UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION

Case No._____

NICOLAS A. MANZINI, as an individual, and on behalf of all others similarly situated;

Plaintiffs,

v.

UBER TECHNOLOGIES, INC.,

Defendants.
_____/

NOTICE OF REMOVAL

Pursuant to 28 U.S.C. §§ 1332, 1441, 1446, and 1453, Defendant Uber Technologies, Inc., ("Uber") hereby files this Notice of Removal and removes this action from the Circuit Court for the 11th Judicial Circuit in and for Miami-Dade County, Florida, to the United States District Court for the Southern District of Florida, Miami Division. This Court has original subject matter jurisdiction over Plaintiff's lawsuit under the Class Action Fairness Act of 2005 ("CAFA"), 28 U.S.C. § 1332(d), because this matter was brought as a class action, diversity of citizenship exists between one or more members of the putative class and Uber, the number of proposed class members exceeds 100 individuals, and the amount in controversy exceeds $5 million in the aggregate. In support of this Notice of Removal, Uber avers as follows:

I. THE STATE COURT ACTION.

1. On September 19, 2019, Plaintiff commenced this action against Uber by filing a Complaint in the Circuit Court of the Eleventh Judicial Circuit in and for Miami-Dade County, Florida, captioned *Nicolas A. Manzini, as an individual, and on behalf of all others similarly situated v. Uber Technologies, Inc., a foreign corporation*, Case No. 2019-27603 CA 22.

2. Plaintiff served the Complaint on Uber on September 23, 2019. A true and correct copy of the Complaint together with all process and documents filed in the state court action is attached hereto as **Exhibit B**.

3. Plaintiff filed an Amended Complaint on October 11, 2019, and served it on Uber on October 11, 2019. A true and correct copy of the Amended Complaint is attached as **Exhibit A**.

4. Plaintiff's Amended Complaint alleges two causes of action.

5. The First Cause of Action alleges that both Uber's practices relating to "cancellation fees" and Uber's arbitration agreement contained in its "Terms of Use" violate the Florida Deceptive and Unfair Trade Practices Act ("FDUTPA"), and seeks damages in the form of a refund of all cancellation fees and attorney's fees and costs, along with declaratory and injunctive relief. Ex A, Am. Compl, ¶¶ 42-57.

6. The Second Cause of Action makes similar allegations, seeking declaratory and injunctive relief under Florida Statute Section 86.011 *et seq*., requesting that Uber be enjoined from enforcing its "Terms of Use" containing an arbitration agreement and waiver of the right to a jury trial and to seek class action status, and that they be held unenforceable. *Id*. at ¶¶ 58-64.

7. Plaintiff alleges that he is an Uber customer who was improperly charged a "cancellation fee." *Id*. at ¶¶ 19-27. Plaintiff also acknowledges that he signed Uber's "Terms of Use." *Id*.

8. Plaintiff claims to bring the lawsuit individually and on behalf of a putative class of "all UBER customers within the State of Florida who have been charged a 'cancellation fee' during the period extending from October 12, 2017, through and to the filing date of this Amended Complaint." *Id*. at ¶ 33.

II. VENUE

9. Venue is proper in this Court pursuant to 28 U.S.C. §§ 124(b), 1441(a), & 1446(a), because the Circuit Court for the 11th Judicial Circuit in and for Miami-Dade County, Florida, where this action was filed and has been pending prior to removal, is a state court within this federal district and division.

III. SUBJECT MATTER JURISDICTION

10. The Supreme Court has clarified that "no antiremoval presumption attends cases invoking CAFA, which Congress enacted to facilitate adjudication of certain class actions in federal court." *Dart Cherokee Basin Operating Co. v. Owens*, 133 S. Ct. 547, 554 (2014).

11. CAFA confers upon the federal courts subject matter jurisdiction over, and thus makes removable, any class action in which: (i) there is minimal diversity (*i.e.*, any member of the proposed plaintiff class is a citizen of a different state than any defendant); (ii) the aggregate number of putative class members in the proposed class is at least 100; and (iii) the amount in controversy exceeds $5 million. *See* 28 U.S.C. §§ 1332(d)(2) & (d)(5)(B).[1]

A. This Court Has Subject Matter Jurisdiction Under CAFA

12. This Court has original jurisdiction based on CAFA. 28 U.S.C. § 1332(d). CAFA jurisdiction exists because (i) this matter was brought as a purported class action, (ii) diversity of citizenship exists between one or more members of the putative class and Uber, (iii) the number of proposed class members exceeds 100 individuals, and (iv) the amount in controversy exceeds $5 million in the aggregate. Additionally, (v) no CAFA exceptions exist. All of CAFA's jurisdictional prerequisites are clearly satisfied here.

[1] Uber disputes and reserves all rights to contest Plaintiff's allegations that this case can properly be certified and proceed as a class action.

