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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 Kimberly Gaab
Department 503

CLASS AND PAGA ACTION

**DECLARATION OF DIANA M. KHOURY
IN SUPPORT OF RENEWED MOTION
FOR ORDER GRANTING PRELIMINARY
APPROVAL OF CLASS ACTION
SETTLEMENT**

Date: October 13, 2022
Time: 3:30 p.m.
Dept: 503
Judge: Hon. Kimberly Gaab

Filed: June 10, 2020
Trial date: Not set

1 I, Diana M. 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. I make this Declaration in support of Plaintiff's Motion for
4 Preliminary Approval of Class Action Settlement. This Declaration is based on my personal
5 knowledge and if called to testify I could and would competently testify to the matters
6 contained in this Declaration.

7 2. I am a 1986 Western State University College of Law graduate and admitted to
8 the California State Bar in June, 1987. I am admitted to practice in all state courts in California
9 and in all federal courts in California.

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

16 4. I, along with Founding Partner Isam C. Khoury and Managing Partner Michael
17 D. Singer, have been selected by our peers based on ethics, experience and reputation as Super
18 Lawyers in Civil Litigation by the Southern California Super Lawyers Magazine for the years
19 2012 through the present. Mr. was admitted as a fellow to the College of Labor and
20 Employment Attorneys in 2020, and named to the Daily Journal 2012, 2013, and 2018 list of
21 Top California Labor and Employment Attorneys.

22 5. Cohelan Khoury & Singer has been certified by the State Bar of California to
23 provide the Mandatory Continuing Legal Education activity entitled "Litigating California Class
24 Actions" and has conducted MCLE certified seminars on this topic. Senior Partner, Timothy D.
25 Cohelan, is the author of Cohelan on California Class Actions (1997-2022, updated annually),
26 part of Thomson Reuters Expert Series updated annually. Michael D. Singer is a contributing
27 author on the CEB publication California Wage and Hour Law: Compliance and Litigation
28 (2010-2022 updated annually), in which he wrote the opening chapter overview on California

1 Wage and Hour laws, including the public policy underpinnings for those laws, and the Private
2 Attorneys General Act (PAGA) Claim chapter. He is also a contributing author to the CEB
3 Practitioner (2020), including guidelines for oral argument and forms for PAGA litigation. Mr.
4 Singer has served as a columnist for the California State Bar, Litigation Section on wage and
5 hour litigation and has contributed articles on wage and hour and class action issues through the
6 years to numerous California publications. Prior to COVID, he typically lectured several times
7 per year for continuing education courses on wage and hour and class action issues at events in
8 San Diego, Orange County, Los Angeles, and San Francisco. For over twelve years, Mr. Singer
9 has served as wage and hour amicus co-chair and liaison for the California Employment
10 Lawyers Association, drafting, reviewing, and coordinating amicus filings on wage and hour
11 issues in the California Supreme Court and Courts of Appeal. He has been engaged in the
12 practice of labor and employment law since 2000, handling well over 300 wage and hour class
13 and PAGA actions and several individual labor cases. He has litigated several types of
14 employment actions, including complex ERISA employee welfare benefit plan cases, as well as
15 wage and hour class actions before Federal and State Courts in California. In 2014, Mr. Singer,
16 along with Partner J. Jason Hill, tried a wage and hour class action involving claims for illegally
17 deducted wages and unreimbursed expenses. *Dilts v Penske Logistics LLC, Inc.* Mr. Singer
18 successfully appealed the trial court ruling in *Dilts* finding state laws preempted by the FAAAA
19 for truck drivers.

20 6. Mr. Singer has participated in over 50 appellate cases and argued writs and
21 appeals before several California District Courts of Appeal, arguing for plaintiffs on rehearing
22 in *Brinker International Inc. v. Superior Court* before the Fourth District Court of Appeal, as
23 well as federal appeals in the Second, Third, and Ninth Circuit Courts of Appeals. In addition,
24 Mr. Singer has drafted numerous appellate briefs as the appellant, respondent, or amicus curiae
25 in employment class and individual actions. As co-Class Counsel in *Brinker Restaurant Corp. v.*
26 *Superior Court* [formerly reported at (2008)165 Cal.App.4th 25], Mr. Singer argued before the
27 Fourth District Court of Appeal in May 2008 on transfer from the California Supreme Court,
28 and co-authored the successful Petition for Review. My firm has successfully tried class cases,

1 obtained appellate reversals of class certification denials (*Hicks v. Kaufman and Broad*, (2001)
2 89 Cal.App.4th 908), and certified multiple wage and hour classes.

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

24 8. Cohelan Khoury & Singer has been certified Class Counsel in the following
25 contested proceedings: *Aguilar v. Atlantic Richfield, et al.*, San Diego County Superior Court
26 Case No. 00700810; *Andino v. Kaiser Foundation Hospitals*, Alameda County Superior Court
27 Case No. RG11580548; *Arellano, et al. v. Container Connection of Southern California, Inc.*,
28 Los Angeles County Superior Court Case No. BC500675; *BANK OF AMERICA WAGE AND*

1 *HOURLY EMPLOYMENT PRACTICES LITIGATION*, United States District Court, District of
2 Kansas MDL Case No. 2138 (FLSA Condition Certification); *Czuchaj v. Conair Corporation*,
3 United States District Court, Southern District of California Case No. 13CV1901; *Dilts, et al. v.*
4 *Penske Logistics, L.L.C., et al.*, United States District Court, Southern District of California
5 Case No. 08CV0318; *Englert, et al. v. AT&T Wireless Services, Inc., et al.*, Circuit Court of the
6 Second Circuit, State of Hawaii Case No. 02-1-0074; *Evans v. Washington Mutual Bank*,
7 Orange County Superior Court Case No. 02CC15415; *Filion v. Ethan Allen Retail Inc.*, United
8 States District Court, Southern District of California Case No. 05CV2340; *Gerard v. Les*
9 *Schwab Tire Centers of California, Inc.*, Sacramento County Superior Court Case No. 2007-
10 300000003; *Grana, et al. v. PICO Enterprises, Inc. dba Phyle Inventory Control Specialist and*
11 *PICS L.A.S.C.* Case No. BC472891; *Gutierrez v. Save Mart Supermarkets San Mateo Superior*
12 *Case No. CIV530955; Wilcox v Albertsons*, San Diego County Superior Court Case No.
13 GIC833922; *Gonzalez, et al. v. Freedom Communications, Inc. d/b/a The Orange County*
14 *Register*, Orange County Superior Court Case No. 03CC08756; *Graham, et al. v. Overland*
15 *Solutions, Inc.*, United States District Court, Southern District of California Case No.
16 10CV0672 (FLSA Conditional Certification); *Hicks v. Kaufman and Broad Home Corp.*, Los
17 Angeles County Superior Court Case No. B198414; *Hohnbaum, et al. v. Brinker Restaurant*
18 *Corporation, et al.*, San Diego County Superior Court Case No. GIC834348; *KEMP, et al. v.*
19 *CSEA, et al.*, Circuit Court of the First Circuit, State of Hawaii Case No. 98-3815-08; *LIBERTY*
20 *MUTUAL OVERTIME CASES*, Los Angeles County Superior Court Case No. JCCP 4234;
21 *Mitchell, et al. v. Acosta, Inc., dba Acosta Sales and Marketing Company*, United States District
22 Court, Central District of California Case No.11CV07196 (FLSA Conditional Certification);
23 *Santana v. Rady Children's Hospital-San Diego*, San Diego County Superior Court Case No.
24 37-2014-00022411; *Schaffer v. Rady Children's Hospital-San Diego*, San Diego County
25 Superior Court Case No. 337-2015-00022978; *Schneider, et al. v. Catholic Healthcare West*,
26 San Francisco County Superior Court Case No. CGC-10-506243; *Salucci v. Amada Senior*
27 *Care, Inc.*, Orange County Superior Court Case No. 37-2015-00778081; *Smith v. California*
28 *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 200 class action settlements.

9. As Class and PAGA Representative Counsel, 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 over 200 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.*,

1 Orange County Superior Court, Case No. 2018-01017838; (j) *Klein v. Loomis Armored US,*
2 *LLC*, San Bernardino County Superior Court, Case No. CIVDS1704547, Hon. David Cohn; (k)
3 *Laureano v. The Art of Shaving*, Los Angeles County Superior Court, Case No. BC550093,
4 Hon. Amy D. Hogue; (l) *Lopez, et al. v. Management & Training Corporation, et al.*, United
5 States District Court, Southern District of California, Case No. 17-CV-010624 JM, Hon. Jeffrey
6 T. Miller; (m) *Magdaleno v. Shelly Automotive, LLC*, Orange County Superior Court Case No.
7 2013-0043958, Hon. Kim. G. Dunning; (n) *McGrath, et al. v. Wyndham Resort Development*
8 *Corporation, et al.*, United States District Court, Southern District of California, Case. No. 15-
9 CV-1631 JM, Hon. Jeffrey T. Miller; (o) *Mena v. Wolfgang Puck Catering*, Los Angeles
10 County Superior Court Case No. BC582743, Hon. John Shepard Wiley, Jr.; (p) *Morales v. The*
11 *Los Angeles Country Club*, Los Angeles County Superior Court, Case No. BC566493, Hon.
12 William F. Highberger; (q) *Nijmeh v. Bon Appetit Management Company, Inc.*, Santa Clara
13 County Superior Court, Case No. 16CV294127, Hon. Thomas E. Kuhnle; (r) *Plascencia v.*
14 *Aramark Services, Inc.*, Santa Clara County Superior Court, Case No. 2015-1-CV-288310, Hon.
15 Brian C. Walsh; (s) *Plimpton v. Gordon Trucking, Inc.*, San Bernardino County Superior Court,
16 Case No. CIV-DS-1511918, Hon. Donald Alvarez; (t) *Raya v. Amazon*, USDC, Northern
17 District of California, Case No. 15-CV-02005 MMC, Hon. Maxine M. Chesney; (u) *Rivas v.*
18 *ESA Management*, USDC, Central District of California, Case No. 14-CV-5767, Hon. Dale S.
19 Fischer; (v) *Rodriguez v Healthcare Partner Medical Group, Inc.*, Los Angeles County
20 Superior Court, Case No. BC541313, Hon. Kenneth Freeman; (w) *Ryan v. Dignity Health*,
21 Sacramento County Superior Court Case No. 2013-00147371, Honorable Alan G. Perkins; (x)
22 *Santana v. Rady Children's Hospital-San Diego*, San Diego County Superior Court Case No.
23 37-2014-00022411, Hon. Joel R. Wohlfeil; (y) *Schaffer v. Rady Children's Hospital-San Diego*,
24 San Diego County Superior Court Case No. 337-2015-00022978; Hon. Joel R. Wohlfeil; (z)
25 *Schneider v. Catholic Healthcare West*, San Francisco County Superior Court, Case No. CGC-
26 10-506243, Hon. Angela Bradstreet; (aa) *Schwartz v Bank of the West*, San Francisco County
27 Superior Court, Case No. CGC-14-538955, Hon. Harold E. Kahn; (bb) *Syed v. M.I. Swaco*,
28 USDC, Eastern District of California, Case No. 12-CV-01718 DAD, Hon. Dale A. Drozd; (cc)

1 *Vaquero, et al. v. Stoneledge Furniture, LLC*, Los Angeles County Superior Court Case No.
2 BC522676, Hon. Elihu M. Berle; (dd) *Vazquez v. Kraft Heinz Foods Company*, USDC,
3 Southern District of California Case No. 16-CV-02749, Hon. William Q. Hayes; (ee) *Walsh v.*
4 *Cedars-Sinai Medical Center*, Los Angeles County Superior Court Case No. BC487290, Hon.
5 William F. Highberger; among others.

6 10. We are experienced and consider ourselves qualified to evaluate the claims and
7 defenses in this Action. This allowed our firm to assist in achieving an efficient resolution of the
8 claims in this matter for a non-reversionary Settlement Payment of \$860,000 for approximately
9 127 California non-exempt employees against Defendants Lightning Source LLC, Ingram
10 Distribution Management LLC, and Ingram Content Group LLC (collectively, “Defendants”)
11 employed any time during the Class Period (April 6, 2016 through June 28, 2021). The
12 proposed Settlement is memorialized in the Stipulation of Class Action Settlement and Release
13 of Claims, (“Settlement Agreement”), attached as Exhibit A.

14 11. Plaintiff alleges he and the putative Class were subject to Defendants’ unlawful
15 policies and practices which denied them compliant meal and rest periods or premiums in lieu
16 thereof; all wages owed due to rounding time worked to the nearest 15-minute increment, off-
17 the-clock work, and miscalculating overtime wages; expense reimbursements for work-related
18 cell-phone use; and derivatively, accurate wage statements and timely final wages.

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

24 13. The Class is defined as all current and former non-exempt employees of
25 Defendants employed in California during the Class Period. The 127 Class Members worked an
26 estimated 10,818 workweeks during the Class Period. PAGA Members, a subset of the Class,
27 worked an estimated 2,623 pay periods during the PAGA Period (April 6, 2019 through June
28 28, 2021).

1 14. On May 19, 2020, Defendants responded to Plaintiff's record request and
2 produced Plaintiff's personnel file containing, in pertinent part, employment policies and
3 procedures, new employee documents, performance evaluations, and wage statements.

4 15. On June 8, 2020, Plaintiff served a PAGA notice on Defendants and the
5 California Labor and Workforce Development Agency ("LWDA") advising that he intended to
6 file a representative action on behalf of himself and all other aggrieved employees to seek civil
7 penalties for the alleged Labor Code violations. Attached as Exhibit B is a true and correct copy
8 of Plaintiff's June 8, 2020 PAGA Notice.

9 16. On June 10, 2020, Plaintiff filed a class action complaint alleging Defendants
10 failed to (1) pay minimum wages (Labor Code §§ 1182.12, 1194, 1194.2, 1197, 1197.1, 1198,
11 and IWC Order(s) § 4); (2) pay overtime wages (Labor Code §§ 510, 1194, 1198, and IWC
12 Wage Order(s) § 3); (3) provide meal periods (Labor Code §§ 226.7, 512, and IWC Order(s) §
13 11); (4) provide rest periods (Labor Code § 226.7 IWC Order(s) § 12); (5) provide accurate
14 itemized wage statements (Labor Code § 226 and IWC Wages Order(s) § 7); (6) reimburse
15 business expenses (Labor Code § 2802, and IWC Order(s) § 9); (7) timely pay wages due
16 during employment (Labor Code §§ 204, 210, and IWC Order(s)); (8) timely pay wages due
17 upon separation of employment (Labor Code §§ 201, 202, 203, and IWC Order(s)); and based
18 on these allegations, (9) violation of the Unfair Competition Law (Business & Professions Code
19 §§ 17200-17208). On June 24, 2020, Plaintiff served an amended PAGA notice on the LWDA
20 and Defendants. Attached as Exhibit C is a true and correct copy of Plaintiff's June 24, 2020
21 Amended PAGA Notice.

22 17. Defendants served their general denial and affirmative defenses to the complaint
23 on August 21, 2020.

24 18. On August 26, 2020, Defendants served Plaintiff with special interrogatories,
25 employment form and form interrogatories, and requests for production of documents. Plaintiff
26 served verified discovery responses and produced 110-pages of responsive documents on
27 November 6, 2020.

28 19. After receiving no notice from the LWDA it intended to investigate the charges,

1 on September 10, 2020, a First Amended Complaint (“FAC”) seeking PAGA civil penalties was
2 filed and served. Defendants served their general denials and affirmative defenses on October
3 12, 2020.

4 20. On September 10, 2020, Plaintiff served each Defendant with employment and
5 form interrogatories, special interrogatories, requests for admission, and requests for production
6 of documents.

7 21. In late-September 2020, the Parties agreed to stay formal discovery and to attend
8 mediation. Plaintiff requested, and Defendants produced, after several meetings with Plaintiff in
9 early 2021, sufficient data and documents to allow Plaintiff to assess liability and to calculate
10 Class-wide damages for purposes of mediation.

11 22. Information provided by Defendants included: (a) contact information for ten
12 (10) Class Members; (b) an excel spreadsheet with timekeeping records and corresponding
13 spreadsheets with payroll records for 25 randomly selected Class Members chosen by Plaintiff’s
14 Counsel (20% of the Class – (13 former employees and 12 current employees)); (c) the
15 estimated Class size: 127, of which 67 were currently employed, and 60 were formerly
16 employed; (d) the estimated number of former employees within three years: 60 former
17 employees in the three-year statute of limitations for waiting time penalties, April 6, 2017 to
18 April 26, 2021; (e) the estimated number of former employees within one year: 29 former
19 employees during the one-year statute of limitations for PAGA Penalties; (f) the estimated
20 number of Class Period pay periods: 5,538 pay periods worked during the Class Period, from
21 April 6, 2016 to April 26, 2021, (g) the estimated number of PAGA Period pay periods: 2,623
22 PAGA Pay Periods Worked from April 6, 2019 to April 26, 2021 (PAGA Period).

23 23. Plaintiff’s Counsel retained a damages’ consultant to review the data to assess
24 short, late, or missed meal periods and underpaid wages due to rounding, off-the-clock work,
25 and overtime wages miscalculations. Damages were extrapolated to the Class. PAGA Penalties
26 were also calculated. Plaintiff’s initial theory for regular rate miscalculation, identified in his
27 PAGA letters, was determined by Plaintiff to be in error and was not pled in his Complaint nor
28 his First Amended Complaint. For mediation, Plaintiff’s consultant determined that payments

1 labeled “Discretionary Bonus” and “Shift Differential” were not included in the regular rate and
2 calculated the amount of underpayment caused by these exclusions, while accounting for offset
3 payments apparently made to account for shift differential payments.

4 24. With Class-wide damages and PAGA penalties models prepared, on April 29,
5 2021, the Parties attended mediation with Steven Serratore, an experienced wage and hour class
6 action mediator facilitating the day-long arms’-length negotiations. At the end of the day, the
7 mediator tendered a proposal which was, by May 4, 2021, accepted by the Parties. As a term of
8 Settlement, Plaintiff filed and served a Second Amended Complaint on August 10, 2021
9 alleging the unlawful time-rounding and underpaid overtime wages which were evaluated at
10 mediation. Settlement was reached through arm’s-length negotiations facilitated by an
11 experienced wage and hour class action mediator. Though cordial and professional, the
12 negotiations were at all times, adversarial and non-collusive in nature.

13 25. The Parties agreed to settle the Action for the Gross Settlement Amount (“GSA”)
14 of \$860,000 which includes, subject to Court approval: (a) attorneys’ fees of \$286,666.67¹; (b)
15 litigation costs of up to \$18,000; (c) Service Payment of \$10,000 to Plaintiff for his efforts in
16 initiating and prosecuting the Action, work performed, risks undertaken for costs, substantial
17 benefits conferred on absent Class Members, and a general release; (d) PAGA Payment of
18 \$50,000 for civil penalties, of which \$37,500 (75%) to be paid to the LWDA and \$12,500
19 (25%) to be distributed to PAGA Members; and (e) administration expenses to Simpluris, up to
20 \$5,000. In addition to the GSA, Defendants will pay the employer’s share of payroll taxes on
21 Class Members’ payment allocated as wages.

22 26. The remaining Net Settlement Amount estimated at \$490,333.33 will be
23 distributed to Participating Class Members based on the number of weeks each worked during
24 the Class Period. No claim form will be necessary.

25 27. With an estimated 10,818 weeks worked during the Class Period, a Participating
26 Class Member will receive an estimated \$45.32 for each week worked during the Class Period,
27

28 ¹ Plaintiff consented in writing to the equal distribution of attorneys’ fees recovered in this
case, i.e., 50% to Lebe Law APLC, and 50% to Cohelan, Khoury and Singer. Khoury Decl. ¶25.

1 or an average payment of \$3,861 (\$490,333.33 / 127 Class Members).

2 28. PAGA Members will receive a proportionate share of the \$12,500 PAGA
3 Payment based on the number of pay periods worked during the PAGA Period. With 2,623 pay
4 periods during the PAGA Period, each PAGA Member will receive an estimated \$4.76 for each
5 pay period. After 180 days of issuance of the Settlement Payments, uncashed checks will be
6 voided and funds sent to the State of California Controller, Unclaimed Property Division for
7 further handling on behalf of the Class Member whose check was voided.

8 29. No part of the GSA will revert to Defendants.

9 30. The information needed to distribute the funds is available from Defendants'
10 records and the Administrator can apply the formula fairly.

11 31. The administrator will search the National Change of Address database to update
12 Class Member mailing addresses produced by Defendants before mailing the Court-approved
13 Notice of Class Action Settlement ("Notice"), Change of Address Form, and pre-printed return
14 envelope, ("Notice Packet").

15 32. If a Notice Packet is returned undeliverable, the Administrator will skip-trace
16 using the Class Member's social security number and re-mail if a better address is found. Class
17 Members with remailed Notice Packets will have an additional 15 days beyond the Response
18 Deadline to act.

