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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 Bradley S. Phillips, Department 26]

**DECLARATION OF KANE MOON IN
SUPPORT OF PLAINTIFF CAIN GARCIA'S
MOTION FOR APPROVAL OF PRIVATE
ATTORNEYS GENERAL ACT
SETTLEMENT AGREEMENT**

[Filed with Plaintiff Cain Garcia's Notice of
Motion and Motion, Declaration of Plaintiff Cain
Garcia, Declaration of Sean Hartranft, [Proposed]
Order, and [Proposed] Judgment]

PAGA APPROVAL HEARING:

Date: March 20, 2025

Time: 8:30 a.m.

Dept.: 26

Reserved by Court.

Complaint Filed: September 19, 2022

Trial Date: Not Set

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1. I am an attorney at law duly licensed to practice as such before all the Courts of the State of California and am one of the attorneys of record for Plaintiff Cain Garcia (“Plaintiff”). I have personal knowledge of the facts set forth in this Declaration and if called as a witness, I could and would competently testify to them under oath.

RELEVANT FACTS AND PROCEDURAL HISTORY

4. On September 17, 2022, Plaintiff filed with 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, subdivision (a) (“PAGA Notice”). A true and correct copy of his PAGA Notice is attached to the instant Declaration as **Exhibit 1**.

1

1 Wage Statements [Labor Code § 226]; and Unfair Business Practices [Business & Professions
2 Code §§ 17200, *et seq.*]; and on January 3, 2023, Plaintiff filed a First Amended Class Action and
3 Representative Action Complaint (“operative Complaint”), which alleged an additional cause of
4 action for Civil Penalties under the Private Attorneys General Act [Labor Code §§ 2699, *et. seq.*].

5 6. On January 27, 2023, in light of the arbitration agreement Plaintiff signed at the
6 commencement of his employment with Defendant, including the valid and enforceable class
7 action waiver therein, Plaintiff filed a Request for Dismissal of Class Allegations pursuant to
8 California Rules of Court Rules 3.770, *et seq.*; and on March 23, 2023, the Parties stipulated to
9 stay the matter pending the California Supreme Court decision in *Adolph v. Uber Technologies,*
10 *Inc.*, Case No. S274671.

11 7. On or around May 31, 2023, the Parties met and conferred regarding the feasibility
12 of resolving the Action through private mediation. The Parties ultimately agreed to engage in an
13 informal exchange of data and documents, including, but not limited to, a random, statistically
14 significant sample of time and corresponding payroll records of all alleged Aggrieved Employees,
15 and to attempt to settle Plaintiff’s individual and non-individual PAGA claims through private
16 mediation.

17 8. On August 12, 2024, the Parties engaged in a successful, private mediation with
18 experienced wage-and-hour class and representative action mediator, Steven Rottman, Esq., in
19 which they agreed to the terms encompassed in the Settlement. A true and correct copy of the
20 Settlement and LWDA case record confirming submission of the Settlement to the LWDA are
21 attached to the instant Declaration as **Exhibit 2** and **Exhibit 3**, respectively.

22 **STATEMENT OF THE CLAIMS**

23 9. The operative Complaint alleges a single cause of action for Civil Penalties Under
24 PAGA [Labor Code sections 2698, *et seq.*]. This cause of action is based on Defendant’s alleged
25 failure to pay Plaintiff and all alleged Aggrieved Employees for all hours worked, including for all
26 regular time and overtime, as a result of not incorporating all non-discretionary remuneration into
27 Aggrieved Employees’ respective regular rates of pay and not paying Aggrieved Employees for
28 all off-the-clock hours worked; failure to provide Plaintiff and all alleged Aggrieved Employees

1 with code-compliant meal periods, including timely, full, and uninterrupted meal periods, as a
2 result of not adopting policies and practices which would allow Aggrieved Employees to be
3 timely and fully relieved from their work duties during their meal periods; failure to authorize and
4 permit Plaintiff and all alleged Aggrieved Employees to take code-compliant rest breaks,
5 including timely, full, and uninterrupted rest breaks, as a result of not adopting practices and
6 practices which would allow Aggrieved Employees to be timely and fully relieved from their
7 work duties during their rest breaks; and failure to reimburse Plaintiff and all alleged Aggrieved
8 Employees for all necessary business expenses incurred in direct discharge of their work duties,
9 including expenses for the required use of their personal cellphones.

10 DISCOVERY AND INVESTIGATION

11 10. Ahead of mediation, the Parties agreed to engage in an informal exchange of data
12 and documents, including, but not limited to (1) the total number of Aggrieved Employees; (2) the
13 total number of pay periods worked by all Aggrieved Employees from October 2021 to April
14 2024; (3) all employee handbooks in effect during the PAGA Period; and (4) a random,
15 statistically significant sample of time and corresponding payroll records of all alleged Aggrieved
16 Employees from October 2021 to April 2024. Following Defendant's production, PAGA Counsel
17 retained an expert data analyst to analyze and prepare a damage analysis based on the sample
18 records. Further, PAGA Counsel personally examined the sample records and contrasted the same
19 with applicable law. These actions enabled PAGA Counsel to participate in mediation with an
20 informed understanding of Defendant's maximum and realistic potential liability.

21 SETTLEMENT NEGOTIATIONS

22 11. On August 12, 2024, the Parties participated in private mediation with experienced
23 wage-and-hour class and representative action mediator, Steven Rottman, Esq. The settlement
24 negotiations were at arm's length and, though conducted in a professional manner, adversarial.
25 The Parties went into the mediation willing to settle the dispute but also prepared to litigate their
26 respective positions through trial and appeal if a settlement were not reached.

1 12. At mediation, on the one hand, Defendant asserted that it is not liable for civil
2 penalties based on unpaid minimum and overtime wages as a result of Aggrieved Employees
3 performing required off-the-clock work, as it did not permit Aggrieved Employees to work off the
4 clock and clearly expressed this within its written work policies; that it is not liable for civil
5 penalties based on meal period and/or rest break violations, as a vast majority of meal periods and
6 rest breaks were taken, and where a violation appears in the sample time records, such violation
7 was either the result of an employee voluntarily choosing to forego a meal period or rest break or
8 waived by an applicable meal period or rest break waiver; and that it is not liable for civil
9 penalties based on unreimbursed business expenses, and certainly not for all pay periods within
10 the PAGA Period, as not all Aggrieved Employees utilized their personal cellphones for work-
11 related purposes, and not all Aggrieved Employees who utilized their personal cellphones for
12 work-related purposes did so on a weekly basis.

13 13. On the other hand, Plaintiff pushed back on Defendant's defenses utilizing the
14 random, statistically significant sample of time and corresponding of the Aggrieved Employees,
15 including by highlighting the regular rate and meal period violations evident on their face, yet also
16 recognized that, if not through settlement, the issues presented in the Action were likely only to be
17 resolved with extensive and costly pretrial and trial proceedings, and that further litigation would
18 likely lead to inconvenience, distraction, disruption, delay, and expense disproportionate to the
19 potential benefits of litigation. In light of this acknowledgment, which was shared by Defendant,
20 the Parties reached a resolution, the material terms of which are encompassed in the Settlement.

21 KEY TERMS OF THE SETTLEMENT

22 14. The Aggrieved Employees include all persons who worked for Defendant in
23 California as an hourly paid or non-exempt employee during the PAGA Period. *Settlement*, ¶ 1.4.
24 The PAGA Period is September 17, 2021, through the earlier of when the PAGA Pay Periods
25 exceed 41,800 or the date on which the Court issues the Approval Order. *Settlement* at ¶ 1.22.

26 15. Defendant agrees to pay a non-reversionary Gross Settlement Amount of
27 \$750,000.00. *Id.*, ¶¶ 1.12, 3.1. Aggrieved Employees are not required to submit a claim as a
28 condition of payment. *Id.*

1 16. The Settlement provides for a PAGA Counsel Fees Payment of not more than one-
2 third of the Gross Settlement Amount, or \$250,000.00, and a PAGA Counsel Expenses Payment
3 of not more than \$29,000.00. *Settlement* at ¶ 3.1.1. If the fees payment approved by the Court is
4 less than the maximum allocation, the difference will be added to the Net Settlement Amount. *Id.*
5 The actual costs are less than the maximum allocation. *See* Exh. 4. In accordance with the
6 Settlement, the difference will be added to the Net Settlement Amount. *Settlement* at ¶ 3.1.1. At
7 this time, PAGA Counsel’s costs are \$24,078.24. A true and correct copy of PAGA Counsel’s
8 itemized, current list of actual costs is attached to the instant Declaration as **Exhibit 4**.

9 17. The Settlement provides for a PAGA Representative Enhancement Payment of not
10 more than \$10,000.00 for Plaintiff’s role, service, and risks undertaken as the PAGA
11 Representative of the State of California and for his general release of claims. *Id.* at ¶¶ 3.1.2, 5.1,
12 et seq. If the enhancement payment approved by the Court is less than the maximum allocation,
13 the difference will be added to the Net Settlement Amount. *Id.*

14 18. The Settlement provides for an Administration Expenses Payment of not more than
15 \$15,000.00 for the Administrator’s fees and expenses in administering this Settlement. *Id.*, ¶¶ 1.2,
16 3.1.3. The actual administration expenses approved by the Court are less than the maximum
17 allocation. *Moon Decl.*, Exh. 5. In accordance with the Settlement, the difference will be added to
18 the Net Settlement Amount. *Settlement*, ¶ 3.1.3. The Parties jointly appoint APEX Class Action
19 Administration (“APEX”) as the neutral entity to administer the Settlement based on its bid of
20 \$13,850.00. *Id.* A true and correct copy of APEX’s administration costs estimate is attached to the
21 instant Declaration as **Exhibit 5**.

22 19. After deducting the PAGA Counsel Fees Payment, PAGA Counsel Expenses
23 Payment, PAGA Representative Enhancement Payment, and Administration Expenses Payment in
24 the amounts approved by the Court, the remainder will be allocated as PAGA Penalties and
25 distributed as 75% to the LWDA and 25% to the Aggrieved Employees. *Id.* at ¶¶ 3.1.4, et seq.

26 20. Aggrieved Employees will receive a letter explaining the Settlement in plain
27 English and Spanish. A true and correct copy of the English version of this letter is incorporated
28 as part of the Settlement as **Exhibit A**.

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

5 22. No later than fourteen (14) calendar days after the Effective Date, Defendant shall
6 fully fund the Gross Settlement Amount by transmitting the funds to the Administrator. *Settlement*
7 at ¶ 4.2.

8 23. No later than fourteen (14) calendar days after Defendant fully funds the Gross
9 Settlement Amount, the Administrator shall mail checks for all Individual PAGA Payments, the
10 LWDA PAGA Payment, the PAGA Counsel Fees Payment, the PAGA Counsel Expenses
11 Payment, the PAGA Representative Enhancement Payment, and the Administration Expenses
12 Payment. *Id.* at ¶ 4.3.

13 24. *Plaintiff's Release.* Effective on the date Defendant fully funds the Gross
14 Settlement Amount, Plaintiff and his former and/or present spouses, representatives, agents,
15 attorneys, heirs, administrators, successors, and assigns, will be deemed to release the Released
16 Parties from all claims, transactions, or occurrences that occurred during his employment with
17 Defendant, including, but not limited to all claims that were, or reasonably could have been,
18 alleged based on the facts contained in the operative Complaint and PAGA Notice, which shall
19 include, but not be limited to, claims for civil penalties under PAGA for violations of the
20 California Labor Code based on Defendant's alleged failure to pay all wages due (including
21 minimum wages, straight time wages, regular rate wages, sick pay, vacation wages, and overtime
22 wages), failure to provide compliant meal periods, failure to authorize and permit compliant rest
23 periods, failure to provide accurate and itemized wage statements, failure to factor bonus,
24 incentive or other payments into regular rate of pay, failure to timely pay all wages due during
25 employment and at the time of termination, failure to reimburse employees for all business-related
26 expenses, failure to keep adequate records, violation of the Wage Orders, and all damages,
27 interest, penalties, attorneys' fees, costs, and other amounts recoverable under said representative
28 causes of action ("Plaintiff's Release"). *Id.* at ¶¶ 5.1, et seq.

