

LEBE LAW, APLC

Jonathan M. Lebe (SBN 284605)

jon@lebelaw.com

Zachary Gershman (SBN 328004)

zachary@lebelaw.com

777 S. Alameda Street, Second Floor

Los Angeles, CA 90021

Telephone: (213) 444-1973

COHELAN KHOURY & SINGER

Isam C. Khoury (SBN 58769)

ikhoury@ckslaw.com

Michael D. Singer (SBN 115301)

msinger@ckslaw.com

Diana M. Khoury (SBN 128643)

dkhoury@ckslaw.com

Rosemary C. Khoury (SBN 331307)

rkhoury@ckslaw.com

605 C Street, Suite 200

San Diego, CA 92101

Telephone: (619) 595-3001 / Facsimile: (619) 595-3000

Attorneys for Plaintiff Eric Garcia, individually and
on behalf of all others similarly situated

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF FRESNO

ERIC GARCIA, individually and on behalf
of all others similarly situated,

Plaintiff,

v.

LIGHTNING SOURCE LLC; INGRAM
DISTRIBUTION MANAGEMENT INC.;
INGRAM CONTENT GROUP LLC; and
DOES 1 through 25, inclusive

Defendants.

Case No. 20CECG01641

ASSIGNED FOR ALL PURPOSES TO:

The Honorable Jeffrey Hamilton

Department 503

CLASS AND PAGA ACTION

**DECLARATION OF ISAM C. KHOURY IN
SUPPORT OF MOTION FOR ORDER
GRANTING FINAL APPROVAL OF
CLASS ACTION SETTLEMENT AND
ENTERING JUDGMENT**

Date: June 15, 2023

Time: 3:30 p.m.

Dept: 503

Judge: Hon. Jeffrey Hamilton

Filed: June 10, 2020

Trial date: Not set

1 I, Isam C. Khoury, declare as follows:

2 1. I am a Partner with the law firm of Cohelan Khoury & Singer, co-counsel of
3 record for Plaintiff Eric Garcia and the Settlement Class. I submit this Declaration in Support of
4 Plaintiff's Motion for Order Granting Final Approval of Class Action Settlement. The following
5 facts are within my personal knowledge and if called to testify I could and would competently
6 testify to them.

7 2. I am a 1973 Hastings School of Law graduate and was admitted to the California
8 State Bar in 1974 and am admitted to practice in all state courts in California and in the all
9 federal courts in California, as well as the First Circuit Court of the State of Hawaii and the
10 United States Court of Appeals for Sixth Circuit.

11 3. In 1981, Timothy D. Cohelan and I formed Cohelan & Khoury, a Partnership of
12 Professional Law Corporations, in 1981 and within a few years began to focus on class actions.
13 Cohelan & Khoury became Cohelan Khoury & Singer in 2009. Our firm represents plaintiffs in
14 class and representative action litigation, including wage and hour, labor and employment,
15 antitrust, consumer protection, construction defect and other public interest class and
16 representative actions.

17 4. I, along with Partner Diana M. Khoury have been selected by our peers based on
18 ethics, experience and reputation as Super Lawyers in Civil Litigation by the Southern
19 California Super Lawyers Magazine for the years 2012 through the present. Michael D. Singer,
20 Managing Partner, was named to the Daily Journal 2012, 2013, and 2018 list of Top California
21 Labor and Employment Attorneys and selected to the Southern California Super Lawyers in
22 2010, 2012-2019. Mr. Singer was admitted as a fellow to the College of Labor and Employment
23 Attorneys in 2020. I am AV – Preeminent rated by Martindale-Hubbell, as are many attorneys
24 in our firm.

25 5. Cohelan Khoury & Singer has been certified by the State Bar of California to
26 provide the Mandatory Continuing Legal Education activity entitled "Litigating California Class
27 Actions" and has conducted MCLE certified seminars on this topic. Senior Partner, Timothy D.
28 Cohelan, is the author of Cohelan on California Class Actions (1997-2023, updated annually),

1 part of Thomson Reuters Expert Series updated annually. Michael D. Singer is a contributing
2 author on the CEB publication California Wage and Hour Law: Compliance and Litigation
3 (2010-2023 updated annually), in which he wrote the opening chapter overview on California
4 Wage and Hour laws, including the public policy underpinnings for those laws, and the Private
5 Attorneys General Act (PAGA) Claim chapter. He is also a contributing author to the CEB
6 Practitioner (2020), including guidelines for oral argument and forms for PAGA litigation. Mr.
7 Singer has served as a columnist for the California State Bar, Litigation Section on wage and
8 hour litigation and has contributed articles on wage and hour and class action issues through the
9 years to numerous California publications.

10 6. Prior to COVID-19, Mr. Singer typically lectured several times per year for
11 continuing education courses on wage and hour and class action issues at events in San Diego,
12 Orange County, Los Angeles, and San Francisco. For over twelve years, Mr. Singer has served
13 as wage and hour amicus co-chair and liaison for the California Employment Lawyers
14 Association, drafting, reviewing, and coordinating amicus filings on wage and hour issues in the
15 California Supreme Court and Courts of Appeal. He has been engaged in the practice of labor
16 and employment law since 2000, handling well over 300 wage and hour class and PAGA
17 actions and several individual labor cases. He has litigated several types of employment actions,
18 including complex ERISA employee welfare benefit plan cases, as well as wage and hour class
19 actions before Federal and State Courts in California. In 2014, Mr. Singer, along with form
20 Partner J. Jason Hill, tried a wage and hour class action involving claims for illegally deducted
21 wages and unreimbursed expenses. *Dilts v Penske Logistics LLC, Inc.* Mr. Singer successfully
22 appealed the trial court ruling in *Dilts* finding state laws preempted by the FAAAA for truck
23 drivers.

