

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
Susan J. Perez (SBN 329044)
sperez@haineslawgroup.com
2155 Campus Drive, Suite 180
El Segundo, California 90245
Tel: (424) 292-2350
Fax: (424) 292-2355

Attorneys for Plaintiff

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

*[Assigned for all purposes to the Hon.
David Cohn; Dept. S-26]*

**DECLARATION OF MATTHEW K.
MOEN IN SUPPORT OF
PLAINTIFF'S MOTION FOR
PRELIMINARY APPROVAL OF
CLASS ACTION SETTLEMENT**

Date: November 7, 2022
Time: 10:00 a.m.
Dept.: S-26

Action Filed: January 27, 2021
Trial Date: None Set

1
2
3
4
5
6
7
8
9
0
1
2
3
4
5
6
7
8
9
0
1
2
3
4
5
6
7
8

I, MATTHEW K. MOEN, declare as follows:

1. I am a Senior Associate with Haines Law Group, APC, and counsel for the Plaintiff John Erving (“Plaintiff”) in the above-captioned matter. I am a member in good standing of the bar of the State of California and am admitted to practice in this Court. I have personal knowledge of the facts stated in this declaration and could testify competently to them should I be called upon to do so.

2. I received a Bachelor of Arts degree from UCLA in 2011, and a Juris Doctor from Loyola Law School, Los Angeles, in 2015. Both before and during law school, I worked at the law firm of Prindle, Amaro, Goetz, Hillyard, Barnes & Reinholtz LLP (now known as Prindle, Goetz, Barnes & Reinholtz LLP), located in Long Beach, California. Both before and during law school, I also worked for Jill McBride Baxter, Certified Sports Agent and Sports Attorney.

3. From January 2016 to December 2017, I worked as an associate at Baltodano & Baltodano LLP, a law firm dedicated exclusively to the practice of Plaintiff-side employment litigation located in San Luis Obispo, California. After the founding partner and senior litigation attorney at Baltodano & Baltodano LLP, Justice Hernaldo J. Baltodano, was appointed to the San Luis Obispo County Superior Court in December 2017, the firm dissolved on December 31, 2017. Since January 1, 2018, I have worked as an associate at my current firm, Haines Law Group, APC.

4. During my time with both Baltodano & Baltodano LLP and Haines Law Group, my practice has been solely devoted to litigating plaintiff-side employment related cases in state and federal court, including wage and hour class actions arising under the Pennsylvania Labor Code and the Fair Labor Standards Act. I am currently staffed on over fifty active wage and hour class actions in which I am integrally involved in all aspects of the litigation. I have also supervised the work of several junior attorneys staffed on the same wage and hour class actions.

5. The following is a non-exhaustive list of the recent wage and hour class actions (all of which have been granted final approval) in which I have been named as Class Counsel: *Morales*

1 *v. Ball Horticultural Co.*, Case No. 16CV-0488, San Luis Obispo County Superior Court,
2 Honorable Linda D. Hurst, presiding (approving an hourly rate of \$375 for work performed in
3 2017 and 2018); *Ruvalcaba Quiroz v. Circle M Contractors, Inc.*, Case No. 30-2016-00885065-
4 CU-OE-CXC, Orange County Superior Court, Honorable William D. Claster, presiding;
5 *Armenta, et al., v. California Friends Homes d/b/a Quaker Gardens*, Case No. 30-2016-
6 00883282-CU-OE-CXC, Orange County Superior Court, Honorable Randall J. Sherman,
7 presiding; *Willie Daniel Myers, Jr. v. Jerome's Furniture Warehouse*, Case No. CIVDS
8 1715069, San Bernardino County Superior Court, Honorable Janet M. Frangie, presiding
9 (approving an hourly rate of \$375 for work performed in 2018 and 2019); *Tina Arellano v.*
10 *Williams Sonoma Stores, Inc.*, Case No. BC693760, Los Angeles County Superior Court,
11 Honorable Daniel J. Buckley, presiding (approving an hourly rate of \$375 for work performed
12 in 2018 and 2019); *William Cuellar v. UMA Enterprises, Inc.*, Case No. BC657146, Los
13 Angeles County Superior Court, Honorable Maren E. Nelson, presiding (approving an hourly
14 rate of \$375 for work performed in 2018 and 2019); *Arturo Delgado v. Spears Manufacturing*
15 *Co.*, Case No. BC709665, Los Angeles County Superior Court, Honorable Maren E. Nelson,
16 presiding (approving an hourly rate of \$400 for work performed in 2018, 2019, and 2020);
17 *Abbygail Hernandez v. WirelessPCS CA, LLC*, Case No. BC721326, Los Angeles County
18 Superior Court, Honorable Carolyn B. Kuhl, presiding; *Lucia Kang, et al., v. Extra Space*
19 *Management, Inc.*, Case No. 30-2018-00997364-CU-OE-CXC, Orange County Superior Court,
20 Honorable William Claster, presiding (approving an hourly rate of \$400 for work performed in
21 2018, 2019, and 2020); *Fishback v. Paragon Framing, Inc.*, Case No. CIVDS1906610, San
22 Bernardino County Superior Court, Honorable David Cohn, presiding (approving an hourly rate
23 of \$400 for work performed in 2019 and 2020); *Francisco Garcia v. Searing Industries, Inc.*,
24 Case No. CIVDS1932477, San Bernardino County Superior Court, Honorable David Cohn,
25 presiding (approving an hourly rate of \$400 for work performed in 2019 and 2020); *David*
26 *Hasler, et al. v. Anheuser-Busch, LLC*, Case No. 19STCV00802, Los Angeles County Superior
27 Court, Honorable Daniel J. Buckley, presiding; *Angel Ochoa v. Fonseca Construction, Inc.*,
28 Case No. CIVDS1928625, San Bernardino County Superior Court, Honorable David Cohn,

1 presiding (approving an hourly rate of \$400 for work performed in 2019 to 2021); *William*
2 *Chang v. Avcorp Composite Fabrication, Inc.*, Case No. BC715159, Los Angeles County
3 Superior Court, Honorable Amy D. Hogue, presiding (approving an hourly rate of \$400 for
4 work performed in 2018 to 2021); *David Alvarado, et al. v. J.G. Boswell Company*, Case No.
5 19STCV19033, Los Angeles County Superior Court, Honorable Daniel J. Buckley, presiding
6 (approving an hourly rate of \$400 for work performed in 2019 to 2021); *Gaudencio Arroyo*
7 *Reynoso, et al. v. Cream of the Crop Ag Service, Inc.*, Case No. VCU278847, Tulare County
8 Superior Court, Honorable Bret D. Hillman, presiding (approving an hourly rate of \$425 for
9 work performed in 2019 to 2022); and *Santos Orellana v. Smarte Carte, Inc.*, Case No.
10 20STCV08890, Los Angeles County Superior Court, Honorable Yvette M. Palazuelos,
11 presiding (approving an hourly rate of \$475 for work performed in 2020-2022).

12 6. I have also moved to certify, and have received an order certifying, a class action
13 as Class Counsel in the following case: *Staublein v. Wells Fargo Bank, National Association*,
14 Case No. CIVDS1712267, San Bernardino Superior Court, Honorable David Cohn, presiding
15 (certifying a wage statement class).

16 7. In every year from 2020 to 2022, Thomson Reuters and Los Angeles Magazine
17 recognized me as a Top Young Attorney in Southern California in the annual Rising Star
18 Edition of Super Lawyers. This is an honor awarded to no more than two-and-a-half percent
19 (2.5%) of attorneys under the age of forty in Southern California each year.

20 8. As counsel for Plaintiff, I have been closely involved in all aspects of this
21 litigation since its inception, and believe that the proposed Joint Stipulation of Class Action
22 Settlement (“Settlement” or “Settlement Agreement”) is a fair and reasonable result for the
23 participating Settlement Class members.

24 9. Defendant Lazer Spot, Inc. (“Lazer Spot” or “Defendant”) operates a trucking
25 business that contracts with third parties to provide yard management and logistics services to
26 those third parties, consisting of transporting trailers and cargo to and from production and
27 distribution centers. Plaintiff worked for Defendant from approximately December 2019 to
28 January 2021 as a non-exempt “truck driver.” Plaintiff’s duties included picking up loaded

1 cargo trailers and transporting them to assigned drop-off locations and picking up empty trailers
2 and taking them back to be loaded. Like all Settlement Class members, Plaintiff was subject to
3 Defendant's wage and hour policies and practices.

