

FILED

AUG 16 2013

RICHARD W. WIEKING
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

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12 UNITED STATES DISTRICT COURT
13 NORTHERN DISTRICT OF CALIFORNIA
(SAN FRANCISCO DIVISION)

KAW

14 DOUGLAS O'CONNOR and THOMAS
15 COLOPY, individually and on behalf of all
16 others similarly situated,

CV No. **13 3826**

17 Plaintiffs,

CLASS ACTION COMPLAINT
AND JURY DEMAND

18 vs.

19 UBER TECHNOLOGIES, INC., TRAVIS
20 KALANICK, and RYAN GRAVES,

21 Defendants.

22 **I. INTRODUCTION**

23 1. This case is brought on behalf of individuals who have worked as Uber drivers
24 anywhere in the United States (other than Massachusetts). Uber is a car service that provides
25 drivers who can be hailed and dispatched through a mobile phone application. As set forth
26 below, Uber advertises to customers that gratuity is included in the cost of its car service.
27

1 However, Uber drivers do not receive the total proceeds of any such gratuity. Instead, they
2 receive only a portion of such gratuity, if any is charged to the customer. Furthermore, based on
3 Uber's communication to customers that gratuity is included in the price of its service and so
4 they do not need to tip, few if any customers leave tips for the drivers. Thus, drivers do not
5 receive the tips that are customary in the car service industry and that they would otherwise
6 receive were it not for Uber's communication to customers that they do not need to tip.
7

8 2. Plaintiffs bring this action on their own behalf, and on behalf of all Uber drivers
9 across the country (except in Massachusetts), for unjust enrichment, tortious interference with
10 contractual and/or advantageous relations, violation of the California Gratuities Law, California
11 Labor Code Section 351, and the California Unfair Competition Law, Cal. Bus. & Prof. Code
12 § 17200 *et seq.* ("UCL"), based upon Uber's failure to remit to drivers the entire gratuity paid by
13 customers, or alternatively for Uber's causing the drivers not to receive tips they would
14 otherwise receive based on Uber's communications to customers that the gratuity is already
15 included in the price of the car service and that there is no need to tip the drivers.
16
17

18 3. In addition, Plaintiffs bring this action on behalf of Uber drivers who have been
19 misclassified as independent contractors and thereby required to pay business expenses (such as
20 for their vehicles, gas, and maintenance) in violation of California Labor Code Section 2802.
21

22 **II. PARTIES**

23 4. Plaintiff Douglas O'Connor is an adult resident of South San Francisco, California,
24 where he works as an Uber driver.

25 5. Plaintiff Thomas Colopy is an adult resident of San Francisco, California, where he
26 works as an Uber driver.
27

8. Defendant Travis Kalanick at all relevant times has been an individual resident of California and the President and a Director of Uber. Mr. Kalanick is responsible for the pay practices and employment policies of Uber throughout the country.

9. Defendant Ryan Graves at all relevant times has been an individual resident of California and the Vice President and a Director of Uber. Mr. Graves is responsible for the pay practices and employment policies of Uber throughout the country.

10. This Court has jurisdiction over the state law claims asserted here pursuant to the Class Action Fairness Act, 28 U.S.C. § 1332(d)(2), since Defendants are California citizens and members of the plaintiff class reside in states around the country; there are more than 100 putative class members; and the amount in controversy exceeds \$5 million.

11. Uber provides car service in cities throughout the country via an on demand dispatch system.

12. Uber offers customers the ability to hail a car service driver on a mobile phone application.

13. Uber's website advertises that "Uber is your on-demand private driver."

1 14. Uber states to customers, on its website and in marketing materials, that a gratuity is
2 included in the total cost of the car service and that there is no need to tip the driver.

3 15. However, Uber drivers do not receive the total proceeds of this gratuity.

4 16. Instead, Uber retains a portion of the gratuity for itself.

5 17. In some instances, Uber has advertised that the gratuity is a set amount, such as 20%,
6 of the fare that it charges.

