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9
10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
11 **FOR THE COUNTY OF LOS ANGELES**

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

16 PLAINTIFF,

17 v.

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

21 DEFENDANTS.
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Case No. 22STCV32449

**[PROPOSED] ORDER GRANTING FINAL
APPROVAL OF CLASS ACTION
SETTLEMENT**

Date: June 29, 2023

Time: 10:00 a.m.

Dept.: 7

Judge: Honorable Lawrence P. Riff

FILED
Superior Court of California
County of Los Angeles
06/29/2023

David W. Slayton, Executive Officer / Clerk of Court

By: A. Morales Deputy

1 On June 29, 2023, the Court held a hearing on Plaintiff Nicole Carson’s (“Plaintiff”) Motion for
2 Final Approval of Class Action Settlement between Plaintiff and Defendant Esports Engine, LLC
3 (“Defendant”) (collectively, the “Parties”), and Plaintiff’s Motion for Attorneys’ Fees and Costs.

4 Due and adequate notice having been given to Class Members, and the Court having considered
5 the Class Action and PAGA Settlement Agreement (the “Settlement Agreement” or “Settlement”), all of
6 the legal authorities and documents submitted in support thereof, all papers filed and proceedings had
7 herein, all oral and written comments received regarding the proposed settlement, and having reviewed
8 the record in this litigation, and good cause appearing, the Court GRANTS final approval of the Settlement
9 and ORDERS AND MAKES THE FOLLOWING FINDINGS AND DETERMINATIONS:

10 1. All terms used in this Order Granting Final Approval of Class Action Settlement (the
11 “Order”) shall have the same meanings given as those terms are used and/or defined in the Parties’
12 Settlement Agreement.¹

13 2. The Court has personal jurisdiction over the Parties to this litigation and subject matter
14 jurisdiction to approve this Settlement and all exhibits thereto.

15 3. For settlement purposes only, the Court finally certifies the Class, as defined in the
16 Settlement Agreement and as follows:

17 *“Plaintiff and all other California residents who are or were employed by Defendant and who*
18 *worked from home for Defendant during at least one pay period in the period from March 20,*
19 *2020 through August 31, 2022.”*

20 4. The Court deems this definition sufficient for the purpose of California Rule of Court
21 3.765(a) and for the purpose of effectuating the Settlement.

22 5. The Court finds that an ascertainable class of 386 Class Members exists and a well-defined
23 community of interests exists in the questions of law and fact involved because in the context of the
24 Settlement: (i) all related matters, predominate over any individual questions; (ii) the claims of the Plaintiff
25 are typical of claims of the Class Members; and (iii) in negotiating, entering into and implementing the
26 Settlement, Plaintiff and Class Counsel have fairly and adequately represented and protected the interest

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28 ¹ A copy of the Settlement Agreement is in the Court record as Exhibit 1 to the Declaration of Craig J. Ackermann in Support
of Plaintiff’s Motion for Preliminary Approval of Class Action Settlement and is made a part of this Order.

1 of the Class Members.

2 6. The Court is satisfied that CPT Group, Inc., which functioned as the Settlement
3 Administrator, completed the distribution of the Class Notice to the Class in a manner that comports with
4 California Rule of Court 3.766 and due process and constitutes the best notice practicable under the
5 circumstances. The Class Notice informed 386 individuals on the original class list of the Settlement
6 terms, their rights to do nothing and receive their settlement share, their rights to submit a request for
7 exclusion, their rights to comment on or object to the Settlement, and their rights to appear at the Final
8 Approval Hearing, and their rights to be heard regarding approval of the Settlement. Adequate periods of
9 time to respond and to act were provided by each of these procedures.

10 7. Not a single Class Member filed or submitted a written objection to the Settlement as part
11 of this notice process.

12 8. Not a single Class Member opted out of the Settlement as part of this notice process.