24 7. Mr. Singer has participated in over 50 appellate cases and argued writs and
25 appeals before several California District Courts of Appeal, arguing for plaintiffs on rehearing
26 in *Brinker International Inc. v. Superior Court* before the Fourth District Court of Appeal, as
27 well as federal appeals in the Second, Third, and Ninth Circuit Courts of Appeals. In addition,
28 Mr. Singer has drafted numerous appellate briefs as the appellant, respondent, or amicus curiae

1 in employment class and individual actions. As co-Class Counsel in *Brinker Restaurant Corp. v.*
2 *Superior Court* [formerly reported at (2008)165 Cal.App.4th 25], Mr. Singer argued before the
3 Fourth District Court of Appeal in May 2008 on transfer from the California Supreme Court,
4 and co-authored the successful Petition for Review. My firm has successfully tried class cases,
5 obtained appellate reversals of class certification denials (*Hicks v. Kaufman and Broad*, (2001)
6 89 Cal.App.4th 908), and certified multiple wage and hour classes.

7 8. As a part of our overall firm philosophy lawyers perform community service and
8 pro bono work. Firm volunteer work includes service through the Legal Aid at Work, San
9 Diego Volunteer Lawyer Program, the San Diego County Bar Foundation and Consumer
10 Attorneys of San Diego. Mr. Cohelan served as the Chair of the San Diego Volunteer Lawyers
11 Program from 2015-2018, and currently sits on the Board as past Chair. He completed 24 years
12 of volunteer judicial service as a Judge Pro Tem of the San Diego Superior Court. Mr. Singer
13 has served on the Legal Aid at Work Board of Directors since 2011. Since admission to the
14 California Bar, Partner Diana M. Khoury has been a member of the San Diego County Bar
15 Association, Consumer Attorneys of San Diego, Consumer Attorneys of California, and
16 American Association for Justice serving and chairing various committees through the years for
17 these organizations. For six years from 2010 through 2015, Ms. Khoury served on the Board of
18 Directors for Consumer Attorneys of San Diego. Since 2013, Ms. Khoury actively serves on the
19 Board of Directors for the San Diego County Bar Foundation, the 501(c)(3) charitable arm of
20 the San Diego County Bar Association providing access to justice to the underserved and
21 impoverished in the San Diego County region. During law school, Partner Jeff Geraci interned
22 for the ACLU and Equal Rights Assistance assisting on impact litigation class action lawsuits
23 and is past recipient of the Wiley W. Manuel Award for Pro Bono Service. Our firm's recent
24 pro bono victories include a settlement which prohibits the City of San Diego from targeting
25 homeless people for illegal lodging tickets under Penal Code Section 467(j). (*Spencer v. City of*
26 *San Diego*, USDC Case No 04CV-2314 BEN (WMC).) The *Spencer* settlement had the effect
27 of increasing the number of available shelter beds in San Diego.

28 9. Cohelan Khoury & Singer has been certified Class Counsel in the following

1 contested proceedings: *Aguilar v. Atlantic Richfield, et al.*, San Diego County Superior Court
2 Case No. 00700810; *Andino v. Kaiser Foundation Hospitals*, Alameda County Superior Court
3 Case No. RG11580548; *Arellano, et al. v. Container Connection of Southern California, Inc.*,
4 Los Angeles County Superior Court Case No. BC500675; *BANK OF AMERICA WAGE AND*
5 *HOOR EMPLOYMENT PRACTICES LITIGATION*, United States District Court, District of
6 Kansas MDL Case No. 2138 (FLSA Condition Certification); *Czuchaj v. Conair Corporation*,
7 United States District Court, Southern District of California Case No. 13CV1901; *Dilts, et al. v.*
8 *Penske Logistics, L.L.C., et al.*, United States District Court, Southern District of California
9 Case No. 08CV0318; *Englert, et al. v. AT&T Wireless Services, Inc., et al.*, Circuit Court of the
10 Second Circuit, State of Hawaii Case No. 02-1-0074; *Evans v. Washington Mutual Bank*,
11 Orange County Superior Court Case No. 02CC15415; *Filion v. Ethan Allen Retail Inc.*, United
12 States District Court, Southern District of California Case No. 05CV2340; *Gerard v. Les*
13 *Schwab Tire Centers of California, Inc.*, Sacramento County Superior Court Case No. 2007-
14 300000003; *Grana, et al. v. PICO Enterprises, Inc. dba Phyle Inventory Control Specialist and*
15 *PICS L.A.S.C.* Case No. BC472891; *Gutierrez v. Save Mart Supermarkets San Mateo Superior*
16 *Case No. CIV530955; Wilcox v Albertsons*, San Diego County Superior Court Case No.
17 GIC833922; *Gonzalez, et al. v. Freedom Communications, Inc. d/b/a The Orange County*
18 *Register*, Orange County Superior Court Case No. 03CC08756; *Graham, et al. v. Overland*
19 *Solutions, Inc.*, United States District Court, Southern District of California Case No.
20 10CV0672 (FLSA Conditional Certification); *Hicks v. Kaufman and Broad Home Corp.*, Los
21 Angeles County Superior Court Case No. B198414; *Hohnbaum, et al. v. Brinker Restaurant*
22 *Corporation, et al.*, San Diego County Superior Court Case No. GIC834348; *KEMP, et al. v.*
23 *CSEA, et al.*, Circuit Court of the First Circuit, State of Hawaii Case No. 98-3815-08; *LIBERTY*
24 *MUTUAL OVERTIME CASES*, Los Angeles County Superior Court Case No. JCCP 4234;
25 *Mitchell, et al. v. Acosta, Inc., dba Acosta Sales and Marketing Company*, United States District
26 Court, Central District of California Case No.11CV07196 (FLSA Conditional Certification);
27 *Santana v. Rady Children's Hospital-San Diego*, San Diego County Superior Court Case No.
28 37-2014-00022411; *Schaffer v. Rady Children's Hospital-San Diego*, San Diego County

Superior Court Case No. 337-2015-00022978; *Schneider, et al. v. Catholic Healthcare West*, San Francisco County Superior Court Case No. CGC-10-506243; *Salucci v. Amada Senior Care, Inc.*, Orange County Superior Court Case No. 37-2015-00778081; *Smith v. California Pizza Kitchen*, San Diego County Superior Court Case No. 37-2008-00083992; STEROID HORMONE PRODUCT CASES, Los Angeles County Superior Court Case No. JCCP 4363; *Stevenson Aibangbee v. Victoria Apartments, et al.*, Los Angeles County Superior Court Case No. BC299498; *Swift v. Liebert Corp.*, Orange County Superior Court Case No. 00CC04588; *Sylvia, et al. v. Wells Fargo Home Mortgage, Inc.*, Orange County Superior Court Case No. 03CC05747; *Vaquero v. Ashley Furniture Industries, Inc., et al.*, United States District Court, Central District of California Case No. 12CV8590; *Vaquero v. Stoneledge Furniture LLC*, Los Angeles County Superior Court Case No. BC522676; *Vazquez v. Kraft Heinz Foods Company*, United States District Court, Southern District of California Case No. 16-CV-02749; *Watson v. Raytheon Company*, United States District Court, Southern District of California Case No. 10CV0634; and *Weigle v. FedEx Ground Package System, Inc.*, United States District Court, Southern District of California Case No. 06CV1330, among others, as well as being appointed Class Counsel in connection with well over 300 class action settlements.

