

# Exhibit 1

**SETTLEMENT AGREEMENT AND RELEASE**

Plaintiffs Colin Bisson, Jaimie Landreth, Nicholas Lombardi, Kendall Micone, Jessica Sharp, and Alexander Skreen (“Plaintiffs”) and Defendants ShopKeep, Inc. and Lightspeed Commerce USA Inc. (“Defendants”) (collectively with Plaintiffs, the “Parties”) hereby enter into this Settlement Agreement and Release (the “Agreement”) to resolve the wage and hour claims of Plaintiffs and class and collective members (as defined below).

**RECITALS**

- A. WHEREAS, on November 12, 2020, Plaintiffs’ counsel sent ShopKeep, Inc. (“ShopKeep”) a letter in which they asserted that ShopKeep failed to pay Plaintiffs and sales representatives overtime wages for all overtime hours worked, and related wage and hour violations, and invited ShopKeep to engage in settlement negotiations;
- B. WHEREAS, thereafter Lightspeed Commerce USA Inc.’s corporate parent acquired ShopKeep, and Plaintiffs assert that Lightspeed Commerce USA Inc. is liable as a successor for ShopKeep’s wage and hour violations and is liable for its own post-acquisition wage and hour violations;
- C. WHEREAS, on or around January 8, 2021, the Parties agreed to engage in dialogue regarding the possibility of a resolution of the threatened wage and hour claims and agreed to toll the limitations period on those claims;
- D. WHEREAS, on June 7, 2021, the Parties participated in a full-day mediation session with the assistance of experienced wage and hour class and collective action mediator Dina R. Jansenson, and participated in a second mediation session with Ms. Jansenson on June 25, 2021, resulting in a settlement term sheet executed on June 25, 2021;
- E. WHEREAS, based upon their analysis and their evaluation of a number of factors, and recognizing the substantial risks of litigation, including the possibility that the claims, if not settled now, might result in a recovery less favorable to Plaintiffs and class and collective members, and that might not occur for several years, Plaintiffs’ counsel is satisfied that the terms and conditions of this Agreement are fair, reasonable, and adequate, and that the Agreement is in the best interests of Plaintiffs and class and collective members;
- F. WHEREAS, Defendants have denied and continue to deny all allegations made by Plaintiffs, have denied and continue to deny that sales representatives were denied overtime pay under the Fair Labor Standards Act and New York and Oregon state wage and hour laws, that Defendants are liable or owes damages or penalties to anyone with respect to the alleged facts and causes of action subject to this Agreement, and that the claims subject to this Agreement are appropriate for class or collective treatment, except for purposes of settlement only. Nonetheless, without admitting or conceding any liability or damages whatsoever, Defendants have agreed to settle the disputed issues on the terms and conditions set forth in this Agreement, to avoid the burden, expense, and uncertainty of litigation of these claims; and

- G. NOW, THEREFORE, in consideration of the mutual covenants and promises set forth in this Agreement, as well as the good and valuable consideration provided for herein, the Parties agree to a full and complete settlement on the following terms and conditions:

1. **DEFINITIONS**

The defined terms set forth in this Agreement have the meanings ascribed to them below.

- 1.1. **Agreement** means this Settlement Agreement and Release.
- 1.2. **Application for Final Approval** means documents and materials to be filed with the Court pursuant to Section 7, seeking final approval of the settlement, attorneys' fees and expenses, and Service Awards.
- 1.3. **Bar Date** means the date that is sixty (60) days from the date of the initial mailing of the Notice, except for Class and Putative Collective Members to whom Notice is re-mailed, for whom the Bar Date shall be the later of sixty (60) days from the initial mailing or thirty (30) days from the date of the re-mailing, whichever is later. Notwithstanding the foregoing, any re-mailing must be made within the original sixty (60) day period. The Bar Date is the date by which any Class Member or Putative Collective Member who wishes to qualify as a Participating Class or Collective Member must timely submit a Claim Form pursuant to Section 4(F), and the deadline for Class Member Objections or Opt-out Statements, if any.
- 1.4. **Claim Form** means the form that Class Members and Putative Collective Members must return by the Bar Date to become Participating Class or Collective Members, substantially in the form set forth as Exhibit B hereto. The Claim Form is subject to approval by the Court. A copy of the Claim Form will be included with the Notice.
- 1.5. **Class Counsel** means Outten & Golden LLP.
- 1.6. **Class List** means a list of all Class and Putative Collective Members disclosed by Defendants pre-mediation, including their names, last known addresses, last known telephone numbers (to the extent such information is in Defendants' possession), last known personal email addresses (to the extent such information is in Defendants' possession), social security numbers, and dates and locations of employment with ShopKeep, Inc. and/or Lightspeed Commerce USA Inc. as a Sales Representative.
- 1.7. **Class Members** means, collectively, New York Class Members and Oregon Class Members.
- 1.8. **Complaint** means the Class and Collective Action Complaint that Class Counsel will file in the Supreme Court of New York, County of Kings, pursuant to Section 2, to commence the Litigation.
- 1.9. **Court** means the Supreme Court of New York, County of Kings.
- 1.10. **Days** means calendar days.

- 1.11 **Defendants** means ShopKeep, Inc. and Lightspeed Commerce USA Inc. as a successor entity to ShopKeep, Inc.
- 1.12. **Defendants' Counsel** means Jackson Lewis P.C.
- 1.13. **Effective Date** means the last of the following dates: (a) if there is no appeal of the Final Approval Order, thirty-one (31) days after the final approval order; or (b) if there is an appeal of the Final Approval Order, the day after all appeals are finally resolved in favor of final approval.
- 1.14. **Eligible Workweek** means each calendar week worked by a Sales Representative during the applicable Class or FLSA Collective Period.
- 1.15. **Employer Payroll Taxes** means all taxes and withholdings an employer is required to make pursuant to federal, state, and/or local law arising out of or based upon the payment of employment compensation in this Litigation, including but not limited to FICA, FUTA, and SUTA obligations. Defendants shall pay Employer Payroll Taxes in addition to the Maximum Settlement Amount in accordance with the terms of this Agreement.
- 1.16. **Fairness Hearing** means the hearing before the Court relating to the Motion for Final Approval.
- 1.17. **Final Approval Order** means the Order entered by the Court after the Fairness Hearing, approving the terms and conditions of this Agreement, authorizing distribution of Settlement Checks, Service Awards, and attorneys' fees and costs, and dismissing the Litigation with prejudice.
- 1.18. **FLSA Collective Period** means the period January 8, 2018 through April 1, 2021.
- 1.19. **Litigation** means the civil action that Named Plaintiffs will commence in the Supreme Court of the State of New York, County of Kings, for the purposes of seeking Court approval of the settlement described in this Agreement and otherwise to facilitate full and final disposition and release of the claims as described herein.
- 1.20. **Maximum Settlement Amount** refers to One Million Seven Hundred and Seventy-Five Thousand Dollars (\$1,775,000.00), which is the maximum amount Defendants have agreed to pay (other than Employer Payroll Taxes as set forth in Section 9(A) herein), subject to Section 9(B).
- 1.21. **Named Plaintiffs** means Colin Bisson, Jaimie Landreth, Nicholas Lombardi, Kendall Micone, Jessica Sharp, and Alexander Skreen.
- 1.22. **Net Fund** means the Maximum Settlement Amount less (1) the Settlement Administrator's fees and costs; (2) Court-approved Service Awards; and (3) Court-approved attorneys' fees and costs for Class Counsel.
- 1.23. **New York Class Members** means Sales Representatives employed by ShopKeep, Inc. and/or Lightspeed Commerce USA Inc. in New York during the New York Class Period.

