

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK**

SPENCER MEYER, individually and on
behalf of those similarly situated,

Plaintiffs,

v.

TRAVIS KALANICK,

Defendant.

Case No. 1:15-cv-9796 (JSR)

**ANSWER OF DEFENDANT TRAVIS KALANICK TO
THE FIRST AMENDED COMPLAINT**

Defendant Travis Kalanick (“Kalanick”), by and through his undersigned attorneys, and for his Answer to the First Amended Complaint (“Complaint”) filed by Plaintiff Spencer Meyer (“Meyer”) states and alleges as follows:

NATURE OF THE SUIT

1. Defendant admits that Kalanick is the co-founder and CEO of Uber Technologies, Inc. (“Uber”) but denies all other allegations of Paragraph 1.

2. Defendant denies this allegation to the extent it seeks an implied admission that Defendant and Uber are one in the same, or requires Defendant to answer on Uber’s behalf. Uber is not a named defendant in this action. Subject to and notwithstanding the foregoing, Defendant admits that Uber offers a smartphone application that connects riders looking for transportation with independent transportation providers (the “Uber App”). Defendant denies the remaining allegations of Paragraph 2.

3. Defendant admits that he is the co-founder and CEO of Uber, and admits that he live tweeted about his experience when he drove a vehicle on the app, which started at 9:19 p.m. on February 21, 2014 and ended at 1:57 a.m. on February 22, 2014. Defendant denies the remaining allegations in Paragraph 3.

4. Defendant denies the allegations in Paragraph 4.

5. Defendant admits to stating that Uber’s business model is procompetitive but denies the remaining allegations and legal conclusions in Paragraph 5.

6. Defendant denies the allegations and legal conclusions in Paragraph 6. Defendant is without knowledge or information sufficient to form a belief as to the truth of the assertion that notice of commencement of this action was served upon the New York State

Attorney General and therefore denies it.

PARTIES

7. Defendant denies this allegation to the extent it seeks an implied admission that Defendant and Uber are one in the same, or requires Defendant to answer on Uber's behalf. Uber is not a named defendant in this action. Subject to and notwithstanding the foregoing, Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 7, and therefore denies them.

8. Defendant denies the allegations in Paragraph 8.

9. Defendant denies the allegations in Paragraph 9, except that Kalanick is a resident of California, Uber's CEO, an Uber Board member, its co-founder, and has, for one night -- starting at 9:19 p.m. on February 21, 2014 and ending at 1:57 a.m. on February 22, 2014 -- driven on the Uber platform.

JURISDICTION AND VENUE

10. Paragraph 10 contains legal conclusions to which no response is required.

11. Defendant admits that, only because he voluntarily appeared in this action, the Court has personal jurisdiction over him. Defendant reserves and expressly does not waive his right to object on personal jurisdiction grounds in other actions in the State of New York.

12. Defendant admits that solely in his role as CEO of Uber, he has conducted business either directly or through intermediaries in the State of New York; Defendant denies that this subjects him to personal jurisdiction in the State of New York, however.

13. Defendant denies the allegations of Paragraph 13.

14. Paragraph 14 contains legal conclusions to which no response is required.

15. Defendant responds that the term “lobby”, as used in this allegation, is vague and ambiguous. Subject to and notwithstanding that objection, Defendant admits that he appeared as a guest on the Late Show with Stephen Colbert in September 2015, he has made public statements and provided interviews regarding Uber, and that Uber has engaged in lobbying efforts, but denies the remaining allegations in Paragraph 15.

16. Paragraph 16 contains legal conclusions to which no response is required.

17. Paragraph 17 contains legal conclusions to which no response is required.

18. Paragraph 18 asserts a legal conclusion, to which no response is required. .

19. Paragraph 19 asserts a legal conclusion, to which no response is required.

CO-CONSPIRATORS

20. Defendant denies the allegations in Paragraph 20.

BACKGROUND

21. Defendant admits that he founded Uber in 2009.

22. Defendant denies this allegation to the extent it seeks an implied admission that Defendant and Uber are one in the same, or requires Defendant to answer on Uber’s behalf. Uber is not a named defendant in this action. Subject to and notwithstanding the foregoing, Defendant admits that Uber offers a smartphone application that connects riders looking for transportation with independent transportation providers.

23. Defendant denies this allegation to the extent it seeks an implied admission that Defendant and Uber are one in the same, or requires Defendant to answer on Uber’s behalf. Uber is not a named defendant in this action. Subject to and notwithstanding the foregoing, Defendant admits that it is Uber’s position that it is not a transportation company. Defendant

denies the allegations in Paragraph 23.

24. Defendant denies this allegation to the extent it seeks an implied admission that Defendant and Uber are one in the same, or requires Defendant to answer on Uber's behalf. Uber is not a named defendant in this action. Subject to and notwithstanding the foregoing, Defendant admits that Uber offers a smartphone application that connects riders looking for transportation with independent transportation providers. Uber denies the remaining allegations in Paragraph 24.