10. Cohelan Khoury & Singer has actively commenced, prosecuted and concluded numerous state and federal class and representative actions. Since 2016, Cohelan Khoury & Singer has played a central role in the resolution of such cases, including the following, which have received court approval: (a) *Arellano, et al. v. Container Connection of Southern California, Inc.*, Los Angeles County Superior Court, Case No. BC500675, Hon. Anne I. Jones; (b) *Castro v. Home Depot U.S.A., Inc.*, Los Angeles County Superior Court, Case No. BC577885, Hon. Elihu M. Berle; (c) *Czuchaj v. Conair Corporation*, United States District Court, Southern District of California, Case No. 13-CV-1901 BEN, Hon. Roger T. Benitez; (d) *Gardiner v. TSYS*, United States District Court, Central District of California, Case No. 18-cv-00415, Hon. David O. Carter; (e) *Grana v. PICO Enterprises, Inc.*, Los Angeles County Superior Court, Case No. BC472891, Hon. Stephanie M. Bowick; (f) *Gutierrez v. Save Mart Supermarkets*, San Mateo County Superior Court, Case No. CIV530955, Hon. Marie S. Weiner;

(g) *Hernandez v. Workforce Enterprises WFE, Inc.*, Los Angeles County Superior Court Case No. BC590913, Hon. Elihu M. Berle; (h) *Hicks v. Poway Academy of Hair Design, Inc.*, San Diego County Superior Court, Case No. 2014-00026517, Hon. Ronald L. Styn; (i) *Hubbard v. Caliber Home Loans, Inc.*, Orange County Superior Court, Case No. 2018-01017838; (j) *Klein v. Loomis Armored US, LLC*, San Bernardino County Superior Court, Case No. CIVDS1704547, Hon. David Cohn; (k) *Laureano v. The Art of Shaving*, Los Angeles County Superior Court, Case No. BC550093, Hon. Amy D. Hogue; (l) *Lopez, et al. v. Management & Training Corporation, et al.*, United States District Court, Southern District of California, Case No. 17-CV-010624 JM, Hon. Jeffrey T. Miller; (m) *Magdaleno v. Shelly Automotive, LLC*, Orange County Superior Court Case No. 2013-0043958, Hon. Kim. G. Dunning; (n) *McGrath, et al. v. Wyndham Resort Development Corporation, et al.*, United States District Court, Southern District of California, Case. No. 15-CV-1631 JM, Hon. Jeffrey T. Miller; (o) *Mena v. Wolfgang Puck Catering*, Los Angeles County Superior Court Case No. BC582743, Hon. John Shepard Wiley, Jr.; (p) *Morales v. The Los Angeles Country Club*, Los Angeles County Superior Court, Case No. BC566493, Hon. William F. Highberger; (q) *Nijmeh v. Bon Appetit Management Company, Inc.*, Santa Clara County Superior Court, Case No. 16CV294127, Hon. Thomas E. Kuhnle; (r) *Plascencia v. Aramark Services, Inc.*, Santa Clara County Superior Court, Case No. 2015-1-CV-288310, Hon. Brian C. Walsh; (s) *Plimpton v. Gordon Trucking, Inc.*, San Bernardino County Superior Court, Case No. CIV-DS-1511918, Hon. Donald Alvarez; (t) *Raya v. Amazon*, USDC, Northern District of California, Case No. 15-CV-02005 MMC, Hon. Maxine M. Chesney; (u) *Rivas v. ESA Management*, USDC, Central District of California, Case No. 14-CV-5767, Hon. Dale S. Fischer; (v) *Rodriguez v Healthcare Partner Medical Group, Inc.*, Los Angeles County Superior Court, Case No. BC541313, Hon. Kenneth Freeman; (w) *Ryan v. Dignity Health*, Sacramento County Superior Court Case No. 2013-00147371, Honorable Alan G. Perkins; (x) *Santana v. Rady Children's Hospital-San Diego*, San Diego County Superior Court Case No. 37-2014-00022411, Hon. Joel R. Wohlfeil; (y) *Schaffer v. Rady Children's Hospital-San Diego*, San Diego County Superior Court Case No. 337-2015-00022978, Hon. Joel R. Wohlfeil; (z) *Schneider v. Catholic Healthcare West*, San Francisco

1 County Superior Court, Case No. CGC-10-506243, Hon. Angela Bradstreet; (aa) *Schwartz v*
2 *Bank of the West*, San Francisco County Superior Court, Case No. CGC-14-538955, Hon.
3 Harold E. Kahn; (bb) *Syed v. M.I. Swaco*, USDC, Eastern District of California, Case No. 12-
4 CV-01718 DAD, Hon. Dale A. Drozd; (cc) *Vaquero, et al. v. Stoneledge Furniture, LLC*, Los
5 Angeles County Superior Court Case No. BC522676, Hon. Elihu M. Berle; (dd) *Vazquez v.*
6 *Kraft Heinz Foods Company*, USDC, Southern District of California Case No. 16-CV-02749,
7 Hon. William Q. Hayes; (ee) *Walsh v. Cedars-Sinai Medical Center*, Los Angeles County
8 Superior Court Case No. BC487290, Hon. William F. Highberger; among others.

9 11. Plaintiff Eric Garcia (“Plaintiff”) seeks final approval of a pre-certification wage
10 and hour class and Private Attorneys General Act (PAGA) action settlement of \$860,000.00.
11 The proposed Settlement will benefit 123 individuals employed in California by Defendants
12 Lightning Source LLC, Ingram Distribution Management LLC (erroneously sued as “Ingram
13 Distribution Management Inc.”), and Ingram Content Group LLC (collectively, “Defendants”)
14 as non-exempt employees any time during the Class Period (April 6, 2016 through June 28,
15 2021).

