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**SUPERIOR COURT OF THE STATE OF CALIFORNIA**

**FOR THE COUNTY OF LOS ANGELES**

MEGHAN O’SULLIVAN, an individual, on  
behalf of the State of California as a private  
attorney general, on behalf of all other  
Aggrieved Employees, and on behalf of all  
others similarly situated,

PLAINTIFF,

v.

MYTHICAL INC., a California Limited  
Liability Company; and DOES 1 to 10,  
inclusive,

DEFENDANTS.

**CASE NO: 22STCV26168**

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

- (1) FAILURE TO REIMBURSE BUSINESS  
EXPENSES (LABOR CODE § 2802);**
- (2) FAILURE TO PROVIDE ACCURATE  
ITEMIZED WAGE STATEMENTS  
(LABOR CODE § 226(a) and (e)); AND**
- (3) PAGA PENALTIES PURSUANT TO  
LABOR CODE § 2699, ET SEQ., FOR  
VIOLATIONS OF CALIFORNIA LABOR  
CODE §§ 2802 AND 226**

1 Plaintiff MEGHAN O’SULLIVAN (“Plaintiff”), on behalf of the people of the State of  
2 California and as an “Aggrieved Employee” acting as a private attorney general under the Labor  
3 Code Private Attorneys General Act of 2004, § 2699, *et seq.* (“PAGA”) complains of Defendant  
4 MYTHICAL INC. and DOES 1 to 10 (“Defendant” or “Mythical”) and alleges the following upon  
5 information and belief:

6 **INTRODUCTION**

7 1. This is a class action and PAGA representative action lawsuit brought pursuant to  
8 Section 382 of the Code of Civil Procedure and pursuant to Labor Code § 2699, *et seq.*, on behalf of  
9 a putative Class of current and former California-resident employees of Defendant, and on behalf of  
10 the State of California and a group of Aggrieved Employees.

11 2. The putative “Class” is defined as follows:

12 Plaintiff and all other California residents who are or were employed by Defendant  
13 Mythical Inc., and who worked from home for at least one pay period during the time period  
14 from March 13, 2020 to the present (the “Class Period”), excluding all of Defendant’s C-  
suite, legal and HR employees.

15 The “Aggrieved Employees” are defined as follows:

16 Plaintiff and all other California residents who are or were employed by Defendant  
17 Mythical Inc., and who worked from home for at least one pay period during the time period  
18 from July 15, 2021, to the present (the “PAGA Period”), excluding all of Defendant’s C-  
suite, legal and HR employees.

19 3. Plaintiff, on behalf of herself, the Class, and all Aggrieved Employees presently or  
20 formerly employed by Defendant during the Class Period and PAGA Period, brings this class action  
21 and representative action lawsuit to Section 382 and pursuant to Labor Code § 2699, *et seq.* seeking  
22 unreimbursed work-from-home business expenses, civil penalties for Defendant’s violation of  
23 California Labor Code § 2802 and civil penalties under Labor Code section 226(a) because  
24 Defendant’s wage statements issued to Plaintiff and the Class members do not identify the same  
25 name of the proper employing entity as was stated in employees’ W-2 IRS Forms issued to them  
26 which must identify the employees’ employer. Based upon the foregoing, Plaintiff, the Class, and all  
27 Aggrieved Employees are entitled to relief as set forth below.

28 ///

**THE PARTIES**

4. Plaintiff Meghan O’Sullivan is a resident of California and at all times pertinent hereto worked for Defendant. Defendant Mythical offered Plaintiff a position as an Executive Assistant starting on November 8, 2021, which was intended to support Mythical’s Sherman Oaks physical office, but she was specifically advised that she would be “working remotely from [her] home office” in Santa Monica, California.

5. Plaintiff, the Class, and all Aggrieved Employees are, and at all times pertinent hereto, have been employees of Defendant, and have been hired to work for Defendant in California during the Class Period and the PAGA Period.

6. Mythical Inc. dba Mythical Games is an American and international game technology studio that develops video games and platforms. Defendant is headquartered in California, and, with its related entities, has a network of locations and operations in the United States and within the State of California, as well as throughout the world. Defendant employed Plaintiff and similarly situated Class members and Aggrieved Employees in California. Defendant has done and does business throughout the State of California, including in Los Angeles County.

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

8. Plaintiff is informed and believes, and based thereon alleges, that Defendant engaged, suffered, and permitted Plaintiff and all other Aggrieved Employees to perform services from which it benefitted. Moreover, the aforementioned entities had the right to exercise control over the wages, hours and/or working conditions over Plaintiff, the Class and all Aggrieved Employees at all relevant times herein, so as to be considered the employer of all of the Class members and Aggrieved

1 Employees. Mythical is liable for unreimbursed business expenses and civil penalties for violation of  
2 the Labor Code as to Plaintiff, the Class and other Aggrieved Employees as set forth herein.