7 18. In other instances, Uber has not specified the amount of the gratuity.

8 19. However, it is customary in the car service industry for customers to leave
9 approximately a 20% gratuity for drivers. Thus, where the amount of the gratuity is not
10 specified, reasonable customers would assume that the gratuity is in the range of 20% of the total
11 fare.

12 20. As a result of Uber's conduct and actions in informing customers that gratuity is
13 included in the cost of its service, and that there is no need to tip the drivers, but then not
14 remitting the total proceeds of the gratuity to the drivers, Uber drivers have been deprived of
15 payments to which they are entitled, and to which reasonable customers would have expected
16 them to receive.

17 21. Moreover, by informing customers that there is no need to tip the drivers, Uber has
18 further interfered with the advantageous relationship that drivers would otherwise enjoy with
19 customers. Uber has prevented its drivers from receiving tips from customers based upon its
20 deceptive and misleading communications to customers.

21 22. Although many are classified as independent contractors, Uber drivers are employees.

1 They are required to follow a litany of detailed requirements imposed on them by Uber and they
2 are graded, and are subject to termination, based on their failure to adhere to these requirements
3 (such as rules regarding their conduct with customers, the cleanliness of their vehicles, their
4 timeliness in picking up customers and taking them to their destination, what they are allowed to
5 say to customers, etc.)

7 23. In addition, Uber is in the business of providing car service to customers, and that is
8 the service that Uber drivers provide. The drivers' services are fully integrated into Uber's
9 business, and without the drivers, Uber's business would not exist.

11 24. However, those Uber drivers who are misclassified as independent contractors are
12 required to bear many of the expenses of their employment, including expenses for their
13 vehicles, gas, and other expenses. California law requires employers to reimburse employees for
14 such expenses, which are for the benefit of the employer and are necessary for the employees to
15 perform their jobs.

17 **V. CLASS ACTION ALLEGATIONS**

18 25. Plaintiffs bring this action as a class action pursuant to Rule 23 of the Federal Rules
19 of Civil Procedure on behalf of all drivers who have worked for Uber anywhere in the country,
20 except in Massachusetts.

21 26. Plaintiffs and other class members throughout the country have uniformly been
22 deprived of gratuities that were not remitted to them.

24 27. Plaintiffs and other class members throughout the country have been uniformly
25 deprived of tips that they would otherwise have received were it not for Uber informing
26 passengers that there is no need to tip the drivers.

1 28. The members of the class are so numerous that joinder of all class members is
2 impracticable.

3 29. Common questions of law and fact regarding Uber's conduct with respect to
4 gratuities exist as to all members of the class and predominate over any questions affecting
5 solely any individual members of the class. Among the questions of law and fact common to the
6 class are:
7

- 8 a. Whether Defendants have charged customers a gratuity for class members'
9 services;
10 b. Whether Defendants failed to distribute the total proceeds of those gratuities to
11 the class members;
12 c. Whether Defendants have informed customers that gratuity is included in the
13 price of the Uber service and so there is no need to tip their drivers;
14 d. Whether class members had a reasonable expectation of receiving tips were it not
15 for this representation Uber made to customers;
16 e. Whether class members have suffered damages based upon Uber's representation
17 to customers that there is no need to tip the drivers.
18

19
20 30. Common questions of law and fact also exist as to members of the class who have
21 been misclassified as independent contractors. Among the questions of law and fact that are
22 common to these drivers are:
23

- 24 a. Whether class members have been required to follow uniform procedures and
25 policies regarding their work for Uber;
26
27
28

- 1 b. Whether the work performed by class members—providing car service to
2 customers—is within Uber’s usual course of business, and whether such service is
3 fully integrated into Uber’s business;
4
5 c. Whether these class members have been required to bear the expenses of their
6 employment, such as expenses for their vehicles, gas, and other expenses.

7 31. The named plaintiffs are members of the class, who suffered damages as a result of
8 Defendants’ conduct and actions alleged herein.