4 10. On January 27, 2021, Plaintiff filed the initial Complaint in this action, alleging
5 Defendant failed to: (i) reimburse necessary business expenses; and (ii) comply with
6 California's Unfair Competition laws. On April 5, 2021, Plaintiff filed his First Amended Class
7 and Representative Action Complaint ("FAC"), adding a cause of action for civil penalties
8 under the PAGA. On April 20, 2021, Plaintiff filed his Second Amended Representative Action
9 Complaint ("SAC"), amending this action to proceed exclusively as a representative action for
10 recovery of civil penalties under the PAGA, premised upon Defendant's alleged failure to
11 reimburse all necessary business expenses incurred.

12 11. As a material term of the Parties' settlement agreement reached during their
13 March 29, 2022 mediation, the Parties' stipulated to Plaintiff filing a further amended complaint
14 to add a class-wide cause of action for Defendant's alleged failure to reimburse necessary
15 business expenses, in violation of Labor Code sections 2802 and 2804. Accordingly, on June 3,
16 2022, Plaintiff filed the operative Third Amended Complaint ("TAC"), alleging Defendant
17 failed to: (i) reimburse necessary business expenses; and (ii) is liable for civil penalties under
18 the PAGA for Defendant's alleged failure to reimburse all necessary business expenses
19 incurred.

20 12. Plaintiff asserts that Defendant failed to reimburse the Settlement Class members
21 for all necessary business expenses incurred, in violation of Labor Code sections 2802 and
22 2804. Specifically, Defendant required Plaintiff and other non-exempt employees to use their
23 personal cellular phones to communicate with dispatchers for work assignments and instructions
24 throughout the workday. For example, a dispatcher would send a text message to the
25 employee's personal cellular phone telling the employee which trailer to pick up. After the
26 employee picked up the trailer, the employee was required to text the dispatcher a picture of the
27 bill of lading, which was taken by the employee using their personal cellular phone. The
28 dispatcher would then instruct the employee, via text, where to take the trailer. Once the

1 employee had transported the trailer to the drop site, the employee would pick up an empty
2 trailer and text the trailer number to the dispatcher, who in turn would tell the employee where
3 to take the empty trailer. Because the assignments are all local, an employee can complete
4 approximately 20 different assignments during each shift.

5 13. Additionally, Plaintiff and other non-exempt employees were required to
6 download an ADP application on their personal cellular phones that was used for timekeeping
7 and to receive paystubs. Finally, Plaintiff also alleges that Defendant required Plaintiff and other
8 non-exempt employees to purchase personal protective equipment (“PPE”) for work purposes,
9 including sanitizing sprays and wipes, during the COVID-19 pandemic. Despite requiring
10 employees to use their personal cellular phones and purchase PPE for work purposes during the
11 COVID-19 pandemic, Defendant did not reimburse Plaintiff and other non-exempt employees
12 for these expenses or a reasonable portion of their monthly cellular phone bills.

13 14. In response, Defendant firmly denies it required Plaintiff and other non-exempt
14 employees to purchase PPE during the COVID-19 pandemic. Defendant maintains that it
15 provided Plaintiff and other non-exempt employees with all needed hand sanitizers and masks.
16 Defendant further maintains that Plaintiff’s cell phone reimbursement allegations lack merit.
17 Specifically, Defendant asserts that, at all relevant times, it provided scan guns to its non-
18 exempt employees through which trailers were assigned, bills of lading were scanned, and
19 employees recorded their time, alleviating the need for employees to use their personal cellular
20 phones for any work-related purposes. Defendant also maintains that Plaintiff’s liability
21 valuations are substantially overstated, as any potential personal cellular phone usage by
22 Plaintiff and other non-exempt employees for work purposes could only have occurred, if at all,
23 at approximately 12 worksites in California, which were the only locations at which employees
24 needed to leave the worksite to transport trailers, and therefore would be the only locations
25 where information regarding trailer numbers and bills of lading needed to be relayed between
26 the drivers and dispatch employees. Defendant contends that these alleged Labor Code
27 violations, therefore, could have only affected, at most, 196 employees, and could not have
28 continued beyond December 20, 2020, when Defendant installed company-provided phones in

1 all truck cabs, ensuring that employees did not need to use their personal cellular devices for
2 work-related purposes. Moreover, Defendant also contends that it provided multiple options for
3 Plaintiff and other non-exempt employees to clock in and out each day, including the company-
4 provided scan guns and punch clocks located at various worksites, and that the option to use the
5 ADP application on their cellular phones was for employee convenience only and purely
6 voluntary. Finally, Defendant contends this claim is not certifiable since it would require a
7 series of mini-trials to determine which employees used their cellular phone for work purposes,
8 the extent of each employees' cellular phone usage, the value of each employees' cellular phone
9 plan, and whether an employee requested a cellular phone plan reimbursement.

10 15. As a result of Defendant's failure to reimburse all necessary business expenses,
11 Plaintiff also seeks PAGA civil penalties on behalf of all aggrieved employees and the State of
12 California. In response, Defendant argues that Plaintiff's underlying claims will fail and, as a
13 result, PAGA claims will also fail. Additionally, at the time of mediation, Defendant raised the
14 possibility that Plaintiff's PAGA claims could soon be compelled to individual arbitration
15 pending the United States Supreme Court's ruling in *Viking River Cruises Inc. v. Moriana*, 596
16 U.S. ____ (2022), Case No. 20 1573. Moreover, Defendant also maintains that given its good
17 faith defenses, this Court would exercise its discretion to substantially reduce any PAGA
18 penalties awarded and provided case law at mediation in support of its position.

19 16. In connection with mediation, Defendant provided Plaintiff with key class-wide
20 data points and relevant documents, including a spreadsheet listing each employee, their number
21 of respective pay periods worked during the relevant time period, and the locations at which
22 they worked. Plaintiff and his counsel then conducted a comprehensive analysis of the key data
23 points to create a detailed, class-wide exposure model for the claims at issue. On March 29,
24 2022, the Parties participated in a mediation session with Jeffrey A. Ross, Esq., a well-respected
25 wage and hour class action mediator, during which the Parties exchanged divergent views on
26 Defendant's liability and exposure valuations, their legal positions, and the likelihood of
27 certification of Plaintiff's claims. At the conclusion of mediation, Mr. Ross made a mediator's
28 proposal for a class-wide settlement that the Parties ultimately accepted. Over the following

1 weeks, the Parties negotiated and finalized the remaining terms of the Settlement, and executed
2 the proposed Settlement now before the Court for preliminary approval.

3 17. Attached hereto as **Exhibit A** is a true and correct copy of the Parties'
4 Settlement Agreement. Attached hereto as **Exhibit B** are true and correct copies of the Notice
5 of Class Action Settlement ("Class Notice") and Notice of Individual Settlement Award
6 (collectively, "Notice Packet").

7 18. If the Court preliminarily approves this settlement, Defendant will pay a
8 Maximum Settlement Amount ("MSA") of \$150,000.00. The Settlement Class members can be
9 easily identified using Defendant's employment and payroll records. Defendant's records
10 indicate that there are approximately 196 Settlement Class members. Based on the estimated
11 Net Settlement Amount, average Individual Settlement Awards are projected to be
12 approximately \$289.54. The lowest possible estimated Individual Settlement Award (in the
13 event a Settlement Class member worked only one workweek during the Class Period) is
14 approximately \$6.83, and the highest possible estimated Individual Settlement Award (in the
15 event a Settlement Class member performed worked in every workweek throughout the Class
16 Period) is approximately \$321.12.

17 19. At the time of seeking final settlement approval, Plaintiff will apply for a Class
18 Representative Enhancement Award in the amount of \$5,000.00 for his service to the Settlement
19 Class and his general release of all claims. Plaintiff's requested Class Representative
20 Enhancement Award is intended to recognize the significant time and effort that he expended on
21 behalf of the Settlement Class, including searching for relevant documents to use in this lawsuit,
22 providing factual information to his attorneys, having various phone calls with his attorneys to
23 discuss the claims in this lawsuit, assisting his attorneys in preparing for mediation, the
24 significant risks Plaintiff undertook by serving as the named plaintiff, and the fact that he agreed
25 to a general release of all claims subject to a waiver of Civil Code § 1542.

26 20. My firm will also apply for an attorneys' fee award of up to one third of the
27 MSA (currently estimated at \$50,000.00), and up to \$17,500 in reimbursement for actual
28 litigation costs. Plaintiff submits that the requested fee is fair compensation for undertaking

1 complex, risky, expensive, and time-consuming litigation on a purely contingent fee basis. My
2 firm has incurred substantial attorneys' fees conducting pre-filing investigation, analyzing
3 Plaintiff's claims, conducting legal research and analysis, reviewing class documents and data
4 produced by Defendant, extensively reviewing and evaluating the produced data to build a
5 comprehensive damages model, preparing for and attending mediation, negotiating and drafting
6 the Memorandum of Understanding, long-form Settlement Agreement, and Notice Packet
7 documents, preparing this motion for preliminary approval, and otherwise litigating the case.
8 My firm will also expend future attorney time attending the hearing on this Motion, overseeing
9 the Notice process, drafting the Final Approval Motion and supporting documents, attending the
10 Final Approval hearing, and completing other tasks, such as fielding questions from Settlement
11 Class members.

