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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN FRANCISCO**

JOSHUA ALBERT, *on his own behalf
and as a Private Attorneys General Act
representative,*

Plaintiff,

v.

LYFT, INC.,

Defendant.

Case No. CGC-20-584351

FIRST AMENDED COMPLAINT

1. FAILURE TO REIMBURSE FOR BUSINESS EXPENSES (CAL. LAB. CODE § 2802)
2. WILLFUL MISCLASSIFICATION (CAL. LAB. CODE § 226.8)
3. MINIMUM WAGE (CAL. LAB. CODE §§ 1194 AND 1197)
4. OVERTIME (CAL. LAB. CODE §§ 1194, 1198, 510, AND 554)
5. FAILURE TO PROVIDE ACCURATE ITEMIZED PAY STATEMENTS (CAL. LAB. CODE §§ 226(A) AND 226.3)
6. UNLAWFUL AND/OR UNFAIR BUSINESS PRACTICES CAL. LAB. BUS. & PROF. CODE §§ 17200-17208)
7. PRIVATE ATTORNEY GENERAL ACT (PAGA) CLAIM FOR CIVIL PENALTIES (CAL. LAB. CODE § 2698 *et seq.*)

1 **I. INTRODUCTION**

2 1. This case is brought by Joshua Albert, who has worked as a Lyft driver in
3 California. Lyft, Inc. (“Lyft”), is a car service, which engages thousands of drivers across the
4 state of California to transport riders. Lyft is based in San Francisco, California, and it does
5 business across the United States and extensively throughout California.
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7 2. As described further below, Lyft has misclassified Plaintiff Joshua Albert (like all
8 of its drivers), as an independent contractor, in violation of Cal. Labor Code §§ 2750.3 and
9 226.8. Because of his misclassification as an independent contractor, Plaintiff has been
10 unlawfully required to pay business expenses (such as expenses to maintain and fuel his vehicle,
11 as well as phone/data expenses) in violation of Cal. Lab. Code § 2802, and he has also not
12 received minimum wage for all hours worked in violation of Cal. Lab. Code §§ 1197 and 1194,
13 nor has he received overtime wages in violation of Cal. Lab. Code §§ 1194, 1198, 510, and 554.
14 Plaintiff also has not received accurate itemized pay statements in violation of Cal. Lab. Code §§
15 226(a) and 226.3. Plaintiff also brings his claims pursuant to the Private Attorney Generals Act
16 (“PAGA”), Cal. Lab. Code § 2699, *et seq.*, on behalf of the state of California and all other
17 similarly situated aggrieved employees who have been misclassified by Lyft in California since
18 2019.

19 **II. PARTIES**

20 3. Plaintiff Joshua Albert is an adult resident of Sacramento, California, where he
21 has worked as a Lyft driver since March 2020.

22 4. Defendant Lyft, Inc. (“Lyft”) is a headquartered in San Francisco, California.
23

24 **III. JURISDICTION**

25 5. This Court has jurisdiction over Plaintiff’s claims pursuant to California Code of
26 Civil Procedure § 410.10.

27 6. Venue is proper in this Court pursuant to Code of Civ. P. §§ 395 and 395.5
28 because Lyft is headquartered in San Francisco County. Furthermore, Lyft engages in business

activities in and throughout the State of California, including San Francisco County.

IV. STATEMENT OF FACTS

7. Lyft is a San Francisco-based transportation service, which engages drivers across the country, including in the state of California, to transport riders.

8. Lyft offers customers the ability to order rides via a mobile phone application, which its drivers then carry out.

9. Plaintiff Joshua Albert has driven for Lyft since March 2020.

10. Although Lyft has classified Joshua Albert (like all of its drivers) as an “independent contractor,” Albert has actually been Lyft’s employee under California law.

11. Plaintiff has provided a service in the usual course of Lyft’s business because Lyft is a car service that provides transportation to its customers, and Plaintiff has performed that transportation service. Lyft holds itself out as a transportation service, and it generates its revenue primarily from customers paying for the very rides that its drivers perform. Without drivers such as Plaintiff to perform rides, Lyft would not exist.

12. Lyft has also required Albert (like all of its drivers) to abide by a litany of policies and rules designed to control the drivers’ work performance. Lyft both retains the right to, and does in fact exercise, control over Plaintiff’s work.

13. Plaintiff has not been engaged in his own transportation business. When driving Lyft customers, he has worn the “hat” of Lyft.

14. Lyft communicates directly with customers and follows up with drivers such as Plaintiff if the customer complains that the ride failed to meet their expectations. Based on any customer feedback, Lyft may suspend or terminate drivers such as Plaintiff at its sole discretion.

15. Plaintiff has not been reimbursed for any expenses he has incurred while working for Lyft, including, but not limited to the cost of owning or leasing and maintaining his vehicles, gas, insurance, and phone and data expenses for running the Lyft Application. Plaintiff has

1 incurred these costs as a necessary expenditure to work for Lyft, which California law requires
2 employers to reimburse.

