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Superior Court of California

County of Fresno

By: I. Herrera, Deputy

10 Attorneys for Plaintiff Eric Garcia,

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

12 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

13 **FOR THE COUNTY OF FRESNO**

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

15 Plaintiff,

16 v.

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

20 Defendants.

Case No. 20CECG01641

**FIRST 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);
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

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

I.

INTRODUCTION

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

2. This class and representative action is within the Court's jurisdiction under California Labor Code §§ 201-203, 204, 210, 226, 226.7, 510, 512, 1182.12, 1194, 1194.2, 1197, 1197.1, 1198, 2800, 2802, the California Industrial Welfare Commission's ("IWC")

1 Wage Orders, and the California Unfair Competition Law (the "UCL"), codified at California
2 Business and Professions Code § 17200, *et seq.*

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

6 4. Plaintiff is informed and believes and based thereon alleges that Defendants
7 jointly and severally have acted intentionally and with deliberate indifference and conscious
8 disregard to the rights of all employees by failing to pay overtime and minimum wages for all
9 hours worked, failing to provide off-duty meal and rest breaks, failing to reimburse all
10 business expenses, failing to provide accurate itemized wage statements, and failing to pay all
11 wages due during and upon termination.

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

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

21 7. Plaintiff Eric Garcia has given notice of these claims to the LWDA on June 8,
22 2020 seeking intervention, as well as an amended notice on June 24, 2020. As there has been
23 no intervention within 65 days of Plaintiff's written notice to the LWDA, Plaintiff asserts
24 claims for civil penalties as a representative for and on behalf of the State of California in a
25 representative capacity, as provided by the PAGA to the extent permitted by law, as an
26 aggrieved employee who suffered one or more of the alleged violations during all or a
27 significant part of the applicable liability period or proposed "PAGA Period" (which is
28 defined as any time from one year from the date of the filing for civil penalties under the

1 PAGA, excluding the 65 days as provided by Labor Code section 2699.3(d).)

2 8. A true and correct copy of Plaintiff's June 8, 2020 PAGA notice showing
3 compliance with Labor Code section 2699.3 is attached hereto as **Exhibit 1, and a true and**
4 **correct copy of Plaintiff's June 24, 2020 Amended PAGA Notice is attached hereto as**
5 **Exhibit 2**, which demonstrate that Plaintiff is an aggrieved employee and has standing to bring
6 a representative action on behalf of the State of California and the LWDA as a private attorney
7 general. Since no notice of cure has been provided by Defendants Lightning Source LLC,
8 Ingram Distribution Management Inc., or Ingram Content Group LLC, nor has the LWDA
9 indicated that it intends to investigate within the proscribed 65-day period from the date of the
10 mailing of the notice, Plaintiff Garcia has asserted PAGA claims herein and brings this action
11 as a "Representative Action" as specifically permitted and authorized by Labor Code section
12 2699.3(a)(2)(C).

13 **II.**

14 **PARTIES, JURISDICTION AND VENUE**

15 9. From approximately May 7, 2018 until approximately February 18, 2020,
16 Plaintiff worked for Defendants as a non-exempt employee. Plaintiff was and is the victim of
17 the policies, practices, and customs of Defendants complained of in this action in ways that
18 have deprived her of the rights guaranteed by California Labor Code §§ 201-203, 204, 210,
19 226, 226.7, 510, 512, 1182.12, 1194, 1194.2, 1197, 1197.1, 1198, 2751, 2800, 2802, and the
20 applicable IWC Wage Order, and the UCL.

21 10. Venue as to each Defendant is proper in this judicial district, pursuant to Code
22 of Civil Procedure, section 395. Defendants conduct business in Fresno County, California
23 and each Defendant is within the jurisdiction of this Court for service of process purposes.
24 The unlawful acts alleged have a direct effect on Plaintiff and those similarly situated and
25 aggrieved within the State of California and Fresno County. Defendants employ numerous
26 Plaintiff and members of the Plaintiff Class in Fresno County. There is no federal question at
27 issue, as the issues are based solely on California statutes and law, including the Labor Code,
28

1 the Applicable IWC Wage Order, Code of Civil Procedure, Civil Code, and Business and
2 Professions Code.

