

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

**SUPERIOR COURT
C.A. NO. 2084CV01519-BLS1**

**ANDREA JOY CAMPBELL, in her official
capacity as ATTORNEY GENERAL for the
COMMONWEALTH OF MASSACHUSETTS,**

Plaintiff,

v.

**UBER TECHNOLOGIES, INC. and LYFT,
INC.,**

Defendants.

**UBER'S DISPUTED AND UNDISPUTED FACTS FOR ATTORNEY GENERAL'S
OPTION 2 PROPOSED FINDINGS OF FACT AS TO UBER TECHNOLOGIES, INC.**

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INTRODUCTION

This is an action brought by Andrea Joy Campbell, in her official capacity as Attorney General for the Commonwealth of Massachusetts (“Attorney General”), against Defendants Uber Technologies, Inc. (“Uber”) and Lyft, Inc. (“Lyft”). The Attorney General seeks a declaratory judgment under G.L. c. 231A, § 1, that Defendants Uber and Lyft improperly misclassify drivers as independent contractors, rather than employees, under G.L. c. 149, § 148B(a).

Under G.L. c. 149, § 148B(a), there is a presumption that “an individual performing any service ... shall be considered an employee.” “Once [the party alleging misclassification] has shown the performance of services for the putative employer, the alleged employer may rebut the presumption by establishing each of ... the three prongs [under G.L. c. 149, § 148B(a)] by a preponderance of the evidence.” *Patel v. 7-Eleven, Inc.*, 489 Mass. 356, 360 (2022). These three prongs are:

- 1) the individual is free from control and direction in connection with the performance of the service, both under his contract for the performance of service and in fact; and
- 2) the service is performed outside the usual course of business of the employer; and
- 3) the individual is customarily engaged in an independently established trade, occupation, profession or business of the same nature as that involved in the service performed.

G.L. c. 149, § 148B(a).

The trial of this matter will concern each of these issues. The Attorney General respectfully submits the following proposed findings of fact as to Defendant Uber:

GENERAL BACKGROUND: UBER

1. Uber has operated in the Commonwealth since 2011. *See* Def. Uber Mem. in Supp. of Mot. to Dismiss, Dkt. 21 at 1 (Sept. 24, 2020) (“Uber has operated in Massachusetts since 2011”).

Disputed. Expected testimony of Uber representative Chad Dobbs. *See* Foreign Corporation Certificate of Registration [Tr. Ex. 3427].

2. One of the businesses that Uber operates in Massachusetts is a business that connects riders in need of transportation with drivers who provide rides. *See* AG1060 at 2267. These rides are pre-arranged through Uber’s mobile phone application (the “App”). G.L. c. 159A 1/2, § 1; AG1060 at 2454. Uber developed and maintains this App. AG1060 at 2438. Through the App, a driver picks a rider up at point A and transports the rider to point B, the rider’s destination. Dobbs 7/17, 191:9-192:5.

Disputed. Expected testimony of Uber expert Justin McCrary, Uber expert Terrence August, and Uber representative Chad Dobbs. *See* Uber’s 2022 10-K [Tr. Ex. 3402]; Uber’s 2021 10-K [Tr. Ex. 3410]; Uber’s S-1 [Tr. Ex. 3399]; Uber’s 2020 10-K [Tr. Ex. 3426].

3. Uber refers to this business as its “Ridesharing” or “Mobility” business. *See* AG1060 at 2275; *see also* AG1062 at 3160.

Undisputed.

4. Uber treats drivers who provide rides on Uber’s App as independent contractors. Dobbs 8/2, 1238:13-1239:8.

Disputed. Expected testimony of Uber representative Chad Dobbs.

5. Uber has treated drivers who provide rides on Uber’s App as independent contractors since at least July 14, 2017. *Id.*

Disputed. Expected testimony of Uber representative Chad Dobbs.

6. Uber does not reimburse drivers for business expenses they incur arising from providing rides on the Uber App. Anticipated Testimony of Kyle Tysvaer (“Tysvaer Ant. Test.”); Anticipated Testimony of Christopher Hansen (“Hansen Ant. Test.”).

Disputed. Expected testimony of Uber representative Chad Dobbs. Cited evidence does not support the finding.

7. Uber does not pay drivers for their time spent while waiting or driving between rides. Tysvaer Ant. Test; Hansen Ant. Test.

Disputed. Expected testimony of Uber representative Chad Dobbs. Cited evidence does not support the finding.

8. Uber does not pay drivers overtime pay for hours worked excessive of forty hours in a week. Tysvaer Ant. Test.; Hansen Ant. Test.

Disputed. Expected testimony of Uber representative Chad Dobbs. Cited evidence does not support the finding.

9. Uber does not provide its drivers with one hour of earned sick time for every thirty hours worked by the driver. Tysvaer Ant. Test.; Hansen Ant. Test.

Disputed. Expected testimony of Uber representative Chad Dobbs. Cited evidence does not support the finding.

10. According to data Uber provided to one of its experts, 67,678 drivers completed at least one ride on the Uber App between August 1, 2022, and July 1, 2023. Anticipated Testimony of Dr. Justin McCrary (“McCrary Ant. Test.”). Of those 67,678 drivers, more than 54% of those drivers spent more than 200 hours either waiting to receive a ride request, driving to pick up a rider, or transporting a rider to their destination. McCrary Ant. Test. Almost 25% spent more than 800 hours during that period either waiting to receive a ride request, driving to pick up a rider, or transporting a rider to their destination. *Id.* Using the 40 hours per week measure like Dr. McCrary does in sections of his report, this equates to almost 20 weeks of work per driver in that 25% grouping. *Id.*

Disputed. Expected testimony of Uber expert Justin McCrary and Uber representative Chad Dobbs.

11. Dr. McCrary also conducted the same calculations, but this time removed the time drivers spent waiting for ride requests from his calculations. McCrary Ant. Test. He determined that of the 67,678 drivers that completed at least one ride on the Uber App between August 1, 2022, and July 1, 2023, more than 53% of those drivers spent more than 150 hours either driving to pick up a rider or transporting a rider to their destination. *Id.* Almost 20% spent more than 750 hours during that period either driving to pick up a rider or transporting a rider to their destination. *Id.* Using the 40 hours per week measure like Dr. McCrary does in sections of his report, this equates to almost 19 weeks of work per driver in that 20% grouping. *Id.*

Disputed. Expected testimony of Uber expert Justin McCrary and Uber representative Chad Dobbs.

12. Of the 67,678 drivers who completed at least one ride on the Uber App between August 1, 2022, and July 1, 2023, more than 51% of them provided rides on more than 51 discrete days. McCrary Ant. Test. Approximately 18% provided rides on more than 201 discrete days. *Id.*

Disputed. Expected testimony of Uber expert Justin McCrary and Uber representative Chad Dobbs.

13. Of the 67,678 drivers who completed at least one ride on the Uber App between August 1, 2022, and July 1, 2023, more than 74% of them averaged at least three hours per day on the App on days that they completed a ride. McCrary Ant. Test. Approximately 11% of this same pool worked at least seven hours per day on the App on days that they completed a ride. *Id.* In other words, 75% of workers worked the equivalent of a part-time shift each day they were logged onto the app, while 11% worked the equivalent of a full-time shift or more. *Id.*

Disputed. Expected testimony of Uber expert Justin McCrary and Uber representative Chad Dobbs.

UBER'S TERMS AND CONDITIONS FOR DRIVERS

A. THE APPLICATION PROCESS

14. Before a driver can start providing rides on Uber's App, the driver-applicant must fill out an application on the Uber web page or in the App. Dobbs 7/17, 34:11–36:18; AG1134. AG1134 is a true and accurate copy of the Uber web page that provides the link for a driver to sign up to use the App and that describes requirements for driving in Boston. Dobbs 7/17, 38:15-39:4. AG1135 is a true and accurate screenshot of Uber's driver application on the App that advises driver-applicants of the information they will need to sign up for the app. Dobbs 7/17, 45:8-23.

Disputed. Expected testimony of Uber representative Chad Dobbs.

15. The driver application process has multiple steps, of which at least *three* are relevant here. *First*, the driver-applicant must create an account with Uber. Dobbs 7/17, 57:4.

Disputed. Expected testimony of Uber representative Chad Dobbs.

16. *Second*, the driver-applicant must submit car details, their Social Security number, a valid driver's license, provide background check consent, and upload a profile photo. Dobbs 7/17, 34:11–36:18, 49:10-23; AG1135.

Disputed. Expected testimony of Uber representative Chad Dobbs.

17. *Third*, driver-applicants must accept various terms and conditions. Dobbs 7/17, 51:19–52:1, 62:18–22. Among the agreements driver-applicants must agree to are Uber's (a) U.S. Terms of Use, (b) Privacy Notice, and (c) Platform Access Agreement ("PAA"). Dobbs 7/17, 51:19-23, 61:18-62:2 (Terms of Use); Dobbs 7/17, 75:23-81:3 (PAA). *See infra*, FF 23-25 (discussing these agreements). Driver-applicants agree to these terms and conditions by checking a box to indicate their agreement in the App or online. Dobbs 7/17, 57:14–58:6. To review the full versions of the terms and conditions driver-applicants would have to click links available in the App or web page. Dobbs 7/17, 57:14–58:6.

Disputed. Expected testimony of Uber representative Chad Dobbs.

18. Uber will not allow driver-applicants to use the App if their applications are incomplete, they fail the background check, or they do not produce all of the required documents, including vehicle registration to ensure the vehicle meets Uber's specifications. Dobbs 7/17, 47:7-23, 49:8-23.

Disputed. Expected testimony of Uber representative Chad Dobbs. *See Affidavit of Ryan Hawkins [Tr. Ex. 3252].*

19. Uber does not allow driver-applicants to use its App unless the driver-applicant's vehicle meets certain requirements set by both Uber and regulation. Dobbs 7/17, 42:14-23. Uber maintains minimum standards for vehicle model type and requires drivers' vehicles to meet those standards. Dobbs 7/17, 41:10-43:18; AG1069; AG1119; AG1120; AG1121; AG1122. Among these requirements, Uber requires drivers to have cars which meet certain vehicle age requirements. AG1069; AG1192; AG1123; AG1124; AG1125.

Disputed. Expected testimony of Uber representative Chad Dobbs. *See Affidavit of Ryan Hawkins [Tr. Ex. 3252].*

20. AG1192 is a screen capture of a page entitled “Vehicle Requirements” on Uber’s website. Dobbs 7/17, 41:5-42:23. Uber only permits drivers with cars meeting certain age and model criteria to provide rides to higher tiers, such as UberXL, Uber Black, and Uber Black SUV. Dobbs 7/17, 43:3-8; AG1192 at 3393. For example, Uber requires drivers who wish to drive Uber Black to have vehicles with “[e]xterior: black only” and “[i]nterior: black leather or vegan leather only.” AG1069.

Undisputed.

21. Uber treats every driver-applicant as an independent contractor. Dobbs 8/2, 1238:13-1239:8. It does not give any individualized consideration to whether or why the worker is an independent contractor. *Id.*

Disputed. Expected testimony of Uber representative Chad Dobbs.

22. Uber does not give any individualized consideration to determine if a driver is incorporated as a business as opposed to an individual worker, including ascertaining whether the driver has incorporated as a business. Dobbs 8/2, 1250:8-1251:3, 1251:24-1252:9.

Disputed. Expected testimony of Uber representative Chad Dobbs.

B. THE TERMS OF USE¹

23. Uber’s U.S. Terms of Use govern access to or use of the App and any related content or services. AG1220. The current version of the U.S. Terms of Use is dated March 27, 2024. Between the period of January 1, 2017, to March 31, 2024, there have been at least ten effective versions of Uber’s U.S. Terms of Use. *See* AG1220 (02.26.24); AG1164 (12.16.21);

¹ Because the meaning of the various terms of Uber’s agreements with drivers are questions of law, the Attorney General reserves her discussion of the various terms regarding control retained by Uber in these agreements to her forthcoming Proposed Conclusions of Law. *See* G.L. c. 149, § 148B(a)(1) (“the individual is free from control and direction in connection with the performance of the service, both under his contract for the performance of service *and* in fact) (emphasis added); *see also Depianti v. Jan-Pro Fran. Intern., Inc.*, 465 Mass. 607, 622 (2013) (expressly recognizing the “use of the conjunctive ‘and’”); *DaSilva v. Border Transfer of MA, Inc.*, 296 F. Supp. 3d 389, 400 (D. Mass. 2017).

AG1167 (07.12.21); AG1168 (04.14.21); AG1169 (01.18.21); AG1170 (07.15.20); AG1171 (03.17.20); AG1172 (11.12.19); AG1173 (12.13.17); AG1174 (03.23.17).

Disputed. Expected testimony of Uber representative Chad Dobbs. See U.S. Terms of Use [Tr. Ex. 3014].

24. Uber's Privacy Notice governs the personal data Uber collects from drivers, and how drivers' data is used and shared by Uber. AG1218. The current version of the Privacy Notice is dated March 29, 2024. *Id.* Between January 1, 2017, and March 31, 2024, there have been at least four effective versions of Uber's Privacy Notice. AG1219 (03.29.24); AG1218 (12.01.23); AG1085 (06.16.23); AG1090 (08.09.21); Dobbs 7/17, 83:23-84:14; 152:2-153:2.

Disputed. Expected testimony of Uber representative Chad Dobbs. See Uber Privacy Notice [Tr. Ex. 3026].

25. The PAA governs drivers' access to the Uber platform and incorporates by reference Uber's Fare Addendum, Community Guidelines, Privacy Notice, and other applicable Uber standards and policies (collectively, the "Agreement" between Uber and drivers).² Dobbs 7/17, 77:11-78:2, 78:4-15; AG1082 at 1. The current version of the Platform Access Agreement for non-livery drivers is dated January 1, 2022. *Id.* Between January 1, 2017, to March 31, 2024, there have been at least three effective versions of the PAA. AG1082 (01.01.22); AG1175 (08.03.20); AG1176 (01.06.20).

Disputed. Expected testimony of Uber representative Chad Dobbs. See Platform Access Agreement [Tr. Ex. 3000].

26. The Technology Services Agreement contained information about drivers' access to the Uber platform, fare and payment terms, and privacy. *See* UX3004 (11.25.19); UX3005 (06.04.18). The PAA superseded the Technology Services Agreement. Dobbs 7/17, 90:3-16. The most recent version of the Technology Services Agreement that was in effect was updated on November 25, 2019. UX3004.

² Uber has separate versions of the PAA and Fare Addendum that are applicable to licensed livery drivers. Dobbs 7/17, 63:20-66:14; 87:18-88:5. *See* UX3001 (Uber USA PAA 01.01.22); UX3006 (Uber USA Fare Addendum 04.04.22); UX3008 (Uber USA Fare Addendum 02.15.22); UX3009 (Uber USA Fare Addendum 08.16.21); AG1178 (Uber USA Fare Addendum 01.01.20).

Undisputed.

27. Uber's Fare Addendum contains information about fare and payment terms. AG1165; Dobbs 7/17, 88:16–18. The current version of the Fare Addendum for non-livery drivers is dated August 16, 2021. AG1165; Dobbs 7/17, 151:9–22. Between January 1, 2017, to March 31, 2024, there have been at least four effective versions of the Fare Addendum. AG1165 (08.16.21); AG1216 (04.07.21); AG1177 (08.03.20); UX3012 (01.06.20).

Undisputed.

28. The Uber Pro Terms and Conditions governs Uber's Uber Pro rewards program. AG1222; Dobbs 7/17, 157:16–158:9. The current version of the Uber Pro Terms and Conditions is dated March 27, 2024. AG1222. Between January 1, 2017, to March 31, 2024, there have been at least five effective versions of Uber's Uber Pro Terms and Conditions. AG1222 (03.27.24); AG1221 (02.02.24); AG1166 (03.25.22); AG1149 (08.02.21); AG1179 (08.01.19).

Disputed. Expected testimony of Uber representative Chad Dobbs. *See Non-California Uber Pro Terms and Conditions* [Tr. Ex. 3032].

29. Uber's Community Guidelines describe Uber's standards of conduct for drivers and riders. AG1084; Dobbs 7/17, 70:7–24. The current version of the Community Guidelines is dated January 17, 2024. AG1084. Between January 1, 2017, to March 31, 2024, there have been at least eleven effective versions of Uber's Community Guidelines. AG1084 (01.17.24); AG1083 (10.20.21); UX3036 (08.21.21); AG1180 (02.13.21); AG1181 (04.22.20); AG1182 (01.23.20); AG1183 (12.03.19); AG1184 (05.29.19); AG1185 (05.22.19); AG1186 (10.17.17); AG1187 (04.06.17); AG1188 (03.23.17); Dobbs 7/17, 81:17-21; 86:10–17; UX3044 (“We update our guidelines regularly”).

Disputed. Expected testimony of Uber representative Chad Dobbs. *See Uber Community Guidelines* [Tr. Ex. 3034].

C. CHANGES TO THE TERMS OF USE

30. Uber is free to and, as noted above, often makes changes to the terms and conditions in the U.S. Terms of Use, PAA, Privacy Notice, Community Guidelines, Fare Addendums, as well as its other standards or policies. Dobbs 7/17, 59:24–60:14.

Undisputed.

31. Uber notifies drivers when there are changes to any of these agreements. Dobbs 7/17, 55:17–56:4, 79:12–18, 82:6–12, 85:21–86:1, 88:19–23, 171:3–9. Drivers must agree to changes in these agreements to continue to provide rides through the App. Dobbs 7/17, 59:9–22; AG1082 ¶ 12.1 at 12.

Undisputed.

32. Individual drivers are not able to change terms or conditions in Uber’s agreements. Dobbs 7/17, 59:9–22; AG1082 ¶ 12.1 at 12.

Disputed. Expected testimony of Uber representative Chad Dobbs.

UBER’S APP: THE BASICS

A. A TYPICAL UBER RIDE SEQUENCE

33. To be eligible to receive a ride request through Uber, drivers open the Uber driver App and press the icon “go online.” AG1136; Dobbs 7/17, 95:6-16; *see also* Tysvaer Ant. Test. This is all that drivers need to do receive a ride request. Dobbs 8/2, 1262:12-21; Tysvaer Ant. Test. AG1136 is a true and accurate screenshot of this sequence of the App. Dobbs 7/17, 95:2-18.

Undisputed.

34. As soon as a driver opens the App, Uber displays a map of the nearby area in the App. AG1137; Tysvaer Ant. Test. AG1137 is a true and accurate screenshot of the driver application. Dobbs 7/17, 106:24-107:10. This map may show the driver, in red, areas nearby, where surge fares are available for drivers based on real-time marketplace conditions. AG1136; Dobbs 7/17, 95:22-96:16, 107:8-21; Tysvaer Ant. Test.

Undisputed.

35. Uber notifies drivers of the availability of a rider request through the App. AG1139; Dobbs 7/17, 111:5-112:17; Tysvaer Ant. Test. Uber controls which requests are surfaced to drivers in the App. Dobbs 7/17, 112:14-17.

Disputed. Expected testimony of Uber representative Chad Dobbs.

36. Beginning in 2022, as part of the notification of the ride request, Uber provides an upfront fare telling drivers how much they will be paid for a ride if they accept and complete it, the star rating of the rider, the approximate rider pickup location, and the approximate rider drop-off location. AG1139; Dobbs 7/17, 116:23-117:8, 122:1-4; Tysvaer Ant. Test. AG1139 is a screenshot of what a driver sees on the App when they receive a ride request. Dobbs 7/17, 111:1-10. Prior to 2022, Uber did not provide drivers the upfront fare as part of the notification of the ride request. Dobbs 7/17, 121:6-13.

Disputed. Expected testimony of Uber representative Chad Dobbs.

37. Drivers can accept or reject the ride request offered by Uber. Dobbs 7/17, 124:3-11; Tysvaer Ant. Test. Drivers have approximately 15 seconds to do so. *Id.* If a driver does not accept a request within approximately 15 seconds, Uber offers the ride request to another driver. *Id.*

Undisputed.

38. When considering a ride request, drivers do not have the ability to negotiate a change to the upfront fare presented to them on the Uber App. Dobbs 7/20, 860:9-861:14; *see also* Tysvaer Ant. Test. While drivers are accessing the ride request, they are unaware of the amount that riders are paying for the ride. Dobbs 7/20, 861:9-14; *id.* at 852:7-17; UX3438; *see infra*, FF 135-138 (discussing Uber's decoupling of rider prices and driver earnings).

Disputed. Expected testimony of Uber expert Justin McCrary, Uber expert Terrence August, and Uber representative Chad Dobbs.

39. If the driver accepts the ride request, Uber provides the driver the rider's name and the actual pickup location. AG1128; Tysvaer Ant. Test. Uber also provides driving directions to

the pickup location on the App. AG1140; Dobbs 7/17 at 126:2-12; Tysvaer Ant. Test. AG1140 is a true and accurate screenshot of the driver application. Dobbs 7/17, 125:19-126:3.

Disputed. Expected testimony of Uber representative Chad Dobbs.

40. Once the driver has picked up the rider, the driver must swipe an icon in the App to begin the ride. AG1138; Dobbs 7/17, 135:22-137:11; Tysvaer Ant. Test. AG1138 is a true and accurate screenshot of this sequence of the App. Dobbs 7/17, 133:18-24. Once the driver swipes the icon, Uber provides the driver with the rider's actual drop-off location. AG1128; *see also* Tysvaer Ant. Test.

Undisputed.

41. Once the driver arrives at the drop-off location, the App prompts the driver to slide an icon in the App to complete drop off. AG1142; Dobbs 7/17, 138:20-139:11; Tysvaer Ant. Test. AG1142 is a true and accurate screenshot of the driver application. Dobbs 7/17, 138:20-24. Once a drop off is complete, the driver can remain online to continue receiving ride requests, proceed to the next pickup location (if the driver accepted a request while the previous ride was in progress), or go offline. Dobbs 7/17, 101:10-13; Dobbs 8/2 1262:12-21; *see infra*, FF 92-94; Tysvaer Ant. Test.

Undisputed.

42. Once the ride is completed, the rider's payment passes from the rider to Uber, with Uber directing its payment processor to distribute to the driver their earnings on the ride. AG1217 at ¶¶ 11-13. In more specific terms, Uber's payment process is as follows:

Disputed. Expected testimony of Uber representative Chad Dobbs. *See Dobbs Payment Processing Decl.* [Tr. Ex. 3395].

43. Post ride, the fare and gratuity paid by a rider via credit or debit card are collected by one of Uber's third-party payment processors: Citibank, Greendot, Branch, Adyen, BrainTree and Stripe (collectively, "Payment Processors"). AG1217 at ¶¶ 11-12. Uber selects and contracts with these Payment Processors. Dobbs 7/20, 797:2-9. Drivers do not determine the process for

processing rider payments, select the Payment Processors, or have a contractual relationship with the Payment Processors. AG1217 at ¶¶ 11-12; Dobbs 7/20, 813:10-814:2.

Disputed. Expected testimony of Uber representative Chad Dobbs. See Dobbs Payment Processing Decl. [Tr. Ex. 3395].

44. The Payment Processors convey the payment to drivers, doing so by conveying the funds from their acquiring bank directly to an account at Citibank. AG1217 at ¶¶ 11-12. The Citibank account is established by Uber and for the benefit (“FBO Account”) of drivers. *Id.* Drivers do not have the ability to use the FBO Account for anything other than receiving payment for a ride. AG1217 at ¶¶ 11-13.

Disputed. Expected testimony of Uber representative Chad Dobbs. See Dobbs Payment Processing Decl. [Tr. Ex. 3395].

45. Drivers must pay a fee to Uber in order to receive their payment immediately upon completion of a ride. UX3444. Otherwise, they must wait until the following week’s statement. *Id.*

Disputed. Expected testimony of Uber representative Chad Dobbs.

46. The rider payment is then transmitted from the above FBO account as follows: (1) the driver receives the fare, gratuity, and any other charges (*e.g.*, for cleaning or repairs) less taxes paid by riders on the ride in some municipalities (Dobbs 7/19, 607:18-608:8); and (2) Uber retains any applicable fees, including the service fee that the driver owes to Uber. AG1217 at ¶ 13. Uber provides Citibank with information as to how much money to deposit from the FBO account into the driver’s personal account. Dobbs 7/20, 890:10-20. Uber also specifies which portion of the rider fare should be deposited in Uber’s account. Dobbs 7/20, 890:16-891:11.

Disputed. Expected testimony of Uber representative Chad Dobbs.

47. Under the payment processing system designed by Uber, drivers cannot access Uber’s share of the ride (*i.e.*, the service fee that forms Uber’s revenue on the ride, a concept discussed in detail below, *see infra*, FF 183-201). AG1217 at ¶¶ 11-13. Nor does the driver ever have access to the money that comprises the rider’s booking fee. Dobbs 7/20, at 889:6-9, 905:21-906:7 (*See infra*, FF 193-197 for a discussion of booking fees). Rather, Uber’s share of the ride is

effectively segregated as soon as the Payment Processor processes the rider's payment. AG1217 at ¶¶ 11-13. Drivers have no right to propose a different payment processing method, to propose a different ordering of payment, or to ask Citibank to withhold from Uber its share of the ride if the driver is disappointed in Uber's performance. AG1217 at ¶ 13.

Disputed. Expected testimony of Uber representative Chad Dobbs. Cited evidence does not support the finding.

48. At times, riders may choose to also pay a tip to the driver through the App. UX3447 at 249043. This portion of the rider payment is not subject to deductions for Uber's fees. UX3435 ("There is no service fee applied to tips. Tips 100% belong to you."). Before permitting a rider to tip a driver through the App, Uber requires riders to rate the driver. UX3447 at 249043. Drivers are not provided the identities of the riders who tipped them. *Id.* at 249045.

Disputed. Expected testimony of Uber representative Chad Dobbs. Cited evidence does not support the finding.

49. Drivers are never provided a rider's phone number or contact information. Uber uses technology to keep riders' numbers private from drivers. UX3470 at 2803.

Disputed. Expected testimony of Uber representative Chad Dobbs. Cited evidence does not support the finding.

B. TRIP RADAR

50. Uber also has a feature in the App called "Trip Radar." AG1143 at 8977; Dobbs 8/2, 1261:19-1262:11; 1265:13-1266:2.

Disputed. Expected testimony of Uber representative Chad Dobbs, Uber expert Terrence August, and driver witnesses.

51. Uber sends drivers periodic alerts about Trip Radar. AG1144 at 3512, 3525; Dobbs 8/2, 1261:22-1262:6, 1263:23-1264:4. AG1143 is a true and accurate copy of a screenshot of the App showing the Trip Radar feature. AG1143 at 8977; Dobbs 7/17, 114:14-115:5.

Disputed. Expected testimony of Uber representative Chad Dobbs.

52. When drivers tap on Trip Radar in the App, the App displays multiple ride requests simultaneously, separate from individual ride assignments. AG1143 at 8977; AG1144 at 3525; Dobbs 8/2, 1261:19-1262:12, 1263:23-1264:4.

Disputed. Expected testimony of Uber representative Chad Dobbs.

53. The rides available on Trip Radar are determined by Uber. Dobbs 8/2, 1278:6-11.

Disputed. Expected testimony of Uber representative Chad Dobbs.

54. Within Trip Radar, drivers can indicate interest in being assigned to any number of the rides in Trip Radar. AG1144; Dobbs 8/2, 1269:10-16. Uber will decide whether to match a rider with a particular driver who has expressed interest in a particular ride in Trip Radar. AG1145.

Disputed. Expected testimony of Uber representative Chad Dobbs.

UBER'S RATINGS SYSTEMS: HOW UBER USES RATINGS TO ALIGN DRIVER BEHAVIOR WITH COMPANY OBJECTIVES

55. At the completion of each ride, Uber prompts riders to provide a star rating for drivers as well as to provide feedback on the ride. Dobbs 7/17, 142:20-143:11; AG1082 at § 2.9; AG1085 at 21.

Disputed. Expected testimony of Uber representative Chad Dobbs and driver witnesses.

56. The App prompts riders to rate their driver on a scale of 1 to 5, with a 5-star rating indicating the best service provided by the driver. Dobbs 7/17, 142:20-143:11. *See* AG1082 at § 2.9; AG1085 at 21.

Disputed. Expected testimony of Uber representative Chad Dobbs and driver witnesses. See "How Star Ratings Work," Uber Website [Tr. Ex. 3441]; "Rating a rider," Uber Website [Tr. Ex. 3446]; "Rating a driver," Uber Website [Tr. Ex. 3518]; Screenshot of Driver Prompt to Rate Rider [Tr. Ex. 3398].

