

EXHIBIT 1

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(d/b/a VIPKID)

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 FOR THE COUNTY OF SAN JOAQUIN

10 EMILY IBEJI,

11 Plaintiff,

12 v.

13 VIPKIDS INTERNATIONAL, INC. (d/b/a
14 VIPKID),

15 Defendant.

Case No. STK-VA-UCE-2019-0009895

**AMENDED PAGA AND CLASS ACTION
SETTLEMENT AGREEMENT AND
RELEASE**

16 This PAGA and Class Action Settlement Agreement and Release, including Exhibits 1 - 3
17 hereto (“Settlement Agreement” or “Agreement”), is made and entered into by and between Plaintiff
18 Emily Ibeji (“Plaintiff”) on behalf of herself and the Settlement Class and the State of California as
19 defined below, on the one hand, and Defendant VIPKIDS International Inc., (d/b/a VIPKID)
20 (“VIPKid” or “Defendant”) on the other hand. Plaintiff and Defendant (collectively, the “Parties”)
21 enter into this Agreement to effect a full and final settlement and preclusive judgment resolving all
22 claims brought or that could have been brought against VIPKid in the above-captioned case, including
23 as amended pursuant to this Agreement (the “Action”), and all claims based on or reasonably related
24 thereto. This Agreement is intended to fully and finally compromise, resolve, discharge, and settle
25 the Released Claims, as defined and on the terms set forth below, and to the full extent reflected herein,
26 subject to the approval of the Court.

27 **I. RECITALS**

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This Agreement is made in consideration of the following facts:

1.1 WHEREAS, on July 31, 2019, Plaintiff Emily Ibeji filed a Private Attorneys General Act, Labor Code §§ 2698, *et seq.* (“PAGA”) representative action complaint in San Joaquin County Superior Court (Case No. STK-VA-UCE-2019-0009895) asserting various Labor Code claims against VIPKid arising from VIPKid’s alleged misclassification of teachers in California as independent contractors on behalf of the State of California Labor and Workforce Development Agency (“LWDA”);

1.2 WHEREAS, Plaintiff alleges generally that VIPKid improperly classified her and all putative Settlement Class Members as independent contractors rather than employees, and asserts derivative claims related thereto;

1.3 WHEREAS, VIPKid denies the allegations in the Action; maintains each and any teacher’s claims must be individually arbitrated pursuant to that teacher’s arbitration agreement; denies that it has engaged in any wrongdoing; denies that any Settlement Class Member was ever an employee of VIPKid; denies that Plaintiff’s allegations state valid claims; denies that a litigation class could properly be certified in the Action; denies that Plaintiff’s claims could properly be maintained as a representative action; and states that it is entering into this Settlement Agreement solely to eliminate the burden, expense, and delay of further litigation;

1.4 WHEREAS, a bona fide dispute exists as to whether any amount of wages or penalties are due from Defendant to any putative Settlement Class Member or to the LWDA;

1.5 WHEREAS, in preparation for mediation, the Parties engaged in informal discovery, exchanging information and reviewing and analyzing extensive data made available by VIPKid, which enabled Plaintiff and the mediator to thoroughly evaluate Plaintiff’s claims and the claims of the putative class, and the likely outcomes, risks and expense of pursuing litigation;

1.6 WHEREAS, the Parties attended an in-person mediation session on February 16, 2021, with professional mediator Francis J. “Tripper” Ortman;

1.7 WHEREAS, following changes in circumstances regarding the viability of VIPKid’s business, the Parties agreed to renegotiate the settlement, with the assistance of professional mediator Francis J. “Tripper” Ortman;

1 1.8 WHEREAS, as part of these continued negotiations, VIPKid produced financial data
2 and bank statements substantiating its financial position;

3 1.9 WHEREAS, as a result of the mediation and subsequent negotiations, Plaintiff's Counsel
4 believe that the Amended Settlement provides a favorable recovery for the Settlement Class, based on
5 the claims asserted, the damages that might be proven against VIPKid in the Action, and in light of
6 VIPKid's precarious financial position. Plaintiff's Counsel further recognizes and acknowledges the
7 expense and length of continued proceedings necessary to prosecute the Action against VIPKid through
8 trial and appeals and/or to collect on a judgment against VIPKid. Counsel has also considered the
9 uncertain outcome and the risk of any litigation, as well as the difficulties and delays inherent in any
10 such litigation and risk of non-payment under the original deal;

11 1.10 WHEREAS, for settlement purposes only, VIPKid will stipulate to the certification of
12 class claims that are subject to the certification requirements of California Code of Civil Procedure
13 Section 382. VIPKid disputes that certification is proper for the purposes of litigating the class claims
14 proposed in or flowing from the claims asserted in this Action. VIPKid expressly reserves the right to
15 oppose certification of any purported class should the Settlement fail to become final and effective, and
16 likewise to file any motions attacking the manageability of any representative PAGA action;

17 1.11 WHEREAS, the Parties desire to compromise and settle all issues and claims that have
18 been, could have been, or should have been brought against VIPKid or related persons in this Action;

19 1.12 NOW, THEREFORE, IT IS HEREBY STIPULATED, CONSENTED TO, AND
20 AGREED, by the Plaintiff for herself and on behalf of the Settlement Class, and by VIPKid that, subject
21 to the approval of the Court, this Action shall be settled, compromised, and judgment shall be entered
22 with prejudice, and the Released Claims shall be finally and fully compromised and settled as to the
23 Released Parties, in the manner and upon the terms and conditions hereafter set forth in this Agreement.

24 **II. DEFINITIONS**

25 Unless otherwise defined herein, capitalized terms used in this Agreement shall have the
26 meanings set forth below:

27 2.1 "Settlement Class" means all approximately 6,000 individuals who entered into an
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1 agreement with VIPKid to offer teaching services in California and taught at least one class through
2 the VIPKid platform since May 22, 2018 through the date of preliminary approval or June 30, 2021,
3 whichever comes first.

4 2.2 “Class Counsel” means Lichten & Liss-Riordan, P.C.

5 2.3 “Class Counsel Award” means (i) the attorneys’ fees for Class Counsel’s litigation and
6 resolution of the Action, as awarded by the Court, which may not exceed \$483,000 (or 23% of the
7 initial sum of \$2,100,000.00) and (ii) all expenses and costs incurred by Class Counsel in litigation
8 and resolution of the Action, as awarded by the Court.

9 2.4 “Class Notice” means the notice of class action settlement to be provided to Settlement
10 Class Members, without material variation from **Exhibit 1**. The Class Notice provides the Settlement
11 Class an opportunity to opt-out of the Class Action Agreement outlined herein.

12 2.5 “Court” means San Joaquin County Superior Court.

13 2.6 “Effective Date” means seven (7) days after which both of the following events have
14 occurred: (i) the Court’s Final Approval order has been entered and (ii) the Court’s Final Approval order
15 and Judgment have become Final.

16 2.7 “Exclusion/Written Objection Deadline” means the final date by which a Settlement
17 Class Member may either (i) object to any aspect of the Settlement, or (ii) request to be excluded from
18 the Settlement (other than the release of PAGA claims, which may not be opted out of). The
19 Exclusion/Written Objection Deadline shall be sixty (60) days after the Notice Date, defined below as
20 the date of the initial distribution of the Class Notice to Settlement Class Members by electronic mail.
21 The Exclusion/Written Objection Deadline shall be specifically identified and set forth in the
22 Preliminary Approval Order and the Class Notice.

23 2.8 “Final” when referring to a judgment or order, means that (i) the judgment is a final,
24 appealable judgment; and (ii) either (a) no appeal has been taken from the judgment as of the date on
25 which all times to appeal therefrom have expired, or (b) an appeal or other review proceeding of the
26 judgment having been commenced, such appeal or other review is finally concluded and no longer is
27 subject to review by any court, whether by appeal, petitions for rehearing or re-argument, petitions for
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1 re-hearing en banc, petitions for writ of certiorari, or otherwise, and such appeal or other review has
2 been finally resolved in such manner that affirms the judgment order in its entirety.

3 2.9 “Final Approval” means the Court’s entry of a Final Approval order finally approving
4 this Settlement.

5 2.10 “Final Approval Hearing” means the hearing at or after which the Court will make a
6 final decision as to whether the Settlement is fair, reasonable, and adequate, and therefore, finally
7 approved by the Court.

8 2.11 “Judgment” means the judgment to be entered in the Action on Final Approval of this
9 Settlement.

10 2.12 “Legally Authorized Representatives” means an administrator/administratrix, personal
11 representative, or executor/executrix of a deceased Settlement Class Member’s estate; a guardian,
12 conservator, or next friend of an incapacitated Settlement Class Member; or any other legally
13 appointed person responsible for handling the business affairs of a Settlement Class Member.

14 2.13 “Notice Date” means the date of the initial distribution of the Class Notice to Settlement
15 Class Members by electronic mail, as set forth in Section III.

16 2.14 “Opt Out List” means the Court-approved list of all persons who timely and properly
17 request exclusion from the Settlement Class (other than the release of PAGA claims, which may not
18 be opted out of).

19 2.15 “Plaintiff” means Emily Ibeji.

20 2.16 “PAGA Claims” means the Plaintiff’s representative claims seeking penalties pursuant
21 to PAGA, as alleged in the Complaint and/or based on any other provision of the Labor Code, Wage
22 Orders or any other statute or regulation (whether identified in the Complaint or not) to the fullest
23 extent permitted by law.

24 2.17 “PAGA Payment” means a total payment of \$75,000 to settle all claims under the
25 PAGA from May 22, 2018 through the date the Court grants preliminary approval or June 30, 2021,
26 whichever comes first. From this amount, 75% will be paid to the LWDA for civil penalties pursuant
27 to the PAGA and 25% will be distributed as “PAGA Awards” based on each individual teacher’s Class
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1 Count as determined from the Information provided to the Settlement Administrator by VIPKid. There
2 shall be no right for any Settlement Class Member to opt out of the PAGA Award. The PAGA
3 payment will be made from the first installment, due within thirty (30) days of the Effective Date of
4 the Agreement, but no earlier than December 2022.

5 2.18 “Plan of Allocation” means the plan for allocating the Settlement Payment Fund and
6 between and among Settlement Class Members as approved by the Court.

7 2.19 “Preliminary Approval Date” means the date that the Court enters the Preliminary
8 Approval Order and thus: (i) preliminarily approves the Settlement, and the exhibits thereto, and (ii)
9 enters an order providing for notice to the Settlement Class, an opportunity to opt out of the Settlement
10 Class, an opportunity to submit timely and proper objections to the Settlement, and setting a hearing
11 on the fairness of the terms of Settlement, including approval of the Class Counsel Award.

12 2.20 “Preliminary Approval Order” means the order that the Plaintiff and VIPKid will seek
13 from the Court, without material variation from **Exhibit 2**. Entry of the Preliminary Approval Order
14 shall constitute preliminary approval of the Settlement Agreement.

15 2.21 “Released Claims” means any and all claims, actions, demands, causes of action, suits,
16 debts, obligations, damages, penalties, rights or liabilities, pursuant to any theory of recovery against
17 VIPKid arising from July 31, 2015, through the date on which the Court enters the order of Final
18 Approval of this Settlement, or June 30, 2021, whichever comes first, for any type of relief that can be
19 released as a matter of law, including, without limitation, claims for wages, damages, unpaid costs,
20 penalties (including civil and waiting time penalties), liquidated damages, punitive damages, interest,
21 attorneys’ fees, litigation costs, restitution, or equitable relief (with the exception of any claims which
22 cannot be released as a matter of law), that could be brought based on the allegations in the Complaint,
23 namely VIPKid’s misclassification of the Settlement Class as independent contractors and resulting
24 wage and hour violations resulting from misclassification. The claims released pursuant to this
25 paragraph specifically include, without limitations, a release of claims under Cal. Lab. Code. §§ 201-
26 204, 222-223, 226.2, 226.3, 226.8, 226.7, 226(a), 432, 512, 510, 558, 1174(d), 1182.11, 1194, 1197,
27 1199, 1199.5, 2802, the Private Attorneys General Act, Cal. Lab. Code § 2698, *et seq.*, unlawful and/or
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1 unfair business practices (Cal. Buys. Prof. Code § 17200, *et seq.*), in connection with claims related to
2 independent contractor misclassification; as well as any other claims under the California Labor Code
3 (including sections 132a, 4553 *et seq.*) or any applicable California Industrial Welfare Commission
4 Wage Orders; and all of their implementing regulations and interpretive guidelines, as well as any other
5 similar state, local, or common law claims that relate to independent contractor misclassification and
6 resultant wage and hour violations. The release does not include claims that, as a matter of law, cannot
7 be released and does not include claims for retaliation, discrimination, wrongful termination, and
8 individual claims filed with the appropriate agency for the recovery of workers' compensation benefits.
9 Released Claims also includes all PAGA Claims by all individuals who entered into an agreement with
10 VIPKid to provide teaching services and taught at least one class in California from May 22, 2018,
11 through the date the Court grants preliminary approval or June 30, 2021, whichever comes first. In
12 addition to the Released Claims, Plaintiff shall be bound by a complete and general release of all claims
13 under any and all applicable federal and state laws and/or regulations as to Released Parties, and shall
14 also be bound by a California Civil Code section 1542 release and waiver of all claims known and
15 unknown, without exception, except as may be prohibited by law, such as claims for workers'
16 compensation benefits. California Civil Code section 1542 reads as follows:

17 **“A general release does not extend to claims that the creditor or releasing party does not**
18 **know or suspect to exist in his or her favor at the time of executing the release and that, if**
19 **known by him or her, would have materially affected his or her settlement with the debtor**
20 **or released party.”**

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22 2.22 “Released Parties” means (i) VIPKid International, Inc.; (2) any predecessors and
23 successors in interest, any current or former parent corporations, subsidiary corporations, affiliates, and
24 assigns, including, without limitation, VIPKid HK Limited, VIPKid Limited, VIPKid Co., Ltd., Future
25 VIPKid Limited, Horizon Education HK Limited, and Beijing Da Mi Technology Co., Ltd.; (3)
26 companies acquiring any or all of VIPKid's assets or capital stock; (4) any of VIPKid's past or present,
27 divisions, suppliers, distributors, dealers, or sales branches; (5) current or former officers, directors,
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1 shareholders, agents, representatives, and employees; (6) directors, shareholders, agents, representatives,
2 and employees; and (7) insurers of any of the foregoing entities or persons.

3 2.23 “Settlement Payment” means the amount payable to each Settlement Class Member
4 who does not opt out, which payment will be for non-PAGA claims released through this Agreement.
5 The Settlement Payment shall be calculated pursuant to Section V herein.

6 2.24 “Settlement Payment Fund” means the funds paid to Settlement Class Members after
7 deducting Class Counsel Award, Service Awards, Settlement Administrator Expenses, and payments to
8 the Labor & Workforce Development Agency (LWDA).

9 2.25 “Settlement” means the settlement of the Action between and among Plaintiff and
10 VIPKid, as set forth in this Settlement Agreement.

11 2.26 “Settlement Administrator” means Simpluris, the neutral, third-party settlement
12 administrator to be appointed by the Court.

13 2.27 “Settlement Administrator Expenses” means the amount to be paid to the Settlement
14 Administrator from the Settlement Payment Fund, including the total costs, expenses, and fees of the
15 Settlement Administrator. The amount may not exceed \$108,000, to be paid in four equal installments
16 of \$27,000, deducted from each annual payment of \$525,000.

17 2.28 “Settlement Class Member” means any member of the Settlement Class.

