Court File No.: CV-17-567946-CP

ONTARIO
SUPERIOR COURT OF JUSTICE

BETWEEN:

DAVID HELLER

Plaintiff

- and -

UBER TECHNOLOGIES INC., UBER CANADA INC., UBER B.V., and RASIER OPERATIONS B.V.

Defendants

Proceeding under the *Class Proceedings Act, 1992*

STATEMENT OF CLAIM

TO THE DEFENDANTS

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the plaintiff. The claim made against you is set out in the following pages.

IF YOU WISH TO DEFEND THIS PROCEEDING, you or an Ontario lawyer acting for you must prepare a statement of defence in Form 18A prescribed by the Rules of Civil Procedure, serve it on the plaintiff's lawyer or where the plaintiff does not have a lawyer, serve it on the plaintiff, and file it, with proof of service, in this court office, WITHIN TWENTY DAYS after this statement of claim is served on you, if you are served in Ontario.

If you are served in another province or territory of Canada or in the United States of America, the period for serving and filing your statement of defence is forty days. If you are served outside Canada and the United States, the period is sixty days.

Instead of serving and filing a statement of defence, you may serve and file a notice of intent to defend in Form 18B prescribed by the Rules of Civil Procedure. This will entitle you to ten more days within which to serve and file your statement of defence.

IF YOU FAIL TO DEFEND THIS PROCEEDING, JUDGMENT MAY BE GIVEN AGAINST YOU IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO DEFEND THIS PROCEEDING BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.

IF YOU PAY THE PLAINTIFF'S CLAIM, and $2000.00 for costs, within the time for serving and filing your statement of defence you may move to have this proceeding dismissed by the court. If you believe the amount claimed for costs is excessive, you may pay the plaintiff's claim and $400.00 for costs and have the costs assessed by the court.

TAKE NOTICE: THIS ACTION WILL AUTOMATICALLY BE DISMISSED if it has not been set down for trial or terminated by any means within five years after the action was commenced unless otherwise ordered by the court.

Date: January 19, 2017

Issued by: Gerri Findlay
(Local Registrar)

Address of court office:

Superior Court of Justice
393 University Ave., 10th Floor
Toronto, Ontario
M5G 1E6

TO: **UBER TECHNOLOGIES INC.**
312 Adelaide Street West, 2nd Floor
Toronto, ON
M5V 1R2

AND TO: **UBER CANADA INC.**
312 Adelaide Street West, 2nd Floor
Toronto, ON
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AND TO: **UBER B.V.**
312 Adelaide Street West, 2nd Floor
Toronto, ON
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AND TO: **RASIER OPERATIONS B.V.**
312 Adelaide Street West, 2nd Floor
Toronto, ON
M5V 1R2

CLAIM

1. The Plaintiff claims against the Defendants:

a) an order certifying this proceeding as a class proceeding and appointing the Plaintiff as representative Plaintiff for the Class (defined below);

b) $200 million in damages for the Class, or such other sum as this Honourable Court deems just;

c) a declaration that the provisions of the *Employment Standards Act, 2000* ("*ESA*"), as applicable, are express or implied terms of the contracts of employment of the Class Members (defined below);

d) a declaration that the Class Members are employees of the Defendants who are operating as a common employer, for the purposes of the *ESA*;

e) a declaration that the Defendants violated the terms of the *ESA*, breached the Class Members' contracts of employment and duty of good faith owed to the Class Members, and/or breached the duty of care owed to Class Members by:

(i) failing to ensure that Class Members were properly classified as employees;

(ii) failing to advise class members of their entitlement to compensation equal to or above the minimum wage as stipulated by the *ESA* (the "Minimum Wage");

(iii) failing to compensate Class Members at a rate equal to or above the Minimum Wage;

(iv) failing to advise Class Members of their entitlement to overtime pay for hours worked in excess of 44 hours per week in accordance with the *ESA* (the "Overtime Threshold");

(v) requiring and/or permitting the Class Members to work overtime hours but failing to compensate the Class Members as required for hours worked in excess of the Overtime Threshold ("Overtime Pay");

(vi) failing to ensure that the Class Members' hours of work were monitored and accurately recorded;

(vii) failing to advise Class Members of their entitlement to vacation pay at a rate of 4 percent of wages in accordance with the *ESA* ("Vacation Pay");

(viii) failing to compensate Class Members for Vacation Pay;