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

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

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

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

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

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

28

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

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

1 employed Plaintiff and members of the Plaintiff Class for more than 8 hours per day and more
2 than 40 hours per workweek, or in excess of twelve (12) hours in a day and/or in excess of
3 eight (8) hours on the seventh day of work in a work week, and failed to pay Plaintiff and
4 members of the Plaintiff Class overtime and double time compensation for the overtime and
5 double time hours Plaintiff and members of the Plaintiff Class worked. Defendants also failed
6 to pay all overtime wages for all overtime hours worked because it failed to properly calculate
7 the regular rate of pay for purposes of calculating overtime and double-time rates for Plaintiff
8 and members of the Plaintiff Class. As a result, Defendants failed to pay Plaintiff and members
9 of the Plaintiff Class all their earned wages.

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

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

22 24. During all, or portions of the Class Period, Defendants had a consistent policy
23 of failing to reimburse Plaintiff and members of the Plaintiff Class for all necessary and
24 reasonable business expenses incurred, in violation of California state wage and hour laws.
25 Plaintiff and Members of the Plaintiff Class were required use their personal cellular devices
26 for work related purposes, such, but not limited to, communicating with their supervisors.
27 Defendant failed to reimburse Plaintiff and members of the Plaintiff Class for their work-
28

1 related use of their scrubs, and their personal cellular device, incurred in the discharge of their
2 duties for Defendants.

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

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

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

17 IV.

18 **CLASS ALLEGATIONS**

19 28. Plaintiff brings this action pursuant to California Code of Civil Procedure §
20 382 on behalf of himself and class members defined below. The Plaintiff Class is comprised
21 of and defined as:

22 **Plaintiff Class**

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

25 29. Plaintiff also seeks to certify the following Subclass:
26 _____

27
28 ¹ The statute of limitations for this matter was tolled pursuant to Cal. Rules of Court,
Appendix I, Emergency Rule No. 9.

1 Waiting Time Subclass

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

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

5 Wage Statement Subclass:

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

10 31. 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 32. There exists a well-defined community of interest among the Plaintiff Class,
15 and the Plaintiff Class is readily ascertainable.

16 33. 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 34. 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 35. 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
 regulations and caused Plaintiff and the rest of the Plaintiff Class to suffer the same or similar
 injuries;

1 (ii) whether Defendants violated Labor Code §§ 1182.12, 1194, 1194.2,
2 1197, 1197.1, 1198 and § 4 of the Applicable IWC Wage Order by failing to pay minimum
3 wage for all hours worked;

4 (iii) whether Defendants violated Labor Code §§ 510, 1194, 1198, and § 3
5 of the Applicable IWC Wage Order by failing to pay overtime compensation;

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

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

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

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

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

23 (ix) whether Defendants violated Labor Code §§ 201-203 by failing to
24 timely pay Plaintiff and Waiting Time Subclass members all wages due upon termination or
25 within seventy-two (72) of resignation; and

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

28

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

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

V.

CAUSES OF ACTION

FIRST CAUSE OF ACTION

FAILURE TO PAY MINIMUM WAGES

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

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

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

6 40. Labor Code section 1194.2 states: "In any action under Section 98, 1193.6,
7 1194, or 1197.1 to recover wages because of the payment of a wage less than the minimum
8 wage fixed by an order of the commission or by statute, an employee shall be entitled to
9 recover liquidated damages in an amount equal to the wages unlawfully unpaid and interest
10 thereon."

11 41. Labor Code section 1194.2 provides for liquidated damages equal to
12 unlawfully unpaid minimum wages, with interest.

13 42. Labor Code section 1197 states: "The minimum wage for employees fixed by
14 the commission is the minimum wage to be paid to employees, and the payment of a less wage
15 than minimum wage so fixed is unlawful."

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

26 44. Labor Code section 1198 states: "The maximum hours of work and the
27 standard conditions of labor fixed by the commission shall be the maximum hours of work
28 and the standard conditions of labor for employees. The employment of any employee for

1 longer hours than those fixed by the order or under conditions of labor prohibited by the order
2 is unlawful.”

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

7 46. During the relevant time period, Defendants regularly failed to pay at least
8 minimum wage to Plaintiff and members of the Plaintiff Class for all hours worked pursuant
9 to Labor Code §§ 1194 and 1197.

10 47. Defendants’ failure to pay Plaintiff and members of the Plaintiff Class the
11 minimum wage as required violates Labor Code §§ 1194 and 1197.

