Stephen Noel Ilg, Esq.
silg@ilglegal.com
Direct: (415) 340-2863

Tel: (415) 580-2574
Fax: (415) 735-3454
Web: ilglegal.com

ILG Legal Office, PC

156 S. Spruce Ave, Unit 206A, South San Francisco, CA 94080

February 15, 2024

VIA ONLINE SUBMISSION

Labor and Workforce Development Agency
Department of Industrial Relations
Accounting Unit
455 Golden Gate Avenue, 10th Floor
San Francisco, CA 94102

VIA CERTIFIED MAIL

Uber Technologies, Inc.
1515 3RD STREET
SAN FRANCISCO, CA 94158

Uber Technologies, Inc.
c/o CT Corporation System
330 N BRAND Blvd Ste 700
GLENDALE, CA 91203

Dear Sir or Madam:

This correspondence shall serve as notice to both the California Labor and Workforce Development Agency, and employer Uber Technologies, Inc. ("Employer" or "Defendant") that Complainant James Marcmin ("Plaintiff", "Employee", or "Complainant") is seeking civil penalties pursuant to California Labor Code § 2698 *et seq.*, the Private Attorney General Act of 2004 ("PAGA"), against Employer. Plaintiff seeks these penalties on behalf of himself/herself/themselves and on behalf of other similarly situated and similarly aggrieved workers based on Plaintiff's belief that Employer's other workers were also subject to the violations described herein.

The brief description of facts herein is not intended to be exhaustive of the facts that support the claims herein; rather, the facts stated herein serve to put Employer and the Labor and Workforce Development Agency on notice.

The PAGA allows an individual worker to recover penalties that would normally go to the State for violations of California Labor Law. Specifically, Mr. Marcmin seeks to enforce such penalties for violations against himself and all other aggrieved workers of Employer. Mr. Marcmin is seeking the recovery of attorney fees to the extent permitted by California Labor Code § 2698 *et seq.*. Specifically, Plaintiff alleges that Employer violated several California

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Labor Code sections, as detailed herein. As such, Plaintiff alleges that Employer owes penalties pursuant to the provisions described herein and PAGA.

Plaintiff worked for Employer at its San Francisco, California location. Employer was and is registered as a business entity to do business in the State of California.

Plaintiff brings these claims on behalf of all allegedly exempt and non-exempt employees of Employer who worked in California.

FACTUAL BACKGROUND

Mr. Marcmin was employed by Uber from April 18, 2022 until February 7, 2024. He was first hired as Senior Enterprise Client Partner for Uber Advertising and was quickly promoted to Enterprise Team Lead for Uber Advertising. Mr. Marcmin's performance has consistently exceeded expectations and he was promoted in less than one year of employment.

Mr. Marcmin was out on paternity leave from May 30 to October 2, 2023. He returned to work on October 3, 2023.

Plaintiff also recently participated in a series of meetings with Employee Relations (ER), at their invitation, as part of a racial discrimination complaint made by one of Plaintiff's subordinates against Plaintiff's manager Jess Shuraleff (hereinafter "Ms. Shuraleff"). The meetings took place on October 26 and November 1, 2023. During these meetings, Plaintiff provided relevant information which was unfavorable to Ms. Shuraleff and made the claim of racial discrimination more likely, including but not limited to the fact that the subordinate in question was recently placed on a formal coaching plan, upon Ms. Shuraleff's request, despite having minimal performance issues. Plaintiff had opposed placing this subordinate on a plan, but Ms. Shuraleff insisted. In fact, Ms. Shuraleff had initially requested that the subordinate be placed on a more serious Performance Improvement Plan (PIP), which was denied for lack of evidence when presented to ER by Plaintiff at the request of Ms. Shuraleff. Plaintiff also noticed that Ms. Shuraleff arbitrarily approved a significantly higher Q4 sales quota of $16,477,450 for this subordinate (that also rolls up to the Plaintiff's total quota) when employees on another team tied to the exact same accounts had their quota maintained at $11,234,092, resulting in a $5,243,358 higher quota for Plaintiff and Plaintiff's subordinate. The decision was later agreed to be reversed by the Head of Sales Operations for Uber Advertising, but Ms. Shuraleff vetoed the reversal and doubled down.

