

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

ALI RAZAK, KENAN SABANI, and	:	
KHALDOUN CHERDOUD, individually	:	Civil Action No. 16-573
and on behalf of all others similarly	:	
situated,	:	Judge Michael M. Baylson
	:	
Plaintiffs,	:	
	:	
v.	:	
	:	
UBER TECHNOLOGIES, INC. and	:	
GEGEN LLC,	:	
	:	
Defendants.	:	

**PLAINTIFFS’ STATEMENT OF FACTS OPPOSING
DEFENDANTS’ MOTION FOR SUMMARY JUDGMENT**

Pursuant to F.R.C.P. 56 and the Court’s Pretrial Procedures (ECF 42), Plaintiffs, in support of their request for an order denying the Defendants’ Motion for Summary Judgment (ECF 114), submit this Statement of Facts, which lists disputed and undisputed facts responsive to Defendants Statement (ECF 114-3), and additional material facts.

I. DISPUTED AND UNDISPUTED FACTS

1. Luxe Limousine Services, Inc. (“Luxe”), Freemo Limo, LLC (“Freemo”), and Milano Limo, Inc. (“Milano”) “are business entities owned and operated by the named Plaintiffs.” Memorandum of Law in Support of Luxe Limousine Services, Inc., Freemo Limo, LLC, and Milano Limo, Inc.’s

Consolidated Motion to Quash Defendants’ Subpoenas (“Motion to Quash”) (ECF 100-1) at 3 n.2; *see also* Exhibit 29, Transcript of Hearing (Oct. 18, 2017) at 4:20-23 (confirming that Luxe, Freemo and Milano are “owned by these Plaintiffs”).

Disputed. This statement, as worded by the Defendants, mischaracterizes material facts. These corporations were setup pursuant to Uber’s rules and requirements; specifically, Uber requires all UberBLACK drivers to be associated with such a corporation in order to gain access to the Uber App. *See* Jan. 4, 2018 Cherdoud Dep.¹ at 10:8-18, 20:2-5, 46:15-18; Jan. 4, 2018 Sabani Dep.² at 9:23-10:7; Jan. 3, 2018 Umer Razak Dep.³ at 23:17-24:5; Jan. 3, 2018 Ali Razak Dep.⁴ at 112:6-18. In fact, Uber referred all three Plaintiffs to the same accounting firm – Amara & Associates – for this very reason. *See* Amara & Associates Correspondence.⁵ According to Plaintiff Cherdoud, this accounting firm was paid by Uber to setup Milano Limo, Inc. *See* Jan. 4, 2018 Cherdoud Dep., Ex. 1 at 39:18-40:21.

2. These “business pursuits” (which Plaintiffs refer to as “their personal businesses”) are “outside of Uber.” Motion to Quash (ECF 100-1) at 9 & 15.

¹ *See* Jan. 4, 2018 Cherdoud Dep. Excerpts filed herewith as Ex. 1.

² *See* Jan. 4, 2018 Sabani Dep. Excerpts filed herewith as Ex. 2.

³ *See* Jan. 3, 2018 Umer Razak Dep. Excerpts filed herewith as Ex. 3.

⁴ *See* Jan. 3, 2018 Ali Razak Dep. Excerpts filed herewith as Ex. 4.

⁵ *See* Amara & Associates Correspondence filed herewith as Ex. 5.

Disputed. These quotes are taken out of context. When the Plaintiffs work as UberBLACK drivers, they are incontrovertibly operating within Uber’s system under Uber’s rules. See Uber’s Driver Deactivation Policy, ECF 68-8 (“soliciting payment of fares outside the Uber system” leads to deactivation) (“activities conducted outside of Uber’s system – like anonymous pickups - are prohibited”); see also Uber’s Community Guidelines, ECF Nos. 68-5, 68-6 and 68-7 (“collusion between rider or driver” results in account deactivation); see also Owner/Operator Agreement, ECF 15-2 at p. 62 (“you understand that you shall not, during the term of this Agreement, use your relationship with Gegen (or the information gained therefrom) to divert or attempt to divert any business from the Company to a competitive transportation broker, or any transportation provider”); see also Sept. 26, 2016 Uber Support Email to Sabani⁶ (notifying Sabani that he is subject to “permanent removal” from the App for messaging clients to “solicit rides outside of the platform”).

Furthermore, whenever the Plaintiffs are working as UberBLACK drivers, they are operating under Gegen’s certificate of public convenience with the Philadelphia Parking Authority, and are covered by Gegen’s insurance

⁶ See Sept. 26, 2016 Uber Support Email to Sabani filed herewith as Ex. 6.

policy. *See, e.g.,* May 2, 2017 Holtzman-Conston Dep.⁷ at 30:10-34:11 and 20:15-21:5 (regarding Gegen insurance and automatic deductions for insurance premiums) (regarding PPA compliance). Furthermore, the driver's vehicle is registered to Gegen for this purpose. *See* Cherdoud and Gegen's Annual Vehicle Lease Agreement.⁸ Accordingly, Uber pays for the driver's insurance and vehicle then recoups that money by deducting it from the driver's weekly earnings with Uber. *See* Sample Pay Statements.⁹ Uber makes these deductions every week regardless of whether the driver earns enough money to cover the expenses. *Id.* (showing \$3.72 in net weekly earnings for the driver after Uber paid, and thus deducted, \$366.82 for the vehicle's lease and insurance).

3. Transportation providers who use the Uber App to generate trip requests (like Plaintiffs) "are free to operate their own businesses outside of UberBLACK." ECF 80

Disputed. The Plaintiffs are not permitted to use the Uber App to generate business outside of Uber. In fact, this is expressly prohibited by Uber. *See* citations in response to ¶ 2 *supra*. Furthermore, Plaintiffs cannot pursue business outside of Uber while working as UberBLACK drivers. *See*

⁷ *See* May 2, 2017 Holtzman-Conston Dep. Excerpts filed herewith as Ex. 7.

⁸ *See* Cherdoud and Gegen's Annual Vehicle Lease Agreement filed herewith as Ex. 8.

⁹ *See* Sample Pay Statements filed herewith as Ex. 9.

Owner/Operator Agreement, ECF 15-2 at p. 60 (“[Y]ou agree to only make yourself available to receive Requests during such times as you are generally able to accept Requests that are offered. Following acceptance of a Request, you shall be contractually obligated to perform the Request in accordance with the Customer’s specifications.”); *see also* Uber’s Driver Deactivation Policy, ECF 68-6 (providing that a driver will be deactivated for “accepting trips without the intention to complete, including provoking riders to cancel...”); *see also* July 25, 2017 George Clapps Dep.¹⁰ at 53:2-24 (describing how cancelling on a customer leads to deactivation). When Plaintiffs are working as UberBLACK drivers, moreover, they are operating exclusively within Uber’s system under Uber’s control. *See, e.g.*, Uber’s Driver Deactivation Policy, ECF 68-6 (“activities conducted outside of Uber’s system – like anonymous pickups - are prohibited”).

4. Luxe was incorporated in 2012. Exhibit 1 (Deposition of Umer Razak as Corporate Representative of Luxe Limousine Services, Inc. (referred to herein as “Luxe 30(b)(6) Depo.”)) at 42:6-11; 227:5-14; 230:9-11, 231:6-11; Exhibit 9 (Luxe Limousine Pennsylvania Articles of Incorporation).

Undisputed.

5. “Luxe is owned by Plaintiff Razak and his brother.” Motion to Quash

¹⁰ *See* July 25, 2017 George Clapps Dep. Excerpts attached as Ex. 10.

(ECF 100-1) at 15; *see also* Transcript of Hearing (Oct. 18, 2017) at 6:5-9 (“Luxe Limo is owned by Mr. Razak and his brother.”).

Undisputed.

6. Luxe is in the transportation business. Luxe 30(b)(6) Dep., 248:1-5.

Undisputed.

7. Luxe has its own certificate from the Pennsylvania Public Utility Commission (PUC) to provide black car transportation services in the counties of Bucks, Chester, Delaware and Montgomery. Luxe 30(b)(6) Dep., 51:20 – 52:4, 335:18 – 336:24, 337:16-19; Exhibit 10 (Luxe’s PUC Certificate).

Undisputed.

8. Luxe’s PUC certificate contemplates that Luxe will provide hourly-rate services, as well as fixed-fee black car services for special events such as weddings and proms. Luxe 30(b)(6) Dep., 339:17-24; Exhibit 10 (Luxe’s PUC Certificate), at RAZAK_UBER_PL0007501.

Undisputed.

9. Plaintiff Razak signed up to use the Uber App to connect with riders using the UberBLACK product on July 8, 2014 (two years *after* Luxe was incorporated). ECF 80 (Plaintiffs’ Admitted Facts), at ¶ 10.

Disputed. Plaintiff Razak signed up to use the Uber App to earn compensation from Uber as an UberBLACK driver. He did not, moreover, sign

up to “connect with riders.” Uber’s statement implies that Plaintiff Razak could meet riders through the Uber App, and then independently contract with the riders to perform his own transportation services. Not so. *See* Uber’s Driver Deactivation Policy, ECF 68-6 (“soliciting payment of fares outside the Uber system” leads to deactivation) (“activities conducted outside of Uber’s system – like anonymous pickups - are prohibited”); *see also* Uber’s Community Guidelines, ECF Nos. 68-5, 68-6 and 68-7 (“collusion between rider or driver” results in account deactivation); *see also* Owner/Operator Agreement, ECF 15-2 at p. 62 (“you understand that you shall not during the term of this Agreement use your relationship with Gegen (or the information gained therefrom) to divert or attempt to divert any business from the Company to a competitive transportation broker, or any transportation provider”); *see also* Sept. 26, 2016, Uber Support Email to Sabani, Ex. 6 (notifying Sabani that he is subject to “permanent removal” from the App for messaging clients to “solicit rides outside of the platform”).

10. Plaintiff Sabani began performing transportation services in Philadelphia at the end of 2013. Exhibit 2 (Deposition of Kenan Sabani taken January 4, 2018 (referred to herein as “Sabani II Dep.”)), at 65:7-10.

Undisputed.

11. Plaintiff Sabani began performing transportation services with another

limousine company—Barry Limo, LLC—in Philadelphia at the end of 2013. Sabani II Dep., 67:19-68:3. At that time, Mr. Sabani received dispatches for private trips (including some identified by Barry and some identified by King Limousine) and also provided transportation services to riders identified using the UberBLACK product. Exhibit 3 (Deposition of Kenan Sabani taken May 8, 2017 (referred to herein as “Sabani I Dep.”)), at 93:9-22; Sabani II Dep., 198:10-24 & 201:6-18 (provided private trips identified by Barry, outside the Uber App), 200:3-12 (provided private trips for King Limousine, outside the Uber App).

Disputed. Plaintiff Sabani was driving for Uber and gained access to the Uber App through Barry Limo, LLC. See Jan. 4, 2018 Sabani Dep., Ex. 2 at 92:24 – 93:5.

12. In August 2015, Plaintiff Sabani formed his own limousine company, Freemo Limo, LLC. Sabani II Dep., 9:9-22.

Disputed. Freemo Limo, LLC was not a “limousine company” when it was formed in 2015, as it did not possess a requisite certificate of public convenience. Plaintiff Sabani instead performs transportation services under Gegen’s certificate of public convenience as an UberBLACK driver. See Jan. 4, 2018 Sabani Dep., Ex. 2 at 23:17-24:4.

13. Freemo offers its transportation services to the public. Sabani II Dep., 90:19 – 94:24.

Disputed. The transportation services provided by Plaintiff Sabani as an UberBLACK driver are “offered” to the public by Uber, not Freemo. *See* Jan. 4, 2018 Sabani Dep., Ex. 2 at 23:17-24:4.

14. In addition to owning and operating Freemo, Plaintiff Sabani signed up to use the Uber App to connect with riders using the UberBLACK product on November 26, 2013. ECF 80 (Plaintiffs’ Admitted Facts), at ¶ 9.

Disputed. Plaintiff Sabani signed up to use the Uber App to earn compensation from Uber as an UberBLACK driver. He did not, moreover, sign up to “connect with riders.” Uber’s statement implies that Plaintiff Sabani could meet riders through the Uber App, and then independently contract with the riders to perform his own transportation services. Not so. *See* Uber’s Driver Deactivation Policy, ECF 68-6 (“soliciting payment of fares outside the Uber system” leads to deactivation) (“activities conducted outside of Uber’s system – like anonymous pickups - are prohibited”); *see also* Uber’s Community Guidelines, ECF Nos. 68-5, 68-6 and 68-7 (“collusion between rider or driver” results in account deactivation); *see also* Owner/Operator Agreement, ECF 15-2 at p. 62 (“you understand that you shall not, during the term of this Agreement, use your relationship with Gegen (or the information gained therefrom) to divert or attempt to divert any business from the Company to a competitive transportation broker, or any transportation

provider”); *see also* Sept. 26, 2016 Uber Support Email to Sabani, Ex. 6 (notifying Sabani that he is subject to “permanent removal” from the App for messaging clients to “solicit rides outside of the platform”).

15. Plaintiff Sabani is the sole owner of Freemo. Sabani II Dep., 9:9-22.

Undisputed.

16. Milano is a “sole proprietorship” that is “owned by Mr. Cherdoud.” Motion to Quash (ECF 100-1) at 15; Transcript of Hearing (Oct. 18, 2017) at 6:5-9; Exhibit 7, Deposition of Khaldoun Cherdoud taken January 4, 2018 (referred to herein as “Cherdoud II Dep.”), 30:12-15 (authenticating Articles of Incorporation for Milano Limo, Inc.); Exhibit 28 (Articles of Incorporation for Milano Limo, Inc.).

Undisputed. However, Uber paid the fee to open the business account for Milano and paid the fee for the limousine certificate for Plaintiff Cherdoud to be able to provide transportation services in Philadelphia. Plaintiff Cherdoud set up Milano because Uber required this set up for him to have access to the Uber App. No one else has driven under the Milano banner, which shows Plaintiff Cherdoud only formed Milano because of Uber’s requirements and involvement. See Jan. 4, 2018 Cherdoud Dep., Ex. 1 at 40:5-15, 20:2-5 and 46:15-18.