57. Under the PAA, whose terms drivers are required to consent to before driving on Uber's app (*see* FF 17), drivers agree to allow Uber to use, distribute, and display their star ratings by riders. AG1082 at § 2.9. Uber informs drivers of their star rating in the aggregate. *See* AG1190 at 8966 ("It's normal for your average rating to vary over the course of your first 50 to 100 trips.

This is because there are fewer available trips making up your average. As you complete more and more rated trips, your overall rating will be more stable.”).

Undisputed.

58. [REDACTED]
[REDACTED]
[REDACTED]

Disputed. Expected testimony of Uber representative Chad Dobbs.

59. Uber tells drivers about ways to get higher star ratings, including “providing extras like phone chargers, water bottles, or mint.” AG1091. Uber contracts with third parties to provide training and coaching resources to drivers. Dobbs 8/1, 992:5-993:12. Uber contacts drivers via email and text to provide coaching and tutorials outlining how they should drive or interact with customers (*i.e.*, riders). AG1092; AG1093; AG1094. Some of Uber’s “Tips for a 5-star trip” include having a “clean car that’s well maintained and scent-free,” engaging in “[p]olite, easygoing, and respectful conversation” with the rider, “helping riders with doors and their luggage,” and following traffic laws. UX3007 at 8936-37.

Disputed. Expected testimony of Uber representative Chad Dobbs and driver witnesses.

60. [REDACTED]
[REDACTED]
[REDACTED]

Disputed. Expected testimony of Uber representative Chad Dobbs. *See* “How Star Ratings Work,” Uber Website [Tr. Ex. 3441]; “Rating a driver,” Uber Website [Tr. Ex. 3518].

61. [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED]

[REDACTED]

Undisputed.

62. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Disputed. Expected testimony of Uber representative Chad Dobbs.

63. In Uber's Driver Deactivation Policy,³³ Uber stated, "*Our goal at Uber is transportation as reliable as running water everywhere, for everyone.*" AG1147 at 585 (emphasis added). To this end, Uber explained, "Riders who use Uber expect their drivers to drive safely, as well as be courteous and professional. The higher the quality of the service, the more riders want to take trips" and explained that one of the most important measures of driver quality for Uber were star ratings. AG1147 at 585.

Disputed. Expected testimony of Uber representative Chad Dobbs. Cited evidence does not support the finding.

64. Uber coaches drivers on ways to achieve higher quality service. *See, e.g.*, AG1091 at 25292 (suggesting that drivers "provid[e] extras like phone chargers, water bottles, or mint" to get higher ratings); *see also* AG1092 (linking to a training module regarding "what conversation topics are appropriate during a safe and respectful rideshare trip"); AG1094 (email linking to "5-star pro tips" for drivers); AG1093 (similar).

³ AG1147 is a true and accurate copy of Uber's Driver Deactivation Policy, which was last updated on July 26, 2016. The policy is no longer in effect, but the contents captured in AG1147 are now captured in Uber's Community Guidelines. Dobbs 8/1, 954:2-955:6.

Disputed. Expected testimony of Uber representative Chad Dobbs and driver witnesses.

65. Uber benefits from drivers providing better service, which is reflected through higher star ratings. This is because riders having a good experience results in riders returning to Uber for rides, which allows Uber's liquidity network effect to take action and its business to grow. Dobbs 8/1, 993:16-995:4; *see infra*, FF 232-243 (discussion of Uber's liquidity network effect).

Disputed. Expected testimony of Uber expert Terrence August, Uber expert Justin McCrary, and Uber representative Chad Dobbs.

66. [REDACTED]

Undisputed.

67. [REDACTED]

Disputed. Expected testimony of Uber representative Chad Dobbs.

68. [REDACTED]

Disputed. Expected testimony of Uber representative Chad Dobbs.

69. [REDACTED]

Disputed. Cited evidence does not support the finding. Expected testimony of Uber representative Chad Dobbs.

70. [REDACTED]

Disputed. Expected testimony of Uber representative Chad Dobbs.

71. Uber collects driver data from sensors on drivers' devices to detect unsafe driving behavior, such as speeding, harsh braking and acceleration, and uses real-time speeding alerts and daily driving dashboards to inform drivers of safer driving habits. Dobbs, 7/17, 82:20-84:1; *see* AG1219; AG1090. Uber sends drivers warnings through the App that they are at risk of deactivation for poor safety as well as violations of Uber's policies and procedures incorporated into the PAA. Dobbs 8/1, 972:5-16.

Disputed. Cited evidence does not support the finding. Expected testimony of Uber representative Chad Dobbs.

72. [REDACTED]

Disputed. Cited evidence does not support the finding. Expected testimony of Uber representative Chad Dobbs.

73. [REDACTED]

Disputed. Expected testimony of Uber representative Chad Dobbs.

UBER'S DATA COLLECTION

74. Driver and rider location data (both current and historical) is central to Uber's matching process, its pricing process, and its market balancing efforts. *See, e.g., infra*, FF 80-82, 131.

Disputed. Expected testimony of Uber representative Chad Dobbs. See Uber's S-1, [Tr. Ex. 3399]; "How does Uber match riders with drivers?" [Tr. Ex. 3401].

75. Data collection is also critical to Uber's rating and monitoring of drivers. *See, e.g. supra*, FF 71. Anytime a driver or a rider calls or texts each other after they've been paired together in the App, it is done so through the App. AG1090 at 2919. Uber reviews all feedback submitted on the App by riders. AG1090 at 2920. Uber monitors the content of communications (*i.e.*, in-app messages and in-app phone calls) between riders and drivers. AG1090 at 2919. Uber retains data and contents of communications (*i.e.*, in-app messages and phone calls) between riders and drivers. AG1090 at 2924.

Disputed. Expected testimony of Uber representative Chad Dobbs. Cited evidence does not support the finding.

76. AG1219 is a copy of Uber's Privacy Policy in effect as of March 29, 2024. AG1219 details how Uber collects data from users on its platform. AG1219 at 0061-0062; *see* AG1085 at 5-8; Dobbs 7/17, 82:20-84:1 (discussing prior version of Uber's Privacy Policy at AG1085). For drivers, this includes tracking drivers' precise location data. AG1219 at 0061. Uber collects this data whenever the driver has the App open and running in the foreground. *Id.* Uber uses this data to enable ride tracking and safety features and prevent fraud. *Id.* at 0062-0063. It states that it uses the driver (and rider) data to enable pricing, and matching. *Id.* Uber also uses data collected from rider feedback to encourage drivers' compliance with Uber's terms. *Id.* at 0063; *see also*

AG1085 at 11 (using user ratings, reported incidents, and other feedback to encourage compliance with our Community Guidelines”). Under Uber’s Privacy Policy, drivers are not able to adjust their privacy settings such that Uber may not collect location data; however, Uber permits riders to do so. Dobbs 7/20, 778:11-780:11.

Disputed. Expected testimony of Uber representative Chad Dobbs.

77. AG1224 is a publicly available document created by Uber that outlines how Uber uses the data associated with, among other things, riders and drivers. AG1224 at 5085; Dobbs 7/19, 694:3-10. The document specifies that Uber uses driver data to, among other things, enable matching, pricing, payment process, ratings/deactivation, detect unsafe behavior, enforce Uber’s Community Guidelines, and for research and development. AG1224 at 5088.

Disputed. Expected testimony of Uber representative Chad Dobbs.

MATCHING: HOW UBER ASSIGNS RIDERS TO DRIVERS

78. Matching is a process by which Uber determines how to match potential riders and drivers in a given area. AG1198 at 9100. Uber matches riders and drivers using an algorithm. AG1217 at ¶ 16; Dobbs 7/19, 698:12-699:2; Dobbs 7/20, 728:22-729:14. Uber built this algorithm and controls all the design features behind it. Dobbs 7/20, 729:6-731:6; AG1198 at 9101.

Disputed. Expected testimony of Uber representative Chad Dobbs and Uber expert Terrence August.

A. UBER’S PUBLIC STATEMENTS ABOUT ITS MATCHING PROCESS

79. AG1198 is a true and accurate copy of a page from Uber’s website that Uber produced during discovery. AG1198; Dobbs 7/19, 688:4-20. It explains, in general terms, how Uber’s matching algorithm has evolved over time. AG1198 at 1-2; *see also id.* at 2 (Uber explaining it is constantly refining its matching algorithm).

Disputed. Expected testimony of Uber representative Chad Dobbs.

80. Initially, Uber’s objective for its matching algorithms was to immediately pair a rider with the closest available driver. AG1198 at 9100. However, Uber found that using the

closest available driver would sometimes cause long wait times across a larger city or geographic area. AG1198 at 9100. As a general matter, longer estimated wait times reduce the likelihood that a customer would request a ride. *See, e.g.*, AG1198 at 9101 (“Riders don’t like waiting.”); *see also* Dobbs 7/18, 440:15-441:5, 458:4-17.

Disputed. Expected testimony of Uber representative Chad Dobbs.

81. Uber informs the public on its website that it moved from a matching objective based on the closest available driver to a “batch matching” process that optimizes across the whole region. AG1198 at 9100; Dobbs 7/19, 698:8-699:2; Dobbs 7/20, 739:23-741:10; UX3489. Publicly, the primary focus of Uber’s batch matching process is to reduce the average pickup time for riders by “ultimately mak[ing] the best decisions for the network on the whole.” AG1198 at 9101; Dobbs 7/17, 192:6-193:5; Dobbs 7/19, 698:8-699:2; Dobbs 7/20, 755:12-756:20; UX3489. Optimizing for the network on the whole is beneficial for Uber. Dobbs 7/18, 451:17-24; Anticipated Testimony of Dr. David Weil (“Weil Ant. Test”). Uber represents that optimizing for the network on the whole increases the reliability of rides provided on its platform. UX3489.

Disputed. Expected testimony of Uber representative Chad Dobbs, Uber expert Justin McCrary, and Uber expert Terrence August. *See* Uber’s S-1 [Tr. Ex. 3399]; “How does Uber match riders with drivers?” [Tr. Ex. 3401].

82. In general terms, Uber’s matching algorithm accomplishes this by waiting several seconds after a request is made to find a batch of available drivers instead of matching the request with the closest available driver. AG1198 at 9100-01. To create potential rider-driver pairings, Uber uses a variety of real-time data, including the rider pickup location, the rider destination, the product they have used, the pickup location they have provided, driver location, the number and location of drivers in the area, and whether those drivers are immediately available or close to dropping off another rider. Dobbs 7/19, 695:24–698:15; Dobbs 7/20, 739:1-740:14, 741:4-10; AG1198 at 9100-01. As part of the matching process, Uber also constrains its matching algorithm from pairing certain riders with certain drivers, such as not pairing a rider and driver who have given each other a one-star rating. Dobbs 7/20, 742:7-744:17.

Disputed. Expected testimony of Uber representative Chad Dobbs and Uber expert Terence August. *See* Uber's S-1 [Tr. Ex. 3399]; "How does Uber match riders with drivers?" [Tr. Ex. 3401].

B. INTERNAL DOCUMENTS PROVIDE ADDITIONAL DETAIL ABOUT UBER'S MATCHING PROCESS

83. [REDACTED]

Disputed. Expected testimony of Uber representative Chad Dobbs and Uber expert Justin McCrary.

84. [REDACTED]

Disputed. Expected testimony of Uber representative Chad Dobbs.

85. [REDACTED]

Disputed. Expected testimony of Uber representative Chad Dobbs.

86. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Disputed. Expected testimony of Uber representative Chad Dobbs.

87. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Disputed. Expected testimony of Uber representative Chad Dobbs.

88. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Disputed. Expected testimony of Uber representative Chad Dobbs.

89. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Disputed. Expected testimony of Uber representative Chad Dobbs.

90. And while drivers may accept matches offered by Uber as a result of this matching process, at no point does the algorithm optimize for the priorities of individual drivers. Dobbs 7/19, 756:7-20.

Disputed. Expected testimony of Uber representative Chad Dobbs. Cited evidence does not support the finding.

91. Uber's matching process provides key insight into its underlying business model and how Uber pursues profitability. Weil Ant. Test. Control over the rider-driver matching process is so central to Uber's profit-making model that it is unlikely to ever cede it. *Id.*; see Dobbs 8/2, 1218:3-15 (Uber: "I would imagine in a world of employment that Uber would continue to match riders and drivers."). It is also consistent with an employee model. Anticipated Testimony of Dr. James Parrott ("Parrott Ant. Test").

Disputed. Expected testimony of Uber representative Chad Dobbs, Uber expert Justin McCrary, and Uber expert Terrence August. Cited evidence does not support the finding.

C. UBER'S MATCHING PROCESS ALSO EMPHASIZES DRIVER PRODUCTIVITY

92. [REDACTED]

Disputed. Expected testimony of Uber representative Chad Dobbs.

93. Where Uber is surfacing a ride request for a driver already providing a ride, Uber's matching algorithm considers the amount of time left in the driver's current trip, as well as the drop-off location of the trip, rather than the origin location. Dobbs 7/20, 758:10-759:12. Using these factors, Uber's matching algorithm determines whether a driver nearby receives a forward

dispatch based on whether the trip is most optimal for the marketplace as a whole. Dobbs 7/20, 758:10-760:4.

Disputed. Expected testimony of Uber representative Chad Dobbs.

94. [REDACTED]

Disputed. Expected testimony of Uber representative Chad Dobbs. Cited evidence does not support the finding.

PRICING: HOW UBER SETS RIDER FARES AND DRIVER PAY

A. UBER SETS RIDE PRICES AND DRIVER PAY

95. During the period applicable to this case, Uber has set the prices for rides and the earnings for drivers. Dobbs 7/19, 538:7-9 (prices for rides); Dobbs 8/2, 1263:8-14 & 1271:5-15 (driver pay). The two amounts are set independently and are not directly connected to each other. *See infra*, FF 103-107. As explained below, the differential is Uber's per-ride revenue. *See infra*, FF 183-203.

Disputed. Expected testimony of Uber representative Chad Dobbs, Uber expert Justin McCrary, and Uber expert Terrence August.

96. To earn the fare offered by Uber, a driver must accept a ride request and complete the ride. Dobbs 7/17, 140:6-10. If a driver does not like the fare offered by Uber, they can reject the ride request. Dobbs 7/20, 859:11-860:2; 861:9-14; Dobbs 7/17, 119:4-13. A driver cannot, however, charge riders a higher fare for a ride through the App than is quoted by Uber. Dobbs 7/20, 917:11-919:3. And the driver may not, while providing rideshare services, separately charge for rides. Dobbs 7/20, 903:12-904:5. Nor can drivers negotiate the amount that Uber charges riders for a ride. Dobbs 7/17, 59:9-17; Dobbs 7/20, 859:18-860:2, 919:9-24.

Disputed. Expected testimony of Uber representative Chad Dobbs. Cited evidence does not support the finding.

97. At the time Uber offers a driver a ride request, drivers do not have real-time knowledge of (1) the rider price Uber has set for the ride or (2) the service fee that Uber intends to collect once the ride is complete. Dobbs 8/2, 1271:24-1272:17 (ride price); *Id.* at 1273:20-1274:7 (service fee); *see also* Dobbs 7/19, 631:6-13 (ride price); Dobbs 7/20, 861:23-863:1 (same).⁴ Rather, the primary information that drivers have is the driver earnings amount that Uber has set for the ride. Dobbs 7/20, 863:3-18. As such, drivers cannot accurately assess the actual value of the transportation service they are providing. Anticipated Testimony of Dr. Lindsey Cameron (“Cameron Ant. Test.”).

Disputed. Expected testimony of Uber representative Chad Dobbs and Uber expert Steven Tadelis.

98. Price setting is so central to Uber’s profit-making strategy that Uber is unlikely to ever cede control over the ride pricing. Weil Ant. Test. *See* Dobbs 8/2, 1218:17-1219:10 (Uber: “You know, in a world of employment, we are likely to pay drivers a flat hourly rate, and then Uber would likely collect 100 percent of the fare directly from the rider.”).

Disputed. Expected testimony of Uber representative Chad Dobbs and Uber expert Justin McCrary. Cited evidence does not support the finding.

B. UBER SETS RIDER PRICES AND DRIVER PAY TO FULFILL ITS PROFIT OBJECTIVES

99. Uber does not offer higher per-ride earnings to drivers with more seniority. Cameron Ant. Test.; Tysvaer Ant. Test. Uber also does not provide post-ride earnings adjustments for tenure or good performance. Cameron Ant. Test; Tysvaer Ant. Test. Rather, internal Uber

⁴ During the Rule 30(b)(6) deposition, Uber, when pressed about how the driver could learn this information *before they accepted a ride*, suggested that drivers who wanted to know the rider price and Uber’s service fee on the ride before accepting the request “could use the rider app to get an understanding of what riders *might pay in similar situations*” or “could turn around and ask the rider how much their upfront fare was.” Dobbs 7/20, 861:21-863:18 (emphasis added).

documents show that Uber sets rider prices and driver earnings in a manner that prioritizes its profit objectives. Weil Ant. Test.

Disputed. Expected testimony of Uber expert Steven Tadelis and Uber expert Justin McCrary.

100. Uber prioritizes its profit objectives through its pricing models in two main ways. Weil Ant. Test.

Disputed. Expected testimony of Uber expert Justin McCrary.

101. *First*, Uber decided to decouple rider pricing from driver earnings, affording it the opportunity to collect a much greater percentage of the rider's fare than under its old, fixed commission system. *See infra*, FF 103-107; Weil Ant. Test.

Disputed. Expected testimony of Uber expert Justin McCrary and Uber representative Chad Dobbs.

102. *Second*, Uber has capitalized on decoupled pricing by incorporating price elasticity concepts reflecting rider willingness to pay and driver willingness to work into its pricing models. Weil Ant. Test. This affords Uber the opportunity to manipulate the difference between the rider's fare and the driver's earnings and collect a much greater percentage of the rider's fare on each ride. *See infra*, FF 116-138.

Disputed. Expected testimony of Uber expert Justin McCrary and Uber representative Chad Dobbs.

1. Uber Decouples Rider Prices and Driver Earnings

103. [REDACTED]

Disputed. Expected testimony of Uber representative Chad Dobbs. Cited evidence does not support finding.

104. [REDACTED]

Disputed. Expected testimony of Uber representative Chad Dobbs. Cited evidence does not support the finding.

105. [REDACTED]

Disputed. Expected testimony of Uber representative Chad Dobbs and Uber expert Justin McCrary.

106. In decoupled pricing, if Uber correctly measures the differential between rider willingness to pay and driver willingness to work, Uber has the opportunity to collect a much greater percentage of the rider's fare on certain rides than under its old, fixed commission system. *See infra*, FF 108-134; Weil Ant Test. And this has profound effects on Uber's profitability, as it is now able to manipulate the difference between the rider's fare and the driver's earnings and collect more revenue on each ride. *See infra*, FF 108-134; Weil Ant Test.

Disputed. Expected testimony of Uber expert Justin McCrary and Uber representative Chad Dobbs.

107. In furtherance of this profitability objective, Uber has worked extensively to refine both sides of its decoupled pricing system (*i.e.*, to independently measure rider willingness to pay and driver willingness to work). *See infra*, FF 108-127 (rider willingness) & FF 128-138 (driver willingness); Weil Ant Test. Illustrative examples of Uber's efforts to incorporate measures of

rider willingness to pay into its ride pricing and driver willingness to work into its driver earnings are discussed below. *See infra*, FF 116-138.

Disputed. Expected testimony of Uber representative Chad Dobbs and Uber expert Justin McCrary. Cited evidence does not support the finding.

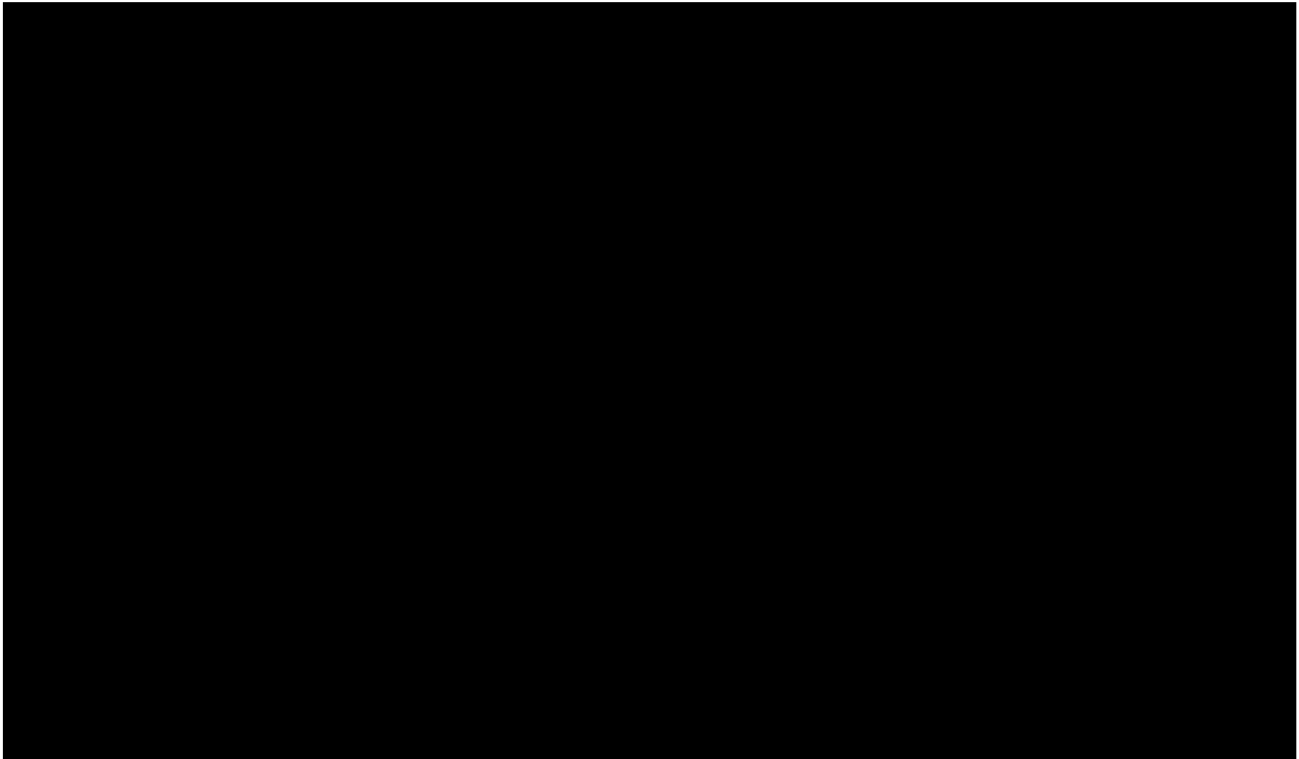
2. By Factoring Rider Willingness to Pay into its Decoupled Ride Pricing, Uber Can Stand to Earn a Greater Percentage of the Ride Fare

108. When a rider is using the App to look for rides, Uber presents a rider an estimated fare, which Uber refers to as the “Rider Upfront Fare,” for each type of ride offered based on the destination that the rider has entered. Dobbs 7/19, 537:2-15, 609:13-610:1, 627:1-11. Internal presentations regarding how Uber calculates this upfront fare help illustrate how Uber is attempting to optimize ride pricing for riders for its benefit. Weil Ant. Test.

Disputed. Expected testimony of Uber representative Chad Dobbs and Uber expert Justin McCrary. *See* Screenshot of Upfront Fare [Tr. Ex. 3554]; Screenshot of Ride Request [Tr. Ex. 3456].

109. [REDACTED]

Disputed. Expected testimony of Uber representative Chad Dobbs.



a. Uber's *Base, Time, and Distance* Inputs

110.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Disputed. Expected testimony of Uber representative Chad Dobbs.

111.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Disputed. Expected testimony of Uber representative Chad Dobbs.

112.

Disputed. Expected testimony of Uber representative Chad Dobbs.

113.

Disputed. Expected testimony of Uber representative Chad Dobbs. Cited evidence does not support the finding.

114.

Disputed. Expected testimony of Uber representative Chad Dobbs.

b. The Multipliers

115.

[REDACTED]

Disputed. Expected testimony of Uber representative Chad Dobbs.

i.

116.

[REDACTED]

Disputed. Expected testimony of Uber representative Chad Dobbs and Uber expert Justin McCrary.

117.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Disputed. Expected testimony of Uber representative Chad Dobbs.

118. Elasticity is a standard measure of price sensitivity used in economics and business, which estimates the ratio of the percentage change in units purchased of a product to a percentage change in the price of the product. Weil Ant. Test. If riders are highly sensitive to prices (“elastic” demand), prices can only be increased modestly without the loss of their requests for rides. If riders have lower price sensitivity (“inelastic” demand), they will be willing to pay higher prices for their ride requests. Weil Ant. Test.

Disputed. Expected testimony of Uber expert Justin McCrary.

119. [REDACTED]

[REDACTED]

[REDACTED]

Disputed. Expected testimony of Uber representative Chad Dobbs. Cited evidence does not support the finding.

120. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Disputed. Expected testimony of Uber representative Chad Dobbs. Cited evidence does not support the finding.

121. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Disputed. Expected testimony of Uber representative Chad Dobbs.

122.

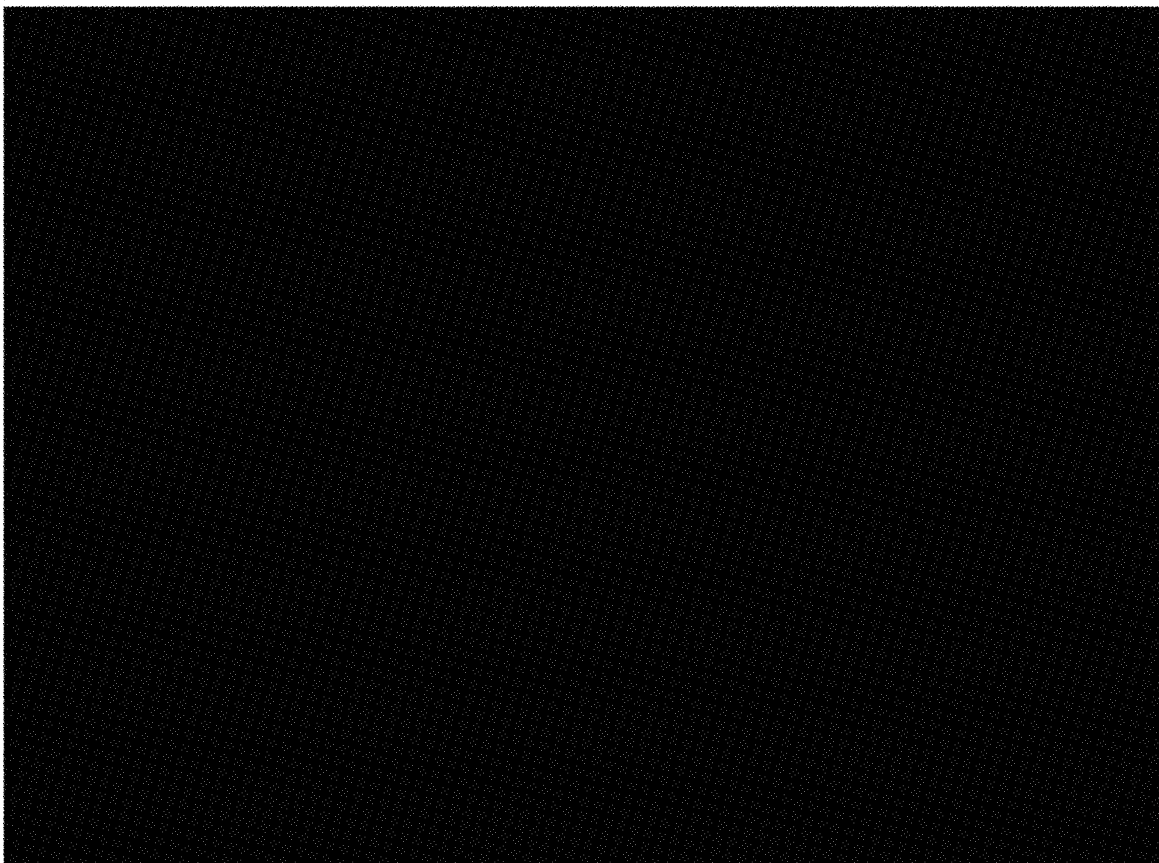
[REDACTED]

Disputed. Expected testimony of Uber representative Chad Dobbs and Uber expert Justin McCrary.

123.

