

**CLASS ACTION AND PAGA SETTLEMENT AGREEMENT
AND CLASS NOTICE**

This Class Action and PAGA Settlement Agreement (“Agreement”) is made by and between plaintiff Nicole Carson (“Plaintiff”) and defendant Esports Engine, LLC (“ESPORTS”). The Agreement refers to Plaintiff and ESPORTS collectively as “Parties,” or individually as “Party.”

1. DEFINITIONS.

1.1. “Action” means and refers to *Nicole Carson v. Esports Engine, LLC*, the Complaint for which alleges violation of Labor Code section 2802 against ESPORTS and shall be filed in the Superior Court of the State of California, County of Los Angeles, and is attached hereto as Exhibit B. The Parties have stipulated to file the Complaint for purposes of facilitating class action and Private Attorneys General Act (PAGA) settlement approval only.

1.2. “Administrator” means CPT Group, Inc., the neutral entity the Parties have agreed to appoint to administer the Settlement.

1.3. “Administration Expenses Payment” means the amount the Administrator will be paid from the Gross Settlement Amount to reimburse its reasonable fees and expenses in accordance with the Administrator’s “not to exceed” bid submitted to the Court in connection with Preliminary Approval of the Settlement.

1.4. “Aggrieved Employee” means and refers to Plaintiff and all other California residents who are or were employed by ESPORTS and who worked from home for ESPORTS during at least one pay period in the period from April 11, 2021 through August 31, 2022.

1.5. “Class” means and refers to Plaintiff and all other California residents who are or were employed by ESPORTS and who worked from home for ESPORTS during at least one pay period in the period from March 20, 2020 through August 31, 2022.

1.6. “Class Counsel” means Craig Ackermann and Avi Kreitenberg of Ackermann & Tilajef, P.C.

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1.7. "Class Counsel Fees Payment" and "Class Counsel Litigation Expenses Payment" mean the amounts allocated to Class Counsel for reimbursement of reasonable attorneys' fees and expenses, respectively, incurred to prosecute the Action, including through settlement, and defend the Settlement if necessary.

1.8. "Class Data" means Class Member identifying information in ESPORTS's possession including the Class Member's name, last-known mailing address, Social Security number, and number of Class Period Months Worked and PAGA Period Months Worked.

1.9. "Class Member" or "Settlement Class Member" means a member of the Class, as either a Participating Class Member or Non-Participating Class Member (including a Non-Participating Class Member who qualifies as an Aggrieved Employee).

1.10. "Class Member Address Search" means the Administrator's investigation and search for current Class Member mailing addresses using all reasonably available sources, methods and means including, but not limited to, the National Change of Address database, skip traces, and direct contact by the Administrator with Class Members.

1.11. "Class Notice" means the COURT APPROVED NOTICE OF CLASS ACTION SETTLEMENT AND HEARING DATE FOR FINAL COURT APPROVAL, to be mailed to Class Members in English in the form, without material variation, attached as Exhibit A and incorporated by reference into this Agreement.

1.12. "Class Period" means the period from March 20, 2020 to August 31, 2022.

1.13. "Class Representative" means the named Plaintiff in the operative complaint in the Action seeking Court approval to serve as a Class Representative.

1.14. "Class Representative Service Payment" means the payment to the Class Representative for initiating the Action and providing services in support of the Action.

1.15. "Court" means the Superior Court of California, County of Los Angeles.

1.16. "ESPORTS" means named Defendant Esports Engine, LLC

1.17. "Defense Counsel" means Emily J. Fox and Nicole R. Roysdon of Wilson Turner Kosmo LLP.

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1.18. "Effective Date" means the later of the following: (a) the 65th calendar day after entry of a signed order finally approving this Agreement and Settlement provided no motion to intervene or motion to vacate the judgment, appeal, writ or other appellate proceeding has been filed; or (b) the 7th calendar day after any motion to intervene or motion to vacate the judgment, appeal, writ, or other appellate proceeding opposing the Agreement has been finally dismissed with no material change to the terms of this Agreement and there is no right to pursue further remedies or relief, whichever is later.

1.19. "Final Approval" means the Court's order granting final approval of the Settlement.

1.20. "Final Approval Hearing" means the Court's hearing on the Motion for Final Approval of the Settlement.

1.21. "Final Judgment" means the Judgment Entered by the Court upon Granting Final Approval of the Settlement.

1.22. "Gross Settlement Amount" means \$155,000 which is the total amount ESPORTS agrees to pay under the Settlement except as provided in Paragraph 9 below. The Gross Settlement Amount will be used to pay Individual Class Payments, Individual PAGA Payments, the LWDA PAGA Payment, Class Counsel Fees, Class Counsel Expenses, Class Representative Service Payment and the Administrator's Expenses.

1.23. "Individual Class Payment" means the Participating Class Member's pro rata share of the Net Settlement Amount calculated according to the number of Class Period Months Worked.

1.24. "Individual PAGA Payment" means the Aggrieved Employee's pro rata share of 25% of the PAGA Penalties calculated according to the number of PAGA Period Months Worked.

1.25. "Judgment" means the judgment entered by the Court based upon the Final Approval.

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

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

1.28. "Net Settlement Amount" means the Gross Settlement Amount, less the following payments in the amounts approved by the Court: Individual PAGA Payments, the LWDA PAGA Payment, Class Representative Service Payment, Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment, and the Administration Expenses Payment. The remainder is to be paid to Participating Class Members as Individual Class Payments.

1.29. "Non-Participating Class Member" means any Class Member who opts out of the Settlement by sending the Administrator a valid and timely Request for Exclusion.

1.30. "PAGA Period Month Worked" means any Month Worked during which an Aggrieved Employee worked for ESPORTS for at least one day during the PAGA Period.

1.31. "PAGA Period" means the period from April 11, 2021 to August 31, 2022.

1.32. "PAGA" means the Private Attorneys General Act (Labor Code §§ 2698. et seq.).

1.33. "PAGA Notice" means Plaintiff's April 11, 2022 letter to ESPORTS and the LWDA providing notice pursuant to Labor Code section 2699.3, subd.(a).

1.34. "PAGA Penalties" means the total amount of PAGA civil penalties to be paid from the Gross Settlement Amount of \$20,000, allocated 25% to the Aggrieved Employees (\$5,000) and 75% to LWDA (\$15,000) in settlement of PAGA claims.

1.35. "Participating Class Member" means a Class Member who does not submit a valid and timely Request for Exclusion from the Settlement.

1.36. "Plaintiff" means Nicole Carson, the named plaintiff in the Action.

1.37. "Preliminary Approval" means the Court's Order Granting Preliminary Approval of the Settlement.

1.38. "Preliminary Approval Order" means the proposed Order Granting Preliminary Approval and Approval of PAGA Settlement.

1.39. "Released Class Claims" means the claims being released as described in Paragraph 6.2 below.

1.40. "Released PAGA Claims" means the claims being released as described in Paragraph 6.3 below.

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1.41. "Released Parties" means: ESPORTS and each of its former and present directors, officers, shareholders, owners, members, investors, partners, related organizations, agents, employees, managers, holding companies, attorneys, insurers, predecessors, successors, parents, assigns, subsidiaries, and affiliates, including but not limited to Hitbox, LLC, Vindex LLC, Belong Gaming, LLC, and Esports Engine (Ohio), LLC.

1.42. "Request for Exclusion" means a Class Member's submission of a written request to be excluded from the Class Settlement signed by the Class Member.

1.43. "Response Deadline" means 45 days after the Administrator mails Notice to Class Members and Aggrieved Employees, and shall be the last date on which Class Members may: (a) fax, email, or mail Requests for Exclusion from the Settlement, or (b) fax, email, or mail his or her Objection to the Settlement. Class Members to whom Notice Packets are resent after having been returned undeliverable to the Administrator shall have an additional 14 calendar days beyond the Response Deadline.

1.44. "Settlement" means the disposition of the Action effected by this Agreement and the Judgment.

1.45. "Class Period Months Worked" means any month during which a Class Member worked for ESPORTS for at least one day, during the Class Period.

2. RECITALS.

2.1. Class Counsel shall file and serve a Complaint (the "Operative Complaint") with the Court, substantially in the form attached hereto as Exhibit B, following execution of this Agreement by the Parties and prior to the lodging of a fully-executed copy of this Agreement with the Court. The Operative Complaint shall allege causes of action against ESPORTS for Failure to Reimburse Business Expenses (Labor Code § 2802); UCL violations (Cal. Bus. & Prof. Code §§ 17200-17204); and Penalties Pursuant to Labor Code §2699, *et seq.* The Parties agree that ESPORTS' time to respond to the Complaint shall be stayed pending the settlement approval process. ESPORTS denies the allegations in the Operative Complaint, denies any failure to comply with the laws identified in the Operative Complaint and denies any and all liability for the causes of action alleged.

2.2. Pursuant to Labor Code section 2699.3, subd.(a), Plaintiff gave timely written notice to ESPORTS and the LWDA by sending the PAGA Notice.

2.3. The Parties reached this settlement through arm-length negotiations over several months.

2.4. Prior to negotiating the Settlement, Plaintiff obtained, through informal discovery, information about the Class, including the total number of Class Members and Aggrieved Employees at issue, the total months worked during the PAGA period, and the total months worked during the Class Period. Plaintiff's investigation was sufficient to satisfy the criteria for court approval set forth in *Dunk v. Foot Locker Retail, Inc.* (1996) 48 Cal.App.4th 1794, 1801 and *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 129-130 ("*Dunk/Kullar*").

2.5. The Court has not granted class certification to date.

2.6. The Parties, Class Counsel and Defense Counsel represent that they are not aware of any other pending matter or action asserting claims that will be extinguished or affected by the Settlement.

3. MONETARY TERMS.

3.1. Gross Settlement Amount. Except as otherwise provided by Paragraph 9 below, ESPORTS promises to pay \$155,000 and no more as the Gross Settlement Amount. ESPORTS has no obligation to pay the Gross Settlement Amount prior to the deadline stated in Paragraph 4.3 of this Agreement. The Administrator will disburse the entire Gross Settlement Amount without asking or requiring Participating Class Members or Aggrieved Employees to submit any claim as a condition of payment. None of the Gross Settlement Amount will revert to ESPORTS.

3.2. Payments from the Gross Settlement Amount. The Administrator will make and deduct the following payments from the Gross Settlement Amount, in the amounts specified by the Court in the Final Approval:

3.2.1. To Plaintiff: Class Representative Service Payment to the Class Representative of not more than \$7,500 in addition to any Individual Class Payment and any Individual PAGA Payment the Class Representative is entitled to receive as a Participating Class Member. ESPORTS will not oppose Plaintiff's request for a Class Representative Service Payment that

1 does not exceed this amount. As part of the motion for Class Counsel Fees Payment and Class
2 Litigation Expenses Payment, Plaintiff will seek Court approval for any Class Representative
3 Service Payments no later than 16 court days prior to the Final Approval Hearing. If the Court
4 approves a Class Representative Service Payment less than the amount requested, the
5 Administrator will retain the remainder in the Net Settlement Amount. The Administrator will pay
6 the Class Representative Service Payment using IRS Form 1099. Plaintiff assumes full
7 responsibility and liability for employee taxes owed on the Class Representative Service Payment.

8 3.2.2. To Class Counsel: A Class Counsel Fees Payment of not more than 33 1/3%,
9 which is currently estimated to be \$51,666.67 and a Class Counsel Litigation Expenses Payment
10 of not more than \$5,000. ESPORTS will not oppose requests for these payments provided they do
11 not exceed these amounts. Plaintiff and/or Class Counsel will file a motion for Class Counsel Fees
12 Payment and Class Litigation Expenses Payment no later than 16 court days prior to the Final
13 Approval Hearing. If the Court approves a Class Counsel Fees Payment and/or a Class Counsel
14 Litigation Expenses Payment less than the amounts requested, the Administrator will allocate the
15 remainder to the Net Settlement Amount. With the exception of the Class Counsel Fees Payment
16 and Class Litigation Expenses Payment, all Parties shall bear their own fees and costs. Released
17 Parties shall have no liability to Class Counsel or any other Plaintiff's Counsel arising from any
18 claim to any portion of any Class Counsel Fee Payment and/or Class Counsel Litigation Expenses
19 Payment. The Administrator will pay the Class Counsel Fees Payment and Class Counsel
20 Expenses Payment using one or more IRS 1099 Forms. Class Counsel assumes full responsibility
21 and liability for taxes owed on the Class Counsel Fees Payment and the Class Counsel Litigation
22 Expenses Payment and holds ESPORTS harmless, and indemnifies ESPORTS, from any dispute
23 or controversy regarding any division or sharing of any of these Payments.

24 3.2.3. To the Administrator: An Administrator Expenses Payment not to exceed \$8,750
25 except for a showing of good cause and as approved by the Court. To the extent the
26 Administration Expenses are less or the Court approves payment less than \$8,750, the
27 Administrator will retain the remainder in the Net Settlement Amount.

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1 3.2.4. To Each Participating Class Member: An Individual Class Payment calculated
2 by (a) dividing the Net Settlement Amount by the total number of Class Period Months Worked
3 by all Participating Class Members during the Class Period and (b) multiplying the result by each
4 Participating Class Member's Class Period Months Worked.

