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RASIER-CA, LLC

SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN FRANCISCO

ULADZIMER TABOLA, individually and
on behalf of all others aggrieved
employees,

Plaintiff,

v.

UBER TECHNOLOGIES, INC., RASIER,
LLC AND RASIER-CA, LLC AND DOES
1 THROUGH 25,

CASE NO.: CGC-16-550992

Assigned for All Purposes to
Hon. Andrew Y.S. Cheng, Dept. 613

**DECLARATION OF ALEXEI KUCHINSKY
IN SUPPORT OF JOINT APPLICATION FOR
APPROVAL OF PAGA SETTLEMENT**

Date: March 4, 2020
Time: 10:30 AM
Dept.: 613
Judge: Hon. Andrew Y.S. Cheng

1 I, Alexei Kuchinsky, declare as follows:

2 1. I am an attorney licensed to practice law in the state of California. I am a partner at the
3 law firm Klein Law Group, LLP, counsel for Plaintiff and PAGA Representative Uladzimer Tabola
4 in this case. Another partner, William P. Klein, and I are the attorneys handling this case. I submit
5 this Declaration in support of the Joint Application of Plaintiff Tabola (“Plaintiff”) and Defendants
6 Uber Technologies, Inc., Rasier, LLC, and Rasier-CA, LLC (“Defendants”) (collectively, the
7 “Parties”) for this Court’s approval of the Parties’ agreement to settle all claims for civil penalties
8 under the Private Attorneys General Act of 2004, California Labor Code sections 2698, et seq.
9 (“PAGA”) pursuant to Labor Code section 2699(1)(2). Based on my personal knowledge of the facts
10 stated herein, if called as a witness, I could and would testify competently thereto.

11 **I. FACTUAL AND PROCEDURAL HISTORY**

12 **A. PAGA Notice and the Complaint**

13 2. On January 6, 2016, pursuant to Labor Code section 2966.3, Plaintiff Tabola notified
14 Defendants and the California Labor and Workforce Development Agency (“LWDA”) via certified
15 mail of Defendants’ alleged violations of the following sections of the California Labor Code: 200-
16 204, 210, 221-224, 225.5, 226, 226.7, 226.8, 245-249, 350-354, 500, 510, 512; 1174, 1182.11-
17 1182.13, 1194, 1197, 1198, 2802. Plaintiff’s claims were all based on the alleged misclassification of
18 drivers as independent contractors, and his LWDA notice stated his intent to pursue a representative
19 civil action under the PAGA to recover civil penalties on behalf of the State of California and
20 drivers. The LWDA declined to investigate the alleged violations, permitting Plaintiff to initiate a
21 PAGA action in superior court. A true and correct copy of the January 6, 2016 Notice is attached to
22 this Declaration as Exhibit 1.

23 3. On March 16, 2016, Plaintiff Tabola filed a lawsuit in San Francisco Superior Court on
24 behalf of himself, as well as the State of California and other allegedly aggrieved drivers, based on
25 alleged misclassification as independent contractors and derivative violations of the Labor Code and
26 Industrial Welfare Commission (“IWC”) Wage Orders. Plaintiffs’ Complaint alleged the following
27 causes of action: (1) failure to pay for all hours worked (Cal. Lab. Code §§ 200–204); (2–3) failure
28 to pay minimum wage and overtime (Cal. Lab. Code §§ 510 and 1194); (4) failure to provide meal

1 periods (Cal. Lab. Code § 512); (5) unlawful deductions (Cal. Lab. Code §§ 221–223); (6) failure to
2 pay all wages due at termination (Cal. Lab. Code § 203); (7) failure to provide sick leave (Cal. Lab.
3 Code §§ 245–249); (8) failure to provide accurate itemized wage statements (Cal. Lab. Code § 226);
4 (9) unlawful collection and conversion of gratuities (Cal. Lab. Code §§ 350–354); (10) failure to
5 provide employment records upon request (Cal. Lab. Code § 226(c)); (11) failure to reimburse
6 business expenses (Cal. Lab. Code § 2802); and (12) violation of the Private Attorneys General Act
7 based on the foregoing and additional provisions of the Labor Code and IWC Wage Orders.¹ In
8 addition to his representative PAGA claims, Plaintiff alleged individual claims to recover unpaid
9 wages based on the same underlying violations that gave rise to his PAGA claims, including
10 restitution under Unfair Competition Law. (Cal. Bus. & Prof Code §§ 17200 *et seq.*).

11 **B. Procedural Background**

12 4. On May 3, 2016, in lieu of filing an Answer to the Complaint, Defendants filed a Motion
13 to Stay or in the Alternative to Compel Arbitration. Plaintiff filed his response in opposition and also
14 initiated written discovery; however, on May 31, 2016, the Court granted Defendants’ Motion to
15 Stay pending other related actions. Ultimately, this Action remained stayed pending the PAGA
16 settlement in *Price v. Uber Technologies, Inc.*, No. BC554512 (L.A. Sup. Ct.) (“*Price*”).

17 5. On January 18, 2018, Judge Nelson approved the *Price* PAGA Settlement, pursuant to
18 which Defendants agreed to pay \$7,775,000 to settle all PAGA claims on behalf of all drivers who
19 used the Uber App from July 8, 2013 to January 29, 2017. Recognizing the preclusive effect of the
20 *Price* PAGA settlement on Plaintiff’s PAGA claims, Plaintiff agreed to amend his original complaint
21 to exclude duplicative claims settled in *Price*.

22 6. In February 2018, this case was assigned to Complex Department 305 of San Francisco
23 Superior Court. On May 1, 2018, the Court lifted the stay and on June 1, 2018, Plaintiff filed his
24 First Amended Complaint (“FAC”).

25 7. In August 2018, Defendants demurred to Plaintiff’s FAC and moved to strike certain
26

27 ¹ The PAGA action was originally filed on behalf of Uladzimir Tabola, Alexander Kazakov, Yahor
28 Zgurski, and Maksim Hancharuk, however, Kazakov, Zgurski, and Hancharuk subsequently dismissed their
claims, with the Court’s approval.

1 portions of the FAC. The Court overruled Defendants' demurrer but granted, in part, Defendants'
2 motion to strike. Specifically, the Court limited the liability period of certain PAGA claims in light
3 of the *Price* PAGA Settlement. On November 2, 2018, Defendants answered the FAC.

4 8. In October 2018, Plaintiff served his second set of written discovery requests, including
5 Requests for Production of Documents and Special and Form Interrogatories. In January 2019, Uber
6 responded to Plaintiff's written requests and starting on January 16, 2019, Plaintiff engaged in a
7 meet-and-confer process with Uber regarding its responses. As a result of meet-and-confer efforts,
8 the Parties stipulated to, and, on March 29, 2019, the Court entered a Bifurcation Order. Specifically,
9 the Court ordered the issue of whether Plaintiff was properly classified as an independent contractor
10 to be bifurcated from all other issues and limited all discovery, motion practice, and merits to the
11 issue of Plaintiff's independent contractor status. All other claims, including all discovery unrelated
12 to the issue of Plaintiffs' independent contractor status, were ordered stayed.

13 **C. Settlement Negotiations**

14 9. In April 2019, the Parties agreed to submit Plaintiff's individual and PAGA claims to
15 mediation. Plaintiff requested and Defendants disclosed information and data related to Plaintiff and
16 the PAGA Cohort Members, including a randomly selected sample of 500 drivers' Uber software
17 application usage data in a CSV format, showing miles driven while on trip, trip durations, and
18 commissions paid. Uber also disclosed the number of workweeks for all PAGA Cohort Members for
19 the relevant time period prior to mediation. In preparation for the mediation, Plaintiff's counsel
20 analyzed, researched, and investigated the potential issues including matters related to the
21 calculation of damages at trial and appellate issues and risks.

22 10. On July 17, 2019, the Parties participated in a full-day mediation session before well-
23 respected wage-and-hour mediator, Joel M. Grossman, Esq. of JAMS. The mediation took place in
24 San Francisco. The Parties made considerable headway over the course of the full-day mediation
25 through robust discussions of the risks and rewards of continued litigation, possible economic and
26 non-economic terms, as well as several rounds of offers and counter-proposals. While the Parties
27 were able to agree on the principal amount of the PAGA settlement on July 17, 2019, the Parties
28 continued negotiations with respect to the remaining key terms until September 2019, and on

1 January 28, 2020, a long-form settlement agreement was executed.² A true and correct copy of the
2 Settlement Agreement is attached hereto as Exhibit 2.

3 11. As part of the Settlement, on September 25, 2019, Plaintiff served the LWDA with a
4 supplemental notice pursuant to Labor Code section 2699.3(a), notifying the LWDA of additional
5 alleged violations by Defendants, including the following sections of the Labor Code: 206, 206.5,
6 208, 212, 216, 226.2, 232.5, 432.5, 515, 551, 552, 558.1, 1174.5, 1175, 1182.12, 1197.1, 1198.5,
7 1199, 2753, 2804, and 2810.5 (“September 2019 Letter”). Pursuant to Labor Code section
8 2699.3(a)(2)(A), Plaintiff’s administrative remedies with respect to the additional violations alleged
9 in the September 2019 Letter were exhausted on November 29, 2019. A true and correct copy of the
10 September 2019 Letter is attached to this Declaration as Exhibit 3.

11 12. On January 29, 2020, Plaintiff filed a Second Amended Complaint incorporating the
12 additional alleged violations that Plaintiff notified the LWDA about on September 25, 2019.

13 **D. Later-Filed PAGA Actions**

14 13. After *Price*, this Action is the first-filed action against Defendants alleging a violation of
15 the PAGA based on alleged misclassification of drivers in California as independent contractors.

16 14. However, *after* Plaintiffs sent their letter to the LWDA, several other individuals also
17 sent letters to the LWDA and filed suit against Defendants seeking to recover penalties under many
18 of the same sections of the Labor Code, all based on the underlying theory that Uber misclassified
19 drivers in California as independent contractors. These later-filed matters (the “Later-Filed PAGA
20 Cases”) are identified below:

- 21 (1) *Sherman v. Uber Technologies, Inc.*, Superior Court of California, County of Los
22 Angeles, Case No. BC656880, filed April 6, 2017;
- 23 (2) *Rosales v. Uber Technologies, Inc.*, Superior Court of California, County of Los
24 Angeles, Case No. BC685555, filed December 4, 2017;
- 25 (3) *Rowe v. Rasier-CA, LLC*, Superior Court of California, County of Orange, Case
26 No. 30-2018-00989673-CU-OE-CXC, filed May 1, 2018;;
- 27 (4) *Alamas v. Uber Technologies, Inc.*, Superior Court of California, County of Los
28 Angeles, Case No. 19STCV29939, filed August 23, 2019;

² On September 3, 2019, Plaintiffs Kazakov and Hancharuk filed a request for dismissal.

- 1 (5) *Gregg v. Uber Technologies, Inc.*, Superior Court of California, County of
2 Orange, Case No. BC719085, filed August 29, 2018;
- 3 (6) *Adolph v. Uber Technologies, Inc.*, Superior Court of California, County of
4 Orange, Case No. 30-2019-01103801-CU-CO-CXC, filed October 10, 2019;
- 5 (7) *Ramon Segarra v. Uber Technologies, Inc.* (notice of PAGA claims), dated July 17,
6 2019; and
- 7 (8) *In re Jericho Nicolas, Anthony Sanchez, Barton Lasheem, Benjamin Laney,*
8 *Carlos Alvarez, Christine Tringali, David Kim, Dora Waters, Eric Calvillo*
9 *Hernandez, Gary Baumgarten, Jackson Rodriguez, Jaime Del Real, Jamin*
10 *Goodner, Jason Thais, Jorge Jimenez, Jose Contreras, Juan Jamarron, Juan*
11 *Montalvo, Kamal Suri, Kelly Clifton, Kevin Byler, Kevin Neely, Lisette Castillo,*
12 *Lorianne Blakey, Marcos Montes, Mark Glinoga, Michael Kramer, Michael Vela,*
13 *Richard Trujillo, Rick Anderson, Sherbas Khalid, Steven Robert Callahan,*
14 *William Hooper IV, Yazmin Garcia, and Yhon Lara v. Uber Technologies, Inc.*
15 (notice of PAGA claims), dated November 1, 2019.

16 **II. NOTICE OF THE PAGA SETTLEMENT AND NOTICE OF THIS MOTION TO THE**

17 **LWDA**

18 15. Pursuant to Labor Code section 2699(l)(3), on February 10, 2020, I uploaded
19 electronically to the LWDA website the Proposed PAGA Settlement Agreement, this Joint
20 Application For for Approval of PAGA Settlement as well as the papers in support. As of the time of
21 the filing of this Motion, I did not receive any communication from the LWDA.

22 **III. TERMS OF THE PROPOSED SETTLEMENT AGREEMENT**

23 16. The Parties have agreed to settle Plaintiff's PAGA claims, inclusive of attorneys' fees
24 and costs, for \$10,831,500. (See Ex. 2, Sec. III.). The material terms of this Settlement Agreement
25 are as follows:

26 **A. The Payment**

27 17. Defendants will pay a total of \$10,831,500 ("Settlement Sum") to resolve the PAGA
28 Claims (as defined below) during the PAGA Release Period (as defined in the Settlement Agreement)
on behalf of Plaintiff as a representative of the LWDA and PAGA Cohort Members. The Settlement
Sum covers civil penalties (to be shared between the LWDA and PAGA Cohort Members), as well as

1 an Enhancement Award to Plaintiff, Attorneys' Fees and Costs, and Claims Administration Costs.
2 (Ex. 2, ¶ Sec. III(C).) The LWDA will receive 75% of the Net Settlement Amount (after fees, costs,
3 and enhancement award are deducted, as defined in the Agreement). The PAGA Cohort Members will
4 receive 25% of the Net Settlement Amount on a pro-rated basis. (*Id.*)

5 **B. Attorneys' Fees, Costs, and Incentive Payment**

6 18. The Agreement permits Plaintiff to apply for an Enhancement Award of \$1,500 in
7 exchange for a release of his individual claims, and Attorneys' Fees and Costs not to exceed 30% of
8 the Settlement Sum. (Ex. 2, ¶ Sec. III(C)(a)(1).)

9 **C. Settlement Administration**

10 19. The Parties have agreed that the cost of administering the Settlement shall be deducted
11 from the Settlement Sum. The Settlement Administrator mutually selected by the Parties, Epiq Class
12 Action & Claims Solutions, Inc., has provided the Parties with an anticipated cost of administration
13 of the settlement, of approximately \$700,000. (Ex. 2, ¶ Sec. III(C)(a)(3)). If the claims
14 administration fees are less than the estimated amount, the remainder will be included in the
15 Payment of PAGA Penalties (as defined in the Agreement).

16 **D. The Scope of the Release**

17 20. The Settlement provides for an Individual Release and PAGA Cohort Member Release as
18 set forth in the Agreement. The PAGA Cohort Member Release, is as follows:

19 Upon entry of the Final Order, Plaintiff as representative of the State of California on
20 behalf of all PAGA Cohort Members shall be deemed to have fully, finally, and forever
21 waived, released, relinquished, and discharged each and all of the Released Parties from
22 any PAGA Claims that arose or may be alleged to have arisen, or that have been
23 brought or could have been brought by Plaintiff, the State of California, or any PAGA
24 Cohort Member, at any time during the PAGA Release Period. Moreover,
25 notwithstanding the provisions of Section 1542 of the California Civil Code (above),
26 and to implement a full and complete release and discharge of Released Parties,
27 Plaintiff on behalf of himself and the State of California, expressly acknowledges this
28 Agreement is intended to include in its effect, without limitation, all PAGA Claims
Plaintiff and the State of California on behalf of the PAGA Cohort Members do not
know or suspect to exist in their favor at the time of signing this Agreement, and that
this Agreement contemplates the extinguishment of any and all known or unknown
PAGA Claims related to the claims being released.

(Ex. 2, Sec. V(C).)

1 21. Under this PAGA Settlement, the PAGA Release Period is defined as follows:

2 (1) For PAGA Claims arising out of or relating to alleged failure to pay
3 for all hours worked or unlawful deductions, from January 5, 2015
4 through December 31, 2019.

5 (2) For PAGA Claims arising out of or relating to alleged unpaid sick
6 leave violations, from July 1, 2015 through December 31, 2019.

7 (3) For PAGA Claims arising out of or relating to all other allegations,
8 from January 30, 2017 through December 31, 2019.

9 (Ex. 2, Sec. V(p).)

10 22. Under this PAGA Settlement, the PAGA Cohort Members are defined as any individual
11 who used the Uber software applications to generate leads in California during the PAGA Release
12 Period. (Ex. 2, Sec. I(o).)

13 23. “PAGA Claims” are defined as follows:

14 [A]ny and all claims under or pursuant to PAGA based on alleged misclassification of
15 PAGA Cohort Members as independent contractors or any PAGA-enabling violation
16 of any law arising from any act or omission by the Released Parties, whether known or
17 unknown, suspected or unsuspected, to which Plaintiff or the State of California on
18 behalf of the PAGA Cohort Members may have been entitled or may be entitled under
19 the California Labor Code including, but not limited to, penalties based on or arising
20 from alleged violations of California Labor Code sections 200, 201, 202, 203, 204, 206,
21 206.5, 208, 210, 212, 216, 221, 222, 222.5, 225.5, 223, 224, 226, 226.2, 226.3, 226.7,
22 226.8, 232.5, 245, 245.5, 246, 246.5, 247, 247.5, 248, 248.5, 249, 351, 352, 353, 354,
23 355, 356, 432.5, 500, 510, 512, 515, 551, 552, 558, 558.1, 1174, 1174.5, 1175, 1182.11
24 – 1182.3, 1194, 1194.2, 1197, 1197.1, 1198, 1198.5, 1199, 2753, 2802, 2804, 2810.5,
25 2699(f); and to the fullest extent permissible under governing law, the California Code
26 of Regulations and/or Industrial Welfare Commission Wage Orders, including, but not
27 limited to Wage Order 9-2001, and any and all other statutes, laws, or regulations on
28 which a claim for penalties under PAGA may be based.

29 (Ex. 2, Sec. I(n).)

