UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

JOSHUA FISHER, individually, and on behalf of all others similarly-situated, Plaintiff, v. UBER TECHNOLOGIES, INC., a Delaware corporation; RASIER, LLC,[1] a subsidiary of UBER TECHNOLOGIES, INC.; JOHN DOES I-V and JANE DOES I-V; BLACK CORPORATIONS I-V; WHITE LIMITED LIABILITY COMPANIES I-V; and GREEN PARTNERSHIPS I-V, Defendants.	Case No. **NOTICE OF REMOVAL** *(CLASS ACTION FAIRNESS ACT)* [28 U.S.C. §§ 1332(d), 1453]

TO: CLERK OF THE ABOVE-NAMED COURT;

AND TO: PLAINTIFF JOSHUA FISHER;

AND TO: MICHAEL MYERS, MARIE NAPOLI, BRITTANY WEINER, and ANNIE CAUSEY, PLAINTIFF'S ATTORNEYS.

PLEASE TAKE NOTICE that Defendants UBER TECHNOLOGIES, INC. ("Uber") and RASIER, LLC ("Rasier") (collectively, "Defendants"), hereby remove the state action described herein, Case No. 15-2-25028-1 SEA, from the Superior Court of the State of Washington in and for the County of King, to the United States District Court for the Western District of

[1] Rasier, LLC was misspelled in Plaintiff's Complaint filed in the Superior Court of Washington State for King County. The LLC is actually called "Rasier," not "Raiser" LLC.

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Washington. This Notice of Removal ("Notice") is based on 28 U.S.C. §§ 1332(d), 1441, 1446, and 1453, and more specifically, the following:

I. SUMMARY OF JURISDICTION

1. This Court has original jurisdiction over this action pursuant to 28 U.S.C. §§ 1332(d) and 1453, and this action is one that may be removed to this Court pursuant to the provisions of 28 U.S.C. § 1441(a)–(b), § 1453(b), and § 1446. All Defendants consent to removal. As set forth below, this case meets all of the requirements for removal and is timely and properly removed by the filing of this Notice.

II. PLEADINGS

2. On or about October 12, 2015, Plaintiff commenced this civil action against Defendants in the Superior Court of the State of Washington for King County, where the case was assigned Case No. 15-2-25028-1 SEA. A true and correct copy of the summonses to each defendant, the complaint, and all attached documents, are attached hereto as **Exhibit A**.

3. A true and correct copy of the Affidavit of Service filed by Plaintiff with respect to Uber is attached hereto as **Exhibit B**. No Affidavit of Service was filed by Plaintiff with respect to Rasier.

4. Defendants filed a Notice of Appearance on November 3, 2015. A copy of this notice is attached hereto as **Exhibit C**.

5. The Ex Parte Department of the King County Superior Court issued orders authorizing Plaintiff's counsel Marie Napoli, Brittany Weiner, and Annie Causey to appear *pro hac vice* on November 4, 2015. Copies of these orders are attached hereto as **Exhibit D**.

III. TIMELINESS

6. Plaintiff served Uber with a copy of the Summons and Complaint on October 14, 2015. This Notice of Removal is timely as it is made within 30 days of receipt of a copy of the initial pleading setting forth the claim for relief as to Uber. 28 U.S.C. § 1446(b). Further, as there is nothing in the Complaint specifying that the amount in controversy is over $5,000,000,

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Defendants may remove at any time upon an affirmative showing that this putative class action meets jurisdictional requirements under the Class Action Fairness Act of 2005 ("CAFA"), 28 U.S.C. § 1332(d). *See Rea v. Michael's Stores Inc.*, 742 F.3d 1234, 1238 (9th Cir. 2014) ("[A]s long as the complaint or 'an amended pleading, motion, order or other paper' does not reveal that the case is removable, the 30-day time period never starts to run and the defendant may remove at any time."); *accord Roth v. CHA Hollywood Medical Center, L.P.*, 720 F.3d 1121, 1124–25 (9th Cir. 2013); *Durham v. Lockheed Martin Corp.*, 445 F.3d 1247, 1250 (9th Cir. 2006).

7. Plaintiff served Rasier with a Summons and a copy of the Complaint on October 20, 2015. This Notice of Removal is timely as it is made within 30 days of receipt of a copy of the initial pleading setting forth the claim for relief as to Rasier. 28 U.S.C. § 1446(b). As with Defendant Uber, Defendant Rasier may remove this matter at any time upon an affirmative showing that the amount in controversy requirement under 28 U.S.C. § 1332(d) is met. *Rea*, 742 F.3d at 1238.