13 9. The Court hereby approves the terms set forth in the Settlement Agreement, including the
14 \$185,649.13 escalated Gross Settlement Amount², and finds that the Settlement Agreement is, in all
15 respects, fair, adequate, and reasonable, consistent and compliant with all applicable requirements of the
16 California Code of Civil Procedure, the California and United States Constitutions, including the Due
17 Process clauses, the California Rules of Court, and any other applicable law, and in the best interests of
18 each of the Parties and Class Members. The Court directs the Parties to effectuate the Settlement
19 Agreement according to its terms, and declares this Settlement Agreement to be binding on all
20 Participating Class Members. The Court finds that the Settlement Agreement has been reached as a result
21 of informed and non-collusive arm's-length negotiations. The Court further finds that the Parties have
22 conducted extensive investigation and research, and their attorneys were able to reasonably evaluate their
23 respective positions. The Court further finds that the allocation of PAGA penalties is fair and reasonable
24 under the circumstances.

25 10. The Court also finds the amount allocated to PAGA Penalties is fair and reasonable, and
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27 ² Pursuant to the Settlement Agreement, if the total number of Class Period Months Worked exceeded 3,406 by more than 15%
28 (i.e., 3,917 Class Period Months Worked), then the Gross Settlement Amount would increase proportionally by the number of
Months Worked in excess of 3,406. *See* Settlement Agreement, ¶ 9. The Settlement Administrator reported that the total Class
Period Months Worked is 4,079; therefore, the Escalator Clause was triggered.

1 that Plaintiff provided notice of the proposed Settlement to the Labor and Workforce Development
2 Agency (LWDA) and will fully and adequately comply with the notice requirements of California Labor
3 Code section 2699(1). The Court hereby approves the PAGA Penalties amount.

4 11. The Court also finds that Settlement now will avoid additional and potentially substantial
5 litigation costs, as well as delay and risks if the Parties were to continue to litigate the case. Additionally,
6 after considering the monetary recovery provided as part of the Settlement in light of the challenges posed
7 by continued litigation, the Court concludes that Class Counsel secured significant relief for Class
8 Members.

9 12. The Court confirms Nicole Carson as Class Representative and finds her to be adequate.

10 13. The Court confirms Craig J. Ackermann, Erika Smolyar, and Avi Kreitenberg of
11 Ackermann & Tilajef, P.C. as Class Counsel, and finds each of them to be adequate, experienced, and
12 well-versed in similar class action litigation.

13 14. The terms of the Settlement Agreement, including the escalated Gross Settlement Amount
14 of **\$185,649.13** (\$155,000 + \$30,649.13 escalator) and the individual settlement payments, are fair,
15 adequate, and reasonable to the Class and to each Class Member, and the Court grants final approval of
16 the Settlement set forth in the Settlement Agreement, subject to this Order. The Court approves the
17 following allocations, which fall within the ranges stipulated by and through the Settlement Agreement:

- 18 a. The **\$8,750.00** designated for payment to CPT Group, Inc., the Settlement Administrator,
19 is fair and reasonable. The Court grants final approval of, and orders the Parties to make,
20 the payment to the Settlement Administrator in accordance with the Settlement Agreement.
- 21 b. The **\$51,666.67** requested by Plaintiff and Class Counsel for the Class Counsel's attorneys'
22 fees is fair and reasonable in light of the benefit obtained for the Class. The Court grants
23 final approval of, awards, and orders the Class Counsel Fees Payment to be made in
24 accordance with the Settlement Agreement.
- 25 c. The Court awards **\$2,621.11** in litigation costs, an amount which the Court finds to be
26 reflective of the reasonable costs incurred. The Court grants final approval of, and orders
27 the Class Counsel Litigation Expenses Payment in this amount to be made, in accordance
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with the Settlement Agreement.³

- d. The **\$7,500.00** requested by Plaintiff for her Class Representative Service Payment is ~~fair~~ and reasonable. The Court grants final approval of, and orders the Class Representative

Service Payment to be made, in accordance with the Agreement.

- e. The Court grants final approval of the **\$20,000.00** PAGA Penalties, 75% of which (i.e., **\$15,000**) shall be paid to the LWDA and orders the payment to be made in accordance with the Settlement Agreement. The remaining 25% of the PAGA Penalties shall be distributed to the Aggrieved Employees in accordance with the Settlement Agreement.

