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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

JULIAN METTER, individually, and on
behalf of a class of similarly situated
individuals,

Plaintiff,

v.

UBER TECHNOLOGIES, INC., a
Delaware corporation,

Defendant.

Case No.:

CLASS ACTION COMPLAINT FOR:

- (1) Violations of Unfair Competition Law, California Business & Professions Code § 17200 *et seq.*
- (2) Violations of California’s Consumers Legal Remedies Act
- (3) Violations of California Civil Code § 1671
- (4) Unjust Enrichment

DEMAND FOR JURY TRIAL

INTRODUCTION

1
2 1. Plaintiff Julian Metter (“Plaintiff”) brings this action for himself and on behalf
3 of all persons in the United States who have utilized the ride-sharing services (“Riders”)
4 offered by Uber Technologies, Inc. (“Defendant” or “Uber”) and unfairly and unlawfully
5 incurred a cancellation fee imposed by Defendant.

6 2. Uber’s cancellation fees are arbitrarily imposed against Riders who are not
7 informed in advance of contracting for a ride that such fees, including the specific amount of
8 the fees, may be automatically charged to their credit cards. The fees are imposed in
9 situations both where Riders intend to cancel the requested rides and, remarkably, even when
10 the Riders have no desire to cancel the requested ride.

11 3. Specifically, the cancellation fees are imposed when Riders intend to cancel a
12 ride but fail to do so within the 2-5 minute time limit in which they are required to do so
13 because they are not aware that such a time limit exists until it is too late. The fees are also
14 imposed when the Rider has no intent to cancel but, through no fault of the Rider, the Uber
15 driver is delayed, unable to fulfill the ride request, or chooses not to fulfill the ride request
16 after accepting it and the Rider is forced at the behest of the driver to cancel the ride on the
17 Rider’s mobile device and request a different Uber driver.

18 4. On information and belief, Uber penalizes its drivers by deactivating their
19 account and subsequently prevents them from driving for Uber, if an Uber driver has a low
20 ride-acceptance rate due to too many driver-initiated cancellations (i.e. when the Uber driver
21 depresses the “Driver Requested Cancel” function on his/her mobile device as opposed to the
22 “Rider Requested Cancel” button). As such, when an Uber driver cannot complete a ride
23 he/she accepted or chooses not to do so, most commonly during “surge pricing”¹ times, Uber

24
25 ¹ “Surge pricing is when fares temporarily increase to encourage more drivers to get on
26 the road and head to areas of the city where demand for rides is high. Fares may surge when
27 many riders are requesting pickup in an area of the city. Surge is designed to ensure you can
28 request and receive a quick pickup anytime... In some cities, before you request a ride, your
app will display any current surge multiplier as a whole number and decimal. Surge multiplies
the base, time, and distance of your trip fare. Cancellation fees, tolls, and per-trip surcharges
are not subject to surge pricing. For example, a surge multiplier of 1.2x applied to a trip fare
that would normally cost \$5 would result in a trip fare of \$6 (\$5 x 1.2x).” See “What is surge

1 actually incentivizes its drivers to cancel the Rider’s request by depressing the “Rider
2 Requested Cancel” function or by requesting the Rider to cancel from the Rider’s mobile
3 device. In either scenario, Riders automatically and unknowingly incur a cancellation fee if
4 the 2-5 minute time period to cancel has passed; meanwhile, Uber drivers are not penalized
5 for initiating the ride request cancellation and thus avoid Uber deactivation by maintaining an
6 artificially low number of Driver Requested Cancellations.

7 5. While Uber asserts that the automatic cancellation fees it charges Riders are
8 “intended to compensate driver-partners for time and effort spent heading toward a pick-up
9 location,” the reality is that Uber profits from these fees because, like any other fare, Uber, on
10 information and belief, takes 25% of the cancellation fee even though it is “intended” only to
11 compensate Uber drivers. This incentivizes Uber to continue this profitable business practice
12 rather than revise its Cancellation Fee Policy to make it fair to Riders, or eliminate it
13 altogether. Uber’s automatic cancellation fees, and entire cancellation fee practices, are
14 arbitrarily and unfairly imposed to the sole detriment of Riders (but to the benefit of Uber) and
15 therefore must be stopped.

16 6. Had Plaintiff and other Class Members known all material information
17 regarding Defendant’s Cancellation Fee Policy, then Plaintiff and the other Class Members
18 would not have utilized Uber’s ride-sharing services or would not have cancelled a pending
19 ride request. Plaintiff and other Riders were harmed and suffered actual damages in that they
20 incurred, and continue to incur, unlawful cancellation fees.

21 **THE PARTIES**

22 7. Plaintiff Julian Metter (“Plaintiff”) is a citizen of the state of California,
23 residing in Los Angeles California.

24 8. Defendant Uber Technologies, Inc. is a corporation organized and in existence
25 under the laws of the State of Delaware and registered to do business in the State of
26 California. Uber Technologies, Inc. Corporate Headquarters are located at 1455 Market
27 _____
28 pricing?,” Uber Help, <https://help.uber.com/>.

1 Street, 4th Floor, San Francisco, California.

2 9. At all relevant times, Defendant was and is engaged in the business of
3 arranging ride-share services via its mobile application and website in San Francisco County
4 and throughout the United States of America.

5 **JURISDICTION**

6 10. This is a class action.

