

THIERMAN BUCK LLP
7287 Lakeside Drive
Reno, NV 89511
(775) 284-1500 Fax (775) 703-5027
Email info@thiermanbuck.com www.thiermanbuck.com

1 Mark R. Thierman, Nev. Bar No. 8285
mark@thiermanbuck.com
2 Joshua D. Buck, Nev. Bar No. 12187
josh@thiermabuck.com
3 Leah L. Jones, Nev. Bar No. 13161
leah@thiermanbuck.com
4 **THIERMAN BUCK LLP**
5 7287 Lakeside Drive
6 Reno, Nevada 89511
7 Tel. (775) 284-1500
Fax. (775) 703-5027

8 *Attorneys for Plaintiff-Relator*

9 **UNITED STATES DISTRICT COURT**

10 **DISTRICT OF NEVADA**

11 THE STATE OF NEVADA, DEPARTMENT
12 OF EMPLOYMENT TRAINING AND
13 REHABILITATION, *ex. rel.* Chagolla

14 Plaintiff,
15 vs.

16 LYFT, INC.,

17 Defendant.

Case No.: 3:23-cv-00442-LRH-CLB

**FIRST AMENDED COMPLAINT FOR
VIOLATIONS OF THE NEVADA FALSE
CLAIMS ACT, NRS 357 *ET SEQ.***

JURY TRIAL DEMANDED

18
19 **INTRODUCTION**

20 1. Relator Christina Michelle Chagolla (hereafter referred to as the “Relator”), on
21 behalf of herself and Plaintiff, the State of Nevada (“Plaintiff” or “State of Nevada” or “State”),
22 brings this action against Defendant LYFT INC. (“LYFT” or “Defendant”), to recover damages
23 and civil penalties arising from LYFT’s concealment and avoidance of its obligation to pay
24 unemployment taxes to the State of Nevada and/or the Nevada Department of Employment,
25 Training, and Rehabilitation (“DETR”), in violation of the Nevada False Claims Act, NRS
26 357.010 *et seq.* (“NFCA”).
27
28

1 2. LYFT commits fraud against Nevada's unemployment insurance system,
2 violating NRS 357.040, by knowingly and improperly avoiding an obligation to pay or transmit
3 its share of unemployment taxes to the State of Nevada or a political subdivision thereof.

4 3. **Who:** LYFT is a transportation company with a principal place of business in San
5 Francisco, California, that contracts with drivers in the state of Nevada to provide personal
6 transportation services to persons in the state of Nevada. Relator is a former driver for LYFT in
7 the state of Nevada and has knowledge of LYFT's failure to participate in Nevada's
8 unemployment system.

9 4. **What:** Nevada's Unemployment Insurance system presumes an employment
10 relationship unless DETR makes a determination of independent contractor status. *See* NRS
11 612.085. Therefore, all entities must remit their share of employment taxes to Plaintiff unless
12 the entity has been deemed exempt. By doing business in the state of Nevada, LYFT has a duty
13 to abide by Nevada's unemployment statutes. LYFT has knowingly and intentionally failed to
14 seek an exemption from Nevada's unemployment system and, therefore, has knowingly avoided
15 its obligation to remit monies to Plaintiff.

16 5. **Where:** LYFT's unlawful conduct has occurred throughout the state of Nevada
17 since on or about 2015.

18 6. **When:** Relator began driving for LYFT from on or about July 12, 2019, until on
19 or about September 14, 2022, and has knowledge of LYFT's failure to participate in Nevada's
20 unemployment system. LYFT's unlawful conduct has occurred throughout the state of Nevada
21 since on or about 2015.

22 7. **How:** LYFT's business model is to treat its drivers as independent contractors
23 and shift the burden of employment taxes to the individual drivers themselves. As a result of its
24 decision to treat drivers as independent contractors, LYFT has never paid the state of Nevada any
25 unemployment taxes for its drivers.

26 8. Prior to filing the originally filed complaint, Relator provided the Attorney
27 General for the State of Nevada a written Disclosure Statement of substantially all the material
28 evidence and information in their possession related to the allegations in the originally filed

1 complaint in accordance with NRS 357.080. The Disclosure Statement includes the work
2 product of Relator's attorneys and was submitted to the Attorney General as a potential co-
3 counsel in this litigation pursuant to joint prosecution and common interest privileges.