5 3.2.4.1. Tax Allocation of Individual Class Payments. 100% of each Participating
6 Class Member's Individual Class Payment will be allocated to settlement of claims for
7 unreimbursed expenses (40%), interest (30%), and penalties (30%) (the "Non-Wage Portion").
8 The Non-Wage Portion is not subject to wage withholdings and will be reported on IRS 1099
9 Forms as required. Participating Class Members assume full responsibility and liability for any
10 employee taxes owed on their Individual Class Payment.

11 3.2.4.2. Effect of Non-Participating Class Members on Calculation of Individual
12 Class Payments. Non-Participating Class Members will not receive any Individual Class
13 Payments. The Administrator will retain amounts equal to their Individual Class Payments in the
14 Net Settlement Amount for distribution to Participating Class Members on a pro rata basis.

15 3.2.5. To the LWDA and Aggrieved Employees: PAGA Penalties in the amount of
16 \$20,000 to be paid from the Gross Settlement Amount, with 75% (\$15,000) allocated to the
17 LWDA PAGA Payment and 25% (\$5,000) allocated to the Individual PAGA Payments.

18 3.2.5.1. The Administrator will calculate each Individual PAGA Payment by (a)
19 dividing the amount of the Aggrieved Employees' 25% share of PAGA Penalties (\$5,000) by the
20 total number of PAGA Period Months Worked for all Aggrieved Employees during the PAGA
21 Period and (b) multiplying the result by each Aggrieved Employee's PAGA Period Months
22 Worked. Aggrieved Employees assume full responsibility and liability for any taxes owed on their
23 Individual PAGA Payment.

24 3.2.5.2. If the Court approves PAGA Penalties of less than the amount requested,
25 the Administrator will allocate the remainder to the Net Settlement Amount. The Administrator
26 will report the Individual PAGA Payments on IRS1099 Forms.

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1 **4. SETTLEMENT FUNDING AND PAYMENTS.**

2 4.1. Class Member and Aggrieved Employee Class Period and PAGA Period Months
3 Worked. Based on a review of its records to date, ESPORTS estimates there are 372 Class
4 Members who collectively worked a total of 3,406 Class Period Months Worked, and 189
5 Aggrieved Employees who worked a total 1,782.93 PAGA Period Months Worked.

6 4.2. Class Data. Not later than 20 days after the Court grants Preliminary Approval of the
7 Settlement, ESPORTS will simultaneously deliver the Class Data to the Administrator, in the form
8 of a Microsoft Excel spreadsheet. To protect Class Members' privacy rights, the Administrator
9 must maintain the Class Data in confidence, use the Class Data only for purposes of this
10 Settlement and for no other purpose, and restrict access to the Class Data to Administrator
11 employees who need access to the Class Data to effect and perform under this Agreement.
12 ESPORTS has a continuing duty to immediately notify Class Counsel if it discovers that the Class
13 Data omitted class member identifying information and to provide corrected or updated Class Data
14 as soon as reasonably feasible. Without any extension of the deadline by which ESPORTS must
15 send the Class Data to the Administrator, the Parties and their counsel will expeditiously use best
16 efforts, in good faith, to reconstruct or otherwise resolve any issues related to missing or omitted
17 Class Data.

18 4.3. Funding of Gross Settlement Amount. ESPORTS shall fully fund the Gross Settlement
19 Amount by transmitting the funds to the Administrator no later than 30 days after the Effective
20 Date.

21 4.4. Payments from the Gross Settlement Amount. Within 20 days after ESPORTS funds
22 the Gross Settlement Amount, the Administrator will mail checks for or otherwise pay all
23 Individual Class Payments, all Individual PAGA Payments, the LWDA PAGA Payment, the
24 Administration Expenses Payment, the Class Counsel Fees Payment, the Class Counsel Litigation
25 Expenses Payment, and the Class Representative Service Payment. Disbursement of the Class
26 Counsel Fees Payment, the Class Counsel Litigation Expenses Payment and the Class
27 Representative Service Payment shall not precede disbursement of Individual Class Payments and
28 Individual PAGA Payments.

1 4.4.1. The Administrator will issue checks for the Individual Class Payments and/or
2 Individual PAGA Payments and send them to the Class Members via First Class U.S. Mail,
3 postage prepaid. The face of each check shall prominently state the date (180 days after the date of
4 mailing) when the check will be voided. The Administrator will cancel all checks not cashed by
5 the void date. The Administrator will send checks for Individual Settlement Payments to all
6 Participating Class Members (including those for whom Class Notice was returned undelivered).
7 The Administrator will send checks for Individual PAGA Payments to all Aggrieved Employees
8 including Non-Participating Class Members who qualify as Aggrieved Employees (including
9 those for whom Class Notice was returned undelivered). The Administrator may send
10 Participating Class Members a single check combining the Individual Class Payment and the
11 Individual PAGA Payment. Before mailing any checks, the Settlement Administrator must update
12 the recipients' mailing addresses using the National Change of Address Database.

13 4.4.2. The Administrator must conduct a Class Member Address Search for all other
14 Class Members whose checks are returned undelivered without USPS forwarding address. Within
15 7 days of receiving a returned check the Administrator must re-mail checks to the USPS
16 forwarding address provided or to an address ascertained through the Class Member Address
17 Search. The Administrator need not take further steps to deliver checks to Class Members whose
18 re-mailed checks are returned as undelivered. The Administrator shall promptly send a
19 replacement check to any Class Member whose original check was lost or misplaced, requested by
20 the Class Member prior to the void date.

21 4.4.3. For any Class Member whose Individual Class Payment check or Individual
22 PAGA Payment check is uncashed and cancelled after the void date, the Administrator shall
23 transmit the funds represented by such checks to the California Controller's Unclaimed Property
24 Fund in the name of the Class Member thereby leaving no "unpaid residue" subject to the
25 requirements of California Code of Civil Procedure Section 384, subd. (b).

26 4.4.4. The payment of Individual Class Payments and Individual PAGA Payments shall
27 not obligate ESPORTS to confer any additional benefits or make any additional payments to Class
28 Members (such as 401(k) contributions or bonuses) beyond those specified in this Agreement.

1 **5. [Section 5 not included in LASC Model Settlement Agreement]**

2 **6. RELEASES OF CLAIMS.**

3 Effective on the date when ESPORTS fully funds the entire Gross Settlement Amount,
4 Plaintiff, Class Members, and Class Counsel will release claims against all Released Parties as
5 follows:

6 6.1 Plaintiff's General Release. Plaintiff and her respective former and present spouses,
7 representatives, agents, attorneys, heirs, administrators, successors, predecessors, and assigns
8 generally, fully and forever release and discharge Released Parties from any and all charges,
9 claims, liabilities, obligations, promises, agreements, controversies, transactions, occurrences,
10 damages, actions, causes of action, suits, rights, demands, costs, losses, debts, and expenses
11 (including back wages, penalties, liquidated damages, and attorneys' fees and costs actually
12 incurred) of any nature whatsoever, from the beginning of time through the date of her signature
13 on this Settlement, known or unknown, suspected or unsuspected, including but not limited to all
14 claims arising out of, based upon, or relating to her employment with ESPORTS or the
15 remuneration for such employment. Without limiting the generality of the foregoing, Plaintiff
16 expressly releases all claims which were or could have been raised in the Action and all claims or
17 rights arising out of alleged violations of any contracts, express or implied (including but not
18 limited to any contract of employment); any contract or covenant of good faith or fair dealing
19 (express or implied); wrongful discharge; any tort, including negligence, fraud, misrepresentation
20 under California Labor Code section 970, negligent infliction of emotional distress, intentional
21 infliction of emotional distress, assault, battery, and defamation; any "retaliation" claims; any
22 claims relating to any breach of public policy; any legal restrictions on ESPORTS' right to
23 discharge employees or refuse to hire applicants; and any federal, state, or other governmental
24 statute, regulation, or ordinance, including, without limitation: (1) Title VII of the Civil Rights Act
25 of 1964 (race, color, religion, sex, and national origin discrimination or harassment, including
26 retaliation for reporting discrimination or harassment); (2) 42 U.S.C. § 1981 (discrimination); (3)
27 sections 503 and 504 of the Rehabilitation Act of 1973 (disability discrimination); (4) Equal Pay
28 Act, 29 U.S.C. § 209(4)(1) (equal pay); (5) Americans with Disabilities Act, 42 U.S.C. § 12100 *et*

1 *seq.* (disability discrimination); (6) Family and Medical Leave Act, 29 U.S.C. § 2601 *et seq.*
 2 (family/medical leave); (7) California Fair Employment and Housing Act, Cal. Gov't Code §
 3 12900 *et seq.* (discrimination or harassment in employment and/or housing, including
 4 discrimination or harassment based on race, religious creed, color, national origin, ancestry,
 5 physical or mental disability, marital status, sex (including pregnancy), sexual orientation, genetic,
 6 or age, including retaliation for reporting discrimination or harassment); (8) California Family
 7 Rights Act, Cal. Gov't Code § 12945.1 *et seq.* (family/medical leave); (9) California Labor Code,
 8 including PAGA, or any Industrial Welfare Commission Wage Order; (10) the Fair Labor
 9 Standards Act, 29 U.S.C. § 201 *et seq.*; (11) Executive Order 11246 (race, color, religion, sex, and
 10 national origin discrimination or harassment); (12) Executive Order 11141 (age discrimination);
 11 (13) Employee Retirement Income Security Act, 29 U.S.C. § 1000 *et seq.* (employee benefits);
 12 (14) state and federal false claims acts; (15) Pregnancy Disability Leave Law; (16) National Labor
 13 Relations Act; (17) Occupational Safety and Health Act; and (18) Business and Professions Code
 14 § 17200 *et seq.* ("Plaintiff's General Release.") Plaintiff's General Release does not extend to any
 15 claims or actions to enforce this Agreement, or to any claims for vested benefits, unemployment
 16 benefits, disability benefits, social security benefits, or workers' compensation benefits that arose
 17 at any time, or based on occurrences outside the Class Period. Plaintiff acknowledges that Plaintiff
 18 may discover facts or law different from, or in addition to, the facts or law that Plaintiff now
 19 knows or believes to be true but agrees, nonetheless, that Plaintiff's General Release shall be and
 20 remain effective in all respects, notwithstanding such different or additional facts or Plaintiff's
 21 discovery of them.

22 6.1.1 Plaintiff's Waiver of Rights Under California Civil Code Section 1542. For
 23 purposes of Plaintiff's General Release, Plaintiff expressly waives and relinquishes the provisions,
 24 rights, and benefits, if any, of section 1542 of the California Civil Code, against the Released
 25 Parties, which reads:

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 27 A general release does not extend to claims that the creditor or releasing party does
 28 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.

1 Plaintiff acknowledges she is aware that she or her attorneys may hereafter discover claims
2 or facts in addition to or different from those now known or believed to be true with respect to the
3 subject matter of this Agreement and/or the Released Class Claims and Released PAGA Claims.
4 Plaintiff acknowledges that she intends to and will fully, finally, and forever settle and release any
5 and all claims, including but not limited to the Released Class Claims described in Section 6.2 and
6 Released PAGA Claims described in Section 6.3, whether known or unknown, suspected or
7 unsuspected, which now exist, hereinafter may exist, or heretofore may have existed. In
8 furtherance of this intention, the releases contained in this Agreement shall be and remain in effect
9 as full and complete releases by Plaintiff without regard to the subsequent discovery or existence
10 of such different or additional claims or facts.

11 6.2 Release by Participating Class Members: All Participating Class Members, on behalf
12 of themselves and their respective former and present representatives, agents, attorneys, heirs,
13 administrators, successors, assigns, and estates, release Released Parties from any and all claims,
14 debts, liabilities, demands, obligations, guarantees, costs, expenses, attorneys' fees, damages,
15 interest, restitution, penalties, action or causes of action, and liabilities of any nature whatsoever,
16 including costs, expenses, penalties, and attorneys' fees, in law or equity, for causes of action
17 alleged in the Operative Complaint and for any other claims or causes of action that could have
18 been alleged based upon the facts alleged in the Operative Complaint ("Released Class Claims").
19 The Released Class Claims include, without limitation, claims for failure to reimburse for
20 necessary business expenses, including but not limited to mileage and personal vehicle expenses,
21 home internet, home telephone, cellular telephone, home utilities, office supplies and equipment,
22 and cost of space for home office, and claims for unfair business practices for the forgoing alleged
23 violations, as well as any other state or federal law, statute, regulation, or ordinance imposing
24 liability and/or obligations that could be brought based on the factual allegations in the Operative
25 Complaint, including the Fair Labor Standards Act (FLSA). This release shall run through the
26 Class Period. Except as set forth in Section 6.3 of this Agreement, Participating Class Members
27 do not release any other claims, including claims for vested benefits, wrongful termination,

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violation of the Fair Employment and Housing Act, unemployment insurance, disability, social security, workers' compensation, or claims based on facts occurring outside the Class Period.

