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11 *Counsel for Plaintiff and the Proposed Class*

12 **UNITED STATES DISTRICT COURT**
13 **NORTHERN DISTRICT OF CALIFORNIA**
14 **SAN FRANCISCO DIVISION**

15 D. BRUNNER, JR.,
16 Plaintiff
17 v.
18 LYFT, INC.,
19 Defendant.

Case No.

CLASS ACTION

**COMPLAINT FOR FEDERAL AND
STATE EMPLOYMENT LAW
VIOLATIONS;**

**CLAIMS FOR DAMAGES AND
INJUNCTIVE RELIEF;**

DEMAND FOR JURY TRIAL

1 Plaintiff Donald Brunner, Jr. (“Plaintiff”), by and through his undersigned attorneys,
2 alleges, on behalf of himself and all those similarly situated, as follows:

3 **SUMMARY OF CLAIMS**

4 1. Plaintiff is a driver for Defendant Lyft, Inc. (“Lyft” or “Defendant”). He brings
5 this action as a class action on behalf of himself and all other current and former Lyft drivers in
6 California, to recover lost wages, reimbursement of expenses, and other relief resulting from
7 Lyft’s willful decision to misclassify him and other drivers as independent contractors.

8 2. Plaintiff alleges that Lyft has violated and continues to violate the Fair Labor
9 Standards Act (“FLSA”), the California Labor Code, the California Industrial Welfare
10 Commission’s Wage Order 9-2001 (“Wage Orders”), and California’s Unfair Competition Law
11 (“UCL”), which protect Plaintiff and other drivers from being misclassified. These violations
12 include the failure to: (1) reimburse Plaintiff for his expenses, (2) pay overtime, (3) pay minimum
13 wage, (4) provide itemized wage statements, and (5) keep accurate payroll records.

14 3. Plaintiff brings his claims under the California Labor Code, Wage Order, and the
15 UCL, on behalf of all Lyft drivers who worked in California between July 2, 2016 through the
16 date final disposition of this action (the “Class”).

17 4. Plaintiff also brings claims under the FLSA, 29 U.S.C. §§ 201 *et seq.* and 29
18 U.S.C. § 216(b) on behalf of all Lyft drivers who worked in California between the period
19 beginning 3 years prior to the filing of this action through the date of its final disposition (the
20 “Collective”).

21 5. Like all Lyft drivers, Plaintiff was required to consent to Lyft’s Terms of Service
22 (“TOS”) when he signed up to become a Lyft driver. And like the vast majority of Lyft drivers,
23 Plaintiff did not opt out of the arbitration clause contained in Section 17 of the TOS.

24 6. However, after bringing an individual arbitration claim with the American
25 Arbitration Association (“AAA”) to litigate his claims, Lyft failed to pay the fees necessary for
26 Plaintiff’s claims to proceed.

1 drives from around 6:00 PM until 3:00 AM. To the best of his recollection, Plaintiff drove more
2 than forty hours per week for Lyft without overtime compensation during the weeks beginning
3 December 11, 2017 and December 18, 2017. He estimates that he drives from 500 to 1,100 miles
4 a week for Lyft's benefit. Details regarding Plaintiff's precise hours, pay, and revenue generated
5 for Lyft are available by reference to Lyft's records.

6 13. Defendant Lyft, Inc. is a publicly-traded (NASDAQ: LYFT) Delaware corporation
7 with its corporate headquarters and primary place of business in San Francisco, California, and
8 operations in at least 33 other states in the United States. Lyft has a market capitalization of
9 almost \$17 billion. The practices described in this Complaint were designed at, emanated from,
10 and carried out by agents in Lyft's San Francisco, California headquarters.

11 **LYFT'S DEFAULT OF ARBITRATION**

12 14. Plaintiff's claims were originally brought in arbitration because Plaintiff was
13 subject to the arbitration agreement contained within Lyft's TOS. Plaintiff, represented by the
14 undersigned counsel, filed an arbitration demand with AAA on February 15, 2019 and notified
15 Lyft of his demand on the same day.

16 15. On February 27, 2019, AAA sent an invoice to Plaintiff for filing fees. Plaintiff
17 has paid the fees.

18 16. On April 29, 2019, Plaintiff's counsel first contacted counsel for Lyft to begin the
19 process of identifying arbitrators for Plaintiff's arbitration. Hearing nothing, on May 2 and again
20 on May 6, 2019, Plaintiff followed up with Lyft's counsel regarding identifying arbitrators for
21 Plaintiff's arbitration.

22 17. On May 7, 2019, still having heard nothing from Lyft, Plaintiff contacted AAA
23 about the assignment of arbitrators for Plaintiff's claim.

24 18. On May 8, 2019, Lyft finally responded via email to AAA and Plaintiff regarding
25 the process of selecting an arbitrator.