25. Defendant denies this allegation to the extent it seeks an implied admission that Defendant and Uber are one in the same, or requires Defendant to answer on Uber's behalf. Uber is not a named defendant in this action. Subject to and notwithstanding the foregoing, Defendant admits the allegations in paragraph 25.

26. Defendant denies this allegation to the extent it seeks an implied admission that Defendant and Uber are one in the same, or requires Defendant to answer on Uber's behalf. Uber is not a named defendant in this action. Subject to and notwithstanding the foregoing, Defendant denies the allegations in Paragraph 26.

27. Defendant denies this allegation to the extent it seeks an implied admission that Defendant and Uber are one in the same, or requires Defendant to answer on Uber's behalf. Uber is not a named defendant in this action. Subject to and notwithstanding the foregoing, Defendant denies the allegations in Paragraph 27.

28. Defendant denies this allegation to the extent it seeks an implied admission that Defendant and Uber are one in the same, or requires Defendant to answer on Uber's behalf. Uber is not a named defendant in this action. Subject to and notwithstanding this, Defendant

denies the allegation in paragraph 28.

29. Defendant denies this allegation to the extent it seeks an implied admission that Defendant and Uber are one in the same, or requires Defendant to answer on Uber's behalf. Uber is not a named defendant in this action. Subject to and notwithstanding the foregoing, Defendant admits the allegations in Paragraph 29.

30. Defendant denies this allegation to the extent it seeks an implied admission that Defendant and Uber are one in the same, or requires Defendant to answer on Uber's behalf. Uber is not a named defendant in this action. Subject to and notwithstanding the foregoing, Defendant admits the allegations in Paragraph 30.

31. Defendant denies this allegation to the extent it seeks an implied admission that Defendant and Uber are one in the same, or requires Defendant to answer on Uber's behalf. Uber is not a named defendant in this action. Subject to and notwithstanding the foregoing, Defendant admits that the Uber App facilitates payment between an Uber user and an independent transportation provider. Uber denies the remaining allegations in Paragraph 31.

32. Defendant denies this allegation to the extent it seeks an implied admission that Defendant and Uber are one in the same, or requires Defendant to answer on Uber's behalf. Uber is not a named defendant in this action. Subject to and notwithstanding the foregoing, Defendant admits that paragraph 32 describes one way that Uber facilitates the collection of a fare.

33. Defendant denies this allegation to the extent it seeks an implied admission that Defendant and Uber are one in the same, or requires Defendant to answer on Uber's behalf. Uber is not a named defendant in this action. Subject to and notwithstanding the foregoing,

Defendant lacks knowledge sufficient to admit or deny this allegation.

34. Defendant denies this allegation to the extent it seeks an implied admission that Defendant and Uber are one in the same, or requires Defendant to answer on Uber's behalf. Uber is not a named defendant in this action. Subject to and notwithstanding the foregoing, Defendant denies the allegations in Paragraph 34.

35. Defendant denies this allegation to the extent it seeks an implied admission that Defendant and Uber are one in the same, or requires Defendant to answer on Uber's behalf. Uber is not a named defendant in this action. Subject to and notwithstanding the foregoing, Defendant admits that when agreed between the user and the driver-partner, users pay driver partners through the Uber App.

36. Defendant denies this allegation to the extent it seeks an implied admission that Defendant and Uber are one in the same, or requires Defendant to answer on Uber's behalf. Uber is not a named defendant in this action. Subject to and notwithstanding the foregoing, Defendant lacks knowledge sufficient to admit or deny this allegation.

37. Defendant denies this allegation to the extent it seeks an implied admission that Defendant and Uber are one in the same, or requires Defendant to answer on Uber's behalf. Uber is not a named defendant in this action. The terms "actively recruit" and "partners," are, as used in this allegation, vague and ambiguous. Subject to and notwithstanding the foregoing, Defendant admits the allegation in paragraph 37. .

38. Defendant denies this allegation to the extent it seeks an implied admission that Defendant and Uber are one in the same, or requires Defendant to answer on Uber's behalf. Uber is not a named defendant in this action. Subject to and notwithstanding the foregoing,

Defendant admits that independent transportation providers must agree to written agreements with Uber.

39. Defendant denies this allegation to the extent it seeks an implied admission that Defendant and Uber are one in the same, or requires Defendant to answer on Uber's behalf. Uber is not a named defendant in this action. Subject to and notwithstanding the foregoing, Defendant admits that the following language appears in the operative agreement with driver partners: "No joint venture, partnership, employment, or agency relationship exists between you, the Company or any third party provider as a result of this Agreement or use of the Service or Application."

