

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

B E T W E E N:

**A. BEN-DOR**

Plaintiff

- and -

**UBER CANADA INC., UBER TECHNOLOGIES, INC., AND RASIER, LLC**

Defendants

Proceeding under the *Class Proceedings Act, 1992*

**STATEMENT OF CLAIM**

**TO THE DEFENDANTS**

**A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU** by the plaintiff. The claim made against you is set out in the following pages.

**IF YOU WISH TO DEFEND THIS PROCEEDING**, you or an Ontario lawyer acting for you must prepare a statement of defence in Form 18A prescribed by the Rules of Civil Procedure, serve it on the plaintiff's lawyer or, where the plaintiff does not have a lawyer, serve it on the plaintiff, and file it, with proof of service, in this court office, **WITHIN TWENTY DAYS** after this statement of claim is served on you, if you are served in Ontario.

If you are served in another province or territory of Canada or in the United States of America, the period for serving and filing your statement of defence is forty days. If you are served outside Canada and the United States of America, the period is sixty days.

Instead of serving and filing a statement of defence, you may serve and file a notice of intent to defend in Form 18B prescribed by the Rules of Civil Procedure. This will entitle you to ten more days within which to serve and file your statement of defence.

**IF YOU FAIL TO DEFEND THIS PROCEEDING, JUDGMENT MAY BE GIVEN AGAINST YOU IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO DEFEND THIS PROCEEDING BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.**

**TAKE NOTICE: THIS ACTION WILL AUTOMATICALLY BE DISMISSED** if it has not been set down for trial or terminated by any means within five years after the action was commenced unless otherwise ordered by the court.

Date: September 23, 2016

Issued by

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Local Registrar

Address of      161 Elgin Street  
court office:    2<sup>nd</sup> Floor  
                     Ottawa, ON K2P 2K1

**TO:**      **Uber Canada Inc.**  
100 King Street West  
1 First Canadian Place, Suite 6100  
Toronto, Ontario  
M5X 1B8

**AND:**      **Uber Technologies, Inc.**  
1455 Market Street, Suite 400  
San Francisco, California  
94103-1331

Tel: (415) 986-2715

**AND:**      **Rasier, LLC**  
1455 Market Street, Suite 400  
San Francisco, California  
94103-1331

Tel: (415) 801-4068

## DEFINED TERMS

1. In this Statement of Claim, in addition to the terms that are defined elsewhere herein, the following terms have the following meanings:

- (a) “**Uber App**” means the online-enabled mobile **Rideshare Services** application developed, represented, marketed, advertised, promoted, operated and/or sold by the **Defendants** that allows passengers to summon, arrange, and pay for **Rideshare Services** with Uber drivers electronically via their **Mobile Device(s)**;
- (b) “**Mobile Device**” means a portable computing device such as a smartphone or tablet computer;
- (c) “**Uber Rideshare Services**”, “**Uber Transportation Services**”, and/or “**Rideshare Services**” means all transportation services that are arranged through the Defendants’ website or the Uber App, such as UberX, UberXL, UberSELECT, UberBLACK, UberSUV, and UberPOOL, etc.;
- (d) “**Rideshare Fee**” means the fee charged to passengers by the **Defendants** in exchange for the provision of **Rideshare Services**;
- (e) “**Safe Rides Fee**” means the additional fee charged to passengers by the **Defendants** to ostensibly provide **Safety Measures**;

(f) “**Safety Measures**” means “driver safety education”, “regular motor vehicle checks”, “safety features in the App” and other efforts to ensure the safety of and for the benefit of consumers;

(g) “**Rideshare Services Agreement**” means the services contract entered into between the **Defendants** and **Class Members** whereby the **Defendants** agreed to provide **Rideshare Services** in exchange for a **Rideshare Fee**”;

(h) “**Class**”, “**Proposed Class**”, or “**Class Members**” means all residents in Canada who used one of **Uber’s Rideshare Services** and who paid a **Safe Rides Fee**;

(i) “*Courts of Justice Act*” means the Ontario *Courts of Justice Act*, RSO 1990, c. C-43, as amended;

(j) “*Class Proceedings Act*” means the *Class Proceedings Act*, 1992, SO 1992, c. 6, as amended;

(k) “*Consumer Protection Act*” means the *Consumer Protection Act*, 2002, SO 2002, c. 30, Schedule A, as amended;

(l) “**Consumer Protection Legislation**” means:

- (i)     *Business Practices and Consumer Protection Act*, SBC 2004, c.2, as amended, including ss. 4, 5 & 8-10;
- (ii)    *The Business Practices Act*, CCSM, c. B120, as amended, including ss. 2 & 23;

- (iii) *Consumer Protection and Business Practices Act*, SNL 2009, c. C-31.1, as amended, including ss. 7, 8, 9 & 10, and *Trade Practices Act*, RSNL 1990, c. T-7, as amended, including ss. 5, 6 & 14;
  - (iv) The *Fair Trading Act*, RSA 2000, c. F-2, as amended, including ss. 6, 7 & 13;
  - (v) The *Consumer Protection Act*, RSQ c. P-40.1, as amended, including ss. 219, 228, 253 & 272;
  - (vi) The *Consumer Product Warranty and Liability Act*, SNB 1978, c. C-18.1, including ss. 4, 10, 12, 15-18, 23 & 27;
  - (vii) The *Consumer Protection Act*, RSNS 1989, c. 92, including ss. 26 & 28A;
  - (viii) *Business Practices Act*, RSPEI 1988, c. B-7, as amended, including ss. 2-4; and
  - (ix) The *Consumer Protection Act*, SS 1996, c. C-30.1, as amended, including ss. 5-8, 14, 16, 48 & 65;
- (m) “**Competition Act**” means the *Competition Act*, RSC 1985, c. C-34, as amended;
- (n) “**Defendants**” or “**Uber**” means Uber Canada Inc., Uber Technologies, Inc., and Rasier, LLC;
- (o) “**Plaintiff**” or “**Representative Plaintiff**” means A. Ben-Dor; and
- (p) “**Representation**” means the **Defendants’** false, misleading or deceptive representations that their **Rideshare Services** and/or **Safe Rides Fee** (a) have uses,

safety benefits and/or qualities which they did not possess, (b) are of a particular standard and/or quality, and (c) are available for a reason that does not exist; and the **Defendants'** (d) use of exaggeration, innuendo and ambiguity (i) in failing to disclose the existence of the **Safe Rides Fee** and/or (ii) regarding the purpose of the Safe Rides Fee and the degree of safety afforded to **Class Members** in comparison to standard commercial transportation providers.

## THE CLAIM

2. The proposed Representative Plaintiff, A. Ben-Dor, claims the following on his own behalf and on behalf of the members of the Class of persons as defined in paragraph 4 below (the "Class") as against Uber Canada Inc., Uber Technologies, Inc., and Rasier, LLC (the "Defendants"):

- (a) An order pursuant to the *Class Proceedings Act* certifying this action as a class proceeding and appointing the Plaintiff as Representative Plaintiff for the Class Members;
- (b) A declaration that the Defendants committed the tort of civil fraud and/or deceit;
- (c) A declaration that the Defendants committed fraudulent and/or negligent misrepresentation;
- (d) A declaration that the Defendants committed fraudulent concealment;

- (e) A declaration that the Defendants breached their express and/or implied contracts with Class Members;
- (f) A declaration that the Defendants breached their implied covenant of good faith and fair dealing;
- (g) A declaration that the Defendants breached their fiduciary duty to Class Members;
- (h) A declaration that the Defendants made representations that were false, misleading, deceptive, and unconscionable, amounting to unfair practices in violation of the *Consumer Protection Act* and the parallel provisions of the Consumer Protection Legislation as well as the *Competition Act*;
- (i) A declaration that the present Statement of Claim is considered as notice given by the Plaintiff on his own behalf and on behalf of “persons similarly situated” and is sufficient to give notice to the Defendants on behalf of all Class Members;
- (j) In the alternative, a declaration, if necessary, that it is in the interests of justice to waive the notice requirement under Part III and s. 101 of the *Consumer Protection Act* and the parallel provisions of the Consumer Protection Legislation;

- (k) A declaration that the Plaintiff and Class Members are entitled to a refund of the Safe Rides Fee based *inter alia* on its invalidity *ab initio*, revocation of acceptance, and rescission;
- (l) A declaration that the Defendants are jointly and severally liable for any and all damages awarded;
- (m) General damages in an amount to be assessed individually or in the aggregate for the Class Members;
- (n) Special damages in an amount that this Honourable Court deems appropriate to compensate Class Members for, *inter alia*, the overpayment of the Rideshare Services (i.e. the Safe Rides Fee);
- (o) Punitive damages in an amount that this Honourable Court deems appropriate;
- (p) Aggravated damages in an amount that this Honourable Court deems appropriate;
- (q) In the alternative to the claim for damages, an order for an accounting of revenues received by the Defendants resulting from the additional charge of the Safe Rides Fee;
- (r) A declaration that any funds received by the Defendants through the additional charge of the Safe Rides Fee are held in trust for the benefit of the Plaintiff and Class Members;

- (s) Restitution and/or a refund of all monies paid to or received by the Defendants through the additional charge of the Safe Rides Fee to members of the Class on the basis of unjust enrichment;
- (t) In addition, or in the alternative, restitution and/or a refund of all monies paid to or received by the Defendants from the additional charge of the Safe Rides Fee to members of the Class on the basis of *quantum meruit*;
- (u) An order compelling the creation of a plan of distribution pursuant to ss. 23, 24, 25 and 26 of the *Class Proceedings Act*;
- (v) An interim interlocutory and permanent order restraining the Defendants from continuing any tortious actions, including those taken in contravention of the *Consumer Protection Act*, Consumer Protection Legislation, and/or the *Competition Act*;
- (w) An order directing a reference or such other directions as may be necessary to determine issues not determined at the trial of the common issues;
- (x) Pre-judgment and post-judgment interest on the foregoing sums in the amount of 2% per month, compounded monthly, or alternatively, pursuant to ss. 128 and 129 of the *Courts of Justice Act*;
- (y) Costs of notice and administration of the plan of distribution of recovery in this action, plus applicable taxes, pursuant to s. 26 (9) of the *Class Proceedings Act*;

- (z) Costs of this action on a substantial indemnity basis including any and all applicable taxes payable thereon; and
  
- (aa) Such further and other relief as counsel may advise and/or this Honourable Court may deem just and appropriate in the circumstances.

## **THE PARTIES**

### **The Representative Plaintiff**

3. The Plaintiff, A. Ben-Dor, is an individual residing in Toronto, in the province of Ontario. On May 27, 2014, Mr. Ben-Dor created an Uber account and, on December 27, 2014, he used the Uber App to obtain UberX Transportation Services, paying \$10.21. He subsequently used Uber's Rideshare Services on many occasions, never (until recently) noticing the Safe Rides Fee that was being added to his purchases after-the-fact.

### **The Class**

4. The Plaintiff seeks to represent the following class of which he is a member (the "Proposed Class"):

All residents in Canada who used one of Uber's Rideshare Services and who paid a Safe Rides Fee.

### **The Defendants**

5. The Defendant, Uber Canada Inc. (“Uber Canada”), is a Canadian transportation network corporation with its principal place of business in Toronto, Ontario. Uber Canada conducts business in Canada, including within the province of Ontario.

6. The Defendant, Uber Technologies, Inc. (“Uber Tech”), is an American transportation network corporation with its principal place of business in San Francisco, California. It is the parent company of Defendant Rasier, LLC. It is the registrant of the CIPO trade-mark (word) “UBER” (TMA935075) which was filed on June 25, 2013 and it filed the CIPO trade-mark (design) “U Logo” on June 25, 2013 which has reached the status of searched as well as the CIPO trade-mark (design) “RIDER Logo” and “PARTNER Logo” on February 1, 2016, which have both now reached the status of formalized.

7. The Defendant, Raiser, LLC (“Raiser”), is an American transportation network corporation with its principal place of business in San Francisco, California. It is a wholly-owned subsidiary of Defendant Uber Tech.

8. The Defendants develop, represent, market, advertise, promote, operate, and/or sell Uber Transportation Services as well as the Uber App, throughout Canada, including within the province of Ontario.

