COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss   SUPERIOR COURT

ANDREA JOY CAMPBELL, in her official capacity as ATTORNEY GENERAL for the COMMONWEALTH OF MASSACHUSETTS,
 	
     Plaintiff,
 	
  v.
 	
UBER TECHNOLOGIES, INC. and LYFT, INC.,
 	
     Defendants.
	Civil Action No. 2084CV01519-BLS1

DEFENDANT UBER TECHNOLOGIES, INC.'S PROPOSED FINDINGS OF FACT

INTRODUCTION

The Attorney General of Massachusetts brought this suit against Uber Technologies, Inc. and Lyft, Inc. on July 14, 2020, alleging that both companies "misclassify their drivers as independent contractors, rather than employees" under Massachusetts General Laws chapter 149, section 148B. The complaint seeks both declaratory and injunctive relief. Pursuant to Massachusetts Rule of Civil Procedure 52(a), having considered all relevant evidence adduced at trial and the parties' respective arguments and objections, the Court issues the following findings of fact.

In short, the Court finds, as set forth below, that the Attorney General has failed to meet its burden of demonstrating that drivers using Uber's Rides platform perform services for Uber within the meaning of Massachusetts General Laws chapter 149, section 148B. Furthermore, even if the Court were to find that the Attorney General has met its threshold burden, the Court would find in any event that Uber meets its burden of demonstrating that Uber does not direct or control drivers under their contracts or in fact; drivers do not provide a service in the usual course of Uber's business; and drivers are free to and in fact do exercise an independent trade or occupation in providing transportation services to their customer-passengers. The Court has also issued, consistent with these findings, conclusions of law.

FINDINGS OF FACT[1]

1. <u>Uber was founded in 2009.</u>

   • Uber's 2022 10-K [Dobbs Dep. Ex. 84], at 10. [Tr. Ex. 3402]

   AGO Response: Undisputed.

---

[1] Consistent with the Court's standing bench trial order and the relevant guidance on proposed findings of fact, Uber has presented each subsidiary issue of fact it asks the Court to find in numbered paragraphs (in which the text is underlined for clarity), followed by citations to evidence Uber expects to adduce at trial to establish the relevant factual finding. The evidentiary citations are illustrative, and Uber in no way waives its rights at trial to establish any proposed factual finding by the use of whatever evidence is ultimately adduced at trial.

2. <u>Uber began offering its mobile applications ("Apps") in Massachusetts in 2012.</u>

- Foreign Corporation Certificate of Registration, UBER-MA0002262. [Tr. Ex. 3427]

AGO Response: Undisputed.

3. <u>For its Massachusetts operations, Uber divides the state into three geographic regions.</u>

- Expected testimony from Uber, Chad Dobbs. (*E.g.*, Dobbs Dep. Tr. 543:19–544:10.)

AGO Response: Undisputed.

4. <u>The three regions in Massachusetts are Boston, Worcester, and Western Massachusetts.</u>

- Expected testimony from Uber, Chad Dobbs. (*E.g.*, Dobbs Dep. Tr. 544:1–10.)

AGO Response: Undisputed.

5. <u>Uber develops Apps to connect the different sides of various marketplaces.</u>

- Uber's 2022 10-K [Dobbs Dep. Ex. 84], at 4. [Tr. Ex. 3402]
- Uber's 2021 10-K, UBER-MA00023047, at UBER-MA00023052. [Tr. Ex. 3410]
- Expected testimony from Uber, Chad Dobbs. (*E.g.*, Dobbs Dep. Tr. 105:9–106:10, 1289:24–1292:7.)
- Expected testimony from Uber expert, Justin McCrary. (McCrary Rep. ¶ 15; McCrary Rebuttal Rep. ¶¶ 12, 14, 39.) [Tr. Ex. 3071; Tr. Ex. 3072]
- Expected testimony from AGO expert, Daniel Leistra-Jones. (Leistra-Jones Rep. ¶ 70.) [Tr. Ex. 3085]
- Expected testimony from Uber expert, Terrence August. (August Rep. ¶ 15.) [Tr. Ex. 3074]
- Expected testimony from Uber expert, On Amir. (Amir Rebuttal Rep. ¶ 15.) [Tr. Ex. 3076]

AGO Response: Disputed.[2] The Attorney General takes issue with the characterization that Uber connects different sides of various marketplaces as well as to the implication that this is the full extent of Uber's business model. Notwithstanding, it is undisputed that Uber develops apps, including the Uber Driver App.

---

[2] In addition to providing the information prescribed under option two of this Court's trial order, dated June 14, 2023, AGO has taken the additional steps—in the spirit of cooperation and with the goal of narrowing the scope of triable issues—of (1) identifying those proposed findings which it only partially disputes, and, in such instances, (2) identifying alternative phrasings of same to which it appears both parties likely agree.

- Expected testimony from AGO expert, David Weil.[3]

- Expected testimony from AGO expert, Lindsey Cameron.

6. <u>Those Apps are multi-sided platforms.</u>

- Expected testimony from Uber, Chad Dobbs. (*E.g.*, Dobbs Dep. Tr. 105:9–106:10, 1227:19–1228:10, 1234:3–1235:1, 1236:10–20.)

- Expected testimony from Uber expert, Justin McCrary. (McCrary Rep. ¶¶ 15, 19–21, 23–24.) [Tr. Ex. 3071]

- Expected testimony from Uber expert, Terrence August. (August Rep. ¶¶ 13–15, 18, 47–56.) [Tr. Ex. 3074]

- Expected testimony from Uber expert, On Amir. (Amir Rebuttal Rep. ¶¶ 14–17.) [Tr. Ex. 3076]

AGO Response: Disputed. AGO takes issue with the characterization that Uber is a multi-sided platform as well as the implication that this is the full extent of Uber's business model. Notwithstanding, it is undisputed that Uber develops apps and connects riders in need of transportation with drivers who provide rides.

- Expected testimony from AGO Expert, David Weil.

7. <u>A multi-sided platform facilitates transactions between multiple sides of a market, such as buyers and sellers of a product or service.</u>

- Uber's S-1, UBER-MA0002267 [Dobbs Dep. Ex. 49], at UBER-MA0002282–2286, UBER-MA0002289–2290. [Tr. Ex. 3399]

- U.S. Terms of Use (Feb. 26, 2024), UBER-MA00390035. [Tr. Ex. 3014]

- Non-California Uber Pro Terms and Conditions (Mar. 27, 2024), UBER-MA00390050, at UBER-MA00390051–390053. [Tr. Ex. 3032]

- Expected testimony from Uber, Chad Dobbs. (*E.g.*, Dobbs Dep. Tr. 105:9–106:10, 1227:19–1228:10, 1234:3–1235:1, 1236:10–20.)

- Expected testimony from Uber expert, Justin McCrary. (McCrary Rep. ¶¶ 15, 19–21, 23–24.) [Tr. Ex. 3071]

- Expected testimony from Uber expert, Terrence August. (August Rep. ¶¶ 13–15, 18, 47–56.) [Tr. Ex. 3074]

- Expected testimony from Uber expert, On Amir. (Amir Rebuttal Rep. ¶¶ 14–17.) [Tr. Ex. 3076]

---

[3] All evidentiary citations provided as grounds for dispute are illustrative, and AGO in no way waives its rights at trial to dispute any fact at issue by the use of any evidence adduced at trial.

AGO Response: Disputed. The Attorney General takes issue with the vagueness of "buyers and sellers" and the term "multi-sided platform," as well as the implication that this is the full extent of Uber's business model. Notwithstanding, it is undisputed that some platforms facilitate transactions between multiple sides of a market.

- Expected testimony from AGO expert, David Weil

8. <u>Uber competes with other technology companies that develop multi-sided platforms, including, but not limited to, Lyft, GrubHub, DoorDash, Amazon, and Instacart.</u>

- Uber's S-1, UBER-MA0002267 [Dobbs Dep. Ex. 49], at UBER-MA0002306–2307. [Tr. Ex. 3399]

- Uber's 2022 10-K [Dobbs Dep. Ex. 84], at 6, 8. [Tr. Ex. 3402]

- Uber's 2021 10-K, UBER-MA00023047, at UBER-MA00023053–23054, UBER-MA00023056. [Tr. Ex. 3410]

- Expected testimony from Uber expert, Justin McCrary. (McCrary Rebuttal Rep. ¶ 39.) [Tr. Ex. 3072]

- Expected testimony from AGO expert, Daniel Leistra-Jones. (Leistra-Jones Dep. Tr. 134:10–14.)

AGO Response: Disputed. The Attorney General takes issue with the characterization of Uber developing multi-sided platforms, as well as the implication that this is the full extent of Uber's business model.

- AG1060, AG1061-AG1065

- UX3413-UX3424

- Uber 30(b)(6) Testimony of Chad Dobbs.

- Expected testimony from AGO expert, David Weil.

9. <u>Uber employs thousands of software engineers, project managers, and data scientists engaged in the development of its multi-sided platforms.</u>

- Uber's S-1, UBER-MA0002267 [Dobbs Dep. Ex. 49], at UBER-MA0002313, UBER-MA0002461. [Tr. Ex. 3399]

- Expected testimony from Uber, Chad Dobbs. (*E.g.*, Dobbs Dep. Tr. 106:5–18, 1226:3–24, 1227:19–1228:10, 1291:12–20.)

- Expected testimony from Uber expert, Terrence August. (August Rep. ¶ 49.) [Tr. Ex. 3074]

- Expected testimony from Uber expert, Justin McCrary. (McCrary Rep. ¶¶ 20–21.) [Tr. Ex. 3071]

AGO Response: Disputed. The Attorney General takes issue with the characterization of Uber as developing multi-sided platforms as well as the implication that this is the full extent

of Uber's business model. Notwithstanding, it is undisputed that Uber employs thousands of software engineers, project managers, and data scientists.

- Expected testimony of AGO expert, David Weil.

10. <u>Uber dedicates substantial financial resources to bettering its technology, including maintaining and improving its multi-sided platforms.</u>

- Uber's S-1, UBER-MA0002267 [Dobbs Dep. Ex. 49], at UBER-MA0002285, UBER-MA0002291, UBER-MA0002293–2294. [Tr. Ex. 3399]

- Uber's 2022 10-K [Dobbs Dep. Ex. 84], at 5, 11, 19. [Tr. Ex. 3402]

- Uber's 2021 10-K, UBER-MA00023047, at UBER-MA00023053, UBER-MA00023056, UBER-MA00023059. [Tr. Ex. 3410]

- Expected testimony from Uber expert, Justin McCrary. (McCrary Rep. ¶¶ 19–21; McCrary Rebuttal Rep. ¶ 11.) [Tr. Ex. 3071]

- Expected testimony from Uber, Chad Dobbs. (*E.g.*, Dobbs Dep. Tr. 105:9–106:23.)

AGO Response: Disputed. The Attorney General takes issue with the characterization of the term "multi-sided platforms," and Uber's resources and purposes, as well as the implication that this is the full extent of Uber's business model. Notwithstanding, it is undisputed that Uber dedicates financial resources to bettering its technology.

- Expected testimony of AGO expert, David Weil.

11. <u>Multi-sided platform companies use technology to provide a variety of services to their users that facilitate transactions between market participants.</u>

- Expected testimony from Uber expert, Terrence August. (August Rep. ¶¶ 13–14, 19–20, 23–46.) [Tr. Ex. 3074]

- Expected testimony from Uber expert, On Amir. (Amir Rebuttal Rep. ¶¶ 14–16.) [Tr. Ex. 3076]

- Expected testimony from Uber expert, Justin McCrary. (McCrary Rep. ¶¶ 15–17, 19–21, 23–24.) [Tr. Ex. 3071]

- Expected testimony from Uber, Chad Dobbs. (*E.g.*, Dobbs Dep. Tr. 1285:18–1286:5; 1422:20–1423:15.)

AGO Response: Disputed. The Attorney General takes issue with the conclusion of law regarding services, as well as the implication that this is the full extent of Uber's business model.

- Expected testimony of AGO expert, David Weil.

12. <u>Both internally and externally, Uber holds itself out as a technology company.</u>

- Uber's S-1, UBER-MA0002267 [Dobbs Dep. Ex. 49], at UBER-MA0002282, UBER-MA0002577. [Tr. Ex. 3399]

- Uber's 2022 10-K [Dobbs Dep. Ex. 84], at 4. [Tr. Ex. 3402]

- Uber's 2021 10-K, UBER-MA00023047, at UBER-MA00023052. [Tr. Ex. 3410]

- Uber's 2020 10-K, UBER-MA0003155 [Dobbs Dep. Ex. 87], at UBER-MA0003160. [Tr. Ex. 3426]

- Expected testimony from Uber, Chad Dobbs. (*E.g.*, Dobbs Dep. Tr. 105:9–106:23, 1055:6–17, 1221:21–1222:5, 1235:15–1236:20, 1279:4–14, 1285:18–1286:5, 1287:11–1292:7.)

- Expected testimony from Uber expert, On Amir. (Amir Rebuttal Rep. ¶¶ 29–39.) [Tr. Ex. 3076]

AGO Response: Disputed.
- AGO FF 293-319, 320-368
- AG1060 at 2282; AG1064 at 6-7; AG1065 at 6-7; AG1062 at 3160, 3161 (same), 3208 (similar), 3250 (similar); and AG1053 at 12.
- AG1017 at 12; AG1018 at 25; AG1022 at 15; AG1031 at 11.
- Expected testimony of AGO expert, Ilana Bryant
- Expected testimony of AGO expert, Chris Arning
- Expected testimony of AGO expert, David Weil

13. <u>Uber's marketing is consistent with it being a technology company that develops multi-sided platforms.</u>

- Expected testimony from Uber expert, On Amir. (Amir Rebuttal Rep. ¶¶ 20–39.) [Tr. Ex. 3076]

AGO Response: Disputed.
- AGO FF 293-319, 320-368
- AG1060 at 2282; AG1064 at 6-7; AG1065 at 6-7; AG1062 at 3160, 3161 (same), 3208 (similar), 3250 (similar); and AG1053 at 12.
- AG1017 at 12; AG1018 at 25; AG1022 at 15; AG1031 at 11.
- Marketing content: AG1100-AG1117
- Expected testimony of AGO expert, Ilana Bryant
- Expected testimony of AGO expert, Chris Arning
- Expected testimony of AGO expert, David Weil

14. <u>For instance, Uber advertises riders' demand for transportation services to prospective drivers, and it advertises drivers' transportation services to prospective riders.</u>

- Expected testimony from Uber expert, On Amir. (Amir Rebuttal Rep. ¶¶ 30–39.) [Tr. Ex. 3076]

AGO Response: Disputed. The Attorney General takes issue with the characterization of the purpose and content of the advertising, the conclusion of law about services, and the implication that this is the full extent of Uber's business model. Notwithstanding, it is undisputed that that Uber advertises to riders and drivers.

- Expected testimony from AGO expert, Ilana Bryant.
- Expected testimony from AGO expert, Chris Arning.
- Expected testimony from AGO expert, David Weil.

15. <u>Uber uses its advertising to communicate to users what they can get out of using Uber's platform. For example, Uber communicates to drivers that it will advertise drivers' services in order to attract riders to the platform.</u>

- Expected testimony from Uber expert, On Amir. (Amir Rebuttal Rep. ¶¶ 18, 30–34.) [Tr. Ex. 3076]
- Expected testimony from Uber, Chad Dobbs.

AGO Response: Disputed. The Attorney General takes issue with the characterization of the purpose and content of the advertising, the conclusion of law about services, and the implication that this is the full extent of Uber's business model. Notwithstanding, it is undisputed that Uber advertises to riders and drivers.

- Expected testimony from AGO expert, Ilana Bryant.
- Expected testimony from AGO expert, Chris Arning.
- Expected testimony from AGO expert, David Weil.

16. <u>Consistent with other platform companies, Uber also advertises "the service provided by the other side rather than advertising the platform itself or its constituent technologies."</u>

- Expected testimony from Uber expert, On Amir. (Amir Rebuttal Rep. ¶¶ 27, 33, 36.) [Tr. Ex. 3076]

AGO Response: Disputed. The Attorney General takes issue with the conclusion of law about services, as well as the characterization of the purpose and content of Uber's advertising. The AGO also takes issue with the implication that this is the full extent of Uber's business model. Lastly, this fact is unsupported by evidence identified by Defendant.

- Expected testimony of AGO expert, Ilana Bryant.
- Expected testimony of AGO expert, Chris Arning.

- Expected testimony from AGO expert, David Weil.

17. Uber's communications with investors are also consistent with it being a technology company that develops multi-sided platforms.

- Expected testimony from Uber, Chad Dobbs. (*E.g.*, Dobbs Dep. Tr. 1316:4–1319:18.)

- Uber's 2022 10-K [Dobbs Dep. Ex. 84], at 4–7. [Tr. Ex. 3402]

- Uber's 2021 10-K, UBER-MA00023047, at UBER-MA00023052–23054. [Tr. Ex. 3410]

- Uber's 2020 10-K, UBER-MA0003155 [Dobbs Dep. Ex. 87], at UBER-MA0003160–3162. [Tr. Ex. 3426]

- Uber Technologies, Inc. Q3 2022 Earnings Supplemental Data (Nov. 1, 2022) [Dobbs Dep. Ex. 90]. [Tr. Ex. 3406]

- Uber Technologies, Inc. Q4 2022 Earnings Supplemental Data (Feb. 8, 2023) [Dobbs Dep. Ex. 91]. [Tr. Ex. 3407]

- Uber Technologies, Inc. Q3 2021 Earnings Supplemental Data (Nov. 4, 2021) [Dobbs Dep. Ex. 92]. [Tr. Ex. 3408]

- Uber's June 2022 10-Q, UBER-MA00024651. [Tr. Ex. 3424]

AGO Response: Disputed. The Attorney General takes issue with the implication that this is the full extent of Uber's business model.

- AGO FF 279-292

- AG1060 at 2282; AG1064 at 6-7; AG1065 at 6-7; AG1062 at 3160, 3161 (same), 3208 (similar), 3250 (similar); and AG1053 at 12.
- AG1017 at 12; AG1018 at 25; AG1022 at 15; AG1031 at 11.
- Expected testimony from AGO expert, David Weil.

18. For example, in its 2022 Form 10-K, Uber highlighted its "leading technology" as a foundation of its platform and explained that "marketplace technologies are the core of [its] deep technology advantage," including "demand prediction, matching and dispatching, and pricing technologies."

- Uber's 2022 10-K [Dobbs Dep. Ex. 84], at 5. [Tr. Ex. 3402]

AGO Response: Disputed. The Attorney General takes issue with the characterization of content that is "highlighted," as well as the implication that this is the full extent of Uber's business model. Notwithstanding, the content of Uber's 2022 Form 10-K is undisputed.

- AGO FF 244-247, 253-257, 261-264, 271-272, 279-292

- Expected testimony from AGO expert, David Weil.

19. In its 2022 Form 10-K, Uber also identified various technology-related risks to its business, including its "substantial investments in new offerings and technologies," the possibility of "security or data privacy breaches or other unauthorized or improper access to, use of, alteration of or

destruction of [its] proprietary or confidential data," "[c]yberattacks," the possibility of "third parties interfer[ing] with the distribution of our products or offerings or with [its] use of such software," risks related to its "collection, use, transfer, disclosure, and other processing of data," and the need to "protect [its] intellectual property."

- Uber's 2022 10-K [Dobbs Dep. Ex. 84], at 10–12, 19, 24–30. [Tr. Ex. 3402]

AGO Response: Disputed. The Attorney General takes issue with the characterization of content as "technology-related risks," as well as the implication that this is the full extent of Uber's business model. Notwithstanding, the content of Uber's 2022 Form 10-K is undisputed.

- AGO FF 244-247, 253-257, 261-264, 271-272, 279-292

- Expected testimony of AGO expert, David Weil

20. With respect to new offerings and technologies, Uber explained that if it is "unable to successfully introduce new or upgraded products, offerings, or features for Drivers, consumers, merchants, Shippers, and Carriers, [it] may fail to retain and attract such users to [its] platform and [its] operating costs would be adversely affected."

- Uber's 2022 10-K [Dobbs Dep. Ex. 84], at 25–26. [Tr. Ex. 3402]

- Expected testimony from AGO expert, Daniel Leistra-Jones. (Leistra-Jones Dep. Tr. 138:20–139:22, 141:18–142:3.)

AGO Response: Disputed. The Attorney General takes issue with the implication that this is the full extent of Uber's business model. Notwithstanding, the content of Uber's 2022 Form 10-K is undisputed.

- AGO FF 244-247, 253-257, 261-264, 271-272, 279-292

- Expected testimony of AGO expert, David Weil

21. Uber further explained in its 2022 Form 10-K that its "platform is highly technical, and any undetected errors could adversely affect [its] business."

- Uber's 2022 10-K [Dobbs Dep. Ex. 84], at 27. [Tr. Ex. 3402]

- Expected testimony from AGO expert, Daniel Leistra-Jones. (Leistra-Jones Dep. Tr. 139:23–141:17.)

AGO Response: Disputed. The Attorney General takes issue with the implication that this is the full extent of Uber's business model. Notwithstanding, the content of Uber's 2022 Form 10-K is undisputed.

- AGO FF 244-247, 253-257, 261-264, 271-272, 279-292

- Expected testimony of AGO expert, David Weil

22. <u>In its quarterly earnings reports to investors, Uber presented "platform highlights" such as innovative new App features, monthly active user data, and in-App advertising opportunities.</u>

● Uber Technologies, Inc. Q3 2022 Earnings Supplemental Data (Nov. 1, 2022) [Dobbs Dep. Ex. 90]. [Tr. Ex. 3406]

● Uber Technologies, Inc. Q4 2022 Earnings Supplemental Data (Feb. 8, 2023) [Dobbs Dep. Ex. 91]. [Tr. Ex. 3407]

● Uber Technologies, Inc. Q3 2021 Earnings Supplemental Data (Nov. 4, 2021) [Dobbs Dep. Ex. 92]. [Tr. Ex. 3408]

AGO Response: Disputed. The Attorney General takes issue with whether these excerpts are representative of the full extent of Uber's statements to investors and the public, as well as the information Uber provides to these groups. Furthermore, the Attorney General takes issue with the implication that this is the full extent of Uber's business model, as well as the characterization that new App features are "innovative." Notwithstanding, the content of Uber's Q3 2022 Earnings Supplemental Data, Q4 2022 Earnings Supplemental Data, and Q3 Earnings Supplemental Data is undisputed.

● AGO FF 244-247, 253-257, 261-264, 271-272, 279-292, 293-318

● Expected testimony of AGO expert, David Weil

23. <u>In its June 2022 Form 10-Q, Uber explained that it is "developing technologies that will provide new solutions to everyday problems."</u>

● Uber's June 2022 10-Q, UBER-MA00024651. [Tr. Ex. 3424]

AGO Response: Disputed. The Attorney General takes issue with whether this excerpt is representative of the extent of Uber's statements to investors and the public as well as the information Uber provides to these groups. The Attorney General also takes issue with the implication that this is the full extent of Uber's business model. Notwithstanding, the content of Uber's June 2022 10-Q is undisputed.

● AGO FF 244-247, 253-257, 261-264, 271-272, 279-292, 293-318

● Expected testimony of AGO expert, David Weil

24. <u>Uber tracks the following key metrics and non-GAAP financial measures: monthly active platform consumers (MAPCs), trips, gross bookings, core platform adjusted net revenue, core platform contribution margin, and adjusted EBITDA.</u>

● Uber's S-1, UBER-MA0002267 [Dobbs Dep. Ex. 49], at UBER-MA0002382–2386. [Tr. Ex. 3399]

AGO Response: Disputed. The Attorney General takes issue insofar as the list of key metrics is incomplete. Notwithstanding, it is undisputed that that Uber tracks monthly active platform consumers (MAPCs), trips, gross bookings, core platform adjusted net revenue, core platform

contribution margin, and adjusted EBITDA, in addition to average monthly trips per rider, wait times, active drivers.

- AGO FF 262, 263, 264.

- Expected testimony of AGO expert, David Weil

25. <u>In its communications to investors, Uber identifies the following as factors affecting its performance: MAPCs, trips per MAPC, gross bookings per trip, driver incentives, growth initiatives, regulations permitting or limiting its offerings, reputation and brand, global operations, global acquisition and consolidation strategy, and stock-based compensation for certain equity awards.</u>

- Uber's S-1, UBER-MA0002267 [Dobbs Dep. Ex. 49], at UBER-MA0002386–2389. [Tr. Ex. 3399]

AGO Response: Disputed. The Attorney General takes issue with the generalization of Uber's communications to investors. Notwithstanding, it is undisputed that in Uber's S-1, Uber identifies MAPCs, trips per MAPC, gross bookings per trip, driver incentives, growth initiatives, regulations permitting or limiting its offerings, reputation and brand, global operations, global acquisition and consolidation strategy, and stock-based compensation for certain equity awards under the heading "Factors Affecting Our Performance."

26. <u>According to the Attorney General's expert, Daniel Leistra-Jones, MAPCs is a "technology-based" metric.</u>

- Expected testimony from AGO expert, Daniel Leistra-Jones. (Leistra-Jones Rep. ¶ 66.) [Tr. Ex. 3085]

AGO Response: Disputed. The Attorney General takes issue with the characterization of AGO expert Daniel Leistra-Jones' anticipated testimony, as the scope of Mr. Leistra-Jones' anticipated testimony is as follows:

> In my analysis, I have classified MAPCs as a "technology-based" metric, since it measures the number of consumers (i.e., riders and people ordering deliveries) using Uber's platform, including for non-ride uses. Nonetheless, MAPCs are heavily influenced by the number of riders – each unique rider within the past month would equate to one MAPC – meaning that MAPCs is also, if not a measure of ridership per se, then certainly very close to one. MAPCs were the only technology-based metric that I identified in the sections of Uber's annual reports that I reviewed, with the potential exception of the number of members enrolled in the company's various subscription offerings; this could arguably be construed as a "technology-based metric." Other than MAPCs and membership, there were no other, more clearly technology-focused metrics.

The Attorney General also takes issue with the implication that the labeling/characterization of the nature of the metric informs the full extent of Uber's business model.

- Expected testimony of AGO Expert, David Weil

27. <u>The markets in which Uber uses the technology and software it develops to facilitate transactions between market participants include food delivery (Uber Eats, Uber's Delivery business), transportation (Uber's Mobility business), and freight (Uber's Freight business).</u>

- Uber's S-1, UBER-MA0002267 [Dobbs Dep. Ex. 49], at UBER-MA0002282–2286. [Tr. Ex. 3399]

- U.S. Terms of Use, UBER-MA00390035. [Tr. Ex. 3014]

- Expected testimony from Uber, Chad Dobbs. (*E.g.*, Dobbs Dep. Tr. 460:15–21, 1146:17–24, 1230:6–22, 1235:15–1236:8, 1290:21–1291:11.)

- Expected testimony from Uber expert, Terrence August. (August Rep. ¶ 50.) [Tr. Ex. 3074]

- Expected testimony from Uber expert, Justin McCrary. (McCrary Rep. ¶¶ 15, 21.) [Tr. Ex. 3071]

> **AGO Response**: Disputed. The Attorney General takes issue with the characterization of Uber's business model. Notwithstanding, the names of Uber's businesses are undisputed.
>
> - Expected testimony of AGO Expert, David Weil

28. <u>Uber has developed three main lines of business: Uber Mobility (which includes, but is not limited to, its Rides business), Uber Eats, and Uber Freight.</u>

- Uber's S-1, UBER-MA0002267 [Dobbs Dep. Ex. 49], at UBER-MA0002282–2286. [Tr. Ex. 3399]

- Uber's 2022 10-K [Dobbs Dep. Ex. 84], at 4, 6. [Tr. Ex. 3402]

- Uber's 2021 10-K, UBER-MA00023047, at UBER-MA00023052–23054. [Tr. Ex. 3410]

- Uber's 2020 10-K, UBER-MA0003155 [Dobbs Dep. Ex. 87], at UBER-MA0003160–3161, UBER-MA0003292. [Tr. Ex. 3426]

- Expected testimony from Uber, Chad Dobbs. (*E.g.*, Dobbs Dep. Tr. 436:20–437:24, 448:3–449:16, 471:16–473:6, 1145:8–1146:24, 1230:6–22, 1235:3–1236:8, 1247:8–1248:19, 1289:24–1292:7.)

> **AGO Response:** Undisputed.

29. <u>When Uber communicates with and represents its business to the investing public, it includes all of its various business lines.</u>

- *See supra* ¶¶ 12–17.

- Expected testimony from AGO expert, Daniel Leistra-Jones. (Leistra-Jones Dep. Tr. 93:20–94:20, 100:18–103:7, 151:22–25, 152:16–19.)

AGO Response: Disputed. The Attorney General takes issue to the extent that ¶¶ 12-17 are disputed. Notwithstanding, it is undisputed that Uber communicates with the investing public about its businesses.

30. <u>Uber charges all platform customers—e.g., riders, drivers, diners, couriers, restaurants, shippers—for the use of its technology.</u>

- Uber's 2022 10-K [Dobbs Dep. Ex. 84], at 50, 63, 71, 87–88, 94. [Tr. Ex. 3402]

- Uber's 2021 10-K, UBER-MA00023047, at UBER-MA00023113, UBER-MA00023120, UBER-MA00023136–23137. [Tr. Ex. 3410]

- Uber's 2020 10-K, UBER-MA0003155 [Dobbs Dep. Ex. 87], at UBER-MA0003213, UBER-MA0003232, UBER-MA0003256–3257. [Tr. Ex. 3426]

- Expected testimony from Uber expert, Terrence August. (August Rep. ¶¶ 17, 65–68.) [Tr. Ex. 3074]

- Expected testimony from Uber expert, Justin McCrary. (McCrary Rep. ¶ 22; McCrary Rebuttal Rep. ¶ 11.) [Tr. Ex. 3071]

- Expected testimony from Uber, Chad Dobbs. (*E.g.*, Dobbs Dep. Tr. 608:23–609:7, 635:6–11, 859:11–16, 1241:9–1242:24.)

AGO Response: Disputed. The Attorney General takes issue with the characterization of Uber's relationship with, among others, drivers, as well as the implication that this is the full extent of Uber's business model.

- Expected testimony of AGO expert, David Weil.

- Uber 30(b)(6) testimony of Chad Dobbs

- AGO FF 185-198

- AG1060 at 2585; AG1062 at 3256; AG1063 at 3136

31. <u>Uber earns its revenues from the fees all users pay to use its platforms.</u>

- Uber's 2022 10-K [Dobbs Dep. Ex. 84], at 50, 63, 71, 87–88, 94. [Tr. Ex. 3402]

- Uber's 2021 10-K, UBER-MA00023047, at UBER-MA00023113, UBER-MA00023120, UBER-MA00023136–23137. [Tr. Ex. 3410]

- Uber's 2020 10-K, UBER-MA0003155 [Dobbs Dep. Ex. 87], at UBER-MA0003213, UBER-MA0003232, UBER-MA0003256–3257.

- Expected testimony from Uber expert, Justin McCrary. (McCrary Rep. ¶ 22; McCrary Rebuttal Rep. ¶ 11.) [Tr. Ex. 3071]

AGO Response: Disputed. The Attorney General takes issue with the characterization of fees and users, as well as the implication that this is the full extent of Uber's business model. Notwithstanding, it is undisputed that Uber earns revenues from completed rides.

- AGO FF 223-231.

- AG1060 at 2419, 2395, 2585

- Expected testimony from AGO expert, David Weil

- Uber 30(b)(6) Testimony of Chad Dobbs

32. <u>The market participants for Uber's Rides platform include (1) individuals who wish to transport others using their own vehicles (drivers) and (2) individuals who are looking to be transported in those vehicles (riders).</u>

- Expected testimony from Uber, Chad Dobbs. (*E.g.*, Dobbs Dep. Tr. 453:1–9, 1285:18–1286:1.)

- Expected testimony from Uber expert, Terrence August. (August Rep. ¶¶ 15, 48, 56.) [Tr. Ex. 3074]

AGO Response: Disputed. The Attorney General takes issue with the characterization of "market participants," and Uber's relationship with drivers. The Attorney General also takes issue with the implication that this is the full extent of Uber's business model.

- Expected testimony from AGO expert, David Weil.

33. <u>As to Uber's Rides platform, riders must request rides using Uber's platform in order for Uber to obtain revenue from the fees riders pay to Uber to utilize the multi-sided platform.</u>

- Expected testimony from Uber expert, Justin McCrary. (McCrary Rebuttal Rep. ¶ 10.) [Tr. Ex. 3072]

- Expected testimony from Uber expert, Steven Tadelis. (Tadelis Rebuttal Rep. ¶¶ 57, 60.) Tr. Ex. 3077]

- Expected testimony from Uber, Chad Dobbs. (*E.g.*, Dobbs Dep. Tr. 222:2–15, 508:18–509:10.)

AGO Response: Disputed. The Attorney General takes issue with the phrase, "from fees riders pay to Uber to utilize the multi-sided platform." The Attorney General also takes issue with the implication that this is the full extent of Uber's business model. Notwithstanding, it is undisputed that Uber obtains revenue from completed rides.

- Expected testimony from AGO expert, David Weil.

- Uber 30(b)(6) Testimony of Chad Dobbs.

- AGO FF 2, 185-192, 193-201.

- AG1060 at 2419, 2395, 2585.

34. <u>Drivers must be willing to pay Uber service fees for receiving proposed rides through the multi-sided platform in order for Uber to obtain revenue from drivers.</u>

- Expected testimony from Uber, Chad Dobbs. (*E.g.*, Dobbs Dep. Tr. 222:2–15, 508:18–509:10.)

AGO Response: Disputed. The Attorney General takes issue with the characterization of drivers' willingness to pay the Uber service fees. The Attorney General also takes issue with the implications that (1) this is the full extent of Uber's business model and (2) drivers are aware of the amount of Uber's service fee when they accept a ride request. Notwithstanding, it is undisputed that Uber collects a service fee from drivers after completed ride.

- AGO FF 183-201

- Uber 30(b)(6) Testimony of Chad Dobbs

- Expected testimony from AGO expert, David Weil

35. <u>As customers of Uber's Rides platform, drivers pay Uber a service fee for use of Uber's technology.</u>

- Fare Addendum (Aug. 16, 2021), UBER-MA0000794 [Dobbs Dep. Ex. 27]. [Tr. Ex. 3010]

- Expected testimony from Uber expert, Terrence August. (August Rep. ¶¶ 17, 65, 67.) [Tr. Ex. 3074]

- Expected testimony from Uber, Chad Dobbs. (*E.g.*, Dobbs Dep. Tr. 1230:23–1231:19.)

- Expected testimony from driver, Rebekah Field. (Field Dep. Tr. 59:5–60:6.)

- "What is the Service Fee?" Uber Website, UBER-MA00249063. [Tr. Ex. 3452]

- Uber's 2022 10-K [Dobbs Dep. Ex. 84], at 87. [Tr. Ex. 3402]

- Platform Access Agreement (Jan. 1, 2022), UBER-MA0001492, § 2.6(a). [Tr. Ex. 3000]

AGO Response: Disputed. The Attorney General takes issue with the characterization and conclusion of law about drivers' relationship with Uber. The Attorney General also takes issue with the implication that this is the full extent of Uber's business model. Notwithstanding, it is undisputed that Uber collects a service fee from drivers after completed ride.

- AGO FF 186-192

- Expected testimony from AGO expert, David Weil

36. <u>The service fee is calculated as the difference between what the rider paid and the driver's earnings, excluding tips and tolls, and any other fees paid by the rider and retained by Uber such as taxes and airport surcharges.</u>

- Fare Addendum, UBER-MA0000794 [Dobbs Dep. Ex. 27], at UBER-MA0000795. [Tr. Ex. 3010]

Gibson, Dunn &
Crutcher LLP

- "What is the Service Fee?" Uber Website, UBER-MA00249063. [Tr. Ex. 3452]

AGO Response: Undisputed.

37. <u>Likewise, as customers of Uber's Rides platform, riders pay Uber a booking fee for use of Uber's technology.</u>

- Fare Addendum, UBER-MA0000794 [Dobbs Dep. Ex. 27]. [Tr. Ex. 3010]

- Expected testimony from Uber, Chad Dobbs. (*E.g.*, Dobbs Dep. Tr. 1242:4–24.)

- "I was charged a booking fee" [Leistra-Jones Dep. Ex. 4]. [Tr. Ex. 3088]

- Expected testimony from Uber expert, Terrence August. (August Rep. ¶¶ 17, 65–66.) [Tr. Ex. 3074]

- Uber's 2022 10-K [Dobbs Dep Ex. 84], at 94. [Tr. Ex. 3402]

- Uber Marketplace Service Fee | Uber, UBER-MA0003327. [Tr. Ex. 3506]

- Booking Fee | Riders - Uber Help, UBER-MA0003332. [Tr. Ex. 3508]

- What is a booking fee? | Driving & Delivering - Uber Help, UBER-MA0003334. [Tr. Ex. 3509]

AGO Response: Disputed. The Attorney General takes issue with the characterization of why riders pay a booking fee to Uber, as well as the implication that this is the full extent of Uber's business model. Notwithstanding, it is undisputed that Uber collects fares from riders, which include a booking fee.