30 **E. The Settlement Administration Process**

31 24. The Agreement provides that the Claims Administrator will distribute the Settlement
32 Sum formulas as follows:

33 The total sum available for payment of PAGA penalties shall be calculated by
34 deducting the Attorneys’ Fees and Costs awarded, the Enhancement Award and
35 Settlement Payment and Claims Administration Costs from the Settlement Sum (this
36 will yield the “Net Settlement Amount”). Of the Net Settlement Amount, seventy-five
37 percent (75%) shall be distributed to the LWDA (“LWDA Payment”) and the
38

remaining twenty-five percent (25%) shall be distributed to the PAGA Cohort Members (“Driver Penalty Payments”). The Driver Penalty Payment for each PAGA Cohort Member shall be calculated based on a pro rata allocation of that PAGA Cohort Member’s “Active Weeks.” An “Active Week” means any week, measured from Monday at 12:00 a.m. until Sunday at 11:59 p.m., in which a PAGA Cohort Member accepted a lead using Uber’s software application. For Active Weeks during the period of January 5, 2015 through January 29, 2017, a PAGA Cohort Member will be awarded 0.5 points. For Active Weeks during the Period of January 30, 2017 through December 31, 2019, a PAGA Cohort Member will be awarded 1 point. The pro rata allocation will be determined by dividing the Driver Penalty Payments by the total number of Active Week points for all PAGA Cohort Members. Each PAGA Cohort Member will then be paid an individual Driver Penalty Payment equal to the Active Week Amount multiplied by that PAGA Cohort Member’s total number of Active Week points.

(Ex. 2, Sec. III(C)(a)(4).)

F. Amendment of the Complaint

25. As part of the Settlement, the Parties stipulated to the filing of the Second Amended Complaint to add claims under the PAGA for the alleged violations outlined in Plaintiff’s September 2019 Letter to the LWDA. (Ex. 2, Sec. VI(D).) A true and correct copy of the Second Amended Complaint is attached to this Declaration as Exhibit 4.

IV. PLAINTIFF’S COUNSEL’S EXPERIENCE IN HANDLING COMPLEX WAGE-AND- HOUR LITIGATION

26. I am a member in good standing of the State Bar of California and have been since 2011. I am admitted to practice in the state of California and the United States District Courts for the Northern, Central, and Southern Districts of California. I am a member of the Labor and Employment Law Section of the State Bar of California. I earned a bachelor’s degree from San Francisco State University (summa cum laude) and I am a graduate of the University of California Davis School of Law.

27. My partner, William P. Klein, has been a member of the State Bar of California since 1990 and has been continuously practicing business and employment law since 1991. He is also admitted to practice in various districts of United States District Courts and the United States Court of Appeals for the Ninth Circuit. He has represented employees and employers in litigation resulting in both settlements and taking cases to verdict.

1 28. Mr. Klein and I have extensive experience handling wage-and-hour cases, including
2 claims like those asserted in this action. We have litigated various wage-and-hour legal issues,
3 including, but not limited to, independent contractor misclassification, exempt misclassification,
4 unreimbursed expenses, unpaid off-the-clock time and overtime, and unpaid premiums for missed
5 meal and rest breaks. Our knowledge of the applicable wage-and-hour laws is evidenced by our
6 representation of thousands of employees, as well as numerous employers, in litigation in California
7 and federal courts. During the past five years, we have handled over one hundred fifty employment
8 cases, including multi-plaintiff, class, and representative actions. Some of the most recent cases
9 include the following:

- 10 • *Sanchez, et. al. v. Examone Worl Wide, Inc., et. al.*, No. 17CV308382 (Cal.
11 Super. Ct., Cty. of Santa Clara, Jan. 2020) (a Class and PAGA action on behalf
of 450 mobile examiners for failure to pay wages);
- 12 • *Matsui v. Chinese Hospital Association, Inc.* No. CGC-19-577901 (Cal. Super.
13 Ct., Cty. of San Francisco, Feb 2020) (a Class and PAGA action on behalf of
14 145 nurses);
- 15 • *Ma v. Creative Energy Foods, Inc.*, No. RG17868229 (Cal. Super. Ct., Cty. of
16 Alameda., May 2019) (class counsel in a class action for failure to provide meal
and rest periods to 380 employees);
- 17 • *Alkhamaisi v. Katmai Government Services, LLC*, No. 3:18-cv-00115 (S.D. Cal.
18 Aug. 20, 2019) (class counsel in a collective FLSA and class action on behalf
of 450 employees for failure to pay wages);
- 19 • *Atiqi v. Parsons Government Services, Inc.*, No. 5:14-CV-00628 (C.D. Cal.
20 Aug. 22, 2017) (class counsel in a class action on behalf of 1,930 employees
for failure to pay wages);
- 21 • *Hillman v. Lexicon Consulting, Inc.*, No. 5:16-cv-01186, (C.D. Cal. Oct. 12,
22 2017) (class counsel in a collective FLSA and class action for failure to pay
wages on behalf of 190 employees);
- 23 • *Zhang v. SMSSI of California, Inc.*, No. CGC-15-544752 (Cal. Super. Ct., Cty.
of San Francisco, July 2016) (a representative PAGA action on behalf of 400
24 security guards for failure to reimburse expenses);
- 25 • *Ahuja v. Hooper Holmes, Inc.*, No. RG16833437 (Cal. Super. Ct., Cty. of
Alameda, Feb. 2018) (a representative PAGA action on behalf of 100 mobile
26 examiners for failure to pay wages);
- 27 • *Graham. v. Amazon Logistics, Inc.*, No. RG17852953 (Cal. Super. Ct., Cty. of
Alameda, May 2018) (a representative PAGA action on behalf of 64 delivery
28 drivers for failure to pay wages); and

- *Staben v. Bernarda, LLC*, No. CGC-14-541700 (Cal. Super. Ct., Cty. of San Francisco, July 2015) (a representative PAGA action on behalf of 180 restaurant workers).

V. THE SETTLEMENT SUM IS FAIR, REASONABLE, AND ADEQUATE

29. The Settlement encompasses only PAGA claims for civil penalties, and the Parties request that this Court approve the Proposed PAGA Settlement because it is fair and adequate in view of the purposes and policies of the PAGA.

30. The Proposed PAGA Settlement is fair, reasonable, and adequate with reference to the public policies underlying PAGA because it will enhance the resources available to the LWDA to serve its law enforcement and education role.

31. The Proposed PAGA Settlement will dramatically enhance the resources available to the LWDA to serve its law enforcement and education role by providing the LWDA to serve its law enforcement and education role. This is the fourth-largest PAGA settlement in California based on the data provided to Plaintiff's Counsel by the LWDA. This is the fourth largest PAGA settlement in California, according to data provided by the LWDA.³ Specifically, as of August 2, 2019, there were only eight PAGA cases in which the LWDA received \$2 million or more in civil penalties and only three cases exceeding \$6 million.

32. Plaintiff's counsel have calculated that the theoretical maximum civil penalty recovery that Plaintiff may pursue at trial is approximately \$8,542,076,360. This number is calculated as follows:

Cause of Action	Labor Code of Underlying Violation	Applicable Civil Penalty	PAGA Liability Period Start Date	Civil Penalty Per Pay Period	Number of Pay Periods	Total Civil Penalties
Failure to	§ 1194	§ 1197.1	1/30/2017	\$100.00	14,977,039 ⁴	\$1,497,703,900

³ My office made a public information request to the LWDA under Government Code sections 6250 *et. seq.*, asking the agency to provide a list of all cases in which the LWDA received more than \$2 million in civil penalties. A true and correct copy of the LWDA's response is attached as Exhibit 5.

⁴ 14,977,039 is the total number of earning statements issued to all drivers during the relevant PAGA Period from February 1, 2017 to around June 25, 2019.

1	Pay Minimum Wage						
2							
3	Failure to Pay Overtime	§ 510	§ 558	1/30/2017	\$50.00	14,977,039	\$748,851,950
4							
5	Failure to Provide Meal Breaks	§§ 226.7, 512	§ 558	1/30/2017	\$50.00	14,977,039	\$748,851,950
6							
7	Improper Deductions (Failure to include “Safe Rides Fees” into Gross Fare)	§§ 221–224	§ 225.5	2/12/2015	\$100.00	4,648,041 ⁵	\$464,804,100
8							
9							
10							
11	Failure to Provide Accurate Itemized Wage Statements and Maintain Accurate Records	§ 226	§ 226.3	1/30/2017	\$250.00	14,977,039	\$3,744,259,750
12							
13							
14							
15							
16	Unlawful Collection of Gratuities	§§ 351–354	§ 2699(f)	1/30/2017	\$100.00	2,582,245 ⁶	\$258,224,500
17							
18	Failure to Reimburse Business Expenses	§ 2802		1/30/2017	\$100.00	14,977,039	\$1,497,703,900
19							
20							
21	Total:						\$8,960,400,050

22 33. If the Court refuses to “stack” duplicative PAGA penalties for various derivative causes
23 of action based on the same underlying violation of the independent contractor misclassification,
24 \$1,497,703,900 is a more realistic number representing Plaintiff’s maximum recover at trial

25 _____
26 ⁵ Plaintiffs’ counsel estimated that the average number of pay periods worked by all California drivers
27 per month is 516,449 (14,977,039/29 months). Therefore, Plaintiff’s counsel estimate that during this nine-
28 month period from February 12, 2015 to November 1, 2015, there were 4,648,041 pay periods worked by all
California drivers.

⁶ Plaintiff’s counsel estimate that during this five-month period from January 30, 2017 to July 1, 2017,
there were 2,582,245 pay periods worked by all California drivers.

1 (14,977,039 pay periods x \$100).

2 **VI. THE REQUESTED ATTORNEYS' FEES AND COSTS ARE REASONABLE**

3 34. Subject to the court's approval, Defendants have agreed not to oppose Plaintiff's request
4 of an award of class counsel's fees and costs in the amount \$3,249,450 (or up to 30% of the
5 settlement amount) and Incentive Payment of \$1,500 to Plaintiff Tabola. Concurrently with this
6 Motion, Plaintiff filed a motion for attorneys' fees that will be heard on the same date and at the
7 same time as the Approval Hearing. As explained in detail in the application, the requested fees are
8 reasonable considering the results achieved and Plaintiff's counsel's lodestar. The Motion also
9 explained that the requested incentive award is also reasonable and justified based on the significant
10 time, effort, and risks that Plaintiff Tabola incurred in bringing this case on behalf of the State of
11 California.

12
13 I declare under penalty of perjury under the laws of the United States and the State of
14 California that the foregoing is true and correct. Executed on February 10, 2020, in San Francisco,
15 California.

16
17 
18 _____
19 Alexei Kuchinsky, Esq.
20
21
22
23
24
25
26
27
28

Exhibit 1



Four Embarcadero Center, Suite 3900
San Francisco, CA 94111

Tel: 415.693.9107 Fax: 415.693.9222
Email: alexei@sfbizlaw.com

January 6, 2016

Attn. PAGA Administrator
David M. Lanier,
California Labor and Workforce Development Agency
1515 Clay Street, Ste. 801
Oakland, CA 94612

VIA CERTIFIED U.S. MAIL (RETURN RECEIPT REQUESTED)

NOTICE OF LABOR CODE VIOLATIONS
PURSUANT TO LABOR CODE SECTION 2699.3

TO: The California Labor and Workforce Development Agency, Uber
Technologies, Inc. (dba "Uber"), Rasier, LLC and Rasier-CA, LLC

FROM: Alexander Kazakov and Uladzimir Tabola

Dear Mr. Lanier,

This office represents Alexander Kazakov and Uladzimir Tabola ("Claimants") regarding their wage-and-hour claims related to their employment with Uber Technologies, Inc. (dba "Uber"), Rasier, LLC and Rasier-CA, LLC ("Employer" or "Uber") in the Bay Area, California.

Pursuant to California Labor Code Section 2699, the Claimants, as aggrieved employees, intend to bring on behalf of themselves and other current or former employees of the Employers a civil action against the Employers, to recover unpaid wages and civil penalties as provided by California Labor Code.

I. FACTUAL STATEMENT

The Employer owns and operates a transportation company “Uber” that provides transportation services to the general public in California. From about March 2015 through November 2015 (“Employment Period”), the Employer employed Uladzimir Tabola as a driver. Alexander Kazakov’s Employment Period with the Employer started in February 2012 and ended in October 2015. The Claimants’ responsibilities include transporting passengers within the Bay Area, California. During the Employment Period, the Employer misclassified the Claimants as independent contractors and denied them all benefits and protections of the California Labor Code, and the applicable Industrial Wage Order (e.g. No. 9-2001).

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

During the Employment Period, the Claimants observed how other drivers who worked for Uber were misclassified as independent contractors and subjected to similar California labor law violations committed by the Employer, as alleged below. The violations caused the Claimant and other current or former employees to suffer substantial damages. Hereinafter, the Claimants and other current or former employees of the Employer, who worked for Uber in California from December 2014 through December 2015 are referred to as the Claimants and Aggrieved Employees.

During the Employment Periods, Uber Technologies, Inc. (dba “Uber”), Rasier, LLC and Rasier-CA, LLC were joint employers of the Claimants and Aggrieved Employees because they jointly exercised control over the wages, hours, or working conditions of the Claimants and Aggrieved Employees. Analogously, Uber Technologies, Inc. (dba “Uber”), Rasier, LLC and Rasier-CA, LLC engaged, suffered, or permitted the Claimants and Aggrieved Employees. to work under working conditions described herein

The Claimants seek to serve as representatives of the general public to enforce and uphold California's wage and hour laws as representatives 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 the Employer 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.

Uber willfully misclassified the Claimants and other aggrieved employees as independent contractors despite the fact that Uber exercised pervasive control over the Claimants' manner and means of transporting passengers. For example, Uber terminated the Claimants for refusing to transport some of Uber passengers (i.e. cancellations). Because of misclassification by Employers as independent contractors, the Claimants and other aggrieved employees 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, that inure from the employment relationship under law.

Therefore, the Claimants and Aggrieved Employees are entitled to recover damages and/or 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

The Employer failed to pay the Claimants and Aggrieved Employees 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 the Claimants and Aggrieved Employees 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

The Employer failed to pay the Claimants and Aggrieved Employees for the time they spend driving without the passenger.

Using the Uber Mobile Application, the Employer required the Claimants and Aggrieved Employees to pick up passengers in certain locations. The Claimants and Aggrieved Employees' 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 he is located at the time of the dispatch ("Dispatch Location") and the pickup location. Similarly, the Fare does not include the time or the mileage the driver spends driving from the dropoff location and the driver's typical waiting area. In other words, the Fare does not include the time drivers spend for work-related driving without a passenger. For example, more than often, the Claimants and Aggrieved Employees were required to transport passengers to distant areas located 10-60 miles away from their registered territory.¹ Uber failed to compensate the Claimants and Aggrieved Employees for hours they spend coming back from the distant dropoff locations to the registered territory. For example, the Claimants were often required to transport passengers to one-way locations in San Francisco Airport or Peninsula and then come back without any passengers to San Francisco. Uber did not pay the Claimants for hours they spend driving back to San Francisco, which often amounted to 0.5 to 2 hours depending on the traffic and distance.

2. Failure to Pay for Time Waiting Time

Analogously, Uber failed to pay the Claimants and other aggrieved employees for the time spent waiting for passengers. For example, the Claimants and other aggrieved employees were required to wait for passengers approximately from 5 to 30 minutes. Uber failed to pay the Claimants and other aggrieved employees for the waiting time.

Therefore, Claimants and Aggrieved Employees are entitled to recover compensation for all hours that they worked pursuant to Labor Code Sections, including but not limited to sections 200, 204, 226, 500, 510, 1197, and 1198., penalties, including penalties available pursuant to Labor Code sections 225.5, 558, 2699(f), plus interest, reasonable attorney fees and costs of suit under Labor Code section 1194.

¹ At the time of hiring, the Employer required the Claimants and Aggrieved Employee to indicate and register their preferred territory. The Claimants indicated San Francisco as they preferred Territory.

C. Improper Deductions

Pursuant to Labor Code sections 221-224, it is unlawful for an employer to collect or receive from an employee any part of the employees' wages and to make improper, unlawful and/or unauthorized deductions from employees' pay checks. In violation of Labor Code section 221, the Employers improperly deducted from the Claimants' wages \$1 "Safe Rides Fee."

Sometime during the Employment Period, Uber implemented a program under which each rider was required to pay \$1 as a "safe riders' fee." According to Uber, this \$1 fee was collected to cover the costs of insurance and safety features. The \$1 safe ride fee was deducted from (or not included in) the total Fare causing the gross Fare amount to be reduced by \$1, which, in turn, caused the drivers to lose 80 cents from each ride. Uber deducted the \$1 safe ride fee from the total Fare as the insurance costs despite the drivers were required to have their own insurance.

The Claimants are entitled to recover the unpaid balance of wages owed, penalties, including penalties available pursuant to Labor Code sections 225.5, 558, 2699(f), plus interest, reasonable attorney fees and costs of suit under Labor Code section 1194.

D. Failure to Pay Overtime

Labor Code section 510 requires Uber to compensate the Claimants and other aggrieved employees 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, the Employers regularly required the Claimants and other aggrieved employees to work more than 8 hours per day and/or more than 40 hours per week. During the Employment Period, the Claimants and other aggrieved employees were never paid overtime compensation. The Claimants and other aggrieved employees are entitled to recover unpaid wages with interest, and are entitled to an award of attorney's fees as permitted by Labor Code section 1194 and other penalties, as permitted by Labor Code sections 558, 2699(f) and 210.

E. Failure to Pay Minimum Wage

At all times of their employment with the Employers, the Claimants and other aggrieved employees were entitled to be paid at least a minimum wage rate. The Employers 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. The Claimants and other aggrieved employees are entitled to recover unpaid wages with interest, liquidated damages, and an award of attorney's fees as permitted by Labor Code section 1194, as well as other penalties, as permitted by Labor Code sections 558, 2699(f) and 210.

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 ..., the employer 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, the Employer 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..”

The Employers failed to comply with the California meal break requirements because the Employer failed to provide an opportunity for the Claimants and other aggrieved employees to take their 30-minute uninterrupted meal break. Specifically, the Claimants and other aggrieved employees were systematically required to work five hours without a meal break.