### 3 **OVERVIEW OF CLAIMS**

4 9. Plaintiff brings this action on behalf of herself and all others similarly situated, as a  
5 Class Action and as a representative action claim, against MYTHICAL INC. and Does 1 to 10  
6 (“Defendants”) for their (1) failure to reimburse its current and former employees for a reasonable  
7 portion of their work-related home office expenses, including a reasonable percentage of her and their  
8 home internet expenses, incurred on behalf of Defendants while working from home in California for  
9 which they have not been fully reimbursed; and (2) their failure to provide compliant wage statements  
10 that included the proper name and address of their legal employer; and (3) civil penalties under PAGA  
11 based on the foregoing. As a result of the foregoing, Defendants have violated California statutory  
12 laws as described below.

### 13 **JURISDICTION AND VENUE**

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

19 11. This Court has personal jurisdiction over Defendants because Defendants have caused  
20 injuries in the County of Los Angeles and State of California through their acts, and by their violation  
21 of the California Labor Code and California state common law.

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

### 26 **COMMON ALLEGATIONS**

27 13. From at least March 13, 2020 and continuing into the present, the Class members,  
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1 including Plaintiff and the aggrieved employees at various times, at the direction of Defendant and/or  
2 with Defendant's knowledge and acquiescence, have incurred work-related home internet expenses  
3 in order to perform their necessary work-related duties.

4 14. Plaintiff, who was employed by Mythical was not able to work on premises at  
5 Defendant's office, but instead was advised to and required to, and did, work from home, like the  
6 other Class members and aggrieved employees. She, like all of her co-workers, needed to use the  
7 internet in order to be able to perform her job, including Defendant's network and systems to send  
8 emails and calendar various events and to generally perform her job duties. To be clear, Mythical sent  
9 home all of their employees, including Plaintiff, during the period from around March 13, 2020 to  
10 the present, to conduct their work from home, and did so without affirmatively reimbursing them  
11 with monthly stipends or otherwise for a reasonable portion of their monthly home internet expenses.  
12 To the contrary, Mythical advised that home internet expenses were not reimbursable despite the fact  
13 that employees needed to use their home internet to do their jobs.

14 15. As noted, during the Class Period and the PAGA Period, Plaintiff, the Class members  
15 and the Aggrieved Employees were not able to work on the premises at Mythical's office in Sherman  
16 Oaks, California, because Defendant's offices were closed, and Class members including Plaintiff  
17 were thus expected by Defendant to pay for, and have personally paid for home internet service in  
18 the discharge of their job duties. These home office internet expenses were required and necessary  
19 for work to be performed. Notably, many of Defendant's employees work as video game designers,  
20 programmers, developers and/or in other jobs that require the usage of the internet in order to access  
21 Defendant's network and systems. These home internet expenses typically amounted to \$50 to \$100  
22 per month per Class Member and/or Aggrieved Employee.

23 16. During the Class Period and the PAGA Period, Defendant did not affirmatively  
24 reimburse Plaintiff and the other aggrieved employees for a reasonable portion of her and their  
25 monthly home internet expenses which Defendant had reason to know were being incurred.

26 17. According to Mythical's "Travel & Entertainment Policy," the company specifically  
27 stated that, "Expenses relating to internet, cable & wireless services at employee's homes *are not*  
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1 *reimbursable* and will be issued on a case-by-case basis.” (See **Exhibit 1**) (emphasis added).

2 18. Indeed, the company’s Chief People Officer, **Cassandra Kaiser**, explained this policy  
3 in a written email explanation to Plaintiff, as follows:

4 “Regarding internet reimbursement, Mythical does not provide reimbursement for  
5 this given most employees would already have internet as a part of their daily lives  
6 and additionally most employees are no longer incurring the costs to commute (gas,  
7 tolls, vehicle wear and tear) to an office. Even when we do reopen offices, it will be  
voluntary for the majority for Mythical employees. Most companies in this day and  
age do not reimburse for home internet costs.” (See **Exhibit 2**).

8 In addition, upon being hired at Mythical Games in October 2021, Plaintiff asked the  
9 company’s People Administrator, Jacquie Overeem (“Ms. Overeem”), about Mythical’s home  
10 internet reimbursement policy. In Ms. Overeem’s written email response, she states, “As for the  
11 internet, we are currently not expensing that for employees.” (See **Exhibit 3**).

