



IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

LENZA H. MCELRATH, III,
derivatively on behalf of UBER
TECHNOLOGIES, INC.,

Plaintiff,

v.

TRAVIS KALANICK, GARRETT
CAMP, RYAN GRAVES, ARIANNA
HUFFINGTON, YASIR AL-
RUMAYYAN, WILLIAM GURLEY,
DAVID BONDERMAN

Defendants,

-and-

UBER TECHNOLOGIES, INC.,

Nominal Defendant.

C.A. No. _____ - _____

VERIFIED STOCKHOLDER DERIVATIVE COMPLAINT

Plaintiff Lenza H. McElrath, III, (“Plaintiff”), derivatively on behalf of nominal defendant Uber Technologies, Inc. (“Uber” or the “Company”), brings the following Verified Stockholder Derivative Complaint (the “Complaint”) against Uber directors Travis Kalanick (“Kalanick”), Garrett Camp (“Camp”), Ryan Graves (“Graves”), Arianna Huffington (“Huffington”), Yasir Al-Rumayyan (“Al-Rumayyan”), William Gurley (“Gurley”) and David Bonderman (“Bonderman”, collectively the “Director Defendants”). The allegations of the Complaint are based on the knowledge of Plaintiff as to himself, and on information and belief, including the investigation of counsel and review of publicly available information,

including court filings.

INTRODUCTION

1. This case arises from the bad faith actions of, and breaches of fiduciary duty by, the Director Defendants in approving Uber's \$680 million acquisition of self-driving technology company Ottomotto LLC ("Otto"), knowing that Otto's founder Anthony Levandowski had misappropriated massive amounts of trade secrets and other confidential and proprietary information from his former employer Waymo, the self-driving technology subsidiary of the parent company of Google. The Director Defendants' reckless approval of the acquisition of Otto led directly to Waymo's litigation against Uber, which could result in billions of dollars in damages and has led to a federal criminal investigation.

2. Uber operates the world's dominant ride sharing mobile app, generating \$6.5 billion in revenue in 2016. Through its acquisition of Otto, Uber sought to leapfrog its primary competitor in the race to launch self-driving vehicles through illicit means.

3. From its inception, Uber has built a reputation for "flout[ing] laws and regulations to gain an edge."¹ The corrupt incentive to disregard laws was especially strong with respect to Uber's efforts to claw its way back into the thick

¹ Mike Isaac, *How Uber Deceives the Authorities Worldwide*, N.Y. Times, Mar. 3, 2017.

of competition for autonomous vehicles. Uber was badly behind its competitors in this area, particularly Google. Kalanick described the threat of being left behind in the race for an autonomous vehicle as “basically existential for us.” Kalanick was worried that if a competitor “rolls out a ride-sharing network that is cheaper or far higher-quality than Uber’s, then Uber is no longer a thing.” The combination of the existential competitive threat to Uber’s viability and Uber’s law-breaking culture was toxic and led directly to where one would expect with no fiduciary check by the Director Defendants.

4. Kalanick and others at Uber colluded with Anthony Levandowski in a scheme to misappropriate trade secrets and other confidential and proprietary information regarding Google’s self-driving vehicles,² including source code, production process pictures, and circuit board designs for Google’s LiDAR (Light Detection and Ranging) system.

5. In the span of less than one month, Levandowski resigned from Google’s self-driving division, Waymo; started Otto; hired over a dozen former Google employees to join him; and signed a term sheet to sell Otto to Uber. This

² The brand under which Google carried out its self-driving research and development has evolved over time as Google changed the name of the self-driving project, (Chauffer Project, Waymo) and the parent company’s name to Alphabet. For simplicity, this Complaint refers to the family of companies as “Google.”

rapid sequence of events in itself constituted a red flag of warning to Uber's board that its acquisition of Otto was simply an improper and potentially criminal raiding of Google's assets.

6. Uber retained forensic firm Stroz Friedberg ("Stroz") to conduct due diligence before consummating the Otto transaction. Stroz was specifically tasked with determining whether Levandowski and other Otto employees "took with them or retained confidential and/or proprietary information from their former employer, Google."

7. Stroz discovered that Levandowski and others with Otto had taken a massive amount of confidential and proprietary information, including trade secrets, when they left Google. Stroz also discovered that Uber was well aware of the misappropriation. At a March 11, 2016 meeting, an Uber official instructed Levandowski not to destroy Google information in his possession. Kalanick told Levandowski to "do what he needed to do" with the disks of information.