9. The Defendants are jointly and severally liable for the acts and omissions of each other.

#### **THE NATURE OF THE CLAIM**

10. The Defendants are and, have been at all relevant times, engaged in the business of developing, representing, marketing, advertising, promoting, operating, and/or selling Uber Rideshare Services throughout Canada by positioning themselves in the minds of consumers as a safer, lower cost, more reliable, and efficient alternative to standard commercial transportation services.

11. These class proceedings concern the Defendants' unlawful conduct in (a) failing to disclose the existence of the Safe Rides Fee to Class Members and/or alternatively (ii) misrepresenting its true purpose and the Safety Measures in association therewith.

12. More specifically, Uber charges a Safe Rides Fee without properly disclosing it to consumers prior to the trip (and peripherally at best even thereafter), making its imposition insupportable. In addition, Uber makes a number of representations and/or omissions regarding its safety efforts, expenditures, and background checks. Simply put, Uber does not use the Safe Rides Fee to pay for the alleged safety-related services and thus, even the term itself, is a misrepresentation.

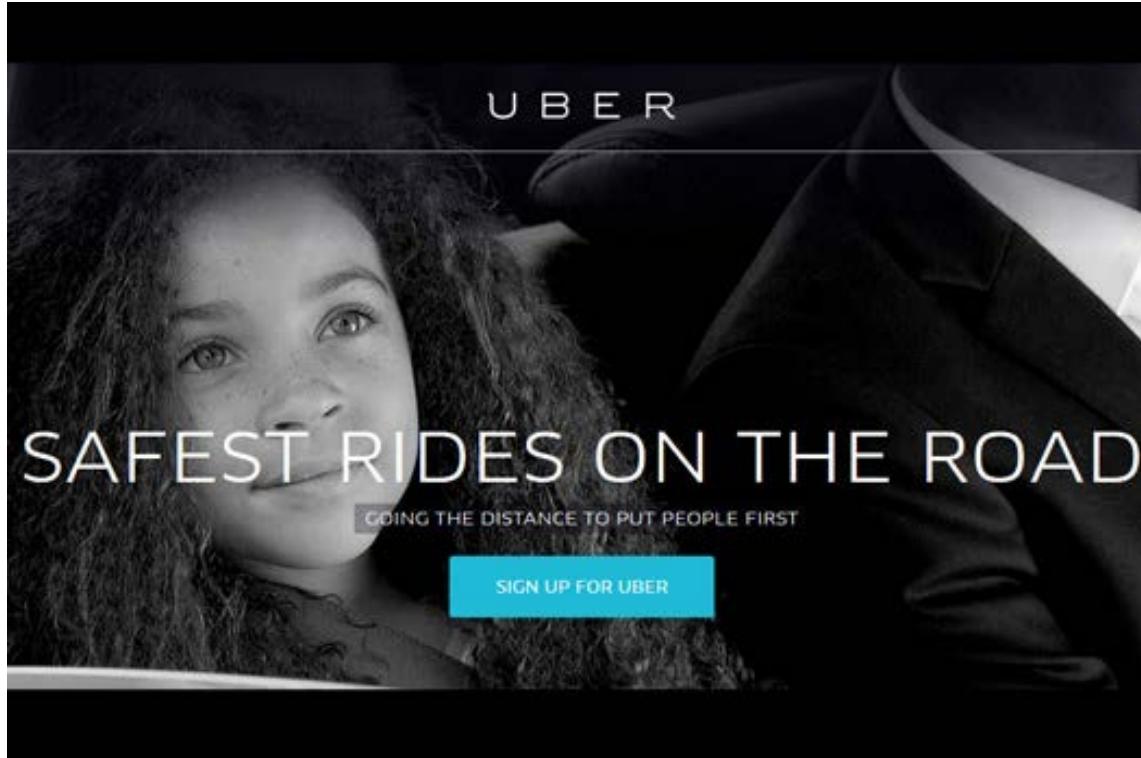
13. The Defendants represented that all of its drivers were "thoroughly screened through a rigorous process [they've] developed using industry-leading standards", and that the additional Safe Rides Fee charge of between \$1.00 and \$2.50 per ride, supported the Safety Measures<sup>1</sup>.

14. Further, the Defendants categorically and falsely touted its supposed "industry-leading standards" throughout its advertising campaign and marketing schemes,

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<sup>1</sup> In the United States, it was estimated that the average Safe Rides Fee amounted to \$1.12 USD.

prominently and consistently representing that their Rideshare Services are superior in safety as compared to standard, traditional transportation services. One such example appears below.



15. However, contrary to the Defendants' Representation to this effect, Uber's proclaimed Safety Measures fall far short of what is required and reasonably expected of standard commercial transportation providers.

16. The Defendants make a number of representations in an attempt to convey the message that they take every measure possible to ensure the safety of their riders. Such statements and claims are false, deceptive, misleading, and simply inaccurate. In reality, the Defendants' actual background check process and supposed Safety Measures unacceptably fail to remotely meet the standards that they advertise.

17. Further, the revenue amassed from the collection of the Safe Rides Fee, in large part, is not being used to support the implementation and/or operation of the purported Safety Measures but is simply an unlawful “fee” which serves as an additional revenue stream for the Defendants.

18. The Defendants are able to charge this additional Safe Rides Fee as a result of their failure to clearly and conspicuously disclose its existence to consumers and/or as a result of their false and misleading Representation as to its actual purpose and existence.

#### **A. Overview – How Uber works**

19. The Defendants developed, represented, marketed, advertised, promoted, operated, and/or sold Rideshare Services, commonly known as “Uber”, on their website and/or through an online-enabled mobile device application (the “Uber App”) that allows passengers/riders throughout Canada to summon, to arrange, and to pay for transportation services electronically via their Mobile Devices and/or online through their desktop computers.



20. The Defendants offer transportation services, including those at issue in the present Statement of Claim, UberX, UberXL, UberSELECT, UberBLACK, UberSUV, and UberPOOL, etc., that are differentiated by either the type of vehicle used and/or the size/number of passengers that it can accommodate. Any person with a vehicle model that is ten years old or less car can become an Uber driver. Specifically, the taxonomy is as follows:

- First Tier: UberX is the least expensive Uber service that seats up to four riders<sup>2</sup>,
  - Second Tier: UberXL is the more expensive Uber service than UberX, seating at least six passengers and will be a sports utility vehicle (SUV) or a minivan<sup>3</sup>,

<sup>2</sup> Examples of UberX vehicles include: Toyota Prius, Honda Accord, Maxda3 and Mazda6, Toyota Camry and Corolla, Ford Focus, Nissan Altima, Ford F-150, Toyota Tacoma, Honda Civic, Chevrolet Malibu, Chevrolet Cruz, Chevrolet Cobalt, Volkswagen Golf, and Volkswagen Passat.

<sup>3</sup> Examples of UberXL vehicles include: GMC Acadia, Dodge Caravan, Honda Odyssey, Ford Explorer, Ford Expedition, Honda, Pilot, Dodge Durango, Jeep Cherokee, Chevrolet Suburban, Nissan Pathfinder, Toyota Highlander, and Nissan Quest.

- Third Tier: UberSELECT is an even more expensive Uber service that seats up to four riders in a semi-luxury premium sedan and usually have a post-2008 model date<sup>4</sup>, and
- Fourth Tier: UberBLACK and UberSUV are the high-end, high-cost Uber services that have the highest vehicle and driver standards that seat at least 4 (UberBLACK) or up to 6 (UberSUV) riders in a black exterior and black interior, great condition, 2013 or newer luxury vehicle<sup>5,6</sup>.

21. UberPOOL is an Uber Rideshare Service that allows a rider to share their ride and split the cost of the trip with another Uber rider headed in the same or a similar direction. UberPOOL also offers the rider a guaranteed fare.

22. In order to request Rideshare Services, consumers must first create an Uber account either online or by downloading the Uber App onto their Mobile Device(s) and by placing a credit card, debit card or PayPal account on file, eliminating the need for cash payments between the passenger and the driver. Consumers can then submit a “trip request” by clicking the “Request UberX” button to call for a ride which is then routed to Uber drivers who then provide Rideshare Services.

23. At the end of the trip, the Defendants automatically obtain payment from the passenger’s credit card, debit card or PayPal account. The Defendants then retain a portion

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<sup>4</sup> Examples of UberSELECT vehicles include: Mercedes C-Class, Audi A4, Audi S8, BMW 3 Series, BMW X1, Cadillac SRX, Cadillac ATS, Cadillac DTS, Infiniti QX70, Infiniti M-Class, Tesla Model S, Tesla Model X, Porsche Panamera, Porsche Cayman, Lexus RX, Jaguar X Type, and Jaguar S Type.

<sup>5</sup> Examples of UberBLACK vehicles include: Audi A6 and A7, BMW 5 Series, Cadillac XTS, Infiniti Q70, Jaguar XF, Lexus GS, and Mercedes-Benz E-Class.

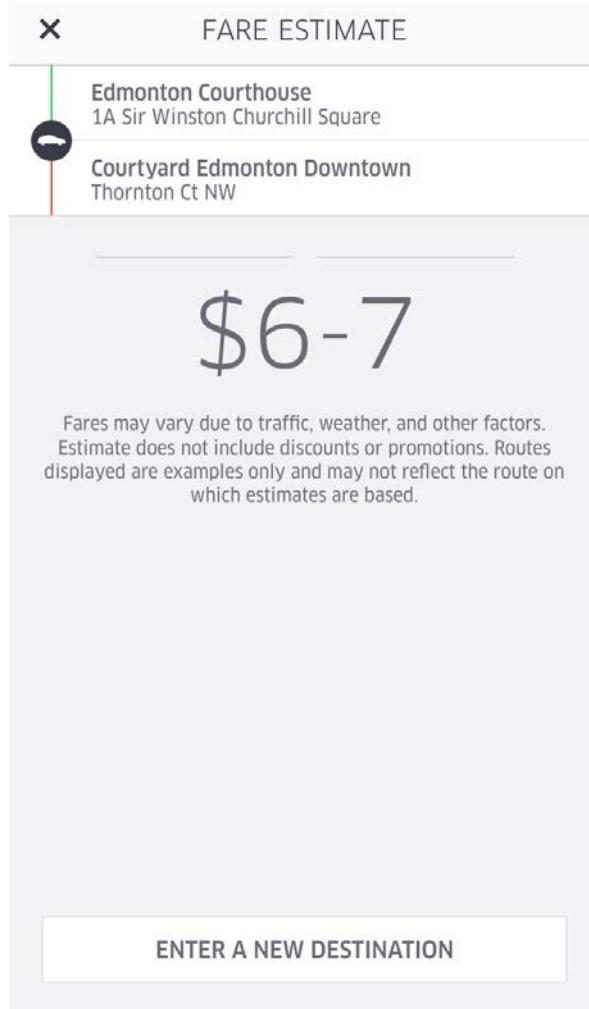
<sup>6</sup> Examples of UberSUV vehicles include: Cadillac Escalade ESV, Chevrolet Suburban, GMC Yukon XL, Infiniti QX56 and QX80, Lexus LX, Lincoln Navigator L, and Mercedes-Benz GL-Class.

(between 15% and 30%) of the fare charged for themselves, pay the Uber driver with the balance (between 70% and 85%), and the consumer is sent a receipt for the transaction through the Uber App and through e-mail.

