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12 Attorneys for Plaintiffs and the Putative Class

14 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA  
15 COUNTY OF ORANGE

17 PATRICK O'BEIRNE and WILLIAM GIBBES  
18 PIERCE, individually and on behalf of all others  
19 similarly situated,

19 Plaintiffs,

20 vs.

21 COPIER SOURCE, INC., dba Image Source, a  
22 California Corporation

23 Defendant.

Case No.: 30-2015-00801066-CU-OE-CXC

**ORDER GRANTING PRELIMINARY  
APPROVAL OF CLASS ACTION  
SETTLEMENT**

**Date:** April 6, 2016  
**Time:** 1:30 p.m.  
**Dept:** CX-104  
**Judge:** Hon. Kim G. Dunning

**[Non-appearance Case Review]**

**Trial Date:** None Set  
Action filed on July 28, 2015

**ELECTRONICALLY FILED**  
Superior Court of California,  
County of Orange  
**03/30/2016** at 01:00:00 PM  
Clerk of the Superior Court  
By Sarah Loose, Deputy Clerk

1 This matter is before the Court on Plaintiffs’ unopposed Motion for Preliminary Approval of  
2 Joint Stipulation and Class Action Settlement (the “Settlement Agreement”), a copy of which has been  
3 submitted as Exhibit 2 to the Declaration of Julian Hammond in Support of Plaintiffs’ Motion for  
4 Order Granting Preliminary Approval of Class Action Settlement, of the above-entitled case. The  
5 matter came on for hearing on March 16, 2016 in the above-identified Court, and the parties were  
6 represented by their respective counsel.

7 On March 16, 2016 the Court issued a Tentative Ruling raising around 20 questions and/or  
8 concerns regarding the Settlement Agreement and heard oral argument regarding the Tentative. The  
9 parties agreed to modify the Settlement Agreement to address the Court’s concerns, and Class Counsel  
10 submitted supplemental papers, including a Joint Stipulation and First Addendum amending the  
11 Settlement Agreement to address the Court’s concerns as set forth in the Tentative Ruling.

12 The motion, having been fully considered by the Court, is ruled upon as follows:

13 Based upon Plaintiffs’ unopposed Motion for Preliminary Approval of the Settlement  
14 Agreement, the accompanying declarations and exhibits attached thereto, argument at hearing, and all  
15 of the files, records and papers filed in this class action and proceedings herein, and it appearing to the  
16 Court, upon preliminary examination, that the settlement set forth herein is within the range of  
17 reasonableness, and that a final approval hearing should and will be held after notice to the Settlement  
18 Class to confirm that the Settlement Agreement therein is fair, adequate and reasonable, and to  
19 determine whether a Judgment should be entered in this action thereon:

20 IT IS HEREBY ORDERED THAT:

21 1. This Order Granting Preliminary Approval of the Settlement Agreement Certifying  
22 Provisional Settlement Class, Appointing Settlement Administrator, Approving Notice of Proposed  
23 Class Action Settlement, and Setting Final Approval Hearing Date (“Preliminary Approval Order”),  
24 hereby incorporates by reference the definitions in the Settlement Agreement, and all terms used herein  
25 shall have the same meaning as set forth in the Settlement Agreement.

1           2.       This Court preliminarily approves the Settlement Agreement, and finds that the  
2 Settlement Agreement is within the range of reasonableness as to the Class and Defendant, and is the  
3 product of good faith, arm’s length negotiations between the parties.

4           3.       This Court has considered the papers in support of the Motion and the Settlement  
5 Agreement and finds that the, pursuant to C.R.C. Rule 3.769(d), proposed Class should be certified for  
6 settlement purposes only. Specifically, the Court finds for settlement purposes only that the proposed  
7 Class: (a) is ascertainable; (b) is sufficiently numerous; (c) meets the commonality requirements; (d) the  
8 claims of the Class Representatives are typical of the claims of the proposed Class Members; (e) Class  
9 Representatives’ counsel has and is able to adequately represent the proposed Class; (f) the Class  
10 Representatives are adequate to represent the Class; and (g) class-wide treatment of this dispute is  
11 superior to individual litigation because common issues predominate over individual issues for  
12 settlement purposes.