12 19. In this case, Plaintiff challenges Mythical’s illegal uniform reimbursement policy that  
13 did not authorize reimbursement of Plaintiff’s, the Class members’ and the aggrieved employees’  
14 home internet expenses incurred while they were working from home. As shown below, under  
15 applicable California law, however, employers must reimburse a reasonable percentage of  
16 employees’ expenses even if their employees have unlimited data plans and incurred no incremental  
17 or extra increase in costs.

18 20. California Labor Code section 2802 requires an employer to “indemnify his or her  
19 employee for all necessary expenditures or losses incurred by that employee in direct consequence of  
20 the discharge of his or her duties.” See Cal. Labor Code section 2802(a); see also section 2802(c)  
21 where necessary is defined to include all “reasonable” costs.

22 21. “The elements of a claim under Section 2802 are: (i) the employee made expenditures  
23 or incurred losses; (ii) the expenditures or losses were incurred in direct consequence of the  
24 employee’s discharge of his or her duties, or obedience to the directions of the employer; and (iii) the  
25 expenditures or losses were reasonable and necessary.” *Marr v. Bank of America*, 2011 U.S. Dist.  
26 LEXIS 24868 (N.D. Cal. Mar. 8, 2011) (citing *Gattuso v. Harte-Hanks Shoppers, Inc.*, 42 Cal. 4th  
27 554, 568 (2007)). “In addition, the employer ‘must either know or have reason to know that the  
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1 employee has incurred [the] expense.” *Id.* (citing *Stuart v. RadioShack Corp.*, 641 F. Supp. 2d 901  
2 (N.D. Cal. 2009)). Where an employer has knowledge that employees are incurring a reimbursable  
3 expense, the employer must “exercise due diligence to ensure each employee is reimbursed.” *Marr*,  
4 at \*1. The right of an employee to expense reimbursements is not waivable. See Cal. Labor Code  
5 sections 2804 and 219(a). Any contract to waive them is null and void. *Edwards v. Arthur Anderson*,  
6 44 Cal. 4th 937, 951 (2008).

7 22. Notably, under Labor Code section 2802, employers in California must reimburse  
8 employees for all necessary and/or reasonable work-related expenses, regardless of whether or not  
9 employees incurred any additional out-of-pocket expenses from that work-related use. *See Cochran*  
10 *v. Schwan’s Home Service, Inc.*, 228 Cal. App. 4th 1137, 176 Cal. Rptr. 3d at 412-13 (Cal. 2014)  
11 (“We hold that when employees must use their personal cell phones for work-related calls, Labor  
12 Code section 2802 requires the employer to reimburse them. Whether the employees have cell phone  
13 plans with unlimited minutes or limited minutes, the reimbursement owed is a reasonable percentage  
14 of their cell phone bills.”); *Aguilar v. Zep, Inc.*, 2014 US Dist. LEXIS 120315, \*54 (N.D. Cal. Aug.  
15 27, 2014) (Hon. Edward Chen) (where outside sales reps used home internet and computers for work,  
16 and even admitted that they would have incurred the same expenses without work duties, the court  
17 nevertheless held that the employer was obligated to reimburse some reasonable portion of these  
18 expenses); *Krauss v. Wal-Mart, Inc.*, 2020 U.S. Dist. LEXIS 66535, \*18-19 (E.D. Cal. Apr. 14, 2020)  
19 (“The Court previously found this allegation also failed because Plaintiff did not provide a “single  
20 instance when such a cost was actually incurred and not reimbursed.” Order at 11. In light of *Cochran*,  
21 the Court no longer finds Plaintiff needs to allege such an instance. The Court therefore now finds  
22 Plaintiff has properly plead the reimbursement claim as to her phone app allegation.”). Significantly,  
23 the Ninth Circuit Court of Appeals has also suggested that the logic of *Cochran* would apply to home  
24 internet expenses. *See Herrera v. Zumiez*, 953 F.3d 1063, 1078, footnote 10 (Ninth Cir. March 19,  
25 2020) (“But using WhatsApp or Skype often requires personal expenses associated with internet  
26 service and a phone or computer, for which a ruling consistent with *Cochran* might require  
27 reimbursement of a portion of the bills...”, citing *Cochran*).

23. In addition, Defendant's wage statements issued to Plaintiff and the Aggrieved Employees in the last year do not state their employer as Mythical Inc., but mention only a payroll service, "Sequoia One PEO, LLC", which is not the true or proper employer, as Plaintiff's offer letter from Mythical makes clear, in violation of Labor Code section 226(a), which requires the name and address of the employees' legal employer to be listed on their wage statements. (See **Exhibit 4**). This omission of the proper employer from Defendant's wage statements also triggers Defendant's liability for PAGA penalties and Section 226(e) civil penalties.

