

HAINES LAW GROUP
EMPLOYMENT ATTORNEYS

January 27, 2021

VIA LWDA WEBSITE

Labor and Workforce Development Agency
Attn. PAGA Administrator
1515 Clay Street, Ste. 801
Oakland, CA 94612

Re: *John Erving v. Lazer Spot, Inc.*

To Whom It May Concern:

Please be advised that this law firm represents John Erving (Mr. Erving) in claims arising from his employment with Lazer Spot, Inc., and Does 1 through 100 (collectively “Defendants”). Mr. Erving is an “aggrieved employee” as defined by Labor Code Section 2698 *et seq.*, due to Defendants’ numerous violations of the Labor Code as set forth below. The purpose of this letter is to comply with Labor Code Sections 2699.3, which requires aggrieved employees to notify their employer and the Labor & Workforce Development Agency (“LWDA”) of the specific provisions of the Labor Code allegedly violated. For purposes of this letter, “aggrieved employees” includes all of Defendants’ non-exempt employees who worked for Defendants in California during the one year immediately preceding the date of this letter through the present.

Mr. Erving has been employed by Defendants as a non-exempt “truck driver” since 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.

Mr. Erving 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 aggrieved employees by a dispatcher who sends a text message to the aggrieved employee’s personal cellular phone telling them which trailer to pick up. Once the aggrieved employee picks up the assigned trailer, the aggrieved employee must send a picture of the bill of lading to the dispatcher, again with their personal cellular phone. The dispatcher then tells the aggrieved employee where to take the trailer. Once the aggrieved employee has transported the trailer to the drop site, the aggrieved employee picks up an empty trailer and sends the trailer number to the dispatcher, who in turn tells the aggrieved employee where to take the empty trailer. While the dispatchers are provided with company cellular phones, the aggrieved 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 aggrieved employee can complete approximately 20 different assignments during each shift.

Additionally, Mr. Erving 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 aggrieved employees receive their paystubs.

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

Additionally, during the COVID-19 pandemic, Defendants have required Mr. Erving and other aggrieved employees to purchase their own Personal Protective Equipment (PPE) and sanitizing sprays and wipes. Despite disciplining aggrieved 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.

As described above, Defendants committed the following violations of the Labor Code, and Industrial Welfare Commission Wage Order 9 ("Wage Order 9"):

Failure to Reimburse Employees for Necessary Business Expenditures

Defendants failed to reimburse Mr. Erving and other aggrieved employees for necessary work expenses, including the use of their personal cellular phones and COVID-19 related PPE and sanitizing products for business purposes. Defendants' policy of not providing reimbursement for necessary work-related expenses violates Wage Order 9, § 9, and Labor Code §§ 2802 and 2804 ("An employer shall indemnify his or her employees for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties, or of his or obedience to the directions of the employer.") Mr. Erving and other aggrieved employees are therefore entitled to reimbursement of such unpaid work expenses with interest.

As an "aggrieved employee," Mr. Erving will initiate a civil action on behalf of himself and other aggrieved employees to recover damages, statutory penalties, and civil penalties resulting from the wage and hour violations alleged herein. Based on Mr. Erving own investigation, and on information and belief, Defendants committed and continue to commit the following Labor Code violations:

- a. Defendants violated Labor Code §§ 2802 and 2804 by failing to reimburse Mr. Erving and other aggrieved employees for all necessary business expenditures incurred.

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Pursuant to Labor Code Section § 2699.3(a)(2)(A), please notify us and Defendants if the LWDA intends to investigate these alleged violations of the Labor Code. Please contact me should you require additional information.

Very truly yours,
HAINES LAW GROUP, APC

A handwritten signature in blue ink, appearing to read "F. W. Schmidt", is positioned above the printed name.

Fletcher W. Schmidt

cc: Lazer Spot, Inc. (via certified mail)