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10

11 **UNITED STATES DISTRICT COURT**

12 **NORTHERN DISTRICT OF CALIFORNIA**

13 **SAN FRANCISCO DIVISION**

15 FARRAH WILLIAMS,
 16 Plaintiff,
 17 v.
 18 EAZE SOLUTIONS, INC.,
 19 Defendant.

Case No. 18-CV-02598-JD

**DEFENDANT EAZE SOLUTIONS, INC.’S
 NOTICE OF MOTION AND MOTION TO
 COMPEL INDIVIDUAL ARBITRATION
 AND DISMISS ACTION;
 MEMORANDUM OF POINTS AND
 AUTHORITIES**

[Declaration of Daniel Erickson with Exhibits;
 and [Proposed] Order filed concurrently
 herewith]

Judge: Hon. James Donato
Date: September 13, 2018

Complaint Filed: May 2, 2018
 Trial Date: Not Set

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1 **TO ALL PARTIES AND TO THEIR COUNSEL OF RECORD:**

2 **PLEASE TAKE NOTICE** that on September 13, 2018, at 10:00 a.m., or as soon
3 thereafter as this matter may be heard, in the courtroom of the Honorable District Judge James
4 Donato, located in Courtroom 11 of the United States Courthouse, 450 Golden Gate Avenue, San
5 Francisco, CA 94102, Defendant Eaze Solutions, Inc. (“Eaze”) will and hereby does move this
6 Court to compel individual arbitration of Plaintiff’s claims and dismiss this action with prejudice.

7 This Motion is made pursuant to the Federal Arbitration Act, 9 U.S.C. §§ 1-16 (“FAA”),
8 upon the grounds that Plaintiff Farrah Williams agreed to arbitrate her claims when she agreed to
9 be bound by the arbitration agreement in Eaze’s Terms of Service.

10 This Motion is based on this Notice of Motion, the accompanying Memorandum of Points
11 and Authorities, the Declaration of Daniel Erickson and the exhibits attached thereto filed
12 concurrently herewith, all of the pleadings and other documents on file in this case, all other
13 matters of which the Court may take judicial notice, and any further argument or evidence that
14 may be received by the Court at the hearing.

15
16 DATED: June 22, 2018

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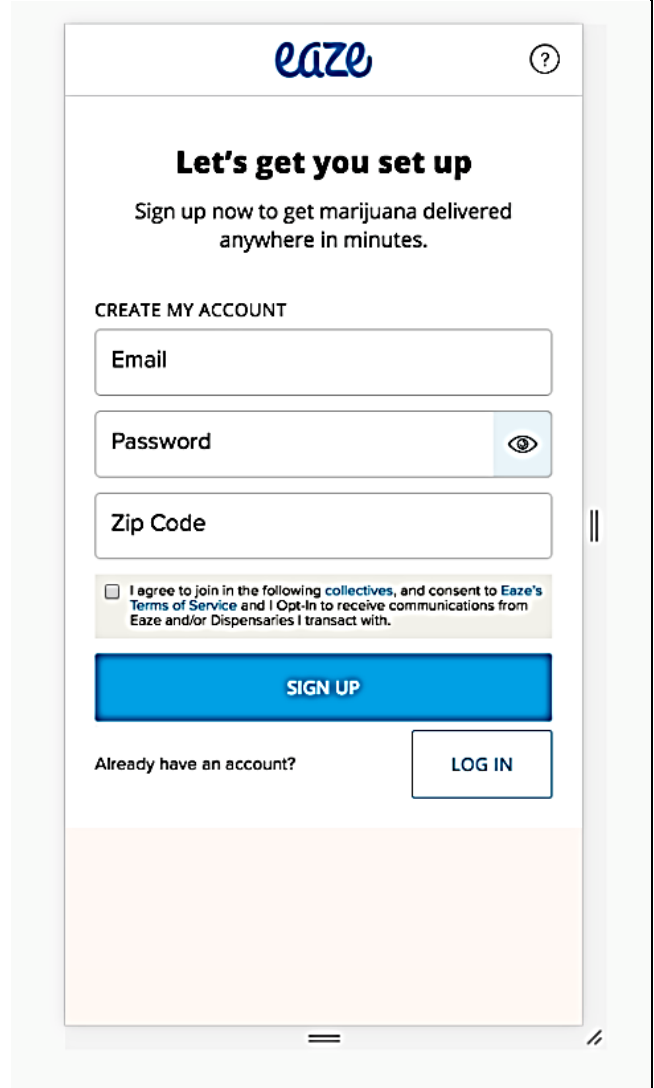
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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Eaze Solutions, Inc. (“Eaze”) is a technology platform that connects independent, authorized cannabis dispensaries with verified users (the “Eaze Platform”), to facilitate the delivery of cannabis products from the dispensaries to the users. In order to access and utilize the Eaze Platform, any prospective user must go through an online account creation process that expressly requires that the user consent to: (1) arbitrate disputes as part of Eaze’s Terms of Service; and (2) receive communications from Eaze. Plaintiff Farrah Williams (“Plaintiff”) is a verified user of the Eaze Platform who went through this online process (called a “clickwrap” agreement) and affirmatively consented to arbitrate disputes and to receive communications from Eaze. Accordingly, Eaze brings this motion to compel this Telephone Consumer Protection Act (“TCPA”) action into individual arbitration.



Indeed, Plaintiff ignored her agreements to arbitrate and receive communications from Eaze when she filed this action alleging she received improper text messages under the TCPA. To be clear, Plaintiff’s claims of improper text messaging lack merit: Plaintiff expressly agreed to receive communications from Eaze and Plaintiff never opted out of such communications despite receiving many text messages instructing her to “Text STOP to unsubscribe.” But this Court need not reach the merits of Plaintiff’s TCPA claims because, as a threshold jurisdictional matter, the Federal Arbitration Act (“FAA”) requires that this dispute be submitted to an arbitrator.

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1 To prevail on a motion to compel arbitration, a defendant need only prove that a written
2 arbitration agreement exists and covers the instant dispute. Plaintiff and Eaze entered into an
3 agreement to arbitrate when Plaintiff agreed to Eaze’s Terms of Service. This action concerns
4 communications from Eaze about its services, which falls directly within the broad scope of the
5 arbitration agreement. This Court should therefore grant Eaze’s motion to compel individual
6 arbitration and dismiss Plaintiff’s claims in court.

7 **II. FACTUAL BACKGROUND**

8 **A. Background on the Eaze Platform and Service**

9 Eaze is the premier technology platform connecting independent, authorized cannabis
10 dispensaries with verified users, providing consumers with safe and secure access to legal
11 cannabis. (Declaration of Daniel Erickson (“Erickson Decl.”), at ¶ 4.) Using the Eaze Platform,
12 dispensaries are able to deliver legal and compliant cannabis and cannabis products to customers
13 in their service area in a fast and safe manner. (*Id.*) The Eaze Platform includes, among other
14 things, Eaze’s website, technology platform, and mobile-phone applications (“app”). (*Id.*) The
15 Eaze Platform uses the Internet, through the website or the app, to connect authorized dispensaries
16 with verified users. (*Id.*, at ¶ 7)

17 **B. Eaze Users Are Required to Consent to Eaze’s Terms of Service**

18 In order for a user to request and receive a delivery, they must create an Eaze account
19 either through the website or via the Eaze app. (Erickson Decl., at ¶ 5.) Creating an Eaze account
20 consists of two main components: registration and verification. (*Id.*) To register, a user must
21 enter information including their name, email address, and phone number. (*Id.*) As part of this
22 registration process, users are also required to consent to Eaze’s Terms of Service and Privacy
23 Policy, and opt in to receiving communications from Eaze (once registered, users may opt out of
24 communications at any time). (*Id.*) After registration, a user must complete verification in order
25 to receive a delivery. (*Id.*) To verify the account, a user must upload a valid form of government
26 identification (*i.e.*, a driver’s license, state ID, or passport) onto the Eaze Platform, where an Eaze
27 customer service representative confirms that the user is over the age limit and legally permitted to
28 purchase cannabis products. (*Id.*)

1 In September 2017, when Plaintiff
 2 created an account on the Eaze Platform,
 3 Eaze’s website presented the prospective user
 4 with a mandatory signup page that asked the
 5 user to enter their email, create a password,
 6 and enter their zip code. (*Id.*, at ¶ 9, Exh. A.)
 7 The page also presented the user with a
 8 checkbox that required the user to affirm the
 9 following statement: “I agree to join in the
 10 following [collectives](#), and consent to [Eaze’s](#)
 11 [Terms of Service](#) and I Opt-In to receive
 12 communications from Eaze and/or
 13 Dispensaries I transact with.” (*Id.*) In
 14 contrast to the black text surrounding it, the
 15 words “[Eaze’s Terms of Service](#)” were in
 16 blue. (*Id.*) These words contained an active
 17 hyperlink to the Terms of Service that was in
 18 effect at the time, which users had the

19 opportunity to scroll through and review. (*Id.*) In order to click “Sign Up” and register to use the
 20 Eaze Platform, users were required to check the checkbox “consent[ing] to [Eaze’s Terms of](#)
 21 [Service](#)” and agree to all of the terms and conditions contained in the Terms of Service in effect at
 22 that time. (*Id.*) Checking the checkbox “consent[ing] to [Eaze’s Terms of Service](#)” and clicking
 23 “Sign Up” automatically generated an electronic record of acceptance in Eaze’s system. (*Id.*)

24 **C. Plaintiff Agreed to the Terms of Service, Including the Arbitration Agreement**

25 Through the Eaze website, Plaintiff Farrah Williams successfully created a profile under the
 26 name Farrah Raoufi on September 21, 2017, including uploading required documentation that
 27 identified her as “Farrah Raoufi-Williams,” listing a phone number that matches the “5968” phone
 28 number and “(619)” area code in the Complaint, and verifying her city as San Diego, which also

1 corresponds to the allegations in the Complaint. (*Compare* Erickson Decl., at ¶ 16, *with* Compl., at
 2 ¶ 12.) As part of her registration process on September 21, 2017, Plaintiff was presented with and
 3 electronically accepted the Terms of Service through the Eaze website, by clicking the checkbox
 4 affirming her consent to be bound by the Terms of Service then in effect. (Erickson Decl., at ¶ 17.)

5 The version of the Terms of Service that was in effect on September 21, 2017, and that
 6 Plaintiff had the opportunity to review prior to her acceptance of it, was the August 16, 2016
 7 Terms of Service. (*Id.*, at ¶ 19, Exh. E.) Several aspects of the Terms of Service are relevant to
 8 this motion to compel individual arbitration:

9 *First*, the Terms of Service advises users that “[b]y using or receiving any services
 10 supplied by” Eaze, “and/or accessing, downloading, installing or using any associated application
 11 or website provided by” Eaze, users “expressly acknowledge and agree to be bound by the terms
 12 and conditions of the Agreement.” (Erickson Decl., Exh. E at 1.) This advisory notice is
 13 substantially reaffirmed later in the TOS, under the heading “**TERMS & CONDITIONS OF**
 14 **SERVICE**”:

15 In order to use the Service (defined below) and the associated
 16 Application (defined below) you must agree to the Terms and
 17 Conditions that are set out below. By using or receiving any services
 18 provided to you by the Company (collectively, the “Service”), and
 19 downloading, installing or using any associated application supplied
 20 or website provided by the Company which purpose is to enable you
 21 to use the Service (collectively, the “Application”), you hereby
 expressly acknowledge and agree to be bound by the terms and
 conditions of the Agreement, and any future amendments and
 additions to this Agreement as published from time to time at the
 Company website www.eaze.com or through the Service.

22 (*Id.*, Exh. E at 2.)