3 16. Lyft has violated Cal. Lab. Code §§ 1197 and 1194 by failing to ensure that
4 Plaintiff has received the applicable state minimum wage for all hours worked. For example, the
5 week of March 2, 2020 to March 8, 2020, Plaintiff Albert only earned \$7.08 per hour when
6 accounting for all of his time spent on the Lyft Application and after deducting expenses for
7 mileage driven picking up and transporting riders (calculated at the IRS standard reimbursement
8 rate).

9 17. Lyft has violated Cal. Lab. Code §§ 1194, 1198, 510 and 554 by failing to pay
10 Plaintiff the appropriate overtime premium for all overtime hours worked. Plaintiff has worked
11 more than eight hours in a day and more than twelve hours in a day since he began driving for
12 Lyft in March 2020.

13 18. On April 30, 2018, the California Supreme Court issued its decision in Dynamex,
14 which makes clear that Lyft drivers such as Plaintiff should be classified as employees rather
15 than as independent contractors under California law for purposes of wage-and-hour statutes.
16 Under the “ABC” test adopted in Dynamex, in order to justify classifying drivers such as
17 Plaintiff as independent contractors, Lyft would have to prove that its drivers perform services
18 outside its usual course of business, which it cannot do. Notwithstanding this decision, Lyft has
19 continued to misclassify its drivers such as Plaintiff as independent contractors.

20 19. Furthermore, the California legislature has now codified the Dynamex decision by
21 passing Assembly Bill 5, which was passed into law by the California legislature and went into
22 effect on January 1, 2020. The legislature has clearly intended for Lyft to be covered by this
23 statute; indeed, the author of the statute, Assemblywoman Lorena Gonzalez, has made clear that
24 Lyft (and similar “gig economy” companies) would not be exempted from the law. Although
25 Lyft specifically lobbied to obtain a “carve-out” exemption from the law, it did not receive a
26 carve-out from the legislature. Lyft is now one of several “gig economy” companies that have
27

pledged more than \$100 million to fund a ballot initiative seeking a carve-out for “gig economy” companies from A.B. 5. Lyft’s actions in opposing the law – and its expressed concern that the law would have such an impact on its business -- are an acknowledgement that this law requires it to classify its drivers such as Plaintiff as employees.

COUNT I
Expense Reimbursement
Violation of Cal. Lab. Code § 2802; Wage Order 9-2001

20. Lyft’s conduct, as set forth above, in misclassifying Plaintiff as an independent contractor, and failing to reimburse him for expenses he incurred in order to perform his job, violates California Labor Code § 2802.

COUNT II
Willful Misclassification
Violation of Cal. Lab. Code § 226.8

21. Lyft’s conduct, as set forth above, in continuing to classify drivers as independent contractors notwithstanding the California Supreme Court’s decision in Dynamex Operations W., Inc. v. Superior. Court (2018) 4 Cal.5th 903, and the enactment of Cal. Labor Code § 2750.3, both of which make clear that drivers are employees under California law, violates Cal. Lab. Code § 226.7 and constitutes willful misclassification.

COUNT III
Minimum Wage
Violation of Cal. Lab. Code §§ 1197 and 1194

22. Lyft’s conduct, as set forth above, in failing to pay Plaintiff minimum wage for all hours worked, violates California Labor Code §§ 1197 and 1194.

1 **COUNT IV**

2 **Overtime**

3 **Violation of Cal. Lab. Code §§ 1194, 1198, 510, and 554**

4 23. Lyft's conduct, as set forth above, in failing to pay Plaintiff the appropriate
5 overtime premium for overtime hours worked, violates California Labor Code §§ 1194, 1198,
6 510 and 554.

7 **COUNT V**

8 **Failure to Provide Accurate Itemized Pay Statements**

9 **Violation of Cal. Lab. Code § 226(a), 226.3; Wage Order 9-2001**

10 24. Lyft's conduct, as set forth above, in failing to provide proper itemized wage
11 statements, as required by California state law violates Cal. Lab. Code § 226(a).

12 **COUNT VI**

13 **Unfair Business Practices**

14 **Violation of Cal. Bus. & Prof. Code § 17200, *et seq.***

15 25. Lyft's conduct, as set forth above, violates the California Unfair Competition
16 Law, Cal. Bus. & Prof. Code § 17200 *et seq.* ("UCL"). Lyft's conduct constitutes unlawful
17 business acts or practices, in that Lyft has violated the California Labor Code §§ 2802, 1194,
18 1197, 1198, 510, 554, and 2750.3. As a result of Lyft's unlawful conduct, Plaintiff suffered
19 injury in fact and lost money and property, including but not limited to business expenses that
20 Plaintiff was required to pay, and wages that Plaintiff was due. Pursuant to California Code of
21 Civil Procedure § 1021.5, Plaintiff is entitled to recover reasonable attorneys' fees, costs, and
22 expenses incurred in bringing this action.

