

CANADA

SUPERIOR COURT
(Class Action Division)

PROVINCE OF QUÉBEC
DISTRICT OF MONTREAL

No.: 500-06-001238-233

MARAL YERETZIAN;

Petitioner

v.

UBER PORTIER CANADA INC.

and

UBER RASIER CANADA INC.

and

UBER CASTOR CANADA INC.

and

UBER TECHNOLOGIES INC.

and

UBER CANADA INC.

and

UBER B.V.

and

RASIER OPERATIONS B.V.

and

UBER PORTIER B.V.

Respondents

**AMENDED APPLICATION FOR AUTHORIZATION TO INSTITUTE A CLASS ACTION
AND TO OBTAIN THE STATUS OF REPRESENTATIVE**
(Articles 574 and following of the *Code of Civil Procedure*)

TO (...) THE HONOURABLE DONALD BISSON, J.C.S. SITTING IN AND FOR THE DISTRICT OF MONTREAL, THE PETITIONER RESPECTFULLY ALLEGES AS FOLLOWS:

I. INTRODUCTION – THE ACTION

(...)

1. The Petitioner wishes to institute a class action on behalf of the following group, of which she is a member, namely:

All persons who used the Uber App to transport passengers and/or provide delivery services in Quebec pursuant to Service Agreements with Uber (...)

(the “**Class**” or “**Class Members**”).

II. THE PARTIES

A) THE PETITIONER

2. The Petitioner, Maral Yeretzian (“**Ms. Yeretzian**”),₁ resides in Laval, in the greater Montreal area, Quebec.
3. Ms. Yeretzian provides ridesharing services for (...) some or all of the Respondents.
4. Ms. Yeretzian has been working for the Respondents since in or around December 2019.
 - 4.1 As more amply detailed below, Ms. Yeretzian considers herself to be an employee of the Respondents, as opposed to an independent contractor, and seeks the requalification of her contractual relationship with the Respondents and obtain redress and compensation for the Respondents’ assistance of the court of be properly qualified as such and obtained the compensation and redresses associated with Respondents’ failures to qualify her and treat her as their employee.
 - 4.2 As also detailed below, Ms. Yeretzian participated in similar class proceedings initiated before the Alberta courts but which were not certified for the members living in the province of Quebec like her.

4.3. Ms. Yeretian had then filed an affidavit, filed as **Exhibit P-6**, on which she was cross-examined, as appears from the transcript of same and filed as **Exhibit P-7**, and for which she provided undertakings and answered questions taken under advisement, as appears from these responses filed as **Exhibit P-8**.

B) THE RESPONDENTS

5. The Respondents Uber Portier Canada Inc., Uber Rasier Canada Inc., Uber Castor Canada Inc., Uber Technology Inc., Uber Canada Inc., Uber B.V., Rasier Operations B.V., and Uber Portier B.V. (herein collectively referred to as “**Uber**” or the “**Respondents**”) are a worldwide transportation network company.
6. Uber develops, markets, and operates the Uber Internet application (the “**Uber App**” or “**App**”), which allows its customers to submit a trip and/or delivery request with the use of a smartphone. Uber then uses the App to alert the nearest driver of the customer’s request, location, and the price the customer will be paying the driver for the requested services.
7. Uber is the largest company of its kind worldwide. In Quebec, Uber has operations in communities including, but not limited to, major cities such as Montreal, Quebec City, and Sherbrooke, as well as other major Quebec regions. Uber provides services in those cities that include, but are not limited to, the following:
 - (a) Uber X: a ride service offered by Uber for drivers with standard 4-door vehicles;
 - (b) Uber XL: a ride service substantially similar to Uber X but offered in larger vehicles and at a premium price to Uber X;
 - (c) Uber Select: a ride service substantially similar to Uber XL but offered in luxury cars of a higher quality than Uber XL and at a premium price to the Uber XL price structure;
 - (d) Uber Black: a ride service offered by licensed limousine drivers in limousines;
 - (e) Uber SUV: a ride service similar to Uber Black using licensed limousine drivers and cars but offered in larger SUV-type limousines at a premium price to Uber Black;
 - (f) Uber LUX: a ride service similar to Uber Select but with premium luxury cars and professional drivers;
 - (g) Uber Taxi: a ride service provided by taxi drivers and cars at metered rates;
 - (h) Uber WAV (formerly Uber Access): a ride service similar to Uber Taxi but utilizing wheelchair accessible taxis;

