

IN THE SUPREME COURT OF THE STATE OF NEVADA

Supreme Court Case No. 82556

Uber Technologies, Inc.; Rasier, LLC;
and Rasier-CA, LLC,
Appellants

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Elizabeth A. Brown
Clerk of Supreme Court

v.

Megan Royz;
and Andrea Eileen Work,
Respondents

Appeal
Eighth Judicial District Court
Case No. A-20-810843-C

**APPELLANTS' APPENDIX
VOLUME 1**

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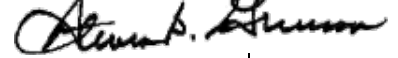
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CASE NO: A-20-810843-C
Department 16

COMP

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IN THE EIGHT JUDICIAL DISTRICT COURT

COUNTY OF CLARK, NEVADA

MEGAN ROYZ, an individual; and ANDREA)
EILEEN WORK, an individual)

Plaintiff,)

v.)

MARK ANTHONY JACOBS, an individual,)
MARCO ANTONIO HEREDIA-ESTRADA,)
an individual, UBER TECHNOLOGIES, INC.,)
a corporation; RAISER, LLC., a corporation,)
RAISER-CA, LLC, an individual; DOES 1)
through 10 and ROE Corporations 1 through)
10, Inclusive,)

Defendants)

CASE NO.:

DEPT. NO.:

PLAINTIFF'S COMPLAINT FOR:

- 1. NEGLIGENCE AGAINST
DEFENDANTS MARCO
ANTONIO HEREDIA-ESTRADA,
UBER, RAISER LLC, RAISER-CA
LLC;**
- 2. NEGLIGENCE AGAINST
DEFENDANTS MARK
ANTHONY JACOBS, UBER,
RAISER LLC, RAISER-CA LLC;
AND**
- 3. NEGLIGENT HIRING,
SUPERVISION AND
RETENTION**

**(Arbitration Exemption Requested
Damages Exceed \$50,000)**

Plaintiffs MEGAN ROYZ and ANDREA EILEEN WORK (collectively referred to as
"PLAINTIFFS"), by and through PLANTIFFS' attorneys, as and for this Complaint against
Defendants, and each of them, alleges:

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GENERAL ALLEGATIONS

1. All allegations of the complaint are based on information and belief and are likely to have evidentiary support after a reasonable opportunity for investigation and discovery.

2. At all times herein mentioned, Plaintiff MEGAN ROYZ is and was a resident of County of Los Angeles, State of California.

3. At all times herein mentioned, Plaintiff ANDREA EILEEN WORK is and was a resident of County of Clark, State of Nevada.

4. At all times mentioned in this Complaint, PLAINTIFFS were the restrained occupant of a vehicle ("Vehicle 1").

5. PLAINTIFFS are informed and believe, and based upon such information and belief alleges that at all times herein mentioned, Defendant MARCO ANTONIO HEREDIA-ESTRADA ("ESTRADA"), was and is a resident of County of Clark, State of Nevada.

6. PLAINTIFFS are informed and believe, and based upon such information and belief alleges that at all times herein mentioned, Defendant MARK ANTHONY JACOBS ("JACOBS"), was and is a resident of County of Clark, State of Nevada.

7. PLAINTIFFS are informed and believe, and based upon such information and belief alleges that at all times mentioned in this Complaint, Defendants ESTRADA, and each of them, were the owners of that certain 2008 Scion XB, NV license plate number 63E328 ("Vehicle 1").

8. PLAINTIFFS are informed and believe, and based upon such information and belief alleges that at all times mentioned in this Complaint, Defendants JACOBS, and each of them, were the owners of that certain 2014 Ford Flex, NV license plate number 444B78 ("Vehicle 2").

9. PLAINTIFFS are informed and believe, and based upon such information and belief allege that at all times herein mentioned, Defendant UBER TECHNOLOGIES, INC. ("UBER") was and is a corporation and/or business entities, form unknown, which run a Transportation Network Company (TNC) known as UBER which provide a number of

1 transportation options and vehicles for users of their service, including a low-cost option called
2 Uber X, through an online-enabled application (hereinafter "APP"). UBER has its principal place
3 of business in and conducts business in San Francisco, California.

4 10. PLAINTIFFS are informed and believe, and based upon such information and
5 belief allege that at all times herein mentioned, Defendant, RAISER LLC is a Delaware Limited
6 Liability Company which is a wholly owned subsidiary of UBER and the parent company of
7 RAISER-CA LLC, a Delaware Limited Liability Company. RAISER LLC & RAISER-CA LLC
8 have their principal place of business in and conducts business in San Francisco, California.

9 11. PLAINTIFFS are informed and believe, and based upon such information and belief allege
10 that at all times mentioned in this Complaint, Defendants UBER, RAISER LLC, RAISER-CA
11 LLC, Does 1-5 and Roe Corporations 1-5, was and is a TNC, licensed by the Nevada Public
12 Utilities Commission.

13 12. PLAINTIFFS are informed and believe, and based upon such information and
14 belief allege that at all times mentioned in this Complaint, Defendants UBER, Does 1-5 and Roe
15 Corporations 1-5, provided prearranged transportation services for compensation using an online-
16 enabled application or platform (such as a smart phone application) to connect drivers using their
17 personal vehicles with passengers.

18 13. UBER and Does 1-10, use RAISER LLC and/or RAISER-CA LLC and/or DOES
19 1 to 10, to operate a TRANSPORTATION NETWORK COMPANY (TNC) known as Uber X, a
20 division of UBER and/or Does 1-10's commercial enterprise.

21 14. PLAINTIFFS are informed and believe, and based upon such information and
22 belief allege that RAISER-CA LLC is the insurance certificate holder for the insurance that UBER
23 is required to carry as a TNC, which it uses for its Uber X operations.

24 15. PLAINTIFFS are informed and believe, and on the based upon such information
25 and belief allege, that there is a unity of interest and operation between UBER, RAISER LLC,
26 RAISER- CA LLC and Does 1-10 such that their separate and independent classification is but a
27 fiction and that each is the alter-ego of the other.

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1 16. Defendants are liable for the acts of each other through principals of respondeat
2 superior, agency, ostensible agency, partnership, alter-ego and other forms of vicarious liability.

3 17. PLAINTIFFS are informed and believe, and based upon such information and
4 belief, allege, that on February 22, 2018, at the time of this collision, Defendants ESTRADA
5 JACOBS, and each of them, were driver/transportation providers who were operating their
6 vehicles utilizing the UBER APP and as such were an agents and/or employees and/or partners of
7 UBER, and/or RAISER LLC and/or RAISER-CA LLC and/or Does 1-10.

8 18. PLAINTIFFS are informed and believe, and based upon such information and
9 belief alleges that at all times mentioned in this Complaint, Defendants JACOBS was employed
10 as an UBER driver, was driving Vehicle 2 while in the course and scope of employment with
11 Defendant UBER and was driving Vehicle 2 with Defendant UBER's knowledge, consent and/or
12 permission.

13 19. PLAINTIFFS are informed and believe, and based upon such information and
14 belief alleges that at all times mentioned in this Complaint, Defendants ESTRADA was employed
15 as an UBER driver, was driving Vehicle 1 while in the course and scope of employment with
16 Defendant UBER and was driving Vehicle 1 with Defendant UBER's knowledge, consent and/or
17 permission.

18 20. PLAINTIFFS are informed and believe, and based on information and belief allege,
19 that at the time of the incident, Defendants ESTRADA, and each of them, had Defendant UBER's
20 Application "On," Driver Mode activated and had accepted Plaintiffs as passengers.

21 21. PLAINTIFFS are informed and believe, and based on information and belief allege,
22 that at the time of the incident, Defendants JACOBS, and each of them, had Defendant UBER's
23 Application "On," Driver Mode activated and had accepted passengers.

24 22. PLAINTIFFS are informed and believe and based on this information and belief
25 allege that Defendant JACOBS, knowingly ingested and/or consumed intoxicating substances to
26 the point of legal intoxication all the while knowing that Defendant JACOBS was going to and
27 was required to drive a motor vehicle. Further Defendant JACOBS knew or should have known
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1 Defendant JACOBS was not legally permitted to operate a vehicle on public streets and highways,
2 but nevertheless Defendant JACOBS consciously chose to operate Vehicle 2 after Defendant
3 JACOBS knowingly and willingly ingesting and consuming intoxicating substances to the point
4 of legal intoxication. The above mentioned conduct constitutes conduct invoking the provisions of
5 NRS §42.005 because a person who voluntarily commences, and thereafter continues to ingest or
6 consume intoxicating substances to the point of legal intoxication knowing from the outset that
7 he/she must thereafter operate a motor vehicle demonstrates such a conscious and deliberate
8 disregard of the interests of others that the conduct of the Defendant was willful and wanton and
9 in reckless disregard for the safety and well-being of PLAINTIFFS. PLAINTIFFS are therefore
10 entitled to punitive and exemplary damages for sake of example and by way of punishing
11 Defendant, and each of them.

12 23. The true names and capacities, whether individual, corporate, associate or
13 otherwise, of Defendants named herein as Does 1 through 10 and Roe Corporations 1 through 10
14 are unknown to PLAINTIFFS, who therefore sues such Defendants by such fictitious names and
15 will amend this Complaint to show their true names and capacities when ascertained together with
16 the proper charging allegations.

17 24. At all times herein mentioned, Defendants Does 1 through 10 and Roe Corporations
18 1 through 10, inclusive, were the agents, servants and employees of their co-Defendants, and in
19 doing the things hereinafter alleged were acting within the scope of their authority as such agents,
20 servants and employees and with the consent and permission of their co-Defendants.

21 25. PLAINTIFFS are informed and believe and thereupon alleges that each of the
22 Defendants designated herein as a DOE or ROE is responsible in some manner and liable herein
23 by reason of negligence, malfeasance, nonfeasance, wanton and reckless misconduct, and
24 conscious disregard, and said Defendants directly, legally and proximately caused the injuries and
25 damages asserted in this Complaint by such wrongful conduct.

26 26. The acts, conduct, and nonfeasance herein carried out by each and every
27 representative, employee or agent of each and every corporate or business defendant, were
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1 authorized, ordered, and directed by the respective Defendant's corporate or business employers,
2 officers, directors and/or managing agents; that in addition thereto, said corporate or business
3 employers, officers, directors and/or managing agents had advance knowledge of, authorized, and
4 participated in the herein described acts, conduct and nonfeasance of their representatives,
5 employees, agents and each of them; and that in addition thereto, upon the completion of the
6 aforesaid acts, conduct and nonfeasance of the employees and agents, the aforesaid corporate and
7 business employers, officers, directors and/or managing agents respectively ratified, accepted the
8 benefits of, condoned and approved of each and all of said acts, conduct or nonfeasance of their
9 co-employees, employers, and agents.

10 27. In addition, at all times herein relevant, each defendant, whether named herein or
11 designated as a DOE or ROE, was a principal, master, employer and joint venturer of every other
12 defendant, and every defendant was acting within the scope of said agency authority, employment
13 and joint venture.

14 **JURISDICTION AND VENUE**

15 28. This Court has jurisdiction in this matter pursuant to NRS 13 because the accident
16 and/or injury occurred within Clark County, State of Nevada.

17 29. Venue is proper in this Court pursuant to the provisions of NRS 13, in that the
18 accident occurred and Defendants' obligations and liability arose in Clark County, State of
19 Nevada.

20 **FIRST CLAIM FOR RELIEF**

21 ***FOR NEGLIGENCE***

22 ***(Defendant ESTRADA, UBER, RAISER LLC, RAISER-CA LLC,***

23 ***Does 1-5 and Roe Corporations 1-10)***

24 30. PLAINTIFFS repeat and reallege the preceding paragraphs as though fully set forth
25 herein.

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1 31. At all times mentioned in this Complaint, S. Las Vegas Boulevard at or near the
2 intersection of W. Mandalay Bay Road was and is a public street and/or highway in Clark County,
3 Nevada.

4 32. On or about February 22, 2018, PLAINTIFFS were occupants of Vehicle 1, when
5 Defendants ESTRADA, and each of them, who were operating Vehicle 1 on S. Las Vegas
6 Boulevard while in the course and scope of employment with Defendants UBER, RAISER LLC
7 and/or RAISER-CA LLC, and with Defendant UBER, RAISER LLC and/or RAISER-CA LLC's
8 knowledge consent and permission, when Defendant failed to observe traffic in front of Defendant,
9 failed to operate Vehicle 1 as a reasonably prudent person in the same or similar circumstances,
10 failed to stop Vehicle 1 in a timely and reasonable manner, and thereafter caused a collision
11 between Vehicles 1 and other vehicles.

12 33. All operators of motor vehicles have a general duty to exercise reasonable care and
13 skill in the operation of their vehicles. The duty of care includes operating a vehicle in a safe and
14 prudent manner and heeding all traffic ordinances. Operators of motor vehicles must operate their
15 vehicle such as a reasonable and prudent person would in the same or similar circumstances.

16 34. On the above date and time, Defendants, and each of them, failed to use the due
17 care of an ordinary and reasonable person by failing to drive as a reasonably prudent person and
18 by causing a collision between Vehicles 1 and other vehicles.

19 35. On that date and at that time and place, Defendants, and each of them, so
20 negligently, carelessly, recklessly and/or unlawfully entrusted, managed, drove and operated
21 Vehicle 1 so as to proximately cause it to collide with Vehicle 2 and to proximately cause the
22 hereinafter described injuries and damages to PLAINTIFFS.

23 36. At that time and place, there was in effect NRS § 484B.600 which provides "it is
24 unlawful for any person to drive or operate a vehicle at a rate of speed greater than reasonable or
25 proper, having due regard for the traffic, surface and width of the highway, the weather and other
26 conditions."

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1 37. At this time and place, Defendants, and each of them, violated NRS § 484B.600 by
2 driving at a speed greater than was reasonable and consequently striking PLAINTIFFS and Vehicle
3 2.

4 38. At that time and place, there was in effect NRS § 484B.603 which provides “[t]he
5 fact that the speed of a vehicle is lower than the prescribed limits does not relieve a driver from
6 the duty to decrease speed when approaching and crossing an intersection, when approaching and
7 going around a curve, when approaching a hill crest, when traveling upon any narrow or winding
8 highway, or when special hazards exist or may exist with respect to pedestrians or other traffic, or
9 by reason of weather or other highway conditions, and speed must be decreased as may be
10 necessary to avoid colliding with any person, vehicle or other conveyance on or entering a highway
11 in compliance with legal requirements and the duty of all persons to use due care.”

12 39. At this time and place, Defendants, and each of them, violated NRS § 484B.603 by
13 driving at a speed greater than was reasonable when approaching and crossing an intersection and
14 consequently crashing into and Vehicle 2.

15 40. At that time and place, there was in effect §484B.127, which states: “[t]he driver of
16 a vehicle shall not follow another vehicle more closely than is reasonable and prudent, having due
17 regard for the speed of such vehicles and the traffic upon and the condition of the highway.”

18 41. At this time and place, Defendants, and each of them, violated NRS § 484B.127 by
19 following Vehicle 2 more closely than was reasonable and prudent at a speed greater than was
20 reasonable and consequently crashing into and Vehicle 2.

21 42. NRS §484B.600, §484B.603, §484B.127 were enacted to prevent the type of
22 accident Defendants, and each of them, caused.

23 43. PLAINTIFFS are within the class of people the above statutes are designed to
24 protect. The vehicle codes exist to ensure the safety of all vehicle motorists and to deter negligent
25 driving.

26 44. The type of injuries PLAINTIFFS sustained are the type the above statutes are
27 designed to prevent.
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46. As a proximate result of the negligence of Defendants, and each of them, PLAINTIFFS necessarily employed and will employ physicians and surgeons for medical examination, treatment and care of these injuries and incurred medical and incidental expenses and may have to incur additional like expenses in the future, all in amounts presently unknown to PLAINTIFFS. PLAINTIFFS therefore requests leave of Court to prove that amount at trial.

47. As a proximate result of the negligence of Defendants, and each of them, PLAINTIFFS were disabled and may be disabled in the future and thereby be prevented from attending to the duties of PLAINTIFFS' usual occupation. PLAINTIFFS have therefore lost earnings and may continue to lose earnings in the future, all in amounts presently unknown to PLAINTIFFS. PLAINTIFFS request leave of Court to prove that amount at trial.

SECOND CLAIM FOR RELIEF

FOR NEGLIGENCE

(Against Defendant JACOBS, UBER, RAISER LLC, RAISER-CA LLC,

Does 6-10 and Roe Corporations 1-10)

48. PLAINTIFFS repeat and reallege the preceding paragraphs as though fully set forth herein.

49. On or about February 22, 2018, PLAINTIFFS were occupants of Vehicle 1, when Defendants JACOBS, and each of them, who were operating Vehicle 2 on S. Las Vegas Boulevard while in the course and scope of employment with Defendant UBER, RAISER LLC and/or

1 RAISER-CA LLC, and with Defendant UBER, RAISER LLC and/or RAISER-CA LLC's
2 knowledge consent and permission, when Defendant failed to observe as a reasonably prudent
3 person in the same or similar circumstances, failed to operate Vehicle 2 as a reasonably prudent
4 person in the same or similar circumstances, failed to yield to PLAINTIFFS and Vehicle 1, made
5 a U-turn directly into PLAINTIFFS and Vehicle 1 and thereafter caused a collision between
6 Vehicle 2 and Vehicle 1.

7 50. The conduct of Defendant JACOBS, and each of them, as described above, to wit,
8 that Defendant voluntarily, knowingly, willfully and purposefully ingested and/or consumed
9 intoxicating substances to the point of legal intoxication all the while knowing that Defendant was
10 going to thereafter drive a motor vehicle, that Defendant thereafter drove Vehicle 2 while under
11 the influence of illegal, intoxicating substances, that Defendant failed to operate Vehicle 2 as a
12 reasonably prudent in the same or similar circumstances and crashed Vehicle 2 into PLAINTIFFS
13 and Vehicle 1, constitutes conduct invoking the provisions of NRS 42.005 because a person who
14 voluntarily consumes illegal, intoxicating substances to the point of legal intoxication knowing
15 he/she is going to thereafter operate a motor vehicle and then he/she operates a motor vehicle while
16 legally intoxicated on residential streets demonstrates such a conscious and deliberate disregard of
17 the interests of others that the conduct of the Defendant was willful and wanton and in reckless
18 disregard for the safety and well-being of PLAINTIFFS. PLAINTIFFS are heretofore entitled to
19 punitive and exemplary damages for sake of example and by way of punishing Defendants
20 JACOBS, and each of them.

21 51. All operators of motor vehicles have a general duty to exercise reasonable care and
22 skill in the operation of their vehicles. The duty of care includes operating a vehicle in a safe and
23 prudent manner and heeding all traffic ordinances. Operators of motor vehicles must operate their
24 vehicle such as a reasonable and prudent person would in the same or similar circumstances.

25 52. On the above date and time, Defendants, JACOBS and each of them, failed to use
26 the due care of an ordinary and reasonable person by failing to observe Vehicle 1, by failing to
27 operate Vehicle 2 as a reasonably prudent person in the same or similar circumstance and by
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1 causing Vehicle 2 to strike PLAINTIFFS and Vehicle 1 and by causing PLAINTIFFS injuries.

2 53. On that date and at that time and place, Defendants, and each of them, so
3 negligently, carelessly, recklessly and/or unlawfully entrusted, managed, drove and/or operated
4 Vehicle 2 so as to proximately cause it to collide with Vehicle 1 and PLAINTIFFS and to
5 proximately cause the hereinafter described injuries and damages to PLAINTIFFS.

6 54. At that time and place, there was in effect NRS § 484B.600 which provides “it is
7 unlawful for any person to drive or operate a vehicle at a rate of speed greater than reasonable or
8 proper, having due regard for the traffic, surface and width of the highway, the weather and other
9 conditions.”

10 55. At this time and place, Defendants, and each of them, violated NRS § 484B.600 by
11 driving at a speed greater than was reasonable and consequently striking PLAINTIFFS and Vehicle
12 1.

13 56. At that time and place, there was in effect NRS § 484B.603 which provides “[t]he
14 fact that the speed of a vehicle is lower than the prescribed limits does not relieve a driver from
15 the duty to decrease speed when approaching and crossing an intersection, when approaching and
16 going around a curve, when approaching a hill crest, when traveling upon any narrow or winding
17 highway, or when special hazards exist or may exist with respect to pedestrians or other traffic, or
18 by reason of weather or other highway conditions, and speed must be decreased as may be
19 necessary to avoid colliding with any person, vehicle or other conveyance on or entering a highway
20 in compliance with legal requirements and the duty of all persons to use due care.”

21 57. At this time and place, Defendants, and each of them, violated NRS § 484B.603 by
22 driving at a speed greater than was reasonable while approaching and crossing an intersection and
23 consequently striking PLAINTIFFS and Vehicle 1.

24 58. At that time and place, there was in effect NRS § 484B.403 which provides “[a] U-
25 turn may be made on any road where the turn can be made with safety, except as prohibited by
26 this section and by the provisions of NRS 484B.227 and 484B.407.”

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1 59. At this time and place, Defendants, and each of them, violated NRS § 484B.403 by
2 turning Vehicle 2 in front of Vehicle 1 at an unreasonable and unsafe time and thereafter colliding
3 with Vehicle 1.

4 60. At that time and place, there was in effect NRS § 484C.110 which provides “[i]t is
5 unlawful for any person who: (a) Is under the influence of intoxicating liquor; (b) Has a
6 concentration of alcohol of 0.08 or more in his or her blood or breath; or (c) Is found by
7 measurement within 2 hours after driving or being in actual physical control of a vehicle to have a
8 concentration of alcohol of 0.08 or more in his or her blood or breath, to drive or be in actual
9 physical control of a vehicle on a highway or on premises to which the public has access.”

10 61. At this time and place, Defendants, and each of them, violated NRS § 484C.110 by
11 driving Vehicle 2 while legally intoxicated and while under the influence of intoxicating
12 substances and by causing a collision between Vehicles 1 & 2.

13 62. NRS §484B.600, §484B.603, §484B.403, §484C.110 were enacted to prevent the
14 type of accident Defendants, and each of them, caused.

15 63. PLAINTIFFS are within the class of people the above statutes are designed to
16 protect. The vehicle codes exist to ensure the safety of all vehicle motorists and to deter negligent
17 driving.

18 64. The type of injuries PLAINTIFFS sustained are the type the above statutes are
19 designed to prevent.

20 65. On that date and at that time and place, Defendants, and each of them, so
21 negligently, carelessly, recklessly and/or unlawfully entrusted, managed, drove and operated
22 Vehicle 2 so as to proximately cause the above described accident and to injure PLAINTIFFS.

23 66. As a proximate result of the negligence, carelessness, recklessness and/or
24 unlawfulness of Defendants, and each of them, and the resulting collision as previously alleged,
25 Plaintiffs were injured in their health, strength and activity, sustained injuries to PLAINTIFF’S
26 bodies, nervous systems and persons and sustained personal injuries all of which have caused and
27 continue to cause PLAINTIFFS great mental, physical and nervous pain and suffering. These
28

1 injuries may result in personal disabilities to PLAINTIFFS all to their general damage.

2 67. As a proximate result of the negligence of Defendants, and each of them,
3 PLAINTIFFS necessarily employed physicians and surgeons for medical examination, treatment
4 and care of their injuries and incurred medical and incidental expenses and may have to incur
5 additional like expenses in the future, all in amounts presently unknown to them. PLAINTIFFS
6 therefore request leave of Court to prove that amount at trial.

7 68. As a proximate result of the negligence of Defendants, and each of them,
8 PLAINTIFFS were disabled and may be disabled in the future and thereby be prevented from
9 attending to the duties of PLAINTIFFS' usual occupations. PLAINTIFFS lost earnings and may
10 continue to lose earnings in the future, all in amounts presently unknown to them. PLAINTIFFS
11 request leave of Court to prove that amount at trial.

12 69. As a proximate result of the negligence, carelessness, recklessness and/or
13 unlawfulness of Defendants, and each of them, and the resulting collision as previously alleged,
14 PLAINTIFFS were denied the use of Vehicle 1. PLAINTIFFS have, therefore, incurred and/or
15 will incur expenses associated with the loss of use of PLAINTIFFS' automobile.

16 70. As a proximate result of the negligence, carelessness, recklessness and/or
17 unlawfulness of Defendants, and each of them, and the resulting collision as previously alleged,
18 Vehicle 1 was damaged and PLAINTIFFS have, therefore, incurred or will incur expenses
19 associated with repairing and/or replacing Vehicle 1.

20 71. As a further, direct and proximate result of the negligence of Defendants, and each
21 of them, PLAINTIFFS are entitled to recover from Defendants, and each of them, their general,
22 special, actual compensatory, punitive damages and attorney fees under Code of Civil Procedure
23 § 1021.4.

24 72. As a further, direct and proximate result of the negligence, carelessness,
25 recklessness and/or unlawfulness of Defendants, and each of them, and the resulting collision as
26 previously alleged, Vehicle 1 was diminished and PLAINTIFFS have, therefore, incurred or will
27 incur diminution in value damages associated with Vehicle 1.

28

1 73. As a further, direct and proximate result of the willful, wanton and reckless
2 disregard for the safety and well-being of PLAINTIFFS by Defendants, and each of them,
3 PLAINTIFFS are entitled to recover from each of the Defendants, and each of them, punitive and
4 exemplary damages in accordance with the provisions of the California Civil Code § 3294 in an
5 amount according to proof at trial.

6
7 **THIRD CLAIM FOR RELIEF**
8 **FOR NEGLIGENT HIRING, SUPERVISION AND RETENTION**
9 ***(Against UBER, RAISER LLC, RAISER-CA LLC ,***
10 ***Does 6-10, Roe Corporations 1-10, and each of them)***

11 74. PLAINTIFFS repeat and reallege the preceding paragraphs as though fully set forth
12 herein.

13 75. Defendant JACOBS, and each of them, was unfit and or incompetent to perform
14 the work for which he was hired.

15 76. Defendants, ROE corporation 1-10, and each of them, knew or should have known
16 that JACOBS, and each of them, was unfit and/or incompetent and that this unfitness and/or
17 incompetence harmed PLAINTIFFS.

18 77. JACOBS, and each of them unfitness and/or incompetence harmed PLAINTIFFS.

19 78. Defendants, ROE corporation 1-10, and each of their, negligence in hiring,
20 supervising and or retaining JACOBS, and each of them proximately caused PLAINTIFFS' harm.

21 79. Defendants, and each of them, had advanced knowledge of JACOBS, Does 6-10,
22 and each of their, unfitness and nevertheless employed him with a conscious disregard of the rights
23 or safety of others or authorized or ratified the wrongful conduct or was personally guilty of
24 oppression, fraud, or malice.

25 80. With respect to Defendants, ROE corporation 1-10, and each of them, the advance
26 knowledge and conscious disregard, authorization, ratification or act of oppression, fraud, or
27 malice was done on the part of an officer, director, or managing agent of the corporation.

28

1 81. Defendants, ROE corporation 1-10, and each of their conduct, as described above,
2 was malicious, was done with a conscious and deliberate disregard of the interests of others, and
3 was ratified by a Defendant officer, director or managing agent.

4 82. As a further, direct and proximate result of the malicious, willful, wanton and
5 reckless disregard for the safety and well-being of PLAINTIFFS by Defendants, and each of them,
6 PLAINTIFFS are entitled to recover from Defendants, and each of them, punitive and exemplary
7 damages in an amount according to proof at trial.

8
9 WHEREFORE, PLAINTIFF prays for judgment as follows:

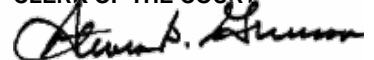
- 10 1. For general, consequential, incidental and special damages in an amount
11 exceeding Ten Thousand Dollars (\$10,000.00);
12 2. For loss of earnings according to proof;
13 3. For prejudgment interest;
14 4. For property damage according to proof;
15 5. For punitive damages under NRS 42.005;
16 6. For diminution in value according to proof;
17 7. For attorney fees and costs according to proof; and
18 8. For such other and further relief as this Court may deem proper.

19
20
21 Dated: _____.

22 QUIRK LAW FIRM, LLP

23
24
25 By: _____

26 Trevor M. Quirk, Esq #8625
27 Attorneys for Plaintiffs, Megan Royz and
28 Andrea Eileen Work



QUIRK LAW FIRM, LLP
Trevor M. Quirk, Esq. (State Bar No. 8625)
2421 Tech Center Court, Suite 100
Las Vegas, NV 89128
Tel. (702) 755-8854
Facsimile: (866) 728-7721

Attorney for Plaintiffs
MEGAN ROYZ and ANDREA EILEEN WORK

MEGAN ROYZ, an individual; and }
ANDREA EILEEN WORK, an individual, }
 }
Plaintiff(s), }
 }
e. }
 }
MARK ANTHONY JACOBS, }
an individual; of or }
 }
Defendant(s). }

**IN THE EIGHTH JUDICIAL
DISTRICT COURT**

CLARK COUNTY, NEVADA

Case No. A-20-810843-C
Department No. 16

AFFIDAVIT OF SERVICE

DOCUMENT(S): SUMMONS, COMPLAINT, CIVIL COVER SHEET,
PLAINTIFF'S INITIAL APPEARANCE FEE DISCLOSURE

RYAN GADDIE, being duly sworn, or under penalty of perjury, deposes(s) and states(s) to not be
a party to the action, and to be over 18 years of age.

I served the document(s) addressed to: **UBER TECHNOLOGIES, INC., a corporation**

Manner of Service: By personal service via agent for service of process

Authorized Agent: CT CORPORATION SYSTEM, agent for service of process,
by leaving with Danielle Naka, Administrative Assistant,
authorized to accept


Address: 701 South Carson Street, Suite 200, Carson City, NV 89701

Date of Service: April 20, 2020

Time of Service: 2:34 p.m.

Date: April 24, 2020

ASAP Legal, LLC
1607 James M. Wood Blvd.
Los Angeles, CA 90015
(213) 252-2000
(32084006,r,c)


Ryan Gaddie
Nevada process server, #R-097995

QUIRK LAW FIRM, LLP

Trevor M. Quirk, Esq. (State Bar No. 8625)
2421 Tech Center Court, Suite 100
Las Vegas, NV 89128
Tel. (702) 755-8854
Facsimile: (866) 728-7721

Attorney for Plaintiff

MEGAN ROYZ and ANDREA EILEEN WORK

MEGAN ROYZ, an individual; and)
ANDREA EILEEN WORK, an individual,)

Plaintiff(s),)

v.)

MARK ANTHONY JACOBS,)
an individual, et al.)

Defendant(s).)

**IN THE EIGHTH JUDICIAL
DISTRICT COURT**

CLARK COUNTY, NEVADA

Case No. A-20-810843-C

Department No.: 16

AFFIDAVIT OF SERVICE

**DOCUMENT(S): SUMMONS; COMPLAINT; CIVIL COVER SHEET;
PLAINTIFF'S INTIAL APPEARANCE FEE DISCLOSURE**

RYAN GADDIE, being duly sworn, or under penalty of perjury, depose(s) and state(s) to not be
a party to the action, and to be over 18 years of age.

I served the document(s) addressed to; **RAISER, LLC., a corporation**

Manner of Service: By personal service via agent for service of process

Authorized Agent: **CT CORPORATION SYSTEM**, agent for service of process,
by leaving with Danielle Naki, Administrative Assistant,
authorized to accept.

Address: 701 South Carson Street, Suite 200, Carson City, NV 89701

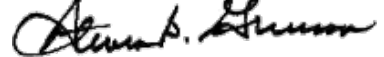
Date of Service: April 20, 2020

Time of Service: 2:34 p.m.

Date: April 24, 2020

ASAP Legal, LLC
1607 James M. Wood Blvd.
Los Angeles, CA 90015
(213) 252-2000
(32084007.rtc)


Ryan Gaddie
Nevada process server, #R-097995



QUIRK LAW FIRM, LLP

Trevor M. Quirk, Esq. (State Bar No. 8625)
2421 Tech Center Court, Suite 100
Las Vegas, NV 89128
Tel. (702) 755-8854
Facsimile: (866) 728-7721

Attorney for Plaintiffs

MEGAN ROYZ and ANDREA EILEEN WORK

MEGAN ROYZ, an individual; and)
ANDREA EILEEN WORK, an individual,)
)
Plaintiff(s),)
)
v.)
)
MARK ANTHONY JACOBS,)
an individual; et al.)
)
Defendant(s).)

**IN THE EIGHTH JUDICIAL
DISTRICT COURT**

CLARK COUNTY, NEVADA

Case No. A-20-810843-C
Department No.: 16

AFFIDAVIT OF SERVICE

DOCUMENT(S): SUMMONS; COMPLAINT; CIVIL COVER SHEET; PLAINTIFF'S
INITIAL APPEARANCE FEE DISCLOSURE

JUDITH MAE ALL, #R-040570, being duly sworn, or under penalty of perjury, depose(s) and
state(s) to not be a party to the action, and to be over 18 years of age.

I served the document(s) addressed to: **MARK ANTHONY JACOBS, an individual.**

Manner of Service: By Personal Service

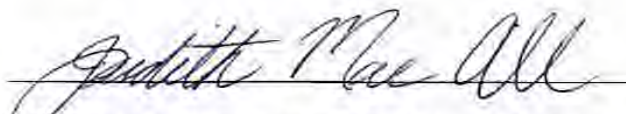
Address: 5570 NORMANTON ST., LAS VEGAS, NV 89120

Date of Service: April 15, 2020

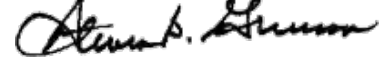
Time of Service: 3:56 p.m.

Date: April 20, 2020

ASAP Legal, LLC
1607 James M. Wood Blvd.
Los Angeles, CA 90015
(213) 252-2000
[32083846.exd]



Judith Mae All, Registered Work Card #R-040570



QUIRK LAW FIRM, LLP

Trevor M. Quirk, Esq. (State Bar No. 8625)
2421 Tech Center Court, Suite 100
Las Vegas, NV 89128
Tel. (702) 755-8854
Facsimile: (866) 728-7721

Attorney for Plaintiffs

MEGAN ROYZ and ANDREA EILEEN WORK

MEGAN ROYZ, an individual; and)
ANDREA EILEEN WORK, an individual,)

Plaintiff(s),)

v.)

MARK ANTHONY JACOBS,)
an individual; et al.)

Defendant(s).)

**IN THE EIGHTH JUDICIAL
DISTRICT COURT**

CLARK COUNTY, NEVADA

Case No. A-20-810843-C

Department No.: 16

AFFIDAVIT OF SERVICE

DOCUMENT(S): SUMMONS; COMPLAINT; CIVIL COVER SHEET;
PLAINTIFF'S INTIAL APPEARANCE FEE DISCLOSURE

JOSE GARCIA, being duly sworn, or under penalty of perjury, depose(s) and state(s) to not be a party to the action, and to be over 18 years of age.

I served the document(s) addressed to: **RAISER-CA, LLC, an individual**

Manner of Service: By personal service via agent for service of process

Authorized Agent: CT CORPORATION SYSTEM, agent for service of process,
by leaving with Jessie Gastelum, process specialist, authorized to accept

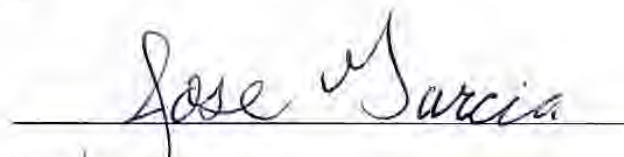
Address: 818 W. 7TH STREET, SUITE 930, LOS ANGELES, CA 90017

Date of Service: April 17, 2020

Time of Service: 9:05 a.m.

Date: April 20, 2020

ASAP Legal, LLC
1607 James M. Wood Blvd.
Los Angeles, CA 90015
(213) 252-2000
[32084008.exd]



Jose Garcia
Registered California process server: employee
Registration: 2015085803
County: Los Angeles

Steven D. Grierson

QUIRK LAW FIRM, LLP
Trevor M. Quirk, Esq. (State Bar No. 8625)
2421 Tech Center Court, Suite 100
Las Vegas, NV 89128
Tel. (702) 755-8854
Facsimile: (866) 728-7721

Attorney for Plaintiff
MEGAN BOYZ and ANDREA EILEEN WORK

MEGAN ROYZ, an individual; and)
ANDREA EILEEN WORK, an individual,)
)
Plaintiff(s),)
)
v.)
)
MARK ANTHONY JACOBS,)
an individual, et al.)
)
Defendant(s).)

**IN THE EIGHTH JUDICIAL
DISTRICT COURT**

CLARK COUNTY, NEVADA

Case No. A-20-810843-C
Department No.: 16

AFFIDAVIT OF SERVICE

**DOCUMENT(S): SUMMONS; COMPLAINT; CIVIL COVER SHEET;
PLAINTIFF'S INTIAL APPEARANCE FEE DISCLOSURE**

RYAN GADDIE, being duly sworn, or under penalty of perjury, depose(s) and state(s) to not be
a party to the action, and to be over 18 years of age.

I served the document(s) addressed to; **RAISER, LLC., a corporation**

Manner of Service: By personal service via agent for service of process

Authorized Agent: **CT CORPORATION SYSTEM**, agent for service of process,
by leaving with Danielle Naki, Administrative Assistant,
authorized to accept

Address: 701 South Carson Street, Suite 200, Carson City, NV 89701

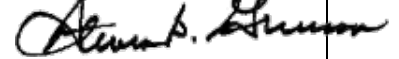
Date of Service: April 20, 2020

Time of Service: 2:34 p.m.

Date: April 24, 2020

ASAP Legal, LLC
1607 James M. Wood Blvd.
Los Angeles, CA 90015
(213) 252-2000
[32084007.rtc]

Ryan Gaddie
Ryan Gaddie
Nevada process server, #R-097995



LUCIAN J. GRECO, ESQ.
Nevada State Bar No. 10600
JARED G. CHRISTENSEN, ESQ.
Nevada State Bar No. 11538
MELISSA INGLEBY, ESQ.
Nevada State Bar No. 12935
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SUITE 250
LAS VEGAS, NV 89144
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FACSIMILE: (702) 258-6662
lgreco@bremerwhyte.com
jchristensen@bremerwhyte.com
mingleby@bremerwhyte.com

Attorneys for Defendant,
Mark Anthony Jacobs

IN THE EIGHT JUDICIAL DISTRICT COURT
COUNTY OF CLARK, NEVADA

MEGAN ROYZ, an individual; and ANDREA EILEEN WORK, an individual,)	Case No. A-20-810843-C
)	
Plaintiffs,)	DEPT. NO. 16
)	
vs.)	DEFENDANT MARK ANTHONY
)	JACOB'S ANSWER TO PLAINTIFFS'
)	COMPLAINT
MARK ANTHONY JACOBS, an individual,)	
MARCO ANTONIO HEREDIA-ESTRADA, an individual, UBER TECHNOLOGIES, INC., a corporation; RAISER, LLC., a corporation, RAISER-CA, LLC, an individual; DOES 1 through 10 and ROE Corporations 1 through 10, Inclusive,)	
)	
Defendants.)	

Defendant MARK ANTHONY JACOBS (hereinafter "DEFENDANT" or "This answering Defendant"), by and through his attorneys of record, Lucian J. Greco, Jr., Esq., Jared G. Christensen, Esq., and Melissa Ingleby, Esq. of the law firm Bremer, Whyte, Brown & O'Meara, LLP, hereby answers and responds to Plaintiffs' Complaint as follows:

///

1 **GENERAL ALLEGATIONS**

2 1. DEFENDANT, answering Paragraphs 1 through 5 of Plaintiffs' Complaint, is
3 presently without sufficient information to form a belief as to the truth of the allegations contained
4 within these paragraphs, and therefore, denies the same.

5 2. DEFENDANT, answering Paragraph 6 of Plaintiffs' Complaint, admits the allegation
6 upon information and belief.

7 3. DEFENDANT, answering Paragraphs 7 through 15 of Plaintiffs' Complaint, is
8 presently without sufficient information to form a belief as to the truth of the allegations contained
9 within these paragraphs, and therefore, denies the same.

10 4. DEFENDANT, answering Paragraphs 16 through 27 of Plaintiffs' Complaint,
11 specifically and generally denies the allegations contained therein as they pertain to the Answering
12 Defendant. Defendant is presently without sufficient information to respond to the allegations against
13 all other parties and therefore denies the same.

14 **JURISDICTION AND VENUE**

15 5. DEFENDANT, answering Paragraphs 28 through 29 of Plaintiffs' Complaint, is
16 presently without sufficient information to form a belief as to the truth of the allegations contained
17 within these paragraphs, and therefore, denies the same.

18 **FIRST CLAIM FOR RELIEF**

19 **FOR NEGLIGENCE**

20 **(Defendant ESTRADA, UBER, RAISER LLC, RAISER-CA LLC, Does 1-5 and Roe**
21 **Corporation 1-10)**

22 6. DEFENDANT, answering Paragraph 30 of Plaintiffs' Complaint, repeats its answers
23 to Paragraphs 1 through 29, and incorporates the same by reference, as though fully set forth herein.

24 7. DEFENDANT, answering Paragraphs 31 through 47 of Plaintiffs' Complaint,
25 specifically and generally denies the allegations contained therein as they pertain to the Answering
26 Defendant. Defendant is presently without sufficient information to respond to the allegations against
27 all other parties and therefore denies the same.

SECOND CLAIM FOR RELIEF

FOR NEGLIGENCE

(Against Defendant JACOBS, UBER, RAISER LLC, RAISER-CA LLC, Does 6-10 and Roe Corporation 1-10)

8. DEFENDANT, answering Paragraph 48 of Plaintiffs' Complaint, repeats its answers to Paragraphs 1 through 47, and incorporates the same by reference, as though fully set forth herein.