7 11. This Court has subject matter jurisdiction over this matter pursuant to 28 U.S.C.
8 § 1331 because this action arises under the Constitution or laws of the United States and the
9 Class Action Fairness Act, 28 U.S.C. § 1332(d)(2) and (6), in that, as to each Class defined
10 herein:

- 11 (a) the matter in controversy exceeds \$5,000,000.00, exclusive of interest
12 and costs;
- 13 (b) this is a class action involving 100 or more class members; and
- 14 (c) this is a class action in which at least one member of the Plaintiff class
15 is a citizen of a State different from at least one Defendant.

16 12. The Court has personal jurisdiction over Defendant, which have at least
17 minimum contacts with the State of California because they have conducted business there
18 and have availed themselves of California's markets through their ride-sharing services.

19 **VENUE**

20 13. Uber, through its ride-sharing business has established sufficient contacts in
21 this district such that personal jurisdiction is appropriate. Defendant is deemed to reside in
22 this district pursuant to 28 U.S.C. § 1391(a).

23 14. In addition, Defendant is headquartered here and/or has conducted business
24 here and has availed itself of California's markets through its marketing, sale, and
25 administration of ride-sharing services. Venue is proper in this Court pursuant to 28 U.S.C. §
26 1391(a).

27 //

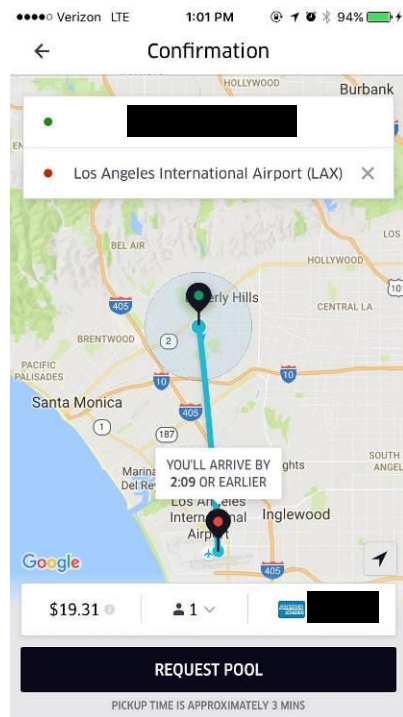
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FACTUAL ALLEGATIONS

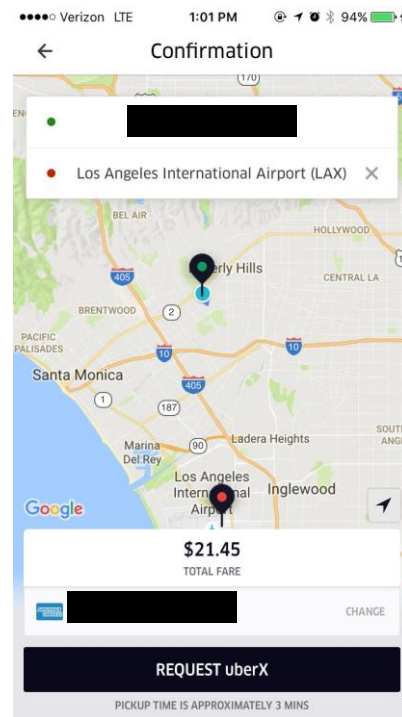
A. Uber’s Cancellation Fee Policy

15. Uber provides a ride-sharing service whereby Riders are able to request private drivers through its application available for download on iPhone, Android, and other similar devices. In order to request an Uber driver, the Rider must enter a pickup location and destination (Screen 1). The next screen informs the Rider of the total fare for the ride, which the Rider must accept in order to complete the ride request (Screen 2). The fare is automatically charged to the Rider’s credit card saved to the Uber application at the end of the ride.

Screen 1:

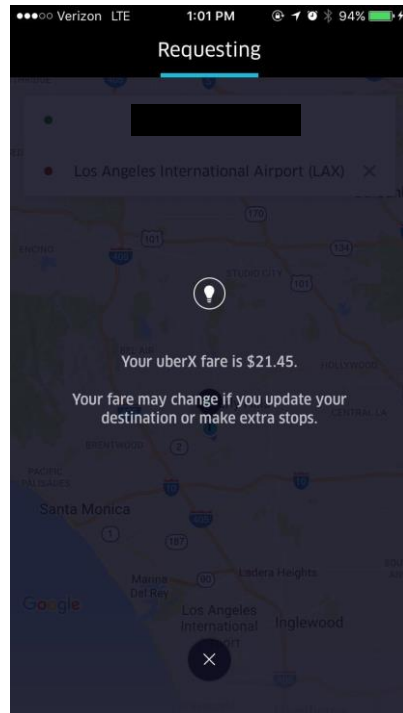


Screen 2:

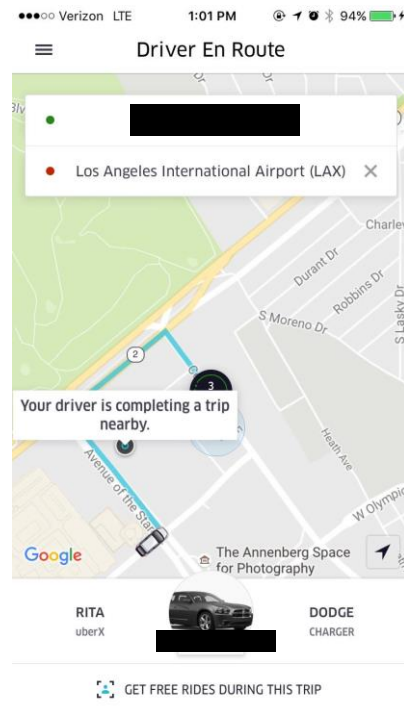


16. Once the Rider requests a ride on the application, Uber’s software uses geo-location technology to alert nearby Uber drivers of the Rider’s request (Screen 3). Once an Uber driver accepts the ride request, the alert is disabled for other drivers and the Rider is notified through the application of the approximate time until the driver’s arrival, which varies depending on the location of the driver and traffic conditions (Screen 4).