19 33. The proposed Notice advises the Class of: (1) the right to participate in the
20 Settlement/that a claim form is not needed; (2) the manner and timing to submit objections or
21 opt out requests; (3) how to dispute the payment calculation information; (4) the released
22 claims; and (5) the date, place, and time to appear for the Final Approval hearing.

23 34. Class Members who remain in the Class will release only those claims alleged in
24 the Action, i.e.:

25 All claims of wrongful conduct, causes of action or legal theories of relief alleged
26 or otherwise raised, or that could have been raised on the facts alleged in the
27 Complaint, including all of the following: (1) failure to pay wages minimum
28 wages (Labor Code §§ 1194, 1194.2, 1197, 1197.1, 1198, and IWC Orders; (2)
failure to pay overtime wages (Labor Code §§ 510, 1194, 1198); (3) failure to
provide rest periods and proper meal periods or compensation in lieu thereof
(Labor Code §§ 226.7, 512, and IWC Orders); (4) failure to timely pay wages due

1 while employed and at termination of employment (Labor Code §§ 201 - 204,
2 210 and IWC Orders); (5) failure to provide accurate wage statements (Labor
3 Code § 226); (6) failure to reimburse business expenses (Labor Code § 2802, and
4 IWC Orders); (7) Unfair Business Practices (Business & Professions Code §§
5 17200, et seq.); and (8) civil penalties pursuant to the Private Attorneys General
6 Act (“PAGA”), Labor Code §§ 2698, *et seq.*, for the above-referenced Labor
7 Code violations, and all damages, penalties, interest, attorneys’ fees, litigation
8 costs, restitution, equitable relief, and other amounts or types of relief recoverable
9 under said claims, causes of action, or legal theories of relief, or other claims
10 based on the facts alleged in the Action.

11 35. If a Class Member opts out, and is an eligible PAGA Member, they will receive
12 a proportionate share of the \$12,500 PAGA Payment and release only those claims brought
13 under PAGA.

14 36. Plaintiff’s Counsel investigated claims and Defendants’ potential defenses before
15 serving the PAGA letter and filing the complaints. For mediation, Defendants produced contact
16 information for 10 Class members, and data, documents, and information for 25 Class Members
17 (20% of the Class).

18 37. This gave the Parties an understanding of the strengths and weaknesses of their
19 positions before negotiations.

20 38. Counsel for Plaintiff and the Class have significant experience in litigating
21 employment wage and hour class actions.

22 39. Defense counsel Ryan Eddings and Andrew Woo of Littler are also skilled and
23 experienced wage and hour litigators who defended their clients vigorously to settle this action.

24 40. Class Counsel believes the Settlement is fair, reasonable, and in the Class’ best
25 interest in light of the recovery and risks of continued litigation.

26 41. I, along with my fellow co-counsel concluded the proposed Settlement is
27 reasonable. Plaintiff’s counsel recognized and considered the inherent risks and uncertainty of
28 litigation, including: (i) denial of certification; (ii) if certified, that decertification may be
granted; (iii) a grant of summary judgment or summary adjudication; (iv) the possibility of an
unfavorable, or less favorable, result at trial; (v) the possibility post-trial motions may result in
an unfavorable, or less favorable, result than trial; and, (vi) the possibility of an unfavorable, or

1 less favorable, result on appeal, and the certainty that process would be lengthy. While Plaintiff
2 believes in the strength of his claims, Defendants' defenses create a significant possibility Class
3 claims would not be certified or would fail on the merits, conferring no Class benefit. By
4 contrast, the proposed Settlement will yield a prompt, certain, and substantial Class recovery,
5 without additional time or judicial resources.

6 42. The \$860,000 non-reversionary settlement stands to benefit 127 Class Members
7 with an average payment of \$3,861.

8 43. Defendants disputed liability and contended they abided all California labor laws
9 pertinent to the claims brought in this action.

10 44. Class Counsel relied on time and pay records for 20% of the randomly selected
11 Class, extrapolated to the Class for the Class Period. On these bases, Class counsel's damages
12 consultant calculated Class-wide damages and penalties through the date of mediation.

13 45. Time records analyzed revealed that 100 percent of employees analyzed were
14 subjected to rounding and were not paid for some time worked due to rounding, and that on
15 average, 2.6 minutes per shift were unpaid. Over the Class Period, 2,335.5 hours were unpaid
16 and 436.1 hours were overpaid, with a net of 1,899.4 unpaid hours. Plaintiff estimated
17 Defendants' exposure at \$42,878.95, assuming half of unpaid hours were regular and half were
18 overtime [(949.7 hours x \$18.06 per hour= \$17,151.58) + (949.7 hours x \$27.09 per hour
19 (overtime rate) = \$25,727.37)]. Plaintiff reduced Defendants' estimated exposure by 50%, to
20 **\$21,439.48**, based on case law suggesting a court might uphold Defendants' rounding policy.

21 46. Unpaid minimum wages for off-the-clock work was estimated at \$19,541 (0.1
22 hours x 10,818 workweeks x \$18.06 per hour). Plaintiff reduced Defendants' exposure by 50%
23 to **\$9,770.50**.

24 47. Plaintiff contends Defendants failed to factor into the regular rate of pay all non-
25 discretionary bonuses when calculating overtime wages. Both overtime and bonuses were paid
26 in 326 of 1,320 pay periods. Plaintiff calculated unpaid overtime wages at \$81,371.00. Given
27 the risk this claim could fail at certification, Plaintiff reduced Defendants' exposure by 50%, to
28 **\$40,685.50**.

48. Defendants' time records showed (1) no meal breaks on 9.3% of shifts longer than 6 hours (\$72,792.00 in premiums owed); (2) late first meal breaks on 35.1% of shifts over 5 hours (\$250,045.00 in premiums owed); (3) short first meal breaks on 39.3% of shifts over 5 hours (\$279,987.00 in premiums owed); and (4) no second meal break on 99.9% of shifts over 10 hours (\$246,968.00 in premiums owed), yielding exposure of \$849,792.00. Recognizing only one meal period premium may be owed per shift, and that a second meal period may be waived if the first meal period is taken, a more accurate figure of **\$602,824.00** was calculated, subtracting premiums calculated for failure to provide a second meal period.

49. Given rest periods were not recorded, and based on Plaintiff's experiences, Plaintiff assumed a 50% violation rate (22,507 violations) requiring \$406,548.00 in rest period premiums. Given that rest period claims are inherently difficult to certify, that Class Members likely could not remember which, if any, shifts had non-compliant rest periods, and the lack of rest period records, Defendants' potential exposure was reduced by 90% to **\$40,654.80**.

50. Plaintiff alleged Defendants failed to reimburse Class Members for the use of personal cell phones to communicate with supervisors during their shifts and to report mechanical failures. Maximum exposure was estimated at \$43,180 (\$5 a month x 68 months during Class Period x 127 Class Members). Defendants contend Class Members were generally prohibited from taking their cell phones onto the factory floor, and that Plaintiff's position did not require the use of a personal cell phone. Defendants' exposure was thus reduced by 75% to **\$10,795**.

51. For the 86 Class Members in the one-year liability period comprising 2,623 pay periods, Defendants' potential exposure was calculated at \$131,150 (\$50 x 2,623).

52. Plaintiff estimated probability of certification at 50% and victory at trial at 50%, resulting in a 75% discount to realistic exposure of **\$32,787.50**.

53. For the 60 former employees (in the period three years from filing), penalties of \$260,064.00 (8 hrs/day x \$18.06/hr x 30 days x 60 EEs) were calculated. Realistic exposure was estimated at 25% of the maximum, or **\$65,016.00**.

///

54. Maximum PAGA civil penalties, using the initial violation rate for all pay periods versus using the initial violation rate for the first pay period and the subsequent violation rate for all subsequent pay periods for 2,623 pay periods during the PAGA Period are estimated at \$4,230,400 / \$1,510,350 based on the underlying violations: (a) Section 226(a) - wage statements (\$250/\$1,000): \$2,558,500/\$655,750; (b) Section 510 - overtime/regular rate (\$100/\$200): \$121,000/\$64,800; (c) Section 1194- wages (\$100/\$200): \$516,000/\$262,300; (d) Sections 512 and 226.7 - meal periods (\$100/\$200)—\$516,000/\$262,300; (e) Section 226.7 - rest periods (\$100/\$200): \$516,000/\$262,300; and (f) Section 203 - final wages for 29 formers (\$100): \$2,900.

55. Plaintiff anticipated the court might deem a PAGA trial unmanageable given the need to interview Class members as to rest and meal period violations and cell phone usage. Based on this, Plaintiff believed reasonable exposure was no more than five (5) percent of maximum exposure at initial violation rates, or **\$75,517.50** (5% of \$1,510.350).

56. The proposed Settlement reflects an excellent recovery for the Class and should be granted preliminary approval.

57. On the same date this motion and its exhibits are filed with the Court, they will be served upon Defendant and provided to the Labor and Workforce Development Agency ("LWDA") via the LWDA's website, using the appropriate intake form. Attached as Exhibit D is a true and correct copy of the LWDA confirmation of Receipt.

I declare under the penalty of perjury under the laws of the State of California the foregoing is true and correct and this declaration is executed September 16, 2022, in San Diego, California.



Diana M. Khoury

EXHIBIT A

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behalf of all others similarly situated and aggrieved

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF FRESNO

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

Plaintiff,

v.

LIGHTNING SOURCE LLC; INGRAM
DISTRIBUTION MANAGEMENT INC;
INGRAM CONTENT GROUP LLC; and
Does 1
through 25,

Defendants.

Case No. 20CECG01641

ASSIGNED FOR ALL PURPOSES TO:
The Honorable Kimberly Gaab

**STIPULATION OF CLASS ACTION
SETTLEMENT AND RELEASE OF CLAIMS**

Exhibits:

1 - Notice of Class Action Settlement

2 - Change of Address Form

3 - Preliminary Approval Order

4 - Final Approval Order and Judgment

IT IS HEREBY STIPULATED by Plaintiff Eric Garcia, individually, and on behalf of the Class he represents, and Defendants Lightning Source LLC, Ingram Distribution Management LLC (erroneously sued as “Ingram Distribution Management Inc”), and Ingram Content Group LLC, subject to the approval of the Court, that this class and representative action is settled pursuant to the terms and conditions set forth below in this Stipulation of Class Action Settlement and Release Claims.

DEFINITIONS

1. “Action” means the class and representative action entitled *Eric Garcia, individually and on behalf of all others similarly situated and aggrieved, Plaintiff, v. Lightning Source LLC; Ingram Distribution Management Inc; Ingram Content Group LLC; and Does 1 through 25, Defendants*, Case No. 20CECG01641 pending in the Superior Court for the State of California, County of Fresno, filed on June 8, 2020, amended on September 10, 2020 by a First Amended Complaint, and on August 10, 2021 amended by a Second Amended Complaint.

2. “Administrator” means Simpluris or such other entity which the Parties mutually agree shall serve as Administrator.

3. “Administration Payment” means the payment to the Administrator for the actual and direct costs reasonably charged by the Administrator for its services in administering the Settlement. The Administration Payment is estimated not to exceed \$5,000. The entirety of the Administration Payment shall be paid from the Gross Settlement Amount and will not increase the Gross Settlement Amount.

4. “Agreement”, “Settlement Agreement” or “Stipulation of Settlement” refers to this Stipulation of Class Action Settlement and Release of Claims.

5. “Attorneys’ Fees and Costs Payment” means such payment of attorneys’ fees and litigation costs as the Court may authorize to be paid to Class Counsel for the services they have rendered to Plaintiff and the Class and expenses they have incurred in prosecuting the Action. The entirety of the Attorneys’ Fees and Costs Payment shall be paid from the Gross Settlement Amount and will not increase the Gross Settlement Amount. Any portion of the Attorneys’ Fees

and Costs Payment not awarded shall remain with the Gross Settlement Amount and be made available for payments to Participating Class Members.

6. “Class” or “Class Members” shall mean all current and former non-exempt employees who worked for Defendants in the State of California at any time during the Class Period.

7. “Class Counsel” means the law firms of Lebe Law, APLC and Cohelan Khoury & Singer.

8. “Class Period” means April 6, 2016 through June 28, 2021, inclusive.

9. “Complaint” means the operative complaint in the Action, the Second Amended Complaint. The Second Amended Complaint was filed on August 10, 2021 and asserted claims for 1) Failure to Pay Minimum Wages, 2) Failure to Pay Overtime Wages, 3) Failure to Provide Meal Periods, 4) Failure to Provide Rest Periods, 5) Failure to Provide Accurate Itemized Wage Statements, 6) Failure to Reimburse Business Expenses, 7) Failure to Timely Pay Wages Due During Employment, 8) Failure to Timely Pay Wages Due Upon Separation of Employment, 9) Violation of the Unfair Competition Laws, and 10) Civil Penalties Pursuant to the PAGA.

10. “Court” means the Superior Court of the State of California County of Fresno.

11. “Defendants” or “Ingram” means Lightning Source LLC, Ingram Distribution Management LLC (erroneously sued as “Ingram Distribution Management Inc”), and Ingram Content Group LLC.

12. “Defendants’ Counsel” means Littler Mendelson PC.

13. “Employer Tax Obligations” means the employer’s / Released Parties’ share of payroll taxes, including, but not limited to, FICA, Medicare, ETT, FUTA, and SUTA, etc., with respect to the portion of the Gross Settlement Amount that is treated as wages. The Tax Obligations shall be paid by Defendants in addition to the Gross Settlement Amount.

14. “Effective Date of Settlement” shall mean the date by which this Agreement is approved by the Court by entry of a Final Approval Order and Judgment and that Final Approval Order and Judgment has become final without any recourse for appeal, writ, or other appellate

1 proceeding. The Final Approval Order and Judgment shall become final when the later of the
2 following events occurs: (a) the period for filing any appeal, writ, or other appellate proceeding
3 opposing the Settlement has elapsed without any appeal, writ, or other appellate proceeding having
4 been filed; (b) any appeal, writ, or other appellate proceeding opposing the Settlement has been
5 dismissed finally and conclusively with no right by any appellant or objector to pursue further
6 remedies or relief; or (c) any appeal, writ, or other appellate proceeding has upheld the Final
7 Approval Order and Judgment with no right by any appellant or objector to pursue further remedies
8 or relief. In this regard, it is the intention of the Parties that the Settlement shall not become
9 effective until the Court's Final Approval Order and Judgment is completely final, and no further
10 recourse exists by an appellant or objector who seeks to contest the Settlement. The occurrence
11 of the Effective Date is a prerequisite to any obligation of Defendants to pay any amount of the
12 Gross Settlement Amount.

13 15. "Final Approval" means that the Final Approval Order and Judgment have been
14 entered.

15 16. "Final Approval Hearing" means a hearing held before the Court to consider Final
16 Approval of the Settlement, and in what amount attorneys' fees and litigation costs should be
17 awarded to Class Counsel, a Service Payment awarded to the Class Representative Eric Garcia,
18 the administration expenses and fees to the Administrator, and the merits of objections to the
19 Settlement, if any.

20 17. "Final Approval Order and Judgment" means an Order and Judgment issued by
21 the Court in substantially the form attached as **Exhibit 4** approving the Settlement and this
22 Agreement as binding upon the Parties and the Class Members.

23 18. "Gross Settlement Amount" (or "GSA") means the maximum amount Defendants
24 shall pay under this Settlement. The GSA consists of the a) Attorneys' Fees and Costs Payment;
25 b) the Class Representative's Service Payment; c) the LWDA Payment (75% of the PAGA
26 Payment); d) the Administration Expenses; and e) Class Member Settlement Payments, which
27 includes to the extent eligible, a proportionate share of amount the \$12,500 (25% of the PAGA
28

Penalty) allocated to the PAGA Members. The GSA is non-reversionary and no portion will revert to Defendants under any circumstances. The Parties agree, covenant, and represent that Defendants shall be required to pay only the Gross Settlement Amount and the Employer Tax Obligations.

19. “LWDA Payment” means the 75% portion of the PAGA Payment, i.e. \$37,500, to be paid to the California Labor and Workforce Development Agency (“LWDA”), for all applicable civil penalties under the California Labor Code’s Private Attorneys General Act of 2004, Labor Code §§ 2699 *et seq.*

20. “Net Settlement Amount” means the amount remaining after the Court-approved deductions from the Gross Settlement Amount for the a) Attorneys’ Fees and Costs Payment; b) the Class Representative’s Service Payment; c) the LWDA Payment; d) the PAGA Member Payment; and e) the Administration Expenses.

21. “Notice” (or “Class Notice”) means the Court-approved Notice of Class Action Settlement informing Class Members of the terms of the proposed Settlement, of their rights to object, to request exclusion from the Class, to dispute the information upon which their Settlement Payments are calculated, as well as the date set for the Final Approval Hearing, among other things, substantially in the form attached as **Exhibit 1**.

22. “Notice Packet” means collectively, the Court-approved Notice, Change of Address form (in a form substantially similar to **Exhibit 2**), and a pre-printed return envelope to be mailed to all Class Members.

23. “PAGA Member” means any and all current and former non-exempt persons employed by Defendants in California at any time during the PAGA Period.

24. “PAGA Period” means that period of time from April 6, 2019 through June 28, 2021.

25. “PAGA Payment” means the allocation of \$50,000 from the Gross Settlement Amount of which 75% (\$37,500) will be paid to the California’s Labor and Workforce Development Agency (“LWDA”, “LWDA Payment”), for all applicable civil penalties under the California Labor Code’s Private Attorneys General Act of 2004, Labor Code §§ 2699 *et seq.*, and

of which 25% (\$12,500) (the “PAGA Member Payment”) will be distributed on a proportionate basis to all PAGA Members.

26. “Participating Class Members” means all members of the Class who did not return a valid and timely request for exclusion in the manner and by the Response Deadline as set forth in the Notice and this Agreement.

27. “Parties” means Plaintiff and Defendants.

28. “Party” means any of said Parties.

29. “PAGA Pay Periods Worked” means the number of pay periods in which a PAGA Member performed compensable work for Defendants, within the PAGA Period, and as reflected in Defendants’ business and payroll records. Class and PAGA Members were paid biweekly, which is a Pay Period. The Gross Settlement Amount was negotiated based on records that indicated that approximately 85 PAGA Members collectively had approximately 2,623 PAGA Pay Periods Worked between April 6, 2019 to March 20, 2021. It is anticipated that the number of PAGA Pay Periods Worked by all PAGA Members increased in the time period between March 20, 2021 and the end of the PAGA Period.

30. “Plaintiff” or “Class Representative” means Eric Garcia.

31. “Preliminary Approval” means the Court has entered the Preliminary Approval Order which preliminarily approves the terms and conditions of this Settlement, including the form and manner of providing notice to the Class.

32. “Preliminary Approval Order” means the order issued by the Court substantially in the form attached as **Exhibit 3** preliminarily approving the terms and conditions of this Settlement, conditionally certifying the Class, appointing Plaintiff as the Class Representative, Plaintiff’s Counsel as Class Counsel, and Simpluris as the Administrator, and setting a date for the Final Approval Hearing.

33. “Released Claims” means all claims of wrongful conduct, causes of action or legal theories of relief alleged or otherwise raised, or that could have been raised on the facts alleged in the Complaint, including all of the following: (1) failure to pay wages minimum

1 wages (Labor Code §§ 1194, 1194.2, 1197, 1197.1, 1198, and IWC Orders; (2) failure to pay
2 overtime wages (Labor Code §§ 510, 1194, 1198); (3) failure to provide rest periods and proper
3 meal periods or compensation in lieu thereof (Labor Code §§ 226.7, 512, and IWC Orders); (4)
4 failure to timely pay wages due while employed and at termination of employment (Labor Code
5 §§ 201 - 204, 210 and IWC Orders); (5) failure to provide accurate wage statements (Labor
6 Code § 226); (6) failure to reimburse business expenses (Labor Code § 2802, and IWC Orders);
7 (7) Unfair Business Practices (Business & Professions Code §§ 17200, *et seq.*); and (8) civil
8 penalties pursuant to the Private Attorneys General Act (“PAGA”), Labor Code §§ 2698, *et seq.*,
9 for the above-referenced Labor Code violations, and all damages, penalties, interest, attorneys’
10 fees, litigation costs, restitution, equitable relief, and other amounts or types of relief recoverable
11 under said claims, causes of action, or legal theories of relief, or other claims based on the facts
12 alleged in the Action.

13 34. “Released Parties” means with respect to the Class and PAGA Members,
14 Defendants Lightning Source LLC, Ingram Content Group LLC and Ingram Distribution
15 Management LLC (erroneously sued as “Ingram Distribution Management Inc.”), their parents,
16 predecessors, successors, subsidiaries, affiliates, partners, franchisors, franchisees, and trusts,
17 employment agencies and professional employer organizations, and their officers, shareholders,
18 fiduciaries, members, directors, agents, attorneys, employees, insurers, and assigns.

19 35. “Response Deadline” means sixty (60) days after the initial mailing by the
20 Administrator of the Notice Packet for Class Members to postmark and return to a valid and
21 timely request for exclusion or a dispute concerning the information upon which their Settlement
22 Payment will be calculated. Written objections may be submitted by the Response Deadline,
23 however, Participating Class Members may also appear at the Final Approval without first
24 returning a written objection.