13           4.       This Court certifies a provisional class for the purposes of this settlement defined as:

14                   **“all employees of Defendant Copier Source, Inc. d.b.a. Image Source who**  
15                   **worked as Account Executives and/or Sales Representatives for Defendant in**  
16                   **the State of California during the time period beginning July 28, 2011 and**  
17                   **ending on the earlier of January 31, 2016 or the Preliminary Approval Date.”**

18           5.       This Court also certifies four provisional subclasses for the purposes of settlement  
19 defined as:

20                   a.       “All Account Executives who worked for Defendant during the Class Period,  
21                   *were not* provided with a monthly auto allowance, and who *did not* sign an audit  
22                   and release on or after June 2015 indicating they were fully compensated for all  
23                   auto expenses.”

24                   b.       “All Account Executives who worked for Defendant during the Class Period,  
25                   *were not* provided with a monthly auto allowance, and who *did* sign an audit and  
26                   release on or after June 2015 indicating they were fully compensated for all auto  
27                   expenses.”

28                   c.       “All Account Executives who worked for Defendant during the Class Period,  
                  *were* provided with a monthly auto allowance, and who *did not* sign an audit and

1 release on or after June 2015 indicating they were fully compensated for all auto  
2 expenses.”

3 d. “All Account Executives who worked for Defendant during the Class Period,  
4 were provided with a monthly auto allowance, and who *did* sign an audit and  
5 release on or after June 2015 indicating they were fully compensated for all auto  
6 expenses.”

7 6. The Court finds that for the purposes of settlement, Plaintiffs have established in their  
8 moving papers, supporting declarations, and supplemental submissions, all of the requirements for  
9 certification of provisional settlement classes pursuant to Cal. Rules of Court, Rule 3.769(d).

10 7. The Court appoints and designates, for settlement purposes only, Simpluris, Inc. as  
11 Settlement Administrator. The Court further preliminarily approves the payment of the settlement  
12 administration costs as provided in the Settlement Agreement.

13 8. The Court appoints and designates, for settlement purposes only, Plaintiffs Patrick  
14 O’Beirne and William Girbes-Pierce as the Class Representatives and the law firms HammondLaw, P.C.  
15 and Ackermann & Tilajef, P.C. as Class Counsel.

16 9. The Court preliminarily approves payments from the Gross Settlement Amount as set  
17 forth in the Settlement Agreement, and specifically as follows:

- 18 a. Service Award to each named Plaintiff in the amount of up to \$6,000;
- 19 b. Reasonable attorneys’ fees in an amount up to \$131,100, and costs and expenses  
20 in an amount of up to \$15,000, to Class Counsel;
- 21 c. \$6,000 for penalties based on the PAGA claims asserted in the action, with \$4,500  
22 (75% of that amount) to be paid to the California Labor and Workforce  
23 Development Agency;
- 24 d. Costs of settlement administration up to \$8,000, to be paid to the Settlement  
25 Administrator designated by the parties;
- 26 e. \$5,000 to be set aside in and as a Reserve Fund, to be distributed pursuant to the  
27 Settlement Agreement;

1 f. The balance of the Maximum Settlement Amount following the payments  
2 summarized in subparagraphs (a) through (f) to constitute the Net Settlement  
3 Amount which is to be distributed to Participating Class Members in the manner  
4 prescribed in the Settlement Agreement.

5 10. The Settlement Administrator, with information to be provided by the Defendant and the  
6 assistance of the Parties as necessary, shall provide Notice to the Class Members in the following  
7 manner: Within ten (10) calendar days of this Order, Defendant shall provide the information pertaining  
8 to all Class Members as described in the Settlement Agreement to the Settlement Administrator. Within  
9 twenty (20) calendar days of this Order, the Settlement Administrator will send the revised Notice of  
10 Proposed Class Action Settlement (attached to the Declaration of Craig J. Ackermann as **Exhibit 2**) and  
11 revised Estimated Share Form (referred to in the Settlement Agreement as a “Share Form”) (attached to  
12 the Declaration of Craig J. Ackermann as **Exhibit 3**) (collectively the “Notice Packet”) to the Class via  
13 U.S. First Class Mail.