- Uber 30(b)(6) Testimony of Chad Dobbs

- AGO FF 193-198

- Expected testimony from AGO expert, David Weil

38. <u>The booking fees paid by riders support regulatory, safety, and operational costs.</u>

- Expected testimony from Uber expert, Justin McCrary. (McCrary Rep. ¶ 22 & n.33.) [Tr. Ex. 3071]

- "I was charged a booking fee" [Leistra-Jones Dep. Ex. 4]. [Tr. Ex. 3088]

- "How does the Booking Fee work with taxes_.pdf," Uber Website, UBER-MA00249010. [Tr. Ex. 3438]

AGO Response: Disputed. The Attorney General takes issue with the characterization of what the booking fees support, as well as the implication that this is the full extent of Uber's business model. Notwithstanding, it is undisputed that Uber calculates, sets, and collects a booking fee from riders.

- Expected testimony of AGO expert, David Weil.

- AGO FF 193-197

39. <u>Uber relies on all customers of its multi-sided platforms to generate revenue.</u>

- Uber's 2022 10-K [Dobbs Dep. Ex. 84], at 50, 63, 71, 87–88, 94. [Tr. Ex. 3402]

- Uber's 2021 10-K, UBER-MA00023047, at UBER-MA00023113, UBER-MA00023120, UBER-MA00023136–23137. [Tr. Ex. 3410]

- Uber's 2020 10-K, UBER-MA0003155 [Dobbs Dep. Ex. 87], at UBER-MA0003213, UBER-MA0003232, UBER-MA0003256–3257. [Tr. Ex. 3426]

- Expected testimony from Uber expert, Justin McCrary. (McCrary Rep. ¶ 22; McCrary Rebuttal Rep. ¶¶ 10–11.) [Tr. Ex. 3071; Tr. Ex. 3072]

AGO Response: Disputed. The Attorney General takes issue with the characterization of Uber's relationship with drivers, and the implication that this is the full extent of Uber's business model. The Attorney General also takes issue with the implication that this fact provides an accurate representation of the operational realities of Uber's revenue generation model. Notwithstanding, it is undisputed that Uber generates revenue from completed rides.

- AGO FF 176-231

- Expected testimony from AGO expert, David Weil.

40. <u>Uber earns revenue from a variety of sources apart from Rides, including from Uber Eats and Uber Freight.</u>

- Uber's 2022 10-K [Dobbs Dep. Ex. 84], at 50, 56, 63, 71, 87–88, 94. [Tr. Ex. 3402]

- Uber's 2021 10-K, UBER-MA00023047, at UBER-MA00023106–23107, UBER-MA00023136–23137, UBER-MA00023144. [Tr. Ex. 3410]

- Uber's 2020 10-K, UBER-MA0003155 [Dobbs Dep. Ex. 87], at UBER-MA0003213, UBER-MA0003221, UBER-MA0003232, UBER-MA0003256–3257, UBER-MA0003293. [Tr. Ex. 3426]

- Uber Technologies, Inc. Q3 2022 Earnings Supplemental Data (Nov. 1, 2022) [Dobbs Dep. Ex. 90].]. [Tr. Ex. 3406]

- Uber Technologies, Inc. Q4 2022 Earnings Supplemental Data (Feb. 8, 2023) [Dobbs Dep. Ex. 91]. [Tr. Ex. 3408]

- Uber Technologies, Inc. Q3 2021 Earnings Supplemental Data (Nov. 4, 2021) [Dobbs Dep. Ex. 92]. [Tr. Ex. 3408]

- Expected testimony from Uber, Chad Dobbs. (*E.g.*, Dobbs Dep. Tr. 1146:17–24, 1230:6–22, 1246:15–1248:19; Dobbs Day 8 Dep. Tr. 63:11–64:4.)

- Expected testimony from Uber expert, Justin McCrary. (McCrary Rebuttal Rep. ¶ 21 & n.47.) [Tr. Ex. 3072]

AGO Response: Undisputed.

41. In its Q3 2019 Earnings Call, Uber reported that its "Eats business continues to expand globally with gross bookings growing 77% and ANR growing 109% year-on-year on a constant currency basis."

- Uber's Q3 2019 Earnings Call Transcript, at 5, 8–12. [Tr. Ex. 1018]

AGO Response: Disputed. The Attorney General takes issue with these excerpts as representative of the extent of Uber's statements to investors and the public, as well as the information Uber provides to these groups. The Attorney General also takes issue with the implication that this is the full extent of Uber's business model. Notwithstanding, the text of Uber's Q3 2019 Earnings Call Transcript is undisputed.

- AGO FF 244-247, 253-257, 261-264, 271-272, 279-292, 293-318.
- Anticipated testimony of AGO expert, David Weil.

42. In its Q4 2019 Earnings Call, Uber reported that it "grew [its] US Eats business 44% to $1.7 billion in GBs."

- Uber's Q4 2019 Earnings Call Transcript, at 5. [Tr. Ex. 1019]

AGO Response: Disputed. The Attorney General takes issue with these excerpts as representative of the extent of Uber's statements to investors and the public, as well as the information Uber provides to these groups. The Attorney General also takes issue with the implication that this is the full extent of Uber's business model. Notwithstanding, the text of Uber's Q4 2019 Earnings Call Transcript is undisputed.

- AGO FF 244-247, 253-257, 261-264, 271-272, 279-292, 293-318.
- Anticipated testimony of AGO expert, David Weil.

43. In its Q4 2021 Earnings Call, Uber reported that Uber Eats "reported its first adjusted EBITDA profit, including for the first time in the U.S., even as Uber Eats became the fastest growing delivery player in America."

- Uber's Q4 2021 Earnings Call Transcript, at 4. [Tr. Ex. 1027]

AGO Response: Disputed. The Attorney General takes issue with these excerpts as representative of the extent of Uber's statements to investors and the public, as well as the information Uber provides to these groups. The Attorney General also takes issue with the implication that this is the full extent of Uber's business model. Notwithstanding, the text of Uber's Q4 2021 Earnings Call Transcript is undisputed.

- AGO FF 244-247, 253-257, 261-264, 271-272, 279-292, 293-318.
- Anticipated testimony of AGO expert, David Weil.

44. <u>In its Q1 2023 Prepared Remarks, Uber reported that "Delivery Gross Bookings grew 12% YoY" and "Delivery Adjusted EBITDA significantly improved both sequentially and YoY to $288 million."</u>

- Uber's Q1 2023 Prepared Remarks, at 5. [Tr. Ex. 1043]

AGO Response: Disputed. The Attorney General takes issue with these excerpts as representative of the extent of Uber's statements to investors and the public, as well as the information Uber provides to these groups. The Attorney General also takes issue with the implication that this is the full extent of Uber's business model. Notwithstanding, the text of Uber's Q1 2023 Earnings Call Transcript is undisputed.

- AGO FF 244-247, 253-257, 261-264, 271-272, 279-292, 293-318.
- Anticipated testimony of AGO expert, David Weil.

45. <u>Uber Eats is a multi-sided platform that connects people who want to purchase food or grocery items with restaurants and stores that provide food or grocery items and people who want to deliver those items.</u>

- Uber's S-1, UBER-MA0002267 [Dobbs Dep. Ex. 49], at UBER-MA0002284. [Tr. Ex. 3399]
- Uber's 2022 10-K [Dobbs Dep. Ex. 84], at 4. [Tr. Ex. 3402]
- Uber's 2021 10-K, UBER-MA00023047, at UBER-MA00023052. [Tr. Ex. 3410]
- Uber's 2020 10-K, UBER-MA0003155 [Dobbs Dep. Ex. 87], at UBER-MA0003160–3161. [Tr. Ex. 3426]
- Expected testimony from Uber expert, Justin McCrary. (McCrary Rep. ¶¶ 15, 19.) [Tr. Ex. 3072]
- Expected testimony from Uber, Chad Dobbs. (*E.g.*, Dobbs Dep. Tr. 453:1–7, 1236:1–3, 1286:2–5.)
- Expected testimony from Uber expert, Terrence August. (August Rep. ¶ 50.) [Tr. Ex. 3074]

AGO Response: Disputed. The Attorney General takes issue with the characterization of Uber's business model, as well as the implication that this is analogous to Uber's business model for its Ridesharing business. Notwithstanding, it is undisputed that Uber Eats is a segment of Uber's business.

- Expected testimony of AGO expert, David Weil.

46. <u>Uber Freight is a multi-sided platform that connects companies looking to move large goods over great distances with carriers who specialize in that type of service.</u>

- Uber's S-1, UBER-MA0002267 [Dobbs Dep. Ex. 49], at UBER-MA0002285. [Tr. Ex. 3399]

- Uber's 2022 10-K [Dobbs Dep. Ex. 84], at 4. [Tr. Ex. 3402]

- Uber's 2021 10-K, UBER-MA00023047, at UBER-MA00023052–23053. [Tr. Ex. 3410]

- Uber's 2020 10-K, UBER-MA0003155 [Dobbs Dep. Ex. 87], at UBER-MA0003161. [Tr. Ex. 3426]

- Expected testimony from Uber expert, Justin McCrary. (McCrary Rep. ¶¶ 15, 19.) [Tr. Ex. 3071]

- Expected testimony from Uber expert, Terrence August. (August Rep. ¶ 50.) [Tr. Ex. 3074]

- Expected testimony from Uber, Chad Dobbs. (*E.g.*, Dobbs Dep. Tr. 1236:3–4.)

AGO Response: Disputed. The Attorney General takes issue with the characterization of Uber's business model, as well as the implication that this is analogous to Uber's business model for its Ridesharing business. Notwithstanding, it is undisputed that Uber Freight is a segment of Uber's business.

- Expected testimony of AGO expert, David Weil.

47. In 2022, Uber Eats and Uber Freight accounted for approximately 56% of Uber's annual revenue worldwide.

- Uber's 2022 10-K [Dobbs Dep. Ex. 84], at 56. [Tr. Ex. 3402]

- Expected testimony from Uber, Chad Dobbs. (*E.g.*, Dobbs Day 8 Dep. Tr. 63:11–64:4.)

- Expected testimony from Uber expert, Justin McCrary. (McCrary Rebuttal Rep. ¶ 21 & n.47.) [Tr. Ex. 3072]

- Expected testimony from AGO expert, Daniel Leistra-Jones. (Leistra-Jones Rep. ¶ 26.) [Tr. Ex. 3085]

AGO Response: Undisputed.

48. In 2022, Uber Eats and Uber Freight grew the most compared to previous years, generating $17.8 billion in revenue.

- Uber's 2022 10-K [Dobbs Dep. Ex. 84], at 56. [Tr. Ex. 3402]

- Uber Technologies, Inc. Q3 2022 Earnings Supplemental Data (Nov. 1, 2022) [Dobbs Dep. Ex. 90]. [Tr. Ex. 3406]

- Uber Technologies, Inc. Q4 2022 Earnings Supplemental Data (Feb. 8, 2023) [Dobbs Dep. Ex. 91]. [Tr. Ex. 3407]

AGO Response: Undisputed.

49. <u>If riders stopped demanding rides, Uber's revenues would suffer as much or more in its Rides business as they would if drivers stopped using the Rides platform—both are equally important.</u>

- Expected testimony from Uber expert, Justin McCrary. (McCrary Rebuttal Rep. ¶ 10.) [Tr. Ex. 3072]

- Expected testimony from Uber expert, Steven Tadelis. (Tadelis Rebuttal Rep. ¶¶ 57, 60.) [Tr. Ex. 3077]

AGO Response: Disputed.

- Expected testimony of AGO expert, James Parrott.

- Expected testimony of AGO expert, David Weil.

50. <u>Uber's Rides platform facilitates transactions to transport people from point A to point B.</u>

- Uber's S-1, UBER-MA0002267 [Dobbs Dep. Ex. 49], at UBER-MA0002282–2283, UBER-MA0002456. [Tr. Ex. 3399]

- Uber's 2022 10-K [Dobbs Dep. Ex. 84], at 4–5. [Tr. Ex. 3402]

- Uber's 2021 10-K, UBER-MA00023047, at UBER-MA00023052. [Tr. Ex. 3410]

- Uber's 2020 10-K, UBER-MA0003155 [Dobbs Dep. Ex. 87], at UBER-MA0003160, UBER-MA0003292. [Tr. Ex. 3426]

- Expected testimony from Uber, Chad Dobbs. (*E.g.*, Dobbs Dep. Tr. 20:12–23, 1279:4–14, 1420:3–10.)

- Expected testimony from Uber expert, Justin McCrary. (McCrary Rep. ¶ 15.) [Tr. Ex. 3071]

- Expected testimony from Uber expert, On Amir. (Amir Rebuttal Rep. ¶¶ 15 & n.9, 29.) [Tr. Ex. 3076]

AGO Response: Disputed. The Attorney General takes issue with the characterization that Uber only facilitates transactions to transport people from point A to point B.

- Expected testimony of AGO expert, David Weil.

- AGO FF 253-257, 261-264, 271-272, 279-292, 293-318.

51. <u>In its Rides business, Uber provides separate apps for drivers and riders to access its Rides platform: the Driver App for drivers and the Rides App for riders.</u>

- Expected testimony from Uber, Chad Dobbs. (*E.g.*, Dobbs Dep. Tr. 1242:4–24, 1290:21–1291:11.)

AGO Response: Undisputed.

52. <u>The Driver App and the Rides App connect drivers and riders to Uber's multi-sided marketplace.</u>

- Expected testimony from Uber, Chad Dobbs. (*E.g.*, Dobbs Dep. Tr. 1290:21–1291:20.)

AGO Response: Disputed. The Attorney General takes issue with the characterization that Uber is a multi-sided marketplace. The Attorney General also takes issue with the implication that this is the full extent of Uber's business model. Notwithstanding, it is undisputed that the Driver App and Rides App match drivers and riders.

- Expected testimony of AGO Expert, David Weil

53. <u>Uber runs its Rides platform and Uber Eats from the same Driver App for drivers and on the same Rides App for riders.</u>

- Screenshot of Uber App, UBER-MA00375814. [Tr. Ex. 3454]
- Screenshot of Uber App, UBER-MA00375821. [Tr. Ex. 3455]
- Uber's 2022 10-K [Dobbs Dep. Ex. 84], at 5. [Tr. Ex. 3402]
- Expected testimony from Uber, Chad Dobbs. (*E.g.*, Dobbs Dep. Tr. 33:17–35:3, 450:6–23, 1322:15–1323:16.)
- Expected testimony from Uber expert, Justin McCrary. (McCrary Rebuttal Rep. ¶ 21 & n.48.) [Tr. Ex. 3072]

AGO Response: Disputed. The statement is unsupported by evidence identified by the Defendant during the relevant period of the lawsuit.

54. <u>Although the exact figure varies from year to year, Uber's Rides business accounts for approximately 44% of Uber's revenue worldwide.</u>

- Uber's 2022 10-K [Dobbs Dep. Ex. 84], at 50, 56. [Tr. Ex. 3402]
- Expected testimony from AGO Expert, Daniel Leistra-Jones. (Leistra-Jones Rep. ¶¶ 24, 26.) [Tr. Ex. 3085]
- Expected testimony from Uber expert, Justin McCrary. (McCrary Rebuttal Rep. ¶ 21 & n.47.) [Tr. Ex. 3072]

AGO Response: Disputed. The statement is unsupported by evidence identified by the Defendant during the relevant period of the lawsuit.

- AGO FF 223-231.
- AG1060 at 2419, 2395, 2585
- AG1063 at 23113, 23136, 23144
- AG1064 at 58, 59, 65, 87, 88

55. <u>Uber does not actually provide rides or transportation services in Massachusetts.</u>

- U.S. Terms of Use, UBER-MA00390035. [Tr. Ex. 3014]

- Expected testimony from Uber expert, Terrence August. (August Rep. ¶ 23.) [Tr. Ex. 3074]

- Expected testimony from Uber, Chad Dobbs. (*E.g.*, Dobbs Dep. Tr. 1244:17–1245:9, 1279:16–1280:5, 1297:18–1298:8.)

AGO Response: Disputed. The Attorney General takes issue with the characterization of Uber's operational realities and to the conclusion of law about services. The Attorney General also takes issue with the implication that this is the full extent of Uber's business model.

- Expected testimony of AGO expert, David Weil.

56. <u>Uber does not own any cars used to provide rides to riders in Massachusetts.</u>

- Expected testimony from driver, Kyle Tysvaer. (Tysvaer Dep. Tr. 40:7–41:20, 42:11–24.)

- Expected testimony from driver, Kenneth Smock. (Smock Dep. Tr. 16:10–15.)

- Expected testimony from driver, Khalid Benlail. (Benlail Dep. Tr. 50:7–21, 95:9–11.)

AGO Response: Disputed. The statement is unsupported by evidence identified by Defendant, as drivers can only speak to whether they own their personal vehicle, not whether Uber owns any vehicles.

57. <u>Uber does not own any fleet of vehicles of any kind in Massachusetts.</u>

- Platform Access Agreement, UBER-MA0001492, § 2.5. [Tr. Ex. 3000]

- Expected testimony from Uber, Chad Dobbs. (*E.g.*, Dobbs Dep. Tr. 468:11–14.)

AGO Response: Undisputed.

58. <u>Uber does not guarantee riders will get a ride when they use the Rides App.</u>

- U.S. Terms of Use, UBER-MA00390035. [Tr. Ex. 3014]

- Expected testimony from Uber, Chad Dobbs. (*E.g.*, Dobbs Dep. Tr. 1276:13–1277:5.)

AGO Response: Undisputed.

59. <u>Some ride requests placed through the Rides App go unfulfilled.</u>

- U.S. Terms of Use, UBER-MA00390035. [Tr. Ex. 3014]

- Expected testimony from Uber, Chad Dobbs. (*E.g.*, Dobbs Dep. Tr. 1276:13–1277:5.)

• Expected testimony from Uber expert, Justin McCrary. (McCrary Rep. ¶ 22.) [Tr. Ex. 3071]

AGO Response: Undisputed.

60. <u>Uber provides riders and drivers with a variety of services when they use the Rides platform.</u>

• Expected testimony from Uber expert, Terrence August. (August Rep. ¶¶ 15, 47–56.) [Tr. Ex. 3074]

• Expected testimony from Uber, Chad Dobbs. (*E.g.*, Dobbs Dep. Tr. 1224:3–1225:10, 1230:3–22, 1242:4–24; Dobbs Payment Processing Decl. ¶ 8.) [Tr. Ex. 3395]

AGO Response: Disputed. The Attorney General takes issue with the characterization of Uber's operational realities and to the conclusion of law about services. The Attorney General also takes issue with the implication that this is the full extent of Uber's business model.

• Expected testimony of AGO expert, David Weil.

61. <u>Uber provides riders access to the Rides App.</u>

• Expected testimony from Uber, Chad Dobbs. (*E.g.*, Dobbs Dep. Tr. 1242:4–24, 1290:21–1291:11.)

AGO Response: Undisputed.

62. <u>Uber provides drivers access to the Driver App.</u>

• Expected testimony from Uber, Chad Dobbs. (*E.g.*, Dobbs Dep. Tr. 33:17–35:12, 1290:21–1291:11.)

AGO Response: Undisputed.

63. <u>Uber gives drivers the option to offer various service product types to riders in Massachusetts, including UberX, UberXL, Uber Comfort, Uber Black, and Uber Black SUV.</u>

• Expected testimony from Uber, Chad Dobbs. (*E.g.*, Dobbs Dep. Tr. 44:3–18, 624:8–20, 1110:7–16.)

• Vehicle Requirements, UBER-MA0003392 [Dobbs Dep. Ex. 3]. [Tr. Ex. 3322]

AGO Response: Disputed. The Attorney General takes issue with the characterization of drivers' relationship with Uber and to the conclusion of law about services. Notwithstanding, it is undisputed that Uber offers "various" "product types to riders in Massachusetts, including UberX, UberXL, Uber Comfort, Uber Black, and Uber Black SUV."

• Expected testimony of AGO expert, David Weil.

64. <u>Uber offers various service product types to allow riders the opportunity to pick the product that best meets their needs for a particular ride.</u>

- Expected testimony from Uber, Chad Dobbs. (*E.g.*, Dobbs Dep. Tr. 42:24–44:18.)

AGO Response: Disputed. The Attorney General takes issue with the conclusion of law about services. Notwithstanding, it is undisputed that Uber offers various product types to riders.

65. <u>UberX is the standard, most popular vehicle option for riders.</u>

- Vehicle Requirements, UBER-MA0003392 [Dobbs Dep. Ex. 3]. [Tr. Ex. 3322]
- Expected testimony from Uber, Chad Dobbs.

AGO Response: Undisputed.

66. <u>UberXL is an offering for riders to connect with drivers with larger vehicles to accommodate, for example, more people or luggage.</u>

- Expected testimony from Uber, Chad Dobbs. (*E.g.*, Dobbs Dep. Tr. 624:8–20, 1110:7–16.)
- Vehicle Requirements, UBER-MA0003392 [Dobbs Dep. Ex. 3]. [Tr. Ex. 3322]

AGO Response: Disputed. The Attorney General takes issue with the implications regarding the nature and extent of Uber's business model. Notwithstanding, it is undisputed that UberXL is a vehicle option that is limited to certain vehicles per Uber's Vehicle Requirements.

- Uber 30(b)(6) Testimony of Chad Dobbs

- AG1192

- Expected testimony from AGO expert, David Weil

67. <u>Uber Comfort is an option for riders to connect with drivers who have cars with more legroom than smaller cars.</u>

- Vehicle Requirements, UBER-MA0003392 [Dobbs Dep. Ex. 3]. [Tr. Ex. 3322]
- Expected testimony from Uber, Chad Dobbs.

AGO Response: Disputed. The Attorney General takes issue with the implications regarding the nature and extent of Uber's business model. Notwithstanding, it is undisputed that Uber Comfort is a vehicle option that is limited to certain vehicles per Uber's Vehicle Requirements.

- Uber 30(b)(6) Testimony of Chad Dobbs

- AG1192

- Expected testimony from AGO expert, David Weil

68. <u>Uber Black is an option for riders to connect with a driver who has a high-end, commercially insured, luxury vehicle and provides a black car service.</u>

- Vehicle Requirements, UBER-MA0003392 [Dobbs Dep. Ex. 3]. [Tr. Ex. 3322]

- Expected testimony from Uber, Chad Dobbs. (*E.g.*, Dobbs Dep. Tr. 624:8–20, 1110:7–16.)

AGO Response: Disputed. The Attorney General takes issue with the implications regarding the nature and extent of Uber's business model. Notwithstanding, it is undisputed that Uber Black is a vehicle option that is limited to certain vehicles per Uber's Vehicle Requirements.

- Uber 30(b)(6) Testimony of Chad Dobbs

- AG1192

- Expected testimony from AGO expert, David Weil

69. <u>Uber Black SUV is an option for riders to connect with drivers driving high-end, commercially insured, luxury SUVs.</u>

- Vehicle Requirements, UBER-MA0003392 [Dobbs Dep. Ex. 3]. [Tr. Ex. 3322]

- Expected testimony from Uber, Chad Dobbs. (*E.g.*, Dobbs Dep. Tr. 624:8–20, 1110:7–16.)

AGO Response: Disputed. The Attorney General takes issue with the implications regarding the nature and extent of Uber's business model. Notwithstanding, it is undisputed that Uber Black SUV is a vehicle option that is limited to certain vehicles per Uber's Vehicle Requirements.

- Uber 30(b)(6) Testimony of Chad Dobbs

- AG1192

- Expected testimony from AGO expert, David Weil

70. <u>Uber provides riders and drivers a matching service.</u>

- U.S. Terms of Use, UBER-MA00390035. [Tr. Ex. 3014]

- Expected testimony from Uber expert, Terrence August. (August Rep. ¶¶ 15, 48–51.) [Tr. Ex. 3074]

- Expected testimony from Uber expert, Justin McCrary. (McCrary Rep. ¶¶ 19–21, 23.) [Tr. Ex. 3071]

- Expected testimony from Uber expert, Steven Tadelis. (Tadelis Rebuttal Rep. ¶¶ 61–62.) [Tr. Ex. 3077]

- Expected testimony from Uber expert, On Amir. (Amir Rebuttal Rep. ¶¶ 19, 28.) [Tr. Ex. 3076]

- Expected testimony from Uber, Chad Dobbs. (*E.g.*, Dobbs Dep. Tr. 438:11–24, 925:7–26:12, 1242:4–24, 1264:18–1265:11.)

AGO Response: Disputed. The Attorney General takes issue with the conclusion of law regarding services, as well as the implications regarding the nature and extent of Uber's business model.

- Expected testimony from AGO expert, David Weil.

71. <u>Uber uses a "batched matching" process that considers the locations of all riders requesting a ride and all drivers seeking to provide a ride to find a set of proposed matches that aims to keep wait times short for both riders and drivers.</u>

- Uber's S-1, UBER-MA0002267 [Dobbs Dep. Ex. 49], at UBER-MA0002435–2436. [Tr. Ex. 3399]

- Expected testimony from Uber expert, Terrence August. (August Rep. ¶ 49.) [Tr. Ex. 3074]

- Expected testimony from Uber, Chad Dobbs. (*E.g.*, Dobbs Dep. Tr. 698:8–699:2, 741:12–19.)

- "How does Uber match riders with drivers?" UBER-MA00249100 [Dobbs Dep. Ex. 57]. [Tr. Ex. 3401]

AGO Response: Disputed. The Attorney General takes issue with whether this is an accurate statement about the objectives of Uber's matching process. Notwithstanding, it is undisputed that Uber uses a "batched matching" process.

- AGO FF 83-94.

- Expected testimony from AGO expert, David Weil

72. <u>Uber provides drivers and riders with safe and cashless payment processing services.</u>

- Platform Access Agreement, UBER-MA0001492, at 1 & § 4. [Tr. Ex. 3000]

- Fare Addendum, UBER-MA0000794 [Dobbs Dep. Ex. 27]. [Tr. Ex. 3010]

- U.S. Terms of Use, UBER-MA00390035. [Tr. Ex. 3014]

- Expected testimony from Uber expert, Terrence August. (August Rep. ¶¶ 15, 52.) [Tr. Ex. 3074]

- Expected testimony from driver, Naser Zorrok. (Zorrok Dep. Tr. 47:6–8.)

- Expected testimony from driver, Mary Ellen McAllister. (McAllister Dep. Tr. 124:24–125:12.)

- Expected testimony from Uber, Chad Dobbs. (*E.g.*, Dobbs Dep. Tr. 813:12–814:2, 903:4–23, 925:7–26:12, 929:2–16, 1242:4–24; Dobbs Payment Processing Decl. ¶¶ 4–15.) [Tr. Ex. 3395]

- "How payments work.pdf," Uber Website, UBER-MA00249016. [Tr. Ex. 3440]

AGO Response: Disputed. The Attorney General takes issue with the conclusion of law regarding services, and the characterization of Uber's payment process. Notwithstanding, it is undisputed that Uber processes payments for rides.

- AGO FF 42-47

73. <u>Uber provides drivers with lead-generation services.</u>

- Platform Access Agreement, UBER-MA0001492, §§ 2.1, 6.2. [Tr. Ex. 3001]

- U.S. Terms of Use, UBER-MA00390035. [Tr. Ex. 3014]

- Expected testimony from Uber, Chad Dobbs. (*E.g.*, Dobbs Dep. Tr. 416:2–7, 925:7–926:12, 1250:8–20.)

- Expected testimony from Uber expert, Terrence August. (August Rep. ¶¶ 48–51.) [Tr. Ex. 3074]

- Expected testimony from Uber expert, Justin McCrary. (McCrary Rep. ¶¶ 19–20, 43–44, Exs. 8A & 8B.) [Tr. Ex. 3071]

- Expected testimony from Uber expert, Steven Tadelis. (Tadelis Rebuttal Rep. ¶¶ 61–62.) [Tr. Ex. 3077]

AGO Response: Disputed. The Attorney General takes issue with the conclusion of law regarding services. Notwithstanding, it is undisputed that Uber surfaces ride requests to drivers in the Driver App.

- AGO FF 35-41.

74. <u>Another aspect of the services Uber provides drivers and riders are tools that help improve the quality of customer experiences on the platform.</u>

- Expected testimony from Uber, Chad Dobbs. (*E.g.*, Dobbs Dep. Tr. 214:8–215:2, 974:21–977:1, 1230:6–22, 1242:4–24, 1397:12–16.)

- Expected testimony from Uber expert, Terrence August. (August Rep. ¶ 53.) [Tr. Ex. 3074]

AGO Response: Disputed. The Attorney General takes issue with the conclusion of law regarding services.

- AGO FF 55-73, 139-175.

- Expected testimony of AGO expert, Lindsey Cameron

- Expected testimony of AGO expert, David Weil

75. <u>One tool Uber provides is a reciprocal rating system for riders and drivers.</u>

- Expected testimony from Uber expert, Terrence August. (August Rep. ¶¶ 36–38, 42–46, 55.) [Tr. Ex. 3074]

- Expected testimony from Uber, Chad Dobbs. (*E.g.*, Dobbs Dep. Tr. 974:21–977:1.)

- Expected testimony from driver, Mary Ellen McAllister. (McAllister Dep. Tr. 122:24–124:6.)

- Expected testimony from driver, Joshua Cambridge. (Cambridge Dep. Tr. 23:7–16.)

- Expected testimony from driver, Rebekah Field. (Field Dep. Tr. 48:11–49:13.)

- "How Star Ratings Work," Uber Website, UBER-MA00248965. [Tr. Ex. 3441]

AGO Response: Disputed.

- AGO FF 55-73.

- Expected testimony of AGO expert, Lindsey Cameron

- Expected testimony of AGO expert, David Weil

76. <u>Using the rating system on the App, drivers and riders can provide feedback about their experiences.</u>

- "How Star Ratings Work," Uber Website, UBER-MA00248965. [Tr. Ex. 3441]

- Expected testimony from Uber, Chad Dobbs. (*E.g.*, Dobbs Dep. Tr. 974:21–977:1.)

- Uber Community Guidelines (Jan. 17, 2024), UBER-MA00390044. [Tr. Ex. 3034]

- Expected testimony from driver, Mary Ellen McAllister. (McAllister Dep. Tr. 122:24–124:6.)

- Expected testimony from driver, Rebekah Field. (Field Dep. Tr. 48:11–49:13.)

AGO Response: Undisputed.

77. <u>At the end of a completed trip, a rider and a driver are prompted to rate one another on a scale of 1 to 5 stars.</u>

- Expected testimony from driver, Mary Ellen McAllister. (McAllister Dep. Tr. 122:24–124:6.)

- "How Star Ratings Work," Uber Website, UBER-MA00248965. [Tr. Ex. 3441]

- "Rating a rider," Uber Website, UBER-MA00248907. [Tr. Ex. 3446]

Gibson, Dunn &
Crutcher LLP

- Screenshot of Driver Prompt to Rate Rider, UBER-MA00375748 [Dobbs Dep. Ex. 24]. [Tr. Ex. 3398]

- "Rating a driver," Uber Website, UBER-MA0003358. [Tr. Ex. 3518]

AGO Response: Undisputed.

78. <u>Riders and drivers may also provide feedback to explain the rating they give.</u>

- "How Star Ratings Work," Uber Website, UBER-MA00248965. [Tr. Ex. 3441]
- "Rating a rider," Uber Website, UBER-MA00248907. [Tr. Ex. 3446]
- "Rating a driver," Uber Website, UBER-MA0003358. [Tr. Ex. 3518]
- Uber Community Guidelines, UBER-MA00390044. [Tr. Ex. 3034]

AGO Response: Undisputed.

79. <u>If a driver rates a rider 1 star, Uber's matching algorithm will not match that rider to that driver again.</u>

- Expected testimony from Uber, Chad Dobbs. (*E.g.*, Dobbs Dep. Tr. 742:7–743:15.)

AGO Response: Undisputed.

80. <u>If a rider rates a driver 1 star, Uber's matching algorithm will not match that driver to that rider again.</u>

- Expected testimony from Uber, Chad Dobbs. (*E.g.*, Dobbs Dep. Tr. 742:7–743:15.)

AGO Response: Undisputed.

81. <u>Both drivers and riders can refer to each other's average star rating when determining whether to accept or decline a proposed match.</u>

- Expected testimony from Uber, Chad Dobbs. (*E.g.*, Dobbs Dep. Tr. 122:1–123:18.)
- Expected testimony from driver, Joshua Cambridge. (Cambridge Dep. Tr. 23:7–16.)
- Expected testimony from driver, Naser Zorrok. (Zorrok Dep. Tr. 23:21–24:10.)

AGO Response: Disputed. The Attorney General takes issue with the characterization of what drivers and riders do with this information. Notwithstanding, it is undisputed that Uber includes a rider's star rating in a ride request notification sent to a driver.

- AGO FF 37

82. <u>Another way Uber helps to improve the experiences of users on its platform is through the Community Guidelines, which define basic standards of decency for all users.</u>

- Uber Community Guidelines, UBER-MA00390044. [Tr. Ex. 3034]

- Expected testimony from driver, Naser Zorrok. (Zorrok Dep. Tr. 59:12–60:1.)

AGO Response: Disputed. The Attorney General takes issue with the characterization of the purpose of the Community Guidelines, and the characterization of the content of the Community Guidelines, which is a legal conclusion. Notwithstanding it is undisputed that Uber has Community Guidelines.

- Uber 30(b)(6) Testimony of Chad Dobbs

- AG1084

83. <u>Uber can withdraw platform access to either riders or drivers who violate the Community Guidelines.</u>

- Expected testimony from Uber, Chad Dobbs. (*E.g.*, Dobbs Dep. Tr. 70:11–24.)

- Uber Community Guidelines, UBER-MA00390044. [Tr. Ex. 3034]

AGO Response: Disputed. The Attorney General takes issue with the implication that this is the full extent of potential reasons for why Uber deactivates drivers.

- AGO FF 65-72.

84. <u>Another aspect of the services Uber provides drivers and riders are features that help riders and drivers connect safely.</u>

- "Safety," Uber Website, UBER-MA0002777. [Tr. Ex. 3469]

- Expected testimony from Uber, Chad Dobbs. (*E.g.*, Dobbs Dep. Tr. 982:4–983:24; Dobbs Day 8 Dep. Tr. 148:12–149:21.)

- Expected testimony from Uber expert, Terrence August. (August Rep. ¶ 55.) [Tr. Ex. 3074]

- Expected testimony from Uber expert, On Amir. (Amir Rebuttal Rep. ¶¶ 36–37.) [Tr. Ex. 3076]

AGO Response: Disputed. The Attorney General takes issue with the conclusion of law about services and the characterization of the relationship between drivers and riders.

- Expected testimony of AGO expert, David Weil.
- Uber 30(b)(6) Testimony of Chad Dobbs

85. <u>The safety features Uber provides include background checks for drivers.</u>

- Expected testimony from Uber, Chad Dobbs. (*E.g.*, Dobbs Dep. Tr. 172:14–173:7.)

- "Ride with Confidence," Uber Website, UBER-MA0002800. [Tr. Ex. 3470]

- "Driver requirements," Uber Website, UBER-MA00248943. [Tr. Ex. 3436]

- Expected testimony from Uber expert, Terrence August. (August Rep. ¶ 55.) [Tr. Ex. 3074]

- Expected Testimony from Uber expert, On Amir. (Amir Rebuttal Rep. ¶ 37.) [Tr. Ex. 3076]

AGO Response: Disputed. The Attorney General takes issue with the characterization of background checks as a "safety feature." Notwithstanding, it is undisputed that Uber requires a completed background check for each driver.

- AGO FF 18
- Uber 30(b)(6) Testimony of Chad Dobbs
- Expected testimony of AGO expert, David Weil

86. <u>The safety features Uber provides include phone number anonymization between riders and drivers.</u>

- Expected testimony from Uber, Chad Dobbs. (*E.g.*, Dobbs Dep. Tr. 172:14–173:7.)

- "Ride with Confidence," Uber Website, UBER-MA0002800. [Tr. Ex. 3470]

- Expected Testimony from Uber expert, On Amir. (Amir Rebuttal Rep. ¶ 37.) [Tr. Ex. 3076]

AGO Response: Disputed. The Attorney General takes issue with the characterization of phone number anonymization as a "safety feature" as well as Uber's purpose for doing so. Notwithstanding, it is undisputed that Uber requires phone number anonymization.

87. <u>The safety features Uber provides include emergency alerts.</u>

- Expected testimony from Uber, Chad Dobbs. (*E.g.*, Dobbs Dep. Tr. 172:14–173:7.)

- "Ride with Confidence," Uber Website, UBER-MA0002800. [Tr. Ex. 3470]

- Expected Testimony from Uber expert, On Amir. (Amir Rebuttal Rep. ¶ 37.) [Tr. Ex. 3076]

AGO Response: Undisputed.

88. <u>The safety features Uber provides include the Safety Toolkit, which allows drivers and riders to access a menu of safety features from their home screen, including emergency alerts.</u>

- Uber's S-1, UBER-MA0002267 [Dobbs Dep. Ex. 49], at UBER-MA0002290. [Tr. Ex. 3399]

- "Ride with Confidence," Uber Website, UBER-MA0002800. [Tr. Ex. 3470]

- Expected Testimony from Uber expert, On Amir. (Amir Rebuttal Rep. ¶ 37.) [Tr. Ex. 3076]

AGO Response: Undisputed.

89. <u>The safety features Uber provides include the RideCheck feature, which flags if a trip goes unusually off-course.</u>

- "Ride with Confidence," Uber Website, UBER-MA0002800. [Tr. Ex. 3470]

- Expected Testimony from Uber expert, On Amir. (Amir Rebuttal Rep. ¶ 47.) [Tr. Ex. 3076]

AGO Response: Disputed. The Attorney General takes issue with the characterization that RideCheck is merely a "safety feature." Notwithstanding, it is undisputed that Uber implements RideCheck.

- Expected testimony from AGO expert, David Weil.

90. <u>Another safety feature Uber provides is the facilitation of secure financial transactions so that riders do not have to use cash or provide their credit card information to unknown individuals.</u>

- Expected testimony from driver, Naser Zorrok. (Zorrok Dep. Tr. 47:6–8.)

- Expected testimony from Uber expert, Terrence August. (August Rep. ¶ 35.) [Tr. Ex. 3074]

AGO Response: Disputed. The Attorney General takes issue with the characterization of the purpose of the payment process. Notwithstanding, it is undisputed that Uber requires payment through the Uber app.

- AGO FF 42-47.

91. <u>Another service Uber provides to both riders and drivers is real-time assessment of the market price for rides.</u>

- Uber's S-1, UBER-MA0002267 [Dobbs Dep. Ex. 49], at UBER-MA0002290, UBER-MA0002436. [Tr. Ex. 3399]

- Expected testimony from Uber expert, Terrence August. (August Rep. ¶¶ 39–41, 54.) [Tr. Ex. 3074]

- Expected testimony from Uber expert, Justin McCrary. (McCrary Rep. ¶ 24.) [Tr. Ex. 3071]

- Expected Testimony from Uber, Chad Dobbs. (*E.g.*, Dobbs Dep. Tr. 465:17–466:13, 591:8–592:20, 1509:5–17, 1517:20–1518:13.)

AGO Response: Disputed. The Attorney General takes issue with the conclusion of law about services as well as to the implications relating to the objectives of Uber's price setting. Notwithstanding, it is undisputed that Uber sets ride prices for riders and, separately, earnings for drivers and that real-time market conditions are a component of Uber's price setting.

- Expected testimony of AGO expert, David Weil
- Uber 30(b)(6) Testimony of Chad Dobbs
- AGO FF 95-138
- AG1097 at 9051-52; AG1098 at 9064.

92. <u>To facilitate transactions between drivers and riders, Uber determines the optimal price for each ride.</u>

- Uber's S-1, UBER-MA0002267 [Dobbs Dep. Ex. 49], at UBER-MA0002436. [Tr. Ex. 3399]

- Expected testimony from Uber expert, Terrence August. (August Rep. ¶¶ 39–41, 54.) [Tr. Ex. 3074]

- Expected testimony from Uber expert, Justin McCrary. (McCrary Rep. ¶ 24.) [Tr. Ex. 3071]

- Expected Testimony from Uber, Chad Dobbs. (*E.g.*, Dobbs Dep. Tr. 465:17–466:13, 591:8–592:20, 1509:5–17.)

AGO Response: Disputed. The Attorney General takes issue with the characterization of the purpose for which Uber determines the optimal price for each ride. Notwithstanding, it is undisputed that Uber sets ride prices for riders and, separately, earnings for drivers and that real-time market conditions are a component of Uber's price setting.

- Expected testimony from AGO expert, David Weil
- AGO FF 95-138

93. <u>Uber determines the optimal price for each ride by using dynamic pricing to balance driver supply and rider demand.</u>

- Uber's S-1, UBER-MA0002267 [Dobbs Dep. Ex. 49], at UBER-MA0002436. [Tr. Ex. 3399]

- Expected testimony from Uber expert, Justin McCrary. (McCrary Rep. ¶ 24.) [Tr. Ex. 3071]

• Expected Testimony from Uber, Chad Dobbs. (*E.g.*, Dobbs Dep. Tr. 465:17–466:13, 591:8–592:20, 1509:5–17.)

AGO Response: Disputed. The Attorney General takes issue with the characterization of the purpose of Uber setting an optimal price. Notwithstanding, it is undisputed that Uber sets ride prices for riders and, separately, earnings for drivers and that real-time market conditions are a component of Uber's price setting.

- Expected testimony of AGO expert, David Weil.

- AGO FF 95-138

94. Uber proposes real-time pricing based on market conditions (number of riders in need of a ride) to ensure drivers get rides at commensurate prices and riders get rides with lower wait times.

• Expected testimony from Uber expert, Justin McCrary. (McCrary Rep. ¶¶ 23–24.) [Tr. Ex. 3071]

AGO Response: Disputed. The Attorney General takes issue with the characterization of the purpose behind Uber setting prices and to the characterization of Uber proposing prices. Notwithstanding, it is undisputed that Uber sets ride prices for riders and, separately, earnings for drivers and that real-time market conditions are a component of Uber's price setting.

- Expected testimony of AGO expert, David Weil

- Uber 30(b)(6) Testimony of Chad Dobbs

- AGO FF 95-138

- AG1097 at 9051-52; AG1098 at 9064.

95. Without Uber's services, drivers would make less money, and riders would pay more.

• Expected testimony from Uber expert, Terrence August. (August Rep. ¶¶ 19, 26.) [Tr. Ex. 3074]

AGO Response: Disputed. The Attorney General takes issue with the legal conclusions as to services. The statement is unsupported by the evidence cited.

96. Another service that Uber provides to both drivers and riders is customer support.

• Expected testimony from Uber, Chad Dobbs. (*E.g.*, Dobbs Dep. Tr. 770:1–8.)

AGO Response: Disputed. The Attorney General takes issue with the conclusion of law about services and characterization of Uber's relationship with drivers. Notwithstanding, it is undisputed that Uber has customer support.

Expected testimony of AGO Expert, Lindsey Cameron.

97. To provide customer support services to drivers and riders, Uber hires thousands of customer support representatives.

- Expected testimony from Uber, Chad Dobbs. (*E.g.*, Dobbs Dep. Tr. 770:1–8.)

- Uber's S-1, UBER-MA0002267 [Dobbs Dep. Ex. 49], at UBER-MA0002464. [Tr. Ex. 3399]

- Expected testimony from Uber expert, Justin McCrary. (McCrary Rep. ¶ 20 n.21.) [Tr. Ex. 3071]

AGO Response: Disputed. The Attorney General takes issue with the conclusion of law about services and characterization of Uber's relationship with drivers. Notwithstanding, it is undisputed that Uber has customer support representatives. .

Expected testimony of AGO expert, Lindsey Cameron.

98. The services Uber provides reduce transaction costs to drivers and riders.

- Expected testimony from Uber, Chad Dobbs. (*E.g.*, Dobbs Dep. Tr. 1422:20–1423:15.)

- Expected testimony from Uber expert, Terrence August. (August Rep. ¶¶ 19, 26.) [Tr. Ex. 3074]

- Expected testimony from Uber expert, Justin McCrary. (McCrary Rep. ¶ 23.) [Tr. Ex. 3071]

- Expected testimony from Uber expert, On Amir. (Amir Rebuttal Rep. ¶¶ 16–17.) [Tr. Ex. 3076]

AGO Response: Disputed. The Attorney General takes issue with the conclusion of law about services, and the characterization that Uber reduces transactions costs between drivers and rides.

- Uber 30(b)(6) Testimony of Chad Dobbs

- FF 97–98, 99-102, 154-155

- AG1148 at 596

- AG1060 at 2345

99. The services that Uber provides lower the barrier to entry for individuals looking to enter the business of providing rides.

- Expected testimony from Uber, Chad Dobbs.

AGO Response: Disputed. The Attorney General takes issue with the conclusion of law about services, characterization of Uber's relationship with drivers, and the characterization/legal conclusion of drivers being in the "business of providing rides." This statement is unsupported by evidence identified by Defendant.

100. <u>Matching market participants, payment processing, providing tools to improve the customer experience, offering safety features, and real-time determination of market prices are the same as or are similar to services that other multi-sided platform companies provide to market participants in their respective markets.</u>

- Expected testimony from Uber expert, Terrence August. (August Rep. ¶¶ 23–56.) [Tr. Ex. 3074]

- Expected testimony from Uber expert, On Amir. (Amir Rebuttal Rep. ¶¶ 14–19.) [Tr. Ex. 3076]

- Expected testimony from Uber expert, Justin McCrary. (McCrary Rep. ¶¶ 23–24.) [Tr. Ex. 3071]

AGO Response: Disputed. The Attorney General takes issue with the conclusion of law about services, the characterization of Uber's relationship with drivers, the characterization of "multi-sided platforms" and the Defendant's comparison to other platforms. This statement is also unsupported by evidence identified by the Defendant.

101. <u>Rides are not a service that Uber sells.</u>

- Expected testimony from Uber expert, Terrence August. (August Rep. ¶ 23.) [Tr. Ex. 3074]

AGO Response: Disputed. The Attorney General takes issue with the conclusion of law about services and the characterization of Uber's business model. This statement is also unsupported by evidence identified by the Defendant.
- Expected testimony from AGO expert, David Weil.

102. <u>To begin using the Driver App, a prospective driver first downloads the Uber App, which is publicly available for downloading, on his or her phone.</u>

- Expected testimony from Uber, Chad Dobbs. (*E.g.*, Dobbs Dep. Tr. 34:11–36:24.)

AGO Response: Undisputed.

103. <u>Prospective drivers do not apply in any traditional sense to use the Driver App; they simply sign up by creating an account, which requires basic information such as name, phone number, e-mail address, and a password.</u>

- Expected testimony from Uber, Chad Dobbs. (*E.g.*, Dobbs Dep. Tr. 34:11–36:24.)

- Expected testimony from driver, Rebekah Field. (Field Dep. Tr. 16:3–9.)
- Expected testimony from driver, Mary Ellen McAllister. (McAllister Dep. Tr. 112:9–11.)

AGO Response: Disputed. The Attorney General takes issue with the legal conclusion about the characteristics of an employment relationship. Notwithstanding, it is undisputed that drivers create an account, which requires basic information including but not limited to name, phone number, e-mail, and a password.

104. <u>The prospective driver then chooses what they would like to do on the Uber App, either drive people or deliver food, or both.</u>

- Expected testimony from Uber, Chad Dobbs. (*E.g.*, Dobbs Dep. Tr. 34:11–36:24.)

AGO Response: Disputed. The Attorney General takes issue with the characterization of the decision as a choice. The decision to offer a driver a ride request or delivery request is determined by Uber. Notwithstanding, it is undisputed that prospective drivers make themselves available on the Uber App, either to drive people or deliver food, or both.

- AGO FF 35.

105. <u>As part of the sign-up process, prospective drivers in Massachusetts must consent to two background checks that are required under the Massachusetts Transportation Network Company ("TNC") laws, including one that is conducted by the Massachusetts Department of Public Utilities ("DPU").</u>

- Expected testimony from Uber, Chad Dobbs. (*E.g.*, Dobbs Dep. Tr. 34:11–36:24.)

AGO Response: Undisputed.

106. <u>Prospective drivers also submit various documents required under Massachusetts law, including a driver's license, vehicle registration, and insurance.</u>

- Expected testimony from Uber, Chad Dobbs. (*E.g.*, Dobbs Dep. Tr. 34:11–36:24.)

AGO Response: Undisputed.

107. <u>Once the documents have been verified and approved, and the prospective driver passes both background checks, the prospective driver is presented with various agreements to review and accept.</u>

- Expected testimony from Uber, Chad Dobbs. (*E.g.*, Dobbs Dep. Tr. 34:11–36:24.)

AGO Response: Undisputed.

108. <u>Once the prospective driver agrees to the agreements, they can begin using the Driver App to find matches.</u>

- Expected testimony from Uber, Chad Dobbs. (*E.g.*, Dobbs Dep. Tr. 34:11–36:24.)

AGO Response: Undisputed.

109. <u>Prospective drivers do not have to interview with Uber before starting to use the Driver App.</u>

- Expected testimony from driver, Rebekah Field. (Field Dep. Tr. 16:24–17:4.)
- Expected testimony from driver, Bryan Amparo Mesa. (Amparo Mesa Dep. Tr. 61:9–11.)
- Expected testimony from driver, Dhiraj Tulachan. (Tulachan Dep. Tr. 54:18–21.)
- Expected testimony from driver, Mary Ellen McAllister. (McAllister Dep. Tr. 112:9–14.)

AGO Response: Undisputed.

110. <u>Drivers can sign up to use the Driver App as business entities.</u>

- Expected testimony from Uber, Chad Dobbs. (*E.g.*, Dobbs Dep. Tr. 907:17–908:5, 911:24–912:8, 941:8–942:5.)

AGO Response: Disputed. This statement is unsupported by the evidence identified by Defendant.

111. <u>Every driver who uses Uber's Rides platform agrees to the terms of the Platform Access Agreement ("PAA").</u>

- Expected testimony from Uber, Chad Dobbs. (*E.g.*, Dobbs Dep. Tr. 77:11–14, 80:22–81:7.)
- Expected testimony from driver, Bryan Amparo Mesa. (Amparo Mesa Dep. Tr. 32:18–33:13, 34:7–14.)
- Expected testimony from driver, Dhiraj Tulachan. (Tulachan Dep. Tr. 32:14–33:21.)
- Expected testimony from driver, Naser Zorrok. (Zorrok Dep. Tr. 16:19–17:17.)

AGO Response: Undisputed.

112. <u>The current version of the PAA is dated January 1, 2022.</u>

- Platform Access Agreement, UBER-MA0001492. [Tr. Ex. 3000]

AGO Response: Undisputed.

Gibson, Dunn &
Crutcher LLP

113. <u>The PAA incorporates by reference Uber's Community Guidelines, Fare Addendum, Privacy Notice, Referral Policies, and various other standards and policies.</u>

- Platform Access Agreement, UBER-MA0001492, at 1 & §§ 4.2, 7. [Tr. Ex. 3000]
- Expected testimony from Uber, Chad Dobbs. (*E.g.*, Dobbs Dep. Tr. 68:13–19, 78:4–79:6.)

AGO Response: Undisputed.

114. <u>Uber receives feedback on these agreements from users of its platform—including drivers, riders, and restaurants—and updates the agreements to address that feedback.</u>

- Expected testimony from Uber, Chad Dobbs. (*E.g.*, Dobbs Dep. Tr. 58:15–60:8.)

AGO Response: Disputed. The Attorney General takes issue with the characterization of Uber's relationship with drivers. Individual drivers are not able to change terms or conditions in Uber's agreements. Notwithstanding, it is undisputed that Uber updates its agreements with drivers.

- AGO FF 30-32
- Uber 30(b)(6) Testimony of Chad Dobbs

115. <u>When Uber updates its agreements, it notifies drivers through in-app or email notifications and prompts them to review and accept those agreements to continue using the Uber platform.</u>

- Expected testimony from Uber, Chad Dobbs. (*E.g.*, Dobbs Dep. Tr. 55:17–56:9, 79:12–18, 82:6–12, 85:21–86:1, 88:19–23.)

AGO Response: Undisputed.

116. <u>Drivers agree in the PAA that they are not engaged to provide any service to Uber.</u>

- Platform Access Agreement, UBER-MA0001492, § 1.1. [Tr. Ex. 3000]
- Expected testimony from Uber, Chad Dobbs. (*E.g.*, Dobbs Dep. Tr. 1231:21–1232:10.)

AGO Response: Disputed. The Attorney General takes issue with the conclusion of law about services, the interpretation of the contract, as well as the characterization of Uber's relationship with drivers. Notwithstanding, the plain text of Uber's PAA is undisputed.

117. <u>Drivers also agree in the PAA that they are not employed by Uber.</u>

- Platform Access Agreement, UBER-MA0001492, § 1.1. [Tr. Ex. 3000]
- Expected testimony from Uber, Chad Dobbs. (*E.g.*, Dobbs Dep. Tr. 1237:9–23, 1251:5–1253:14.)

AGO Response: Disputed. The Attorney General takes issue with the conclusion of law about employment status, the interpretation of the contract, as well as the characterization of Uber's relationship with drivers. Notwithstanding, the plain text of Uber's PAA is undisputed.

118. <u>Drivers also agree in the PAA that they are independent contractors.</u>

- Platform Access Agreement, UBER-MA0001492, § 1.1. [Tr. Ex. 3000]
- Expected testimony from driver, Naser Zorrok. (Zorrok Dep. Tr. 20:4–21:22.)
- Expected testimony from driver, Raya Denny. (Denny Dep. Tr. 117:17–24, 135:16–136:5.)
- Expected testimony from driver, Mary Ellen McAllister. (McAllister Dep. Tr. 81:3–15.)
- Testimony from AGO, Lauren Moran. (Corporate Representative Testimony, Moran Day 2 Dep. Tr. 89:7–19.)
- Communications between AGO and driver, MAAGO010186 [Moran Dep. Ex. 38]. [Tr. Ex. 3146]

AGO Response: Disputed. The Attorney General takes issue with the conclusion of law about employment status, the interpretation of the contract, as well as the characterization of Uber's relationship with drivers. Notwithstanding, the plain text of Uber's PAA is undisputed.

119. <u>Uber does not require drivers to incorporate or use any particular business form, but drivers are free to do so.</u>

- Expected testimony from driver, Edward Gannon. (Gannon Dep. Tr. 45:7–10.)
- Expected testimony from Uber, Chad Dobbs. (*E.g.*, Dobbs Dep. Tr. 1251:5–1253:14.)
- Expected testimony from driver, David Langlais. (Langlais Dep. Tr. 53:5–17.)

AGO Response:

- Undisputed.

120. <u>Some drivers incorporate their own businesses when using the Uber Rides platform.</u>

- Expected testimony from Uber, Chad Dobbs. (*E.g.*, Dobbs Dep. Tr. 907:17–908:5, 1251:5–1253:14.)
- Expected testimony from driver, Khalid Benlail. (Benlail Dep. Tr. 16:1–8, 30:1–15.)
- Testimony from AGO, Lauren Moran. (Corporate Representative Testimony, Moran Day 2 Dep. Tr. 161:4–21.)
- Part 6 – Uber's 16 Questions [Moran Dep. Ex. 57]. [Tr. Ex. 3165]
- Articles of Organization for GoLuxLimo Incorporated [Benlail Dep. Ex. 1]. [Tr. Ex. 3284]
- Annual Report for GoLuxLimo Incorporated (Dec. 30, 2020) [Benlail Dep. Ex. 2]. [Tr. Ex. 3285]

- Entity Summary for GoLuxLimo Incorporated [Benlail Dep. Ex. 3]. [Tr. Ex. 3286]

- Annual Report for GoLuxLimo Incorporated (Sept. 8, 2022) [Benlail Dep. Ex. 4]. [Tr. Ex. 3287]

AGO Response: Undisputed.

121. <u>Some drivers run driving businesses as sole proprietorships.</u>

- Expected testimony from driver, Michael Venezia. (Venezia Dep. Tr. 137:7–138:5.)

- Expected testimony from driver, Kyle Tysvaer. (Tysvaer Dep. Tr. 32:24–35:19.)

- Kyle Tysvaer PPP Loan [Tysvaer Dep. Ex. 1]. [Tr. Ex. 3262]

- Expected testimony from driver, Rebekah Field. (Field Dep. Tr. 19:7–21:4, 57:19–58:2, 58:15–60:2.)

- Expected testimony from driver, Naser Zorrok. (Zorrok Dep. Tr. 20:12–21:1, 52:6–9.)

AGO Response: Disputed. The Attorney General takes issue with the cited evidence as supporting the conclusion that drivers generally engage in this practice. Notwithstanding, it is undisputed as to the statements made by the cited drivers.

- Unsupported by evidence identified by Defendant.

122. <u>Running a business does not require incorporation, and drivers who run other businesses have run both those businesses and their driving businesses as sole proprietorships.</u>

- Expected testimony from driver, Kyle Tysvaer. (Tysvaer Dep. Tr. 19:12–21:15, 32:24–35:19.)

- Kyle Tysvaer PPP Loan [Tysvaer Dep. Ex. 1]. [Tr. Ex. 3262]

- Expected testimony from driver, Michael Venezia. (Venezia Dep. Tr. 137:7–138:5.)

- Expected testimony from driver, Felipe Martinez. (Martinez Dep. Tr. 31:7–32:17, 45:22–46:2.)

AGO Response: Disputed. The Attorney General takes issue with the cited evidence as supporting the conclusion that drivers generally engage in this practice, and the conclusion of law about business incorporation. Notwithstanding, it is undisputed as to the statements made by the cited drivers.

123. <u>Drivers may choose when—if at all—they use the Uber Rides platform to find customers.</u>

- Expected testimony from driver, Kenneth Smock. (Smock Dep. Tr. 12:3–10, 55:2–16, 56:11–20; Smock Decl., UBER-MA0001427, ¶ 5.) [Tr. Ex. 3377]

- Expected testimony from driver, Jonathan Chabot. (Chabot Decl., UBER-MA00376126, ¶ 7.) [Tr. Ex. 3393]

- Expected testimony from Uber expert, Justin McCrary. (McCrary Rep. ¶¶ 28–38, Exs. 1–7.) [Tr. Ex. 3071]

- Expected testimony from Uber, Chad Dobbs. (*E.g.*, Dobbs Dep. Tr. 1259:11–1260:10, 1261:19–1262:6.)

- Expected testimony from driver, Rebekah Field. (Field Dep. Tr. 30:12–31:9.)

- Expected testimony from driver, Raya Denny. (Denny Dep. Tr. 144:6–8.)

- Expected testimony from driver, Richard Kambugu. (Kambugu Dep. Tr. 151:4–152:9, 152:19–153:6.)

- Expected testimony from driver, Naser Zorrok. (Zorrok Dep. Tr. 55:2–9, 56:3–9.)

- Expected testimony from driver, Mary Ellen McAllister. (McAllister Dep. Tr. 118:16–119:22.)

AGO Response: Disputed. The Attorney General takes issue with the characterization of Uber's relationship with drivers and riders. Notwithstanding, it is undisputed that Uber allows drivers to choose when—if at all—they use the Uber Rides platform.

124. When drivers choose to use the Uber Rides platform, they must open the Driver App and click "go" to go online and be able to receive ride requests.

- Screenshots of the Uber application, UBER-MA00375800, UBER-MA00375725, UBER-MA00375802. [Tr. Ex. 3430]

- Expected testimony from Uber, Chad Dobbs. (*E.g.*, Dobbs Dep. Tr. 95:12–16.)

AGO Response: Undisputed.

125. When drivers use Uber's Rides platform, Uber's matching software proposes to drivers rides that are being sought in real-time by riders.

- Expected testimony from Uber, Chad Dobbs. (*E.g.*, Dobbs Dep. Tr. 460:12–465:16, 549:17–550:9.)

AGO Response: Disputed. Notwithstanding, it is undisputed that Uber matches riders and drivers using an algorithm. The AGO takes issue with the superficial characterization of Uber's matching process.

- AGO FF 78–91

126. In most of Massachusetts, when drivers receive a ride request through the Rides platform, they are presented with the upfront fare for the trip, the rider's star rating, the pickup location and its distance from their current location, and the trip length and destination.

- Expected testimony from Uber, Chad Dobbs. (*E.g.*, Dobbs Dep. Tr. 110:17–111:21, 116:23–117:8, 122:1–123:18.)

- Ride Request Screenshot, UBER-MA00238982 [Dobbs Dep. Ex. 18]. [Tr. Ex. 3554]

AGO Response: Disputed. The Attorney General takes issue with this statement as unsupported by evidence identified by the Defendant during the relevant period of the lawsuit. Notwithstanding, it is undisputed that in most of Massachusetts, when drivers receive a ride request through the Rides platform, Uber currently presents them with the upfront fare for the trip and the rider's star rating.

- Uber 30(b)(6) Testimony of Chad Dobbs
- AGO FF 36

127. Uber's decision to provide this information to drivers was the result, in part, of collecting and listening to driver feedback.

- Expected testimony from Uber, Chad Dobbs. (*E.g.*, Dobbs Dep. Tr. 1270:1–2, 4–15.)

AGO Response: Disputed. The Attorney General takes issue with the characterization of Uber's relationship with drivers. Notwithstanding, it is undisputed that Uber has decision making authority to unilaterally change the information provided to drivers, including based on feedback that Uber receives from drivers.

128. When a driver receives a ride request through the Rides platform, they can choose to accept it by clicking the "UberX" button that appears on the screen.

- Expected testimony from Uber, Chad Dobbs. (*E.g.*, Dobbs Dep. Tr. 111:1–20.)
- Ride Request Screenshot, UBER-MA00238982 [Dobbs Dep. Ex. 18]. [Tr. Ex. 3554]

AGO Response: Disputed. The Attorney General takes issue with the characterization of Uber's relationship with drivers. Notwithstanding, it is undisputed that drivers can accept a ride request by clicking the "UberX" button on the screen, so long as drivers accept within 15 seconds of receiving the ride request.

- AGO FF 37.

129. Uber does not guarantee riders and drivers will be matched.

- U.S. Terms of Use, UBER-MA00390035. [Tr. Ex. 3014]
- Expected testimony from Uber, Chad Dobbs. (*E.g.*, Dobbs Dep. Tr. 1276:13–1277:5.)

AGO Response: Undisputed.

130. Uber does not guarantee to riders that they will get a ride when they request one, even after a driver has accepted.

- U.S. Terms of Use, UBER-MA00390035. [Tr. Ex. 3014]

- Expected testimony from Uber, Chad Dobbs. (*E.g.*, Dobbs Dep. Tr. 1276:13–1277:5.)

- Expected testimony from Uber expert, Justin McCrary. (McCrary Rep. ¶ 22.) [Tr. Ex. 3071]

AGO Response: Undisputed.

131. <u>Drivers are free to turn down rides offered to them on the Uber Rides platform.</u>

- Expected testimony from Uber, Chad Dobbs. (*E.g.*, Dobbs Dep. Tr. 1261:16–1262:11, 1268:21–1269:19.)

- Expected testimony from Uber expert, Justin McCrary. (McCrary Rep. ¶¶ 43–44, Exs. 8A & 8B.) [Tr. Ex. 3071]

- Expected testimony from driver, Kyle Tysvaer. (Tysvaer Dep. Tr. 48:1–49:2.)

- Expected testimony from driver, Naser Zorrok. (Zorrok Dep. Tr. 23:21–24:18, 27:10–15, 56:10–18.)

- Expected testimony from driver, Kenneth Smock. (Smock Dep. Tr. 25:16–19, 61:10–19.)

- Expected testimony from driver, David Langlais. (Langlais Dep. Tr. 31:23–32:10, 33:8–19, 79:4–8.)

- Expected testimony from driver, Dhiraj Tulachan. (Tulachan Dep. Tr. 32:2–5, 60:12–24.)

- Expected testimony from driver, Edward Gannon. (Gannon Dep. Tr. 25:7–26:2, 57:17–21.)

- Expected testimony from driver, Mary Ellen McAllister. (McAllister Dep. Tr. 117:13–118:12.)

- Expected testimony from driver, Raya Denny. (Denny Dep. Tr. 145:14–146:5.)

- Expected testimony from driver, Bryan Amparo Mesa (Amparo Mesa Dep. Tr. 70:18–71:7.)

- Expected testimony from driver, Rebekah Field. (Field Dep. Tr. 32:8–33:3.)

AGO Response: Disputed. This statement is unsupported by the evidence identified by the Defendant.

- Expected testimony from AGO expert, Lindsey Cameron.

132. <u>Drivers may cancel a ride they previously accepted.</u>

- Expected testimony from Uber, Chad Dobbs. (*E.g.*, Dobbs Dep. Tr. 131:17–132:22.)

- Screenshot of In-App Ride Cancellation Screen, UBER-MA00375739 [Dobbs Dep. Ex. 21]. [Tr. Ex. 3397]

- Expected testimony from Uber expert, Justin McCrary. (McCrary Rep. ¶¶ 43–44, Exs. 8A & 8B.) [Tr. Ex. 3071]

- Platform Access Agreement, UBER-MA0001492, § 1.2. [Tr. Ex. 3000]

- Expected testimony from driver, Naser Zorrok. (Zorrok Dep. Tr. 30:16–31:18.)

- Expected testimony from driver, Joshua Cambridge. (Cambridge Dep. Tr. 34:22–35:4.)

- Expected testimony from driver, Kevin Hyland. (Hyland Dep. Tr. 30:21–23, 31:6–15.)

AGO Response: Undisputed.

133. Uber does not penalize drivers for canceling rides they initially accepted.

- Expected testimony from Uber, Chad Dobbs. (*E.g.*, Dobbs Dep. Tr. 396:10–23, 997:11–13.)

AGO Response: Disputed.

- Anticipated testimony of AGO expert, Lindsey Cameron

134. Drivers' cancellation rates do not affect their ability to access the Uber Rides platform.

- Expected testimony from Uber, Chad Dobbs. (*E.g.*, Dobbs Dep. Tr. 997:11–13.)

AGO Response: Disputed. This statement is unsupported by the evidence identified by the Defendant for the duration of the relevant time period.

- AG1186, AG1187

135. Through the Rider and Driver Apps, Uber collects payments from riders and transfers those funds to drivers, which makes financial transactions simpler and safer for both sides.

- Fare Addendum, UBER-MA0000794 [Dobbs Dep. Ex. 27]. [Tr. Ex. 3010]

- U.S. Terms of Use, UBER-MA00390035. [Tr. Ex. 3014]

- Expected testimony from Uber expert, Terrence August. (August Rep. ¶¶ 33–35, 52.) [Tr. Ex. 3074]

- Expected testimony from Uber, Chad Dobbs. (*E.g.*, Dobbs Dep. Tr. 790:3–11; Dobbs Payment Processing Decl. ¶¶ 4–15.) [Tr. Ex. 3395]

- Expected testimony from driver, Mary Ellen McAllister. (McAllister Dep. Tr. 124:24–125:12.)

- "How payments work.pdf," Uber Website, UBER-MA00249016. [Tr. Ex. 3440]

AGO Response: Disputed. The Attorney General takes issue with the characterization of the characterization of the transactions as well as the omission of how Uber is collecting its fees on the transaction. Notwithstanding, it is undisputed that Uber collects payments from riders and pays compensation to drivers.

- AGO FF 42-48

- Uber 30(b)(6) Testimony of Chad Dobbs

- Expected testimony of AGO expert, David Weil.

136. <u>Uber's Fare Addendum provides the details regarding the fares that riders pay to drivers and how those payments are processed.</u>

- Fare Addendum, UBER-MA0000794 [Dobbs Dep. Ex. 27]. [Tr. Ex. 3010]

- Expected testimony from Uber, Chad Dobbs. (*E.g.*, Dobbs Dep. Tr. 88:16–18.)

AGO Response: Disputed. The Attorney General takes issue with the characterization of the payment. Notwithstanding, it is undisputed that Uber requires drivers and riders to abide by the Fare Addendum.

137. <u>The current version of the Fare Addendum is dated August 16, 2021.</u>

- Fare Addendum, UBER-MA0000794 [Dobbs Dep. Ex. 27]. [Tr. Ex. 3010]

AGO Response: Undisputed.

138. <u>To use these payment processing services, drivers appoint Uber as a limited collection agent by agreeing to the Fare Addendum.</u>

- Fare Addendum, UBER-MA0000794 [Dobbs Dep. Ex. 27]. [Tr. Ex. 3010]

- U.S. Terms of Use, UBER-MA00390035. Tr. Ex. 3014]

- Expected testimony from Uber, Chad Dobbs. (*E.g.*, Dobbs Dep. Tr. 928:10–18; Dobbs Payment Processing Decl. ¶ 9.) [Tr. Ex. 3395]

AGO Response: Disputed. The statement is an effort to interpret a term or terms in the Fare Addendum and is therefore a question of law for the Court regarding the meaning of the Fare Addendum.

139. <u>Although payments are routed through Uber or third-party payment processing companies, the payments are made from riders to drivers.</u>

- Expected testimony from Uber, Chad Dobbs. (*E.g.*, Dobbs Dep. Tr. 120:24–121:5, 140:6–16, 610:23–611:3, 787:10–11, 903:12–18, 1506:4–20; Dobbs Payment Processing Decl. ¶¶ 9–10.) [Tr. Ex. 3395]

- Fare Addendum, UBER-MA0000794 [Dobbs Dep. Ex. 27]. [Tr. Ex. 3010]

AGO Response: Disputed. The Attorney General takes issue with the characterization of Uber's relationship with riders and drivers. To the extent this statement is an effort to interpret a term, or terms, in the Fare Addendum, it is a question of law for the Court regarding the

meaning of the Fare Addendum. Notwithstanding, it is undisputed that Uber collects payments from riders and pays compensation to drivers.

- Expected testimony of AGO expert, David Weil.
- Uber 30(b)(6) Testimony of Chad Dobbs
- AGO FF 42-48

140. Uber, as a driver's limited payment collection agent, collects the fare and any gratuity on the driver's behalf by charging the rider's credit or debit card.

- Expected testimony from Uber, Chad Dobbs. (*E.g.*, Dobbs Payment Processing Decl. ¶ 11.) [Tr. Ex. 3395]

- U.S. Terms of Use, UBER-MA00390035. [Tr. Ex. 3014]

- Fare Addendum, UBER-MA0000794 [Dobbs Dep. Ex. 27]. [Tr. Ex. 3010]

AGO Response: Disputed. The Attorney General takes issue with the characterization of Uber's relationship with riders and drivers. To the extent this statement is an effort to interpret a term, or terms, in the Fare Addendum, it is a question of law for the Court regarding the meaning of the Fare Addendum. Notwithstanding, it is undisputed that Uber collects payments from riders.

- Expected testimony of AGO expert, David Weil.
- Uber 30(b)(6) Testimony of Chad Dobbs
- AGO FF 42-48

141. A third-party payment processor collects the funds from the rider and deposits them into an account maintained by Citibank for the benefit of drivers ("FBO").

- Expected testimony from Uber, Chad Dobbs. (*E.g.*, Dobbs Payment Processing Decl. ¶ 12.) [Tr. Ex. 3395]

- Testimonial Aid re: Third Party Payment Processor [Dobbs Dep. Ex. 96]. [Tr. Ex. 3552]

AGO Response: Disputed. The Attorney General takes issue with the characterization of Uber's relationship with riders and drivers. To the extent this statement is an effort to interpret a term, or terms, in the Fare Addendum, it is a question of law for the Court regarding the meaning of the Fare Addendum. Notwithstanding, it is undisputed that Uber accepts payments from riders and pays compensation to drivers.

142. The FBO account is entirely separate from Uber's corporate accounts.

- Expected testimony from Uber, Chad Dobbs. (*E.g.*, Dobbs Payment Processing Decl. ¶ 12.) [Tr. Ex. 3395]

AGO Response: Disputed. The Attorney General takes issue with the characterization of Uber's relationship with riders and drivers. To the extent this statement is an effort to interpret a term or terms in the Fare Addendum, it is a question of law for the Court regarding the meaning of the Fare Addendum. Notwithstanding, it is undisputed that Uber accepts payments from riders and pays compensation to drivers.

- AG1217

143. <u>Drivers are beneficial owners of driver funds in the FBO account.</u>

- Expected testimony from Uber, Chad Dobbs. (*E.g.*, Dobbs Payment Processing Decl. ¶¶ 12–13.) [Tr. Ex. 3395]

AGO Response: Disputed. The Attorney General takes issue with the characterization of Uber's relationship with riders and drivers. To the extent this statement is an effort to interpret a term or terms in the Fare Addendum, it is a question of law for the Court regarding the meaning of the Fare Addendum. Notwithstanding, it is undisputed that Uber accepts payments from riders and pays compensation to drivers.

- AG1217

144. <u>From the FBO account, Citibank transmits to drivers the fare, gratuity, and any other charges (such as cleaning or repair fees), less taxes and any service fee the driver owes Uber.</u>

- Expected testimony from Uber, Chad Dobbs. (*E.g.*, Dobbs Payment Processing Decl. ¶ 13.) [Tr. Ex. 3395]
- Fare Addendum, UBER-MA0000794 [Dobbs Dep. Ex. 27]. [Tr. Ex. 3010]

AGO Response: Disputed. The Attorney General takes issue with the characterization of Uber's relationship with riders and drivers. To the extent this statement is an effort to interpret a term or terms in the Fare Addendum, it is a question of law for the Court regarding the meaning of the Fare Addendum. Notwithstanding, it is undisputed that Uber accepts payments from riders and pays compensation to drivers.

- AG1217

145. <u>Citibank also transmits to Uber any applicable fees from the rider.</u>

- Expected testimony from Uber, Chad Dobbs. (*E.g.*, Dobbs Payment Processing Decl. ¶ 13.) [Tr. Ex. 3395]
- Fare Addendum, UBER-MA0000794 [Dobbs Dep. Ex. 27]. [Tr. Ex. 3010]
- U.S. Terms of Use, UBER-MA00390035. [Tr. Ex. 3014]

AGO Response: Disputed. The Attorney General takes issue with the characterization of Uber's relationship with riders and drivers. To the extent this statement is an effort to interpret a term or terms in the Fare Addendum, it is a question of law for the Court regarding the

meaning of the Fare Addendum. Notwithstanding, it is undisputed that Uber accepts payments from riders and pays compensation to drivers.

- AG1217

146. <u>Uber's Rides platform relies on network effects, meaning that having more users on one side of the market (e.g., more drivers) increases the value of the platform to users on the other side of the market (e.g., more riders).</u>

- Expected testimony from Uber expert, Terrence August. (August Rep. ¶ 20.) [Tr. Ex. 3074]

AGO Response: Disputed. The Attorney General takes issue with the characterization that network effects only increase value for "users." The Attorney General also takes issue with the implications regarding the nature of Uber's business model. Notwithstanding, it is undisputed that Uber's platform relies on network effects, and that having more drivers and riders increases the effectiveness of Uber's network.

- Anticipated testimony of AGO expert, David Weil.
- Uber 30(b)(6) Testimony of Chad Dobbs
- AGO FF 232-243

147. <u>Network effects, and thus the health of Uber's marketplace, depends on increasing the number of users on all sides of transactions.</u>

- Expected testimony from Uber, Chad Dobbs. (*E.g.*, Dobbs Dep. Tr. 440:16–21.)
- Expected testimony from AGO expert, James Parrott. (Parrot Dep. Tr. 363:8–10.)

AGO Response: Disputed. The Attorney General takes issue with the characterization that network effects only increase value for "users." The Attorney General also takes issue with the implications regarding the nature of Uber's business model. Notwithstanding, it is undisputed that Uber's platform relies on network effects, and that having more drivers and riders increases the effectiveness of Uber's network.

- Anticipated testimony of AGO expert, David Weil.
- Uber 30(b)(6) Testimony of Chad Dobbs
- AGO FF 232-243

148. <u>On the Rides platform, too few drivers will result in bad experiences for riders, leading to fewer riders, which in turn creates a bad experience for drivers who will have fewer ride opportunities.</u>

- Expected testimony from AGO expert, James Parrott. (Parrott Dep. Tr. 363:3–365:9, 491:7–492:10.)
- Expected testimony from Uber expert, Terrence August. (August Rep. ¶¶ 20, 48–56.) [Tr. Ex. 3074]

• Expected testimony from Uber expert, Justin McCrary. (McCrary Rep. ¶¶ 17, 23–26, 71–78.) [Tr. Ex. 3071]

AGO Response: Disputed. The Attorney General takes issue with the implication that this is the only situation that can lead to bad experiences for riders. Notwithstanding, it is undisputed that this is one of the experiences relating to a ride that can lead to a bad experience for riders and thereby reduce the number of future riders.

- AGO FF 235-241

- AG1060 at 2434

149. <u>Platform companies, including Uber, take steps to increase supply and demand and smooth out a marketplace to create beneficial network effects and avoid a negative downward spiral effect.</u>

• Expected testimony from AGO expert, James Parrott. (Parrott Dep. Tr. 363:3–365:9, 491:7–492:10.)

• Expected testimony from Uber expert, Terrence August. (August Rep. ¶¶ 20, 48–56.) [Tr. Ex. 3074]

• Expected testimony from Uber expert, Justin McCrary. (McCrary Rep. ¶¶ 17, 23–26, 71–78.) [Tr. Ex. 3071]

AGO Response: Disputed. The Attorney General takes issue with Uber's motivations for taking steps to increase supply and demand, as well as the implications regarding the nature of Uber's business model. Notwithstanding, it is undisputed that Uber takes steps to increase supply and demand.

- Expected testimony from AGO expert, David Weil.

- Expected testimony from AGO expert, James Parrott.

150. <u>For example, surge pricing is dynamic pricing used by Uber to optimize the multi-sided market for its Rides business; when riders do not want to pay the surge price, it brings the marketplace into balance.</u>

• Expected testimony from Uber, Chad Dobbs. (*E.g.*, Dobbs Dep. Tr. 108:18–109:16, 556:2–557:13.)

• "What's happening when prices surge?" Uber Website, UBER-MA0002977. [Tr. Ex. 3490]

AGO Response: Disputed. The Attorney General takes issue with the characterization of Uber as a multi-sided platform, and the implication that this represents the full extent of Uber's business model. Notwithstanding, it is undisputed that surge pricing is dynamic pricing used by Uber to optimize the marketplace for its rides business.

- Expected testimony from AGO expert, David Weil.

151. <u>As explained above, both riders and drivers pay a fee for use of the Uber platform.</u>

- *See supra* ¶¶ 30, 34–38.

   AGO Response: Disputed. The Attorney General takes issue with the implication regarding the nature of Uber's business model or the relationship between drivers and Uber. The Attorney General also incorporates responses to findings ¶¶ 30, 34-38. Notwithstanding, it is undisputed that Uber collects a booking fee from riders and service fee from drivers after a completed ride.

152. <u>The service fee is variable, in order to balance supply and demand and therefore improve the health of the marketplace for all parties.</u>

- Expected testimony from Uber, Chad Dobbs. (*E.g.*, Dobbs Dep. Tr. 635:19–636:8, 638:20–24; 639:14–21.)

- *See supra* ¶ 149 (explaining how platform companies like Uber manage supply and demand for purposes of benefiting the marketplace).

   AGO Response: Disputed. The Attorney General takes issue with the characterization of why the service fee is variable and the implications regarding Uber's business model. Notwithstanding, it is undisputed that the service fee is variable.

   - AGO FF 95-138, 183-198, 202-231

153. <u>The variable service fee benefits both riders and drivers using the platform, by attracting either side of the platform, keeping the marketplace operating at its most effective.</u>

- Expected testimony from Uber, Chad Dobbs. (*E.g.*, Dobbs Dep. Tr. 635:19–636:8.)

   AGO Response: Disputed.

   - Expected testimony from AGO expert, David Weil
   - AGO FF 97-98, 186-192

154. <u>Uber provides incentives and promotions for the purpose of balancing supply and demand in the marketplace.</u>

- Expected testimony from Uber, Chad Dobbs. (*E.g.*, Dobbs Dep. Tr. 171:18–172:13, 176:17–177:7, 404:19–405:3, 409:9–410:1, 617:21–618:20, 1194:17–1195:17.)

- Expected testimony from Uber expert, Terrence August. (August Rep. ¶ 54.) [Tr. Ex. 3074]

- "How and why do drivers earn extra?" Uber Website, UBER-MA0003145. [Tr. Ex. 3503]

AGO Response: Disputed. The Attorney General takes issue with the characterization of Uber's purposes in providing incentives and promotions. Notwithstanding, it is undisputed that Uber provides incentives and promotions.

- Uber 30(b)(6) Testimony of Chad Dobbs

- Anticipated testimony of AGO expert, Lindsey Cameron.

- AGO FF 164-175

155. <u>Drivers are free to not take advantage of the promotions Uber offers.</u>

- Expected testimony from Uber, Chad Dobbs. (*E.g.*, Dobbs Dep. Tr. 342:11–24, 617:21–618:10.)

- Expected testimony from driver, Kyle Tysvaer. (Tysvaer Dep. Tr. 53:18–23, 54:2–9.)

- Expected testimony from driver, David Langlais. (Langlais Dep. Tr. 80:20–23.)

- Expected testimony from driver, Dhiraj Tulachan. (Tulachan Dep. Tr. 62:21–63:17.)

- Expected testimony from driver, Edward Gannon. (Gannon Dep. Tr. 27:24–28:23, 29:6–30:3, 60:17–61:8.)

- Expected testimony from driver, Bartek Sikora. (Sikora Dep. Tr. 26:14–24.)

- Expected testimony from driver, Mary Ellen McAllister. (McAllister Dep. Tr. 120:6–20.)

- Expected testimony from driver, Naser Zorrok. (Zorrok Dep. Tr. 27:22–28:11, 29:6–10.)

AGO Response: Disputed. The Attorney General takes issue with the assertion about drivers generally, as unsupported by the evidence identified by the Defendant. Notwithstanding, it is undisputed as to the statements made by the cited drivers.

Expected testimony of Lindsey Cameron.

156. <u>Drivers often do not take advantage of the promotions Uber offers.</u>

- Expected testimony from driver, Kyle Tysvaer. (Tysvaer Dep. Tr. 47:5–13, 53:18–54:9.)

- Expected testimony from driver, Edward Gannon. (Gannon Dep. Tr. 27:24–28:23, 29:6–30:3, 60:17–61:8.)

- Expected testimony from driver, Raya Denny. (Denny Dep. Tr. 150:16–151:3, 154:23–155:3.)

AGO Response: Disputed. The Attorney General takes issue with the assertion about drivers generally, as unsupported by the evidence identified by the Defendant. Notwithstanding, it is undisputed as to the practices of individual cited drivers.

- Expected testimony of Lindsey Cameron

157. <u>Uber's "take rate" is the percentage of the rider fare that the driver pays to Uber.</u>

- Expected testimony from Uber, Chad Dobbs. (*E.g.*, Dobbs Dep. Tr. 1326:12–16.)

AGO Response: Disputed. The Attorney General takes issue with the characterization that riders pay fares to drivers directly, as riders pay Uber, which then extracts profit and pays drivers the remaining amount. Notwithstanding, it is undisputed that Uber's "take rate" on a particular ride is the difference between a rider fare and a driver's earnings.

158. <u>The take rate differs depending on variables such as whether drivers take advantage of incentives and promotions. For example, if driver incentives go up, Uber's take rate would go down.</u>

- Expected testimony from Uber, Chad Dobbs. (*E.g.*, Dobbs Dep. Tr. 1326:12–16.)

AGO Response: Disputed. The Attorney General takes issue with the assertions regarding Uber's take rate and its relationship to driver incentives and promotions as unsupported by the evidence identified by the Defendant, where the finding includes insufficient information for the Attorney General to make any assessment regarding Uber's tale rate calculation on a particular ride.

159. <u>Two-sided platform companies optimize matching through proposing market clearing sales prices to consumers and service providers for the service being exchanged.</u>

- Expected testimony from Uber expert, Justin McCrary. (McCrary Rep. ¶ 24.) [Tr. Ex. 3071]

AGO Response: Disputed.

- Expected testimony from AGO expert, David Weil.

160. <u>Drivers can, but are not required to, provide different services to riders.</u>

- Expected testimony from driver, Rebekah Field. (Field Dep. Tr. 17:19–19:6.)
- Expected testimony from driver, Naser Zorrok. (Zorrok Dep. Tr. 54:5–23.)
- Expected testimony from driver, Bryan Amparo Mesa. (Amparo Mesa Dep. Tr. 24:16–20, 46:11–16, 67:5–17.)
- Expected testimony from driver, Kenneth Smock. (Smock Dep. Tr. 34:18–23, 36:8–37:1, 58:6–19, 59:6–21.)
- Expected testimony from driver, David Langlais. (Langlais Dep. Tr. 74:15–20.)
- Expected testimony from driver, Dhiraj Tulachan. (Tulachan Dep. Tr. 56:13–19.)
- Expected testimony from driver, Edward Gannon. (Gannon Dep. Tr. 52:5–21.)

AGO Response: Disputed. The Attorney General takes issue with the conclusion of law regarding services and the characterization of the relationship between riders and drivers. Further disputed because and because drivers must complete rides to receive pay from Uber. Notwithstanding, it is undisputed as to the statements made by the cited drivers.

- Expected testimony from AGO expert, David Weil.

161. <u>For example, drivers can provide riders with the service of getting them from A to B.</u>

- Expected testimony from driver, Rebekah Field. (Field Dep. Tr. 17:19–18:3.)
- Expected testimony from driver, Kenneth Smock. (Smock Dep. Tr. 34:18–23, 36:8–37:1.)
- Expected testimony from driver, David Langlais. (Langlais Dep. Tr. 74:15–20.)
- Expected testimony from driver, Dhiraj Tulachan. (Tulachan Dep. Tr. 56:13–19.)
- Expected testimony from driver, Edward Gannon. (Gannon Dep. Tr. 52:19–21.)

AGO Response: Disputed. The Attorney General takes issue with the conclusion of law regarding services and the characterization of Uber's relationship with riders and drivers. Notwithstanding, it is undisputed that drivers transport riders from point A to point B.

- Expected testimony from AGO expert, David Weil.

162. <u>Drivers can also provide riders with a clean vehicle.</u>

- Expected testimony from driver, Naser Zorrok. (Zorrok Dep. Tr. 54:5–11.)
- Expected testimony from driver, Bryan Amparo Mesa. (Amparo Mesa Dep. Tr. 24:16–20.)

AGO Response: Disputed. The Attorney General takes issue with the characterization that Uber does not require drivers to have a clean vehicle. Notwithstanding, it is undisputed as to the statements made by the cited drivers.

- AGO FF 59-60
- Uber 30(b)(6) Testimony of Chad Dobbs
- UX3007

163. <u>Drivers can also provide riders with water, snacks, chargers, and other amenities like umbrellas, lights, and music to provide customer service.</u>

- Expected testimony from driver, Rebekah Field. (Field Dep. Tr. 18:4–19:6.)
- Expected testimony from driver, Naser Zorrok. (Zorrok Dep. Tr. 54:5–23.)
- Expected testimony from driver, Bryan Amparo Mesa. (Amparo Mesa Dep. Tr. 46:11–16, 67:5–17.)
- Expected testimony from driver, Kenneth Smock. (Smock Dep. Tr. 58:6–19, 59:6–21.)
- Expected testimony from driver, Edward Gannon. (Gannon Dep. Tr. 52:5–18.)

AGO Response: Disputed. The Attorney General takes issue with the characterization of the relationship between riders and drivers. Notwithstanding, it is undisputed that drivers may provide riders with water, snacks, chargers, and other amenities like umbrellas, lights, and music. It is further undisputed as to the statements made by the cited drivers.

- Uber 30(b)(6) Testimony of Chad Dobbs
- AGO FF 59, 64

164. <u>Some drivers choose not to provide riders with these amenities, such as water, snacks, and chargers.</u>

- Expected testimony from driver, Felipe Martinez. (Martinez Dep. Tr. 50:21–51:2.)
- Expected testimony from driver, Marc Pompee. (Pompee Dep. Tr. 68:18–21.)
- Expected testimony from driver, Khalid Benlail. (Benlail Dep. Tr. 54:17–23.)

AGO Response: Undisputed.

165. <u>Drivers admit that they do not "work for" Uber.</u>

- Expected testimony from driver, Richard Kambugu. (Kambugu Dep. Tr. 95:16–21.)

AGO Response: Disputed. The Attorney General takes issue with the proposed conclusion of law regarding the relationship between Uber and drivers, and the assertion that drivers generally state this. Notwithstanding, it is undisputed that the cited driver made this statement.

166. <u>Drivers who complained to AGO did not tell AGO that they provided services to Uber.</u>

- Testimony from AGO, Lauren Moran. (Corporate Representative Testimony, Moran Day 2 Dep. Tr. 153:15–155:2.)
- Expected testimony from driver, Rebekah Field. (Field Dep. Tr. 86:16–20.)
- AGO Wage Complaint or Dispute Forms [Moran Dep. Exs. 8–9; Field Dep. Ex. 1]. [Tr. Ex. 3116; Tr. Ex. 3117; Tr. Ex. 3255]

AGO Response: Disputed. The Attorney General takes issue with the proposed conclusion of law regarding the relationship between Uber and drivers, and the assertion that drivers generally followed this practice. Notwithstanding, it is undisputed that the cited drivers did not make this statement.

167. <u>A number of drivers in this case have never used Uber's Rides platform.</u>

- Expected testimony from driver, Alain Cabache. (Cabache Dep. Tr. 182:21–184:4.)
- Expected testimony from driver, Kevin Clark. (Clark Dep. Tr. 169:14–17.)

- Expected testimony from driver, Steve Cordeiro. (Cordeiro Dep. Tr. 126:5–15.)

- Expected testimony from driver, Christopher Hansen. (Hansen Dep. Tr. 146:15–22.)

- Expected testimony from driver, Robert Ciccarelli. (Ciccarelli Dep. Tr. 15:8–12.)

- Expected testimony from driver, Tim Wilkins. (Wilkins Dep. Tr. 90:18–21.)

- Expected testimony from driver, Shepard Collins. (Collins Dep. Tr. 169:15–18.)

AGO Response: Undisputed, at least as of the time of the respective drivers' depositions.

168. <u>Drivers who have only used the Lyft platform do not provide services to Uber.</u>

- Expected testimony from driver, Christopher Hansen. (Hansen Dep. Tr. 147:5–9.)

- Expected testimony from driver, Tim Wilkins. (Wilkins Dep. Tr. 91:1–3.)

- Expected testimony from driver, Shepard Collins. (Collins Dep. Tr. 169:23–170:1.)

AGO Response: Undisputed.

169. <u>Drivers who have only used the Lyft platform have no relationship with Uber whatsoever.</u>

- Expected testimony from driver, Alain Cabache. (Cabache Dep. Tr. 184:2–4.)

- Expected testimony from driver, Kevin Clark. (Clark Dep. Tr. 170:14–16.)

- Expected testimony from driver, Steve Cordeiro. (Cordeiro Dep. Tr. 126:8–11.)

- Expected testimony from driver, Christopher Hansen. (Hansen Dep. Tr. 147:2–4.)

- Expected testimony from driver, Tim Wilkins. (Wilkins Dep. Tr. 90:22–24.)

- Expected testimony from driver, Shepard Collins. (Collins Dep. Tr. 170:2–5.)

AGO Response: Disputed. The Attorney General takes issue with the proposed conclusion of law regarding driver relationships with Uber and Lyft. Notwithstanding, it is undisputed as to the statements of the cited drivers.

170. <u>Riders do not provide services to Uber.</u>

- AGO's June 23, 2021 Response to RFA No. 2. [Tr. Ex. 3531]

- Expected testimony from Uber, Chad Dobbs. (*E.g.*, Dobbs Dep. Tr. 440:15–441:8.)

AGO Response: Undisputed.

171. <u>Uber depends on riders using its Rides platform to increase earnings opportunities for drivers and the Rides platform's effectiveness.</u>

- AGO's June 23, 2021 Response to RFA No. 2. [Tr. Ex. 3531]
- Expected testimony from Uber, Chad Dobbs. (*E.g.*, Dobbs Dep. Tr. 440:15–441:8.)

AGO Response: Disputed. The Attorney General takes issue with the characterization that driver pay is directly reliant on rider pricing. Notwithstanding, it is undisputed that more riders completing rides on the Rides platform may, in Uber's discretion, increase earnings opportunities for drivers and will increase Uber's revenue.

- Expected testimony from AGO expert, David Weil.
- AGO FF 199-201

172. <u>Drivers view riders as the drivers' customers.</u>

- Expected testimony from driver, Kenneth Smock. (Smock Dep. Tr. 34:18–23, 36:14–37:1, 58:6–19, 59:6–21.)
- Expected testimony from driver, David Langlais. (Langlais Dep. Tr. 74:15–20.)
- Expected testimony from driver, Bryan Amparo Mesa. (Amparo Mesa Dep. Tr. 24:16–20, 67:5–17.)
- Expected testimony from driver, Dhiraj Tulachan. (Tulachan Dep. Tr. 56:13–19.)
- Expected testimony from driver, Edward Gannon. (Gannon Dep. Tr. 52:5–21.)

AGO Response: Disputed. The Attorney General takes issue with the conclusion of law as to the relationship between riders and drivers, and to the extent it is generalized to drivers as a whole, as unsupported by the evidence identified by the Defendant. Notwithstanding, it is undisputed as to the statements made by the cite drivers.

- Expected testimony from AGO expert, David Weil.

173. <u>Both drivers and riders are Uber's customers.</u>

- Uber's 2022 10-K [Dobbs Dep. Ex. 84], at 86–87. [Tr. Ex. 3402]
- Expected testimony from Uber, Chad Dobbs. (*E.g.*, Dobbs Dep. Tr. 1241:9–1242:2.)

AGO Response: Disputed. The Attorney General takes issue with the findings proposed legal conclusion regarding the relationship between Uber and drivers, as well as to the implication that this is the full extent of Uber's business model. Notwithstanding, it is undisputed that riders are Uber's customers.

- Expected testimony of AGO Expert, David Weil.

174. <u>Many drivers use a variety of other multi-sided platforms in addition to Uber (multi-apping) to find customers.</u>

- Expected testimony from Uber expert, Christopher Stanton. (Stanton Rep. ¶¶ 16–17, 20–25, Exs. 1 & 3.) [Tr. Ex. 3073]

- Expected testimony from Uber expert, Justin McCrary. (McCrary Rep. ¶¶ 41–42.) [Tr. Ex. 3071]

- Expected testimony from Uber expert, Steven Tadelis. (Tadelis Rebuttal Rep. ¶¶ 42–44, 59.) [Tr. Ex. 3077]

AGO Response: Disputed. The Attorney General takes issue with the implication that this represents the full extent of Uber's business model, and as unsupported by the evidence identified by the Defendant.

- Expected testimony from AGO expert, David Weil.

175. <u>Drivers who engage in multi-apping do so often.</u>

- Expected testimony from Uber expert, Christopher Stanton. (Stanton Rep. ¶¶ 26–31.) [Tr. Ex. 3073]

AGO Response: Disputed. The Attorney General takes issue with the implication that this represents the full extent of Uber's business model, and as unsupported by the evidence identified by the Defendant.

Expected testimony from AGO expert, David Weil.

176. <u>For example, drivers use the Lyft platform in the same weeks and days as they use the Uber Rides platform.</u>

- Expected testimony from driver, Kyle Tysvaer. (Tysvaer Dep. Tr. 52:24–53:14.)

- Expected testimony from driver, Kenneth Smock. (Smock Dep. Tr. 21:12–22:16, 58:20–59:5.)

- Expected testimony from driver, Marc Pompee. (Pompee Dep. Tr. 57:8–15.)

- Expected testimony from driver, Dhiraj Tulachan. (Tulachan Dep. Tr. 7:21–8:2, 64:17–65:5.)

- Expected testimony from driver, Felipe Martinez. (Martinez Dep. Tr. 168:2–169:19.)

- Expected testimony from driver, Naser Zorrok. (Zorrok Dep. Tr. 36:11–37:3.)

- Expected testimony from driver, Edward Gannon. (Gannon Dep. Tr. 11:18–12:2, 63:12–64:10.)

- Expected testimony from driver, Raya Denny. (Denny Dep. Tr. 134:21–23.)

- Expected testimony from driver, Mary Ellen McAllister. (McAllister Dep. Tr. 33:7–13, 110:14–111:16.)

AGO Response: Disputed. The Attorney General takes issue with the application of the finding to drivers generally, as unsupported by the evidence identified by the Defendant. Notwithstanding, it is undisputed as to the statements made by the drivers cited.

177. <u>Drivers also use food delivery service platforms, including DoorDash, to find customers.</u>

- Expected testimony from driver, Bryan Amparo Mesa. (Amparo Mesa Dep. Tr. 65:17–23.)

- Expected testimony from driver, Dhiraj Tulachan. (Tulachan Dep. Tr. 7:21–8:17, 64:17–65:5.)

- Expected testimony from driver, Edward Gannon. (Gannon Dep. Tr. 63:16–64:1.)

AGO Response: Disputed. The Attorney General takes issue with the application of the finding to drivers generally, as unsupported by the evidence identified by the Defendant. Notwithstanding, it is undisputed as to the statements made by the drivers cited.

178. <u>When drivers engage in multi-apping, they often use multiple, competing platforms simultaneously.</u>

- Expected testimony from Uber expert, Justin McCrary. (McCrary Rep. ¶¶ 41–42.) [Tr. Ex. 3071]

- Expected testimony from Uber expert, Christopher Stanton. (Stanton Rep. ¶¶ 15–18, 23–25, 35.) [Tr. Ex. 3073]

- Expected testimony from Uber expert, Steven Tadelis. (Tadelis Rebuttal Rep. ¶¶ 42–44.) [Tr. Ex. 3077]

AGO Response: Disputed. This statement is unsupported by the evidence identified by the Defendant.

179. <u>When drivers multi-app simultaneously, they compare the opportunities being offered on each platform to decide which to pursue.</u>

- Expected testimony from Uber expert, Christopher Stanton. (Stanton Rep. ¶ 18.) [Tr. Ex. 3073]

- **AGO Response**: Disputed. Expected testimony from AGO expert, David Weil.

180. <u>Drivers toggle between the Lyft platform and Uber's Rides platform in real time looking for better ride requests.</u>

- Expected testimony from driver, Kyle Tysvaer. (Tysvaer Dep. Tr. 52:21–53:17.)

AGO Response: Disputed. The Attorney General takes issue with the application of the finding to drivers generally, as unsupported by the evidence identified by the Defendant. Notwithstanding, it is undisputed as to the statements made by the driver cited.

181. <u>Some drivers switch between the Lyft platform and the Rides platform between rides while they are parked.</u>

- Expected testimony from driver, Kenneth Smock. (Smock Dep. Tr. 21:12–22:16, 58:20–59:5.)

AGO Response: Disputed. The Attorney General takes issue with the application of the finding to drivers generally, as unsupported by the evidence identified by the Defendant. Notwithstanding, it is undisputed as to the statements made by the driver cited.

182. <u>Drivers have both the Lyft platform and Rides platform open on their phones, then choose to use the first platform on which they receive a ride request.</u>

- Expected testimony from driver, Marc Pompee. (Pompee Dep. Tr. 57:8–15.)
- Expected testimony from driver, Felipe Martinez. (Martinez Dep. Tr. 168:2–169:19.)
- Expected testimony from driver, Naser Zorrok. (Zorrok Dep. Tr. 36:11–37:3.)
- Expected testimony from driver, Edward Gannon. (Gannon Dep. Tr. 11:18–12:2, 63:12–64:10.)
- Expected testimony from driver, Mary Ellen McAllister. (McAllister Dep. Tr. 33:7–13, 110:14–111:16.)

AGO Response: Disputed. The Attorney General takes issue with the application of the finding to drivers generally, as unsupported by the evidence identified by the Defendant. Notwithstanding, it is undisputed as to the practices of the specific individual drivers cited.

183. <u>After receiving a ride request through one platform, some drivers choose to turn off the other platform(s) on their phones.</u>

- Expected testimony from driver, Naser Zorrok. (Zorrok Dep. Tr. 36:11–37:3.)
- Expected testimony from driver, Dhiraj Tulachan. (Tulachan Dep. Tr. 8:3–17.)
- Expected testimony from driver, Felipe Martinez. (Martinez Dep. Tr. 114:14–115:6.)
- Expected testimony from driver, Mary Ellen McAllister. (McAllister Dep. Tr. 33:7–13, 110:14–111:16.)

Gibson, Dunn &
Crutcher LLP

AGO Response: Disputed. The Attorney General takes issue with the application of the finding to drivers generally, as unsupported by the evidence identified by the Defendant. Notwithstanding, it is undisputed as to the statements made by the specific individual drivers cited.

184. <u>Drivers do not interview with Uber as a prerequisite to using the Driver App.</u>

- Expected testimony from Uber expert, Justin McCrary. (McCrary Rep. ¶ 48.) [Tr. Ex. 3071]

- Expected testimony from driver, Richard Kambugu. (Kambugu Decl., UBER-MA00376130, ¶ 3.) [Tr. Ex. 3344]

- Expected testimony from driver, Bartek Sikora. (Sikora Decl., UBER-MA0001418, ¶ 5.) [Tr. Ex. 3366]

AGO Response: Undisputed.

185. <u>Drivers do not have to complete any mandatory training to use the Driver App.</u>

- Expected testimony from driver, Richard Kambugu. (Kambugu Decl., UBER-MA00376130, ¶ 3.) [Tr. Ex. 3344]

- Expected testimony from driver, Bartek Sikora. (Sikora Decl., UBER-MA0001418, ¶ 5.) [Tr. Ex. 3366]

AGO Response: Disputed. The Attorney General takes issue with the application of the finding to drivers generally, as unsupported by the evidence identified by the Defendant. Notwithstanding, it is undisputed as to the statements of the drivers cited.

186. <u>Everyone who uses Uber's Rides platform must agree to Uber's Terms of Use.</u>

- U.S. Terms of Use, UBER-MA00390035. [Tr. Ex. 3014]

- Expected testimony from Uber, Chad Dobbs. (*E.g.*, Dobbs Dep. Tr. 51:19–52:1, 56:16–57:13, 70:11–24.)

AGO Response: Undisputed.

187. <u>The Terms of Use are the legal agreement between Uber and any user who uses its platform, which govern the use of Uber's platform and services.</u>

- U.S. Terms of Use, UBER-MA00390035, at MA00390035. [Tr. Ex. 3014]

AGO Response: Undisputed.

188. <u>The current Terms of Use became effective February 26, 2024.</u>

- U.S. Terms of Use, UBER-MA00390035. [Tr. Ex. 3014]

AGO Response: Undisputed.

189. <u>Everyone who uses Uber's Rides platform must agree to Uber's Privacy Notice.</u>

- Uber Privacy Notice (Mar. 29, 2024), UBER-MA00390060. [Tr. Ex. 3026]

AGO Response: Undisputed.

190. <u>The Privacy Notice details how Uber utilizes the data from various users on its platforms.</u>

- Expected testimony from Uber, Chad Dobbs. (*E.g.*, Dobbs Dep. Tr. 83:15–18.)

AGO Response: Undisputed.

191. <u>The current Privacy Notice became effective March 29, 2024.</u>

- Uber Privacy Notice, UBER-MA00390060. [Tr. Ex. 3026]

AGO Response: Undisputed.

192. <u>Every driver who uses Uber's Rides platform agrees to the terms of the Platform Access Agreement ("PAA").</u>

- *See supra* ¶ 111.

AGO Response: Undisputed.

193. <u>Uber adjusts its agreements over time based on driver feedback that it collects from interactions with drivers.</u>

- Expected testimony from Uber, Chad Dobbs. (*E.g.*, Dobbs Dep. Tr. 59:9–22, 1546:6–20.)

AGO Response: Disputed. The Attorney General takes issue with the implication that the only reason Uber modifies agreements is in response to driver feedback. Notwithstanding, it is undisputed that Uber updates and modifies its agreements with drivers.

- AGO FF 30-32
- Uber 30(b)(6) Testimony of Chad Dobbs

194. <u>Under the PAA, drivers may accept, decline, or ignore ride requests.</u>

- Platform Access Agreement, UBER-MA0001492, § 2.6(a). [Tr. Ex. 3000]
- Expected testimony from Uber, Chad Dobbs. (*E.g.*, Dobbs Dep. Tr. 1261:16–1262:11, 1268:21–1269:19.)
- Expected testimony from driver, Henry DeGroot. (DeGroot Dep. Tr. 64:10–18.)
- Expected testimony from driver, Kevin Hyland. (Hyland Dep. Tr. 26:9–13.)
- Expected testimony from driver, Dhiraj Tulachan. (Tulachan Dep. Tr. 60:14–24.)
- Expected testimony from driver, Kyle Tysvaer. (Tysvaer Dep. Tr. 49:3–22, 48:10–18.)

AGO Response: Disputed. The Attorney General takes issue with this statement insofar as it contains a conclusion of law insofar as interpreting terms in the PAA and is therefore a question of law for the Court regarding the meaning of the PAA. Also disputed as to any evidence seeking to vary the plain text of the Platform Access Agreement.

195. <u>The PAA does not require drivers to take a particular route in arriving at a rider's destination.</u>

- Platform Access Agreement, UBER-MA0001492, § 2.6(b). [Tr. Ex. 3000]

AGO Response: Disputed. The Attorney General takes issue with this statement insofar as it contains a conclusion of law insofar as interpreting terms in the PAA and is therefore a question of law for the Court regarding the meaning of the PAA.

196. <u>No other agreement, policy, or practice requires drivers to take a particular route in arriving at a rider's destination.</u>

- Fare Addendum, UBER-MA0000794 [Dobbs Dep. Ex. 27]. [Tr. Ex. 3010]
- U.S. Terms of Use, UBER-MA00390035. [Tr. Ex. 3014]
- Non-California Uber Pro Terms and Conditions, UBER-MA00390050. [Tr. Ex. 3032]
- Uber Community Guidelines, UBER-MA00390044. [Tr. Ex. 3034]
- Uber Privacy Notice, UBER-MA00390060. [Tr. Ex. 3026]
- Technology Services Agreement, UBER-MA0000257 [Dobbs Dep. Ex. 13]. [Tr. Ex. 3004]
- Expected testimony from Uber, Chad Dobbs. (*E.g.*, Dobbs Dep. Tr. 782:3–783:4.)
- Expected testimony from driver, Rebekah Field. (Field Dep. Tr. 43:24–45:10.)
- Expected testimony from driver, Kyle Tysvaer. (Tysvaer Dep. Tr. 54:25–56:23.)
- Expected testimony from driver, Raya Denny. (Denny Dep. Tr. 151:23–153:12.)
- Expected testimony from driver, Richard Kambugu. (Kambugu Dep. Tr. 154:17–19.)
- Expected testimony from driver, Dhiraj Tulachan. (Tulachan Dep. Tr. 64:5–6.)

- Expected testimony from driver, Mary Ellen McAllister. (McAllister Dep. Tr. 121:17–19.)

- Expected testimony from driver, Naser Zorrok. (Zorrok Dep. Tr. 58:2–22.)

AGO Response: Disputed. The Attorney General takes issue with this statement insofar as it contains a conclusion of law, and as to any evidence seeking the plain terms of Uber's various agreements with drivers. Notwithstanding, it is undisputed as to the plain text of Uber's various agreements with drivers and the statements made by the cited drivers.

197. <u>The PAA does not require drivers to drive in a particular area.</u>

- Platform Access Agreement, UBER-MA0001492, § 1.2. [Tr. Ex. 3000]

AGO Response: Disputed. The Attorney General takes issue with this statement insofar as it contains a conclusion of law. Notwithstanding, it is undisputed as to the plain text of the Platform Access Agreement.

198. <u>No other agreement, policy, or practice requires drivers to drive in a particular area.</u>

- Fare Addendum, UBER-MA0000794 [Dobbs Dep. Ex. 27]. [Tr. Ex. 3010]

- U.S. Terms of Use, UBER-MA00390035. [Tr. Ex. 3014]

- Non-California Uber Pro Terms and Conditions, UBER-MA00390050. [Tr. Ex. 3032]

- Uber Community Guidelines, UBER-MA00390044. [Tr. Ex. 3034]

- Uber Privacy Notice, UBER-MA00390060. [Tr. Ex. 3026]

- Technology Services Agreement, UBER-MA0000257 [Dobbs Dep. Ex. 13]. [Tr. Ex. 3004]

- Expected testimony from driver, Rebekah Field. (Field Dep. Tr. 31:21–32:7, 36:24–37:2, 37:15–17.)

- Expected testimony from driver, Naser Zorrok. (Zorrok Dep. Tr. 30:16–23, 55:17–56:2.)

- Expected testimony from driver, Dhiraj Tulachan. (Tulachan Dep. Tr. 61:16–62:5.)

- Expected testimony from driver, David Langlais. (Langlais Dep. Tr. 80:2–10.)

- Expected testimony from driver, Edward Gannon. (Gannon Dep. Tr. 24:7–19, 50:17–51:17, 57:7–16.)

- Expected testimony from driver, Bartek Sikora. (Sikora Dep. Tr. 36:14–20, 59:23–60:23.)

- Expected testimony from driver, Mary Ellen McAllister. (McAllister Dep. Tr. 34:23–35:3.)

- Expected testimony from driver, Richard Kambugu. (Kambugu Dep. Tr. 152:19–153:17.)

AGO Response: Disputed. Disputed as to characterization that "No other agreement, policy, or practice requires drivers to drive in a particular area," which is a legal conclusion not requiring a response, and as to any evidence seeking the plain terms of Uber's various

agreements with drivers. Notwithstanding, it is undisputed as to the plain text of Uber's various agreements with drivers.

199. <u>The PAA does not set a minimum number of rides that drivers have to accept.</u>

- Platform Access Agreement, UBER-MA0001492, § 1.2. [Tr. Ex. 3000]
- Expected testimony from driver, Steve Cordeiro. (Cordeiro Dep. Tr. 130:11–14, 126:1–7.)
- Expected testimony from driver, Robert Ciccarelli. (Ciccarelli Dep. Tr. 15:8–12, 98:19–24.)

