materials in violation of this provision within ten (10) calendar days of receipt of notice of the
6 violation from Defendant.

7 9.12.1. Following approval of the Settlement, the Plaintiff and PAGA Counsel will not
8 have any communications with any media other than to direct any media inquiries to the public records of
9 the Actions on file with the Court.

10 9.12.2. Following approval of the Settlement, Plaintiff and Plaintiff's counsel may
11 communicate with Aggrieved Employees about this Settlement and lawsuit, as well as provide any further
12 information as requested by any courts, the LWDA, and other state and/or federal agencies. Nothing
13 herein will restrict PAGA Counsel from including publicly available information regarding this Settlement
14 in future judicial submissions regarding PAGA Counsel's qualifications and experience.

15 9.12.3. The Parties agree that violation of this Section constitutes a breach of the agreement
16 that cannot practically be cured. Thus, any actions to enforce this provision may be brought on an *ex parte*
17 or otherwise expedited basis, and Defendant may seek any and all available remedies, including but not
18 limited to injunctive relief.

19 9.12.4. To the extent permitted by law, all agreements made, and orders entered during the
20 Action and in this Agreement relating to the confidentiality of information shall survive the execution of
21 this Agreement.

22 9.13. *Use and Return of Aggrieved Employee Data.* Information provided to PAGA Counsel
23 pursuant to Cal. Evid. Code §1152, and all copies and summaries of the Aggrieved Employee Data
24 provided to PAGA Counsel by Defendant in connection with the mediation, other settlement negotiations,
25 or in connection with the Settlement, may be used only with respect to this Settlement, and no other
26 purpose, and may not be used in any way that violates any existing contractual agreement, statute, or rule
27 of court. No later than ninety (90) days after the Administrator discharges its obligation to pay out of all
28 Settlement funds, Plaintiff shall destroy all paper and electronic versions of Aggrieved Employee Data

received from Defendant unless, prior to the Administrator's payment of all Settlement funds, Defendant makes a written request to PAGA Counsel for the return, rather than the destruction, of Aggrieved Employee Data.

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

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

9.16. *Notice*. All notices, demands or other communications between the Parties in connection with this Agreement will be in writing and deemed to have been duly given as of the third business day after mailing by United States mail, or the day sent by email or messenger, addressed as follows:

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To Plaintiff:

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To Defendant:

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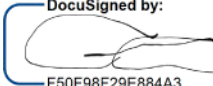
9.17. *Execution in Counterparts.* This Agreement may be executed in one or more counterparts by facsimile, electronically (*i.e.*, DocuSign), or email which for purposes of this Agreement shall be accepted as an original. All executed counterparts and each of them will be deemed to be one and the same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

9.18. *Stay of Litigation.* The Parties agree that, upon the full execution of this Agreement, the litigation shall be stayed, except to effectuate the terms of this Agreement. The Parties further agree, upon the signing of this Agreement and pursuant to CCP section 583.330, to extend the date to bring a case to trial under CCP section 583.310 for the entire period of this settlement process.

The Parties hereby execute this Agreement.

Signatures on following page.

1 Dated: 10/8/2024

DocuSigned by:

F50F98F29E884A3...

2 Cain Garcia, Plaintiff

3 Dated:

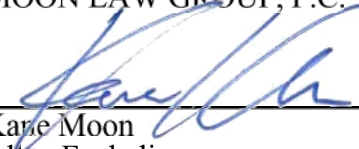
4 Crunch, LLC, Defendant

5 Title

6
7 Dated: 10/8/2024

MOON LAW GROUP, P.C.

8
9 By:


Kane Moon
Alien Feghali
Jacquelyne VanEmmerik
Attorneys for Plaintiff, Cain Garcia

10
11
12 Dated:

JACKSON LEWIS, P.C.

13
14 By:

Mia Farber
Shannon B. Nakabayashi
Isabella L. Shin
Attorneys for Defendant, Crunch, LLC

15
16 4864-3532-6442, v. 1

Dated:

Cain Garcia, Plaintiff

Dated: 10/01/2024

DocuSigned by:
Dan Gallagher
Crunch, LLC, Defendant
Chief Financial Officer
Title

Dated:

MOON LAW GROUP, P.C.

By: Kane Moon
Allen Feghali
Jacquelyne VanEmmerik
Attorneys for Plaintiff, Cain Garcia

Dated: 10/09/2024

JACKSON LEWIS, P.C.
By: *Shannon Nakabayashi*
Mia Farber
Shannon B. Nakabayashi
Isabella L. Shin
Attorneys for Defendant, Crunch, LLC
4864-3532-6442, v. 1