18 2.29 “Service Award” means the amount approved by the Court to be paid to the Plaintiff,
19 in addition to her respective individual Settlement Payments, in recognition of her efforts in coming
20 forward as the PAGA Representative and named plaintiff and her general release of claims. The Service
21 Award amount payable to Plaintiff is not to exceed \$10,000.

22 2.30 “Total Settlement Amount” means Two Million, One Hundred Thousand Dollars
23 (\$2,100,000) for payment of all claims, which is the maximum amount that VIPKid is obligated to pay
24 under this Settlement Agreement under any circumstances in order to resolve and settle the Action,
25 subject to Court approval. The Total Settlement Amount shall be paid in four equal installments of
26 \$525,000, one year apart, over the course of four consecutive years. The first payment will be made
27 within thirty (30) days of Final Approval, but in no event sooner than December 1, 2022. The Total
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1 Settlement Amount is inclusive of all costs and fees, including, but not limited to, Class Counsel Award,
2 applicable Settlement Administrator Expenses, escrow costs and expenses, Service Awards, PAGA
3 Payment, and interest.

4 2.31 “Virtual Class Count” means the total number of virtual ESL classes taught by the
5 teacher or paid for, for each Settlement Class Member during the Settlement Class Period, as determined
6 by VIPKid’s records.

7 2.32 “Void Date” means the date by which any checks issued to Responding Settlement Class
8 Members shall become void, *i.e.* on the 181st day after mailing.

9 **III. SUBMISSION OF THE SETTLEMENT AGREEMENT TO THE COURT FOR**
10 **PRELIMINARY AND FINAL APPROVAL**

11 3.1 Upon execution of this Settlement Agreement, the Plaintiff shall submit to the Court a
12 motion for preliminary approval of the Settlement. The motion for preliminary approval shall include a
13 proposed plan for filing the First Amended Complaint (**Exhibit 3** hereto), for sending of the Class Notice
14 to Settlement Class Members within thirty (30) days after the Preliminary Approval Date (the Notice
15 Date), and establishing a period of sixty (60) days from the Notice Date within which any Settlement
16 Class Member may (i) request exclusion from the Settlement Class, (ii) submit written objections to the
17 proposed Settlement, or (iii) submit written objections to Class Counsel’s request for the Class Counsel
18 Award and for Service Awards to the Plaintiff (the Exclusion/Written Objection Deadline).

19 3.2 The Parties stipulate to certification under California Code of Civil Procedure Section
20 382, for settlement purposes only, of the Settlement Class. The Parties agree that this stipulation shall
21 not be admissible in, and may not be used by any person for any purpose whatsoever in any legal
22 proceeding, including but not limited to any arbitrations and/or any civil and/or administrative
23 proceedings, other than a proceeding to enforce the terms of the Agreement.

24 3.3 Class Counsel agrees to keep any and all data related to the Settlement Class’s use of
25 the VIPKid platform in the strictest confidence and shall not disclose that data.

26 3.4 Class Counsel and Plaintiff agree to use their best efforts, in cooperation with defense
27 counsel, to keep this Action stayed pending Final Approval of the Settlement, and upon Final Approval
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1 of the Settlement, Class Counsel and Plaintiff agree to dismiss this Action with prejudice.

2 3.5 The Parties stipulate to the form of, and agree to submit to the Court for its
3 consideration this Settlement Agreement, and the following Exhibits to this Settlement Agreement:
4 [Proposed] Preliminary Approval Order (Exhibit 2); Class Notice (Exhibit 1); and First Amended
5 Complaint (Exhibit 3).

6 3.6 Within 10 days of the Preliminary Approval Date, Class Counsel will notify the LWDA
7 of the Preliminary Approval Order.

8 3.7 At the Final Approval Hearing, the Plaintiff shall request entry of a Final Approval
9 Order and a Judgment, to be agreed upon by the Parties, the entry of which is a material condition of
10 this Settlement and that, among other things:

11 3.7.1 Finally approves the Settlement as fair, reasonable, and adequate and directs its
12 consummation pursuant to the terms of the Settlement Agreement;

13 3.7.2 Finds that Class Counsel and Plaintiff adequately represented the Settlement
14 Class for the purpose of entering into and implementing the Agreement;

15 3.7.3 Re-confirms the appointment of the Settlement Administrator and finds that the
16 Settlement Administrator has fulfilled its duties under the Settlement to date;

17 3.7.4 Finds that the Class Notice (i) constituted the best practicable notice; (ii)
18 constituted notice that was reasonably calculated, under the circumstances, to apprise Settlement Class
19 Members of the pendency of the Action, and their right to exclude themselves from or object to the
20 proposed settlement and/or to appear at the Final Approval Hearing; (iii) was reasonable and
21 constituted due, adequate, and sufficient notice to all persons entitled to receive notice; and (iv) met
22 all applicable requirements of California Rules of Court 3.766(d) and 3.769(f), due process, and any
23 other applicable rules or law;

24 3.7.5 Approves the Opt-Out List and determines that the Opt-Out List is a complete
25 list of all Settlement Class Members who have timely and properly requested exclusion from the
26 Settlement Class and, accordingly, shall neither share in nor be bound by the Final Approval order and
27 Judgment, except as provided in Paragraph 10.2.4;
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1 3.7.6 Directs that the Final Approval order and Judgment shall be final and entered
2 forthwith;

3 3.7.7 Without affecting the finality of the Final Approval order and Judgment, directs
4 that the San Joaquin County Superior Court retains continuing jurisdiction over the Plaintiff, the
5 Settlement Class, and VIPKid as to all matters concerning the administration, consummation, and
6 enforcement of this Settlement Agreement;

7 3.7.8 Adjudges that, as of the Final Approval Date, the Plaintiff, and all Settlement
8 Class Members who have not been excluded from the Settlement Class as provided in the Opt-Out
9 List approved by the Court, and their heirs, estates, trustees, executors, administrators, principals,
10 beneficiaries, representatives, agents, assigns, and successors, and/or anyone claiming through them
11 or acting or purporting to act for them or on their behalf, regardless of whether they have received
12 actual notice of the proposed Settlement, have conclusively compromised, settled, discharged, and
13 released the Released Claims against VIPKid, and are bound by the provisions of this Agreement;

14 3.7.9 Affirms that, notwithstanding the submission of a timely and proper request for
15 exclusion, Settlement Class Members will still be bound by the settlement and release of the PAGA
16 Claims as requests for exclusion do not apply to the PAGA Claims, and further affirms that the
17 LWDA's claims for civil penalties pursuant to PAGA are also extinguished through the date this Court
18 grants preliminary approval or June 30, 2021, whichever comes first;

19 3.7.10 Declares this Agreement and the Final Approval order and Judgment to be
20 binding on, and have res judicata and preclusive effect as to all pending and future lawsuits or other
21 proceedings that encompass the Released Claims and that are maintained by or on behalf of any
22 Settlement Class Member who has not been excluded from the Settlement Class as provided in the
23 Opt-Out List approved by the Court and/or his or her heirs, estates, trustees, executors, administrators,
24 principals, beneficiaries, representatives, agents, assigns, and successors, and/or anyone claiming
25 through them or acting or purporting to act for them or on their behalf, regardless of whether the
26 Settlement Class Member previously initiated or subsequently initiates individual litigation,
27 arbitration, or other proceedings encompassed by the Settlement Class Members' Released Claims,
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1 and even if such Settlement Class Member never received actual notice of the Action or this proposed
2 Settlement;

3 3.7.11 Determines that the Agreement and the Settlement provided for herein, and any
4 proceedings taken pursuant thereto, are not, and should not in any event be offered, received, or
5 construed as evidence of, a presumption, concession, or an admission by any Party of liability or non-
6 liability or of the certifiability or non-certifiability of a litigation class, or that PAGA representative
7 claims may validly be pursued, or of any misrepresentation or omission in any statement or written
8 document approved or made by any Party; provided, however, that reference may be made to this
9 Agreement and the Settlement provided for herein in such proceedings as may be necessary to
10 effectuate the provisions of this Agreement, as further set forth in this Agreement;

11 3.7.12 Orders that the preliminary approval of the Settlement, certification of the
12 Settlement Class and final approval of the proposed Settlement, and all actions associated with them,
13 are undertaken on the condition that they shall be vacated if the Settlement Agreement is terminated
14 or disapproved in whole or in part by the Court, or any appellate court and/or other court of review, in
15 which event the Agreement and the fact that it was entered into shall not be offered, received, or
16 construed as an admission or as evidence for any purpose, including but not limited to an admission
17 by any Party of liability or non-liability or of any misrepresentation or omission in any statement or
18 written document approved or made by any Party, or of the certifiability of a litigation class or the
19 appropriateness of maintaining a PAGA representative action, as further provided in this Settlement
20 Agreement;

21 3.7.13 Contains such other and further provisions consistent with the terms of this
22 Settlement Agreement to which the Parties expressly consent in writing.

23 3.8 At the Final Approval Hearing and as a part of the final approval of this Settlement,
24 Class Counsel will also request approval of the Plan of Allocation set forth in Section V. Any
25 modification to the Plan of Allocation by the Court shall not (i) affect the enforceability of the
26 Settlement Agreement, (ii) provide any of the Parties with the right to terminate the Settlement
27 Agreement, or (iii) impose any obligation on the Defendant to increase the consideration paid in
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1 connection with the Settlement.

2 3.9 At the Final Approval Hearing, Class Counsel may also request entry of an Order
3 approving the Class Counsel Award and for the Service Awards to the Plaintiff, which shall be paid
4 exclusively from the Total Settlement Amount and in accordance with the distribution plan described
5 in Section V. The disposition of Class Counsel’s application for a Class Counsel Award, and for
6 Service Awards, is within the sound discretion of the Court and is not a material term of this
7 Settlement.

8 3.10 In no event shall any Released Party be obligated to pay Settlement Administration
9 Expenses beyond those provided for in this Agreement.

10 3.11 Within 10 days after entry of Judgment, Class Counsel will provide a copy of the
11 Judgment to the LWDA.

12 **IV. SETTLEMENT CONSIDERATION**

13 4.1 The total monetary component of the Settlement from VIPKid is the Total Settlement
14 Amount (\$2,100,000.00). This is an “all in” number that includes, without limitation, all monetary
15 benefits and payments to the Settlement Class, Service Award, Class Counsel Award, Settlement
16 Administrator Expenses and the PAGA Payment, and all claims for interest, fees, and costs. Under no
17 circumstances shall VIPKid be required to pay anything more than the Total Settlement Amount or make
18 any payments under this Settlement before the deadlines set forth in this Agreement.

19 4.2 The Plaintiff and all Settlement Class Members who receive a payment of any kind from
20 the Total Settlement Amount (including, in the case of the Plaintiff, a Service Award) expressly
21 acknowledge that such payments shall be considered non-wages for which an IRS Form 1099 will be
22 issued, if required.

23 4.3 The terms of this Agreement relating to the Service Award and Class Counsel Award
24 were not negotiated by the Parties before full agreement was reached as to all other material terms of
25 the proposed Settlement, including, but not limited to, any terms relating to the relief to the Settlement
26 Class. VIPKid agrees not to oppose a request for a Service Award for Plaintiff, as awarded by the Court,
27 up to a maximum of Ten Thousand Dollars (\$10,000). The Plaintiff and Class Counsel agree not to seek
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1 a Service Award in excess of the above amount.

2 4.4 Class Counsel agrees not to seek an award of attorneys' fees, costs and expenses from
3 the Court in excess of \$483,000 (or 23% of \$2,100,000.00). VIPKid agrees not to oppose a request for
4 attorneys' fees, costs and expenses up to 23% of the Total Settlement Amount. Any amount awarded
5 as the Class Counsel Award shall be inclusive of any and all amounts due to all Plaintiff's Counsel.
6 VIPKid and Class Members shall have no obligation regarding or liability for allocation or payment of
7 any Class Counsel Award to Plaintiff's Counsel. Furthermore, Class Counsel may elect to receive
8 payment of the Class Counsel Award in four equal installments or receive larger shares of the later
9 payments.

10 4.5 If no timely objection to the Settlement is made, the payment of the Service Award and
11 the PAGA Payment shall be made by the Settlement Administrator within thirty (30) days of the
12 Effective Date (but not earlier than December 2022).

13 4.6 The Settlement Administrator shall pay the Class Counsel Award by check, payable to
14 "Lichten & Liss-Riordan, P.C." Class Counsel shall provide the Settlement Administrator notice of
15 receipt of the Class Counsel Award.

16 **V. FUNDING AND ALLOCATION OF THE SETTLEMENT**

17 5.1 VIPKid shall fund the Settlement by providing the Settlement Fund (\$2,100,000) to the
18 Settlement Administrator in four equal installments of \$525,000. The first payment will be made within
19 30 days of the Effective Date as defined in the original settlement agreement (but not earlier than
20 December 2022), and each subsequent payment will be made one year thereafter, anticipated in
21 December 2023, December 2024, and December 2025. . The Settlement Administrator shall thereafter
22 distribute the funds in the manner and at the times set forth in this Agreement.

23 5.2 Except as provided in Paragraph 10.2.4, to receive a payment from the Settlement, a
24 Settlement Class Member must not have submitted a request for exclusion from the Settlement.

25 5.3 The amount of each Settlement Class Member's Settlement Payment will be calculated
26 in proportion to the number of points awarded pursuant to the formula set forth in this paragraph.
27 VIPKid shall provide its best estimate of each Settlement Class Member's Virtual ESL Class Count and
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1 the dates on which those classes were taught/attended. Utilizing this information, the Administrator will
2 calculate settlement shares as follows:

3 5.4 Class Counsel will be permitted to review and approve the calculation of settlement funds
4 to be distributed (not including Class Member names and contact information). If under the Plan of
5 Allocation a Settlement Class Member will be distributed \$10 or more (for any one of the four
6 distribution rounds), then he or she will receive the entitled amount. If, however, the Settlement Class
7 Member is due less than \$10, then his or her Settlement Payment will be for \$10 (a “minimum share”),
8 except as provided in Paragraph 10.2.4. If a Settlement Class Member is paid a minimum share in one
9 round of payments, he or she will not receive subsequent payments under the Settlement.

10 (1) classes taught or paid for between July 2015 and December 31, 2020, will receive 2 points;
11 and (2) classes taught or paid for between January 1, 2020 and June 30, 2021 will receive 3
12 points.

13 5.5 Each Settlement Class Member’s PAGA Awards will likewise be calculated based on the
14 allocation formula set forth in Paragraph 5.4.

15 5.6 Following distribution of the first round of Settlement Payments to Settlement Class
16 Members, all funds not claimed prior to the Void Date (*i.e.* all funds from uncashed checks) shall be
17 redistributed to the Settlement Class Members who received and cashed their first Settlement Payments
18 in the next round of settlement payments the following year. These unclaimed funds shall be
19 redistributed pursuant to the same formula described in Paragraphs 5.3 to all individuals who cashed
20 their checks (or otherwise were successfully delivered their digital payments) and who did not already
21 receive a minimum share.

22 5.7 As described in Section VI, each Settlement Class Member will have the opportunity,
23 should he or she disagree with the calculation of his or her Class Count, to provide documentation to
24 establish the appropriate number. There will be a presumption that VIPKid’s records are correct, absent
25 evidence produced by a Settlement Class Member to the contrary.

