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9 **UNITED STATES DISTRICT COURT**

10 **FOR THE CENTRAL DISTRICT OF CALIFORNIA**

11 ALEJANDRO FLORES; individually
12 and on behalf of all others similarly
13 situated,

14 Plaintiffs,

15 vs.

16 RASIER, LLC., a Limited Liability
17 Company; RASIER-CA, LLC., a
18 Limited Liability Company; and
19 UBER TECHNOLOGIES, INC., a
20 corporation; DOES 1 through 15,
21 inclusive,

22 Defendants.

CASE NO.: 2:17-cv-8503

CLASS ACTION COMPLAINT

1. BREACH OF IMPLIED CONTRACT
2. NEGLIGENCE
3. VIOLATION OF CALIFORNIA’S UNFAIR COMPETITION LAW CAL. BUS. & PROF. CODE § 17200 - UNLAWFUL BUSINESS PRACTICES
4. VIOLATION OF CALIFORNIA’S UNFAIR COMPETITION LAW CAL. BUS. & PROF. CODE § 17200 UNFAIR BUSINESS PRACTICES
5. VIOLATION OF CALIFORNIA’S UNFAIR COMPETITION LAW CAL. BUS. & PROF. CODE § 17200 FRAUDULENT/DECEPTIVE BUSINESS PRACTICES
6. UNFAIR AND DECEPTIVE BUSINESS PRACTICES
7. CONSTITUTIONAL INVASION OF PRIVACY
8. NEGLIGENCE *PER SE*
9. BREACH OF COVENANT OF DUTY OF GOOD FAITH AND FAIR DEALING
10. VIOLATION OF STATE DATA BREACH

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ACTS

Plaintiff, Alejandro Flores ("Plaintiff"), by and through her counsel of record, on behalf of themselves and all others similarly situated bring this Class Action Complaint against against Rasier, LLC., a Limited Liability Company ("Rasier"), Rasier-CA, LLC., a Limited Liability Company ("Rasier-CA"), and Uber Technologies, Inc., a corporation, ("Uber") (Rasier, Rasier-LLC, and Uber are sometimes collectively referenced as "Uber Defendants" for ease of reading when the allegations implicate both entities) Plaintiffs alleges the following on information and belief, except as to those allegations specific to Plaintiffs, as follows:

I. NATURE OF THE ACTION

1. Millions of customers book rides using Uber for their traveling needs. Consumers expect the highest quality of services when booking a ride. What consumers did not expect was that starting in October 2016, driver and rider’s information was stolen. The information stolen included full name, driver’s license, e-mail addresses, mobile phone numbers, credit card numbers, social security numbers, and date of birth. This is a data breach case.

2. Plaintiffs, individually and on behalf of those similarly situated persons (hereafter “Class Members”), brings this Class Action to secure redress against Uber for their reckless and negligent violation of customer privacy rights. Plaintiffs and Class Members are former customers who booked rides, and were drivers in October 2016, at the time of the data breach.

3. Plaintiffs and Class Members suffered injury. The security breach compromised both riders and drivers’ full name, driver’s license, e-mail addresses, mobile phone numbers, credit card numbers, social security numbers, and date of birth, and other private identifiable information (“PII”).

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1 4. As a result of Uber’s wrongful actions and inactions, customer and
2 driver’s information were stolen. Many of the customers who booked rides have
3 had their PII compromised, have had their privacy rights violated, have been
4 exposed to the risk of fraud and identify theft, and have otherwise suffered
5 damages.

6 **II. THE PARTIES**

7 5. Plaintiff Alejandro Flores is a California citizen residing in Los
8 Angeles, California.

9 6. Plaintiffs bring this action on his own behalf and on behalf of all
10 others similarly situated, namely all other individuals who have worked as Uber
11 Black, Uber Pool, Uber SUV, or UberX drivers in the United States, and on
12 behalf of all riders who ordered Uber rides during or near the time of the data
13 breach incident.

14 7. Defendant Rasier, LLC. is a Limited Liability Company
15 headquartered in San Francisco, California.

16 8. Defendant Rasier-CA, LLC. is a Limited Liability Company
17 headquartered in San Francisco, California.

18 9. Defendant Uber Technologies, Inc. is a corporation headquartered in
19 San Francisco, California. Defendant Uber Technologies is the parent company
20 of Defendants Rasier and Rasier-CA.

21 10. The Uber Defendants provide car service in cities throughout the
22 country via an on demand dispatch system that enables users to hail a car service
23 driver using a mobile phone through the User application, and which enables
24 transportation providers to accept and fulfill such on-demand requests for
25 transportation services by Users seeking transportation services through the use
26 of a driver’s application (collectively “Uber Software”).

27 11. At all relevant times, including during the Class Period, the Uber
28 Defendants and/or their agents distributed, implemented, warranted,

1 disseminated, permitted, licensed, or otherwise caused the Uber Software to be
2 used by drivers and Users.

3 12. Plaintiff is ignorant of the true names and capacities of Defendants
4 sued herein as Does 1 through 50, inclusive, and therefore sues these Defendants
5 by such fictitious names. Plaintiff will amend this Complaint to allege their true
6 names and capacities when the same are ascertained. Plaintiff is informed and
7 believe and thereon allege that each of the fictitiously named Defendants are
8 responsible in some manner for the occurrences and discriminatory acts alleged
9 herein, and that Plaintiff's damages alleged herein were proximately caused by
10 these Defendants. When used herein, the term "Defendants" is inclusive of
11 DOES 1 through 15.

12 13. Plaintiff is informed and believes and thereon alleges that at all
13 relevant times herein, each of the Defendants, including the Defendants sued
14 herein as Does 1 through 50, were the agents, employees, and/or joint venturers
15 of, or working in concert with the other Defendants, and were acting within the
16 course and scope of such agency, employment, joint venture and/or concerted
17 activity. To the extent that said conduct and omissions were perpetrated by
18 Defendants and their agents, Defendants confirmed and ratified said conduct and
19 omissions.

20 14. At all relevant times, including during the Class Period, each
21 Defendant, including Does 1 through 50, acted as an agent, servant, employee, or
22 joint venturer of the other Defendants, and in doing the things alleged acted
23 within the course of such agency, employment, and/or in furtherance of the joint
24 venture to accomplish the scheme. Each of the Defendants' acts alleged herein
25 was done with the permission and consent of the other Defendant. While each of
26 the Defendants are separate legal entities, each Defendant works together under a
27 common identity as portrayed to the public and there is a sufficient unity of
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1 interest and control between each Defendant such that the acts of one are for the
2 benefit and can be imputed to the acts of the other.

3 15. Whenever and wherever reference is made in this Complaint to any
4 act by a Defendant or Defendants, such allegations and reference shall also be
5 deemed to mean the acts and failures to act of each Defendant acting
6 individually, jointly, and severally.

7 **III. JURISDICTION AND VENUE**

8 16. This Court has subject matter jurisdiction over the state law claims
9 asserted here pursuant to the Class Action Fairness Act, 28 U.S.C. § 1332(d)(2),
10 since some of the Class Members are citizens of a State different from the
11 Defendant and, upon the original filing of this complaint, members of the
12 putative Plaintiffs class resided in states around the country; there are more than
13 100 putative class members; and the amount in controversy exceeds \$5 million.

14 17. The Court also has personal jurisdiction over the Parties because
15 Uber conducts a major part of their national operations with regular and
16 continuous business activity in California, with an advertising budget both not
17 exceeded in other jurisdictions throughout the United States.

18 18. Venue is appropriate because, among other things: (a) Plaintiffs are
19 resident and citizen of this District; (b) the Defendants had directed their
20 activities at residents in this District; (b) the acts and omissions that give rise to
21 this Action took place, among others, in this judicial district.

22 19. Venue is further appropriate pursuant to 28 U.S.C. § 1391 because
23 Defendants conduct a large amount of their business in this District, and
24 Defendants have substantial relationships in this District. Venue is also proper in
25 this Court because a substantial part of the events and omissions giving rise to the
26 harm of the Class Members occurred in this District.