[REDACTED]

Disputed. Expected testimony of Uber representative Chad Dobbs.



ii. The *Surge* Multiplier

124. [REDACTED]

[REDACTED]

Disputed. Expected testimony of Uber representative Chad Dobbs. See “What’s happening when prices surge?” [Tr. Ex. 3490].

125. Uber’s goal with the *Surge* multiplier, when applied to rider fares, is to reduce rider demand to be “more in line” with the supply of drivers available at that time. Dobbs 7/19, 556:2-557:13. This prevents situations where wait times (*i.e.*, “ETAs”) for rides “skyrocket” in times of high demand. *Id.* As explained above (*see* FF 89), Uber’s goal is to keep ETAs low, as low ETAs are one factor that create a positive experience for riders on the App, which leads to riders requesting and completing more rides, and increased rider engagement on its App moving forward.

Dobbs 7/18, 514:15-515:4, 517:15-24. This leads to a margin advantage for Uber. Dobbs 7/19, 565:9-566:2.

Disputed. Expected testimony of Uber representative Chad Dobbs, Uber expert Justin McCrary, and Uber expert Terrence August. See "What's happening when prices surge?" [Tr. Ex. 3490].

126. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Disputed. Expected testimony of Uber representative Chad Dobbs, Uber expert Justin McCrary, and Uber expert Terrence August. Cited evidence does not support the finding.

[REDACTED]

127.

Disputed. Expected testimony of Uber representative Chad Dobbs and Uber expert Justin McCrary.

3. By Factoring Driver Willingness to Work into its Driver Earnings Calculations, Uber Stands to Retain a Greater Share of the Overall Ride Payment

128. The history of Uber's driver-side pricing efforts also highlight how Uber emphasizes its own profitability when setting the driver upfront fares for ride requests offered to drivers. Weil Ant. Test.

Disputed. Expected testimony of Uber expert Justin McCrary and Uber representative Chad Dobbs.

129. [REDACTED]

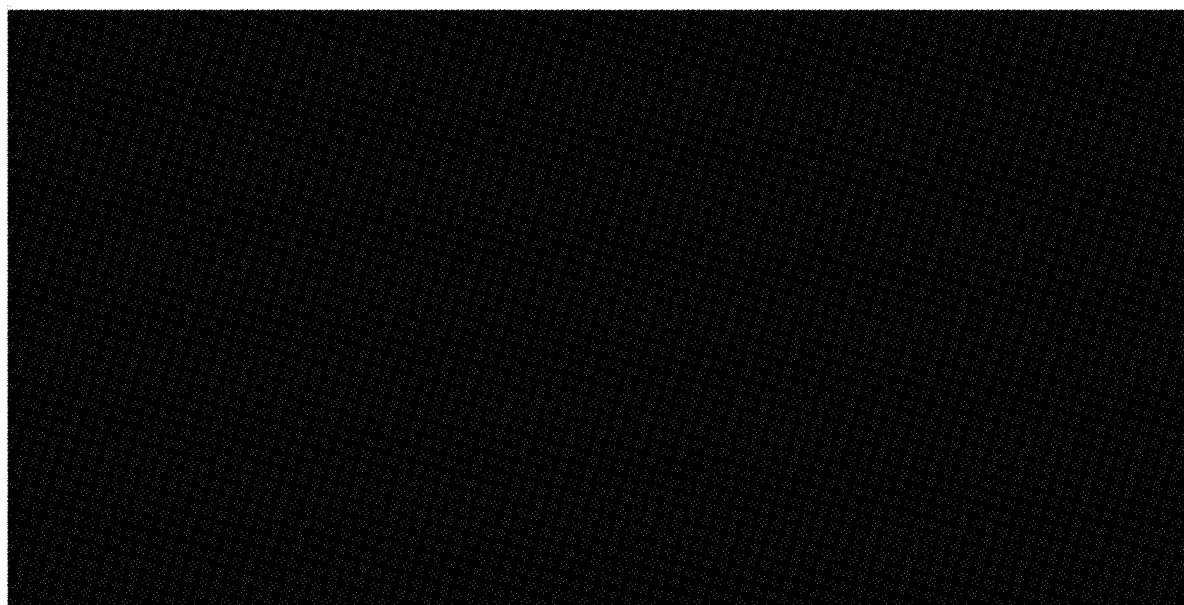
[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]



Disputed. Expected testimony of Uber representative Chad Dobbs and Uber expert Justin McCrary.

130. Uber later switched its primary approach for calculating driver earnings from the fixed rate card model discussed above to a variable pricing model called “upfront fares.” Dobbs 7/17, 121:6-13; AG1097; AG1098. Under upfront fares, Uber tells a driver what they will earn if they accept a ride, doing so at the time Uber sends the ride request to the driver. Dobbs 7/19, 635:13-636:8; AG1097 at 9051; AG1098 at 9064.

Disputed. Expected testimony of Uber representative Chad Dobbs. See Screenshot of Upfront Fare [Tr. Ex. 3554]; Screenshot of Ride Request [Tr. Ex. 3456].

[REDACTED]

[REDACTED]

131. As opposed to using actual time and distance, Uber now calculates driver upfront fares using both estimated time and distance of the ride as well as real-time market conditions. Dobbs 7/17, 117:6-8, 121:6-13; Dobbs 7/19, 627:1-19, 635:13-636:8; AG1097 at 9051-52; AG1098 at 9064; AG1139. Significantly, Uber considers “demand at the destination” and can make “real time adjustments” to the driver’s upfront fare to either raise or lower the amount based on Uber’s assessment of conditions in the area in which the driver is driving. AG1097 at 9051-52; AG1098 at 9064.

Disputed. Expected testimony of Uber representative Chad Dobbs.

132. During Uber’s Q3 2023 Earnings Conference Call, Uber’s CEO, Dara Khosrowshahi, explained how the shift to upfront pricing for driver earnings benefits Uber by creating “opportunit[ies] for [Uber] to price out that trip.” AG1034 at 7. Previously, he explained, drivers were “paid based on time and distance. Anyone can price based on time and distance. So the amount of data that you have doesn’t help you calculate a certain per-mile rate and a certain time rate as well. So there’s zero kind of benefit to scale.” *Id.* at 7. In contrast, in the upfront pricing “world,” he explained, Uber “can price out that destination” and, based on the size of its network, has “more opportunities to price.” *Id.* at 7. Thus, Uber is “able to price up that trip and *match it to a particular driver* based on a bigger data set than anyone else in the world.” *Id.* at 7. During that same call, Mr. Khosrowshahi continued that Uber’s “advantage compounds as our machine learning kind of platform learns more about different trips, which ones are accepted, which ones are not accepted, which ones are canceled as well. So all of our marketplace mechanisms in terms of routing, in terms of matching, in terms of pricing, now are essentially point estimates that we can train on a larger database than anyone else.” *Id.* at 7.

Disputed. Expected testimony of Uber representative Chad Dobbs.

133. Mr. Khosrowshahi returned to this theme during Uber’s Q4 2023 Earnings Conference Call, stating that upfront pricing allows Uber to target “different trips to different drivers based on their preferences or *based on behavioral patterns that they’re showing us.*” AG 1035 at 9 (emphasis added). This, he explained, allows Uber to offer “the right trip at the right

price to the right driver, which is a win-win-win, the rider wait time is lower, drivers are seeing the trips that they want at the right price and the network gets more and more efficient.” *Id.* at 9. And returning to Uber’s evolution on ride pricing, he added: “And I would also say that the nature of upfront fares, you’ve gone from just flat time and distance to know kind of point estimates for every single trip based on the driver. *It accrues to players who have the kind of data skills and the amount of data that we have.*” *Id.* at 9 (emphasis added).

Disputed. Expected testimony of Uber representative Chad Dobbs.

134. This evolution in the pricing of driver earnings further demonstrates how Uber’s extensive experimentation with driver price elasticity (*i.e.* “driver preferences” or “behavioral patterns that they’re showing us”) (1) allows it to set driver earnings in a way that benefits its ridesharing marketplace and (2) allows it to set prices in a manner that ultimately advances benefits its profitability. Weil Ant. Test.

Disputed. Expected testimony of Uber expert Justin McCrary and Uber representative Chad Dobbs.

4. Uber’s Surge Pricing is Decoupled, and Shares Similar Characteristics with Uber’s Pricing of Rides and Earnings

135. [REDACTED]

Disputed. Expected testimony of Uber representative Chad Dobbs. See “What’s happening when prices surge?” [Tr. Ex. 3490].

136. [REDACTED]

[REDACTED]

Disputed. Expected testimony of Uber representative Chad Dobbs and Uber expert Justin McCrary. See “What’s happening when prices surge?” [Tr. Ex. 3490].

137. [REDACTED]

Disputed. Expected testimony of Uber representative Chad Dobbs and Uber expert Justin McCrary.

138. [REDACTED]

Disputed. Expected testimony of Uber representative Chad Dobbs and Uber expert Justin McCrary.

[REDACTED]

**INCENTIVES: HOW UBER USES INCENTIVES ENCOURAGE DRIVER RETENTION
AND INFLUENCE WORKERS' SCHEDULES**

A. UBER'S PLANNED INCENTIVES

139. Uber also utilizes planned driver incentives that have the effect of increasing a driver's earnings from a ride. AG1060 at 2380-81; Weil Ant. Test.; Cameron Ant. Test.

Disputed. Expected testimony from Uber representative Chad Dobbs, Uber expert Justin McCrary, and Uber expert Steven Tadelis. Cited evidence does not support the finding.

140. Uber refers to these financial incentives as "DxGy ("Do X, Get Y") incentives" internally, and as "Quests" to drivers. Dobbs 7/18, 307:15-308:8. Uber presents these "Quests" to drivers as "Do X, meaning do a certain number of trips, and the driver can get Y, Y meaning a certain dollar figure." *Id.* Most often, Uber plans these Quests incentives for certain time-limited periods on weekday days and weekends, according to Uber's need to balance driver supply with rider demand in a certain market at those times. Dobbs 7/18, 311:5-312:6.

Disputed. Expected testimony of Uber representative, Chad Dobbs and Uber expert Terrence August. *See* "How and why do drivers earn extra?" [Tr. Ex. 3503]. Cited evidence does not support the finding.

141. To complete a Quest and earn their reward, drivers are often asked to drive at "busy" hours or complete a certain number of consecutive trips. *See, e.g.*, AG1154; AG1211 (Email stating: "Here's an offer to help you feel confident about earning again: if you make less than \$2,150 for your next 195 trips taken in Boston by May 19, 2021, you'll get the difference."); AG1213 (email stating: "Earn up to \$10.50 extra when you complete 3 trips in a row during busy hours . . . to reach this offer, trips must be completed in a row without going offline, cancelling, or rejecting."); AG1155 (similar); UX3503 ("To make the network more reliable with lower wait times in the busiest areas at the busiest times of day, we sometimes offer drivers Consecutive Trips promotions."); *see also* Dobbs 7/17, 171:18-172:13; Dobbs 7/18, 307:15-308:18; Dobbs 7/19, 677:19-679:3; Dobbs 8/2, 1191:10-16; Dobbs 8/2, 1376:23-1378:3.

Disputed. Expected testimony of Uber representative Chad Dobbs and Uber expert Terrence August. *See* "How and why do drivers earn extra?" [Tr. Ex. 3503].

142. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Disputed. Expected testimony of Uber representative Chad Dobbs. Cited evidence does not support the finding.

143. That Uber uses ride quality metrics to evaluate the efficacy of these experiments demonstrates its focus on rider experience through managing its labor supply. Cameron Ant. Test. Weil Ant. Test.

Disputed. Expected testimony from Uber expert Steven Tadelis, Uber expert Justin McCrary, and Uber representative Chad Dobbs.

144. Uber executives consistently frame Uber's driver incentives as "supply investments" that Uber makes proactively to improve ETAs and prices on rides:

- On Uber's Q3 2022 Earnings Call, Mr. Khosrowshahi stated, "In terms of surge and ETAs, they are coming down. Generally, I would say surge levels now are running at a high 20% to 30% range. We're more comfortable with range, call it, in the teens. ETAs on average, are running, call it, six minutes. And we are more comfortable in the five-minute range. What it takes to get to those levels is *simply continued investment in supply*, and we are seeing our supply improve, and generally supply hours are growing at very healthy rates which is a function of new drivers onboarding, but then the average driver who's onboarded being engaged at a higher level than they were last year. *So as we improve the supply demand balance of the marketplaces and we're well on our way, we think we'll get surge levels below 20% and ETA is closer to five minutes. Directionally, we're confident where we're going.*" AG1030 at 17 (emphasis added).\\
- On Uber's Q2 2023 Earnings Call, Mr. Khosrowshahi stated, "Our path to growth is centered on our ability to grow supply, and our focus on driver growth over the last several years has resulted in a significantly improved consumer experience." AG1044 at 1.

Disputed. Expected testimony of Uber representative Chad Dobbs and Uber expert Terrence August.

145. Uber can determine whether “incentives were worthwhile in a particular market. Incentives could exist for riders or drivers...depending on, you know, marketplace conditions, depending on macroeconomic factors, depending on the existence of a global pandemic. You know, there are—there are lots of factors that would be considered when determining whether incentives were worthwhile.” Dobbs 7/18, 358:4-359:9.

Disputed. Expected testimony of Uber representative Chad Dobbs.

146. In this sense, Uber mirrors the reasons that employers in a variety of business settings decide to provide voluntary bonuses—to encourage specific behaviors of benefit to the company by tapping into workers’ desire for additional earnings, recognition, or other benefits. Cameron Ant. Test.; Weil Ant. Test.

Disputed. Expected testimony of Uber expert Steven Tadelis, Uber expert Justin McCrary, and Uber representative Chad Dobbs.

B. UBER PRO: UBER’S LOYALTY PROGRAM

147. [REDACTED]

Disputed. Expected testimony from Uber representative Chad Dobbs, Uber expert Steven Tadelis, and Uber expert Justin McCrary. See Non-California Uber Pro Terms and Conditions [Tr. Ex. 3032].

148. Under Uber Pro, drivers can achieve one of four tiers—blue, gold, platinum, or diamond—with each tier unlocking access to rewards. AG1149 at 2956; AG1222 at 0052. To participate in the program, drivers must meet points thresholds¹⁰ and meet certain star ratings,

¹⁰ Drivers achieve tiered status by earning points for each trip completed during the three-month period. AG1222 at 0052. Points do not carry over into subsequent periods, so drivers must earn enough points to maintain their tier status or move up to a higher tier with more rewards. Dobbs 7/17, 163:22-164:10; AG1149 at 2960; AG1222 at 0052.

cancellation rates, and acceptance rates standards.¹¹ Uber sets the applicable thresholds and rates. AG1159 at 5593; AG1222 at 0052. The current version of the Uber Pro Terms and Conditions is dated March 27, 2024. AG1222.¹²

Disputed. Expected testimony of Uber representative Chad Dobbs and driver witnesses. See Non-California Uber Pro Terms and Conditions [Tr. Ex. 3032].

149. [REDACTED]

Disputed. Expected testimony of Uber representative Chad Dobbs, Uber expert Steven Tadelis, Uber expert Justin McCrary, and driver witnesses.

150. As with its planned incentives, the objective of Uber's Uber Pro program is to retain and incentivize the highest value drivers—those who offer great customer service, as indicated by higher customer ratings, and are loyal to Uber. Cameron Ant. Test; Weil Ant. Test.

Disputed. Expected testimony of Uber representative Chad Dobbs, Uber expert Steven Tadelis, and Uber expert Justin McCrary.

¹¹ Previously, in addition to the points threshold, a driver was required to have at least a star rating at or above 4.85; a cancellation rate at 4% or less; and an acceptance rate of 85% or more. Dobbs 7/17, 169:2-11; AG1149 at 2960. Currently, in addition to the points threshold, a driver must have at least a star rating at or above 4.75; a cancellation rate at 10% or less; and an acceptance rate of 75%. AG1222 at 0052.

¹² AG1157 is a copy of an email chain by Uber employees providing updates on the roll out of Uber Pro. Dobbs 7/18, 345:8-346:16. Under Uber Pro, drivers in higher tiers are offered larger bonuses through Quest to drive at times determined by Uber. Dobbs 7/18, 307:11-308:22, 311:5-12; AG1159 at 5602.

151. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Disputed. Expected testimony of Uber representative Chad Dobbs. Cited evidence does not support the finding.

152. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Disputed. Expected testimony of Uber representative Chad Dobbs. Cited evidence does not support the finding.

[REDACTED]

153.

[REDACTED]

Disputed. Expected testimony of Uber representative Chad Dobbs.

154.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Disputed. Expected testimony of Uber representative Chad Dobbs.

155.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Disputed. Expected testimony of Uber representative Chad Dobbs.

156. Uber benefits from these high-value drivers' participation in Uber Pro in at least *two* main ways. *First*, the program addresses Uber's need to have a supply of drivers available to provide rides. Dobbs 7/17, 176:17-177:7; Cameron Ant. Test.; Weil Ant. Test. It does this by (a) attracting new drivers to the platform and (b) helping retain existing drivers over the long run. Dobbs 7/17, 176:17-177:7, 220:13-20. As Uber increases the supply of drivers on its network, Uber's network functions more effectively and becomes more profitable for Uber. Dobbs 7/18, 286:8-287:5.

Disputed. Expected testimony of Uber representative Chad Dobbs, Uber expert Steven Tadelis, and Uber expert Justin McCrary.

157.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Disputed. Expected testimony of Uber representative Chad Dobbs, Uber expert Steven Tadelis, and Uber expert Justin McCrary.

158. The *three* examples that follow underscore the various ways that Uber expects to benefit from drivers' participation in Uber Pro.

Disputed. Expected testimony of Uber representative Chad Dobbs. Cited evidence does not support the finding.

1. Uber Expects Uber Pro to Improve Ride Quality and Driver Productivity

159.

Disputed. Expected testimony of Uber representative Chad Dobbs. Cited evidence does not support the finding.

160.

Disputed. Cited evidence does not support the finding. Expected testimony of Uber representative Chad Dobbs.

161.

[REDACTED]

[REDACTED]

Disputed. Expected testimony of Uber representative Chad Dobbs.

162.

[REDACTED]

Disputed. Cited evidence does not support the finding. Expected testimony of Uber representative Chad Dobbs.

163.

[REDACTED]

[REDACTED]

Disputed. Expected testimony of Uber representative Chad Dobbs.

2. Uber Expects Its Loyalty Programs to Improve Driver Acceptance Rates, Something that Ultimately Benefits Uber

164.

[REDACTED]

Disputed. Expected testimony of Uber representative Chad Dobbs.

[REDACTED]

165.

[REDACTED]

[REDACTED]

Undisputed.

3. Internal Recaps of Uber Pro Demonstrate that the Program was Meeting Uber's Desired Business Objectives

166. [REDACTED]

Disputed. Expected testimony of Uber representative Chad Dobbs.

167. [REDACTED]

Disputed. Cited evidence does not support the finding. Expected testimony of Uber representative Chad Dobbs.

168. [REDACTED]

[REDACTED]

[REDACTED]

Disputed. Expected testimony of Uber representative Chad Dobbs.

169. [REDACTED]

[REDACTED]

[REDACTED]

Disputed. Cited evidence does not support the finding. Expected testimony of Uber representative Chad Dobbs.

170. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Disputed. Expected testimony of Uber representative Chad Dobbs.

C. UBER HAS INTENTIONALLY INTEGRATED ELEMENTS OF GAMIFICATION INTO THE INCENTIVES IT OFFERS TO DRIVERS

171. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Disputed. Expected testimony of Uber expert Steven Tadelis and Uber representative Chad Dobbs.

172. Uber offers incentives to drivers on the App to earn extra money if drivers work when Uber needs drivers. Dobbs 7/17, 148:2-22, 171:22-172:8; Dobbs 7/18, 357:5 - 358:18; AG1154; AG1155; AG1156. Uber offers drivers cash bonuses if they complete more trips at a time designated by Uber that makes the platform more efficient, such as on weekends. Dobbs 7/17, 171:18-172:8, Dobbs 7/18, 309:13-22.

Disputed. Expected testimony of Uber representative Chad Dobbs.

173. [REDACTED]

Disputed. Expected testimony of Uber expert Steven Tadelis and Uber representative Chad Dobbs.

174. [REDACTED]

Disputed. Expected testimony of Uber expert Steven Tadelis and Uber representative Chad Dobbs.

175. Uber has invested considerable effort in having its teams design programs and planned incentives that encourage drivers to remain committed to the Uber platform. Dobbs 7/17, 238:11-240:15; Cameron Ant. Test.; Weil Ant. Test. Uber's planned incentives influence overall driver behavior. Hyland, 63:11-16; Zorok, 36:13-37:14; Cameron Ant. Test. Uber's technology team and business strategy team, which includes someone from its driver operations team, determine whether to offer these incentives to drive at a particular time. Dobbs 7/17, 172:18-173:18.

Disputed. Expected testimony of Uber expert Steven Tadelis, Uber expert Justin McCrary, Uber representative Chad Dobbs, and driver witnesses.

UBER'S SERVICE FEES: HOW UBER EARNS REVENUE ON RIDES

A. UBER'S SEC FILINGS AND EARNINGS CONFERENCE CALLS

176. On April 11, 2019, Uber filed its Form S-1 with the U.S. Securities and Exchange Commission ("SEC"). AG1060; Dobbs 8/2, 1309:4-15. AG1060 is a true and accurate copy of Uber's Form S-1. AG1000. Uber filed its S-1 in anticipation of the initial public offering of its stock in 2019. AG1060; Dobbs 8/2, 1309:4-15.

Undisputed.

177. For every fiscal year since 2019, Uber has filed a Form 10-K (*i.e.*, its annual report) with the SEC. AG1061-1065. AG1061-1065 are true and accurate copies of Uber's Form 10-Ks for 2019, 2020, 2021, 2022, and 2023. AG1000; Anticipated Testimony of Edward Cherubin ("Cherubin Ant. Test.").¹⁵

Disputed. Expected testimony of Uber representative Chad Dobbs.

178. Uber's Form S-1 and Form 10-Ks, all of which are signed by Uber's CEO, contain disclosures from Uber to investors about Uber's business model, financial condition, revenues, risk factors Uber believes it could face, and key terms that Uber uses to describe its business. AG1060-1065; Dobbs 8/2, 1309:16-1311:17; *Id.* at 1424:18-1429:11.

Undisputed.

179. Uber also filed quarterly reports (Form 10-Qs) with the SEC. *See* AG1062 at 3167. In connection with these quarterly SEC filings, Uber hosts quarterly Earnings Conference Calls for investors, during which Uber executives make statements which they are authorized to make on behalf of Uber regarding Uber's financial results for the previous quarter, financial outlook, and Uber's business operations and key initiatives. AG1017-1035; AG1001, ¶¶ 2-3.

Undisputed.

¹⁵ Mr. Cherubin is a Senior Investigator in the Attorney General's Civil Investigations Division. The sole purpose of Mr. Cherubin's testimony is to authenticate various exhibits, such as the various 10-Ks referenced in the foregoing paragraph.

180. AG1017-1035 are true and accurate copies of unofficial transcripts that accurately reflect statements made by Uber executives during Uber's Q2 2019-Q4 2023 Earnings Conference Calls. AG1001; Cherubin Ant. Test.

Undisputed.

181. Uber sometimes provides Earnings Supplemental Data to investors in conjunction with its quarterly Earnings Conference Calls. AG1047-AG1059; Dobbs 8/3, 1430:21-1431:1. These supplemental materials contain statements made by Uber that are intended to give investors and the general investing public additional information about its business that might not be covered during the course of the call itself. *Id.* at 1433:2-1434:3. Uber says these materials are helpful for investors to understand what is happening at Uber at a greater level of detail than they would be able to see otherwise and to provide investors greater transparency with respect to key metrics used by Uber in its financial and operational decision-making. Dobbs 8/3, 1434:10-1436:19. AG1047-AG1059 are true and accurate copies of Uber's Earnings Supplemental Data. Cherubin Ant. Test.

Undisputed.

182. Uber understands that investors may rely on information contained in these materials when making investment decisions. Dobbs 8/2, 1310:15-20.

Disputed. Expected testimony of Uber representative Chad Dobbs.

B. UBER'S FEES

183. In its S-1, Uber discloses accounting policies to investors that are "critical to understanding [its] consolidated financial condition and results of [its] operations." AG1060 at 2419.

Undisputed.

184. As part of its accounting policies, Uber discloses its revenue recognition policy for its Ridesharing business to investors. AG1060 at 2419, 2585.

Undisputed.

185. According to its revenue recognition policy, Uber recognizes revenue on a ride when the ride is complete. AG1060 at 2419, 2585.

Disputed. Expected testimony of Uber representative Chad Dobbs. *See* Uber's S-1 [Tr. Ex. 3399]; Uber's 2022 10-K [Tr. Ex. 3402]; Uber's 2021 10-K [Tr. Ex. 3410]; Uber's 2020 10-K [Tr. Ex. 3426].

186. Uber collects a service fee from drivers after the ride is completed. AG1060 at 2585.

Disputed. Expected testimony of Uber representative Chad Dobbs. *See* "What is the Service Fee?" Uber Website [Tr. Ex. 3452]; Uber Marketplace Service Fee | Uber [Tr. Ex. 3506].

187. Uber sets the amount of the service fee. Dobbs 8/2, 1273:20-1274:7, 1358:14-1360:4.

Disputed. Expected testimony of Uber representative Chad Dobbs. *See* "What is the Service Fee?" Uber Website [Tr. Ex. 3452]; Uber Marketplace Service Fee | Uber [Tr. Ex. 3506].

188. The amount of the service fee varies on a ride-by-ride basis. AG1060 at 2585; Dobbs 8/2, 1359:6-18; *see also* Dobbs 7/19, 635:13-636:8 ("You know, what we have realized over time is that there are certain trip types, for both riders and drivers, that either they prefer or—for drivers that they—for drivers that they prefer, or riders that they take more often. And so our goal is to set a market clearing rate on both sides of the marketplace, and sometimes that requires a bigger service fee and sometimes that requires a smaller service fee."). The amount of the variation is determined by Uber. Dobbs 8/2, 1359:6-18.

Disputed. Expected testimony of Uber representative Chad Dobbs. *See* "What is the Service Fee?" Uber Website [Tr. Ex. 3452]; Uber Marketplace Service Fee | Uber [Tr. Ex. 3506].

189. Drivers are not able to negotiate the amount of the service fee. *See supra*, FF 95-97, 186-188. And after a trip is completed, a driver cannot attempt to renegotiate the amount of the service fee. Dobbs 8/2, 1389:8-1390:14. This is true even when the driver deems the services provided by Uber on a ride to be inadequate. Dobbs 8/2, 1389:8-1390:14.

Disputed. Expected testimony of Uber representative Chad Dobbs. Cited evidence does not support the finding.

190. Drivers do not know the amount of the service fee that Uber will collect on a ride when Uber offers them a ride request. Dobbs 8/2, 1273:20-1274:2; *see supra*, FF 95-97. Drivers do not learn the amount of the service fee that Uber collects on a ride until after the ride is complete. *See supra*, FF 97.

Disputed. Expected testimony of Uber representative Chad Dobbs.

191. Uber attributes the service fees that it collects from riders and drivers on each ride to the services it claims to provide to riders and drivers (*e.g.*, matching, payment processing, quality verification). Dobbs 8/2, 1245:11-20.

Disputed. Expected testimony of Uber representative Chad Dobbs. Cited evidence does not support the finding.

192. But Uber does not know the portion of revenue attributable to the discrete services that Uber states it provides drivers and riders (*i.e.*, matching, payment processing, verification of the quality of market participants). Dobbs 8/2, 1394:22-1398:7. This is because Uber “doesn’t think about the financials in that way” (matching), “that’s not how we would break out our financials” (payment processing), and “that’s not how Uber would put together or evaluate our financials” (participant verification). Dobbs 8/2, 1394:22-1398:7.

Disputed. Expected testimony of Uber representative Chad Dobbs.

193. Uber also currently charges riders a booking fee. Dobbs 7/19, 609:3-7. The booking fee is collected at the completion of the trip. AG1062 at 3256; AG1063 at 3136 (“We recognize revenue [on the booking fee] when a trip is complete.”).

Undisputed.

194. The booking fee is in an amount determined by Uber and is paid directly by riders to Uber from the rider price. Dobbs 7/19, 609:3-610:9; UX3508; UX3509; AG1062 at 3256. Uber receives this fee “within a short period of time following the completion of a trip.” AG1063 at 3136.

Disputed. Expected testimony of Uber representative Chad Dobbs. *See Booking Fee | Riders - Uber Help* [Tr. Ex. 3508].