Since the Employer required the Claimants and other aggrieved employees to work during meal periods in violation of Labor Code Section 226.7(a), the Claimants and other aggrieved employees seek to recover wages of one additional hour of pay as permitted by Labor Code Section 226.7(b) as well as 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, the employer 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, the Employers did not have a rest break policy and failed to provide the required rest breaks to the Claimants and other aggrieved employees. Pursuant to Labor Code § 226.7(b) and Wage Order No. 9-2001, §11(B), the Employers shall pay Claimants and other aggrieved employees one additional hour of pay at their regular rate of compensation for each day that rest periods were not provided.

H. Failure to Reimburse Business Expenses

The Claimants and other aggrieved employees 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. The Employers failed to reimburse the Claimants and other aggrieved employees gas, repairs, maintenance, and other expenses incurred in connection with work performed for the Employers. Therefore, the Claimants and other aggrieved employees are entitled to recover reimbursement for gas, repairs, maintenance, and toll fees and all available penalties as set forth in Labor Code Section 2699(f.)

I. 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, the Employers 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

The Employer never provided the Claimants and other aggrieved employees with any wage statements, thereby violating Labor Code section 226. Therefore, the Claimants and other aggrieved employees 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).

J. Failure to Provide Employment Records Upon Request

Pursuant to California Labor Code sections 226(c), the Claimants requested Uber to allow them to inspect and make copies of their personnel file. Uber refused to make the Claimants'

records available for inspection. Therefore, the Claimants and other aggrieved employees are entitled to recover damages and/or penalties as provided by Labor Code Section 226(f), as well as all available penalties as set forth in and 2699(f).

K. 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 Claimants and other aggrieved employees who are now former employees of the Employer terminated their employment relationship with the Employer either through voluntary resignation or involuntary termination. For example, on or October 2015, the Claimants were terminated. Upon such termination, Claimant and other aggrieved employee did not receive their premium compensation for overtime, minimum wage, reimbursement and missed meal and rest breaks.

Therefore, the Claimants and other aggrieved employees are entitled to recover waiting time penalties as provided by Labor Code Section 203, as well as all available penalties as set forth in Labor Code Section 2699(f).

L. Failure to Provide Sick Leave

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

Therefore, the Claimants and other aggrieved employees are entitled to recover sick leave compensation for days when they were sick pursuant to Healthy Workplaces, Healthy Families Act of 2014, and statutory penalties as provided by Labor Code Section 245.8, as well as all available penalties as set forth in Labor Code Sections 247, 558 and 2699(f).

M. Unlawful Collection and Conversion of Gratuities

Labor Code section 351 prohibits employers or their agents to collect any gratuity or a part thereof that was paid, given to, or left for an employee by a patron.

It is a custom in the transportation industry for the passengers to leave 10-20% of the total fare amount as gratuities/tips to a driver. Uber represented to its passengers that the Fare already included a gratuity and the passengers were not required to tip their drivers. However, these collected gratuities were never distributed to drivers despite it was their property under section 351.

Therefore, the Claimants are entitled to recover unlawfully-collected gratuity as provided by Labor Code Section 351 and 354, including all available penalties as set forth in Labor Code Section 558 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, the Claimant on behalf of themselves and other current and former employees of Uber hereby notify the California Labor and Workforce Development Agency and the Employers of the various Labor Code violations committed by Uber.

Please advise this office within the thirty-day statutory period if your office will be investigating this matter. We would appreciate hearing from the LWDA at your earliest convenience.

Respectfully Submitted,



Alexei Kuchinsky, Esq.

VIA CERTIFIED U.S. MAIL (RETURN RECEIPT REQUESTED)

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Uber Technologies, Inc. (dba "Uber") and Rasier-CA, LLC
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Exhibit 2

SETTLEMENT AGREEMENT

IT IS HEREBY STIPULATED AND AGREED by and between Plaintiff Uladzimir Tabola for himself and on behalf of the State of California (collectively "Plaintiff"), on the one hand, and Defendants Uber Technologies, Inc., Rasier, LLC, and Rasier-CA, LLC ("Defendants"), on the other (collectively, the "Parties"), subject to the approval of the Court in accordance with California Labor Code section 2699(1), that the Settlement of this Action shall be effectuated upon and subject to the following terms and conditions.

The Parties agree that the Action (as defined in Section I below) shall be, upon approval by the Court, ended, settled, resolved, and concluded without any admission of fault or liability, as set forth in this Agreement and for the consideration set forth herein, including but not limited to a release of claims by Plaintiff on behalf of himself individually, and as a representative of the State of California pursuant to the Private Attorneys General Act ("PAGA").

I. DEFINITIONS

Unless otherwise defined herein, the following terms used in this Agreement shall have the meanings ascribed to them as set forth below:

- (a) "Action" means the civil action, including as amended in the manner described herein, *Uladzimir Tabola, Alexander Kazakov, and Maksim Hancharuk, individually and on behalf of all other aggrieved employees, Plaintiffs, v. Uber Technologies, Inc., Rasier, LLC, and Rasier-CA, LLC, and DOES 1-25 inclusive, Defendants*, pending in the Superior Court of California in and for the County of San Francisco, Case No. CGC-16-550992.
- (b) "Approval Date" means the date the Court grants approval of this Agreement by signing and filing the Final Order and entering Judgment in accordance with the terms and conditions of this Agreement.
- (c) "Complaint" means the Complaint for Damages filed on or about March 16, 2016 in the Action, and all amendments thereto.
- (d) "Court" means the Superior Court for the State of California, County of San Francisco.
- (e) "Defendants" means the Defendants in this Action, Uber Technologies, Inc., Rasier, LLC, and Rasier-CA, LLC.
- (f) "Defense Counsel" or "Counsel for Defendants" means:

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- (g) “Driver Penalty Payment” means the portion of the Settlement Sum that shall be paid to each PAGA Cohort Member per the terms and conditions of this Agreement.
- (h) “Effective Date” means the date by which all of the following have occurred:
 - (1) The Court has approved the Settlement;
 - (2) The Court has issued the Final Order, approved amendment of the Complaint as described herein, dismissed all of Plaintiff’s claims with prejudice in their entirety, and entered Judgment in accordance with the terms described herein; and
 - (3) The judgment is final, meaning that (i) it is appealable and (ii) either (a) no appeal has been taken from the judgment as of the date on which all times to appeal therefrom have expired, or (b) an appeal or other review proceeding of the judgment having been commenced, such appeal or other review is finally concluded and no longer is subject to review by any court, whether by appeal, petitions for rehearing or re-argument, petitions for re-hearing en banc, petitions for writ of certiorari, or otherwise, and such appeal or other review has been finally resolved in such manner that affirms the judgment order in its entirety. If the Parties’ Settlement is not approved as described herein, the Settlement shall be void *ab initio* and of no further force or effect, and the Parties shall be returned in all respects to their respective positions as of July 16, 2019, the day before the mediation in this matter.
- (i) “Final Order” means the final Court order entered in this Action in accordance with the terms herein, approving amendment of the Complaint as described herein, approving this Agreement (and the Settlement described herein) under the specific terms requested, dismissing all of Plaintiff’s claims with prejudice in their entirety.

- (j) “Judgment” means the Court adopting and approving the terms of the Settlement, entering the Final Order, and retaining jurisdiction over the enforcement, implementation, construction, administration, and interpretation of the Settlement.
- (k) “LWDA” means the State of California Labor and Workforce Development Agency.
- (l) “Plaintiff” means Uladzimir Tabola.
- (m) “PAGA” means the Private Attorneys General Act of 2004, California Labor Code section 2698 *et seq.*
- (n) “PAGA Claims” means any and all claims under or pursuant to PAGA based on alleged misclassification of PAGA Cohort Members as independent contractors or any PAGA-enabling violation of any law arising from any act or omission by the Released Parties, whether known or unknown, suspected or unsuspected, to which Plaintiff or the State of California on behalf of the PAGA Cohort Members may have been entitled or may be entitled under the California Labor Code including, but not limited to, penalties based on or arising from alleged violations of California Labor Code sections 200, 201, 202, 203, 204, 206, 206.5, 208, 210, 212, 216, 221, 222, 222.5, 225.5, 223, 224, 226, 226.2, 226.3, 226.7, 226.8, 232.5, 245, 245.5, 246, 246.5, 247, 247.5, 248, 248.5, 249, 351, 352, 353, 354, 355, 356, 432.5, 500, 510, 512, 515, 551, 552, 558, 558.1, 1174, 1174.5, 1175, 1182.11-1182.13, 1194, 1194.2, 1197, 1197.1, 1198, 1198.5, 1199, 2753, 2802, 2804, 2810.5, 2699(f); and to the fullest extent permissible under governing law, the California Code of Regulations and/or Industrial Welfare Commission Wage Orders, including, but not limited to Wage Order 9-2001, and any and all other statutes, laws, or regulations on which a claim for penalties under PAGA may be based.
- (o) “PAGA Cohort Members” means any individual who used the Uber software applications to generate leads in California during the PAGA Release Period.
- (p) “PAGA Release Period” means:
 - (1) For PAGA Claims arising out of or relating to alleged failure to pay for all hours worked or unlawful deductions, from January 5, 2015 through December 31, 2019.
 - (2) For PAGA Claims arising out of or relating to alleged unpaid sick leave violations, from July 1, 2015 through December 31, 2019.
 - (3) For PAGA Claims arising out of or relating to all other allegations, from January 30, 2017 through December 31, 2019.
- (q) “Plaintiff’s Counsel” means:

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- (r) “Released Parties” means Uber Technologies, Inc., and any and all subsidiaries of Uber Technologies, Inc., including, but not limited to Rasier, LLC, Rasier-CA, LLC, Uber USA, LLC, Portier, LLC, and each of their past, present, and future parents, affiliated companies, subsidiaries, divisions, predecessors, successors, partners, joint venturers, shareholders, insurers, reinsurers and assigns, and each of their past, present and future officers, investors, directors, executives, trustees, agents, employees, attorneys, representatives, benefit plans sponsored or administered by the Released Parties, and any other persons or entities acting on behalf of or in concert with any of the foregoing.
- (s) “Settlement Agreement” or “Agreement” means the Parties’ agreement, as detailed herein, to dispose of the Action, the PAGA Claims, and all other claims, demands, rights, promises, covenants, actions, suits, causes of action, obligations, debts, expenses, attorneys’ fees and costs, administration costs, damages, penalties, fines, interest, injuries, compensation, judgments, orders and liabilities alleged in, arising from or related to the Action.
- (t) “Settlement Sum” means the total gross settlement amount of Ten Million Eight Hundred Thirty-One Thousand and Five Hundred dollars (\$10,831,500.00) to be paid by Defendants as provided by this Agreement to fully and finally settle, resolve and conclude this Action as provided under this Agreement, without any admission of fault or liability. Under no circumstances shall the Settlement Sum exceed \$10,831,500.00.

II. FACTUAL BACKGROUND

- (a) On January 6, 2016, Plaintiff Tabola and former plaintiff Kazakov served a letter to the LWDA and Defendants (“January 2016 Letter”), in accordance with the requirements of Labor Code section 2699.3(a), to notify the LWDA of alleged violations of the California Labor Code by Uber Technologies, Inc. arising from the alleged misclassification of drivers as independent contractors. The January 2016 Letter alleged that, by virtue of the alleged misclassification, Uber Technologies, Inc. had violated California Labor Code sections 200-204, 210, 221-224, 225.5, 226, 226.7, 226.8, 245-249, 351-354, 500, 510, 512, 558, 1174, 1182.11-1182.13, 1194, 1194.2, 1197, 1198, 2802, and 2699(f). The January 2016 Letter also indicated that Plaintiff and former plaintiff Kazakov intended to pursue a representative civil action under the PAGA against Uber pursuant to Labor Code section 2698 *et seq.* The LWDA declined to investigate the alleged violations, permitting Plaintiff and former plaintiff Kazakov to initiate a PAGA action in superior court.

- (b) On April 14, 2016, former plaintiff Hancharuk served a letter to the LWDA and Defendants (“April 2016 Letter”), in accordance with the requirements of Labor Code section 2699.3(a), to notify the LWDA of alleged violations of the California Labor Code by Uber Technologies, Inc. arising from the alleged misclassification of drivers as independent contractors. The April 2016 Letter alleged violations identical to those alleged in the January 4, 2016 letter. The LWDA declined to investigate the alleged violations, permitting Plaintiff and other former plaintiffs to initiate a PAGA action in superior court.
- (c) On March 16, 2016, Plaintiff Tabola and other former plaintiffs initiated the Action by filing a Complaint in the Superior Court of the State of California for the County of San Francisco, entitled *Uladzimir Tabola, Alexander Kazakov, Yahor Zgurski, and Maksim Hancharuk, individually and on behalf of all other aggrieved employees, Plaintiffs, v. Uber Technologies, Inc., Rasier, LLC and Rasier-CA, LLC, and Does 1 through 25, Defendants*, Case No. CGC-16-550992. The Action was brought individually and on a representative basis under PAGA on behalf of the State of California and other allegedly aggrieved drivers in California, based on the alleged misclassification as independent contractors of drivers in California and alleged derivative violations of the California Labor Code, Business and Professions Code, and IWC Wage Orders. The Complaint alleged the following causes of action: (1) failure to pay for all hours worked; (2) failure to pay minimum wage; (3) failure to pay California overtime; (4) failure to provide meal periods; (5) unlawful deductions; (6) failure to pay all wages due at termination; (7) failure to provide paid sick leave; (8) failure to provide accurate itemized wage statements; (9) unlawful collection of gratuities; (10) failure to provide employment records upon request; (11) failure to reimburse expenses; (12) violation of Private Attorneys General Act; and (13) unfair competition pursuant to California Business and Professions Code §§ 17200 *et seq.*
- (d) By amendment dated June 1, 2018, Plaintiff Yahor Zgurski withdrew from this action to pursue individual claims in arbitration.
- (e) On September 7, 2018, Plaintiff Tabola, and other former plaintiffs served an Amended letter to the LWDA and Defendants (“September 2018 Letter”), in accordance with the requirements of Labor Code section 2699.3(a), to notify the LWDA of alleged violations of the California Labor Code by Uber Technologies, Inc. arising from the alleged misclassification of drivers as independent contractors. The September 2018 letter sought to confirm that Plaintiff intended to represent “all current and former California drivers who provided transportation services for Uber and to Uber’s passengers using the Uber App...starting from February 12, 2015 to the present.” The LWDA declined to investigate the alleged violations.
- (f) The Parties engaged in written discovery, including requests for production and interrogatories.
- (g) On July 17, 2019, the Parties engaged in a one-day mediation session with the Joel Grossman. After an arms-length negotiation facilitated by Mr. Grossman, the Parties reached this Settlement and signed a Memorandum of Understanding memorializing

this Settlement. The Memorandum of Understanding is incorporated herein by reference, but to the extent it is inconsistent with this Agreement, it is superseded by this Agreement, and this Agreement controls.

- (h) The Parties reached this Settlement only after extensive discovery and investigation were performed.
- (i) On September 25, 2019, Plaintiff served an amended notice letter to the LWDA and Defendants (“September 25, 2019 Letter”), pursuant to Labor Code section 2699.3(a). The September 25, 2019 Letter asserts that Plaintiff seeks civil penalties against Uber, Rasier, LLC, Rasier-CA, LLC, and any and all of Uber’s wholly-owned subsidiaries, for violation of each and every provision of the Labor Code, including, but not limited to, the California Labor Code sections 200, 201, 202, 203, 204, 206, 206.5, 208, 210, 212, 216, 221, 222, 222.5, 225.5, 223, 224, 226, 226.2, 226.3, 226.7, 226.8, 232.5, 245, 245.5, 246, 246.5, 247, 247.5, 248, 248.5, 249, 351, 352, 353, 354, 355, 356, 432.5, 500, 510, 512, 515, 551, 552, 558, 558.1, 1174, 1174.5, 1175, 1182.11-1182.13, 1194, 1194.2, 1197, 1197.1, 1198, 1198.5, 1199, 2753, 2802, 2804, 2810.5, 2699(f), and Wage Order 9-2011. Pursuant to California Labor Code section 2699.3(a)(2)(A), Plaintiff’s administrative remedies with respect to the amended violations alleged in the September 25, 2019 Letter were exhausted on November 29, 2019. The Parties will submit a Stipulated Motion for Judicial Approval of the Parties’ Private Attorneys General Act Settlement and [Proposed] Order (“Joint Motion”) to the Court only (1) after receipt from the LWDA of a notice that the LWDA does not intend to investigate the alleged violations contained in the September 25, 2019 Letter; or (2) at least sixty-five (65) days after service of the September 25, 2019 Letter, if the LWDA provides no response to the September 25, 2019 Letter. Should the LWDA inform Plaintiff’s Counsel or Defendants that it intends to investigate the alleged violations, the Settlement will be null and void *ab initio*.
- (j) This Settlement Agreement shall cover the claims in all pending and anticipated actions brought under the PAGA against Defendants, including:
 - (1) *Rowe v. Rasier-CA, LLC*, Superior Court of California, County of Los Angeles, Case No. NC060982;
 - (2) *Toyserkani v. Raiser, LLC*, Superior Court of California, County of Los Angeles, Case No. BC660915;
 - (3) *Rosales v. Uber Technologies, Inc.*, Superior Court of California, County of Los Angeles, Case No. BC685555;
 - (4) *Alamas v. Uber Technologies, Inc.*, Superior Court of California, County of Los Angeles, Case No. 19STCV29939;
 - (5) *Adolph v. Uber Technologies, Inc.*, Superior Court of California, County of Orange, Case No. 30-2019-01103801-CU-CO-CXC;

- (6) *Sherman v. Uber Technologies, Inc.*, Superior Court of California, County of Los Angeles, Case No. BC656880;
- (7) *Gregg v. Uber Technologies, Inc.*, Superior Court of California, County of Orange, Case No. BC719085;
- (8) *Ramon Segarra v. Uber Technologies, Inc.* (notice of PAGA claims); and
- (9) *In re Jericho Nicolas, Anthony Sanchez, Barton Lasheem, Benjamin Laney, Carlos Alvarez, Christine Tringali, David Kim, Dora Waters, Eric Calvillo Hernandez, Gary Baumgarten, Jackson Rodriguez, Jaime Del Real, Jamin Goodner, Jason Thais, Jorge Jimenez, Jose Contreras, Juan Jamarron, Juan Montalvo, Kamal Suri, Kelly Clifton, Kevin Byler, Kevin Neely, Lisette Castillo, Lorianne Blakey, Marcos Montes, Mark Glinoga, Michael Kramer, Michael Vela, Richard Trujillo, Rick Anderson, Sherbas Khalid, Steven Robert Callahan, William Hooper IV, Yazmin Garcia, and Yhon Lara v. Uber Technologies, Inc.* (notice of PAGA claims).
- (k) The Settlement embodied in this Agreement is contingent on (i) issuance by the Court of a Final Order approving the Settlement, dismissing all of Plaintiff's claims with prejudice in their entirety, (ii) amendment of the Complaint to add the PAGA Claims described in Plaintiff's September 25, 2019 Letter, (iii) entry of Judgment enforcing the terms of the Settlement, and retaining jurisdiction to ensure compliance with the Court's Final Order only, (iv) discharge of Defendants and the Released Parties from liability for any and all PAGA Claims released by this Agreement, (v) release of all PAGA Claims against the Released Parties by Plaintiff, as the representative of the State of California and on behalf of all PAGA Cohort Members, (vi) release of all claims against Defendants and the Released Parties by Plaintiff, (vii) submission of the Court's Final Order by Plaintiff's Counsel to the LWDA within ten (10) days of entry of the order pursuant to California Labor Code § 2699(1)(3), and (viii) all parties bearing their respective fees and costs except as expressly provided in this Agreement.
- (l) Defendants dispute and deny Plaintiff's allegations and various causes of action asserted in the Complaint, including, without limitation, Plaintiff's individual and PAGA Claims.