27 **IV. SUBSTANTIVE ALLEGATIONS**

28 **A. *The Data Breach Unravels***

1 20. On November 21, 2017, Uber’s new CEO, Dara Khosrowshahi
2 disclosed that “I recently learned that in late 2016 we became aware that two
3 individuals outside the company had inappropriately accessed user data stored on
4 a third-party cloud-based service that we use.” 2016 Data Security Incident,
5 available at: <https://www.uber.com/newsroom/2016-data-incident>.

6 21. This disclosure was made more than a year later, customers, and
7 drivers had no chance to protect their identity, and their information.

8 ***B. Stolen Information Is Valuable to Hackers and Thieves***

9 22. It is well known, and the subject of many media reports, that payment
10 card data is highly coveted and a frequent target of hackers. Especially in the
11 technology industry, the issue of data security and threats thereto, is well known.
12 Despite well-publicized litigation and frequent public announcements of data
13 breaches, Uber opted to maintain an insufficient and inadequate system to protect
14 the payment information of Plaintiffs and Class Members. Legitimate
15 organizations and criminal underground alike recognize the value of PII.
16 Otherwise, they would not aggressively seek or pay for it. As previously seen in
17 one of the world’s largest breaches, hackers compromised the card holder data of
18 40 million customers. *See* “Target: 40 million credit cards compromised,” CNN
19 Money, Dec. 19, 2013, *available* at
20 <http://money.cnn.com/2013/12/18/news/companies/target-credit-card/> (attached
21 hereto as Exhibit A).

22 23. Credit or debit card information is highly valuable to hackers. Credit
23 and debit card information that is stolen from the point of sale are known as
24 “dumps.” *See* Krebs on Security April 16, 2016, Blog Post, *available* at
25 <https://krebsonsecurity.com/2016/04/all-about-fraud-how-crooks-get-the-cvv/>
26 (attached hereto as Exhibit B). Credit and debit card dumps can be sold in the
27 cybercrime underground for a retail value of about “\$20 apiece.” *Id.* This
28 information can also be used to clone a debit or credit card. *Id.*

1 **C. The Data Breach Has and Will Result in Additional Identity Theft and**
2 **Identity Fraud**

3 24. Uber failed to implement and maintain reasonable security procedures
4 and practices appropriate to the nature and scope of the information compromised
5 in the data breach.

6 25. Security flaws and other infirmities were explicitly outlined by Visa,
7 as early as 2009, when it issued a Data Security Alert outlining the threat of RAM
8 scraper malware. The report instructs companies to “[s]ecure remote access
9 connectivity,” “[i]mplement a secure network configuration, including egress and
10 ingress filtering to only allow the ports/services necessary to conduct business”
11 (i.e., segregate networks), “actively monitor logs of network components,
12 including IDS [intrusion detection systems] and firewalls for suspicious traffic,
13 particularly outbound traffic to unknown addresses,” “[e]ncrypt cardholder data
14 anywhere it is being stored and [] implement[] a data field encryption solution to
15 directly address cardholder data in transit” and “[w]ork with your payment
16 application vendor to ensure security controls are in place to prevent unauthorized
17 modification to the payment application configuration.”

18 26. All merchants that accept customer payments via payment cards,
19 including Defendants, are obligated and required to comply with the Payment Card
20 Industry Data Security Standards (the “PCI DSS”). *How to Be Compliant: Getting*
21 *Started with PCI Data Security Standard Compliance*, PCI SSC, available at
22 https://www.pcisecuritystandards.org/merchants/how_to_be_compliant.php (last
23 visited June 24, 2015) (stating “[i]f you are a merchant that accepts payment cards,
24 you are required to be complaint with the PCI [DSS].”). Compliance with the PCI
25 DSS is common practice in the retail industry. The PCI DSS, among other things,
26 mandates merchants to protect cardholder data, PCI DSS v. 3.0 at 34 (Nov. 2013),
27 requires merchants to install and maintain firewalls, *id.* at 19, forbids merchants
28 from using default settings and passwords for applications and devices, *id.* at 28,

1 requires merchants to segment cardholder data, *id.* at 61, and requires merchants
2 to identify and authenticate their system users. *Id.* at 64.

3 27. Additionally, sub-requirement 3.2 of the PCI DSS requires merchants
4 and other organizations involved in payment card transactions to refrain from
5 storing sensitive authentication data after authorization (even if it is encrypted).
6 *See id.* at 35. To adhere to the PCI DSS, a merchant must, *inter alia*:

7 First, **Assess** -- identify cardholder data, take an inventory of your
8 ITassets and business processes for payment card processing, and
9 analyze them for vulnerabilities that could expose cardholder data.

10 Second, **Remediate** -- fix vulnerabilities and do not store cardholder
11 data unless you need it. Third, **Report** -- compile and submit required
12 remediation validation records (if applicable), and submit compliance
13 reports to the acquiring bank and card brands you do business with.

14 (emphasis in original). *How to Be Compliant: Getting Started with PCI Data*
15 *Security Standard Compliance*, PCI SSC, available at
16 https://www.pcisecuritystandards.org/merchants/how_to_be_compliant.php (last
17 visited June 24, 2015).

18 28. The ramification of Uber’s failure to keep Plaintiffs’ and Class
19 Members’ data secure is severe.

20 29. According to Javelin Strategy and Research, “one in every three
21 people who is notified of being a potential fraud victim becomes one . . . with 46%
22 of consumers who had cards breached becoming fraud victims that same year.”
23 “Someone Became an Identity Theft Victim Every 2 Seconds Last Year,” Fox
24 Business, Feb. 5, 2014 available at [http://www.foxbusiness.com/personal-](http://www.foxbusiness.com/personal-finance/2014/02/05/someone-became-identitytheft-victim-every-2-seconds-last-year.html)
25 [finance/2014/02/05/someone-became-identitytheft-victim-every-2-seconds-last-](http://www.foxbusiness.com/personal-finance/2014/02/05/someone-became-identitytheft-victim-every-2-seconds-last-year.html)
26 [year.html](http://www.foxbusiness.com/personal-finance/2014/02/05/someone-became-identitytheft-victim-every-2-seconds-last-year.html) (attached hereto as Exhibit C).

27 30. It is incorrect to assume that reimbursing a consumer for a financial
28 loss due to fraud makes that individual whole again. On the contrary, after

1 conducting a study, the Department of Justice’s Bureau of Justice Statistics
2 (“BJS”) found that “among victims who had personal information used for
3 fraudulent purposes, 29% spent a month or more resolving problems.” *See*
4 “Victims of Identity Theft,” U.S. Department of Justice, Dec 2013, *available at*
5 <https://www.bjs.gov/content/pub/pdf/vit12.pdf> (attached hereto as Exhibit D). In
6 fact, the BJS reported, “resolving the problems caused by identity theft [could] take
7 more than a year for some victims.” *Id.* at 11.

8 ***D. Annual Monetary Losses from Identity Theft are in the Billions of***
9 ***Dollars***

10 31. Javelin Strategy and Research reports that those losses increased to
11 \$21 billion in 2013. *See* 2013 Identity Fraud Report (attached hereto as Exhibit
12 E). There may be a time lag between when harm occurs and when it is discovered,
13 and also between when PII is stolen and when it is used. According to the U.S.
14 Government Accountability Office (“GAO”), which conducted a study regarding
15 data breaches:

16 [L]aw enforcement officials told us that in some cases, stolen data
17 may be held for up to a year or more before being used to commit
18 identity theft. Further, once stolen data have been sold or posted on
19 the Web, fraudulent use of that information may continue for years.
20 As a result, studies that attempt to measure the harm resulting from
21 data breaches cannot necessarily rule out all future harm. GAO,
22 Report to Congressional Requesters, at 33 (June 2007), *available at*
<http://www.gao.gov/new.items/d07737.pdf> (attached hereto as
Exhibit F)

23 32. Plaintiffs and Class Members now face years of constant surveillance
24 of their financial and personal records, monitoring, and loss of rights. The Class is
25 incurring and will continue to incur such damages in addition to any fraudulent
26 credit and debit card charges incurred by them and the resulting loss of use of their
27 credit and access to funds, whether or not such charges are ultimately reimbursed
28 by the credit card companies.