- (i) Uber Assist: a ride service similar to Uber X for riders who require additional assistance (such as those with disabilities or older adults);
 - (j) Uber Pool: a ride service similar to Uber X but where riders can share a ride with other riders heading in the same general direction;
 - (k) Uber Comfort: a ride service with additional features such as extra legroom and personalized vehicle temperature, etc;
 - (l) Uber VIP Taxi: a ride service similar to Uber Taxi but with luxury vehicles;
 - (m) Uber Taxi Van: a ride service similar to Uber Taxi but with larger vehicles;
 - (n) Uber Green: a ride service with low-emissions vehicles;
 - (o) Uber Premier: a ride service similar to Uber X but with luxury vehicles;
 - (p) Uber Switch Health: a ride service similar to Uber Connect designed to facilitate transportation of COVID-19 tests to labs;
 - (q) Uber Pet: a ride service where customers can travel with their pets;
 - (r) Uber Eats: a food-delivery service; and,
 - (s) Uber Connect: a package-delivery service.
8. The Respondents carry on business in common with respect to the hiring, training, supervision, and control of the Class Members.
9. The business activities of Uber are provincially regulated and therefore governed by the Quebec *Act Respecting Labour Standards*, CQLR c N-1.1 (“**Act Respecting Labour Standards**”).
10. Effective on or about July 1, 2021, the Respondents corporately restructured their business operations in Canada. As a result, the Petitioner’s agreements with three of the Respondents, all of which are incorporated under the laws of the Netherlands, (Uber Portier B.V., Uber Raiser B.V., and Uber B.V.; collectively “**The Dutch Companies**”) were terminated and replaced by agreements with three of the other Respondents (Uber Portier Canada Inc., Uber Raiser Canada Inc., and Uber Castor Canada Inc.; collectively, “**The Canadian Companies**”), all of which are incorporated under the laws of Canada. The Petitioner states that the Canadian Companies are, in respect of all obligations of the Dutch Companies to the Petitioner and the Class Members stated within, related to, or arising from this action, successors in law of the Dutch Companies, and jointly and severally liable to the Petitioner and the Class Members in respect of these obligations.

III. THE FACTS

A) EMPLOYMENT RELATIONSHIP

11. Class Members are required to enter into service agreements with the Respondents in order to provide food delivery or rideshare services through the Uber App ("**Service Agreements**"). The Services Agreements must be read in conjunction with the Guidelines, which also set out the duties of the Class Members. Copies of the Service Agreements as well as the Community Guidelines are attached as **Exhibits (...), P-3, P-9 and P-10.**
12. There have been updates to the Service Agreements over time; however, the principal terms are the same. The Service Agreements are contracts of adhesion that are presented to Class Members within the Uber App. Class Members have no opportunity to negotiate the terms of the Service Agreements.
 - 12.1. Importantly, the terms of the Services Agreements, including the qualification of the Class Members as "independent contractors," do not correspond to the day-to-day reality of the Class Members. Indeed, the Services Agreements are drafted and modified by the Respondents as they see fit, including to purportedly disguise the control Respondents actually exercise over the activities of Class Members.
13. The duties performed by the Class Members and the supervision and control imposed on the Class Members by Uber create an employment relationship with Uber. In particular:
 - (a) Class Members must pass a mandatory screening process to work for Uber and this process may span over several weeks;
 - (b) Class Members must provide Uber with proof of eligibility to work in Canada (e.g., passport, social insurance number, birth certificate, permanent residency card, etc.), and they must always comply with any applicable conditions on their licences, work permits and other authorization to work in Canada;
 - (c) Uber trains all the Class Members in their operation of the App and other related software necessary in carrying out their duties;
 - (d) Class Members must use the tools of or prescribed by Uber, in the form of delivery bags, data, delivery signs, and the Uber App;
 - (e) (...) Uber prescribes the type of vehicle the Class Members (...) must supply, maintain, and use as well as the category of license they must possess in order to work for Uber;
 - (f) Class Members' vehicles are subject to mandatory inspections by Uber, where noncompliance by Class Members can result in their immediate suspension. For instance, after being involved in a collision, a driver cannot

resume providing services until Uber determine that his car is in proper condition;

- (g) (...);
- (h) (...);
- (i) all prices and compensation are solely fixed by Uber, and Uber can unilaterally cancel or reduce the fare owed to the Class Member;
- (j) Class Members do not solicit or contact customers. In fact, all customers contact Uber directly, at which point, the customers' information is provided to Class Members in order for the Class Members to service Uber's customers;
- (j.1) Class Members are forbidden to accept a ride outside the Uber App. Should they do so, they risk losing their access to the Uber App;
- (j.2) Class Members cannot negotiate rides and their fares with the customers, as per the Community Guidelines (P-3 and P-10). The Class Members therefore remain dependant of the Uber App and this prevents them from developing their own clientele, as independent contractors could do, as testified by Ms. Yeretian (P-7);
- (k) Uber maintains sole discretion whether to accept or reject any potential customers who contact Uber for services;
- (l) all customers serviced by Class Members are reported to Uber through the App and tracked by Uber;
- (m) Class Members who reduce their hours of work are denied special promotions, incentives, and pay increases;
- (n) Only Uber handles customer complaints about the Class Members;
- (o) Uber assumes responsibility for alleged misconduct of the Class Members while providing services to the public on behalf of Uber;
- (p) Uber undertakes a full review of the Class Members' performance, notably by collecting customer feedback and other related data on Class Members and can suspend or terminate a Class Member's use of the App if the service provided or the Class Member's rating is not satisfactory;
- (q) Class Members cannot sub-contract or independently employ other drivers under their App accounts with Uber to provide services on the Class Members' behalf;