40. Defendant denies this allegation to the extent it seeks an implied admission that Defendant and Uber are one in the same, or requires Defendant to answer on Uber's behalf. Uber is not a named defendant in this action. Defendant further denies that he "and his subordinates decide to offer Uber App services" as it conflates Defendant and Uber. Subject to and notwithstanding the foregoing, Defendant admits that when Uber decides to offer Uber App services in a new geographic location, Uber may use social media as one of several ways to advertise for new independent transportation providers.

41. Defendant denies this allegation to the extent it seeks an implied admission that Defendant and Uber are one in the same, or requires Defendant to answer on Uber's behalf. Uber is not a named defendant in this action. Subject to and notwithstanding the foregoing, Defendant lacks knowledge sufficient to admit or deny this allegation, and, on that basis, denies it.

42. Defendant denies this allegation to the extent it seeks an implied admission that

Defendant and Uber are one in the same, or requires Defendant to answer on Uber's behalf. Uber is not a named defendant in this action. Subject to and notwithstanding the foregoing, Defendant admits that the language quoted in paragraph 42 has appeared on Uber's website.

43. Defendant denies this allegation to the extent it seeks an implied admission that Defendant and Uber are one in the same, or requires Defendant to answer on Uber's behalf. Uber is not a named defendant in this action. Subject to and notwithstanding the foregoing, Defendant admits that the independent transportation providers who use the Uber app have discretion to accept or decline an Uber user request.

44. Defendant denies this allegation to the extent it seeks an implied admission that Defendant and Uber are one in the same, or requires Defendant to answer on Uber's behalf. Uber is not a named defendant in this action. Subject to and notwithstanding the foregoing, Defendant lacks knowledge sufficient to admit or deny this allegation, and, on that basis, denies the allegation.

45. Defendant denies this allegation to the extent it seeks an implied admission that Defendant and Uber are one in the same, or requires Defendant to answer on Uber's behalf. Uber is not a named defendant in this action. Defendant further responds that the terms "mobilize" and "lobby" are, as used in this allegation, vague and ambiguous, and, for that reason, Defendant lacks knowledge sufficient to admit or deny this allegation.

46. Defendant denies this allegation to the extent it seeks an implied admission that Defendant and Uber are one in the same, or requires Defendant to answer on Uber's behalf. Uber is not a named defendant in this action. Uber further objects that the phrase "steadfastly maintained," is vague and ambiguous, and, for that reason, Defendant lacks knowledge

sufficient to admit or deny this allegation, and, on that basis, denies the allegation. Subject to and notwithstanding the foregoing, Defendant admits that it has maintained that the independent service providers who use the Uber App are not employees of Uber. Defendant denies the remaining allegations in paragraph 46.

47. Defendant denies this allegation to the extent it seeks an implied admission that Defendant and Uber are one in the same, or requires Defendant to answer on Uber's behalf. Uber is not a named defendant in this action. Subject to and notwithstanding the foregoing, Defendant admits that the Uber App generates a suggested fare for its independent transportation providers based on an Uber-generated algorithm. Defendant admits that Uber's pricing algorithm is dynamic, and when demand outstrips supply in a given area, the Uber algorithm temporarily increases the factor applied to the calculation of the fare in that area to encourage more independent transportation providers to become available to offer rides and therefore expand supply. Defendant denies the remaining allegations of paragraph 47.

48. Defendant denies this allegation to the extent it seeks an implied admission that Defendant and Uber are one in the same, or requires Defendant to answer on Uber's behalf. Uber is not a named defendant in this action. Subject to and notwithstanding the foregoing, Defendant denies the allegations in paragraph 48.

49. Defendant denies this allegation to the extent it seeks an implied admission that Defendant and Uber are one in the same, or requires Defendant to answer on Uber's behalf. Uber is not a named defendant in this action. Subject to and notwithstanding the foregoing, Defendant lacks knowledge sufficient to admit or deny the allegations in paragraph 49, and, on that basis, denies the allegations.

50. Defendant admits that he publicly advocates the procompetitive benefits of the “surge pricing” model. Defendant denies the remaining allegations in paragraph 50.

51. Defendant admits that the quoted language in paragraph 51 appears among his comments on market pricing for the Wired article.

52. Defendant denies this allegation to the extent it seeks an implied admission that Defendant and Uber are one in the same, or requires Defendant to answer on Uber’s behalf. Uber is not a named defendant in this action. Subject to and notwithstanding the foregoing, Defendant admits that the quoted language in paragraph 52 appears on Uber’s website. Defendant denies the remaining allegations in paragraph 52.

53. Defendant denies the allegations in paragraph 53.

54. Defendant denies this allegation to the extent it seeks an implied admission that Defendant and Uber are one in the same, or requires Defendant to answer on Uber’s behalf. Uber is not a named defendant in this action. Subject to and notwithstanding the foregoing, Defendant denies the allegations in paragraph 54..