25 36. “Service Payment” means the amount the Court authorizes to be paid to the Class
26 Representative over and above his individual Settlement Payment in recognition of his work and
27 efforts in obtaining the benefits of the Settlement for the Class, for undertaking the risk for
28

1 payment of costs in the event this matter had not successfully resolved, and for providing a
2 General Release of all claims against the Released Parties. Class Representative, Plaintiff Eric
3 Garcia, will request and Defendants will not oppose, a Service Payment of Ten Thousand Dollars
4 (\$10,000). The Service Payment shall be paid out of—and will not increase—the Gross
5 Settlement Amount.

6 37. “Settlement” or “Agreement” means the terms and conditions set forth in this
7 Stipulation of Class Action Settlement and Release of Claims.

8 38. “Settlement Payment” means the gross amount (including any taxes or other
9 standard withholdings) each Participating Class Member is entitled to receive based on their
10 number of Workweeks Worked during the Class Period, and the number of PAGA Pay Periods
11 Worked each was employed during the PAGA Period.

12 39. “Workweek” means any seven consecutive days, starting with the same calendar
13 day each week beginning at any hour on any day, so long as it is fixed and regularly occurring.

14 40. “Class Workweeks Worked” means the number of Workweeks in which a Class
15 Member performed compensable work for Defendants, within the Class Period, and reflected in
16 Defendants’ business and payroll records. The Gross Settlement Amount was negotiated based
17 on records that indicated that approximately 127 Class Members collectively had approximately
18 10,818 Class Workweeks Worked between April 6, 2016 to March 20, 2021. It is anticipated
19 that the number of Class Workweeks Worked by all Class Members increased in the time period
20 between March 20, 2021 and the end of the Class Period.

21 **PROCEDURAL HISTORY, INVESTIGATION AND DISCOVERY CONDUCTED**

22 41. On April 28, 2020, Plaintiff sent a records request to Defendants seeking Plaintiff’s
23 entire employment and personnel files to include: timecards, wages statements, pay stubs,
24 business expense reimbursements, compensation agreements and policies, employment manuals,
25 among other documents.

26 42. On May 19, 2020, Defendants produced Plaintiff’s 92-page employment file that
27 contained Defendants’ employment policies; work safety guidelines; acknowledgement of receipt
28

1 of the employee handbook; Plaintiff's employment offer; Plaintiff's performance evaluations; tax
2 documents; termination paperwork; Plaintiff's resignation letter; and all of Plaintiff's wage
3 statements.

4 43. On June 8, 2020, Plaintiff served his PAGA Notice on the LWDA and Defendants
5 informing them of his intention to file a representative action on behalf of himself and all other
6 aggrieved employees seeking civil penalties for violation of various Labor Code provisions.

7 44. The Class Action Complaint was filed June 10, 2020. The Complaint alleged
8 failure to (1) pay minimum wages (Labor Code §§ 1182.12, 1194, 1194.2, 1197, 1197.1, 1198,
9 and IWC Order(s) § 4); (2) pay overtime wages (Labor Code §§ 510, 1194, 1198, and IWC Wage
10 Order(s) § 3); (3) provide meal periods (Labor Code §§ 226.7, 512, and IWC Order(s) § 11); (4)
11 provide rest periods (Labor Code § 226.7 IWC Order(s) § 12); (5) provide accurate itemized wage
12 statements (Labor Code § 226 and IWC Wages Order(s) § 7); (6) reimburse business expenses
13 (Labor Code § 2802, and IWC Order(s) § 9); (7) timely pay wages due during employment (Labor
14 Code §§ 204, 210, and IWC Order(s)); (8) timely pay wages due upon separation of employment
15 (Labor Code §§ 201, 202, 203, and IWC Order(s)); and based on these allegations, (9) violation
16 of the Unfair Competition Law (Business & Professions Code §§ 17200-17208);

17 45. On June 24, 2020, Plaintiff served an amended PAGA Notice on the LWDA and
18 Defendants.

19 46. Defendants served their general denial and affirmative defenses to the Class Action
20 Complaint on August 21, 2020.

21 47. Without an indication or response from the LWDA it intended to investigate the
22 charges contained in the PAGA Notices, on September 10, 2020, Plaintiff filed his First Amended
23 Complaint ("FAC") alleging claims for civil penalties for the applicable Labor Code violations
24 pursuant to the Private Attorneys General Act of 2004 ("PAGA"), Labor Code §§ 2698, *et seq.*

25 48. On September 10, 2020, Plaintiff served separate but identical sets of discovery on
26 Defendants Lightning Source LLC, Ingram Distribution Management LLC
27 (erroneously sued as "Ingram Distribution Management Inc"), and Ingram Content Group
28 LLC. To each Defendant, Plaintiff served Employment Form Interrogatories, Form

1 Interrogatories, Requests for Admission, Requests for Production, and Special Interrogatories.

2 49. In late-September 2020, the Parties agreed to suspend formal discovery, and to go
3 to mediation provided that Defendants produced the necessary information, data and
4 documentation informally to allow Plaintiff to assess liability for each claim and calculate Class-
5 wide damages for purposes of mediation.

6 50. Defendants served their general denial and affirmative defenses to the FAC on
7 October 12, 2020.

8 51. On November 16, 2020, Plaintiff sent Defendants an informal request for the
9 necessary information, data and documents to allow them to assess liability, and to calculate
10 Class-wide damages and penalties to prepare for mediation. Between February and April 2021,
11 following several meet and confer discussions regarding the scope of the information sought,
12 Defendants produced: (a) contact information for ten (10) Class Members; (b) an Excel
13 spreadsheet with timekeeping records and corresponding spreadsheets with payroll records for 25
14 randomly selected Class Members chosen by Plaintiff's Counsel (20% of the Class – (13 former
15 employees and 12 current employees)); (c) the estimated Class size: 127, of which 67 were
16 currently employed, and 60 were formerly employed; (d) the estimated number of former
17 employees within three years: 60 former employees in the three-year statute of limitations for
18 waiting time penalties, April 6, 2017 to April 26, 2021; (e) the estimated number of former
19 employees within one year: 29 former employees during the one-year statute of limitations
20 for PAGA Penalties; (f) the estimated number of Class Period pay periods: 5,538 pay periods
21 worked during the Class Period, from April 6, 2016 to April 26, 2021, (g) the estimated
22 number of PAGA Period pay periods: 2,623 PAGA Pay Periods Worked from April 6,
23 2019 to April 26, 2021 (PAGA Period).

24 52. With substantial investigation, research, and analysis of the voluminous data, and
25 a Class-wide damage model extrapolated through the date of mediation, on May 4, 2021, the
26 Parties attended mediation with Steven Serratore, an experienced wage and hour class action
27 mediator, facilitating the serious and informed arms'-length negotiations. As an agreement could
28 not be reached by the end of the day, the Mediator tendered a Mediator's Proposal which was

1 accepted on June 4, 2021. The Parties thereafter continued to negotiate the balance of the terms
2 of the Settlement, and entered into a Memorandum of Understanding.

3 53. As a material term of the proposed Settlement documented by this Agreement,
4 Plaintiff would amend the FAC to allege additional theories of recovery, i.e., Defendant's failure
5 to pay all wages due based upon its unlawful policy, practice and procedure of rounding time
6 worked and failure to correctly pay overtime wages by failing to use the Class Members' regular
7 rates of pay when calculating overtime wages. By Stipulation and Order, the Second Amended
8 Class Action Complaint was filed and served on August 10, 2021.

9 **PLAINTIFF'S CLAIMS**

10 54. Plaintiff has claimed and continues to claim that the Released Claims have merit
11 and gives rise to the Released Parties' liability. Neither this Agreement nor any documents referred
12 to, or any action taken to carry out this Agreement is, or may be construed as or may be used as,
13 an admission by or against the Class Members or Class Counsel or any Party or Counsel as to the
14 merits or lack thereof of the claims asserted, except to show resolution of the Released Claims.

15 **NO ADMISSION OF LIABILITY**

16 55. This Agreement represents a compromise and settlement of the Action. Neither this
17 Agreement, nor any document referred to or contemplated, nor any action taken to carry out this
18 Agreement may be construed as, or may be used as an admission, concession, or indication by or
19 against Released Parties that Plaintiff's claims in the Action have merit or that they have any fault,
20 wrongdoing, or liability to Plaintiff or the Class on those claims whatsoever, including any
21 concession that certification of a class continues to be appropriate in this case.

22 56. This Agreement is made for the sole purpose of consummating settlement of all
23 causes of action contained in the Second Amended Class Action Complaint. By entering into this
24 Agreement, the Parties do not admit the allegations or contentions of the other Party, and each
25 Party is entering into this Agreement for the sole purpose of resolving this matter and avoiding the
26 time and expense incident to protracted litigation. Released Parties specifically deny all of
27 Plaintiff's claims as to liability and remedies, as well as Plaintiff's class and representative
28

1 allegations, and expressly reserve all rights to challenge all such claims and allegations upon all
2 procedural and substantive grounds, including the assertion of any and all defenses if the Court
3 does not approve this Agreement and/or if the Settlement does not become effective as defined.

4 **INADMISSIBILITY OF SETTLEMENT AGREEMENT**

5 57. Whether or not the Settlement is finally approved, neither the Settlement, nor any
6 of its terms, nor any document, statement, proceeding, or conduct related to this Agreement, nor
7 any reports or accounts thereof, shall in any event be:

8 A. Construed as, offered, or admitted in evidence as, received as, or deemed to
9 be evidence for any purpose adverse to the Released Parties, including, but not limited to, evidence
10 of a presumption, concession, indication, or admission by any of the Released Parties of any
11 liability, fault, wrongdoing, omission, concession or damage; or

12 B. Disclosed, referred to or offered or received in evidence against any of the
13 Released Parties, in any further proceeding in the Action, or in any other civil, criminal, or
14 administrative action or proceeding except for purposes of settling this Action pursuant to the
15 terms of this Agreement or enforcing the release of the Released Claims.

16 **CERTIFICATION OF THE CLASS FOR SETTLEMENT PURPOSES ONLY**

17 58. The Parties stipulate to certification of the Class only for purposes of the
18 Settlement. If, for any reason, the Settlement is not finally approved, the stipulation to certify the
19 Class will be void. The Parties further agree that certification for purposes of the Settlement is not
20 an admission that class action certification is proper under the standards applied to contested
21 certification motions and that this Agreement will not be admissible in this or any other proceeding
22 as evidence that either: (a) a class action should be certified or (b) Defendants are liable to Plaintiff
23 or any Class Member, other than according to the Settlement's terms.

24 **FAIRNESS AND BENEFITS OF SETTLEMENT TO THE CLASS**

25 59. Plaintiff recognizes the expense and length of continued proceedings necessary to
26 continue the litigation against Defendants through trial and through any possible appeals. Plaintiff
27 has also taken into account the uncertainty and risk of the outcome of further litigation, and the
28

difficulties and delays inherent in such litigation, including those involved in the maintenance of class certification. Plaintiff is also aware of the burdens of proof necessary to establish liability for the claims asserted in the Action, Defendants' defenses, and the difficulties in establishing damages for the Class. Plaintiff has also considered the lengthy and significant negotiations facilitated by Mediator Steven Serratore at mediation on April 29, 2021, and through such time as the mediator's proposal was accepted on June 4, 2021, and beyond to reach agreement on all terms of this Agreement and exhibits. Based on the foregoing, Plaintiff, Class Counsel, Defendants, and Defendants' Counsel have determined that the Settlement set forth in this Agreement, and its terms, are fair, adequate, equitable and reasonable, the product of good faith, arms-length negotiations between the Parties, are consistent with public policy, and fully comply with applicable provisions of law, and in the best interests of all Class Members.

RELEASE AS TO ALL CLASS MEMBERS

60. Plaintiff does, and all Participating Class Members will, agree that upon the Effective Date, they shall be deemed to have, and by operation of the Final Approval Order and Judgment shall have, released the Released Parties from the Released Claims. The Settlement Payments shall be paid to Participating Class Members specifically in exchange for the release of the Released Parties from the Released Claims.

GENERAL RELEASE BY PLAINTIFF

61. Plaintiff will give upon the execution of this Agreement and Effective Date of Settlement, in addition to the Released Claims given by Participating Class Members, a general release of all claims, known or unknown, based on any fact, condition, or incident occurring prior to the date of this Agreement against Defendants, including a waiver of rights under California Civil Code section 1542, which states:

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

Plaintiff agrees to release the Released Parties from all wage and hour claims, including, but not limited to, unpaid overtime or minimum wages, meal and rest period violations, untimely payment

1 of wages, wage statement violations, penalties under the Private Attorneys General Act and all
2 other Released Claims (“Plaintiff’s Released Claims”).

3 **FUNDING AND DISTRIBUTION OF GROSS SETTLEMENT AMOUNT**

4 62. Within fifteen days (15) days of the Effective Date, Defendant shall pay to the
5 Administrator the Gross Settlement Amount. In addition to the GSA, Defendants shall pay the
6 Employer Tax Obligations.

7 63. Following the anticipated Court-approved deductions for the Attorneys’ Fees
8 (\$286,666.67), and Litigation Costs (up to \$18,000), Service Payment (\$10,000), LWDA Payment
9 (\$37,500), the PAGA Member Payment (\$12,500), and Administration Expenses (up to \$5,000),
10 the remaining sum, the Net Settlement Amount estimated at \$490,333.33 will be distributed to all
11 Participating Class Members on a proportionate basis, using the Class Member’s aggregate number
12 of Workweeks Worked during the Class Period in relation to the aggregate number of Workweeks
13 Worked during the Class Period by all Participating Class Members. PAGA Members will receive
14 also receive a share of the \$12,500 PAGA Payment based on the number of PAGA Pay Periods
15 Worked during the PAGA Period.

16 64. Within ten (10) days of the Administrator’s receipt of the GSA, the Administrator
17 shall distribute the Settlement Payments to Participating Class and PAGA Members, LWDA
18 Payment to the LWDA, the Court-approved Attorneys’ Fees and Litigation Costs to Class Counsel,
19 the Service Payment to the Class Representative, and the Administration Payment to Simplicis.

20 **NOTICE/APPROVAL OF SETTLEMENT AND**

21 **SETTLEMENT IMPLEMENTATION**

22 65. As part of this Settlement, the Parties agree to the following procedures for
23 obtaining Preliminary Approval of the Settlement, and providing notice of the Settlement to the
24 Class:

25 A. Preliminary Approval Hearing. Class Counsel shall notice a hearing before
26 the Court to request Preliminary Approval of the Settlement. In conjunction with this hearing,
27 Class Counsel will submit this Agreement (including all exhibits) which set forth the terms of this
28

1 Settlement. The proposed Order Granting Preliminary Approval of Class Action Settlement, in a
2 form substantially similar to **Exhibit 3** will be submitted together with such motion.

3 B. Information Regarding Class. Within fourteen (14) calendar days of
4 Preliminary Approval, Defendants shall provide the Administrator with a Microsoft Excel
5 Spreadsheet containing for each member of the Class, the following: full name, most current
6 mailing address, telephone numbers and email address, social security number, dates of
7 employment, the number of Class Workweeks Worked during the Class Period, and the number
8 of PAGA Pay Periods Worked during the PAGA Period, (the “Class List and Data”).

9 C. Notice to Class Members. The Administrator shall mail the Court-approved
10 Notice Packet, (Notice of Class Action Settlement, Change of Address form, and pre-printed return
11 envelope, Exhibits 1 and 2) by U.S. First Class Mail to all Class Members identified by
12 Defendants’/Released Parties’ records to be Class Members and contained in the Class List and
13 Data.

14 D. Administrator. The Administrator shall be responsible for (a) printing and
15 mailing the Notice, Change of Address Form, and preprinted return envelope (“Notice Packet”) as
16 directed by the Court; (b) updating mailing addresses on receipt of the Class List and Data, and
17 performing subsequent skip-traces on undelivered Notice Packets; (c) establishing a toll-free
18 number and post-office box for receipt of Class Member communications; (d) receiving and
19 reviewing all communications from Class Members and others seeking information on eligibility
20 as a Class Member; (e) consulting with counsel for the Parties as necessary concerning the data,
21 resolution of disputed claims, and status of the settlement process, and weekly status reports; (f)
22 receiving and tracking Class Member communications and requests for exclusion, objections, and
23 disputes; (g) calculating and informing Defendants, and obtaining approval from
24 Defendants of such calculation, prior to the Funding Date, of the Employer Tax Obligations;
25 Tax Obligations; (h) calculating all Settlement Payments, including applicable taxes and
26 withholdings; (i) distributing Settlement Payments to Participating Class and PAGA Members and
27 to others as Ordered by the Court; (j) submitting tax documents to applicable taxing authorities
28

1 and submitting copies of such tax documents to Defendants within thirty (30) days of submitting
2 the tax documents to applicable taxing authorities; (k) handling uncashed checks; (m) cooperating
3 with counsel for the Parties as necessary to prepare declarations in support of the motion for
4 preliminary and/or final approval of the Settlement, and final accounting; and (l) for such other
5 tasks as the Parties set forth in this Agreement or as the Parties mutually agree or the Court orders
6 the Administrator to perform. The Parties each represent they do not have any financial interest in
7 the Administrator or otherwise have a relationship with it that could create a conflict of interest.
8 The Parties agree to cooperate in the settlement administration process and to make all reasonable
9 efforts to control and minimize the Settlement Administration Payment.

10 **CLASS NOTICE**

11 66. The Parties agree to the following procedures for giving notice of this Settlement
12 to the Class:

13 A. On receipt of the Class List and Data, and after conducting a National
14 Change of Address (“NCOA”) database search of all Class Member addresses and making the
15 address corrections indicated, the Administrator shall mail within ten (10) business days of receipt
16 of the Class List and Data the Notice Packet to all Class Members. The envelope containing the
17 Notice Packet shall include on the exterior, front side, the following language:

18 **IMPORTANT LEGAL DOCUMENT:**
19 **You may get Money from a Class Action**
20 **Settlement; your prompt reply to correct a**
BAD address is required.

21 B. Notice Packets returned to the Administrator with a forwarding address
22 shall be re-mailed by the Administrator within three (3) business days of receipt of the returned
23 Notice Packet. All Notice Packets returned to the Administrator as undelivered shall be researched
24 by the Administrator using the Class Member’s social security number to determine any possible
25 new address. If an updated address is located, the Notice Packet shall be remailed immediately.
26 Class Members who are re-mailed Notice Packets shall have their Response Deadline extended
27 fifteen (15) calendar days from the original Response Deadline. If a Notice Packet belonging to a
28

1 currently employed Class Member is returned as undelivered, the Administrator will notify the
2 Parties and Defendants shall then confirm the most recent address they have and provide same to
3 the Administrator for remailing of the Notice Packet no later than three (3) business days after
4 receipt of the updated address.

5 C. Class Members will be responsible for keeping the Administrator apprised
6 of any changes of address to ensure receipt of their Settlement Payments checks. A Change of
7 Address form and pre-printed return envelope will be included in the Notice Packet.

8 **PROCEDURE FOR OBJECTING TO OR REQUESTING EXCLUSION**
9 **FROM THE SETTLEMENT**

10 67. Class Members who wish to object to the Settlement or to exclude themselves from
11 the Class shall use the following procedures:

12 A. Procedure for Objecting. All Class Members shall have the right to submit
13 objections to the Settlement. The Class Notice shall indicate that any Class Member who wishes
14 to object to the Settlement may return to the Administrator, a written statement that includes the
15 specific reasons for the objection(s) on or before the Response Deadline. Class Members may also
16 appear at the time of the Final Approval Hearing without first submitting a written objection.

17 B. Procedure for Requesting Exclusion from the Class. Class Members must
18 return a written statement (as directed by the Notice) no later than the Response Deadline stating
19 their intention to opt out of the Class. The written request for exclusion must contain the Class
20 Member's full name, address, telephone number, last four digits of their social security number,
21 and be signed by that Class Member. Any Class Member who properly opts out of the Class using
22 this procedure will no longer be a Class Member, will not be entitled to any Settlement Payment,
23 and will not be bound by the Settlement or have any right to object, appeal, or comment thereon.
24 Because there is no right to request exclusion from a settlement brought pursuant to the PAGA,
25 Class Members who successfully exclude themselves, who are eligible PAGA Members, will
26 receive their proportionate share of the \$12,500 (25% of the \$50,000 PAGA Payment) based on
27 the number of PAGA Pay Periods Worked, if any, they were employed during the PAGA Period.

1 For this payment, each will release all PAGA claims alleged in the Action.

2 Class Members who do not return a valid and timely request for exclusion in the manner
3 described in the Class Notice and in this paragraph, will remain in the Class and shall receive their
4 proportionate share of the NSA (Settlement Payment) and shall be bound by all terms of the
5 Settlement and any Judgment entered in this Action if the Settlement is approved by the Court,
6 regardless of whether they ineffectively or untimely request exclusion from the Settlement, or do
7 not cash their Settlement Payment checks.

