

1 SHANNON LISS-RIORDAN, SBN 310719
2 (sliss@llrlaw.com)
3 ADELAIDE PAGANO, *pro hac vice*
4 (apagano@llrlaw.com)
5 LICHTEN & LISS-RIORDAN, P.C.
6 729 Boylston Street, Suite 2000
7 Boston, MA 02116
8 Telephone: (617) 994-5800
9 Facsimile: (617) 994-5801

10 Attorneys for Plaintiffs

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

13 MOKHTAR TALHA, PEDRO SANCHEZ,
14 AARON DULLES, and ANTONIO
15 OLIVEIRA, individually and on behalf of all
16 others similarly situated,

17 Plaintiffs,

18 v.

19 UBER TECHNOLOGIES, INC. and TRAVIS
20 KALANICK,

21 Defendants.

Case No. CV 15-0262 EMC

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

CASE FILED: JUNE 26, 2014

BEFORE THE HON. EDWARD M. CHEN

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

I. INTRODUCTION

1. This case is brought on behalf of individuals who have worked as Uber drivers in Massachusetts, including but not limited to Uber Black Car, UberX, and UberSUV drivers. Uber is a car service that provides customers with drivers who can be hailed and dispatched through a mobile phone application.
2. Uber has misclassified these drivers as independent contractors, in violation of Mass. Gen. L. c. 149 § 148B. As a result of this misclassification, the drivers have had to bear expenses that should be borne by the employer. For example, the drivers have had to pay expenses to maintain or lease their vehicles, as well as other expenses, such as gas, insurance, and phone data charges.
3. In addition, Uber has advertised to customers that gratuity is included in the cost of its car service. However, Uber drivers do not receive the total proceeds of any such gratuity. Furthermore, based on Uber’s communication to customers that gratuity is included in the price of its service and so they do not need to tip, few if any customers leave tips for the drivers. Uber has also prohibited its drivers from accepting tips. Thus, drivers do not receive the tips that are customary in the car service industry and that they would otherwise receive were it not for Uber’s communication to customers that they do not need to tip, and were it not for Uber’s prohibition on drivers accepting tips.
4. Plaintiffs bring this action on their own behalf, and on behalf of all Uber drivers who have worked in Massachusetts, for violations of the Independent Contractor Law, Mass. Gen. L. c. 149 § 148B; the Tips Law, Mass. Gen. L. c. 149 § 152A; the Massachusetts Minimum Wage Laws, Mass. Gen. L. c. 151 §§ 1, 7, 10, and 16; the Massachusetts Overtime Law, Mass. Gen. L. c. 151 § 1A, and the Massachusetts Unfair Trade Practices and False Advertising Laws, Mass. G. L. c. 93A, §§ 1, 2, and 11 and Mass. G. L. c. 266, § 91. Plaintiffs also assert violations of the Massachusetts Recordkeeping Law, Mass.

1 Gen. L. c. 151 § 15; Family and Medical Leave, Earned Sick Time, and Parental Leave
2 Laws, Mass. Gen. L. c. 149 §§ 52D, 105D, and 148C; the Pay Stub Law, Mass. Gen. L.
3 ch. 149 § 150; and restitution; as well as unjust enrichment, tortious interference with
4 advantageous relations, conversion, fraud, and deceit.

- 5
6
7
8
9
10
11
12
5. Furthermore, as described further below, Defendants have misclassified Plaintiffs and other similarly situated drivers as independent contractors and, in so doing, violated the federal Fair Labor Standard Act (“FLSA”), 29 U.S.C. §§ 201 *et seq.*, by failing to pay them minimum wage and for all time worked and overtime for all hours worked in excess of forty per week. Plaintiffs bring this claim under the FLSA on behalf of all similarly situated employees within the state of Massachusetts who may choose to opt in to this action pursuant to 29 U.S.C. § 216(b).

13 **II. PARTIES**

- 14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
6. Plaintiff Mokhtar Talha is an adult resident of East Boston, Massachusetts. He worked as an Uber Black Car driver in Massachusetts in 2011 and 2012.
 7. Plaintiff Pedro Sanchez is an adult resident of Hyde Park, Massachusetts. He has worked as an UberX driver in Massachusetts since November 2014.
 8. Plaintiff Aaron Dulles is an adult resident of Leyden, Massachusetts. He worked as an UberX driver in Massachusetts from April 2015 until June 2017.
 9. Plaintiff Antonio Oliveira is an adult resident of Quincy, Massachusetts. He has worked as an UberX driver in Massachusetts since November 2013.
 10. Plaintiffs bring this action on their own behalf and on behalf of all others similarly situated, namely all other individuals who have worked as Uber drivers in Massachusetts.
 11. Defendant Uber Technologies, Inc. (“Uber”) is an international car service that is headquartered in San Francisco, California.

