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

14 DOUGLAS O’CONNOR, THOMAS
15 COLOPY, MATTHEW MANAHAN, and
16 ELIE GURFINKEL, individually and on behalf
of all others similarly situated,

17 Plaintiffs,

18
19 v.

20 UBER TECHNOLOGIES, INC,
21 Defendant.

Case No. CV 13-3826-EMC

**SECOND 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 in
3 California. Uber is a car service that provides drivers who can be hailed and dispatched through
4 a mobile phone application. As set forth below, Uber has advertised to customers that gratuity is
5 included in the cost of its car service. However, Uber drivers do not receive the total proceeds of
6 any such gratuity. Instead, they receive only a portion of such gratuity, if any is charged to the
7 customer.
8

9 2. Plaintiffs bring this action on their own behalf, and on behalf of other similarly
10 situated Uber drivers, for violation of the California Unfair Competition Law, Cal. Bus. & Prof.
11 Code § 17200 *et seq.* (“UCL”), based upon Uber’s violation of the California Gratuities Law,
12 California Labor Code Section 351, and failure to remit to drivers the entire gratuity paid by
13 customers or that customers would otherwise intend to leave for them.
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15 3. In addition, Plaintiffs bring this action on behalf of Uber drivers who have been
16 misclassified as independent contractors and thereby required to pay business expenses (such as
17 for their vehicles, gas, and maintenance) in violation of California Labor Code Section 2802.
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22 ¹ Plaintiffs have removed from the complaint portions of claims that the Court dismissed in
23 its Order of December 5, 2013 (Doc. 58), and its Order of September 4, 2014 (Doc. 136).
24 However, in so doing, Plaintiffs do not waive their rights to the claims that have been dismissed,
25 for appellate purposes, and Plaintiffs do not waive their rights to reinstitute claims against Travis
26 Kalanick and Ryan Graves, individually, if appropriate. Plaintiffs have also removed from the
27 complaint named plaintiffs from outside California, and allegations regarding a national class
28 brought under the statutory claims, based on the Court’s Order of September 4, 2014 (Doc. 136).
In doing so, Plaintiffs do not waive their rights to assert these claims on behalf of a national class
should the Court’s order be altered on reconsideration or appeal.

1 **II. PARTIES**

2 4. Plaintiff Douglas O'Connor is an adult resident of South San Francisco,
3 California, where he has worked as an Uber driver.

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

6 6. Plaintiff Matthew Manahan is an adult resident of Los Angeles, California, where
7 he works as an Uber driver.

8 8. Plaintiff Elie Gurfinkel is an adult resident of San Diego, California, where he
9 works as an Uber driver.

10 9. Plaintiffs bring this action on their own behalf and on behalf of all others similarly
11 situated, namely all other individuals who have worked as Uber Black, Uber SUV, or UberX
12 drivers in California.

13 10. Defendant Uber Technologies, Inc. (“Uber”) is a corporation headquartered in
14 San Francisco, California.

15 **III. JURISDICTION**

16 11. This Court has jurisdiction over the state law claims asserted here pursuant to the
17 Class Action Fairness Act, 28 U.S.C. § 1332(d)(2), since Defendant is a California citizen and,
18 upon the original filing of this complaint, members of the putative plaintiff class resided in states
19 around the country; there are more than 100 putative class members; and the amount in
20 controversy exceeds \$5 million.
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1 **IV. STATEMENT OF FACTS**

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

4 13. Uber offers customers the ability to hail a car service driver on a mobile phone
5 application.
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7 14. Uber's website has advertised that "Uber is your on-demand private driver."

8 15. Uber has stated to customers, on its website, and in marketing materials, that a
9 gratuity is included in the total cost of the car service and that there is no need to tip the driver.
10

11 16. However, Uber drivers have not received the total proceeds of this gratuity.

12 17. Instead, Uber has retained a portion of the gratuity for itself.

13 18. For Uber Black, Uber SUV, and UberX drivers, Uber has not specified the
14 amount of the gratuity.