8 C. Option to Reject the Settlement. No later than five (5) business days after
9 the close of the regular or extended Response Deadline, whichever is later, the Administrator shall
10 provide to Class Counsel and Defendants' Counsel a complete list of all persons who have timely
11 requested exclusion from the Class, and the number of their Work Weeks. If more than five
12 percent (5%) of the Class submit valid and timely requests for exclusion, Defendants will have the
13 option at their discretion of rejecting the Settlement in its entirety. Counsel for Defendants shall
14 make such election to reject the Settlement in a writing and served on Class Counsel no later than
15 ten (10) business days following the issuance of the Administrator's notification of the number of
16 Class Members who validly requested exclusion from the Class. If Defendants make this election,
17 they will assume full responsibility for the payment of the Administrator's fees and costs through
18 the date of their election.

19 D. Plaintiff's Right to Rescission. The Gross Settlement Amount was negotiated
20 based on records that indicated there were approximately 127 Class Members with approximately
21 10,818 Class Workweeks Worked during the period from April 6, 2016 to March 20, 2021, and
22 that approximately 85 PAGA members worked approximately 2,623 PAGA Pay Periods Worked
23 during the period from April 6, 2019 to March 20, 2021. It is anticipated that the number of work
24 weeks and the number of pay periods will increase in the time period between March 20, 2021
25 and the end of the Class Period. If it is determined following receipt of the Class Data List by the
26 Administrator and prior to the mailing of the Notice of Class Action Settlement that the number
27 of Class Workweeks Worked or the number of PAGA Pay Periods Worked is fifteen (15) percent
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greater than these figures, Plaintiff shall have the option to rescind the settlement agreement. However, Plaintiff agrees to pay the cost of the Third-Party Administrator incurred in administering the settlement up to that date if they choose to exercise this opt-out option.

NO SOLICITATION OF SETTLEMENT OBJECTIONS OR EXCLUSIONS

68. The Parties agree to use their best efforts to carry out the terms of this Agreement. At no time shall any of the Parties or their counsel or agents (or the Administrator) seek to solicit or otherwise encourage anyone to submit written objections to the Settlement or requests for exclusion from eligible Class Members, or encourage anyone to appeal from the Court's Judgment.

CALCULATION OF SETTLEMENT PAYMENTS

AND TAX OBLIGATIONS PAYMENT

69. The Administrator shall have the authority and obligation to calculate the amounts of the Settlement Payments in accordance with the methodology set forth in this Agreement and orders of the Court. Each Participating Class Member will be eligible to receive a Settlement Payment based upon the total number of his/her Class Workweeks Worked during the Class Period in relation to the aggregate number of Class Workweeks Worked by all Participating Class Members during the Class Period, and the total number of his/her PAGA Pay Periods Worked during the PAGA Period in relation to the aggregate number of PAGA Pay Periods Worked by all Participating Class Members during the PAGA Period, e.g.

$$\text{Settlement Payment} = \text{NSA} \times \frac{\text{Class Member's Total Number of Class Workweeks Worked}}{\text{All Participating Class Members Class Workweeks Worked}}$$

If the Class Member also worked during the PAGA Period, he or she would be eligible to receive a proportionate share of the PAGA Payment allocated to them, e.g.:

$$\text{PAGA Member Payment} = \$12,500 \times \frac{\text{PAGA Member's Number of PAGA Pay Periods Worked}}{\text{All PAGA Members' Number of PAGA Pay Periods Worked}}$$

70. The Parties agree that the formula for allocating the Settlement Payments to the Class is reasonable and that the payments are designed to provide a fair settlement to the Class, despite the uncertainties of the compensation and penalties alleged to be owed to the Class and the calculation of them.

1 71. The Parties agree that ten (10) percent of each Settlement Payment shall be deemed
2 wages for which the Administrator shall make all ordinary deductions from each Participating
3 Class Member's gross Settlement Payment for local, state, and federal taxes and withholdings or
4 any other applicable payroll deductions. The Parties further agree that ninety (90) percent of the
5 gross Settlement Payment represents the payment of penalties and interest. The amounts allocated
6 as wages shall be reported on an IRS Form W-2. The amounts allocated as penalties and interest
7 shall be reported on IRS Forms 1099-MISC and 1099-INT, respectively. If the Class Member is
8 also an eligible PAGA Member, the portion representing the civil penalties will be reported as
9 penalties, and reported on an IRS Form 1099-MISC. The IRS W-2 and 1099 Forms shall be
10 provided to the respective Participating Class and PAGA Members, Plaintiff, and applicable
11 governmental authorities by the Administrator.

12 72. Each Participating Class Member will be responsible for paying all applicable local,
13 state, and federal taxes on Settlement Payments paid under the terms of this Settlement, as
14 described above. Each Participating Class Member shall cooperate with Defendants and the
15 Administrator and provide documentation as requested to demonstrate such payment should any
16 taxing authority challenge the allocation of the Settlement Payments.

17 73. It shall be the responsibility of the Administrator or its designee to timely calculate
18 and withhold from the Settlement Payments all Participating Class Member tax obligations on the
19 portion allocated as wages; to timely calculate and withhold from the Gross Settlement Amount
20 the appropriate payroll deductions; to calculate and report to Defendants, and obtain approval from
21 Defendants of such calculation, the necessary Employer Tax Obligations, and to prepare and
22 deliver the necessary tax documentation for signature by all necessary parties and, thereafter, to
23 cause the appropriate deposits of withholding taxes and informational and other tax return filing
24 to occur. Once received from Defendants, the Administrator shall pay the Employer Tax
25 Obligations arising out of the Settlement Payments to the appropriate taxing authorities within
26 thirty (30) days of distribution.

27 74. Defendants make no representations as to the tax treatment or legal effect of the
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1 payments called for hereunder, and Plaintiff and Participating Class Members are not relying on
2 any statement or representation by Defendants in this regard. Plaintiffs and Participating Class
3 Members understand and agree that except for Defendants' payment of the employer's portion of
4 any payroll taxes, they will be solely responsible for the payment of any taxes and penalties
5 assessed on the payments described herein.

6 **ATTORNEYS' FEES AND COSTS PAYMENT AND SERVICE PAYMENT**

7 75. Class Counsel shall be paid up to one-third of the Gross Settlement Amount,
8 \$286,666.67, as Attorneys' Fees, and up to \$18,000 as reimbursement of their litigation costs.
9 Class Counsel shall not be permitted to petition the Court for, or accept, any additional payments
10 for fees or costs. The amounts paid in fees and costs shall be for all claims for attorneys' fees,
11 expenses, or costs past, present, and future incurred in litigating the Action. Defendants shall not
12 oppose Class Counsel's Attorneys' Fees and Costs Payment request in these amounts.

13 76. The Attorneys' Fees and Costs Payment to Class Counsel shall constitute full
14 satisfaction of any obligation to pay any amounts to any person, attorney, or law firm for attorneys'
15 fees, expenses, or costs in the Action incurred by any attorney on behalf of the Plaintiff and the
16 Class, and shall relieve Released Parties of any other claims or liability to any other attorney or
17 law firm for any attorneys' fees, expenses, and/or costs to which any of them may claim to be
18 entitled on behalf of the Plaintiff and/or the Class.

19 77. Plaintiff Eric Garcia shall be paid up to \$10,000 as a Class Representative's Service
20 Payment for having initiated this Action, work performed in furtherance of the Action, and the
21 risks associated with the payment of attorneys' fees and costs in the event this matter had not
22 successfully concluded, for the substantial benefits conferred upon the Class, and a General
23 Release of all claims. Defendants shall not oppose the Service Payment request in this amount.
24 The Service Payment approved by the Court shall be a part of, and paid from, the Gross Settlement
25 Amount. This payment shall not have any state or federal taxes withheld, and shall be reported on
26 an IRS Form 1099 and provided to the Plaintiff and applicable governmental authorities by the
27 Administrator. Plaintiff shall be responsible for characterizing this payment for tax purposes and
28

1 for paying any taxes owing.

2 78. Plaintiff's Settlement Payment will be paid in addition to the Service Payment.

3 **PAGA PAYMENT**

4 79. The Parties have allocated Fifty Thousand Dollars (\$50,000) to settle the claims of
5 the Class under Labor Code § 2699. Labor Code § 2699(i) requires any settlement under this
6 section be distributed 75% to the California's Labor Workforce Development Agency ("LWDA")
7 for enforcement of labor laws and education of employers, and 25% to the PAGA Members.
8 Accordingly, \$37,500 will be issued and paid to the LWDA, and the remaining \$12,500 will be
9 distributed on a proportional basis to all PAGA Members.

10 **DEFENDANTS' LEGAL FEES**

11 80. All of Defendants' own legal fees, costs, and expenses incurred in the Action as
12 well as the employment related taxes normally paid by an employer shall be borne by Defendants.

13 **FINAL APPROVAL HEARING AND ENTRY OF ORDER AND JUDGMENT**

14 81. Following the Response Deadline, the Parties will ask the Court to conduct a Final
15 Approval Hearing. Upon final approval of the Settlement by the Court at or after the Final
16 Approval Hearing, the Parties shall present the Final Approval Order and the Judgment to the
17 Court for its approval and entry. Class Counsel shall submit the final approval papers to
18 Defendants' Counsel for their review prior to filing such papers with the Court.

19 **PROCEDURE FOR PAYMENT OF SETTLEMENT PAYMENTS**

20 82. Following Final Approval, and solely for purposes of this Agreement, the
21 Settlement Payments shall be distributed in accordance with the following eligibility requirements:

22 A. Participating Class and PAGA Members. All Participating Class and
23 PAGA Members shall receive a Settlement Payment under the plan of allocation and will be bound
24 by the terms of the Settlement and any order or judgment entered by the Court approving this
25 Settlement.

26 B. Those Class Members Who Requested Exclusion. Those Class Members
27 who return valid and timely requests for exclusion will no longer be a member of the Class, are
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1 not Participating Class Members, are not entitled to any Settlement Payment, and will not be bound
2 by this Settlement or any order or judgment entered by the Court approving this Settlement.
3 However, if the Class Member is also an eligible PAGA Member, they will receive a proportionate
4 share of the \$12,500 PAGA Payment and will release all PAGA Claims alleged in the Action
5 because PAGA Members, under the law, have no right to opt out of a PAGA Settlement.

6 83. Settlement Payments to Participating Class Members shall be paid pursuant to the
7 formula and at the times set forth in this Agreement. The Administrator's determination of
8 eligibility for, and the calculations of, any Settlement Payments under the terms of this Agreement,
9 shall be conclusive, and binding on all Parties, including all Class Members, subject to the Court's
10 final determination.

11 84. Any Settlement Payment checks issued to Participating Class Members shall
12 remain valid and negotiable until 120 calendar days after the date of issuance of the Settlement
13 Payment checks, and will thereafter be canceled if not cashed within that time. However, 45
14 calendar days after the issuance of the Settlement Payment checks, the Administrator will mail a
15 postcard to all member of the Class, who have not by that date, cashed their checks reminding
16 them of the void date. All sums represented by uncashed checks will therefore be submitted to the
17 State of California, Controller Unclaimed Property Division for further handling on behalf of the
18 Class Member.

19 85. No person shall have any claim against the Released Parties, Defendants' Counsel,
20 the Plaintiff, the Class, Class Counsel, or the Administrator based on mailings, calculations,
21 distributions and payments made in accordance with or pursuant to this Agreement.

22 **NULLIFICATION OF SETTLEMENT AGREEMENT**

23 86. In the event: (a) the Court does not enter any Order as requested; (b) the Court does
24 not finally approve the Settlement; (c) the Court does not enter a Judgment which becomes final
25 as a result of the occurrence of the Effective Date; or (d) the Settlement does not become effective
26 for any other reason, including Defendants' decision to reject the Settlement in the event more
27 than five percent (5%) of the Class timely requests exclusion, or an objection which is sustained
28 in the trial court and on all appeals, or Plaintiff elects to rescind the Settlement in the event that

1 the Class Workweeks Worked or the PAGA Pay Periods Worked are exceeded by fifteen percent
2 (15%) or more as set forth in this Agreement, this Agreement shall be null and void and any order
3 or judgment entered by the Court in furtherance of this Settlement shall be treated as withdrawn
4 or vacated by stipulation of the Parties. In such a case, the Parties shall be returned to their
5 respective statuses as of the date and time immediately before the execution of this Agreement,
6 and the Parties shall proceed in all respects as if this Agreement had not been executed. In the
7 event an appeal is filed from the Court's Judgment, or any other appellate review is sought prior
8 to the Effective Date, administration of the Settlement shall be stayed pending final resolution of
9 the appeal or other appellate review.

10 87. An award by the Court of a lesser amount than that sought by Plaintiff and Class
11 Counsel for the Service Payment or the Attorneys' Fees and Costs Payment will not constitute a
12 material modification of the Settlement and shall not render the Settlement voidable.

13 **NOTIFICATION AND CERTIFICATION BY ADMINISTRATOR**

14 88. The Administrator shall keep Defendants' Counsel and Class Counsel apprised of
15 all distributions of Settlement Payments and upon completion of administration of that portion of
16 the Settlement, the Administrator shall provide written certification of progress of such completion
17 to counsel for all Parties and the Court as requested.

18 **PRIVACY OF DOCUMENTS AND INFORMATION**

19 89. Class Counsel agree none of the documents and information provided to them by
20 Defendants shall be used for any purpose other than prosecution and resolution of this Action.

21 **NO EFFECT ON EMPLOYEE BENEFITS**

22 90. The Settlement Payments issued and paid to Participating Class Members and the
23 Service Payment issued and paid to Plaintiff shall be deemed not to be "pensionable" earnings and
24 shall not have any effect on the eligibility for, accrual of, or calculation of, any of the employee
25 benefits (*e.g.* vacations, holiday pay, retirement plans, 401K, Employee Stock Purchase Plan, etc.)
26 of the Plaintiff or Participating Class Members. The Parties agree that any Settlement Payments
27 to Participating Class Members and the Service Payment under the terms of this Agreement do not
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1 represent any modification of Participating Class Members’ previously credited hours of service
2 or other eligibility criteria under any employee stock purchase plan, employee pension benefit
3 plan, or employee welfare benefit plan sponsored by Defendants. Further, any Settlement
4 Payments or Service Payment shall not be considered “compensation” in any year for purposes of
5 determining eligibility for, or benefit accrual within, an employee stock purchase plan, employee
6 pension benefit plan, or employee welfare benefit plan sponsored by Defendants.

7 **GENERAL PROVISIONS**

8 91. Exhibits. The terms of this Agreement include the terms included in **Exhibits 1-4**,
9 which are incorporated by reference as though fully set forth. Any exhibits to this Agreement are
10 an integral part of the Settlement. Any changes to exhibits following preliminary approval by the
11 Court, shall be approved by all Parties, but shall not be re-submitted to the Court if changes are
12 minor, clerical, and do not materially alter the originally submitted documents.

13 92. Headings. The descriptive headings of any paragraphs or sections of this
14 Agreement are inserted for convenience of reference only and do not constitute a part of this
15 Agreement.

16 93. Interim Stay of Proceedings. The Parties agree to hold all proceedings in the
17 Action, except such proceedings necessary to implement and complete the Settlement, in abeyance
18 pending the Final Approval Hearing to be conducted by the Court.

19 94. Amendment or Modification. This Agreement may be amended or modified only
20 by a written instrument signed by counsel for all Parties or their successors-in-interest.

21 95. Entire Agreement. This Agreement and any attached Exhibits constitute the entire
22 agreement among these Parties, and no oral or written representations, warranties, inducements,
23 or covenants have been made to any Party concerning this Agreement or its Exhibits other than
24 the representations, warranties, inducements, and covenants contained and memorialized in such
25 documents. All prior or contemporaneous negotiations, agreements, understandings, and
26 representations, whether written or oral, are expressly superseded and are of no further force and
27 effect. Each of the Parties acknowledges that it has not relied on any promise, representation, or
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warranty, express or implied, not contained in this Agreement.

96. Authorization to Enter Into Settlement Agreement. Counsel for all Parties warrant and represent that they are expressly authorized by the Parties whom they represent to negotiate this Agreement and to take all appropriate action required or permitted to be taken by such Parties pursuant to this Agreement to effectuate its terms, and to execute any other documents required to effectuate the terms of this Agreement. The Parties and their counsel will cooperate with each other and use their best efforts to effect the implementation of the Settlement. In the event the Parties are unable to reach agreement on the form or content of any document needed to implement the Settlement, or on any supplemental provisions that may become necessary to effectuate the terms of this Settlement, the Parties may seek the assistance of the Mediator or the Court to resolve such disagreement.

97. Binding Agreement. Subject to the limitations in Paragraph 86, the Parties intend that this agreement shall be fully enforceable and binding on all Parties, including Participating Class Members, and that it shall be admissible and subject to disclosure in any proceeding to enforce its terms, notwithstanding the mediation confidentiality provisions that otherwise might apply under federal or state law. The Parties further agree that this Agreement is enforceable pursuant to California Code of Civil Procedure section 664.6.

98. Binding on Successors. This Agreement shall be binding upon, and inure to the benefit of, the heirs, beneficiaries, or successors of the Parties.

99. Assignment. None of the rights, commitments, or obligations recognized under this Agreement may be assigned by any Party, Class Member, Class Counsel, or Defendants' Counsel without the express written consent of each other Party and their respective counsel. The representations, warranties, covenants, and agreements contained in this Agreement are for the sole benefit of the Parties under this Agreement, and shall not be construed to confer any right or any remedy to any other person.

100. California Law Governs. All terms of this Agreement and the Exhibits shall be governed by and interpreted according to the laws of the State of California.

1 101. Venue. Any adjudicated dispute regarding the interpretation or validity of or
2 otherwise arising out of this Agreement, or relating to the Action or the Released Claims, shall be
3 subject to the exclusive jurisdiction of the Court in which the Parties seek approval of this
4 Settlement, and the Plaintiff, Class Members, and Defendants agree to submit to the personal and
5 exclusive jurisdiction and venue of that Court.

6 102. Counterparts. This Agreement may be executed in one or more counterparts. All
7 executed counterparts and each of them shall be deemed to be one and the same instrument.

8 103. Facsimile and Electronic Signatures. A signed facsimile or electronic version of
9 this Agreement shall have the same force and effect as a signed original of this Agreement.

10 104. Jurisdiction of the Court. The Court shall retain jurisdiction solely with respect to
11 the interpretation, implementation, and enforcement of the terms of this Agreement and all orders
12 and judgments entered in connection with the Agreement, and the Parties and their counsel submit
13 to the jurisdiction of the Court for purposes of interpreting, implementing, and enforcing this
14 Agreement and all related orders and judgments entered in connection. In the event judicial
15 intervention or enforcement is necessary, the prevailing Party shall be entitled to an award or
16 attorneys' fees, costs and interest.

17 105. Cooperation and Drafting. Each of the Parties has cooperated in the drafting and
18 preparation of this Agreement; and the drafting of this Agreement shall not be construed against
19 any of the Parties.

20 106. Invalidity of Any Provision. The Parties request that before declaring any provision
21 of this Agreement invalid, the Court shall first attempt to construe all provisions valid to the fullest
22 extent possible consistent with applicable precedents.

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107. Plaintiff's Waiver of Right to be Excluded and Object. Plaintiff agrees to sign this Agreement and by signing this Agreement is bound by the terms stated and further agrees not to request to exclusion from the Class and agrees not to object to any of the terms of this Agreement. Any such request for exclusion or objection shall be void and of no force or effect.

IN WITNESS THEREOF, the Parties hereto have so agreed.

PLAINTIFF/CLASS REPRESENTATIVE

11/12/2021

Date: November __, 2021

By: Eric Garcia
Eric Garcia
Plaintiff/Class Representative

LIGHTNING SOURCE, LLC,

Date: November __, 2021

By: _____
Kelly L. S. Arnold, Authorized Representative of
Defendant
[title]: _____

**INGRAM DISTRIBUTION MANAGEMENT, LLC
Defendant**

Date: November __, 2021

By: _____
Kelly L. S. Arnold, Authorized Representative of
Defendant
[title]: _____

INGRAM CONTENT GROUP, LLC

Date: November __, 2021

By: _____
Kelly L. S. Arnold, Authorized Representative of
Defendant
[title]: _____

[Signatures, continued next page]

107. Plaintiff's Waiver of Right to be Excluded and Object. Plaintiff agrees to sign this Agreement and by signing this Agreement is bound by the terms stated and further agrees not to request to exclusion from the Class and agrees not to object to any of the terms of this Agreement. Any such request for exclusion or objection shall be void and of no force or effect.

IN WITNESS THEREOF, the Parties hereto have so agreed.