1
2
3
4
5
6
12. Defendant Travis Kalanick is a California resident and has been the President and Chief Executive Officer of Uber. Mr. Kalanick is responsible for Uber’s pay practices and employment policies. As the top official for Uber, Mr. Kalanick has primary responsibility for overseeing the management of service employees employed by Uber, namely Uber drivers.

7
8
III. STATEMENT OF FACTS

9
10
13. Uber provides car service via an on-demand dispatch system.

11
12
14. Uber offers customers the ability to hail a car service driver on a mobile phone application.

13
14
15. Uber’s website advertises that “Uber is your on-demand private driver.”

16
17
16. Uber has stated to customers, on its website and in marketing materials, that a gratuity is included in the total cost of the car service and that there is no need to tip the driver.

18
19
17. For example, up until the end of 2012, Uber’s website included such statements as “There’s no need to hand your driver any payment and the tip is included” and “Please thank your driver, but tip is already included.” Beginning in 2013, Uber’s website has stated that “there is no need to tip.”

20
21
18. Even after the statements that tips are included in the fare were apparently removed from Uber’s website at the end of 2012, Uber has nevertheless continued to inform passengers through marketing materials that tips are included in the fare. For example, as recently as at least April 2015, Uber has sent promotional emails to customers, declaring that “payment is automatically charged to a credit card on file, with tip included.”

22
23
19. However, despite Uber’s representations to customers that the fare includes a gratuity, Uber drivers have not received the total proceeds of this gratuity.

1 20. Instead, Uber has retained a portion of this tip, gratuity, or service charge for itself.¹

2 21. Uber has generally not specified the amount of the tip, gratuity, or service charge for its
3 car services.

4 22. However, it is customary in the car service industry for customers to leave approximately
5 a 20% gratuity for drivers. Thus, where the amount of the gratuity is not specified,
6 reasonable customers would assume that the gratuity is in the range of 20% of the total
7 fare.

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

13 24. Moreover, by informing customers that there is no need to tip the drivers, Uber has
14 further interfered with the advantageous relationship that drivers would otherwise enjoy
15 with customers. Uber has prevented its drivers from receiving tips from customers based
16 upon its deceptive and misleading communications to customers, and has unjustly
17 enriched itself by retaining those tips for itself.

18 25. Although classified as independent contractors, Uber drivers are employees under
19 Massachusetts law.
20
21
22
23

24
25
26 ¹ Under Massachusetts law, "tips", "gratuities", and "service charges" are generally
27 interchangeable. Thus, Plaintiffs do not, and need not, specify whether the charge is a "tip",
28 "gratuity", or a "service charge".

1 26. Uber is in the business of providing car service to customers, and that is the service that
2 Uber drivers provide. The drivers' services are fully integrated into Uber's business, and
3 without the drivers, Uber's business would not exist.

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

9 28. Drivers are economically dependent on Uber, and when they are transporting Uber
10 customers, they do so on behalf of Uber. In other words, drivers are not wearing their
11 own "hat", but instead are wearing Uber's "hat."

12 29. Due to their misclassification as independent contractors, Uber drivers have been
13 required to bear many of the expenses of their employment, including expenses for
14 maintaining or leasing their vehicles, insurance, gas, phone data charges, and other
15 expenses. Massachusetts law prohibits employers from requiring employees to pay for
16 their jobs, or to bear expenses that are necessary for the performance of their jobs and
17 which primarily benefit the employer.

18 30. In addition, Uber does not ensure that drivers receive at least the Massachusetts minimum
19 wage, and drivers often receive less than minimum wage. Moreover, Uber has failed to
20 post relevant notices about minimum and fair wages in violation of Massachusetts law.

21 31. Uber also does not pay time-and-a-half for hours drivers work beyond 40 per week.

22 Drivers often work more than 40 hours per week without receiving this overtime pay.

23 32. Uber has violated numerous other employment laws, including family and medical leave,
24 parental leave, and sick time leave laws, as well as Massachusetts' pay stub law.
25
26
27
28

1 33. As a result of its misclassification of drivers as independent contractors, Uber has also
2 failed to maintain proper records of employment, and to make those records available to
3 drivers and the government as required by law. Additionally, Uber has failed to provide
4 proper pay stubs to drivers.
5

6 **IV. EXHAUSTION OF ADMINISTRATIVE REMEDIES**
7

8 34. Pursuant to the state law requirements as set forth in Mass. Gen. L. c. 149 § 150, the above-
9 named plaintiffs filed their statutory claims with the Office of the Attorney General and
10 received a right to sue letter in order to proceed on these claims in court.
11

12 **V. THE COLLECTIVE ACTION**

13 35. Plaintiffs bring the tenth and eleventh causes of action on behalf of themselves and all
14 other Uber drivers who worked for Defendant in the state of Massachusetts.

