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April 12, 2021

SENT VIA CERTIFIED MAIL AND EMAIL

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**Re: Malik v. Uber Technologies, Inc., et al.
 Notice of California Labor Code Violations pursuant to Labor Code § 2699.3
 (Private Attorneys General Act)**

Dear Counsel:

This correspondence shall serve as notice to Uber Technologies, Inc. (“Uber”) and Russell Tobin and Associates LLC (“RTA”) that Ms. Soha Malik may seek monetary and non-monetary relief against them vis-à-vis class and/or other representative actions, including under the California Private Attorneys General Act (“PAGA”) for, violations of the following provisions of the California Labor Code:

- Failure to provide complete employment records (Labor Code § 226);
- Failure to timely pay all wages owed upon termination (Labor Code §§ 201, 203, 210, 218.5, 225.5);
- Failure to provide accurate itemized statements to employees (Labor Code §§ 226(e); 226.3); and,
- Failure to reimburse employees for all reasonable and necessary expenses (Labor Code § 2802).
- Violation of San Francisco Administrative Code 12W.3

The facts and theories supporting the alleged violations are described in detail below.

Failure to provide complete payroll and employment records (Labor Code § 226, 432, 1198.5).

Per Labor Code Section 1198.5 former employees have the right to receive a copy of personnel records relating to the employee's performance under a 30-day statutory deadline or employer is subject to a \$750 penalty and an employee may also bring an action for injunctive relief and may recover costs and reasonable attorney's fees in such action. Per Labor Code Section 226 former employees have the right to receive a copy of the employee's payroll records under a 21-day statutory deadline or employer is subject to a \$750 penalty. The language comprising "relating to the employee's performance" is interpreted broadly and requires employers to provide records that show an employee's attendance. Attendance records are in fact directly related to an employee's performance. Significantly, the Labor Commissioner explicitly lists attendance records as a category of records considered to be "personnel records."

See <https://www.dir.ca.gov/dlse/FAORightToInspectPersonnelFiles.htm>.

Also, the California Industrial Welfare Commission Wage Orders provide, "Every employer ... shall keep accurate information with respect to each employee including the following ... **Time records** showing when the employee begins and ends each work period. Meal periods, split shift intervals and total daily hours worked shall also be recorded ... An employee's records shall be available for inspection by the employee upon reasonable request." [Emphasis added].

Further, per Labor Code Section 432, "If an employee or applicant signs any instrument relating to the obtaining or holding of employment, he shall be given a copy of the instrument upon request."

On or around March 10, 2021, Ms. Malik requested her personnel, employment, and payroll records from Uber and RTA. On or around March 25, 2021, through counsel, RTA responded to the request with a 88-page electronic document. Absent from the document were Ms. Malik's timesheet records; the offer of employment sent to Ms. Malik via electronic mail; the offer to extend Ms. Malik's term of employment with Uber and RTA; and all written documentation regarding Ms. Malik's performance. Ms. Malik did not receive these documents within the statutory time requirement. Accordingly, she is entitled to the statutory penalty and attorney fees.

Failure to timely pay all wages owed upon termination (Labor Code §§ 201, 203, 210, 218.5, 223, 225.5)

California law requires that all wages owed to an employee be paid to the employee the same day that the employee is fired. See Cal. Lab. Code § 201. The "waiting-time penalty" for

violating Section 201 is one day of pay at the employee's regular rate for each day the owed wages go unpaid, up to 30 days. *Id.*

Ms. Malik was terminated on January 21, 2021. She did not receive her final paycheck with all wages owed to her the same day. Instead, she received partial payment on January 27, 2021, and another partial payment on January 29, 2021 for 24 hours of PTO. As an employee of Uber and/or RTA, Ms. Malik was entitled to all 120 hours of PTO, or at least 60 hours of PTO based on Ms. Malik's 6-month term employment agreement. As of April 12, 2021, Ms. Malik has not received compensation for all PTO accrued, and accordingly Ms. Malik is entitled to the full 30-days of waiting penalties.