- (r) Class Members are prohibited from developing their own apps to independently provide services to customers;
- (s) the services rendered by Class Members form the vast majority of Uber's revenue;
- (t) Class Members do not receive payment directly from customers; and,
- (u) Class Members are paid directly by Uber at specified intervals;
- (v) Uber provides limited information to the Class Members regarding the prospective rides, which in turn makes it difficult for the Class Members to make an informed decision when accepting a ride;
- (w) Class Members cannot set or filter order-taking criteria, including to ensure their safety, such as where they travel or whom they drive. For instance, in the spring of 2020, when the world was under the onslaught of COVID-19, Ms. Yeretian was denied the possibility to filter her rides, especially including those to the airport and with riders susceptible to carry the virus and this, despite Ms. Yeretian's requests, as appears from the stenographic notes of her cross-examination, **Exhibit P-7.**

13.3 The different constrains imposed by Uber on the Class Members, whether through the Services Agreements, the Guidelines or Uber's practices, thus creates a control relationship in which the Class Members must perform their services according to Uber's own standards: the Class Members must also accept rides from customers they cannot select and can see their relationship with Uber terminated should Uber find their performance insufficient.

13.4 The contractual relationship between Uber and the Class Members must therefore be requalified as an employment relationship.

B) THE CONTRACTS OF EMPLOYMENT AND THE ACT RESPECTING LABOUR STANDARDS

- 14. The provisions of the *Act Respecting Labour Standards* are implied terms, in fact or by law, as minimum terms of the contract of employment with Class Members.
- 15. Therefore, the contracts of employment with the Class Members expressly or impliedly provide that Class Members shall be compensated:
 - (a) at a rate equal to, or greater than, the minimum wage, as prescribed by s 3 of the *Regulation Respecting Labour Standards*, RLRQ c N-1.1, r 3 ("**Minimum Wage**");
 - (b) with overtime pay as prescribed by the *Act Respecting Labour Standards* ("**Overtime Pay**");

- (c) with vacation pay as prescribed by the *Act Respecting Labour Standards* (“**Vacation Pay**”); and,
 - (d) with statutory general holiday pay and the statutory holiday indemnity as prescribed by the *Act Respecting Labour Standards* (“**Public Holiday Pay**”).
16. In Quebec, the Respondents need to make the employer contributions to the Quebec Pension Plan, to the Quebec Parental Insurance Plan, and under the *Employment Insurance Act* (“**Applicable Statutory Deductions Legislation**”).

C) CONTRACTUAL DUTIES TO CLASS MEMBERS

17. The Class Members were and are at all times under the direct control and supervision of the Respondents, and the Class Members have always relied on the Respondents to advise them properly regarding their employee status and eligibility for Minimum Wage, Overtime Pay, Vacation Pay, and Public Holiday Pay and to fulfill their contractual and statutory employment responsibilities to keep track of and pay the Class Members at, or above, the Minimum Wage, and for Overtime Pay, (...) Vacation Pay, and (...) Public Holiday Pay.
18. Uber is and was in a position of power and direct control over the Class Members and the Class Members were in a vulnerable position vis-à-vis the Respondents.
- 18.1 The vulnerability of the Class Members is heightened by the fact, fully known by the Respondents, that many of the Class Members are in dire financial needs and resort to become a driver for lack of better employment opportunities.
19. The Respondents owe and owed contractual duties to the Class Members, including their contractual duty of good faith, all of which required, and continues to require, the Respondents to:
- (a) ensure that Class Members are properly classified as employees;
 - (b) advise Class Members of their entitlements to the Minimum Wage, Overtime Pay, Vacation Pay, and Public Holiday Pay;
 - (c) ensure that Class Members’ hours of work are monitored and accurately recorded; and,
 - (d) ensure that Class Members are appropriately compensated at, or above, the Minimum Wage, and for Overtime Pay, (...) Vacation Pay, and (...) Public Holiday Pay.
20. The Respondents have intentionally taken advantage of Class Members’ vulnerability and deliberately profited at the expense of Class Members, who have been deprived of minimum labour standards as protected by Quebec legislation.

