

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

JOSE ORTEGA, on his own behalf, and on behalf of
those similarly situated,

Plaintiff,

-against-

UBER TECHNOLOGIES, INC., RASIER, LLC, UBER
USA, LLC, UBER NEW YORK LLC, UBER
TRANSPORTATION LLC, JOHN DOE "UBER
AFFILIATES," fictitious name used to identify presently
unknown entities,

Defendants.

No. 1:15-cv-7387 (NGG) (JO)

**NOTICE OF PROPOSED CLASS ACTION LAWSUIT SETTLEMENT
AND FINAL FAIRNESS HEARING**

TO: ALL INDIVIDUALS WHO HAVE PROVIDED TRANSPORTATION SERVICES ARRANGED USING THE UBER APP WITHIN THE STATE OF NEW YORK AT ANY TIME BETWEEN DECEMBER 29, 2009, AND MAY 25, 2018, AND WHO PURPORTED TO OPT-OUT OF ARBITRATION, OR WHOSE MOST RECENT AGREEMENT WITH DEFENDANTS AND/OR THE RELEASED PARTIES OTHERWISE DOES NOT CONTAIN AN ARBITRATION PROVISION, EXCLUDING INDIVIDUALS WHO EXCLUSIVELY PROVIDED TRANSPORTATION SERVICES ARRANGED USING UBER'S "UBERTAXI" PRODUCT.

Uber Technologies, Inc. ("Uber"), Uber USA, LLC, and Rasier, LLC's records (collectively "Defendants") indicate that you provided transportation services arranged using Uber's software application (the "Uber App") within the State of New York between December 29, 2009, and May 25, 2018, and are eligible to participate in the proposed settlement of the case captioned *Ortega v. Uber Technologies, Inc.*, Case No. 1:15-cv-7387 (NGG) (JO) (U.S. District Court, Eastern District of New York) (the "Action").

PLEASE READ THIS NOTICE CAREFULLY. It contains important information about your rights concerning the settlement of the Action. Additional information about the Action and the settlement is also available at the following website: www.ortegaubersettlement.com. You are encouraged to forward this website address to those individuals whom you believe may be included in this class. If the Court approves the settlement, you will be bound by its terms unless you affirmatively opt-out of the settlement.

**YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT
INCLUDE THE FOLLOWING:**

DO NOTHING	If you do nothing, you will automatically participate in the settlement and receive a settlement payment.
EXCLUDE YOURSELF	<u>Get no payment.</u> This is the only option that allows you to maintain your claims and, if you wish, to file your own lawsuit against Defendants for the claims released by the settlement.
OBJECT	If you choose, you may object to the settlement. The Court may or may not agree with your objection. Objecting to the settlement will not exclude you from the settlement.

1. WHAT IS THE PURPOSE OF THIS NOTICE?

You are receiving this notice because you have a right to know about a proposed settlement of a class action lawsuit, and about all of your options, before the Court decides whether to approve the settlement. You have the ability to participate in the settlement, or you may decline to do so.

This notice explains the process required for informing the attorneys and the Court of your decision. The notice also explains the process the Court has put in place for deciding whether to approve the settlement, and for administering the settlement if it is approved.

2. WHAT IS THIS CASE ABOUT?

Plaintiffs Jose Ortega and Joce Martinez (“Plaintiffs”), who provided transportation services arranged using the Uber App, filed a putative class action lawsuit against Defendants, asserting, among other things, wage and hour claims under the New York Labor Law, a common law claim for breach of contract, and a claim for false advertising, on behalf of themselves and other transportation providers in New York State (“drivers”).

Plaintiffs premised their breach of contract claim on the theory that Defendants allegedly (i) inflated the service fee charged to drivers by: including sales tax and Black Car Fund fees “in the fare instead of calculating the fare net of such charges,” allegedly causing drivers to pay an inflated service fee contrary to their agreements with Defendants; (ii) failed to remit taxes and fees, including sales tax and Black Car Fund fees to drivers; and (iii) failed to remit to drivers “the total proceeds of all gratuities” received.

