



October 22, 2020

Via Online Filing

California Labor & Workforce Development Agency
455 Golden Gate Avenue, 10th Floor
San Francisco, CA 94102

Via Certified Mail

CT Corporation System, Registered Agent for
LYFT, Inc.
818 West Seventh Street, Suite 930
Los Angeles, CA 90017

Via First Class Mail

Logan Green, CEO
LYFT, Inc.
185 Berry Street, Suite 5000
San Francisco, CA 94107

Re: Notice Pursuant to the Private Attorneys General Act, California Labor Code § 2699.3 (the “PAGA”)

Dear Sir or Madam:

Ms. Delia Samayoa (“Plaintiff”) has retained our firm to represent her and other similarly-situated current and former employees of Lyft, Inc., a Delaware corporation (“Defendant”) for alleged violations of the California Labor Code. Defendant formerly employed Plaintiff and currently or formerly have employed other similarly situated employees (collectively, the “Aggrieved Employees”) throughout the State of California.

Plaintiff on her own behalf and on behalf of the Aggrieved Employees alleges that she and the Aggrieved Employees were hourly, non-exempt employees employed as drivers performing Defendant’s on-demand ride-share services, picking up and transporting Defendant’s customers to customer-specified destinations (hereinafter, “Covered Positions”). This letter formally serves to inform Defendant of Plaintiff’s intent to file a PAGA representative action against Defendant and to bring causes of action for violations of the Private Attorney Generals Act (the “PAGA”) and for injunctive relief for Defendant’s intentional misclassification of Plaintiff and the Aggrieved Employees resulting in Defendant’s failure to lawfully compensate Plaintiff and the Aggrieved under the provisions of California’s Labor Code Sections 201-202, 204, 226 (a), 226.7, 510, 512, 1174, 1194, 2802 and Wage Order No. 9-2001 of the Industrial Wage Commission (“IWC No. 9”). Plaintiff further alleges retaliatory wrongful termination pursuant to California Labor Code Section 1102.5 as further detailed herein below. Plaintiff is informed and believes that said violations are ongoing, systematic and uniform. If Defendant fails to cure the alleged violations, Plaintiff will

bring an action against Defendant under the PAGA to recover wages and penalties and for injunctive relief as provided by California law.¹

Facts and Theories to Support the Alleged Labor Code Violations

During the relevant statutory period Plaintiff and the Aggrieved Employees currently or formerly worked for Defendant as drivers all over the State of California. Plaintiff was hired as a driver on or about September 11, 2017 to September 18, 2020.

At all relevant times, Defendant unlawfully classified Plaintiff and the Aggrieved Employees as if they were independent contractors, depriving them of their proper wage and employment benefits.

Instead Defendant compensate their drivers on a piecemeal basis as such is defined under Labor Code Section 226.2. Defendant compensated Plaintiff \$.79 cents per mile (while driving) and fifty percent (50%) of whatever fee Lyft charges the customer. They are not for any other time while under Defendant's control during their workday (e.g. traveling from one customer location to another or while waiting for passengers they pick up or while engaged in other non-driving activities such as cleaning and fueling their vehicles or obtaining work-related supplies). Further, no other compensation or reimbursement for expenses incurred in the discharge of duties is or has been paid by Defendant.

Resultantly, Plaintiff and the Aggrieved Employees were not paid at least a minimum hourly wage for every hour worked; they were not provided with compliant rest breaks or meal breaks; they failed to pay them for overtime for shifts during which they worked in excess of an eight hour day or more than forty hours in a workweek. Moreover, in order to work as drivers, Plaintiff and the Aggrieved Employees are required to download and utilize throughout their workday the Lyft app in order to communicated with Lyft and its customers.

¹ Without limitation, Plaintiff, if permitted, will seek any and all penalties otherwise capable of being collected by the Labor & Workforce Development Agency ("LWDA"). This includes, each of the following, as is set forth in Labor Code § 2699.5, which states:

