

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE
(Nashville Division)**

PUBLISHAMERICA, LLLP)
 230 E. Patrick St.)
 Frederick, Maryland)
)
 Plaintiff)
)
 v.)
)
 LIGHTNING SOURCE, INC.)
 1246 Heil Quaker Blvd.)
 La Vergne, Tennessee)
)
 serve on:)
)
 William P. Morelli)
 4400 Harding Road)
 Nashville, Tennessee 37205)
)
 Defendant)
 _____)

Case No. _____

JURY DEMAND

PLAINTIFF’S COMPLAINT WITH DEMAND FOR A JURY TRIAL

Plaintiff, Publish America, LLLP, sues Defendant Lightning Source, Inc. and states:

I. PARTIES AND JURISDICTION

1. Plaintiff Publish America, LLLP (“PA” or “Plaintiff”) is a Maryland Limited Liability Limited Partnership, with its principal office and place of business located in Frederick, Maryland. PA’s partners include America House Publishing Company, LLC, Book Publishing, LLC, and Publish America, Inc., all of which are citizens of Maryland. PA publishes literary works acquired from third party authors. PA prints copies of its books as they are ordered and pays its authors royalties based upon the sales price received for those orders. PA has used independent contractors to print some copies of its books. In 2007, PA purchased its own

printing equipment and started printing some orders for its titles itself. PA currently publishes approximately 40,000 titles.

2. Defendant Lightning Source, Inc. (“LSI” or “Defendant”) is a Delaware Corporation, with its principal office and place of business located in La Vergne, Tennessee. LSI prints books for publishers like PA.

3. This Court has jurisdiction over this civil action pursuant to 28 U.S.C. § 1332 based upon the fact that the amount in controversy exceeds \$75,000 and there is a diversity of citizenship between the parties to this matter. This Court has venue over this action pursuant to 28 U.S.C. § 1391 based upon Defendant’s residence in the Middle District of Tennessee.

4. **JURY DEMAND**: Plaintiff demands a jury trial on all issues so triable.

II. FORMATION OF THE CONTRACT

5. On or about June 1, 2005, PA and LSI entered into a “Print on Demand Agreement” (hereinafter referred to as the “Agreement”). A copy of that agreement, which was signed by both parties, is attached hereto as Exhibit 1 and incorporated herein. LSI’s Print on Demand Publisher Operating Manual (hereinafter referred to as the “Operating Manual”) was incorporated into and formed a part of the Agreement. A copy of the Operating Manual is attached hereto as Exhibit 2 and incorporated herein.

6. The term of the Agreement was for one year. However, the parties agreed to continue their relationship through the filing date of this Complaint by assenting to a series of print on demand contracts of approximately one year each (“renewal terms”). All references to the “Agreement” herein shall include the renewal terms unless stated otherwise. Except for the

price schedule referenced below, the terms and conditions of the original Agreement did not change in any material respects during any renewal periods.

7. Pursuant to the Agreement, PA was authorized to upload digital files of its books to LSI's database. Once uploaded, LSI was obligated to print copies of these books in response to orders placed either directly by PA ("Publisher Direct Orders") or by LSI's customers ("Wholesale Orders"), who consist of retailers, distributors and wholesalers. For Publisher Direct Orders, PA was obligated to pay LSI the prices identified in the schedule set forth in Attachment A to Exhibit 1.

8. For Wholesale Orders, LSI was obligated to (a) print copies of PA's books, and then (b) buy those copies from PA at the "Wholesale Price" set by PA minus the print fees set forth in Attachment A to Exhibit 1. See Exhibit 1, Section II.A and B. Except for titles specifically designated as returnable by PA, LSI resold Wholesale Orders to its customers on a non-returnable basis. When LSI's customers returned eligible books, PA was obligated to refund the Wholesale Price received from LSI for that sale. LSI was obligated to destroy those returns unless PA directed LSI to ship those returns to PA; in that event, PA was obligated to pay a \$2.00 shipping and handling fee for each returned book.

II. PERFORMANCE OF THE AGREEMENT

9. LSI has purported to fill both Wholesale Orders and Publisher Direct Orders pursuant to the Agreement. Starting in the second half of 2005, PA began designating some of its titles as returnable. Thereafter, LSI charged PA the Wholesale Price of all returns that it purported to receive. However, PA never saw those returns because LSI destroyed them upon

receipt.

10. In or around early 2009, PA started questioning the accuracy of LSI's return charges. As a result, PA directed LSI to ship all returns received by it to PA in order to allow PA to verify the authenticity of all return charges. PA explained its reason for wanting to see the returns to LSI. Starting in May 2009, LSI started shipping returns to PA, charging PA an additional \$2.00 shipping and handling fee for each returned book.