55. Defendant denies this allegation to the extent it seeks an implied admission that Defendant and Uber are one in the same, or requires Defendant to answer on Uber’s behalf. Uber is not a named defendant in this action. Subject to and notwithstanding the foregoing, lacks knowledge sufficient to admit or deny this allegation, and, on that basis, denies the allegation as alleged.

56. Defendant denies this allegation to the extent it seeks an implied admission that Defendant and Uber are one in the same, or requires Defendant to answer on Uber’s behalf. Uber is not a named defendant in this action. Subject to and notwithstanding the foregoing,

Defendant denies the allegations in paragraph 56.

57. Defendant denies this allegation to the extent it seeks an implied admission that Defendant and Uber are one in the same, or requires Defendant to answer on Uber's behalf. Uber is not a named defendant in this action. Subject to and notwithstanding the foregoing, Defendant admits that and when demand outstrips supply in a given area, the Uber algorithm temporarily increases the factor applied to the calculation of the fare in that area to encourage more independent transportation providers to become available to offer rides and therefore expand supply. Defendant further admits that the Uber App may notify independent service providers of the increased fares.

58. Defendant denies this allegation to the extent it seeks an implied admission that Defendant and Uber are one in the same, or requires Defendant to answer on Uber's behalf. Uber is not a named defendant in this action. Subject to and notwithstanding the foregoing, Defendant admits the allegations in paragraph 58.

59. Defendant denies this allegation to the extent it seeks an implied admission that Defendant and Uber are one in the same, or requires Defendant to answer on Uber's behalf. Uber is not a named defendant in this action. Subject to and notwithstanding the foregoing, Defendant denies the allegations in paragraph 59.

60. Defendant denies this allegation to the extent it seeks an implied admission that Defendant and Uber are one in the same, or requires Defendant to answer on Uber's behalf. Uber is not a named defendant in this action. Subject to and notwithstanding the foregoing, Defendant denies the allegations in paragraph 60.

61. Defendant admits that the quoted language in paragraph 61 is among the

comments he made in an article in Vanity Fair magazine from an interview that he gave.

62. Defendant admits that the quoted language in paragraph 62 is among statements made by him in a television interview on Late Show with Stephen Colbert.

63. Defendant admits that the quoted language in paragraph 63 is among the statements made by him in a television interview on Late Show with Stephen Colbert.

64. Defendant denies this allegation to the extent it seeks an implied admission that Defendant and Uber are one in the same, or requires Defendant to answer on Uber's behalf. Uber is not a named defendant in this action. Subject to and notwithstanding the foregoing, Defendant denies the allegations in paragraph 64.

65. Defendant denies the allegations in paragraph 65.

66. Defendant denies this allegation to the extent it seeks an implied admission that Defendant and Uber are one in the same, or requires Defendant to answer on Uber's behalf. Uber is not a named defendant in this action. Subject to and notwithstanding the foregoing, Defendant lacks knowledge sufficient to admit or deny this allegation.

67. Defendant denies this allegation to the extent it seeks an implied admission that Defendant and Uber are one in the same, or requires Defendant to answer on Uber's behalf. Uber is not a named defendant in this action. Subject to and notwithstanding the foregoing, Defendant lacks knowledge sufficient to admit or deny this allegation, and, on that basis, denies the allegation.

68. Defendant denies this allegation to the extent it seeks an implied admission that Defendant and Uber are one in the same, or requires Defendant to answer on Uber's behalf. Uber is not a named defendant in this action. Subject to and notwithstanding the foregoing,

Defendant denies the allegation in paragraph 68.

69. Defendant denies this allegation to the extent it seeks an implied admission that Defendant and Uber are one in the same, or requires Defendant to answer on Uber's behalf. Uber is not a named defendant in this action. Subject to and notwithstanding the foregoing, Defendant denies the allegations in paragraph 69.

70. Defendant denies this allegation to the extent it seeks an implied admission that Defendant and Uber are one in the same, or requires Defendant to answer on Uber's behalf. Uber is not a named defendant in this action. Subject to and notwithstanding the foregoing, Defendant denies the allegations of paragraph 70.

71. Defendant denies this allegation to the extent it seeks an implied admission that Defendant and Uber are one in the same, or requires Defendant to answer on Uber's behalf. Uber is not a named defendant in this action. Subject to and notwithstanding the foregoing, Defendant denies the allegations in paragraph 71.

72. Defendant denies this allegation to the extent it seeks an implied admission that Defendant and Uber are one in the same, or requires Defendant to answer on Uber's behalf. Uber is not a named defendant in this action. Subject to and notwithstanding the foregoing, Defendant denies the allegations in paragraph 72.

73. Defendant denies this allegation to the extent it seeks an implied admission that Defendant and Uber are one in the same, or requires Defendant to answer on Uber's behalf. Uber is not a named defendant in this action. Subject to and notwithstanding the foregoing, Defendant lacks knowledge sufficient to admit or deny this allegation.

74. Defendant admits that on or about December 16, 2013, he made a post to his

Facebook account that contained the quoted language.