8. In April 2016, before the Director Defendants authorized Uber to execute the agreement to acquire Otto, Uber's counsel asked Stroz to provide access to its preliminary findings. Stroz provided this requested access to Uber's counsel.

9. The Director Defendants were aware that Uber retained Stroz to

conduct the due diligence investigation and report on any intellectual property risks associated with the Otto acquisition.

10. Despite the findings in Stroz's reports that Levandowski downloaded over 14,000 files containing confidential and proprietary Google information and took several pictures of Google's self-driving vehicle parts and of the production process on his phone, the Board met on April 11, 2016 and approved the Otto transaction.

11. Eventually Uber's misappropriation through Levandowski and the acquisition of Otto came to light and led Google to file a complaint against Uber and Otto for misappropriation of trade secrets, among other claims. After the shocking evidence was produced, the judge took the unusual step of referring the matter to the Department of Justice for investigation of potential criminal activity. The parties were scheduled to go to trial on December 4, 2017. The trial has been postponed over questions of Uber destroying evidence. Google seeks damages of \$1.859 billion for the trade secret misappropriation alone.

12. Through this action, Plaintiff seeks to hold the Director Defendants accountable for their reckless or bad faith approval of Otto in violation of their fiduciary duties and the resulting damage caused to Uber.

THE PARTIES

13. Plaintiff is a stockholder of Uber and has been a stockholder of Uber at all material times alleged in this Complaint.

14. Nominal defendant Uber is a privately-held company which operates the world's dominant ride-sharing mobile app. It was founded in 2009 by Camp and Kalanick. Uber is incorporated in the State of Delaware with its corporate headquarters located at 555 Market Street, San Francisco, California 94105.

15. Defendant Kalanick has served as an Uber director since the Company's founding. Kalanick was the Company's CEO from December 2010 until his resignation on June 20, 2017. Immediately after his resignation as CEO, Kalanick appointed himself to a vacant Board seat.

16. Defendant Camp has served as an Uber director since the Company's founding.

17. Defendant Graves has served as an Uber director since 2010. Graves became the first Uber employee in 2010, served as the Company's first CEO in 2010, and was subsequently Uber's head of global operations until his resignation on August 10, 2017.

18. Defendant Huffington, the founder of the Huffington Post, has served as an Uber director since April 27, 2016.

19. Defendant Al-Rumayyan has served as an Uber director since June 1, 2016. Al-Rumayyan is the managing partner of Saudi Arabia’s Public Investment Fund (“PIF”), an Uber stockholder.

20. Defendant Gurley served as an Uber director from 2011 through his resignation on June 21, 2017. Gurley is a Partner of Benchmark Capital Partners VII, L.P. (“Benchmark”), an Uber stockholder.

21. Defendant Bonderman served as an Uber director from 2011 through his resignation on June 13, 2017. Bonderman is a Partner of TPG Capital L.P. (“TPG”), an Uber stockholder.

22. As noted above, the defendants listed in paragraphs 15 through 21 above are collectively referred to herein as the “Director Defendants.”

SUBSTANTIVE ALLEGATIONS

A. “The Most Ethically Challenged Company in Silicon Valley”

23. Kalanick has a long history of disregarding the law and the rights of others as an entrepreneur. One of Kalanick’s early ventures, called “Scour” was similar to Napster, the illegal music-sharing site that was eventually shut down for violating copyrights. Kalanick’s venture offered not only music but also illegal copies of theatrical film releases.

24. The violations of copyright committed by Kalanick and Scour added

up to around \$250 billion of damages from the copyright holders. Scour declared bankruptcy.

25. Kalanick co-founded Uber in 2008, but had not learned to respect the law or rights of others in the meantime. Kalanick operated Uber as an extension of this disrespect. “Kalanick has long set the tone for Uber. Under him, Uber has taken a pugnacious approach to business, flouting local laws and criticizing competitors in a race to expand as quickly as possible.” The role of a board of a Delaware corporation is to act as a check on such behavior by a chief executive, but Uber had a culture of pushing performance above legal or ethical accountability. “Members of the group [that appeared immune to internal scrutiny], called the A-Team and composed of executives who were personally close to Mr. Kalanick, were shielded from accountability over their actions.”