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

17 49. Defendants’ unlawful acts deprived Plaintiff and members of the Plaintiff
18 Class Plaintiff seeks to represent of minimum wages in amounts to be determined at trial, and
19 they are entitled to recover these amounts, along with liquidated damages for unpaid regular
20 or minimum wages, interest, attorneys’ fees, and costs.

21 50. Plaintiff seeks to recover in a civil action the unpaid balance of the full amount
22 of the unpaid wages resulting from Defendants’ minimum wage violations including interest
23 thereon, reasonable attorney’s fees and costs of suit, penalties, and liquidated damages to the
24 fullest extent permissible including those permitted pursuant to Labor Code sections 218.6,
25 1194, 1194.2, 1197.1, and Code of Civil Procedure section 1021.5. Plaintiff, on behalf of
26 himself and the members of the Plaintiff Class, requests relief as described below.

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SECOND CAUSE OF ACTION
FAILURE TO PAY OVERTIME COMPENSATION
(Violation of Cal. Labor Code §§ 510, 1194 and 1198,
and the Applicable IWC Wage Order § 3)

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

52. Labor Code § 1198 and the Applicable IWC Wage Order provide that it is unlawful to employ persons without compensating them at a rate of pay either one and one-half (1½) or two (2) times the person's regular rate of pay, depending on the number of hours or days worked by the person on a daily or weekly basis.

53. Specifically, section 3 of the Applicable IWC Wage Order provides that Defendants are and were required to pay overtime compensation to Plaintiff and members of the Plaintiff Class at the rate of one and one-half times (1½) their regular rate of pay when working and for all hours worked in excess of eight (8) hours in a day or more than forty (40) hours in a workweek and for the first eight (8) hours of work on the seventh day of work in a workweek.

54. Section 4 of the Applicable IWC Wage Order further provide that Defendants are and were required to pay overtime compensation to Plaintiff and members of the Plaintiff Class at a rate of two times their regular rate of pay when working and for all hours worked in excess of twelve (12) hours in a day or in excess of eight (8) hours on the seventh day of work in a workweek.

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

56. Labor Code § 510 and the Applicable IWC Wage Order provide that employment of more than six days in a workweek is only permissible if the employer pays

1 proper overtime compensation as set forth herein.

2 57. During the relevant time period, Defendants failed to pay Plaintiff and
3 members of the Plaintiff Class overtime wages for all overtime hours worked when Plaintiff
4 and members of the Plaintiff Class worked in excess of eight (8) hours in a day, forty (40)
5 hours in a week and/or for a seventh consecutive day of work in a workweek, or when Plaintiff
6 and members of the Plaintiff Class worked in excess of twelve (12) hours in a day and/or in
7 excess of eight (8) hours on the seventh day of work in a work week.

8 58. In violation of state law, Defendants knowingly and willfully refused to
9 perform their obligations and compensate Plaintiff and members of the Plaintiff Class for all
10 wages earned and all hours worked.

11 59. Defendants' failure to pay Plaintiff and members of the Plaintiff Class the
12 unpaid balance of overtime and double time compensation, as required by California law,
13 violates the provisions of Labor Code §§ 510 and 1198, and is therefore unlawful.

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

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

23 62. Pursuant to Labor Code § 1194, Plaintiff and members of the Plaintiff Class
24 are entitled to recover their unpaid overtime and double time compensation as well as interest,
25 costs, and attorneys' fees.

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

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

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

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

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

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

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

69. At all relevant times, Defendants failed to pay Plaintiff and members of the Plaintiff Class meal period premiums for their missed meal periods pursuant to Labor Code § 226.7(b) and section 11 of the Applicable IWC Wage Order.

70. As a result of Defendants’ failure to pay Plaintiff and members of the Plaintiff Class an additional hour of pay for each day a compliant meal period was not provided,

1 Plaintiff and members of the Plaintiff Class suffered and continue to suffer a loss of wages
2 and compensation. Because Defendants failed to provide meal periods, they are liable to
3 Plaintiff and members of the Plaintiff Class for one hour of additional premium pay at the
4 regular rate of compensation for each workday that the meal periods were not provided,
5 pursuant to Labor Code section 226.7 and the Applicable IWC Wage Order, section 11(B).