1 33. As Chief Judge Lasnik observed when sentencing a thief of PII,
2 “identity theft can create huge emotional problems for people. We often think of
3 bank fraud as just against a bank or just money, but it damages real people.” Press
4 Release, United States Attorney’s Office, Western District of Washington,
5 Member of ID Theft Ring That Preyed on Starbucks’ Employees Sentenced to
6 Prison (June 2, 2006), *available at*
7 <http://www.usdoj.gov/usao/waw/press/2006/jun/nguyen.htm> (last visited Apr. 28,
8 2009). Chief Judge Lasnik also noted that the damage of identity theft isn’t just
9 financial, “it causes rifts between husbands and wives, it causes divorces.” *Id.*

10 ***E. Plaintiffs and Class Members Suffered Damages***

11 34. The data breach was a direct and proximate result of Uber’s failure to
12 properly safeguard and protect Plaintiffs’ and Class Members’ PII from
13 unauthorized access, use, and disclosure, as required by various state and federal
14 regulations, industry practices, and the common law, including Uber’s failure to
15 establish and implement appropriate administrative, technical, and physical
16 safeguards to ensure the security and confidentiality of Plaintiffs’ and Class
17 Members’ PII to protect against reasonably foreseeable threats to the security or
18 integrity of such information.

19 35. Plaintiffs and Class Members’ PII is private and sensitive in nature
20 and was inadequately protected by Uber. Uber did not obtain Plaintiffs’ and Class
21 Members’ consent to disclose their PII, except to certain persons not relevant to
22 this action, as required by applicable law and industry standards.

23 36. As a direct and proximate result of Uber’s wrongful action and
24 inaction and the resulting data breach, Plaintiffs and Class Members have been
25 placed at an imminent, immediate, and continuing increased risk of harm from
26 identity theft and identity fraud, requiring them to take the time and effort to
27 mitigate the actual and potential impact of the subject data breach on their lives by,
28 among other things, placing “freezes” and “alerts” with credit reporting agencies,

1 contacting their financial institutions, closing or modifying financial accounts, and
2 closely reviewing and monitoring their credit reports and accounts for
3 unauthorized activity.

4 37. As a result of this breach of security, Plaintiffs' and other Class
5 members' debit cards and credit cards were exposed and subjected to unauthorized
6 charges; their bank accounts were overdrawn and credit limits exceeded; they were
7 deprived of the use of their cards and access to their funds; their preauthorized
8 charge relationships were disrupted; they were required to expend time, energy and
9 expense to address and resolve these financial disruptions and mitigate the
10 consequences; and they suffered consequent emotional distress and their credit and
11 debit card information is at an increased risk of theft and unauthorized use.

12 38. Plaintiffs' and class members were deprived of use of their cards for
13 appreciable periods of time and were unable to access their accounts or their funds;
14 customers lost accumulated miles and points toward bonus awards and were unable
15 to earn points during the interval their cards were inactivated; customers who
16 requested that their cards be cancelled were required to pay fees to issuing banks
17 for replacement cards; customers who had registered their cards with online sellers
18 were required to cancel and change their registered numbers; customers who had
19 given creditors pre-authorization to charge their debit cards or credit cards for
20 recurring payments were required to change the pre-authorizations; customers
21 were placed in non-payment status by virtue of their cards being overdrawn or
22 abruptly cancelled and were required to pay penalties and service reinstatement
23 fees; customers purchased identity theft insurance and credit monitoring services
24 to protect themselves against possible consequences of the breach; customers
25 suffered emotional distress as they were forced to cope with the unauthorized
26 charges and other consequences of Defendant's' data breach, and some customers
27 are still not aware of the data breach or that their data has been compromised.
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1 39. Some of the Plaintiffs’ and class members did not cancel their debit
2 and credit cards and continue to experience fraudulent activity on their accounts.

3 40. Plaintiffs have suffered sufficiently concrete injuries for the purposes
4 of Article III standing. The current rule in the Ninth Circuit comes from *Spokeo*
5 ruling after remand from the United States Supreme Court. *See Robins v. Spokeo,*
6 *Inc.*, No. 11-56843 (9th Cir. Aug. 15, 2017). The “risk of real harm” is sufficient
7 in this circumstance to constitute injury in fact. *Id.*; *Lujan v. Defs. Of Wildlife*, 504
8 U.S. 555, 578 (1992). The nature of a data breach, makes it so that the threatened
9 injury is “certainly impending” as opposed to merely speculative. *Clapper v.*
10 *Amnesty International USA*, 133 S. Ct. 1138, 1147-48 (2013). The reason for that,
11 is that the very nature of a data breach stems from individuals attempting to use the
12 stolen information – this “intangible injury” has already occurred. *See Spokeo, Inc.*
13 *v. Robins*, 136 S. Ct. 1540, 1549 (2016). The harm in a data breach occurs to every
14 affected individual that has had their information acquired without their consent.
15 Whether anticipated conduct or an anticipated injury is likely to happen after a
16 breach is beside the point. Just as in *Spokeo II*, the court did not suggest that
17 “Congress's ability to recognize such injuries turns on whether they would also
18 result in additional future injuries that would satisfy *Clapper*.” *See, e.g., Spokeo*
19 *II*, 136 S. Ct. at 1553 (Thomas, J., concurring).

20 41. Uber’s wrongful actions and inaction directly and proximately caused
21 the theft and dissemination into the public domain of Plaintiffs and Class
22 Members’ PII, causing them to suffer, and continue to suffer, economic damages
23 and other actual harm for which they are entitled to compensation, including:

- 24 a. Theft of their PII;
- 25 b. The imminent and certainly impending injury flowing from potential
26 fraud and identity theft posed by their PII being placed in the hands of
27 criminals and already misused via the sale of Plaintiffs’ and Class
28 Members’ information on the Internet black market;

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- 1 c. The untimely and inadequate notification of the data breach;
- 2 d. The improper disclosure of their PII;
- 3 e. Loss of privacy;
- 4 f. Ascertainable losses in the form of out-of-pocket expenses and the
- 5 value of their time reasonably incurred to remedy or mitigate the
- 6 effects of the data breach;
- 7 g. Ascertainable losses in the form of deprivation of the value of their
- 8 PII, for which there is a well-established national and international
- 9 market;
- 10 h. Overpayments to Uber for booking rides and fees to drivers during the
- 11 subject data breach in that a portion of the price paid for such booking
- 12 by Plaintiffs and Class Members to Uber was for the costs of
- 13 reasonable and adequate safeguards and security measures that would
- 14 protect customers' PII, which Uber and its affiliates did not implement
- 15 and, as a result, Plaintiffs and Class Members did not receive what they
- 16 paid for and were overcharged by Uber; and
- 17 i. Deprivation of rights they possess under the Unfair
- 18 Competition Laws.

19 **V. CLASS ACTION ALLEGATIONS**

20 42. Plaintiffs brings this action on their own behalf and pursuant to the
21 Federal Rules of Civil Procedure Rule 23(a), (b)(2), (b)(3), and (c)(4), Plaintiffs
22 seeks certification of a Nationwide class and a California class. The nationwide
23 class is initially defined as follows:

24 All persons residing in the United States whose PII was
25 disclosed in the data breach in 2016 (the "Nationwide Class").

26 The California class is initially defined as follows:
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1 All persons residing in California whose PII was disclosed in
2 the data breach in 2016 (the “California Class”).

