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12 Individually and on behalf of all others similarly situated and aggrieved

13 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

14 **FOR THE COUNTY OF FRESNO**

15 Eric Garcia, individually and on behalf
16 of all others similarly situated and
aggrieved,

17 Plaintiff,

18 v.

19 Lightning Source LLC; Ingram
20 Distribution Management Inc; Ingram
21 Content Group LLC; and Does 1
through 25,

22 Defendants.
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E-FILED

8/10/2021 11:25 AM

Superior Court of California

County of Fresno

By: I. Herrera, Deputy

Case No. 20CECG01641

**SECOND AMENDED CLASS ACTION
[Cal. Code Civ. Proc. § 382] AND
REPRESENTATIVE ACTION [Cal. Lab.
Code §§ 2698, et seq.] COMPLAINT**

1. Failure to Pay Minimum Wages (Lab. Code §§1182.12, 1194, 1194.2, 1197, 1197.1, 1198, and the Applicable IWC Order § 4);
2. Failure to Pay Overtime Wages (Lab. Code § 510, 1194, 1198, and the Applicable IWC Wage Order § 3);
3. Failure to Provide Meal Periods (Lab. Code §226.7, 512, and the Applicable IWC Wage Order §11);
4. Failure to Provide Rest Periods (Lab. Code §226.7 and the Applicable IWC Wage Order §12);
5. Failure to Provide Accurate Itemized Wage Statements (Lab. Code §226 and the Applicable IWC Wage Order § 7);

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6. Failure to Reimburse Business Expenses (Lab. Code §2802 and the Applicable IWC Wage Order § 9);
7. Failure to Timely Pay Wages Due During Employment (Lab. Code §§ 204, 210, and the Applicable IWC Wage Order);
8. Failure to Timely Pay Wages Due Upon Separation of Employment (Lab. Code §§201, 202, 203, and the Applicable IWC Wage Order); and
9. Violation of the Unfair Competition Law (Bus. & Prof. Code §§ 17200-17208).
10. Civil Penalties Pursuant to the PAGA (Labor Code §§ 2698, *et seq.*)

JURY TRIAL DEMANDED

1 Plaintiff Eric Garcia ("Plaintiff"), on behalf of himself and all others similarly situated
2 and aggrieved, complains and alleges as follows:

3 I.

4 **INTRODUCTION**

5 1. Plaintiff brings this class action pursuant to California Code of Civil Procedure
6 section 382 and representation action pursuant to the Private Attorneys General Act of 2004
7 ("PAGA"), Labor Code sections 2698, *et seq.*, against Defendants Lightning Source LLC
8 ("Defendant Lightning Source"); Ingram Distribution Management Inc ("Defendant Ingram
9 Distribution"); Ingram Content Group LLC ("Defendant Ingram Content Group"); and Does
10 1-25 (hereinafter collectively referred to as "Defendants"), as an individual and on behalf of
11 all other similarly situated and aggrieved current and former employees of Defendants for:
12 failure to pay all minimum and overtime wages for all hours worked, failure to provide off-
13 duty meal and rest periods, failure to provide accurate itemized wage statements, failure to
14 reimburse business expenses, failure to timely pay all wages due during employment, failure
15 to timely pay all wages due upon separation of employment, and restitution for unfair business
16 practices in violation of Business and Professions Code sections 17200, *et seq.*

17 2. This class and representative action is within the Court's jurisdiction under
18 California Labor Code sections 201-203, 204, 210, 226, 226.7, 510, 512, 1182.12, 1194,
19 1194.2, 1197, 1197.1, 1198, 2800, 2802, the California Industrial Welfare Commission's
20 ("IWC") Wage Orders, and the California Unfair Competition Law (the "UCL"), codified at
21 California Business and Professions Code sections 17200, *et seq.*

22 3. This Complaint challenges systemic illegal employment practices resulting in
23 violations of the California Labor Code and Business and Professions Code against employees
24 of Defendants.

25 4. Plaintiff is informed and believes and based thereon alleges that Defendants
26 jointly and severally have acted intentionally and with deliberate indifference and conscious
27 disregard to the rights of all employees by failing to pay overtime and minimum wages for all
28 hours worked, failing to provide off-duty meal and rest breaks, failing to reimburse all

1 business expenses, failing to provide accurate itemized wage statements, and failing to pay all
2 wages due during and upon termination.

3 5. Plaintiff is informed and believes and based thereon alleges that Defendants
4 have engaged in, among other things a system of willful violations of the California Labor
5 Code, Business and Professions Code and applicable IWC Wage Orders by creating and
6 maintaining policies, practices and customs that knowingly deny employees the above stated
7 rights and benefits.

8 6. The policies, practices and customs of defendants described above and below
9 have resulted in unjust enrichment of Defendants and an unfair business advantage over
10 businesses that routinely adhere to the strictures of the California Labor Code and the
11 California Business and Professions Code.

12 7. Plaintiff Eric Garcia has given notice of these claims to the LWDA on June 8,
13 2020 seeking intervention, as well as an amended notice on June 24, 2020. As there has been
14 no intervention within 65 days of Plaintiff's written notice to the LWDA, Plaintiff asserts
15 claims for civil penalties as a representative for and on behalf of the State of California in a
16 representative capacity, as provided by the PAGA to the extent permitted by law, as an
17 aggrieved employee who suffered one or more of the alleged violations during all or a
18 significant part of the applicable liability period or proposed "PAGA Period" (which is
19 defined as any time from one year from the date of the filing for civil penalties under the
20 PAGA, excluding the 65 days as provided by Labor Code section 2699.3(d).)

21 8. A true and correct copy of Plaintiff's June 8, 2020 PAGA notice showing
22 compliance with Labor Code section 2699.3 is attached hereto as **Exhibit 1**, and a true and
23 correct copy of Plaintiff's June 24, 2020 Amended PAGA Notice is attached hereto as **Exhibit**
24 **2**, which demonstrate that Plaintiff is an aggrieved employee and has standing to bring a
25 representative action on behalf of the State of California and the LWDA as a private attorney
26 general. Since no notice of cure has been provided by Defendants Lightning Source LLC,
27 Ingram Distribution Management Inc., or Ingram Content Group LLC, nor has the LWDA
28 indicated that it intends to investigate within the proscribed 65-day period from the date of the

1 mailing of the notice, Plaintiff Garcia has asserted PAGA claims herein and brings this action
2 as a "Representative Action" as specifically permitted and authorized by Labor Code section
3 2699.3(a)(2)(C).

4 **II.**

5 **PARTIES, JURISDICTION AND VENUE**

6 9. From approximately May 7, 2018 until approximately February 18, 2020,
7 Plaintiff worked for Defendants as a non-exempt employee. Plaintiff was and is the victim of
8 the policies, practices, and customs of Defendants complained of in this action in ways that
9 have deprived him of the rights guaranteed by California Labor Code sections 201-203, 204,
10 210, 226, 226.7, 510, 512, 1182.12, 1194, 1194.2, 1197, 1197.1, 1198, 2751, 2800, 2802, and
11 the applicable IWC Wage Order, and the UCL.

12 10. Venue as to each Defendant is proper in this judicial district, pursuant to Code
13 of Civil Procedure, section 395. Defendants conduct business in Fresno County, California
14 and each Defendant is within the jurisdiction of this Court for service of process purposes.
15 The unlawful acts alleged have a direct effect on Plaintiff and those similarly situated and
16 aggrieved within the State of California and Fresno County. Defendants employ Plaintiff and
17 numerous members of the Plaintiff Class in Fresno County. There is no federal question at
18 issue, as the issues are based solely on California statutes and law, including the Labor Code,
19 the Applicable IWC Wage Order, Code of Civil Procedure, Civil Code, and Business and
20 Professions Code.

21 11. The Court has jurisdiction over Plaintiff's and other aggrieved employees'
22 claims for civil penalties under the PAGA, Labor Code section 2698, *et seq.* Plaintiff's
23 representative PAGA penalty claims are not subject to federal jurisdiction.