1 19. On May 13, 2019, Plaintiff provided a list of possible arbitrators to Lyft. Lyft
2 provided a list of arbitrators on May 16, 2019. On May 23, 2019 Plaintiff and Lyft selected the
3 arbitrators.¹ On May 31, 2019, Plaintiff provided the list of arbitrators to AAA.

4 20. Having heard nothing from AAA about appointment from the parties' selected list
5 of arbitrators, on June 10, 2019 Plaintiff requested an update from AAA about the status of
6 Plaintiff's arbitration. Nine days later, on June 19, 2019 - *four months* after Plaintiff gave notice
7 of his arbitration demand to Lyft and AAA – AAA notified Plaintiff that Lyft had not paid the
8 required fees for Plaintiff's arbitration.

9 21. On June 25, 2019, Lyft requested, via email, an opportunity to discuss the unpaid
10 invoice with AAA. On June 28, 2019, Plaintiff asked AAA for an update, but on July 8, 2019,
11 AAA notified Plaintiff that Lyft had still not paid the fees necessary for Claimant's arbitration to
12 proceed. Plaintiff's arbitration cannot proceed until Lyft pays its fees.

13 22. As of the date of the filing of this Complaint, Lyft has still refused to pay the fees
14 necessary for Plaintiff's arbitration to proceed. Plaintiff therefore withdrew his arbitration claim
15 without prejudice and filed the instant action. Plaintiff's claims were tolled during the period
16 starting when he filed his arbitration demand and ending when he withdrew it. *See Fanucci v.*
17 *Allstate Ins. Co.*, 638 F. Supp. 2d 1125, 1137-38 (N.D. Cal. 2009).

18 23. Lyft's actions are inconsistent with an intent to arbitrate Plaintiff's claims. Lyft has
19 failed to pay necessary fees for Plaintiff to pursue his claims in arbitration (which its own TOS
20 require). Lyft has failed to remit these required payments to AAA in spite of numerous requests
21 from Plaintiff and the passage of six months since Plaintiff filed his arbitration demand. As such,
22 Lyft has defaulted in arbitration, waived its right to compel Plaintiff to proceed in that forum, and
23 therefore Plaintiff may proceed in this Court. *Sink v. Aden Enterprises, Inc.*, 352 F.3d 1197 (9th
24 Cir. 2003).

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26 _____
27 ¹ Per an agreement between Plaintiff's counsel and Lyft, Plaintiff's arbitration was to be grouped
28 with the arbitrations of numerous other drivers (also represented by Plaintiff's counsel) and
assigned, in groups, to an agreed set of arbitrators with each arbitrator presiding over a grouping
of arbitrations.

FACTUAL BACKGROUND

A. Plaintiff Is An Employee of Lyft Under the FLSA and California Law.

24. Lyft is an App-based transportation provider that has been based in San Francisco, California since 2012. In March 2019, Lyft’s shares were offered to the public and now trade on the NASDAQ stock exchange.

25. **Lyft’s business.** Lyft provides riders with transportation by assigning Lyft drivers to riders using a mobile phone application (the “Lyft App”).

26. The driver then transports the rider, and the rider pays Lyft for the service with a credit card via the Lyft App.

27. Lyft sets the fare to be paid by the rider and communicates it to the rider via the App.

28. On information and belief, Lyft pays the driver a percentage of the ride fare plus 100% of any added tip, with Lyft keeping the rest of the fare for itself.

29. The work that Lyft drivers perform is in the usual course of Lyft’s business – indeed, providing driving services *is* Lyft’s business.

30. Lyft says that it “is one of the largest and fastest growing multimodal transportation networks in the United States.” *See* Lyft, Inc., Securities and Exchange Commission Form S-1 Registration Statement,² at p. 1 (March 1, 2019) (“S-1 Statement”).

31. Lyft drivers, including Plaintiff, provide the service that Lyft sells to the public.

32. Lyft says that it participates in the “transportation . . . market,” and describes its business as “singularly focused on revolutionizing transportation.” S-1 Statement at pp. 3-4.

33. Lyft earns money by providing its customers with a ride from point A to point B – a service that is wholly dependent on Lyft drivers, like Plaintiff.

34. Lyft’s “business depends largely on [its] ability to cost-effectively attract and retain qualified drivers[.]” S-1 Statement at p. 10.

² Available at: <https://www.sec.gov/Archives/edgar/data/1759509/000119312519059849/d633517ds1.htm> (last visited Apr. 15, 2019).

1 35. Lyft is not merely a platform or uninterested bystander between drivers and riders.
2 As this Court has found, “Lyft concerns itself with far more than simply connecting random users
3 of its platform. It markets itself to customers as an on-demand ride service, and it actively seeks
4 out those customers. It gives drivers detailed instructions about how to conduct themselves.
5 Notably, Lyft’s own drivers’ guide and FAQs state that drivers are ‘driving for Lyft.’” *Cotter v.*
6 *Lyft, Inc.*, 60 F. Supp. 3d 1067, 1078 (N.D. Cal. 2015).

7 36. As part of Lyft’s requirements, Plaintiff received training in how to interact with
8 riders, as well as Lyft’s expectations and practices.

