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PAGA Notice of Claim
Maryanne LeBlanc v. Lyft, Inc.
(Cal. Labor Code §§ 2698-2699.5)

July 16, 2018

Labor & Workforce Development Agency
Attn: PAGA Administrator
1515 Clay Street, Ste. 801
Oakland, CA 94612
PAGA@dir.ca.gov

To DIR by electronic transmission

Lyft, Inc.
548 Market Street
Suite 68514
San Francisco, CA 94104

To Lyft, Inc. by certified mail

Re: NOTICE OF INTENT TO BRING PAGA REPRESENTATIVE ACTION
Maryanne LeBlanc, Claimant
California Private Attorneys General Act
Claims against Lyft, Inc. and related companies

Dear PAGA Administrator:

My firm represents Maryanne LeBlanc in connection with her claims pursuant to the California Labor Code against Lyft, Inc. ("Lyft").

In compliance with the administrative procedures required by California Labor Code section 2699.3, this is Maryanne LeBlanc's notice of intent to bring claims under the California Private Attorneys General Act ("PAGA"). These claims are brought by Maryanne LeBlanc on behalf of the State of California, and all current and former employee Lyft drivers who operated in California and have been harmed by Lyft's violations of the California Labor Code as described below.[1]

[1] Before bringing a PAGA claim, a plaintiff must comply with administrative procedures outlined in section 2699.3, requiring notice to the LWDA and allowing the employer an opportunity to cure unspecified violations not listed in section 2699.5. Recently, the California Supreme Court explained that: "[a]s a condition of suit, an aggrieved employee acting on behalf of the state and other current or former

Background Facts

Maryanne LeBlanc, [redacted] is well-experienced as a sales representative. She understands business, sales, and distribution well. She is, and has been, at all times mentioned herein, a citizen of the United States and resident of Los Angeles in the State of California. Beginning in September, 2017, Maryanne began to earn her living mainly in the Gig Economy as a full-time TNC driver (Transportation Network Company); specifically, she drove for Lyft, Inc. ("Lyft"). On June 22, 2018 she was "deactivated" by Lyft (terminated) for complaining about problems with her damaged "Hertz Express" rented car, after driving for Lyft for approximately nine (9) months.

Maryanne set her own hours, earning money by responding quickly to ride requests communicated to her by Lyft over the Lyft App network and transporting the passenger who requested the ride. However, Lyft sends the ride referrals, sets the rates, determines the ultimate fare and how the fare is shared between Lyft and the driver, and exerts numerous other methods of great control over its drivers' work. Lyft collected the fare, extracted a varying collection of commissions and fees, and paid the driver the remainder. Like all Lyft drivers, Maryanne had no choice in fare pricing.

Maryanne purchased and provided her own car and car insurance for her work for Lyft, and she purchased her own gasoline for the work. She was required to pay her own automobile maintenance and, after her car depreciated in value and wore out, she had to purchase, lease, or rent another car. As with all other Lyft drivers, Lyft never reimbursed Maryanne for any of these expenses.

Legal Context – Persistent Misclassification of Employee as Independent Contractor:
The viability of the claims asserted in this Notice depend upon the classification of Maryanne and other Lyft drivers as employees, for the purpose of determining applicability of the Labor Code provisions listed herein.

Under both the economic realities test of *Borello* and the ABC test of *Dynamex*, Maryanne and similarly situated Lyft drivers are employees, and this definition applies for the purpose of determining the applicability of the Labor Code provisions listed herein. *See Dynamex*

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employees must provide notice to the employer and the responsible state agency 'of the specific provisions of [the Labor Code] alleged to have been violated, including the facts and theories to support the alleged violation.'" *Williams v. Superior Court*, 3 Cal.5th 531, 545 (2017). The evident purpose of the notice requirement is to afford the LWDA the opportunity to decide whether to allocate scarce resources to an investigation, a decision better made with knowledge of the allegations an aggrieved employee is making and any basis for those allegations. Notice to the employer serves the purpose of allowing the employer to submit a response to the agency, again thereby promoting an informed agency decision as to whether to allocate resources toward an investigation. *Id.* at 545-46. The civil penalties available under PAGA are in addition to any other remedies available under state or federal law. Any civil penalty recovered is paid 75 percent to the LWDA and 25 percent to aggrieved employees.

Operations W., Inc. v. Superior Court, No. S222732, 2018 WL 1999120 (Cal., Apr. 30, 2018); *S.G. Borello & Sons, Inc. v. Department of Industrial Relations*, 48 Cal.3d 341 (1989).