23 *Second*, the Terms of Service includes a mandatory arbitration agreement, which contains
 24 an express class action waiver:

DISPUTE RESOLUTION

25 You and Company agree that any dispute, claim or controversy
 26 arising out of or relating to this Agreement or the breach, termination,
 27 enforcement, interpretation or validity thereof or the use of the
 28 Service or Application (collectively, “Disputes”) will be settled by
 binding arbitration, except that each party retains the right to bring an

1 individual action in small claims court and the right to seek injunctive
 2 or other equitable relief in a court of competent jurisdiction to prevent
 3 the actual or threatened infringement, misappropriation or violation of
 4 a party's copyrights, trademarks, trade secrets, patents or other
 5 intellectual property rights. You acknowledge and agree that you and
 6 Company are each waiving the right to a trial by jury or to participate
 7 as a plaintiff or class User in any purported class action or
 8 representative proceeding. Further, unless both you and Company
 9 otherwise agree in writing, the arbitrator may not consolidate more
 10 than one person's claims, and may not otherwise preside over any
 11 form of any class or representative proceeding. If this specific
 12 paragraph is held unenforceable, then the entirety of this "Dispute
 13 Resolution" section will be deemed void. Except as provided in the
 14 preceding sentence, this "Dispute Resolution" section will survive
 15 any termination of this Agreement.

16 (Erickson Decl., at ¶ 23, Exh. E at 10.) In addition, the arbitration agreement expressly states that
 17 "The Federal Arbitration Act will govern the interpretation and enforcement of this Section." (*Id.*,
 18 Exh. E at 11.)

19 *Third*, the arbitration agreement in the Terms of Service states that any arbitration will be
 20 administered by the American Arbitration Association ("AAA") in accordance with AAA Rules.
 21 (*Id.*)

22 *Finally*, as explained in detail below, the Terms of Service reiterates the user's express
 23 agreement from the mandatory signup page to receive communications from Eaze. (*Id.*, at 5-6.)

24 ***D. Plaintiff Agreed to Receive Communications from Eaze, Including Text
 25 Messages***

26 As noted above, the mandatory signup page presented to Plaintiff on September 21, 2017
 27 asked her to "Opt-In to receive communications from Eaze and/or Dispensaries I transact with."
 28 (Erickson Decl., at ¶ 9, Exh. A.) By completing her registration process, she necessarily checked
 the checkbox consenting to receive such communications. (*See id.*) Plaintiff also consented to the
 Terms of Service, which unambiguously states:

EAZE COMMUNICATIONS

By becoming a User, you expressly consent and agree to accept and receive communications from us and/or Dispensaries that you transact with, including via e-mail, text message, calls, and push notifications to the cellular telephone number you provided to us. By consenting to being contacted by the Company, you understand and agree that you

1 may receive communications generated by automatic telephone dialing
 2 systems and/or which will deliver prerecorded messages sent by or on
 3 behalf of the Company, its affiliated companies and/or Drivers,
 4 including but not limited to: operational communications concerning
 5 your User account or use of the EAZE Application or Services,
 6 updates concerning new and existing features of the EAZE
 7 Application, communications concerning promotions run by us or
 8 third party Dispensaries, and news concerning the Company and
 9 industry developments. IF YOU WISH TO OPT-OUT OF
 10 PROMOTIONAL EMAILS, TEXT MESSAGES, OR OTHER
 11 COMMUNICATIONS, YOU MAY OPT-OUT BY FOLLOWING
 THE UNSUBSCRIBE OPTIONS PROVIDED TO YOU. Standard
 text messaging charges applied by your cell phone carrier will apply to
 text messages we send. You acknowledge that you are not required to
 consent to receive promotional messages as a condition of using the
 EAZE Application or the Service. However, you acknowledge that
 opting out of receiving text messages or other communications may
 impact your use of the EAZE Application or the Service.

12 (Erickson Decl., Exh. E at 5-6.) After Plaintiff successfully signed up to be an Eaze user, she
 13 received many text messages containing the opt-out instruction “Text STOP to unsubscribe.” (*Id.*,
 14 at ¶ 21; *see also* Compl., at ¶ 21 (alleging she received “dozens of text messages”).) However,
 15 Eaze has no record of Plaintiff opting out of communications with Eaze, either by texting “STOP”
 16 to unsubscribe, emailing Eaze with an unsubscribe request, or by any other means. (Erickson
 17 Decl., at ¶ 21.)

18 ***E. Plaintiff Ignored the Arbitration Agreement and Filed This Action in Court***

19 Plaintiff disregarded the mandatory arbitration agreement between herself and Eaze when
 20 she filed the instant action on May 2, 2018 alleging violations of the TCPA, 47 U.S.C. § 227. (*See*
 21 Compl., at ¶ 1.)

22 Plaintiff alleges that she was the subscriber to the cellular telephone number (619) ***-5968
 23 (the “5968 Number”). (*Id.*, at ¶ 12.) Eaze’s records show that this was the same telephone number
 24 that Plaintiff used to register on the Eaze Platform on September 21, 2017, when she agreed to the
 25 Terms of Service and the arbitration agreement. (Erickson Decl., at ¶¶ 16-17.) Plaintiff alleges that
 26 Eaze transmitted text messages to the 5968 Number without her express written consent, and
 27 without providing her a mechanism to opt out. (*See* Compl., at ¶¶ 21-22, 34.)

28 Plaintiff asserts claims for negligent and knowing/willful violation of the TCPA. (*Id.*, at

1 ¶¶ 50-59.) Plaintiff also purports to bring a civil class action on behalf of herself and others
 2 similarly situated. (*Id.*, ¶ 35.) Because the Parties have agreed to arbitrate any disputes on an
 3 individual, not classwide basis, Eaze brings the instant motion to compel individual arbitration and
 4 to dismiss the present action.

5 **III. PLAINTIFF SHOULD BE COMPELLED TO ARBITRATE HER DISPUTE WITH**
 6 **EAZE ON AN INDIVIDUAL BASIS**

7 Congress enacted the Federal Arbitration Act (“FAA”) to reverse the “widespread judicial
 8 hostility to arbitration agreements.” *AT&T Mobility LLC v. Concepcion*, 131 S.Ct. 1740, 1745
 9 (2011). The Supreme Court has repeatedly emphasized that courts are obligated to enforce
 10 arbitration agreements as written because the FAA ““reflects an emphatic federal policy in favor of
 11 arbitral dispute resolution.”” *See, e.g., Marmet Health Care Ctr., Inc. v. Brown*, 132 S.Ct. 1201,
 12 1203 (2012) (quoting *KPMG LLP v. Cocchi*, 132 S.Ct. 23, 25 (2011), and *Mitsubishi Motors*
 13 *Corp. v. Soler Chrysler-Plymouth, Inc.*, 473 U.S. 614, 631 (1985)).

14 The FAA provides that contractual arbitration agreements “shall be valid, irrevocable, and
 15 enforceable, save upon such grounds as exist at law or in equity for the revocation of any
 16 contract.” 9 U.S.C. § 2. Section 4 of the FAA provides the mechanism for courts to enforce
 17 arbitration agreements through “an affirmative order to engage in arbitration.” *Moses H. Cone*
 18 *Mem’l Hosp. v. Mercury Const. Corp.*, 460 U.S. 1, 22 (1983) *superseded by statute on other*
 19 *grounds; see also* 9 U.S.C. § 4. Given the strong federal policy in favor of arbitration, “any doubts
 20 concerning the scope of arbitrable issues should be resolved in favor of arbitration.” *Moses H.*
 21 *Cone Mem’l Hosp.*, 460 U.S. at 24-25. The party *opposing* enforcement of the arbitration
 22 agreement bears the heavy burden of proving that the claims are not subject to arbitration. *Green*
 23 *Tree Fin. Corp.-Ala. v. Randolph*, 531 U.S. 79, 91-92 (2000).

24 Under the FAA,¹ a court must compel arbitration if it finds that: (1) a written arbitration

25 _____
 26 ¹ The arbitration agreement in Eaze’s Terms of Service expressly provides that “[t]he Federal
 27 Arbitration Act will govern the interpretation and enforcement of this Section.” (Erickson Decl.,
 28 Exh. E at ¶ 11.) The Parties’ stipulation that the FAA applies controls. *See Mitsubishi Motors*
Corp. v. Soler Chrysler-Plymouth, Inc., 473 U.S. 614, 626 (1985) (“Thus, as with any other
 contract, the parties’ intentions control, but those intentions are generously construed as to issues

1 agreement exists between the parties; and (2) the dispute falls within the scope of the agreement.
 2 *See Chiron Corp. v. Ortho Diagnostic Sys., Inc.*, 207 F.3d 1126, 1130 (9th Cir. 2000). Both
 3 prongs can be readily established in this case.

4 **A. A Binding Arbitration Agreement Was Formed When Plaintiff Consented to**
 5 **Eaze’s Terms of Service**

6 “[C]ourts must place arbitration agreements on an equal footing with other contracts, and
 7 enforce them according to their terms.” *Concepcion*, 131 S.Ct. at 1745 (internal citations
 8 omitted); *DIRECTV, Inc. v. Imburgia*, 136 S. Ct. 463, 468 (2015) (“lower courts must follow this
 9 Court’s holding in *Concepcion*”). In determining whether a valid arbitration agreement exists,
 10 federal courts “apply ordinary state-law principles that govern the formation of contracts.” *First*
 11 *Options of Chicago, Inc. v. Kaplan*, 514 U.S. 938, 944 (1995). Here, the Eaze Terms of Service is
 12 “governed by the laws of the State of California.” (Erickson Decl., Exh. E at 12.)

13 Applying contract formation principles from California law, courts in this District
 14 routinely uphold the enforceability of “clickwrap agreements”—online agreements where users
 15 are required to affirmatively manifest assent, either by checking a checkbox or clicking a button—
 16 even where the agreement’s terms are presented by hyperlink. *See, e.g., McLellan v. Fitbit, Inc.*,
 17 No. 3:16-CV-00036-JD, 2018 WL 1913832, at *2 (N.D. Cal. Jan. 24, 2018) (*McLellan II*)
 18 (confirming prior order in *McLellan v. Fitbit, Inc.*, No. 3:16-CV-00036-JD, 2017 WL 4551484, at
 19 *3 (N.D. Cal. Oct. 11, 2017) (*McLellan I*), compelling arbitration under clickwrap agreement
 20 where plaintiffs “‘each clicked a box next to a hyperlinked terms of service (or took equivalent
 21 action on a mobile platform)’ that stated, ‘I agree to the Fitbit Terms of Service and Privacy
 22 Policy’”); *Loewen v. Lyft, Inc.*, 129 F. Supp. 3d 945, 957 (N.D. Cal. 2015) (compelling arbitration
 23 under clickwrap agreement where “[o]nly after the ‘I agree’ box was checked” could prospective
 24 users submit an application); *Tompkins v. 23andMe, Inc.*, No. 5:13-cv-05682-LHK, 2014 WL
 25 2903752, at *8 (N.D. Cal. 2014) (compelling arbitration where “each named Plaintiff clicked a
 26 _____
 27 of arbitrability.”). Furthermore, the Eaze Platform connects authorized dispensaries with verified
 28 users through the Internet, which is a recognized “instrumentality and channel of interstate
 commerce” governed by the FAA. *United States v. Sutcliffe*, 505 F.3d 944, 953 (9th Cir. 2007).

1 box or button that appeared near a hyperlink to the TOS to indicate acceptance of the TOS”
 2 containing the arbitration provision); *see also Mohamed v. Uber Techs.*, 848 F.3d 1201, 1206 (9th
 3 Cir. 2016) (compelling arbitration and reversing *Mohamed v. Uber Technologies, Inc.*, 109 F.
 4 Supp. 3d 1185, 1197 (N.D. Cal. 2015), which explained clickwrap arbitration agreement presented
 5 on smartphone application, where user clicked button manifesting assent after having the
 6 opportunity to review the relevant terms of the hyperlinked agreements); *Nguyen v. Barnes &*
 7 *Noble Inc.*, 763 F.3d 1171, 1176 (9th Cir. 2014) (noting heightened notice in clickwrap
 8 agreements “where the user is required to affirmatively acknowledge the agreement before
 9 proceeding with use of the website”).

