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11
12 **UNITED STATES DISTRICT COURT**
13 **NORTHERN DISTRICT OF CALIFORNIA**

14 DOUGLAS O'CONNOR, THOMAS
15 COLOPY, DAVID KHAN, MATTHEW
16 MANAHAN, WILSON ROLLE, JR., and
17 WILLIAM ANDERSON, individually and on
18 behalf of all others similarly situated,

19 Plaintiffs,

20 v.

21 UBER TECHNOLOGIES, INC,

22 Defendant.

Case No. CV 13-3826-EMC

**FIRST AMENDED CLASS ACTION
COMPLAINT AND JURY DEMAND**

CASE FILED: AUGUST 16, 2013

BEFORE THE HON. EDWARD M. CHEN

1 **I. INTRODUCTION**¹

2 1. This case is brought on behalf of individuals who have worked as Uber drivers
3 anywhere in the United States (other than Massachusetts). Uber is a car service that provides
4 drivers who can be hailed and dispatched through a mobile phone application. As set forth
5 below, Uber advertises to customers that gratuity is included in the cost of its car service.
6 However, Uber drivers do not receive the total proceeds of any such gratuity. Instead, they
7 receive only a portion of such gratuity, if any is charged to the customer. Furthermore, based on
8 Uber's communication to customers that gratuity is included in the price of its service and so
9 they do not need to tip, few if any customers leave tips for the drivers. Thus, drivers do not
10 receive the tips that are customary in the car service industry and that they would otherwise
11 receive were it not for Uber's communication to customers that they do not need to tip.
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14 2. Plaintiffs bring this action on their own behalf, and on behalf of all Uber drivers
15 across the country (except in Massachusetts), for tortious interference with prospective economic
16 advantage, breach of contract with customers (for which drivers are third party beneficiaries),
17 violation of the California Gratuities Law, California Labor Code Section 351 (enforced through
18 the UCL), and the California Unfair Competition Law, Cal. Bus. & Prof. Code § 17200 *et seq.*
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22 ¹ Plaintiffs file this First Amended Complaint pursuant to the Court's Order of April 18,
23 2014. Plaintiffs have removed from the complaint the portions of claims that the Court
24 dismissed in its Order of December 5, 2013 (Doc. 58). However, in so doing, Plaintiffs do not
25 waive their rights to the claims that have been dismissed, for appellate purposes, and Plaintiffs
26 do not waive their rights to reinstitute claims against Travis Kalanick and Ryan Graves,
27 individually, if appropriate. Plaintiffs have conferred with Defendant, who does not object to the
28 filing of this amended complaint (while reserving the right to challenge the complaint) and who
has acknowledged that Plaintiffs have not waived their rights for appellate purposes to the claims
that have been dismissed.

1 (“UCL”), based upon Uber’s failure to remit to drivers the entire gratuity paid by customers, or
2 alternatively for Uber’s causing the drivers not to receive tips they would otherwise receive
3 based on Uber’s communications to customers that the gratuity is already included in the price of
4 the car service and that there is no need to tip the drivers.
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6 3. In addition, Plaintiffs bring this action on behalf of Uber drivers who have been
7 misclassified as independent contractors and thereby required to pay business expenses (such as
8 for their vehicles, gas, and maintenance) in violation of California Labor Code Section 2802.
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10 **II. PARTIES**

11 4. Plaintiff Douglas O’Connor is an adult resident of South San Francisco,
12 California, where he works as an Uber driver.

13 5. Plaintiff Thomas Colopy is an adult resident of San Francisco, California, where
14 he works as an Uber driver.

15 6. Plaintiff David Khan is an adult resident of San Francisco, California, where he
16 has worked as an Uber driver.
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18 7. Plaintiff Matthew Manahan is an adult resident of Los Angeles, California, where
19 he works as an Uber driver.

