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Via Certified U.S. Mail and LWDA's e-Filing System (<https://dir.tfaforms.net>)

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

NOTICE OF LABOR CODE VIOLATIONS
PURSUANT TO LABOR CODE SECTION 2699.3

TO: The California Labor and Workforce Development Agency, and Lyft, Inc.

FROM: Anton Goncharuk

Dear Ms. Su,

This office represents Anton Goncharuk regarding his wage-and-hour claims related to his employment with Lyft Inc. in the Bay Area, California. Pursuant to California Labor Code Section 2699, Anton Goncharuk, as an aggrieved employee, intends to bring on behalf of himself and other current or former drivers of Lyft Inc. a civil action against Lyft Inc. to recover all civil penalties provided by California Labor Code and California's Industrial Welfare Commission applicable Wage Order, including Wage Order No. 9-2201 for Lyft, Inc.'s misclassification of its drivers as independent contractors.

I. FACTUAL STATEMENT

Lyft owns and operates a transportation company "Lyft" that provides transportation services to the general public in California. From about 2015 through the present ("Employment Period"), Lyft employed Anton Goncharuk as a driver. His responsibilities include transporting Lyft's customers within the Bay Area, California, using a personal vehicle. During the Employment Period, Lyft misclassified Goncharuk as an independent contractor and denied him all benefits and protections of the California Labor Code, and the applicable Industrial Wage Order. (*e.g.*, No. 9-2001).

During the Employment Period, Lyft failed to classify Goncharuk as a non-exempt hourly or commissioned employee, entitled to all protections and benefits of the California Labor Code, Industrial Wage Order No. 9-2001 and San Francisco Administrative Code Chapter 12. Lyft systematically subjected Goncharuk to multiple California labor law violations committed, as alleged below. These violations caused Goncharuk to suffer substantial damages.

During the Employment Period, Goncharuk observed how other drivers who worked for Lyft were misclassified as independent contractors and subjected to similar California labor law violations committed by Lyft, as alleged below. The violations caused Goncharuk and other current or former employees to suffer substantial damages.

Goncharuk seeks to represent “*all current and former California drivers who provided transportation services for Lyft, Inc. and to Lyft’s passengers using the Lyft App during the applicable PAGA period, starting from March 31, 2019 to the present in California.*” (collectively, “CA Drivers”)

During the Employment Period, Lyft, Inc. was Goncharuk and CA Drivers’ employer within the meaning of California Labor Code section 2750.3 and Wage Order No. 9. Lyft exercised control over the wages, hours, or working conditions of Goncharuk and CA Drivers. Analogously, Lyft Inc. engaged, suffered, or permitted Goncharuk and CA Drivers to work under working conditions described herein

Goncharuk seeks to serve as a representative of the general public to enforce and uphold California's wage and hour laws as a representative and private attorneys' general as expressly permitted by Labor Code section 2698 *et seq.*, pursuant to the Private Attorneys General Act of 2004 ("PAGA Act").

II. THEORIES OF LABOR CODE VIOLATIONS AND REMEDIES

A. Willful Misclassification as Independent Contractors

Cal. Labor Code § 226.8 (a) prohibits Lyft from misclassifying their workers as independent contractors. Section 226.8(b & c) also reads:

(b) If the Labor and Workforce Development Agency or a court issues a determination that a person or employer has engaged in any of the enumerated violations of subdivision (a), the person or employer shall be subject to a civil penalty of not less than five thousand dollars (\$5,000) and not more than fifteen thousand dollars (\$15,000) for each violation, in addition to any other penalties or fines permitted by law.

(c) If the Labor and Workforce Development Agency or a court issues a determination that a person or employer has engaged in any of the enumerated

violations of subdivision (a) and the person or employer has engaged in or is engaging in a pattern or practice of these violations, the person or employer shall be subject to a civil penalty of not less than ten thousand dollars (\$10,000) and not more than twenty-five thousand dollars (\$25,000) for each violation, in addition to any other penalties or fines permitted by law.

Lyft willfully misclassified Goncharuk and other CA Drivers as independent contractors despite the fact that Lyft exercised pervasive control over Goncharuk's manner and means of transporting passengers. Because of misclassification by Lyft, as independent contractors, Goncharuk and other CA Drivers have not received the rights and benefits, including compensation for all hours worked; minimum wage, overtime, reimbursement of expenses, 30-minute meal breaks, and itemized wage statements.

Therefore, Goncharuk and CA Drivers are entitled to recover civil penalties as provided by Labor Code Section 226.8(b & c) as well as all available penalties as set forth in Labor Code Section 2699(f).