10 Here, Plaintiff consented to the Terms of Service when she visited Eaze’s website on
 11 September 21, 2017. (Erickson Decl., at ¶ 9.) Before she could create an account and access the
 12 Eaze Platform, Plaintiff was required to check a checkbox “consent[ing] to [Eaze’s Terms of](#)
 13 [Service](#)” and containing a hyperlink offset in blue text linking to a website containing the then-
 14 current Terms of Service. (*Id.*, at ¶ 9; *id.*, Exh. A.) Eaze’s Terms of Service contained a binding
 15 arbitration agreement, under the bolded and capitalized heading “DISPUTE RESOLUTION,”
 16 which explicitly stated that “You and Company agree that any dispute, claim or controversy
 17 arising out of or relating to this Agreement or the breach, termination, enforcement, interpretation
 18 or validity thereof or the use of the Service or Application (collectively, “Disputes”) will be settled
 19 by binding arbitration.” (*Id.*, at ¶ 23, *id.*, Exh. E at 10.) Indeed, Plaintiff explicitly acknowledges
 20 the Terms of Service in her Complaint. (Compl., at ¶ 32 n.15.)

21 Therefore, by checking the checkbox “consent[ing] to [Eaze’s Terms of Service](#),” Plaintiff
 22 affirmatively manifested consent to arbitrate disputes via “a classic ‘clickwrap’ agreement, a type
 23 of agreement that courts routinely find valid and enforceable because the user must affirmatively
 24 acknowledge receipt of the terms of the contract.” *McLellan II*, 2018 WL 1913832, at *2; *see*
 25 *also, e.g., Swift v. Zynga Game Network, Inc.*, 805 F. Supp. 2d 904, 910 (N.D. Cal. 2011)
 26 (describing clickwrap process); *Loewen*, 129 F. Supp. 3d at 957 (describing clickwrap process);
 27 *Cordas v. Uber Techs., Inc.*, 228 F. Supp. 3d 985, 990 (N.D. Cal. 2017) (compelling arbitration
 28 where user assented to TOS using a clickwrap agreement). Indeed, in *McLellan II*, this Court

1 declined to reconsider its prior holding compelling arbitration, where plaintiffs assented to a
 2 clickwrap arbitration agreement where ““each clicked a box next to a hyperlinked terms of service
 3 (or took equivalent action on a mobile platform)’ that stated, ‘I agree to the Fitbit Terms of Service
 4 and Privacy Policy.’” *McLellan II*, No. 3:16-CV-00036-JD, 2018 WL 1913832, at *2.

5 ***B. The Parties Clearly and Unmistakably Delegated Threshold Questions of***
 6 ***Arbitrability to an Arbitrator, and Agreed to Arbitrate the TCPA Claims Asserted***
 7 ***in this Action on an Individual Basis***

8 Because Plaintiff affirmatively consented to the arbitration agreement in Eaze’s Terms
 9 of Service, the only remaining questions are: (1) whether the Court or arbitrator decides
 10 questions of arbitrability; and (2) if questions of arbitrability fall within the province of the
 11 Court, whether (a) the dispute falls within the scope of the arbitration clause, and (b) classwide
 12 arbitration is permissible. *See Howsam v. Dean Witter Reynolds, Inc.*, 537 U.S. 79, 83 (2002)
 13 (characterizing ““question of arbitrability”” as “question [of] whether the parties have submitted
 14 a particular dispute to arbitration”) (citation omitted). Here, the Court need not address
 15 arbitrability because the Parties expressly delegated such questions to the arbitrator in the first
 16 instance. Even were the Court to reach such questions, there is no reasonable dispute that the
 17 arbitration agreement is broad in scope, covers the TCPA claims asserted in this action, and
 18 includes a class action waiver.

19 **1. Threshold questions of arbitrability should be decided by the**
 20 **arbitrator, not the Court**

21 “[W]hether the court or the arbitrator decides arbitrability is an issue for judicial
 22 determination unless the parties *clearly and unmistakably provide otherwise.*” *Mohamed*, 848 F.3d
 23 at 1208 (emphasis in original, internal quotation marks omitted); *see also Rent-A-Center, W., Inc. v.*
 24 *Jackson*, 561 U.S. 63, 70 (2010) (“An agreement to arbitrate a gateway issue is simply an additional
 25 antecedent agreement the party seeking arbitration asks the court to enforce, and the FAA operates
 26 on this additional arbitration agreement just as it does on any other.”). Clear and unmistakable
 27 evidence of an agreement to arbitrate arbitrability “might include . . . a course of conduct
 28 demonstrating assent . . . or . . . an express agreement to do so.” *Mohamed*, 848 F.3d at 1208

1 (internal quotation marks and citation omitted). Where the delegation is implied or express, “a court
2 *must* enforce an agreement that . . . clearly and unmistakable delegates arbitrability questions to the
3 arbitrator.” *Brennan v. Opus Bank*, 796 F.3d 1125, 1130-1132 (9th Cir. 2015) (emphasis added).

4 Here, the Parties unambiguously delegated arbitrability questions to an arbitrator in two
5 different ways. *First*, the arbitration agreement delegates “any dispute, claim or controversy arising
6 out of or relating to this Agreement *or the breach, termination, enforcement, interpretation or*
7 *validity thereof.*” (Erickson Decl., at ¶ 23, *id.*, Exh. E at 10.) Such broad language is an express
8 delegation of threshold issues to the arbitrator in the first instance. *See, e.g., Rent-A-Ctr., W., Inc.*,
9 561 U.S. at 66 (enforcing clause delegating “any dispute relating to the interpretation, applicability,
10 enforceability or formation of this Agreement including, but not limited to any claim that all or any
11 part of this Agreement is void or voidable”); *Mohamed*, 848 F.3d at 1208 (enforcing clause
12 delegating “disputes arising out of or relating to interpretation or application of this Arbitration
13 Provision, including the enforceability, revocability or validity of the Arbitration Provision”).

14 *Second*, the arbitration agreement incorporates the AAA rules.² (Erickson Decl., Exh. E
15 at 11.) In the Ninth Circuit, “incorporation of the AAA rules constitutes clear and unmistakable
16 evidence that contracting parties agreed to arbitrate arbitrability.” *McLellan I*, No. 3:16-CV-
17 00036-JD, 2017 WL 4551484, at *2 (quoting *Brennan*, 796 F.3d at 1130) (internal quotation
18 marks omitted); *Cordas*, 228 F. Supp. 3d at 991 (same); *Zenelaj v. Handybook Inc.*, 82 F. Supp. 3d
19 968, 972 (N.D. Cal. 2015) (“the overwhelming consensus of other circuits, as well as the vast
20 majority of decisions in this district, support Defendant’s claim that, in the context of this case,
21 incorporation of the AAA Rules effectively delegates jurisdictional questions, including
22 arbitrability and validity, to the arbitrator”). Indeed, in *McLellan I*, this Court granted a motion to
23 compel arbitration, holding that the arbitrator should decide arbitrability questions where the
24 Terms of Service incorporated the AAA rules. *McLellan I*, No. 3:16-CV-00036-JD, 2017 WL

25 _____
26 ² AAA Commercial Arbitration Rule 7(a) provides: “The arbitrator shall have the power to rule
27 on his or her own jurisdiction, including any objections with respect to the existence, scope, or
28 validity of the arbitration agreement or to the arbitrability of any claim or counterclaim.” Am.
Arbitration Assoc., Commercial Arbitration Rules and Mediation Procedures (2013), available at
<https://adr.org/sites/default/files/Commercial%20Rules.pdf>.

1 4551484, at *2, 3 (involving clause that “any dispute . . . arising out of . . . the Fitbit Service, or
2 any other Fitbit products or services’ will be resolved through arbitration pursuant to AAA rules”).

3 “Because the parties agreed to arbitrate . . . and agreed to delegate questions of arbitrability
4 to an arbitrator, the remaining questions of whether the arbitration agreement is valid and whether
5 it encompasses this dispute are delegated to an arbitrator.” *Cordas*, 228 F. Supp. 3d at 992. And
6 this Court need not, and should not, reach questions about the scope of the arbitration clause
7 before enforcing the Parties’ agreement to arbitrate the question of arbitrability. Instead, this
8 Court should defer Plaintiff’s claims to an arbitrator and dismiss the litigation entirely. *See, e.g.,*
9 *Loewen*, 129 F. Supp. 3d at 966 (dismissing with prejudice where there was no “compelling
10 reason to keep this case on the Court’s docket”).

11 **2. The Parties’ arbitration agreement is broad in scope, and encompasses**
12 **the TCPA claims asserted in this action**

13 Even were the Court to address the scope of the arbitration agreement, there is no
14 reasonable dispute about its breadth:

15 You and Company agree that *any dispute, claim or controversy arising out*
16 *of or relating to this Agreement or the breach, termination, enforcement,*
17 *interpretation or validity thereof or the use of the Service or Application*
(collectively, “Disputes”) will be settled by binding arbitration

18 (Erickson Decl., Exh. E at 10) (emphasis added). Here, Plaintiff’s TCPA claims plainly implicate
19 her agreement to receive communications from Eaze via an automatic telephone dialing systems.
20 (*Id.*, at 5-6; *see* Compl., at ¶ 32.) Furthermore, the Terms of Service broadly defines “Service” as
21 “any service provided to you by the Company,” and “Application” as “any associated application
22 supplied or website provided by the Company which purpose is to enable you to use the Service.”
23 (Erickson Decl., Exh. E at 2.)

24 As explained by the Ninth Circuit in *Simula, Inc. v. Autoliv, Inc.*, such broad language
25 covers any dispute that *touches a matter* covered by the contract:

26 Every court that has construed the phrase “arising in connection with”
27 in an arbitration clause has interpreted that language broadly. . . .

28 ***

To require arbitration, [the plaintiff’s] factual allegations need only

1 “touch matters” covered by the contract containing the arbitration
2 clause and all doubts are to be resolved in favor of arbitrability.

3 175 F.3d 716, 721 (9th Cir. 1999); *see also Mitsubishi*, 473 U.S. at 624 n.13 (holding that where
4 arbitration clause provided for the arbitration of “[a]ll disputes, controversies or differences which
5 may arise between [Mitsubishi] and [Soler] out of or in relation to [the specified provisions] or for
6 the breach thereof,” the plaintiff was required to arbitrate any claim that “touch[ed] matters
7 covered by the enumerated articles”) (alterations in original). Courts interpreting *Simula* and
8 *Mitsubishi* have similarly emphasized that arbitration agreements that, like the clause in Eaze’s
9 TOS, contain the phrase “‘related to’ must be read broadly” and encompass “matters that, while
10 not arising directly under the contractual relationship, are nevertheless related to it.” *In re TFT-
11 LCD (Flat Panel) Antitrust Litig.*, No. 04-1827 SI, 2011 WL 2650689, at *5 (N.D. Cal. July 6,
12 2011); *see also Chiron Corp. v. Ortho Diagnostic Sys., Inc.*, 207 F.3d 1126, 1131 (9th Cir. 2000)
13 (“The record here leaves little doubt that the dispute is subject to arbitration . . . The parties’
14 arbitration clause is broad and far reaching: ‘Any dispute, controversy or claim arising out of or
15 relating to the validity, construction, enforceability or performance of this Agreement’”).