Screen 3:



Screen 4:



17. There are a number of ways an Uber ride request can be cancelled prior to the time the driver picks up the Rider. An Uber Rider may cancel a ride request through the Uber Application by hitting the Uber drivers name and then pressing “Cancel” (Screen 5). An Uber Driver may also cancel a ride request. Uber drivers have the option of hitting “Rider Requested Cancel” to cancel a ride, which charges a cancellation fee to the Rider. Alternatively, Uber drivers can cancel a ride by selecting “Driver Requested Cancel” at any time prior to pick up.

Rider Requested Cancellation

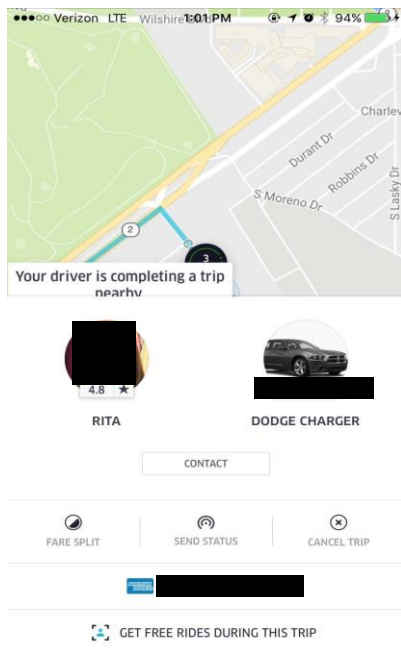
18. Plaintiff is informed and believes and based thereon alleges that Uber has a uniform policy of automatically imposing a cancellation fee to its Riders, in varying amounts based on the Rider’s geographic location, if the Rider(or Uber driver, by selecting the “Rider Requested Cancel” button) cancels the accepted ride request after two or five minutes.

19. During the class period alleged herein, Plaintiff and other Riders were not informed by the Uber application at any time of this policy and only discovered a cancellation

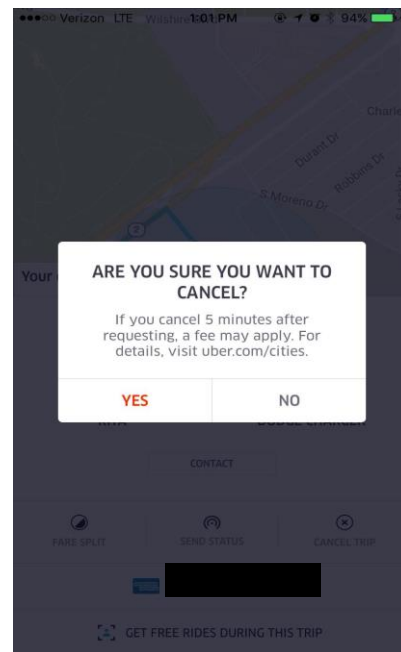
1 fee had been assessed through subsequent receipt of an email from Uber.

2 20. Recently, Uber changed its policy to advise Riders, within its mobile phone
 3 application, of the potential imposition of cancellation fees. However, Riders are not
 4 informed of the potential cancellation fee until *after* they have already requested the ride, the
 5 Uber driver has accepted the request, and the Rider has selected the cancellation button to
 6 cancel the ride request (Screens 5 and 6).² Unbeknownst to Plaintiff and other Riders, the 2-5
 7 minute grace period may have already elapsed, triggering a cancellation fee.

8 Screen 5:



Screen 6:



20 21. Moreover, Plaintiff and other Riders remain unaware of the actual amount of
 21 the cancellation fee until their credit card has been charged and a receipt is provided to the
 22 Rider's email address because the Uber application never specifies what the amount of the
 23 cancellation fee will be. Screen 6, above, only generically indicates that a fee *may* apply and
 24 then directs the Rider to Uber's website for additional information (uber.com/cities).

25 22. However, Uber's Cancellation Fee Policy is not apparent from visiting

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27
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² On information and belief, Riders do not receive a message indicating that they incurred or may incur a cancellation fee if the driver cancels on his/her mobile device application by selecting either "Driver Requested Cancel" or "Rider Requested Cancel."

1 uber.com/cities, as the Uber application and Screen 6 above indicate. The webpage provided
2 merely consists of a list of the cities around the globe where Uber operates its ride-sharing
3 business. The Rider would need to navigate to this webpage, click on the city where he/she is
4 located, and then click through a number of other “Help” links and webpages to get to the
5 precise page in the help.uber.com section that generically discusses Uber’s cancellation policy
6 (See Paragraph 25, below). Further, the Rider would need to complete the above search
7 within the first 2-5 minutes of an Uber driver accepting the ride-request in order to not incur a
8 cancellation fee.³

9 23. Uber’s Cancellation Fee Policy is also not apparent from its Terms and
10 Conditions which fails to mention or disclose any details regarding the potential incurrence of
11 a cancellation fee or disclose any details regarding its cancellation fees, including the length
12 of time provided to Riders prior to incurring a fee or the amount of the fee to be incurred.
13 Instead, the sum total of the discussion of Cancellation Fees consists of one clause hidden
14 within the Payment Section where Uber states:

15 You may elect to cancel your request for services or goods from a Third Party
16 Provider at any time prior to such Third Party Provider's arrival, in which case
you may be charged a cancellation fee.