PLAINTIFF/CLASS REPRESENTATIVE

Date: November __, 2021

By: _____
Eric Garcia
Plaintiff/Class Representative

LIGHTNING SOURCE, LLC,

Date: November 10, 2021

By: Kelly L.S. Arnold
Kelly L.S. Arnold, Authorized Representative of
Defendant
[title]: SVP, GC and Asst. Secretary

**INGRAM DISTRIBUTION MANAGEMENT, LLC
Defendant**

Date: November 10, 2021

By: Kelly L.S. Arnold
Kelly L. S. Arnold, Authorized Representative of
Defendant
[title]: Asst Secretary

INGRAM CONTENT GROUP, LLC

Date: November 10, 2021

By: Kelly L.S. Arnold
Kelly L. S. Arnold, Authorized Representative of
Defendant
[title]: Chief Legal Officer

[Signatures, continued next page]

1 Date: November 15, 2021

COHELAN KHOURY & SINGER

2
3 By: 
4 Diana M. Khoury / Rosemary C. Khoury
Attorneys for Plaintiff / Class Representative

5 Date: November 15, 2021

LEBE LAW, APLC

6
7 By: 
8 Jonathan M. Lebe
Attorneys for Plaintiff / Class Representative

9
10 Date: November 10, 2021

LITTLER MENDELSON, P.C.

11 By: 
12 Ryan L. Eddings,
13 Attorneys for Defendants
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EXHIBIT 1

NOTICE OF CLASS ACTION SETTLEMENT

Eric Garcia v. Lightning Source LLC, et al.
Superior Court of California, County of Fresno, Case No. 20CECG01641

*This Notice was authorized by the Court. This is not a solicitation from a lawyer.
This is not a lawsuit against you and you are not being sued.
However, your legal rights are affected whether you act or don't act.*

TO: All current or former non-exempt employees of Lightning Source LLC, Ingram Distribution Management LLC, and Ingram Content Group LLC, employed in California at any time from April 6, 2016 through June 28, 2021, ("Class Member(s")).

If you are a Class Member, as described above, you are eligible for a payment from the Class Action Settlement described in this Notice without the need to return a claim form.

PLEASE READ THIS NOTICE CAREFULLY

YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT:	
DO NOTHING TO RECEIVE A PAYMENT	To receive your Settlement Payment shown in Paragraph 9, you do not need to do anything. Your estimated Settlement Payment will be mailed to you after the Court grants final approval of the Settlement. <i>[You must keep a current address on file with the Administrator to ensure receipt of your Settlement Payment].</i>
UPDATE YOUR ADDRESS	Update your personal information with the Administrator to make sure your Settlement Payment is sent to the correct address. (A Change of Address Form and return envelope are enclosed with this Notice.)
EXCLUDE YOURSELF	You may ask to exclude yourself from the Class (to opt out), if you do not wish to participate in the Settlement. See Paragraphs 15-17. If you opt out, you will not release the Class claims, and you will not receive a Settlement Payment. This is the only option that allows you to pursue your own claims (in your own lawsuit) against the same Defendants about the legal claims in this case.
OBJECT	You may also object and tell the Court why you don't like the Settlement. See Paragraph 18. If the Court approves the Settlement despite your objection, you will still be bound by the terms of the Settlement, and a Settlement Payment will be mailed to you. Your objection may be submitted in writing, or you may appear at the time of the Final Approval Hearing to comment upon the Settlement.

- **YOUR RIGHTS AND OPTIONS – AND THE DEADLINES TO EXERCISE THEM – ARE EXPLAINED IN THIS NOTICE.**
- **LIGHTNING SOURCE LLC, INGRAM DISTRIBUTION MANAGEMENT LLC (erroneously sued as "INGRAM DISTRIBUTION MANAGEMENT INC), AND INGRAM CONTENT GROUP LLC, SUPPORT THE SETTLEMENT AND WILL NOT RETALIATE IN ANY WAY AGAINST ANY CLASS MEMBER FOR EXERCISING ANY OF THE RIGHTS AND OPTIONS DESCRIBED IN THIS NOTICE**

Page 1 of 6
NOTICE OF CLASS ACTION SETTLEMENT
Questions? Please contact the Settlement Administrator at [insert]

BASIC INFORMATION

1. Why did I receive this Notice?

You received this Notice because company records of Defendants Lightning Source LLC, Ingram Distribution Management LLC, and Ingram Content Group LLC, show that you were employed by at least one of them in California as a non-exempt employee some time during the period from April 6, 2016 through June 28, 2021, and as such, are a member of the Class.

A Court authorized this Notice because you have a right to know about the proposed Settlement of the class action Lawsuit, and about all of your options before the Court decides whether to finally approve it. This Notice explains the Lawsuit, the Settlement, your rights, the Settlement Payment you are entitled to receive under the terms of the Settlement if you do not opt out of the Class, and how to get them.

2. What is this Lawsuit about?

The Complaint in the *Garcia vs. Lightning Source LLC, Ingram Distribution Management LLC (erroneously named as Ingram Distribution Management Inc), and Ingram Content Group LLC*, action was filed on June 10, 2020 by Plaintiff on behalf of himself and all members of the Class in the Superior Court for the County of Fresno, Case No. 20CECG01641, (the “Lawsuit” or “Action”).

In the Action, Plaintiff has alleged Lightning Source LLC, Ingram Distribution Management LLC, and Ingram Content Group LLC (collectively, “Defendants” or “Lightning Source”) failed to pay Class Members all wages due for all hours worked, failed to pay all wages when due, failed to properly calculate and pay all earned overtime wages, failed to provide legally compliant meal and rest breaks or compensation to them for non-compliant meal and rest breaks, and failed to reimburse business expenses. Based on these alleged violations, Plaintiff also asserted derivative claims for issuing inaccurate wage statements, and failure to timely pay all wages due upon separation from employment. On the basis of these allegations, Plaintiff alleged that Defendants violated California’s Unfair Competition Law, Business & Professions Code sections 17200 *et seq.*, and has claimed entitlement to civil penalties under the California Labor Code Private Attorneys General Act, (“PAGA”), California Labor Code sections 2698, *et seq.*

Defendants have denied and continue to deny all the claims and contentions alleged in the Action and maintain they have fully complied with the law at all times. The Settlement is not an admission that Defendants did anything wrong or an indication any law was violated, and the Court overseeing this Action has not ruled on whether Defendants violated any law.

3. What is a Class Action?

In a class action, a person called a Class Representative (here, Eric Garcia) sues on behalf of themselves and all other people who may have similar claims. The group of people with similar claims is called a “Class.” Each person covered by the Class definition is a “Class Member.” One court decides the issues for all Class Members. In this Action, Superior Court for the County of Fresno, Judge Kimberly Gaab, is in charge of this class action lawsuit.

4. Why is there a Settlement?

The Court did not decide in favor of Plaintiff Eric Garcia or Defendants. Instead, both sides agreed to a settlement of the Action (“Settlement”). That way, they avoid the cost of a trial, and members of the Class

will receive compensation from the Settlement. Mr. Garcia, who was appointed the Class Representative by the Court, and his attorneys, believe the Settlement is best for all Class Members.

5. Who are the Parties in this Lawsuit?

Plaintiff Eric Garcia was employed by one or all of the Defendants from May 7, 2018 through February 18, 2020 as an operations employee in the position of “Operations Team Lead – 2nd Shift.”

Defendants in this Action are Lightning Source LLC, Ingram Distribution Management LLC, and Ingram Content Group LLC.

The Class, for purposes of this Settlement only, is defined as all current or former non-exempt employees of Lightning Source LLC, Ingram Distribution Management LLC, and Ingram Content Group LLC employed in California at any time during the Class Period defined as from April 6, 2016 through June 28, 2021. There are an estimated 127 Class Members who worked 10,818 weeks during the Class Period.

6. Who are the Attorneys for Plaintiff and the Class?

The Court appointed Lebe Law, APLC and Cohelan Khoury & Singer as Class Counsel and found they are competent and experienced and will adequately represent the Class. Their addresses are:

COHELAN KHOURY & SINGER
Michael Singer/Diana M. Khoury/Rosemary C. Khoury
605 C Street, Suite 200
San Diego, California 92101
Telephone: (619) 595-3001

LEBE LAW, APLC
Jonathan Lebe
777 S. Alameda Street, Second Floor
Los Angeles, California 90021
Telephone: (213) 358-7046

7. What is the Settlement Amount?

The proposed Settlement provides for a maximum payment of \$860,000 to fully and finally resolve all claims in the Action (referred to as the “Gross Settlement Amount”). From this amount, Class Counsel will apply to the Court for: (1) attorneys’ fees of up to \$286,666.67; (2) litigation costs estimated at \$18,000; (3) a Class Representative Service Payment to Eric Garcia of up to \$10,000 for his work and efforts in initiating and prosecuting the Action, for undertaking the risks of payment of costs in the event of an unsuccessful outcome, and a general release of all claims; (4) Administration expenses not to exceed \$5,000 to Simpluris; and (5) a payment to the California Labor Workforce and Development Agency, under California Labor Code’s Private Attorneys General Act of 2004 (“PAGA”) in the sum of \$37,500 (75% of \$50,000 PAGA Payment) to cover the State of California’s share of all applicable civil penalties implicated or raised by the allegations of the Action. (The exact sum of attorneys’ fees and costs, Class Representative Service Payment, and Administration expenses will be determined by the Court at a Final Approval hearing). In addition, \$12,500 (25% of the \$50,000 PAGA Payment) will be distributed to a subset of Class Members who were employed at any time during the period from April 6, 2019 through June 28, 2021 (“PAGA Members”) based on the number of pay periods each worked during that time. Regardless of whether a Class Member requests to be excluded from the Class, if he or she is a PAGA Member, he or she will receive a proportionate share of the \$12,500.

The remaining balance estimated at \$490,333.33, the “Net Settlement Amount” will be apportioned and paid entirely to all Class Members who do not request to be excluded from Class. **A claim form is not required to receive this Settlement Payment.**

Any portion of the Net Settlement Amount which would otherwise have been paid to Class Members who have requested to be excluded from the Class will be redistributed and paid to Class Members who remain

in the Class. No portion of the Gross Settlement Amount will return to Defendants under any circumstances.

8. How will Settlement Payments be Calculated?

Class Members who do not request to be excluded from the Class and this Settlement will receive their share of the Net Settlement Amount based on the number of their Work Weeks at any time from April 6, 2016 through June 28, 2021, (“Class Period”). A Work Week is defined as any week in which a Class Member worked at least one day in that week as reflected by Defendants’ employment records.

With an estimated 10,818 Work Weeks worked by the 127-member Class during the Class Period, a Class Member can expect to receive an estimated **\$45.32** for each week worked during the Class Period.

The Settlement Payment will be characterized as ten percent (10%) unpaid wages and subject to payroll taxes and withholdings for which an IRS W-2 Form will be issued; and 45% considered payment of penalties and 45% as payment of interest which shall each be reflected on IRS 1099 Forms issued to Participating Class Members. Participating Class Members should consult with their tax advisors concerning the tax consequences of the Settlement Payments received under the Settlement.

A subset of the Class, PAGA Members, are those who worked at any time during the PAGA Period defined as any time from April 6, 2019 through June 28, 2021 (“PAGA Period”). There are 85 PAGA Members who worked an estimated 2,623 Pay Periods during the PAGA Period. Each will receive a proportionate share of the \$12,500 of the PAGA Penalty based on the number of Pay Periods each worked during the PAGA Period. With an aggregate 2,623 Pay Periods worked by PAGA Members, each will receive an estimated \$4.76 for each Pay Period worked during the PAGA Period, and will release all PAGA claims alleged in the Action regardless of whether they request exclusion from the Class.

9. How much will my Settlement Payment be?

Defendants’ business and personnel records reflect that you were non-exempt employee in California sometime during the April 6, 2016 through June 28, 2021 Class Period, and worked [redacted] Weeks during the Class Period.

Defendants’ records also show that you were [were not] employed [redacted] Pay Periods during the period from April 6, 2019 through June 28, 2021 PAGA Period. Based on this information, your share of the Settlement funds is estimated to be \$ [redacted], less payroll taxes. Your Settlement Payment check will be mailed to you at the address on file with the Administrator. The actual amount you receive may be more or less than the estimated amount shown, depending on a number of factors including whether other Class Members request exclusion from the Settlement and how much the Court approves in attorneys’ fees, litigation expenses, and other costs of suit.

HOW TO GET A SETTLEMENT PAYMENT

10. How can I get my Settlement Payment?

You do not need to do anything to receive your Settlement Payment. **A claim form is not required.**

If the Court approves the Settlement at the scheduled Final Approval Hearing, your Settlement Payment will be mailed to the address this Notice was mailed to, unless you have updated your address with the Administrator. **It is your responsibility to keep the Administrator informed of any change in your mailing address.** A Change of Address form is enclosed with this Notice for your convenience. It is strongly recommended you retain a copy of any completed Change of Address form until you receive your entire Settlement Payment.

11. What if the number of Work Weeks or Pay Periods Shown in this Notice is Wrong?

If you believe the number of Work Weeks or Pay Periods shown in Paragraph 9 is wrong, send a letter addressed to the Lightning Source LLC Class Action Administrator, c/o Simpluris, P. O. Box _____, Irvine, CA 9____, stating what you believe to be the correct number of Work Weeks or Pay Periods. Your letter must be postmarked on or before ____, 2021. *[45 days from mailing the Notice Packet]*

Include any documents or other information which supports what you believe to be the correct number of Work Weeks or Pay Periods. The Administrator will resolve any disputes using Defendants' records and any information you provide. If the Parties disagree with the Administrator's determination, the Court will resolve the issue.

12. When can I expect to receive my Settlement Payment?

If no Class Member objects to the Settlement, and no appeal is sought, and the Court finally approves the Settlement, your share of the Settlement will be mailed to you approximately one month after the Court grants final approval of the Settlement.

13. What am I giving up to get my Settlement Payment?

You will give up or "release" the following claims described below:

Released Claims:

Participating Class Members (those who do not return a request to be excluded from the Class) will release Lightning Source LLC, Ingram Content Group LLC and Ingram Distribution Management LLC, their parents, subsidiaries, officers, shareholders, members, directors, agents, attorneys, employees, and insurers ("Released Parties") from the Released Claims defined as all claims of wrongful conduct, causes of action or legal theories of relief alleged or otherwise raised, or that could have been raised on the facts alleged in the Complaint, including all of the following: (1) failure to pay minimum wages (Labor Code §§ 1194, 1194.2, 1197, 1197.1, 1198, and IWC Orders); (2) failure to pay overtime wages (Labor Code §§ 510, 1194, 1198); (3) failure to provide rest periods and proper meal periods or compensation in lieu thereof (Labor Code §§ 226.7, 512, and IWC Orders); (4) failure to timely pay wages due while employed and at termination of employment (Labor Code §§ 201 - 204, 210 and IWC Orders); (5) failure to provide accurate wage statements (Labor Code § 226); (6) failure to reimburse business expenses (Labor Code § 2802, and IWC Orders); (7) Unfair Business Practices (Business & Professions Code §§ 17200, et seq.); and (8) civil penalties pursuant to the Private Attorneys General Act, ("PAGA"), Labor Code §§ 2698, et seq., for the above-referenced Labor Code violations, and all damages, penalties, interest, attorneys' fees, litigation costs, restitution, equitable relief, and other amounts or types of relief recoverable under said claims, causes of action, or legal theories of relief, or other claims based on the facts alleged in the Action.

Class Members who remain in the Class, who do not exclude themselves, will be considered to have accepted the release and to have waived the Released Claims against the Released Parties.

Class Members who successfully exclude themselves from the Class will not receive a share of the Net Settlement Amount, but will receive their proportionate share of the \$12,500 based on the number of Pay Periods employed during the PAGA Period, April 6, 2019 through June 28, 2021, and will release only claims alleged under PAGA.

14. Will I be Subject to Discipline if I Participate in the Settlement?

No. California law protects individuals and employees from retaliation based on their decision to participate or to not participate in a class action settlement. Defendants are prohibited by law from retaliating in any way based on your decision to participate or to not participate in the settlement. Your

decision to participate, not participate, or object to this Settlement will not impact your employment with Defendants or Defendants' treatment of you as a former employee in any manner.

EXCLUDING YOURSELF FROM THE SETTLEMENT?

15. How do I get out of the Class Action?

If you wish to pursue your own separate lawsuit against Defendants for the claims alleged in the Action, or if you otherwise wish to not be in the Class or to participate in the Settlement for whatever reason, you should exclude yourself from this case (that is, "opt out" of the Settlement). To opt out and exclude yourself from the Class and this Settlement, you must submit a written request for exclusion. Your request for exclusion must include (a) the case name and case number; (b) your full name, current address, telephone number, and last four digits of your social security number; and (c) your signature. The request for exclusion should state in substance:

"I wish to be excluded from the case entitled *Eric Garcia v. Lightning Source LLC, et al.*, Case No. 20CECG01641, filed in the Superior Court of California, County of Fresno and the Settlement. I understand by requesting to be excluded from the Action and Settlement, I will receive no money from the Class Settlement described in this Notice."

Your request for exclusion letter must be mailed to the Administrator postmarked no later than _____, 2021 (45 days of the initial mailing) in the envelope provided or in a separate envelope addressed to:

Lightning Source LLC Class Action Administrator
c/o Simpluris
P. O. Box _____
Irvine, California _____

16. If I do not exclude myself, can I sue Defendants for the same thing later?

No. Unless you exclude yourself from the Lawsuit, you give up any right to sue Defendants for the claims raised in this Lawsuit and which this Settlement resolves. ***If you have a claim or lawsuit already filed against any of the Defendants, you must speak to your lawyer in that case immediately.*** You may need to opt out of this Lawsuit to continue your own lawsuit. Remember, the deadline to postmark a valid request for exclusion is _____, 2021.

17. If I exclude myself from the Class Action and Settlement, can I still get a Settlement Payment?

No and Yes. You will not receive any portion of the Net Settlement Amount estimated at \$490,533.33 for the Work Weeks you worked during the Class Period. The Settlement Payment you would have received (as shown in Paragraph 9 above) will be distributed on a proportionate basis to Participating Class Members.

And yes, even if you opt out of the Class and the Settlement, California law provides that you will receive a portion of the \$12,500 of the PAGA Penalties based on the number of Pay Periods you were employed during the PAGA Period.

OBJECTING TO THE SETTLEMENT

18. How do I object if I don't think the Settlement is fair?

If you don't think the Settlement is fair, you can object to the Settlement and tell the Court you don't agree with the Settlement or some part of it. The Court will consider your views. You must state what your objection(s) are to the Settlement, and include the case name and number: *Eric Garcia v. Lightning Source LLC, et al.*, Case No. 20CECG01641. Be sure to include your full name, current address and telephone number, and the specific reasons you object to the Settlement. You may mail your written objection to the address listed below, on or before _____, 2021.

Lightning Source LLC Class Action Administrator
c/o Simpluris
P. O. Box _____
Irvine, California _____

THE COURT'S FINAL FAIRNESS HEARING

19. When and where will the Court decide whether to approve the Settlement?

The Court will hold a Final Approval hearing in Department 503 of the Superior Court of California, County of Fresno located at the B.F. Sisk Courthouse, 1130 O Street, Fresno, California 93721-2220 _____, 2021 at ____m. At this hearing, the Court will determine whether the Settlement should be finally approved as fair, reasonable, and adequate. The Court will be asked to approve Class Counsel's request for attorneys' fees and litigation costs, the Class Representative's Service Payment, and the Administrator's fees and expenses. The Court may reschedule the Final Approval hearing without further notice to Class Members. However, any Class Member who has submitted a written objection will be notified by Class Counsel of any rescheduling of the date and time of the Final Approval hearing.

20. Do I have to come to the hearing?

No. Class Counsel will answer any questions the Judge may have. But you are welcome to come at your own expense. You may also hire and pay your own lawyer to attend.

21. May I speak at the hearing?

You may ask the Court for permission to speak at the Final Approval Hearing.

THE COURT'S FINAL FAIRNESS HEARING

22. Who may I contact if I have questions about the Settlement?

This Notice is a summary of the basic terms of the Settlement. For more information, you may review the Settlement pleadings in this case, including the Settlement Agreement, at any time during regular business hours in the Superior Court of California, County of Fresno located at the B.F. Sisk Courthouse, 1130 O Street, Fresno, California 93721-2220. You may also examine case records online on the Fresno County Superior Court's website, [www._____](http://www._____.) [insert instructions.] The documents filed in this case are listed in the Register of Actions, some may be available to view at a minimal charge.

You may also contact the attorneys for the Plaintiff and the Class, whose contact information is included in Paragraph 6 above, for more information or if you have specific questions. You may also contact the Administrator by calling toll free 1-_____, or writing to: Administrator, Lightning Source LLC Class Action Administrator, c/o Simpluris, P. O. Box _____, Irvine, California _____

PLEASE DO NOT CONTACT THE CLERK OF THE COURT, THE JUDGE, OR ANY OF DEFENDANTS' MANAGERS, SUPERVISORS, HUMAN RESOURCES, OR ATTORNEYS FOR INFORMATION.

ADDITIONAL IMPORTANT INFORMATION

- A. It is your responsibility to ensure that the Administrator has your current mailing address and telephone number on file. It is the address to which your Settlement Payment will be mailed.
- B. Settlement Payment checks must be cashed soon after receipt. Proceeds of checks which remain uncashed 120 days after the date of issuance will be transmitted to the State of California, Controller's Office, Unclaimed Property Division for further handling. If you lose or misplace a check, you should contact the Administrator immediately to request a replacement.