9. DEFENDANT, answering Paragraphs 49 through 73 of Plaintiffs' Complaint, specifically and generally denies the allegations contained therein as they pertain to the Answering Defendant. Defendant is presently without sufficient information to respond to the allegations against all other parties and therefore denies the same.

THIRD CLAIM FOR RELIEF

FOR NEGLIGENT HIRING, SUPERVISION AND RETENTION

(Against Defendant UBER, RAISER LLC, RAISER-CA LLC Does 6-10 and Roe Corporation 1-10)

10. DEFENDANT, answering Paragraph 74 of Plaintiffs' Complaint, repeats its answers to Paragraphs 1 through 73, and incorporates the same by reference, as though fully set forth herein.

11. DEFENDANT, answering Paragraphs 75 through 82 of Plaintiffs' Complaint, specifically and generally denies the allegations contained therein as they pertain to the Answering Defendant. Defendant is presently without sufficient information to respond to the allegations against all other parties and therefore denies the same.

AFFIRMATIVE DEFENSES

FIRST AFFIRMATIVE DEFENSE

This answering Defendant is informed and believes, and thereon alleges, that Plaintiffs' Complaint on file herein fails to state a claim against this answering Defendant upon which Relief can be granted.

SECOND AFFIRMATIVE DEFENSE

This answering Defendant is informed and believes, and thereon alleges, that the occurrence referred to in Plaintiffs' Complaint, and all injuries and/or damages, if any, resulting therefrom, were

1 caused by the acts or omissions of a third party over whom this answering Defendant had no control,
2 and that this answering Defendant is therefore entitled to an apportionment of responsibility for the
3 damages, if any, as alleged by Plaintiffs to the extent that such damages were caused by these third
4 parties.

5 **THIRD AFFIRMATIVE DEFENSE**

6 This answering Defendant is informed and believes, and thereon alleges, that the occurrence
7 referred to in Plaintiffs' Complaint, and all injuries and damages, if any, resulting therefrom, were
8 caused by the acts or omissions of Plaintiffs over whom this answering Defendant had no control and
9 that this answering Defendant is therefore entitled to an apportionment of responsibility for the
10 damages, if any, as alleged by Plaintiffs to the extent that such damages were caused by Plaintiffs.

11 **FOURTH AFFIRMATIVE DEFENSE**

12 This answering Defendant is informed and believes, and thereon alleges, that the occurrence
13 referred to in Plaintiffs' Complaint, and all injuries and damages, if any, resulting therefrom, were
14 caused by an act of God over which this answering Defendant had no control.

15 **FIFTH AFFIRMATIVE DEFENSE**

16 This answering Defendant is informed and believes, and thereon alleges, that attorney's fees
17 are only recoverable through contract or by statute and are not recoverable as damages in this matter.
18 Plaintiffs' claim for attorney's fees as alleged in Plaintiffs' Complaint are not recoverable herein and
19 have been improperly pled this answering Defendant specifically reserves the right to have Plaintiffs'
20 improperly-pled claim for attorney's fees dismissed prior to trial.

21 **SIXTH AFFIRMATIVE DEFENSE**

22 This answering Defendant is informed and believes, and thereon alleges, that Plaintiffs have
23 failed to mitigate their damages, if any.

24 **SEVENTH AFFIRMATIVE DEFENSE**

25 This answering Defendant is informed and believes, and thereon alleges, that Plaintiffs'
26 alleged special damages were not reasonable and/or necessary.

27 ///

28 ///

1 **EIGHTH AFFIRMATIVE DEFENSE**

2 This answering Defendant is informed and believes, and thereon alleges, that certain of said
3 parties have or will enter into settlement agreements with Plaintiffs so that in the event that this
4 answering Defendant is held liable to Plaintiffs herein, then this answering Defendant is entitled to
5 an offset, in an amount equal to any settlements previously made by Plaintiffs with any other party,
6 against any judgment which may be entered herein.

7 **NINTH AFFIRMATIVE DEFENSE**

8 This answering Defendant is informed and believes, and thereon alleges, that Plaintiffs'
9 Complaint, and each and every cause of action contained therein, is barred by the applicable Statutes
10 of Limitation.

11 **TENTH AFFIRMATIVE DEFENSE**

12 This answering Defendant are informed and believes, and thereon allege, that the Plaintiffs
13 unreasonably delayed both the filing of this Complaint and notification of this answering Defendant
14 to the alleged negligence and the basis for the causes of action alleged against this answering
15 Defendant, all of which have unduly and severely prejudiced this answering Defendant in their
16 defense of the action, thereby barring or diminishing Plaintiffs' recovery herein under the Doctrine
17 of Estoppel.

18 **ELEVENTH AFFIRMATIVE DEFENSE**

19 This answering Defendant is informed and believes, and thereon alleges, that Plaintiffs
20 unreasonably delayed both the filing of this Complaint and notification of this answering Defendant
21 to the alleged negligence of a third party and the basis for the causes of action alleged against this
22 answering Defendant, all of which has unduly and severely prejudiced this answering Defendant in
23 their defense of the action, thereby barring or diminishing Plaintiffs' recovery herein under the
24 Doctrine of Laches.

25 **TWELFTH AFFIRMATIVE DEFENSE**

26 This answering Defendant is informed and believes, and thereon alleges, that Plaintiffs have
27 failed to join all necessary and/or indispensable parties to this lawsuit.

1 **THIRTEENTH AFFIRMATIVE DEFENSE**

2 This answering Defendant is informed and believes, and thereon alleges, that Plaintiffs failed
3 to properly plead special damages as required by N.R.C.P. 9(g), and therefore, Plaintiffs should be
4 barred from recovering any damages within this category.

5 **FOURTEENTH AFFIRMATIVE DEFENSE**

6 This answering Defendant is informed and believes, and thereon alleges, that it has been
7 necessary for this answering Defendant to retain the services of an attorney to defend this action, and
8 this answering Defendant is entitled to a reasonable sum as and for attorney's fees, together with its
9 costs expended in this action.

10 **FIFTEENTH AFFIRMATIVE DEFENSE**

11 Pursuant to N.R.C.P. 11, as amended, all possible affirmative defenses may not have been
12 alleged herein, insofar as sufficient facts were not available after reasonable inquiry upon the filing
13 of this answering Defendant's Answer; and therefore, this answering Defendant reserves the right to
14 amend their Answer to allege additional affirmative defenses if subsequent investigation warrants.

15 **SIXTEENTH AFFIRMATIVE DEFENSE**

16 This answering Defendant denies that the Plaintiffs were damaged in the sum or sums alleged,
17 or to be alleged or any other sum or sums whatsoever.

18 **SEVENTEENTH AFFIRMATIVE DEFENSE**

19 This answering Defendant is informed and believes, and thereon alleges, that Plaintiffs lacks
20 the capacity to seek any and all relief as set forth in the pleadings.

21 **EIGHTEENTH AFFIRMATIVE DEFENSE**

22 This answering Defendant is informed and believes, and thereon alleges, that Plaintiffs'
23 claims are reduced, modified and/or barred by the Doctrine of Unclean Hands.

24 **NINETEENTH AFFIRMATIVE DEFENSE**

25 This answering Defendant denies that by reason of any act or omission, fault, conduct or
26 liability on the part of this answering Defendant, whether negligent, careless, unlawful or whether as
27 alleged, or otherwise, Plaintiffs were injured or damaged in any of the amounts alleged, or in any
28 other manner or amount whatsoever; this answering Defendant further denies that this answering

1 Defendant was negligent, careless, reckless, wanton, acted unlawfully or are liable, whether in the
2 manner alleged or otherwise.

3 **TWENTIETH AFFIRMATIVE DEFENSE**

4 This answering Defendant is informed and believes, and thereon alleges, that at no time prior
5 to the filing of this action did Plaintiffs, or any other party, or any agent, representative or employee
6 thereof, notify this answering Defendant of any breach of any contract, warranty, or duty; therefore,
7 Plaintiffs are barred from any right of recovery from this answering Defendant. Furthermore, this
8 answering Defendant is informed and believes, and thereon alleges, that Plaintiffs are barred and
9 precluded from any recovery in this action because this answering Defendant at all times complied
10 with the applicable standard of care required of this answering Defendant.

11 **TWENTY-FIRST AFFIRMATIVE DEFENSE**

12 This answering Defendant is informed and believes, and thereon alleges, that Plaintiffs
13 expressly, voluntarily, and knowingly assumed all risks about which they complain in thier
14 Complaint, and, therefore, is barred either totally, or to the extent of said assumption, from any
15 damages.

16 **TWENTY-SECOND AFFIRMATIVE DEFENSE**

17 This answering Defendant is informed and believes, and thereon alleges, that at the time and
18 place alleged in the Complaint, Plaintiffs did not exercise ordinary care, caution, or prudence to avoid
19 the events alleged in Plaintiffs' Complaint and the resulting injuries, if any, complained of were
20 directly and proximately contributed to and caused by the fault, carelessness and negligence of
21 Plaintiffs, and any judgment in favor of Plaintiffs and against this answering Defendant should be
22 reduced in proportion to Plaintiffs' own comparative negligence.

23 **TWENTY-THIRD AFFIRMATIVE DEFENSE**

24 This answering Defendant is informed and believes, and thereon alleges, that the collision
25 alleged in the Complaint, and the alleged damages and injuries, if any, to Plaintiffs, were proximately
26 caused or contributed to by Plaintiffs' own negligence and that the negligence of Plaintiffs exceeds
27 that of the Defendants, if any, and that Plaintiffs are thereby barred from any recovery.

TWENTY-FOURTH AFFIRMATIVE DEFENSE

This answering Defendant is informed and believes, and thereon alleges, that the injuries claimed to have been suffered by Plaintiffs, if any, were caused by either pre-existing, subsequent or otherwise unrelated medical conditions, diseases, illnesses or infections of Plaintiffs.

TWENTY-FIFTH AFFIRMATIVE DEFENSE

This answering Defendant is informed and believes, and thereon alleges, that the injuries or damages sustained by Plaintiffs, if any, were unforeseeable.

TWENTY-SIXTH AFFIRMATIVE DEFENSE

This answering Defendant is informed and believes, and thereon alleges, that Plaintiffs' injuries and/or damages, if any, were the result of an unavoidable accident.

TWENTY-SEVENTH AFFIRMATIVE DEFENSE

This answering Defendant is informed and believes, and thereon alleges, that any verdict rendered against this answering Defendant must be apportioned between injuries directly caused by the incident alleged in Plaintiffs' Complaint and other medical conditions which may have predated or occurred subsequent to the accident alleged.

TWENTY-EIGHTH AFFIRMATIVE DEFENSE

This answering Defendant is informed and believes, and thereon alleges, that Plaintiffs' alleged medical treatment and related expenses were not reasonable and/or medically necessary.

TWENTY-NINTH AFFIRMATIVE DEFENSE

This answering Defendant is informed and believes, and thereon alleges, that the incident alleged in the Complaint, and the alleged damages and/or injuries, if any, to Plaintiffs, were proximately caused or contributed to by a third-party over which this answering Defendant had no control over, which was the sole and proximate cause of this accident and, therefore, Plaintiffs are thereby barred from any recovery against this answering Defendant.

THIRTIETH AFFIRMATIVE DEFENSE

This answering Defendant is informed and believes, and thereon alleges, that Plaintiffs unreasonably delayed the filing of their Complaint and notification of this answering Defendant of the basis for the causes of action alleged against this answering Defendant, which have unduly and

1 severely prejudiced this answering Defendant in their defense of the action, thereby barring or
2 diminishing Plaintiffs' recovery herein under the Doctrine of Waiver.

3 **THIRTY-FIRST AFFIRMATIVE DEFENSE**

4 This answering Defendant is informed and believes, and thereon alleges, that the incident
5 alleged in the Complaint, and the resulting damage, if any, to Plaintiffs, or any other party, was
6 proximately caused or contributed to by the comparative negligence of other yet unnamed parties,
7 and such negligence was greater than the negligence, if any, of this answering Defendant, thus barring
8 any recovery by Plaintiff pursuant to N.R.S. 41.141.

9 **THIRTY-SECOND AFFIRMATIVE DEFENSE**

10 This answering Defendant is informed and believes, and thereon alleges, that if this answering
11 Defendant are found responsible in damages to Plaintiffs or some other party, whether as alleged or
12 otherwise, that the liability will be predicated upon the active conduct of other persons and/or legal
13 entities, whether by negligence, breach of warranty, strict liability in tort or otherwise, which
14 unlawful conduct proximately caused the alleged incident and that Plaintiffs' action against this
15 answering Defendant are barred by that active and affirmative conduct.

16 **THIRTY-THIRD AFFIRMATIVE DEFENSE**

17 This answering Defendant is informed and believes, and thereon alleges, that they are not
18 legally responsible in any fashion with respect to the damages and injuries claimed by Plaintiffs;
19 however, if this answering Defendant is subjected to any liability to Plaintiffs, it will be due, in whole
20 or in part, to the breach of warranty, acts, omissions, activities, carelessness, recklessness, and
21 negligence of others; wherefore any recovery obtained by Plaintiffs against this answering Defendant
22 should be reduced in proportion to the respective negligence and fault and legal responsibility of all
23 other parties, persons and entities, their agents, servants and employees who contributed to and/or
24 caused any such injury and/or damages, in accordance with the law of comparative negligence;
25 consequently, this answering Defendant is informed and believes, and thereon alleges, that the
26 liability of this answering Defendant, if any, is limited in direct proportion to the percentage of fault
27 actually attributed to this answering Defendant.

1 **THIRTY-FOURTH AFFIRMATIVE DEFENSE**

2 This answering Defendant is informed and believes, and thereon alleges, that this answering
3 Defendant is not legally responsible for acts and/or omissions of those Defendants named by
4 Plaintiffs as fictitious Defendants.

5 **THIRTY-FIFTH AFFIRMATIVE DEFENSE**

6 This answering Defendant is informed and believes, and thereon alleges, that Plaintiffs
7 knowingly made false representations with the intent to deceive third parties, including this
8 answering Defendant, which this answering Defendant justifiably relied upon, all to this answering
9 Defendant's detriment. This answering Defendant further alleges that Plaintiffs are not entitled to any
10 recovery from this answering Defendant.

11 **THIRTY-SIXTH AFFIRMATIVE DEFENSE**

12 This answering Defendant is informed and believes, and thereon alleges, that Plaintiffs'
13 cause of action for punitive damages does not state a viable cause of action under Nevada law.
14 Defendants reserve the right to seek dismissal of this cause of action upon further discovery and/or
15 proceedings.

16 **THIRTY-SEVENTH AFFIRMATIVE DEFENSE**

17 This answering Defendant is informed and believes, and thereon alleges, that joint and several
18 liabilities are inapplicable.

19 **THIRTY-EIGHTH AFFIRMATIVE DEFENSE**

20 This answering Defendant is informed and believes, and thereon alleges, that Plaintiffs acted
21 with the intent to fraudulently obtain some benefit or advantage to which they are not otherwise
22 entitled and therefore are not entitled to any recovery from this answering Defendant.

23 **THIRTY-NINE AFFIRMATIVE DEFENSE**

24 This answering Defendant has not engaged in any conduct which entitles Plaintiffs to punitive
25 damages.

26 **FORTIETH AFFIRMATIVE DEFENSE**

27 This answering Defendant is informed and believes, and thereon alleges, that Plaintiffs have
28 committed fraud and therefore are not entitled to any recovery from this answering Defendant.

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FORTY-FIRST AFFIRMATIVE DEFENSE

Any punitive damages sought by Plaintiffs are limited by statute and/or case law.

FORTY-SECOND AFFIRMATIVE DEFENSE

Plaintiffs’ Complaint, to the extent that it seeks punitive damages, violates this answering Defendant’s right to protection from “excessive fines” as provided in the 8th Amendment of the United States Constitution and/or the provisions of the Constitution of the State of Nevada and violates this answering Defendant right to substantive due process as provided in the 5th and 14th Amendment of the United States Constitution and/or the Constitution of the State of Nevada, and therefore, fails to state a cause of action supporting punitive damages claimed.

FORTY-THIRD AFFIRMATIVE DEFENSE

Plaintiffs’ Complaint, to the extent that it seeks punitive damages, violates this answering Defendant’s right to procedural process under the 14th Amendment of the United States Constitution and/or the provisions of the Constitution of the State of Nevada and, therefore fails to state a cause of action upon which punitive damages can be awarded.

FORTY-FORTH AFFIRMATIVE DEFENSE

Plaintiffs’ claims for punitive damages should be dismissed or limited on the grounds that punitive damages, under Nevada law, violate this answering Defendant’s right to equal protection of the law under the United States Constitution and/or the Nevada Constitution.

FORTY-FIFTH AFFIRMATIVE DEFENSE

Plaintiffs are not entitled to punitive damages because there is no conduct on the part of this Answering Defendant that rises to a level warranting punitive damages.

FORTY-SIXTH AFFIRMATIVE DEFENSE

This answering Defendant has not engaged in any conduct which entitles Plaintiffs to punitive damages.

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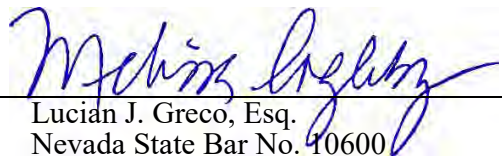
PRAYER FOR RELIEF

WHEREFORE, Defendant, MARK ANTHONY JACOBS prays for judgment against Plaintiff as follows:

- a) That Plaintiffs take nothing by virtue of their Complaint;
- b) For the cost of suit incurred herein;
- c) For attorney's fees and costs; and
- d) For such other and further relief as the court deems just and proper.

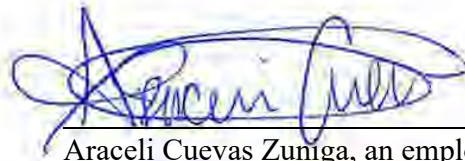
Dated: May 18, 2020

BREMER WHYTE BROWN & O'MEARA, LLP

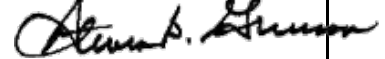
By: 
Lucian J. Greco, Esq.
Nevada State Bar No. 40600
Jared G. Christensen, Esq.
Nevada State Bar No. 11538
Melissa Ingleby, Esq.
Nevada State Bar No. 12935
Attorneys for Defendant,
Mark Anthony Jacobs

CERTIFICATE OF SERVICE

I hereby certify that on this 18th day of May 2020, a true and correct copy of the foregoing document was electronically delivered to Odyssey for filing and service upon all electronic service list recipients.



Araceli Cuevas Zuniga, an employee of
BREMER WHYTE BROWN & O'MEARA,
LLP



1 **MTC**
2 **KAREN L. BASHOR**
3 Nevada Bar No.: 11913
4 **HARRY V. PEETRIS**
5 Nevada Bar No.: 6448
6 **WILSON, ELSE, MOSKOWITZ,**
7 **EDELMAN & DICKER LLP**
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9 Las Vegas, NV 89119
10 (702) 727-1400; FAX (702) 727-1401
11 Karen.Bashor@wilsonelser.com
12 Harry.Peetris@wilsonelser.com
13 *Attorneys for Defendant UBER TECHNOLOGIES, INC., and RASIER, LLC*

14
15 **IN THE EIGHT JUDICIAL DISTRICT COURT**

16 **CLARK COUNTY, NEVADA**

17 MEGAN ROYZ; and ANDREA EILEEN WORK,

18 Plaintiff,

19 v.

20 MARK ANTHONY JACOBS; MARCO
21 ANTONIO HEREDIA-ESTRADA; UBER
22 TECHNOLOGIES, INC.; RAISER, LLC; RAISER-
23 CA, LLC; DOES I-X, and ROE CORPORATIONS
24 I-X, inclusive,

25 Defendants.

CASE NO. : A-20-810843-C

DEPT. NO.: 16

**DEFENDANTS UBER TECHNOLOGIES,
INC., RASIER, LLC AND RASIER-CA,
LLC'S MOTION TO COMPEL
ARBITRATION AND STAY ACTION**

HEARING REQUESTED

26 Defendants, UBER TECHNOLOGIES, INC., RASIER, LLC and RASIER-CA, LLC
27 (hereinafter collectively referred to as "Uber") and/or ("Defendants"), by and through their attorneys
28 of record, Karen L. Bashor and Harry V. Peetris, II of the law firm of Wilson, Elser, Moskowitz,
Edelman & Dicker, LLP, hereby submit their Motion to Compel Arbitration and Stay Action.

This Motion is based upon the papers and pleadings on file herein, the accompanying
memorandum of points and authorities, and any oral argument as may be permitted at the hearing
on this matter.

1 DATED this 12th day of June, 2020.

2 **WILSON, ELSER, MOSKOWITZ,**
3 **EDELMAN & DICKER LLP**

4 By: /s/Harry V. Peetris

5 **KAREN L. BASHOR**

6 Nevada Bar No. 11913

7 **HARRY V. PEETRIS**

8 Nevada Bar No. 6448

9 6689 Las Vegas Blvd. South, Suite 200

10 Las Vegas, NV 89119

11 *Attorneys for Defendants*

12 *UBER TECHNOLOGIES, INC.,*

13 *RAISER, LLC AND RAISER-CA, LLC*

14 **DECLARATION OF KAREN L. BASHOR IN SUPPORT OF DEFENDANTS UBER**
15 **TECHNOLOGIES, INC. AND RASIER, LLC'S MOTION TO COMPEL ARBITRATION**
16 **AND STAY ACTION**

17 1. I, Karen L. Bashor, Esq. declaration under penalty of perjury the following:

18 2. I am over the age of 18 years old and have capacity and direct knowledge to testify as
19 to the following.

20 3. I am a Partner with the law firm of WILSON, ELSER, MOSKOWITZ, EDELMAN
21 & DICKER LLP and counsel of record for Uber Technologies, Inc., Rasier LLC and Rasier-
22 CA, LLC (collectively "Uber") in the instant matter.

23 4. Uber was served with Plaintiff's Complaint on April 17 and 20, 2020. Uber filed its
24 demand for Cost Bond on May 7, 2020.

25 5. Plaintiff filed costs bonds on June 3, 2020. This motion shall serve as Uber's response
26 to the Complaint.

27 6. Formal discovery is not open for Uber as the Early Case Conference has not yet been
28 held in the matter and as such Uber has not participated in any discovery.

1 7. Attached hereto as **Exhibit 1** is a true and correct copy of the Declaration of Ryan
2 Buoscio wherein is a true and correct copies of the Plaintiff Work's sign up date confirmation,
3 attached as **Exhibit "1-A,"** and the February 10, 2015 Uber Terms of Service Agreement,
4 attached as **Exhibit "1-B."** The email to Plaintiff Work providing the updated terms of use
5 from November 14, 2016 is attached as **Exhibit "1-C,"** with the contents of the email attached
6 as **Exhibit "1-D."** Attached as **Exhibit "1-E"** is a true and correct copy of the November
7 21, 2016 terms.

8
9 8. Attached hereto as **Exhibit 2** is a true and correct copy of the Declaration of Ryan
10 Buoscio wherein is a true and correct copies of the Plaintiff Royz's sign up date confirmation,
11 attached as **Exhibit "2-I."** Screenshots of the Uber website registration page for Plaintiff
12 Royz are attached as **Exhibit "2-J."**

13 9. Attached hereto as **Exhibit 3** is a true and correct copy of Alex Perez's Declaration
14 wherein true and correct screenshots of the registration process for this version Rider App are
15 attached as **Exhibit "3-F" through "3-H."**

16
17 10. A true and correct copy of Plaintiff's Complaint attached hereto as **Exhibit 4.**

18 11. A true and correct copy of the minute order of *Granados et al v. Uber Technologies, Inc.*
19 *et al*, No. 2:16-cv-02912-APG-PAL (D. Nev. July 20, 2017), ECF. No. 25 is attached hereto
20 as **Exhibit 5.**

21
22 12. A true and correct copy of Ubers' correspondence to Plaintiffs requesting a stipulation
23 for arbitration is attached hereto as **Exhibit 6.** Plaintiff has not responded to Uber's request
24 for stipulation to arbitrate this matter pursuant to the terms of the relevant contract.

25 ///

26
27 ///

1 I declare under penalty of perjury that the foregoing is true and correct to the best of my
2 knowledge.

3 Executed on 12th day of June 2020 in Las Vegas, Nevada.
4

5 /s/Karen L. Bashor
6 Karen L. Bashor
7 Nevada Bar No. 11913

8 **MEMORANDUM OF POINTS AND AUTHORITIES**

9 **I. INTRODUCTION**

10 When Plaintiffs Megan Royz (“Royz”) and Andrea Eileen Work (“Work”) (together, the
11 “Plaintiffs”) created their respective Uber accounts, they both expressly agreed by written contract
12 to arbitrate the claims they now assert here. Plaintiffs cannot unilaterally repudiate their binding
13 contract with Uber. Filing this personal injury lawsuit in state court violates their binding arbitration
14 agreements, and therefore, this action cannot proceed.
15

16 Before first using Uber’s smartphone application, which enables riders who have agreed to
17 Uber’s Terms & Conditions to connect rides with drivers, Plaintiff Work created an Uber account
18 on March 27, 2015. During that process, Plaintiff Work expressly agreed to be bound by Uber’s
19 Terms. The Terms included a clear and conspicuous arbitration agreement that delegated any
20 disputes regarding arbitrability to the arbitrator (the “Arbitration Agreement”). Similarly, on
21 November 30, 2016, Plaintiff Royz created an account via the Uber website. During that process,
22 Plaintiff Royz expressly agreed to be bound by Uber’s Terms. The Terms included a clear and
23 conspicuous Arbitration Agreement. Therefore, the Court should reject Plaintiffs’ efforts to evade
24 the Terms to which they both agreed, and order both Plaintiffs to arbitrate their claims against Uber.
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1 Under the Terms, both Plaintiffs agreed to arbitrate “any claim that [they] may have against
2 Uber,” including those “arising out of or relating to” the Terms and its existence, breach,
3 termination, enforcement, interpretation, or validity, or Plaintiff’s access to or use of Uber
4 application or services. The parties also agreed in a delegation clause that an arbitrator—not a
5 court—will resolve any disputes about the existence, interpretation and enforceability of the
6 Arbitration Agreement. **See Exhibits 1-E and 6.**

7 Judges in Nevada and nationwide have affirmed Uber’s Arbitration Agreement as valid and
8 enforceable. *See Mwithiga v. Uber Techs., Inc.*, 376 F. Supp. 3d 1052, 1062 (D. Nev. 2019);
9 *Granados et al v. Uber Technologies, Inc. et al*, No. 2:16-cv-02912-APG-PAL (D. Nev. July 20,
10 2017), ECF. No. 25 *Meyer v. Uber Techs Inc.* 868 F.3d 66, 80 (2d Cir. 2017); *Cordas v. Uber Techs.,*
11 *Inc.* 228 F.Supp.3d 985, 992 (N.D. Cal. 2017); *Cubria v. Uber Techs Inc.* 242 F.Supp.3d 541,
12 548(W.D. Tex. 2017). Consistent with the FAA, federal and state courts throughout the state of
13 Nevada routinely enforce precisely this kind of arbitration agreement. Any issues Plaintiffs may
14 raise regarding the enforceability of the Arbitration Agreement or the arbitrability of their disputes
15 are reserved for the arbitrator.
16

17
18 Uber Defendants respectfully request that Plaintiffs’ claims be stayed pending the outcome
19 of arbitration. In the alternative, should the Court only compel a portion of the claims in this matter
20 to arbitration, Uber respectfully requests that the remainder of the matter be stayed until the
21 Arbitration has been completed.

22 **II. FACTUAL BACKGROUND**

23 **A. Plaintiffs Agreed to Arbitrate Their Claims.**

24
25 Uber is a technology company that developed a software application (“the Uber App”) that
26 enables riders to request rides from third-party transportation providers. To request and pay for
27 third-party transportation services via the Uber App, riders must first register with Uber by creating

1 an account. A rider account can be created from within the Uber App itself. *See Exhibit 3,*
2 Declaration of Alex Perez (“Perez Decl.”) attached hereto at ¶¶ 2-4. A rider account can similarly
3 be created via the Uber website. *See Declaration of Ryan Buoscio re Royz (“Buoscio Decl. Exhibit*
4 **2”)** ¶¶ 9-11.

5 **i. Plaintiff Work’s Sign Up**

6 Plaintiff Work registered for an Uber rider account on March 27, 2015, via the iOS version
7 of the Uber App using a smartphone with an iOS operating system. Perez Decl. at ¶ 3. A true and
8 correct copy of the screenshots of the registration sign-up process for this version of the iOS-based
9 Uber App is attached as **Exhibits “3-F” through “3-H”** to **Exhibit 3**, Perez Decl. ¶ 4; Declaration
10 of Ryan Buoscio re Work (“Buscio Decl. **Exhibit 1”**) at ¶ 9, **Exhibit 1-A**.

12 The process for creating an Uber account on March 27, 2015, involved a few simple steps,
13 each of which involved a single screen, as set forth below. As reflected in the screenshots attached
14 to the Perez declaration as **Exhibits “3-F” through “3-H,”** the registration process is short and
15 simple, and the screens are uncluttered, as well as easy to read and understand. Each step is
16 contained in a single screen on the user’s smartphone with no scrolling required. *See Id.* at ¶ 4 and
17 **Exhibits “3-F” through “3-H.”**

19 After successfully downloading the Rider App, the user is given the option to “Sign In” or
20 Register.” *Id.* at ¶ 4(a) and **Exhibit “3-F.”** Uber records indicate this user selected “Register”, where
21 they would have been taken to the next screen titled “Create An Account” with a prompt “Don’t
22 Allow” or “Allow” for Uber access to the user’s location while using the Rider App, the user is then
23 prompted on the same screen to enter an email address, mobile number and a password or connect
24 with Facebook. *Id.* After entering the requested information on the screen, the word “NEXT” is
25 enabled and lights up in the upper right hand corner of the screen. *Id.* The user clicks “NEXT to
26 advance to the next screen. *Id.*

1 On the next screen, titled "Create A Profile", the user is prompted to create a profile by
2 entering his or her first and last name. After entering the requested information on the screen, the
3 word "NEXT" is enabled and lights up in the upper right hand corner of the screen. The user clicks
4 "NEXT to advance to the next screen. *Id.* at ¶ 4(a) and **Exhibit "3-G."**

5 On the final screen, titled "Link Payment", the user is prompted to enter payment
6 information by entering credit card information or by clicking a *PayPal* button. The following notice
7 is visibly displayed on this screen at the bottom of the screen with no need to scroll down to view
8 it: "By creating an Uber account, you agree to the Terms & Conditions and Privacy Policy." The
9 phrase "Terms & Conditions and Privacy Policy" is displayed in a box and in gray text, all of which
10 sets the text apart from other text on the screen and indicates a hyperlink. When a user clicks the
11 link, he is taken to a screen that contains clickable buttons titled "Terms & Conditions" and "Privacy
12 Policy," which when clicked would have displayed the Terms & Conditions and Privacy Policy then
13 in effect. *Id.* at ¶ 4(a) and **Exhibit "3-H."**

14 The Terms and Conditions in effect on March 27, 2015, the date Plaintiff Work created her
15 account with Uber, were the Terms and Conditions that went into effect for users utilizing the Uber
16 App in the United States on February 10, 2015. *See* Buoscio Decl. **Exhibit 1, ¶ 10, Exhibit "1-B."**
17 On November 14, 2016, Uber sent Plaintiff an email with the subject line "We've Updated Our
18 Terms of Use" that provided notice of updates to the Uber Apps' Terms & Conditions. *Id.* ¶ 11,
19 **Exhibit "1-C."** This email expressly stated that continued use of the Uber Apps would constitute
20 assent to the updated Terms. The Terms were available via hyperlink from the email. *Id.* ¶ 12,
21 **Exhibit "1-D."** A copy of the November 21, 2016 U.S. Terms is provided as **Exhibit "1-E"** to
22 Buoscio Decl. **Exhibit 1, ¶ 13.** The November 21, 2016 Terms contain an Arbitration Agreement.
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1 Plaintiff Work could not have completed the registration process via the Rider App, and
2 taken any rides utilizing this account via the Rider App, without completing these steps. *See Exhibit*
3 *3*, Perez Decl. at ¶ 5. Plaintiff Work therefore unequivocally accepted and agreed to Uber’s Terms.

4 **ii. Plaintiff Royz’s Sign Up**

5 Plaintiff Royz registered for an Uber rider account on November 30, 2016, via the Uber
6 website. *See Exhibit 2*, Buoscio Decl. ¶ 9, **Exhibit “2-I.”** A Rider may register via the Uber
7 website using any type of device with access to a web browser. *See Exhibit 2*, Buoscio Decl. ¶ 10,
8 **Exhibit “2-J.”**

9
10 On November 30, 2016, the process for creating an Uber account via the Uber website
11 required potential Riders to input the following data in fields contained on a single webpage: email,
12 password, first name, last name, mobile number, language, and promotion code (if any). Upon
13 completing these fields, Riders would then register for an account by clicking the blue “Create
14 Account” button at the bottom of the webpage. *See Exhibit 2*, Buoscio Decl. ¶ 11. Immediately
15 below the “Create Account” button, Riders were informed in clear language:

16
17 “By clicking “Create Account”, you agree to Uber’s Terms and Conditions and Privacy
18 Policy”

19 The phrases “Terms and Conditions” and “Privacy Policy” were displayed on a simple white
20 background and in blue, hyperlinked text. This distinguished them from other content on the
21 webpage and indicated traditional hyperlinks. *See Exhibit 2*, Buoscio Decl. ¶ 11, **Exhibit “2-J.”**
22 When the “Terms and Conditions” hyperlink was clicked from the website registration page on
23 November 30, 2016, the relevant Terms then in effect were displayed for the user. *See Exhibit 2*,
24 Buoscio Decl. ¶ 12.

25
26 The Terms and Conditions in effect on November 30, 2016, the date Plaintiff Royz created
27 her account with Uber, were the Terms and Conditions that went into effect for users utilizing the

1 Uber App in the United States on November 21, 2016. *See Exhibit 2*, Buoscio Decl. ¶ 13, *Exhibit*
2 **“1-E.”** The November 21, 2016 Terms contain an Arbitration Agreement.

3 **iii. When Plaintiffs Voluntarily Registered for Uber’s Services They Agreed to**
4 **Uber’s Terms.**

5 As discussed above, both Plaintiffs signed up to utilize the rider version of the Uber App.
6 Plaintiff Work completed the process and accepted the Terms on March 27, 2015. *See Exhibit 3*,
7 Perez Decl. at ¶¶ 3-5. Plaintiff Royz completed the process and accepted the Terms on November
8 30, 2016. *See Exhibit 2*, Buoscio Decl. ¶ 9, *Exhibit “2-I.”* Pursuant to its Terms & Conditions to
9 both Plaintiffs, Uber has provided Plaintiffs with access to its services. Plaintiffs have accessed
10 those services, using the Uber App to connect with independent drivers, for which they then took
11 numerous trips from the time they created their accounts through the date of the incident that is the
12 subject of this litigation. *See Exhibit 1*, Buoscio Decl. at ¶¶ 4-5, 13 *Exhibit “1-E”*; *See Exhibit 2*,
14 Buoscio Decl. ¶¶ 13, *Exhibit “1-E.”*

15 **iv. Uber’s Terms Include a Prominent, Valid Arbitration Agreement.**

16 The Terms to which both Plaintiffs agreed contain several sections, separated by bolded
17 headings. *See Exhibit 1*, Buoscio Decl. at ¶ 13, *Exhibit “1-E”*; *See Exhibit 2*, Buoscio Decl. 2 ¶
18 13, *Exhibit “1-E”* (2016 Terms and Conditions). The Arbitration Agreement in the Terms to which
19 both Plaintiffs agreed is broad: **“By agreeing to the Terms, you agree that you are required to**
20 **resolve any claim that you may have against Uber on an individual basis in arbitration, as set**
21 **forth in this Arbitration Agreement.”** *Id.* at 2 (emphasis in original).

22 The Arbitration Agreement in the Terms emphasizes its broad scope:

23 You and Uber agree that any dispute, claim or controversy arising out of or relating
24 to (a) these Terms or the existence, breach, termination, enforcement, interpretation
25 or validity thereof, or (b) your access to or use of the Services at any time, whether
26 before or after the date you agreed to the Terms, will be settled by binding arbitration
27 between you and Uber, and not in a court of law.

1 *Id.* at § 2 (“Rules and Governing Law”).

2 The Arbitration Agreement further specifies: (1) that the arbitration will be administered by
3 the American Arbitration Association (“AAA”); (2) that the AAA will apply its “Consumer
4 Arbitration Rules and the Supplementary Procedures for Consumer Related Disputes (the ‘AAA
5 Rules’) then in effect,”; and (3) that the “Federal Arbitration Act will govern [the] interpretation
6 and enforcement” of the agreement. *Id.*

7
8 The Arbitration Agreement also includes several features, which ensure that consumers have
9 a simple, efficient, and fair means of resolving any disputes. For example, riders may arbitrate any
10 disputes in the counties where they reside *Id.* at § 2 (“Location and Procedure”) and retain the option
11 to commence claims in small claims court *Id.* at § 2 (“Agreement to Binding Arbitration Between
12 You and Uber”). The arbitrator is empowered to award declaratory and injunctive relief in the rider’s
13 favor. *Id.* at § 2 (“Arbitrator’s Decision”). And, unless the rider makes a claim for more than
14 \$75,000.00 or the arbitrator finds that a rider’s claims are frivolous or brought for an improper
15 purpose, Uber will pay all filing, administrative, and arbitrator fees associated with the arbitration.
16 *Id.* at § 2 (“Fees”).

17 18 **3. Plaintiffs Ignored Their Arbitration Agreement and Filed Suit.**

19 By completing all the steps necessary to register for Uber’s services, including creating an
20 account, both Plaintiffs unequivocally agreed to Uber’s Terms, including the Arbitration
21 Agreement. *See Exhibit 3*, Perez Decl. at ¶¶ 2-5; *See Exhibit 1*, Buoscio Decl. ¶¶ 8-13, **Exhibit “1-
22 E”**; and *See Exhibit 2*, Buoscio Decl. ¶¶ 8-13, **Exhibit “1-E”** (2016 Terms and Conditions).
23 Pursuant to its Terms, Uber has provided Plaintiffs with access to its services, and Plaintiffs have
24 requested and obtained rides from drivers through those services. *See Exhibit 1*, Buoscio Decl. ¶
25 14. Disavowing the parties’ agreement, Plaintiffs have filed this lawsuit. Plaintiff have also refused
26
27

1 to honor their contractual obligations to stipulate to arbitrate this matter upon demand by refusing
2 to respond to Uber Defendants' written demand to arbitrate. *See Exhibit 6.*

3 Plaintiffs' claims all stem from his allegations that they suffered personal injuries while
4 utilizing the Uber App. *See Plaintiff's Complaint, ¶¶ 32-46 as Exhibit "4."* The alleged incident
5 giving rise to Plaintiff's allegations occurred on or about February 22, 2018, almost a year and half
6 after Plaintiff Royz consented to Terms and the Arbitration Agreement and almost three years after
7 Plaintiff Work consented to said Terms. *Id., See Exhibit 1, Buoscio Decl. ¶¶ 8-13; and Exhibits*
8 *"1-A" and "1-E," See Exhibit 2, Buoscio Decl. ¶¶ 8-13; and Exhibits "1-E" and "2-I."*
9

10 Since it is undisputed that both Plaintiffs' claimed injuries arise out of his use of Uber's
11 services, Plaintiffs' allegations are governed by the Arbitration Agreement. Plaintiffs' claims are
12 encompassed by the Arbitration Agreement because the Terms govern Plaintiffs' use of the Uber
13 services they allege resulted in their harm. *See Exhibit 3, Perez Decl. at ¶ 4(c) and Exhibit "3-H;"*
14 *See Exhibit 1, Buoscio Decl. ¶ 13, Exhibit "1-E," See Exhibit 2, Buoscio Decl. ¶ 13, Exhibit "1-*
15 *E" (2016 Terms and Conditions).*
16

17 **III. ARGUMENT**

18 **A. The FAA Governs the Agreement.**

19 Courts repeatedly hold that the FAA applies to all arbitration agreements involving interstate
20 commerce. *See Circuit City Stores, Inc. v. Adams*, 532 U.S. 105 (2001). The Arbitration Provision
21 at issue here is indisputably governed by the FAA. First, it specifically states as much, which is
22 sufficient to bring it within the purview of the FAA. Thus, the parties clearly intended the FAA to
23 apply, and the Court should employ the parties' agreed upon choice of law. *See Buckeye Check*
24 *Cashing Inc. v. Cardegna*, 546 U.S. 440, 442-43(2006)(applying the FAA to resolve a motion to
25 compel brought in state court when the parties selected the FAA to govern in their arbitration
26 agreement).
27

1 Second, the agreement within which the Arbitration Provision is contained involves
2 commerce. The FAA’s term “involving commerce” is interpreted broadly by the courts. *See Citizens*
3 *Bank v. Alafabco, Inc.*, 539 U.S. 52, 56 (2003) (finding the requisite commerce for FAA coverage
4 even when the individual transaction did not have a substantial effect on commerce). Here, the Uber
5 App and its related 2016 TSA impacts over 250 cities across the United States clearly involves
6 commerce as required by the FAA.