12 21. My firm carefully vetted the claims at issue, reviewed relevant data produced by
13 Defendant, and created a comprehensive damages model for Defendant's liability. Although the
14 Parties engaged in substantial informal discovery and information exchange prior to mediation,
15 the Parties had agreed to refrain from engaging in formal written and deposition discovery until
16 after exhausting their settlement efforts at mediation. Absent settlement, the Parties will be
17 required to expend substantial time and resources conducting extensive formal written and
18 deposition discovery. Moreover, Plaintiff has not yet filed for class certification, and thus,
19 absent settlement, the Parties would face the prospect of appeals in the wake of a disputed class
20 certification ruling and/or an adverse summary judgment ruling. Even if Plaintiff succeeded in
21 certifying one or more classes, the Parties would incur considerably more attorneys' fees and
22 costs through a possible decertification motion, trial, and possible appeal.

23 22. At the time of the proposed Settlement, Plaintiff had not filed his motion for
24 class certification. Had the Court certified any claims, Plaintiff anticipated that Defendant
25 would seek decertification. There was also a risk that Defendant would engage in a *Pick-up-Stix*
26 campaign pursuant to *Chindarah v. Pick Up Stix, Inc.* (2009) 171 Cal.App.4th 796, to
27 significantly reduce the size of the putative class for a fraction of what Settlement Class
28 members are receiving through this Settlement. Therefore, absent the Settlement, there was a

1 serious risk that Plaintiff would be unable to move forward on a class-wide basis, or that a
2 significantly smaller class would exist than that which is currently before this Court for
3 approval.

4 23. Plaintiff extensively researched and analyzed the market rates for cellular phones
5 and cellular calling and data plans during the relevant time period, including reviewing JD
6 Power and Consumer Reports analyses of cellular phone plan rates from all major service
7 providers during the liability period to determine the true reasonable monthly cell phone
8 expenses incurred by the putative class members. As a result, Plaintiff determined that a
9 reasonable portion of the employees' monthly cell phone bill during the relevant time period
10 was approximately \$40. Plaintiff then calculated the weekly value of the unreimbursed expenses
11 by dividing the monthly cost by 30 days and multiplying by 7, resulting in a weekly expense
12 value of \$9.33. Therefore, Plaintiff determined that Defendant failed to reimburse the putative
13 Settlement Class members for an aggregate total of approximately \$38,747 (4,153 workweeks x
14 \$9.33 weekly expenses incurred).

15 24. Defendant maintains Plaintiff's reimbursement allegations fail on their merits, as
16 Defendant asserts that, at all relevant times, it provided scan guns to its non-exempt employees
17 through which trailers were assigned, bills of lading were scanned, and employees recorded
18 their time, alleviating the need for employees to use their personal cellular phones for any work-
19 related purposes. As such, Defendant contends this claim is not certifiable since it would require
20 a series of mini-trials to determine the extent of each employee's cellular phone use and value
21 of reimbursement, whether or not the employee utilized Defendant's reimbursement policies
22 and, if not, why, and a day-by-day analysis of which days each of the Settlement Class members
23 worked at a location where off-site transportation was required. Finally, Defendant asserts that
24 class certification will be impossible to achieve through contested litigation due to the existence
25 of an arbitration agreement potentially applicable to all putative class members that includes a
26 waiver of representative and/or collective action litigation. Therefore, Plaintiff discounted the
27 maximum potential exposure by 60% for the risk of non-certification and 10% for the risk of
28 being unsuccessful on the merits, to arrive at an estimated exposure of \$13,948.

25. Plaintiff alleges that PAGA civil penalties would be recoverable for each pay period in which he could prove an underlying Labor Code violation. According to Plaintiff's data analysis, the Settlement Class members worked a combined total of 4,153 pay periods during the PAGA liability period in which Defendant failed to reimburse all employees for their necessary business expenses. Plaintiff therefore calculates Defendant's maximum PAGA exposure at \$415,300.00 (4,153 pay periods x \$100 per violation). However, these penalties are exclusively derivative of the underlying violations that Defendant vigorously disputes, both as to certification and the merits. Plaintiff also recognizes that the Court has discretion to substantially reduce any award of PAGA penalties. Therefore, Plaintiff discounted the maximum figure by 15% to account for the risk that he would not prevail on the underlying claims, and by an additional 60% for the likely possibility that this Court would reduce the PAGA penalties to arrive at an estimated exposure on this claim of \$141,202.

26. Using these estimated figures, Plaintiff estimated that the potential reasonable recovery for the Settlement Class would be approximately \$155,150. Thus, the proposed recovery to the Settlement Class of \$150,000 represents approximately 96.6% of Plaintiff's reasonably forecasted class-wide recovery, which is a fantastic result and well within the range approved by courts as being fair, reasonable and adequate, while also avoiding further expense and risk of proceeding towards class certification and trial.

27. Concurrently with the filing of this motion, Plaintiff provided notice of the proposed Settlement, as well as copies of the Motion for Preliminary Approval and all papers filed in support hereof, to the LWDA. Attached hereto as **Exhibit C** are true and correct copies of Plaintiff's Settlement submission and the LWDA's confirmation of receipt.

I declare under penalty of perjury under the laws of the United States and the state of California that the foregoing is true and correct. Executed on October 12, 2022, at El Segundo, California.

Matthew N. Kerr

Matthew K. Moen

EXHIBIT A

JOINT STIPULATION OF CLASS ACTION SETTLEMENT

This Joint Stipulation of Class Action Settlement (“Settlement Agreement” or “Settlement”) is reached by and between Plaintiff John Erving (“Plaintiff” or “Class Representative”), as an individual and on behalf of all members of the Settlement Class (defined below), on one hand, and Defendant Lazer Spot, Inc. (“Defendant”), on the other hand. Plaintiff and Defendant are referred to herein collectively as the “Parties.” Plaintiff and the Settlement Class are represented by Paul K. Haines, Fletcher W. Schmidt, Matthew K. Moen, and Susan J. Perez of Haines Law Group, APC (collectively, “Class Counsel”). Defendant is represented by Jon D. Meer, Michael Afar, and Bernard Olshansky of Seyfarth Shaw LLP (collectively, “Defense Counsel”).

On January 27, 2021, Plaintiff filed a class action complaint against Defendant in San Bernardino County Superior Court, titled *John Erving v. Lazer Spot, Inc.*, Case No. CIVSB2101370 (the “Action”). On June 3, 2022, Plaintiff filed the operative Third Amended Class and Representative Action Complaint, alleging that Defendant: (i) failed to reimburse necessary business expenses; and (ii) is liable for civil penalties under the Private Attorneys General Act, Labor Code § 2968 *et seq.* (“PAGA”) for this underlying Labor Code violation.

Given the uncertainty of litigation, Plaintiff and Defendant wish to settle both individually and on behalf of the Settlement Class. Accordingly, the Parties agree as follows:

1. **Settlement Class Defined.** For the purposes of this Settlement Agreement only, Plaintiff and Defendant stipulate to the certification of the following Settlement Class:

All persons who are employed or have been employed by Defendant in California as hourly-paid or non-exempt employees at any time during the time period from January 27, 2020 to December 20, 2020 (the “Class Period”), who worked at certain sites where they allegedly incurred unreimbursed expenses. The Settlement Class will include any participating Class Member who settled or released any of the claims covered by this Settlement.

The Parties agree that certification for purposes of settlement is not an admission that class certification is proper under Section 382 of the Code of Civil Procedure. If for any reason this Settlement Agreement is not approved or is terminated, in whole or in part, this conditional agreement to class certification will be inadmissible and will have no effect in this matter or in any claims brought on the same or similar allegations, and the Parties shall revert to the respective positions they held prior to entering into the Settlement Agreement. The Parties agree that this stipulation to class certification for purposes of Settlement only shall have no bearing on or impact the efficacy and validity of Defendant’s Arbitration Agreement and class action waiver therein.

