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Attorney for Plaintiffs Lance Zeaman, Robert Pellegrino,  
United Drivers For Uber South Jersey, and all others  
who are similarly situated

LANCE ZEAMAN, ROBERT PELLEGRINO,  
UNITED DRIVERS FOR UBER SOUTH  
JERSEY, on behalf of themselves and the  
putative class,

Plaintiffs,

vs.

KNG CAB INC. and CITY SERVICE CAB,  
(both d/b/a ATLANTIC CITY YELLOW CAB  
CO.), THE MYRA COHEN TRUST and ABC  
CORPORATIONS 1-100,

Defendants.

SUPERIOR COURT OF NEW JERSEY  
LAW DIVISION – ATLANTIC COUNTY  
DOCKET NO.: ATL-L-\_\_\_\_\_

Civil Action

**CLASS ACTION COMPLAINT  
AND JURY DEMAND**

Plaintiffs Lance Zeaman and Robert Pellegrino, on behalf of themselves and the United Drivers For Uber South Jersey (“Plaintiffs”), on behalf of themselves and all others similarly situated, through their undersigned attorneys, by way of Complaint, state and allege matters pertaining to themselves and their own acts, upon personal knowledge, and as to all other matters, upon information and belief, based upon the investigation undertaken by their counsel, as follows:

**NATURE OF THE ACTION**

1. Plaintiffs bring this action seeking damages pursuant to the New Jersey civil Racketeer Influenced and Corrupt Organizations Act, among other things, against several taxicab

companies operating in a fraudulent and anticompetitive manner in and around Atlantic City. The taxicab companies permit their “pirate” drivers to fraudulently pose as Uber drivers in order to steal Uber customers away from those rideshare services.

2. This practice presents a grave threat to public safety because the taxicabs are not insured while providing rideshare services, nor or they covered by Uber because they are not authorized to operate on the Uber platform. Therefore, riders that are duped into one of these pirate cabs is unwittingly riding without insurance.

3. Moreover, this practice deprives authorized Uber drivers, such as Plaintiffs here, of customers and fares that they otherwise would have received, but for the unlawful interference of Defendants and their drivers.

#### **PARTIES**

4. Plaintiff Plaintiff Lance Zeaman is a natural person, residing in Atlantic County, New Jersey. Mr. Zeaman has been an authorized Uber driver since 2014.

5. Plaintiff Robert Pellegrino is a natural person, residing in Camden County, New Jersey. Mr. Pellegrino has been an authorized Uber driver since 2015.

6. Plaintiff United Drivers For Uber South Jersey is an informal association of approximately 220 Uber drivers operating in and around the Atlantic City area.

7. Defendants KNG CAB INC. and CITY SERVICE CAB, both doing business as “Atlantic City Yellow Cab Co.”, operate from and maintain a place of business at 3401 Winchester Avenue, Atlantic City, New Jersey 08401

8. Defendant THE MYRA COHEN TRUST, operates and maintains a place of business at 403 N. Cornwall Ave, Ventnor, New Jersey 08406.

## **JURISDICTION AND VENUE**

9. Jurisdiction in this action properly lies here because the acts and practices complained of by Plaintiffs occurred within this State. Defendants' liability to Plaintiffs arose within the jurisdictional region of this Court. Defendants do substantial business in this State, advertise in this State, receive substantial profits in monies charged to residents of this State, and have engaged in unlawful practices in this State, so as to subject themselves to jurisdiction in this State.

10. Plaintiffs have standing to bring these claims because they have suffered a concrete injury in-fact, consisting of ascertainable loss of moneys and profits as described herein, which confers jurisprudential standing under both State and Federal law.

11. Venue is proper in this County under Rule 4:3-2(a)(3) because Plaintiffs' cause of action arose in this County through the acts of Defendants in this County and because Plaintiffs reside in this County. Moreover, Defendants transact business in the State of New Jersey and are subject to personal jurisdiction in New Jersey and this County.

## **BACKGROUND**

12. Plaintiffs are Uber drivers who work in the South Jersey area, including Atlantic City and the surrounding shore towns.