7
8 **B. Threshold Questions of Arbitrability Must Be Decided By the Arbitrator.**

9 After determining that the FAA applies, the Court must examine the underlying contract to
10 determine whether the parties agreed to a delegation clause, and thereby committed threshold
11 questions of arbitrability to the arbitrator. *Rent-A-Center, W., Inc. v. Jackson*, 561 U.S. 63, 70 (2010)
12 (“An agreement to arbitrate a gateway issue is simply an additional antecedent agreement the party
13 seeking arbitration asks the federal court to enforce, and the FAA operates on this additional
14 arbitration agreement just as it does on any other.”). Here, the parties “clearly and unmistakably”
15 agreed to arbitrate arbitrability, and the Court should enforce that agreement. The Arbitration
16 Agreement provides that the arbitrator, rather than the court, “shall have exclusive authority to
17 resolve any disputes relating to the interpretation, applicability, enforceability, or formation of this
18 Arbitration Agreement . . . [and] shall also be responsible for determining all threshold arbitrability
19 issues, including issues relating to whether the Terms are unconscionable or illusory and any defense
20 to arbitration.” *See Exhibit 1*, Buoscio Decl. ¶ 13, *Exhibit “1-E”*, *See Exhibit 2*, Buoscio Decl. 2
21 ¶ 13, *Exhibit “1-E”* (2016 Terms and Conditions) at § 2 (“Rules and Governing Law”).

22
23
24 By incorporating the AAA Consumer Arbitration Rules, the Terms underscore the parties’
25 delegation of gateway issues of arbitrability. *See id.* at § 2 (“Rules and Governing Law”). In
26 *Brennan*, the Ninth Circuit held that “incorporation of the AAA rules constitutes clear and
27 unmistakable evidence that contracting parties agreed to arbitrate arbitrability.” *Brennan*, 796 F.3d

1 at 1130. *See also Cubria*, 242 F.Supp.3d at 548; *Cordas*, 228 F.Supp.3d at 992 (“clear weight of
2 authority” supports [the] conclusion that incorporation of the AAA rules effectively delegates
3 arbitrability regardless of the sophistication of the parties); *accord McLellan v. Fitbit, Inc.* (N.D.
4 Cal. Oct. 11, 2017, No. 3:16-CV-00036-JD) 2017 WL 4551484 at *2. Thus, because the parties
5 unambiguously agreed to delegate arbitrability issues to the arbitrator both through an express
6 delegation clause and the incorporation of the AAA Rules, the Court should enforce the agreement.
7

8 Accordingly, the court should end the inquiry here and compel arbitration pursuant to the
9 delegation clause in the Arbitration Provision. Two courts in this District have previously compelled
10 arbitration under this exact same Arbitration Provision. *See Granados et al v. Uber Technologies,*
11 *Inc. et al*, No. 2:16-cv-02912-APG-PAL (D. Nev. July 20, 2017), ECF. No. 25 (although no formal
12 written order was issued, the court compelled arbitration, struck class allegations, and dismissed the
13 complaint) and *Mwithiga v. Uber Techs., Inc.*, 376 F. Supp. 3d 1052, 1062 (D. Nev. 2019). A copy
14 of the Minute Order of *Granados* is attached hereto as **Exhibit “5”**.
15

16 **C. Even if the Court Concludes It, Rather than the Arbitrator, Should Decide**
17 **Arbitrability, Both Gateway Issues are Satisfied.**

18 The Court should compel arbitration even if it were to decide, contrary to the parties’
19 delegation agreement, that it (rather than the arbitrator) should assess gateway questions of
20 arbitrability. Nevada law regarding motions to compel arbitration is plain and unambiguous: “On
21 a motion of a person showing an agreement to arbitrate and alleging another person’s refusal to
22 arbitrate ... if the refusing party opposes the motion, the court shall proceed summarily to decide
23 the issue and order the parties to arbitrate unless it finds that there is no enforceable agreement to
24 arbitrate.” NRS 38.221(1) (emphasis added). Disputes are presumptively arbitrable and a court must
25 resolve all doubts concerning the arbitrability of claims in favor of arbitration. *International Ass’n*
26 *Firefighters v. City of Las Vegas*, 112 Nev. 1319, 1323, 929 P.2d 954 (1996). Consequently, the
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1 only questions a court posed with a motion to compel arbitration must answer are (1) whether a
2 valid agreement to arbitrate exists and, if it does, (2) whether the agreement encompasses the dispute
3 at issue.

4 The FAA requires the same analysis and mandates that “district courts shall direct the parties
5 to proceed to arbitration on issues as to which an arbitration agreement has been signed[,]” and
6 limits court involvement to “determining (1) whether a valid agreement to arbitrate exists and, if it
7 does, (2) whether the agreement encompasses the dispute at issue.” *Cox v. Ocean View Hotel Corp.*,
8 533 F.3d 1114, 1119 (9th Cir. 2008). If the court were to reach this issue, both of these inquiries
9 must be answered in the affirmative.
10

11 **1. Plaintiffs Entered into Valid Agreements to Arbitrate.**

12 There can be no dispute that Plaintiffs accepted Uber’s Terms and thereby agreed to arbitrate
13 their disputes with Uber Defendants. The validity of an agreement to arbitrate is assessed under state
14 law. *See* 9 U.S.C. § 2. Under Nevada law, an arbitration agreement must contain an offer,
15 acceptance, and consideration. *DeNigris v. Las Vegas Police Managers & Supervisors Ass’n*, 2013
16 U.S. Dist. LEXIS 104908 (D. Nev. July 26, 2013) citing *May v. Anderson*, 121 Nev. 668, 119 P.3d
17 1254, 1257 (Nev. 2005).
18

19 Here, all of these requirements are easily satisfied. Further, an enforceable contract
20 “requires a manifestation of mutual assent in the form of an offer by one party and acceptance
21 thereof by the other ... [and] agreement or meeting of the minds of the parties as to all essential
22 elements.” *Keddie v. Beneficial Ins., Inc.* 94 Nev. 418, 580 P.2d 955, 956 (1978) (Baltjer, C.J.,
23 concurring) (citations omitted). Further, “[i]n interpreting a contract, we construe a contract that is
24 clear on its face from the written language, and it should be enforced as written.” *State ex rel. Masto*
25 *v. Second Judicial Dist. Court ex rel. Cnty. of Washoe*, 125 Nev. 37, 44, 199 P.3d 828, 832 (2009)
26 (citations omitted); *see also Pink v. Busch*, 100 Nev. 684, 688, 691 P.2d 456, 459 (1984)(to satisfy
27

1 the consideration requirement under Nevada law, an accepting party to a contract can either tender
2 bargained-for performance or make a mutual promise) (citations omitted).

3 Thus, courts routinely enforce online agreements where users' conduct indicates their
4 consent to hyperlinked terms of service to which they had actual or constructive notice. *See, e.g.,*
5 *Nevarez v. Forty Niners Football Co., LLC* (N.D. Cal. August 15, 2017, No. 16-CV-07013) 2017
6 WL 3492110, at *6-9 (user bound by arbitration provision where clicked buttons with language
7 below them alerting the user that clicking such buttons constituted consent to the website's terms);
8 *In re Facebook Biometric Info. Privacy Litig.* F.Supp.3d 1155, 1164 (N.D. Cal. 2016) (finding
9 assent where the user clicked a "Sign Up" box with language beneath it that put him on notice that
10 clicking the box constituted assent to the agreement); *Graf v. Match.com, LLC* (C.D. Cal. July 10,
11 2015, No. CV 15-3911 PA (MRWX)) 2016 WL 4263957, at *4 (enforcing arbitration provision in
12 hyperlinked terms of use where website informed user that clicking on website button affirmed
13 consent to terms of use); *Crawford v. Beachbody, LLC* (S.D. Cal. Nov. 5, 2015, No. 14-CV-1583
14 GPC) 2014 WL 6606563, at *3 (online customer who placed order was bound by contract terms
15 when website stated that "by clicking Place Order below, you are agreeing that you have read and
16 understand the Beachbody Purchase Terms and Conditions," which were hyperlinked on the same
17 webpage).
18
19

20 Here, the prong of assent has been met because the notice of the confirmation of the terms
21 and services were readily apparent. The phrases "Terms and Conditions" and "Privacy Policy" in
22 this notice were displayed in bright blue text, indicating that they are hyperlinks. *See Exhibit 3,*
23 *Perez Decl.* ¶ 4(c) and **Exhibit "3-H"** (for Work); *See Exhibit 2,* Buoscio Decl. ¶¶ 11, 12 and
24 **Exhibit "2-J"** (for Royz). Plaintiffs then had the option to click on the "Terms and Conditions"
25 hyperlink and review Uber's then current Terms and Conditions. *Id.* Uber's disclosure provided
26 clear notice to Plaintiff of Uber's Terms and the fact that creating an account would constitute his
27

1 consent to it. *See Cordas*, 228 F.Supp.3d at 990-91 (by completing sign up process and creating an
2 Uber account, Uber rider affirmatively assented to Uber’s terms and conditions); *Meyer*, 868 F.3d
3 at 80; *Cubria Inc.*, 242 F.Supp.3d at 548. By creating their Uber accounts, Plaintiffs thereby
4 consented to Uber’s Terms, including the Arbitration Agreement. *See Exhibit 3*, Perez Decl. ¶¶ 3-
5 5; and *See Exhibit 1*, Buoscio Decl. ¶¶ 8-13 at **Exhibits “1-A” through Exhibit “1-E”**; *See Exhibit*
6 **2**, Buoscio Decl. ¶¶ 8-13 and **Exhibits “2-I” and “2-J.”** Both Plaintiffs’ consent to the Terms is
7 also demonstrated by their continued use of the Uber App after actively agreeing to the Terms. *See*
8 **Exhibit 3**, Perez Decl. ¶¶ 3-5; *See Exhibit 1*, Buoscio Decl. ¶¶ 8-14 and **Exhibits “1-A” through**
9 **Exhibit “1-E.”** *See Wright v. Sirius XM Radio Inc.* (C.D. Cal. June 1, 2017, No. SACV16-01688
10 (JVS)(JCGx)) 2017 WL 4676580, at *5-6 (enforcing arbitration agreement in “Welcome Kit” where
11 the contract was mailed to plaintiff and plaintiff continued to use his subscription after receiving it);
12 *Amirhamzeh v. Wells Fargo Bank, N.A.* (N.D. Cal. Oct. 31, 2014, No. 14-CV-02123-VC) 2014 WL
13 12610227, at *1 (Chhabria, J.) (plaintiff agreed to arbitration agreement in terms and conditions
14 received after enrolling in service by continuing to use the service after receipt of terms).
15

16
17 Plaintiffs’ continued use of their Uber accounts after signing up further reflects their consent
18 to those Terms, including the Arbitration Agreement. *See In re Facebook Biometrics Info. Privacy*
19 *Litig., supra*, 185 F.Supp. at 1167 (“[P]laintiffs were given adequate notice of the terms in the
20 current user agreement, and the plaintiffs accepted and agreed to the current terms by continuing to
21 use Facebook after receiving that notice.”); *James v. Comcast Corp.* (N.D. Cal. Aug. 15, 2016, No.
22 16-CV-02218-EMC) 2016 WL 4269898, at *2 (plaintiff consented to revised service agreement
23 containing arbitration provision by continuing to use her account after receiving notice of the
24 provision in a bill stuffer). Thus, Plaintiffs are bound by the Arbitration Agreement.
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1 **2. Plaintiffs’ Claims are Covered by the Arbitration Agreement.**

2 The FAA requires that courts compel arbitration “unless it may be said with *positive*
3 *assurance* that the arbitration clause is not susceptible of an interpretation that covers the asserted
4 dispute. Doubts should be resolved in favor of coverage.” *AT&T Techs., Inc. v. Commc’ns Workers*
5 *of Am.* 475 U.S. 643, 650(1986)(emphasis added, citation omitted.) Here, the Arbitration
6 Agreement extends to **all claims or disputes** “arising out of or relating to” the Terms or the rider’s
7 “access to or use of” the Uber App. See **Exhibit 1**, Buoscio Decl. 1 ¶ 13, **Exhibit “1-E”**; See
8 **Exhibit 2**, Buoscio Decl. ¶ 13, **Exhibit “1-E”** (2016 Terms and Conditions). The Arbitration
9 Agreement’s use of the “arising out of or relating to” language should be interpreted broadly. See,
10 *Law Offices of Bradley J. Hofland, P.C. v. McFarling*, 2007 WL 1074096, *4 (D.Nev.)
11 (D.Nev.,2007); *Simula, Inc.*, 175 F.3d at 720 (interpreting the language “[a]ll disputes arising in
12 connection with this Agreement” broadly); *J.J. Ryan & Sons, Inc. v. Rhone Poulenc Textile, S.A.*,
13 863 F.2d 315, 321 (4th Cir.1988) (finding that the language “[a]ll disputes arising in connection
14 with the present contract shall be finally settled” by arbitration was sufficiently broad in scope to
15 include claims for unfair trade practices, libel, and defamation); *McDonnell Douglas Fin. Corp. v.*
16 *Pennsylvania Power & Light Co.*, 858 F.2d 825, 832 (2d Cir.1988) (noting the distinction between
17 “broad” clauses that purport to refer to arbitration all disputes arising out of a contract and “narrow”
18 clauses that limit arbitration to specific types of disputes). In the face of this language, “Plaintiff’s
19 claims need only ‘touch matters’ covered by the contract containing the arbitration provision.”
20 *Simula, Inc.*, 175 F.3d at 721 (citations and internal quotes omitted). Plaintiff’s claims fall squarely
21 within the broad scope of the Arbitration Agreement. Plaintiffs allege that they suffered personal
22 injuries in the course of an Uber ride. See **Exhibit 4**, Complaint. That is the very reason Uber
23 Defendants are named as Defendants in this suit.
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1 The underlying incident here clearly arises out of Plaintiffs' use of the Uber App, and the
2 scope of the Arbitration Agreement specifically extends to disputes or claims arising out of the
3 user's "access to or use of" the Uber App. See **Exhibit 1**, Buoscio Decl. ¶ 13, **Exhibit "1-E"**; See
4 **Exhibit 2**, Buoscio Decl. 2 ¶ 13; See **Exhibit "1-E"** (2016 Terms and Conditions).

5 **3. The Arbitration Agreement is not Unconscionable.**

6 Plaintiffs cannot avoid the Arbitration Agreement they entered into with Uber Defendants
7 by claiming it is unconscionable. "[P]rocedural and substantive unconscionability must *both* be
8 present" to permit a court "to refuse to enforce a contract." *Burch v. Dist. Ct.*, 118 Nev. 438, 442,
9 49 P.3d 647, 650 (2002). A contractual clause is "procedurally unconscionable" when "a party
10 lacks a meaningful opportunity to agree to the clause terms either because of unequal bargaining
11 power . . . or because the clause and its effects are not readily ascertainable upon a review of the
12 contract." *Nebab v. Bank of Am., N.A.*, No. 2:10-CV-01865-KJD, 2012 WL 2860660, at *4 (D. Nev.
13 July 11, 2012). Procedural unconscionability can involve "the use of fine print or complicated,
14 incomplete, or misleading language that fails to inform a reasonable person of the contractual
15 language's consequences." *Id.* Uber's Arbitration Agreement is consumer friendly and cost
16 effective, and Plaintiffs cannot meet their burden of proving otherwise. Plaintiffs had a meaningful
17 choice whether to accept the Terms and take advantage of the Uber App—they could have easily
18 declined those terms and used an alternative means of making trips via the Lyft App, taxi, and/or
19 public transportation. See *Belton v. Comcast Cable Holdings LLC* 151 Cal.App.4th 1224, 1245
20 (2007)("The availability of alternative sources from which to obtain the desired service defeats any
21 claim of oppression, because the consumer has a meaningful choice). The Terms containing the
22 Arbitration Agreement were prominently called out in grey text on the account sign-up screen and
23 were readily accessible to Plaintiff. See **Exhibit 3**, Perez Decl. ¶¶ 4 **Exhibits 3-F through 3-H**; See
24 **Exhibit 2**, Buoscio Decl. ¶ 11, **Exhibit "2-J."** Uber "was under no obligation to highlight the
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1 arbitration clause of its contract, nor was it required to specifically call that clause to [Plaintiff's]
2 attention.” *Sanchez, supra*, 61 Cal. 4th at 914. Even so, the Arbitration Agreement is written in
3 plain English and is conspicuously displayed under the large heading “Arbitration Agreement” not
4 “hidden within a prolix printed form.” See **Exhibit 1**, Buoscio Decl. ¶ 13, **Exhibit “1-E”**; See
5 **Exhibit 2**, Buoscio Decl. 2 ¶ 13, **Exhibit “1-E”** (2016 Terms and Conditions); see also *Jones v.*
6 *Wells Fargo Bank* 112 Cal.App.4th 1527, 1539(2003); *Serafin v. Balco Properties Ltd., LLC* 235
7 Cal.App.4th 165, 179 (2015)(“any procedural unconscionability is “limited” where arbitration
8 provision is highlighted); *Morris v. Redwood Empire Bancorp* (2005) 128 Cal.App.4th 1305, 132
9 [“a clear heading in a contract may refute a claim of surprise”].) Under this heading, the Terms
10 clearly state in bold: “**By agreeing to the Terms, you agree that you are required to resolve any**
11 **claim that you may have against Uber on an individual basis in arbitration.**” See *id.* (emphasis
12 in original).

14 Nor can it be said that the Arbitration Agreement was substantively unconscionable.
15 “Substantive unconscionability focuses on the one-sidedness of the contract terms.” *Nebab*, 2012
16 WL 2860660, at *4. Here, the terms of the Arbitration Provision are plainly reasonable, fair, and
17 none of its terms are one-sided. The Arbitration Agreement is bilateral and safeguards Plaintiff’s
18 ability to pursue a small claims action or an individual arbitration. See **Exhibit 1**, Buoscio Decl. ¶
19 13, **Exhibit “1-E”**; See **Exhibit 2**, Buoscio Decl. ¶ 13, **Exhibit “1-E”** (2016 Terms and Conditions).
20 It also includes cost terms that benefit the consumer. Uber has agreed to pay all of Plaintiff’s “filing,
21 administrative and arbitrator fees” for arbitration of non-frivolous claims under \$75,000. *Id.* Further,
22 Plaintiff is not faced with significant travel expenses because Uber agreed to conduct the arbitration
23 in Plaintiff’s home county. *Id.* These provisions defeat any claimed unconscionability. See, e.g.,
24 *Ulbrich v. Oberstock.com, Inc.* 887 F.Supp.2d 924, 933-34 (N.D. Cal 2012) rejecting
25 unconscionability challenge even where arbitration provision required individuals to share in costs
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1 of arbitration, set the arbitration out-of-state, and lacked mutuality in the remedies available to the
2 parties).

3 **D. The Action Should Be Stayed Pending the Completion of Plaintiffs’**
4 **Arbitration.**

5 “Once the court has determined that a dispute falls within the scope of an arbitration
6 agreement, the proceedings in the case as to the arbitrable issue must be stayed pending the
7 completion of arbitration.” *Benson Pump Co. v. S. Cent. Pool Supply*, 325 F.Supp.2d 1152, 1160
8 (D.Nev. 2004). Moreover, NRS 38.221(6) provides that any judicial proceedings shall be stayed
9 pending this process. Section 3 of the FAA provides in relevant part that the court “shall on
10 application of one of the parties stay the trial of the action until such arbitration has been had in
11 accordance with the terms of the agreement.” Because Plaintiff must arbitrate his claims or pursue
12 them in Clark County District Court, this action should be stayed pending the results of individual
13 arbitration. *See Benson Pump Co.* at 1160. The Nevada Uniform Arbitration Act (“NUAA”)
14 provides that, “[o]n motion of a person showing an agreement to arbitrate and alleging another
15 person’s refusal to arbitrate pursuant to the agreement, if the refusing party opposes the motion, the
16 court shall proceed summarily to decide the issue and order the parties to arbitrate unless it finds
17 there is no enforceable agreement to arbitrate.” Nev. Rev. Stat. § 38.221(1)(b). Plaintiffs’ act of
18 filing a Complaint in civil court in lieu of submitting a demand for arbitration, as they had agreed
19 to do, constitutes a “refusal to arbitrate” for purposes of the NUAA. *Continental Ins. Co. v. Hull*, 98
20 Nev. 542, 654 P.2d 1024 (1982). Thus, pursuant to Defendant’s Motion and the NUAA, the proper
21 procedure is for the Court to stay any and all deadlines associated with this litigation until the Court
22 has considered the motion and issued a decision as to whether arbitration should be ordered. Nev.
23 Rev. Stat. § 38.221(6); see also *Continental Ins. Co. v. Hull*, 98 Nev. 542, 654 P.2d 1024 (1982)
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1 (holding that proper procedure on a motion to submit claims to arbitration is to stay the proceedings
2 pending arbitration rather than dismiss the action).

3 **IV. CONCLUSION**

4 The Court should order Plaintiffs to arbitrate all of their claims against Defendants pursuant
5 to the relevant contract between the parties and stay Plaintiffs' claims pending the outcome of
6 arbitration. Alternatively, should the Court only compel a portion of the claims in this matter to
7 arbitration, Uber Defendants respectfully requests the remainder of the matter be stayed until the
8 Arbitration has been completed.
9

10 DATED this 12th day of June, 2020.

11 **WILSON, ELSER, MOSKOWITZ,**
12 **EDELMAN & DICKER LLP**

13
14 By: /s/Harry V. Peetris

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Las Vegas, NV 89119

Attorneys for Defendants

UBER TECHNOLOGIES, INC.,

RAISER, LLC AND RAISER-CA, LLC

1 **CERTIFICATE OF SERVICE**

2 Pursuant to NRCP 5(b), I certify that I am an employee of Wilson Elser Moskowitz Edelman
3 & Dicker LLP, and that on this 12th day of June, 2020, I served a true and correct copy of the
4 foregoing **DEFENDANTS UBER TECHNOLOGIES, INC., RASIER, LLC and RASIER-CA,**
5 **LLC'S MOTION TO COMPEL ARBITRATION AND STAY ACTION** as follows:
6

- 7 ☐ by placing same to be deposited for mailing in the United States Mail, in a sealed
8 envelope upon which first class postage was prepaid in Las Vegas, Nevada;
9 ☒ via electronic means by operation of the Court's electronic filing system, upon each
10 party in this case who is registered as an electronic case filing user with the Clerk;
11 ☐ via hand-delivery to the addressees listed below;
12 ☐ via facsimile;
13 ☐ by transmitting via email the document listed above to the email address set forth
14 below on this date before 5:00 p.m. PST

15 Trevor M. Quirk , Esq.
16 QUIRK LAW FIRM, LLP
17 2421 Tech Center Court, Suite 100
18 Las Vegas, NV 89128
19 Attorneys for Plaintiffs

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20
21
22 BY /s/Annemarie Gourley
23 An Employee of WILSON ELSEER MOSKOWITZ EDELMAN
24 & DICKER LLP
25
26
27
28

EXHIBIT 1

EXHIBIT 1

DECL
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IN THE EIGHT JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

MEGAN ROYZ; and ANDREA EILEEN WORK,

Plaintiff,

v.

MARK ANTHONY JACOBS; MARCO
ANTONIO HEREDIA-ESTRADA; UBER
TECHNOLOGIES, INC.; RAISER, LLC; RAISER-
CA, LLC; DOES I-X, and ROE CORPORATIONS
I-X, inclusive,

Defendants.

CASE NO. : A-20-810843-C
DEPT. NO.: 16

**DECLARATION OF RYAN BUOSCIO IN
SUPPORT OF DEFENDANTS' MOTION
TO COMPEL ARBITRATION**

I, Ryan Buoscio, hereby declare and state as follows:

1. I am over the age of 18 and a resident of Illinois. I submit this declaration in support of Motion of Defendants UBER TECHNOLOGIES, INC. ("Uber"), Rasier, LLC, Rasier-CA, LLC and Rasier-NY, LLC (collectively "Rasier") to Compel Arbitration and to Stay Action. I have personal knowledge of each fact stated in this declaration and, if called as a witness, I could and would competently and truthfully testify thereto.

2. I am presently employed with Uber as Senior Legal Program Manager. I have been

1 employed by Uber since 2016.

2 3. I make this declaration based upon my personal knowledge and information available
3 to me, including records maintained in the ordinary course of Uber's business.

4 4. Uber Technologies, Inc. and its affiliates (collectively "Uber") is a software company
5 that develops proprietary software to create digital marketplaces that are operated through app-based
6 platforms. The first and most widely known marketplace the company built is for consumers to
7 connect with independent businesses offering transportation services, known within Uber as the
8 Rides marketplace.

9
10 5. The Rides marketplace connects independent transportation providers ("Drivers")
11 with individuals seeking transportation services ("Riders"). Rasier, LLC and its affiliated
12 companies are wholly-owned subsidiaries of Uber Technologies, Inc. engaged in the business of
13 providing lead generation services to independent providers of transportation services through the
14 Rider marketplace, using the Driver version of the Uber App ("Driver App").

15
16 6. Uber has created several mobile applications available via smartphone or tablet that
17 allow Riders, Eaters, Drivers, and delivery providers to access its various marketplaces. Uber's
18 marketplaces, including the Rides marketplace, are available across the United States.

19 7. Riders download the Rider version of the Uber App ("Rider App"), and after
20 completing all the necessary steps required to gain access to the Rider App, the Rider App enables
21 Riders and Drivers to connect.

22 **PLAINTIFF'S ACCOUNT CREATION AND ASSENT TO TERMS**

23
24 8. In the normal course of its business, Uber maintains records regarding when and how
25 Riders register, Rider trip history, the Terms & Conditions (also referred to as "Terms of Service"
26 or "Terms of Use," hereafter the "Terms") in effect and as amended from time to time, and
27 correspondence regarding the Terms. As Senior Legal Program Manager, I have access to these

1 records and am familiar with them.

2 9. Based on my review of records maintained by Uber in the regular course of business,
3 I was able to identify the date and method by which Plaintiff registered for Uber: Andrea Eileen
4 (Andi) Work registered on March 27, 2015 via the Rider App using an iPhone device. Attached
5 hereto as **Exhibit A** is a true and correct copy of Uber's Rider sign-up date and device.

6 10. I am familiar with the Terms that went into effect for U.S. Riders on February 10,
7 2015, which were in effect on March 27, 2015 when Plaintiff registered for an account. Attached
8 hereto as **Exhibit B** is a true and correct copy of the February 10, 2015 Terms. The February 10,
9 2015 Terms contain an Arbitration Agreement.

11 **NOVEMBER 2016 EMAIL**

12 11. On November 14, 2016, Uber sent Plaintiff an email with the subject line "We've
13 Updated Our Terms of Use" that provided notice of updates to the Uber Apps' Terms & Conditions.
14 Attached hereto as **Exhibit C** is a true and correct copy of the records confirming that Plaintiff was
15 sent the aforementioned email.

16 12. This email expressly stated that continued use of the Uber Apps would constitute
17 assent to the updated Terms. The Terms were available via hyperlink from the email. Attached
18 hereto as **Exhibit D** is a true and correct copy of the content of the email.

19 13. I accessed Uber's business records and reviewed the Terms that went into effect for
20 U.S. Riders on November 21, 2016. Attached hereto as **Exhibit E** is a true and correct copy of the
21 November 21, 2016 U.S. Terms.

22 14. Pursuant to its Terms, Uber has provided Plaintiff with access to its services. Plaintiff
23 has accessed those services and continued to use the Rider App after November 21, 2016. The trip
24 at issue in this litigation took place on February 22, 2018.

I declare under penalty of perjury and the laws of the State of California that the foregoing
is true and correct and that this Declaration was executed on June 11, 2020 at Chicago, Illinois.

DocuSigned by:
Ryan Buoscio
87B92AC9FB044DB...
Ryan Buoscio

EXHIBIT 1-A

EXHIBIT 1-A

CONFIDENTIAL

<u>First Name</u>	<u>Last Name</u>	<u>Sign Up Timestamp (UTC)</u>	<u>Sign Up Form</u>
Andi	Work	3/27/15 6:36 AM	iphone

CONFIDENTIAL

EXHIBIT 1-B

EXHIBIT 1-B

CONFIDENTIAL

<% include ../header.html %>

Terms and Conditions

Last Updated: February 10, 2015

<% include ../country-picker-terms.html %>

1. Contractual Relationship

These Terms of Use (“*Terms*”) govern the access or use by you, an individual, from within the United States and its territories and possessions of applications, websites, content, products, and services (the “*Services*”) made available in the United States and its territories and possessions by Uber USA, LLC and its subsidiaries and affiliates (collectively, “*Uber*”). PLEASE READ THESE TERMS CAREFULLY BEFORE ACCESSING OR USING THE SERVICES. In this Agreement, the words “including” and “include” mean “including, but not limited to.”

Your access and use of the Services constitutes your agreement to be bound by these Terms, which establishes a contractual relationship between you and Uber. If you do not agree to these Terms, you may not access or use the Services. These Terms expressly supersede prior agreements or arrangements with you. Uber may immediately terminate these Terms or any Services with respect to you, or generally cease offering or deny access to the Services or any portion thereof, at any time for any reason.

Supplemental terms may apply to certain Services, such as policies for a particular event, activity or promotion, and such supplemental terms will be disclosed to you in connection with the applicable Services. Supplemental terms are in addition to, and shall be deemed a part of, the Terms for the purposes of the applicable Services. Supplemental terms shall prevail over these Terms in the event of a conflict with respect to the applicable Services.

Uber may amend the Terms related to the Services from time to time. Amendments will be effective upon Uber’s posting of such updated Terms at this location or the amended policies or supplemental terms on the applicable Service. Your continued access or use of the Services after such posting constitutes your consent to be bound by the Terms, as amended.

Our collection and use of personal information in connection with the Services is as provided in Uber’s Privacy Policy located at <https://www.uber.com/legal/usa/privacy>.

2. The Services

The Services constitute a technology platform that enables users of Uber’s mobile applications or websites provided as part of the Services (each, an “*Application*”) to arrange and schedule transportation and/or logistics services with third party providers of such services, including independent third party transportation providers and third party logistics providers under agreement with Uber or certain of Uber’s subsidiaries (“*Third Party Providers*”). Unless otherwise agreed by Uber in a separate written agreement with you, the Services are made available solely for your personal, noncommercial use.

YOU ACKNOWLEDGE THAT UBER DOES NOT PROVIDE TRANSPORTATION OR LOGISTICS SERVICES OR FUNCTION AS A TRANSPORTATION CARRIER. UBER’S SERVICES MAY BE USED BY YOU TO REQUEST AND SCHEDULE TRANSPORTATION OR LOGISTICS SERVICES WITH THIRD PARTY PROVIDERS, BUT YOU AGREE THAT UBER HAS NO RESPONSIBILITY OR LIABILITY TO YOU RELATED TO ANY TRANSPORTATION OR LOGISTICS PROVIDED TO YOU BY THIRD PARTY PROVIDERS

CONFIDENTIAL

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THROUGH THE USE OF THE SERVICES OTHER THAN AS EXPRESSLY SET FORTH IN THESE TERMS.

UBER DOES NOT GUARANTEE THE SUITABILITY, SAFETY OR ABILITY OF THIRD PARTY PROVIDERS. IT IS SOLELY YOUR RESPONSIBILITY TO DETERMINE IF A THIRD PARTY PROVIDER WILL MEET YOUR NEEDS AND EXPECTATIONS. UBER WILL NOT PARTICIPATE IN DISPUTES BETWEEN YOU AND A THIRD PARTY PROVIDER. BY USING THE SERVICES, YOU ACKNOWLEDGE THAT YOU MAY BE EXPOSED TO SITUATIONS INVOLVING THIRD PARTY PROVIDERS THAT ARE POTENTIALLY UNSAFE, OFFENSIVE, HARMFUL TO MINORS, OR OTHERWISE OBJECTIONABLE, AND THAT USE OF THIRD PARTY PROVIDERS ARRANGED OR SCHEDULED USING THE SERVICES IS AT YOUR OWN RISK AND JUDGMENT. UBER SHALL NOT HAVE ANY LIABILITY ARISING FROM OR IN ANY WAY RELATED TO YOUR TRANSACTIONS OR RELATIONSHIP WITH THIRD PARTY PROVIDERS.

License.

Subject to your compliance with these Terms, Uber grants you a limited, non-exclusive, non-sublicensable, revocable, non-transferrable license to: (i) access and use the Applications on your personal device solely in connection with your use of the Services; and (ii) access and use any content, information and related materials that may be made available through the Services, in each case solely for your personal, noncommercial use. Any rights not expressly granted herein are reserved by Uber and Uber's licensors.

Restrictions.

You may not: (i) remove any copyright, trademark or other proprietary notices from any portion of the Services; (ii) reproduce, modify, prepare derivative works based upon, distribute, license, lease, sell, resell, transfer, publicly display, publicly perform, transmit, stream, broadcast or otherwise exploit the Services except as expressly permitted by Uber; (iii) decompile, reverse engineer or disassemble the Services except as may be permitted by applicable law; (iv) link to, mirror or frame any portion of the Services; (v) cause or launch any programs or scripts for the purpose of scraping, indexing, surveying, or otherwise data mining any portion of the Services or unduly burdening or hindering the operation and/or functionality of any aspect of the Services; or (vi) attempt to gain unauthorized access to or impair any aspect of the Services or its related systems or networks.

Provision of the Services.

You acknowledge that portions of the Services may be made available under Uber's various brands or request options associated with transportation or logistics, including, without limitation, "*Uber*," "*UberX*," "*UberXL*," "*UberBLACK*," "*UberSUV*," and "*UberLUX*." You also acknowledge that the Services may be made available under such brands or request options by or in connection with: (i) certain of Uber's subsidiaries and affiliates; or (ii) independent Third Party Providers, including Transportation Network Company drivers, Transportation Charter Permit holders or holders of similar transportation permits, authorizations or licenses.

Third-Party Services and Content.

The Services may be made available or accessed in connection with third-party services and content (including advertising) that Uber does not control. You acknowledge that different terms of use and privacy policies may apply to your use of such third-party services and content. Uber does not endorse such third party services and content and in no event shall Uber be responsible or liable for any products or services of such third party providers. Additionally, Apple Inc., Google, Inc., Microsoft Corporation or BlackBerry Limited will be a third-party beneficiary to this contract if you access the Services using Applications developed for Apple iOS, Android, Microsoft Windows, or Blackberry-powered mobile devices, respectively. These third-party beneficiaries are not parties to this contract and are not responsible for the provision or support of the Services in any manner. Your access to the Services using these devices is subject to terms set forth in the applicable third-party beneficiary's terms of service.

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Ownership.

The Services and all rights therein are and shall remain Uber's property or the property of Uber's licensors. Neither these Terms nor your use of the Services convey or grant to you any rights: (i) in or related to the Services except for the limited license granted above; or (ii) to use or reference in any manner Uber's company names, logos, product and service names, trademarks or services marks or those of Uber's licensor.

3. Your Use of the Services

User Accounts.

In order to use most aspects of the Services, you must register for and maintain an active personal user Services account ("Account"). You must be at least 18 years of age, or the age of legal majority in your jurisdiction (if different than 18), to obtain an Account. Account registration requires you to submit to Uber certain personal information, such as your name, address, mobile phone number and age, as well as at least one valid credit card. You agree to maintain accurate, complete, and up-to-date information in your Account. Your failure to maintain accurate, complete, and up-to-date Account information, including having an invalid or expired credit card on file, may result in your inability to access and use the Services or Uber's termination of this Agreement with you. You are responsible for all activity that occurs under your Account, and, as such, you agree to maintain the security and secrecy of your Account username and password at all times. Unless otherwise permitted by Uber in writing, you may only possess one Account.

User Requirements and Conduct.

The Service is not available for use by persons under the age of 18. You may not authorize third parties to use your Account, and you may not allow persons under the age of 18 to receive transportation or logistics services from Third Party Providers unless they are accompanied by you. You may not assign or otherwise transfer your Account to any other person or entity. You agree to comply with all applicable laws when using the Services, and you may only use the Services for lawful purposes (e.g., no transport of unlawful or hazardous materials). You will not in your use of the Services cause nuisance, annoyance, inconvenience, or property damage, whether to the Third Party Provider or any other party. In certain instances Uber may require you to provide proof of identity to access or use the Services, and you agree that you may be denied access or use of the Services if you refuse to provide proof of identity.

Text Messaging.

By creating an Account, you agree that the Services may send you informational text (SMS) messages as part of the normal business operation of your use of the Services. You may opt-out of receiving text (SMS) messages from Uber at any time by texting the word STOP to 89203 from the mobile device receiving the messages. You acknowledge that opting out of receiving text (SMS) messages may impact your use of the Services.

Promotional Codes.

Uber may, in Uber's sole discretion, create promotional codes that may be redeemed for Account credit or other features or benefits related to a Third Party Provider's services, subject to terms that Uber establish on a per promotional code basis ("Promo Codes"). You agree that Promo Codes: (i) must be used for the intended audience and purpose, and in a lawful manner; (ii) may not be duplicated, sold or transferred in any manner, or made available to the general public, unless expressly permitted by Uber; (iii) may be disabled by Uber at any time for any reason without liability to Uber; (iv) may only be used pursuant to the specific terms that Uber establish for such Promo Code; (v) are not valid for cash; and (vi) may expire prior to your use. Uber reserves the right to withhold or deduct credits or other features or benefits obtained through the use of Promo Codes by you or any other user in the event that Uber determines or believes that the use or redemption of the Promo Code was in error, fraudulent, illegal, or in violation of the applicable Promo Code

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terms or these Terms.

User Provided Content.

Uber may, in Uber's sole discretion, permit you from time to time to submit, upload, publish or otherwise make available to Uber through the Services textual, audio, and/or visual content and information, including commentary and feedback related to the Services, initiation of support requests, and submission of entries for competitions and promotions ("*User Content*"). Any User Content provided by you remains your property. However, by providing User Content to Uber, you grant Uber a worldwide, perpetual, irrevocable, transferrable, royalty-free license, with the right to sublicense, to use, copy, modify, create derivative works of, distribute, publicly display, publicly perform, and otherwise exploit in any manner such User Content in all formats and distribution channels now known or hereafter devised (including in connection with the Services and Uber's business and on third-party sites and services), without further notice to or consent from you, and without the requirement of payment to you or any other person or entity.

You represent and warrant that: (i) you either are the sole and exclusive owner of all User Content or you have all rights, licenses, consents and releases necessary to grant Uber the license to the User Content as set forth above; and (ii) neither the User Content nor your submission, uploading, publishing or otherwise making available of such User Content nor Uber's use of the User Content as permitted herein will infringe, misappropriate or violate a third party's intellectual property or proprietary rights, or rights of publicity or privacy, or result in the violation of any applicable law or regulation.

You agree to not provide User Content that is defamatory, libelous, hateful, violent, obscene, pornographic, unlawful, or otherwise offensive, as determined by Uber in its sole discretion, whether or not such material may be protected by law. Uber may, but shall not be obligated to, review, monitor, or remove User Content, at Uber's sole discretion and at any time and for any reason, without notice to you.

Network Access and Devices.

You are responsible for obtaining the data network access necessary to use the Services. Your mobile network's data and messaging rates and fees may apply if you access or use the Services from a wireless-enabled device. You are responsible for acquiring and updating compatible hardware or devices necessary to access and use the Services and Applications and any updates thereto. Uber does not guarantee that the Services, or any portion thereof, will function on any particular hardware or devices. In addition, the Services may be subject to malfunctions and delays inherent in the use of the Internet and electronic communications.

4. Payment

You understand that use of the Services may result in payments by you for the services you receive from a Third Party Provider ("*Charges*"). After you have received services obtained through your use of the Service, Uber will facilitate payment of the applicable Charges on behalf of the Third Party Provider, as such Third Party Provider's limited payment collection agent, using the preferred payment method designated in your Account, and will send you a receipt by email. Payment of the Charges in such manner shall be considered the same as payment made directly by you to the Third Party Provider. Charges will be inclusive of applicable taxes where required by law. Charges paid by you are final and non-refundable, unless otherwise determined by Uber. You retain the right to request lower Charges from a Third Party Provider for services received by you from such Third Party Provider at the time you receive such services. Uber will respond accordingly to any request from a Third Party Provider to modify the Charges for a particular service.

All Charges are due immediately and payment will be facilitated by Uber using the preferred payment method designated in your Account. If your primary Account payment method is determined to be expired, invalid or otherwise not able to be charged, you agree that Uber may, as the Third Party Provider's limited payment collection agent, use a

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secondary payment method in your Account, if available.

Uber reserves the right to establish, remove and/or revise Charges for any or all aspects of the Services at any time in Uber's sole discretion. Further, you acknowledge and agree that Charges applicable in certain geographical areas may increase substantially during times of high demand of the Services. Uber will use reasonable efforts to inform you of Charges that may apply, provided that you will be responsible for Charges incurred under your Account regardless of your awareness of such Charges or the amounts thereof. Uber may from time to time provide certain users with promotional offers and discounts that may result in different Charges for the same or similar Services, and you agree that such promotional offers and discounts, unless also made available to you, shall have no bearing on your use of the Services or the Charges applied to you. You may elect to cancel your request for Services from a Third Party Provider at any time prior to such Third Party Provider's arrival, in which case you may be charged a cancellation fee.

This payment structure is intended to fully compensate the Third Party Provider for the services provided. Except with respect to taxicab transportation services requested through the Application, Uber does not designate any portion of your payment as a tip or gratuity to the Third Party Provider. Any representation by Uber (on Uber's website, in the Application, or in Uber's marketing materials) to the effect that tipping is "voluntary," "not required," and/or "included" in the payments you make for services provided is not intended to suggest that Uber provides any additional amounts, beyond those described above, to the Third Party Provider. You understand and agree that, while you are free to provide additional payment as a gratuity to any Third Party Provider who provides you with services obtained through the Service, you are under no obligation to do so. Gratuities are voluntary. After you have received services obtained through the Service, you will have the opportunity to rate your experience and leave additional feedback about your Third Party Provider. In the event you feel unwelcome pressure to provide a gratuity, you may factor that experience into the rating or additional feedback you give.

