

PEOPLE OF THE STATE OF NEW YORK
OFFICE OF THE ATTORNEY GENERAL
LABOR BUREAU

IN THE MATTER OF THE INVESTIGATION OF
LETITIA JAMES, ATTORNEY GENERAL OF THE
STATE OF NEW YORK

ASSURANCE OF
DISCONTINUANCE

OF

AOD No. 24-080

DRIZLY, LLC.

ASSURANCE OF DISCONTINUANCE

The Office of the New York State Attorney General (“OAG”) has investigated DRIZLY, LLC (“Drizly”) pursuant to New York Executive Law § 63(12).

The investigation, pursuant to New York State Executive Law § 63(12)’s fraud provision and General Business Law § 349, examined whether Drizly deceived customers into believing that tips placed on the platform would reach the individual worker delivering the order when not all tips were received by such workers.

This Assurance of Discontinuance (“AOD”) contains OAG’s findings in connection with this investigation of Drizly and the relief agreed to by OAG and Drizly (collectively, the “Parties”).

OAG FINDINGS

1. Drizly was a “marketplace provider” that operated a website or platform through which consumers purchased wine, beer, or liquor to be delivered by local liquor stores.

2. The Drizly platform routed the orders and the purchase price, applicable tax, and any tips to the store chosen by the customer.

3. Drizly partnered with local liquor stores, which listed their products on Drizly and delivered the alcohol with their own workers or used a third-party delivery app. A consumer making an order through the Drizly platform could also add a tip to the worker delivering the order.

4. The OAG commenced its investigation of Drizly in 2023. It covered delivery workers employed by the platform’s liquor stores (and excluded third-party delivery app delivery workers) for the time period of January 1, 2018 through August 2023.

5. The OAG also served subpoenas to local liquor stores in New York that used Drizly.

6. Tips for New York employees are governed by New York Labor Law § 196-d and the minimum wage orders under the New York Codes, Rules and Regulations. Liquor store employees are covered under the Miscellaneous Wage Order. The Miscellaneous Wage Order does not allow for tip pooling.

7. The OAG found that the Drizly platform encouraged customers to input a tip for the person making the delivery. For example, the platform told customers: “We provide you with the opportunity to tip your driver from our apps or website. The default tip is 10% of your order total, but you may adjust the amount according to your preference. We humbly ask that you tip drivers, as they are critical in making every Drizly delivery a reality.” The OAG found that Drizly’s communications failed to clearly state that the tip did not necessarily go to the worker making the delivery and failed to disclose or clarify that the stores on the platform were responsible for tipping their employees. The OAG found that Drizly was heavily involved in stores’ delivery processes, including informing retailers and delivery workers (after the order was complete) of the customer tip amount on an individual order. The OAG also found that Drizly encouraged retailers to pool tips but omitted any mention of tip pooling to Drizly’s customers.

8. Because Drizly misled its customers into believing that the total amount of tip they designated on Drizly would go to the delivery worker who delivered that particular order, omitted the material fact from customers that customer tips frequently did not change delivery pay, and misled stores about the legality of tip pooling, OAG has concluded that Drizly violated Executive Law § 63(12)’s fraud provision and engaged in persistent and repeated illegality in violation of Executive Law § 63(12) and General Business Law § 349.

9. Drizly ceased its operations in March 2024.

10. Drizly does not admit the findings made by the OAG or alleged violations of law in paragraphs 1-9 above.

11. The OAG finds the relief and agreements contained in this AOD appropriate and in the public interest. THEREFORE, OAG is willing to accept this AOD pursuant to Executive Law § 63(15), in lieu of commencing a statutory proceeding for violations of Executive Law § 63(12) based on the conduct described above.

IT IS HEREBY UNDERSTOOD AND AGREED, by and between the Parties:

RELIEF

Entities Bound By the AOD

12. This AOD binds Drizly, as well as its principals, directors, beneficial owners, officers, shareholders, successors, and assigns.

Monetary Payment

13. Drizly agrees to pay \$4,000,000 (four million dollars) in resolution of OAG's investigation (the "Monetary Relief Amount"), which will be paid directly to OAG within 30 (thirty) days of the date of the execution of the AOD ("Effective Date"). The Monetary Relief Amount will be used for distribution as wage restitution to current and former delivery workers who made deliveries for the Drizly platform from January 1, 2018 through August 2023 for violations of laws specified in this AOD. No amount shall revert to Drizly.

14. Drizly also agrees to pay \$200,000 (two hundred thousand dollars) to OAG within 30 (thirty) days of the Effective Date to cover the costs for a Settlement Administrator to disburse the Monetary Relief Amount. No funds shall be returned to Drizly if the Settlement Administrator costs are less than \$200,000, and any remaining funds will be added to the Monetary Relief Amount for distribution to delivery workers.

15. Payments shall be made by wire transfer, attorney check, corporate or certified check, or bank draft, which shall be made payable to the "State of New York" and shall reference AOD No. 24-080. Payment shall be addressed to the attention of:

Jessica Agarwal
Assistant Attorney General, Labor Bureau
28 Liberty Street
New York, New York 10005
Jessica.Agarwal@ag.ny.gov

The payment and all correspondence related to this AOD must reference "AOD No. 24-080."

16. The OAG has the sole discretion to determine which delivery workers shall be eligible for restitution and to determine the amount of such restitution.

17. The OAG has sole discretion to select the Settlement Administrator and contract for their services. The OAG will similarly have sole discretion to select and contract with a new Settlement Administrator upon a reasonable and good faith determination that the Settlement Administrator has materially failed to carry out its duties pursuant to this AOD.