1 25. *Release by Aggrieved Employees.* Effective on the date Defendant fully funds the
2 Gross Settlement Amount, the Aggrieved Employees and their respective former and present
3 representatives, agents, attorneys, heirs, administrators, successors, and assigns, will be deemed to
4 release the Released Parties from (i) all PAGA claims asserted in the operative Complaint and
5 PAGA Notice, (ii) all PAGA claims that could have reasonably been asserted in the operative
6 Complaint and PAGA Notice, and (iii) all PAGA claims arising out of the same operative facts,
7 including claims for civil penalties under PAGA for violations of the California Labor Code based
8 on Defendant's failure to pay all wages due (including minimum wages, straight time wages,
9 regular rate wages, sick pay, vacation wages, and overtime wages), failure to provide compliant
10 meal periods, failure to authorize and permit compliant rest periods, failure to provide accurate
11 itemized wage statements, failure to factor bonus, incentive or other payments into regular rate of
12 pay, failure to timely pay all wages due during employment and at the time of termination, failure
13 to reimburse employees for all business-related expenses, failure to keep adequate records,
14 violation of the Wage Orders and all damages, interest, penalties, attorneys' fees, costs, and other
15 amounts recoverable under said representative causes of action under California law, to the extent
16 permissible ("Released Claims"). *Settlement* at ¶ 5.2.

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

22 THE SETTLEMENT MERITS APPROVAL

23 27. The Settlement merits approval because the PAGA Penalties are reasonable,
24 providing genuine and meaningful relief to the LWDA and Aggrieved Employees consistent with
25 the dual purpose of PAGA and pursuant to Labor Code section 2699(e); and the Settlement
26 allocations, including the PAGA Counsel Fees Payment, PAGA Counsel Expenses Payment, and
27 PAGA Representative Enhancement Payment are reasonable and permissible.

1 28. The PAGA Penalties are based on PAGA Counsel's analysis of the time, payroll,
2 and additional information produced by Defendant; PAGA Counsel's expert's analysis of the
3 random, statistically significant sample of time and corresponding payroll records of the Aggrieved
4 Employees produced by Defendant; and on information from Plaintiff, as all of this information
5 enabled PAGA Counsel to calculate Defendant's maximum and risk-adjusted potential exposure.

6 29. The PAGA claim is based, in part, on Plaintiff's underlying factual allegations that
7 Defendant failed to pay Aggrieved Employees for all off-the-clock work and failed to incorporate,
8 or properly incorporate, all non-discretionary remuneration into Aggrieved Employees' respective
9 regular rates of pay for purposes of paying *biweekly* and *monthly* overtime and sick pay. PAGA
10 Counsel and their expert assumed each Aggrieved Employee worked five off-the-clock minutes per
11 shift based on Plaintiff's assertion that he and all other Aggrieved Employees regularly spent their
12 meal periods on duty, assisting incoming clients; regularly engaged in work-related activities after
13 hours, including by communicating with management about scheduling and work-related topics;
14 and regularly waiting for the clock-in machine to reboot due to it frequently malfunctioning. PAGA
15 Counsel and their expert also identified significant underpayment in the sample records as a result
16 of Aggrieved Employees not being paid overtime and sick pay at their proper regular rates: the time
17 and corresponding payroll records demonstrated that 18.5% of sampled Aggrieved Employees were
18 paid both *biweekly* overtime and additional non-discretionary remuneration, with the latter not
19 incorporated into the former, resulting in at least \$199,717.00 of extrapolated underpayment; 18.0%
20 of sampled Aggrieved Employees were paid both *monthly* overtime and additional non-
21 discretionary remuneration, with the latter not incorporated into the former, resulting in at least
22 \$27,167.00 of extrapolated underpayment; and 13.4% of sampled Aggrieved Employees were paid
23 both sick pay and additional non-discretionary remuneration, with the latter not incorporated into
24 the former, resulting in at least \$210,308.00 of extrapolated underpayment. Based on these facts
25 and findings, and the PAGA statute, PAGA Counsel and their expert determined that Defendant's
26 maximum potential exposure for civil penalties for unpaid overtime and sick pay affected roughly
27 ten percent (10%) of all pay periods.

1 30. The PAGA claim is also based, in part, on Plaintiff's underlying factual allegations
2 that Defendant failed to pay Aggrieved Employees for all interrupted, missed, short, and/or late
3 meal periods and rest breaks. PAGA Counsel and their expert identified significant underpayment
4 in the sample records as a result of Aggrieved Employees experiencing uncompensated meal period
5 violations: the time and corresponding payroll records demonstrated that Aggrieved Employees
6 recorded approximately 118,838 meal periods for shifts greater than five hours and that 34.7% were
7 recorded after the end of the fifth hour but were not waived or compensated through attendant meal
8 period premium wages. PAGA Counsel and their expert assumed each Aggrieved Employee
9 experienced one rest break violation each workweek, or twice each biweekly pay period, based on
10 Plaintiff's assertion that he and all other Aggrieved Employees spent roughly one-quarter of their
11 weekly rest breaks on duty, assisting incoming clients. Based on these facts and findings, and the
12 PAGA statute, PAGA Counsel and their expert determined that Defendant's maximum potential
13 exposure for civil penalties for unpaid meal period and rest break premium wages affected roughly
14 forty percent (40%) of all pay periods.

15 31. The PAGA claim is further based, in part, on Plaintiff's underlying factual
16 allegation that Defendant failed to reimburse Aggrieved Employees for necessary business
17 expenses incurred in the direct discharge of their work duties. PAGA Counsel and their expert did
18 not identify a single reimbursement in the time and corresponding payroll records. Yet, PAGA
19 Counsel and their expert assumed each Aggrieved Employee experienced an unreimbursed expense
20 violation each pay period based on Plaintiff's assertion that he and all other Aggrieved Employees
21 were required to use their personal cellphones to communicate about scheduling and other work-
22 related topics on a weekly basis. Based on these facts and findings, and the PAGA statute, PAGA
23 Counsel and their expert determined that Defendant's maximum potential exposure for civil
24 penalties for unreimbursed business expenses affected all pay periods had evidence of such
25 violations.

26 32. PAGA Counsel and their expert determined Defendant's maximum potential
27 exposure was \$9,984,932.35, based on the foregoing and based on Defendant's pre-mediation
28 production and PAGA Counsel's extrapolation that there were 53,069 total pay periods.

33. PAGA Counsel and their expert then discounted Defendant's maximum potential exposure, first by sixty percent (60%), to account for Defendant's defenses, and then by eighty percent (80%), to account for several relevant extenuating considerations, including, but not limited to, the fact that Defendant overestimated the total number of pay periods by thirty percent (30%), *see Settlement* at 7, the risk that the Supreme Court decision *Viking River Cruises, Inc. v. Moriana* (2022) 596 U.S. 287 could eliminate Plaintiff's standing to represent other Aggrieved Employees in this Action, given his individual claims are subject to individual arbitration; Due Process concerns related to penalizing Defendant disproportionately to the amount of damages at issue; and the fact that all PAGA awards are discretionary and can be reduced by the Court pursuant to Labor Code section 2699(e). **PAGA Counsel and their expert therefore determined Defendant's maximum risk-adjusted exposure was \$798,794.59. The Gross Settlement Amount of \$750,000.00 therefore represents roughly 93.89% of Plaintiff's assumed realistic recovery.** *Villalobos v. Calandri Sunrise Farm LP* (C.D. Cal., July 22, 2015, No. CV 12-2615 PSG (JEMx)) 2015 WL 12732709, at *5; *see also O'Connor v. Uber Technologies, Inc.* (N.D. Cal. 2016) 201 F.Supp.3d 1110, 1135.) This is an excellent result, particularly because, under the Settlement, Aggrieved Employees will receive timely, guaranteed relief and will avoid the risk of not being able to recover anything.

34. The amount estimated as PAGA Penalties for the LWDA and Aggrieved Employees will be at least **\$452,071.76**.¹ The LWDA PAGA Payment makes up seventy-five percent (75%) of the PAGA Penalties, or **\$339,053.82**, and will be allocated to the LWDA for the education of employees and employers about their rights and responsibilities under the Labor Code. *See* Labor Code section 2699(i). The Individual PAGA Payments make up twenty-five percent (25%) of the PAGA Penalties, or **\$113,017.94**, and will be allocated to all Aggrieved Employees on a pro-rata basis for the alleged Labor Code violations they suffered from during the PAGA Period. *Settlement*, ¶ 1.13. Thus, 475 estimated Aggrieved Employees will get an average payment of **\$237.93**. *Id.* at 7.

¹ The PAGA Penalties equal the Gross Settlement Amount (\$750,000.00) less the PAGA Counsel Fees Payment (\$250,000.00), PAGA Counsel Litigation Expenses Payment (\$24,078.24), PAGA Representative Enhancement Payment (\$10,000.00), and Administration Expenses Payment (\$13,850.00).

1 35. The Settlement contains an Escalator Clause under which Defendant may owe more
2 than \$750,000.00 as the Gross Settlement Amount. *Settlement* at ¶ 7. Under the Escalator Clause,
3 the Parties agree that, “[i]f the number of biweekly pay periods during the PAGA Period is more
4 than 10% greater than 38,000 (*i.e.*, if there are approximately 41,801 or more biweekly pay periods
5 worked by Aggrieved Employees) as of the date the Court issues its order approving this
6 Agreement, the PAGA Period will end when the biweekly pay periods exceed 41,800.” *Id.*
7 Therefore, the Individual PAGA Payments will increase if the total number of pay periods
8 increases by more than ten percent (10%).

9 THE PAGA COUNSEL FEES PAYMENT MERITS APPROVAL

10 36. The Class Counsel Fees Payment merits approval because it is reasonable and
11 permissible because it (1) was calculated using the common fund doctrine and aligns with leading
12 treatises on awards calculated using the common fund doctrine, (2) comports with Labor Code
13 section 2699(g); (3) is commensurate with Class Counsel’s significant experience, reputation, and
14 ability in representative action settlements; and (4) is reasonable under the lodestar method.

15 My Experience And Qualifications

16 37. I received a Bachelor of Arts in History in 1998 from the University of California,
17 Los Angeles, and a Juris Doctorate from Loyola Marymount Law School in 2006. I became an
18 Active Member of the State Bar of California in June 2007 and have been an Active Member in
19 good standing continuously since. I have been selected to Super Lawyers each year from 2020 to
20 2024.

21 38. I co-founded Moon Law Group, P.C., formerly Moon & Yang, APC, in March
22 2010. For the past decade, I have built my practice to have an emphasis on employment and
23 related civil litigation cases. In fact, my practice is focused almost exclusively on advocating for
24 the rights of employees in wage-and-hour litigation through class and representative actions. The
25 firm and its lawyers, including myself, have successfully settled hundreds of wage-and-hour
26 cases; tried both bench and jury trials, representing both plaintiffs and defendants, in employment-
27 related matters; and have been appointed lead or co-lead class counsel in numerous federal and
28 state courts in California.

39. In addition to the present case, Moon Law Group, P.C. is presently class counsel for dozens of other putative wage-and-hour class- and representative-action lawsuits pending in various state and federal jurisdictions throughout California. The following is a list of some of our recent class action settlements that have received preliminary and final approval: *Mark Brulee, et al. v. DAL Global Services, LLC* (C.D. Cal. Dec. 20, 2018) No. CV 17-6433 JVS(JCGx), 2018 WL 6616659 (class size approx. 2,650; lead counsel) (In approving my \$650 hourly rate, the Court found: “Class Counsel's declarations show that the attorneys are experienced and successful litigators.” Other courts have approved the attorneys' current rates for the Moon Law Group, APC attorneys. *Id.* at *10; *Sison v. Cha Hollywood Medical Center, L.P.*, LASC BC6441 29 (class size approx. 2,100; co-counsel); *Jones v. Fitness Alliance, LLC*, Riverside Superior Court PSC1404079 (class size approx. 1,000; lead counsel); *Gomez v. H Mart Companies, Inc.*, LASC BC671525 (class size approx. 2,500; co-counsel); *Montoya v. Golden 1 Credit Union*, Sacramento Superior Court 34-2018-00228252 (class size approx. 1,900; lead counsel); *Campa v. Bloomingdeals, Inc.*, LASC BC700366 (class size approx. 1,500; lead counsel); *Black v. Mission Healthcare Services, Inc.*, LASC 19STCV04602 (class size approx. 1,000; lead counsel); *Onofre v. Caitac Garment Processing, Inc.*, LASC BC702283 (class size approx. 750; lead counsel); *Martinez v. Bail Hotline Bail Bonds, Inc.*, LASC BC700131 (class size approx. 173; lead counsel); *Jones v. Citiguard, Inc.*, LASC BC664890 (class size approx. 587; lead counsel); *Slaughter v. ACA Security Stems, LP*, LASC BC699137 (class size approx. 300; lead counsel); *Taylor v. Sherman's Delicatessen & Bakery, LLC*, LASC BC722765 (class size approx. 515; lead counsel); *Vertti v. Bagcraft Papercon III, LLC*, LASC 19STCV12729 (class size approx. 260; lead counsel); *Rodriguez v. Rossmoyne, Inc.*, LASC BC699137 (class size approx. 220; lead counsel); *Vargas v. AMS Paving, Inc.*, LASC BC722767 (case size approx. 260; lead counsel); *Garcia v. Comfy U.S.A. Apparel, Inc.*, LASC BC709630 (class size approx. 210; lead counsel); *Lagos v. ThyssenKrupp Elevator Corporation*, LASC BC682972 (\$750,000 for 79 Class Members; lead counsel); *Aparicio v. Lineage Logistics, LLC*, LASC BC722764 (class size approx. 155; lead counsel).