4 9. There has been no "public disclosure" of the false claims or allegations herein—
5 *i.e.*, that LYFT knowingly failed to seek an exemption from Nevada's unemployment system and
6 failed to remit moneys to Plaintiff—as that term is defined in the Nevada False Claims Act at
7 NRS 357.100.

8 10. Even if a public disclosure has occurred, which it has not, Relator is an "original
9 source" pursuant to NRS 357.100 because even though it may be widely known that LYFT
10 classifies its drivers as independent contractors in a general sense, it is not widely known that
11 LYFT did not seek an exemption from Nevada's unemployment system and that LYFT did not
12 pay into the unemployment compensation system. Relator voluntarily disclosed to the State the
13 information on which the allegations or transactions involved in this litigation are based prior to
14 any public disclosure. Additionally, Relator has knowledge that is independent of any such public
15 disclosure and which materially adds to any publicly disclosed allegations or transactions.
16 Relator voluntarily provided this information to the State of Nevada before filing this action.

17 PARTIES

18 **I. Relator**

19 11. Relator Christina Michelle Chagolla is a natural born person who is a citizen of
20 the United States and resident of the City of Reno in the State of Nevada.

21 12. Relator was a driver for LYFT; she began driving for LYFT on or about July 12,
22 2019, until September 14, 2022.

23 13. The party in interest to the Nevada FCA *qui tam* claims herein is Plaintiff, the
24 State of Nevada. Accordingly, at this time, Relator is pursuing her cause of action on behalf of
25 Plaintiff on the NFCA *qui tam* claims set forth herein. *See* NRS 357.080.

26 **II. Defendant**

27 14. Defendant LYFT is a foreign corporation incorporated in the state of Delaware
28 with a principal place of business in San Francisco, California. LYFT is a business entity that is

1 registered to do business in the state of Nevada. LYFT's agent of service is CT Corporation
2 System, located at 701 S. Carson Street, Suite 200, Carson City, Nevada 89701.

3 **JURISDICTION AND VENUE**

4 15. This Court has personal jurisdiction and venue over LYFT because LYFT transacts
5 business in this District, and Relator drove for LYFT primarily in the Reno, Nevada, area.

6 16. Venue is proper in this District because LYFT transacts business in this judicial
7 district, and acts proscribed by NRS 357 *et seq.* have been committed by LYFT in this District.

8 17. This action is not precluded by any provisions of the Nevada False Claims Act's
9 jurisdictional exclusions as set forth in NRS 357.180.

10 **BACKGROUND**

11 **I. Nevada's Unemployment Insurance System**

12 18. "Unemployment Insurance is a joint Federal/State insurance system established
13 to protect workers by paying benefits during periods of involuntary unemployment and aid the
14 business community by stabilizing the available workforce. The system is funded through payroll
15 taxes on employers." See https://ui.nv.gov/ESSHTML/ui_information.htm (last visited March
16 31, 2022).

17 19. "Generally, any employing unit that has paid wages for employment in Nevada
18 of \$225 or more during any calendar quarter must register with the Employment Security
19 Division and pay taxes on those wages." *Id.*

20 20. "As defined in NRS 612.060, an 'employing unit' means any individual or type
21 of organization, including any partnership, association, trust, estate, joint-stock company,
22 insurance company, corporation, or a receiver or trustee in bankruptcy." *Id.*

23 21. "NRS 612.065 states: 'Employment' means service, including service in
24 interstate commerce, performed for wages or under any contract of hire, written or oral, express
25 or implied." *Id.*

26 22. Nevada unemployment compensation law presumes persons to be employees
27 rather than independent contractors. NRS 612.085.

