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

13 RONALD GILLETTE, individually, and on
behalf of all others similarly-situated,

14 Plaintiff,
15 vs.

16 UBER TECHNOLOGIES, INC., a California
corporation; and DOES 1-20, inclusive

17 Defendants.
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Case No.: 3:14-cv-05241-LB

CLASS AND REPRESENTATIVE ACTION

AMENDED COMPLAINT

1. **Failure to Provide Notice of Obtaining Consumer Report in Violation of 15 U.S.C. § 1681b(b)(2)(A)(i);**
 2. **Failure to Obtain Authorization for Consumer Report in Violation of 15 U.S.C. § 1681b(b)(2)(A)(ii);**
 3. **Failure to Provide Consumer Report Prior to Taking Adverse Action in Violation of 15 U.S.C. § 1681b(b)(3)(A)(i);**
 4. **Failure to Provide a Summary of Rights Prior to Taking Adverse Action in Violation of 15 U.S.C. § 1681b(b)(3)(A)(ii)**
 5. **Failure to Provide Notice of Obtaining Consumer Report in Violation of California Civil Code § 1786.16(a)(2)(B)**
 6. **Failure to Obtain Authorization for Consumer Report in Violation of California Civil Code § 1786.16(a)(2)(C)**
 7. **Failure to Provide Opportunity to Request and Receive Copy of Consumer Report in Violation of California Civil Code § 1786.16(b)**
 8. **Violation of the Private Attorneys General Act of 2004, California Labor Code § 2698 *et seq.***
- Demand for Jury Trial**

1 Plaintiff RONALD GILLETTE (“Plaintiff”), on behalf of himself and other similarly-situated
2 individuals, alleges as follows:

3 **INTRODUCTION**

4 1. Plaintiff brings this action pursuant to the federal Fair Credit Reporting Act (“FCRA”),
5 15 U.S.C. § 1681 *et seq.* on a class basis, the Private Attorneys General Act of 2004 (“PAGA”),
6 California Labor Code § 2698 *et seq.* on a representative basis, and the California Investigative
7 Consumer Reporting Agencies Act (“ICRAA”), California Civil Code § 1786 *et seq.* on an individual
8 basis.

9 2. The FCRA and ICRAA impose on entities that use consumer background reports
10 important procedural safeguards designed to protect consumers like Plaintiff Gillette. Plaintiff began
11 working for Uber Technologies, Inc. (“Defendant” or “UBER”) as a driver in approximately February
12 2013. In April 2014, Uber abruptly closed Mr. Gillette’s account and terminated his employment as a
13 result of a consumer background report. Uber, however, failed to notify Mr. Gillette or obtain his
14 authorization prior to procuring his consumer background report. Moreover, Uber failed to provide
15 Plaintiff Gillette with a copy of his consumer background report and a description of his rights under
16 the FCRA. These actions amount to willful violations of the FCRA.

17 3. Plaintiff also brings this action pursuant the California Private Attorneys General Act of
18 2004 (“PAGA”). The California Labor Code requires employers to provide to its employees, among
19 others things, itemized wage statements, meal and rest periods, minimum and overtime wages,
20 reimbursement of necessary expenses, full and complete gratuities, and prompt payment of wages
21 upon termination. Uber failed to comply with California Labor Code requirements due to the
22 erroneous classification of its drivers as independent contractors. Plaintiff Gillette seeks civil penalties
23 on behalf of himself and other aggrieved employees pursuant to PAGA on a representative basis.

24 **JURISDICTION AND VENUE**

25 4. This Court has jurisdiction over Plaintiff’s and putative class members’ FCRA claims
26 pursuant to 28 U.S.C. § 1331.

27 5. This Court has supplemental jurisdiction over Plaintiff’s PAGA claims pursuant 28
28 U.S.C. § 1367.

1 Abbey, Plaintiff applied to become a driver for Uber. Following the submission of an application
2 through Uber's website, Plaintiff met with an Uber representative at one of Uber's San Francisco
3 office locations. There he passed a short test given on a tablet device, and had his picture taken.
4 Plaintiff began driving for Uber immediately thereafter. At no time during the application process did
5 Uber request Plaintiff's authorization to obtain a consumer background report, nor did it notify
6 Plaintiff that it would obtain a consumer background report.

7 12. From approximately March 2013 to April 2014, Plaintiff successfully drove for Uber.
8 Using an SUV provided by Abbey, Plaintiff provided "SUV" car services in the San Francisco
9 metropolitan area. Plaintiff worked between 36-48 hours per week. On average he picked up and
10 dropped off between 4 to 7 customers per day. Although Plaintiff continued to work for Abbey, he
11 spent approximately 90% of his time working for Uber. Throughout his employment with Uber,
12 Plaintiff maintained a rating of between 4.7 and 4.8 out of 5 stars.