16 Here, Plaintiff’s TCPA claims do much more than “touch” the Terms of Service: they
17 squarely implicate specific provisions in the Terms of Service. The gravamen of Plaintiff’s
18 Complaint is that Eaze sent her text message advertisements allegedly without her consent.
19 (Compl., at ¶¶ 21-22, 34.) Critical to Plaintiff’s claims of wrongdoing are the subjects of text
20 message communications, automatic telephone dialing systems, and promotions offered by Eaze to
21 its users. Each of these subjects is *specifically* addressed by the Terms of Service. The Terms of
22 Service includes a section for “EAZE COMMUNICATIONS” that addresses text message
23 communications, use of automatic telephone dialing systems, and promotions offered by Eaze—
24 subjects that Plaintiff has directly put at issue in her Complaint. (Erickson Decl., Exh. E at 5-
25 6.) Accordingly, Plaintiff’s allegations of wrongdoing *directly raise*, and at the very least “touch,”
26 matters addressed by the Terms of Service. *See Murphy v. DIRECTV, Inc.*, No. 2:07-cv-06465-
27 JHN-VBx, 2011 WL 3319574, at *4 (C.D. Cal. Aug. 2, 2011) *aff’d*, 724 F.3d 1218 (9th Cir. 2013)
28 (holding that plaintiffs’ claims alleging that defendant’s packaging led them to believe they were

1 purchasing DirecTV receivers and DVRs, when in fact they were leasing them, sufficiently
 2 touched matters covered by a customer agreement that discussed leased equipment); *LegalForce*
 3 *RAPC Worldwide, P.C. v. LegalZoom.com, Inc.*, No. 17-CV-07194-MMC, 2018 WL 1730333, at
 4 *4 (N.D. Cal. Apr. 10, 2018) (compelling arbitration where subject provision contained “broad
 5 clause covering ‘claims arising out of or relating to any aspect of the relationship between us’”).

6 More generally, Plaintiff’s claims implicate the “Service” and “Application” offered by
 7 Eaze. Eaze’s Terms of Service is a license to use the Eaze Platform and to access the premier
 8 technology platform connecting independent, authorized cannabis dispensaries with verified users.
 9 (Erickson Decl., at ¶ 7; *Id.*, Exh. E at 4-5.) Not only does Plaintiff’s Complaint expressly
 10 reference the Terms of Service (Compl., at ¶ 32 n.15), it is replete with allegations about Eaze’s
 11 business model, services to users, and promotional and marketing tools used to offer such services.
 12 (*See, e.g.*, Compl., at ¶¶ 13-19, 22-24.) Plaintiff herself is a verified user of the Eaze Platform, and
 13 received text messages after creating a user account. (Erickson Decl., at ¶¶ 9, 17) Thus,
 14 Plaintiff’s allegations are inextricably tied to the Eaze Platform, including her own registration for
 15 the Eaze Platform, which is the very subject of the Terms of Service and arbitration agreement.

16 Accordingly, Plaintiff’s claims are well within the broad scope of her arbitration agreement.
 17 Even if there were room for doubt, any doubts “should be resolved in favor of [arbitration].”
 18 *United Steelworkers of Am. v. Warrior & Gulf Nav. Co.*, 363 U.S. 574, 582-83 (1960) (“an order to
 19 arbitrate [a] particular grievance should not be denied unless it may be said with positive assurance
 20 that the arbitration clause is not susceptible of an interpretation that covers the asserted dispute”);
 21 *see Mitsubishi*, 473 U.S. at 626 (“[A]ny doubts concerning the scope of arbitrable issues should be
 22 resolved in favor of arbitration.”) (citation omitted).

23 3. The Parties’ arbitration agreement requires Plaintiff to proceed with 24 individual arbitration

25 It is well-settled that the Court must enforce the Parties’ arbitration agreement as written,
 26 including an agreement that the arbitration proceed on an individual and non-class basis. *See, e.g.*,
 27 *Concepcion*, 131 S.Ct. at 1748; *accord Stolt-Nielsen S.A. v. AnimalFeeds Int’l Corp.*, 559 U.S. 662,
 28 683 (2010). In *Concepcion*, the Supreme Court reasoned that “[r]equiring the availability of

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1 classwide arbitration,” contrary to the parties’ agreement, “interferes with fundamental attributes of
2 arbitration and thus creates a scheme inconsistent with the FAA.” 131 S.Ct at 1748. *See also*
3 *American Exp. Co. v. Italian Colors Rest.*, 133 S.Ct. 2304, 2312 & 2319 n.5 (2013) (the “FAA does
4 not sanction” any such basis for refusing to enforce an arbitration agreement’s class action waiver)
5 (citations omitted, alterations in original); *Sanchez v. Valencia Holding Co., LLC*, 61 Cal.4th 899,
6 924 (2015) (enforcing, under *Concepcion*, a class waiver in arbitration provision of a consumer
7 sales contract).

8 Here, the arbitration agreement unambiguously states:

9 You acknowledge and agree that you and Company are each waiving
10 the right to a trial by jury or to participate as a plaintiff or class User in
11 any purported class action or representative proceeding. Further, unless
12 both you and Company otherwise agree in writing, the arbitrator may
not consolidate more than one person’s claims, and may not otherwise
preside over any form of any class or representative proceeding.

13 (Erickson Decl., Exh. E at 10). Because this arbitration language clearly requires arbitration of all
14 of Plaintiff’s claims, but expressly prohibits arbitration of those claims on a classwide basis,
15 Plaintiff must arbitrate her claims on an individual, non-class basis. Indeed, refusing to enforce the
16 class action waiver here would fail to effectuate the parties’ agreement for the “speedy resolution
17 that . . . bilateral arbitration in particular was meant to secure.” *Italian Colors*, 133 S.Ct. at 2312.

18 **IV. CONCLUSION**

19 For the foregoing reasons, Eaze respectfully requests that the Court dismiss with prejudice
20 Plaintiff’s putative class action claims and issue an order compelling arbitration proceedings on an
21 individual basis.

22 DATED: June 22, 2018

Respectfully submitted,

23 BOIES SCHILLER FLEXNER LLP
24 ALBERT GIANG
25 MICHAEL D. ROTH
26 FIONA TANG

27 By /s/ Albert Giang
ALBERT GIANG
28 Attorneys for Defendant Eaze Solutions, Inc.

CERTIFICATE OF SERVICE

It is hereby certified that a true and correct copy of the foregoing was served electronically via the Court's electronic filing system on the date below upon all counsel of record in this matter.

DATED: June 22, 2018

BOIES SCHILLER FLEXNER LLP
ALBERT GIANG
MICHAEL D. ROTH
FIONA TANG

By /s/ Albert Giang
ALBERT GIANG
Attorneys for Defendant EAZE SOLUTIONS, INC.

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10
11 **UNITED STATES DISTRICT COURT**
12 **NORTHERN DISTRICT OF CALIFORNIA**
13 **SAN FRANCISCO DIVISION**
14

15 FARRAH WILLIAMS,
16 Plaintiff,
17 v.
18 EAZE SOLUTIONS, INC.,
19 Defendant.

Case No. 18-CV-02598-JD

**DECLARATION OF DANIEL ERICKSON
IN SUPPORT OF DEFENDANT EAZE
SOLUTIONS, INC.'S NOTICE OF
MOTION AND MOTION TO COMPEL
INDIVIDUAL ARBITRATION AND
DISMISS ACTION**

**[Notice of Motion and Motion to Compel
Individual Arbitration and Dismiss Action;
and [Proposed] Order filed concurrently
herewith]**

**Judge: Hon. James Donato
Date: September 13, 2018**

Complaint Filed: May 2, 2018
Trial Date: Not Set

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DECLARATION OF DANIEL ERICKSON

I, Daniel Erickson, declare as follows:

1. I have been employed by Eaze Solutions, Inc. (“Eaze”) since June 2016, when I started as Director of Engineering. In December 2016, I was promoted to my current role as Vice President of Engineering. I submit this declaration in support of Eaze’s Motion to Compel Individual Arbitration and Dismiss Action. Because of my history with the company and my role as Vice President of Engineering, I am familiar with Eaze’s platform including the user sign-up and consent process, user accounts, and the Terms of Service Agreement (the “Terms of Service”). In my role as Vice President of Engineering, I also have access to certain of Eaze’s electronic business records, including user account information, which include records of each user’s registration with Eaze and acceptance of the Terms of Service. I have personal knowledge of the facts stated herein and would and could testify competently thereto if called as a witness in this matter.

2. Eaze is a Delaware corporation with headquarters located in San Francisco, California.

3. As described in further detail below, all prospective users of the Eaze platform must go through an account creation process that requires users to consent to Eaze’s Terms of Service, which contains an arbitration agreement with a class action waiver, and to consent to receive communications from Eaze. I have confirmed that Plaintiff Farrah Williams is a registered and verified user of the Eaze platform, who consented both to the Terms of Service and to receive communications from Eaze.

Eaze’s Platform

4. Eaze is the premier technology platform connecting independent, authorized cannabis dispensaries with verified users, providing consumers with safe and secure access to legal cannabis. Using the Eaze platform, dispensaries are able to deliver legal and compliant cannabis and cannabis products to customers in their service area in a fast and safe manner. All delivery drivers are W-2 employees of dispensaries who receive training on how to safely deliver cannabis to the dispensaries’ customers. The Eaze platform includes, among other things, Eaze’s

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1 website, technology platform, and mobile-phone applications (“app”) (collectively, the “Eaze
2 Platform”). The Eaze Platform offers a method to connect authorized cannabis dispensaries and
3 users, but does not itself provide or handle cannabis.

4 5. In order for a user to request and receive a delivery, they must create an Eaze
5 account either through the website or via the Eaze app. Creating an Eaze account consists of two
6 main components: registration and verification. To register, a user must enter information
7 including their name, email address, and phone number. As part of this registration process, users
8 are also required to consent to Eaze’s Terms of Service and Privacy Policy, and opt in to receiving
9 communications from Eaze (once registered, users may opt out of communications at any time).
10 After registration, a user must complete verification in order to receive a delivery. To verify the
11 account, a user must upload a valid form of government identification (*i.e.*, a driver’s license, state
12 ID, or passport) onto the Eaze Platform, where an Eaze customer service representative confirms
13 that the user is over the age limit and legally permitted to purchase cannabis products.

14 6. Once a user is registered and verified, they may shop the Eaze menu. The products
15 available to the user are determined by the address the user enters, which connects the user to the
16 Eaze dispensary partner that services that area. Once a user places an order, the Eaze Platform
17 connects them with the relevant dispensary in their area, which fulfills that order and completes
18 delivery. When the driver arrives at the delivery destination, the driver checks the user’s ID to
19 confirm their identity. Only then may a user receive their delivery.

20 7. The Eaze Platform uses the Internet, through the website or the app, to connect
21 authorized dispensaries with verified users.

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1 *Users Affirmatively Consent to the Terms of Service, and to Receive Communications, as*
 2 *Part of the Registration Process Before Receiving Access to the Eaze Platform*

3 8. As the Vice President of Engineering, I am familiar with the process by which
 4 users register for and interface with the Eaze Platform. The aforementioned registration process
 5 begins with a mandatory signup page.

6 9. In September 2017, when
 7 Ms. Williams created an account on the Eaze
 8 Platform, Eaze’s website presented the
 9 prospective user with a mandatory signup
 10 page that asked the user to enter their email,
 11 create a password, and enter their zip code.
 12 The page also presented the user with a
 13 checkbox that required the user to affirm the
 14 following statement: “I agree to join in the
 15 following [collectives](#), and consent to [Eaze’s](#)
 16 [Terms of Service](#) and I Opt-In to receive

17 communications from Eaze and/or
 18 Dispensaries I transact with.” In contrast to
 19 the black text surrounding it, the words
 20 “[Eaze’s Terms of Service](#)” were in blue.