21. Consequently, the Respondents have violated fundamental rights of Class Members, with respect to their work and security, by breaching public order employee protection as set by the *Act Respecting Labour Standards*, RLRQ c N-1.1 and the *Charter of Human Rights and Freedoms*, RLRQ c C-12.

D) DISPUTE RESOLUTION MECHANISM

22. The Service Agreements contain provisions requiring disputes to be submitted to arbitration.
23. On June 26, 2020, in *Uber Technologies Inc. v. Heller*, 2020 CSC 16, the Supreme Court of Canada set aside a prior version of the dispute-resolution provisions, determining them unconscionable.
24. On or around August 26, 2020, the Respondents implemented amendments to the Service Agreement, in particular to the dispute-resolution provisions (the “**New Arbitration Clause**”).
25. The Respondents delivered the New Arbitration Clause directly to the Class Members through the App. The Class Members were not able to log into the App and work unless they accepted the New Arbitration Clause by clicking “Yes, I agree.”
26. The New Arbitration Clause sought to amend the Class Members’ Service Agreements with each of the Dutch Companies (now with the Canadian Companies) by:
 - (a) requiring Class Members to resolve all disputes arising out of their Service Agreements, or relationship with Uber, on an individual basis through arbitration pursuant to the Arbitration Rules of the ADR Institute of Canada Inc.;
 - (b) precluding Class Members from participating in any class action or collective proceeding and likewise from seeking or being eligible to recover monetary or other relief in connection with any class action or collective proceeding (the “**Class Action Waiver**”);
 - (c) requiring that any dispute as to the validity, enforceability, conscionability, or breach of the Class Action Waiver, including whether it is void or voidable, be resolved by a court; and,
 - (d) allowing Class Members to “opt out” of the New Arbitration Clause within 30 days of “accepting” the terms therein by sending an email to an address administered by the Respondents indicating their intention to opt out.

(...)

A copy of the New Arbitration Clause is attached as **Exhibit P-4**.

27. The New Arbitration Clause is null and unenforceable for the following reasons, *inter alia*:
- (a) it is contrary to the *Act Respecting Labour Standards*;
 - (b) it was not freely negotiated with Class Members, but rather unilaterally imposed on them by the Respondents;
 - (c) the Class Members' consent was vitiated by fear and constraint;
 - (d) the Class Members' consent was vitiated by error; and,
 - (e) the mechanism to opt out from the New Arbitration Clause clearly creates an undue burden on Class Members especially considering the short period to opt out;
 - (f) a renunciation by a worker domiciled in Quebec to file a labour action cannot be set up against them;
 - (g) is abusive as per article 1437 of the Civil Code of Quebec.
28. The Respondents exerted undue pressure on Class Members, who rely on the Respondents to earn income and are in a vulnerable position, by requiring them to accept the New Arbitration Clause in order to access the App and continue to work for Uber.
29. The Respondents unduly discouraged Class Members from "opting out" of the New Arbitration Clause by, *inter alia*:
- (a) placing the relevant instructions at the end of the amendments, which were many pages in length and viewed on the Class Members' (...) phones;
 - (b) providing for an unreasonably short 30-day time limit;
 - (c) failing to make the mechanism to "opt out" clear and requiring Class Members to send specifically worded emails to specific email addresses; and,
 - (d) requiring steps to "opt(...)out" that are substantially more onerous than accepting the New Arbitration Clause, which involved simply clicking "Yes, I agree" in the App.
- 29.1. To summarize, in order to earn a living by providing services to the Respondents, the Class Members were forced to accept a non-negotiable arbitration clause at the end of a cumbersome 25-page legal document, which drastically limits their rights of access to the Courts, not to mention becoming irrevocable unless the Class Members take active action within a short period of time.

30. In the context of the New Arbitration Clause imposed on Class Members, the Respondents omitted material and necessary information, including not advising Class Members of a proposed class action (*Virani v Uber Portier Canada Inc.*, which has been certified by the Court of King's Bench of Alberta, Court File No. 2001-08472 on April 25, 2023) commenced on behalf of a proposed class that included people who used the Uber App to transport passengers and/or provide delivery services pursuant to a Service Agreement with Uber notably in Quebec, or how their failure to "opt out" of the New Arbitration Clause would impact their ability to participate in that proposed class action.