24. In sum, under Labor Code section 2802, employers must reimburse employees for all necessary and/or reasonable work-related expenses, regardless of whether or not the employees incurred any additional out-of-pocket expense from that work-related usage. Defendant is, was, or should have been aware that Plaintiff, the Class members and the Aggrieved Employees regularly incurred and continue to incur home internet and monthly cell phone expenses in the discharge of their duties as employees in California by virtue of Defendant's instructions to Plaintiff and the Aggrieved Employees to work from home during the pandemic.

25. Defendant nevertheless has, throughout the Class Period and the PAGA Period, failed and refused to authorize reimbursement of a reasonable portion of the home internet and expenses of Plaintiff, the Class and the Aggrieved Employees that were incurred in connection with their work. In addition, many Class members and Aggrieved employees did not have their cell phone expenses reimbursed, although they used their cell phones for work-related purposes on a regular basis during the work-from-home period since March 2020.

## CLASS ACTION ALLEGATIONS

26. 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 seeks to represent a Class composed of and defined as Plaintiff and all other California residents who are or were employed by Defendant Mythical and who worked from home for at least one pay period at any point from March 13, 2020 to the present and ongoing, excluding all of Defendant's C-suite, legal and HR employees ("Class Members"). All such Class Members were subject to Defendant's policy and practice of not

1 reimbursing employees' home office internet expenses.

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

5           a. Numerosity: The potential members of the Class as defined are so numerous  
6 that joinder of all the members of the Class is impracticable. While the precise number of  
7 Class Members has not been determined at this time, Plaintiff is informed and believes that  
8 Defendant has employed approximately 200 current and former employees who were known  
9 to be working from home in California during the Class Period. The Class Members are  
10 dispersed throughout California. Joinder of all members of the proposed classes is therefore  
11 not practicable.

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

15           i. Whether Plaintiff and Class Members incurred unreimbursed business  
16 expenses in the discharge of their duties as employees working from home during the class  
17 period, including but not limited to home internet expenses;

18           ii. Whether Defendant's uniform policy not to authorize reimbursement for home  
19 office internet expenses unless there was an incremental increase in costs violates Labor Code  
20 section 2802;

21           iii. Whether Defendant knew and/or should have known that Plaintiff and Class  
22 Members incurred unreimbursed home office expenses, including home internet, in the  
23 discharge of their duties as employees working from home during the Class Period;

24           iv. Whether Defendant's failure to reimburse Plaintiff, the Class and the  
25 Aggrieved Employees proactively, automatically and monthly for a reasonable portion of  
26 their home internet expenses incurred by Plaintiff and Class Members violates Labor Code  
27 section 2802;

1           v.       Whether Defendant violated Labor Code section 226(a) by not including the  
2 proper employer name and address on its wage statements issued to Plaintiff and those  
3 members of the wage statement subclass who worked for Defendant during the one-year  
4 period prior to the filing of this case;

5           vi.      Whether Plaintiffs are entitled to restitution under Business and Professions  
6 Code § 17200;

7           vii.     The proper formula(s) for calculating damages, interest, and restitution owed  
8 to Plaintiff and the Class Members, under Labor Code Section 2802 and 17200;

9           viii.    The proper amount of penalties that should be issued against Defendant under  
10 Labor Code section 226(e); and

11          ix.     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  
14 rightly belonging to them, arising out of and caused by Defendant's common course of  
15 conduct in violation of law as alleged herein, in similar ways and for the same types of  
16 expenses.

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

23          e.      Superiority of Class Action: A class action is superior to other available means  
24 for the fair and efficient adjudication of this controversy. Individual joinder of all Class  
25 Members is not practicable, and questions of law and fact common to the Class predominate  
26 over any questions affecting only individual members of the Class. Each Class Member has  
27 been damaged or may be damaged in the future by reason of Defendant's unlawful policies  
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1 and/or practices of not fully and proactively exercising due diligence to reimburse business  
2 expenses. Certification of this case as a class action will allow those similarly situated persons  
3 to litigate their claims in the manner that is most efficient and economical for the parties and  
4 the judicial system. Certifying this case as a class action is superior because it allows for  
5 efficient and full disgorgement of the ill-gotten gains Defendant has enjoyed by maintaining  
6 its unlawful business expense reimbursement policies and/or practices, and will thereby  
7 effectuate California's strong public policy of protecting employees from deprivation or  
8 offsetting of compensation earned in their employment. If this action is not certified as a Class  
9 Action, it will be impossible as a practical matter for many or most Class Members to bring  
10 individual actions to recover monies unlawfully withheld from their lawful compensation due  
11 from Defendant's, due to the relatively small amounts of such individual recoveries relative  
12 to the costs and burdens of litigation.