1 40. This experience is helpful in assessing the reasonableness of settlements such as
2 the one at issue here. From this experience, our firm, as Class Counsel, concluded that this lawsuit
3 could not have been settled on better terms than provided under the present Settlement.

4 Allen Feghali's Experience And Qualifications

5 41. Allen Feghali is a partner at Moon Law Group, P.C. He received a Bachelor of
6 Arts in Global and International Studies from the University of California, Santa Barbara in 2011,
7 and a Juris Doctorate from University of La Verne College of Law in 2014. Mr. Feghali became
8 an Active Member of the State Bar of California in December 2014 and has been an Active
9 Member in good standing continuously since. He was selected by Super Lawyers as a "Southern
10 California Rising Star" from 2020 to 2024.

11 42. Mr. Feghali began working at Moon Law Group, P.C. in May 2015, and his
12 practice focuses on advocating for the rights of employees at the trial-court and appellate levels.
13 Prior to approximately June 2018, with the exception of a handful of cases, his practice focused on
14 individual FEHA and wrongful termination claims, as well as individual wage and hour claims. In
15 June 2018, Mr. Feghali became heavily involved in the firm's class action practice.

16 43. During the pendency of this Action, Mr. Feghali's hourly billing rate increased
17 from \$500.00 to his current hourly rate of \$600.00. During Mr. Feghali's tenure with Moon Law
18 Group, P.C., he has played a critical role in obtaining outstanding results for employees who have
19 been wronged by their employers. Mr. Feghali's litigation experience includes, but is not limited
20 to:

- 21 (a) In March 2021, Mr. Feghali prepared the briefing in the matter of *Rivera, et*
22 *al. v. Clearpath Federal Credit Union* (LASC No. 19STCV33504), which
23 resulted in a certification order on all causes of action following contested
24 briefing in a wage and hour class action.
- 25 (b) Mr. Feghali prepared the briefing in a contested class certification motion
26 in the matter of *Dawson, et al. v. GoHealth, LLC, et al.* (No. CGC-19-
27 577790), which was argued and taken under submission by the Court on
28 February 3, 2022.

- 1 (c) Mr. Feghali prepared the briefing in a contested class certification motion
2 in the matter of *Brown v. NTI-CA, Inc., et al.* (No. 21STCV04397), which
3 is not currently scheduled for hearing.
- 4 (d) Mr. Feghali was part of a team that prepared the briefing in a contested
5 class certification motion in the matter of *Thong, et al. v. Outlook*
6 *Resources, Inc., et al.* (No. 19STCV44400), which was granted in part and
7 denied in part in October 2022.
- 8 (e) Mr. Feghali prepared the briefing which resulted in a remand order in the
9 matter of *Andrade v. Rehrig Pacific Corp.* (C.D. Cal. April 22, 2020, No.
10 CV 20-1448 FMP (RAOx)) 2020 WL 1934954, where Defendant removed
11 a wage and hour class alleging that Plaintiff's claims were pre-empted by
12 the Labor Management Relations Act.
- 13 (f) Mr. Feghali briefed, argued, and won the matter of *Lee, et al. v. The*
14 *Christian Herald, U.S.A., Inc.* (Cal. Ct. App. Dec. 12, 2017, No. B266853)
15 2017 WL 6333905, at *1. There, the Court of Appeal reversed a dismissal
16 of an individual defendant following the trial court's granting of a demurrer
17 without leave to amend relating to alter ego allegations.
- 18 (g) Mr. Feghali prepared the briefing which resulted in a remand order in the
19 matter of *Sotelo v. Belfor USA Group, Inc.* (C.D. Cal. Mar., 13, 2018, No.
20 2:17-cv-09056-RSWL-MRWx) 2018 WL 1352910. Defendants there
21 sought to remove the case based on the inclusion of a "sham defendant,"
22 but the court agreed with Mr. Feghali's briefing which argued that the
23 individual defendant, who was alleged to have harassed the plaintiff under
24 FEHA, was a proper defendant.
- 25 (h) Mr. Feghali has been the lead counsel, or co-lead counsel, in individual
26 cases that settled for \$850,000.00, \$375,000.00, and \$250,000.00. In
27 addition to the foregoing, Mr. Feghali has resolved or assisted in the
28 resolution of approximately 100 cases which has resulted in millions of

dollars of unpaid wages being returned to low-wage employees.

44. Since June 2018, Mr. Feghali's practice has shifted to almost exclusively representing employees in wage and hour class and representative actions. His fee has been approved by Courts throughout the state. He has participated as lead, or co-lead counsel, in the litigation and resolution of over 100 wage and hour class actions, including obtaining preliminary and final approval of settlements. A selection of settled cases wherein Mr. Feghali served as lead or co-lead class counsel includes the following: *Barahona v. Methodist Hosp. of Cal.* (No. 20STCV09876) (\$5,000,000); *Stanley Black & Decker Wage and Hour Cases* (No. JCCP5218) (\$3,500,000); *Vazquez v. St. Mar 2.0 Inc.* (No. 37-2021-00042702-CU-OE-CTL) (\$2,250,000); *Duncan v. Infineon Technologies Americas Corp.* (No. 21STCV16872) (\$2,500,000); *Aquino v. Coast King Packing, LLC* (No. 21CV002448) (\$2,300,000); *Martinez, et al. v. Curative LLC* (No. 21STCV20778) (\$1,500,000); *Calderon v. Installed Building Products* (No. 37-2021-00035844-CU-OE-CTL) (\$1,500,000); *Majdoub v. Argent Hotel Mgmt.* (No. CGC-20-582921) (\$1,800,000); *Fuentes v. Covid Clinic, Inc.* (No. CIVSB2106806) (\$1,526,317.57); *Rahman, et al. v. Gate Gourmet, Inc.* (No. 3:20-cv-03047) (\$3,850,000); *Pagoulatos v. Coast Hills Credit Union* (No. 20CV02801) (\$1,100,000); *Hammers v. Redwood Oil Co., Inc.* (No. SCV-269625) (\$1,180,000); *Cuadras v. R.C. Wendt Painting, Inc.* (No. BC705964) (\$1,400,000); *Zaragoza v. The Roman Catholic Bishop of Fresno* (No. 22CV-00282) (\$1,500,000); *Garcia v. San Jose Water Co.* (22CV396328) (\$1,200,000); *Garcia v. Tri-Valley Plastering, Inc.* (No. 22CECG00591) (\$1,250,000); *Garcia v. Tapia Enter., Inc.* (\$2,137,651 for 507 class members); *Cha v. Center Point, Inc.* (No. CIV2102081) (\$1,000,000); *Sison v. Cha Hollywood Med. Ctr., L.P.* (No. BC644129) (2,137 class members); *Lagos v. ThyssenKrupp Elevator Corp.* (No. BC682972) (\$750,000 for 79 class members); and *Montoya v. Golden 1 Credit Union* (No. 34-2018-00228252) (\$1,250,000).

Jacquelyne VanEmmerik's Experience And Qualifications

45. Jacquelyne VanEmmerik received a Bachelor of Arts in Law, History, and Culture from the University of Southern California in 2017, and a Juris Doctorate from the University of California, Davis School of Law in 2021. In law school, Ms. VanEmmerik served as a Judicial

1 Extern for the Honorable Todd W. Eddins of the Supreme Court of Hawai'i and Senior Articles
2 Editor of the Environmental Journal of Law and Policy.

3 46. Ms. VanEmmerik became an Active Member of the State Bar of California in
4 November 2021 and has been an Active Member in good standing continuously since. Ms.
5 VanEmmerik is also a member in good standing with the United States District Court for the
6 Central and Northern Districts and was selected by Super Lawyers as a "Southern California
7 Rising Star" in 2024.

8 47. Ms. VanEmmerik is an associate attorney at Moon Law Group, P.C. and represents
9 employees in all aspects of employment litigation, including wage-and-hour class and
10 representative actions involving claims related to overtime and minimum wages, meal and rest
11 break violations, improper wage statements, the California Private Attorneys General Act, and
12 unfair business practices.

13 48. During her tenure with Moon Law Group, P.C., Ms. VanEmmerik has played a
14 critical role in obtaining outstanding results for employees who have been wronged by their
15 employers. Ms. VanEmmerik's litigation experience includes, but is not limited to:

- 16 (a) In March 2023, Ms. VanEmmerik briefed a Motion for Class Certification
17 in the matter of *Roland Tolentino v. Gillig, LLC*, Case No. RG20073930,
18 Alameda County Superior Court, thereafter, removed to Federal Court;
- 19 (b) In May 2023, Ms. VanEmmerik briefed, and prevailed on, an Opposition to
20 Motion for Judgment on the Pleadings in the matter of *Rodrigo Gonzalez*
21 *Guzman v. Wayne Provisions Co., Inc.*, Case No. 21STCV41124, Los
22 Angeles Superior Court, in which Defendant attempted to invalidate
23 Plaintiff's standing to bring a representative claim under the California
24 Private Attorneys General Act of 2004;
- 25 (c) In January 2022, Ms. VanEmmerik briefed, and prevailed on, an
26 Opposition to Demurrer in the matter of *Fernando Alquicira, et al. v. Sit N'*
27 *Sleep, Inc., et al.*, Case No. 21STCV14594, Los Angeles Superior Court, in
28 which Defendant wrongfully sought an order of abatement or stay of

proceedings pending final judgment of an unrelated matter;

- (d) In January 2022, Ms. VanEmmerik briefed, and prevailed on, an Opposition to Motion for Bifurcate and Sequence Discovery in the matter of *David Flores Valencia v. Wawona Packing Co., LLC*, Case No. 21CECG01163, Fresno County Superior Court, in which Defendant sought to subject Plaintiff to a preliminary trial to establish his status as an aggrieved employee before proceeding as a representative in his PAGA action; and
- (e) From September 2021 to the present, Ms. VanEmmerik has participated in the litigation and/or resolution of approximately seventy wage-and-hour class and/or representative actions, including through successfully moving the Court for preliminary and final approval of settlements on the first attempt.

49. As demonstrated by the foregoing, my office is qualified to handle this litigation because we are experienced in litigating Labor Code and Wage Order violations in individual, class, and representative actions. The attorneys at my office have been appointed as lead or co-lead counsel in numerous PAGA actions in state and federal courts by way of motion for settlement approval. Including myself, Moon Law Group, P.C. is comprised of twenty-three attorneys, all of whom are actively and continuously practicing employment litigation, representing almost entirely employee-plaintiffs, in both individual and class and/or PAGA actions, in this Superior Court and other Superior Courts throughout the State, in the Courts of Appeal, and in various federal courts.

50. Moon Law Group, P.C. has been engaged in the practice of employment and labor law for over a decade and presently focuses exclusively on plaintiffs' employment law. The firm and its lawyers have tried both bench and jury trials (representing both plaintiffs and Defendants) relating to employment matters. As noted above, Moon Law Group, P.C. has been appointed lead or co-lead class counsel in federal and state courts in California. Also, the firm and its lawyers

1 have successfully settled hundreds of cases during that time, including wage and hour class and/or
2 PAGA actions.

3 51. My experience and the experience of other PAGA Counsel is helpful in assessing
4 the reasonableness of settlements, such as the one at issue here, and from this experience, PAGA
5 Counsel concluded that this litigation could not have been settled on better terms than provided
6 under the Settlement.

7 52. I do not believe I or any other attorneys of Moon Law Group, P.C. have a conflict
8 of interest with the named Plaintiff, other Aggrieved Employees, or the Administrator. I am not
9 related to Plaintiff. I respectfully submit that Moon Law Group, P.C. is competent and well suited
10 to act as PAGA Counsel in the Action and that we have represented, and will continue to
11 vigorously represent, the interests of the Aggrieved Employees.

12 53. PAGA Counsel bases the requested award of fees on the common fund method.
13 However, the lodestar method can be used to cross-check the reasonableness of the award
14 calculated under the common fund method.