24 12. Business and Professions Code section 17203 provides that any person who
25 engages in unfair competition may be enjoined in any court of competent jurisdiction.
26 Business and Professions Code, section 17204 provides that any person, acting on his own
27 behalf, may bring an action in a court of competent jurisdiction.

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1 13. Plaintiff is informed and believes and based thereon alleges that Defendant
2 Lightning Source was and is a Delaware limited liability company doing business in the State
3 of California. Plaintiff is informed and believes and based thereon alleges that Defendant
4 Lightning Source maintains its headquarters in La Vergne, Tennessee.

5 14. Plaintiff is informed and believes and based thereon alleges that Defendant
6 Ingram Distribution was and is a Tennessee limited liability company doing business in the
7 State of California. Plaintiff is informed and believes and based thereon alleges that Defendant
8 Ingram Distribution maintains its headquarters in La Vergne, California.

9 15. Plaintiff is informed and believes and based thereon alleges that Defendant
10 Ingram Distribution was and is a Tennessee corporation doing business in the State of
11 California. Plaintiff is informed and believes and based thereon alleges that Defendant Ingram
12 Content Group maintains its headquarters in La Vergne, California.

13 16. Plaintiff does not know the true names or capacities of the Defendants sued
14 herein as Does 1 through 25, inclusive, and, for that reason, said Defendants are sued under
15 such fictitious names. Plaintiff is informed and believes, and based thereon, alleges that each
16 of said fictitious Defendants are and were responsible in some manner for the injuries
17 complained of herein. Plaintiff will amend this Complaint to identify such fictitiously-named
18 Defendants pursuant to Code of Civil Procedure section 474 once their identities become
19 known.

20 17. The relief sought by Plaintiff on behalf of himself and the Class defined below
21 exceeds the minimal jurisdictional limits of the Superior Court and will be established
22 according to proof at trial. The Court has personal jurisdiction over each of the parties because
23 they are either citizens of this State, doing business in this State or otherwise have minimum
24 contacts with this State.

25 18. Venue is proper in this Court because, upon information and belief, Plaintiff
26 worked for Defendants in this county, Defendants are headquartered in this county,
27 Defendants transact business in this county, and acts and omissions alleged herein took place
28 in this county.

19. Plaintiff is informed and believes and, based thereon, alleges that Defendants were at all times relevant hereto members of, and engaged in, a joint venture, partnership, association or common enterprise, and acting within the course and scope of, and in pursuance of, said joint venture, partnership, association or common enterprise. Furthermore, Plaintiff is informed and believes and, based thereon, alleges that at all times relevant hereto Defendants conspired together in, aided and abetted, contributed to, and/or acted as agents or employees of each other with respect to, the commission of the acts complained of herein. Defendants are therefore jointly and severally liable for the injuries complained of herein.

III.

GENERAL ALLEGATIONS

20. California's Labor Code and the Applicable IWC Wage Order requires employers, among other things, to pay wages, including minimum and overtime wages for all hours worked, provide compliant meal and rest periods, to furnish each employee with accurate, itemized wage statements, and to reimburse employees for all expenses necessarily incurred in discharge of employment.

21. During all, or portions of the Class Period, Defendants maintained a consistent policy of failing to pay Plaintiff and members of the Plaintiff Class for all hours worked, including minimum and overtime wages, by requiring Defendants to work off-the-clock without receiving any compensation for these hours worked off-the-clock. Defendants employed Plaintiff and members of the Plaintiff Class for more than 8 hours per day and more than 40 hours per workweek, or in excess of twelve (12) hours in a day and/or in excess of eight (8) hours on the seventh day of work in a work week, and failed to pay Plaintiff and members of the Plaintiff Class overtime and double time compensation for the overtime and double time hours Plaintiff and members of the Plaintiff Class worked. Defendants 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 Plaintiff and members of the Plaintiff Class. Specifically, Defendants failed to include in their regular rate of pay calculations hours for holidays, paid sick leave, and paid time off, among other

1 exempted items, which caused Plaintiff and members of the Plaintiff Class to be consistently
2 paid less in overtime wages than they were owed. As a result, Defendants failed to pay Plaintiff
3 and members of the Plaintiff Class all their earned wages.

4 22. During all, or portions of the Class Period, Defendants maintained a consistent
5 policy of rounding employees' time worked to the nearest quarter hour. Defendants' rounding
6 policy was not fair and neutral and over a period of time has resulted in Defendants' failure
7 to fully compensate Plaintiffs and members of the Plaintiff Class. Expert analysis of
8 Defendants' time records for Plaintiff and members of the Plaintiff class has revealed that on
9 average each member of the Plaintiff Class was not paid for 2.6 minutes per shift due to
10 Defendants' rounding policy. As a result, Defendants failed to pay Plaintiff and members of
11 the Plaintiff Class all their earned wages.

12 23. During all, or portions of the Class Period, Defendants failed to provide
13 Plaintiff and members of the Plaintiff Class timely, uninterrupted, off-duty meal periods of no
14 less than thirty minutes before their fifth hour of work and failed to compensate Plaintiff and
15 members of the Plaintiff Class for these missed meal periods at their regular rate of pay.
16 Defendants' employment practices would often require Plaintiff and members of the Plaintiff
17 would also regularly require Plaintiff and members of the Plaintiff Class to perform work off-
18 the-clock during their meal breaks. Defendants also illegally rounded meal period times of
19 Plaintiff and members of the Plaintiff Class.

20 24. Defendants employed Plaintiff and members of the Plaintiff Class for work
21 periods of four hours or major fraction thereof without rest periods of ten minutes' net rest
22 time and failed to compensate Plaintiff and members of the Plaintiff Class for these missed
23 rest periods. When Plaintiff and members of the Plaintiff Class were able to receive a rest
24 period, they were often, late, interrupted, or short.

25 25. During all, or portions of the Class Period, Defendants had a consistent policy
26 of failing to reimburse Plaintiff and members of the Plaintiff Class for all necessary and
27 reasonable business expenses incurred, in violation of California state wage and hour laws.
28 Plaintiff and Members of the Plaintiff Class were required use their personal cellular devices

1 for work related purposes, such, but not limited to, communicating with their supervisors.
2 Defendant failed to reimburse Plaintiff and members of the Plaintiff Class for their work-
3 related use of their scrubs, and their personal cellular device, incurred in the discharge of their
4 duties for Defendants.

5 26. Defendants have intentionally and willfully failed to provide Plaintiff and
6 members of the Plaintiff Class with complete and accurate wage statements. The deficiencies
7 include, among other things, the failure to list the gross wages earned, net wages earned, and
8 all hours worked.

9 27. During all, or portions, of the Class Period, Defendants had a consistent policy
10 of failing to Plaintiff and members of the Plaintiff Class all wages due during and upon
11 termination of employment, in violation of California state wage and hour laws. For example,
12 Plaintiff's employment with Defendants ended on approximately February 18, 2020, however
13 he did not receive portions of his final wages until approximately March 6, 2020.

14 28. On information and belief, Plaintiff alleges that Defendant applied the same
15 policies described above to all other members of the proposed Plaintiff Class. As alleged below,
16 these uniform policies, practices and procedures violated California's labor laws and constituted
17 unfair, fraudulent or illegal business practices under Business & Professions Code sections
18 17200, *et seq.*

19 **IV.**

20 **CLASS ALLEGATIONS**

21 29. Plaintiff brings this action pursuant to California Code of Civil Procedure
22 section 382 on behalf of himself and class members defined below. The Plaintiff Class is
23 comprised of and defined as:

24 **Plaintiff Class**

25 All current and former non-exempt employees who worked for
26 Defendants in the State of California from April 6, 2016 to the date
27 of trial.¹

28 ¹ The statute of limitations for this matter was tolled pursuant to Cal. Rules of Court, Appendix
I, Emergency Rule No. 9.