18. The parties acknowledge that Drizly has provided the information that it has available to it to locate and contact current and former delivery workers who may be eligible for a restitution amount, including providing for each worker, to the extent reasonably available, their last known telephone number and last-known email address. Drizly agrees to provide reasonable cooperation to assist the OAG with logistical support, should it be needed, as it administers this settlement.

MISCELLANEOUS

Representations and Warranties

19. The OAG has agreed to the terms of this AOD based on, among other things, the representations made to OAG by Drizly and OAG's own factual investigation as set forth in Paragraphs 1 through 9 above. Drizly represents and warrants that neither it nor its counsel have made any material representations to OAG that are inaccurate or misleading. If any material representations by Drizly or its counsel are later found to be inaccurate or misleading, this AOD is voidable by OAG in its sole discretion.

20. No representation, inducement, promise, understanding, condition, or warranty not set forth in this AOD have been made or relied upon by Drizly in agreeing to this AOD.

21. Drizly represents and warrants, through the signature below, that the terms and conditions of this AOD are duly approved and execution of this AOD is duly authorized.

Effects of AOD

22. Any failure by OAG to insist upon the strict performance by Drizly of any of the provisions of this AOD shall not be deemed a waiver of any of the provisions hereof, and OAG, notwithstanding that failure, shall have the right thereafter to insist upon the strict performance of any and all provisions of this AOD to be performed by Drizly.

Subsequent Proceedings

23. Drizly expressly agrees and acknowledges that OAG may initiate a subsequent investigation, civil action, or proceeding to enforce this AOD, for violations of the AOD, or if the AOD is voided pursuant to Paragraph 19, and agree and acknowledge that in such event:

- a. any statute of limitations or other time-related defenses are tolled from and after the Effective Date of this AOD;
- b. the OAG may use statements, documents, or other materials produced or provided by Drizly prior to or after the Effective Date of this AOD except for settlement communications;
- c. any civil action or proceeding must be adjudicated by the courts of the State of New York, and that Drizly irrevocably and unconditionally waives any objection based upon personal jurisdiction, inconvenient forum, or venue;

d. evidence of a violation of this AOD shall constitute prima facie proof of a violation of the applicable law pursuant to Executive Law § 63(15).

24. If a court of competent jurisdiction determines that Drizly has violated the AOD, Drizly shall pay to OAG the reasonable cost, if any, of obtaining such determination and of enforcing this AOD, including without limitation legal fees, expenses, and court costs.

General Principles

25. Nothing in this AOD shall relieve Drizly of other obligations imposed by any applicable state or federal law or regulation or other applicable law.

26. Nothing contained herein shall be construed to limit the remedies available to OAG in the event that Drizly violates the AOD after the Effective Date.

27. This AOD may not be amended except by an instrument in writing signed on behalf of the parties to this AOD.

28. In the event that any one or more of the provisions contained in this AOD shall for any reason be held by a court of competent jurisdiction to be invalid, illegal, or unenforceable in any respect, in the sole discretion of OAG, such invalidity, illegality, or unenforceability shall not affect any other provision of this AOD.

29. Drizly acknowledges that it has entered this AOD freely and voluntarily and upon due deliberation with the advice of counsel.

30. This AOD shall be governed by the laws of the State of New York without regard to any conflict of laws principles.

31. The AOD and all its terms shall be construed as if mutually drafted with no presumption of any type against any party that may be found to have been the drafter.

32. All notices, reports, requests, and other communications to any party pursuant to this AOD shall be in writing and shall be directed as follows:

From Drizly to the Attorney General:

New York State Office of the Attorney General
Jessica Agarwal, Assistant Attorney General
Labor Bureau
28 Liberty Street
New York, New York 10005

Or

Jessica.Agarwal@ag.ny.gov

From the Attorney General to Drizly:

Ashley L. Taylor, Jr.
Stephen C. Piepgrass
Troutman Pepper Hamilton Sanders LLP
P.O. Box 1122
1001 Haxall Point
Richmond, Virginia 23219

Or

Ashley.Taylor@troutman.com and Stephen.Piepgrass@troutman.com

Any changes in the persons to whom communications should be specifically directed shall be made in writing in advance of the change.

33. This AOD may be executed in multiple counterparts, each of which shall be deemed to be an original, but all of which, taken together, shall constitute one and the same agreement.

IN WITNESS WHEREOF, this AOD is executed by the parties hereto on December ____, 2024.

LETITIA JAMES

Attorney General of the State of New York

By: _____

Jessica Agarwal

Assistant Attorney General

28 Liberty Street

New York, New York 10005

Phone: (212) 416-8701

Dated: December ____, 2024

DRIZLY, LLC.

By: Michelle Parker

Michelle Parker, Manager

1725 3rd Street

San Francisco, CA

Dated: December ¹⁶ ____, 2024

33. This AOD may be executed in multiple counterparts, each of which shall be deemed to be an original, but all of which, taken together, shall constitute one and the same agreement.

IN WITNESS WHEREOF, this AOD is executed by the parties hereto on December 17, 2024.

LETITIA JAMES

Attorney General of the State of New York

By: Jessica Agarwal

Jessica Agarwal

Assistant Attorney General

28 Liberty Street

New York, New York 10005

Phone: (212) 416-8701

Dated: December 17, 2024

DRIZLY, LLC.

By: _____

Michelle Parker, Manager

1725 3rd Street

San Francisco, CA

Dated: December __, 2024