15 36. Plaintiffs bring this count under 29 U.S.C. § 216(b) of the Fair Labor Standards Act.
16 Plaintiffs and other Uber drivers are similarly situated in that they are all subject to
17 Uber's common plan or practice of failing to pay the federal minimum wage for all hours
18 worked and overtime for hours worked by drivers in excess of forty (40) in a given week.
19

20 **COUNT I**

21 **Independent Contractor Misclassification**

22 As set forth above, Defendants have misclassified their drivers in Massachusetts as
23 independent contractors, in violation of Mass. Gen. L. c. 149 § 148B. As a result of this
24 misclassification, drivers have improperly been required to bear the expenses of their
25 employment (such as expenses for maintaining or leasing their vehicles, insurance, gas, phone
26
27

1 data charges, and other expenses), in violation of Mass. Gen. L. c. 149 §§ 148 and 148B. This
2 claim is brought pursuant to M.G.L. c. 149, § 150.
3

4
5 **COUNT II**

6 **Tips Law Violations**

7 As set forth above, Uber has violated the Massachusetts Tips Law, Mass. Gen. L. c. 149
8 §§ 152A, by failing to remit to drivers the total proceeds of gratuities that Uber has informed
9 customers are included in Uber's price for car service. Uber has interfered with drivers' receipt
10 of tips by leading customers to believe that tips are already included in Uber's price for car
11 service.

12 **COUNT III**

13 **Tortious Interference with Advantageous Relations**

14 Uber's conduct, as set forth above, in failing to remit the total proceeds of
15 gratuities to the drivers (that customers want to leave for Uber drivers and believe they are
16 leaving for them) constitutes unlawful tortious interference with the advantageous relationship
17 that exists between the drivers and the customers, under state common law. Furthermore, Uber's
18 conduct in informing its customers that there is no need to tip their drivers also constitutes
19 unlawful tortious interference with the advantageous relationship that exists between the drivers
20 and the customers, under state common law.

21 **COUNT IV**

22 **Violation of Massachusetts Minimum Wage Law**

23 By failing to ensure that Uber drivers receive the full Massachusetts minimum wage for
24 all hours worked, and by failing to post notice of minimum wage and fair wage orders, Uber has
25 violated Mass. Gen. L. ch. 151 §§ 1, 7, 10, and 16. This claim is brought pursuant to Mass. Gen.
26 L. c. 151 §§ 19 and 20.
27

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

COUNT V

Violation of Massachusetts Overtime Law

By failing to pay Uber drivers time-and-a-half for all hours worked in excess of forty per week, Uber has violated Mass. Gen. L. ch. 151 § 1A. This claim is brought pursuant to Mass. Gen. L. c. 151 § 1B.

COUNT VI

Violation of Massachusetts Family and Medical Leave, Earned Sick Time, and Parental Leave Laws

Uber has failed to provide family and medical leave, parental leave, and sick leave as required by Massachusetts law. In doing so, Uber has violated Mass. Gen. L. ch. 149 §§ 52D, 105D, and 148C.

COUNT VII

Violation of Massachusetts Recordkeeping and Paystubs Laws

By failing to maintain adequate personnel records and to make them available as required by Massachusetts law, and by failing to provide documentation of deductions from drivers' payments Uber has violated Mass. Gen. L. ch. 151 § 15 and Mass. Gen. L. ch. 149 § 150A.

COUNT VIII

Unpaid Minimum Wage Under the FLSA

Defendant's willful conduct in failing to ensure its employees receive the federal minimum wage, and requiring its employees to pay for the expenses of their employment (all of which contribute to them not receiving the federal minimum wage), violates the FLSA, 29 U.S.C. § 201, *et seq.* This claim is brought on behalf of a class of similarly situated individuals who have worked for Uber in Massachusetts and may choose to "opt in" to this case, pursuant to 29 U.S.C. §216(b).

1 **COUNT IX**

2 **Unpaid Overtime Under the FLSA**

3 The Fair Labor Standards Act, 29 U.S.C. §207(a)(1), states that an employee must be
4 paid overtime, equal to one and one-half (1.5) times the employee’s regular rate of pay, for all
5 hours worked in excess of 40 per week. Plaintiffs sometimes worked in excess of forty (40)
6 hours per week but were not paid premium pay for all hours worked over 40 in a week. As a
7 direct and proximate result of Defendant’s unlawful conduct, Plaintiffs have suffered lost wages
8 and other damages. This claim is brought on behalf of a class of similarly situated individuals
9 who may choose to “opt-in” to this case, pursuant to 29 U.S.C. § 216(b).