2. **Release by Settlement Class Members and Plaintiff.** Plaintiff and every member of the Settlement Class (except those who opt out) will fully release and discharge: (i) Defendant; (ii) each of Defendant’s respective past, present and future parents, subsidiaries, and affiliates including, without limitation, any corporation, limited liability company, partnership, affiliated entity, trust, foundation, and non-profit entity which controls, is controlled by, or is under common

control with Defendant; (iii) the past, present and future shareholders, directors, officers, agents, employees, attorneys, insurers, members, partners, managers, contractors, agents, consultants, representatives, administrators, fiduciaries, benefit plans, transferees, predecessors, successors, and assigns of any of the foregoing; and (iv) any individual or entity which could be jointly liable with any of the foregoing (collectively, the “Released Parties”), as follows:

- A. All Settlement Class members who do not timely opt out will release and discharge the Released Parties from all claims that were raised or could have been raised based on the factual allegations made in the operative Third Amended Complaint, including failure to pay all unreimbursed business expenses and PAGA claims for civil penalties due to any Labor Code violations by Defendant arising out of or related to events alleged in the Third Amended Complaint, including any and all claims arising out of alleged violations of California Labor Code § 2802, penalties, interest, attorneys’ fees and costs, and any other claims arising out of or related to the Third Amended Complaint filed in the Action that arose during the Class Period (“Released Claims”). This release shall run from January 27, 2020 to December 20, 2020.

It is understood and acknowledged that all persons who are employed or have been employed by Defendant in California as hourly-paid or non-exempt employees at any time during the time period from January 27, 2020 through December 20, 2020 (the “PAGA Period”), who worked at certain sites where they allegedly incurred unreimbursed expenses (the “PAGA Aggrieved Employees”), will be issued a check for their share of the PAGA Amount, as defined below, regardless of whether they submit a timely Request for Exclusion from the Settlement. All PAGA Aggrieved Employees shall be deemed to have released all claims for civil penalties under the PAGA against the Released Parties with respect to the underlying claims pled in the operative Third Amended Complaint in the Action or Plaintiff’s letter to the California Labor and Workforce Development Agency (“LWDA”) dated January 27, 2021, or which could have been pled in the operative Third Amended Complaint in the Action based on the factual allegations therein, that arose during the PAGA Period (the “PAGA Released Claims”). This release shall run from January 27, 2020 to December 20, 2020.

- B. In light of Plaintiff’s Class Representative Enhancement Award, Plaintiff agrees to release, as an individual and in addition to the Released Claims described above, all claims, whether known or unknown, under federal law or state law against Defendant. Plaintiff understands that this release includes unknown claims and that Plaintiff is, as a result, waiving all rights and benefits afforded by Section 1542 of the California Civil Code, which provides:

A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release and that, if known by him or her, would have materially affected his or her settlement with the debtor or released party.

Nothing contained herein shall constitute a release of any rights or claims that cannot be waived as a matter of law (including but not limited to claims arising under workers' compensation laws). Nor shall anything contained herein be construed to exclude the filing of an administrative charge or complaint with the Equal Employment Opportunity Commission or National Labor Relations Board, or participation in an administrative investigation or proceeding.

The "Effective Date" of this Settlement is the date on which the Settlement is approved and the Court's order approving the Settlement ("Judgment") becomes final. For purposes of this agreement, the Court's Judgment "becomes final" upon the latter of: (i) if no appeal is filed, the expiration date of the time for the filing or noticing of any appeal from, or other challenge to, the Court's Judgment (this time period shall not be less than 60 calendar days after the Court's Judgment is entered); (ii) the date of affirmance of an appeal of the Judgment becomes final under the California Code of Civil Procedure; or (iii) the date of final dismissal of any appeal from the Judgment or the final dismissal of any proceeding on review of any court of appeal decision relating to the Judgment.

3. **Maximum Settlement Amount.** As consideration, Defendant agrees to pay a non-reversionary "Maximum Settlement Amount" of One Hundred Fifty Thousand Dollars and Zero Cents (\$150,000.00) in full and complete settlement of the Action, as follows:

- A. The Parties have agreed to engage Simpluris, Inc. as the "Settlement Administrator" to administer this Settlement.
- B. Defendant will fund the Maximum Settlement Amount within thirty (30) calendar days after the Effective Date, which shall be deposited with the Settlement Administrator and held in an established Qualified Settlement Fund ("QSF").
- C. Under no condition will Defendant's aggregate liability exceed the Maximum Settlement Amount. At no time shall Defendant have the obligation to segregate the funds comprising the Maximum Settlement Amount, and Defendant shall retain exclusive authority over, and the responsibility for, those funds prior to the date such funds are deposited with the Settlement Administrator into the QSF.
- D. This is a non-reversionary settlement. The Maximum Settlement Amount includes:
 - (1) All awards (including interest) to the Settlement Class members;
 - (2) All costs of the Settlement Administrator which are anticipated to be no greater than \$5,750.00;
 - (3) Up to \$5,000.00 for Plaintiff's Class Representative Enhancement Award in recognition for Plaintiff's contributions to the Action and service to the Settlement Class. In the event that the Court reduces or does not approve the requested Class Representative Enhancement Award, Plaintiff shall not have the right to revoke the Settlement Agreement for that reason, and the Settlement will remain binding;

- (4) Up to one-third (33.33%) of the Maximum Settlement Amount in Class Counsel's attorneys' fees (currently estimated at \$50,000.00), plus actual costs and expenses incurred by Class Counsel related to the Action as supported by declaration, which are currently estimated to be no greater than \$17,500.00. In the event that the Court reduces or does not approve the requested Class Counsel attorneys' fees or costs, Class Counsel shall not have the right to revoke the Settlement Agreement based on that reason, and the Settlement will remain binding; and
 - (5) Twenty Thousand Dollars and Zero Cents (\$20,000.00) of the Maximum Settlement Amount has been set aside by the Parties as PAGA civil penalties. Per Labor Code § 2699(i), 75% of such penalties, or \$15,000.00, will be payable to the LWDA, and the remaining 25%, or \$5,000.00, will be payable to the PAGA Aggrieved Employees as the "PAGA Amount."
 - E. Defendants will not oppose the reasonableness of these requests. Any reduction by the Court of these requests will revert to the Net Settlement Amount for distribution to the Settlement Class members who do not opt-out.
 - F. **Escalator Clause.** Defendant represents that there are approximately 196 potential Settlement Class members who worked an estimated 4,153 aggregate pay periods during the Class Period. If the actual number of total pay periods worked by the Settlement Class members as reported to the Settlement Administrator following preliminary approval is more than 10% greater than this figure (i.e., if there are 4,569 or more total pay periods), Defendant will increase the Maximum Settlement Amount on a proportional basis equivalent to the increase above 10% (i.e., if there was a 12% increase in pay periods, Defendant shall increase the Maximum Settlement Amount by 2%).
5. **Awards to the Settlement Class.** Settlement Class members are not required to submit a claim form to receive an award ("Individual Settlement Award") from the Settlement. Individual Settlement Awards will be determined and paid as follows:
- A. The Settlement Administrator shall first deduct from the Maximum Settlement Amount the amounts approved by the Court for Class Counsel's attorneys' fees, Class Counsel's costs and expenses, the Class Representative Enhancement Award, the Settlement Administrator's fees and expenses for administration, and the 75% portion of PAGA civil penalties designated as payable to the LWDA. The remaining amount shall be known as the "Net Settlement Amount."
 - B. From the Net Settlement Amount, the Settlement Administrator will calculate each Settlement Class member's Individual Settlement Award based on the following formula:
 - i. PAGA Amount: The \$5,000.00 payable to the PAGA Aggrieved Employees as their 25% portion of the PAGA civil penalties shall be designated as the "PAGA Amount." Each PAGA Aggrieved Employee who

was employed by Defendant at any time during the PAGA Period, regardless of whether they timely submit a Request for Exclusion, shall receive a portion of the PAGA Amount proportionate to the number of workweeks that he or she worked during the PAGA Period compared to the aggregate number of workweeks worked by all PAGA Aggrieved Employees during the PAGA Period.