13 13. Uber paid Abbey once per week for Plaintiff Gillette's services. The gross money
14 generated by Plaintiff was split as follows: 20% to Uber, 40% to Abbey, and 40% to Plaintiff.

15 14. Uber classified Plaintiff as an independent contractor rather than as an employee. As a
16 result, Uber failed to provide Plaintiff with itemized wage statements, minimum and overtime wages,
17 lawful meal or rest periods, and reimbursement for necessary expenses. Uber also failed to keep
18 accurate payroll records showing Plaintiff's hours worked and wages paid. Moreover, Uber retained
19 all gratuities despite representing to its customers and to Plaintiff Gillette that gratuity is included in
20 the total cost of the car service. Gratuities of 15-20% are customary in the car service industry.

21 15. In April 2014, Plaintiff's Uber account was abruptly deactivated. Both Plaintiff and
22 Abbey immediately contacted Uber to determine the reason for the deactivation. In response, Uber
23 requested that Plaintiff meet with a representative at Uber's Mission Street office location. The
24 meeting between Plaintiff and Uber lasted only a few minutes. Upon Plaintiff's arrival, a male
25 representative who failed to identify himself greeted Plaintiff in the building lobby. The representative
26 informed Plaintiff that "something had come up" on his consumer background report and that he could
27 no longer work for Uber. Prior to his termination, Uber failed to provide Plaintiff with a copy of his
28 consumer background report or a summary of his rights under the FCRA or other applicable laws.

1 16. On April 25, 2014, Uber announced a new “three-step” background check policy that
2 includes “county, federal, and multi-state checks.” Uber further announced that “[w]e apply this
3 comprehensive and new industry standard consistently across all Uber products, including uberX.”

4 17. Subsequently, Plaintiff through Abbey requested further information regarding
5 Plaintiffs’ consumer background report. Following several requests for information, Uber informed
6 Plaintiff that his consumer background report was produced by a company called Hirease, Inc., an
7 employment background screening company located in North Carolina. Pursuant to Plaintiff’s request,
8 Hirease provided Plaintiff with a copy of his consumer background report on May 2, 2014.

9 18. On October 29, 2014, Uber announced that it is “on track to complete more than 2
10 million background checks of potential drivers in 2014, which Uber has noted is among the highest
11 totals of any major corporation in the world.”

12 **FACTUAL ALLEGATIONS COMMON TO ALL FCRA CLASS MEMBERS**

13 19. 15 U.S.C. § 1681b(b)(2)(A) governs the conduct of any person who obtain consumer
14 background reports used for employment purposes:

15 Except as provided in subparagraph (B), a person may not procure a
16 consumer report, or cause a consumer report to be procured, for
employment purposes with respect to any consumer, unless—

17 (i) a clear and conspicuous disclosure has been made in writing to the
18 consumer at any time before the report is procured or caused to be
19 procured, in a document that consists solely of the disclosure, that a
consumer report may be obtained for employment purposes; and

20 (ii) the consumer has authorized in writing (which authorization may be
21 made on the document referred to in clause (i)) the procurement of the
report by that person.

22 20. Uber failed to provide Plaintiff and the putative class “clear and conspicuous” notice in
23 a written document that consists solely of the disclosure that it may procure consumer background
24 reports for employment purposes.

25 21. Similarly, Uber failed to obtain written authorization from Plaintiff and the putative
26 class prior to obtaining consumer background reports for employment purposes.

27 22. 15 U.S.C. § 1681b(3)(A) governs the conduct of any person who uses a consumer
28 background report to take adverse action against consumers with respect to their employment:

1 Except as provided in subparagraph (B), in using a consumer report for
2 employment purposes, before taking any adverse action based in whole
3 or in part on the report, the person intending to take such adverse action
4 shall provide to the consumer to whom the report relates—

5 (i) a copy of the report; and

6 (ii) a description in writing of the rights of the consumer under this
7 subchapter, as prescribed by the Bureau under section 1681g(c)(3) of this
8 title.

9 23. The purpose of 15 U.S.C. § 1681b(3)(A) is to inform consumers of their rights under
10 the FCRA and provide them an opportunity to review the consumer report and correct any inaccuracies
11 before any adverse actions are taken.

12 24. Uber failed to provide Plaintiff and the putative class with a summary of their rights
13 under the FCRA prior to taking adverse actions against them, including termination of their
14 employment and suspension and/or deactivation of their user accounts.

15 25. Uber further failed to provide Plaintiff and the putative class a copy of their consumer
16 background reports prior to taking adverse actions against them, including termination of their
17 employment and suspension and/or deactivation of their user accounts.