3 43. Excluded from each of the above Classes are Uber, including any
4 entity in which Uber has a controlling interest, is a parent or subsidiary, or which
5 is controlled by Uber, as well as the officers, directors, affiliates, legal
6 representatives, heirs, predecessors, successors, and assigns of Uber. Also
7 excluded are the judges and court personnel in this case and any members of their
8 immediate families. Plaintiffs reserves the right to amend the Class definitions if
9 discovery and further investigation reveal that the Classes should be expanded or
10 otherwise modified.

11 44. *Numerosity*. Fed. R. Civ. P. 23(a)(1). The members of the Classes are
12 so numerous that the joinder of all members is impractical. While the exact number
13 of Class Members is unknown to Plaintiffs at this time, Uber has acknowledged
14 that customers’ PII was stolen for a period of over a year. The disposition of the
15 claims of Class Members in a single action will provide substantial benefits to all
16 parties and to the Court. The Class Members are readily identifiable from
17 information and records in Uber’s possession, custody, or control.

18 45. *Commonality*. Fed. R. Civ. P. 23(a)(2) and (b)(3). There are questions
19 of law and fact common to the Classes, which predominate over any questions
20 affecting only individual Class Members. These common questions of law and fact
21 include, without limitation:

- 22 a. Whether Uber owed a duty of care to Plaintiffs and Class Members
23 with respect to the security of their personal information;
- 24 b. Whether Uber took reasonable steps and measures to safeguard
25 Plaintiffs’ and Class Members’ personal information;
- 26 c. Whether Uber violated California’s Unfair Competition Law by
27 failing to implement reasonable security procedures and practices;
- 28 d. Whether Uber violated common and statutory law by

- 1 failing to promptly notify Class Members their Private Identifiable
2 Information had been compromised;
- 3 e. Which security procedures and which data-breach notification
4 procedure should Uber be required to implement as part of any
5 injunctive relief ordered by the Court;
- 6 f. Whether Uber has an implied contractual obligation to use reasonable
7 security measures;
- 8 g. Whether Uber has complied with any implied contractual obligation
9 to use reasonable security measures;
- 10 h. Whether Uber acts and omissions described herein give rise to a claim
11 of negligence;
- 12 i. Whether Uber knew or should have known of the security breach prior
13 to its November 2017 disclosure;
- 14 j. Whether Uber had a duty to promptly notify Plaintiffs and Class
15 Members that their personal information was, or potentially could be,
16 compromised;
- 17 k. What security measures, if any, must be implemented by Uber to
18 comply with its implied contractual obligations;
- 19 l. Whether Uber violated California's privacy laws in connection with
20 the acts and omissions described herein;
- 21 m. What the nature of the relief should be, including equitable relief, to
22 which Plaintiffs and the Class Members are entitled;
- 23 n. Whether Uber willfully and/or negligently violated the Fair Credit
24 Reporting Act, 15 U.S.C. § 1681, *et seq.*; and
- 25 o. Whether Plaintiffs and the Class are entitled to damages, civil
26 penalties, punitive damages, and/or injunctive relief.
- 27
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1 (On Behalf of Plaintiffs and the Nationwide and California Classes)

2 51. Plaintiffs incorporate the substantive allegations contained in each
3 and every paragraph of this Complaint.

4 52. Uber's system solicited and invited Plaintiffs and the members of the
5 Class to book rides, and for drivers to drive customers. Plaintiffs and Class
6 Members accepted Uber's offers and booked rides through Uber.

7 53. When Plaintiffs and Class Members booked rides through Uber, they
8 provided their Private Identifiable Information. In so doing, Plaintiffs and Class
9 Members entered into implied contracts with Uber to which Uber agreed to
10 safeguard and protect such information and to timely and accurately notify
11 Plaintiffs and Class Members if their data had been breached and compromised.

12 54. Each booking made with Uber's system by Plaintiffs and Class
13 Members was made pursuant to the mutually agreed-upon implied contract with
14 Uber and the drivers using their system under which Uber agreed to safeguard and
15 protect Plaintiffs' and Class Members' Private Identifiable Information and to
16 timely and accurately notify them if such information was compromised or stolen.

17 55. Plaintiffs and Class Members would not have provided and entrusted
18 their Private Identifiable Information to Uber in the absence of the implied contract
19 between them and Uber.

20 56. Plaintiffs and Class Members fully performed their obligations under
21 the implied contracts with Uber.

22 57. Uber breached the implied contracts it made with Plaintiffs and Class
23 Members by failing to safeguard and protect the Private Identifiable Information
24 of Plaintiffs and Class Members and by failing to provide timely and accurate
25 notice to them that their Private Identifiable Information was compromised as a
26 result of the data breach.

27 58. As a direct and proximate result of Uber's breaches of the implied
28 contracts between Uber and Plaintiffs and Class Members, Plaintiffs and Class

1 Members sustained actual losses and damages as described in detail above.

2 **COUNT II**

3 **Negligence**

4 (On Behalf of Plaintiffs and the Nationwide and California Classes)

5 59. Plaintiffs repeats and fully incorporates the allegations contained in
6 each and every paragraph of this Complaint.

7 60. A special relationship exists between Defendants and the Consumer
8 Plaintiffs and the Class. Defendants actively solicited Consumer Plaintiffs and the
9 other Class members to use their PII in sales transactions at Defendants' stores.
10 When Consumer Plaintiffs and the other Class members gave their PII to
11 Defendants to facilitate and close sales transactions, they did so with the mutual
12 understanding that Defendants had reasonable security measures in place and
13 Defendants would take reasonable steps to protect and safeguard the PII of
14 Consumer Plaintiffs and the other Class members. Consumer Plaintiffs and the
15 other Class members also gave their PII to Defendants on the premise that
16 Defendants were in a superior position to protect against the harms attendant to
17 unauthorized access, theft and misuse of that information.

18 61. Upon accepting Plaintiffs' and Class Members' Private Identifiable
19 Information in their respective point-of-sale systems, Uber undertook and owed a
20 duty to Plaintiffs and Class Members to exercise reasonable care to secure and
21 safeguard that information from being compromised, lost, stolen, misused, and
22 or/disclosed to unauthorized parties, and to utilize commercially reasonable
23 methods to do so. This duty included, among other things, designing, maintaining,
24 and testing Uber's security systems to ensure that Plaintiffs' and the Class
25 Members' PII was adequately secured and protected.

26 62. Uber further had a duty to implement processes that would detect a
27 breach of its security system in a timely manner.

28 63. Uber had a duty to timely disclose to Plaintiffs and Class Members

1 that their Private Identifiable Information had been or was reasonably believed to
2 have been compromised. Timely disclosure was appropriate so that, among other
3 things, Plaintiffs and Class Members could take appropriate measures to avoid use
4 of bank funds, and monitor their account information and credit reports for
5 fraudulent activity.

6 64. Uber breached its duty to discover and to notify Plaintiffs and Class
7 Members of the unauthorized access by failing to discover the security breach
8 within reasonable time and by failing to notify Plaintiffs and Class Members of the
9 breach until November of 2017. To date, Uber has not provided sufficient
10 information to Plaintiffs and Class Members regarding the extent and scope of the
11 unauthorized access and continues to breach its disclosure obligations to Plaintiffs
12 and the Class.

13 65. Uber also breached its duty to Plaintiffs and Class Members to
14 adequately protect and safeguard this information by knowingly disregarding
15 standard information security principles, despite obvious risks, and by allowing
16 unmonitored and unrestricted access to unsecured Private Identifiable Information.
17 Furthering its negligent practices, Uber failed to provide adequate supervision and
18 oversight of the Private Identifiable Information with which it is entrusted, in spite
19 of the known risk and foreseeable likelihood of breach and misuse, which
20 permitted a third party to gather Plaintiffs' and Class Members' Private Identifiable
21 Information, misuse the Private Identifiable Information, and intentionally disclose
22 it to others without consent.