E) OTHER SIMILAR CLASS ACTIONS AUTHORIZED BY CANADIAN COURTS

- 30.1 Prior to this proceeding, two class actions were filed in the provinces of Ontario (*Heller v. Uber*, docket number CV-17-567946-00CP; the "**Ontario Case**") and Alberta (*Virani v. Uber*, docket number 2001-08472; the "**Alberta Case**") seeking the requalification of the Uber drivers as employees within the meaning of the applicable provincial employment standards legislation.
- 30.2 The Ontario Case was filed on January 19, 2017, on behalf of the Ontario drivers. On August 12, 2021, the Ontario Superior Court certified the class action.
- 30.3 The Alberta Case was filed on July 2, 2020, as appear from the motion for certification of same date, filed as **Exhibit P-11**. On August 9, 2021, Mr. Virani then sought the certification of a class action on behalf of all drivers working for Uber across Canada, except the Ontario drivers. The purported class thus included drivers living in the province of Quebec, such as Ms. Yeretian.
- 30.4 Ms. Yeretian provided the affidavit filed as Exhibit P-6 in the context of the Alberta Case.
- 30.5 On April 25, 2023, the Alberta Court of King's Bench certified a class action, as appears from the judgment of same date and filed as **Exhibit P-12**. The Court then limited the class to the drivers living in Alberta, thereby excluding from the Alberta Case Ms. Yeretian and other drivers living in Quebec.

IV. CONDITIONS REQUIRED TO INSTITUTE A CLASS ACTION

A) THE CLAIMS OF THE MEMBERS OF THE CLASS RAISE IDENTICAL, SIMILAR OR RELATED ISSUES OF LAW OR FACT

31. The claims of the Class Members raise identical, similar or related questions of fact or law, namely:
- (a) Do the predominate features of the Respondents' business model and relationship with the Class Members lead to a finding that the Class Members are the Respondents' employees?

- (b) Do the minimum requirements of the *Act Respecting Labour Standards* with respect to Minimum Wage, Overtime Pay, Vacation Pay, and Public Holiday Pay constitute implied terms of the contracts with Class Members?
- (c) Do the Respondents owe contractual duties and/or statutory obligations to ensure that Class Members were compensated for Minimum Wage, Overtime Pay, Vacation Pay, and Public Holiday Pay?
 - i. If the answer to Common Issue (c) is “yes,” did the Respondents fail to pay the Class Members Minimum Wage, Overtime Pay, Vacation Pay, and/or Public Holiday Pay as required by the Respondents’ contractual duties and/or statutory obligations pursuant to the *Act Respecting Labour Standards*?
 - ii. If the answer to Common Issue (c) is “yes,” did the Respondents fail to make employer contributions to the Applicable Statutory Deductions Legislation? If so, have the Respondents been unjustly enriched?
- (d) Are the Class Members entitled to an award of punitive damages based on the Respondents’ conduct? If so, in what amount?
- (e) (...)Are the New Arbitration Clause and/or Class Action Waiver implemented by the Respondents on or around August 26, 2020 unenforceable on the basis that (...) they, *inter alia*:
 - i. (...) are contrary to the *Act Respecting Labour Standards*; and/or,
 - ii. (...) breach principles of contract formation; and/or
 - iii. are abusive clauses?

B) THE FACTS ALLEGED APPEAR TO JUSTIFY THE CONCLUSIONS SOUGHT

(1) THE FACTS GIVING RISE TO AN INDIVIDUAL ACTION BY THE PETITIONER

- 32. Ms. Yeretzian began her employment with Uber in or around December 2019.
- 33. Ms. Yeretzian’s duties and responsibilities include:
 - (a) ensuring that the vehicle used is safe to operate and meets the specifications/requirements set out by Uber;
 - (b) ensuring that the App is operational so that she can provide services to Uber’s customers;
 - (c) using the App to locate Uber’s customers;

- (d) arriving at passengers' requested pick-up location and transporting them to their requested destination;
 - (e) following route guidance to ensure passengers are dropped off at their destinations in a safe and timely manner; and,
 - (f) other duties and responsibilities as assigned.
34. Ms. Yeretzian relied on the Respondents in good faith and was unaware that she was an employee and entitled to the Minimum Wage, Overtime Pay, Vacation Pay, and Public Holiday Pay. At the time, Ms. Yeretzian relied on the Respondents to properly classify her regarding her status as an employee and her entitlement to Minimum Wage, Overtime Pay, Vacation Pay, and Public Holiday Pay. Ms. Yeretzian was misled by the Respondents that she was not an employee of the Respondents.
35. Ms. Yeretzian did not become aware that she was eligible as an employee for Minimum Wage, Overtime Pay, Vacation Pay, and Public Holiday Pay because the Respondents had continually misrepresented her actual eligibility and entitlement to such pay.
- 35.1 Furthermore, it was impossible for Ms. Yeretzian to assert her status as an employee of the Respondents with government authorities, since the Respondents never issued and provided her with the relevant tax statements (i.e. T4 slips, "Statement of Remuneration Paid") that would have enabled Ms. Yeretzian to assert her point.
36. Ms. Yeretzian's duties are consistent with the duties of all Class Members and the controls imposed by Uber.
37. At all material times, Ms. Yeretzian and other Class Members were directed how, when, and where they could provide driving services for Uber's customers.
- 37.1. This materialises, *inter alia*, in the following manners:
- a) The Respondents required Ms. Yeretzian to complete and provide them with various forms and paperwork, and needed her to meet with them in their local office in Montreal before she allowed to become a driver;
 - b) The passengers serviced by Ms. Yeretzian are Uber's at all material times; all communications with passengers are channelled through the Uber App and accordingly, Ms. Yeretzian does not have any direct commercial relationship with the passengers;
 - c) Ms. Yeretzian cannot filter the requests for rides and was denied the possibility of doing so when she had concerns for her safety;
 - d) Uber controls the amounts paid to her.