- ii. The remainder of the Net Settlement Amount will be distributed to each participating Settlement Class member based on their proportionate number of workweeks worked during the Class Period, by multiplying the remaining Net Settlement Amount by a fraction, the numerator of which is the Settlement Class member's total workweeks worked during the Class Period, and the denominator of which is the total number of workweeks worked by all participating Settlement Class members during the Class Period.
- C. Within 10 business days following the full funding of the Maximum Settlement Amount with the Settlement Administrator, the Settlement Administrator will calculate each Settlement Class member's Individual Settlement Award, and will prepare and mail the Individual Settlement Awards to the participating Settlement Class members.
- D. Each Individual Settlement Award shall be allocated as 100% as expense reimbursements (which are not wages) and PAGA civil penalties (not subject to withholdings). The Settlement Administrator will be responsible for issuing to participating Settlement Class members an IRS Form 1099-MISC (for amounts paid pursuant to this Settlement Agreement). Neither Plaintiff nor Defendant, nor counsel for either of the Parties, makes any representations or warranties with respect to tax consequences of any payment under this Settlement. To the extent that this Settlement Agreement is interpreted to contain or constitute advice regarding any state or federal tax issue, such advice is not intended or written to be used, and cannot be used, by any person for the purpose of avoiding penalties under the Internal Revenue Code. Defendant is not responsible for any employee tax obligations regarding the allocation of the Maximum Settlement Amount or any payment made pursuant to this Settlement Agreement.
- E. Defendant shall fully discharge its obligations to the participating Settlement Class members through the mailing of an Individual Settlement Award, regardless of whether such checks are actually received and/or negotiated by the recipients. Uncashed Individual Settlement Award checks will not be re-issued, except for good cause and as mutually agreed upon by the Parties in writing. Each member of the Settlement Class who receives an Individual Settlement Award must cash that check within one hundred eighty (180) days from the date the Settlement Administrator mails it. Any check that is not negotiated within 180 days of mailing to a Settlement Class member shall be transferred to the California State Controller's Office to be held pursuant to the Unclaimed Property Law, California

Civil Code § 1500 *et seq.*, in the name of the Settlement Class member to whom the check was issued, until such time that they claim their property.

- F. Neither Plaintiff nor Defendant shall bear any liability for lost or stolen checks, forged signatures on checks, or unauthorized negotiation of checks. Unless responsible by its own acts of omission or commission, the same is true for the Settlement Administrator.

6. **Attorneys' Fees and Costs.** Defendant will not object to Class Counsel's request for a total award of attorneys' fees of up to one-third of the Maximum Settlement Amount, which is currently estimated to be \$50,000.00. Additionally, Class Counsel will request an award of actual costs and expenses as supported by declaration, in an amount not to exceed \$17,500.00 from the Maximum Settlement Amount. These amounts will cover any and all work performed and any and all costs incurred in connection with this litigation, including without limitation: all work performed and all costs incurred to date; and all work to be performed and costs to be incurred in connection with obtaining the Court's approval of this Settlement Agreement, including any objections raised and any appeals necessitated by those objections. Class Counsel will be issued an IRS Form 1099-MISC by the Settlement Administrator for the fees and costs award approved by the Court. Except as specified in this paragraph, the Parties will otherwise each bear their own attorneys' fees and litigation costs.

7. **Class Representative Enhancement Award.** Defendant will not object to a request for a Class Representative Enhancement Award in the amount of \$5,000.00 for Plaintiff's time and risk in prosecuting this case, Plaintiff's service to the Settlement Class, and in exchange for Plaintiff's general release of claims. This award will be in addition to Plaintiff's Individual Settlement Award as a Settlement Class member, and shall be reported on an IRS Form 1099-MISC issued by the Settlement Administrator.

8. **Settlement Administrator.** Defendant agrees to the appointment of Simpluris, Inc. as Settlement Administrator. Defendant will not object to Plaintiff seeking approval to pay up to \$5,750.00 for the administration services from the Maximum Settlement Amount. The Settlement Administrator shall be responsible for establishing a QSF into which it shall deposit and hold the payment from Defendant comprising the Maximum Settlement Amount, maintaining its own employer taxpayer ID number, sending Notice Packets in English and Spanish to the Settlement Class members, calculating Individual Settlement Awards and preparing all checks and mailings, and other duties as described in this Settlement Agreement. The Settlement Administrator shall be authorized to pay itself from the Maximum Settlement Amount only after Individual Settlement Awards have been mailed to all participating Settlement Class members.

9. **Preliminary Approval.** Within a reasonable time after execution of this Settlement Agreement by the Parties, Plaintiff shall apply to the Court for the entry of an Order:

- A. Conditionally certifying the Settlement Class for settlement purposes only;
- B. Appointing Paul K. Haines, Fletcher W. Schmidt, Matthew K. Moen, and Susan J. Perez of Haines Law Group, APC as Class Counsel;
- C. Appointing Plaintiff John Erving as Class Representative for the Settlement Class;

- D. Approving Simpluris, Inc. as Settlement Administrator;
- E. Preliminarily approving this Settlement Agreement and its terms as fair, reasonable, and adequate;
- F. Approving the form and content of the Notice Packet (which is comprised of the Notice of Class Action Settlement and Notice of Individual Settlement Award, and which was mutually drafted and agreed upon by the Parties prior to submission to the Court for approval), and directing the mailing of the same; and
- G. Scheduling a Final Approval hearing.

Defendant and Defense Counsel shall have a reasonable opportunity to review Plaintiff's Motion for Preliminary Approval of Class Action Settlement prior to it being filed with the Court.

10. **Notice to Settlement Class.** Following preliminary approval, the Settlement Class shall be notified as follows:

- A. Within twenty-one (21) calendar days of the court signing an order preliminarily approving this Settlement Agreement, Defendant will provide the Settlement Administrator, on a confidential basis, with the names, last known addresses, last known telephone numbers, social security numbers, and the number of pay periods/workweeks ("workweek data") from the Class Period for all Settlement Class members to the Settlement Administrator to use to determine the number of workweeks worked by each Settlement Class member during the Class Period (to the extent all such information is available).
- B. Within fourteen (14) calendar days from receipt of this information, the Settlement Administrator shall (i) run the names of all Settlement Class members through the National Change of Address ("NCOA") database to determine any updated addresses for Settlement Class members; (ii) update the address of any Settlement Class member for whom an updated address was found through the NCOA search; (iii) calculate the estimated Individual Settlement Award for each Settlement Class member; and (iv) mail a Notice Packet to each Settlement Class member at his or her last known address or at the updated address found through the NCOA search, and retain proof of mailing.
- C. Any Notice Packets returned to the Settlement Administrator as non-delivered on or before the Response Deadline, as defined below, shall be re-mailed to the forwarding address affixed thereto within three (3) business days of receipt. If no forwarding address is provided, the Settlement Administrator shall make reasonable efforts, including utilizing a "skip trace," to obtain an updated mailing address within three (3) business days of receiving the returned Notice Packet. If an updated mailing address is identified, the Settlement Administrator shall resend the Notice Packet to the Settlement Class member immediately, and in any event within three (3) business days of obtaining the return mail. The address identified by the Settlement Administrator as the current mailing address shall be presumed to be the best mailing address for each Settlement Class member. Settlement Class

members to whom Notice Packets are re-mailed after having been returned as undeliverable to the Settlement Administrator shall have an additional fourteen (14) calendar days after the Response Deadline to opt-out, object, or dispute their Individual Settlement Award. Notice Packets that are re-mailed shall inform the recipient of this adjusted deadline.

- D. Requests for Exclusion. Any Settlement Class member who wishes to opt-out of the Settlement must complete and mail a Request for Exclusion (defined below) to the Settlement Administrator within 60 calendar days of the date of the initial mailing of the Notice Packets (the "Response Deadline").
- i. The Notice Packet shall state that Settlement Class members who wish to exclude themselves from the Settlement must submit a Request for Exclusion by the Response Deadline. The Request for Exclusion must: (1) contain the name, address, telephone number and the last four digits of the Social Security number of the Settlement Class member; (2) contain a statement that the Settlement Class member wishes to be excluded from the Settlement; (3) be signed by the Settlement Class member; and (4) be postmarked by the Response Deadline and mailed to the Settlement Administrator at the address specified in the Class Notice. If the Request for Exclusion does not contain the information listed in (1)-(3), it will not be deemed valid for exclusion from the Settlement, except a Request for Exclusion not containing a Class Member's telephone number and/or last four digits of the Social Security number will be deemed valid. The date of the postmark on the Request for Exclusion shall be the exclusive means used to determine whether a Request for Exclusion has been timely submitted. Any Settlement Class member who requests to be excluded from the Settlement Class will not be entitled to any recovery under this Settlement Agreement and will not be bound by the terms of the Settlement or have any right to object, appeal or comment thereon.
 - ii. At no time will the Parties or their counsel seek to solicit or otherwise encourage any Settlement Class member to object to the Settlement or opt-out of the Settlement Class, or encourage any Settlement Class member to appeal from the final judgment.
 - iii. PAGA Aggrieved Employees. All PAGA Aggrieved Employees employed by Defendant during the PAGA period shall receive their share of the PAGA Amount and will be deemed to have released the PAGA Released Claims, regardless of whether or not they timely request to be excluded from the Settlement Class.
 - iv. Defendant's Right to Rescind. Notwithstanding any other provision of this Settlement Agreement, Defendant shall retain the right, in the exercise of its sole discretion, to nullify the Settlement if more than five percent (5%) of the putative Settlement Class members validly exclude themselves from the Settlement. Defendant shall communicate its decision to nullify the Settlement Agreement pursuant to this paragraph in writing to the Settlement

Administrator and Class Counsel no later than ten (10) calendar days after the Response Deadline. In the event that Defendant elects to exercise this right, Defendant shall be solely responsible for paying all costs incurred by the Settlement Administrator through the date that Defendant communicates its decision to nullify the Settlement Agreement in writing to the Settlement Administrator and Class Counsel.