26 5.8 The Settlement Administrator shall issue the Settlement Payments to each Settlement
27 Class Member who does not opt out by mailing their settlement payment to the address on file.
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1 Settlement Class Members will not be permitted to opt out of the PAGA Payment or the release of
2 PAGA claims. Because the settlement will be paid in multiple installments, Settlement Class Members
3 will be encouraged in the Notice to update their address and contact information via the settlement
4 website's online portal and to opt for a digital payment in lieu of mailed check (such as by Zelle, PayPal
5 or Venmo, if they provide the required information via the settlement website). If any settlement check
6 sent to any Settlement Class Member sent via first-class mail is returned to the Settlement Administrator
7 with a forwarding address, the Settlement Administrator shall forward the postal mailing to that address.
8 For any remaining returned checks, the Settlement Administrator shall make a good-faith search of an
9 appropriate database, and postal mailings shall be forwarded to any new postal mail address obtained
10 through such a search. The Settlement Payments shall be reported by the Settlement Administrator to
11 the applicable governmental authorities on IRS Form 1099s. The Settlement Administrator shall be
12 responsible for issuing copies of IRS Form 1099s for the Plaintiff and Settlement Class Members.

13 **VI. CLASS NOTICE PROCEDURES**

14 6.1 No more than fourteen (14) calendar days after entry of the Preliminary Approval Order,
15 Defendant shall provide the Settlement Administrator with the Class Information for purposes of
16 sending the Class Notice to Settlement Class Members. Class Information shall include names, last
17 known addresses, last known email address, last known phone numbers, Social Security Numbers, and
18 the classes credited to each Settlement Class Member.

19 6.2 The Class Notice will inform Settlement Class Members of their right to request
20 exclusion from the Settlement (with the exception of the PAGA Payment and release, which they may
21 not opt out of), of their right to object to the Settlement, and of their right to dispute the information
22 upon which their share of the Settlement will be calculated and the claims to be released. The Class
23 Notice shall also provide each potential Settlement Class Member with a best estimate of his or her Class
24 Count. The Class Notice will also encourage Settlement Class Members to update their address and
25 contact information via the settlement website. Settlement Class Members will also be strongly
26 encouraged to receive their settlement payment through alternate means in lieu of mailed check (such
27 as by Zelle, PayPal or Venmo, if they provide the required information via the settlement website).
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1 6.3 Within fourteen (14) days after receiving the Class Information from Defendant, the
2 Settlement Administrator shall send a copy of the Class Notice by electronic mail to each potential
3 Settlement Class Member.

4 6.4 If any Class Notice sent via electronic mail to any potential Settlement Class Member is
5 undeliverable, then no later than ten (10) days after the Notice Date, the Settlement Administrator shall
6 then send the Class Notice to the potential Settlement Class Member's postal mailing address on file via
7 first-class mail, to the extent such a mailing address is on file, and the deadline to claim or opt out of the
8 settlement shall be extended by ten (10) days for any such individual. If any Class Notice sent to any
9 potential Settlement Class Member via first-class mail is returned to the Settlement Administrator with
10 a forwarding address, the Settlement Administrator shall forward the postal mailing to that address. For
11 any remaining returned postal mailings or for any Settlement Class Member for whom there is no
12 mailing address on file, the Settlement Administrator shall make a good-faith search of an appropriate
13 database, and postal mailings shall be forwarded to any new postal mail address obtained through such
14 a search. In the event that any Class Notice is returned as undeliverable a second time, no further postal
15 mailing shall be required. The Settlement Administrator shall maintain a log detailing the instances
16 Class Notices are returned as undeliverable.

17 6.5 To the extent that sending the Class Notice via postal mail is necessary under the terms
18 of Paragraph 6.4, before any mailing, the Settlement Administrator shall make a good-faith attempt to
19 obtain the most-current names and postal mail addresses for all potential Settlement Class Members to
20 receive such postal mail, including cross-checking the names and/or postal mail addresses it received
21 from VIPKid, as well as any other sources, with appropriate databases (e.g., the National Change of
22 Address Database) and performing further reasonable searches (e.g., through Lexis/Nexis) for more-
23 current names and/or postal mail addresses for Settlement Class Members. All Settlement Class
24 Members' names and postal mail addresses obtained through these sources shall be protected as
25 confidential and not used for purposes other than the notice and administration of this Settlement. The
26 Settlement Administrator shall exercise its best judgment to determine the current mailing address for
27 each Settlement Class Member. The address determined by the Settlement Administrator as the current
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1 mailing address shall be presumed to be the best mailing address for each Settlement Class Member.

2 6.6 As set forth in the Class Notice, Settlement Class Members will be asked to object or
3 request exclusion to the Settlement Administrator within sixty (60) days. However, any Settlement
4 Class Members who do object or request exclusion will nevertheless be bound by the release of the
5 Settlement Members' Released PAGA Claims.

6 6.7 Thirty (30) days prior to the deadline to object or request exclusion, a reminder will be
7 sent by email by the Administrator to all Settlement Class Members whose initial Class Notice email
8 was not undeliverable (and by mail to any Settlement Class Member whose initial Class Notice email
9 was undeliverable) and who has not yet submitted an objection or request for exclusion.

10 6.8 The Parties agree that the procedures set forth in this Section constitute reasonable and
11 the best practicable notice under the circumstances and an appropriate and sufficient effort to locate
12 current addresses for Settlement Class Members such that no additional efforts to do so shall be required.

13 6.9 The Settlement Administrator will provide Class Notice by, at a minimum, (i) electronic
14 mail notice without material variation from the form attached as Exhibit 1; (ii) if necessary in accordance
15 with Paragraph 6.4, first-class mail notice; and (iii) a content-neutral settlement website managed by the
16 Settlement Administrator, and approved by counsel for the Parties, which will contain further
17 information about the Settlement, including relevant pleadings. The Class Notice shall comply with
18 California Rules of Court 3.766(d), 3.769(f) and due process.

19 6.10 The Settlement Administrator shall prepare a declaration of due diligence and proof of
20 dissemination with regard to the mailing of the Class Notice, and any attempts by the Settlement
21 Administrator to locate Settlement Class Members, its receipt of valid requests for exclusion, and its
22 inability to deliver the Notice of Settlement to Settlement Class Members due to invalid addresses ("Due
23 Diligence Declaration"), to Class Counsel and counsel for VIPKid for presentation to the Court. Class
24 Counsel shall be responsible for filing the Due Diligence Declaration with the Court contemporaneous
25 with the filing of the Motion for Final Approval of Class Action Settlement.

26 6.11 If any individual whose name does not appear in the Class Information that VIPKid
27 provides the Settlement Administrator (and who has not previously opted out of the Settlement Class),
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1 believes that he or she is a Settlement Class Member, he or she shall have the opportunity to dispute his
2 or her exclusion from the Settlement Class. If an individual believes he or she is a Settlement Class
3 Member, he or she must notify the Settlement Administrator by mail or email within a reasonable
4 amount of time after the Notice Date. The Parties will meet and confer regarding any such individuals
5 in an attempt to reach an agreement as to whether any such individual should be regarded as a Settlement
6 Class Member. If the Parties so agree, the Settlement Administrator will mail a Class Notice to the
7 individual, and treat the individual as a Settlement Class Member for all other purposes. Such an
8 individual will have all of the same rights as any other Settlement Class Member under this Agreement.
9 In the event that the disbursement of the Settlement Payments has begun (in accordance with this
10 Settlement Agreement) at the time that the Parties agree that such individual should be regarded as a
11 Settlement Class Member and that such individual does not exercise his or her right to opt out of the
12 Settlement, the Settlement Payment to such individual shall be disbursed from funds remitted back to
13 the Payment Fund (*i.e.* from settlement checks that remain uncashed beyond the Void Date). The Parties
14 further agree to cooperate to resolve any disputes involving Settlement Class Members who come
15 forward after the deadline to submit a claim and agree to endeavor to pay claims to such individuals out
16 of funds remitted back to the Payment Fund (*i.e.* from settlement checks that remain uncashed beyond
17 the Void Date) to the extent it is feasible.

18 **VII. PROCEDURES FOR REQUESTS FOR EXCLUSION**

19 7.1 Settlement Class Members (with the exception of the Plaintiff) may opt out of the
20 Settlement (although they may not opt out of the release of PAGA claims). Those who wish to exclude
21 themselves (or “opt out”) from the Settlement Class with respect to non-PAGA claims must submit
22 timely, written requests for exclusion. To be effective, such a timely request must include the Settlement
23 Class Member’s name, address, and telephone number (or information sufficient for the individual to be
24 identified with certainty within the settlement class); a clear and unequivocal statement that the
25 Settlement Class Member wishes to be excluded from the Settlement Class with respect to non-PAGA
26 claims; and the signature of the Settlement Class Member or the Legally Authorized Representative of
27 the Settlement Class Member (who is not the class member’s counsel). The request must be mailed or
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1 emailed to the Settlement Administrator at the mailing address or email address provided in the Class
2 Notice and must be postmarked no later than the Exclusion/Objection Deadline in the case of a mailed
3 request for exclusion. Alternatively, the Request may be emailed to the Settlement Administrator from
4 the email address associated with the Settlement Class Member's VIPKid account, in which case the
5 requirement of a signature will be waived. With respect to mailed requests for exclusion, the date of the
6 postmark shall be the exclusive means used to determine whether a request for exclusion has been timely
7 submitted. Requests for exclusion must be exercised individually by the Settlement Class Member (or
8 their Legally Authorized Representative as defined herein), even if the Settlement Class Member is
9 represented by counsel. However, nothing about the Settlement's opt-out procedure prevents counsel
10 (a) from reviewing the Settlement with the client, (b) from advising the client on whether participating
11 in or opting out of the Settlement is in the client's (as opposed to counsel's) best interest, or (c) from
12 preparing the opt-out request for their client to sign (e.g., including the requisite information such as the
13 Settlement Class Member's name, address, and telephone number, and a clear and unequivocal
14 statement that the individual wishes to be excluded). Attempted collective group, class, or subclass
15 requests for exclusions shall be ineffective and disregarded by the Settlement Administrator. The
16 Settlement Administrator will attempt to contact any Settlement Class Member whose request for
17 exclusion is incomplete or invalid to provide them with an opportunity to cure the defect prior to the
18 deadline.

19 7.2 The Settlement Administrator shall promptly log each request for exclusion that it
20 receives and provide copies of the log and all such requests for exclusion to Class Counsel and counsel
21 for VIPKid, as requested.

22 7.3 The Settlement Administrator shall prepare a list of all persons who timely and properly
23 requested exclusion from the Settlement Class (the Opt-Out List) and shall, before the Final Approval
24 Hearing, submit an affidavit to the Court attesting to the accuracy of the list.

25 7.4 All Settlement Class Members who are not included in the Opt-Out List approved by the
26 Court shall be bound by this Agreement, and judgment entered as to all their claims, which shall be
27 released as provided for herein, even if they never received actual notice of the Action or this proposed
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1 Settlement.

2 7.5 The Settlement Administrator shall determine whether a request for exclusion was timely
3 and properly submitted and shall submit the Opt-Out List to the Court for its approval along with a list
4 of any defective or untimely requests for exclusion. The Court shall have the ultimate authority to
5 approve or disapprove of any requests for exclusion.

6 7.6 The Plaintiff agrees not to request exclusion from the Settlement Class and not to
7 encourage anyone from requesting exclusion from the Settlement Class. Settlement Class Members may
8 object to or opt out of the Settlement, but may not do both. Any Settlement Class Member who submits
9 a timely request for exclusion may not file an objection to the Settlement or receive a Settlement
10 Payment (although they may not object to receipt of their share of the PAGA Award), and shall be
11 deemed to have waived any rights or benefits under the Settlement Agreement, except as provided in
12 Paragraph 10.2.4.

13 7.7 Notwithstanding the submission of a timely request for exclusion, Class Members will
14 still be bound by the settlement and release of the PAGA Claims or remedies under the Final Judgment
15 pursuant to *Arias v. Superior Court*, 46 Cal. 4th 969 (2009). Requests for exclusion do not apply to the
16 PAGA Claims, and will not be effective to preclude the release of the PAGA Claims. Upon Final
17 Approval, any right the Plaintiff and all other Settlement Class Members have to seek or receive civil
18 penalties pursuant to the PAGA shall be released, waived and fully extinguished, and therefore barred
19 by res judicata.

20 7.8 No later than three (3) business days after the Exclusion/Objection Deadline, the
21 Settlement Administrator shall provide to Class Counsel and counsel for VIPKid the Opt-Out List
22 together with copies of the opt-out requests, including any untimely or defective requests.
23 Notwithstanding any other provision of this Settlement Agreement, if more than two percent (2%) of
24 potential Settlement Class Members exercise their right to opt out of the Settlement, VIPKid at its sole
25 and absolute discretion may elect to rescind, void, and revoke the entire Settlement Agreement by
26 sending written notice that it revokes the Settlement pursuant to this Paragraph to Class Counsel within
27 twelve (12) business days following receipt of the Opt-Out List.
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1 7.9 Named Plaintiff and her counsel shall support the settlement and take such steps as are
2 reasonably necessary to effectuate the settlement. Plaintiff’s counsel shall recommend the settlement to
3 Settlement Class Members, and Plaintiff’s counsel agree to use their best efforts to resolve any
4 objections to the release of all claims described in the Scope of Release, including all class actions,
5 putative class actions, individual-plaintiff actions, and arbitrations. VIPKid, in turn, agrees to use its
6 best efforts to cooperate with Plaintiff’s counsel’s efforts in this regard. Named Plaintiff shall not opt
7 out of or object to the settlement, nor shall she or her counsel directly or indirectly encourage settlement
8 class members to opt out of or object to the settlement.

9 **VIII. PROCEDURES FOR OBJECTIONS**

10 8.1 Any Settlement Class Member that wishes to object to the fairness, reasonableness, or
11 adequacy of this Agreement or the proposed Settlement must provide to the Settlement Administrator
12 (who shall forward it to Class Counsel and counsel for VIPKid), a timely statement of the objection, as
13 set forth below.

14 8.2 To be timely, the objection must be postmarked and mailed to the Settlement
15 Administrator (or emailed to the Settlement Administrator from the email address associated with the
16 Settlement Class Member’s VIPKid account) no later than the Exclusion/Objection Deadline. With
17 respect to mailed objections, the date of the postmark on the return-mailing envelope shall be the
18 exclusive means used to determine whether an objection has been timely submitted.

19 8.3 The objection must contain at least the following: (i) the objector’s full name, address,
20 telephone number (or information sufficient for the individual to be identified with certainty within the
21 settlement class), and signature; (ii) a clear reference to the Action; and (iii) a statement of the specific
22 basis for each objection argument. All objections shall be signed by the objecting Settlement Class
23 Member (or his Legally Authorized Representative as defined herein), even if the Settlement Class
24 Member is represented by counsel. However, if the objection is emailed to the Settlement Administrator
25 from the email address associated with the Settlement Class Member’s VIPKid account, the signature
26 requirement will be waived.

27 8.4 The right to object to the proposed Settlement must be exercised individually by a
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1 Settlement Class Member. Attempted collective, group, class, or subclass objections shall be ineffective
2 and disregarded. Individual objections may be submitted by a Settlement Class Member's Legally
3 Authorized Representative.

4 8.5 Settlement Class Members who object to the proposed Settlement shall remain
5 Settlement Class Members, and shall be deemed to have voluntarily waived their right to pursue an
6 independent remedy against VIPKid and the Released Parties. To the extent any Settlement Class
7 Member objects to the proposed Settlement, and such objection is overruled in whole or in part, such
8 Settlement Class Member will be forever bound by the Final Approval order and Judgment.