13 **FIRST CAUSE OF ACTION**  
14 **FAILURE TO REIMBURSE FOR BUSINESS EXPENSES**  
15 **[Cal. Labor Code § 2802(a) and (c)]**  
**On Behalf of Plaintiff and the Class Against Defendant**

16 28. The actionable period for this cause of action is from March 13, 2020, through the  
17 present.

18 29. Defendant does not and did not maintain an expense reimbursement policy and/or  
19 practice stating that Defendant will affirmatively and proactively reimburse Plaintiff and Class  
20 Members for a reasonable portion of their home office expenses, including home internet, necessarily  
21 incurred in their discharge of their duties, while working from home at Defendant's direction during  
22 the pandemic, as required by Labor Code sections 2802(a) and (c). To the contrary, Defendant stated  
23 that it would not reimburse home internet expenses incurred while working from home since  
24 employees already presumably had home internet. This is not the law in California. Defendant's  
25 uniform policy is therefore illegal.

26 30. California Labor Code section 2802 requires an employer to "indemnify his or her  
27 employee for all necessary expenditures or losses incurred by that employee in direct consequence of  
28 the discharge of his or her duties." See Cal. Labor Code section 2802(a); see also 2802(c) where

1 “necessary” costs are defined to include all “reasonable” costs. In this case, home internet expenses  
2 were reasonably and necessarily incurred by Class Members during the Class Period, as were home  
3 electricity and cell phone expenses, as all these were necessary for Plaintiff and the class to do their  
4 job while working from home.

5 31. “The elements of a claim under Section 2802 are: (i) the employee made expenditures  
6 or incurred losses; (ii) the expenditures or losses were incurred in direct consequence of the  
7 employee's discharge of his or her duties, or obedience to the directions of the employer; and (iii) the  
8 expenditures or losses were reasonable and necessary.” *Marr v. Bank of America*, 2011 U.S. Dist.  
9 LEXIS 24868 (N.D. March 8, 2011) (citing *Gattuso v. Harte-Hanks Shoppers, Inc.*, 42 Cal.4th 554,  
10 568 (2007). “In addition, the employer ‘must either know or have reason to know that the employee  
11 has incurred [the] expense.’” *Id.* (citing *Stuart v. RadioShack Corp.*, 641 F.Supp. 2d 901 (N.D.Cal.  
12 2009). Where an employer has knowledge that employees are incurring a reimbursable expense, the  
13 employer must “exercise due diligence to ensure each employee is reimbursed.” *Marr*, at \*1. The  
14 right of an employee to expense reimbursements is not waivable. See Cal. Labor Code sections 2804  
15 and 219(a). Any contract to waive them is null and void. *Edwards v. Arthur Anderson*, 44 Cal. 4th  
16 937, 951 (2008).

17 32. Furthermore, under Labor Code section 2802, employers must reimburse employees  
18 for all reasonable work-related expenses, regardless of whether or not the employees incurred any  
19 additional out-of-pocket expense from that work-related use. *See, Cochran v. Schwan's Home*  
20 *Service, Inc.*, 228 Cal.App.4th 1137, 176 Cal. Rptr. 3d at 412-13 (Cal. Aug. 12, 2014) (“We hold that  
21 when employees must use their personal cell phones for work-related calls, Labor Code section 2802  
22 requires the employer to reimburse them. Whether the employees have cell phone plans with  
23 unlimited minutes or limited minutes, the reimbursement owed is a reasonable percentage of their  
24 cell phone bills.”).

25 33. Where, as here, employees are expected or mandated to use their internet at home for  
26 work, courts have held that they incurred home internet expenses in “direct consequence of the  
27 discharge of his or her duties” and were entitled to reimbursement. *See Aguilar v. Zep, Inc.*, 2014 US  
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1 Dist LEXIS 120315, \*54 (N.D.Cal. Aug. 27, 2014) (Hon. Edward Chen) (where outside sales reps  
2 used home internet and computers for work, and even admitted that they would have incurred the  
3 same expenses without work duties, the court nevertheless held that the employer was obligated to  
4 reimburse some reasonable portion of these expenses); see also *Ritchie v. Blue Shield of California*,  
5 2014 WL 6982943, at \*21 (N.D.Cal. Dec. 9, 2014) (Hon. Edward Chen) (certifying class of home  
6 office claims processors with 2802 phone reimbursement claims for landline reimbursements where  
7 company required claims processors working from home to have a landline, but rejecting certification  
8 of claims for home office supplies as individualized). Defendant's failure to affirmatively and  
9 proactively exercise due diligence to reimburse the work-related home office expenses, including  
10 monthly home internet expenses, and work-related cell phone of Plaintiff and Class Members violates  
11 the non-waivable rights secured to Plaintiff and Class Members by Labor Code §2802. See Labor  
12 Code §2804.