17 *See, Terms & Conditions.*⁴

18 24. Additional fees and penalties that Riders may incur are separately and
19 conspicuously stated outside the Payment section. For example, Uber may charge its Riders
20 with a repair or cleaning fee that it separately discloses and details in its Terms & Conditions
21 under the Repair or Cleaning Fees section.

22 25. Only after a Rider has been charged a cancellation fee, or if the Rider is
23 fortunate enough to locate the cancellation fee information within the 2-5 minutes allotted,
24 does the Rider learn any information about Uber’s Cancellation Fee Policy. However, to this
25 day, Uber neither discloses the precise period of time in which a rider can cancel the ride
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27 ³ <https://www.uber.com/cities> (Last visited: November 10, 2016)

28 ⁴ <https://www.uber.com/legal/terms/us/> (Last visited: November 10, 2016)

1 without incurring a cancellation fee nor the precise amount of the cancellation fee. Uber only
2 states:

3 While the Uber app allows you to cancel anytime, a cancellation fee may be
4 charged. The cancellation fee amount differs and ranges from \$5 to \$10. This
5 fee is intended to compensate driver-partners for time and effort spent heading
6 toward a pickup location.⁵ A ride request can be cancelled free of charge for up
7 to 2-5 minutes after your initial request. If your driver is running more than 5
8 minutes behind the provided ETA, you can cancel the ride request without
9 incurring a cancellation fee.⁶

10 26. The Uber Rider is not aware of the precise amount of the cancellation fee until
11 the Rider receives and reads an email from Uber or the Rider's credit or debit card statement.
12 The email receipt from Uber, once read, provides information regarding disputing the
13 cancellation fee. But on many occasions, the Rider may not discover the email receipt until
14 much later due to its redirection to a "Spam" folder or the Rider's limited access to email or
15 for other reasons. In addition, disputing the cancellation fee requires a Rider to expend
16 additional time on Uber's website to select the cancelled trip and submit the reason for
17 disputing the fee, without any assurance that the cancellation fee will be automatically
18 reversed, justifying that expense of time. Further, it is apparent from the following reasons for
19 cancellation provided to Riders who dispute cancellation fees that Uber knows about and
20 ratifies its policy in which a driver cancels on a Rider and the Rider subsequently incurs a fee
21 despite never initiating a cancellation:

- 22 My driver and I couldn't connect
- 23 My pickup location was incorrect
- 24 **My driver cancelled**
- 25 The ETA was too long
- 26 The ETA was too short
- 27 **My driver asked me to cancel**

28 ⁵ While Uber asserts that the fee "is intended to compensate driver-partners for time and effort spent heading toward a pick-up location", the reality is that Uber profits from these fees because, like any other fare, Uber, on information and belief, takes 25% of the cancellation fee even though it is "intended" only to compensate driver-partners.

⁶ *Cancellation Fees*, Uber Help, <https://help.uber.com/>.

1 Driver Requested Cancellations

2 27. Uber drivers are also able to cancel a ride by selecting “Driver Requested
3 Cancel” on the Uber application at any time prior to pick-up, in which case a Rider should not
4 be assessed a cancellation fee. However, Uber drivers are penalized for initiating too many
5 Driver Requested Cancellations. If an Uber driver initiates Driver Requested Cancellations
6 for any reason, his/her acceptance rate with Uber declines.⁷ If a driver’s Uber acceptance rate
7 drops to a certain level, Uber can deactivate the driver’s account without notice, temporarily
8 or permanently.

9 28. On information and belief, Uber’s uniform policies and practices encourage its
10 drivers to either unilaterally and falsely select “Rider Requested Cancel” on the driver’s Uber
11 application (causing Riders to be automatically assessed a cancellation fee without initiating
12 the cancellation) or to instruct the Rider to select “Cancel” from his/her mobile device’s Uber
13 application and request a new Uber driver. Both scenarios cause the Rider to be charged a
14 cancellation fee through no fault of their own. This practice allows drivers to renege on
15 accepted ride-requests prior to picking up a first ride-request if they receive another, more
16 lucrative, second ride-request while in route. The driver and Uber thus capitalize on the
17 cancellation fee from the first ride-request and the more lucrative second ride-request while
18 the first Rider is left with an unwarranted cancellation fee and must request and wait for
19 another driver.

20 29. Uber acknowledges and states the impact of deactivation on Uber drivers and
21 further acknowledges that frequent Driver Requested Cancellations can result in the
22 deactivation of an Uber Driver’s Account:

23 When a driver’s account is deactivated, even if only temporarily, it limits their
24 ability to earn income. So it’s important to have a clear, published policy that
25 explains: the circumstances in which drivers are denied access to Uber; how (if
26 at all) they can use the app again; and if drivers can appeal these decisions.[1]
- and we’ll update this policy regularly - but the following are sufficient cause

27 ⁷ [http://therideshareguy.com/uber-deactivated-a-bunch-of-drivers-as-an-intimidation-](http://therideshareguy.com/uber-deactivated-a-bunch-of-drivers-as-an-intimidation-tactic/)
28 [tactic/](http://therideshareguy.com/uber-deactivated-a-bunch-of-drivers-as-an-intimidation-tactic/) (last visited Nov. 10, 2016).