(ix) failing to advise class members of their entitlement to public holiday pay and premium pay in accordance with the *ESA* (the "Public Holiday and Premium Pay"); and,

(x) failing to compensate Class Members for Public Holiday and Premium Pay.

f) an interlocutory and a final mandatory order for specific performance directing that the Defendants comply with the *ESA* and/or the contracts of employment with the Class Members, in particular, to:

(xi) ensure that Class Members are properly classified as employees;

(xii) advise Class Members of their entitlement to the Minimum Wage, Overtime Pay for hours worked in excess of the Overtime Threshold, Vacation Pay and Public Holiday and Premium Pay;

(xiii) ensure that Class Members' hours of work are monitored and accurately recorded; and,

(xiv) ensure that Class Members are appropriately compensated at a rate equal to or above the Minimum Wage, for Overtime Pay, for Vacation Pay and for Public Holiday and Premium Pay.

g) a declaration that the provisions of any applicable "Partner" and/or independent contractor agreement which may purport to exclude the Class Members from eligibility for the Minimum Wage, Overtime pay, Vacation Pay and Public Holiday and Premium Pay are void and unenforceable;

h) a declaration that the Defendants are liable for any consequential damages resulting from the determination that the Class Members are/were employees of the Defendants and not Partners and/or independent contractors;

i) a declaration that the Defendants are liable for any adverse tax liability sustained by the Class Members resulting from a determination that the Class Members are/were employees of the Defendants and not Partners and/or independent contractors;

j) a declaration that the Defendants are liable, and must reimburse Class Members, for any *Canada Pension Plan* ("CPP") or *Employment Insurance Act* ("EI") contributions which may have been paid or are owed resulting from a determination that the Class Members are/were employees of the Defendants and not Partners and/or independent contractors;

k) a declaration that the Defendants were unjustly enriched, to the deprivation of the Class Members, in that they received the value of compensating Class Members at rates below the Minimum Wage, without paying Overtime Pay, without paying Vacation Pay and without paying Public Holiday and Premium Pay, and an order requiring the Defendants to disgorge to the Class Members all amounts withheld by them in respect of such unpaid hours and entitlements;

l) an order, pursuant to s. 24 of the *Class Proceedings Act, 1992*, directing an aggregate assessment of damages;

m) an order directing the Defendants to preserve and disclose to the Plaintiff all records (in any form) relating to the identification of Class Members and the hours of work performed by the Class Members;

n) pre-judgement and post-judgement interest pursuant to the *Courts of Justice Act*;

o) punitive, aggravated and exemplary damages in the amount of $200 million, or such other amounts as this Honourable Court deems just;

p) costs of this action on a substantial indemnity basis, together with applicable HST, or other applicable taxes, thereon;

q) the costs of administering the plan of distribution of the recovery in this action; and,

r) such further and other relief as this Honourable Court may deem just.

THE PARTIES

2. The Plaintiff, David Heller ("Heller"), resides in Ontario. He is an employee retained by the Defendants to provide delivery and driving services to Uber's customers. Heller is currently employed by Uber. Heller works as a driver in Toronto and the Greater Toronto Area.

3. Uber Technology Inc., Uber Canada Inc., Uber B.V., and Raiser Operations B.V. (herein collectively referred to as "Uber" or the "Defendants") is a worldwide transportation network company. Uber develops, markets and operates the Uber internet application (the "App") which allows its' customers to submit a trip and/or delivery request with the use of a smartphone. Uber then uses the App to alert the nearest driver of the customer's request, location and the price the customer will be paying the driver for his/her services.

4. Uber is the largest company of its kind and operates in 66 countries and 507 cities worldwide. In Canada, Uber has extensive operations in the Provinces of Ontario, Alberta, and Quebec, spanning fourteen (14) major cities. Uber provides services in those cities which includes, but is not limited to, the following:

a) Uber EATS: a food delivery service offered by Uber for drivers with standard 2 or 4 door vehicles and/or bicycles;

b) Uber X: a ride service offered by Uber for drivers with standard 4 door sedans;

c) Uber XL: a ride service substantially similar to Uber X only offered in larger cars or vans and at a premium price to Uber X;

d) Uber Select: a ride service substantially similar to Uber XL only offered in luxury cars of a higher quality than Uber XL and at a premium price to the Uber XL price structure;

e) Uber Black: a ride service offered by licensed limousine drivers in limousines;

f) Uber SUV: a ride service similar to Uber Black using licensed limousine drivers and cars, but offered in larger SUV-type limousines (e.g. Escalade and similar) at a premium price to Uber Black;

g) Uber Taxi: a ride service provided by taxi drivers and cars at metered rates; and,

h) Uber Access: a ride service similar to Uber Taxi only utilizing wheelchair accessible taxis.

