July 27, 2022

Nancy Sienko, Area Director
Roberta Steele, Regional Attorney
U.S. Equal Employment Opportunity Commission
San Francisco District Office
450 Golden Gate Avenue
5 West, P.O. Box 36025
San Francisco, CA 94102-3661

Re: Investigation Request/Lyft, Inc.

Dear Ms. Sienko and Ms. Steele:

America First Legal Foundation ("AFL") is a national, nonprofit organization working to protect the rule of law, due process, and equal protection for all Americans. We write pursuant to 29 C.F.R. § 1601.6(a), providing that "[a]ny person or organization may request the issuance of a Commissioner charge for an inquiry into individual or systemic discrimination," to request that the Equal Employment Opportunity Commission open an investigation into Lyft, Inc. (the "Company") for engaging in unlawful employment practices in violation of Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e-2.[1]

The Company is a publicly traded corporation incorporated under the laws of the State of California with its principal executive offices located at 185 Berry Street, Suite 5000, San Francisco, CA 94107. The Company's Form 10-K for the fiscal year ended December 31, 2021, states that it is "one of the largest multimodal transportation networks in the United States and Canada," with a mission to "improve people's lives in the world's best transportation." Lyft, Inc., Form 10-K at 8 (February 28, 2022) https://bit.ly/3PpHVZF. As of December 31, 2021, the Company claimed to employ 4,453 employees across approximately 119 offices and additional locations. *Id.* at 15.

As you know, an unlawful employment practice is established when the evidence demonstrates that race, color, religion, sex, or national origin was a motivating factor for any employment practice. 42 U.S.C. § 2000e-2(m). Here, the evidence is that the

[1] Copies of this letter are also addressed to each Member of the Commission, and AFL makes the same request of them pursuant to 29 C.F.R. § 1601.6(a).

Company is knowingly and intentionally discriminating with respect to compensation, terms, conditions, or privileges of employment because of pregnancy and childbirth in violation of 42 U.S.C. § 2000e-2(a)(1).

On April 29, 2022, the Company announced that "[f]or Lyft employees enrolled in our U.S. medical benefits, which include coverage for elective abortion, we'll cover the travel costs if these laws require travel outside of Texas and Oklahoma to [abort a pregnancy]." Then, on June 24, 2022, the Company announced a special employee benefit including "reimbursement for travel costs if an employee must travel more than 100 miles for an in-network provider."[2] However, Title VII, as amended by the Pregnancy Discrimination Act of 1978, prohibits discrimination with respect to compensation, terms, conditions, or privileges of employment because of childbirth. *See* 42 U.S.C. §§ 2000e(k); 2000e-2(a). The Company's decision to provide "coverage for an elective abortion and reimbursement for travel costs"—which is properly classified both as compensation and/or as a privilege of employment—to a pregnant woman who chooses to abort her child, while denying any equivalent compensation or benefit to a pregnant woman who chooses life, facially violates the statute. 42 U.S.C. §§ 2000e-2(a)(1); 2000e(k).

Also, evidence suggests that the Company is knowingly and intentionally discriminating with respect to recruitment, compensation, terms, conditions, or privileges of employment because of race, color, national origin, and/or sex. The Company has affirmatively and repeatedly represented to its shareholders, to the Securities and Exchange Commission, and to consumers that its employment and contracting practices are infused with facially unlawful considerations of race, color, sex, and/or national origin.[3] Among other things, the Company repeatedly admits to limiting, segregating, or classifying employees or applicants for employment in ways that would deprive, or tend to deprive, individuals of employment and promotion opportunities because of their race, color, sex, or national origin. In other words, the Company has admitted

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[2] *See* https://lft.to/3B4GImn; https://lft.to/3cpoaml.

[3] The Company admits it provides contracting preferences to "Diverse (sic) Business," meaning a business it has certified, or that has been certified by designated special interest organizations, as it certifies as "at least 51% owned, operated and controlled by one of these groups: Minority, Woman, LGBTQ…" The Company identifies a "minority group member" as an individual who is, *inter alia*: "at least 25% Asian, Black, Hispanic or Native American; a Woman; [or] LGBTQ+." It is not clear how the Company defines these terms, nor whether the Company requires independent confirmation of self-identification by way of a genetic test, affidavits attesting to qualifying sexual behavior, or otherwise. https://lft.to/3cwtDrv. Regardless, since the Civil Rights Act of 1866 (codified at 42 U.S.C. 1981), federal law has prohibited all forms of racial discrimination in private contracting. As the late Justice Ginsburg noted, Section 1981 is a "'sweeping' law designed to 'break down all discrimination between black men and white men' regarding 'basic civil rights.'" *Comcast Corp. v. Nat'l Ass'n of Afr. Am.-Owned Media*, 140 S.Ct. 1009, 1020 (2020) (Ginsburg, J. concurring) (quoting *Jones v. Alfred H. Mayer Co.*, 392 U.S. 409, 432 (1968). The Company's contracting practices are outside the Commission's jurisdiction. However, they reflect its management's disregard for the most basic and fundamental requirements of federal civil rights law.

to unlawful employment practices in violation of 42 U.S.C. §§ 2000e-2(a) and 2000e-2(d).