- 1.24. **New York Class Period** means the period January 8, 2015 through April 1, 2021.
- 1.25. **Notice** means the Court-approved Notice of Proposed Class and Collective Action Settlement, as authorized in the Preliminary Approval Order, substantially in the form set forth as Exhibit A hereto.
- 1.26. **Objector** means a Class Member who properly files an Objection to the settlement and does not include any Class Member who opts out of this settlement.
- 1.27. **Opt-out Statement** is a written, signed statement that an individual Class Member has decided to opt out and be excluded from this settlement.
- 1.28. **Oregon Class Members** means Sales Representatives employed by ShopKeep, Inc. and/or Lightspeed Commerce USA Inc. in Oregon during the Oregon Class Period.
- 1.29. **Oregon Class Period** means the period January 8, 2018 through April 1, 2021.
- 1.30. **Participating Class Members** means all Class Members who timely submit Claim Forms before the Bar Date.
- 1.31. **Participating Collective Members** means all Putative Collective Members who timely submit Claim Forms before the Bar Date.
- 1.32. **Parties** means Named Plaintiffs and Defendants (each a “Party”).
- 1.33. **Preliminary Approval Order** means the Order entered by the Court: (i) certifying the New York and Oregon Classes solely for purposes of effectuating the Agreement; (ii) conditionally certifying the Fair Labor Standards Act Collective pursuant to 29 U.S.C. § 216(b) solely for purposes of effectuating the Agreement; (iii) preliminarily approving the terms and conditions of this Agreement; (iv) appointing Class Counsel as defined above; (v) directing the manner and timing of providing Notice to the Class and Putative Collective Members; and (vi) setting dates to effectuate the terms of this Agreement, including the date of the Fairness Hearing.
- 1.34. **Putative Collective Members** means Sales Representatives employed by ShopKeep, Inc. and/or Lightspeed Commerce USA Inc. outside of New York or Oregon during the FLSA Collective Period.
- 1.35. **Qualified Settlement Fund or QSF** means the account established by the Settlement Administrator for the Maximum Settlement Amount paid by Defendants. The QSF will be controlled by the Settlement Administrator subject to the terms of this Agreement and the Court’s Orders for Preliminary Approval and Final Approval.
- 1.36. **Released Class Claims** means any New York and/or Oregon state and local wage and hour claims pled in the Complaint that accrued during a Class Member’s employment in a covered Sales Representative position, relating back to the full extent of the applicable statutes of limitations, including any period tolled by the Parties’ January 8, 2021 tolling agreement, and continuing through the date the final settlement agreement is executed, or August 13, 2021, whichever is earlier, including, without limitations, all state claims for

unpaid overtime wages, premium pay of any kind, and related claims for penalties, interest, liquidated damages, attorneys' fees, costs, and expenses.

- 1.37. Released FLSA Claims** means FLSA claims pled in the Complaint that accrued during each Participating Class or Collective Member's employment in a covered Sales Representative position, relating back to the full extent of the applicable statutes of limitations, including any period tolled by the Parties' January 8, 2021 tolling agreement and continuing through the date the final settlement agreement is executed, or August 13, 2021, whichever is earlier, including, without limitations, claims for unpaid overtime wages and related claims for penalties, interest, liquidated damages, attorneys' fees, costs, and expenses.
- 1.38. Reminder** means the text set forth in Exhibit C hereto, which the Settlement Administrator shall send via First-Class United States Mail postcard, along with email and text (to the extent such contact information is in Defendants' possession), to Class Members who have not submitted a Claim Form, Opt-out Statement, or Objection, and to Putative Collective Members who have not submitted a Claim Form thirty (30) days after the initial mailing of the Notice.
- 1.39. Sales Representatives** means Sales Representatives, Point of Sale Specialists, and Account Executives employed by ShopKeep, Inc. and/or Lightspeed Commerce USA Inc. during the applicable Class or FLSA Collective Period.
- 1.40. Settlement Administrator** means the qualified administrator selected pursuant to Section 3(A) to disseminate the Notice, administer the calculation, allocation, and distribution of the QSF, and perform the administrative duties set forth in Section 3(C).
- 1.41. Settlement Checks** means checks issued to Participating Class and Collective Members for their share of the Net Settlement Fund, calculated in accordance with this Agreement.
- 1.42. Service Awards** means awards the Court approves to be paid to Named Plaintiffs Colin Bisson, Jaimie Landreth, Nicholas Lombardi, Kendall Micone, Jessica Sharp, and Alexander Skreen of up to Twelve Thousand Five Hundred Dollars (\$12,500.00) each.

## **2. COMPLAINT AND APPLICATION FOR PRELIMINARY APPROVAL.**

- A. Timing.** Within seven (7) days after the execution of this Agreement, Class Counsel shall file the Complaint in New York State Court, Kings County Supreme, and a motion for preliminary settlement approval ("Preliminary Approval Motion").
- B. Complaint.** The Parties mutually consent to the Court's jurisdiction and venue in Kings County. The Complaint shall list only ShopKeep, Inc. in the caption, although the Parties agree that Lightspeed Commerce USA Inc. shall execute this Agreement and any judgment in the Litigation shall be issued against both ShopKeep, Inc. and Lightspeed Commerce USA Inc.



- C. **Preliminary Approval Motion.** The Preliminary Approval Motion shall include: (1) the proposed Notice and Claim Form, attached hereto as Exhibits A and B; (2) a proposed Preliminary Approval Order; (3) an executed version of this Agreement; and (4) the necessary documents, memorandum, affidavits, and exhibits for purposes of certifying the Classes and Collective for settlement purposes only, and preliminarily approving the Agreement. The Preliminary Approval Motion will seek the setting of a Fairness Hearing for Final Approval of the settlement before the Court at the earliest practicable date.
- D. **Review.** Class Counsel shall provide Defendants' Counsel with drafts of the Complaint, Memorandum of Law in Support of Preliminary Approval Motion, and proposed Preliminary Approval Order at least seven (7) days in advance of filing to allow Defendants sufficient time to review and make comments. The Parties agree to meet and confer in good faith in the event that there are disputes over any of Defendants' comments to the Preliminary Approval Papers.

### 3. SETTLEMENT ADMINISTRATOR

- A. **Retention.** Class Counsel has selected ILYM Group, Inc. to serve as Settlement Administrator.
- B. **Settlement Administration Costs.** The Settlement Administrator's costs and expenses, not to exceed Sixteen Thousand Dollars (\$16,000), shall be paid from the Maximum Settlement Amount.
- C. **Responsibilities of the Settlement Administrator.** The Settlement Administrator shall be responsible for: disseminating the Notice, Claim Form, and Reminder, as provided herein; performing a skip trace up to two (2) times and resending, within one day of receipt, any Notice and Claim Form returned without forwarding information and resending to those with new forwarding information; responding to requests or communications made by the Parties; preparing, monitoring, and maintaining a website where Class and Collective Members can review additional information regarding the settlement and submit a Claim Form; preparing, monitoring, and maintaining a telephone number with phone answerers; promptly furnishing to counsel for the Parties copies of any Objections and Opt-out Statements that the Settlement Administrator receives; receiving, retaining, and reviewing submitted Claim Forms; providing counsel for the Parties with copies of all submitted Claim Forms; keeping track of Opt-out Statements, Objections, or otherwise, including maintaining the original mailing envelope in which the request was mailed; providing Class Counsel with a list of the names, addresses, and contact information for Class Members who do not opt-out after the expiration of the Bar Date and Participating Class and Collective Members; distributing the Settlement Checks to Participating Class and Collective Members; preparing, sending, and/or wire transferring Class Counsel's approved attorneys' fees and costs; mailing Service Awards in accordance with this

Agreement and the Final Approval Order; working with Class Counsel and Defendants' Counsel to resolve disputes raised by Class and Collective Members regarding Defendants' records and/or the calculation of Class and/or Collective Members' Net Settlement Amount pursuant to Section 9.3 below; referring to Class Counsel all inquiries by Class and Collective Members regarding matters not within the Settlement Administrator's duties specified herein; promptly apprising counsel for the Parties of the activities of the Settlement Administrator; maintaining adequate records of its activities, including the dates of the mailing and other communications and attempted written or electronic communications with Class and Collective Members, confirming in writing to Class Counsel and Defendants' Counsel its completion of the administration of the Agreement; timely responding to communications from the Parties and their counsel; calculating the Net Settlement Amounts; reporting on the status of the settlement to the Parties on a weekly basis; notifying counsel for all Parties of all timely and untimely submissions; providing a compliance affidavit in connection with the application for Final Approval; locating Class and Collective Members, including calling Class and Collective Members, if necessary; establishing and administering the QSF; calculating and paying, as provided herein, all appropriate taxes and complying with all applicable tax reporting obligations, including preparing and filing all applicable tax forms; and such other tasks as set forth herein, or as the Parties mutually agree.