16 12. After adequate Notice to the Class informing them of their rights, the reaction
17 has been wholly positive—with no Requests for Exclusion or Objections received to date.¹

18 13. Plaintiff has achieved an excellent result in this litigation, with an average
19 estimated settlement payment over \$4,000 and the highest at nearly \$12,000.

20 14. With no reversion to Defendants, 100 percent of this money will be paid out to
21 the Class.

22 15. Finally, all fees and awards requested herein are reasonable in light of work
23 performed, costs reasonably incurred, and results achieved.

24 16. Defendants are printers and distributors of print-on-demand books throughout
25 the United States. Defendants operate a book-binding factory in Fresno, California where
26 Plaintiff and the entire putative Class worked.

27
28 ¹ Class Members were allowed to opt-out/object until May 26, 2023. An updated Administrator
declaration will be submitted before the Final Approval hearing.

1 17. Plaintiff was employed as an “Operations Team Lead-2nd Shift” in Defendants’
2 Fresno book-binding factory from May 7, 2018 through February 18, 2020. In this position,
3 Plaintiff ensured next-day priority shipping; filled, boxed, packed, and labeled orders; and
4 loaded boxes of books into trucks for delivery. Plaintiff typically worked four days per week,
5 with three 12-hour workdays, and one six-hour workday per week.

6 18. The Class is defined as all current and former non-exempt employees of
7 Defendants employed in California during the Class Period. PAGA Members, a subset of the
8 Class, worked during the PAGA Period (April 6, 2019 through June 28, 2021).

9 19. On May 19, 2020, Defendants responded to Plaintiff’s record request and
10 produced Plaintiff’s personnel file containing, in pertinent part, employment policies and
11 procedures, new employee documents, performance evaluations, and wage statements.

12 20. On June 8, 2020, Plaintiff served a PAGA notice on Defendants and the
13 California Labor and Workforce Development Agency (“LWDA”) advising that he intended to
14 file a representative action on behalf of himself and all other aggrieved employees to seek civil
15 penalties for the alleged Labor Code violations.

16 21. On June 10, 2020, Plaintiff filed a class action complaint alleging Defendants
17 failed to (1) pay minimum wages (Labor Code §§ 1182.12, 1194, 1194.2, 1197, 1197.1, 1198,
18 and IWC Order(s) § 4); (2) pay overtime wages (Labor Code §§ 510, 1194, 1198, and IWC
19 Wage Order(s) § 3); (3) provide meal periods (Labor Code §§ 226.7, 512, and IWC Order(s) §
20 11); (4) provide rest periods (Labor Code § 226.7 IWC Order(s) § 12); (5) provide accurate
21 itemized wage statements (Labor Code § 226 and IWC Wages Order(s) § 7); (6) reimburse
22 business expenses (Labor Code § 2802, and IWC Order(s) § 9); (7) timely pay wages due
23 during employment (Labor Code §§ 204, 210, and IWC Order(s)); (8) timely pay wages due
24 upon separation of employment (Labor Code §§ 201, 202, 203, and IWC Order(s)); and based
25 on these allegations, (9) violation of the Unfair Competition Law (Business & Professions Code
26 §§ 17200-17208). On June 24, 2020, Plaintiff served an amended PAGA notice on the LWDA
27 and Defendants.

28 22. Defendants served their general denial and affirmative defenses to the complaint

1 on August 21, 2020.

2 23. On August 26, 2020, Defendants served Plaintiff with special interrogatories,
3 employment form and form interrogatories, and requests for production of documents. Plaintiff
4 served verified discovery responses and produced 110-pages of responsive documents on
5 November 6, 2020.

6 24. After receiving no notice from the LWDA it intended to investigate the charges,
7 on September 10, 2020, a First Amended Complaint ("FAC") seeking PAGA civil penalties was
8 filed and served. Defendants served their general denials and affirmative defenses on October
9 12, 2020.

10 25. On September 10, 2020, Plaintiff served each Defendant with employment and
11 form interrogatories, special interrogatories, requests for admission, and requests for production
12 of documents.

13 26. In late-September 2020, the Parties agreed to stay formal discovery and to attend
14 mediation. Plaintiff requested, and Defendants produced (a) contact information for ten (10)
15 Class Members; (b) an excel spreadsheet with timekeeping records and corresponding
16 spreadsheets with payroll records for 25 randomly selected Class Members chosen by Plaintiff's
17 Counsel (20% of the Class – (13 former employees and 12 current employees)); (c) the
18 estimated Class size: 127, of which 67 were currently employed, and 60 were formerly
19 employed; (d) the estimated number of former employees within three years: 60 former
20 employees in the three-year statute of limitations for waiting time penalties, April 6, 2017 to
21 April 26, 2021; (e) the estimated number of former employees within one year: 29 former
22 employees during the one-year statute of limitations for PAGA Penalties; (f) the estimated
23 number of Class Period pay periods: 5,538 pay periods worked during the Class Period, from
24 April 6, 2016 to April 26, 2021, and (g) the estimated number of PAGA Period pay periods:
25 2,623 PAGA Pay Periods Worked from April 6, 2019 to April 26, 2021 (PAGA Period). The
26 data was sufficient to allow Plaintiff to assess liability and to calculate Class-wide damages for
27 purposes of mediation.

28 27. With Class-wide damages and PAGA penalties models prepared, on April 29,

2021, the Parties attended mediation with Steven Serratore, an experienced wage and hour class action mediator facilitating the day-long arms'-length negotiations. At the end of the day, the mediator tendered a proposal which was, by May 4, 2021, accepted by the Parties. As a term of Settlement, Plaintiff filed and served a Second Amended Complaint on August 10, 2021 alleging the unlawful time-rounding and underpaid overtime wages theories which were evaluated at mediation.

28. The Parties agreed to settle the Action for the Gross Settlement Amount ("GSA") of \$860,000.00 which includes, subject to Court approval: (a) attorneys' fees of \$286,666.67²; (b) litigation costs of \$15,405.67; (c) Class Representative Service Payment of \$10,000; (d) PAGA Payment of \$50,000 for civil penalties, of which \$37,500 (75%) will be paid to the LWDA and \$12,500 (25%) will be distributed to PAGA Members; and (e) administration expenses to Simpluris, Inc. of \$4,400.