B. Failure to Pay for All Hours Worked

Lyft failed to pay Goncharuk and CA Drivers for all hours worked.

The California Labor Code and the applicable IWC Wage Order requires that all employees be compensated for all "hours worked" defined as "the time during which an employee is subject to the control of an employer, and includes all the time the employee is suffered or permitted to work, whether or not required to do so."

During their respective Employments, Defendants were required to compensate Goncharuk and CA Drivers for all hours worked pursuant to Labor Code Sections, including but not limited to sections 200, 204, 226, 500, 510, 1197, and 1198.

1. Failure to Pay for Time Spent Driving without Passengers

Lyft failed to pay Goncharuk and CA Drivers for the time they spend driving without passengers.

Using the Lyft Mobile Application, Lyft required Goncharuk and CA Drivers to pick up passengers in certain locations. Goncharuk and CA Drivers' compensation was calculated as a percentage of the Fare paid by customers. This Fare was calculated based on a base fare amount plus mileage or the number of minutes/hours the driver spends transporting the passenger from the pickup and drop-off locations. However, this Fare does not include the time or the mileage the driver spends driving from the place where the drivers is located at the time of the dispatch ("Dispatch Location") and the pickup location. Lyft does not pay its drivers for the time they spend for work-related driving without a passenger. For example, Goncharuk was often

required to transport passengers to one-way locations in San Jose, Sonoma County; Oakland; Vallejo and then come back without any passengers to San Francisco. Lyft did not pay Goncharuk for hours driving back to San Francisco without passengers, which often amounted to 0.5 to 2 hours, depending on the traffic and distance.

2. Failure to Pay for Time Waiting Time

Analogously, Lyft failed to pay Goncharuk and other CA Drivers for the time spent waiting for passengers. For example, Goncharuk and other CA Drivers were required to wait for passengers approximately from 2 to 10 minutes. Lyft failed to pay Goncharuk and other CA Drivers for the waiting time.

Therefore, Claimants and CA Drivers are entitled to recover all civil penalties available pursuant to Labor Code section 2699(f), plus interest, reasonable attorney fees and costs.

C. Failure to Pay Overtime

Labor Code section 510 requires Lyft to compensate Goncharuk and other CA Drivers at one and one-half (1 ½) times the regular rate of pay for all hours worked in excess of eight (8) hours per day. During the Employment Period, Lyft regularly required Goncharuk and other CA Drivers to work more than 8 hours per day and/or more than 40 hours per week, often seven consecutive days. During the Employment Period, Goncharuk and other CA Drivers were never paid overtime compensation. Goncharuk and other CA Drivers are entitled to recover civil penalties, as permitted by Labor Code sections 558, 2699(f) and 210.

D. Failure to Pay Minimum Wage

At all times of their employment with Lyft, Goncharuk and other CA Drivers were entitled to be paid at least a minimum wage rate. Lyft failed to pay the applicable minimum wage rates violating California Labor Code sections 1182.11-1182.13, 1194(a), 1194.2, 1197, San Francisco Administrative Code Chapter 12 and Wage Order No. 9-2001. Goncharuk and other CA Drivers are entitled to recover civil penalties, as permitted by Labor Code sections 1197.1, 2699(f) and 210.

E. Violations of Labor Code Section 226.2

Labor Code section 226.2 (a) requires that for employees compensated on a piece-rate basis during a pay period shall be compensated for rest and recovery periods and other nonproductive time separate from any piece-rate compensation and that the itemized statement required by subdivision (a) of Section 226 shall, in addition to the other items specified in that subdivision, separately state the following:

(A) The total hours of compensable rest and recovery periods, the rate of compensation, and the gross wages paid for those periods during the pay period.

(B) Except for employers paying compensation for other nonproductive time in accordance with paragraph (7), the total hours of other nonproductive time, as determined under paragraph (5), the rate of compensation, and the gross wages paid for that time during the pay period.

Labor Code section 226.2 (a)(3)(A) also requires that piece-rate employees are compensated for rest and recovery periods at a regular hourly rate.

Labor Code section 226.2 (a)(3)(B) also requires employers who pay on a semimonthly basis, to compensate piece-rate employees at least at the applicable minimum wage rate for the rest and recovery periods together with other wages for the payroll period during which the rest and recovery periods occurred.

Labor Code section 226.2(a) (4) requires that piece rate employees are compensated for other nonproductive time at an hourly rate that is no less than the applicable minimum wage.

Because Lyft misclassified CA drivers as independent contractors, the manner and method by which Lyft paid CA Drivers their earned commissions violated the above provisions. Accordingly, Lyft is subject to all applicable civil penalties, including civil penalties under Labor Code section See Cal. Lab. Code § 2699(a) and (f).

