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10 Attorneys for Plaintiffs

11 UNITED STATES DISTRICT COURT  
12 NORTHERN DISTRICT OF CALIFORNIA

13 MATHEW HENLEY, an individual;  
14 NICHOLAS GICINTO, an individual;  
15 EDWARD RUSSO, an individual; and  
16 JACOB NOCON, an individual,

17 Plaintiffs,

18 v.

19 RICHARD A. JACOBS, an individual,  
20 Defendant.

Case No. 3:18-cv-2244

**COMPLAINT FOR  
DEFAMATION**

**DEMAND FOR A JURY TRIAL**

21 Come now Plaintiffs Mathew Henley, Nicholas Gicinto, Edward Russo,  
22 and Jacob Nocon (collectively, “Plaintiffs”), and complain, aver and allege as  
23 follows:

**I. INTRODUCTION**

24 1. Defendant Richard A. Jacobs spuriously sullied the good reputations  
25 of the Plaintiffs in a failed attempt to insulate himself from the consequences of  
26 his own conduct. After he was demoted for underperforming in his job at Uber  
27 Technologies, Inc. (“Uber”) and caught stealing company documents, Jacobs  
28 sent an email that contained a litany of lies about his colleagues, the Plaintiffs.  
The fabrications about the Plaintiffs in that email were no small matter—Jacobs

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1 falsely accused Plaintiffs of engaging in a pattern of illegal and unauthorized  
2 misconduct. Jacobs's lies about the Plaintiffs were later broadcast to the world  
3 when his email was disclosed in a high-profile civil lawsuit involving Uber.

4 2. Before Jacobs lied about them, the Plaintiffs were admired  
5 professionals with sterling reputations in both their fields and at Uber. Jacobs's  
6 falsehoods blighted the Plaintiffs and their standing at Uber, sabotaged their  
7 employment prospects, and torpedoed their future earnings. Plaintiffs seek  
8 damages commensurate with the injuries Jacobs's mendacious and self-serving  
9 conduct visited upon them.

## 10 **II. THE PARTIES**

11 3. Plaintiff Mathew Henley is an individual domiciled in the State of  
12 California.

13 4. Plaintiff Nicholas Gicinto is an individual domiciled in the State of  
14 Missouri.

15 5. Plaintiff Edward Russo is an individual domiciled in the State of  
16 Virginia.

17 6. Plaintiff Jacob Nocon is an individual domiciled in the State of  
18 California.

19 7. Defendant Richard A. Jacobs is an individual domiciled in the State  
20 of Washington. During the time period relevant to the events alleged in this  
21 Complaint, Jacobs resided and worked in this district.

## 22 **III. JURISDICTION AND VENUE**

23 8. Subject matter jurisdiction over this action is founded upon 28  
24 U.S.C. § 1332. Complete diversity exists between Plaintiffs and Defendant.  
25 Plaintiffs are citizens of California, Missouri and Virginia, while Defendant is a  
26 citizen of Washington. The matter in controversy exceeds the sum or value of  
27 \$75,000.

1 9. The Court has personal jurisdiction over Defendant because  
2 Defendant engaged in the underlying conduct in California while working for  
3 Uber in California, and therefore had sufficient minimum contacts with  
4 California to support jurisdiction. Additionally, the defamatory statements at  
5 issue were made to and about California residents and concerned activities in  
6 California.

7 10. Venue is proper under 28 U.S.C. § 1391(b)(2) because a substantial  
8 part of the events giving rise to the claim occurred within this judicial district.

9 **IV. GENERAL ALLEGATIONS**

10 11. At the time of these events, Jacobs and the Plaintiffs were  
11 employees at Uber, a global ridesharing network serving more than 550 cities  
12 around the world.

13 12. Beginning in or about the summer of 2015, Plaintiff Mathew Henley  
14 was employed as Uber’s Director of Global Threat Operations, which is part of  
15 Uber’s Security group. Threat Operations was divided into different teams,  
16 including the Strategic Services Group (“SSG”) and Marketplace Analytics  
17 (“MA”). Threat Operations also included an Investigations team, of which  
18 Gicinto, Nocon, and Russo were members.

19 13. Beginning in or about March 2016, Plaintiff Gicinto was hired by  
20 Uber and is the manager of the SSG. Beginning in or about the summer of 2016,  
21 Plaintiff Edward Russo was hired by Uber as a Senior Risk and Threat Analyst  
22 for the SSG, and Plaintiff Jacob Nocon began working for Uber as a Senior  
23 Intelligence Analyst for the SSG. Russo and Nocon are supervised by Gicinto.

24 14. Defendant Jacobs was hired by Uber as Manager of Global  
25 Intelligence in March 2016. The Global Intelligence group was part of Global  
26 Threat Operations, which was overseen by Plaintiff Henley during Jacobs’s  
27 employment with Uber. As Director of Global Threat Operations, Plaintiff  
28 Henley managed and oversaw the work of Jacobs.

