

THE ORDER OF JUSTICE E. BELOBABA
L'ORDONNANCE DU JUGE E. BELOBABA
DATED/FAIT LE AUG 10, 2022

Court File No. CV-21-00671950-00CP

REGISTRAR SUPERIOR COURT OF JUSTICE / GREFFIER COUR SUPÉRIEURE DE JUSTICE



**ONTARIO
SUPERIOR COURT OF JUSTICE**

BETWEEN:

ADRIAN WASYLYK

Plaintiff

and

LYFT, INC and LYFT CANADA INC

Defendants

Proceeding under the *Class Proceedings Act, 1992*

AMENDED STATEMENT OF CLAIM

TO THE DEFENDANTS

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the Plaintiff.
The Claim made against you is set out in the following pages.

IF YOU WISH TO DEFEND THIS PROCEEDING, you or an Ontario lawyer acting for you must prepare a Statement of Defence in Form 18A prescribed by the *Rules of Civil Procedure*, serve it on the Plaintiff's lawyer or, where the Plaintiff does not have a lawyer, serve it on the Plaintiff, and file it, with proof of service in this court office, WITHIN TWENTY DAYS after this Statement of Claim is served on you, if you are served in Ontario.

If you are served in another province or territory of Canada or in the United States of America, the period for serving and filing your Statement of Defence is forty days. If you are served outside Canada and the United States of America, the period is sixty days.

Instead of serving and filing a Statement of Defence, you may serve and file a Notice of Intent to Defend in Form 18B prescribed by the *Rules of Civil Procedure*. This will entitle you to ten more days within which to serve and file your Statement of Defence.

IF YOU FAIL TO DEFEND THIS PROCEEDING, JUDGMENT MAY BE GIVEN AGAINST YOU IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO DEFEND THIS PROCEEDING BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.

TAKE NOTICE: THIS ACTION WILL AUTOMATICALLY BE DISMISSED if it has not been set down for trial or terminated by any means within five years after the action was commenced unless otherwise ordered by the court.

Date November 12, 2021 Issued by E-FILING
Local Registrar

Address of court office: Toronto Courthouse
330 University Ave
Toronto, ON M5G 1R7

TO: **LYFT, INC**
185 Berry Street, Suite 5000
San Francisco, CA 94107
USA

c/o C T CORPORATION SYSTEM
(as Lyft, Inc's agent for service of process)
28 Liberty Street
New York, NY 10005
USA

AND TO: **LYFT CANADA INC**
~~1812 Serenity Place~~
~~Victoria, BC V8N 6K2~~
595 Burrard Street, Three Bentall Centre P O Box 49314 2600,
Vancouver, British Columbia, Canada, V7X 1L3

CLAIM

1. The Plaintiff, Adrian Wasylyk (“Mr Wasylyk”), on his own behalf and on behalf of all Class Members, seeks:
 - a. an order certifying this action as a class proceeding and appointing him as the representative plaintiff of the Class pursuant to the *Class Proceedings Act, 1992*, SO 1992, c 6 (the “*Class Proceedings Act*”);
 - b. damages in an amount to be determined at trial;
 - c. a declaration that the provisions of the *Employment Standards Act, 2000*, SO 2000, c 41 (the “*Employment Standards Act*”) are express or implied terms of the contracts of employment of the Plaintiff and Class Members;
 - d. a declaration that the Plaintiff and Class Members are employees of the Defendants for the purposes of the *Employment Standards Act*;
 - e. a declaration that the Defendants have breached, and continue to breach, the terms of the *Employment Standards Act*, the contracts of employment and their duty of good faith and/or duty of care owed to the Plaintiff and Class Members by:
 - i. failing to properly classify the Plaintiff and Class Members as their employees;
 - ii. failing to ensure the hours of work of the Plaintiff and Class Members were appropriately remunerated as employees;
 - iii. failing to advise the Plaintiff and Class Members of their entitlement to compensation equal to or above the minimum wage as stipulated by the *Employment Standards Act* (“Minimum Wage”);

- iv. failing to compensate the Plaintiff and Class Members at a rate equal to or above the Minimum Wage;
- v. failing to advise the Plaintiff and Class Members of their entitlement to overtime pay in accordance with the *Employment Standards Act*;
- vi. requiring and/or permitting the Plaintiff and Class Members to work overtime hours but failing to compensate them as required for hours worked in excess of the overtime threshold (“Overtime Pay”);
- vii. failing to advise the Plaintiff and Class Members of their entitlement to vacation pay in accordance with the *Employment Standards Act* (“Vacation Pay”);
- viii. failing to compensate the Plaintiff and Class Members for Vacation Pay;
- ix. failing to advise the Plaintiff and Class Members of their entitlement to holiday pay and premium pay in accordance with the *Employment Standards Act* (“Holiday Pay and Premium Pay”);
- x. failing to compensate the Plaintiff and Class Members for Holiday Pay and Premium Pay; and,
- xi. failing to provide and/or compensate the Plaintiff and Class Members for any and all other entitlements provided under the *Employment Standards Act* (“Other Entitlements”);