IV. VENUE

8. Venue is proper in the Western District of Washington because this is the district court of the United States for the district encompassing the place where this action is currently pending. 28 U.S.C. § 1441(a). Assignment to the Seattle Division is proper because this case arose in King County, Washington, and is being removed to this Court from the Washington State Superior Court for King County. LCR 3(d)(1).

V. CLASS ACTION FAIRNESS ACT – 28 U.S.C. § 1332(d)

9. Removal jurisdiction exists because this Court has original jurisdiction over this action under CAFA. CAFA grants federal district courts original jurisdiction over civil class action lawsuits in which any plaintiff is a citizen of a state different from any defendant, and where the amount in controversy exceeds $5,000,000, exclusive of interest and costs. *See* 28 U.S.C. § 1332(d). CAFA authorizes removal of such actions in accordance with 28 U.S.C. § 1446. As set forth below, this case meets each CAFA requirement for removal, and is timely and

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properly removed by the filing of this Notice. Specifically, this Court has jurisdiction over this case under CAFA because it is a putative civil class action wherein: (1) the proposed class contains at least 100 members; (2) Defendants are not a state, state official, or other governmental entity; (3) there is diversity between at least one class member and one defendant; and (4) the amount in controversy for all class members exceeds $5,000,000.

10. As a preliminary matter, Plaintiff purports to bring this case as a class action on behalf of himself and all others similarly situated pursuant to Washington State Superior Court Civil Rule 23(a). Complaint at ¶ 7. This rule authorizes an action to be brought by one or more representative persons as a class action. As such, this action is properly considered a putative class action under CAFA.

A. The Proposed Class Contains at Least 100 Members

11. Plaintiff defines the putative class as "all other similarly situated Uber drivers in the State of Washington." Complaint, ¶ 7. A preliminary investigation has revealed that no fewer than 15,719 individuals, including Plaintiff, have used Defendants' software application to generate leads in the State of Washington between July 2011 (when Uber commenced operating in Washington) and the present. Declaration of Michael Colman in Support of Defendants' Removal of Civil Action from State Court ("Colman Decl."), ¶ 3. Accordingly the putative class contains more than 100 members.

B. Defendants are Not Governmental Entities

12. Defendant Uber is incorporated in the State of Delaware, and maintains its principal place of business in San Francisco, California. Defendant Rasier is a Delaware limited liability company, which maintains its principal place of business in San Francisco, California. Neither Defendant is a state, state official, or any other governmental entity. Colman Decl., ¶ 2.

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C. Plaintiff's Citizenship Is Diverse from Defendants' Citizenship

13. CAFA's minimal diversity requirement is satisfied, inter alia, when "any member of a class of Plaintiffs is a citizen of a State different from any defendant." 28 U.S.C. §§ 1332(d)(2)(A), 1453(b).

14. Plaintiff is a citizen of the state of Washington. Complaint, ¶ 1.

15. For purposes of federal jurisdiction, a corporation is deemed to be a citizen of the State in which it was incorporated and the State where it has its principal place of business. 28 U.S.C. § 1332(c)(1).

16. Defendant Uber is incorporated in the State of Delaware, and has its principal place of business is San Francisco, California. Colman Decl., ¶ 2. Accordingly, Uber is a citizen of Delaware and California, and not Washington, for diversity purposes. 28 U.S.C. §§ 1332(a)(1), (c)(1).

17. Defendant Rasier is a wholly owned subsidiary of Uber. Rasier is a Delaware limited liability company, and has its principal place of business is in San Francisco, California. Colman Decl., ¶ 2. Accordingly, Rasier is a citizen of Delaware and California, and not Washington, for diversity purposes. 28 U.S.C. §§ 1332(a)(1), (c)(1).

D. Amount in Controversy

18. "In determining the amount in controversy, courts first look to the complaint." *Ibarra v. Manheim Investments, Inc.*, 775 F.3d 1193, 1197 (9th Cir. 2015).

19. In reference to the allegations in the Complaint, Defendants need only establish that Plaintiffs' claims and the claims of the putative class exceed the jurisdictional minimum. The Act authorizes the removal of putative class actions in which, among the other factors mentioned above, the aggregate amount in controversy for all class members exceeds five million dollars ($5,000,000). Although Defendants deny the validity and merit of Plaintiffs' claims and allegations, and vigorously deny that (i) Plaintiffs and putative class members are

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entitled to any relief, and (ii) Plaintiffs are representative of the putative class, the damages claimed clearly exceed the jurisdictional minimum.