17. Milano provides transportation services. Cherdoud II Dep., 10:8-18.

Disputed. When Plaintiff Cherdoud provides UberBLACK services, he

is operating under Gegen's certificate of public convenience, in a vehicle registered to Gegen, insured by Gegen, paid for by Gegen. *See, e.g.,* May 2, 2017 Holtzman-Conston Dep., Ex. 7 at 30:10-34:11 and 20:15-21:5 (regarding Gegen insurance and automatic deductions for insurance premiums) (regarding PPA compliance). Furthermore, the driver's vehicle is registered to Gegen for this purpose. *See* Cherdoud and Gegen's Annual Vehicle Lease Agreement, Ex. 8. Accordingly, Uber pays for the driver's insurance and vehicle then recoups that money by deducting it from the driver's weekly earnings with Uber. *See* Sample Pay Statements, Ex. 9. Uber makes these deductions every week regardless of whether the driver earns enough money to cover the expenses. *Id.* (showing \$3.72 in net weekly earnings for the driver after Uber paid, and thus deducted, \$366.82 for the vehicle's lease and insurance).

18. In addition to owning and operating Milano, Plaintiff Cherdoud signed up to use the Uber App to connect with riders using the UberBLACK product on December 26, 2013. Exhibit 8 (Declaration of Jordan Holtzman-Conston ("Holtzman-Conston Decl.")), ¶3.

Disputed. Plaintiff Cherdoud signed up to use the Uber App to earn compensation from Uber as an UberBLACK driver. He did not, moreover, sign up to "connect with riders." Uber's statement implies that Plaintiff Cherdoud

could meet riders through the Uber App, and then independently contract with the riders to perform his own transportation services. Not so. *See* Uber's Driver Deactivation Policy, ECF 68-6 ("soliciting payment of fares outside the Uber system" leads to deactivation) ("activities conducted outside of Uber's system – like anonymous pickups - are prohibited"); *see also* Uber's Community Guidelines, ECF Nos. 68-5, 68-6 and 68-7 ("collusion between rider or driver" results in account deactivation); *see also* Owner/Operator Agreement, ECF 15-2 at p. 62 ("you understand that you shall not during the term of this Agreement use your relationship with Gegen (or the information gained therefrom) to divert or attempt to divert any business from the Company to a competitive transportation broker, or any transportation provider"); *see also* Sept. 26, 2016 Uber Support Email to Sabani, Ex. 6 (notifying Sabani that he is subject to "permanent removal" from the App for messaging clients to "solicit rides outside of the platform").

19. Independent transportation companies who desire to use the Uber App to obtain requests to provide limousine services on the UberBLACK product must first enter into a Software License and Online Services Agreement (or similar agreement such as a Technology Services Agreement, collectively referred to as the "Services Agreement") with Uber that sets forth the relationship between Defendants and companies that want to gain access to the Uber App, as well as terms

for receiving leads from Uber's technology. Exhibit 8 (Holtzman-Conston Decl.), ¶4; Exhibit 11 (December 11, 2015 Technology Services Agreement).

Disputed. This statement contradicts the sworn declaration of Michael Coleman (ECF 15-1) and Uber's Brief in Support of its Motion to Dismiss (ECF 15). In seeking to dismiss the Plaintiffs' claims into arbitration, Uber argued that the Plaintiffs – not their corporations – had contracted with Uber, thereby subjected the Plaintiffs to Uber's arbitration provision. See March 31, 2016 Coleman Decl. at ¶¶ 11-13, ECF 15-1 (declaring under oath that the three individual Plaintiffs accepted the "Uber Agreements"); see also Defs.' Br. in Support of Mot. to Dismiss at p. 3; see also Cherdoud and Gegen's Annual Vehicle Lease Agreement, Ex 8.

20. These agreements are between "an independent company in the business of providing transportation services ("Customer or "You")" and Uber. Exhibit 11 (December 11, 2015 Technology Services Agreement).

Disputed. See response to ¶ 19 *supra*.

21. For purposes of the Services Agreement, companies like Luxe, Freemo, and Milano, are Uber's "Customer[s]" who contract for the opportunity to use Uber's technology. Exhibit 8 (Holtzman-Conston Decl.), ¶5.

Disputed. See response to ¶ 19 *supra*.

22. In relevant part, the Services Agreement provides:

Customer [defined by the agreement as “an independent company in the business of providing transportation services”] acknowledges and agrees that Uber is a technology services provider that does not provide transportation services, function as a transportation carrier, nor operate as a broker for the transportation of passengers.

“Driver” means a principal, employee or contractor of Customer: (a) who meets the then current Uber requirements to be an active driver using the Uber Services; (b) whom Uber authorizes to access the Uber Services to provide Transportation Services on behalf of Customer; and (c) who has entered into the Driver Addendum.

“Driver Addendum” means the terms and conditions that Customer is required to enter into with a Driver prior to such Driver providing Transportation Services on behalf of Customer (as may be updated by Uber from time to time).

“Transportation Services” means the provision of passenger transportation services to Users via the Uber Services in the Territory by customer and its Drivers using the Vehicles.

As between Uber and Customer, Customer acknowledges and agrees that: (a) Customer and its Drivers are solely responsible for determining the most effective, efficient and safe manner to perform each instance of Transportation Services; and (b) except for the Uber Services or any Uber Devices (if applicable), Customer shall provide all necessary equipment, tools and other materials, at Customer’s own expense, necessary to perform Transportation Services.

Customer’s Relationship with Users. Customer acknowledges and agrees that Customer’s provision of Transportation Services to Users creates a direct business relationship between Customer and the User.

Customer’s Relationship with Uber. Customer acknowledges and agrees that Uber’s provision to Customer of the Driver App and the Uber Services creates a direct business relationship between Uber and Customer. Uber does not, and shall not be deemed to, direct or control Customer or its Drivers generally or in their performance under this Agreement specifically, including in connection with the operation of Customer’s business, the provision of Transportation Services, the acts

or omissions of Drivers, or the operation and maintenance of any Vehicles. Customer and its Drivers retain the sole right to determine when, where, and for how long each of them will utilize the Driver App or the Uber Services. Customer and its Drivers retain the option, via the Driver App, to attempt to accept or to decline or ignore a User's request for Transportation Services via the Uber Services, or to cancel an accepted request for Transportation Services via the Driver App, subject to Uber's then-current cancellation policies. With the exception of any signage required by local law or permit/license requirements, Uber shall have no right to require Customer or any Driver to: (a) display Uber's or any of its Affiliates' names, logos or colors on any Vehicle(s); or (b) wear a uniform or any other clothing displaying Uber's or any of its Affiliates' names, logos or colors. . . .

Customer's Relationship with Drivers. Customer shall have the sole responsibility for any obligations or liabilities to Drivers that arise from its relationship with its Drivers (including provision of Transportation Services). Customer acknowledges and agrees that it exercises sole control over the Drivers and will comply with all applicable laws (including tax, social security and employment laws) governing or otherwise applicable to its relationship with its Drivers.

Customer shall require each Driver to enter into a Driver Addendum (as may be updated from time to time) and shall provide a copy of each executed Driver Addendum to Uber.

Fare Calculation and Customer Payment. Customer is entitled to charge a fare for each instance of completed Transportation Services provided to a User that are obtained via the Uber Services ("Fare"), where such Fare is calculated based upon a base fare amount plus distance (as determined by Uber using location-based services enabled through the Device) and/or time amounts, as detailed at www.uber.com/cities for the applicable Territory ("Fare Calculation").

Customer is also entitled to charge User for any Tolls, taxes or fees incurred during the provision of Transportation Services, and, if applicable. Customer: (i) appoints Uber as Customer's limited payment collection agent solely for the purpose of accepting the Fare, applicable Tolls and, depending on the region and/or if requested by Customer, applicable taxes and fees from the User on behalf of the Customer via

the payment processing functionality facilitated by the Uber Services; and (ii) agrees that payment made by User to Uber (or to an Affiliate of Uber acting as an agent of Uber) shall be considered the same as payment made directly by User to Customer. In addition, the parties acknowledge and agree that as between Customer and Uber, the Fare is a recommended amount, and the primary purpose of the pre-arranged Fare is to act as the default amount in the event Customer does not negotiate a different amount. Customer shall always have the right to: (i) charge a fare that is less than the pre-arranged Fare; or (ii) negotiate, at Customer's request, a Fare that is lower than the pre-arranged Fare (each of (i) and (ii) herein, a "Negotiated Fare").

Service Fee. In consideration of Uber's provision of the Driver App and the Uber Services for the use and benefit of Customer and its Drivers hereunder, Customer agrees to pay Uber a service fee on a per Transportation Services transaction basis calculated as a percentage of the Fare determined by the Fare Calculation (regardless of any Negotiated Fare), as provided to Customer and/or a Driver via email or otherwise made available electronically by Uber from time to time for the applicable Territory ("Service Fee").

Customer agrees to maintain during the term of this Agreement on all Vehicles operated by Customer or its Drivers commercial automobile liability insurance that provides protection against bodily injury and property damage to third parties at levels of coverage that satisfy all applicable laws in the Territory.

Customer agrees to maintain during the term of this Agreement commercial general liability insurance that provides protection against personal injury, advertising injury and property damage to third parties at levels of coverage required by all applicable laws in the Territory. Customer agrees to maintain during the term of this Agreement workers' compensation insurance for itself and any of its subcontractors as required by all applicable laws in the Territory.

As between Customer and Uber, Customer is and shall be solely responsible for its Drivers' provision of Transportation Services.

Except as otherwise expressly provided herein with respect to Uber acting as the limited payment collection agent solely for the purpose of

collecting payment from Users on behalf of Customer, the relationship between the parties under this Agreement is solely that of independent contracting parties. The parties expressly agree that: (a) this Agreement is not an employment agreement, nor does it create an employment relationship, between Uber and Customer or Uber and any Driver; and (b) no joint venture, partnership, or agency relationship exists between Uber and Customer or Uber and any Driver.

Exhibit 11 (December 11, 2015 Technology Services Agreement) (emphasis in original); Exhibit 4, Deposition of Ali Razak taken May 8, 2018 (referred to herein as “Razak I Dep.”), at 13:2-21 (authenticating December 11, 2015 Technology Services Agreement).

Undisputed.

23. Once a transportation company has entered into an agreement with Uber, drivers engaged by that transportation company may also use the Uber App once they agree to the terms of a Driver Addendum to the Services Agreement.

Exhibit 8 (Holtzman-Conston Decl.), ¶6.

Disputed. See response to ¶¶ 19 and 21 *supra*.

24. The Driver Addendum, in relevant part, provides:

This Driver Addendum to Technology Services Agreement (“*Addendum*”) constitutes a legal agreement between an independent company in the business of providing transportation services (“*Transportation Company*”) and an independent, for-hire transportation provider (“*Driver*” or “*You*”).

Driver maintains a contractual or employment arrangement with Transportation Company to perform passenger carriage services for the Transportation Company.

In addition to the transportation services it regularly performs pursuant to his or her contractual arrangement with Transportation Company, Driver is interested in receiving lead generation and related services through the Uber Services.

“Transportation Services” means the provision of passenger transportation services to Users via the Uber Services in the Territory by Transportation Company and its Drivers using the Vehicles.

“Uber Services” mean Uber’s on-demand lead generation and related services that enable transportation providers to seek, receive and fulfill on-demand requests for transportation services by Users seeking transportation services; such Uber Services include Uber’s software, websites, payment services, and related support services systems, as may be updated or modified by Uber at its discretion from time to time. “User” means an end user authorized by Uber to use Uber’s mobile application for the purpose of obtaining Transportation Services.

Driver’s Relationship With Uber. Uber does not, and shall not be deemed to, direct or control Driver generally or in Driver’s performance of Transportation Services or maintenance of any Vehicles. Driver acknowledges that Uber does not control, or purport to control: (a) when, where, or for how long Driver will utilize the Driver App or the Uber Services; or (b) Driver’s decision, via the Driver App, to attempt to accept or to decline or ignore a User’s request for Transportation Services, or to cancel an accepted request for Transportation Services, via the Driver App, subject to Uber’s then-current cancellation policies.

Exhibit 8 (Holtzman-Conston Decl.), ¶7; Exhibit 5, Deposition of Ali Razak taken January 3, 2018 (referred to herein as “Razak II Dep.”), at 46:11 – 47:22 (authenticating December 11, 2015 Driver Addendum), Exhibit 12 (December 11, 2015 Driver Addendum); Razak I Dep., 37:12-24 (acknowledging that a transportation company “has complete discretion to operate its independent business and direct its drivers at its own discretion.”).

Undisputed.

25. Uber is a technology company that invented, develops, markets, licenses, and seeks to constantly improve a revolutionary technology that allows people who need things to almost instantaneously connect with a business that can provide it. Exhibit 8 (Holtzman-Conston Decl.), ¶9; Exhibit 6, Deposition of Jordan Holtzman-Conston (referred to herein as “Holtzman- Conston Dep.”), 11:19-12:2, 12:8-10.

Disputed. Uber, according to its Senior Regulatory Counsel, “is a certified limousine provider authorized to furnish limousine services.” *See* Uber’s Comments received by the Pennsylvania Public Utility Commission on Oct. 12, 2016¹¹ (PUC Docket No. L-2016-2556432). Uber, according to its certificate of public convenience, is a common carrier licensed by the Philadelphia Parking Authority to “transport passengers in luxury vehicles... within the City.” *See* Notice of Gegen Application¹² (42 Pa.B. 7883, Dec. 29, 2012). Uber, according to its Owner/Operator Agreement, is a company “authorized and licensed to operate a limousine company to transport passengers in luxury vehicles between points within the City of Philadelphia...” *See* Owner/Operator Agreement, ECF 15-2 at p. 59. Uber, according to its

¹¹ *See* Defs.’ Comments received by the Pennsylvania Public Utility Commission on Oct. 12, 2016 filed herewith as Ex. 11.