(Minimum Wage, Overtime Pay, Vacation Pay, Holiday Pay and Premium Pay, and Other Entitlements are cumulatively referred to hereinafter as “the Employment Standards Entitlements”);

- f. an interlocutory and a final mandatory order for specific performance directing the Defendants to comply with the *Employment Standards Act* and/or contracts of employment of the Plaintiff and Class Members to:
 - i. ensure that the Plaintiff and Class Members are properly classified as employees for all purposes under the *Employment Standards Act*;
 - ii. advise the Plaintiff and Class Members of the Employment Standards Entitlements;
 - iii. ensure that the Plaintiff's and Class Members' hours of work are appropriately remunerated as employees; and,
 - iv. ensure that the Plaintiff and Class Members are appropriately compensated for the Employment Standards Entitlements.
- g. a declaration that the provisions of the Terms of Service Agreement, and/or any other agreement purporting to exclude the Plaintiff and Class Members from eligibility for the Employment Standards Entitlements, are void and unenforceable;
- h. a declaration that the Defendants are liable for any consequential damages resulting from a determination that the Plaintiff and Class Members are employees of the Defendants and not independent contractors;
- i. a declaration that the Defendants are liable for any adverse tax liability sustained by the Plaintiff and Class Members resulting from a determination that the Plaintiff and Class Members are employees of the Defendants and not independent contractors;
- j. a declaration that the Defendants have been and continue to be unjustly enriched to the deprivation of the Plaintiff and Class Members for any Canada Pension Plan or

Employment Insurance contributions and/or benefits that should have been paid on behalf of, or are owed to, the Plaintiff and Class Members resulting from a determination that the Plaintiff and Class Members are employees of the Defendants and not independent contractors;

- k. a declaration that the Defendants have been and continue to be unjustly enriched to the deprivation of the Plaintiff and Class Members in that the Defendants receive the value of compensating the Plaintiff and Class Members at rates and in amounts below the Employment Standards Entitlements, and an order requiring the Defendants to pay the Plaintiff and Class Members all amounts withheld and/or owing by the Defendants in respect of such Employment Standards Entitlements;
- l. an order pursuant to section 24 of the *Class Proceedings Act* directing an aggregate assessment of damages;
- m. an order pursuant to section 23 of the *Class Proceedings Act* admitting into evidence statistical information;
- n. an order directing the Defendants to preserve and disclose to the Plaintiff all records, in any form, relating to the identification of Class Members and the hours of work performed by the Plaintiff and Class Members;
- o. prejudgment interest in accordance with s 128 of the *Courts of Justice Act*, RSO 1990, c C43, as amended;
- p. post-judgment interest in accordance with s 129 of the *Courts of Justice Act*, RSO 1990, c C43, as amended;
- q. punitive, aggravated and exemplary damages in an amount to be determined at trial and which this Honourable Court may deem just;

- r. costs of this action on a substantial indemnity basis as well as the costs of administering the plan of distribution of the recovery in this action; and,
- s. such further and other relief as this Honourable Court may deem just.

THE PARTIES

- 2. The Plaintiff, Mr Wasylyk, is an individual residing in Toronto, Ontario. He was hired by the Defendants as a driver (the “Position”) in or around July 2019 to provide driving services (the “Services”) to the Defendants’ customers in the Greater Toronto Area and has done so continuously since that time. At the time of hiring, Mr Wasylyk was required by the Defendants to enter into a Terms of Service Agreement (the “Agreement”).
- 3. Lyft, Inc is a corporation incorporated pursuant to the laws of Delaware with its registered office located in San Francisco, California.
- 4. Lyft Canada Inc is a corporation incorporated pursuant to the laws of ~~Canada~~ British Columbia with its registered office in ~~Victoria~~ Vancouver, British Columbia.
- 5. Lyft, Inc and Lyft Canada Inc (hereinafter the “Defendants” or “Lyft”) develop, market, and operate the Lyft app (the “App”). The App is a mobile internet vehicle-for-hire service that allows customers to place an order for a ride from one of the Class Members in exchange for money.