11. When PA started receiving copies of returned books, it noticed that the books did not look like returns at all. Returned books typically show some signs of wear and tear from handling by bookstores and customers. The books received by PA were in pristine condition like they had been newly printed. When PA questioned LSI about this, LSI admitted that the books shipped by it were not returns at all; instead, LSI had been destroying the returns and then reprinting replacement copies. PA also started noticing some disturbing trends after opting to have LSI ship returns to it. Among other things, there were many discrepancies in LSI's reports as well as delays processing the returns.

12. During this investigation by PA, LSI also admitted that it had been breaching the contract. Rather than only accepting returns of Wholesale Orders, LSI had also been accepting returns of books that had been sold by PA to bookstores and/or individual customers. This included books that were sold by LSI to PA as Publisher Direct Orders and even books that were never even printed by LSI at all, e.g. books printed on PA's own printing equipment. This was not authorized by the Agreement.

13. On October 7, 2009, PA notified LSI that it was lowering the Wholesale Price for all of its books. LSI notified PA that this reduction would go in effect on November 1, 2009. Nevertheless, LSI did not timely implement the price reduction.

COUNT I

14. PA incorporates paragraphs 1 to 13 as if set forth herein.

15. Pursuant to the parties' Agreement, LSI was only authorized to charge PA for returns of Wholesale Orders, *i.e.* books ordered directly from LSI by its customers.

16. Nevertheless, LSI charged PA for returns of books sold by PA, many of which were never even printed by LSI. This was a breach of the Agreement.

17. As a result of this breach, LSI inappropriately charged PA for thousands of returns. Compounding this harm, LSI failed to record any information that would allow the parties to determine which books were subject to return and which ones were not. To the contrary, LSI destroyed the returns making it impossible to verify that even one single charge assessed by LSI for returns was authorized by the Agreement.

WHEREFORE, Plaintiff Publish America, LLLP demands that this Court award Plaintiff Seven Hundred Seventy-Five Thousand dollars (\$775,000.00) in compensatory damages, costs, interest and attorneys' fees as may be established at trial, as well as such other and further relief as this Court may deem just and proper.

COUNT II

18. PA incorporates paragraphs 1 to 13 as if set forth herein.

19. LSI represented that if PA elected to have returns shipped to PA rather than

destroyed, LSI would ship the actual copies of the returns.

20. Based upon that promise, PA elected to have its returns shipped to it rather than destroyed by LSI.

21. LSI breached the contract by destroying the returns and reprinting substitute copies.

22. As a result of the breach, PA had to pay a \$2 charge for returns that were useless to it.

WHEREFORE, Plaintiff Publish America, LLLP demands that this Court award Plaintiff Thirty Three Thousand Three Hundred and Twenty Six dollars (\$33,326.00) in compensatory damages, costs, interest and attorneys' fees as may be established at trial, as well as such other and further relief as this Court may deem just and proper.

COUNT III

23. PA incorporates paragraphs 1 to 13 as if set forth herein.

24. LSI led PA to believe that if PA elected to have returns shipped, LSI would deliver any actual copies of returns received by it to PA. This representation was material since it concerned the quality of books that LSI would send to PA. A reasonable publisher would expect returns to be of a lower quality than newly printed books and thus might be less likely to elect to have them shipped (rather than destroyed) if given the option, as LSI did in the Agreement.

25. In fact, LSI's statements and representations were false. When LSI offered to deliver any actual copies of returns to PA, it knew that it was never going to do so. According to

LSI's practices and policies, it destroyed all of the original returns and reprinted substitute copies.

26. PA relied upon LSI's misrepresentations. First, when it originally started making titles returnable in 2005, PA elected to have LSI destroy those returns rather than ship them to PA because it expected those books to be of low quality and thus not be resalable. Then, in 2009, PA elected to change its return status from destroy to deliver based solely on its expectation that the books would be of low quality. Since PA had started to question the authenticity of LSI's return charges, PA wanted to see the actual returns in order to verify that they contained the signs of wear and tear a reasonable publisher would expect. If PA had known that the actual copies of the returns would be destroyed and that LSI was going to reprint substitute copies, PA never would have elected to have returns shipped to it. PA's reliance was reasonable. Not only did it notify LSI of its reasons for electing to have returns delivered, but it diligently investigated the matter until LSI had no choice but to admit to the fraud.

27. As a result of the intentional misrepresentations, PA paid a \$2 charge for each return shipped from LSI that it would not have paid if LSI had told PA the truth or otherwise complied with the contract.

WHEREFORE, Plaintiff Publish America, LLLP demands that this Court award Plaintiff Thirty Three Thousand Three Hundred and Twenty Six dollars (\$33,326.00) in compensatory damages and Thirty Three Thousand Three Hundred and Twenty Six dollars (\$33,326.00) in punitive damages, costs, interest and attorneys' fees as may be established at trial, as well as such other and further relief as this Court may deem just and proper.

COUNT IV

28. PA incorporates paragraphs 1 to 13 as if set forth herein.

29. LSI led PA to believe that if PA elected to have returns shipped, LSI would deliver any actual copies of returns received by it to PA. This representation was material since it concerned the quality of books that LSI would send to PA. A reasonable publisher would expect returns to be of a lower quality than newly printed books and thus might be less likely to elect to have them shipped (rather than destroyed) if given the option, as LSI did in the Agreement. LSI made this representation in the course of its business in an effort to guide Plaintiff.