III. APPROVAL AND IMPLEMENTATION OF SETTLEMENT

A. Cooperation

The Parties will cooperate in seeking approval of the Settlement described in this Agreement, including by drafting and filing the Joint Motion. The Parties further agree to fully cooperate in the drafting and/or filing of any further documents or filings reasonably necessary to be prepared or filed, including responding to challenges by any third parties, and shall take all steps that may be requested by the Court relating to the approval and implementation of the Settlement described in this Agreement.

B. Court Approval

Because this Action includes PAGA claims, this Agreement requires review and approval by the Court. *See* Cal. Lab. Code § 2699(1)(2). Accordingly, the Parties enter into this Agreement on a conditional basis. This Agreement is expressly contingent upon the Court's approval of this Settlement and the terms and material conditions of this Agreement (including, but not limited to, issuance of the Final Order in a form agreed to by the Parties and entry of Judgment in accordance therewith). If Court approval is not given and the Final Order is not entered, under the specific terms requested, this entire Agreement shall automatically be deemed null and void *ab initio*, shall be of no force or effect whatsoever, and shall not be referred to or used for any purpose whatsoever.

The Parties will jointly file, by no later than January 7, 2020, or a date otherwise ordered by the Court, the Joint Motion to the Court for an Order approving this Agreement. If the Court does not grant the application for approval and issue the Final Order under the specific terms requested, the Parties agree to meet and confer to address the Court's concerns and determine whether resolution of the Action can be obtained in a manner consistent with the Court's concerns. But, under no circumstances may a modified settlement be entered by the Court without a written agreement signed by all Parties.

The Parties agree there is no statutory right for any PAGA Cohort Member to object, opt out or otherwise exclude himself or herself from the Settlement. Except as otherwise stated, Plaintiff will vigorously defend against any attempt by any PAGA Cohort Member or by any entity or agency to intervene in this matter or object to/opt-out of this settlement. The Parties further agree there is no right or opportunity for any PAGA Cohort Member to appeal the approval of the Settlement by the Court. The Parties will jointly defend against any appeal filed with respect to the Final Order.

Plaintiff shall submit a copy of the Judgment in this Action and a copy of any other order providing for or denying an award of civil penalties within ten (10) days after entry of the Judgment and/or order, in compliance with Section 2699(1)(3) of the California Labor Code. If Plaintiff fails to satisfy this condition in strict compliance with Section 2699(1)(3) of the California Labor Code, the Settlement shall be voidable at Defendants' option.

C. Settlement Payment Procedures

(a) Settlement Payments

In exchange for the releases, obligations, and promises set forth in this Agreement (and subject to the terms and conditions contained in this Agreement), Defendants agree to pay the Settlement Sum, which is the total and all-inclusive amount Defendants will be obligated to pay under the Settlement embodied by this Agreement. Other than payment of that portion of the Settlement Sum specifically allocated to settle the PAGA Claims, there shall be no other payments arising out of or related to drivers' alleged misclassification as independent contractors for the PAGA Release Period assessed against Defendants or any of the Released Parties on behalf of Plaintiff as representative of the State of California on behalf of any PAGA Cohort Member, or any other individual or entity. The Settlement Sum shall be allocated as follows:

- (1) Enhancement Award and Settlement Payment for Plaintiff's Global Release: Plaintiff Tabola shall receive One Thousand and Five Hundred dollars (\$1,500) from the Settlement Sum ("Enhancement Award and Settlement Payment").
- (2) Attorneys' Fees and Costs: Plaintiff's Counsel may apply to the Court for up to 30% of the total Settlement Sum ("Attorneys' Fees and Costs") as attorneys' fees and costs pursuant to PAGA, which provides for the recovery of attorneys' fees and costs. Any modification of such application by the Court shall not (i) affect the enforceability of the Settlement Agreement, (ii) provide any of the Parties with the right to terminate the Settlement Agreement, or (iii) impose any obligation on the Defendants to increase the consideration paid in connection with the Settlement. Plaintiff's Counsel's entitlement to fees and costs is a material condition of this Settlement, but the amount of the Attorneys' Fees and Costs awarded is not.
- (3) Claims Administration Costs: The cost of administering the Settlement ("Claims Administration Costs") shall be paid from the Settlement Sum and shall not exceed Seven Hundred Thousand dollars (\$700,000). Claims Administration Costs paid to an outside Claims Administration service must come out of the Settlement Sum. The Parties agree to retain Epiq Class Action & Claims Solutions, Inc. ("Claims Administrator") to serve as the Claims Administrator in this matter.
- (4) Payment of PAGA Penalties: The total sum available for payment of PAGA penalties shall be calculated by deducting the Attorneys' Fees and Costs awarded, the Enhancement Award and Settlement Payment and Claims Administration Costs from the Settlement Sum (this will yield the "Net Settlement Amount"). Of the Net Settlement Amount, seventy-five percent (75%) shall be distributed to the LWDA ("LWDA Payment") and the remaining twenty-five percent (25%) shall be distributed to the PAGA Cohort Members ("Driver Penalty Payments").

The Driver Penalty Payment for each PAGA Cohort Member shall be calculated based on a pro rata allocation of that PAGA Cohort Member's "Active Weeks." An "Active Week" means any week, measured from Monday at 12:00 a.m. until Sunday at 11:59 p.m., in which a PAGA Cohort Member accepted a lead using Uber's software applications. For Active Weeks during the period of January 5, 2015 through January 29, 2017, a PAGA Cohort Member will be awarded 0.5 points. For Active Weeks during the Period of January 30, 2017 through December 31, 2019, a PAGA Cohort Member will be awarded 1 point. The pro rata allocation will be determined by dividing the Driver Penalty Payments by the total number of Active Week points for all PAGA Cohort Members. Each PAGA Cohort Member will then be paid an individual Driver Penalty Payment equal to the Active Week Amount multiplied by that PAGA Cohort Member's total number of Active Week points.

(b) Distribution Process

- (1) Within thirty (30) days following the Effective Date, Defendants will transmit to the Claims Administrator the amount of the Settlement Sum.

- (2) Within forty-five (45) days following the Effective Date, the Claims Administrator shall pay from the Settlement Sum the Court-approved Enhancement Award and Settlement Payment and Attorneys' Fees and Costs described in Sections III(C)(a)(1)-(2), in the form of: (1) a check for the Attorneys' Fees and Costs awarded made payable to "Klein Law Group LLP" delivered to Plaintiff's Counsel; and (2) one check for the Enhancement Award and Settlement Payment to Plaintiff Tabola, delivered to Plaintiff's Counsel.
- (3) Within forty-five (45) days following the Effective Date, the Claims Administrator shall pay from the Settlement Sum the LWDA Payment to the LWDA, in the amount calculated pursuant to the terms of this Settlement.
- (4) Within forty-five (45) days following the Effective Date, the Claims Administrator shall be paid Claims Administration Costs, not to exceed Seven Hundred Thousand (\$700,000).
- (5) Within sixty (60) days following the Effective Date, the Claims Administrator shall disburse Driver Penalty Payments to each PAGA Cohort Member to the last known physical address on file with Defendants in their regularly maintained records. Prior to this disbursement, the Claims Administrator shall run a single skip trace for every PAGA Cohort Member to determine whether any more recent physical address information than that reflected in Defendants' regularly maintained records may be found. PAGA Cohort Members who receive their Driver Penalty Payments via U.S. Mail will receive a letter along with their Driver Penalty Payment explaining the reason for the payment, the content of which will be agreed upon by the Parties. Such mailing as described in this paragraph shall be conclusive evidence of payment of the Driver Penalty Payments, and shall satisfy any and all due process requirements.
- (6) All funds not claimed within one hundred and eighty (180) days of mailing of payment shall be sent to the California State Controller's Office Unclaimed Property Fund with an identification of the amount of unclaimed funds attributable to each PAGA Cohort Member.

(c) No Additional Contribution by Defendants

Defendants' monetary obligation under this Agreement is limited to the Settlement Sum. Defendants shall not be required to contribute any additional monies above the Settlement Sum under any circumstances whatsoever. Nor shall Defendants be required to pay more than the Settlement Sum to obtain the relief (including, but not limited to, the Settlement, the amendment of the Complaint, releases of claims, issuance of the Final Order, dismissing all of Plaintiff's claims with prejudice in their entirety, and entering Judgment in accordance with the terms and conditions of this Agreement) provided in this Agreement or to fully and finally settle and resolve the PAGA Claims.

Notwithstanding the above, in the event that this Agreement is voided or nullified, in whole or in part, however that may occur, or the Settlement of the Action is barred by operation of law, or

invalidated, or ordered not to be carried out by a Court of competent jurisdiction, Defendants will cease to have any obligation to pay any portion of the Settlement Sum to anyone under the terms of this Agreement, and all previous disbursements from the Settlement Sum (including, without limitation any Enhancement Award and Settlement Payment, the Attorneys' Fees and Costs awarded, any Driver Penalty Payment, and/or the LWDA Payment) will immediately be paid back to Defendants by the person(s) and/or entity who received such disbursement.

(d) No Claims Resulting from Payments

No person shall have any claim of any kind whatsoever against any of the Parties, Defense Counsel, and/or Plaintiff's Counsel, based on distribution of the Settlement Sum made in accordance with this Agreement.

(e) Tax Indemnity

The Enhancement Award and Settlement Payment to Plaintiff constitutes payments for non-wages, shall be reported on an IRS Form 1099, and shall not be subject to local, state or federal tax withholdings by Defendants. The Driver Penalty Payments are made for the settlement of penalties, shall be reported on an IRS Form 1099 (to the extent required by law), and will not be subject to local, state or federal tax withholdings. Plaintiff and each PAGA Cohort Member will be responsible for paying all applicable state, local and federal income taxes on all amounts received pursuant to this Settlement, and they shall not seek any indemnification from the Released Parties in this regard. Plaintiff and Plaintiff's Counsel shall cooperate with Defendants and provide documentation to the extent possible and as reasonably requested to demonstrate any payment of taxes made by Plaintiff any PAGA Cohort Member should any taxing authority challenge the allocation of Enhancement Award and Settlement Payment and/or Driver Penalty Payments.

In the event any taxing authority asserts that the characterization of Plaintiff's Enhancement Award and Settlement Payment is inappropriate and/or Plaintiff fails to pay any tax liability resulting from the payments made hereunder, and Defendants are made to pay any taxes, settlements, interest, penalties, and/or other sums (hereinafter collectively referred to as "Tax Payments") to a taxing authority as a result of the payments made to Plaintiff, Plaintiff shall fully indemnify and reimburse Defendants for any and all such Tax Payments upon demand and reasonable verification of sums paid.

IV. LIMITATIONS ON USE OF THIS SETTLEMENT

A. No Admission

Defendants dispute that Plaintiff or any PAGA Cohort Member are improperly classified as independent contractors, dispute the allegations and each and every cause of action in the Action, and dispute that the Action may be maintained on a class or representative basis. This Agreement is entered into solely for the purpose of compromising highly disputed claims. This Agreement and the payment of the Settlement Sum and the other considerations recited herein represent the compromise of disputed claims. Nothing in this Agreement is intended as or may be construed as an admission of liability, unlawful conduct, or wrongdoing by Defendants (and/or any of the Released Parties) in any way, shape or form, and Defendants and the Released Parties deny any such liability or wrongdoing.

B. Non-Evidentiary Use

Except for purposes of effectuating the Settlement pursuant to this Agreement and/or for Defendants (and/or a Released Party) to establish that the State of California on behalf of a PAGA Cohort Member has resolved any of his/her claims released through this Agreement, and regardless of whether the Final Order occurs, neither this Agreement nor any of its terms (including, but not limited to, the payment of the Settlement Sum) nor the fact of settlement itself will be construed as, offered, or admitted in evidence as, received as, or deemed to be evidence, in any further proceeding in the Action, or any other civil, criminal, and/or administrative action or proceeding, for any purpose adverse to Defendants or any of the Released Parties, including but not limited to, evidence of a presumption, concession, indication, or admission by Defendants or any of the Released Parties of any liability, fault, wrongdoing, omission, concession, or damage.

C. Nullification

If (a) the Court should for any reason fail to approve this Settlement consistent with the specific terms agreed to by the Parties and set forth herein, (b) the Court should for any reason fail to enter the Final Order and Judgment, or (c) the Final Order and/or Judgment is reversed, modified, or declared or rendered void, then this Agreement shall automatically be considered null and void *ab initio*.

In that instance, (i) neither this Agreement nor any of the related negotiations or proceedings shall be of any force or effect; and (ii) all Parties to this Agreement and the pleadings in this Action shall stand in the same position they were the day prior to the July 17, 2019 mediation in this Action, without prejudice to either Party, and as if the Memorandum of Understanding executed following the Parties' July 17, 2019 mediation regarding this Action and Agreement had been neither entered into nor filed with the Court; and (iii) Defendants will not have any obligation to pay any portion of the Settlement Sum to anyone under the terms of this Agreement, and all previous disbursements (if any) from the Settlement Sum will immediately be paid back to Defendants in accordance with Section III(C)(c) of this Agreement.

Invalidation of any material portion of this Agreement shall invalidate this Agreement in its entirety, unless the Parties shall subsequently agree in writing that the remaining provisions shall remain in full force and effect.

V. RELEASE AND WAIVER OF CLAIMS

A. Individual Release

Plaintiff for himself and his administrators, executors, heirs, successors, assigns, and attorneys, hereby irrevocably and unconditionally release and forever discharge the Released Parties from all claims of any nature whatsoever, whether known or unknown, suspected or unsuspected, that Plaintiff has or asserts to have, or which Plaintiff at any time heretofore had, or asserted to have, or that Plaintiff may hereafter have, or assert to have, up to and including the Effective Date of this Agreement, against the Released Parties, including but not limited to any claims concerning any aspect of Plaintiff's contractual relationship with Released Parties and, to the extent applicable, the termination of the contractual relationship with Released Parties. The term "claims" includes any claim or cause of action, regardless of the forum in which it may be brought, and includes, but

is not limited to, any alleged breach of express or implied contract, breach of the covenant of good faith and fair dealing, breach of any obligation arising out of any law or public policy of the United States of America, the State of California or any other governmental entity, discrimination or harassment on the basis of race, sex, sexual preference, age, national origin, religion, medical condition, disability, marital status or otherwise (including but not limited to any and all claims that may be brought under the Civil Rights Acts of 1866, 1964 and 1991, the California Fair Employment and Housing Act, any amendments to the foregoing, or any other federal, state, county or local law, ordinance, regulation or order relating to discrimination and employment), unpaid wages, expenses, gratuities, and benefits (including failure to provide workers' compensation benefits) for any and all alleged violations of the California Labor Code, the Industrial Welfare Commission Wage Orders, the California Code of Regulations, the federal Fair Labor Standards Act and/or any local ordinance), unfair business practices (including, but not limited to, any and all alleged violations of the California Business and Professions Code § 17200 *et seq.*), intentional or negligent infliction of emotional distress, fraud, misrepresentation, defamation, interference with contract or other interests, or any other claims or causes of action for damages of any nature, including without limitation, actual, compensatory, punitive, and liquidated damages, penalties, and attorneys' fees, costs and expenses.

Plaintiff expressly waives any and all past, current or future claims, known or unknown, through the Effective Date of this Agreement, regarding the amount allegedly owed to him for any services he allegedly performed during his contractual relationships with any of the Released Parties.

Plaintiff acknowledges that he is expressly waiving any and all claims that may entitle him to participate, either as a named plaintiff or class or representative group members, in *O'Connor v. Uber Technologies, Inc.*, United States District Court, Northern District of California, Case No. 3:13-cv-03826-EMC; *Del Rio v. Uber Technologies, Inc. et al.*, United States District Court, Northern District of California, Case No. 3:15-cv-03667; *Hood v. Uber Technologies, Inc. et al.*, Case No. 1:16-cv-00998-CCE-JLW (Middle District of North Carolina); *Rowe v. Rasier-CA, LLC*, Superior Court of California, County of Los Angeles, Case No. NC060982; *Toyserkani v. Raiser, LLC*, Superior Court of Los Angeles, Case No. BC660915; *Johnston v. Uber Technologies, Inc.*, United States District Court, Northern District of California, Case No. 3:16-cv-03134-EMC; *Rosales v. Uber Technologies, Inc.*, Superior Court of California, County of Los Angeles, Case No. BC685555; *Gregg v. Uber Technologies, Inc.*, Superior Court of California, County of Los Angeles, Case No. BC719085; *Alamas v. Uber Technologies, Inc.*, Superior Court of California, County of Los Angeles, Case No. 19STCV29939; *Adolph v. Uber Technologies, Inc.*, Superior Court of California, County of Orange, Case No. 30-2019-01103801-CU-CO-CXC; *Ramon Segarra v. Uber Technologies, Inc.* (notice of PAGA claims); *In re Jericho Nicolas et al.* (notice of PAGA claims); *Sherman v. Uber Technologies, Inc.*, Superior Court of California, County of Los Angeles, Case No. BC656880; and/or any other similar case involving allegations of employment misclassification. To the extent a class has been certified and/or a settlement has been reached in any of the aforementioned matters or in any similar matters, Plaintiff agrees that the release of his claims in this Action precludes any recovery in any subsequent action.