The provisions of subdivision (a) of Section 2699.3 apply to any alleged violation of the following provisions: subdivision (k) of Section 96, Sections 98.6, 201, 201.3, 201.5, 201.7, 202, 203, 203.1, 203.5, 204, 204a, 204b, 204.1, 204.2, 205, 205.5, 206, 206.5, 208, 209, and 212, subdivision (d) of Section 213, Sections 221, 222, 222.5, 223, and 224, subdivision (a) of Section 226, Sections 226.7, 227, 227.3, 230, 230.1, 230.2, 230.3, 230.4, 230.7, 230.8, and 231, subdivision (c) of Section 232, subdivision (c) of Section 232.5, Sections 233, 234, 351, 353, and 403, subdivision (b) of Section 404, Sections 432.2, 432.5, 432.7, 435, 450, 510, 511, 512, 513, 551, 552, 601, 602, 603, 604, 750, 751.8, 800, 850, 851, 851.5, 852, 921, 922, 923, 970, 973, 976, 1021, 1021.5, 1025, 1026, 1101, 1102, 1102.5, and 1153, subdivisions (c) and (d) of Section 1174, Sections 1194, 1197, 1197.1, 1197.5, and 1198, subdivision (b) of Section 1198.3, Sections 1199, 1199.5, 1290, 1292, 1293, 1293.1, 1294, 1294.1, 1294.5, 1296, 1297, 1298, 1301, 1308, 1308.1, 1308.7, 1309, 1309.5, 1391, 1391.1, 1391.2, 1392, 1683, and 1695, subdivision (a) of Section 1695.5, Sections 1695.55, 1695.6, 1695.7, 1695.8, 1695.9, 1696, 1696.5, 1696.6, 1697.1, 1700.25, 1700.26, 1700.31, 1700.32, 1700.40, and 1700.47, paragraphs (1), (2), and (3) of subdivision (a) of and subdivision (e) of Section 1701.4, subdivision (a) of Section 1701.5, Sections 1701.8, 1701.10, 1701.12, 1735, 1771, 1774, 1776, 1777.5, 1811, 1815, 2651, and 2673, subdivision (a) of Section 2673.1, Sections 2695.2, 2800, 2801, 2802, 2806, and 2810, subdivision (b) of Section 2929, and Sections 3095, 6310, 6311, and 6399.

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As evidenced by the Defendant's lobby campaign to defeat AB 5, which during the statutory period, was enacted as law and went into effect in California on January 1, 2020, Defendant was well aware that it was misclassifying its drivers, including Plaintiff and the Aggrieved Employees. AB5 codified the ruling of *Dynamex Operations W, Inc. v. Superior Court* (2018) 4 Cal.4th 903 ("*Dynamex*"). Despite exercising unilateral control over pricing, compensation, and unilateral imposition of all the terms and conditions of drivers' employment and policies (including the ability to impose disciplinary actions) and retention of absolute control regarding customer or driver complaints and resolution of same, and despite the current rule of law in California, Defendant has flagrantly continued to defy the law and improperly classify and improperly pay its driver employees.

As a result of Defendant's above-described violations, Plaintiff and the Aggrieved Parties have not been, and are not presently being timely paid all their rightfully earned wages by law, including overtime pay, have not received itemized wage statements, have not been paid premium penalties for each rest and meal break violation that occurred during each and every pay period during the statutory period and for Plaintiff and such Aggrieved Employees who separated from Defendant's employment during the statutory period, such were not paid all of the wages they were due at the time of such termination or discharge.

Further, during the term of her employment with Defendant, Plaintiff was twice assaulted and attacked while on the job. The first incident occurred August 28, 2019 when a customer tried to steal her car. During the attack, Plaintiff Samayoa used pepper spray to defend herself against the perpetrator. When Plaintiff exited her vehicle to make a police report the customer fled, stealing her cell phone and car keys. Despite a tow truck charge of \$400, cell phone replacement charges of \$900 and replace of her car keys at a cost of \$150, Defendant not only failed to reimburse her for these expenses, in retaliatory manner they de-activated her from Lyft for three days. Lyft told Plaintiff not to spray customers with pepper spray, but never told her she could not carry it for her protection.