Plaintiffs premised their false advertising claim on the theory that some of Defendants’ advertising materials have been misleading insofar as they allegedly “offer guaranteed compensation without disclosing the actual conditions imposed,” and that Defendants allegedly failed to remit “guaranteed payments promised” in the advertisements.

Defendants strenuously deny the allegations in the lawsuit, and maintain that they did not violate any laws with respect to Plaintiff Ortega, Settlement Class Members, or Plaintiff Martinez, whose claims were ordered to individual arbitration.

The Court did not decide which side was right. Both sides agreed to a settlement to resolve the Action, and to avoid further disputes, inconvenience, and expense. The settlement is not to be construed as or deemed an admission of liability, culpability, negligence, or wrongdoing on the part of Defendants.

Defendants do not discourage your participation in the settlement, and will not take any retaliatory action against you for participating or not participating in the settlement.

3. WHO IS INCLUDED IN THE SETTLEMENT?

All individuals who (i) have provided transportation services arranged using the Uber App within the State of New York at any time between December 29, 2009, and May 25, 2018, and (ii) purported to opt-out of arbitration, or whose most recent agreement with Defendants and/or the Released Parties otherwise does not contain an arbitration provision, as determined by Defendants’ records, excluding individuals who exclusively provided transportation services arranged using Uber’s “UberTAXI” product.

4. WHAT ARE THE TERMS OF THE SETTLEMENT AGREEMENT? HOW WILL MY SHARE OF THE SETTLEMENT BE CALCULATED?

Defendants have agreed to create a settlement fund of three-million dollars (\$3,000,000.00). Before Settlement Class Members are paid, however, the following amounts may be removed from the settlement fund:

- Attorneys’ Fees and Costs: Class Counsel will apply to the Court for recovery of fees not to exceed one third of the settlement fund, and costs not to exceed twenty-nine thousand fifty-five dollars (\$29,055.00).
- Service Payment: The gross amount of two-thousand dollars (\$2,000.00) will be paid to Plaintiff Ortega as a Service Payment, in recognition of the services he contributed on behalf of the Settlement Class.
- Plaintiff Ortega’s Individual Settlement Payment: The gross amount of one-thousand dollars (\$1,000.00) will be paid to Plaintiff Ortega, in exchange for his general release of claims.
- Settlement Expenses: The cost of administering this settlement (sending this notice, re-sending it, sending the checks, etc.) is estimated to be twenty-five thousand dollars (\$25,000.00).

If the Court approves all of these fees and payments, approximately \$1,942,945.00 would remain in the settlement fund to pay Settlement Class Members based on the following formula. The individual Settlement Payment for each Settlement Class Member shall be determined by: (i) allocating to any Settlement Class Member who completed a trip and/or received payment for a completed trip in New York State at any time between December 29, 2012, through May 25, 2018 (which coincides with the statute of limitations period applicable to Plaintiff Ortega’s false advertising claim), as determined by Defendants’ records, a flat amount of one hundred dollars (\$100.00); and then (ii) taking (a) the remaining amount of the settlement fund, (b) divided by the total amount of New York State sales tax and Black Car fund fees charged for rides personally completed by all Settlement Class Members at any time from December 29, 2009, through May 25, 2018, as determined by Defendants’ records, (c) multiplied by the amount of New York State sales tax and Black Car Fund fees charged for rides that each Settlement Class Member personally completed during this time period, as determined by Defendants’ records, and allocating those amounts accordingly.

Defendants' records indicate that \$_____ in New York State sales tax and Black Car Fund fees were charged for rides you personally completed from December 29, 2009, through May 25, 2018. Defendants' records also indicate that you [DID / DID NOT] complete a trip or receive payment for a completed trip in New York State between December 29, 2012, through May 25, 2018. Your estimated claim at this point is approximately \$_____.

If you believe these figures are incorrect and wish to dispute them, you must contact the Settlement Administrator, and provide any documentation and/or information supporting your contention, no later than August 9, 2018. In the event of a dispute, Defendants' records will be presumed determinative, but the Parties will evaluate any information and evidence you timely submit to the Settlement Administrator, and then reach a final determination.