¹² *See* Notice of Gegen Application filed herewith as Ex. 12.

Annual Vehicle Lease Agreement, is the lessee of Plaintiff Cherdoud’s vehicle. See Cherdoud and Gegen Annual Vehicle Lease Agreement, Ex. 8. Uber, according to its payment processes, is a debt collector. See Sample Pay Statements, Ex. 9 (deducting the driver’s PPA sticker fees, vehicle lease payments and insurance premiums); see also Feb. 14, 2014 Correspondence between Plaintiff Cherdoud and Uber Support¹³ (regarding late payments on Plaintiff Cherdoud’s vehicle); see also May 2, 2017 Holtzman-Conston Dep., Ex. 7 at 34:8-24. Uber is an insurance agent that “negotiat[es] hard on behalf of [the Plaintiffs] to minimize the increase in [insurance] premiums.” See Email re Gegen Insurance¹⁴; see also May 2, 2017 Holtzman-Conston Dep., Ex. 7 at 32:14-33:5. Uber is likewise the primary policyholder on an auto insurance policy that provides the Plaintiffs with \$1.5 million in liability coverage. *Id.* Uber is a manager that establishes and enforces driver rules and standards. See, e.g., Uber’s Driver Deactivation Policy, ECF 68-6; see also July 14, 2014 Email regarding Background Checks¹⁵ (stating that UberBLACK drivers are required to undergo Uber’s own background check, which Uber claims is “more thorough” than the obligatory PPA background check); see also Feb. 9,

¹³ See Feb. 14, 2014 Correspondence between Plaintiff Cherdoud and Uber Support filed herewith as Ex. 13.

¹⁴ See Email from Uber regarding Gegen Insurance filed herewith as Ex. 14.

¹⁵ See July 14, 2014 Email regarding Background Checks filed herewith as Ex. 15.

2015 Correspondence between Plaintiff Sabani and Uber Support¹⁶ (deactivating Plaintiff Sabani due to his driver rating and recommending that he undergo training from an approved Uber vendor); see also Sept. 26, 2016 Uber Support Email to Plaintiff Sabani, Ex. 6 (warning Plaintiff Sabani that soliciting riders outside of the platform will result in his “permanent removal”). These are the characteristics of an employer, not a “technology company.”

26. The Services Agreement defines “Uber Services” as:

Uber’s on-demand lead generation and related services that enable transportation providers to seek, receive and fulfill on-demand requests for transportation services by Users seeking transportation services; such Uber Services include access to the Driver App and Uber’s software, websites, payment services as described in Section 4 below, and related support services systems, as may be updated or modified by Uber at its discretion from time to time.

Exhibit 8 (Holtzman-Conston Decl.), ¶8; Exhibit 11 (December 11, 2015 Technology Services Agreement).

Undisputed.

27. The Services Agreement states that:

Uber does not, and shall not be deemed to, direct or control Customer or its Drivers generally or in their performance under this Agreement specifically, including in connection with the operation of Customer’s business, the provision of Transportation Services, the acts or omissions of Drivers, or the operation and maintenance of any Vehicles. Customer and its Drivers retain the sole right to determine when, where, and for how long each of them will utilize the Driver App

¹⁶ See Feb. 9, 2015 Correspondence between Plaintiff Sabani and Uber Support attached as Ex. 16.

or the Uber Services. Customer and its Drivers retain the option, via the Driver App, to attempt to accept or to decline or ignore a User's request for Transportation Services via the Uber Services, or to cancel an accepted request for Transportation Services via the Driver App, subject to Uber's then- current cancellation policies. . . . Customer acknowledges and agrees that it has complete discretion to operate its independent business and direct its Drivers at its own discretion, including the ability to provide services at any time to any third party separate and apart from Transportation Services. For the sake of clarity, Customer understands that Customer retains the complete right to provide transportation services to its existing customers and to use other software application services in addition to the Uber Services.

Exhibit 8 (Holtzman-Conston Decl.), ¶10; Exhibit 11 (December 11, 2015 Technology Services Agreement).

Undisputed.

28. Uber's most popular technology—commonly referred to as the Uber App— enables riders and drivers to make a match with each other based on their location, the rider's transportation budget and needs, and the drivers' preferences. Exhibit 8 (Holtzman-Conston Decl.), ¶11.

Undisputed.

29. The Uber App offers riders an opportunity to request a trip from a number of different transportation options, including, but not limited to, UberBLACK, UberSUV, uberXL, and uberX. *Id.*, ¶12.

Undisputed.

30. These options vary in cost, vehicle size, and vehicle options. *Id.*

Undisputed.

31. UberBLACK is just one of Uber’s technology products accessible through the Uber App, and enables riders to connect with luxury black car sedans or town cars. *Id.*, ¶13. The Uber App, when that term is used in connection with UberBLACK, refers to both the rider and driver versions of the app. *Id.*

Undisputed.

32. UberSUV allows riders to connect with full-sized luxury SUVs, uberXL connects riders with drivers of cost-effective SUVs and other large vehicles, and uberX connects riders with drivers typically in more cost-effective vehicles. *Id.*, ¶14.

Undisputed.

33. The Uber App is also not limited to connecting riders and drivers, and instead offers an array of marketplace products. *Id.*, ¶15.

Undisputed.

34. The core of Uber’s business is its technology, which drives its business model. *Id.*, ¶16.

Disputed. Uber is, at its core, a transportation company. Indeed, Uber’s own Senior Regulatory Counsel characterized Uber/Gegen as “a certified limousine provider authorized to furnish limousine services.” See Comments submitted to the Pennsylvania Public Utility on Oct. 12, 2016, Ex. 11 (PUC Docket No. L-2016-2556432). If Uber were merely a “technology company,”

then it would simply license its software to drivers and charge a monthly licensing fee (just like how Westlaw charges attorneys a monthly fee to use its software). Uber instead takes a commission between 25-28% on every fare. *See* May 2, 2017 Holtzman-Conston Dep., Ex. 7 at 35:1-16. That means Uber is fundamentally dependent on its drivers to generate income, which is why Uber exerts such a high level of control over the drivers.

35. Uber has spent and continues to spend tens of millions of dollars on developing, expanding, and deploying its technology products. *Id.*, ¶17.

Undisputed.

36. Uber employs thousands of people in technology-centric roles, and it markets and promotes the services that users are able to access through its various products. *Id.*, ¶18.

Undisputed.

37. Defendants do not transport riders in Philadelphia. *Id.*, ¶19.

Disputed. When Plaintiffs provide UberBLACK transportation services, they do so on behalf of Uber. This agency is best evinced by Uber's insurance policy, which covers the drivers *and* Uber in the event the driver injures a third-party. *See* Email from Uber regarding Gegen Insurance, Ex. 14; *see also* May 2, 2017 Holtzman-Conston Dep., Ex. 7 at 32:14-33:5. If Uber was not in the business of transporting riders, then it would not need such an insurance policy.

38. Defendants do not hire, promote, or transfer transportation providers—like Plaintiffs—who actually provide black car transportation services in Philadelphia. *Id.*, ¶20.

Disputed. UberBLACK drivers, such as the Plaintiffs, do undergo a hiring process conducted by Uber, which includes Uber’s own background check. *See* July 14, 2014 Email regarding Background Checks, Ex. 15 (stating that UberBLACK drivers are required to undergo Uber’s own background check, which Uber claims is “more thorough” than the obligatory PPA background check); *see also* May 2, 2017 Holtzman-Conston Dep., Ex. 7 at 26:5-27:14 (discussing Uber’s background check).

Furthermore, when an UberBLACK driver is deactivated, the driver has to undergo a “Quality Improvement Course” in order to be eligible for reactivation. *See* Feb. 9, 2015 Correspondence between Plaintiff Sabani and Uber Support, Ex. 16 (deactivating Plaintiff Sabani due to his driver rating and recommending that he undergo training from an approved Uber vendor); *see also* Uber’s Quality Improvement Policy¹⁷ (“If you have been deactivated for a low overall rating, your account may be eligible for reactivation upon successful completion of a quality improvement course.”).

¹⁷ *See* Uber’s Quality Improvement Policy attached as Ex. 17.

UberBLACK drivers cannot be “promoted” because there is no position to promote them into. They are, nevertheless, given incentive bonuses. See UberX Fare Guarantee Message¹⁸ (providing that UberBLACK drivers who agreed to accept UberX fares were, for a limited time, guaranteed \$30 per hour); see also Jersey Shore Fare Message¹⁹ (advising that drivers accepting fares at the “Jersey Shore” would receive higher base rates); see also Referral Bonus Message²⁰ (rewarding drivers \$300 for referring friends and family).

39. If a rider cannot secure a driver willing to provide the rider black car transportation services in Philadelphia, there are no Uber employee drivers standing by to fulfill the trip request. *Id.*, ¶21.

Disputed. This statement may be literally true. Uber nevertheless omits material facts. Since Uber takes a commission from each fare, as opposed to charging drivers a onetime or periodic fee to use the App, Uber is economically motivated to ensure that the supply of drivers is equal to or greater than demand. See May 2, 2017 Holtzman-Conston Dep., Ex. 7 at 35:1-16. Uber accomplishes that goal through various “system integrity” measures. See May 2, 2017 Holtzman-Conston Dep., Ex. 7 at 41:3-43:12 (explaining that drivers are given 15 seconds to accept a trip request before the request is automatically

¹⁸ See UberX Fare Guarantee Message attached as Ex. 18.

¹⁹ See Jersey Shore Fare Message attached as Ex. 19.

²⁰ See Referral Bonus Message attached as Ex. 20.

transferred to another driver); *see also* Uber’s Article on Surge Pricing²¹ (explaining that Uber monitors each City’s market in real time, and employs surge pricing – the “temporary” increase in fare rates – to manipulate rider demand and driver supply); *see also* Jersey Shore Fare Message, Ex. 19 (offering drivers larger base fares as an incentive to work at the “Jersey Shore”).

40. Uber does not contractually or otherwise guarantee rides for riders seeking black car transportation services in Philadelphia, because it is not in the business of providing such transportation services. *Id.*, ¶22.

Disputed. Under 53 Pa.S.C. § 57A11, Uber is legally required to guarantee access to a wheelchair-accessible vehicle, either by itself providing the vehicle or referring the rider to another transportation company. Uber is in the business of providing transportation services, which it has previously admitted. *See* Defs.’ Comments received by the Pennsylvania Public Utility Commission on Oct. 12, 2016, Ex. 11 (PUC Docket No. L-2016-2556432) (Gegen is a “certified limousine provider”); *See also* Notice of Gegen Application (42 Pa.B. 7883, Dec. 29, 2012), Ex. 12 (Gegen is a “common carrier”).

41. Gegen is a wholly-owned subsidiary of Uber that holds a certificate of public convenience from the Philadelphia Parking Authority (PPA). Holtzman-

²¹ *See* Uber’s Article on Surge Pricing attached as Ex. 21.

Conston Dep., 11:19- 12:2, 12:8-10; 21:11-19.

Undisputed.

42. Transportation companies and individual transportation providers who wish to provide black car limousine services in Philadelphia are required by applicable regulation to hold a certificate of public convenience or to do so in connection with an entity that holds a certificate of public convenience from the PPA. *Id.*, ¶23.

Undisputed.

43. The application fee for a PPA certificate of public convenience is \$12,000. *Id.*, ¶24.

Undisputed.

44. Qualified transportation companies who do not hold their own certificate of public convenience, such as Plaintiffs' companies, may affiliate with an entity that holds a certificate of public convenience in order to enable them to provide limousine services in Philadelphia. Exhibit 8 (Holtzman-Conston Decl.), ¶25.

Disputed. Only a qualified common carrier, here Gegen, can hold a certificate of public convenience. See Notice of Gegen Application, Ex. 12 (42 Pa.B. 7883, Dec. 29, 2012) (Gegen is a “common carrier”). Each limousine vehicle purporting to operate on behalf of that common carrier is then

registered under the common carrier's certificate of public convenience. *See* 53 Pa.C.S. § 5741. The alleged affiliation between the Plaintiffs' companies and Uber/Gegen is not relevant under the applicable regulations. What matters is that the UberBLACK vehicle is registered to Gegen's certificate of public convenience. This is why Gegen, and not the driver, pays the annual "limousine rights sticker" on behalf of each UberBLACK driver. *See* 52 Pa. Code § 1055.2.

Indeed, PPA regulations only permit three categories of persons to operate under a certificate of public convenience: (1) the owner, if the owner is a limousine driver; (2) an employee of the certificate holder; or, (3) a limousine driver who leases the limousine directly from the certificate holder. 52 Pa. Code § 1051.8(a). Since Gegen is the owner of the certificate, and does not lease vehicles to the Plaintiffs, the Plaintiffs must be employees of Gegen.

45. Some UberBLACK transportation providers operate under the certificate of public convenience held by Gegen, while others operate under a certificate held by other limousine companies licensed by the PPA. *Id.*, ¶26.

Disputed. Anytime a driver provides UberBLACK services, that driver is covered by Gegen's insurance, and Gegen, by virtue of its common carrier status, is responsible for the driver. *See* May 2, 2017 Holtzman-Conston Dep., Ex. 7 at 30:10-34:11 (regarding Gegen insurance and automatic deductions for insurance premiums) and 20:15-21:5 (regarding PPA compliance); 52 Pa. Code

§ 1051.8(b).

46. Plaintiff Sabani testified that one way to get into the transportation business without having to pay for a PPA license is to incorporate and then affiliate with Gegen. Sabani II Dep., 70:15-71:24.

Disputed. The individual, assuming he/she is properly licensed, need only operate a qualified limousine registered under Gegen’s certificate of public convenience. There is no incorporation or affiliation requirement. See response to ¶ 44 *supra*.