23 **COUNT VII**

24 **Penalties Pursuant to Labor Code Private Attorneys General Act of 2004**

25 **Cal. Lab. Code §§ 2698, *et seq.*,**

26 26. Plaintiff Joshua Albert realleges and incorporates by reference the allegations in
27 the preceding paragraphs as if fully alleged herein. Plaintiff is an aggrieved employee as defined
28 by Cal. Lab. Code § 2699(c) as he was employed by Lyft during the applicable statutory period

1 and suffered injury as a result of Lyft's Labor Code violations. Accordingly, Plaintiff seeks to
2 recover on behalf of the State of California, as well as himself and all other current and former
3 aggrieved employees of Lyft who have worked in California, the civil penalties provided by
4 PAGA, plus reasonable attorney's fees and costs.

5 27. Lyft drivers are entitled to penalties for Lyft's violations of Cal. Lab. Code §§
6 226.8, 246, 510, 554, 1194, 1197, 1198, and 2802. Plaintiff seeks civil penalties pursuant to
7 PAGA for (1) failure to reimburse driver employees for all necessary expenditures incurred in
8 performing their duties, including but not limited to, owning and leasing and maintaining their
9 vehicles, fuel, phones, and data and by requiring drivers to enter into contracts that
10 impermissibly waive their right to reimbursement of these expenses, in violation of Cal. Lab.
11 Code §§ 2802; the willful misclassification of drivers as independent contractors in violation of
12 Cal. Lab. Code § 226.8; (4) failure to provide sick leave benefits in violation of Cal. Lab. Code §
13 246; (5) failure to assure that all drivers received the appropriate overtime premium for all
14 overtime hours worked beyond forty (40) per week or eight hours per day in violation of Cal.
15 Lab. Code §§ 1194, 1198, 510, and 554; and (6) failure to pay appropriate minimum wage for all
16 hours worked in violation of Cal. Lab. Code §§ 1197 and 1194.

17 28. Cal. Lab. Code § 2699(f) provides for civil penalties in violation of all Labor
18 Code provisions for which no civil penalty is specifically provided. There is no specified civil
19 penalty for violations of Cal. Lab. Code § 2802. With respect to minimum wage violations
20 under Cal. Lab. Code §§ 1197 and 1194, 1197.1 imposes a civil penalty in addition to any other
21 penalty provided by law for one hundred (\$100) for each underpaid employee for each pay
22 period for which the employee is underpaid in addition to an amount sufficient to recover
23 underpaid wages and liquidated damages, and, for each subsequent violation of Cal. Lab. Code
24 §§ 1197 and 1194, two hundred and fifty dollars (\$250) for each underpaid employee for each
25 pay period for which the employee is underpaid in addition to an amount sufficient to recover
26 underpaid wages and liquidated damages. With respect to overtime violations under Labor Code
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1 § 510, the statute imposes a civil penalty in addition to any other penalty provided by law of fifty
2 dollars (\$50) for initial violations for each underpaid employee for each pay period for which the
3 employee was underpaid in addition to an amount sufficient to recover unpaid wages, and one
4 hundred dollars (\$100) for subsequent violations for each underpaid employee for each pay
5 period for which the employee was underpaid in addition to an amount sufficient to recover
6 underpaid wages. With respect to violations of Labor Code § 226.8, Cal. Lab. Code § 226.8(b)
7 imposes a civil penalty of not less than five thousand dollars (\$5,000) and not more than fifty
8 thousand dollars (\$15,000) for each violation. With respect to violations of Cal. Lab. Code §
9 246, the statute imposes a civil penalty of the dollar amount of paid sick days withheld
10 multiplied by three, or two hundred fifty dollars (\$250) but not to exceed four thousand dollars
11 (\$4,000).
12

13 29. Plaintiff Albert complied with the notice requirement of Cal. Lab. Code § 2699.3
14 and served a written notice to the California Labor & Workforce Development Agency
15 (“LWDA”) through its website’s online filing portal, and on defendant Lyft via certified mail,
16 return receipt requested on March. It has been sixty-five (65) days or more since the LWDA was
17 notified of the Labor Code violations asserted in the Complaint, and the LWDA has not provided
18 any notice that it will or will not investigate the alleged violations.
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1 WHEREFORE, Plaintiff requests that this Court enter the following relief:

- 2 a. Declare and find that Lyft violated Cal. Lab. Code §§ 2750.3, 2802, 226(a), 226.8,
- 3 1194, 1197, 1198, 510 and 554;
- 4 b. Award penalties, including PAGA penalties in an amount according to proof;
- 5 c. Award compensatory damages including all expenses and wages owed, in an amount
- 6 according to proof;
- 7 d. Award pre- and post-judgment interest;
- 8 e. Award reasonable attorneys' fees, costs, and expenses;
- 9 f. Injunctive relief in the form of an order requiring Lyft to comply with the California
- 10 Labor Code; and
- 11 g. Any other relief to which Plaintiff may be entitled.
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14 Respectfully submitted,
15 JOSHUA ALBERT,

16 By his attorneys,

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26 Dated: June 9, 2020

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