

JILL H. COFFMAN (NY Bar 2307098)  
 CHRISTY J. KWON (CA Bar 217186)  
 CARMEN LEÓN (CA Bar 249981)  
 National Labor Relations Board  
 Region 20  
 901 Market Street, Suite 400  
 San Francisco, California 94103  
 Telephone: (415) 356-5130/356-5176  
 Facsimile: (415) 356-5156  
 Email: carmen.leon@nrlrb.gov

Attorneys for Applicant

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

NATIONAL LABOR RELATIONS BOARD,

Applicant,

v.

UBER TECHNOLOGIES, INC.

Respondent.

**CV 16 80 057 MISC**

Hearing Date:

Hearing Time:

**APPLICATION FOR ORDER  
 REQUIRING OBEDIENCE TO  
 SUBPOENA AD TESTIFICANDUM AND  
 SUBPOENA DUCES TECUM**

The National Labor Relations Board (the Board), an administrative agency of the United States Government created pursuant to the National Labor Relations Act, as amended [29 U.S.C. § 151 et seq.] (the Act), by its General Counsel, and by Jill Coffman, Regional Attorney for Region 20 of the Board (Region 20), respectfully applies to this Honorable Court, pursuant to Section 11(2) of the Act [29 U.S.C. § 161(2)], for an order requiring Uber Technologies, Inc., (Respondent), to obey investigative subpoenas issued to it by an agent of the Board. The subpoenas were issued by the Board and were duly served on Respondent in the manner

1 provided by law. In support of this application, upon information and belief, the Board shows  
2 as follows:

### 3 JURISDICTION AND VENUE

4 (a) This Court has jurisdiction over the subject matter of the proceeding, and over  
5 Respondent, by virtue of Section 11(2) of the Act [29 U.S.C. § 161(2)], in that the investigation  
6 for which Subpoena *Ad Testificandum* A-1-PRRW1T (Exhibit 1(a)) and Subpoena *Duces*  
7 *Tecum* B-1-PRL733 (Exhibit 2(a)) were issued is being carried on within this judicial district.

8 (b) Pursuant to the provisions of Section 6 of the Act, the Board has issued Rules  
9 and  
10 Regulations (Series 8, as amended) (the Rules), governing the conduct of its operations, which  
11 have been duly published in the Federal Register, 24 F.R. 9095, as provided for in the  
12 Administrative Procedure Act, 5 U.S.C. § 552 (2012), and are reported at 29 C.F.R. §§ 102.1, et  
13 seq. This Court may take judicial notice of the Rules. See 44 U.S.C. § 1507 (2012).

### 14 THE BOARD'S INVESTIGATION AND SUBPOENAS

15 (c) Pursuant to the provisions of Section 10(b) of the Act [29 U.S.C. § 160(b)], there  
16 are now pending before the Board unfair labor practice proceedings entitled *Uber Technologies,*  
17 *Inc.*, involving charges filed against Respondent in Board Cases 20-CA-160717, 20-CA-  
18 160720, 14-CA-158833, 28-CA-160791, and 13-CA-163062. The charge in Case 20-CA-  
19 160717 was filed on September 24, 2015, by John Billington (Billington), an individual, and is  
20 attached here as Exhibit 3(a). The charge in Case 20-CA-160720 was filed on September 24,  
21 2015, by Catherine London (London), an individual, and is attached here as Exhibit 4(a). The  
22 charge in Case 14-CA-158833, was filed on August 27, 2015, by Mamdooh Ramzi Husein  
23 (Husein), an individual, and is attached here as Exhibit 5(a). The charge in Case 28-CA-160791

1 was filed on September 25, 2015, by Brittany Nicol (Nicol), an individual, and is attached here  
2 as Exhibit 6(a). The charge in Case 13-CA-163062, was filed on October 30, 2015, by Abdul  
3 Mohammed (Mohammed), an individual, and is attached here as Exhibit 7(a). The charges were  
4 served on Respondent in the manner and form required by law and by Sections 102.9, 102.10  
5 and 102.14 of the Board's Rules. Copies of the affidavits of service for each are attached hereto  
6 as Exhibits 3(b), 4(b), 5(b), 6(b), and 7(b), respectively.

7 (d) Pursuant to the provisions of Section 3(d) of the Act [29 U.S.C. § 153(d)], the  
8 General Counsel of the Board and his duly authorized agents have the final authority, on behalf  
9 of the Board, to investigate charges and issue complaints under Section 10 of the Act [29 U.S.C.  
10 § 160]. The Regional Director of Region 20 of the Board, on behalf of the General Counsel,  
11 pursuant to the provisions of Section 3(d) of the Act [29 U.S.C. § 153(d)], has caused  
12 investigations to be conducted regarding the unfair labor practice charges described in  
13 paragraph (c) above.

