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Four Embarcadero Center, Suite 3900
San Francisco, CA 9411

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

April 14, 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: Yahor Zgurski and Maksim Hancharuk

Dear Mr. Lanier,

As you recall in January 4, 2016, our office served the LWDA with the Notice of Violations, informing the LWDA about our office's intention to represent Alexander Kazakov and Uladzimir Tabola in a wage-and-hour action Uber Technologies, Inc. (dba "Uber"), Rasier, LLC and Rasier-CA, LLC ("Employer" or "Uber") pursuant to California Labor Code Section 2699, *et. seq.* From January 4, 2016 to April 14, 2016, Uber did not take any remedial action and the LWDA did not intervene to investigate the claims. Accordingly, Kazakov and Tabola filed a representative action¹ under the Labor Code section 2699.3(a)(2)(C), seeking to represent all drivers who provided transportation services for Uber within the San Francisco territory during the applicable PAGA period (collectively "SF Drivers") ("PAGA Action").

¹ *Tabola, et. al. v. Uber Technologies, Inc., et. al.* (San Francisco Superior Court - CGC-16-550992)

There are two other former Uber drivers, Yahor Zgurski and Maksim Hancharuk (collectively "Claimants"), who also would like to inform the LWDA and Uber about violations identical to those alleged in Kazakov and Tabola's January 4, 2016's letter.

The purpose of this letter is to preserve Yahor Zgurski and Maksim Hancharuk's right to serve as PAGA representatives of SF Drivers under Labor Code sections 2698 *et seq.* in the event Kazakov and Tabola are found to be not aggrieved employees of Uber and are not permitted to be PAGA representatives of SF Drivers, or any other reasons that may prevent Kazakov and Tabola from pursuing the PAGA action.

I. FACTUAL STATEMENT

The Employer owns and operates a transportation company "Uber" that provides transportation services to the general public in California. From about January 2014 through December 2015 ("Employment Period"), the Employer employed Yahor Zgurski as a driver. Maksim Hancharuk's Employment Period with the Employer started in August 2014 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.² 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

² 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.

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.

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.

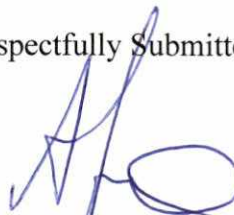
It is a custom in the transportation industry for the passengers to leave 10-20% of the total fare amount as gratuities/tips to a driver. Uber represented to its passengers that the Fare already included a gratuity and the passengers were not required to tip their drivers. However, these collected gratuities 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.

David M. Lanier,
April 14, 2016
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David M. Lanier,
California Labor and Workforce Development Agency
1515 Clay Street, Ste. 801
Oakland, CA 94612

Cert. Mail (7014 2870 0001 3428 0375)

Uber Technologies, Inc. (dba "Uber") and Rasier-CA, LLC
1455 Market St, 4th Floor,
San Francisco, CA 94103

KLEIN LAW GROUP
Four Embarcadero Center, Suite 3950
San Francisco, CA 94111

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



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