#### **B. The Undisclosed Safe Rides Fee**

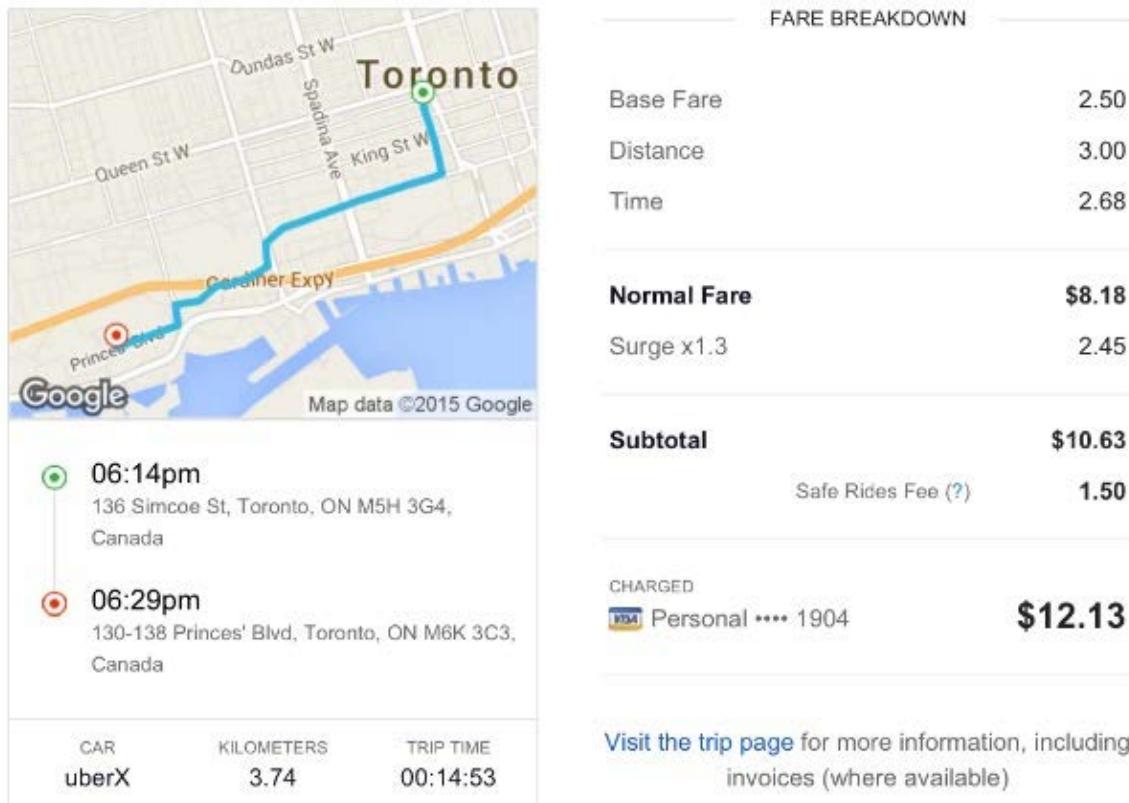
24. In April 2014, the Defendants began charging a purported “Safe Rides Fee” to its Uber Transportation Services users.

25. The Defendants failed to clearly and conspicuously disclose, if at all, the existence of this automatic Safe Rides Fee charge to consumers. Further, even when a rider actively chooses to obtain a “Fare Estimate” (which is quite a common practice) by inputting their location and their destination either online or into the Uber App, the existence of the additional and mandatory Safe Rides Fee is still not disclosed. Immediately below is an example of the “Fare Estimate” feature.

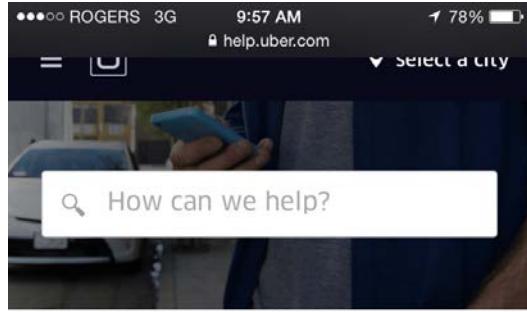


26. The Fare Estimate feature explicitly states that the estimate “does not include discounts or promotions” (letting the consumer know that the fare *might* be less), yet it does not correspondingly disclose or even remotely allude to the existence of the Safe Rides Fee in any way (not letting the consumer know that the fare *will* be more).
27. Instead, upon completion of a trip, the Safe Rides Fee is separately itemized on an electronic receipt which is sent to the customer via the Uber App and through the e-mail address that they had provided. As is depicted below, next to the words “Safe Rides Fee”

on the receipt is a hyperlink in the form of a question mark that, *if* noticed and clicked on, leads to an explanation of the Safe Rides Fee (as described above).



28. Assuming a consumer notices and clicks on the question mark hyperlink, they are directed to a page on the Defendants' website on which the following description of the Safe Rides Fee is present.



### I WAS CHARGED A SAFE RIDES FEE (US + CANADA ONLY)

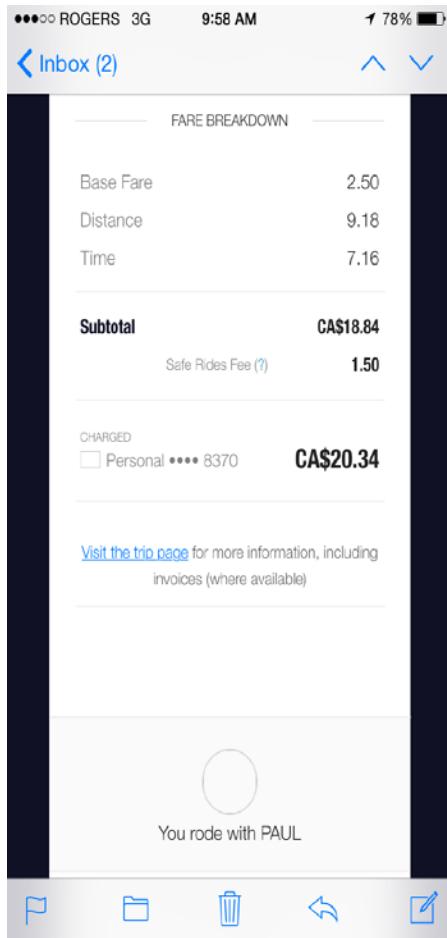
The Safe Rides Fee supports safety efforts for the uberX platform, including among other things a background check process, motor vehicle checks, driver safety education and development of safety features in the app.



29. However, the Plaintiff and the vast majority of the Class Members never even noticed or made use of the Safe Rides Fee hyperlink appearing on their electronic receipts. This is largely due to the fact that the electronic receipts are predominantly received on the riders' Mobile Devices after the trip has been completed and the user has exited the vehicle and the combination of the minuscule size of the font and the light grey colour used by the Defendants to itemize the Safe Rides Fee renders it virtually illegible to the vast majority of consumers. The following screen shot equivalent in size to the screen of an Apple iPhone 5s<sup>7</sup>.

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<sup>7</sup> The iPhone 5s is 4.87 by 2.31 inches, which translates to 12.37 by 5.87 centimetres.

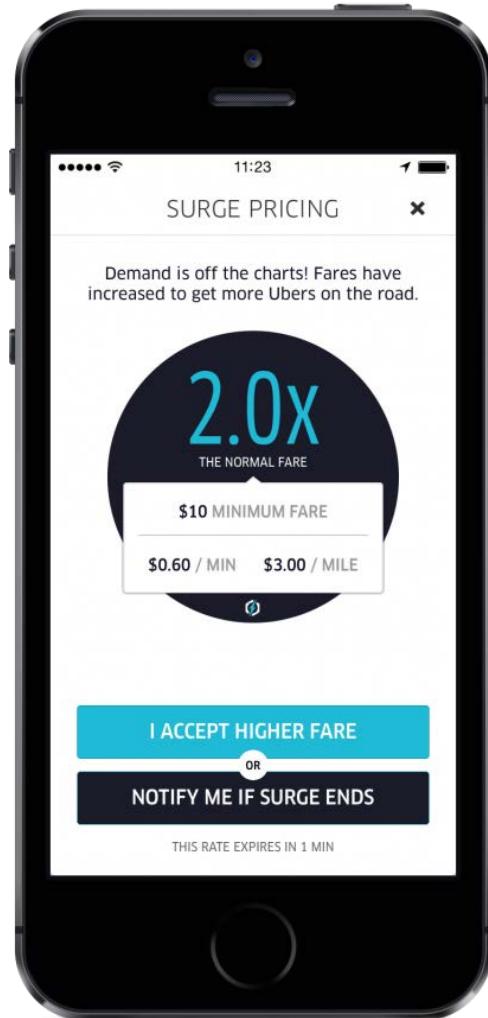


30. At no time prior to entering into Rideshare Services Agreements for Uber Transportation Services are the riders, including the Plaintiff and Class Members, at the very least, informed of the existence of the Safe Rides Fee or directed/encouraged to click on the hyperlink that leads to the explanation of the Safe Rides Fee in order to ensure their knowledge and informed consent of said additional fee.

31. Instead, consumers are unknowingly forced to pay the Safe Rides Fee, which is essentially hidden and only disclosed, if at all, after the transaction has ended, therefore, there was no consent to these additional terms to the Rideshare Services Agreement. The Safe Rides Fee is only disclosed, if at all, at the end of the trip, after the terms of the

Rideshare Services Agreement have been mutually agreed-upon and fully performed and therefore, the addition of the surprise Safe Rides Fee, after-the-fact, cannot form part of the agreement.

32. In stark contrast, Uber goes out of its way and is very careful to get informed consent from customers before charging its “surge pricing”, wherein fees for Transportation Services rise significantly during times of high demand. Unlike the Safe Rises Fee, Uber conspicuously discloses the amount of the surge pricing, and requires the customer to specifically “accept the higher fare” or to request to be notified if the surge ends, ensuring that the customer is expressly consenting to the augmented fee.



### C. Safety Measures – The Defendants’ Misrepresentations

33. To begin with, the terminology used by the Defendants of a “Safe Rides Fee” leaves the distinct impression on users that the revenue generated therefrom will be used for Safety Measures. As we will see, this reasonable assumption created by the purposeful use of term itself, is materially inaccurate.

34. According to the Defendants, the Safe Rides Fee was being charged to riders to ostensibly “support continued efforts to ensure the safest possible platform for Uber riders and drivers, including an industry-leading background check process, regular motor vehicle checks, driver safety education and development of safety features in the app ...”

35. On or around April 24, 2014, the Defendants’ explanation of Safe Rides Fee could be seen on Uber’s website as follows:

#### What Is The Safe Rides Fee?

From the beginning, we’ve always been committed to connecting you with the safest rides on the road. Our new Safe Rides Fee is a \$1 fee added to uberX fares in United States cities with uberX ridesharing. This Safe Rides Fee supports our continued efforts to ensure the safest possible platform for Uber riders and drivers, including an industry-leading background check process, regular motor vehicle checks, driver safety education, development of safety features in the app, and insurance. For complete pricing transparency, you’ll see this as a separate line item on every uberX receipt.

36. In October of 2014, the Defendants replaced the words “industry-leading” with the words “a Federal, state, and local background check.” The Defendants also replaced the words “and insurance” to “and more.” The explanation of the Safe Rides Fee was then as follows:

## What Is The Safe Rides Fee?

From the beginning, we've always been committed to connecting you with the safest rides on the road. The Safe Rides Fee is a fee added to uberX fares on behalf of drivers (who may pay this fee to Uber) in cities with uberX ridesharing. This Safe Rides Fee supports continued efforts to ensure the safest possible platform for Uber riders and drivers, including a Federal, state, and local background check process, regular motor vehicle checks, driver safety education, development of safety features in the app, and more. For complete pricing transparency, you'll see this as a separate line item on every uberX receipt.

In the U.S., the Safe Rides Fee is always \$1 USD. In Canada, it is \$1 CAD.

37. Interestingly, the Defendants claimed that the Safe Rides Fee was being collected “on behalf of drivers”; however, (a) the so-called “background check process” is not so much of an ongoing process as implied by the use of the word “process”, but more of a one-time occurrence, (b) the “regular motor vehicle checks” are between \$20.00 and \$40.00 for an annual inspection, which is paid for by the drivers in any case, (c) the “driver safety education” consists of online videos and optional classes at the drivers’ expense, and (d) “development of safety features in the app” should not be charged to passengers and is also exceedingly vague in any case. Thus, there is little to no benefit for the driver on behalf of whom the Defendants were purportedly collecting the Safe Rides Fee in the first place.

38. The Defendants collected millions of dollars per year in so-called Safe Rides Fees. Specifically, in the United States, the Defendants admitted to having collected \$448,598,018.00 in Safe Rides Fees; given that the proportionate population of Canada compared to the United States is approximately 10 percent, this amount translates to

\$44,859,801.80 in Canada. This amount is more comparable to an excise tax to which Uber keeps essentially the whole amount as an extra “fee” for the provision of the Rideshare Services.