9 37. Lyft also screens every driver, including Plaintiff, “before they are permitted to
10 drive on [its] platform, starting with professional third-party background and driving record
11 checks.” *See* S-1 Statement at p. 148.

12 38. Lyft can terminate drivers’ right to provide driving services for violating one or
13 more of the rules that Lyft imposes by contract.

14 39. **Plaintiff lacks business autonomy.** Plaintiff is not engaged in an independently
15 established business. Lyft requires riders to request rides and pay drivers through the Lyft App.
16 Lyft tells drivers not to solicit riders’ contact information and to reject riders’ requests to drive
17 them outside of the Lyft App. Plaintiff is dependent on Lyft to identify riders for him, he may not
18 hire employees to assist him in providing services for Lyft, and he does not need to possess any
19 particular or special skills other than those required to obtain a driver’s license.

20 40. By working for Lyft, Plaintiff has not independently made the decision to go into
21 business for himself. Lyft has unilaterally determined that drivers are an independent contractors
22 while precluding them from taking the usual steps toward promoting and establishing
23 independent businesses, such as forming business relationships with Lyft customers or otherwise
24 promoting their services to the public.

25 41. Lyft also prohibits drivers from setting or in any way affecting the rates of pay for
26 their own services. Lyft prohibits drivers from communicating with riders about future ride
27 services.

1 42. Lyft requires drivers to use their own car or rent a car to provide rides for Lyft.
2 Lyft requires that the car is not more than 8-9 years old, and it must pass automotive inspections
3 as dictated by Lyft. Lyft requires drivers, including Plaintiff, to “only provide Services using the
4 vehicle that has been reported to, and approved by Lyft, and for which a photograph has been
5 provided to Lyft.” TOS ¶ 10(d).

6 43. Lyft requires drivers to carry their own insurance, but Lyft also provides drivers
7 with liability and uninsured/underinsured coverage while they are logged into the Lyft App and
8 driving riders.

9 44. Lyft is solely responsible for recording drivers’ rides, including the time and
10 distance for each ride, the ride fare and added Lyft fees, any tips, and for compiling drivers’ rates
11 of pay for each ride.

12 45. **Lyft controls the terms of employment.** Lyft maintains uniform policies and
13 terms of service with which all Lyft drivers, including Plaintiff, must comply. Once Plaintiff
14 passed Lyft’s initial requirements, he was able to work for Lyft for an indefinite period of time.
15 However, Lyft may shut down Plaintiff’s access to the Lyft App for myriad reasons, thus
16 preventing him from obtaining and responding to ride requests.

17 46. Plaintiff performs work for Lyft by logging into the Lyft App, making himself
18 available for rides and visible to Lyft users, which benefits Lyft. While logged in, Plaintiff
19 regularly receives ride assignment quickly, sometimes receiving a new ride before completing the
20 existing ride. Plaintiff rarely waits more than 15 minutes between ending one ride and receiving a
21 new ride assignment. On an average day, Plaintiff typically waits 3-5 minutes between
22 completing one ride and accepting the next assignment. Once Plaintiff receives an assignment,
23 Lyft allows him 15 seconds to accept the assignment.

24 47. On information and belief, until the beginning of 2018, Lyft required that drivers
25 accept at least 90% of ride assignments to avoid being terminated. Now, Lyft “use[s] acceptance
26 rates to determine driver eligibility for certain features and help keep passenger wait times short.”
27 Lyft Help Center, “Acceptance Rate”, available at <https://help.lyft.com/hc/en->
28

1 [us/articles/115013077708-Acceptance-rate](https://www.ridester.com/lyft-power-driver-bonus/) (last accessed July 1, 2019). Lyft calculates drivers'
2 acceptance rates by adding the number of rides a driver completes to the number of rides
3 cancelled by the rider, and dividing that number by the total number of ride assignments shown to
4 the driver. Lyft explains that a driver's acceptance rate may decrease due to missed assignments,
5 such as when a driver lets the timer count down to zero, and by driver cancellations. Lyft drivers
6 are under pressure to keep their acceptance rates high because Lyft bases eligibility for certain
7 bonuses, awards, and other benefits in part on a driver's overall acceptance rate, such as the
8 weekly "power drive bonus" – a weekly cash bonus given to drivers for completing a certain
9 number of rides. Ridester, "An Introduction to the Lyft Power Driver Bonus", available at
10 <https://www.ridester.com/lyft-power-driver-bonus/> (last accessed July 1, 2019).

11 48. Lyft's manner of assigning rides – including the frequency of ride assignment
12 messages, the very short window within which a driver can accept rides, and the threat of
13 termination for failure to accept the vast majority of rides – prevents Plaintiff from engaging in
14 personal activities while logged into the Lyft app.