AGO Response: Disputed. Notwithstanding, it is undisputed as to the plain text of the Platform Access Agreement. Disputed as to characterization that "The PAA does not set a minimum number of rides that drivers have to accept," which is a legal conclusion not requiring a response, and as to any evidence seeking to vary the plain text of the Platform Access Agreement.

200. <u>No other agreement, policy, or practice sets a minimum number of rides that drivers must accept.</u>

- Fare Addendum, UBER-MA0000794 [Dobbs Dep. Ex. 27]. [Tr. Ex. 3010]
- U.S. Terms of Use, UBER-MA00390035. [Tr. Ex. 3014]
- Uber Community Guidelines, UBER-MA00390044. [Tr. Ex. 3034]
- Uber Privacy Notice, UBER-MA00390060. [Tr. Ex. 3026]
- Technology Services Agreement, UBER-MA0000257 [Dobbs Dep. Ex. 13]. [Tr. Ex. 3004]
- Expected testimony from Uber, Chad Dobbs. (*E.g.*, Dobbs Dep. Tr. 861:9–14, 997:14–16.)
- Expected testimony from driver, Kenneth Smock. (Smock Dep. Tr. 25:16–19, 61:10–19.)
- Expected testimony from driver, Naser Zorrok. (Zorrok Dep. Tr. 24:11–25:1, 26:3–6.)

AGO Response: Disputed. Undisputed as to the plain text of Uber's various agreements with drivers. Disputed as to characterization that "No other agreement, policy, or practice sets a minimum number of rides that drivers must accept," which is a legal conclusion not requiring a response, and as to any evidence seeking the plain terms of Uber's various agreements with drivers.

201. <u>Under the PAA, Uber does not prohibit drivers from advertising, including the use of business cards.</u>

- Platform Access Agreement, UBER-MA0001492. [Tr. Ex. 3000]
- Expected testimony from Uber, Chad Dobbs. (*E.g.*, Dobbs Dep. Tr. 932:24–933:3.)
- Expected testimony from driver, Khalid Benlail. (Benlail Dep. Tr. 41:4–9, 48:6–17.)
- GoLuxLimo Website [Benlail Dep. Ex. 5]. [Tr. Ex. 3288]

- "About Us," GoLuxLimo Website [Benlail Dep. Ex. 6]. [Tr. Ex. 3289]

- GoLuxLimo Yelp Page [Benlail Dep. Ex. 7]. [Tr. Ex. 3290]

- GoLuxLimo Booking Website [Benlail Dep. Ex. 9]. [Tr. Ex. 3291]

AGO Response: Disputed. Undisputed as to the plain text of Uber's Platform Access Agreement. Disputed as to characterization that "Under the PAA, Uber does not prohibit drivers from advertising, including the use of business cards," which is a legal conclusion not requiring a response, and as to any evidence seeking the plain terms of Uber's Platform Access Agreement.

202. <u>Uber does not prohibit drivers from contacting riders outside the Driver App if the rider consents.</u>

- Platform Access Agreement, UBER-MA0001492, § 2.6. [Tr. Ex. 3000]

- Expected testimony from driver, Kyle Tysvaer. (Tysvaer Dep. Tr. 58:15–24.)

- Expected testimony from Uber, Chad Dobbs. (*E.g.*, Dobbs Dep. Tr. 934:2–935:6.)

- Expected testimony from driver, Rebekah Field. (Field Dep. Tr. 131:18–133:9.)

AGO Response: Disputed. The Attorney General takes issue with the assertion that Uber does not prohibit drivers from contacting rider outside the Driver App as unsupported by the evidence identified by the Defendant. Disputed as to characterization that "Uber does not prohibit drivers from contacting riders outside the Driver App if the rider consents," which is a legal conclusion not requiring a response, and as to any evidence seeking the plain terms of Uber's Platform Access Agreement. Notwithstanding, it is undisputed as to the plain text of Uber's Platform Access Agreement.

- Uber Community Guidelines, AG1084 ("Post-trip contact").

203. <u>Some drivers enjoy interacting with riders and talk with riders to hear their stories.</u>

- Expected testimony from driver, Kevin Hyland. (Hyland Dep. Tr. 67:19–68:8.)

AGO Response: Disputed. The Attorney General takes issue with the application of the finding to drivers generally, as unsupported by the evidence identified by the Defendant. Notwithstanding, it is undisputed as to the statements made by the cited driver.

204. <u>Some drivers open the door for their riders.</u>

- Expected testimony from driver, Kenneth Smock. (Smock Dep. Tr. 58:6–19.)

- Expected testimony from driver, Kyle Tysvaer. (Tysvaer Dep. Tr. 101:16–20.)

AGO Response: Disputed. The Attorney General takes issue with the application of the finding to drivers generally, as unsupported by the evidence identified by the Defendant. Notwithstanding, it is undisputed as to the statements made by the cited drivers.

205. <u>Some drivers help riders with their luggage.</u>

- Expected testimony from driver, Kyle Tysvaer. (Tysvaer Dep. Tr. 101:16–20.)

AGO Response: Disputed. The Attorney General takes issue with the application of the finding to drivers generally, as unsupported by the evidence identified by the Defendant. Notwithstanding, it is undisputed as to the statements made by the cited driver.

206. <u>Some drivers have umbrellas for riders and walk them to their destinations.</u>

- Expected testimony from driver, Kenneth Smock. (Smock Dep. Tr. 58:6–19.)

AGO Response: Disputed. The Attorney General takes issue with the application of the finding to drivers generally, as unsupported by the evidence identified by the Defendant. Notwithstanding, it is undisputed as to the statements made by the cited driver.

207. <u>Some drivers entertain their riders with lights and music.</u>

- Expected testimony from driver, Kenneth Smock. (Smock Dep. Tr. 59:12–21.)

AGO Response: Disputed. The Attorney General takes issue with the application of the finding to drivers generally, as unsupported by the evidence identified by the Defendant. Notwithstanding, it is undisputed as to the statements made by the cited driver.

208. <u>Some drivers provide water, wipes, sanitizer, and charger cords to riders.</u>

- Expected testimony from driver, Richard Kambugu. (Kambugu Dep. Tr. 149:22–150:10.)
- Expected testimony from driver, Joshua Cambridge. (Cambridge Dep. Tr. 42:23–43:6, 44:17–45:9.)

AGO Response: Disputed. The Attorney General takes issue with the application of the finding to drivers generally, as unsupported by the evidence identified by the Defendant. Notwithstanding, it is undisputed as to the statements made by the cited drivers.

209. <u>Some drivers provide chargers or sanitizer to riders only if riders specifically ask for those items.</u>

- Expected testimony from driver, Khalid Benlail. (Benlail Dep. Tr. 105:8–106:16.)

AGO Response: Disputed. The Attorney General takes issue with the application of the finding to drivers generally, as unsupported by the evidence identified by the Defendant. Notwithstanding, it is undisputed as to the statements made by the cited drivers.

210. Drivers are free to choose when they accept rides offered to them on the Driver App.

- Platform Access Agreement, UBER-MA0001492, §§ 1.2, 2.6(a). [Tr. Ex. 3000]

- Expected testimony from Uber, Chad Dobbs. (*E.g.*, Dobbs Dep. Tr. 1261:16–1262:11, 1264:5–16.)

- Expected testimony from Uber expert, Justin McCrary. (McCrary Rep. ¶¶ 28–38, Exs. 1–7.) [Tr. Ex. 3071]

- Expected testimony from driver, Rebekah Field. (Field Dep. Tr. 31:1–10.)

- Expected testimony from driver, Raya Denny. (Denny Dep. Tr. 143:15–144:5.)

- Expected testimony from driver, Richard Kambugu. (Kambugu Dep. Tr. 151:14–22.)

- Expected testimony from driver, Dhiraj Tulachan. (Tulachan Dep. Tr. 59:12–24.)

- Expected testimony from driver, Mary Ellen McAllister. (McAllister Dep. Tr. 118:21–119:12.)

AGO Response: Disputed. The Attorney General takes issue with the characterization that drivers "are free to choose" when they accept rides offered by Uber. Notwithstanding, it is undisputed as to the statements made by the cited drivers.

- AGO FF 37.

- Anticipated Testimony of AGO expert, Lindsey Cameron.

211. Drivers are free to choose where they are physically located when they log onto the Driver App.

- Platform Access Agreement, UBER-MA0001492, § 1.2. [Tr. Ex. 3000]

- Expected testimony from driver, Naser Zorrok. (Zorrok Dep. Tr. 55:17–22.)

AGO Response: Undisputed.

212. Drivers are free to choose where they are physically located when they accept ride matches on the Driver App.

- Platform Access Agreement, UBER-MA0001492, § 1.2. [Tr. Ex. 3000]

- Expected testimony from driver, Edward Gannon. (Gannon Dep. Tr. 50:5–10.)

- Testimony from AGO, Lauren Moran. (Corporate Representative Testimony, Moran Dep. Tr. Day 2 160:16–161:21.)

- Part 6 – Uber's 16 Questions [Moran Dep. Ex. 57]. [Tr. Ex. 3165]

AGO Response: Disputed. The Attorney General takes issue with the characterization that drivers "are free to choose" where they are located in order to receive rider requests. Notwithstanding, it is undisputed as to the statements made by the cited driver.

- Expected testimony from AGO expert, Lindsey Cameron.

213. <u>Uber does not provide a uniform to drivers.</u>

- Platform Access Agreement, UBER-MA0001492, § 2.7(a). [Tr. Ex. 3000]
- Expected testimony from driver, Richard Kambugu. (Kambugu Dep. Tr. 149:14–15.)
- Expected testimony from driver, Rebekah Field. (Field Dep. Tr. 34:20–24.)
- Expected testimony from driver, Kyle Tysvaer. (Tysvaer Dep. Tr. 49:23–25.)
- Expected testimony from driver, Raya Denny. (Denny Dep. Tr. 146:23–147:1.)
- Expected testimony from driver, Naser Zorrok. (Zorrok Dep. Tr. 56:22–57:2.)
- Expected testimony from driver, Dhiraj Tulachan. (Tulachan Dep. Tr. 61:1–3.)
- Expected testimony from driver, Mary Ellen McAllister. (McAllister Dep. Tr. 118:13–15.)

AGO Response: Undisputed.

214. <u>Uber does not have any dress code for drivers in Massachusetts.</u>

- Platform Access Agreement, UBER-MA0001492, § 2.7(a). [Tr. Ex. 3000]
- Expected testimony from driver, Richard Kambugu. (Kambugu Dep. Tr. 149:14–15.)
- Expected testimony from driver, Naser Zorrok. (Zorrok Dep. Tr. 57:1–2.)
- Expected testimony from driver, Rebekah Field. (Field Dep. Tr. 34:23–24.)
- Expected testimony from driver, Kyle Tysvaer. (Tysvaer Dep. Tr. 50:1–2.)
- Expected testimony from driver, Raya Denny. (Denny Dep. Tr. 147:2–3.)

AGO Response: Undisputed.

215. <u>When using Uber's Rides platform, drivers are free to choose any car that is 15 years old or newer, has four doors, and is in good condition.</u>

- Vehicle Requirements, UBER-MA0003392 [Dobbs Dep. Ex. 3]. [Tr. Ex. 3322]
- Expected testimony from Uber expert, Justin McCrary. (McCrary Rep. ¶ 46, Exs. 10–11.) [Tr. Ex. 3071]

AGO Response: Disputed. The Attorney General takes issue with the characterization of drivers' ability to choose any car. Notwithstanding, it is undisputed that drivers may only use

cars that meet Uber's vehicle requirements, which currently are that it be 15 years old or newer, have four doors, and are in good condition.

- AG1192

216. <u>Drivers are free to choose when they log onto the Driver App.</u>

- Platform Access Agreement, UBER-MA0001492, § 1.2. [Tr. Ex. 3000]

- Expected testimony from Uber, Chad Dobbs. (*E.g.*, Dobbs Dep. Tr. 1259:11–1260:10.)

- Expected testimony from Uber expert, Justin McCrary. (McCrary Rep. ¶¶ 28–38, Exs. 1–7.) [Tr. Ex. 3071]

- Expected testimony from driver, Rebekah Field. (Field Dep. Tr. 28:9–15.)

- Expected testimony from driver, Raya Denny. (Denny Dep. Tr. 144:6–11.)

- Expected testimony from driver, Richard Kambugu. (Kambugu Dep. Tr. 151:4–152:9, 152:19–153:12.)

- Expected testimony from driver, Naser Zorrok. (Zorrok Dep. Tr. 55:2–56:9.)

- Expected testimony from driver, Mary Ellen McAllister. (McAllister Dep. Tr. 118:16–18.)

- Testimony from AGO, Lauren Moran. (Corporate Representative Testimony, Moran Dep. Tr. Day 2 160:16–161:21.)

- Part 6 – Uber's 16 Questions [Moran Dep. Ex. 57]. [Tr. Ex. 3165]

AGO Response: Disputed. The Attorney General takes issue with the characterization that drivers "are free to choose" when they log onto the Driver App. Notwithstanding, it is undisputed as to the statements made by the cited drivers.

- Expected Testimony of AGO expert, Lindsey Cameron

217. <u>Drivers take into account a host of individualized factors in deciding when, where, and how to use the Driver App to find matches.</u>

- Expected testimony from Uber expert, Justin McCrary. (McCrary Rep. ¶¶ 28–38.) [Tr. Ex. 3071]

- Expected testimony from driver, Rebekah Field. (Field Dep. Tr. 28:9–31:10.)

- Expected testimony from driver, Kyle Tysvaer. (Tysvaer Dep. Tr. 44:13–24.)

- Expected testimony from driver, Raya Denny. (Denny Dep. Tr. 143:15–144:5.)

- Expected testimony from driver, Richard Kambugu. (Kambugu Dep. Tr. 151:4–152:9.)

- Expected testimony from driver, Naser Zorrok. (Zorrok Dep. Tr. 55:2–56:9.)

- Expected testimony from driver, Dhiraj Tulachan. (Tulachan Dep. Tr. 58:15–59:3, 61:16–62:5.)

- Expected testimony from driver, May Ellen McAllister. (McAllister Dep. Tr. 33:23–34:12.)

AGO Response: Disputed. The Attorney General takes issue with the characterization that drivers decided when, where, and how to drive. Notwithstanding, it is undisputed as to the statements made by the cited drivers.

- Expected testimony of Lindsey Cameron

218. <u>Drivers consider earning potential when deciding when, where, and how to use the Driver App to find matches.</u>

- Expected testimony from driver, Joshua Cambridge. (Cambridge Dep. Tr. 45:24–46:18.)

- Expected testimony from driver, Kyle Tysvaer. (Tysvaer Dep. Tr. 44:13–45:21.)

- Expected testimony from driver, Bartek Sikora. (Sikora Dep. Tr. 59:23–60:23.)

- Expected testimony from driver, Richard Kambugu. (Kambugu Dep. Tr. 151:4–13.)

- Expected testimony from driver, Dhiraj Tulachan. (Tulachan Dep. Tr. 26:8–15, 58:22–59:11.)

AGO Response: Undisputed.

219. <u>Drivers consider surge pricing when deciding when, where, and how to use the Driver App to find matches.</u>

- Expected testimony from driver, Kyle Tysvaer. (Tysvaer Dep. Tr. 44:13–45:21.)

AGO Response: Disputed. The Attorney General takes issue with the characterization that drivers decided when, where, and how to drive. Notwithstanding, it is undisputed as to the statements made by the cited driver.

- Expected testimony of Lindsey Cameron

220. <u>Drivers consider personal convenience and family obligations when deciding when, where, and how to use the Driver App to find matches.</u>

- Expected testimony from driver, Naser Zorrok. (Zorrok Dep. Tr. 56:3–9.)

- Expected testimony from driver, Bartek Sikora. (Sikora Dep. Tr. 35:5–13.)

- Expected testimony from driver, Joshua Cambridge. (Cambridge Dep. Tr. 46:3–24.)

AGO Response: Disputed. The Attorney General takes issue with the application of the finding to drivers generally, as unsupported by the evidence identified by the Defendant. Notwithstanding, it is undisputed as to the practice of the specific individual drivers cited.

221. <u>Drivers consider demand when deciding when, where, and how to use the Driver App to find matches.</u>

- Expected testimony from driver, Mary Ellen McAllister. (McAllister Dep. Tr. 33:7–13, 110:14–111:16.)

AGO Response: Disputed. The Attorney General takes issue with the application of the finding to drivers generally, as unsupported by the evidence identified by the Defendant. Notwithstanding, it is undisputed as to the practices of the specific individual driver cited.

222. <u>Drivers consider trip length when deciding when, where, and how to use the Driver App to find matches.</u>

- Expected testimony from driver, Naser Zorrok. (Zorrok Dep. Tr. 24:11–25:1.)
- Expected testimony from driver, Raya Denny. (Denny Dep. Tr. at 161:11–15.)

AGO Response: Disputed. The Attorney General takes issue with the application of the finding to drivers generally, as unsupported by the evidence identified by the Defendant. Notwithstanding, it is undisputed as to the practices of the specific individual drivers cited.

223. <u>Drivers consider the location when deciding when, where, and how to use the Driver App to find matches.</u>

- Expected testimony from driver, Rebekah Field. (Field Dep. Tr. 32:12–33:3.)

AGO Response: Disputed. The Attorney General takes issue with the application of the finding to drivers generally, as unsupported by the evidence identified by the Defendant. Notwithstanding, it is undisputed as to the practices of the specific individual driver cited.

224. <u>The factors (¶¶ 216–223) that drivers consider are not mandated by Uber.</u>

- Expected testimony from driver, Rebekah Field. (Field Dep. Tr. 28:9–15, 31:1–10, 41:1–13.)
- Expected testimony from driver, Kyle Tysvaer. (Tysvaer Dep. Tr. 53:21–23, 54:2–17.)
- Expected testimony from driver, Edward Gannon. (Gannon Dep. Tr. 24:7–19, 50:17–51:17, 57:7–16, 60:17–61:8.)
- Expected testimony from driver, Joshua Cambridge. (Cambridge Dep. Tr. 21:18–22.)
- Expected testimony from driver, Raya Denny. (Denny Dep. Tr. 143:15–144:8.)

AGO Response: Disputed. Undisputed as to the statements made by the cited drivers.
- Expected testimony of Lindsey Cameron

225. <u>Drivers do not have a supervisor at Uber.</u>

- Expected testimony from driver, Kevin Hyland. (Hyland Dep. Tr. 65:19–66:3.)
- Expected testimony from driver, Kenneth Smock. (Smock Dep. Tr. 56:18–20.)
- Expected testimony from driver, Marc Pompee. (Pompee Dep. Tr. 58:22–59:7, 71:10–12.)
- Expected testimony from driver, David Langlais. (Langlais Dep. Tr. 81:14–16.)
- Expected testimony from driver, Bryan Amparo Mesa. (Amparo Mesa Dep. Tr. 72:19–21.)
- Expected testimony from driver, Dhiraj Tulachan. (Tulachan Dep. Tr. 25:20–26:7, 64:14–16.)
- Expected testimony from driver, Khalid Benlail. (Benlail Dep. Tr. 113:19–21, 189:14–16.)
- Expected testimony from driver, Edward Gannon. (Gannon Dep. Tr. 48:18–49:6, 63:4–8.)
- Expected testimony from driver, Bartek Sikora. (Sikora Dep. Tr. 66:23–67:10.)
- Expected testimony from driver, Raya Denny. (Denny Dep. Tr. 153:13–21.)
- Expected testimony from driver, Mary Ellen McAllister. (McAllister Dep. Tr. 121:20–122:3.)
- Expected testimony from driver, Richard Kambugu. (Kambugu Dep. Tr. 154:20–22.)
- Expected testimony from driver, Joshua Cambridge. (Cambridge Dep. Tr. 50:15–21.)

AGO Response: Disputed. Notwithstanding, it is undisputed as to the statements made by the cited drivers.

- AGO FF 74-75, 139-146, 171-175
- Expected testimony of AGO expert, Lindsey Cameron.

226. <u>Drivers do not report to anyone at Uber.</u>

- Expected testimony from driver, Kevin Hyland. (Hyland Dep. Tr. 65:19–66:3.)
- Expected testimony from driver, Kenneth Smock. (Smock Dep. Tr. 56:18–20.)
- Expected testimony from driver, Marc Pompee. (Pompee Dep. Tr. 58:22–59:7, 71:10–12.)
- Expected testimony from driver, David Langlais. (Langlais Dep. Tr. 81:14–16.)
- Expected testimony from driver, Bryan Amparo Mesa. (Amparo Mesa Dep. Tr. 72:19–21.)
- Expected testimony from driver, Dhiraj Tulachan. (Tulachan Dep. Tr. 25:20–26:7, 64:14–16.)
- Expected testimony from driver, Khalid Benlail. (Benlail Dep. Tr. 113:19–21, 189:14–16.)
- Expected testimony from driver, Edward Gannon. (Gannon Dep. Tr. 48:18–49:6, 63:4–8.)
- Expected testimony from driver, Bartek Sikora. (Sikora Dep. Tr. 66:23–67:10.)
- Expected testimony from driver, Raya Denny. (Denny Dep. Tr. 153:13–21.)

- Expected testimony from driver, Mary Ellen McAllister. (McAllister Dep. Tr. 121:20–122:3.)

- Expected testimony from driver, Richard Kambugu. (Kambugu Dep. Tr. 154:20–22.)

- Expected testimony from driver, Joshua Cambridge. (Cambridge Dep. Tr. 50:15–21.)

AGO Response: Disputed. Notwithstanding, it is undisputed as to the statements made by the cited drivers.

- AGO FF 74-75, 139-146, 171-175

- Expected testimony of AGO expert, Lindsey Cameron.

227. <u>Drivers do not need permission from Uber to take time off from using the Driver App.</u>

- Platform Access Agreement, UBER-MA0001492, § 1.2. [Tr. Ex. 3000]

- Expected testimony from Uber expert, Justin McCrary. (McCrary Rep. ¶ 28.) [Tr. Ex. 3071]

- Expected testimony from driver, Joshua Cambridge. (Cambridge Dep. Tr. 46:19–47:4.)

- Expected testimony from driver, Mary Ellen McAllister. (McAllister Dep. Tr. 119:9–22.)

- Expected testimony from driver, Rebekah Field. (Field Dep. Tr. 40:6–17.)

- Expected testimony from driver, Bryan Amparo Mesa. (Amparo Mesa Dep. Tr. 62:7–63:14.)

AGO Response: Undisputed.

228. <u>Drivers do not need to inform anyone at Uber that they are taking time off from using the Driver App.</u>

- Platform Access Agreement, UBER-MA0001492, § 1.2. [Tr. Ex. 3000]

- Expected testimony from driver, Joshua Cambridge. (Cambridge Dep. Tr. 46:19–47:4.)

- Expected testimony from driver, Naser Zorrok. (Zorrok Dep. Tr. 57:3–23.)

- Expected testimony from driver, Mary Ellen McAllister. (McAllister Dep. Tr. 119:9–22.)

AGO Response: Disputed. Notwithstanding, it is undisputed as to the statements made by the cited drivers.

- See *supra*, ¶ 124.

- Uber 30(b)(6) Testimony of Chad Dobbs

- Anticipated testimony of AGO expert, Lindsey Cameron.

229. <u>Drivers may stop using the Driver App at any time.</u>

- Platform Access Agreement, UBER-MA0001492, §§ 1.2, 2.6. [Tr. Ex. 3000]
- Expected testimony from driver, Rebekah Field. (Field Dep. Tr. 36:3–18.)
- Expected testimony from driver, Bryan Amparo Mesa. (Amparo Mesa Dep. Tr. 63:15–64:7.)
- Expected testimony from driver, Kyle Tysvaer. (Tysvaer Dep. Tr. 50:3–9.)
- Expected testimony from driver, Raya Denny. (Denny Dep. Tr. 147:4–15, 148:6–11.)
- Expected testimony from driver, Richard Kambugu. (Kambugu Dep. Tr. 157:8–24.)
- Expected testimony from driver, Naser Zorrok. (Zorrok Dep. Tr. 57:10–20.)
- Expected testimony from driver, Dhiraj Tulachan. (Tulachan Dep. Tr. 60:10–11.)

AGO Response: Disputed. Notwithstanding, it is undisputed as to the statements made by the cited drivers.

- AGO FF 33, 41
- Expected Testimony of Lindsey Cameron
- Uber 30(b)(6) Testimony of Chad Dobbs

230. <u>Drivers do not need to notify Uber if they stop using the Driver App.</u>

- Platform Access Agreement, UBER-MA0001492, § 1.2. [Tr. Ex. 3000]
- Expected testimony from driver, Bartek Sikora. (Sikora Dep. Tr. 64:4–7.)

AGO Response: Disputed.

- AGO FF 33, 41
- Expected Testimony of Lindsey Cameron
- Uber 30(b)(6) Testimony of Chad Dobbs

231. <u>Drivers state that Uber's Community Guidelines do not control their behavior.</u>

- Expected testimony from driver, Naser Zorrok. (Zorrok Dep. Tr. 48:14–49:14, 59:12–60:1.)
- Expected testimony from driver, Kevin Hyland. (Hyland Dep. Tr. 66:18–67:18.)
- Expected testimony from driver, Kenneth Smock. (Smock Dep. Tr. 49:19–50:2, 62:21–63:17.)
- Expected testimony from driver, Marc Pompee. (Pompee Dep. Tr. 70:8–11, 74:24–75:19.)
- Expected testimony from driver, David Langlais. (Langlais Dep. Tr. 81:23–83:8.)

- Expected testimony from driver, Edward Gannon. (Gannon Dep. Tr. 54:13–23, 64:17–65:2.)

- Expected testimony from driver, Bartek Sikora. (Sikora Dep. Tr. 58:18–59:18.)

- Expected testimony from driver, Raya Denny. (Denny Dep. Tr. 142:2–20, 159:1–160:4.)

- Expected testimony from driver, Richard Kambugu. (Kambugu Dep. Tr. 155:14–156:8.)

- Expected testimony from driver, Joshua Cambridge. (Cambridge Dep. Tr. 52:13–17.)

- Expected testimony from driver, Rebekah Field. (Field Dep. Tr. 56:21–57:1.)

AGO Response: Disputed. The Attorney General takes issue with the characterization of Uber Community Guidelines, which is a legal conclusion, and the application of the finding to drivers generally, as unsupported by the evidence identified by the Defendant. Notwithstanding, it is undisputed as to the statements made by the cited drivers.

232. <u>Uber does not require that drivers provide water bottles.</u>

- Expected testimony from driver, Rebekah Field. (Field Dep. Tr. 18:4–19:6.)

- Expected testimony from driver, Raya Denny. (Denny Dep. Tr. 139:13–24, 142:6–20.)

- Expected testimony from driver, Mary Ellen McAllister. (McAllister Dep. Tr. 113:8–114:3.)

- Expected testimony from driver, Richard Kambugu. (Kambugu Dep. Tr. 151:1–3.)

AGO Response: Disputed. Notwithstanding, it is undisputed as to the statements made by the cited drivers.

233. <u>Uber does not require that drivers keep their vehicles clean.</u>

- Expected testimony from driver, Marc Pompee. (Pompee Dep. Tr. 70:8–11.)

- Expected testimony from driver, David Langlais. (Langlais Dep. Tr. 76:2–7.)

- Expected testimony from driver, Bryan Amparo Mesa. (Amparo Mesa Dep. Tr. 68:23–69:9.)

- Expected testimony from driver, Edward Gannon. (Gannon Dep. Tr. 54:13–23.)

- Expected testimony from driver, Bartek Sikora. (Sikora Dep. Tr. 58:18–59:18.)

- Expected testimony from driver, Raya Denny. (Denny Dep. Tr. 142:2–20.)

- Expected testimony from driver, Mary Ellen McAllister. (McAllister Dep. Tr. 124:7–23.)

- Expected testimony from driver, Naser Zorrok. (Zorrok Dep. Tr. 54:12–23.)

AGO Response: Disputed. Notwithstanding, it is undisputed as to the statements made by the cited drivers.

- AGO FF 59-60
- Expected Testimony of Lindsey Cameron
- Uber 30(b)(6) Testimony of Chad Dobbs
- UX3007

234. <u>Uber does not provide drivers with cars.</u>

- Expected testimony from driver, Rebekah Field. (Field Dep. Tr. 23:8–9.)
- Expected testimony from driver, Kyle Tysvaer. (Tysvaer Dep. Tr. 41:7–10.)
- Expected testimony from driver, Raya Denny. (Denny Dep. Tr. 140:16–17.)
- Expected testimony from driver, Mary Ellen McAllister. (McAllister Dep. Tr. 116:6–7.)
- Expected testimony from driver, Richard Kambugu. (Kambugu Dep. Tr. 149:16–17.)
- Expected testimony from driver, Naser Zorrok. (Zorrok Dep. Tr. 53:4–5.)
- Expected testimony from driver, Dhiraj Tulachan. (Tulachan Dep. Tr. 56:23–24.)
- Expected testimony from driver, Kevin Hyland. (Hyland Dep. Tr. 62:18–63:1.)
- Expected testimony from driver, Kenneth Smock. (Smock Dep. Tr. 16:10–15.)
- Expected testimony from driver, Marc Pompee. (Pompee Dep. Tr. 18:18–22, 69:16–23.)
- Expected testimony from driver, David Langlais. (Langlais Dep. Tr. 75:3–8.)
- Expected testimony from driver, Bryan Amparo Mesa. (Amparo Mesa Dep. Tr. 22:5–6, 61:15–17.)
- Expected testimony from driver, Edward Gannon. (Gannon Dep. Tr. 54:24–55:9.)

AGO Response: Undisputed.

235. <u>Uber offers a loyalty program for drivers called Uber Pro.</u>

- Non-California Uber Pro Terms and Conditions, UBER-MA00390050, at UBER-MA00390051. [Tr. Ex. 3032]
- Expected testimony from Uber, Chad Dobbs. (*E.g.*, Dobbs Dep. Tr. 158:11–18.)

AGO Response: Undisputed.

236. <u>Uber launched Uber Pro in Massachusetts in early 2019.</u>

- Expected testimony from Uber, Chad Dobbs. (*E.g.*, Dobbs Dep. Tr. 158:19–23.)

AGO Response: Undisputed.

Gibson, Dunn &
Crutcher LLP

237. <u>The terms applicable to Uber Pro are set forth in the Uber Pro Terms and Conditions, which were last updated on March 27, 2024.</u>

- Non-California Uber Pro Terms and Conditions, UBER-MA00390050. [Tr. Ex. 3032]

AGO Response: Undisputed.

238. <u>When drivers sign up to use the Driver App, they are automatically enrolled in Uber Pro.</u>

- Non-California Uber Pro Terms and Conditions, UBER-MA00390050, at UBER-MA00390052. [Tr. Ex. 3032]
- Expected testimony from Uber, Chad Dobbs. (*E.g.*, Dobbs Dep. Tr. 159:22–160:21.)

AGO Response: Undisputed.

239. <u>The Uber Pro program includes various levels, or "tiers," that drivers can qualify for by meeting specific criteria.</u>

- Non-California Uber Pro Terms and Conditions, UBER-MA00390050, at UBER-MA00390052. [Tr. Ex. 3032]
- Expected testimony from Uber, Chad Dobbs. (*E.g.*, Dobbs Dep. Tr. 160:23–161:3, 162:2–7.)

AGO Response: Undisputed.

240. <u>The Uber Pro tiers are Blue, Gold, Platinum, and Diamond.</u>

- Non-California Uber Pro Terms and Conditions, UBER-MA00390050, at UBER-MA00390052. [Tr. Ex. 3032]
- Expected testimony from Uber, Chad Dobbs. (*E.g.*, Dobbs Dep. Tr. 161:4–6.)

AGO Response: Undisputed.

241. <u>The default Uber Pro tier, applicable to all drivers when they sign up to use the Driver App, is Blue.</u>

- Non-California Uber Pro Terms and Conditions, UBER-MA00390050, at UBER-MA00390052. [Tr. Ex. 3032]

AGO Response: Undisputed.

242. <u>Higher Uber Pro tiers offer various rewards for drivers, including cash back on gas, tuition coverage at ASU, priority airport rematch, and discounted roadside assistance.</u>

- Non-California Uber Pro Terms and Conditions, UBER-MA00390050, at UBER-MA00390053–390058. [Tr. Ex. 3032]

AGO Response: Disputed. The Attorney General takes issue with the characterization that this is the full extent features Uber provides drivers in higher Uber Pro tiers. Notwithstanding, it is undisputed that the features listed are among those Uber provides to higher tier drivers.

243. <u>To qualify for each Uber Pro tier, drivers must earn a certain number of points, which they earn by completing Uber trips.</u>

- Non-California Uber Pro Terms and Conditions, UBER-MA00390050, at UBER-MA00390052–390053. [Tr. Ex. 3032]
- Expected testimony from Uber, Chad Dobbs. (*E.g.*, Dobbs Dep. Tr. 162:2–11, 162:24–163:9.)

AGO Response: Undisputed.

244. <u>Drivers can earn additional Uber Pro points by completing trips at certain times and in specific locations.</u>

- Non-California Uber Pro Terms and Conditions, UBER-MA00390050, at UBER-MA00390052. [Tr. Ex. 3032]
- Expected testimony from Uber, Chad Dobbs. (*E.g.*, Dobbs Dep. Tr. 162:24–163:9.)

AGO Response: Undisputed.

245. <u>Drivers can also earn Uber Pro points by completing deliveries through Uber Eats.</u>

- Non-California Uber Pro Terms and Conditions, UBER-MA00390050, at UBER-MA00390052. [Tr. Ex. 3032]
- Expected testimony from Uber, Chad Dobbs. (*E.g.*, Dobbs Dep. Tr. 162:12–16, 162:24–163:9.)

AGO Response: Undisputed.

246. <u>Additionally, to advance to the Uber Pro tiers above the Blue tier, drivers must have at least a 4.85 star rating, no greater than a 4% cancellation rate, and no less than a certain acceptance rate that varies by location.</u>

- Non-California Uber Pro Terms and Conditions, UBER-MA00390050, at UBER-MA00390052–390053. [Tr. Ex. 3032]

● Expected testimony from Uber, Chad Dobbs. (*E.g.*, Dobbs Dep. Tr. 166:4–11, 169:2–9.)

AGO Response: Undisputed.

247. <u>Uber does not penalize drivers for not advancing through the Uber Pro tiers.</u>

● *See generally* Non-California Uber Pro Terms and Conditions, UBER-MA00390050. [Tr. Ex. 3032]

AGO Response: Disputed.

- ● Non-California Uber Pro Terms and Conditions, UBER-MA00390050.
- ● Expected testimony of AGO expert, Lindsey Cameron.

248. <u>For drivers to maintain their Uber Pro tiers, they must maintain a minimum star rating of 4.75, a maximum cancellation rate of 10%, and a minimum acceptance rate of between 60–75%, depending on their location.</u>

● Non-California Uber Pro Terms and Conditions, UBER-MA00390050, at UBER-MA00390052–390053. [Tr. Ex. 3032]

● Expected testimony from Uber, Chad Dobbs. (*E.g.*, Dobbs Dep. Tr. 163:22–164:10, 169:2–9.)

AGO Response: Undisputed.

249. <u>If a driver in a higher Uber Pro tier does not maintain eligibility for that tier, the driver defaults to the Blue tier.</u>

● Non-California Uber Pro Terms and Conditions, UBER-MA00390050, at UBER-MA00390053. [Tr. Ex. 3032]

AGO Response: Undisputed.

250. <u>To the extent Uber provides a minimum number of rides that drivers must accept in its Uber Pro Terms and Conditions (via the minimum acceptance rate), that minimum does not affect drivers' ability to access the Uber Rides platform or its services identified above.</u>

● Non-California Uber Pro Terms and Conditions, UBER-MA00390050, at UBER-MA00390052–390053. [Tr. Ex. 3032]

● Expected testimony from Uber, Chad Dobbs. (*E.g.*, Dobbs Dep. Tr. 227:5–228:6, 251:14–252:5, 824:19–825:10.)

● What are acceptance rates?" Uber Website, UBER-MA0003361. [Tr. Ex. 3519]

AGO Response: Disputed. The Attorney General takes issue with the conclusion of law about services. Notwithstanding it is undisputed that Uber does not have a minimum acceptance rate for drivers to access the Uber Rides platform.

251. To the extent Uber provides a maximum number of rides that drivers can cancel in its Uber Pro Terms and Conditions (via the maximum cancellation rate), that maximum does not affect drivers' ability to access the Uber Rides platform or its services identified above.

- Non-California Uber Pro Terms and Conditions, UBER-MA00390050, at UBER-MA00390052–390053. [Tr. Ex. 3032]

- Expected testimony from Uber, Chad Dobbs. (*E.g.*, Dobbs Dep. Tr. 227:5–228:6, 251:14–252:5, 824:19–825:10.)

AGO Response: Disputed. The Attorney General takes issue with the conclusion of law about services. Notwithstanding, it is undisputed that Uber does not currently deactivate drivers solely on the basis of their cancellation rate.