26. As Uber’s valuation rose, the Director Defendants too were apparently happy to turn a blind eye to improper behavior and practices. Kalanick made no secret of his disrespect for local law. It has been reported he directed Uber employees to push the envelope and take the position that if local regulations that would impinge on Uber’s business were not being enforced, they were as good as nonexistent. In the warped Uber world created by Kalanick and not supervised by its board, the lack of approval for Uber to operate was called “tacit approval” and

the Company behaved as if it had real approval. Among the greatest hits that this approach led to, in 2014, Kalanick and Uber were indicted in South Korea. The Company also created a program called “Greyball” that was specifically designed to facilitate the Company’s violations of local law regarding taxi service by “greyballing” local regulators posing as customers and providing them with false information.

27. Although many Silicon Valley companies have profited by pushing the envelope, Uber has been in a different class entirely in its reckless and lawless behavior. Peter Thiel, a prominent venture capitalist with experience in a wide variety of companies, described Uber as “the most ethically challenged company in Silicon Valley.” The Company is reportedly now the subject of at least five criminal probes from the United States Department of Justice. Thus, in a troubling sense, Uber’s acquisition of Otto was business as usual for Kalanick and the other Director Defendants.

B. Uber Induces Levandowski to Leave Waymo and Start Otto

28. Levandowski began working at Google in April 2007. In 2011, Google promoted him to Engineering Manager of its “Chauffeur Project,” which was Google’s self-driving vehicle project.

29. Kalanick was motivated by a desperate desire to catch up to Google in

self-driving vehicle technology without regard to the legal rights of others, the violation of which could ultimately harm Uber. While Google had developed its own LiDAR technology, in 2016 Uber was still relying on a third-party LiDAR system.³ Uber was years behind Google in the race to develop technology for self-driving vehicles that could compete in the marketplace with Google's.

30. To make up the competitive ground, Uber executives began recruiting Levandowski in June 2015 to leave Google and join Uber. At one of the meetings, Levandowski asked an Uber executive what Uber would be willing to pay for the entire Google self-driving staff. This foreshadowed Levandowski's founding of Otto which consisted of little more than a packaged misappropriation of Google's self-driving business and assets.

31. Kalanick likely had direct knowledge of what Levandowski was engaged in and communicated with Levandowski extensively between the time he was first approached and when he finally left Google on or about January 27, 2016.

³ On a self-driving car, the LiDAR sensor is a spinning cylinder that usually sits on the roof. By bouncing a laser off an object and measuring the time of flight, LiDAR can tell how far away something is. Thanks to the spinning, these sensors can "see" in 360 degrees. Most self-driving car solutions use LiDAR as the major sensor, giving the car a "big picture" view of the world so it can see pedestrians and other vehicles. *See Google's Waymo invests in LIDAR technology, cuts costs by 90 percent*, ARS Technica (Jan. 9, 2017) (at <https://arstechnica.com/cars/2017/01/googles-waymo-invests-in-lidar-technology-cuts-costs-by-90-percent/>).

Levandowski later told Uber's outside forensic investigators with Stroz that he and Kalanick exchanged more than 200 text messages during the recruitment period. It was recently revealed in the litigation between Google and Uber that Uber had extensive secret communications on platforms purpose-built to hide and destroy evidence of wrongful behavior. Kalanick described the relationship between him and Levandowski as extremely close. "I feel like we're brothers from another mother," Kalanick reportedly said and Kalanick and Levandowski discussed the acquisition of Otto "during a series of 10-mile night walks."

32. Levandowski prepared for his scheme with Uber by downloading tens of thousands of files containing Google trade secrets and proprietary and/or confidential information before resigning. The misappropriated files include:

- (a) Technical drawings and diagrams: this includes figures depicting radar technology at Google, the production processes, and electronic and hardware components for self-driving vehicles.
- (b) Texts and notes: Levandowski stored notes on his personal smartphone he wrote demonstrating his intent to join Uber with misappropriated information. On September 17, 2015, for example, he wrote a note regarding "doing business for Uber" and "how can it not have Google IP in it."
- (c) Emails: Levandowski downloaded approximately 50,000 Google work emails onto his personal computer in September 2014. Levandowski accessed ten of the emails between September 1, 2015 and January 28, 2016.