1 30. Plaintiff also seeks to certify the following Subclass:

2 Waiting Time Subclass

3 All members of the Class who separated their employment from
4 Defendants from April 6, 2017 to the date of trial.

5 31. Plaintiff also seeks to certify the following Subclass:

6 Wage Statement Subclass:

7 All members of the Plaintiff Class who, within one year of the filing
8 of this Action, received one or more itemized wage statement that
9 did not include all wages due and/or the accurate number of hours
 worked from April 6, 2019 to the date of trial.

10 32. Members of the Plaintiff Class and Subclasses described above will be
11 collectively referred to as “class members.” Plaintiff reserves the right to establish other or
12 additional subclasses, or modify the Plaintiff Class or Subclasses definition, as appropriate
13 based on investigation, discovery and specific theories of liability.

14 33. There exists a well-defined community of interest among the Plaintiff Class,
15 and the Plaintiff Class is readily ascertainable.

16 34. The members of the Plaintiff Class are so numerous that joinder of all members
17 in a single action would not be feasible or practical, and the amount of individual damages is
18 not large enough to make individual lawsuits by each class member practical or feasible.
19 Plaintiff is informed and believes and based upon such information and belief alleges that
20 there are in excess of 50 members of the Plaintiff Class.

21 35. Plaintiff’s claims are typical of the claims of the rest of the Plaintiff Class, and
22 Plaintiff and her counsel will fairly and adequately represent the interests of the Class.

23 36. Common issues of fact and/or law predominate in this action over any
24 allegedly individual issues. Specifically, the following common questions of fact or law
25 predominate and make this action superior to individual actions:

26 (i) whether Plaintiff and the rest of the Plaintiff Class are entitled to
27 recover damages, penalties and other relief on the grounds that Defendants have used uniform
28 policies, practices and procedures that have consistently violated California labor laws and

1 regulations and caused Plaintiff and the rest of the Plaintiff Class to suffer the same or similar
2 injuries;

3 (ii) whether Defendants violated Labor Code sections 1182.12, 1194,
4 1194.2, 1197, 1197.1, 1198 and § 4 of the Applicable IWC Wage Order by failing to pay
5 minimum wage for all hours worked;

6 (iii) whether Defendants violated Labor Code sections 510, 1194, 1198, and
7 section 3 of the Applicable IWC Wage Order by failing to pay overtime compensation;

8 (iv) whether Defendants violated Labor Code sections 226.7, 512, and
9 section 11 of the Applicable IWC Wage Order by failing to provide meal periods for each
10 five hours worked, and not compensating employees with one hour of pay at the employees'
11 regular rate of compensation for each workday that a meal period was not provided;

12 (v) whether Defendants violated Labor Code section 226.7 and section 12
13 of the Applicable IWC Wage Order by failing to provide daily rest periods of ten minutes per
14 four hours or major fraction thereof worked and by failing to compensate employees one
15 hour's wages in lieu of rest periods;

16 (vi) whether Defendants violated Labor Code section 226, and section 7 of
17 the Applicable IWC Wage Order by failing to provide and maintain timely and accurate
18 itemized wage statements;

19 (vii) whether Defendants violated Labor Code sections 2800, 2802, and
20 section 9 of the Applicable IWC Wage Order by failing to indemnify Plaintiff and members
21 of the Plaintiff Class for all the necessary expenditures or losses incurred in direct
22 consequence of the discharge of their duties, or of their obedience to the directions of their
23 employer;

24 (viii) whether Defendants violated Labor Code sections 204, 210, and
25 sections 3 and 4 of the Applicable IWC Wage Order by failing to pay wages for all hours
26 worked;

27 (ix) whether Defendants violated Labor Code sections 201-203 by failing
28 to timely pay Plaintiff and Waiting Time Subclass members all wages due upon termination

1 or within seventy-two (72) of resignation; and

2 (x) whether Defendants' practices constitute unfair, fraudulent, or illegal
3 business practices under Business and Professions Code sections 17200, *et seq.*

4 37. California labor laws under which Plaintiff asserts the following causes of
5 action on behalf of himself and the rest of the Plaintiff Class are broadly remedial in nature.
6 These labor laws serve an important public interest in establishing minimum working
7 conditions and standards in California. They furthermore protect employees from exploitation
8 by employers who may seek to take advantage of their superior economic and bargaining
9 power in setting onerous terms and conditions of employment. The class action mechanism is
10 a particularly efficient and appropriate procedure to redress the injuries alleged herein. If each
11 employee in the Plaintiff Class was required to file an individual action, Defendants would be
12 able to use their superior financial and legal resources to gain an unfair advantage over each
13 individual class member. Moreover, requiring each class member to pursue an individual
14 action would also discourage the assertion of meritorious causes of action by employees who
15 would likely be disinclined to file such individual actions due to a justifiable fear of retaliation
16 and damage to their careers at subsequent employment.

17 38. In addition, even if feasible, individual actions by each Plaintiff Class member
18 would create a substantial risk (i) of inconsistent or varying adjudications with respect to the
19 claims of each class member against Defendants, that in turn could establish potentially
20 incompatible standards of conduct for Defendants, and/or (ii) of adjudications with respect to
21 individual Plaintiff and members of the Plaintiff Class that would, as a practical matter, be
22 dispositive of the interests of the other Plaintiff and members of the Plaintiff Class .
23 Furthermore, the claims of each individual class member are not sufficiently large enough to
24 make it economically feasible to bring each class member's claims on an individual basis.

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1 V.

2 **CAUSES OF ACTION**

3 **FIRST CAUSE OF ACTION**

4 **FAILURE TO PAY MINIMUM WAGES**

5 (Violation of Cal. Labor Code §§ 1182.12, 1194, 1194.2, 1197, 1197.1,
6 and 1198, and the Applicable IWC Wage Order §4)

7 39. Plaintiff re-alleges and incorporates herein by this reference each and every
8 allegation set forth in all previous paragraphs of the Complaint.

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

14 41. Labor Code section 1194.2 states: "In any action under Section 98, 1193.6,
15 1194, or 1197.1 to recover wages because of the payment of a wage less than the minimum
16 wage fixed by an order of the commission or by statute, an employee shall be entitled to
17 recover liquidated damages in an amount equal to the wages unlawfully unpaid and interest
18 thereon."

19 42. Labor Code section 1194.2 provides for liquidated damages equal to
20 unlawfully unpaid minimum wages, with interest.

21 43. Labor Code section 1197 states: "The minimum wage for employees fixed by
22 the commission is the minimum wage to be paid to employees, and the payment of a less wage
23 than minimum wage so fixed is unlawful."

24 44. Labor Code section 1197.1 states: "Any employer or other person acting either
25 individually or as an officer, agent, or employee of another person, who pays or causes to be
26 paid to any employee a wage less than the minimum fixed by an order of the commission shall
27 be subject to a civil penalty, restitution of wages, liquidated damages payable to the employee,
28 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

1 pay period for which the employee is underpaid. For each subsequent violation for the same
2 specific offense, two hundred fifty dollars (\$250) for each underpaid employee for each pay
3 period for which the employee is underpaid regardless of whether the initial violation is
4 intentionally committed.”

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

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

14 47. An employer may not round its employees’ time worked unless the rounding
15 policy “is fair and neutral on its face and [] is used in such a manner that it will not result, over
16 a period of time, in failure to compensate the employees properly for all the time they have
17 actually worked.” *See’s Candy Shops, Inc. v. Superior Court* (2012) 210 Cal. App. 4th 889,
18 907 (internal quotations omitted).

19 48. During the relevant time period, Defendants regularly failed to pay at least
20 minimum wage to Plaintiff and members of the Plaintiff Class for all hours worked pursuant
21 to Labor Code sections 1194 and 1197, including due to rounding.

22 49. Defendants’ failure to pay Plaintiff and members of the Plaintiff Class the
23 minimum wage as required violates Labor Code sections 1194 and 1197.