15 49. Plaintiff logs out of the Lyft App at all times when he is not engaged in providing
16 a ride for Lyft or making himself available for the next ride. When performing other types of
17 work for Lyft, Plaintiff typically logs out of the App. For example, Plaintiff typically logs out
18 when he pumps gas, performs vehicle maintenance and repairs, or uses the restroom. He
19 schedules his work and personal activities to minimize the risk of missing ride assignments.

20 50. Lyft recognizes that drivers' time while logged into the App is not their own.
21 Specifically, Lyft advises drivers to log out and take a break if they do not plan to accept ride
22 assignments: "If you can't or don't want to accept ride requests, we recommend taking a break."

23 *Id.*

24 **B. Lyft's Misclassification of Drivers Violates the FLSA and California Law.**

25 51. Overtime and minimum wage. Lyft does not pay Plaintiff and drivers overtime for
26 hours worked over eight in a day or over 40 in a week. Furthermore, although Lyft suffers or
27 permits Plaintiff and drivers to log on to the Lyft App and make himself available to pick up
28

1 rides, Lyft fails to pay them while they are logged on but not providing a ride. In this way, Lyft
2 fails to pay the minimum wage for all hours actually worked and instead limits his drivers' to a
3 piece rate for each ride. Even limiting the calculation of minimum wage to the hours Plaintiff is
4 engaged in providing a ride, Lyft fails to pay him a minimum wage for all hours worked.

5 52. Expense reimbursement. Plaintiff's and drivers' necessary expenses incurred as a
6 direct consequence of the discharge of their duties for Lyft include mileage costs; car insurance;
7 cell phone service to perform driving services, receive driving requests, and maintain required
8 email and/or text message contact with Lyft; and car cleaning and repair to comply with Lyft
9 requirements, among other expenses. Lyft does not reimburse Plaintiff and drivers for work-
10 related expenses.

11 53. Wage statements and time records. Lyft's wage statements do not clearly itemize
12 earnings in such a way that Plaintiff and drivers can readily identify whether they received all pay
13 for which they are eligible under the law, such as hours worked, overtime, and minimum wages.
14 Payroll records similarly fail to track all pay accurately.

15 54. Willfulness. Lyft has continued to classify Plaintiff and drivers as independent
16 contractors notwithstanding that its classification policy has been the subject of several lawsuits,
17 including this Court's determination that a jury could reasonably find that Lyft drivers are
18 employees under California law under the more stringent pre-*Dynamex* standard. It has also not
19 changed its policy despite the California Supreme Court's decision in *Dynamex Operations W.,*
20 *Inc. v. Superior Court*, 4 Cal.5th 903 (2018). Lyft's refusal to reclassify Plaintiff and its drivers as
21 employees despite the clear legal standard showing that they are employees is knowing and
22 voluntary and constitutes willful misclassification.

23 COLLECTIVE ACTION ALLEGATIONS

24
25 55. Plaintiff brings his FLSA Claim for Relief on behalf of himself and all Collective
26 members, defined above.
27
28

1 and California Industrial Welfare Commission Wage Order No. 9-2001
2 (“Wage Order 9”);

- 3 • Whether Lyft’s classification of Lyft drivers as independent contractors
4 was willful; and
- 5 • The proper measure of damages sustained by members of the Class.

6 62. Typicality. Plaintiff’s claims are typical of Class members’ claims. Plaintiff, like
7 other Class members, was subjected to Lyft’s policies and practices that violated the FLSA and
8 California law. Plaintiff’s job duties and claims were and are typical of those of the Class
9 members.

10 63. Adequacy. Plaintiff will fairly and adequately represent and protect the interests of
11 the Class members. Plaintiff’s counsel are experienced in employment class actions and will
12 fairly and adequately represent and protect the interests of the Class members.

13 64. Superiority. Class treatment would benefit the courts and Class members.
14 Certification of the class would provide substantial benefits to the courts and Class members. The
15 damages suffered by individual Class members are relatively small compared to the significant
16 expense and burden of individual prosecution of this litigation. In addition, class certification will
17 obviate the need for unduly duplicative litigation which might result in inconsistent judgments
18 about Lyft’s practices.

FIRST CLAIM FOR RELIEF
(Minimum Wage Claim, 29 U.S.C. § 206
Brought by Plaintiff on Behalf of Himself and the Collective)

19 65. Plaintiff, on behalf of himself and all members of the Collective, realleges and
20 incorporates by reference all other paragraphs as if they were set forth again herein.

21 66. At all relevant times, Lyft has been an employer and Plaintiff and the Collective
22 have been employees under California and Federal law entitled to the protections of the FLSA,
23 the California Labor Code, and Wage Order 9.

24 67. The foregoing conduct, as alleged, constitutes a violation of 29 U.S.C. § 206,
25 which protects Plaintiff’s and the Collective’s right to earn a minimum wage and provides for
26 damages and punishment for violations of that right.

THIRD CLAIM FOR RELIEF
(Minimum Wage Claim, Cal. Labor Code §§ 1182.12, 1194, 1194.2, 1197, 1197.1, 1199, and Wage Order 9 Brought by Plaintiff on Behalf of Himself and the Class)

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3 75. Plaintiff, on behalf of himself and all members of the Class, realleges and
4 incorporates by reference all other paragraphs as if they were set forth again herein.