10 **COUNT X**

11 **Common Counts – Restitution or Unjust Enrichment**

12 Uber has been unjustly enriched as a result of the conduct described in this Complaint
13 and other inequitable conduct. Uber has accepted payment of gratuities to which Plaintiffs are
14 entitled and customers expected Plaintiffs to receive, and Uber and/or its affiliates has retained
15 all or a portion of these gratuities and refused to remit them to Plaintiffs.
16

17 Retention of these gratuities by Uber would be unjust and inequitable. The gratuities that
18 Uber and/or its affiliates received were not legitimately earned by Uber, and came at the expense
19 of Plaintiffs, to whom customers expected the gratuities to be paid.

20 Uber is guilty of malice, oppression, and/or fraud through its willful and conscious
21 disregard for Plaintiffs’ rights, and through its intentional retention of gratuities meant for
22 Plaintiffs. Uber’s willful and conscious disregard for Plaintiffs’ rights created an unjust hardship
23 for Plaintiffs.

24 As a result of Uber’s unjust enrichment, Plaintiffs seek restitution and disgorgement of all
25 gratuities, tips, or additional compensation Uber received from customers that customers
26 expected Plaintiffs to receive.

1 **COUNT XI**

2 **Conversion**

3 Uber intentionally and unlawfully took Plaintiffs' property, namely tips and money spent
4 for expenses, without Plaintiffs' permission. Uber's conduct, as set forth above, substantially
5 interfered with Plaintiffs' property. As a result, Plaintiffs were harmed and class members are
6 entitled to restitution for their full share of proceeds. Uber's conduct was willful, wanton,
7 malicious, and oppressive, and further justifies the awarding of exemplary and punitive damages.
8

9 **COUNT XII**

10 **Fraud**

11 Defendants made a false representation, that Plaintiffs would receive gratuities, which
12 Defendants knew were a false representation at the time, with the intent to defraud, which
13 Plaintiffs justifiably relied upon, causing Plaintiffs to incur damages.

14 **COUNT XIII**

15 **Violation of Massachusetts Unfair Trade Practices Law**

16 Defendant uses an unfair method of competition or an unfair or deceptive act or practice,
17 causing monetary loss to the Plaintiffs, in violation of Mass. G. L. c. 93A, § 11. Such methods,
18 acts, and practices include but are not limited to Defendants failing to reimburse drivers for
19 expenses incurred and stating that "tips are included" in advertising to the public.

20 **COUNT IVX**

21 **Violation of Massachusetts False Advertising Laws**

22 Defendants engaged in unfair methods of competition and unfair or deceptive acts or
23 practices in the conduct of trade and/or commerce, and disseminated advertising before the
24 public in Massachusetts that: (a) contained statements that were untrue, deceptive, or misleading;
25 (b) Defendant knew, or in the exercise of reasonable care should have known, were untrue,
26 deceptive, or misleading; (c) with the intent to sell a service or increase the consumption of or
27

1 demand for such service; and (d) was likely to mislead or deceive a reasonable consumer, in
2 violation of Mass. G. L. c. 93A, § 1 & 2 and Mass. G. L. c. 266, § 91. Such methods and acts
3 include but are not limited to Defendants stating that “tips are included” in advertising to the
4 public.

5
6 **JURY DEMAND**

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

8 WHEREFORE, Plaintiffs respectfully request this Court to:

9 A. Certify this case as a class action pursuant to Mass. Gen. L. c. 149 § 150 and/or
10 Fed. R. Civ. P. 23;

11 B. Conditionally certify a collection action pursuant to 29 U.S.C. § 216(b);

12 C. Issue a declaratory judgment that Plaintiffs are employees, not independent
13 contractors;

14 D. Award damages for all wages or other forms of restitution that are due to
15 Plaintiffs because of their misclassification as independent contractors;

16 E. Award damages that are due to Plaintiffs because of Defendant’s violation of
17 Mass. Gen. L. c. 149 § 152A and common law doctrine;

18 F. Award treble damages for all wage law violations;

19 G. Award attorneys’ fees and costs; and

20 H. Award any other relief to which the Plaintiffs may be entitled.
21
22
23
24
25
26
27

1 Respectfully submitted,

2 MOKHTAR TALHA, PEDRO SANCHEZ,
3 AARON DULLES, and ANTONIO OLIVEIRA,
4 individually and on behalf of all others similarly
situated,

5 By their attorneys,

6 /s/ Shannon Liss-Riordan
7 Shannon Liss-Riordan, SBN 310719
8 Adelaide Pagano, *pro hac vice*
9 LICHTEN & LISS-RIORDAN, P.C.
10 729 Boylston Street, Suite 2000
11 Boston, MA 02116
12 (617) 994-5800
13 Email: sliss@llrlaw.com, apagano@llrlaw.com

14 Dated: April 19, 2019

15
16
17
18 **CERTIFICATE OF SERVICE**

19 I hereby certify that a copy was served by electronic filing on April 19, 2019, on all
20 counsel of record.
21

22 /s/ Shannon Liss-Riordan
23 Shannon Liss-Riordan, Esq.
24
25
26
27