15 54. The total current lodestar for Moon Law Group, P.C. is not less than the following:

Attorney	Rate	Hours	Lodestar
Kane Moon	\$900.00	33.50	\$30,150.00
Allen Feghali	\$850.00	52.00	\$44,200.00
Jacquelyne VanEmmerik	\$575.00	49.60	\$28,520.00
Total:		135.10	\$102,870.00

21 55. There are additional hours devoted to this litigation by the attorneys and legal
22 assistants in my office that are not reflected in the foregoing lodestar, including additional attorney
23 time that will be spent to obtain and monitor approval of the Settlement and requested awards,
24 oversee the settlement administration process and distribution of funds, respond to inquiries, and
25 communicate with Plaintiff regarding the case. I estimate that my office will commit no less than
26 ten hours to these additional tasks, which are hours not included in the foregoing lodestar total. My
27 office also bears the risk of taking whatever actions are necessary if Defendant fails to pay.
28

1 56. We can provide complete, detailed billing records in the event the Court requests
2 them but would request the opportunity to redact attorney-client privileged information and any
3 other privileged information.

4 57. The lodestar method requires the Court to determine a “touchstone” or lodestar
5 figure based on a compilation of time spent and reasonable hourly compensation for each attorney.
6 *Graham v. DaimlerChrysler Corp.* (2004) 34 Cal.4th 553, 579. Generally, hours are reasonable if
7 they were “reasonably expended in pursuit of the ultimate result achieved in the same manner that
8 an attorney traditionally is compensated by a fee-paying client.” *Hensley v. Eckerhart* (1983) 461
9 U.S. 424, 431. The Court “should defer to the winning lawyer’s professional judgment as to how
10 much time he was required to spend on the case.” *Moreno v. City of Sacramento* (9th Cir. 2008)
11 534 F.3d 1106, 1112.

12 (a) Number Of Hours Expended By My Office Is Reasonable: As set forth in
13 the instant Declaration, my office expended a significant amount of time
14 litigating the case to achieve an excellent result on behalf of the Aggrieved
15 Employees. To date, my office has spent no less than approximately **135.10**
16 **hours** litigating this case. In the event the Court grants settlement approval,
17 my office will spend additional time related to this litigation, including to
18 monitor the administration of the settlement after approval, committing no
19 less, although likely more, than ten hours to those additional tasks. The
20 number of hours that my office has devoted and will devote to this case is
21 reasonable. *See, e.g., Ketchum III v. Moses* (2001) 24 Cal.4th 1122, 1133
22 [fee award should be fully compensatory and, “absent circumstances
23 rendering the award unjust, an attorney fee award should ordinarily include
24 compensation for *all* the hours *reasonably spent*”] [emphasis in original];
25 *Serrano v. Unruh* (1982) 32 Cal. 3d 621, 624 [counsel are entitled to
26 compensation for all hours reasonably expended]; *Hensley, supra*, 461 U.S.
27 at pp. 435–36; *Caudle v. Bristow Optical Co.* (9th Cir. 2000) 224 F.3d
28 1014, 1028; *Cabrales v. Cty. of L.A.* (9th Cir. 1991) 935 F.2d 1050, 1052–

1 53. As discussed above, my office was required to expend considerable time
2 and resources to investigate, litigate, and successfully settle these claims for
3 the benefit of the Aggrieved Employees.

- 4 (b) The Attorneys' Hourly Rates Are Reasonable: “[T]he established standard
5 when determining a reasonable hourly rate is the ‘rate prevailing in the
6 community for similar work performed by attorneys of comparable skill,
7 experience, and reputation.’” *Camacho v. Bridgeport Fin., Inc.* (9th Cir.
8 2008) 523 F.3d 973, 979 [quoting *Barjon v. Dalton* (9th Cir. 1997) 132 F.3d
9 496, 502]. This rule applies even when, as here, the attorneys representing a
10 named plaintiff perform the work on a contingent fee basis. *See, e.g.,*
11 *Robertson v. Fleetwood Travel Trailers of Cal., Inc.* (2006) 144
12 Cal.App.4th 785, 818; *Blanchard v. Bergeron* (1989) 489 U.S. 87, 96.
13 These hourly rates are reasonable in light of the significant experience,
14 expertise, and skill my firm brought to this action. Rates are reasonable if
15 they are “within the range of reasonable rates charged by and judicially
16 awarded comparable attorneys for comparable work.” *Children’s Hosp. &*
17 *Med. Ctr. v. Bonta* (2002) 97 Cal.App.4th 740, 783. The trial court may
18 “find hourly rates reasonable based on evidence of other courts approving
19 similar rates.” *Parkinson v. Hyundai Motor Am.* (C.D. Cal. 2010) 796
20 F.Supp.2d 1160, 1172. The attorneys at Moon Law Group, P.C. are
21 experienced litigators who specialize in employment law, with a substantial
22 wage and hour class action practice. These rates are not opposed or
23 challenged, and have been approved by other courts, as explained *supra*.
24 (c) Application Of A Positive Multiplier Is Warranted: Once this lodestar figure
25 has been determined, the Court may take into account other “enhancement”
26 factors to adjust the lodestar award. As the California Supreme Court has
27 held, contingency fees should be higher than fees for the same legal services
28 paid concurrently with the provision of the services. *Ketchum III, supra*, 24

Cal.4th at pp. 1132–33; *see also Fischel v. Equitable Life Assurance Soc’y of the U.S.* (9th Cir. 2002) 307 F.3d 997, 1008. “A lawyer who both bears the risk of not being paid and provides legal services is not receiving the fair market value of his work if he is paid only for the second of these functions. If he is paid no more, competent counsel will be reluctant to accept fee award cases.” *Ketchum*, 24 Cal.4th at p. 1133. Application of that rule is particularly appropriate where the case is brought to redress important rights of vulnerable persons. *Id.* A risk enhancement is “earned compensation; unlike a windfall, it is neither unexpected nor fortuitous. Rather, it is intended to approximate market-level compensation for such services, which typically includes a premium for the risk of nonpayment or delay in payment of attorney fees.” *Id.* at p. 1138. **Multipliers normally range from two to four or higher.** *Wershba v. Apple Comp., Inc.* (2001) 91 Cal.App.4th 224, 255 [emphasis added]; *see also Vizcaino v. Microsoft Corp.* (9th Cir. 2002) 290 F.3d 1043, 1051, n.6 [“most” common fund cases apply a multiplier of 1.0–4.0]; *Been v. O.K. Indus., Inc.* (E.D. Okla. 2011, No. CIV–02–285–RAW) 2011 WL 4478766, *11 [citing a study “reporting [an] average multiplier of 3.89 in survey of 1,120 class action cases” and finding that a multiplier of 1.22 would be “per se reasonable”]. Factors considered in determining whether a lodestar multiplier is appropriate generally include: (1) the risks presented by the contingent nature of the case; (2) the novelty and difficulty of the questions involved and the skill requisite to perform the legal service properly; (3) the nature of the opposition; (4) the preclusion of other employment by the attorney due to acceptance of the case; and (5) the result obtained and the importance of the lawsuit to the public. *Serrano v. Ivy Baker Priest* (1977) 20 Cal. 3d 25, 48–49 [hereinafter “*Serrano III*”]. Here, all these factors favor approval of a multiplier along the lines of those approved in the cases above. To date, my

1 office has incurred no less than **\$102,870.00** in attorneys' lodestar fees and
2 has advanced **\$24,078.24** in actual litigation costs. After reimbursement of
3 our out-of-pocket expenses, the fee request represents a multiplier of **2.43**

4 (d) *Risks presented by the contingent nature of the case:* The major
5 consideration in determining the necessity of a multiplier is the contingent
6 nature of the award. *Ketchum III, supra*, 24 Cal.4th at pp. 1132–33; *see also*
7 *Fischel, supra*, 307 F.3d at p. 1008. In determining what multiplier to
8 award, the probability of success must be assessed *ex ante*, that is, as
9 viewed from the outset of the case. *See, e.g., Harman v. Lyphomed, Inc.* (7th
10 Cir. 1991) 945 F.2d 969, 976. Further, the possibility of no recovery is only
11 one of the uncertainties involved in taking on such a case. Other
12 uncertainties are the amount that will be recovered, uncertainty as to the
13 cost, both in effort and expenses, and uncertainty about how much time will
14 pass before the recovery is obtained. *See, e.g., Ketchum*, 24 Cal.4th at pp.
15 1132–1133, 1138. My office's outlay of time and money in this case has
16 been significant. In all, my office has spent approximately **135.10** hours to
17 date investigating, analyzing, researching, litigating, and negotiating a
18 favorable resolution of this case, in addition to a minimum of ten hours that
19 will be spent following final settlement approval, including to monitor
20 settlement administration and distribution of funds, and has incurred
21 **\$24,078.24** in necessary litigation expenses. Unsettled legal issues also
22 presented risks to the claims in this case. My office bore the substantial risk
23 of an uncertain outcome in agreeing to prosecute this representative action
24 case on a contingency fee basis, as well as the difficulties and delay inherent
25 in such litigation. There was the prospect of the enormous cost inherent in
26 PAGA action litigation, as well as extensive negotiations with a corporate
27 Defendant who vigorously opposed Plaintiff's claims and resisted
28 settlement from the outset, as demonstrated by Defendant's successful

1 Motion to Compel Arbitration of Plaintiff's Individual PAGA Claims. My
2 office risked significant time and expense to ensure a successful settlement.
3 As detailed *supra*, the risks presented in this case were significant, and
4 Defendant's defenses posed serious risks to the success of this matter on the
5 merits. These risks illustrate the recognition by the California Supreme
6 Court in *Ketchum III* that, if multipliers are not awarded to PAGA Counsel
7 in the cases that are successfully settled, counsel's fees are essentially being
8 cut because the lodestar in and of itself would not account for contingent
9 risk.

10 (e) *Difficulty of the questions involved and the skill required:* My office is
11 comprised of skilled attorneys who have had success in wage and hour class
12 and PAGA representative actions. This case required experienced and
13 competent lawyers, as well as expertise in the issues presented herein. To
14 obtain such an attorney on the free market, a client must pay the market
15 rate. While most class and/or representative actions are complex and
16 involve some risk, my office had to overcome several major obstacles in
17 prosecuting this case. Defendant's contentions underscore the risk of
18 prevailing at trial, and any of these obstacles could have prevented recovery
19 completely.

20 (f) *Vigorous opposition by Defendant:* Counsel who skillfully overcome
21 difficult issues or uncompromising opposition in the litigation are entitled to
22 a fee enhancement. *Serrano III*, *supra*, 20 Cal.3d at 49. Here, before
23 eventually agreeing to settle, Defendant asserted a vigorous defense. The
24 settlement effort was protracted, with extended discussions and instances in
25 which it appeared the Parties would not reach a settlement. Further,
26 proceeding to trial would have added years to the resolution of this case
27 because of the difficult legal and factual issues raised and the likelihood of
28

1 appeals. Indeed, even if Plaintiff prevailed at trial, Defendant would likely
2 have mounted an appeal.

3 (g) *The result obtained would justify an enhancement:* The results obtained in
4 litigation can properly be used to enhance a lodestar calculation where an
5 exceptional effort produced excellent results. (*Graham, supra*, 34 Cal.4th at
6 p. 582.) Here, the final maximum settlement figure of \$750,000.00
7 represents approximately 93.89% of the realistic potential liability of the
8 claims based on a penalty-by-penalty assessment of the claims. Considered
9 against the size of the PAGA group, the risks posed by continued litigation,
10 and the importance of the employment rights and a speedy recovery, the
11 relief provided under the Settlement represents a very strong result for the
12 Aggrieved Employees.