13 34. Moreover, Defendant's uniform policies conveyed in writing to Plaintiff and others  
14 on multiple occasions to not reimburse work related home internet expenses because they are and  
15 were not "extra" or "additional" expenses to employees who already were paying for those services  
16 when the pandemic began, are simply illegal and violate Labor Code Section 2802. Plaintiff and  
17 similarly situated Class Members are thus entitled to reimbursement for these necessary and  
18 reasonable work-related home internet expenses, plus interest and attorneys' fees and costs, under  
19 Labor Code § 2802(a) and (c).

20 **SECOND CAUSE OF ACTION**  
21 **FAILURE TO PROVIDE COMPLIANT WAGE STATEMENTS**  
22 **[Cal. Labor Code § 226(a) and 226(e)]**

23 **On behalf of Plaintiff and the Wage Statement Subclass Against Defendants**

24 35. Plaintiff and the putative wage statement subclass re-allege and incorporate the  
25 foregoing paragraphs as though full set forth herein.

26 36. At all relevant times, Plaintiff and those members of the Class who worked for  
27 Defendant within the one year prior to the filing of this lawsuit (the "Wage Statement Subclass")  
28 were employees covered by California Labor Code §§ 226.

37. California Labor Code § 226(a) states:

1 An employer, semimonthly or at the time of each payment of wages, shall furnish to  
2 his or her employee, either as a detachable part of the check, draft, or voucher paying  
3 the employee's wages, or separately if wages are paid by personal check or cash, an  
4 accurate itemized statement in writing showing ... (8) the name and address of the  
5 legal entity that is the employer and, if the employer is a farm labor contractor, as  
6 defined in subdivision (b) of Section 1682, the name and address of the legal entity  
7 that secured the services of the employer ...

8 38. Based on the above allegations incorporated by reference, Defendants have violated  
9 Labor Code § 226(a)(8) by failing to provide compliant itemized wage statements to Plaintiff and the  
10 putative class members that included their employing entity's legal address. *See Cicairos v. Summit*  
11 *Logistics, Inc.* (2005) 133 Cal. App. 4th 949, 961 (employers that do not list the defendant employer's  
12 name and address...are not adequate itemized wage statements."). Labor Code § 226(e) states:

13 An employee suffering injury as a result of a knowing and intentional failure by an  
14 employer to comply with subdivision (a) is entitled to recover the greater of all actual  
15 damages or fifty dollars (\$50) for the initial pay period in which a violation occurs  
16 and one hundred dollars (\$100) per employee for each violation in a subsequent pay  
17 period, not to exceed an aggregate penalty of four thousand dollars (\$4,000), and is  
18 entitled to an award of costs and reasonable attorney's fees.

19 Here, Defendants knowingly and intentionally failed to include required information  
20 identifying the employing entity and its address on Plaintiff's and the putative wage statement  
21 subclass members' wage statements as required by Labor Code § 226(a) subsection (8).

22 39. Defendants' failure to provide accurate itemized wage statements that included the  
23 proper employer name and address resulted in Plaintiff and putative wage statement subclass  
24 members suffering legal injury damages insofar as she and they were not able to discern the name  
25 and address of the legal entity that employed them from the wage statements alone and they were,  
26 therefore, incomplete, confusing and deficient. *See Elliot v. Spherion Pac. Work LLC*, 572 F. Supp.  
27 2nd 1169, 1181 (C.D. Cal. 2008) (noting that there was no injury where plaintiff did not even allege  
28 confusion); *Perez v. Safety-Kleen Systems, Inc.*, 2007 U.S. Dist. LEXIS 48308, 2007 WL 1848037  
(N.D. Cal. June 27, 2007); *Cicairos v. Summit Logistics, Inc.*, 133 Cal.App.4th 949, 35 Cal. Rptr. 3d  
243 (Cal. Ct. App. 2005); *Wang v. Chinese Daily News, Inc.*, 435 F.Supp.2d 1042 (C.D. Cal. 2006).

40. In violation of California law, Defendants knowingly and intentionally issued Plaintiff  
and the putative wage statement subclass inaccurate wage statements in violation of California Labor

Code § 226(a), triggering penalties under both sections 226(e). Defendants' act in so doing was willful, intentional, deliberate and with an improper motive amounting to malice and in conscious disregard for the rights of Plaintiff and the putative wage statement subclass, thereby entitling Plaintiff and the putative wage statement subclass to recover nominal, actual, compensatory, and all damages so allowable under California law, in amounts according to proof at time of trial.

41. As a direct and proximate result of the aforementioned violations, Plaintiff and the putative wage statement subclass have been damaged by Defendants in an amount according to proof at time of trial and seek the amount of the penalties specified in Section 226(e) for Plaintiff and each member of the putative Wage Statement Subclass, as well as an award of attorney fees and costs set forth below.