39. The Defendants represented that “[t]he Safe Rides Fee is a fee added to UberX fares on behalf of drivers (who may pay this fee to Uber) in cities with UberX ridesharing.” Ironically, and despite this statement, the Defendants tell their drivers that Uber retains the entirety of the Safe Rides Fee as follows: “[r]ider fees are fees charged to the rider by Uber directly. They include the *safe rides fee*, airport tolls, and fare split fees, if applicable. *Uber receives rider fees in full.*”

Rider fees are fees charged to the rider by Uber directly. They include the safe rides fee, airport tolls, and fare split fees, if applicable. Uber receives rider fees in full.

40. In October of 2014, Uber continued to surreptitiously charge the Safe Rides Fee, however, it stopped claiming that its Safety Measures were “industry-leading” and instead claimed that the extra charge supported “continued efforts to ensure the safest possible platform for Uber riders and drivers, including a *Federal, state, and local background check process*, regular motor vehicle checks, driver safety education, development of safety features in the app, and more.”

41. Central to the Defendants’ deceptive marketing scheme is their message that Uber does everything possible to ensure the safety of its Uber Transportation Services users. By way of example, the Defendants’ promotional strategy includes communicating the following statements:

- (a) “From the moment you request a ride to the moment you arrive, the Uber experience has been designed from the ground up with your safety in mind”;
- (b) “Putting safety first for each of the one million trips we are doing every day means setting strict safety standards, then working hard to improve them every day”;
- (c) “We believe deeply that, alongside our driver partners, we have built the safest transportation option in 260 cities around the world;” and
- (d) “Of course, no background check can predict future behaviour and no technology can yet prevent bad actions. But our responsibility is to leverage every smart tool at our disposal to set the highest standard in safety we can. We will not shy away from this task.”

42. Such safety-related representations are false, deceptive, and/or misleading.
43. Furthermore, and relating back to the dollar amount of revenue that the Defendants were receiving from the Safe Rides Fee, from their own admission, they were collecting one million dollars a day “on behalf of drivers” and that it “receives [it] in full”.

**D. The Defendants Neither Conduct “Industry-Leading” Background Checks nor Use the “Safe Rides Fee” Therefor**

44. Similarly, the Defendants misrepresented the scope of their so-called “industry-leading” background check process. The Defendants do not and have never conducted or paid for an “industry-leading” background check process.

45. As previously stated in this Statement of Claim, the Defendants represent that all Uber drivers are “thoroughly screened through a rigorous process [they’ve] developed using industry-leading standards”. However, contrary to this statement, in reality, Uber allows any person with a vehicle that qualifies its vehicle requirements to become a driver for one of Uber’s Transportation Services.

46. In reality, the Defendants’ background check process does not even include the minimum of fingerprint identification of potential drivers to ensure that the results of a background check actually correspond to the applicant that submitted the information.

47. Instead of using fingerprint identification, the Defendants’ background check process simply relies on applicants to submit their own personal information online (name, address, driver’s license number and province, and social insurance number). The Defendants then transfer this information to ISB Canada Inc., a private Canadian company that performs their background checks.

48. Considering that the Defendants’ background check process does not use a unique biometric identifier such as a fingerprint, there is no guarantee that the results of the background check report are actually affiliated with the applicant who submitted the personal identifiers. Moreover, the applicant driver is never required to appear in person to verify his or her identity at any point during the background check process.

49. The Defendants’ background check process does not even come close to what is generally accepted and required within the commercial transportation industry. By way of example, taxi regulators in many metropolitan cities in Canada require applicant drivers

to undergo criminal background checks using fingerprint identification through the Royal Canadian Mounted Police (“RCMP”)'s certified Criminal Record Check process.

50. The RCMP's Certified Criminal Record Check program requires that the applicant personally appear in order to be fingerprinted, which confirms that the results of the background check do, in fact, belong to that particular individual. This process ensures that, for example, a registered sex offender could not use his law-abiding brother's identification or that a convicted burglar could not borrow his cousin's identification information to become an Uber driver in order to case the empty homes of riders that he drives to the airport.

51. The Defendants' background check process, although purportedly “industry-leading” simply does not meet minimum safety standards. It does not afford the same or a similar level of security as the fingerprint-based RCMP certified Criminal Record Check process that is used for performing background checks on taxi drivers. The use of fingerprint identification is the bare minimum standard for a background check process to be considered “industry-leading”.

52. The Defendants have misled and continue to mislead the Class by exaggerating the purported measures taken to ensure the safety of Uber riders in comparison to standard commercial transportation providers and by pragmatically misleading and/or failing to disclose the actual use of the revenues accrued through the collection of the Safe Rides Fee. All of this has generated more revenue for the Defendants at the expense of Class Members.

53. Notably and quite hypocritically, while touting its “industry-leading” background checks and strategically collecting the Safe Rides Fee from consumers, “in statehouses across the [United States], Uber has fought against legislation requiring background checks as strong as those demanded of traditional taxis.” In fact, “[i]n Colorado, the company helped persuade lawmakers to ease drivers’ background checks in a bill that legalized ride-sharing companies. In Illinois, after a lobbying push, Gov. Pat Quinn vetoed a bill that would have forced Uber to strengthen those checks. And in California, Uber and other companies like it helped kill a law that would have required drivers to undergo a background check by the state’s Justice Department, as is required of taxi drivers.”

54. Equally inconsistent with its representations to riders, Uber markets itself to potential drivers as having an easier application process than that of regulated taxi and transportation services specifically because it does *not* require fingerprinting.

55. In an opinion editorial published in The Globe and Mail in November of 2014, Toronto City Councillor Gord Perks explains, “Because Toronto grants and can revoke licenses; we can keep bad drivers off the streets. By using unlicensed drivers Uber takes that public power away.”

#### **E. A Sampling of Reported Safety Incidents**

56. On September 21, 2016, an Uber driver was charged with sexually assaulting several women while on the job in southern California.

57. In August 2016, a couple was brutally attacked during an Uber trip in South Africa by 3 men who were being hidden in the trunk of the Uber vehicle, apparently to extort

money from their bank account(s). Thereafter, Uber has announced that it is going to be testing a “panic button” to press in the event of an emergency.

58. On August 13, 2016, an Uber passenger in Toronto alleged that she was assaulted by a racist Uber driver, resulting in a fractured finger and an injured arm. After refusing to let the Uber driver take her photograph, he dragged her out of the vehicle. The incident was captured on video.

59. On June 20, 2016, an Uber passenger alleged that his Uber driver attempted to attack him with a 40-pound stone and then stole his iPhone.

60. In May 2016, it was revealed by The Independent in the United Kingdom that Uber drivers are accused of sexually assaulting or raping customers almost three times a month – 32 assault claims had been made against Uber drivers in the preceding 12 months.

61. On April 26, 2016, an Uber driver in Toronto was charged with sexual assault after an alleged attack on an Uber passenger. Uber removed the Uber driver from the platform thereafter.

62. On February 20, 2016, an Uber driver in Kalamazoo, Michigan confessed to killing 6 people and injuring 2 others on a shooting spree that spanned approximately 5 hours during which the suspect was operating an Uber vehicle as an Uber driver<sup>8</sup>.

63. On January 1, 2016, in the early morning hours, a woman in Los Angeles claimed that an Uber driver attacked her, leaving her with a broken jaw. The woman alleged that

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<sup>8</sup> Interestingly, the suspect has blamed his actions on his Uber App, claiming that its symbol resembled that of the Order of the Eastern Star, and that it took over his body during the events after he pressed the button of a new app resembling the Devil when it abruptly popped up.

the Uber driver pulled her from the car, punched her in the face and knocked her to the ground.

64. On December 15, 2015, an Uber driver attacked 2 women with a snow brush in Chicago.

65. In August of 2015, ABC News reported that four Uber drivers in the United States had been convicted of crimes that would have made them ineligible to become taxi drivers including child exploitation, identity theft and manslaughter. Uber commented that it “stands behind its safety screening process.”

66. In April of 2015, Chron News reported that “the criminal record of an Uber driver accused of sexually assaulting a passenger last week would have been caught by the city's background check system if the driver had sought a permit as required” by taxi drivers. According to a Houston city report, an Uber driver was cleared to be an Uber driver by Hirease Inc., the company used by Uber in the United States to perform its background checks; however, when this individual underwent a City of Houston fingerprint check “it turned out she had 24 alias names, 5 listed birth dates, 10 listed Social Security numbers, and an active warrant for arrest.”

67. On December 18, 2014, an Uber driver pleaded not guilty to charges of rape, assault to rape, kidnapping, and two counts of assault and battery following the Uber driver’s rape of a young female Uber rider in the back of his car. Uber confirmed that the alleged rapist had passed Uber’s background check. Following the attack, it was discovered that the Uber driver was linked to two previous rapes. On October 16, 2015,

following positive DNA evidence, the Uber driver pled guilty to aggravated rape, kidnapping, and assault and battery and was sentenced to ten to twelve years in prison.

68. In February of 2014, the Chicago Tribune reported that a 24-year-old Uber driver had a felony conviction for residential burglary in 2010, a misdemeanor conviction for criminal damage to property in 2009, another misdemeanor conviction in 2008 for breaking into a car to steal a GPS and satellite radio receiver. The same Uber driver had received numerous speeding tickets and had his driving license suspended twice in 2008.

69. In January of 2014, in an article entitled “Uber driver accused of assault had done prison time for a felony, passed background check anyways,” online news site PandoDaily.com reported that an Uber driver in San Francisco, who had been accused of verbally and physically assaulting a passenger, had passed the Defendants’ background check even though he had a significant criminal history – including felony and misdemeanor charges, and at least one felony conviction involving the prison time – that should have disqualified him from becoming an Uber driver. In June 2014, Forbes.com reported that the driver had been on probation for a battery conviction when Uber hired him in October 2013. Respondents claimed that the driver “had a clean background check in October.”

70. On December 31, 2013, an Uber driver struck and killed a six-year-old girl while driving in San Francisco. The San Francisco Business Times subsequently reported that the driver had been convicted of reckless driving in Florida in September of 2004.

71. On June 2, 2014, an Uber driver was arrested in Los Angeles for allegedly kidnapping a drunk female passenger after she woke up in a motel room and found her shirtless driver in bed with her.

72. On April 24, 2014, an NBC Los Angeles aired an investigative report about Uber's driver background checks in which the station enlisted a woman to apply to become an Uber driver. She was on felony probation for making criminal threats (willfully threatening to commit a crime which will result in death or great bodily injury to another person), and during the broadcast described the conduct leading to her arrest: "I pulled a girl out of a car and almost beat her to death." On March 3, 2014, Uber sent the woman an email notifying her that she passed her background check. According to the NBC report, Uber would not respond to the station's request for comment about this case. Instead, Uber spokesperson Lane Kasselman sent an email explaining Uber's background screening policy. The email ended with, "[w]e're confident that every ride on Uber is safer than a taxi."

73. In fact, anonymous chat rooms, social media websites and messaging apps share ways in which a potential Uber driver can avoid undergoing a background check. For example, "[a]ll you have to do is input your information on an existing drivers account that no longer wants to work and presto – you're online and driving." This practice of account-swapping is particularly troublesome in that "[o]ne person could fill out all the info and hand off the approved account to another person. You can't do that in the taxi world." In addition, another post stated "I know of a few guys that "share" an account. One was approved by Uber, totally legit, and the other just drives."

74. Even though the Defendants do not and have never conducted or paid for “industry-leading background checks”, they have had huge commercial success through their false and misleading advertising.

**F. Uber Does Not Pay for the Other Safety-Related Services that it Represents are Supported by the Safe Rides Fee**

75. Contrary to their express representations to consumers, the Defendants do not use the revenue generated from the Safe Rides Fee to pay for “regular motor vehicle checks”, to fund “driver safety education”, or to develop “safety features in the App”.

- a) The so-called “regular motor vehicle checks” consist of annual vehicle inspections paid for by the Uber drivers at their own expense. All Uber Transportation Service vehicles are required to pass a Safety Standards Certification (SSC) inspection. The Defendants recommend that drivers go to Canadian Tire as their “preferred vehicle inspection partner” to have their vehicles inspected and to receive certain rebates for their vehicle, such as winter tires;
- b) The Safe Rides Fee has not been used to launch any safety education programs and the Defendants do not require Uber drivers to participate in any form of mandatory driver safety education. Instead, in the United States, Uber advises Uber drivers that if they *want* to learn how to be good drivers, they can pay anywhere from approximately \$40.00 to \$65.00 on a class that will provide “detailed reviews” of a particular city’s “neighborhoods and key routes, as well as driver professionalism tips and basic safety concepts for commercial drivers. In Canada, no such optional out-of-pocket class appears to be available; and

- c) Since the introduction of the Safe Rides Fee in April of 2014, the Defendants have not launched any safety features for the Uber App that are available in Canada. For example, the “Safe Ride Checklist” is only available to consumers in Chicago and Boston.

