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15 Attorneys for Defendant
16 LUMENIS INC.

18 **UNITED STATES DISTRICT COURT**
 19 **NORTHERN DISTRICT OF CALIFORNIA**

21 COOPER GILLESPIE, et. al.,

22 Plaintiff,

23 vs.

24 LUMENIS INC.,

25 Defendant.

} Case No. 3:17-cv-02080-EMC

} **JOINT STIPULATION FOR**
 } **CONDITIONAL CERTIFICATION**
 } **AND NOTICE**

1 Plaintiffs Cooper Gillespie, Leighton Wynter, Christopher Castle, Michael
2 Conway, William Sean Dunegan, Skylar Fisk, Jeff Folz, Randy Hill, and Dennis
3 Walsh (“Plaintiffs”), and Defendant Lumenis Inc. (“Lumenis”) (collectively, the
4 “Parties”) by and through their counsel of record, hereby submit this Joint Stipulation
5 (“Stipulation”) to memorialize the Parties’ agreements for conditional certification of
6 this action as a collective action and notice to the collective class under the Fair Labor
7 Standards Act, 29 U.S.C. § 216(b), and for limited discovery pending mediation.

8 1. Plaintiffs are current or former employees of Lumenis who worked as
9 Customer Engineers during all or a portion of their employment with Lumenis. On
10 April 13, 2017, Plaintiffs commenced the instant action under the Fair Labor Standards
11 Act, 29 U.S.C. §§ 201 *et seq.* Plaintiffs allege that Lumenis improperly classified them
12 as exempt employees and failed to pay required overtime compensation.

13 2. Lumenis denies that it has violated the FLSA in any respect and
14 vigorously contests liability. Lumenis further denies that this matter should be
15 maintained as a collective action through trial and asserts that, even if conditionally
16 certified, it should be decertified.

17 3. In an effort to avoid unnecessary expense and use of resources, the Parties
18 have agreed to stipulate to conditional certification of the following collective: those
19 persons who have been employed by Lumenis in the position of Customer Engineer at
20 any time from April 13, 2014 through the present. While the Complaint defines
21 Customer Engineer as “customer service engineers, field service engineers and other
22 job titles performing similar duties,” Lumenis asserts that it has not employed anyone
23 as a field service engineer during the proposed collective period. By this Stipulation,
24 Lumenis is not agreeing that this period is proper and is not waiving its right to assert
25 that it is not liable for all or part of any alleged damages that Plaintiffs or putative opt-
26 in Plaintiffs claim to have incurred during this period.

27 4. This Stipulation shall not otherwise be referenced, cited to or used by the
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1 Parties in any manner that would be prejudicial to the other party at any point in the
 2 lawsuit. This Stipulation is not an admission by either party on the merits of Plaintiffs'
 3 claims or of Lumenis' defenses, nor is it in any way reflective of whether collective
 4 certification is appropriate. This Stipulation only reflects the Parties' shared interest
 5 in advancing this litigation in the most efficient and practical manner possible.

6 5. The Parties have agreed to stipulate to the distribution of judicially
 7 approved notice attached hereto as **Exhibit A**. The Parties request that the notice issue
 8 according to the following schedule set forth below in Paragraph 6. The Parties agree
 9 that the statute of limitations for the FLSA claim alleged in the action will be tolled
 10 for putative opt-in plaintiffs from May 31, 2017 until the date that notice is distributed,
 11 because the Parties have been meeting and conferring about the language of the
 12 stipulation and notice since that date.

13 6. The Parties stipulate to the following Notice and Opt-In schedule:

DEADLINE	SUBJECT
5 Days from Order Approving Notice to Putative Collective Members	Defendant shall disclose, in Excel format, the names, last known mail addresses, and dates of employment with Defendant in the position of Customer Engineer from April 13, 2014 to the date of the Order Approving Notice to Putative Collective Members (hereinafter referred to as "Opt-In List").
5 Days from Receipt of the Collective Contact Information from Defendant	Plaintiffs' Counsel shall mail a copy of the Court-approved Notice and Consent Form to the Putative Collective Members.
55 Days from the Date Notice is Mailed to Putative Collective Members	The Putative Collective Members shall have 55 days to postmark or email their signed Consent forms for filing with the Court.
20 Days from Date Notice is Mailed to Putative Collective Members	Plaintiffs' Counsel is authorized to mail a second identical copy of the Notice and Consent form to the Putative Collective Members reminding them of the post mark deadline for the submission of the Consent forms.

27 7. During the notice period, Plaintiffs' counsel will not send written
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1 communications to the putative collective members beyond the Court-approved
2 notice. Further, Plaintiffs' counsel will not solicit the putative collective members, or
3 engage any runner or capper to solicit putative collective action members, in violation
4 of the Business and Professions Code.

5 8. The Parties agree to attend a Fed.R.Civ.P. 26(a) conference timely, if the
6 Court sets the Fed.R.Civ.P. 16 conference. The Parties further agree that the Parties
7 may propound a first set of formal discovery requests when permitted under the
8 Fed.R.Civ.P., but that the Parties' time to respond and to provide initial disclosures
9 will be stayed pending mediation of this matter, which is presently set for September
10 18, 2017 with mediator Steve Rottman. Except as expressly set forth herein, all formal
11 discovery is stayed.

12 9. The Parties further agree to cooperate in the exchange of information
13 informally for purposes of facilitating mediation, which will be agreed upon by the
14 Parties through meet and confer efforts. Should the matter not resolve at mediation,
15 The Parties will have thirty (30) days after the mediation to object and respond to any
16 previously propounded formal discovery requests, assuming they would be due at that
17 time, under the Fed.R.Civ.P.