1. This Case Is A Purported Class Action.

13. Plaintiff seeks to certify a putative class of "all UBER customers within the State of Florida who have been charged a 'cancellation fee' during the period extending from October 12, 2017, through and to the filing date of this Amended Complaint" under Florida Rule of Civil Procedure 1.220. Ex A., Am. Compl. ¶ 33. Florida Rule of Civil Procedure 1.220 is Florida's class action rule based on Federal Rule of Civil Procedure 23 governing class actions. Thus, the first CAFA requirement is satisfied. *See Lance v. Wade*, 457 So. 2d 1008, 1011, n.2 (Fla. 1984) ("The current [Florida] class action rule is based on the federal class action rule …"); *Andrews v. Ocean Reef Club, Inc.*, No. 91-20-575CA18, 1992 WL 205805, at n.1 (Fla. Cir. Ct. 1992) (Fed. R. Civ. P. 23 "is substantially similar to Fla. R. Civ. P. 1.220-its Florida counterpart") (citing *Powell v. River Ranch Property Owners Ass'n, Inc.*, 522 So. 2d 69 (Fla. 2d DCA 1988)).

2. Minimal Diversity of Citizenship Exists.

14. CAFA does not require complete diversity, but rather minimal diversity, which may be established when "[a]ny member of a class of plaintiffs is a citizen of a State different from any defendant." 28 U.S.C. § 1332(d)(2)(A). Here, this requirement is met because Plaintiff is a citizen of Florida and Uber is a citizen of Delaware and California.

15. Plaintiff alleges that he is a citizen and resident of Florida. Ex. A, Am. Compl. ¶ 13.

16. For diversity purposes, "a corporation shall be deemed to be a citizen of any State by which it has been incorporated and of the State where it has its principal place of business." 28 U.S.C. 1332(c)(1). Plaintiff concedes that Uber is a "foreign corporation." Ex. A, Am. Compl. ¶ 14. Uber is a publicly-held company incorporated in Delaware with its principal place of business in San Francisco, California. Therefore, Uber is a citizen of Delaware and California.

See Diva Limousine, Ltd. v. Uber Techs., Inc., 392 F. Supp. 3d 1074, 1083 (N.D. Cal. 2019) (holding that Uber is a citizen of Delaware and California); *Costopoulos v. Uber Techs., Inc.*, No. CV 18-3590, 2018 WL 4739693, at *1 (E.D. La. Oct. 2, 2018) (same).

17. Based on the above, at least one member of the putative class is a citizen of a state different from Uber, because Plaintiff is a citizen of Florida while Uber is a citizen of Delaware and California—not Florida. 28 U.S.C. § 1332(d)(2)(A) (requiring only "minimal diversity" under which any member of a putative class is a citizen of a state different from any defendant).

3. <u>The Amount-In-Controversy Plausibly Meets or Exceeds $5 Million</u>.

18. Under CAFA, the class action complaint sought to be removed must place in controversy at least $5 million. 28 U.S.C. § 1332(d). Importantly, CAFA requires claim aggregation when determining the amount put at issue by a complaint. 28 U.S.C. § 1332(d)(6).

19. As the United States Supreme Court has held, Defendants' notice of removal "need include only a plausible allegation that the amount in controversy exceeds the jurisdictional threshold." *Dart Cherokee Basin Operating Co., LLC*, 135 S.Ct. at 554. The Supreme Court has made it clear that "the defendant's amount-in-controversy allegation should be accepted when not contested by the plaintiff or questioned by the court." *Id*. at 553.

20. Based upon Plaintiff's allegations, theories, and class definition (which Uber disputes), Uber plausibly alleges that the $5 million amount-in-controversy requirement for CAFA is satisfied.

21. It is well settled that damages and attorneys' fees (when authorized by statute or contract) must be considered when calculating the amount-in-controversy under 28 U.S.C. § 1332. *See, e.g., Morrison v. Allstate Indem. Co.*, 228 F.3d 1255, 1265 (11th Cir. 2000) ("When a statute authorizes the recovery of attorney's fees, a reasonable amount of those fees is included in the

amount in controversy."); *Awad v. Cici Enters.*, No. 8:06-cv-1278-T-24TBM, 2006 WL 2850108, at *1 (M.D. Fla. Oct. 3, 2006) (emphasizing that in determining the amount-in-controversy, compensatory damages and reasonable attorneys' fees authorized by statute must be included).

22. The Eleventh Circuit Court of Appeals has recognized that the amount-in-controversy for CAFA jurisdiction can be satisfied through "reasonable deductions, reasonable inferences, or other reasonable extrapolations." *Pretka v. Kolter City Plaza II, Inc.*, 608 F.3d 744, 754 (11th Cir. 2010).

23. Further, it is axiomatic that "[a] removing defendant need not confess liability in order to show that the controversy exceeds the threshold." *Spivey v. Vertrue, Inc.*, 528 F.3d 982, 986 (7th Cir. 2008) (citations omitted); *see also Pretka*, 608 F.3d at 751. The amount in controversy "concerns what the plaintiff is claiming (and thus the amount in controversy between the parties), not whether the plaintiff is likely to win or be awarded everything he seeks." *Id.*

24. Finally, a plaintiff's conclusory allegation and/or stipulation that the amount in controversy does not exceed $5 million does not prevent removal under CAFA. *See Standard Fire Ins. Co. v. Knowles*, 133 S. Ct. 1345, 185 L. Ed. 2d 439 (2013). This rule has particular force here, where Plaintiff conclusorily alleges in a footnote that the amount-in-controversy does not exceed $5 million. Ex A., Am. Compl. ¶ 11 n.3.