13. Plaintiffs' vehicles are approved by Uber. Uber covers its drivers with a \$1,500,000 commercial insurance policy that cover's Uber drivers' liability to riders and takes precedence over any personal auto coverage. Uber provides \$1,500,000 in uninsured / underinsured motorist injury coverage that applies to bodily injury of any Uber passenger harmed while riding in the Uber vehicle. Uber also provides contingent collision and comprehensive coverage that applies to physical damage occurring during an Uber ride.

14. Uber's Vehicle Requirements do not permit taxicabs or other vehicles with "commercial branding" to operate as Uber cars. In addition, Uber requires that vehicles be registered in the name of the driver, and carry at least \$30,000 in insurance through a private or commercial carrier. Vehicles and drivers that do not comply with Uber's Vehicle Requirements are not permitted to operate as Uber cars and are not covered by Uber's insurance.

15. Although taxicabs are not permitted to use the Uber platform, many taxicab drivers have found a loophole in the Uber registration process which allows them to register their taxicabs as Uber cars. Although those drivers are then able to access the Uber App – giving them access to all Uber customers seeking rides – their vehicles are not sanctioned by Uber and are not covered by Uber's insurance. Moreover, the insurance company used by many, if not all, of the subject taxicabs specifically excludes coverage for "rideshare" vehicles, such as Uber cars. Thus, while these taxicabs are posing as Uber cars, they are operating with no insurance coverage whatsoever, creating great risk to the general public.

16. These "pirate" taxicabs are unlawfully stealing Uber fares from Plaintiffs by, among other things, exploiting the taxi lines at all of the casino properties. Uber cars are not permitted to use the taxi lines, but pirate taxicabs can, and do, take advantage of the lines while fraudulently using the Uber platform to gain a proximity advantage over authorized Uber drivers.

17. Plaintiffs have identified and documented over forty (40) taxicabs that are fraudulently operating on the Uber platform in Atlantic City. These vehicles each bear an "OT" license plate, and are therefore easily identifiable as taxicabs, which are prohibited from using the Uber platform.

18. The taxicabs that are fraudulently operating on the Uber platform have each been identified as operating under medallions owned by Defendants.

19. Defendants reap substantial profits through their ownership of medallions, which profits are augmented by knowingly allowing their drivers to operate simultaneously as taxicabs and as fraudulent Uber cars.

20. In addition, Defendants have publicly complained that they are each losing drivers to Uber, which is generally perceived as a threat to the taxicab industry. In order to hedge against that threat, Defendants knowingly allow their drivers to fraudulently operate as Uber drivers, in order to prevent drivers from abandoning their medallion leases in favor of simply joining Uber.

21. Plaintiffs have complained to the Mercantile Department of the City of Atlantic City, but have received no substantive response.

22. Plaintiffs have suffered substantial, quantifiable economic damages as a result of the fraudulent activity of Defendants, and the taxicabs that each of these Defendants allows to operate on the Uber platform.

### **CLASS ALLEGATIONS**

23. This action is brought and may properly proceed as a class action, pursuant to Rule 4:32 of the New Jersey Court Rules. Plaintiffs bring this class action on behalf of themselves and all others similarly situated. The Class is defined as follows:

All registered Uber drivers operating in New Jersey, whose rides were diverted and taken by Defendants and Defendants' agents for the four-year period preceding the filing of this Complaint.

Specifically excluded from the proposed class are any officers, directors, employees or agents of Defendants and their immediate family members, and any Judge presiding over this action and his or her immediate family members. Also specifically excluded from the proposed class are Uber drivers who operate a vehicle bearing an "OT" license plate.

24. The Class for whose benefit this action is brought is so numerous that joinder of all members is impracticable.

25. Plaintiffs' claims are typical of the claims of the members of the Class, as the claims arise from the same course of conduct by Defendants and the relief sought is common.

26. Plaintiffs do not have interests antagonistic to the interests of the Class.

27. The Class, of which Plaintiffs are member, is readily identifiable and can be ascertained through discovery and notice.