F. Failure to Provide Meal Breaks or One Additional Hour of Pay instead

Labor Code section 226.7 states:

“(a) No employer shall require any employee to work during any meal or rest period mandated by an applicable order of the Industrial Welfare Commission.

(b) If an employer fails to provide an employee a meal period ..., Lyft shall pay the employee one additional hour of pay at the employee's regular rate of compensation for each work day that the meal or rest period is not provided.”

This means that in order to satisfy the requirements of Labor Code section 512 and 226.7, Lyft has to (1) relieve the employee of all duty, (2) relinquish control over his or her activities; (3) permit the employee a reasonable opportunity to take an uninterrupted 30-minute break, and (4) do not impede or discourage the employee from doing so. *Brinker Restaurant Corp. v. Superior Court*, 53 Cal. 4th 1004, 1040 (Cal. 2012).

In addition, Wage Order No. 5, subdivision 11(A) reads: “[u]nless the employee is relieved of all duty during a 30-minute meal period, the meal period shall be considered an “on duty”

meal period and counted as time worked. An “on duty” meal period shall be permitted only (1) when the nature of the work prevents an employee from being relieved of all duty and (2) when by written agreement between the parties an on-the-job paid meal period is agreed to..”

Lyft failed to comply with the California meal break requirements because Lyft failed to provide an opportunity for Goncharuk and other CA Drivers to take their 30-minute uninterrupted meal break. Specifically, Goncharuk and other CA Drivers were systematically required to work five hours without a meal break.

Since Lyft required Goncharuk and other CA Drivers to work during meal periods in violation of Labor Code Section 226.7(a), Goncharuk and other CA Drivers seek to recover all available penalties as set forth in Labor Code Section 558 and 2699(f.) and attorney’ fees.

G. Failure to Provide Proper Rest Periods

Wage Order #5, Section 12 provides:

(A) Every employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period. The authorized rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof. However, a rest period need not be authorized for employees whose total daily work time is less than three and one-half (3 ½) hours. Authorized rest period time shall be counted, as hours worked, for which there shall be no deduction from wages.

(B) If an employer fails to provide an employee a rest period in accordance with the applicable provisions of this Order, Lyft shall pay the employee one (1) hour of pay at the employee’s regular rate of compensation for each work day that the rest period is not provided.

During the Employment Period, Lyft did not have a rest break policy and failed to provide the required rest breaks to Goncharuk and other CA Drivers. Since Lyft required Goncharuk and other CA Drivers to work during rest periods in violation of Labor Code Section 226.7(a), Goncharuk and other CA Drivers seek to recover all available penalties as set forth in Labor Code Section 558, Wage Order No. 9, and 2699(f.) and attorney’ fees.

H. Violations of Labor Code Sections 551-552

California Labor Code section 551 provides that “[e]very person employed in any occupation of labor is entitled to one day’s rest therefrom in seven.” Section 552 adds that “[n]o employer of labor shall cause his employees to work more than six days in seven.”

Because Lyft misclassified CA Drivers as independent contractors, Lyft violated Labor Code sections 551-552 and 1199(a). Accordingly, Lyft is subject to all applicable civil penalties, including civil penalties under Labor Code section See Cal. Lab. Code § 2699(a) and (f).

I. Violations of Labor Code Sections 1174.5-1175, 1198.5, and 2810.5

California Labor Code 1174(d) requires that every employer in California maintain “payroll records showing the hours worked daily by and the wages paid to, and the number of piece-rate units earned by and any applicable piece rate paid to, employees employed” in California. In addition, Cal. Lab. Code § 1174(d) requires that these records “be kept in accordance with rules established for this purpose by the [Industrial Welfare] commission.” Rules established by the commission, Wage Order 9, § 7, require that every employer in California “keep accurate information with respect to each employee,” including without limitation, “time records showing when the employee begins and ends each work period,” as well as “[m]eal periods, split shift intervals and total daily hours worked.”

Similarly, Labor Code section 2810.5 requires employers to provide all employees at the time of hiring with a written notice that contains specific information, including:

- a) The rate or rates of pay and basis thereof, whether paid by the hour, shift, day, week, salary, piece, commission, or otherwise, including any rates for overtime, as applicable.
- b) Allowances, if any, claimed as part of the minimum wage, including meal or lodging allowances.
- c) The regular payday designated by the employer in accordance with the requirements of this code.
- d) The name of the employer, including any “doing business as” names used by the employer.
- e) The physical address of the employer’s main office or principal place of business, and a mailing address, if different.
- f) The telephone number of the employer.
- g) The name, address, and telephone number of the employer’s workers’ compensation insurance carrier.
- h) That an employee: may accrue and use sick leave; has a right to request and use accrued paid sick leave; may not be terminated or retaliated against for using or requesting the use of accrued paid sick leave; and has the right to file a complaint against an employer who retaliates.