75. Paragraph 75 contains legal conclusions to which no response is required. To the extent that a response is required, Defendant denies the allegations in paragraph 75.

76. Paragraph 76 contains legal conclusions to which no response is required. To the extent that a response is required, Defendant denies the allegations in paragraph 76..

77. Defendant denies this allegation to the extent it seeks an implied admission that Defendant and Uber are one in the same, or requires Defendant to answer on Uber's behalf. Uber is not a named defendant in this action. Subject to and notwithstanding the foregoing, Defendant denies the allegations in paragraph 77.

78. Defendant denies this allegation to the extent it seeks an implied admission that Defendant and Uber are one in the same, or requires Defendant to answer on Uber's behalf. Uber is not a named defendant in this action. Subject to and notwithstanding the foregoing, Defendant denies the allegations in paragraph 78.

79. Defendant denies this allegation to the extent it seeks an implied admission that Defendant and Uber are one in the same, or requires Defendant to answer on Uber's behalf. Uber is not a named defendant in this action. Subject to and notwithstanding the foregoing, Defendant lacks knowledge sufficient to admit or deny this allegation, and, on that basis, denies the allegation.

80. Defendant admits that he is the CEO and co-founder of Uber and that on one night -- starting at 9:19 p.m. on February 21, 2014 and ending at 1:57 a.m. on February 22, 2014 -- Defendant acted as a driver-partner on the Uber platform

81. Defendant admits to tweeting the quoted language.

82. Defendant denies the allegations in paragraph 82.

83. Defendant denies the allegations in paragraph 83.

84. Defendant denies the allegations and legal conclusions in paragraph 84.

85. Defendant denies the allegations and legal conclusions in paragraph 85.

86. Defendant denies the allegations and legal conclusions in paragraph 86.

87. Defendant denies this allegation to the extent it seeks an implied admission that Defendant and Uber are one in the same, or requires Defendant to answer on Uber's behalf. Uber is not a named defendant in this action. Subject to and notwithstanding the foregoing, Defendant denies the allegations in paragraph 87.

88. Defendant denies the allegations and legal conclusions in paragraph 88.

89. Defendant denies this allegation to the extent it seeks an implied admission that Defendant and Uber are one in the same, or requires Defendant to answer on Uber's behalf. Uber is not a named defendant in this action. Subject to and notwithstanding the foregoing, Defendant denies the allegations and legal conclusions in paragraph 89.

90. Defendant denies this allegation to the extent it seeks an implied admission that Defendant and Uber are one in the same, or requires Defendant to answer on Uber's behalf. Uber is not a named defendant in this action. Subject to and notwithstanding the foregoing, Defendant denies the allegations and legal conclusions in paragraph 90.

91. Defendant denies this allegation to the extent it seeks an implied admission that Defendant and Uber are one in the same, or requires Defendant to answer on Uber's behalf. Uber is not a named defendant in this action. Subject to and notwithstanding the foregoing, Defendant denies the allegations and legal conclusions in paragraph 91.

92. Defendant denies this allegation to the extent it seeks an implied admission that Defendant and Uber are one in the same, or requires Defendant to answer on Uber's behalf. Uber is not a named defendant in this action. To the extent this paragraph seeks information about the mindset or beliefs of people who are not the Defendant, Defendant lacks sufficient knowledge to admit or deny the allegation. Subject to and notwithstanding the foregoing, Defendant denies the allegations in paragraph 92.

93. Paragraph 93 contains legal conclusions and hypotheses to which no response is required.

94. Defendant denies this allegation to the extent it seeks an implied admission that Defendant and Uber are one in the same, or requires Defendant to answer on Uber's behalf. Uber is not a named defendant in this action. Subject to and notwithstanding the foregoing, Defendant denies the allegations in paragraph 94.

95. Defendant denies this allegation to the extent it seeks an implied admission that Defendant and Uber are one in the same, or requires Defendant to answer on Uber's behalf. Uber is not a named defendant in this action. Subject to and notwithstanding the foregoing, Defendant denies the allegation in paragraph 95..

96. Defendant denies this allegation to the extent it seeks an implied admission that Defendant and Uber are one in the same, or requires Defendant to answer on Uber's behalf. Uber is not a named defendant in this action. Subject to and notwithstanding the foregoing, Defendant denies the allegation in paragraph 96.

97. Defendant lacks knowledge sufficient to admit or deny the allegation in paragraph 97, and, on that basis, denies it.

98. Defendant admits that the chart displayed in paragraph 98 may be found as part of an article by Daniel Miller entitled “Lyft vs. Uber: Just How Dominant Is Uber in the Ridesharing Business?,” May 24, 2015, available at www.fool.com/investing/general/2015/05/24/lyft-vs-uber-just-how-dominant-is-uber-ridesharing.aspx.