23 66. Through Uber's acts and omissions described in this Complaint,
24 including Uber's failure to provide adequate security and its failure to protect
25 Plaintiffs' and Class Members' Private Identifiable Information from being
26 foreseeably captured, accessed, disseminated, stolen, and misused, Uber
27 unlawfully breached its duty to use reasonable care to adequately protect and
28 secure Plaintiffs and Class Members' Private Identifiable Information during the

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1 time it was within Uber’s control.

2 67. Further, through its failure to timely discover and provide clear
3 notification of the data breach to consumers, Uber prevented Plaintiffs and Class
4 Members from taking meaningful, proactive steps to secure their Private
5 Identifiable Information.

6 68. Upon information and belief, Uber improperly and inadequately
7 safeguarded the Private Identifiable Information of Plaintiffs and Class Members
8 in deviation from standard industry rules, regulations, and practices at the time of
9 the data breach.

10 69. Uber’s failure to take proper security measures to protect Plaintiffs
11 and Class Members’ sensitive PII as described in this Complaint, created
12 conditions conducive to a foreseeable, intentional criminal act, namely the
13 unauthorized access of Plaintiffs and Class Members’ Private Identifiable
14 Information.

15 70. Uber’s conduct was grossly negligent and departed from all
16 reasonable standards of care, including, but not limited to: failing to adequately
17 protect the Private Identifiable Information; failing to conduct adequate regular
18 security audits; failing to provide adequate and appropriate supervision of persons
19 having access to Plaintiffs’ and Class Members’ Private Identifiable Information.

20 71. Neither Plaintiffs nor the other Class Members contributed to the data
21 breach and subsequent misuse of their Private Identifiable Information as described
22 in this Complaint. As a direct and proximate result of Uber’s negligence, Plaintiffs
23 and Class Members sustained actual losses and damages as described in detail
24 above.

25 **COUNT III**

26 **Violation of California’s Unfair Competition Law Cal. Bus. & Prof. Code §**

27 **17200 Unlawful Business Practices**

28 (On Behalf of the California Class)

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1 72. Plaintiffs repeats and fully incorporates the allegations contained in
2 each and every allegation of this Complaint.

3 73. Uber has violated Cal. Bus. and Prof. Code §17200 et seq. by
4 engaging in unlawful, unfair or fraudulent business acts and practices and unfair,
5 deceptive, untrue or misleading advertising that constitute acts of “unfair
6 competition” as defined in Cal. Bus. Prof. Code §17200. Uber engaged in unlawful
7 acts and practices with respect to its services by establishing the sub-standard
8 security practices and procedures described herein; by soliciting and collecting
9 Plaintiffs’ and Class Members’ Private Identifiable Information with knowledge
10 that the information would not be adequately protected; and by gathering Plaintiffs’
11 and Class Members’ Private Identifiable Information in an unsecure electronic
12 environment in violation of California’s data breach statute, Cal. Civ. Code §
13 1798.81.5, which requires Uber to take reasonable methods of safeguarding the
14 Private Identifiable Information of Plaintiffs and the Class Members.

15 74. In addition, Uber engaged in unlawful acts and practices with respect
16 to its services by failing to discover and then disclose the data breach to Plaintiffs
17 and Class Members in a timely and accurate manner, contrary to the duties imposed
18 by Cal. Civ. Code § 1798.82. To date, Uber has still not provided such sufficient
19 information to Plaintiffs and the Class Members.

20 75. As a direct and proximate result of Uber’s unlawful acts and practices,
21 Plaintiffs and the Class Members were injured and lost money or property,
22 including but not limited to the loss of their legally protected interest in the
23 confidentiality and privacy of their Private Identifiable Information, and additional
24 losses described above.

25 76. Uber knew or should have known that its system had been breached
26 and data security practices were inadequate to safeguard Class Members’ Private
27 Identifiable Information and that the risk of a data breach or theft was highly likely.
28 Uber’s actions in engaging in the above-named unlawful practices and acts were

1 negligent, knowing and willful, and/or wanton and reckless with respect to the
2 rights of Class Members.

3 77. Plaintiffs and members of the Classes seek relief under Cal. Bus. &
4 Prof. Code § 17200, *et. seq.*, including, but not limited to, restitution to Plaintiffs
5 and Class Members of money or property that Uber may have acquired by means
6 of its unlawful, and unfair business practices, restitutionary disgorgement of all
7 profits accruing to Uber because of its unlawful and unfair business practices,
8 declaratory relief, attorney’s fees and costs (pursuant to Cal. Code Civ. Proc. §
9 1021.5), and injunctive or other equitable relief.

10 **COUNT IV**

11 **Violation of California’s Unfair Competition Law Cal. Bus. & Prof. Code**
12 **§17200 Unfair Business Practices**

13 (On Behalf of the California Class)

14 78. Plaintiffs repeats and fully incorporates the allegations contained in
15 each and every allegation of this Complaint.

16 79. Uber engaged in unfair acts and practices by soliciting and collecting
17 Plaintiffs’ and Class Members’ Private Identifiable Information with knowledge
18 that the information would not be adequately protected; while Plaintiffs’ and the
19 Class Members’ Private Identifiable Information would be processed in an
20 unsecure electronic environment. These unfair acts and practices were immoral,
21 unethical, oppressive, unscrupulous, unconscionable, and/or substantially injurious
22 to Plaintiffs and Class Members. They were likely to deceive the public into
23 believing their Private Identifiable Information was secure, when it was not. The
24 harm these practices caused to Plaintiffs and the members of the Class outweighed
25 their utility, if any.

26 80. Uber engaged in unfair acts and practices with respect to the provision
27 of its services by failing to enact adequate privacy and security measures and
28 protect Class Members’ Private Identifiable Information from further unauthorized

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1 disclosure, release, data breaches, and theft, and failing to timely discovery and
2 give notice of the Data Breach. These unfair acts and practices were immoral,
3 unethical, oppressive, unscrupulous, unconscionable, and/or substantially injurious
4 to Plaintiffs and Class Members. They were likely to deceive the public into
5 believing their Private Identifiable Information was secure, when it was not. The
6 harm these practices caused to Plaintiffs and the Class Members outweighed their
7 utility, if any.

8 81. As a direct and proximate result of Uber's acts of unfair practices and
9 acts, Plaintiffs and the members of the Class were injured and lost money or
10 property, including but not limited to the loss of their legally protected interest in
11 the confidentiality and privacy of their PII, and additional losses described above.

12 82. Uber knew or should have known that its systems and data security
13 practices were inadequate to safeguard Class Members' Private Identifiable
14 Information and that the risk of a data breach or theft was highly likely. Uber's
15 actions in engaging in the above-named unlawful practices and acts were negligent,
16 knowing and willful, and/or wanton and reckless with respect to the rights of the
17 Class Members.

18 83. The members of the Class seek relief under Cal. Bus. & Prof. Code
19 § 17200, *et. seq.*, including, but not limited to, restitution to Plaintiffs and Class
20 Members of money or property that the Uber may have acquired by means of its
21 unfair business practices, restitutionary disgorgement of all profits accruing to
22 Uber because of its unfair business practices, declaratory relief, attorney's fees
23 and costs (pursuant to Cal. Code Civ. Proc. §1021.5), and injunctive or other
24 equitable relief.

25 **COUNT V**

26 **Violation of California's Unfair Competition Law Cal. Bus. & Prof. Code**
27 **§17200 Fraudulent/Deceptive Business Practices**

28 (On Behalf of the California Class)

1 84. Plaintiffs repeats and fully incorporates the allegations contained in
2 each and every allegation of this Complaint.