195. Before a driver accepts a ride request they do not know the amount of the booking fee that Uber charges on a ride. Dobbs 7/20, 852:7-17; UX3438. Nor does the driver ever have access to the money that comprises the booking fee. Dobbs 7/20, at 889:6-9, 905:21-906:7.

Disputed. Expected testimony of Uber representative Chad Dobbs.

196. Uber did not originally charge booking fees to riders. *See, e.g.*, AG1060. For instance, in its S-1, Uber describes booking fees just as being paid by drivers. AG1060 at 2390 (“We generate Ridesharing revenue from service and booking fees paid by Drivers ...”). In the first quarter of FY 2020, however, Uber began charging end-users (*i.e.*, riders) a fee for Ridesharing services in certain markets. AG1062 at 3213, 3256-57.

Disputed. Expected testimony of Uber representative Chad Dobbs.

197. Uber tells investors that it earns revenue from the booking fee. Dobbs 7/19, 635:6-11. In FY 2020, Uber collected \$323 million in booking fees from riders, while in FY 2021 Uber collected \$336 million in booking fees from riders. AG1063 at 3136. Uber states that the purpose of the fee is to cover certain of its operational costs, including background checks for drivers, insurance costs, and payment processing costs. Dobbs 7/19, 609:3-610:9; UX3438.

Disputed. Expected testimony of Uber representative Chad Dobbs. *See* Uber’s 2022 10-K [Tr. Ex. 3402]; Uber’s 2021 10-K [Tr. Ex. 3410]; Uber’s 2020 10-K [Tr. Ex. 3426]; Uber’s S-1 [Tr. Ex. 3399].

198. In sum, Uber’s revenue is derived from the difference between the rider’s payment on the ride and what the driver earns on that ride. Dobbs 7/19, 632:17-633:15.

Disputed. Expected testimony of Uber representative Chad Dobbs and Uber expert Justin McCrary. *See* Uber’s 2022 10-K [Tr. Ex. 3402]; Uber’s 2021 10-K [Tr. Ex. 3410]; Uber’s 2020 10-K [Tr. Ex. 3426]; Uber’s S-1 [Tr. Ex. 3399].

199. Uber calls completed rides “Trips,” which it defines as “the number of completed consumer Ridesharing or New Mobility rides and Uber Eats meal deliveries in a given period.” AG1060 at 2383.

Disputed. Expected testimony of Uber representative Chad Dobbs and Uber expert Justin McCrary. *See* Uber’s S-1 [Tr. Ex. 3399].

200. Uber says that “Trips generate money” for Uber. Dobbs 8/2, 1320:11-21. Uber says that “Trips generate money” for Uber. Dobbs 8/2, 1320:11-21.

Disputed. Expected testimony of Uber representative Chad Dobbs and Uber expert Justin McCrary.

201. Uber admits that if a ride is not completed, it does not collect a service fee or otherwise generate revenue from its provision of the services it claims to provide to riders and drivers. Dobbs 8/2, 1247:8-1248:4, 1395:24-1399:8; *see also id.*, 1317:12-1318:4 (“Obviously, without people using [Uber’s] services, there would not be revenue generated”) & *id.* at 1318:6-1319:2 (“Because without consumers doing trips, there’s not a whole lot of value being generated.”). Uber also acknowledges that its services “don’t have much value [to riders] unless a ride is completed.” Dobbs 8/2, 1245:11-1246:13.

Disputed. Expected testimony of Uber representative Chad Dobbs and Uber expert Justin McCrary. See Uber’s 2022 10-K [Tr. Ex. 3402]; Uber’s 2021 10-K [Tr. Ex. 3410]; Uber’s 2020 10-K [Tr. Ex. 3426].

C. UBER’S REVENUE ACCOUNTING MODEL

202. Virtually all of Uber’s revenue from its ridesharing business comes from the fees that Uber collects from completed rides. AG1060 at 2419.

Disputed. Expected testimony of Uber representative Chad Dobbs, Uber expert Justin McCrary, and Uber expert Terrence August. See Uber’s 2022 10-K [Tr. Ex. 3402]; Uber’s 2021 10-K [Tr. Ex. 3410]; Uber’s 2020 10-K [Tr. Ex. 3426].

203. In its S-1, Uber explains to investors that it accounts for its revenues from service fees using a financial and operating model that it calls its “Core Platform Financial and Operating Model.” AG1060 at 2380.

Disputed. Expected testimony of Uber representative Chad Dobbs, Uber expert Justin McCrary, and Uber expert Terrence August. See Uber’s S-1 [Tr. Ex. 3399].

204. Uber uses this model to calculate its “Core Platform Revenue,” which Uber defines as “Core Platform Gross Bookings” minus (1) “Driver and Restaurant Earnings, Refunds, Expenses, and Discounts” and (2) “Driver Incentives.” AG1060 at 2380.

Disputed. Expected testimony of Uber representative Chad Dobbs, Uber expert Justin McCrary, and Uber expert Terrence August. *See* Uber's S-1 [Tr. Ex. 3399].

205. Uber defines Core Platform Gross Bookings as the total dollar value of Ridesharing trips and Uber Eats meal deliveries, in each case without any adjustment for consumer discounts and refunds, driver and restaurant earnings, and driver incentives. AG1060 at 2372, 2380. The contribution from Uber's Ridesharing business to Core Platform Gross Bookings equates to the total rider fare that is collected from completed rides (*i.e.*, Ridesharing trips). Dobbs 8/2, 1348:8-24.

Disputed. Expected testimony of Uber representative Chad Dobbs, Uber expert Justin McCrary, and Uber expert Terrence August. *See* Uber's S-1 [Tr. Ex. 3399].

206. Uber reports Core Platform Gross Bookings to investors as an indication of the scale of its platform, which ultimately impacts Uber's revenue. AG1060 at 2383, 2412 (Uber reporting to its investors that its "Ridesharing adjusted net revenue for 2018 increased by \$2.6 billion, or 40%, to \$9.0 billion compared to \$6.4 billion in 2017" and attributing this increase to an "increase in Ridesharing Gross Bookings of \$10.1 billion, or 32%, to \$41.5 billion compared to \$31.4 billion in 2017.").

Disputed. Expected testimony of Uber representative Chad Dobbs, Uber expert Justin McCrary, and Uber expert Terrence August. *See* Uber's S-1 [Tr. Ex. 3399].

207. If no ridesharing rides are completed by drivers during a particular quarter, Uber's Core Platform Revenue attributable to Ridesharing during that quarter would be zero. Dobbs 8/2, 1344:19-1346:11. Similarly, if comparatively fewer ridesharing trips are completed during a particular quarter, Uber's Gross Bookings attributable to Ridesharing and, therefore, Core Platform Revenue attributable to Ridesharing, would be lower. Dobbs 8/2, 1342:20-1343:4.

Disputed. Expected testimony of Uber representative Chad Dobbs, Uber expert Justin McCrary, and Uber expert Terrence August.

208. In addition to Core Platform Revenue, Uber also uses the Core Platform Financial and Operating Model to calculate its Core Platform Adjusted Net Revenue. AG1060 at 2380. Uber considers its Core Platform Adjusted Net Revenue as informative of its Core Platform's top

line performance because it is the total net financial activity generated by its Core Platform after taking into account all driver and restaurant earnings. AG1060 at 2380.

Disputed. Expected testimony of Uber representative Chad Dobbs, Uber expert Justin McCrary, and Uber expert Terrence August.

209. Uber uses the Core Platform Financial and Operating Model to calculate its Take Rate. AG1060 at 2381. In the context of Uber’s Ridesharing business, Take Rate references the percentage of the rider fare that the driver pays to Uber. Dobbs 8/2, 1326:5-16.

Disputed. Expected testimony of Uber representative Chad Dobbs, Uber expert Justin McCrary, and Uber expert Terrence August.

D. UBER’S MANIPULATION OF ITS TAKE RATE

210. In the S-1, Uber tells investors that it is “focused on increasing [its] Core Platform Adjusted Net Revenue and our Take Rate.” AG1060 at 2381.

Disputed. Expected testimony of Uber representative Chad Dobbs, Uber expert Justin McCrary, and Uber expert Terrence August.

211. [REDACTED]
[REDACTED]
[REDACTED]

Disputed. Expected testimony of Uber representative Chad Dobbs, Uber expert Justin McCrary, and Uber expert Terrence August.

212. [REDACTED]
[REDACTED]
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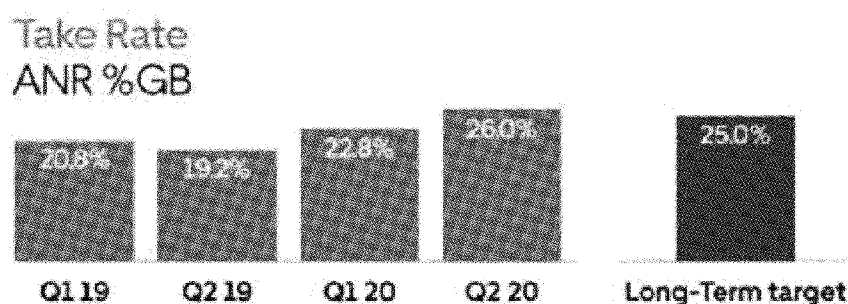
Disputed. Expected testimony of Uber representative Chad Dobbs, Uber expert Justin McCrary, and Uber expert Terrence August.

213. As to target goals, Uber reports Take Rate targets to investors in conjunction with its Earnings Calls. For instance, in Uber’s 2020 Investor Presentation, Uber also reported that its “Mobility segment is already profitable, with room for margin expansion” and displayed a “Long-

term target” Take Rate of 25.0% to investors. AG1050 at 23 (see image below); *see also* AG1048 at 15 (similar).

Disputed. Expected testimony of Uber representative Chad Dobbs, Uber expert Justin McCrary, and Uber expert Terrence August.

Mobility segment is already profitable, with room for margin expansion



214. In the S-1, Uber informs investors that it “manage[s] our Take Rate.” AG1060 at 2381; Dobbs 8/2, 1369:6-13.

Disputed. Expected testimony of Uber representative Chad Dobbs, Uber expert Justin McCrary, and Uber expert Terrence August. *See* Uber’s S-1 [Tr. Ex. 3399].

215. According to Uber, the “greatest impact” on its Take Rate “has historically come from Driver earnings.” AG1060 at 2381. *See supra*, FF 95 (Uber determines the amount that a driver earns on a ride if they accept the ride request.).

Disputed. Expected testimony of Uber representative Chad Dobbs, Uber expert Justin McCrary, and Uber expert Terrence August.

216. In the S-1, Uber explains that its Take Rate is affected by “the service fee paid by Drivers and Driver incentives.” AG1060 at 2381. These items are both within Uber’s control. *See supra*, FF 187, 194 (service fee) & 145 (incentives).

Disputed. Expected testimony of Uber representative Chad Dobbs, Uber expert Justin McCrary, and Uber expert Terrence August. *See* Uber’s S-1 [Tr. Ex. 3399].

217. As regards adjustments to the service fee, Uber sets the amount of the service fee that it collects from drivers. *See supra*, FF 95 (Uber sets the rider price and driver earnings); *see also* FF 186-198 (service fee is equal to the difference between the rider price and driver earnings). If Uber were to increase the service fee amount on any particular ride, the driver's earnings on that ride would decrease. Dobbs 8/2, 1349:10-1350:6.

Disputed. Expected testimony of Uber representative Chad Dobbs, Uber expert Justin McCrary, and Uber expert Terrence August.

218. As regards adjustments to incentives, Uber plans its projected spend on driver incentives on an annual and monthly basis. Dobbs 8/3, 1484:11-1485:11. As inputs to its planned spend on driver incentives, Uber considers "a lot of historical data" regarding current incentive levels, what kind of discounts are being offered to riders, and what kind of promotions are being offered to drivers. Dobbs 8/3, 1485:10-1486:9. It also makes projections regarding how many trips Uber thinks will need to happen on the platform, how much demand is going to grow, and how much supply is going to grow. Dobbs 8/3, 1485:10-1486:9.

Disputed. Expected testimony of Uber representative Chad Dobbs, Uber expert Justin McCrary, and Uber expert Terrence August.

219. Uber explains in the S-1 that it "typically manage[s]" its Take Rate by adjusting incentives offered to drivers. AG1060 at 2381 ("We typically manage our Take Rate through adjustments to Driver incentives, as Driver incentives are shorter-term adjustments that can be more easily tailored to specific local markets."). These "adjustments" are made by Uber. Dobbs 8/2, 1369:18-1370:18.

Disputed. Expected testimony of Uber representative Chad Dobbs, Uber expert Justin McCrary, and Uber expert Terrence August. *See* Uber's S-1 [Tr. Ex. 3399].

220. More specifically, Uber decides whether to make incentives available to drivers. Dobbs 8/2, 1352:7-21. It also retains control over the amount (if any) of incentives offered to drivers, *see* Dobbs 8/2, 1353:12-16, all of which are contingent upon the completion of a ride. Dobbs 8/2, 1354:17-1356:9 (explaining ride incentives fall within the "Driver Incentives" category addressed above).

Disputed. Expected testimony of Uber representative Chad Dobbs, Uber expert Justin McCrary, Uber expert Terrence August, and driver witness testimony.

221. One way Uber can increase its Take Rate is by decreasing incentives offered to drivers. AG1060 at 2381; *see also* Dobbs 8/2, 1368:9-1370:18 (“So if driver incentives go up, all else equal, take rate would go down. And if driver incentives go down, take rate would go up.”).

Disputed. Expected testimony of Uber representative Chad Dobbs.

222. Based on what Uber has told investors, its efforts to increase its Take Rate have been successful. For instance, in its 2020 Investor Presentation, which Uber provided in conjunction with its Q4 2019 Earnings Call, Uber reported “significant progress achieved since IPO” to investors and cited “increased Take Rate from 19% in Q1 to 21% in Q4” as one indicator of that progress. AG1048 at 10. Similarly, in supplemental earnings materials issued in conjunction with Uber’s 2022 Q4 earnings call, Uber told investors that the Take Rate for its last three quarters had been 26.6, 27.9, and 27.8. AG1059 at 16; Dobbs 8/3, 1454:7-21; *see also* AG1050 at 23; Dobbs 8/3, 1446:19-1448:14.

Disputed. Expected testimony of Uber representative Chad Dobbs.

E. UBER’S REVENUE FROM RIDESHARING

223. Uber’s total reported revenue for FY 2016 was \$3,845M, of which \$3,535M was Ridesharing revenue, derived from service fees Uber collected from completed Ridesharing trips. AG1060 at 2419, 2395, 2585. Thus, in FY 2016, 91.9% of total reported revenue in Uber’s Form S-1 came from its ridesharing business. *Id.*

Disputed. Expected testimony of Uber representative Chad Dobbs.

224. Uber’s total reported revenue for FY 2017 was \$7,932M, of which \$6,888M was Ridesharing revenue derived from service fees Uber collected from completed Ridesharing trips.

AG1060 at 2419, 2395, 2585. Thus, in FY 2017, 86.8% of Uber's total reported revenue came from its ridesharing business. *Id.*

Disputed. Expected testimony of Uber representative Chad Dobbs.

225. Uber's total reported revenue for FY 2018 was \$11,270M, of which \$9,182M was Ridesharing revenue derived from service fees Uber collected from completed Ridesharing trips. AG1060 at 2419, 2395, 2585. Thus, in FY 2018, 81.5% of Uber's total reported revenue came from its ridesharing business. *Id.*

Disputed. Expected testimony of Uber representative Chad Dobbs.

226. Uber's total reported revenue for FY 2019 was \$13,000M, of which \$10,707M was Ridesharing revenue derived from service fees Uber collected from completed Ridesharing trips. AG1063 at 23113, 23136, 23144. Thus, in FY 2019, 82.4% of Uber's total reported revenue came from its ridesharing business. *Id.*

Disputed. Expected testimony of Uber representative Chad Dobbs.

227. Uber's total reported revenue for FY 2020 was \$11,139M, of which \$6,089M was Ridesharing revenue derived from service fees Uber collected from completed Ridesharing trips. AG1063 at 23113, 23136, 23144. Thus, in FY 2020, 54.7% of Uber's total reported revenue came from its ridesharing business. *Id.*

Disputed. Expected testimony of Uber representative Chad Dobbs. *See* Uber's 2020 10-K [Tr. Ex. 3426].

228. Uber's total reported revenue for FY 2021 was \$17,455M, of which \$6,953M was Ridesharing revenue derived from service fees Uber collected from completed Ridesharing trips. AG1063 at 23113, 23136, 23144. Thus, in FY 2021, 39.8% of Uber's total reported revenue came from its ridesharing business. *Id.*

Disputed. Expected testimony of Uber representative Chad Dobbs. *See* Uber's 2021 10-K [Tr. Ex. 3410].

229. Uber's total reported revenue for FY 2022 was \$31,877M, of which \$14,029M was Ridesharing revenue derived from service fees Uber collected from completed Ridesharing trips.

AG1064 at 58, 65, 87. Thus, in FY 2022, 44.0% of Uber’s total reported revenue came from its Ridesharing business. *Id.*

Disputed. Expected testimony of Uber representative Chad Dobbs. See Uber’s 2022 10-K [Tr. Ex. 3402].

230. Uber’s total reported revenue for FY 2023 was \$37,281M, of which \$19,832M was Ridesharing revenue derived from service fees Uber collected from completed Ridesharing trips. AG1064 at 59, 88. Thus, in FY 2023, 53.2% of Uber’s total reported revenue came from its ridesharing business. *Id.*

Disputed. Expected testimony of Uber representative Chad Dobbs.

231. [REDACTED]

Disputed. Expected testimony of Uber representative Chad Dobbs. See Uber’s 2020 10-K [Tr. Ex. 3426]; Uber’s 2021 10-K [Tr. Ex. 3410]; Uber’s 2022 10-K [Tr. Ex. 3402].

F. UBER’S LIQUIDITY NETWORK EFFECT

232. In its SEC filings, Uber informs investors that its Ridesharing platform relies in part on its “massive network,” which “becomes smarter with every trip,” and “powers movement at the touch of a button for millions, and we hope eventually billions, of people.” AG1060 at 2433; *see also* AG1048 at 8; AG1050 at 12; AG1051 at 18.

Disputed. Expected testimony of Uber representative Chad Dobbs. *See* Uber's 2020 10-K [Tr. Ex. 3426]; Uber's 2021 10-K [Tr. Ex. 3410]; Uber's 2022 10-K [Tr. Ex. 3402].

233. In the S-1, Uber informs investors that the scale of its network allows it to have important competitive advantages. AG1060 at 2381. One advantage of a large network is it allows Uber to have a higher margin on a ride than an operator with a smaller network. AG1060 at 2381. Another advantage of a large network is that Uber can remain competitive on ride price and driver earnings, even in instances where a competing network increases driver incentives or rider discounts. *Id.* at 2381.

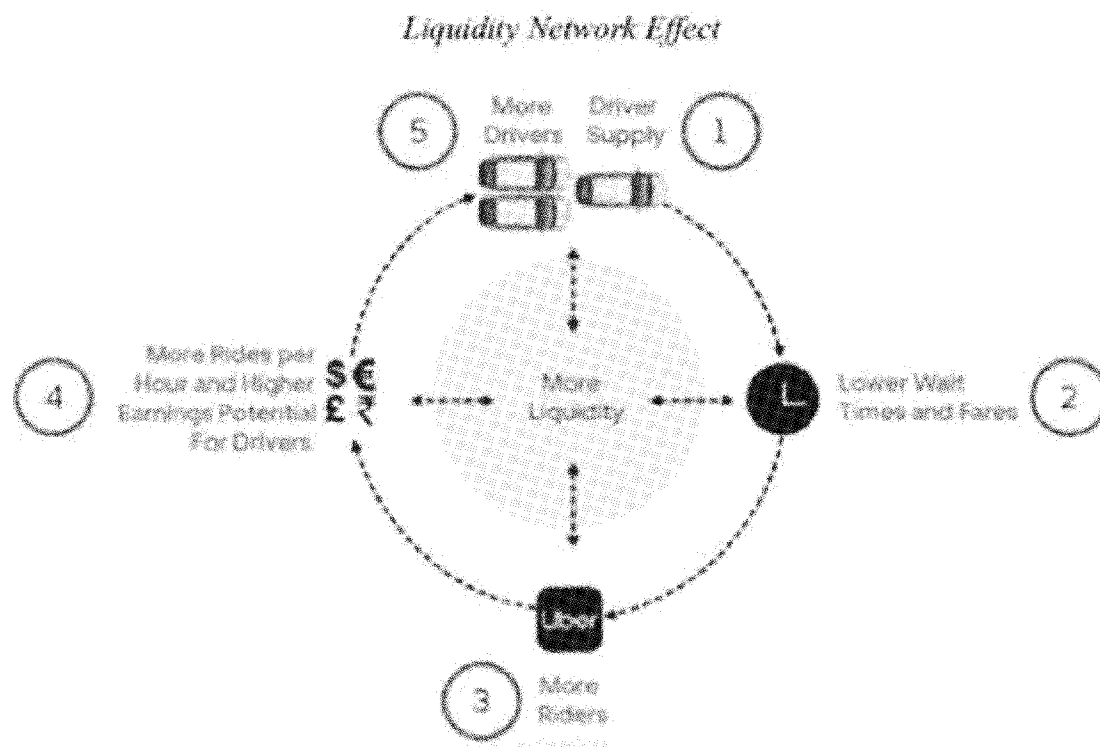
Disputed. Expected testimony of Uber representative Chad Dobbs. *See* Uber's S-1 [Tr. Ex. 3399]; Uber's 2020 10-K [Tr. Ex. 3426]; Uber's 2021 10-K [Tr. Ex. 3410]; Uber's 2022 10-K [Tr. Ex. 3402].

234. Uber's strategy is "to create the largest network in each market" so that Uber "can have the greatest liquidity network effect." AG1060 at 2433. "Liquidity network effect" refers to the concept that as more riders and more drivers use Uber's Ridesharing app, the effectiveness of Uber's network increases. Dobbs 7/18, 440:15-441:8.

Disputed. Expected testimony of Uber representative Chad Dobbs. *See* Uber's S-1 [Tr. Ex. 3399]; Uber's 2020 10-K [Tr. Ex. 3426]; Uber's 2021 10-K [Tr. Ex. 3410]; Uber's 2022 10-K [Tr. Ex. 3402].

235. Uber provides the following diagram ("Flywheel Diagram") in its S-1 for investors to demonstrate the "positive flywheel" of the "liquidity network effect." Dobbs 7/18, 440:15-441:8; AG1060 at 2434.

Disputed. Expected testimony of Uber representative Chad Dobbs. *See* Uber's S-1 [Tr. Ex. 3399].



236. As depicted in the Flywheel Diagram, Uber informs its investors that it first needs a supply of drivers to achieve this liquidity network effect. AG1060 at 2434 (Flywheel Diagram, “1”). See AG1060 at 2433 (“Starting with supply to create a liquidity network effect. When we launch our Ridesharing products in a new city, we start by onboarding Drivers and creating awareness among consumers.”).

Disputed. Expected testimony of Uber representative Chad Dobbs.

237. Uber uses driver incentives to maintain a steady supply of Drivers for its network. AG1060 at 2387-2388 (“We vary Driver incentives for each local market based on the needs of the market relative to other alternatives in the Ridesharing and meal delivery industries. For example, to rapidly scale our network in new cities by attracting consumers to our platform and away from personal vehicles or public transportation or to compete effectively in existing cities where competitors offer incentives, we often use Driver incentives. These incentives and our large network help maintain a steady supply of Drivers on our platform.”).

Disputed. Expected testimony of Uber representative Chad Dobbs and Uber expert Justin McCrary.

238. As Uber grows the number of drivers (*i.e.*, driver supply or driver-side liquidity), Uber expects that the wait times for riders will decrease and that this, in turn, attracts more riders. AG1060 at 2434 (Flywheel Diagram, “2”). *See* AG1060 at 2433 (“As we grow the number of Drivers, our market coverage improves, bringing down average wait times, which attracts more consumers.”).

Disputed. Expected testimony of Uber representative Chad Dobbs and Uber expert Terrence August. *See* Uber’s S-1 [Tr. Ex. 3399].

239. As the number of riders increases (*i.e.*, rider demand or rider-side liquidity), *see* AG1060 at 2434 (Flywheel Diagram, “3”), Uber expects that drivers will be utilized more, that drivers will complete more rides per hour, and that, in turn, more drivers will be attracted to its network, *see* AG1060 at 2434 (Flywheel Diagram, “4” and “5”); *see also* AG1060 at 2433-34 (“More consumers results in an increased volume of trips and higher Driver utilization, which attracts more Drivers and enables us to reduce fares for consumers, in some cases, through the effects of dynamic pricing.”).

Disputed. Expected testimony of Uber representative Chad Dobbs. *See* Uber’s S-1 [Tr. Ex. 3399].

240. As the cycle continues (*i.e.*, as the flywheel continues to turn), Uber’s network of drivers and riders continues to grow, drivers are utilized more, fare prices drop, and, most importantly for Uber, more rides are completed per hour. AG1060 at 2434 (Flywheel Diagram, “1”- “5”).

Disputed. Expected testimony of Uber representative Chad Dobbs. *See* Uber’s S-1 [Tr. Ex. 3399].

241. Uber believes its variable service fee allows Uber to maintain this positive flywheel, by addressing points of feedback from both riders and drivers and giving them a better experience on its Ridesharing app. Dobbs 7/19, 639:1-23.

Disputed. Expected testimony of Uber representative Chad Dobbs.

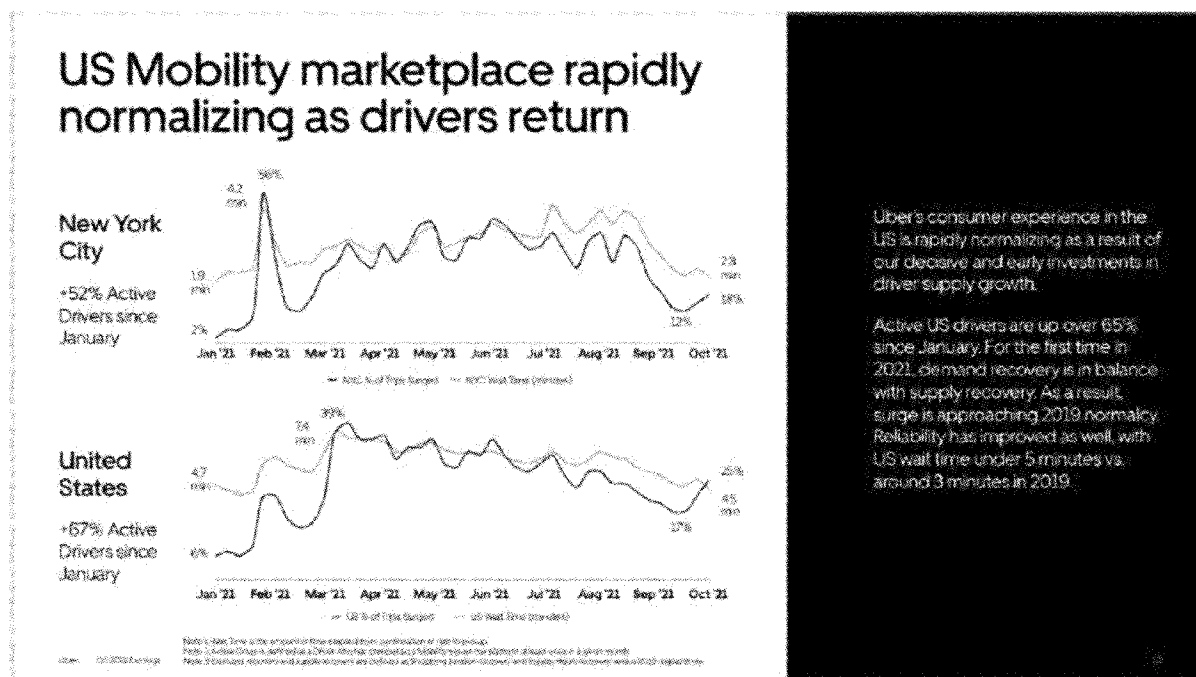
242. Uber therefore adjusts the service fee across different trip types “in service of” the liquidity network effect. Dobbs 7/19, 635:13-638:24.

Disputed. Expected testimony of Uber representative Chad Dobbs.

243. Uber believes that this liquidity network effect results in margin advantages for Uber. Dobbs 7/19, 639:1-23.

Disputed. Expected testimony of Uber representative Chad Dobbs.

244. The following image is a screenshot from Uber’s Q3 2021 Earnings Supplemental Data, which Uber made available to investors in conjunction with its Q3 2021 Earnings Call. AG1054 at 10.