38. The Respondents require Ms. Yeretzian and other Class Members to consistently be available for work or risk reduced pay and loss of incentives and/or promotions.
39. The Respondents were aware of and/or encouraged Ms. Yeretzian and all other Class Members to work overtime hours, which were necessary in order to earn a liveable wage. The Respondents required and/or permitted Ms. Yeretzian and other Class Members to work hours for which they ought to have been paid Overtime Pay in accordance with the Act Respecting Labour Standards but failed or refused to provide them with Overtime Pay, contrary to their contractual terms.
40. At all material times, Ms. Yeretzian and the other Class Members were explicitly and incorrectly informed that they were not employees of Uber.
41. The Respondents failed and continue to fail to compensate Ms. Yeretzian and the other Class Members for Vacation Pay, contrary to their contractual terms.
42. The Respondents failed and continue to fail to compensate Ms. Yeretzian and the other Class Members for Public Holiday Pay, contrary to their contractual terms.
43. Ms. Yeretzian opted out of the New Arbitration Clause on or around July 24, 2021. (...) A copy of Ms. Yeretzian's opt-out email is attached as **Exhibit P-5**.

(2) THE FACTS GIVING RISE TO AN INDIVIDUAL ACTION BY EACH OF THE CLASS MEMBERS

44. Each Class Member entered into the same or a substantially similar Service Agreement with the Respondents and each has the following rights of action.
 - 44.1. The situation of the Class Members is also substantially similar to the ones of the drivers working in the other Canadian provinces than Quebec.

(i) Unlawful and Systemic Classification as Independent Contractors

45. Pursuant to the Service Agreements, the Respondents systematically classified all drivers as independent contractors and required and/or permitted the Class Members to regularly work hours without receiving the Minimum Wage, Overtime Pay, Vacation Pay, or Public Holiday Pay, under the misrepresentation from Uber that drivers were independent contractors.
 - 45.1 In this regard, the Respondents must have known that several people decided to join the App because of their pressing financial needs, such as Mr. Karim Traoré, whose affidavit dated December 13, 2021 is communicated as **Exhibit P-13**.
 - 45.2 This puts potential drivers in a difficult and untenable situation, in which they must either accept the Respondents' abusive terms and conditions without being able to negotiate them or ask for modifications or renounce to start completing journeys and earn revenues.

46. The Respondents were aware that the Class Members relied on the Respondents to advise them properly of their employment status and eligibility for Minimum Wage, Overtime Pay, Vacation Pay, and Public Holiday Pay and to fulfill their contractual and statutory employment responsibilities to keep track of and pay the Class Members for their hours worked.
47. The Respondents exerted persuasive pressure on Class Members to work overtime hours. If Class Members did not work regularly and did not work overtime as required to complete their employment responsibilities, such Class Members would not be eligible for pay raises and incentives and/or promotions.

(ii) Systemic Breach of the Act Respecting Labour Standards

48. The Respondents have systemically breached the provisions of the *Act Respecting Labour Standards* with respect to all Class Members by:
 - (a) failing to ensure that Class Members were properly classified as employees;
 - (b) failing to advise Class Members of their entitlement to Minimum Wage, Overtime Pay, Vacation Pay, and Public Holiday Pay;
 - (c) failing to ensure that the Class Members' hours of work were monitored and accurately recorded;
 - (d) requiring and/or permitting the Class Members to work hours for which the Respondents failed to compensate at a rate equal to, or above, the Minimum Wage;
 - (e) requiring and/or permitting the Class Members to work overtime hours but failing to ensure that Class Members were compensated with Overtime Pay;
 - (f) failing to compensate Class Members for Vacation Pay; and,
 - (g) failing to compensate Class Members for Public Holiday Pay.
49. Uber's (...) classification of its drivers as independent contractors and denial of Minimum Wage, Overtime Pay, Vacation Pay, and Public Holiday (...) Pay to Class Members are in violation of the *Act Respecting Labour Standards* (...) are unlawful.
50. To the extent that any contracts purport to designate the Class Members as independent contractors and exclude the Class Members from eligibility for the Minimum Wage, Overtime Pay, Vacation Pay, and Public Holiday (...) Pay or any other minimum requirement under the *Act Respecting Labour Standards*, such contracts and/or provisions are void and unenforceable.