99. Defendant admits that the chart displayed in paragraph 99 may be found as part of an article by Daniel Miller entitled “Lyft vs. Uber: Just How Dominant Is Uber in the Ridesharing Business?”.

100. Defendant admits that a study by Wefi published in Forbes Magazine in August 2015 reported that 6% of sampled smart phones had the Uber App installed, and 1% had the Lyft App installed. Defendant denies the remaining allegations in paragraph 100.

101. Defendant denies this allegation to the extent it seeks an implied admission that Defendant and Uber are one in the same, or requires Defendant to answer on Uber’s behalf. Uber is not a named defendant in this action. Subject to and notwithstanding the foregoing, Defendant denies the allegations asserted in paragraph 101.

102. Defendant denies this allegation to the extent it seeks an implied admission that Defendant and Uber are one in the same, or requires Defendant to answer on Uber’s behalf. Uber is not a named defendant in this action. Subject to and notwithstanding the foregoing, Defendant denies the allegations asserted in paragraph 102.

103. Defendant denies this allegation to the extent it seeks an implied admission that Defendant and Uber are one in the same, or requires Defendant to answer on Uber’s behalf. Uber is not a named defendant in this action. Subject to and notwithstanding the foregoing, Defendant denies the allegations asserted in paragraph 103.

104. Defendant denies this allegation to the extent it seeks an implied admission that Defendant and Uber are one in the same, or requires Defendant to answer on Uber's behalf. Uber is not a named defendant in this action. Subject to and notwithstanding the foregoing, Defendant admits that using a mobile app-generated ride-share service like the Uber App means that riders need not have cash or credit card on hand, and they can simply get out of the car when they reach their destination without further delay and that the Uber App allows a rider to rate his or her driver and view their driver's name, headshot, the make and model of his car, and overall rating before entering the vehicle. Defendant denies all other allegations in this paragraph.

105. Defendant denies this allegation to the extent it seeks an implied admission that Defendant and Uber are one in the same, or requires Defendant to answer on Uber's behalf. Uber is not a named defendant in this action. Subject to and notwithstanding the foregoing, Defendant denies the allegations of paragraph 105.

106. Defendant denies the allegations in paragraph 106.

107. Defendant denies this allegation to the extent it seeks an implied admission that Defendant and Uber are one in the same, or requires Defendant to answer on Uber's behalf. Uber is not a named defendant in this action. Subject to and notwithstanding the foregoing, Defendant denies the allegations in paragraph 107.

108. Defendant denies the allegations in paragraph 108.

109. Defendant denies this allegation to the extent it seeks an implied admission that Defendant and Uber are one in the same, or requires Defendant to answer on Uber's behalf. Uber is not a named defendant in this action. To the extent paragraph 109 calls for a legal

conclusion, no response is required. Subject to and notwithstanding the foregoing, Defendant denies the allegations in paragraph 109.

110. Defendant denies this allegation to the extent it seeks an implied admission that Defendant and Uber are one in the same, or requires Defendant to answer on Uber's behalf. Uber is not a named defendant in this action. Subject to and notwithstanding the foregoing, Defendant denies the allegations and legal conclusions in paragraph 110.

111. Defendant denies the allegations in paragraph 111.

112. Defendant denies the allegations and legal conclusions in paragraph 112.

113. Defendant admits that Plaintiff seeks to sue "on behalf of a class of persons pursuant to Federal Rule of Civil Procedure 23". Defendant denies that this case can proceed as a class action and denies the remaining allegations set forth in paragraph 113. Defendant further states that Plaintiff cannot maintain this action in this forum or as a class action because Plaintiff expressly agreed to not to participate as a plaintiff in a class.

114. Defendant admits that Plaintiff also seeks to "bring certain of the claims on behalf of himself and a portion of the Class described as the Surge Pricing Subclass." Defendant denies that this case can proceed as a class action and deny the remaining allegations set forth in paragraph 114. Defendant further states that Plaintiff cannot maintain this action as a class action because Plaintiff expressly agreed to not to participate as a plaintiff in a class.

115. Defendant denies the allegations in paragraph 115.

116. Defendant denies the allegations in paragraph 116 (and its subparts).

117. Defendant denies the allegations in paragraph 117.

118. Defendant denies the allegations in paragraph 118.

119. Defendant denies the allegations in paragraph 119.

FIRST CAUSE OF ACTION
(Violation of the Sherman Act, 15 U.S.C. § 1)

120. Defendant incorporates his responses to Paragraphs 1 through 119 as if fully rewritten herein.

121. Defendant denies this allegation to the extent it seeks an implied admission that Defendant and Uber are one in the same, or requires Defendant to answer on Uber's behalf. Uber is not a named defendant in this action. Subject to and notwithstanding the foregoing, Defendant denies the allegations in paragraph 121 and contests Plaintiff's assertion that he is not required to allege a relevant market.