1           15. Jacobs failed to perform adequately in his role, and Henley and  
2 others considered and discussed terminating Jacobs. Instead, Henley and his  
3 supervisors decided to give Jacobs a review that reflected his shortcomings and  
4 demote him rather than terminate him.

5           16. In or around February 2017, Jacobs received a performance review  
6 from Plaintiff Henley. Although Jacobs received a rating of “Solid” for his  
7 performance, Jacobs’s trajectory was rated as “Below Baseline.” Henley gave  
8 Jacobs a negative performance review because Jacobs’s job included anticipating  
9 threats of violence against Uber’s drivers and employees, and Henley believed  
10 that Jacobs was not adequately anticipating such threats, and had failed in this  
11 regard on multiple occasions. Henley had previously received other negative  
12 feedback throughout the company, including from other leadership.

13           17. Following the February 2017 performance review, Jacobs was  
14 demoted—his role was changed from a manager to an individual contributor, and  
15 his job title became a senior analyst for the SSG. Jacobs, who previously was on  
16 par with Plaintiff Gicinto, began reporting to Gicinto.

17           18. Jacobs resented the demotion. He regularly expressed his  
18 dissatisfaction to Henley, Gicinto, and others, and repeatedly asked to be restored  
19 to a managerial role. Those requests were rebuffed. His performance did not  
20 improve and continued to decline in his new role.

21           19. At no point before or during this time did Jacobs express any  
22 concerns about the propriety or legality of the conduct of SSG, MA, the  
23 Investigations team or Plaintiffs, or object to any of the efforts undertaken by  
24 SSG, MA, the Investigations team or Plaintiffs on behalf of Uber.

25           20. On or about April 14, 2017, Plaintiff Henley and Uber’s security  
26 team noticed some unusual activity: documents were being exfiltrated outside  
27 Uber’s firewall. Upon investigation, it was determined that Jacobs was  
28

1 surreptitiously moving confidential company materials to his private email  
2 account.

3 21. Henley acted immediately, consulting with senior management and  
4 human resources about Jacobs conduct and preparing to terminate Jacobs. As a  
5 prelude to his termination, on or about April 14, 2017, Jacobs received a notice  
6 from Uber’s human resources department that he would be interviewed in  
7 relation to an investigation concerning the stealing of confidential company  
8 documents.

9 22. Knowing that he was about to be fired, Jacobs sent an email to four  
10 Uber executives: then-CEO Travis Kalanick, Senior Vice President and Chief  
11 Human Resources Officer Liane Hornsey, General Counsel Salle Yoo and Senior  
12 Vice President of Global Policy and Communications Jill Hazelbaker  
13 (collectively, the “Uber Executives”), in which Jacobs stated that he was writing  
14 to inform them of his “immediate resignation due to working conditions that  
15 have become intolerable because of Uber management’s illegal activities and  
16 retaliation against me for refusing to engage in those activities.”

17 23. In that email, Jacobs made the following false and defamatory  
18 statements about the Plaintiffs and their work units:

- 19 a. Jacobs stated that the MA team’s “mission” is to “steal trade  
20 secrets” and that the MA team carried out these efforts in  
21 partnership with the SSG.
- 22 b. Jacobs asserted that the SSG, under Gicinto, “conducted  
23 unauthorized surveillance, including unauthorized recording of  
24 private conversations, against executives from competitor firms  
25 such as Didi Chuxing, and against its own employees and  
26 contractors at the Autonomous Technologies Group (ATG) in  
27 Pittsburgh.”  
28

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- 1 c. Jacobs claimed that the Threat Operations team “conducted
- 2 unlawful technical collections against mobile phones of Uber’s
- 3 opponents and politicians.”
- 4 d. Jacobs also claimed “that MA hacked last year” into a database in a
- 5 foreign country to “unlawfully garner[] approximately 35,000 taxis
- 6 driver records for Uber’s benefit.”
- 7 e. Jacobs alleged that the “Investigations team also engaged in illegal
- 8 inquiries by abusing data privacy for consumers, contract personnel,
- 9 and full-time employees often aimed at rooting out or discrediting
- 10 potential whistleblowers, quieting dissent, and to appease the
- 11 paranoia of senior executives.”
- 12 f. Jacobs stated that the Investigations team “surreptitiously recorded”
- 13 an employee listening session “in February [2017]—in which
- 14 female employees were encouraged to attend an anonymous support
- 15 group for women dealing with sexual harassment in the workplace.”