18 26. Defendants acted willfully in violating the requirements of the FCRA. Defendants
19 knew or should have known about their obligations under the FCRA. These obligations are well-
20 established by the plain language of the FCRA and in the promulgations and opinion letters of the
21 Federal Trade Commission.

22 27. Despite Uber's awareness of its legal obligations, Uber acted consciously in breaching
23 its known duties and depriving Plaintiff and other class members of their rights under the FCRA. At
24 minimum, Uber's conduct was reckless in failing to make an appropriate inquiry to ascertain its
25 obligations under the FCRA.

26 28. As a result of these FCRA violations, Uber is liable to Plaintiff and the putative class
27 for statutory damages of \$100.00 to \$1,000.00 pursuant to 15 U.S.C. § 1681n(a)(1)(A), punitive
28 damages pursuant to 15 U.S.C. § 1681n(a)(2), and reasonable attorneys' fees and costs pursuant to 15
U.S.C. § 1681n(a)(3). Plaintiff and the putative class are also entitled to equitable relief against Uber
enjoining further violations of the FCRA.

1 **CLASS ALLEGATIONS**

2 29. Plaintiff brings this action in his individual capacity and as a class action pursuant to
3 Federal Rule of Civil Procedure 23 on behalf of the following “FCRA Disclosure Class” and “FCRA
4 Consent Class:”

5 All individuals residing in the United States (including all territories and
6 other political subdivisions of the United States) who worked as an Uber
7 driver or applied to become an Uber driver on or after November 26,
2009 and received inadequate disclosure prior to consumer report
procurement as required by 15 U.S.C. § 1681b(b)(2)(A)(i).

8 All individuals residing in the United States (including all territories and
9 other political subdivisions of the United States) who worked as an Uber
10 driver or applied to become an Uber driver on or after November 26,
2009 and did not provide written consent prior to consumer report
procurement as required by 15 U.S.C. § 1681b(b)(2)(A)(ii).

11 30. Plaintiff also brings this action in his individual capacity and as a class action pursuant
12 to Federal Rule of Civil Procedure 23 on behalf of the following “FCRA Consumer Report Copy
13 Class” and “FCRA Summary of Rights Class:”

14 All individuals residing in the United States (including all territories and
15 other political subdivisions of the United States) who worked as an Uber
16 driver or applied to become an Uber driver on or after November 26,
2009 and was subject to an adverse action based in whole or in part on
17 information contained in the consumer report without receiving a copy of
the consumer report at least five business days prior to the adverse action
as required by 15 U.S.C. § 1681b(b)(3)(i).

18 All individuals residing in the United States (including all territories and
19 other political subdivisions of the United States) who worked as an Uber
20 driver or applied to become an Uber driver on or after November 26,
2009 and was subject to an adverse action based in whole or in part on
21 information contained in the consumer report without receiving a written
description of their rights under the FCRA at least five business days
prior to the adverse action as required by 15 U.S.C. § 1681b(b)(3)(ii).

22 31. **Numerosity** – Plaintiff is informed and believes and thereon alleges that the putative
23 class exceeds 500 persons. Information concerning the exact size of the putative class is within the
24 possession of Defendant. The putative class is so numerous that joinder of all members is impractical.

25 32. **Commonality** – Common questions of fact and law exist as to all class members and
26 predominate over any questions that effect only individual class members, including by example only
27 and without limitation, the following:

28 a. Whether Defendant had a policy and/or practice of procuring or causing to be

1 procured consumer reports for its drivers and applicants;

- 2 b. Whether Defendant had a policy and/or practice of providing clear and
3 conspicuous notice in a written document that consists solely of the disclosure
4 that it may procure consumer reports for its drivers and applicants;
- 5 c. Whether Defendant had a policy and/or practice of obtaining written
6 authorization from its drivers and applicants prior to procuring consumer
7 reports;
- 8 d. Whether Defendant had a policy and/or practice of providing copies of
9 consumer reports to its existing drivers and applicants at least five business days
10 prior to taking any adverse action based in whole or in part on the consumer
11 reports;
- 12 e. Whether Defendant had a policy and/or practice of providing a written
13 description of FCRA rights to its drivers and applicants at least five business
14 days prior to taking any adverse action based in whole or in part on a consumer
15 report;
- 16 f. Whether any written description of FCRA rights provided to its drivers and
17 applicants is legally sufficient;
- 18 g. Whether Defendant willfully failed to comply with the FCRA;
- 19 h. The proper measure of statutory and punitive damages and the availability and
20 appropriateness of declaratory and injunctive relief;

21 33. **Typicality** – Plaintiff’s claims are typical of the claims of the putative class in that: (1)
22 Plaintiff is a member of the class; (2) Plaintiff’s claims arise from the same practice or course of
23 conduct that forms the basis of the class claims; (3) Plaintiff’s claims are based upon the same legal
24 and remedial theories as those of the class and involve similar factual circumstances; (4) there is no
25 antagonism between the interests of Plaintiff and absent class members; (5) the injuries that Plaintiff
26 suffered are similar to the injuries that class members have suffered.