9 32. The named plaintiffs’ claims are typical of the claims of the class, and the named
10 plaintiffs have the same interests as the other members of the class and subclass.
11

12 33. The named plaintiffs will fairly and adequately represent and protect the interests of
13 the class. The named plaintiffs have retained able counsel experienced in class action litigation.
14 The interests of the named plaintiffs are coincident with, and not antagonistic to, the interests of
15 the other class members.
16

17 34. The questions of law and fact common to the members of the class predominate over
18 any questions affecting only individual members, including legal and factual issues relating to
19 liability and damages.

20 35. A class action is superior to other available methods for the fair and efficient
21 adjudication of this controversy because joinder of all class members is impractical. Moreover,
22 since the damages suffered by individual members of the class may be relatively small, the
23 expense and burden of individual litigation makes it practically impossible for the members of
24 the class individually to redress the wrongs done to them. The class is readily definable and
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1 prosecution of this action as a class action will eliminate the possibility of repetitive litigation.
2 There will be no difficulty in the management of this action as a class action.
3

4 COUNT I

5 **Tortious Interference with Contractual and/or Advantageous Relations**

6 36. Defendants' conduct, as set forth above, in failing to remit the total proceeds of
7 gratuities to the drivers constitutes unlawful tortious interference with the contractual and/or
8 advantageous relationship that exists between the drivers and the customers, under state common
9 law. Furthermore, Defendants' conduct in informing Uber customers that there is no need to tip
10 their drivers also constitutes unlawful tortious interference with the contractual and/or
11 advantageous relationship that exists between the drivers and the customers, under state common
12 law.
13

14 COUNT II

15 **Unjust Enrichment/*Quantum Meruit***

16 37. Defendants have been unjustly enriched through their retention of a portion of the
17 gratuities owed to the drivers, in violation of state common law. Plaintiff and the class are
18 entitled to restitution for their full share of the proceeds of these gratuities under the state
19 common law doctrine of *quantum meruit*.
20
21

22 COUNT III

23 **Breach of Contract**

24 38. Defendants' conduct, as set forth above, constitutes breach of contract under state
25 common law. Defendants have an implied contract with the drivers to remit to them the total
26 proceeds of all gratuities. Additionally, the drivers are third-party beneficiaries of the
27

1 contractual relationship between Defendants and the customers, pursuant to which the customers
2 pay the gratuity for the benefit of the drivers.

3 4 COUNT IV

5 **Statutory Gratuity Violation**

6 39. Defendants' conduct, as set forth above, in failing to remit all gratuities to the Uber
7 drivers constitutes a violation of California Labor Code Section 351. This violation is
8 enforceable pursuant to UCL § 17200.

9 10 COUNT V

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

12 40. Defendants' conduct, as set forth above, in misclassifying Uber drivers as
13 independent contractors, and failing to reimburse them for expenses they paid that
14 should have been borne by their employer, constitutes a violation of California Labor Code
15 Section 2802.

16 17 COUNT VI

18 19 **Unfair Competition in Violation of California Business and Professions Code 20 § 17200 *et seq.***

21 41. Defendants' conduct, as set forth above, violates the California Unfair
22 Competition Law, Cal. Bus. & Prof. Code § 17200 *et seq.* ("UCL"). Defendants' conduct
23 constitutes unlawful, unfair, or fraudulent business acts or practices, in that Defendants have
24 committed the tort of tortious interference with contractual and/or advantageous relations,
25 unjustly enriched themselves, breached implied contracts with the drivers and with customers for
26

