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

18  
19  
20 IN RE UBER FCRA LITIGATION

Case No.: 14-cv-05200-EMC

**PLAINTIFFS' OBJECTION TO  
 O'CONNOR/YUCESOY PARTIES' JOINT  
 STIPULATION AND [PROPOSED] ORDER  
 VACATING RULE 23(D) ORDERS**

Before: Hon. Edward M. Chen

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1 Interim Lead Counsel in *In Re Uber FCRA Litigation*, Case Nos. 14-cv-05200-EMC, 14-cv-  
2 05241-EMC, on behalf of Plaintiffs Ronald Gillette, Abdul Kadir Mohamed, Brandon Farmer,  
3 Shannon Wise, Meghan Christianson, and hundreds of thousands (if not millions) of putative class  
4 members (collectively, “*In Re Uber FCRA Plaintiffs*”), strenuously object to the Joint Stipulation and  
5 [Proposed] Order Vacating Rule 23(d) Orders filed in *O’Connor v. Uber Technologies Inc.*, Case No.  
6 13-cv-03826-EMC and *Yucesoy v. Uber Technologies Inc.*, Case No. 15-cv-00262-EMC, which  
7 purport to vacate an order entered in and applying to this action, as well as *O’Connor* and *Yucesoy*.  
8 *O’Connor* ECF No. 522; *Yucesoy* ECF No. 210. *In Re Uber FCRA Plaintiffs*, who are members of the  
9 proposed Settlement Class as well as the putative class in this case, object to this stipulation not only as  
10 it purports to apply to this action, but as it applies to *O’Connor* and *Yucesoy*.

11 *First*, the parties in *O’Connor* and *Yucesoy* have no standing to agree to vacate this Court’s  
12 Order Re Plaintiffs’ Motions to Enjoin Uber’s Communications with Class and Putative Class  
13 Members and Enforcement of December 11, 2015 Arbitration Agreement issued in this *In Re Uber*  
14 *FCRA Litigation*. *In Re Uber FCRA* ECF No. 127. *In Re Uber FCRA Plaintiffs* do not stipulate, and  
15 in fact oppose, vacating the Court’s Order as it pertains to *In Re Uber FCRA Litigation*. The  
16 *O’Connor* and *Yucesoy* plaintiffs have no authority to make such a stipulation on behalf the *In Re Uber*  
17 *FCRA Plaintiffs* and the hundreds of thousands of putative class members who would be adversely  
18 impacted by this stipulation and whose interests Interim Lead Counsel represents. None of the parties  
19 to the stipulation even consulted Interim Lead Counsel on it. The stipulation must be denied on this  
20 basis alone.

21 *Second*, this Court has not yet approved the *O’Connor* settlement, and may not do so for quite  
22 some time, if ever, or may do so only after requiring modification of the settlement. The proposed  
23 stipulation threatens to harm members of the *O’Connor* and *Yucesoy* classes (which overlap with the *In*  
24 *Re Uber FCRA* class) by subjecting them to the December 2015 arbitration agreement and further  
25 versions of Uber’s arbitration agreement now, despite the Court’s ruling that the December 2015  
26 agreement is misleading and threatens to interfere with these class members’ rights. Until judgment is  
27 entered, the Court and Plaintiffs’ counsel have fiduciary duties to the certified and putative classes in  
28 all of these cases, regardless of what the settling parties in two of the cases now want. All the

1 justifications for protecting class members on which the Court based its 23(d) orders still stand.

2 *Third*, Uber’s CEO issued a press release regarding the proposed settlement in which Uber  
3 already is making misrepresentations that directly impact this case and members of the putative class  
4 here, as well as members of the classes in *O’Connor* and *Yucesoy*. See *Growing and Growing Up*,  
5 available at <https://newsroom.uber.com/growing-and-growing-up/> (last visited April 22, 2016). For  
6 instance, Uber indicates that “Drivers will remain independent contractors, not employees,” and that  
7 “this settlement recognizes that drivers should remain as independent contractors, not employees,”  
8 including quotes from drivers to the effect that independent contractor status is superior to employee  
9 status, despite the lack of benefits accorded to independent contractors. *Id.* Such statements  
10 misrepresent drivers’ current status, which is undetermined; misrepresent the proposed settlement,  
11 which does not and cannot recognize that independent contractor status is superior to employee status;  
12 and misrepresents issues that, according to Uber itself, are central to *In Re Uber FCRA* Plaintiffs’  
13 claims in this action. See, e.g., *In Re Uber FCRA Litigation* Jt. Case. Mgmt. Statement at 5, May 7,  
14 2015, ECF No. 56 (“Defendants disagree the FCRA governed these practices with regard to Plaintiffs  
15 as independent contractors.”). Through such statements, which appear designed to deter class  
16 members from closely examining or objecting to the proposed settlement, Uber threatens to mislead  
17 class members about issues important to their claims in this case, as well as about the proposed  
18 settlement itself.