Failure to provide accurate itemized statements to employees (Labor Code §§ 226; 226.3)

California law has strict requirements regarding workers' pay stubs. Specifically, employers must issue wage statements to their employees that accurately include nine distinct pieces of information. See Cal. Lab. Code §226(a)(1)-(9). Failure to comply with just one of the nine requirements triggers an employer's liability. Additionally, the California Wage Statement Statute provides that workers issued non-compliant wage statements may recover \$50 for the initial pay period in which a violation occurs and \$100 for each subsequent pay period, up to a maximum of \$4000, and is entitled to an award of costs and reasonable attorney's fees. See Cal. Lab. Code § 226 (e)(1). Employers shall also be subject to a civil penalty in the amount of two hundred fifty dollars per employee per violation for an initial citation and one thousand dollars per employee for each violation in a subsequent citation.

Uber and RTA failed to provide Ms. Malik with accurate wage statements. The wage statements failed to accurately reflect the accurate amount of paid sick time and accrued PTO that Ms. Malik had accrued during her employment. On information and belief, all similarly situated employees have similar defects in their wage statements.

Failure to reimburse employees for all reasonable and necessary expenses (Labor Code § 2802)

California law requires an employer to reimburse employees "for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties" Cal. Lab. Code § 2802(a). An employer cannot refuse to reimburse the employee for expenses that are incurred even if the employee does not follow an employer's procedures for requesting reimbursement. *Jacobus v. Krambo Corp.* (2000) 78 Cal.App.4th 1096, 1100.

Ms. Malik incurred several expenses to perform her job duties including but not limited to, renting an extra room to work remotely; a desk; chair; monitor; keyboard; mouse; computer repairs; computer equipment including charging cables; cell phone expenses; and internet. Ms. Malik notified Uber of these expenses and Uber refused to reimburse her for her expenses. One time, Ms. Malik's supervisor at Uber, Lindsay Owyand, informed Ms. Malik that she needed to ask RTA to reimburse her. Ms. Malik asked her contact at RTA if she could obtain

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reimbursement for her expenses, and RTA told her she could not. As of April 12, 2021, Ms. Malik still has not been reimbursed for these costs. Accordingly, Ms. Malik is entitled to reimbursement for her expenses, interest, and attorneys' fees.

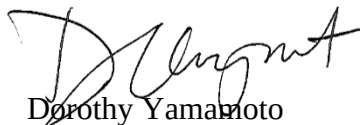
Violation of San Francisco's Administrative Code 12W.3

San Francisco requires employers to provide employees with paid sick leave that accrues as of her first day of employment at a rate of 1 hour of paid sick leave for every 30 hours of work. SF Code 12W.3. Any person aggrieved by a violation of this ordinance "shall be entitled to such legal or equitable relief as may be appropriate to remedy the violation including, but not limited to, reinstatement, back pay, the payment of any sick leave unlawfully withheld, the payment of an additional sum as liquidated damages in the amount of \$50.00 to each employee or person whose rights under this Chapter were violated for each hour or portion thereof that the violation occurred or continued, plus, where the employer has unlawfully withheld paid sick leave to an employee, the dollar amount of paid sick leave withheld from the employee multiplied by three; or \$250.00, whichever amount is greater; and reinstatement in employment and/or injunctive relief; and, further, shall be awarded reasonable attorneys' fees and costs." SF Code 12W.8(c).

Uber and RTA failed to comply with San Francisco's ordinance by not allowing Ms. Soha to accrue paid sick leave until 90 days after her first day of employment. Accordingly, Uber and RTA are jointly and severally liable to Ms. Malik for penalties, reinstatement, backpay, payment of sick leave withheld, and reasonable attorneys' fees and costs.

Thank you for your attention to this matter.

Sincerely,


Dorothy Yamamoto
Michael Yamamoto LLP

Enclosures: