

PHILLIPS, ERLEWINE, GIVEN & CARLIN LLP
39 Mesa Street, Suite 201 - The Presidio
San Francisco, CA 94129
Telephone: (415) 398-0900

1 R. SCOTT ERLEWINE (State Bar No. 095106)
2 NICHOLAS A. CARLIN (State Bar No. 112532)
3 BRIAN S. CONLON (State Bar No. 303456)
4 PHILLIPS, ERLEWINE, GIVEN & CARLIN LLP
5 39 Mesa Street, Suite 201
6 The Presidio
7 San Francisco, CA 94129
8 Telephone: 415-398-0900
9 Fax: 415-398-0911
10 Email: rse@phillaw.com
11 nac@phillaw.com
12 bsc@phillaw.com

13 Attorneys for Plaintiff
14 Lenza H. McElrath III

15 SUPERIOR COURT OF THE STATE OF CALIFORNIA
16 COUNTY OF SAN FRANCISCO

17 LENZA H. McELRATH III, in his
18 representative capacity,

19 Plaintiffs,

20 v.

21 UBER TECHNOLOGIES, INC, a Delaware
22 corporation,

23 Defendant.

Case No: CGC-16-551748

**ORDER SUSTAINING IN PART AND
OVERRULING IN PART DEFENDANT'S
DEMURRER TO FIRST AMENDED
COMPLAINT**

Date: December 9, 2016
Time: 9:30 a.m.
Department: 302
Judge: Hon. Harold E. Kahn

Complaint Filed: 5/2/16
First Amended Complaint Filed: 7/14/16
Trial Date: Not Yet Set

FILED
San Francisco County Superior Court

DEC 09 2016

CLERK OF THE COURT

BY: Alivia Sheen
Deputy Clerk

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1 Defendant Uber Technologies, Inc.'s Demurrer to the First Amended Complaint came on
2 regularly for hearing on December 12, 2016 at 9:30 a.m. in Department 302 of the above-
3 entitled Court. Phillips, Erlewine, Given & Carlin LLP appeared on behalf of Plaintiff Lenza H.
4 McElrath III; Cooley LLP appeared on behalf of Defendant Uber Technologies, Inc.

5 IT IS HEREBY ORDERED that the following tentative ruling shall become the final
6 Order of this Court:

7 Defendant Uber Technologies, Inc.'s Demurrer to the First Amended Complaint is
8 sustained without leave to amend as to alleged violations of Labor Code 201, 202 and 204 and
9 overruled as to the alleged violation of Labor Code 970. Mr. McElrath has not alleged sufficient
10 facts to state a PAGA claim based on violations of Labor Code 201, 202, and 204, nor does it
11 appear that he will be able to do, because stock options, whether vested or not, are not "wages"
12 within the meaning of Labor Code 200(a). (*IBM v. Bajorek* (9th Cir. 1999) 191 F.3d. 1033,
13 1039.) Mr. McElrath's PAGA notice alleges that the Labor Code 970 false representations "are
14 contained in my Employment Agreement." The employment agreement states that the grant of
15 stock options to Mr. McElrath is subject to the approval of Uber's Board. Liberally construing
16 Mr. McElrath's allegations, Mr. McElrath is not contesting that the Board had the discretionary
17 authority to disapprove his stock options grant, as long as it did so in compliance with the
18 covenant of good faith and fair dealing implied in the employment agreement, but once the
19 Board approved the issuance of stock options to him as it must have done, those options were to
20 be ISOs, not NSOs. So construed, these allegations sufficiently allege a PAGA claim based on a
21 violation of Labor Code 970.

22 SO ORDERED.

23
24 Dated: 12/12/16

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26 
27 HON. HAROLD E. KAHN
28 JUDGE OF THE SUPERIOR COURT