13 (h) *The use of a multiplier is permitted in a PAGA action:* PAGA provides that
14 “[a]ny employee who prevails in any action shall be entitled to an award of
15 reasonable attorney’s fees and costs.” Lab. Code § 2699(g)(1). Although,
16 PAGA does not provide a specific standard for evaluating attorneys’ fees in
17 connection with a settlement of PAGA claims, California Courts have
18 employed a lodestar analysis and use of multipliers for this purpose. “Where
19 a settlement produces a common fund for the benefit of the entire class,
20 courts have discretion to employ either the lodestar method or the
21 percentage-of-recovery method...To guard against an unreasonable result,
22 the Ninth Circuit encourages district courts to “cross-check[] their
23 calculations against a second method...Accordingly, the Court calculates
24 attorneys’ fees in the instant case using the percentage-of-recovery method
25 and then cross-checks its calculations against the lodestar method.”
26 (*Hermosillo v. Davey Tree Surgery Co.* (N.D. Cal. July 7, 2021, No. 18-CV-
27 00393-LHK) 2021 WL 2826697, at *1 [quoting *In re Bluetooth Headset*
28 *Prods. Liab. Litig.* (9th Cir. 2011) 654 F.3d 935, 942, 944–45].) The Court

1 in *Hermosillo* granted, in part, plaintiffs’ counsel’s unopposed motion for
2 attorneys’ fees and costs in a PAGA-only settlement, wherein 33.3% of the
3 gross settlement fund was requested for fees. (*Hermosillo*, at *1–3.) The
4 Court stated, “[w]here the percentage-of-recovery method is used, it is well-
5 established that 25 percent of a common fund is a presumptively reasonable
6 amount of attorneys’ fees.” (*Id.* at *1.) The Court further stated, “the Ninth
7 Circuit has emphasized that ‘[t]he 25% benchmark rate, although a starting
8 point for analysis, may be inappropriate in some cases. . . . Selection of the
9 benchmark or any other rate must be supported by findings that take into
10 account all the circumstances of the case.’” (*Id.* [quoting *Vizcaino v.*
11 *Microsoft Corp.* (2022) 290 F.3d 1043, 1048].) The Court found the
12 settlement at issue “d[id] not justify an upward deviation from th[e]
13 standard [25%] benchmark rate, given PAGA Counsels’ effective
14 abandonment of the Aggrieved Employees’ wage and hour [class action]
15 claims after more than 3.5 years of litigation,” and therefore, only approved
16 25% for fees and a lodestar multiplier of 1.22. (*Id.* at *1, 3.) In contrast to
17 *Hermosillo*, however, the class allegations in the present Action were
18 dismissed shortly following the complaint filing, and therefore, the large
19 majority of PAGA Counsel’s work in this matter was focused on the settled
20 PAGA claims at issue. Accordingly, the Court should find that the
21 circumstances of the present case justify an award of one third (1/3) of the
22 Gross Settlement Amount for attorneys’ fees.

23 58. I am informed and believe that the fee and costs provisions under the Settlement are
24 reasonable. The fee percentage requested is customarily charged by my office for most
25 employment cases. My office invested significant time and resources into the case, with payment
26 deferred to the end of the case, and then, of course, contingent on the outcome.

27 59. The risk to my office has been significant, particularly if we would have not been
28 successful in pursuing this representative action. In that case, we would have been left with no

1 compensation for all the time taken in litigating this case. Indeed, I have taken on a number of class
2 and/or PAGA action cases that have resulted in thousands of attorney hours being expended and
3 ultimately having the Defendant company going bankrupt. The contingent risk in these types of
4 cases is very real and occurs regularly. Furthermore, we were precluded from focusing on, or
5 taking on, other cases which could have resulted in a larger, and less risky, monetary gain.

6 60. Because most individuals cannot afford to pay for representation in litigation on an
7 hourly basis, Moon Law Group, P.C. represents virtually all its employment law clients on a
8 contingency fee basis, including the named Plaintiff in this litigation. Pursuant to this arrangement,
9 we are not compensated for our time unless we prevail at trial or successfully settle our clients'
10 cases. Because Moon Law Group, P.C. is taking the risk that we will not be reimbursed for our
11 time unless our client settles or wins his or her case, we cannot afford to represent an individual
12 employee on a contingency basis if, at the end of our representation, all we are to receive is our
13 regular hourly rate for services. It is essential that we recover more than our regular hourly rate
14 when we win if we are to remain in practice so as to be able to continue representing other
15 individuals in civil rights employment disputes.

16 61. My office invested significant time and resources into the case, with payment
17 deferred to the end of the case, and then, of course, contingent on the outcome. My office's efforts
18 have included, and will include following an approval order, without limitation, the following:

- 19 (a) Multiple interviews with the Plaintiff and review of documents provided by
20 him;
- 21 (b) Legal research and investigation regarding Defendant's practices at
22 numerous points in the litigation;
- 23 (c) Preparation and submission of Plaintiff's PAGA notice letter;
- 24 (d) Preparation of multiple drafts of the original class action complaint and
25 subsequent first amended complaint, as well as finalization and filing of
26 said complaints;
- 27 (e) Preparation and submission of Plaintiff's Request for Dismissal of Class
28 Allegations;

- 1 (f) Extensive “meet and confer” discussions with Defendant’s counsel to
2 discuss the status of PAGA standing in view of *Viking River Cruises*, the
3 status of the related actions, and relevant documents and information needed
4 through informal discovery;
- 5 (g) Analysis of the informal discovery production and preparation of a damages
6 model with the aid of a data expert;
- 7 (h) Research and preparation of Plaintiff’s mediation brief;
- 8 (i) Attendance and active participation at the mediation;
- 9 (j) Drafting, negotiating, and reviewing multiple drafts of the Settlement and
10 attachment thereto;
- 11 (k) Preparation, finalization, and filing of the motion for approval and
12 accompanying filings;
- 13 (l) Anticipated preparation for and attendance at the hearing on motion for
14 approval;
- 15 (m) Anticipated monitoring approval of the Settlement and requested awards;
- 16 (n) Anticipated overseeing the settlement administration process and
17 distribution of funds; and
- 18 (o) Anticipated communications with Plaintiff regarding the case.

19 THE PAGA COUNSEL EXPENSES PAYMENT MERITS APPROVAL

20 62. PAGA Counsel incurred \$24,078.24 to prosecute the Action. *See* Ex. 5. This sum
21 reflects the aggregate of all expenses that PAGA Counsel necessarily incurred to initiate, litigate,
22 mediate, and ultimately settle this matter, including, but not limited to, all filing, service, and
23 mediation fees. Because the sum includes only necessary expenses, it is reasonable. Further,
24 because the Aggrieved Employees have prevailed in the Action, their attorneys are entitled to
25 the awarded costs. Moreover, these expenses are below the maximum amount allowed in the
26 Settlement, and the remainder will revert to the Net Settlement Amount. *Id.*; *Settlement*, ¶
27 3.1.1. Therefore, costs should be reimbursed in full, up to the maximum amount allowed in
28 the Settlement.

1 THE PAGA REPRESENTATIVE ENHANCEMENT PAYMENT MERITS APPROVAL

2 63. Throughout this litigation, Plaintiff, who was a former employee of Defendant, has
3 cooperated immensely with my office and has taken many actions to protect the interests of the
4 State of California and the Aggrieved Employees. Plaintiff provided valuable information
5 regarding his hours worked and what duties he performed during those hours. Plaintiff also
6 provided information regarding meal and rest periods taken and missed by Plaintiff and other
7 Aggrieved Employees. Plaintiff participated in decisions concerning this action and assisted in
8 preparation for the mediation session. Before we filed this case, Plaintiff worked with my office to
9 determine the viability of his claims. Plaintiff also provided information and documents relating to
10 his employment by Defendant.

11 64. The information and documentation provided by Plaintiff were instrumental in
12 establishing the wage and hour violations alleged in this Action, and the recovery provided for in
13 the Settlement would have been impossible to obtain without his participation.

14 65. Plaintiff faces many risks as the PAGA Representative in this matter. Plaintiff faces
15 actual risks with his future employment, as putting himself on public record in an employment
16 lawsuit could also very well affect his likelihood for future employment. For example, a search of
17 Plaintiff's name could reveal this action, and as a result, many employers may likely forego hiring
18 Plaintiff in learning he sued a former employer.

19 66. If each Aggrieved Employee would have tried to pursue legal remedies on their
20 own, that would have resulted in each having to expend a significant amount of their own
21 monetary resources and time, not to mention limited judicial resources, which were obviated by
22 Plaintiff putting himself on the line on behalf of the Aggrieved Employees.

23 67. In the final analysis, this representative action would not have been possible
24 without the aid of Plaintiff, who put his own time and effort into this litigation and placed himself
25 at risk for the sake of the State of California and the Aggrieved Employees. The requested
26 enhancement payment to Plaintiff for his service as the PAGA Representative is a relatively small
27 amount of money considering the time and effort put into the litigation. The requested
28 enhancement payments is therefore reasonable to compensate Plaintiff for his active participation

1 in this lawsuit, in addition to his General Release of claims, both known and unknown, and waiver
2 of California Civil Code section 1542 rights.

3 I declare under penalty of perjury under the laws of the State of California and the United
4 States that the foregoing is true and correct. Executed on October 28, 2024, at Los Angeles,
5 California.

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Kane Moon

EXHIBIT 1

MOON & YANG, APC

ATTORNEYS AT LAW
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LOS ANGELES, CALIFORNIA 90017
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Kane Moon, Esq.
Kane.Moon@moonyanglaw.com

September 17, 2022

VIA ONLINE SUBMISSION

Labor & Workforce Development Agency
Attn. PAGA Administrator
1515 Clay Street, Ste. 801
Oakland, CA 94612

VIA CERTIFIED MAIL

Crunch, LLC
150 Clearbrook Road, Suite 125
Elmsford, NY 10523

Notice of Labor Code Violations and PAGA Penalties

Re: ***Cain Garcia v. Crunch, LLC***

To Whom It May Concern:

Please be advised that my office has been retained by Cain Garcia (“Plaintiff”) to pursue a Labor Code Private Attorney General Act (PAGA) representative action (Cal. Lab. Code §§ 2699, *et seq.*) against his former employer, Crunch, LLC (“Defendant”). The purpose of this letter is to comply with PAGA and set forth the facts and theories of California Labor Code violations which we allege Defendant engaged in with respect to Plaintiff and all of Defendant’s aggrieved employees.

Plaintiff wishes to pursue a PAGA representative action on behalf of Plaintiff as an aggrieved employee, on behalf of the State of California, and on behalf of all other current and former aggrieved employees who worked for Defendant in California as an hourly paid, non-exempt employee at any time within the applicable statutory period (hereafter, the “Aggrieved Employees”).

Plaintiff and the Aggrieved Employees of Defendant suffered the Labor Code violations described below.

Factual Background Regarding Plaintiff's Employment with Defendant

Defendant owns and operates an industry, business, and establishment within the State of California, including Los Angeles County. As such, Defendant is subject to the California Labor Code and the Wage Orders issued by the Industrial Welfare Commission (“IWC”).

Plaintiff worked for Defendant as a front desk clerk from approximately October 2021 to April 2022, primarily in Los Angeles County. Defendant classified Plaintiff as non-exempt from overtime. During the time period that Plaintiff was employed by Defendant, Plaintiff typically worked 5 to 6 days per week, and in excess of 8 hours each workday.

Throughout Plaintiff's employment, Defendant committed numerous labor code violations under state law. As discussed below, Plaintiff's experience working for Defendant was typical and illustrative.

Failure to Pay for All Hours Worked, Including Overtime

Under California law, an employer must pay for all hours worked by an employee. "Hours worked" is the time during which an employee is subject to the control of an employer, and includes all the time the employee is suffered or permitted to work, whether or not required to do so.

In addition, Labor Code § 510 provides that employees in California shall not be employed more than eight (8) hours in any workday or forty (40) hours in a workweek unless they receive additional compensation beyond their regular wages in amounts specified by law.

Labor Code §§ 1194 and 1198 also provide that employees in California shall not be employed more than eight hours in any workday unless they receive additional compensation beyond their regular wages in amounts specified by law. Additionally, Labor Code § 1198 states that the employment of an employee for longer hours than those fixed by the Industrial Welfare Commission is unlawful.

Throughout the statutory period, Defendants maintained a policy and practice of not paying Plaintiff and the Aggrieved Employees for all hours worked, including all overtime wages. Plaintiff and the Aggrieved Employees were required to work "off the clock" during the statutory time period. For example, Plaintiff and the Aggrieved Employees were required to sometimes use their cellular telephones to communicate or to use a telephone application for work purposes, off the clock and uncompensated.

In doing so, Defendant also failed to maintain accurate records of the hours Plaintiff and the Aggrieved Employees worked.

As a result, Defendant is liable to Plaintiff and the Aggrieved Employees for the civil penalties provided for in Labor Code §§ 210, 558, 1197.1, and 2699(f)(2) for failing to pay for all hours worked, including overtime.

Failure to Provide Meal Periods

Under California law, employers have an affirmative obligation to relieve employees of all duty in order to take their first 30-minute, duty-free meal periods no later than the start of sixth hour of work in a workday, and to allow employees to take their second 30-minute, duty-free meal period no later than the start of the eleventh hour of work in the workday. Further, employees are entitled to be paid one hour of additional wages for each workday they were not provided with all required meal period(s).