Repair or Cleaning Fees.

You shall be responsible for the cost of repair for damage to, or necessary cleaning of, Third Party Provider vehicles and property resulting from your use of the Services in excess of normal "*wear and tear*" damages and necessary cleaning ("*Repair or Cleaning*"). In the event that a Third Party Provider reports the need for Repair or Cleaning, and such Repair or Cleaning request is verified by Uber in Uber's reasonable discretion, Uber reserves the right to facilitate payment for the reasonable cost of such Repair or Cleaning on behalf of the Third Party Provider using your preferred payment method designated in your Account. Such amounts will be transferred by Uber to the applicable Third Party Provider and are non-refundable.

5. Disclaimers; Limitation of Liability; Indemnity

DISCLAIMER.

THE SERVICES ARE PROVIDED "AS IS" AND "AS AVAILABLE." UBER DISCLAIMS ALL REPRESENTATIONS AND WARRANTIES, EXPRESS, IMPLIED, OR STATUTORY, NOT EXPRESSLY SET OUT IN THESE TERMS, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT. IN ADDITION, UBER MAKES NO REPRESENTATION, WARRANTY, OR GUARANTEE REGARDING THE RELIABILITY, TIMELINESS, QUALITY, SUITABILITY, OR AVAILABILITY OF THE SERVICES OR ANY GOODS OR SERVICES OBTAINED THROUGH THE USE OF THE SERVICES, OR THAT THE SERVICES WILL BE UNINTERRUPTED OR ERROR-FREE. YOU AGREE THAT THE ENTIRE RISK ARISING OUT OF YOUR USE OF THE SERVICES, AND ANY THIRD PARTY GOOD OR SERVICES OBTAINED IN CONNECTION THEREWITH, REMAINS SOLELY WITH YOU, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW.

THIS DISCLAIMER DOES NOT ALTER YOUR RIGHTS AS A CONSUMER TO THE EXTENT NOT PERMITTED UNDER THE LAW IN THE JURISDICTION OF YOUR PLACE OF RESIDENCE.

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LIMITATION OF LIABILITY.

UBER SHALL NOT BE LIABLE TO YOU FOR INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY, PUNITIVE, OR CONSEQUENTIAL DAMAGES, INCLUDING LOST PROFITS, LOST DATA, PERSONAL INJURY, OR PROPERTY DAMAGE, EVEN IF UBER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. UBER SHALL NOT BE LIABLE FOR ANY DAMAGES, LIABILITY OR LOSSES INCURRED BY YOU ARISING OUT OF: (i) YOUR USE OF OR RELIANCE ON THE SERVICES OR YOUR INABILITY TO ACCESS OR USE THE SERVICES; OR (ii) ANY TRANSACTION OR RELATIONSHIP BETWEEN YOU AND ANY THIRD PARTY PROVIDER, EVEN IF UBER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. UBER SHALL NOT BE LIABLE FOR DELAY OR FAILURE IN PERFORMANCE RESULTING FROM CAUSES BEYOND UBER'S REASONABLE CONTROL. YOU ACKNOWLEDGE THAT THIRD PARTY TRANSPORTATION PROVIDERS PROVIDING TRANSPORTATION SERVICES REQUESTED THROUGH UBERX MAY OFFER RIDESHARING OR PEER-TO-PEER TRANSPORTATION SERVICES AND MAY NOT BE PROFESSIONALLY LICENSED OR PERMITTED. IN NO EVENT SHALL UBER'S TOTAL LIABILITY TO YOU IN CONNECTION WITH THE SERVICES FOR ALL DAMAGES, LOSSES AND CAUSES OF ACTION EXCEED FIVE HUNDRED U.S. DOLLARS (US \$500).

THESE LIMITATIONS DO NOT PURPORT TO LIMIT LIABILITY THAT CANNOT BE EXCLUDED UNDER THE LAW IN THE JURISDICTION OF YOUR PLACE OF RESIDENCE.

Indemnity.

You agree to indemnify and hold Uber and its officers, directors, employees and agents, harmless from any and all claims, demands, losses, liabilities, and expenses (including attorneys' fees), arising out of or in connection with: (i) your use of the Services; (ii) your breach or violation of any of these Terms; (iii) Uber's use of your User Content; or (iv) your violation of the rights of any third party, including Third Party Providers.

6. Dispute Resolution

Arbitration.

You agree that any dispute, claim or controversy arising out of or relating to these Terms or the breach, termination, enforcement, interpretation or validity thereof or the use of the Services (collectively, "*Disputes*") will be settled by binding arbitration between you and Uber, except that each party retains the right to bring an individual action in small claims court and the right to seek injunctive or other equitable relief in a court of competent jurisdiction to prevent the actual or threatened infringement, misappropriation or violation of a party's copyrights, trademarks, trade secrets, patents or other intellectual property rights. You acknowledge and agree that you and Uber are each waiving the right to a trial by jury or to participate as a plaintiff or class in any purported class action or representative proceeding. Further, unless both you and Uber otherwise agree in writing, the arbitrator may not consolidate more than one person's claims, and may not otherwise preside over any form of any class or representative proceeding. If this specific paragraph is held unenforceable, then the entirety of this "Dispute Resolution" section will be deemed void. Except as provided in the preceding sentence, this "Dispute Resolution" section will survive any termination of these Terms.

Arbitration Rules and Governing Law.

The arbitration will be administered by the American Arbitration Association ("AAA") in accordance with the Commercial Arbitration Rules and the Supplementary Procedures for Consumer Related Disputes (the "*AAA Rules*") then in effect, except as modified by this "Dispute Resolution" section. (The AAA Rules are available at www.adr.org/arb_med or by calling the AAA at 1-800-778-7879.) The Federal Arbitration Act will govern the

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interpretation and enforcement of this Section.

Arbitration Process.

A party who desires to initiate arbitration must provide the other party with a written Demand for Arbitration as specified in the AAA Rules. (The AAA provides a form Demand for Arbitration at www.adr.org/aaa/ShowPDF?doc=ADRSTG_004175 and a separate form for California residents at www.adr.org/aaa/ShowPDF?doc=ADRSTG_015822.) The arbitrator will be either a retired judge or an attorney licensed to practice law in the state of California and will be selected by the parties from the AAA's roster of consumer dispute arbitrators. If the parties are unable to agree upon an arbitrator within seven (7) days of delivery of the Demand for Arbitration, then the AAA will appoint the arbitrator in accordance with the AAA Rules.

Arbitration Location and Procedure.

Unless you and Uber otherwise agree, the arbitration will be conducted in the county where you reside. If your claim does not exceed \$10,000, then the arbitration will be conducted solely on the basis of documents you and Uber submit to the arbitrator, unless you request a hearing or the arbitrator determines that a hearing is necessary. If your claim exceeds \$10,000, your right to a hearing will be determined by the AAA Rules. Subject to the AAA Rules, the arbitrator will have the discretion to direct a reasonable exchange of information by the parties, consistent with the expedited nature of the arbitration.

Arbitrator's Decision.

The arbitrator will render an award within the time frame specified in the AAA Rules. The arbitrator's decision will include the essential findings and conclusions upon which the arbitrator based the award. Judgment on the arbitration award may be entered in any court having jurisdiction thereof. The arbitrator's award damages must be consistent with the terms of the "Limitation of Liability" section above as to the types and the amounts of damages for which a party may be held liable. The arbitrator may award declaratory or injunctive relief only in favor of the claimant and only to the extent necessary to provide relief warranted by the claimant's individual claim. If you prevail in arbitration you will be entitled to an award of attorneys' fees and expenses, to the extent provided under applicable law. Uber will not seek, and hereby waives all rights Uber may have under applicable law to recover, attorneys' fees and expenses if Uber prevail in arbitration.

Fees.

Your responsibility to pay any AAA filing, administrative and arbitrator fees will be solely as set forth in the AAA Rules. However, if your claim for damages does not exceed \$75,000, Uber will pay all such fees unless the arbitrator finds that either the substance of your claim or the relief sought in your Demand for Arbitration was frivolous or was brought for an improper purpose (as measured by the standards set forth in Federal Rule of Civil Procedure 11(b)).

Changes.

Notwithstanding the provisions of the modification-related provisions above, if Uber changes this "Dispute Resolution" section after the date you first accepted these Terms (or accepted any subsequent changes to these Terms), you may reject any such change by providing Uber written notice of such rejection by mail or hand delivery to: Uber USA, LLC, Attn: Dispute Resolutions, 160 Greentree Drive, Suite 101, Dover, DE 19904, or by email from the email address associated with your Account to: change-dr@uber.com, within 30 days of the date such change became effective, as indicated in the "Last update" date above. In order to be effective, the notice must include your full name and clearly indicate your intent to reject changes to this "Dispute Resolution" section. By rejecting changes, you are agreeing that you will arbitrate any Dispute between you and Uber in accordance with the provisions of this "Dispute Resolution" section as of the date you first accepted these Terms (or accepted any subsequent changes to these Terms).

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7. Other Provisions

Choice of Law.

These Terms are governed by and construed in accordance with the laws of the State of California, U.S.A., without giving effect to any conflict of law principles.

Claims of Copyright Infringement.

Claims of copyright infringement should be sent to Uber's designated agent. Please visit Uber's web page at <https://www.uber.com/legal/usa/copyright> for the designated address and additional information.

Notice.

Uber may give notice by means of a general notice on the Services, electronic mail to your email address in your Account, or by written communication sent by first class mail or pre-paid post to your address in your Account. Such notice shall be deemed to have been given upon the expiration of 48 hours after mailing or posting (if sent by first class mail or pre-paid post) or 12 hours after sending (if sent by email). You may give notice to Uber, with such notice deemed given when received by Uber, at any time by first class mail or pre-paid post to Uber USA, LLC, Attn: User Notices - Legal, 160 Greentree Drive, Suite 101, Dover, DE 19904.

General.

You may not assign these Terms without Uber's prior written approval. Uber may assign these Terms without your consent to: (i) a subsidiary or affiliate; (ii) an acquirer of Uber's equity, business or assets; or (iii) a successor by merger. Any purported assignment in violation of this section shall be void. No joint venture, partnership, employment, or agency relationship exists between you, Uber or any Third Party Provider as a result of this Agreement or use of the Services. If any provision of these Terms is held to be invalid or unenforceable, such provision shall be struck and the remaining provisions shall be enforced to the fullest extent under law. Uber's failure to enforce any right or provision in these Terms shall not constitute a waiver of such right or provision unless acknowledged and agreed to by Uber in writing.

<% include ../footer.html %>

EXHIBIT 1-C

EXHIBIT 1-C

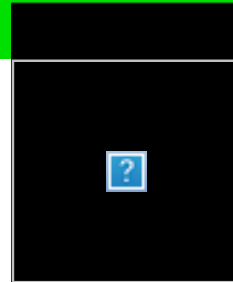
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<u>Name</u>	<u>Email Address</u>	<u>Date (UTC)</u>	<u>Event Type</u>	<u>Email Subject</u>
Andi Work		11/14/16 4:11 PM	Sent	We've updated our Terms of Use

EXHIBIT 1-D

EXHIBIT 1-D

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Hi %%=ProperCase(Trim(first_name))=%%,

With your help, we've been able to bring Uber to more than 400 cities in 72 countries. And that's in just a little over 6 years. In light of that growth and some changes to our services, we've made some updates to our US Terms of Use. These updates won't change the way you usually use Uber to request rides or deliveries.

Some key highlights:

- We included updated information about our expanding services, like UberEATS
- We updated information about charges and payment options
- We revised our arbitration agreement which explains how legal disputes

are handled

- We reorganized and clarified our terms

Our updated Terms are effective as of November 21, 2016, so please make sure to read them fully (you can access them [here](#)). If you use our app or other services on or after that date, you're confirming you've read and agree to the updated Terms. If you have any questions, please check out our help portal [here](#).

Thanks for being part of our growing community!

The Uber Team

UBER

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EXHIBIT 1-E

EXHIBIT 1-E

Legal | Uber

U.S. Terms of Use

Effective: November 21, 2016

1. Contractual Relationship

These Terms of Use ("Terms") govern your access or use, from within the United States and its territories and possessions, of the applications, websites, content, products, and services (the "Services," as more fully defined below in Section 3) made available in the United States and its territories and possessions by Uber USA, LLC and its parents, subsidiaries, representatives, affiliates, officers and directors (collectively, "Uber"). PLEASE READ THESE TERMS CAREFULLY, AS THEY CONSTITUTE A LEGAL AGREEMENT BETWEEN YOU AND UBER. In these Terms, the words "including" and "include" mean "including, but not limited to."

By accessing or using the Services, you confirm your agreement to be bound by these Terms. If you do not agree to these Terms, you may not access or use the Services. These Terms expressly supersede prior agreements or arrangements with you. Uber may immediately terminate these Terms or any Services with respect to you, or generally cease offering or deny access to the Services or any portion thereof, at any time for any reason.

IMPORTANT: PLEASE REVIEW THE ARBITRATION AGREEMENT SET FORTH BELOW CAREFULLY, AS IT WILL REQUIRE YOU TO RESOLVE DISPUTES WITH UBER ON AN INDIVIDUAL BASIS THROUGH FINAL AND BINDING ARBITRATION. BY ENTERING THIS AGREEMENT, YOU EXPRESSLY ACKNOWLEDGE THAT YOU HAVE READ AND UNDERSTAND ALL OF THE TERMS OF THIS AGREEMENT AND HAVE TAKEN TIME TO CONSIDER THE CONSEQUENCES OF THIS IMPORTANT DECISION.

Supplemental terms may apply to certain Services, such as policies for a particular event, program, activity or promotion, and such supplemental terms will be disclosed to you in separate region-specific disclosures (e.g., a particular city webpage on Uber.com) or in connection with the applicable Service(s). Supplemental terms are in addition to, and shall be deemed a part of, the Terms for the purposes of the applicable Service(s). Supplemental terms shall prevail over these Terms in the event of a conflict with respect to the applicable Services.

Uber may amend the Terms from time to time. Amendments will be effective upon Uber's posting of such updated Terms at this location or in the amended policies or supplemental terms on the applicable Service(s). Your continued access or use of the Services after such posting confirms your consent to be bound by the Terms, as amended. If Uber changes these Terms after the date you first agreed to the Terms (or to any subsequent changes to these Terms), you may reject any such change by providing Uber written notice of such rejection within 30 days of the date such change became effective, as indicated in the "Effective" date above. This written notice must be provided either (a) by mail or hand delivery to our registered agent for service of process, c/o Uber USA, LLC (the name and current contact information for the registered agent in each state are available online [here](#)), or (b) by email from the email address associated with your Account to: change-dr@uber.com. In order to be effective, the notice must include your full name and clearly indicate your intent to reject changes to these Terms. By rejecting changes, you are agreeing that you will continue to be bound by the provisions of these Terms as of the date you first agreed to the Terms (or to any subsequent changes to these Terms).

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Uber's collection and use of personal information in connection with the Services is described in Uber's Privacy Statements located at www.uber.com/legal/privacy.

2. Arbitration Agreement

By agreeing to the Terms, you agree that you are required to resolve any claim that you may have against Uber on an individual basis in arbitration, as set forth in this Arbitration Agreement. This will preclude you from bringing any class, collective, or representative action against Uber, and also preclude you from participating in or recovering relief under any current or future class, collective, consolidated, or representative action brought against Uber by someone else.

Agreement to Binding Arbitration Between You and Uber.

You and Uber agree that any dispute, claim or controversy arising out of or relating to (a) these Terms or the existence, breach, termination, enforcement, interpretation or validity thereof, or (b) your access to or use of the Services at any time, whether before or after the date you agreed to the Terms, will be settled by binding arbitration between you and Uber, and not in a court of law.

You acknowledge and agree that you and Uber are each waiving the right to a trial by jury or to participate as a plaintiff or class member in any purported class action or representative proceeding. Unless both you and Uber otherwise agree in writing, any arbitration will be conducted only on an individual basis and not in a class, collective, consolidated, or representative proceeding. However, you and Uber each retain the right to bring an individual action in small claims court and the right to seek injunctive or other equitable relief in a court of competent jurisdiction to prevent the actual or threatened infringement, misappropriation or violation of a party's copyrights, trademarks, trade secrets, patents or other intellectual property rights.

Rules and Governing Law.

The arbitration will be administered by the American Arbitration Association ("AAA") in accordance with the AAA's Consumer Arbitration Rules and the Supplementary Procedures for Consumer Related Disputes (the "AAA Rules") then in effect, except as modified by this Arbitration Agreement. The AAA Rules are available at www.adr.org/arb_med or by calling the AAA at 1-800-778-7879.

The parties agree that the arbitrator ("Arbitrator"), and not any federal, state, or local court or agency, shall have exclusive authority to resolve any disputes relating to the interpretation, applicability, enforceability or formation of this Arbitration Agreement, including any claim that all or any part of this Arbitration Agreement is void or voidable. The Arbitrator shall also be responsible for determining all threshold arbitrability issues, including issues relating to whether the Terms are unconscionable or illusory and any defense to arbitration, including waiver, delay, laches, or estoppel.

Notwithstanding any choice of law or other provision in the Terms, the parties agree and acknowledge that this Arbitration Agreement evidences a transaction involving interstate commerce and that the Federal Arbitration Act, 9 U.S.C. § 1 et seq. ("FAA"), will govern its interpretation and enforcement and proceedings pursuant thereto. It is the intent of the parties that the FAA and AAA Rules shall preempt all state laws to the fullest extent permitted by law. If the FAA and AAA Rules are found to not apply to any issue that arises under this Arbitration Agreement or the enforcement thereof, then that issue shall be resolved under the laws of the state of California.

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Process.

A party who desires to initiate arbitration must provide the other party with a written Demand for Arbitration as specified in the AAA Rules. (The AAA provides a form Demand for Arbitration - Consumer Arbitration Rules at www.adr.org or by calling the AAA at 1-800-778-7879). The Arbitrator will be either (1) a retired judge or (2) an attorney specifically licensed to practice law in the state of California and will be selected by the parties from the AAA's roster of consumer dispute arbitrators. If the parties are unable to agree upon an Arbitrator within seven (7) days of delivery of the Demand for Arbitration, then the AAA will appoint the Arbitrator in accordance with the AAA Rules.

Location and Procedure.

Unless you and Uber otherwise agree, the arbitration will be conducted in the county where you reside. If your claim does not exceed \$10,000, then the arbitration will be conducted solely on the basis of documents you and Uber submit to the Arbitrator, unless you request a hearing or the Arbitrator determines that a hearing is necessary. If your claim exceeds \$10,000, your right to a hearing will be determined by the AAA Rules. Subject to the AAA Rules, the Arbitrator will have the discretion to direct a reasonable exchange of information by the parties, consistent with the expedited nature of the arbitration.

Arbitrator's Decision.

The Arbitrator will render an award within the time frame specified in the AAA Rules. Judgment on the arbitration award may be entered in any court having competent jurisdiction to do so. The Arbitrator may award declaratory or injunctive relief only in favor of the claimant and only to the extent necessary to provide relief warranted by the claimant's individual claim. An Arbitrator's decision shall be final and binding on all parties. An Arbitrator's decision and judgment thereon shall have no precedential or collateral estoppel effect. If you prevail in arbitration you will be entitled to an award of attorneys' fees and expenses, to the extent provided under applicable law. Uber will not seek, and hereby waives all rights Uber may have under applicable law to recover, attorneys' fees and expenses if Uber prevails in arbitration.

Fees.

Your responsibility to pay any AAA filing, administrative and arbitrator fees will be solely as set forth in the AAA Rules. However, if your claim for damages does not exceed \$75,000, Uber will pay all such fees, unless the Arbitrator finds that either the substance of your claim or the relief sought in your Demand for Arbitration was frivolous or was brought for an improper purpose (as measured by the standards set forth in Federal Rule of Civil Procedure 11(b)).

Changes.

Notwithstanding the provisions in Section I above, regarding consent to be bound by amendments to these Terms, if Uber changes this Arbitration Agreement after the date you first agreed to the Terms (or to any subsequent changes to the Terms), you may reject any such change by providing Uber written notice of such rejection within 30 days of the date such change became effective, as indicated in the "Effective" date above. This written notice must be provided either (a) by mail or hand delivery to our registered agent for service of process, c/o Uber USA, LLC (the name and current contact information for the registered agent in each state are available online [here](#)), or (b) by email from the email address associated with your Account to: change-dr@uber.com. In order to be

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effective, the notice must include your full name and clearly indicate your intent to reject changes to this Arbitration Agreement. By rejecting changes, you are agreeing that you will arbitrate any dispute between you and Uber in accordance with the provisions of this Arbitration Agreement as of the date you first agreed to the Terms (or to any subsequent changes to the Terms).

Severability and Survival.

If any portion of this Arbitration Agreement is found to be unenforceable or unlawful for any reason, (1) the unenforceable or unlawful provision shall be severed from these Terms; (2) severance of the unenforceable or unlawful provision shall have no impact whatsoever on the remainder of the Arbitration Agreement or the parties' ability to compel arbitration of any remaining claims on an individual basis pursuant to the Arbitration Agreement; and (3) to the extent that any claims must therefore proceed on a class, collective, consolidated, or representative basis, such claims must be litigated in a civil court of competent jurisdiction and not in arbitration, and the parties agree that litigation of those claims shall be stayed pending the outcome of any individual claims in arbitration.

3. The Services

The Services comprise mobile applications and related services (each, an "Application"), which enable users to arrange and schedule transportation, logistics and/or delivery services and/or to purchase certain goods, including with third party providers of such services and goods under agreement with Uber or certain of Uber's affiliates ("Third Party Providers"). In certain instances the Services may also include an option to receive transportation, logistics and/or delivery services for an upfront price, subject to acceptance by the respective Third Party Providers. Unless otherwise agreed by Uber in a separate written agreement with you, the Services are made available solely for your personal, noncommercial use. YOU ACKNOWLEDGE THAT YOUR ABILITY TO OBTAIN TRANSPORTATION, LOGISTICS AND/OR DELIVERY SERVICES THROUGH THE USE OF THE SERVICES DOES NOT ESTABLISH UBER AS A PROVIDER OF TRANSPORTATION, LOGISTICS OR DELIVERY SERVICES OR AS A TRANSPORTATION CARRIER.

License.

Subject to your compliance with these Terms, Uber grants you a limited, non-exclusive, non-sublicensable, revocable, non-transferable license to: (i) access and use the Applications on your personal device solely in connection with your use of the Services; and (ii) access and use any content, information and related materials that may be made available through the Services, in each case solely for your personal, noncommercial use. Any rights not expressly granted herein are reserved by Uber and Uber's licensors.

Restrictions.

You may not: (i) remove any copyright, trademark or other proprietary notices from any portion of the Services; (ii) reproduce, modify, prepare derivative works based upon, distribute, license, lease, sell, resell, transfer, publicly display, publicly perform, transmit, stream, broadcast or otherwise exploit the Services except as expressly permitted by Uber; (iii) decompile, reverse engineer or disassemble the Services except as may be permitted by applicable law; (iv) link to, mirror or frame any portion of the Services; (v) cause or launch any programs or scripts for the purpose of scraping, indexing, surveying, or otherwise data mining any portion of the Services or unduly burdening or hindering the operation and/or functionality of any aspect of the Services; or (vi) attempt to gain unauthorized access to or impair any aspect of the Services or its related systems or networks.

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Provision of the Services.

You acknowledge that portions of the Services may be made available under Uber's various brands or request options associated with transportation or logistics, including the transportation request brands currently referred to as "Uber," "uberX," "uberXL," "UberBLACK," "UberSELECT," "UberSUV" and "UberLUX" and the logistics request products currently referred to as "UberRUSH," and "UberEATS." You also acknowledge that the Services may be made available under such brands or request options by or in connection with: (i) certain of Uber's subsidiaries and affiliates; or (ii) independent Third Party Providers, including Transportation Network Company drivers, Transportation Charter Permit holders or holders of similar transportation permits, authorizations or licenses.

Third Party Services and Content.

The Services may be made available or accessed in connection with third party services and content (including advertising) that Uber does not control. You acknowledge that different terms of use and privacy policies may apply to your use of such third party services and content. Uber does not endorse such third party services and content and in no event shall Uber be responsible or liable for any products or services of such third party providers. Additionally, Apple Inc., Google, Inc., Microsoft Corporation or BlackBerry Limited will be a third-party beneficiary to this contract if you access the Services using Applications developed for Apple iOS, Android, Microsoft Windows, or Blackberry-powered mobile devices, respectively. These third party beneficiaries are not parties to this contract and are not responsible for the provision or support of the Services in any manner. Your access to the Services using these devices is subject to terms set forth in the applicable third party beneficiary's terms of service.

Ownership.

The Services and all rights therein are and shall remain Uber's property or the property of Uber's licensors. Neither these Terms nor your use of the Services convey or grant to you any rights: (i) in or related to the Services except for the limited license granted above; or (ii) to use or reference in any manner Uber's company names, logos, product and service names, trademarks or services marks or those of Uber's licensors.

4. Access and Use of the Services

User Accounts.

In order to use most aspects of the Services, you must register for and maintain an active personal user Services account ("Account"). You must be at least 18 years of age, or the age of legal majority in your jurisdiction (if different than 18), to obtain an Account. Account registration requires you to submit to Uber certain personal information, such as your name, address, mobile phone number and age, as well as at least one valid payment method supported by Uber. You agree to maintain accurate, complete, and up-to-date information in your Account. Your failure to maintain accurate, complete, and up-to-date Account information, including having an invalid or expired payment method on file, may result in your inability to access or use the Services. You are responsible for all activity that occurs under your Account, and you agree to maintain the security and secrecy of your Account username and password at all times. Unless otherwise permitted by Uber in writing, you may only possess one Account.

User Requirements and Conduct.

The Service is not available for use by persons under the age of 18. You may not authorize third parties to use

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your Account, and you may not allow persons under the age of 18 to receive transportation or logistics services from Third Party Providers unless they are accompanied by you. You may not assign or otherwise transfer your Account to any other person or entity. You agree to comply with all applicable laws when accessing or using the Services, and you may only access or use the Services for lawful purposes (e.g., no transport of unlawful or hazardous materials). You may not in your access or use of the Services cause nuisance, annoyance, inconvenience, or property damage, whether to the Third Party Provider or any other party. In certain instances you may be asked to provide proof of identity to access or use the Services, and you agree that you may be denied access to or use of the Services if you refuse to provide proof of identity.

Text Messaging and Telephone Calls.

You agree that Uber may contact you by telephone or text messages (including by an automatic telephone dialing system) at any of the phone numbers provided by you or on your behalf in connection with an Uber account, including for marketing purposes. You understand that you are not required to provide this consent as a condition of purchasing any property, goods or services. You also understand that you may opt out of receiving text messages from Uber at any time, either by texting the word "STOP" to 89203 using the mobile device that is receiving the messages, or by contacting help.uber.com. If you do not choose to opt out, Uber may contact you as outlined in its User Privacy Statement, located at www.uber.com/legal/privacy.

Referrals and Promotional Codes.

Uber may, in its sole discretion, create referral and/or promotional codes ("Promo Codes") that may be redeemed for discounts on future Services and/or a Third Party Provider's services, or other features or benefits related to the Services and/or a Third Party Provider's services, subject to any additional terms that Uber establishes. You agree that Promo Codes: (i) must be used for the intended audience and purpose, and in a lawful manner; (ii) may not be duplicated, sold or transferred in any manner, or made available to the general public (whether posted to a public form or otherwise), unless expressly permitted by Uber; (iii) may be disabled by Uber at any time for any reason without liability to Uber; (iv) may only be used pursuant to the specific terms that Uber establishes for such Promo Code; (v) are not valid for cash; and (vi) may expire prior to your use. Uber reserves the right to withhold or deduct credits or other features or benefits obtained through the use of the referral system or Promo Codes by you or any other user in the event that Uber determines or believes that the use of the referral system or use or redemption of the Promo Code was in error, fraudulent, illegal, or otherwise in violation of Uber's Terms.

User Provided Content.

Uber may, in Uber's sole discretion, permit you from time to time to submit, upload, publish or otherwise make available to Uber through the Services textual, audio, and/or visual content and information, including commentary and feedback related to the Services, initiation of support requests, and submission of entries for competitions and promotions ("User Content"). Any User Content provided by you remains your property. However, by providing User Content to Uber, you grant Uber a worldwide, perpetual, irrevocable, transferable, royalty-free license, with the right to sublicense, to use, copy, modify, create derivative works of, distribute, publicly display, publicly perform, and otherwise exploit in any manner such User Content in all formats and distribution channels now known or hereafter devised (including in connection with the Services and Uber's business and on third-party sites and services), without further notice to or consent from you, and without the requirement of payment to you or any other person or entity.

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You represent and warrant that: (i) you either are the sole and exclusive owner of all User Content or you have all rights, licenses, consents and releases necessary to grant Uber the license to the User Content as set forth above; and (ii) neither the User Content, nor your submission, uploading, publishing or otherwise making available of such User Content, nor Uber's use of the User Content as permitted herein will infringe, misappropriate or violate a third party's intellectual property or proprietary rights, or rights of publicity or privacy, or result in the violation of any applicable law or regulation.

You agree to not provide User Content that is defamatory, libelous, hateful, violent, obscene, pornographic, unlawful, or otherwise offensive, as determined by Uber in its sole discretion, whether or not such material may be protected by law. Uber may, but shall not be obligated to, review, monitor, or remove User Content, at Uber's sole discretion and at any time and for any reason, without notice to you.

Network Access and Devices.

You are responsible for obtaining the data network access necessary to use the Services. Your mobile network's data and messaging rates and fees may apply if you access or use the Services from your device. You are responsible for acquiring and updating compatible hardware or devices necessary to access and use the Services and Applications and any updates thereto. Uber does not guarantee that the Services, or any portion thereof, will function on any particular hardware or devices. In addition, the Services may be subject to malfunctions and delays inherent in the use of the Internet and electronic communications.

5. Payment

You understand that use of the Services may result in charges to you for the services or goods you receive ("Charges"). Uber will receive and/or enable your payment of the applicable Charges for services or goods obtained through your use of the Services. Charges will be inclusive of applicable taxes where required by law. Charges may include other applicable fees, tolls, and/or surcharges including a booking fee, municipal tolls, airport surcharges or processing fees for split payments. Please visit www.uber.com/cities for further information on your particular location.

All Charges and payments will be enabled by Uber using the preferred payment method designated in your Account, after which you will receive a receipt by email. If your primary Account payment method is determined to be expired, invalid or otherwise not able to be charged, you agree that Uber may use a secondary payment method in your Account, if available. Charges paid by you are final and non-refundable, unless otherwise determined by Uber.

As between you and Uber, Uber reserves the right to establish, remove and/or revise Charges for any or all services or goods obtained through the use of the Services at any time in Uber's sole discretion. Further, you acknowledge and agree that Charges applicable in certain geographical areas may increase substantially during times of high demand. Uber will use reasonable efforts to inform you of Charges that may apply, provided that you will be responsible for Charges incurred under your Account regardless of your awareness of such Charges or the amounts thereof. Uber may from time to time provide certain users with promotional offers and discounts that may result in different amounts charged for the same or similar services or goods obtained through the use of the Services, and you agree that such promotional offers and discounts, unless also made available to you, shall have no bearing on your use of the Services or the Charges applied to you. You may elect to cancel your request for

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Services at any time prior to the commencement of such Services, in which case you may be charged a cancellation fee on a Third Party Provider's behalf. After you have received services or goods obtained through the Service, you will have the opportunity to rate your experience and leave additional feedback. Uber may use the proceeds of any Charges for any purpose, subject to any payment obligations it has agreed to with any Third Party Providers or other third parties.

In certain cases, with respect to Third Party Providers, Charges you incur will be owed directly to Third Party Providers, and Uber will collect payment of those charges from you, on the Third Party Provider's behalf as their limited payment collection agent, and payment of the Charges shall be considered the same as payment made directly by you to the Third Party Provider. In such cases, you retain the right to request lower Charges from a Third Party Provider for services or goods received by you from such Third Party Provider at the time you receive such services or goods, and Charges you incur will be owed to the Third Party Provider. Uber will respond accordingly to any request from a Third Party Provider to modify the Charges for a particular service or good. This payment structure is intended to fully compensate a Third Party Provider, if applicable, for the services or goods obtained in connection with your use of the Services. In all other cases, Charges you incur will be owed and paid directly to Uber or its affiliates, where Uber is solely liable for any obligations to Third Party Providers. In such cases, you retain the right to request lower Charges from Uber for services or goods received by you from a Third Party Provider at the time you receive such services or goods, and Uber will respond accordingly to any request from you to modify the Charges for a particular service or good. Except with respect to taxicab transportation services requested through the Application, Uber does not designate any portion of your payment as a tip or gratuity to a Third Party Provider. Any representation by Uber (on Uber's website, in the Application, or in Uber's marketing materials) to the effect that tipping is "voluntary," "not required," and/or "included" in the payments you make for services or goods provided is not intended to suggest that Uber provides any additional amounts, beyond those described above, to a Third Party Provider you may use. You understand and agree that, while you are free to provide additional payment as a gratuity to any Third Party Provider who provides you with services or goods obtained through the Service, you are under no obligation to do so. Gratuities are voluntary.

Repair or Cleaning Fees.

You shall be responsible for the cost of repair for damage to, or necessary cleaning of, vehicles and property resulting from use of the Services under your Account in excess of normal "wear and tear" damages and necessary cleaning ("Repair or Cleaning"). In the event that a Repair or Cleaning request is verified by Uber in Uber's reasonable discretion, Uber reserves the right to facilitate payment for the reasonable cost of such Repair or Cleaning using your payment method designated in your Account. Such amounts will be transferred by Uber to a Third Party Provider, if applicable, and are non-refundable.

6. Disclaimers; Limitation of Liability; Indemnity.

DISCLAIMER.

THE SERVICES ARE PROVIDED "AS IS" AND "AS AVAILABLE." UBER DISCLAIMS ALL REPRESENTATIONS AND WARRANTIES, EXPRESS, IMPLIED, OR STATUTORY, NOT EXPRESSLY SET OUT IN THESE TERMS, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT. IN ADDITION, UBER MAKES NO REPRESENTATION, WARRANTY, OR GUARANTEE REGARDING THE RELIABILITY, TIMELINESS, QUALITY, SUITABILITY, OR AVAILABILITY OF

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THE SERVICES OR ANY SERVICES OR GOODS REQUESTED THROUGH THE USE OF THE SERVICES, OR THAT THE SERVICES WILL BE UNINTERRUPTED OR ERROR-FREE. UBER DOES NOT GUARANTEE THE QUALITY, SUITABILITY, SAFETY OR ABILITY OF THIRD PARTY PROVIDERS. YOU AGREE THAT THE ENTIRE RISK ARISING OUT OF YOUR USE OF THE SERVICES, AND ANY SERVICE OR GOOD REQUESTED IN CONNECTION THEREWITH, REMAINS SOLELY WITH YOU, TO THE MAXIMUM EXTENT PERMITTED UNDER APPLICABLE LAW.

LIMITATION OF LIABILITY.

UBER SHALL NOT BE LIABLE FOR INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY, PUNITIVE, OR CONSEQUENTIAL DAMAGES, INCLUDING LOST PROFITS, LOST DATA, PERSONAL INJURY, OR PROPERTY DAMAGE RELATED TO, IN CONNECTION WITH, OR OTHERWISE RESULTING FROM ANY USE OF THE SERVICES, REGARDLESS OF THE NEGLIGENCE (EITHER ACTIVE, AFFIRMATIVE, SOLE, OR CONCURRENT) OF UBER, EVEN IF UBER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

UBER SHALL NOT BE LIABLE FOR ANY DAMAGES, LIABILITY OR LOSSES ARISING OUT OF: (i) YOUR USE OF OR RELIANCE ON THE SERVICES OR YOUR INABILITY TO ACCESS OR USE THE SERVICES; OR (ii) ANY TRANSACTION OR RELATIONSHIP BETWEEN YOU AND ANY THIRD PARTY PROVIDER, EVEN IF UBER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. UBER SHALL NOT BE LIABLE FOR DELAY OR FAILURE IN PERFORMANCE RESULTING FROM CAUSES BEYOND UBER'S REASONABLE CONTROL. YOU ACKNOWLEDGE THAT THIRD PARTY PROVIDERS PROVIDING TRANSPORTATION SERVICES REQUESTED THROUGH SOME REQUEST PRODUCTS MAY OFFER RIDESHARING OR PEER-TO-PEER TRANSPORTATION SERVICES AND MAY NOT BE PROFESSIONALLY LICENSED OR PERMITTED.

THE SERVICES MAY BE USED BY YOU TO REQUEST AND SCHEDULE TRANSPORTATION, GOODS, OR LOGISTICS SERVICES WITH THIRD PARTY PROVIDERS, BUT YOU AGREE THAT UBER HAS NO RESPONSIBILITY OR LIABILITY TO YOU RELATED TO ANY TRANSPORTATION, GOODS OR LOGISTICS SERVICES PROVIDED TO YOU BY THIRD PARTY PROVIDERS OTHER THAN AS EXPRESSLY SET FORTH IN THESE TERMS.

THE LIMITATIONS AND DISCLAIMER IN THIS SECTION DO NOT PURPORT TO LIMIT LIABILITY OR ALTER YOUR RIGHTS AS A CONSUMER THAT CANNOT BE EXCLUDED UNDER APPLICABLE LAW. BECAUSE SOME STATES OR JURISDICTIONS DO NOT ALLOW THE EXCLUSION OF OR THE LIMITATION OF LIABILITY FOR CONSEQUENTIAL OR INCIDENTAL DAMAGES, IN SUCH STATES OR JURISDICTIONS, UBER'S LIABILITY SHALL BE LIMITED TO THE EXTENT PERMITTED BY LAW. THIS PROVISION SHALL HAVE NO EFFECT ON UBER'S CHOICE OF LAW PROVISION SET FORTH BELOW.

Indemnity.

You agree to indemnify and hold Uber and its affiliates and their officers, directors, employees, and agents harmless from any and all claims, demands, losses, liabilities, and expenses (including attorneys' fees), arising out of or in connection with: (i) your use of the Services or services or goods obtained through your use of the Services; (ii) your breach or violation of any of these Terms; (iii) Uber's use of your User Content; or (iv) your violation of the rights of any third party, including Third Party Providers.

7. Other Provisions

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Choice of Law.

These Terms are governed by and construed in accordance with the laws of the State of California, U.S.A., without giving effect to any conflict of law principles, except as may be otherwise provided in the Arbitration Agreement above or in supplemental terms applicable to your region. However, the choice of law provision regarding the interpretation of these Terms is not intended to create any other substantive right to non-Californians to assert claims under California law whether that be by statute, common law, or otherwise. These provisions, and except as otherwise provided in Section 2 of these Terms, are only intended to specify the use of California law to interpret these Terms and the forum for disputes asserting a breach of these Terms, and these provisions shall not be interpreted as generally extending California law to you if you do not otherwise reside in California. The foregoing choice of law and forum selection provisions do not apply to the arbitration clause in Section 2 or to any arbitrable disputes as defined therein. Instead, as described in Section 2, the Federal Arbitration Act shall apply to any such disputes.

Claims of Copyright Infringement.

Claims of copyright infringement should be sent to Uber's designated agent. Please visit Uber's web page at <https://www.uber.com/legal/intellectual-property/copyright/global> for the designated address and additional information.

Notice.

Uber may give notice by means of a general notice on the Services, electronic mail to your email address in your Account, telephone or text message to any phone number provided in connection with your account, or by written communication sent by first class mail or pre-paid post to any address connected with your Account. Such notice shall be deemed to have been given upon the expiration of 48 hours after mailing or posting (if sent by first class mail or pre-paid post) or 12 hours after sending (if sent by email or telephone). You may give notice to Uber, with such notice deemed given when received by Uber, at any time by first class mail or pre-paid post to our registered agent for service of process, c/o Uber USA, LLC. The name and current contact information for the registered agent in each state are available online [here](#).

General.

You may not assign these Terms without Uber's prior written approval. Uber may assign these Terms without your consent to: (i) a subsidiary or affiliate; (ii) an acquirer of Uber's equity, business or assets; or (iii) a successor by merger. Any purported assignment in violation of this section shall be void. No joint venture, partnership, employment, or agency relationship exists between you, Uber or any Third Party Provider as a result of this Agreement or use of the Services. If any provision of these Terms is held to be invalid or unenforceable, such provision shall be struck and the remaining provisions shall be enforced to the fullest extent under law. Uber's failure to enforce any right or provision in these Terms shall not constitute a waiver of such right or provision unless acknowledged and agreed to by Uber in writing. This provision shall not affect the Severability and Survivability section of the Arbitration Agreement of these Terms.

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EXHIBIT 2

EXHIBIT 2

DECL
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Nevada Bar No.: 11913
HARRY V. PEETRIS
Nevada Bar No.: 6448
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Attorneys for Defendant UBER TECHNOLOGIES, INC., and RASIER, LLC

IN THE EIGHT JUDICIAL DISTRICT COURT
CLARK COUNTY, NEVADA

MEGAN ROYZ; and ANDREA EILEEN WORK,

Plaintiff,

v.

MARK ANTHONY JACOBS; MARCO
ANTONIO HEREDIA-ESTRADA; UBER
TECHNOLOGIES, INC.; RAISER, LLC; RAISER-
CA, LLC; DOES I-X, and ROE CORPORATIONS
I-X, inclusive,

Defendants.