252. Drivers are not required to maintain any particular Uber Pro tier to use the Uber Rides platform.

- *See generally* Non-California Uber Pro Terms and Conditions, UBER-MA00390050. [Tr. Ex. 3032]

- Expected testimony from driver, Dhiraj Tulachan. (Tulachan Dep. Tr. 29:19–30:3.)

- Expected testimony from Uber, Chad Dobbs. (*E.g.*, Dobbs Dep. Tr. 161:17–24.)

AGO Response: Undisputed.

253. Another incentive Uber offers to drivers is surge pricing.

- Expected testimony from Uber, Chad Dobbs. (*E.g.*, Dobbs Dep. Tr. 574:2–23, 650:17–652:8.)

- "What's happening when prices surge?" Uber Website, UBER-MA0002977. [Tr. Ex. 3490]

AGO Response: Undisputed.

254. Surge pricing is dynamic pricing used by Uber to optimize the multi-sided market for its Rides business; when riders do not want to pay the surge price, it brings the marketplace into balance.

- *See supra* ¶ 154.

AGO Response: Disputed. The Attorney General takes issue with the characterization of Uber's business and the implication that this represents the full extent of Uber's business model. Notwithstanding, it is undisputed that surge pricing is dynamic pricing used by Uber to optimize the marketplace for its rides business.

- Expected testimony from AGO expert, David Weil.

- AGO FF 135–138.

255. <u>When drivers go online to receive ride requests, the Driver App shows them a map of the surrounding area and indicates in red the regions where there is surge pricing.</u>

- Expected testimony from Uber, Chad Dobbs. (*E.g.*, Dobbs Dep. Tr. 95:22–96:16.)
- Expected testimony from driver, Rebekah Field. (Field Dep. Tr. 40:18–24, 43:1–3.)
- Screenshot of Surge Map on the Uber App, UBER-MA00375808. [Tr. Ex. 3430]

AGO Response: Undisputed.

256. <u>Drivers can choose not to participate in surge pricing by not driving in a higher-demand region.</u>

- Expected testimony from driver, Rebekah Field. (Field Dep. Tr. 43:4–13.)
- Expected testimony from driver, Kyle Tysvaer. (Tysvaer Dep. Tr. 47:5–13, 50:24–51:2.)

AGO Response: Undisputed.

257. <u>Drivers do not have to drive in surge pricing areas in order to use the Driver App to find matches.</u>

- Expected testimony from driver, Kyle Tysvaer. (Tysvaer Dep. Tr. 47:5–13, 50:24–51:2.)
- Expected testimony from driver, Raya Denny. (Denny Dep. Tr. 150:16–151:3.)
- Expected testimony from driver, Dhiraj Tulachan. (Tulachan Dep. Tr. 62:21–63:17.)

AGO Response: Undisputed.

258. <u>Uber does not penalize drivers who do not accept rides with surge pricing or do not drive in an area with surge pricing.</u>

- Expected testimony from driver, Rebekah Field. (Field Dep. Tr. 43:14–17.)
- Expected testimony from driver, Raya Denny. (Denny Dep. Tr. 151:4–9.)
- Expected testimony from driver, Mary Ellen McAllister. (McAllister Dep. Tr. 120:21–121:1.)

AGO Response: Undisputed.

259. <u>Drivers decide if they want to provide rides to customers outside of the Uber Rides platform.</u>

- Expected testimony from driver, Rebekah Field. (Field Dep. Tr. 131:18–133:9.)
- Expected testimony from driver, Kyle Tysvaer. (Tysvaer Dep. Tr. 58:15–24.)

AGO Response: Undisputed.

260. <u>Drivers decide if they want to provide rides using other lead generation services.</u>

- Platform Access Agreement, UBER-MA0001492, § 1.2. [Tr. Ex. 3000]

- AGO's June 23, 2021 Response to RFA No. 8. [Tr. Ex. 3531]

- Expected testimony from driver, Edward Gannon. (Gannon Dep. Tr. 11:18–12:15, 63:21–64:10.)

- Expected testimony from driver, Felipe Martinez. (Martinez Dep. Tr. 114:14–115:9, 168:2–169:19.)

- Expected testimony from driver, Kenneth Smock. (Smock Dep. Tr. 21:12–22:16, 58:20–59:5.)

- Expected testimony from driver, Marc Pompee. (Pompee Dep. Tr. 57:8–15.)

- Expected testimony from driver, Kyle Tysvaer. (Tysvaer Dep. Tr. 52:21–25, 53:4–7.)

- Expected testimony from driver, Rebekah Field. (Field Dep. Tr. 53:12–14.)

- Expected testimony from driver, Raya Denny. (Denny Dep. Tr. 157:7–19.)

- Expected testimony from driver, Mary Ellen McAllister. (McAllister Dep. Tr. 33:7–13, 110:14–111:16.)

- Expected testimony from driver, Richard Kambugu. (Kambugu Dep. Tr. 52:2–10, 154:23–155:13.)

- Expected testimony from driver, Dhiraj Tulachan. (Tulachan Dep. Tr. 7:16–20, 8:11–17, 64:23–65:1.)

- Expected testimony from driver, Bryan Amparo Mesa. (Amparo Mesa Dep. Tr. 65:17–23.)

- Expected testimony from driver, Naser Zorrok. (Zorrok Dep. Tr. 36:8–37:3.)

- Expected testimony from Uber, Chad Dobbs. (*E.g.*, Dobbs Dep. Tr. 197:6–198:2, 1237:15–23.)

- Expected testimony from Uber expert, Justin McCrary. (McCrary Rep. ¶ 41.) [Tr. Ex. 3071]

- Expected testimony from Uber expert, Christopher Stanton. (Stanton Rep. ¶¶ 16–19.) [Tr. Ex. 3073]

AGO Response: Disputed.

- Expected testimony of AGO expert, David Weil

- Expected testimony of AGO expert, Lindsey Cameron

261. <u>Uber does not prohibit drivers from using other competing platforms to provide their driving services.</u>

- Platform Access Agreement, UBER-MA0001492, § 1.2. [Tr. Ex. 3000]

- Expected testimony from Uber, Chad Dobbs. (*E.g.*, Dobbs Dep. Tr. 197:6–198:2, 1251:5–22.)

- Expected testimony from driver, Bryan Amparo Mesa. (Amparo Mesa Dep. Tr. 65:17–66:14.)

- Expected testimony from Uber expert, Justin McCrary. (McCrary Rep. ¶¶ 41–42.) [Tr. Ex. 3071]

AGO Response: Disputed. The Attorney General takes issue with the conclusion of law about services. Notwithstanding, it is undisputed that Uber does not prohibit drivers from using other platforms.

262. <u>The PAA does not prohibit drivers from using other apps to offer or obtain rides.</u>

- Platform Access Agreement, UBER-MA0001492, § 1.2. [Tr. Ex. 3000]

- Expected testimony from Uber, Chad Dobbs. (*E.g.*, Dobbs Dep. Tr. 1237:15–23.)

AGO Response: Disputed. The Attorney General takes issue with the conclusion of law about the meaning of the Platform Access Agreement, as well as any evidence seeking to vary the plain terms of the Platform Access Agreement.

263. <u>No other agreement or Uber policy prohibits drivers from using other apps to obtain ride requests.</u>

- Fare Addendum, UBER-MA0000794 [Dobbs Dep. Ex. 27]. [Tr. Ex. 3010]

- U.S. Terms of Use, UBER-MA00390035. [Tr. Ex. 3014]

- Non-California Uber Pro Terms and Conditions, UBER-MA00390050. [Tr. Ex. 3032]

- Uber Community Guidelines, UBER-MA00390044. [Tr. Ex. 3034]

- Uber Privacy Notice, UBER-MA00390060. [Tr. Ex. 3026]

- Technology Services Agreement, UBER-MA0000257 [Dobbs Ex. 13]. [Tr. Ex. 3004]

- AGO's June 23, 2021 Response to RFA No. 8. [Tr. Ex. 3531]

- Expected testimony from driver, Edward Gannon. (Gannon Dep. Tr. 11:18–12:15, 63:21–64:10.)

- Expected testimony from driver, Felipe Martinez. (Martinez Dep. Tr. 114:14–115:9, 168:2–169:19.)

- Expected testimony from driver, Kenneth Smock. (Smock Dep. Tr. 21:12–22:16, 58:20–59:5.)

Gibson, Dunn &
Crutcher LLP

- Expected testimony from driver, Marc Pompee. (Pompee Dep. Tr. 57:8–15.)

- Expected testimony from driver, Kyle Tysvaer. (Tysvaer Dep. Tr. 52:21–25, 53:4–7.)

- Expected testimony from driver, Rebekah Field. (Field Dep. Tr. 53:12–14.)

- Expected testimony from driver, Raya Denny. (Denny Dep. Tr. 157:7–19.)

- Expected testimony from driver, Mary Ellen McAllister. (McAllister Dep. Tr. 33:7–13, 110:14–111:16.)

- Expected testimony from driver, Richard Kambugu. (Kambugu Dep. Tr. 52:2–10, 154:23–155:13.)

- Expected testimony from driver, Joshua Cambridge. (Cambridge Dep. Tr. 51:4–52:7.)

- Expected testimony from driver, Dhiraj Tulachan. (Tulachan Dep. Tr. 7:16–20, 8:11–17, 64:23–65:1.)

- Expected testimony from driver, Bryan Amparo Mesa. (Amparo Mesa Dep. Tr. 65:17–23.)

- Expected testimony from driver, Naser Zorrok. (Zorrok Dep. Tr. 36:8–37:3.)

- Expected testimony from Uber, Chad Dobbs. (*E.g.*, Dobbs Dep. Tr. 197:6–198:2, 1237:15–23.)

- Expected testimony from Uber expert, Justin McCrary. (McCrary Rep. ¶ 41.) [Tr. Ex. 3071]

- Expected testimony from Uber expert, Christopher Stanton. (Stanton Rep. ¶¶ 16–19.) [Tr. Ex. 3073]

AGO Response: Disputed. The Attorney General takes issue with the conclusion of law about the interpretation of Uber's agreements with drivers, as well as to any evidence varying the plain terms of Uber's agreements with drivers.

264. Many drivers use the Driver App simultaneously with platforms from Uber's competitors.

- Expected testimony from Uber expert, Christopher Stanton. (Stanton Rep. ¶¶ 15–18, 23–25, 35.) [Tr. Ex. 3073]

- Expected testimony from Uber expert, Justin McCrary. (McCrary Rep. ¶ 41.) [Tr. Ex. 3071]

- Expected testimony from Uber, Chad Dobbs. (*E.g.*, Dobbs Dep. Tr. 197:6–198:2, 1237:15–23.)

- Expected testimony from driver, Kevin Hyland. (Hyland Dep. Tr. 55:20–56:6, 66:4–17.)

- Expected testimony from driver, Kyle Tysvaer. (Tysvaer Dep. Tr. 52:24–53:14.)

- Expected testimony from driver, Kenneth Smock. (Smock Dep. Tr. 21:12–22:16, 58:20–59:5.)

- Expected testimony from driver, Marc Pompee. (Pompee Dep. Tr. 57:8–15.)

- Expected testimony from driver, Dhiraj Tulachan. (Tulachan Dep. Tr. 7:16–20, 8:11–17, 64:23–65:1.)

- Expected testimony from driver, Edward Gannon. (Gannon Dep. Tr. 11:18–12:15.)

- Expected testimony from driver, Mary Ellen McAllister. (McAllister Dep. Tr. 33:7–13, 110:14–111:16.)

- Expected testimony from driver, Naser Zorrok. (Zorrok Dep. Tr. 36:8–37:3.)

- Expected testimony from driver, Richard Kambugu. (Kambugu Dep. Tr. 52:2–10.)

- Expected testimony from driver, Rebekah Field. (Field Dep. Tr. 53:12–14.)

AGO Response: Disputed. The Attorney General takes issue with the extent the statement is generalized to drivers as a whole, as unsupported by the evidence identified by the Defendant. Notwithstanding, it is undisputed as to the statements made by the cited drivers.

265. <u>Drivers rate riders.</u>

- Platform Access Agreement, UBER-MA0001492, § 2.9. [Tr. Ex. 3000]

- "How Star Ratings Work," Uber Website, UBER-MA00248965. [Tr. Ex. 3441]

- Expected testimony from Uber, Chad Dobbs. (*E.g.*, Dobbs Dep. Tr. 142:20–143:11.)

- Expected testimony from driver, Rebekah Field. (Field Dep. Tr. 48:14–21.)

- Expected testimony from driver, Kyle Tysvaer. (Tysvaer Dep. Tr. 59:3–6, 60:10–11.)

- Expected testimony from driver, Raya Denny. (Denny Dep. Tr. 155:10–13, 156:10–13.)

- Expected testimony from driver, Mary Ellen McAllister. (McAllister Dep. Tr. 122:24–124:6.)

- Expected testimony from Uber expert, Terrence August. (August Rep. ¶¶ 15, 55.) [Tr. Ex. 3074]

- Screenshot of Driver Prompt to Rate Rider, UBER-MA00375748 [Dobbs Dep. Ex. 24]. [Tr. Ex. 3398]

AGO Response: Disputed. The Attorney General takes issue with the implication that Uber has no control over star ratings, as unsupported by the evidence identified by the Defendant. Notwithstanding, it is undisputed as to the statements made by the cited drivers.

- AGO FF 55-56, 60, 82

- Expected testimony of AGO Expert, Lindsey Cameron

- Uber 30(b)(6) Testimony of Chad Dobbs

266. <u>Riders rate drivers.</u>

- Platform Access Agreement, UBER-MA0001492, § 2.9. [Tr. Ex. 3000]

- Expected testimony from Uber, Chad Dobbs. (*E.g.*, Dobbs Dep. Tr. 142:20–143:11.)

- Expected testimony from Uber expert, Terrence August. (August Rep. ¶ 15.) [Tr. Ex. 3074]

- Expected testimony from driver, Rebekah Field. (Field Dep. Tr. 48:14–21.)

- Rating a driver," Uber Website, UBER-MA0003358. [Tr. Ex. 3518]

AGO Response: Disputed. The Attorney General takes issue with the implication that Uber has no control over star ratings, as unsupported by the evidence identified by the Defendant.

- AGO FF 55-56, 60, 82

- Expected testimony of AGO Expert, Lindsey Cameron

- Uber 30(b)(6) Testimony of Chad Dobbs

267. <u>Uber does not rate riders or drivers.</u>

- Expected testimony from driver, Mary Ellen McAllister. (McAllister Dep. Tr. 122:24–124:6.)

- "How Star Ratings Work," Uber Website, UBER-MA00248965. [Tr Ex. 3441]

AGO Response: Disputed. The Attorney General takes issue with the implication that Uber has no control over star ratings, as unsupported by the evidence identified by the Defendant.

- AGO FF 55-56, 60, 82

- Expected testimony of AGO Expert, Lindsey Cameron

- Uber 30(b)(6) Testimony of Chad Dobbs

268. <u>Uber does not control driver or rider ratings.</u>

- Expected testimony from Uber expert, Terrence August. (August Rep. ¶ 55.) [Tr. Ex. 3074]

AGO Response: Disputed.

- AGO FF 55-56, 60, 82

- Expected testimony of AGO Expert, Lindsey Cameron

- Uber 30(b)(6) Testimony of Chad Dobbs

269. <u>The star rating system is not a tool used by Uber to control drivers.</u>

- Expected testimony from driver, Raya Denny. (Denny Dep. Tr. 156:14–17.)

- Expected testimony from driver, Kenneth Smock. (Smock Dep. Tr. 43:3–17, 46:15–47:1, 50:12–17.)

- Expected testimony from driver, Bryan Amparo Mesa. (Amparo Mesa Dep. Tr. 46:13–19.)
- Expected testimony from driver, Dhiraj Tulachan. (Tulachan Dep. Tr. 41:3–6.)
- Expected testimony from driver, David Moyer. (Moyer Dep. Tr. 237:4–8.)
- Expected testimony from driver, Rebekah Field. (Field Dep. Tr. 50:23–51:4.)

AGO Response: Disputed. The Attorney General takes issue with this statement insofar as it contains a conclusion of law about control.

- AGO FF 55-56, 60, 82
- Expected testimony of AGO Expert, Lindsey Cameron
- Expected testimony of AGO Expert, David Weil
- Uber 30(b)(6) Testimony of Chad Dobbs

270. <u>Drivers can reject a proposed match by not accepting a ride request.</u>

- Platform Access Agreement, UBER-MA0001492, §§ 1.2, 2.6. [Tr. Ex. 3000]
- Expected testimony from driver, Raya Denny. (Denny Dep. Tr. 40:23–41:4, 131:16–20.)
- Expected testimony from driver, Richard Kambugu. (Kambugu Dep. Tr. 47:4–7.)
- Expected testimony from Uber, Chad Dobbs. (*E.g.*, Dobbs Dep. Tr. 124:3–11.)
- Expected testimony from Uber expert, Justin McCrary. (McCrary Rep. ¶¶ 43–44, Exs. 8A & 8B.) [Tr. Ex. 3071]

AGO Response: Undisputed.

271. <u>Drivers can reject a proposed match by ignoring a ride request.</u>

- Expected testimony from Uber, Chad Dobbs. (*E.g.*, Dobbs Dep. Tr. 113:20–114:2.)

AGO Response: Undisputed.

272. <u>Drivers can reject a proposed match by declining a ride request.</u>

- Platform Access Agreement, UBER-MA0001492, §§ 1.2, 2.6. [Tr. Ex. 3000]
- Expected testimony from driver, Kyle Tysvaer. (Tysvaer Dep. Tr. 48:13–15.)
- Expected testimony from driver, Raya Denny. (Denny Dep. Tr. 145:14–17.)
- Expected testimony from driver, Richard Kambugu. (Kambugu Dep. Tr. 51:16–52:1.)
- Expected testimony from driver, Naser Zorrok. (Zorrok Dep. Tr. 56:10–11.)
- Expected testimony from driver, Dhiraj Tulachan. (Tulachan Dep. Tr. 60:12–13.)

- Expected testimony from Uber, Chad Dobbs. (*E.g.*, Dobbs Dep. Tr. 1260:16–21, 1268:21–1269:19.)

- Expected testimony from Uber expert, Justin McCrary. (McCrary Rep. ¶¶ 43–44, Exs. 8A & 8B.) [Tr. Ex. 3071]

AGO Response: Undisputed.

273. <u>Drivers can cancel a ride after accepting it.</u>

- Platform Access Agreement, UBER-MA0001492, §§ 1.2, 2.6. [Tr. Ex. 3000]

- Expected testimony from driver, Kyle Tysvaer. (Tysvaer Dep. Tr. 111:3–5.)

- Expected testimony from driver, Raya Denny. (Denny Dep. Tr. 131:24–132:2.)

- Expected testimony from Uber, Chad Dobbs. (*E.g.*, Dobbs Dep. Tr. 131:17–132:22, 135:5–21.)

- Screenshot of In-App Ride Cancellation Screen, UBER-MA00375739 [Dobbs Dep. Ex. 21]. [Tr. Ex. 3397]

- Expected testimony from Uber expert, Justin McCrary. (McCrary Rep. ¶¶ 43–44, Exs. 8A & 8B.) [Tr. Ex. 3071]

AGO Response: Undisputed.

274. <u>Riders can reject a proposed match by canceling a ride.</u>

- Expected testimony from Uber, Chad Dobbs. (*E.g.*, Dobbs Dep. Tr. 192:6–193:5.)

- Expected testimony from driver, Kevin Hyland. (Hyland Dep. Tr. 33:4–8.)

- Expected testimony from driver, David Langlais. (Langlais Dep. Tr. 38:16–18.)

- Expected testimony from driver, Joshua Cambridge. (Cambridge Dep. Tr. 35:24–36:3.)

AGO Response: Undisputed.

275. <u>A driver can prevent future matches with a rider by giving that rider a 1-star rating.</u>

- Expected testimony from Uber, Chad Dobbs. (*E.g.*, Dobbs Dep. Tr. 742:20–743:15.)

AGO Response: Undisputed.

276. <u>A rider can prevent future matches with a driver by giving that driver a 1-star rating.</u>

- Expected testimony from Uber, Chad Dobbs. (*E.g.*, Dobbs Dep. Tr. 742:20–743:15.)

AGO Response: Undisputed.

277. <u>From time to time, Uber will notify drivers about people seeking rides in the drivers' vicinity.</u>

- Expected testimony from driver, Naser Zorrok. (Zorrok Dep. Tr. 34:1–9.)
- "Opportunities," Screenshot of Uber App UBER-MA00375746. [Tr. Ex. 3431]
- "Earnings," Screenshot of Uber App, UBER-MA00375805. [Tr. Ex. 3432]

AGO Response: Disputed. The Attorney General takes issue with the assertion that Uber notifies drivers about people seeking rides in the driver's vicinity as unsupported by the evidence identified by the Defendant relating to the time period relevant to this litigation.

278. <u>Drivers are not obligated to respond to Uber communications by going online, accepting a trip request, or by any other means.</u>

- Expected testimony from driver, Naser Zorrok. (Zorrok Dep. Tr. 34:1–9.)

AGO Response: Disputed. The Attorney General takes issue with the assertion's implication that drivers are *never* obligated to respond to Uber communications, as unsupported by the evidence identified by the Defendant.

279. <u>Uber provides tools to drivers so they have information about rides before they accept or reject ride requests.</u>

- Expected testimony from driver, Raya Denny. (Denny Dep. Tr. 161:11–15.)
- Expected testimony from driver, Richard Kambugu. (Kambugu Dep. Tr. 36:6–10, 36:21–24.)

AGO Response: Disputed. The Attorney General takes issue with the characterization of Uber's purpose for providing information about rides. Notwithstanding, it is undisputed that Uber provides certain information and tools to drivers, and that Uber controls which information and tools are provided to drivers and when.

- Expected testimony of AGO expert, David Weil,
- Expected testimony of AGO expert, Lindsey Cameron

280. <u>Drivers in the Boston and Worcester regions see an estimated upfront fare before deciding whether to accept, decline, or ignore a ride request.</u>

- Expected testimony from Uber, Chad Dobbs. (*E.g.*, Dobbs Dep. Tr. 116:23–117:5, 120:6–121:5, 1517:3–19, 1522:19–23.)
- Screenshot of Upfront Fare, UBER-MA00238982 [Dobbs Dep. Ex. 18]. [Tr. Ex. 3554]
- Screenshot of Ride Request, UBER-MA00375747. [Tr. Ex. 3456]

AGO Response: Disputed. The Attorney General takes issue with the assertion that drivers in Boston and Worcester see estimated upfront fares, as unsupported by evidence identified by the Defendant throughout the relevant period of the lawsuit.

281. <u>Drivers in the Boston and Worcester regions see a rider's requested destination before deciding whether to accept, decline, or ignore a ride request.</u>

- Expected testimony from Uber, Chad Dobbs. (*E.g.*, Dobbs Dep. Tr. 1389:16–1390:14.)

AGO Response: Disputed. The Attorney General takes issue with the assertion that drivers in Boston and Worcester see a requested destination before accepting a ride, as unsupported by evidence identified by the Defendant during the relevant period of the lawsuit.

282. <u>Drivers in the Boston and Worcester regions see the estimated length of a trip before deciding whether to accept, decline, or ignore a ride request.</u>

- Expected testimony from Uber, Chad Dobbs. (*E.g.*, Dobbs Dep. Tr. 312:11–22, 1270:17–22.)

AGO Response: Disputed. The Attorney General takes issue with the assertion that drivers in Boston and Worcester see an estimated trip length before accepting a ride, as unsupported by evidence identified by the Defendant during the relevant period of the lawsuit.

283. <u>Drivers in the Boston and Worcester regions see the location of the rider before deciding whether to accept, decline, or ignore a ride request.</u>

- Expected testimony from Uber, Chad Dobbs. (*E.g.*, Dobbs Dep. Tr. 1389:16–1390:14.)

AGO Response: Disputed. The Attorney General takes issue with the assertion that drivers in Boston and Worcester see the location of a rider before accepting a ride, as unsupported by evidence identified by the Defendant during the relevant period of the lawsuit.

284. <u>Drivers in the Boston and Worcester regions can view multiple ride requests at one time through Uber's Trip Radar feature.</u>

- Expected testimony from Uber, Chad Dobbs. (*E.g.*, Dobbs Dep. Tr. 113:6–115:5, 689:5–11, 690:19–691:14, 1264:7–1266:2, 1268:24–1269:19.)
- Expected testimony from Uber expert, Terrence August. (August Rep. ¶ 51.) [Tr. Ex. 3074]
- Screenshot of Trip Radar, UBER-MA00238977 [Dobbs Dep. Ex. 19]. [Tr. Ex. 3396]

AGO Response: Disputed. The Attorney General takes issue with the assertion that drivers in Boston and Worcester can view multiple ride requests at one time before accepting a ride, as unsupported by evidence identified by the Defendant during the relevant period of the lawsuit.

285. <u>As with any other ride request, drivers can choose to decline or accept any ride requests offered in the Trip Radar feature, or ignore the Trip Radar feature altogether.</u>

- Expected testimony from Uber, Chad Dobbs. (*E.g.*, Dobbs Dep. Tr. 1269:10–6.)

AGO Response: Undisputed.

286. <u>Uber is subject to the Massachusetts Transportation Network Company ("TNC") statute and regulations, which are administered by the Department of Public Utilities ("DPU").</u>

- Affidavit of Ryan Hawkins ¶¶ 3–8. [Tr. Ex. 3252]

- Declaration of Siya Mai ¶ 6. [Tr. Ex. 3254]

- Foreign Corporation Certificate of Registration - Uber Technologies, Inc., UBER-MA0002262. [Tr. Ex. 3427]

- Transportation Network Companies Act ("TNC Act"), Mass. Gen. Laws ch. 159A 1/2, § 1 *et seq.* [Tr. Ex. 3557]

- Transportation Network Companies Regulations ("TNC Regulations"), 220 CMR 274.01 *et seq.* [Tr. Ex. 3557]

AGO Response: Undisputed.

287. <u>Every TNC that wishes to operate in Massachusetts must maintain a valid TNC permit issued by DPU.</u>

- Affidavit of Ryan Hawkins ¶ 5. [Tr. Ex. 3252]

- Uber's Transportation Network Company Permit Application Form, UBER-MA0002662. [Tr. Ex. 3428]

- Rasier, LLC's Transportation Network Company Permit No. 2021-TNCDP-02, UBER-MA0002683. [Tr. Ex. 3429]

- TNC Act, Mass. Gen. Laws ch. 159A 1/2, § 3. [Tr. Ex. 3557]

- TNC Regulations, Transportation Network Company Permit Process, 220 CMR 274.03. [Tr. Ex. 3557]

AGO Response: Undisputed.

288. <u>Uber's subsidiary, Rasier, LLC, currently holds a valid operating permit as a TNC in Massachusetts.</u>

- Affidavit of Ryan Hawkins ¶ 7. [Tr. Ex. 3252]

- Rasier, LLC's Transportation Network Company Permit No. 2021-TNCDP-02, UBER-MA0002683. [Tr. Ex. 3429]

AGO Response: Undisputed.

289. <u>To lawfully operate, Rasier must comply with its permit, the TNC regulations, and the TNC statute.</u>

- Affidavit of Ryan Hawkins ¶ 8. [Tr. Ex. 3252]

- TNC Act, Mass. Gen. Laws ch. 159A 1/2, § 1 *et seq.* [Tr. Ex. 3557]

- TNC Regulations, 220 CMR 274.01 *et seq.* [Tr. Ex. 3557]

AGO Response: Disputed. The Attorney General takes issue with this statement insofar as it contains a conclusion of law.

290. <u>Massachusetts laws and regulations require Uber to maintain records and provide all information and documents related to the condition, management, and operation of the company that are reasonably related to DPU's rules and regulations.</u>

- Declaration of Siya Mai ¶ 14. [Tr. Ex. 3254]

- Affidavit of Ryan Hawkins ¶¶ 10–11. [Tr. Ex. 3252]

- TNC Act, Mass. Gen. Laws ch. 159A 1/2, § 8(a). [Tr. Ex. 3557]

- TNC Regulations, Record Maintenance and Retention, 220 CMR 274.11. [Tr. Ex. 3557]

AGO Response: Disputed. The Attorney General takes issue with this statement insofar as it contains a conclusion of law.

291. <u>Massachusetts laws and regulations require Uber to collect and maintain data used to comply with the TNC statute and regulations.</u>

- Affidavit of Ryan Hawkins ¶ 9. [Tr. Ex. 3252]

- Declaration of Siya Mai ¶¶ 6, 10. [Tr. Ex. 3254]

- AGO's Nov. 22, 2021 Response to RFA No. 31. [Tr. Ex. 3532]

- TNC Regulations, Record Maintenance and Retention, 220 CMR 274.11(3). [Tr. Ex. 3557]

- TNC Regulations, Reporting Requirements, 220 CMR 274.12(2)(a). [Tr. Ex. 3557]

AGO Response: Disputed. The Attorney General takes issue with this statement insofar as it contains a conclusion of law.

- AGO FF 71, 74-77
- AG1219, AG1090

292. Massachusetts laws and regulations require Uber to collect data about each ride on the Rides platform.

- Affidavit of Ryan Hawkins ¶ 9. [Tr. Ex. 3252]
- Declaration of Siya Mai ¶ 10. [Tr. Ex. 3254]
- Exhibits to Affidavit of Ryan Hawkins, DPU000001, at DPU000027. [Tr. Ex. 3253]
- TNC Regulations, Record Maintenance and Retention, 220 CMR 274.11(3). [Tr. Ex. 3557]
- TNC Regulations, Reporting Requirements, 220 CMR 274.12(2)(a). [Tr. Ex. 3557]

AGO Response: Disputed. The Attorney General takes issue with this statement insofar as it contains a conclusion of law.

- AGO FF 71, 74-77
- AG1219, AG1090

293. Massachusetts laws and regulations require Uber to maintain records on each ride on the Rides platform for at least three years, including the driver's ID, license plate number, date and time of the ride, origin and destination address, method of payment, and date time and location of drop off.

- Affidavit of Ryan Hawkins ¶ 10. [Tr. Ex. 3252]
- Declaration of Siya Mai ¶ 10. [Tr. Ex. 3254]
- AGO's Nov. 22, 2021 Response to RFA No. 30. [Tr. Ex. 3532]
- TNC Regulations, Record Maintenance and Retention, 220 CMR 274.11(3). [Tr. Ex. 3557]
- TNC Regulations, Reporting Requirements, 220 CMR 274.12(2)(a). [Tr. Ex. 3557]

AGO Response: Disputed. The Attorney General takes issue with this statement insofar as it contains a conclusion of law.

294. Massachusetts laws and regulations require Uber to notify riders and drivers of its use of their personal information and obtain riders' and drivers' consent to use such information.

- Declaration of Siya Mai ¶ 16. [Tr. Ex. 3254]
- Exhibits to Affidavit of Ryan Hawkins, DPU000001, at DPU000027. [Tr. Ex. 3253]
- TNC Regulations, Data Protection, 220 CMR 274.10. [Tr. Ex. 3557]

AGO Response: Disputed. The Attorney General takes issue with this statement insofar as it contains a conclusion of law.

- AGO FF 74-77

295. <u>Massachusetts laws and regulations require Uber to maintain a list of drivers for each calendar year.</u>

- Affidavit of Ryan Hawkins ¶ 11. [Tr. Ex. 3252]

- Declaration of Siya Mai ¶¶ 7, 11. [Tr. Ex. 3254]

- Exhibits to Affidavit of Ryan Hawkins, DPU000001, at DPU000026. [Tr. Ex. 3253]

- TNC Act, Mass. Gen. Laws ch. 159A 1/2, §§ 3(b)(vii)(1), 8(a). [Tr. Ex. 3557]

- TNC Regulations, Transportation Network Company Permit Process, 220 CMR 274.03(2). [Tr. Ex. 3557]

AGO Response: Disputed. The Attorney General takes issue with this statement insofar as it contains a conclusion of law.

296. <u>Massachusetts laws and regulations require Uber to maintain records pertaining to the price of rides.</u>

- Affidavit of Ryan Hawkins ¶ 11. [Tr. Ex. 3252]

- Declaration of Siya Mai ¶ 11. [Tr. Ex. 3254]

- Exhibits to Affidavit of Ryan Hawkins, DPU000001, at DPU000040. [Tr. Ex. 3253]

- TNC Act, Mass. Gen. Laws ch. 159A 1/2, §§ 3(b)(vii)(1), 8(a). [Tr. Ex. 3557]

- TNC Regulations, Record Maintenance and Retention, 220 CMR 274.11(3). [Tr. Ex. 3557]

AGO Response: Disputed. The Attorney General takes issue with this statement insofar as it contains a conclusion of law.

297. <u>Massachusetts laws and regulations require Uber to annually report ride-specific information including the location of origin and destination of each ride, trip route and length, and location of vehicle accidents.</u>

- Affidavit of Ryan Hawkins ¶ 12. [Tr. Ex. 3252]

- Declaration of Siya Mai ¶ 10. [Tr. Ex. 3254]

- AGO's Nov. 22, 2021 Response to RFA No. 32. [Tr. Ex. 3532]

- TNC Regulations, Record Maintenance and Retention, 220 CMR 274.11(3). [Tr. Ex. 3557]

- TNC Regulations, Reporting Requirements, 220 CMR 274.12(2). [Tr. Ex. 3557]

AGO Response: Disputed. The Attorney General takes issue with this statement insofar as it contains a conclusion of law.

298. <u>Massachusetts laws and regulations require Uber to provide all such information and/or records of rides to DPU, as a condition of licensing.</u>

- Affidavit of Ryan Hawkins ¶ 13. [Tr. Ex. 3252]

- Exhibits to Affidavit of Ryan Hawkins, DPU000001, at DPU000027. [Tr. Ex. 3253]

- TNC Regulations, Reporting Requirements, 220 CMR 274.12. [Tr. Ex. 3557]

AGO Response: Disputed. The Attorney General takes issue with this statement insofar as it contains a conclusion of law.

299. <u>Massachusetts laws and regulations require Uber to ensure that drivers do not offer or provide services for more than 12 consecutive hours in a 24-hour period.</u>

- Affidavit of Ryan Hawkins ¶ 14. [Tr. Ex. 3252]

- Declaration of Siya Mai ¶ 15. [Tr. Ex. 3254]

- Exhibits to Affidavit of Ryan Hawkins, DPU000001, at DPU000025. [Tr. Ex. 3253]

- TNC Regulations, Hours of Service, 220 CMR 274.07(1)–(3). [Tr. Ex. 3557]

- TNC Regulations, Transportation Network Company Permit Process, 220 CMR 274.03. [Tr. Ex. 3557]

AGO Response: Disputed. The Attorney General takes issue with this statement insofar as it contains a conclusion of law.

300. <u>Massachusetts laws and regulations require Uber to run background checks on drivers every six months.</u>

- Testimony from AGO, Lauren Moran. (Corporate Representative Testimony, Moran Dep. Tr. Day 2 66:19–22.)

- Expected testimony from Uber, Chad Dobbs. (*E.g.*, Dobbs Dep. Tr. 34:11–36:24, 99:8–21, 100:20–101:8.)

- Affidavit of Ryan Hawkins ¶¶ 15–16. [Tr. Ex. 3252]

- Declaration of Siya Mai ¶¶ 6–7, 17. [Tr. Ex. 3254]

- AGO's Nov. 22, 2021 Response to RFA Nos. 26, 27. [Tr. Ex. 3532]

- Exhibits to Affidavit of Ryan Hawkins, DPU000001, at DPU000069. [Tr. Ex. 3253]

- TNC Act, Mass. Gen. Laws ch. 159A 1/2, §§ 4(c), (d). [Tr. Ex. 3557]

- TNC Regulations, Transportation Network Driver Background Check, 220 CMR 274.06(2). [Tr. Ex. 3557]

- TNC Regulations, Suitability Standard, 220 CMR 274.21. [Tr. Ex. 3557]

AGO Response: Disputed. The Attorney General takes issue with this statement insofar as it contains a conclusion of law.

301. <u>Massachusetts laws and regulations require Uber to remove "unsuitable" drivers from the Rides platform.</u>

- Affidavit of Ryan Hawkins ¶¶ 15–16. [Tr. Ex. 3252]

- Declaration of Siya Mai ¶ 17. [Tr. Ex. 3254]

- Exhibits to Affidavit of Ryan Hawkins, DPU000001, at DPU000207. [Tr. Ex. 3253]

- TNC Act, Mass. Gen. Laws ch. 159A 1/2, §§ 4(c), (d). [Tr. Ex. 3557]

- TNC Regulations, Transportation Network Driver Background Check, 220 CMR 274.06(2). [Tr. Ex. 3557]

- TNC Regulations, Suitability Standard, 220 CMR 274.21. [Tr. Ex. 3557]

AGO Response: Disputed. The Attorney General takes issue with this statement insofar as it contains a conclusion of law.