47. There are “many” companies that provide black car services in Philadelphia without relying on the Uber App to generate trip requests. Razak II Dep., 110:11-17.

Undisputed, although the financial viability of such a company is unknown.

48. Luxe perceived that having multiple cars in its fleet was “good business.” Luxe 30(b)(6) Dep., 109:11-19.

Undisputed.

49. At the beginning of 2015, Luxe had just two vehicles. Luxe 30(b)(6) Dep., 251:16-23.

Undisputed.

50. By the end of 2015, Luxe expanded its fleet to six vehicles. Luxe

30(b)(6) Dep., 249:23 – 250:1, 251:12-15, 251:20 – 252:1.

Undisputed.

51. *See* Defs.’ Unredacted Statement of Facts.

Undisputed.

52. In 2016, Luxe acquired additional vehicles, including five vehicles at one time from another black car business. Luxe 30(b)(6) Dep., 252:2-12, 303:17 – 304:18.

Undisputed.

53. In 2016, Luxe managed up to sixteen vehicles at one time. Luxe 30(b)(6) Dep., 250:2-7.

Disputed. Luxe does not “manage” the vehicles. Luxe leased these vehicles on a weekly basis to individuals, who in turn provide transportation services under Gegen’s certificate of public convenience. *See* Jan. 3, 2018 Umer Razak Dep., Ex. 3 at 26:1-27:18 and 54:15-55:6 (testifying that the drivers provide services in Philadelphia “[b]y Uber. They are working under Uber[’s] license... The sticker is under Uber, the certificate is under Uber, insurance by Uber [SIC].”).

54. Luxe currently has 14 vehicles in its fleet. Luxe 30(b)(6) Dep., 25:22-24.

Undisputed.

55. Luxe financed the purchase of its vehicles. Luxe 30(b)(6) Dep., 116:24 – 117:4, 187:4-8 (“Luxe is paying for the financing.”).

Disputed. The vehicles were purchased with financing obtained from Uber’s vendors, including Exeter. See Jan. 3, 2018 Umer Razak Dep., Ex. 3 at 116:15-117:11. These vendors are paid by Uber via automatic deductions from the driver’s earnings. See Sample Pay Statements, Ex. 9.

56. See Defs.’ Unredacted Statement of Facts.

Undisputed.

57. Luxe owns one of its vehicles (a Lincoln Navigator) outright, with no financing obligation. Luxe 30(b)(6) Dep., 117:5-13, 122:10-11.

Undisputed.

58. As for the other 13 vehicles Luxe financed, Luxe will own them outright once its finance payments are completed. Luxe 30(b)(6) Dep., 121:15-24.

Undisputed.

59. Luxe’s goal is to have one driver assigned to each of its vehicles. Luxe 30(b)(6) Dep., 178:10-12.

Disputed. Luxe does not “assign” a driver to a vehicle. The vehicles are leased on a weekly basis to individuals who operate under Gegen’s certificate of public convenience. See response to ¶ 53 supra.

60. The number of drivers on Luxe’s active roster may vary from week to

week and has been as high as 14-17 drivers. Luxe 30(b)(6) Dep., 26:8-14 (14 drivers on roster), 214:9-18 (had 17 active drivers on roster in May 2017).

Disputed. Luxe does not have an “active roster” of drivers. Luxe does not have drivers. It leases vehicles to individuals who in turn provide transportation services under Gegen’s certificate of public convenience. See response to ¶ 53 *supra*.

61. See Defs.’ Unredacted Statement of Facts.

Disputed. See response to ¶¶ 53 and 60 *supra*.

62. Plaintiff Razak’s brother used to provide transportation services “a lot” using the Uber App. Luxe 30(b)(6) Dep., 192:3-8. However, he is now so busy operating the Luxe business enterprise (“doing the payroll, fixing the cars”) that he is not driving as much. Luxe 30(b)(6) Dep., 192:3-14.

Disputed. “As much” as what? Umer Razak testified that he provided 40-50 trips in the month prior to his deposition, all of which were UberBLACK trips. See Jan. 3, 2018 Umer Razak Dep., Ex. 3 at 13:12-20. Furthermore, the perceived decline was in part due to the fact that Umer Razak is spending more time with his family. See Jan. 3, 2018 Umer Razak Dep., Ex. 3 at 192:10-14.

63. When one of Luxe’s drivers provides transportation services (whether using the Uber App, Blacklane, or any other lead generation source), the revenue from those services is paid to Luxe. Luxe 30(b)(6) Dep., 39:6:17.

Disputed. The money, pursuant to Uber’s rules, goes into Luxe’s Uber account, and then is distributed to the individual who performed the fare. *See Jan. 3, 2018 Umer Razak Dep., Ex. 3 at 23:21-24.* Furthermore, Luxe does not have “drivers.” *See response to ¶ 53 supra.*

64. *See* Defs.’ Unredacted Statement of Facts.

Disputed. Luxe does not have “drivers.” *See response to ¶ 53 supra.*

65. Luxe pays its drivers from the revenues generated from providing transportation services. Luxe 30(b)(6) Dep., 26:8-14.

Disputed. Luxe does not have “drivers.” *See response to ¶ 53 supra.*

66. *See* Defs.’ Unredacted Statement of Facts.

Disputed. Luxe does not have “drivers.” *See response to ¶ 53 supra.* Furthermore, this was money earned by and distributed to the lessee, less the weekly lease payments collected by Luxe. *See Jan. 3, 2018 Umer Razak Dep., Ex. 3 at 23:21-24.*

67. *See* Defs.’ Unredacted Statement of Facts.

Disputed. *See response to ¶ 66 supra.*

68. Plaintiff Razak’s brother handled the payroll for Luxe. Luxe 30(b)(6) Dep., 39:18- 22.

Undisputed.

69. In 2016, Luxe retained Visha Umer to perform payroll services for

Luxe. Luxe 30(b)(6) Dep., 315:3-13, 316:1 – 317:2.

Undisputed.

70. *See* Defs.’ Unredacted Statement of Facts.

Undisputed.

71. When a driver does not provide sufficient transportation services to generate enough revenue to cover his or her lease obligation, Luxe has to cover those expenses out of its own pocket. Luxe 30(b)(6) Dep., 101:2-10 & Ex 22.

Disputed. Luxe does not have “drivers.” *See* response to ¶ 53 *supra*. Furthermore, Umer Razak described a personal deficit because of a lack of business; he had not been paid in 7 months, but he does not state that Luxe as a business covers the expenses. *See* Jan. 3, 2018 Umer Razak Dep., Ex. 3 at 102:1-103:7.

72. While Luxe will then attempt to recoup the shortfall from the driver at a later time that is not always possible. Luxe 30(b)(6) Dep., 102:5-10, 102:19 – 103:7.

Disputed. *See* response to ¶¶ 53 and 71 *supra*.

73. When Luxe’s drivers incur costs associated with parking tickets, Luxe attempts to pass the costs of those tickets to its drivers; but if the driver is no longer active, Luxe incurs the expense. Luxe 30(b)(6) Dep., 283:2-24.

Undisputed. Luxe does not have “drivers.” *See* response to ¶ 53 *supra*.

Uber receives the ticket because the vehicle is operating under Gegen's certificate of public convenience. See response to ¶ 44 *supra*; See Jan. 3, 2018 Umer Razak Dep., Ex. 3 at 283:2-13. Instead of passing the ticket onto the individual UberBLACK driver, Uber palms it off on Luxe. *Id.*

74. Luxe incurs expenses for repairs and maintenance on its vehicles and endeavoring to have its vehicles repaired quickly. Luxe 30(b)(6) Dep., 137:16 – 139:14.

Disputed. Uber will cover some expenses if they are incurred while working as an UberBLACK driver. See, e.g., Dec. 26, 2015 Email re Cleaning Fee.²²

75. Luxe maintains a corporate account at a nearby Goodyear to provide automotive services. Luxe 30(b)(6) Dep., 175:15 – 176:1.

Undisputed.

76. Luxe also incurs expenses in maintaining its fleet of vehicles, including finance payments, insurance, oil changes and repairs, towing expenses, maintenance, car washes, and “all kinds of professional fees.” Luxe 30(b)(6) Dep., 131:17 – 132:19, 133:7-18, 142:18 – 144:4, 299:2-11, 301:7-13, 302:2-11.

Disputed. Uber pays the Gegen insurance, financing, PPA fees and then reimburses itself via automatic deductions against the UberBLACK drivers'

²² See Dec. 26, 2015 Email re Cleaning Fee attached as Ex. 22.

earnings. *See* response to ¶ 2 *supra*. Under certain circumstances Uber will also pay a cleaning fee. *See* response to ¶ 74.

77. *See* Defs.' Unredacted Statement of Facts.

Disputed. Certain expenses, including insurance premiums and PPA fees, are incurred by Uber and then passed onto UberBLACK drivers. *See* response to ¶ 2 *supra*.

78. *See* Defs.' Unredacted Statement of Facts.

Undisputed.

79. *See* Defs.' Unredacted Statement of Facts.

Undisputed.

80. *See* Defs.' Unredacted Statement of Facts.

Undisputed.

81. *See* Defs.' Unredacted Statement of Facts.

Undisputed.

82. In order to promote its business and generate its own leads, Luxe advertised, developed an internet presence, and utilized Blacklane and the Uber App so that its drivers could receive trip requests. Luxe 30(b)(6) Dep., 49:20 – 50:14.

Disputed. Uber prohibits its drivers from using the Uber App to generate trips that are conducted outside of the Uber system. *See* response to ¶ 9 *supra*.

83. *See* Defs.' Unredacted Statement of Facts.

Undisputed.

84. Luxe also created a website – luxelimousineservices.com (Luxe 30(b)(6) Dep., 341:17-342:3), a Facebook account (*Id.*, 347:21-22, 350:1-16), and a Twitter account. *Id.*, 350:23-351:2. *See also* Luxe 30(b)(6) Dep., 47:15-18 (Luxe operated a website to advertise its transportation services).

Undisputed.

85. According to the Luxe website:

Our limo service was established back in 2012 with a dream to become the best transportation option state-wide. We set out to achieve this by offering our clientele the most luxurious, reliable and safe rides around town.

We are happy to provide you with complimentary drinks whether you're traveling to the airport, or just 5 blocks up the road. Rest assured that we'll get you there in style, glitz and comfort. We also believe in providing the safest rides around.

Luxe 30(b)(6) Dep., 341:21-342:3 (authenticating printout of Luxe's website); Exhibit 17 (printout of Luxe's website), at RAZAK_UBER_PL007434.

Undisputed.

86. According to the Luxe website: "We are available around the clock and unlike most other limousine services we just need 30 min and the limousine will be ready, especially if you use our book now services." Luxe 30(b)(6) Dep., Exhibit 17 (printout of Luxe's website), at RAZAK_UBER_PL007434.

Undisputed.

87. Potential customers could submit a booking request using the Luxe website. Luxe 30(b)(6) Dep., 47:19-22.

Undisputed.

88. Potential customers emailed Luxe to request bookings. Luxe 30(b)(6) Dep., 226:12-14.

Undisputed.

89. Luxe maintained its website at its expense. Luxe 30(b)(6) Dep., 341:21-24, 342:9- 12 (Luxe paid fee to maintain website), 342:20 – 343:2 (Luxe paid third party to create website).

Undisputed.

90. In 2017, Luxe engaged an internet Search Engine Optimization company named QRG Direct to help Luxe improve its web presence and to help generate leads independently, outside of Uber and Blacklane. *Id.*, 357:4-358:4, 358:18-360:14. Luxe spent approximately \$300 per month on QRG Direct's services. *Id.*, 360:15-20.

Undisputed.

91. Luxe has generated its own leads through advertising. Luxe 30(b)(6) Dep., 19:24 – 20:10, 30:19-21.

Disputed. Umer Razak testified that he had “no” success generating leads. See Jan. 3, 2018 Umer Razak Dep., Ex. 3 at 20:1-5.

92. Luxe purchases supplies for its business. Luxe 30(b)(6) Dep., 284:1 – 285:1.

Undisputed.

93. Luxe incurs travel expenses for its business, including sending Plaintiff Razak’s brother to Buffalo, Orlando, Miami and Tampa for the purpose of investigating the transportation business in those cities to ascertain whether there would be a “better opportunity” for Luxe in those locations. Luxe 30(b)(6) Dep., 286:1 – 288:5.

Undisputed.

94. Luxe can control some of its costs, e.g., by delaying an expensive repair or oil change. Luxe 30(b)(6) Dep., 150:7-15.

Disputed. Uber decides when most major costs will be paid, including insurance, financing, and PPA payments, by making weekly deductions against earnings. See Jan. 3, 2018 Umer Razak Dep., Ex. 3 at 150:3-23; see also response to ¶ 2 supra.

95. Other costs are fixed (e.g., car payments and insurance) and will be incurred even if the driver does not generate sufficient revenues to cover his or her lease obligations. *Id.* at 150:7-15.

Disputed. These costs are not truly “fixed,” rather they are forced onto UberBLACK drivers by Uber via automatic weekly deductions against their

earnings. *See* response to ¶ 2 *supra*.

96. *See* Defs.' Unredacted Statement of Facts.

Disputed. Certain expenses, including insurance premiums and PPA fees, are incurred by Uber and then passed onto UberBLACK drivers. *See* response to ¶ 2 *supra*.

97. *See* Defs.' Unredacted Statement of Facts.

Undisputed.

98. *See* Defs.' Unredacted Statement of Facts.

Undisputed.

99. *See* Defs.' Unredacted Statement of Facts.

Undisputed.

100. *See* Defs.' Unredacted Statement of Facts.

Undisputed.

101. On approximately December 15, 2013, Mr. Sabani entered into a partnership agreement with Barry Limo, LLC that entitled him to 50% ownership of a 2012 Chevrolet Suburban. Sabani I Dep., 92:18-93:4, 94:6-9; Exhibit 19 (Barry Limo, LLC Partnership Agreement).

Undisputed.