Furthermore, **Labor Code section 1198.5** requires employers to provide every current and former employee upon request a copy of the personnel records that the employer maintains relating to the employee’s performance or to any grievance concerning the employee.

Lyft has failed to maintain accurate records in compliance with Section 1174 and failed to provide CA drivers with the required written notice in violation of Section 2810.5 as well as CA Drivers’ personnel file upon request in violation of Section 1198.5. Accordingly, Lyft is

subject to civil penalties pursuant to PAGA in addition to the statutory penalties of \$500 pursuant to Cal. Lab. Code § 1174.5.

J. Failure to Reimburse Business Expenses

Goncharuk and other CA Drivers were entitled to be indemnified for all necessary expenditures or losses that they incurred in direct consequence of the discharge of their duties as delivery driver as required California Labor Code section 2802. Lyft failed to reimburse Goncharuk and other CA Drivers gas, repairs, maintenance, vehicle insurance, and other expenses incurred in connection with work performed for Lyft. Therefore, Goncharuk and other CA Drivers are entitled to recover all available civil penalties as set forth in Labor Code Section 2699(f.)

K. Failure to Provide Accurate Itemized Wage Statements and Maintain Adequate Records

Pursuant to California Labor Code sections 226 and 1174, and the record-keeping provisions of Wage Order 9-2001, Lyft were required to maintain accurate records of each employee's hours of work and meal breaks each workday for a period of at least three years, and provide to each employee with accurate, periodic wage payments in writing

Lyft never provided Goncharuk and other CA Drivers with any wage statements, thereby violating Labor Code section 226. Therefore, Goncharuk and other CA Drivers are entitled to recover damages and/or penalties as provided by Labor Code Section 226(e), as well as all available penalties as set forth in Labor Code Section 226.3 and 2699(f).

L. Failure to Pay All Wages Due at Termination

California Labor Code § 201(a) provides, in pertinent part, as follows: "If an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately." California Labor Code § 202(a) provides, in pertinent part, as follows: If an employee not having a written contract for a definite period quits his or his employment, his or his wages shall become due and payable not later than 72 hours thereafter, unless the employee has given 72 hours previous notice of his or his intention to quit, in which case the employee is entitled to his or his wages at the time of quitting. Some CA Drivers who are now former employees of Lyft terminated their employment relationship with Lyft either through voluntary resignation or involuntary termination. Upon such termination, CA Drivers did not receive their premium compensation for overtime, minimum wage, reimbursement and premiums for missed meal and rest breaks.

Therefore, Goncharuk and other CA Drivers are entitled to recover all available civil penalties as set forth in Labor Code Section 2699(f).

M. Failure to Provide Sick Leave

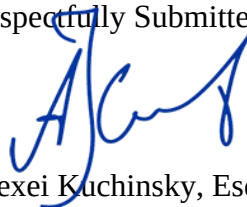
As of July 1, 2015, California Labor Code sections 245 *et. sec.* required Lyft to provide paid sick leave to all employees. At least on one occasion, Goncharuk was not able to go to work because he was sick. Lyft did not have a sick leave policy in place which would allow Goncharuk to take sick days pursuant to California Labor Code section 245. Therefore, Lyft refused to provide Goncharuk and other CA Drivers sick leave when Goncharuk and other CA Drivers were sick and were not able to drive passengers. Lyft also failed to comply with the posting requirements of Healthy Workplaces, Healthy Families Act of 2014.

Therefore, Goncharuk and other CA Drivers are entitled to recover sick leave compensation for days when they were sick pursuant to Healthy Workplaces, Healthy Families Act of 2014, and civil penalties as provided by Labor Code Section 245.8, 247, and 2699(f).

This letter is intended to comply with the requirements of California Labor Code section 2699.3(a). Pursuant to Labor Code section 2699.3(a)(1), as an aggrieved employee, Goncharuk on behalf of himself, and other current and former drivers of Lyft hereby notifies the California Labor and Workforce Development Agency and Lyft, Inc. of the various Labor Code violations committed by Lyft.

Please advise this office within 65 days if your office will be investigating this matter. We would appreciate hearing from the LWDA at your earliest convenience.

Respectfully Submitted,



Alexei Kuchinsky, Esq.

Julie A. Su,
March 30, 2020
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VIA CERTIFIED U.S. MAIL

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