14 (e) The charges in Cases 20-CA-160717 and 20-CA-160720, (Exhibit 3(a) and 4(a))  
15 were filed with Region 20 (San Francisco) and they allege that Respondent violated the Act by  
16 requiring its drivers to waive their right to engage in protected concerted activity by requiring  
17 them to agree to a Licensing Agreement which includes an arbitration policy in which drivers  
18 waive their right to commence or participate in a class or collective action against Respondent.  
19 The charge in Case 14-CA-158833 (Exhibit 5(a)) was filed with Region 14 (Kansas City), and it  
20 alleges that Respondent discriminated against the Charging Party for engaging in protected  
21 concerted activity. The charge in Case 28-CA-160791 (Exhibit 6(a)) was filed on September 25,  
22 2015, it alleges that Respondent disciplined and/or discharged the Charging Party because of her  
23 protected concerted activities. The charge in Case 13-CA-163062 (Exhibit 7(a)) was filed with

1 Region 13 (Chicago) and it alleges that Respondent interfered with rights protected by Section 7  
2 of the Act by telling employees that they would be terminated if they attempted to discuss  
3 working conditions with other employees and by discharging the Charging Party in retaliation  
4 and/or in order to discourage protected concerted activities.

5 (f) Each of the charges under investigation listed above in paragraph (c) allege  
6 conduct that would constitute a violation of the Act only if those individuals alleged to have had  
7 their statutory rights violated are “employees” of Respondent as defined by Section 2(3) of the  
8 Act [29 U.S.C. §152(3)].<sup>1</sup> The Respondent contends that all drivers alleged to have had their  
9 rights violated under the Act are independent contractors and not statutory employees.  
10 Therefore, the General Counsel of the Board must investigate the threshold issue of whether  
11 individuals subject to any of the alleged unfair labor practices described above are statutory  
12 employees and not independent contractors.

13 (g) On October 21, November 2, and November 9, 2015, all counsel for Respondent  
14 were notified that for the sake of efficiency, the General Counsel of the Board had designated  
15

16  
17 <sup>1</sup> Section 2(3) of the Act [29 U.S.C. § 152(3)] (2016) provides:

18 The term “employee” shall include any employee, and shall not be limited to the  
19 employees of a particular employer, unless this subchapter explicitly states otherwise,  
20 and shall include any individual whose work has ceased as a consequence of, or in  
21 connection with, any current labor dispute or because of any unfair labor practice, and  
22 who has not obtained any other regular and substantially equivalent employment, but  
23 shall not include any individual employed as an agricultural laborer, or in the domestic  
service of any family or person at his home, or any individual employed by his parent or  
spouse, or any **individual having the status of an independent contractor**, or any  
individual employed as a supervisor, or any individual employed by an employer subject  
to the Railway Labor Act [45 U.S.C.A. § 151 et seq.], as amended from time to time, or  
by any other person who is not an employer as herein defined.” 29 U.S.C.A. § 152.  
(emphasis added)

1 Region 20 to coordinate the investigation of the threshold issue of whether the drivers covered  
2 by the charges listed above in paragraph (c) are employees under Section 2(3) of the Act [29  
3 U.S.C. §152]. The emails and letter communicating this consolidation are attached here as  
4 Exhibit 8(a). Absent such coordination, multiple regional offices of the Board would be  
5 undertaking duplicative investigation of the same threshold issue, and would be required to do  
6 so each time a new charge is filed with a regional office of the Board. In response, Respondent  
7 designated Rob Hulteng and his law firm to respond to the Board's consolidated investigation  
8 into this threshold. (Leon Affidavit, pg. 2, par. 4-6; Exhibit 8(b)).

9 (h) After failing to obtain complete cooperation from Respondent with regard to its  
10 production of material and relevant evidence on the threshold "employee/independent  
11 contractor" issue, the Regional Director on December 31, 2015, caused to be issued at the  
12 written request of the investigating Board agent, Carmen León, (the Board agent) a  
13 representative of the General Counsel of the Board, the following investigative subpoenas:

14 (1) Subpoena *Ad Testificandum* A-1-PRRW1T requiring Respondent's Custodian  
15 of Records to appear before a Board agent on January 26, 2016, at 9:00 a.m. at the San  
16 Francisco Regional Office, 901 Market Street, Suite 400, in San Francisco, California, and give  
17 testimony in the form of sworn answers to written interrogatories regarding the threshold issue  
18 of whether the drivers at issue are employees under Section 2(3) of the Act. A copy of Subpoena  
19 A-1-PRRW1T is attached as Exhibit 1(a).

20 (2) Subpoena *Duces Tecum* No. B-1-PRL733 requiring Respondent's  
21 Custodian of Records to appear before a Board agent on January 26, 2016, at 9:00 a.m., at the  
22  
23

1 San Francisco Regional Office, 901 Market Street, Suite 400, in San Francisco, California, and  
2 provide certain specified records and other documents regarding, *inter alia*, the threshold issue  
3 of whether the drivers at issue are employees under Section 2(3) of the Act, and to give  
4 testimony in connection with the contents of those records and other documents. A copy of  
5 Subpoena B-1-PRL733 is attached as Exhibit 2(a).