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

20 20. As a result of Uber's conduct and actions in informing customers that gratuity is
21 included in the cost of its service, and that there is no need to tip the drivers, but then not
22 remitting the total proceeds of the gratuity to the drivers, Uber drivers have been deprived of
23 payments to which they are entitled, and to which reasonable customers would have expected
24 them to receive.
25

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

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

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

18 **V. CLASS ACTION ALLEGATIONS**

19 24. Plaintiffs bring this action as a class action pursuant to Rule 23 of the Federal
20 Rules of Civil Procedure on behalf of Uber Black, Uber SUV, and UberX drivers who have
21 worked for Uber in California.

23 25. Plaintiffs and other class members have uniformly been deprived of gratuities that
24 were not remitted to them.

25 26. The members of the class are so numerous that joinder of all class members is
26 impracticable.

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

- 6 a. Whether Defendant has charged customers a gratuity for class members' services;
- 7 b. Whether Defendant has failed to distribute the total proceeds of those gratuities to
8 the class members;
- 9 c. Whether Defendant has informed customers that gratuity is included in the price
10 of the Uber service and so there is no need to tip their drivers;
- 11 d. Whether class members have suffered damages based upon Uber's representation
12 to customers that tips are included but not distributing them to the drivers.
- 13

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

- 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.
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1 29. The named plaintiffs are members of the class, who suffered damages as a result
2 of Defendant's conduct and actions alleged herein.

3 30. The named plaintiffs' claims are typical of the claims of the class, and the named
4 plaintiffs have the same interests as the other members of the class.
5

6 31. The named plaintiffs will fairly and adequately represent and protect the interests
7 of the class. The named plaintiffs have retained able counsel experienced in class action
8 litigation. The interests of the named plaintiffs are coincident with, and not antagonistic to, the
9 interests of the other class members.
10

11 32. The questions of law and fact common to the members of the class predominate
12 over any questions affecting only individual members, including legal and factual issues relating
13 to liability and damages.

14 33. A class action is superior to other available methods for the fair and efficient
15 adjudication of this controversy because joinder of all class members is impractical. Moreover,
16 since the damages suffered by individual members of the class may be relatively small, the
17 expense and burden of individual litigation makes it practically impossible for the members of
18 the class individually to redress the wrongs done to them. The class is readily definable and
19 prosecution of this action as a class action will eliminate the possibility of repetitive litigation.
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21 There will be no difficulty in the management of this action as a class action.
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COUNT I

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

34. Defendant’s conduct, as set forth above, violates the California Unfair Competition Law, Cal. Bus. & Prof. Code § 17200 et seq. (“UCL”). Defendant’s conduct constitutes unlawful business acts or practices, in that Defendant has violated California Labor Code Sections 351 and 2802. As a result of Defendant’s unlawful conduct, Plaintiffs and class members suffered injury in fact and lost money and property, including, but not limited to loss of gratuities to which they were entitled and customers expected them to receive, and business expenses that drivers were required to pay. Pursuant to California Business and Professions Code § 17203, Plaintiffs and class members seek declaratory and injunctive relief for Defendant’s unlawful conduct and to recover restitution. Pursuant to California Code of Civil Procedure § 1021.5, Plaintiffs and class members are entitled to recover reasonable attorneys’ fees, costs, and expenses incurred in bringing this action.

COUNT II

Independent Contractor Misclassification and Expense Reimbursement Violation

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

JURY DEMAND

Plaintiffs request a trial by jury on all their claims.

WHEREFORE, Plaintiffs request that this Court certify this case as a class action, pursuant to Fed. R. Civ. P. 23; award restitution for all charged gratuities which were not remitted to the drivers; award reimbursement that the drivers who were misclassified as independent contractors were required to bear; award pre- and post-judgment interest; award reasonable attorneys' fees, costs, and expenses; and award any other relief to which the plaintiffs may be entitled.

Respectfully submitted,

DOUGLAS O'CONNOR, THOMAS COLOPY,
MATTHEW MANAHAN, and
ELIE GURFINKEL, individually
and on behalf of all others similarly situated,

By their attorneys,

/s/ Shannon Liss-Riordan
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Dated: November 17, 2014

CERTIFICATE OF SERVICE

I hereby certify that a copy of this motion was served by electronic filing on November 17, 2014, on all counsel of record.

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