The payments made to you from the settlement fund shall be treated as non-wage income and reported on an IRS Form 1099.

5. WHAT IS THE LEGAL EFFECT OF THE SETTLEMENT?

Unless you exclude yourself from the settlement, you will release Defendants from any claims premised on the theory that Defendants unlawfully failed to remit, withheld, or improperly calculated, all monies, fares, sales tax, Black Car Fund fees, and gratuities allegedly due to you per any contract or agreement between you and Defendants.

You will also release Defendants from any claims for false advertising based on advertisements related to drivers' use of the Uber App, driver earnings, and earnings "guarantees."

Specifically, unless you exclude yourself from the settlement, you will fully release Defendants and all affiliated entities, and their past, present, and future parent companies, affiliates, subsidiaries, divisions, predecessors, successors, partners, owners, joint ventures, affiliated organizations, shareholders, insurers, reinsurers and assigns, and each of its/their past, present and future officers, investors, executives, directors, trustees, agents, employees, attorneys, contractors (other than driver partners), representatives, plan fiduciaries and/or administrators, benefits plan sponsored or administered by Defendants or affiliated entities, or divisions, units, branches, and any other persons or entities acting on their behalf, including any party that was or could have been named as a defendant in the Action (the "Released Parties") from any and all claims, causes of action, assertions of injury or harm, damages, debts, liabilities, demands, obligations, guarantees, liquidated damages, costs (including, but not limited to, settlement administration costs), entitlement to restitution or injunctive or declaratory relief, right to direct or indirect recovery of compensation, expenses, interest, and/or attorneys' fees, whether suspected or unsuspected, known or unknown, that you have had, now have, or may have in the future against Defendants, the Released Parties or any of them, for acts occurring at any time up to and including May 25, 2018 (i) arising from or related to the claim that Defendants or any of the Released Parties failed to remit all monies, including, without limitation, sales tax, Black Car Fund fees, gratuities, and fares, due to you, withheld payments due to you, or otherwise miscalculated the share of the fares or other amounts paid by riders to which Defendants, the Released Parties, and/or you were entitled, pursuant to any express or implied agreement(s), contract(s), promise(s), or covenant(s), including any and all claims, whether alleged under federal, state or local law, regulation or ordinance, common law or tort, for breach of contract (whether oral, written, implied, express or otherwise), breach of the implied covenant of good faith and fair dealing, promissory estoppel, unjust enrichment, conversion, unlawful deductions under the New York Labor Law (including any related claims for liquidated damages), or otherwise based on the same or similar facts, allegations and/or theories asserted or that could have been asserted in the Action (including the facts, allegations, and/or theories asserted in the Complaint, First Amended Complaint, and/or Second Amended Complaint in the Action). This includes any and all claims based on similar theories that are or could be asserted in *Haider v. Uber Technologies, Inc., et al.*, S.D.N.Y. Case No. 16-cv-4098-AKH ("*Haider*"). This does not include claims asserted in *Haider* based on Uber's "upfront pricing" program, or any other claim for unlawful deductions under the New York Labor Law not described above, including based on the theories that Uber unlawfully deducted amounts for vehicle payments and/or other alleged "tools of the trade," or the service fee drivers pay in exchange for the lead generation services provided to them through the Uber App. This also does not include any claim that, as a result of alleged misclassification of drivers as independent contractors, Defendants or the Released Parties unlawfully failed to provide minimum wage, overtime, or spread-of-hours pay to drivers; and (ii) arising from or related to the claim that Defendants or any of the Released Parties engaged in false or misleading advertising, or deceptive business practices, in connection with advertisements and communications regarding drivers' use of the Uber App, driver earnings, and earnings "guarantees," whether arising under federal, state, or local law, including, without limitation, claims under New York General Business Law § 349 *et seq.*, and § 350 *et seq.*

6. DO I HAVE A LAWYER IN THIS CASE?

The Court has decided that Jonathan Greenbaum, of Coburn & Greenbaum, PLLC, and Philip M. Hines, Marc J. Held, and Scott B. Richman, of Held & Hines LLP, are qualified to represent you and all other Settlement Class Members. These attorneys are called "Class Counsel." You do not need to hire your own attorney because Class Counsel is working on your behalf. If you want to be represented by your own lawyer, you may hire one at your own expense.