102. Barry Limo, LLC passed along responsibility for repair and maintenance costs to Sabani. Sabani II Dep., 130:5-131:24.

Undisputed.

103. Plaintiff Sabani paid \$500 per week to Barry Limo, LLC to purchase a Chevrolet Suburban, and now owns the vehicle outright. Sabani II Dep., 73:16-74:3, 78:1-20, 79:10-81:18.

Undisputed.

104. Plaintiff Sabani also engaged up to four independent contract drivers (including himself and at times Plaintiff Cherdoud), whose earnings Freemo reported on IRS 1099 Forms, to provide transportation services for Freemo. Sabani II Dep., 17:14-17.

Undisputed.

105. Plaintiff Sabani testified that his brother affiliates with Freemo instead of creating his own company because his brother did not want to go through the hassle of satisfying the PPA requirements. Sabani II Dep., 12:8-15.

Disputed. Plaintiff Sabani and his brother can provide limousine transportation services in Philadelphia County by virtue of the fact that their vehicles are registered under Gegen's certificate of public convenience. See Jan. 4, 2018 Sabani Dep., Ex. 2 at 84:10-14; see also response to ¶ 44 supra.

106. Plaintiff Sabani determines how much to pay his drivers. Sabani II Dep., 15:11- 16.

Disputed. Plaintiff Sabani does not have drivers. Neither Plaintiff Sabani

nor Freemo hold a certificate of public convenience. See also response to ¶¶ 44 and 105 supra.

107. Freemo could take a fee from the money earned by his drivers, but he chooses not to. Sabani II Dep., 15:17-20, 16:1-4 (could pay drivers less than what Uber transfers to Freemo).

Disputed. See response to ¶¶ 44 and 105 supra.

108. See Defs.' Unredacted Statement of Facts.

Disputed. See response to ¶¶ 44 and 105 supra.

109. See Defs.' Unredacted Statement of Facts.

Undisputed.

110. One of Freemo's drivers in 2016 provided transportation services only for Freemo's private trips, and did not provide any services for trip requests from the Uber App. *Id.*, 87:12-21.

Disputed. The driver also uses the UberBLACK App and Plaintiff Sabani did not know if the driver provided transportation services using other sources in 2016. See Jan. 4, 2018 Sabani Dep., Ex. 2 at 88:3-10.

111. Freemo also created a website to advertise its business and to generate private trip requests. Sabani II Dep., 90:19-92:3 (authenticating printout of Freemo's website).

Undisputed.

112. Freemo's website states:

Freemo Limo, LLC is a privately held, full service chauffeured transportation company...

We provide a full complement of ground transportation solutions for our various clientele. Our fleet of vehicles and experienced chauffeurs can handle all of your transportation needs, whether you're with a Fortune 500 company or a family looking for airport transportation.

Freemo Limo has the best prices in town.

We do not publish our prices on the web because we stay so competitive in our pricing.

We Offer Full Corporate Contracted accounts

Whether you need to transport one person or 500 people, Freemo Limo can take the headache out of planning corporate transportation. Our fleet of vehicles from executive sedans to luxury SUV's, and we work with you to handle all of your special needs and requests. No matter where your business is going, Freemo Limo can take you there.

Freemo Limo is available 24 hours a day, 7 days a week, 365 days a year...

Before our chauffeurs are hired they must pass a drug & alcohol screening test... Random drug & alcohol screening is performed throughout a chauffeur's [sic] tenure with Freemo. We train our chauffeurs with over 40 hours of classroom training and then on the road experience. All chauffeurs are given a 90 day probationary period. Within that time they are required to attend a defensive driving course as well as hit certain milestones in real time performance. In addition, drivers are monitored by GPS vehicle tracking systems. Driving speeds, idling times and locations can be monitored by our 24-hour dispatch team.

Our vehicles are maintained to specific factory specifications or better to keep them in safe running condition.

We Have The Best Professional Chauffeurs Committed To Safety.

Sabani II Dep., 90:19-92:3 (authenticating printout of Freemo’s website); Exhibit 26 (printout of Freemo’s website).

Undisputed.

113. Freemo’s website solicits customers to make reservations either “online by emailing us or by calling our 24-hour service contact number.” Sabani II Dep., 90:19-92:3 (authenticating printout of Freemo’s website); Exhibit 26 (printout of Freemo’s website).

Undisputed.

114. When he formed Freemo, Plaintiff Sabani intended to form a company that would own vehicles and lease them out to other drivers, thereby becoming a businessman who would make money by collecting lease payments from drivers. Sabani II Dep., 176:22-178:14 (“My goal was to run an independent business and maybe, five or six or 10 years from now, not have to drive - to live the American dream.”).

Undisputed.

115. Freemo has advertised on Yelp, and has also created a Facebook profile. Sabani II Dep., 95:8-96:11 (authenticating printout of Freemo’s Yelp advertisement), 97:15-98:12 (Facebook page); Exhibit 27 (printout of Freemo’s Yelp advertisement).

Undisputed.

116. Plaintiff Sabani noted he had been responsible for his driving expenses (including tires, brakes, oil changes, and tolls) when he drove for Barry Limo, LLC before starting Freemo. Sabani II Dep., 76:4-15.

Undisputed.

117. *See* Defs.' Unredacted Statement of Facts.

Undisputed.

118. *See* Defs.' Unredacted Statement of Facts.

Undisputed.

119. *See* Defs.' Unredacted Statement of Facts.

Undisputed.

120. Plaintiff Cherdoud was free as an independent contractor to purchase and finance a vehicle from whoever he wanted, and he chose to purchase his vehicle from Fred Beans and finance it through Exeter. Cherdoud II Dep., 94:19-95:17.

Disputed. Uber gave a list of who Plaintiff Cherdoud would be able to purchase a vehicle from. *See* Jan. 4, 2018 Cherdoud Dep., Ex. 1 at 94:7-14. Furthermore, Exeter financed the purchase because Exeter is paid weekly by Uber from Plaintiff Cherdoud's earnings. *See* Sample Pay Statements, Ex. 9.

121. Milano also incurs unreimbursed business expenses that it claims on its taxes. Cherdoud II Dep., 74:16-75:12.

Undisputed.

122. Plaintiff Cherdoud pays for his own phone, is responsible for tolls if he is not transporting a passenger, and pays for the PPA vehicle inspection. Cherdoud II Dep., 80:2-9, 91:5-18, 126:11-127:6.

Undisputed as to these limited items.

123. Defendants do not prohibit transportation providers from using software applications other than the Uber App or providing transportation services to others. ECF 80 (Plaintiffs' Admitted Facts), at ¶ 47.

Undisputed.

124. Luxe's drivers can generate revenue by providing transportation services using lead generation sources other than the Uber App. Luxe 30(b)(6) Dep., 30:22 – 31:7, 55:7-13.

Disputed. Luxe does not have drivers. See response to ¶¶ 2, 44 and 53 *supra*.

125. *See* Defs.' Unredacted Statement of Facts.

Undisputed.

126. Luxe informed its drivers of the opportunity to provide transportation services through a company known as Blacklane. Luxe 30(b)(6) Dep., 378:21 – 379:10.

Disputed. Luxe does not have drivers. See response to ¶¶ 2, 44 and 53

supra.

127. Plaintiff Razak and his brother, Umer Razak, dispatched Luxe drivers to handle Blacklane trips. Razak II Dep., 74:18-75:7.

Disputed. Luxe does not have drivers. See response to ¶¶ 2, 44 and 53 supra. These “drivers,” moreover, provide transportation services under Gegen’s certificate of public convenience. *Id.*

128. Approximately five to seven of Luxe’s drivers signed up to use Blacklane to generate additional revenue for Luxe’s business. Luxe 30(b)(6) Dep., 62:21 – 63:3; Razak II Dep., 10:10 – 11:3.

Disputed. These “drivers” do not work for Luxe, nor do they generate additional revenue for Luxe by using the Blacklane App. See response to ¶¶ 44 and 53 supra.

129. In fact, Plaintiff Razak himself provided transportation services through Blacklane. ECF 80 (Plaintiffs’ Admitted Facts), at ¶ 71; Razak I Dep., 40:21-41:7; Razak II Dep., 73:5-8.

Undisputed.

130. More frequently, however, Plaintiff Razak’s job with respect to Blacklane trip requests submitted to Luxe was that of “dispatch” – assigning transportation requests to other drivers on Luxe’s roster. Razak II Dep., 75:4-7.

Disputed. See response to 127 and 128 supra.

131. When Luxe received transportation requests from Blacklane, Plaintiff Razak or his brother “accepted the Blacklane request” on behalf of Luxe and then “assigned the actual transportation job to another” on Luxe’s active roster. Luxe 30(b)(6) Dep., 59:9-13 (Blacklane sent trip requests to Luxe); ECF 80 (Plaintiffs’ Admitted Facts), at ¶ 72; Luxe 30(b)(6) Dep., 335:9-12 (Plaintiff Razak was authorized by Luxe to facilitate Blacklane transactions and trips); Razak II Dep., 10:10-22 (“I’m the one who will be accepting the jobs and distributing” them to the drivers); *id.* at 11:15 – 12:1 (Plaintiff Razak received requests from Blacklane and distributed them to Luxe’s drivers).

Disputed. *See* response to 127 and 128 *supra*. It is undisputed, however, that unlike Uber, Blacklane permits users to transfer prearranged trip requests.

132. If Luxe accepted the trip request from Blacklane, Luxe would then identify a driver to provide the transportation services. Luxe 30(b)(6) Dep., 59:14-16; Razak II Dep., 11:4- 14.

Undisputed.

133. After the trip was completed, Blacklane would pay Luxe, and Luxe would pay the driver who performed the transportation services. Luxe 30(b)(6) Dep., 65:6-14; *id.* at 65:21-24; *id.* at 68:9-12.

Undisputed.

134. *See* Defs.’ Unredacted Statement of Facts.

Undisputed.

135. When Luxe’s drivers provided transportation services to riders they connected using the Blacklane app or to private clients generated from Luxe’s own advertising, the revenue from those trips did not benefit Uber in any way. Luxe 30(b)(6) Dep., 56:10-24.

Disputed. The individuals who lease vehicles from Luxe are primarily UberBLACK drivers. *See* Jan. 3, 2018 Umer Razak Dep., Ex. 3 at 26:1-27:18 and 54:15-55:6. Luxe connects these individuals to prearranged Blacklane requests in order to supplement their UberBLACK incomes, thereby helping them pay for their vehicle leases. *Id.* at 58:11-17. This in turn maintains and/or increases the supply of UberBLACK drivers, which benefits Uber.

136. Plaintiff Cherdoud testified that he started providing black car services outside of the Uber App in 2016. Cherdoud II Dep., 12:7-18.

Disputed. Some trips are performed “outside of the Uber App,” but not necessarily outside of the Uber system. Plaintiff Cherdoud is able to provide limousine transportation services in Philadelphia County by virtue of the fact that his vehicle is registered under Gegen’s certificate of public convenience with the PPA. *See* response to ¶¶ 2 and 44 *supra*.

137. At first, Plaintiff Cherdoud worked with Freemo (Plaintiff Sabani’s

company) to handle pre-arranged trips. Cherdoud II Dep., 12:19-22, 17:5-9.

Undisputed.

138. *See* Defs.’ Unredacted Statement of Facts.

Disputed. The referenced trips are not necessarily “non-Uber.” *See* response to ¶¶ 2, 44 and 136 *supra*.

139. Plaintiff Cherdoud testified that almost half of his personal income in 2016 was generated from trips performed for Freemo. Cherdoud II Dep., 112:1-4.

Disputed. Paragraph 139 misconstrues the facts. Plaintiff Cherdoud is the sole proprietor of Milano, which he established pursuant to Uber’s rules and with the help of Uber. *See* response to paragraph 16 *supra*. Consequently, Plaintiff Cherdoud’s personal income is derived from the net income of Milano. In 2016, Uber accounted for over 85% of Milano’s gross receipts. *See* Cherdoud 2016 Tax Records.²³

140. While Plaintiff Cherdoud admits that he lacked the “courage” of other transportation providers in terms of how aggressively to promote his business, even he has found ways to promote his independent business, such as by parking next to hotels and negotiating with the doormen to have them direct hotel guests to him, and he does so while he is online on the Uber App. Cherdoud II Dep., 20:22-21:21, 68:7 – 69:2.

²³ *See* Cherdoud 2016 Tax Records attached as Ex. 23.

Undisputed.

141. Plaintiff Cherdoud has received trip requests from the hotel doormen, and uses a Square reader to charge the riders. Cherdoud II Dep., 21:22-23:1.

Undisputed.

142. Freemo's drivers have provided rides outside of the Uber App. Sabani II Dep., 16:5-11.

Undisputed.

143. Mr. Sabani, on behalf of Freemo Limo, corresponded with private customers about his company's pricing for airport and local rides. Sabani II Dep., 107:23-109:14 (authenticating Sabani's correspondence with Freemo's private customer); Exhibit 21 (Sabani correspondence with Freemo's private customer), at RAZAK_UBER_PL0007541-7545.

Undisputed.

144. Sabani personally provided over 100 trips through his company, and admitted that Uber placed no restrictions on his right to receive Freemo trip requests while simultaneously online on the Uber App. Sabani I Dep., 16:15-20 (over 100 trips), 18:18-19:6 (permitted to provide driving service through his company, Freemo Limo, and never harassed by Uber), 19:2-6 (no restrictions while online).

Disputed. Plaintiff Sabani was asked how many trips he provided personally *since the inception* of Freemo Limo. He answered, "I will say like

over a hundred. I don't know the exact number." *See* Defs.' Exhibit cited as Sabani I Dep., 16:15-20.