5 76. The foregoing conduct, as alleged, also constitutes a violation of the California
6 Labor Code §§ 1182.12, 1194, 1194.2, 1197, 1197.1, 1199, and Wage Order 9, which similarly
7 protect Plaintiff's and Class members' right to earn a minimum wage and provide for damages
8 and punishment for violations of that right.

9 77. Although the applicable minimum wage in California was \$10 to \$13 between
10 2016 and 2019, Plaintiff and Class members regularly earned less than the minimum due to the
11 significant deductions from pay that Lyft made for gasoline, car insurance, car financing, cleaning
12 and maintenance, and cell phone usage, as well as the other expenses noted above. These
13 expenses resulted in hourly rates of well less than \$10-\$13 based on the hours that Plaintiff and
14 Class members worked.

15 78. Although Plaintiff and Class members periodically did not earn at least the
16 minimum wage, Lyft had a policy and practice of failing and refusing to pay them minimum
17 wage for all hours worked and thus violated and continues to violate the above-referenced
18 minimum wage protections.

19 79. Plaintiff seeks the amount of the respective unpaid wages owed him and other
20 Class members, liquidated damages, attorneys' fees and costs pursuant to Cal. Labor Code § 1194
21 and Wage Order 9, and such other legal and equitable relief as the Court deems just and proper.

FOURTH CLAIM FOR RELIEF
(Overtime Claim, Cal. Labor Code §§ 510, 1194, 1198, and Wage Order 9 Brought by Plaintiff on Behalf of Himself and the Class)

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24 80. Plaintiff, on behalf of himself and all members of the Class, realleges and
25 incorporates by reference all other paragraphs as if they were set forth again herein.
26
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1 88. Plaintiff seeks the amount of unpaid expenses owed him and Class members,
2 interest, attorneys' fees and costs pursuant to Labor Code § 2802(b) and (c) and Wage Order 9,
3 and such other legal and equitable relief as the Court deems just and proper.

4 **SIXTH CLAIM FOR RELIEF**
5 **(Wage Statement Claim, Cal. Labor Code § 226, and Wage Order 9**
6 **Brought by Plaintiff on Behalf of Himself and the Class)**

7 89. Plaintiff, on behalf of himself and all members of the Class, realleges and
8 incorporates by reference all other paragraphs as if they were set forth again herein.

9 90. The foregoing conduct, as alleged, constitutes a violation of California Labor Code
10 § 226 and Wage Order 9, which provides requirements for properly itemized wage statements.

11 91. The wage statements Lyft provided to Plaintiff and Class members do not clearly
12 itemize hours worked, an hourly wage, overtime, or earnings in a way that readily identifies
13 whether Plaintiff and Class members received all applicable pay for which they were eligible.
14 Lyft thus violated and continues to violate California Labor Code § 226 and Wage Order 9.

15 92. Plaintiff seeks to recover, on behalf of himself and Class members, the greater of
16 all actual damages or fifty dollars (\$50) for the initial pay period in which a violation occurred
17 and one hundred dollars (\$100) for each violation in a subsequent pay period, not to exceed an
18 aggregate penalty of four thousand dollars (\$4,000), as well as costs and attorneys' fees.

19 **SEVENTH CLAIM FOR RELIEF**
20 **(Meal and Rest Break Claim, Cal. Labor Code §§ 226.7, 512, and Wage Order 9,**
21 **Brought by Plaintiff on Behalf of Himself and the Class)**

22 93. Plaintiff, on behalf of himself and all members of the Class, realleges and
23 incorporates by reference all other paragraphs as if they were set forth again herein.

24 94. At all relevant times, Lyft has been an employer, and Plaintiff and Class members
25 are employees under California law entitled to the protections of the California Labor Code.

26 95. The foregoing conduct, as alleged, constitutes a violation of California Labor Code
27 §§ 226.7, 512, and Wage Order 9, which provide for a 30-minute meal break for employees who
28 work five hours or more in a day and for 10-minute breaks for every three and one-half hours
worked.

1 96. Although Plaintiff and an identifiable portion of Class members periodically
2 worked four to five hours or more in a day, Lyft had a policy and practice of failing to provide
3 lawful meal and rest breaks. Lyft thus violated and continues to violate the above-referenced meal
4 and rest break provisions of the Labor Code.