25. Here, consistent with these principles, the amount in controversy exceeds $5 million for all putative class members and CAFA removal is proper. Although Uber denies that it is liable to Plaintiff at all for any relief, given the Amended Complaint's request for compensatory damages, attorneys' fees, and declaratory and injunctive relief on behalf of the putative class, the amount in controversy is more than $5 million.

26. ***Compensatory Damages***. Plaintiff seeks to certify a class consisting of "all UBER customers within the State of Florida who have been charged a 'cancellation fee' during the period extending from October 12, 2017, through and to the filing date of this Amended Complaint." Ex A., Am. Compl. ¶ 33. Plaintiff alleges that he was improperly charged a cancellation fee in the amount of $3.50 dollars. *Id*. at ¶ 23. As damages, Plaintiff seeks a refund of all "cancellation fees" charged by Uber in Florida during the putative class period. *Id*. at ¶¶ 50, 57.

27. A preliminary review of Uber's records indicates that for the period covering the putative class period (October 12, 2017 through October 11, 2019), riders were charged more than $5 million in cancellation fees in connection with trips completed via the Uber application in Florida.

28. Accordingly, the amount-in-controversy based on Plaintiff's requested refund of cancellation fees alone is sufficient to meet or exceed CAFA's $5 million requirement.

29. ***Attorney's Fees***. In addition to seeking refund of the alleged improper cancelation fees, Plaintiff also seeks attorney's fees and costs in connection with this FDUTPA claim—which are available to the prevailing party under FDUTPA. Ex A, Am. Compl. ¶ 49; Fla. Stat. § 501.2105(1).

30. When authorized by statute—as here—reasonable attorneys' fees must be considered when calculating the amount in controversy. *Morrison*, 228 F.3d at 1265 ("When a statute authorizes the recovery of attorney's fees, a reasonable amount of those fees is included in the amount in controversy.").

31. In determining the amount of attorneys' fees in controversy for purposes of CAFA, federal courts often use a benchmark of total potential damages. *See e.g.*, *Porter v. MetroPCS Commc'ns Inc.*, 592 F. App'x 780, 783 (11th Cir. 2014) (suggesting that a 30 percent benchmark

may be appropriate in determining whether CAFA amount-in-controversy requirement is met); *Frederico v. Home Depot*, 507 F.3d 188, 199 (3d Cir. 2007) (using 30 percent benchmark).

32. Here, while Uber disputes that Plaintiff would be entitled to any attorneys' fees, Plaintiff's request for attorneys' fees further increases the total amount in controversy beyond the $5 million jurisdictional threshold.

33. ***Injunctive Relief***. In addition to compensatory damages and attorney's fees and costs, Plaintiff also seeks injunctive relief that would completely change whether and how Uber collects cancellation fees. Ex A., Am. Compl. ¶¶ 49-50. The Senate Judiciary Report 109-14—the authoritative source regarding Congress' intent in enacting CAFA[2]—makes clear that the impact of injunctive relief on a defendant must be considered in determining whether CAFA's amount-in-controversy requirement is met. *See* S. Rep. No. 109-14 (2005), *available at* 2005 WL 627977 (hereinafter, the "Senate Report"); *see, also e.g.*, *Keeling v. Esurance Ins. Co.*, 660 F.3d 273, 274 (7th Cir. 2011) (analyzing CAFA's $5 million amount in controversy requirement by examining the cost to defendant of complying with an injunction because "the cost of prospective relief cannot be ignored in the calculation of the amount in controversy"); *Ullman v. Safeway Ins. Co.*, 995 F. Supp. 2d 1196, 1218 (D.N.M. 2013) (under CAFA, "a court can calculate the defendants' costs associated with the relief sought to determine the amount in controversy"); *Otay Hydraulics, Inc. v. Safety-Kleen Sys., Inc.*, No. 2:12-CV-07357- ODW(VBKx), 2013 WL 1898573, at *2 (C.D. Cal. May 6, 2013) (same); *Magnum Minerals, L.L.C. v. Homeland Ins. Co. of N.Y.*, No. 2:13-CV-103-J, 2013 WL 4766707, at *3 (N.D. Tex. Sept. 5, 2013) (same); *Rippee v. Boston Mkt. Corp.*, 408 F. Supp. 2d 982, 984 (S.D. Cal. 2005) (same); *Lewis v. Auto Club Family Inc. Co.*, CIV.A. No. 11-169-D-M2, 2011 WL 3444312, at *3 (M.D. La. July 7, 2011) (same);

[2] *Lowery v. Ala. Power Co.*, 483 F.3d 1184, 1205–06 (11th Cir. 2007) ("[The Senate Report is] the authoritative source for finding the Legislature's intent [regarding CAFA].")

Rasberry v. Capitol Cnty. Mut. Fire Ins. Co., 609 F. Supp. 2d 594, 600-01 (E.D. Tex. 2009) (same).

34. Here, Plaintiff's claim for injunctive relief has placed in controversy the costs to Uber in foregoing the collection of cancellation fees. Ex A, Am Compl. ¶¶ 50. As a result, if Plaintiff obtains the injunctive relief sought, the costs to Uber will be substantial, further increasing the amount-in-controversy above the CAFA threshold. *See Adams v. Am. Family Mut. Ins. Co.*, 981 F. Supp. 2d 837, 850–51 (S.D. Iowa 2013) (finding defendant sufficiently demonstrated that the "stakes" of the lawsuit exceeded the amount in controversy because "if Plaintiffs are awarded the declaratory and injunctive relief they seek, Defendant is likely to face pecuniary costs that logically flow from such relief in amounts exceeding $5 million").