EXHIBIT 2

CHANGE OF ADDRESS FORM

I wish to change my name and/or mailing address and/or other contact information, for purposes of receiving communications related to this Lawsuit (*Eric Garcia v. Lightning Source LLC, et al.* filed in the Superior Court of California for the County of Fresno, Case No. 20CECG01641, hereinafter referred to as the “Action” or the “Lawsuit”), to the following:

Name (First, Middle, Last): _____

Former Names (if any): _____

Home Street Address: _____

City, State, Zip Code: _____

Telephone Number(s): Home: _____ Work: _____

Email: _____

Last 4 digits of Social Security Number: _____ **[Required]**

I understand all future correspondence in this Action, including but not necessarily limited to important notices or settlement payments, will be sent to the address listed above and not to the address previously used. I hereby request and consent to the use of the address listed above for these purposes.

Dated: _____, 2021

Signature **[Required]**

**PLEASE RETURN THIS FORM IN THE ENVELOPE PROVIDED
OR VIA UNITED STATES FIRST CLASS MAIL TO:**

Lightning Source, LLC Class Action Administrator
c/o Simpluris
P. O. Box _____
Irvine, California _____

QUESTIONS? CALL TOLL FREE 1-866-_____

EXHIBIT 3

LEBE LAW, APLC

Jonathan M. Lebe (SBN 284605)

jon@lebelaw.com

Zachary Gershman (SBN 328004)

zachary@lebelaw.com

777 S. Alameda Street, Second Floor

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Telephone: (213) 358-7046

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Michael D. Singer (SBN 115301)

msinger@ckslaw.com

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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 and aggrieved

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF FRESNO

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

Plaintiff,

v.

LIGHTNING SOURCE LLC; INGRAM
DISTRIBUTION MANAGEMENT INC;
INGRAM CONTENT GROUP LLC; and
Does 1
through 25,

Defendants.

Case No. 20CECG01641

ASSIGNED FOR ALL PURPOSES TO:
The Honorable Kimberly Gaab

[PROPOSED]

**ORDER GRANTING RENEWED
PRELIMINARY APPROVAL OF CLASS
ACTION SETTLEMENT, CLASS
CERTIFICATION, APPROVAL OF CLASS
NOTICE, AND SETTING FINAL APPROVAL
HEARING**

Date: October 13, 2022

Time: 3:30 p.m.

Dept: 503

Judge: Hon. Kimberly Gaab

Filed: March 16, 2015

Trial: None set

1 This matter came for hearing on October 13, 2022 at 3:30 p.m. in Department 503 of the
2 above-captioned Court on Plaintiff's Renewed Motion for Order Granting Preliminary Approval of
3 Class Action Settlement ("Motion").

4 The Court, having fully reviewed the Motion, the supporting memorandum of points and
5 authorities, Declarations of Class Counsel Diana M. Khoury, and Jonathan M. Lebe, Declaration of
6 Plaintiff Eric Garcia, Declaration of Eric Springer, on behalf of Simpluris, Declaration of Jacqueline
7 Letson, as Vice President of Human Resources for Defendant Lightning Source LLC, the Stipulation
8 of Class Action Settlement and Release of Claims, ("Settlement Agreement"), and the Notice of
9 Class Action Settlement, ("Notice") and having carefully analyzed the Settlement Agreement and
10 the proposed Notice and in recognition of the Court's duty to make a preliminary determination as
11 to the reasonableness of a proposed class action settlement, and if preliminarily determined to be
12 reasonable, to ensure proper notice is provided to all Class Members in accordance with due process,
13 and to set a Final Approval Hearing to consider the good faith, fairness, adequacy and reasonableness
14 of the proposed settlement, THE COURT MAKES THE FOLLOWING DETERMINATIONS AND
15 ORDERS:

16 1. The Court conditionally finds that, for the purposes of approving this settlement
17 only, the proposed Class meets the requirements for certification under section 382 of the California
18 Code of Civil Procedure: (a) the proposed Class is ascertainable and so numerous that joinder of all
19 members of the class is impracticable; (b) there are questions of law or fact common to the proposed
20 Class, and there is a well-defined community of interest among members of the proposed Class with
21 respect to the subject matter of the class action; (c) the claims of the Class Representative are typical
22 of the claims of the members of the proposed Class; (d) the Class Representative has and will fairly
23 and adequately protect the interests of the Members of the Class; (e) a class action is superior to
24 other available methods for an efficient adjudication of this controversy in the context of settlement;
25 and (f) Counsel of record for the Class Representative are qualified to serve as counsel for him as
26 well as his representative capacity and for the Class.

27 2. The Court finds on a preliminary basis that the Settlement Agreement, attached to
28 the Declaration of Diana M. Khoury as Exhibit "A," incorporated herein by this reference in full,

1 and made a part of this Order of preliminary approval, appears to be within the range of
2 reasonableness of a settlement which could ultimately be given final approval by this Court.

3 3. Further, it appears to the Court on a preliminary basis that: (a) the settlement amount
4 is fair and reasonable to the Class Members when balanced against the probable outcome of further
5 litigation relating to class certification, liability and damages issues and potential appeals; (b)
6 significant investigation, research, and discovery have been conducted such that counsel for the
7 Parties at this time are able to reasonably evaluate their respective positions; (c) settlement at this
8 time will avoid substantial costs, delay and risks that would be presented by the further prosecution
9 of the litigation; and (d) the proposed Settlement has been reached as the result of intensive, serious
10 and non-collusive negotiations facilitated by an experienced mediator at mediation and between the
11 Parties.

12 4. Accordingly, good cause appearing, the Motion for Order Granting Preliminary
13 Approval of Class Action Settlement is hereby GRANTED, and as a part of said preliminary
14 approval, the Court accepts and incorporates the Settlement Agreement and orders that the Class be
15 conditionally certified for settlement purposes only pursuant to the terms and conditions contained
16 in the Settlement Agreement.

17 5. For purposes of the settlement of the Action, the Class is defined as: “all current and
18 former non-exempt persons employed by Lightning Source LLC, Ingram Distribution Management
19 LLC (erroneously sued as “Ingram Distribution Management Inc.”), and Ingram Content Group LLC
20 in California at any time from April 6, 2016 through June 28, 2021.”

21 6. The Court further finds that the proposed Notice of Class Action Settlement (“Class
22 Notice”) fairly and adequately advises Class Members of a) the pendency of the Class Action; b) the
23 conditional certification of the Class for settlement purposes only; c) preliminary Court approval of
24 the proposed Settlement; d) the date of the Final Approval Hearing; e) the terms of the proposed
25 Settlement and the benefits available to Class Members, if they do not request exclusion; f) their
26 right to receive their proportionate share of the Settlement proceeds without the need to return a
27 claim form; g) their right to request exclusion from the Settlement and the procedures and deadline
28 for doing so; h) their right to object to the Settlement, and the procedure for doing so; and i) their

1 right to file documentation in support of or in opposition to, and to appear in connection with the
2 Final Approval Hearing. The Court further finds that the Class Notice clearly comports with all
3 constitutional requirements, including those of due process. Accordingly, good cause appearing, the
4 Court hereby APPROVES the Class Notice.

5 7. The Court further finds that the mailing of the Notice, Change of Address Form, and
6 pre-printed return envelope, (collectively, the “Notice Packet”), to the last known address of Class
7 Members as specifically described within the Settlement Agreement, with measures taken for
8 verification of an address and skip tracing set forth therein constitutes an effective method of
9 notifying Class Members of their rights with respect to the class action and Settlement. Accordingly,
10 it is hereby ORDERED, that:

11 8. Simpluris, Inc., be appointed the Administrator to administer the settlement of this
12 matter as more specifically set forth in the Settlement Agreement.

13 A. The law firms Cohelan Khoury & Singer and Lebe Law APLC be appointed
14 Class Counsel.

15 B. Plaintiff Eric Garcia be appointed the Class Representative.

16 C. Within fourteen (14) calendar days of the Preliminary Approval Order,
17 Defendants shall transmit to the Administrator in a readable, ready to use electronic excel format
18 spreadsheet, with a list containing, for each Class Member, (1) the name; (2) most current mailing
19 address; (3) telephone number(s) and email address as indicated in Defendants’ records; (4) social
20 security number; (5) dates of employment; (6) their number of Workweeks; and (7) their number of
21 Pay Periods (“Class List and Data”).

22 D. Within ten (10) business days after receipt of the Class List and Data, the
23 Administrator shall mail the Notice Packet to each Class Member. The Notice Packet shall be mailed
24 by first class, regular U.S. mail, using the most current mailing address information available, with
25 measures taken for updating an address as provided by the terms of the Settlement Agreement.

26 E. Within 60 calendar days from the initial date the Administrator first mails
27 the Notice Packet to Class Members (the “Response Deadline”), Class Members who wish to
28 exclude themselves from the Class must submit a written request for exclusion in the manner set

1 forth in the Class Notice and such request must be postmarked by the Response Deadline. Class
2 Members who receive a re-mailed Notice Packet shall have their Response Deadline extended fifteen
3 (15) calendar days from the original Response Deadline, to submit a Request for Exclusion.

4 F. On or before the Response Deadline, Class Members who dispute the
5 number of Work Weeks or Pay Periods must postmark and submit a written explanation to the
6 Settlement Administrator describing why the Workweeks or Pay Periods are incorrect, with any
7 supporting information or documents, as set forth in the Class Notice. Class Members who receive
8 a re-mailed Notice Packet shall have their Response Deadline extended fifteen (15) calendar days
9 from the original Response Deadline, to postmark a dispute.

10 G. Class Members who wish to object to the Settlement, should submit to the
11 Administrator, their written objection which must include, (i) the objector's full name, address, and
12 last four digits of social security number; and (ii) state the basis for objection. Class Members may
13 also appear at the time of the Final Approval Hearing to comment upon the Settlement.

14 9. IT IS FURTHER ORDERED that the Final Approval Hearing shall be held before
15 the undersigned at ____ p.m. on _____, 2023, in Department 503 of the Superior Court for the
16 State of California, County of Fresno, located at the B. F. Sisk Courthouse, 1130 O Street, Fresno,
17 California 93721, to consider the fairness, adequacy and reasonableness of the proposed Settlement
18 preliminarily approved by this Order of Preliminary Approval, and to consider the application for a
19 service payment award to the named Plaintiff/Class Representative, for Administration expenses and
20 for Class Counsel's attorneys' fees and litigation expenses incurred. All briefs and materials in
21 support of an Order Granting Final Approval, the service payment, Settlement Administration
22 expenses, and Class Counsel's attorneys' fees and litigation costs shall be filed with this Court on
23 or before _____, 2023.

24 10. IT IS FURTHER ORDERED that if for any reason the Court does not sign and file
25 an Order Granting Final Approval, the Settlement Agreement shall be treated as if it had not been
26 entered, and the Parties shall be restored without prejudice to their status quo ante rights, as
27 specifically set forth in the Settlement Agreement.

28 ///

11. All proceedings in this matter, except those contemplated by the Settlement Agreement or this Order, are stayed.

12. The Court expressly reserves the right to adjourn or continue the Final Approval Hearing from time to time without further notice to Class Members, except that Class Counsel will notify all Class Members who returned written objections.

IT IS SO ORDERED.

Date: _____

The Honorable Kimberly Gaab
Judge of the Superior Court

EXHIBIT 4

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

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF FRESNO

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

Plaintiff,

v.

LIGHTNING SOURCE LLC; INGRAM
DISTRIBUTION MANAGEMENT INC;
INGRAM CONTENT GROUP LLC; and

Does 1
through 25,

Defendants.

Case No. 20CECG01641

ASSIGNED FOR ALL PURPOSES TO:
The Honorable Kimberly Gaab

[PROPOSED]

**ORDER GRANTING FINAL APPROVAL OF
CLASS ACTION SETTLEMENT AND
ENTERING JUDGMENT**

Date:

Time:

Dept:

Judge:

503

Hon. Kimberly Gaab

Filed:

Trial:

March 16, 2015

None set

1 This matter came on for hearing on _____ in Department 503 of the above-
2 captioned Court on Plaintiff's Motion for Order Granting Final Approval of Class Action
3 Settlement and Entering Judgment ("Motion") pursuant to California Rule of Court 3.769, and the
4 Court's Order Granting Preliminary Approval filed _____, 2022, and the Stipulation of
5 Class Action Settlement and Release of Claims ("Settlement Agreement") filed _____ in
6 conjunction with Plaintiff's Preliminary Approval Motion.

7 Having received and considered the Settlement Agreement, the supporting papers filed by
8 the Parties, and the evidence and argument received by the Court in conjunction with the Motion
9 for Preliminary Approval of Class Action Settlement, and the supporting papers, and evidence and
10 argument received by the Court in conjunction with the Motion for Order Granting Final Approval
11 of Class Action Settlement, the Court grants final approval of the Settlement and HEREBY
12 ORDERS AND MAKES THE FOLLOWING DETERMINATIONS:

13 1. Pursuant to the Preliminary Approval Order filed _____, 2022, a Notice
14 of Class Action Settlement, Change of Address form, and pre-printed return envelope
15 ("Notice Packet") were sent to each Class Member by first-class United States mail. The Notice
16 informed the Class of the terms of the Settlement, their right to receive a Settlement Payment
17 without any required action, their right to comment upon or object to the Settlement, and their
18 right to appear in person or by counsel at the final approval hearing and to be heard regarding
19 approval of the Settlement. Adequate periods of time were provided for each of these
20 procedures.

21 2. No member of the Class filed a request to be excluded from the Settlement or a
22 written objection to the proposed Settlement as part of this notice process or stated an intention to
23 appear at the final approval hearing.

24 3. The Court finds and determines this notice procedure afforded adequate
25 protections to Class Members and provides the basis for the Court to make an informed
26 decision regarding approval of the Settlement based on the responses of the Class. The Court
27 finds and determines that the notice provided in this case was the best notice practicable,
28 which satisfies the requirements of law and due process.

1 4. With respect to the Class and for purposes of approving this Settlement only, this
2 Court finds and concludes that: (a) the members of the Class are ascertainable and so numerous
3 that joinder of all members is impracticable; (b) there are questions of law or fact common to the
4 Class, and there is a well-defined community of interest among members of the Class with respect
5 to the subject matter of the Action; (c) the claims of the Class Representative are typical of the
6 claims of the members of the Class; (d) the Class Representative has fairly and adequately
7 protected the interests of the members of the Class; (e) a class action is superior to other available
8 methods for an efficient adjudication of this controversy; and (f) the counsel of record for Plaintiff,
9 the Class Representative, i.e., Class Counsel, are qualified to serve as counsel for Plaintiff in his
10 individual and representative capacity for the Class.

11 5. The Court confirms certification, for settlement purposes only, of the Class: “all
12 current and former non-exempt persons employed by Lightning Source LLC, Ingram Distribution
13 Management LLC (erroneously sued as “Ingram Distribution Management Inc.”), and Ingram
14 Content Group LLC in California at any time from April 6, 2016 through June 28, 2021.”

15 6. The Court finds and determines the terms set forth in the Settlement Agreement are
16 fair, reasonable, and adequate and, having found that the Settlement was reached as a result of
17 informed and non-collusive arms’-length negotiations facilitated by a neutral and experienced
18 mediator, directs the Parties to effectuate the Settlement according to the terms set forth in the
19 Settlement Agreement. The Court further finds the Parties conducted extensive investigation,
20 research, and discovery, and that their attorneys were able to reasonably evaluate their respective
21 positions. The Court also finds that Settlement will enable the Parties to avoid additional and
22 potentially substantial litigation costs, as well as delay and risks if the Parties were to continue to
23 litigate the case. The Court has reviewed the monetary recovery and recognizes the significant
24 value provided to the Class.

25 7. The Court further finds and determines that the terms of the Settlement are fair,
26 reasonable and adequate to the Class and to each Class Member and that the Settlement is ordered
27 finally approved, and that all terms and provisions of the Settlement Agreement should be and
28

1 hereby are ordered to be consummated.

2 8. The Court finds and determines that the Settlement Payments to be paid to
3 Participating Settlement Class Members as provided for by the Settlement are fair and reasonable.
4 The Court hereby grants final approval to and orders the payment of those amounts be made to the
5 Participating Class Members in accordance with the Agreement.

6 9. The Court finds and determines that the fees and expenses in administering the
7 Settlement incurred by Simpluris, Inc. in the amount of \$_____ are fair and reasonable. The
8 Court hereby grants final approval to and orders that the payment of that amount in accordance
9 with the Settlement Agreement.

10 10. The Court finds and determines the Class Representative Service Payment of
11 \$10,000 to Plaintiff Eric Garcia is fair and reasonable. The Court hereby orders the Administrator
12 to make this payment to the Plaintiff Eric Garcia, in accordance with the terms of the Settlement
13 Agreement.

14 11. The Court approves the payment of PAGA civil penalties in the amount of \$37,500
15 to the California Labor and Workforce Development Agency ("LWDA") representing the
16 LWDA's 75% share of the \$50,000 allocated to the PAGA claim.

17 12. Pursuant to the terms of the Settlement Agreement, and the authorities, evidence
18 and argument submitted by Class Counsel, the Court hereby awards Class Counsel attorneys' fees
19 of \$286,666.67 and litigation costs of \$_____. The Court finds such amounts to be fair and
20 reasonable. The Court hereby orders the Administrator to make these payments in accordance with
21 the terms of the Settlement Agreement.

22 13. Without affecting the finality of this Order or the entry of judgment in any way, the
23 Court retains jurisdiction of all matters relating to the interpretation, administration,
24 implementation, effectuation, and enforcement of this Order and the Agreement.

25 14. Neither Defendants nor any related persons or entities shall have any further
26 liability for costs, expenses, interest, attorneys' fees, or for any other charge, expense, or liability,
27 except as provided for by the Settlement Agreement.

1 15. The Settlement is not an admission of liability by Defendants or any of the other
2 Released Parties, nor is this Judgment a finding of the validity of any claims in the Actions or of
3 any wrongdoing by Defendants or any of the other Released Parties. Neither this Judgment, the
4 Settlement, nor any document referred to herein, nor any action taken to carry out the Settlement
5 is, may be construed as, or may be used as an admission by or against Defendants or any of the
6 other Released Parties of any fault, wrongdoing or liability whatsoever. The entering into or
7 carrying out of the Settlement, and any negotiations or proceedings related thereto, shall not in any
8 event be construed as, or deemed to be evidence of, an admission or concession with regard to the
9 denials or defenses by Defendants or any of the other Released Parties and shall not be offered in
10 evidence against Defendants or any of the Released Parties in any action or proceeding in any
11 court, administrative agency or other tribunal for any purpose whatsoever other than to enforce the
12 provisions of this Judgment, the Settlement, or any related agreement or release. Notwithstanding
13 these restrictions, any of the Released Parties may file in the Action or in any other proceeding
14 this Judgment, the Settlement, or any other papers and records on file in the Action as evidence of
15 the Settlement and to support a defense of res judicata, collateral estoppel, release, waiver or other
16 theory of claim preclusion, issue preclusion or similar defense as to the released claims.

17 16. Nothing in this Order shall preclude any action to enforce the Parties' obligations
18 under the Settlement Agreement or under this Order, including the requirement that Defendants
19 make payments to the Participating Class Members in accordance with the Settlement.

20 17. The Court hereby enters final judgment in accordance with the terms of the
21 Settlement Agreement, the Court's Preliminary Approval Order, and this Order.

22 18. The Parties will bear their own costs and attorneys' fees except as otherwise
23 provided by this Court's Order awarding Class Counsels' attorneys' fees and litigation costs.

24 IT IS SO ORDERED.

25 Date: _____

26 The Honorable Kimberly Gaab
27
28

EXHIBIT B

June 8, 2020

NOTICE VIA ONLINE SUBMISSION

California Labor and Workforce Development Agency ("LWDA")

VIA CERTIFIED U.S. MAIL WITH RETURN RECEIPT

Lightning Source LLC
1246 Heil Quaker Blvd.
La Vergne, TN 37086-3515

Ingram Distribution Management Inc.;
Ingram Content Group LLC
1 Ingram Blvd.
La Vergne, TN 37086-3629

Lightning Source LLC; Ingram
Distribution Management Inc.; Ingram
Content Group LLC
c/o Eleanor G. McDonald
4400 Harding Pike
Nashville, TN 37205-2204

Re: Notice pursuant to California Labor Code sections 2698, *et seq.*, **the Private Attorneys General Act ("PAGA")**, sent by Eric Garcia on behalf of himself and all other non-exempt employees of Lightning Source LLC, Ingram Distribution Management Inc., and Ingram Content Group LLC as an individual and as a proposed Representative of the State of California

Dear PAGA Administrator; Lightning Source LLC; Ingram Distribution Management Inc.; and Ingram Content Group LLC:

This letter shall serve as Eric Garcia's (hereafter "Claimant") Notice pursuant to the California Private Attorneys General Act of 2004 ("PAGA"), California Labor Code sections 2698, *et seq.* regarding his claims against Lightning Source LLC, Ingram Distribution Management Inc., and Ingram Content Group LLC (referred to herein as "the Employer"). Claimant submits this notice on behalf of himself and all current and former non-exempt employees employed by the Employer in California during the one year preceding the date of this notice suffered one or more of the violations described herein (collectively referred to as "aggrieved employees").