24 50. As a direct result, Plaintiff and members of the Plaintiff Class have suffered
25 and continue to suffer, substantial losses related to the use and enjoyment of such wages,
26 including lost interest on such monies and expenses and attorney’s fees in seeking to compel
27 Defendants to fully perform their obligation under state law, all to their respective damage in
28 amounts according to proof at trial and within the jurisdictional limitations of this Court.

1 in excess of twelve (12) hours in a day or in excess of eight (8) hours on the seventh day of
2 work in a workweek.

3 57. Labor Code section 510 codifies the right to overtime compensation at one and
4 one-half (1½) times the regular hourly rate for hours worked in excess of eight (8) hours in a
5 day or forty (40) hours in a week and for the first eight (8) hours worked on the seventh
6 consecutive day of work, and overtime compensation at twice the regular hourly rate for hours
7 worked in excess of twelve (12) hours in a day or in excess of eight (8) hours in a day on the
8 seventh day of work in a workweek.

9 58. Labor Code section 510 and the Applicable IWC Wage Order provide that
10 employment of more than six days in a workweek is only permissible if the employer pays
11 proper overtime compensation as set forth herein.

12 59. An employer may not round its employees' time worked unless the rounding
13 policy "is fair and neutral on its face and [] is used in such a manner that it will not result, over
14 a period of time, in failure to compensate the employees properly for all the time they have
15 actually worked." *See's Candy Shops, Inc. v. Superior Court* (2012) 210 Cal. App. 4th 889,
16 907 (internal quotations omitted).

17 60. During the relevant time period, Defendants failed to pay Plaintiff and
18 members of the Plaintiff Class overtime wages for all overtime hours worked when Plaintiff
19 and members of the Plaintiff Class worked in excess of eight (8) hours in a day, forty (40)
20 hours in a week and/or for a seventh consecutive day of work in a workweek, or when Plaintiff
21 and members of the Plaintiff Class worked in excess of twelve (12) hours in a day and/or in
22 excess of eight (8) hours on the seventh day of work in a work week, including due to
23 rounding. To the extent overtime wages were paid, they were underpaid due to Defendants'
24 failure to incorporate required earnings into the regular rate of pay for the purpose of
25 calculating overtime pay.

26 61. In violation of state law, Defendants knowingly and willfully refused to
27 perform their obligations and compensate Plaintiff and members of the Plaintiff Class for all
28 wages earned and all hours worked.

1 62. Defendants' failure to pay Plaintiff and members of the Plaintiff Class the
2 unpaid balance of overtime and double time compensation, as required by California law,
3 violates the provisions of Labor Code sections 510 and 1198, and is therefore unlawful.

4 63. As a direct result, Plaintiff and members of the Plaintiff Class have suffered
5 and continue to suffer, substantial losses related to the use and enjoyment of such wages,
6 including lost interest on such monies and expenses and attorney's fees in seeking to compel
7 Defendants to fully perform their obligation under state law, all to their respective damage in
8 amounts according to proof at trial and within the jurisdictional limitations of this Court.

9 64. Defendants' unlawful acts deprived Plaintiff and members of the Plaintiff
10 Class Plaintiff seeks to represent of minimum and/or overtime wages in amounts to be
11 determined at trial, and they are entitled to recover these amounts, along with liquidated
12 damages for unpaid regular or minimum wages, interest, attorneys' fees, and costs.

13 65. Pursuant to Labor Code section 1194, Plaintiff and members of the Plaintiff
14 Class are entitled to recover their unpaid overtime and double time compensation as well as
15 interest, costs, and attorneys' fees.

16 **THIRD CAUSE OF ACTION**
17 **FAILURE TO PROVIDE MEAL PERIODS**
18 **(Violation of Cal. Labor Code §§ 226.7, 512, and the**
 Applicable IWC Wage Order § 11)

19 66. Plaintiff re-alleges and incorporates herein by this reference each and every
20 allegation set forth in all previous paragraphs of the Complaint.

21 67. Labor Code section 226.7 provides that no employer shall require an employee
22 to work during any meal period mandated by the IWC Wage Orders.

23 68. Section 11 of the Applicable IWC Wage Order states, "[n]o employer shall
24 employ any person for a work period of more than five (5) hours without a meal period of not
25 less than 30 minutes, except that when a work period of not more than six (6) hours will
26 complete the day's work the meal period may be waived by mutual consent of the employer
27 and the employee."

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1 69. Labor Code section 512(a) provides that an employer may not require, cause,
2 or permit an employee to work for a period of more than five (5) hours per day without
3 providing the employee with an uninterrupted meal period of not less than thirty (30) minutes,
4 except that if the total work period per day of the employee is not more than six (6) hours, the
5 meal period may be waived by mutual consent of both the employer and the employee.

6 70. During the relevant time period, Plaintiff and members of the Plaintiff Class
7 did not receive compliant meal periods for working more than five (5) and/or ten (10) hours
8 per day.

9 71. Labor Code section 226.7(b) and Section 11 of the Applicable IWC Wage
10 Order requires an employer to pay an employee one (1) additional hour of pay at the
11 employee's regular rate of compensation for each workday that a compliant meal period is not
12 provided.

13 72. "[E]mployers cannot engage in the practice of rounding time punches—that
14 is, adjusting the hours that an employee has actually worked to the nearest preset time
15 increment—in the meal period context. The meal period provisions are designed to prevent
16 even minor infringements on meal period requirements, and rounding is incompatible with
17 that objective." *Donohue v. AMN Servs., LLC* (2021) 11 Cal. 5th 58, 61.

18 73. At all relevant times, Defendants failed to pay Plaintiff and members of the
19 Plaintiff Class meal period premiums for their missed, non-compliant, and rounded meal
20 periods pursuant to Labor Code section 226.7(b) and Section 11 of the Applicable IWC Wage
21 Order.

22 74. As a result of Defendants' failure to pay Plaintiff and members of the Plaintiff
23 Class an additional hour of pay for each day a compliant meal period was not provided,
24 Plaintiff and members of the Plaintiff Class suffered and continue to suffer a loss of wages
25 and compensation. Because Defendants failed to provide meal periods, they are liable to
26 Plaintiff and members of the Plaintiff Class for one hour of additional premium pay at the
27 regular rate of compensation for each workday that the meal periods were not provided,
28 pursuant to Labor Code section 226.7 and the Applicable IWC Wage Order, section 11(B).

75. As a direct result of Defendants' violations alleged herein, Plaintiff and members of the Plaintiff Class have suffered and continue to suffer substantial losses related to the use and enjoyment of such wages, including lost interest on such monies and expenses and attorney's fees in seeking to compel Defendants to fully perform their obligation under state law, all to their respective damage in amounts according to proof at trial and within the jurisdictional limitations of this Court.

76. Defendants' unlawful acts deprived Plaintiff and members of the Plaintiff Class Plaintiff seeks to represent of premium wages and/or other compensation in amounts to be determined at trial, and they are entitled to recover such amounts, plus interest, attorneys' fees, and costs.

77. Plaintiff seeks to recover in a civil action the unpaid balance of the full amount of the unpaid wages resulting from Defendants' meal period violations including interest thereon, reasonable attorney's fees and costs of suit, and penalties to the fullest extent permissible including those permitted pursuant to Labor Code sections 226.7 and 512, and Code of Civil Procedure section 1021.5.

78. Plaintiff, on behalf of himself and members of the Plaintiff Class, requests relief as described below.

FOURTH CAUSE OF ACTION
FAILURE TO PROVIDE REST PERIODS
(Violation of Cal. Labor Code §§ 226.7, and the Applicable IWC Wage Order § 12)

79. Plaintiff re-alleges and incorporates herein by this reference each and every allegation set forth in all previous paragraphs of the Complaint.

80. Labor Code section 226.7(a) provides that no employer shall require an employee to work during any rest period mandated by the IWC Wage Orders.

81. Section 12 of the 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” and the “authorized rest period time 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” unless the total daily work time is less than three and one-half (3½) hours.

