

**BEFORE THE JUDICIAL PANEL
ON MULTIDISTRICT LITIGATION**

***IN RE:* UBER MISCLASSIFICATION
EMPLOYMENT LITIGATION**

MDL Docket No. _____

**MEMORANDUM OF LAW IN SUPPORT OF PLAINTIFF OLASAPO OGUNMOKUN
AND MANZOOR MUMIN'S MOTION FOR TRANSFER OF ACTIONS TO THE
WESTERN DISTRICT OF TEXAS AND FOR COORDINATION OR
CONSOLIDATION OF ALL PRETRIAL
PROCEEDINGS PURSUANT TO 28 U.S.C. §1407**

INTRODUCTION

There are at least five (5) related actions filed in five (5) federal district courts against Uber Technologies, Inc. and Raiser, LLC, (collectively, “Uber”) (the “Actions”). There is one related actions filed in state court, which Plaintiffs anticipate will be removed to the appropriate federal district court within the next thirty (30) days. The Actions assert similar claims and all claims stem from the same or similar alleged conduct of Uber, that is, Uber’s unlawful misclassification of its drivers, including Plaintiffs, failure to remit gratuities and violation of other state labor laws and common laws. Including this action, all of the Actions are brought as putative classes.

A. The Actions Allege Common Issues of Fact and Law.

Uber is a Delaware corporation headquartered in San Francisco, California. Uber maintains an active presence in large cities across the United States. Uber has conducted and advertised its business throughout the nation and derived substantial revenue nationwide from its transportation company.

Plaintiffs Olasapo Ogunmokun and Manzoor Mumin are citizens of the State of New York and residents of Kings County. Plaintiffs are former drivers for Uber who were damaged by Uber’s conduct. The putative class that Plaintiffs represent are current and former Uber drivers within the State of New York who have driven or are currently driving for Uber within the previous six (6) years.

Uber is a transportation company that employs thousands of drivers, like Plaintiffs, throughout the United States. Through its mobile application, Uber connects its customers with a nearby driver. Uber attempts to classify its drivers as independent contractors in order to avoid

relevant federal and state labor laws. Uber's policies and procedures are similar amongst Plaintiffs, the class they seek to represent and nationwide drivers.

For example, Uber unilaterally determines the fares that will be charged to the customer. In addition, Uber retains a percentage of each fare along with a \$1 "safe ride" fee, which is allegedly used to pay for background checks, driver safety education and development of safety features for Uber's mobile application – an expense that Uber, the employer, should pay. Uber further controls the drivers by requiring that all drivers, including Plaintiffs, maintain a certain star rating in order to remain an active driver.

Uber advertises on its website and marketing materials that gratuity is included in the total cost of the car service and that "there's no need to tip." Uber further instructs its drivers not to accept tips from passengers. Despite Uber's representations, Plaintiffs and other drivers have not received gratuities.

Lawmakers have recently scrutinized Uber's employment policies. In June of 2015, the California Labor Commissioner issued a determination that the claimant who filed a claim with the Department of Labor was entitled to unpaid wages and reimbursement of expenses because she was Uber's employee. On October 14, 2015, the Oregon Bureau of Labor and Industries issued an advisory opinion concluded that Uber drivers are employees. Both determinations were based on, amongst other factors, the degree of control asserted by Uber, the permanency of the relationship, the extent to which work performed by the drivers is an integral part of Uber's business and whether the service rendered requires a special skill.

The Actions seek an injunction prohibiting Uber from engaging in the unlawful policies and practices described above. The Actions also seek damages, including compensatory damages, punitive damages, and attorneys' fees on several legal theories, including breach of

contract, fraud and misrepresentation, unfair competition, conversion, unjust enrichment and violations of state labor law.

In addition to similar remedies sought and claims made, the Actions share the following questions of law and fact:

- a. whether Uber has charged customers a gratuity for Class members' services;
- b. whether Uber failed to distribute the total proceeds of those gratuities to Class members;
- c. whether Class members have suffered damages based on Uber's representation to customers that there is no need to tip the drivers;
- d. whether Uber improperly classified Class members as independent contractors rather than employees;
- e. whether Class members have been required to pay the expenses of their employment, including the cost of a vehicle, repairs, gas, and tolls;
- f. whether Uber unlawfully denied compensation to Class members; and
- g. whether Class members were denied employee benefits as required by law.

B. Procedural History of the Actions and Plaintiffs-Movants' Petition before the Judicial Panel on Multidistrict Litigation Concerning In Re: Uber Misclassification Employment Litigation

In addition to Plaintiffs' case in the Eastern District of New York, there are currently five (5) similar actions pending in the Eastern District of Pennsylvania, Western District of Texas, Northern District of California, Western District of Washington and District Court for Arizona. There are similar actions filed in state court in Maryland, which Plaintiffs anticipate will be removed to the appropriate federal district court within thirty (30) days. *See* Schedule of Actions.

Each of these Actions arises from the same or similar nucleus of operative facts as Plaintiffs' case, and each Action will involve substantially similar discovery, with the same or similar documents and witnesses. Discovery has only commenced in the action pending in California.

Since these Actions involve the same or similar questions of law and fact, prompt action by the Panel to transfer, consolidate, and coordinate these Actions in the Western District of Texas, San Antonio division, will promote their just and efficient prosecutions, enhance judicial economy, and serve the convenience of the respective parties.