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

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

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

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

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

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

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

1 77. Section 12 of the Applicable IWC Wage Order states “every employer shall
2 authorize and permit all employees to take rest periods, which insofar as practicable shall be
3 in the middle of each work period” and the “authorized rest period time shall be based on the
4 total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major
5 fraction thereof” unless the total daily work time is less than three and one-half (3½) hours.

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

10 79. Labor Code 226.7(d) provides that a rest period mandated by state law or IWC
11 Wage Order “shall be counted as hours worked, for which there shall be no deduction from
12 wages.”

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

16 81. Labor Code § 226.7(b) and section 12 of the Applicable IWC Wage Order
17 requires an employer to pay an employee one additional hour of pay at the employee’s regular
18 rate of compensation for each workday that the rest period is not provided.

19 82. At all relevant times, Defendants failed to pay Plaintiff and members of the
20 Plaintiff Class the full rest period premium for missed or interrupted rest periods pursuant to
21 Labor Code § 226.7(b) and section 12 of the Applicable IWC Wage Order.

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

28 84. Defendants’ unlawful acts deprived Plaintiff and members of the Plaintiff

1 Class Plaintiff seeks to represent of premium wages and/or other compensation in amounts to
2 be determined at trial, and they are entitled to recover such amounts, plus interest, attorneys'
3 fees, and costs.

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

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

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

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

16 88. Labor Code section 226(a) states in pertinent part: "Every employer shall,
17 semimonthly or at the time of each payment of wages, furnish each of his or her employees,
18 either as a detachable part of the check, draft, or voucher paying the employee's wages, or
19 separately when wages are paid by personal check or cash, an accurate itemized statement in
20 writing showing": (1) gross wages earned; (2) total hours worked by the employee, except for
21 any employee whose compensation is solely based on a salary and who is exempt from
22 payment of overtime under subdivision (a) of Section 515 or any applicable order of the
23 Industrial Welfare Commission; (3) the number of piece-rate units earned and any applicable
24 piece rate if the employee is paid on a piece-rate basis; (4) All deductions, provided that all
25 deductions made on written orders of the employee may be aggregated and shown as one item;
26 (5) net wages earned; (6) the inclusive dates of the period for which the employee is paid; (7)
27 the name of the employee and only the last four digits of his or her social security number or
28 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

1 during the pay period and the corresponding number of hours worked at each hourly rate by
2 the employee. The deductions made from payment of wages shall be recorded in ink or other
3 indelible form, properly dated, showing the month, day, and year, and a copy of the statement
4 and the record of the deductions shall be kept on file by the employer for at least three years
5 at the place of employment or at a central location within the State of California.”

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

10 90. Defendants have intentionally and willfully failed to provide Plaintiff and
11 members of the Wage Statement Subclass with complete and accurate wage statements. The
12 deficiencies include, among other things, the failure to list the gross wages earned, net wages
13 earned, and all hours worked.

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

28

1 92. Labor Code section 226(e) states: "An employee suffering injury as a result of
2 a knowing and intentional failure by an employer to comply with subdivision (a) is entitled to
3 recover the greater of all actual damages or fifty dollars (\$50) for the initial pay period in
4 which a violation occurs and one hundred dollars (\$100) per employee for each violation in a
5 subsequent pay period, not exceeding an aggregate penalty of four thousand dollars (\$4,000),
6 and is entitled to an award of costs and reasonable attorneys' fees."

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

16 94. Defendants' violations of California Labor Code § 226(a) prevented Plaintiff
17 and members of the Wage Statement Subclass from knowing, understanding and disputing
18 the wages paid to them, and resulted in an unjustified economic enrichment to Defendants. As
19 a result of Defendants' knowing and intentional failure to comply with California Labor Code
20 § 226(a), Plaintiff and members of the Wage Statement Subclass have suffered an injury, the
21 exact amount of damages and/or penalties is all in an amount to be shown according to proof
22 at trial.

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

26 96. Labor Code section 226.3 states, in part: "Any employer who violates
27 subdivision (a) of section 226 shall be subject to a civil penalty in the amount of two hundred
28 fifty dollars (\$250) per employee per violation in an internal citation and one thousand dollars

1 (\$1,000) per employee for each violation in a subsequent citation, for which the employer fails
2 to keep the records required in subdivision (a) of Section 226. The civil penalties provided for
3 in this section are in addition to any other penalty provided by law.”