1 82. The Applicable IWC Wage Order, section 12(B) states that if an employer fails
2 to provide an employee a rest period in accordance with the applicable provisions of this
3 Order, the employer shall pay the employee one (1) hour of pay at the employee's regular rate
4 of compensation for each work day that the rest period is not provided.

5 83. Labor Code section 226.7(d) provides that a rest period mandated by state law
6 or IWC Wage Order "shall be counted as hours worked, for which there shall be no deduction
7 from wages."

8 84. During the relevant time period, Plaintiff and members of the Plaintiff Class
9 did not receive a ten (10)-minute net rest period for every four (4) hours or major fraction
10 thereof worked.

11 85. Labor Code section 226.7(b) and Section 12 of the Applicable IWC Wage
12 Order requires an employer to pay an employee one additional hour of pay at the employee's
13 regular rate of compensation for each workday that the rest period is not provided.

14 86. At all relevant times, Defendants failed to pay Plaintiff and members of the
15 Plaintiff Class the full rest period premium for missed or interrupted rest periods pursuant to
16 Labor Code section 226.7(b) and Section 12 of the Applicable IWC Wage Order.

17 87. As a direct result of Defendants' violations alleged herein, Plaintiff and
18 members of the Plaintiff Class have suffered and continue to suffer substantial losses related
19 to the use and enjoyment of such wages, including lost interest on such monies and expenses
20 and attorney's fees in seeking to compel Defendants to fully perform their obligation under
21 state law, all to their respective damage in amounts according to proof at trial and within the
22 jurisdictional limitations of this Court.

23 88. Defendants' unlawful acts deprived Plaintiff and members of the Plaintiff
24 Class Plaintiff seeks to represent of premium wages and/or other compensation in amounts to
25 be determined at trial, and they are entitled to recover such amounts, plus interest, attorneys'
26 fees, and costs.

27 89. Plaintiff seeks to recover in a civil action the unpaid balance of the full amount
28 of the unpaid wages resulting from Defendants' rest period violations including interest

1 thereon, reasonable attorney's fees and costs of suit, and penalties to the fullest extent
2 permissible including those permitted pursuant to Labor Code sections 226.7, 512, and Code
3 of Civil Procedure section 1021.5.

4 90. Plaintiff, on behalf of himself and members of the Plaintiff Class requests relief
5 as described below.

6 **FIFTH CAUSE OF ACTION**
7 **FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS**
8 **(Violation of Cal. Labor Code § 226, and the Applicable IWC Wage Order § 7)**

9 91. Plaintiff re-alleges and incorporates herein by this reference each and every
10 allegation set forth in all previous paragraphs of the Complaint.

11 92. Labor Code section 226(a) states in pertinent part: "Every employer shall,
12 semimonthly or at the time of each payment of wages, furnish each of his or her employees,
13 either as a detachable part of the check, draft, or voucher paying the employee's wages, or
14 separately when wages are paid by personal check or cash, an accurate itemized statement in
15 writing showing": (1) gross wages earned; (2) total hours worked by the employee, except for
16 any employee whose compensation is solely based on a salary and who is exempt from
17 payment of overtime under subdivision (a) of Section 515 or any applicable order of the
18 Industrial Welfare Commission; (3) the number of piece-rate units earned and any applicable
19 piece rate if the employee is paid on a piece-rate basis; (4) All deductions, provided that all
20 deductions made on written orders of the employee may be aggregated and shown as one item;
21 (5) net wages earned; (6) the inclusive dates of the period for which the employee is paid; (7)
22 the name of the employee and only the last four digits of his or her social security number or
23 an employee identification number other than a social security number; (8) the name and
24 address of the legal entity that is the employer; and (9) all applicable hourly rates in effect
25 during the pay period and the corresponding number of hours worked at each hourly rate by
26 the employee. The deductions made from payment of wages shall be recorded in ink or other
27 indelible form, properly dated, showing the month, day, and year, and a copy of the statement
28 and the record of the deductions shall be kept on file by the employer for at least three years
at the place of employment or at a central location within the State of California."

1 93. The Applicable IWC Wage Order, section 7(A) states in relevant part that the
2 employer shall keep accurate information regarding, “(4) Total wages paid each payroll
3 period, including value of board, lodging, or other compensation actually furnished to the
4 employee; (5) Total hours worked in the payroll period and applicable rates of pay.”

5 94. Defendants have intentionally and willfully failed to provide Plaintiff and
6 members of the Wage Statement Subclass with complete and accurate wage statements. The
7 deficiencies include, among other things, the failure to list the gross wages earned, net wages
8 earned, and all hours worked, including due to rounding.

9 95. As a result of Defendants’ violation of California Labor Code section 226(a),
10 Plaintiff and members of the Wage Statement Subclass have suffered injury and damage to
11 their statutorily protected rights. Specifically, Plaintiff and members of the Wage Statement
12 Subclass have been injured by Defendants’ intentional violation of California Labor Code
13 section 226(a) because they were denied both their legal right to receive, and their protected
14 interest in receiving, accurate itemized wage statements under California Labor Code section
15 226(a). In addition, because Defendants failed to provide the accurate rates of pay on wage
16 statements, Defendants have prevented Plaintiff and members of the Wage Statement Subclass
17 from determining if all hours worked were paid at the appropriate rate and the extent of the
18 underpayment. Plaintiff has had to file this lawsuit in order to analyze whether in fact Plaintiff
19 was paid correctly and the extent of the underpayment, thereby causing Plaintiff to incur
20 expenses and lost time. Plaintiff would not have had to engage in these efforts and incur these
21 costs had Defendants provided the accurate rate of pay. This has also delayed Plaintiff’s ability
22 to demand and recover the underpayment of wages from Defendants.

23 96. Labor Code section 226(e) states: “An employee suffering injury as a result of
24 a knowing and intentional failure by an employer to comply with subdivision (a) is entitled to
25 recover the greater of all actual damages or fifty dollars (\$50) for the initial pay period in
26 which a violation occurs and one hundred dollars (\$100) per employee for each violation in a
27 subsequent pay period, not exceeding an aggregate penalty of four thousand dollars (\$4,000),
28 and is entitled to an award of costs and reasonable attorneys’ fees.”

1 97. Labor Code section 226(e)(2)(B) states: "An employee is deemed to suffer
2 injury for purposes of this subdivision if the employer fails to provide accurate and complete
3 information as required by any one or more of items (1) to (9), inclusive, of subdivision (a)
4 and the employee cannot promptly and easily determine from the wage statement alone one
5 or more of the following: (i) The amount of gross wages or net wages paid to the employee
6 during the pay period or any other information required to be provided on the itemized wage
7 statement pursuant to items (2) to (4), inclusive, (6) and (9) of subdivision (a)..." Because
8 Plaintiff's wage statements did not include, among other things, an accurate accounting of
9 gross wages earned or the accurate total hours worked, he is deemed to have suffered injury.

10 98. Defendants' violations of California Labor Code section 226(a) prevented
11 Plaintiff and members of the Wage Statement Subclass from knowing, understanding and
12 disputing the wages paid to them, and resulted in an unjustified economic enrichment to
13 Defendants. As a result of Defendants' knowing and intentional failure to comply with
14 California Labor Code § 226(a), Plaintiff and members of the Wage Statement Subclass have
15 suffered an injury, the exact amount of damages and/or penalties is all in an amount to be
16 shown according to proof at trial.

17 99. Labor Code section 226(h) states: "An employee may also bring an action for
18 injunctive relief to ensure compliance with this section, and is entitled to an award of costs
19 and reasonable attorney's fees."

20 100. Labor Code section 226.3 states, in part: "Any employer who violates
21 subdivision (a) of section 226 shall be subject to a civil penalty in the amount of two hundred
22 fifty dollars (\$250) per employee per violation in an internal citation and one thousand dollars
23 (\$1,000) per employee for each violation in a subsequent citation, for which the employer fails
24 to keep the records required in subdivision (a) of Section 226. The civil penalties provided for
25 in this section are in addition to any other penalty provided by law."