6.3 Release by Participating and Non-Participating Class Members Who Are Aggrieved Employees: All Participating Class Members and Non-Participating Class Members who are Aggrieved Employees are deemed to release, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors, assigns, and estates, the Released Parties from any and all claims debts, liabilities, demands, obligations, guarantees, costs, expenses, penalties, attorneys' fees, damages, action or causes of action, and liabilities of any nature whatsoever that could have been recovered under PAGA for violations of Labor Code section 2802 as alleged in Plaintiff's letter to the LWDA dated April 11, 2022 and the Operative Complaint, including claims for failure to reimburse for necessary business expenses, including but not limited to mileage and personal vehicle expenses, home internet, home telephone, cellular telephone, home utilities, office supplies and equipment ("Released PAGA Claims"). This release shall run through the PAGA Period.

7. MOTION FOR PRELIMINARY APPROVAL.

Class Counsel will prepare and file a motion for preliminary approval ("Motion for Preliminary Approval") that complies with the Court's current checklist for Preliminary Approvals.

7.1 ESPORTS' Declaration in Support of Preliminary Approval. Within 14 days of the full execution of this Agreement, ESPORTS will prepare and deliver to Class Counsel a signed Declaration from Defense Counsel disclosing all facts relevant to any actual or potential conflicts of interest with the Administrator. In the Declaration, Defense Counsel shall aver that they are not aware of any other pending matter or action asserting claims that will be extinguished or adversely affected by the Settlement.

7.2 Plaintiff's Responsibilities. Plaintiff will prepare and deliver to Defense Counsel all documents necessary for obtaining Preliminary Approval, including: (i) a draft of the notice, and memorandum in support, of the Motion for Preliminary Approval that includes an analysis of the Settlement under *Dunk/Kullar* and a request for approval of the PAGA Settlement under Labor

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

7.3 Responsibilities of Counsel. Class Counsel is responsible for expeditiously finalizing and filing the Motion for Preliminary Approval no later than 45 days after the full execution of this Agreement; obtaining a prompt hearing date for the Motion for Preliminary Approval; and for appearing in Court to advocate in favor of the Motion for Preliminary Approval. Class Counsel is responsible for delivering the Court’s Preliminary Approval to the Administrator.

7.4 Duty to Cooperate. No later than three business days before the motion for preliminary approval is due to be filed, Class Counsel will provide Defense Counsel with drafts of all papers in support of the motion for preliminary approval. If the Parties disagree on any aspect of the proposed Motion for Preliminary Approval and/or the supporting declarations and documents, Class Counsel and Defense Counsel will expeditiously work together on behalf of the Parties by

meeting in person or by telephone, and in good faith, to resolve the disagreement. If the Court does not grant Preliminary Approval or conditions Preliminary Approval on any material change to this Agreement, Class Counsel and Defense Counsel will expeditiously work together on behalf of the Parties by meeting in person or by telephone, and in good faith, to modify the Agreement and otherwise satisfy the Court's concerns.

8. SETTLEMENT ADMINISTRATION.

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

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

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

8.4 Notice to Class Members.

8.4.1 No later than three (3) business days after receipt of the Class Data, the Administrator shall notify Class Counsel that the list has been received and state the number of Class Members, PAGA Members, and Class Period and PAGA Period Months Worked in the Class Data.

8.4.2 Using best efforts to perform as soon as possible, and in no event later than 20 days after receiving the Class Data, the Administrator will send to all Class Members identified in the Class Data, via first-class United States Postal Service ("USPS") mail, the Class Notice substantially in the form attached to this Agreement as Exhibit A. The first page of the Class Notice shall prominently estimate the dollar amounts of any Individual Class Payment and/or

1 Individual PAGA Payment payable to the Class Member, and the number of Class Period Months
2 Worked and PAGA Period Months Worked (if applicable) used to calculate these amounts. Before
3 mailing Class Notices, the Administrator shall update Class Member addresses using the National
4 Change of Address database.

5 8.4.3 Not later than 3 business days after the Administrator's receipt of any Class
6 Notice returned by the USPS as undelivered, the Administrator shall re-mail the Class Notice
7 using any forwarding address provided by the USPS. If the USPS does not provide a forwarding
8 address, the Administrator shall conduct a Class Member Address Search, and re-mail the Class
9 Notice to the most current address obtained. The Administrator has no obligation to make further
10 attempts to locate or send Class Notice to Class Members whose Class Notice is returned by the
11 USPS a second time.

12 8.4.4 The deadlines for Class Members' written objections, Challenges to Class Period
13 and PAGA Period Months Worked, and Requests for Exclusion will be extended an additional 14
14 days beyond the 45 days otherwise provided in the Class Notice for all Class Members whose
15 notice is re-mailed. The Administrator will inform the Class Member of the extended deadline
16 with the re-mailed Class Notice.

17 8.4.5 If the Administrator, ESPTS or Class Counsel is contacted by or otherwise
18 discovers any persons who believe they should have been included in the Class Data and should
19 have received Class Notice, the Parties will expeditiously meet and confer in person or by
20 telephone, and in good faith in an effort to agree on whether to include them as Class Members. If
21 the Parties agree, such persons will be Class Members entitled to the same rights as other Class
22 Members, and the Administrator will send, via email or overnight delivery, a Class Notice
23 requiring them to exercise options under this Agreement not later than 14 days after receipt of
24 Class Notice, or the deadline dates in the Class Notice, which ever are later.

25 8.5 Requests for Exclusion (Opt-Outs).

26 8.5.1 Class Members who wish to exclude themselves (opt-out of) the Class Settlement
27 must send the Administrator, by fax, email, or mail, a signed written Request for Exclusion not
28 later than 45 days after the Administrator mails the Class Notice (plus an additional 14 days for

1 Class Members whose Class Notice is re-mailed). A Request for Exclusion is a letter from a Class
2 Member or his/her representative that reasonably communicates the Class Member's election to be
3 excluded from the Settlement and includes the Class Member's name, address and email address
4 or telephone number. To be valid, a Request for Exclusion must be timely faxed, emailed, or
5 postmarked by the Response Deadline.

6 8.5.2 The Administrator may not reject a Request for Exclusion as invalid because it
7 fails to contain all the information specified in the Class Notice. The Administrator shall accept
8 any Request for Exclusion as valid if the Administrator can reasonably ascertain the identity of the
9 person as a Class Member and the Class Member's desire to be excluded. The Administrator's
10 determination shall be final and not appealable or otherwise susceptible to challenge. If the
11 Administrator has reason to question the authenticity of a Request for Exclusion, the
12 Administrator may demand additional proof of the Class Member's identity. The Administrator's
13 determination of authenticity shall be final and not appealable or otherwise susceptible to
14 challenge.

15 8.5.3 Every Class Member who does not submit a timely and valid Request for
16 Exclusion is deemed to be a Participating Class Member under this Agreement, entitled to all
17 benefits and bound by all terms and conditions of the Settlement, including the Participating Class
18 Members' Releases under Paragraphs 6.2 and 6.3 of this Agreement, regardless of whether the
19 Participating Class Member actually receives the Class Notice or objects to the Settlement.

20 8.5.4 Every Class Member who submits a valid and timely Request for Exclusion is a
21 Non-Participating Class Member and shall not receive an Individual Class Payment or have the
22 right to object to the class action components of the Settlement. Because future PAGA claims are
23 subject to claim preclusion upon entry of the Judgment, Non-Participating Class Members who are
24 Aggrieved Employees are deemed to release the claims identified in Paragraph 6.3 of this
25 Agreement and are eligible for an Individual PAGA Payment.

26 8.6 Challenges to Calculation of Class Period and PAGA Period Months Worked. Each
27 Class Member shall have 45 days after the Administrator mails the Class Notice (plus an
28 additional 14 days for Class Members whose Class Notice is re-mailed) to challenge the number

1 of Class Period and/or PAGA Period Months Worked allocated to the Class Member in the Class
2 Notice. The Class Member may challenge the allocation by communicating with the Administrator
3 via fax, email or mail. The Administrator must encourage the challenging Class Member to submit
4 supporting documentation. In the absence of any contrary documentation, the Administrator is
5 entitled to presume that the Class Period and PAGA Period Months Worked contained in the Class
6 Notice are correct so long as they are consistent with the Class Data. The Administrator's
7 determination of each Class Member's allocation of Class Period and PAGA Period Months
8 Worked shall be final and not appealable or otherwise susceptible to challenge. The Administrator
9 shall promptly provide copies of all challenges to calculation of Class Period and PAGA Period
10 Months Worked to Defense Counsel and Class Counsel and the Administrator's determination of
11 the challenges.

12 8.7 Objections to Settlement.

13 8.7.1 Only Participating Class Members may object to the class action components of
14 the Settlement and/or this Agreement, including contesting the fairness of the Settlement, and/or
15 amounts requested for the Class Counsel Fees Payment, Class Counsel Litigation Expenses
16 Payment and/or Class Representative Service Payment.

17 8.7.2 Participating Class Members may send written objections to the Administrator,
18 by fax, email, or mail. In the alternative, Participating Class Members may appear in Court (or hire
19 an attorney to appear in Court) to present verbal objections at the Final Approval Hearing. A
20 Participating Class Member who elects to send a written objection to the Administrator must do so
21 not later than 45 days after the Administrator's mailing of the Class Notice (plus an additional 14
22 days for Class Members whose Class Notice was re-mailed).

23 8.7.3 Non-Participating Class Members have no right to object to any of the class
24 action components of the Settlement.

25 8.7.4 If a Class Member submits both an objection and a Request for Exclusion, the
26 Administrator will attempt to determine the Class Member's true intention. If the Administrator is
27 unable to do so, the Request for Exclusion shall govern.

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1 8.8 Administrator Duties. The Administrator has a duty to perform or observe all tasks to
2 be performed or observed by the Administrator contained in this Agreement or otherwise.

3 8.8.1 Website, Email Address and Toll-Free Number. The Administrator will establish
4 and maintain and use an internet website to post information of interest to Class Members
5 including the date, time and location for the Final Approval Hearing and copies of the Settlement
6 Agreement, Motion for Preliminary Approval, the Preliminary Approval, the Class Notice, the
7 Motion for Final Approval, the Motion for Class Counsel Fees Payment, Class Counsel Litigation
8 Expenses Payment and Class Representative Service Payment, the Final Approval and the
9 Judgment. Posting of the Judgment on the Administrator's website shall be sufficient to provide
10 notice of the judgment to Class Members pursuant to California Rule of Court 3.771(b). The
11 Administrator will also maintain and monitor an email address and a toll-free telephone number to
12 receive Class Member calls, faxes and emails.

13 8.8.2 Requests for Exclusion (Opt-outs) and Exclusion List. The Administrator will
14 promptly review on a rolling basis Requests for Exclusion to ascertain their validity. Not later than
15 5 days after the expiration of the deadline for submitting Requests for Exclusion, the
16 Administrator shall email a list to Class Counsel and Defense Counsel containing (a) the names
17 and other identifying information of Class Members who have timely submitted valid Requests for
18 Exclusion ("Exclusion List"); (b) the names and other identifying information of Class Members
19 who have submitted invalid Requests for Exclusion; (c) copies of all Requests for Exclusion from
20 Settlement submitted (whether valid or invalid).

21 8.8.3 Weekly Reports. The Administrator must, on a weekly basis, provide written
22 reports to Class Counsel and Defense Counsel that, among other things, tally the number of: Class
23 Notices mailed or re-mailed, Class Notices returned undelivered, Requests for Exclusion (whether
24 valid or invalid) received, objections received, and challenges to Class Period and PAGA Period
25 Months Worked received and/or resolved ("Weekly Report"). The Weekly Reports must include
26 the Administrator's assessment of the validity of Requests for Exclusion and attach copies of all
27 Requests for Exclusion and objections received.

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1 8.8.4 Class Period and PAGA Period Months Worked Challenges. The Administrator
2 has the authority to address and make final decisions consistent with the terms of this Agreement
3 on all Class Member challenges over the calculation of Class Period and PAGA Period Months
4 Worked. The Administrator's decision shall be final and not appealable or otherwise susceptible to
5 challenge.

6 8.8.5 Administrator's Declaration. Not later than 14 days before the date by which
7 Plaintiff is required to file the Motion for Final Approval of the Settlement, the Administrator will
8 provide to Class Counsel and Defense Counsel, a signed declaration suitable for filing in Court
9 attesting to its due diligence and compliance with all of its obligations under this Agreement,
10 including, but not limited to, its mailing of Class Notice, the Class Notices returned as
11 undelivered, the re-mailing of Class Notices, attempts to locate Class Members, the total number
12 of Requests for Exclusion from Settlement it received (both valid or invalid), the number of
13 written objections and attach the Exclusion List. The Administrator will supplement its declaration
14 as needed or requested by the Parties and/or the Court. Class Counsel is responsible for filing the
15 Administrator's declaration(s) in Court.

16 8.8.6 Final Report by Settlement Administrator. Within 10 days after the Administrator
17 disburses all funds in the Gross Settlement Amount, the Administrator will provide Class Counsel
18 and Defense Counsel with a final report detailing its disbursements by employee identification
19 number only of all payments made under this Agreement. At least 15 days before any deadline set
20 by the Court, the Administrator will prepare, and submit to Class Counsel and Defense Counsel, a
21 signed declaration suitable for filing in Court attesting to its disbursement of all payments required
22 under this Agreement. Class Counsel is responsible for filing the Administrator's declaration in
23 Court.