23. An entity seeking to have persons declared to be independent contractors and exempt from Nevada's unemployment insurance system must seek a prior determination from the Administrator of DETR:

NRS 612.085 "Employment": Services deemed employment unless specific facts shown. Services performed by a person for wages *shall* be deemed to be employment subject to this chapter *unless it is shown to the satisfaction of the Administrator that:*

1. The person has been and will continue to be free from control or direction over the performance of the services, both under his or her contract of service and, in fact;
2. The service is either outside the usual course of the business for which the service is performed, or the service is performed outside of all the places of business of the enterprises for which the service is performed and
3. The service is performed in the course of an independently established trade, occupation, profession, or business in which the person is customarily engaged, of the same nature as that involved in the contract of service.

NRS 612.085 (emphasis added).¹

II. The Nevada False Claims Act

24. The NFCA authorizes so-called qui-tam actions by which "a private plaintiff ... bring[s] an action ... on his or her own account and that of the State or a political subdivision, or both the State and a political subdivision, for violations thereunder." *Orbitz Worldwide, LLC v. Eighth Judicial District Court in and for Cnty. of Clark*, 535 P.3d 1173, 1178 (Nev., 2023).

25. The NFCA includes what is commonly referred to as a "reverse false claims," which occurs any time a person "knowingly and improperly avoids . . . an obligation to pay or transmit money or property to the State or a political subdivision." NRS 357.040(1)(g).

26. An "obligation" means any established duty, regardless of whether the duty is a fixed duty, arising from: . . . 5. A statute or regulation[.]" NRS 357.024(5).

¹ "Wages" is defined, in part, as "All remuneration paid for personal services, including commissions and bonuses and the cash value of all remuneration payable in any medium other than cash[.]" NRS 612.190.

27. The failure to pay required taxes, such as employer share of unemployment taxes, is “within the realm of possible false claims.” *International Game Technology, Inc. v. Second Judicial Dist. Court of Nevada*, 127 P.3d 1088, 1101, 122 Nev. 132, 150 (Nev., 2006).

28. Any person who violates the NFCA is liable for damages in the amount of three (3) times the amount of loss the government sustained and penalties which range between \$10,957 and \$21,916 per claim. *See* NRS 357.040(2) (citing 31 U.S.C. § 3729(a)); 28 C.F.R. § 85.3. The prevailing plaintiff is also entitled to recover his or her reasonable attorney’s fees and costs of suit. NRS 357.180, 357.040(2)(b).

III. LYFT Knowingly and Improperly Avoided an Obligation to Pay or Transmit Money to Plaintiff

29. LYFT does not have an employer account with DETR.

30. LYFT has not paid the State of Nevada any amount for unemployment insurance.

31. LYFT has an established duty to report and pay unemployment taxes unless it seeks and receives an independent contractor exemption from DETR. *See* NRS 612.085.

32. By doing business in Nevada, LYFT has an obligation to follow Nevada’s unemployment statutes and regulations. *See* NRS 357.024.

33. Without seeking an independent contractor determination for its Nevada drivers from DETR, all of LYFT’s Nevada drivers must be deemed employees.

34. Being deemed employees, LYFT willfully, intentionally, and knowingly failed to remit any unemployment taxes to the state of Nevada for Relator or for any driver who worked in the state of Nevada.

35. From March 27, 2020, until March 14, 2021, the State paid Pandemic Unemployment Assistance to drivers for LYFT as independent contractors, which is 100% funded by general tax revenue, instead of payments of Nevada unemployment compensation, which is funded in part by the employer to these LYFT drivers as employees.

36. As a result, the State (along with all LYFT drivers in Nevada) has been significantly harmed by LYFT’s unlawful conduct.

IV. LYFT Cannot Satisfy the Independent Contractor ABC Test

37. Even if LYFT had sought, or in the future does seek, an independent contractor exemption, LYFT would not be able to meet the exemption.