302. <u>Massachusetts laws and regulations require Uber to immediately report suspensions of drivers who use its Rides platform.</u>

- Declaration of Siya Mai ¶ 13. [Tr. Ex. 3254]

- Exhibits to Affidavit of Ryan Hawkins, DPU000001, at DPU000188–189. [Tr. Ex. 3253]

- TNC Act, Mass. Gen. Laws ch. 159A 1/2, § 4(e). [Tr. Ex. 3557]

- TNC Regulations, Reporting Requirements, 220 CMR 274.12(4). [Tr. Ex. 3557]

AGO Response: Disputed. The Attorney General takes issue with this statement insofar as it contains a conclusion of law.

303. <u>Massachusetts laws and regulations require Uber to immediately report any instances where drivers who use its Rides platform violate provisions of the TNC Act or any applicable regulations.</u>

- Declaration of Siya Mai ¶ 13. [Tr. Ex. 3254]

- Exhibits to Affidavit of Ryan Hawkins, DPU000001, at DPU000073–74. [Tr. Ex. 3253]

- TNC Regulations, Reporting Requirements, 220 CMR 274.12. [Tr. Ex. 3557]

AGO Response: Disputed. The Attorney General takes issue with this statement insofar as it contains a conclusion of law.

304. <u>Massachusetts laws and regulations require Uber to set up points of contact for rider, driver, and consumer complaints.</u>

- Affidavit of Ryan Hawkins ¶¶ 17–18. [Tr. Ex. 3252]

- Declaration of Siya Mai ¶¶ 19–20. [Tr. Ex. 3254]

- AGO's Nov. 22, 2021 Response to RFA No. 28. [Tr. Ex. 3532]

- Exhibits to Affidavit of Ryan Hawkins, DPU000001, at DPU000009. [Tr. Ex. 3253]

- TNC Act, Mass. Gen. Laws ch. 159A 1/2, § 3(c)(viii). [Tr. Ex. 3557]

- TNC Regulations, Transportation Network Company Permit Process, 220 CMR 274.03(1)(c)(1), (2)(c). [Tr. Ex. 3557]

AGO Response: Disputed. The Attorney General takes issue with this statement insofar as it contains a conclusion of law.

305. <u>Massachusetts laws and regulations require Uber to report to DPU a detailed monthly accounting of complaints it receives from users of its Rides platform, and any steps it has taken to remediate those complaints.</u>

- Declaration of Siya Mai ¶ 12. [Tr. Ex. 3254]

- TNC Act, Mass. Gen. Laws ch. 159A 1/2, § 8(b). [Tr. Ex. 3557]

AGO Response: Disputed. The Attorney General takes issue with this statement insofar as it contains a conclusion of law.

306. <u>Massachusetts laws and regulations require Uber to set up a 24-hour toll-free customer service hotline, online webpage, email system, and functionality within the Rides platform to respond to questions and complaints.</u>

- Affidavit of Ryan Hawkins ¶¶ 17–18. [Tr. Ex. 3252]

- Declaration of Siya Mai ¶¶ 7, 19. [Tr. Ex. 3254]

- AGO's Nov. 22, 2021 Response to RFA No. 29. [Tr. Ex. 3532]

- Exhibits to Affidavit of Ryan Hawkins, DPU000001, at DPU000009. [Tr. Ex. 3253]

- TNC Act, Mass. Gen. Laws ch. 159A 1/2, § 3(c)(viii). [Tr. Ex. 3557]

- TNC Regulations, Transportation Network Company Permit Process, 220 CMR 274.03(1)(c)(1), (2)(c). [Tr. Ex. 3557]

AGO Response: Disputed. The Attorney General takes issue with this statement insofar as it contains a conclusion of law.

307. <u>Massachusetts laws and regulations require Uber to ensure that it and every driver has appropriate insurance.</u>

- Expected testimony from Uber, Chad Dobbs. (*E.g.*, Dobbs Dep. Tr. 210:13–211:5.)

- Affidavit of Ryan Hawkins ¶¶ 19–20. [Tr. Ex. 3252]

- Declaration of Siya Mai ¶¶ 6–7, 21–22, 31. [Tr. Ex. 3254]

- AGO's Nov. 22, 2021 Response to RFA No. 42. [Tr. Ex. 3532]

- Certificate of Liability Insurance for Rasier LLC, Rasier-CA LLC, Rasier-DC LLC, Rasier-PA LLC, UBER-MA0002865. [Tr. Ex. 3471]

- Updates to the insurance Uber maintains on behalf of drivers and delivery people | Uber Blog, UBER-MA0002868. [Tr. Ex. 3472]

- Exhibits to Affidavit of Ryan Hawkins, DPU000001, at DPU000024. [Tr. Ex. 3253]

- TNC Act, Mass. Gen. Laws ch. 159A 1/2, §§ 3(a)(i), 5. [Tr. Ex. 3557]

- Mass. Gen. Laws ch. 175, § 228.

- TNC Regulations, Transportation Network Company Permit Process, 220 CMR 274.03(1), (2). [Tr. Ex. 3557]

- TNC Regulations, Transportation Network Driver Certificate, 220 CMR 274.05(2)(c). [Tr. Ex. 3557]

AGO Response: Disputed. The Attorney General takes issue with this statement insofar as it contains a conclusion of law.

308. <u>Massachusetts laws and regulations require Uber to ensure that all vehicles used to provide rides have a removable trade decal displayed at all times while providing pre-arranged rides.</u>

- Declaration of Siya Mai ¶ 31. [Tr. Ex. 3254]

- TNC Act, Mass. Gen. Laws ch. 159A 1/2, §§ 2(b), 5(b). [Tr. Ex. 3557]

- Mass. Gen. Laws ch. 175, § 228.

- TNC Regulations, Transportation Network Vehicle Requirements, 220 CMR 274.08. [Tr. Ex. 3557]

AGO Response: Disputed. The Attorney General takes issue with this statement insofar as it contains a conclusion of law.

309. <u>Massachusetts laws and regulations require Uber to oversee the rate-setting process and prohibit the use of excessive rates for rides by drivers.</u>

- Affidavit of Ryan Hawkins ¶ 21. [Tr. Ex. 3252]

- Declaration of Siya Mai ¶ 23. [Tr. Ex. 3254]

- Exhibits to Affidavit of Ryan Hawkins, DPU000001, at DPU000027. [Tr. Ex. 3253]

- TNC Act, Mass. Gen. Laws ch. 159A 1/2, § 3(c)(iv). [Tr. Ex. 3557]

- TNC Regulations, Transportation Network Company Permit Process, 220 CMR 274.03(2)(i). [Tr. Ex. 3557]

AGO Response: Disputed. The Attorney General takes issue with this statement insofar as it contains a conclusion of law. The Attorney General also takes issue with the characterization of Uber's role in setting prices.

- AGO FF 95-98

310. <u>Massachusetts laws and regulations require Uber to maintain a price structure for pre-arranged rides.</u>

- Declaration of Siya Mai ¶ 24. [Tr. Ex. 3254]

- AGO's Nov. 22, 2021 Response to RFA No. 43. [Tr. Ex. 3532]

- Exhibits to Affidavit of Ryan Hawkins, DPU000001, at DPU000027. [Tr. Ex. 3253]

- TNC Act, Mass. Gen. Laws ch. 159A 1/2, § 3(c)(iv). [Tr. Ex. 3557]

AGO Response: Disputed. The Attorney General takes issue with this statement insofar as it contains a conclusion of law.

- AGO FF 95-102

311. <u>Massachusetts laws and regulations require Uber to create an oversight process to make sure drivers are suitable under the TNC regulations.</u>

- Affidavit of Ryan Hawkins ¶ 23. [Tr. Ex. 3252]

- Declaration of Siya Mai ¶¶ 6–7, 26. [Tr. Ex. 3254]

- Exhibits to Affidavit of Ryan Hawkins, DPU000001, at DPU000041. [Tr. Ex. 3253]

- TNC Act, Mass. Gen. Laws ch. 159A 1/2, § 3(c)(ii). [Tr. Ex. 3557]

- TNC Regulations, Purpose and Scope, 220 CMR 274.01(1). [Tr. Ex. 3557]

- TNC Regulations, Transportation Network Company Permit Process, 220 CMR 274.03(2)(a)–(c), (g). [Tr. Ex. 3557]

- TNC Regulations, Transportation Network Driver Background Check, 220 CMR 274.06. [Tr. Ex. 3557]

- TNC Regulations, Suitability Standard, 220 CMR 274.21. [Tr. Ex. 3557]

AGO Response: Disputed. The Attorney General takes issue with this statement insofar as it contains a conclusion of law.

312. <u>Massachusetts laws and regulations require that drivers using the Driver App to provide rides be at least 21 years old.</u>

- Declaration of Siya Mai ¶ 26. [Tr. Ex. 3254]

- AGO's Nov. 22, 2021 Response to RFA No. 41. [Tr. Ex. 3532]

- TNC Regulations, Transportation Network Company Permit Process, 220 CMR 274.03(2)(a)–(c), (g). [Tr. Ex. 3557]

- TNC Regulations, Suitability Standard, 220 CMR 274.21. [Tr. Ex. 3557]

AGO Response: Disputed. The Attorney General takes issue with this statement insofar as it contains a conclusion of law.

313. <u>Massachusetts laws and regulations require that drivers using the Driver App to provide rides have a valid driver's license for not less than three years if they are under 23 years old, and not less than one year if they are 23 years old or older.</u>

- Declaration of Siya Mai ¶ 26. [Tr. Ex. 3254]

- TNC Regulations, Transportation Network Company Permit Process, 220 CMR 274.03(2)(a)–(c), (g). [Tr. Ex. 3557]

- TNC Regulations, Suitability Standard, 220 CMR 274.21. [Tr. Ex. 3557]

AGO Response: Disputed. The Attorney General takes issue with this statement insofar as it contains a conclusion of law.

314. <u>Massachusetts laws and regulations require Uber to ensure non-discrimination and safety of riders.</u>

- Affidavit of Ryan Hawkins ¶ 24. [Tr. Ex. 3252]

- Declaration of Siya Mai ¶ 25. [Tr. Ex. 3254]

- Exhibits to Affidavit of Ryan Hawkins, DPU000001, at DPU000041. [Tr. Ex. 3253]

- TNC Act, Mass. Gen. Laws ch. 159A 1/2, § 3(c)(vi). [Tr. Ex. 3557]

- TNC Regulations, Suitability Standard, 220 CMR 274.21. [Tr. Ex. 3557]

AGO Response: Disputed. The Attorney General takes issue with this statement insofar as it contains a conclusion of law.

315. <u>Massachusetts laws and regulations require Uber to maintain standards of conduct consistent with the public interest, safety, and convenience.</u>

- Affidavit of Ryan Hawkins ¶ 24. [Tr. Ex. 3252]

- Declaration of Siya Mai ¶ 26. [Tr. Ex. 3254]

- TNC Regulations, Purpose and Scope, 220 CMR 274.01(1). [Tr. Ex. 3557]

- TNC Regulations, Transportation Network Company Permit Process, 220 CMR 274.03(2)(a)–(c), (g). [Tr. Ex. 3557]

- TNC Regulations, Suitability Standard, 220 CMR 274.21. [Tr. Ex. 3557]

AGO Response: Disputed. The Attorney General takes issue with this statement insofar as it contains a conclusion of law.

316. <u>Massachusetts laws and regulations require Uber to prohibit drivers from using other individuals' certificates or identities to drive.</u>

- Affidavit of Ryan Hawkins ¶ 26. [Tr. Ex. 3252]

- Declaration of Siya Mai ¶ 30. [Tr. Ex. 3254]

- AGO's Nov. 22, 2021 Response to RFA No. 36. [Tr. Ex. 3532]

- TNC Act, Mass. Gen. Laws ch. 159A 1/2, § 7(b). [Tr. Ex. 3557]

AGO Response: Disputed. The Attorney General takes issue with this statement insofar as it contains a conclusion of law.

317. <u>Massachusetts laws and regulations require Uber to specifically identify each driver on an account, including the driver's legal name, up-to-date facial image, and license plate.</u>

- Affidavit of Ryan Hawkins ¶ 27. [Tr. Ex. 3252]

- AGO's Nov. 22, 2021 Response to RFA No. 40. [Tr. Ex. 3532]

- Exhibits to Affidavit of Ryan Hawkins, DPU000001, at DPU000026. [Tr. Ex. 3253]

- TNC Act, Mass. Gen. Laws ch. 159A 1/2, § 2. [Tr. Ex. 3557]

- TNC Regulations, Transportation Network Driver Certificate, 220 CMR 274.05(3). [Tr. Ex. 3557]

AGO Response: Disputed. The Attorney General takes issue with this statement insofar as it contains a conclusion of law.

318. <u>Massachusetts laws and regulations require that TNC-certified drivers accept rides through a licensed TNC digital network. Unless otherwise authorized by law, drivers are generally prohibited from soliciting, accepting, or providing transportation in any other manner than through a digital network.</u>

- Affidavit of Ryan Hawkins ¶ 25. [Tr. Ex. 3252]

- Declaration of Siya Mai ¶ 29. [Tr. Ex. 3254]

- TNC Act, Mass. Gen. Laws ch. 159A 1/2, §§ 3(a), 7(a), (c). [Tr. Ex. 3557]

- TNC Regulations, Transportation Network Driver Requirements, 220 CMR 274.04. [Tr. Ex. 3557]

AGO Response: Disputed. The Attorney General takes issue with this statement insofar as it contains a conclusion of law.

319. <u>Drivers are free to choose what car they use to provide rides within the broad category of vehicles that are 15 years old or newer, with four doors, and no cosmetic damage or commercial branding.</u>

- Vehicle Requirements, UBER-MA0003392 [Dobbs Dep. Ex. 3], at UBER-MA0003393–3394. [Tr. Ex. 3322]

- Expected testimony from Uber expert, Justin McCrary. (McCrary Rep. ¶ 46, Exs. 10–11.) [Tr. Ex. 3071]

AGO Response: Disputed. The Attorney General takes issue with the characterization of the types of vehicles drivers are permitted to drive. Notwithstanding, it is undisputed that drivers may only use cars that meet Uber's vehicle requirements.

320. <u>Certain vehicles qualify for one or more Uber Rides platforms, e.g., UberX, Uber Black, UberXL, Uber Comfort, and Uber Black SUV.</u>

- Vehicle Requirements, UBER-MA0003392 [Dobbs Dep. Ex. 3], at UBER-MA0003394–3396. [Tr. Ex. 3322]

- Expected Testimony from Uber, Chad Dobbs. (*E.g.*, Dobbs Dep. Tr. 690:19–691:14.)

AGO Response: Undisputed.

321. <u>Based on their vehicle type, drivers choose which Uber Rides platform to use.</u>

- Expected Testimony from Uber, Chad Dobbs. (*E.g.*, Dobbs Dep. Tr. 690:19–691:14.)

- Vehicle Requirements, UBER-MA0003392 [Dobbs Dep. Ex. 3]. [Tr. Ex. 3322]

AGO Response: Disputed. The Attorney General takes issue with the characterization of Uber's relationship with drivers. Notwithstanding, it is undisputed that drivers may only operate vehicles that conform with Uber's vehicle requirements.

- AG1192

322. <u>Drivers can change their Uber Rides platform election as desired, so long as their vehicle qualifies for the platform.</u>

- Vehicle Requirements, UBER-MA0003392 [Dobbs Dep. Ex. 3]. [Tr. Ex. 3322]

- Expected Testimony from Uber, Chad Dobbs. (*E.g.*, Dobbs Dep. Tr. 690:19–691:14.)

AGO Response: Undisputed.

323. <u>Drivers are free to create strategies to maximize their earnings using the Driver App.</u>

- Expected testimony from driver, Khalid Benlail. (Benlail Dep. Tr. 61:22–62:5.)

- Expected testimony from driver, Rebekah Field. (Field Dep. Tr. 28:9–15, 32:12–33:3.)

- Expected testimony from driver, Kyle Tysvaer. (Tysvaer Dep. Tr. 44:13–45:2, 47:5–13.)

- Expected testimony from driver, Dhiraj Tulachan. (Tulachan Dep. Tr. 26:8–15, 61:16–62:2.)

- Expected testimony from driver, Naser Zorrok. (Zorrok Dep. Tr. 29:17–19, 55:2–56:9.)

- Expected testimony from driver, Richard Kambugu. (Kambugu Dep. Tr. 151:4–16.)

- Expected testimony from Uber, Chad Dobbs. (*E.g.*, Dobbs Dep. Tr. 307:22–308:8.)

AGO Response: Disputed. The Attorney General takes issue with the characterization of drivers being "free to create strategies" and as to the application of the finding to drivers generally as unsupported by the evidence identified by the Defendant. Notwithstanding, it is undisputed as to the statements made by the cited drivers.

- Expected testimony from AGO expert, Lindsey Cameron.

324. <u>Drivers are free to perform driving services in any manner they choose.</u>

- Platform Access Agreement, UBER-MA0001492, § 1.1(b). [Tr. Ex. 3000]

- Expected testimony from driver, Rebekah Field. (Field Dep. Tr. 18:4–19:6, 34:20–24.)

- Expected testimony from driver, Kyle Tysvaer. (Tysvaer Dep. Tr. 101:16–20.)

- Expected testimony from driver, Raya Denny. (Denny Dep. Tr. 139:13–24, 142:21–23.)

- Expected testimony from driver, Richard Kambugu. (Kambugu Dep. Tr. 150:21–151:3.)

- Expected testimony from driver, Naser Zorrok. (Zorrok Dep. Tr. 54:5–23, 56:22–57:2.)

- Expected testimony from driver, Mary Ellen McAllister. (McAllister Dep. Tr. 113:13–114:3.)

AGO Response: Disputed.

- Uber Community Guidelines, UBER-MA00390044

- Expected testimony from AGO expert, Lindsey Cameron.

325. <u>Drivers consider themselves to be their own bosses with respect to their driving businesses.</u>

- Expected testimony from driver, Mary Ellen McAllister. (McAllister Dep. Tr. 121:20–122:3.)

AGO Response: Disputed.

- Expected testimony from AGO expert, David Weil.

326. <u>Uber does not have visibility into what occurs in the vehicle on any ride, unless a driver or rider reports an issue or complains.</u>

- Expected testimony from Uber, Chad Dobbs. (*E.g.*, Dobbs Dep. Tr. 119:18–120:5, 919:9–920:16.)

AGO Response: Disputed as unsupported by evidence identified by the Defendant.

- AGO FF 71-77

- AG1219, AG 1090

327. <u>Uber does not have visibility into how drivers obtain or provide rides outside the Rides platform.</u>

- Expected testimony from Uber, Chad Dobbs. (*E.g.*, Dobbs Dep. Tr. 909:21–910:18, 934:2–935:6.)

AGO Response: Undisputed.

328. <u>Uber does not prevent drivers from performing driving services for anyone wishing to avail themselves of the services.</u>

- Platform Access Agreement, UBER-MA0001492, § 1.1. [Tr. Ex. 3000]
- Expected testimony from Uber, Chad Dobbs. (*E.g.*, Dobbs Dep. Tr. 56:15–57:13.)
- Expected testimony from Uber expert, Justin McCrary. (McCrary Rep. ¶¶ 39–40.) [Tr. Ex. 3071]

AGO Response: Disputed.

- Expected testimony of David Weil

329. <u>Drivers are free to accept referrals from other platforms, taxi companies, or livery companies.</u>

- Platform Access Agreement, UBER-MA0001492, § 1.2. [Tr. Ex. 3000]

AGO Response: Disputed. The statement is unsupported by the evidence identified by Defendant.

330. <u>Some drivers do in fact accept referrals from other platforms, taxi companies, or livery companies.</u>

- Expected testimony from driver, Khalid Benlail. (Benlail Dep. Tr. 76:17–77:4, 77:14–21.)

AGO Response: Disputed. The Attorney General takes issue with the characterization of the term "referral," and to the extent the statement is generalized to drivers as a whole, as unsupported by the evidence identified by the Defendant. Notwithstanding, it is undisputed as to the statements made by the cited driver.

331. <u>Drivers are not limited to using the Driver App (or any platform) to provide rides and be paid for their services.</u>

- *See supra* ¶¶ 259–264 (finding rides using competing apps).
- *See supra* ¶¶ 328–330 (finding rides using referrals).
- Platform Access Agreement, UBER-MA0001492, § 1.1. [Tr. Ex. 3000]
- Expected testimony from driver, Kyle Tysvaer. (Tysvaer Dep. Tr. 104:1–12.)
- Expected testimony from Uber, Chad Dobbs. (*E.g.*, Dobbs Dep. Tr. 934:13–21.)

AGO Response: Disputed. The Attorney General takes issue with the legal conclusion regarding services. Notwithstanding, it is undisputed as to that drivers are not limited to using Uber's Driver App to provide rides.

332. <u>Uber does not prohibit drivers from soliciting riders directly, without the use of any intermediary.</u>

- Platform Access Agreement, UBER-MA0001492, § 1.1. [Tr. Ex. 3000]
- Expected testimony from driver, Rebekah Field. (Field Dep. Tr. 131:18–133:9.)
- Expected testimony from driver, Kyle Tysvaer. (Tysvaer Dep. Tr. 103:22–104:12.)

AGO Response: Disputed. The statement is unsupported by the evidence identified by the Defendant.

- AG1084

333. <u>Drivers are free to develop their own strategies for when, where, and how often they pick up riders.</u>

- *See supra* ¶¶ 194–200.
- Platform Access Agreement, UBER-MA0001492, § 1.1(b). [Tr. Ex. 3000]
- Expected testimony from Uber, Chad Dobbs. (*E.g.*, Dobbs Dep. Tr. 1180:9–19, 1259:11–1260:10, 1268:24–1289:19.)

- Expected testimony from driver, Richard Kambugu. (Kambugu Dep. Tr. 136:15–137:8, 151:4–152:1, 152:19–24, 153:10–17.)

- Expected testimony from Uber expert, Justin McCrary. (McCrary Rep. ¶¶ 28–38, Exs. 3B, 4B.) [Tr. Ex. 3071]

AGO Response: Disputed. The Attorney General takes issue with the characterization of Uber's relationship with drivers, and any evidence seeking to vary the plain terms of the Platform Access Agreement. Notwithstanding, it is undisputed as to the statements made by the cited driver.

- Expected testimony from AGO expert, Lindsey Cameron

- AGO FF 139-146, 171-175

334. Drivers exercise "entrepreneurial control" over their use of the Rides platform.

- Expected testimony from driver, Dhiraj Tulachan. (Tulachan Dep. Tr. 26:8–15, 58:22–59:3, 61:16–62:2.)

AGO Response: Disputed. The Attorney General takes issue with the conclusion of law about classification, and that the cited evidence does not support the conclusion that the conclusion of law applies to drivers generally. Notwithstanding, it is undisputed as to the statements made by the cited driver.

- Expected testimony from AGO expert, Lindsey Cameron.

335. For example, some drivers decline requests for longer trips or requests for trips that are too far away.

- Expected testimony from driver, Rebekah Field. (Field Dep. Tr. 28:9–15, 31:21–33:3.)

AGO Response: Disputed. The Attorney General takes issue that the cited evidence does not support the conclusion that drivers generally engage in this practice. Notwithstanding, it is undisputed as to the statements made by the cited driver.

336. Some drivers decline requests in areas with low pay rates.

- Expected testimony from driver, Rebekah Field. (Field Dep. Tr. 28:9–15, 31:21–33:3, 38:7–10, 45:6–10.)

AGO Response: Disputed. The Attorney General takes issue that the cited evidence does not support the conclusion that drivers generally engage in this practice. Notwithstanding, it is undisputed as to the statements made by the cited driver.

337. <u>Some drivers choose to drive in busier locations, like Boston, with high demand and surge pricing opportunities.</u>

- Expected testimony from driver, Raya Denny. (Denny Dep. Tr. 143:20–144:5, 150:16–151:3.)

- Expected testimony from driver, Naser Zorrok. (Zorrok Dep. Tr. 55:2–56:9.)

- Expected testimony from driver, Dhiraj Tulachan. (Tulachan Dep. Tr. 61:16–62:2.)

AGO Response: Disputed. The Attorney General takes issue that the cited evidence does not support the conclusion that drivers generally engage in this practice. Notwithstanding, it is undisputed as to the statements made by the cited drivers.

338. <u>Other drivers start driving at their houses because they like the people around them and want to avoid busy surge areas.</u>

- Expected testimony from driver, Mary Ellen McAllister. (McAllister Dep. Tr. 34:13–35:3, 120:11–17.)

AGO Response: Disputed. The Attorney General takes issue that the cited evidence does not support the conclusion that drivers generally engage in this practice. Notwithstanding, it is undisputed as to the statements made by the cited driver.

339. <u>Some drivers use a very flexible driving schedule, and they set their own hours and goals for driving.</u>

- Expected testimony from driver, Rebekah Field. (Field Dep. Tr. 28:9–15, 38:7–10.)

- Expected testimony from driver, Richard Kambugu. (Kambugu Dep. Tr. 136:15–137:8, 153:10–17.)

AGO Response: Disputed. The Attorney General takes issue that the cited evidence does not support the conclusion that drivers generally engage in this practice. Notwithstanding, it is undisputed as to the statements made by the cited drivers.

340. <u>Other drivers choose to drive during specific time frames that they find more lucrative, like weekends.</u>

- Expected testimony from driver, Kyle Tysvaer. (Tysvaer Dep. Tr. 44:13–45:2.)

- Expected testimony from driver, Dhiraj Tulachan. (Tulachan Dep. Tr. 58:22–59:3.)

- Expected testimony from driver, Bryan Amparo Mesa. (Amparo Mesa Dep. Tr. 69:10–24.)

AGO Response: Disputed. The Attorney General takes issue that the cited evidence does not support the conclusion that drivers generally engage in this practice. Notwithstanding, it is undisputed as to the statements made by the cited drivers.

341. <u>Other drivers choose to drive in areas where there are major events, such as concerts or sporting events.</u>

- Expected testimony from driver, Edward Gannon. (Gannon Dep. Tr. 45:7–13.)

AGO Response: Disputed. The Attorney General takes issue that the cited evidence does not support the conclusion that drivers generally engage in this practice. Notwithstanding, it is undisputed as to the statements made by the cited driver.

342. <u>Some drivers choose to avoid driving in areas where major events are happening.</u>

- Expected testimony from driver, Rebekah Field. (Field Dep. Tr. 109:7–13.)
- Expected testimony from driver, Kyle Tysvaer. (Tysvaer Dep. Tr. 47:5–13.)

AGO Response: Disputed. The Attorney General takes issue that the cited evidence does not support the conclusion that drivers generally engage in this practice. Notwithstanding, it is undisputed as to the statements made by the cited drivers.

343. <u>Uber does not set schedules for drivers, nor does it require drivers to drive during any particular time period.</u>

- Expected testimony from AGO expert, James Parrott. (Parrot Dep. Tr. 497:7–11.)
- Expected testimony from Uber, Chad Dobbs. (*E.g.*, Dobbs Dep. Tr. 1260:4–8.)

AGO Response: Disputed.
- Expected testimony from AGO expert, Lindsey Cameron,
- Expected testimony from AGO expert, David Weil.

344. <u>Drivers exercise judgment in deciding the routes to take with riders and can suggest quicker routes to riders.</u>

- Expected testimony from driver, Rebekah Field. (Field Dep. Tr. 45:6–10.)
- Expected testimony from driver, Raya Denny. (Denny Dep. Tr. 152:15–20.)

AGO Response: Undisputed.

345. <u>Some drivers have other drivers who drive for them and their businesses.</u>

- Platform Access Agreement (Uber Black), UBER-MA0001436 [Dobbs Dep. Ex. 7], § 1.2. [Tr. Ex. 3001]
- Fare Addendum (Uber Black), UBER-MA0001464 [Dobbs Dep. Ex. 12]. [Tr. Ex. 3006]
- Expected testimony from Uber, Chad Dobbs. (*E.g.*, Dobbs Dep. Tr. 908:17–909:5.)

• Expected testimony from driver, Khalid Benlail. (Benlail Dep. Tr. 50:22–51:10.)

AGO Response: Disputed. The Attorney General takes issue with the implication that all drivers using the Ride app are permitted to hire employees or contractors. The statement is also unsupported by evidence Defendant has identified.

- Uber 30(b)(6) testimony of Chad Dobbs

346. <u>Some drivers have their own websites that can be used to book transportation services.</u>

• Expected testimony from driver, Khalid Benlail. (Benlail Dep. Tr. 41:4–9.)

• Booking Page for GoLuxLimo.com [Benlail Dep. Ex. 9]. [Tr. Ex. 3292]

AGO Response: Disputed. The Attorney General takes issue that the cited evidence does not support the conclusion that drivers generally engage in this practice. Notwithstanding, it is undisputed as to the statements of the cited driver.

- Expected testimony from AGO expert, Lindsey Cameron,

- Expected testimony from AGO expert, David Weil

347. <u>Drivers view themselves as creating "a direct business relationship" between them and their riders when they accept ride requests through the Rides platform.</u>

• Expected testimony from driver, Kenneth Smock. (Smock Dep. Tr. 34:18–23, 36:8–37:1.)

AGO Response: Disputed. The Attorney General takes issue that the cited evidence does not support the conclusion that drivers generally engage in this practice. Notwithstanding, it is undisputed as to the statements of the cited driver.

- Expected testimony from AGO expert, Lindsey Cameron,

- Expected testimony from AGO expert, David Weil

348. <u>Drivers take initiative to learn how to make rides more comfortable for riders.</u>

• Expected testimony from driver, Bryan Amparo Mesa. (Amparo Mesa Dep. Tr. 37:11–38:8.)

AGO Response: Disputed. The Attorney General takes issue that the cited evidence does not support the conclusion that drivers generally engage in this practice. Notwithstanding, it is undisputed as to the statements of the cited driver.

- Expected testimony from AGO expert, Lindsey Cameron,

- Expected testimony from AGO expert, David Weil

349. <u>Drivers view their main function as providing transportation services for riders "in a clean and safe environment."</u>

- Expected testimony from driver, Edward Gannon. (Gannon Dep. Tr. 52:5–21.)

> **AGO Response**: Disputed. The Attorney General takes issue that the cited evidence does not support the conclusion that drivers generally engage in this practice. Notwithstanding, it is undisputed as to the statements of the cited driver.
>
> - Expected testimony from AGO expert, Lindsey Cameron,
> - Expected testimony from AGO expert, David Weil

350. <u>Drivers can hire their own employees or contractors to use the Rides platform.</u>

- Expected testimony from Uber, Chad Dobbs. (*E.g.*, Dobbs Dep. Tr. 908:17–909:5.)
- Expected testimony from driver, Khalid Benlail. (Benlail Dep. Tr. 50:22–51:10.)

> **AGO Response**: Disputed. The Attorney General takes issue with the implication that all drivers using the Ride app are permitted to hire employees or contractors. The statement is also unsupported by evidence Defendant has identified.
>
> - Uber 30(b)(6) testimony of Chad Dobbs

351. <u>Drivers view themselves as running their own independent businesses.</u>

- Expected testimony from driver, Kyle Tysvaer. (Tysvaer Dep. Tr. 32:24–35:16.)
- Expected testimony from driver, Raya Denny. (Denny Dep. Tr. 153:19–21.)
- Expected testimony from driver, Mary Ellen McAllister. (McAllister Dep. Tr. 121:20–122:3.)
- Expected testimony from driver, Richard Kambugu. (Kambugu Dep. Tr. 136:15–20, 139:19–20, 142:18–19, 154:20–22.)
- Expected testimony from driver, Naser Zorrok. (Zorrok Dep. Tr. 20:12–21:22, 52:6–9.)
- Expected testimony from driver, Dhiraj Tulachan. (Tulachan Dep. Tr. 64:14–16.)
- Expected testimony from driver, Bryan Amparo Mesa. (Amparo Mesa Dep. Tr. 72:19–21.)
- Testimony from AGO, Lauren Moran. (Corporate Representative Testimony, Moran Dep. Tr. Day 2 162:24–163:13.)

> **AGO Response**: Disputed. The Attorney General takes issue with the conclusion of law about classification. Notwithstanding, undisputed as to the statements made by the cited drivers.
>
> - Expected testimony from AGO expert, David Weil,
> - Expected testimony from AGO expert, Lindsey Cameron

352. <u>Uber does not provide company vehicles to drivers in Massachusetts.</u>

- Platform Access Agreement, UBER-MA0001492, § 2.5. [Tr. Ex. 3000]
- Expected testimony from Uber, Chad Dobbs. (*E.g.*, Dobbs Dep. Tr. 468:11–14.)
- Expected testimony from driver, Rebekah Field. (Field Dep. Tr. 23:8–9.)
- Expected testimony from driver, Kyle Tysvaer. (Tysvaer Dep. Tr. 41:7–10.)
- Expected testimony from driver, Raya Denny. (Denny Dep. Tr. 140:16–19.)
- Expected testimony from driver, Mary Ellen McAllister. (McAllister Dep. Tr. 116:6–7.)
- Expected testimony from driver, Richard Kambugu. (Kambugu Dep. Tr. 149:16–17.)
- Expected testimony from driver, Bryan Amparo Mesa. (Amparo Mesa Dep. Tr. 61:15–17.)

AGO Response: Undisputed.

353. <u>Uber does not own the vehicles used by the drivers using the Rides platform in Massachusetts.</u>

- Platform Access Agreement, UBER-MA0001492, § 2.5. [Tr. Ex. 3000]
- Expected testimony from Uber, Chad Dobbs. (*E.g.*, Dobbs Dep. Tr. 468:11–14.)
- Expected testimony from driver, Rebekah Field. (Field Dep. Tr. 23:10–11.)
- Expected testimony from driver, Raya Denny. (Denny Dep. Tr. 140:16–19.)
- Expected testimony from driver, Richard Kambugu. (Kambugu Dep. Tr. 61:6–15, 149:18–19.)
- Expected testimony from driver, Naser Zorrok. (Zorrok Dep. Tr. 53:4–8.)
- Expected testimony from driver, Dhiraj Tulachan. (Tulachan Dep. Tr. 23:4–6, 57:1–4.)
- Expected testimony from driver, Bryan Amparo Mesa. (Amparo Mesa Dep. Tr. 22:5–6.)
- Expected testimony from driver, Khalid Benlail. (Benlail Dep. Tr. 148:23–149:3.)
- Expected testimony from driver, Kyle Tysvaer. (Tysvaer Dep. Tr. 40:20–41:17.)

AGO Response: Undisputed.

354. <u>Drivers own the vehicles they use to provide their services through the Rides platform.</u>

- Platform Access Agreement, UBER-MA0001492, § 2.5. [Tr. Ex. 3000]
- Expected testimony from Uber, Chad Dobbs. (*E.g.*, Dobbs Dep. Tr. 468:11–14.)
- Expected testimony from driver, Rebekah Field. (Field Dep. Tr. 23:10–11.)
- Expected testimony from driver, Raya Denny. (Denny Dep. Tr. 140:16–19.)
- Expected testimony from driver, Richard Kambugu. (Kambugu Dep. Tr. 61:6–15, 149:18–19.)

- Expected testimony from driver, Naser Zorrok. (Zorrok Dep. Tr. 53:4–8.)

- Expected testimony from driver, Dhiraj Tulachan. (Tulachan Dep. Tr. 23:4–6, 57:1–4.)

- Expected testimony from driver, Bryan Amparo Mesa. (Amparo Mesa Dep. Tr. 22:5–6.)

- Expected testimony from driver, Khalid Benlail. (Benlail Dep. Tr. 148:23–149:3.)

- Expected testimony from driver, Kyle Tysvaer. (Tysvaer Dep. Tr. 40:20–41:17.)

AGO Response: Dispute. The Attorney General takes issue with the conclusion of law about services. Notwithstanding, undisputed as to the statements of the cited drivers.

355. <u>Drivers maintain the vehicles they use to provide rides to riders.</u>

- Uber Community Guidelines, UBER-MA00390044, at UBER-MA00390045. [Tr. Ex. 3034]

- Expected testimony from driver, Bryan Amparo Mesa. (Amparo Mesa Dep. Tr. 43:17–23.)

- Expected testimony from driver, Rebekah Field. (Field Dep. Tr. 19:10–21, 20:4–9.)

- Expected testimony from driver, Richard Kambugu. (Kambugu Dep. Tr. 150:14–24.)

- Expected testimony from driver, Naser Zorrok. (Zorrok Dep. Tr. 52:15–53:8.)

- Expected testimony from driver, Khalid Benlail. (Benlail Dep. Tr. 55:4–7.)

AGO Response: Undisputed.

356. <u>Drivers insure the vehicles they use to provide rides to riders.</u>

- Expected testimony from driver, Khalid Benlail. (Benlail Dep. Tr. 55:4–7.)

- Expected testimony from driver, Rebekah Field. (Field Dep. Tr. 16:3–9, 24:10–15, 97:12–16.)

- Expected testimony from driver, Richard Kambugu. (Kambugu Dep. Tr. 60:23–61:1.)

- Expected testimony from driver, Kyle Tysvaer. (Tysvaer Dep. Tr. 41:9–42:10.)

