

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

-----X	
SPENCER MEYER, individually and on behalf of those similarly situated,	:
	:
Plaintiff,	:
	:
vs.	: Case No. 1:15-cv-9796 (JSR)
	:
TRAVIS KALANICK and UBER TECHNOLOGIES, INC.,	:
	:
Defendants.	:
-----X	

**DEFENDANTS UBER TECHNOLOGIES, INC. AND TRAVIS KALANICK’S JOINT OPPOSITION TO
PLAINTIFF’S MOTION FOR RELIEF RELATED TO THE ERGO INVESTIGATION**

REDACTED

CONFIDENTIAL

GIBSON, DUNN & CRUTCHER LLP

Reed Brodsky
200 Park Avenue
New York, NY 10166-0193
Telephone: 212.351.4000
Facsimile: 212.351.4035
RBrodsky@gibsondunn.com

Theodore J. Boutrous, Jr.
Daniel G. Swanson
Nicola T. Hanna
Joshua S. Lipshutz
333 South Grand Avenue
Los Angeles, CA 90071
Telephone: 213.229.7000
Facsimile: 213.229.7520

TBoutrous@gibsondunn.com
DSwanson@gibsondunn.com
NHanna@gibsondunn.com
JLipshutz@gibsondunn.com

Cynthia E. Richman
1050 Connecticut Avenue, N.W.
Washington, DC 20036
Telephone: 202.955.8500
Facsimile: 202.467.0539
CRichman@gibsondunn.com

Counsel for Uber Technologies, Inc.

BOIES, SCHILLER & FLEXNER LLP

Karen L. Dunn
William A. Isaacson
Ryan Y. Park
5301 Wisconsin Avenue, NW
Washington, DC 20015
Telephone: (202) 237-2727
Facsimile: (202) 237-6131
kdunn@bsflp.com
wisaacson@bsflp.com
rpark@bsflp.com

Alanna C. Rutherford
Peter M. Skinner
Joanna C. Wright
575 Lexington Avenue, 7th Floor
New York, NY 10022
Telephone: (212) 446-2300
Facsimile: (212) 446-2350
arutherford@bsflp.com
pskinner@bsflp.com
jwright@bsflp.com

Counsel for Defendant Travis Kalanick

TABLE OF CONTENTS

	<u>Page</u>
PRELIMINARY STATEMENT	1
FACTUAL AND PROCEDURAL BACKGROUND.....	2
A. Plaintiff Files the Complaint.....	2
B. Potential Security Threat is Identified	2
C. The Security Investigation	4
D. The Report is Delivered and the Investigation is Closed.....	6
E. The Miscommunication and Correction	7
F. Meet and Confer Process	8
G. Proceedings Before the Court	9
ARGUMENT.....	11
A. Plaintiff Is Not Entitled To Attorney’s Fees.....	11
1. Plaintiff has not shown that Defendants acted in bad faith.....	12
2. Plaintiff has not demonstrated any prejudice.....	16
3. Defendants’ legitimate attempts to protect privileged communications are not grounds for sanctions.....	17
B. The Cases Plaintiff Cites Do Not Support the Imposition of Sanctions.....	18
C. Plaintiff Is Not Entitled to an Order Precluding Defendants from Seeking Discovery About Him.....	19

TABLE OF AUTHORITIES

Cases	<u>Page(s)</u>
<i>Amchem Products, Inc. v. Windsor</i> , 521 U.S. 591 (1997).....	20
<i>Browning Debenture Holders' Comm. v. DASA Corp.</i> , 560 F.2d 1078 (2d Cir. 1977).....	14, 15, 16, 19
<i>Chambers v. NASCO, Inc.</i> , 501 U.S. 32 (1991).....	17
<i>Chateau de Ville Prods., Inc. v. Tams-Witmark Music Library, Inc.</i> , 586 F.2d 962 (2d Cir. 1978).....	20
<i>De Beers Consol. Mines v. United States</i> , 325 U.S. 212 (1945).....	12
<i>Fayemi v. Hembrecht & Quist, Inc.</i> , 174 F.R.D. 319 (S.D.N.Y. 1997).....	18, 19, 20
<i>Gidatex, S.r.L v. Campaniello Imps., Ltd.</i> , 82 F. Supp. 2d 119 (S.D.N.Y. 1999).....	13
<i>Grupo Mexicano de Desarrollo S.A. v. All. Bond Fund, Inc.</i> , 527 U.S. 308 (1999).....	12
<i>Hensley v. Eckerhart</i> , 461 U.S. 424 (1983).....	16
<i>Mackler Prods., Inc. v. Cohen</i> , 225 F.3d 136 (2d Cir. 2000).....	17
<i>New York State Ass'n for Retarded Children, Inc. v. Carey</i> , 711 F.2d 1136 (2d Cir. 1983).....	16
<i>Oliveri v. Thompson</i> , 803 F.2d 1265 (2d Cir. 1986).....	12
<i>Plum Creek Lumber Co. v. Hutton</i> , 608 F.2d 1283 (9th Cir. 1979).....	12
<i>Roadway Exp., Inc. v. Piper</i> , 447 U.S. 752 (1980).....	12