30. In fact, LSI's statements and representations were false. When LSI offered to deliver any actual copies of returns to PA, it should have known that it was never going to do so. According to LSI's practices and policies, it destroyed all of the original returns and reprinted substitute copies. Thus, LSI did not exercise reasonable care when communicating this information to PA.

31. PA relied upon LSI's misrepresentations. First, when it originally started making titles returnable in 2005, PA elected to have LSI destroy those returns rather than ship them to PA because it expected those books to be of low quality and thus not be resalable. Then, in 2009, PA elected to change its return status from destroy to deliver based solely on its expectation that the books would be of low quality. Since PA had started to question the authenticity of LSI's return charges, PA wanted to see the actual returns in order to verify that they contained the signs of wear and tear a reasonable publisher would expect. If PA had known

that the actual copies of the returns would be destroyed and that LSI was going to reprint substitute copies, PA never would have elected to have returns shipped to it. PA's reliance was reasonable. Not only did it notify LSI of its reasons for electing to have returns delivered, but it diligently investigated the matter until LSI had no choice but to admit to the misrepresentations.

32. As a result of the negligent misrepresentations, PA paid a \$2 charge for each return shipped from LSI that it would not have paid if LSI had told PA the truth or otherwise complied with the contract.

WHEREFORE, Plaintiff Publish America, LLLP demands that this Court award Plaintiff Thirty Three Thousand Three Hundred and Twenty Six dollars (\$33,326.00) in compensatory damages, costs, interest and attorneys' fees as may be established at trial, as well as such other and further relief as this Court may deem just and proper.

COUNT V

33. PA incorporates paragraphs 1 to 13 as if set forth herein.

34. LSI was obligated to implement PA's price reduction by November 1, 2009.

35. LSI breached its obligations to PA by failing to implement those changes as required.

36. As a result, PA has reimbursed LSI for returns at a higher Wholesale Price than it would have if the price reduction had been implemented.

WHEREFORE, Plaintiff Publish America, LLLP demands that this Court award Plaintiff Fifty Thousand dollars (\$50,000.00) in compensatory damages, costs, interest and attorneys' fees as may be established at trial, as well as such other and further relief as this Court may deem just

and proper.

COUNT VI

37. PA incorporates paragraphs 1 to 13 as if set forth herein.

38. LSI led PA to believe that PA owed it money under the Agreement for returns that LSI had received. LSI made these representations in monthly statements. These representations were material since the amount charged in the statements directly corresponded to the amount of money that LSI expected to be paid.

39. In fact, LSI's statements and representations were false because LSI charged PA for books that were not eligible for return under the Agreement. LSI knew, or should have know about this falsity, since it drafted the Agreement.

40. PA relied upon LSI's misrepresentations by paying the charges assessed by LSI. PA's reliance was reasonable because it had no way to know that LSI's representations were false. Indeed, LSI had covered up its fraud by destroying the returns.

41. As a result of the misrepresentations, PA paid return charges to LSI that it would not have paid if LSI had told PA the truth or otherwise complied with the contract.

WHEREFORE, Plaintiff Publish America, LLLP demands that this Court award Plaintiff Seven Hundred Seventy-Five Thousand dollars (\$775,000.00) in compensatory damages, costs, interest and attorneys' fees as may be established at trial, as well as such other and further relief as this Court may deem just and proper.

COUNT VII

42. PA incorporates paragraphs 1 to 13 as if set forth herein.

43. LSI led PA to believe that PA owed it money under the Agreement for returns that LSI had received. LSI made these representations in monthly statements. These representations were material since the amount charged in the statements directly corresponded to the amount of money that LSI expected to be paid.

44. In fact, LSI's statements and representations were false because LSI charged PA for books that were not eligible for return under the Agreement. LSI did not use reasonable care when making these representations since it should have known that the Agreement did not authorize these charges.

45. PA relied upon LSI's misrepresentations by paying the charges assessed by LSI. PA's reliance was reasonable because it had no way to know that LSI's representations were false. Indeed, LSI had covered up its fraud by destroying the returns.

46. As a result of the misrepresentations, PA paid return charges to LSI that it would not have paid if LSI had told PA the truth or otherwise complied with the contract.

WHEREFORE, Plaintiff Publish America, LLLP demands that this Court award Plaintiff Seven Hundred Seventy-Five Thousand dollars (\$775,000.00) in compensatory damages, costs, interest and attorneys' fees as may be established at trial, as well as such other and further relief as this Court may deem just and proper.

Respectfully Submitted,



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JURY DEMAND

Pursuant to Fed. R. Civ. Proc. 38, Plaintiff in the above captioned matter demands a trial by jury of all issues so triable in this matter and respectfully requests that this matter be placed on the jury docket.



Raymond Leathers