CASE NO. : A-20-810843-C
DEPT. NO.: 16

**DECLARATION OF RYAN BUOSCIO IN
SUPPORT OF DEFENDANTS' MOTION
TO COMPEL ARBITRATION**

I, Ryan Buoscio, hereby declare and state as follows:

1. I am over the age of 18 and a resident of Illinois. I submit this declaration in support of Motion of Defendants UBER TECHNOLOGIES, INC. ("Uber"), Rasier, LLC, Rasier-CA, LLC and Rasier-NY, LLC (collectively "Rasier") to Compel Arbitration and to Stay Action. I have personal knowledge of each fact stated in this declaration and, if called as a witness, I could and would competently and truthfully testify thereto.

2. I am presently employed with Uber as Senior Legal Program Manager. I have been employed by Uber since 2016.

1 3. I make this Declaration based upon my personal knowledge and information available
2 to me, including records maintained in the ordinary course of Uber's business.

3 4. Uber Technologies, Inc. and its affiliates (collectively "Uber") is a software company
4 that develops proprietary software to create digital marketplaces that are operated through app-based
5 platforms. The first and most widely known marketplace the company built is for consumers to
6 connect with independent businesses offering transportation services, known within Uber as the
7 Rides marketplace.
8

9 5. The Rides marketplace connects independent transportation providers ("Drivers")
10 with individuals seeking transportation services ("Riders"). Rasier, LLC and its affiliated
11 companies are wholly-owned subsidiaries of Uber Technologies, Inc. engaged in the business of
12 providing lead generation services to independent providers of transportation services through the
13 Rider marketplace, using the Driver version of the Uber App ("Driver App").
14

15 6. Uber has created several mobile applications available via smartphone or tablet that
16 allow Riders, Eaters, Drivers, and delivery providers to access its various marketplaces. Uber's
17 marketplaces, including the Rides marketplace, are available across the United States.

18 7. Riders download the Rider version of the Uber App ("Rider App"), and after
19 completing all the necessary steps required to gain access to the Rider App, the Rider App enables
20 Riders and Drivers to connect.

21 **PLAINTIFF'S ACCOUNT CREATION AND ASSENT TO TERMS**
22

23 8. In the normal course of its business, Uber maintains records regarding when and how
24 Riders register, Rider trip history, the Terms & Conditions (also referred to as "Terms of Service"
25 or "Terms of Use," hereafter the "Terms") in effect and as amended from time to time, and
26 correspondence regarding the Terms. As Senior Legal Program Manager, I have access to these
27 records and am familiar with them.
28

1 9. Based on my review of records maintained by Uber in the regular course of business,
2 I was able to identify the date and method by which Plaintiff Megan (Rosen) Royz ("Plaintiff")
3 registered for an Uber Rider account. Plaintiff registered for an Uber Rider account on November
4 30, 2016 at 6:49 a.m. UTC (which converts to November 29, 2016 at 10:49 p.m. PST, via the Uber
5 website. Attached hereto as **Exhibit I** is a true and correct copy of Uber's Rider sign-up date and
6 device records.

7 10. A Rider may register via the Uber website using any type of device with access to a
8 web browser. To confirm the process by which a Rider registered an Uber account via the Uber
9 website on November 30, 2016, as Plaintiff did, I accessed historical screenshots of Uber's website
10 registration page from archive.org. Attached hereto as **Exhibit J** is a true and correct screenshot of
11 the Uber website registration page as it was last captured before November 30, 2016.

12 11. On November 30, 2016, the process for creating an Uber account via the Uber website
13 required potential Riders to input the following data in fields contained on a single webpage: email,
14 password, first name, last name, mobile number, language, and promotion code (if any). Upon
15 completing these fields, Riders would then register for an account by clicking the blue "Create
16 Account" button at the bottom of the webpage.

17 Immediately below the "Create Account" button, Riders were informed in clear language:
18 "By clicking "Create Account", you agree to Uber's Terms and Conditions and Privacy Policy"
19 The phrases "Terms and Conditions" and "Privacy Policy" were displayed on a simple white
20 background and in blue, hyperlinked text. This distinguished them from other content on the
21 webpage and indicated traditional hyperlinks. See **Exhibit J**.

22 12. When the "Terms and Conditions" hyperlink was clicked from the website registration
23 page on November 30, 2016, the relevant Terms then in effect were displayed for the user.

24 13. I am familiar with the Terms that went into effect for U.S. Riders on November 21,

1 2016, which were in effect on November 30, 2016 when Plaintiff registered for an account, and
2 were hyperlinked during Plaintiff's account creation process. Attached hereto as **Exhibit E** is a true
3 and correct copy of the November 21, 2016 Terms. The November 21, 2016 Terms contain an
4 Arbitration Agreement.

5 I declare under penalty of perjury and the laws of the State of California that the foregoing
6 is true and correct and that this declaration was executed on June 11, 2020 at Chicago, Illinois.
7

8 DocuSigned by:
9 *Ryan Buoscio*
10 87B92AC9FB044DB...
11 Ryan Buoscio
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EXHIBIT 2-I

EXHIBIT 2-I

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<u>First Name</u>	<u>Last Name</u>	<u>Signup Time Stamp (UTC)</u>	<u>Signup Form</u>
Megan	Rosen	11/30/16 6:49 AM	website_invite

EXHIBIT 2-J

EXHIBIT 2-J

UBER



SIGN UP TO RIDE

Welcome to Uber, the easiest way to get around at the tap of a button.

Create your account and get moving in minutes.

1

Account

* Required

* EMAIL

name@example.com

* PASSWORD

At least 5 characters

Profile

* NAME

First Name

Last Name

* MOBILE NUMBER

Mobile Phone

* LANGUAGE

English

Promotion Code

[ADD A PROMO CODE](#)

CREATE ACCOUNT

Please fill out all required (*) fields.

By clicking "Create Account", you agree to Uber's
[Terms and Conditions](#) and [Privacy Policy](#).

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EXHIBIT 2 (1-E)

EXHIBIT 2 (1-E)

Legal | Uber

U.S. Terms of Use

Effective: November 21, 2016

1. Contractual Relationship

These Terms of Use ("Terms") govern your access or use, from within the United States and its territories and possessions, of the applications, websites, content, products, and services (the "Services," as more fully defined below in Section 3) made available in the United States and its territories and possessions by Uber USA, LLC and its parents, subsidiaries, representatives, affiliates, officers and directors (collectively, "Uber"). PLEASE READ THESE TERMS CAREFULLY, AS THEY CONSTITUTE A LEGAL AGREEMENT BETWEEN YOU AND UBER. In these Terms, the words "including" and "include" mean "including, but not limited to."

By accessing or using the Services, you confirm your agreement to be bound by these Terms. If you do not agree to these Terms, you may not access or use the Services. These Terms expressly supersede prior agreements or arrangements with you. Uber may immediately terminate these Terms or any Services with respect to you, or generally cease offering or deny access to the Services or any portion thereof, at any time for any reason.

IMPORTANT: PLEASE REVIEW THE ARBITRATION AGREEMENT SET FORTH BELOW CAREFULLY, AS IT WILL REQUIRE YOU TO RESOLVE DISPUTES WITH UBER ON AN INDIVIDUAL BASIS THROUGH FINAL AND BINDING ARBITRATION. BY ENTERING THIS AGREEMENT, YOU EXPRESSLY ACKNOWLEDGE THAT YOU HAVE READ AND UNDERSTAND ALL OF THE TERMS OF THIS AGREEMENT AND HAVE TAKEN TIME TO CONSIDER THE CONSEQUENCES OF THIS IMPORTANT DECISION.

Supplemental terms may apply to certain Services, such as policies for a particular event, program, activity or promotion, and such supplemental terms will be disclosed to you in separate region-specific disclosures (e.g., a particular city webpage on Uber.com) or in connection with the applicable Service(s). Supplemental terms are in addition to, and shall be deemed a part of, the Terms for the purposes of the applicable Service(s). Supplemental terms shall prevail over these Terms in the event of a conflict with respect to the applicable Services.

Uber may amend the Terms from time to time. Amendments will be effective upon Uber's posting of such updated Terms at this location or in the amended policies or supplemental terms on the applicable Service(s). Your continued access or use of the Services after such posting confirms your consent to be bound by the Terms, as amended. If Uber changes these Terms after the date you first agreed to the Terms (or to any subsequent changes to these Terms), you may reject any such change by providing Uber written notice of such rejection within 30 days of the date such change became effective, as indicated in the "Effective" date above. This written notice must be provided either (a) by mail or hand delivery to our registered agent for service of process, c/o Uber USA, LLC (the name and current contact information for the registered agent in each state are available online [here](#)), or (b) by email from the email address associated with your Account to: change-dr@uber.com. In order to be effective, the notice must include your full name and clearly indicate your intent to reject changes to these Terms. By rejecting changes, you are agreeing that you will continue to be bound by the provisions of these Terms as of the date you first agreed to the Terms (or to any subsequent changes to these Terms).

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Uber's collection and use of personal information in connection with the Services is described in Uber's Privacy Statements located at www.uber.com/legal/privacy.

2. Arbitration Agreement

By agreeing to the Terms, you agree that you are required to resolve any claim that you may have against Uber on an individual basis in arbitration, as set forth in this Arbitration Agreement. This will preclude you from bringing any class, collective, or representative action against Uber, and also preclude you from participating in or recovering relief under any current or future class, collective, consolidated, or representative action brought against Uber by someone else.

Agreement to Binding Arbitration Between You and Uber.

You and Uber agree that any dispute, claim or controversy arising out of or relating to (a) these Terms or the existence, breach, termination, enforcement, interpretation or validity thereof, or (b) your access to or use of the Services at any time, whether before or after the date you agreed to the Terms, will be settled by binding arbitration between you and Uber, and not in a court of law.

You acknowledge and agree that you and Uber are each waiving the right to a trial by jury or to participate as a plaintiff or class member in any purported class action or representative proceeding. Unless both you and Uber otherwise agree in writing, any arbitration will be conducted only on an individual basis and not in a class, collective, consolidated, or representative proceeding. However, you and Uber each retain the right to bring an individual action in small claims court and the right to seek injunctive or other equitable relief in a court of competent jurisdiction to prevent the actual or threatened infringement, misappropriation or violation of a party's copyrights, trademarks, trade secrets, patents or other intellectual property rights.

Rules and Governing Law.

The arbitration will be administered by the American Arbitration Association ("AAA") in accordance with the AAA's Consumer Arbitration Rules and the Supplementary Procedures for Consumer Related Disputes (the "AAA Rules") then in effect, except as modified by this Arbitration Agreement. The AAA Rules are available at www.adr.org/arb_med or by calling the AAA at 1-800-778-7879.

The parties agree that the arbitrator ("Arbitrator"), and not any federal, state, or local court or agency, shall have exclusive authority to resolve any disputes relating to the interpretation, applicability, enforceability or formation of this Arbitration Agreement, including any claim that all or any part of this Arbitration Agreement is void or voidable. The Arbitrator shall also be responsible for determining all threshold arbitrability issues, including issues relating to whether the Terms are unconscionable or illusory and any defense to arbitration, including waiver, delay, laches, or estoppel.

Notwithstanding any choice of law or other provision in the Terms, the parties agree and acknowledge that this Arbitration Agreement evidences a transaction involving interstate commerce and that the Federal Arbitration Act, 9 U.S.C. § 1 et seq. ("FAA"), will govern its interpretation and enforcement and proceedings pursuant thereto. It is the intent of the parties that the FAA and AAA Rules shall preempt all state laws to the fullest extent permitted by law. If the FAA and AAA Rules are found to not apply to any issue that arises under this Arbitration Agreement or the enforcement thereof, then that issue shall be resolved under the laws of the state of California.

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Process.

A party who desires to initiate arbitration must provide the other party with a written Demand for Arbitration as specified in the AAA Rules. (The AAA provides a form Demand for Arbitration - Consumer Arbitration Rules at www.adr.org or by calling the AAA at 1-800-778-7879). The Arbitrator will be either (1) a retired judge or (2) an attorney specifically licensed to practice law in the state of California and will be selected by the parties from the AAA's roster of consumer dispute arbitrators. If the parties are unable to agree upon an Arbitrator within seven (7) days of delivery of the Demand for Arbitration, then the AAA will appoint the Arbitrator in accordance with the AAA Rules.

Location and Procedure.

Unless you and Uber otherwise agree, the arbitration will be conducted in the county where you reside. If your claim does not exceed \$10,000, then the arbitration will be conducted solely on the basis of documents you and Uber submit to the Arbitrator, unless you request a hearing or the Arbitrator determines that a hearing is necessary. If your claim exceeds \$10,000, your right to a hearing will be determined by the AAA Rules. Subject to the AAA Rules, the Arbitrator will have the discretion to direct a reasonable exchange of information by the parties, consistent with the expedited nature of the arbitration.

Arbitrator's Decision.

The Arbitrator will render an award within the time frame specified in the AAA Rules. Judgment on the arbitration award may be entered in any court having competent jurisdiction to do so. The Arbitrator may award declaratory or injunctive relief only in favor of the claimant and only to the extent necessary to provide relief warranted by the claimant's individual claim. An Arbitrator's decision shall be final and binding on all parties. An Arbitrator's decision and judgment thereon shall have no precedential or collateral estoppel effect. If you prevail in arbitration you will be entitled to an award of attorneys' fees and expenses, to the extent provided under applicable law. Uber will not seek, and hereby waives all rights Uber may have under applicable law to recover, attorneys' fees and expenses if Uber prevails in arbitration.

Fees.

Your responsibility to pay any AAA filing, administrative and arbitrator fees will be solely as set forth in the AAA Rules. However, if your claim for damages does not exceed \$75,000, Uber will pay all such fees, unless the Arbitrator finds that either the substance of your claim or the relief sought in your Demand for Arbitration was frivolous or was brought for an improper purpose (as measured by the standards set forth in Federal Rule of Civil Procedure 11(b)).

Changes.

Notwithstanding the provisions in Section I above, regarding consent to be bound by amendments to these Terms, if Uber changes this Arbitration Agreement after the date you first agreed to the Terms (or to any subsequent changes to the Terms), you may reject any such change by providing Uber written notice of such rejection within 30 days of the date such change became effective, as indicated in the "Effective" date above. This written notice must be provided either (a) by mail or hand delivery to our registered agent for service of process, c/o Uber USA, LLC (the name and current contact information for the registered agent in each state are available online [here](#)), or (b) by email from the email address associated with your Account to: change-dr@uber.com. In order to be

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effective, the notice must include your full name and clearly indicate your intent to reject changes to this Arbitration Agreement. By rejecting changes, you are agreeing that you will arbitrate any dispute between you and Uber in accordance with the provisions of this Arbitration Agreement as of the date you first agreed to the Terms (or to any subsequent changes to the Terms).

Severability and Survival.

If any portion of this Arbitration Agreement is found to be unenforceable or unlawful for any reason, (1) the unenforceable or unlawful provision shall be severed from these Terms; (2) severance of the unenforceable or unlawful provision shall have no impact whatsoever on the remainder of the Arbitration Agreement or the parties' ability to compel arbitration of any remaining claims on an individual basis pursuant to the Arbitration Agreement; and (3) to the extent that any claims must therefore proceed on a class, collective, consolidated, or representative basis, such claims must be litigated in a civil court of competent jurisdiction and not in arbitration, and the parties agree that litigation of those claims shall be stayed pending the outcome of any individual claims in arbitration.

3. The Services

The Services comprise mobile applications and related services (each, an "Application"), which enable users to arrange and schedule transportation, logistics and/or delivery services and/or to purchase certain goods, including with third party providers of such services and goods under agreement with Uber or certain of Uber's affiliates ("Third Party Providers"). In certain instances the Services may also include an option to receive transportation, logistics and/or delivery services for an upfront price, subject to acceptance by the respective Third Party Providers. Unless otherwise agreed by Uber in a separate written agreement with you, the Services are made available solely for your personal, noncommercial use. YOU ACKNOWLEDGE THAT YOUR ABILITY TO OBTAIN TRANSPORTATION, LOGISTICS AND/OR DELIVERY SERVICES THROUGH THE USE OF THE SERVICES DOES NOT ESTABLISH UBER AS A PROVIDER OF TRANSPORTATION, LOGISTICS OR DELIVERY SERVICES OR AS A TRANSPORTATION CARRIER.

License.

Subject to your compliance with these Terms, Uber grants you a limited, non-exclusive, non-sublicensable, revocable, non-transferable license to: (i) access and use the Applications on your personal device solely in connection with your use of the Services; and (ii) access and use any content, information and related materials that may be made available through the Services, in each case solely for your personal, noncommercial use. Any rights not expressly granted herein are reserved by Uber and Uber's licensors.

Restrictions.

You may not: (i) remove any copyright, trademark or other proprietary notices from any portion of the Services; (ii) reproduce, modify, prepare derivative works based upon, distribute, license, lease, sell, resell, transfer, publicly display, publicly perform, transmit, stream, broadcast or otherwise exploit the Services except as expressly permitted by Uber; (iii) decompile, reverse engineer or disassemble the Services except as may be permitted by applicable law; (iv) link to, mirror or frame any portion of the Services; (v) cause or launch any programs or scripts for the purpose of scraping, indexing, surveying, or otherwise data mining any portion of the Services or unduly burdening or hindering the operation and/or functionality of any aspect of the Services; or (vi) attempt to gain unauthorized access to or impair any aspect of the Services or its related systems or networks.

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Provision of the Services.

You acknowledge that portions of the Services may be made available under Uber's various brands or request options associated with transportation or logistics, including the transportation request brands currently referred to as "Uber," "uberX," "uberXL," "UberBLACK," "UberSELECT," "UberSUV" and "UberLUX" and the logistics request products currently referred to as "UberRUSH," and "UberEATS." You also acknowledge that the Services may be made available under such brands or request options by or in connection with: (i) certain of Uber's subsidiaries and affiliates; or (ii) independent Third Party Providers, including Transportation Network Company drivers, Transportation Charter Permit holders or holders of similar transportation permits, authorizations or licenses.

Third Party Services and Content.

The Services may be made available or accessed in connection with third party services and content (including advertising) that Uber does not control. You acknowledge that different terms of use and privacy policies may apply to your use of such third party services and content. Uber does not endorse such third party services and content and in no event shall Uber be responsible or liable for any products or services of such third party providers. Additionally, Apple Inc., Google, Inc., Microsoft Corporation or BlackBerry Limited will be a third-party beneficiary to this contract if you access the Services using Applications developed for Apple iOS, Android, Microsoft Windows, or Blackberry-powered mobile devices, respectively. These third party beneficiaries are not parties to this contract and are not responsible for the provision or support of the Services in any manner. Your access to the Services using these devices is subject to terms set forth in the applicable third party beneficiary's terms of service.

Ownership.

The Services and all rights therein are and shall remain Uber's property or the property of Uber's licensors. Neither these Terms nor your use of the Services convey or grant to you any rights: (i) in or related to the Services except for the limited license granted above; or (ii) to use or reference in any manner Uber's company names, logos, product and service names, trademarks or services marks or those of Uber's licensors.

4. Access and Use of the Services

User Accounts.

In order to use most aspects of the Services, you must register for and maintain an active personal user Services account ("Account"). You must be at least 18 years of age, or the age of legal majority in your jurisdiction (if different than 18), to obtain an Account. Account registration requires you to submit to Uber certain personal information, such as your name, address, mobile phone number and age, as well as at least one valid payment method supported by Uber. You agree to maintain accurate, complete, and up-to-date information in your Account. Your failure to maintain accurate, complete, and up-to-date Account information, including having an invalid or expired payment method on file, may result in your inability to access or use the Services. You are responsible for all activity that occurs under your Account, and you agree to maintain the security and secrecy of your Account username and password at all times. Unless otherwise permitted by Uber in writing, you may only possess one Account.

User Requirements and Conduct.

The Service is not available for use by persons under the age of 18. You may not authorize third parties to use

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your Account, and you may not allow persons under the age of 18 to receive transportation or logistics services from Third Party Providers unless they are accompanied by you. You may not assign or otherwise transfer your Account to any other person or entity. You agree to comply with all applicable laws when accessing or using the Services, and you may only access or use the Services for lawful purposes (e.g., no transport of unlawful or hazardous materials). You may not in your access or use of the Services cause nuisance, annoyance, inconvenience, or property damage, whether to the Third Party Provider or any other party. In certain instances you may be asked to provide proof of identity to access or use the Services, and you agree that you may be denied access to or use of the Services if you refuse to provide proof of identity.

Text Messaging and Telephone Calls.

You agree that Uber may contact you by telephone or text messages (including by an automatic telephone dialing system) at any of the phone numbers provided by you or on your behalf in connection with an Uber account, including for marketing purposes. You understand that you are not required to provide this consent as a condition of purchasing any property, goods or services. You also understand that you may opt out of receiving text messages from Uber at any time, either by texting the word "STOP" to 89203 using the mobile device that is receiving the messages, or by contacting help.uber.com. If you do not choose to opt out, Uber may contact you as outlined in its User Privacy Statement, located at www.uber.com/legal/privacy.

Referrals and Promotional Codes.

Uber may, in its sole discretion, create referral and/or promotional codes ("Promo Codes") that may be redeemed for discounts on future Services and/or a Third Party Provider's services, or other features or benefits related to the Services and/or a Third Party Provider's services, subject to any additional terms that Uber establishes. You agree that Promo Codes: (i) must be used for the intended audience and purpose, and in a lawful manner; (ii) may not be duplicated, sold or transferred in any manner, or made available to the general public (whether posted to a public form or otherwise), unless expressly permitted by Uber; (iii) may be disabled by Uber at any time for any reason without liability to Uber; (iv) may only be used pursuant to the specific terms that Uber establishes for such Promo Code; (v) are not valid for cash; and (vi) may expire prior to your use. Uber reserves the right to withhold or deduct credits or other features or benefits obtained through the use of the referral system or Promo Codes by you or any other user in the event that Uber determines or believes that the use of the referral system or use or redemption of the Promo Code was in error, fraudulent, illegal, or otherwise in violation of Uber's Terms.

User Provided Content.

Uber may, in Uber's sole discretion, permit you from time to time to submit, upload, publish or otherwise make available to Uber through the Services textual, audio, and/or visual content and information, including commentary and feedback related to the Services, initiation of support requests, and submission of entries for competitions and promotions ("User Content"). Any User Content provided by you remains your property. However, by providing User Content to Uber, you grant Uber a worldwide, perpetual, irrevocable, transferable, royalty-free license, with the right to sublicense, to use, copy, modify, create derivative works of, distribute, publicly display, publicly perform, and otherwise exploit in any manner such User Content in all formats and distribution channels now known or hereafter devised (including in connection with the Services and Uber's business and on third-party sites and services), without further notice to or consent from you, and without the requirement of payment to you or any other person or entity.

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You represent and warrant that: (i) you either are the sole and exclusive owner of all User Content or you have all rights, licenses, consents and releases necessary to grant Uber the license to the User Content as set forth above; and (ii) neither the User Content, nor your submission, uploading, publishing or otherwise making available of such User Content, nor Uber's use of the User Content as permitted herein will infringe, misappropriate or violate a third party's intellectual property or proprietary rights, or rights of publicity or privacy, or result in the violation of any applicable law or regulation.

You agree to not provide User Content that is defamatory, libelous, hateful, violent, obscene, pornographic, unlawful, or otherwise offensive, as determined by Uber in its sole discretion, whether or not such material may be protected by law. Uber may, but shall not be obligated to, review, monitor, or remove User Content, at Uber's sole discretion and at any time and for any reason, without notice to you.

Network Access and Devices.

You are responsible for obtaining the data network access necessary to use the Services. Your mobile network's data and messaging rates and fees may apply if you access or use the Services from your device. You are responsible for acquiring and updating compatible hardware or devices necessary to access and use the Services and Applications and any updates thereto. Uber does not guarantee that the Services, or any portion thereof, will function on any particular hardware or devices. In addition, the Services may be subject to malfunctions and delays inherent in the use of the Internet and electronic communications.

5. Payment

You understand that use of the Services may result in charges to you for the services or goods you receive ("Charges"). Uber will receive and/or enable your payment of the applicable Charges for services or goods obtained through your use of the Services. Charges will be inclusive of applicable taxes where required by law. Charges may include other applicable fees, tolls, and/or surcharges including a booking fee, municipal tolls, airport surcharges or processing fees for split payments. Please visit www.uber.com/cities for further information on your particular location.

All Charges and payments will be enabled by Uber using the preferred payment method designated in your Account, after which you will receive a receipt by email. If your primary Account payment method is determined to be expired, invalid or otherwise not able to be charged, you agree that Uber may use a secondary payment method in your Account, if available. Charges paid by you are final and non-refundable, unless otherwise determined by Uber.

As between you and Uber, Uber reserves the right to establish, remove and/or revise Charges for any or all services or goods obtained through the use of the Services at any time in Uber's sole discretion. Further, you acknowledge and agree that Charges applicable in certain geographical areas may increase substantially during times of high demand. Uber will use reasonable efforts to inform you of Charges that may apply, provided that you will be responsible for Charges incurred under your Account regardless of your awareness of such Charges or the amounts thereof. Uber may from time to time provide certain users with promotional offers and discounts that may result in different amounts charged for the same or similar services or goods obtained through the use of the Services, and you agree that such promotional offers and discounts, unless also made available to you, shall have no bearing on your use of the Services or the Charges applied to you. You may elect to cancel your request for

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Services at any time prior to the commencement of such Services, in which case you may be charged a cancellation fee on a Third Party Provider's behalf. After you have received services or goods obtained through the Service, you will have the opportunity to rate your experience and leave additional feedback. Uber may use the proceeds of any Charges for any purpose, subject to any payment obligations it has agreed to with any Third Party Providers or other third parties.

In certain cases, with respect to Third Party Providers, Charges you incur will be owed directly to Third Party Providers, and Uber will collect payment of those charges from you, on the Third Party Provider's behalf as their limited payment collection agent, and payment of the Charges shall be considered the same as payment made directly by you to the Third Party Provider. In such cases, you retain the right to request lower Charges from a Third Party Provider for services or goods received by you from such Third Party Provider at the time you receive such services or goods, and Charges you incur will be owed to the Third Party Provider. Uber will respond accordingly to any request from a Third Party Provider to modify the Charges for a particular service or good. This payment structure is intended to fully compensate a Third Party Provider, if applicable, for the services or goods obtained in connection with your use of the Services. In all other cases, Charges you incur will be owed and paid directly to Uber or its affiliates, where Uber is solely liable for any obligations to Third Party Providers. In such cases, you retain the right to request lower Charges from Uber for services or goods received by you from a Third Party Provider at the time you receive such services or goods, and Uber will respond accordingly to any request from you to modify the Charges for a particular service or good. Except with respect to taxicab transportation services requested through the Application, Uber does not designate any portion of your payment as a tip or gratuity to a Third Party Provider. Any representation by Uber (on Uber's website, in the Application, or in Uber's marketing materials) to the effect that tipping is "voluntary," "not required," and/or "included" in the payments you make for services or goods provided is not intended to suggest that Uber provides any additional amounts, beyond those described above, to a Third Party Provider you may use. You understand and agree that, while you are free to provide additional payment as a gratuity to any Third Party Provider who provides you with services or goods obtained through the Service, you are under no obligation to do so. Gratuities are voluntary.

Repair or Cleaning Fees.

You shall be responsible for the cost of repair for damage to, or necessary cleaning of, vehicles and property resulting from use of the Services under your Account in excess of normal "wear and tear" damages and necessary cleaning ("Repair or Cleaning"). In the event that a Repair or Cleaning request is verified by Uber in Uber's reasonable discretion, Uber reserves the right to facilitate payment for the reasonable cost of such Repair or Cleaning using your payment method designated in your Account. Such amounts will be transferred by Uber to a Third Party Provider, if applicable, and are non-refundable.

6. Disclaimers; Limitation of Liability; Indemnity.

DISCLAIMER.

THE SERVICES ARE PROVIDED "AS IS" AND "AS AVAILABLE." UBER DISCLAIMS ALL REPRESENTATIONS AND WARRANTIES, EXPRESS, IMPLIED, OR STATUTORY, NOT EXPRESSLY SET OUT IN THESE TERMS, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT. IN ADDITION, UBER MAKES NO REPRESENTATION, WARRANTY, OR GUARANTEE REGARDING THE RELIABILITY, TIMELINESS, QUALITY, SUITABILITY, OR AVAILABILITY OF

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THE SERVICES OR ANY SERVICES OR GOODS REQUESTED THROUGH THE USE OF THE SERVICES, OR THAT THE SERVICES WILL BE UNINTERRUPTED OR ERROR-FREE. UBER DOES NOT GUARANTEE THE QUALITY, SUITABILITY, SAFETY OR ABILITY OF THIRD PARTY PROVIDERS. YOU AGREE THAT THE ENTIRE RISK ARISING OUT OF YOUR USE OF THE SERVICES, AND ANY SERVICE OR GOOD REQUESTED IN CONNECTION THEREWITH, REMAINS SOLELY WITH YOU, TO THE MAXIMUM EXTENT PERMITTED UNDER APPLICABLE LAW.

LIMITATION OF LIABILITY.

UBER SHALL NOT BE LIABLE FOR INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY, PUNITIVE, OR CONSEQUENTIAL DAMAGES, INCLUDING LOST PROFITS, LOST DATA, PERSONAL INJURY, OR PROPERTY DAMAGE RELATED TO, IN CONNECTION WITH, OR OTHERWISE RESULTING FROM ANY USE OF THE SERVICES, REGARDLESS OF THE NEGLIGENCE (EITHER ACTIVE, AFFIRMATIVE, SOLE, OR CONCURRENT) OF UBER, EVEN IF UBER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

UBER SHALL NOT BE LIABLE FOR ANY DAMAGES, LIABILITY OR LOSSES ARISING OUT OF: (i) YOUR USE OF OR RELIANCE ON THE SERVICES OR YOUR INABILITY TO ACCESS OR USE THE SERVICES; OR (ii) ANY TRANSACTION OR RELATIONSHIP BETWEEN YOU AND ANY THIRD PARTY PROVIDER, EVEN IF UBER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. UBER SHALL NOT BE LIABLE FOR DELAY OR FAILURE IN PERFORMANCE RESULTING FROM CAUSES BEYOND UBER'S REASONABLE CONTROL. YOU ACKNOWLEDGE THAT THIRD PARTY PROVIDERS PROVIDING TRANSPORTATION SERVICES REQUESTED THROUGH SOME REQUEST PRODUCTS MAY OFFER RIDESHARING OR PEER-TO-PEER TRANSPORTATION SERVICES AND MAY NOT BE PROFESSIONALLY LICENSED OR PERMITTED.

THE SERVICES MAY BE USED BY YOU TO REQUEST AND SCHEDULE TRANSPORTATION, GOODS, OR LOGISTICS SERVICES WITH THIRD PARTY PROVIDERS, BUT YOU AGREE THAT UBER HAS NO RESPONSIBILITY OR LIABILITY TO YOU RELATED TO ANY TRANSPORTATION, GOODS OR LOGISTICS SERVICES PROVIDED TO YOU BY THIRD PARTY PROVIDERS OTHER THAN AS EXPRESSLY SET FORTH IN THESE TERMS.

THE LIMITATIONS AND DISCLAIMER IN THIS SECTION DO NOT PURPORT TO LIMIT LIABILITY OR ALTER YOUR RIGHTS AS A CONSUMER THAT CANNOT BE EXCLUDED UNDER APPLICABLE LAW. BECAUSE SOME STATES OR JURISDICTIONS DO NOT ALLOW THE EXCLUSION OF OR THE LIMITATION OF LIABILITY FOR CONSEQUENTIAL OR INCIDENTAL DAMAGES, IN SUCH STATES OR JURISDICTIONS, UBER'S LIABILITY SHALL BE LIMITED TO THE EXTENT PERMITTED BY LAW. THIS PROVISION SHALL HAVE NO EFFECT ON UBER'S CHOICE OF LAW PROVISION SET FORTH BELOW.

Indemnity.

You agree to indemnify and hold Uber and its affiliates and their officers, directors, employees, and agents harmless from any and all claims, demands, losses, liabilities, and expenses (including attorneys' fees), arising out of or in connection with: (i) your use of the Services or services or goods obtained through your use of the Services; (ii) your breach or violation of any of these Terms; (iii) Uber's use of your User Content; or (iv) your violation of the rights of any third party, including Third Party Providers.

7. Other Provisions

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Choice of Law.

These Terms are governed by and construed in accordance with the laws of the State of California, U.S.A., without giving effect to any conflict of law principles, except as may be otherwise provided in the Arbitration Agreement above or in supplemental terms applicable to your region. However, the choice of law provision regarding the interpretation of these Terms is not intended to create any other substantive right to non-Californians to assert claims under California law whether that be by statute, common law, or otherwise. These provisions, and except as otherwise provided in Section 2 of these Terms, are only intended to specify the use of California law to interpret these Terms and the forum for disputes asserting a breach of these Terms, and these provisions shall not be interpreted as generally extending California law to you if you do not otherwise reside in California. The foregoing choice of law and forum selection provisions do not apply to the arbitration clause in Section 2 or to any arbitrable disputes as defined therein. Instead, as described in Section 2, the Federal Arbitration Act shall apply to any such disputes.

Claims of Copyright Infringement.

Claims of copyright infringement should be sent to Uber's designated agent. Please visit Uber's web page at <https://www.uber.com/legal/intellectual-property/copyright/global> for the designated address and additional information.

Notice.

Uber may give notice by means of a general notice on the Services, electronic mail to your email address in your Account, telephone or text message to any phone number provided in connection with your account, or by written communication sent by first class mail or pre-paid post to any address connected with your Account. Such notice shall be deemed to have been given upon the expiration of 48 hours after mailing or posting (if sent by first class mail or pre-paid post) or 12 hours after sending (if sent by email or telephone). You may give notice to Uber, with such notice deemed given when received by Uber, at any time by first class mail or pre-paid post to our registered agent for service of process, c/o Uber USA, LLC. The name and current contact information for the registered agent in each state are available online [here](#).

General.

You may not assign these Terms without Uber's prior written approval. Uber may assign these Terms without your consent to: (i) a subsidiary or affiliate; (ii) an acquirer of Uber's equity, business or assets; or (iii) a successor by merger. Any purported assignment in violation of this section shall be void. No joint venture, partnership, employment, or agency relationship exists between you, Uber or any Third Party Provider as a result of this Agreement or use of the Services. If any provision of these Terms is held to be invalid or unenforceable, such provision shall be struck and the remaining provisions shall be enforced to the fullest extent under law. Uber's failure to enforce any right or provision in these Terms shall not constitute a waiver of such right or provision unless acknowledged and agreed to by Uber in writing. This provision shall not affect the Severability and Survivability section of the Arbitration Agreement of these Terms.

EXHIBIT 3

EXHIBIT 3

DECL
KAREN L. BASHOR
Nevada Bar No.: 11913
HARRY V. PEETRIS
Nevada Bar No.: 6448
WILSON, ELSE, MOSKOWITZ,
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Attorneys for Defendant UBER TECHNOLOGIES, INC., and RASIER, LLC

IN THE EIGHT JUDICIAL DISTRICT COURT
CLARK COUNTY, NEVADA

MEGAN ROYZ; and ANDREA EILEEN WORK,

Plaintiff,

v.

MARK ANTHONY JACOBS; MARCO
ANTONIO HEREDIA-ESTRADA; UBER
TECHNOLOGIES, INC.; RAISER, LLC; RAISER-
CA, LLC; DOES I-X, and ROE CORPORATIONS
I-X, inclusive,

Defendants.

CASE NO. : A-20-810843-C
DEPT. NO.: 16

**DECLARATION OF ALEX PEREZ IN
SUPPORT OF DEFENDANTS MOTION
TO COMPEL ARBITRATION**

I, Alex Perez, hereby declare and state as follows:

1. I am over the age of 18 and a resident of San Francisco, California. I submit this declaration in support of Motion of Defendants UBER TECHNOLOGIES, INC. ("Uber"), Rasier, LLC, Rasier-CA, LLC and Rasier-NY, LLC (collectively "Rasier") to Compel Arbitration and to Stay Action. I have personal knowledge of each fact stated in this declaration and, if called as a witness, I could and would competently and truthfully testify thereto.

2. I am a Software Engineer with Uber. I have been employed by Uber since 2017. I am one of the developers on Uber's iOS team that designs and implements changes to the iOS Rider

1 App. I am familiar with the iOS version of the Uber software application for Riders ("Rider App")
2 and the registration process necessary to gain access to the Rider App. In the normal course of
3 business, Uber maintains records regarding the sign-up flow a user encounters when registering for
4 an account. As a Software Engineer, I have access to these records and I am familiar with these
5 records, which are maintained in the ordinary course of business.

6 3. As declared by Ryan Buoscio, Andrea Eileen (Andi) Work ("Plaintiff") registered on
7 March 27, 2015 via the Rider App on a smartphone using an iOS operating system. [*See Buoscio*
8 *Declaration*, ¶ 9, Ex. A].

10 4. Based on my review of records maintained by Uber in the regular course of business,
11 I identified the version of the iOS Rider App that Plaintiff used on March 27, 2015. As a Software
12 Engineer, I am familiar with this version of the Rider App. Attached hereto as **Exhibits F - H** are
13 true and correct screenshots that accurately represent the account registration process for the version
14 of the Rider App that Plaintiff used to register. The registration process for the Rider App involves
15 the following steps, each of which is contained in a single screen on the user's smartphone:

17 (a) After successfully downloading the Rider App, the user is given the option to
18 "Sign In" or Register". Uber records indicate this user selected "Register", where they would have
19 been taken to the next screen titled "Create An Account" with a prompt "Don't Allow" or "Allow"
20 for Uber access to the user's location while using the Rider App, the user is then prompted on the
21 same screen to enter an email address, mobile number and a password or connect with Facebook.
22 After entering the requested information on the screen, the word "NEXT" is enabled and lights up
23 in the upper right hand corner of the screen. The user clicks "NEXT" to advance to the next screen.
24 The screenshots of these screens are attached as **Exhibit F**.

1 (b) On the next screen, titled "Create A Profile", the user is prompted to create a
2 profile by entering his or her first and last name. After entering the requested information on the
3 screen, the word "NEXT" is enabled and lights up in the upper right hand corner of the screen. The
4 user clicks "NEXT" to advance to the next screen. The screenshot of this "Create A Profile" screen
5 is attached as **Exhibit G**.

6 (c) On the final screen, titled "Link Payment", the user is prompted to enter
7 payment information by entering credit card information or by clicking a *PayPal* button. The
8 following notice is visibly displayed on this screen at the bottom of the screen with no need to scroll
9 down to view it: "By creating an Uber account, you agree to the Terms & Conditions and Privacy
10 Policy." The phrase "Terms & Conditions and Privacy Policy" is displayed in a box and in gray
11 text, all of which sets the text apart from other text on the screen and indicates a hyperlink. When a
12 user clicks the link, he is taken to a screen that contains clickable buttons titled "Terms &
13 Conditions" and "Privacy Policy," which when clicked would have displayed the Terms &
14 Conditions and Privacy Policy then in effect. A screenshot of the "Link Payment" screen is attached
15 as **Exhibit H**.

16 5. Plaintiff could not have completed the registration process via the Rider App, and
17 taken any rides utilizing this account via the Rider App, without completing the steps described in
18 paragraph 4.

19 I declare under penalty of perjury pursuant to the laws of the State of California that the
20 foregoing is true and correct and that this Declaration was executed on June 11, 2020 at San
21 Francisco, Ca.


22 DocuSigned by:
23 
24 7C2C3D7CEC8147C...
25 Alex Perez

EXHIBIT 3-F

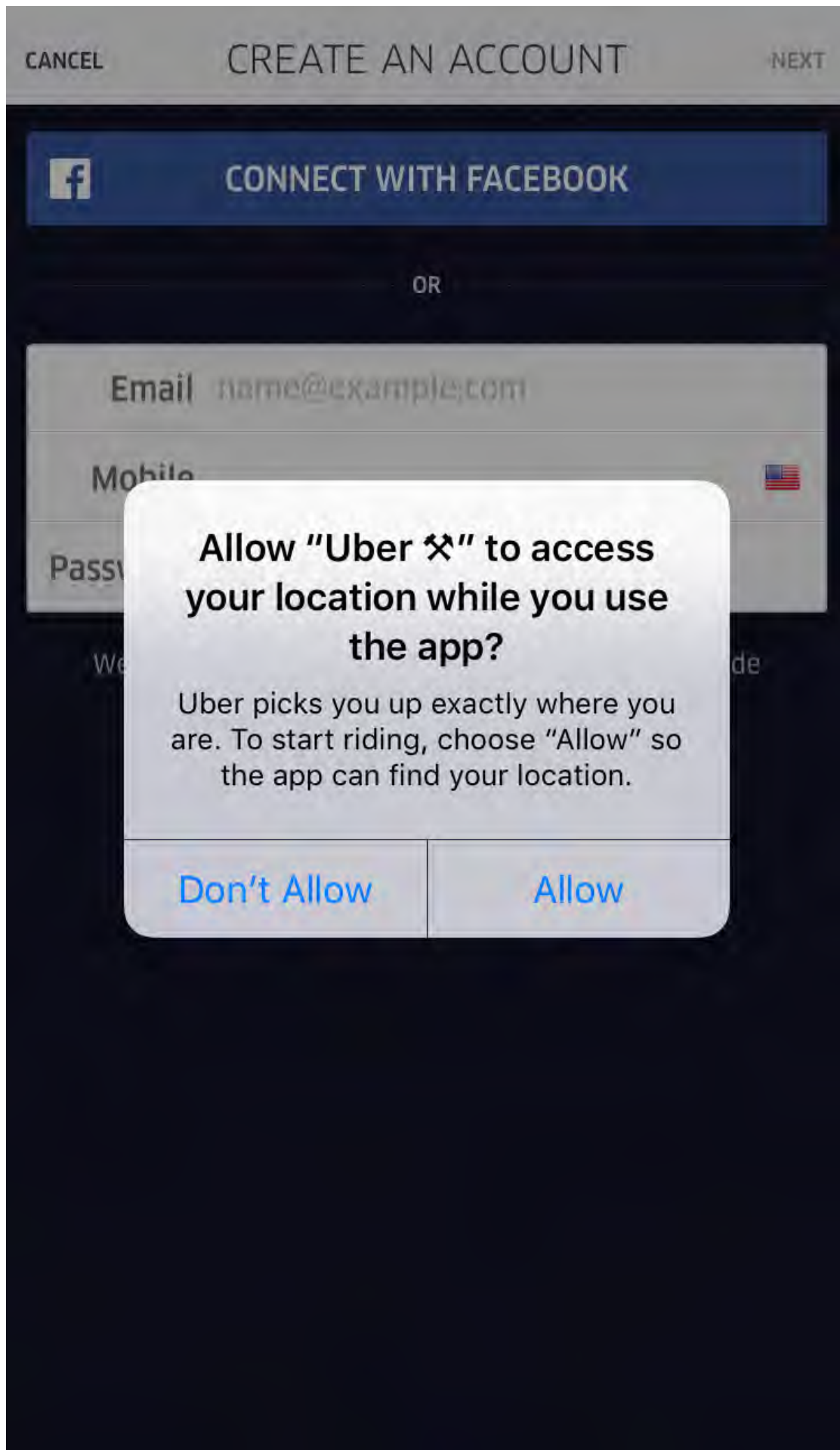
EXHIBIT 3-F



U B E R

SIGN IN

REGISTER



CANCEL

CREATE AN ACCOUNT

NEXT



CONNECT WITH FACEBOOK

OR

Email name@example.com

Mobile



Password Min 5 characters

We use your email and mobile number to send you ride confirmations and receipts.