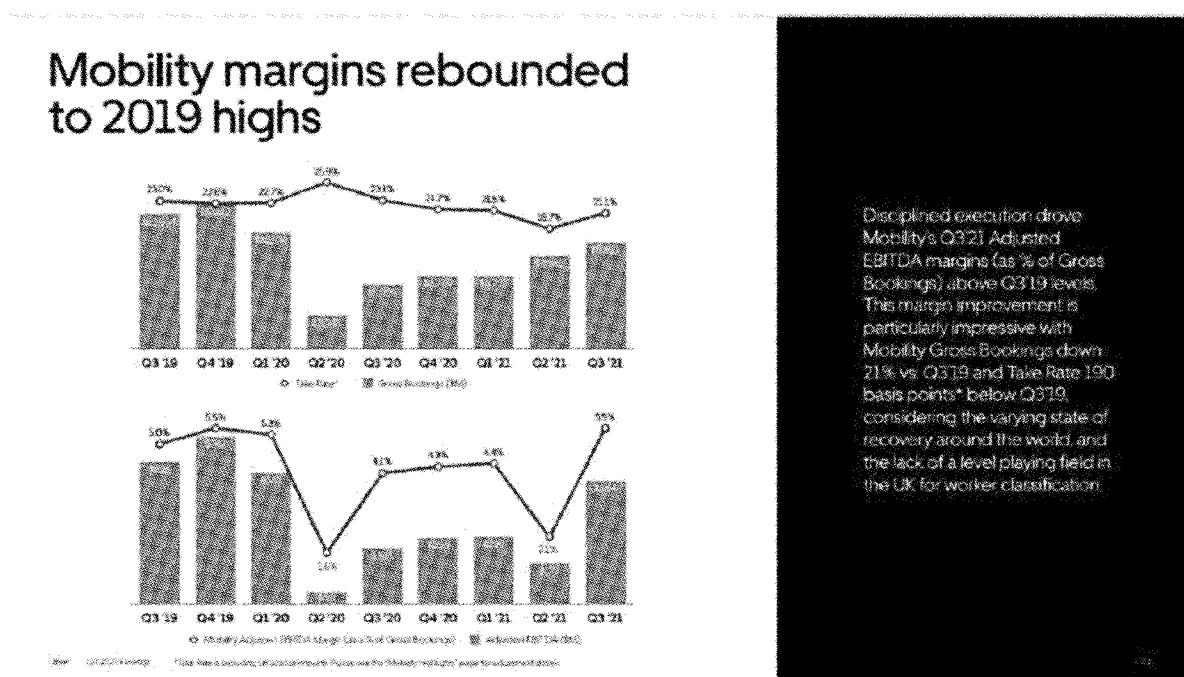
Undisputed.

245. The above slide shows that, as Active Drivers increased by 67% in the United States from January 2021 to October 2021, Wait Time for rides dropped to 4.5 minutes, and % of Trips Surged dropped to 25% in October 2021. AG1054 at 10; *see also* AG1055 at 6 (similar); AG1057 at 6 (similar).

Disputed. Expected testimony of Uber expert Justin McCrary and Uber representative Chad Dobbs.

246. The following image is also a screenshot from Uber's Q3 2021 Earnings Supplemental Data, which Uber made available to investors in conjunction with its Q3 2021 Earnings Call. AG1054 at 12.

Undisputed.



247. The above slide shows that, during the same period when drivers returned, Wait Times dropped, and % of Trips Surged dropped—from Q2 2021 to Q3 2021—Uber's Ridesharing margins “rebounded.” AG1054 at 10, 12.

Disputed. Expected testimony of Uber expert Justin McCrary, Uber expert Terrence August, and Uber representative Chad Dobbs.

G. UBER'S KEY OPERATING METRICS

248. In its S-1, Uber identifies Key Terms for their Key Metrics and Non-GAAP Financial Measures for investors, *see* AG1060 at 2275-2277, including “Monthly Active Platform Consumers” or “MAPCs” and “Trips.” AG1060 at 2277. And in its supplemental earnings materials, Uber addresses other metrics like “Average Monthly Trips per Rider,” “Wait Times,” and “Active Drivers.” *See infra*, FF 249-264.

Disputed. Expected testimony of Uber expert Justin McCrary and Uber representative Chad Dobbs.

249. Uber defines “Monthly Active Platform Consumers” or “MAPCs” as “the number of unique consumers who completed a Ridesharing or New Mobility ride or received an Uber Eats meal on our platform at least once in a given month, averaged over each month in the quarter.” AG1060 at 2277.

Undisputed.

250. MAPCs is a metric that measures “people who are using Uber to get connected to a driver to go from Point A to Point B or to have food delivered to them.” Dobbs 8/2, 1317:12-1318:4.

Disputed. Expected testimony of Uber expert Justin McCrary and Uber representative Chad Dobbs.

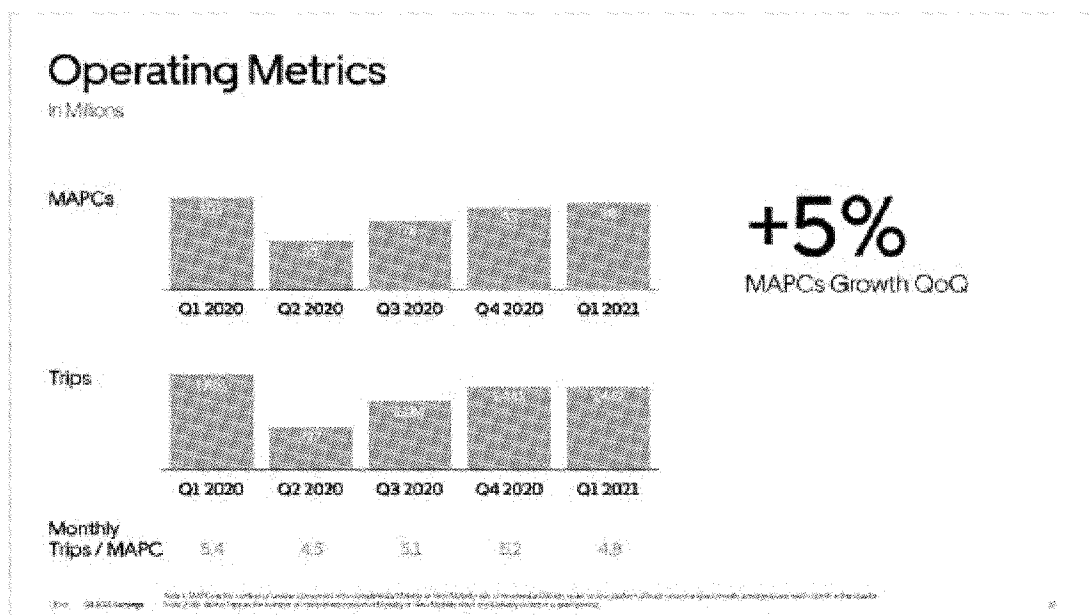
251. In the context of Uber’s Ridesharing business, MAPCs are the number of unique riders who received a completed ride from a driver on Uber’s Ridesharing app at least once in a given month, averaged over each month in the quarter. AG1060 at 2277; Dobbs 8/2, 1317:12-1318:4.

Disputed. Expected testimony of Uber expert Justin McCrary and Uber representative Chad Dobbs.

252. Changes in MAPCs are a key factor in driving Uber’s Gross Bookings. AG1060, at 2386 (“Changes in MAPCs are a key factor driving our Gross Bookings.”); *see also* Dobbs 8/2, 1317:12-1318:4.

Disputed. Expected testimony of Uber expert Justin McCrary and Uber representative Chad Dobbs.

253. The following three images are screenshots from Uber's Q1 2021 Earnings Supplemental Data, which it made available to investors in conjunction with its Q1 2021 Earnings Conference Call. AG1052 at 10-12.



Undisputed.

255. This same trend is present in subsequent Earnings Supplemental Data. AG1053 at 19-21; AG1054 at 15-17; AG1055 at 10-12; AG1057 at 10-12; AG1058 at 10-12.

~~Disputed. Expected testimony of Uber expert Justin McCrary and Uber representative Chad Dobbs.~~

256. The above slides from Uber's Q1 2021 Earnings Supplemental Data also show that the quarter with the highest number of MAPCs in the displayed period also had the highest number of Trips, Gross Bookings, and Revenue, excluding the impact of a \$600 million accrual made for the resolution of historical claims in the United Kingdom relating to the classification of drivers. AG1052 at 10-12.

~~Disputed. Expected testimony of Uber expert Justin McCrary and Uber representative Chad Dobbs.~~

257. This same trend is present in subsequent Earnings Supplemental Data. AG1053 at 19-21; AG1054 at 15-17; AG1055 at 10-12; AG1057 at 10-12; AG1058 at 10-12.

~~Disputed. Expected testimony of Uber expert Justin McCrary and Uber representative Chad Dobbs.~~

258. Uber uses MAPCs to showcase the company's value to investors in other ways, too. AG1060 at 2382. For instance, Uber uses MAPCs to assess the adoption of their platform and frequency of transactions, which Uber considers key factors in the penetration of the countries in which it operates. *Id.* Similarly, Uber uses the number of MAPCs as a metric for measuring the number of trips that could happen on Uber's Ridesharing app. Dobbs 8/2, 1316:4-1318:4.

~~Disputed. Expected testimony of Uber expert Justin McCrary and Uber representative Chad Dobbs.~~

259. In its S-1, Uber informed investors that it planned to use incentives, discounts, and promotions, such as reduced fares on its Ridesharing products or consumer referral programs, to acquire, engage, and retain MAPCs. AG1060 at 2386 ("We expect MAPC growth to continue as consumer adoption of our Personal Mobility...increases, and we plan to continue to use incentives, discounts, and promotions, as well as restaurant expansion, to grow these categories and to acquire,

engage, and retain MAPCs. These incentives and promotions may include new consumer referral programs and coupons for reduced fares on our Ridesharing products...”).

Disputed. Expected testimony of Uber expert Justin McCrary and Uber representative Chad Dobbs. See Uber’s S-1 [Tr. Ex. 3399].

260. Another Key Term for Uber’s Key Metrics is “Trips,” which Uber defines as “the number of completed consumer Ridesharing or New Mobility rides and Uber Eats meal deliveries in a given period.” AG1060 at 2383.

Undisputed.

261. Uber informs investors that Trips are a useful metric to measure the scale and usage of its platform. AG1060 at 2383; *see also* AG1049 at 7 (reporting “Trips” for Q1 2019 – Q1 2020 along with other “Operating Metrics” to investors). Uber believes that “without consumers doing trips, there’s not a whole lot of value being generated.” Dobbs 8/2, 1318:12-1319:18. Uber also believes that “[i]f no one’s doing the trips, investors are probably less likely to invest.” *Id.*

Disputed. Expected testimony of Uber expert Terrence August and Uber representative Chad Dobbs.

262. Uber also reports to investors the number of Average Monthly Trips per Rider. See AG1048 at 13 (reporting “5.7 Average monthly trips/Rider” and “Rider engagement remains strong”); *see also* AG1049 at 7; AG1052 at 10; AG1053 at 19; AG1054 at 15; AG1055 at 10; AG1058 at 10.

Undisputed.

263. Uber reports to investors Wait Times for rides, which are based on the Estimated Time of Arrival, or “ETA,” that riders see in the app after they have entered their pickup and drop-off location. See AG1053 at 10 (reporting improvements in Wait Times from the week of 3/29/2021 to the week of 7/12/2021); *see also* AG1054 at 10; AG1055 at 6; AG1057 at 6.

Undisputed.

264. Uber also reports data regarding the number of “Active Drivers,” which it defines as a “Driver who has completed a Mobility trip on our platform at least once in a given month,” to investors. AG1054 at 9-10 (Supplemental Data slide reporting “[s]upply growth has been a key

priority through 2021. We were focused on not only reviving driver supply, but also growing our courier base, to better position Uber’s platform for future demand”); *see also* AG1058 at 6.

Undisputed.

UBER’S SELF-DESCRIPTION: UBER DESCRIBES ITSELF AS MORE THAN A PLATFORM FOR CONNECTING RIDERS AND DRIVERS.

A. UBER’S MISSION STATEMENT

265. In its S-1, Uber states that its mission is to “ignite opportunity by setting the world in motion.” AG1060 at 2282.

Disputed. Expected testimony of Uber representative Chad Dobbs, Uber expert Justin McCrary, and Uber expert Terrence August. *See* Uber’s S-1 [Tr. Ex. 3399].

266. Uber also states that its Mobility offering “connects consumers with a wide range of transportation modalities, such as ridesharing, carsharing, micromobility, rentals, public transit, taxis, and more—helping customers go almost anywhere they need.” AG1064 at 6; *see also* AG1065 at 6; AG1062 at 3160 (similar).

Undisputed.

267. Uber states that “The foundation of our platform is our massive network, leading technology, operational excellence, and product expertise. *Together, these elements power movement from point A to point B.*” AG1064 at 7; AG1065 at 6-7 (emphasis added). *See also* AG1062 at 3160 (similar), 3161 (same), 3208 (similar), 3250 (similar).

Disputed. Expected testimony of Uber representative Chad Dobbs, Uber expert Justin McCrary, and Uber expert Terrence August. *See* Uber’s S-1 [Tr. Ex. 3399].

B. UBER’S DISCUSSION OF COMPETITORS

268. In its S-1, Uber identifies its competitors as including personal vehicles and public transportation. AG1060 at 2374 (“The markets in which we operate are highly competitive and include well-funded competitors in the ridesharing. . .space[], which have low barriers to entry and low switching costs; well-established and low-cost public transportation options; and personal vehicle ownership.”); *id.* at 2388 (“For example, to rapidly scale our network in new cities by

attracting consumers to our platform and away from personal vehicles or public transportation or to compete effectively in existing cities where competitors offer incentives, we often use Driver incentives. These incentives and our large network help maintain a steady supply of Drivers on our platform.”); Dobbs 8/1, 1129:12–1130:7.

Disputed. Expected testimony of Uber representative Chad Dobbs, Uber expert Justin McCrary, and Uber expert Terrence August. *See* Uber’s S-1 [Tr. Ex. 3399]; Uber’s 2020 10-K [Tr. Ex. 3426]; Uber’s 2021 10-K [Tr. Ex. 3410]; Uber’s 2022 10-K [Tr. Ex. 3402].

269. In its S-1, Uber states that the market for drivers is highly competitive. AG1060 at 2344 (“We operate in an industry in which the competition for Drivers is intense. In this highly competitive environment, the means we use to onboard and attract Drivers may be challenged by competitors, government regulators, or individual plaintiffs.”).

Undisputed.

270. In its S-1, Uber does not identify Amazon or other technology companies as competitors, except in the development of autonomous vehicles, which Uber is no longer involved in. *Id.* at 2465; Dobbs 8/1, 1135:22–1136:12. Uber does not consider itself a competitor of Microsoft, PayPal, Visa, eBay, Facebook Marketplace, or Airbnb, Dobbs 8/1, 1143:6-10; 1144:2-5; 1144:23-1145:3; 1146:8-10; 1147:1-5, 1148:6-8.

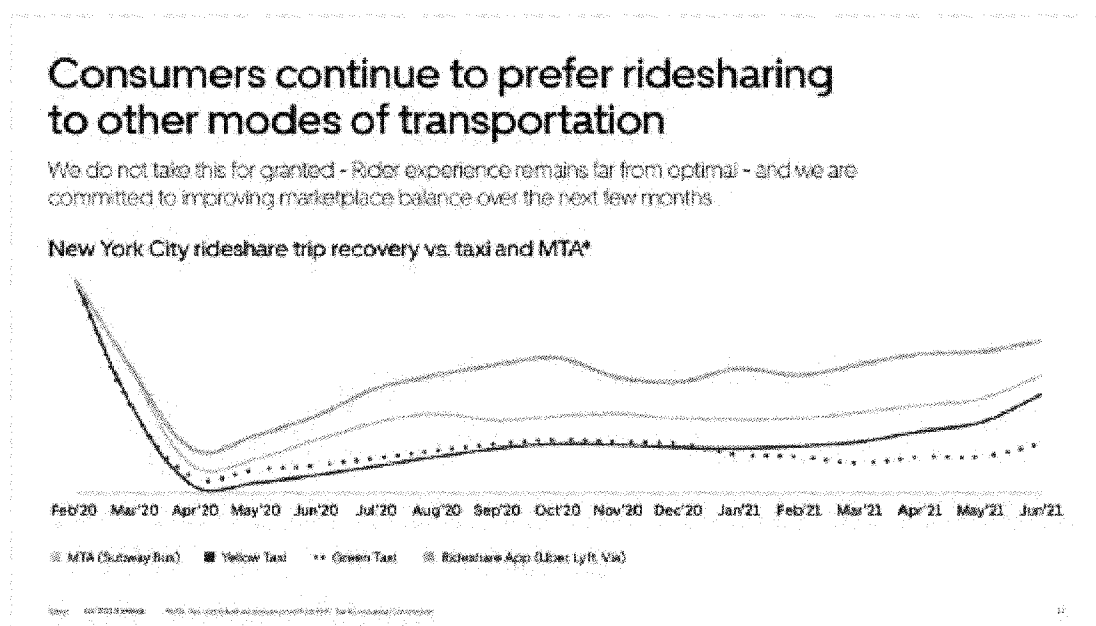
Disputed. Expected testimony of Uber representative Chad Dobbs, Uber expert Justin McCrary, and Uber expert Terrence August. *See* Uber’s S-1 [Tr. Ex. 3399]; Uber’s 2020 10-K [Tr. Ex. 3426]; Uber’s 2021 10-K [Tr. Ex. 3410]; Uber’s 2022 10-K [Tr. Ex. 3402].

271. In Uber’s Q2 2021 Earnings Supplemental Data, Uber reported to investors that “consumers continue to prefer ridesharing to other modes of transportation.” AG1053 at 12.

Undisputed.

272. The following image is a screenshot from Uber’s Q2 2021 Earnings Supplemental Data. AG1053 at 12.

Undisputed.



273. Uber informs its investors that its key operating metrics depend on overall demand for transportation:

- a) Uber informs investors that there is underlying seasonality in *Trips*, similar to that of MAPCs. AG1060 at 2383.
- b) Uber informs investors that it experiences seasonal trends in the number of *MAPCs*. AG1060 at 2383 (“[W]e typically experience higher levels of activity in the fourth quarter from holiday and business demand, as well as lower levels of activity in the third quarter resulting from less usage of our platform during peak tourist season in certain cities, such as Paris.”).
- c) In Uber’s 2022 10-K, Uber reported to investors that “Consumer preferences tend to shift to lower-cost alternatives during recessionary periods and other periods in which disposable income is adversely affected. In such circumstances, consumers may choose to use one of our lower price-point products over a higher Gross Bookings per Trip offering, may choose to forgo our offerings for lower-cost personal vehicle or public transportation alternatives, or may reduce total miles traveled as economic activity decreases. Such a shift in consumer behavior may reduce our network liquidity and may harm our business, financial condition, and operating results.” AG1064 at 30.
- d) In Uber’s 2022 10-K, Uber reported to investors that “In addition, we experience seasonal fluctuations in our financial results. For Mobility, we typically generate higher revenue in our fourth quarter compared to other quarters due in part to fourth quarter holiday and business demand, as well as lower levels of activity in the third

quarter resulting from less usage of our platform during peak tourist season in certain cities, such as Paris.” AG1064 at 23.

- e) Uber reports data to investors regarding the types of Trips that consumers take on its Ridesharing app, including Airport trips, Commute + Workday trips, Social, and Other trips, to investors. AG1054 at 8; *see also* AG1050 at 20 (similar); AG1051 at 28 (similar); AG1056 at 7 (similar).

Disputed. Expected testimony of Uber representative Chad Dobbs, Uber expert Justin McCrary, and Uber expert Terrence August. *See* Uber’s S-1 [Tr. Ex. 3399]; Uber’s 2020 10-K [Tr. Ex. 3426]; Uber’s 2021 10-K [Tr. Ex. 3410]; Uber’s 2022 10-K [Tr. Ex. 3402].

C. UBER’S DISCUSSION OF RISK FACTORS

274. In the S-1, Uber identifies certain risks that investors should consider before investing in Uber’s stock. AG1060 at 2293.

Undisputed.

275. The risks Uber identifies in the S-1 include the following:

- a) That Uber has lowered, and may continue to lower, fares and services fees. AG1060 at 2293, 2307-08.
- b) That Uber has offered, and may continue to offer, significant incentives to drivers and discounts and promotions to consumers. AG1060 at 2293, 2307-08.
- c) That its business will be adversely affected if Drivers were classified as employees instead of independent contractors. AG1060 at 2294, 2309, 2335.
- d) That its platform will become less appealing to users if it is unable to attract or maintain, among other things, “a critical mass of drivers.” AG1060 at 2294, 2310 (explaining Uber experiences driver supply constraints in a number of markets). In discussing this risk, Uber informs investors that it “aim[s] to reduce Driver incentives to improve [its] financial performance.” *Id.* at 2311.
- e) That it has previously suffered significant media coverage and negative publicity, particularly with the “#DeleteUber” campaign in 2017, regarding its brand and reputation, and that a failure to rehabilitate the brand and reputation will harm the business. AG1060 at 2294, 2312. *See id.* at 2312 (noting Uber has “taken significant steps to rehabilitate our brand and reputation”).

Disputed. Expected testimony of Uber representative Chad Dobbs, Uber expert Justin McCrary, and Uber expert Terrence August. *See* Uber’s S-1 [Tr. Ex. 3399]; Uber’s 2020 10-K [Tr. Ex. 3426]; Uber’s 2021 10-K [Tr. Ex. 3410]; Uber’s 2022 10-K [Tr. Ex. 3402].

276. An additional risk that Uber identifies to investors in the S-1 is that its Ridesharing business competes with personal vehicle ownership and usage, “traditional transportation services,” and public transportation. AG1060 at 2306.

Disputed. Expected testimony of Uber representative Chad Dobbs, Uber expert Justin McCrary, and Uber expert Terrence August.

277. Uber also informs investors in the S-1 that its continued growth depends, in part, on growing supply and demand on the platform, increasing existing users’ use of the platform, and increasing the number of rides taken on the platform. AG1060 at 2318.

Disputed. Expected testimony of Uber representative Chad Dobbs, Uber expert Justin McCrary, and Uber expert Terrence August. *See* Uber’s S-1 [Tr. Ex. 3399]; Uber’s 2020 10-K [Tr. Ex. 3426]; Uber’s 2021 10-K [Tr. Ex. 3410]; Uber’s 2022 10-K [Tr. Ex. 3402].

278. Uber also tells investors in the S-1 that its revenue is dependent on the pricing model it uses to calculate consumer fares and driver earnings. AG1060 at 2345.

Disputed. Expected testimony of Uber representative Chad Dobbs, Uber expert Justin McCrary, and Uber expert Terrence August. *See* Uber’s S-1 [Tr. Ex. 3399]; Uber’s 2020 10-K [Tr. Ex. 3426]; Uber’s 2021 10-K [Tr. Ex. 3410]; Uber’s 2022 10-K [Tr. Ex. 3402].

D. EARNINGS CALL STATEMENTS

279. Uber hosts quarterly Earnings Calls for investors, during which Uber executives provide financial results for the previous quarter, financial outlook, and provide updates on Uber’s business and key initiatives. AG1033-035.

Disputed. Expected testimony of Uber representative Chad Dobbs.

280. During his tenure as CEO of Uber, Mr. Khosrowshahi has made statements during Uber’s quarterly Earnings Calls (“calls”) for every quarter between May 2019 and the present. The statements Mr. Khosrowshahi made, either as “Prepared Remarks” or during the calls themselves, were in his capacity as the CEO of Uber on topics he was authorized to speak about. AG1001, ¶ 2. Other Uber executives have also made statements during these same calls. The

statements these executives made during these calls were in their capacity as Uber executives on topics that they were authorized to speak about. *Id.* ¶ 3.

Disputed. Expected testimony of Uber representative Chad Dobbs.

281. AG1017-035 are true and accurate copies of unofficial transcripts that accurately reflect statements made during Uber's Q2 2019-Q4 2023 Earnings Conference Calls. AG1001. AG1001 (attaching AG1017-032 as Exhibits 1A-1P); Cherubin Ant. Test.

Undisputed.

282. AG1036-046 are true and accurate copies of Prepared Remarks for Uber's Q2 2021, Q3 2021, Q4 2021, Q1 2022, Q2 2022, Q3 2022, Q4 2022, Q1 2023, Q2 2023, Q3 2023, and Q4 2023 Earnings Conference Calls. AG1001 (attaching AG1036-043 as Exhibits 2A-2H); Cherubin Ant. Test.

Undisputed.

283. During these quarterly Earnings Calls, both in opening remarks and in response to investor questions, Uber executives routinely tell call participants that ridesharing revenues are a primary source of Uber's value:

- On Uber's Q3 2019 Earnings Call, Mr. Khosrowshahi stated, "First, I'll discuss our Rides business, which reached two very significant milestones in Q3: we achieved \$1 billion in weekly gross bookings; and we generated Rides Adjusted EBITDA of \$631 million, up 52% year-on-year. Importantly, Rides Adjusted EBITDA now more than covers our corporate overhead, which consists of \$623 million in corporate G&A and platform R&D spend." AG1018 at 4.
- On Uber's Q4 2019 Earnings Call, Mr. Khosrowshahi stated, "In Rides, we generated \$742 million in Rides adjusted EBITDA in the fourth quarter, covering our corporate overhead by \$98 million." AG1019 at 4.
- On Uber's Q4 2021 Earnings Call, Mr. Khosrowshahi stated, "We had a strong quarter to close out 2021 on a high note. Our results continued to demonstrate both how eager people are to move around their cities as restrictions ease up" AG1027 at 3. *See also* AG1038 at 1 (same, prepared remarks).

- On Uber’s Q1 2023 Earnings Call, Uber CFO Nelson Chai stated, “At a segment level, Mobility Gross Bookings reached another all-time high, driven by growing consumer engagement across use cases.” AG1043 at 5.¹⁶

Disputed. Expected testimony of Uber representative Chad Dobbs, Uber expert Justin McCrary, and Uber expert Terrence August.

284. Uber executives also mention that Uber takes a share of each ride a driver provides and that this benefits Uber’s bottom line:

- On Uber’s Q3 2019 Earnings Call, Mr. Khosrowshahi stated, “Since Q1, we’ve doubled Q3 Rides ANR to 24% on a constant currency basis, that’s ANR growth 24% on a constant currency basis. *We improved our Rides take rate* by 200 basis points to 22.8%, producing an incremental \$300 million in Q3, 2019 ANR.” AG1018 at 7 (emphasis added).
- On Uber’s Q1 2020 Earnings Call, Mr. Khosrowshahi stated, “As lockdowns began to affect their business in mid-March, we experienced trip and gross bookings declines of nearly 40%. And despite this sudden deterioration, we’re able to maintain strong Q1 take rate of 22.8% and Rides adjusted EBITDA margin of 23.5% of adjusted net revenue, clearly demonstrating the variable cost structure of our Rides business.” AG1020 at 6.
- On Uber’s Q3 2021 Earnings Call, Mr. Khosrowshahi stated, “And Brian, the only thing I want to jump in there is that, as you know, because, you know, *we get a commission on that as pricing increases, it’s been beneficial.*” AG1026 at 11 (emphasis added).
- On Uber’s Q1 2023 Earnings Call, Mr. Khosrowshahi stated, “And, Ross, just to add one point is part of the take-rate increase that you saw Q4 to Q1 on the mobility business is seasonal. Q4 tends to be very, very busy from a demand perspective, so we put more money, so to speak, into incentives to make sure that supply is balanced. Q1, usually demand is a bit lower and supply is elevated. Therefore, we can take down incentives, which has the effect of increasing our take rate.” AG1032 at 7.¹⁷

Disputed. Expected testimony of Uber representative Chad Dobbs, Uber expert Justin McCrary, and Uber expert Terrence August.

¹⁶ See also AG1018 at 4 (similar, Q3 2019); AG1043 at 2 (similar, Q1 2023); AG1046 at 1 (similar, Q4 2023).

¹⁷ See also AG1017 at 4 (similar, Q2 2019); AG1018 at 8 (similar, Q3 2019); AG1021 at 3 (similar, Q2 2020).