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

10 98. Plaintiff seeks to recover in a civil action all remedies including damages,
11 unpaid wages, penalties, attorney’s fees and costs, and injunctive relief to the fullest extent
12 permissible including those permitted pursuant to Labor Code sections 226(e) and (h), 226.3,
13 and Code of Civil Procedure section 1021.5.

14 99. Plaintiff, on behalf of himself and the members of the Wage Statement
15 Subclass, request relief as described below.

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

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

21 101. Labor Code § 2800 provides, in pertinent part, “[a]n employer shall in all cases
22 indemnify his employee for losses caused by the employer’s want of ordinary care.”

23 102. Labor Code § 2802 provides, in pertinent part, “[a]n employer shall indemnify
24 his or her employee for all necessary expenditures or losses incurred by the employee in direct
25 consequence of the discharge of his or her duties...”

26 103. Further, Labor Code § 2802 additionally provides, in pertinent part: “(c)...the
27 term ‘necessary expenditures or losses’ shall include all reasonable costs, including but not
28 limited to, attorney’s fees incurred by the employee enforcing the rights granted by this
section.”

1 104. The Applicable IWC Wage Order § 9 provides that: “When tools or equipment
2 are required by the employer or are necessary to the performance of a job, such tools and
3 equipment shall be provided and maintained by the employer . . .”

4 105. California Labor Code section 2804 mandates that this statutory right cannot
5 be waived.

6 106. During the relevant time period, Defendants were required to indemnify and
7 reimburse Plaintiff and members of the Plaintiff Class for all expenditures or losses caused by
8 the employer’s want of ordinary care and/or incurred in direct consequent of the discharge of
9 their duties, but failed to indemnify and reimburse Plaintiff and members of the Plaintiff Class.

10 107. As a direct and proximate result, Plaintiff and members of the Plaintiff Class
11 have suffered, and continue to suffer, substantial losses, related to the use and enjoyment of
12 such monies to be reimbursed, lost interest on such monies, and expenses and attorney’s fees
13 in seeking to compel Defendants to fully perform their obligations under California law, all
14 to their damage in amounts according to proof at the time of trial.

15 108. Accordingly, Plaintiff and members of the Plaintiff Class are entitled to
16 recover, and hereby seek, an amount equal to incurred necessary expenditures, pre- and post-
17 judgment interest, applicable penalties, attorneys’ fees and costs, and any further equitable
18 relief this Court may deem just and proper. *See* Cal. Lab. Code § 2802, *see also*, Cal. Civ.
19 Proc. Code § 1021.5.

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

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

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

26 111. Labor Code § 204 provides that all wages earned by an employee are due and
27 payable twice during each calendar month.
28

1 112. Defendants failed to timely pay Plaintiff and members of the Plaintiff Class all
2 of their earned wages as required by Labor Code Section 204.

3 113. Plaintiff and members of the Plaintiff Class have been deprived of their
4 rightfully earned wages as a direct and proximate result of Defendants' failure to pay said
5 compensation. Plaintiff and members of the Plaintiff Class are entitled to recover such
6 amounts, plus interest thereon, attorney's fees and costs.

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

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

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

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

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

28 118. Defendants' failure to pay Plaintiff and Waiting Time Subclass members all

1 their earned wages at the time of discharge or within seventy-two (72) hours of their leaving
2 Defendants' employ is in violation of Labor Code §§ 201 and 202.

3 119. California Labor Code § 203 provides that if an employer willfully fails to
4 pay wages owed immediately upon discharge or resignation in accordance with Labor Code
5 §§ 201 and 202, then the wages of the employee shall continue as a penalty from the due
6 date at the same rate until paid or until an action is commenced; but the wages shall not
7 continue for more than thirty (30) days.

8 120. Plaintiff and Waiting Time Subclass members are entitled to recover from
9 Defendants the statutory penalty which is defined as Plaintiff's and Waiting Time Subclass
10 members' regular daily wages for each day they were not paid, at their regular hourly rate
11 of pay, up to a thirty (30) day maximum pursuant to Labor Code § 203.

