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

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

16 Plaintiffs,

17 vs.

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

20 Defendants.

Case No. \_\_\_\_\_

**CLASS ACTION COMPLAINT  
AND JURY DEMAND**

21 **I. INTRODUCTION**

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

1       6.       Plaintiffs bring this action on their own behalf and on behalf of all others similarly  
2 situated, namely all other individuals who have worked as Uber drivers anywhere in the country  
3 other than in Massachusetts.

4       7.       Defendant Uber Technologies, Inc. (“Uber”) is a corporation headquartered in San  
5 Francisco, California.  
6

7       8.       Defendant Travis Kalanick at all relevant times has been an individual resident of  
8 California and the President and a Director of Uber. Mr. Kalanick is responsible for the pay  
9 practices and employment policies of Uber throughout the country.  
10

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

14 **III.    JURISDICTION**

15       10.      This Court has jurisdiction over the state law claims asserted here pursuant to the  
16 Class Action Fairness Act, 28 U.S.C. § 1332(d)(2), since Defendants are California citizens and  
17 members of the plaintiff class reside in states around the country; there are more than 100  
18 putative class members; and the amount in controversy exceeds \$5 million.  
19

20 **IV.    STATEMENT OF FACTS**

21       11.      Uber provides car service in cities throughout the country via an on demand dispatch  
22 system.  
23

24       12.      Uber offers customers the ability to hail a car service driver on a mobile phone  
25 application.  
26

27       13.      Uber’s website advertises that “Uber is your on-demand private driver.”  
28

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 fare.

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

19 21. Moreover, by informing customers that there is no need to tip the drivers, Uber has  
20 further interfered with the advantageous relationship that drivers would otherwise enjoy with  
21 customers. Uber has prevented its drivers from receiving tips from customers based upon its  
22 deceptive and misleading communications to customers.  
23

24 22. Although many are classified as independent contractors, Uber drivers are employees.  
25  
26  
27

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.

16  
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 30. Common questions of law and fact also exist as to members of the class who have  
19 been misclassified as independent contractors. Among the questions of law and fact that are  
20 common to these drivers are:  
21

- 22 a. Whether class members have been required to follow uniform procedures and  
23 policies regarding their work for Uber;

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

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

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  
25

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 **COUNT I**

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

5  
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  
17 37. Defendants have been unjustly enriched through their retention of a portion of the  
18 gratuities owed to the drivers, in violation of state common law. Plaintiff and the class are  
19 entitled to restitution for their full share of the proceeds of these gratuities under the state  
20 common law doctrine of *quantum meruit*.  
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  
18 **COUNT VI**

19  
20 **Unfair Competition in Violation of California Business and Professions Code  
21 § 17200 *et seq.***

22 41. Defendants' conduct, as set forth above, violates the California Unfair  
23 Competition Law, Cal. Bus. & Prof. Code § 17200 *et seq.* ("UCL"). Defendants' conduct  
24 constitutes unlawful, unfair, or fraudulent business acts or practices, in that Defendants have  
25 committed the tort of tortious interference with contractual and/or advantageous relations,  
26 unjustly enriched themselves, breached implied contracts with the drivers and with customers for  
27

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  
14 **JURY DEMAND**

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

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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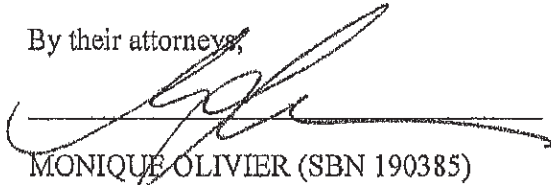
1 Dated: August 16, 2013

Respectfully submitted,

2 DOUGLAS O'CONNOR AND THOMAS COLOPY,

3 individually and on behalf of all others similarly situated,

4  
5 By their attorneys,

6 

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