3 85. Uber engaged in fraudulent and deceptive acts and practices by
4 representing and advertising that it would maintain adequate data privacy and
5 security practices and procedures to safeguard the Class Members' Private
6 Identifiable Information from unauthorized disclosure, release, data breaches, and
7 theft; and representing and advertising that it did and would comply with the
8 requirements of relevant federal and state laws pertaining to the privacy and
9 security of the members of the Class' Private Identifiable Information. These
10 representations were likely to deceive members of the public, including Plaintiffs
11 and Class Members, into believing their Private Identifiable Information was
12 securely stored, when it was not, and that Uber was complying with relevant law,
13 when it was not.

14 86. Uber engaged in fraudulent and deceptive acts and practices by
15 omitting, suppressing, and concealing the material fact of the inadequacy of the
16 privacy and security protections for Class Members' Private Identifiable
17 Information. At the time that Class Members were booking rides through Uber's
18 system, Uber failed to disclose to Class Members that its data security systems
19 failed to meet legal and industry standards for the protection of their Private
20 Identifiable Information. Plaintiffs would not have booked rides with Uber if
21 they had known about its substandard data security practices. These
22 representations were likely to deceive members of the public, including Plaintiffs
23 and the Class Members, into believing their Private Identifiable Information was
24 secure, when it was not, and that Uber was complying with relevant law and
25 industry standards, when it was not.

26 87. As a direct and proximate result of Uber's deceptive practices and
27 acts, Plaintiffs and the Class Members were injured and lost money or property,
28 including but not limited to the loss of their legally protected interest in the

1 confidentiality and privacy of their Private Identifiable Information, and
2 additional losses described above.

3 88. Uber knew or should have known that its system and data security
4 practices were inadequate to safeguard Class Members' PII and that the risk of a
5 data breach or theft was highly likely. Uber's actions in engaging in the above-
6 named unlawful practices and acts were negligent, knowing and willful, and/or
7 wanton and reckless with respect to the rights of Class Members.

8 89. Class Members seek relief under Cal. Bus. & Prof. Code § 17200, *et*
9 *seq.*, including, but not limited to, restitution to Plaintiffs and Class Members of
10 money or property that Uber may have acquired by means of its fraudulent and
11 deceptive business practices, restitutionary disgorgement of all profits accruing to
12 Uber because of its fraudulent and deceptive business practices, declaratory
13 relief, attorney's fees and costs (pursuant to Cal. Code Civ. Proc. §1021.5), and
14 injunctive or other equitable relief.

15 **COUNT VI**

16 **Unfair and Deceptive Business Practices**

17 (On Behalf of the Nationwide Class)

18 90. Plaintiffs repeats and fully incorporates the allegations contained in
19 each and every allegation of this Complaint.

20 91. Plaintiffs bring this Count individually, and on behalf of all similarly
21 situated residents of each of the 50 States and the District of Columbia, aside
22 from the state of California, for violations of the respective statutory consumer
23 protection laws, as follows:

- 24 a. the Alabama Deceptive Trade Practices Act, Ala.Code 1975, § 8–
25 19–1, *et seq.*;
- 26 b. the Alaska Unfair Trade Practices and Consumer Protection Act, AS
27 § 45.50.471, *et seq.*;
- 28 c. the Arizona Consumer Fraud Act, A.R.S §§ 44-1521, *et seq.*;

- 1 d. the Arkansas Deceptive Trade Practices Act, Ark.Code §§ 4-88-101,
- 2 *et seq.*;
- 3 e. the Colorado Consumer Protection Act, C.R.S.A. §6-1-101, *et seq.*;
- 4 f. the Connecticut Unfair Trade Practices Act, C.G.S.A. § 42-110, *et*
- 5 *seq.*;
- 6 g. the Delaware Consumer Fraud Act, 6 Del. C. § 2513, *et seq.*;
- 7 h. the D.C. Consumer Protection Procedures Act, DC Code § 28-3901,
- 8 *et seq.*;
- 9 i. the Florida Deceptive and Unfair Trade Practices Act, FSA §
- 10 501.201, *et seq.*;
- 11 j. the Georgia Fair Business Practices Act, OCGA § 10-1-390, *et seq.*;
- 12 k. the Hawaii Unfair Competition Law, H.R.S. § 480-1, *et seq.*;
- 13 l. the Idaho Consumer Protection Act, I.C. § 48-601, *et seq.*;
- 14 m. the Illinois Consumer Fraud and Deceptive Business Practices Act,
- 15 815 ILCS 501/1 *et seq.*;
- 16 n. the Indiana Deceptive Consumer Sales Act, IN ST § 24-5-0.5-2, *et*
- 17 *seq.*
- 18 o. the Iowa Private Right of Action for Consumer Frauds Act, Iowa
- 19 Code Ann. § 714H.1, *et seq.*;
- 20 p. the Kansas Consumer Protection Act, K.S.A. § 50-623, *et seq.*;
- 21 q. the Kentucky Consumer Protection Act, KRS 367.110, *et seq.*;
- 22 r. the Louisiana Unfair Trade Practices and Consumer Protection Law,
- 23 LSA-R.S. 51:1401, *et seq.*;
- 24 s. the Maine Unfair Trade Practices Act, 5 M.R.S.A. § 205-A, *et seq.*;
- 25 t. the Maryland Consumer Protection Act, MD Code, Commercial
- 26 Law, § 13-301, *et seq.*;
- 27 u. the Massachusetts Regulation of Business Practices for Consumers
- 28 Protection Act, M.G.L.A. 93A, *et seq.*;

- 1 v. the Michigan Consumer Protection Act, M.C.L.A. 445.901, *et seq.*;
- 2 w. the Minnesota Prevention of Consumer Fraud Act, Minn. Stat. §
- 3 325F.68, *et seq.*;
- 4 x. the Mississippi Consumer Protection Act, Miss. Code Ann. § 75-24-
- 5 1, *et seq.*
- 6 y. the Missouri Merchandising Practices Act, V.A.M.S. § 407, *et seq.*;
- 7 z. the Montana Unfair Trade Practices and Consumer Protection Act of
- 8 1973, Mont. Code Ann. § 30-14-101, *et seq.*;
- 9 aa. the Nebraska Consumer Protection Act, Neb.Rev.St. §§ 59-1601, *et*
- 10 *seq.*;
- 11 bb. the Nevada Deceptive Trade Practices Act, N.R.S. 41.600, *et seq.*;
- 12 cc. the New Hampshire Regulation of Business Practices for Consumer
- 13 Protection, N.H.Rev.Stat. § 358-A:1, *et seq.*;
- 14 dd. the New Jersey Consumer Fraud Act, N.J.S.A. 56:8, *et seq.*;
- 15 ee. the New Mexico Unfair Practices Act, N.M.S.A. §§ 57-12-1, *et seq.*;
- 16 ff. the New York Consumer Protection from Deceptive Acts and
- 17 Practices, N.Y. GBL (McKinney) § 349, *et seq.*;
- 18 gg. the North Carolina Unfair and Deceptive Trade Practices Act, N.C.
- 19 Gen Stat. § 75-1.1, *et seq.*;
- 20 hh. the North Dakota Consumer Fraud Act, N.D. Cent.Code Chapter 51-
- 21 15, *et seq.*;
- 22 ii. the Ohio Consumer Sales Practices Act, R.C. 1345.01, *et seq.*;
- 23 jj. the Oklahoma Consumer Protection Act, 15 O.S.2001, §§ 751, *et*
- 24 *seq.*;
- 25 kk. the Oregon Unlawful Trade Practices Act, ORS 646.605, *et seq.*;
- 26 ll. the Pennsylvania Unfair Trade Practices and Consumer Protection
- 27 Law, 73 P.S. § 201-1, *et seq.*;
- 28 mm. the Rhode Island Deceptive Trade Practices Act, G.L.1956 § 6-13.1-

