

L I C H T E N & L I S S - R I O R D A N , P . C .

ATTORNEYS AT LAW

HAROLD L. LICHTEN*
SHANNON LISS-RIORDAN*^Δ[◇]
MATTHEW W. THOMSON*
ADELAIDE H. PAGANO*

729 BOYLSTON STREET, SUITE 2000
BOSTON, MASSACHUSETTS 02116

WWW.LLRLAW.COM

THOMAS P. FOWLER*[◇]
OLENA SAVYTSKA*
ANNE KRAMER*^Δ
MICHELLE CASSORLA*[◇]^Δ
ZACHARY RUBIN*[◇][♦]
ANASTASIA DOHERTY*

TELEPHONE 617-994-5800
FACSIMILE 617-994-5801

OF COUNSEL

MATTHEW D. CARLSON*^Δ[◇]
BENJAMIN J. WEBER*[◇]

* ADMITTED IN MASSACHUSETTS
Δ ADMITTED IN CALIFORNIA
◇ ADMITTED IN NEW YORK
• ADMITTED IN NEW JERSEY
♦ ADMITTED IN CONNECTICUT
Δ ADMITTED IN DISTRICT OF COLUMBIA
◇ ADMITTED IN TENNESSEE

January 23, 2020

VIA ELECTRONIC FILING

California Labor and Workforce Development Agency
Attn. PAGA Administrator
1515 Clay St., Ste. 801
Oakland, CA 94612
PAGAinfo@dir.ca.gov

Re: Notice Pursuant to California Labor Code § 2699.3(a)(1)

Dear PAGA Administrator:

My firm represents Marc Alexander in connection with his claims pursuant to the California Labor Code against Lyft, Inc. ("Lyft"). Mr. Alexander has been working for Lyft as a driver in the Los Angeles, California area since approximately September 2014. Because Lyft illegally misclassifies its drivers as independent contractors rather than employees, Lyft has violated numerous provisions of the California Labor Code.

Pursuant to Cal. Lab. Code §2699.3(a)(1), please consider this letter notice of the specific provisions of the California Labor Code violated by Lyft that may result in penalties under the Private Attorney General Act of 2004.

Factual Background

Lyft is a San Francisco-based car service established in 2012 in California, which engages thousands of drivers across the state of California to transport riders. Mr. Alexander has driven for Lyft since approximately September 2014. Lyft drivers, like Mr. Alexander, transport Lyft riders to their chosen destinations. There could be no Lyft without drivers.

As the California Supreme Court's decision in Dynamex Operations W. v. Superior Court, (2018) 4 Cal. 5th 903, reh'g denied (June 20, 2018) makes clear, drivers should be classified as employees of Lyft, rather than independent contractors, for the purposes of the Labor Code statutes. Under the "ABC" test adopted in Dynamex, in order to justify classifying its shoppers as non-employees, Respondent would have to prove its drivers perform services outside Lyft's usual course of business, which Lyft

L I C H T E N & L I S S - R I O R D A N , P . C .

cannot do here. Likewise, Respondent cannot satisfy its burden to prove that drivers have been customarily engaged in an independently established trade, occupation, or business of the same nature as the work they performed for Respondent; drivers depend on Respondent for their work and do not hold themselves out as being in the business of providing independent transportation services. Additionally, Respondent cannot satisfy their burden to demonstrate that drivers have been free from Respondent's control and direction, both under their contract and in fact.

As of January 1, 2020, California Assembly Bill 5 amended the Labor Code to include Section 2750.3, which mandates that the "ABC" test for misclassification applies for the purposes of the Labor Code, the Unemployment Insurance Code, and for the Wage Orders. See Cal. Lab. Code § 2750.3(a).

Lyft classifies its drivers as independent contractor" despite the following reasons – among others – that drivers should be properly classified as employees:

- Drivers provide a service (i.e. transporting riders) that benefits Lyft and forms an integral part of its regular course of business;
- Delivery drivers do not engage in a business distinct and independent from Lyft's business and instead form an integrated part of Lyft's business model. Riders cannot request a particular driver and drivers cannot cultivate their own repeat riders but rather rely upon Lyft to provide them with rides;
- Lyft controls numerous aspects of drivers' work:
 - Drivers do not possess any special skill and are not required to have any prior experience;
 - Lyft provides drivers with the only instrumentality by which a driver can perform services for Lyft, namely Lyft's software;
 - Lyft unilaterally sets the rate of pay for drivers' services and changes the rate of pay in its sole discretion;
 - Lyft communicates directly with riders and follows up with drivers if a customer complains that something failed to meet their expectations;
 - Drivers' vehicles must meet Lyft's quality standards, which it determines and may change at any time in its sole discretion;

L I C H T E N & L I S S - R I O R D A N , P . C .

- Lyft monitors' drivers performance and may suspend or terminate drivers who do not accept enough rides, do not maintain high customer satisfaction rates, do not take what Lyft deems to be the most efficient routes, or engage in other conduct that Lyft in its sole discretion may determine constitute grounds for suspension or termination.

Because Lyft drivers are, in fact, employees, they are protected by the provisions of the California Labor Code. Accordingly, we wish to notify you of the following violations of the California Labor Code:

Violations of the California Labor Code

1. Lyft has violated Cal. Lab. Code § 2802 by failing to reimburse drivers for all reasonably necessary expenditures incurred in the discharge of their duties, including but not limited to the cost of owning or leasing their vehicles, gas, insurance, phone and data expenses, and other costs;
2. Lyft has violated Cal. Lab. Code § 226.8 by willfully misclassifying drivers as independent contractors;
3. Lyft has violated Cal. Lab. Code §§ 1197 and 1194 for failure to pay the appropriate minimum wage for all hours worked;
4. Lyft has violated Cal. Lab. Code §§ 1194, 1198, 510, and 554 for failure to pay the appropriate overtime premium for overtime hours worked.

Accordingly, Mr. Alexander seeks all applicable civil penalties related to the foregoing violations. Claimant hereby invites the Labor and Workforce Development Agency to take any action it deems appropriate.

Yours Truly,



Shannon Liss-Riordan

cc: Kristin Sverchek, Lyft General Counsel
(via certified mail)