20. Specifically, in Plaintiff's Complaint, Plaintiff alleges that he and all "similarly situated drivers" are entitled to recover what Plaintiff describes as his "employment related expenses," which he states were "between $35 and $50 per week." Complaint, ¶ 24, 54. Plaintiff alleges that he "worked for Uber as an UberBLACK driver" from "July of 2012 through June of 2013," or approximately 48 weeks. Even assuming the minimum amount of "employment related expenses" that Plaintiff seeks to recover, he alleges at least $1,680 in expenses damages alone.[2] Assuming that Plaintiff's claims are representative of the putative class (which, as stated above, Defendants dispute), each class member would seek an average of at least $1,680 in damages arising just from the "expenses" portion of Plaintiff's conversion claim. As stated above, the putative class contains at least 15,719 members. Accordingly, accounting for nothing other than the minimum possible amount claimed, the Plaintiff class seeks to recover at least $26,407,920 in damages for allegedly owed expenses alone (just one component of one claim asserted by the Plaintiff class).[3] $26,407,920 easily exceeds the $5,000,000 jurisdictional threshold.

21. Plaintiff also alleges that he is entitled to recover gratuities for each trip he performed. *E.g.*, Complaint at ¶¶ 41, 46, 51, 54. Plaintiff claims he earned approximately $200 per week using the Uber software platform. Complaint, ¶ 24. The gross amounts of the fares making up this amount would be 20% greater than this insofar as they would include the portion of each fare allegedly retained by Uber. Complaint, ¶ 23. Thus, Plaintiff claims he is entitled to gratuities on at least $11,520 in fares.[4] If Plaintiff claims that these allegedly foregone gratuities should be even 10% of the underlying fare, he is personally seeking at least $1,152 in foregone

[2] $35 per week times 48 weeks equals $1,680.
[3] $1,680 times 15,719 members equals $26,407,920.
[4] 20% of $200 equals $40, so gross fares would equal $240 per week. $240 per week times 48 weeks equals $11,520.

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gratuities.[5] Accordingly, accounting for nothing other than this component of Plaintiff's claimed damages, the Plaintiff class seeks to recover at least $18,108,288 in damages for allegedly foregone gratuities alone.[6] $18,108,288 easily exceeds the $5,000,000 jurisdictional threshold.

22. When just these two alleged damages components addressed above are combined, the putative Plaintiff class seeks at least $44,516,208 in damages. This amount easily exceeds the $5,000,000 jurisdictional threshold. This amount does not account for any foregone wages related to alleged misclassification, treble damages, or attorney's fees, all of which Plaintiff claims that the putative class is entitled to recover.

23. Based on the foregoing, the CAFA amount in controversy requirement is easily satisfied here, even without taking into consideration Plaintiff's claims for misclassification wages, attorney's fees, punitive damages, or Plaintiff's various other claims.

VI. NOTICE TO PLAINTIFF AND STATE COURT

24. Written notice of the filing of this Notice of Removal will be given to all parties who have appeared in this action, and a copy of the Notice of Removal will be filed with the Clerk of the Superior Court of the State of Washington in and for the County of King. Pursuant to 28 U.S.C. §1446(a), true and complete copies of all process and pleadings in this action filed to date in the state court proceeding are attached hereto as Exhibits. By signing this Notice of Removal, counsel for Defendants verifies that the items attached hereto are true and complete copies of all the records and proceedings in the Superior Court action. Except as discussed above, no orders have been signed by the State Court judge presiding over this action and no motions are pending.

[5] 10% of $11,520 equals $1,520.
[6] $11,520 times 15,719 members equals $18,108,288.

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VII. CONCLUSION

WHEREFORE, Defendants respectfully request that the above-captioned matter, now pending in the Superior Court of the State of Washington, in and for the County of King, Case No. 15-2-25028-1 SEA, be removed to this Honorable Court for further proceedings.

November 13, 2015

/s/ *Douglas E. Smith*
Douglas E. Smith, WSBA #17319

/s/ *Thomas P. Holt*
Thomas P. Holt, WSBA #39722

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Attorneys for Defendants UBER TECHNOLOGIES, INC., and RASIER, LLC

CERTIFICATE OF SERVICE

I am a resident of the State of Washington, over the age of eighteen years, and not a party to the within action. My business address is One Union Square, 600 University Street, Ste. 3200, Seattle, WA 98101. I hereby certify that on November 13, 2015, I electronically filed the foregoing **DEFENDANTS' NOTICE OF REMOVAL** with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following:

Attorneys for Plaintiff

Michael David Myers, WSBA No. 22486
Marie Napoli (not licensed to practice in Washington)
Brittany Weiner (not licensed to practice in Washington)
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and I hereby certify that I have mailed by United States Postal Service the document to the following non-CM/ECF participants:

[Not applicable]

I declare under penalty of perjury under the laws of the State of Washington that the above is true and correct. Executed on November 13, 2015, at Seattle, Washington.

s/ Leili Moore
Leili Moore
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