24 **9. CLASS SIZE ESTIMATES and ESCALATOR CLAUSE.**

25 Based on its records, ESPORTS estimates that, as of the date of this Settlement
26 Agreement, (1) there are 372 Class Members and 3,406 Total Class Period Months Worked and
27 (2) there were 189 Aggrieved Employees and 1,782.93 PAGA Period Months Worked. If it is
28

found that the total number of Class Period Months Worked exceeds 3,406 by more than 15%, then the GSA shall increase proportionately by the number of Months Worked in excess of 3,406.

10. ESPORTS' RIGHT TO WITHDRAW.

If the number of valid Requests for Exclusion identified in the Exclusion List exceeds 5% of the total of all Class Members, ESPORTS may, but is not obligated, elect to withdraw from the Settlement. The Parties agree that, if ESPORTS withdraws, the Settlement shall be void ab initio, have no force or effect whatsoever, and that neither Party will have any further obligation to perform under this Agreement; provided, however, ESPORTS will remain responsible for paying all Settlement Administration Expenses incurred to that point. ESPORTS must notify Class Counsel and the Court of its election to withdraw not later than seven days after the Administrator sends the final Exclusion List to Defense Counsel; late elections will have no effect.

11. MOTION FOR FINAL APPROVAL.

Not later than 16 court days before the calendared Final Approval Hearing, Plaintiff will file in Court, a motion for final approval of the Settlement that includes a request for approval of the PAGA settlement under Labor Code section 2699, subd. (l), a Proposed Final Approval Order and a proposed Judgment, and a motion for Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment and Class Representative Service Payment (collectively "Motion for Final Approval"). Plaintiff shall provide drafts of the Motion for Final Approval to Defense Counsel not later than three business days prior to filing the Motion for Final Approval. Class Counsel and Defense Counsel will expeditiously meet and confer in person or by telephone, and in good faith, to resolve any disagreements concerning the Motion for Final Approval.

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

11.2 Duty to Cooperate. If the Court does not grant Final Approval or conditions Final Approval on any material change to the Settlement (including, but not limited to, the scope of release to be granted by Class Members), the Parties will expeditiously work together in good

1 faith to address the Court's concerns by revising the Agreement as necessary to obtain Final
2 Approval. The Court's decision to award less than the amounts requested for the Class
3 Representative Service Payment, Class Counsel Fees Payment, Class Counsel Litigation Expenses
4 Payment and/or Administrator Expenses Payment shall not constitute a material modification to
5 the Agreement within the meaning of this paragraph.

6 11.3 Continuing Jurisdiction of the Court. The Parties agree that, after entry of Judgment,
7 the Court will retain jurisdiction over the Parties, Action, and the Settlement solely for purposes of
8 (i) enforcing this Agreement and/or Judgment, (ii) addressing settlement administration matters,
9 and (iii) addressing such post-Judgment matters as are permitted by law.

10 11.4 Waiver of Right to Appeal. Provided the Judgment is consistent with the terms and
11 conditions of this Agreement, specifically including the Class Counsel Fees Payment and Class
12 Counsel Litigation Expenses Payment reflected set forth in this Settlement, the Parties, their
13 respective counsel, and all Participating Class Members who did not object to the Settlement as
14 provided in this Agreement, waive all rights to appeal from the Judgment, including all rights to
15 post-judgment and appellate proceedings, the right to file motions to vacate judgment, motions for
16 new trial, extraordinary writs, and appeals. The waiver of appeal does not include any waiver of
17 the right to oppose such motions, writs or appeals. If an objector appeals the Judgment, the
18 Parties' obligations to perform under this Agreement will be suspended until such time as the
19 appeal is finally resolved and the Judgment becomes final, except as to matters that do not affect
20 the amount of the Net Settlement Amount.

21 11.5 Appellate Court Orders to Vacate, Reverse, or Materially Modify Judgment. If the
22 reviewing Court vacates, reverses, or modifies the Judgment in a manner that requires a material
23 modification of this Agreement (including, but not limited to, the scope of release to be granted by
24 Class Members), this Agreement shall be null and void. The Parties shall nevertheless
25 expeditiously work together in good faith to address the appellate court's concerns and to obtain
26 Final Approval and entry of Judgment, sharing, on a 50-50 basis, any additional Administration
27 Expenses reasonably incurred after remittitur. An appellate decision to vacate, reverse, or modify
28 the Court's award of the Class Representative Service Payment or any payments to Class Counsel

1 shall not constitute a material modification of the Judgment within the meaning of this paragraph,
2 as long as the Gross Settlement Amount remains unchanged.

3 **12. AMENDED JUDGMENT.**

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

6 **13.ADDITIONAL PROVISIONS.**

7 13.1 No Admission of Liability, Class Certification or Representative Manageability for
8 Other Purposes. This Agreement represents a compromise and settlement of highly disputed
9 claims and is conditioned upon court approval. Nothing in this Agreement is intended or should be
10 construed as an admission by ESPORTS that any of the allegations in the Operative Complaint
11 have merit or that ESPORTS has any liability for any claims asserted; nor should it be intended or
12 construed as an admission by Plaintiff that ESPORTS's defenses in the Action have merit. The
13 Parties agree that class certification and representative treatment is for purposes of this Settlement
14 only. If, for any reason the Court does grant Preliminary Approval, Final Approval or enter
15 Judgment, this Agreement shall be null and void and ESPORTS reserves the right to contest
16 certification of any class for any reasons, and ESPORTS reserves all available defenses to the
17 claims in the Action, and Plaintiff reserves the right to move for class certification on any grounds
18 available and to contest ESPORTS's defenses. The Settlement, this Agreement and the Parties'
19 willingness to settle the Action will have no bearing on, and will not be admissible in connection
20 with, any litigation (except for proceedings to enforce or effectuate the Settlement and this
21 Agreement).

22 13.2 Confidentiality Prior to Preliminary Approval. Plaintiff, Class Counsel, ESPORTS
23 and Defense Counsel separately agree that, until the Motion for Preliminary Approval of
24 Settlement is filed, they and each of them will not disclose, disseminate and/or publicize, or cause
25 or permit another person to disclose, disseminate or publicize, any of the terms of the Agreement
26 directly or indirectly, specifically or generally, to any person, corporation, association, government
27 agency, or other entity except: (1) to the Parties' attorneys, accountants, or spouses, all of whom
28 will be instructed to keep this Agreement confidential; (2) counsel in a related matter; (3) to the

1 extent necessary to report income to appropriate taxing authorities; (4) in response to a court order
2 or subpoena; or (5) in response to an inquiry or subpoena issued by a state or federal government
3 agency. Each Party agrees to immediately notify each other Party of any judicial or agency order,
4 inquiry, or subpoena seeking such information. Plaintiff, Class Counsel, ESPORTS and Defense
5 Counsel separately agree not to, directly or indirectly, initiate any conversation or other
6 communication, before the filing of the Motion for Preliminary Approval, with any third party
7 regarding this Agreement or the matters giving rise to this Agreement except to respond only that
8 “the matter was resolved,” or words to that effect. This paragraph does not restrict Class Counsel’s
9 communications with Class Members in accordance with Class Counsel’s ethical obligations owed
10 to Class Members.

11 13.3 No Publicity After Preliminary Approval. Except for communications between Class
12 Counsel and Class Members, Plaintiff and Class Counsel agree not to make any public statements,
13 issue any press releases, place information regarding this settlement on their web site, or make any
14 other announcements publicizing this settlement. In the event Plaintiff this provision, ESPORTS
15 reserves the right to request that the court forfeit the Class Representative Service Payment.

16 13.4 No Solicitation. The Parties separately agree that they and their respective counsel
17 and employees will not solicit any Class Member to opt out of or object to the Settlement, or
18 appeal from the Judgment. Nothing in this paragraph shall be construed to restrict Class Counsel’s
19 ability to communicate with Class Members in accordance with Class Counsel’s ethical
20 obligations owed to Class Members.

21 13.5 Integrated Agreement. Upon execution by all Parties and their counsel, this
22 Agreement together with its attached exhibits shall constitute the entire agreement between the
23 Parties relating to the Settlement, superseding any and all oral representations, warranties,
24 covenants, or inducements made to or by any Party.

25 13.6 Attorney Authorization. Class Counsel and Defense Counsel separately warrant and
26 represent that they are authorized by Plaintiff and ESPORTS, respectively, to take all appropriate
27 action required or permitted to be taken by such Parties pursuant to this Agreement to effectuate

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1 its terms, and to execute any other documents reasonably required to effectuate the terms of this
2 Agreement including any amendments to this Agreement.

3 13.7 Cooperation. The Parties and their counsel will cooperate with each other and use
4 their best efforts, in good faith, to implement the Settlement by, among other things, modifying the
5 Settlement Agreement, submitting supplemental evidence and supplementing points and
6 authorities as requested by the Court. In the event the Parties are unable to agree upon the form or
7 content of any document necessary to implement the Settlement, or on any modification of the
8 Agreement that may become necessary to implement the Settlement, the Parties will seek the
9 assistance of a mediator and/or the Court for resolution.

10 13.8 No Prior Assignments. The Parties separately represent and warrant that they have not
11 directly or indirectly assigned, transferred, encumbered, or purported to assign, transfer, or
12 encumber to any person or entity any portion of any liability, claim, demand, action, cause of
13 action, or right released and discharged by the Party in this Settlement.

14 13.9 No Tax Advice. Neither Plaintiff, Class Counsel, ESPORTS nor Defense Counsel are
15 providing any advice regarding taxes or taxability, nor shall anything in this Settlement be relied
16 upon as such within the meaning of United States Treasury Department Circular 230 (31 CFR Part
17 10, as amended) or otherwise.

18 13.10 Modification of Agreement. This Agreement, and all parts of it, may be amended,
19 modified, changed, or waived only by an express written instrument signed by all Parties or their
20 representatives, and approved by the Court.

21 13.11 Agreement Binding on Successors. This Agreement will be binding upon, and inure
22 to the benefit of, the successors of each of the Parties.

23 13.12 Applicable Law. All terms and conditions of this Agreement and its exhibits will be
24 governed by and interpreted according to the internal laws of the state of California, without
25 regard to conflict of law principles.

26 13.13 Cooperation in Drafting. The Parties have cooperated in the drafting and preparation
27 of this Agreement. This Agreement will not be construed against any Party on the basis that the
28 Party was the drafter or participated in the drafting.

1 13.14 Confidentiality. To the extent permitted by law, all agreements made, and orders
2 entered during this Action and in this Agreement relating to the confidentiality of information
3 shall survive the execution of this Agreement.

4 13.15 Use and Return of Class Data. Information provided to Class Counsel pursuant to
5 Cal. Evid. Code §1152, and all copies and summaries of the Class Data provided to Class Counsel
6 by ESPORTS in connection with the mediation, other settlement negotiations, or in connection
7 with the Settlement, may be used only with respect to this Settlement, and no other purpose, and
8 may not be used in any way that violates any existing contractual agreement, statute, or rule of
9 court. Not later than 90 days after the date when the Court discharges the Administrator's
10 obligation to provide a Declaration confirming the final pay out of all Settlement funds, Plaintiff
11 shall destroy, all paper and electronic versions of Class Data received from ESPORTS unless,
12 prior to the Court's discharge of the Administrator's obligation, ESPORTS makes a written
13 request to Class Counsel for the return, rather than the destructions, of Class Data.

14 13.16 Headings. The descriptive heading of any section or paragraph of this Agreement is
15 inserted for convenience of reference only and does not constitute a part of this Agreement.

16 13.17 Calendar Days. Unless otherwise noted, all reference to "days" in this Agreement
17 shall be to calendar days. In the event any date or deadline set forth in this Agreement falls on a
18 weekend or federal legal holiday, such date or deadline shall be on the first business day
19 thereafter.

20 13.18 Notice. All notices, demands or other communications between the Parties in
21 connection with this Agreement will be in writing and deemed to have been duly given as of the
22 third business day after mailing by United States mail, or the day sent by email or messenger,
23 addressed as follows:

24 To Plaintiff:

25 **ACKERMANN & TILAJEF, P.C.**
26 Craig J. Ackermann, Esq.
27 Avi Kreitenberg, Esq.
28 1180 South Beverly Drive, Suite 610
 Los Angeles, California 90035
 Telephone: (310) 277-0614
 Facsimile: (310) 277-0635
 Email: cja@ackermanntilajef.com
 Email: ak@ackermanntilajef.com

To ESPORTS:

WILSON TURNER KOSMO LLP

Emily J. Fox

Nicole R. Roysdon

402 West Broadway, Suite 1600

San Diego, California 92101

Telephone: (619) 236-9600

Facsimile: (619) 236-9669

Email: efox@wilsonturnerkosmo.com

Email: nroysdon@wilsonturnerkosmo.com

13.19 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.

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

13.21 Severability. In the event that any one or more of the provisions contained in this Agreement shall for any reason be held invalid, illegal, or unenforceable in any respect, or not approved, such invalidity, illegality, unenforceability, or non-approval shall in no way affect any other provision if the Court, Defense Counsel and Class Counsel, on behalf of the Parties and the Class Members, mutually elect in writing to proceed as if such invalid, illegal, unenforceable, or unapproved provision had never been included in this Agreement. If the Parties do not elect to proceed, the Parties shall be restored to their respective positions in the Action, as of the date of the hearing on the Motion for Preliminary Approval.