Despite these legal requirements, Defendant wrongfully failed to provide Plaintiff and the Aggrieved Employees with legally compliant meal periods. Defendant regularly required Plaintiff and the Aggrieved Employees to work in excess of five consecutive hours a day without providing a 30-minute, continuous and uninterrupted, duty-free meal period for every five hours of work, or without compensating Plaintiff and the Aggrieved Employees for meal periods that were not provided by the end of the fifth hour of work or tenth hour of work. Defendant did not adequately inform Plaintiff and the Aggrieved Employees of their right to take a meal period by the end of the fifth hour of work, or, for shifts greater than 10 hours, by the end of the tenth hour of work. Moreover, Defendant did not have adequate written policies or practices providing meal periods for Plaintiff and the Aggrieved Employees, nor did Defendant have adequate policies or practices regarding the timing of meal periods. Defendant also did not have adequate policies or practices to verify whether Plaintiff and the Aggrieved Employees were taking their required meal periods. Accordingly, Defendant's policy and practice was to not provide meal periods to Plaintiff and the Aggrieved Employees in compliance with California law.

Plaintiff and the Aggrieved Employees are thus entitled to be paid one hour of additional wages for each workday he or she was not provided with all required meal period(s). Defendant, however, regularly failed to pay Plaintiff and the Aggrieved Employees the additional wages to which they were entitled for meal periods and that were not provided.

As a result, Defendant is liable to Plaintiff and the Aggrieved Employees for the civil penalties provided for in Labor Code §§ 210, 558, and 2699(f)(2) for failing to provide meal periods and pay meal period premium wages.

Failure to Authorize and Permit Rest Periods

Employers are required by California law to authorize and permit breaks of 10 uninterrupted minutes for each four hours of work or major fraction of four hours (i.e. more than two hours). Thus, for example, if an employee's work time is 6 hours and ten minutes, the employee is entitled to two rest breaks. Each failure to authorize rest breaks as so required is itself a violation of California's rest break laws.

Defendant, however, wrongfully failed to authorize and permit Plaintiff and the Aggrieved Employees to take timely and duty-free rest periods. Defendant regularly required Plaintiff and the Aggrieved Employees to work in excess of four consecutive hours a day without Defendant authorizing and permitting them to take a 10 minute, continuous and uninterrupted, rest period for every four hours of work (or major fraction of four hours), or without compensating Plaintiff and the Aggrieved Employees for rest periods that were not authorized or permitted. Defendant did not adequately inform Plaintiff and the Aggrieved Employees of their right to take a rest period. Moreover, Defendant did not have adequate policies or practices permitting or authorizing rest periods for Plaintiff and the Aggrieved Employees, nor did Defendant have adequate policies or practices regarding the timing of rest periods. Defendant also did not have adequate policies or practices to verify whether Plaintiff and the Aggrieved Employees were taking their required rest periods. Further, Defendant did not maintain accurate records of employee work periods, and therefore Defendant cannot demonstrate that Plaintiff and the Aggrieved Employees took rest periods during the middle of each work period. Accordingly, Defendant's policy and practice was for Plaintiff and the Aggrieved Employees to work through rest periods and to not authorize or permit them to take any rest periods.

Plaintiff and the Aggrieved Employees are thus entitled to be paid one hour of additional wages for each workday he or she was not authorized and permitted to take all required rest period(s). Defendant, however, regularly failed to pay Plaintiff and the Aggrieved Employees the additional wages to which they were entitled for rest periods and that they were not authorized and permitted to take.

As a result, Defendant are liable to Plaintiff and the Aggrieved Employees for the civil penalties provided for in Labor Code §§ 210, 558, and 2699(f)(2) for failing to authorize and permit rest periods and pay rest period premium wages.

Failure to Maintain Accurate Records of Hours Worked and Meal Periods

Plaintiff seeks penalties under Labor Code § 1174(d). Pursuant to Labor Code § 1174.5, any person, including any entity, employing labor who willfully fails to maintain accurate and complete records required by Labor Code § 1174 is subject to a penalty under § 1174.5. Pursuant to the applicable IWC Order § 7(A)(3), every employer shall keep time records showing when the employee begins and ends each work period. Meal periods and total hours worked daily shall also be recorded.

Defendant, however, failed to maintain accurate records of hours worked and all meal periods taken or missed by Plaintiff and the Aggrieved Employees.

Defendant's failure to provide and maintain records required by the Labor Code IWC Wage Orders deprived Plaintiff and the Aggrieved Employees the ability to know, understand and

question the accuracy and frequency of meal periods, and the accuracy of their hours worked stated in Defendant's records. Therefore, Plaintiff and the Aggrieved Employees had no way to dispute the resulting failure to pay wages, all of which resulted in an unjustified economic enrichment to Defendant. As a direct result, Plaintiff and the Aggrieved Employees have suffered and continue to suffer, substantial losses related to the use and enjoyment of such wages, lost interest on such wages and expenses and attorney's fees in seeking to compel Defendant to fully perform its obligation under state law, all to their respective damage in amounts according to proof at trial. As a result of Defendant's knowing failure to comply with the Labor Code and applicable IWC Wage Orders, Plaintiff and the Aggrieved Employees have also suffered an injury in that they were prevented from knowing, understanding, and disputing the wage payments paid to them.

As a result, Defendant is liable to Plaintiff and the Aggrieved Employees for the civil penalties provided for in Labor Code § 1174.5 for failing to maintain accurate records of hours worked and meal periods.

Failure to Reimburse and Indemnify Expenses

California Labor Code § 2802 requires employers to reimburse employees for their necessary expenditures and losses incurred in direct consequence of the discharge of their duties or of their obedience to directions of the employer.

Throughout the statutory period, Defendant wrongfully required Plaintiff and the Aggrieved Employees to pay expenses that they incurred in direct discharge of their duties for Defendant without reimbursement, which included the use of personal cellular telephones for work purposes, including to communicate and to use a telephone application for work purposes. Plaintiff and the Aggrieved Employees incurred these substantial expenses as a direct result of performing their job duties for Defendant, and Defendant has failed to indemnify Plaintiff and the Aggrieved Employees for these employment-related expenses.

Failure to Pay All Accrued Vacation Wages at Termination

Labor Code § 227.3 requires employers to pay employees for all unused vested vacation time at their final rate of pay upon termination of their employment.

During the statutory period, Defendant maintained a policy and practice of failing to pay Plaintiff and the Aggrieved Employees the correct amount of vacation pay owed at the termination of employment. For instance, when Plaintiff's employment with Defendant terminated, he was owed vacation wages at his true final wage rate on his final pay check from Defendant even though he had accrued unused vacation time. On information and belief, Defendant's failure to

pay Plaintiff the correct amount of vacation pay was not a single, isolated incident, but was instead part of Defendant's policy and practice that applied to the Aggrieved Employees.

As a result, Defendant is liable to Plaintiff and the Aggrieved Employees for the civil penalties provided for in Labor Code § 2699(f)(2) for failing to pay all accrued vacation wages at termination.

Failure to Timely Pay All Wages at Termination

Labor Code §§ 201 and 202 provide that if an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately, and that if an employee voluntarily leaves his or her employment, his or her wages shall become due and payable not later than seventy-two (72) hours thereafter, unless the employee has given seventy-two (72) hours previous notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting.

Within the applicable statute of limitations, the employment of Plaintiff and many other Aggrieved Employees ended, i.e. was terminated by quitting or discharge, and the employment of others will be. However, during the relevant time period, Defendant failed, and continues to fail to pay Plaintiff and terminated Aggrieved Employees, without abatement, all wages required to be paid by Labor Code sections 201 and 202 either at the time of discharge, or within seventy-two (72) hours of their leaving Defendant's employ. These unpaid wages include wages for unpaid work time (including minimum and straight time wages), missed meal periods, and missed rest periods.

Defendant's conduct violates Labor Code §§ 201 and 202. Labor Code § 203 provides that if an employer willfully fails to pay wages owed, in accordance with sections 201 and 202, then the wages of the employee shall continue as a penalty wage from the due date, and at the same rate until paid or until an action is commenced; but the wages shall not continue for more than thirty (30) days.

Accordingly, Plaintiff and the Aggrieved Employees are entitled to recover from Defendant their additionally accruing wages for each day they were not paid, at their regular hourly rate of pay, up to 30 days maximum pursuant to Labor Code § 203.

Moreover, Defendant is liable to Plaintiff and the Aggrieved Employees for the civil penalties provided for in Labor Code § 2699(f)(2) for failing to timely pay all wages at termination.

Failure to Furnish Accurate Itemized Wage Statements

Labor Code § 226(a) provides that every employer shall furnish each of his or her employees an accurate itemized wage statement in writing showing nine pieces of information, including: (1)

gross wages earned, (2) total hours worked by the employee, (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis, (4) all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item, (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the employee and the last four digits of his or her social security number or an employee identification number other than a social security number, (8) the name and address of the legal entity that is the employer, and (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee. An employee is presumed to suffer an injury if this information is missing. (Lab. Code § 226(e)(2)(B)(iii).)

The statute further provides: “An employee suffering injury as a result of a knowing and intentional failure by an employer to comply with subdivision (a) is entitled to recover the greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and one hundred dollars (\$100) per employee for each violation in a subsequent pay period, not to exceed an aggregate penalty of four thousand dollars (\$4,000), and is entitled to an award of costs and reasonable attorney’s fees.” (Lab. Code § 226(e)(1).)

Defendant intentionally and willfully failed to provide employees with complete and accurate wage statements. The deficiencies include, among other things, the failure to correctly identify hourly rates, the failure to correctly list gross wages earned, and the failure to list the true net wages earned, including wages for meal periods that were not provided in accordance with California law, wages for rest periods that were not authorized and permitted to take in accordance with California law, and correct wages earned for all hours worked.

As a result of Defendant violating Labor Code § 226, Plaintiff and similarly Aggrieved Employees suffered injury and damage to their statutorily protected rights.

Accordingly, Plaintiff and similarly Aggrieved Employees are entitled to recover from Defendant the greater of their actual damages caused by Defendant’s failure to comply with Labor Code § 226(a), or an aggregate penalty not exceeding \$4,000 dollars per employee.

Moreover, Defendant is liable to Plaintiff and the Aggrieved Employees for the civil penalties provided for in Labor Code § 226.3 for failing to furnish accurate itemized wage statements.

Failure to Pay All Earned Wages Twice Per Month

Based on its failure to pay Plaintiff and the Aggrieved Employees for all wages as discussed above, Defendant also violated Labor Code § 204.

Labor Code § 204 requires employers to pay employees all earned wages two times per month. Throughout the statute of limitations period applicable to this cause of action, employees were

entitled to be paid twice a month at their regular rates, including all meal period premium wages owed, rest period premium wages owed, and wages owed for hours worked. However, during all such times, Defendant systematically failed and refused to pay the employees all wages due, and failed to pay those wages twice a month, in that employees were not paid all wages for all meal periods not provided by Defendant, all wages for all rest periods not authorized and permitted by Defendant, and all wages for all hours worked. As a result, Defendant owes employees the legally required wages for unpaid wages, and Plaintiff and the Aggrieved Employees suffered damages in those amounts.

Moreover, Defendant is liable to Plaintiff and the Aggrieved Employees for the civil penalties provided for in Labor Code § 210 for failing to pay all earned wages twice per month.

Action for Civil Penalties Under PAGA

In light of the above, Plaintiff alleges that Defendant violated the following provisions of the Labor Code with respect to the Aggrieved Employees:

1. Labor Code § 204, 510, 1194, 1197, and 1198 by failing to pay for all hours worked, including minimum wages, straight time wages and overtime wages;
2. Labor Code § 226.7, 512 and applicable Wage Orders by failing to provide meal periods;
3. Labor Code § 226.7 and applicable Wage Orders by failing to authorize and permit rest periods;
4. Labor Code § 1174.5 and applicable Wage Orders by failing to maintain accurate records of hours worked and meal periods taken or missed;
5. Labor Code § 2802 by failing to reimburse and indemnify employees for expenses and losses in the direct consequence and discharge of their duties;
6. Labor Code § 227.3 by failing to pay all vacation wages at termination;
7. Labor Code §§ 201 to 203 by willfully failing to pay all wages owed at termination;
8. Labor Code § 226 by failing to provide accurate itemized wage statements; and
9. Labor Code § 204 by failing to pay all earned wages two times per month.

Therefore, on behalf of all Aggrieved Employees, Plaintiff seeks applicable penalties related to the violations alleged above pursuant to the PAGA. These include, but are not limited to, penalties under Labor Code §§ 210, 226.3, 558, 1174.5, 1197.1, 2802, and 2699(f)(2).

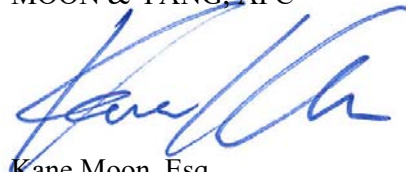
LWDA
Notice of Labor Code Violations and PAGA
September 17, 2022
Page 9 of 9

Plaintiff has placed Defendant on notice by mailing a certified copy of this correspondence to its corporate address, as indicated on the first page.