35. In short, Uber disputes that Plaintiff is entitled to any form of relief on any claim, much less on a class basis. Nonetheless, the aggregate amount in controversy that Plaintiff has placed at issue exceeds $5 million based solely on the amount of cancellation fees charged in Florida during Plaintiff's putative class period, for which Plaintiff seeks a refund. When attorney's fees are added, the $5 million threshold is further exceeded. Lastly, the injunctive relief sought by Plaintiff further pushes the amount in controversy above the $5 million requirement.

4. <u>The Putative Class Includes At Least 100 Members</u>.

36. CAFA requires that the putative class consist of at least 100 persons. 28 U.S.C. § 1332(d)(5). That requirement is clearly met here.

37. While Plaintiff does not identify the number of putative class members in his Amended Complaint, Plaintiff seeks to certify a state-wide class of all Uber customers in Florida who were charged "cancellation fees" between October 12, 2017 and October 11, 2019, and alleges that "a large number of Uber customers [are] affected." Ex A, Am. Compl. ¶ 39.

38. A preliminary review of Uber's records indicates that for the putative class period covering October 12, 2017 through October 11, 2019, in excess of 100 riders were charged cancellation fees in connection with trips completed via the Uber application in Florida. Accordingly, it is clear that in excess of 100 putative class members exist based on Plaintiff's proposed class definition in the Amended Complaint.

5. No CAFA Exception Applies.

39. The "local controversy" exception to CAFA jurisdiction under 28 U.S.C. § 1332(d)(4)(A) is inapplicable because Uber—the only Defendant in this case—is not a citizen of Florida. Uber is a citizen of Delaware and California.

40. Likewise, the "home state" exception to CAFA jurisdiction under 28 U.S.C. § 1332(d)(4)(B) is inapplicable because the "primary defendant"—Uber—is not a citizen of Florida. Uber is a citizen of Delaware and California.

IV. THE OTHER PREREQUISITES FOR REMOVAL HAVE BEEN SATISFIED

41. The Notice of Removal is timely filed. Plaintiff served Uber with the Complaint on September 23, 2019 and with the Amended Complaint on October 11, 2019. Because this Notice of Removal is filed within thirty (30) days of service of the original Complaint on Uber, it is timely under 28 U.S.C. §§ 1446(b) and 1453. No previous Notice of Removal has been filed or made with this Court for the relief sought herein.

42. In compliance with 28 U.S.C. § 1446(a), copies of all process and documents filed or served in the state court action are attached as **Exhibits A-B**.

43. As Plaintiff originally filed this action in the Circuit Court of the Eleventh Judicial Circuit in and for Miami-Dade County, Florida, removal to the United States District Court for the Southern District of Florida is proper under 28 U.S.C. § 1441(a).

44. As required by 28 U.S.C. § 1446(d), Uber will provide notice of this removal to Plaintiff, who is proceeding *pro se*, and will file a copy of this Notice with the Circuit Court of the Eleventh Judicial Circuit in and for Miami-Dade County, Florida.

45. By filing this Notice of Removal, Uber does not waive any defenses that may be available to it and reserves all such defenses. Uber does not concede that Plaintiff is entitled to have a class certified or is entitled to any damages or attorneys' fees. If any question arises as to the propriety of the removal of this action, Uber requests the opportunity to present a brief in support of their position that this case is removable.

IV. CONCLUSION

WHEREFORE, pursuant to 28 U.S.C. § 1332, 1441, 1446, and 1453, Uber hereby removes this action from the Circuit Court for the 11th Judicial Circuit in and for Miami-Dade County, Florida to the United States District Court for the Southern District of Florida, Miami Division.

Dated: October 23, 2019

Respectfully submitted,

/s/ Brian M. Ercole

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CERTIFICATE OF SERVICE

I hereby certify that the foregoing Notice of Removal was served via e-mail and Federal Express on October 23, 2019, to:

Nicolas A. Manzini
6426 S.W. 9th Street
West Miami, FL 33144
manzini404@aol.com

Plaintiff

/s/ Brian M. Ercole
Brian M. Ercole

Exhibit A

IN THE CIRCUIT COURT OF THE 11TH JUDICIAL CIRCUIT, IN AND FOR MIAMI-DADE COUNTY, FLORIDA

GENERAL JURISDICTION DIVISION

CASE NO: 19-27603 CA 22

NICOLAS A. MANZINI,
as an individual, and on behalf
of all others similarly situated,

Plaintiff,

vs.

UBER TECHNOLOGIES, INC.
a foreign corporation

Defendant.
_____/

AMENDED CLASS ACTION COMPLAINT –
STATEWIDE CLASS REPRESENTATION - JURY TRIAL DEMANDED

Plaintiff NICOLAS A. MANZINI, as an individual, and on behalf of all others similarly situated, in propria persona,[1] hereby files this Amended Class Action Complaint – Statewide Class Representation — and makes these allegations based on information and belief and/or which are likely to have evidentiary support after a reasonable opportunity for further investigation and discovery — against Defendant UBER TECHNOLOGIES, INC., a foreign corporation ("UBER") as follows:

[1] Plaintiff, a retired lawyer in Florida and New York, intends to retain class action counsel in the immediate future to prosecute this action on his behalf.