28. Plaintiffs will fairly and adequately protect the interests of the Class, and have retained competent counsel.

29. There are questions of law and fact common to the members of the Class. These common questions include:

- a. Whether Defendants engaged in a pattern of racketeering activity in violation of N.J.S.A. 2C:41-1, *et seq.* by committing multiple acts of fraudulent practices involving the deception of the public and the wrongful diversion of moneys to Defendants.
- b. Whether Defendants tortuously interfered with the economic business relationships and opportunities of the the Class to the detriment of the Class members.
- c. Whether Defendants engaged in unfair competition in violation of N.J.S.A. 56:4-1, *et seq.* and in violation of common law.

30. A class action is superior to other available methods for the fair and efficient adjudication of this controversy since joinder of all members is impracticable. The economic damages suffered by the individual class members are modest compared to the expense and burden of individual litigation. A class action will allow for an orderly and expeditious administration of the claims of the Class and will foster economies of time, effort and expense.

31. The questions of law and/or fact common to the members of the Class predominate over any questions affecting only individual members.

32. The prosecution of separate actions by individual members of the Class creates a risk of inconsistent or varying adjudications, which would establish incompatible standards of conduct for the Defendants in this action. Prosecution as a class action will eliminate the possibility of repetitious litigation.

33. The Defendants have acted or refused to act on grounds generally applicable to the Class, thereby making appropriate final injunctive relief or corresponding declaratory relief with respect to the class as a whole.

34. Plaintiffs do not anticipate any difficulty in the management of this litigation.

### **COUNT ONE**

#### **(Violation of New Jersey Racketeer Influenced and Corrupt Organizations Act)** **(N.J.S.A. 2C:41-1, et seq.)**

35. Plaintiffs hereby reallege each of the foregoing allegations as if fully set forth herein.

36. Defendants are “persons” within the meaning of N.J.S.A. 2C:41-1(b) in that they are each individuals or entities capable of holding legal or beneficial interests in property, and do in fact hold such interests.

37. The conduct giving rise to Plaintiffs’ Complaint and which forms the elements to Defendants’ offenses occurred and continues to occur within this State.

38. Defendants have engaged conduct constituting “racketeering activity” and “fraudulent practices” as defined by N.J.S.A. 2C:41-1(a)(o), by, among other things, knowingly operating and allowing to be operated taxicabs that are fraudulently representing themselves as authorized Uber vehicles, when in fact, they are not. This fraudulent practice is surreptitiously

conducted by Defendants' drivers, with Defendants' knowledge, so as to divert income and profits away from Plaintiffs for the wrongful enrichment of Defendants.

39. Defendants constitute an "enterprise" as defined by N.J.S.A. 2C:41-1(c), in that they are individuals, sole proprietorships, partnerships, corporations, businesses, including the individual taxicab drivers who lease medallions from Defendants, as they are controlled by, agents of, and associated in fact with Defendants' enterprise.

40. Defendants have engaged in a "pattern of racketeering activity" as defined by N.J.S.A. 2C:41-1(d), as they have engaged in two or more incidents of racketeering activity and fraudulent practices within ten years of each other. Specifically, and by way of example, on November 30, 2016, a taxicab driver operating under the direction and control of Defendants fraudulently represented himself and his vehicle as lawfully operating as a sanctioned Uber car. Plaintiffs are in possession of video evidence of this incident, which took place at Caesars Casino in Atlantic City, as well as video evidence of multiple taxicabs engaging in the same practice on October 24, 2016 at the Borgata Hotel Casino & Spa (the "Borgata"), November 1, 2016 at the Borgata, November 4, 2016 at the Golden Nugget Hotel & Casino, March 10, 2017 at the Tropicana Casino & Resort, and March 11, 2017 at the Borgata. In addition, Plaintiffs are in possession of photographic evidence of over 40 taxicabs that are fraudulently operating on the Uber platform and overtly misrepresenting themselves to the public as sanctioned Uber vehicles in furtherance of the pattern of fraud alleged herein.

41. Each incident of Defendants' racketeering activity embraces the same fraudulent conduct (i.e. drivers fraudulently misrepresenting themselves as sanctioned Uber drivers), has the same purpose (i.e. to fraudulently induce the public away from authorized Uber vehicles and into their own uninsured, unlawful vehicles) so as to produce the same result (i.e. to divert income



and profit away from Plaintiffs for the wrongful benefit of Defendants and Defendants' enterprise). Moreover, each interrelated incident of fraudulent conduct shares the same participants, victims and methods of commission, and all have identifiable common distinguishing characteristics as described herein.