27 34. **Adequacy** – Plaintiff will fairly and adequately represent the class in that: (1) there is
28 no conflict between Plaintiff’s claims and those of other class and subclass members; (2) Plaintiff had

1 retained counsel who are skilled and experienced in class actions and who will vigorously prosecute
2 this litigation; (3) Plaintiff's claims are typical of the claims of class members.

3 **PAGA REPRESENTATIVE ACTION ALLEGATIONS**

4 35. On September 4, 2014, Plaintiff gave written notice by certified mail of Uber's
5 violations of various provisions of the California Labor Code as alleged in this complaint to the Labor
6 and Workforce Development Agency ("LWDA") and Uber. *See* Letter from Andrew P. Lee to
7 Secretary Marty Morgenstern (Sept. 4, 2014) attached hereto as Exhibit A.

8 36. The LWDA did not provide notice of its intention to investigate Uber's alleged
9 violations within thirty-three (33) calendar days of the September 4, 2014 postmark date of the notice
10 sent by Plaintiff. *See* Cal. Lab. Code § 2699.3(a)(2)(A).

11 37. Plaintiff is informed and believes and thereon alleges that Uber uniformly misclassifies
12 all of its drivers as independent contractors when they are, in fact, employees.

13 38. Uber exerts significant control over its drivers. For example, Uber drivers must adhere
14 to rules regarding the cleanliness of their car, their clothing, the timeframe within which they pick up a
15 customer following a request, and must provide transportation for at least one customer per month.

16 39. As a result, Uber failed to provide Plaintiff and other aggrieved employees with
17 itemized wage statements, minimum and overtime wages, lawful meal or rest periods, and
18 reimbursement for necessary expenses. Uber also failed to keep accurate payroll records showing
19 aggrieved employees' hours worked and wages paid. Moreover, Uber retained all gratuities owed to
20 aggrieved employees despite representing to its customers that gratuity is included in the total cost of
21 the car service. Gratuities of 15-20% are customary in the car service industry.

22 40. Plaintiff further alleges that Uber violated PAGA in the following ways: (1) Uber has
23 failed to provide prompt payment of wages to driver employees upon termination and resignation in
24 violation of Labor Code §§ 201, 202, 203; (2) Uber has failed to provide itemized wage statements to
25 driver employees in violation of Labor Code §§ 226(a), 1174, and 1174.5; (3) Uber has failed to
26 provide meal and rest periods in violation of Wage Order No. 9 and Labor Code §§ 226.7, 512, and
27 558; (4) Uber has willfully misclassified its driver employees in violation of Labor Code § 226.8; (5)
28 Uber has retained portions of gratuities intended for driver employees in violation of Labor Code

1 § 351; (6) Uber has failed to keep required payroll records in violation of Wage Order No. 9 and Labor
2 Code §§ 1174 and 1174.5; (7) Uber has failed to pay overtime wages in violation of Wage Order No. 9
3 and Labor Code §§ 510, 558, 1194 and 1198; (8) Uber has failed to pay minimum wages in violation
4 of Wage Order No. 9 and Labor Code §§ 1182.12, 1194, and 1197; (9) Uber has failed to reimburse
5 driver employees for all reasonably necessary expenditures and losses incurred by driver employees in
6 direct consequence of the discharge of their duties, including but not limited to fuel, insurance,
7 maintenance, and toll costs, in violation of Labor Code § 2802.

8 **FIRST CAUSE OF ACTION**
9 **VIOLATION OF THE FAIR CREDIT REPORTING ACT**
10 **(15 U.S.C. § 1681b(b)(2)(A)(i))**

11 41. Plaintiff re-alleges and incorporates by reference the allegations contained in the
12 paragraphs above as if fully set forth herein.

13 42. Uber willfully violated 15 U.S.C. § 1681b(b)(2)(A)(i) because it failed to provide
14 Plaintiff and the putative class “clear and conspicuous” notice in a written document that consists
15 solely of the disclosure that it may procure consumer background reports for employment purposes.

16 43. Plaintiff seeks statutory damages for himself and all others similarly situated for this
17 violation pursuant to 15 U.S.C. § 1681n(a)(1)(A).

18 44. Plaintiff seeks punitive damages for himself and all others similarly situated for this
19 violation pursuant to 15 U.S.C. § 1681n(a)(2).