1 for deactivation: quality; fraud; safety and discrimination.⁸

2 30. Further, with respect to Quality, Uber states “[t]here are several ways we
3 measure driver quality, with the most important being *Star Ratings* and *Cancellation Rate*.”⁹

4 31. With respect to *Cancellation Rate*, Uber has the following policy:

5 **Cancellation Rate**

6 A driver cancellation is when a driver accepts a trip request and then cancels the
7 trip. Cancellations create a poor rider experience and negatively affect other
8 drivers. We understand that there may be times when something comes up that
9 causes a driver to cancel an accepted trip, but minimizing cancellations is
10 critical for the reliability of the system.

11 **How is my cancellation rate calculated?** Your cancellation rate is based on the
12 number of trips cancelled out of the total number of trips you accept. (For
13 example, if you’ve accepted 100 trips and 4 of them are cancelled, your
14 cancellation rate would be 4%.)

15 High-quality drivers typically have a low cancellation rate less than 5%.

16 **What leads to deactivation?** Each city has a maximum cancellation rate, based
17 on the average cancellation rate of drivers in that area. We will alert you
18 multiple times if your cancellation rate is much higher or if you are consistently
19 cancelling more often than other drivers in your city, after which you may not
20 be able to go online for a short period of time. If your cancellation rate
21 continues to exceed the maximum limit, your account may be deactivated.¹⁰

22 32. In summary, Uber fails to disclose to Riders its Cancellation Fee Policy prior to
23 Riders completing their ride requests. Riders remain unaware of the possible cancellation fee
24 until after the grace period has ended and are either forced to incur the cancellation fee or
25 continue with the unwanted ride. Uber’s Cancellation Fee Policy fails to provide the actual or
26 possible fee amount or how Riders can discern the fee amount through Uber’s website or
27 mobile application. Riders would have to spend a significant amount of time on Uber’s
28 website just to find the Cancellation Fee Policy, which then fails to list the cities subject to
cancellation fees, the amount of the fees incurred per city, or the grace period allotted per city.

⁸ See Driver Deactivation Policy - US ONLY,
<https://www.uber.com/legal/deactivation-policy/us-en/> (last visited Nov. 10, 2016).

⁹ *Id.*

¹⁰ *Id.*

1 Uber also incentivizes its drivers to not use the “Driver Requested Cancel” function when the
2 driver cannot or chooses not to perform the pick-up he or she previously accepted, but to
3 instead use the “Rider Requested Cancel” function or to verbally request that the Rider cancel
4 the request and re-request another Uber driver, whereby the Rider is assessed a cancellation
5 fee through no fault of their own.

6 **B. Plaintiff Julian Metter**

7 33. On or about August 7, 2015, in Seattle, Washington, Plaintiff requested an
8 Uber ride service at a specific location. When the Uber ride service did not appear at that
9 specific location after more than five minutes, Plaintiff contacted the Uber driver. The Uber
10 driver informed Plaintiff that he could not get to that specific location and that Plaintiff
11 needed to cancel the current ride request on Plaintiff’s mobile device and request another ride
12 with a different Uber driver. Plaintiff complied and canceled the ride request on his mobile
13 device and initiated another request. The second Uber driver arrived at Plaintiff’s location
14 and took him to his destination. Later, Plaintiff learned that he had been charged a \$5.00
15 cancellation fee when he checked his email.

16 34. At no point prior to checking his email, had Plaintiff been informed from the
17 first or second Uber drivers or from the Uber application on his mobile device that he was
18 going to be assessed a cancellation fee of \$5. If Plaintiff and Riders knew that Uber would
19 automatically impose cancellation fees without first disclosing them to Plaintiff and Riders
20 (and that they only had a very limited window in which to cancel without a fee), and that they
21 would be assessed a fee even when they did not intend to cancel a ride request, they would not
22 have utilized Uber’s ride-sharing services or would not have canceled their ride request on
23 their mobile device.

24 **CLASS ACTION ALLEGATIONS**

25 35. Plaintiff brings this lawsuit as a class action on behalf of himself and all others
26 similarly situated as members of the proposed Class pursuant to Federal Rules of
27 Civil Procedure 23(a), 23(b)(2), 23(b)(3), and 23(c)(4). This action satisfies the numerosity,
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1 commonality, typicality, adequacy, predominance, and superiority requirements of those
2 provisions.

3 36. The Class and Sub-Class are defined as:

4 **Nationwide Class:** All individuals in the United States who
5 utilized Uber's ride-sharing services and incurred a cancellation
6 fee (the "Nationwide Class" or "Class").

7 **California Sub-Class:** All members of the Nationwide Class
8 who reside in the State of California.

9 **CLRA Sub-Class:** All members of the California Sub-Class
10 who are "consumers" within the meaning of California Civil
11 Code § 1761(d).

12 37. Excluded from the Class and Sub-Classes are: (1) Defendant, any entity or
13 division in which Defendant has a controlling interest, and their legal representatives, officers,
14 directors, assigns, and successors; (2) the Judge to whom this case is assigned and the Judge's
15 staff; (3) any Judge sitting in the presiding state and/or federal court system who may hear an
16 appeal of any judgment entered; and (4) those persons who have suffered personal injuries as
17 a result of the facts alleged herein. Plaintiff reserves the right to amend the Class and Sub-
18 Class definitions if discovery and further investigation reveal that the Class and Sub-Class
19 should be expanded or otherwise modified.

20 38. **Numerosity:** Although the exact number of Class Members is uncertain and
21 can only be ascertained through appropriate discovery, the number is great enough such that
22 joinder is impracticable. The disposition of the claims of these Class Members in a single
23 action will provide substantial benefits to all parties and to the Court. The Class Members are
24 readily identifiable from information and records in Defendant's possession, custody, or
25 control.