42. Both the taxicab business and the Uber rideshare business constitute economic activity involving and relating to services, and constitute "trade or commerce" as defined by N.J.S.A. 2C:41-1(h).

43. As a direct and proximate result of Defendants' racketeering activities, specifically of those independently wrongful predicate racketeering acts described herein, Plaintiffs have lost income and profits and therefore suffered significant damages in amounts that are easily ascertained and quantified.

## **COUNT TWO**

### **(Tortious Interference With Business Relationship)**

44. Plaintiffs hereby reallege each of the foregoing allegations as if fully set forth herein.

45. Plaintiffs have a reasonable expectation of enjoying an economic benefit or advantage in their capacity as Uber drivers. Specifically, Uber drivers enjoy a captive market of customers who have elected to, and do in fact, patron Uber over other transportation options. Those customers have actively and affirmatively chosen to use Uber, as is evidenced by their choice of the Uber App, and their request for an Uber car made within that App. Plaintiffs realize income and profits by providing those rides, and have a reasonable expectation in enjoying that income and profit.

46. Defendants are well aware of Plaintiffs' reasonable expectation of economic benefit as Uber drivers, and in fact have actual knowledge of that expectancy. Defendants' representatives and principals have made public comments evidencing that actual knowledge, including comments made, for example, at the February 8, 2017 Atlantic City Council meeting.

47. In addition, each of the individual taxicab drivers fraudulently operating on the Uber platform have actual knowledge of Plaintiffs' reasonable expectation of economic benefit, as those taxicab drivers are in fact diverting that expected income and profits away from Plaintiffs on a regular basis by impersonating legitimate Uber drivers.

48. Defendants wrongfully and intentionally interfere with Plaintiffs' expectation of economic benefit by engaging in the pattern described above of fraudulent and knowingly operating, and directing drivers to operate, taxicabs on the Uber platform in order to intentionally divert income and profits to Defendants and away from Plaintiffs. Specifically, although Defendants are not authorized to use the Uber platform, they intentionally and wrongfully pose as Uber drivers so as to steal customers who are searching for, and have requested, actual authorized, insured Uber drivers. Moreover, further evidence of Defendants' wrongful and intentional interference is found in Defendants' knowing misrepresentations in connection with their fraudulent registration of commercial vehicles on the Uber platform, which does not allow drivers to register vehicles with commercial markings and license plates.

49. In the absence of Defendants' intentional interference, Plaintiffs would have received the anticipated economic benefit that they had experienced prior to Defendants' interference. Among other things, the nature of the Uber Drivers App allows Plaintiffs to view in real time customers' ride requests that are intentionally and wrongfully diverted by

Defendants. But for Defendants' intentional interference, Plaintiffs would have received the economic benefit represented by those diverted ride requests.

50. As a direct and proximate result of Defendants' intentional and wrongful interference, Plaintiffs have lost income and profits and therefore suffered significant damages in amounts that are easily ascertained and quantified.

### **COUNT THREE**

#### **(Misappropriation of Name, Brand, Reputation and Goodwill)** **(N.J.S.A. 56:4-1, et seq.)**

51. Plaintiffs hereby reallege each of the foregoing allegations as if fully set forth herein.

52. Defendants are each a "merchant, firm or corporation" within the meaning of N.J.S.A. 56:4-1.

53. As described above, Defendants and Defendants' agents have misappropriated and continue to misappropriate the name, brand, reputation and goodwill of Uber for their own use in furtherance of their own interests. Specifically, although unauthorized, uninsured and unsanctioned by Uber, Defendants and Defendants' agents represent themselves as Uber drivers, display and use the Uber name, brand and mark, and cause public confusion as to whether they are taxicabs or Uber cars.

54. The foregoing conduct constitutes a violation of N.J.S.A. 56:4-1.

55. Plaintiffs are "any other injured person" within the meaning of N.J.S.A. 56:4-2, and have been injured and damaged, as described above, by Defendants' and Defendants' agents' misappropriation of the Uber name, brand, reputation and goodwill.