76. In an October 10, 2014 article entitled “Uber Skimbs On Driver Training, Then Charges Drivers \$65 For Basic Driver Skills Course,” Forbes reported that new Uber drivers are not required to engage in any safety training whatsoever:

When Michael Coe, 38, signed up to be an Uber driver in Washington, D.C. a few weeks ago, he was shocked to find that once his driver’s license and identity paperwork had cleared, he was asked to come in to pick up a phone — then put on the road with no training except a [13-minute video](#) on how to use the Uber app.

“When I got to one of the onboarding sessions at a local hotel, it was like, ‘Here’s your papers, go to the other room, get your phone, and great — get on the road and drive,’ ” Coe told Forbes.

No one from Uber had more than a passing conversation with him before he was set to give what the company calls “[the world’s safest, most reliable ride.](#)” Uber never looked at his car either, though he did have to provide proof of a recent Virginia state car inspection.

77. As an example, Uber drivers are offered the following “training class” in cities across the United States as well as virtually:

## WASHINGTON DC DRIVER TRAINING CLASS

The Driver Training Class given by 7x7 Executive Transportation introduces beginning and experienced Uber partners to lessons and techniques designed to improve their driving and customer service skills. Lecture topics include detailed reviews of Washington DC neighborhoods and key routes, as well as driver professionalism tips and basic safety concepts for commercial drivers. Class discussion on each of these topics is encouraged, and another module includes discussion of common customer service issues and how to address them. A major focus of the class is how drivers can improve their ratings from Uber users. The class lectures are supplemented by video-clips, map displays, white board drawings, written course materials as well as a final exam.

All classes are held at the University of Phoenix. University of Phoenix is a trade name and registered trademark of the Apollo Education Group, Inc. Any use by 7x7 Executive Transportation to identify the event location is not intended to imply affiliation with, sponsorship or endorsement of the event by The University of Phoenix, Inc. or Apollo Education Group, Inc.

The address for the class is 25 Massachusetts Ave NW, Washington, DC 20001. The nearest Metro station is Union Station. Free parking is available by validation if you park in the garage in the basement of 25 Massachusetts Ave NW. (Validation is available ONLY from the Instructor and is not available for any other parking location.) Go to the elevator lobby and you will be directed to the University of Phoenix lobby area and from there information on the classroom number will be available. PLEASE DO NOT GO TO THE UNIVERSITY OF PHOENIX EXCEPT ON THE DAY OF YOUR CLASS. THERE WILL BE NO ONE THERE FROM 7X7 TO HELP YOU. IF YOU NEED TO CONTACT US, PLEASE USE THE CONTACT INFORMATION AT THE BOTTOM OF THIS WEB PAGE.

The class will start on time. Please arrive 15 minutes early to allow time for registration. If you are more than 10 minutes late for the class you will not be able to come in and will need to sign up for another class. You must pay for the class online using a major credit card. We will accept Visa, Master Card, American Express, and Discover. Please follow the prompt after signing up to pay now. Please dress professionally as if you are working and bring your personal phone (NOT Uber phone) with you.

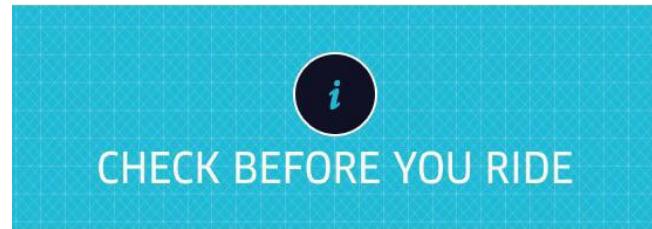
**CLICK ON A DATE IN THE CALENDAR BELOW:**

Choose Appointment      Your Info      Confirmation

Returning? [Log In](#)

Tx7 Washington DC Driver Training Class  
4 hours @ \$65.00

78. The Safe Ride Checklist is a relatively simple and straightforward single page that recommends that passengers confirm that they are getting in the right car and that the in-app driver photo matches up.



## SAFE RIDE CHECKLIST

- 1) Confirm the license plate number in app matches the one on your driver's vehicle
- 2) Confirm the name/picture of the driver in app matches the driver in the car
- 3) Questions? Send us an email or tweet and we'll be in touch.

ENJOY YOUR RIDE

79. Consequently, despite Canadian consumers being charged the Safe Rides Fee of between \$1.00 and \$2.50, every ride, since April of 2014, they have in no way benefitted from the Defendants' supposed "development of safety features" in the Uber App.

80. In fact, in May of 2015, The Globe and Mail reported that an Uber user was forced to "jump out of [a] moving Uber car" to escape the driver's erratic and unresponsive driving. Mr. Bobadilla, a frequent Uber user, says that "there was no emergency number he could call to speak with someone at Uber, or any kind of protocol he could find to report the incident."

81. The Defendants' additional charge of the Safe Rides Fee for benefits that it fails to provide constitutes an unlawful and unfair business practice and a breach of contract between themselves and Class Members.

**F. The Safe Rides Fee was a Pure Profit for Uber, not a Genuine Fee Used to Fund Safety Measures**

82. The revenue generated by the Safe Rides Fee and subsequently retained by the Defendants far exceeded the amount that Uber spends on "efforts to ensure the safest possible platform for Uber riders and drivers", if any.

83. Furthermore, the Defendants spend significantly less on background checks than the amount they retain from the amassment of Safe Rides Fees.

84. For comparison purposes, given that the RCMP's Certified Criminal Record Check program costs \$25.00 per background check and that there are approximately 22,000 Uber drivers in Canada, even had the Defendants actually used the Safe Rides Fee to fund Safety Measures, the amount that would have been necessary for that purpose would have only been \$550,000.00. Given that the Defendants have collected approximately \$44,859,801.80 in so-called Safe Rides Fees, only 1.2 percent of the Safe Rides Fee would have been spent on this ( $550,000/44,859,801.80$ ). Further, as detailed herein, the background checks performed by Uber are, at best, less than adequate, indicating that this presumed \$25.00 is inflated.

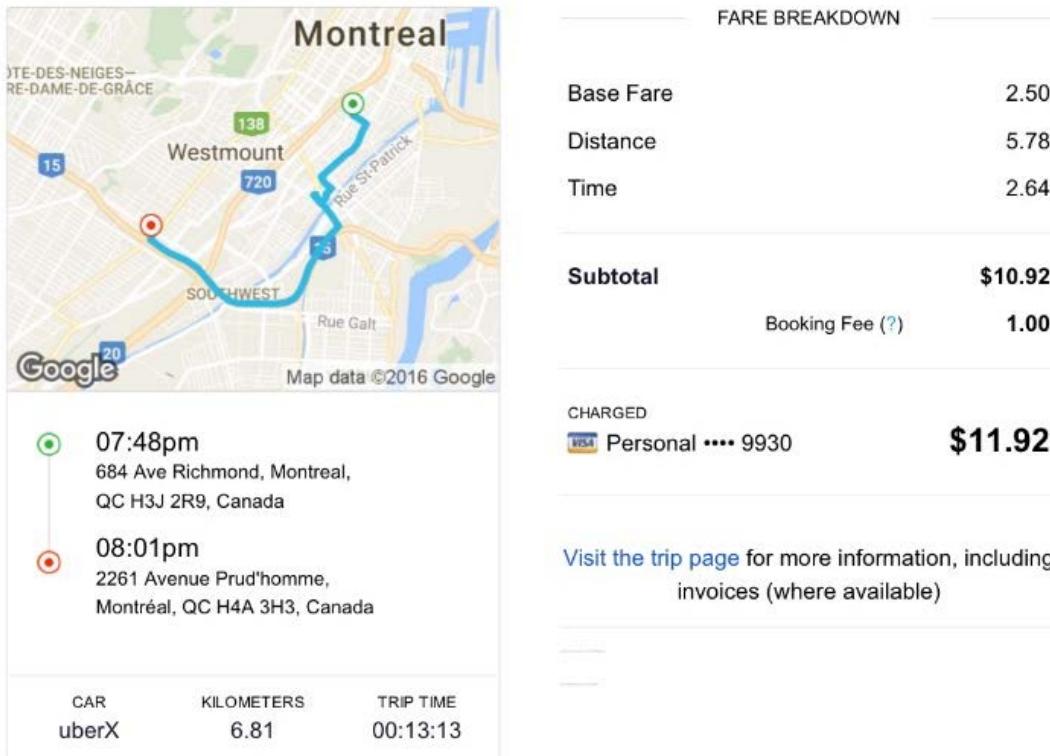
85. Even if one was to consider the Defendants' insurance expenditures, which includes liability coverage during a trip, it cannot be said to attribute any valuable safety features to Class Members because: (a) it is a garden variety liability insurance of the kind

carried by many firms and is considered an ordinary cost of doing business, (b) the primary purpose of the Defendants' insurance policies is the protection of Uber, not its customers, and (c) to the extent that it does benefit Uber passengers, it merely compensates for harm suffered rather than preventing the occurrence of harm.

86. To see the bigger picture, as Uber has collected \$44,859,801.80 in Safe Rides Fees from Class Members and that it is spending less than \$550,000 (1.2 percent), the vast majority of \$44,309,801.80 (98.8 percent) is wholly unaccounted for and more comparable to "unearned" revenue.

#### **G. The Defendants Have Renamed the Safe Rides Fee as the "Booking Fee"**

87. Pursuant to the United States settlement agreement dated February 11, 2016, the Defendants have agreed to rename the Safe Rides Fee as the "Booking Fee" as can be seen from the image below:



88. If a consumer clicks on the hyperlink next to the Booking Fee, they are directed to a page on the Defendants' website on which the following description of the Safe Rides Fee is present.

## I was charged a booking fee

The booking fee is a separate flat fee added to every trip that helps support safety initiatives for riders and drivers as well as other operational costs. Previously known as the safe rides fee, your booking fee will appear in your trip receipt.

89. This renaming of the so-called Safe Rides Fee as a "Booking Fee" changes nothing with respect to the fact that the charge is still improperly disclosed prior to a customer's ride (and very poorly disclosed even thereafter); however, it could certainly be viewed as an admission that the terminology of "Safe Rides Fee" was materially misleading.

## H. Summative Remarks

90. The Plaintiff and the Class Members that he seeks to represent suffered economic damages by paying for the Safe Rides Fee. They did not, and could not, have agreed to the inclusion of this additional term into their Rideshare Services Agreement and, even if it had been adequately disclosed (which it was not), its purpose was misleading in that (a) for the period of April to October 2014, Uber's Safety Measures were not "industry-leading" and (b) during the entire period that the Safe Rides Fee was charged (until the change of terminology to a "Booking Fee"), very little, if any, of the revenue generated by Uber was applied towards any purported Safety Measures. In short, the Safe Rides Fee was an after-the-fact charge that was never agreed to by customers in advance of their agreement to use the Rideshare Services and, even if it had been noticed, the term itself is misleading as it was not being collected and used for the represented purpose.

91. The Plaintiff and Class Members suffered out-of-pocket loss in terms of the cost of the mandatory Safe Rides Fee and are therefore entitled to claim full reimbursement of the payment of said Safe Rides Fee.

92. The Plaintiff, on behalf of the Class Members, seeks an award of damages against the Defendants for their intentional and willful failure to disclose and/or active concealment of the Safe Rides Fee for which the stated purpose is inherently false.

93. The Defendants have made false and misleading statements to consumers. The Representation was false and misleading, namely as to the purpose of the Safe Rides Fee, including the nature and character of the background checks and purported Safety Measures. The Representation was and is made for the purpose of promoting directly or

indirectly, the purchase of Uber's Rideshare Services and/or for the purpose of promoting, directly or indirectly, the business interests of the Defendants.

94. The Representation was made knowingly and recklessly. The Defendants placed their Rideshare Services in the Canadian market with the intention and expectation that consumers, such as the Plaintiff and the Class Members, would pay for Uber Transportation Services based on their Representation.