38. LYFT cannot satisfy the “A” prong of the ABC independent contractor test under NRS 612.085(1). Relator and all other LYFT drivers in Nevada were not free from the control and direction of LYFT in connection with the performance of the work, both under the contract for the performance of the work and in fact. For example, LYFT exhibited the following instances of control over the Relator (and all other LYFT drivers in Nevada):

- a. LYFT required a background check for Relator (and all other LYFT drivers in Nevada);
- b. LYFT inspected the car Relator (and all other LYFT drivers in Nevada) uses to carry passengers referred by the LYFT application on the customers’ phones;
- c. LYFT set the price per ride with the customer without Relator (and all other LYFT drivers in Nevada) knowledge and conceals the price the driver receives for a trip until after the trip is initiated;
- d. LYFT monitored in real-time via GPS the speed and route that Relator (and all other LYFT drivers in Nevada) goes when providing a ride to a customer;
- e. LYFT required Relator (and all other LYFT drivers in Nevada) to watch safety and other videos produced and written by LYFT and /or consistent with LYFT policies;
- f. LYFT rated the performance of Relator (and all other LYFT drivers in Nevada), more than just the customer feedback surveys it receives;
- g. If Relator (and all other LYFT drivers in Nevada) did not meet LYFT’s standards for driver behavior, and/or if LYFT determined Relator (and all other LYFT drivers in Nevada) had violated LYFT’s rules, LYFT would discipline or terminate the driver, which is done by denying the driver future access to the LYFT platform and refusing to dispatch future riders to the driver²;

² LYFT deactivated Relator’s driving privileges on September 14, 2022, after a customer complaint.

- h. The rider pays LYFT directly, and LYFT then pays Relator (and all other LYFT drivers in Nevada) a different amount for that ride;
- i. Any fees or compensation LYFT may earn is proportional to the ride purchased by the customer rather than being proportional to the usage of the platform by Relator (and all other LYFT drivers in Nevada); and
- j. LYFT also provides bonus compensation to Relator (and all other LYFT drivers in Nevada) for driving during certain days, times, and localities.

39. In addition to being unable to satisfy the first prong of the ABC test, LYFT cannot possibly satisfy the “B” prong of the ABC test under NRS 612.085(2). LYFT is a transportation company. Relator is a driver for LYFT. Without drivers like Relator, LYFT would not have a business.

COUNT I

Violations of the Nevada False Claims Act, NRS 357.040

40. Plaintiff reasserts and incorporates by reference all paragraphs set forth above as if restated herein.

41. NRS 357.040(1)(g) states that “1. Except as otherwise provided in NRS 357.050, a person who, with or without specific intent to defraud, does any of the following listed acts is liable to the State or a political subdivision, whichever is affected, for the amounts set forth in subsection 2: (g) Knowingly conceals or knowingly and improperly avoids or decreases an obligation to pay or transmit money or property to the State or a political subdivision.”

42. Failure to properly report and pay taxes due to the State of Nevada gives rise to a “reverse false claim.”

43. LYFT has, and continues to this day, to knowingly conceal or knowingly and improperly avoid or decrease an obligation to pay or transmit unemployment taxes to the state of Nevada by willfully, intentionally, and knowingly failed to seek an affirmative independent contractor exemption and by misclassifying its drivers as independent contractors under Nevada law.

44. Based on the above, LYFT is liable to the state of Nevada for all unpaid unemployment taxes for Relator and all other LYFT drivers, trebled, plus civil penalties for each violation of the Act, attorneys fees, costs, and all other remedies available under the law.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, the State of Nevada, is entitled to damages from LYFT in accordance with the provisions of NRS 357.040, *et seq.*, Relator requests that judgment be entered against LYFT as follows:

- a. LYFT shall pay an amount equal to three times the amount of damages the State of Nevada has sustained because of LYFT's actions, plus a civil penalty against LYFT between \$10,957 and \$21,916 for each violation of NRS 357.040;
- b. LYFT shall pay all interest provided by law at the maximum legal rate;
- c. LYFT shall pay all reasonable attorneys fees;
- d. LYFT shall pay all costs of suit;
- e. LYFT shall pay pre-judgment and post-judgment interest, as provided by law; and
- f. For such other and further relief as the Court may deem just and proper.

JURY DEMAND

Pursuant to Rule 38 of the Federal Rules of Civil Procedure, Plaintiff hereby demands a jury trial.

Dated: November 16, 2023

Respectfully Submitted,

By: /s/ Joshua D. Buck
 Joshua D. Buck
 Mark R. Thierman
 Leah L. Jones

Counsel for Plaintiff-Relator