EXHIBIT 3-G

EXHIBIT 3-G



CREATE A PROFILE

NEXT



First John

Last Smith

EXHIBIT 3-H

EXHIBIT 3-H




LINK PAYMENT

DONE



1234 5678 9012 3456

enter promo code 

OR

PayPal

By creating an Uber account, you agree to the

[Terms & Conditions and Privacy Policy](#)

EXHIBIT 4

EXHIBIT 4

Steven D. Grierson

CASE NO: A-20-810843-C
Department 16

COMP

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Attorneys for Plaintiffs, Megan Royz and Andrea Eileen Work

IN THE EIGHT JUDICIAL DISTRICT COURT

COUNTY OF CLARK, NEVADA

MEGAN ROYZ, an individual; and ANDREA)
EILEEN WORK, an individual)

Plaintiff,)

v.)

MARK ANTHONY JACOBS, an individual,)
MARCO ANTONIO HEREDIA-ESTRADA,)
an individual, UBER TECHNOLOGIES, INC.,)
a corporation; RAISER, LLC., a corporation,)
RAISER-CA, LLC, an individual; DOES 1)
through 10 and ROE Corporations 1 through)
10, Inclusive,)

Defendants)

CASE NO.:

DEPT. NO.:

PLAINTIFF'S COMPLAINT FOR:

1. NEGLIGENCE AGAINST
DEFENDANTS MARCO
ANTONIO HEREDIA-ESTRADA,
UBER, RAISER LLC, RAISER-CA
LLC;
2. NEGLIGENCE AGAINST
DEFENDANTS MARK
ANTHONY JACOBS, UBER,
RAISER LLC, RAISER-CA LLC;
AND
3. NEGLIGENT HIRING,
SUPERVISION AND
RETENTION

(Arbitration Exemption Requested
Damages Exceed \$50,000)

Plaintiffs MEGAN ROYZ and ANDREA EILEEN WORK (collectively referred to as
"PLAINTIFFS"), by and through PLAINTIFFS' attorneys, as and for this Complaint against
Defendants, and each of them, alleges:

///

GENERAL ALLEGATIONS

1. All allegations of the complaint are based on information and belief and are likely to have evidentiary support after a reasonable opportunity for investigation and discovery.

2. At all times herein mentioned, Plaintiff MEGAN ROYZ is and was a resident of County of Los Angeles, State of California.

3. At all times herein mentioned, Plaintiff ANDREA EILEEN WORK is and was a resident of County of Clark, State of Nevada.

4. At all times mentioned in this Complaint, PLAINTIFFS were the restrained occupant of a vehicle ("Vehicle 1").

5. PLAINTIFFS are informed and believe, and based upon such information and belief alleges that at all times herein mentioned, Defendant MARCO ANTONIO HEREDIA-ESTRADA ("ESTRADA"), was and is a resident of County of Clark, State of Nevada.

6. PLAINTIFFS are informed and believe, and based upon such information and belief alleges that at all times herein mentioned, Defendant MARK ANTHONY JACOBS ("JACOBS"), was and is a resident of County of Clark, State of Nevada.

7. PLAINTIFFS are informed and believe, and based upon such information and belief alleges that at all times mentioned in this Complaint, Defendants ESTRADA, and each of them, were the owners of that certain 2008 Scion XB, NV license plate number 63E328 ("Vehicle 1").

8. PLAINTIFFS are informed and believe, and based upon such information and belief alleges that at all times mentioned in this Complaint, Defendants JACOBS, and each of them, were the owners of that certain 2014 Ford Flex, NV license plate number 444B78 ("Vehicle 2").

9. PLAINTIFFS are informed and believe, and based upon such information and belief allege that at all times herein mentioned, Defendant UBER TECHNOLOGIES, INC. ("UBER") was and is a corporation and/or business entities, form unknown, which run a Transportation Network Company (TNC) known as UBER which provide a number of

1 transportation options and vehicles for users of their service, including a low-cost option called
2 Uber X, through an online-enabled application (hereinafter "APP"). UBER has its principal place
3 of business in and conducts business in San Francisco, California.

4 10. PLAINTIFFS are informed and believe, and based upon such information and
5 belief allege that at all times herein mentioned, Defendant, RAISER LLC is a Delaware Limited
6 Liability Company which is a wholly owned subsidiary of UBER and the parent company of
7 RAISER-CA LLC, a Delaware Limited Liability Company. RAISER LLC & RAISER-CA LLC
8 have their principal place of business in and conducts business in San Francisco, California.

9 11. PLAINTIFFS are informed and believe, and based upon such information and belief allege
10 that at all times mentioned in this Complaint, Defendants UBER, RAISER LLC, RAISER-CA
11 LLC, Does 1-5 and Roe Corporations 1-5, was and is a TNC, licensed by the Nevada Public
12 Utilities Commission.

13 12. PLAINTIFFS are informed and believe, and based upon such information and
14 belief allege that at all times mentioned in this Complaint, Defendants UBER, Does 1-5 and Roe
15 Corporations 1-5, provided prearranged transportation services for compensation using an online-
16 enabled application or platform (such as a smart phone application) to connect drivers using their
17 personal vehicles with passengers.

18 13. UBER and Does 1-10, use RAISER LLC and/or RAISER-CA LLC and/or DOES
19 1 to 10, to operate a TRANSPORTATION NETWORK COMPANY (TNC) known as Uber X, a
20 division of UBER and/or Does 1-10's commercial enterprise.

21 14. PLAINTIFFS are informed and believe, and based upon such information and
22 belief allege that RAISER-CA LLC is the insurance certificate holder for the insurance that UBER
23 is required to carry as a TNC, which it uses for its Uber X operations.

24 15. PLAINTIFFS are informed and believe, and on the based upon such information
25 and belief allege, that there is a unity of interest and operation between UBER, RAISER LLC,
26 RAISER- CA LLC and Does 1-10 such that their separate and independent classification is but a
27 fiction and that each is the alter-ego of the other.

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attorneys at law

1 16. Defendants are liable for the acts of each other through principals of respondeat
2 superior, agency, ostensible agency, partnership, alter-ego and other forms of vicarious liability.

3 17. PLAINTIFFS are informed and believe, and based upon such information and
4 belief, allege, that on February 22, 2018, at the time of this collision, Defendants ESTRADA
5 JACOBS, and each of them, were driver/transportation providers who were operating their
6 vehicles utilizing the UBER APP and as such were an agents and/or employees and/or partners of
7 UBER, and/or RAISER LLC and/or RAISER-CA LLC and/or Does 1-10.

8 18. PLAINTIFFS are informed and believe, and based upon such information and
9 belief alleges that at all times mentioned in this Complaint, Defendants JACOBS was employed
10 as an UBER driver, was driving Vehicle 2 while in the course and scope of employment with
11 Defendant UBER and was driving Vehicle 2 with Defendant UBER's knowledge, consent and/or
12 permission.

13 19. PLAINTIFFS are informed and believe, and based upon such information and
14 belief alleges that at all times mentioned in this Complaint, Defendants ESTRADA was employed
15 as an UBER driver, was driving Vehicle 1 while in the course and scope of employment with
16 Defendant UBER and was driving Vehicle 1 with Defendant UBER's knowledge, consent and/or
17 permission.

18 20. PLAINTIFFS are informed and believe, and based on information and belief allege,
19 that at the time of the incident, Defendants ESTRADA, and each of them, had Defendant UBER's
20 Application "On," Driver Mode activated and had accepted Plaintiffs as passengers.

21 21. PLAINTIFFS are informed and believe, and based on information and belief allege,
22 that at the time of the incident, Defendants JACOBS, and each of them, had Defendant UBER's
23 Application "On," Driver Mode activated and had accepted passengers.

24 22. PLAINTIFFS are informed and believe and based on this information and belief
25 allege that Defendant JACOBS, knowingly ingested and/or consumed intoxicating substances to
26 the point of legal intoxication all the while knowing that Defendant JACOBS was going to and
27 was required to drive a motor vehicle. Further Defendant JACOBS knew or should have known
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1 Defendant JACOBS was not legally permitted to operate a vehicle on public streets and highways,
2 but nevertheless Defendant JACOBS consciously chose to operate Vehicle 2 after Defendant
3 JACOBS knowingly and willingly ingesting and consuming intoxicating substances to the point
4 of legal intoxication. The above mentioned conduct constitutes conduct invoking the provisions of
5 NRS §42.005 because a person who voluntarily commences, and thereafter continues to ingest or
6 consume intoxicating substances to the point of legal intoxication knowing from the outset that
7 he/she must thereafter operate a motor vehicle demonstrates such a conscious and deliberate
8 disregard of the interests of others that the conduct of the Defendant was willful and wanton and
9 in reckless disregard for the safety and well-being of PLAINTIFFS. PLAINTIFFS are therefore
10 entitled to punitive and exemplary damages for sake of example and by way of punishing
11 Defendant, and each of them.

12 23. The true names and capacities, whether individual, corporate, associate or
13 otherwise, of Defendants named herein as Does 1 through 10 and Roe Corporations 1 through 10
14 are unknown to PLAINTIFFS, who therefore sues such Defendants by such fictitious names and
15 will amend this Complaint to show their true names and capacities when ascertained together with
16 the proper charging allegations.

17 24. At all times herein mentioned, Defendants Does 1 through 10 and Roe Corporations
18 1 through 10, inclusive, were the agents, servants and employees of their co-Defendants, and in
19 doing the things hereinafter alleged were acting within the scope of their authority as such agents,
20 servants and employees and with the consent and permission of their co-Defendants.

21 25. PLAINTIFFS are informed and believe and thereupon alleges that each of the
22 Defendants designated herein as a DOE or ROE is responsible in some manner and liable herein
23 by reason of negligence, malfeasance, nonfeasance, wanton and reckless misconduct, and
24 conscious disregard, and said Defendants directly, legally and proximately caused the injuries and
25 damages asserted in this Complaint by such wrongful conduct.

26 26. The acts, conduct, and nonfeasance herein carried out by each and every
27 representative, employee or agent of each and every corporate or business defendant, were
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1 authorized, ordered, and directed by the respective Defendant's corporate or business employers,
2 officers, directors and/or managing agents; that in addition thereto, said corporate or business
3 employers, officers, directors and/or managing agents had advance knowledge of, authorized, and
4 participated in the herein described acts, conduct and nonfeasance of their representatives,
5 employees, agents and each of them; and that in addition thereto, upon the completion of the
6 aforesaid acts, conduct and nonfeasance of the employees and agents, the aforesaid corporate and
7 business employers, officers, directors and/or managing agents respectively ratified, accepted the
8 benefits of, condoned and approved of each and all of said acts, conduct or nonfeasance of their
9 co-employees, employers, and agents.

10 27. In addition, at all times herein relevant, each defendant, whether named herein or
11 designated as a DOE or ROE, was a principal, master, employer and joint venturer of every other
12 defendant, and every defendant was acting within the scope of said agency authority, employment
13 and joint venture.

14 **JURISDICTION AND VENUE**

15 28. This Court has jurisdiction in this matter pursuant to NRS 13 because the accident
16 and/or injury occurred within Clark County, State of Nevada.

17 29. Venue is proper in this Court pursuant to the provisions of NRS 13, in that the
18 accident occurred and Defendants' obligations and liability arose in Clark County, State of
19 Nevada.

20 **FIRST CLAIM FOR RELIEF**

21 **FOR NEGLIGENCE**

22 ***(Defendant ESTRADA, UBER, RAISER LLC, RAISER-CA LLC,***

23 ***Does 1-5 and Roe Corporations 1-10)***

24 30. PLAINTIFFS repeat and reallege the preceding paragraphs as though fully set forth
25 herein.

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1 31. At all times mentioned in this Complaint, S. Las Vegas Boulevard at or near the
2 intersection of W. Mandalay Bay Road was and is a public street and/or highway in Clark County,
3 Nevada.

4 32. On or about February 22, 2018, PLAINTIFFS were occupants of Vehicle 1, when
5 Defendants ESTRADA, and each of them, who were operating Vehicle 1 on S. Las Vegas
6 Boulevard while in the course and scope of employment with Defendants UBER, RAISER LLC
7 and/or RAISER-CA LLC, and with Defendant UBER, RAISER LLC and/or RAISER-CA LLC's
8 knowledge consent and permission, when Defendant failed to observe traffic in front of Defendant,
9 failed to operate Vehicle 1 as a reasonably prudent person in the same or similar circumstances,
10 failed to stop Vehicle 1 in a timely and reasonable manner, and thereafter caused a collision
11 between Vehicles 1 and other vehicles.

12 33. All operators of motor vehicles have a general duty to exercise reasonable care and
13 skill in the operation of their vehicles. The duty of care includes operating a vehicle in a safe and
14 prudent manner and heeding all traffic ordinances. Operators of motor vehicles must operate their
15 vehicle such as a reasonable and prudent person would in the same or similar circumstances.

16 34. On the above date and time, Defendants, and each of them, failed to use the due
17 care of an ordinary and reasonable person by failing to drive as a reasonably prudent person and
18 by causing a collision between Vehicles 1 and other vehicles.

19 35. On that date and at that time and place, Defendants, and each of them, so
20 negligently, carelessly, recklessly and/or unlawfully entrusted, managed, drove and operated
21 Vehicle 1 so as to proximately cause it to collide with Vehicle 2 and to proximately cause the
22 hereinafter described injuries and damages to PLAINTIFFS.

23 36. At that time and place, there was in effect NRS § 484B.600 which provides "it is
24 unlawful for any person to drive or operate a vehicle at a rate of speed greater than reasonable or
25 proper, having due regard for the traffic, surface and width of the highway, the weather and other
26 conditions."

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1 37. At this time and place, Defendants, and each of them, violated NRS § 484B.600 by
2 driving at a speed greater than was reasonable and consequently striking PLAINTIFFS and Vehicle
3 2.

4 38. At that time and place, there was in effect NRS § 484B.603 which provides "[t]he
5 fact that the speed of a vehicle is lower than the prescribed limits does not relieve a driver from
6 the duty to decrease speed when approaching and crossing an intersection, when approaching and
7 going around a curve, when approaching a hill crest, when traveling upon any narrow or winding
8 highway, or when special hazards exist or may exist with respect to pedestrians or other traffic, or
9 by reason of weather or other highway conditions, and speed must be decreased as may be
10 necessary to avoid colliding with any person, vehicle or other conveyance on or entering a highway
11 in compliance with legal requirements and the duty of all persons to use due care."

12 39. At this time and place, Defendants, and each of them, violated NRS § 484B.603 by
13 driving at a speed greater than was reasonable when approaching and crossing an intersection and
14 consequently crashing into and Vehicle 2.

15 40. At that time and place, there was in effect §484B.127, which states: "[t]he driver of
16 a vehicle shall not follow another vehicle more closely than is reasonable and prudent, having due
17 regard for the speed of such vehicles and the traffic upon and the condition of the highway."

18 41. At this time and place, Defendants, and each of them, violated NRS § 484B.127 by
19 following Vehicle 2 more closely than was reasonable and prudent at a speed greater than was
20 reasonable and consequently crashing into and Vehicle 2.

21 42. NRS §484B.600, §484B.603, §484B.127 were enacted to prevent the type of
22 accident Defendants, and each of them, caused.

23 43. PLAINTIFFS are within the class of people the above statutes are designed to
24 protect. The vehicle codes exist to ensure the safety of all vehicle motorists and to deter negligent
25 driving.

26 44. The type of injuries PLAINTIFFS sustained are the type the above statutes are
27 designed to prevent.

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1 45. As a proximate result of the negligence, carelessness, recklessness and/or
2 unlawfulness of Defendants, and each of them, and the resulting collision as previously alleged,
3 PLAINTIFFS were injured in PLAINTIFFS' health, strength and activity, sustained injuries to
4 PLAINTIFFS' body and nervous system and person and sustained personal injuries all of which
5 have caused and continue to cause PLAINTIFFS great mental, physical and nervous pain and
6 suffering. These injuries may result in personal disability to PLAINTIFFS all to PLAINTIFFS'
7 general damage.

8 46. As a proximate result of the negligence of Defendants, and each of them,
9 PLAINTIFFS necessarily employed and will employ physicians and surgeons for medical
10 examination, treatment and care of these injuries and incurred medical and incidental expenses and
11 may have to incur additional like expenses in the future, all in amounts presently unknown to
12 PLAINTIFFS. PLAINTIFFS therefore requests leave of Court to prove that amount at trial.

13 47. As a proximate result of the negligence of Defendants, and each of them,
14 PLAINTIFFS were disabled and may be disabled in the future and thereby be prevented from
15 attending to the duties of PLAINTIFFS' usual occupation. PLAINTIFFS have therefore lost
16 earnings and may continue to lose earnings in the future, all in amounts presently unknown to
17 PLAINTIFFS. PLAINTIFFS request leave of Court to prove that amount at trial.

18
19 **SECOND CLAIM FOR RELIEF**

20 **FOR NEGLIGENCE**

21 ***(Against Defendant JACOBS, UBER, RAISER LLC, RAISER-CA LLC,***

22 ***Does 6-10 and Roe Corporations 1-10)***

23 48. PLAINTIFFS repeat and reallege the preceding paragraphs as though fully set forth
24 herein.

25 49. On or about February 22, 2018, PLAINTIFFS were occupants of Vehicle 1, when
26 Defendants JACOBS, and each of them, who were operating Vehicle 2 on S. Las Vegas Boulevard
27 while in the course and scope of employment with Defendant UBER, RAISER LLC and/or
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1 RAISER-CA LLC, and with Defendant UBER, RAISER LLC and/or RAISER-CA LLC's
2 knowledge consent and permission, when Defendant failed to observe as a reasonably prudent
3 person in the same or similar circumstances, failed to operate Vehicle 2 as a reasonably prudent
4 person in the same or similar circumstances, failed to yield to PLAINTIFFS and Vehicle 1, made
5 a U-turn directly into PLAINTIFFS and Vehicle 1 and thereafter caused a collision between
6 Vehicle 2 and Vehicle 1.

7 50. The conduct of Defendant JACOBS, and each of them, as described above, to wit,
8 that Defendant voluntarily, knowingly, willfully and purposefully ingested and/or consumed
9 intoxicating substances to the point of legal intoxication all the while knowing that Defendant was
10 going to thereafter drive a motor vehicle, that Defendant thereafter drove Vehicle 2 while under
11 the influence of illegal, intoxicating substances, that Defendant failed to operate Vehicle 2 as a
12 reasonably prudent in the same or similar circumstances and crashed Vehicle 2 into PLAINTIFFS
13 and Vehicle 1, constitutes conduct invoking the provisions of NRS 42.005 because a person who
14 voluntarily consumes illegal, intoxicating substances to the point of legal intoxication knowing
15 he/she is going to thereafter operate a motor vehicle and then he/she operates a motor vehicle while
16 legally intoxicated on residential streets demonstrates such a conscious and deliberate disregard of
17 the interests of others that the conduct of the Defendant was willful and wanton and in reckless
18 disregard for the safety and well-being of PLAINTIFFS. PLAINTIFFS are heretofore entitled to
19 punitive and exemplary damages for sake of example and by way of punishing Defendants
20 JACOBS, and each of them.

21 51. All operators of motor vehicles have a general duty to exercise reasonable care and
22 skill in the operation of their vehicles. The duty of care includes operating a vehicle in a safe and
23 prudent manner and heeding all traffic ordinances. Operators of motor vehicles must operate their
24 vehicle such as a reasonable and prudent person would in the same or similar circumstances.

25 52. On the above date and time, Defendants, JACOBS and each of them, failed to use
26 the due care of an ordinary and reasonable person by failing to observe Vehicle 1, by failing to
27 operate Vehicle 2 as a reasonably prudent person in the same or similar circumstance and by
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1 causing Vehicle 2 to strike PLAINTIFFS and Vehicle 1 and by causing PLAINTIFFS injuries.

2 53. On that date and at that time and place, Defendants, and each of them, so
3 negligently, carelessly, recklessly and/or unlawfully entrusted, managed, drove and/or operated
4 Vehicle 2 so as to proximately cause it to collide with Vehicle 1 and PLAINTIFFS and to
5 proximately cause the hereinafter described injuries and damages to PLAINTIFFS.

6 54. At that time and place, there was in effect NRS § 484B.600 which provides "it is
7 unlawful for any person to drive or operate a vehicle at a rate of speed greater than reasonable or
8 proper, having due regard for the traffic, surface and width of the highway, the weather and other
9 conditions."

10 55. At this time and place, Defendants, and each of them, violated NRS § 484B.600 by
11 driving at a speed greater than was reasonable and consequently striking PLAINTIFFS and Vehicle
12 1.

13 56. At that time and place, there was in effect NRS § 484B.603 which provides "[t]he
14 fact that the speed of a vehicle is lower than the prescribed limits does not relieve a driver from
15 the duty to decrease speed when approaching and crossing an intersection, when approaching and
16 going around a curve, when approaching a hill crest, when traveling upon any narrow or winding
17 highway, or when special hazards exist or may exist with respect to pedestrians or other traffic, or
18 by reason of weather or other highway conditions, and speed must be decreased as may be
19 necessary to avoid colliding with any person, vehicle or other conveyance on or entering a highway
20 in compliance with legal requirements and the duty of all persons to use due care."

21 57. At this time and place, Defendants, and each of them, violated NRS § 484B.603 by
22 driving at a speed greater than was reasonable while approaching and crossing an intersection and
23 consequently striking PLAINTIFFS and Vehicle 1.

24 58. At that time and place, there was in effect NRS § 484B.403 which provides "[a] U-
25 turn may be made on any road where the turn can be made with safety, except as prohibited by
26 this section and by the provisions of NRS 484B.227 and 484B.407."

27 ///

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1 59. At this time and place, Defendants, and each of them, violated NRS § 484B.403 by
2 turning Vehicle 2 in front of Vehicle 1 at an unreasonable and unsafe time and thereafter colliding
3 with Vehicle 1.

4 60. At that time and place, there was in effect NRS § 484C.110 which provides "[i]t is
5 unlawful for any person who: (a) Is under the influence of intoxicating liquor; (b) Has a
6 concentration of alcohol of 0.08 or more in his or her blood or breath; or (c) Is found by
7 measurement within 2 hours after driving or being in actual physical control of a vehicle to have a
8 concentration of alcohol of 0.08 or more in his or her blood or breath, to drive or be in actual
9 physical control of a vehicle on a highway or on premises to which the public has access."

10 61. At this time and place, Defendants, and each of them, violated NRS § 484C.110 by
11 driving Vehicle 2 while legally intoxicated and while under the influence of intoxicating
12 substances and by causing a collision between Vehicles 1 & 2.

13 62. NRS §484B.600, §484B.603, §484B.403, §484C.110 were enacted to prevent the
14 type of accident Defendants, and each of them, caused.

15 63. PLAINTIFFS are within the class of people the above statutes are designed to
16 protect. The vehicle codes exist to ensure the safety of all vehicle motorists and to deter negligent
17 driving.

18 64. The type of injuries PLAINTIFFS sustained are the type the above statutes are
19 designed to prevent.

20 65. On that date and at that time and place, Defendants, and each of them, so
21 negligently, carelessly, recklessly and/or unlawfully entrusted, managed, drove and operated
22 Vehicle 2 so as to proximately cause the above described accident and to injure PLAINTIFFS.

23 66. As a proximate result of the negligence, carelessness, recklessness and/or
24 unlawfulness of Defendants, and each of them, and the resulting collision as previously alleged,
25 Plaintiffs were injured in their health, strength and activity, sustained injuries to PLAINTIFF'S
26 bodies, nervous systems and persons and sustained personal injuries all of which have caused and
27 continue to cause PLAINTIFFS great mental, physical and nervous pain and suffering. These
28

1 injuries may result in personal disabilities to PLAINTIFFS all to their general damage.

2 67. As a proximate result of the negligence of Defendants, and each of them,
3 PLAINTIFFS necessarily employed physicians and surgeons for medical examination, treatment
4 and care of their injuries and incurred medical and incidental expenses and may have to incur
5 additional like expenses in the future, all in amounts presently unknown to them. PLAINTIFFS
6 therefore request leave of Court to prove that amount at trial.

7 68. As a proximate result of the negligence of Defendants, and each of them,
8 PLAINTIFFS were disabled and may be disabled in the future and thereby be prevented from
9 attending to the duties of PLAINTIFFS' usual occupations. PLAINTIFFS lost earnings and may
10 continue to lose earnings in the future, all in amounts presently unknown to them. PLAINTIFFS
11 request leave of Court to prove that amount at trial.

12 69. As a proximate result of the negligence, carelessness, recklessness and/or
13 unlawfulness of Defendants, and each of them, and the resulting collision as previously alleged,
14 PLAINTIFFS were denied the use of Vehicle 1. PLAINTIFFS have, therefore, incurred and/or
15 will incur expenses associated with the loss of use of PLAINTIFFS' automobile.

16 70. As a proximate result of the negligence, carelessness, recklessness and/or
17 unlawfulness of Defendants, and each of them, and the resulting collision as previously alleged,
18 Vehicle 1 was damaged and PLAINTIFFS have, therefore, incurred or will incur expenses
19 associated with repairing and/or replacing Vehicle 1.

20 71. As a further, direct and proximate result of the negligence of Defendants, and each
21 of them, PLAINTIFFS are entitled to recover from Defendants, and each of them, their general,
22 special, actual compensatory, punitive damages and attorney fees under Code of Civil Procedure
23 § 1021.4.

24 72. As a further, direct and proximate result of the negligence, carelessness,
25 recklessness and/or unlawfulness of Defendants, and each of them, and the resulting collision as
26 previously alleged, Vehicle 1 was diminished and PLAINTIFFS have, therefore, incurred or will
27 incur diminution in value damages associated with Vehicle 1.

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1 73. As a further, direct and proximate result of the willful, wanton and reckless
2 disregard for the safety and well-being of PLAINTIFFS by Defendants, and each of them,
3 PLAINTIFFS are entitled to recover from each of the Defendants, and each of them, punitive and
4 exemplary damages in accordance with the provisions of the California Civil Code § 3294 in an
5 amount according to proof at trial.

6
7 **THIRD CLAIM FOR RELIEF**
8 **FOR NEGLIGENT HIRING, SUPERVISION AND RETENTION**

9 *(Against UBER, RAISER LLC, RAISER-CA LLC ,*
10 *Does 6-10, Roe Corporations 1-10, and each of them)*

11 74. PLAINTIFFS repeat and reallege the preceding paragraphs as though fully set forth
12 herein.

13 75. Defendant JACOBS, and each of them, was unfit and or incompetent to perform
14 the work for which he was hired.

15 76. Defendants, ROE corporation 1-10, and each of them, knew or should have known
16 that JACOBS, and each of them, was unfit and/or incompetent and that this unfitness and/or
17 incompetence harmed PLAINTIFFS.

18 77. JACOBS, and each of them unfitness and/or incompetence harmed PLAINTIFFS.

19 78. Defendants, ROE corporation 1-10, and each of their, negligence in hiring,
20 supervising and or retaining JACOBS, and each of them proximately caused PLAINTIFFS' harm.

21 79. Defendants, and each of them, had advanced knowledge of JACOBS, Does 6-10,
22 and each of their, unfitness and nevertheless employed him with a conscious disregard of the rights
23 or safety of others or authorized or ratified the wrongful conduct or was personally guilty of
24 oppression, fraud, or malice.

25 80. With respect to Defendants, ROE corporation 1-10, and each of them, the advance
26 knowledge and conscious disregard, authorization, ratification or act of oppression, fraud, or
27 malice was done on the part of an officer, director, or managing agent of the corporation.

28

1 81. Defendants, ROE corporation 1-10, and each of their conduct, as described above,
2 was malicious, was done with a conscious and deliberate disregard of the interests of others, and
3 was ratified by a Defendant officer, director or managing agent.

4 82. As a further, direct and proximate result of the malicious, willful, wanton and
5 reckless disregard for the safety and well-being of PLAINTIFFS by Defendants, and each of them,
6 PLAINTIFFS are entitled to recover from Defendants, and each of them, punitive and exemplary
7 damages in an amount according to proof at trial.

8
9 WHEREFORE, PLAINTIFF prays for judgment as follows:

- 10 1. For general, consequential, incidental and special damages in an amount
11 exceeding Ten Thousand Dollars (\$10,000.00);
12 2. For loss of earnings according to proof;
13 3. For prejudgment interest;
14 4. For property damage according to proof;
15 5. For punitive damages under NRS 42.005;
16 6. For diminution in value according to proof;
17 7. For attorney fees and costs according to proof; and
18 8. For such other and further relief as this Court may deem proper.

19
20
21 Dated: 02/20/2020.

22 QUIRK LAW FIRM, LLP

23
24
25 By: 

26 Trevor M. Quirk, Esq #8625
27 Attorneys for Plaintiffs, Megan Royz and
28 Andrea Eileen Work

EXHIBIT 5

EXHIBIT 5

Full docket text for document 25:

MINUTES OF PROCEEDINGS - Motion Hearing held on 7/20/2017 before Judge Andrew P. Gordon..
Crtm Administrator: *Melissa Johansen*; Pla Counsel: *Lauren Calvert-Arnold*; Def Counsel: *Rick Roskelley*; Court Reporter/Recorder: *Alana Kamaka*; Time of Hearing: *11:00 a.m. - 11:45 a.m.*;
Courtroom: *6C*; The Court makes preliminary remarks and hears arguments of counsel regarding [9]
Motion to Compel; [10] Motion to Strike and [11] Motion to Dismiss. For reasons stated on the record,
the Motion to Compel Arbitration is GRANTED, the Motion to Strike Class Allegations is GRANTED
and the Motion to Dismiss the Complaint is GRANTED without prejudice. **(no image attached)**
(Copies have been distributed pursuant to the NEF - MAJ)

EXHIBIT 6

EXHIBIT 6



June 5, 2020

Karen L. Bashor
702.727.1394 (direct)
Karen.Bashor@wilsonelser.com

Harry V. Peetris
702.727.1260 (direct)
Harry.Peetris@wilsonelser.com

Via E-Serve

Trevor M. Quirk, Esq.
QUIRK LAW FIRM, LLP
2421 Tech Center Court, Ste. 100
Las Vegas, NV 89128

Jerold Sullivan, Esq.
SULLIVAN & SULLIVAN
120 South Sepulveda Blvd.
Manhattan Beach, CA 90266

Re: *Royz, Megan and Work, Andrea v. Uber Technologies, Inc., et al.*
Case No.: A-20-810843-C

Dear Counsel:

Please allow this correspondence to serve as notice that Uber Technologies, Inc., Rasier, LLC and Rasier-CA, LLC (hereinafter "UTI and Related Entities") demand that Plaintiffs stipulate to have all matters related to these defendants submitted to mandatory arbitration pursuant to the terms of the November 21, 2016, U.S. Terms of Service (hereinafter "U.S. Terms of Service"). UTI and Related Entities exercise its contractual rights to have this matter submitted to mandatory arbitration.

Plaintiffs voluntarily entered into a valid and enforceable arbitration agreement that plainly requires arbitration of the claims being asserted in this action. Specifically, Plaintiffs contracted and agreed to abide by the U.S., Terms of Service with UTI and Related Entities to use the Rider App, which connects riders with independent drivers. Plaintiff cannot unilaterally repudiate their binding contract with the above referenced defendants. Filing this personal injury lawsuit violates this binding arbitration agreement. Therefore, this action cannot proceed and must be dismissed or stayed pending arbitration. Nothing herein shall be construed as a waiver of Defendant's important contract rights.

Plaintiffs agreed to be bound to the U.S. Terms of Service. On the first page, the U.S. Terms of Service in bold letters provides: **"IMPORTANT: PLEASE REVIEW THE ARBITRATION AGREEMENT SET FORTH BELOW CAREFULLY, AS IT WILL REQUIRED YOU TO RESOLVE DISPUTES WITH UBER ON AN INDIVIDUAL BASIS THROUGH FINAL AND BINDING ARBITRATION. BY ENTERING THIS AGREEMENT, YOU EXPRESSLY ACKNOWLEDGE THAT YOU HAVE READ AND UNDERSTOOD ALL OF THE TERMS OF**

6689 Las Vegas Boulevard South, Suite 200 • Las Vegas, NV 89119 • p 702.727.1400 • f 702.727.1401

Alabama • Albany • Atlanta • Austin • Baltimore • Beaumont • Boston • Chicago • Dallas • Denver • Edwardsville • Garden City • Hartford • Houston
Indiana • Kentucky • Las Vegas • London • Los Angeles • Miami • Michigan • Milwaukee • Mississippi • Missouri • Nashville • New Jersey • New Orleans
New York • Orlando • Philadelphia • Phoenix • San Diego • San Francisco • Sarasota • Stamford • Virginia • Washington, DC • Wellington • White Plains

wilsonelser.com

1609774v.1

Case Number: A-20-810843-C

000140

THIS AGREEMENT AND HAVE TAKEN TIME TO CONSIDER THE CONSEQUENCES OF THIS IMPORTANT DECISION.”

Section 2 of the U.S. Terms of Service begins in bold, **“By agreeing to the Terms, you agree that you are required to resolve any claim that you may have against Uber on an individual basis in arbitration, as set forth in this Arbitration Agreement...”** The Agreement provides for arbitration administered by the American Arbitration Association (“AAA”) in accordance with AAA’s Consumer Arbitration Rules and the Supplementary Procedures for Consumer Related Disputes. The Agreement goes on to state, “Notwithstanding any choice of law or other provision in the Terms, the parties agree and acknowledge that this Arbitration Agreement evidences a transaction involving interstate commerce and that the Federal Arbitration Act, 9 U.S.C. §1 et seq. (“FAA”), will govern its interpretation and enforcement and proceedings pursuant thereto. It is the intent of the parties that the FAA and AAA Rules shall preempt all state laws to the fullest extent permitted by law...”

Courts repeatedly hold that the FAA applies to all arbitration agreements involving interstate commerce. *See Circuit City Stores, Inc. v. Adams*, 532 U.S. 105 (2001). The Arbitration Agreement at issue here is indisputably governed by the FAA. First, it specifically states as much, which is sufficient to bring it within the purview of the FAA. Thus, the parties clearly intended the FAA to apply, and the Court should employ the parties’ agreed upon choice of law. *See Buckeye Check Cashing Inc. v. Cardegna*, 546 U.S. 440, 442-43(2006) (applying the FAA to resolve motion to compel brought in state court when the parties selected the FAA to govern in their arbitration agreement).

Second, the U.S. Terms of Service, within which the Arbitration Provision, expressly stipulates that the Agreement involves commerce. The FAA’s term “involving commerce” is interpreted broadly by the courts. *See Citizens Bank v. Alafabco, Inc.*, 539 U.S. 52, 56 (2003) (finding the requisite commerce for FAA coverage even when the individual transaction did not have a substantial effect on commerce). Here, the Rider App and its related U.S. Terms of Service impacts over 250 cities across the United States, which clearly involves commerce as required by the FAA. Accordingly, it is undisputed that the FAA governs the Arbitration Agreement at issue here.

The Arbitration Agreement also consistently states that (1) the Arbitration Provision is governed by the Federal Arbitration Act (hereinafter, the “FAA”) and evidences a transaction involving commerce; and (2) the Arbitration Agreement delegates determination of gateway issues, such as its enforceability to the arbitrator. The Agreement in that regard provides the following delegation clause, “The parties agree that the arbitrator (“Arbitrator”), and not any federal, state or local court or agency shall have exclusive authority to resolve any disputes relating to the interpretation, applicability, enforceability or formation of this Arbitration Agreement, including any claim that all or part of this Arbitration Agreement is void or voidable. The Arbitrator shall also be responsible for determining all threshold arbitrability issues, including issues related to whether the Terms are unconscionable or illusory and any defense to arbitration, including waiver, delay, laches, or estoppel.”

Under the FAA, arbitration is a matter of contract, and courts must enforce arbitration contracts according to their terms. *See Rent-A-Center*, 561 U. S., at 67, 130 S. Ct. 2772, 177 L. Ed. 2d 403. Applying the Act, the U.S. Supreme Court held that parties may agree to have an arbitrator decide not only the merits of a particular dispute, but also “‘gateway’ questions of ‘arbitrability,’ such as whether the parties have agreed to arbitrate or whether their agreement covers a particular controversy.” *Id.*, at 68-69, 130 S. Ct. 2772, 177 L. Ed. 2d 403; *see also First Options*, 514 U. S., at 943, 115 S. Ct. 1920, 131 L. Ed. 2d 985. The United States Supreme Court explained that an “agreement to arbitrate a gateway issue is simply an additional, antecedent agreement the party seeking arbitration asks the federal court to enforce,

and the FAA operates on this additional arbitration agreement just as it does on any other.” *Id.*, at 70, 130 S. Ct. 2772, 177 L. Ed. 2d 403.

We look forward to your response to this demand for arbitration. Nothing contained herein shall be deemed a waiver of UTI and Related Entities’ rights pursuant to the Agreement including the right to have this matter heard in arbitration. We require your response prior to June 10, 2020.

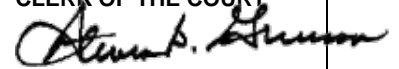
Very truly yours,

Wilson Elser Moskowitz Edelman & Dicker LLP

/s/Karen L. Bashor

Karen L. Bashor
Harry V. Peetris

cc: All Counsel Via E-Service



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Attorneys for Defendant,
Mark Anthony Jacobs

IN THE EIGHT JUDICIAL DISTRICT COURT
COUNTY OF CLARK, NEVADA

MEGAN ROYZ, an individual; and ANDREA EILEEN WORK, an individual,)	Case No. A-20-810843-C
)	
Plaintiffs,)	DEPT. NO. 16
)	
vs.)	DEFENDANT MARK ANTHONY JACOBS'S JOINDER TO DEFENDANTS UBER TECHNOLOGIES, INC., RASIER, LLC AND RASIER-CA, LLC'S MOTION TO COMPEL ARBITRATION AND STAY ACTION
MARK ANTHONY JACOBS, an individual,)	
MARCO ANTONIO HEREDIA-ESTRADA, an individual, UBER TECHNOLOGIES, INC., a corporation; RAISER, LLC., a corporation, RAISER-CA, LLC, an individual; DOES 1 through 10 and ROE Corporations 1 through 10, Inclusive,)	
)	
Defendants.)	

Defendant MARK ANTHONY JACOBS (hereinafter "Defendant"), by and through his attorneys of record, Lucian J. Greco, Jr., Esq., Jared G. Christensen, Esq. and Melissa Ingleby, Esq. of the law firm Bremer, Whyte, Brown & O'Meara, LLP, hereby joins in Defendants UBER TECHNOLOGIES, INC., RASIER, LLC and RASIER-CA, LLC's (hereinafter collectively referred to as "Uber") Motion to Compel Arbitration and Stay Action.

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. LEGAL ARGUMENT**

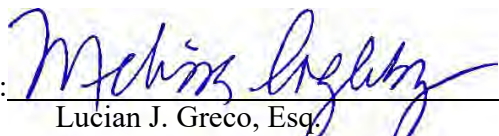
3 Defendant hereby adopts the same arguments, grounds, and requested relief detailed in
4 Uber's Motion to Compel Arbitration and Stay Action as if stated herein on behalf of Defendant.

5 **II. CONCLUSION**

6 Based on the foregoing, Defendant respectfully requests that this Honorable Court issue an
7 Order in favor of Uber's Motion to Compel Arbitration and Stay Action.

8
9 Dated: June 18, 2020

BREMER WHYTE BROWN & O'MEARA, LLP

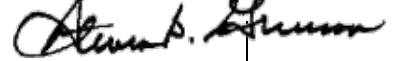
10
11 By: 
12 Lucian J. Greco, Esq.
13 Nevada State Bar No. 10600
14 Jared G. Christensen, Esq.
15 Nevada State Bar No. 11538
16 Melissa Ingleby, Esq.
17 Nevada State Bar No. 12935
18 Attorneys for Defendant,
19 Mark Anthony Jacobs.
20
21
22
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28

CERTIFICATE OF SERVICE

I hereby certify that on this 18th day of June 2020, a true and correct copy of the foregoing document was electronically delivered to Odyssey for filing and service upon all electronic service list recipients.