122. Defendant denies this allegation to the extent it seeks an implied admission that Defendant and Uber are one in the same, or requires Defendant to answer on Uber's behalf. Uber is not a named defendant in this action. Subject to and notwithstanding the foregoing, Defendant denies the allegations in paragraph 122.

123. Defendant denies this allegation to the extent it seeks an implied admission that Defendant and Uber are one in the same, or requires Defendant to answer on Uber's behalf. Uber is not a named defendant in this action. Subject to and notwithstanding the foregoing, Defendant denies the allegations in paragraph 123.

124. Defendant denies this allegation to the extent it seeks an implied admission that Defendant and Uber are one in the same, or requires Defendant to answer on Uber's behalf. Uber is not a named defendant in this action. Subject to and notwithstanding this denial, Defendant denies the allegations in paragraph 124.

125. Defendant denies this allegation to the extent it seeks an implied admission that

Defendant and Uber are one in the same, or requires Defendant to answer on Uber's behalf. Uber is not a named defendant in this action. Subject to and notwithstanding the foregoing, Defendant denies the allegations in paragraph 125.

126. Defendant denies this allegation to the extent it seeks an implied admission that Defendant and Uber are one in the same, or requires Defendant to answer on Uber's behalf. Uber is not a named defendant in this action. Subject to and notwithstanding the foregoing, Defendant denies the allegations in paragraph 126.

127. Defendant denies this allegation to the extent it seeks an implied admission that Defendant and Uber are one in the same, or requires Defendant to answer on Uber's behalf. Uber is not a named defendant in this action. Subject to and notwithstanding the foregoing, Defendant denies the allegations in paragraph 127.

128. Defendant denies this allegation to the extent it seeks an implied admission that Defendant and Uber are one in the same, or requires Defendant to answer on Uber's behalf. Uber is not a named defendant in this action. Subject to and notwithstanding the foregoing, Defendant denies the allegations in paragraph 128.

129. Defendant denies the allegations in paragraph 129.

130. Defendant denies this allegation to the extent it seeks an implied admission that Defendant and Uber are one in the same, or requires Defendant to answer on Uber's behalf. Uber is not a named defendant in this action. Subject to and notwithstanding the foregoing, Defendant denies the allegations in paragraph 130.

131. Defendant denies this allegation to the extent it seeks an implied admission that Defendant and Uber are one in the same, or requires Defendant to answer on Uber's behalf.

Uber is not a named defendant in this action. Subject to and notwithstanding the foregoing, Defendant denies the allegations in paragraph 131.

132. Defendant denies this allegation to the extent it seeks an implied admission that Defendant and Uber are one in the same, or requires Defendant to answer on Uber's behalf. Uber is not a named defendant in this action. Subject to and notwithstanding the foregoing, Defendant denies the allegations in paragraph 132.

133. Defendant denies this allegation to the extent it seeks an implied admission that Defendant and Uber are one in the same, or requires Defendant to answer on Uber's behalf. Uber is not a named defendant in this action. Subject to and notwithstanding the foregoing, Defendant denies the allegations in paragraph 133.

SECOND CAUSE OF ACTION
(Violation of the Donnelly Act, N.Y. Gen. Bus. Law § 340)

134. Defendant incorporates his responses to Paragraphs 1 through 133 as if fully rewritten herein.

135. Defendant denies this allegation to the extent it seeks an implied admission that Defendant and Uber are one in the same, or requires Defendant to answer on Uber's behalf. Uber is not a named defendant in this action. Subject to and notwithstanding the foregoing, Defendant denies the allegations in paragraph 135.

136. Defendant denies this allegation to the extent it seeks an implied admission that Defendant and Uber are one in the same, or requires Defendant to answer on Uber's behalf. Uber is not a named defendant in this action. Subject to and notwithstanding the foregoing, Defendant denies the allegations in paragraph 136.

137. Defendant denies this allegation to the extent it seeks an implied admission that

Defendant and Uber are one in the same, or requires Defendant to answer on Uber's behalf. Uber is not a named defendant in this action. Subject to and notwithstanding the foregoing, Defendant denies the allegations in paragraph 137.

138. Defendant denies this allegation to the extent it seeks an implied admission that Defendant and Uber are one in the same, or requires Defendant to answer on Uber's behalf. Uber is not a named defendant in this action. Subject to and notwithstanding the foregoing, Defendant denies the allegations in paragraph 138.

139. Defendant denies this allegation to the extent it seeks an implied admission that Defendant and Uber are one in the same, or requires Defendant to answer on Uber's behalf. Uber is not a named defendant in this action. Subject to and notwithstanding the foregoing, Defendant denies the allegations in paragraph 139.

140. Defendant denies this allegation to the extent it seeks an implied admission that Defendant and Uber are one in the same, or requires Defendant to answer on Uber's behalf. Uber is not a named defendant in this action. Subject to and notwithstanding the foregoing, Defendant denies the allegations in paragraph 140.