19 *Fourth*, the *O’Connor* and *Yucesoy* parties incorrectly assert that “the Court based its Rule  
20 23(d) Orders almost exclusively on the supposed confusion and complexity pertaining to the *O’Connor*  
21 action, not any developments that have taken place in the *In re FCRA* case.” *O’Connor* Jt. Stip. at 7,  
22 ECF No. 522; *Yucesoy* Jt. Stip. at 7, ECF No. 210. This contention is plainly false. As set forth in  
23 Plaintiffs’ briefing to this Court and the Ninth Circuit, Uber’s December 2015 arbitration agreement is  
24 highly coercive, and amounts to an improper attempt to extract waivers from hundreds of thousands of  
25 drivers during the pendency of class litigation. See *In Re Uber FCRA Litigation* Mot. to Enjoin Def.  
26 Comm’ns, Dec. 15, 2015, ECF No. 127. Furthermore, the December 2015 arbitration agreement  
27 contains significant misrepresentations about *In Re Uber FCRA Litigation* that are highly misleading,  
28 including the following:

- 1 • The December 2015 arbitration agreement identifies *In Re Uber FCRA* by name but  
2 fails to explain the actual nature of this action. This alone renders the arbitration  
3 agreement confusing and misleading. *See, e.g., Williams v. Securitas Sec. Servs.*  
4 *USA, Inc.*, No. CIV.A. 10-7181, 2011 WL 2713741, at \*3 (E.D. Pa. July 13, 2011)  
5 (concluding that arbitration agreement amounted to a confusing and misleading  
6 communication where the agreement identified the lawsuit by name, but failed to  
7 explain the nature of the action);
- 8 • The December 2015 arbitration agreement described *In Re Uber FCRA* as a lawsuit  
9 alleging “claims for tips, reimbursement of expenses, and employment status.”  
10 *O’Connor Liss-Riordan Decl* at Ex. A, § 15.3, Dec. 11, 2016, ECF No. 406. While *In*  
11 *Re Uber FCRA* includes a PAGA cause of action that seeks civil penalties for Uber’s  
12 alleged violation of California drivers’ rights to tips and reimbursement of expenses,  
13 the PAGA claims go beyond those allegations (*i.e.* including allegations that Uber  
14 failed to pay minimum wage and overtime). Even more crucially, this case includes  
15 numerous factual and legal claims related to the violation of the federal Fair Credit  
16 Reporting Act, the California Investigative Consumer Reporting Agencies Act, the  
17 California Credit Reporting Agencies Act, the California Business and Professions  
18 Code, the Massachusetts Credit Reporting Act, and the Massachusetts Criminal  
19 Offender Record Information Requirements. *See In Re Uber FCRA Am. Compl.*,  
20 Oct. 15, 2015, ECF No. 109.
- 21 • The December 2015 arbitration agreement describes *In Re Uber FCRA* as a “non-  
22 PAGA” lawsuit when in fact the case includes the very PAGA claims based on both  
23 wage and hour and background check violations. *See O’Connor Liss-Riordan Decl* at  
24 Ex. A, § 15. And to confuse matters even further, PAGA claims are specifically  
25 exempted from the arbitration agreement. *Id.*
- 26 • The December 2015 arbitration agreement confusingly states that counsel for the  
27 *O’Connor* plaintiffs represents the Plaintiffs in *In Re Uber FCRA*. *See id.*

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1 As a result of these misrepresentations, this Court ordered Uber to “revise the notice provision  
2 within the [December 2015] arbitration agreement “to identify all the class actions that have been filed  
3 in this Court on behalf of the putative class members (*i.e.*, *O’Connor*, *Yucesoy*, *In Re Uber FCRA*  
4 *Litigation*, and *Del Rio*.” *In Re Uber FCRA* Order at 6, Dec. 23, 2014, ECF No. 137 (emphasis  
5 added). The Court further ordered that “[c]ounsel for each of the other related cases shall be identified  
6 along with their current address.” *Id.* The Court’s Order is now the subject of a pending cross-appeal  
7 before the Ninth Circuit that has been fully briefed by the parties in *In Re Uber FCRA Litigation*.

8 Finally, Interim Lead Counsel is in the process of reviewing the proposed *O’Connor* settlement  
9 for other terms that adversely impact Plaintiffs and the putative class *In Re Uber FCRA*, including a  
10 purported release that covers the instant case, and will raise further objections following completion of  
11 their review and well before the preliminary approval hearing in *O’Connor* and *Yucesoy*. Clearly, the  
12 settlement may affect members of the putative class in this case, and cause possible confusion  
13 regarding their FCRA background check claims as well the claims at issue in *O’Connor* and *Yucesoy*.  
14 *See, e.g.*, *Driver Deactivation Policy*, available at [https://www.uber.com/legal/other/driver-](https://www.uber.com/legal/other/driver-deactivation-us-english/)  
15 [deactivation-us-english/](https://www.uber.com/legal/other/driver-deactivation-us-english/) (last visited April 22, 2016) (describing, as part of the “deactivation policy”  
16 instituted under the proposed settlement, how background checks and application of Uber’s driver  
17 criteria may lead to deactivation).

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20 Dated: April 22, 2016

Respectfully submitted,

21 GOLDSTEIN, BORGEN, DARDARIAN & HO

22  
23 /s/ Laura L. Ho

Laura L. Ho

Andrew P. Lee

William Jhaveri-Weeks

24  
25 Attorneys for Plaintiffs and the Putative Class

1 Dated: April 22, 2016

Respectfully submitted,

2 AHDOOT & WOLFSON, P.C.

3  
4 /s/ Tina Wolfson

Tina Wolfson  
Robert Ahdoot  
Theodore W. Maya  
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7 Attorneys for Plaintiffs and the Putative Class

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10 **ATTESTATION OF FILER**

11 I, Laura L. Ho, attest that concurrence in the filing of this document has been obtained from  
12 each of the other Signatories, which shall serve in lieu of their signatures on the document. Signed this  
13 22nd day of April, 2016.

14  
15 /s/ Laura L. Ho