AGO Response: Undisputed.

357. <u>Drivers use their own phones to access the Rides platform.</u>

- Expected testimony from driver, Kyle Tysvaer. (Tysvaer Dep. Tr. 42:25–43:11.)

- Expected testimony from driver, Raya Denny. (Denny Dep. Tr. 141:11–22.)

AGO Response: Undisputed.

358. <u>Drivers, like riders, pay a service fee to access the Rides platform.</u>

  • *See supra* ¶ 35.

  • Expected testimony from Uber, Chad Dobbs. (*E.g.*, Dobbs Dep. Tr. 1230:23–1231:19.)

  • Expected testimony from Uber expert, Terrence August. (August Rep. ¶¶ 58–68.) [Tr. Ex. 3074]

  AGO Response: Disputed. The Attorney General takes issue with the implications that this represents the full extent of Uber's business model or that drivers are aware of the amount of Uber's service fee when they accept a ride request. Notwithstanding, it is undisputed that Uber collects a service fee from drivers.

  • Uber 30(b)(6) Testimony of Chad Dobbs.

  • FF 183-201

  • Expected testimony from AGO expert, David Weil.

359. <u>Drivers deduct business expenses such as mileage, gas, and insurance when filing their taxes.</u>

  • Expected testimony from driver, Rebekah Field. (Field Dep. Tr. 19:7–21:8, 25:8–22, 26:15–17.)

  • Expected testimony from driver, Raya Denny. (Denny Dep. Tr. 160:19–161:1.)

  • Expected testimony from driver, Mary Ellen McAllister. (McAllister Dep. Tr. 117:5–12.)

  • Expected testimony from driver, Richard Kambugu. (Kambugu Dep. Tr. 150:11–24.)

  • Expected testimony from driver, Naser Zorrok. (Zorrok Dep. Tr. 52:10–53:3.)

  • Expected testimony from driver, Dhiraj Tulachan. (Tulachan Dep. Tr. 54:22–55:21.)

  • Expected testimony from driver, Bryan Amparo Mesa. (Amparo Mesa Dep. Tr. 53:1–6.)

  • Testimony from AGO, Lauren Moran. (Corporate Representative Testimony, Moran Dep. Tr. Day 2 160:16–161:21.)

  • Part 6 – Uber's 16 Questions [Moran Dep. Ex. 57]. [Tr. Ex. 3165]

  AGO Response: Disputed. The Attorney General takes issue with the assertion that drivers as a whole generally engage in this practice. Notwithstanding, it is undisputed as to the practices of the particular cited drivers.

360. <u>Drivers can, and many do, claim depreciation on their taxes for the cars they use to provide rides to riders.</u>

  • Expected testimony from driver, Kyle Tysvaer. (Tysvaer Dep. Tr. 36:6–10.)

AGO Response: Disputed. The Attorney General takes issue with the assertion as applied to "many" drivers, for which there is no supporting evidence. Notwithstanding, it is undisputed as to the statements made by the specific driver cited.

361. <u>Uber provides drivers with a 1099-K and tax summary, which report earnings from third party transactions (in this case, from riders to drivers).</u>

- Expected testimony from driver, Rebekah Field. (Field Dep. Tr. 58:21–60:6, 65:14–16, 68:1–6.)

- Expected testimony from driver, Kyle Tysvaer. (Tysvaer Dep. Tr. 63:15–25.)

- Expected testimony from driver, Raya Denny. (Denny Dep. Tr. 160:5–11.)

- Expected testimony from driver, Naser Zorrok. (Zorrok Dep. Tr. 20:12–18, 52:18–53:3.)

- Expected testimony from driver, Bryan Amparo Mesa. (Amparo Mesa Dep. Tr. 50:8–10.)

- Bryan Amparo Mesa Form 1099-K [Amparo Mesa Dep. Ex. 13]. [Tr. Ex. 3328]

- Bryan Amparo Mesa Tax Summary [Amparo Mesa Dep. Ex. 14]. [Tr. Ex. 3329]

- Khalid Benlail Form 1099-Ks [Benlail Dep. Ex. 8] [Tr. Ex. 3291]

- Tax summaries for Khalid Benlail, UBER-MA00090404, UBER-MA00090406, UBER-MA00090408, UBER-MA00090410, UBER-MA00090412. [Tr. Ex. 3298; Tr. Ex. 3202; Tr. Ex. 3303; Tr. Ex. 3204; Tr. Ex. 3205]

AGO Response: Disputed. The Attorney General takes issue with the characterization of the source of driver earnings, drivers are paid by Uber. Notwithstanding, it is undisputed that Uber provides drivers with form 1099-Ks.

- AGO FF 42–48.

362. <u>Drivers deduct Uber's service fee on their taxes as a business expense, stating that it is a "price of doing business."</u>

- Expected testimony from driver, Rebekah Field. (Field Dep. Tr. 58:15–20, 59:24–60:2.)

AGO Response: Disputed. The Attorney General takes issue with the assertion that drivers generally engage in the practice of deducting Uber's service fee from their taxes. Notwithstanding, it is undisputed as to the statements made by the specific driver cited.

363. <u>Uber does not restrict drivers from performing other work using the same vehicle they drive when using the Driver App.</u>

- Expected testimony from driver, Khalid Benlail. (Benlail Dep. Tr. 52:1–5.)

- Expected testimony from driver, Rebekah Field. (Field Dep. Tr. 23:10–11.)

- Expected testimony from driver, Raya Denny. (Denny Dep. Tr. 140:11–15.)

- Expected testimony from driver, Richard Kambugu. (Kambugu Dep. Tr. 61:6–18.)

- Expected testimony from driver, Naser Zorrok. (Zorrok Dep. Tr. 53:6–17.)

- Expected testimony from driver, Dhiraj Tulachan. (Tulachan Dep. Tr. 77:16–19.)

AGO Response: Undisputed.

364. <u>Prior to bringing this lawsuit, AGO had received numerous complaints from drivers about misclassification going back years, including from drivers involved in this case.</u>

- Testimony from AGO, Lauren Moran. (Corporate Representative Testimony, Moran Dep. Tr. Day 2 12:10–20.)

- Index of driver complaints to AGO [Moran Dep. Ex. 12]. [Tr. Ex. 3120]

- Combined driver complaints to AGO [Moran Dep. Ex. 8]. [Tr. Ex. 3116]

- Communications between AGO and activist, MAAGO007016. [Tr. Ex. 3234]

- Rebekah Field Complaint, MAAGO000076 [Field Dep. Ex. 1]. [Tr. Ex. 3255]

AGO Response: Undisputed.

365. <u>AGO responded to each complaint with a no action letter, including to drivers involved in this case.</u>

- Testimony from AGO, Lauren Moran. (Corporate Representative Testimony, Moran Dep. Tr. Day 2 12:10–20, 74:24–75:12, 79:5–14.)

- Combined driver complaints to AGO [Moran Dep. Ex. 12]. [Tr. Ex. 3120]

- Combined private right of action letters for Uber complaints to AGO [Moran Dep. Ex. 14]. [Tr. Ex. 3122]

- Communications between AGO and activist, MAAGO007016. [Tr. Ex. 3234]

- Rebekah Field Complaint, MAAGO000076 [Field Dep. Ex. 1]. [Tr. Ex. 3255]

AGO Response: Undisputed.

366. <u>In early 2020, activist drivers, along with organized labor representatives, began meeting with AGO, and they met numerous times.</u>

- Testimony from AGO, Lauren Moran. (Corporate Representative Testimony, Moran Dep. Tr. Day 2 102:1–11, 110:7–22.)

- Communications between AGO and drivers, MAAGO006814 [Moran Dep. Ex. 42]. [Tr. Ex. 3150]

- Communications between AGO and drivers, MAAGO006841 [Moran Dep. Ex. 29]. [Tr. Ex. 3137]

- Timeline of BIDG Communications [Moran Dep. Ex. 28]. [Tr. Ex. 3136]

- Communications between AGO and driver, MAAGO004859. [Tr. Ex. 3183]

- Communications between AGO and activist, MAAGO0006904. [Tr. Ex. 3226]

- Communications between AGO and driver, MAAGO007063. [Tr. Ex. 3238]

AGO Response: Disputed. The Attorney General takes issue with the characterization that any such meeting was relevant to the present litigation. Notwithstanding, it is undisputed that members of the AGO met with labor representatives and community organizations on various issues.

367. <u>These activist drivers and representatives were members of the Boston Independent Drivers Guild (BIDG), whose major campaign was to convince AGO to launch legal action against Uber for allegedly violating "the ABC test."</u>

- About BIDG webpage [Moran Dep. Ex. 30]. [Tr. Ex. 3138]

- AGO's June 23, 2021 Response to RFA No. 20. [Tr. Ex. 3531]

AGO Response: Disputed. The Attorney General takes issue with the characterization of the BIDG's motivations. Notwithstanding, it is undisputed that some AGO employees met with members of BIDG.

368. <u>Activist drivers explicitly threatened Attorney General Maura Healey with bad publicity during her campaign year if she did not file suit against Uber.</u>

- Testimony from AGO, Lauren Moran. (Corporate Representative Testimony, Moran Dep. Tr. Day 2 102:1–11, 110:7–22.)

- Communications between AGO and drivers, MAAGO006814 [Moran Dep. Ex. 42]. [Tr. Ex. 3150]

- Communications between AGO and drivers, MAAGO007083 [Moran Dep. Ex. 40]. [Tr. Ex. 3148]

- Timeline of BIDG Communications [Moran Dep. Ex. 28]. [Tr. Ex. 3136]

- Letter from H. DeGroot to AGO, MAAGO006815 [DeGroot Dep. Ex. 7.] [Tr. Ex. 3281]

- Communications between AGO and driver, MAAGO006908. [Tr. Ex. 3228]

AGO Response: Disputed. The Attorney General takes issue with the characterization of interactions between BIDG and the Attorney General.

369. <u>Shortly after that meeting, AGO filed this lawsuit.</u>

- Testimony from AGO, Lauren Moran. (Corporate Representative Testimony, Moran Dep. Tr. Day 2 172:14–18.)

AGO Response: Disputed. The Attorney General takes issue with the characterization that the lawsuit was filed in response to interactions with BIDG. Notwithstanding, it is undisputed that the Attorney General filed this lawsuit on July 14, 2020.

370. <u>Activist drivers and AGO's now-expert witness attended AGO's press conference announcing this lawsuit and accusing Uber of misclassifying drivers.</u>

- BIDG Timeline [Moran Dep. Ex. 28]. [Tr. Ex. 3136]

- Expected testimony from AGO expert, David Weil. (Weil Dep. Tr. 59:8–60:13.)

- Communications between AGO and driver, MAAGO007805. [Tr. Ex. 3248]

- Communications between AGO and driver, MAAGO007528. [Tr. Ex. 3242]

AGO Response: Disputed. The Attorney General takes issue with the characterization of the drivers and David Weil. Notwithstanding, it is undisputed that the Attorney General held a press conference announcing this lawsuit and that drivers and David Weil attended.

371. <u>Prior to filing this lawsuit, AGO neither provided formal notice nor contacted Uber to inform Uber that it believed drivers had been misclassified.</u>

- Expected testimony from Uber, Chad Dobbs.

AGO Response: Undisputed.

372. <u>AGO issued a state-wide survey to drum up complaints against Uber after filing this litigation.</u>

- Testimony from AGO, Lauren Moran. (Corporate Representative Testimony, Moran Dep. Tr. Day 1 140:3–8.)

- Survey Monkey Questions, MAAGO010276 [Moran Dep. Ex. 16]. [Tr. Ex. 3124]

- Part 3 – Summary Survey Monkey [Moran Dep. Ex. 17]. [Tr. Ex. 3125]

- Survey Monkey Partial Redacted Results English, MAAGO000195 [Moran Dep. Ex. 18]. [Tr. Ex. 3126]

- Correspondence between AGO and driver, MAAGO005958 [Moran Dep. Ex. 58]. [Tr. Ex. 3166]

- Correspondence between AGO and Henry DeGroot, MAAGO006873 [Moran Dep. Ex. 19]. [Tr. Ex. 3127]

AGO Response: Disputed. The Attorney General takes issue with the characterization of the Attorney General's motivations for issuing a survey. Notwithstanding, undisputed as to fact that the Attorney General issued the survey.

373. <u>As a result of that survey, AGO interviewed 37 drivers.</u>

- Testimony from AGO, Lauren Moran. (Corporate Representative Testimony, Moran Dep. Tr. Day 1 160:16–22.)
- Survey Monkey Driver Contact Summary [Moran Dep. Ex. 22]. [Tr. Ex. 3130]

AGO Response: Undisputed.

374. <u>In none of those interviews did any driver ever tell AGO that the driver was Uber's employee.</u>

- Testimony from AGO, Lauren Moran. (Corporate Representative Testimony, Moran Dep. Tr. Day 2 89:7–19.)
- Correspondence between AGO and driver, MAAGO010186 [Moran Dep. Ex. 38]. [Tr. Ex. 3146]
- Part 6 – Uber's 16 Questions [Moran Dep. Ex. 57]. [Tr. Ex. 3165]
- Rebekah Field Interview Notes [Moran Dep. Ex. 49]. [Tr. Ex. 3157]
- Kyle Tysvaer Interview Notes [Moran Dep. Ex. 46]. [Tr. Ex. 3154]

AGO Response: Disputed. The Attorney General takes issue with the implied legal conclusion regarding the classification and characterization of Uber's relationship with drivers. Notwithstanding, it is undisputed that the drivers cited did not make such statements.

375. <u>In none of those interviews did any driver ever tell AGO that Uber controlled him or her.</u>

- Testimony from AGO, Lauren Moran. (Corporate Representative Testimony, Moran Dep. Tr. Day 2 160:16–161:21.)
- Part 6 – Uber's 16 Questions [Moran Dep. Ex. 57]. [Tr. Ex. 3165]
- Rebekah Field Interview Notes [Moran Dep. Ex. 49]. [Tr. Ex. 3157]
- Kyle Tysvaer Interview Notes [Moran Dep. Ex. 46]. [Tr. Ex. 3154]

AGO Response: Disputed. The Attorney General takes issue with the implied legal conclusion regarding the classification and characterization of Uber's relationship with drivers. Notwithstanding, it is undisputed that the drivers cited did not make such statements.

376. <u>In none of those interviews did any driver ever tell AGO that the driver was prohibited by Uber from running their own driving business.</u>

- Testimony from AGO, Lauren Moran. (Corporate Representative Testimony, Moran Dep. Tr. Day 2 162:24–163:13.)
- Part 6 – Uber's 16 Questions [Moran Dep. Ex. 57]. [Tr. Ex. 3165]
- Rebekah Field Interview Notes [Moran Dep. Ex. 49]. [Tr. Ex. 3157]
- Kyle Tysvaer Interview Notes [Moran Dep. Ex. 46]. [Tr. Ex. 3154]

- Khalid Benlail Interview Notes [Moran Dep. Ex. 45]. [Tr. Ex. 3153]

AGO Response: Disputed. The Attorney General takes issue with the implied legal conclusion regarding the classification and characterization of Uber's relationship with drivers. Notwithstanding, it is undisputed that the drivers cited did not make such statements.

377. <u>In none of those interviews did any driver ever tell AGO that the driver provided revenue generation services to Uber.</u>

- Testimony from AGO, Lauren Moran. (Corporate Representative Testimony, Moran Dep. Tr. Day 2 153:15–155:8.)

- Part 6 – Uber's 16 Questions [Moran Dep. Ex. 57]. [Tr. Ex. 3165]

- Rebekah Field Interview Notes [Moran Dep. Ex. 49]. [Tr. Ex. 3157]

- Kyle Tysvaer Interview Notes [Moran Dep. Ex. 46]. [Tr. Ex. 3154]

- Khalid Benlail Interview Notes [Moran Dep. Ex. 45]. [Tr. Ex. 3153]

AGO Response: Disputed. The Attorney General takes issue with the implied legal conclusion regarding the classification and characterization of Uber's relationship with drivers. Notwithstanding, it is undisputed that the drivers cited did not make such statements.

378. <u>Indeed, even AGO's driver witness, Rebekah Field, admitted that she never told AGO in her meetings with them that she provided services to Uber.</u>

- Expected testimony from driver, Rebekah Field. (Field. Dep. Tr. 85:8–11, 85:24–86:8.)

- Rebekah Field Interview Notes [Moran Dep. Ex. 49]. [Tr. Ex. 3157]

AGO Response: Disputed. The Attorney General takes issue with the implied legal conclusion regarding the classification and characterization of Uber's relationship with drivers. Notwithstanding, it is undisputed that this driver did not make the above statement to the AGO.

379. <u>To the contrary, drivers told AGO they set their own schedules when using the Rides platform.</u>

- Testimony from AGO, Lauren Moran. (Corporate Representative Testimony, Moran Dep. Tr. Day 2 160:16–161:21.)

- Part 6 – Uber's 16 Questions [Moran Dep. Ex. 57]. [Tr. Ex. 3165]

- Rebekah Field Interview Notes [Moran Dep. Ex. 49]. [Tr. Ex. 3157]

- Kyle Tysvaer Interview Notes [Moran Dep. Ex. 46]. [Tr. Ex. 3154]

AGO Response: Disputed. The Attorney General takes issue with the implied legal conclusion regarding the classification and characterization of Uber's relationship with drivers. Notwithstanding, it is undisputed as to the statements made by the specific drivers cited.

380. <u>Drivers told AGO they choose when and where to use the Driver App to find matches.</u>

- Testimony from AGO, Lauren Moran. (Corporate Representative Testimony, Moran Dep. Tr. Day 2 160:16–161:21.)

- Part 6 – Uber's 16 Questions [Moran Dep. Ex. 57]. [Tr. Ex. 3165]

- Rebekah Field Interview Notes [Moran Dep. Ex. 49]. [Tr. Ex. 3157]

- Kyle Tysvaer Interview Notes [Moran Dep. Ex. 46]. [Tr. Ex. 3154]

AGO Response: Disputed. The Attorney General takes issue with the implied legal conclusion regarding the classification and characterization of Uber's relationship with drivers. Notwithstanding, it is undisputed as to the statements made by the specific drivers cited.

381. <u>Drivers told AGO they incorporated driving businesses.</u>

- Testimony from AGO, Lauren Moran. (Corporate Representative Testimony, Moran Dep. Tr. Day 2 160:16–161:21.)

- Part 6 – Uber's 16 Questions [Moran Dep. Ex. 57]. [Tr. Ex. 3165]

- Khalid Benlail Interview Notes [Moran Dep. Ex. 45]. [Tr. Ex. 3153]

AGO Response Disputed. The Attorney General takes issue with the implied legal conclusion regarding the classification and characterization of Uber's relationship with drivers. Notwithstanding, it is undisputed as to the statements made by the specific drivers cited.

382. <u>Drivers told AGO they deducted business expenses on their taxes associated with their driving businesses.</u>

- Testimony from AGO, Lauren Moran. (Corporate Representative Testimony, Moran Dep. Tr. Day 2 160:16–161:21.)

- Part 6 – Uber's 16 Questions [Moran Dep. Ex. 57]. [Tr. Ex. 3165]

AGO Response: Disputed. The Attorney General takes issue with the implied legal conclusion regarding the classification and characterization of Uber's relationship with drivers. Notwithstanding, it is undisputed that drivers made such statements to the AGO.

383. <u>Drivers' individual use of and relationship to the Rides platform varies dramatically between drivers, including whether, when, and how they use the Rides platform.</u>

- *See supra* ¶¶ 119–123, 174–176, 194–223, 259–260.

AGO Response: Disputed. The Attorney General takes issue with the characterization that drivers are free from Uber's control over their behavior and driving patterns. Additionally the Attorney General takes issue with this finding to the extent that the Attorney General has also disputed findings ¶¶ 119–123, 174–176, 194–223, 259–260. Notwithstanding, it is undisputed that drivers prefer to work on days and times as their availability allows.

384. <u>A number of drivers using the Lyft platform admit to having no relationship to Uber and providing no services through the Rides platform.</u>

- Expected testimony from driver, Robert Ciccarelli. (Ciccarelli Dep. Tr. 125:10–20.)

- Expected testimony from driver, Alain Cabache. (Cabache Dep. Tr. 182:21–184:4.)

- Expected testimony from driver, Benjamin Chase. (Chase Dep. Tr. 115:24–117:7.)

- Expected testimony from driver, Kevin Clark. (Clark Dep. Tr. 15:5–9, 169:18–170:16.)

- Expected testimony from driver, Shepard Collins. (Collins Dep. Tr. 169:14–170:5.)

- Expected testimony from driver, Steven Cordeiro. (Cordeiro Dep. Tr. 12:2–7, 125:3–126:15, 130:11–14.)

- Expected testimony from driver, Christopher Hansen. (Hansen Dep. Tr. 146:15–147:9.)

- Expected testimony from driver, Timothy Wilkins. (Wilkins Dep. Tr. 12:4–8, 90:18–91:7.)

AGO Response: Undisputed as to the statements made by the specific drivers cited.

385. <u>Nevertheless, AGO seeks a declaration and injunction regarding *all* drivers, regardless which platform the drivers used.</u>

- AGO's Complaint for Declaratory Judgment, filed July 10, 2020, at 15–16.

AGO Response: Disputed. The Attorney General takes issue insofar as the statement encompasses platforms other than Uber and Lyft.

386. <u>An injunction requiring drivers to be classified as employees would cause a substantial reduction in the number of drivers who use the Rides platform.</u>

- Expected testimony from Uber expert, Justin McCrary. (McCrary Rep. ¶ 78.) [Tr. Ex. 3071]

AGO Response: Disputed. The Attorney General takes issue with the assertion that classifying drivers as employees would necessarily cause a substantial reduction in the number of drivers using the platform as unsupported by evidence identified by Defendant.

- Expected testimony from AGO expert, James Parrott.

387. <u>An injunction requiring drivers to be classified as employees would cause a substantial reduction in the number of rides completed on the Rides platform.</u>

- Expected testimony from Uber expert, Justin McCrary. (McCrary Rep. ¶ 78.) [Tr. Ex. 3071]

AGO Response: Disputed. The Attorney General takes issue with the assertion that classifying drivers as employees would necessarily cause a substantial reduction in the number of rides completed using the platform as unsupported by evidence identified by Defendant.

- Expected testimony from AGO expert, James Parrott.

388. <u>If Uber imposed a 40-hour workweek for drivers, it would need only approximately 20% of the drivers currently using the Rides platform in Massachusetts.</u>

- Expected testimony from Uber expert, Justin McCrary. (McCrary Rep. ¶ 14(a).) [Tr. Ex. 3071]

AGO Response: Disputed. The Attorney General takes issue with the assertion that, if Uber imposed a 40-hour workweek, it would need only 20% of drivers currently active as unsupported by evidence identified by Defendant.

- Expected testimony from AGO expert, James Parrott.

389. <u>If Uber imposed a 40-hour workweek for drivers, it would result in a loss of opportunities for 74–80% of drivers currently using the Rides platform.</u>

- Expected testimony from Uber expert, Justin McCrary. (McCrary Rep. ¶¶ 52, 62–63.) [Tr. Ex. 3071]

AGO Response: Disputed. The Attorney General takes issue with the assertion that, if Uber imposed a 40-hour workweek, it would necessarily result in a loss of opportunities for 74-80% of drivers currently active as unsupported by evidence identified by Defendant.

- Expected testimony from AGO expert, James Parrott.

390. <u>If Uber limited the hours drivers could work to prevent incurring overtime charges, it would prevent up to 36% of all drivers using the Rides platform in Massachusetts from maximizing their earnings.</u>

- Expected testimony from Uber expert, Justin McCrary. (McCrary Rep. ¶ 65.) [Tr. Ex. 3071]

AGO Response: Disputed. The Attorney General takes issue with the assertion that, if Uber limited the hours drivers could work to prevent incurring overtime charges, it would prevent up to 36% of all drivers using the Rides platform in Massachusetts from maximizing their earnings as unsupported by the evidence identified by the Defendant.

- Expected testimony from AGO expert, James Parrott.

391. <u>Tens of thousands of individuals would lose work if Uber had to limit the number of drivers on the Rides platform.</u>

- Expected testimony from Uber expert, Justin McCrary. (McCrary Rep. ¶ 14(a).) [Tr. Ex. 3071]

- Expected testimony from AGO expert, James Parrott. (Parrott Rebuttal Rep. ¶¶ 22–23.) [Tr. Ex. 3100]

AGO Response: Disputed. The Attorney General takes issue with the assertion that tens of thousands of individuals would lose work if Uber had to limit the number of drivers on the Rides platform as unsupported by the evidence identified by the Defendant.

392. <u>The typical Massachusetts rideshare driver is male (86%), a person of color (60%), foreign-born (63%), without a four-year college degree (78%), and with lower income.</u>

- Expected testimony from AGO expert, James Parrott. (Parrott Rebuttal Rep. ¶¶ 22–23.) [Tr. Ex. 3100]

AGO Response: Undisputed.

393. <u>Drivers value the flexibility that using the Driver App provides them.</u>

- Expected testimony from Uber, Chad Dobbs. (*E.g.*, Dobbs Dep. Tr. 1164:13–1165:24.)

AGO Response: Disputed.

- Expected testimony from AGO expert, James Parrott, David Weil

394. <u>An injunction requiring drivers to be classified as employees would cause a substantial reduction in driver flexibility.</u>

- Expected testimony from Uber, Chad Dobbs. (*E.g.*, Dobbs Dep. Tr. 1181:17–1182:18, 1185:2–9.)

- Expected testimony from Uber expert, Justin McCrary. (McCrary Rep. ¶ 78.) [Tr. Ex. 3071]

AGO Response: Disputed. The Attorney General takes issue with the assertion that an injunction requiring Uber to comply with the law by classifying drivers as employees would cause a substantial reduction in driver flexibility, as unsupported by the evidence identified by the Defendant.

- Expected testimony from AGO expert, James Parrott.

395. <u>Drivers' discretion over whether and when to accept rides would be at risk.</u>

- Expected testimony from Uber expert, Justin McCrary. (McCrary Rep. ¶ 67.) [Tr. Ex. 3071]

AGO Response: Disputed. The Attorney General takes issue with the assertion that an injunction requiring Uber to comply with the law by classifying drivers as employees would necessarily cause driver discretion over accepting individual rides to be at risk, as unsupported by the evidence identified by the Defendant.

- Expected testimony from AGO expert, James Parrott.

396. <u>Drivers would not be permitted to multi-app.</u>

- Expected testimony from Uber expert, Justin McCrary. (McCrary Rep. ¶¶ 14(a), 67.) [Tr. Ex. 3071]

AGO Response: Disputed. The Attorney General takes issue with the assertion that an injunction requiring Uber to comply with the law by classifying drivers as employees would necessarily require Uber to prevent drivers from multi-apping, as unsupported by the evidence identified by the Defendant Expected testimony from AGO expert, James Parrott.

397. <u>If the Rides platform did not offer flexibility, many drivers would not be able to use it.</u>

- Expected testimony from Uber expert, Justin McCrary. (McCrary Rep. ¶ 14(a).) [Tr. Ex. 3071]

- Expected testimony from Uber, Chad Dobbs. (*E.g.*, Dobbs Dep. Tr. 1164:13–1165:24.)

AGO Response: Disputed. The Attorney General takes issue with the assertion that if the Rides platform did not offer flexibility then many drivers would not be able to use it and as unsupported by the evidence identified by the Defendant.

- Expected testimony from AGO expert, James Parrott.

398. <u>As hourly employees, drivers would be incentivized to increase wait times and decline rides, which would lead Uber to require drivers to schedule work in shifts in advance and accept a minimum percentage, or even all, of the ride requests they receive during a shift.</u>

- Expected testimony from Uber expert, Justin McCrary. (McCrary Rep. ¶ 70.) [Tr. Ex. 3071]

AGO Response: Disputed. The Attorney General takes issue with the assertion that drivers would necessarily need to be hourly employees, that drivers would be necessarily incentivized to increase wait times and decline rides, or that Uber would necessarily need to require drivers to work scheduled shifts or accept some minimum number of rides, as unsupported by the evidence cited by the Defendant.

- Expected testimony from AGO expert, James Parrott.

399. <u>Limiting drivers' ability to multi-app would increase both wait times and prices for riders.</u>

• Expected testimony from Uber expert, Justin McCrary. (McCrary Rep. ¶¶ 67, 68 n.107.) [Tr. Ex. 3071]

AGO Response: Disputed. The Attorney General takes issue with the implication that, if limited drivers ability to multi-app, and the assertion that wait times and prices for riders would necessarily increase, as unsupported by the evidence identified by the Defendant.

• Expected testimony from AGO expert, James Parrott.

400. <u>Uber would have to pass on some of the costs associated with having employee drivers to riders.</u>

• Expected testimony from Uber expert, Justin McCrary. (McCrary Rep. ¶ 75.) [Tr. Ex. 3071]

AGO Response: Disputed. The Attorney General takes issue with the assertion that Uber would necessarily be forced to pass on the costs, associated with properly classifying their drivers as employees, to riders, as unsupported by the evidence identified by the Defendant.

• Expected testimony from AGO expert, James Parrott.

401. <u>Riders would have to pay higher prices for rides because of increased costs and reduced efficiencies on the Rides platform.</u>

• Expected testimony from Uber expert, Justin McCrary. (McCrary Rep. ¶ 14(b).) [Tr. Ex. 3071]

AGO Response: Disputed. The Attorney General takes issue with the assertions that Uber would necessarily experience increased costs or reduced efficiencies, or that Uber would necessarily have to charge riders higher prices, as unsupported by the evidence identified by the Defendant.

• Expected testimony from AGO expert, James Parrott.

402. <u>Riders would likely take fewer rides using the Rides platform.</u>

• Expected testimony from Uber expert, Justin McCrary. (McCrary Rep. ¶ 14(b).) [Tr. Ex. 3071]

AGO Response: Disputed. The Attorney General takes issue with the assertion that an injunction requiring Uber to comply with the law by classifying drivers as employees would necessarily result in riders taking fewer rides on the Uber platform, as unsupported by the evidence identified by the Defendant. Expected testimony from AGO expert, James Parrott.

403. <u>There would be fewer riders on the Rides platform.</u>

- Expected testimony from Uber expert, Justin McCrary. (McCrary Rep. ¶ 76.) [Tr. Ex. 3071]

AGO Response: Disputed. The Attorney General takes issue with the assertion that an injunction requiring Uber to comply with the law by classifying drivers as employees would necessarily result in fewer riders on the Uber platform, as unsupported by the evidence identified by the Defendant.

- Expected testimony from AGO expert, James Parrott.

404. <u>Uber would incur substantial costs and require considerable time to make a transition to an employee-based model.</u>

- Expected testimony from Uber expert, Justin McCrary. (McCrary Rep. ¶ 14(c).) [Tr. Ex. 3071]

AGO Response: Disputed. The Attorney General takes issue with the assertion that an injunction requiring Uber to comply with the law by classifying drivers as employees would necessarily result in Uber incurring substantial costs or would necessarily require considerable time to comply with, as unsupported by the evidence identified by the Defendant. Expected testimony from AGO expert, James Parrott.

405. <u>Uber would need to set up a hiring process.</u>

- Expected testimony from Uber expert, Justin McCrary. (McCrary Rep. ¶ 52.) [Tr. Ex. 3071]

AGO Response: Disputed. The Attorney General takes issue with the assertion that an injunction requiring Uber to comply with the law by classifying drivers as employees would necessarily require Uber to set up a new hiring process, as unsupported by the evidence identified by the Defendant.

- Expected testimony from AGO expert, James Parrott.

406. <u>Uber would need to hire and onboard corporate staff to recruit and manage the employee drivers.</u>

- Expected testimony from Uber expert, Justin McCrary. (McCrary Rep. ¶¶ 52–53.) [Tr. Ex. 3071]

AGO Response: Disputed. The Attorney General takes issue with the assertion that an injunction requiring Uber to comply with the law by classifying drivers as employees would necessarily require Uber to hire and onboard more corporate staff, as unsupported by the evidence identified by the Defendant.

- Expected testimony from AGO expert, James Parrott.

407. Uber may have to shut down for a period of time to ensure compliance.

- Expected testimony from Uber expert, Justin McCrary. (McCrary Rep. ¶ 52.) [Tr. Ex. 3071]

- Expected testimony from Uber, Chad Dobbs. (*E.g.*, Dobbs Dep. Tr. 1162:13–1164:3.)

AGO Response: Disputed. The Attorney General takes issue with the assertion that an injunction requiring Uber to comply with the law by classifying drivers as employees would necessarily require Uber to shut down in order to comply, as unsupported by the evidence identified by the Defendant.

- Expected testimony from AGO expert, James Parrott.

408. Uber would also have to modify certain aspects of its business model, including the rules governing the use of its Rides platform.

- Expected testimony from Uber expert, Justin McCrary. (McCrary Rep. ¶ 52.) [Tr. Ex. 3071]

AGO Response: Disputed. The Attorney General takes issue with the assertion that an injunction requiring Uber to comply with the law by classifying drivers as employees would necessarily require Uber to modify its business model, as unsupported by the evidence identified by the Defendant.

- Expected testimony from AGO expert, James Parrott.

409. There would be an increase in fixed costs per worker, which would equate to approximately 40% of Uber's service provider revenue.

- Expected testimony from Uber expert, Justin McCrary. (McCrary Rep. ¶¶ 55, 57–59, 75.) [Tr. Ex. 3071]

AGO Response: Disputed. The Attorney General takes issue with the assertion that an injunction requiring Uber to comply with the law by classifying drivers as employees would necessarily require increased fixed costs for Uber equal to approximately 40% of Uber revenue, as unsupported by the evidence identified by the Defendant.

- Expected testimony from AGO expert, James Parrott.

410. <u>Uber may provide less efficient matches between drivers and riders, which could decrease the value of its Rides platform.</u>

- Expected testimony from Uber expert, Justin McCrary. (McCrary Rep. ¶ 14(c).) [Tr. Ex. 3071]

AGO Response: Disputed. The Attorney General takes issue with the assertion that Uber may necessarily provide less efficient matches between drivers and riders as unsupported by as unsupported by the evidence identified by the Defendant.

- Expected testimony from AGO expert, James Parrott.

411. <u>With a fixed number of scheduled drivers, Uber would not be able to make real-time adjustments to account for fluctuations in the number of users in the market to increase the supply of drivers to match the demand from riders.</u>

- Expected testimony from Uber expert, Justin McCrary. (McCrary Rep. ¶ 72.) [Tr. Ex. 3071]

AGO Response: Disputed. The Attorney General takes issue with the assertion that with a fixed number of scheduled drivers, Uber necessarily would not be able to make real-time adjustments to account for fluctuations in the number of users in the market to increase the supply of drivers to match the demand from riders as unsupported by evidence identified by Defendant.

- Expected testimony from AGO expert, James Parrott.

412. <u>Shifting all workers to an employee model would require Uber to solve a problem that no other company has ever had to solve.</u>

- Expected testimony from AGO expert, James Parrott. (Parrott Dep. Tr. 196:1–197:5, 493:2–23.)

AGO Response: Disputed. The Attorney General takes issue with the assertion that shifting all workers to an employee model would necessarily require Uber to solve a problem that no other company has ever had to solve as unsupported by evidence identified by Defendant.

- Expected testimony from AGO expert, James Parrott.

Respectfully submitted,

UBER TECHNOLOGIES, INC.

By its attorneys,

/s/ Stephen T. Melnick
Stephen T. Melnick (BBO # 667323)
LITTLER MENDELSON P.C.
One International Place, Suite 2700
Boston, MA 02110
(617) 378-6000
smelnick@littler.com

Theane Evangelis (*pro hac vice*)
Perlette Jura (*pro hac vice*)
Heather Richardson (*pro hac vice*)
GIBSON, DUNN & CRUTCHER LLP
333 South Grand Avenue
Los Angeles, CA 90071
(213) 229-7000
tevangelis@gibsondunn.com
pjura@gibsondunn.com
hrichardson@gibsondunn.com

Blaine H. Evanson (*pro hac vice*)
Michele L. Maryott (*pro hac vice*)
GIBSON, DUNN & CRUTCHER LLP
3161 Michelson Drive
Irvine, CA 92612

(949) 451-3800
bevanson@gibsondunn.com
mmaryott@gibsondunn.com
George J. Hazel (*pro hac vice*)
Jeremy M. Christiansen (*pro hac vice*)
GIBSON, DUNN & CRUTCHER LLP
1050 Connecticut Avenue, N.W.
Washington, D.C. 20036-5306
(202) 887-3674
ghazel@gibsondunn.com
jchristiansen@gibsondunn.com

Dated: May 1, 2024

CERTIFICATE OF SERVICE

    I, Stephen T. Melnick, hereby certify that, on this 1st day of May 2024, the foregoing document was electronically filed with the Superior Court for Suffolk County via efileMA and that a true copy of the foregoing document was served via e-mail upon counsel of record for all other parties.

<div align="right">

/s/ *Stephen T. Melnick*

Stephen T. Melnick

</div>