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- 1 5.2(B), *et seq.*;
- 2 nn. the South Carolina Unfair Trade Practices Act, SC Code 1976, §§
- 3 39-5-10, *et seq.*;
- 4 oo. the South Dakota Deceptive Trade Practices and Consumer
- 5 Protection Act, SDCL § 37-24-1, *et seq.*;
- 6 pp. the Tennessee Consumer Protection Act, T.C.A. § 47-18-101, *et*
- 7 *seq.*;
- 8 qq. the Texas Deceptive Trade Practices-Consumer Protection Act,
- 9 V.T.C.A., Bus. & C. § 17.41, *et seq.*;
- 10 rr. the Utah Consumer Sales Practices Act, UT ST § 13-11-1, *et seq.*;
- 11 ss. the Vermont Consumer Fraud Act, 9 V.S.A. § 2451, *et seq.*;
- 12 tt. the Virginia Consumer Protection Act of 1977, VA ST § 59.1-196,
- 13 *et seq.*;
- 14 uu. the Washington Consumer Protection Act, RCWA 19.86.010, *et*
- 15 *seq.*;
- 16 vv. the West Virginia Consumer Credit And Protection Act, W.Va.Code
- 17 § 46A-1-101, *et seq.*;
- 18 ww. the Wisconsin Deceptive Trade Practices Act, WIS.STAT. § 100.18,
- 19 *et seq.*; and
- 20 xx. the Wyoming Consumer Protection Act, WY ST § 40-12-101, *et*
- 21 *seq.*

22 92. Uber violated the statutes set forth above (collectively, the
23 “Consumer Protection Acts”) by failing to properly implement adequate,
24 commercially reasonable security measures to protect Plaintiffs and Class
25 Members’ PII, and by allowing third parties to access Plaintiffs’ and Class
26 Members’ PII.

27 93. Uber further violated the Consumer Protection Acts by failing to
28 disclose to the consumers that its data security practices were inadequate, thus

1 inducing consumers to schedule and book rides through Uber.

2 94. Uber's acts and/or omissions constitute fraudulent, deceptive, and/or
3 unfair acts or omissions under the Consumer Protection Acts.

4 95. Plaintiffs and other Class Members were deceived by Uber's failure
5 to properly implement adequate, commercially reasonable security measures to
6 protect their PII.

7 96. Uber intended for Plaintiffs and other Class Members to rely on
8 Uber to protect the information furnished to it in connection with debit and credit
9 card transactions and/or otherwise collected by Uber, in such manner that
10 Plaintiffs' PII would be protected, secure and not susceptible to access from
11 unauthorized third parties.

12 97. Uber instead handled Plaintiffs' and other Class Members'
13 information in such manner that it was compromised.

14 98. Uber failed to follow industry best practices concerning data security
15 or was negligent in preventing the Data Breach from occurring.

16 99. It was foreseeable that Uber's willful indifference or negligent
17 course of conduct in handling PII it collected would put that information at the
18 risk of compromise by data thieves.

19 100. On information and belief, Uber benefited from mishandling the PII
20 of customers, by not taking effective measures to secure this information, and
21 therefore saving on the cost of providing data security.

22 101. Uber's fraudulent and deceptive acts and omissions were intended to
23 induce Plaintiffs' and Class Members' reliance on Uber's deception that their
24 Private Information was secure.

25 102. Uber's conduct offends public policy and constitutes unfair acts or
26 practices under the Consumer Protection Acts because Uber caused substantial
27 injury to Class Members that is not offset by countervailing benefits to
28 consumers or competition, and is not reasonably avoidable by consumers.

1 103. Uber’s acts or practice of failing to employ reasonable and
2 appropriate security measures to protect Private Information constitute violations
3 of the Federal Trade Commission Act, 15 U.S.C. § 45(a), which the courts
4 consider when evaluating claims under the Consumer Protection Acts, including
5 815 ILCS 505/2.

6 104. Uber’s conduct constitutes unfair acts or practices as defined in the
7 Consumer Protection Acts because Uber caused substantial injury to Class
8 members, which injury is not offset by countervailing benefits to consumers or
9 competition and was not reasonably avoidable by consumers.

10 105. Plaintiffs and other Class Members have suffered injury in fact and
11 actual damages including lost money and property as a result of Uber’s violations
12 of the Consumer Protection Acts.

13 106. Uber’s fraudulent and deceptive behavior proximately caused
14 Plaintiffs’ and Class Members’ injuries, and Uber conducted itself with reckless
15 indifference toward the rights of others, such that an award of punitive damages
16 is appropriate.

17 107. Uber’s failure to disclose information concerning the Data Breach
18 directly and promptly to affected customers, constitutes a separate fraudulent act
19 or practice in violation of the Consumer Protection Acts.

20 108. Plaintiffs seek attorney’s fees and damages to the fullest extent
21 permitted under the Consumer Protection Acts, including N.Y. G.B.L. § 349(h).

22 **COUNT VII**

23 **Constitutional Invasion of Privacy**

24 (On Behalf of the California Class)

25 109. Plaintiffs repeats and fully incorporates the allegations contained in
26 each and every allegation of this Complaint.

27 110. Cal. Const., Art. 1., section 1 provides that “[a]ll people are by
28 nature free and independent and have inalienable rights. Among these are

1 enjoying and defending life and liberty, acquiring, possessing, and protecting
2 property, and pursuing and obtaining safety, happiness, and privacy.”

3 111. Plaintiffs and Class members had a legally protected privacy interest
4 in the Private Identifiable Information provided to Uber.

5 112. Plaintiffs and Class Members had a reasonable expectation of
6 privacy as to the Private Identifiable Information they provided to Uber under the
7 circumstances of their purchases.

8 113. Uber's actions and inactions amounted to a serious invasion of the
9 protected privacy interests of Plaintiffs and Class Members.

10 114. Uber's invasion of Plaintiffs and Class Members' reasonable
11 expectation of privacy caused Plaintiffs and Class members to suffer damages.

12 **COUNT VIII**

13 ***Negligence Per Se***

14 (On Behalf of Plaintiffs and the Nationwide and California Classes

15 115. Plaintiffs repeats and fully incorporates the allegations contained in
16 each and every allegation of this Complaint.

17 116. Pursuant to the Federal Trade Commission Act (15 U.S.C. §45),
18 Uber had a duty to provide fair and adequate computer systems and data security
19 practices to safeguard Plaintiffs' and Class Members' PII.

20 117. Pursuant to the Gramm-Leach-Bliley Act (15 U.S.C. § 6801), Uber
21 had a duty to protect the security and confidentiality of Plaintiffs' and Class
22 Members' PII.

23 118. Pursuant to state laws in the following 12 states, Uber operating in
24 those states had a duty to those respective states' Class Members to implement
25 and maintain reasonable security procedures and practices to safeguard Plaintiffs'
26 and Class Members' Personal Information:

27 a. Arkansas: Ark. Code § 4-110-104

28 b. California: Cal Civ. Code § 1798.81.5

- c. Connecticut: Conn. Gen. Stat. § 42-471
- d. Florida: Fla. Stat. § 501.171(2)
- e. Indiana: Ind. Code § 24-4.9-3.5
- f. Maryland: Md. Code. Comm. Law § 14-5303
- g. Massachusetts: Mass. Gen Laws Ch. 93H, § 3(a)
- h. Nevada: Nev. Rev. Stat. § 603A.210
- i. Oregon: Ore. Rev. Stat. § 646A.622(1)
- j. Rhode Island: R.I. Gen Laws § 11-49.2-2(2)
- k. Texas: Tex. Bus. & Com. Code § 521.052(a)
- l. Utah: Utah Code § 14-44-201(1)(a)

11 119. Uber breached their duties to Plaintiffs and Statewide Class
12 Members under the Federal Trade Commission Act (15 U.S.C. § 45), Gramm-
13 Leach-Bliley Act (15 U.S.C. § 6801), and the state reasonable data security
14 statutes by failing to provide fair, reasonable, or adequate computer systems and
15 data security practices to safeguard Plaintiffs' and Class Members' Personal
16 Information.

17 120. Uber's failure to comply with applicable laws and regulations
18 constitutes negligence *per se*.