Araceli Cuevas Zuniga, an employee of
BREMER WHYTE BROWN & O'MEARA,
LLP



OPP

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Attorneys for Plaintiffs,
Megan Royz & Andrea Eileen Work

**DISTRICT COURT OF THE STATE OF NEVADA
FOR THE COUNTY OF CLARK**

MEGAN ROYZ, an individual; and ANDREA
EILEEN WORK, an individual

Plaintiff,

v.

MARK ANTHONY JACOBS, an individual,
MARCO ANTONIO HEREDIA-ESTRADA,
an individual, UBER TECHNOLOGIES, INC.,
a corporation; RASIER, LLC, a corporation,
RASIER-CA, LLC, an individual; DOES 1
through 10 and ROE Corporations 1 through
10, Inclusive,

Defendants

Case No.: A-20-810843-C

Dept.: XVI

**PLAINTIFFS' OPPOSITION TO
DEFENDANTS UBER
TECHNOLOGIES, INC., RASIER, LLC,
RASIER-CA, LLC'S, AND MARK
ANTHONY JACOBS'S, MOTION TO
COMPEL ARBITRATION AND STAY
ACTION**

COMES NOW Plaintiffs MEGAN ROYZ and ANDREA EILEEN WORK ("Plaintiffs"),
by and through their attorneys of record, Quirk Law Firm, LLP, hereby oppose Defendants
UBER TECHNOLOGIES, INC., RASIER, LLC, and RASIER-CA, LLC's—joined by

PLAINTIFFS' OPPOSITION TO DEFENDANTS MOTION TO COMPEL ARBITRATION AND STAY
ACTION

1 Defendant MARK ANTHONY JACOBS—Motion to Compel Arbitration and Stay Action.

2 Plaintiffs’ motion is made and based upon the attached Memorandum of Points &
3 Authorities, the records and pleadings on file herein and any oral argument this Court may allow.
4

5 Dated this 25th day of June, 2020

QUIRK LAW FIRM, LLP

6
7
8 By: 
9 Trevor Quirk, Esq.
10 2421 Tech Center Court, Suite 100
11 Las Vegas, NV 89128
12 Telephone: (702) 755-8854
13 Attorney for Plaintiff
14
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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. FACTS**

3 This is a personal injury suit arising from a motor vehicle accident on February 22, 2018.
4 Plaintiffs Megan Royz (“Royz”) and Andrea Eileen Work (“Work”) were passengers in a vehicle
5 being driven by Defendant Marco Antonio Herida-Estrada (“Estrada”). The ride was requested
6 by Andrea Work through the ride share app, Uber. Defendant Marco Antonio Herida-Estrada
7 was transporting Plaintiffs as an employee of Defendant Uber Technologies, Inc., Rasier, LLC,
8 and Rasier-CA, LLC at the time of the incident. Plaintiffs’ claims against Defendants Antonio
9 Herida-Estrada, Uber Technologies, Inc., Rasier, LLC, and Rasier-CA, LLC, are outlined in the
10 first cause of action in Plaintiffs’ Complaint.

11 On February 22, 2018, while in Mr. Estrada’s vehicle, Plaintiffs’ were struck by Defendant
12 Mark Anthony Jacobs’ (“Jacobs”) vehicle. Mr. Jacobs was operating his vehicle while under the
13 influence of intoxicating substances. Defendant Jacobs was also operating his vehicle as an
14 employee of Defendants Uber Technologies, Inc., (“Uber”) Rasier, LLC, and Rasier-CA, LLC at
15 the time of the incident. Plaintiffs’ claims against Defendant Jacobs, Uber Technologies, Inc.,
16 Rasier, LLC, and Rasier-CA, LLC, are outline in the second and third causes of action in
17 Plaintiffs’ Complaint.

18 Currently, Plaintiffs are seeking punitive damages against Defendant Jacobs with respect
19 the Second Cause of action. Plaintiffs also allege in the Third Cause of Action that Uber, Rasier,
20 LLC, and Rasier-CA, LLC had advanced knowledge of Defendant Jacobs unfitness and
21 incompetence and nevertheless employed him with a conscious disregard of the rights or safety
22 of others. As such, Plaintiffs are seeking punitive damages against Uber, Rasier, LLC, and
23 Rasier-CA, LLC in Plaintiffs’ Third Cause of Action.

24 **II. THERE IS NO ENFORCEABLE AGREEMENT TO ARBITRATE**

25 NRS 38.221 outlines the procedures for a Motion to Compel or Stay Arbitration. NRS
26 38.221(1)(b) provides that on a motion of a person showing an agreement to arbitrate, “[i]f the
27 refusing party opposes the motion, the court shall proceed summarily to decide the issue and
28 order the parties to arbitrate *unless it finds there is no enforceable agreement to arbitrate.*”

1 (Emphasis added). Moreover, “[i]f the court finds that there is no enforceable agreement, it may
2 not, pursuant to subsection 1 or 2, order the parties to arbitrate.” NRS 38.221 (3).

3 Here, there is no enforceable agreement to arbitrate because the alleged terms and
4 conditions do not bind Plaintiffs’ to arbitration in this situation. Defendants Rasier and Uber
5 represent that Plaintiffs Work and Royz agreed to arbitrate their personal injury claims, because
6 they created an Uber account on her phone via the Uber rider App, and as a prerequisite to
7 creating an Uber account, Plaintiffs purportedly accepted Uber’s Terms and Conditions,
8 including the arbitration provision. However, the “Terms and Conditions” clearly outline what
9 the alleged contractual relationship governed, and the physical transportation of passengers is not
10 governed by the alleged contract.

11 The 2016 Terms and Conditions agreement which Defendants allege both Work and Royz
12 are bound by states:

13 “These Terms of Use (“Terms”) govern your access or use, from within the
14 United States and its territories and possessions, of the applications, websites,
15 content, products, and services (the “services,” as more fully defined below in
16 Section 3) made available in the United States and its territories and possessions
17 by Uber USA, LLC and its parents, subsidiaries, representatives, affiliates,
18 officers, and directors (collectively, ‘Uber’).”

19 Defense **Exhibit 1**, Buoscio Decl. ¶ 11, **Exhibit 1-C** first paragraph under “Contractual
20 Relationship”; and Defense **Exhibit 2**, Buoscio Decl. ¶ 13, **Exhibit 1-E** first paragraph under
21 “Contractual Relationship”

22 Moreover, the services provided by Uber are outlined on the fourth page of the alleged
23 “Terms and Conditions” and states:

24 “The Services comprise mobile applications and related services (each, an
25 ‘Application’), which enable users to arrange and schedule transportation,
26 logistics and/or delivery services and/or purchase certain goods, including with
27 third party providers of such services and goods under agreement with Uber or
28 certain of Uber’s affiliates (‘Third Party Providers’). In certain instances the

1 Services may also include an option to receive transportation logistics and/or
2 delivery services for an upfront price, subject to acceptance by the respective
3 Third Party Providers. Unless otherwise agreed by Uber in a separate written
4 agreement with you, the Services are made available solely for your personal,
5 noncommercial use. YOU ACKNOWLEDGE THAT YOUR ABILITY TO
6 OBTAIN TRANSPORTATION, LOGISTICS AND/OR DELIVERY SERVICES
7 THROUGH THE USE OF THEIR SERVICES DOES NOT ESTABLISH UBER
8 AS A PROVIDER OF TRANSPORTATION, LOGISTICS OR DELIVERY
9 SERVICES OR AS A TRANSPORTATION CARRIER.”

10 Defense **Exhibit 1**, Buoscio Decl. ¶ 11, **Exhibit 1-C** page 4 under “The Services”; and
11 Defense **Exhibit 2**, Buoscio Decl. ¶ 13, **Exhibit 1-E** page 4 under “The Services”

12 As shown above, the terms of the alleged contract only govern the use of the applications,
13 website, content, products, and services. Uber then goes on to make it clear that the service they
14 are providing, within the meaning of this contract, does not include the physical transportation of
15 passengers. Uber emphasizes, in capital letters, that they are simply a transportation logistics
16 provider and not a transportation carrier.

17 Since Plaintiff’s Royz and Work’s lawsuit is based on a motor vehicle accident that
18 occurred while they were being physically transported, the terms of the alleged contract does not
19 apply. The dispute between Plaintiffs and Uber does involve the logistics of their trip. Instead, it
20 involves a dispute regarding the transportation carrier. Uber, Rasier, LLC, and Rasier-CA, LLC,
21 are parties to this lawsuit because they are the employer of the transportation carrier.

22 Even if the court finds that Plaintiff Work is bound by an arbitration agreement, Plaintiff
23 Royz is not. The Uber was ordered by Plaintiff Work, not Royz. Ms. Royz was not using Uber’s
24 applications, website, content, products, or services as defined in the alleged contract. Royz was
25 simply a passenger in a vehicle that was ordered by Work. The fact that she had allegedly used
26 Uber in the past does not make her bound to the alleged contract.

27 ///

28 ///

1 **III. DEFENDANTS RASIER, LLC, RASIER-CA, LLC, AND JACOBS MAY**
2 **NOT COMPEL WORK AND ROYZ TO ARBITRATE THEIR CLAIM AGAINST**
3 **THEM BECAUSE RASIER, LLC, RASIER-CA, LLC, AND JACOBS ARE NON-**
4 **SIGNATORY TO THE DISPUTED ARBITRATION AGREEMENTS BETWEEN UBER**
5 **AND THE PLAINTIFFS**

6 Whether a dispute is subject to arbitration is a question contract interpretation
7 question. *Clark Co. Public Employees v. Pearson*, 106 Nev. 587, 590, 798 P.2d 136, 137 (1990).
8 Although Nevada has strong policy favoring arbitration, arbitration clauses ‘ “must not be so
9 broadly construed as to encompass claims and parties that were not intended by the
10 original **contract**.’ “ *Truck Ins. Exch. v. Palmer J. Swanson, Inc.*, 124 Nev. 629, 634, 189 P.3d
11 656, 660 (2008) (quoting *Thomson-CSF, S.A. v. American Arbitration Ass'n*, 64 F.3d 773, 776
12 (2d Cir.1995)). Moreover, NRS 38.221(3) provides that if the court finds that there is no
13 enforceable agreement to arbitrate, it may not order the parties to arbitrate.

14 Here, Rasier, LLC, Rasier-CA, LLC, and Jacobs are not a signatory or a party to Uber's
15 2015 and 2016 Terms and Conditions, upon which Defendants predicate their motion to compel
16 arbitration. Defense Exhibit 1-A to the Buoscio Declaration, which Uber represents to be the
17 "2015 Terms and Conditions" that apply to Plaintiff Work, clearly states that "[y]our access and
18 use of the Services constitutes your agreement to be bound by these Terms, which establishes a
19 contractual relationship between you and Uber" (Defense **Exhibit 1**, Buoscio Decl. ¶ 9, **Exhibit**
20 **1-A** paragraph 2 under “Contractual Relationship”).

21 Moreover, the "2016 Terms and Conditions", which defendants allege applies to both
22 Plaintiff Work and Royz, expressly provides and is titled “**Agreement to Binding Arbitration**
23 **between You and Uber**” (Defense **Exhibit 1**, Buoscio Decl. ¶ 11, **Exhibit 1-C** page 2; and
24 Defense **Exhibit 2**, Buoscio Decl. ¶ 13, **Exhibit 1-E** page 2).

25 In fact, neither Rasier, LLC, Rasier-CA, LLC, nor Jacobs are mentioned anywhere in the
26 2015 or 2016 alleged “Terms and Conditions. Rasier, LLC, Rasier-CA, LLC, and Jacobs have no
27 standing to compel Plaintiffs to arbitrate their claims against them. Rasier, LLC, Rasier-CA,
28 LLC, and Jacobs are strangers to the arbitration agreements and the Plaintiffs did not agree to

1 arbitrate their claims against them.

2 Further, Jacobs is not even the driver of the vehicle that Plaintiffs were passengers in.
3 Jacobs was operating a different vehicle while under the influence of intoxicating substances
4 when he struck plaintiffs' vehicle. Jacobs's actions posed a danger to the health and safety of the
5 public and as a result is facing punitive damages. It would be unfair and prejudicial to order
6 Plaintiffs' claims against Jacobs into arbitration.

7 Based on the foregoing, it will be a miscarriage of justice and inconsistent with contract law
8 to allow Rasier, LLC, Rasier-CA, LLC, and Jacobs to piggyback on Uber's motion to compel
9 notwithstanding the absence of any agreement to arbitrate between Rasier, LLC, Rasier-CA,
10 LLC, Jacobs and Plaintiffs.

11 **IV. IF THE COURT FINDS THERE IS A VALID ARBITRATION**
12 **AGREEMENT IT WOULD ONLY APPLY TO THE FIRST CAUSE OF ACTION IN**
13 **PLAINTIFFS' COMPLAINT**

14 Plaintiffs' Complaint alleges three causes of action. The First cause of action alleges
15 Negligence against Marco Antonio Heredia-Estrada, Uber, Rasier, LLC, and Rasier-CA, LLC.
16 The second cause of action alleges negligence against Mark Anthony Jacobs, Uber Rasier, LLC,
17 and Rasier-CA, LLC. Finally, the third cause of action alleges the Negligent Hiring Supervision,
18 and retention of Mark Anthony Jacobs and is alleged against Uber Rasier, LLC, and Rasier-CA,
19 LLC.

20 As discussed above, the alleged Terms and Conditions agreement does not apply Plaintiffs
21 in this situation. However, even if the court finds it is binding on Plaintiffs, it would could only
22 be binding because of Plaintiffs' first cause of action.

23 Plaintiffs' first cause of action is the only cause of action that relates to the vehicle
24 Plaintiffs were passengers in. It is unfathomable that the Terms and Conditions agreement could
25 apply to any Uber vehicle on the road, not just the vehicle the passenger requested. If this were
26 the case, Uber could block anyone who has ever tried their product from a Trial.

27 Further, with respect to Plaintiffs' Third Cause of Action, Plaintiffs allege that Uber, Rasier,
28 LLC, and Rasier-CA, LLC had advanced knowledge of Defendant Jacobs unfitness and


1 incompetence and nevertheless employed him with a conscious disregard of the rights or safety
2 of others. Plaintiff is not only seeking punitive damages against Defendant Jacobs but also
3 against Uber, Rasier, LLC, and Rasier-CA, LLC. If this case is ordered into arbitration, Plaintiffs
4 will be prejudiced.

5 As such, if the court finds that there is a binding arbitration agreement, Plaintiffs will
6 consider dismissing Defendants Uber, Rasier, LLC, and/or Rasier-CA, LLC from the first cause
7 of action if it will resolve Defendants motion and allow Plaintiffs' case to be heard by the Court.

8 **Conclusion**

9 Based on the foregoing, Plaintiff respectfully requests Defendants motion be denied.

10
11
12 DATED: This 25th Day of June, 2020



Trevor Quirk, Esq.
2421 Tech Center Court, Suite 100
Las Vegas, NV 89128
Telephone: (702) 755-8854
Attorney for Plaintiff

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I hereby affirm that I am an employee of Quirk Law Firm, LLP and that I caused the foregoing:

**PLAINTIFFS' OPPOSITION TO DEFENDANTS UBER TECHNOLOGIES, INC.,
RASIER, LLC, RASIER-CA, LLC'S, AND MARK ANTHONY JACOBS', MOTION TO
COMPEL ARBITRATION AND STAY ACTION**

to be served as follows:

☐ by placing a true and correct copy of the same to be deposited for mailing in the U.S. mail in Ventura, California, enclosed in a sealed envelope upon which first class postage was fully prepaid: and/or

☐ pursuant to EDCR 7.26, by sending the same via facsimile; and/or

☒ by e-filing and electronic service and/or

☐ by hand delivery

to the party(ies) listed below

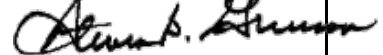
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IN THE EIGHT JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

MEGAN ROYZ; and ANDREA EILEEN WORK,

Plaintiff,

v.

MARK ANTHONY JACOBS; MARCO
ANTONIO HEREDIA-ESTRADA; UBER
TECHNOLOGIES, INC.; RAISER, LLC; RAISER-
CA, LLC; DOES I-X, and ROE CORPORATIONS
I-X, inclusive,

Defendants.

CASE NO. : A-20-810843-C
DEPT. NO.: 16

**DEFENDANTS UBER TECHNOLOGIES,
INC., RASIER-CA, LLC AND RASIER,
LLCS' REPLY TO PLAINTIFFS'
OPPOSITION TO MOTION TO COMPEL
ARBITRATION AND STAY ACTION**

Defendant UBER TECHNOLOGIES, INC., RASIER, LLC (erroneously sued as "Raiser, LLC, a corporation") and RASIER-CA, LLC (erroneously sued as "Raiser-CA, LLC, an individual") (hereinafter, collectively "Uber and Rasier") by and through its attorneys of record, Karen L. Bashor and Harry V. Peetris, II of the law firm of Wilson, Elser, Moskowitz, Edelman & Dicker LLP, hereby submit its Defendants Uber Technologies, Inc., Rasier-CA, LLC and Rasier, LLC's Reply to Plaintiff's Opposition to Motion to Compel Arbitration and Stay Action.

...

...

1 This Motion is based upon the papers and pleadings on file herein, the accompanying
2 memorandum of points and authorities, and any oral argument as may be permitted at the hearing
3 on this matter.

4 DATED this 9th day of July, 2020.

5 **WILSON, ELSE, MOSKOWITZ,**
6 **EDELMAN & DICKER LLP**

7
8 By: /s/Harry V. Peetris

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16 *UBER TECHNOLOGIES, INC.,*

17 *RAISER, LLC AND RAISER-CA, LLC*

18 **MEMORANDUM OF POINTS AND AUTHORITIES**

19 **I. INTRODUCTION**

20 Plaintiffs' Opposition to Defendants Uber Technologies, Inc., Rasier-CA, LLC and Rasier,
21 LLC's (collectively hereafter "Uber and Rasier") Motion to Compel Arbitration and Stay Action
22 ("Opposition") fails to provide any reason, substantively or otherwise, why Plaintiffs should not be
23 bound by the arbitration clause they willingly entered into when they signed up to use the Uber App.
24 Conversely, Uber and Rasier have firmly established the existence of a valid arbitration agreement
25 with Plaintiffs Megan Royz and Andrea Eileen Work, and included the relevant terms of the
26 arbitration agreements and the agreements themselves. Plaintiffs had the burden in their opposition
27 to establish a defense. Plaintiffs failed to meet their burden by offering *no evidence of any kind*
28 demonstrating why the valid arbitration agreement should not be enforced. Thus, Uber and Rasier's
Motion must be granted.

In fact, Plaintiffs never dispute the existence of the arbitration agreements. (*See* Opposition,
generally.) Plaintiffs Royz and Work concede in their Opposition they are a parties to the Arbitration

1 Agreement by failing to address Uber and Rasier's allegation establishing that they are parties to
2 the agreement. Significantly, Plaintiffs do not provide any evidence nor do they dispute any fact in
3 the declarations of Ryan Buoscio ("Buoscio Decls.") that outlines the manner, method, date, and
4 time that both Plaintiffs created their accounts and thereby assented to Uber and Rasier's Terms and
5 Conditions, including the Agreement to Arbitrate. Plaintiffs offer no counter-declarations of
6 evidence of any kind to satisfy their burden to establish a defense necessary to have this Court not
7 stay this action and compel this matter into arbitration.

8 Substantively, Plaintiffs make four meritless and improper arguments against enforcement
9 of the arbitration agreement: 1) There is no enforceable agreement to arbitrate because physical
10 transportation of passengers is not governed by contract. (See Opposition, p. 4, Ln 3 – P. 5, ln 21);
11 2) Rasier, LLC, Rasier-CA, LLC and Jacobs are non-signatories to the arbitration agreement. (See
12 Opposition, p. 6, ln. 1 - p. 7, ln. 10.); 3) Plaintiff Royz is not bound by an arbitration agreement
13 because she was a passenger in a ride share ordered by Work. (See Opposition, p. 5 ln, 22-26); and
14 4). Plaintiffs also generally claim that if the Court were to find there is a valid arbitration agreement,
15 it would only apply to the first cause of action in Plaintiff's complaint (See Opposition p. 7, ln. 11
16 – p. 8, ln 10). Even assuming any of these claims have merit (they do not), each and every issue
17 raised by Plaintiffs are substantive arguments that go to threshold questions of arbitrability and are
18 reserved for the arbitrator to decide. Substantively, these issues favor arbitration, as Plaintiffs'
19 claims from the motor vehicle accident stem specifically from their use of Uber and Rasier's
20 services to arrange and utilize transportation with third party providers (i.e. Estrada) as Uber account
21 holders and riders, the agreement applies to all of Uber and Rasier's subsidiaries, a corollary
22 agreement applies to the independent drivers including Defendant Jacobs who has already joined
23 the motion, and arbitration is applicable to all of the claims.

24 In any respect, Plaintiffs ultimately argues the arbitration agreement they voluntarily entered
25 should not apply to them *in this instance*. Plaintiffs are wrong. Left with no other argument,
26 Plaintiffs turn to meritless claims and allegations with no evidence by way of affidavit or otherwise
27

1 to rebut the evidentiary established arbitration clause and its scope. As such, Uber and Rasier
2 respectfully request that the court grant the present motion.

3 **II. PLAINTIFFS DO NOT DISPUTE THAT AN ARBITRATION AGREEMENT**
4 **EXISTS, AND FAILED TO CARRY THEIR BURDEN TO PROVE ANY VALID**
5 **DEFENSES TO ITS ENFORCEMENT**

6 Uber and Rasier allege the existence of a valid arbitration agreement with Plaintiffs and
7 provided the agreement(s) in question. Plaintiffs responded with no evidentiary proof or defenses
8 challenging the existence of said agreements. Uber and Rasier provided more than sufficient
9 evidence for this court to make a finding that the Arbitration Agreement exists. Accordingly, Uber
10 and Rasier have shifted the burden to Plaintiffs to establish a defense to the Arbitration Agreement,
11 which Plaintiffs categorically fail to do. *Gonski v. Second Judicial District Court of Nevada*, 126
12 Nev. 551, 557 (2010) (the party opposing enforcement of a valid arbitration clause must establish
13 its defense to enforcement); *see also Condee v. Longwood Management Corp.* 88 Cal.App.4th 215,
14 219 (2001) (court ruled that once moving party established the existence of a valid arbitration
15 agreement, the burden shifted to plaintiffs to prove the falsity of said agreement).

16 Plaintiffs do not dispute that they are a party to the Arbitration Agreement (with the
17 exception of Plaintiff Royz, however her claims are invalidated based on additional reasons).
18 Plaintiffs also do not dispute that the Arbitration Agreement contains a broad delegation clause,
19 which reads in pertinent part, “[t]he parties agree that the arbitrator ("Arbitrator")...shall have
20 exclusive authority to resolve any disputes relating to the interpretation, applicability, enforceability
21 or formation of this Arbitration Agreement...The Arbitrator shall also be responsible for determining
22 all threshold arbitrability issues...”. *See Exhibit 1*, Buoscio Decl. ¶ 13, **Exhibit “1-E”**, *See Exhibit*
23 **2**, Buoscio Decl. 2 ¶ 13, **Exhibit “1-E”** (2016 Terms and Conditions) at § 2 (“Rules and Governing
24 Law”).

25 This is “clear and unmistakable” evidence that the parties agreed to delegate gateway
26 questions of arbitrability to the arbitrator, not a court. The Nevada Supreme Court decided *Rent-A-*
27 *Center, West, Inc. v. Jackson*, 561 U.S. 63, 130 S. Ct. 2772, 177 L. Ed. 2d 403 (2010), which rejects

1 a Nevada-law-based unconscionability challenge to the enforceability under the FAA of an
2 arbitration agreement containing a delegation clause, holding that unless the party contesting
3 arbitration "challenged the delegation provision specifically, we must treat it as valid . . . and must
4 enforce it . . . , leaving any challenge to the validity of the [Arbitration] Agreement as a whole for
5 the arbitrator." *Id.* at 130 S. Ct. at 2779. The Nevada Supreme Court has recognized that delegation
6 clauses permitting an arbitrator to determine the appropriateness of arbitration are enforceable if the
7 parties clearly agreed to it. *See, Howsam v. Dean Witter Reynolds, Inc.*, 537 U.S. 79, 83-85, 123 S.
8 Ct. 588, 154 L. Ed. 2d 491 (2002).

9 As a recurring theme, Plaintiffs' Opposition fails to address Uber and Rasier's argument that
10 all issues of arbitrability have been delegated to the arbitrator. Accordingly, Plaintiffs have
11 conceded this proposition by failing to address same in the Opposition and per the holdings of the
12 Nevada Supreme Court. Plaintiffs' Opposition only raises issues of enforcement of the arbitration
13 agreement itself. These defenses to enforcement are expressly delegated to the arbitrator as gateway
14 issues of arbitrability of Plaintiffs' claims. *See Exhibit 1*, Buoscio Decl. ¶ 13, *Exhibit "1-E"*, *See*
15 *Exhibit 2*, Buoscio Decl. 2 ¶ 13, *Exhibit "1-E"* (2016 Terms and Conditions) at § 2 ("Rules and
16 Governing Law"). Accordingly, these issues are not properly before the court. Uber and Rasier's
17 motion to compel should be granted.

18 **III. PLAINTIFFS' SUBSTANTIVE ARGUMENTS GO TO THRESHOLD QUESTIONS**
19 **OF ARBITRABILITY AND ARE RESERVED TO THE ARBITRATOR PER THE**
20 **TERMS OF THE DELEGATION CLAUSE.**

21 **A. THE FAA GOVERNS THE AGREEMENT**

22 The Arbitration Provision at issue here is indisputably governed by the FAA. It specifically
23 states as much in the operative agreements, which is sufficient to bring it within the purview of the
24 FAA. Thus, the parties clearly intended the FAA to apply, and the Court should employ the parties'
25 agreed upon choice of law. *See Buckeye Check Cashing Inc. v. Cardegna*, 546 U.S. 440, 442-43
26 (2006)(applying the FAA to resolve motion to compel brought in state court when the parties
27 selected the FAA to govern in their arbitration agreement).

1 After determining that the FAA applies, the Court must examine the underlying contract to
2 determine whether the parties agreed to a delegation clause, and thereby committed threshold
3 questions of arbitrability to the arbitrator. *Rent-A-Center, W., Inc. v. Jackson*, 561 U.S. 63, 70 (2010)
4 (“An agreement to arbitrate a gateway issue is simply an additional antecedent agreement the party
5 seeking arbitration asks the federal court to enforce, and the FAA operates on this additional
6 arbitration agreement just as it does on any other.”).

7 Here, the parties “clearly and unmistakably” agreed to arbitrate arbitrability, and the Court
8 should enforce that agreement. The Arbitration Agreement provides that the arbitrator, rather than
9 the court, “shall have exclusive authority to resolve any disputes relating to the interpretation,
10 applicability, enforceability, or formation of this Arbitration Agreement . . .[and] shall also be
11 responsible for determining all threshold arbitrability issues, including issues relating to whether
12 the Terms are unconscionable or illusory and any defense to arbitration.” See **Exhibit 1**, Buoscio
13 Decl. ¶ 13, **Exhibit “1-E”**, See **Exhibit 2**, Buoscio Decl. 2 ¶ 13, **Exhibit “1-E”** (2016 Terms and
14 Conditions) at § 2 (“Rules and Governing Law”).

15 **B. THRESHOLD QUESTIONS OF ARBITRABILITY MUST BE DECIDED BY**
16 **THE ARBITRATOR PURSUANT TO THE DELEGATION CLAUSE.**

17 By incorporating the AAA Consumer Arbitration Rules, the Terms underscore the parties’
18 delegation of gateway issues of arbitrability. See *id.* at § 2 (“Rules and Governing Law”). In
19 *Brennan*, the Ninth Circuit held that “incorporation of the AAA rules constitutes clear and
20 unmistakable evidence that contracting parties agreed to arbitrate arbitrability.” *Brennan*, 796 F.3d
21 at 1130. See also *Cubria*, 242 F.Supp.3d at 548; *Cordas*, 228 F.Supp.3d at 992 (“clear weight of
22 authority” supports [the] conclusion that incorporation of the AAA rules effectively delegates
23 arbitrability regardless of the sophistication of the parties); accord *McLellan v. Fitbit, Inc.* (N.D.
24 Cal. Oct. 11, 2017, No. 3:16-CV-00036-JD) 2017 WL 4551484 at *2. Thus, because the parties
25 unambiguously agreed to delegate arbitrability issues to the arbitrator both through an express
26 delegation clause and the incorporation of the AAA Rules, the Court should enforce the agreement.

1 Accordingly, the court should end the inquiry here and compel arbitration pursuant to the delegation
2 clause in the Arbitration Provision

3 As previously mentioned, Plaintiffs do not dispute that they are parties to the Arbitration
4 Agreement. Plaintiffs also do not dispute that the Arbitration Agreement contains a delegation
5 clause, which reads in pertinent part, “[t]he parties agree that the arbitrator (“Arbitrator”)...shall have
6 exclusive authority to resolve any disputes relating to the interpretation, applicability, enforceability
7 or formation of this Arbitration Agreement...The Arbitrator shall also be responsible for determining
8 all threshold arbitrability issues...”. See **Exhibit 1**, Buoscio Decl. ¶ 13, **Exhibit “1-E”**, See **Exhibit**
9 **2**, Buoscio Decl. 2 ¶ 13, **Exhibit “1-E”** (2016 Terms and Conditions) at § 2 (“Rules and Governing
10 Law”).

11 It is at least as clear here that the arbitration agreement exists, and that said agreement
12 contains a valid delegation clause, which Plaintiffs do not specifically challenge. As discussed,
13 Plaintiffs have not met their burden to challenge said agreement by failing to offer any evidence or
14 defenses to the Arbitration Agreement and the contents therein. Indeed, Plaintiffs offer no evidence
15 in the form of a declaration or otherwise indicating they did not sign up for an Uber account.
16 Plaintiffs do not dispute they had the opportunity to review the Terms and Conditions in 2016 Terms
17 of Service when they signed up. Plaintiffs do not dispute they took advantage of the Agreement by
18 using Uber and Rasier’s services at the time this alleged accident took place. Plaintiffs do not dispute
19 that they had an opportunity to opt out after signing up for an Uber account but did not do so. In
20 short, Plaintiffs do not even attempt to dispute the existence of the Agreement or its validity.
21 Accordingly, the court must compel arbitration of Plaintiffs’ claims and stay this action.

22 **C. PLAINTIFFS’ CLAIMS MADE HEREIN FALL WITHIN THE SCOPE OF THE**
23 **ARBITRATION AGREEMENT FOR AN ARBITRATOR TO DECIDE**

24 Substantively, Plaintiffs make four meritless and improper arguments against enforcement
25 of the Arbitration Agreement. None of these are valid defenses to the Arbitration Agreement. More
26 importantly, all four are threshold questions that the Arbitration Agreement clearly requires an
27 arbitrator, not a Court, to consider. As follows are the four main arguments in Plaintiff’s Opposition.

1 Uber and Rasier request that the Court not entertain any of these arguments and rather direct them
2 to be decided by an Arbitrator forthwith.

3 ...

4 ...

5 **1. Plaintiffs' Claims That There is No Enforceable Agreement To Arbitrate**
6 **Because Physical Transportation of Passengers Is Not Governed by Contract Is**
7 **Without Merit And Misstates The Agreement and Roles of The Parties**

8 It appears that Plaintiffs' main argument in their Opposition is that the Arbitration
9 Agreement is not enforceable because they seem believe that "physical transportation of
10 passengers" is not governed by Agreement. Opposition p. 5, Ln. 12-16.

11 However, as discussed above, this is a gateway issue to be decided by an arbitrator as
12 outlined above. Moreover, Plaintiffs, without a single affidavit or evidence of any kind, utilize the
13 Uber App subject to the 2016 Terms and Conditions to obtain transportation logistics for a Ride,
14 and during that ride an alleged incident takes place that forms the basis of Plaintiffs bringing the
15 present lawsuit against Uber and Rasier. Plaintiffs, to cover up for this logical conundrum, then
16 ignore or misstate the scope of services provided by Uber and Rasier in hopes of escaping their
17 contractual obligations. Offering no evidence to support any of the factual assertions, Plaintiffs
18 attempt to re-label the duties of the parties and roles of all involved actors in clear violation of the
19 plain terms of the 2016 Terms and Conditions that define the responsibility, role, rights and
20 limitations of the parties. This is exactly why this is an issue of fact for an arbitrator to decide, not
21 this Court.

22 Just as Plaintiffs attempt to turn their backs on the Arbitration Agreement, Plaintiffs also try
23 to rewrite the contract terms that they are bound to. Plaintiffs' Opposition reflects a self-serving
24 and selective review of the contract terms. However, upon closer examination, it becomes readily
25 apparent that Plaintiffs omitted critical clarifications. First, Services are defined in Section 3 of the
26 2016 Terms and Conditions in pertinent part as follows: "The Services comprise mobile applications
27 and related services...**which enable users to arrange and schedule transportation**...including
28 with third party providers of such services and goods under agreement with Uber..." See **Exhibit**

1 1, Buoscio Decl. ¶ 13, **Exhibit “1-E”**; *See Exhibit 2*, Buoscio Decl. 2 ¶ 13; *See Exhibit “1-E”*
2 (2016 Terms and Conditions) (emphasis added).

3 As such, Plaintiffs’ argument is sorely misguided. Despite the obvious fact that the present
4 lawsuit involves allegations surrounding a purported motor vehicle accident during the course of a
5 Ride Share on the Uber and Rasier platform, Plaintiffs’ Opposition improperly and erroneously
6 misconstrue the language in the Arbitration Agreement to somehow claim that Uber and Rasier are
7 not a transportation provider, thus attempting to render the Agreement to Arbitrate unenforceable.
8 This makes no sense whatsoever, especially in light of the clear and unequivocally language from
9 the Agreement itself, which specifies that “[t]he Services constitutes a technology platform that
10 enables users...**to arrange and schedule transportation** and/or logistics services with third party
11 providers of such services, including third party transportation providers” and Defendant
12 Independent Driver Marco Antonio Heredia Estrada was the third party provider with whom
13 plaintiffs’ transportation was arranged through the Uber App. *See*, Exhibit “1-B” and Exhibit “1-
14 E.” Plaintiffs cannot have it both ways and file claims against Uber and Rasier as a result of the
15 alleged motor vehicle accident, and then simultaneously contend that Uber and Rasier’s services are
16 not within the scope of services to serve as a basis for arbitration of these claims.

17 Further, in Section 2 of the 2016 Terms and Conditions, titled “Arbitration Agreement,” it
18 clearly states, “**By agreeing to the Terms, you agree that you are required to resolve any claim**
19 **that you may have against Uber on an individual basis in arbitration....**” (*Id.* (emphasis in
20 original).) There is no limiting language in the agreement Plaintiff assented to. By its plain
21 language, Plaintiffs contracted to resolve **any claims they may have against Uber** in arbitration.
22 Multiple courts have similarly interpreted such arbitration provisions broadly. For example, In
23 *Simula, Inc. v. Autoliv, Inc.*, the United States Court of Appeals for the Ninth Circuit broadly
24 interpreted an arbitration clause covering “[a]ll disputes arising in connection with [an]
25 [a]greement” between an investor of air bag systems and a supplier of components. 175 F.3d 716,
26 720-21 (9th Cir. 1999) (ordering arbitration of plaintiff’s antitrust, trademark, trade secret and
27 defamation claims). The Ninth Circuit reasoned that the arbitration language “reache[d] every

1 dispute between the parties having a significant relationship to the contract and all disputes having
2 their origin or genesis in the contract." *Id.* at 721.

3 Similarly, in *J.J. Ryan & Sons, Inc. v. Rhone Poulenc Textile, S.A.*, the United States Court
4 of Appeals for the Fourth Circuit held that an arbitration agreement providing that "[a]ll disputes
5 arising in connection with the present contract shall be finally settled" by arbitration was sufficiently
6 broad in scope to include claims for civil conspiracy, unfair trade practices, libel, and defamation,
7 among other things. *J.J. Ryan*, 863 F.2d 315, 316-17, 321 (4th Cir. 1988). The Fourth Circuit
8 reasoned that "[t]he recommended clause does not limit arbitration to the literal interpretation or
9 performance of the contract. It embraces every dispute between the parties having a significant
10 relationship to the contract regardless of the label attached to the dispute." *Id.* at 321. In *Coors*
11 *Brewing Co. v. Molson Breweries*, the United States Court of Appeals for the Tenth Circuit ruled
12 that an arbitration clause covering any dispute arising in connection with the implementation,
13 interpretation or enforcement" of an agreement was sufficiently broad to cover antitrust disputes
14 between the parties. 51 F.3d 1511, 1513, 1515 (10th Cir. 1995) (internal quotation marks omitted).
15 The Tenth Circuit reasoned that, among other things, the public policy in favor of arbitration
16 compelled it to include the antitrust disputes within the scope of the arbitration clause. *See id.* at
17 1515.

18 Here, the language in the arbitration provision is even broader than in the cases cited above.
19 The language in this matter mandates arbitration as follows: "You and Uber agree ***that any dispute,***
20 ***claim or controversy arising out of or related to*** (a) these Terms...will be settled by binding
21 arbitration between you and Uber, and not in a Court of law." (Emphasis added.) Thus, the operative
22 arbitration agreement is not limited in terms of legal versus factual disputes, nor is it limited to acts
23 performed by the parties. Moreover, it is not limited to only certain causes of action as suggested
24 by Plaintiffs. Because the language in the present Arbitration Agreement is even broader than the
25 arbitration provisions in the cases above, and because the Supreme Court has mandated that
26 "ambiguities as to the scope of the arbitration clause . . . [be] resolved in favor of arbitration," the
27 present dispute between the parties falls under the arbitration provision's broad language. *See, Volt*

1 *Info. Scis., Inc. v. Bd. of Trs. of Leland Stanford Junior Univ.*, 489 U.S. 468, 476, 109 S. Ct. 1248,
2 103 L. Ed. 2d 488 (1989); *see also Truck Ins. Exch.*, 124 Nev. at 633, 189 P.3d at 659.

3 Where, like here, language of an arbitration clause is broad and no express provision
4 excludes a particular grievance from the arbitration, “only the most forceful evidence of a purpose
5 to exclude the claim from arbitration can prevail...” *See, O’Malley v. Wilshire Oil Co.* (1963) 59
6 Cal.2d 482, 491.) Therefore, Plaintiffs’ argument that the arbitration agreement is unenforceable
7 because the terms and conditions do not bind Plaintiffs to arbitration is simply incorrect. As such,
8 the subject motion must be granted.

9 **2. Plaintiffs’ Claims That Rasier, LLC, Rasier-CA, LLC are not signatories of the**
10 **arbitration Agreement is without merit.**

11 Plaintiffs’ second argument raised in their Opposition is that the subsidiaries identified in
12 the Complaint were not intended parties to the Arbitration Agreement. Once again, this is a
13 threshold issue for an arbitrator to decide. However, such contention is also willfully ignorant of
14 the direct language of the arbitration agreement itself. Indeed, the very first paragraph of the 2016
15 Terms of Use states, in relevant part, that “Uber USA, LLC and its parents, subsidiaries,
16 representatives, affiliates, officers and directors (collectively “UBER”) are covered under the 2016
17 Terms and Conditions.” *See, Exhibit “1-E”* (2016 Terms and Conditions, Section 1. “Contractual
18 Relationship”, Para 1.) Uber Technologies, Inc., Uber USA, LLC, Rasier-CA, LLC and Rasier,
19 LLC are all either parents, subsidiaries, and/or affiliates of each other as defined in the Agreement.

20 By the clear terms of the 2016 TSA, Plaintiffs’ claims that Rasier, LLC and Rasier-CA, LLC
21 are not covered by the Agreement is without merit and contradicted by the plain terms of the 2016
22 Terms of Service and contained within the four corners of that contract.

23 Plaintiffs’ claims about Defendant Jacobs not being a party to the 2016 Terms of Service is
24 also a gateway issue to be left up to the arbitrator to decide. However, Plaintiffs’ summary factual
25 conclusions with no rebuttal evidence to support any of its proffered defenses, fail. Defendant
26 Jacobs has already joined Uber and Rasier’s motion to compel arbitration. It is Uber and Rasier’s
27

1 understanding, and the arbitrator can address it at the appropriate time, that Defendant Jacobs is
2 willing to join the arbitration proceedings, thus negating Plaintiffs' contentions.

3 **3. Plaintiff Royz Cannot Circumvent Her Contractual Obligation Based On Her**
4 **Status as a Guest Rider.**

5 Plaintiff Royz attempts to avoid her voluntary contractual obligations to arbitrate her claims
6 because she contends that she did not use her Uber account to order the underlying Uber ride.
7 Plaintiff Royz does not deny that he has an account subject to the 2016 Terms and Conditions.
8 Plaintiff Royz's reasoning is misguided.