285. Also during these Earnings Calls, Uber executives focus on metrics that underscore the relationships between ridesharing bookings and Uber's financial outlook:

- On Uber's Q4 2021 Earnings Call, Mr. Khosrowshahi stated, "So the revenue margin that you see, it's more of an output. Like at the end of the month or at the end of the quarter, we like look at our revenue margins, but we're managing to the business. We're trying to maximize *gross bookings*. We're trying to maximize *trips*. And frankly, we're going to -- we're trying to maximize *throughput*." AG1027 at 12.
- On Uber's Q4 2019 Earnings Call, Mr. Khosrowshahi stated, "We expanded our set of products, serving high-value consumers and use cases, including the launch of Uber Comfort, which drove premium rides growth of 55% in Q4, and Uber for Business, which achieved \$1.2 billion in gross bookings in Q4." AG1019 at 4-5.
- On Uber's Q4 2020 Earnings Call, Uber's CFO Nelson Chai stated, "And so we're pretty optimistic that as we get more COVID recovery, as people start moving, that -- we think we're very bullish in terms of the profitability profiles for our Mobility business." AG1023 at 13.
- On Uber's Q1 2023 Earnings Call, Mr. Khosrowshahi stated, "So, I think as far as the cost structure goes, listen, we manage the cost structure dynamically based on the environment that we're seeing. And I think the results speak for themselves in terms of our bookings growth, trip acceleration on a quarter-on-quarter basis." AG1032 at 4.
- On Uber's Q2 2023 Earnings Call, Mr. Khosrowshahi stated, "Our Mobility business continues to fire on all cylinders, delivering strong and profitable growth, with Trips, Gross Bookings, MAPCs, active drivers, and Adjusted EBITDA all at record highs. In Q2, Mobility Trips grew 26% YoY, driven by broad-based strength across our markets as consumer engagement continued to increase, with monthly Trips per MAPC of 5.4, up 8% YoY. In fact, US & Canada Trips are now fully recovered vs. Q2 2019, alongside a new record for MAPCs." AG1044 at 1.¹⁸

Disputed. Expected testimony of Uber representative Chad Dobbs, Uber expert Justin McCrary, and Uber expert Terrence August.

286. Uber executives also use its Earnings Calls to draw attention to the number of drivers in its network, often emphasizing the superiority of Uber's supply of drivers to meet the demand for ride requests:

- On Uber's Q1 2021 Earnings Call, Mr. Khosrowshahi stated, "In several countries, including the US we'll continue to lean in with targeted incentives for new and existing

¹⁸ See also AG1019 at 4 (similar, Q4 2019); AG1020 at 6 (similar, Q1 2020); see also AG1029 at 25 (similar, Q2 2022).

drivers to build up significant supply which will enable us to achieve maximum velocity as the recovery plays out.” AG1024 at 6.

- On Uber’s Q2 2021 Earnings Call, Mr. Khosrowshahi stated, “On our last call with you, we said that we would lean in to re-ignite driver and courier growth. We’ve done so aggressively, and we’ve made real progress. Matching and balancing supply and demand, market by market, at the right times, at the right places, and at the right price is the key to our marketplace and what we do better than anyone else in the world.” AG1036 at 2.
- On Uber’s Q2 2021 Earnings Call, Mr. Khosrowshahi stated, “Listen, we can’t speak for Lyft. *But I think on balance, we were super aggressive as it relates to driver acquisition levels.* And when we compare the number of new drivers coming on to the platform quarter on quarter, month on month, the monthly active drivers directly against, at least the numbers that we heard from Lyft, our numbers are higher on a direct comparable basis. So I think that if you compare our numbers to Lyft, again, we’re not privy to their numbers. We invested early and aggressively and we’re seeing very positive momentum as a result of that early investment and we’ve been able to pull back as it relates to incentives. And revenue margins in July have come up significantly over Q2 and *the momentum that we see in driver and courier growth is continuing, if not strengthening.* So that gives us a lot of confidence as it relates to Q4, Q3 in terms of revenue margins, take rate and in terms of EBITDA.” AG1025 at 12 (emphasis added).
- On Uber’s Q2 2021 Earnings Call, Uber’s CFO Nelson Chai stated, “The good news is driver supply has been growing and our marketplace dynamics are improving, drivers on our platform are earning more than other alternatives. Our gross bookings continue to grow and in July *our margins are already improving, benefiting from our investment in Q2 to accelerate the flywheel.* In July, new driver additions on Uber in the US grew 30% month over month, that’s right, over 30% month over month, even as we pulled back on incentives and improved our margins. As our investments taper, we expect Mobility to show strong leverage in the back half.” AG1036 at 6 (emphasis added).
- On Uber’s Q3 2021 Earnings Call, Mr. Khosrowshahi stated, “The results are clear: we’ve seen 10 consecutive weeks of active driver growth in the US, resulting in a far better rider experience.” AG1037 at 2.
- On Uber’s Q4 2022 Earnings Call, Mr. Khosrowshahi stated, “So right now, we are seeing kind of the positive feedback loop of more driver supply leading to more demand, leading to more data so that we can target the demand, so that we can match the right driver to the right rider, whether it’s Reserve or on-demand.” AG1031 at 23.¹⁹

¹⁹ See also AG1025 at 11-12 (similar, Nelson Chai, Q2 2021); AG1026 at 4, 5 (similar, Q3 2021); AG1028 at 3 (similar, Q4 2022).

Disputed. Expected testimony of Uber representative Chad Dobbs, Uber expert Justin McCrary, and Uber expert Terrence August.

287. Executives consistently frame Uber's driver incentives to attract and retain drivers as "supply investments" that Uber makes proactively for the health of its ridesharing marketplace:

- On Uber's Q4 2021 Earnings Call, Uber CFO Nelson Chai stated, "Mobility gross bookings grew 67% and the segment generated a healthy adjusted EBITDA margin of 5.1% of gross bookings, up 80 basis points year-over-year even as take rate declined 160 basis points year-over-year, primarily due to our *driver supply investments*." AG1027 at 7 (emphasis added); *see also* AG1038 at 4 (same, prepared remarks).
- On Uber's Q1 2022 Earnings Call, Mr. Khosrowshahi stated, "We're constantly watching supply-demand dynamics. We're constantly watching supply hours. Earner retention is improving. Engagement on the platform is improving. So we feel as good about our driver supply in general, our earner position as we ever have. That said, we know we have to improve. We have to keep increasing the number of new drivers on the platform. We're focused on resurrecting a number of drivers as well, and we're focusing on increasing engagement on the platform because earnings levels are so high." AG1028 at 12.
- On Uber's Q1 2022 Earnings Call, Mr. Khosrowshahi stated, "And so, yes, when we lower incentives, but either through surge or just because we planned, pricing does improve for the end user, which is great. And so we like that marketplace. But again, I would tell you that there are certain marketplaces as markets start up and come at COVID that you should expect there to be some incentives. So as of San Francisco or Boston, which are two markets that are lagging, if you will, on the COVID recovery, *you should assume that there's going to be some incentives to help drive the supply in the marketplace there* and then vice versa, as markets get overheated. *And so we continue to manage that supply. We do a really good job. The team does a great job. And we do think, over time, pricing will continue to improve because our marketplace continues to improve in terms of how it's operating.*" AG1029 at 25 (emphasis added).
- On Uber's Q3 2022 Earnings Call, Mr. Khosrowshahi stated, "In terms of surge and ETAs, they are coming down. Generally, I would say surge levels now are running at a high 20% to 30% range. We're more comfortable with range, call it, in the teens. ETAs on average, are running, call it, six minutes. And we are more comfortable in the five-minute range. What it takes to get to those levels is *simply continued investment in supply*, and we are seeing our supply improve, and generally supply hours are growing at very healthy rates which is a function of new drivers onboarding, but then the average driver who's onboarded being engaged at a higher level than they were last year. *So as we improve the supply demand balance of the marketplaces and we're well on our way, we think we'll get surge levels below 20% and ETA is closer to five minutes. Directionally, we're confident where we're going.*" AG1030 at 17 (emphasis added).

- On Uber's Q2 2023 Earnings Call, Mr. Khosrowshahi stated, "Our path to growth is centered on our ability to grow supply, and our focus on driver growth over the last several years has resulted in a significantly improved consumer experience." AG1044 at 1.

Disputed. Expected testimony of Uber representative Chad Dobbs, Uber expert Justin McCrary, and Uber expert Terrence August.

288. Uber executives routinely describe Uber as involved in and/or focused on transportation:

- On Uber's Q2 2019 Earnings Call, Mr. Khosrowshahi stated, "I think it's -- listen, we -- when we look at the Ridesharing category, our top competitor in this category is car ownership and other ways of getting around. And when I look at how we are faring against car ownership, we're faring very well." AG1017 at 12.
- On Uber's Q3 2019 Earnings Call, Mr. Khosrowshahi stated, "Ultimately there's a lot of demand for *our transportation* and we're becoming kind of a more fundamental part of everyone's lives." AG1018, at 25 (emphasis added).
- On Uber's Q3 2020 Earnings Call, Mr. Khosrowshahi stated, "So I think to sum it up, the evidence that we're seeing is Uber comes back when cities come back. And if anything, Uber is an advantage form of transportation versus alternatives as they come back." AG1022 at 15.
- On Uber's Q4 2022 Earnings Call, Mr. Khosrowshahi stated, "There are over 20 million vehicles that are hailable vehicles in the world, about 4.5 million taxis. It's a huge base of drivers and vehicles that we think we should power, Uber should power, because we are the No. 1 kind of source of on-demand movement in the world." AG1031 at 11.²⁰

Disputed. Expected testimony of Uber representative Chad Dobbs, Uber expert Justin McCrary, and Uber expert Terrence August.

289. Uber executives emphasize the control Uber exerts over the quality and reliability of the ride itself:

- On Uber's Q2 2020 Earnings Call, Mr. Khosrowshahi stated, "First, we built new products for new use cases: our hourly option lets you book one car for several hours so that you can run errands without having to request the trip at each stop along the way; and our Uber for business team has built a new shared ride solution, which

²⁰ See also AG1017 at 24, 28 (similar, Q2 2019); AG1022 at 23-24 (similar, Q3 2020); AG1023 at 19 (similar, Q4 2020); AG1033 at 1 (similar, Q2 2023).

matches only employees from the same company. Look us up if you want to get back to work safely and affordably with your coworkers.” AG2021 at 7.

- On Uber’s Q1 2021 Earnings Call, Mr. Khosrowshahi stated, “As riders come back to the platform, we’re working hard to make sure that their second first trip is as magical as ever.” AG1024 at 5.
- On Uber’s Q1 2022 Earnings Call, Mr. Khosrowshahi stated, “We are continuing to launch Reserve in many, many markets. And it's a combination of reserving premium cars, but also we are offering Reserve for X as well. And it's just a great experience. Like, usually, when I go to dinner with my wife and instead of us hustling down to meet the car, you know that the driver can wait for 15 minutes and it's not a problem as well.” AG1029 at 22.
- On Uber’s Q4 2022 Earnings Call, Mr. Khosrowshahi stated, “Mobility MAPCs grew 17% YoY in Q4 and exceeded 100 million consumers for the first time in Uber’s history. It’s a big milestone, but we’re excited to grow beyond it by continuing to win on reliability, value, and safety.” AG1042 at 1.
- On Uber’s Q1 2023 Earnings Call, Mr. Khosrowshahi stated, “As far as what we are seeing domestically with Lyft, obviously, they’re going through a lot of changes. It’s a very, very strong brand. It’s not going anywhere. And what we’re seeing is they’re looking to price competitively with us. And we think that sets up a competitive environment where *we’re competing on brand, and we’re competing on service and ETAs and accuracy, reliability*, etc. So, we think it sets up a constructive competitive environment going forward.” AG1032 at 21 (emphasis added); *see also* AG1023 at 28 (similar, Q4 2020).

Disputed. Expected testimony of Uber representative Chad Dobbs, Uber expert Justin McCrary, and Uber expert Terrence August.

290. Uber executives emphasize Uber’s control over various aspects of the ridesharing market, like ride pricing, driver earnings, and driver behavior, as well as how Uber actions relating to drivers benefit Uber:

- On Uber’s Q2 2019 Earnings Call, Mr. Khosrowshahi stated, “As far as the pricing power and pricing in general in the U.S., we’re constantly testing and learning in terms of pricing. *I do think that we have pricing power as a category.* As to what’s the best way to exercise that pricing power one way or the other, I think it remains to be seen and we don’t want to talk too much about kind of what our intentions are going forward. But I think as a service, *we have pricing power, and I think it will inure to our ability to grow this business for many, many years to come.*” AG1017 at 19 (emphasis added).
- On Uber’s Q1 2020 Earnings Call, Mr. Khosrowshahi stated, “And as we publicly confirmed several days ago, we’re working through plans *to require drivers and riders* to wear masks or face coverings when using Uber in certain countries, including the

U.S. As a category leader, *we tend to continue to set the standard* for safety moving forward.” AG1020 at 6 (emphasis added).

- On Uber’s Q3 2020 Earnings Call, Mr. Khosrowshahi stated, “So, the driver supply coming back is a bit slower than we would want. Someone [sp] say that’s a first-class problem and we are putting some incentives into the market in order to make sure that drivers come back and they have great earnings opportunities during a period where economically, more and more people need those earnings opportunities.” AG1022 at 14.
- On Uber’s Q2 2021 Earnings Call, Mr. Khosrowshahi stated, “We’ve done a bunch of testing and learning in terms of what incentives work and which ones don’t. All of that is resulting in greater efficiency in terms of our being able to add incremental drivers at a lower cost and are [sp] being able to hold on to drivers because earnings are really high.” AG1025 at 27.
- On Uber’s Q3 2021 Earnings Call, Mr. Khosrowshahi stated, “I think in terms of kind of pricing and the shift over from other forms of transportation, one point I’ll make is that, we have come back from the pandemic faster than almost any other mode of transportation, despite higher pricing, which goes to the earlier comment that I made about the utility of our product and the pricing power that we’ve had.” AG1026 at 14.
- On Uber’s Q4 2023 Earnings Call, Mr. Khosrowshahi stated: “So I think that what we can do better is actually targeting of different trips to different drivers based on their preferences or based on behavioral patterns that they’re showing us, that really is the focus going forward, offering the right trip at the right price to the right driver, which is a win-win-win, the rider wait time is lower, drivers are seeing the trips that they want at the right price and the network gets more and more efficient.” AG1035 at 9.²¹

Disputed. Expected testimony of Uber representative Chad Dobbs, Uber expert Justin McCrary, and Uber expert Terrence August.

291. Uber executives also describe how Uber’s ridesharing business is helping to grow Uber Eats and/or integrated with Uber’s other offerings:

- On Uber’s Q1 2020 Earnings Call, Mr. Khosrowshahi stated: “As far as the demand side, I don’t want to disclose any particulars, but we have been using the Rides platform, and we’re getting more and more effective in using the Rides platform to cross promote into Eats. You’ll see that in some of the designs of our Rides app, which is they’ll be right up front, Rides and Eats and other categories.” AG1020 at 20.

²¹ See also AG1017 at 5, 16-17 (similar, Q2 2019); AG1021 at 7 (similar, Q2 2020); AG1024 at 15; AG1036 at 6 (similar, Nelson Chair, Q2 2021); AG1027 at 5 (similar, Q4 2021); AG1027 at 18 (similar, Nelson Chai, Q4 2021); AG1041 at 2 (similar, Q3 2022); AG1033 at 1 (similar, Q2 2023).

- On Uber’s Q4 2020 Earnings Call, Mr. Khosrowshahi stated, “And as you can imagine, we have more data than anyone else in the field. We understand not only use it within Mobility and within Delivery, but across the two.” AG1023 at 20.
- On Uber’s Q3 2021 Earnings Call, Mr. Khosrowshahi stated, “In the US now, Mobility continues to be a very significant customer acquisition tool for Eats.” AG1026 at 18.²²

Disputed. Expected testimony of Uber representative Chad Dobbs, Uber expert Justin McCrary, and Uber expert Terrence August.

292. Finally, on Uber’s Q3 2023 Earnings Conference Call, Mr. Khosrowshahi stated, “So in terms of the regulatory framework, the first thing I’d say is we can operate under any regulatory framework.” AG1034 at 15; *see also* AG1024 at 14.

Disputed. Expected testimony of Uber representative Chad Dobbs, Uber expert Justin McCrary, and Uber expert Terrence August.

E. PUBLIC STATEMENTS BY EXECUTIVES

293. Dara Khosrowshahi has been the CEO of Uber since August 2017. AG1001, ¶ 1. As part of his duties as CEO of Uber, Mr. Khosrowshahi is regularly interviewed about Uber. *See, e.g.*, AG1001, ¶¶ 4-12.

Undisputed.

294. On February 14, 2018, Mr. Khosrowshahi was interviewed during an episode of “Talks at GS,” a program hosted by Goldman Sachs. AG1001, ¶ 4. The statements Mr. Khosrowshahi made during the interview were in his capacity as the CEO of Uber on topics he was authorized to speak about. *Id.* AG1002, which was attached to AG1001 as Exhibit 3, is a true and accurate video recording of the interview. *Id.*

Undisputed.

295. Mr. Khosrowshahi made the following statements during the February 14, 2018, episode of “Talks at GS”:

- “Well, I think in general we want to be the largest transportation company in the transportation industry, and we are about getting people or things from point A to point

²² *See also* AG1028 at 5, 10 (similar, Q1 2022); AG1032 at 10-11 (similar, Q1 2023); AG1033 at 1 (similar, Q2 2023).

B and obviously we have a very big business in rides in the car business and the way that I think about it is --cars to us, are what books was to Amazon. And, just as Amazon went into other lines of business, we are going to go into other lines of business having to do with mobility and transportation.” AG1002 at 03:04-03:28.

- “And Uber is a company that is touching millions and millions of people across the world. We got 3 million driver partners who are on our platform and earning money on our platform. It is a verb, and if you compare Uber to the travel business, we move more people than the entire airline industry.” AG1002 at 01:46-02:26.
- “Uber is now about taking a car and I want Uber to be about getting from point A to B, whatever the best way from getting point A to B. I want to run the bus systems for a city. You know, think about bus routing, et cetera. I want you to be able to take an Uber and get into the subway. If you know, the trains are running on time and you’ve got real-time data, get in the subway, get out, have an Uber waiting for you right now or know that there’s a bike right there for you, and get to where you’re going in the fastest manner, in the way that makes sense for you, with zero friction.” AG1002 at 17:23-18:03.

Disputed. Expected testimony of Uber representative Chad Dobbs, Uber expert Justin McCrary, and Uber expert Terrence August.

296. On May 31, 2018, Mr. Khosrowshahi was interviewed on CNBC’s “Squawk on the Street.” AG1001, ¶ 5. The statements Mr. Khosrowshahi made during the interview were in his capacity as the CEO of Uber on topics he was authorized to speak about. *Id.* AG1003, which was attached to AG1001 as Exhibit 4, is a true and accurate copy of an “unofficial transcript” of the interview and accurately reflects statements made during the interview. *Id.*

Undisputed.

297. Mr. Khosrowshahi made the following statements during the May 31, 2018, episode of CNBC’s “Squawk on the Street”:

- “I think that with a company of our scale-- you can never take your eye off the core. And so we have to drive that core business, the ride sharing business, and now the markets that we’re in, the core markets, the U.S., Europe, Latin America, India, Middle East, Africa, et cetera. So you really have to keep your eye on the core. But when you’re involved in the transportation marketplace, this is a \$6 trillion market, it is such an enormous market to go after that you have to keep your eye on the core, but you also have to be making investments, forward investments.” AG1003 at 5.
- “We want to be there-- anytime you’re going from point A to B, we want to be there for you. Whether it’s taking a car, whether it’s taking a pooled car, whether it’s taking a bike, whether you should walk, or even now-- we want to build out the capability for

you to take a bus or a subway. We want to be the A to B platform—for transportation—and the biggest one on Earth.” AG1003 at 6.

- “Because we’re becoming a bigger and bigger part of people’s lives. Because we’re becoming a part of everyday life. And, for example, where we play in the transportation space is this is fundamental to how people are going to move.” AG1003 at 8.
- “The amazing thing about technology is that what seems to be fantastical becomes normal, and then becomes rudimentary. I mean listen, the idea that you would, like, push a button and have a car show up in four minutes, seven years ago you’d say, ‘That’s amazing.’ Now, if the car doesn’t show up in four minutes and it shows up in five minutes, you’re like, ‘That was a minute late. I can’t believe that.’ Right? So it’s amazing how the fantastical becomes normal.” AG1003 at 9.

Disputed. Expected testimony of Uber representative Chad Dobbs, Uber expert Justin McCrary, and Uber expert Terrence August.

298. On May 31, 2018, Mr. Khosrowshahi was interviewed as part of Recode’s 2018 Code Conference. AG1001, ¶ 6. The statements Mr. Khosrowshahi made during the interview were in his capacity as the CEO of Uber on topics he was authorized to speak about. *Id.* AG1004, which was attached to AG1001 as Exhibit 5, is a true and accurate video recording of the interview. *Id.*

Undisputed.

299. Mr. Khosrowshahi made the following statements during the May 31, 2018, conference:

- “The face of Uber is the person sitting in the front seat, mostly guys, I actually would like to have more women sitting on the front seat as well, because it’s a great form of employment. You can be your own boss and you don’t need to work full time. That is the face of Uber, right? It is, we build a delightful app. You can get in and get out. But ultimately, the time you spend with our service is really the time that you spend with our driver partners.” AG1004 at 11:24-11:53.
- “We have to build a great service and actually I think one of the fundamental growth blockers that we have are, are we going to be able to have enough driver partners and we’re recruiting enough driver partners long term. So one is, we’re working on a product very actively, two is, we are going to work on earnings and maximizing earnings as long as it doesn’t fundamentally hurt the price of the product.” AG1004 at 13:01-13:28.
- “Listen, I think the competition for drivers is a bigger competition within the economic context because the economy’s getting better. And as you know, unemployment rate

is at an all-time low. So, we have to compete against the economy for drivers. It's not necessarily us versus Lyft, et cetera. It's our sourcing just more drivers, that come on to the platform. And we have to make them more attractive because their alternatives are becoming more attractive." AG1004 at 14:46-15:06.

Disputed. Expected testimony of Uber representative Chad Dobbs, Uber expert Justin McCrary, and Uber expert Terrence August.

300. On May 10, 2019, Mr. Khosrowshahi was interviewed on CNBC's "Squawk Box." AG1001, ¶ 7. The statements Mr. Khosrowshahi made during the interview were in his capacity as the CEO of Uber on topics he was authorized to speak about. *Id.* AG1005, which was attached to AG1001 as Exhibit 6, is a true and accurate copy of an "unofficial transcript" of the interview and accurately reflects statements made during the interview. *Id.*

Undisputed.

301. Mr. Khosrowshahi made the following statement during the May 10, 2019, interview on CNBC's "Squawk Box": "I care if many more drivers *drive for me*, but they can also drive for Lyft." AG1005 at 7 (emphasis added).

Disputed. Expected testimony of Uber representative Chad Dobbs, Uber expert Justin McCrary, and Uber expert Terrence August.

302. On August 9, 2019, Mr. Khosrowshahi was interviewed on an episode of CNBC's "Squawk on the Street" series. AG1001, ¶ 8. The statements Mr. Khosrowshahi made during the interview were in his capacity as the CEO of Uber on topics he was authorized to speak about. *Id.* AG1006, which was attached to AG1001 as Exhibit 7, is a true and accurate video recording of the interview. *Id.* AG1007, which was attached to AG1001 as Exhibit 7A, is a true and accurate copy of an "unofficial transcript" of the interview and accurately reflects statements made during the interview. *Id.*

Undisputed.

303. Mr. Khosrowshahi made the following statements during the August 9, 2019, interview on CNBC's "Squawk on the Street":

- "So, we are in a situation as far as the network effects of this company. This is much more than just the ride share company now, it is a transportation company, where we don't need to continue to increase the marketing and incentives, we can go in with

loyalty plans, both for riders and drivers, that are going to add to leverage in the company and ultimately improve the profitability of company.” AG1007 at 5.

- “Well, listen our mission is igniting opportunity by setting the world in motion. We want to move people and we want to be that service where if you’re going from point A to B in a city, you wake up, you come to us, and we started with cars. But what we’re trying to do is get you to where you’re going and we think that mass transit is an incredibly important part of that equation. It is good for business. The more people come to Uber to check Uber, to come for information every day, the more of an opportunity we have to offer our services for them.” AG1007 at 12-13.

Disputed. Expected testimony of Uber representative Chad Dobbs, Uber expert Justin McCrary, and Uber expert Terrence August.

304. On September 26, 2019, Mr. Khosrowshahi was interviewed on CNBC’s “The Exchange.” AG1001, ¶ 9. The statements Mr. Khosrowshahi made during the interview were in his capacity as the CEO of Uber on topics he was authorized to speak about. *Id.* AG1008, which was attached to AG1001 as Exhibit 8, is a true and accurate copy of an “unofficial transcript” of the interview and accurately reflects statements made during the interview. *Id.*

Undisputed.

305. Mr. Khosrowshahi made the following statements during the September 26, 2019, interview on CNBC’s “The Exchange”:

- “I don’t think we have to raise prices in order to be a profitable company. I think the company can scale. We can improve margins. We’re looking at costs in every single part of the business. But I do think we have pricing power. And we have seen in certain markets because of New York City regulations, for example, we have to increase prices significantly to consumers. It’s not something that we wanted to do, but we have to because of new regulations. And our New York business continues to grow.” AG1008 at 5.
- “So, just like Google has great product search, Amazon has built out their product search all the way to delivery which we think is a terrific experience. And we think about transportation the same way. You’ve got search and you’ve got information, but you can transact all in one go, get loyalty points, use your Uber Cash, etcetera. We think all that together is superior.” AG1008 at 9-10.

Disputed. Expected testimony of Uber representative Chad Dobbs, Uber expert Justin McCrary, and Uber expert Terrence August.

306. On February 7, 2020, Mr. Khosrowshahi was interviewed on CNBC’s “Squawk Box.” AG1001, ¶ 10. The statements Mr. Khosrowshahi made during the interview were in his

capacity as the CEO of Uber on topics he was authorized to speak about. *Id.* AG1009, which was attached to AG1001 as Exhibit 9, is a true and accurate video recording of the interview.

Undisputed.

307. Mr. Khosrowshahi made the following statements during the February 7, 2020, interview on CNBC's "Squawk Box":

- "Yeah so, I think there are different ways of increasing pricing. There's certainly some pricing power that we have in the main line service because it's a service that people use every day. And frankly, it's a service that's well priced and--and it's a great service. So, we do see some pricing power there as well, but there're different ways of increasing pricing." AG1009 at 1:40–2:01.
- "And I think it's leading to the era of actually having a great service-- innovating, for example, for us on safety, making sure that every single time you take Uber you've got your safety area, you can text 911 if anything happens, you can have someone to track your ride. We think you should price based on service." *Id.* at 2:47–3:10.
- "Yeah, a couple of drivers were suspected to have had the virus. So out of an abundance of caution we looked at who rode with him and took them off the system to make sure that they're okay. Now we think that things are now returned to normal. But again, we-- the data that we have allows us to create a great service and this is an advantage." *Id.* at 9:32–9:58.
- "And we wanna make sure that the data doesn't rest with either player, rests in the cloud someplace and it is only access when needed." *Id.* at 10:28–11:29.

Disputed. Expected testimony of Uber representative Chad Dobbs, Uber expert Justin McCrary, and Uber expert Terrence August.

308. On July 12, 2020, Mr. Khosrowshahi was interviewed by Prannoy Roy on an episode of NDTV's "The New Normal" series. AG1001, ¶ 11. The statements Mr. Khosrowshahi made during the interview were in his capacity as the CEO of Uber on topics he was authorized to speak about. *Id.* AG1010, which was attached to AG1001 as Exhibit 10, is a true and accurate video recording of the interview. *Id.*

Undisputed.

309. Mr. Khosrowshahi made the following statement during the July 12, 2020, interview with Mr. Roy:

- “As you know, Uber really was started on the rides business. This is the business of moving people around in cities with either cars or autos, motos, etc, depending on the local means of transportation. And that part of the business, frankly, has been hit very hard. As cities closed down, and they closed down for good reason, our rides business really went to an almost stopped. We’re seeing that business start to return. ... But we took a hard hit. There was a point at which we talked to investors where our rides business, which is really a profit generator of the group, was down 80% year on year.” AG1010 at 2:22-3:3:15.
- “The good news for us is that – And this happened when I first took over the company. We had a priority that we call standing for safety. And at the time that definition of safety was much more about personal safety, especially women riding in Ubers or women drivers in Ubers, making sure that you got to enjoy a safe ride. So we have a team of business leaders and technology product leaders that are completely dedicated to safety. That’s all they think about.” *Id.* at 8:43-9:12.
- “Well, the definition of safety in a COVID world has changed, which is safety from the virus. And as we return from the crisis, what you have seen from us is a real leadership position in terms of making sure that your second first ride on Uber, cause that second time that someone says they’re going to take an Uber is a big step. That second first ride is a safe ride. And we’ve really designed the app almost redesigned the app from the ground up. Riders and drivers are required to use masks. We have selfie technology that was designed to recognize the driver to make sure you’re getting the driver that you’re signing up for. Now, not only are you getting the driver that you signed up for, but we’re making sure that that driver is wearing a mask. Drivers can cancel if riders aren’t wearing a mask.” *Id.* at 9:30-10:19.