- D. Access to the Settlement Administrator.** The Parties will have equal access to the Settlement Administrator throughout the settlement administration period. Defendants shall provide the Settlement Administrator with the information necessary to calculate the estimated Net Settlement Amounts for Class and Putative Collective Members and the Net Settlement Amounts for Participating Class and Collective Members, and both Parties shall reasonably assist the Settlement Administrator in locating Class and Collective Members.

#### 4. NOTICE AND CLAIM FORMS

- A. Class List.** Within seven (7) days of the Preliminary Approval Order, Defendants' Counsel shall provide the Settlement Administrator and Class Counsel with the Class List, except that the class list provided to Class Counsel shall not include social security numbers of the Class and Collective Members and the Settlement Administrator shall not share social security numbers with Class Counsel. The Settlement Administrator shall provide the Parties with its calculations regarding the number of workweeks included in the Class List, so that the Parties are able to determine whether the provisions of Section 9(B) are triggered.
- B. Notice Content.** The Notice will include a description of the claims and this Agreement, an estimate of each Class and Putative Collective Member's Net Settlement Amount, and detail regarding the opportunity to become eligible to



receive a Settlement Check by filing a Claim Form, and the opportunity to object or opt out, and/or appear at the Fairness Hearing, as applicable. The Notice will also advise Class and Putative Collective Members of a website where they can review information regarding the settlement and submit a Claim Form.

- C. Notice Distribution.** Within twenty-one (21) days of the Preliminary Approval Order, the Settlement Administrator shall send to all Class and Putative Collective Members, via First Class United States Mail and email (to the extent such information is in Defendants' possession), the Court-approved Notice and Claim Form, enclosing a postage pre-paid return envelope with the physical mailing. The Settlement Administrator will also send a text message (to the extent such contact information is in Defendants' possession) advising Class Members and Putative Collective Members of the settlement and of a website where they can review information regarding the settlement and submit a Claim Form.
- D. Skip Trace and Re-mailing.** The Settlement Administrator will use all commercially reasonable means to confirm Class and Putative Collective Members' addresses and obtain new addresses as necessary. In the event that a Notice and Claim Form mailed to a Class or Putative Collective Member is returned as undeliverable, the Settlement Administrator shall attempt to obtain the correct address of such person, including up to two (2) skip traces, and shall attempt a re-mailing provided it obtains a more recent address; provided, however, that skip traces shall be performed no later than sixty (60) days after the initial dissemination of Notice. The Settlement Administrator shall also mail and/or email a Notice and Claim Form to any Class Member or Putative Collective Member who contacts the Settlement Administrator or Class Counsel during the time period between the initial mailing of the Notice and the Bar Date and requests a Notice and Claim Form.
- E. Reminder.** The Settlement Administrator shall send the Reminder text set forth as Exhibit C hereto via First-Class United States Mail postcard, along with similar text via email and text message (to the extent such contact information is in Defendants' possession), to each Class Member who has not submitted a Claim Form, Opt-out Statement, or Objection, and to each Putative Collective Member who has not submitted a Claim Form thirty (30) days after the initial mailing of the Notice.
- F. Effective Claim Forms for Participating Class and Collective Members.** Only Participating Class and Collective Members shall be eligible to receive a Settlement Check from the settlement. To be effective for purposes of becoming a Participating Class or Collective Member, a Claim Form must be post-marked, faxed, emailed, submitted/completed online, or otherwise received by the Settlement Administrator by the Bar Date and include a signature in the designated area. To the extent a mailed Claim Form does not bear a post-mark, the Claim Form will be deemed timely if the Settlement Administrator receives it

within three (3) days of the Bar Date. Class and Collective Members who were unable to file the Claim Form by the Bar Date due to good cause, as mutually agreed by the Class Counsel and Defendants' Counsel, such as change of address, military service, hospitalization, or other extraordinary circumstances, shall have until seven (7) days before the Fairness Hearing in which to return their Claim Form and become a Participating Class or Collective Member.

## **5. CLASS MEMBER OPT-OUTS**

- A.** Class Members who choose to opt-out of the settlement as set forth in this Agreement must mail via First-Class United States Mail a written, signed statement to the Settlement Administrator that states that he or she is opting out of the settlement, and include his or her name, address, telephone number, and a statement indicating his or her intention to opt-out, such as: "I opt out of the ShopKeep wage and hour settlement." ("Opt-out Statement"). To be effective, an Opt-out Statement must be post-marked or otherwise received by the Bar Date.
- B.** The Settlement Administrator will stamp the received date on the original of each Opt-out Statement that it receives and shall serve copies of each Opt-out Statement on Class Counsel and Defendants' Counsel no later than three (3) days after receipt. The Settlement Administrator shall provide all Opt-out Statements in its compliance affidavit to be filed with the Application for Final Approval. The Settlement Administrator will retain the stamped originals of all Opt-out Statements and the originals of all envelopes accompanying Opt-out Statements in its files until such time as the Settlement Administrator is relieved of its duties and responsibilities under this Agreement.

## **6. OBJECTIONS TO THE SETTLEMENT.**

- A.** Class Members who wish to present objections to the settlement or the Agreement at the Fairness Hearing must first do so in writing ("Objection"). To be considered, such Objection must be mailed to the Settlement Administrator by First-Class United States Mail and post-marked or otherwise received by the Bar Date. The Objection must include all reasons for objecting to the settlement or the Agreement, and any supporting documentation. The Objection must also include the name, address, and telephone number for the Class Member making the objection (the "Objector"). The Settlement Administrator will stamp the date received on the original and send copies of each Objection and any supporting documentation, as well as a copy of the Notice and Claim Form mailed to the Objector, to Class Counsel and Defendants' Counsel by email no later than three (3) days after receipt of the Objection. A Class Member who opts out may not object.
- B.** An Objector has the right to appear at the Fairness Hearing either on his or her own behalf or through counsel hired by the Objector. An Objector who wishes to appear at the Fairness Hearing must state his or her intention to do so in writing

on his or her Objection at the time he or she submits his or her written Objection. An Objector may withdraw his or her Objection at any time.

- C. The Parties may file with the Court written responses to any filed Objections no later than three (3) days before the Fairness Hearing.

## 7. FAIRNESS HEARING AND MOTION FOR FINAL APPROVAL

- A. **Content.** After the Bar Date, in accordance with the schedule set by the Court in the Preliminary Approval Order and in advance of the Fairness Hearing, Class Counsel shall file supporting documents and materials for Final Approval of the Settlement (“Final Approval Motion”). The Final Approval Motion will include a compliance affidavit from the Settlement Administrator; an application for attorneys’ fees, costs, and Service Awards; supporting affidavits and documents from Class Counsel regarding the fairness, adequacy, and reasonableness of the settlement or any aspect related to this Agreement, and a proposed Final Approval Order. At the Fairness Hearing and through the Final Approval Motion, Named Plaintiffs shall request that the Court, among other things: (1) finally certify the New York and Oregon Classes for purposes of settlement only; (2) approve the settlement and this Agreement as fair, reasonable, adequate, and binding on all Class Members who do not opt out and all Participating Collective Members; (3) order the Settlement Administrator to disburse Settlement Checks to Participating Class and Collective Members; (4) order Service Awards, attorneys’ fees and costs, and the Settlement Administrator’s fees and costs to be paid from the QSF (5) order dismissal with prejudice of all Released Class Claims and Released FLSA claims, in accordance with this Agreement; (6) order entry of the Final Approval Order in accordance with this Agreement; and (7) retain jurisdiction over the interpretation and implementation of this Agreement as well as any and all matters arising out of, or related to, the interpretation or implementation of this Agreement and of the settlement contemplated hereby.
- B. **Review.** Class Counsel shall provide Defendants’ counsel with drafts of the Memorandum of Law in Support of Final Approval Motion and the proposed Final Approval Order (“Final Approval Papers”) at least seven (7) days in advance of filing to afford Defendants sufficient time to review and make comments. The Parties agree to meet and confer in good faith in the event that there are disputes over any of Defendants’ comments to the Final Approval Papers.