The courts have yet to determine whether the *Dynamex* ABC test shall be applied to Labor Code violations and retroactively. If the *Dynamex* test were applied, Lyft would be unable to satisfy at least one, and probably all three, of the three prongs of the ABC ("and") test; and, therefore, Lyft drivers would be classified as employees. However, reference to the ABC test is not necessary. Maryanne and other Lyft drivers are employees of Lyft, Inc. under the *Borello* test, as has been determined by the Labor Commissioner. *See Berwick v. Uber Technologies, Inc.*, State Case Number 11-46739 EK (San Francisco, June 4, 2015) (attached).

As a result, Lyft is liable to Maryanne LeBlanc and all present and former Lyft drivers for violations of the Labor Code provisions listed below.

Facts Regarding Employment

Maryanne LeBlanc ("Claimant") is, and has been, at all times mentioned herein, a citizen and resident of the State of California. Beginning in September 2017, Maryanne earned income in the Gig Economy as a TNC driver (Transportation Network Company); specifically, she drove for Lyft, Inc. ("Lyft").

Maryanne lives in Los Angeles County, and began her daily driving for Lyft from that location. She set her own hours. She earned money by responding quickly to ride requests communicated to her by Lyft over the Lyft App network and by transporting the passenger who has requested the ride. However, Lyft sends the ride referrals, sets the rates, determines the ultimate fare and how the fare is shared between Lyft and the driver. Lyft collected the fare, extracting a varying collection of commissions and fees, and paid Maryanne the remainder. Maryanne had no choice in pricing.

Fare prices for the rider are determined by Lyft based on distance, time, base fee for ride type, premium times and service fees. Ride charges are calculated before the ride but could change if the time increases. In January 2016, Lyft began decreasing fare rates for all Lyft drivers by raising its basic commission from 20% to 25%. From the outset, Lyft took an additional fee from the rider while informing the driver of a lower fare paid by the rider.

Labor

Maryanne gave over 2,000 Lyft rides over a period of nine months. In general, she drove for Lyft 50 hours per week in addition to her work for Disney, driving 7 days a week. However, Lyft and Uber consider the driver "at work" only during the time a paying passenger is in the car. Thus, if Maryanne was in the car, driving 20 minutes to pick up a passenger, Lyft considered this her own time and that she was not "at work" until the passenger is in the car. Her time without a passenger in the car constituted about one-half of the workday.

Gross Income

Her typical and average gross weekly income, paid to her in a check from Lyft, was $650 per week for the 50-hour week.

Expenses
Maryanne rented a car through Hertz Express, a service that contracts with Lyft. She paid $230 per week for the rental and also paid for gasoline, at about $130 per week, for a total weekly expense of $365 per week. In all, her car expense was very nearly equal to the IRS mileage rate of 54.5 cents per mile. **Her total expenses for approximately 9 months is approximately $13,000.**

Net Income
Thus, after deducting her expenses Maryanne netted approximately $300 per week. At 50 hours per week this equates to **$6 per hour**. However, Maryanne did not earn even these low wages during every hour she worked.

Unpaid Wages
Minimum wages and overtime wages not paid, and any other wages promised but withheld or not yet paid, constitute unpaid wages. As described below, Lyft has withheld money that was owed to Maryanne and other Lyft drivers under the employment contract. These amounts constitute unpaid wages.

Late-paid Wages
Minimum wages and overtime wages not paid, and any other wages promised but withheld or not yet paid will constitute late-paid wages when paid.

LABOR CODE VIOLATIONS

Lyft has violated each of the following Labor Code sections with respect to Maryanne's employment as a Lyft driver.[2]

Labor Code §226.8: Misclassification of employees
Lyft previously has intentionally misclassified its drivers as independent contractors. Since the June 4, 2015 *Berwick* ruling, and also since the April 30, 2018 *Dynamex* decision, Lyft has continued to knowingly and intentionally misclassify its drivers, including Maryanne, as independent contractors.

Maryanne qualifies under the ABC Test factors and under the *Borello* test as an employee. Lyft drivers as a group also are properly classified as employees. Lyft, however, misclassifies Maryanne and other Lyft drivers as independent contractors. By misclassifying its driver employees as independent contractors, Lyft has violated, and continues to violate Labor Code §226.8.