12 **NINTH CAUSE OF ACTION**
13 **VIOLATION OF THE UNFAIR COMPETITION LAW**
14 **(Business and Professions Code §§ 17200-17208)**

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

17 122. California Business and Professions Code §§ 17200, *et seq.*, prohibits acts of
18 unfair competition, which includes any "unlawful, unfair or fraudulent business act or practice
19"

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

1 124. This cause of action is brought under Business and Professions Code sections
2 17203 and 17204, commonly called the Unfair Competition Law. Under this cause of action
3 and pursuant to Business and Professions Code section 17208, Plaintiff and all Plaintiff Class
4 Members seek restitution of wages owed and, where applicable, penalties under Labor Code
5 section 203, where such wages were due each of the class members during the Class Period,
6 commencing four (4) years prior to filing of this complaint, according to proof.

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

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

18 127. At the time Plaintiff and members of the Plaintiff Class were hired, Defendants
19 knowingly, intentionally and wrongfully misrepresented to each of them their conformance
20 with the California Labor Code and IWC Wage Orders including proper payments required
21 by law .

22 128. At all relevant times herein, Defendants held themselves out to Plaintiff and
23 members of the Plaintiff Class as being knowledgeable concerning the labor laws of
24 California.

25 129. At all times relevant herein, Plaintiff and members of the Plaintiff Class relied
26 on and believed Defendants' representations concerning their conformance with California's
27 wage and hour laws all to their detriment.

28

1 130. As a result of Defendants' intentional, willful, purposeful and wrongful
2 misrepresentation of their conformance with the California Labor Code and IWC Wage
3 Orders, Plaintiff and members of the Plaintiff Class suffered a loss of wages and monies, all
4 in an amount to be shown according to proof at trial. By violating the foregoing statutes and
5 regulations as herein alleged, Defendants' acts constitute unfair and unlawful business
6 practices under California Business and Professions Code §§ 17200, *et seq.*

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

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

14 133. Plaintiff and members of the Plaintiff Class seek to enforce important rights
15 affecting the public interest within the meaning of California Code of Civil Procedure §
16 1021.5. Defendants' conduct, as alleged herein, has been, and continues to be, unfair, unlawful
17 and harmful to members of the Plaintiff Class and to the general public. Based on Defendants'
18 conduct as alleged herein, Plaintiff and members of the Plaintiff Class are entitled to an award
19 of attorneys' fees pursuant to California Code of Civil Procedure § 1021.5.

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

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

25 135. Pursuant to Labor Code section 2699(a), any provision of the Labor Code that
26 provides for a civil penalty to be assessed and collected by the Labor and Workforce
27 Development Agency ("LWDA") or any of its departments, divisions, commissions, boards,
28 agencies or employees for violation of the code may, as an alternative, be recovered through
a civil action brought by an aggrieved employee on behalf of himself/herself and other

1 current or former employees pursuant to the procedures specified in Labor Code section
2 2699.3.

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

8 137. Defendants' conduct violates numerous Labor Code sections including, but not
9 limited to, the following:

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

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

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

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

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

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

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

4 138. Further, Labor Code section 558(a) provides that “any employer or other
5 person acting on behalf of an employer who violates, or causes to be violated, a section of this
6 chapter or any provisions regulating hours and days of work in any order of the IWC shall be
7 subject to a civil penalty as follows: (1) For any violation, fifty dollars (\$50) for each
8 underpaid employee for each pay period for which the employee was underpaid in addition to
9 an amount sufficient to recover underpaid wages. (2) For each subsequent violation, one
10 hundred dollars (\$100) for each underpaid for each pay period for which the employee was
11 underpaid in addition to an amount sufficient to recover underpaid wages. (3) Wages
12 recovered pursuant to this section shall be paid to the affected employee.” Plaintiff seeks only
13 to recover the civil penalty provided for in this section 558(a) for the violations alleged herein
14 and *does not* seek to recover unpaid wages.

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

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

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

24 142. Plaintiff has exhausted the procedural requirements under Labor Code section
25 2699.3 as to Defendants and is therefore able to pursue a claim for penalties on behalf of
26 himself and all other aggrieved employees under the PAGA.

27 143. The PAGA imposes a penalty of one hundred dollars (\$100.00) for each
28

1 aggrieved employee per pay period for the initial violation and two hundred dollars (\$200.00)
2 for each aggrieved employee per pay period for each subsequent violation.