I. INTRODUCTION

1. UBER has made and continues to make false and misleading statements that are likely to deceive reasonable consumers and has otherwise engaged and is engaging in deceptive and unfair trade practices within the State of Florida.

2. UBER has mistakenly or misleadingly represented and continues to represent that it is required to charge a "cancellation fee" to compensate its drivers for their time when riders cancel their rides.

3. However, UBER routinely charges its customers a "cancellation fee" of up to $5.00 even when it is the driver who cancels the trip which regularly occurs.

4. Thereafter, UBER will not refund the "cancellation fee" to its customer until and unless the customer asks UBER to review the "cancellation fee."

5. If UBER, in its sole discretion, agrees that the "cancellation fee" ought not have been charged, UBER will not refund the "cancellation fee" to the customer's payment method from which it was debited but rather will issue an "UBER credit" or "UBER Cash" in an equivalent amount.

6. An "UBER credit" or "UBER cash" in the amount of the cancellation fee is seldom sufficient in amount to cover most UBER fares and thus the customer is faced with a Hobson's choice of having to purchase an additional "UBER credit" or "UBER cash" usually in minimum increments of $25.00, thus ensuring that the customer is trapped into a scheme of being continually forced to replenish his or her "UBER credit" or "UBER cash" in an amount sufficient to cover his or her next fare.

7. In those rare instances where UBER will agree to refund the "cancellation fee" to the customer's method of payment, the refund will not be processed for 3 – 5 business days pursuant to UBER's own stated policy, during which time UBER unlawfully holds and detains the customer's funds.[2]

8. UBER's actions as described above violate both the letter and spirit of the Florida Deceptive and Unfair Trade Practices Act, §§ 501.201-.213, Florida Statutes (2018) ("FDUTPA").

9. Moreover, UBER contends that merely by downloading the so-called UBER App to access the company's ridesharing services, customers ipso facto agree to its "Terms of Use" and are bound by, among other things, an arbitration agreement. Notably, UBER's "Terms of Use" state as follows:

> "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."

* * * * *

> "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."

* * * * *

> "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."

[2] By contrast, UBER's ridesharing market competitor Lyft, Inc. immediately refunds customers' improperly charged cancellation fees to its customers' payment method.

10. UBER's "Terms of Use" as comprehensively detailed above constitute an unenforceable contract of adhesion and are otherwise against equity's conscience and is in and of itself a violation of the letter and spirit of FDUTPA as the majority of customers who download the UBER App unwittingly agree to waive their right to a trial by jury, no matter what their claim against UBER, or to participate as a plaintiff or class member in any class action or representative proceeding against UBER without being afforded the right to opt out of such an agreement because, by its own terms, a customer who does not agree to UBER's "Terms of Use" may not access or use the company's ridesharing services.

II. VENUE, JURISDICTION AND THE PARTIES

11. This Court has jurisdiction over the subject matter presented by this Amended Complaint because this is a class action arising under FDUTPA.[3]

12. This Court also has jurisdiction over the subject matter presented by this Amended Complaint because this is an action for permanent declaratory and supplemental/injunctive relief arising under section 86.011, et seq., Florida Statutes (2018).

13. Plaintiff is sui juris, an individual more than 21 years old, a resident of Miami-Dade-County, Florida, and a citizen of the United States of America. Plaintiff respectfully requests a jury trial on all damage claims and a non-jury trial of all equitable relief claims.

[3] Despite the diversity of citizenship between Plaintiff and UBER, the U.S. Class Action Fairness Act of 2005, 28 U.S.C. §§ 1332(d), 1453, is inapplicable because the matter in controversy does not exceed in the aggregate the sum of $5,000,000.00, exclusive of interest and costs.

14. UBER is sui juris, a foreign for-profit corporation which is registered to do business and is engaged in the conduct of business in the State of Florida and specifically within Miami-Dade and Broward Counties, Florida.

15. Venue is proper in Miami-Dade County, Florida because it is here that the claims alleged in this Amended Complaint occurred.

16. Pursuant to §90.202(12), Fla. Stat. ("Facts that are not subject to dispute because they are capable of accurate and ready determination by resort to sources whose accuracy cannot be questioned") the Court should take judicial notice from the Internet and related sources that UBER is an American multinational transportation network company offering services that include peer-to-peer ridesharing, ride service hailing, food delivery, and a bicycle-sharing system.

17. Moreover, the Court should take judicial notice of UBER's "Terms of Use" likewise available online containing the afore-described arbitration agreement and purported waiver of the right to a jury trial and to seek class action status.

III. ADDITIONAL FACTS GIVING RISE TO THIS ACTION

18. Plaintiff has been an UBER customer since on or about October 12, 2017.

19. Plaintiff, who is virtually blind out of his right eye due to a retinal hemorrhage caused by chronic diabetes, first downloaded the UBER App the day he was discharged from Jackson Memorial Hospital in Miami, Florida, following foot surgery. At that time, Plaintiff did not read UBER's "Terms of Use" as he

was merely seeking an expeditious and inexpensive way to get home after an eight-day hospital stay.