- (d) Source code files: Levandowski downloaded 734 source code files onto his personal devices or accounts. A Google employee Levandowski recruited to join Otto was found to possess 174,311 source code files on his personal devices.
- (e) Pictures and videos: Levandowski took and stored pictures onto his smartphone of the construction process of Google self-driving vehicles and parts, whiteboard pictures, figures depicting radar technology, video of the self-driving test, and a flowchart of Chauffeur software architecture.

33. Levandowski stored the misappropriated files on personal devices, such as laptops and smartphones, as well as disks and other storage devices in his possession.

34. About two weeks before he left Google, Levandowski met with Uber officials in San Francisco on January 14, 2016. The next day, while still employed at Google, he founded 280 Systems, the precursor to Otto. Levandowski resigned from Google less than two weeks later on January 27.

35. Kalanick's close involvement and direct knowledge of Levandowski's activities continued after Levandowski left Google. Levandowski continued to text Kalanick to update him on Otto's status and the poaching of Google employees to join his startup, who made up more than half of Otto's personnel.

36. On February 22, 2016, Otto and Uber signed a Term Sheet for Uber's acquisition of Otto. The Term Sheet called for Uber to conduct due diligence and Uber subsequently retained Stroz.

C. Stroz Discovers Massive Misappropriation During Due Diligence

37. Uber retained Stroz in March 2016 to conduct an independent investigation, under the supervision of outside counsel, about whether certain Otto employees – including Levandowski – took with them or retained confidential and/or proprietary information from Google. Stroz was also tasked to investigate whether the Otto individuals took any other actions which may have breached non-solicitation, non-compete, or fiduciary obligations in connection with their move to Otto.

38. The scope of misappropriation by Levandowski and other Otto individuals discovered by Stroz was breathtaking. Levandowski downloaded more than 14,000 Waymo documents that contain trade secrets or confidential/proprietary information about Google’s self-driving vehicle technology shortly before he resigned from Google.

39. Levandowski was not forthcoming with Stroz. He initially told Stroz that there were no or few Google emails on his laptop, but Stroz uncovered the truth. Stroz subsequently discovered approximately 50,000 Google work emails downloaded onto his computer in September 2014. Further undermining his credibility, Levandowski had recently accessed ten of the emails. Stroz concluded that “[i]t is difficult to believe that Levandowski was not, prior to his interview,

fully aware of the extent of the data that he had retained.”

40. Levandowski searched for instructions on securely wiping files from his computer shortly before his interview with Stroz investigators. He also attempted to empty the trash folder on his computer during one of his Stroz interviews.

41. Stroz could not confirm that Levandowski – who did not have a receipt from the shredding company where he claimed he destroyed disks with Google proprietary information and claims he paid in cash – actually had the five disks referenced in the March 11 meeting destroyed.

42. Stroz delivered interim findings to outside counsel for Uber and Otto in April 2016 before the Board authorized agreeing to acquire Otto. Stroz continued its investigation and delivered its full report on August 5, 2016.

43. Uber was fully aware of Levandowski’s raid on Google’s trade secrets and confidential and proprietary information. At a March 11, 2016 meeting, Levandowski told Kalanick and other Uber executives that he possessed source code, design files, laser files, engineering documents, and other proprietary and confidential information about Google’s self-driving vehicle technology on disks in his personal Drobo 5D storage device. One Uber official told Levandowski not to destroy the disks. Kalanick told Levandowski that he “wanted nothing to do

with the disks” and told Levandowski to “do what he needed to do.”

D. Uber’s Board Approves the Acquisition

44. Despite the array of red flags, including the alarming findings in Stroz’s preliminary report, which the Board knew or should have known of, the Board approved Uber’s entering into an Agreement and Plan of Merger dated April 11, 2016 (“Merger Agreement”), whereby Uber acquired Otto for \$680 million and appointed Levandowski the head of Uber’s self-driving vehicle operations.

45. Otto publicly launched in May 2016 when it announced a kit for a self-driving truck.

46. Within months, Otto was poaching Google engineers, who also brought further internal data and materials with them. One Google employee Levandowski recruited to join Otto was found to possess 174,311 source code files on his personal devices.

47. The parties announced the deal after the it had closed on August 18, 2016.

E. Google Uncover the Fraud and Sues Uber and Otto

48. Google was suspicious of the remarkably quick purchase by Uber of Otto and the hiring of Levandowski to run Uber’s self-driving vehicle efforts.