5. In Ontario, the main cities in which Uber operates, include the cities of Hamilton, Kingston, Kitchener-Waterloo, London, Windsor, Toronto and the Greater Toronto Area, Ottawa, and throughout the Niagara region. Within Ontario, Uber employs upwards of 20,000 drivers, the majority of whom work in the Toronto and Greater Toronto Area. The Defendant initiated its operations in Ontario and more specifically Toronto in and around 2012.

6. The Defendants carry on business in common with respect of the hiring, training, supervision and control of the Class Members.

7. The business activities of Uber, and the activities of the Partners, are provincially regulated and therefore governed by the *ESA*.

THE CLASS

8. The Plaintiff brings this action pursuant to the *Class Proceeding Act, 1992* on his own behalf and on behalf of the following class of persons:

> "Any person, since 2012, who worked or continues to work for Uber in Ontario as a Partner and/or independent contractor, providing any of the services outlined in Paragraph 4 of the Statement of Claim pursuant to a Partner and/or independent contractor agreement."
>
> (the "Class" or "Class Members")

EMPLOYMENT RELATIONSHIP

9. The duties performed by the Class Members and the supervision and control imposed on the Class Members by Uber creates an employment relationship with Uber. In particular:

a) Uber trains all the Class Members in their operation of the App and other related software necessary in completing their duties;

b) Class Members must use the tools of Uber in the form of delivery bags, data, delivery signs, and the Uber App;

c) Class Members are told the type of vehicle they must use and the category of license they must possess in order to work for Uber;

d) Class Members' vehicles are subject to mandatory inspections by Uber, where non-compliance by Class Members can result in their immediate suspension;

e) Class Members must pass a mandatory screening process to work for Uber;

f) Class Members must provide Uber with proof of eligibility to work in Canada (e.g. passport, social insurance number, birth certificate, permanent residency card, etc.);

g) All prices and Partner compensation are fixed by Uber;

h) Class Members do not solicit or contact customers, all customers contact Uber directly, at which point their information is provided to Class Members in order for the Class Members to service Uber's clients;

i) Uber maintains sole discretion whether to accept or reject any potential clients who contact Uber for services;

j) All clients serviced by Class Members are reported to Uber through the App and tracked by Uber;

k) Class Members who reduce their hours of work are denied special promotions, incentives and pay increases;

l) Only Uber handles customer complaints about the Class Members;

m) Uber assumes responsibility for alleged misconduct of the Class Members while providing services to the public on behalf of Uber;

n) Uber collects customer feedback and other related data on Class Members and can suspend or terminate the Class Members use of the App if the service provided or the Class Members' rating is not satisfactory;

o) Class Members cannot sub-contract or independently employ other drivers under their App account with Uber to provide services on the Class Members behalf;

p) Class Members are prohibited from developing their own Apps to independently provide services to customers;

q) The services rendered by Class Members form the vast majority of Uber's revenue;

r) Class Members do not receive payment directly from customers; and,

s) Class Members are paid directly by Uber at specified intervals.

ESA AND CLASS MEMBERS' CONTRACTS OF EMPLOYMENT

10. The provisions of the *ESA* are implied terms, in fact or by law, as minimum terms of the contract of employment by Class Members.

11. Therefore, the contracts of employment of the Class Members expressly or impliedly provide that Class Members shall be compensated:

a) at a rate equal to, or greater than, the Minimum Wage;

b) with Overtime Pay for hours worked in excess of the Overtime Threshold;

c) with Vacation Pay on all amounts paid; and,

d) with Public Holiday Pay and Premium Pay.

CONTRACTUAL DUTIES TO CLASS MEMBERS

12. As low skilled employees under the direct control and supervision of the Defendants, the Class Members relied on the Defendants to advise them properly regarding their employee status and eligibility for Minimum Wage, Overtime Pay, Vacation Pay, Public Holiday and Premium Pay and to fulfill their contractual and statutory employment responsibilities to keep track of and pay the Class Members at, or above, the Minimum Wage, Overtime Pay, Vacation Pay and Public Holiday and Premium Pay. Uber is/was in a position of power and direct control over the Class Members and the Class Members were in a vulnerable position *vis-à-vis* the Defendants.