3 144. Pursuant to Labor Code sections 2699(a), 2699.3, and 2699.5, Plaintiff is
4 entitled to recover civil penalties, in addition to other remedies, for violations of the Labor
5 Code sections cited above.

6 145. Plaintiff, as a representative of the general public, seeks to recover all Labor
7 Code section 2699(f)(2) civil penalties for each Labor Code violation alleged herein,
8 according to proof, as to those penalties otherwise only available in public agency
9 enforcement actions. Funds recovered will be distributed in accordance with the PAGA, with
10 75% of penalties recovered provided to the LWDA on behalf of the State of California.

11 146. For bringing this action, Plaintiff is entitled to attorney's fees and costs
12 incurred herein.

13 VI.

14 PRAYER

15 Plaintiff prays for judgment as follows:

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

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

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

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

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

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

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

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

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

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

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

19 12. For an award of penalties incurred under sections 210, 226.3, 226(e), and
20 1174.5 per underpaid employee pursuant to Labor Code sections 210, 226(e), 226.3, and
21 1174.5;

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

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

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

28 16. For damages under Labor Code section 558;

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

4 18. For the Plaintiff to be recognized by the Court as serving as a Representative
5 of the LWDA, that he be deemed an “aggrieved employee” and to proceed in this PAGA
6 Action, and to be awarded some form of enhanced compensation for bringing this action
7 should he prevail and provide benefit to the State of California or other “aggrieved
8 employees,” subject to the Court’s discretion;

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

11 20. Attorney’s fees and costs of suit, including expert fees and fees pursuant to
12 California Labor Code sections 1194 and 2699.3 and all other applicable state laws including
13 Code of Civil Procedure section 1021.5; and

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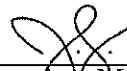
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1 21. Determine the appropriate remedy to compensate Plaintiff, Plaintiff Class,
2 and Subclass members, as required to promote fairness and justice, including but not limited
3 to establishing procedures for compensation, and fluid recovery if appropriate.

4
5 DATED: September 10, 2020

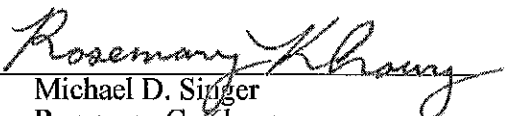
LEBE LAW, APLC

6
7 By: 
8 Jonathan M. Lebe

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

12 DATED: September 10, 2020

COHELAN KHOURY & SINGER

13
14 By: 
15 Michael D. Singer
16 Rosemary C. Khoury

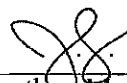
17 Attorney for Plaintiff Eric Garcia, individually
18 and on behalf of all others similarly situated
19 and aggrieved

20 **DEMAND FOR JURY TRIAL**

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

22
23 DATED: September 10, 2020

Lebe Law, APLC

24
25 By: 
26 Jonathan M. Lebe

27 Attorney for Plaintiff Eric Garcia, individually
28 and on behalf of all others similarly situated
and aggrieved

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DATED: September 10, 2020

COHELAN KHOURY & SINGER

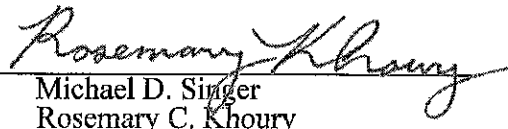
By: 
Michael D. Singer
Rosemary C. Khoury
Attorney for Plaintiff Eric Garcia, individually
and on behalf of all others similarly situated
and aggrieved

EXHIBIT 1



☎ (213) 458-7049 🖨 (213) 820-1258 📧 info@lebelaw.com 📍 778 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

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:

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Littler Mendelson, P.C.
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605 C Street Suite 200
San Diego, CA 92101
msinger@ckslaw.com

EXHIBIT 2



☎ (213) 438-7040 📠 (408) 820-1258 📧 info@lebelaw.com 📍 77 S. Alameda Street, 2nd Floor, Los Angeles, CA 90012

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 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.

**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, Amber Worden, 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 September 10, 2020, I instituted service of the forgoing document(s) described as:

8 **FIRST 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.
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15 I then caused service of each document in the manner described below:

16 **[XX] BY EMAIL:** I transmitted the foregoing document(s) electronically via email to the addresses
17 listed above.

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 September 10, 2020, at San Diego, California.

21
22 
23 Amber Worden