29. In addition to the GSA, Defendants will pay the employer's share of payroll taxes on Class Members' payment allocated as wages.

30. After approved deductions, the estimated \$493,527.66 Net Settlement Amount ("NSA") will be distributed pro rata to Participating Class Members based on the number of weeks each worked during the Class Period in relation to the total number of weeks worked by all Class Members during the Class Period. No claim form will be necessary.

31. The 123 Class Members will receive an average estimated settlement payment of \$4,012.42 and highest estimated settlement payment of \$11,798.88, upon Approval. Plaintiff's estimated individual settlement amount is \$4,026.77.

32. The 85 PAGA Members will receive a share of the \$12,500.00 PAGA Payment based on Pay Periods worked during the PAGA Period, even if they request exclusion, as no right exists to opt out of a PAGA Settlement.

33. No portion of the GSA will revert to Defendants under any circumstances.

34. After 120 days of issuance, the uncashed checks shall be voided and the principal

² Fees are apportioned 50% to Lebe Law, APLC and 50% to Cohelan Khoury & Singer with Plaintiff's written consent. Garcia Decl., ¶ 9.

1 for those uncashed checks shall be transmitted to the State of California, Controller's Office,
2 Unclaimed Property Division for further handling.

3 35. Settlement payments are characterized as ninety (90) percent penalties and
4 interest and ten (10) percent wages; appropriate tax forms will be provided by the
5 Administrator.

6 36. On November 17, 2022, the Court preliminarily approved the proposed
7 Settlement.

8 37. On March 27, 2023, after searching the National Change of Address database,
9 and updating Class Member addresses, the Settlement Administrator mailed a Notice Packet to
10 123 Class Members. The Notice Packet informed them of (1) the pendency of the Action; (2)
11 proposed settlement terms; (3) automatic payment of Settlement shares if exclusion not
12 requested; (4) released claims; (5) right to object or request exclusion, and (6) date, time and
13 place of the final approval hearing.

14 38. The Class response to the Settlement has been extremely favorable.³ To date, no
15 objections or requests for exclusion have been received.

16 39. The Court determined the first three *Dunk* factors were met when it granted
17 preliminary approval: (1) the settlement was reached through arm's-length bargaining; (2)
18 investigation and discovery allowed counsel and the court to act intelligently; and (3) counsel
19 was experienced in similar litigation. The fourth factor could not be known until the Class had
20 notice and an opportunity to respond. *Dunk v. Ford Motor Co.* (1996) 48 Cal. App. 4th 1794,
21 1801-1802. The fourth *Dunk* factor was established when the Class, after receiving notice, and
22 having an opportunity to respond, unanimously approved the Settlement.

23 40. Nothing has changed since Preliminary Approval to negate the presumption of
24 fairness and Class Counsel remains convinced the Settlement is in the Class' best interest.

25 41. Class Counsel requests attorneys' fees of \$286,666.67, one-third of \$860,000
26 GSA, and actual litigation costs of \$15,405.67. Class Counsel expended 377 hours, a
27

28 ³ After performing advanced address searches, and remailing Class Notices, there is only one
(1) Class Notice that remains undeliverable. Simpluris Decl., ¶ 9.

1 \$223,282.50 lodestar.⁴ Attached as **Exhibit 1** is a true and correct copy of Class Counsel's
2 Summary of Time and Costs. Attached as **Exhibit 2** is a true and correct copy of Cohelan
3 Khoury & Singer's Itemized Costs.

4 42. The most important factor to consider in granting a fee award is the success
5 obtained. *Harman v. City & Cty. of S.F.* (2006) 136 Cal. App. 4th 1279, 1312 (citing *Hensley v.*
6 *Eckerhart* (1983) 461 U.S. 424, 426). Here, an excellent result was achieved, enforcing the law
7 and providing benefits to the Class. The average individual settlement of over \$4,000 is
8 substantial, especially given the average Class Member's hourly rate of approximately \$18.06—
9 as discerned by Plaintiff's consultant based on time records provided by Defendants.

10 43. Class Counsel undertook representation at their own expense, with compensation
11 wholly contingent upon providing a Class benefit. Class Members will benefit from the
12 proposed Settlement and receive monetary payments. Based on the defined and clearly traceable
13 Class benefit, the Court may award a percentage of the common fund as attorneys' fees.

14 44. Counsel's request for one-third of the common fund is in the mid-range of
15 awards which range from 20% to 50%, and is fair compensation for undertaking complex, risky,
16 litigation on a contingent basis, and for the result achieved for the Class.

17 45. Class Counsel's fee request is consistent with awards in similar California cases,
18 and market rates, and is reasonable. Cohelan Khoury & Singer has routinely been awarded
19 attorneys' fees of one-third of a common fund in wage and hour class actions.

20 46. Under the lodestar method, a base fee is calculated from compilation of time
21 reasonably spent on the case and the reasonable hourly compensation of the attorneys. *Serrano*
22 *III*, 20 Cal.3d at p. 48. Here, Class Counsel's lodestar is \$223,282,50.

23 47. In *Lealao*, the Court held a trial court's refusal to enhance the lodestar was an
24 abuse of discretion, remanded for consideration of the original 8.0 multiplier request, and
25 opined a multiplier more than 3.5 was reasonable. *Lealao*, 82 Cal. App. 4th at p. 24, 52; *see also*
26 *Vizcaino v. Microsoft Corp.* (9th Cir. 2002) 290 F.3d 1043, 1051 (internal citations omitted)

27 ⁴ Cohelan Khoury & Singer expended 227.6 hours; Lebe Law expended 149.4 hours. $227.6 +$
28 $149.4 = 377$. Cohelan Khoury & Singer's total lodestar is \$125,147.50. Lebe Law's total
lodestar is \$98,135. $\$125,147.50 + \$98,135 = \$223,282.50$.

1 (finding a trial court did not abuse its discretion in applying a multiplier of 3.65, explaining
2 “courts have routinely enhanced the lodestar to reflect the risk of non-payment in common fund
3 cases.”); *Parkinson v. Hyundai Motor Am.* (C.D. Cal. 2010) 796 F. Supp. 2d 1160, 1170
4 (“Where appropriate, multipliers may range from 1.2 to 4 or even higher.”).