Plaintiff agrees that his waiver and release of rights and claims as set forth herein is knowing and voluntary and that Plaintiff is receiving consideration herein which may be in addition to anything of value to which they already are entitled. Plaintiff acknowledges the following: (a) Plaintiff is represented by and has consulted with his attorney prior to executing this Agreement; (b) this

Agreement has been written in a manner calculated to be understood by Plaintiff and Plaintiff has consulted his attorney if Plaintiff does not understand any provisions contained in this Agreement; (c) the individual release and waiver in this Agreement specifically covers any claims of age discrimination; (d) this Agreement does not waive rights or claims that may arise after Plaintiff executes it; (e) Plaintiff had twenty-one (21) days to consider this Agreement but can elect to sign it sooner; and (f) Plaintiff is provided with a seven (7) day period to revoke this Agreement by delivering written notification of revocation in person or by messenger addressed to Defense Counsel for Uber, which will expire seven (7) days after they execute this Agreement. Plaintiff acknowledges and agrees that, in the event that Plaintiff revokes this Agreement pursuant to this provision, Plaintiff will not be entitled to receive any payments, and this Agreement will be null and void *ab initio*.

Plaintiff also waives and releases to the maximum extent allowed by law all monetary and other relief that may be sought on his behalf by other persons or agencies. The sole exclusions from this release shall be the consideration provided in exchange for this Agreement, any claim that cannot be waived by private agreement under federal, state, or local law.

B. Section 1542 Waiver

Plaintiff hereby waives the provisions of Section 1542 of the California Civil Code, which provides as follows:

A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release and that, if known by him or her, would have materially affected his or her settlement with the debtor or released party.

C. PAGA Cohort Member Release

Upon entry of the Final Order, Plaintiff as representative of the State of California on behalf of all PAGA Cohort Members shall be deemed to have fully, finally, and forever waived, released, relinquished, and discharged each and all of the Released Parties from any PAGA Claims that arose or may be alleged to have arisen, or that have been brought or could have been brought by Plaintiff, the State of California, or any PAGA Cohort Member, at any time during the PAGA Release Period.

Moreover, notwithstanding the provisions of Section 1542 of the California Civil Code (above), and to implement a full and complete release and discharge of Released Parties, Plaintiff on behalf of himself and the State of California, expressly acknowledges this Agreement is intended to include in its effect, without limitation, all PAGA Claims Plaintiff and the State of California on behalf of the PAGA Cohort Members do not know or suspect to exist in their favor at the time of signing this Agreement, and that this Agreement contemplates the extinguishment of any and all known or unknown PAGA Claims related to the claims being released.

D. No Additional Attorneys' Fees Or Costs

The Parties agree to bear its/their own attorneys' fees and costs related to this Action except as specifically provided above with respect to the Attorneys' Fees and Costs awarded, and Plaintiff's

Counsel waives any and all rights to further attorneys' fees and costs in connection with this Action.

VI. MISCELLANEOUS PROVISIONS

A. Independent Contractor Classification

The PAGA Cohort Members shall remain classified by Defendants as independent contractors and no aspect of this Settlement shall be deemed an admission by Defendants or any Released Parties that any PAGA Cohort Member was or is misclassified.

B. Plaintiff's Counsel Representation

Plaintiff's Counsel represents that, as of the signing of this Agreement, they do not represent, nor have they been approached to represent, any individuals seeking to bring claims against Defendants, or any of their wholly-owned subsidiaries, except for those individuals already disclosed to Counsel for Defendants, Sophia Behnia.

C. Amendment to PAGA Letter

Plaintiff served the LWDA with an amended exhaustion letter on September 25, 2019 encompassing all the PAGA Claims intended to be released by this Agreement.

D. Amendment of Complaint

As part of the Joint Motion, the Parties agree to stipulate to an amended complaint to add claims under the PAGA for the alleged violations outlined in Plaintiff's September 25, 2019 Letter. The amendment is contingent on the Court's approval of this Agreement. Should the Court not approve this Agreement and enter the Final Order, the amended complaint will be void and the operative Complaint at the time of the July 17, 2019 mediation will remain operative.

E. LWDA Notice

The LWDA will be given notice of this Settlement pursuant to the 2016 amendments to the PAGA. Cal. Lab. Code § 2699(l). Plaintiff will serve a copy of the Settlement to the LWDA on the same day the Settlement is filed with the Court.

Additionally, a copy of the Court's Final Order will be submitted to the LWDA within ten (10) days after entry of the Final Order, pursuant to California Labor Code § 2699(1)(3).

F. PAGA Cohort Member Data

All data, if any, regarding the number of PAGA Cohort Members and total weeks during which the drivers logged into Uber's software applications, and other similar settlement metrics will be filed under seal to the extent permitted under governing legal standards for filing materials under seal.

G. Voluntariness

This Agreement is executed voluntarily and without duress or undue influence on the part of or on behalf of any of the Parties, or of any other person, firm or other entity.

H. Amendments

The terms and provisions of this Agreement may be amended or modified only by an express written agreement that is signed by the Plaintiff and an authorized representative of Defendants.

I. Assignment

None of the rights, commitments, or obligations recognized under this Agreement may be assigned by any Party, PAGA Cohort Member, the State of California, Plaintiff's Counsel, or Defense Counsel without the express written consent of each Party. Plaintiff warrants that he has not transferred to any person or entity any right or cause of action, or claim released by this Agreement.

J. Representation and Warranties

Plaintiff jointly and severally represents and warrants to Defendants that there are no attorneys beyond those named as Plaintiff's Counsel who have claims for fees arising out of the Action or the Settlement contemplated hereby.

K. Governing Law

This Agreement shall be governed, construed, and interpreted, and the rights of the Parties shall be determined, in accordance with the laws of the State of California, irrespective of the State of California's choice of law principles.

L. Entire Agreement

This Agreement contains the entire understanding of the Parties hereto in respect of the subject matter contained herein. There are no restrictions, promises, representations, warranties, covenants, or undertakings governing the subject matter of this Agreement other than those expressly set forth or referred to herein. This Agreement supersedes all prior agreements and understandings among the Parties hereto with respect to the subject matter hereof, including, without limitation, the Memorandum of Understanding executed by the Parties.

M. Service Agreements

Nothing in this Agreement is intended to alter or impact the terms of any Partner Agreements, Technology Service Agreements, or other service agreements entered into by Defendants, any wholly-owned subsidiary of Defendants, and Plaintiff and/or any PAGA Cohort Members, including the enforceability of the Arbitration Provision contained therein.

N. Waiver of Compliance

A waiver or failure to insist upon strict compliance with any representation, warranty, covenant,

agreement, or condition shall not operate as a waiver of, or estoppel with respect to, any subsequent or other failure.

O. Counterparts

This Agreement, and any amendments hereto, may be executed in any number of counterparts and any Party and/or its/their respective counsel hereto may execute any such counterpart, each of which when executed and delivered shall be deemed to be an original and all of which counterparts taken together shall constitute but one and the same instrument. A fax or PDF signature on this Agreement shall be as valid as an original signature.

P. Meet and Confer Regarding Dispute(s)

Should any dispute(s) arise among the Parties or their respective counsel regarding the implementation or interpretation of this Agreement, Plaintiff's Counsel and Defense Counsel shall meet and confer in an attempt to resolve such disputes prior to submitting such disputes to the Court. In the event of a dispute, the Parties' July 17, 2019 Memorandum of Understanding shall be instructive as to the Parties' intent in making this Agreement.

Q. Agreement Binding on Successors

This Agreement shall bind and inure to the benefit of the Parties hereto and to their respective successors, assigns, legatees, heirs, and personal representatives.

R. Cooperation in Drafting

The Parties have cooperated in the negotiation and preparation of this Agreement. This Agreement will not be construed against any Party on the basis that the Party, or the Party's counsel, was the drafter or participated in the drafting of this Agreement.

S. Fair Settlement

Plaintiff and Defendants, Plaintiff's Counsel, and Defense Counsel believe that this Agreement reflects a fair, reasonable, and adequate settlement of the Action and have arrived at this Agreement through arms' length negotiation, taking into account all relevant factors, current and potential, and is consistent with public policy, and fully complies with applicable provisions of law.

T. Headings

The descriptive heading of any section or paragraph of this Agreement is inserted for convenience of reference only and does not constitute a part of this Agreement and shall not be considered in interpreting this Agreement.

U. Continuing Jurisdiction

The Parties agree that upon the occurrence of the Final Order pursuant to the terms of this Agreement, this Agreement shall be enforceable by the Court pursuant to Code of Civil Procedure

Section 664.6 and the Court shall retain exclusive and continuing equity jurisdiction of this Action over all Parties, the State of California and the PAGA Cohort Members to the fullest extent to interpret, enforce and effectuate the terms, conditions, intents and obligations of the Agreement.

V. No Reliance on Representations

The Parties have made such investigation of the facts and the law pertaining to the matters described herein and to this Agreement as they deem necessary, and have not relied, and do not rely, on any statement, promise, or representation of fact or law, made by any of the other Parties, or any of their agents, employees, attorneys, or representatives, with regard to any of their rights or asserted rights, or with regard to the advisability of making and executing this Agreement, or with respect to any such matters. No representations, warranties, or inducements have been made to any Party concerning this Agreement.

W. Confidentiality/Public Statements

This Settlement and Agreement shall remain confidential in every respect until the Parties' Joint Motion is filed with the Court.

Plaintiff and Plaintiff's Counsel will not (a) issue any press or other media release, (b) initiate any contact with the press, other media (including social media), or any third party, (c) respond to any inquiry from the press, or media, or (d) have any communication with the press, other media about the Action, including, but not limited to the fact, amount, and/or terms of the Settlement, either before or after the Court approves this Agreement. Plaintiff and Plaintiff's Counsel agree to keep the terms of the Settlement confidential, except as reasonably necessary to obtain judicial approval of the Settlement, including as appropriate in the Parties' anticipated Joint Motion. This Section shall not preclude Uber from sharing the details of this Settlement with opposing counsel in other pending class and putative class, collective and PAGA actions, as well as mediators and their staff, provided any such disclosure is expressly designated as a "Confidential Settlement Communication" and for "Attorneys' Eyes Only."

To the extent limited public disclosures are required to effectuate the Settlement or to notify the courts or parties in any pending, related proceeding, such limited and necessary details may be revealed with the consent of all Parties. However, any such disclosures shall not constitute a waiver of confidentiality with respect to any information not publicly disclosed.

X. No Collateral Attack

The Parties agree that this Agreement may not be subject to collateral attack by any PAGA Cohort Member or the State of California prior to or after entry of the Final Order, to the fullest extent permitted by law.

IN WITNESS WHEREOF, the Parties have executed this Settlement Agreement on the date set forth below.

APPROVED AND ACCEPTED.

Dated: _____, 2020

Uladzimir Tabola
Plaintiff and PAGA Representative

Dated: January 28, 2020

UBER TECHNOLOGIES, INC.

By Tony West
Derek A. West
Senior Vice President,
Chief Legal Officer and Corporate
Secretary

Dated: January 28, 2020

RASIER-CA, LLC

By Keir Gumbs
Keir D. Gumbs
Manager

Dated: January 28, 2020

RASIER, LLC

By Keir Gumbs
Keir D. Gumbs
Manager

**APPROVED AS TO FORM AND
ATTORNEY OBLIGATIONS ONLY**

Dated: _____, 2020

KLEIN LAW GROUP LLP

By _____
Alexei Kuchinsky
Attorneys for Plaintiff
Uladzimir Tabola

Dated: 01-27-2020, 2020

Uladzimir Tabola

Uladzimir Tabola
Plaintiff and PAGA Representative

Dated: _____, 2020

UBER TECHNOLOGIES, INC.

By _____
Tony West

Dated: _____, 2020

RASIER-CA, LLC

By _____
Keir Gumbs

Dated: _____, 2020

RASIER, LLC

By _____
Keir Gumbs

**APPROVED AS TO FORM AND
ATTORNEY OBLIGATIONS ONLY**

Dated: January 27, 2020

KLEIN LAW GROUP LLP

By 
Alexei Kuchinsky
Attorneys for Plaintiff
Uladzimir Tabola

Exhibit 3



50 California Street, Suite 1500
San Francisco, CA 94111

Tel: 415.693.9107 Fax: 415.693.9222
Email: alexei@sfbizlaw.com

September 25, 2019

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

SUPPLEMENTAL NOTICE OF LABOR CODE VIOLATIONS
PURSUANT TO LABOR CODE SECTION 2699.3

TO: The California Labor and Workforce Development Agency, Uber Technologies, Inc., Rasier, LLC and Rasier-CA, LLC

FROM: Uladzimir Tabola

LWDA Case Number: LWDA-CM-296332-17

Dear Ms. Su,

As you are aware, this office represents Uladzimir Tabola ("Claimant" or "Tabola") regarding his wage-and-hour claims against Uber Technologies, Inc., Rasier, LLC and Rasier-CA, LLC (collectively, "Uber") related to his alleged employment with Uber in California.

On January 6, 2016, Tabola served a letter to the LWDA and Defendants ("January 2016 Letter"), in accordance with the requirements of Labor Code section 2699.3(a), to notify the LWDA of alleged violations of the California Labor Code by Uber Technologies, Inc. arising from the alleged misclassification of drivers as independent contractors. The January 2016 Letter alleged that, by virtue of the alleged misclassification, Uber Technologies, Inc. had violated California Labor Code sections 200-204, 210, 221-224, 225.5, 226, 226.7, 226.8, 245-249, 351-354, 500, 510, 512, 558, 1174, 1182.11-1182.13, 1194, 1194.2, 1197, 1198, 2802, and 2699(f). The January 2016 Letter also indicated that Tabola intended to pursue a

representative civil action under the PAGA against Uber pursuant to Labor Code section 2698 *et. seq.* The LWDA did not investigate the alleged violations, permitting Tabola to initiate a PAGA action. Accordingly, on March 16, 2016, Plaintiff Tabola and other former plaintiffs initiated a PAGA action in the Superior Court of the State of California for the County of San Francisco, entitled *Uladimir Tabola, et. al., v. Uber Technologies, Inc., et. al.*, Case No. CGC-16-550992. On September 7, 2018, Tabola, served an Amended letter to the LWDA and Defendants (“September 2018 Letter”), in accordance with the requirements of Labor Code section 2699.3(a), to confirm that Tabola intended to represent “all current and former California drivers who provided transportation services for Uber and to Uber’s passengers using the Uber App...starting from February 12, 2015 to the present.”

Pursuant to Cal. Lab. Code §2699.3(a)(1), please consider this letter to be a *supplemental notice* to include additional specific provisions of the California Labor Code alleged to have been violated by Uber that may result in penalties under the Private Attorney General Act of 2004, including the additional facts and theories to support these additional alleged violations.

I. ADDITIONAL THEORIES OF LABOR CODE VIOLATIONS AND REMEDIES

Tabola incorporates by reference as though fully set forth herein the allegations contained in his prior PAGA Notices, including the letters dated January 6, 2016, April 14, 2016, and September 7, 2018.

During the relevant period from February 12, 2015 to the present, Uber failed to classify Tabola as a non-exempt hourly or commissioned employee and as a result it denied Tabola all protections and benefits of the California Labor Code, Industrial Wage Order No. 9-2001, as alleged below. During the relevant period from February 12, 2015 to the present, Tabola observed how other California drivers who worked for Uber were misclassified as independent contractors and subjected to similar California labor law violations committed by Uber, as alleged below. Hereinafter, Tabola and other current or former employees of the Employer, who worked for Uber in California from February 12, 2015 through the present are collectively referred to as CA Drivers.

A. Violations of Labor Code Sections 206, 206.5, 208, 212, and 216

Labor Code section 206 requires that in case of a dispute over wages, the employer shall pay, without condition and within the time set by this article, all wages, or parts thereof, conceded by him to be due, leaving to the employee all remedies he might otherwise be entitled to as to any balance claimed.

Labor Code 206.5 prohibits an employer to require the execution of a release of a claim or right on account of wages due, or to become due, or made as an advance on wages to be earned, unless payment of those wages has been made.

Labor Code section 208 requires that every employee who is discharged shall be paid at the place of discharge, and every employee who quits shall be paid at the office or agency of the employer in the county where the employee has been performing labor.

Labor Code section 212 prohibits employers from issuing in payment of wages due, or to become due, or as an advance on wages to be earned:

- (1) Any order, check, draft, note, memorandum, or other acknowledgment of indebtedness, unless it is negotiable and payable in cash, on demand, without discount, at some established place of business in the state, the name and address of which must appear on the instrument, and at the time of its issuance and for a reasonable time thereafter, which must be at least 30 days, the maker or drawer has sufficient funds in, or credit, arrangement, or understanding with the drawee for its payment.
- (2) Any scrip, coupon, cards, or other thing redeemable, in merchandise or purporting to be payable or redeemable otherwise than in money.

Labor Code section 216 states that in addition to any other penalty imposed by this article, any person, or an agent, manager, superintendent, or officer thereof is guilty of a misdemeanor, who: (a) Having the ability to pay, willfully refuses to pay wages due and payable after demand has been made; and/or (b) Falsely denies the amount or validity thereof, or that the same is due, with intent to secure for himself, his employer or other person, any discount upon such indebtedness, or with intent to annoy, harass, oppress, hinder, delay, or defraud, the person to whom such indebtedness is due.

Because Uber misclassified CA drivers as independent contractors, the manner and method by which Uber paid CA Drivers their compensation violated Sections 206, 206.5, 208, 212, and 216. Accordingly, Uber is subject to all applicable civil penalties, including civil penalties under Labor Code section *See* Cal. Lab. Code § 2699(a) and (f).

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

C. Violations of Labor Code Sections 232.5, 432.5 and 2804

Labor Code section 232.5 makes it illegal for employers to:

- (a) Require, as a condition of employment, that an employee refrain from disclosing information about the employer's working conditions.
- (b) Require an employee to sign a waiver or other document that purports to deny the employee the right to disclose information about the employer's working conditions.
- (c) Discharge, formally discipline, or otherwise discriminate against an employee who discloses information about the employer's working conditions.