## 8. TERMINATION OF AGREEMENT

- A. **Grounds for Settlement Termination.** In the event that the Court declines to enter the Preliminary Approval Order or the Final Approval Order, except if the Court declines to enter the Preliminary Approval Order or the Final Approval Order due solely to the amount of attorneys’ fees sought by Class Counsel, the Parties Agree to work together in an effort resolve any issues identified by the

Court in an attempt to reach a modified agreement to resubmit to the Court for approval. If the Parties are unable to reach an agreement, then either Party has the right to terminate the Agreement. This Agreement is not contingent upon approval by the Court of Class Counsel's application for attorneys' fees, and if the Court approves the settlement payments allocated to Participating Class and Participating Collective Members as set forth in this Agreement, but not the application for attorneys' fees, the Agreement may not be terminated. Defendants will not oppose (a) an application for attorneys' fees of up to one-third of the Maximum Settlement Amount, plus litigation costs and expenses, to be paid out of the Maximum Settlement Amount, and/or (b) a motion for reconsideration of such application.

- B. Procedures for Termination.** To terminate this Agreement, the terminating Party shall give written notice to the other Party via email and overnight mail.
- C. Effect of Termination.** Termination shall have the following effects:
- i. The Agreement shall be terminated as to the affected Parties and shall have no force or effect.
  - ii. Defendants shall have no obligation to make any payments to any Party, Class or Collective Member, or Class Counsel, except that the Parties shall jointly be responsible for: (i) the costs and fees associated with the Settlement Administrator subsequent to the signing of this Agreement; and (ii) the costs and expenses of the Settlement Administrator associated with the mailing of the termination notice to Class and Collective Members, informing them of the settlement termination, if any.
  - iii. If the Court grants Preliminary Approval, but not Final Approval, the Settlement Administrator will issue a Court-approved notice to Class Members and Participating Collective Members that the Agreement did not receive Final Approval and that, as a result, no payments will be made to Participating Class and Collective Members under the Agreement. Such notice shall be sent by the Settlement Administrator via email and First-Class United States Mail.
  - iv. The Parties may jointly or independently seek reconsideration of a ruling by the Court declining to enter the Preliminary Approval Order or Final Approval Order in the form submitted by the Parties, or seek approval of a renegotiated settlement.
  - v. The Litigation will resume as if no settlement had been attempted and the Agreement and all negotiations, statements, and proceedings relating thereto shall be without prejudice to the right of any of the Parties, all of whom shall be restored to their respective positions prior to the entering of this Agreement, including the Parties' previous tolling agreement.

Defendants retain the right to contest whether the claims should be maintained as a class or collective action, and to contest the merits of the claims being asserted. The Preliminary Approval Order approving the settlement and certifying the Classes and Collective for settlement purposes only shall be null and void and the case may be certified only if Plaintiffs are granted class or collective certification after full briefing on a motion for such certification, or if the Parties agree otherwise.

## 9. SETTLEMENT TERMS

- A. **Maximum Settlement Amount.** Defendants agree to pay a Maximum Settlement Amount of no more than One Million Seven Hundred and Seventy-Five Thousand Dollars (\$1,775,000), subject to Section 9(B). Defendants shall pay Employer Payroll Taxes separately from, and in addition to, the Maximum Settlement Amount.
- B. **Total Workweeks.** This settlement is intended to cover no more than 150 Sales Representatives disclosed by Defendants pre-mediation and no more than 8,513 Eligible Workweeks ("Total Workweeks") for all New York Class Members for the period January 8, 2015 through July 30, 2021, and for all Oregon Class Members and Putative Collective Members for the period January 8, 2018 through July 30, 2021. Should the Total Workweeks increase by more than 2%, the parties will re-negotiate the Maximum Settlement Amount and if necessary engage Dina Jansenson to assist.
- C. **Funding.** By no later than seven (7) days after the Effective Date, Defendants shall deposit the Maximum Settlement Amount into the QSF, minus the portion of the Net Fund allocated to Class and Putative Collective Members who do not become Participating Class or Collective Members. The Settlement Administrator shall notify Defendants' Counsel of the total amount to be deposited into the QSF (and provide the calculations used to arrive at such amount) no later than seven (7) days after the Final Approval Order. The Settlement Administrator will act as escrow agent and will have the authority to release the settlement funds from escrow immediately for purposes of administering the settlement reflected in this Agreement immediately following the Effective Date.
- D. **Unclaimed Funds.** Any portion of the Maximum Settlement Amount not distributed as per the terms hereof, including any Settlement Checks not cashed after the expiration of one-hundred and twenty (120) days following issuance of Settlement Checks to Participating Class or Collective Member shall revert to Defendants. The Settlement Administrator shall transmit any funds remaining in the Net Fund to Defendants within seven (7) days after the expiration of all Settlement Checks.

### 9.1. Attorneys' Fees, Expenses and Costs

- A. At the Fairness Hearing and through the Application for Final Approval, Class Counsel will petition the Court for an award of attorneys' fees of up to one-third of the Maximum Settlement Amount, plus reimbursement of actual litigation expenses and costs to be paid from the QSF. Defendants will not oppose this application, including any appeal or request for reconsideration if the application is denied or modified by the Court.
- B. The substance of Class Counsel's application for attorneys' fees and costs is to be considered separately from the Court's consideration of the fairness, reasonableness, adequacy, and good faith of the settlement of the Litigation. The outcome of any proceedings related to Class Counsel's application for fees and costs shall not terminate this Agreement or otherwise affect the Court's ruling on the Motion for Final Approval. Any amount not approved by the Court will become part of the Net Fund to be distributed to Participating Class and Collective Members.
- C. Payment to Class Counsel of Court-approved fees and costs from the Maximum Settlement Amount shall be made ten (10) days after the Effective Date.

## 9.2. Service Awards

- A. In return for services rendered to Class and Collective Members, Named Plaintiffs will apply to the Court to receive up to Twelve Thousand Five Hundred Dollars (\$12,500) each as Service Awards from the Maximum Settlement Amount.
- B. The application for Service Awards is to be considered separately from the Court's consideration of the fairness, reasonableness, adequacy, and good faith of the settlement of the Litigation. The outcome of the Court's ruling on the application for Service Awards will not terminate this Agreement or otherwise affect the Court's ruling on the Motion for Final Approval, Final Approval Order, or the fairness or reasonableness of this Agreement. Defendants will not oppose Named Plaintiffs' application for Service Awards. Any amount not approved by the Court will become part of the Net Fund to be distributed to Participating Class and Collective Members.
- C. Named Plaintiffs will execute a general release as set forth in Section 10(C) in consideration for receipt of the Service Awards in the amounts requested.
- D. Payment to Named Plaintiffs of Court-approved Service Awards from the Maximum Settlement Amount shall be made ten (10) days after Effective Date.