(iii) Systemic Breach of Contract

51. The Respondents systematically breached the contracts with the Class Members and the contractual duty of good faith owed to the Class Members by:
- (a) improperly and arbitrarily misclassifying the Class Members as independent contractors;
 - (b) misrepresenting to Class Members that the Class Members were independent contractors;
 - (c) failing to monitor and keep track of the hours worked by the Class Members; and,
 - (d) requiring and/or permitting the Class Members to work regular hours and overtime hours but failing to compensate the Class Members as required for the Minimum Wage, Overtime Pay, Vacation Pay, and Public Holiday Pay.
52. There was not a legitimate basis for the Respondents' deliberate and (...) unlawful designation of the Class Members as independent contractors and for denying eligibility for Minimum Wage, Overtime Pay, Vacation Pay, and Public Holiday Pay, which was contrary to the Class Members' express or implied terms of contract with the Respondents. Such classification and exclusion are contrary to the terms of the *Act Respecting Labour Standards*, which are the minimum protection of employees in Quebec.
53. Such breaches are ongoing.
- (iv) Unjust Enrichment**
54. The Respondents have been unjustly enriched by failing to make the employer contributions pursuant to the Applicable Statutory Deductions Legislation.
55. The Class Members have suffered a corresponding deprivation. The Respondents' failure to make the employer contribution to the Applicable Statutory Deductions Legislation has resulted in the Class Members being ineligible for the benefits and protections offered by these government programs.
56. There is no (...) justification for the Respondents' unjust enrichment and the Class Members' corresponding deprivation.

C) THE COMPOSITION OF THE CLASS

57. The composition of the Class makes it difficult or impracticable to apply the rules for mandates to take part in judicial proceedings on behalf of others or for consolidation of proceedings for the following reasons:
- (a) Class Members are numerous and are estimated to be in the thousands;

- (b) (...) the names and addresses of the Class Members are not known to the Petitioner (but are likely known to the Respondents);
 - (c) (...) given the costs and risks inherent in an action before the courts, many people will hesitate to institute an individual action against the Respondents. Even if Class Members themselves could afford such individual litigation, it would place an unjustifiable burden on the courts;
 - (d) (...) individual litigation of the factual and legal issues raised by the conduct of the Respondents would increase delay and expense to all parties and to the court system;
 - (e) (...) a multitude of actions risks having contradictory judgments on questions of fact and law that are similar or related to all Class Members; and,
 - (f) (...) it would be impractical, if not impossible, to contact each and every Class Member to obtain consent to join them in one action.
58. In these circumstances, a class action is the only appropriate procedure for all of the Class Members to effectively pursue their respective rights and have access to justice.

D) THE CLASS MEMBER REQUESTING TO BE APPOINTED AS REPRESENTATIVE PLAINTIFF IS IN A POSITION TO ADEQUATELY REPRESENT THE CLASS MEMBERS

59. The Petitioner requests that she be appointed as representative plaintiff for the following main reasons:
- (a) she is a member of the Class and has a personal interest in seeking the conclusions proposed herein;
 - (b) she is competent and has the capacity and interest to fairly and adequately protect and represent the interest of Class Members; and,
 - (c) her interests are not antagonistic to those of other Class Members and (...) do not conflict with the interests of other Class Members.
60. In addition, the Petitioner is ready and available to manage and direct the present action in the interest of the Class Members she wishes to represent and is determined to lead the present dossier until a final resolution of the matter, the whole for the benefit of the Class, and to dedicate the time necessary for the present action before the Courts of Quebec, and to collaborate with her lawyers.
61. The Petitioner has given the mandate to her lawyers to obtain all relevant information with respect to the present action and intends to (...) be kept informed of all developments.

62. The Petitioner is ready and available to dedicate the time necessary for this action and to collaborate with other Class Members and to keep them informed.
63. The Petitioner has given instructions to her lawyers to put information about this class action on their website and to collect the contact information of Class Members who wish to be kept informed and participate in any resolution of the present matter, the whole as will be shown at the hearing.
64. The Petitioner is in good faith and has instituted this action for the sole goal of having her rights, as well as the rights of other Class Members, recognized and protected so that they may be compensated for the damages that they have suffered because of the Respondents' conduct.
65. The Petitioner understands the nature of the action.