21 These words contained an active hyperlink to
 22 the Terms of Service that was in effect at the
 23 time, which users had the opportunity to
 24 scroll through and review. In order to click
 25 “Sign Up” and register to use the Eaze Platform, users were required to check the checkbox
 26 “consent[ing] to [Eaze’s Terms of Service](#)” and agree to all of the terms and conditions contained
 27 in the Terms of Service in effect at that time. Checking the checkbox “consent[ing] to [Eaze’s](#)
 28 [Terms of Service](#)” and clicking “Sign Up” automatically generated an electronic record of

1 acceptance in Eaze’s system. A true and correct screen capture of the signup screen for the Eaze
2 website as of September 2017 is attached hereto as **Exhibit “A.”**

3 10. If users attempted to click “Sign Up” *without* first checking the checkbox agreeing
4 to “[Eaze’s Terms of Service](#),” they would not have been able to proceed with signup. Instead, the
5 mandatory signup page would have reminded users to check the checkbox by highlighting in red
6 the statement: “I agree to join in the following [collectives](#), and consent to [Eaze’s Terms of Service](#)
7 and I Opt-In to receive communications from Eaze and/or Dispensaries I transact with.” A true
8 and correct copy of a screenshot of this reminder is attached hereto as **Exhibit “B.”**

9 11. Current prospective users attempting to create an account on the Eaze Platform are
10 also presented with a mandatory screen that asks them to enter their email address, create a
11 password, and indicate their delivery zip code. Before progressing to the next screen, the user sees
12 clear white text on a blue background that reads: “By clicking ‘Next’, I hereby attest that I am 21
13 years old or older, consent to Eaze’s Terms of Service & Privacy Policy, and to use electronic
14 records and signature, and opt in to receive communications from Eaze and/or Dispensaries with
15 which I transact.” The phrase, “Eaze’s Terms of Service & Privacy Policy” is underlined, and
16 clicking on the text directs the user to Eaze’s Terms of Service via an active hyperlink. A true and
17 correct screen capture of Eaze’s signup page as it appeared on the Eaze website on June 18, 2018
18 is attached hereto as **Exhibit “C.”** A true and correct screen capture of the signup page on the
19 Eaze app as of June 18, 2018 is attached hereto as **Exhibit “D.”**

20 12. I am unaware of any period when Eaze did not present prospective users with a
21 mandatory signup page that required affirmative consent to Eaze’s Terms of Service.

22 13. Eaze’s Terms of Service describes the terms and conditions by which Eaze offers
23 access to Eaze’s Platform to users, and users must consent to the Terms of Service before
24 accessing the Eaze Platform. Both currently, and in September 2017, users could not complete the
25 registration process and access the Eaze Platform if they chose to decline the Terms of Service.
26 Correspondingly, because all Eaze deliveries must be pre-arranged through the Eaze Platform,
27 users cannot request or receive Eaze deliveries without first accepting the Terms of Service and
28 completing the aforementioned registration process.

1 14. In the normal course of its business, Eaze maintains user account information,
2 including when and how its users register for and use the Eaze Platform. As the Vice President of
3 Engineering, I have access to this registration information, and I am familiar with this information
4 and the manner in which it is recorded and maintained. When a user electronically accepts Eaze's
5 Terms of Service, either through the Eaze website or the Eaze app, that information is sent to
6 Eaze's server, which automatically records the timestamp of the user's acceptance of the Terms of
7 Service and signup. Nothing in the system changes the timestamp that is recorded.

8 15. Information relating to a user's registration process and acceptance of the Terms of
9 Service is maintained in Eaze records that are accessible to me and certain other Eaze employees.
10 Using Eaze's electronically-stored user records, I ran a query for Plaintiff Farrah Williams to
11 identify the precise date, time, and method (*i.e.*, website or Eaze app) by which she electronically
12 consented to the Terms of Service.

13 ***Plaintiff Farrah Williams Affirmatively Consented to the Terms of Service***

14 16. I searched Eaze's records and confirmed that, through the Eaze website, Plaintiff
15 Farrah Williams successfully created a profile under the name Farrah Raoufi. As part of the
16 verification process, users must provide required documentation to verify their age and identities.
17 Eaze's records show that the user Farrah Raoufi uploaded documentation that identifies her as
18 "Farrah Raoufi-Williams." Furthermore, I confirmed from Eaze's records that (a) the phone
19 number for user Farrah Raoufi matches the "5968" phone number provided for Farrah Williams in
20 the Complaint, including the "(619)" area code; (b) the city verified for user Farrah Raoufi is San
21 Diego, which matches with Farrah Williams's representation in the Complaint that she is "a
22 citizen and resident of San Diego, California"; (c) there is no other user on the Eaze Platform with
23 the name "Farrah Williams" or "Farrah Raoufi"; and (d) there is no other user phone number on
24 the Eaze Platform that matches the "5968" number in the "(619)" area code. Therefore, I believe
25 that Farrah Williams is the same person as Farrah Raoufi.

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1 17. Ms. Williams created her Eaze account on September 21, 2017, by completing both
2 registration and verification, and placing her first order that day. Eaze's records show that, as part
3 of her registration process on September 21, 2017, Ms. Williams was presented with and
4 electronically accepted the Terms of Service through the Eaze website, by clicking the checkbox
5 affirming her consent to be bound by the Terms of Service then in effect. Below is a screenshot
6 excerpt of Eaze's records confirming the time and date of Ms. Williams' successful registration
7 and creation of her user ID (423199), which could not occur without her consent to the Terms of
8 Service:

user_id	reporting_day	time	event
423199	2017-09-21 0:00:00	2017-09-21 21:30:58	Signup.Success
423199	2017-09-21 0:00:00	2017-09-21 21:30:58	Verification.StageChange
423199	2017-09-21 0:00:00	2017-09-21 21:30:59	Verification.StageChange
423199	2017-09-21 0:00:00	2017-09-21 21:31:00	Catalog.Load
423199	2017-09-21 0:00:00	2017-09-21 21:31:01	Catalog.Load
423199	2017-09-21 0:00:00	2017-09-21 21:31:01	Catalog.Load
423199	2017-09-21 0:00:00	2017-09-21 21:31:08	Verification.Phone.Success
423199	2017-09-21 0:00:00	2017-09-21 21:31:24	Verification.StageChange
423199	2017-09-21 0:00:00	2017-09-21 21:31:25	Verification.StageChange
423199	2017-09-21 0:00:00	2017-09-21 21:31:25	Verification.ConfirmPhone.Success
423199	2017-09-21 0:00:00	2017-09-21 21:32:31	Verification.Id.Submit
423199	2017-09-21 0:00:00	2017-09-21 21:32:32	Verification.StageChange
423199	2017-09-21 0:00:00	2017-09-21 21:32:32	Verification.Id.Success

17 18. Shortly after her successful registration, Ms. Williams also successfully completed
18 the verification process. This means that she successfully uploaded any required documentation,
19 including uploading her California driver's license by taking a photograph of her driver's license
20 with her cellular phone and sending the image to the Eaze verification team.

21 19. The version of the Terms of Service that was in effect on September 21, 2017, and
22 that Ms. Williams had the opportunity to review prior to her acceptance of it, was the August 16,
23 2016 Terms of Service. Attached hereto as **Exhibit "E"** is a true and correct copy of the August
24 16, 2016 Terms of Service.

25 ***Plaintiff Farrah Williams Affirmatively Consented to Receive Text Messages from Eaze***

26 20. I have seen a copy of Ms. Williams' Complaint against Eaze, and my
27 understanding is that Ms. Williams' lawsuit alleges violations of the Telephone Consumer
28 Protection Act because she claims that she never consented to receive communications from Eaze

BOIES SCHILLER FLEXNER LLP

1 and she was never informed of her right to opt-out of such communications. As noted above,
2 Eaze’s records confirm that Ms. Williams consented to receive communications from Eaze and
3 dispensaries as part of her initial registration process on September 21, 2017.

4 21. I searched Eaze’s records that track and record when text messages are sent to
5 users. Eaze’s records confirm that Ms. Williams received no text messages from Eaze prior to her
6 consent to receive such communications on September 21, 2017. I also confirmed that, after
7 consenting to receive communications from Eaze, Ms. Williams received many text messages in
8 connection with her Eaze account that contained the opt-out instruction “Text STOP to
9 unsubscribe,” but that Eaze has no record of Ms. Williams opting out of communications with
10 Eaze, either by texting “STOP” to unsubscribe, emailing Eaze with an unsubscribe request, or by
11 any other means.

12 ***The Relevant Terms of Service Contain an Arbitration Agreement***

13 22. I have access to the current version of Eaze’s Terms of Service, which is dated
14 August 16, 2016, which took effect while I was an employee at Eaze, and which is still in effect
15 today. Included within Eaze’s Terms of Service is an arbitration agreement requiring mutual
16 arbitration of disputes and legal claims as well as a class action waiver.

17 23. I accessed Eaze’s business records and have reviewed the August 16, 2016 Terms
18 of Service that Ms. Williams was presented with and agreed to on September 21, 2017 (*see*
19 Exhibit “E”). It contains an arbitration agreement with a class action waiver, which states in
20 relevant part:

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DISPUTE RESOLUTION

You and Company agree that any dispute, claim or controversy arising out of or relating to this Agreement or the breach, termination, enforcement, interpretation or validity thereof or the use of the Service or Application (collectively, "Disputes") will be settled by binding arbitration, except that each party retains the right to bring an individual action in small claims court and the right to seek injunctive or other equitable relief in a court of competent jurisdiction to prevent the actual or threatened infringement, misappropriation or violation of a party's copyrights, trademarks, trade secrets, patents or other intellectual property rights. You acknowledge and agree that you and Company are each waiving the right to a trial by jury or to participate as a plaintiff or class User in any purported class action or representative proceeding. Further, unless both you and Company otherwise agree in writing, the arbitrator may not consolidate more than one person's claims, and may not otherwise preside over any form of any class or representative proceeding. If this specific paragraph is held unenforceable, then the entirety of this "Dispute Resolution" section will be deemed void. Except as provided in the preceding sentence, this "Dispute Resolution" section will survive any termination of this Agreement.

24. Users, including Ms. Williams, could also review the current version of Eaze's Terms of Service by clicking "Terms" on the home page of the Eaze website or visiting <https://www.eaze.com/terms>. The current Terms of Service on Eaze's website is the same version, and contains the same arbitration agreement, as the one to which Ms. Williams consented on September 21, 2017.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct. Executed June 22, 2018, at San Francisco, California.



Daniel Erickson

EXHIBIT A



Let's get you set up

Sign up now to get marijuana delivered
anywhere in minutes.

CREATE MY ACCOUNT



I agree to join in the following [collectives](#), and consent to [Eaze's Terms of Service](#) and I Opt-In to receive communications from Eaze and/or Dispensaries I transact with.

SIGN UP

Already have an account?

LOG IN

EXHIBIT B



Let's get you set up

Sign up now to get marijuana delivered anywhere in minutes.

CREATE MY ACCOUNT

Email
christopher+hello1@eaze.com

Password
..... 

Zip Code
94111

I agree to join in the following [collectives](#), and consent to [Eaze's Terms of Service](#) and I Opt-In to receive communications from Eaze and/or Dispensaries I transact with.

SIGN UP

Already have an account?

LOG IN

EXHIBIT C



Sign up to place your order

Enter your personal details to get started.

Email

Password



Delivery Zip Code

By clicking "Next", I hereby attest that I am 21 years old or older, consent to [Eaze's Terms of Service & Privacy Policy](#), and to use electronic records and signatures, and opt in to receive communications from Eaze and/or Dispensaries with which I transact.

NEXT

EXHIBIT D



Account Info

Let's get you set up

Enter your personal details to get started.

Email
sample@gmail.com

Password
●●●●●●

Zip code
94111

By clicking Sign Up, I hereby attest that I am 21 years old or older, consent to Eaze's **Terms of Service** and **Privacy Policy**, to use electronic records and signatures, and opt in to receive communications from Eaze and/or Dispensaries with which I transact.

SIGN UP

EXHIBIT E

A photograph showing two hands holding a white paper bag. The bag has the word 'EAZE' printed on it in a dark, bold font. The hands are positioned at the top corners of the bag, and the bag is slightly open, revealing some contents inside. The background is a plain, light-colored surface.