Thank you for your attention to this matter. If you have any questions, please do not hesitate to contact me.

Sincerely,

MOON & YANG, APC

A handwritten signature in blue ink, appearing to read 'Kane Moon', is written over the printed name.

Kane Moon, Esq.
Attorney at Law

EXHIBIT 2

Kane Moon (SBN 249834)
Allen Feghali (SBN 301080)
Jacquelyne VanEmmerik (SBN 339338)
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Attorneys for Defendant, Crunch, LLC

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

and PAGA Notice, which shall include, but not be limited to, claims for civil penalties under PAGA for violations of the California Labor Code based on Defendant's alleged 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 and 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 ("Plaintiff's Release").

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

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

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

5.2. *Release by Aggrieved Employees.* Effective on the date Defendant fully funds the Gross Settlement Amount, the Aggrieved Employees and their respective former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, will be deemed to release the Released 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:

//

To Plaintiff:

MOON LAW GROUP, P.C.
Kane Moon
Allen Feghali
Jacquelyne VanEmmerik
725 South Figueroa Street, 31st Floor
Los Angeles, California 90017
Telephone: (213) 232-3128
Email: kmoon@moonlawgroup.com
Email: afeghali@moonlawgroup.com
Email: jvanemmerik@moonlawgroup.com

To Defendant:

Mia Farber
Shannon B. Nakabayashi
Isabella L. Shin
JACKSON LEWIS P.C.
50 California Street, 9th Floor
San Francisco, California 94111-4615
Telephone: (415) 394-9400
Facsimile: (415) 394-9401
Email: mia.farber@jacksonlewis.com
Email: shannon.nakabayashi@jacksonlewis.com
Email: isabella.shin@jacksonlewis.com

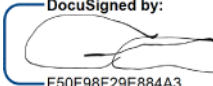
9.17. *Execution in Counterparts.* This Agreement may be executed in one or more counterparts by facsimile, electronically (*i.e.*, DocuSign), or email which for purposes of this Agreement shall be accepted as an original. All executed counterparts and each of them will be deemed to be one and the same 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:

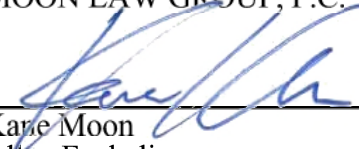
4 Crunch, LLC, Defendant

5 Title

7 Dated: 10/8/2024

MOON LAW GROUP, P.C.

9 By:


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

12 Dated:

JACKSON LEWIS, P.C.

14 By:

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

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:

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

4864-3532-6442, v. 1

EXHIBIT A

NOTICE OF PRIVATE ATTORNEYS GENERAL ACT SETTLEMENT AGREEMENT

Cain Garcia v. Crunch, LLC,
Superior Court of the State of California, County of Los Angeles, Case No. 22STCV30481

This is not a solicitation by a lawyer. You are not being sued.

Why am I receiving this Notice?

A settlement (the “Settlement”) has been reached in the lawsuit entitled *Cain Garcia v. Crunch, LLC*, Superior Court of the State of California, County of Los Angeles, Case No. 22STCV30481 (the “Lawsuit”). You are receiving this Notice because the Settlement affects your rights.

Who is affected by the Settlement?

Aggrieved Employees are affected by the Settlement. Aggrieved Employees are persons who worked for Crunch, LLC in California as an hourly paid or non-exempt employee from September 17, 2021, to [the earlier of when the pay periods exceed 41,800 or the date the Court issues the Approval Order]. You are receiving the instant Notice because you have been identified by Crunch, LLC as an Aggrieved Employee.

What is the Lawsuit about?

In the Lawsuit, Plaintiff Cain Garcia (“Plaintiff”) asserted claims that Crunch, LLC (with Plaintiff, the “Parties”) violated provisions of the California Labor Code, giving rise to claims for civil penalties under the California Private Attorneys General Act of 2004 (“PAGA”). Crunch, LLC denies all liability for these claims based on various legal and factual defenses. Nevertheless, Crunch, LLC has agreed to settle the Lawsuit to avoid the risks, distractions, and costs associated with further litigation of the Lawsuit.

The Settlement is, therefore, a compromise reached after good faith, arm’s length negotiations between the Parties and is not an admission of liability by Crunch, LLC. The Court has not ruled on the merits of Plaintiff’s claims or Crunch, LLC’s defenses but did approve the Settlement.

What are the Settlement terms?

Crunch, LLC has agreed to pay \$750,000.00 under the Settlement. This sum will be used for the payment of (a) \$_____ to the California Labor and Workforce Development Agency as its 75% share of the PAGA Penalties; (b) \$_____ to all Aggrieved Employees to be distributed *pro rata* as their 25% share of the PAGA Penalties; (c) **\$250,000.00** to PAGA Counsel for Attorney’s Fees; (d) \$[_____] to PAGA Counsel for actual litigation costs; (e) \$_____ to the Administrator for administration costs; and (f) **\$10,000.00** to Plaintiff for his participation in the litigation and general release under the Settlement.

Under the Settlement terms, all Aggrieved Employees will release Crunch, LLC 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, from 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.

The Individual PAGA Payments to Aggrieved Employees are classified as other miscellaneous income and will be reported on an IRS Form 1099-MISC, if required¹. Your *pro rata* share was calculated based on the number of Pay Periods you worked for Crunch, LLC from September 17, 2021, to [the earlier of when the pay periods exceed 41,800 or the date the Court issues the Approval Order].

All Individual PAGA Payment checks will remain valid and negotiable for one hundred eighty (180) days from the date of their issuance and shall thereafter automatically be void if not cashed within that time. Uncashed checks will be sent to the California State Controller’s Unclaimed Property Fund, in the name of the Aggrieved Employee. You can visit https://www.sco.ca.gov/search_upd.html to search for unclaimed property. If your check is lost or misplaced, you should contact the Administrator, Simpluris, Inc., immediately at [xxx-xxx-xxxx] to request a replacement.

PLEASE DO NOT CONTACT THE COURT FOR INFORMATION REGARDING THIS SETTLEMENT.

¹ One hundred percent (100%) of your Individual PAGA Payment under the Settlement will be considered penalties, 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, if any, of your Individual PAGA Payment. Neither Plaintiffs nor Crunch, LLC, have made any representations or warranties regarding the taxation of your Individual PAGA Payment. Nothing within this Notice or any other communication shall constitute or be construed or relied upon as tax advice within the meaning of United States Treasury Department Circular 230 (31 C.F.R. Part 10, as amended).

EXHIBIT 3

PAGA NOTICE PUBLIC SEARCH - CASE DETAIL

Case Information

Case Number: LWDA-CM-908590-22
Plaintiff for PAGA Case: Cain Garcia
Filer/Attorney for PAGA Case: Kane Moon
Law Firm for PAGA Plaintiff: Moon & Yang, APC
Employer: Crunch, LLC
Date Case Received:
Filer for Employer:
Employer Filer Firm:
Court Type: California Superior Courts
Court Name: Los Angeles County Superior Court
PAGA Court Case Number: 22STCV30481
Violation Type:
Related BOFE Case:

Attachments

Attachment Name	Description	Date Submitted	Type
Court Complaint Submitted on 03/07/2023 02:52:48 PM by Jacquelyne VanEmmerik	Garcia v. Crunch Fitness 20230103 FAC.pdf	3/7/2023 10:52 PM	Court Complaint
PAGA Notice Submitted on 09/17/2022 03:22:50 PM by Kane Moon	Paga Letter - Garcia v. Crunch.pdf	9/17/2022 10:23 PM	PAGA Notice
Proposed Settlement Submitted on 10/17/2024 12:21:15 PM by Jacquelyne VanEmmerik	Garcia v. Crunch, LLC - Long Form (Final) - FULLY EXECUTED.pdf	10/17/2024 7:21 PM	Proposed Settlement

EXHIBIT 4

Activities Export

10/17/2024

12:41 PM

Date ▲	Type	Description	Matter	User	Qty	Rate (\$)	Non-billable (\$)	Billable (\$)
09/21/2022	\$	LWDA ● Unbilled	01840-Garcia Garcia v. Crunch LLC	Seung Yang	1.00	\$75.00	-	\$75.00
09/21/2022	\$	Complaint fee ● Unbilled	01840-Garcia Garcia v. Crunch LLC	Seung Yang	1.00	\$1,481.72	-	\$1,481.72
09/21/2022	\$	Admin fee ● Unbilled	01840-Garcia Garcia v. Crunch LLC	Seung Yang	1.00	\$750.00	-	\$750.00
10/17/2022	\$	Journal ● Unbilled	01840-Garcia Garcia v. Crunch LLC	Seung Yang	1.00	\$7.26	-	\$7.26
10/31/2022	\$	Ace ● Unbilled	01840-Garcia Garcia v. Crunch LLC	Seung Yang	1.00	\$95.75	-	\$95.75
11/09/2022	\$	Journal ● Unbilled	01840-Garcia Garcia v. Crunch LLC	Seung Yang	1.00	\$7.26	-	\$7.26
11/10/2022	\$	Journal ● Unbilled	01840-Garcia Garcia v. Crunch LLC	Andrea Marin	1.00	\$7.26	-	\$7.26
11/17/2022	\$	Journal ● Unbilled	01840-Garcia Garcia v. Crunch LLC	Andrea Marin	1.00	\$27.81	-	\$27.81
11/21/2022	\$	Ace ● Unbilled	01840-Garcia Garcia v. Crunch LLC	Seung Yang	1.00	\$54.15	-	\$54.15
11/21/2022	\$	Ace ● Unbilled	01840-Garcia Garcia v. Crunch LLC	Seung Yang	1.00	\$46.25	-	\$46.25
11/21/2022	\$	Ace ● Unbilled	01840-Garcia Garcia v. Crunch LLC	Seung Yang	1.00	\$46.25	-	\$46.25
11/23/2022	\$	Journal	01840-Garcia	Seung Yang	1.00	\$71.74	-	\$71.74

Activities Export

10/17/2024
12:41 PM

Date	Type	Description	Matter	User	Qty	Rate (\$)	Non-billable (\$)	Billable (\$)
		Unbilled	Garcia v. Crunch LLC					
01/03/2023	\$	Journal Unbilled	01840-Garcia Garcia v. Crunch LLC	Andrea Marin	1.00	\$7.26	-	\$7.26
01/10/2023	\$	Journal Unbilled	01840-Garcia Garcia v. Crunch LLC	Andrea Marin	1.00	\$7.26	-	\$7.26
01/20/2023	\$	Ace Unbilled	01840-Garcia Garcia v. Crunch LLC	Andrea Marin	1.00	\$46.75	-	\$46.75
01/20/2023	\$	Journal Unbilled	01840-Garcia Garcia v. Crunch LLC	Andrea Marin	1.00	\$7.26	-	\$7.26
02/13/2023	\$	Journal Unbilled	01840-Garcia Garcia v. Crunch LLC	Andrea Marin	1.00	\$7.26	-	\$7.26
03/01/2023	\$	Journal Unbilled	01840-Garcia Garcia v. Crunch LLC	Andrea Marin	1.00	\$7.26	-	\$7.26
05/30/2023	\$	LASC Unbilled	01840-Garcia Garcia v. Crunch LLC	Andrea Marin	1.00	\$5.00	-	\$5.00
07/05/2023	\$	Journal Unbilled	01840-Garcia Garcia v. Crunch LLC	Andrea Marin	1.00	\$7.26	-	\$7.26
08/08/2023	\$	Ace Unbilled	01840-Garcia Garcia v. Crunch LLC	Andrea Marin	1.00	\$147.15	-	\$147.15
04/22/2024	\$	Journal Unbilled	01840-Garcia Garcia v. Crunch LLC	Andrea Marin	1.00	\$27.81	-	\$27.81
05/09/2024	\$	Ace Unbilled	01840-Garcia Garcia v. Crunch LLC	Andrea Marin	1.00	\$44.00	-	\$44.00

Activities Export

10/17/2024
12:41 PM

Date	Type	Description	Matter	User	Qty	Rate (\$)	Non-billable (\$)	Billable (\$)
06/04/2024	\$	Garcia v. Crunch Mediation Steve Rottman Paid online with MLG Checking ● Unbilled	01840-Garcia Garcia v. Crunch LLC	Kane Moon	1.00	\$15,000.00	-	\$15,000.00
08/09/2024	\$	LASC ● Unbilled	01840-Garcia Garcia v. Crunch LLC	Support Account	1.00	\$4.00	-	\$4.00
08/22/2024	\$	Berger Consulting Group ● Unbilled	01840-Garcia Garcia v. Crunch LLC	Support Account	1.00	\$6,075.00	-	\$6,075.00
08/28/2024	\$	Journal - CMS ● Unbilled	01840-Garcia Garcia v. Crunch LLC	Support Account	1.00	\$7.26	-	\$7.26
09/06/2024	\$	Journal - Notice of Continuance ● Unbilled	01840-Garcia Garcia v. Crunch LLC	Support Account	1.00	\$7.26	-	\$7.26
							\$0.00 0.00h	\$24,078.24 0.00h