9 8.6 It shall be Class Counsel's sole responsibility to respond to any objections made with
10 respect to any application for the Class Counsel Award and Service Award.

11 **IX. RELEASES**

12 9.1 The Released Claims against each and all of the Released Parties shall be released and
13 judgment entered (without an award of costs to any party other than as provided in this Agreement) upon
14 entry of the Final Approval order and Judgment.

15 9.2 As of the Final Approval Date, the Plaintiff, and all Settlement Class Members who have
16 not been excluded from the Settlement Class as provided in the Opt-Out List, individually and on behalf
17 of their heirs, estates, trustees, executors, administrators, representatives, agents, successors, and
18 assigns, and anyone claiming through them or acting or purporting to act on their behalf, agree to forever
19 release, discharge, hold harmless, and covenant not to sue each and all of the Released Parties from each
20 and all of the Released Claims, and by operation of the Final Judgment shall have fully and finally
21 released, relinquished, and discharged all such claims against each and all of the Released Parties; and
22 they further agree that they shall not now or hereafter initiate, maintain, or assert any Released Claims
23 against the Released Parties in any other court action or before any administrative body, tribunal,
24 arbitration panel, or other adjudicating body. Without in any way limiting the scope of the release
25 described in Paragraphs 2.21, as well as the remainder of this Section, this release covers, without
26 limitation, any and all claims for attorneys' fees, costs or disbursements incurred by Class Counsel or
27 by the Plaintiff or Settlement Class Members, in connection with or related in any manner to the Action,
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1 the Settlement of the Action, the administration of such Settlement, and/or the Released Claims, except
2 to the extent otherwise specified in the Agreement.

3 9.3 Subject to Court approval, the Plaintiff, and all Settlement Class Members who have
4 not been excluded from the Settlement Class as provided in the Opt-Out List, shall be bound by this
5 Settlement Agreement, and judgment entered as to all their claims, which shall be released, even if
6 they never received actual notice of the Action or this Settlement.

7 9.4 As of the Final Approval Date, the State of California and all VIPKid teachers who
8 taught or were paid for at least one class in California from May 22, 2018 through June 30, 2021,
9 whichever comes first, shall be deemed to have fully, finally, and forever waived, released,
10 relinquished, and discharged each and all of the Released Parties from all the PAGA Claims that arose
11 or may be alleged to have arisen at any time from May 22, 2018, through June 30, 2021.

12 **X. ADMINISTRATION OF THE SETTLEMENT FUND**

13 10.1 The Settlement Administrator or its authorized agents in consultation with the Parties
14 and subject to the supervision, direction, and approval of the Court, shall calculate the allocation of
15 and oversee the distribution of the Settlement Fund.

16 10.2 The Settlement Payment Fund shall be applied as follows:

17 10.2.1 To pay the total costs, expenses, and fees of the Settlement Administrator
18 incurred in connection with providing Class Notice to potential Settlement Class Members, and the
19 management and distribution of the Settlement Payments to Settlement Class Members;

20 10.2.2 Subject to the approval and further order(s) of the Court, to pay Plaintiff's
21 Service Award based on contributions and time expended assisting in the litigation and Plaintiff's
22 general release of claims, up to a maximum of \$10,000. The Service Award will be paid in its entirety
23 from the first installment;

24 10.2.3 Subject to the approval and further order(s) of the Court, to pay the Class
25 Counsel Award as ordered by the Court. The Class Counsel Award will be paid in four equal
26 installments, or if Class Counsel believes it is in the best interests of the Settlement Class that counsel
27 receive more of their fees out of later installments, they may elect to do so;

1 10.2.4 Subject to the approval and further order(s) of the Court, to distribute 75% of
2 the PAGA Payment to the LWDA and 25% of the PAGA Payment based on each individual's pro rata
3 share. The PAGA Payment shall be made in its entirety from the first installment;

4 10.2.5 After the Effective Date and subject to the approval and further order(s) of the
5 Court, to distribute the Settlement Payments from the Settlement Payment Fund for the benefit of the
6 Settlement Class pursuant to the Plan of Allocation, or as otherwise ordered by the Court.

7 10.3 In the distribution of the Settlement Payments, the Settlement Administrator will
8 include a statement to each Settlement Class Member containing a best estimate of his or her total
9 number of points awarded as well as total Virtual ESL Class Count being used to calculate the amount
10 of his or her Settlement Payment and PAGA Award, as described in Paragraphs 5.4 and 5.5.

11 10.4 Settlement Class Members will have an opportunity to dispute the calculation of their
12 total Class Count by providing documentation of contrary class counts to the Settlement Administrator
13 within forty-five (45) days of receiving their Notice. The Settlement Administrator shall review any
14 documentation submitted by a Settlement Class Member and consult with the Parties to determine
15 whether an adjustment is warranted. There will be a presumption that VIPKid's records and the Class
16 Count calculations are correct, absent evidence produced by a Settlement Class Member to the
17 contrary.

18 10.5 If any portion of the Settlement Payment Fund is not successfully redistributed to
19 Settlement Class Members after the initial Void Date (*i.e.* checks are not cashed or checks are returned
20 as undeliverable after the second distribution), then after the Void Date for redistributed checks, the
21 Settlement Administrator shall void the check and shall direct such unclaimed funds to be redistributed
22 to all of the Settlement Class Members who (1) received and cashed their initial Settlement Payments,
23 and did not receive a minimum share, as part of the next annual installment, calculated pursuant to the
24 same formula used to calculate the amounts of the initial Settlement Payments. If any portion remains
25 unclaimed after the fourth and final installment (*i.e.* checks are not cashed or checks are returned as
26 undeliverable after the second distribution), then after the Void Date for redistributed checks, the
27 Settlement Administrator shall void the check and shall direct such unclaimed funds to be paid to the
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1 *cy pres* recipients -- the Workers' Rights Clinic of Legal Aid at Work.

2 10.6 Settlement Class Members who are not on the Opt-Out List approved by the Court shall
3 be subject to and bound by the provisions of the Settlement Agreement, the releases contained herein,
4 and the Judgment with respect to all Settlement Class Members' Released Claims, regardless of
5 whether they obtain any distribution from the Settlement Payment Fund for non-PAGA claims.

6 10.7 Payment from the Settlement Payment Fund made pursuant to and in the manner set
7 forth herein shall be deemed conclusive of compliance with this Settlement Agreement as to all
8 Settlement Class Members.

9 10.8 No Settlement Class Member shall have any claim against the Plaintiff, Class Counsel,
10 or the Settlement Administrator based on distributions made substantially in accordance with this
11 Settlement Agreement and/or orders of the Court. No Settlement Class Member shall have any claim
12 against VIPKid or its counsel relating to distributions made under this Settlement.

13 **XI. EFFECT OF DISAPPROVAL, CANCELLATION, OR TERMINATION OF**
14 **SETTLEMENT AGREEMENT**

15 11.1 If the Court does not approve the Settlement as set forth in this Settlement Agreement,
16 or does not enter the Final Approval order and Judgment on the terms described herein, or if the Court
17 enters the Judgment and appellate review is sought, and on such review, the entry of Judgment is
18 vacated, modified in any way, or reversed, or if the Final Approval order does not otherwise become
19 Final, then this Settlement Agreement shall be cancelled and terminated, unless all Parties, in their
20 sole discretion within thirty (30) days from the date such ruling becomes final, provide written notice
21 to all other Parties hereto of their intent to proceed with the Settlement under the terms of the Judgment
22 as it may be modified by the Court or any appellate court. Notwithstanding the foregoing, any denial
23 or reduction in amount by the Court of the application for attorneys' fees and litigation costs, Service
24 Award, and/or Settlement Administration Costs will in no way affect the validity of the remainder of
25 this Settlement Agreement, or give rise to a right to abrogate this Settlement Agreement. If the Court
26 does not approve either preliminarily or finally any material term or condition of the Settlement
27 Agreement, or if the Court effects a material change to the Parties' settlement, the Parties shall work
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1 together in good faith to address any concerns raised by the Court and propose a revised Settlement
2 for the Court's approval.

3 11.2 VIPKid shall have the right to withdraw from the Settlement if the number of
4 Settlement Class Members who attempt to exclude themselves from the Settlement Class equals or
5 exceeds two percent (2%) of potential Settlement Class Members. If VIPKid chooses, pursuant to its
6 sole and absolute discretion, to exercise this right, it must do so within twelve (12) days of receipt of
7 the Opt-Out List as provided in Paragraph 7.8, by providing written notice to Class Counsel.

8 11.3 In the event that: (i) the Settlement is not approved, is overturned, or is modified by the
9 Court or on appeal, (ii) the Judgment does not become Final, or (iii) this Settlement Agreement is
10 terminated, cancelled, or fails to become effective for any reason, then: (a) the Parties stipulate and
11 agree the Settlement, this Agreement, the Amended Complaint, the Class Information, the Opt-Out
12 List, and all documents exchanged and filed in connection with the Settlement shall be treated as
13 privileged mediation communications under Cal. Evid. Code §§ 1115 *et seq.*; (b) the Settlement shall
14 be without force and effect upon the rights of the Parties hereto, and none of its terms shall be effective
15 or enforceable, with the exception of this paragraph, which shall remain effective and enforceable; (c)
16 the Parties shall be deemed to have reverted nunc pro tunc to their respective status prior to execution
17 of this Agreement, including with respect to any Court-imposed deadlines; (d) all Orders entered in
18 connection with the Settlement, including the certification of the Settlement Class, shall be vacated
19 without prejudice to any Party's position on the issue of class certification, the issue of amending the
20 complaint, or any other issue, in the Action or any other action, and the Parties shall be restored to
21 their litigation positions existing on the date of execution of this Agreement; and (e) the Parties shall
22 proceed in all respects as if the Settlement Agreement and related documentation and orders had not
23 been executed, and without prejudice in any way from the negotiation or fact of the Settlement or the
24 terms of the Settlement Agreement.

25 11.4 VIPKid does not agree or consent to certification of the Settlement Class for any
26 purpose other than to effectuate the Settlement of the Action.

27 **XII. EFFECT OF TERMINATION**

1 12.1 In the event of a default by the Defendant as to any of the four installments of the
2 Settlement, the total unpaid balance due under the Agreement will be accelerated, except that Defendant
3 shall be provided with a 14-day grace period. If the installment payment is made as required within the
4 grace period, there shall be no default. If the installment payment is not made within the 14-day grace
5 period, Defendant agrees to entry of judgment in the full amount of all remaining payments plus accrued
6 interest as provided herein against Defendant VIPKid International Inc. Plaintiffs shall also be entitled
7 to recover all reasonable and customary fees and costs incurred in enforcing and collecting on any such
8 default judgment. Any late payments from Defendant shall incur interest at the rate of 8% per annum
9 accruing from the date the installment payment is due or, in the event of a default, beginning as of the
10 date of the default.

11 **XIII. ADDITIONAL PROVISIONS**

12 13.1 All of the Exhibits to this Agreement are an integral part of the Settlement and are
13 incorporated by reference as though fully set forth herein.

14 13.2 The Plaintiff and Class Counsel acknowledge that an adequate factual record has been
15 established that supports the Settlement and, apart from the limited discovery described in the next
16 sentence, hereby waive any right to conduct further discovery to assess or confirm the Settlement.
17 Notwithstanding the prior sentence, the Parties agree to reasonably cooperate with respect to limited
18 confirmatory discovery to facilitate approval of the settlement and related to the last-known addresses
19 of Settlement Class Members.

20 13.3 Unless otherwise noted, all references to “days” in this Agreement shall be to calendar
21 days. In the event any date or deadline set forth in this Agreement falls on a weekend or federal legal
22 holiday, such date or deadline shall be on the first business day thereafter.

23 13.4 This Agreement constitutes the full and complete agreement of the Parties hereto, and
24 supersedes all prior negotiations and agreements, whether oral, written or otherwise, and may be
25 amended or modified only by a written instrument signed by counsel for all Parties or the Parties’
26 successors-in-interest.

27 13.5 The Parties reserve the right, subject to the Court’s approval, to make any reasonable
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1 extensions of time that might be necessary to carry out any of the provisions of this Agreement. Such
2 extensions must be in writing to be enforceable.

3 13.6 The Settlement Agreement, the Settlement, the fact of the Settlement's existence, any
4 of terms of the Settlement Agreement, any press release or other statement or report by the Parties or
5 by others concerning the Settlement Agreement or the Settlement, and any negotiations, proceedings,
6 acts performed, or documents executed pursuant to or in furtherance of the Settlement Agreement or
7 the Settlement: (i) may not be deemed to be, may not be used as, and do not constitute an admission
8 or evidence of the validity of any Released Claims or of any wrongdoing or liability of VIPKid; (ii)
9 may not be deemed to be, may not be used as, and do not constitute an admission or evidence of any
10 fault, wrongdoing, or omission by VIPKid in any trial, civil, arbitration, criminal, or administrative
11 proceeding of the Action or any other action or proceedings in any court, administrative agency,
12 arbitration or other tribunal; (iii) may not be used as evidence of any waiver of, unenforceability of,
13 or as a defense to any VIPKid arbitration agreement; and (iv) may not be used as evidence on any
14 class certification proceeding. Except as required to obtain preliminary or final approval in this case,
15 Plaintiff and Class Counsel agree not to publicize the amount or other terms of this settlement to any
16 person. Nothing herein will restrict Class Counsel from including publicly available information
17 regarding this settlement in future judicial submissions regarding Class Counsel's qualifications and
18 experience.

19 13.7 The Released Parties shall have the right to file the Settlement Agreement, the Final
20 Approval order and Judgment, and any other documents or evidence relating to the Settlement in any
21 action that may be brought against them in order to support a defense or counterclaim based on
22 principles of res judicata, collateral estoppel, release, good-faith settlement, judgment bar, reduction,
23 or any other theory of claim preclusion or issue preclusion or similar defense or counterclaim.

24 13.8 The Parties to the Settlement Agreement agree that the Total Settlement Amount and
25 the other terms of the Settlement were negotiated at arm's length and in good faith by the Parties,
26 resulted from an arm's-length mediation session facilitated by Tripper Ortman, and reflect a settlement
27 that was reached voluntarily based upon adequate information and sufficient discovery and after
28

1 consultation with experienced legal counsel.

2 13.9 The Plaintiff and Class Counsel have concluded that the Settlement set forth herein
3 constitutes a fair, reasonable, and adequate resolution of the claims that the Plaintiff asserted against
4 VIPKid, including the claims on behalf of the Settlement Class, and that it promotes the best interests
5 of the Settlement Class.

6 13.10 To the extent permitted by law, all agreements made and orders entered during the
7 course of the Action relating to the confidentiality of information shall survive this Settlement
8 Agreement.

9 13.11 The waiver by one Party of any breach of this Settlement Agreement by any other Party
10 shall not be deemed a waiver of any other prior or subsequent breach of this Settlement Agreement.

11 13.12 This Settlement Agreement, including its Exhibits, constitutes the entire agreement
12 among the Parties, and no representations, warranties, or inducements have been made to any Party
13 concerning this Settlement Agreement or its Exhibits, other than the representations, warranties, and
14 covenants contained and memorialized in this Settlement Agreement and its Exhibits.

15 13.13 This Settlement Agreement may be executed in one or more counterparts. All executed
16 counterparts and each of them shall be deemed to be one and the same instrument provided that counsel
17 for the Parties to this Settlement Agreement shall exchange among themselves original signed
18 counterparts.

19 13.14 The Parties hereto and their respective counsel agree that they will use their best efforts
20 to obtain all necessary approvals of the Court required by this Settlement Agreement and to resolve any
21 objections to the release of all Claims.

