

| | | |
|---|---|---------------------|
| LABOR COMMISSIONER, STATE OF CALIFORNIA Department of Industrial Relations Division of Labor Standards Enforcement 455 Golden Gate Ave. - 10th floor East San Francisco, CA 94102 Tel: (415)783-6300 Fax: (415)703-4130 | | For Court Use Only: |
| Plaintiff: Rashid Alatrachchi | Court Number | |
| Defendant: UBER Technologies, Inc., Delaware corporation | | |
| State Case Number 11 - 42020 CT | ORDER, DECISION OR AWARD OF THE LABOR COMMISSIONER | |

1. The above-entitled matter came on for hearing before the Labor Commissioner of the State of California as follows:

DATE: July 19, 2012

CONTINUED TO:

CITY: 455 Golden Gate Ave. - 10th floor East, San Francisco, CA

2. IT IS ORDERED THAT: Plaintiff take nothing by virtue of his/her complaint.

- \$ 0.00 for wages (with lawful deductions)
 \$ _____ for liquidated damages pursuant to Labor Code Section 1194.2
 \$ _____ Reimbursable business expenses
 \$ 0.00 for interest pursuant to Labor Code Section(s) 98.1(c), 1194.2 and/or 2802(b),
 \$ 0.00 for additional wages accrued pursuant to Labor Code Section 203 as a penalty
and that same shall not be subject to payroll or other deductions.
 \$ _____ for penalties pursuant to Labor Code Section 203.1 which shall not be subject to payroll or other deductions.
 \$ _____ other (specify):
 \$ 0.00 TOTAL AMOUNT OF AWARD

3. The hereto Order, Decision or Award is based upon the Findings of Fact, Legal Analysis and Conclusions attached hereto and incorporated herein by reference.

4. The parties herein are notified and advised that this Order, Decision or Award of the Labor Commissioner shall become final and enforceable as a judgment in a court of law unless either or both parties exercise their right to appeal to the appropriate court within ten (10) days of service of this document. Service of this document can be accomplished either by first class mail or by personal delivery and is effective upon mailing or at the time of personal delivery. If service on the parties is made by mail, the ten (10) day appeal period shall be extended by five (5) days. For parties served outside of California, the period of extension is longer (See Code of Civil Procedure Section 1013). In case of appeal, the necessary filing fee must be paid by the appellant and appellant must, immediately upon filing an appeal with the appropriate court, serve a copy of the appeal request upon the Labor Commissioner. If an appeal is filed by a corporation, a non-lawyer agent of the corporation may file the Notice of Appeal with the appropriate court, but the corporation must be represented in any subsequent trial by an attorney, licensed to practice in the State of California. Labor Code Section 98.2(c) provides that if the party seeking review by filing an appeal to the court is unsuccessful in such appeal, the court shall determine the costs and reasonable attorney's fees incurred by the other party to the appeal and assess such amount as a cost upon the party filing the appeal. An employee is successful if the court awards an amount greater than zero.

PLEASE TAKE NOTICE: Labor Code Section 98.2(b) requires that as a condition to filing an appeal of an Order, Decision or Award of the Labor Commissioner, the employer shall first post a bond or undertaking with the court in the amount of the ODA; and the employer shall provide written notice to the other parties and the Labor Commissioner of the posting of the undertaking. Labor Code Section 98.2(b) also requires the undertaking contain other specific conditions for distribution under the bond. While this claim is before the Labor Commissioner, you are required to notify the Labor Commissioner in writing of any changes in your business or personal address within 10 days after any change occurs.

LABOR COMMISSIONER, STATE OF CALIFORNIA

BY:

Rashid Alatrachchi
 Rashid Alatrachchi

HEARING OFFICER

DATED: July 19, 2012

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27

BEFORE THE LABOR COMMISSIONER
OF THE STATE OF CALIFORNIA

RASHID ALATRAQCHI,

Plaintiff,

vs.

UBER TECHNOLOGIES, INC., a Delaware
corporation,

Defendant.

CASE NO. 11-42020 CT

ORDER DECISION OR AWARD
OF THE LABOR COMMISSIONER

BACKGROUND

Plaintiff filed an initial claim with the Labor Commissioner's office on January 17, 2012.

The complaint alleges Plaintiff is owed the following:

1. Commission wages the period December 29, 2011 to January 8, 2012, in the total amount of \$1,420.00;
2. Claiming four adjustments per invoice on January 8, 2012, in the amount of \$80.00 and four adjustments per invoices #1, #16 and #12, in the amount of \$39.60;
3. Reimbursement for Iphone deposit in the amount of \$300.00; and
4. Penalties pursuant to Labor Code §§ 201 and 203 at the daily rate of \$200.00.

A hearing was conducted in San Francisco, California, on July 19, 2012, before the undersigned hearing officer designated by the Labor Commissioner to hear this matter.

Plaintiff appeared in pro per. Jesse Lucas appeared for Defendant.