18 Dated: July 10, 2017

CAROTHERS DISANTE & FREUDENBERGER
LLP

21 By: /s/ Todd R. Wulffson
22 Todd R. Wulffson
23 Attorneys for Defendant
LUMENIS INC.

24 Dated: July 10, 2017

BRYAN SCHWARTZ LAW

26 By: /s/
27 Bryan Schwartz
28 Attorneys for Plaintiffs
Cooper Gillespie, *et al.*

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IT IS SO ORDERED.

Date: July 17, 2017



EXHIBIT A

UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF CALIFORNIA

As a current or former customer engineer employed by Lumenis Inc., a collective action lawsuit may affect your rights.

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

- Nine current and former customer engineers have sued Lumenis, alleging that Lumenis misclassified field and customer service engineers as exempt from the federal overtime law and therefore failed to pay overtime pay when they worked over 40 hours in a week.
- The Court has authorized notice of the lawsuit to be distributed to all customer engineers who work or have worked at Lumenis since April 13, 2014.
- The Court has not decided the merits of this case and therefore has not decided whether Plaintiffs or Lumenis are correct.
- The purpose of this notice is to inform you of the lawsuit, to advise you of how your rights may be affected by this lawsuit, and to instruct you on the procedure for participating in this lawsuit, should you choose to do so.
- In order for you to participate in this case, you must return the enclosed consent form by *[insert date 55 days from distribution of notice]*.

NOTICE OF COLLECTIVE ACTION LAWSUIT

An overtime lawsuit has been filed against Lumenis. The Court has conditionally certified the case as a collective action on behalf of all customer engineers who worked for Lumenis within the United States at any point in time since April 13, 2014 and who Lumenis classified as exempt. The Court determined that this notice should be sent to all individuals who have potential claims. If the Court later determines that these individuals are not sufficiently “similarly situated,” the case will not proceed as a collective action lawsuit.

Plaintiffs in the lawsuit allege that Lumenis improperly classified its customer engineers as “exempt” from the federal overtime law, meaning that Lumenis classified those employees as ineligible for overtime pay. Plaintiffs contends that these employees should have been classified

as “non-exempt” and paid overtime when they worked over 40 hours in a week (or 8 hours a day, in California).

Lumenis denies any wrongdoing or liability and contests all claims that have been asserted. Specifically, Lumenis claims that Plaintiffs and all other customer engineers were properly classified as “exempt” employees and therefore are not owed overtime pay under the FLSA.

You are receiving this notice because you are eligible to join this lawsuit by returning a consent form. Lumenis’ records indicate that you worked as a customer engineer in the period from April 13, 2014 to the present. Thus, you are eligible to join this case even if you were paid a salary and were told you were not entitled to overtime, if you worked more than 40 hours in a workweek.

YOUR RIGHTS AND OBLIGATIONS

If you worked as a customer engineer for Lumenis at any point in time since April 13, 2014 and worked overtime, you are eligible to participate in the lawsuit. You may join the lawsuit by mailing, emailing, or faxing the enclosed Plaintiff Consent Form to Plaintiffs’ Counsel for filing with the Court. However, signing a Consent Form does not guarantee any recovery in this lawsuit. The Plaintiff Consent Form must be postmarked on or before *[insert date 55 days from distribution of notice]* in order for you to participate in this lawsuit.

Plaintiffs’ counsel in this case are:

**Bryan Schwartz Law
Attn: Rachel Terp
1300 Broadway, Suite 1630
Oakland, CA 94612
Telephone: (510) 444-9300 (no faxes to this number)
Facsimile: (510) 444-9301
Email: Rachel@BryanSchwartzLaw.com**

EFFECTS OF JOINING OR NOT JOINING THIS CASE

If you choose to join this lawsuit by filing a Plaintiff Consent Form, your interests will be represented by Plaintiffs' Counsel. If you submit a Consent Form, you will be bound by a judgment or settlement in this action, unless you withdraw your consent beforehand. If you choose not to join this lawsuit, you are free to take action on your own or do nothing at all; you will not be bound by, and will not receive any compensation from, a judgment or settlement in this case.

NO RETALIATION PERMITTED

The law prohibits retaliation against employees for exercising their rights to participate in a lawsuit of this nature. Lumenis is prohibited from discharging you or retaliating against you in any way (*i.e.*, reducing your hours, reducing your pay, giving you an unfair performance review, etc.) because you choose to participate in this lawsuit.

THIS NOTICE AND ITS CONTENT HAVE BEEN AUTHORIZED BY THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF CALIFORNIA, THE HONORABLE EDWARD M. CHEN. THE COURT HAS TAKEN NO POSITION REGARDING THE MERITS OF THE PLAINTIFFS' CLAIMS OR OF LUMENIS' DEFENSES.

**GILLESPIE V. LUMENIS INC.
PLAINTIFF CONSENT FORM**

1. I consent to make a claim under the Fair Labor Standards Act, 29 U.S.C. § 201, et seq. against my current/former employer, Lumenis Inc., to recover overtime pay.
2. During the past three years, there were one or more occasions when I worked over 40 hours in a week as a customer engineer, field service engineer, customer service engineer, or associate customer service engineer for Lumenis Inc., and did not receive overtime pay.
3. I understand that I may withdraw my consent to proceed with my claims at any time by notifying the attorneys handling the matter.

Date: _____
Signature

Print Name

Information Below Will Be Redacted in Filings with the Court. Please Print or Type.

Address: _____

City, State Zip: _____

Best Phone Number(s): _____

Email: _____

**Return this form by
fax, email or mail to:**

**Bryan Schwartz Law
Attn: Rachel Terp
1300 Broadway, Suite 1630
Oakland, CA 94612
Fax: (510) 444-9301
Email: Rachel@BryanSchwartzLaw.com**