22 13.15 This Settlement Agreement shall be binding upon and shall inure to the benefit of the
23 successors and assigns of the Parties hereto, including any and all Released Parties and any
24 corporation, partnership, or other entity into or with which any Released Party hereto may merge,
25 consolidate, or reorganize.

26 13.16 This Settlement Agreement shall not be construed more strictly against one Party than
27 another merely because of the fact that it may have been prepared by counsel for one of the Parties, it
28

1 being recognized that because of the arm's-length negotiations resulting in the Settlement Agreement,
2 all Parties hereto have contributed substantially and materially to the preparation of the Settlement
3 Agreement.

4 13.17 Except where this Settlement Agreement itself provides otherwise, all terms,
5 conditions, and Exhibits are material and necessary to this Settlement Agreement and have been relied
6 upon by the Parties in entering into this Settlement Agreement.

7 13.18 This Settlement Agreement shall be governed by California law. Any dispute regarding
8 the Settlement Agreement shall first be presented to the mediator Tripper Ortman to provide guidance
9 to the parties before the parties seek other recourse. Following this initial guidance, any action based
10 on this Settlement Agreement, or to enforce any of its terms, shall be venued in San Joaquin County
11 Superior Court, which shall retain jurisdiction over all such disputes; except however that all Parties to
12 this Settlement Agreement shall be subject to the jurisdiction of San Joaquin County Superior Court for
13 all purposes related to this Settlement Agreement. This paragraph relates solely to the law governing
14 this Settlement Agreement and any action based thereon, and nothing in this paragraph shall be
15 construed as an admission or finding that California law applies to the Released Claims of Plaintiff or
16 Settlement Class Members who reside outside of the state.

17 13.19 The Court shall retain continuing and exclusive jurisdiction over the Parties to this
18 Settlement Agreement for the purpose of the administration and enforcement of this Settlement
19 Agreement.

20 13.20 The headings used in this Settlement Agreement are for the convenience of the reader
21 only, and shall not affect the meaning or interpretation of this Settlement Agreement.

22 13.21 In construing this Settlement Agreement, the use of the singular includes the plural
23 (and vice-versa) and the use of the masculine includes the feminine (and vice-versa).

24 13.22 Each Party to this Settlement Agreement warrants that he, she, or it is acting upon his
25 or its independent judgment and upon the advice of his or its counsel, and not in reliance upon any
26 warranty or representation, express or implied, of any nature of any kind by any other Party, other than
27 the warranties and representations expressly made in this Settlement Agreement.
28


1 13.23 Each counsel signing this Settlement Agreement on behalf of his/her clients who are
2 unable to sign the Agreement on the date that it is executed by other Parties represents that such
3 counsel is fully authorized to sign this Settlement Agreement on behalf of his/her clients; provided,
4 however, that all Parties who have not executed this Agreement on the date that it is executed by the
5 other Parties shall promptly thereafter execute this Agreement and in any event no later than one (1)
6 week after the Agreement has been executed by counsel.

7 Dated: June 29, 2022

8 By: 
Damon M. Ott
LITTLER MENDELSON, P.C.

9 Attorneys for Defendant
10 VIPKIDS INTERNATIONAL, INC.
11 (Approved As to Form Only)

12 Dated: June 27, 2022


13 By: 
Shannon Liss-Riordan
LICHTEN & LISS-RIORDAN, P.C.

14 Attorney for the Settlement Class and for
15 Plaintiff EMILY IBEJI

16 Dated: June 27, 2022

17 By: 
EMILY IBEJI
18 PLAINTIFF

19 Dated: June 29, 2022

20 By: 
GAGAN G. VAIDEESWARAN
21 LEGAL DIRECTOR
22 VIPKIDS INTERNATIONAL, INC.

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EXHIBIT 1

**NOTICE OF REVISED PROPOSED CLASS ACTION SETTLEMENT
AND FINAL APPROVAL HEARING**

Ibeji v. VIPKids International, Inc. (d/b/a VIPKid)
Case No. STK-VA-UCE-2019-0009895

The Court authorized this notice. This is not a solicitation from a lawyer.

Pursuant to the Order of the Superior Court for the State of California for the County of San Joaquin, you are hereby notified that a proposed settlement has been reached in the above-referenced case brought on behalf of the following individuals:

All individuals who entered into an agreement with VIPKid to offer teaching services in California and taught at least one class through the VIPKid platform since May 22, 2018 through the date of June 30, 2021.

You have been identified by VIPKid records as a member of the Settlement Class. Please read this entire notice carefully. It may affect your legal rights to money you may be owed.

You previously received a notice about a proposed class action settlement covering the same settlement class. The settlement has been revised due to financial difficulties that VIPKid has suffered, described further in this notice. A result, the Parties have re-negotiated the settlement. Please read this Notice carefully to understand the changes to the proposed settlement and whether you want to participate.

<u>YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT</u>	
Participate in the Settlement	If you do not opt out of the settlement, as described below, you will automatically receive a share of the Settlement proceeds. TO ENSURE RECEIPT OF YOUR SETTLEMENT PAYMENTS, YOU ARE <u>STRONGLY ENCOURAGED</u> TO ENTER THE REQUIRED INFORMATION TO EFFECTUATE A DIGITAL PAYMENT OF FUNDS VIA VENMO, ZELLE, OR PAYPAL BY VISITING THE SETTLEMENT WEBSITE: www.WEBSITE.com . If you previously elected a form of digital payment in response to the prior settlement notice and you do not opt out of the settlement, this selection will be honored.
Exclude Yourself from the Settlement (Opt-Out)	If you do not want to participate in the Settlement, you must mail or email a written Request for Exclusion to the Settlement Administrator postmarked no later than [REDACTED], 2022, or else you will be bound by the Settlement and the Release if the Court grants final approval of the Settlement. Please refer to <u>paragraph 13</u> below for instructions on excluding yourself.
Object to the Settlement	If you wish to object to the Settlement, you may mail or email a written objection to the Settlement Administrator postmarked no later than [REDACTED], 2022,

Which option you choose is entirely up to you. No matter your choice, it will not impact your relationship with VIPKid.

YOUR LEGAL RIGHTS AND OPTIONS ARE CONTINUED ON PAGE 2.

THESE RIGHTS AND OPTIONS, INCLUDING THE DEADLINES BY WHICH TO EXERCISE THEM, ARE EXPLAINED IN THIS NOTICE.

	<p>or make your objection at the Fairness Hearing. However, if you choose to object, you will remain bound by the settlement and will release your claims against VIPKid if the settlement is ultimately approved. A Class Member cannot object and opt out of the settlement. Please refer to <u>paragraph 14</u> below for instructions on objecting.</p>
<p>Participate in the Hearing</p>	<p>If you submit a written objection to the Settlement, you may also indicate in the objection whether you wish to appear and be heard at the time of the Fairness Hearing. You may also appear and be heard at the Fairness Hearing without submitting a written objection. Remember that Settlement Class Members who object remain part of the settlement class and shall be bound by the Settlement.</p>
<p>Do Nothing</p>	<p>If you do nothing with respect to this notice, and the Court grants final approval of the Settlement, you will receive a share of the Settlement, mailed to the address VIPKid has on file for you, and you will be bound by the terms of the Settlement, including the Release of claims against VIPKid.</p>
<p>Information About Your Claim Amount</p>	<p>This Notice includes information regarding the number of classes you taught using the VIPKid platform and other information that the Settlement Administrator will utilize to calculate your share of the settlement proceeds in <u>paragraph 12</u>. If you believe this information is inaccurate, you can dispute your settlement payments amount by contacting the Settlement Administrator within forty-five (45) days of receiving this Notice</p>

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GENERAL INFORMATION REGARDING THIS NOTICE

WHAT IS THIS NOTICE ABOUT?

A proposed settlement (the “Settlement”) has been reached in the case *Ibeji v. VIPKids International, Inc. (d/b/a VIPKid)* Case No. STK-VA-UCE-2019-0009895 (S.J. Sup. Ct.) As described further below, the First Amended Complaint in this case, filed for settlement purposes, includes claims for minimum wage and overtime and for willful misclassification, failure to provide meal and rest breaks, failure to provide itemized wage statements, failure to provide all wages when due, unfair competition, and claims under the Private Attorney General Act. The Court has preliminarily approved the Settlement and has directed the parties to notify the Settlement Class of the Settlement.

You have received this notice because VIPKid’s records indicate that you are a Settlement Class Member. This notice is designed to inform you of how you can participate in the settlement or elect not to participate in the Settlement, or object to the Settlement.

WHAT IS THIS LAWSUIT ABOUT?

Plaintiff claims that she and others who taught classes through the VIPKid platform have been improperly classified as independent contractors by VIPKid, and have sought relief under various California Labor Code provisions, Section 17200 of the California Business and Professions Code, and the Private Attorney General Act of 2004 (“PAGA”) on behalf of the state of California and California VIPKid teachers. Plaintiff primarily seeks minimum wage, overtime, and meal and rest break damages, but has also brought claims for failure to provide itemized wage statements, failure to provide all wages when due, and numerous other wage violations.

VIPKid denies Plaintiff’s allegations and instead contends, among other things, that those who used the VIPKid platform to teach classes were correctly classified as independent contractors.

The Court has not ruled whether either party is correct.

After good-faith negotiations with an experienced, neutral mediator, in which both sides recognized the substantial risk of an uncertain outcome, the parties agreed to settle their dispute pursuant to the terms and conditions of a negotiated Settlement. The parties and their counsel have concluded that the Settlement is advantageous, considering the risks and uncertainties of continued litigation. The parties and their counsel have determined that the Settlement is fair, reasonable, and adequate and is in the best interests of the members of the Settlement Class.

The Settlement represents a compromise and settlement of disputed claims. Nothing in the Settlement is intended to be or will be construed as an admission by VIPKid that Plaintiff’s claims have merit or that it has any liability to Plaintiff or the proposed class on the claims in the Action.

SUMMARY OF THE SETTLEMENT

WHO IS INCLUDED IN THE SETTLEMENT?

You have received this notice and are included in the Settlement because VIPKid’s records show that you fall within the following definition:

All individuals who entered into an agreement with VIPKid to offer teaching services in California and taught at least one class through the VIPKid platform since May 22, 2018 through the date of June 30, 2021.

WHAT ARE THE IMPORTANT TERMS OF THE SETTLEMENT?

1. VIPKid's business has experienced unexpected and severe financial difficulties due to regulatory changes in China that have disallowed the type of ESL tutoring that was VIPKid's primary offering. Although the company is shifting its business strategy and hopes to rebound in the long-run, its future prospects are uncertain. The Parties renegotiated the terms of the settlement with the assistance of a professional mediator over a period of weeks and after careful review of VIPKid's financial information. Class Counsel believes that this renegotiated settlement, although less favorable to Settlement Class Members, is in the best interest of the Settlement Class because of the risk that VIPKid would not be able to pay the original settlement and would declare bankruptcy, resulting in protracted (and possibly unsuccessful) collections efforts.
2. The Settlement Fund is \$2,100,000. The Settlement Fund will fund payments to all Settlement Class Members over a four-year period, beginning in or around December 2022.
3. From this Settlement Fund, amounts will be deducted for attorneys' fees and costs in the amount that the Court approves, up to 23% of the total Settlement Fund (\$483,000); an incentive payment for the named plaintiff, in the amount the Court approves, estimated to be \$10,000 for named plaintiff Emily Ibeji; a payment to the Settlement Administrator for the costs of administering the settlement that is not to exceed \$108,000 without leave of court; and a payment to the State of California for PAGA penalties, in the amount of \$56,250.
4. The remaining approximately \$1,442,750 will be distributed to all Settlement Class Members in four equal installments, beginning approximately December 2022 and ending approximately December 2025. The Settlement Fund will be allocated to Class Members proportionally to the total number of virtual ESL classes taught by or paid to the teacher between July 1, 2015 through June 30, 2021 (the "Class Count"), with no Settlement Class Member receiving less than \$10 total (however, if you are entitled to a minimum share as defined in the agreement, you may not receive subsequent payments after the first distribution of funds). **If you would like to update your mailing address to ensure that you receive your settlement check, or if you would like to opt to receive payment by digital means (such as Venmo, Paypal, or Zelle), please visit the settlement website and enter the Claimant ID # and Verification Number printed on this Notice.**

YOU ARE STRONGLY ENCOURAGED TO OPT FOR DIGITAL PAYMENTS BECAUSE IT WILL ENSURE THAT YOU RECEIVE SETTLEMENT FUNDS OVER THE NEXT FOUR YEARS, EVEN IF YOUR MAILING ADDRESS CHANGES.

5. Funds from uncashed checks will be re-distributed in the following year's distribution to Class Members who cashed their first check and who did not receive a minimum share of \$10.00; no amount of the settlement funds will revert to VIPKid. Any uncashed checks from the final distribution in December 2025 will be donated to Legal Aid at Work. This organization is a non-profit that advocates for employees' rights in the workplace.
6. You **will be bound** by this Settlement if it is given final approval by the Court unless you

submit a written Request for Exclusion to the Settlement Administrator, postmarked by the deadline of [REDACTED], 2022. If you do mail a Request for Exclusion by the deadline in accordance with the instructions for submitting a Request for Exclusion, you will be excluded from the Settlement and **will not receive a Settlement Share, but you will retain the right you may have, if any, to litigate or arbitrate your claim against VIPKid.**

7. If the Court does not grant final approval of the Settlement, or does not enter the Final Approval Order or if the Court's Final Approval Order is reversed in whole or in part on appeal, the parties have no obligations under the Settlement, and Class Members will not receive payments. In other words, it will be as if this settlement were never reached.
8. The Court has appointed Simpluris to act as the Settlement Administrator to administer the Settlement. The Settlement Administrator serves as a neutral, third-party who collects requests for exclusion, and objections, adjudicates disputes, calculates payments, mails and reissues checks, and performs other tasks necessary to administer the settlement.
9. If the Court grants final approval of the Settlement, the Court will enter judgment, the Settlement will bind all Class Members who have not opted out, and the judgment will bar all Class Members from bringing any claims released in the Settlement, such as claims related to allegations of independent contractor misclassification (the "Released Claims"). The release is described below:

"Released Claims" means any and all claims, actions, demands, causes of action, suits, debts, obligations, damages, penalties, rights or liabilities, pursuant to any theory of recovery against VIPKid arising from July 31, 2015, through the date on which the Court enters the order of Final Approval of this Settlement, or June 30, 2021, whichever comes first, for any type of relief that can be released as a matter of law, including, without limitation, claims for wages, damages, unpaid costs, penalties (including civil and waiting time penalties), liquidated damages, punitive damages, interest, attorneys' fees, litigation costs, restitution, or equitable relief (with the exception of any claims which cannot be released as a matter of law), that could be brought based on the allegations in the Complaint, namely VIPKid's misclassification of the Settlement Class as independent contractors and resulting wage and hour violations resulting from misclassification. The claims released pursuant to this paragraph specifically include, without limitations, a release of claims under Cal. Lab. Code. §§ 201-204, 222-223, 226.2, 226.3, 226.8, 226.7, 226(a), 432, 512, 510, 558, 1174(d), 1182.11, 1194, 1197, 1199, 1199.5, 2802, the Private Attorneys General Act, Cal. Lab. Code § 2698, *et seq.*, unlawful and/or unfair business practices (Cal. Buys. Prof. Code § 17200, *et seq.*), in connection with claims related to independent contractor misclassification; as well as any other claims under the California Labor Code (including sections 132a, 4553 *et seq.*) or any applicable California Industrial Welfare Commission Wage Orders; and all of their implementing regulations and interpretive guidelines, as well as any other similar state, local, or common law claims that relate to independent contractor misclassification and resultant wage and hour violations. The release does not include claims that, as a matter of law, cannot be released and does not include claims for retaliation, discrimination, wrongful termination, and individual claims filed with the appropriate agency for the recovery of workers' compensation benefits. Released Claims also includes all PAGA Claims by all individuals who entered into an agreement with VIPKid to provide teaching services and taught at least one class in California from May 22, 2018, through the date the

Court grants preliminary approval or June 30, 2021, whichever comes first.