If the LWDA does not intend to investigate the allege violations, Claimant intends to file a representative action for PAGA *civil penalties* on behalf of himself and all other aggrieved employees of the Employer, seeking civil penalties on behalf of himself and all

other aggrieved non-exempt employees in the State of California. A copy of this notice is being sent to the Employer by certified mail at the addresses above.

Claimant and other non-exempt employees were subject to the same policies and practices alleged herein which impermissibly denied aggrieved employees their rights pursuant to the California Labor Code and caused violation of the Labor Code as set forth below.

FACTUAL STATEMENT

The Employer is a printer and distributor of print-on-demand books within the state of California. Claimant worked for the Employer as a non-exempt employee from approximately May 7, 2018 through February 18, 2020 as a factory employee. At all relevant times at least one year prior to the date of this Notice, the Employer subjected Claimant and non-exempt employees to policies and practices which caused the violations of the Labor Code as described herein. Claimant now seeks civil penalties individually and on behalf of other aggrieved employees based on the alleged violations of the California Labor Code and applicable IWC Wage Order, including civil penalties pursuant to Labor Code section 558(a), *excluding underpaid wages per ZB, N.A. v. Superior Court* (2019) 8 Cal. 5th 175, 252 Cal. Rptr. 3d 228, 448 P.3d 239. Claimant's claims are set forth in further detail below.

For reasons set forth herein, Claimant alleges the following violations of the California Labor Code and the applicable IWC Wage Order on behalf of himself and all other aggrieved employees of Defendant. Claimant alleges that Defendant:

1. Failed to pay Claimant and other aggrieved employees all wages due including minimum, regular, and overtime wages;
2. Failed to provide legally compliant off-duty meal periods or pay compensation in lieu thereof;
3. Failed to provide legally compliant duty-free, rest periods or pay compensation in lieu thereof;
4. Failed to reimburse all reasonable and necessary business expenses; and
5. Failed to pay all wages due upon separation of employment.

Accordingly, Claimant now seeks civil penalties on behalf of himself and other nonexempt aggrieved employees based on the Defendant's alleged violations of the California Labor Code and applicable IWC Wage Order. Claimant's claims are set forth below.

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FAILURE TO PAY MINIMUM, REGULAR, AND OVERTIME WAGES

(Labor Code §§ 218, 510, 1194, 1197, 1197.1, 1198, and 1199(c) and the “Minimum Wages” and “Hours and Days of Work” Sections of the Applicable Wage Order)

Labor Code section 510 provides in pertinent part: “Eight hours of labor constitutes a day’s work. Any work in excess of 8 hours in one workday and any work in excess of 40 hours in any one workweek and the first eight hours worked on the seventh day of work in any one workweek shall be compensated at the rate of no less than one and one-half times the regular rate of pay for an employee. Any work in excess of 12 hours in one day shall be compensated at the rate of no less than twice the regular rate of pay for an employee. In addition, any work in excess of eight hours on any seventh day of a workweek shall be compensated at the rate of no less than twice the regular rate of pay of an employee.”

Labor Code section 1194(a) states: “Notwithstanding any agreement to work for a lesser wage, any employee receiving less than the legal minimum wage or the legal overtime compensation applicable to the employee is entitled to recover in a civil action the unpaid balance of the full amount of this minimum wage or overtime compensation, including interest thereon, reasonable attorney’s fees, and costs of suit.”

Labor Code section 1198 provides: “The maximum hours of work and the standard conditions of labor fixed by the commission shall be the maximum hours of work and the standard conditions of labor for employees. The employment of any employee for longer hours than those fixed by the order or under conditions of labor prohibited by the order is unlawful.”

Labor Code section 1199, which is a statute listed for which PAGA default civil penalties are recoverable pursuant to Labor Code sections 2699.5 and 2699(f)((2), provides that:

Every employer or other person acting either individually or as an officer, agent, or employee of another person is guilty of a misdemeanor and is punishable by a fine of not less than one hundred dollars (\$100) or by imprisonment for not less than 30 days, or by both, who does any of the following:

- (a) Requires or causes any employee to work for longer hours than those fixed, or under conditions of labor prohibited by an order of the commission.
- (b) Pays or causes to be paid to any employee a wage less than the minimum fixed by an order of the commission.
- (c) Violates or refuses or neglects to comply with any provision of this chapter or any order or ruling of the commission.

Labor Code section 1197 states: “The minimum wage for employees fixed by the commission or by any applicable state or local law, is the minimum wage to be paid to employees, and the payment of a lower wage than the minimum so fixed is unlawful. This section does not change the applicability of local minimum wage laws to any entity.”

Labor Code section 1197.1 states: “Any employer or other person acting either individually or as an officer, agent, or employee of another person, who pays or causes to be paid to any employee a wage less than the minimum fixed by an order of the commission shall be subject to a civil penalty, restitution of wages, liquidated damages payable to the employee, and any applicable penalties imposed pursuant to Section 203. For any initial violation that is intentionally committed, one hundred dollars (\$100) for each underpaid employee for each pay period for which the employee is underpaid. For each subsequent violation for the same specific offense, two hundred fifty dollars (\$250) for each underpaid employee for each pay period for which the employee is underpaid regardless of whether the initial violation is intentionally committed.”

Pursuant to the “Hours & Days of Work” Section of the applicable Wage Order, an employer may not pay non-exempt employees less than the applicable overtime rate for all overtime hours worked.

Pursuant to the “Minimum Wages” and “Hours & Days of Work” Sections of the applicable Wage Order, an employer may not pay employees less than the applicable minimum wage for all hours worked and provides that an employer may not pay non-exempt employees less than the applicable overtime rate for all overtime hours worked.

The Employer violated Labor Code sections 218, 510, 1194, 1197, and 1198, and the “Minimum Wages” and “Hours and Days of Work” Sections of the Applicable Wage Order because it did not pay Claimant and other aggrieved current and former employees all minimum, regular, and overtime wages for all hours worked. Claimant, and on information and belief, other aggrieved employees regularly worked off-the-clock without receiving any compensation for these hours worked off-the-clock, including during meal periods in which Claimant and other employees were regularly interrupted by their supervisors, and would often be instructed to return to work before the conclusion of their meal period. The Employer also failed to pay all overtime wages for all overtime hours worked because it failed to properly calculate the regular rate of pay for purposes of calculating overtime and double-time rates for Claimant and other aggrieved employees by including in their regular rate of pay calculations hours for holidays, paid sick leave, and paid time off, among other exempted items, which caused Claimant and other aggrieved employees to be consistently paid less in overtime wages than they were owed.

Accordingly, Claimant now seeks *civil penalties* pursuant to the PAGA on behalf of all aggrieved employees based on the alleged violations of the California Labor Code and applicable IWC Wage Orders.

FAILURE TO PROVIDE MEAL AND REST PERIODS

(Labor Code §§ 226.7, 512, and 1198, and the “Meal Period” and “Rest Period” Sections of the applicable IWC Wage Order)

Labor Code section 512(a) states in pertinent part: “[A]n employer may not employ an employee for a work period of more than five hours per day without providing the employee with a meal period of not less than 30 minutes. An employer may not employ an employee for a work period of more than 10 hours per day without providing the employee with a second meal period of not less than 30 minutes” Labor Code section

226.7(a) states that “no employer shall require any employee to work during any meal or rest period mandated by an applicable order of the Industrial Welfare Commission.”

The “Rest Period” Section of applicable IWC Wage Order states: “Every employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period. The authorized rest period shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof.” If an employer fails to provide an employee a rest period in accordance with the applicable provision of the order, the employer shall pay the employee one (1) hour of pay at the employee’s regular rate of compensation of each workday that the rest period is not provided.

Labor Code section 226.7(c) states: “[I]f an employer fails to provide an employee a meal period or rest period in accordance with an applicable order of the IWC, the employer shall pay the employee one additional hour of pay at the employee’s regular rate of compensation for each work day that the meal or rest period is not provided.”

During Claimant’s employment, the Employer failed to provide Claimant and other aggrieved employees with legally compliant off-duty meal periods and duty-free rest periods as required by Labor Code sections 226.7 and 512, and sections 11 and 12 of the applicable IWC Wage Order. The Employer regularly failed to provide a duty-free and uninterrupted meal period before the end of the fifth hour of work and failed to provide a second meal period on shifts of more than ten (10) hours, as required under California law. Furthermore, the meal periods provided to Claimant and other aggrieved employees were often short insofar as they were not at least thirty (30) minutes in length, as required under California law, and were often interrupted by the Employer texting Claimant and other aggrieved employees on their cellular devices to inform them of mechanical breakdowns, inform them of which department they would need to report to after their rest period had concluded, or Employer otherwise would instruct Claimant and other aggrieved employees to work off-the-clock during their meal periods. Finally, meal periods were often late because Employer would often require Claimant and other aggrieved employees to continue working after their fifth hour to address mechanical breakdowns, or to cover for other employees.

The Employer also regularly failed to provide a duty-free and uninterrupted rest break for each four hours worked as required by California law. Claimant and other aggrieved employees were often denied their rest breaks because the rest breaks were short, interrupted, or otherwise on-duty, as Claimant and other employees were regularly interrupted by Employer during their rest break, in order to inform Claimant and other aggrieved employees about work-related issues, or otherwise to require Claimant and other aggrieved employees to return from a rest break early in order to address mechanical breakdowns, or other scheduling issues. Furthermore, the Employer failed to pay one (1) hour of pay at the employee’s regular rate of compensation for each workday that the meal and/or rest period was not provided, in accordance with California law.

Accordingly, Claimant now seeks *civil penalties* pursuant to the PAGA on behalf of all aggrieved employees based on the alleged violations of the California Labor Code and applicable IWC Wage Orders.

FAILURE TO REIMBURSE BUSINESS-RELATED EXPENSES
**(Labor Code §§ 2802 and 2804, and the “Tools and Equipment” section of
the applicable IWC Wage Order)**

Labor Code section 2802(a) provides that “[a]n employer shall indemnify his or her employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties, or of his or her obedience to the directions of the employer, even though unlawful, unless the employee, at the time of obeying the directions, believed them to be unlawful.”

Labor Code section 2802(c) states that “[f]or purposes of [2802], the term “necessary expenditures or losses” shall include all reasonable costs, including, but not limited to attorney’s fees incurred by the employee enforcing the rights granted by [2802].”

Section 9(b) of the applicable IWC Wage Order states in pertinent part: “When tools or equipment are required by the employer or are necessary to the performance of a job, such tools and equipment shall be provided and maintained by the employer.”

Labor Code section 2802 prohibits employers, such as the Employer, from shifting their cost of doing business onto the employee. California Labor Code section 2802 states that employers must “indemnify” an employee for “all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties, or of his or her obedience to the directions of the employer.” This means that if the expense in question is “necessary” for performance of the job, the employer must reimburse the employee 100% of the cost. An expense is considered “necessary” if it directly results from the employee’s performance of his or her work duties. An expense is also “necessary” if it occurs because the employee is following the directions given by the employer.

“Any contract or agreement, express or implied, made by any employee to waive the benefits of this article or any part thereof is null and void, and this article shall not deprive any employee or his personal representative of any right or remedy to which he is entitled to under the laws of this State.” Cal. Labor Code § 2804.

The Employer failed to comply with Labor Code section 2802 and the applicable IWC Wage Order by failing to reimburse Claimant and other aggrieved employees for necessary business-related expenses incurred in direct consequence of the discharge of his or her duties. Claimant and other aggrieved employees were required to use their personal cellular device for work related purposes, such as, but not limited to, communicating with supervisors who would contact Claimant and other employees on their cellphone during work hours in order to coordinate work. As such, the Employer failed to reimburse Claimant and other aggrieved employees for the costs incurred by employees in direct consequence of the discharge of his or her duties.

Accordingly, Claimant now seeks *civil penalties* pursuant to the PAGA on behalf of himself and other aggrieved employees based on the alleged violations of the California Labor Code and applicable IWC Wage Orders.

FAILURE TO TIMELY PAY WAGES DUE DURING AND UPON
TERMINATION OF EMPLOYMENT

(Labor Code §§ 201, 202, 203, 204, 256, 1198, and 2699)

Labor Code section 201 states: “If an Employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately.” Labor Code section 202 states: “If an employee not having a written contract for a definite period quits his or her employment, his or her wages shall become due and payable not later than 72 hours thereafter, unless the employee has given 72 hours previous notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting.”

Labor Code section 203(a) states, in relevant part: “If an Employer willfully fails to pay, without abatement or reduction, in accordance with Sections 201, 201.3, 201.5, 202, and 205.5, any wages of an employee who is discharged or who quits, the wages of the employee shall continue as a penalty from the due date thereof at the same rate until paid or until an action therefor is commenced; but the wages shall not continue for more than 30 days. An employee who secretes or absents himself or herself to avoid payment to his or her, or who refuses to receive the payment when fully tendered to his or her, including any penalty then accrued under this section, is not entitled to any benefit under this section for the time during which he or she so avoids payment.”

Labor Code section 204(a) states, in pertinent part: “All wages . . . earned by any person in any employment are due and payable twice during each calendar month, on days designated in advance by the employer as the regular paydays.” The “Minimum Wages” Section of the applicable Wage Order further states “every employer shall pay to each employee, on the established payday for the period involved, not less than the applicable minimum wage for all hours worked in the payroll period.”

Labor Code section 256 states: “The Labor Commissioner shall impose a civil penalty in an amount not exceeding 30 days of pay as waiting time under the terms of Section 203.”

As detailed above, the Employer failed to pay Claimant and other aggrieved employees all wages that were due and owing to them including meal period premiums, and regular, minimum, overtime, and paid leave within the required time during their employment and upon their separation of employment, in violation of the Labor Code and the applicable IWC Wage Order because of the violations alleged herein. Furthermore, Claimant’s employment with Employer ended on approximately February 18, 2020, however, Claimant was not paid a portion of his final wages until approximately March 6, 2020. As a result, the Employer violated the above sections of the Labor Code.

Accordingly, Claimant now seeks *civil penalties* pursuant to the PAGA on behalf of himself and other aggrieved employees based on the alleged violations of the California Labor Code and applicable IWC Wage Orders.

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CIVIL PENALTIES FOR VIOLATION OF
THE LABOR CODE AND IWC WAGE ORDERS
(Labor Code §§ 558, 558.1, and 1197.1)

Labor Code section 558 subjects any employer or other person acting on behalf of an employer who violates, or causes to be violated, a section of Part 2, Chapter 1, of the Labor Code or any provision regulating hours and days of work in any IWC Wage Order to a civil penalty in the amount of \$50 for any initial violation for each pay period in which an employee is underpaid in addition to an amount sufficient to recover underpaid wages, and \$100 for each subsequent violation in addition to an amount sufficient to recover underpaid wages, which shall be paid to each affected employee.

Labor Code section 558.1(a) states: “Any Employer or other person acting on behalf of an employer, who violates, or causes to be violated, any provision regulating minimum wages or hours and days of work in any order of the Industrial Welfare Commission, or violates, or causes to be violated, Sections 203, 226, 226.7, 1193.6, 1194, or 2802, may be held liable as the Employer for such violation.” Labor Code section 558.1 expressly defines “employer or other person acting on behalf of an employer” to include a “natural person who is an owner, director, officer, or managing agent of the employer.”

Labor Code section 1197.1 states that any employer or other person acting either individually or as an officer, agent or employee of another person, which pays or causes to be paid to any employee a wage less than the minimum fixed by an order of the commission shall be subject to a civil penalty and restitution of wages payable to the employee in an amount of \$100 for the initial violation for each pay period in which an employee underpaid in addition to an amount sufficient to recover underpaid wages, and \$250 for each subsequent violation in addition to an amount sufficient to recover underpaid wages, which shall be paid to each affected employee.

As set forth above, Employer violated the IWC Wage Order regulating the hours and days of work, Labor Code sections 510, 1197, and 1198, and caused the employees to be paid less than the minimum set by the IWC Wage Order. As a result, Employer is liable for civil penalties under Labor Code sections 558, 558.1, and 1197.1.

Accordingly, Claimant will pursue civil penalty or other lawful remedies for himself and other current and former non-exempt employees, including recovery of attorney’s fees, costs, and civil penalties to the extent allowed by law. However, pursuant to the recent California Supreme Court decision in *ZB, N.A. v. Superior Court* (2019) 8 Cal. 5th 175, 252 Cal. Rptr. 3d 228, 448 P.3d 239, Claimant does not seek underpaid wages as part of any anticipated PAGA representative action.

DUTIES OF EMPLOYER
(Labor Code §§ 1174, 1174.5, 1175, and 1198, and the Applicable Wage Order)

Labor Code section 1174 describes certain duties of every employer in this state. Subsection (d) of this labor code section requires that payroll records show the hours worked daily by employees and the corresponding wages to be paid for the hours worked. The Employer violated this requirement by its failure to accurately record employee hours worked and/or paid including wages owed for off-the-clock time and

meal and rest period premiums. Labor Code section 1174.5 imposes a civil penalty of \$500 for an employer's failure to maintain accurate and complete records. This civil penalty is addition to the civil penalty of \$100 per pay period, per aggrieved employee that would be imposed pursuant to Labor Code section 2699 for a violation of Labor Code section 1174(d). Furthermore, Claimant and all other aggrieved current and former employees are entitled to collect 25% of the penalty imposed pursuant to Section 2699.

The Employer failed to accurately record all hours worked by Claimant and other aggrieved employees and failed to record all accurate wages to be paid.

Claimant will pursue all remedies on behalf of himself and other current and former employees, including recovery of attorney's fees, costs, damages and penalties to the extent allowed by law.

ATTORNEY'S FEES, COSTS, INTEREST AND PENALTIES

(Labor Code §§ 218.6, 226(e), 1194, 1194.2, and 2699, *et seq.*)

Labor Code sections 218.6, 226(e), 1194, 1194.2, and 2699, *et seq.* give employees the right to recover in a civil action the unpaid balance of the full amount of minimum wages, regular wages, overtime compensation, damages, liquidated damages, and penalties, including interest thereon, reasonable attorney's fees, and costs of suit.

Pursuant to Labor Code sections 2699, *et seq.*, aggrieved employees are entitled to collect 25% of the penalty assessment and 100% of the underpaid wages. Accordingly, the Employer is liable for these items in addition to the unpaid wages. Claimant has already incurred in actual damages, costs and attorney's fees and will continue to incur costs as a result of the Employer's unlawful actions.

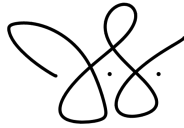
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CONCLUSION

The Employer violated Labor Code sections as set forth herein. Claimant will pursue all remedies on behalf of himself and other aggrieved employees, including recovery of attorney's fees, costs, and penalties to the extent allowed by law. The facts and claims contained herein are based on the information available at the time of this writing. Therefore, if through discovery and/or expert review, Claimant becomes aware of additional claims, he reserves the right to revise these facts and/or add any new claims by amending the claim letter or by adding applicable causes of action in the complaint.

Should you have any questions, please feel free to contact me at your convenience.

Sincerely,

A handwritten signature in black ink, appearing to read 'Jonathan M. Lebe'.

Jonathan M. Lebe, Esq.

Attorney for Eric Garcia,

Individually and on behalf of Aggrieved Employees

Copied by E-Mail:

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Littler Mendelson, P.C.
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EXHIBIT C

June 24, 2020

NOTICE VIA ONLINE SUBMISSION

California Labor and Workforce Development Agency ("LWDA")

VIA CERTIFIED U.S. MAIL WITH RETURN RECEIPT

Lightning Source LLC
1246 Heil Quaker Blvd.
La Vergne, TN 37086-3515

Ingram Distribution Management Inc.;
Ingram Content Group LLC
1 Ingram Blvd.
La Vergne, TN 37086-3629

Lightning Source LLC; Ingram
Distribution Management Inc.; Ingram
Content Group LLC
c/o Eleanor G. McDonald
4400 Harding Pike
Nashville, TN 37205-2204

Re: Amended Notice pursuant to California Labor Code sections 2698, *et seq.*, the Private Attorneys General Act ("PAGA"), sent by Eric Garcia on behalf of himself and all other non-exempt employees of Lightning Source LLC, Ingram Distribution Management Inc., and Ingram Content Group LLC as an individual and as a proposed Representative of the State of California

Dear PAGA Administrator; Lightning Source LLC; Ingram Distribution Management Inc.; and Ingram Content Group LLC:

This letter shall serve as Eric Garcia's (hereafter "Claimant") Notice pursuant to the California Private Attorneys General Act of 2004 ("PAGA"), California Labor Code sections 2698, *et seq.* regarding his claims against Lightning Source LLC, Ingram Distribution Management Inc., and Ingram Content Group LLC (referred to herein as "the Employer"). Claimant submits this notice on behalf of himself and all current and former non-exempt employees employed by the Employer in California during the one year preceding the date of this notice suffered one or more of the violations described herein (collectively referred to as "aggrieved employees").