5 48. If the fee award here is calculated using the lodestar, rather than the common
6 fund method, Plaintiff would ask the Court to apply a multiplier of 1.28
7 (\$286,666.67/\$223,282.50).

8 49. This multiplier is justified given that Class Counsel prosecuted this action on a
9 wholly contingent basis; Class Counsel has decades of experience in prosecuting wage and hour
10 class actions; work in this action precluded other work that could have been undertaken;
11 complex issues were involved; and one-third of the GSA represents the fair market value
12 according to many California authorities.

13 50. Class Counsel’s skill and experience support their hourly rates and are in line
14 with rates typically approved in California wage and hour class actions. Cohelan Khoury &
15 Singer’s practice is limited to litigating class and representative actions on behalf of employees
16 and consumers, and our firm has been appointed Class Counsel or co-Class Counsel in over 300
17 such cases.

18 51. Class Counsel’s skill and experience support their hourly rates: Cohelan Khoury
19 & Singer: Founding Partners, Isam C. Khoury - \$925; Managing Partner, Michael D. Singer -
20 \$900; Partner, Diana M. Khoury - \$725, Associate, Rosemary C. Khoury - \$500; Lebe Law,
21 APLC: Founding Attorney, Jonathan M. Lebe - \$800, Associate, Zachary Gershman - \$475.
22 These rates are in line with those typically approved in California wage-and hour class action
23 litigation. Indeed, the Laffey Matrix would actually provide for a rate increase. Attached as
24 **Exhibit 3** is a true and correct copy of the Laffey Matrix.

25 52. Hours are reasonable if, “at the time rendered, [they] would have been
26 undertaken by a reasonable and prudent lawyer to advance or protect his client’s interest.”
27 *Moore v. Jas. H. Matthews & Co.* (9th Cir. 1982) 682 F.2d 830, 839. *Norman v. Housing Auth.*
28 (11th Cir. 1988) 836 F.2d 1292, 1306 (“The measure of reasonable hours is determined by the

profession's judgment of the time that may be conscionably billed and not the least time in which it might theoretically have been done"). Here, all work undertaken was in the client and the class's interest to achieve this Settlement.

53. The Settlement allows Class Counsel to recover up to \$18,000.00 in costs and the Settlement Administrator to recovery up to \$5,000.00 in costs. Counsel and the Settlement Administrator respectively seek \$15,405.67⁵ and \$4,400.00 in actual reasonable and necessary costs.

54. The settlement of PAGA penalties for \$50,000.00, of which \$37,500.00 (75%) will be paid to the LWDA and \$12,500.00 (25%) to PAGA Employees, is reasonable and appropriate. The Parties negotiated a good faith amount for PAGA penalties, which was not the result of self-interest at the expense of Class Members.

55. The amount allocated to PAGA here, which represents over five percent of the GSA (\$50,000/\$860,000), is within the range, or higher, than other settlements. See *Magadia v. Wal-Mart Assocs.* (2019) 384 F. Supp. 3d 1058, 1101, citing, among others, *Ceja-Corona v. CVS Pharm., Inc.* (E.D. Cal. Jan. 14, 2015) 2015 U.S. Dist. LEXIS 5118 (\$10,000 PAGA penalties in settlement of \$900,000), recommendation adopted, (E.D. Cal. Mar. 3, 2015) 2015 U.S. Dist. LEXIS 25730; *Nen Thio v. Genji, LLC* (N.D. Cal. 2014) 14 F. Supp. 3d 1324, 1330 (\$10,000 PAGA penalties, \$1.25m settlement); *Franco v. Ruiz Food Prods.* (E.D. Cal. Nov. 27, 2012) 2012 U.S. Dist. LEXIS 169057, *5-6 (\$10,000 PAGA penalties, \$2.5m settlement); *Garcia v. Gordon Trucking* (E.D. Cal. 2012) 2012 U.S. Dist. LEXIS 160052 (\$10,000 PAGA, \$3.7m settlement).

56. Class Counsel provided the LWDA with the Motion for Preliminary Approval and the Settlement Agreement. The LWDA did not object. Attached as **Exhibit 4** is a true and correct copy of the confirmation of the September 16, 2022 submission to the LWDA.

57. The LWDA was served with this Final Approval Motion when filed. Attached as **Exhibit 5** is a true and correct copy of the confirmation of the May 23, 2023 submission to the

⁵ Costs for Cohelan Khoury & Singer are \$15, 336.99, and costs for Lebe Law are \$68.68. \$15,336.99 + \$68.68 = \$15,405.67.

1 LWDA.

2 58. Here, Plaintiff has done substantial work and taken substantial risks to achieve
3 an excellent result for the Class, justifying the \$10,000 award he seeks.

4 59. If granted, he would receive approximately \$14,026.77 in total (\$4,026.77
5 estimated individual payment + \$10,000 Class Representative Service Payment). This would be
6 approximately 3.5 times the average estimated settlement payment (\$14,026.77/4,012.42).

7 60. Granting this Service Payment would not be a clear abuse of discretion. *See*
8 *Munoz v. BCI Coca-Cola Bottling Co. of L.A.* (2010) 186 Cal. App. 4th 399, 412 (finding trial
9 court did not abuse its discretion in awarding named plaintiffs more than twice the average
10 payment to class members). Further, courts have issued \$10,000 awards to named plaintiffs in
11 class actions under similar circumstances. *See, e.g. Ellison v. Madden, Ltd.* (C.D. Cal. May 7,
12 2013) 2013 U.S. Dist. LEXIS 202269, at *34-35 (granting \$10,000 for work performed and
13 risks taken, notwithstanding that plaintiff apparently did not sit for deposition).

14 61. Finally, the Class received notice Plaintiff would request \$10,000.00. No Class
15 Member objected.

16 I declare under the penalty of perjury under the laws of the State of California the
17 foregoing is true and correct and this declaration is executed May 23, 2023, in San Diego,
18 California.