TABLE OF AUTHORITIES (continued)

	<u>Page(s)</u>
<i>Sakon v. Andreo</i> , 119 F.3d 109 (2d Cir. 1997).....	12, 14, 16
<i>Salahuddin v. Harris</i> , 782 F.2d 1127 (2d Cir. 1986).....	12
<i>United States v. Hayman</i> , 342 U.S. 205 (1952).....	12
<i>United States v. Int’l Bhd. of Teamsters, Chauffeurs, Warehousemen & Helpers of Am., AFL-CIO</i> , 948 F.2d 1338 (2d Cir. 1991).....	1, 12
<i>Update Art, Inc. v. Modiin Pub., Ltd.</i> , 843 F.2d 67 (2d Cir. 1988).....	19
<i>Upjohn Co. v. Aetna Cas. & Sur. Co.</i> , 768 F. Supp. 1186 (W.D. Mich. 1990)	18, 19, 20
<i>Wilson v. Citigroup, N.A.</i> , 702 F.3d 720 (2d Cir. 2012).....	12
<i>Wolters Kluwer Fin. Servs., Inc. v. Scivantage</i> , 564 F.3d 110 (2d Cir. 2009).....	12, 16

PAGES 1-20 INTENTIONALLY OMITTED

Dated: July 6, 2016

Respectfully submitted,

/s/ Nicola T. Hanna

Nicola T. Hanna

GIBSON, DUNN & CRUTCHER LLP

Reed Brodsky
200 Park Avenue
New York, NY 10166-0193
Telephone: 212.351.4000
Facsimile: 212.351.4035
RBrodsky@gibsondunn.com

Theodore J. Boutrous, Jr.
Daniel G. Swanson
Nicola T. Hanna
Joshua S. Lipshutz
333 South Grand Avenue
Los Angeles, CA 90071
Telephone: 213.229.7000
Facsimile: 213.229.7520
TBoutrous@gibsondunn.com
DSwanson@gibsondunn.com
NHanna@gibsondunn.com
JLipshutz@gibsondunn.com

Cynthia E. Richman
1050 Connecticut Avenue, N.W.
Washington, DC 20036
Telephone: 202.955.8500
Facsimile: 202.467.0539
CRichman@gibsondunn.com

Attorneys for Uber Technologies, Inc.

BOIES, SCHILLER & FLEXNER LLP

Karen L. Dunn
William A. Isaacson

Ryan Y. Park
5301 Wisconsin Avenue, NW
Washington, DC 20015
Telephone: (202) 237-2727
Facsimile: (202) 237-6131
kdunn@bsflp.com
wisaacson@bsflp.com
rpark@bsflp.com

Alanna C. Rutherford
Peter M. Skinner
Joanna C. Wright
575 Lexington Avenue, 7th Floor
New York, NY 10022
Telephone: (212) 446-2300
Facsimile: (212) 446-2350
arutherford@bsflp.com
pskinner@bsflp.com
jwright@bsflp.com

Counsel for Defendant Travis Kalanick

CERTIFICATE OF SERVICE

I hereby certify that on July 6, 2016, I filed and therefore caused the foregoing document to be served via the CM/ECF system in the United States District Court for the Southern District of New York on all parties registered for CM/ECF in the above-captioned matter.

/s/ Nicola T. Hanna
Nicola T. Hanna