95. Based on the Defendants' misleading and deceptive marketing scheme and their use of exaggeration, innuendo and ambiguity in failing to disclose the Safe Rides Fee and/or the falseness of its purpose, the Defendants were able to charge the additional Safe Rides Fee for which they did not use for its stated purpose; i.e. to fund "driver safety education", "regular motor vehicle checks", "safety features in the App" or to conduct "industry-leading background checks".

96. The Defendants' practice of charging a Safe Rides Fee that was not clearly or conspicuously disclosed, if at all, to consumers (whether on the Uber App, Uber's website and/or other promotional outlets), and that the details of which are only available through a facultative clickable hyperlink available only after-the-fact, caused its mere inclusion to be an additional term to the contract which was never agreed-upon, therefore entitling the Plaintiff and Class Members to claim a refund of the Safe Rides Fee.

97. In addition, Class Members paid for Rideshare Services that were of a substantially lesser standard than represented. Therefore, all consumers who paid for Uber Transportation Services overpaid, through the addition of the Safe Rides Fee, than they would have had the Defendants disclosed the truth of the situation.

98. In other words, the Plaintiff and the Class Members would not have paid for Uber Transportation Services or would have paid less had they known that said services did not meet the minimum safety standards of industry-leading commercial transportation service providers and that the revenue generated from the Safe Rides Fee is not used for its stated goals, had the existence of the Safe Rides Fee even been disclosed to them.

99. The Defendants know or understand that the promotion and advertising of their Rideshare Services in part targets consumers and customers in Canada.

100. The Plaintiff and the Class Members have suffered and will continue to suffer injuries, losses or damages as a result of the Defendants' conduct.

### **THE REPRESENTATIVE PLAINTIFF**

101. On May 27, 2014, Mr. Ben-Dor followed the registration process for creating an Uber account, in Toronto, Ontario using the App itself on the screen of his smartphone (an iPhone 5s).

102. At no time during the registration process were the "Terms and Conditions" or "Privacy Policy" displayed to the Plaintiff.

103. The Plaintiff subsequently received an email from Uber with the subject line "Welcome to Uber!" (the "Welcome Email"), which included several representations, including the following:

- Just request a pickup, and in minutes a car will be curbside and ready to take you wherever you need to go;

- Order a Car: Use the iPhone or Android app, or visit m.uber.com to request a ride;
- Your Driver Comes to You: Sit back and relax. We'll text you when your Uber arrives;
- Hop in & Hop out: After arriving at your destination, we'll charge your credit card on file and email you a receipt.

104. The Welcome Email also represented that the Plaintiff could obtain a "fare estimate" as follows: "You can get a fare estimate for your trip right in the app by following the instructions at t.uber.com/fareestimate."

105. On December 27, 2014, the Plaintiff used the Uber App to obtain UberX Transportation Services (he had previously used it for other services that had not charged a Safe Rides Fee). The Safe Rides Fee was not disclosed to him before he paid for the UberX Transportation Service and the Plaintiff was not aware of the fee. He was charged and he paid \$10.21 for the Rideshare Services, including a Safe Rides Fee to which he was wholly unaware.

106. He subsequently used Uber's Rideshare Services on many occasions over the years, including but not limited to:

- a) December 28, 2014 for \$17.38;
- b) December 31, 2014 for \$36.94;

- c) November 9, 2015 for \$12.99;
- d) November 12, 2015 for \$11.31;
- e) November 22, 2015 for \$7.83;
- f) November 29, 2015 for \$8.73;
- g) December 1, 2015 for \$9.23 and then again for \$7.69;
- h) December 10, 2015 for \$8.59 and then again for \$6.78; and
- i) December 22, 2015 for \$12.13.

107. The Safe Rides Fee was never disclosed to the Plaintiff and he never (until recently) noticed the Safe Rides Fee that was being added to his purchases after-the-fact, sometimes amounting to a \$1.00 additional fee and at others amounting to as much as a \$2.50 additional fee.

108. The Plaintiff discovered, while researching online, that several class actions were instituted in the United States due to this issue. The U.S. class actions subsequently settled out-of-court.

109. In consequence, the Plaintiff now realizes that he has been unlawfully overcharged by the Defendants.

110. The Plaintiff has suffered damages as a result of purchasing the Rideshare Services, including the costs of the Safe Rides Fee(s).

## **CAUSES OF ACTION**

### **A. Tort of Civil Fraud/ Deceit**

#### **(i) As to the Existence of the Safe Rides Fee**

111. The Defendants falsely represented the terms of the Rideshare Services Agreement to Class Members when they failed to disclose the existence of the mandatory Safe Rides Fee.

112. This false representation was made knowingly and/or recklessly in that the Defendants knew that Class Members were unaware of the existence of the Safe Rides Fee and this lack of knowledge was intentional and calculated.

113. This false representation induced the Plaintiff and Class Members to utilize the Defendants' Rideshare Services in reliance upon the Defendants' representation and to unknowingly pay the Safe Rides Fee.

114. The Plaintiff and Class Members suffered a loss in having been forced to pay the Safe Rides Fee without their knowledge or consent.

#### **(ii) As to the Purpose of the Safe Rides Fee**

115. In the alternative to not having represented anything at all (which the Plaintiff alleges in this Statement of Claim), the Defendants falsely represented the purpose of the

Safe Rides Fee. As alleged herein, the Defendants represented that the Safe Rides Fee was used to support Safety Measures, “industry-leading” standards (between April 1, 2014 and October 2014), and/or a “Federal, state, and local background check process” (between October 2014 and approximately February 11, 2016).

116. The Defendants knew that the Representation was false at the time that they made it and/or were reckless as to its truth. Specifically, Uber knew that the Safe Rides Fee was not being used, at least to the extent that they claimed it would be, to fund the development of Safety Measures and to provide the safety benefits to Class Members.

117. The Defendants made the Representation herein alleged with the intention of inducing the Plaintiff and the Class Members to purchase their Rideshare Services and to pay the mandatory Safe Rides Fee. Uber made these misrepresentations with the intention of depriving the Plaintiff and the Class Members of property or otherwise causing injury.

118. The Plaintiff and the Class Members relied upon Uber’s Representation and, in reliance thereupon, purchased Rideshare Services. Said reliance was reasonable. The Plaintiff and the Class Members were without the ability to determine the truth of the Defendants’ statements and representations on their own and could only rely on the Defendants.

119. The Plaintiff and Class Members suffered damages as a result of paying the Safe Rides Fee.

#### **B. Tort of Negligent Misrepresentation**

120. The Defendants committed negligent pre-contractual misrepresentation when they failed to disclose the existence of the Safe Rides Fee to Class Members; inducing them to enter into a contract to which they were wholly unaware of this essential element.

121. Alternatively, the Defendants committed negligent misrepresentation when they misrepresented the purpose of the Safe Rides Fee to Class Members; inducing them to enter into a contract to which they were wholly unaware of the purpose of this fee.

122. The tort of negligent misrepresentation can be made out as:

- (a) There was a relationship of proximity in which failure to take reasonable care would foreseeably cause loss or harm to the Class;
- (b) The Defendants made a Representation that was untrue, inaccurate and/or misleading;
- (c) The Defendants acted negligently in making the Representation;
- (d) The Representation was relied upon by the Class reasonably; and
- (e) The Class has sustained damages as a result of their reliance.

123. The Defendants represented to the Class Members that the Rideshare Services costed a certain amount and was based on certain elements when a material element of the cost was not disclosed. Alternatively, even if the Safe Rides Fee was disclosed, its purpose was misrepresented.

124. These material misrepresentations made by the Defendants are false.
125. At the time that the Defendants made the misrepresentations herein alleged, they knew that they were false, they had no reasonable grounds to believe that they were true as there was ample evidence to the contrary set forth in detail above, and the Defendants made the material representations recklessly.
126. The Defendants knew or were reckless in not knowing that their representations were untrue. The Defendants either had actual knowledge of the fact that their Rideshare Services costed more than disclosed and/or that the Safe Rides Fee was not being used for the purposes for which it was allegedly in place, or they were reckless or negligent in not knowing.
127. The Defendants made the Representation herein alleged with the intention of inducing the Class Members to act by purchasing their Rideshare Services in reliance thereupon.
128. The Class Members acted in justifiable and reasonable reliance on these material misrepresentations and, in reliance thereupon, purchased the Rideshare Services specifically under the belief that they would cost a certain amount and/or would provide the claimed Safety Measures.
129. The Class Members were unaware of the fact that the Rideshare Services comprised the Safe Rides Fee and/or were unaware that the Safe Rides Fee was not being utilized for the purposes for which it was being represented to be used for.

130. The Class Members were without the ability to determine the truth of these statements on their own and could only rely on the Defendants.

131. Safety of the Rideshare Services is a primary selling point to the Plaintiff and the Class Members. Had the Class Members known the true facts, they would not have purchased the Rideshare Services and/or would not have paid such a high price therefor.

132. By reason of the foregoing, the Class Members are entitled to recover damages and other relief from Defendants.

### **C. Tort of Fraudulent Concealment**

133. The Defendants concealed, omitted and/or suppressed material facts as well as made affirmative misrepresentations regarding Uber's Rideshare Services and the coinciding Safe Rides Fee.

134. The Defendants knew that the Representation was false at the time that it was made.

135. The Defendants fraudulently concealed and/or intentionally failed to disclose the existence and/or the true nature of the Safe Rides Fee and the availability of the Safety Measures to the Plaintiff and the Class Members.

136. The Defendants had a duty to disclose material facts regarding the existence and true nature of the use of the Safe Rides Fee because it was known and/or accessible only to the Defendants, at the time of the entering into the contract. Neither the Plaintiff, nor the Class Members could, in the exercise of reasonable diligence, have independently

discovered that the Rideshare Services and/or Safe Rides Fee did not conform to the statements and representations prior to entering into contract with the Defendants.

137. The facts concealed and/or not disclosed by the Defendants to the Plaintiff and Class Members are material facts in that a reasonable person would have considered important in deciding whether to pay for Uber's Rideshare Services.

138. The Defendants actively concealed and/or suppressed these material facts, in whole or in part, to protect their profits and they did so at the expense of the Plaintiff and the Class Members.

139. The Defendants have still not made full and adequate disclosure and continue to defraud the Plaintiff and the Class Members and conceal material information regarding the Safe Rides Fee by simply changing the name of this undisclosed additional charge to a "Booking Fee".

140. The Plaintiff and Class Members relied on the Defendants' Representations and acted in reliance thereupon. The Class Members' actions were reasonable and justified. The Defendants were in exclusive control of the material facts concerning the Safe Rides Fee and such facts were not known to the public or to the Class Members.

141. As a result of the concealment and/or suppression of facts, the Plaintiff and Class Members have sustained and will continue to sustain damages arising from the difference between the price that they have paid and the actual value of the service that they received.

142. As a result of their reliance, the Plaintiff and Class Members have been injured in an amount to be proven at trial.

## **D. Breach of Contract**

### **(i) The Terms of the Rideshare Services Agreement**

143. At all relevant times, the Rideshare Services available when Class Members requested Uber Transportation Services consisted of an invitation to treat. When Class Members then requested Rideshare Services, this consisted of an offer, on the terms of the invitation to treat (including the fare estimate), which was accepted by the Defendants' conduct in dispatching an Uber driver. It is then that there is consensus *ad idem* between the parties and the contract is validly formed.

144. This contract included a provision for payment for the Rideshare Services, one which could not and did not include the charging of the Safe Rides Fee as it had not been disclosed to Class Members who were wholly unaware of it and who could not and did not agree to it as part of the terms of this contract.

145. The fact of the Defendants including the Safe Rides Fee after-the-fact and without disclosing it prior to the meeting of the minds (pre-contractual negligent misrepresentation), consisted of a unilateral addition to the terms which was never agreed-upon by Class Members and which therefore cannot be considered as having formed part of the contract.

146. As the Safe Rides Fee was not a part of the contract, its inclusion therein by the Defendants is void and Class Members are entitled to a refund of the monies that they spent thereon.

147. Even had Defendants properly disclosed the Safe Rides Fee prior to the formation of the contract and had they secured Class Members' consent thereto (thereby legally including it as part of the terms), this consent would have been misinformed as the Defendants' representations were that this money would be utilized to develop Safety Measures (as described herein, this money was not used for this purpose). Therefore, had Class Members consented to the Safe Rides Fee, this consent would have been fraudulently obtained, thereby voiding its inclusion in any case.