49. Google’s suspicions that something improper was amiss were confirmed on December 13, 2016, when a Google employee was copied on an

email from one of its LiDAR-component vendors. The email was titled OTTO FILES and its recipients included an email alias indicating that the thread was a discussion among members of the vendor's "Uber" team.

50. The email attached a machine drawing of an Otto circuit board that Google believed bore a striking resemblance to its LiDAR circuit board – the design of which had been downloaded by Levandowski before his resignation.

51. Google filed suit against Uber and Otto on February 23, 2017 in the U.S. District Court for the Northern District of California.

52. Uber fought to prevent disclosure of Stroz's reports, causing Google to file a motion to compel on May 1, 2017. Federal District Judge William Alsup granted the order on June 8 and compelled production of the reports.

53. Levandowski (who is not a party in the Google litigation) sought to enjoin disclosure of the Stroz reports to protect his rights under the 5th Amendment against self-incrimination. The Federal Circuit Court of Appeals upheld Judge Alsup's order on September 13.

54. Uber finally disclosed the August 5, 2016 Stroz report on or around September 16, 2017 – along with numerous other documents about its scheme. Judge Alsup noted that "to say that this volume is surprising is an understatement. It's shocking. It's unbelievable." He ordered a continuance of trial, which was to

begin on December 4, 2017.

55. But before the delayed trial could begin, still more wrongdoing came to light. The United States attorney's office in Northern California made the judge aware of a letter detailing Uber's efforts to gather information from its competitors and cover its tracks in doing so. An internal group at Uber called the "market analytics team" was set up to gather trade secrets, code and other information about Uber's competitors. The letter also reportedly indicated that Uber hired someone "to help recruit employees of competitors to steal trade secrets" and communications about these efforts took place in a manner to "ensure there was no paper trail that would come back to haunt the company in any criminal or civil litigation." The Director Defendants presided over this enterprise and, in the face of specific information about wrongdoing in connection with Otto, approved the acquisition.

56. Demonstrating the gravity of what the documents revealed, even before the letter about the market analytics team came to light in late November 2017, Judge Alsup took the rare step of referring the case to the U.S. Attorney's Office in May 2017 "for investigation of possible theft of trade secrets" to determine whether criminal charges were justified against Levandowski, Kalanick, Uber, and others.

57. Due to Levandowski's purported non-cooperation with Uber's litigation efforts and the increasingly bad publicity arising from the litigation, Uber terminated Levandowski's employment on May 30, 2017.

F. The Board's Failure to Exercise its Duties Led to the Google Litigation

58. Google's litigation demonstrates the Uber Board recklessly and in bad faith acquired Otto in furtherance of a business strategy comprised of flouting the law and rights of others. Uber retained a forensic investigator to conduct due diligence on Levandowski and Otto, but the Director Defendants ignored or made themselves unaware of the unmistakable warnings in the Stroz reports and the obvious red flags raised by the speed with which Levandowski supposedly was able to build Otto. Only the Director Defendants had the ability to protect Uber by refusing to approve the underhanded deal.

59. Had the Director Defendants complied with their fiduciary duties by acting with care and in good faith to protect the Company and ensure it was operating legally, Uber would never have paid \$680 million to knowingly acquire a startup built upon stolen intellectual property that would lead to a federal criminal investigation and grievous civil liability.

DERIVATIVE ALLEGATIONS

60. Plaintiff brings this action derivatively to redress injuries suffered by

the Company as a direct result of breaches of fiduciary duties by the Director Defendants.

61. Plaintiff currently owns Uber stock and has owned Uber stock continuously during the relevant period.

62. Plaintiff will adequately and fairly represent the interests of Uber and its stockholders in enforcing and prosecuting their rights, and has retained counsel competent and experienced in stockholder derivative litigation.

DEMAND ON THE BOARD IS EXCUSED AS FUTILE

63. Plaintiff repeats and realleges each and every allegation above as if set forth in full herein.

64. Plaintiff has not made any demand on the Uber Board to institute this action against the Director Defendants. Such demand would be a futile and useless act because the Otto acquisition was not the product of a valid exercise of business judgment by the Board, including the Director Defendants, and the Uber Board cannot be trusted to act in Uber's best interests with respect to prosecuting the Director Defendants for their breaches of duty.