20 45. In the alternative to the Plaintiff’s allegations that these violations were willful, he
21 alleges that the violations were negligent and seeks issue certification of that issue and appropriate
22 remedy, if any, under 15 U.S.C. § 1681o.

23 **SECOND CAUSE OF ACTION**
24 **VIOLATION OF THE FAIR CREDIT REPORTING ACT**
25 **(15 U.S.C. § 1681b(b)(2)(A)(ii))**

26 46. Plaintiff re-alleges and incorporates by reference the allegations contained in the
27 paragraphs above as if fully set forth herein.

28 47. Uber willfully violated 15 U.S.C. § 1681b(b)(2)(A)(ii) because it failed to obtain
written authorization from Plaintiff and the putative class prior to obtaining consumer background
reports for employment purposes.

1 48. Plaintiff seeks statutory damages for himself and all others similarly situated for this
2 violation pursuant to 15 U.S.C. § 1681n(a)(1)(A).

3 49. Plaintiff seeks punitive damages for himself and all others similarly situated for this
4 violation pursuant to 15 U.S.C. § 1681n(a)(2).

5 50. In the alternative to the Plaintiff's allegations that these violations were willful, he
6 alleges that the violations were negligent and seeks appropriate remedy, if any, under 15 U.S.C.
7 § 1681o.

8 **THIRD CAUSE OF ACTION**
9 **VIOLATION OF THE FAIR CREDIT REPORTING ACT**
10 **(15 U.S.C. § 1681b(b)(3)(i))**

11 51. Plaintiff re-alleges and incorporates by reference the allegations contained in the
12 paragraphs above as if fully set forth herein.

13 52. Uber willfully violated 15 U.S.C. § 1681b(3)(A)(i) because it failed to provide Plaintiff
14 and the putative class with a summary of their rights under the FCRA prior to taking adverse actions
15 against them, including termination of their employment and suspension and/or deactivation of their
16 user accounts.

17 53. Plaintiff seeks statutory damages for himself and all others similarly situated for this
18 violation pursuant to 15 U.S.C. § 1681n(a)(1)(A).

19 54. Plaintiff seeks punitive damages for himself and all others similarly situated for this
20 violation pursuant to 15 U.S.C. § 1681n(a)(2).

21 55. In the alternative to the Plaintiff's allegations that these violations were willful, he
22 alleges that the violations were negligent and seeks appropriate remedy, if any, under 15 U.S.C.
23 § 1681o.

24 **FOURTH CAUSE OF ACTION**
25 **VIOLATION OF THE FAIR CREDIT REPORTING ACT**
26 **(15 U.S.C. § 1681b(b)(3)(ii))**

27 56. Plaintiff re-alleges and incorporates by reference the allegations contained in the
28 paragraphs above as if fully set forth herein.

57. Uber willfully violated 15 U.S.C. § 1681b(b)(2)(A)(ii) because it failed to provide
Plaintiff and the putative class a copy of their consumer background reports prior to taking adverse

1 actions against them, including termination of their employment and suspension and/or deactivation of
2 their user accounts.

3 58. Plaintiff seeks statutory damages for himself and all others similarly situated for this
4 violation pursuant to 15 U.S.C. § 1681n(a)(1)(A).

5 59. Plaintiff seeks punitive damages for himself and all others similarly situated for this
6 violation pursuant to 15 U.S.C. § 1681n(a)(2).

7 60. In the alternative to the Plaintiff's allegations that these violations were willful, he
8 alleges that the violations were negligent and seeks appropriate remedy, if any, under 15 U.S.C.
9 § 1681o.

10 **FIFTH CAUSE OF ACTION**
11 **VIOLATION OF THE CALIFORNIA INVESTIGATIVE**
12 **CONSUMER REPORTING AGENCIES ACT**
13 **(Cal. Civ. Code § 1786.16(2)(B))**

14 61. Plaintiff re-alleges and incorporates by reference the allegations contained in the
15 paragraphs above as if fully set forth herein.

16 62. Plaintiff alleges this cause of action on an individual basis only.

17 63. Uber willfully violated California Civil Code § 1786.16(2)(B) because it failed to
18 provide Plaintiff "clear and conspicuous" notice of the following in a written document that consists
19 solely of the disclosure: (1) that it may procure a consumer background report for employment
20 purposes; (2) the permissible purpose of the report; (3) that the disclosure may including information
21 on the consumer's character, general reputation, personal characteristics, and mode of living;
22 (4) identification of the name, address, and telephone number of the investigative consumer reporting
23 agency conducting the investigation; (5) notification of the nature and scope of the investigation
24 requested, including a summary of the provisions of California Civil Code § 1786.22.

25 64. Plaintiff seeks statutory damages for himself for the violation pursuant to California
26 Civil Code § 1786.16(2)(B).