Labor Code section 2804 reads that “[a]ny contract or agreement, express or implied, made by any employee to waive the benefits of [Labor Code Section 2802] any part thereof (or right to reimbursement of employment-related expenses), is null and void.

Similarly Labor Code section 432.5 prohibits employer, or agent, manager, superintendent, or officer thereof, from requiring any employee or applicant for employment to agree, in writing, to any term or condition which is known by such employer, or agent, manager, superintendent, or officer thereof to be prohibited by law.

Because Uber misclassified CA drivers as independent contractors and required them to sign independent contractor agreements, Uber violated Sections 232.5, 432.5 and 2804. Accordingly, Uber is subject to all applicable civil penalties, including civil penalties under Labor Code section See Cal. Lab. Code § 2699(a) and (f).

D. Violations of Labor Code Sections 551-552, 1199(a)

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.”

Furthermore, Labor Code section 1199(a) makes it illegal for employers to require or cause any employee to work for longer hours than those fixed, or under conditions of labor prohibited by an order of the commission.

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

E. 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.

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

F. Violations of Labor Code Sections 515, 1182.12, 1197.1, 1199

California Labor Code Sections 1182.12, 1197.1, 1199 make it unlawful for employers to pay employees an hourly rate below a statutory minimum wage rate. Also, Labor Code section 510 requires employer to pay employees overtime compensation for overtime hours unless an employee is exempt from the overtime requirement under Labor Code section 515.

As more fully discussed in Tabola's prior notices of violations, dated January 6, 2016, April 14, 2016, and September 7, 2018, Uber violated Labor Code Sections 1182.12, 1197.1, 1199 and 515 when it failed to pay CA Drivers minimum wage and overtime for hours worked. Accordingly, Uber is subject to civil penalties pursuant to PAGA in addition to the statutory penalties pursuant to Cal. Lab. Code §1197.1.

G. Violations of Labor Code Sections 558.1 and 2753

Labor Code section 2753(a) prohibits any person who, for money or other valuable consideration, knowingly advises an employer to treat an individual as an independent contractor to avoid employee status for that individual shall be jointly and severally liable with the employer if the individual is found not to be an independent contractor.

Labor Code section 558.1 (a) reads that "[A]ny employer or other person acting on behalf of an employer, who violates, or causes to be violated, any provision regulating minimum wages or hours and days of work in any order of the Industrial Welfare Commission, or violates, or causes to be violated, Sections 203, 226, 226.7, 1193.6, 1194, or 2802, may be held liable as the employer for such violation.

On information and belief, Claimant Tabola alleges that during the relevant period, certain natural individuals acting on behalf of Uber violated Labor Code sections 203, 226, 226.7, 1193.6, 1194, 2753, or 2802 and as such they should be personally liable for civil penalties under Labor Code section 558 and 558.1.

Tabola 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 sections 2698 *et seq.*, pursuant to the Private Attorneys General Act of 2004 ("PAGA Act").

This letter and all previously filed notices of violations by Tabola are intended to comply with the requirements of California Labor Code section 2699.3(a). To sum up all allegations contained in this and all previously-filed notices to the LWDA and Uber, Tabola, on behalf of himself and all other CA Drivers, notifies the LWDA and Uber of the the following violations of the California Labor Code sections 200, 201, 202, 203, 204, 206, 206.5, 208, 210, 212, 216, 221, 222, 222.5, 225.5, 223, 224, 226, 226.2, 226.3, 226.7, 226.8, 232.5, 245, 245.5, 246, 246.5, 247, 247.5, 248, 248.5, 249, 351, 352, 353, 354, 355, 356, 432.5, 500, 510, 512, 515, 551, 552, 558, 558.1, 1174, 1174.5, 1175, 1182.11, 1182.12, 1182.13, 1194, 1194.2, 1197, 1197.1, 1198, 1198.5, 1199, 2753, 2802, 2804, 2810.5, 2699(f).

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

Respectfully Submitted,

A handwritten signature in blue ink, appearing to read 'Alexei Kuchinsky', is written over the typed name.

Alexei Kuchinsky, Esq.

CC: Cert. Mail (7017 3380 0000 8888 1860)

Uber Technologies, Inc.,
Rasier, LLC and Rasier-CA, LLC

C/O Sophia Behnia,
LITTLER MENDELSON, P.C.
333 Bush Street, 34th Floor
San Francisco, CA 94104

Exhibit 4

William P. Klein State Bar No. 148867
Alexei Kuchinsky State Bar No. 279405
KLEIN LAW GROUP LLP
50 California Street, Suite 1500
San Francisco, CA 9411
Tel.: (415) 693-9107
Fax.: (415) 693-9222
Email: alexei@sfbizlaw.com

Attorneys for Plaintiff Tabola

ELECTRONICALLY
FILED
Superior Court of California,
County of San Francisco
01/29/2020
Clerk of the Court
BY: DAVID YUEN
Deputy Clerk

SUPERIOR COURT OF CALIFORNIA
city and COUNTY OF SAN FRANCISCO
UNLIMITED JURISDICTION

ULADZIMIR TABOLA, individually and
on behalf of all others aggrieved
employees,

Plaintiffs,

vs.

UBER TECHNOLOGIES, INC., RASIER,
LLC, AND RASIER-CA, LLC. AND DOES
1 THROUGH 25,

Defendants.

CASE NO.: CGC-16-550992

Assigned for All Purposes to Hon. Andrew
Y.S. Cheng, Dept. 613

SECOND AMENDED COMPLAINT

Plaintiff Uladzimir Tabola ("Plaintiff") brings this action individually and on behalf of other former and current aggrieved employees against Defendants Uber Technologies, Inc., Rasier, LLC, Rasier-CA, LLC, and Does 1 through 25 and alleges, based upon personal knowledge as to himself and his own acts, and as to all others matters upon information and belief, as follows:

I. NATURE OF THIS ACTION

1. This is a representative wage-and-hour action brought by Plaintiff on behalf of himself individually and other current and former aggrieved employees ("CA Drivers") under California Labor Code section 2698 *et. seq.* (known as the Labor Code Private Attorneys General Act or

1 “PAGA”) against Defendants Uber Technologies, Inc., and their affiliates, Rasier, LLC and
2 Rasier-CA, LLC, (collectively "Uber" or "Defendants") to recover all available remedies under the
3 PAGA.

4 2. Uber is in the transportation business. Through a downloadable smartphone application,
5 Uber uses drivers for the pick-up and drop-off of passengers. Despite pervasive control over its
6 transportation operations and its drivers, Uber uniformly classifies and treats all drivers, including
7 Plaintiff and CA Drivers, as independent contractors in violation of the California Labor Code. As
8 a result of Uber’s willful misclassification, Plaintiff and CA Drivers were denied certain benefits
9 and protections of the California Labor Code.

10 3. Plaintiff seeks to serve as representatives of the general public to enforce and uphold
11 California's wage and hour laws as representatives and private attorneys general as expressly
12 permitted by Labor Code sections 2698 *et. seq.*, known as the Private Attorneys General Act of
13 2004 ("PAGA "). Plaintiff has complied with all notice provisions and is an aggrieved employee
14 as required by the PAGA to serve as private attorneys general as representatives on behalf of the
15 general public. On January 6, 2016, Plaintiff Tabola and other former plaintiffs notified
16 Defendants and the California Labor and Workforce Development Agency (“LWDA”) via
17 certified mail of Defendants’ violations pursuant to Labor Code section 2966.3. Plaintiff has
18 waited in excess of 33 days for either Defendants to take remedial action or for the LWDA to
19 intervene in accordance with Labor Code §2699.3(c). On September 25, 2019, Plaintiff served a
20 Supplemental Notice of Labor Code Violations to the LWDA and Defendants in accordance with
21 the requirements of Labor Code section 2699.3(a), alleging additional violations arising from the
22 alleged misclassification of Plaintiff and CA Drivers as independent contractors.

23 4. From January 4, 2016 to the present, Defendants did not take any remedial action and the
24 LWDA did not intervene to investigate Plaintiff’s claims.

25 5. Accordingly, Plaintiff challenges Uber's policy of willfully and unlawfully misclassifying
26 CA Drivers as "independent contractors and file this Complaint as a representative action under
27 the Labor Code section 2699.3(a)(2)(C). Plaintiff seeks to represent all drivers who provided
28 transportation services for Uber within California during the applicable PAGA period (collectively

1 “CA Drivers”) and seeks to recover on behalf of himself and CA Drivers all applicable civil
2 penalties pursuant to California Labor Code Section 2698, *et. seq.*

3 **II. VENUE AND JURISDICTION**

4 6. At all times mentioned in this Complaint, Plaintiff was a resident of the State of California.

5 7. Venue is proper in this Court in accordance with Section 395(a) of the California Code of
6 Civil Procedure because at all relevant times Defendants were doing business in the County of San
7 Francisco. Moreover, Defendants employed Plaintiff in the County of San Francisco and the
8 harms occurred in the County of San Francisco.

9 8. This Court has jurisdiction over Plaintiff’s PAGA claims based on California Labor Code
10 sections 2699, *et seq.* Plaintiff has complied with all requirements set forth in Labor Code §
11 2699.3 necessary to commence a civil action under the Labor Code sections 2698, *et seq.*

12 9. The damages sought in this matter exceed \$25,000.

13 **III. THE PARTIES**

14 **A. PLAINTIFFS**

15 10. At all relevant times, Plaintiff Uladzimir Tabola was and is an individual over the age of
16 eighteen (18) and are residents of San Francisco, California.

17 11. Plaintiff Uladzimir Tabola worked as a driver for Defendants from approximately March
18 2015 through the present (“Employment Period”) in San Francisco, California.

19 12. Plaintiff’s responsibilities includes transporting passengers within the Bay Area,
20 California.

21 13. At all relevant times, Plaintiff was an hourly non-exempt employee and is entitled to all
22 benefits and protections of California Labor Code, California Industrial Welfare Commission
23 Occupational Wage Order No. 9-2001 (Title 8 California Code of Regulations §§ 11040, 11070),
24 or other applicable Wage Order(s).

25 **B. DEFENDANTS**

26 14. Defendant Uber Technologies, Inc. has been doing business in the State of California.
27 Uber Technologies, Inc. is a corporation organized under the laws of the State of Delaware, with
28 its principal place of business and headquarters located at 1455 Market St, San Francisco, CA

1 94103. It is registered with the Secretary of State to do business in California as a corporation
2 under Entity No. C3318029, and does business in California as Uber.

3 15. Defendant Rasier, LLC is a Delaware limited liability company with its principal place of
4 business in San Francisco, California, operating under California Entity Number 201323810228.
5 Rasier, LLC is a wholly owned subsidiary of Uber Technologies, Inc.

6 16. Defendant Rasier-CA, LLC is a Delaware limited liability company with its principal place
7 of business in San Francisco, California, operating under California Entity Number
8 201326310085. Rasier-CA, LLC is also wholly owned subsidiary of Uber Technologies, Inc.

9 17. Does 1 through 25, inclusive, are persons or entities whose true names and identities are
10 now unknown to Plaintiff, and who therefore are sued by such fictitious names. Plaintiff will
11 amend this complaint to alleges their true names and capacities once ascertained. Plaintiff is
12 informed and believes that each of the fictitiously-named Doe defendants, including any such
13 defendants that may be the agents, representatives, or parent or subsidiary corporations of the
14 named Defendant, is responsible in some manner for the occurrences, events, transactions, and
15 injuries alleged herein and that the harm suffered by Plaintiff was proximately caused by them in
16 addition to named Defendants.

17 18. Unless otherwise stated, Defendants Uber Technologies, Inc., Rasier, LLC and Rasier-CA,
18 LLC and Does 1 through 25 are hereinafter collectively referred to as Defendants or Uber.

19 19. Based on information and belief, Plaintiff alleges that beginning in, at least, February 2012
20 and continuing until or about to the present (“Employment Period”), Defendants employed
21 Plaintiff as a driver. Defendants were joint employers of Plaintiff because they exercised control
22 over the wages, hours, or working conditions of Plaintiff. Based on information and belief,
23 Plaintiff alleges that Defendants jointly engaged, suffered, or permitted Plaintiff to work under
24 working conditions described herein. Based on information and belief, Plaintiff alleges that during
25 the Employment Period, Defendants jointly had control or the right to control Plaintiff both as to
26 the work done and the manner and means in which Plaintiff’s work was performed.

27 20. Plaintiff is informed and believes and thereon alleges that each of the Defendants,
28 including the Doe defendants, acted in concert with each and every other Defendant, intended to

1 and did participate in the events, acts, practices and courses of conduct alleged herein, and was a
2 proximate cause of damage and injury thereby to Plaintiff as alleged herein. At all times herein
3 mentioned, each Defendant was the agent or employee of each of the other Defendants and was
4 acting within the course and scope of such agency or employment.

5 21. Plaintiff is informed and believes and thereon alleges that at all relevant times, each
6 Defendant authorized and ratified, aided and abetted, and acted in concert with and/or conspired
7 with each and every other Defendants to commit the acts and to engage in the unlawful practices
8 complained herein.

9 22. At all times herein material each Defendant was completely dominated and controlled by
10 its co-defendants. Whenever and wherever reference is made in this Complaint to any conduct by
11 Defendant or Defendants, such allegations and references shall also be deemed to mean the
12 conduct of each of the defendants, acting individually; jointly, and severally. Whenever and
13 wherever reference is made to individuals who are not named as defendants in this Complaint, but
14 were employees and/or agents of Defendants, such individuals at all relevant times acted on behalf
15 of Defendants named in this Complaint within the scope of their respective employments

16 **C. JOINT ENTERPRISE DEFENDANTS**

17 23. To shield itself from potential liability, Defendant Uber Technologies, Inc. has created
18 wholly-owned subsidiaries – Defendants Rasier, LLC and Rasier-CA, LLC, – who “license” the
19 smartphone technology from Defendant Uber Technologies, Inc. and then hire the drivers for the
20 rideshare services. By engaging in this corporate stacking, Defendant Uber Technologies, Inc. has
21 created an appearance that it has “no association” with the drivers who provide transportation
22 services for Defendant Uber Technologies, Inc. and its passengers.

23 24. On information and belief Plaintiff alleges that at all relevant times, all Defendants
24 performed (either through unified operation or common control) the related activities for a
25 common business purpose as a single enterprise. Defendants performed all such activities through
26 one or more establishments or by one or more corporate or other organizational units. On
27 information and belief Plaintiff alleges that at all relevant times, Defendants were and are under
28 common ownership in that one corporate defendant so dominated and controlled the finances,

1 policies and practices of the other corporate defendants and that the other corporate defendants
2 were merely a conduit or instrumentality of the controlling corporation in pursuit of a single
3 business venture. Therefore, disregarding the separate nature of the corporations is necessary to
4 prevent an injustice to Plaintiff.

5 25. On information and belief Plaintiff alleges that at all relevant times, that all corporate
6 Defendants participated in a common venture or in a similar or functionally reciprocal business;
7 they have identical equitable ownership; common directors, officers, and employees; share the
8 same resources, pool assets and revenues, or use of one corporation's financial resources to pay or
9 guaranty the other's obligations. Defendants jointly benefit from transactions entered into by one
10 of them. Defendants used common management and financial control, and their operations
11 depended on each other.

12 **IV. GENERAL ALLEGATIONS**

13 26. Defendants provide transportation services to the general public in cities throughout the
14 country, including San Francisco, California. To connect their drivers and passengers, Defendants
15 use an on-demand dispatch system that can be downloaded using a smartphone.

16 27. During the relevant PAGA period, Defendants employed 1.6 million of drivers registered
17 in California. Defendants uniformly classified and treated all drivers, including Plaintiff and CA
18 Drivers, as independent contractors.

19 28. During the Employment Period, Defendants retained and exercised extensive control over
20 the work of Plaintiff and CA Drivers. Defendants required Plaintiff and CA Drivers to follow
21 Defendants' detailed policies and procedures. Defendants required each prospective driver,
22 including CA Drivers, to complete an application process and only qualified drivers who met
23 Defendants' requirements would be hired. Defendants regularly punished Plaintiff and CA Drivers
24 for canceling or rejecting the Uber passengers' requests. Defendants prohibited Plaintiff and CA
25 Drivers to provide transportation services to passengers outside the Driver App. Defendants
26 expected each driver to provide transportation services to the Uber passengers according to
27 Defendants' specific quality standards. Plaintiff and CA Drivers were punished for failing to
28 comply with these quality standards.

1 29. During the Employment Period, Defendants also controlled and limited the compensation
2 paid to Plaintiff and CA Drivers. Defendants unilaterally set the prices charged to their passengers
3 for transportation services provided by Plaintiff and CA Drivers. Specifically, Plaintiff and CA
4 Drivers did not have any control over the rates charged to the Uber passengers. Plaintiff and CA
5 Drivers' compensation entirely depended on their ability to drive their vehicle and pick up and
6 drop off the Uber passengers. Defendants paid Plaintiff and CA Drivers a percentage of each and
7 every fare Plaintiff and CA Drivers earned. Specifically, the Uber passenger pays Defendants a
8 trip fare, and Defendants, then, pay their drivers a non-negotiable service fee, ranging from 70-
9 85%.

10 30. During the Employment Period, Plaintiff and CA Drivers provided services that were and
11 are an integral part of Defendants' business enterprise. Defendants are in the business of providing
12 transportation services to the general public. Plaintiff and CA Drivers were the ones who drove the
13 Uber passengers. Without the drivers, no passenger would ever use the Uber App and Defendants
14 would be out of business. Plaintiff and CA Drivers do not own or operate their own transportation
15 business.

16 31. As a result of Defendants misclassifying Plaintiff and CA Drivers as "independent
17 contractors," Defendants failed to pay Plaintiff and CA Drivers for all hours worked, minimum
18 wage, overtime compensation.

19 32. As a result of Defendants misclassifying Plaintiff and CA Drivers as "independent
20 contractors," Defendants regularly failed to indemnify Plaintiff and CA Drivers for employment-
21 related expenses, including the costs of providing their vehicles; all operations costs associated
22 with the vehicle (i.e., fuel, maintenance, repair, cleaning, and licensing); liability insurance; and
23 vehicle depreciation.

24 33. As a result of Defendants misclassifying Plaintiff and CA Drivers as "independent
25 contractors," Defendants regularly denied Plaintiff and CA Drivers paid sick leave hours as
26 required under the Healthy Workplaces, Healthy Families Act of 2014.