Terms of Service

AUGUST 16, 2016

The terms and conditions stated herein (collectively, the "Agreement") constitute a legal agreement between you and Eaze Solutions, Inc., and its subsidiaries and affiliates (collectively, "EAZE" or the "Company"). In order to use the Service (defined below) and the associated Application (defined below) you must agree to the Terms and Conditions that are set out below. By using or receiving any services supplied to you by the Company (collectively, the "Service"), and/or accessing, downloading, installing or using any associated application or website provided by the Company (including without limitation, the EAZE website located at eaze.com) (collectively, the "Application"), you hereby expressly acknowledge and agree to be bound by the terms and conditions of the Agreement, and any future amendments and additions to this Agreement as published from time to time at the EAZE website or through the Service.

USER AGREEMENT

DISCLAIMER & ACKNOWLEDGMENT

THE COMPANY IS NOT A MEDICAL CANNABIS COLLECTIVE OR COOPERATIVE ("DISPENSARY") AND DOES NOT ITSELF PROVIDE MEDICAL CANNABIS DELIVERY SERVICES TO MEDICAL CANNABIS PATIENTS. THE COMPANY DOES NOT PROVIDE OR SELL MEDICAL CANNABIS AND IS NOT A MEDICAL CANNABIS DELIVERY SERVICE PROVIDER. IT IS THE SOLE RESPONSIBILITY OF THE THIRD PARTY DISPENSARY TO OFFER STATE LAW COMPLIANT SERVICES, WHICH MAY BE LOCATED, SCHEDULED, AND COORDINATED THROUGH USE OF THE APPLICATION OR SERVICE. EAZE OFFERS PRE-VERIFICATION OF USERS AND PROVIDES USERS' INFORMATION TO DISPENSARIES, AND A METHOD TO CONTACT A DISPENSARY TO OBTAIN DELIVERY SERVICES FROM THE DISPENSARY. THE COMPANY DOES NOT AND DOES NOT INTEND TO PROVIDE

DELIVERY SERVICES OR ACT IN ANY WAY AS A DELIVERY SERVICE PROVIDER, AND HAS NO RESPONSIBILITY OR LIABILITY FOR ANY DELIVERY SERVICES PROVIDED TO YOU BY THIRD PARTY DISPENSARIES.

ACKNOWLEDGMENT OF FEDERAL LAW

User expressly acknowledges that EAZE is for residents with laws regulating medical or the recreational use of cannabis only and that medical cannabis collectives and patients are established pursuant to their respective State laws. Marijuana is included on Schedule 1 under the United States Controlled Substances Act. Under the federal laws of the United States of America, manufacturing, distributing, dispensing or possession of marijuana is illegal, and individuals are subject to arrest and/or prosecution for doing so. Client further acknowledges that medical use is not recognized as a valid defense under federal laws regarding marijuana. Client also acknowledges that the interstate transportation of marijuana is a federal offense.

ACKNOWLEDGMENT OF CALIFORNIA LAW

User expressly acknowledges that the use, possession, cultivation, transportation and distribution of cannabis is illegal in California unless all participants are acting completely within the scope of California's medical cannabis laws as set forth in the Attorney General's Guidelines for the Security and Non-Diversion of Marijuana Grown for Medical Use (August 2008) and the Medical Marijuana Regulation and Safety Act (consisting of AB243), AB266 and SB643 and any amendments thereto.

ACKNOWLEDGMENT OF THE LAWS OF USERS STATE OF RESIDENCY

The Company has its principal place of business is California. Even though the EAZE Application may be accessed outside of California, the Service is currently available only to users and Dispensaries located in California. In all events, you must abide the by and follow the laws of the state in which you are a resident. User expressly acknowledges and assumes full responsibility for cooperating with the laws of the state of user's residency.

TERMS & CONDITIONS OF SERVICE

The terms and conditions stated in this Agreement constitute a legal agreement between you and the Company. In order to use the Service (defined below) and the associated Application (defined below) you must agree to the Terms and Conditions that are set out below. By using or receiving any services provided to you by the Company (collectively, the "Service"), and downloading, installing or using any associated application supplied or website provided by the Company which purpose is to enable you to use the Service (collectively, the "Application"), you hereby expressly acknowledge and agree to be bound by the terms and conditions of the Agreement, and any future amendments and additions to this Agreement as published from time to time at the Company website www.eaze.com or through the Service.

The Company is willing to license, not sell, the EAZE Application to you only upon the condition that you accept all the terms contained in this Agreement. By signing up with or by using the EAZE Application, you indicate that you understand this Agreement and accept all of its terms. If you do not accept all the terms of this Agreement, then the Company is unwilling to license the EAZE Application to you.

The Company reserves the right to modify the terms and conditions of this Agreement or its policies relating to the Service or Application at any time, effective upon posting of an updated version of this Agreement on the Service or Application. You are responsible for regularly reviewing this Agreement. Continued use of the Service or Application after any such changes shall constitute your consent to such changes.

The EAZE Application provides the communication structure to enable a connection between persons ("Users") and third party Dispensaries who provide medical cannabis collective or cooperative membership opportunities and members-only delivery services for medical marijuana. This Agreement describes the terms and conditions that will govern your use of and participation in the EAZE Application.

KEY CONTENT-RELATED TERMS

"Content" means text, graphics, images, music, software (excluding the Application), audio, video, information or other materials.

"Company Content" means Content that Company makes available through the Service or Application, including any Content licensed from a third party, but excluding User Content.

"User" means a person who accesses or uses the Service or Application

"User Content" means Content that a User posts, uploads, publishes, submits or transmits to be made available through the Service or Application.

"Collective Content" means, collectively, Company Content and User Content.

REPRESENTATIONS AND WARRANTIES

Users agree not to post, email, or otherwise make available Content: a) that is unlawful, harmful, threatening, abusive, harassing, defamatory, libelous, invasive of another's privacy, or is harmful to minors in any way; b) that advertises any illegal service or the sale of any items which are prohibited or restricted by the laws of your State; c) attempt to gain unauthorized access to the Company's computer systems or engage in any activity that disrupts, diminishes the quality of, interferes with the performance of, or impairs the functionality of, the Service or the EAZE Application (including the EAZE website). By using the Application or Service, you expressly represent and warrant that you are legally entitled to enter into this Agreement. If you reside in a jurisdiction that restricts the use of the Service because of your age, you warrant that you are at least 18 years old at the time you use the Service.

the Service because of age, or restricts the ability to enter into agreements such as this one due to age or other restrictions, you must abide by such age limits or other restrictions and you must not use the Application and Service. Without limiting the foregoing, the Service and Application is not available to children (persons under the age of 18).

By using the Application or Service, you represent and warrant that you are at least 18 years old. By using the Application or the Service, you represent and warrant that you have the right, authority and capacity to enter into this Agreement and to abide by the terms and conditions of this Agreement. Your participation in using the Service and/or Application is for your sole, personal use. You may not authorize others to use your user status, and you may not assign or otherwise transfer your user account to any other person or entity. When using the Application or Service you agree to comply with all applicable laws from your home nation, country, state and city in which you are present while using the Application or Service.

You may only access the Service using authorized means. It is your responsibility to check to ensure you download the correct Application for your device. The Company is not liable if you do not have a compatible handset or if you have downloaded the wrong version of the Application for your handset. The Company reserves the right to terminate this Agreement should you be using the Service or Application with an incompatible or unauthorized device.

By using the Application or the Service, you agree that:

1. You will only use the Service or Application for lawful purposes; you will not use the Services for sending or storing any unlawful material or for fraudulent purposes.
2. You will not use the Service or Application to cause nuisance, annoyance or inconvenience.
3. You will not impair the proper operation of the network.
4. You will not try to harm the Service or Application in any way whatsoever.
5. You will not copy, or distribute the Application or other content without written permission from the Company.
6. You will only use the Application and Service for your own use and will not resell it to a third party.
7. You will keep secure and confidential your account password or any identification we provide you which allows access to the Service.
8. You will provide us with whatever proof of identity we may reasonably request.
9. You will at all times act in full compliance with the laws of your State pertaining to medical (or the recreational use of) cannabis collectives and/or cooperatives

LICENSE GRANT, RESTRICTIONS, AND COPYRIGHT POLICY

LICENSES TO COMPANY CONTENT AND USER CONTENT GRANTED BY COMPANY

Subject to your compliance with the terms and conditions of this Agreement, Company grants you a limited, non-exclusive, non-transferable license: (i) to view, download and print any Company Content solely for your personal and non-commercial purposes; and (ii) to view any User Content to

which you are permitted access solely for your personal and non-commercial purposes. You have no right to sublicense the license rights granted in this section.

You will not use, copy, adapt, modify, prepare derivative works based upon, distribute, license, sell, transfer, publicly display, publicly perform, transmit, stream, broadcast or otherwise exploit the Service, Application or Collective Content, except as expressly permitted in this Agreement. No licenses or rights are granted to you by implication or otherwise under any intellectual property rights owned or controlled by Company or its licensors, except for the licenses and rights expressly granted in this Agreement.

LICENSE GRANTED BY USER

Eaze may, in its sole discretion, permit Users to post, upload, publish, submit or transmit User Content. By making available any User Content on or through the Service or Application, you hereby grant to Company a worldwide, irrevocable, perpetual, non-exclusive, transferable, royalty-free license, with the right to sublicense, to use, view, copy, adapt, modify, distribute, license, sell, transfer, publicly display, publicly perform, transmit, stream, broadcast and otherwise exploit such User Content only on, through or by means of the Service or Application. Company does not claim any ownership rights in any User Content and nothing in this Agreement will be deemed to restrict any rights that you may have to use and exploit any User Content.

You acknowledge and agree that you are solely responsible for all User Content that you make available through the Service or Application. Accordingly, you represent and warrant that: (i) you either are the sole and exclusive owner of all User Content that you make available through the Service or Application or you have all rights, licenses, consents and releases that are necessary to grant to Company and to the rights in such User Content, as contemplated under this Agreement; and (ii) neither the User Content nor your posting, uploading, publication, submission or transmittal of the User Content or Company's use of the User Content (or any portion thereof) on, through or by means of the Service or Application will infringe, misappropriate or violate a third party's patent, copyright, trademark, trade secret, moral rights or other intellectual property rights, or rights of publicity or privacy, or result in the violation of any applicable law or regulation

You agree that the Company may verify your medical recommendation and may share your identification, your medical recommendation and the results of the medical recommendation verification with any Dispensary with that you join or transact with through the Company

EAZE COMMUNICATIONS

By becoming a User, you expressly consent and agree to accept and receive communications from us and/or Dispensaries that you transact with, including via e-mail, text message, calls, and push notifications to the cellular telephone number you provided to us. By consenting to being contacted by the Company, you understand and agree that you may receive communications generated by automatic telephone dialing systems and/or which will deliver prerecorded messages sent by or on behalf of the Company, its affiliated companies and/or Dispensaries, including but not limited to:

penalty or the Company, its affiliated companies and/or Drivers, including but not limited to:

operational communications concerning your User account or use of the EAZE Application or Services, updates concerning new and existing features of the EAZE Application, communications concerning promotions run by us or third party Dispensaries, and news concerning the Company and industry developments. IF YOU WISH TO OPT-OUT OF PROMOTIONAL EMAILS, TEXT MESSAGES, OR OTHER COMMUNICATIONS, YOU MAY OPT-OUT BY FOLLOWING THE UNSUBSCRIBE OPTIONS PROVIDED TO YOU. Standard text messaging charges applied by your cell phone carrier will apply to text messages we send. You acknowledge that you are not required to consent to receive promotional messages as a condition of using the EAZE Application or the Service. However, you acknowledge that opting out of receiving text messages or other communications may impact your use of the EAZE Application or the Service.

APPLICATION LICENSE

Subject to your compliance with this Agreement, Company grants you a limited non-exclusive, non-transferable license to download and install a copy of the Application on a single mobile device or computer that you own or control and to run such copy of the Application solely for your own personal use. Furthermore, with respect to any Application accessed through or downloaded from the Apple App Store, Android Market, Amazon App Store, BlackBerry App World, Samsung Apps Store, Nokia OVI store, and Windows marketplace for Mobile ("App Store Sourced Application"), you will use the App Store Sourced Application as permitted by the "Usage Rules" set forth in the App Store Sourced Application Terms of Service. Company reserves all rights in and to the Application not expressly granted to you under this Agreement.