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[2] Under the California Private Attorneys General Act (Cal. Labor Code §§ 2698-2699.5), an "aggrieved employee" may file a representative action "on behalf of himself or herself and other current and former employees" and the State of California to recover civil penalties for violations of the Labor Code that otherwise would be assessed and collected by the LWDA. For all provisions of the Labor Code for which a civil penalty is not specified, PAGA creates a default civil penalty under California Labor Code section 2699(f)).

The penalties for misclassification are provided by Labor Code §2699(f) or as otherwise provided under the Labor Code.

Labor Code § 2802: Reimbursement of expenses
Lyft unlawfully requires its drivers to provide their own cars, pay for gas, insurance and registration, and maintain their cars. This forces Lyft drivers to purchase cars and pay finance charges on loans or leases, pay for gasoline, commercial insurance, registration, and maintenance expenses. The typical Lyft driver sustains an annual expense of $10,000 to $50,000, for which they are not reimbursed, which drastically reduces their annual living wage, generally to below minimum wage, as in the case of Maryanne LeBlanc.

Maryanne and other Lyft drivers are not reimbursed for these expenses by Lyft. By failing to indemnify and reimburse its driver employees, including Maryanne, for necessary expenditures incurred by drivers in direct consequence of the discharge of their duties as Lyft drivers, or in direct consequence of the discharge of their work duties for Lyft, Lyft has violated, and continues to violate Labor Code §2802.[3]

Each driver, including Maryanne, is entitled to reimbursement of their full, necessary car expense. This includes the purchase price of the car and finance charges, or the lease cost. In the case of Maryanne and other drivers who rent, the full rental cost, including sales tax, is substituted for the purchase or lease cost reimbursement.

Other costs for Maryanne and all Lyft drivers include taxes, insurance, maintenance, and registration, gasoline, commercial insurance, registration, and maintenance expenses resulting from all of her driving for Lyft; not merely for the miles driven with a passenger in the car.

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[3] Section 2802 provides as follows:
(a) 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, or of his or her obedience to the directions of the employer, even though unlawful, unless the employee, at the time of obeying the directions, believed them to be unlawful.
(b) All awards made by a court or by the Division of Labor Standards Enforcement for reimbursement of necessary expenditures under this section shall carry **interest** at the same rate as judgments in civil actions. Interest shall accrue from the date on which the employee incurred the necessary expenditure or loss.
(c) For purposes of this section, the term "necessary expenditures or losses" shall include all reasonable costs, including, but not limited to, attorney's fees incurred by the employee enforcing the rights granted by this section.
(d) In addition to recovery of penalties under this section in a court action or proceedings pursuant to Section 98, the commissioner may issue a citation against an employer or other person acting on behalf of the employer who violates reimbursement obligations for an amount determined to be due to an employee under this section. The procedures for issuing, contesting, and enforcing judgments for citations or civil penalties issued by the commissioner shall be the same as those set forth in Section 1197.1. Amounts recovered pursuant to this section shall be paid to the affected employee.
(*Amended by Stats. 2015, Ch. 783, Sec. 4. (AB 970) Effective January 1, 2016.*)

Unpaid and Underpaid Wages

In its advertising and driver contracts, Lyft represents that drivers, including Maryanne, will receive payment for each ride after Lyft deducts 25% (20% prior to January 2016) of the rider's payments. The contract provides that service fees may also be deducted, but this language lies in the same sentence with tolls and parking fees, leading the driver to believe that "service fees" means fees of those other than Lyft. At the very least, this passage is ambiguous, and nowhere in the contract is the amount of such a service fee stated; nor is it made clear who is paid the service fee. Only by searching online and finding a rate schedule, not in the contract, could the Lyft driver discover and clearly understand that the service fee is a charge of Lyft, Inc. rather than a pass-through charge like parking and toll fees. As ambiguities in a contract are construed against the drafter, and as Lyft drafted the contract, the ambiguity must be construed against Lyft and in favor of the driver. Thus, the service fees Lyft retains from the driver's earnings are unlawfully retained and belong to the driver. These amounts constitute unpaid wages, entitling the drivers to the wages plus interest and 25% of applicable penalties, and entitling the State of California to 75% of the penalties. The breach of contract is also established by breach of the implied covenant of good faith and fair dealing.

Under the pre-April 2018 contract, Lyft represented to Maryanne that Lyft would deduct 25% of the riders' fares, whereas in fact the records show that Lyft has been deducting from 30-48% of the fares paid by riders, significantly lowering the expected earnings of Maryanne and other Lyft drivers.

