

1 SHANNON LISS-RIORDAN, *pro hac vice*
(sliss@llrlaw.com)
2 BENJMAIN J. WEBER, *pro hac vice*
(bweber@llrlaw.com)
3 LICHTEN & LISS-RIORDAN, P.C.
4 729 Boylston Street, Suite 2000
5 Boston, MA 02116
6 Telephone: (617) 994-5800
Facsimile: (617) 994-5801

7 MATTHEW CARLSON (SBN 273242)
(mcarlson@carlsonlegalservices.com)
8 Carlson Legal Services
9 100 Pine Street, Suite 1250
10 San Francisco, CA 94111
Telephone: (415) 817-1470

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.
14

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.
18

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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 **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.
6

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 **COUNT I**

2 **Unfair Competition in Violation of California Business and Professions Code**
3 **§ 17200 *et seq.***

4 34. Defendant’s conduct, as set forth above, violates the California Unfair
5 Competition Law, Cal. Bus. & Prof. Code § 17200 *et seq.* (“UCL”). Defendant’s conduct
6 constitutes unlawful business acts or practices, in that Defendant has violated California Labor
7 Code Sections 351 and 2802. As a result of Defendant’s unlawful conduct, Plaintiffs and class
8 members suffered injury in fact and lost money and property, including, but not limited to loss of
9 gratuities to which they were entitled and customers expected them to receive, and business
10 expenses that drivers were required to pay. Pursuant to California Business and Professions Code
11 § 17203, Plaintiffs and class members seek declaratory and injunctive relief for Defendant’s
12 unlawful conduct and to recover restitution. Pursuant to California Code of Civil Procedure §
13 1021.5, Plaintiffs and class members are entitled to recover reasonable attorneys’ fees, costs, and
14 expenses incurred in bringing this action.
15

16 **COUNT II**

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

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

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

3 WHEREFORE, Plaintiffs request that this Court certify this case as a class action,
4 pursuant to Fed. R. Civ. P. 23; award restitution for all charged gratuities which were not
5 remitted to the drivers; award reimbursement that the drivers who were misclassified as
6 independent contractors were required to bear; award pre- and post-judgment interest; award
7 reasonable attorneys' fees, costs, and expenses; and award any other relief to which the plaintiffs
8 may be entitled.
9

10 Respectfully submitted,

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

15 By their attorneys,

16 /s/ Shannon Liss-Riordan
17 Shannon Liss-Riordan, *pro hac vice*
18 Ben Weber, *pro hac vice*
19 LICHTEN & LISS-RIORDAN, P.C.
20 729 Boylston Street, Suite 2000
21 Boston, MA 02116
22 (617) 994-5800
23 Email: sliss@llrlaw.com, bweber@llrlaw.com

24 Matthew Carlson, SBN 273242
25 CARLSON LEGAL SERVICES
26 100 Pine Street, Suite 1250
27 San Francisco, CA 94111
28 (415) 817-1470
Email: mcarlson@carlsonlegalservices.com

Dated: November 17, 2014

1 **CERTIFICATE OF SERVICE**

2 I hereby certify that a copy of this motion was served by electronic filing on November
3 17, 2014, on all counsel of record.

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