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

MAR 17 2023

BY Jessica Garcez
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**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,

Defendant.

Case No. CIVSB2101370

*[Assigned for all purposes to the Hon. Joseph
T. Ortiz; Dept. S-17]*

**[PROPOSED] JUDGMENT AND ORDER
GRANTING PLAINTIFF'S MOTION
FOR FINAL APPROVAL OF CLASS
ACTION SETTLEMENT, ATTORNEYS'
FEES AND COSTS, AND CLASS
REPRESENTATIVE ENHANCEMENT
AWARD**

Date: March 17, 2023
Time: 1:30 p.m.
Dept.: S-17

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

[PROPOSED] JUDGMENT AND ORDER GRANTING FINAL APPROVAL OF SETTLEMENT

1 **[PROPOSED] JUDGMENT AND ORDER**

2 The Motion of Plaintiff John Erving ("Plaintiff") for Final Approval of Class Action
3 Settlement, Attorneys' Fees and Costs, and Class Representative Enhancement Award came on
4 regularly for hearing before this Court on March 17, 2023, at 1:30 p.m., pursuant to California
5 Rule of Court 3.769 and this Court's Order granting Preliminary Approval of Class Action
6 Settlement ("Preliminary Approval Order"). Having considered the parties' Joint Stipulation of
7 Class Action Settlement ("Settlement" or "Settlement Agreement") and all other documents and
8 evidence presented in support thereof, and recognizing the sharply disputed factual and legal
9 issues involved in this case, the risks of further prosecution, and the benefits to be received by the
10 participating Settlement Class members pursuant to the Settlement, the Court hereby makes a
11 final ruling that the proposed Settlement is fair, reasonable, and adequate, and is the product of
12 good faith, arms'-length negotiations between the parties. Good cause appearing therefor, the
13 Court hereby GRANTS Plaintiff's Motion for Final Approval of Class Action Settlement and
14 HEREBY ORDERS THE FOLLOWING:

15 1. Final judgment is hereby entered in conformity with the Settlement and this Final
16 Approval Order.

17 2. The conditional class certification is hereby made final, and the Court thus
18 certifies, for purposes of the Settlement, the following Settlement Class:

19 All persons who are employed or have been employed by Defendant Lazer Spot,
20 Inc. ("Defendant") in California as hourly-paid or non-exempt employees at any
21 time during the time period from January 27, 2020 to December 20, 2020 (the
22 "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.

23 3. As of the date that this Judgment becomes final, all participating Settlement Class
24 members who did not timely opt-out from participation, by virtue of this Judgment, will fully
25 release and discharge: (i) Defendant; (ii) each of Defendant's respective past, present and future
26 parents, subsidiaries, and affiliates including, without limitation, any corporation, limited liability
27 company, partnership, affiliated entity, trust, foundation, and non-profit entity which controls, is
28 controlled by, or is under common control with Defendant; (iii) the past, present and future

1 shareholders, directors, officers, agents, employees, attorneys, insurers, members, partners,
2 managers, contractors, agents, consultants, representatives, administrators, fiduciaries, benefit
3 plans, transferees, predecessors, successors, and assigns of any of the foregoing; and (iv) any
4 individual or entity which could be jointly liable with any of the foregoing (collectively, the
5 “Released Parties”), from all claims that were raised or could have been raised based on the factual
6 allegations made in the operative Third Amended Complaint, including failure to pay all
7 unreimbursed business expenses and PAGA claims for civil penalties due to any Labor Code
8 violations by Defendant arising out of or related to events alleged in the Third Amended
9 Complaint, including any and all claims arising out of alleged violations of California Labor Code
10 § 2802, penalties, interest, attorneys’ fees and costs, and any other claims arising out of or related
11 to the Third Amended Complaint filed in the Action that arose during the Class Period (the
12 “Released Claims”). The time period for the Released Claims will run from January 27, 2020 to
13 December 20, 2020.

14 4. Plaintiff John Erving is hereby confirmed as Class Representative. Paul K. Haines,
15 Fletcher Schmidt, Matthew K. Moen, and Susan J. Perez of Haines Law Group, APC are hereby
16 confirmed as Class Counsel.

17 5. Notice was mailed to the Settlement Class members in English and Spanish as set
18 forth in the Settlement, which was preliminarily approved by the Court on November 7, 2022.
19 The notice process has been completed in conformity with the Settlement and with this Court’s
20 orders. The Court finds that said notice was the best notice practicable under the circumstances.
21 The notice provided due and adequate notice of the proceedings and matters set forth therein,
22 informed Settlement Class members of their rights, and fully satisfied the requirements of
23 California Code of Civil Procedure § 1781(e), California Rule of Court 3.769, and due process.