26 39. **Typicality:** Plaintiff's claims are typical of the claims of the Class in that
27 Plaintiff, like all Class Members, utilized Uber's ride-sharing services and incurred a
28 cancellation fee. The representative Plaintiff, like all Class Members, has been damaged by
Defendant's misconduct in that they have incurred or will incur an unlawful cancellation fee.
Furthermore, the factual bases of Uber's misconduct are common to all Class Members and

1 represent a common thread resulting in injury to all Class Members.

2 40. Commonality: There are numerous questions of law and fact common to
3 Plaintiff and the Class that predominate over any question affecting only individual Class
4 Members. These common legal and factual issues include the following:

- 5 (a) Whether Uber's Cancellation Fee Policy is an unlawful, unfair or
6 fraudulent business act or practice in violation of *California Business &*
7 *Professions Code* §§ 17200 et seq.
- 8 (b) Whether Uber's Cancellation Fee Policy is untrue or misleading in
9 violation of and *California Business & Professions Code* §§17500;
- 10 (c) Whether Uber knew or should have known that Uber's Cancellation Fee
11 Policy is untrue or misleading in violation of and *California Business &*
12 *Professions Code* §§17500;
- 13 (d) Whether the grace period and fee amount of Uber's Cancellation Fee
14 Policy constitutes a material fact;
- 15 (e) Whether Defendant has a duty to disclose the grace period and fee
16 amount of its Cancellation Fee Policy to Riders prior to cancelling the
17 ride request;
- 18 (f) Whether Uber's Cancellation Fee Policy violates the CLRA;
- 19 (g) Whether Defendant's cancellation fee is a liquidated damage;
- 20 (h) Whether Plaintiff and other Class Members are entitled to equitable
21 relief, including but not limited to a preliminary and/or permanent
22 injunction; and
- 23 (i) Whether Defendant is obligated to inform Class Members of their right
24 to seek reimbursement for having paid a cancellation fee.

25 41. Adequate Representation: Plaintiff will fairly and adequately protect the
26 interests of the Class Members. Plaintiff has retained attorneys experienced in the prosecution
27 of class actions, including consumer and product defect class actions, and Plaintiff's intend to
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1 prosecute this action vigorously.

2 42. Predominance and Superiority: Plaintiff and Class Members have all suffered
3 and will continue to suffer harm and damages as a result of Defendant’s unlawful and
4 wrongful conduct. A class action is superior to other available methods for the fair and
5 efficient adjudication of the controversy. Absent a class action, most Class Members would
6 likely find the cost of litigating their claims prohibitively high and would therefore have no
7 effective remedy at law. Because of the relatively small size of the individual Class
8 Members’ claims, it is likely that only a few Class Members could afford to seek legal redress
9 for Defendant’s misconduct. Absent a class action, Class Members will continue to incur
10 damages, and Defendant’s misconduct will continue without remedy. Class treatment of
11 common questions of law and fact would also be a superior method to multiple individual
12 actions or piecemeal litigation in that class treatment will conserve the resources of the courts
13 and the litigants, and will promote consistency and efficiency of adjudication.

14 **FIRST CAUSE OF ACTION**

15 **(Violation of California Business & Professions Code § 17200 *et seq.*)**

16 43. Plaintiff incorporates by reference the allegations contained in each and every
17 paragraph of this Complaint.

18 44. Plaintiff brings this cause of action on behalf of himself and on behalf of the
19 Nationwide Class.

20 45. As a result of their reliance on Defendant’s omissions, Riders utilizing
21 Defendant’s ride-sharing services suffered an ascertainable loss of money due to Defendant’s
22 Cancellation Fee.

23 46. California Business & Professions Code § 17200 prohibits acts of “unfair
24 competition,” including any “unlawful, unfair or fraudulent business act or practice” and
25 “unfair, deceptive, untrue or misleading advertising.”

26 47. Plaintiff and Class Members are reasonable consumers who expect to be
27 informed of the length of the grace period and cancellation fee amount prior to being
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1 automatically charged a cancellation fee. Defendant knew, but failed to inform Plaintiffs and
2 Class Members, of the applicable grace period allotted and cancellation fee amounts to be
3 charged per city of operation prior to Plaintiff and Class Members incurring cancellation fees
4 per Defendant's Cancellation Fee Policy.

5 48. Plaintiff and Class Members are reasonable consumers who expect to not be
6 charged a cancellation fee when the driver asks them to cancel their ride. Defendant knew but
7 failed to inform Plaintiffs and Class Members of this fact.

8 49. Plaintiff and Class Members are reasonable consumers who expect to not be
9 charged a cancellation fee when the cancellation is made by the driver. Defendant knew but
10 failed to inform Plaintiffs and Class Members of this fact.

11 50. Plaintiff and Class Members are reasonable consumers who do not expect an
12 Uber Driver to be able to initiate a Rider Requested Cancellation without their consent.
13 Defendant knew but failed to inform Plaintiffs and Class Members of this fact.

14 51. Defendant knew the applicable grace period allotted and cancellation fee
15 amounts to be charged per city of operation prior to Plaintiff and Class Members incurring
16 cancellation fees per Defendant's Cancellation Fee Policy.

17 52. In failing to disclose the grace period allotted and cancellation fee amount prior
18 to automatically charging Plaintiff and Class Members' method of payment, Defendant has
19 knowingly and intentionally concealed material facts and breached its duty not to do so.