14 11. The Notice Packet shall provide information on the meaning and nature of the Settlement  
15 Class, the terms and provisions of the Settlement Agreement, the manner in which payments to the  
16 former Class Members may be claimed, how such payments will be calculated, the application of Class  
17 Counsel for reimbursement of costs and for attorneys’ fees, the Plaintiffs’ proposed Service Awards  
18 from the Maximum Settlement Amount, the date, time and place of the final approval/fairness hearing,  
19 and the procedures and deadlines for objection to the Settlement Agreement and/or requesting exclusion  
20 from the Class, all as specified in the Settlement Agreement. In the event that the first mailing of any  
21 Notice packages are returned without a forwarding address, the Settlement Administrator will promptly  
22 perform a standard skip trace to obtain a current address and re-mail the Notice Packets to such address,  
23 if available. If necessary thereafter, the Settlement Administrator shall perform an in-depth manual skip  
24 tracing and re-mail the Notice Packet if a newer or more accurate address is found. The Request for  
25 Exclusion must be postmarked no later than the Notice Response Deadline (which is the date forty-five  
26 (45) calendar days after the Notice Packet is mailed to the Class Members by the Settlement  
27 Administrator), or as otherwise ordered by the Court.

1           12.     Class Members will have forty-five (45) calendar days from the date of the first mailing  
2 to submit Requests for Exclusion and/or objections. Participating Class Members, who are all Class  
3 Members who do not opt out of the settlement, shall be eligible to share in the distribution of the Net  
4 Settlement Amount as specified in the Settlement Agreement. Amounts allocated to Class Members  
5 who file a Request for Exclusion will be included in the amounts distributed to Participating Class  
6 Members. Any Class Members who wish to object to the settlement must do so in writing and must  
7 include the Class Member's name, address, and last four digits of his/her Social Security number, and  
8 state the basis of the objection. All objections must be mailed to the Settlement Administrator and  
9 postmarked no later than the Notice Response Deadline. The Settlement Administrator shall date  
10 stamp, serve, and file any Requests for Exclusion, objections, or withdrawals of the same as provided  
11 in the Settlement Agreement.

12           13.     All papers in support of Final Approval and related awards or fees shall be submitted,  
13 and Class Plaintiffs' Enhancement shall be filed and served, at least sixteen (16) court days prior to the  
14 Final Approval Hearing.

15           14.     The Final Approval Hearing shall be held on August 31, 2016, at 1:30 p.m. in  
16 Department CX104 of this Court, to determine whether the Settlement Agreement and the payments  
17 specified in it as summarized above are fair, adequate, reasonable, and should be finally approved.

18           15.     Should the Court grant Final Approval of the Settlement Agreement, following the Final  
19 Approval Hearing, the Court shall enter Judgment in the instant class action in accordance with the  
20 Settlement Agreement that will adjudicate the rights of all Class Members who do not request exclusion,  
21 including the named Plaintiffs, and shall dismiss the action with prejudice.

22           16.     The Court shall designate California Rural Legal Assistance, Inc. as the *cy pres*  
23 beneficiaries, pursuant to California Code of Civil Procedure section 384(b).

24           17.     Unless and until further order by this Court, the Parties and the Classes (as defined in the  
25 Settlement Agreement) are enjoined from commencing or pursuing any action before any other court  
26 addressing the same claims presented in this action and/or covered by the Settlement Agreement.  
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1 18. In the event that this Court does not grant Final Approval to the settlement, or the  
2 settlement is reversed or modified by any other court with jurisdiction over this matter, then the  
3 Settlement Agreement shall become null and void *ab initio* and shall have no bearing on, and shall not  
4 be admissible in connection with, further proceedings in this or any other action, including, without  
5 limitation, any proceedings to determine whether class certification would be appropriate.

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7 **IT IS SO ORDERED.**

8 **Date Judge Signed: March 30, 2016**



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11 The Honorable Kim G. Dunning  
12 Judge of the Superior Court  
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