Furthermore, Uber does restrict an individual's ability to conduct business outside of Uber while working as an UberBLACK driver. *See* Uber's Driver Deactivation Policy, ECF 68-6 ("soliciting payment of fares outside the Uber system" leads to deactivation) ("activities conducted outside of Uber's system – like anonymous pickups - are prohibited"); *see also* Uber's Community Guidelines, ECF Nos. 68-5, 68-6 and 68-7 ("collusion between rider or driver" results in account deactivation); *see also* Owner/Operator Agreement, ECF 15-2 at p. 62 ("you understand that you shall not during the term of this Agreement use your relationship with Gegen (or the information gained therefrom) to divert or attempt to divert any business from the Company to a competitive transportation broker, or any transportation provider"); *see also* Sept. 26, 2016 Uber Support Email to Sabani, Ex. 6 (notifying Sabani that he is subject to "permanent removal" from the App for messaging clients to "solicit rides outside of the platform"); *see also* Sept. 13, 2017 Op. denying Defs.' Mot. for Partial Summ. J., ECF 93 (discussing the nature of Plaintiffs' online time and finding that such time may be compensable due to the restrictions that Uber imposes on drivers while online), available at *Razak v. Uber Techs., Inc.*, 2017 U.S. Dist. LEXIS 148087, 2017 WL 4052417

(E.D. Pa. Sept. 13, 2017).

145. *See* Defs.' Unredacted Statement of Facts.

Undisputed.

146. The trips provided by Freemo are pre-arranged trips. ECF 80 (Plaintiffs' Admitted Facts), at ¶ 13.

Undisputed.

147. Freemo advertised its business in 2015 using pay per click on Google, and that advertising generated phone calls for trip requests. Sabani II Dep., 16:12-17:4.

Undisputed.

148. As recently as 2017, Freemo has also obtained rides by handing out cards to hotels that say Freemo Limo Transportation Service. Sabani II Dep., 20:16-21:3, 49:11-20, 62:22-63:2 (100-150 business cards to hotels).

Disputed. Plaintiff Sabani testified that he did not have any private jobs in 2017. *See* Jan. 4, 2018 Sabani Dep., Ex. 2 at 38:18-20.

149. *See* Defs.' Unredacted Statement of Facts.

Undisputed.

150. Kevin Bryant is an independent transportation provider who has received leads from the UberBLACK product in Philadelphia. Exhibit 8 (Holtzman-Conston Decl.), ¶27.

Objection. This statement is based on inadmissible hearsay and, therefore, should be disregarded. F.R.C.P. 56(c)(4) (“An affidavit or declaration used to support or oppose a motion must ... set out facts that would be admissible in evidence ...”).

The referenced Declaration does not sufficiently establish how the Declarant obtained personal knowledge of this alleged fact. To the extent that the Declarant obtained personal knowledge through his review of Uber’s business records, then said records must be produced pursuant to F.R.E. 1002 in order for the declaration testimony to be admissible. *See Acumed LLC v. Advanced Surgical Servs.*, 561 F.3d 199 (3d Cir. 2007); *United States v. Miller*, 248 Fed.Appx. 426, 429 (3d Cir. 2007) (“[A] party [must] produce original documents if a witness testifies to the actual content of a writing.”).

151. On March 26, 2015, Mr. Bryant went online on the Uber App for the UberBLACK product at 6:40:19 p.m., went offline at 6:54:48 p.m., went online at 7:37:09 p.m., accepted a trip request at 7:43:09 p.m., picked up the rider at 7:51:14 p.m., and completed the trip at 8:01:42 p.m. *Id.*, ¶28.

Objection. *See response to ¶ 150 supra.*

152. Kevin Bryant also provides transportation services using the Lyft App. ECF 66-11 (Certificate of Counsel), ¶¶3-5, Exhibits 1 (subpoena to Lyft), 2 (Lyft letter responding to subpoena, including excerpts from Kevin Bryant’s login and ride

history records), 3 (Declaration of Custodian of Records).

Objection. This statement is based on documents produced by Lyft in response to a subpoena issued by the Defendants on April 21, 2017. (ECF 66-11.) The subpoena, and Lyft's production, relied on unauthenticated, hearsay information – specifically, a list of names, email addresses, and telephone numbers – prepared by the Defendants' attorneys. (ECF 66-11 at 9.) Accordingly, the documents produced by Lyft are inadmissible and should be disregarded pursuant to F.R.C.P. 56(c)(4). This portion of the cited Declaration should be disregarded since the Declaration itself fails to establish that the Declarant is qualified to interpret the content of Lyft's records.

153. According to records produced by Lyft, on March 26, 2015, Mr. Bryant logged onto the Lyft App at 6:40 p.m., finished a ride request at 6:53 p.m., and logged off at 7:44 p.m. ECF 66-11 (Certificate of Counsel), ¶¶3-5, Exhibit 2 to Certificate of Counsel (excerpts from Kevin Bryant's login and ride history records).

Objection. See response to ¶ 151 and 152 above.

154. On March 31, 2015, Mr. Bryant went online on the Uber App at 6:22:39 p.m., accepted a trip on the UberBLACK product at 6:35:14 p.m., began the trip at 6:38:15 p.m., and completed the trip at 6:47:44 p.m. Exhibit 8 (Holtzman-Conston Decl.), ¶29.

Objection. See response to ¶ 151 above.

155. According to records produced by Lyft, on March 31, 2015, Mr. Bryant finished a Lyft trip at 6:39 p.m. ECF 66-11 (Certificate of Counsel), ¶¶3-5, Exhibit 2 to Certificate of Counsel (excerpts from Kevin Bryant’s login and ride history records).

Objection. See response to ¶ 151 and 152 above.

156. To access the Uber App, transportation providers open the app on their mobile device and log in using their username and password. ECF 80 (Plaintiffs’ Admitted Facts), at ¶ 14.

Undisputed.

157. After logging on, transportation providers tap a button to go online to be eligible to receive trip requests. Exhibit 8 (Holtzman-Conston Decl.), ¶30.

Undisputed.

158. Transportation providers are not required to remain on Uber’s premises, physically or virtually (*i.e.*, being online) at any time; they have complete control over when their time spent online on the Uber App (“Online Time”) begins and when it ends. Exhibit 8 (Holtzman-Conston Decl.), ¶31; Razak I Dep., 144:8-11 (can decide when to go offline), 171:8- 13 (can go offline anytime he chooses and can stay online as long as he wants).

Disputed. Drivers are required to remain on virtual premises established by Uber. For example, UberBLACK drivers “may only advance in the queue at

the Airport or 30th Street Train Station if within a certain zone, and may only accept trip requests at the Airport if inside the west parking lot.” Sept. 13, 2017 Op. denying Defs.’ Mot. for Partial Summ. J., ECF 93. Uber even goes to the airport zone “[e]very night from 11pm to 5am” to make sure drivers are physically present “with their phones.” *See* Uber’s PHL Airport Policies.²⁴

Similarly, Uber establishes “territorial limitations” that Uber changes “[e]very day, every week.” *See* May 8, 2017 Razak Dep. 26:4-13 (ECF 66-9). Drivers are not informed of these “territorial limitations” in advance, instead the App shuts down. *Id.*

Drivers are also required to meet face-to-face with Uber employees inside of Uber’s physical offices at 7821 Bartram Avenue. *See, e.g.,* Jan. 4, 2018 Sabani Dep., Ex. 2 at 84:15-85:4 (describing how drivers have to talk with the “Uber staff in the Uber office” to get information regarding new rules); *see also* May 2, 2017 Holtzman-Conston Dep., Ex. 7 at 18:16-22 (confirming that the purpose of Uber’s Office at 7821 Bartram Avenue is to provide support to drivers) and 77:20-78:2 (stating that drivers can “show up to our office during open hours” to have their questions answered) and 16:10-23 (testifying that Uber employees meet with drivers face-to-face to discuss “a wide array of things,” including to “set up their accounts for the first time” and “address

²⁴ *See* Uber’s PHL Airport Policies filed herewith as Ex. 24.

complaints”); *see also* July 25, 2017 Clapps Dep., Ex. 10 at 18:3-18 (testifying that you have to go to the Bartram office to resolve issues, and time spent at the Bartram office is not paid for).

Drivers do not have “complete control” over when their online time begins and ends. Uber, moreover, will unilaterally log off a driver for a variety of reasons. For example, “[i]f a driver ignores three trip requests in a row, however, the Uber App will automatically move the driver from Online to offline, such that he will not be eligible at that time to accept trip requests.” *Op. denying Defs.’ Mot. for Partial Summ. J.*, ECF 93. Drivers can also be taken offline due to App malfunctions, and are usually compensated at an hourly rate by Uber for such malfunctions. *See Email re Uber App Malfunction.*²⁵ Uber will also log off drivers for a period of six hours if the driver reaches Uber’s 12-hour driving limit. *See Uber’s Drowsy Driving Policy.*²⁶ Drivers can also be taken offline for operating outside their defined territory. *See May 8, 2017 Razak Dep. 26:4-13 (ECF 66-9).*

159. Drivers choose when to go online on the Uber App, and when to go offline. *Razak II Dep.*, 28:21-24, 29:1-3.

Disputed. *See response to ¶ 158 supra.*

²⁵ *See Email re Uber App Malfunction attached as Ex. 25.*

²⁶ *See Uber’s Drowsy Driving Policy attached as Ex. 26, available at <https://www.uber.com/newsroom/drowsydriving/> (Feb. 21, 2018).*

160. Drivers can go online and offline whenever they want. Razak I Dep., 30:20-23.

Disputed. Uber can unilaterally deactivate drivers, thereby preventing them from going online. *See* Uber's Driver Deactivation Policy, ECF 68-6, *accord* Feb. 9, 2015 Correspondence between Plaintiff Sabani and Uber Support, Ex. 16 (deactivating Plaintiff Sabani due to his driver rating and recommending that he undergo training from an approved Uber vendor) *and* Feb. 18, 2016 Email from Uber to Cherdoud regarding Airport Block²⁷ (advising Plaintiff Cherdoud that he is blocked from going online in the airport zone).

161. Drivers can stay offline for as long as they want. Razak I Dep., 30:24 – 31:3.

Undisputed.

162. Once online, there is no requirement that the driver be engaged with the Uber App in order to stay online. Exhibit 8 (Holtzman-Conston Decl.), ¶32.

Disputed. Drivers are moved offline by Uber if they miss three trip requests in a row. *See* response to ¶¶ 3 and 158; *see also* Sept. 13, 2017 Op. denying Defs.' Mot. for Partial Summ. J., ECF 93 (taking notice of the fact that

²⁷ *See* Feb. 18, 2016 Email from Uber to Cherdoud regarding Airport Block attached as Ex. 27.

“drivers must constantly engage with the Uber App to keep themselves Online and situated to accept a request”).

163. Defendants do not control the number of trip requests that are generated by riders or the number of requests Plaintiffs will receive, schedule start or stop times for Plaintiffs, or require them to work for a set number of hours. Exhibit 8 (Holtzman-Conston Decl.), ¶33.

Disputed. Uber’s Owner/Operator Agreement expressly states: “[t]he frequency with which [Uber] offers Requests to [the driver] under this Agreement shall be in the sole discretion of the Company.” Uber’s Owner/Operator Agreement, ECF 15-2 at p. 59.

164. Trip requests are determined by the number of riders searching for rides, the number of other transportation providers who are available, and the location of the rider and driver. Exhibit 8 (Holtzman-Conston Decl.), ¶34.

Disputed. The number of trip requests available to Plaintiffs is largely driven by Uber. For example, “economy” – not UberBLACK – is the new default option for riders using the Uber App. See Uber’s Selecting A Vehicle Option.²⁸ Similarly, the illegal introduction of UberX into the Philadelphia marketplace has driven down UberBLACK business. See PPA Message to

²⁸ See Uber’s Selecting a Vehicle attached as Ex. 28, available at <https://help.uber.com/h/53d5ef29-0fa5-4252-a48c-43ff244ce6ce> (Feb. 21, 2018).

Gegen/UberBLACK drivers regarding UberX (Pls.’ First Compl. at ¶ 178, ECF 1 at p. 42 of 43); see also *Checker Cab Phila. v. Phila. Parking Auth.*, No. 16-4669, 2018 U.S. Dist. LEXIS 13671, 2018 WL 587298 (E.D. Pa. Jan. 28, 2018).

165. Drivers are free to reject trip requests for any reason. ECF 93 (Memorandum re: Defendants’ Motion for Partial Summary Judgment (Sept. 13, 2017)), at p 9.

Disputed. Rejecting a trip request due to a person’s race, religion, national origin, disability, sexual orientation, sex, marital status, gender identity, or age “will result in permanent deactivation.” See Uber’s Driver Deactivation Policy, ECF 68-6.

166. Uber cannot require any driver to accept a trip. *Id.*, at p 9.

Undisputed.

167. If not accepted, the request will then be offered to another online transportation provider. ECF 80 (Plaintiffs’ Admitted Facts), at ¶ 27; ECF 93, at p 9.

Undisputed.

168. A trip request is sent to only one Uber driver at any given time, and having drivers who do not intend to give rides being online slows down the process of connecting riders and drivers, and leads to a poorer user experience for riders. ECF 93, at p 9.

Undisputed.

169. If no other transportation provider is available or accepts, the trip request goes unfulfilled. ECF 80 (Plaintiffs' Admitted Facts), at ¶ 28; ECF 93, at p 9.

Undisputed.

170. If there are insufficient transportation providers to provide rides, there is nothing Defendants could do to force additional transportation providers to go online on the Uber App. ECF 80 (Plaintiffs' Admitted Facts), at ¶ 67.

Disputed. Uber coerces UberBLACK drivers to go online and accept trips by making automatic weekly deductions against their account. See Sample Pay Statements, Ex. 9.

171. Plaintiffs never suffered any consequences for cancelling trips, and Plaintiffs have not personally been penalized for their respective acceptance rates, or for failing to accept rides. ECF 93, at p 9-10.

Disputed. See response to ¶ 172 *infra*.

172. Drivers are free to cancel trips even after they have accepted them, which Plaintiffs testified they have done on numerous occasions. *Id.* ("This court has not been presented with evidence that, in practice, Uber imposed *any consequences* for drivers' acceptance rates."); Razak I Dep., 36:23 – 37:4.