9 Primarily, Plaintiff Royz individually agreed to the arbitration terms, which broadly
10 encompass this precise issue. The Terms to which both Plaintiffs agreed contain several sections,
11 separated by bolded headings. *See Exhibit 1*, Buoscio Decl. at ¶ 13, **Exhibit "1-E"**; *See Exhibit*
12 **2**, Buoscio Decl. 2 ¶ 13, **Exhibit "1-E"** (2016 Terms and Conditions). The Arbitration Agreement
13 contained in both Plaintiffs' Agreements, in the Terms Section to which both Plaintiffs agreed
14 contains very broad language as follows: **"By agreeing to the Terms, you agree that you are**
15 **required to resolve any claim that you may have against Uber on an individual basis in**
16 **arbitration, as set forth in this Arbitration Agreement."** *Id.* at 2 (emphasis in original).

17 The Arbitration Agreement in the Terms and Conditions signed by both Plaintiffs
18 emphasizes its broad scope:

19 You and Uber agree that **any dispute, claim or controversy arising out of**
20 **or relating to** (a) these Terms or the existence, breach, termination,
21 enforcement, interpretation or validity thereof, or (b) your access to or use of
22 the Services at any time, whether before or after the date you agreed to the
23 Terms, will be settled by binding arbitration between you and Uber, and not
24 in a court of law.

25 *Id.* at § 2 ("Rules and Governing Law").

26 As discussed in Section III(C) (1) above, multiple courts have similarly interpreted such
27 arbitration provisions broadly. The Ninth Circuit in holding that these broad arbitration provisions
28 are enforceable and cover almost every kind of dispute between the parties stated in its reasoning
the has interpreted similar broad provisions to "reache[d] every dispute between the parties having
a significant relationship to the contract and all disputes having their origin or genesis in the

1 contract." *Simula, Inc. v. Autoliv, Inc.*, 175 F.3d 716, 720-21 (9th Cir. 1999) (ordering arbitration of
2 plaintiff's antitrust, trademark, trade secret and defamation claims).

3 Similarly, the United States Court of Appeals for the Fourth Circuit held that an Arbitration
4 Agreement providing that "[a]ll disputes arising in connection with the present contract shall be
5 finally settled" by arbitration was sufficiently broad in scope to include claims for civil conspiracy,
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7 *Poulenc Textile, S.A.*, 863 F.2d 315, 316-17, 321 (4th Cir. 1988). The Fourth Circuit reasoned that
8 "[t]he recommended clause does not limit arbitration to the literal interpretation or performance of
9 the contract. It embraces every dispute between the parties having a significant relationship to the
10 contract regardless of the label attached to the dispute." *Id.* at 321. The United States Court of
11 Appeals for the Tenth Circuit ruled that an arbitration clause covering any dispute arising in
12 connection with the implementation, interpretation or enforcement" of an agreement was
13 sufficiently broad to cover antitrust disputes between the parties. In *Coors Brewing Co. v. Molson*
14 *Breweries*, 51 F.3d 1511, 1513, 1515 (10th Cir. 1995) (internal quotation marks omitted). The Tenth
15 Circuit reasoned that, among other things, the public policy in favor of arbitration compelled it to
16 include the antitrust disputes within the scope of the arbitration clause. *See id.* at 1515.

17 As discussed at length above, here, the language in the Arbitration Provision is even broader
18 than in the cases cited above. The language of the Arbitration Agreement in this matter mandates
19 arbitration as follows: "You and Uber agree ***that any dispute, claim or controversy arising out of***
20 ***or related to*** (a) these Terms...will be settled by binding arbitration between you and Uber, and not
21 in a Court of law." (Emphasis added.) Thus, the operative arbitration agreement is not limited in
22 terms of legal versus factual disputes, nor is it limited to acts performed by the parties. Moreover, it
23 is not limited to only certain causes of action as suggested by Plaintiffs. Because the language in the
24 present arbitration agreement is even broader than the arbitration provisions in the cases above, and
25 because the Supreme Court has mandated that "ambiguities as to the scope of the arbitration clause
26 . . . [be] resolved in favor of arbitration," the present dispute between the parties falls under the
27 arbitration provision's broad language. *See, Volt Info. Scis., Inc. v. Bd. of Trs. of Leland Stanford*

1 *Junior Univ.*, 489 U.S. 468, 476, 109 S. Ct. 1248, 103 L. Ed. 2d 488 (1989); *see also Truck Ins.*
2 *Exch. v. Swanson*, 124 Nev. at 629, 633, 189 P.3d at 659, 656 (2008).

3 Furthermore, Plaintiffs' position contradicts public policy. Plaintiff Royz should not be
4 entitled to make use of Plaintiff Work's contract with Uber and Rasier by taking advantage of Uber
5 and Rasier's transportation logistics services through Plaintiff Work's Uber App account and 2016
6 Terms of Service agreement with Uber and Rasier when it worked to her advantage, then attempt to
7 avoid the contract's application in defining the forum in which her dispute should be resolved.
8 Plaintiff Royz is a third-party beneficiary of the Work / Uber and Rasier Agreement in this case. If
9 Plaintiff Royz were allowed to do so, she would be gaining greater rights than the parties to the
10 contract – Uber and Work. Such a result does not comport with the principles of contract law.
11 Generally, an intended third-party beneficiary is bound by the terms of a **contract** even if she is not
12 a signatory. *See, Canfora v. Coast Hotels & Casinos, Inc.*, 121 Nev. 771, 779, 121 P.3d 599, 604
13 (2005); *see also Zahn v. Canadian Indem. Co.* 57 Cal.App.3d 509, 513 (1976) (A third-party
14 beneficiary of a contract can gain no greater rights under that contract than the contracting parties).
15 Lastly, that position ignores the fact that Plaintiff Royz had executed her own 2016 Ride Share
16 contract. Plaintiff offers no admissible evidence, defense, affidavit or allegation in the complaint
17 or in the Opposition that supports that Plaintiff Work was a third-party beneficiary. Even if Plaintiff
18 is a third-party beneficiary, pursuant to contract law and third-party beneficiary rights, Plaintiff
19 Royz's claims that she is not subject to the Arbitration Agreement as a mere rider fails. By creating
20 their Uber accounts, Plaintiffs thereby consented to Uber and Rasier's Terms, including the
21 Arbitration Agreement. Pursuant to Nevada Law, a third party beneficiary is bound to the terms of
22 a contract even if she is not a signatory. *See Canfora* at 779; *See also Exhibit 3*, Perez Decl. ¶¶ 3-
23 5; and *See Exhibit 1*, Buoscio Decl. ¶¶ 8-13 at **Exhibits "1-A" through Exhibit "1-E"**; *See Exhibit*
24 **2**, Buoscio Decl. ¶¶ 8-13 and **Exhibits "2-I" and "2-J."** Both Plaintiffs consented to the Terms is
25 also demonstrated by their continued use of the Uber App after actively agreeing to the Terms. *See*
26 **Exhibit 3**, Perez Decl. ¶¶ 3-5; *See Exhibit 1*, Buoscio Decl. ¶¶ 8-14 and **Exhibits "1-A" through**
27 **Exhibit "1-E."**

Second, Plaintiffs' position is inconsistent with the principle of equitable estoppel. The obligation to arbitrate, which was executed by another party, may attach to a nonsignatory. In particular, a nonsignatory "may be bound to an arbitration agreement if so dictated by the 'ordinary principles of contract and agency.'" Accordingly, various courts have adopted "theories for binding non-signatories to arbitration agreements: 1) incorporation by reference; 2) assumption; 3) agency; 4) veil-piercing/alter ego; and 5) estoppel." *Truck Ins. Exch. v. Swanson*, 124 Nev. 629, 634-35, 189 P.3d 656, 660 (2008). "A nonsignatory plaintiff may be estopped from refusing to arbitrate when he or she asserts claims that are dependent upon, or inextricably intertwined with the underlying contractual obligations of the agreement containing the arbitration clause." *JSM Tuscany, LLC v. Superior Court* 193 Cal.App.4th 1222, 1239 (2011). Equitable estoppel applies when the signatory to a written agreement containing an arbitration clause must rely on the terms of the written agreement in asserting its claims against the nonsignatory. When each of a signatory's claims against a nonsignatory 'makes reference to' or 'presumes the existence of the written agreement, the signatory's claims 'arise out of and relate directly to the written agreement, and arbitration is appropriate. See *Chastain*, 502 F. Supp. 2d at 1077 (quoting *MS Dealer Service Corp. v. Franklin*, 111 F.3d 942, 947 (11th Cir. 1999)); see also *Murphy v. Direc TV, Inc.*, 724 F.3d 1218, 1229-32 (9th Cir. 2013)(noting "the *sine qua non* for allowing a nonsignatory to enforce an arbitration clause based on equitable estoppel is that the claims the plaintiff asserts against the nonsignatory are dependent on or inextricably bound up with the contractual obligations of the agreement containing the arbitration clause")(citing *Goldman v. KPMG, LLP*, 173 Cal. App. 4th 209, 213-14 (2009)). "By relying on contract terms in a claim against a nonsignatory defendant, even if not exclusively, a plaintiff may be equitably estopped from repudiating the arbitration clause contained in that agreement...**The rule applies to prevent parties from trifling with their contractual obligations.**" (*Molecular Analytical Systems v. Ciphergen Biosystems, Inc.* (2010) 186 Cal.App.4th 696, 706 (emphasis added).) An intended third-party beneficiary is bound by the terms of the contract even if she is not a signatory. See *Canfora*, 121 Nev. 771, 779.

1 Here, Plaintiff Royz's claims of personal injury arising out of and directly related to her
2 access to and benefitting from Uber and Rasier's Services through the Uber App subject to the 2016
3 Terms of Service, are inextricably intertwined with her contractual obligations to arbitrate any
4 claims arising from her access to Uber and Rasier's Services. The same is true for Plaintiff Work.
5 The court should not allow Plaintiff Royz to "trifle" with her contractual promise.

6 Most importantly, like Plaintiffs' other asserted defenses to enforcement, Plaintiffs'
7 argument on this issue is not properly before the Court because defenses to *enforcement* of the
8 arbitration agreement must be decided by the arbitrator given the clear and unambiguous broad
9 delegation clause. (*Id.*) The arbitrator must determine whether or not Plaintiff Royz's defense to
10 enforcement based on her status as a guest rider of Andrea Work has any validity or impact under
11 the law. However, Plaintiff Andrea Work has no such defense and this matter must proceed to
12 arbitration immediately.

13 **4. Plaintiffs claim that a valid arbitration agreement only applies to the first cause**
14 **of action in Plaintiff's complaint is without legal support and violates case law**
15 **and public policy**

16 Plaintiffs' contention that a valid arbitration agreement would only apply to the first cause
17 of action ignores the delegation clause that an arbitrator, not a Court, is to determine threshold issues
18 of arbitration and further ignores that fact Uber and Rasier are only in this lawsuit relating to any of
19 these causes of action as a result of Plaintiffs having contracted through the 2016 Terms of Service.
20 Plaintiffs' claims also violate the case law cited above due to the broad scope of the arbitration
21 agreement.

22 Once again, this is a gateway issue for an arbitrator to decide not the Court pursuant to the
23 terms of the arbitration agreement and delegation clause. Plaintiffs, without citing to any case law,
24 puts forth this unsupported argument. Plaintiffs' argument fails because it ignores the clear
25 delegation clause outlined above, violates clear case law as contained in Reply Section II(B)(3)
26 above, and Plaintiff concedes that the first cause of action for Negligence against Defendants
27 Hereda-Estrada, Uber Technologies, Inc, Rasier-CA, LLC and Rasier, LLC is subject to arbitration
28 and directly relates to the 2016 Terms of Service. (*See* Opposition, p. 7, ln 23-24). Given the

1 relevant case law above and the concessions made by Plaintiff, this Court is obligated to
2 immediately stay this action compel this matter into arbitration.

3 All of Plaintiffs' causes of action are also covered under the broad language of the 2016
4 TSA, as supported by case law cited herein. Plaintiff's second cause of action for negligence against
5 Defendant Independent Driver Jacobs, Uber Technologies, Inc., Rasier, LLC, and Rasier-CA, LLC.
6 Plaintiffs' third cause of action alleges negligent hiring, supervision and retention as to Defendant
7 Independent Driver Jacobs and is directed at the Uber Technologies, Inc., Rasier-CA, LLC and
8 Rasier, LLC. While Uber and Rasier dispute any employment relationship with Defendant Jacobs
9 and disputes any basis for punitive damages whatsoever, all of these causes of action are subject to
10 the broad language of the arbitration agreement above because they directly derive from the
11 underlying use of the Uber Rider App by Plaintiffs. Uber and Rasier are only involved in this
12 lawsuit because Plaintiffs availed themselves of the benefits of the Ride Share App and were
13 actively involved in the ride share process and use of its services when the alleged accident occurred.
14 As such, it cannot be disputed that every nexus of Plaintiffs' claims relate back to the 2016 Terms
15 of Service.

16 **IV. CONCLUSION**

17 The Court should order Plaintiffs to arbitrate all of their claims against Uber Technologies,
18 Inc., Rasier-CA, LLC and Rasier, LLC and stay Plaintiffs' claims pending the outcome of
19 arbitration. Alternatively, should the Court decide contrary to the delegation clause to only compel
20 a portion of the claims in this matter to arbitration, Uber and Rasier respectfully requests the
21 remainder of the matter be stayed until the Arbitration has been completed.
22

23 DATED this 9th day of July, 2020.
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**WILSON, ELSER, MOSKOWITZ,
EDELMAN & DICKER LLP**

By: /s/Harry V. Peetris

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UBER TECHNOLOGIES, INC.,

RAISER, LLC AND RAISER-CA, LLC

1 **CERTIFICATE OF SERVICE**

2 Pursuant to NRCP 5(b), I certify that I am an employee of Wilson Elser Moskowitz Edelman
3 & Dicker LLP, and that on this 9th day of July, 2020, I served a true and correct copy of the foregoing
4 **DEFENDANTS UBER TECHNOLOGIES, INC., RASIER-CA, LLC AND RASIER, LLC'S**
5 **REPLY TO PLAINTIFFS' OPPOSITION TO MOTION TO COMPEL ARBITRATION**
6 **AND STAY ACTION** as follows:

- 7
- 8 ☐ by placing same to be deposited for mailing in the United States Mail, in a sealed
9 envelope upon which first class postage was prepaid in Las Vegas, Nevada;
- 10 ☒ via electronic means by operation of the Court's electronic filing system, upon each
11 party in this case who is registered as an electronic case filing user with the Clerk;
- 12 ☐ via hand-delivery to the addressees listed below;
- 13 ☐ via facsimile;
- 14 ☐ by transmitting via email the document listed above to the email address set forth
15 below on this date before 5:00 p.m. PST

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24 An Employee of WILSON ELSER MOSKOWITZ EDELMAN
25 & DICKER LLP

1 CASE NO. A-20-810843-C

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DISTRICT COURT

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CLARK COUNTY, NEVADA

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MEGAN ROYZ,

)

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Plaintiff,

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vs.

)

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MARC JACOBS,

)

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Defendant.

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REPORTER'S TRANSCRIPT

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OF

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HEARING

18

(VIA TELEPHONIC CONFERENCE CALL)

19

20

BEFORE THE HONORABLE JUDGE TIMOTHY C. WILLIAMS

21

DISTRICT COURT JUDGE

22

23

DATED THURSDAY, JULY 16, 2020

24

25

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Pursuant to NRS 239.053, illegal to copy without payment.

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3 DEPARTMENT 16 ARE BEING HEARD VIA TELEPHONIC
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1 LAS VEGAS, NEVADA, THURSDAY, JULY 16, 2020

2 9:05 A.M.

3 P R O C E E D I N G S

4 * * * * *

5

6 THE COURT: Okay. We're going to move on.

7 Page 10 Megan Royz versus Marc Jacobs. Let's go ahead
8 and place our appearances on the record.

9 MR. QUIRK: Trevor Quirk for the plaintiffs.

09:05:38 10 Good morning, your Honor.

11 MS. BASHOR: Good morning, your Honor. Karen
12 Bashor on behalf of the defendants Uber and Rasier.
13 And we would like a transcript.

14 THE COURT: And do we want to have this matter
09:05:49 15 reported?

16 MS. BASHOR: Yes, please.

17 THE COURT: Okay.

18 MS. INGLEBY: And Melissa Ingleby on behalf of
19 the defendant Jacobs.

09:05:58 20 THE COURT: All right. So I just want to make
21 sure we get all the appearances on this. We have
22 Mr. Quirk; is that correct?

23 MR. QUIRK: Yes.

24 THE COURT: We have Ms. Ingleby. And who else
09:06:10 25 appeared in this matter for Raiser? Is that

09:06:12 1 Ms. Bashor?

2 MS. BASHOR: Karen Bashor.

3 THE COURT: Okay.

4 MS. BASHOR: Yes, your Honor. On behalf of
09:06:17 5 Uber and Raiser.

6 THE COURT: And we want to have the matter
7 reported; is that correct?

8 MS. BASHOR: Yes, please.

9 THE COURT: Okay. It's my understanding we
09:06:27 10 have a motion to compel arbitration; is that right?

11 MS. BASHOR: Yes, your Honor. Your Honor, may
12 I proceed?

13 THE COURT: Yes, ma'am. You may.

14 MS. BASHOR: Okay. Great. Thank you very
09:06:42 15 much. I'm sorry I didn't hear you initially.

16 We made attempts, your Honor, to brief this as
17 thoroughly as possible to hopefully make a decision
18 easier for you, but I will just highlight a couple
19 things from the brief. It is defendants Uber and

09:06:56 20 Raiser's motion to compel arbitration, your Honor. And
21 we believe that the defendants have demonstrated that
22 there is a valid arbitration agreement here and that
23 both plaintiffs have failed to demonstrate why the
24 agreement is not enforceable. And, therefore, under
09:07:11 25 Nevada law we believe that the arbitration agreement

09:07:14 1 should be enforced and that the parties should be
2 propelled to move this into arbitration, your Honor.

3 I think it's very clear that there are
4 critical facts that are undisputed here. It's
09:07:26 5 undisputed that there is a valid arbitration agreement.
6 Both plaintiffs Royz and Work have voluntarily agreed
7 to those 2016 terms and conditions which were in effect
8 at the time of the incident, which warrants the very
9 basis of plaintiffs lawsuit in this matter.

09:07:43 10 The plaintiffs in their opposition do not deny
11 any opportunity to review the terms and conditions.
12 Therefore, they don't dispute that there is either
13 actual or constructive knowledge of the terms. They
14 don't deny any opportunity to opt-out or seek
09:07:59 15 alternative means to arrange the transportation. It's
16 not disputed that Uber services were used at the time
17 of the incident, as they were in the vehicle which was
18 arranged through the Uber platform.

19 And there was no contesting that this
09:08:16 20 arbitration agreement was unconscionable in any way
21 whatsoever. Therefore, your Honor, that critical prong
22 is established and undisputed. And by the very fact
23 that as a threshold matter the plaintiff also has
24 failed to oppose the delegation clause in the valid
09:08:32 25 arbitration agreement, we believe that the question of

09:08:35 1 arbitrability should be with the arbitrator.

2 And the Nevada Supreme Court holds that that
3 delegation clause, unless specifically challenged, is
4 presentable valid. And, therefore, for all those
09:08:47 5 reasons we believe that our motion should be granted.

6 But nevertheless, your Honor, we also do want
7 to establish for the record that separate and apart
8 from all those arguments that if the Court were to
9 address this issue and rule on this issue, we believe
09:09:01 10 that Nevada law is clear. And it warrants that our
11 motion to compel arbitration to also be granted in this
12 matter, your Honor.

13 Specifically, under NRS 38.221 what appears to
14 be plaintiffs' attempt to oppose the matter is
09:09:19 15 creative, but unsuccessful arguments with respect to
16 whether the agreement encompasses the dispute at issue.
17 And as your Honor has reviewed the opposition and reply
18 brief, what plaintiffs attempt to argue is that the
19 arbitration agreement is enforceable because they --
09:09:35 20 they attempt to redefine the terms of the arbitration
21 agreement, and they attempt to argue that the physical
22 transportation of passengers is not governed by the
23 contract.

24 And I believe that this interpretation,
09:09:47 25 obviously, is self serving, that it's illogical. It's

09:09:52 1 completely contradicted by the plain terms of this
2 agreement itself. And also it's not consistent with
3 the case law which indicates that the terms should be
4 read broadly in favor of arbitration and this case as
09:10:07 5 well.

6 Plaintiff also attempts to agree -- I'm sorry,
7 to argue that plaintiff Work is bound by the
8 arbitration agreement. And if the Court finds that's
9 the case that plaintiff Royz was not however, again, I
09:10:19 10 believe that the arbitration agreement is very clear on
11 this issue as any dispute, claim, or controversy
12 arising out of or relating to Uber's terms and access
13 for use of services is covered by the agreement. And
14 the broad interpretation as indicated by the case law
09:10:37 15 is supportive of this.

16 And furthermore, under Nevada law Royz as the
17 third-party beneficiary would also be subject to the
18 Uber and Work contract. So as we know, and is
19 completely indisputably in this case, we know that both
09:10:52 20 Work and Royz voluntarily agreed to the terms and
21 conditions.

22 Real quickly, with respect to the allegations
23 as to the subsidiaries and co-defendant Jacobs, we
24 believe that, again, the plain terms indicate that the
09:11:08 25 subsidiaries are apparent and subsidiaries are covered

09:11:13 1 by the arbitration agreement in Section 1. And also
2 defendant Jacob has voluntarily, you know, joined the
3 motion to compel arbitration, so we don't believe
4 that's an issue for the Court.

09:11:22 5 And then last, your Honor, plaintiff attempts
6 to argue that only the first cause of action applies to
7 the arbitration agreement arguably. We believe, again,
8 that's not the case according to the terms of the
9 agreement and the case law which supports a broad
09:11:40 10 interpretation of the agreement. The arbitration
11 agreement applies to all of the claims that the
12 plaintiffs have asserted to Uber and Raiser. And it
13 would be not only in the judicial economy but it's
14 warranted by Nevada law and the terms of the agreement
09:11:58 15 that defendants' motion should be granted. And so on
16 those basis, your Honor, that we would request that our
17 motion be granted.

18 THE COURT: All right, ma'am, I understand. I
19 have a couple of questions because I did look at the
09:12:08 20 briefing. And I think you indicated on -- it was in
21 the reply. And I'm assuming it was a typo because the
22 cases you cited happen to be US Supreme Court cases.
23 And you said like, for example, I'm looking at page 5
24 of the reply at line 5. And it really starts on
09:12:29 25 page 4. You cite -- you're dealing specifically with

09:12:32 1 the delegation under --

2 MS. BASHOR: Right.

3 THE COURT: Yeah. And it appears to me those
4 are federal cases; is that correct? Because, for
09:12:41 5 example, I looked at the Howsam vs. Dean Witter
6 Reynolds matter. In fact, I looked at the other matter
7 too that was cited, Rent-A-Center, West, Inc. vs.
8 Jackson. And the only reason I bring that up those
9 aren't Nevada cases. These are US Supreme Court cases;
09:13:00 10 right?

11 MS. BASHOR: Yes, your Honor. My apologies
12 for that typographical error. That is correct.

13 THE COURT: And the reason why I say that when
14 I see cases cited, I actually go back and read it. And
09:13:11 15 the reason for it is this, and it's important that we
16 don't paint with broad brushes as it relates to the
17 interpretation of an arbitration provision under a
18 contract. And there's many reasons for that.

19 So what I have to do is I have to look at the
09:13:27 20 specific language that would stand for the proposition
21 that the question of arbitrability is not an issue for
22 judicial determination. Because, typically, that's how
23 that occurs and what part of the language would be
24 clear, and unmistakably provide otherwise.

09:13:49 25 The reason why I bring that up that's the

09:13:50 1 language that was set forth by our Supreme Court of the
2 United States in the Dean Witter Reynolds matter, and
3 so on. And they're -- all the cases are different.
4 And so I have to first make that interpretation and
09:14:07 5 whether that's true or not.

6 Because I'm going to be candid with everyone.
7 And I don't mind saying this. I think what gets --
8 what is lost in this whole arbitrability issue is this,
9 and I don't mind saying this, I think the US Supreme
09:14:22 10 Court overlooks it. I think our Nevada Supreme Court
11 does. And it appears to me that they don't -- they
12 don't give the Seventh Amendment to the United States
13 Supreme Court the same deference they give the Fourth,
14 Fifth and Sixth Amendment as it relates to criminal
09:14:41 15 matters. It just seems that way to me.

16 Because you have a right to a jury trial on a
17 federal level. And then you have a -- and then you
18 have just as important too, in the state of Nevada
19 under our Nevada constitution, a right to a jury trial
09:14:52 20 in the civil matter.

21 And so they never talk about -- and I
22 understand the unconscionability, both procedural and
23 substantive. I get that. But they really never
24 address it head on. And that's just my -- and
09:15:07 25 understand, that's my observation. But at the end of

09:15:11 1 the day what I do is this: I will follow the mandate.
2 And I think actually the seminal cases relates to
3 consumer contracts and arbitrability under the FAA,
4 Federal Arbitration Act, is the case out of California,
09:15:28 5 Concepcion vs. AT&T.
6 But, ma'am, tell me why I shouldn't be
7 deciding this and an arbitrator should decide
8 arbitrability vis-à-vis the contractual language, so I
9 can take a look at it.
09:15:44 10 MS. BASHOR: Sure, your Honor. Let me pull up
11 that exhibit. My apologies, your Honor. I have it
12 marked earlier and I'm just going through my notes.
13 THE COURT: And, ma'am, take your time.
14 MS. BASHOR: (indiscernible) the cases
09:19:24 15 indicate that the FAA applies. And the delegation
16 clause in the contract indicates the arbitrator is to
17 decide the gateway issue. I'm just looking for the
18 specific language to cite to.
19 THE COURT: Ma'am, I understand what the issue
09:19:39 20 is. I just want to make sure that I understand
21 specifically what the contractual provision as set
22 forth in the contract and what it stands for so I can
23 interpret it right. Because like, for example, in the
24 Howsam versus Dean Witter matter, the US Supreme Court
09:20:03 25 says the question whether the parties have submitted a

09:20:07 1 particular dispute to arbitration, i.e., the question
2 of arbitrability is an issue for judicial determination
3 unless the parties clearly and unmistakably provide
4 otherwise. And so I have to look at and see what the
09:20:25 5 parties agreed to.

6 Because in a general sense, unless they --
7 unless they agree otherwise, and unless it's clearly
8 and unmistakably provided for, I'm going to decide it
9 on the arbitration issue as to the arbitrability of the
09:20:49 10 dispute. And that's my point.

11 MS. BASHOR: Yes. And I understand, your
12 Honor. And I understand that issue. And I -- and I
13 would indicate that in addition to that issue that even
14 if your Honor does move forward with your analysis in
09:21:04 15 deciding that issue, I believe that both the plain
16 language and the case law do support the enforceability
17 of this arbitration agreement at issue.

18 THE COURT: And that's another issue, ma'am.
19 I get that. I do.

09:21:17 20 And as far as that is concerned what language
21 should I provide -- rely upon as to the arbitrability
22 of the disputes in a general sense notwithstanding the
23 "gateway" issue?

24 MS. BASHOR: The arbitration agreement is
09:22:01 25 shared by the American Arbitration Association in

09:22:04 1 accordance with commercial arbitration rules and the
2 supplementary procedures for consumer related disputes,
3 and the fact that except as modified by the Dispute
4 Resolution Section and the Federal Arbitration Act
09:22:17 5 involving an interpretation and enforcement of this
6 section.

7 THE COURT: Okay. I see that. I do. I have
8 it right in front of me. That's Section 6, Dispute
9 Resolution.

09:22:27 10 But here's my point. And I understand what
11 that stands for. And I don't mind saying this. I'm
12 probably the only judge that was probably AAA certified
13 for both mediation and arbitration purposes as a
14 lawyer, probably back in the early '90s. But my point
09:22:46 15 is this. What shall be arbitrated? Right. What types
16 of disputes pursuant to contractual language?

17 Because you look under Section 6, Dispute
18 Resolution, it says "arbitration". What shall be
19 arbitrated, you know? What's the thrust and focus of
09:23:06 20 the arbitrable claims, and that's my point, pursuant to
21 the contractual terms?

22 MS. BASHOR: I'm sorry, your Honor. Can you
23 repeat that?

24 THE COURT: Yeah, pursuant -- because, you
09:23:18 25 know, if you look at the agreement -- and understand,

09:23:21 1 it's your motion to compel arbitration, I'm --

2 MS. BASHOR: Right.

3 THE COURT: -- trying to figure out what
4 contractual terms should I rely upon to have this motor
09:23:31 5 vehicle accident arbitrated.

6 MS. BASHOR: So, okay. So my understanding,
7 your Honor, is that you're referring to the services,
8 and whether the motor vehicle accident was (telephonic
9 audio drop) from under the services as part of what
09:23:49 10 would be arbitrated at the hearing. So that, your
11 Honor, is yes. Under Section 6 I would argue that
12 under dispute resolution it's agreed between the
13 parties that any dispute, claim, or controversy arising
14 out of or relating to these terms or the breach,
09:24:06 15 termination, enforcement, interpretation, or validity
16 thereof or use of these services would constitute a
17 dispute that would be settled by the binding
18 arbitration.

19 THE COURT: Okay. And so I want to be real
09:24:19 20 clear here. When I look at the contractual language,
21 how do you -- how do I interpret that? Because I
22 wanted to make sure you pointed it out to me. I have
23 it right in front of me. It provides as follows,
24 quote:

09:24:31 25 "You agree that any dispute, claim, or

09:24:34 1 controversy arising out of or relating to the
2 terms or the breach, termination, enforcement,
3 interpretation or validity thereof, or the use
4 of services collectively 'disputes' will be
09:24:50 5 settled by binding arbitration."

6 So when I look at that language, does that
7 indicate that motor vehicle accidents would be part of
8 the contractual dispute? And the only reason I'm
9 bringing it up in that regard, I mean, I'm not going to
09:25:09 10 make a decision right now, but I think it's important
11 before I paint with a broad brush to dig a little
12 deeper and specifically focus on the terms and
13 conditions that the parties agreed to pursuant to the
14 contract.

09:25:24 15 That's all I'm --

16 MS. BASHOR: I understand that. Yes, your
17 Honor. And with respect to that concern, I would say
18 that for purposes of interpretation that clause and the
19 contractual terms I would say that we would look to the
09:25:40 20 services. It references to the use of services. And
21 so, therefore, under the services, as we find in
22 Section 2, it indicates -- and I'm just, for the
23 record, referencing to Exhibit 1B, with the services
24 where it states that the services constitute a
09:25:59 25 technology platform that enables viewers of the user's

09:26:02 1 mobile application or website as provided as part of
2 the services, each and application, to arrange and
3 schedule transportation and/or logistic services to a
4 third-party provider process servicing including
09:26:16 5 independent third party transportation providers and
6 third-party logistics providers under the agreement
7 with Uber or through an Uber subsidiary.

8 So the plaintiffs in this case are, plaintiff
9 Work specifically, both signed on to these terms and
09:26:30 10 conditions. Plaintiffs Work at the time ordered
11 through the Uber platform a ride in which defendant
12 independent driver Jacob was their independent driver
13 through the Uber platform, and, therefore, through the
14 use of the Uber platform engaged those services to
09:26:49 15 arrange and schedule the transportation.

16 So it was through the use of the Uber platform
17 that they were in the vehicle with independent driver
18 Jacob, and while using the services for that
19 transportation wherein the accident occurred. And,
09:27:06 20 therefore, we believe that based upon the plain terms
21 of the service of the terms and conditions of the --
22 how service is defined, that would include anyone in a
23 motor vehicle which was arranged through the Uber
24 platform and then claiming injuries arising from a
09:27:29 25 motor vehicle accident.

09:27:31 1 THE COURT: I understand, ma'am. I do. All
2 right. Anything else?

3 MS. BASHOR: Not at this time, your Honor.

4 THE COURT: Okay. Thank you.

09:27:40 5 It's my understanding we had a joinder; is
6 that correct?

7 MS. INGLEBY: Yes, your Honor. Defendant
8 Jacob joins in co-defendants' arguments.

9 THE COURT: Okay. Ma'am, anything else you
09:27:53 10 want to place on the record?

11 MS. INGLEBY: No, your Honor.

12 THE COURT: Okay. And thank you.

13 Okay. We'll go to the opposition.

14 MR. QUIRK: Your Honor, you brought up two
09:28:06 15 issues. I'm going to address them really quickly.
16 Number one, the arbitrability of this agreement whether
17 you should decide or an arbitrator should decide,
18 clearly you should. The Federal Arbitration Act which
19 I brought up says, It is the Court's role to determine
09:28:20 20 whether or not a valid arbitration agreement exists.

21 There's a Ninth Circuit case on point. It's a
22 2014 case. It's Nguyen vs. Barnes. And it cites 763
23 F.3d 1171 at page 1175. Specifically speaks to this
24 issue.

09:28:40 25 There's also a Nevada Supreme Court case on

09:28:43 1 point. Phillips vs. Parker. It's a 1990 case. Cite
2 is 106 Nev 415. Says the Court's decide not
3 arbitrators. So you're right on that issue.

4 Second issue that you brought up was what
09:28:59 5 language that you rely on in determining whether or not
6 this issue is arbitrable. I think -- and here's what's
7 really going on with these Uber contracts. They
8 crafted the arbitration provisions, and these contracts
9 for all the users perhaps yourself, me, certainly,
09:29:23 10 which I didn't even know was in here until this motion
11 happened, but what they did is they put this
12 arbitration agreement in here. And then they also
13 included this scope of services session that you were
14 speaking to opposing counsel about. And they
09:29:38 15 specifically put in here in the scope of services that
16 Uber is not a provider of transportation. It says
17 that, Defendant's Exhibit 1C terms of use 4, and you
18 were reading from it.

19 And the reason the Court -- Uber is not a
09:29:56 20 provider of transportation services is because they
21 didn't want to get hit with these personal injury
22 lawsuits. They didn't want to get hit with wage and
23 hour cases, et cetera. They're trying to craft this
24 thing, this agreement so that they're arguing to the
09:30:11 25 Courts throughout the country, Look, all we do is

09:30:15 1 provide our technology services. We just merely link
2 drivers up with users like me, for example. You know,
3 I need an Uber. They're -- they're not a provider of
4 transportation services. And what happens, well
09:30:31 5 California came down with a statute saying, well, you
6 are.

7 And the various courts around the country are
8 saying now you are. And so now what you're seeing
9 throughout the different states is Uber filing this
09:30:44 10 motion and doing a 180 on the language that's in its
11 own contract. And they're saying, well, actually even
12 though the contract says we're not a provider of
13 transportation services, which you are hitting on, and
14 you're right Oh, well, we actually are, and the scope
09:31:00 15 of this agreement is a lot more broad than we defined
16 in the original agreement.

17 Well, the problem for Uber which you are
18 pointing out, your Honor, is if they wanted to include
19 motor vehicle crashes in the arbitrability of the
09:31:16 20 contract, put it in there. And they didn't. That's
21 their problem. But they're trying to do a 180, and the
22 correct way to do it is to do it via contract.

23 So, number one, yes, you should decide.
24 Number two, is we looked at the issue. Is this a
09:31:32 25 crafts arbitrable? The answer is no because it's not

09:31:36 1 in the contract. And the -- and you apply state court
2 principals, that's what the Supreme Court says, when
3 looking at these contracts. And these construe it
4 specifically to the language of the contract. And the
09:31:46 5 contract just simply states what's arbitrable and what
6 is not. And there is nothing in there about a motor
7 vehicle crash.

8 And then you didn't bring up another issue
9 which I wanted to really briefly bring to the Court's
09:31:58 10 attention because I think you were talking about
11 painting with a broad brush, and it's important.

12 I got two clients, Work and Royz. Work is the
13 one that ordered the Uber. Royz did not. So if your
14 Honor is going to say, Well, look, I'm going to decide
09:32:17 15 the issue, which you should, and, yes, the client is
16 not included in the service section, which I don't
17 think they are, but when you say that, but then when
18 you get to cruise down by it, and if you get that far,
19 Work should be bound by it but not Royz. Because Royz
09:32:32 20 didn't sign up for the Uber. She just happens to have
21 an Uber account, and she happened to be in an Uber car
22 and another drunk who happens to hit her.

23 So we're suing our own Uber driver. And then
24 we're suing a third party Uber. We're asking -- the
09:32:48 25 last issue is perhaps if you say this thing is

09:32:52 1 arbitrable against Work only that's only as to the
2 first cause of action. It should be arbitrable against
3 Estrada who's driving as a drunk driver working for
4 Uber at the time and hits our clients.

09:33:04 5 So that's it.

6 THE COURT: Thank you, sir.

7 And, ma'am, you get the last word.

8 MS. BASHOR: Thank you, your Honor, yes. I'll
9 just address two points quickly, your Honor. We just
09:33:22 10 discussed the interpretation of the language here.

11 And, I believe, that's the definition of services is
12 plainly defined here. And I believe that plaintiffs
13 are seeking to have it both ways here.

14 They're suing Uber and Royz here arising out
09:33:38 15 of this motor vehicle accident. Yet at the same time
16 they're denying their -- the terms and conditions to
17 which they agreed to where they agreed that any claim
18 against Uber or Raiser would be subject to arbitration.

19 And I think it's -- that interpretation is not only
09:33:55 20 subserving but it's illogical, it's hypocritical, and
21 it's not consistent with the language, nor is the
22 interpretation that is -- that plaintiffs were

23 (indiscernible) it's not consistent with the case law
24 which indicates that applications of the terms within
09:34:10 25 an arbitration agreement where there is references to

09:34:12 1 any claims and all disputes is encouraged to be
2 interpreted broadly.

3 And, furthermore, your Honor, I -- as the
4 reasons I indicated earlier with respect to Work and
09:34:25 5 Royz, both have voluntarily signed off as to the Uber
6 terms and conditions. And here, even if the Court were
7 to find it only applied to Work that the arbitration
8 agreement only applies to Work, which we don't believe
9 it does, but even if the Court were to find that, then
09:34:42 10 we believe that your Honor would -- would need to still
11 compel this case to move forward to arbitration and
12 stay the remainder of the matter.

13 For all the reasons I set forth earlier, we
14 believe that the arbitration agreement does apply to
09:34:56 15 Royz. It does apply to the other parties. It would be
16 in interest of judicial economy for everything because
17 it all arises out of this incident wherein Uber
18 services were used to arrange a ride that it would make
19 sense to submit everything to arbitration.

09:35:15 20 And last, your Honor, putting aside the
21 gateway issue of arbitrability by an arbitrator, even,
22 again, as I mentioned earlier, with respect to this
23 Court's decision, under NRS 38.221 unless this Court
24 finds that this valid arbitration agreement is
09:35:34 25 unenforceable then the Court must move this case to

09:35:39 1 arbitration.

2 And for those reasons, your Honor, and for all
3 the reasons set forth in our brief, we would ask that
4 our motion to compel arbitration in this matter be
09:35:51 5 granted.

6 THE COURT: All right. Just a couple of
7 things.

8 Number one, as far as what is concerned if
9 they're not -- if they weren't part of the retention of
09:36:02 10 services in this case, I don't see how they can be
11 bound by the "arbitration agreement."

12 But more specifically what I'm going to do is
13 I'm going to go back and take one last final look at
14 the language pursuant to the contract. Because the
09:36:19 15 bottom line is this, this is kind of how I look at this
16 case. Language matters as it pertains to contractual
17 interpretation. Right?

18 And I think what I want to do is I want to
19 issue a minute order when I make my decision that can't
09:36:36 20 be subject to any interpretation other than what I
21 specifically find as a matter of law in this case.

22 Regarding the issue as it pertains to the
23 gateway issue, I'm going to decide the arbitrability in
24 this case. And I don't mind saying that for the
09:36:54 25 record.

09:36:55 1 But what I'm going to do is this, I'm going to
2 go back and I'm going to look at the specific
3 contractual provisions that were agreed to. And I'm
4 going to make a determination as to whether pursuant to
09:37:06 5 the terms and conditions of the "contract", whether
6 this covers motor vehicle accidents. And I'll get you
7 out a decision within a couple of weeks.

8 And everyone enjoy your day. It's been a
9 pleasure.

09:37:20 10 MR. QUIRK: Thank you, your Honor. Have a
11 nice day.

12 MS. BASHOR: Thank you very much, your Honor.

13 THE COURT: You're welcome.

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17 (Proceedings were concluded.)

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1 REPORTER'S CERTIFICATE

2 STATE OF NEVADA)

:SS

3 COUNTY OF CLARK)

4 I, PEGGY ISOM, CERTIFIED SHORTHAND REPORTER DO
5 HEREBY CERTIFY THAT I TOOK DOWN IN STENOGRAPHY ALL OF THE
6 TELEPHONIC PROCEEDINGS HAD IN THE BEFORE-ENTITLED
7 MATTER AT THE TIME AND PLACE INDICATED, AND THAT
8 THEREAFTER SAID STENOGRAPHY NOTES WERE TRANSCRIBED INTO
9 TYPEWRITING AT AND UNDER MY DIRECTION AND SUPERVISION
10 AND THE FOREGOING TRANSCRIPT CONSTITUTES A FULL, TRUE
11 AND ACCURATE RECORD TO THE BEST OF MY ABILITY OF THE
12 PROCEEDINGS HAD.

13 IN WITNESS WHEREOF, I HAVE HEREUNTO SUBSCRIBED
14 MY NAME IN MY OFFICE IN THE COUNTY OF CLARK, STATE OF
15 NEVADA.

16
17 _____
18 PEGGY ISOM, RMR, CCR 541
19
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<p>MR. QUIRK: [4] 4/9 4/23 18/14 25/10</p> <p>MS. BASHOR: [20] 4/11 4/16 5/2 5/4 5/8 5/11 5/14 10/2 10/11 12/10 12/14 13/11 13/24 14/22 15/2 15/6 16/16 18/3 22/8 25/12</p> <p>MS. 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