THE CLASS

- 6. The Plaintiff seeks to represent the following Class (the “Class” or “Class Members”) of which he is a member:

Any person who has entered into an Agreement, or other similar agreement, with Lyft, Inc and/or Lyft Canada Inc to provide driving services in Ontario.

JURISDICTION

7. Toronto, Ontario is the appropriate jurisdiction in which to hear this claim because:
 - a. in order to provide the driving services, the Plaintiff and Class Members were required by the Defendants to enter into an Agreement, or other similar agreement, that specifically states “this Agreement shall be governed by the laws of Ontario” and “The place of this Agreement is Toronto, Ontario”; and,
 - b. the Plaintiff lives in Toronto, Ontario and performed the majority of his work for Lyft in the Greater Toronto Area.

EMPLOYMENT RELATIONSHIP

8. The Plaintiff relied on the Defendants in good faith and was unaware until shortly before the issuing of this Statement of Claim that he was an employee and entitled to the Employment Standards Entitlements. The Plaintiff relied on the Defendants to properly classify him regarding his status as an employee and provide him with the Employment Standards Entitlements, and was misled by the Defendants that he was not their employee.
9. The Position, the Services, the terms and conditions of employment, and the operations of the Defendants and the controls imposed by them on all Class Members are consistent across the Class.
10. At all material times, the Plaintiff and Class Members were directed how, when and where they could provide the Services to the Defendants’ customers.
11. The Plaintiff and Class Members worked varying numbers of hours each week, including weekends and holidays. The Defendants (1) permitted the Plaintiff and Class Members to work hours for which, as employees, they were entitled to Employment Standards Entitlements but did not receive those entitlements; and, (2) explicitly and incorrectly

informed the Plaintiff and Class Members that they were not employees of the Defendants.

12. The degree of supervision and control the Defendants imposed on the Plaintiff and Class Members creates an employment relationship. Particulars include the following:

- a. the Defendants set compensation rates, which the Plaintiff and Class Members have no ability to negotiate;
- b. the Defendants train the Plaintiff and Class Members in their operation of the App and other related software necessary to complete their duties;
- c. the Plaintiff and Class Members use the Defendants' tools to perform the Services;
- d. the Plaintiff and Class Members are told the type of vehicle insurance and category of license they must have in order to work for the Defendants;
- e. the Plaintiff and Class Members do not solicit or contact customers – all customers contact the Defendants directly, at which point their information is provided to a Class Member to provide the Services to the Defendants' customers;
- f. the Defendants maintain discretion whether to accept or reject potential customers;
- g. all customers serviced by the Plaintiff and Class Members are reported to and tracked by the Defendants;
- h. the Plaintiff and Class Members are assessed in their performance and subject to discipline by the Defendants, including by a driver rating developed and imposed by the Defendants;
- i. the Defendants handle all customer complaints;
- j. the Defendants collect payments by customers for the Services;

- m. the Defendants collect data from customers and other data with respect to the Plaintiff and Class Members and can suspend or terminate a Class Member at any time if the Defendants are not satisfied with their performance;
- n. the Plaintiff and Class Members are prohibited from competing with the Defendants;
- o. the Plaintiff and Class Members cannot sub-contract or independently employ other drivers;
- p. the Services provided by the Plaintiff and Class Members form a significant portion of the Defendants' revenue;
- q. the Plaintiff and Class Members do not receive payment directly from the customers;
- r. the Plaintiff and Class Members are paid directly by the Defendants on specified weekly pay dates;
- s. the Plaintiff and Class Members are subject to a "Community Guideline" and/or a Code of Conduct; and,
- t. the Plaintiff and Class Members have no risk of loss.

BREACH OF EMPLOYMENT STANDARDS ACT

- 13. Provisions of the *Employment Standards Act* are implied and/or express terms of the contracts of employment of the Plaintiff and Class Members.
- 14. The Plaintiff and Class Members regularly work without receiving the Employment Standards Entitlements.
- 15. In particular, the Defendants have repeatedly and systematically breached provisions of the

Employment Standards Act in respect of the Class by:

- a. failing to ensure that the Plaintiff and Class Members are properly classified as employees;
 - b. failing to advise the Plaintiff and Class Members of their Employment Standards Entitlements or compensate them accordingly;
 - c. failing to ensure hours of work are appropriately remunerated for the Plaintiff and Class Members; and,
 - d. requiring and/or permitting the Plaintiff and Class Members to work hours for which the Defendants do not compensate them in accordance with the Employment Standards Entitlements.
16. To the extent any written contracts purport to designate any Class Members as independent contractors and exclude them from eligibility for the Employment Standards Entitlements, such contracts and/or provisions thereof are void and/or unenforceable.
17. The breaches as aforesaid are ongoing and continuous.