20. A typical instance of UBER's deceptive and trade practices in violation of FDUTPA occurred on the evening of August 10, 2019. At approximately 10:12 PM, Plaintiff requested a shared "UBER pool" ride from 1818 N.W. 2nd Court in Miami, Florida to his home at 6426 S.W. 9th Street in West Miami, Florida.

21. In accordance with UBER's shared ride policy, Plaintiff (a 68-year old disabled person who has difficulty walking) was asked to walk to a pick-up point located at the intersection of N.W. 17th Street and 3rd Place, almost three city blocks away.

22. Plaintiff waited for more than twenty (20) minutes but the driver never showed up. He called the driver three (3) times and texted him (3) times using the UBER App but the driver never answered or replied (This is not an uncommon UBER experience in Miami-Dade County).

23. Finally, in order to disengage that ride request from the UBER App so that he could request another ride, Plaintiff cancelled the trip.[4] UBER immediately notified Plaintiff that he was being charged a $3.50 "cancellation fee." Plaintiff then requested another ride which arrived at the original pick-up point at approximately 10:37 PM.

[4] As part of its scheme to defraud consumers like Plaintiff, UBER makes it impossible for customers to disengage from its app until and unless the customer agrees to "accept" its cancellation fee. On August 10, 2019, the app showed that the driver was just "1 minute" away from the pick-up point for more than 20 minutes. Plaintiff believes and therefore alleges that UBER drivers often will not "cancel" the ride and therefore force the customer to do so because of UBER's policy of shutting out drivers who cancel from the UBER app for one or more hours.

24. In all, Plaintiff was forced to walk six (6) blocks, wasted over twenty-five (25) minutes before connecting with an UBER driver and, adding insult to injury, was unfairly charged a "cancellation fee" to compensate UBER's rogue driver for his time.

25. When Plaintiff complained and asked that the "cancellation fee" be returned, UBER initially refused and then begrudgingly issued him an "UBER credit" or "UBER cash" in the amount of $3.50.

26. When Plaintiff again complained that an "UBER credit" or "UBER cash" is not the same thing as a refund of his unlawfully charged "cancellation fee," UBER withdrew the "UBER credit" or "UBER cash" from his account and instead informed Plaintiff by way of a support message that the $3.50 "cancellation fee" would be returned to his payment method (bank account) within 3-5 business days.

27. On a prior occasion (July 17, 2019) when UBER initially refused to refund Plaintiff's "cancellation fee" and later relented, it took more than one (1) week before the monies were returned to Plaintiff's payment method, during which time UBER unlawfully held and detained Plaintiff's funds.

28. Plaintiff believes and therefore alleges that other UBER customers within the State of Florida who are similarly situated to him have been unlawfully subjected by UBER to the deceptive and unfair trade practices and representations described elsewhere in this Amended Complaint in violation of FDUTPA.

29. Plaintiff and members of the Class whom he seeks to represent have been economically damaged by UBER's practices and representations as alleged elsewhere in this Amended Complaint.

30. At a minimum, Plaintiff contends that UBER should a) cease charging a "cancellation fee" where it is the driver who cancels the trip, or b) immediately refund the "cancellation fee" to the customer's payment method, and c) cease its use of "UBER credit" or "UBER cash" as an alternative to refunding the "cancellation fee" to its customers via their payment method. Additionally, UBER should cease its unlawful enforcement of the so-called arbitration agreement and waiver of the right to a jury trial and to seek class action status to which its customers unwittingly become bound merely by downloading the UBER App.

31. Plaintiff therefore brings this class action to secure, among other things, equitable relief and damages for the Class against UBER for its violations of FDUTPA as specifically alleged elsewhere in this Amended Complaint.

IV. CLASS ACTION ALLEGATIONS

32. Plaintiff re-alleges and incorporates by reference the allegations set forth in each of the preceding paragraphs of this Amended Complaint.

33. Pursuant to Florida Rule of Civil Procedure 1.220, Plaintiff brings this class action and seeks certification of the claims and certain issues in this action on behalf of a Class defined as all UBER customers within the State of Florida who have been charged a "cancellation fee" during the period extending from October 12, 2017, through and to the filing date of this Amended Complaint.

34. Also pursuant to Florida Rule of Civil Procedure 1.220, Plaintiff brings this class action and seeks certification of the claims and certain issues in this action on behalf of a Class defined as all UBER customers within the State of Florida who have been charged a "cancellation fee" during the period extending from October 12, 2017, through and to the filing date of this Amended Complaint and whom UBER contends are bound by the arbitration agreement and waiver of the right to a jury trial and to seek class action status by virtue of having downloaded the UBER App containing the afore-described "Terms of Use."

35**.** Plaintiff believes and therefore alleges that (a) the members of the class are so numerous that separate joinder of each member is impracticable, if not impossible, (b) the claim or defense of the representative party raises questions of law or fact common to the questions of law or fact raised by the claim or defense of each member of the class, (c) the claim or defense of the representative party is typical of the claim or defense of each member of the class, and (d) the representative party can fairly and adequately protect and represent the interests of each member of the class.

36. Plaintiff reserves the right to amend the Class definition if further investigation and discovery indicates that the Class definition should be narrowed, expanded, or otherwise modified. Excluded from the Class are governmental entities. Also excluded from the Class is any judge, justice, or judicial officer presiding over this matter and the members of their immediate families and judicial staff.

