

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

KENT HASSELL,  
Plaintiff,  
v.  
UBER TECHNOLOGIES, INC.,  
Defendant.

Case No. 20-cv-04062-PJH

**ORDER GRANTING IN PART AND DENYING IN PART MOTION TO DISMISS FIRST AMENDED COMPLAINT AND DENYING MOTION TO STRIKE CERTAIN CLASS ALLEGATIONS**

Re: Dkt. No. 37

United States District Court  
Northern District of California

Defendant Uber Technologies, Inc.’s d/b/a Uber Eats (“defendant”) motion to dismiss plaintiff Kent Hassell’s (“plaintiff”) first amended complaint (“FAC”) and strike certain class allegations came on for hearing before this court on May 6, 2021. Plaintiff appeared through his counsel, Shannon Liss-Riordan. Defendant appeared through its counsel, Andrew Spurchise. Having read the parties’ papers and carefully considered their arguments and the relevant legal authority, and good cause appearing, the court hereby **GRANTS IN PART** and **DENIES IN PART** defendant’s motion to dismiss and **DENIES** defendant’s motion to strike.

**BACKGROUND**

This case is a putative wage and hour class action premised on the alleged violation of various California labor laws. Defendant provides food delivery services through its “Uber Eats” mobile phone application (the “Uber Eats App”). Dkt. 33 (FAC) ¶ 2, 10-11. Plaintiff has worked as an Uber Eats driver since January 2020. *Id.* ¶ 6. Plaintiff seeks to certify a class comprising “all Uber Eats drivers who have worked in California.” *Id.* ¶ 49.

The instant order represents the court’s second substantive consideration of

1 plaintiff's original complaint. Dkt. 30 (the "December 7, 2020 order") at 20. To the extent  
2 plaintiff premised his claim for declaratory relief on past violations, the court dismissed  
3 that claim with prejudice. Id. at 18. The court permitted plaintiff to amend all other  
4 claims. Id. The court directed plaintiff to correct all factual deficiencies in the remaining  
5 claims and follow certain instructions when amending his minimum wage and overtime  
6 claims. Id. The court will detail its December 7, 2020 order as necessary in the analysis  
7 below.

8 On January 4, 2021, plaintiff filed his FAC. Dkt. 33. In it, plaintiff maintains  
9 substantively identical background and class allegations to those proffered in his original  
10 complaint. Dkt. 33-1 (redline comparing original complaint with FAC). Plaintiff continues  
11 to allege that, since the California Supreme Court's decision in Dynamex Operations  
12 West v. Superior Court, 4 Cal. 5th 903 (2018) (Dynamex) and the California state  
13 legislature's passage of Assembly Bill 5 (A.B. 5) (previously codified at Labor Code §  
14 2750.3 but recodified at Labor Code § 2775), defendant has misclassified plaintiff as an  
15 "independent contractor" rather than an "employee." FAC ¶¶ 2-4, 13-25, 46-47. Based  
16 on that misclassification allegation, plaintiff brings claims for the following:

- 17 1. Violation of Labor Code § 2802 and the Industrial Welfare Commissions ("IWC")  
18 Wage Order 9-2001, Cal. Code Regs. tit. 8, § 11090 ("Wage Order 9"), premised  
19 on defendant's failure to reimburse drivers "for expenses they paid," including  
20 "gas, insurance, car maintenance, and phone and data charges." Id. ¶¶ 58-59.
- 21 2. Violation of Labor Code §§ 1197, 1194, 1182.12, 1194.2, 1197.1, 1199, and Wage  
22 Order 9 premised on defendant's failure "to ensure its delivery drivers receive  
23 minimum wage for all hours worked." Id. ¶¶ 60-61.
- 24 3. Violation of Labor Code §§ 1194, 1198, 510, 554, and 2750.3, and Wage Order 9  
25 premised on defendant's failure "to pay its employees the appropriate overtime  
26 premium for overtime hours worked as required by California law." Id. ¶¶ 62-63.
- 27 4. Violation of Labor Code § 226(a) and Wage Order 9 premised on defendant's

1 5. Violation of Business & Professions Code § 17200, *et. seq.* (§ 17200), premised  
 2 on defendant's purported violations of Labor Code §§ 2802, 1194, 1198, 510, 554,  
 3 1197, 1194, 1182.12, 1194.2, 1197.1, 226.8, 226(a), and 246. *Id.* ¶¶ 66-69.

4 In his FAC, plaintiff adds allegations to each of the above claims. Dkt. 33-1 ¶¶ 2  
 5 n.1, 27-48 (redline showing changes to similar claims alleged in the complaint). The  
 6 court will detail those additional allegations in its analysis below.

7 On February 1, 2021, defendant filed the instant motion. Dkt. 37. In it, defendant  
 8 asks the court to dismiss all claims alleged in the FAC. *Id.* Defendant also asks the court  
 9 to strike the FAC's class allegations to the extent plaintiff seeks class certification "of  
 10 those bound by arbitration agreements with class action waivers." *Id.* at 8.

11 The court addresses each request in turn below.

## 12 DISCUSSION

### 13 A. Legal Standard

14 A motion to dismiss under Rule 12(b)(6) tests for the legal sufficiency of the claims  
 15 alleged in the complaint. *Ileto v. Glock*, 349 F.3d 1191, 1199-1200 (9th Cir. 2003). Rule  
 16 8 requires that a complaint include a "short and plain statement of the claim showing that  
 17 the pleader is entitled to relief." Fed. R. Civ. P. 8(a)(2). Under Rule 12(b)(6), dismissal  
 18 "is proper when the complaint either (1) lacks a cognizable legal theory or (2) fails to  
 19 allege sufficient facts to support a cognizable legal theory." *Somers v. Apple, Inc.*, 729  
 20 F.3d 953, 959 (9th Cir. 2013). While the court is to accept as true all the factual  
 21 allegations in the complaint, legally conclusory statements, not supported by actual  
 22 factual allegations, need not be accepted. *Ashcroft v. Iqbal*, 556 U.S. 662, 678-79  
 23 (2009). The complaint must proffer sufficient facts to state a claim for relief that is  
 24 plausible on its face. *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555, 558-59 (2007).