FEE AND REFUND POLICY

Any fees that the Company may charge you for the Application or Service, are due immediately and are non-refundable. This no refund policy shall apply at all times regardless of your decision to terminate your usage, our decision to terminate your usage, disruption caused to our Application or Service either planned, accidental or intentional, or any reason whatsoever. The Company reserves the right to determine final prevailing pricing - Please note the pricing information published on the website may not reflect the prevailing pricing.

The Company, at its sole discretion, may make promotional offers with different features and different rates to any of our customers. These promotional offers, unless made to you, shall have no bearing whatsoever on your offer or contract. Any such promotions shall be made subject to its particular terms, and unless expressly provided otherwise shall expire ninety (90) days following the date of the promotion offer. The Company may change the fees for our Service or Application, as we deem necessary for our business. We encourage you to check back at our website periodically if you are interested about how we charge for the Service or Application.

INTELLECTUAL PROPERTY OWNERSHIP

The Company alone (and its licensors, where applicable) shall own all right, title and interest, including all related intellectual property rights, in and to the Application and the Service and any suggestions, ideas, enhancement requests, feedback, recommendations or other information provided by you or any other party relating to the Application or the Service. This Agreement is not a sale and does not convey to you any rights of ownership in or related to the Application or the Service, or any intellectual property rights owned by the Company. The Company name, the Company logo, and the product names associated with the Application and Service are trademarks of the Company or third parties, and no right or license is granted to use them.

THIRD PARTY INTERACTIONS

During use of the Application and Service, you may enter into correspondence with, purchase goods and/or services from, or participate in promotions of third party service providers, advertisers or sponsors showing their goods and/or services through the Application or Service. In particular, Company is not a party to any transaction that a User may enter into with a Dispensary or third party payment processor. Any such activity, and any terms, conditions, warranties or representations associated with such activity, is solely between you and the applicable third-party. The Company and its licensors shall have no liability, obligation or responsibility for any such correspondence, purchase, transaction or promotion between you and any such third-party. The Company does not endorse any sites on the Internet that are linked through the Service or Application, and in no event shall the Company or its licensors be responsible for any content, products, services or other materials on or available from such sites or third party providers. The Company provides the Application and Service to you pursuant to the terms and conditions of this Agreement. You recognize, however, that certain third-party providers of goods and/or services may require your agreement to additional or different terms and conditions prior to your use of or access to such goods or services, and the Company disclaims any and all responsibility or liability arising from such agreements between you and the third party providers.

The Company may rely on third party advertising and marketing supplied through the Application or Service and other mechanisms to subsidize the Application or Service. By agreeing to these terms and conditions you agree to receive such advertising and marketing. The Company may compile and release information regarding you and your use of the Application or Service on an anonymous basis as part of a customer profile or similar report or analysis. You agree that it is your responsibility to take reasonable precautions in all actions and interactions with any third party you interact with through the Service.

INDEMNIFICATION

By entering into this Agreement and using the Application or Service, you agree that you shall defend, indemnify and hold the Company, its licensors and each such party's parent organizations, subsidiaries, affiliates, officers, directors, Users, employees, attorneys and agents harmless from and against any and all claims, costs, damages, losses, liabilities and expenses (including attorneys' fees and costs) arising out of or in connection with: (a) your violation or breach of any term of this

Agreement or any applicable law or regulation, whether or not referenced herein; (b) your violation of any rights of any third party, including providers of delivery services arranged via the Service or Application, or (c) your use or misuse of the Application or Service.

DISCLAIMER OF WARRANTIES

THE COMPANY MAKES NO REPRESENTATION, WARRANTY, OR GUARANTY AS TO THE RELIABILITY, TIMELINESS, QUALITY, SUITABILITY, AVAILABILITY, ACCURACY OR COMPLETENESS OF THE SERVICE OR APPLICATION. THE COMPANY DOES NOT REPRESENT OR WARRANT THAT: (A) THE USE OF THE SERVICE OR APPLICATION WILL BE SECURE, TIMELY, UNINTERRUPTED OR ERROR-FREE OR OPERATE IN COMBINATION WITH ANY OTHER HARDWARE, APPLICATION, SYSTEM OR DATA, (B) THE SERVICE OR APPLICATION WILL MEET YOUR REQUIREMENTS OR EXPECTATIONS, (C) ANY STORED DATA WILL BE ACCURATE OR RELIABLE, (D) THE QUALITY OF ANY PRODUCTS, SERVICES, INFORMATION, OR OTHER MATERIAL PURCHASED OR OBTAINED BY YOU THROUGH THE SERVICE WILL MEET YOUR REQUIREMENTS OR EXPECTATIONS, (E) ERRORS OR DEFECTS IN THE SERVICE OR APPLICATION WILL BE CORRECTED, OR (F) THE SERVICE OR THE SERVER(S) THAT MAKE THE SERVICE AVAILABLE ARE FREE OF VIRUSES OR OTHER HARMFUL COMPONENTS. THE SERVICE AND APPLICATION IS PROVIDED TO YOU STRICTLY ON AN "AS IS" BASIS. ALL CONDITIONS, REPRESENTATIONS AND WARRANTIES, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR NON-INFRINGEMENT OF THIRD PARTY RIGHTS, ARE HEREBY DISCLAIMED TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW BY THE COMPANY. THE COMPANY MAKES NO REPRESENTATION, WARRANTY, OR GUARANTY AS TO THE RELIABILITY, SAFETY, TIMELINESS, QUALITY, SUITABILITY OR AVAILABILITY OF ANY SERVICES, PRODUCTS OR GOODS OBTAINED BY THIRD PARTIES THROUGH THE USE OF THE SERVICE OR APPLICATION. YOU ACKNOWLEDGE AND AGREE THAT THE ENTIRE RISK ARISING OUT OF YOUR USE OF THE APPLICATION AND SERVICE, AND ANY THIRD PARTY SERVICES OR PRODUCTS REMAINS SOLELY WITH YOU, TO THE MAXIMUM EXTENT PERMITTED BY LAW.

INTERNET DELAYS

THE COMPANY'S SERVICE AND APPLICATION MAY BE SUBJECT TO LIMITATIONS, DELAYS, AND OTHER PROBLEMS INHERENT IN THE USE OF THE INTERNET AND ELECTRONIC COMMUNICATIONS. THE COMPANY IS NOT RESPONSIBLE FOR ANY DELAYS, DELIVERY FAILURES, OR OTHER DAMAGE RESULTING FROM SUCH PROBLEMS.

LIMITATION OF LIABILITY

IN NO EVENT SHALL THE COMPANY AND/OR ITS LICENSORS BE LIABLE TO ANYONE FOR ANY INDIRECT, PUNITIVE, SPECIAL, EXEMPLARY, INCIDENTAL, CONSEQUENTIAL OR OTHER DAMAGES OF ANY TYPE OR KIND (INCLUDING PERSONAL INJURY, LOSS OF DATA, REVENUE, PROFITS, USE OR OTHER ECONOMIC ADVANTAGE). THE COMPANY AND/OR ITS LICENSORS SHALL NOT BE LIABLE FOR ANY LOSS, DAMAGE OR INJURY WHICH MAY BE INCURRED BY YOU INCLUDING BUT

LIABLE FOR ANY LOSS, DAMAGE OR INJURY WHICH MAY BE INCURRED BY YOU, INCLUDING BUT NOT LIMITED TO LOSS, DAMAGE OR INJURY ARISING OUT OF, OR IN ANY WAY CONNECTED WITH THE SERVICE OR APPLICATION, INCLUDING BUT NOT LIMITED TO THE USE OR INABILITY TO USE THE SERVICE OR APPLICATION, ANY RELIANCE PLACED BY YOU ON THE COMPLETENESS, ACCURACY OR EXISTENCE OF ANY ADVERTISING, OR AS A RESULT OF ANY RELATIONSHIP OR TRANSACTION BETWEEN YOU AND ANY THIRD PARTY SERVICE PROVIDER, ADVERTISER OR SPONSOR WHOSE ADVERTISING APPEARS ON THE WEBSITE OR IS REFERRED BY THE SERVICE OR APPLICATION, EVEN IF THE COMPANY AND/OR ITS LICENSORS HAVE BEEN PREVIOUSLY ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

THE COMPANY MAY INTRODUCE YOU TO THIRD PARTY DELIVERY SERVICE PROVIDERS FOR THE PURPOSES OF PROVIDING DELIVERY SERVICES. WE WILL NOT ASSESS THE SUITABILITY, LEGALITY OR ABILITY OF ANY THIRD PARTY DELIVERY SERVICE PROVIDERS AND YOU EXPRESSLY WAIVE AND RELEASE THE COMPANY FROM ANY AND ALL ANY LIABILITY, CLAIMS OR DAMAGES ARISING FROM OR IN ANY WAY RELATED TO THE THIRD PARTY DELIVERY SERVICE PROVIDER. YOU ACKNOWLEDGE THAT THIRD PARTY DELIVERY SERVICE PROVIDERS PROVIDING DELIVERY SERVICES REQUESTED THROUGH THE COMPANY MAY OFFER DELIVERY SERVICES AND MAY NOT BE PROFESSIONALLY LICENSED OR PERMITTED. THE COMPANY WILL NOT BE A PARTY TO DISPUTES, NEGOTIATIONS OF DISPUTES BETWEEN YOU AND ANY THIRD PARTY PROVIDERS. WE CANNOT AND WILL NOT PLAY ANY ROLE IN MANAGING PAYMENTS BETWEEN YOU AND THE THIRD PARTY PROVIDERS. RESPONSIBILITY FOR THE DECISIONS YOU MAKE REGARDING SERVICES OFFERED VIA THE APPLICATION OR SERVICE (WITH ALL ITS IMPLICATIONS) RESTS SOLELY WITH YOU. WE WILL NOT ASSESS THE SUITABILITY, LEGALITY OR ABILITY OF ANY SUCH THIRD PARTIES AND YOU EXPRESSLY WAIVE AND RELEASE THE COMPANY FROM ANY AND ALL LIABILITY, CLAIMS, CAUSES OF ACTION, OR DAMAGES ARISING FROM YOUR USE OF THE APPLICATION OR SERVICE, OR IN ANY WAY RELATED TO THE THIRD PARTIES INTRODUCED TO YOU BY THE APPLICATION OR SERVICE. YOU EXPRESSLY WAIVE AND RELEASE ANY AND ALL RIGHTS AND BENEFITS UNDER SECTION 1542 OF THE CIVIL CODE OF THE STATE OF CALIFORNIA (OR ANY ANALOGOUS LAW OF ANY OTHER STATE), WHICH READS AS FOLLOWS: "A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH, IF KNOWN BY HIM, MUST HAVE MATERIALLY AFFECTED HIS SETTLEMENT WITH THE DEBTOR."

THE QUALITY OF THE DELIVERY SERVICES SERVICES SCHEDULED THROUGH THE USE OF THE SERVICE OR APPLICATION IS ENTIRELY THE RESPONSIBILITY OF THE THIRD PARTY PROVIDER WHO ULTIMATELY PROVIDES SUCH DELIVERY SERVICES TO YOU. YOU UNDERSTAND, THEREFORE, THAT BY USING THE APPLICATION AND THE SERVICE, YOU MAY BE EXPOSED TO A DELIVERY SERVICE THAT IS POTENTIALLY DANGEROUS, OFFENSIVE, HARMFUL TO MINORS, UNSAFE OR OTHERWISE OBJECTIONABLE, AND THAT YOU USE THE APPLICATION AND THE SERVICE AT YOUR OWN RISK.