- E. Objections. Members of the Settlement Class who do not opt-out may object to this Settlement Agreement as explained in the Class Notice by filing a written objection with the Settlement Administrator (who shall serve all objections as received on Class Counsel and Defendant's counsel, as well as file all such objections with the Court) within the Response Deadline. Defense Counsel and Class Counsel shall file any responses to objections no later than the deadline to file the Motion for Final Approval. To be valid, any objection must be postmarked no later than the Response Deadline. Any Settlement Class member who wishes to may appear in person or through their own counsel and raise an objection at the Final Approval Hearing.
 - F. Notice of Individual Settlement Award / Disputes. Each Notice Packet mailed to a Settlement Class member shall disclose the amount of the Settlement Class member's estimated Individual Settlement Award as well as all of the information that was used to calculate the Individual Settlement Award. Settlement Class members will have the opportunity, should they disagree with Defendant's records regarding the information stated in the Notice of Individual Settlement Award, to provide documentation and/or an explanation to show contrary information. Defendant's workweek data will be presumed to be correct unless a particular Settlement Class member proves otherwise to the Settlement Administrator by credible written evidence. Any such dispute, including any supporting documentation, must be mailed to the Settlement Administrator and postmarked by the Response Deadline. The Settlement Administrator shall determine the eligibility for, and the amounts of, any Individual Settlement Awards under the terms of this Settlement Agreement, and the Settlement Administrator's decision on all workweek disputes will be final and non-appealable. However, if the Settlement Administrator and the Parties cannot agree on a resolution, the Parties will submit the dispute to the Court for a final determination.
 - G. Defendant understands its legal obligation not to retaliate against the Settlement Class members for their participation and/or election to participate in the benefits to be afforded any of them by the Settlement and/or the Action.
11. **Final Approval.** Following preliminary approval and the close of the period for filing requests for exclusion, objections, or disputes under this Settlement Agreement, Plaintiff shall apply to the Court for entry of an Order:
- A. Granting final approval to the Settlement Agreement and adjudging its terms to be fair, reasonable, and adequate;

- B. Approving Plaintiff's and Class Counsel's application for attorneys' fees and costs, Class Representative Enhancement Award, settlement administration costs, and payment to the LWDA for its share of civil penalties under PAGA; and
- C. Entering judgment pursuant to California Rule of Court 3.769.

Defendant and Defense Counsel shall have a reasonable opportunity to review Plaintiff's Motion for Final Approval prior to it being filed with the Court.

12. **Non-Admission of Liability.** Nothing in this Settlement Agreement shall operate or be construed as an admission of any liability, wrongdoing, or that class certification is appropriate in any context other than this Settlement. Each of the Parties has entered into this Settlement Agreement to avoid the burden and expense of further litigation. Pursuant to California Evidence Code Section 1152, this Settlement Agreement is inadmissible in any proceeding, except a proceeding to approve, interpret, or enforce this Settlement Agreement. If Final Approval does not occur, the Parties agree that this Settlement Agreement is void, but remains protected by California Evidence Code Section 1152. Defendant denies Plaintiff's claims and allegations alleged in the Action and any and all liability, fault, and the existence or applicability of any damages or penalties of any kind whatsoever. This Settlement Agreement may however be used as an affirmative defense or bar, in whole or in part, to any other of future claims.

13. **Waiver and Amendment.** The Parties may not waive, amend, or modify any provision of this Settlement Agreement except by a written agreement signed by all of the Parties or their respective counsel, and subject to any necessary Court approval. A waiver or amendment of any provision of this Settlement Agreement will not constitute a waiver of any other provision.

14. **Notices.** All notices, demands, and other communications to be provided concerning this Settlement Agreement shall be in writing and delivered by receipted delivery and by e-mail at the addresses set forth below, or such other addresses as either Party may designate in writing from time to time:

if to Plaintiff: Fletcher W. Schmidt of Haines Law Group, APC
2155 Campus Drive, Suite 180, El Segundo, CA 90245
fschmidt@haineslawgroup.com

if to Defendant: Michael Afar of Seyfarth Shaw, LLP
2029 Century Park East, Suite 3500, Los Angeles, California 90067
mafar@seyfarth.com

15. **Entire Agreement.** This Settlement Agreement contains the entire agreement between the Parties with respect to the transactions contemplated hereby, and supersedes all negotiations, presentations, warranties, commitments, offers, contracts, and writings prior to the date hereof relating to the subject matters hereof.

16. **Counterparts.** This Settlement Agreement may be executed by one or more of the Parties on any number of separate counterparts and delivered electronically, and all of said counterparts taken together shall be deemed to constitute one and the same instrument.

IN WITNESS THEREOF, the Parties to this Settlement Agreement each acknowledge that they have read the foregoing Settlement Agreement, accept and agree to the provisions contained herein, and hereby execute it voluntarily and with full understanding of its consequences.

Dated: Jul 19, 2022

JOHN ERVING


John Erving (Jul 19, 2022 22:40 PDT)

John Erving, Plaintiff

LAZER SPOT, INC.

Dated: _____

By: _____
Its: _____

APPROVED AS TO FORM:

Dated: Jul 20, 2022

HAINES LAW GROUP, APC

By: 
Paul K. Haines
Fletcher W. Schmidt
Matthew K. Moen
Attorneys for Plaintiff

Dated: _____

SEYFARTH SHAW LLP

By: _____
Michael Afar
Bernard Olshansky
Attorneys for Defendant

IN WITNESS THEREOF, the Parties to this Settlement Agreement each acknowledge that they have read the foregoing Settlement Agreement, accept and agree to the provisions contained herein, and hereby execute it voluntarily and with full understanding of its consequences.

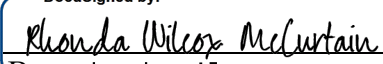
JOHN ERVING

Dated: _____

John Erving, Plaintiff

LAZER SPOT, INC.

Dated: 7/19/2022

DocuSigned by:

By: Rhonda Wilcox McCurtain
Its: VP and General Counsel

APPROVED AS TO FORM:

Dated: _____

HAINES LAW GROUP, APC

By: _____
Paul K. Haines
Fletcher W. Schmidt
Matthew K. Moen
Attorneys for Plaintiff

Dated: July 20, 2022

SEYFARTH SHAW LLP

By: 

Michael Afar
Bernard Olshansky
Attorneys for Defendant

EXHIBIT B

SUPERIOR COURT OF THE STATE OF CALIFORNIA

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

NOTICE OF CLASS ACTION SETTLEMENT

To: All persons who are employed or have been employed by Defendant in California as hourly-paid or non-exempt employees at any time during the time period from January 27, 2020 to December 20, 2020 (the "Class Period"), who worked at certain sites where they allegedly incurred unreimbursed expenses. Collectively, these employees will be referred to as "Settlement Class Members."

**PLEASE READ THIS NOTICE CAREFULLY
YOUR LEGAL RIGHTS MAY BE AFFECTED WHETHER YOU ACT OR NOT**

Why should you read this notice?

The Court has granted preliminary approval of a proposed class action settlement (the "Settlement") in *John Erving v. Lazer Spot, Inc.*, San Bernardino County Superior Court, Case No. CIVSB2101370 (the "Lawsuit"). Your rights may be affected by the Settlement, and it is important that you read this notice carefully.

You may be entitled to money from this Settlement. Defendant Lazer Spot, Inc.'s ("Defendant") records show that you were employed by Defendant as a hourly-paid or non-exempt employee in California during the Class Period and worked at certain sites where you allegedly incurred unreimbursed expenses. The Court ordered that this Notice be sent to you because you may be entitled to money under the Settlement and because the Settlement affects your legal rights.

The purpose of this notice is to provide you with a brief description of the Lawsuit, to inform you of the terms of the Settlement, to describe your rights in connection with the Settlement, and to explain what steps you may take to participate in, object to, or exclude yourself from the Settlement. If you do not exclude yourself from the Settlement and the Court finally approves the Settlement, you will be bound by the terms of the Settlement and any final judgment.

What is this case about?

Plaintiff John Erving ("Plaintiff") brought this lawsuit against Defendant, asserting claims on behalf of all Settlement Class Members. Plaintiff is known as the "Class Representative," and his attorneys, who also represent the interests of all Settlement Class Members, are known as "Class Counsel."