**THIRD CAUSE OF ACTION**  
**CIVIL PENALTIES PURSUANT TO PAGA, LABOR CODE § 2699, *et seq.***  
**[For Violations of Labor Code §§ 2802 and 226]**  
**Plaintiff, the LWDA, and All Aggrieved Employees Against Defendants**

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

43. Based on the above allegations incorporated by reference, Defendant has violated Labor Code §§ 2802 and 226. During the PAGA Period, Defendant failed to reimburse Aggrieved Employees for a reasonable percentage of their home internet expenses incurred while working remotely from home.. Moreover, for most of the Aggrieved Employees during the PAGA Period, Defendant failed to reimburse them for the cost of their monthly cell phone plans, or a reasonable portion thereof, since those phones were used for work-related purposes from March 13, 2020 to the present. Finally, for much of the PAGA Period, Defendant's wage statements lacked the proper name and address of their employing entity.

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

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

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

45. Courts in California have held that the stepped-up \$200 per pay period PAGA penalties are only triggered after Defendant is placed on notice of the claim. *See Amaral v. Cintas Corp.*, No. 2, 163 Cal. App. 4th 1157, 1209 (2008); *see also Bernstein v. Virgin Am., Inc.*, No. 19-15382, 2021 WL 867583 (9th Cir. Feb. 23, 2021) (stepped up penalties only triggered by ruling against employer on the merits). Accordingly, Plaintiff will seek \$100 per employee per pay period in this case for each violation during the PAGA Period, unless and until the law changes.

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

47. Pursuant to Labor Code § 2699.3 (a), on July 15, 2022, Plaintiff gave written notice by certified mail to Defendant, and to the LWDA of her claims for violations of Labor Code § 2802, and theories supporting these claims as alleged herein. As of the date of this Complaint, the LWDA has not responded to Plaintiff's PAGA letter. Plaintiff has already paid the required \$75 fee and has otherwise satisfied all prerequisites to filing suit. Accordingly, Plaintiff has fulfilled all administrative prerequisites to the filing and pursuit of her PAGA claims on behalf of herself and all other current and former Aggrieved Employees of Defendant.

48. As a result of the acts alleged above, Plaintiff seeks penalties under Labor Code § 2699, *et seq.* because of Defendant's violation of Labor Code sections 2802 and 226.

## RELIEF REQUESTED

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

1. An award of all reasonable unreimbursed monthly home internet expenses to Plaintiff and the Class members for their home internet expenses incurred during the Class Period, in an amount not less than \$50 per month per employee, plus interest, attorneys' fees and litigation costs pursuant to Labor Code section 2802(c);

2. An award of penalties, as well as fees and costs, in the maximum amount allowed by law under Section 226(e) of the Labor Code, which allows for \$50 per employee for the initial violation pay period, and \$100 per employee for all the subsequent violation pay periods, up to a

1 maximum of \$4,000 per employee in the wage statement subclass, based on Defendant's violation of  
2 Labor Code section 226(a) in connection with its issuance of inaccurate wage statements to Plaintiff  
3 and the Wage Statement subclass members during the one year period prior to the filing of this case;

4 3. For civil penalties allowable under Labor Code § 2699, *et seq.* for Plaintiff and all  
5 Aggrieved Employees because of Defendant's violation of Labor Code sections 2802 and 226 during  
6 the PAGA Period in the amount of \$100 per pay period per employee as authorized by section  
7 2699(f)(2) of the California Labor Code for Plaintiff and all Aggrieved Employees for each and every  
8 month during which Defendant violated a provision of the Labor Code during the PAGA Period;

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

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

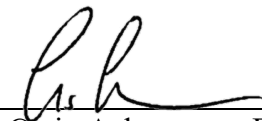
15 6. Such other and further relief as this Court may deem proper and just.

16  
17 Dated: August 12, 2022

Respectfully submitted,

18 ACKERMANN & TILAJEF, P.C.

19  
20 By:



Craig Ackermann, Esq.

*Attorneys for Plaintiff, the Putative Class, the  
LWDA, and all other Aggrieved Employees*

# EXHIBIT 1

# MYTHICAL™

## Travel & Entertainment Policy Updated January 2022, Effective May 2022

submitting your reimbursement. In unique cases when the standard service for Lyft/Uber is not available during peak travel times, it is permitted to use the upgraded service.

### Mileage Reimbursement

Reimbursement will be provided for miles in excess of the commuting distance from your place of residence to the nearest Mythical Games office. When submitting reimbursements through teampay, please include, time and date of drive, the total distance of the drive in excess of commute from home to office, business purpose and destination. The 2022 rate per mile is \$0.585.