20 8. Plaintiff Wilson Rolle, Jr. is an adult resident of Atlanta, Georgia, where he
21 works as an Uber driver.
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23 9. Plaintiff William Anderson is an adult resident of Seattle, Washington, where he
24 works as an Uber driver.
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1 gratuities exist as to all members of the class and predominate over any questions affecting
2 solely any individual members of the class. Among the questions of law and fact common to the
3 class are:

- 4 a. Whether Defendant has charged customers a gratuity for class members' services;
- 5 b. Whether Defendant has failed to distribute the total proceeds of those gratuities to
6 the class members;
- 7 c. Whether Defendant has informed customers that gratuity is included in the price
8 of the Uber service and so there is no need to tip their drivers;
- 9 d. Whether class members had a reasonable expectation of receiving tips were it not
10 for this representation Uber made to customers;
- 11 e. Whether class members have suffered damages based upon Uber's representation
12 to customers that there is no need to tip the drivers.

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15 32. Common questions of law and fact also exist as to members of the class who have
16 been misclassified as independent contractors. Among the questions of law and fact that are
17 common to these drivers are:

- 18 a. Whether class members have been required to follow uniform procedures and
19 policies regarding their work for Uber;
- 20 b. Whether the work performed by class members—providing car service to
21 customers—is within Uber's usual course of business, and whether such service is
22 fully integrated into Uber's business;
- 23 c. Whether these class members have been required to bear the expenses of their
24 employment, such as expenses for their vehicles, gas, and other expenses.

1 **COUNT IV**

2 **Independent Contractor Misclassification and Expense Reimbursement Violation**

3 41. Defendant's conduct, as set forth above, in misclassifying Uber drivers as
4 independent contractors, and failing to reimburse them for expenses they paid that
5 should have been borne by their employer, constitutes a violation of California Labor Code
6 Section 2802.

7 **COUNT V**

8 **Unfair Competition in Violation of California Business and Professions Code**
9 **§ 17200 *et seq.***

10 42. Defendant's conduct, as set forth above, violates the California Unfair
11 Competition Law, Cal. Bus. & Prof. Code § 17200 *et seq.* ("UCL"). Defendant's conduct
12 constitutes unlawful or fraudulent business acts or practices, in that Defendant has committed the
13 tort of tortious interference with prospective economic advantage, breached implied-in-fact
14 contracts with customers for whom the drivers are third party beneficiaries, and have violated
15 California Labor Code Sections 351 and 2802. As a result of Defendant's unlawful and
16 fraudulent conduct, Plaintiffs and class members suffered injury in fact and lost money and
17 property, including, but not limited to loss of gratuities to which they were entitled and
18 customers expected them to receive, loss of tips that customers did not pay to the drivers due to
19 Defendant's deceptive representations, and business expenses that drivers were required to pay.
20 Pursuant to California Business and Professions Code § 17203, Plaintiffs and class members
21 seek declaratory and injunctive relief for Defendant's unlawful and fraudulent conduct and to
22 recover restitution. Pursuant to California Code of Civil Procedure § 1021.5, Plaintiffs and class
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1 members are entitled to recover reasonable attorneys' fees, costs, and expenses incurred in
2 bringing this action.

3
4 **JURY DEMAND**

5 Plaintiffs request a trial by jury on all their claims.

6 WHEREFORE, Plaintiffs request that this Court certify this case as a class action,
7 pursuant to Fed. R. Civ. P. 23; award restitution for all charged gratuities which were not
8 remitted to the drivers; award damages for Defendant's interference with drivers' receiving tips
9 from customers; award reimbursement that the drivers who were misclassified as independent
10 contractors were required to bear; award pre- and post-judgment interest; award reasonable
11 attorneys' fees, costs, and expenses; and award any other relief to which the plaintiffs may be
12 entitled.
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Respectfully submitted,

DOUGLAS O'CONNOR, THOMAS COLOPY,
DAVID KHAN, MATTHEW MANAHAN,
WILSON ROLLE, JR., and WILLIAM
ANDERSON, individually and on behalf of all
others similarly situated,

By their attorneys,

/s/ Shannon Liss-Riordan
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Dated: May 30, 2014

CERTIFICATE OF SERVICE

I hereby certify that a copy of this motion was served by electronic filing on May 30,
2014, on all counsel of record.

/s/ Shannon Liss-Riordan
Shannon Liss-Riordan, Esq.