37. UBER's practices and omissions were and are being applied uniformly to all members of the Class, including any subclass, arising out of the statutory claims under FDUTPA alleged herein, so that the questions of law and fact are common to all members of the Class and any subclass.

38. UBER's practices and omissions were and are also being applied uniformly to all members of the Class, including any subclass, because of UBER's intended enforcement of the arbitration agreement and waiver of the right to a jury trial and to seek class action status by virtue of its customers downloading the UBER App that contains the afore-described "Terms of Use," so that the questions of law and fact are common to all members of the Class and any subclass.

39. All members of the Class and any subclass were and are similarly affected by UBER's deceptive and unfair trade practices and the relief sought herein is for the benefit of Plaintiff and members of the Class and any subclass.

33. Questions of law and fact common to the Plaintiff Class and any subclass exist that predominate over questions affecting only individual members, including, inter alia: a) whether UBER's practices and representations including the aforementioned provisions of its "Terms of Use" were and are unfair, deceptive and/or unlawful in any respect, thereby violating FDUTPA, and b) whether UBER's practices and representations including the aforementioned provisions of its "Terms of Use" injured and continue to injure consumers and, if so, the extent of the injury.

34. The claims asserted by Plaintiff in this action are typical of the claims of the members of the Plaintiff Class and any subclass, as the claims arise from the same course of conduct by UBER, and the relief sought within the Class and any subclass is common to the members of each.

35. Plaintiff will fairly and adequately represent and protect the interests of the members of the Plaintiff Class and any subclass.

36. Plaintiff shall endeavor to retain counsel competent and experienced in both consumer protection and class action litigation.

37. Certification of this class action is appropriate under Florida Rule of Civil Procedure 1.220 because the questions of law or fact common to the respective members of the Class and any subclass predominate over questions of law or fact affecting only individual members. This predominance makes class litigation superior to any other method available for a fair and efficient decree of the claims.

38. Absent a class action, it would be highly unlikely that the representative Plaintiff or any other members of the Class or any subclass would be able to protect their own interests because the cost of litigation through individual lawsuits might exceed expected financial recovery.

39. Certification also is appropriate because, upon information and belief, UBER acted, or refused to act on grounds generally applicable to both the Class and any subclass, thereby making appropriate the relief sought on behalf of the Class and any subclass as respective wholes. Further, given the large number of

UBER customers affected, allowing individual actions to proceed in lieu of a class action would run the risk of yielding inconsistent and conflicting adjudications.

40. A class action is a fair and appropriate method for the adjudication of the controversy, in that it will permit a large number of claims to be resolved in a single forum simultaneously, efficiently, and without the unnecessary hardship that would result from the prosecution of numerous individual actions and the duplication of discovery, effort, expense and burden on the courts that individual actions would engender.

41. The benefits of proceeding as a class action, including providing a method for obtaining redress for claims that would not be practical to pursue individually, outweigh any difficulties that might be argued with regard to the management of this class action.

FIRST CAUSE OF ACTION – VIOLATION OF FDUTPA

42. Plaintiff re-alleges and incorporates by reference the allegations set forth in each of the preceding paragraphs of this Amended Complaint.

43. Plaintiff is informed and believes, and thereon alleges, that UBER by its conduct as alleged elsewhere in this Amended Complaint has engaged in a deceptive and unfair trade practice as defined in FDUTPA.

44. This cause of action is brought on behalf of Plaintiff and members of the general public pursuant to FDUTPA which prohibits “unconscionable, deceptive, or unfair acts or practices in the conduct of any trade or commerce." § 501.202.

45. An unfair practice is "one that 'offends established public policy' and one that is 'immoral, unethical, oppressive, unscrupulous or substantially

injurious to consumers.' " Samuels v. King Motor Co. of Boca Raton, 782 So.2d 489, 499 (Fla. 4th DCA 2001).

46. UBER committed and continues to commit a deceptive act or practice which has a capacity, tendency, and/or likelihood to deceive or confuse reasonable consumers in that such consumers have a good faith basis for believing that UBER's actions in the charging and handling of its so-called "cancellation fee" are reasonable instead of self-dealing and injurious to its customers like Plaintiff.

47. UBER's practices as they relate to the charging and handling of its so-called "cancellation fee" as set forth in comprehensive detail elsewhere in this Amended Complaint, constitute unfair and/or deceptive business under the meaning of FDUTPA. Plaintiff and members of the general public were and are likely to be deceived by UBER as set forth herein.

48. Moreover, UBER's practices as they relate to its so-called "Terms of Use" containing an arbitration agreement and waiver of the right to a jury trial and to seek class action status to which UBER's customers purportedly become bound merely by downloading the UBER App as set forth in comprehensive detail elsewhere in this Amended Complaint, constitute unfair and/or deceptive business under the meaning of FDUTPA. Plaintiff and members of the general public were and are likely to be deceived by UBER as set forth herein.

49. In addition to actual damages, FDUTPA affords civil private causes of action for both declaratory and injunctive relief and for actual damages, plus attorney's fees and court costs as provided in s. 501.2105.