16 24. Jacobs knew these allegations were untrue. Uber’s vice president  
17 and deputy general counsel testified in open court that the bulk of Jacobs’s  
18 claims were “meritless” and had “low value.” After a full and complete  
19 investigation of Jacobs’s claims by former federal prosecutors, Uber took no  
20 adverse employment action against any of the Plaintiffs, indicating that there was  
21 no merit to Jacobs’s claims that Plaintiffs engaged in wrongdoing. Furthermore:

- 22 a. Jacobs admitted under oath in open court that his claims about MA
- 23 and SSG stealing trade secrets were false. When asked in open
- 24 court about his claims that MA stole trade secrets, Jacobs confessed
- 25 that his trade secret claims were “hyperbolic.” When asked whether
- 26 he stood by his claims that MA stole trade secrets, Jacobs said, “No
- 27 ... I don’t stand by that statement.” And when asked what he was
- 28 aware of with respect to MA’s stealing of trade secrets from

1 Waymo, an Uber competitor, he responded, “Nothing.” When  
 2 asked whether he had information that would have indicated that his  
 3 claim that MA or Uber stole trade secrets was true, he answered,  
 4 “No.”

- 5 b. Similarly fabricated was the claim that Gicinto conducted  
 6 unauthorized surveillance of executives from competitor firms. In  
 7 fact, Gicinto conducted no unauthorized surveillance of  
 8 competitors’ executives—Uber’s executive team authorized  
 9 surveillance of two competitors’ executives in public locations.  
 10 That surveillance was not conducted by Gicinto—it was performed  
 11 by others. Gicinto engaged in no recording of private conversations.  
 12 Instead, a single, non-confidential conversation involving personnel  
 13 from a competitor was legally recorded when the competitor’s  
 14 personnel sat down at a table already occupied by an individual  
 15 conducting surveillance supervised by Gicinto.<sup>1</sup> Neither Gicinto nor  
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17 <sup>1</sup> California Penal Code Section 632 prohibits only the recording of  
 18 “confidential communication[s],” and does not forbid the recording of  
 19 communications in which the participants lack a reasonable expectation of  
 20 privacy, particularly those in public places. Davis v. Los Angeles W.  
 21 Travelodge, No. CV 08–8279 CBM CTX, 2009 WL 4260406, at \*2 (C.D. Cal.  
 22 Oct. 8, 2009) (“The communication took place in the hotel lobby, which is a  
 23 public place. Given the location of the communication and the nature of the  
 24 conversation, the desk clerk could have no reasonable expectation that her  
 25 conversation was not being overheard or recorded. Accordingly, based on the  
 26 facts here, the Court finds that evidence or testimony regarding the video  
 27 recordings is not precluded by California Penal Code § 632.”); Wilkins v.  
 28 National Broadcasting Co., Inc., 71 Cal. App. 4th 1066, 1080 (1999) (lunch  
 conversation was recorded, and “[w]aiters frequently came to the table, but  
 Wilkins did not acknowledge them, pause in his sales pitch, or even lower his  
 voice . . . This conversation was not confidential under the terms of the statute  
 and O’Laskey and Coulter. Accordingly, videotaping the lunch meeting did not  
 violate Penal Code section 632.”).

1 any other Plaintiff conducted, supervised, or authorized surveillance  
2 of Uber employees or contractors at the Autonomous Technologies  
3 Group in Pittsburgh. All surveillance activities conducted or  
4 supervised by Gicinto or the other Plaintiffs was fully authorized  
5 and directed by Uber executives.

- 6 c. Jacobs's assertion that MA has engaged in technical collections of  
7 mobile phones—also known as wiretapping—was false. MA did  
8 not engage in technical collections of telephone calls or data. MA  
9 had neither the capability nor the inclination to engage in technical  
10 collections on mobile phones and was aware that doing so would  
11 violate the law.
- 12 d. Jacobs's assertion that MA hacked an Argentinian database was a  
13 fiction. In fact, a database of Argentinian taxi drivers that was  
14 publicly available on the internet was accessed by an employee of  
15 Uber.
- 16 e. Also false was the claim that the Investigations team engaged in  
17 illegal inquiries concerning consumers, contract personnel, and full-  
18 time employees. In fact, the Investigations team, under Henley's  
19 supervision, conducted occasional internal investigations of alleged  
20 wrongdoing by Uber employees. Those investigations were  
21 authorized, legal, and professional. The Investigations team never  
22 investigated consumers and never abused data privacy.
- 23 f. The claim that the Investigations team surreptitiously recorded a  
24 listening session concerning female employees was fallacious. In  
25 fact, the session was recorded by an Uber employee, who passed the  
26 recording to a journalist. That journalist publicly posted the  
27 recording. Threat Operations investigated the leak and successfully  
28 identified the employee who made the recording. During the course



1 of the many investigations conducted by the Investigations team and  
2 Threat Operations—including investigations of Uber Board  
3 members and executives—neither the Investigations team nor  
4 Threat Operations surreptitiously recorded any conversations.