If you have questions or desire additional details, you may call, email or correspond with Class Counsel. Here is the contact information for Class Counsel:

Jonathan Greenbaum
Coburn & Greenbaum, PLLC
1710 Rhode Island Avenue NW
2nd Floor
Washington, D.C. 20036
202.657.4490

Philip M. Hines
Marc J. Held
Scott B. Richman
Held & Hines LLP
2004 Ralph Ave.
Brooklyn, N.Y. 11234
718.531.9700

7. HOW DO I OPT-OUT OF THE SETTLEMENT?

You have the option of opting-out of the settlement if you do not want to participate. If you do not opt-out, you will be bound by the terms of the settlement, including the release described above. To opt-out, you must mail a written opt-out request that includes words to the effect of "I elect to exclude myself from the settlement in *Ortega v. Uber Technologies, Inc.*, Case No. 1:15-cv-7387 (NGG) (JO)" to the Settlement Administrator by August 9, 2018. The opt-out request must also state your name, address, and telephone number, bear your signature, and be postmarked no later than August 9, 2018. If you choose to opt-out, send your opt-out request to: *Ortega v. Uber Technologies, Inc.*, c/o GCG P.O. Box 10563, Dublin, Ohio 43017-7263.

If you exclude yourself from the settlement by opting-out, you will not get any settlement payment, and you cannot object to the settlement.

8. WHAT IF I HAVE AN OBJECTION TO THE SETTLEMENT?

If you wish to present objections to the proposed settlement at the Final Fairness Hearing, you must first do so in writing by August 9, 2018. Written objections must be mailed to the Settlement Administrator at the address listed above in Paragraph 7, and must be postmarked on or before August 9, 2018. The Settlement Administrator will provide a copy of your objection to Class Counsel and Defendants' Counsel, and Class Counsel will file a copy with the Court.

Written objections must include reference to "*Ortega v. Uber Technologies, Inc.*, Case No. 1:15-cv-7387 (NGG) (JO)," and must include all reasons for the objection. The written objection must also include your name, address, and telephone number, and it must bear your signature.

If you object to the settlement, you must include with your written objection an explanation of the basis for the objection, and any supporting documents. If you do not comply with the foregoing procedures and deadlines for submitting written comments, you will not be entitled to contest or appeal from approval of the settlement or any award of attorneys' fees or expenses, or contest or appeal from any other orders or judgments of the Court entered in connection with the settlement. The Parties may file with the Court written responses to any filed objections.

You cannot both object to the settlement and opt-out of the settlement. If you opt-out, you have no basis to object because the case no longer affects you.

9. WHEN IS THE FINAL FAIRNESS HEARING?

A hearing before the Honorable Nicholas G. Garaufis, U.S.D.J., will be held on September 13, 2018 at 11:00 a.m. at the United States District Court, Eastern District of New York, 225 Cadman Plaza East, Brooklyn, New York 11201 (the "Final Fairness Hearing"). The purpose of this hearing will be for the Court to determine whether the settlement is fair, adequate, and reasonable, and whether it should be approved by the Court. The Court will take into account any comments or objections you have submitted in accordance with the procedures described above.

10. HOW CAN I GET MORE INFORMATION?

This notice does not contain all of the terms of the proposed settlement, or all of the details of these proceedings. For more detailed information, you are advised to refer to the underlying documents and papers on file with the Court, including the Modified Class Action Settlement Agreement and Release. In addition, if you have questions about this notice or need additional information, you can contact the Settlement Administrator or Class Counsel. Finally, additional information, including documents relevant to the Action and the settlement, and Class Counsel's contact information, can also be accessed at the following website: www.ortegaubersettlement.com. Please forward the link to this website to any individuals you believe to be members of the Settlement Class.