On September 18, 2020, Plaintiff was *again* assaulted by a customer. She picked up a lone male passenger at approximately 5 a.m. and began driving him to his destination. Suddenly and without warning the customer started masturbating in the back seat. It was still dark outside and the streets were still fairly deserted. Plaintiff was terrified and frightened of her passenger's intentions. She had heard about other incidents where Lyft drivers had been sexually assaulted and violently attacked. She was fearful and acutely aware that the assault could quickly escalate into a physical attack. In her bravest voice, she told the customer to stop. The customer refused. Shaking and terrified, Plaintiff pulled the car over, pulled out her pepper spray canister and told the customer to get out of the car and threatened to call the police. The customer hesitated and finally got out. He had been in her car for nearly eighteen minutes. These dangerous incidents and assaults on Lyft employees are well known to Defendant. Plaintiff immediately called Lyft and reported what happened. Without even asking Plaintiff if she was injured or in a safe place, they instantly terminated her for "having a weapon." Pepper spray is a non-lethal deterrent – which in this instance Plaintiff merely *let the customer see she had some form of protection* while ordering him to leave her car. Plaintiff then drove directly to the police station in Santa Ana, California and tried to file a police report concerning the incident. Lyft however refused to cooperate and would not disclose the customer's identity or any contact information, effectively tying law enforcement's hands to do anything at all. As a result of Defendant's conduct, Plaintiff alleges that Defendant has further violated California Labor Code Section 1102.5 and wrongfully terminated her because she attempted to file a bonafide complaint regarding an unlawful sexual assault that occurred while she was on the job and tried to file a police report concerning the incident with a law enforcement agency.

Labor Code/PAGA Violations

Here, Defendant has violated Labor Code 201-202, 204, 226 (a), 226.7 510, 512, 1102.5 1174, 1194, 2802 and IWC No. 9, Sections 11 and 12. As a result of their unlawful practices, including failure to provide compliant rest breaks and meal breaks; failure to pay them one hour's premium pay wage for each missed rest break or meal break; failure to pay proper overtime wages; failure to record all hours worked, including proper tracking and logging every hour worked by its employees, failure to timely pay employees separately for all hours worked and earned wages twice monthly during each calendar month worked; failure to reimburse for all expenses incurred in the discharge of their work-related duties, failure to provide accurately itemized wage statements; failure to pay all wages due upon termination of employment, and the unlawful retaliatory termination of Plaintiff, Defendant is liable for civil penalties under the PAGA.

A. Failure to Pay All Wages When Due

At all times relevant, Labor Code § 204 provides that all wages, other than those mentioned in sections 201, 202, 204.1, or 204.2, earned by any person in any employment, are due and payable twice during each calendar month, on days designated in advance by the employer as the regular paydays. Labor performed between the 1st and 15th days, inclusive, of any calendar month shall be paid for between the 16th and the 26th day of the month during which the labor was performed, and labor performed between the 16th and the last day, inclusive, of any calendar month, shall be paid for between the 1st and 10th day of the following month.

At all times relevant, Labor Code § 210 provides, in pertinent part, *“every person who fails to pay the wages of each employee as provided in Sections 201.3, 204, 204b, 204.1, 204.2, 205, 205.5, and 1197.5, shall be subject to a civil penalty as follows: (1) For any initial violation, one hundred dollars (\$100) for each failure to pay each employee. (2) For each subsequent violation, or any willful or intentional violation, two hundred dollars (\$200) for each failure to pay each employee, plus 25 percent of the amount unlawfully withheld.”*

B. Rest/M meal Break Violations

Under Labor Code § 226.7 *“(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 or rest period in accordance with an applicable order of the Industrial Welfare Commission, 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.”*

Under Labor Code § 512 (a) *“An employer shall not employ an employee for a work period of more than five hours per day without providing the employee with a meal period of not less than 30 minutes, except that if the total work period per day of the employee is no more than six hours, the meal period may be waived by mutual consent of both the employer and employee. An employer shall not employ an employee for a work period of more than 10 hours per day without providing the employee with a second meal period of not less than 30 minutes, except that if the total hours worked is no more than 12 hours, the second meal period may be waived by mutual consent of the employer and the employee only if the first meal period was not waived.”*

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Also pursuant to the IWC Wage Order No. 9, Section 12, employers must authorize and permit a net 10-minute paid rest period for every four hours worked or major fraction thereof. 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 workday that the rest period is not provided. See, IWC No. 9, Section 12 (A) & (B).

As stated, during the relevant statutory period, the Plaintiff and Aggrieved Employees, were not provided with duty-free rest or meal break periods. Defendants have not ever paid the Aggrieved Employees premium pay penalties for the missed and non-compliant rest and meal breaks.

This is a clear violation of the provisions of the Labor Code and the IWC No. 9 Sections 11 and 12 which set forth California employers' affirmative obligation to provide timely, duty-free rest and meal break periods. Pursuant to §512 of the Labor Code and Section 12 (B) of IWC No. 9, Plaintiff and the Aggrieved Employees are owed premium pay penalties for each missed rest and meal break for which they were not paid during the statutory period.