19 121. But for Uber's wrongful and negligent breach of their duties owed to
20 Plaintiffs and Statewide Class Members, Plaintiffs and Statewide Class Members
21 would not have been injured.

22 122. The injury and harm suffered by Plaintiffs and Statewide Class
23 Members was the reasonably foreseeable result of Uber's breach of their duties.
24 Uber knew or should have known that they were failing to meet their duties, and
25 that Uber's breach would cause Plaintiffs and Statewide Class Members to
26 experience the foreseeable harms associated with the exposure of their Personal
27 Information.

28 123. As a direct and proximate result of Uber negligent conduct,

1 Plaintiffs and Class Members have suffered injury and are entitled to damages in
2 an amount to be proven at trial.

3 **COUNT IX**

4 **Breach of the Covenant of Duty of Good Faith and Fair Dealing**

5 (On Behalf of Plaintiffs and the Nationwide and California Classes)

6 124. Plaintiffs repeats and fully incorporates the allegations contained in
7 each and every allegation of this Complaint.

8 125. The law implies a covenant of good faith and fair dealing in every
9 contract.

10 126. Plaintiffs and Class Members contracted with Defendant by
11 accepting Defendant’s offers and paying for the booking of rides.

12 127. Plaintiffs and Class Members performed all of the significant duties
13 under their agreements with Defendant.

14 128. The conditions required for Uber’s performance under the contract
15 has occurred.

16 129. Uber did not provide and/or unfairly interfered with and/or frustrated
17 the right of Plaintiffs and the Class Members to receive the full benefits under
18 their agreement.

19 130. Uber breached the covenant of good faith and fair dealing implied in
20 its contracts with Plaintiffs and the Class Members by failing to use and provide
21 reasonable and industry-leading security practices.

22 131. Plaintiffs and the Class Members were damaged by Uber’s breach
23 in that they paid for, but never received, the valuable security protections to
24 which they were entitled, and which would have made their products and services
25 more valuable.

26
27
28 **COUNT X**

Violation of State Data Breach Acts

(On Behalf of Plaintiffs and the Nationwide and California Classes)

132. Plaintiffs repeats and fully incorporates the allegations contained in each and every allegation of this Complaint.

133. Uber owns, licenses and/or maintains computerized data that includes Plaintiffs' and Class Members' PII.

134. Uber was required to, but failed, to take all reasonable steps to dispose, or arrange for the disposal, of records within its custody or control containing PII when the records were no longer to be retained, by shredding, erasing, or otherwise modifying the personal information in those records to make it unreadable or undecipherable through any means.

135. Uber's conduct, as alleged above, violated the data breach statutes of many states, including:

- a. California, Cal. Civ. Code §§ 1798.80 et. seq.;
- b. Hawaii, Haw. Rev. Stat. § 487N-1-4 (2006);
- c. Illinois, 815 Ill. Comp Stat. Ann. 530/1-30 (2006);
- d. Louisiana, La. Rev. Stat. § 51:3071-3077 (2005), and L.A.C. 16:III.701;
- e. Michigan, Mich. Comp. Laws Ann. §§ 445.63, 445.65, 445.72 (2006);
- f. New Hampshire, N.H. Rev. Stat. Ann. §§ 359-C:19-C:21, 358-A:4 (2006)., 332-I:1-I:610;
- g. New Jersey, N.J. Stat. Ann. § 56:8-163-66 (2005);
- h. North Carolina, N.C. Gen. Stat. §§ 75-65 (2005); as amended (2009);
- i. Oregon, Or. Rev. Stat. §§ 646A.602, 646A.604, 646A.624 (2011);
- j. Puerto Rico, 10 L.P.R.A. § 4051; 10 L.P.R.A. § 4052 (2005), as

1 amended (2008);

2 k. South Carolina, S.C. Code § 1-11-490 (2008); S.C. Code § 39-1-
3 90 (2009);

4 l. Virgin Islands, 14 V.I.C. § 2208, et seq. (2005);

5 m. Virginia, Va. Code Ann. § 18.2-186.6 (2008); Va. Code Ann. §
6 32.1– 127.1:05 (2011); and

7 n. the District of Columbia, D.C. Code § 28-3851 to 28-3853
8 (2007) (collectively, the “State Data Breach Acts”).

9 136. Uber was required to, but failed, to implement and maintain
10 reasonable security procedures and practices appropriate to the nature and scope
11 of the information compromised in the Data Breach.

12 137. The Data Breach constituted a “breach of the security system”
13 within the meaning of section 1798.82(g) of the California Civil Code, and other
14 State Data Breach Acts.

15 138. The information compromised in the Data Breach constituted
16 “personal information” within the meaning of section 1798.80(e) of the
17 California Civil Code, and other State Data Breach Acts.

18 139. Like other State Data Breach Acts, California Civil Code §
19 1798.80(e) requires disclosure of data breaches “in the most expedient time
20 possible and without unreasonable delay”

21 140. Uber violated Cal. Civ. Code § 1798.80(e) and other State Data
22 Breach Acts by unreasonably delaying disclosure of the Data Breach to Plaintiffs
23 and other Class Members, whose PII was, or was reasonably believed to have
24 been, acquired by an unauthorized person.

25 141. Upon information and belief, no law enforcement agency instructed
26 Uber that notification to Plaintiffs and Class Members would impede a criminal
27 investigation.

28 142. As a result of Uber’s violation of State Data Breach Acts, including

1 Cal. Civ. Code § 1798.80, et seq., Plaintiffs and Class Members incurred
2 economic damages, including expenses associated with monitoring their personal
3 and financial information to prevent further fraud.

4 143. Plaintiffs, individually and on behalf of the Class, seek all remedies
5 available under Cal. Civ. Code § 1798.84 and under the other State Data Breach
6 Acts, including, but not limited to: (a) actual damages suffered by Class Members
7 as alleged above; (b) statutory damages for Uber’s willful, intentional, and/or
8 reckless violation of Cal. Civ. Code § 1798.83; (c) equitable relief; and (d)
9 reasonable attorneys’ fees and costs under Cal. Civ. Code §1798.84(g).

10 144. Because Uber was guilty of oppression, fraud or malice, in that it
11 failed to act with a willful and conscious disregard of Plaintiffs’ and Class
12 Members’ rights, Plaintiffs also seek punitive damages, individually and on
13 behalf of the Class.

14 **VI. PRAYER FOR RELIEF**

15 WHEREFORE, Plaintiffs, individually and on behalf of all Class Members
16 proposed in this Complaint, respectfully requests that the Court enter judgment in
17 her favor and against Uber as follows:

- 18 A. For an Order certifying the Nationwide Class and California Class as
19 defined here, and appointing Plaintiffs and her Counsel to represent
20 the Nationwide Class and the California Class;
- 21 B. For equitable relief enjoining Uber from engaging in the wrongful
22 conduct complained of here pertaining to the misuse and/or
23 disclosure of Plaintiffs’ and Class Members’ Private Identifiable
24 Information, and from refusing to issue prompt, complete, and
25 accurate disclosures to the Plaintiffs and Class Members;
- 26 C. For equitable relief compelling Uber to utilize appropriate methods
27 and policies with respect to consumer data collection, storage, and
28

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safety and to disclose with specificity to Class Members the type of PII compromised.

- D. For equitable relief requiring restitution and disgorgement of the revenues wrongfully retained as a result of Uber’s wrongful conduct;
- E. For an award of actual damages and compensatory damages, in an amount to be determined;
- F. For an award of costs of suit and attorneys’ fees, as allowable by law; and
- G. Such other and further relief as this court may deem just and proper.

DEMAND FOR JURY TRIAL

Based on the foregoing, Plaintiffs, on behalf of themselves, and all others similarly situated, hereby demand a jury trial for all claims so triable.

Dated: November 21, 2017

Respectfully Submitted,

/s/ Colin M. Jones, Esq.

Colin M. Jones, Esq. SBN: 265628
Attorneys for Plaintiffs