13. The Defendants owe contractual duties to the Class Members, including its contractual duty of good faith, all of which required, and continues to require, the Defendants to:

a) ensure Class Members are properly classified as employees;

b) advise Class Members of their entitlement to the Minimum Wage, Overtime Pay and Vacation Pay;

c) ensure that Class Members' hours of work are monitored and accurately recorded; and,

d) ensure that Class Members are appropriately compensated at, or above, the Minimum Wage, for Overtime Pay, for Vacation Pay and for Public Holiday and Premium Pay.

DUTY OF CARE

14. Uber owed the Class Members a duty of care based upon the special relationship that developed between them as a consequence of Uber retaining the Class Members to perform driving services on Uber's behalf.

15. Uber owed the Class Members a duty to take reasonable steps to properly characterize the employment relationship when retaining the Class Members to provide driving services to Uber's customers.

16. The Defendants' duty of care required the Defendants to:

a) ensure Class Members are properly classified as employees;

b) advise Class Members of their entitlement to the Minimum Wage, Overtime Pay, Vacation Pay and Public Holiday and Premium Pay;

c) ensure that the Class Members hours of work are monitored and accurately recorded; and,

d) ensure that Class Members are appropriately compensated at, or above, the Minimum Wage, for Overtime Pay, for Vacation Pay and for Public Holiday and Premium Pay.

RESPONSIBILITIES OF PARTNERS AND TREATMENT BY UBER

17. Heller began his employment with Uber in and around February 2016. Heller provides services to Uber's customers who contracted with Uber primarily through the Uber EATS App.

18. Heller's duties and responsibilities as a Partner and/or independent contractor included:

a) ensuring that the vehicle he used was safe to operate and met the specifications/requirements set out by Uber;

b) ensuring the App was operational so that he could provide services to Uber clients;

c) using the App to locate Uber's customers;

d) arriving at restaurants and other food service outlets to pick up orders placed by Uber's customers;

e) verifying the contents of food orders made by Uber's clients; and,

f) delivering food orders to Uber's customers in a timely fashion.

19. In order to receive a livable wage, Heller was required to work between 40-50 hours per week without receiving the Minimum Wage, contrary to his contractual terms.

20. Heller relied on the Defendants in good faith and was unaware while working for the Defendants or afterwards that he was an employee and entitled to the Minimum Wage, Overtime Pay, Vacation Pay and Public Holiday and Premium Pay. At the time, Heller relied on the Defendants to properly classify him regarding his status as an employee and his entitlement to Minimum Wage, Overtime Pay, Vacation Pay and Public Holiday Pay and Premium Pay and was misled by the Defendants that he was not an employee of the Defendants.

21. Heller did not become aware that he was eligible as an employee for Minimum Wage, Overtime Pay, Vacation Pay and Public Holiday Pay and Premium Pay because the Defendants had continually misrepresented to him his actual eligibility and entitlement to such pay.

22. Heller's duties are consistent with the duties of all Partners and/or independent contractors in the Class and the operations of Uber and the controls imposed by Uber on its Partners and/or independent contractors.

23. At all material times, Heller and other Class Members were directed how, when, and where they could provide driving services for Uber's customers.

24. The Defendant's required Heller and other Class Members to consistently be available for work or risk reduced pay and loss of incentives and/or promotions.

25. As a Partner and/or independent contractor, Heller and other Class Members worked between 40-50 hours per week, including weekends and holidays. The Defendants were aware of, and/or encouraged Heller and all other Class Members, to work those hours in excess of the Overtime Threshold, which were necessary in order to earn a livable wage. The Defendants required and/or permitted Heller and other Class Members, to work hours in excess of the Overtime Threshold and failed or refused to provide them with Overtime Pay, contrary to their contractual terms.

26. At all material times, Heller and the other Class Members were explicitly and incorrectly informed they were not employees of Uber.

27. The Defendants failed to compensate Heller and the other Class Members for Vacation Pay, contrary to their contractual terms.

28. The Defendants failed to compensate Heller and the other Class Members for Public Holiday and Premium Pay, contrary to their contractual terms.