Due consideration having been given to the testimony, documentary evidence, and arguments presented, the Labor Commissioner hereby adopts the following Order, Decision or Award.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20

BINDINGS OF FACT

Plaintiff contracted with Defendant Uber Technologies, Inc., a Delaware corporation, under the terms of a written agreement, to provide limousine services to third parties from December 29, 2011 to January 12, 2012. Plaintiff agreed to Defendant's "Partner/Driver Terms and Conditions" when he downloaded the application on his Iphone. Plaintiff acknowledged that Defendant was not a transportation carrier but merely provided the software which connects limousine drivers with parties seeking transportation services. Plaintiff agreed to receive 80% of the charge and Defendant takes the remaining 20%. Plaintiff is a licensed limousine operator and also worked with other companies. Defendant had no control on Plaintiff's working hours. Expenses such as gasoline costs and maintenance of the vehicle were paid by Plaintiff.

Plaintiff claimed that Defendant failed to pay his commissions in the total amount of \$1,420.00 from December 29, 2011 to January 8, 2012. Plaintiff also claimed that there were invoice adjustments in the total amount of \$113.60 in January 2012. Plaintiff had not presented any contemporaneous documents that would substantiate his contentions. Defendant's representative, Jesse Lucas, provided Plaintiff's Driver Detail record which showed Plaintiff's trips from December 30, 2011 to January 9, 2012 and Plaintiff had received payment in the amount of \$3,009.60 on January 19, 2012. Defendant also added the reimbursement of \$300.00 in that check for Iphone deposit.

21
22
23
24
25
26
27

LEGAL ANALYSIS

Defendant contends Plaintiff is an independent contractor. In determining whether an individual providing service to another is an employee or an independent contractor, there is no single determinative factor. Prior to 1970, the principle test was whether the person to whom the service was rendered had the right to control the manner and means of accomplishing the result desired. *S.G. Borello & Sons, Inc. v. Dept. of Industrial Relations* (1989) brought a departure from the focus on control over the work details. The court identified the following additional factors that must be considered:

- 1
- 2 Whether the person performing services is engaged in an occupation or
- 3 business distinct from that of the principal
- 4 Whether the work is a part of the regular business of the principal
- 5 Whether the principal or the worker supplies the instrumentalities, tools, and
- 6 the place for the person doing the work
- 7 The alleged employee's investment in the equipment or materials required by
- 8 the task
- 9 The skill required in the particular occupation
- 10 The kind of occupation, with reference to whether, in the locality, the work
- 11 usually is done under the direction of the principal or by a specialist without
- 12 supervision
- 13 The alleged employee's opportunity for profit or loss depending on his
- 14 managerial skill
- 15 The length of time for which the services are to be performed
- 16 The degree of permanence of the working relationship
- 17 The method of payment, whether by time or by the job
- 18 Whether the parties believe they are creating an employer-employee
- 19 relationship

20 California courts have established a series of definitive tests for determining whether one
21 is an employee or an independent contractor. Even if the parties expressly agree in writing
22 that an independent contractor relationship exists, under the tests, the one performing services
23 may still be considered an employee.

24 In the instant matter, Defendant's business was engaged in technology and not in the
25 transportation industry. The services Plaintiff provided were not part of the business operated
26 by Defendant, and the evidence did indicate that Plaintiff provided similar services for others
27 during the time of his employment with Defendant. The work arrangement was paid at a per-
28 job rate. Plaintiff provided the means to complete the job. Plaintiff set his own hours, and
29 controlled the manner in which he completed the job. Defendant did not supervise or direct
30 his work and only paid him when Plaintiff invoiced Defendant. Based on the testimonies and
31 evidence presented, Plaintiff performed services as an independent contractor of Defendant,
32 and not as a bona fide employee.

1 The Labor Commissioner lacks jurisdiction over disputes arising from bona fide
2 independent contractor, rather than employment, relationships. Plaintiff's claim, therefore, is
3 dismissed for lack of jurisdiction on the part of the Labor Commissioner.

4 CONCLUSION

5 For all of the reasons set forth above, IT IS HEREBY ORDERED that Plaintiff take
6 nothing by virtue of his complaint.

7
8
9 Dated: August 1, 2012



Regina C. Pagalilauan, Hearing Officer

10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27

STATE OF CALIFORNIA
DEPARTMENT OF INDUSTRIAL RELATIONS
DIVISION OF LABOR STANDARDS ENFORCEMENT

CERTIFICATION OF SERVICE BY MAIL
(C.C.P. 1013A) OR CERTIFIED MAIL

I, Carrie Williams, do hereby certify that I am a resident of or employed in the County of San Francisco, over 18 years of age, not a party to the within action, and that I am employed at and my business address is:

LABOR COMMISSIONER, STATE OF CALIFORNIA
455 Golden Gate Ave. - 10th floor East
San Francisco, CA 94102
Tel: (415)703-5300 Fax: (415)703-4130

I am readily familiar with the business practice of my place of business for collection and processing of correspondence for mailing with the United States Postal Service. Correspondence so collected and processed is deposited with the United States Postal Service that same day in the ordinary course of business.

On August 2, 2012 at my place of business, a copy of the following document(s):

Order, Decision or Award

was(were) placed for deposit in the United States Postal Service in a sealed envelope, by first class mail _____, with postage fully prepaid, addressed to:

NOTICE TO: UBER Technologies, Inc.
Jesse Lucas, Finance Manager
800 Market St., 7th Floor
San Francisco, CA 94102

and that envelope was placed for collection and mailing on that date following ordinary business practices.

I certify under penalty of perjury that the foregoing is true and correct.

Executed on: August 2, 2012 at San Francisco, California

STATE CASE NUMBER: 11-42020 CT

Carrie Williams
Carrie Williams