15. The Court orders the Parties to comply with and carry out all terms and provisions of the Settlement, to the extent that the terms thereunder do not contradict or conflict with this Order, in which case the provisions of this Order shall take precedence and supersede the Settlement.

16. The Settlement Agreement is not an admission by Defendant, nor is this Order a finding of the validity of any allegations or of any wrongdoing by Defendant. Neither this Order, the Settlement Agreement, nor any document referred to herein, nor any action taken to carry out the Settlement Agreement, may be construed as, or may be used as, an admission of any fault, wrongdoing, omission, concession, or liability whatsoever by or against Defendant.

17. Nothing in the Settlement or this Order purports to extinguish or waive Defendant's rights to continue to oppose the merits of the claims in this Action or class treatment of these claims in this case if the Settlement fails to become final or effective, or in any other case without limitation. The Settlement is not an admission by Defendant, nor is this Order or the subsequent Judgment that Plaintiff has asked the Court to enter based on this Order a finding of the validity of any allegations against Defendant in the Court proceeding or any wrongdoing by Defendant. Neither the Settlement nor this Order or the subsequent Judgment is a finding that certification of the Class is proper for any purpose or proceeding other than for settlement purposes.

18. All Class Members shall be bound by the Settlement and this Order, and shall release, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs,

³ Class Counsel is only seeking litigation cost reimbursement in the amount \$2,621.11, which is slightly over half of the \$5,000 maximum cost allocation contemplated by the Settlement Agreement, preliminarily approved by the Court, and noticed to the Class. Thus, the remaining \$2,378.89 will be distributed to the Class.

administrators, successors, assigns, and estates, Defendant and all other Released Parties⁴ from any and all Released Class Claims⁵ and Released PAGA Claims⁶ as set forth in the Settlement Agreement, and are permanently barred and enjoined from prosecuting against Defendant and the other Released Parties any and all of Class Members' Released Class Claims and Released PAGA Claims as defined in the Settlement Agreement.

19. Plaintiff is bound by Plaintiff's General Release against Defendant and the other Released Parties and waiver of Civil Code section 1542, as set forth in the Settlement Agreement, and is permanently barred from prosecuting against Defendant and the other Released Parties any and all of the claims in Plaintiff's General Release as defined in the Settlement Agreement.

20. The Parties shall bear their own respective attorneys' fees and costs except as otherwise provided in the Settlement Agreement.

21. The Court approves the one hundred eighty (180) day period for cashing of checks. Any funds associated with stale checks that have not been cashed within one hundred eighty (180) days will be sent to the California Controller's Unclaimed Property Fund.

22. The Settlement Administrator, within five (5) days of the date of this Order, shall give notice to the Settlement Class pursuant to Rule 3.771(b) of the California Rules of Court, by posting a copy of this order and judgment on its website for 60 days.

23. Pursuant to California Rule of Court 3.769(h), the Court retains jurisdiction solely for

⁴ "Released Parties" means and refers to: Esports Engine, LLC 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. (S.A., ¶ 1.41).

⁵ "Released Class Claims" means and refers to 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. The Released Class 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). (S.A., ¶¶ 1.39, 6.2).

⁶ "Released PAGA Claims" means and refers to 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"). (S.A., ¶¶ 1.40, 6.3).

1 purposes of implementing the terms of the settlement, such as enforcing the Settlement Agreement,
2 addressing settlement administration matters, and addressing such post-Judgment matters as may be
3 appropriate under court rules or applicable law.

4 24. Plaintiff or the Settlement Administrator shall file with the Court a report regarding the
5 status of distribution ~~within sixty (60) days after all funds have been distributed.~~

6 ~~IT IS SO ORDERED.~~

7 **IT IS SO ORDERED.**



9 

10 DATED: 06/29/2023

11 Lawrence P. Riff / Judge

12 HON. LAWRENCE P. RIFF

13 JUDGE OF THE SUPERIOR COURT OF CALIFORNIA