In the Lawsuit, Plaintiff alleges that Defendant: (i) failed to reimburse all necessary business expenses incurred; and (ii) is liable for civil penalties under the Private Attorneys General Act (Labor Code § 2698 *et seq.*) ("PAGA").

Defendant denies that it has done anything wrong. Defendant denies that it has engaged in any unlawful activity, that it has failed to comply with the law in any respect, and that it has any liability to anyone under the claims asserted in the Lawsuit. Defendant denies that it owes Settlement Class Members any reimbursement, restitution, penalties, or other damages. Accordingly, the Settlement constitutes a compromise of disputed claims and should not be construed as an admission of liability on the part of Defendant, which expressly denies all liability.

The Court has not ruled on the merits of Plaintiff's claims. However, to avoid additional expense, inconvenience, and interference with business operations, the parties concluded that it is in the best interests of Defendant and the Settlement Class Members to settle the Lawsuit on the terms summarized in this Notice. After Defendant provided relevant information to Class Counsel, the Settlement was reached after mediation and arms'-length negotiations between the parties.

The Class Representative and Class Counsel support the Settlement. Among the reasons for support are the defenses to liability potentially available to Defendant, the risk of denial of class certification, the inherent risks of trial on the merits, and the delays and uncertainties associated with ongoing litigation.

If you are still employed by Lazer Spot, Inc., your decision about whether to participate in the Settlement will not affect your employment. California law and Lazer Spot, Inc. policy strictly prohibit unlawful retaliation. Defendant will not take any adverse employment action against or otherwise target, retaliate, or discriminate against any Settlement Class Member because of his or her decision to either participate or not participate in the Settlement.

Who are the Attorneys?

Attorneys for Plaintiff / Settlement Class Members:	Attorneys for Defendant, Lazer Spot, Inc.:
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 Susan J. Perez (SBN 329044) sperez@haineslawgroup.com 2155 Campus Drive, Suite 180 El Segundo, California 90245 Tel: (424) 292-2350 Fax: (424) 292-2355 haineslawgroup.com	SEYFARTH SHAW LLP Jon D. Meer (SBN 144389) jmeer@seyfarth.com Michael Afar (SBN 298990) mafar@seyfarth.com 2029 Century Park East, Suite 3500 Los Angeles, California 90067-3021 Telephone: (310) 277-7200 Facsimile: (310) 201-5219 Bernard Olshansky (SBN 336251) bolshansky@seyfarth.com 601 South Figueroa Street, Suite 3300 Los Angeles, California 90017-5793 Telephone: (213) 270-9600 Facsimile: (213) 270-9601

What are the terms of the Settlement?

On <<PRELIM APPROVAL DATE>>, the Court preliminarily certified a class – for settlement purposes only – of all persons who are employed or have been employed by Defendant in California as hourly-paid or non-exempt employees at any time during the Class Period, who worked at certain sites where they allegedly incurred unreimbursed expenses. The Settlement Class includes any participating Settlement Class Member who settled or released any of the claims covered by this Settlement. Settlement Class Members who do not submit a valid and timely Request for Exclusion from the Settlement pursuant to the procedures set forth in this Notice will be bound by the Settlement and will release their claims against Defendant, as described below in the “Release” section.

Defendant agreed to pay \$150,000.00 (the “Maximum Settlement Amount”) to fully resolve all claims in the Lawsuit, including payments to Settlement Class Members, attorneys’ fees and verified cost reimbursement, settlement administration costs, payment to the California Labor and Workforce Development Agency (“LWDA”) for its share of PAGA civil penalties, and the Class Representative Enhancement Award. The following deductions from the Maximum Settlement Amount will be requested by the parties:

Settlement Administration Costs. The Court has approved Simpluris, Inc. to act as the “Settlement Administrator,” who is sending this Notice to you and who will perform many other duties relating to the Settlement. The Court has approved setting aside up to \$5,750.00 from the Maximum Settlement Amount to pay the Settlement administration costs.

Attorneys' Fees and Expenses. Class Counsel have been prosecuting the Lawsuit on behalf of the Settlement Class Members on a contingency fee basis (that is, without being paid any money to date) and have been paying all litigation costs and expenses. The Court will determine the actual amount awarded to Class Counsel as attorneys' fees, which will be paid from the Maximum Settlement Amount. Settlement Class Members are not personally responsible for any of Class Counsel's attorneys' fees or expenses. Class Counsel will ask for fees of up to one-third of the Maximum Settlement Amount (which is currently estimated to be \$50,000.00) as reasonable compensation for the work Class Counsel performed and will continue to perform in this Lawsuit through Settlement finalization. Class Counsel also will ask for reimbursement of up to \$17,500.00 for verified costs which were incurred by Class Counsel in connection with the Lawsuit.

Class Representative Enhancement Award. Class Counsel will ask the Court to award \$5,000.00 to Plaintiff as a Class Representative Enhancement Award. This is meant to compensate Plaintiff for his general release of claims against Defendant and his service and extra work provided on behalf of the Settlement Class Members.

PAGA Payment to the State of California. The parties have agreed to allocate \$20,000.00 of the Maximum Settlement Amount as PAGA civil penalties. Per Labor Code Section 2699(i), 75% of such penalties (\$15,000.00) will be payable to the LWDA for its share of PAGA penalties, and the remaining 25% (\$5,000.00) will be payable to the Settlement Class as part of the Net Settlement Amount.

Calculation of Settlement Class Members' Individual Settlement Awards. After deducting the Court-approved amounts above, the balance of the Maximum Settlement Amount will form the Net Settlement Amount, which will be distributed to all Settlement Class Members who do not submit a valid and timely Request for Exclusion (described below). The Net Settlement Amount will be divided as follows:

- (i) PAGA Amount: The \$5,000.00 payable to the Settlement Class Members as PAGA civil penalties shall be designated as the "PAGA Amount." Each Settlement Class Member is employed or who was employed by Defendant in California as hourly-paid or non-exempt employees at any time between January 27, 2020 and December 20, 2020 (the "PAGA Period"), who worked at certain sites where they allegedly incurred unreimbursed expenses (the "PAGA Aggrieved Employees"), shall receive a portion of the PAGA Amount proportionate to the number of workweeks that he or she worked during the PAGA Period compared to the aggregate number of workweeks worked by all PAGA Aggrieved Employees during the PAGA Period, regardless of whether he or she timely submits a Request for Exclusion.
- (ii) The remainder of the Net Settlement Amount will be distributed to each participating Settlement Class Member based on their proportionate number of workweeks worked during the Class Period, by multiplying the remaining Net Settlement Amount by a fraction, the numerator of which is the Settlement Class Member's total workweeks worked during the Class Period, and the denominator of which is the total number of workweeks worked by all participating Settlement Class members during the Class Period.

Individual Settlement Awards to Settlement Class Members. If the Court grants final approval of the Settlement, Individual Settlement Awards will be mailed to Settlement Class Members who did not submit a valid and timely Request for Exclusion. Each participating Settlement Class Member who receives an Individual Settlement Award must negotiate that check within 180 calendar days from the date the Settlement Administrator mails it. Any funds payable to participating Settlement Class Members whose checks are not negotiated within 180 calendar days after mailing will be transferred to the California State Controller's Office to be held pursuant to the Unclaimed Property Law, California Civil Code § 1500 *et seq.*, in the name of the Settlement Class Member to whom the check was issued, until such time that he or she claims his or her property.

Allocation and Taxes. For tax purposes, each Individual Settlement Award will be allocated as 100% expense reimbursements and PAGA civil penalties issued pursuant to an IRS Form 1099-MISC. Settlement Class Members are responsible for the proper income tax treatment of the Individual Settlement Award. The Settlement Administrator, Defendant and its counsel, and Class Counsel cannot provide tax advice. Accordingly, Settlement Class Members should consult with their tax advisors concerning the tax consequences and treatment of payments they receive under the Settlement.

Release. If the Court approves the Settlement, each Settlement Class Member who has not submitted a timely and valid Request for Exclusion will fully release and discharge: (i) Defendant, (ii) each of Defendant's respective past, present and future parents, subsidiaries, and affiliates including, without limitation, any corporation, limited liability company, partnership, affiliated entity, trust, foundation, and non-profit entity which controls, is controlled by, or is under common control with Defendant; (iii) the past, present and future shareholders, directors, officers, agents, employees, attorneys, insurers, members, partners, managers, contractors, agents, consultants, representatives, administrators, fiduciaries, benefit plans, transferees, predecessors, successors, and assigns of any of the foregoing; and (iv) any individual or entity which could be jointly liable with any of the foregoing (collectively the "Released Parties") from all claims that were raised or could have been raised based on the factual allegations made in the operative Third Amended Complaint, including failure to pay all unreimbursed business expenses and PAGA claims for civil penalties due to any Labor Code violations by Defendant arising out of or related to events alleged in the Third Amended Complaint, including any and all claims arising out of alleged violations of California Labor Code § 2802, penalties, interest, attorneys' fees and costs, and any other claims arising out of or related to the Third Amended Complaint filed in the Lawsuit that arose during the Class Period ("Released Claims"). This release shall run from January 27, 2020 to December 20, 2020.