All Class Members who do not timely and formally opt out of the settlement by requesting exclusion as described below shall be bound by this release for all claims, except that all Class Members (even those who do opt out) will still release their PAGA claims through June 30, 2021.

If you wish to contact the Settlement Administrator, you may do so at (8XX) [] - [] or []@[].com.

10. Plaintiff, as Class Representative, and Class Counsel, support the Settlement. Their reasons include the risk of non-payment due to VIPKid's financial difficulties, the risk of being unable to pursue this case as a class action on behalf of all Class Members, the risk of a trial on the merits, the inherent delays and uncertainties associated with litigation, and the possibility that the Class is not entitled to any recovery. Based on their experience litigating similar cases, Class Counsel believes that further proceedings in this case would be uncertain. Upon careful consideration of all the facts and circumstances of this case, as well as the potential damages that could be recovered, Class Counsel believes that the Settlement is fair, reasonable, and adequate.
11. If more than 2% of the Settlement Class Members exercise their right to opt out of the Settlement, VIPKid can decide to terminate the settlement, meaning that it will be as if this settlement were never reached.

WHAT ARE MY RIGHTS AS A SETTLEMENT CLASS MEMBER?

12. Participating in the Settlement:

To update your address or opt to receive your settlement payment digitally, **click on this link**, or go to **www.[WEBSITE].com** and enter your Claimant ID and Verification Number, provided below. [Website name will be linked to website where info can be submitted; Claimant ID and Verification Number will be automatically entered for Class Members who enter the website through this link.] You can update your address and/or opt for a digital payment in under five minutes, and doing so will help ensure you receive the funds you are entitled to under the settlement.

Claimant ID: []
Verification Number: []

Settlement class members will be awarded points proportional to the estimated number of classes taught as followed: (1) classes taught or paid for between July 2015 and December 31, 2019, will receive 2 points; and (2) classes taught or paid for between January 1, 2020 and June 30, 2021, will receive 3 points.

According to VIPKids records, you have taught or been paid or an estimated (1) [] classes between July 2015 and December 31, 2019; and (2) [] classes between January 1, 2020 and June 30, 2021.

Your points total is: [number of points].

These points do not have a value fixed at a particular dollar amount; that amount will vary depending upon many factors, including the amount ultimately awarded in attorneys' fees and incentive payments to the named plaintiff.

The determination of each class member's estimated classes taught or paid for ("Class Count") shall be based on the relevant records that VIPKid is able to identify. If you do not agree with your estimated Class Count, you can inform the Settlement Administrator by mail or email at any time up to forty-five (45) days after receipt of this Notice. To contest your Class Count, you must provide documentation showing that you taught more classes than estimated in this Notice, as well as the date(s) of those classes.

If the Court approves the Settlement, checks and digital payments will be sent to all Class Members who did not exclude themselves from the Settlement. **Paper checks will expire after approximately six months (181 days) from the date they were mailed. You must cash your check prior to this date.** If you misplace your check prior to the expiration date, please notify the Settlement Administrator at (8XX) [] - [] or []@[].com.

With respect to PAGA penalties, 25% of the PAGA penalties (totaling \$18,750) will be distributed based on each individual's Class Count, set forth above. Every Settlement Class Member who does not opt out will have their share of the PAGA penalties added to their settlement share.

- 13. Excluding Yourself from the Settlement (Opt-Out):** If you do not wish to participate in the Settlement, you must mail or email a Request for Exclusion to the Settlement Administrator. The Request for Exclusion must include: (1) the Settlement Class Member's name, address, and telephone number; (2) a clear and unequivocal statement that the Settlement Class Member wishes to be excluded from the Settlement Class and that the Settlement Class Member understands that he or she is still bound by the release of the PAGA Claims upon Final Approval of the Settlement and Final Judgment; and (3) the signature of the Settlement Class Member or the Legally Authorized Representative of the Settlement Class Member (who is not the class member's counsel). Signatures may be physical ("wet ink") signatures or electronic signatures, provided that there is an electronic certificate authenticating the signature and IP address, such as that provided by DocuSign. Alternatively, if the Request for Exclusion is emailed from the email address associated with the Settlement Class Member's VIPKid account, the requirement to sign the request is waived. Nothing about the Settlement's opt-out procedure prevents counsel (a) from reviewing the Settlement with the client, (b) from advising the client on whether participating in or opting out of the Settlement is in the client's (as opposed to counsel's) best interest, or (c) from preparing the opt-out request for their client to sign (e.g., including the requisite information such as the Settlement Class Member's name, address, and telephone number, and a clear and unequivocal statement that the individual wishes to be excluded).

The Request for Exclusion must be completed, signed, and mailed or emailed to the Settlement Administrator at the address identified below, postmarked no later than [], 2022. If your Request for Exclusion is defective, the Settlement Administrator will attempt to reach out to you prior to the deadline so that you can fix any errors. **A Settlement Class Member who fails to return a Request for Exclusion in the manner and by the deadline specified above will be bound by all terms and conditions of the Settlement and the Judgment, regardless of whether he or she has objected to the Settlement.** Requests for exclusion must be exercised individually by the Settlement Class Member (or their Legally Authorized Representative who is not the Settlement Class Member's counsel),

even if the Settlement Class Member is represented by counsel. Attempted collective group, class, or subclass requests for exclusions shall be ineffective and disregarded by the Settlement Administrator.

Any person who files a complete and timely Request for Exclusion will, upon receipt, no longer be a member of the Settlement Class and will not be eligible to receive a payment, with the exception of the payment of his or her share of the PAGA Award. Any such person will retain the right, if any, to pursue at his or her own expense a claim against VIPKid (except that he or she shall be bound by the settlement of the PAGA Claim). A Request for Exclusion that does not fulfill the requirements above will be deemed invalid.

If a Settlement Class Member submits both a Written Objection and a valid and timely Request for Exclusion, the Request for Exclusion will be accepted and the objection will be rejected.

Please note that Requests for Exclusion do not apply to the release of PAGA claims contemplated by the Settlement. Settlement Class Members who validly and timely submit a Request for Exclusion will nevertheless be bound by the settlement and release of PAGA claims, and therefore any PAGA claims that any Settlement Class Member may possess for the Settlement Class Period shall be extinguished if the Court approves the Settlement.

There will be no retaliation or adverse action taken against any Class Member who participates in the Settlement, elects not to participate in the Settlement, or objects to the settlement.

- 14. Objecting to the Settlement:** If you think the settlement is unfair and should not be given final approval, you may mail or email an objection to the Settlement Administrator. You may also attend the Fairness Hearing and make your objection to the Court at that time, without submitting an objection to the Settlement Administrator. If you choose to object to any aspect of the Settlement (including to the Settlement itself, the request for attorney's fees, or the service awards), you can still receive a payment; however, you cannot object and opt out of the settlement. If a Settlement Class Member submits both an objection and a valid and timely Request for Exclusion, the Request for Exclusion will be accepted and the objection will be rejected.

If you choose to object, you will remain a Settlement Class Member and will be deemed to have waived the right to pursue any independent remedy against VIPKid for the claims being released in the settlement.

If the Court does not give final approval to the settlement, no settlement payments will be sent out and the lawsuit will continue.

All written objections and supporting papers must be mailed or emailed to the Settlement Administrator at the Settlement Administrator's address or email address below and be postmarked on or before [REDACTED], 2022. All objections must be in writing and contain at least the following: (i) your full name, address, telephone (or information sufficient for the individual to be identified with certainty within the settlement class), and signature; (ii) a clear reference to the Action; and (iii) a statement of the specific basis for each objection argument. All objections shall be signed by you (or your Legally Authorized Representative as defined herein), even if you are represented by counsel. However, if the objection is emailed to the Settlement Administrator from the email address associated with the your VIPKid account, the signature requirement will be waived.

15. **Participating in the Final Approval Hearing:** You may appear and object at the Final Approval Hearing in person or appear through counsel of your choice, paid at your own expense, and be heard at the time of the Final Approval Hearing, if you wish to do so. **If the Court overrules your objection and gives final approval to the Settlement, you will be bound by the terms of the Settlement and receive a Settlement Payment if you submitted a Claim.**
16. **Keep Your Information Up to Date:** It is your obligation to keep the Settlement Administrator informed of any changes in your mailing address until your Settlement Payment is received, should final approval of the Settlement be granted. Failing to provide the Settlement Administrator with any change of your mailing address may prevent you from receiving your Settlement Payment. You can update your contact information by visiting the settlement website and entering you Claimant ID and Verification Number on this claim form. **YOU CAN ALSO OPT TO RECEIVE YOUR PAYMENT DIGITALLY VIA VENMO OR ZELLE. YOU ARE STRONGLY ENCOURAGED TO OPT FOR DIGITAL PAYMENT.**
17. **The Settlement Administrator’s Address & Email Address.** You may send a Request for Exclusion or Objection to the Settlement Administrator at the following mailing address:

[Address]
[Address]
[Email Address]

CLASS COUNSEL

Contact information for Class Counsel is provided below:

Shannon Liss-Riordan
Anne Kramer
Lichten & Liss-Riordan, P.C.
729 Boylston Street, Suite 2000
Boston, MA 02116
www.llrlaw.com
Phone: (617) 994-5800
claims@llrlaw.com, Firm Settlement Administrator

FINAL SETTLEMENT APPROVAL HEARING

The Court has scheduled the Settlement Fairness Hearing for [] on [], 2022, in the Superior Court for the County of San Joaquin, Department 10D, 180 Weber Ave., Stockton, CA 95202, to determine whether the Settlement should be finally approved as fair, reasonable, and adequate. The Court will also be asked to approve the requests for the Class Representative Enhancement Payment and the Class Counsel Award and Costs.

The hearing may be postponed without further notice to the Class. **It is not necessary for you to appear at this hearing.** If you plan to attend the Fairness Hearing, you may contact Class Counsel to confirm the date and time, as the hearing may be rescheduled without further notice.

GETTING MORE INFORMATION

This notice summarizes the proposed settlement. For more precise terms and conditions of the Settlement, please contact Class Counsel (contact information above), visit the Settlement website at [www.\[WEBSITE\].com](http://www.[WEBSITE].com), or contact the Settlement Administrator at XXX-XXX-XXXX. Notice of entry of final judgment will be provided on the Settlement website.

You can also view the full docket of the case for free on the Court's website at <https://www.sjcourts.org/online-services/>. From there, select "Case Query" and search for Case Number 19-0009895. You will see the "Register of Actions" page, where you can view all the motions and court orders that have been filed in this case. Accessing the court's docket online is free.

PLEASE DO NOT TELEPHONE THE COURT, VIPKID OR VIPKID'S COUNSEL FOR INFORMATION! YOU MAY CALL THE SETTLEMENT ADMINISTRATOR OR CLASS COUNSEL LISTED ABOVE.

Dated: _____, 2022.
By Order of the Court

EXHIBIT 2

1 SHANNON LISS-RIORDAN, SBN 310719
2 LICHTEN & LISS-RIORDAN, P.C.
3 729 Boylston Street, Suite 2000
4 Boston, MA 02116
5 Telephone: 617.994.5800
6 Fax No.: 617.994.5801

Attorneys for Plaintiff EMILY IBEJI

6 SUPERIOR COURT OF THE STATE OF CALIFORNIA
7 FOR THE COUNTY OF SAN JOAQUIN

8
9 EMILY IBEJI,

10 Plaintiff,

11 v.

12 VIPKIDS INTERNATIONAL, INC.

(d/b/a VIPKID),

13 Defendant.

Case No. **STK-VA-UCE-2019-0009895**

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

Trial Date: None Set

1 Plaintiff has filed a Motion for Preliminary Approval of the class action settlement
2 reached with Defendant VIPKids International, Inc. (d/b/a VIPKid). A preliminary approval
3 hearing was held on July ____, 2022. The Court has carefully considered the Settlement
4 Agreement together with all exhibits thereto, all the filings related to the Settlement, the
5 arguments of counsel, and the record in this case. The Court hereby gives its preliminary
6 approval of the Settlement; finds that the Settlement and Settlement Agreement are sufficiently
7 fair, reasonable and adequate to allow dissemination of notice of the Settlement to the Settlement
8 Class and to hold a Fairness Hearing; orders the Class Notice be sent to the Settlement Class in
9 accordance with the Settlement Agreement and this Order; and schedules a Fairness Hearing to
10 determine whether the proposed Settlement is fair, adequate and reasonable.

11 **IT IS HEREBY ORDERED THAT:**

- 12 1. The Amended Settlement Agreement is hereby incorporated by reference in this Order,
13 and all terms or phrases used in this Order shall have the same meaning as in the
14 Settlement Agreement.
- 15 2. The Court finds that the terms of the Settlement Agreement preliminarily appear to be fair,
16 reasonable, and adequate, and within the range of possible approval and sufficient to
17 warrant providing notice to the Settlement Class, when balanced against the probable
18 outcome of further litigation, given the risks relating to liability and damages. It further
19 appears that investigation and research has been conducted such that counsel for the
20 Parties are reasonably able to evaluate their respective positions. It further appears to the
21 Court that the Settlement will avoid substantial additional costs by all parties, as well as
22 the delay and risks that would be presented by the further prosecution of the Action, and
23 that it will provide substantial benefits to Class Members going forward. It appears that
24 the Settlement has been reached as a result of intensive, arm's-length negotiations
25 utilizing an experienced third party neutral mediator.
- 26 3. The Court certifies, for settlement purposes only, the following Settlement Class: "All
27 individuals who entered into an agreement with VIPKid to offer teaching services in
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1 California and taught at least one class through the VIPKid platform since May 22, 2018
2 through the date of June 30, 2021.”

3 4. The Court appoints as class representative, for settlement purposes only, Named Plaintiff
4 Emily Ibeji. The Court finds, for settlement purposes only, that the Named Plaintiff will
5 adequately represent the Settlement Class.

6 5. Pursuant to the Parties’ Agreement, the First Amended Complaint attached as Exhibit 3 to
7 the Parties’ Class Action Settlement Agreement is hereby deemed filed.

8 6. For settlement purposes only, the Court designates as Class Counsel the law firm of
9 Lichten & Liss-Riordan, P.C. The Court preliminarily finds that, based on the work Class
10 Counsel have done identifying, investigating, and prosecuting the claims in this action;
11 Class Counsel’s experience in handling class actions and claims of this type asserted in
12 this Action; Class Counsel’s knowledge of the applicable law; and the resources Class
13 Counsel have and will commit to representing the class, that Class Counsel have
14 represented and will represent the interests of the Settlement Class fairly and adequately.

15 7. Simpluris shall administer the Settlement in accordance with the terms and conditions of
16 this Order and the Settlement Agreement.