Disputed. Expected testimony of Uber representative Chad Dobbs, Uber expert Justin McCrary, and Uber expert Terrence August.

310. On December 20, 2021, Mr. Khosrowshahi was interviewed on an episode of Morgan Stanley’s “Exceptional Leaders/Exceptional Ideas” series. AG1001, ¶12. The statements Mr. Khosrowshahi made during the interview were in his capacity as the CEO of Uber on topics he was authorized to speak about. *Id.* AG1011, which was attached to AG1001 as Exhibit 11, is a true and accurate video recording of the interview.

Undisputed.

311. Mr. Khosrowshahi made the following statements during the December 20, 2021, interview with Morgan Stanley:

- “For us, our mission is all about reimagining the way that the world moves for the better.” AG1011 at 3:07-3:16.

- “The thing that we always come back to is movement. It’s movement of people. And food ... Our core mission is one of movement.” *Id.* at 3:18-3:46.
- “We allow drivers ... to essentially work when they want to. We allow them to work where they want to.” *Id.* at 6:34-6:46.
- “As long as are interests are aligned and as long as we are transparent with earners as to what they can expect to earn and what the best way to earn is, I think we’re fulfilling our mission so to speak.” *Id.* at 7:30-7:45.
- “The platform absolutely has a responsibility to police itself and to police the communities in which it serves. For us, it started with safety. It’s saying that when we have earners join the platform, when we have riders join the platform, we want to make sure that they are safe. You see it, for example, even within the pandemic you know, using our selfie technology to make sure that you have a mask on. We were leading in that and it was because we were standing for safety. And we were taking responsibility on our platform” *Id.* at 9:57-10:35.

Disputed. Expected testimony of Uber representative Chad Dobbs, Uber expert Justin McCrary, and Uber expert Terrence August.

312. In a May 2022 letter to Uber employees obtained by CNBC, Mr. Khosrowshahi made the following statement: “We are Uber, a once-in-a-generation company that became a verb and changed the world forever.” AG1012 at 4. The statements made in that letter to Uber employees were in his capacity as CEO of Uber on topics he was authorized to speak about. *Id.* AG1012 includes a true and accurate copy of the letter obtained by CNBC. Cherubin Ant. Test.

Disputed. Expected testimony of Uber representative Chad Dobbs, Uber expert Justin McCrary, and Uber expert Terrence August.

313. Mr. Khosrowshahi spoke with Steven Levy in relation to an August 1, 2023 article in Wired titled “Uber CEO Will Always Say His Company Sucks.” AG1013. The statements Mr. Khosrowshahi made during the interview and included in the article were in his capacity as the CEO of Uber on topics he was authorized to speak about. *Id.* AG1013 is a true and accurate copy of the Wired article. Cherubin Ant. Test.

Undisputed.

314. Mr. Khosrowshahi made the following statements to Mr. Levy during that interview:

- “When I came to Uber, we decided that safety was not going to be an afterthought, but a core principle. We started innovating in safety features, whether it’s, you know, ‘text to 911’ or ‘track your ride’ or making sure drivers take selfies so that you know they’re the driver you think they are.” AG1013 at 2.
- “Listen, the world is unpredictable. Maybe the safest thing to do is stay home. But if you’re choosing to get out there in the world, we think Uber for Teens is the safest way.” AG1013 at 2.
- “And a lot of the safety features we introduced hurt our growth. We had to make trade-offs. It absolutely slowed us down, but that up-front investment helped us become the most respected transportation brand. And now we’re growing faster and we’re more profitable than our competitors.” AG1013 at 2-3.
- “And we’re seeing audience growth—130 million people come to our platform on a monthly basis. So while prices are higher, people are finding our services more compelling. It certainly hasn’t hurt the business.” AG1013 at 3.
- “We have a bigger competitor [than Lyft]. For us, it’s people who own one or two cars. We’re responsible for less than 5 percent of the miles traveled by those people. The ultimate competitive goal for us is, how do we get you to get rid of that second car, and then, how do we get rid of that first car? That requires us to keep creating more circumstances in which you can use Uber.” AG1013 at 5.
- “Driving is actually much more difficult than you would think, especially in terms of using the system.” AG1013 at 5.
- “I do get nervous before I drive because drivers get graded on every element. As a CEO, the board gives me a performance rating at the end of [the] year. Drivers essentially get a performance review after every trip.” AG1013 at 6.
- “AI is part of the Uber DNA. We use large models to predict your ETA, to process documents that drivers upload, to predict your next order on Uber Eats, or to predict whether someone wants an UberX driver or Comfort, Black, or Electric. With generative AI, we’ll be able to create a personalized assistant for drivers and couriers to maximize their earnings on their terms. If you have an issue, it will be able to talk with you in a very human, personalized way. We’ll be able to advise new drivers who may not know, say, where to go after they’ve dropped someone off.” AG1013 at 7.

Disputed. Expected testimony of Uber representative Chad Dobbs, Uber expert Justin McCrary, and Uber expert Terrence August.

315. In a September 10, 2018, Uber Press Release titled “Uber Welcomes Rebecca Messina as Chief Marketing Officer,” Mr. Khosrowshahi made the following comment: “Very few brands become verbs; for Uber to have achieved this shows how we’ve captured imaginations

and become an important part of our customers' lives. I'm excited to bring on Rebecca as a steward for our brand moving forward." AG1014 at 1. The statements Mr. Khosrowshahi made in that release were in his capacity as CEO of Uber on topics he was authorized to speak about. *Id.* AG1014 is a true and accurate copy of the Uber Press Release. Cherubin Ant. Tes.t

Disputed. Expected testimony of Uber representative Chad Dobbs, Uber expert Justin McCrary, and Uber expert Terrence August.

316. On June 12, 2023, Mr. Khosrowshahi was interviewed on an episode of the podcast Acquired. AG1015. The statements Mr. Khosrowshahi made on the podcast were in his capacity as the CEO of Uber on topics he was authorized to speak about. *Id.* AG1015 is a true and accurate audio recording of the interview. Cherubin Ant. Test.

Undisputed.

317. Mr. Khosrowshahi made the following statements during the June 12, 2023, podcast:

- "The rides business has most of the audience. And generally we move more people from rides to eats. So it's a almost free customer acquisition tool for Eats." AG1015 at 25:00-25:13.
- "We get more new customers from Rides than we do from Google, Meta, Instagram, all of these other channels combined." *Id.* at 25:18-25:27.
- "At a quarter of the cost. So it's a proprietary channel and it's cheaper." *Id.* at 25:29-25:34.
- "I think we're in the scale business. We centrally wire up every form of transportation whether it's people or things." *Id.* at 31:40-31:49.
- "But you're responsible for your customers. We have a very important responsibility to the driver and courier community." *Id.* at 36:25-:36:33.
- "When a company who's a verb asks you to run it, just say yes." *Id.* at 49:23-49:31.
- "And 15% of our growth are international countries where the business model as we had it wasn't legal. So the attitude at the time was well if our business model isn't legal, then like we not coming in until we're invited in. And we took a different tack which is well, what business model is legal and let's adjust our business model to the country versus have the country adjust to the business model." *Id.* at 56:10-56:35.

- “Our working with taxis was an interesting twist. To some extent, they have been definitionally the competition, or we have been the competition or the challenger to those incumbents. At some point, we became much bigger than taxis.” *Id.* at 59:23-59:40.
- “So the consequence of like all this coming together and building for drivers the way that we essentially build for consumers, which is pretty cool and techy” *Id.* at 1:31:11-1:31:20.

Disputed. Expected testimony of Uber representative Chad Dobbs, Uber expert Justin McCrary, and Uber expert Terrence August.

318. In a 2016 interview with CNBC, Travis Kalanick, the former CEO of Uber and one of the co-founders, stated that “our mission is transportation as reliable as running water, everywhere for everyone.” AG1016 at 1. The statements Mr. Kalanick made in that interview were in his capacity as CEO of Uber on topics he was authorized to speak about. *Id.*

Disputed. Expected testimony of Uber representative Chad Dobbs, Uber expert Justin McCrary, and Uber expert Terrence August.

319. Uber’s Rule 30(b)(6) deposition testimony retreats from the above-mentioned public statements by Uber’s Chief Executive Officer. Consider the following examples:

- Dobbs 8/2, 1244:17-21.

Q: From Uber’s perspective, if a rider thought they were purchasing a ride from Uber, would that be a misunderstanding?

A: Yes.

- Dobbs 8/2, 1256:6-10

Q: Outside of this case, would it be accurate to say that it is Uber’s public position that drivers do not driver for Uber?

A: I believe that’s accurate.

- Dobbs 8/2, 1279:4-14

Q: [W]ould it be accurate to describe Uber’s ride-sharing business model as about getting people from Point A to Point B?

A: No, I don’t think – I don’t think that’s the best description. Our business is that we’re a technology business.

- Dobbs 8/2, 1279:23-1280:5

Q: [Does Uber want to be] a service that people use to get from Point A to Point B?

A: No. We have – people aren't using Uber to get from Point A to Point B. They're using our service to connect with drivers to get them from Point A to Point B.

- Dobbs 8/2, 1280:7-12.

Q: Would it be accurate to describe Uber's ride-sharing product as "Push a button and have a car show up?"

A: Maybe that's a very simplified version of how the platform works.

- Dobbs 8/2, 1281:19-1282:12.

Q: Does Uber want people to consider its ride-sharing business to be a trusted form of transportation?

A: I wouldn't consider Uber the form of transportation. The transportation services are coming from the driver. I think Uber would like riders to feel like the – using the Uber platform is reliable, you know, and therefore trusted.

Q: A trusted form of transportation?

A: No. It's a trusted service that riders are accessing. They're using Uber's service, the technology platform, to connect to a driver who's providing the transportation.

- Dobbs 8/2, 1285:6-16

Q: Would it be accurate to say that the term "Uber" has become synonymous with on-demand transportation?

A: I don't know that I'm in a position to answer that on behalf of the general public.

Q: Would there be somebody at Uber who has considered that issue?

A: I don't think so.

- Dobbs 8/2, 1285:18-22

Q: Would you describe Uber's ride-sharing business as being involved in the transportation marketplace?

A: I would not.

Disputed. Expected testimony of Uber representative Chad Dobbs, Uber expert Justin McCrary, and Uber expert Terrence August.

F. BRANDING

320. From 2017 through the present, Uber has marketed itself to Massachusetts residents as a provider of transportation services. Anticipated Testimony of Ilana Bryant (“Bryant Ant. Test.”); Anticipated Testimony of Chris Arning (“Arning Ant. Test.”).

Disputed. Expected testimony of Uber expert On Amir, Uber expert Terrence August, and Uber representative Chad Dobbs.

321. Uber devotes substantial resources to the strategic development and maintenance of its public brand image. Bryant Ant. Test.; Arning Ant. Test.; Anticipated Testimony of Representative of MediaRadar (“MediaRadar Ant. Test.”); *see*, AG1206; AG1207; AG1208; AG1209; AG1210.

Undisputed.

322. Uber carefully manages the content of public facing communications bearing upon the nature of its products and services, as well as those characterizing its relationships with drivers and riders. *Id.*

Disputed. Expected testimony of Uber expert On Amir, Uber expert Terrence August, and Uber representative Chad Dobbs.

323. AG1206 is an accurate copy of a document created by or at the direction of Uber. Dobbs 10/6, 75:13-79:4.

Undisputed.

324. [REDACTED]

Disputed. Expected testimony of Uber expert On Amir, Uber expert Terrence August, and Uber representative Chad Dobbs.

325. [REDACTED]

Disputed. Expected testimony of Uber expert On Amir, Uber expert Terrence August, and Uber representative Chad Dobbs.

326. [REDACTED]

Disputed. Expected testimony of Uber expert On Amir, Uber expert Terrence August, and Uber representative Chad Dobbs.

327. AG1207 is an accurate copy of a document created by or at the direction of Uber. Dobbs 10/6, 101:8-103:17.

Undisputed.

328. [REDACTED]

Disputed. Expected testimony of Uber expert On Amir, Uber expert Terrence August, and Uber representative Chad Dobbs.

329. [REDACTED]

Disputed. Expected testimony of Uber representative Chad Dobbs.

330. [REDACTED]

Disputed. Expected testimony of Uber representative Chad Dobbs.

331. [REDACTED]

Disputed. Expected testimony of Uber expert On Amir, Uber expert Terrence August, and Uber representative Chad Dobbs.

332. As illustrated by the below referenced advertisements, from 2017 through 2023, Uber marketed itself to Massachusetts residents as a provider of transportation services.

Disputed. Expected testimony of Uber expert On Amir, Uber expert Terrence August, and Uber representative Chad Dobbs.

333. In 2017, Uber's mission statement was "to make transportation as reliable as running water everywhere for everyone." AG1131; Bryant Ant. Test.; Cherubin Ant. Test. In 2017, Uber spent in excess of \$38M related to advertising. Bryant Ant. Test.; MediaRadar Ant. Test. In 2017, Uber's advertising efforts communicated a message that its service was a better form of transportation than alternative forms of transportation. Bryant Ant. Test. In 2017, Uber's advertising efforts highlighted convenience, reliability, and efficiency. Bryant Ant. Test.; Arning Ant. Test.

Disputed. Expected testimony of Uber expert On Amir, Uber expert Terrence August, and Uber representative Chad Dobbs.

334. AG1100 includes an accurate depiction of marketing content produced by or at the direction of Uber. Bryant Ant. Test.; MediaRadar Ant. Test. Uber caused AG1100 to be accessible over the internet, on television, and/or in a print medium to Massachusetts residents in 2017. Bryant Ant. Test.; MediaRadar Ant. Test.

Disputed. Expected testimony of Uber expert On Amir, Uber expert Terrence August, and Uber representative Chad Dobbs.

335. AG1101 includes an accurate depiction of marketing content produced by or at the direction of Uber. Bryant Ant. Test.; MediaRadar Ant. Test. Uber caused AG1101 to be accessible over the internet, on television, and/or in a print medium to Massachusetts residents in 2017. Bryant Ant. Test.; MediaRadar Ant. Test.

Disputed. Expected testimony of Uber expert On Amir, Uber expert Terrence August, and Uber representative Chad Dobbs.

336. In 2018, for at least a portion of the year, Uber's mission statement was "to bring transportation—for everyone, everywhere." AG1132; Bryant Ant. Test.; Cherubin Ant. Test. In

2018, Uber spent in excess of \$129M related to advertising. Bryant Ant. Test.; MediaRadar Ant. Test. In 2018, Uber's advertising efforts communicated a value proposition of a safe car ride from A to B. Bryant Ant. Test.; Arning Ant. Test. In 2018, Uber's advertising efforts positioned Uber as a safe, reliable transportation system that enables people to thrive. Bryant Ant. Test.; Arning Ant. Test.

Disputed. Expected testimony of Uber expert On Amir, Uber expert Terrence August, and Uber representative Chad Dobbs.

337. AG1067 includes an accurate depiction of marketing content produced by or at the direction of Uber. Bryant Ant. Test.; MediaRadar Ant. Test. Uber caused AG1067 to be accessible over the internet, on television, and/or in a print medium to Massachusetts residents in 2018. Bryant Ant. Test.; MediaRadar Ant. Test.

Disputed. Expected testimony of Uber expert On Amir, Uber expert Terrence August, and Uber representative Chad Dobbs.

338. AG1102 includes an accurate depiction of marketing content produced by or at the direction of Uber. Bryant Ant. Test.; MediaRadar Ant. Test. Uber caused AG1102 to be accessible over the internet, on television, and/or in a print medium to Massachusetts residents in 2018. Bryant Ant. Test.; MediaRadar Ant. Test.

Disputed. Expected testimony of Uber expert On Amir, Uber expert Terrence August, and Uber representative Chad Dobbs.

339. In 2019, Uber's mission statement was "to bring transportation—for everyone, everywhere." AG1132; Bryant Ant. Test.; Cherubin Ant. Test. In 2019, Uber spent in excess of \$90M related to advertising. Bryant Ant. Test.; MediaRadar Ant. Test. In 2019, Uber's advertising efforts communicated a theme of physical safety for riders. Bryant Ant. Test.; Arning Ant. Test.

Disputed. Expected testimony of Uber expert On Amir, Uber expert Terrence August, and Uber representative Chad Dobbs.

340. AG1103 includes an accurate depiction of marketing content produced by or at the direction of Uber. Bryant Ant. Test.; MediaRadar Ant. Test. Uber caused AG1103 to be accessible

over the internet, on television, and/or in a print medium to Massachusetts residents in 2019.
Bryant Ant. Test.; MediaRadar Ant. Test.

Disputed. Expected testimony of Uber expert On Amir, Uber expert Terrence August, and Uber representative Chad Dobbs.

341. AG1104 includes an accurate depiction of marketing content produced by or at the direction of Uber. Bryant Ant. Test.; MediaRadar Ant. Test. Uber caused AG1104 to be accessible over the internet, on television, and/or in a print medium to Massachusetts residents in 2019.
Bryant Ant. Test.; MediaRadar Ant. Test.

Disputed. Expected testimony of Uber expert On Amir, Uber expert Terrence August, and Uber representative Chad Dobbs.

342. AG1105 includes an accurate depiction of marketing content produced by or at the direction of Uber. Bryant Ant. Test.; MediaRadar Ant. Test. Uber caused AG1105 to be accessible over the internet, on television, and/or in a print medium to Massachusetts residents in 2019.
Bryant Ant. Test.; MediaRadar Ant. Test.

Disputed. Expected testimony of Uber expert On Amir, Uber expert Terrence August, and Uber representative Chad Dobbs.

343. In 2020, Uber's mission statement was "to bring transportation—for everyone, everywhere." AG1132; Bryant Ant. Test.; Cherubin Ant. Test. In 2020, Uber spent in excess of \$162M related to advertising. Bryant Ant. Test.; MediaRadar Ant. Test. In 2020, Uber's advertising efforts communicated a theme of safety to women riders. Bryant Ant. Test.; Arning Ant. Test. In 2020, Uber's advertising efforts communicated Uber rides as a safe, trustworthy form of transportation during the pandemic. Bryant Ant. Test.; Arning Ant. Test.

Disputed. Expected testimony of Uber expert On Amir, Uber expert Terrence August, and Uber representative Chad Dobbs.

344. AG1106 includes an accurate depiction of marketing content produced by or at the direction of Uber. Bryant Ant. Test.; MediaRadar Ant. Test. Uber caused AG1106 to be accessible over the internet, on television, and/or in a print medium to Massachusetts residents in 2020.
Bryant Ant. Test.; MediaRadar Ant. Test.

Disputed. Expected testimony of Uber expert On Amir, Uber expert Terrence August, and Uber representative Chad Dobbs.

345. AG1107 includes an accurate depiction of marketing content produced by or at the direction of Uber. Bryant Ant. Test.; MediaRadar Ant. Test. Uber caused AG1107 to be accessible over the internet, on television, and/or in a print medium to Massachusetts residents in 2020. Bryant Ant. Test.; MediaRadar Ant. Test.

Disputed. Expected testimony of Uber expert On Amir, Uber expert Terrence August, and Uber representative Chad Dobbs.

346. AG1108 includes an accurate depiction of marketing content produced by or at the direction of Uber. Bryant Ant. Test.; MediaRadar Ant. Test. Uber caused AG1108 to be accessible over the internet, on television, and/or in a print medium to Massachusetts residents in 2020. Bryant Ant. Test.; MediaRadar Ant. Test.

Disputed. Expected testimony of Uber expert On Amir, Uber expert Terrence August, and Uber representative Chad Dobbs.

347. In 2021, Uber's mission statement was "to bring transportation—for everyone, everywhere." AG1132; Bryant Ant. Test.; Cherubin Ant. Test. In 2021, Uber spent in excess of \$308M related to advertising. Bryant Ant. Test.; MediaRadar Ant. Test. In 2021, Uber's advertising efforts communicated a theme of safe, affordable, efficient, and convenient rides. Bryant Ant. Test.; Arning Ant. Test.

Disputed. Expected testimony of Uber expert On Amir, Uber expert Terrence August, and Uber representative Chad Dobbs.

348. AG1109 includes an accurate depiction of marketing content produced by or at the direction of Uber. Bryant Ant. Test.; MediaRadar Ant. Test. Uber caused AG1109 to be accessible over the internet, on television, and/or in a print medium to Massachusetts residents in 2021. Bryant Ant. Test.; MediaRadar Ant. Test.

Disputed. Expected testimony of Uber expert On Amir, Uber expert Terrence August, and Uber representative Chad Dobbs.

349. AG1110 includes an accurate depiction of marketing content produced by or at the direction of Uber. Bryant Ant. Test.; MediaRadar Ant. Test. Uber caused AG1110 to be accessible

over the internet, on television, and/or in a print medium to Massachusetts residents in 2021.
Bryant Ant. Test.; MediaRadar Ant. Test.

Disputed. Expected testimony of Uber expert On Amir, Uber expert Terrence August, and Uber representative Chad Dobbs.

350. In 2022, for at least a portion of the year, Uber's mission statement was "To reimagine the way the world moves for the better." AG1133; Bryant Ant. Test. In 2022, Uber spent in excess of \$197M related to advertising. Bryant Ant. Test.; MediaRadar Ant. Test. In 2022, Uber's advertising efforts communicated transportation options available in the Uber app to enable riders to choose the ride that was right for them or reserve a ride ahead of time. Bryant Ant. Test.

Disputed. Expected testimony of Uber expert On Amir, Uber expert Terrence August, and Uber representative Chad Dobbs.

351. AG1111 includes an accurate depiction of marketing content produced by or at the direction of Uber. Bryant Ant. Test.; MediaRadar Ant. Test. Uber caused AG1111 to be accessible over the internet, on television, and/or in a print medium to Massachusetts residents in 2022. Bryant Ant. Test.; MediaRadar Ant. Test.

Disputed. Expected testimony of Uber expert On Amir, Uber expert Terrence August, and Uber representative Chad Dobbs.

352. AG1112 includes an accurate depiction of marketing content produced by or at the direction of Uber. Bryant Ant. Test.; MediaRadar Ant. Test. Uber caused AG1112 to be accessible over the internet, on television, and/or in a print medium to Massachusetts residents in 2022. Bryant Ant. Test.; MediaRadar Ant. Test.

Disputed. Expected testimony of Uber expert On Amir, Uber expert Terrence August, and Uber representative Chad Dobbs.

353. AG1113 includes an accurate depiction of marketing content produced by or at the direction of Uber. Bryant Ant. Test.; MediaRadar Ant. Test. Uber caused AG1113 to be accessible over the internet, on television, and/or in a print medium to Massachusetts residents in 2022. Bryant Ant. Test.; MediaRadar Ant. Test.

Disputed. Expected testimony of Uber expert On Amir, Uber expert Terrence August, and Uber representative Chad Dobbs.

354. AG1114 includes an accurate depiction of marketing content produced by or at the direction of Uber. Bryant Ant. Test.; MediaRadar Ant. Test. Uber caused AG1114 to be accessible over the internet, on television, and/or in a print medium to Massachusetts residents in 2022. Bryant Ant. Test.; MediaRadar Ant. Test.

Disputed. Expected testimony of Uber expert On Amir, Uber expert Terrence August, and Uber representative Chad Dobbs.

355. In 2023, Uber's mission statement was "To reimagine the way the world moves for the better." AG1133; Bryant Ant. Test. In 2023, Uber spent in excess of \$84M related to advertising. Bryant Ant. Test.; MediaRadar Ant. Test. In 2023, Uber's advertising efforts communicated Uber as a method of transportation to the airport. Bryant Ant. Test.

Disputed. Expected testimony of Uber expert On Amir, Uber expert Terrence August, and Uber representative Chad Dobbs.

356. AG1115 includes an accurate depiction of marketing content produced by or at the direction of Uber. Bryant Ant. Test.; MediaRadar Ant. Test. Uber caused AG1115 to be accessible over the internet, on television, and/or in a print medium to Massachusetts residents in 2023. Bryant Ant. Test.; MediaRadar Ant. Test.

Disputed. Expected testimony of Uber expert On Amir, Uber expert Terrence August, and Uber representative Chad Dobbs.

357. AG1116 includes an accurate depiction of marketing content produced by or at the direction of Uber. Bryant Ant. Test.; MediaRadar Ant. Test. Uber caused AG1116 to be accessible over the internet, on television, and/or in a print medium to Massachusetts residents in 2023. Bryant Ant. Test.; MediaRadar Ant. Test.

Disputed. Expected testimony of Uber expert On Amir, Uber expert Terrence August, and Uber representative Chad Dobbs.

358. AG1117 includes an accurate depiction of marketing content produced by or at the direction of Uber. Bryant Ant. Test.; MediaRadar Ant. Test. Uber caused AG1117 to be accessible

over the internet, on television, and/or in a print medium to Massachusetts residents in 2023.
Bryant Ant. Test.; MediaRadar Ant. Test.

Disputed. Expected testimony of Uber expert On Amir, Uber expert Terrence August, and Uber representative Chad Dobbs.

359. AG1999 includes an accurate depiction of marketing content produced by or at the direction of Amtrak. MediaRadar Ant. Test. AG1999 is representative of transportation sector marketing. Arning Ant. Test.

Disputed. Expected testimony of Uber expert On Amir, Uber expert Terrence August, and Uber representative Chad Dobbs.

360. AG1998 includes an accurate depiction of marketing content produced by or at the direction of Greyhound. MediaRadar Ant. Test. AG1998 is representative of transportation sector marketing. Arning Ant. Test.

Disputed. Expected testimony of Uber expert On Amir, Uber expert Terrence August, and Uber representative Chad Dobbs.

361. AG1997 includes an accurate depiction of marketing content produced by or at the direction of American Airlines. MediaRadar Ant. Test. AG1997 is representative of transportation sector marketing. Arning Ant. Test.

Disputed. Expected testimony of Uber expert On Amir, Uber expert Terrence August, and Uber representative Chad Dobbs.

362. AG1996 includes an accurate depiction of marketing content produced by or at the direction of Delta Air Lines. MediaRadar Ant. Test. AG1996 is representative of transportation sector marketing. Arning Ant. Test.

Disputed. Expected testimony of Uber expert On Amir, Uber expert Terrence August, and Uber representative Chad Dobbs.

363. AG1995 includes an accurate depiction of marketing content produced by or at the direction of Boston Coach. MediaRadar Ant. Test. AG1995 is representative of transportation sector marketing. Arning Ant. Test.

Disputed. Expected testimony of Uber expert On Amir, Uber expert Terrence August, and Uber representative Chad Dobbs.

364. AG1993–AG1994 include accurate depictions of marketing content produced by or at the direction of Universal Taxi Dispatch. MediaRadar Ant. Test. AG1993-1994 are representative of transportation sector marketing. Arning Ant. Test.

Disputed. Expected testimony of Uber expert On Amir, Uber expert Terrence August, and Uber representative Chad Dobbs.

365. AG1992 includes an accurate depiction of marketing content produced by or at the direction of Etsy. MediaRadar Ant. Test. AG1992 is representative of marketplace technology sector marketing. Arning Ant. Test.

Disputed. Expected testimony of Uber expert On Amir, Uber expert Terrence August, and Uber representative Chad Dobbs.

366. AG1991 includes an accurate depiction of marketing content produced by or at the direction of Poshmark. MediaRadar Ant. Test. AG1991 is representative of marketplace technology sector marketing. Arning Ant. Test.

Disputed. Expected testimony of Uber expert On Amir, Uber expert Terrence August, and Uber representative Chad Dobbs.

367. AG1990 includes an accurate depiction of marketing content produced by or at the direction of Sittercity. MediaRadar Ant. Test. AG1990 is representative of marketplace technology sector marketing. Arning Ant. Test.

Disputed. Expected testimony of Uber expert On Amir, Uber expert Terrence August, and Uber representative Chad Dobbs.

368. AG1989 includes an accurate depiction of marketing content produced by or at the direction of Rover. MediaRadar Ant. Test. AG1989 is representative of marketplace technology sector marketing. Arning Ant. Test.