26 101. As a direct result of Defendants' violations alleged herein, Plaintiff and
27 members of the Wage Statement Subclass have suffered, and continue to suffer, injury
28 including substantial losses related to the use and enjoyment of such wages, lost interest on

1 such monies and expenses and attorney's fees in seeking to compel Defendants to fully
2 perform their obligations under state law, all to their respective damage in amounts according
3 to proof at trial and within the jurisdictional limitations of this Court.

4 102. Plaintiff seeks to recover in a civil action all remedies including damages,
5 unpaid wages, penalties, attorney's fees and costs, and injunctive relief to the fullest extent
6 permissible including those permitted pursuant to Labor Code sections 226(e) and (h), 226.3,
7 and Code of Civil Procedure section 1021.5.

8 103. Plaintiff, on behalf of himself and the members of the Wage Statement
9 Subclass, request relief as described below.

10 **SIXTH CAUSE OF ACTION**
11 **FAILURE TO REIMBURSE BUSINESS EXPENSES**
12 **(Violation of Labor Code §§ 2800, 2802, and the Applicable IWC Wage Order § 9)**

13 104. Plaintiff re-alleges and incorporates by this reference each and every allegation
14 set forth in all previous paragraphs of the Complaint.

15 105. Labor Code section 2800 provides, in pertinent part: "[a]n employer shall in
16 all cases indemnify his employee for losses caused by the employer's want of ordinary care."

17 106. Labor Code section 2802 provides, in pertinent part: "[a]n employer shall
18 indemnify his or her employee for all necessary expenditures or losses incurred by the
19 employee in direct consequence of the discharge of his or her duties..."

20 107. Further, Labor Code section 2802 additionally provides, in pertinent part:
21 "(c)...the term 'necessary expenditures or losses' shall include all reasonable costs, including
22 but not limited to, attorney's fees incurred by the employee enforcing the rights granted by
23 this section."

24 108. The Applicable IWC Wage Order section 9 provides that: "When tools or
25 equipment are required by the employer or are necessary to the performance of a job, such
26 tools and equipment shall be provided and maintained by the employer . . ."

27 109. California Labor Code section 2804 mandates that this statutory right cannot
28 be waived.

110. During the relevant time period, Defendants were required to indemnify and

1 reimburse Plaintiff and members of the Plaintiff Class for all expenditures or losses caused by
2 the employer's want of ordinary care and/or incurred in direct consequent of the discharge of
3 their duties, but failed to indemnify and reimburse Plaintiff and members of the Plaintiff Class.

4 111. As a direct and proximate result, Plaintiff and members of the Plaintiff Class
5 have suffered, and continue to suffer, substantial losses, related to the use and enjoyment of
6 such monies to be reimbursed, lost interest on such monies, and expenses and attorney's fees
7 in seeking to compel Defendants to fully perform their obligations under California law, all
8 to their damage in amounts according to proof at the time of trial.'

9 112. Accordingly, Plaintiff and members of the Plaintiff Class are entitled to
10 recover, and hereby seek, an amount equal to incurred necessary expenditures, pre- and post-
11 judgment interest, applicable penalties, attorneys' fees and costs, and any further equitable
12 relief this Court may deem just and proper. *See* Cal. Lab. Code § 2802, *see also*, Cal. Civ.
13 Proc. Code § 1021.5.

14 113. Plaintiff, on behalf of himself and members of the Plaintiff Class, requests
15 relief as described below.

16 **SEVENTH CAUSE OF ACTION**
17 **FAILURE TO TIMELY PAY WAGES DUE DURING EMPLOYMENT**
18 **(Violation of Cal. Labor Code §§ 204, 210, and the Applicable IWC Wage Order)**

19 114. Plaintiff re-alleges and incorporates herein by this reference each and every
20 allegation set forth in all previous paragraphs of the Complaint.

21 115. Labor Code section 204 provides that all wages earned by an employee are due
22 and payable twice during each calendar month.

23 116. Defendants failed to timely pay Plaintiff and members of the Plaintiff Class all
24 of their earned wages as required by Labor Code section 204.

25 117. Plaintiff and members of the Plaintiff Class have been deprived of their
26 rightfully earned wages as a direct and proximate result of Defendants' failure to pay said
27 compensation. Plaintiff and members of the Plaintiff Class are entitled to recover such
28 amounts, plus interest thereon, attorney's fees and costs.

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1 118. In addition, Plaintiff and members of the Plaintiff Class are entitled to penalties
2 pursuant to Labor Code section 210 as follows: (1) for Defendants' initial violation, \$100 for
3 each failure to pay each Class Member; and (2) for each of Defendants' subsequent violations,
4 or any willful or intentional violation, \$200 for each failure to pay each Class Member, plus
5 25 percent of the amount unlawfully held.

6 **EIGHTH CAUSE OF ACTION**
7 **FAILURE TO TIMELY PAY ALL WAGES DUE UPON SEPARATION OF**
8 **EMPLOYMENT**
9 **(Violation of Labor Code §§ 201, 202, 203, and the Applicable IWC Wage Order)**

10 119. Plaintiff re-alleges and incorporates by this reference each and every allegation
11 set forth in all previous paragraphs of the Complaint.

12 120. California Labor Code sections 201 and 202 provide that if an employer
13 discharges an employee, the wages earned and unpaid at the time of discharge are due and
14 payable immediately, and that if an employee voluntarily leaves his employment, his wages
15 shall become due and payable not later than seventy-two (72) hours thereafter, unless the
16 employee has given seventy-two (72) hours previous notice of his intention to quit, in which
17 case the employee is entitled to his wages at the time of quitting.

18 121. During the relevant time period, Defendants willfully failed to pay Plaintiff
19 and Waiting Time Subclass members all their earned wages upon termination including, but
20 not limited to, proper minimum wages and overtime and doubletime compensation, either at
21 the time of discharge or within seventy-two (72) hours of their leaving Defendants' employ.

22 122. Defendants' failure to pay Plaintiff and Waiting Time Subclass members all
23 their earned wages at the time of discharge or within seventy-two (72) hours of their leaving
24 Defendants' employ is in violation of Labor Code sections 201 and 202.

25 123. California Labor Code section 203 provides that if an employer willfully fails
26 to pay wages owed immediately upon discharge or resignation in accordance with Labor Code
27 sections 201 and 202, then the wages of the employee shall continue as a penalty from the due
28 date at the same rate until paid or until an action is commenced; but the wages shall not
continue for more than thirty (30) days.

1 124. Plaintiff and Waiting Time Subclass members are entitled to recover from
2 Defendants the statutory penalty which is defined as Plaintiff's and Waiting Time Subclass
3 members' regular daily wages for each day they were not paid, at their regular hourly rate of
4 pay, up to a thirty (30)-day maximum pursuant to Labor Code section 203.

5 **NINTH CAUSE OF ACTION**
6 **VIOLATION OF THE UNFAIR COMPETITION LAW**
7 **(Business and Professions Code §§ 17200-17208)**

8 125. Plaintiff re-alleges and incorporates herein by this reference each and every
9 allegation set forth in all previous paragraphs of the Complaint.

10 126. California Business and Professions Code sections 17200, *et seq.*, prohibits
11 acts of unfair competition, which includes any "unlawful, unfair or fraudulent business act or
12 practice"

13 127. A violation of California Business and Professions Code sections 17200, *et*
14 *seq.* may be predicated on the violation of any state or federal law. In the instant case,
15 Defendants' policies and practices have violated state law causing Plaintiff and class members
16 to suffer and continue to suffer injuries in fact. As alleged herein, Defendants systematically
17 engaged in unlawful conduct in violation of the California Labor Code and IWC Wage Orders,
18 such as failing to timely pay all earned wages, minimum wages, failing to pay overtime wages,
19 failing to pay reporting time pay, failing to authorize or permit paid rest breaks, failing to
20 provide meal periods, failing to furnish accurate itemized wage statements, failing to
21 reimburse business expenses, and failing to timely pay final wages due during and upon
22 separation of employment, all in order to decrease their costs of doing business and increase
23 their profits.