### **Accommodations**

#### Domestic

Accommodation within the U.S. should not *exceed \$500 per night*. If unavoidable, your manager must provide approval ahead of the purchase. We have a negotiated rate with Hotel Ballard in Seattle as well as Airbnb which is integrated into Etta. When you book through Etta, you will have the option to book an AirBnB instead of a hotel.

#### International

Travel outside of the U.S. will be approved on a case-by-case basis for employees. Must have manager approval ahead of the purchase.

#### Personal Accommodation

As indicated above, personal travel is not covered by Mythical, Inc. However, you can use Etta to get good rates at hotels for personal travel, but you must use your personal credit card.

### **Internet Services**

Charges for business-related wireless internet connection in the hotel room are reimbursable. Wireless internet connections at "hotspots," including those on airplanes, are reimbursable.

Expenses relating to internet, cable & wireless services at employee's homes are not reimbursable and will be issued on a case-by-case basis.

### **Meals – Employee while traveling**

Meals while traveling for business for Mythical, Inc. is reimbursable. Limit of \$150/day for all meals, which also includes alcoholic and non alcoholic beverages, applies per employee. Reimbursement will not be provided for purchases solely for alcoholic cases, bottles, and cans.

## **ENTERTAINMENT**

### **Meals and Entertainment - Clients**

Drinks and food with clients and business partners are reimbursable. Please indicate the meeting purpose and business relationship, and the attendees in your submission. Please attach e-mail approval by your manager.

# EXHIBIT 2

----- Forwarded message -----

From: **Cassandra Kaiser** <[cassandra@mythical.games](mailto:cassandra@mythical.games)>

Date: Tue, Jul 5, 2022 at 7:46 AM

Subject: Re: Following Up

To: Meghan O'Sullivan <[meghan@mythical.games](mailto:meghan@mythical.games)>, Jeff Poffenbarger <[jeff@mythical.games](mailto:jeff@mythical.games)>

Hi Meghan,

Thanks for reaching out and apologies for the delayed reply.

Regarding John and the transition, we are in the process of making an offer and so hopefully we will have someone to start in the next 2-3 weeks. As you know, Maya has been supporting Jung in the interim and they have established a very strong working relationship. Jung would like to have Maya continue to be his EA given her strong project management skills and ability to project manage and build decks and collateral for him. Given this, you will resume supporting Jeff (as you did when hired) and you will also support at least one other Exec but I am still in the process of figuring out who that will be.

Regarding pay for the CEO role; we aren't advertising any pay for the role nor are we interested in paying \$160k- I am not sure where that is coming from? Perhaps you saw requests from candidates about their ideal pay.

Jeff and I connected on your request for a temporary retro increase back to when you began supporting John. This is a totally fair request and we agree to increase your pay for the period of time you are supporting John. Once you are no longer supporting him then your pay will revert back. Please know that we truly appreciate you stepping in and supporting John during this time.

Regarding internet reimbursement, Mythical does not provide reimbursement for this given most employees would already have internet as a part of their daily lives and additionally most employees are no longer incurring the costs to commute (gas, tolls, vehicle wear and tear) to an office. Even when we do reopen offices, it will be voluntary for the majority for Mythical employees. Most companies in this day and age do not reimburse for home internet costs.

Please let me know if you have any thoughts or questions.

Best,  
Cassandra



ReplyForward

# EXHIBIT 3

[Quoted text hidden]

---

**Jacquie Overeem** <jacquie@mythical.games>  
To: Meghan O'Sullivan [REDACTED]

Thu, Oct 28, 2021 at 3:33 PM

Hi Meghan, I've got those questions out to the various folks who'll be able to answer them. I'll circle back when I receive an update from them.

--

**Jacquie Overeem**

People Administrator

Mythical Games



*Together, We Are Mythical*

---

847-363-1080

jacquie@mythical.games

www.mythicalgames.com

Check us out on Glassdoor!

[Quoted text hidden]

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**Jacquie Overeem** <jacquie@mythical.games>  
To: Meghan O'Sullivan [REDACTED]

Thu, Oct 28, 2021 at 4:09 PM

Alright here's the info for you regarding the FSA:

"When an employee enrolls into an FSA benefits account, they will receive a packet in the mail within a few weeks of their elections, which will include a Debit Card.

They can use their debit card for expenses or if they pay out of pocket for a service, they can also submit receipts for reimbursement."

As for the internet, we are currently not expensing that for employees. If you're in need of expanding your bandwidth, we can discuss expensing that cost, but it's not something we do regularly. I'd follow up with your supervisor after you start if there are any issues with your service preventing you from working or being on Zoom.

Let me know if you have any other questions!

--

**Jacquie Overeem**

People Administrator

Mythical Games



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---

847-363-1080

[REDACTED]