19
20 
21 _____
22 Isam C. Khoury
23
24
25
26
27
28

EXHIBIT 1

SUMMARY OF TIME AND COSTS
Garcia v. Lightning Source LLC, et al.
Fresno Superior Court Case No. 20CECG01641

Total Attorneys' Hours: 377
Total Lodestar Fees: \$ 223,282.50
Total Costs: \$ 15,405.67

FIRM/ ATTORNEYS	YEAR ADMITTED	HOURS	HOURLY RATE	TOTAL
COHELAN KHOURY & SINGER				
Isam C. Khoury, Founding Partner	1974	25.5	\$925	\$23,587.50
Michael D. Singer, Managing Partner	1974	1.1	\$900	\$990.00
Diana M. Khoury, Partner	1987	29.5	\$725	\$21,387.50
Rosemary C. Khoury, Associate	2020	151.1	\$500	\$75,550.00
Amber Worden, Certified Paralegal	N/A	2.5	\$200	\$500.00
Matthew Atlas, Paralegal	N/A	17.9	\$175	\$3,132.50
TOTAL:		227.6		\$125,147.50

FIRM/ ATTORNEYS	YEAR ADMITTED	HOURS	HOURLY RATE	TOTAL
LEBE LAW, APLC				
Jonathan M. Lebe	2015	83.6	\$800	\$66,880.00
Zachary Gersham	2019	65.8	\$475	\$31,255.00
TOTAL:		149.4		\$98,135.00

Total Aggregate Hours: 377	Total Lodestar: \$223,282.50
-----------------------------------	-------------------------------------

LITIGATION EXPENSES	
Cohelan Khoury & Singer	\$15,336.99
Lebe Law, APLC	\$68.68
TOTAL COSTS	\$15,405.67

EXHIBIT 2

COHELAN KHOURY SINGER
Litigation Costs
Garcia v. Lightning Source LLC, et al.
Fresno Superior Court Case No. 20CECG01641

<u>Date</u>	<u>Payee</u>	<u>Details</u>	<u>Amount</u>
6/10/2020	Express Network	Complaint Filing Fee	\$1,435.00
6/10/2020	Express Network	Complaint/Summons Svc. Fee	\$41.00
7/22/2020	Express Network	SOP: Ingram Content Group	\$250.00
7/22/2020	Express Network	SOP: Ingram Distribution Management	\$63.00
7/22/2020	Express Network	SOP: Lightning Source LLC	\$48.00
7/29/2020	Green Filing	Proof of Service of Summons	\$4.62
8/5/2020	Green Filing	Proof of Service of Summons	\$4.62
9/2/2020	Green Filing	Notice of Appearance	\$4.62
9/11/2020	Green Filing	First Amended Complaint	\$4.62
10/7/2020	Green Filing	Notice of Posting Jury Fees	\$158.75
2/9/2021	Green Filing	Stipulation	\$27.23
2/17/2021	Green Filing	CMC	\$6.68
4/8/2021	Serratore Law	Mediation Fee 4/29/21	\$9,000.00
5/6/2021	Green Filing	Stipulation and Order	\$27.23
5/10/2021	Berger Consulting, Inc.	Consultant	\$1,912.50
5/11/2021	Green Filing	Notice of Entry of Order	\$6.68
7/15/2021	Green Filing	Notice of Entry of Order	\$6.68
8/11/2021	Green Filing	Notice of Entry of Order	\$6.68
9/10/2021	Green Filing	Notice of Appearance	\$27.23
11/16/2021	Green Filing	Notice of Entry of Order	\$6.68
12/3/2021	Green Filing	Stipulation	\$27.23
12/20/2021	Green Filing	Notice of Entry of Order	\$6.68
1/10/222	Green Filing	Preliminary Approval Motion	\$68.33
4/12/2022	Courtcall	DMK 5/3/22 Motion	\$94.00
5/2/2022	Courtcall	Motion	\$94.00
9/19/2022	Green Filing	Stipulation and Order	\$28.26
9/19/2022	Green Filing	Renewed Motion	\$69.36
10/7/2022	Green Filing	Notice of Remote Appearance	\$7.71
4/20/2023	Green Filing	Stipulation and Order	\$33.24
<i>Est</i>	<i>Green Filing</i>	<i>Motion</i>	<i>\$69.36</i>
<i>Est</i>	<i>Courtcall</i>	<i>Hearing</i>	<i>\$94.00</i>
	In House	Postage	\$0.00
	In House	Photocopies (6,812@.25)	\$1,703.00
	Total:		\$15,336.99

EXHIBIT 3

LAFFEY MATRIX

[History](#)
[Case Law](#)
[See the Matrix](#)
[Contact us](#)
[Home](#)

			Years Out of Law School *				
Year	Adjustmt Factor**	Paralegal/ Law Clerk	1-3	4-7	8-10	11-19	20 +
6/01/22- 5/31/23	1.085091	\$225	\$413	\$508	\$733	\$829	\$997
6/01/21- 5/31/22	1.006053	\$208	\$381	\$468	\$676	\$764	\$919
6/01/20- 5/31/21	1.015894	\$206	\$378	\$465	\$672	\$759	\$914
6/01/19- 5/31/20	1.0049	\$203	\$372	\$458	\$661	\$747	\$899
6/01/18- 5/31/19	1.0350	\$202	\$371	\$455	\$658	\$742	\$894
6/01/17- 5/31/18	1.0463	\$196	\$359	\$440	\$636	\$717	\$864
6/01/16- 5/31/17	1.0369	\$187	\$343	\$421	\$608	\$685	\$826
6/01/15- 5/31/16	1.0089	\$180	\$331	\$406	\$586	\$661	\$796
6/01/14- 5/31/15	1.0235	\$179	\$328	\$402	\$581	\$655	\$789
6/01/13- 5/31/14	1.0244	\$175	\$320	\$393	\$567	\$640	\$771
6/01/12- 5/31/13	1.0258	\$170	\$312	\$383	\$554	\$625	\$753
6/01/11- 5/31/12	1.0352	\$166	\$305	\$374	\$540	\$609	\$734
6/01/10- 5/31/11	1.0337	\$161	\$294	\$361	\$522	\$589	\$709
6/01/09- 5/31/10	1.0220	\$155	\$285	\$349	\$505	\$569	\$686
6/01/08- 5/31/09	1.0399	\$152	\$279	\$342	\$494	\$557	\$671
6/01/07-5/31/08	1.0516	\$146	\$268	\$329	\$475	\$536	\$645
6/01/06-5/31/07	1.0256	\$139	\$255	\$313	\$452	\$509	\$614
6/1/05-5/31/06	1.0427	\$136	\$249	\$305	\$441	\$497	\$598
6/1/04-5/31/05	1.0455	\$130	\$239	\$293	\$423	\$476	\$574
6/1/03-6/1/04	1.0507	\$124	\$228	\$280	\$405	\$456	\$549
6/1/02-5/31/03	1.0727	\$118	\$217	\$267	\$385	\$434	\$522
6/1/01-5/31/02	1.0407	\$110	\$203	\$249	\$359	\$404	\$487
6/1/00-5/31/01	1.0529	\$106	\$195	\$239	\$345	\$388	\$468
6/1/99-5/31/00	1.0491	\$101	\$185	\$227	\$328	\$369	\$444
6/1/98-5/31/99	1.0439	\$96	\$176	\$216	\$312	\$352	\$424
6/1/97-5/31/98	1.0419	\$92	\$169	\$207	\$299	\$337	\$406
6/1/96-5/31/97	1.0396	\$88	\$162	\$198	\$287	\$323	\$389
6/1/95-5/31/96	1.032	\$85	\$155	\$191	\$276	\$311	\$375
6/1/94-5/31/95	1.0237	\$82	\$151	\$185	\$267	\$301	\$363