As a further and direct consequence of Defendant's failure to pay the premium pay penalties as mandated under Lab. Cod. § 226.7 and IWC No. 9, all Aggrieved Employees who separated from their employment with Defendant prior to today and were not and have not been properly paid these penalties, are owed such penalties, per Labor Code § 201(a).

C. Failure to Furnish Accurate Wage Statements

At all times relevant, Labor Code § 226(a) requires Defendant to "furnish each of [its] employees, either as a detachable part of the check, draft, or voucher paying the employee's wages, or separately when wages are paid by personal check or cash, an itemized statement in writing showing: (1) gross wages earned, (2) total hours worked by the employee, ... (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, and (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee."

Here, Defendant violated Labor Code § 226 (a). Defendant had a uniform policy and practice of failing to record and pay its workers wages for all hours worked during each and every pay period, including overtime to which the Plaintiff and Aggrieved Employees in the Covered Positions are and were lawfully entitled during the relevant period.

Resultantly, Plaintiff and the Aggrieved Employees shall also seek injunctive relief pursuant to Labor Code Section 226 (g) as well as their attorneys' fees, interest, expenses and costs of suit.

D. Failure to Reimburse and Indemnify for Work Related Expenses

California Labor Code Section 2802 provides that an employer shall indemnify his or her employees for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties.

As discussed above, Defendant required Plaintiff and the Aggrieved Employees to use their personal cellphones to regularly communicate with Defendant and its customers, but Defendant has not and does not pay the Plaintiff and the Aggrieved Employees a cell phone allowance, nor do they or have they reimbursed them for any other expenses they incurred while discharging their work

related duties, including theft of cell phones, car towing, key replacement expenses and other work related expenses incurred during the statutory period. As a consequence, pursuant to Section 2802, the Plaintiff and the Aggrieved Employees are entitled to recover their attorneys' fees, interest, expenses and costs of suit.

E. Failure to Maintain Records of All Hours Worked

Labor Code § 1174 provides, that every person employing labor in this state shall "... Keep, at a central location in the state or establishments at which employees are employed, 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 at the respective plants or establishments. These records shall be kept in accordance with rules established for this purpose by the commission, but in any case, shall be kept on file for not less than three years. An employer shall not prohibit an employee from maintaining a personal record of hours worked, or, if paid on a piece-rate basis, piece-rate units earned."

As described above and incorporated by reference hereto, every hour spent by Plaintiff and the Aggrieved Employees working and attending to work-related duties are not recorded or tracked and therefore not compensated. Instead they are only compensated on a per mile basis (while driving) no matter how many hours the Aggrieved Employees are actually working and under Defendant's control in violation of Labor Code Section 1174 (d).

F. Failure to Pay Employees Separately For Each Hour Worked at the Legal Rate

Pursuant to Labor Code Section 1194, "Notwithstanding any agreement to work for a lesser wage, any employee receiving less than the legal minimum wage or the legal overtime compensation applicable to the employee is entitled to recover in a civil action the unpaid balance of the full amount of this minimum wage or overtime compensation, including interest thereon, reasonable attorney's fees, and costs of suit."

As described above supra, and incorporated by reference hereto, Defendant has failed to track or record the time in which Plaintiff and the Aggrieved Employees are actually working while under its control. Therefore, there is time during each working shift for which Plaintiff and the Aggrieved Employees are not/were not compensated their legal minimum wages or legal overtime wages in violation of Labor Code Section 1194.

G. Failure to Pay Overtime

Labor Code Section 510 provides,

"Eight hours of labor constitutes a day's work. Any work in excess of eight hours in one workday and any work in excess of 40 hours in any one workweek and the first eight hours worked on the seventh day of work in any one workweek shall be compensated at the rate of no less than one and one-half times the regular rate of pay for an employee. Any work in excess of 12 hours in one day shall be compensated at the rate of no less than twice the regular rate of pay for an employee. In addition, any work in excess of eight hours on any seventh day of a workweek shall be compensated at the rate of no less than twice the regular rate of pay of an employee..."

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As stated above and incorporated by reference hereto, Defendant has failed to record nor compensate Plaintiff and the Aggrieved Employees for all hours worked including hours worked in excess of eight hours in a single day or over 40 hours per week during the relevant time period. As a result, Defendant has not complied with Labor Code Section 510 by paying Plaintiff or the Aggrieved Employees at 1.5 times their regular hourly rate of pay for the hours they worked in excess of eight hours or in excess of 40 hours a week.