20 53. Defendant was under a duty to Plaintiff and Class Members to disclose grace
21 period allotted and cancellation fee amount, and other omitted facts alleged herein, because:

- 22 (a) Defendant was in a superior position to know the specifics of its
23 Cancellation Fee Policy;
- 24 (b) Defendant made partial disclosures about its Cancellation Fee Policy
25 without revealing the material information needed to determine whether
26 to incur a cancellation fee; and
- 27 (c) Defendant actively concealed the specific Cancellation Fee Policy from
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1 Plaintiff and the Class.

2 54. The facts Defendant concealed from or did not disclose to Plaintiffs and Class
3 Members are material in that a reasonable person would have considered them to be important
4 in deciding whether to utilize Uber's ride-sharing services or cancel a pending ride request.
5 Had Plaintiff and other Class Members known all material information regarding Defendant's
6 Cancellation Fee Policy, then Plaintiff and the other Class Members would not have utilized
7 Uber's ride-sharing services or would not have cancelled a pending ride request.

8 55. In failing to allow the Uber Rider to give a reason for cancellation prior to
9 cancelling the ride to avoid a fee, and instead automatically charging Plaintiff and the Class
10 Member's method of payment without knowing the reason the ride was cancelled, Defendant
11 has engaged in an unfair, unlawful, fraudulent, and/or deceptive trade practice.

12 56. By failing to disclose the material fact that an Uber-Driver is able to cancel a
13 ride request without an Uber-Rider incurring a cancellation fee, Defendant has engaged in an
14 unfair, unlawful, fraudulent, and/or deceptive trade practice.

15 57. By instituting a policy that prevents an Uber Rider from cancelling a ride
16 without giving the reasons for the cancellation, Defendant has engaged in an unfair and
17 deceptive trade practice an unfair, unlawful, fraudulent, and/or deceptive trade practice.

18 58. By implementing and charging a cancellation fee that has no reasonable
19 relationship to the cost of actual value of lost time and effort spent heading toward a pick-up
20 location, Uber has engaged in an unfair, unlawful, fraudulent, and/or deceptive trade practice.

21 59. By charging a cancellation fee that is, sometimes, more than the original
22 estimated cost of the trip, Uber has engaged in an unfair, unlawful, fraudulent, and/or
23 deceptive trade practice.

24 60. Defendant continues to employ these unfair, unlawful, deceptive, and/or
25 fraudulent practices as alleged herein.

26 61. Defendant's conduct was and is likely to deceive consumers.

27 62. Defendant's conduct is unfair because it offends an established public policy
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1 that one should not be charged for cancelling an order when the supplier has not met the terms
2 of its agreement. It should be the other way around.

3 63. Defendant's acts, conduct and practices were unlawful, in that they constituted:

4 (a) Violations of California's Consumers Legal Remedies Act;

5 (b) Violations of California Civil Code § 1671;

6 64. By its conduct, Defendant has engaged in unfair competition and unlawful,
7 unfair, and fraudulent business practices.

8 65. Defendant's unfair or deceptive acts or practices occurred repeatedly in
9 Defendant's trade or business, and were capable of deceiving a substantial portion of the
10 public.

11 66. As a direct and proximate result of Defendant's unfair and deceptive practices,
12 Plaintiff and the Class have suffered and will continue to suffer actual damages.

13 67. Defendant has been unjustly enriched and should be required to make
14 restitution to Plaintiff and the Class pursuant to §§ 17203 and 17204 of the Business &
15 Professions Code.

16 **SECOND CAUSE OF ACTION**

17 **(Violation of California's Consumers Legal Remedies Act,**

18 **California Civil Code § 1750 et seq.)**

19 68. Plaintiff incorporates by reference the allegations contained in each and every
20 paragraph of this Complaint.

21 69. Plaintiff brings this cause of action on behalf of himself and on behalf of the
22 members of the CLRA Sub-Class.

23 70. Defendant is a "person" as defined by California Civil Code § 1761(c).

24 71. Plaintiff and CLRA Sub-class Members are "consumers" within the meaning of
25 California Civil Code § 1761(d) because they utilized Defendant's ride-shares services for
26 personal, family, or household use.

27 72. Defendant violated California Civil Code § 1770(a)(5), (7), (9), (14) and/or
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1 (19) by engaging in one the business acts or practices alleged above in connection with the
2 sale of goods or services to Plaintiff and the CLRA Class Members.

3 73. As a result of their reliance on Defendant's unfair methods of competition
4 and/or unfair or deceptive acts or practices, Riders utilizing Defendant's ride-sharing services
5 suffered an ascertainable loss of money due to Defendant's Cancellation Fee Policy.

6 74. Defendant was under a duty to Plaintiff and Class Members to disclose the
7 material terms of its Cancellation Fee Policy because:

8 (a) Defendant was in a superior position to know the specifics of its
9 Cancellation Fee Policy;

10 (b) Plaintiff and Class Members could not reasonably have been expected to
11 learn or discover the specifics of Defendant's Cancellation Fee Policy
12 until fees were incurred;

13 (c) Defendant knew that Plaintiffs and Class Members could not reasonably
14 have been expected to learn of or discover the specifics of the
15 Cancellation Fee Policy.

16 75. In failing to disclose the material Cancellation Policy terms prior to
17 automatically charging Plaintiff and Class Members' method of payment, Defendant has
18 knowingly and intentionally concealed material facts and breached its duty not to do so.

19 76. The facts Defendant concealed from or failed to disclose to Plaintiff and Class
20 Members are material in that a reasonable consumer would have considered them to be
21 important in deciding whether to to utilize Uber's ride-sharing services or cancel a pending
22 ride request.

23 77. Plaintiff and Class Members are reasonable consumers who expect to be
24 informed of and agree to the material terms surrounding the cancellation prior to being
25 automatically charged a cancellation fee.