For example, in 2019 the Company published an "Inclusion and Diversity" report demonstrating that "balancing" based on race, color, national origin, and sex infused its employment practices. *See* Lyft, Inc., *2019 Lyft Inclusion and Diversity Annual Report* at 4, 9, 12, 17-18 (last accessed July 20, 2022), https://bit.ly/3RNZ1SJ. Management admitted that "[w]e've baked accountability metrics into our [employment] process, holding ourselves to our promise to deliver on our development commitments and hiring goals." *Id.* at 16. These "goals" appear to have been mandatory quotas enforced by an "I&D team" responsible for "reviewing workforce demographics." *Id.* at 19.

In 2020, the "Inclusion and Diversity" report evolved into an "Inclusion, Diversity, and Racial Equity (sic)" report. *See* Lyft, Inc., *2020 Lyft Inclusion, Diversity, and Racial Equity Report* (last accessed July 20, 2022), https://bit.ly/3RO419W. Here, the Company referenced a "diverse (sic) internship program" which appears to be a training program that discriminates based on race, color, and/or national origin in violation of 42 U.S.C. § 2000e-2(d). *Id.* at 6. It admitted that the Company is using numeric criteria to racially balance its workforce, affirming that the Company is building "accountability metrics to ensure we are delivering on hiring…" *Id.* at 7. It further admitted that the Company is using racial balancing in making separation decisions caused by "significant disruptions to the business landscape." In other words, it uses race, color, national origin, and/or sex to decide who to fire. *Id.* at 11-12. It further admitted that the Company is providing special compensation and privileges of employment to "Women, Black, and Latinx (sic) engineering team members" but not to its other employees. *Id.* at 16. Additionally, the Company admitted to limiting, segregating, or classifying employees and applicants for employment in ways that deprive or tend to deprive individuals of employment opportunities based on race, color, sex, or national origin—meaning the Company systematically uses unlawful hiring quotas in its employment practices. *Id.* at 7, 11-14, 21, 22, 36. Although the Company's public-facing statements are unclear, the most recent Form 10-K continues to cite the 2020 "equity" report, suggesting that this remains an authoritative summary of its employment practices. *See* Form 10-K at 15.

On April 19, 2021, the Company yet again admitted to facially unlawful race, color, and national origin-based recruiting and employment practices. *See* Lyft, Inc., "Reflecting on our work toward inclusion, diversity, and racial justice: An update on our commitment", Lyft Blog (Apr. 19, 2021), (last accessed on July 26, 2022), https://lft.to/3PnXQYl. It referenced, but did not publish, "Racial Equity (sic) Objectives and Key Results (OKRs) to drive further accountability" and claimed, without details or substantiation, that the Company had "currently completed or are (sic) on track to complete 30 out of 34 objectives." *Id.* It conceded providing training and pro-

motion opportunities based on race and national origin. And it promised to "specifically focus" on "[w]orking to reach our remaining hiring goals, expanding our pipeline of underrepresented talent, and investing in the development, retention, and promotion of Black and Latinx staff members." *Id.*

Racial, color, national origin, and sex-based "balancing" in hiring, training, compensation, and promotion is patently illegal. 42 U.S.C. §§ 2000e-2(a), (d). Decades of case law holds that—no matter how well intentioned—such policies are prohibited. *See, e.g.*, *United Steelworkers of Am. v. Weber*, 443 U.S. 193, 208 (1979); *Johnson v. Transp. Agency*, 480 U.S. 616, 621-641 (1987).[4] If the Company is engaged in such conduct, then it is knowingly and intentionally violating federal civil rights laws. If the Company is not engaged in such conduct, but merely pretending to do so, then it is cynically and intentionally misleading consumers, workers, and investors. There is no third alternative.

Discrimination based on immutable characteristics such as race, color, national origin, or sex "generates a feeling of inferiority" in its victims "that may affect their hearts and minds in a way unlikely to ever be done."[5] More broadly, the apparent discrimination here necessarily foments contention and resentment. It is "odious and destructive."[6] It truly "is a sordid business, this divvying us up" by race, color, national origin, or sex.[7] Always has been, always will be.

The Company's admissions, as described above and in its public disclosures, as well as its failure to transparently disclose the thirty-four "Racial Equity (sic) Objectives and Key Results (OKRs)", are all at least highly suggestive of, if not intentional and purposeful, actions arising from unlawful race, color, national origin, and sex quotas and discrimination, thus providing compelling reason for the Commission to open a comprehensive investigation into the Company's employment practices.

[Signature page follows]

[4] *See also Bostock v. Clayton Cnty., Georgia*, 140 S. Ct. 1731 (2020).
[5] *Brown v. Bd. Of Education*, 347 U.S. 484, 494 (1954).
[6] *Texas v. Johnson*, 491 U.S. 397, 418 (1989).
[7] *League of United Latin Am. Citizens v. Perry*, 548 U.S. 399, 511 (2006) (Roberts, C.J., concurring in part).

Sincerely,

Reed D. Rubinstein

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Reed D. Rubinstein
America First Legal Foundation

Cc: The Hon. Charlotte A. Burrows, Commission Chair
The Hon. Jocelyn Samuels, Commission Vice Chair
The Hon. Janet Dhillon, Commissioner
The Hon. Keith E. Sonderling, Commissioner
The Hon. Andrea R. Lucas, Commissioner