Disputed. Expected testimony of Uber expert On Amir, Uber expert Terrence August, and Uber representative Chad Dobbs.

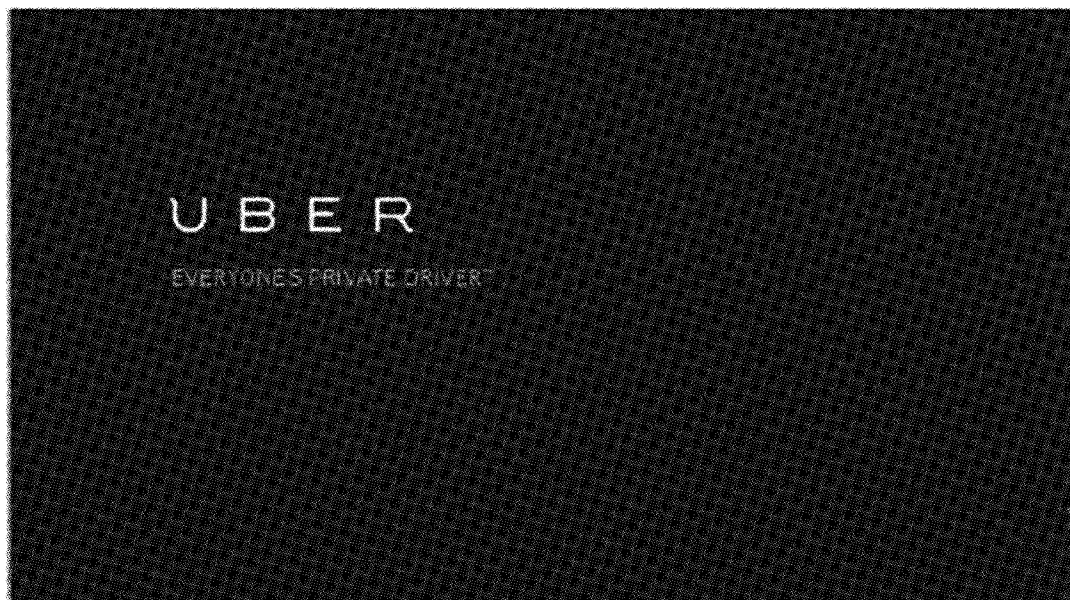
G. SERVICE MARKS

369. Uber has registered multiple service marks with the United States Patent & Trademark Office (“USPTO”) that identify it as a source of transportation services, including

“DOORS ARE ALWAYS OPENING,” “EVERYONE’S PRIVATE DRIVER,” “GET YOUR RIDE RIGHT,” “ONCE UPON A RIDE,” and “WHAT MOVES US.” *See* FF 372-374.

Disputed. Expected testimony of Uber representative Chad Dobbs and Uber expert On Amir.

370. Uber registered the service mark “EVERYONE’S PRIVATE DRIVER” with the USPTO in 2015. AG1194. AG1194 is a true and accurate copy of the trademark record for this service mark. Dobbs 8/1, 1040:18-1042:22. AG1195 is a true and accurate copy of Uber’s application for that word mark. Cherubin Ant. Test. In its application, Uber told the USPTO it intended to use the mark specifically in connection with its “computer software for *coordinating transportation services*, namely, software for the *automated scheduling and dispatch of motorized vehicles*.” AG1195 at 4 (emphasis added). AG1196 is a true and accurate copy of Uber’s Statement of Use (*i.e.*, Uber’s submission to the USPTO establishing it was actually using the mark in



commerce for this intended purpose). Dobbs 8/1, 1046:14-1047:10; AG1196 at 1593; *see* 15 U.S.C. § 1051(d) (requiring applicants to submit a “Statement of Use” for all marks registered with the USPTO). That submission included a screenshot of the mark “EVERYONE’S PRIVATE DRIVER” displayed directly below the name “UBER” in its app. AG1196 at 1596-1598 (depicted below). The mark was thereafter registered as a service mark belonging to Uber by the USPTO. AG1199. Uber eventually cancelled the service mark on March 4, 2022. *Id.*

Disputed. Expected testimony of Uber representative Chad Dobbs.

371. Uber has registered other transportation-focused service marks with the USPTO:

- AG1200 is a true and accurate copy of Uber's application for the word mark "ONCE UPON A RIDE." Cherubin Ant. Test. Uber told the UPSTO it intended to use this mark in connection with advertising related to Uber's transportation services. *See* AG1200 at 3 ("ONCE UPON A RIDE" for "providing talks, conferences, seminars, and workshops in the fields of inspiration and transportation"). AG1201 is a true and accurate copy of Uber's Statement of Use. Dobbs 8/1, 1061:23-1062:9. Uber attached evidence that it had used the mark "ONCE UPON A RIDE" as early as January 31, 2019, and continued to use the mark on Uber's webpage sharing stories of "real *Uber trips*, as told by the actual riders and drivers that experienced them." AG1201 at 5, 8-10 (emphasis added).
- AG1202 is a true and accurate copy of Uber's application for the word mark "WHAT MOVES US." Cherubin Ant. Test. Uber told the UPSTO it intended to use this mark in connection with advertising related to Uber's transportation services. *See* AG1202 ("WHAT MOVES US" for "providing an interactive website featuring information regarding transportation . . ."). AG1225 is a true and accurate copy of Uber's Statement of Use. Uber had used the mark "WHAT MOVES US" as early as November 28, 2018 and continued to use the mark on its webpage providing information on its pricing principles, service fees, and ride matching services. AG1225 at 5, 8-14.
- AG1203 is a true and accurate copy of Uber's September 2018 application for the service mark "DOORS ARE ALWAYS OPENING." Cherubin Ant. Test. Uber told the USPTO it intended to use the mark in connection with "providing a website featuring information about transportation; transportation services, namely, arranging, scheduling, coordinating, managing, and booking transportation and delivery." AG1203; *see also* AG 1204. AG1204 is a true and accurate web capture of the U.S. Patent and Trademark Office record for this service mark. Dobbs 8/1, 1092:3-1093:12. Uber abandoned this mark on September 24, 2020. AG1204.
- AG1205 is a true and accurate copy of Uber's October 2022 application for the service mark "GET YOUR RIDE RIGHT." Dobbs 8/1, 1099:6-1100:22. Uber told the USPTO it intended to use the mark in connection with "transport." AG1205 at 3.

Disputed. Expected testimony of Uber representative Chad Dobbs.

372. During the Rule 30(b)(6) deposition:

- Uber was not aware of the number of active service marks that Uber had registered with the USPTO. *See* Dobbs 8/1, 1040:6-10.
- Claimed that Uber's registration of the mark "EVERYONE'S PRIVATE DRIVER" "was meant to suggest to riders or prospective riders that they could use the Uber app to connect with their very own private driver." Dobbs 8/1, 1042:8-16; 1049:13-

1050:19. *See id.* at 1055:6-1056:4 (Uber disclaiming that anyone would associate the mark with Uber providing the ride because “Uber is not the driver”).²³

- Claimed that it had stopped using mark “EVERYONE’S PRIVATE DRIVER” no later than “early 2014.” Dobbs 8/1, 1045:2-9. *See id.* 1053:17-21 (same). *But see* AG1196 at 1591 (showing use of the mark by Uber in 2015, over one year later).
- Could not explain the reason for why Uber had cancelled the “EVERYONE’S PRIVATE DRIVER” mark on March 4, 2022. Dobbs 8/1, 1043:16-1046:9.

Disputed. Expected testimony of Uber representative Chad Dobbs.

THE ATTORNEY GENERAL’S EXPERTS

373. The Court will hear testimony from the Attorney General’s expert witnesses—Dr. David Weil, Dr. Lindsey Cameron, Dan Leistra-Jones, Ilana Bryant, Chris Arning, and Dr. James Parrott. Their anticipated testimony is summarized below.

Disputed, including because experts are subject to Daubert motions.

A. ANTICIPATED TESTIMONY OF DR. DAVID WEIL

374. David Weil, Ph. D. is a professor of social policy and economics at the Heller School for Social Policy and Management at Brandeis University. Weil Ant. Test. Dr. Weil was the Wage and Hour Administrator for the United States Department of Labor’s Wage and Hour Division from 2014 to 2017. *Id.* He specializes in employment and labor market policy; regulation; transparency policy; and the impacts of industry restructuring on employment, work, and business performance. *Id.* A major emphasis of his research, writing, and teaching over the past thirty years concerns how market structure and competitive forces shape business strategy and, in turn, on the organization of work and on business compliance with regulations. *Id.* An equally important, and related, emphasis in his research, writing, and teaching has been analyzing business restructuring in response to changing capital market pressures and economic competition

²³ Uber similarly attempted to disclaim the meaning of the phrase “Uber has powered the movement of millions from A to B” in one of its applications to the USPTO. *See* Dobbs 8/1, 1077:15-1078:23 (Uber suggesting the phrase refers only to Uber’s technology).

and how evolving business models affects the organization of work and conditions at the workplace. *Id.* He is an expert in the assessment of a company's business model.

Disputed. Expected testimony of AGO expert David Weil.

375. Dr. Weil has been asked by the Attorney General to opine on (1) the nature of Uber's business models; (2) how Uber achieves its service missions operationally; (3) what Uber's core business strategy says about the nature of its business models; and (4) how Uber's business model compares with other platform companies. Weil Ant. Test.

Undisputed.

376. A business model comprises the core methods a company uses to maximize profits in the long run. *Id.* It represents the underlying logic of the company and reveals the core decisions a company makes to sustain and increase its revenue and profitability. *Id.* It involves consideration of how a company maintains and expands its customer base and prices its services in a way that translates customers' desire for that service into revenue. *Id.* A business model also delineates how a company controls the costs of providing its service by selecting its most efficient scale of operation as well as its fixed and variable costs. *Id.* Understanding a business model is fundamental to an analysis of the nature of services a company provides and the decisions it makes. *Id.*

Disputed. Expected testimony of AGO expert David Weil and expected testimony of Uber expert Justin McCrary.

377. Dr. Weil will opine that the business model underlying both Uber and Lyft is best characterized as providing reliable, efficient, quality transportation to allow their customers—riders—to go from point A to point B. Weil Ant. Test. In support of this opinion, Dr. Weil will testify that based on his review of Uber's past and current operations, Uber has consistently displayed three organizational principles, the persistence of which reveal the essential features of Uber's profitability and business model. *Id.* They are:

- The customer for Uber's transportation services is the rider. Uber has built a brand around providing comprehensive transportation to people who need to get from point A to point B. The rider is the primary focus of these branding efforts. Branding efforts

include the refinement of multiple product lines (*e.g.*, Uber X) developed to appeal to the needs of different types of customers and intended to create long term brand loyalty and internal systems (driver rating tools, rules of driver engagement, and other driver-focused carrots and sticks) that ensure that riders receive services consistent with brand expectations. This focus on the rider is also revealed in Uber's pricing methods that seek to optimize revenue streams by charging prices based on customer preferences (*i.e.*, "willingness to pay"). *Id.*

- Uber provides its transportation services by managing its labor force of drivers dynamically using its platform technology, while also carefully controlling associated unit labor costs. Uber has developed a technology platform consisting of sophisticated pricing algorithms, bonus programs and other driver incentive systems in order to dynamically service the level of real time rider demand. Uber's technology platform thereby provides it a unique capability to adjust the number of drivers it needs to fulfill rider demand to real-time market conditions. At the same time, Uber carefully calibrates driver fares, bonuses and other driver incentive programs to driver willingness to work so as to offset its costs while still increasing the efficiency and productivity of drivers while they drive. *Id.*
- Uber's profit streams arise from the difference between revenues generated by their customers (riders) and the costs they incur in paying drivers to meet that demand. Uber seeks to maximize the difference between their operational revenues and costs by setting rider prices reflective of their willingness to pay and seeking to contain the costs for drivers by setting carefully calibrated fares based on drivers' willingness to accept rides at the time and in the place where they are most needed by the companies at the same time as increasing their efficiency (productivity) in the number of rides provided in a given amount of time through bonus and other incentive programs. *Id.*

Disputed. Expected testimony of AGO expert David Weil and expected testimony of Uber expert Justin McCrary.

378. In support of his opinion, Dr. Weil will discuss Uber-specific facts relating to these issues. *Id.* This will include facts relating to Uber's core organizational policies, Uber's underlying profit model, Uber's decoupling of rider and driver pricing, the evolution of Uber's matching of riders and drivers, Uber's efforts to build and maintain an identifiable brand, Uber's incorporation of rider willingness to pay into its rider pricing efforts, Uber's incorporation of driver willingness to work into its driver earnings offers, Uber's use of incentives to adjust driver supply, and Uber's efforts to reduce driver-related costs by increasing driver productivity. *Id.* Dr. Weil will also contrast these aspects of Uber's business model to the business models of other companies that are commonly accepted as platform businesses. *Id.*

~~Disputed. Expected testimony of AGO expert David Weil and expected testimony of Uber expert Justin McCrary.~~

B. ANTICIPATED TESTIMONY OF DR. LINDSEY CAMERON

379. Lindsey Cameron, Ph. D. is an Assistant Professor of Management at the Wharton School of the University of Pennsylvania in Philadelphia, PA. Cameron Ant. Test. She specializes in organizational control and management, with a focus on algorithmic management and on-demand organizations. *Id.* She teaches in the field, has written and researched extensively on these topics, is a reviewer of academic journals on management, and has previously serve as an expert witness on employee misclassification matters. *Id.* She is an expert in organizational control and algorithmic management as used by on-demand companies.

~~Disputed. Expected testimony of AGO expert Lindsey Cameron and expected testimony of Uber expert Steven Tadelis.~~

380. Dr. Cameron has been asked by the Attorney General to (1) provide an overview of organizational control and algorithmic management as it applies to on-demand organizations; (2) apply organizational theories on if, and if so how, on-demand companies execute organizational control over their workers; (3) apply organizational theories on if, and if so how, ride-hailing companies execute organizational control over their workers; (4) provide an overview of narratives used by ride-hailing and on-demand companies to influence drivers and other stakeholders; (5) assess whether, and if so how, Uber implements organizational control, as defined by the literature on organizational theory and behavior. Cameron Ant. Test.

~~Disputed. Expected testimony of AGO expert Lindsey Cameron and expected testimony of Uber expert Steven Tadelis.~~

381. Dr. Cameron will opine that Uber deploys organizational control through its algorithmic management systems and that this form of control is integral to its business model and is evident in its relationship with drivers. Cameron Ant. Test. She will further opine that Uber deploys certain narratives to influence drivers' behavior. *Id.*

~~Disputed. Expected testimony of AGO expert Lindsey Cameron and expected testimony of Uber expert Steven Tadelis.~~

382. Dr. Cameron will testify to the following:

- That Lyft employs algorithms to retain organizational control over drivers. Cameron Ant. Test. “Organizational control” is defined as any process that aligns and individual worker’s capabilities, activities and performance with the organization’s goals and aspirations. *Id.* There are two components to organizational control—general and detailed. *Id.* General control refers to the overarching accommodation of workers to the overall aims of the enterprise. *Id.* Detailed control refers to the organization’s control over the execution of the work itself. Organizations must balance general and detailed control measures to maintain a motivated workforce and achieve profitability. *Id.* Dr. Cameron will testify that Uber’s upfront pricing mechanisms; planned incentives and loyalty programs; algorithmically mediated customer ratings and related systems of warnings, suspensions, deactivation; and reactivation process are examples of the general control Uber exercises over drivers. *Id.* She will point to Uber’s matching algorithm; monitoring and tracking of drivers; and driver experimentation as examples of the detailed control Uber exercises over drivers. *Id.*
- That Uber is an on demand company that relies upon algorithmic management for their organizational control. *Id.* Algorithmic management is a system of control over workers where self-learning algorithms are given responsibility for making and executing decisions affecting labor, thereby limiting human involvement and oversight over labor. *Id.* Uber has designed an algorithmic management system to exercise control over drivers’ behaviors while also obfuscating their intent and inherent power in their relationship with drivers. *Id.* The algorithmic management system relied upon by Uber is more comprehensive, instantaneous, interactive, and opaque than other management systems resulting in unprecedented quantification and intensification of organizational control over drivers. *Id.*
- That there are four features of an algorithmic management system that contribute to its quantification and intensification of control. *Id.* First, algorithms are engineered to monitor and track workers. *Id.* Second, the algorithm collects data from workers to feed back into the algorithm to make the management of the worker more efficient. *Id.* Third, algorithmic control is more interactive than other forms of organizational control because algorithms enable interactive participation from multiple parties in different locations. *Id.* This allows the on-demand company like Uber to use the information collected to run experiments. *Id.* Fourth, algorithms are more opaque than previous forms of organizational control because the data and algorithms used to control workers are usually proprietary and undisclosed. *Id.*
- That as an on-demand organization, Uber integrates customer control through its rider ratings system, into its algorithmic management system. *Id.* This, in fact, outsources the task of managing drivers to Uber’s customers, the riders, empowering them to directly monitor, evaluate, and report on the drivers’ job performance. *Id.*
- That Uber operates its algorithmically mediated management system as a closed labor market platform, as opposed to an open labor market platform (where customers are free to choose the freelancers to hire for their project facilitated by the app’s matching

algorithm). *Id.* While both open and closed labor market platforms rely upon customer ratings, in a closed labor market platform like Uber, the algorithmic management is more deeply embedded in the labor process. *Id.*

Disputed. Expected testimony of AGO expert Lindsey Cameron and expected testimony of Uber expert Steven Tadelis.

383. Dr. Cameron will also testify:

- That Uber superficially provides drivers a sense of autonomy but retains organizational control over various processes and decisions. Cameron Ant. Test. Uber employs three practices to promote that false sense of autonomy—constant and confined choice, gamification, and workplace games. *Id.*
- With constant and confined choices, the algorithm gives the driver a narrow set of choices that must be made in a short period of time (*e.g.*, accepting or rejecting a ride request in a 15 second window). *Id.* Whether the driver engages with the algorithm within these confined boundaries, or risks sanction by the companies by attempting to deviate from it, the workers’ choices are constrained by a predefined option set mediated by the algorithmic management system. *Id.*
- Uber obfuscates control through gamification, which applies elements of a game in the algorithmic management system to entice drivers to work longer hours. Cameron Ant. Test. By making the work appear more fun, Uber is better able to position the drivers’ behavior with the companies’ goals. *Id.*
- Unlike gamification which relies upon rules imposed by the organization, workplace games are the result of organic interact between the worker and touchpoints in their environment. *Id.* Some drivers play a “relational game” in which the drivers go above-and-beyond to create position rider experiences, while other play an efficiency game that sets boundaries with the riders, minimizing extra behavior and maximizing earnings in as most efficient a manner as possible. *Id.*

Disputed. Expected testimony of AGO expert Lindsey Cameron and expected testimony of Uber expert Steven Tadelis.

384. In support of her opinion, Dr. Cameron will discuss Uber-specific facts relating to these issues. *Id.* This will include facts relating to Uber’s algorithmically mediated customer ratings and related systems of warnings, suspensions, deactivation; algorithms for matching riders with drivers; algorithms for setting prices; and algorithms for tracking and monitoring driver behavior; and algorithmically mediated incentive and rewards structure. *Id.*

Disputed. Expected testimony of AGO expert Lindsey Cameron and expected testimony of Uber expert Steven Tadelis.

C. ANTICIPATED TESTIMONY OF DAN LEISTRA-JONES

385. Dan Leistra-Jones is a Principal at Industrial Economics, Inc. Anticipated Testimony of Dan Leistra-Jones (“Leistra-Jones Ant. Test.”). He has more than 15 years of experience in financial and corporate analysis, with a particular emphasis on corporate finance. *Id.* He routinely reviews companies’ quarterly and annual financial reports, quarterly earnings presentations and calls, and other information about companies’ financial performance, future prospects, funding, and structure. *Id.*

Undisputed.

386. Mr. Leistra-Jones was retained by the Attorney General to evaluate how Uber represents its investment proposition to investors and financial analysts, focusing on significant factors affecting Lyft’s ability to generate revenues and profits; performance metrics relating to the same; the role of drivers in the business; and Uber’s involvement in the transportation or technology industries. Leistra-Jones Ant. Test. He is an expert in corporate financial analysis.

Disputed. Expected testimony of AGO expert Dan Leistra-Jones and Uber expert Justin McCrary.

387. Mr. Leistra-Jones will testify that:

- Uber’s communications with investors and analysts show that substantially all of Uber’s ridesharing revenues come from fees and commissions collected from drivers, paid through a third-party payment processor, based upon fares set by Uber for each ride. Uber collects the fees and charges at the time the ride is delivered. Thus, riders demand the service that ultimately produces revenues for Uber. Leistra-Jones Ant. Test.
- Uber consistently identifies driver supply, driver-related incentives, and demand for transportation (including economic recovery from COVID 19) as being among the major determinants of Uber’s ability to generate revenues and profit. Driver incentives, in particular, are key levers that Uber uses to increase or decrease driver supply to help balance supply and demand on its platform. *Id.*
- Uber uses multiple performance metrics to track the company’s performance. Beyond financial metrics used by nearly all companies, key metrics commonly used across

Uber's communications include Monthly Active Platform Consumers (MAPCs), number of trips, and number of riders. MAPCs are both a technology-based and transportation-based metric, while number of trips and number of rides are unambiguous measures of ridership and, thus, transportation-based metrics. Other technology-based metrics, like number of downloads, were given less prominence. *Id.*

- Uber's communications with investors and analysts demonstrates that Uber's investment consistently identifies driver supply, driver-related incentives, and demand for transportation as being among the major determinants of Uber's ability to generate revenues and profit. Driver incentives, in particular, are key levers that Uber uses to increase or decrease driver supply to help balance supply and demand on its platform. *Id.*
- Overall, Uber's communications with investors and analysts demonstrate that the company's investment proposition shows numerous hallmarks of company whose business relies primarily upon transporting riders from one point to another. The aspects of Uber's communication which illustrate the nature of Uber's business are the means by which Uber generates mobility revenue, the central importance of driver supply, the company's use of incentives to generate that supply, the influence of large economic forces closely tied to transportation, and the nature of non-financial metrics used to analyze the company's performance. *Id.*

Disputed. Expected testimony of AGO expert Daniel Leistra-Jones and Uber expert Justin McCrary.

D. ANTICIPATED TESTIMONY OF ILANA BRYANT

388. Ms. Ilana Bryant is an expert in brand marketing. Bryant Ant. Test. Ms. Bryant will provide testimony related to Uber's marketing and advertising efforts. *Id.*

Undisputed.

389. Ms. Bryant is a marketing consultant with over 25 years of experience in developing brand and advertising strategy, conducting market research, and developing communications strategy for Fortune 500 companies. In 2011, Ms. Bryant founded the marketing consultancy Special Forces Agency, Inc. Bryant Ant. Test.

Undisputed.

390. Ms. Bryant was retained by the Attorney General's Office to (1) provide an industry overview of marketing and branding, including the concepts of brand strategy, value proposition, and brand image; and (2) review and analyze Uber's internal and public-facing branding and

marketing materials to determine the value proposition that Uber communicates to its customers.

Bryant Ant. Test.

Disputed. Expected testimony of AGO expert Ilana Bryant and Uber expert On Amir.

391. Ms. Bryant will testify that:

- Uber has sought to position its brand as transportation in the minds of their customers. Bryant Ant. Test.
- Uber's marketing utilized the visual and verbal language of transportation to build the value proposition of safe, convenient, and reliable transportation via brand messages, brand associations, brand meaning, and memory structures in the minds of customers. *Id.*
- Uber's marketing efforts to build transportation brand meaning were supported by significant media budgets, achieving significant ad impressions among customers between 2017 to 2023. *Id.*
- Uber's marketing efforts included campaigns that promised a physically safe in-car experience and a value proposition extending beyond purely a technological driver-rider connection to a physical in-car experience during the journey. *Id.*

Disputed. Expected testimony of AGO expert Ilana Bryant, Uber expert On Amir, and Uber expert Terrence August.

E. ANTICIPATED TESTIMONY OF CHRIS ARNING

392. Mr. Chris Arning is an expert in applied semiotics. Arning Ant. Test. Mr. Arning will provide testimony related to Uber's marketing and advertising efforts. *Id.*

Disputed. Expected testimony of AGO expert Chris Arning, Uber expert On Amir, and Uber expert Terrence August.

393. Mr. Arning is the Founder-Director of Creative Semiotics Ltd., a boutique consultancy specializing in semiotics, and has 22 years of experience practicing applied semiotics. Mr. Arning has been published in academic journals, in trade press, and in UK national press. He has taught courses on applied semiotics and mentored students since 2012, and is the co-founder of Semiofest, which began in 2012, where semioticians from around the globe gather to meet and exchange knowledge and ideas related to semiotics. Arning Ant. Test.

Undisputed.

394. Mr. Arning was retained by the Attorney General's Office to determine two questions (1) based upon the semiotic analysis of communications and codes found, what does Uber communicate about the product or service it is selling; and (2) based upon the semiotic analysis of communications and codes found, what does Uber communicate about the industry sector or category it belongs to. Arning Ant. Test.

Undisputed.

395. Mr. Arning will testify that:

- The dominant product claims in Uber's advertising are more congruent with the advertising of the transportation sector than marketplace technology sector. Arning Ant. Test.
- The dominant product claims for Uber targeted towards riders include convenience, speed, comfort, and safety. *Id.*
- Uber's advertising has similarities to several transportation sector codes and equate ride sharing with other modes of transportation. *Id.*
- Except for the presence of the app in some communications, marketplace technology codes are largely absent from Uber's advertising. *Id.*
- The value proposition of Uber in its advertising is heavily mediated and is presented as a standardized service. *Id.*

Disputed. Expected testimony of AGO expert Chris Arning, Uber expert On Amir, and Uber expert Terrence August.

F. ANTICIPATED TESTIMONY OF DR. JAMES PARROTT

396. Dr. James Parrott is an economist and the Director of Economic and Fiscal Policies at the Center for New York City Affairs at The New York School in New York City. Anticipated Parrott Ant. Test. He was asked by the Attorney General to address, in rebuttal to Uber's experts, the feasibility and costs of an employee model in the rideshare industry and to examine the likely consequences for drivers, the companies, and riders. *Id.* Dr. Parrott will opine that Uber's expert has a flawed understanding of rideshare driver behavior and dynamics and consequently misjudges

the impact of an employee model on Uber, drivers, and riders. *Id.* He is an expert in labor economics.

Disputed. Expected testimony of AGO expert James Parrott, expected testimony of Uber expert Justin McCrary, and expected testimony of Uber expert Terrence August.

397. Dr. Parrott will testify that:

- Uber could adopt an employee model for engaging its drivers. Parrott Ant. Test. Uber can rely upon the relatively low share of its total drivers who already provide the majority of the ridesharing services to Uber riders as employees. The employee model will provide Uber with the permanent and predictable work force that it already seeks through its rewards program rewarding high value drivers for providing consistent, reliable, quality service to Uber's riders. *Id.*
- An employee model would generate offsetting savings for Uber. *Id.* While an employee model may entail some higher costs for payroll taxes and unemployment insurance, other costs may decrease due to higher driver retention, savings on recruitment and incentives, and greater efficiencies in how Uber manages drivers' time. *Id.*
- In onboarding, managing and compensating its drivers, Uber already has the basis for a recruitment, supervision and payroll functions. *Id.* An employment model would require some additions to administer benefits and add a scheduling function which would not entail a wholesale makeover of the manner and means by which Uber recruits, manages and compensates its drivers today. *Id.*
- Uber's high degree of market power gives it latitude to decide whether to pass on any cost increases to riders. *Id.* Uber's take rate, a measure of its margins, has risen over the years. Should its net costs increase from an employee model, Uber's market position gives it the power to decide whether to pass those costs to customers or absorb them itself through lower margins. *Id.*
- While drivers like flexibility in scheduling, drivers use the Lyft app to make money by providing rides. *Id.* An employee model would provide all drivers with more reliable earnings. *Id.* Drivers, like other workers, will adapt their behavior to maximize their earnings, much like they already do as drivers classified as independent contractors. *Id.* This is of particular importance to the small percentage of drivers account for who are already providing a majority of the logged hours and trips. *Id.*
- An employee model will provide a more permanent and predictable workforce, consistent with the purposes of the Uber Pro program to retain that small percentage of high value drivers who provide the majority of the rides. *Id.*

Disputed. Expected testimony of AGO expert James Parrott, expected testimony of Uber expert Justin McCrary, and expected testimony of Uber expert Terrence August.

Respectfully submitted,

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