NOTICE

The Company may give notice by means of a general notice on the Service, electronic mail to your email address on record in the Company's account information, or by written communication sent by first class mail or pre-paid post to your address on record in the Company's account information. Such notice shall be deemed to have been given upon the expiration of 48 hours after mailing or posting (if sent by first class mail or pre-paid post) or 12 hours after sending (if sent by email). You may give notice to the Company (such notice shall be deemed given when received by the Company) at any time by sending an email to: admin@eazeup.com; Please specify the reason for the email in the subject line so it can be forwarded to the proper department.

ASSIGNMENT

This Agreement may not be assigned by you without the prior written approval of the Company but may be assigned without your consent by the Company to (i) a parent or subsidiary, (ii) an acquirer of assets, or (iii) a successor by merger. Any purported assignment in violation of this section shall be void.

EXPORT CONTROL

You agree to comply fully with all U.S. and foreign export laws and regulations to ensure that neither the Application nor any technical data related thereto nor any direct product thereof is exported or re-exported directly or indirectly in violation of, or used for any purposes prohibited by, such laws and regulations. By using the App Store Sourced Application, you represent and warrant that: (i) you are not located in a country that is subject to a U.S. Government embargo, or that has been designated by the U.S. Government as a "terrorist supporting" country; and (ii) you are not listed on any U.S. Government list of prohibited or restricted parties.

DISPUTE RESOLUTION

You and Company agree that any dispute, claim or controversy arising out of or relating to this Agreement or the breach, termination, enforcement, interpretation or validity thereof or the use of the Service or Application (collectively, "Disputes") will be settled by binding arbitration, except that each party retains the right to bring an individual action in small claims court and the right to seek injunctive or other equitable relief in a court of competent jurisdiction to prevent the actual or threatened infringement, misappropriation or violation of a party's copyrights, trademarks, trade secrets, patents or other intellectual property rights. You acknowledge and agree that you and Company are each waiving the right to a trial by jury or to participate as a plaintiff or class User in any purported class action or representative proceeding. Further, unless both you and Company otherwise agree in writing, the arbitrator may not consolidate more than one person's claims, and may not otherwise preside over any form of any class or representative proceeding. If this specific paragraph is held unenforceable, then the entirety of this "Dispute Resolution" section will be deemed void. Except as provided in the preceding sentence, this "Dispute Resolution" section will survive any termination of this Agreement.

Arbitration Rules and Governing Law. The arbitration will be administered by the American Arbitration Association ("AAA") in accordance with the Commercial Arbitration Rules and the Supplementary Procedures for Consumer Related Disputes (the "AAA Rules") then in effect, except as modified by this "Dispute Resolution" section. (The AAA Rules are available at www.adr.org/arb_med or by calling the AAA at 1-800-778-7879.) The Federal Arbitration Act will govern the interpretation and enforcement of this Section.

Arbitration Process. A party who desires to initiate arbitration must provide the other party with a written Demand for Arbitration as specified in the AAA Rules. The AAA provides a form Demand for Arbitration [here](#) and a separate form for California residents at [this page](#). The arbitrator will be either a retired judge or an attorney licensed to practice law in the state of California and will be selected by the parties from the AAA's roster of consumer dispute arbitrators. If the parties are unable to agree upon an arbitrator within seven (7) days of delivery of the Demand for Arbitration, then the AAA will appoint the arbitrator in accordance with the AAA Rules.

Arbitration Location and Procedure. Unless you and Company otherwise agree, the arbitration will be conducted in the county where you reside. If your claim does not exceed \$10,000, then the arbitration will be conducted solely on the basis of documents you and Company submit to the arbitrator, unless you request a hearing or the arbitrator determines that a hearing is necessary. If your claim exceeds \$10,000, your right to a hearing will be determined by the AAA Rules. Subject to the AAA Rules, the arbitrator will have the discretion to direct a reasonable exchange of information by the parties, consistent with the expedited nature of the arbitration.

Arbitrator's Decision. The arbitrator will render an award within the time frame specified in the AAA Rules. The arbitrator's decision will include the essential findings and conclusions upon which the arbitrator based the award. Judgment on the arbitration award may be entered in any court having jurisdiction thereof. The arbitrator's award damages must be consistent with the terms of the "Limitation of Liability" section above as to the types and the amounts of damages for which a party may be held liable. The arbitrator may award declaratory or injunctive relief only in favor of the claimant and only to the extent necessary to provide relief warranted by the claimant's individual claim. The prevailing party in arbitration will be entitled to an award of attorneys' fees and expenses, to the extent provided under applicable law.

Fees. Your responsibility to pay any AAA filing, administrative and arbitrator fees will be solely as set forth in the AAA Rules.

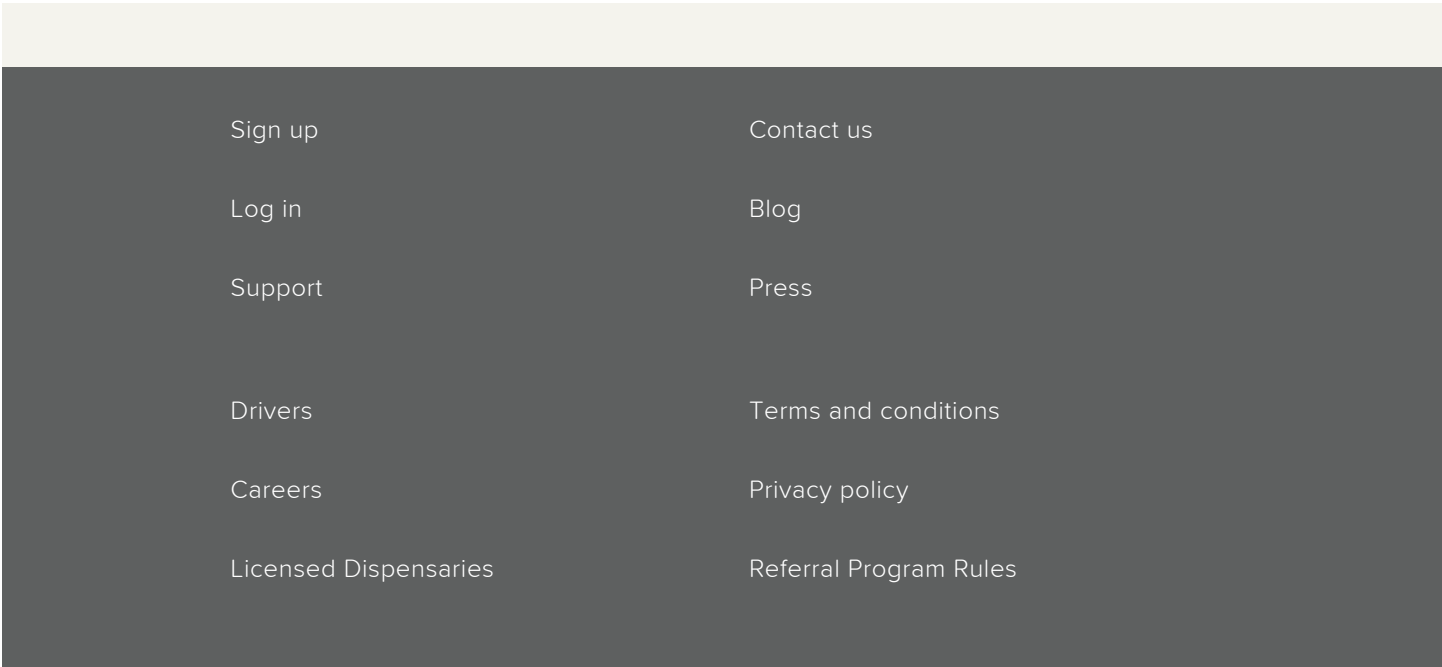
Changes. Notwithstanding the provisions of the modification-related provisions above, if Company changes this "Dispute Resolution" section after the date you first accepted this Agreement (or accepted any subsequent changes to this Agreement), you may reject any such change by sending us a notice to admin@eazeup.com with "Legal" in the subject line within 30 days of the date such change became effective, as indicated in the "Last Updated Date" above or in the date of Company's email to you notifying you of such change. By rejecting any change, you are agreeing

that you will arbitrate any Dispute between you and Company in accordance with the provisions of this "Dispute Resolution" section as of the date you first accepted this Agreement (or accepted any subsequent changes to this Agreement).

GENERAL

No joint venture, partnership, employment, or agency relationship exists between you, the Company or any third party provider as a result of this Agreement or use of the Service or Application. If any provision of the Agreement is held to be invalid or unenforceable, such provision shall be struck and the remaining provisions shall be enforced to the fullest extent under law. The failure of the Company to enforce any right or provision in this Agreement shall not constitute a waiver of such right or provision unless acknowledged and agreed to by the Company in writing.

This User Agreement constitutes the entire agreement between you and the Company and governs your use of the Service, superseding any prior agreements between you and the Company. The User Agreement and the relationship between you and Eaze shall be governed by the laws of the State of California without regard to its conflict of law provisions. You and Eaze agree to submit to binding arbitration for any dispute arising out of your relationship with Eaze and that such arbitration will take place in the City of San Francisco, California. The failure of Eaze to exercise or enforce any right or provision of the User Agreement shall not constitute a waiver of such right or provision. If any provision of the User Agreement is found by an arbitrator to be invalid, the parties nevertheless agree that the arbitrator should endeavor to give effect to the parties' intentions as reflected in the provision, and the other provisions of the User Agreement remain in full force and effect. You agree that regardless of any statute or law to the contrary, any claim or cause of action arising out of or related to use of the Service or the TOU must be filed within one (1) year after such claim or cause of action arose or be forever barred.





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CERTIFICATE OF SERVICE

It is hereby certified that a true and correct copy of the foregoing was served electronically via the Court's electronic filing system on the date below upon all counsel of record in this matter.

DATED: June 22, 2018

BOIES SCHILLER FLEXNER LLP
ALBERT GIANG
MICHAEL D. ROTH
FIONA TANG

By /s/ Albert Giang
ALBERT GIANG
Attorneys for Defendant EAZE SOLUTIONS, INC.

BOIES SCHILLER FLEXNER LLP

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BOIES SCHILLER FLEXNER LLP

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION**

FARRAH WILLIAMS,

Plaintiff,

v.

EAZE SOLUTIONS, INC.,

Defendant.

Case No. 18-CV-02598-JD

**[PROPOSED] ORDER GRANTING
DEFENDANT EAZE SOLUTIONS, INC.'S
MOTION TO COMPEL INDIVIDUAL
ARBITRATION AND DISMISS ACTION**

**[Notice of Motion and Motion to Compel
Individual Arbitration and Dismiss Action;
Memorandum of Point and Authorities;
Declaration of Daniel Erickson with
Exhibits; filed concurrently herewith]**

**Judge: Hon. James Donato
Date: September 13, 2018**

Complaint Filed: May 2, 2018
Trial Date: Not Set

BOIES SCHILLER FLEXNER LLP

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Defendant Eaze Solutions, Inc.’s Motion to Compel Individual Arbitration and Dismiss
Action (“Motion”) came on for hearing before this Court on _____, 2018, at _____
a.m. After full consideration of the matter and good cause appearing, **IT IS HEREBY**
ORDERED that the Motion is GRANTED in its entirety.

Plaintiff Farrah Williams is ordered to proceed to individual arbitration of all of her claims.
This action is dismissed with prejudice.

IT IS SO ORDERED.

DATED: _____, 2018

By _____
HONORABLE JAMES DONATO
United States District Judge

Prepared By:

/s/ Albert Giang
ALBERT GIANG
BOIES SCHILLER FLEXNER LLP
Attorneys for Defendant EAZE SOLUTIONS, INC.

CERTIFICATE OF SERVICE

It is hereby certified that a true and correct copy of the foregoing was served electronically via the Court's electronic filing system on the date below upon all counsel of record in this matter.

DATED: June 22, 2018

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By /s/ Albert Giang
ALBERT GIANG
Attorneys for Defendant EAZE SOLUTIONS, INC.

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