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On November 15, 2023, a couple of weeks only after the said meetings, Ms. Shuraleff unexpectedly gave Plaintiff a phone call while he was on vacation to inform him that the company had decided to relocate his position to Dallas, Chicago, or New York. The next day, Atlanta was also inexplicably added to the list. The reason provided was that Plaintiff needed to be "closer to internal and external partners." Ms. Shuraleff indicated that if Plaintiff didn't want to relocate, his only other option would be severance. He was given until November 27 to make a decision. On November 16, 2023, Ms. Shuraleff's decision was broadly communicated to over 200 internal partners across the organization and was apparently ratified by Drew Mitchell, Uber's Global Head of Ad Sales and Tricia Mullinax, Director, People.

In addition to the relocation decision, Ms. Shuraleff decided to have Plaintiff report to a peer who joined her team after he did despite Plaintiff's excellent performance. This peer has the same job title as Plaintiff, with a similar account and book of business as Mr. Marcmin. This would make Mr. Marcmin the only manager on the team who would not report directly to Ms. Shuraleff. This change is set to take effect after Mr. Marcmin's forced relocation.

Ms. Shuraleff knows that Plaintiff is a new father (owing to his recent paternity leave) and could reasonably foresee how unreasonably burdensome it would be for him and his husband to move out of state on such short notice. In fact, if Plaintiff moved his family out-of-state, Plaintiff's husband would lose his own job and the family would have to live on a single income.

Ms. Shuraleff's justification that the relocation was necessary for better proximity to internal and external partners is not credible for the following reasons:

- On November 6, 2023, a week before Ms. Shuraleff communicated her decision to relocate Plaintiff and change the reporting structure, Plaintiff had a one-on-one career and performance conversation with Ms. Shuraleff during which there was no mention of a need for him to relocate or report to a peer. In fact, Ms. Shuraleff told Plaintiff: "You are doing great. You have what it takes and the skills necessary to get promoted."

- Before Ms. Shuraleff made the decision to relocate Plaintiff, Plaintiff had asked if they should hire someone in Dallas and Ms. Shuraleff responded it wouldn't make sense to hire in Dallas due to limited external partner presence in that area (with only one major client in the area). Dallas is now inexplicably one of the locations being offered to Plaintiff for greater proximity to internal and external partners.

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- The need to be physically closer to internal and external partners is unclear given the fact that there are several members of the team not currently located in these target cities who are not impacted by this decision, including Ms. Shuraleff herself, who is based remotely in Boston, a city devoid of internal or external partners.

- It is unclear how relocation would serve the purpose of greater proximity to internal partners specifically, as Plaintiff already lives in San Francisco, where the company is headquartered. Plaintiff meets with various key internal stakeholders in-person on a weekly basis in the San Francisco office. There are over 20 people based in San Francisco on the Advertising Team directly, as well as several additional key stakeholders on key cross-functional teams.

- The mere variety of locations on offer does not support the existence of a clearly articulated need or strategy, not to mention Atlanta being added as a potential location overnight.

Plaintiff sent an email to ER on November 21 to report retaliation against him and also to add facts relevant to the ongoing racial discrimination investigation of Ms. Shuraleff. ER subsequently scheduled two follow-up meetings with him on November 29 and December 1, 2023. The December 1st meeting with Senior ER Partner Emily Ralph was particularly hostile and came after Ms. Ralph had met with Global Head of Ad Sales Drew Mitchell that morning prior to meeting with Plaintiff.

Generally speaking, Ms. Shuraleff shows very little compassion for her team members. When Ms. Shuraleff asked Plaintiff to terminate or put employees on a PIP, she would routinely use egregious language that suggests she views team members as mere objects. For instance, when discussing a particular employee's severance agreement with Plaintiff, Ms. Shuraleff said "You just need to push her through and make sure she leaves." These kinds of comments may not be legally actionable on their own, but they suggest a pattern of disregard for employee well-being and make any claim of discrimination, harassment or retaliation that much more likely.