> **Labor Code §558: Violation regarding hours and days of work:** Under the plain terms of §558, an aggrieved employee is entitled to recover civil penalties in the amount of underpaid wages. In failing to pay full wages to its drivers, including Maryanne, Lyft has violated, and continues to violate Labor Code §558. Section 558 provides its own remedies. Under §558, claims for underpaid wages are included in civil penalties under the PAGA. See the California decision in *Thurman v. Bayshore Transit Management*, 203 Cal. App. 4th 1112 (2012) which expressly provides that civil penalties under §558 i**ncluding claims for underpaid wages** are cognizable under PAGA. The finding was confirmed in California Fourth District in *Lawson v. ZB, N.A.*, 18 Cal. App. 5th 705 (Cal. Ct. App. 4th Dist. Dec. 19, 2017).
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> **Labor Code § 216: Failure to Pay All Payments Due[4]** Under § 216 also, penalties are provided by §225.5 where there are underpaid wages. In failing to pay full wages to its

[4] Labor Code §216 provides: 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.
(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.
(Amended by Stats. 1959, Ch. 1358.)

drivers, including Maryanne, Lyft has violated, and continues to violate Labor Code §216, establishing the basis for penalties under §225.5.

Labor Code §§1194, 1197 and 1197.1: Payment of less than minimum wage.
Depending upon the expense reimbursement Maryanne and other Lyft drivers receive, they may nevertheless earn less than minimum wage. The California minimum wage is currently $11.00/hour. Lyft drivers are making less than that amount after Lyft's deductions from the fares paid by the riders. By failing to pay its employee drivers at least the minimum wage required by California law for each and every hour worked, and premium overtime compensation for hours worked in excess of 8 in a day and/or 40 in a week, Lyft has violated, and continues to violate Labor Code §§1194, 1197 and 1197.1.

Labor Code §510: Failure to pay premium overtime wage
Depending upon the expense reimbursement Maryanne and other Lyft drivers receive, they also may nevertheless be entitled to overtime and double-time wages. By failing to pay a premium overtime wage to drivers who work, and have worked, more than 8 hours a day, and/or 40 hours in a week, Lyft has violated, and continues to violate Labor Code §510.

PENALTIES

- Cal. Labor Code §558 provides its own penalty.
- Cal. Labor Code §225.5 provides the penalties for violation of sections 216.
- Cal. Labor Code §2699(f) provides the penalties for violation of sections that do not provide their own penalties.

California Labor Code §225.5 provides as follows:

In addition to, and entirely independent and apart from, any other penalty provided in this article, every person who unlawfully withholds wages due any employee in violation of §§212, **216**, 221, 222, or 223 shall be subject to a civil penalty as follows:

(a) For any initial violation, one hundred dollars ($100) for each failure to pay each employee.

(b) 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.[5]

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[5] Section 225.5 continues: The penalty shall be recovered by the Labor Commissioner as part of a hearing held to recover unpaid wages and penalties or in an independent civil action. The action shall be brought in the name of the people of the State of California and the Labor Commissioner and attorneys thereof may proceed and act for and on behalf of the people in bringing the action. Twelve and one-half percent of the penalty recovered shall be paid into a fund within the Labor and Workforce Development Agency dedicated to educating employers about state labor laws, and the remainder shall be paid into the State Treasury to the credit of the General Fund.
(*Amended by Stats. 2003, Ch. 329, Sec. 2. Effective January 1, 2004.*)

California Labor Code §2699(f) provides civil penalties for the violation of any provision of the California Labor Code which does not otherwise specifically provide for a penalty in the following amounts: "one hundred 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."

Conclusion

Pursuant to Government Code §910(f), the amount of compensatory and other damages claimed exceeds $10,000 and will lie with the unlimited jurisdiction of the Supreme Court. Maryanne LeBlanc claims and seeks to recover herein damages, attorney's fees, expert fees, and costs as provided by law. Lyft has violated each of the above California Labor Code sections with respect to Maryanne LeBlanc as an employee driver. Maryanne LeBlanc, as private attorney general, is therefore entitled to recover, and seeks herein, the applicable statutory civil penalties. The State of California is further entitled to recover civil penalties on behalf of the People.

Sincerely,

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Larry Peluso

cc: Department of Industrial Relations, Accounting Unit (with $75 check): to
455 Golden Gate Avenue (10th Floor), San Francisco, CA 94102