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1 **AGREED TO AND ACCEPTED.**

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4 Dated: 10/3/2022 | 11:00 AM PDT

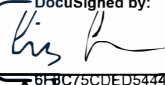
DocuSigned by:
By: 
NICOLE CARSON
Plaintiff

5
6
7
8 Dated: 10/3/2022

ESPORTS ENGINE, LLC
DocuSigned by:
By: 
Defendant

9
10 **APPROVED AS TO FORM:**

11
12 Dated: 9/30/2022 | 2:59 PM PDT

ACKERMAN & TILAJEF, P.C.
DocuSigned by:
By: 
Craig Ackermann
Class Counsel

13
14
15
16 Dated: 10/03/2022


WILSON TURNER KOSMO LLP
By: 
Nicole R. Roysdon
Attorneys for Defendant
ESPORTS ENGINE, LLC

EXHIBIT A

EXHIBIT A**COURT APPROVED NOTICE OF CLASS ACTION SETTLEMENT AND HEARING
DATE FOR FINAL COURT APPROVAL***Nicole Carson v. Esports Engine LLC*, Case No. _____

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

You may be eligible to receive money from an employee class action lawsuit ("Action") against Esports Engine LLC ("ESPORTS") for alleged failure to reimburse business expenses, including expenses incurred through cell phone usage, internet usage, home office expenses, and use of personal vehicle. The Action was filed by a former ESPORTS employee Nicole Carson ("Plaintiff") and seeks payment of (1) unreimbursed business expenses for all employees ("Class Members") who worked for ESPORTS during the Class Period (March 20, 2020 to August 31, 2022 and (2) penalties under the California Private Attorney General Act ("PAGA") for all employees who worked for ESPORTS during the PAGA Period (April 11, 2021 to August 31, 2022) ("Aggrieved Employees").

The proposed Settlement has two main parts: (1) a Class Settlement requiring ESPORTS to fund Individual Class Payments, and (2) a PAGA Settlement requiring ESPORTS to fund Individual PAGA Payments and pay penalties to the California Labor and Workforce Development Agency ("LWDA").

Based on ESPORTS's records, and the Parties' current assumptions, **your Individual Class Payment is estimated to be \$_____ and your Individual PAGA Payment is estimated to be \$_____**. The actual amount you may receive likely will be different and will depend on a number of factors. (If no amount is stated for your Individual PAGA Payment, then according to ESPORTS's records you are not eligible for an Individual PAGA Payment under the Settlement because you didn't work during the PAGA Period.)

The above estimates are based on ESPORTS's records showing that **you worked _____ months** during the Class Period and **you worked _____ months** during the PAGA Period. If you believe that you worked more months during either period, you can submit a challenge by the deadline date. See Section 4 of this Notice.

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

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

(1)**Do Nothing.** You don't have to do anything to participate in the proposed Settlement and be eligible for an Individual Class Payment and/or an Individual PAGA Payment. As a Participating Class Member, though, you will give up your right to assert Class Period reimbursement claims and PAGA Period penalty claims against ESPORTS.

(2)**Opt-Out of the Class Settlement.** You can exclude yourself from the Class Settlement (opt-out) by submitting the written Request for Exclusion or otherwise notifying the Administrator in writing. If you opt-out of the Settlement, you will not receive an Individual Class Payment. You will, however, preserve your right to personally pursue Class Period reimbursement claims against ESPORTS, and, if you are an Aggrieved Employee, remain eligible for an Individual PAGA Payment. You cannot opt-out of the PAGA portion of the proposed Settlement.

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

SUMMARY OF YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT

You Don't Have to Do Anything to Participate in the Settlement	If you do nothing, you will be a Participating Class Member, eligible for an Individual Class Payment and an Individual PAGA Payment (if any). In exchange, you will give up your right to assert the reimbursement claims against ESPORTS that are covered by this Settlement (Released Class Claims).
You Can Opt-out of the Class Settlement but not the PAGA Settlement	If you don't want to fully participate in the proposed Settlement, you can opt-out of the Class Settlement by sending the Administrator a written Request for Exclusion. Once excluded, you will be a Non-Participating Class Member and no longer eligible for an Individual Class Payment. Non-Participating Class Members cannot object to any portion of the proposed Settlement. See Section 6 of this Notice.
The Opt-out Deadline is _____	You cannot opt-out of the PAGA portion of the proposed Settlement. ESPORTS must pay Individual PAGA Payments to all Aggrieved Employees and the Aggrieved Employees must give up their rights to pursue Released PAGA Claims (defined below).
Participating Class Members Can Object to the Class Settlement but not the PAGA Settlement Written Objections Must be Submitted by _____	All Class Members who do not opt-out ("Participating Class Members") can object to any aspect of the proposed Settlement. The Court's decision whether to finally approve the Settlement will include a determination of how much will be paid to Class Counsel and Plaintiff who pursued the Action on behalf of the Class. You are not personally responsible for any payments to Class Counsel or Plaintiff, but every dollar paid to Class Counsel and Plaintiff reduces the overall amount paid to Participating Class Members. You can object to the amounts requested by Class Counsel or Plaintiff if you think they are unreasonable. See Section 7 of this Notice.

You Can Participate in the Final Approval Hearing

The Court's Final Approval Hearing is scheduled to take place on _____. You don't have to attend but you do have the right to appear (or hire an attorney to appear on your behalf at your own cost), in person, by telephone or by using the Court's virtual appearance platform. Participating Class Members can verbally object to the Settlement at the Final Approval Hearing. See Section 8 of this Notice

You Can Challenge the Calculation of Your Class Period and PAGA Period Months Worked Written Challenges Must be Submitted by

The amount of your Individual Class Payment and PAGA Payment (if any) depend on how many months you worked at least one day during the Class Period and how many months you worked at least one day during the PAGA Period, respectively. The number of months worked during the Class Period and PAGA Period according to ESPORTS' records is stated on the first page of this Notice. If you disagree with either of these numbers, you must challenge it by _____. See Section 4 of this Notice.

1. WHAT IS THE ACTION ABOUT?

Plaintiff is a former ESPORTS employee. The Action accuses ESPORTS of failing to reimburse business expenses for employees who worked from home at least one pay period between March 20, 2020 and August 31, 2022. Based on the same claims, Plaintiff has also asserted a claim for civil penalties under the California Private Attorneys General Act (Labor Code §§ 2698, et seq.) ("PAGA"). Plaintiff is represented by attorneys in the Action: Craig Ackermann and Avi Kreitenberg of Ackermann & Tilajef, P.C. ("Class Counsel.") ESPORTS strongly denies violating any laws or failing to pay any reimbursements and contends it complied with all applicable laws.

2. WHAT DOES IT MEAN THAT THE ACTION HAS SETTLED?

So far, the Court has made no determination whether ESPORTS or Plaintiff is correct on the merits. In the meantime, Plaintiff and ESPORTS negotiated an to end the case by agreement (settle the case) rather than continuing the expensive and time-consuming process of litigation. By signing a lengthy written settlement agreement ("Agreement") and agreeing to jointly ask the Court to enter a judgment ending the Action and enforcing the Agreement, Plaintiff and ESPORTS have negotiated a proposed Settlement that is subject to the Court's Final Approval. Both sides agree the proposed Settlement is a compromise of disputed claims. By agreeing to settle, ESPORTS does not admit any violations or concede the merit of any claims.

Plaintiff and Class Counsel strongly believe the Settlement is a good deal for you because they believe that: (1) ESPORTS has agreed to pay a fair, reasonable and adequate amount considering the strength of the claims and the risks and uncertainties of continued litigation; and (2) Settlement is in the best interests of the Class Members and Aggrieved Employees. The Court preliminarily approved the proposed Settlement as fair, reasonable and adequate, authorized this Notice, and scheduled a hearing to determine Final Approval.

3. WHAT ARE THE IMPORTANT TERMS OF THE PROPOSED SETTLEMENT?

1. ESPORTS Will Pay \$155,000.00 as the Gross Settlement Amount (Gross Settlement). ESPORTS has agreed to deposit the Gross Settlement into an account controlled by the Administrator of the Settlement. The Administrator will use the Gross Settlement to pay the Individual Class Payments, Individual PAGA Payments, Class Representative Service Payment, Class Counsel's attorney's fees and expenses, the Administrator's expenses, and penalties to be

1 paid to the California Labor and Workforce Development Agency ("LWDA"). Assuming the
 2 Court grants Final Approval, ESPTS will fund the Gross Settlement not more than 30 days
 3 after the Judgment entered by the Court becomes final. The Judgment will be final 65 days after
 the Court enters Judgment, or a later date if Participating Class Members object to the proposed
 Settlement or filed a motion to intervene or vacate the Judgment, or the Judgment is appealed.

4 2. Court Approved Deductions from Gross Settlement. At the Final Approval Hearing,
 5 Plaintiff and/or Class Counsel will ask the Court to approve the following deductions from the
 6 Gross Settlement, the amounts of which will be decided by the Court at the Final Approval
 Hearing:

7 A. Up to \$51,666.67 (33 1/3% of the Gross Settlement) to Class Counsel for
 8 attorneys' fees and up to \$5,000 for their litigation expenses. To date, Class Counsel have
 worked and incurred expenses on the Action without payment.

9 B. Up to \$7,500 as a Class Representative Award for filing the Action, working
 10 with Class Counsel and representing the Class. A Class Representative Award will be the
 only monies Plaintiff will receive other than Plaintiff's Individual Class Payment and any
 Individual PAGA Payment.

11 C. Up to \$8,750 to the Administrator for services administering the Settlement.

12 D. Up to \$20,000 for PAGA Penalties, allocated 75% to the LWDA PAGA
 13 Payment and 25% in Individual PAGA Payments to the Aggrieved Employees based on
 their PAGA Period Months Worked.

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

16 3. Net Settlement Distributed to Class Members. After making the above deductions in
 17 amounts approved by the Court, the Administrator will distribute the rest of the Gross Settlement
 (the "Net Settlement") by making Individual Class Payments to Participating Class Members based
 on their Class Period Months Worked.

18 4. Taxes Owed on Payments to Class Members. The Individual PAGA Payments are counted
 19 as reimbursements, interest, and penalties rather than wages for tax purposes. The Administrator
 will report the Individual PAGA Payments and the Individual Class Payments on IRS 1099 Forms
 20 as required. Although Plaintiff and ESPTS have agreed to these allocations, neither side is giving
 you any advice on whether your Payments are taxable or how much you might owe in taxes. You
 21 are responsible for paying all taxes (including penalties and interest on back taxes) on any Payments
 received from the proposed Settlement. You should consult a tax advisor if you have any questions
 22 about the tax consequences of the proposed Settlement.

23 5. Need to Promptly Cash Payment Checks. The front of every check issued for Individual
 24 Class Payments and Individual PAGA Payments will show the date when the check expires (the
 void date). If you don't cash it by the void date, your check will be automatically cancelled, and the
 25 monies will be deposited with the California Controller's Unclaimed Property Fund in your name.
 If the money represented by your check is sent to the Controller's Unclaimed Property, you should
 consult the rules of the Fund for instructions on how to retrieve your money.

26 6. Requests for Exclusion from the Class Settlement (Opt-Outs). You will be treated as a
 27 Participating Class Member, participating fully in the Class Settlement, unless you notify the
 Administrator in writing, not later than _____, that you wish to opt-out. The easiest way
 28 to notify the Administrator is to send a written and signed Request for Exclusion by the
 _____ Response Deadline. The Request for Exclusion should be a letter from a Class
 Member or his/her representative setting forth a Class Member's name, present address, telephone

number, and a simple statement electing to be excluded from the Settlement. Excluded Class Members (i.e., Non-Participating Class Members) will not receive Individual Class Payments, but will preserve their rights to personally pursue reimbursement claims against ESPORTS. You cannot opt-out of the PAGA portion of the Settlement. Class Members who exclude themselves from the Class Settlement (Non-Participating Class Members) remain eligible for Individual PAGA Payments and are required to give up their right to assert PAGA claims against ESPORTS based on the PAGA Period facts alleged in the Action.

7. The Proposed Settlement Will be Void if the Court Denies Final Approval. It is possible the Court will decline to grant Final Approval of the Settlement or decline to enter a Judgment. It is also possible the Court will enter a Judgment that is reversed on appeal. Plaintiff and ESPORTS have agreed that, in either case, the Settlement will be void: ESPORTS will not pay any money and Class Members will not release any claims against ESPORTS.

8. Administrator. The Court has appointed a neutral company, CPT Group, Inc. (the "Administrator") to send this Notice, calculate and make payments, and process Class Members' Requests for Exclusion. The Administrator will also decide Class Member Challenges over Class Period and PAGA Period Months Worked, mail and remail settlement checks and tax forms, and perform other tasks necessary to administer the Settlement. The Administrator's contact information is contained in Section 9 of this Notice.