1 whom the drivers are third party beneficiaries, and have violated California Labor Code Sections
2 351 and 2802. As a result of Defendants' unlawful, unfair, and fraudulent conduct, Plaintiffs and
3 class members suffered injury in fact and lost money and property, including, but not limited to
4 loss of gratuities to which they were entitled and customers expected them to receive, loss of tips
5 that customers did not pay to the drivers due to Defendants' deceptive representations, and
6 business expenses that drivers were required to pay. Pursuant to California Business and
7 Professions Code § 17203, Plaintiffs and class members seek declaratory and injunctive relief for
8 Defendants' unlawful, unfair, and fraudulent conduct and to recover restitution. Pursuant to
9 California Code of Civil Procedure § 1021.5, Plaintiffs and class members are entitled to recover
10 reasonable attorneys' fees, costs, and expenses incurred in bringing this action.
11
12

13 JURY DEMAND

14 Plaintiffs request a trial by jury on all their claims.
15

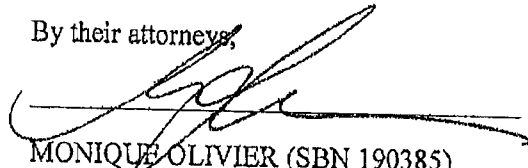
16 41. WHEREFORE, Plaintiffs request that this Court certify this case as a class action,
17 pursuant to Fed. R. Civ. P. 23; award restitution for all charged gratuities which were not
18 remitted to the drivers; award damages for Defendants' interference with drivers' receiving tips
19 from customers; award reimbursement that the drivers who were misclassified as independent
20 contractors were required to bear; award pre- and post-judgment interest; award reasonable
21 attorneys' fees, costs, and expenses; and award any other relief to which the plaintiffs may be
22 entitled.
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27
28

1 Dated: August 16, 2013

Respectfully submitted,

DOUGLAS O'CONNOR AND THOMAS COLOPY,
individually and on behalf of all others similarly situated,

By their attorneys,



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Exhibit 1

JS 44 (Rev. 12/12)
Cand rev (1/15/13)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

DOUGLAS O'CONNOR and THOMAS COLOPY,
Individually and on behalf of all others similarly situated

DEFENDANTS

UBER TECHNOLOGIES, INC., TRAVIS KALANICK, and RYAN GRAVES

(b) County of Residence of First Listed Plaintiff San Mateo
(EXCEPT IN U.S. PLAINTIFF CASES)

County of Residence of First Listed Defendant San Francisco
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

(c) Attorneys (Firm Name, Address, and Telephone Number)
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Attorneys (If Known)

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II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff ☐ 3 Federal Question (U.S. Government Not a Party)
☐ 2 U.S. Government Defendant ☒ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- (For Diversity Cases Only)
- | | | | |
|---|--|---|--|
| Citizen of This State | PTF <input checked="" type="checkbox"/> 1 DEF <input type="checkbox"/> 1 | Incorporated or Principal Place of Business in This State | PTF <input type="checkbox"/> 4 DEF <input checked="" type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 <input type="checkbox"/> 2 | Incorporated and Principal Place of Business in Another State | <input type="checkbox"/> 5 <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT <input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input checked="" type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	TORTS PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice PERSONAL INJURY <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	FORFEITURE/PENALTY <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	BANKRUPTCY <input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	OTHER STATUTES <input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input checked="" type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities Employment <input type="checkbox"/> 446 Amer. w/Disabilities Other <input type="checkbox"/> 448 Education	PRISONER PETITIONS Habeas Corpus: <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty Other: <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement		

V. ORIGIN (Place an "X" in One Box Only)

- ☒ 1 Original Proceeding ☐ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from Another District (specify) ☐ 6 Multidistrict Litigation

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
Class Action Fairness Act, 28 U.S.C. § 1332

Brief description of cause:

Common law & statutory violations for unlawful retention of gratuities

VII. REQUESTED IN COMPLAINT:

☒ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.

DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: ☐ Yes ☐ No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

IX. DIVISIONAL ASSIGNMENT (Civil L.R. 3-2)

(Place an "X" in One Box Only)

☒ (x) SAN FRANCISCO/OAKLAND

☐ () SAN JOSE

☐ () EUREKA

DATE

SIGNATURE OF ATTORNEY OF RECORD

August 16, 2013

Monique Olivier

Monique Olivier /paa