**(ii) Safety Representations**

148. Alternatively, the Defendants represented that their Safety Measures and background checks were top of the line.

149. Uber breached its contract with Class Members in at least the following respects:

- (a) Uber did not use the Safe Rides Fee to provide an "industry-leading" background check process;
- (b) Uber did not use enough of the Safe Rides Fee to sustain "regular motor vehicle checks";
- (c) Uber did not use enough of the Safe Rides Fee to provide "driver safety education";
- (d) Uber has not used enough of the Safe Rides Fee to develop safety features on the Uber App for the vast majority of consumers; and

(e) Uber has retained considerable portions of the revenue generated from the Safe Rides Fee for purposes wholly unrelated to the provision of safe rides for consumers.

150. Even had the Defendants disclosed the existence of the Safe Rides Fee, they failed to perform their end of the bargain in accordance with said contractual terms, amounting to a breach of contract. Class Members paid the Safe Rides Fee, thereby performing their end of the bargain, and in exchange for that consideration, Defendants did not live up to their end of the bargain. The Plaintiff and Class Members were thus unable to receive a considerable benefit from the payment of the Safe Rides Fee, to their detriment.

151. The Defendants' breach of contract has resulted in injury, economic losses and damages to the Plaintiff and Class Members.

152. The aforementioned loss suffered by the Plaintiff and the Class Members was caused by this contractual breach, particulars of which include, but are not limited to the fact that the Class Members paid money for a service that they neither agreed to nor received.

153. The Defendants' breaches were willful and not the result of mistake or inadvertence.

154. By virtue of the acts and omissions described above, the Plaintiff and Class Members are entitled to recover damages from the Defendants.

155. The loss, damage and injuries were foreseeable.

## E. Breach of Implied Contract

156. In the alternative, an implied-in-fact collateral contract was formed between Class Members on the one hand and the Defendants on the other with respect to the Safe Rides Fee (the “Safe Rides Fee Agreement”).

157. Between April 1, 2014 and October 2014, the Defendants offered to enter into the Safe Rides Fee Agreement when it demanded payment of the Safe Rides Fee from the Plaintiff and other Class Members to “support continued efforts to ensure the safest possible platform for Uber riders and drivers, including an *industry-leading background check process*, regular motor vehicle checks, driver safety education [and] development of safety features in the app...”

158. Between October 2014 until approximately February 11, 2016<sup>9</sup>, the Defendants offered to enter into the Safe Rides Fee Agreement when it demanded payment of the Safe Rides Fee from the Plaintiff and other Class Members to “support continued efforts to ensure the safest possible platform for Uber riders and drivers, including a *Federal, state, and local background check process*, regular motor vehicle checks, driver safety education [and] development of safety features in the app...”

159. The Plaintiff and other Class Members accepted the Defendants’ offer by paying the Safe Rides Fee. Through their payment of the Safe Rides Fee, the Plaintiff and other Class Members performed all conditions, covenants and promises required of them in accordance with the Safe Rides Fee Agreement.

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<sup>9</sup> Pursuant to the United States settlement agreement dated February 11, 2016, the Safe Rides Fee was renamed as the “Booking Fee”.

160. The Defendants breached the Safe Rides Fee Agreement in at least the following respects:

- (a) Uber did not use the Safe Rides Fee to provide an “industry-leading” background check process;
- (b) Uber did not use enough of the Safe Rides Fee to sustain “regular motor vehicle checks”;
- (c) Uber did not use enough of the Safe Rides Fee to provide “driver safety education”;
- (d) Uber has not used enough of the Safe Rides Fee to develop safety features on the Uber App for the vast majority of consumers; and
- (e) Uber has retained considerable portions of the revenue generated from the Safe Rides Fee for purposes wholly unrelated to the provision of safe rides for consumers.

161. No express contract exists between the Plaintiff and Class Members on the one hand and the Defendants on the other with respect to the imposition and collection of the Safe Rides Fee due to its non-inclusion in the terms of the contract that was mutually-agreed upon (as discussed above).

162. The Defendants’ breaches were willful and not the result of mistake or inadvertence.

163. As a result of Defendants' breach of the Safe Rides Fee Agreement, the Plaintiff and other Class Members have been damaged in an amount to be determined at trial.

**F. Breach of Implied Covenant of Good Faith and Fair Dealing**

164. It is a well-established tenet of contract law that there is an implied covenant of good faith and fair dealing in every contract.

165. As alleged herein, the Defendants failed to disclose the existence of the Safe Rides Fee to consumers prior to entering into the contract. This runs contrary to the concepts of good faith and fair dealing in that the Defendants were acting with dishonesty in failing to make Class Members aware of the additional charge of the Safe Rides Fee.

166. Regardless of Class Members' knowledge of the Safe Rides Fee or the lack thereof, the Plaintiff and Class Members were charged for and paid for supposed Safety Measures which were not provided.

167. The Defendants had a duty to take reasonable efforts to inform Class Members of the existence of the Safe Rides Fee and to thereafter, inform them if the Safety Measures were not put into place.

168. The Defendants, who failed to perform their legal obligations and then benefitted from illegally retaining property, cannot be said to be in good faith or dealing fairly with Class Members.

169. As a result of the Defendants' conduct, the Plaintiff and Class Members have suffered injury, been damaged and lost money.

#### **G. Breach of Fiduciary Duty**

170. The Defendants and the Plaintiff and Class Members entered into an arrangement whereby for a fee, the Defendants obligated themselves to provide Rideshare Services. By and through the operation of this relationship, Uber was acting as a fiduciary to the Plaintiff and to the Class.

171. The Defendants charged an undisclosed Safe Rides Fee to Class Members and further, did not use the Safe Rides Fee for the professed purposes, which fact they also did not disclose.

172. As a proximate result of the Defendants' actions, the Plaintiff and Class Members have suffered damages in the form of the amount of the Safe Rides Fee.

173. The Defendants' breach of fiduciary duty was a direct cause of the Plaintiff's and the Class Member's damages. The Defendants had a duty to make reasonable and timely efforts to provide notice of the Safe Rides Fee to the Plaintiff and the Class Members and of the fact that the Safety Measures were not being provided.

#### **STATUTORY REMEDIES**

174. The Defendants' development, representation, marketing, advertising, promoting, operating, and/or selling practices constitute breaches of the *Consumer Protection Act*, the *Competition Act* and/or other similar/equivalent legislation.

175. The Plaintiff pleads and relies upon competition, consumer protection and trade legislation and common law, as it exists in this jurisdiction, and the equivalent/similar legislation and common law in other Canadian provinces and territories. The Class Members have suffered injury, economic loss and damages caused by or materially-contributed to by the Defendants' inappropriate and unfair business practices.

#### **A. Breach of the *Consumer Protection Act***

176. The Defendants are residents in Ontario for the purpose of s. 2 of the *Consumer Protection Act*.

177. At all times relevant to this action, the Plaintiff and Class Members were “consumer[s]” within the meaning of that term as defined in s.1 of the *Consumer Protection Act*.

178. At all times relevant to this action, the Defendants were “supplier[s]” within the meaning of that term as defined in s.1 of the *Consumer Protection Act*.

179. The service agreement entered into between the Plaintiff and Class Members and the Defendants is a “consumer agreement” within the meaning of that term as defined in s.1 of the *Consumer Protection Act*.

180. The transactions by which the Plaintiff and Class Members entered into the service agreement to pay for the Defendants' Rideshare Services were "consumer transaction[s]" within the meaning of that term as defined in s.1 of the *Consumer Protection Act*.

**(i) Unfair Practice – ss. 14, 15, & 17**

181. The Defendants have engaged in an unfair practice by making a Representation to Class Members which was and is "false, misleading or deceptive" and/or "unconscionable" in "using exaggeration, innuendo or ambiguity as to a material fact or failing to state a material fact if such use or failure deceives or tends to deceive" within the meaning of ss. 14, 15 and 17 of the *Consumer Protection Act* as follows:

- (a) By failing to disclose the existence of the Safe Rides Fee prior to entering into the Rideshare Services Agreements with Class Members;
- (b) By representing, albeit inadequately, that the Safe Rides Fee was used to support and fund its "industry-leading" background check process and other alleged Safety Measures which, it is not;
- (c) By failing to disclose that the vast majority of the revenue generated by the Safe Rides Fee would be kept as revenue for themselves; and
- (d) By using exaggeration, innuendo and ambiguity as to a material fact or failing to state a material fact regarding the true nature of the Safe Rides Fee and the degree of safety afforded to riders.

182. Further, the Defendants' conduct alleged herein is unfair insofar as it offends public policy, is oppressive and causes consumers substantial injury.

183. The Representation was and is unconscionable because *inter alia* the Defendants know or ought to know that consumers are unable to receive a substantial benefit from the subject-matter of the misrepresentations.

184. The Representation was and is false, misleading, deceptive and/or unconscionable such that it constituted an unfair practice, which induced the Plaintiff and the Class Members to pay for Uber Transportation Services and the coinciding undisclosed and mandatory Safe Rides Fee as a result of which they are entitled to damages pursuant to the *Consumer Protection Act*.

185. The Plaintiff and the Class Members relied on the Representations made by the Defendants.

186. The reliance upon the Representations by the Plaintiff and Class Members is established by his or her purchase of Uber Transportation Services.

## **(ii) Quality of Service**

187. In addition, pursuant to section 9 (1) of the *Consumer Protection Act*, by virtue of entering into the Rideshare Services Agreements with consumers, the Defendants have impliedly warranted that the Rideshare Services supplied be of a "reasonably acceptable quality" in terms of safety. The Defendants breached the consumer agreement when they failed to discharge their contractual obligation of performance, failing which Defendants should have informed Class Members rather than leave them completely in the dark. The

quality of services provided by Defendants was and is therefore deficient in that it is unacceptable to not disclose failed performance and to retain Class Members' monies for a Safe Rides Fee, thereby being in breach of contract.

188. Class Members held up their end of the bargain through payment of a sum of money and the Defendants are delinquent and in default.

189. The Plaintiff states that the breach of contract and the refusal to compensate Class Members constitutes an unfair practice as a result of which they are entitled to damages pursuant to the *Consumer Protection Act*.

190. Pursuant to section 8 (1) of the *Consumer Protection Act*, the Plaintiff is entitled to commence a proceeding on behalf of the Class Members under the *Class Proceedings Act* and the members of the Class are entitled to become a member of the Class with regards to the breach of the consumer agreement despite any clause to the contrary purporting to waive these rights.

191. The Plaintiff and Class Members are entitled to recover damages and costs of administering the plan to distribute the recovery of the action in accordance with the *Consumer Protection Act*.

#### **B. Breach of the *Competition Act***

192. At all times relevant to this action, the Defendants' Rideshare Services was a "business", a "product" and a "service" within the meaning of these terms as defined in s. 2 of the *Competition Act*.

193. The Defendants' acts are in breach of s. 52 of Part VI of the *Competition Act*, were and are unlawful and render the Defendants jointly and severally liable to pay damages and costs of investigation pursuant to s. 36 of the *Competition Act*.

194. The Defendants knowingly or recklessly made the Representation to the public and in so doing breached s.52 of the *Competition Act* because the Representation:

- (a) Was made for the purpose of promoting, directly or indirectly, the business interests of the Defendants;
- (b) Was made to the public;
- (c) Was false and misleading in a material respect;
- (d) Failed to state material facts; and
- (e) Stated benefits and qualities of the Rideshare Services that were false and represented that the Safe Rides Fee was used for a purpose that does not exist, i.e. to the Safety Measures.

195. Due to the Defendants' Representations, the Plaintiff and Class Members were induced into purchasing Uber Transportation Services, therefore paying the additional undisclosed and mandatory Safe Rides Fee, and consequently suffering damages and loss.

196. Pursuant to s. 36 of the *Competition Act*, the Defendants are liable to pay the damages that resulted from the breach of s. 52.

197. Pursuant to s. 36 of the *Competition Act*, the Plaintiff and Class Members are entitled to recover their full costs of investigation and substantial indemnity costs paid in accordance with the *Competition Act*.