24 6. The Court finds that one (1) potential Settlement Class member opted out from the
25 Settlement, and that the 99.45% participation rate in the Settlement supports final approval.

26 7. The Court hereby approves the Settlement as set forth in the Settlement Agreement
27 as fair, reasonable, and adequate, and directs the parties to effectuate the Settlement Agreement
28 according to its terms.

1 8. For purposes of settlement only, the Court finds that: (a) the members of the
2 Settlement Class are ascertainable and so numerous that joinder of all members is impracticable;
3 (b) there are questions of law or fact common to the Settlement Class and there is a well-defined
4 community of interest among members of the Settlement Class with respect to the subject matter
5 of the litigation; (c) the claims of the Class Representative are typical of the claims of the members
6 of the Settlement Class; (d) the Class Representative has fairly and adequately protected the
7 interests of the Settlement Class members; (e) a class action is superior to other available methods
8 for an efficient adjudication of this controversy; and (f) Class Counsel are qualified to serve as
9 counsel for the Class Representative and the Settlement Class.

10 9. The Court finds that given the absence of objections, and objections being a
11 prerequisite to appeal, this Order will be considered final as of the date it is signed by this Court.

12 10. The Court orders Defendant to fund the entire Maximum Settlement Amount of
13 \$150,000.00 within 30 calendar days of the Effective Date, as provided for in the Settlement.

14 11. The Court finds that the Individual Settlement Awards, as defined and provided
15 for in the Settlement, are fair, reasonable, and adequate, and orders the Settlement Administrator
16 to distribute the Individual Settlement Awards in conformity with the terms of the Settlement.

17 12. The Court finds that the payment to the State of California Labor and Workforce
18 Development Agency ("LWDA") in the amount of \$15,000.00 for its 75% share of civil penalties
19 under PAGA is fair, reasonable and adequate, and orders the Settlement Administrator to
20 distribute this payment to the LWDA in conformity with the terms of the Settlement.

21 13. The Court finds that the Class Representative Enhancement Award in the amount
22 of \$5,000.00 to Plaintiff is appropriate in recognition of the risks undertaken by Plaintiff and for
23 Plaintiff's service to the Settlement Class; for the amount of time and effort spent by Plaintiff as
24 the Class Representative; for Plaintiff's general release of claims provided as part of the
25 Settlement Agreement; and for serving the interests of the Settlement Class members. The Court
26 finds that this amount is fair, reasonable, and adequate, and orders that the Settlement
27 Administrator make this payment in conformity with the terms of the Settlement.

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1 14. The Court finds that attorneys' fees in the amount of \$50,000.00, and actual
2 litigation costs of \$13,456.49, are fair, reasonable, and adequate in light of the common fund
3 provided for the benefit of the Settlement Class members, and orders that the Settlement
4 Administrator distribute these payments to Class Counsel in conformity with the terms of the
5 Settlement. The Court finds that the time devoted to the matter by Class Counsel was reasonably
6 necessary in the investigation and prosecution of this action and that the fees are appropriately
7 awarded in light of the benefit provided to the Settlement Class members by Class Counsel's
8 efforts.

9 15. The Court orders that the Settlement Administrator, Simpluris, Inc., shall be paid
10 \$5,750.00 from the Maximum Settlement Amount for all of its work done and to be done until
11 the completion of this matter, and finds that sum appropriate.

12 16. Any funds from Individual Settlement Awards remaining uncashed after the 180-
13 day check-cashing deadline shall be transferred to the California State Controller's Office to be
14 held pursuant to the Unclaimed Property Law, California Civil Code § 1500 *et seq.*, in the name
15 of the Settlement Class member to whom the check was issued, until such time that they claim
16 their property.

17 17. Pursuant to California Code of Civil Procedure section 664.6 and Rule 3.769(h) of
18 the California Rules of Court, the Court will retain jurisdiction over this action and the parties
19 until final performance of the Settlement Agreement.

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1 18. This document will constitute a final judgment pursuant to California Rule of
2 Court 3.769(h), which provides, "If the court approves the settlement agreement after the final
3 approval hearing, the court must make and enter judgment. The judgment must include a
4 provision for the retention of the court's jurisdiction over the parties to enforce the terms of the
5 judgment. The court may not enter an order dismissing the action at the same time as, or after,
6 entry of judgment." The Court will retain jurisdiction to enforce the Settlement and this Final
7 Approval Order and Judgment.

8 **IT IS SO ORDERED.**

9
10 Dated: **WAP 17 2023** , 2023

JOSEPH T. ORTIZ

Honorable Joseph T. Ortiz
Judge of the Superior Court