

COPY

FILED

HAINES LAW GROUP, APC
Paul K. Haines (SBN 248226)
phaines@haineslawgroup.com
Fletcher W. Schmidt (SBN 286462)
fschmidt@haineslawgroup.com
Matthew K. Moen (SBN 305956)
mmoen@haineslawgroup.com
2155 Campus Drive, Suite 180
El Segundo, California 90245
Tel: (424) 292-2350
Fax: (424) 292-2355

Attorneys for Plaintiff

FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN BERNARDINO
SAN BERNARDINO DISTRICT

APR 20 2021

BY

DEBRA PEDROSA, DEPUTY

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN BERNARDINO**

JOHN ERVING, as an individual and on
behalf of all others similarly situated,

Plaintiff,

vs.

LAZER SPOT, INC., a Georgia Corporation;
and DOES 1 through 100,

Defendants.

CASE NO. CIVSB2101370

**SECOND AMENDED
REPRESENTATIVE ACTION
COMPLAINT:**

**(1) CIVIL PENALTIES UNDER THE
PRIVATE ATTORNEYS GENERAL
ACT (LABOR CODE § 2698 et seq.).**

UNLIMITED CIVIL CASE

1 Plaintiff John Erving (“Plaintiff”), on behalf of himself and other aggrieved employees,
2 hereby brings this Second Amended Representative Action Complaint (“Complaint”) against
3 Lazer Spot, Inc., a Georgia Corporation; and Does 1 through 100, inclusive (collectively
4 “Defendants”), and on information and belief alleges as follows:

5 **JURISDICTION**

6 1. Plaintiff, on behalf of himself and other aggrieved employees, hereby brings this
7 representative action for recovery of civil penalties under California Labor Code § 2698 *et seq.*
8 This Court has jurisdiction over Defendants’ violations of the California Labor Code because the
9 amount in controversy exceeds this Court’s jurisdictional minimum.

10 **VENUE**

11 2. Venue is proper in this judicial district pursuant to California Code of Civil
12 Procedure §§ 395(a) and 395.5, as Defendants’ principal place of business is located in the County
13 of San Bernardino. Defendants own, maintain offices, transact business, have an agent or agents
14 within the County of San Bernardino, and/or otherwise are found within the County of San
15 Bernardino, and Defendants are within the jurisdiction of this Court for purposes of service of
16 process.

17 **PARTIES**

18 3. Plaintiff is an individual over the age of eighteen (18). At all relevant times herein,
19 Plaintiff was, and currently is, a California resident, residing in the County of San Bernardino.
20 During the one year immediately preceding the filing of this action, and within the statute of
21 limitations periods applicable to each cause of action pled herein, Plaintiff was employed by
22 Defendants as a non-exempt employee in the County of San Bernardino.

23 4. Plaintiff is informed and believes, and based thereon alleges, that during the one
24 year preceding the date that Plaintiff put the California Labor and Workforce Development
25 Agency (“LWDA”) and Defendants on notice of the Labor Code violations alleged herein and
26 continuing to the present, Defendants did (and do) business by providing trucking services
27 including dispatching and hauling trailers, and employed Plaintiff and other, similarly-situated
28

1 non-exempt employees within San Bernardino County and the state of California and, therefore,
2 were (and are) doing business in San Bernardino County and the State of California.

3 5. Plaintiff does not know the true names or capacities, whether individual, partner,
4 or corporate, of the defendants sued herein as DOES 1 through 100, and for that reason, said
5 defendants are sued under such fictitious names, and Plaintiff will seek leave from this Court to
6 further amend this Complaint when such true names and capacities are discovered. Plaintiff is
7 informed and believes, and based thereon alleges, that each of said fictitious defendants, whether
8 individual, partner, or corporate, were responsible in some manner for the acts and omissions
9 alleged herein, and proximately caused Plaintiff and other aggrieved employees to be subject to
10 the unlawful employment practices, wrongs, injuries, and damages complained of herein.

11 6. Plaintiff is informed and believes, and based thereon alleges, that at all times
12 mentioned herein, Defendants were and are the employers of Plaintiff and other aggrieved
13 employees.

14 7. At all times herein mentioned, each of said Defendants participated in the doing
15 of the acts hereinafter alleged to have been done by the named Defendants; and furthermore, the
16 Defendants, and each of them, were the agents, servants, and employees of each and every one of
17 the other Defendants, as well as the agents of all Defendants, and at all times herein mentioned
18 were acting within the course and scope of said agency and employment. Defendants, and each
19 of them, approved of, condoned, and/or otherwise ratified each and every one of the acts or
20 omissions complained of herein.

21 8. At all times mentioned herein, Defendants, and each of them, were members of
22 and engaged in a joint venture, partnership, and common enterprise, and acting within the course
23 and scope of and in pursuance of said joint venture, partnership, and common enterprise. Further,
24 Plaintiff alleges that all Defendants were joint employers for all purposes of Plaintiff and the
25 aggrieved employees (as defined herein).

26 **REPRESENTATIVE FACTUAL ALLEGATIONS**

27 9. Plaintiff has been employed by Defendants as a non-exempt “truck driver” since
28 approximately December 2019. Defendants are in the trucking business and contract with third

parties to provide yard management and logistics services consisting of transporting trailers and cargo to and from production centers and distribution centers.

10. Plaintiff and other aggrieved employees' job duties consist of picking up cargo trailers and transporting them to assigned locations, and picking up empty trailers and taking them back to be loaded. Each specific assignment is communicated to the employees by a dispatcher who sends a text message to the employee's personal cellular phone telling them which trailer to pick up. Once the employee picks up the assigned trailer, the employee must send a picture of the bill of lading to the dispatcher, again with their personal cellular phone. The dispatcher then tells the employee where to take the trailer. Once the employee has transported the trailer to the drop site, the employee picks up an empty trailer and sends the trailer number to the dispatcher, who in turn tells the employee where to take the empty trailer. While the dispatchers are provided with company cellular phones, the employees are required to use their personal cellular phones for all of these communications, and there is no way to complete the job without using a cellular phone. Because the assignments are all local, an employee can complete approximately 20 different assignments during each shift.