## 9.3. Participating Class and Collective Members' Payments

- A. **Allocation.** Each Class and Putative Collective Member's proportionate share of the Net Fund shall be determined by the Settlement Administrator pursuant to the following formula:



- i. Putative Collective Members will receive one (1) point for each Eligible Workweek during the FLSA Collective Period;
  - ii. New York Class Members will receive one and  $\frac{3}{20}$  (1.15) points for each Eligible Workweek during the New York Class Period.
  - iii. Oregon Class Members will receive one (1) point for each Eligible Workweek during the Oregon Class Period.
  - iv. Each Eligible Workweek shall only be counted once pursuant to 9.3(A)(i), 9.3(A)(ii), or 9.3(A)(iii).
  - v. To calculate each Class and Putative Collective Member's proportionate share:
    - (a) Add all points for all Class and Putative Collective Members together to obtain the "Denominator";
    - (b) Divide the number of points for each Class and Putative Collective Member by the Denominator to obtain each Class and Putative Collective Member's "Portion of the Net Fund";
    - (c) Multiply each Class and Putative Collective Member's Portion of the Net Fund by the Net Fund to determine each Class and Putative Collective Member's "Net Settlement Amount";
    - (d) Each Participating Class and Collective Member's Net Settlement Amount will be the amount of their Settlement Check, less applicable taxes and withholdings pursuant to Section 9.4 herein.
- B.** The calculation of Eligible Workweeks shall be based on Defendants' business records in accordance with this Agreement. If a Class or Collective Member disputes Defendants' records and/or the calculation of his or her Net Settlement Amount, he or she must note his or her dispute on the Claim Form or under separate cover to the Settlement Administrator and provide written documentation supporting his or her contention. Defendants' records are presumed correct unless the Class or Collective Member proves otherwise with documentary evidence. The Settlement Administrator will evaluate the information the Class or Collective Member provides and will make the final decision as to any dispute.
- C. Timing of Payments.** Fourteen (14) days after the Effective Date, the Settlement Administrator will mail Settlement Checks to all Participating Class and Participating Collective Members.
- D. Check Cashing Period.** Participating Class and Participating Collective Members will have one hundred and twenty (120) days from the date Settlement Checks are issued by the Settlement Administrator to cash, deposit, or otherwise negotiate their Settlement Check.

- E. Check Reminders.** The Settlement Administrator will send reminders via email and First-Class United States Mail within sixty (60) days after the issuance of Settlement Checks to Participating Class and Participating Collective Members who have not yet cashed their Settlement Checks reminding them to negotiate their Settlement Checks prior to the one hundred and twenty (120) day deadline.

#### **9.4. Tax Characterization of Payments**

- A.** For tax purposes, one-half (50%) of payments to Participating Class and Collective Members pursuant to Section 9.3(A) shall be treated as W-2 wage payments and one-half (50%) of such payments shall be treated as 1099 non-wage income as liquidated damages, statutory penalties, and interest.
- B.** Payments treated as W-2 wages shall be made net of all applicable employment taxes, including, without limitation, federal, state, and local income tax withholding and the employee share of the FICA tax, and shall be reported to the Internal Revenue Service ("IRS") and the payee under the payee's name and social security number on an IRS Form W-2. Payments treated as liquidated damages, statutory penalties, and interest shall be made without withholding and shall be reported to the IRS and the payee, to the extent required by law, under the payee's name and social security number on an IRS Form 1099. Payment of attorneys' fees and costs pursuant to Section 9.1 shall be made without withholding. Class Counsel will receive a Form 1099 for this payment. Payment of Service Awards pursuant to Section 9.2 will be reported as deemed appropriate by the Settlement Administrator.
- C.** The employee portion of all applicable income taxes for the wage payments and any tax responsibility for the non-wage payments shall be the sole responsibility of the Participating Class or Collective Member.
- D.** Defendants and the Settlement Administrator shall exchange such information as is necessary for the Settlement Administrator to make proper tax withholdings and comply with its tax reporting obligations as described in this Section 9.4.

#### **10. RELEASE**

- A. Class Release.** By operation of the entry of the Final Approval Order, except as to such rights or claims as may be created by this Agreement, each Class Member who does not opt out of the Agreement pursuant to Section 5(A), on his or her behalf and on behalf of his or her respective, current, former and future heirs, spouses, executors, administrators, agents, and attorneys, forever and fully releases ShopKeep, Inc. and Lightspeed Commerce USA Inc. from the Released Class Claims.
- B. FLSA Release.** By operation of the entry of the Final Approval Order, except as to such rights or claims as may be created by this Agreement, each Participating Class and Collective Member, on his or her behalf and on behalf of his or her

respective current, former, and future heirs, spouses, executors, administrators, agents, and attorneys, forever and fully releases ShopKeep, Inc. and Lightspeed Commerce USA Inc. from the Released FLSA Claims.

- C. Named Plaintiff Release.** In addition to the waiver and release contained in Sections 10(A) and (B) above, and in consideration for the payment(s) received under Section 9, Named Plaintiffs, their heirs, executors, administrators, successors and assigns, voluntarily release and forever discharge Defendants, as well as their current and former owners, subsidiaries, divisions, affiliated entities, agents, officers, principals, trustees, administrators, executors, attorneys, employees, insurers, reinsurers, predecessors, successors and assigns, and their employee benefit plans and programs and their administrators and fiduciaries, both individually and in their official capacities (collectively “Releasees”) of and from any actions, causes of action, suits, debts, dues, sums of money, accounts, reckonings, bonds, bills, specialties, covenants, contracts, controversies, agreements, promises, judgments, obligations, claims, charges, complaints, appeals and demands whatsoever, in law or equity, which they may have against Releasees as of the date of execution of this Agreement, whether known or unknown, asserted or unasserted, including, but not limited to, any claims under federal, state or local laws.
- D. No Known Claims.** Defendants represent that they have no known claims against Named Plaintiffs.

## **11. DENIAL OF LIABILITY**

Defendants have agreed to the terms of this Agreement without in any way acknowledging any fault or liability, and with the understanding that terms have been reached because this settlement will avoid the further expenses and disruption of Defendants’ business due to the pendency and expense of litigation. Nothing in this Agreement shall be deemed or used as an admission of liability by Defendants, nor as an admission that a class or collective should be certified for any purpose other than settlement purposes.

## **12. INTERPRETATION AND ENFORCEMENT**

- 12.1. Cooperation Between the Parties; Further Acts.** The Parties shall reasonably cooperate with each other and shall use their reasonable best efforts to obtain the Court’s approval of this Agreement and all of its terms. Each Party, upon the request of any other Party, agrees to perform such further acts and to execute and deliver such other documents as are reasonably necessary to carry out the provisions of this Agreement.
- 12.2. No Assignment.** Class Counsel and Named Plaintiffs represent and warrant that they have not assigned or transferred, or purported to assign or transfer, to any person or entity, any claim or any portion thereof or interest therein, including, but not limited to, any interest in the claims, or any related action.

- 12.3. Entire Agreement.** This Agreement constitutes the entire agreement between the Parties with regard to the subject matter contained herein, and all prior and contemporaneous negotiations and understandings between the Parties regarding the subject matter of the Agreement shall be deemed merged into this Agreement, except that the Parties' separate tolling agreement remains in full force and effect and is not merged with this Agreement.
- 12.4. Binding Effect.** This Agreement shall be binding upon the Parties; and Defendants' successors and/or assigns will be bound by this Agreement as well.
- 12.5. Arms' Length Transaction; Materiality of Terms.** The Parties have negotiated all the terms and conditions of this Agreement at arms' length. All terms and conditions of this Agreement in the exact form set forth in this Agreement are material to this Agreement and have been relied upon by the Parties in entering into this Agreement, unless expressly stated.
- 12.6. Captions.** The captions or headings of the Sections and the paragraphs of this Agreement have been inserted for convenience of reference only and shall have no effect upon the construction or interpretation of any part of this Agreement.
- 12.7. Governing Law.** This Agreement shall in all respects be interpreted, enforced, and governed by and under the laws of the State of New York, without regard to choice of law principles, except to the extent that the law of the United States governs any matter set forth herein, in which case such federal law shall govern.
- 12.8. Continuing Jurisdiction.** The Parties shall request the Court to retain jurisdiction over the interpretation and implementation of this Agreement as well as any and all matters arising out of, or related to, the interpretation or implementation of this Agreement and of the settlement contemplated thereby. The Parties shall not petition the Court to modify the terms of the Agreement.
- 12.9. Waivers, etc. to Be in Writing.** No waiver, modification or amendment of the terms of this Agreement, whether purportedly made before or after the Court's approval of this Agreement, shall be valid or binding unless in writing, signed by or on behalf of all Parties and then only to the extent set forth in such written waiver, modification, or amendment. Any failure by any Party to insist upon the strict performance by the other Party of any of the provisions of this Agreement shall not be deemed a waiver of future performance of the same provisions or of any of the other provisions of this Agreement, and, such Party, notwithstanding such failure, shall have the right thereafter to insist upon specific performance of any and all provisions of this Agreement.
- 12.10. When Agreement Becomes Effective; Counterparts.** This Agreement shall become effective upon its full execution and approval by the Court. The Parties may execute this Agreement in counterparts, and execution in counterparts shall have the same force and effect as if all Parties had signed the same instrument.
- 12.11. Signatures.** This Agreement is valid and binding only if signed by the Parties and their authorized representatives.