65. Despite the myriad and glaring red flags surrounding Otto and Levandowski detailed above, the Board approved the \$680 million acquisition, without regard for the pervasive misappropriation of Google trade secrets and other

confidential or proprietary information set forth in the Stroz reports. Thus, the Board either did not rely on Stroz or relied in bad faith. Furthermore, even without Stroz's expertise, it was so obvious that Otto would not have been able to be a viable company for Uber to buy for \$680 million within mere weeks after founding that only bad faith could lead the Board to not consider Otto's likely violation of Google intellectual property.

66. The disturbing actions by the Director Defendants were not valid exercises of business judgment and each of the Director Defendants faces a substantial likelihood of personal liability. The Board's conduct surrounding the acquisition of Otto was tainted by pervasive bad faith, intentional misconduct and knowing violations of the law.

67. The current Uber board, comprised of eleven members, is incapable of impartially considering whether to enforce the breaches of fiduciary duty committed by the Director Defendants because of their relationships with the Director Defendants.

68. Kalanick, Graves, Camp, Al-Rumayyan, Huffington, Burns, and Thain are incapable of impartially considering a demand because they lack independence from or are beholden to Kalanick, who faces a particularly high risk of liability because he was a driving force behind the Otto acquisition despite

having direct knowledge of Levandowski's actions, knowing the Stroz due diligence warnings and other red flags regarding Levandowski's misappropriation.

69. Graves is beholden to Kalanick as the Company's first employee. On Uber's website, Kalanick recounts "[w]e were also interviewing a General Manager candidate – a super sharp guy out of Chicago (working for GE of all places!) named Ryan Graves. Funny story how we brought him in. I was hitting Craigslist, Twitter, and other channels looking for the right candidate. What resulted was the Awesomest job post and response I've ever seen." Graves was "relatively inexperienced before his serendipitous start at Uber." He served as the Company's first CEO in 2010 and then became Uber's general manager when Kalanick became CEO in December 2010, a move that both say was a friendly one. Graves and Kalanick have a close personal relationship and Graves is described as a confidant of Kalanick who could not independently consider suing Kalanick for his breaches of fiduciary duty nor would he impartially consider suing himself in a situation where he faces a substantial likelihood of liability. Graves has been a part of the Company for many years, is thoroughly acquainted with and facilitated its law-breaking culture and would have known that the Company was misappropriating Google's property.

70. Camp is beholden to Kalanick as the Company's co-founder and

friend. The two conceived of the idea for Uber “on a snowy Paris evening in 2008, [when Kalanick and Camp] had trouble hailing a cab,” according to Uber’s website.⁴ Kalanick expands that “Camp and I were hanging out in Paris for a week at Loic and Geraldine LeMeur’s LeWeb conference. Amongst the amazing food, the copious amounts of wine and inevitable nightlife crawls there were all kinds of discussions about what’s next.”⁵ Uber’s explosive growth occurred after Kalanick became CEO in December 2010. Camp has been a part of the Company for many years, is thoroughly acquainted with and facilitated its law-breaking culture and would have known that the Company was misappropriating Google’s property.

71. Huffington, who Kalanick unilaterally appointed to the Board on April 27, 2016, is beholden to and not independent of Kalanick due to their business relationship and close personal friendship which preceded her appointment. Kalanick and Huffington collaborated prior to her appointment on projects to promote Huffington’s book “The Sleep Revolution,” which focuses on the health effects of sleep deprivation.⁶ Huffington has stood by Kalanick despite

⁴ Our Trip History (at <https://www.uber.com/our-story/>).

⁵ Uber’s Founding, Dec. 22, 2010 (at <https://newsroom.uber.com/ubers-founding/>).

⁶ Arianna Huffington joins Uber’s board of directors, April 27, 2016 (at <https://www.recode.net/2016/4/27/11586456/arianna-huffington-joins-ubers-board-of-directors>).

the controversies at Uber, championing a “Travis 2.0” to lead the Company.⁷ The relationship between Kalanick and Huffington is reportedly so close that Huffington visited Kalanick’s family members in the hospital.

72. Al-Rumayyan is beholden to Kalanick because his Board seat resulted from his negotiations with Kalanick on Saudi Arabia’s PIF \$3.5 billion investment. The deal provided a Board seat to Al-Rumayyan, PIF’s managing partner, who stated that the investment fit into PIF’s plan of “unlocking strategic sectors such as tourism and entertainment, boosting employment opportunities and women’s participation in the workforce, and encouraging entrepreneurship.”⁸ Al-Rumayyan was eager for a high profile “signature deal” and is beholden to Kalanick for his Board seat resulting from the deal.