6 (i) Subpoena *Ad Testificandum* A-1-PRRW1T and Subpoena *Duces Tecum* B-1-  
7 PRL733, collectively referred to as Subpoenas, were issued under the authority of, and in the  
8 manner and form provided for, in Section 11(1) of the Act, [29 U.S.C. §161(1)] and Section  
9 102.31(a) of the Board's Rules and Regulations. [29 C.F.R. § 102.31(a)].

10 (j) The Subpoenas were duly served upon Respondent in the manner and form  
11 provided for in Section 11(4) of the Act [29 U.S.C. § 161(4)] and Section 102.113 of the  
12 Board's Rules and Regulations. [29 C.F.R. § 102.113]. Copies of the proofs of service for the  
13 Subpoenas are attached hereto as Exhibit 1(b) and 2(b), respectively.

14 (k) A courtesy copy of the Subpoenas were served on Counsel for Respondent and in  
15 her accompanying cover letter, the Board Agent offered to discuss with Respondent how best to  
16 accommodate production of the requested information. The cover letter accompanying the  
17 courtesy copy of the Subpoenas is attached here as Exhibit 9.

18 (l) Return receipts for the Subpoenas were received by Region 20, noting that  
19 Respondent received the Subpoenas on January 4, 2016. The return receipts are attached here as  
20 Exhibit 10.

21 (m) From January 5, 2016, to February 22, 2016, the Board Agent and Counsel for  
22 Respondent conferred numerous times, orally and in writing, regarding Respondent's obligation  
23 under the Subpoenas to provide documents and answers to interrogatories. During this time



1 period and to date, Respondent has not provided the majority of the documents and information  
2 requested in the Subpoenas. It continues to maintain that the Board is not entitled to the answers  
3 and documents it requested in its Subpoenas, and it has limited its scant production of evidence  
4 to the two Charging Parties that filed charges in Region 20. (Leon Decl. p.3, par. 8)

5 (n) Based on the above, Respondent has failed and refused to comply with the  
6 Board's Subpoenas.

7 (o) The testimony, records and documents requested in the Subpoenas are relevant  
8 and material to the Board's current investigation of Cases 20-CA-160717, 20-CA-160720, 14-  
9 CA-158833, and 13-CA-163062. Respondent's incomplete documentary production, non-  
10 responsive and incomplete answers to the interrogatories and its failure to make available its  
11 Custodian of Records for a sworn statement pursuant to the Subpoenas have impeded and  
12 continue to impede the Board in the investigation before it. In order for the Board to carry out its  
13 statutory duties and functions under the Act, an order compelling Respondent to comply with  
14 the Subpoenas is necessary and appropriate.

15 WHEREFORE, Applicant, the National Labor Relations Board, respectfully prays that:

16 (p) An Order To Show Cause issue directing Respondent to appear before this Court  
17 on a day certain to be fixed in said Order and to show cause, if any there be, why an order  
18 should not issue directing Respondent's Custodian of Records to appear before a Board agent  
19 designated by the Regional Director of Region 20 of the Board to take evidence in Cases 20-  
20 CA-160717, 20-CA-160720, 14-CA-158833, and 13-CA-163062, at such time and place as the  
21 Regional Director may designate, directing Respondent's Custodian of Records to appear before  
22 a Board agent designated by the Regional Director of Region 20, and then and there produce the  
23 records and documents requested in Subpoena *Duces Tecum* No. B-1-PRL733; directing

1 Respondent's Custodian of Records to appear before a Board Agent designated by the Regional  
2 Director of Region 20, at such time and place as the Board Agent may designate, and then and  
3 there provide sworn written answers to the interrogatories and testify in obedience to Subpoena  
4 *Ad Testificandum* A-1-PRRWIT.

5 (q) Upon the return of said Order to Show Cause, an order issue from this Court  
6 requiring Respondent's Custodian of Records to appear and produce documents and testimony  
7 as stated in paragraph (p) above.

8 (r) The Applicant, National Labor Relations Board, have such other further relief as  
9 may be necessary and appropriate.

10 DATED AT San Francisco, California, this 1<sup>st</sup> day of March, 2016.

11  
12   
13 Jill H. Coffman  
Regional Attorney, Region 20

14 Richard Griffin  
15 General Counsel of the Board


16 Christy J. Kwon  
17 Supervisory Attorney, Region 20

18 Carmen León  
19 Field Attorney, Region 20

20 Attorneys for Applicant  
21 National Labor Relations Board  
22  
23



DATED March 15, 2016, at San Francisco, CA.

  
Jill H. Coffman,  
Regional Attorney, Region 20