**12.12. Facsimile, Fax, and Email Signatures.** Any Party may execute this Agreement by signing or causing its counsel to sign on the designated signature block below and transmitting that signature page via facsimile, email, or other electronic means to counsel for the other party. Any signature made and transmitted by facsimile, email, or other electronic means for the purposes of executing this Agreement shall be deemed an original signature for purposes of this Agreement and shall be binding upon the Party whose counsel transmits the signature page by facsimile or email.

**12.13. Construction.** The determination of the terms and conditions of this Agreement has been by mutual agreement of the Parties. Each Party participated jointly in the drafting of this Agreement, and therefore the terms and conditions of this Agreement are not intended to be, and shall not be, construed against any Party by virtue of draftsmanship.

**WE AGREE TO THESE TERMS,**

DATED: August 16, 2021

**LIGHTSPEED COMMERCE USA INC.**

By: *Daniel Micak*

Its: EVP, General Counsel & Corporate Secretary

DATED: August 16, 2021

**SHOPKEEP, INC.**

By: *Daniel Micak*

Its: EVP, General Counsel & Corporate Secretary

DATED: \_\_\_\_\_, 2021

\_\_\_\_\_  
**COLIN BISSON**

DATED: \_\_\_\_\_, 2021

\_\_\_\_\_  
**JAIMIE LANDRETH**

DATED: \_\_\_\_\_, 2021

\_\_\_\_\_  
**NICHOLAS LOMBARDI**

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DATED: \_\_\_\_\_, 2021

**LIGHTSPEED COMMERCE USA INC.**

By: \_\_\_\_\_

Its: \_\_\_\_\_

DATED: \_\_\_\_\_, 2021

**SHOPKEEP, INC.**

By: \_\_\_\_\_

Its: \_\_\_\_\_

DATED: 8/16/2021, 2021

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**COLIN BISSON**

DATED: \_\_\_\_\_, 2021

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**JAIMIE LANDRETH**

DATED: \_\_\_\_\_, 2021

\_\_\_\_\_  
**NICHOLAS LOMBARDI**



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DATED: \_\_\_\_\_, 2021

**LIGHTSPEED COMMERCE USA INC.**

By: \_\_\_\_\_

Its: \_\_\_\_\_

DATED: \_\_\_\_\_, 2021

**SHOPKEEP, INC.**

By: \_\_\_\_\_

Its: \_\_\_\_\_

DATED: \_\_\_\_\_, 2021

\_\_\_\_\_  
**COLIN BISSON**

DATED: <sup>8/17/2021</sup>\_\_\_\_\_, 2021

DocuSigned by:  
*Jaimie Landreth*  
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**JAIMIE LANDRETH**

DATED: \_\_\_\_\_, 2021

\_\_\_\_\_  
**NICHOLAS LOMBARDI**

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DATED: \_\_\_\_\_, 2021

**LIGHTSPEED COMMERCE USA INC.**

By: \_\_\_\_\_

Its: \_\_\_\_\_

DATED: \_\_\_\_\_, 2021

**SHOPKEEP, INC.**

By: \_\_\_\_\_

Its: \_\_\_\_\_

DATED: \_\_\_\_\_, 2021

\_\_\_\_\_  
**COLIN BISSON**

DATED: \_\_\_\_\_, 2021

\_\_\_\_\_  
**JAIMIE LANDRETH**

DATED: 8/17/2021, 2021

DocuSigned by:  
*Nicholas Lombardi*  
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**NICHOLAS LOMBARDI**

DATED: 8/16/2021, 2021

DocuSigned by:

*Kendall Micone*

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**KENDALL MICONE**

DATED: \_\_\_\_\_, 2021

**JESSICA SHARP**

DATED: \_\_\_\_\_, 2021

**ALEXANDER SKREEN**

DATED: \_\_\_\_\_, 2021

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**KENDALL MICONE**

DATED: 8/17/2021, 2021

DocuSigned by:

*Jessica Sharp*

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**JESSICA SHARP**

DATED: \_\_\_\_\_, 2021

\_\_\_\_\_  
**ALEXANDER SKREEN**

DATED: \_\_\_\_\_, 2021

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**KENDALL MICONE**

DATED: \_\_\_\_\_, 2021

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**JESSICA SHARP**

DATED: 8/17/2021, 2021

DocuSigned by:  
*Alexander Skreen*

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**ALEXANDER SKREEN**

# Exhibit A



**OFFICIAL COURT NOTICE OF CLASS AND COLLECTIVE ACTION SETTLEMENT**

[NAME]

[ADDRESS]

[CITY, STATE ZIP]

**If you worked for ShopKeep and/or Lightspeed Commerce USA as a Sales Representative, Point of Sale Specialist, or Account Executive, you may be entitled to a payment from a class and collective action lawsuit settlement.**

*A court authorized this Notice. This is not a solicitation from a lawyer.*

- You have received this Notice because records indicate that you were employed as a Sales Representative, Point of Sale Specialist, or Account Executive (collectively, “Sales Representatives”) by ShopKeep, Inc. and/or Lightspeed Commerce USA Inc. (collectively, “Defendants”) in the State of New York between January 8, 2015 and April 1, 2021; in the State of Oregon between January 8, 2018 and April 1, 2021; or anywhere else in the United States between January 8, 2018 and April 1, 2021.
- Former Sales Representatives (“Plaintiffs”) filed a lawsuit asserting that Defendants failed to pay them and other Sales Representatives proper overtime wages for all overtime hours worked, as well as related wage and hour claims. Defendants deny these allegations and the Court has not made any ruling on the merits of Plaintiffs’ claims. The parties have entered into a settlement with the intention to avoid further disputes and litigation with the attendant inconvenience and expense.
- Under the allocation formula created by the settlement, your potential settlement payment is estimated to be approximately \$[AMOUNT], subject to deductions for applicable taxes.

**Your legal rights may be affected by this settlement, and you have a choice to make:**

<b>YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT:</b>	
<b>SUBMIT A CLAIM FORM</b>	<p>If you wish to participate in the settlement and be eligible to receive a settlement payment of approximately \$[AMOUNT], subject to applicable taxes and withholdings, you must complete and return the enclosed “Claim Form” to the Settlement Administrator, as discussed in Section 8 below. The Claim Form must be postmarked by or otherwise received on or before <b>[INSERT DATE 60 DAYS FROM NOTICE MAILING OR 30 DAYS FROM RE-MAILING, WHICHEVER IS LATER]</b>.</p> <p>If you choose to participate in the settlement, you will release the Released Collective Claims discussed in Section 10 below. If you worked as a Sales Representative in New York or Oregon during the relevant time period, you will also release the Released Class Claims discussed in Section 10 below.</p>
<b>DO NOTHING</b>	<p>If you do nothing, you will not be eligible to receive a settlement payment.</p>

	If you worked as a Sales Representative in New York or Oregon during the relevant time period, you will release the Released Class Claims, but not the Released Collective Claims.
<b>EXCLUDE YOURSELF</b>	<p>If you worked as a Sales Representative in New York or Oregon during the relevant time period and you do not want to participate in the settlement but want to retain your right to sue Defendants for unpaid wages and related wage and hour claims under federal and applicable state law, you must submit a written Opt-out Statement to the Settlement Administrator, as discussed in Section 11 below.</p> <p>If you submit an Opt-out Statement, you will not be eligible to receive a settlement payment or object to the settlement.</p>
<b>OBJECT</b>	If you worked as a Sales Representative in New York or Oregon during the relevant time period and you do not submit an Opt-out Statement, you may write to the Court about why you object to the settlement. More information about objecting is set forth in Section 15 below.