9. Participating Class Members' Release. After the Judgment is final and ESPORTS has fully funded the Gross Settlement, Participating Class Members will be legally barred from asserting any of the claims released under the Settlement. This means that unless you opted out by validly excluding yourself from the Class Settlement, you cannot sue, continue to sue, or be part of any other lawsuit against ESPORTS or related entities for reimbursements based on the Class Period facts and PAGA penalties based on PAGA Period facts, as alleged in the Action and resolved by this Settlement. The Participating Class Members will be bound by the following release:

All Participating Class Members, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors, assigns, and estates, release Released Parties from any and all claims, debts, liabilities, demands, obligations, guarantees, costs, expenses, attorneys' fees, damages, interest, restitution, penalties, action or causes of action, and liabilities of any nature whatsoever, including costs, expenses, penalties, and attorneys' fees, in law or equity, for causes of action alleged in the Operative Complaint and for any other claims or causes of action that could have been alleged based upon the facts alleged in the Operative Complaint ("Released Class Claims"). The Released Claims include, without limitation, claims for failure to reimburse for necessary business expenses, including but not limited to mileage and personal vehicle expenses, home internet, home telephone, cellular telephone, home utilities, office supplies and equipment, and cost of space for home office, and claims for unfair business practices for the forgoing alleged violations, as well as any other state or federal law, statute, regulation, or ordinance imposing liability and/or obligations that could be brought based on the factual allegations in the Operative Complaint, including the Fair Labor Standards Act (FLSA). This release shall run through the Class Period. Participating Class Members do not release any other claims, including claims for vested benefits, wrongful termination, violation of the Fair Employment and Housing Act, unemployment insurance, disability, social security, workers' compensation, or claims based on facts occurring outside the Class Period.

10. Aggrieved Employees' PAGA Release. After the Court's judgment is final, and ESPORTS has paid the Gross Settlement, all Aggrieved Employees will be barred from asserting PAGA claims against ESPORTS, whether or not they exclude themselves from the Settlement. This means that all Aggrieved Employees, including those who are Participating Class Members and those who opt-out of the Class Settlement, cannot sue, continue to sue, or participate in any other

PAGA claim against ESPORTS or its related entities based on the PAGA Period facts alleged in the Action and resolved by this Settlement.

The Aggrieved Employees' Release for Participating and Non-Participating Class Members is as follows:

All Participating Class Members and Non-Participating Class Members who are Aggrieved Employees are deemed to release, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors, assigns, and estates, the Released Parties from any and all claims debts, liabilities, demands, obligations, guarantees, costs, expenses, penalties, attorneys' fees, damages, action or causes of action, and liabilities of any nature whatsoever that could have been recovered under PAGA for violations of Labor Code section 2802 as alleged in Plaintiff's letter to the LWDA dated April 11, 2022 and the Operative Complaint, including claims for failure to reimburse for necessary business expenses, including but not limited to mileage and personal vehicle expenses, home internet, home telephone, cellular telephone, home utilities, office supplies and equipment ("Released PAGA Claims"). This release shall run through the PAGA Period.

4. HOW WILL THE ADMINISTRATOR CALCULATE MY PAYMENT?

1. Individual Class Payments. The Administrator will calculate Individual Class Payments by (a) dividing the Net Settlement Amount by the total number of Class Period Months Worked by all Participating Class Members, and (b) multiplying the result by the number of Class Period Months Worked by each individual Participating Class Member.

2. Individual PAGA Payments. The Administrator will calculate Individual PAGA Payments by (a) dividing \$5,000 by the total number of PAGA Period Months Worked by all Aggrieved Employees and (b) multiplying the result by the number of PAGA Period Months Worked by each individual Aggrieved Employee.

3. Months Worked Challenges. The number of Class Period Months Worked and the number of PAGA Period Months Worked, as recorded in ESPORTS's records, are stated in the first page of this Notice. You have until _____ to challenge the number of Class Period and PAGA Period Months Worked credited to you. You can submit your challenge by signing and sending a letter to the Administrator via mail, email or fax. Section 9 of this Notice has the Administrator's contact information. You need to support your challenge by sending copies of pay stubs or other records. The Administrator will accept ESPORTS's calculation of Class Period and PAGA Period Months Worked based on ESPORTS's records as accurate unless you send copies of records containing contrary information. You should send copies rather than originals because the documents will not be returned to you. The Administrator will resolve Class Period and PAGA Period Months Worked challenges based on your submission and on input from Class Counsel (who will advocate on behalf of Participating Class Members) and ESPORTS's Counsel. The Administrator's decision is final. You can't appeal or otherwise challenge its final decision.

5. HOW WILL I GET PAID?

1. Participating Class Members. The Administrator will send, by U.S. mail, a single check to every Participating Class Member (i.e., every Class Member who doesn't opt-out) including those who also qualify as Aggrieved Employees. The single check will combine the Individual Class Payment and the Individual PAGA Payment.

2. Non-Participating Class Members. The Administrator will send, by U.S. mail, a single Individual PAGA Payment check to every Aggrieved Employee who opts out of the Class Settlement (i.e., every Non-Participating Class Member).

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

6. HOW DO I OPT-OUT OF THE CLASS SETTLEMENT?

Submit a written and signed letter with your name, present address, telephone number, and a simple statement that you do not want to participate in the Settlement. The Administrator will exclude you based on any writing communicating your request be excluded. Be sure to personally sign your request, identify the Action as *Nicole Carson v Esports Engine LLC*, and include your identifying information (full name, address, telephone number, approximate dates of employment, and social security number for verification purposes). You must make the request yourself. If someone else makes the request for you, it will not be valid. The Administrator must be sent your request to be excluded by _____, or it will be invalid. Section 9 of the Notice has the Administrator's contact information.

7. HOW DO I OBJECT TO THE SETTLEMENT?

Only Participating Class Members have the right to object to the Settlement. Before deciding whether to object, you may wish to see what Plaintiff and ESPORTS are asking the Court to approve. At least 16 days before the _____ Final Approval Hearing, Class Counsel and/or Plaintiff will file in Court (1) a Motion for Final Approval that includes, among other things, the reasons why the proposed Settlement is fair, and (2) a Motion for Fees, Litigation Expenses and Service Award stating (i) the amount Class Counsel is requesting for attorneys' fees and litigation expenses; and (ii) the amount Plaintiff is requesting as a Class Representative Service Award. Upon reasonable request, Class Counsel (whose contact information is in Section 9 of this Notice) will send you copies of these documents at no cost to you. You can also view them on the Administrator's Website _____ or the Court's website: <https://www.lacourt.org>. A Participating Class Member who disagrees with any aspect of the Agreement, the Motion for Final Approval and/or Motion for Fees, Litigation Expenses and Service Award may wish to object, for example, that the proposed Settlement is unfair, or that the amounts requested by Class Counsel or Plaintiff are too high or too low. The deadline for sending written objections to the Administrator is _____. Be sure to tell the Administrator what you object to, why you object, and any facts that support your objection. Make sure you identify the Action, *Nicole Carson v Esports Engine LLC*, and include your name, current address, telephone number, and approximate dates of employment for ESPORTS and sign the objection. Section 9 of this Notice has the Administrator's contact information.

Alternatively, a Participating Class Member can object (or personally retain a lawyer to object at your own cost) by attending the Final Approval Hearing. You (or your attorney) should be ready to tell the Court what you object to, why you object, and any facts that support your objection. See Section 8 of this Notice (immediately below) for specifics regarding the Final Approval Hearing.

8. CAN I ATTEND THE FINAL APPROVAL HEARING?

You can, but don't have to, attend the Final Approval Hearing on _____ at _____ in Department _____ of the Los Angeles Superior Court, located at 312 North Spring Street, Los Angeles, CA 90012. At the Hearing, the Judge will decide whether to grant Final Approval of the Settlement and how much of the Gross Settlement will be paid to Class Counsel, Plaintiff, and the Administrator. The Court will invite comment from objectors, Class Counsel and Defense Counsel before making a decision. You can attend (or hire a lawyer to attend) either personally or virtually via LACourtConnect (<https://www.lacourt.org/lacc/>). Check the Court's website for the most current information.

1
2 It's possible the Court will reschedule the Final Approval Hearing. You should check the
3 Administrator's website _____ beforehand or contact Class Counsel
4 to verify the date and time of the Final Approval Hearing.

9. HOW CAN I GET MORE INFORMATION?

5 The Agreement sets forth everything ESPORTS and Plaintiff have promised to do under the
6 proposed Settlement. The easiest way to read the Agreement, the Judgment or any other Settlement
7 documents is to go to _____'s website at _____.
8 You can also telephone or send an email to Class Counsel or the Administrator using the contact
9 information listed below, or consult the Superior Court website by going to
10 (<http://www.lacourt.org/casesummary/ui/index.aspx>) and entering the Case Number for the Action,
11 Case No. _____. You can also make an appointment to personally review court
12 documents in the Clerk's Office at the Stanley Mosk Courthouse by calling (213) 830-0800.

DO NOT TELEPHONE THE SUPERIOR COURT TO OBTAIN INFORMATION ABOUT THE SETTLEMENT.

11 Class Counsel:
12 **ACKERMANN & TILAJEF, P.C.**
13 Craig J. Ackermann, Esq.
14 Avi Kreitenberg, Esq.
15 1180 South Beverly Drive, Suite 610
16 Los Angeles, California 90035
17 Telephone: (310) 277-0614
18 Facsimile: (310) 277-0635
19 Email: cja@ackermanntilajef.com
20 Email: ak@ackermanntilajef.com

21 Settlement Administrator: _____

10. WHAT IF I LOSE MY SETTLEMENT CHECK?

22 If you lose or misplace your settlement check before cashing it, the Administrator will
23 replace it as long as you request a replacement before the void date on the face of the original check.
24 If your check is already void you should consult the Unclaimed Property Fund
25 _____ for instructions on how to retrieve the funds.

11. WHAT IF I CHANGE MY ADDRESS?

26 To receive your check, you should immediately notify the Administrator if you move or
27 otherwise change your mailing address.
28

EXHIBIT B

ACKERMANN & TILAJEF, P.C.

Craig J. Ackermann, Esq. (SBN 229832)

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Los Angeles, California 90035

Telephone: (310) 277-0614

Facsimile: (310) 277-0635

Attorneys for Plaintiff, the Class, the LWDA, and the Aggrieved Employees

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

NICOLE CARSON, an individual, on behalf of
the State of California, as a private attorney
general, and on behalf of all Aggrieved
Employees and all others similarly situated,

PLAINTIFF,

v.

ESPORTS ENGINE, LLC, a Delaware limited
liability company; and DOES 1 to 10, inclusive,

DEFENDANTS.

CASE NO.

**PLAINTIFF'S CLASS AND PAGA
REPRESENTATIVE ACTION
COMPLAINT FOR:**

- (1) FAILURE TO REIMBURSE
BUSINESS EXPENSES (LABOR
CODE § 2802);**
- (2) UCL VIOLATIONS (CAL. BUS. &
PROF. CODE §§ 17200-17204); AND**
- (3) PENALTIES PURSUANT TO
LABOR CODE § 2699, ET SEQ.**

1 Plaintiff NICOLE CARSON (“Plaintiff”), on behalf of the people of the State of California,
2 and as an “Aggrieved Employee” acting as a private attorney general under the Labor Code Private
3 Attorneys General Act of 2004, § 2699, *et seq.* (“PAGA”), and on behalf of all others similarly
4 situated, complains of Defendant ESPORTS ENGINE, LLC (“Esports”) and DOES 1 to 10
5 (collectively, “Defendant”) and alleges the following upon information and belief:

6 **INTRODUCTION**

7 1. This is a class action brought pursuant to Code of Civil Procedure section 382 and a
8 representative action brought pursuant to Labor Code § 2699, *et seq.*, on behalf of the State of
9 California against Defendant for its (1) failure to reimburse its current and former employees for their
10 home office expenses in California during the pandemic for which they have not been fully
11 reimbursed; (2) unfair business practices based on the foregoing; and (3) PAGA penalties based on
12 the foregoing:

13 2. The Class is defined as follows: Plaintiff and all other California residents who are or
14 were employed by Defendant Esports Engine, LLC and who worked from home for Defendant during
15 at least one pay period in the period from March 20, 2020 to August 31, 2022 (the “Class Period”).
16 The Class is estimated to consist of 372 individuals.

17 3. The Aggrieved Employees are defined as follows: Plaintiff and all other California
18 residents who are or were employed by Defendant and who worked from home for Defendant during
19 at least one pay period in the period from April 11, 2021 to August 31, 2022 (the “PAGA Period”).
20 The PAGA Aggrieved Employees include approximately 189 individuals.

21 **THE PARTIES**

22 4. Plaintiff Nicole Carson is a resident of California and at all times pertinent hereto
23 worked for Defendant.

24 5. Plaintiff, the Class, and all Aggrieved Employees are, and at all times pertinent hereto,
25 have been hired to work for Defendant in California.

26 6. Esports Engine, LLC (“Esports”) is a turnkey esports solution company working with
27 gaming publishers, rights holders, brands, and teams to provide production, broadcast, tournament,
28 and program design. Esports employed Plaintiff and similarly situated persons in California. Esports

1 has done and does business throughout the State of California, including in Los Angeles County.