## **COUNT FOUR**

### **(Common Law Unfair Competition – Passing Off)**

56. Plaintiffs hereby reallege each of the foregoing allegations as if fully set forth herein.

57. Although unauthorized, uninsured and unsanctioned by Uber, Defendants and Defendants' agents fraudulently market their services as Uber services and themselves as Uber drivers, by displaying and using the Uber name, brand and mark, and causing public confusion as to whether they are taxicabs or Uber cars.

58. The foregoing acts of passing-off as Uber drivers are intended to, and do in fact, induce customers to use Defendants' services, rather than the services of Plaintiffs.

59. As a direct and proximate result of Defendants' intentional and wrongful passing-off, Plaintiffs have lost income and profits and therefore have suffered significant damages in amounts that are easily ascertained and quantified.

## **COUNT FIVE**

### **(Common Law Unfair Competition – Unprivileged Imitation)**

60. Plaintiffs hereby reallege each of the foregoing allegations as if fully set forth herein.

61. Although unauthorized, uninsured and unsanctioned by Uber, Defendants and Defendants' agents have copied and imitated the Uber name, brand and mark, causing public confusion as to whether they are taxicabs or Uber cars, by causing prospective customers to regard Defendants' services as those of Uber.

62. The Uber name, brand and mark have acquired a special significance in the market as identifying authorized Uber cars and drivers, and distinguishes authorized Uber cars and drivers from all other private transportation services available to prospective consumers.

63. The Uber name, brand and mark are not functional features for Defendants and Defendants' agents, in that the Uber name, brand and mark's value lies only in the demand for services associated with Uber, rather than in any tangible function served by the name, brand and mark in the service itself. In other words, the Uber name, brand and mark are nonfunctional because they serve no purpose other than identification.

64. Defendants and Defendants' agents do not take any reasonable steps to inform prospective customers that the services they provide are not those of Uber. In fact, Defendants and Defendants' agents actively mislead prospective customers in order to induce customers to use Defendants' services, rather than the services of Plaintiffs.

65. As a direct and proximate result of Defendants' intentional and wrongful unprivileged imitation, Plaintiffs have lost income and profits and have therefore suffered significant damages in amounts that are easily ascertained and quantified.

**WHEREFORE**, Plaintiffs demand judgment against Defendants as follows:

(a.) Certifying a Class, as defined herein, under New Jersey Court Rule under Rule 4:32-1(b)(3), and appointment of Plaintiffs as class representatives and their counsel of record as Class Counsel;

(b.) Ordering that the acts complained of herein be ceased and discontinued, pursuant to N.J.S.A. 2C:41-4(a)(6);

(c.) Ordering the restitution of all monies unlawfully obtained, pursuant to N.J.S.A. 2C:41-4(a)(7);

(d.) Awarding treble damages, attorneys' fees and costs of suit, pursuant to N.J.S.A. 2C:41-4(c);

(e.) Awarding treble damages, pursuant to N.J.S.A. 56:4-2;

(f.) Awarding damages for Defendants' acts of unfair competition;

(g.) On behalf of Plaintiffs and the Class, for such other and further relief as they may be entitled or as the Court deems equitable and just.

**JURY DEMAND**

Plaintiffs demand a trial by jury on all issues so triable.

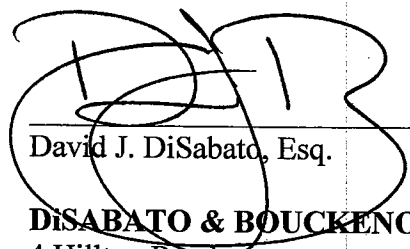
**DESIGNATION OF TRIAL COUNSEL**

Pursuant to Rule 4:25-4, David J. DiSabato, Esq. is hereby designated as trial counsel for the Plaintiffs in the above matter.

**CERTIFICATION**

Pursuant to Rule 4:5-1, I hereby certify, to the best of my knowledge, that the matter in controversy is not the subject of any other action pending in any court or the subject of a pending arbitration proceeding, nor is any other action or arbitration proceeding contemplated.

Dated: April 21, 2017



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David J. DiSabato, Esq.

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