26 78. As a result of Defendant's conduct, Plaintiff and Class Members were harmed
27 and suffered actual damages in that, on information and belief, they incurred unlawful
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1 cancellation fees.

2 79. As a direct and proximate result of Defendant's unfair methods of competition
3 and/or unfair and deceptive practices, Plaintiff and the Class have suffered and will continue
4 to suffer actual damages.

5 80. Plaintiff and the Class are entitled to equitable relief.

6 81. Plaintiff provided Defendant with notice of its violations of the CLRA pursuant
7 to California Civil Code § 1782(a). If Defendant fails to provide appropriate relief for its
8 violations of the CLRA within 30 days, Plaintiff will seek monetary, compensatory, and
9 punitive damages, in addition to injunctive and equitable relief.

10 **THIRD CAUSE OF ACTION**

11 **(Violation of California Civil Code § 1671(d))**

12 82. Plaintiff incorporates by reference the allegations contained in each and every
13 paragraph of this Complaint.

14 83. Plaintiff brings this cause of action on behalf of himself and on behalf of the
15 Nationwide Class, or, in the alternative, on behalf of the California Sub-Class, against
16 Defendant.

17 84. The cancellation fees per Defendant's Cancellation Fee Policy are
18 impermissible liquidated damages under California Civil Code § 1671(d).

19 85. Defendant and Class Members are parties to a ride-share services contract
20 formed for services primarily for Class Members' personal, family, or household purposes
21 (Cal. Civ. Code § 1761(c)(1)). As such, California Civil Code § 1671(d) states, "In the cases
22 described in subdivision (c), a provision in a contract liquidating damages for the breach of
23 the contract is **void** except that the parties to such a contract may agree therein upon an
24 amount which shall be presumed to be the amount of damage sustained by a breach thereof,
25 when, from the nature of the case, it would be impracticable or extremely difficult to fix the
26 actual damage." (Emphasis added).

27 86. Defendant's Cancellation Fee Policy imposes a fixed and certain amount of
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1 compensation to Uber’s drivers in the event of a breach of contract (cancelled ride) and is a
2 liquidated damage under California law.

3 87. Defendant’s imposition and collection of cancellation fees on and from Plaintiff
4 and Class Members violates, and has violated, California Civil Code § 1671(d). Pursuant to §
5 1671(d), Plaintiff seeks an order of the Court preliminarily and permanently enjoining Uber
6 from further enforcement and collection of cancellation fees as alleged herein.

7 **FOURTH CAUSE OF ACTION**
8 **(For Unjust Enrichment)**

9 88. Plaintiff incorporates by reference the allegations contained in each and every
10 paragraph of this Complaint.

11 89. Plaintiff brings this cause of action on behalf of himself and on behalf of the
12 Nationwide Class, or, in the alternative, on behalf of the California Sub-Class, against
13 Defendant.

14 90. Uber has been unjustly enriched as a result of the conduct described in this
15 Complaint.

16 91. Uber has received a benefit from Plaintiff and the Nationwide Class, or, in the
17 alternative, on behalf of the California Sub-Class members in the form of payment for
18 cancellation fees, and Uber retained some, if not all, of these payments.

19 92. Retention of these payments by Uber would be unjust and inequitable.

20 93. As a direct and proximate result of Defendant’s cancellation fee policies and
21 practices, as detailed throughout this Complaint, Defendant has profited through the collection
22 of said cancellation fees paid to itself and its agents.

23 94. Defendant has therefore been unjustly enriched due its collection of unlawful
24 cancellation fees that earned interest or otherwise added to Defendant’s profits when said
25 money should have remained with Plaintiff and Class Members.

26 95. As a result of the Defendant’s unjust enrichment, Plaintiff and Class Members
27 have suffered damages.

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RELIEF REQUESTED

96. Plaintiff, on behalf of himself, and all others similarly situated, requests the Court to enter judgment against Defendant, as follows:

- (a) An order certifying the proposed Class and Sub-Classes, designating Plaintiff as named representative of the Class, and designating the undersigned as Class Counsel;
- (a) An order enjoining Defendant from further deceptive business practices with respect to its Cancellation Fee Policy;
- (b) An order enjoining Defendant from enforcing and collecting cancellation fees;
- (c) A declaration requiring Defendant to reform its Cancellation Fee Policy, in a manner deemed to be appropriate by the Court, to cover the injury alleged and to notify all Class Members that such policy has been reformed;
- (d) An award to Plaintiff and the Class for compensatory, exemplary, and statutory damages, including interest, in an amount to be proven at trial;
- (e) A declaration that Defendant must disgorge, for the benefit of the Class, all or part of the ill-gotten fees it collected from its Cancellation Fee policy, or make full restitution to Plaintiff and Class Members;
- (f) An award of attorneys’ fees and costs, as allowed by law;
- (g) An award of attorneys’ fees and costs pursuant to California Code of Civil Procedure § 1021.5;
- (h) An award of pre-judgment and post-judgment interest, as provided by law; and
- (i) Such other relief as may be appropriate under the circumstances.

DEMAND FOR JURY TRIAL

97. Pursuant to Federal Rule of Civil Procedure 38(b) and Northern District of

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California Local Rule 3-6, Plaintiff demands a trial by jury of any and all issues in this action so triable.

Dated: November 16, 2016

Respectfully submitted,

Capstone Law APC

By: 

Lee A. Cirsch
Robert K. Friedl
Trisha K. Monesi

Attorneys for Plaintiff Julian Metter