PAGA Release. If the Court approves the Settlement, all PAGA Aggrieved Employees will be issued a check for their share of the PAGA Amount and shall be deemed to have released all claims for civil penalties under the PAGA against the Released Parties with respect to the underlying claims pled in the operative Third Amended Complaint in the Lawsuit or Plaintiff's letter to the LWDA dated January 27, 2021, or which could have been pled in the operative Third Amended Complaint in the Lawsuit based on the factual allegations therein, that arose during the PAGA Period (the "PAGA Released Claims"). This release shall run from January 27, 2020 to December 20, 2020.

Conditions of Settlement. The Settlement is conditioned upon the Court entering an order at or following the Final Approval Hearing finally approving the Settlement as fair, reasonable, adequate and in the best interests of the Settlement Class Members, and the entry of Judgment.

How can I claim money from the Settlement?

Do Nothing. If you do nothing, you will be entitled to your Individual Settlement Award, which has been calculated for you based on the formula set forth above, as stated in the accompanying Notice of Individual Settlement Award. You also will be bound by the Settlement, including the release of claims stated above.

What other options do I have?

Dispute Information in Notice of Individual Settlement Award. Your award is based on the proportionate number of workweeks that you worked during the relevant time periods. The information contained in Defendant's records regarding this information, along with your estimated Individual Settlement Award, is listed on the accompanying Notice of Individual Settlement Award. If you disagree with the information in your Notice of Individual Settlement Award, you may submit a dispute, along with any supporting documentation, in accordance with the procedures stated in the Notice of Individual Settlement Award. Any disputes, along with supporting documentation, must be postmarked no later than **<<RESPONSE DEADLINE>>**. **DO NOT SEND ORIGINALS; DOCUMENTATION SENT TO THE SETTLEMENT ADMINISTRATOR WILL NOT BE RETURNED OR PRESERVED.**

The Parties and the Settlement Administrator will evaluate the evidence submitted and discuss in good faith how to resolve any disputes submitted by Settlement Class Members. Should a consensus not be reached, any outstanding disputes will be submitted to the Court for a final determination.

Exclude Yourself from the Settlement. If you **do not** wish to take part in the Settlement, you may exclude yourself by sending to the Settlement Administrator a written "Request for Exclusion" letter or card postmarked no later than **<<RESPONSE DEADLINE>>**, with your name, address, telephone number, last four digits of your social security number, and your signature. The Request for Exclusion must state:

"I WISH TO BE EXCLUDED FROM THE SETTLEMENT CLASS IN THE *JOHN ERVING V. LAZER SPOT, INC.* LAWSUIT FILED IN THE SAN BERNARDINO COUNTY SUPERIOR COURT, CASE NO. CIVSB2101370. I UNDERSTAND THAT IF I ASK TO BE EXCLUDED FROM THE SETTLEMENT CLASS, I WILL NOT RECEIVE ANY MONEY FROM THE SETTLEMENT OF THIS LAWSUIT."

Send the Request for Exclusion directly to the Settlement Administrator at <<ADMINISTRATOR CONTACT INFO>>. Any person who submits a timely Request for Exclusion from the Settlement shall, upon receipt by the Settlement Administrator, no longer be a Settlement Class Member, shall be barred from participating in any portion of the Settlement, and shall receive no benefits from the Settlement. **Do not submit both a Dispute and a Request for Exclusion.** If you do, the Request for Exclusion will be invalid, you will be included in the Settlement Class, and you will be bound by the terms of the Settlement.

Objecting to the Settlement. You also have the right to object to the terms of the Settlement. However, if the Court rejects your objection, you will still be bound by the terms of the Settlement. If you wish to object to the Settlement, or any portion of it, you may mail a written objection to the Settlement Administrator. Your written objection must include your full name and current address, as well as contact information for any attorney representing you regarding your objection, the case name and number, all objections and the factual and legal basis for the same, and any and all supporting papers, briefs, declarations, and/or other evidence supporting your objection. All objections or other correspondence must state the name and number of the case, which is *John Erving v. Lazer Spot, Inc.*, San Bernardino County Superior Court, Case No. CIVSB2101370. Objections in writing must be postmarked on or before <<RESPONSE DEADLINE>>.

You may also appear at the Final Approval Hearing scheduled for <<FINAL APPROVAL HEARING DATE/TIME>> in Department S-26 of the San Bernardino County Superior Court, located at 247 W. 3rd Street, San Bernardino, California 92415. The location, date, and time of the Final Approval Hearing may be moved without further notice to you. You may contact Class Counsel using the contact information provided above to confirm the address and time of the hearing, if you wish to appear in person. You have the right to appear either in person or through your own attorney at this hearing, whether or not you submit a written objection. If you object to the Settlement, you will remain a member of the Settlement Class, and if the Court approves the Settlement, you will be bound by the terms of the Settlement in the same way as Settlement Class Members who do not object.

What is the next step?

The Court will hold a Final Approval Hearing on the adequacy, reasonableness, and fairness of the Settlement on <<FINAL APPROVAL HEARING DATE/TIME>>, in Department S-26 of the San Bernardino County Superior Court, located at 247 W. 3rd Street, San Bernardino, California 92415. The location, date, and time of the Final Approval Hearing may be moved without further notice to you. You may contact Class Counsel using the contact information provided above to confirm the address and time of the hearing. The Court also will be asked to rule on Class Counsel's request for attorneys' fees and reimbursement of documented costs and expenses, the Enhancement Award to the Class Representative, the Settlement Administrator's costs, and the amount related to the PAGA civil penalties. **You are not required to attend the Final Approval Hearing.**

How can I get additional information?

This Notice is only a summary of the Lawsuit and the Settlement. For more information, you may inspect the Court's files and the Settlement Agreement at the Office of the Clerk of the San Bernardino County Court, located at 247 West Third Street, San Bernardino, California 92415, between the hours of 8:00 a.m. and 4:00 p.m., Monday through Friday. You may also contact Class Counsel using the contact information listed above for more information.

PLEASE DO NOT CALL OR WRITE THE COURT, DEFENDANT, OR ITS ATTORNEYS FOR INFORMATION ABOUT THIS SETTLEMENT OR THE SETTLEMENT PROCESS

REMINDER AS TO TIME LIMITS

The deadline for submitting any Disputes, Requests for Exclusion, or Objections is <<RESPONSE DEADLINE>>.

NOTICE OF INDIVIDUAL SETTLEMENT AWARD

JOHN ERVING V. LAZER SPOT, INC.
SAN BERNARDINO COUNTY SUPERIOR COURT, CASE NO. CIVSB2101370

Please complete, sign, date and return this Form to <<ADMINISTRATOR CONTACT INFO>> **ONLY IF** (1) your personal contact information has changed, and/or (2) you wish to dispute any of the information listed in Section (III), below. It is your responsibility to keep a current address on file with the Settlement Administrator.

(I) Please type or print your name:

(First, Middle, Last)

(II) Please type or print the following identifying information if your contact information has changed:

Former Names (if any)

New Street Address

City

State

Zip Code

(III) Information Used to Calculate Your Individual Settlement Award:

According to Lazer Spot, Inc.'s records, you worked _____ workweeks from January 27, 2020 to December 20, 2020, at certain work sites at issue in this case.

Based on the above, your Individual Settlement Award is estimated to be \$ _____.

(IV) If you disagree with the information provided in Section (III) above, please explain why in the space provided below and include copies of any supporting evidence or documentation with this form:

If you dispute the above information from Lazer Spot, Inc.'s records, those records will control unless you are able to provide documentation that establishes that Lazer Spot, Inc.'s records are mistaken. If there is a dispute about whether Lazer Spot Inc.'s information or yours is accurate, and the dispute cannot be resolved informally, the dispute will be resolved by the Parties and the Settlement Administrator as described in the Class Notice that accompanies this Form. Any unresolved disputes will be submitted to the Court for a final determination.

**ANY DISPUTES, ALONG WITH ANY SUPPORTING DOCUMENTATION, MUST BE POSTMARKED
NO LATER THAN <<RESPONSE DEADLINE>>.**

Signature: _____

Date: _____

EXHIBIT C