5 97. Pursuant to Lyft's policy of classifying Plaintiff and Class members as
6 independent contractors, Lyft lacks a meal or rest break policy that complies with California law.
7 In the absence of such policies, and because Lyft's policies and practices incentivize Plaintiff and
8 Class members to work constantly, Plaintiff and Class members regularly work five or more
9 hours in a day without taking an off-duty meal break and work more than three and one-half
10 hours without taking an off-duty rest break. For example:

- 11 • Lyft queues up the next rider before the current rider is dropped off, therefore, Lyft drivers
12 must cancel a rider request in order to log out for meal and rest breaks;
- 13 • Lyft penalizes Lyft drivers for declining rider requests by lowering their acceptance rate,
14 which must be 90% or better. If a Lyft driver refuses too many rider requests, Lyft
15 terminates the driver's employment;
- 16 • To be eligible for Lyft's Power Driver Bonus and other incentive payments, Lyft drivers
17 must be online many hours a week (usually at least 50 per week), provide a certain
18 number of rides, have an acceptance rate of 90% or higher, and/or remain online for long
19 stretches during peak periods (usually for at least 50 minutes an hour). These policies
20 discourage Lyft drivers from taking meal and rest breaks.
- 21 • In addition, because Lyft has cut its prices in order to compete with other rideshare
22 companies, Lyft drivers must work much longer hours in order to make a living. This
23 circumstance also strongly discourages Lyft drivers from taking meal and rest breaks.

24 98. Plaintiff, on behalf of himself and Class members, seeks the amount of the
25 respective pay owed – one hour of compensation for each workday that the meal or rest period is
26 not provided – interest, attorneys' fees and costs, and such other legal and equitable relief as the
27 Court deems just and proper.

28

EIGHTH CLAIM FOR RELIEF
(Unfair Business Practices, Cal. Bus. & Prof. Code § 17200
Brought by Plaintiff on Behalf of Himself and the Class)

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3 99. Plaintiff, on behalf of himself and all members of the Class, realleges and
4 incorporates by reference all other paragraphs as if they were set forth again herein.

5 100. California Labor Code § 226.8 makes it unlawful for employers to willfully
6 misclassify workers as independent contractors, and to charge an individual who has been
7 willfully misclassified as an independent contractor a fee, or make any deductions from
8 compensation, for any purpose including for goods, materials, space rental, services, government
9 licenses, repairs, equipment maintenance, or fines arising from the individual's employment
10 where any of the acts described would have violated the law if the individual had not been
11 misclassified.

12 101. California Labor Code § 2802 and Wage Order 9 provide for the reimbursement of
13 Plaintiff's and Class members' expenses incurred while carrying out their employment or to
14 comply with Lyft requirements.

15 102. California Labor Code §§ 1182.12, 1194, 1194.2, 1197, 1197.1, 1199, and Wage
16 Order 9 protect Plaintiff's right to earn the minimum wage and provide for damages and
17 punishment for violations of that right.

18 103. California Labor Code §§ 510, 1194, 1198, and Wage Order 9 provide for
19 compensation with overtime pay for time worked over eight hours in a day or 40 hours in a week.

20 104. California Labor Code §§ 226, 353, 1174 and Wage Order 9 provide requirements
21 for properly itemized wage statements and payroll recordkeeping.

22 105. California Labor Code § 2810.5 requires employers to provide written notice at the
23 time of hire containing the rate or rates of pay, including overtime rate, the basis for pay (whether
24 by the hour, piece, etc.), as well as other information.

25 106. California Labor Code § 432 requires employers to provide employees and
26 applicants, "upon request," with "a copy of . . . any instrument relating to the obtaining or holding
27 of employment that" that he or she has "sign[ed]." In addition, California Labor Code § 1198.5
28

1 provides “[e]very current and former employee[] or his or her representative . . . the right to
2 inspect and receive a copy of the personnel records that the employer maintains relating to the
3 employee’s performance or to any grievance concerning the employee.” That statute provides
4 procedural protections for employees relating to how and when employees must be allowed to
5 inspect or receive copies of such records, and it provides for injunctive relief and a penalty of
6 \$750 payable to the employee.

7 107. On information and belief, Lyft has a pattern, practice, and/or policy of failing to
8 provide employee-specific documents and information, including details regarding whether they
9 are subject to Lyft’s arbitration clause, within a reasonable time and in a manner that complies
10 with the law.

11 108. Lyft’s conduct, as alleged, violates the UCL, which prohibits, *inter alia*, unfair
12 competition in the form of any unlawful, unfair, deceptive, or fraudulent business practices.

13 109. By failing to pay Plaintiff and Class members for work-related expenses, overtime,
14 and minimum wage, and violating requirements for wage statements, notice, and payroll records,
15 Lyft committed unlawful and unfair acts as defined by the UCL.

16 110. Lyft’s practices, as alleged, constitute unlawful acts because such acts violate the
17 California Labor Code sections detailed above, as well as Wage Order 9.

18 111. Lyft’s practices, as alleged, also constitute unfair acts because such acts are
19 contrary to public policy.