BREACH OF CONTRACT AND BREACH OF DUTY

18. As employees under the direct control and supervision of the Defendants, the Plaintiff and Class Members relied on the Defendants to advise them properly regarding their employee status and eligibility for the Employment Standards Entitlements and to meet their statutory responsibilities to keep track of and pay the Plaintiff and Class Members at, or above, the Employment Standards Entitlements. The Defendants are in a position of power and control over the Plaintiff and Class Members, and the Plaintiff and Class Members are necessarily in a vulnerable position vis-à-vis the Defendants.

19. The Defendants owe a contractual duty to the Plaintiff and Class Members, including a contractual duty of good faith and/or duty of care, which requires the Defendants to:
 - a. Ensure that the Plaintiff and Class Members are properly classified as employees;
 - b. advise the Plaintiff and Class Members of their Employment Standards Entitlements;
 - c. ensure that the hours of work of the Plaintiff and Class Members are appropriately remunerated; and,
 - d. ensure that the Plaintiff and Class Members are appropriately compensated at, or above, the Employment Standards Entitlements.
20. The Defendants have breached their contractual duty owed to the Plaintiff and Class Members by:
 - a. improperly and arbitrarily misclassifying them as independent contractors;
 - b. misrepresenting to them that they were independent contractors;
 - c. failing to appropriately remunerate the hours worked by them; and,
 - d. failing to compensate them as required by the Employment Standards Entitlements.
21. The breaches, as aforesaid, are ongoing and continuous.

UNJUST ENRICHMENT

22. The Defendants have been unjustly enriched as a result of receiving the benefit of not providing the Class with the Employment Standards Entitlements, and the Plaintiff and Class Members have suffered a corresponding deprivation in the form of unpaid Employment Standards Entitlements.

23. There is no juristic reason for the Defendants' unjust enrichment and the Class's corresponding deprivation. The arbitrary and unlawful exclusion of the Class from the Employment Standards Entitlements is inequitable, unconscionable and unjust.
24. The Defendants' unjust enrichment, as aforesaid, is ongoing and continuous.

DAMAGES

25. As a result of the Defendants' breaches described above, the Plaintiff and Class Members have suffered damages and losses, and continue to do so, including any consequential damages resulting from a determination they are employees of the Defendants and not independent contractors.
26. The Plaintiff therefore claims against the Defendants, on his own behalf and on behalf of the Class, the relief more particularly set forth in paragraph 1 above.

PLACE OF TRIAL

27. The Plaintiff proposes that this action be tried in Toronto, Ontario.

SERVICE OUTSIDE ONTARIO WITHOUT LEAVE

28. Pursuant to rule 17.02(f), (g) and (p) of the *Rules of Civil Procedure*, this originating process may be served outside Ontario without a court order because the proceeding consists of a claim or claims (a) in respect of a contract that provides it is to be governed by or interpreted in accordance with the law of Ontario; (b) in respect of a tort committed in Ontario; and, (c) against a person ordinarily resident or carrying on business in Ontario.

November 12, 2021

MCKENZIE LAKE LAWYERS LLP

140 Fullarton Street, Suite 1800

London, ON N6A 5P2

Michael J Peerless (LSO # 34127P)

Sabrina Lombardi (LSO # 52116R)

Chelsea Smith (LSO # 71843N)

Tel: 519-672-5666

Fax: 519-672-2674

DUBOFF EDWARDS SCHACHTER LC

1900-155 Carlton Street

Winnipeg, MB R3C 3H8

Paul Edwards

Evan Edwards

Tel: 204-942-3361

Fax: 204-942-3362

Lawyers for the Plaintiff

ADRIAN WASYLYK
Plaintiff

-and- LYFT, INC et al
Defendants

Court File No.

**ONTARIO
SUPERIOR COURT OF JUSTICE**

PROCEEDING COMMENCED AT
TORONTO

AMENDED STATEMENT OF CLAIM

MCKENZIE LAKE LAWYERS LLP

140 Fullarton Street, Suite 1800

London, ON N6A 5P2

Michael J Peerless (LSO # 34127P)

Sabrina Lombardi (LSO # 52116R)

Chelsea Smith (LSO # 71843N)

Tel: 519-672-5666

Fax: 519-672-2674

DUBOFF EDWARDS SCHACHTER LC

1900-155 Carlton Street

Winnipeg, MB R3C 3H8

Paul Edwards

Evan Edwards

Tel: 204-942-3361

Fax: 204-942-3362

Lawyers for the Plaintiff