SYSTEMIC CLASSIFICATION AS "PARTNERS"

29. The Defendants systematically classified all drivers as Partners and/or independent contractors and required and/or permitted the Class Members to regularly work hours without receiving the Minimum Wage, Overtime Pay, Vacation Pay, Public Holiday Pay and Premium Pay, under the misrepresentation from Uber that drivers were Partners and/or independent contractors.

30. The Defendants were aware that the Class Members relied on the Defendants to advise them properly of their employment status and eligibility for Minimum Wage, Overtime Pay, Vacation Pay and Public Holiday Pay and Premium Pay, and to fulfill their contractual and statutory employment responsibilities to keep track of and pay the Class Members for their hours worked.

31. The Defendants exerted persuasive pressure on Class Members to work hours in excess of the Overtime Threshold. If Class Members did not work regularly and did not work overtime as required to complete their employment responsibilities, such Class Members would not be eligible for pay raises and incentives and/or promotions.

SYSTEMIC BREACH OF THE *ESA*

32. The Defendants have systemically breached the provisions of the *ESA* with respect to all Class Members by:

a) failing to ensure that Class Members were properly classified as employees;

b) failing to advise Class Members of their entitlement to Minimum Wage, Overtime Pay, Vacation Pay and Public Holiday Pay and Premium Pay;

c) failing to ensure that the Class Members' hours of work were monitored and accurately recorded;

d) requiring and/or permitting the Class Members to work hours for which it failed to compensate at a rate equal to, or above, the Minimum Wage;

e) requiring and/or permitting the Class Members to work hours in excess of the Overtime Threshold but failing to ensure that Class Members were compensated with Overtime Pay;

f) failing to compensate Class Members for Vacation Pay; and,

g) failing to compensate Class Members for Public Holiday and Premium Pay.

33. Uber's misclassification of drivers as purported Partners and/or independent contractors and denial of Minimum Wage, Overtime Pay, Vacation Pay and Public Holiday Pay and Premium Pay to Class Members is in violation of the *ESA* and is unlawful.

34. To the extent that any contracts purport to designate the Class Members as Partners and/or independent contractors and exclude the Class Members from eligibility for the Minimum

Wage, Overtime Pay, Vacation Pay and Public Holiday Pay and Premium Pay or any other minimum requirement under the *ESA*, such contracts and/or provisions are void and unenforceable.

APPROPRIATE JURISDICTION

35. The Plaintiff states that Ontario has jurisdiction over this matter and that Ontario is the only appropriate forum in which to hear this litigation. The following factors confirm the aforementioned:

    a. All Class Members were hired by the Defendant in Ontario;

    b. All Class Members work or did work for the Defendant in Ontario;

    c. All Class Members maintain or did maintain residence in Ontario;

    d. Any contracts the Class Members have agreed to were drafted and signed in Ontario;

    e. All Class Members report to, and were/are under the effective control by the Defendant's management in Ontario;

    f. The Defendant carries on business in Ontario; and

    g. The evidence, including witness evidence, required to resolve this litigation is located solely in Ontario.

36. In summary, the Plaintiff pleads that this litigation contains a real and substantial connection to Ontario.

DISPUTE RESOLUTION MECHANISM

37. The Plaintiff and other Class Members' employment with Uber is purportedly subject to the Rasier Operations B.V. Services Agreement (the "Agreement"). The Agreement sets out at Article 15 that:

> Any dispute, conflict or controversy, howsoever arising out of or broadly in connection with or relating to this Agreement, including relating to its validity, its construction or its enforceability, shall be first mandatorily submitted to

> mediation proceedings under the International Chamber of Commerce Mediation Rules ("*ICC Mediation Rules*"). If such a dispute has not been settled within sixty (60) days after a request for mediation has been submitted under such ICC Mediation Rules, such dispute can be referred to and shall be exclusively and finally resolved by arbitration under the Rules of Arbitration of the International Chamber of Commerce ("*ICC Arbitration Rules*").

38. Further to the above provision, it is stated within Article 15 that the arbitration shall be held in Amsterdam, The Netherlands.

39. The Plaintiff states that the arbitration provisions contained in the Agreement create an unworkable and illegal dispute resolution mechanism, as outlined further below, which is both wholly unfair and in direct contravention of the ESA.