20 112. As a result of these unlawful and/or unfair business practices, Lyft reaped unfair
21 benefits and illegal profits at Plaintiff’s and Class members’ expense. Lyft must disgorge these
22 ill-gotten gains and restore to Plaintiff and Class members all expense reimbursement, overtime,
23 minimum wages, and other wages owed. Lyft’s actions deprived Plaintiff and Class members of
24 their expenses and full pay; consequently, Plaintiff and Class members have lost money and
25 property, and they are entitled to restitution in the amount of expenses and pay that Lyft withheld.
26 Pursuant to California Code of Civil Procedure § 1021.5, Plaintiff is entitled to payment of his
27 attorneys’ fees, costs, and expenses incurred in bringing this action.
28

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for relief as follows:

- A. Certification of the Class;
- B. Issuance of Court-approved notice to the Collective so that members are advised of the lawsuit and have the opportunity to join it;
- C. Designation of Plaintiff as Representative of the Class;
- D. Designation of Plaintiff’s counsel of record as Class Counsel for the Class;
- E. A declaratory judgment that the practices complained of herein are unlawful;
- F. An injunction against Lyft and its officers, agents, successors, employees, representatives, and any and all persons acting in concert with it, as provided by law, from engaging in each of the unlawful practices, policies, and patterns set forth herein;
- G. Statutory penalties;
- H. An award of damages and restitution to be paid by Lyft according to proof;
- I. Pre-judgment and post-judgment interest, as provided by law;
- J. Attorneys’ fees, pursuant to the FLSA, Labor Code §§ 218.5, 226(e), 1194, 2802, Code of Civil Procedure § 1021.5, and all other bases for fees in the Labor Code and Wage Order 9;
- K. Costs of suit, including expert fees and costs;
- L. An appropriate service payment to Plaintiff for his service as Class representative; and
- M. Such other injunctive and equitable relief as the Court may deem just and proper.

DEMAND FOR JURY TRIAL

Plaintiff hereby demands a jury trial on all causes of action and claims with respect to which he has a right to jury trial.

1 Dated: August 14, 2019

Respectfully submitted,

2 By: /s/ Christian Schreiber
3 Christian Schreiber

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Counsel for Plaintiff and the Proposed Class

EXHIBIT A

Consent To Join Form

I hereby give my consent to participate in the lawsuit titled *Brunner v. Lyft, Inc.*, filed in the United States District Court for the Northern District of California, to recover unpaid wages under the federal Fair Labor Standards Act (“FLSA”), 29 U.S.C. § 216(b), and other relief under state law.

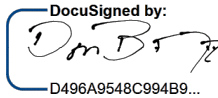
I choose to be represented by Outten & Golden LLP and Olivier Schreiber & Chao LLP (“Plaintiff’s Counsel”). I agree to be bound by their decisions in the litigation and by any adjudication of this action by a court, whether it is favorable or unfavorable. I understand that reasonable costs expended by Plaintiff’s Counsel on my behalf will be deducted from any settlement or judgment amount on a pro-rata basis among all other plaintiffs. I understand that Plaintiff’s Counsel will petition the Court to award them attorneys’ fees from any settlement or judgment.

I also consent to join any separate or subsequent action to assert the claims described above.

Donald Brunner, Jr.

Print Name: _____

Signature: _____



Date: _____

CIVIL COVER SHEET

The JS-CAND 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved in its original form by the Judicial Conference of the United States in September 1974, is required for the Clerk of Court to initiate the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

D. BRUNNER, JR.

(b) County of Residence of First Listed Plaintiff (EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number) Christian Schreiber; Katharine Chao; Olivier Schreiber & Chao LLP 201 Filbert Street, Suite 201, San Francisco, CA 94133. (Please see attached addendum for additional attorney information.)

DEFENDANTS

LYFT, INC.

County of Residence of First Listed Defendant (IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff
2 U.S. Government Defendant
3 Federal Question (U.S. Government Not a Party)
4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

Table with columns for PTF and DEF for Citizen of This State, Citizen of Another State, Citizen or Subject of a Foreign Country, and Incorporated or Principal Place of Business in This State, Incorporated and Principal Place of Business in Another State, Foreign Nation.

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Large table with categories: CONTRACT, REAL PROPERTY, TORTS, CIVIL RIGHTS, PRISONER PETITIONS, HABEAS CORPUS, OTHER, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES.

V. ORIGIN (Place an "X" in One Box Only)

- 1 Original Proceeding
2 Removed from State Court
3 Remanded from Appellate Court
4 Reinstated or Reopened
5 Transferred from Another District (specify)
6 Multidistrict Litigation-Transfer
8 Multidistrict Litigation-Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity): 29 U.S.C. § 206; 29 U.S.C. § 207; Cal. Labor Code §§ 1182.12; Cal. Labor Code §§ 510, 1194, 1198, and Wage Order 9; Cal. Labor Code § 2802; Cal. Labor Code § 226; Cal. Labor Code §§ 226.7, 512; Cal. Bus. & Prof. Code § 17200

Violations of Federal and State Law Arising out of Plaintiff's employment as a driver by Defendant.