ARGUMENT

A. Transfer, Consolidation, and Coordination of the Actions is Appropriate Under 28 U.S.C. §1407

28 U.S.C. §1407 provides for the transfer of actions to one district for coordinated or consolidated pretrial proceedings where actions pending in different districts involve at least one common question of fact. 28 U.S.C. §1407(a). The Panel may authorize the transfers upon a determination that such transfers will be for the convenience of the parties and witnesses, and will promote the just and efficient conduct of the actions. *Id.*

The purpose of the multidistrict litigation process is to “eliminate the potential for contemporaneous pretrial rulings by coordinating district and appellate courts in multidistrict related civil actions.” *In re Multidistrict Private Civ. Treble Damages Litig.*, 298 F.Supp. 484, 491-92 (J.P.M.L. 1968). Consolidation is especially important in class actions where “the potential for conflicting, disorderly, chaotic” action is greatest. *Id.* at 493. Transfer of related actions to a single district for pretrial proceedings avoids conflicting pretrial discovery and ensures uniform and expeditious treatment in the pretrial procedures. *In re Phenylpropanolamine (PPA) Prods. Liab. Litig.*, 460 F.3d 1217, 1230 (9th Cir. 2006).

Transfer, coordination and consolidation are appropriate here because many common questions of fact and law exist. The Actions all arise from the same or similar nucleus of operative facts and include:

- a. whether Uber has charged customers a gratuity for Class members' services;
- b. whether Uber failed to distribute the total proceeds of those gratuities to Class members;
- c. whether Class members have suffered damages based on Uber's representation to customers that there is no need to tip the drivers;
- d. whether Uber improperly classified Class members as independent contractors rather than employees;
- e. whether Class members have been required to pay the expenses of their employment, including the cost of a vehicle, repairs, gas, and tolls;
- f. whether Uber unlawfully denied compensation to Class members; and
- g. whether Class members were denied employee benefits as required by law.

Determination of these and other common issues in a single district will benefit the parties and witnesses, and promote the efficient prosecution and resolution of the Actions. Without transfer, coordination, and consolidation of the Actions, the significant hazard of inconsistent rulings exists, along with judicial inefficiency, overlapping discovery, and unnecessary expense.

Transfer, coordination and consolidation are especially appropriate because formal discovery has not commenced and no party has filed a responsive pleading in any of the Actions. Transfer, coordination, and consolidation of the Actions in a single district are appropriate for the just and efficient prosecution of the Actions and convenience of the parties and witnesses.

B. The Western District of Texas is An Appropriate Forum for Transfer and Consolidation for Coordination

Currently, the actions are pending in six (6) different federal courts throughout the United States (New York, Pennsylvania, Washington, Arizona, California and Texas). The Western District of Texas and its judges have dealt with complicated illegal corporate enterprise actions that have arisen in the past decade and it is well suited to deal with this litigation in an expedient manner. The Western District of Texas provides an ideal venue for managing this litigation in the most efficient and expeditious manner. Moreover, the Western District of Texas has well-equipped staff and an excellent Clerk's office that is able to provide support services for managing this litigation. Many complex cases have previously been handled in this District.

The Western District of Texas courthouse is centrally located for all parties, particularly in light of the fact that this litigation will unquestionably involve parties and witnesses located in a variety of areas throughout the United States. Given that the lawsuits are filed predominantly on the East or West Coast, and that Plaintiffs are located in New York while Defendants are Delaware corporations with their headquarters in California, Texas is a central location between the two parties. San Antonio, Texas is a large city with an international airport, making it efficient and easy for all parties to travel. Further, Defendant maintains a robust presence in this district as there are thousands of drivers located in numerous cities throughout the state.

For these reasons, the Western District of Texas is an appropriate forum for transfer, consolidation, and pretrial coordination.

- (1) District Court Judge Orlando L. Garcia of the Western District of Texas should be designated as the transferee judge. Judge Garcias qualifications, experience, and caseload favors efficient and timely management of this litigation.**

Judge Garcia is presently assigned to one of the actions in *In re Uber Misclassification* pending litigation. Judge Garcia is an appropriate and reasonable choice for managing this

complex litigation. He received a B.A. from the University of Texas in 1975 and a J.D. from the University of Texas School of Law in 1978. Judge Garcia worked in private practice from 1978-1990, working at Matt Garcia Law Offices and the Law Offices of Heard, Goggan and Blair. Judge Garcia was a Texas state representative from 1983-1991 and served on the Texas Fourth Court of Appeals from 1991-1992. On November 19, 1993, Judge Garcia was nominated to the Western District of Texas by President Bill Clinton. Judge Garcia was confirmed by the United States Senate on March 10, 1994 and received his commission on March 11, 1994.

Throughout his over twenty (20) year career as a federal judge, Judge Garcia has gained significant experience managing complex litigation in an efficient manner. Among others, he presided over the widely known *De Leon, et al v. Perry, et al.*, (Case No.: 13-CV-00982), where Judge Garcia struck down Texas' ban on same-sex marriage and issued an injunction as to the enforcement of the state statute, ruling it violated the Fourteenth Amendment. Given Judge Garcia's lengthy experience on the federal bench, Judge Garcia is an appropriate choice for managing this MDL in a manner that will facilitate this litigation for the benefit of all parties.

CONCLUSION

For the reasons detailed herein, Plaintiffs petition and respectfully request that the Panel transfer the Actions for coordinated and consolidated pretrial proceedings before the Western District of Texas, and appoint the Honorable Orlando L. Garcia as the transferee judge.

Dated: December 1, 2015

Respectfully submitted:

/s/ Hunter Shkolnik

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