- These rights and options – **and the deadlines to exercise them** – are explained in greater detail in this Notice.
- The Court in charge of this case still has to decide whether to approve the settlement. Settlement payments will be made if the Court approves the settlement and after any appeals are resolved. Please be patient.

## BASIC INFORMATION

### 1. Why did I get this notice?

The Court ordered that you be sent this Notice because you have a right to know about a proposed class and collective action settlement, and about all of your options, before the Court decides whether to approve the settlement. This Notice explains the lawsuit, your legal rights, and what benefits are available.

The Court overseeing this case is the New York State Supreme Court, Kings County. The litigation is *Lombardi, et al. v. ShopKeep, Inc.*, Index No. **[INSERT INDEX NUMBER]**

### 2. Am I covered by this settlement?

Defendants' records state that you were employed by ShopKeep, Inc. and/or Lightspeed Commerce USA Inc. as a Sales Representative in the State of New York between January 8, 2015 and April 1, 2021; in the State of

Oregon between January 8, 2018 and April 1, 2021; or anywhere in the United States between January 8, 2018 and April 1, 2021.

If you worked for as a Sales Representative in New York or Oregon during the relevant time period, you are considered a “Class Member.” If you worked as a Sales Representative anywhere else in the United States during the relevant time period, you are considered a “Collective Member.”

### 3. What is the litigation about?

The litigation is about whether Defendants failed to pay Sales Representatives proper overtime wages for all overtime hours worked, and failed to provide proper wage notices and wage statements in New York and pay timely wages upon separation in Oregon. Defendants deny these allegations in their entirety and believe that Sales Representatives received all wages and payments to which they were entitled. The Court has not made any ruling on the merits of the claims, and no party has prevailed in this action.

### 4. Why is this a class/collective action?

In a class action, one or more people called “class representatives” sue not only for themselves, but on behalf of other people who have similar claims. The people are called “class members” and together are the “class.” Similarly, in a collective action, one or more people can seek to represent a “collective” of similarly situated people. The individuals who initiated this class/collective action are called the “Plaintiffs.” In a class/collective action, the Plaintiffs ask the court to resolve the issues for every member of the class and collective.

### 5. Why is there a settlement?

The Court did not decide in favor of Plaintiffs or Defendants. Both sides believe they will prevail in the litigation, but there was no decision in favor of either party. Instead, the parties have agreed to resolve this matter solely in order to avoid the burden, expense and risks associated with continued litigation. Plaintiffs and Class Counsel think the settlement is in the best interests of all Class and Collective Members.

## THE SETTLEMENT BENEFITS – WHAT YOU GET

### 6. What does the settlement provide?

Defendants have agreed to pay a Maximum Settlement Amount of up to \$1,775,000.00 (the “Maximum Settlement Amount”). The Maximum Settlement Amount will be used to pay: (1) Participating Class and Collective Members; (2) attorneys’ fees of up one-third of the Maximum Settlement Amount (\$591,666.66) plus reimbursement of actual litigation expenses and costs; (3) Service Awards of \$12,500.00 each (\$75,000.00 total) to the Plaintiffs; and (4) the Settlement Administrator’s fees and costs of up to XXXX.

### 7. How much will my settlement payment be and how was it calculated?

Based on the formula that has been preliminarily approved by the Court, your settlement payment is estimated to be \$[AMOUNT], half of which is subject to payroll deductions for applicable taxes and withholdings like any other paycheck, for which you will receive a Form W-2, and half of which is not subject to deductions and will be reported on a Form 1099. Neither Class Counsel nor Defendants’ counsel can advise you regarding the tax

consequences of the settlement. You may wish to consult with your own personal tax advisor in connection with the settlement.

The formula that has been approved by the Court and used to calculate your settlement payment considers the number of weeks you worked during the relevant time period and whether you worked in New York, Oregon, or elsewhere in the United States for all or part of such number of weeks worked. The Settlement Agreement contains the exact allocation formula. You may obtain a copy of the Settlement Agreement by contacting the Settlement Administrator at [INSERT SETTLEMENT ADMINISTRATOR TELEPHONE NUMBER] or using the information in Section 8 below.

The Settlement Administrator used information from Defendants' records to calculate your payment. If you have questions about your calculation, you may contact the Settlement Administrator at [INSERT SETTLEMENT ADMINISTRATOR TELEPHONE NUMBER] or using the information in Section 8 below. If you dispute Defendants' records and/or the calculation of your settlement payment, please note your dispute on the Claim Form and provide written documentation supporting your contention in connection with submitting your Claim Form. Defendants' records are presumed to be correct unless you prove otherwise with documentary evidence. The Settlement Administrator will evaluate the information you provide and will make the final decision as to any dispute.

**Settlement checks that are not cashed within 120 days of issuance will expire and revert to Defendants.**

## HOW YOU GET A PAYMENT

### 8. How can I get my payment?

You must sign and return the enclosed Claim Form by the deadline to be eligible to receive a settlement payment. Your Claim Form must be postmarked by, or otherwise received on or before, [INSERT DATE 60 DAYS FROM NOTICE MAILING OR 30 DAYS FROM RE-MAILING, WHICHEVER IS LATER].

The Settlement Administrator is XX. You may return the Claim Form in the pre-stamped return envelope or by mailing, emailing, or faxing it to:

[INSERT SETTLEMENT ADMINISTRATOR CONTACT]

### 9. When will I get my settlement payment?

The Court is scheduled to hold a hearing on [INSERT DATE], at [INSERT TIME] to determine whether to give final approval to the settlement. If the Court approves the settlement, and there are no appeals, settlement checks will be mailed within fourteen (14) days after the expiration date of the time for an appeal to have been filed. If there is an appeal, settlement checks will be mailed within fourteen (14) days after all appeals are resolved in favor of final approval of the settlement. Please be patient.

### 10. What am I giving up by releasing my claims?

If you sign and return a Claim Form, you will give up (also called "release") the Released Collective Claims. This means that you release any Fair Labor Standards Act claims pled in the Complaint that accrued during your employment in a covered Sales Representative position, relating back to the full extent of the applicable statutes of limitations, including any period tolled by the parties' January 8, 2021 tolling agreement and continuing through [the date the final settlement agreement is executed, or August 13, 2021, whichever is earlier,] including,

without limitations, claims for unpaid overtime wages and related claims for penalties, interest, liquidated damages, attorneys' fees, costs, and expenses.

If you worked as a Sales Representative in New York or Oregon during the relevant time period, unless you exclude yourself (as explained in Section 11) you will release the Released Class Claims. This means that you release any New York and/or Oregon state and local wage and hour claims pled in the Complaint that accrued during your employment in a covered Sales Representative position, relating back to the full extent of the applicable statutes of limitations, including any period tolled by the parties' January 8, 2021 tolling agreement, and continuing through [the date the final settlement agreement is executed, or August 13, 2021, whichever is earlier] including, without limitations, all state claims for unpaid overtime wages, premium pay of any kind, and related claims for penalties, interest, liquidated damages, attorneys' fees, costs, and expenses.

## **EXCLUDING YOURSELF FROM THE SETTLEMENT**

If you worked as a Sales Representative in New York or Oregon during the relevant time period, and you do not wish to give up the Released Class Claims, then you must take steps to exclude yourself. This is sometimes referred to as "opting out" of the settlement.

### **11. How do I opt out of the settlement?**

If you wish to exclude yourself from the settlement, you must submit a written Opt-out Statement to the Settlement Administrator, stating: (i) your name, address, telephone number, and email address; and (ii) a statement indicating your intent to exclude yourself from the settlement, such as "I opt out of the ShopKeep wage and hour settlement." The Opt-out Statement must be postmarked by or otherwise received on or before [INSERT DATE 60 DAYS FROM NOTICE MAILING OR 30 DAYS FROM RE-MAILING, WHICHEVER IS LATER].