Mr. Marcmin cooperated in good faith with a racial discrimination investigation and made good-faith reports of retaliation and racial discrimination. Our client has credible information supporting a showing that Ms. Shuraleff's decision to put an employee of color on a formal coaching plan was motivated by unlawful bias, including but not limited to an offensive statement she made about how strange it was for the Little Mermaid to be played by a black actress in a feature film released in 2023.

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Instead of investigating the facts rationally and welcoming relevant information from exemplary employees who oppose retaliation and racial discrimination in good faith, the company chooses to intimidate them. The company not only retaliated against Plaintiff for participating as a witness in a racial discrimination investigation but is now responding to his report of retaliation by creating an even more hostile work environment for him and other employees who face, report, and otherwise oppose racial discrimination. The company ended up terminating Mr. Marcmin with a separation date of February 7, 2024.

<u>Timeline</u>

- From May 30 to October 3, 2023, Mr. Marcmin was out on paternity leave.

- On October 26 and November 1, 2023, Plaintiff participated in a series of meetings with ER as part of a racial discrimination investigation against Ms. Shuraleff.

- On November 6, 2023, Plaintiff had a one-on-one with Ms. Shuraleff during which there was no mention of a need for him to relocate or report to a peer. In fact, Ms. Shuraleff told Plaintiff: "You are doing great. You have what it takes and the skills necessary to be promoted."

- On November 9, 2023, it appears ER met with Ms. Shuraleff to discuss the information Plaintiff had shared with them as part of the ongoing racial discrimination investigation on October 26 and November 1, 2023.

- On November 15, 2023, Ms. Shuraleff interrupted Plaintiff's vacation to inform him of her decision to relocate his position and change the reporting structure.

- On November 16, 2023, Ms. Shuraleff rushes to announce her decision during a meeting that included Drew Mitchell, Global Head of Ad Sales. Later that day, she also sent emails informing over 200 internal stakeholders of her decision.

- On November 21, 2023, Plaintiff makes formal report of retaliation to ER over email and provides additional information relevant to the ongoing racial discrimination investigation.

- On November 29, 2023, Plaintiff provides additional details in support of his report during a meeting with ER. ER representative confirmed Plaintiff's concerns were legitimate.

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- On December 1, 2023, Plaintiff attends another ER meeting, this time with Senior ER Partner Emily Ralph, during which he is asked to reiterate the same facts. ER partner attempted to intimidate Plaintiff and justify Ms. Shuraleff's decision.

- On December 4, 2023, Plaintiff experienced severe anxiety and chest pain while at the airport for a work trip and was admitted to the hospital. He was prescribed medication and will require frequent follow-ups according to his doctors. Plaintiff has been under a lot of stress as a result of the company's behavior and has experienced anxiety, depression, and difficulty sleeping for weeks, as documented by his therapist and doctors.

- On January 4, 2024, Defendant announced Plaintiff's termination, setting the separation date to February 7, 2024.

Plaintiff alleges that Employer violated the provisions detailed herein, and thus seeks to enforce civil penalties against Employer for these violations. The PAGA allows a private individual to recover civil penalties previously only recoverable by the State. Although some of the labor provisions referenced herein do not themselves provide the amount of any penalty, the PAGA states that for all provisions of the Labor Code for which no civil penalty is established, including but not limited to the provisions referenced herein the penalty shall be 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. Accordingly, these are the penalties Plaintiff seeks to enforce to the extent civil penalties are not already provided for in the Labor Code. If the Labor Code already provides penalties for particular violations, Plaintiff seeks those penalties.

In accordance with the notice and exhaustion procedures required under the PAGA, facts are described herein to support Plaintiff's allegation that Employer violated several provisions of the Labor Code, including but not necessarily limited to those cited herein.

Huff v. Securitas Security Services, Ca. Ct. App. 6th Dist., Division 7. Filed 5/34/18. Opinion by Justice Grover, H042852

- PAGA allows private individuals to pursue penalties for violations of the labor code. They do so on behalf themselves, and other employees affected by the violations. Without the requirements of class actions. PAGA relieves the overburdened Labor & Workforce Development Agency by allowing private enforcement of the Labor Code.
- In this case, the court decided that a PAGA plaintiff-employee who was affected by a single labor code violation could sue on behalf of employees affected by any and all labor

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code violations perpetrated by the same employer. This is true whether that PAGA plaintiff-employee was affected by those other violations or not.