JURY DEMAND

141. Defendant admits that "Plaintiff requests a jury trial of all issues triable of right to a jury" but also avers that Plaintiff has expressly waived his right to jury trial.

142. Defendant specifically denies any unlawful conduct and further specifically denies that Plaintiff (or the proposed class members) is entitled to any of the relief requested.

AFFIRMATIVE DEFENSES

Based on Defendant's knowledge of the facts to date, Defendant states and further responds:

143. Plaintiff is precluded from proceeding in this action under the terms of his binding User Agreement. Plaintiff expressly agreed to resolve "any dispute, claim, or controversy arising out of or relating to" the Agreement via binding arbitration. Plaintiff also agreed to waive "the right to a trial by jury, to participate as a plaintiff or class User in any purported class action or representative proceeding."

144. Plaintiff's proposed class definition is vague and overly broad, and otherwise fails to satisfy the requirements for maintaining a class action.

145. Plaintiff cannot establish the requirements of Rule 23 of the Federal Rules of Civil Procedure for a class action.

146. This action is not a proper class action under Federal Rule of Civil Procedure 23 because, inter alia, Plaintiff's claims are futile, Plaintiff's claims are not typical or common of those of the putative class, Plaintiff is not an adequate representative of the putative class, common issues do not predominate over individual issues, damages cannot be proven on a class-wide basis, the class is based on a faulty definition of the relevant market, and a class action is not a superior method of adjudication of this case.

147. Plaintiff's claims are subject to arbitration by virtue of Plaintiff's agreement to an arbitration clause.

148. Plaintiff's claims are barred, in whole or part, because the conduct alleged in the Amended Complaint has had no actual, adverse effect on competition or, if there were any such effects, they are outweighed by the pro-competitive benefits of that conduct.

149. Plaintiff has failed to state a cause of action for which relief may be granted in whole or in part.

150. Plaintiff's claims are barred, in whole or part, because plaintiff has not suffered actual, cognizable antitrust injury.

151. The relief sought by Plaintiff and members of the putative class is barred, in whole or in part, because the alleged damages sought are too speculative and uncertain, and because of the impossibility of the ascertainment and allocation of such alleged damages.

152. The claims of Plaintiff and the members of the putative class are barred, in whole or in part, because to the extent any Plaintiff or member of the putative class has been damaged, such damage was not proximately caused by the conduct of Defendant.

153. The claims of Plaintiff and the members of the putative class are barred, in whole or in part, because they have suffered no injury in fact.

154. The claims of Plaintiff and the members of the putative class are barred, in whole or in part, because recovery on such claims would result in unjust enrichment to Plaintiff.

155. The claims of Plaintiff and the members of the putative class are barred, in whole or in part, because any conduct engaged in by Defendant has been reasonable, based on independent, legitimate business and economic justifications, without any purpose or intent to injure competition.

156. Plaintiff's claims are barred to the extent Plaintiff impermissibly seeks equitable relief against non-parties to this litigation.

157. The claims of Plaintiff and the members of the putative class are barred, in whole or in part by the doctrine of laches, waiver, and/or estoppel.

158. The claims of Plaintiff and the members of the putative classes are barred, in whole or in part, because the Complaint fails to plead conspiracy with the particularity required under applicable law.

159. The claims of Plaintiff and the members of the putative classes are barred, in whole or in part, because the alleged conduct of Defendant did not lessen competition in a relevant market or unreasonably restrain trade.

160. The claims of Plaintiff and the members of the putative class are barred, in whole or in part, because the Complaint does not adequately define the relevant market or products allegedly affected by the alleged conduct of Defendant that is the subject of the Complaint.

161. Plaintiff has failed to name a necessary and indispensable party to the proceedings.

162. Plaintiff both directly and indirectly improperly implies that Defendant and Uber are one in the same, or require Defendant to answer on Uber's behalf. Uber is not a named defendant in this action.

163. To the extent not specifically admitted, each factual assertion by Plaintiff is denied. To the extent that the headings and non-numbered statements in the Complaint contain any averments, Defendant denies each and every such averment.

164. Because Plaintiff's Amended Complaint is phrased in conclusory terms, Defendant cannot fully anticipate all affirmative defenses that may be applicable to this action. Accordingly, Defendant has done his best to anticipate the possible affirmative defenses consistent with the requirements of FRCP 8(c). Defendant reserves the right to assert additional defenses, to the extent such defenses are or become applicable, as well as to develop facts in

support of their affirmative defenses. To the extent any affirmative defense is, ultimately, not applicable, in whole or in part, it will be, in good faith, amended or withdrawn.

Dated: April 14, 2016

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on April 14, 2016, I filed and therefore caused the foregoing document to be served via the CM/ECF system in the United States District Court for the Southern District of New York on all parties registered for CM/ECF in the above-captioned matter.

/s/ Ryan Y. Park

Ryan Y. Park