If you submit an Opt-out Statement, you will not be eligible to receive a settlement check. You will retain the right to bring your own legal action against Defendants. You should be aware that your claims are subject to a statute of limitations, which means that they will expire on a certain date.

If you ask to be excluded, you cannot object to the settlement.

### **12. If I exclude myself, can I get money from this settlement?**

No. If you exclude yourself, you will not be eligible to receive a settlement check.

## **THE LAWYERS REPRESENTING YOU**

### **13. Do I have a lawyer in this case?**

The Court has decided that the lawyers at the law firm of Outten & Golden LLP are qualified to represent you and all Class and Collective Members. These lawyers are called "Class Counsel." You will not be charged separately for these lawyers; their fees are being covered by the Maximum Settlement Amount. You do not need to retain your own attorney in order to participate as a Class or Collective Member. If you do not opt out of the Class and want to be represented by your own lawyer, you may hire one at your own expense.

### **14. How will the lawyers be paid?**

Class Counsel will ask the Court to approve payment of up to one-third of the Maximum Settlement Amount (\$591,666.66) for their attorneys' fees. These fees would compensate Class Counsel for investigating the facts,

litigating the case, and negotiating the settlement. Class Counsel will also ask the Court to approve payment for the out-of-pocket costs they incurred litigating the case.

## **OBJECTING TO THE SETTLEMENT**

If you worked as a Sales Representative in New York or Oregon during the relevant time period, you can tell the Court that you do not agree with the settlement or some part of it.

### **15. How do I tell the Court that I disapprove of the settlement?**

If you worked for Defendants in New York or Oregon, and you have not submitted an Opt-out Statement, you can object to any portion of the settlement which you disapprove. You can give reasons why you think the Court should not approve it. The Court will consider your views. To object to the settlement, send a letter to the Settlement Administrator saying that you object to the settlement which includes all of the following: (i) all reasons for objecting to the settlement, and any supporting documentation; and (ii) your name, address, and telephone number.

As an Objector, you also have the right to appear at the Fairness Hearing before the Court (explained in Sections 17 and 18 below) either in person or through your own counsel. If you wish to appear at the Fairness Hearing, you should state your intention to do so in your letter to the Settlement Administrator.

Objections should be mailed to the Settlement Administrator at:

**[SETTLEMENT ADMINISTRATOR CONTACT]**

Your objection must be postmarked by or otherwise received on or before **[INSERT DATE 60 DAYS FROM NOTICE MAILING OR 30 DAYS FROM RE-MAILING, WHICHEVER IS LATER]**.

### **16. What's the difference between objecting and opting out?**

Objecting is telling the Court that you do not like something about the settlement and asking the Court not to approve the settlement as is. You can object only if you stay in the Class.

Opting out (also known as excluding yourself) is telling the Court that you do not want to be part of the Class. If you exclude yourself, you have no basis to object because the case no longer affects you. If you submit both an objection and an Opt-out Statement, the Settlement Administrator will attempt to contact you to determine whether you intended to object or exclude yourself. If the Settlement Administrator cannot reach you, it will be presumed that you intended to exclude yourself, and your objection will not be considered.

## **THE COURT'S FAIRNESS HEARING**

### **17. When and where will the Court decide whether to approve the settlement?**

The Court will hold the Fairness Hearing on **[INSERT DATE]** at **[INSERT TIME]** in **[INSERT IAS PART]**.

At the hearing, the Court will determine whether the settlement is fair, adequate, and reasonable and will consider any properly submitted objections. Please be advised that the Court may adjourn the date of the hearing without further notice to Class and Collective Members, and the Court may opt to hold the Fairness Hearing via telephone or video conference. Please visit the Court's website, <http://ww2.nycourts.gov/courts/2jd/kings/civil/index.shtml>,



or contact Class Counsel using the contact information provided in Section 20 below if you have any questions about the date, time, or location of the Fairness Hearing.

**18. Do I have to come to the fairness hearing?**

No. Class Counsel will attend to answer questions the Court may have. But, you are welcome to come at your own expense. If you send an objection, you do not have to come to Court in person. As long as you have not excluded yourself and have mailed your written objection on time, the Court will consider it. You may also pay your own lawyer to attend, but it is not necessary.

**GETTING MORE INFORMATION****19. Are there more details about the settlement?**

This Notice summarizes the proposed settlement. More details are in a Settlement Agreement. You can get a copy of the Settlement Agreement from the Settlement Administrator or Class Counsel using the contact information below.

**20. How do I get more information?**

If you have other questions about the settlement or want more information, you can contact the Settlement Administrator, or Class Counsel at:

Melissa L. Stewart  
Jared W. Goldman  
OUTTEN & GOLDEN LLP  
695 Third Avenue, 25th Floor  
New York, NY 10017  
Telephone: (212) 245-1000  
[XXXXXXXX@outtengolden.com](mailto:XXXXXXXX@outtengolden.com)

DATED: \_\_\_\_\_, 20\_\_

**Do not contact the Court directly for any reason.**

# Exhibit B

## SUPREME COURT OF THE STATE OF NEW YORK, KINGS COUNTY

Nicholas Lombardi, Colin Bisson, Jaimie Landreth, Kendall Micone, Jessica Sharp, and Alexander Skreen,

Plaintiffs,

v.

SHOPKEEP, INC.,

Defendant.

Index No.:

**CONSENT TO JOIN SETTLEMENT, RELEASE, AND CLAIM FORM**

The form must be returned to the Settlement Administrator so that it is postmarked or received by facsimile or email by **[60 DAYS FROM DATE OF MAILING OR 30 DAYS FROM RE-MAILING, WHICHEVER IS LATER]**.

I hereby consent to join and opt-in as a plaintiff for settlement purposes in the above-captioned lawsuit against ShopKeep, Inc. and to be bound by any adjudication of this action by the Court. I further agree to be bound by the collective action settlement. I hereby designate the law firm of Outten & Golden LLP to represent me in this action. I understand that if I return this Claim Form, I will fully and completely release ShopKeep, Inc. and Lightspeed Commerce USA Inc. from any Fair Labor Standards Act claims pled in the complaint that accrued during my employment in a covered Sales Representative position (as defined in the Agreement), relating back to the full extent of the applicable statutes of limitations, including any period tolled by the parties' January 8, 2021 tolling agreement and continuing through **[the date the final settlement agreement is executed, or August 13, 2021, whichever is earlier,]** including, without limitations, claims for unpaid overtime wages and related claims for penalties, interest, liquidated damages, attorneys' fees, costs, and expenses.

Full Legal Name (print)

Signature

Maiden or other names worked under

Street Address\*

City, State and Zip Code\*

Cell phone\*

Home Telephone Number\*

E-mail Address\*

\*This information will be will not be filed in the public record.

# Exhibit C

**IMPORTANT REMINDER REGARDING SHOPKEEP SETTLEMENT**

Recently you should have received a Court-authorized Notice advising that you are eligible to participate in the settlement of a class and collective action lawsuit for unpaid overtime and related claims against ShopKeep, Inc. and Lightspeed Commerce USA Inc. If you did not receive or no longer have the Notice and Claim Form, you may contact the Settlement Administrator to request another form.

**SHOPKEEP SETTLEMENT ADMINISTRATOR**

&lt;ADDRESS&gt;

&lt;PHONE&gt;

&lt;FAX&gt;

&lt;E-MAIL&gt;

&lt;WEBSITE&gt;

If you wish to submit a Claim Form, object, or request exclusion, you must do so by [INSERT DATE 60 DAYS FROM MAILING].

If you have any questions about the Notice or the case, you may contact Class Counsel, Melissa L. Stewart and Jared W. Goldman at Outten & Golden LLP at (212) 245-1000 or XXXXX@outtengolden.com.