27 65. Plaintiff seeks punitive damages for this violation pursuant to California Civil Code
28 § 1786.50(b).

SIXTH CAUSE OF ACTION
VIOLATION OF THE CALIFORNIA INVESTIGATIVE
CONSUMER REPORTING AGENCIES ACT
(Cal. Civ. Code § 1786.16(a)(2)(C))

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4 66. Plaintiff re-alleges and incorporates by reference the allegations contained in the
5 paragraphs above as if fully set forth herein.

6 67. Plaintiff alleges this cause of action on an individual basis only.

7 68. Uber willfully violated California Civil Code § 1786.16(a)(2)(C) because it failed to
8 obtain written authorization from Plaintiff prior to obtaining a consumer background report for
9 employment purposes.

10 69. Plaintiff seeks statutory damages for this violation pursuant to California Civil Code
11 § 1786.16(a)(2)(B).

12 70. Plaintiff seeks punitive damages for this violation pursuant to California Civil Code
13 § 1786.50(b).

14 **SEVENTH CAUSE OF ACTION**
15 **VIOLATION OF THE CALIFORNIA INVESTIGATIVE**
16 **CONSUMER REPORTING AGENCIES ACT**
17 **(Cal. Civ. Code § 1786.16(b))**

18 71. Plaintiff re-alleges and incorporates by reference the allegations contained in the
19 paragraphs above as if fully set forth herein.

20 72. Plaintiff alleges this cause of action on an individual basis only.

21 73. Uber willfully violated California Civil Code § 1786.16(b)(1) because it failed to
22 provide, by means of a box to check on a written form, the opportunity to request and receive a copy of
23 the consumer background report obtained for Plaintiff. Uber also willfully violated California Civil
24 Code § 1786.16(b)(1) because if failed to provide Plaintiff with a copy of his consumer background
25 report within three days of request.

26 74. Plaintiff seeks statutory damages for this violation pursuant to California Civil Code
27 § 1786.16(a)(2)(B).

28 75. Plaintiff seeks punitive damages for this violation pursuant to California Civil Code
§ 1786.50(b).

1 **EIGHTH CAUSE OF ACTION**
2 **VIOLATION OF THE PRIVATE ATTORNEYS GENERAL ACT (“PAGA”)**
3 **(California Labor Code § 2698 *et seq.*)**

4 76. Plaintiff re-alleges and incorporates by reference the allegations contained in the
5 paragraphs above as if fully set forth herein.

6 77. Plaintiff is an “aggrieved employee” under PAGA, as he was employed by Uber during
7 the applicable statutory period and suffered one or more of the Labor Code violations set forth herein.
8 Accordingly, he seeks to recover on behalf of himself and all other current and former aggrieved
9 employees of Uber, the civil penalties provided by PAGA, plus reasonable attorney’s fees and costs.

10 78. Plaintiff seeks to recover the PAGA civil penalties through a representative action
11 permitted by PAGA and the California Supreme Court in *Arias v. Superior Court* (2009) 46 Cal. 4th
12 969. Therefore, class certification of the PAGA claims is not required, but Plaintiff may choose to
13 seek certification of the PAGA claims.

14 79. Plaintiffs seek civil penalties pursuant to PAGA for violations of the following Labor
15 Code provisions:

- 16 a. failure to provide prompt payment of wages to driver employees upon
17 termination and resignation in violation of Labor Code §§ 201, 202, 203;
- 18 b. failure to provide itemized wage statements to driver employees in violation of
19 Labor Code §§ 226(a), 1174, and 1174.5;
- 20 c. failure to provide meal and rest periods in violation of Wage Order No. 9 and
21 Labor Code §§ 226.7, 512, and 558;
- 22 d. willfully misclassifying its driver employees in violation of Labor Code § 226.8;
- 23 e. failure to provide gratuities intended for driver employees in violation of Labor
24 Code § 351;
- 25 f. failure to keep required payroll records in violation of Wage Order No. 9 and
26 Labor Code §§ 1174 and 1174.5;
- 27 g. failure to pay overtime wages in violation of Wage Order No. 9 and Labor Code
28 §§ 510, 558, 1194 and 1198;
- h. failure to pay minimum wages in violation of Wage Order No. 9 and Labor

1 Code §§ 1182.12, 1194, and 1197;

- 2 i. failure to reimburse driver employees for all reasonably necessary expenditures
3 and losses incurred by driver employees in direct consequence of the discharge
4 of their duties, including but not limited to fuel, insurance, maintenance, and
5 toll costs, in violation of Labor Code § 2802;
- 6 j. failure to provide itemized wage statements to driver employees in violation of
7 Labor Code §§ 226(a).