H. Failure to pay all Wages Due Upon Separation or Termination of Employment

At all times relevant, Labor Code § 201 provides that if an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately. At all times relevant, Labor Code § 202 provides that if employees not having a written contract for a definite period quits their employment, their wages shall become due and payable no later than 72 hours thereafter, unless the employee has given 72 hours advance notice of their intention to quit, in which case the employee is entitled to their wages at the time of quitting.

At all times relevant, Labor Code § 203 provides that an employer who willfully fails to pay, without abatement or reduction, in accordance with sections 201 and 202, any wages of an employee who is discharged or who quits, the wages of the employee shall continue as a penalty from the due date thereof at the same rate until paid or until an action therefore is commenced, but the wages shall not continue for more than 30 days.

Here, Defendant has violated Labor Code §§ 201(a) and 204. When Plaintiff and those Aggrieved Employees' whose employment with Defendant formerly ended, Defendant failed to pay them all of their earned wages as detailed above immediately upon their discharge or within 72 hours thereafter. In addition, Defendant has failed to pay the waiting time penalties to which Plaintiff and such Aggrieved Employees are entitled under Labor Code Section 203.

To date, as set forth in detail above and incorporated by reference hereto, Defendant has failed to pay the Aggrieved Employees all of their earned wages, accrued interest thereon, and failed to remit the Labor Code penalties to be imposed as a consequence of said violations of the Labor Code.

I. Unlawful Retaliatory Termination

Labor Code Section 1102.5 which was in full force and effect at all relevant times hereto, provides in pertinent part:

(a) An employer, or any person acting on behalf of the employer, shall not make, adopt, or enforce any rule, regulation, or policy preventing an employee from disclosing information to a government or law enforcement agency or from providing information to, ... any public body conducting an investigation, hearing, or inquiry, if the employee has reasonable cause to believe that the information discloses a violation of state or federal statute, or a violation of or noncompliance with a local, state, or federal rule or regulation, regardless of whether disclosing the information is part of the employee's job duties.

(b) An employer, or any person acting on behalf of the employer, shall not retaliate against an employee for disclosing information, or because the employer believes that the employee disclosed or may disclose information, to a government or law enforcement agency, or for providing

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information to, or testifying before, any public body conducting an investigation, hearing, or inquiry, if the employee has reasonable cause to believe that the information discloses a violation of state or federal statute, or a violation of or noncompliance with a local, state, or federal rule or regulation, regardless of whether disclosing the information is part of the employee's job duties....

(d) An employer, or any person acting on behalf of the employer, shall not retaliate against an employee for having exercised his or her rights under subdivision (a), (b), ... in any former employment....

(f) In addition to other penalties, an employer that is a corporation or limited liability company is liable for a civil penalty not exceeding ten thousand dollars (\$10,000) for each violation of this section.

On September 18, 2020 when Plaintiff Samayao called Lyft and reported the sexual assault, she was terminated for "having a weapon" – which in fact was merely a canister of *non-lethal pepper spray* – *which she did not use*, but only showed to the perpetrator to convince him to get out of her vehicle. Having been prior attacked on the job by a customer who tried to steal her car, Plaintiff reasonably believed she was lawfully allowed to be able to defend herself from any potential passenger assailants and in fact, was never informed by Defendant that she could not have pepper spray in her possession. After she reported the incident to Lyft, she immediately drove herself to the Santa Ana Police Department to report the sexual assault. When she did so, Defendant failed and refused to cooperate with police and would not provide the law enforcement agency with any information pertaining to the identify or contact information for the customer who perpetrated the assault. Instead, Defendant immediately terminated her. Because Defendant Lyft knew or believed that Plaintiff was going to report the unlawful sexual assault that happened while she was working to a law enforcement agency, they terminated her in violation of Labor Code Section 1102.5.

Conclusion

Plaintiff alleges that Defendant has uniformly violated the foregoing provisions of the California Labor Code. Therefore, Plaintiff requests the LWDA investigate the above allegations and provide notice of the allegations under PAGA's provisions. Alternatively, Plaintiff requests the LWDA inform her if it does not intend to investigate these violations, so that she they may bring an action under the PAGA for the violations discussed in this letter.

Should you have any questions or comments regarding the foregoing, or any aspect of this matter, please do not hesitate to contact our offices.

Sincerely,

WHITEHEAD EMPLOYMENT LAW


Jacob N. Whitehead, Esq.

JNW/dlp

Labor Workforce and Development Agency
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