24 128. This cause of action is brought under Business and Professions Code sections
25 17203 and 17204, commonly called the Unfair Competition Law. Under this cause of action
26 and pursuant to Business and Professions Code section 17208, Plaintiff and all Plaintiff Class
27 Members seek restitution of wages owed and, where applicable, penalties under Labor Code
28 section 203, where such wages were due each of the class members during the Class Period,
commencing four (4) years prior to filing of this complaint, according to proof.

1 129. This cause of action is brought as a cumulative remedy as provided in Business
2 and Professions Code section 17205, and is intended as an alternative remedy for restitution
3 for Plaintiff and each Plaintiff Class Member, for the time period, or any portion thereof,
4 commencing within four (4) years prior to the filing of this complaint, and as the primary
5 remedy for Plaintiff, each Plaintiff Class Member, and each member of the Plaintiff Class for
6 the time period of the fourth year prior to the filing of this complaint, as such one-year time
7 period exceeds the statute of limitations on statutory wage claims.

8 130. At all times relevant herein, Defendants intentionally avoided paying Plaintiff
9 and members of the Plaintiff Class wages and monies, thereby creating for Defendants an
10 artificially lower cost of doing business in order to undercut their competitors and establish
11 and/or gain a greater foothold in the marketplace.

12 131. At the time Plaintiff and members of the Plaintiff Class were hired, Defendants
13 knowingly, intentionally and wrongfully misrepresented to each of them their conformance
14 with the California Labor Code and IWC Wage Orders including proper payments required
15 by law .

16 132. At all relevant times herein, Defendants held themselves out to Plaintiff and
17 members of the Plaintiff Class as being knowledgeable concerning the labor laws of
18 California.

19 133. At all times relevant herein, Plaintiff and members of the Plaintiff Class relied
20 on and believed Defendants' representations concerning their conformance with California's
21 wage and hour laws all to their detriment.

22 134. As a result of Defendants' intentional, willful, purposeful and wrongful
23 misrepresentation of their conformance with the California Labor Code and IWC Wage
24 Orders, Plaintiff and members of the Plaintiff Class suffered a loss of wages and monies, all
25 in an amount to be shown according to proof at trial. By violating the foregoing statutes and
26 regulations as herein alleged, Defendants' acts constitute unfair and unlawful business
27 practices under California Business and Professions Code sections 17200, *et seq.*

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1 135. Defendants' violations of the California Labor Code and IWC Wage Orders
2 and their scheme to lower their payroll costs as alleged herein, constitute unlawful business
3 practices because they were done in a systematic manner over a period of time to the detriment
4 of the Plaintiff and members of the Plaintiff Class.

5 136. As a result of the unfair business practices of Defendants, as alleged herein,
6 Plaintiff and members of the Plaintiff Class are entitled to injunctive relief, disgorgement and
7 restitution in an amount to be shown according to proof at trial.

8 137. Plaintiff and members of the Plaintiff Class seek to enforce important rights
9 affecting the public interest within the meaning of California Code of Civil Procedure section
10 1021.5. Defendants' conduct, as alleged herein, has been, and continues to be, unfair, unlawful
11 and harmful to members of the Plaintiff Class and to the general public. Based on Defendants'
12 conduct as alleged herein, Plaintiff and members of the Plaintiff Class are entitled to an award
13 of attorneys' fees pursuant to California Code of Civil Procedure section 1021.5.

14 **TENTH CAUSE OF ACTION**
15 **CIVIL PENALTIES PURSUANT TO THE PAGA**
 (Labor Code §§ 2698 *et seq.*)

16 138. Plaintiff re-alleges and incorporates herein by this reference each and every
17 allegation set forth in all previous paragraphs of the Complaint.

18 139. Pursuant to Labor Code section 2699(a), any provision of the Labor Code that
19 provides for a civil penalty to be assessed and collected by the Labor and Workforce
20 Development Agency ("LWDA") or any of its departments, divisions, commissions, boards,
21 agencies or employees for violation of the code may, as an alternative, be recovered through
22 a civil action brought by an aggrieved employee on behalf of himself/herself and other current
23 or former employees pursuant to the procedures specified in Labor Code section 2699.3.

24 140. For all provisions of the Labor Code except those for which a civil penalty is
25 specifically provided, Labor Code section 2699(f) imposes upon Defendants a penalty of one
26 hundred dollars (\$100.00) for each aggrieved employee per pay period for the initial violation
27 and two hundred dollars (\$200.00) for each aggrieved employee per pay period for each
28 subsequent pay period in which Defendants violated these provisions of the Labor Code.

1 141. Defendants' conduct violates numerous Labor Code sections including, but not
2 limited to, the following:

3 (a) Violation of Labor Code sections 218, 510, 1194, 1197, 1197.1, 1198, and 1199(c)
4 and the "Minimum Wages" and "Hours and Days of Work" Sections of the applicable Wage
5 Order for failure to pay all minimum, regular, and overtime wages owed to Plaintiff and other
6 aggrieved employees for all hours worked;

7 (b) Violation of Labor Code sections 226.7 and 512 and the "Meal Period" Section
8 of the applicable IWC Wage Order for failure to provide Plaintiff and other aggrieved
9 employees compliant meal periods and failure to pay premium wages for missed meal periods
10 as alleged herein;

11 (c) Violation of Labor Code section 226.7 and the "Rest Period" Section of the
12 applicable IWC Wage Order for failure to permit Plaintiff and other aggrieved employees to
13 take rest periods and failure to pay premium wages for missed rest periods as alleged herein;

14 (d) Violation of Labor Code section 2802 for failure to reimburse all reasonable
15 and necessary business expenses;

16 (e) Violation of Labor Code sections 201, 202, 203, 204, 256 and 1198 for failure to
17 timely pay all earned wages (including minimum, regular, and overtime wages, and meal
18 period premiums) owed to Plaintiff and other aggrieved employees during employment and
19 upon separation of employment as alleged herein;

20 (f) Violation of Labor Code section 226 for failure to provide accurate itemized
21 wage statements to Plaintiff and other aggrieved employees as herein alleged; and

22 (g) Violation of Labor Code sections 1174 and 1174.5 for failure to maintain accurate
23 records

24 142. Further, Labor Code section 558(a) provides that "any employer or other
25 person acting on behalf of an employer who violates, or causes to be violated, a section of this
26 chapter or any provisions regulating hours and days of work in any order of the IWC shall be
27 subject to a civil penalty as follows: (1) For any violation, fifty dollars (\$50) for each
28 underpaid employee for each pay period for which the employee was underpaid in addition to

1 an amount sufficient to recover underpaid wages. (2) For each subsequent violation, one
2 hundred dollars (\$100) for each underpaid for each pay period for which the employee was
3 underpaid in addition to an amount sufficient to recover underpaid wages. (3) Wages
4 recovered pursuant to this section shall be paid to the affected employee.” Plaintiff seeks only
5 to recover the civil penalty provided for in this section 558(a) for the violations alleged herein
6 and *does not* seek to recover unpaid wages.

7 143. Labor Code section 558(c) provides “the civil penalties provided for in this
8 section are in addition to any other civil or criminal penalty provided by law.”

9 144. As set forth above, Defendants have violated numerous provisions of the Labor
10 Code regulating hours and days of work as well as the applicable IWC Wage Order.
11 Accordingly, Plaintiff seeks the remedies set forth in Labor Code section 558 for himself,
12 other aggrieved employees, and the State of California.

13 145. Plaintiff is an “aggrieved employee” because he was employed by the alleged
14 violator and had one or more of the alleged violations committed against him, and therefore
15 is properly suited to represent the interests of all other aggrieved employees.

16 146. Plaintiff has exhausted the procedural requirements under Labor Code section
17 2699.3 as to Defendants and is therefore able to pursue a claim for penalties on behalf of
18 himself and all other aggrieved employees under the PAGA.