40. The Plaintiff pleads that the arbitration provision is unenforceable or not applicable for any one of multiple reasons. Firstly, the Agreement sets out to establish a business relationship with the Plaintiff and the Class Members. Thus, to the extent that the Plaintiff and the Class Members are found to be employees of Uber, the substratum of the Agreement would not be applicable to the relationship between the parties, thereby rendering Article 15 of no force or effect.

41. Second, the possibility that the Plaintiff or a Class Member would be required to enforce its rights by filing claims and traveling to Amsterdam, would lead to an entirely absurd and unjust outcome. Allowing the aforementioned clause to be enforced would effectively bar the Plaintiff and the Class Members from settling any dispute which arises from their employment relationship with the Defendants, given the pervasive costs associated with travel to Amsterdam. Such an outcome would allow the Defendant to exploit its unequal bargaining power over the Plaintiff and the Class Members.

42. Specifically, the Plaintiff states that he, and other Class Members, are low skilled workers of limited means, whereas Uber is a large multinational company with comparably endless means. Further, it is more likely than not that any dispute arising out of the Agreement would be of nominal value (i.e. issues dealing with vacation pay, minimum wage, hours of work, overtime pay, etc.). Pursuant to the Agreement, the Plaintiff or a Class Member would be required to forgo wages, travel to Amsterdam, and devote thousands of dollars to seek legal

redress for nominal amounts. The practical effect of such a scenario would prevent the Plaintiff and Class Members from any form of recourse arising out of the Agreement or their employment with Uber.

43. The Plaintiff pleads that the above result would not be tenable at law. Further, that enforcing such a clause would have a chilling effect on all employees in Ontario, as any employer or business could operate without regard to the law, should they minimally employ an arbitration clause which requires the aggrieved party to pay significant and unrecoverable costs to enforce a right of nominal value.

44. Finally, the Plaintiff pleads that to the extent that the Plaintiff and/or the Class Members agreed to resolve a dispute arising out of their employment with Uber by way of arbitration, the arbitration clause itself is unenforceable as it violates the *ESA*.

45. Specifically, the arbitration provision provides that any dispute or controversy arising under or concerning the Plaintiff and/or Class Members contract with Uber must be resolved by way of arbitration in the City of Amsterdam, The Netherlands. Further, that the arbitration must be in accordance with the Rule of Arbitration of the International Chamber of Commerce. This constitutes a blatant attempt to contract out of the *ESA*.

46. The Plaintiff pleads that pursuant to section 96(1) of the *ESA*, an employee who believes that his/her rights under that *ESA* have been contravened, has a choice as to whether to pursue entitlements in court or file a complaint with the Ministry of Labour which will then be investigated by an officer. This is a basic and essential entitlement that all employees who are governed by the ESA have. The arbitration provision clearly seeks to contract out of the ESA and usurp this statutorily-protected right by requiring that all disputes must be resolved by way of arbitration in a foreign jurisdiction.

47. The Plaintiff pleads that pursuant to Section 5 of the *ESA*, no employer or employee may contract out of the *ESA*, and that any provision that attempts to contract out of the *ESA* is unenforceable.

48. Additionally, Section 7(2) of the *Arbitration Act, 1991*, states that the court may refuse to stay a proceeding if the arbitration agreement is invalid. As such, to the extent the Plaintiff

and/or Class Members agreed to an arbitration provision, it is unenforceable because it violates the *ESA*.

49. The Plaintiff states that for any of the forgoing reasons, arbitration of this matter in Amsterdam, The Netherlands, or any other location is not possible, equitable or permissible by law.

SYSTEMIC BREACH OF CONTRACT AND BREACH OF DUTY OF GOOD FAITH

50. The Defendants systematically breached the contracts with the Class Members and the contractual duty of good faith owed to the Class Members by:

a) improperly and arbitrarily misclassifying the Class Members as Partners or independent contractors;

b) misrepresenting to Class Members that the Class Members were Partners or independent contractors;

c) failing to monitor and keep track of the hours worked by the Class Members; and,

d) requiring and/or permitting the Class Members to work regular hours and hours in excess of the Overtime Threshold but failing to compensate the Class Members as required for the Minimum Wage, Overtime Pay, Vacation Pay and Public Holiday Pay and Premium Pay.