17 8. The Court hereby conditionally certifies the proposed Settlement Class and conditionally
18 finds that, solely for the purposes of approving this Settlement and for no other purpose
19 and with no other effect on this litigation, the proposed Settlement Class meets the
20 requirement for certification under section 382 of the California Code of Civil Procedure
21 including that: (a) the proposed Settlement Class is ascertainable and so numerous that
22 joinder of all members is impracticable; (b) there are predominant questions of law or fact
23 common to the Settlement Class, and there is a well-defined community of interest
24 amongst the Settlement Class with respect to the subject matter of the litigation; (c) the
25 claims of the Named Plaintiff are typical of the claims of the members of the Settlement
26 Class; (d) the Named Plaintiff will fairly and adequately protect the interests of the
27 members of the class; (e) a class action is superior to other available methods for an
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1 efficient method of adjudication of this controversy through settlement; and (f) Class
2 Counsel is qualified to act as counsel for the Named Plaintiff in her individual and
3 representative capacity.

4 9. The Court hereby approves, as to form and content, the Notice of Class Action Settlement
5 attached as Exhibit 1 to the Settlement Agreement. The Court finds that the mailing and
6 distribution of the Notice of Class Action Settlement in accordance with the Settlement
7 Agreement meets the requirements of due process and are the best notice practicable
8 under the circumstances and shall constitute due and sufficient notice to all persons
9 entitled thereto.

10 10. The Court approves the procedures set forth in the Settlement Agreement and the Notice
11 of Settlement of Class Action for exclusions from and objections to the Settlement.

12 11. Any Settlement Class Members who wishes to opt out from the Agreement must do so
13 within 60 days of the Notice Date and in accordance with the terms of the Agreement.

14 12. Any Settlement Class Member who wishes to object to the Agreement may submit a
15 written objection to the Settlement Administrator within 60 days of the Notice Date and in
16 accordance with the terms of the Agreement.

17 13. Reasonable attempts will be made to update the address of any Class Member whose
18 notice is returned as undeliverable.

19 14. The Court directs that a hearing be scheduled for _____, 2022, at 9:30 a.m. (the
20 “Fairness Hearing”) to assist the Court in determining whether the Settlement is fair,
21 reasonable and adequate; whether Final Judgment should be entered in this Action;
22 whether Class Counsel’s application for fees and expenses should be approved; and
23 whether Class Counsel’s request for an enhancement payment to the Named Plaintiff
24 should be approved. Plaintiff shall file a Motion for Final Approval of Class Action
25 Settlement (including a request for attorneys’ fees, costs, and class representative service
26 awards) no later than 10 court days before the hearing.
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15. The Court hereby preliminarily approves the plan of allocation of the Settlement Fund as described in the Settlement.
16. Neither the Settlement, nor any exhibit, document or instrument delivered thereunder shall be construed as or deemed to be evidence of an admission or concession by VIPKid of an interpretation of, any liability or wrongdoing by VIPKid, or of the truth of any allegations asserted by Plaintiff, Settlement Class Members or any other person.
17. If the Settlement is not finally approved, or the Effective Date does not occur, or the Settlement is terminated under its terms, or the Settlement is overturned or modified by the Court or on appeal, then: (a) the Settlement shall be without force and effect upon the rights of the Parties hereto, and none of its terms shall be effective or enforceable; (b) the Parties shall be deemed to have reverted nunc pro tunc to their respective status as of the day immediately before the Parties entered into the Agreement, with the Parties to meet and confer regarding any discovery or case management deadlines that were pending at the time the Parties stayed litigation, arbitration, or other proceedings; (c) VIPKid shall be refunded any amounts paid pursuant to this Agreement but not yet spent or disbursed; (d) all Orders entered in connection with the Settlement, including the certification of the Settlement Class, shall be vacated without prejudice to any Party's position on the issue of class certification, or any other issue, in this Action or any other action, and the Parties shall be restored to their litigation positions existing on the date of execution of Settlement Agreement; and (e) the Parties shall proceed in all respects as if the Settlement Agreement and related documentation and orders had not been executed, and without prejudice in any way from the negotiation or fact of the Settlement or the terms of the Settlement Agreement. In such an event, this Court's orders regarding the Settlement, including this Preliminary Approval Order, shall not be used or referred to in litigation, arbitration, or other proceedings for any purpose. Nothing in the foregoing paragraph is intended to alter the terms of the Settlement Agreement with respect to the effect of the Settlement Agreement if it is not approved.

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18. The Court directs that the following deadlines are established by this Preliminary Approval Order:

- a. Notice to be Provided to Class Members: within twenty-one (21) days of this Preliminary Approval Order.
- b. Opt-Out Deadline: within sixty (60) days after the Notice Date.
- c. Written Objection Deadline: within sixty (60) days after the Notice Date. Class Members may also appear and object at the Fairness Hearing without having submitted a written objection.
- d. Fairness Hearing: _____, 2022, at 9:30 a.m.

IT IS SO ORDERED.

Date: _____

Superior Court Judge

EXHIBIT 3

1 SHANNON LISS-RIORDAN (SBN 310719)
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8 *Attorney for Plaintiff Emily Ibeji*
9 *in her capacity as Private Attorney General*
10 *Representative*

11 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
12 **FOR THE COUNTY OF SAN JOAQUIN**

13
14 EMILY IBEJI,

15 Plaintiff,

16 v.

17 VIPKIDS International Inc. (d/b/a VIPKid),

18 Defendant
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Case No. STK-VA-UCE-2019-0009895

**FIRST AMENDED CLASS ACTION AND
PRIVATE ATTORNEY
GENERAL ACT OF 2004 ("PAGA")
COMPLAINT**

1 **I. INTRODUCTION**

2 1. This case is brought on behalf of the state of California and other similarly
3 situated aggrieved individuals who have worked as teachers for VIPKIDS International Inc.
4 (d/b/a VIPKid) (“VIPKid”) in the state of California. VIPKid is an online tutoring and education
5 service, which engages teachers across the state of California to perform online classes. VIPKid
6 is based in China, and has officials and teachers operating out of San Francisco, California.
7

8 2. As described further below, VIPKid has misclassified its teachers including
9 Plaintiff Emily Ibeji. Because of teachers’ misclassification as independent contractors, VIPKid
10 has unlawfully required teachers to pay for business expenses (including but not limited to the
11 cost of their computer) in violation of Cal. Lab. Code §2802; has failed to ensure that its teachers
12 receive the applicable state minimum wage for all hours worked, and by impermissibly counting
13 customers’ tips toward their minimum wage obligations in violation of Cal. Lab. Code §§ 1197
14 and 1194; has failed to pay teachers the appropriate overtime premium for all overtime hours
15 worked beyond forty per week or eight hours per day in violation of Cal. Lab. Code §§ 1194,
16 1198, 510, and 554; has failed to afford teachers meal and rest breaks in violation of §§ 226.7
17 and 512; has failed to keep accurate payroll records for teachers in violation of Cal. Lab. Code
18 §§ 1174, 1174.5; has failed to provide accurate wage statements in violation of Cal. Lab. Code §
19 226; has deducted unlawful amounts from teachers’ pay in violation of Cal. Lab. Code §§ 221
20 and 224; and required teachers to sign illegal contracts in violation of Cal. Lab. Code § 432.5.
21 Plaintiff brings her claims pursuant to the Private Attorney General Act (“PAGA”), Cal. Lab.
22 Code § 2699, *et seq.*, on behalf of the state of California and all other similarly situated
23 aggrieved employees who have been misclassified by VIPKid in California since May 2018.

24 **II. PARTIES**

25 3. Plaintiff Emily Ibeji is an adult resident of Stockton, California, where she has
26 worked as VIPKid teacher.
27

1 13. VIPKid teachers are not typically engaged in their own teaching business. When
2 teaching children through the VIPKid platform, they wear the “hat” of VIPKid.

3 14. VIPKid also requires its teachers to abide by a litany of policies and rules
4 designed to control the teachers’ work performance. VIPKid regularly exercises control over the
5 teachers’ work.

6 15. VIPKid teachers are required to use the VIPKid curriculum.

7 16. VIPKid determines teachers’ pay. For example, VIPKid will determine whether a
8 class was completed satisfactorily and, therefore, whether the teacher is entitled to the full
9 commission rate (i.e., if feedback is not submitted to the students within 12 hours of class
10 completion the class is not counted as final and teacher will receive reduced pay or no pay at all).
11 Teachers cannot negotiate the amount that they will be paid per class and are instead paid
12 according to VIPKid’s formula.

13 17. VIPKid records every online class taught and handles complaints from their
14 customers by reviewing the recording, determining whether the class was completed
15 satisfactorily, and notifying the teacher accordingly if VIPKid deems that the teacher is not
16 entitled to full pay for the class.

17 18. VIPKid tracks the number of classes taught, the teachers’ approval ratings, and
18 the number of cancellations over multiple contracts, and uses this data to determine which
19 teachers are eligible for a raise.
20

21 19. VIPKid requires its teachers to meet its quality standards such as maintaining a
22 certain approval rating (referred to as an “apple rating”), which is determined by customer
23 feedback, in order to qualify for a raise or to be certified to teach special promotional courses.

24 20. VIPKid follows a strict cancellation policy that punishes workers for
25 cancellations: VIPKid will terminate a teacher’s contract, deduct pay, and/or decline to give
26 raises if the teacher does not follow VIPKid’s strict rules regarding cancellation.
27

1 21. VIPKid may discipline teachers if teachers do not abide by VIPKid’s rules
2 regarding scheduling, such as the requirement that teachers work straight through multiple
3 lessons, without being allowed to take a break; teachers may be disciplined, for example, for
4 taking water breaks or bathroom breaks during a lesson.
5

6 22. VIPKid does not reimburse teachers for any expenses they may incur while working
7 for VIPKid, including, but not limited to, the cost of their computer. Teachers incur these costs
8 as a necessary expenditure incurred in the discharge of their duties working for VIPKid, which
9 California law requires employers to reimburse.

10 23. VIPKid has violated Cal. Lab. Code § 2802, § 221, § 224, § 226, § 226.8, § 1197,
11 § 1194, § 1198, § 510, § 554, § 226.7, § 512, § 1174, § 1174.5, § 432.5 by misclassifying its
12 teachers as independent contractors; failing to reimburse teachers for all reasonably necessary
13 expenditures incurred in the discharge of their duties; failing to ensure that its teachers receive
14 the applicable state minimum wage for all hours worked and by impermissibly counting
15 customers’ tips toward their minimum wage obligations; failing to pay the appropriate overtime
16 pay for all hours worked beyond forty per week or eight per day; failing to afford its employees
17 meal and rest breaks; failing to keep accurate payroll records for teachers, and failing to provide
18 accurate wage statements; deducting unlawful amounts from teachers’ pay; and requiring
19 teachers to sign illegal contracts.

20 24. As the California Supreme Court’s decision in Dynamex Operations W. v.
21 Superior Court, (2018) 4 Cal. 5th 903, reh’g denied (June 20, 2018) makes clear, VIPKid
22 teachers should be classified as employees, rather than independent contractors, for the purposes
23 of the Labor Code statutes. Under the “ABC” test adopted in Dynamex, in order to justify
24 classifying its teachers as non-employees, VIPKid would have to prove its teachers perform
25 services outside their usual course of business, which they cannot do here. Likewise, VIPKid
26 cannot satisfy its burden to prove that teachers have been customarily engaged in an
27

1 independently established trade, occupation, or business of the same nature as the work they
2 performed for Defendant. Additionally, VIPKid cannot satisfy their burden to demonstrate that
3 teachers have been free from VIPKid’s control and direction, both under that contract and in fact.

4 **V. CLASS ALLEGATIONS**

5 25. Plaintiff Ibeji brings this case as a class action pursuant to California Code of
6 Civil Procedure § 382 on behalf of all individuals who entered into an agreement with VIPKid to
7 provide teaching services and taught at least one class in California from May 22, 2018.

8 26. Plaintiffs and other class members have uniformly been deprived of meal and rest
9 breaks, reimbursement of their necessary business expenditures, overtime wages, and properly
10 itemized pay statements and properly maintained employee records.

11 27. The members of the class are so numerous that joinder of all class members is
12 impracticable.

13 28. Common questions of law and fact regarding VIPKid’s conduct in classifying its
14 teachers as independent contractors, failing to provide meal and rest breaks, failing to reimburse
15 for necessary business expenses, and failing to ensure they are paid at least minimum wage and
16 overtime for all weeks, and failing to provide properly itemized pay statements and properly
17 maintained employee records, exist as to all members of the class and predominate over any
18 questions affecting solely any individual members of the class. Among the questions of law and
19 fact common to the class are:
20

- 21
- 22 a. Whether the work performed by class members—providing teaching services to
 - 23 customers—is within VIPKid’s usual course of business;
 - 24 b. Whether class members are typically engaged in their own businesses or whether
 - 25 they wear the “hat” of VIPKid when performing teaching services;
 - 26 c. Whether class members have been required to follow uniform procedures and
 - 27 policies regarding their work for VIPKid;

1 d. Whether these class members have been required to bear the expenses of their
2 employment, such as expenses for maintaining their computers, internet, etc.

3 29. Named plaintiffs Emily Ibeji is a class member who suffered damages as a result
4 of VIPKid's conduct and actions alleged herein.

5 30. Plaintiff's are typical of the claims of the class, and the Plaintiff has the same
6 interests as the other members of the class.

7 31. Plaintiff will fairly and adequately represent and protect the interests of the class.
8 Plaintiff has retained able counsel experienced in class action litigation. The interests of the
9 Plaintiff are coincident with, and not antagonistic to, the interests of the other class members.

10 32. The questions of law and fact common to the members of the class predominate
11 over any questions affecting only individual members, including legal and factual issues relating
12 to liability and damages.

13 33. A class action is superior to other available methods for the fair and efficient
14 adjudication of this controversy because joinder of all class members is impractical. Moreover,
15 since the damages suffered by individual members of the class may be relatively small, the
16 expense and burden of individual litigation makes it practically impossible for the members of
17 the class individually to redress the wrongs done to them. The class is readily definable as
18 VIPKid knows which individuals have signed up to use the VIPKid platform to teach and which
19 have taught or been paid for at least one class in California since May 22, 2018. Further,
20 prosecution of this action as a class action will eliminate the possibility of repetitive litigation.
21 There will be no difficulty in the management of this action as a class action.

22 **VI. PAGA REPRESENTATIVE ACTION ALLEGATIONS**

23 34. Plaintiff alleges that VIPKid violated PAGA by willfully misclassifying its teachers
24 as independent contractors in violation of Cal. Lab. Code § 226.8; by failing to reimburse
25 teachers for all reasonably necessary expenditures incurred in the discharge of their duties,
26 including but not limited to the cost of their computer, in violation of Code § 2802; failing to
27

1 ensure that its teachers receive the applicable state minimum wage for all hours worked and by
2 impermissibly counting customers' tips toward their minimum wage obligations in violation of
3 Cal. Lab. Code §§ 1197 and 1194; failing to pay teachers the appropriate overtime premium for
4 all overtime hours worked beyond forty per week or eight hours per day in violation of Cal. Lab.
5 Code §§ 1194, 1198, 510, and 554; failing to afford teachers meal and rest breaks in violation of
6 §§ 226.7 and 512; failing to keep accurate payroll records for teachers in violation of Cal. Lab.
7 Code §§ 1174, 1174.5; failing to provide accurate wage statements in violation of Cal. Lab. Code
8 § 226; deducting unlawful amounts from teachers' pay in violation of Cal. Lab. Code §§ 221 and
9 224; and requiring teachers to sign illegal contracts in violation of Cal. Lab. Code § 432.5.

