

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF OKLAHOMA**

(1) LIGHTNING SOURCE LLC,

Plaintiff,

v.

(1) TATE PUBLISHING &
ENTERPRISES, LLC; and
(2) RYAN TATE,

Defendants.

Case No. CIV-17-50-R

COMPLAINT

Plaintiff Lightning Source LLC (“Lightning Source”) for its claims against Defendants Tate Publishing & Enterprises, LLC (“Tate Publishing”) and Ryan Tate (“Tate”) (together “Defendants”) states and alleges as follows:

THE PARTIES, JURISDICTION AND VENUE

1. Lightning Source is a Delaware limited liability company with its principal place of business in LaVergne, Tennessee. Lightning Source’s sole member is Ingram Industries Inc. Ingram Industries Inc. is a Tennessee corporation with its principal place of business in Tennessee.

2. Tate Publishing is an Oklahoma limited liability company with its principal place of business in Mustang, Oklahoma. Upon information and belief, none of the members of Tate Publishing are citizens of Delaware or Tennessee.

3. Tate is an individual resident of Oklahoma.

4. The Court has jurisdiction over this civil action because this action arises from diversity jurisdiction under 28 U.S.C. § 1332(a). Venue is proper in this district

under 28 U.S.C § 1391 because it is a judicial district in which a substantial part of the events or omissions giving rise to the claim occurred and it is the judicial district which the Defendants reside.

GENERAL ALLEGATIONS

5. On or about June 28, 2016, Lightning Source and Tate Publishing entered into a written Print on Demand Agreement (the “Agreement”) in which Lightning Source agreed to provide print on demand services to Tate Publishing pursuant to an agreed upon price schedule. A true and correct copy of the Agreement is attached as Exhibit 1.

6. In consideration for the exclusive rights to print and distribute at least five million, five hundred thousand (5,500,000) non-returned units of titles, anticipated to occur within five years of the date of the Agreement, Lightning Source paid Tate Publishing \$722,000.00.

7. On or about July 6, 2016, as additional consideration to induce Lightning Source to make the initial \$722,000.00 payment and further extend credit to Tate Publishing, Tate made, executed and delivered a Personal Guaranty, pursuant to which he absolutely and unconditionally guaranteed the full payment of all amounts due from Tate Publishing to Lightning Source under the Agreement. The Personal Guaranty further provides that Lightning Source may pursue collection from Tate at the same time it seeks collection from Tate Publishing. A true and correct copy of the Personal Guaranty is attached as Exhibit 2.

8. Lightning Source provided services to Tate Publishing pursuant to the Agreement and Tate Publishing was sent weekly consolidated invoices that itemized the

amounts owed to Lightning Source. Payments on these invoices were due within sixty (60) days of the invoice date. The Agreement provides for a late charge of 1.5% per month or the maximum amount allowed by law on all past due invoices.

9. Despite the provision of services by Lightning Source to Tate Publishing under the Agreement, Tate Publishing failed to pay the amounts it owes under the Agreement.

10. The Agreement has now been terminated under paragraph I.H. because of Tate Publishing's failure to comply with the payment terms, and Tate Publishing must pay Lightning Source the entire balance that remained outstanding on the termination date of the Agreement. That amount is \$1,123,725.90 plus late charges as provided for in the Agreement.

11. Based on the difficulty of assessing damages if the Agreement was terminated early, Section D.2 of the Agreement provides for liquidated damages of an amount no less than \$722,000.00, which was the initial amount paid to Tate Publishing by Lightning Source.

12. Because the Agreement has been terminated by no fault of Lightning Source, the liquidated damages clause is in effect and Tate Publishing must pay Lightning Source an additional \$722,000.00 in liquidated damages.

13. Lightning Source has made demands on Tate Publishing and Tate for payment of the balance due under the Agreement but Tate Publishing and Tate have refused and failed to pay the amount owed.

14. Lightning Source Australia Pty Ltd. and Lightning Source UK Ltd. were also parties to the Agreement and both entities have assigned their claims to Lightning Source to be brought and collected upon in this action.

CLAIMS FOR RELIEF

COUNT I - BREACH OF CONTRACT

15. Lightning Source re-alleges and incorporates the allegations stated in Paragraphs 1-14 of this Petition.

16. Tate Publishing failed to timely make the payments to Lightning Source required by the express terms of the Agreement and the Agreement has been terminated.

17. Lightning Source is entitled to a money judgment against Tate Publishing for the full outstanding balance due under the Agreement plus liquidated damages, which amount is \$1,845,725.90 plus interest accruing in accordance with the late charge rate provided for in the Agreement.

18. Under the terms of the Agreement Lightning Source is further entitled to recover from Tate Publishing all attorney fees and costs incurred in this matter.

COUNT II - BREACH OF GUARANTY

19. Lightning Source re-alleges and incorporates the allegations stated in Paragraphs 1-18 of this Petition.

20. Tate personally and unconditionally guaranteed payment of all amounts due including liquidated damages from Tate Publishing to Lightning Source under the Agreement.

21. Lightning Source provided Tate with a written demand for payment of the entire balance that Tate Publishing owes to Lightning Source under the Agreement. Despite this demand Tate has refused to pay the outstanding balance owed to Lightning Source.

22. The refusal of Tate to pay the amount owed by Tate Publishing is a breach of the Personal Guaranty he executed in Lightning Source's favor.

23. Lightning Source is entitled to a money judgment against Tate for the full outstanding balance owed by Tate Publishing under the Agreement plus liquidated damages, which amount is \$1,845,725.90 plus interest accruing in accordance with the late charge rate provided for in the Agreement.

24. Under the terms of the Personal Guaranty Lightning Source is further entitled to recover from Tate all attorney fees and costs incurred in this matter.

REQUESTED RELIEF

WHEREFORE, premises considered, Plaintiff Lightning Source respectfully requests the Court for judgment in its favor and against Defendants providing as follows:

1. That this Court enter money judgment against Tate Publishing for the full outstanding balance owed under the Agreement plus liquidated damages, the sum of which is \$1,845,725.90 plus interest accruing in accordance with the late charge rate provided for in the Agreement.

2. That this Court enter money judgment against Tate for the full outstanding balance owed by Tate Publishing under the Agreement plus liquidated damages, the sum

of which is \$1,845,725.90 plus interest accruing in accordance with the late charge rate provided for in the Agreement.

3. That this Court award Lightning Source its attorney's fees and all costs incurred in pursuing the collection of the owed amounts as stated in the Agreement and Personal Guaranty.

4. For such other and further relief as the Court deems to be just and equitable under the facts and circumstances.

Respectfully submitted,

s/Evan G.E. Vincent

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