The methodology of calculation and benchmarking for this Updated Laffey Matrix has been approved in a number of cases. See, e.g., *DL v. District of Columbia*, 267 F.Supp.3d 55, 69 (D.D.C. 2017)

* $i_{\frac{1}{2}}$ Years Out of Law School $i_{\frac{1}{2}}$ is calculated from June 1 of each year, when most law students graduate. $i_{\frac{1}{2}}1-3$ " includes an attorney in his 1st, 2nd and 3rd years of practice, measured from date of graduation (June 1). $i_{\frac{1}{2}}4-7$ " applies to attorneys in their 4th, 5th, 6th and 7th years of practice. An attorney who graduated in May 1996 would be in tier $i_{\frac{1}{2}}1-3$ " from June 1, 1996 until May 31, 1999, would move into tier $i_{\frac{1}{2}}4-7$ " on June 1, 1999, and tier $i_{\frac{1}{2}}8-10$ " on June 1, 2003.

** The Adjustment Factor refers to the nation-wide Legal Services Component of the Consumer Price Index produced by the Bureau of Labor Statistics of the United States Department of Labor.

EXHIBIT 4

From: [DIR PAGA Unit](#)
To: [Matthew Atlas](#)
Subject: [External] Thank you for your Proposed Settlement Submission
Date: Friday, September 16, 2022 12:28:35 PM

09/16/2022 12:27:55 PM

Thank you for your submission to the Labor and Workforce Development Agency.

Item submitted: Proposed Settlement

If you have questions or concerns regarding this submission or your case, please send an email to pagainfo@dir.ca.gov.

DIR PAGA Unit on behalf of
Labor and Workforce Development Agency

Website: https://urldefense.proofpoint.com/v2/url?u=http-3A__labor.ca.gov_Private-5FAttorneys-5FGeneral-5FAct.htm&d=DwIFaQ&c=euGZstcaTDllvimEN8b7jXrwqOf-v5A_Cdp gnVfiiMM&r=CkmVEddukKLexsqU9o1LOYeca1vZAEC-MO6PZ1f0-Jc&m=xJjs8XxkynL6wAZbYDDSf2pu6RqJQ9jEkIDoVDzFT7A&s=tpqWHZDFexl9csart7y2iROS0-OiDECQ4vhcLKWTEdM&e=



Private Attorneys General Act (PAGA) – Filing

Proposed Settlement of PAGA case

PAGA Number (LWDA-CM-) : *

*Please enter only the eight digit number after "LWDA-CM-" in the following format, "XXXXXX-XX".
[Search for PAGA Case number](#)*

The timing of the deposit of settlement checks is governed by the provisions of the State Administrative Manual. This ministerial, administrative act of depositing a settlement check mandated by state procedures should not be construed as nor does it constitute an unconditional, voluntary and/or absolute acceptance of settlement proceeds or approval of the terms of any settlement agreement or judgment related to that check.

Your Information (Person Who is Filing)

Your First Name *

Matthew

Your Last Name *

Atlas

Your Email Address *

matlas@ckslaw.com

Your Street Name, Number and Suite/Apt *

Cohelan Khoury & Singer,

Your Mobile Phone Number

Your City *

San Diego

Your Work Phone Number

Your State *

California

Your Zip/Postal Code *

92101

Court and Hearing Information

Court *

Fresno Superior Court

Court Case Number *

20CECG01641

Hearing Date (if any)

10/13/2022

Hearing Time

3:30 pm

Hearing Location

Number of aggrieved employees *

127

Gross settlement amount *

860000

Gross penalty amount *

50000

Penalties to LWDA *

37500

Date of proposed settlement *

10/13/2022

Proposed Settlement and Other Documents

Proposed Settlement *

Choose File 1. NOM.pdf

Other Attachment (if any)

Choose File 2. Ps &As.pdf

Other Attachment (if any)

[Remove](#)

Choose File 3. Khoury Dec.pdf

Other Attachment (if any)

[Remove](#)

Choose File 4. Lebe Dec.pdf

Other Attachment (if any)

[Remove](#)

Choose File 5. Garcia Dec.pdf

Other Attachment (if any)

[Remove](#)

Choose File 6. Springer Dec.pdf

Other Attachment (if any)

[Remove](#)

Choose File 7. Letson Dec.pdf

Other Attachment (if any)

[Remove](#)

Choose File 8. Order.pdf

[Add Another Attachment](#)

Should you have questions regarding this online form, please contact PAGAInfo@dir.ca.gov

IMPORTANT NOTICE OF REDACTION RESPONSIBILITY: All filers must redact: Social Security or taxpayer identification numbers; personal addresses, personal telephone numbers, personal email addresses, dates of birth; names of minor children; & financial account numbers. This requirement applies to all documents, including attachments.

☒ **I understand that, if I file, I must comply with the redaction rules consistent with this notice.**

Previous Page

Submit

EXHIBIT 5