27 34. As a result of Defendants misclassifying Plaintiff and CA Drivers as "independent
28 contractors," Defendants regularly failed to provide Plaintiff and CA Drivers with a 30-minute

uninterrupted off-duty meal period when Plaintiff and CA Drivers worked more than 5 hours per workday and a second 30-minute meal break when Plaintiff and CA Drivers worked more than 10 hours per workday.

35. As a result of Defendants misclassifying Plaintiff and CA Drivers as “independent contractors,” Defendants made unlawful deductions from Plaintiff and CA Drivers’ compensation (i.e. safe rider fees).

36. As a result of Defendants misclassifying Plaintiff and CA Drivers as “independent contractors,” Defendants made unlawful gratuity deductions from Plaintiff and CA Drivers’ compensation.

37. As a result of Defendants misclassifying Plaintiff and CA Drivers as “independent contractors,” Defendants refused to make Plaintiff’s records available for inspection upon Plaintiff’s requests.

38. As a result of Defendants misclassifying Plaintiff and CA Drivers as “independent contractors,” Defendants regularly failed to record the actual hours worked by Plaintiff and CA Drivers and failed to itemize the total hours worked on wage statements provided to Plaintiff and CA Drivers, including accrued sick leave hours.

39. As a result of Defendants misclassifying Plaintiff and CA Drivers as “independent contractors,” Defendants failed to maintain payroll records properly, showing the actual hours worked each day by Plaintiff and CA Drivers.

40. As a result of Defendants misclassifying Plaintiff and CA Drivers as “independent contractors,” Defendants have willfully and knowingly failed to pay Plaintiff and CA Drivers, upon termination of their employment, all accrued compensation, including compensation for “dead hours,” minimum wage, overtime, premiums for missed meal periods, unlawfully collected gratuities, reimbursements for employment-related expenses, and unlawful safe rider fee deductions.

41. As a result of Defendants misclassifying Plaintiff and CA Drivers as “independent contractors,” Defendants denied Plaintiff and CA driver the benefits and protections of the Labor Code sections 200, 201, 202, 203, 204, 206, 206.5, 208, 210, 212, 216, 221, 222, 222.5, 225.5,

223, 224, 226, 226.2, 226.3, 226.7, 226.8, 232.5, 245, 245.5, 246, 246.5, 247, 247.5 , 248, 248.5, 249, 351, 352, 353, 354, 355, 356, 432.5, 500, 510, 512, 515, 551, 552, 558, 558.1, 1174, 1174.5, 1175, 1182.11, 1182.12, 1182.13, 1194, 1194.2, 1197, 1197.1, 1198, 1198.5, 1199, 2753, 2802, 2804, 2810.5, 2699(f).

V. PAGA ALLEGATIONS

42. During the Employment Period and applicable PAGA Period, Plaintiff observed how other drivers who worked for Defendants in California were also subjected to similar California labor law violations committed by Defendants as alleged below. The violations caused Plaintiff and other current or former employees of Defendants to suffer substantial damages.

43. Therefore, Plaintiff seeks to represent CA Drivers within the meaning of Labor Code sections 2698, et seq., who are or were employed by Defendants in California within the applicable limitations period preceding the filing of the PAGA claims and/or this Complaint and to whom Defendants committed the following violations of the California Labor Code sections 200, 201, 202, 203, 204, 206, 206.5, 208, 210, 212, 216, 221, 222, 222.5, 225.5, 223, 224, 226, 226.2, 226.3, 226.7, 226.8, 232.5, 245, 245.5, 246, 246.5, 247, 247.5 , 248, 248.5, 249, 351, 352, 353, 354, 355, 356, 432.5, 500, 510, 512, 515, 551, 552, 558, 558.1, 1174, 1174.5, 1175, 1182.11, 1182.12, 1182.13, 1194, 1194.2, 1197, 1197.1, 1198, 1198.5, 1199, 2753, 2802, 2804, 2810.5, 2699(f).

44. While not required to pursue a representative action under PAGA, Plaintiff alleges that there is a well-defined community of interest in the questions of law and fact affecting the aggrieved employees (i.e. CA Drivers) whom Plaintiff seeks to represent. The aggrieved employees' claims against Defendants involve questions of common or general interest. These issues are such that proof of a statement of facts common to Plaintiff will entitle each aggrieved employee to the relief requested in this Complaint.

45. While not required to be entitled to pursue a representative action under PAGA, Plaintiff alleges that their claims are typical of the claims of the aggrieved employees whom Plaintiff seeks to represent and their interests are consistent with, and not antagonistic to, those of the other aggrieved employees. Plaintiff will fairly and adequately represent the interests of the aggrieved

1 employees whom they seek to represent because Plaintiff is also an aggrieved employee and his
2 claims are typical of those of the aggrieved employees. Plaintiff has retained attorneys who are
3 experienced and who intend to prosecute this action vigorously.

4 **FIRST CAUSE OF ACTION**

5 **Failure to Pay for All Hours Worked**

6 **(Cal. Labor Code §§ 200 and 204)**

7 **(Plaintiff individually against all Defendants)**

8 46. Plaintiff incorporates by reference as though fully set forth herein the preceding paragraphs
9 of this Complaint.

10 47. During Plaintiff's Employment Period, Defendants were required to compensate Plaintiff
11 for all hours worked pursuant to the Industrial Welfare Commission Order 9-2001, California
12 Code of Regulations, Title 8, Chapter 5, Section 11090 and California Labor Code Sections 200
13 and 204.

14 48. Defendants failed to pay Plaintiff for the hours spent driving without the passenger.
15 Defendants required Plaintiff to pick up Defendants' passengers in certain locations. Plaintiff's
16 compensation was calculated as a percentage of the fare paid by customers. This fare was
17 calculated based on a base fare amount plus mileage or the number of minutes/hours the driver
18 spends transporting the passenger from the pickup and drop-off locations. However, this fare did
19 not include the time or the mileage Plaintiff spent driving from the place where he was located at
20 the time of the dispatch ("Dispatch Location") to the pickup location. Similarly, the fare did not
21 include the time or the mileage Plaintiff spent driving from the drop-off location and the driver's
22 typical waiting area. In other words, the fare did not include the time Plaintiff spent for work-
23 related driving without passengers, also known as "dead miles". For example, Plaintiff was often
24 required to transport passengers to one-way locations in San Francisco Airport or Peninsula and
25 then come back without any passengers to San Francisco.

26 49. Analogously, Defendants failed to pay Plaintiff for the time spent waiting for passengers.

27 50. At all relevant times, Defendants failed and refused to compensate and did not compensate
28 Plaintiff for all hours worked, including the hours spent driving "dead miles" and waiting for

1 passengers.

2 51. As alleged herein, Plaintiff was not exempt from the wage-and-hour requirements of the
3 California Labor Code and the applicable wage order.

4 52. As a direct and proximate result of Defendants' wrongful acts and omissions alleged
5 herein, Plaintiff has suffered actual damages in an amount according to proof.

6 53. Plaintiff has incurred and will continue to incur attorney's fees as a result of prosecuting
7 this cause of action.

8 54. Plaintiff individually seeks to recover all unpaid wages as compensation for the hours
9 spent driving "dead miles" and waiting for passengers during the respective employment period.

10 55. Wherefore, Plaintiff prays for relief as set forth below.

11 **SECOND CAUSE OF ACTION**

12 **Failure to Pay Minimum Wage**

13 **(Cal. Lab. Code §§ 1182.12, 1194, 1194.2, 1197, 1197.1, Wage Order 9-2001, and San**

14 **Francisco Administrative Code 12R)**

15 **(Plaintiff individually against all Defendants)**

16 56. Plaintiff incorporates by reference as though fully set forth herein the preceding paragraphs
17 of this Complaint.

18 57. Pursuant to Wage Order No. 9-2001, Labor Code sections 1182.12, 1194, 1194.2, 1197,
19 1197.1, and San Francisco Administrative Code Chapter 12R, Defendants were required to pay
20 Plaintiff a minimum wage.

21 58. In violation of the Wage Order No. 9-2001, Labor Code sections 1182.12, 1194, 1194.2,
22 1197, 1197.1, and San Francisco Administrative Code Chapter 12R, Defendants intentionally
23 failed to compensate Plaintiff at least the minimum wage. For example, as more fully discussed
24 above, Defendants failed to pay Plaintiff for "dead miles" or waiting time.

25 59. Despite Plaintiff's demands, Defendants refused and continue to refuse to pay Plaintiff and
26 other aggrieved employees the amount owed. Defendants' failure to pay minimum wage violates
27 the provisions of Labor Code sections 1182.12, 1194, 1194.2, 1197, 1197.1

28 60. Pursuant to Labor Code sections 1194, Plaintiff individually is entitled to recover, and

1 hereby seeks, the unpaid balance of the full amount the minimum wage, including interest thereon,
2 reasonable attorneys' fees, and cost of suit from Defendants for their respective employment
3 periods ranging from 2012 to the present.

4 61. Pursuant to Labor Code Section 1194.2, Plaintiff, individually, is entitled to recover, and
5 hereby seeks, liquidated damages in an amount equal to the wages unlawfully unpaid and interest
6 thereon from Defendants for their respective employment periods ranging from 2012 to the
7 present.

8 62. Pursuant to San Francisco Administrative Code Chapter 12R (7)(c), Plaintiff, individually,
9 is entitled to recover, and hereby seeks, liquidated damages in an amount of \$50 for each day that
10 the violation occurred.

11 63. Wherefore, Plaintiff prays for relief as set forth below.

12 **THIRD CAUSE OF ACTION**

13 **Failure to Pay Overtime**

14 **(Cal. Labor Code §§ 510, 1194, 1198 and Wage Order 9-2001)**

15 **(Plaintiff, individually, against all Defendants)**

16 64. Plaintiff incorporates by reference as though fully set forth herein the preceding paragraphs
17 of this Complaint.

18 65. During Plaintiff's Employment Period, Defendants were required to compensate Plaintiff
19 for all overtime work performed, at one and one-half (1 ½) times the regular rate of pay for hours
20 worked in excess of eight (8) hours per day and/or forty (40) hours per week (whichever was
21 greater), and for the first eight (8) hours on the seventh (7th) consecutive day of any work week.
22 Additionally, Defendants were required to compensate Plaintiff with double time after twelve (12)
23 hours in a single workday and after eight (8) hours on the seventh (7th) consecutive day of any
24 work week.

25 66. Based on information and belief alleges Plaintiff alleges that on more than one occasion,
26 Defendants engaged, suffered, or permitted Plaintiff to work in excess of eight (8) hours in a day.
27 For example, Plaintiff often worked more than 8 hours per workday.

28 67. Based on information and belief alleges Plaintiff alleges that on more than one occasion,

1 Defendants engaged, suffered, or permitted Plaintiff to work in excess of forty (40) hours a week.
2 For example, Plaintiff often worked more than 40 hours per workweek.

3 68. Based on information and belief alleges Plaintiff alleges that on more than one occasion,
4 Defendants engaged, suffered, or permitted Plaintiff to work seven consecutive days in a single
5 workweek.

6 69. Based on information and belief alleges Plaintiff alleges that Defendants have failed to pay
7 Plaintiff overtime premiums for every hour of overtime that Defendants engaged, suffered, or
8 permitted Plaintiff to work overtime hours in violation of Labor Code sections 510 and 1194.

9 70. As a direct and proximate result of Defendants' wrongful acts and omissions alleged
10 herein, Plaintiff has suffered actual damages in an amount according to proof.

11 71. Plaintiff has incurred and will continue to incur attorney's fees as a result of prosecuting
12 this cause of action.

13 72. Plaintiff individually is entitled to recover, and hereby seeks to recover unpaid wages, as
14 set forth in Labor Code Section 510, including compensation for overtime hours pursuant to Labor
15 Code sections 510 and 1194 for work performed during their respective employment periods from
16 2012 to the present.

17 **FOURTH CAUSE OF ACTION**

18 **Failure to Provide Adequate Meal and Rest Periods**

19 **[Cal. Lab. Code §§ 512, 226.7, and Wage Order 9-2001]**

20 **(Plaintiff, individually against all Defendants)**

21 73. Plaintiff incorporates by reference as though fully set forth herein the preceding paragraphs
22 of this Complaint.

23 74. At all relevant times, Defendants were Plaintiff's employer subject to California Labor
24 Code section 512 and California Industrial Welfare Commission Wage Order 9-2001, which
25 include provisions requiring Defendants to provide meal and rest periods to Plaintiff. At all times
26 alleged herein, Plaintiff was a non-exempt employee of Defendants under California law.

27 75. California Industrial Welfare Commission Wage Order 9-2001 provides that no employer
28 shall employ any person for a work period of more than five (5) hours without providing a meal

1 period at least 30 minutes and that no employer shall employ any person for a work period of
2 more than ten (10) hours without providing a second meal period of at least 30 minutes.

3 76. California Industrial Welfare Commission Wage Order 9-2001 also provides that every
4 employer shall authorize and permit all employees to take rest periods, which insofar as
5 practicable shall be in the middle of each work period. The authorized rest period time shall be
6 based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours
7 or major fraction thereof.

8 77. Labor Code section 226.7 and the applicable Wage Orders of the Industrial Welfare
9 Commission provide that if an employer fails to provide a non-exempt employee with an
10 appropriate off duty meal period, the employer must pay the employee one (1) hour of pay at the
11 employee's regular rate of compensation for each work day that the meal period is not provided. If
12 an employer fails to provide an employee a rest period in accordance with the Order, the employer
13 shall pay the employee one (1) hour of pay at the employee's regular rate of compensation for
14 each work day that the rest period is not provided.

15 78. At all relevant times, Defendants were aware of and was under a duty to comply with
16 California Labor Code sections 226.7 and 512, as well as Wage Order 9-2001 of the Industrial
17 Welfare Commission.

18 79. Based on information and belief alleges Plaintiff alleges that during Plaintiff's
19 Employment Period, Plaintiff regularly worked for at least five (5) hours per workday.

20 80. Based on information and belief alleges Plaintiff alleges that during Plaintiff's
21 Employment Period, Plaintiff was not provided with an opportunity to take 30-minute off duty
22 uninterrupted meal periods or 10-minute off duty uninterrupted rest breaks as required by
23 California law and were not compensated by Defendants for each work day that adequate meal
24 periods were not provided.

25 81. Defendants violated Labor Code sections 226.7 and 512, in many different ways, including
26 the following:

- 27 a. Failed to release Plaintiff from all duties during meal periods;
- 28 b. Prevented Plaintiff from taking full 30-minute breaks,

1 c. Required Plaintiff to take on duty breaks; and

2 d. Did not allow Plaintiff to take meal breaks within a statutory 5-hour period.

3 82. For example, Plaintiff was not able to take 30-minute off duty meal breaks due to a heavy
4 workload created by Defendants' various weekly promotions. These promotions required Plaintiff
5 to complete a large number of trips within a short period of time.

6 83. By failing to regularly provide timely uninterrupted and unrestricted meal and rest periods,
7 during which Plaintiff was required to be relieved of all duties, Defendants violated California
8 Labor Code sections 226.7 and 512, as well as the applicable Wage Orders of the Industrial
9 Welfare Commission.

10 84. Because Defendants failed to provide the required meal breaks, Defendants are liable to
11 Plaintiff for one (1) hour of additional pay at the regular rate of compensation for each workday
12 that the proper meal breaks were not provided pursuant to Labor Code section 226.7 and Wage
13 Order 9-2001. Because Defendants failed to provide the required rest breaks, Defendants are liable
14 to Plaintiff for one (1) hour of additional pay at the regular rate of compensation for each workday
15 that the proper rest breaks were not provided pursuant to Labor Code section 226.7 and Wage
16 Order 9-2001.

17 85. Plaintiff individually seeks to recover unpaid meal and rest break premiums (i.e., one
18 additional hour of pay) for violations of Labor Code §§ 226.7, 512(a), and Wage Order 9-2001 for
19 worked performed during the Employment Period.

20 86. Wherefore, Plaintiff prays for relief as set forth below.

21 **FIFTH CAUSE OF ACTION**

22 **Unlawful Deductions**

23 **[Cal. Labor Code §§ 221-224]**

24 **(Plaintiff individually against all Defendants)**

25 87. Plaintiff incorporates by reference as though fully set forth herein the preceding paragraphs
26 of this Complaint.

27 88. At all relevant times, Defendants were Plaintiff's employer subject to California Labor
28 Code sections 221-224 and California Industrial Welfare Commission Wage Order 9-2001, which

1 include provisions prohibiting Defendants to collect or receive from an employee any part of the
2 employees' wages and to make improper, unlawful and/or unauthorized deductions from
3 employees' paychecks. At all times alleged herein, Plaintiff was non-exempt employees of
4 Defendants under California law.

5 89. At all relevant times, Defendants were aware of and was under a duty to comply with
6 California Labor Code sections 221-224, as well as Wage Order 9-2001 of the Industrial Welfare
7 Commission.

8 90. Sometime during Plaintiff's Employment Period, Defendants implemented a program
9 under which each rider was required to pay \$1 as a "safe riders' fee." According to Defendants,
10 this \$1 fee was collected to cover the costs of insurance and safety features. The \$1 safe ride fee
11 was deducted from (or not included in) the total fare causing the gross fare amount to be reduced
12 by \$1, which, in turn, caused Plaintiff to lose commissions from each ride. Defendants deducted
13 the \$1 safe ride fee from the total fare as the insurance costs even though Plaintiff was required to
14 have his own liability auto insurance. On information and believe alleges Plaintiff alleges that
15 Defendants did not use the funds collected as "safe riders' fee" to provide safety features to the
16 Uber passengers. The \$1 safe rider fee should have been included in the total fare and Plaintiff
17 should have been paid commissions from the \$1 safe ride fee collected by Defendants.

18 91. Labor Code section 200 defines "Wages" to include all amounts for labor performed by
19 employees of every description, whether the amount is fixed or ascertained by the standard of
20 time, task, piece, commission basis, or other methods of calculation. By excluding the \$1 safe
21 rider fee from computing Plaintiff's commission, Defendants made unlawful deductions from
22 Plaintiff's wages in violation of Labor Code sections 221-224.

23 92. Plaintiff individually seeks to recover unlawfully collected safe rider fees or deductions
24 for violations of Labor Code §§ 221-224 for work performed during the Employment Period.