11 35. On May 22, 2019, Plaintiff gave written notice of VIPKid's violations of the
12 California Labor Code as alleged in this complaint to the Labor and Workforce Development
13 Agency ("LWDA") via online filing and to Defendant VIPKid's general counsel via certified
14 mail.

15 36. On October 10, 2019, Plaintiff again written notice of VIPKid's violations of the
16 California Labor Code as alleged in this complaint to the Labor and Workforce Development
17 Agency ("LWDA") via online filing of an amended letter, and to Defendant VIPKid's general
18 counsel via certified mail.

19 37. It has been 65 days since the LWDA was notified of the Labor Code violations
20 asserted in this Complaint, and the LWDA has not provided any notice that it will or will not
21 investigate the alleged violations. See Cal. Lab. Code§ 2699.3(a)(2)(A).

22
23 **COUNT I**
24 **Penalties Pursuant to Labor Code Private Attorneys General Act of 2004**
25 **Violation of Cal. Lab. Code § 2698, et seq.**

26 38. Plaintiff realleges and incorporates by reference the allegations in the preceding
27 paragraphs as if fully alleged herein. Plaintiff is an aggrieved employee as defined by Cal. Lab.

1 Code § 2699(c) as she was employed by VIPKid during the applicable statutory period and
2 suffered injury as a result of VIPKid's Labor Code violations. Accordingly, Plaintiff seeks to
3 recover on behalf of the State of California, as well as herself and all other current and former
4 aggrieved employees of VIPKid who have worked in California, the civil penalties provided by
5 PAGA, plus reasonable attorney's fees and costs.
6

7 39. VIPKid teachers are entitled to penalties for VIPKid's violations of Cal. Lab.
8 Code §§ §§ 201-204, 222-223, 226.2, 226.3, 226.8, 226.7, 226(a), 432, 512, 510, 558, 1174(d),
9 1182.11, 1194, 1197, 1199, 1199.5, 2802 *et seq.* Plaintiffs seek civil penalties pursuant to
10 PAGA for: (1) failure to reimburse teachers for all necessary expenditures incurred in
11 performing their duties, in violation of Cal. Lab. Code § 2802; (2) the willful misclassification of
12 teachers as independent contractors in violation of Cal. Lab. Code § 226.8; (3) failure to assure
13 that all teachers received the appropriate overtime premium for all overtime hours worked
14 beyond forty per week or eight hours per day in violation of Cal. Lab. Code §§ 1194, 510, and
15 554, and Cal. Wage Order 4-2001; (4) failure to provide proper itemized wage statements in
16 violation of Cal. Lab. Code § 226(a), 226.3; (5) failure to pay the appropriate minimum wage for
17 all hours worked in violation of Cal. Lab. Code §§ 1197, 1194, 1182.12, 1197.1, 1199, and Cal.
18 Wage Order 4-2001; (6) failure to pay for meal and rest periods in violation of Cal. Lab. Code §§
19 226.7, 512, and 558, and Cal. Wage Order 4-2001 (7) failure to timely pay all earned wages
20 during employment and upon termination and failing to conspicuously post notice of regular pay
21 days in violation of Cal. Lab. Code §§ 201-204; (8) secretly paying wages lower than required by
22 statute in violation of Cal. Lab. Code § 223; (9) failure to provide written notice of material
23 terms of employment and by requiring its teachers to sign illegal contracts in violation of Cal.
24 Lab. Code § 432 and 432.5; and (10) failure to keep accurate records of hours worked and
25 drivers' personal information in violation of Cal. Lab. Code § 1174, 1174.5, and 1175.
26

27 40. Cal. Lab. Code § 2699(f) provides for civil penalties for violation of all Labor
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1 Code provisions for which no civil penalty is specifically provided. There is no specified civil
2 penalty for violations of Cal. Lab. Code §2802. With respect to minimum wage violations under
3 Cal. Lab. Code §§ 1197 and 1194, § 1197.1 imposes a civil penalty in addition to any other
4 penalty provided by law of one hundred (\$100) for each underpaid employee for each pay period
5 for which the employee is underpaid in addition to an amount sufficient to recover underpaid
6 wages and liquidated damages, and, for each subsequent violation of Labor §§1197 and 1194,
7 two hundred and fifty dollars (\$250) for each underpaid employee for each pay period for which
8 the employee is underpaid in addition to an amount sufficient to recover underpaid wages and
9 liquidated damages. With respect to overtime violations under Labor Code §§ 510 and 558, the
10 statute imposes a civil penalty in addition to any other penalty provided by law of fifty dollars
11 (\$50) for initial violations for each underpaid employee for each pay period for which the
12 employee was underpaid in addition to an amount sufficient to recover unpaid wages, and one
13 hundred dollars (\$100) for subsequent violations for each underpaid employee for each pay
14 period for which the employee was underpaid in addition to an amount sufficient to recover
15 underpaid wages. With respect to violations of Labor Code § 226(a), Labor Code § 226.3
16 imposes a civil penalty in addition to any other penalty provided by law of two hundred fifty
17 dollars (\$250) per aggrieved employee for the first violation, and one thousand dollars (\$1,000)
18 per aggrieved employee for each subsequent violation of Labor Code § 226(a). With respect to
19 violations of Labor Code § 226.8, Labor Code § 226.8(b) imposes a civil penalty of not less than
20 five thousand dollars (\$5,000) and not more than fifteen thousand dollars (\$15,000) for each
21 violation. With respect to violations under Labor Code § 512, the statute imposes a civil penalty
22 in addition to any other penalty provided by law of fifty dollars (\$50) for initial violations for
23 each underpaid employee for each pay period for which the employee was underpaid in addition
24 to an amount sufficient to recover unpaid wages, and one hundred dollars (\$100) for subsequent
25 violations for each underpaid employee for each pay period for which the employee was
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1 underpaid in addition to an amount sufficient to recover underpaid wages. With respect to
2 violations of Labor Code § 204, the statute imposes a civil penalty in addition to any other
3 penalty of one hundred dollars (\$100) for initial violations for each underpaid employee and two
4 hundred dollars (\$200) for subsequent violations for each underpaid employee, plus 25% of the
5 amount unlawfully withheld. With respect to violations of Labor Code § 223, the statute
6 imposes a civil penalty in addition to any other penalty of one hundred dollars (\$100) for initial
7 violations for each underpaid employee and two hundred dollars (\$200) for subsequent violations
8 for each underpaid employee, plus 25% of the amount unlawfully withheld. With respect to
9 violations of Labor Code § 1174, the statute imposes a civil penalty of five hundred dollars
10 (\$500).
11

12 40. Plaintiffs complied with the notice requirement of Cal. Lab. Code §2699.3 and
13 served a written notice to the California Labor & Workforce Development Agency (“LWDA”)
14 through its website’s online filing portal, and on Defendant via Certified Mail, return receipt
15 requested, on May 22, 2019, and October 20, 2019, respectively. It has been 65 days or more
16 since the LWDA was notified of the Labor Code violations asserted in this Complaint, and the
17 LWDA has not provided any notice that it will or will not investigate the alleged violations.
18

19 **COUNT II**
20 **Expense Reimbursement**
21 **Violation of Cal. Lab. Code § 2802**

22 41. Plaintiff realleges and incorporates by reference the allegations in the preceding
23 paragraphs as if fully alleged herein. Defendant’s conduct, as set forth above, in misclassifying
24 Plaintiffs as independent contractors and failing to reimburse them for expenses that they paid
25 that should have been borne by their employer, constitutes a violation of California Labor Code §
26 2802.
27

1 42. This claim is brought by Plaintiff, on behalf of a class of all similarly situated
2 individuals who entered into an agreement with VIPKid to provide teaching services and taught
3 at least one class in California from May 22, 2018.
4

5 **COUNT III**
6 **Willful Misclassification**
7 **Violation of Cal. Lab. Code § 226.8**

8 43. Plaintiff realleges and incorporates by reference the allegations in the preceding
9 paragraphs as if fully alleged herein. Defendant's conduct, as set forth above, in continuing to
10 classify drivers as independent contractors notwithstanding the California Supreme Court's
11 decision in Dynamex Operations W. v. Superior Court, 4 Cal. 5th 903, 416 P.3d 1 (2018), reh'g
12 denied (June 20, 2018), and Assembly Bill No. 5 (AB 5) (codified at Cal. Lab. Code § 2750.3)
13 (subsequently repealed and replaced by AB2257, codified at Cal. Lab. Code § 2775), which
14 makes clear that VIPKid teachers are its employees under California law, violates Cal. Lab. Code
15 §226.8 and constitutes willful misclassification.

16 44. This claim is brought by Plaintiff on behalf of a class of all similarly situated
17 individuals who entered into an agreement with VIPKid to provide teaching services and taught
18 at least one class in California from May 22, 2018.

19 **COUNT IV**
20 **Minimum Wage**
21 **Violation of Cal. Lab. Code §§ 1197 and 1194; Cal. Wage Order 4-2001**

22 45. Plaintiff reallege sand incorporate by reference the allegations in the preceding
23 paragraphs as if fully alleged herein. Defendant's conduct, as set forth above, in failing to pay
24 Plaintiffs minimum wage for all hours worked as required by California law, violates Cal. Lab.
25 Code §§ 1197 and 1194; Cal. Wage Order 4-2001.
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1 46. This claim is brought by Plaintiff, on behalf of a class of all similarly situated
2 individuals who entered into an agreement with VIPKid to provide teaching services and taught
3 at least one class in California from May 22, 2018.
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5 **COUNT V**
6 **Overtime**

7 **Violation of Cal. Lab. Code §§ 510, 1194, 1198; Cal. Wage Order 4-2001**

8 47. Plaintiff realleges and incorporate sby reference the allegations in the preceding
9 paragraphs as if fully alleged herein. Defendant’s conduct, as set forth above, in failing to pay
10 Plaintiffs minimum wage for all hours worked as required by California law, violates Cal. Lab.
11 Code §§ 510, 1194, and 1198; Cal. Wage Order 4-2001.

12 48. This claim is brought by Plaintiff, on behalf of a class of all similarly situated
13 individuals who entered into an agreement with VIPKid to provide teaching services and taught
14 at least one class in California from May 22, 2018.

15 **COUNT VI**
16 **Pay Statements**

17 **Violation of Cal. Lab. Code § 226(a)**

18 49. Plaintiff realleges and incorporates by reference the allegations in the preceding
19 paragraphs as if fully alleged herein. Defendant’s conduct, as set forth above, in failing to
20 provide proper itemized wage statements to Plaintiff, as required by California state law, violates
21 Cal. Lab. Code § 226(a).

22 50. This claim is brought by Plaintiff, on behalf of a class of all similarly situated
23 individuals who entered into an agreement with VIPKid to provide teaching services and taught
24 at least one class in California from May 22, 2018.

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COUNT VII
Meal and Rest Period Violations
Cal. Labor Code §§ 226.7 & 512; Cal. Wage Order 4-2001

51. Plaintiff realleges and incorporates by reference all other paragraphs as if they were set forth again herein. Defendant’s conduct in denying teachers at least a half-hour meal break during shifts in excess of five hours and one ten-minute rest break per four hours of work performed violates Cal. Labor Code §§ 226.7 & 512; Cal. Wage Order 4-2001.

52. This claim is brought by Plaintiff, on behalf of a class of all similarly situated individuals who entered into an agreement with VIPKid to provide teaching services and taught at least one class in California from May 22, 2018.

COUNT VIII
Failure to Pay All Regular Wages
Violation of Cal. Labor Code § 204

53. Plaintiff realleges and incorporates by reference the allegations in the preceding paragraphs as if fully alleged herein. Defendant’s conduct, as set forth above, in failing to pay drivers the proper wages for all hours worked violates Cal. Labor Code § 204.

54. This claim is brought by Plaintiff, on behalf of a class of all similarly situated individuals who entered into an agreement with VIPKid to provide teaching services and taught at least one class in California from May 22, 2018.

COUNT IX
Waiting Time Penalties
Violation of Cal. Labor Code §§ 201-203

55. Plaintiff realleges and incorporates by reference the allegations in the preceding paragraphs as if fully alleged herein. Defendant failed to pay its teachers their final wages pursuant to Cal. Labor Code §§ 201-203 and accordingly owes waiting time penalties pursuant to Cal. Labor Code § 203.

1 56. This claim is brought by Plaintiff, on behalf of a class of all similarly situated
2 individuals who entered into an agreement with VIPKid to provide teaching services and taught
3 at least one class in California from May 22, 2018.
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5 **COUNT X**
6 **Unfair Business Practices**
7 **Violation of Cal. Bus. & Prof. Code §17200, et seq.**

8 57. Defendant’s conduct, as set forth above, violates the California Unfair
9 Competition Law, Cal. Bus. & Prof. Code § 17200 *et seq.* (“UCL”). Defendant’s conduct
10 constitutes unlawful business acts or practices, in that Defendant has violated the California
11 Labor Code as described above. As a result of Defendant’s unlawful conduct, Plaintiff suffered
12 injury in fact and lost money and property, including, but not limited to business expenses they
13 were required to pay (and was not reimbursed for) and wages that they were due. Pursuant to
14 California Business and Professions Code § 17203, Plaintiff seeks declaratory and injunctive
15 relief for Defendant’s unlawful conduct and to recover restitution. The nature of this relief is in
16 the public interest, since Defendant’s violation of the Labor Code in misclassifying drivers
17 across California like Plaintiffs, and failing to provide them with protections of the Labor Code,
18 harms the public interest (and not just VIPKid teachers like Plaintiff), in that it burdens the
19 government and taxpayers, as well as complying competitors, and also negatively harms the
20 labor market as a whole, particularly in the delivery industry. Pursuant to California Code of
21 Civil Procedure § 1021.5, Plaintiff is entitled to recover reasonable attorneys’ fees, costs, and
22 expenses incurred in bringing this action.

23 58. This claim is brought by Plaintiff, on behalf of a class of all similarly situated
24 individuals who entered into an agreement with VIPKid to provide teaching services and taught
25 at least one class in California from May 22, 2018.
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27 WHEREFORE, Plaintiffs request that this Court enter the following relief:

- 1 a. Declare and find that the Defendant violated Wage Order 4-2001, the UCL, Cal. Lab.
2 Code §§ 201-204, 226(a), 226.7, 2802, 1194, 1197, 1198, 510, 554;
3
4 b. Certify a California class under Counts I through X and appoint Plaintiff and her
5 counsel to represent a class of all individuals who entered into an agreement with
6 VIPKid to provide teaching services and taught at least one class in California from
7 May 22, 2018;
8
9 c. Award compensatory damages, including all expenses and wages owed and all
10 damages stemming from the alleged use of tips to meet minimum-pay guarantees, in
11 an amount according to proof;
12
13 d. Award restitution for unfair business practices and for all claims arising out of or
14 relating to the statutory causes of action described herein;
15
16 e. Enter Judgment in Plaintiffs' favor on their PAGA claim pursuant to Cal. Lab. Code
17 §2699(c);
18
19 f. Award penalties, including penalties for timely payment of wages upon discharge,
20 waiting time penalties, and PAGA penalties in an amount according to proof;
21
22 g. Award liquidated damages and exemplary and/or punitive damages;
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24 h. Award pre- and post-judgment interest;
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26 i. Award reasonable attorneys' fees, interest, costs, and expenses;
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28 j. Award declaratory and injunctive relief (including public injunctive relief) in the
form of an order requiring Defendant to comply with the California Labor Code; and
k. Award any equitable remedies or any other relief to which the Plaintiff may be
entitled.

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Respectfully submitted,

EMILY IBEJI, in her capacity as Private Attorney
General Representative,

By her attorneys,

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