### 25 B. Motion to Dismiss Analysis

26 In its opening brief, defendant argues that plaintiff's claims fail for two major  
 27 independent reasons. First, defendant asserts that Proposition 22, a ballot initiative

1 in the FAC (the “abatement argument”). Dkt. 37 at 13-14. On December 16, 2020,  
2 California codified Proposition 22 at Business & Professions Code §§ 7448-7467. The  
3 section at the heart of defendant’s abatement argument is Business & Professions Code  
4 § 7451. The court will specifically refer to that section, as opposed to the uncodified  
5 proposition more generally.

6 Second, defendant asserts that, except the claim for failure to reimburse business  
7 expenses, all claims alleged in the FAC lack sufficient factual allegations. Id. at 14-28.

8 At the outset, the court notes that the abatement argument appears to raise novel  
9 questions in a rapidly developing area of California law. That novelty aside, the parties’  
10 briefing on the issues implicated by that argument falls short. However, this action is not  
11 the court’s first pass on the abatement argument.

12 In Nicolas v. Uber Technologies, Inc., another action against defendant that is also  
13 on the undersigned’s docket, the court previously permitted the California Employment  
14 Lawyers Association and the Partnership for Working Families (“Amici”) to file an amicus  
15 brief addressing a similar abatement argument. Nicolas, 19-cv-8228-PJH, Dkt. 65  
16 (permitting leave to file Amici brief lodged at docket 58-1).

17 At oral argument on the motion at hand, plaintiff sought to “incorporate by  
18 reference” Amici’s brief as part of his position. On May 20, 2021, the parties filed a  
19 stipulation requesting that the court permit them to formally file that brief on this action’s  
20 docket. Dkt. 48. As part of that stipulation, the parties further requested that the court  
21 permit defendant to file a response to Amici’s brief and plaintiff to file a reply to such  
22 response. Id. The court granted the parties’ request. Dkt. 49. The court has considered  
23 the above-referenced filings on the abatement issue.<sup>1</sup>

24 The court will now address each of defendant’s major arguments in turn below.

25  
26  
27  
28  

---

<sup>1</sup> When filing the Amici brief in this action, the parties failed to remove the electronic case  
filing (“ECF”) generated header from the Nicolas action. Given their failure, the Amici  
brief filed at docket 48 includes two overlapping ECF headers, neither of which is legible.  
To avoid confusion, the court will cite the Amici brief filed in the Nicolas action at docket

1           **1. The Court Denies Defendant's Motion to the Extent Defendant Asserts**  
 2           **that Business & Professions Code § 7451 Abates Plaintiff's Labor**  
 3           **Code Claims**

4           In their papers, the parties and Amici cite numerous statutes and doctrines as  
 5           purportedly authoritative on the abatement argument. Those rules include the abatement  
 6           doctrine, the repeal doctrine, the retroactivity doctrine, the rationale underlying Dynamex,  
 7           as well as the text of the Business & Professions Code § 7451 and Labor Code § 2775.

8           These authorities are voluminous and wide-ranging. The particular language in  
 9           the cited statutes is critical and the distinctions between the cited doctrines are nuanced.  
 10          Given these complexities, the court will divide its discussion on the abatement argument  
 11          into two sections. First, the court will summarize the parties' (and Amici's) positions and  
 12          concurrently detail the statutes and doctrines underlying their positions. Second,  
 13          following that summary, the court will identify and address the shortcomings in both sides'  
 14          positions. In light of such shortcomings, the court cannot now conclusively determine  
 15          whether (or not) Business & Professions Code § 7451 abates plaintiff's claims. Thus, the  
 16          court denies defendant's motion to the extent it is premised on abatement. The court  
 17          makes this finding without prejudice to defendant's ability to again raise this argument on  
 18          a motion for summary judgment following an opportunity for merits-based discovery.<sup>2</sup>

19                   **a. The Proffered Arguments and Relevant Legal Rules**

20           On April 30, 2018, the California Supreme Court issued its Dynamex decision. In  
 21           that case, the court considered the following:

22                   Here we must decide what standard applies, under California  
 23                   law, in determining whether workers should be classified as  
 24                   employees or as independent contractors *for purposes of*  
 25                   *California wage orders*, which impose obligations relating to the  
 26                   minimum wages, maximum hours, and a limited number of very  
 27                   basic working conditions (such as minimally required meal and  
 28                   rest breaks) of California employees. Dynamex, 4 Cal. 5th 903,  
 29                   913-14 (emphasis in the original) (footnote omitted).

30           <sup>2</sup> On June 9, 2021, the Ninth Circuit in Lawson v. GrubHub Holdings, Inc., No. 18-15386  
 31           heard oral argument on a materially similar abatement issue. If the Ninth Circuit

# Explore Litigation Insights

Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

## Real-Time Litigation Alerts



Keep your litigation team up-to-date with **real-time alerts** and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

## Advanced Docket Research



With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

## Analytics At Your Fingertips



Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

## API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

## LAW FIRMS

Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

## FINANCIAL INSTITUTIONS

Litigation and bankruptcy checks for companies and debtors.

## E-DISCOVERY AND LEGAL VENDORS

Sync your system to PACER to automate legal marketing.