8 80. With respect to violations of Labor Code § 226(a), Labor Code § 226.3 imposes a civil
9 penalty in addition to any other penalty provided by law of two hundred fifty dollars (\$250) per
10 aggrieved employee for the first violation, and one thousand dollars (\$1,000) per aggrieved employee
11 for each subsequent violation of Labor Code § 226(a).

12 81. With respect to violations of Labor Code §§ 510, 512, Labor Code § 558 imposes a civil
13 penalty in addition to any other penalty provided by law of fifty dollars (\$50) for initial violations for
14 each underpaid employee for each pay period for which the employee was underpaid in addition to an
15 amount sufficient to recover underpaid wages, and one hundred dollars (\$100) for subsequent
16 violations for each underpaid employee for each pay period for which the employee was underpaid in
17 addition to an amount sufficient to recover underpaid wages. Moreover, Plaintiff seeks civil penalties
18 in the amount of unpaid wages owed to aggrieved employees pursuant to Labor Code § 558(a)(3).

19 82. With respect to violations of Labor Code § 1174, Labor Code § 1174.5 imposes a civil
20 penalty of \$500.

21 83. Labor Code § 2699 *et seq.* imposes a civil penalty of one hundred dollars (\$100) per
22 pay period, per aggrieved employee for initial violations, and two hundred dollars (\$200) pay period,
23 per aggrieved employee for subsequent violations for all Labor Code provisions for which a civil
24 penalty is not specifically provided, including Labor Code §§ 226.7, 226.8, 1174, 1182.12, 1194, 1197,
25 1198, and 2802.

26 **PRAYER FOR RELIEF**

27 WHEREFORE, Plaintiff, individually and on behalf of the proposed Class, prays for judgment
28 against Defendants as follows:

1 A. Certification of Plaintiff's FCRA claims as a class action pursuant to Federal Rule of
2 Civil Procedure 23;

3 B. Appointment of Plaintiff Gillette and Plaintiff's Counsel as class representative and
4 Class Counsel respectively;

5 C. Class notice to all Uber drivers nationwide who worked for Uber during the five years
6 prior to the filing of the original Complaint through the trial of this action;

7 D. Declaratory and injunctive relief, including an order preliminarily and permanently
8 enjoining Uber from engaging in the practices challenged herein;

9 E. An award of actual or statutory damages to Plaintiff and the Class pursuant to 15 U.S.C.
10 § 1681n(a)(1)(A) in an amount subject to proof at trial;

11 F. An award of punitive damages to Plaintiff and the Class pursuant to 15 U.S.C.
12 § 1681n(a)(2) and California Civil Code § 1786.50(b);

13 G. An award of actual or statutory damages to Plaintiff pursuant to California Civil Code
14 § 1786.50(a)(2) in an amount subject to proof at trial;

15 H. An award of civil penalties pursuant to PAGA;

16 I. An award of reasonable attorneys' fees and costs pursuant to 15 U.S.C. § 1681n(a)(3),
17 California Code of Civil Procedure § 1021.5, California Civil Code § 1786.50(a)(2), California Labor
18 Code § 2699(g) and/or other applicable law;

19 J. Pre-judgment and post-judgment interest as provided by law; and

20 K. Such other and further relief that the Court may deem just and proper.

21 Dated: December 15, 2014

Respectfully submitted,

22 GOLDSTEIN, BORGEN, DARDARIAN & HO

23 /s/ Andrew P. Lee

24 Andrew P. Lee

25 Attorneys for Plaintiff and the putative class
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28

DEMAND FOR JURY TRIAL

Plaintiff, on behalf of himself and the putative class, hereby demands trial by jury.

Dated: December 15, 2014

Respectfully submitted,

GOLDSTEIN, BORGEN, DARDARIAN & HO

/s/ Andrew P. Lee

Andrew P. Lee

Attorneys for Plaintiff and the putative class

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EXHIBIT A



Shareholders
David Borgen
Linda M. Dardarian
Laura L. Ho

Goldstein, Borgen,
Dardarian & Ho

Of Counsel
Barry Goldstein
Morris J. Baller

September 4, 2014

Via Certified Mail – Return Receipt Requested

Secretary Marty Morgenstern
California Labor & Workforce Development Agency
801 K Street, Suite 2101
Sacramento, CA 95814

Re: *Labor Code Private Attorneys General Act Notice*

Dear Secretary Morgenstern:

My firm represents Ronald Gillette in connection with his claims pursuant to the California Labor Code. Mr. Gillette previously worked for Uber Technologies, Inc. (“Uber”) as a driver from approximately February 2013 to April 2014. Since Uber erroneously classifies its drivers as independent contractors, Uber has failed to comply with numerous provisions of the California Labor Code. Mr. Gillette hereby provides notice of his intent to seek civil penalties pursuant to the Private Attorneys General Act of 2004 (California Labor Code § 2699 *et seq.*) for the following Labor Code violations:

1. Uber has failed to provide prompt payment of wages to driver employees upon termination and resignation in violation of Labor Code §§ 201, 202, 203;
2. Uber has failed to provide semimonthly payments of wages in violation of Labor Code §§ 204 and 210;
3. Uber has failed to provide conspicuous notice of regular pay days, including time and place of payment, in violation of Labor Code § 207;
4. Uber has failed to provide itemized wage statements to driver employees in violation of Labor Code §§ 226(a), 1174, and 1174.5;
5. Uber has failed to provide meal and rest periods in violation of Wage Order No. 9 and Labor Code §§ 226.7, 512, and 558;
6. Uber has willfully misclassified its driver employees in violation of Labor Code § 226.8;
7. Uber has retained portions of gratuities intended for driver employees in violation of Labor Code § 351;

Secretary Marty Morgenstern

-2-

September 4, 2014

8. Uber has failed to keep required payroll records in violation of Wage Order No. 9 and Labor Code §§ 1174 and 1174.5;
9. Uber has failed to pay overtime wages in violation of Wage Order No. 9 and Labor Code §§ 510, 558, 1194 and 1198;
10. Uber has failed to pay minimum wages in violation of Wage Order No. 9 and Labor Code §§ 1182.12, 1194, and 1197;
11. Uber has failed to reimburse driver employees for all reasonably necessary expenditures and losses incurred by driver employees in direct consequence of the discharge of their duties, including but not limited to fuel, insurance, maintenance, and toll costs, in violation of Labor Code § 2802.

Accordingly, Mr. Gillette intends to seek all applicable civil penalties related to the foregoing violations. Mr. Gillette hereby invites the Labor and Workforce Development Agency to take any action it deems appropriate. Thank you for your attention to this matter.

Yours very truly,



Andrew P. Lee


APL/slw

cc: Dalene Bramer
Employment Counsel
Uber Technologies, Inc.
1455 Market Street, Fourth Floor
San Francisco, CA 94103
(via certified mail)

SENDER: COMPLETE THIS SECTION	COMPLETE THIS SECTION ON DELIVERY
<ul style="list-style-type: none"> ■ Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired. ■ Print your name and address on the reverse so that we can return the card to you. ■ Attach this card to the back of the mailpiece, or on the front if space permits. 	<p>A. Signature <i>St</i> <input type="checkbox"/> Agent <input type="checkbox"/> Addressee</p> <p>B. Received by (Printed Name) <i>Stewart</i> C. Date of Delivery <i>9-8</i></p>
<p>1. Article Addressed to:</p> <p><i>Dalene Bramer Employment Counsel Uber Technologies, Inc 1455 Market St., 4th Flr San Francisco, CA 94103</i></p>	<p>D. Is delivery address different from Item 1? <input type="checkbox"/> Yes <input type="checkbox"/> No If YES, enter delivery address below:</p> <p>3. Service Type <input checked="" type="checkbox"/> Certified Mail <input type="checkbox"/> Express Mail <input type="checkbox"/> Registered <input type="checkbox"/> Return Receipt for Merchandise <input type="checkbox"/> Insured Mail <input type="checkbox"/> C.O.D.</p> <p>4. Restricted Delivery? (Extra Fee) <input type="checkbox"/> Yes</p>
<p>2. Article Number (Transfer from service label)</p>	<p>7004 2510 0001 2722 3857</p>
<p>PS Form 3811, February 2004 Domestic Return Receipt 102595-02-M-1540</p>	

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PS Form 3800, June 2002 See Reverse for Instructions	



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<p>1. Article Addressed to:</p> <p>Secty Mary Morgenstern CA Labor + Workforce Dev't Agency 801 K Street, Ste. 2101 Sacramento, CA 95814</p>		<p>801 K STREET, STE. 2101 SACRAMENTO, CA 95814 U.S. POSTAL SERVICE DEPARTMENT Capitol Mall</p>	
<p>2. Article Number (Transfer from service label)</p> <p>7004 2510 0001 2722 3840</p>		<p>3. Service Type <input type="checkbox"/> Express Mail <input type="checkbox"/> Return Receipt for Merchandise <input type="checkbox"/> C.O.D.</p> <p><input checked="" type="checkbox"/> Certified Mail <input type="checkbox"/> Registered <input type="checkbox"/> Insured Mail</p> <p>4. Restricted Delivery? (Extra Fee) <input type="checkbox"/> Yes</p>	
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SACRAMENTO, CA 95814

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City, State, ZIP+4 Sacramento, CA 95814

PS Form 3800, June 2002 See Reverse for Instructions

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