2 7. The true names and capacities, whether individual, corporate, associate, or otherwise,
3 of Defendants sued herein as DOES 1 to 10, inclusive, are currently unknown to Plaintiff, who
4 therefore sues Defendants by such fictitious names under Code of Civil Procedure § 474. Plaintiff is
5 informed and believes, and based thereon alleges, that each of the Defendants designated herein as a
6 DOE is legally responsible in some manner for the unlawful acts referred to herein. Plaintiff may
7 seek leave of court to amend this Complaint to reflect the true names and capacities of the Defendants
8 designated hereinafter as DOES when such identities become known.

9 8. Plaintiff is informed and believes, and based thereon alleges, that Defendant engaged,
10 suffered, and permitted Plaintiff, the Class, and all other Aggrieved Employees to perform services
11 from which it benefitted. Defendant is liable for reimbursement expenses and civil penalties for
12 violation of the California Labor Code as to the Plaintiff, the Class, and other Aggrieved Employees
13 as set forth herein.

14 **JURISDICTION AND VENUE**

15 9. This Court has subject matter jurisdiction over any and all causes of action asserted
16 herein pursuant to Article VI, § 10 of the California Constitution and California Code of Civil
17 Procedure § 410.10 by virtue of the fact that this is a civil action in which the matter in controversy,
18 exclusive of interest, exceeds \$25,000, and because each cause of action asserted arises under the
19 laws of the State of California or is subject to adjudication in the courts of the State of California.

20 10. This Court has personal jurisdiction over Defendant because Defendant has caused
21 injuries in the County of Los Angeles and State of California through its acts, and by its violation of
22 the California Labor Code and California state common law.

23 11. Venue as to Defendant is proper in this judicial district, pursuant to Code of Civil
24 Procedure § 395. Defendant does business in California and in Los Angeles County, California. The
25 unlawful acts alleged herein have a direct effect on Plaintiff and all “employees” in the State of
26 California and Los Angeles County.

27 **FACTUAL ALLEGATIONS**

28 12. From at least March 20, 2020 and continuing to August 31, 2022, at the latest, during

1 which time various shelter-in-place orders were, at times, in effect in California and/or Defendant's
2 offices in California were closed, Plaintiff, the Class, and the Aggrieved Employees, at the direction
3 of Defendant and/or with Defendant's knowledge and acquiescence, have incurred home office
4 expenses including, among other things, home internet expenses, cell phone expenses, equipment
5 expenses, electricity for business usage, and home office infrastructure expenses, and personal
6 vehicle expenses, in order to perform necessary work-related duties for Defendant.

7 13. At times during the Class Period, Plaintiff, the Class, and the Aggrieved Employees,
8 who were employed by Defendant in California, were not able to work on premises at Defendant's
9 office location(s), but instead were required to, and did, work from home. Plaintiff, the Class, and
10 Aggrieved Employees could access Defendant's studio only occasionally and when specifically
11 granted permission and were otherwise discouraged from working at Defendant's studio. During the
12 COVID-19 pandemic when stay-at-home order and offices closures were in place, the default was
13 that Plaintiff, the Class, and Aggrieved Employees had to work from home

14 14. During the COVID 19 stay at home orders and office closures in place during the
15 Class Period, Plaintiff, the Class, and the Aggrieved Employees were expected by Defendant to pay
16 for, and have personally paid for, among other things, home internet service, cell phone service,
17 equipment expenses, electricity, and an allocated portion of their home office space (the "home office
18 expenses"), and personal vehicle expenses, in the discharge of their job duties. These home office
19 expenses were required and necessary for work to be performed. These home office expenses
20 typically ranged from \$50 to \$150 per month per Class Member or Aggrieved Employee.

21 15. Defendant had no policy to affirmatively reimburse its employees who were expected
22 to work from home in California during the COVID 19 pandemic for a reasonable portion of their
23 home internet, cell phone, home office expenses, and for their personal vehicle expenses. Defendant's
24 only reimbursement policy in effect during the duration of the Class Period was their Love Games
25 company perk which limited reimbursement to video game purchases, downloaded content and/or
26 expansion packs, and gaming subscriptions and specifically excluded, among other things, hardware
27 and/or computer parts. Further, Esports implemented a written reimbursement policy effective March
28 1, 2022, which allowed California-resident employees to seek reimbursement for home internet and

1 personal cell phone expenses incurred while working from home. However, Defendant should have
2 paid out a monthly stipend or regular reimbursements, regardless of whether or not individuals
3 submitted reimbursements. Furthermore, Defendant's March 2022 policy was deficient in that it: (1)
4 capped monthly reimbursement at \$50 per month; (2) required employees to actively submit
5 reimbursement through an onerous process; and (3) required expense reimbursements to be submitted
6 within 30 days of the statement date

7 16. In sum, Defendant's expense-related policies and/or practices require and expect,
8 and/or with Defendant's knowledge thereof permitted, Plaintiff, the Class, and the Aggrieved
9 Employees to pay for home internet, cell phone, home office infrastructure expenses, and personal
10 vehicle expenses incurred in direct consequence of discharging her and their necessary, reasonable,
11 and business-related job duties on behalf of Defendant, without prompt and timely reimbursement in
12 full by Defendant for such expenses, as required by California law.

13 17. California Labor Code section 2802 requires an employer to "indemnify his or her
14 employee for all necessary expenditures or losses incurred by that employee in direct consequence
15 of the discharge of his or her duties." See Cal. Labor Code section 2802(a); *see also* 2802(c) where
16 necessary is defined to include all "reasonable" costs. "The elements of a claim under Section
17 2802 are: (i) the employee made expenditures or incurred losses; (ii) the expenditures or losses were
18 incurred in direct consequence of the employee's discharge of his or her duties, or obedience to the
19 directions of the employer; and (iii) the expenditures or losses were reasonable and necessary." *Marr*
20 *v. Bank of America*, 2011 U.S. Dist. LEXIS 24868 (N.D. Cal. Mar. 8, 2011) (*citing Gattuso v. Harte-*
21 *Hanks Shoppers, Inc.*, 42 Cal. 4th 554, 568 (2007)). "In addition, the employer 'must either know or
22 have reason to know that the employee has incurred [the] expense.'" *Id.* (*citing Stuart v. RadioShack*
23 *Corp.*, 641 F. Supp. 2d 901 (N.D. Cal. 2009)). Where an employer has knowledge that employees
24 are incurring a reimbursable expense, the employer must "exercise due diligence to ensure each
25 employee is reimbursed." *Marr*, at *1. The right of an employee to expense reimbursements is not
26 waivable. *See* Cal. Labor Code sections 2804 and 219(a). Any contract to waive them is null and
27 void. *Edwards v. Arthur Anderson*, 44 Cal. 4th 937, 951 (2008).

28 18. Furthermore, under Labor Code section 2802, employers must reimburse employees

1 for all necessary and/or reasonable work-related expenses, regardless of whether or not employees
2 incurred any additional out-of-pocket expense from that work-related use, and regardless of whether
3 or not the employer decisions to send workers home that triggered the home internet and home office
4 costs were made in response to government orders. *See Cochran v. Schwan's Home Service, Inc.*,
5 228 Cal. App. 4th 1137 (Cal. 2014) ("We hold that when employees must use their personal cell
6 phones for work-related calls, Labor Code section 2802 requires the employer to reimburse
7 them. Whether the employees have cell phone plans with unlimited minutes or limited minutes, the
8 reimbursement owed is a reasonable percentage of their cell phone bills."); *see also, Herrera v.*
9 *Zumiez, Inc.*, 953 F.3d 1063 at fn. 10 (9th Cir. March 19, 2020 ("Zumiez protests that Herrera did not
10 allege it was necessary to use a cell phone to comply with the call-in policy, suggesting that
11 employees could use free communications services like WhatsApp or Skype. But using WhatsApp
12 or Skype often requires personal expenses associated with internet service and a phone or computer,
13 for which a ruling consistent with *Cochran* might require reimbursement of a portion of the bills.).

14 19. Where, as here, employees in California are expected or mandated to use their
15 internet at home and/or cell phones for work on a monthly and recurring basis, courts have held that
16 they incurred home internet and cell phone expenses in "direct consequence of the discharge of his
17 or her duties" and were entitled to reimbursement. *See Aguilar v. Zep, Inc.*, 2014 US Dist. LEXIS
18 120315, *54 (N.D. Cal. Aug. 27, 2014) (Hon. Edward Chen) (where outside sales reps used home
19 internet and computers for work, and even admitted that they would have incurred the same expenses
20 without work duties, the court nevertheless held that the employer was obligated to reimburse some
21 reasonable portion of these expenses); *see also Ritchie v. Blue Shield of California*, 2014 WL
22 6982943, at *21 (N.D. Cal. Dec. 9, 2014) (Hon. Edward Chen) (certifying class of home office claims
23 processors with 2802 phone reimbursement claims for landline reimbursements where company
24 required claims processors working from home to have a landline, but rejecting certification of claims
25 for home office supplies as individualized).

26 20. Defendant is, was, or should have been aware that Plaintiff, the Class, and the
27 Aggrieved Employees regularly incurred home office internet, cell phone, and other infrastructure
28 expenses in the discharge of their duties as employees by virtue of Defendant's direction and/or with

Defendant's knowledge and acquiescence to Plaintiff, the Class, and the Aggrieved Employees to work from home and/or their announcements of office closures during the COVID-19 pandemic. Specifically, Plaintiff regularly communicated with managers, team members, and mentors on her personal cell phone via text, slack, etc., and Plaintiff and all other Class Members were required to use their home internet for all other work functions. Plaintiff, the Class, and the Aggrieved Employees could not perform their job duties for Defendant without use of the internet or cell phones. Defendant nevertheless has, during the Class Period, and specifically during work from home orders and/or office closures during the COVID-19 pandemic, failed to affirmatively reimburse Plaintiff, the Class, and the Aggrieved Employees for such monthly and recurring home internet, cell phone, and home office expenses, as well as personal vehicle expenses, incurred by them in connection with their work.

CLASS ACTION ALLEGATIONS

21. Plaintiff brings this action on behalf of herself and all others similarly situated as a class action pursuant to Code of Civil Procedure § 382. Plaintiff and all other California residents who are or were employed by Defendant and who worked from home for Defendant during at least one pay period in the period from March 20, 2020 to August 31, 2022 ("Class Members"). Class Members were subject to Defendant's policy and practice of not affirmatively reimbursing home office, cell phone, home office infrastructure, and personal vehicle expenses.

22. This action has been brought and may properly be maintained as a class action under Code of Civil Procedure § 382 because there is a well-defined community of interest in the litigation, the proposed class is easily ascertainable, and Plaintiff is a proper representative of the Class:

a. Numerosity: The potential members of the Class as defined are so numerous that joinder of all the members of the Class is impracticable. On information and belief, Defendant employed over a hundred employees who Plaintiff contends were subject to Defendant's unlawful reimbursement policies during the Class Period. The Class Members are dispersed throughout California. Joinder of all members of the proposed classes is therefore not practicable.

b. Commonality: There are questions of law and fact common to Plaintiff and the Class that predominate over any questions affecting only individual members of the Class. These common questions of law and fact include, without limitation:

1 i. Whether Plaintiff and Class Members incurred unreimbursed business
2 expenses in the discharge of their duties, including but not limited to home office expenses and
3 personal vehicle expenses, in violation of Labor Code § 2802;

4 ii. Whether Defendant intended, suffered and/or permitted, and/or knew and/or
5 should have known that Plaintiff and Class Members incurred unreimbursed home office expenses
6 and personal vehicle expenses, in the discharge of their duties;

7 iii. Whether Plaintiff is entitled to restitution under Business and Professions Code
8 § 17200;

9 iv. The proper formula(s) for calculating damages, interest, and restitution owed
10 to Plaintiff and the Class Members;

11 v. The nature and extent of class-wide damages.

12 c. Typicality: Plaintiff's claims are typical of the claims of the Class. Both
13 Plaintiff and Class Members sustained injuries and damages, and were deprived of property rightly
14 belonging to them, arising out of and caused by Defendant's common course of conduct in violation
15 of law as alleged herein, in similar ways and for the same types of expenses.

16 d. Adequacy of Representation: Plaintiff is a member of the Class and will fairly
17 and adequately represent and protect the interests of the Class and Class Members. Plaintiff's interests
18 do not conflict with those of the Class and Class Members. Counsel who represents Plaintiff are
19 competent and experienced in litigating large wage and hour class actions, and will devote sufficient
20 time and resources to the case and otherwise adequately represent the Class and Class Members.

21 23. Superiority of Class Action: A class action is superior to other available means for the
22 fair and efficient adjudication of this controversy. Individual joinder of all Class Members is not
23 practicable, and questions of law and fact common to the Class predominate over any questions
24 affecting only individual members of the Class. Each Class Member has been damaged or may be
25 damaged in the future by reason of Defendant's unlawful policies and/or practices of not fully
26 reimbursing home office expenses and personal vehicle expenses. Certification of this case as a class
27 action will allow those similarly situated persons to litigate their claims in the manner that is most
28 efficient and economical for the parties and the judicial system. Certifying this case as a class action

1 is superior because it allows for efficient and full disgorgement of the ill-gotten gains Defendant has
2 enjoyed by maintaining its unlawful expense reimbursement policies and/or practices, and will
3 thereby effectuate California's strong public policy of protecting employees from deprivation or
4 offsetting of compensation earned in their employment. If this action is not certified as a Class Action,
5 it will be impossible as a practical matter for many or most Class Members to bring individual actions
6 to recover monies unlawfully withheld from their lawful compensation due from Defendant, due to
7 the relatively small amounts of such individual recoveries relative to the costs and burdens of
8 litigation.