If the LWDA does not intend to investigate the allege violations, Claimant intends to file a representative action for PAGA *civil penalties* on behalf of himself and all other aggrieved employees of the Employer, seeking civil penalties on behalf of himself and all

other aggrieved non-exempt employees in the State of California. A copy of this notice is being sent to the Employer by certified mail at the addresses above.

Claimant and other non-exempt employees were subject to the same policies and practices alleged herein which impermissibly denied aggrieved employees their rights pursuant to the California Labor Code and caused violation of the Labor Code as set forth below.

FACTUAL STATEMENT

The Employer is a printer and distributor of print-on-demand books within the state of California. Claimant worked for the Employer as a non-exempt employee from approximately May 7, 2018 through February 18, 2020 as a factory employee. At all relevant times at least one year prior to the date of this Notice, the Employer subjected Claimant and non-exempt employees to policies and practices which caused the violations of the Labor Code as described herein. Claimant now seeks civil penalties individually and on behalf of other aggrieved employees based on the alleged violations of the California Labor Code and applicable IWC Wage Order, including civil penalties pursuant to Labor Code section 558(a), *excluding underpaid wages per ZB, N.A. v. Superior Court* (2019) 8 Cal. 5th 175, 252 Cal. Rptr. 3d 228, 448 P.3d 239. Claimant's claims are set forth in further detail below.

For reasons set forth herein, Claimant alleges the following violations of the California Labor Code and the applicable IWC Wage Order on behalf of himself and all other aggrieved employees of Employer. Claimant alleges that Employer:

1. Failed to pay Claimant and other aggrieved employees all wages due including minimum, regular, and overtime wages;
2. Failed to provide legally compliant off-duty meal periods or pay compensation in lieu thereof;
3. Failed to provide legally compliant duty-free, rest periods or pay compensation in lieu thereof;
4. Failed to reimburse all reasonable and necessary business expenses;
5. Failure to provide accurate and itemized wage statements; and
6. Failed to pay all wages due upon separation of employment.

Accordingly, Claimant now seeks civil penalties on behalf of himself and other nonexempt aggrieved employees based on the Employer's alleged violations of the California Labor Code and applicable IWC Wage Order. Claimant's claims are set forth below.

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FAILURE TO PAY MINIMUM, REGULAR, AND OVERTIME WAGES

(Labor Code §§ 218, 510, 1194, 1197, 1197.1, 1198, and 1199(c) and the “Minimum Wages” and “Hours and Days of Work” Sections of the Applicable Wage Order)

Labor Code section 510 provides in pertinent part: “Eight hours of labor constitutes a day’s work. Any work in excess of 8 hours in one workday and any work in excess of 40 hours in any one workweek and the first eight hours worked on the seventh day of work in any one workweek shall be compensated at the rate of no less than one and one-half times the regular rate of pay for an employee. Any work in excess of 12 hours in one day shall be compensated at the rate of no less than twice the regular rate of pay for an employee. In addition, any work in excess of eight hours on any seventh day of a workweek shall be compensated at the rate of no less than twice the regular rate of pay of an employee.”

Labor Code section 1194(a) states: “Notwithstanding any agreement to work for a lesser wage, any employee receiving less than the legal minimum wage or the legal overtime compensation applicable to the employee is entitled to recover in a civil action the unpaid balance of the full amount of this minimum wage or overtime compensation, including interest thereon, reasonable attorney’s fees, and costs of suit.”

Labor Code section 1198 provides: “The maximum hours of work and the standard conditions of labor fixed by the commission shall be the maximum hours of work and the standard conditions of labor for employees. The employment of any employee for longer hours than those fixed by the order or under conditions of labor prohibited by the order is unlawful.”

Labor Code section 1199, which is a statute listed for which PAGA default civil penalties are recoverable pursuant to Labor Code sections 2699.5 and 2699(f)((2), provides that:

Every employer or other person acting either individually or as an officer, agent, or employee of another person is guilty of a misdemeanor and is punishable by a fine of not less than one hundred dollars (\$100) or by imprisonment for not less than 30 days, or by both, who does any of the following:

- (a) Requires or causes any employee to work for longer hours than those fixed, or under conditions of labor prohibited by an order of the commission.
- (b) Pays or causes to be paid to any employee a wage less than the minimum fixed by an order of the commission.
- (c) Violates or refuses or neglects to comply with any provision of this chapter or any order or ruling of the commission.

Labor Code section 1197 states: “The minimum wage for employees fixed by the commission or by any applicable state or local law, is the minimum wage to be paid to employees, and the payment of a lower wage than the minimum so fixed is unlawful. This section does not change the applicability of local minimum wage laws to any entity.”

Labor Code section 1197.1 states: “Any employer or other person acting either individually or as an officer, agent, or employee of another person, who pays or causes to be paid to any employee a wage less than the minimum fixed by an order of the commission shall be subject to a civil penalty, restitution of wages, liquidated damages payable to the employee, and any applicable penalties imposed pursuant to Section 203. For any initial violation that is intentionally committed, one hundred dollars (\$100) for each underpaid employee for each pay period for which the employee is underpaid. For each subsequent violation for the same specific offense, two hundred fifty dollars (\$250) for each underpaid employee for each pay period for which the employee is underpaid regardless of whether the initial violation is intentionally committed.”

Pursuant to the “Hours & Days of Work” Section of the applicable Wage Order, an employer may not pay non-exempt employees less than the applicable overtime rate for all overtime hours worked.

Pursuant to the “Minimum Wages” and “Hours & Days of Work” Sections of the applicable Wage Order, an employer may not pay employees less than the applicable minimum wage for all hours worked and provides that an employer may not pay non-exempt employees less than the applicable overtime rate for all overtime hours worked.

The Employer violated Labor Code sections 218, 510, 1194, 1197, and 1198, and the “Minimum Wages” and “Hours and Days of Work” Sections of the Applicable Wage Order because it did not pay Claimant and other aggrieved current and former employees all minimum, regular, and overtime wages for all hours worked. Claimant, and on information and belief, other aggrieved employees regularly worked off-the-clock without receiving any compensation for these hours worked off-the-clock, including during meal periods in which Claimant and other employees were regularly interrupted by their supervisors, and would often be instructed to return to work before the conclusion of their meal period. The Employer also failed to pay all overtime wages for all overtime hours worked because it failed to properly calculate the regular rate of pay for purposes of calculating overtime and double-time rates for Claimant and other aggrieved employees by including in their regular rate of pay calculations hours for holidays, paid sick leave, and paid time off, among other exempted items, which caused Claimant and other aggrieved employees to be consistently paid less in overtime wages than they were owed.

Accordingly, Claimant now seeks *civil penalties* pursuant to the PAGA on behalf of all aggrieved employees based on the alleged violations of the California Labor Code and applicable IWC Wage Orders.

FAILURE TO PROVIDE MEAL AND REST PERIODS

(Labor Code §§ 226.7, 512, and 1198, and the “Meal Period” and “Rest Period” Sections of the applicable IWC Wage Order)

Labor Code section 512(a) states in pertinent part: “[A]n employer may not employ an employee for a work period of more than five hours per day without providing the employee with a meal period of not less than 30 minutes. An employer may not employ an employee for a work period of more than 10 hours per day without providing the employee with a second meal period of not less than 30 minutes” Labor Code section

226.7(a) states that “no employer shall require any employee to work during any meal or rest period mandated by an applicable order of the Industrial Welfare Commission.”

The “Rest Period” Section of applicable IWC Wage Order states: “Every employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period. The authorized rest period shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof.” If an employer fails to provide an employee a rest period in accordance with the applicable provision of the order, the employer shall pay the employee one (1) hour of pay at the employee’s regular rate of compensation of each workday that the rest period is not provided.

Labor Code section 226.7(c) states: “[I]f an employer fails to provide an employee a meal period or rest period in accordance with an applicable order of the IWC, the employer shall pay the employee one additional hour of pay at the employee’s regular rate of compensation for each work day that the meal or rest period is not provided.”

During Claimant’s employment, the Employer failed to provide Claimant and other aggrieved employees with legally compliant off-duty meal periods and duty-free rest periods as required by Labor Code sections 226.7 and 512, and sections 11 and 12 of the applicable IWC Wage Order. The Employer regularly failed to provide a duty-free and uninterrupted meal period before the end of the fifth hour of work and failed to provide a second meal period on shifts of more than ten (10) hours, as required under California law. Furthermore, the meal periods provided to Claimant and other aggrieved employees were often short insofar as they were not at least thirty (30) minutes in length, as required under California law, and were often interrupted by the Employer texting Claimant and other aggrieved employees on their cellular devices to inform them of mechanical breakdowns, inform them of which department they would need to report to after their rest period had concluded, or Employer otherwise would instruct Claimant and other aggrieved employees to work off-the-clock during their meal periods. Finally, meal periods were often late because Employer would often require Claimant and other aggrieved employees to continue working after their fifth hour to address mechanical breakdowns, or to cover for other employees.

The Employer also regularly failed to provide a duty-free and uninterrupted rest break for each four hours worked as required by California law. Claimant and other aggrieved employees were often denied their rest breaks because the rest breaks were short, interrupted, or otherwise on-duty, as Claimant and other employees were regularly interrupted by Employer during their rest break, in order to inform Claimant and other aggrieved employees about work-related issues, or otherwise to require Claimant and other aggrieved employees to return from a rest break early in order to address mechanical breakdowns, or other scheduling issues. Furthermore, the Employer failed to pay one (1) hour of pay at the employee’s regular rate of compensation for each workday that the meal and/or rest period was not provided, in accordance with California law.

Accordingly, Claimant now seeks *civil penalties* pursuant to the PAGA on behalf of all aggrieved employees based on the alleged violations of the California Labor Code and applicable IWC Wage Orders.

FAILURE TO REIMBURSE BUSINESS-RELATED EXPENSES
(Labor Code §§ 2802 and 2804, and the “Tools and Equipment” section of the applicable IWC Wage Order)

Labor Code section 2802(a) provides that “[a]n employer shall indemnify his or her employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties, or of his or her obedience to the directions of the employer, even though unlawful, unless the employee, at the time of obeying the directions, believed them to be unlawful.”

Labor Code section 2802(c) states that “[f]or purposes of [2802], the term “necessary expenditures or losses” shall include all reasonable costs, including, but not limited to attorney’s fees incurred by the employee enforcing the rights granted by [2802].”

Section 9(b) of the applicable IWC Wage Order states in pertinent part: “When tools or equipment are required by the employer or are necessary to the performance of a job, such tools and equipment shall be provided and maintained by the employer.”

Labor Code section 2802 prohibits employers, such as the Employer, from shifting their cost of doing business onto the employee. California Labor Code section 2802 states that employers must “indemnify” an employee for “all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties, or of his or her obedience to the directions of the employer.” This means that if the expense in question is “necessary” for performance of the job, the employer must reimburse the employee 100% of the cost. An expense is considered “necessary” if it directly results from the employee’s performance of his or her work duties. An expense is also “necessary” if it occurs because the employee is following the directions given by the employer.

“Any contract or agreement, express or implied, made by any employee to waive the benefits of this article or any part thereof is null and void, and this article shall not deprive any employee or his personal representative of any right or remedy to which he is entitled to under the laws of this State.” Cal. Labor Code § 2804.

The Employer failed to comply with Labor Code section 2802 and the applicable IWC Wage Order by failing to reimburse Claimant and other aggrieved employees for necessary business-related expenses incurred in direct consequence of the discharge of his or her duties. Claimant and other aggrieved employees were required to use their personal cellular device for work related purposes, such as, but not limited to, communicating with supervisors who would contact Claimant and other employees on their cellphone during work hours in order to coordinate work. As such, the Employer failed to reimburse Claimant and other aggrieved employees for the costs incurred by employees in direct consequence of the discharge of his or her duties.

Accordingly, Claimant now seeks *civil penalties* pursuant to the PAGA on behalf of himself and other aggrieved employees based on the alleged violations of the California Labor Code and applicable IWC Wage Orders.

FAILURE TO PROVIDE ACCURATE AND ITEMIZED WAGE STATEMENTS
(Labor Code § 226, and the “Records” section of the applicable IWC Wage Order)

Labor Code section 226(a) states in pertinent part that every employer shall provide an accurate itemized statement in writing with respect to each one of its employees showing: 1) gross wages earned; 2) total hours worked by an employee, except for any employee whose compensation is solely based on a salary and who is exempt from payment of overtime under subdivision (a) of Section 515 or any applicable order of the Industrial Welfare Commission; (3) the number of piece rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis; (4) all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item; (5) net wages earned; (6) the inclusive dates of the period for which the employee is paid; (7) the name of the employee and the last four digits of his or her social security number or an employee identification number other than a social security number; (8) the name and address of the legal entity that is the employer . . .; and (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee.

“An employee suffering injury as a result of a knowing and intentional failure by an employer to comply with subdivision (a) is entitled to recover the greater of all actual damages or fifty dollars (\$50.00) for the initial pay period in which a violation occurs and one hundred dollars (\$100.00) per employee for each violation in a subsequent pay period, not exceeding an aggregate penalty of four thousand dollars (\$4,000.00), and is entitled to an award of costs and reasonable attorney's fees.”

Due to the Employer's failure to pay all wages, and provide wage statements displaying the correct number of hours worked and at the correct hourly rate, the itemized wage statements provided by Employer to Claimant and other aggrieved employees were inaccurate, and as a result, Employer failed to provide Claimant and other current and former employees with accurate, timely, itemized wage statements complying with the requirements of the Labor Code and applicable IWC Wage Order.

Accordingly, Claimant now seeks *civil penalties* pursuant to the PAGA on behalf of himself and other aggrieved employees based on the alleged violations of the California Labor Code and applicable IWC Wage Orders.

FAILURE TO TIMELY PAY WAGES DUE DURING AND UPON
TERMINATION OF EMPLOYMENT

(Labor Code §§ 201, 202, 203, 204, 256, 1198, and 2699)

Labor Code section 201 states: “If an Employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately.” Labor Code section 202 states: “If an employee not having a written contract for a definite period quits his or her employment, his or her wages shall become due and payable not later than 72 hours thereafter, unless the employee has given 72 hours previous notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting.”

Labor Code section 203(a) states, in relevant part: “If an Employer willfully fails to pay, without abatement or reduction, in accordance with Sections 201, 201.3, 201.5, 202, and 205.5, any wages of an employee who is discharged or who quits, the wages of the employee shall continue as a penalty from the due date thereof at the same rate until paid or until an action therefor is commenced; but the wages shall not continue for more than 30 days. An employee who secretes or absents himself or himself to avoid payment to his or her, or who refuses to receive the payment when fully tendered to his or her, including any penalty then accrued under this section, is not entitled to any benefit under this section for the time during which he or she so avoids payment.”

Labor Code section 204(a) states, in pertinent part: “All wages . . . earned by any person in any employment are due and payable twice during each calendar month, on days designated in advance by the employer as the regular paydays.” The “Minimum Wages” Section of the applicable Wage Order further states “every employer shall pay to each employee, on the established payday for the period involved, not less than the applicable minimum wage for all hours worked in the payroll period.”

Labor Code section 256 states: “The Labor Commissioner shall impose a civil penalty in an amount not exceeding 30 days of pay as waiting time under the terms of Section 203.”

As detailed above, the Employer failed to pay Claimant and other aggrieved employees all wages that were due and owing to them including meal period premiums, and regular, minimum, overtime, and paid leave within the required time during their employment and upon their separation of employment, in violation of the Labor Code and the applicable IWC Wage Order because of the violations alleged herein. Furthermore, Claimant’s employment with Employer ended on approximately February 18, 2020, however, Claimant was not paid a portion of his final wages until approximately March 6, 2020. As a result, the Employer violated the above sections of the Labor Code.

Accordingly, Claimant now seeks *civil penalties* pursuant to the PAGA on behalf of himself and other aggrieved employees based on the alleged violations of the California Labor Code and applicable IWC Wage Orders.

CIVIL PENALTIES FOR VIOLATION OF
THE LABOR CODE AND IWC WAGE ORDERS
(Labor Code §§ 558, 558.1, and 1197.1)

Labor Code section 558 subjects any employer or other person acting on behalf of an employer who violates, or causes to be violated, a section of Part 2, Chapter 1, of the Labor Code or any provision regulating hours and days of work in any IWC Wage Order to a civil penalty in the amount of \$50 for any initial violation for each pay period in which an employee is underpaid in addition to an amount sufficient to recover underpaid wages, and \$100 for each subsequent violation in addition to an amount sufficient to recover underpaid wages, which shall be paid to each affected employee.

Labor Code section 558.1(a) states: “Any Employer or other person acting on behalf of an employer, who violates, or causes to be violated, any provision regulating minimum wages or hours and days of work in any order of the Industrial Welfare

Commission, or violates, or causes to be violated, Sections 203, 226, 226.7, 1193.6, 1194, or 2802, may be held liable as the Employer for such violation.” Labor Code section 558.1 expressly defines “employer or other person acting on behalf of an employer” to include a “natural person who is an owner, director, officer, or managing agent of the employer.”

Labor Code section 1197.1 states that any employer or other person acting either individually or as an officer, agent or employee of another person, which pays or causes to be paid to any employee a wage less than the minimum fixed by an order of the commission shall be subject to a civil penalty and restitution of wages payable to the employee in an amount of \$100 for the initial violation for each pay period in which an employee underpaid in addition to an amount sufficient to recover underpaid wages, and \$250 for each subsequent violation in addition to an amount sufficient to recover underpaid wages, which shall be paid to each affected employee.

As set forth above, Employer violated the IWC Wage Order regulating the hours and days of work, Labor Code sections 510, 1197, and 1198, and caused the employees to be paid less than the minimum set by the IWC Wage Order. As a result, Employer is liable for civil penalties under Labor Code sections 558, 558.1, and 1197.1.

Accordingly, Claimant will pursue civil penalty or other lawful remedies for himself and other current and former non-exempt employees, including recovery of attorney’s fees, costs, and civil penalties to the extent allowed by law. However, pursuant to the recent California Supreme Court decision in *ZB, N.A. v. Superior Court* (2019) 8 Cal. 5th 175, 252 Cal. Rptr. 3d 228, 448 P.3d 239, Claimant does not seek underpaid wages as part of any anticipated PAGA representative action.

DUTIES OF EMPLOYER

(Labor Code §§ 1174, 1174.5, 1175, and 1198, and the Applicable Wage Order)

Labor Code section 1174 describes certain duties of every employer in this state. Subsection (d) of this labor code section requires that payroll records show the hours worked daily by employees and the corresponding wages to be paid for the hours worked. The Employer violated this requirement by its failure to accurately record employee hours worked and/or paid including wages owed for off-the-clock time and meal and rest period premiums. Labor Code section 1174.5 imposes a civil penalty of \$500 for an employer’s failure to maintain accurate and complete records. This civil penalty is addition to the civil penalty of \$100 per pay period, per aggrieved employee that would be imposed pursuant to Labor Code section 2699 for a violation of Labor Code section 1174(d). Furthermore, Claimant and all other aggrieved current and former employees are entitled to collect 25% of the penalty imposed pursuant to Section 2699.

The Employer failed to accurately record all hours worked by Claimant and other aggrieved employees and failed to record all accurate wages to be paid.

Claimant will pursue all remedies on behalf of himself and other current and former employees, including recovery of attorney’s fees, costs, damages and penalties to the extent allowed by law.

ATTORNEY'S FEES, COSTS, INTEREST AND PENALTIES
(Labor Code §§ 218.6, 226(e), 1194, 1194.2, and 2699, *et seq.*)

Labor Code sections 218.6, 226(e), 1194, 1194.2, and 2699, *et seq.* give employees the right to recover in a civil action the unpaid balance of the full amount of minimum wages, regular wages, overtime compensation, damages, liquidated damages, and penalties, including interest thereon, reasonable attorney's fees, and costs of suit.

Pursuant to Labor Code sections 2699, *et seq.*, aggrieved employees are entitled to collect 25% of the penalty assessment and 100% of the underpaid wages. Accordingly, the Employer is liable for these items in addition to the unpaid wages. Claimant has already incurred in actual damages, costs and attorney's fees and will continue to incur costs as a result of the Employer's unlawful actions.

CONCLUSION

The Employer violated Labor Code sections as set forth herein. Claimant will pursue all remedies on behalf of himself and other aggrieved employees, including recovery of attorney's fees, costs, and penalties to the extent allowed by law. The facts and claims contained herein are based on the information available at the time of this writing. Therefore, if through discovery and/or expert review, Claimant becomes aware of additional claims, he reserves the right to revise these facts and/or add any new claims by amending the claim letter or by adding applicable causes of action in the complaint.

Should you have any questions, please feel free to contact me at your convenience.

Sincerely,



Jonathan M. Lebe, Esq.

Attorney for Eric Garcia,

Individually and on behalf of Aggrieved Employees

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EXHIBIT D