198. The Plaintiff and Class Members are also entitled to recover as damages or costs, in accordance with the *Competition Act*, the costs of administering the plan to distribute the recovery in this action and the costs to determine the damages of each Class Member.

## **CAUSATION**

199. The acts, omissions, wrongdoings, and breaches of legal duties and obligations on the part of the Defendants are the direct and proximate cause of the Plaintiff's and Class Members' injuries.

200. The Plaintiff pleads that by virtue of the acts, omissions and breaches of legal obligations as described above, they are entitled to legal and/or equitable relief against the Defendants, including damages, consequential damages, specific performance, rescission, attorneys' fees, costs of suit and other relief as appropriate in the circumstances.

## **DAMAGES**

### **Compensatory Damages (Pecuniary Losses)**

201. By reason of the acts, omissions and breaches of legal obligations of the Defendants, the Plaintiff and Class Members have suffered injury, economic loss and damages, the particulars of which include, but are not limited to the additional charge of the Safe Rides Fee and other damages as described herein.

### **Punitive (Exemplary) and Aggravated Damages**

202. The Defendants have taken a cavalier and arbitrary attitude to their legal and moral duties to the Class Members.

203. At all material times, the conduct of the Defendants as set forth was malicious, deliberate and oppressive towards their customers and the Defendants conducted themselves in a willful, wanton and reckless manner.

204. In addition, it should be noted since the Defendants are parts of a highly-revered, multi-billion-dollar corporation, it is imperative to avoid any perception of evading the law without impunity. Should the Defendants only be required to disgorge monies, which should not have been retained and/or withheld, such a finding would be tantamount to an encouragement to other businesses to deceive their customers as well. Punitive and aggravated damages are necessary in the case at hand to be material in order to have a deterrent effect on other corporations.

### **WAIVER OF TORT, UNJUST ENRICHMENT AND CONSTRUCTIVE TRUST**

205. The Plaintiff pleads and relies on the doctrine of waiver of tort and states that the Defendants' conduct, including the alleged breaches of any of the *Consumer Protection Act*, and/or the *Competition Act* constitutes wrongful conduct which can be waived in favour of an election to receive restitutionary or other equitable remedies.

206. The Plaintiff reserves the right to elect at the Trial of the Common Issues to waive the legal wrong and to have damages assessed in an amount equal to the gross revenues

earned by the Defendants or the net income received by the Defendants from the Safe Rides Fee.

207. Further, the Defendants have been unjustly enriched as a result of the revenues generated by the Safe Rides Fee and as such, *inter alia*, that:

- (a) The Defendants have obtained enrichment through the retention of revenues and profits from the additional Safe Rides Fee, the saving of costs of reimbursing the Safe Rides Fee, and the saving of costs of using the revenue generated by the Safe Rides Fee to fund and implement proper Safety Measures;
- (b) The Plaintiff and other Class Members have suffered a corresponding deprivation, including the additional charge of the undisclosed and mandatory Safe Rides Fee; and
- (c) The benefit obtained by the Defendants and the corresponding detriment experienced by the Plaintiff and Class Members have occurred without juristic reason. There is and can be no juridical reason justifying the Defendants retaining any portion of the Safe Rides Fee paid by the Class since the monies that were received by the Defendants resulted from the Defendants' wrongful acts,

208. Further, or in the alternative, the Defendants are constituted as constructive trustees in favour of the Plaintiff and Class Members for all of the monies received from the imposition of the Safe Rides Fee because, among other reasons:

- (a) The Defendants were unjustly enriched by their receipt of the Safe Rides Fee, which was never used to fund the development of Safety Measures;

- (b) The Plaintiff and Class Members suffered a corresponding deprivation by paying for the Safe Rides Fee;
- (c) The monies were acquired in such circumstances that the Defendants may not in good conscience retain them;
- (d) Equity, justice and good conscience require the imposition of a constructive trust;
- (e) The integrity of the market would be undermined if the Court did not impose a constructive trust; and
- (f) There are no factors that would render the imposition of a constructive trust unjust.

209. Further, or in the alternative, the Plaintiff claims an accounting and disgorgement of the benefits that accrued to the Defendants.

### **COMMON ISSUES**

210. Common issues exist and their resolution would serve to significantly advance the litigation with respect to all Class Members. The common questions of fact and law include:

- (a) Did the Defendants fail to disclose the existence of and/or the true nature and purpose of the Safe Rides Fee?

- (b) Were the Defendants' statements, omissions, and Representation regarding the Safe Rides Fee and their Safety Measures false or misleading?
- (c) Did the Defendants conduct "industry-leading" background checks on its drivers?
- (d) Did the Defendants, or to what extent did the Defendants, use revenue generated by the Safe Rides Fee to fund Safety Measures?
- (e) Did the Defendants knowingly and negligently misrepresent the nature of their background check process, safety efforts and Safe Rides Fee?
- (f) Did the Defendants engage in unfair, misleading, and/or deceptive acts or practices in failing to clearly and conspicuously disclose:
  - (i) The existence of the Safe Rides Fee? and/or
  - (ii) That they would use the Safe Rides Fee to generate profits that they would keep for themselves?
- (g) Did the Defendants commit the tort of civil fraud and/or deceit when they represented that the revenue generated form the Safe Rides Fee is used to fund "industry-leading" background checks and the development of other safety measures??
- (h) Did the Defendants commit a fraudulent and/or negligent misrepresentation?

- (i) Did the Defendants act negligently in failing to use reasonable care to either perform its legal obligations or to inform Class Members of the true nature and purpose of the Safe Rides Fee?
- (j) Did the Defendants' negligence proximately cause loss or injury and damages?
- (k) Are the Defendants in breach of contract?
- (l) Did the Defendants' Representation create implied contracts with Class Members and were such implied contracts breached?
- (m) Are the Defendants in breach of the implied covenant of good faith and fair dealing?
- (n) Do the Defendants owe the Class Members a duty to use reasonable care?
- (o) Did the Defendants breach their fiduciary duty to Class Members?
- (p) Did the Defendants' acts or practices breach the *Consumer Protection Act*, the *Competition Act* or other similar/equivalent legislation?
- (q) Have the Class Members been damaged by the Defendants' conduct, and, if so, what is the proper measure of such damages?
- (r) Are the Defendants liable to the Class Members for reimbursement of the amount of the Safe Rides Fee as a result of the misconduct and unfair business practices?
- (s) Were the Defendants unjustly enriched?

- (t) Should an injunctive remedy be ordered to prohibit the Defendants from continuing to perpetrate the unfair, civilly fraudulent, misleading, and/or deceptive conduct?
- (u) Are the Defendants responsible to pay compensatory and/or punitive damages to Class Members and in what amount?

### **EFFICACY OF CLASS PROCEEDINGS**

211. In the United States, it was estimated that there were 24,812,917 class members – given that the population of Canada is approximately 10 percent of that of the United States, if one imports the corresponding assumption to determine the size of the present Class, there are approximately 2,481,292 Class Members. While the Plaintiff may not know exactly how many Class Members there are in Canada, the exact size of the Class and the identity of each Class Member can be readily ascertained from the Defendants' records. Because of this, joinder into one action is impractical and unmanageable. Conversely, continuing with the Class Members' claim by way of a class proceeding is both practical and manageable.

212. Given the costs and risks inherent in an action before the courts and the relatively small sums involved for each Class Member, people will hesitate to institute an individual action against the Defendants. Even if the Class Members themselves could afford such individual litigation, the court system could not as it would be overloaded. Further, individual litigation of the factual and legal issues raised by the conduct of the Defendants would increase delay and expense to all parties and to the court system.

213. Also, a multitude of actions instituted in different jurisdictions, both territorial (different provinces) and judicial districts (same province), risks having contradictory and inconsistent judgments on questions of fact and law that are similar or related to all members of the Class.

214. In these circumstances, a class action is the only appropriate procedure for all of the members of the Class to effectively pursue their respective rights and have access to justice.

215. The Plaintiff has the capacity and interest to fairly and fully protect and represent the interests of the proposed Class and has given the mandate to his counsel to obtain all relevant information with respect to the present action and intends to keep informed of all developments. In addition, class counsel is qualified to prosecute complex class actions.

## **LEGISLATION**

216. The Plaintiff pleads and relies on the *Class Proceedings Act*, the *Courts of Justice Act*, the *Consumer Protection Act*, the *Competition Act*, and other Consumer Protection Legislation.

## **JURISDICTION AND FORUM**

### **Real and Substantial Connection with Ontario**

217. There is a real and substantial connection between the subject matter of this action and the province of Ontario because:

- (a) Defendant Uber Canada Inc. has its head office in Ontario;

- (b) The Defendants engage in business with residents of Ontario;
- (c) The Defendants derive substantial revenue from carrying on business in Ontario;  
and
- (d) The damages of Class Members were sustained in Ontario.

218. The Plaintiff proposes that this action be tried in the City of Ottawa, in the Province of Ontario as a proceeding under the *Class Proceedings Act*.

#### **THE DEFENDANTS' JOINT AND SEVERAL LIABILITY**

219. The Plaintiff pleads that by virtue of the acts and omissions described above, the Defendants are liable in damages to himself and to the Class Members and that each Defendant is responsible for the acts and omissions of the other Defendants for the following reasons:

- (a) Each was the agent of the other;
- (b) Each company's business was operated so that it was inextricably interwoven with the business of the other as set out above;
- (c) Each company entered into a common advertising and business plan to supervise, control, operate and market, promote, represent and sell Uber Transportation Services;
- (d) Each owed a duty of care to the other and to each Class Member by virtue of the common business plan to supervise, control, operate and market, promote, represent and sell Uber Transportation Services; and

(e) The Defendants intended that their businesses be run as one global business organization.

220. The Plaintiff and the other Class Members are entitled to legal and equitable relief against the Defendants, including damages, consequential damages, attorneys' fees, costs of suit and other relief as appropriate.

221. The Plaintiff and Class Members are entitled to recover damages and costs of administering the plan to distribute the recovery of the action in accordance with the *Consumer Protection Act*.

#### **SERVICE OUTSIDE ONTARIO**

222. The originating process herein may be served outside Ontario, without court order, pursuant to subparagraphs (a), (c), (g), (h) and (p) of Rule 17.02 of *the Rules of Civil Procedure*. Specifically, the originating process herein may be served without court order outside Ontario, in that the claim is:

(a) In respect of personal property situated in Ontario (rule 17.02 (a));

(b) For the interpretation and enforcement of a contract or other instrument in respect of personal property in Ontario (rule 17.02 (c));

(c) In respect of a tort committed in Ontario (rule 17.02 (g));

(d) In respect of damages sustained in Ontario arising from a tort or breach of contract wherever committed (rule 17.02 (h));

- (e) The claim is authorized by statute, the *Competition Act* and the *Consumer Protection Act* (rule 17.02 (n)); and
- (f) Against a person outside Ontario who is necessary and/or proper party to a proceeding properly brought against another person served in Ontario; i.e. Uber Technologies, Inc., and Rasier, LLC (rule 17.02(o)); and
- (g) Against a person carrying on business in Ontario (rule 17.02 (p)).

Date: September 23, 2016

**CONSUMER LAW GROUP  
PROFESSIONAL CORPORATION**  
251 Laurier Ave. West  
Suite 900  
Ottawa, Ontario  
K1P 5J6

Jeff Orenstein  
LSUC# 59631G  
Email: [jorenstein@clg.org](mailto:jorenstein@clg.org)

Andrea Grass  
LSUC# 65051R

Email: [aggrass@clg.org](mailto:aggrass@clg.org)

Tel: (613) 627-4894  
Fax: (613) 627-4893

Lawyers for the Plaintiff

**A. BEN-DOR**  
Plaintiff

Court File No. 16-70038CP  
**UBER CANADA INC. et alii.**  
Defendants

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

**PROCEEDING COMMENCED IN OTTAWA**

Proceeding under the *Class Proceedings Act, 1992*

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**STATEMENT OF CLAIM**

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**CONSUMER LAW GROUP  
PROFESSIONAL CORPORATION**  
251 Laurier Ave. West, Suite 900  
Ottawa, Ontario, K1P 5J6

Jeff Orenstein  
LSUC# 59631G  
jorenstein@clg.org

Andrea Grass  
LSUC# 65051R  
agrass@clg.org

Tel: (613) 627-4894  
Fax: (613) 627-4893

Lawyers for the Plaintiff