Disputed. See Uber's Driver Deactivation Policy, ECF 68-6 (providing

that a driver will be deactivated for “accepting trips without the intention to complete, including provoking riders to cancel...”); *see also* July 25, 2017 Clapps Dep., Ex. 10 at 53:2-24 (describing how cancelling on a customer leads to deactivation).

Uber does punish drivers for cancelling trips. *See* Decl. of Rashid Sheikh²⁹ (attaching a message from Uber notifying Rashid Sheikh, and UberBLACK driver in Philadelphia, that his “account was deactivated due to an excessively high cancellation rate.”); *see also* Jan. 15, 2016 Email from Uber to Plaintiff Razak³⁰ (notifying Plaintiff Razak that he has “canceled an abnormally high number of trips” and that “[f]uture instances of the same offense can be cause for permanent loss of access to both your Uber rider and Uber partner applications.”).

173. A driver may cancel a trip after he has accepted it but before the rider enters the vehicle if, for instance, the driver calls the rider and asks the rider’s destination, and the driver decides he does not want to travel there. ECF 93, at p 9-10.

Disputed. *See* response to ¶ 172 *supra*.

174. Additionally, if the driver indicates on the Uber App that the trip has

²⁹ *See* Sheikh Decl. filed herewith as Ex. 43.

³⁰ *See* Jan. 15, 2016 Email from Uber to Plaintiff Razak filed herewith as Ex. 44.

begun prematurely, he will see the rider's destination on the Uber App, and may choose to cancel it at that time. *Id.*, at 10.

Disputed. *See response to ¶ 172 supra; see also May 2, 2017 Holtzman-Conston Dep., Ex. 7 at 57:16-58:5 (starting a trip before the rider is in the vehicle is fraudulent).*

175. For drivers registered with UberBLACK in Philadelphia, the requesting rider must be located within Philadelphia. The driver, however, may be *anywhere he chooses*. ECF 93, at p 10.

Disputed. **A driver's access to the Uber App is subject to territorial limitations.** *See May 8, 2017 Razak Dep. 26:4-13 (ECF 66-9)*

176. Ultimately, drivers independently decide where to go to offer rides while Online, and drivers are free to ignore any and all information conveyed to them by Uber. *Id.*

Disputed. *See response to ¶¶ 158, 170 and 175 supra.*

177. Uber places no restrictions on drivers' ability to engage in personal activities while Online, and Plaintiffs here, in fact, engaged in a range of personal activities while Online. *Id.*, at p 11.

Disputed. **Drivers cannot, for example, solicit fares outside of Uber while using the Uber App.** *See Uber's Driver Deactivation Policy, ECF 68-6 ("soliciting payment of fares outside the Uber system" leads to deactivation)*

(“activities conducted outside of Uber’s system – like anonymous pickups - are prohibited”); *see also* Sept. 26, 2016 Uber Support Email to Sabani, Ex. 6 (notifying Sabani that he is subject to “permanent removal” from the App for messaging clients to “solicit rides outside of the platform”). Drivers are also required to constantly engage the Uber App to stay online. *See* response to ¶¶ 3 and 158; *see also* Sept. 13, 2017 Op. denying Defs.’ Mot. for Partial Summ. J., ECF 93 (taking notice of the fact that “drivers must constantly engage with the Uber App to keep themselves Online and situated to accept a request”).

178. While online, transportation providers are free to send e-mails advertising their personal limousine company. ECF 80 (Plaintiffs’ Admitted Facts), at ¶ 52.

Undisputed, subject to Uber’s rules prohibiting drivers from using the Uber App to solicit business outside of Uber. *See* response to ¶ 2 *supra*.

179. While online, transportation providers are free to run a personal transportation company and distribute trips to other drivers. ECF 80 (Plaintiffs’ Admitted Facts), at ¶ 53.

Undisputed, subject to Uber’s rules prohibiting drivers from using the Uber App to solicit business outside of Uber. *See* response to ¶ 2 *supra*.

180. If a driver chooses to accept a trip request, the driver taps “accept.” ECF 93, at p 8.

Undisputed.

181. While online, Plaintiffs, inter alia, accepted rides from private clients, slept, did personal errands, smoked cigarettes, took personal phone calls, rejected trips because they were tired, and conducted business for their independent transportation companies. *Id.* at p 11.

Undisputed. However, activities occurred while the Plaintiffs were engaged to wait.

182. One transportation provider testified that he is a Certified Public Accountant (CPA), and he goes online while he is in his CPA offices, performing his CPA work. Clapp Decl., ¶5. While online, he continues doing his CPA work such as tax returns and audits. *Id.* If he receives a trip request, and he's not otherwise in a client meeting or busy with something, he may accept the request. *Id.*

Disputed. The Declarant testified that his office was, in fact, a virtual office. See July 25, 2017 Clapps Dep., Ex. 10 at 69:1-22.

183. One transportation provider stated that Uber does not control him while he is online on the Uber App. ECF 66-10, ¶4. He said he has the right to reject and decline trip requests that he receives from the Uber App without penalty. *Id.* Uber has never assigned or required him to work in a specific geographical area, and he is free to leave his house and to provide his services wherever and whenever he chooses to. *Id.* Although he works in King of Prussia, Pennsylvania, he chooses to

make himself available in the downtown Philadelphia area where he believes that there is a higher demand for limousine services. *Id.*

Disputed. The Declarant testified that he would indeed be penalized for canceling a trip. *See July 25, 2017 Clapps Dep., Ex. 10 at 14:3-13.*

184. Plaintiff Razak testified that he left on vacation for two months in 2017, but did not have to ask permission from Uber to go offline for that long. Razak II Dep., 129:20-130:7, 131:8-13.

Undisputed.

185. Plaintiffs did not have “a schedule, crafted by the [Defendants], in which the [Plaintiff] was obligated to spend time working an expressly delineated shift or period of being on-call.” ECF 93 (Memorandum re: Defendants’ Motion for Partial Summary Judgment (Sept. 13, 2017)), at p 26.

Undisputed.

186. Uber does not require drivers to be online on the Uber App at any time. Razak I Dep., 25:4-6.

Undisputed.

187. Plaintiff Cherdoud testified that it did not matter what his hours were using the Uber App. Cherdoud II Dep., 19:7-15.

Disputed. Plaintiff Cherdoud testified that he does not have “normal hours” and that “when [he] wakes up, [he] want[s] to get access to any trip.”

See Jan. 4, 2018 Cherdoud Dep., Ex. 1 at 19:7-15. Uber also limits the number of hours that an UberBLACK drive can work. See Uber’s Drowsy Driving Policy, Ex. 26. Furthermore, UberBLACK drivers have to continue to perform services once they have accepted a trip request. See Uber’s Driver Deactivation Policy, ECF 68-6 (providing that a driver will be deactivated for “accepting trips without the intention to complete, including provoking riders to cancel...”); see also July 25, 2017 Clapps Dep., Ex. 10 at 53:2-24 (describing how cancelling on a customer leads to deactivation).

188. Drivers are free to choose when to drive. Razak II Dep., 27:8-10.

Disputed. See response to ¶ 187 supra.

189. Drivers retain the sole right to determine when and for how long they will use the Uber App. Razak I Dep., 25:7-10 (drivers determine when), 30:15-19 (drivers determine for how long); Exhibit 8 (Holtzman-Conston Decl.), ¶35.

Disputed. See response to ¶ 187 supra.

190. Each driver “schedules himself.” Razak II Dep., 28:14-15

Disputed. See response to ¶ 187 supra.

191. Drivers choose when to provide transportation services based on their own interest and motivations. Razak II Dep., 29:15 – 30:3 (“It’s up to you... [N]obody is forcing you.”). For example, Plaintiff Razak is driving less now than before for personal reasons. Razak II Dep., 79:14 – 80:7 (“I will keep myself busy

with family, my mom, and other things.”).

Disputed. *See response to ¶ 187 supra.*

192. Plaintiffs’ earnings were generated by the job. They are not paid an hourly wage or on a salary basis. Exhibit 8 (Holtzman-Conston Decl.), ¶36.

Disputed. **Uber does, on occasion, pay UberBLACK drivers, including the Plaintiffs, on an hourly basis. See Email re App Malfunction, Ex. 25 (stating that drivers were paid \$20 per hour for waiting in the airport queue).**

193. Luxe charges its drivers a weekly lease payment amount for the use of its vehicles. Luxe 30(b)(6) Dep., 129:10-13, 130:7-10.

Undisputed.

194. Luxe generates revenues from the weekly lease payments paid by drivers. Luxe 30(b)(6) Dep., 196:18-21, 27:6-18 (Luxe leases its cars to its drivers).

Disputed. **Luxe does not have “drivers.” See response to ¶ 53 supra.**

195. These weekly lease payments are the primary source of revenue for Luxe. Luxe 30(b)(6) Dep., 212:4-10.

Undisputed.

196. In fact, “Luxe doesn’t care if the driver just parks the vehicle in their garage and never does any trips at all, as long as they make their weekly lease payments.” Luxe 30(b)(6) Dep., 189:19 – 190:1.

Disputed. **Umer Razak testified that “Uber should care” because the**

driver is working for Uber, not Luxe. See Jan. 3, 2018 Umer Razak Dep., Ex. 3 at 189:12-18. The lease vehicles are, moreover, registered under Gegen’s certificate of public convenience. See response to ¶ 44 supra.

197. Luxe’s business model contemplates that it will lease the vehicles in its fleet to other drivers at a weekly lease amount that will exceed the expenses associated with maintaining the vehicles (*e.g.*, finance payments, insurance payments, repairs and maintenance, oil changes, etc.), and that this excess amount will represent Luxe’s profit from the operation of its business enterprise. Luxe 30(b)(6) Dep., 145:22 – 147:2, 154:20 – 155:5.

Disputed. Luxe’s current business model is to break even with its leases. See Jan. 3, 2018 Umer Razak Dep., Ex. 3 at 146:7-14 (testifying that lease amount is “hopefully” sufficient to cover the vehicle expenses).

198. By acquiring more vehicles, it was Luxe’s objective to generate more revenue by having more drivers pay more leases. Luxe 30(b)(6) Dep., 250:8-17; *id.* at 294:10-21 (noting that by adding more cars to its fleet, Luxe tripled its gross receipts in one year).

Undisputed.

199. In setting the lease amounts, Luxe seeks to strike the right balance between covering its expenses, attracting drivers and making a profit. For example, the lease amount cannot be so low that Luxe is not making a profit. Luxe 30(b)(6)

Dep., 149:23 – 150:6. And it cannot be so high that drivers will not want to lease its vehicles. Luxe 30(b)(6) Dep., 151:14-18.

Disputed. *See response to ¶ 197 supra.*

200. Luxe sets the lease payment obligations of its drivers based in part on market conditions. Luxe 30(b)(6) Dep., 106:8-21, 148:2 – 150:6 (describing situation in which Luxe reduced a driver’s weekly lease payment).

Disputed. *See response to ¶ 197 supra.*

201. Luxe and its drivers discuss these issues with each other in an attempt to reach agreement on an appropriate weekly lease amount. Luxe 30(b)(6) Dep., 149:17 – 150:6.

Disputed. Luxe does not have drivers. *See response to ¶¶ 2, 44 and 53 supra.*

202. *See Defs.’ Unredacted Statement of Facts.*

Undisputed.

203. *See Defs.’ Unredacted Statement of Facts.*

Undisputed.

204. *See Defs.’ Unredacted Statement of Facts.*

Undisputed.

205. When other vehicles were being refinanced to lower rates (thereby leading to lower lease payments but extending the lease term), Plaintiff Razak

elected to not refinance his vehicle, and to continue to make higher lease payments instead; this will result in his vehicle being paid off more quickly. Razak II Dep., 31:17 – 32:22.

Undisputed.

206. Even though the Lincoln Navigator is owned outright by Luxe, the driver who uses it to provide transportation services (not one of Luxe’s owners) continues to pay a weekly lease to Luxe. Luxe 30(b)(6) Dep., 117:14 – 118:5.

Undisputed.

207. *See* Defs.’ Unredacted Statement of Facts.

Undisputed.

208. *See* Defs.’ Unredacted Statement of Facts.

Undisputed.

209. Luxe “competes” against other corporations to attract drivers who may wish to lease vehicles from them to provide transportation services. Luxe 30(b)(6) Depo.137:16 – 138:24, 140:4-14 (noting that sometimes drivers will switch partner corporations because of their better reputation), 141:2-11 (drivers “pick and choose” between partner corporations); *id.* (describing situation in which a driver talked to two different partner corporations before choosing Luxe), 141:5-10 (Luxe is “better than others” in part because it has never made an error in processing the payments to its drivers, an error that has occurred “with other partners”), 161:17-19 (drivers

have complained about other partners, but not about Luxe).

Disputed. Drivers are referred to Luxe by Uber. See Jan. 3, 2018 Umer Razak Dep., Ex. 3 at 141:12-20.

210. Another reason that drivers will switch partner corporations is that they wish to lease a different vehicle that their current partner corporation does not have available in its fleet. Luxe 30(b)(6) Dep., 217:12 – 218:8 & 220:12 – 221:1 (describing situation in which Luxe lost a driver to another partner corporation because the driver wanted to drive a bigger car, and Luxe was already leasing all of its SUVs to other drivers).

Undisputed.

211. For example, some drivers prefer SUVs, thinking they might obtain more trip requests. Razak II Dep. 33:12 – 34:13.

Undisputed.

212. See Defs.' Unredacted Statement of Facts.

Undisputed.

213. When Luxe acquired one of those SUVs, it negotiated with one of its existing drivers to change his lease from a sedan to the SUV, even though it meant that the driver's weekly lease payment would increase. Luxe 30(b)(6) Dep., 224:7-24.

Undisputed.

214. Luxe believes that a limousine company's ability to move more quickly to repair and maintain vehicles would be appealing to drivers. Luxe 30(b)(6) Dep., 137:16 – 138:24 (claiming that “there is no one better” than Luxe at maintaining its fleet of vehicles).