51. There was not a legitimate basis for the Defendant's arbitrary designation of the Class Members as Partners and/or independent contractors and for denying eligibility for Minimum Wage, Overtime Pay, Vacation Pay and Public Holiday Pay and Premium Pay, which was contrary to the employees' express or implied terms of contract with the Defendants. Such classification and exclusion is contrary to the terms of the *ESA*, which are incorporated as express or implied terms of the contracts.

52. Such breaches are ongoing and continuous in respect to Class Members since at least 2012.

SYSTEMIC NEGLIGENCE

53. Uber owed Heller, and the Class Members a duty to take reasonable steps to properly characterize the employment relationship when retaining the Class Members to provide services to Uber's customers. Uber systemically breached that duty by:

a) improperly and arbitrarily misclassifying the Class Members as Partners and/or independent contractors;

b) misrepresenting to Class Members that the Class Members were Partners and/or independent contractors;

c) failing to monitor and keep track of the hours worked by the Class Members; and,

d) requiring and/or permitting the Class Members to work regular hours and hours in excess of the Overtime Threshold but failing to compensate the Class Members as required for the Minimum Wage, Overtime Pay, Vacation Pay and Public Holiday Pay and Premium Pay.

54. As a result of Uber's negligence in mischaracterizing the relationship between Uber and the Class Members, the Class Members have suffered damages and losses, including lost Minimum Wages, Overtime Pay, Vacation Pay and Public Holiday and Premium Pay, and any consequential damages resulting from the determination that the Class Members are/were employees of the Defendants and not Partners and/or independent contractors, all of which were reasonably foreseeable to Uber.

UNJUST ENRICHMENT

55. The Defendant has been unjustly enriched as a result of receiving the benefit of the unpaid hours worked by the Class Members.

56. The Class Members have suffered a corresponding deprivation, in the form of Minimum Wages, Overtime Pay, Vacation Pay and Public Holiday and Premium Pay that is owed to them.

57. In addition to the above, the Defendants' have inaccurately and/or deliberately programed the App to misrepresent travel distances, leaving Class Members without any form of compensation for a portion of the work they perform for the benefit of Uber.

58. Specifically, the App provides Class Members with the preferred route in which to make a delivery or provide transportation services to an Uber customer. The Class Member is paid according to the specific route which Uber prescribes. If the driver deviates from the prescribed route, he/she is not compensated for any additional travel time and/or distance.

59. Often Class Members are provided with a route that is not navigable or possible (i.e. the opposite direction on a one-way street, through a park or construction site, on private property, etc.). In such circumstances, the Class Member would be required to take a longer, alternative route. In all cases, the Class Member is not compensated for the additional distance or time. The Defendants know or ought to have known that Class Members were providing services without any form of compensation.

60. Despite not even providing Class Members with their Minimum Entitlements under the *ESA*, the Defendants saw fit to further deprive Class Members of any pay on account of a reasonably foreseeable and/or a deliberate malfunction of the App. The Defendants were not only unjustly enriched by their willful neglect of the law but also by the malfunction and/or deliberate programing of the App to deprive Class Members of thousands, if not millions of dollars in compensation.

61. There is no juristic reason for the Defendants' unjust enrichment and the Class Members' corresponding deprivation. The systemic exclusion of the Class Members from their contractual and statutory entitlements is unlawful.

62. The Defendants' unjust enrichment has been continuous and ongoing since at least 2012.

DAMAGES

63. As a result of the Defendants' breaches of the *ESA*, breaches of contract, negligence, and/or unjust enrichment, the Class Members have suffered damages and losses, including lost Minimum Wages, Overtime Pay, Vacation Pay, Public Holiday and Premium Pay, and any

DAVID HELLER

Plaintiff

v.

UBER TECHNOLOGIES INC., UBER CANADA INC., UBER B.V., and RASIER OPERATIONS B.V.

Defendants

Court File No. CV-17-567946-CP

ONTARIO
SUPERIOR COURT OF JUSTICE

PROCEEDING COMMENCED AT TORONTO

STATEMENT OF CLAIM

CERTIFIED TO BE A TRUE COPY THE ORIGINATING PROCESS ISSUED HEREIN DATED: January 19 20 17

COPIE AUTHENTIQUE CERTIFIÉE ET CONFORME À L'ACTE INTRODUCTIF D'INSTANCE DÉLIVRÉ CI-INCLUS FAIT LE:

Samfiru

SOLICITOR FOR THE / AVOCAT POUR LE

PER: / PAR:

FILED / DÉPOSÉ

JAN 19 2017

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