50. Plaintiff, on behalf of himself and members of the general public, seeks an order of this Court: (a) Enjoining UBER from continuing to engage, use, or employ any unfair and/or deceptive business acts or practices related to their charging and handling of the so-called "cancellation fee"; (b) Enjoining UBER from continuing to engage, use, or employ any unfair and/or deceptive business acts or practices related to its so-called "Terms of Use" containing an arbitration agreement and waiver of the right to a jury trial and to seek class action status to which UBER's customers purportedly become bound merely by downloading the UBER App; and (c) Restoring all monies that may have been acquired by UBER as a result of such unfair and/or deceptive acts or practices.

51. Plaintiff and members of the general public may be irreparably harmed and/or denied an effective and complete remedy if such an order is not granted. The unfair and/or deceptive acts and practices of UBER, as described above, present a serious threat to Plaintiff and members of the general public.

52. The harmful impact upon members of the general public and the Class who were charged and continue to be charged the so-called "cancellation fee" by UBER far outweighs any reasons or justifications by UBER for their practices related to the "cancellation fee."

53. Moreover, the harmful impact upon members of the general public and the Class who are subjected by UBER to its so-called "Terms of Use" containing

an arbitration agreement and waiver of the right to a jury trial and to seek class action status to which UBER's customers purportedly become bound merely by downloading the UBER App far outweighs any reasons or justifications by UBER for their practices related to its so-called "Terms of Use."

54. UBER has an improper motive (profit before accurate representations to their consumers) in their practices related to the charging and handling of the "cancellation fee" and enforcement of its so-called "Terms of Use."

55. The utilization of such unfair business acts and practices was and is under UBER's sole control and have been fraudulently and deceptively hidden from members of the general public.

56. As a consumer of UBER's services, and as a member of the general public in Florida, Plaintiff is entitled to and does bring this class action seeking all available remedies under FDUTPA, including declaratory, injunctive, and other equitable relief, as well as actual damages and attorneys' fees and costs.

57. As a result of UBER's violations of FDUTPA, moreover, Plaintiff and the Class are entitled to restitution for out-of-pocket expenses and economic harm. Plaintiff and Members of the Class are further entitled to pre-judgment interest as a direct and proximate result of UBER's wrongful conduct. The amount of damages suffered as a result is a sum certain and capable of calculation and Plaintiff and Members of the Class are entitled to interest in an amount according to proof.

WHEREFORE, Plaintiff NICOLAS A. MANZINI prays for all relief allowed under FDUTPA in accordance with this Amended Class Action Complaint – Statewide Class Representation.

SECOND CAUSE OF ACTION – DECLARATORY AND SUPPLEMENTAL/ INJUNCTIVE RELIEF PURSUANT TO DECLARATORY JUDGMENT ACT

58. Plaintiff re-alleges and incorporates by reference the allegations set forth in paragraphs 1 – 41 of this Amended Complaint.

59. As an alternative to the declaratory and injunctive relief requested under FDUTPA, Plaintiff seeks declaratory and injunctive relief under the provisions of section 86.011 et seq., Florida Statutes (2018).

60. Plaintiff seeks a declaratory judgment that UBER's so-called "Terms of Use" containing an arbitration agreement and waiver of the right to a jury trial and to seek class action status to which UBER's unwitting customers become bound merely by downloading the UBER App, else they expressly will not have access to UBER's ridesharing services as they are afforded no opportunity to opt out, is an unenforceable contract of adhesion that violates equity's conscience and is an otherwise unconscionable, deceptive, or unfair business practice.

61. There is a bona fide, actual, present practical need for the declaration that UBER's so-called "Terms of Use" containing an arbitration agreement and waiver of the ride to a jury trial and to seek class action status is unenforceable as a contract of adhesion and violative of Florida public policy: the declaration sought by Plaintiff deals with a present, ascertained or ascertainable state of facts or present controversy as to a state of facts; a right of the complaining party (Plaintiff and the members of the Class) is dependent upon the facts or the law

applicable to the facts; there is an entity (UBER) who has an actual, present, adverse and antagonistic interest in the subject matter, either in fact or law; the antagonistic and adverse interests are all before the Court by proper process or Class representation; and the relief sought is not merely giving of legal advice by the Court or the answer to questions propounded from curiosity.

62. Plaintiff and members of the general public were and are likely to be deceived by UBER's so-called "Terms of Use" unless UBER is restrained from its enforcement.

63. Pursuant to section 86.011, et seq., Florida Statutes (2018), this Court has jurisdiction to declare that UBER's so-called "Terms of Use" and specifically its arbitration agreement and waiver of the right to a jury trial and to seek class action status that purports to bind all UBER customers who merely download the UBER App is an unenforceable contract of adhesion that violates equity's conscience, and to enjoin UBER's enforcement of its so-called "Terms of Use" in this and all future judicial actions brought by customers against UBER.

64. Additionally, Plaintiff requests that, pending final disposition of this claim for declaratory and supplemental/injunctive relief, this Court summarily deny any request by UBER to dismiss this judicial action and/or to compel arbitration pursuant to the so-called "Terms of Use."

WHEREFORE, Plaintiff NICOLAS A. MANZINI prays for declaratory and supplemental/injunctive relief as allowed by section 86.011 et seq., Florida Statutes (2018) in accordance with this Amended Class Action Complaint – Statewide Class Representation.

DEMAND FOR JURY TRIAL

Plaintiff NICOLAS A. MANZINI demands trial by jury of all issues, claims and defenses in this action that are triable as of right by a jury.

Date: October 11, 2019

/s/ Nicolas A. Manzini

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