9
10 **FIRST CAUSE OF ACTION**
FAILURE TO REIMBURSE FOR BUSINESS EXPENSES
11 **[Cal. Labor Code section 2802]**
On Behalf of Plaintiff and the Class Against Defendant

12 24. Plaintiff re-alleges and incorporates by reference each and every allegation set forth
13 in the preceding paragraphs.

14 25. The actionable period for this cause of action is March 20, 2020 to August 31, 2022.

15 26. Labor Code § 2802(a) provides that "[a]n employer shall indemnify his or her
16 employee for all necessary expenditures or losses incurred by the employee in direct consequence of
17 the discharge of his or her duties." Section 2802(c) defines "necessary" to include all "reasonable
18 costs."

19 27. In order to discharge their duties for Defendant during the Class Period, specifically
20 when stay-at-home orders were in place and/or when Defendant's offices were closed, Plaintiff and
21 similarly situated Class Members regularly incurred home office and personal vehicle expenses in
22 the discharge of their duties as employees by virtue of Defendant's instructions to Plaintiff and the
23 Class and/or with Defendant's knowledge and acquiescence. Defendant nevertheless has, throughout
24 the Class Period, failed to affirmatively reimburse Plaintiff and the Class for such home office and
25 personal vehicle expenses incurred by them in connection with their work

26 28. Although having knowledge of such usage, Defendant did not reimburse Plaintiff and
27 similarly situated Class Members for a reasonable percentage of their work-related expenses, as
28 required by California law as stated in *Cochran v. Schwan's Home Service, Inc.*, 228 Cal.App.4th

1 1137 (August 12, 2014) (“We hold that when employees must use their personal cell phones for work-
 2 related calls, Labor Code section 2802 requires the employer to reimburse them. Whether the
 3 employees have cell phone plans with unlimited minutes or limited minutes, the reimbursement owed
 4 is a reasonable percentage of their cell phone bills.”). *See also, Aguilar v. Zep, Inc.*, 2014 US Dist
 5 LEXIS 120315, *54 (N.D.Cal. Aug. 27, 2014) (Hon. Edward Chen) (where outside sales reps used
 6 home internet and computers for work, and even admitted that they would have incurred the same
 7 expenses without work duties, the court nevertheless held that the employer was obligated to
 8 reimburse some reasonable portion of these expenses); *Ritchie v. Blue Shield of California*, 2014 WL
 9 6982943, at *21 (N.D.Cal. Dec. 9, 2014) (Hon. Edward Chen) (certifying class of home office claims
 10 processors with 2802 phone reimbursement claims for landline reimbursements where company
 11 required claims processors working from home to have a landline, but rejecting certification of claims
 12 for home office supplies as individualized); *see also, Herrera v. Zumiez, Inc.*, 953 F.3d 1063 at fn.
 13 10 (9th Cir. March 19, 2020).

14 29. Defendant’s failure to pay for or reimburse the work-related business expenses of
 15 Plaintiff and Class Members violated non-waivable rights secured to Plaintiff and Class Members by
 16 Labor Code §2802. See Labor Code §2804. Plaintiff and similarly situated Class Members are
 17 entitled to reimbursement for these necessary expenditures, plus interest and attorneys’ fees and costs,
 18 under Labor Code § 2802(c).

19 **SECOND CAUSE OF ACTION**
 20 **UNFAIR COMPETITION LAW VIOLATIONS**
 21 **[Bus. & Prof. Code § 17200]**
On Behalf of Plaintiff and the Class Against Defendant

22 30. Plaintiff re-alleges and incorporates by reference each and every allegation set forth
 23 in the preceding paragraphs.

24 31. Section 17200 of the California Business & Professions Code prohibits any unlawful,
 25 unfair, or fraudulent business practices. Business & Professions Code § 17204 allows “any person
 26 who has suffered injury in fact and has lost money or property” to prosecute a civil action for violation
 27 of the UCL. Such a person may bring such an action on behalf of herself and others similarly situated
 28 who are affected by the unlawful, unfair, or fraudulent business practice.

1 32. Under section 17208 of the California Business and Professions Code, the statute of
2 limitations for a claim under Section 17200 is four years. Accordingly, the actionable period for this
3 cause of action is from four years ago through August 31, 2022.

4 33. Section 90.5(a) of the Labor Code states that it is the public policy of California to
5 enforce vigorously minimum labor standards in order to ensure employees are not required to work
6 under substandard and unlawful conditions, and to protect employers who comply with the law from
7 those who attempt to gain competitive advantage at the expense of their workers by failing to comply
8 with minimum labor standards. The Wage Orders that Defendant is subject to also set forth minimum
9 standards.

10 34. Defendant has committed unlawful, unfair, and/or fraudulent business acts and
11 practices as defined by the UCL, by failing to reimburse and indemnify Plaintiff and similarly situated
12 Class Members for employment-related home office and personal vehicle expenses from March 20,
13 2020 through August 31, 2022, in violation of Labor Code § 2802.

14 35. As a direct and proximate result of Defendant's unlawful, unfair, and/or fraudulent
15 acts and practices described herein, Defendant has received and continues to hold unlawfully obtained
16 property and money belonging to Plaintiff and the Class in the form of unreimbursed employee home
17 office business and personal vehicle expenses that reduced or offset compensation earned by Plaintiff
18 and Class Members.

19 36. As a direct and proximate result of Defendant's unlawful business practices, Plaintiff
20 and the Class Members have suffered economic injuries including, but not limited to out-of-pocket
21 business expenses. Defendant has profited from its unlawful, unfair, and/or fraudulent acts and
22 practices in the amount of those business expenses and interest accrued thereon.

23 37. Plaintiff and similarly situated Class Members are entitled to monetary relief pursuant
24 to Business & Professions Code §§ 17203 and 17208 for all unreimbursed business expenses, and
25 interest thereon, from at least March 20, 2020 through to the date of such restitution, at rates specified
26 by law. Defendant should be required to disgorge all the profits and gains it has reaped and restore
27 such profits and gains to Plaintiff and Class Members from whom they were unlawfully taken.

28 38. Defendant committed acts of unfair competition, as defined in sections 17200 *et seq.*

1 of the California Business and Professions Code by, among other things, failing to reimburse Plaintiff
2 and the Class members for a reasonable portion of their monthly home office expenses and for their
3 personal vehicle expenses as required by California law, and therefore was substantially injurious to
4 Plaintiff and the Class members.

5 39. Defendant engaged in unfair competition in violation of sections 17200 *et seq.* of the
6 California Business & Professions Code by violating Section 2802 of the Labor Code.

7 40. Defendant's course of conduct, act, and practice in violation of the California laws
8 mentioned above constitute independent violations of sections 17200 *et seq.* of the California
9 Business and Professions Code.

10 41. The unlawful, unfair and fraudulent business practices and acts of Defendant, as
11 described above, have injured Plaintiff and the Class in that they were not reimbursed for a reasonable
12 percentage of their monthly business-related home office expenses and for their personal vehicle
13 expenses, and therefore was substantially injurious to Plaintiff and the Class Members.

14 42. Plaintiff and similarly situated Class Members are entitled to enforce all applicable
15 penalty provisions of the Labor Code pursuant to Business & Professions Code § 17202.

16 43. Plaintiff has assumed the responsibility of enforcement of the laws and public policies
17 specified herein by suing on behalf of herself and other similarly situated Class Members previously
18 or presently employed by Defendant in California. Plaintiff's success in this action will enforce
19 important rights affecting the public interest. Plaintiff will incur a financial burden in pursuing this
20 action in the public interest. Therefore, an award of reasonable attorneys' fees to Plaintiff is
21 appropriate pursuant to Code of Civil Procedure § 1021.5.

22 **THIRD CAUSE OF ACTION**
23 **PENALTIES PURSUANT TO PAGA LABOR CODE § 2699, *et seq.***
24 **[For Violations of Labor Code § 2802]**
25 **Plaintiff And All Aggrieved Employees Against Defendant**

26 44. Plaintiff, on behalf of herself and all Aggrieved Employees, realleges and incorporates
27 by reference all previous paragraphs.

28 45. Based on the above allegations incorporated by reference, Defendant has violated
Labor Code § 2802. The PAGA actionable period is from April 11, 2021 to August 31, 2022. The

1 PAGA Covered Employees are all class members who worked for Defendant during the PAGA
2 actionable period.

3 46. Under Labor Code §§ 2699(f)(2) and 2699.5, for each such violation, Plaintiff and all
4 other Aggrieved Employees are entitled to penalties in an amount to be shown at the time of trial
5 subject to the following formula:

6 \$100 for the initial violation per employee per pay period; and

7 \$200 for each subsequent violation per employee per pay period.

8 47. Courts in California have held that the stepped-up \$200 per pay period PAGA
9 penalties are only triggered after Defendant is subject to an adverse ruling and thus placed on notice
10 of the claim. *See Amaral v. Cintas Corp. No. 2*, 163 Cal. App. 4th 1157, 1209 (2008); see also
11 *Bernstein v. Virgin Am., Inc.*, No. 19-15382, 2021 WL 867583 (9th Cir. Feb. 23, 2021) (stepped up
12 penalties only triggered by ruling against employer on the merits).

13 48. These PAGA penalties shall be allocated seventy-five percent (75%) to the Labor and
14 Workforce Development Agency (LWDA) and twenty-five percent (25%) to the affected employees,
15 as set forth in Labor Code section 2699(i).

16 49. Pursuant to Labor Code § 2699.3 (a), on April 11, 2022, Plaintiff gave written notice
17 by certified mail to Defendant, and to the LWDA of her claims for violations of Labor Code § 2802,
18 and theories supporting these claims as alleged herein. As of the date of this Complaint, the LWDA
19 has not responded to Plaintiff's PAGA letter. Plaintiff has already paid the required \$75 fee and has
20 otherwise satisfied all prerequisites to filing suit. Accordingly, Plaintiff has fulfilled all administrative
21 prerequisites to the filing and pursuit of her PAGA claims on behalf of herself and all other current
22 and former Aggrieved Employees of Defendant.

23 50. As a result of the acts alleged above, Plaintiff seeks penalties under Labor Code
24 § 2699, *et seq.* because of Defendant's violation of Labor Code § 2802.

25 **RELIEF REQUESTED**

26 **WHEREFORE**, Plaintiff prays for the following relief:

- 27 1. An Order that this action may proceed and be maintained as a class action:
- 28 2. That the Court find and declare that Defendant's business expense policies and/or

1 practices violate California law, including Labor Code § 2802, by failing to reimburse all business
2 expenses reasonably incurred by Plaintiff and other and Class Members, including while working
3 from home, in the discharge of their duties in California as employees of Defendant;

4 3. That the Court award to Plaintiff and Class Members all unreimbursed business
5 expenses, and interest thereon, that they are owed, pursuant to Labor Code § 2802, and attorney's
6 fees, pursuant to Labor Code § 2802(c), in an amount to be proved at trial.

7 4. That the Court find and declare that Defendant has violated the UCL and committed
8 unfair and unlawful business practices by failing to reimburse Plaintiff and similarly situated Class
9 Members for their reasonable home office business expenses and for their personal vehicle expenses
10 incurred by them in the course of their duties for the benefit of Defendant, their employer;

11 5. That the Defendant be ordered to pay restitution to Plaintiff and the Class Members
12 due to Defendant's UCL violations under the Second Cause of Action pursuant to Business and
13 Professions Code §§ 17200-17205, in the amount of their unreimbursed business expenses and
14 interest thereon;

15 6. For penalties and other relief allowable under Labor Code § 2699, *et seq.* for Plaintiff
16 and all Aggrieved Employees because of Defendant's violation of, without limitation, Labor Code §
17 2802;

18 7. A civil penalty against Defendant in the amount of \$100 for the initial violation and
19 \$200 for each subsequent violation as specified in section 2699(f)(2) of the California Labor Code
20 for Plaintiff and all Aggrieved Employees for each and every pay period during the PAGA Period;

21 8. An award of reasonable attorney's fees against Defendant as allowed by law,
22 including without limitation, in Labor Code § 2699(g)(1), for all the work performed by the
23 undersigned counsel in connection with the PAGA claims;

24 9. An award of all costs incurred by the undersigned counsel for Plaintiff in connection
25 with Plaintiff's and the Aggrieved Employees' claims against Defendant as allowed by law, including
26 without limitation, Labor Code § 2699(g)(1);

27 10. Such other and further relief as this Court may deem proper and just.
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Respectfully submitted,

ACKERMANN & TILAJEF, P.C.

Dated: September 30, 2022

Craig J. Ackermann, Esq.

*Attorney for Plaintiff, the Class, the LWDA, and the
Aggrieved Employees*