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VIA ONLINE FILING

Labor and Workforce Development Agency
Department of Industrial Relations

Re: Labor Code Violations Committed by Uber Technologies, Inc.

Dear Labor and Workforce Development Agency:

I write pursuant to California Labor Code section 2699.3 to notify you of the Labor Code violations committed by Uber Technologies, Inc. (“Uber”) against my client Charles James and all other Uber employees paid at least in part by commission, defined under Labor Code section 204.1 as compensation paid to any person for services rendered in the sale of such employer’s property or services and based proportionately upon the amount or value thereof.

Uber is a Delaware Corporation with its principal place of business in San Francisco, California that provides a ridesharing and food delivery platform. Uber for Business (“U4B”) is a division of Uber that sells contracts to businesses to provide ridesharing and food delivery to their employees and customers. U4B has four distinct segments: small and medium size businesses (< 1,000 employees), Mid-Market (1,000 – 5,000 employees), Enterprise (>5,000 employees), and Strategic (targeted accounts with the potential to spend more than \$10 million annually).

Mr. James is a California resident who worked for Uber as a Senior Mid-Market Account Executive in California from October 2020 to December 2022 in U4B division. His primary duties were to identify and close new sales opportunities that would result in increased Uber usage by businesses. As compensation for his work, Uber paid Mr. James a base salary plus a commission. The plans in effect during Mr. James’ tenure include the UBER for Business Sales Incentive Plan effective July 1, 2019, and the UBER for Business Sales Incentive Plan effective January 1, 2022. These plans are enclosed with this letter as samples.

There are approximately 100 other account executives within U4B that were all subject to the same commission plans who have experienced the same Labor Code violations as Mr. James.

I am informed and believe that there are other divisions within Uber beyond U4B where employees are paid at least in part by commissions as defined in Labor Code section 204.1. Such employees are readily identified through Uber’s records and systems relating to sales compensation.

Labor Code Violations

A. Labor Code section 2751

Labor Code section 2751, subdivision (a), provides that:

[w]henever an employer enters into a contract of employment with an employee for services to be rendered within this state and the contemplated method of payment of the employee involves commissions, the contract shall be in writing and shall set forth the method by which the commissions shall be computed and paid.

The purpose of this requirement is to protect employees whose compensation includes commissions who otherwise would be vulnerable to employer manipulations and obfuscations regarding their compensation. See *Lett v. Paymentech, Inc.*, 81 F.Supp.2d 992, 994 (N.D. Cal. 1999).

Subdivision (b) of section 2751 provides: “The employer shall give a signed copy of the contract to every employee who is a party thereto and shall obtain a signed receipt for the contract from each employee.”

Uber, however, has systematically failed—and continues to systematically fail—to comply with these requirements.

To wit, the relevant incentive plan agreements state that the amount of the variable incentive compensation (“VIC”) that a participant can earn if the participant fully achieves his or her assigned quotas “shall be communicated to a Participant in a separate Individual Plan Participant Details and Acknowledgement Forms, along with his/her assigned territories and quotas.” However, Uber failed to provide the Individual Plan Participant Details to the aggrieved employees before, during, or after seeking employee signatures on the general incentive plan terms. By their own terms, the incentive plan agreements are incomplete without these Individual Plan Participant Details. Uber therefore failed to provide and obtain commission contracts setting forth the method of computing commissions in violation of section 2751(a).

Moreover, Uber failed to provide and collect signed “acknowledgment forms” from the aggrieved employees. This violates section 2751(b).

These individual plan participant details and acknowledgment forms are material components of the incentive plans that had to be disclosed to the aggrieved employees before they rendered their service to Uber. Accordingly, it was impossible for Mr. James and the other aggrieved employees to determine, at time of signing the incentive plan agreements, how their commissions were to be computed and paid absent such details. Uber, therefore, has violated Labor Code section 2751.

B. Labor Code sections 232 and 232.5

Labor Code sections 232 and 232.5 prohibit employers from requiring as a condition of employment that employees refrain from disclosing the amount of his or her wages as well as the employer's working conditions. (Lab. Code, § 232, subd. (a); 232.5, subd. (a).)

Despite this prohibition, Uber required Mr. James as well as the other aggrieved employees to execute a confidentiality agreement as a condition of employment that mandates that they not disclose any confidential information. (See Offer Letter at p. 3 [“This offer and your commencement of employment with the Company are contingent upon the execution, and delivery to an officer of the Company, of the Company's Confidential Information and Invention Assignment Agreement.”].) This agreement ostensibly includes the 2022 commission plan that is marked as “privileged and confidential.” Uber, therefore, has violated Labor Code sections 232 and 232.5 by binding Mr. James and the other aggrieved employees to confidentiality agreements that precluded Mr. James and the other aggrieved employees from disclosing their wages and working conditions.

C. Labor Code sections 201 and 204

Labor Code section 201 requires that an employer immediately pay all wages earned upon discharge. Labor Code section 204 requires that employers promptly pay their employees the wages that are earned.

Despite these requirements, Uber refused to pay Mr. James the commissions that he had earned in the fourth quarter prior to his discharge. Uber's basis for this refusal was the fact that one of the conditions precedent to paying commissions under Uber's plans is that the participant continue his or her employment through the end of the quarter for which the commissions are paid.

Commissions in California, however, are earned when they can be reasonably calculated. (DLSE Opinion Letter 2002.12.09-2 (Dec. 9, 2002).) Uber's condition that a commission is only earned on the satisfaction of all criteria as defined in the plan documents, including continuing employment,¹ violates California law. In this connection, there is nothing about continuing employment that is reasonably necessary for calculating the commission; nor is there anything set forth in the plans that precludes the commissions from being reasonably calculated if the employee is discharged before the end of the quarter. Uber therefore has violated section 201 and 204 by requiring Mr. James and other aggrieved employees to forfeit the commissions in the quarter in which they quit or were terminated.

¹ See, e.g., the 2019 Plan at p. 2, and 2022 Plan at p. 2.

D. Labor Code section 432.5

Labor Code section 432.5 prohibits Uber from requiring any employee or applicant for employment to agree, in writing, to any term or condition which is known by Uber to be prohibited by law.

In the present case, Uber knowingly required employees to agree in writing to terms and conditions of employment relating to purportedly confidential and proprietary information that Uber knew or should have known it could not; specifically, the confidentiality regarding wages and working conditions in violation of Labor Code section 432.5.

Conclusion

Uber has violated the Labor Code. The LWDA, therefore, should investigate Uber's practices. Mr. James intends to recover civil penalties for all of the violations above should you decline to investigate.

As a result of the past, present, and ongoing violations alleged herein, Mr. James provides this notice to the LWDA and Uber pursuant to Labor Code section 2699.3. Mr. James intends to recover civil penalties and attorneys' fees for all violations of the Labor Code alleged herein within a year before the date of this notice.

Very truly yours,



Dan L. Gildor

Service List

Via Certified Mail:

Uber Technologies, Inc.
c/o CT Corporation System
28 Liberty Street
New York, NY 10005

Enclosures