Undisputed.

215. Luxe also moves quickly in part because if one of its vehicles needs to be repaired, no one will lease it from Luxe and it will not generate any revenue for the company. Luxe 30(b)(6) Dep., 139:7-14.

Undisputed.

216. Other limousine companies may not generate enough revenue to cover the expenses associated with operating the business, which might not be appealing to potential drivers. Luxe 30(b)(6) Dep., 142:21 – 143:5.

Undisputed.

II. PLAINTIFFS' ADDITIONAL MATERIAL FACTS

217. In 2014, *all* of Milano's income was derived from Uber. *See* 1099 Form for 2014 issued by Uber, Milano 1120 Form Excerpt from 2014 and Cherdoud 1040A Form Excerpt from 2014 filed herewith as Ex. 29.

218. In 2014, Milano's taxable income was net negative. *See* Milano 1120 Form Excerpt from 2014, Ex. 29.

219. In 2014, all of Plaintiff Cherdoud's income was derived from Uber. *See* Cherdoud 1040A Form Excerpt from 2014 *and* Milano 1120 Form Excerpt from 2014, Ex. 29 (showing that Plaintiff Cherdoud's total income in 2014 – \$14,850 – matched his Milano officer compensation).

220. In 2015, *all* of Milano's income was derived from Uber. *See* 1099 Form for 2015 issued by Uber, Milano 1120 Form Excerpt from 2015 *and* Cherdoud 1040A Form Excerpt from 2015 filed herewith as Ex. 30.

221. In 2015, Milano's taxable income was net negative. *See* Milano 1120 Form Excerpt from 2015, Ex. 30.

222. In 2015, all of Plaintiff Cherdoud's income was derived from Uber. *See* Cherdoud 1040A Form Excerpt from 2015 *and* Milano 1120 Form Excerpt from 2015, Ex. 30 (showing that Plaintiff Cherdoud's total income in 2015 – \$18,585 – matched his Milano officer compensation).

223. In 2015, 88% of Luxe's gross receipts/sales were derived from Uber. *See* Luxe 1120 Form Work Page from 2015 filed herewith as Ex. 31. That money was earned by and distributed to individual UberBLACK drivers, including Plaintiff Ali Razak. *See* Jan. 3, 2018 Umer Razak Dep., Ex. 3 at 23:21-24.

224. In 2016, 98% of Luxe's gross receipts/sales were derived from Uber. *See* Luxe 1120 Form Work Page from 2016 filed herewith as Ex. 32. That money

was earned by and distributed to individual UberBLACK drivers, including Plaintiff Ali Razak. *See* Jan. 3, 2018 Umer Razak Dep., Ex. 3 at 23:21-24.

225. In 2014, **all** of Plaintiff Sabani's income was derived from Uber. *See* Sabani 1040 Form Excerpt from 2014 filed herewith as Ex. 33 *and* Jan. 4, 2018 Sabani Dep., Ex. 2 at 135:2-6 (confirming that all of the income was Uber-related).

226. "Gegen is a certificated limousine provider authorized to furnish limousine services..." *See* Uber's Comments to the Pennsylvania Public Utility Commission, Ex. 11.

227. Gegen's right "to render [limousine] services as a common carrier in the City of Philadelphia" arises from its certificate of public convenience, which was granted by the Philadelphia Parking Authority ("PPA") on or about May 31, 2013. *See* Notice of Gegen Application, Ex. 12 (42 Pa.B. 7883, Dec. 29, 2012) *and* May 13, 2013 Letter from the PPA Granting Gegen a Certificate of Public Convenience filed herewith as Ex. 34 (PPA Certificate No. 1029368-07).

228. A certificate of public convenience permits a "common carrier operating a luxury limousine service" to "transport persons on an exclusive basis between points as authorized by the certificate, if the order for service is received in advance of the actual rendering of service and not by street hail." 52 Pa. Code. § 1053.22(a).

229. Only three categories of individuals may provide limousine services under Gegen's certificate of public convenience: "(1) The owner, if the owner is a limousine driver[,], (2) An employee of the certificate holder who is a limousine driver[, and] (3) A limousine driver who leases the limousine directly from the certificate holder." *See* 52 Pa. Code § 1051.8(a).

230. As a condition of its certificate of public convenience, Gegen must "continually supervise its limousine to make certain that only those limousine drivers authorized by this section provide limousine service. A limousine certificate holder is required to ensure that a person holds a valid limousine driver's certificate issued by the [PPA] before permitting the person to drive a limousine." *See* 52 Pa. Code § 1051.8(b).

231. Gegen "required to conduct or have a third party conduct annual criminal history and driver history checks for all limousine drivers operating a limousine vehicle under [Gegen]." *See* 52 Pa. Code § 1051.8(c)(1) *and* July 14, 2014 Email from Uber regarding Background Checks, Ex. 15 (explaining that, in order to remain an active, drivers must submit to Uber's background check, even if the PPA already ran a background check on the driver).

232. "The liability insurance maintained by [Gegen must] be in an amount at least \$ 1,500,000 to cover liability for bodily injury, death or property damage incurred in an accident arising from authorized service." *See* 52 Pa. Code § 1065.1.

233. A vehicle may not operate as a limousine unless a “valid limousine rights sticker” is filed herewith to the vehicle’s windshield. *See* 52 Pa. Code §§ 1055.1-1055.2.

234. The limousine rights sticker is “issued annually for each limousine by the [PPA] to a certificate holder.” 52 Pa. Code § 1055.1.

235. The certificate holder receives one limousine rights sticker for each vehicle registered under its certificate and listed in its “Annual Information Filing” with the PPA. *See* 52 Pa. Code § 1051.3(h).³¹

236. Uber pays for the fees associated with the limousine rights stickers, then passes all of the costs onto the Plaintiffs through weekly deductions from their Uber earnings, regardless of what the Plaintiffs earned that week. *See* Sample Pay Statements, Ex. 9 (showing a total payout of -\$211.70 to Plaintiff Sabani after Uber deducted \$346.89 in commission and \$1,247.42 in weekly expenses, including “PPA Sticker Cost”).

237. UberBLACK drivers, including Plaintiffs, must be licensed by the PPA; they are required – by Uber – to maintain particular standards of dress whenever they transport riders. *See* December 2013 Driver Addendum § 2.1, ECF

³¹ The 2018 Annual Information Filing (referred to as Form LM-1) is available at <http://www.philapark.org/wp-content/uploads/LM-1-2018-Limousine-CPC-Renewal-Form-2.27.17.pdf> (Feb. 22, 2018).

68-3. See also Razak Dep. 49:2-12, ECF 68-17. *See also* Holtzman-Conston Dep. 102:2-7, 117:20-118:5, ECF 76-2.

238. UberBLACK drivers, including Plaintiffs, are required by Uber to drive particular makes and models of car when they transport the riders. *See* Holtzman-Conston Dep. at 28:3-29:13, ECF 76-2.

239. The vehicles that the Plaintiffs operate are registered under Gegen's certificate of public convenience from the PPA, thereby permitting the vehicles to operate as limousines in Philadelphia County. *See, e.g.*, Pennsylvania Fleet Registration filed herewith as Ex. 35 (showing that the vehicle operated by Plaintiff Cherdoud is registered to Gegen).

240. Since the Plaintiffs' vehicles are registered to Gegen, Uber ensures that the finance payments are made by making weekly deductions from the Plaintiffs' Uber earnings. *See* Sample Pay Statements, Ex. 9 (showing a total payout of \$3.72 to Plaintiff Cherdoud after deducting an "Exeter Payment" and "Gegen Insurance").

241. According to their driver certificates, the Plaintiffs are drivers for Gegen, LLC, which is listed as a "Limo" Company. *See, e.g.*, Cherdoud Limousine Driver Certificate filed herewith as Ex. 36.

242. The Plaintiffs and Gegen are insured under the same commercial auto insurance policy. *See, e.g.*, Certificate of Liability Insurance filed herewith as Ex. 37 (naming Plaintiff Cherdoud and Gegen as the insureds) *and* Pennsylvania

Financial Responsibility Card filed herewith as Ex. 38 (naming Gegen as the insured for the vehicle operated by Plaintiff Cherdoud).

243. Uber has sole discretion in selecting auto insurance, and negotiates on behalf of the Plaintiffs to “minimize the increase in premiums.” *See* Message from Uber regarding Gegen’s Insurance, Ex. 14 (explaining that, despite Uber’s “hard” negotiating, only one insurance company “agreed to underwrite the policy”).

244. Despite Uber’s control over the insurance, Plaintiffs are responsible for the entire premium via weekly deductions from their Uber earnings. *Id.* (assuring drivers that “Gegen does not make money on insurance”); *see also* Sample Pay Statements, Ex. 9.

245. Uber has absolute control over the “financial terms of a trip,” from calculating and adjusting fares, to processing payments. *See* Dec. 11, 2015 Technology Services Agreement at ¶ 4 (ECF 114-15).

246. Uber can unilaterally change, without notice, how it calculates fares. *Id.* at ¶ 4.2. *See also* Aug. 18, 2015 Email to Drivers from Uber regarding UberBLACK Updates filed herewith as Ex. 39 (providing a week’s notice that UberBLACK fares and fees are increasing, the Airport Flat Fee is being removed, and rider surcharges will be applied at the airport).

247. Since Uber controls the payment process, drivers have no recourse if Uber fails to obtain payment from the customer. *See, e.g.*, Sept. 10, 2014 Message

from Uber to Plaintiff Sabani filed herewith as Ex. 40 (refusing to pay Plaintiff Sabani because “the customer used a stolen credit card and acknowledging “we know is [SIC] not your fault... we cannot adjust more because we cannot charge the customer.”); *see also* Jan. 25, 2015 Message from Uber to Plaintiff Cherdoud filed herewith as Ex. 41 (refusing to pay Plaintiff Cherdoud because he “forget to hit being trip.”); *see also* Jan. 19 Message from Uber to Plaintiff Cherdoud filed herewith as Ex. 42 (warning Plaintiff Cherdoud to “never speak to clients about pricing as that is all taken care of by Uber.”).

248. UberBLACK drivers, including Plaintiffs, are required by Uber to drive particular makes and models of car when they transport the riders. *See Holtzman-Conston Dep. at 28:3-29:13, ECF 76-2.*

249. Uber’s written agreement with the drivers expressly provides that drivers who fail to complete a trip, once accepted, are subject to immediate deactivation of their accounts. *See* ¶ 16 *supra*. *See also* Deactivation Policy 5-8 (discussing deactivation from cancellations) and 8-9 (cancelling trips after accepting a fare, or provoking riders to cancel trips, results in permanent deactivation), ECF 68-8. *See also* June 2014 Driver Addendum § 5.1, ECF 68-13. This understanding was confirmed by Uber’s Declarant, George Clapps. *See* Clapps. Dep. 12:6-14:18, ECF 76-1.

250. Uber tracks every driver's cancellation rate, and warns drivers with a high cancellation rate that additional cancellations is "cause for permanent loss of access to both your Uber ride and Uber partner applications. *See* Jan. 15, 2016 Email from Uber to Plaintiff Razak filed herewith as Ex. 44. Plaintiff Razak has received such a warning. *Id.*

251. Uber does indeed deactivate drivers because of their cancellation rate. *See* Decl. of Rashid Sheikh filed herewith as Ex. 43 (notifying Mr. Sheikh that his "account was deactivated due to an excessively high cancellation rate").

252. Rashid Sheikh, an UberBLACK driver, was deactivated due to his cancellation rate. *Id.*

253. Uber has many employee disciplinary penalties, such as deactivating drivers with higher cancellation rates, which it is free to impose at its discretion. *Id.* For example, with airport queue abuse is punishable by a one-week bar from the airport. *Id.* *See also* Holtzman-Conston Dep. 110, ECF 76-2.

254. Uber punished Plaintiff Cherdoud for allegedly violating Uber's "empty sleeper" policy by blocking him from "airport pickups for one week." *See* Feb. 18, 2016 Email from Uber to Plaintiff Cherdoud filed herewith as Ex. 27.

255. Uber maintains a "driver rating" policy that requires the Plaintiffs to "maintain the 'Minimum Average Rating,'" which is "established by Uber" and

“may be updated from time to time by Uber in its sole discretion.” *See also* Nov. 10, 2014 Driver Addendum, ECF 68-4 at ¶ 2.4.2.

256. Uber’s driver rating policy requires drivers to “accept a substantial portion of User requests” in order to prevent “a negative experience for Users of Uber’s mobile application.” *Id.*

257. For UberBLACK drivers in Philadelphia, the “Minimum Average Rating” is 4.7 out of 5 stars.

258. Uber punished Plaintiff Sabani for having a rating of 4.65 (.05 short of the mandate) by deactivating his account. *See* Feb. 9, 2015 Message from Uber to Plaintiff Sabani, Ex. 16.

259. Uber’s background check policy subjects drivers “to certain background and driving record checks from time to time in order to qualify to provide, and remain eligible to provide, Transportation Services.” *See* Nov. 10, 2014 Driver Addendum, ECF 68-4 at ¶ 3.

260. Even if a driver was cleared under PPA’s background check, the driver must submit to Uber’s background check as “a requirement to remain an active driver with Uber” because “Uber’s background check is more thorough.” *See* July 14, 2014 Email from Uber to Plaintiff Razak, Ex. 15.

261. Uber “deactivated(waitlisted)” Plaintiff Razak pursuant to Uber’s background policy. *See* Aug. 18 Email Correspondence between Uber and Plaintiff Razak filed herewith as Ex. 45.

262. On November 10, 2017, the United Kingdom’s Employment Appeal Tribunal issued a judgment affirming that, under English law, Uber drivers are employees. *See* Nov. 10, 2017 U.K. Employment Appeal Tribunal J. (Appeal No. UKEAT/0056/17/DA) filed herewith as Ex. 46.

Respectfully submitted:

s/ Jeremy E. Abay _____

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Dated: February 26, 2018