RETALIATION CLAIM

Under California law, there is a fundamental and well-established public policy against discrimination, harassment or retaliation based on the fact that the employee has a protected characteristic or engaged in a protected activity. Said public policy is embodied in the Constitution of the State of California and California Labor Code sections 1102.5 (due to disclosure of employer's illegal activity), 98.6, 232 (due to disclosure of amount of wages), 232.5 (due to disclosure of working conditions) and other sections of the Labor Code. Adverse employment actions taken by an employer motivated by the fact that an employee has a protected characteristic are contrary to said public policy and are thus actionable under the common law of this state.

California Labor Code section 1102.5 provides "(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, to a person with authority over the employee, or to another employee who has authority to investigate, discover, or correct the violation or noncompliance, or from providing 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 or noncompliance with a state or federal rule or regulation; (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, to a person with authority over the employee or another employee who has the authority to investigate, discover, or correct the violation or noncompliance, or for providing 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; (c) An employer may not retaliate against an employee for refusing to participate in an activity that would result in a violation of state or federal statute, or a violation or noncompliance with a state or federal rule or regulation. (d) An employer may not retaliate against an employee for having exercised his or her rights under subdivision (a), (b), or (c) in any former employment; (e) A report made by an employee of a government agency to his or her employer is a disclosure of information to a government or law enforcement agency pursuant to subdivisions (a) and (b); (f) In addition to other penalties, an

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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; (g) This section does not apply to rules, regulations, or policies which implement, or to actions by Employer against employees who violate, the confidentiality of the lawyer-client privilege of Article 3 (commencing with Section 950), the physician-patient privilege of Article 6 (commencing with Section 990) of Chapter 4 of Division 8 of the Evidence Code, or trade secret information." Lab. Code § 1102.5.

California Labor Code sections 98.6 provides, "(a) A person shall not discharge an employee or in any manner discriminate, retaliate, or take any adverse action against any employee or applicant for employment because the employee or applicant engaged in any conduct delineated in this chapter [i.e. Labor Code §§ 79-107], including the conduct described in subdivision (k) of section 96, and Chapter 5 [i.e. Labor Code §§ 1101-1106] (commencing with section 1101) of Part 3 of Division 2, or because the employee or applicant for employment has filed a bona fide complaint or claim or instituted or caused to be instituted any proceeding under or relating to his or her rights that are under the jurisdiction of the Labor Commissioner, made a written or oral complaint to Court, or because the employee has initiated any action, or has testified or is about to testify in a proceeding pursuant to that section, or because of the exercise by the employee or applicant for employment on behalf of himself, herself, or others of any rights afforded him or her." Any person whose rights are violated according to Labor Code section 98.6(a) "shall be entitled to reinstatement and reimbursement for lost wages and work benefits caused by those acts of the employer." Lab. Code § 98.6(b)(1).

Uber Technologies, Inc. retaliated against Complainant in violation of public policy. Employer retaliated against Complainant because Complainant engaged in protected activity. Complainant is informed and believes, and based thereon, alleges that Employer's conduct, as described herein, was substantially motivated by Complainant's reporting of the actual and/or perceived illegal activity described herein. The conduct of Employer described herein above was outrageous and was executed with malice, fraud, and oppression, and with conscious disregard for Complainant's rights, and further, with the intent, design, and purpose of injuring Complainant.

With respect to all claims referenced herein, Complainant pursues these claims on behalf of himself and all other similarly situated workers at all of Employer's locations within the State of California. Complainant respectfully submits this correspondence to both the LWDA and to Employer, which shall serve as the notice required to both entities under California Labor Code § 2699.3(c).

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Respectfully Submitted,
ILG Legal Office, PC

Nicolas Jupillat

____
Nicolas Jupillat, Esq.

cc:

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1515 3RD STREET
SAN FRANCISCO, CA 94158

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c/o CT Corporation System
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