19 147. The PAGA imposes a penalty of one hundred dollars (\$100.00) for each
20 aggrieved employee per pay period for the initial violation and two hundred dollars (\$200.00)
21 for each aggrieved employee per pay period for each subsequent violation.

22 148. Pursuant to Labor Code sections 2699(a), 2699.3, and 2699.5, Plaintiff is
23 entitled to recover civil penalties, in addition to other remedies, for violations of the Labor
24 Code sections cited above.

25 149. Plaintiff, as a representative of the general public, seeks to recover all Labor
26 Code section 2699(f)(2) civil penalties for each Labor Code violation alleged herein,
27 according to proof, as to those penalties otherwise only available in public agency
28 enforcement actions. Funds recovered will be distributed in accordance with the PAGA, with

1 75% of penalties recovered provided to the LWDA on behalf of the State of California.

2 150. For bringing this action, Plaintiff is entitled to attorney's fees and costs
3 incurred herein.

4 VI.

5 PRAYER

6 Plaintiff prays for judgment as follows:

7 1. That the Court determine this action may be maintained as a class action and
8 Plaintiff as Class Representative and Plaintiff's counsel as Class Counsel;

9 2. For injunctive relief as provided by the Labor Code to the extent permitted by
10 law including, but not limited to, pursuant to Section 226(h), and Business and Professions
11 Code sections 17200, *et seq.*;

12 3. For restitution as provided by Business and Professions Code sections 17200,
13 *et seq.*;

14 4. For an order requiring Defendants to restore and disgorge all funds to each
15 affected person acquired by means of any act or practice declared by this Court to be unlawful,
16 unfair or fraudulent and, therefore, constituting unfair competition under Business and
17 Professions Code sections 17200, *et seq.*;

18 5. For an award of unpaid wages, including minimum and overtime wages, to the
19 extent permissible by law to each affected person;

20 6. For an award of liquidated damages to the extent permissible by Labor Code
21 section 1194.2;

22 7. For an award of meal period premium wages equal to one hour of pay at the
23 employee's regular rate of pay for each workday that a meal period was not provided in
24 accordance with Labor Code sections 226.7 and 512 and Section 11 of the applicable IWC
25 Wage Order;

26 8. For an award of rest period premium wages equal to one hour of pay at the
27 employee's regular rate of pay for each workday that a rest period was not provided in
28 accordance with Labor Code sections 226.7 and Section 12 of the applicable IWC Wage

1 Order;

2 9. For reimbursement of unpaid expenses incurred as a result of the use of cell
3 phones at the direction of and for the benefit of Defendants, in accordance with Labor Code
4 section 2802;

5 10. For penalties to the extent permitted pursuant to the Labor Code, and Orders
6 of the Industrial Welfare Commission including, but not limited to penalties under Labor Code
7 section 226(e);

8 11. For an award of waiting time penalties per former employee pursuant to Labor
9 Code section 203(a);

10 12. For an award of penalties incurred under sections 210, 226.3, 226(e), and
11 1174.5 per underpaid employee pursuant to Labor Code sections 210, 226(e), 226.3, and
12 1174.5;

13 13. For an award of liquidated damages to the extent permissible by Labor Code
14 section 1194.2;

15 14. For penalties incurred under Labor Code section 1197.1 for each underpaid
16 employee per pay period for which the employee was underpaid;

17 15. For pre- and post-judgment interest to the extent permitted by law including,
18 but not limited to, Labor Code sections 218.6 and 1194;

19 16. For damages under Labor Code section 558;

20 17. For civil penalties as described above pursuant to the PAGA, with 75% of
21 penalties being paid to the Labor & Workforce Development Agency and 25% of penalties
22 being distributed to the aggrieved employees;

23 18. For the Plaintiff to be recognized by the Court as serving as a Representative
24 of the LWDA, that he be deemed an "aggrieved employee" and to proceed in this PAGA
25 Action, and to be awarded some form of enhanced compensation for bringing this action
26 should he prevail and provide benefit to the State of California or other "aggrieved
27 employees," subject to the Court's discretion;

28 19. For pre- and post-judgment interest to the extent permitted by law including,

1 but not limited to, Labor Code sections 218.6 and 1194;

2 20. Attorney's fees and costs of suit, including expert fees and fees pursuant to
3 California Labor Code sections 1194 and 2699.3 and all other applicable state laws including
4 Code of Civil Procedure section 1021.5; and

5 21. Determine the appropriate remedy to compensate Plaintiff, Plaintiff Class, and
6 Subclass members, as required to promote fairness and justice, including but not limited to
7 establishing procedures for compensation, and fluid recovery if appropriate.

8 **LEBE LAW, APLC**

9
10 Dated: August 10, 2021

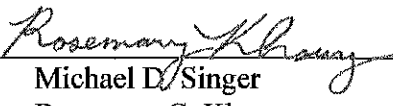
By: 

Jonathan M. Lebe

11 Attorney for Plaintiff Eric Garcia, individually
12 and on behalf of all others similarly situated
13 and aggrieved

14 **COHELAN KHOURY & SINGER**

15 Dated: August 10, 2021

By: 

Michael D. Singer

Rosemary C. Khoury

17 Attorney for Plaintiff Eric Garcia, individually
18 and on behalf of all others similarly situated
19 and aggrieved

20 **DEMAND FOR JURY TRIAL**

21 Plaintiff demands a trial by jury on all claims so triable.

22 **LEBE LAW, APLC**

23
24 Dated: August 10, 2021

By: 

Jonathan M. Lebe

25 Attorney for Plaintiff Eric Garcia, individually
26 and on behalf of all others similarly situated
27 and aggrieved
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COHELAN KHOURY & SINGER

Dated: August 10, 2021

By: *Rosemary Khoury*
Michael D. Singer
Rosemary C. Khoury
Attorney for Plaintiff Eric Garcia, individually
and on behalf of all others similarly situated
and aggrieved

EXHIBIT 1



☎ (213) 358-7049 🖨 (213) 820-1258 ✉ jonel@lebelaw.com 📍 777 S. Alameda Street, 2nd floor, Los Angeles, CA 90021

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

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

Copied by E-Mail:

Renee C. Feldman
Littler Mendelson, P.C.
rfeldman@littler.com

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Cohelan Khoury & Singer
605 C Street Suite 200
San Diego, CA 92101
msinger@ckslaw.com

EXHIBIT 2



☎ (213) 258-7040 📠 (213) 820-1258 ✉ jon@lebelaw.com 📍 777 S. Alameda Street, 2nd Floor, Los Angeles, CA 90021

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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1 **PROOF OF SERVICE**

2 *Garcia v. Lightning Source LLC, et al.*

3 **Fresno Superior Court Case No. 20CECG01641**

4 I, Karla Sousa, declare as follows:

5 I am employed in the County of San Diego, State of California. I am over the age of 18 and not a
6 party to this action. My business address is 605 "C" Street, Suite 200, San Diego, California 92101. On
7 August 10, 2021, I instituted service of the forgoing document(s) described as:

8 **SECOND AMENDED CLASS ACTION AND REPRESENTATIVE ACTION COMPLAINT**

9 on the following parties:

10 **Counsel for Defendant**

11 Ryan L. Eddings, Esq.
12 Andrew H. Woo, Esq.
13 LITTLER MENDELSON, P.C.
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Co-counsel for Plaintiff

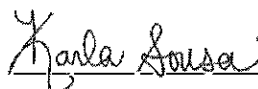
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15 in the manner described below:

16 **[XX] BY ELECTRONIC SERVICE – GREENFILING:** by submitting an electronic version of the
17 documents through the user interface at www.greenfiling.com

18 **[XX] STATE:** I declare under penalty of perjury under the laws of the State of California that the
19 foregoing is true and correct.

20 Executed on August 10, 2021, at San Diego, California.

21
22 
23 Karla Sousa