25 93. Wherefore, Plaintiff prays for relief as set forth below.
26
27
28

1 **SIXTH CAUSE OF ACTION**

2 **Failure to Provide Accurate Itemized Wage Statements**

3 **[Cal. Lab. Code §§ 226(a) & (e); 1174-5 and Wage Order 9-2001]**

4 **(Plaintiff individually against all Defendants)**

5 94. Plaintiff incorporates by reference as though fully set forth herein the preceding paragraphs
6 of this Complaint.

7 95. Labor Code section 226(a) provides that every employer shall furnish each of his or her
8 employees an accurate itemized wage statement in writing showing nine pieces of information,
9 including: (1) gross wages earned, (2) total hours worked by the employee, (3) the number of
10 piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis,
11 (4) all deductions, provided that all deductions made on written orders of the employee may be
12 aggregated and shown as one item, (5) net wages earned, (6) the inclusive dates of the period for
13 which the employee is paid, (7) the name of the employee and the last four digits of his or her
14 social security number or an employee identification number other than a social security number,
15 (8) the name and address of the legal entity that is the employer and, and (9) all applicable hourly
16 rates in effect during the pay period and the corresponding number of hours worked at each hourly
17 rate by the employee.

18 96. During the relevant employment period, Defendants have knowingly and intentionally
19 failed to comply with Labor Code section 226(a) and failed to provide Plaintiff with any wage
20 statements that contained all nine pieces of information.

21 97. Section 1174 of the California Labor Code requires Defendants to maintain and preserve
22 records showing the names and addresses of all employees employed, payroll records showing the
23 hours worked daily by and the wages paid to its employees. By its failure to provide wage
24 statements to Plaintiff, Defendants have knowingly and intentionally failed to comply with Labor
25 Code section 1174. Defendants' failure to comply with Labor Code section 1174 is unlawful under
26 Labor Code section 1175.

27 98. IWC Wage Order 9-2001(7) requires Defendants to maintain time records showing, among
28 others, when the employee begins and ends each work period, meal periods, and total daily hours

1 worked in itemized wage statements, payment of wages, and accurately report total hours worked
2 by Plaintiff and all aggrieved employees. By its failure to provide accurate wage statements to
3 Plaintiff, Defendants have failed to comply with the wage order.

4 99. California Labor Code section 226(e) further provides that any employee suffering injury
5 due to a willful violation of the aforementioned obligations may collect the greater of either actual
6 damages or \$50 for the first inadequate pay statement and \$100 for each inadequate statement
7 thereafter. During Plaintiff's Employment Period, Defendants consistently failed to provide
8 Plaintiff with wage statements as required by California Labor Code section 226.

9 100. Defendants failed to provide such adequate statements willingly and with full
10 knowledge of their obligations under section 226. Defendants' failure to provide such adequate
11 statements has caused injury to the Plaintiff.

12 101. Pursuant to Labor Code sections 226(e), Plaintiff, individually, is entitled to, and
13 hereby seeks to recover the greater of actual damages or penalties as a result of Defendants' failure
14 to provide proper records for work performed during the employment period.

15 102. Plaintiff seeks reasonable attorneys' fees and costs under Labor Code §226.

16 103. Wherefore, Plaintiff prays for relief as set forth below.

17 **SEVENTH CAUSE OF ACTION**

18 **Failure to Provide Employment Records upon Request**

19 **[Cal. Lab. Code §226(c) and Wage Order 9-2001]**

20 **(Plaintiff individually against all Defendants)**

21 104. Plaintiff incorporates by reference as though fully set forth herein the preceding
22 paragraphs of this Complaint.

23 105. Pursuant to Labor Code section 226 (b), an employer shall afford current and
24 former employees the right to inspect or copy the records pertaining to that current or former
25 employee, upon reasonable request to the employer.

26 106. Plaintiff requested Defendants to permit inspection or copying of his employment
27 records pursuant to section 226 (b). Defendants have failed to provide Plaintiff with an
28 opportunity to inspect or copy their employment records within 21 days.

107. Pursuant to Labor Code sections 226 (f) and (g), Plaintiff, individually, is entitled, and hereby seeks, to recover from Defendants a seven-hundred-fifty-dollar (\$750) penalty, reasonable attorney's fees, and the cost of bringing this cause of action.

Wherefore, Plaintiff prays for relief on behalf of themselves and CA Drivers as set forth below.

EIGHTH CAUSE OF ACTION

Failure to Reimburse Employment-related Expenses

[Cal. Lab. Code §2802 and Wage Order 9-2001]

(Plaintiff individually against all Defendants)

108. Plaintiff incorporates by reference as though fully set forth herein the preceding paragraphs of this Complaint.

109. California Labor Code section 2802 provides that: “An employer shall indemnify his or her employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties...”

110. During Plaintiff's Employment Period, Defendants required Plaintiff to operate their own vehicles. Defendants also required Plaintiff to pay for expenses related to the operation of Defendants' vehicles and servicing Defendants' customers. Pursuant to such requirements, Plaintiff purchased gasoline, automobile repairs, auto insurance, maintenance, and other vehicle-related expenses all for the primary benefit of Defendants.

111. At all relevant times, Defendants failed to reimburse Plaintiff for their automobile expenses incurred in servicing Defendants' customers.

112. Defendants knew that Plaintiff was a non-exempt employee who incurred business-related expenses, but knowingly, willfully, maliciously, oppressively, fraudulently failed to indemnify Plaintiff for automobile expenses.

113. As a direct and proximate result of Defendants' wrongful acts and omissions alleged herein, Plaintiff has suffered actual damages in an amount to be proven at trial. Plaintiff has also incurred and will continue to incur attorney's fees as a result of prosecuting this cause of action.

114. Pursuant to Labor Code section 2802, Plaintiff, individually, seeks to recover all

unreimbursed business-related expenses for worked performed during the Employment Period.

115. Plaintiff is also entitled to recover reasonable costs of suit and attorney's fees in an amount to be proven at trial.

116. Wherefore, Plaintiff prays for relief as set forth below.

NINTH CAUSE OF ACTION

Unfair Competition

[Cal. Bus. & Prof. Code §§ 17200 et. seq.]

(Plaintiff, individually, against All Defendants)

117. Plaintiff refers to and incorporates herein by reference as though fully set forth below each and every allegation contained in the preceding paragraphs of this Complaint.

118. Plaintiff is a "person" within the meaning of California Business and Profession Code section 17204 and has standing to bring this claim for equitable relief.

119. At all relevant times, Defendants were conducting business under the laws of the State of California. In conducting their businesses, Defendants were obligated to comply with federal and California laws.

120. California Business and Profession Code sections 17200 *et. seq.* ("UCL"), defines unfair competition to include any "unlawful," "unfair," or "fraudulent" business act or practice. Cal. Bus. & Prof. Code § 17200.

121. Beginning at an exact date unknown to Plaintiffs, but at least four years before the filing of this action, Defendants have engaged in unfair competition as defined by the UCL by, and as further described above, including but not limited to:

a) Defendants have violated various sections of the California Labor Code, including but not limited to: 1194, 510, 512, 200, 201, 202, 203, 204, 221-224, 226, 226.7, 226.3, 245-249, 351-354 and 2802 as alleged above;

122. Plaintiff is informed and believes and thereon alleges that it is the regular practice of Defendants to misclassify their drivers as independent contractors to avoid paying minimum wage, overtime compensation, safe riders' fee, premiums for meal and rest breaks, and other wages upon termination to their employees thereby disregarding their employment rights and

1 violating other applicable laws.

2 123. Plaintiff has suffered injuries in fact and has lost money as a direct and proximate
3 result of Defendants' unfair competition, including, but not limited to, money due to them as
4 minimum wage, overtime compensation, safe riders' fee, premiums for meal and rest periods. This
5 money has been acquired by Defendants by means of its unfair competition within the meaning of
6 the UCL.

7 124. As a result of Defendants unfair business practices, Defendants have reaped unfair
8 benefits and illegal profits at the expense of Plaintiff. Defendants should be made to disgorge their
9 ill-gotten gains and restore such monies to Plaintiff.

10 125. Under California Business and Profession Code section 17203, Defendants' unfair
11 business practices entitle Plaintiff to seek injunctive relief, including but not limited to, orders that
12 the Defendants account for, disgorge and restore to Plaintiff the compensation unlawfully withheld
13 from him, for the last four years together with interest thereon, as well as costs.

14 126. The conducts of Defendants, as alleged herein, have been and continue to be
15 deleterious to Plaintiff and the general public.

16 127. Defendants are liable for attorney fees under Civil Code section 1021.5 as this
17 action confers a benefit on the general public in ensuring Defendants are prohibited from engaging
18 in unfair business practices, as alleged herein.

19 **TENTH CAUSE OF ACTION**

20 **Civil Penalties for Violation of the Private Attorneys General Act of 2004**

21 **(Cal. Lab. Code §§ 2698 et seq.)**

22 **(Representative PAGA claim)**

23 **(Plaintiff, on behalf of all aggrieved employees, against all Defendants)**

24 (Plaintiff on behalf of himself and all aggrieved employees against All Defendants)

25 128. Plaintiff incorporates by reference as though fully set forth herein the preceding
26 paragraphs of this Complaint.

27 129. Under the California Private Attorneys General Act ("PAGA") of 2004, Cal. Lab.
28 Code §§ 2698-2699.5, an aggrieved employee, on behalf of himself and other current or former

1 employees as well as the general public, may bring a representative action as a private attorney
2 general to recover penalties for an employer's violations of the California Labor Code and IWC
3 Wage Orders. These civil penalties are in addition to any other relief available under the California
4 Labor Code, 75% must be allocated to California's Labor and Workforce Development Agency
5 ("LWDA") and 25% to the aggrieved employee, pursuant to California Labor Code § 2699.

6 130. Plaintiff is an aggrieved employee with standing to bring this cause of action under
7 the PAGA because of his employment with Defendants and Defendants' failure to comply with
8 various California Labor Code violations for work performed in California due to
9 misclassification as alleged herein.

10 131. Plaintiff has met all of the requirements set forth in Labor Code § 2699.3 necessary
11 to commence a civil action against Defendants for violations of Labor Code.

12 132. Plaintiff has satisfied all prerequisites to serve as a representative of the general
13 public to enforce California's labor laws, including, without limitation, the penalty provisions
14 identified in Labor Code section 2699.5. The LWDA indicated that it would not be investigating
15 the claims set forth herein. Since the LWDA took no steps within the time period required to
16 intervene and because Defendants took no corrective action to remedy the allegations set forth
17 above Plaintiff, as a representative of the people of the State of California, will seeks any and all
18 civil penalties otherwise capable of being collected by the Labor Commission and/or the
19 Department of Labor Standards Enforcement (DLSE).

20 133. Plaintiff alleges, on behalf of himself and all aggrieved employees, as well as the
21 general public, that Defendants have violated the following provisions of the California Labor
22 Code and the following provisions of the IWC Wage Orders that are actionable through the
23 California Labor Code and PAGA: knowing and willful misclassification of drivers as
24 independent contractors in violation of Cal. Labor Code §§ 226.8 and 2753, requiring employees
25 or applicants to agree to terms and conditions of employment that Uber knows to be prohibited by
26 law in violation of Cal. Lab. Code §§ 232.5, 432.5, and 2804, failure to remit gratuities to drivers
27 in violation of Cal. Lab. Code §§ 351-356, failure to reimburse drivers for all necessary
28 expenditures incurred in direct consequence of their duties in violation of Cal. Lab. Code §§2802

1 and 2804, unlawful deductions in violation of Cal. Labor Code §§ 221-224, 222.5, 225.5, failure
2 to pay wages due at termination and during a dispute in violation of Cal. Labor Code §§ 201-203,
3 204, 206, 206.5, 208, 210, 212, and 216, failure to pay contractual and the minimum wage for all
4 hours worked in violation of Cal. Labor Code §§ 200, 226.2, 558, 1194, 1194.2, 1197, 1197.1,
5 1182.11-1182.13, 1199, failure to pay overtime in violation of Cal. Labor Code §§ 500, 510, 515,
6 558, 1194, 1198, failure to provide required meal and rest periods in violation of Cal. Labor Code
7 §§ 226.2, 226.7, 512, 558, and Section 12 of Wage Order No. 9-2001, failure to keep accurate
8 records in violation of Cal. Labor Code §§ 353. 1174, and 1174.5, failure to provide itemized
9 wage statements and afford current and former employees the right to inspect and copy these
10 records upon request in violation of Cal. Labor Code §§226, 226.2, 1198.5, and 226.3, failure to
11 provide paid sick leave in violation of Cal. Labor Code §§ 245-249, failure to provide drivers at
12 least one day off in seven, in violation of Cal. Labor Code §§ 551-552, 558, 1198 and 1199,
13 failure to provide drivers with a Section 2810.5 notice in violation of Cal. Labor Code §2810.5.

14 134. California Labor Code § 2699(f), which is part of PAGA, provides in pertinent
15 part:

16 For all provisions of this code except those for which a civil penalty is
17 specifically provided, there is established a civil penalty for a violation of
18 these provisions, as follows: . . . (2) If, at the time of the alleged violation, the
19 person employs one or more employees, the civil penalty is one hundred
20 dollars (\$100) for each aggrieved employee per pay period for the initial
violation and two hundred dollars (\$200) for each aggrieved employee per pay
period for each subsequent violation.

21 135. Plaintiff is entitled to civil penalties, to be paid by Defendants and allocated as
22 PAGA requires, pursuant to California Labor Code § 2699(a) for Defendants' violations of the
23 California Labor Code and IWC Wage Orders for which violations a civil penalty is already
24 specifically provided by law.

25 136. Furthermore, Plaintiff is entitled to civil penalties, to be paid by Defendants and
26 allocated as PAGA requires, under California Labor Code § 2699(f) for Defendants' violations of
27 the California Labor Code and IWC Wage Orders for which violations a civil penalty is not
28 already specifically provided.

1 137. Under PAGA, Plaintiff and the State of California are entitled to recover the
2 maximum civil penalties permitted by law for the violations of the California Labor Code and
3 IWC Wage Order No. 9-2001 or other applicable Wage Order(s) that are alleged in this
4 Complaint.

5 138. Labor Code section 558.1 (a) reads that “[A]ny employer or other person acting on
6 behalf of an employer, who violates, or causes to be violated, any provision regulating minimum
7 wages or hours and days of work in any order of the Industrial Welfare Commission, or violates,
8 or causes to be violated, Sections 203, 226, 226.7, 1193.6, 1194, or 2802, may be held liable as the
9 employer for such violation.

10 139. On information and belief, Plaintiff alleges that during the relevant period, certain
11 natural individuals Does 1-25, acting on behalf of Defendants, violated Labor Code sections 203,
12 226, 226.7, 1193.6, 1194, 2753, or 2802 and as such, they should be personally liable for civil
13 penalties under Labor Code sections 558 and 558.1.

14 **VI. PRAYER FOR RELIEF**

15 WHEREFORE, Plaintiff on behalf of himself and behalf of all CA Drivers, demands judgment
16 against Defendants as follows:

- 17 1) For all applicable civil penalties under Labor Code sections 210, 226.3, 226.7,
18 248.5, 558, 1197.1, and 2699;
19 2) Reasonable attorney’s fees under Labor Code sections 248.5, 558, and 2699(g)(1),
20 and Cal. Civ. Code § 1021.5.
21 3) For costs of this suit;

22 WHEREFORE, Plaintiff for himself individually, demands judgment against Defendants
23 as follows:

- 24 1) For unpaid minimum wage, overtime compensation, contractual wages, safe rider
25 fee, premiums for missed or insufficient meal and rest breaks;
26 2) Employment-related reimbursements under Labor Code section 2802;
27 3) For liquidated damages pursuant to Labor Code section 1194.2, and San Francisco
28 Administrative Code Chapter 12(R);

- 1 4) Waiting time penalties under Labor Code Section 203;
2 5) For all applicable statutory damages pursuant to Labor Code section 226;
3 6) For restitution as provided by Business and Professions Code § 17200 et seq. and
4 for an order requiring Defendants jointly and severally to restore and disgorge all funds to
5 Plaintiff by means of any act or practice declared by this Court to be unlawful, unfair or
6 fraudulent and, therefore, constituting unfair competition under Business and Professions Code
7 §17200 et seq. as set forth above;
8 7) Pre-judgment interest at the maximum legal rate;
9 8) Reasonable attorney's fees under Labor Code sections 218.5, 2802, 226, 248.5,
10 558, 1194 and 2699(g)(1), and Cal. Civ. Code § 1021.5.
11 9) For costs of this suit;
12 10) For such other and further relief as the Court deems just and proper.

13
14 Dated: January 29, 2020

KLEIN LAW GROUP, LLP

15
16 BY 
17 Alexei Kuchinsky
18 William P. Klein
19 Attorneys for Plaintiff Tabola
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Exhibit 5

DEPARTMENT OF INDUSTRIAL RELATIONS

Division of Labor Standards Enforcement
Oakland District Office
1515 Clay Street, Suite 801
Oakland, CA 94612

MAILING ADDRESS
P.O. Box 420603
San Francisco, CA 94142-0603



August 2, 2019

Celeste Peifer
KLEIN LAW GROUP, LLP
50 California Street, Suite 1500
San Francisco, CA 94111

Re: Public Records Act Request regarding HQ20463

Dear Celeste Peifer,

In response to the above-referenced Public Records Act request, enclosed are the copies of the records you requested.

If you have any questions, please contact Jason Brotarlo at 510-286-1246.

Sincerely,

Jason Brotarlo
Staff Service Analyst
510-286-1246

PAGA Search

Filtered By

Show: All case management

Total Paid to LWDA greater than 2000000

Case Number	Employer	Total Paid to LWDA
LWDA-CM-185224-16	Uber Technologies	\$2,906,250.00
LWDA-CM-261385-17	WinCo Holdings, Inc. dba WinCo Foods	\$2,261,927.80
LWDA-CM-260970-17	Macy's West Stores, Inc.	\$6,201,719.53
LWDA-CM-302112-17	24 Hour Fitness	\$3,392,850.42
LWDA-CM-615552-18	RITE AID CORPORATION	\$6,825,127.57
LWDA-CM-320904-17	Forever 21, Inc.	\$2,111,567.76
LWDA-CM-184753-16	Bank of America	\$7,374,821.75