EXHIBIT 5

**Quotation Request:**

Jacquelyne VanEmmerik
Moon Law Group
JVanEmmerik@moonlawgroup.com
213.232.3128

Case Name:

Garcia v. Crunch, LLC

Date:

Wednesday, August 14, 2024

RFP Number:

15882008

Prepared By:

Sean Hartranft
Apex Class Action LLC
Sean@apexclassaction.com
949.878.3676

Settlement Specifications

Number of Aggrieved Employees	2,480
Certified Language Translation:	Yes
Static Settlement Website	No
Percentage of Undeliverable Mail	20%

Professional Services**Fee Calculation****Rate(s)****Quantity****Estimated Cost****Data Analytics and Standardization**

Import and Standardize Data*	Per Hour	\$125.00	3	\$375.00
Data Analyst	Per Hour	\$150.00	3	\$450.00
*Data provided must be in a workable format. Apex can standardize provided data at an additional cost of \$150/hr.				
Sub Total:				\$825.00

Project Management

Project Management	Per Hour	\$150.00	3	\$450.00
Project Coordinator	Per Hour	\$90.00	3	\$270.00
Data Analyst and Reporting	Per Hour	\$140.00	2	\$280.00
Sub Total:				\$1,000.00

Toll-Free Contact Center, Website, Reporting & Pre-Distribution

Form Set Up	Per Hour	\$120.00	1	\$120.00
Bilingual Toll-Free Contact Center	Static Rate	\$550.00	1	\$550.00
NCOA Address Update (USPS)	Static Rate	\$419.60	1	\$419.60
Certified Language Translation: Spanish	Static Rate	\$750.00	1	\$750.00
Settlement Status Reports	Static Rate	\$750.00	1	Waived
Sub Total:				\$1,839.60



Professional Services	Fee Calculation	Rate(s)	Quantity	Estimated Cost
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Distribution & Settlement Fund Management				
Settlement Calculations	Per Hour	\$120.00	4	\$480.00
Account Management and Reconciliation	Per Hour	\$140.00	4	\$560.00
Print & Mail Distribution Settlement Check (IRS Form 1099 if applicable)	Per Piece	\$1.35	2,480	\$3,348.00
USPS First Class Postage	Per Piece	\$0.68	2,480	\$1,686.40
Remail Distribution to Updated Address (Skip Trace)	Per Piece	\$2.00	248	\$496.00
Individual Income Tax Preparation & Reporting	Per Hour	\$100.00	8	\$800.00
QSF Income Tax Reporting (per calendar year)	Per Year	\$1,250.00	1	\$1,250.00
Unclaimed Funds: State Controller's Unclaimed Property Fund	Static Rate	\$500.00	1	\$500.00
Sub Total:				\$9,120.40

Post Distribution Reconciliation				
Bank Account Reconciliation	Per Hour	\$135.00	3	\$405.00
Project Management Reconciliation	Per Hour	\$100.00	3	\$300.00
Declarations	Per Hour	\$120.00	3	\$360.00
Sub Total:				\$1,065.00

WILL NOT EXCEED:				\$13,850.00
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Thank you for your business!



Terms & Conditions

The following Terms and Conditions govern the provision of all services to be provided by Apex Class Action and its affiliates ("Apex") to the Client. These terms and conditions are binding and shall apply to all services provided by Apex in relation to any related services or products.

1. **Services:** Apex commits to providing the Client with the administrative services detailed in the attached Proposal (the "Services").

2. **Payment Terms:** As compensation for the legal services to be provided, the Client agrees to pay Apex all fees detailed in the Proposal. The fees quoted in the Proposal (and any subsequent proposals for additional services) are estimates based on the information provided to Apex by the Client. Apex makes no representation that the estimated fees in the Proposal or any subsequent proposals for additional services shall equal the actual fees charged by Apex to the Client, which fees (including individual line items) may be greater or less than estimated. If additional services are requested on an hourly basis and are not specifically detailed in the Proposal, Apex will prepare estimates for such services subject to approval by the Client. In the performance of such additional services, Apex will charge standard hourly fees which shall apply.

3. **Incurred Expenses:** In relation to the provision of services outlined in this agreement, the Client agrees to reimburse Apex for all reasonable out-of-pocket expenses incurred. Such expenses may include, but are not limited to, costs associated with postage, media production or publication, banking fees, brokerage fees, messenger and delivery service expenses, travel expenses, filing fees, office supplies, meals, staff overtime expenses, and other related costs and expenses. If not otherwise specified in writing, fees for print notice and certain expenses, such as media publication and postage, must be paid immediately upon invoicing and, in certain cases, at least ten (10) days prior to the date on which such expenses will be incurred.

4. **Invoicing:** Apex shall present invoices for its fees and expenses on a monthly basis, except as provided in Section 3. The Client agrees to pay each invoice within 30 days of receipt. In the event of non-payment within 90 days of the billing date, an additional service charge of 1.5% per month may apply. Apex reserves the right to increase its prices, charges, and rates annually, subject to reasonable adjustments. If any price increases exceed 10%, Apex shall give thirty (30) days' notice to the Client. In the event of any unpaid invoices beyond 120 days of the due date, Apex reserves the right to withhold services and reports until payment is received, subject to notice to the Client. It is important to note that Apex's failure to provide services and reports in such instances shall not constitute a default under this agreement.

5. **Case Duration:** The duration of these Terms and Conditions, except for the data storage obligations stated in Section 13, shall be in effect until 30 days following the completion of the Services as described in the Proposal. The parties may extend these Terms and Conditions in writing for a mutually agreed-upon period beyond this initial 30-day period.

6. **Termination of Services:** Either party may terminate the Services by providing thirty (30) days written notice to the other party. Alternatively, termination may occur immediately upon written notice for Cause, as defined below. Cause means (i) Apex's gross negligence or willful misconduct that causes serious and material harm to the Client; (ii) the Client's failure to pay Apex invoices for more than one hundred twenty (120) days from the date of the invoice; or (iii) the accrual of invoices or unpaid services where Apex reasonably believes it will not be paid. Termination of the Services shall not relieve the Client of its obligation to pay Apex for services rendered prior to the termination.

7. **Independent Contractor:** As an independent contractor, Apex will provide services under the terms of this agreement. It is agreed that neither Apex nor any of its employees will be considered an employee of the Client. Consequently, Apex and its employees will not be eligible for any benefits provided by the Client to its employees. The Client will not make any tax deductions from the payments due to Apex for state or federal tax purposes. Apex will be solely responsible for paying all taxes and other payments due on payments received from the Client under this agreement.

8. **Apex warrants that the Services outlined in the Proposal will be performed in accordance with the standards generally adhered to by professionals providing similar services.** It is acknowledged that the Services may entail the likelihood of some human and machine errors, omissions, delays, and losses that may result in damage. However, Apex shall not be held liable for such errors, omissions, delays, or losses unless they are caused by its gross negligence or willful misconduct. In the event of any breach of this warranty by Apex, the Client's sole remedy will be limited to Apex's rerunning, at its expense, any inaccurate output provided that such inaccuracies occurred solely as a result of Apex's gross negligence or willful misconduct under this agreement.

9. **Limitation of Liability:** The Client acknowledges that Apex shall not be held liable for any consequential, special, or incidental damages incurred by the Client in relation to the performance of Services, whether the claim is based on breach of warranty, contract, tort (including negligence), strict liability, or any other grounds. Under no circumstances shall Apex's liability to the Client, for any Losses (including court costs and reasonable attorney's fees), arising out of or in connection with these Terms and Conditions, exceed the total amount charged or chargeable to the Client for the specific service(s) that caused the Losses.

10. **Indemnification:** The Client agrees to indemnify and hold harmless Apex from any losses, suits, actions, judgments, fines, costs, liabilities, or claims arising from any action or proceeding relating to the Services provided by Apex, regardless of whether or not it results in liability (collectively referred to as "Indemnified Claims"). However, this indemnification provision shall not apply to the extent that such Indemnified Claims are caused by Apex's willful misconduct, gross negligence, or breach of these Terms and Conditions. This provision shall survive termination of the Services.

11. **Confidentiality:** Apex will uphold strict confidentiality between Apex and the Client and applies to all non-public records, documents, systems, procedures, processes, software, and other information received by either party in connection with the performance of services under these terms. Both Apex and the Client agree to keep confidential all such non-public information, including any material marked or identified as confidential or proprietary. Any such confidential information shall not be disclosed, provided, disseminated, or otherwise made available to any third party, except as required to fulfill the parties' obligations under these terms. The parties acknowledge that in the event of any request to disclose any confidential information in connection with a legal or administrative proceeding, or otherwise to comply with a legal requirement, prompt notice of such request must be given to the other party to enable that party to seek an appropriate protective order or other remedy or to waive compliance with the relevant provisions of these terms. If the Client seeks a protective order or another remedy, Apex, at the Client's expense, will cooperate with and assist the Client in such efforts. If the Client fails to obtain a protective order or waives compliance with the relevant provisions of these terms, Apex will disclose only that portion of the confidential information that it determines it is required to disclose. This confidentiality provision shall survive termination of the services provided. Both parties acknowledge and agree that any breach of this confidentiality may cause irreparable harm to the non-breaching party and that injunctive relief may be necessary to prevent any actual or threatened breach. The terms set forth between the parties supersede all prior negotiations, understandings, and agreements between the parties concerning confidentiality. These terms may only be amended in writing and signed by both parties.

12. **Ownership of the programs, system data, and materials provided by Apex to the Client during the course of providing services herein shall solely belong to Apex.** It is acknowledged that fees and expenses paid by the Client do not confer any rights in such property. It is also understood that the said property is made available to the Client solely for the purpose of using it during and in connection with the services provided by Apex.

13. **Apex may derive financial benefits from financial institutions in connection with the deposit and investment of funds with such institutions, including without limitation, discounts on eligible banking services and fees, and loans at favorable rates.**

14. **COMPLETE AGREEMENT.** These Terms and Conditions, along with the attached Proposal, represent the complete agreement and understanding between the parties and override any prior agreements (whether written or oral) between Apex and the Client regarding the subject matter. Any modification to these Terms and Conditions may only be made in writing and must be signed by both Apex and the Client. The headings in this document are included for convenience only and do not alter or restrict any provisions in these Terms and Conditions. They may not be used in the interpretation of these Terms and Conditions.

15. **This provision outlines the requirements for providing notice or other communication under this agreement.** All such communications must be in writing and can be delivered either by personal delivery or through U.S. Mail with prepaid postage or overnight courier. Once delivered personally or sent through the mail, the notice will be considered given after five (5) days from the deposit date in the U.S. Mail. Alternatively, if sent through an overnight courier, the notice will be considered given one business day after delivery to the such courier. It's important to note that the notice must be provided to a responsible officer or principal of the Client or Apex, depending on the case.

16. **Force Majeure:** In the event of any failure or delay in performance due to circumstances beyond Apex's control, including but not limited to strikes, lockouts, fires, floods, acts of God or public enemy, riots, civil disorders, insurrections, war or war conditions, or interference by civil or military authorities, Apex shall not be held liable for any resulting loss or damage. The time for performance under this agreement shall be extended for a period equal to the duration of the disabling cause and a reasonable time thereafter. This provision shall constitute a force majeure clause and shall be construed accordingly.

17. **The applicable state and federal laws shall govern the interpretation and enforcement of these Terms and Conditions.** No choice of law or conflict of laws provisions shall affect this governing law provision.

18. **Severability:** This applies to all clauses and covenants contained within these Terms and Conditions. In the event that any clause or covenant is deemed invalid, illegal, or unenforceable, the remaining provisions shall remain valid and enforceable to the fullest extent permissible by law. The validity, legality, and enforceability of the remaining provisions shall in no way be affected or impaired by the invalidity, illegality, or unenforceability of any provision deemed so.

19. **Nonwaiver:** This applies to these Terms and Conditions. This means that any failure by one party to enforce a provision of these terms on one or more occasions shall not be construed as a waiver of that provision. In other words, any failure to enforce a provision does not give up the right to enforce it in the future. All provisions of these Terms and Conditions remain in full force and effect, regardless of any prior failure to enforce them.