11. Additionally, Plaintiff and other aggrieved employees are required to download an ADP application on their personal cellular phones which is used for timekeeping and is also how employees receive their paystubs.

12. Despite the inherent necessity of having a cellular phone to complete the job duties, Defendants have never reimbursed Plaintiff or other aggrieved employees for any portion of their cellular phone bill, in direct violation of *Cochran v. Schwan's Home Service, Inc.* (2014) 228 Cal.App.4th 1137, and Labor Code § 2802.

13. Additionally, during the COVID-19 pandemic, Defendants have required Plaintiff and other aggrieved employees to purchase their own Personal Protective Equipment (PPE) and sanitizing sprays and wipes. Despite disciplining employees for failing to obtain required PPE and sanitizing sprays and wipes, Defendants do not provide any reimbursement for such required supplies in violation of Labor Code § 2802.

///

1 14. Based on the foregoing, Plaintiff seeks to represent himself and all other aggrieved
2 employees, as defined by Labor Code § 2699(c), which includes all current and former non-
3 exempt employees who worked for Defendants in California from January 27, 2020 through the
4 present.

5 **FIRST CAUSE OF ACTION**
6 **PRIVATE ATTORNEYS GENERAL ACT**
7 **(AGAINST ALL DEFENDANTS)**

8 15. Plaintiff re-alleges and incorporates by reference all prior paragraphs as though
9 fully set forth herein.

10 16. Defendants have committed several Labor Code violations against Plaintiff and
11 other aggrieved employees. Plaintiff, as an “aggrieved employee” within the meaning of Labor
12 Code § 2698 *et seq.*, acting on behalf of himself and other aggrieved employees, brings this
13 representative action against Defendants to recover the civil penalties due to Plaintiff, other
14 aggrieved employees, and the State of California according to proof pursuant to Labor Code §§
15 558 and 2699 (a) and (f) including, but not limited to: (1) \$50.00 for each initial violation and
16 \$100.00 for each subsequent violation pursuant to Labor Code § 558 per employee per pay period;
17 and/or (2) \$100.00 for each initial violation and \$200.00 for each subsequent violation per
18 employee per pay period for those violations of the Labor Code for which no civil penalty is
19 specifically provided, based on the following Labor Code violations:

- 20 a. Failing to reimburse Plaintiff and other aggrieved employees for all necessary
21 business expenditures incurred in violation of Labor Code §§ 2802 and 2804.

22 17. On or around January 27, 2021, Plaintiff notified Defendants via certified mail,
23 and notified the LWDA via its website, of Defendants’ violations of the California Labor Code
24 and Plaintiff’s intent to bring a claim for civil penalties under California Labor Code § 2698 *et*
25 *seq.* with respect to the violations of the California Labor Code identified in Paragraph 16 (a).
26 Now that sixty-five days have passed from Plaintiff notifying Defendants and the LWDA of these
27 violations, and the LWDA has not provided notice that it intends to investigate the violations,
28

1 Plaintiff has exhausted his administrative requirements for bringing a claim under the Private
2 Attorneys General Act with respect to these violations.

3 18. Based on the foregoing, Plaintiff seeks to represent himself and all Aggrieved
4 Employees, as defined by Labor Code § 2699(c), which includes all current and former non-
5 exempt employees who worked for Defendants in California between January 27, 2020 and the
6 present.

7 19. Plaintiff was compelled to retain the services of counsel to file this court action to
8 protect his interests and the interests of other aggrieved employees, and to assess and collect the
9 civil penalties owed by Defendants. Plaintiff has thereby incurred attorneys' fees and costs, which
10 he is entitled to recover under California Labor Code § 2699.

11 **PRAYER**

12 WHEREFORE, Plaintiff prays for judgment for himself and for all others on whose behalf
13 this suit is brought against Defendants, as follows:

14 1. Upon the First Cause of Action, for civil penalties due to Plaintiff, other aggrieved
15 employees, and the State of California according to proof pursuant to Labor Code §§ 558 and
16 2699(a) and (f) including, but not limited to: (1) \$50.00 for each initial violation and \$100.00 for
17 each subsequent violation pursuant to Labor Code § 558 per employee per pay period; and/or (2)
18 \$100.00 for each initial violation and \$200.00 for each subsequent violation per employee per pay
19 period for those violations of the Labor Code for which no civil penalty is specifically provided.

20 2. On all causes of action, for attorneys' fees and costs as provided by Labor Code §
21 2698 *et seq.*, and Code of Civil Procedure § 1021.5; and

22 3. For such other and further relief as the Court may deem just and proper.

23
24 Dated: April 21, 2021

Respectfully submitted,
HAINES LAW GROUP, APC

25
26 By:


Fletcher W. Schmidt
Attorney for Plaintiff

John Erving v. Lazer Spot, Inc.

STATE OF CALIFORNIA)
COUNTY OF LOS ANGELES) ss.
)

On April 21, 2021, I served the foregoing document(s) described as:

on the interested party(ies) in this action as follows:

Bernard Olshansky, Esq.
Email: bolshansky@seyfarth.com
SEYFARTH SHAW LLP
601 South Figueroa Street, Suite 3300
Los Angeles, California 90017-5793
Attorneys for Defendant LAZER SPOT, INC.

Executed on April 21, 2021, at El Segundo, California.

a. 
Jonathan Ramirez