VII. REQUESTED IN COMPLAINT: CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, Fed. R. Civ. P. DEMAND \$ Per proof; injunctive & declaratory relief. CHECK YES only if demanded in complaint: JURY DEMAND: Yes No

VIII. RELATED CASE(S), IF ANY (See instructions):

JUDGE Hon. Vince Chhabria DOCKET NUMBER 18-cv-06539-VC; and 19-cv-02025-VC

IX. DIVISIONAL ASSIGNMENT (Civil Local Rule 3-2)

(Place an "X" in One Box Only) SAN FRANCISCO/OAKLAND SAN JOSE EUREKA-MCKINLEYVILLE

DATE August 14, 2019

SIGNATURE OF ATTORNEY OF RECORD

/s/ Christian Schreiber

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS-CAND 44

Authority For Civil Cover Sheet. The JS-CAND 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved in its original form by the Judicial Conference of the United States in September 1974, is required for the Clerk of Court to initiate the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

- I. a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.
- b) County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the “defendant” is the location of the tract of land involved.)
- c) Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section “(see attachment).”
- II. Jurisdiction.** The basis of jurisdiction is set forth under Federal Rule of Civil Procedure 8(a), which requires that jurisdictions be shown in pleadings. Place an “X” in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.
- (1) United States plaintiff. Jurisdiction based on 28 USC §§ 1345 and 1348. Suits by agencies and officers of the United States are included here.
 - (2) United States defendant. When the plaintiff is suing the United States, its officers or agencies, place an “X” in this box.
 - (3) Federal question. This refers to suits under 28 USC § 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.
 - (4) Diversity of citizenship. This refers to suits under 28 USC § 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; **NOTE: federal question actions take precedence over diversity cases.**)
- III. Residence (citizenship) of Principal Parties.** This section of the JS-CAND 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.
- IV. Nature of Suit.** Place an “X” in the appropriate box. If the nature of suit cannot be determined, be sure the cause of action, in Section VI below, is sufficient to enable the deputy clerk or the statistical clerk(s) in the Administrative Office to determine the nature of suit. If the cause fits more than one nature of suit, select the most definitive.
- V. Origin.** Place an “X” in one of the six boxes.
- (1) Original Proceedings. Cases originating in the United States district courts.
 - (2) Removed from State Court. Proceedings initiated in state courts may be removed to the district courts under Title 28 USC § 1441. When the petition for removal is granted, check this box.
 - (3) Remanded from Appellate Court. Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.
 - (4) Reinstated or Reopened. Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.
 - (5) Transferred from Another District. For cases transferred under Title 28 USC § 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.
 - (6) Multidistrict Litigation Transfer. Check this box when a multidistrict case is transferred into the district under authority of Title 28 USC § 1407. When this box is checked, do not check (5) above.
 - (8) Multidistrict Litigation Direct File. Check this box when a multidistrict litigation case is filed in the same district as the Master MDL docket. Please note that there is no Origin Code 7. Origin Code 7 was used for historical records and is no longer relevant due to changes in statute.
- VI. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC § 553. Brief Description: Unauthorized reception of cable service.
- VII. Requested in Complaint.** Class Action. Place an “X” in this box if you are filing a class action under Federal Rule of Civil Procedure 23. Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction. Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.
- VIII. Related Cases.** This section of the JS-CAND 44 is used to identify related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.
- IX. Divisional Assignment.** If the Nature of Suit is under Property Rights or Prisoner Petitions or the matter is a Securities Class Action, leave this section blank. For all other cases, identify the divisional venue according to Civil Local Rule 3-2: “the county in which a substantial part of the events or omissions which give rise to the claim occurred or in which a substantial part of the property that is the subject of the action is situated.”
- Date and Attorney Signature.** Date and sign the civil cover sheet.

Addendum to Civil Case Cover Sheet

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Facsimile: (415) 638-8810

AO 440 (Rev. 06/12) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the

Northern District of California

D. BRUNNER, JR.

Plaintiff(s)

v.

LYFT, INC.

Defendant(s)

Civil Action No.

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address) Kristin Svercheck, General Counsel
Lyft, Inc.
185 Berry Street, Suite 5000
San Francisco, CA 94107

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

Christian Schreiber, Olivier Schreiber & Chao, LLP, 201 Filbert Street, Suite 201, San Francisco, CA 94133

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

CLERK OF COURT

Date:

Signature of Clerk or Deputy Clerk

Civil Action No. _____

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))

This summons for *(name of individual and title, if any)* _____
was received by me on *(date)* _____ .

I personally served the summons on the individual at *(place)* _____
_____ on *(date)* _____ ; or

I left the summons at the individual's residence or usual place of abode with *(name)* _____
_____, a person of suitable age and discretion who resides there,
on *(date)* _____ , and mailed a copy to the individual's last known address; or

I served the summons on *(name of individual)* _____ , who is
designated by law to accept service of process on behalf of *(name of organization)* _____
_____ on *(date)* _____ ; or

I returned the summons unexecuted because _____ ; or

Other *(specify)*: _____
_____ .

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____ .

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc:

ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Class Action Alleges Lyft Mislabeled Drivers as Independent Contractors](#)