73. Burns and Thain, the Company’s two most recently named directors, are also beholden to Kalanick. Kalanick unilaterally appointed both to the Board on September 29, 2017 over the objection of the other Board members during a time when Kalanick was desperate to shore up his support on the Board. Burns and Thain were brought in by Kalanick to protect him from other Board members

⁷ Can Uber’s Travis Kalanick be redeemed? Arianna thinks so. (Me, not so much.), June 20, 2017 (at <https://www.recode.net/2017/6/20/15834156/uber-travis-kalanick-arianna-huffington-lawsuit-investigation-culture-silicon-valley-tech>).

⁸ Saudi signals new investment strategies in \$3.5 billion Uber deal, June 2, 2016 (at <http://www.reuters.com/article/us-uber-saudi-funds/saudi-signals-new-investment-strategies-in-3-5-billion-uber-deal-idUSKCN0YO1X1>).

who had become hostile and even sued Kalanick. Underscoring that Burns and Thain were not expected to be ordinary Board members, Kalanick's successor as Uber's CEO, Dara Khosrowshahi characterized the appointments as "disappointing news" and "highly unusual" in a note to his staff.⁹ A corporate governance expert said that Burns and Thain "seem to be walking in the door with a button that says Team Travis, instead of Team Shareholder."¹⁰ Burns is further beholden to Kalanick due to her employment with Teneo Holdings, a public relations firm that Kalanick retained to manage his image after the controversies which enveloped him and Uber earlier this year.

74. Matt Cohler, a partner of Benchmark, cannot impartially consider a demand because he is beholden to and not independent of Director Defendant Gurley who faces a substantial likelihood of liability. Gurley and Cohler are partners at Benchmark and Cohler would not authorize a suit against his partner Gurley for breach of fiduciary duty regardless of the merits.

75. David Trujillo, a partner of TPG Capital, cannot impartially consider a demand because he is beholden to and not independent of Director Defendant

⁹ Uber CEO Dara Khosrowshahi says Travis Kalanick's board move is 'disappointing' and 'unusual,' Sept. 30, 2017 (at <https://www.recode.net/2017/9/30/16391392/dara-khosrowshahis-letter-uber-staff>).

¹⁰ Meet the High-Powered New Uber Directors Representing 'Team Travis,' Oct. 3, 2017 (at <https://www.thestreet.com/story/14327008/1/kalanick-uber-director-appointees.html>).

Bonderman who faces a substantial likelihood of liability. Trujillo and Bonderman are partners at TPG Capital, founded by Bonderman, and Trujillo would not authorize a suit against Bonderman for breach of fiduciary duty regardless of the merits.

COUNT I

DERIVATIVE CLAIM FOR BREACH OF FIDUCIARY DUTY AGAINST THE DIRECTOR DEFENDANTS

76. Plaintiff repeats and realleges each and every allegation above as if set forth in full herein.

77. The Director Defendants, as Uber directors, owe the Company the fiduciary duties of due care, loyalty and good faith.

78. The Director Defendants either knowingly facilitated the acquisition of misappropriated intellectual property or decided to bury their heads in the sand and not make a decision regarding the knowable and grave risks raised in the Stroz reports. Those risks have now materialized in the Google litigation, which will go to trial after Uber turns over additional evidence. The Director Defendants breached their fiduciary duties by approving the Otto acquisition on April 11, 2016, and by failing to attempt to terminate the acquisition thereafter.

79. As a consequence of the Director Defendants' breaches of their fiduciary duties, the Company has been harmed.

RELIEF REQUESTED

WHEREFORE, Plaintiff demands judgment as follows:

- A. Finding that demand on the Demand Board is excused as futile;
- B. Finding the Director Defendants liable for breaching their fiduciary duties;
- C. Awarding the Company compensatory damages, together with pre- and post-judgment interest;
- D. Awarding Plaintiff the costs and disbursements of this action, including attorneys', accountants' and experts' fees; and
- E. Awarding such other and further relief as is just and equitable.

Dated: December 13, 2017

GRANT & EISENHOFER P.A.

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