5 25. Gicinto was mentioned by name in the April 14, 2017 email.  
6 Plaintiff Henley was in charge of SSG and MA, which were the subject of the  
7 allegations in the Jacobs email, and Plaintiffs Nocon and Russo were known  
8 members of SSG whose responsibilities included the matters that were the  
9 subject of the allegations in the email. The Uber Executives who received the  
10 email reasonably understood the communication to be of and concerning all four  
11 Plaintiffs, as the Uber Executives knew that Plaintiffs were the individuals who,  
12 if Jacobs's statements were true, would have authorized, supervised and/or  
13 engaged in the conduct alleged in the Jacobs email.

14 26. Jacobs concocted the false allegations about the Plaintiffs in order to  
15 excuse his failing performance and distract from his attempted theft of Uber  
16 documents, and to dissuade Uber from taking adverse actions against him.

17 27. Jacobs's defamatory email resulted in an internal investigation of  
18 Plaintiffs during which Plaintiffs were repeatedly questioned, without legal  
19 representation, about the conduct alleged in the Jacobs email. Plaintiffs  
20 reasonably feared they would lose their jobs or suffer other employment  
21 consequences as a result of Jacobs's baseless allegations.

22 28. In December 2017, Jacobs's email containing the fictional claims of  
23 Plaintiffs' misconduct was made public during proceedings in a federal civil case  
24 that garnered a substantial amount of media attention, Waymo, LLC, v. Uber  
25 Technologies, LLC, No. 17-939-WHA (N.D. Cal.).<sup>2</sup> Jacobs's false allegations  
26

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27 <sup>2</sup> Also made public in the Waymo case were other letters written by  
28 counsel for Jacobs containing overlapping and additional allegations concerning

1 concerning the Plaintiffs were then amplified and widely reported in the media.  
2 Plaintiffs Henley, Gicinto, and Russo were required to testify publicly  
3 concerning the allegations, which resulted in additional publicity concerning  
4 Jacobs's lies about them.

5 29. As a result of the unfounded claims in Jacobs's April 14, 2017  
6 email, Plaintiffs' previously unblemished reputations have been irreparably  
7 besmirched, and their prospects for advancement at Uber and employment  
8 elsewhere have diminished substantially.

9 **V. CAUSE OF ACTION FOR DEFAMATION**

10 30. Plaintiffs re-allege and incorporate herein by this reference each and  
11 every allegation set forth in paragraphs 1 through 29 of this Complaint as though  
12 set forth fully herein.

13 31. On April 14, 2017, Defendant sent an email to the Uber Executives  
14 that contained the false statements of fact set forth in paragraph 23 above that  
15 were of and concerning Plaintiffs.

16 32. The false statements were made with actual malice because Jacobs  
17 knew the statements were false and/or Jacobs made the statements with reckless  
18 disregard of whether the statements were false or not.

19 33. Jacobs's false statements caused harm to Plaintiffs' reputations in  
20 connection with their profession and occupation. As a direct and proximate  
21 result of Jacobs's defamatory statements, Plaintiffs were each damaged in an  
22 amount to be proven at trial, but in excess of the jurisdictional limit.

23 34. In doing these acts, Jacobs acted with oppression, fraud, or malice  
24 as defined by California Civil Code section 3294(c), and Plaintiffs are therefore  
25 entitled to punitive and/or exemplary damages.

26 \_\_\_\_\_  
27 Plaintiffs and others. The statements in those letters are not the subject of this  
28 Complaint.

1 WHEREFORE, Plaintiffs pray for judgment against Defendant as more  
2 fully set forth below.

3 **VI. PRAYER FOR RELIEF**

4 Wherefore, Plaintiffs pray for judgment against Defendant as follows:

- 5 1. For compensatory damages and other special, general and
- 6 consequential damages according to proof, in an amount not less than \$10
- 7 million;
- 8 2. For an award of punitive and/or exemplary damages;
- 9 3. For an award of interest according to law;
- 10 4. For an award of costs of suit;
- 11 5. For such other and further relief as this Court deems just and proper.

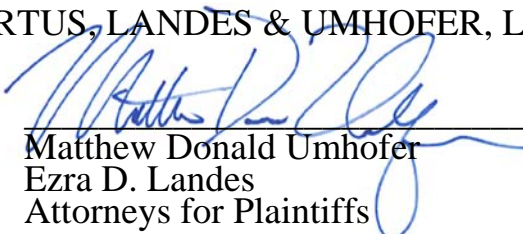
12 **VII. DEMAND FOR JURY TRIAL**

13 Plaintiffs hereby demand a jury trial.

14 Dated: April 13, 2018

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15 By:



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