V. DAMAGE

66. As a result of the Respondents' breaches of the *Act Respecting Labour Standards*, breaches of contract pursuant to articles 1458 and 2085 of the *Civil Code of Québec*, and/or (...) unjust enrichment, the Class Members have suffered damages and losses, including lost Minimum Wages, Overtime Pay, Vacation Pay, and Public Holiday Pay, ineligibility for the government programs offered by the Applicable Statutory Deductions Legislation, and, any consequential damages resulting from the determination that the Class Members are/were employees of the Respondents and not independent contractors.
67. Furthermore, the Respondents' unlawful classification of the Class Members as independent contractors and exclusion from the Minimum Wage, Overtime Pay, Vacation Pay, and Public Holiday Pay, coupled with the Respondents' willingness and/or requirement that Class Members work overtime hours, was high handed and callous. It constitutes a breach of the *Charter of Human Rights and Freedoms*. The Respondents are/were in a position of power over vulnerable employees and owed them a duty of good faith, which the Respondents flagrantly breached to increase their profits at the expense of the Class Members. Such conduct warrants an award of punitive damages in the amount of \$10,000,000 pursuant to article 1611 of the *Civil Code of Québec*, to be amended.

VI. THE PETITIONER SUGGESTS THE DISTRICT OF MONTREAL

68. The Petitioner suggests that this class action be exercised before the Superior Court of Justice in the district of Montreal.
69. (...)
70. A great number of Class Members likely reside in the judicial district of Montreal and in the appeal district of Montreal.
71. The Defendants have establishments either in Montreal or in the surrounding area.

72. The Petitioner's lawyers have their offices in the district of Montreal, as well as the defendants'.

VII. NATURE OF THE ACTION AND CONCLUSIONS SOUGHT

73. The action that the Petitioner wishes to institute for the benefit of the Class Members is an action in damages.
74. The conclusions that the Petitioner wishes to introduce by way of an application to institute proceedings are:

GRANT the Petitioner's action against the Respondents on behalf of all Class Members;

DECLARE that the Respondents are liable to the Class Members for the following:

- i. breach of the *Act Respecting Labour Standards*;
- ii. breach of contract; and,
- iii. unjust enrichment.

CONDEMN the Respondents, solidarily, to pay to the Petitioner and each Class Member an amount for pecuniary damages, to be determined at trial, as well as interest at the legal rate and the additional indemnity provided for at article 1619 of the *Civil Code of Québec*, from the date of service of the Application for Authorization to Institute a Class Action and to Obtain the Status of Representative;

CONDEMN the Respondents, solidarily, to pay to the Petitioner and the Class Members the amount of \$10,000,000 as punitive damages as well as interest at the legal rate and the additional indemnity provided for at article 1619 of the *Civil Code of Québec*, from the date of service of the Application for Authorization to Institute a Class Action and to Obtain the Status of Representative;

ORDER (...) collective recovery of the claims for pecuniary damages for all (...) Class Members and individual liquidation of the claims of Class Members in accordance with articles 595 to 598 of the *Code of Civil Procedure*, or, alternatively, the individual recovery of claims for pecuniary damages for all Class Members in accordance with articles 599 to 601 of the *Code of Civil Procedure*;

ORDER collective recovery of the claims for punitive damages for all Class Members and individual liquidation of the claims of Class Members in accordance with articles 595 to 598 of the *Code of Civil Procedure*;

THE WHOLE with judicial costs, including fees for notices and experts.

FOR THESE REASONS, MAY IT PLEASE THIS HONOURABLE COURT TO:

GRANT this Application for Authorization to Institute a Class Action and to Obtain the Status of Representative;

AUTHORIZE this class action as follows:

An action for damages based on breaches of the *Act Respecting Labour Standards*, breaches of contract, and unjust enrichment;

APPOINT the Petitioner, Maral Yeretian, as Representative of the Class herein described as:

All persons who used the Uber App to transport passengers and/or provide delivery services pursuant to a Service Agreement with Uber in Quebec;

IDENTIFY as follows the main issues of fact and law to be dealt with collectively:

- (a) Do the predominant features of the Respondents' business model and relationship with the Class Members lead to a finding that the Class Members are the Respondents' employees?
- (b) Do the minimum requirements of the *Act Respecting Labour Standards* with respect to Minimum Wage, Overtime Pay, Vacation Pay, and Public Holiday Pay constitute implied terms of the contracts with Class Members?
- (c) Do the Respondents owe contractual duties and/or statutory obligations to ensure that Class Members were compensated for Minimum Wage, Overtime Pay, Vacation Pay, and Public Holiday Pay?
 - i. If the answer to Common Issue (c) is "yes," did the Respondents fail to pay the Class Members Minimum Wage, Overtime Pay, Vacation Pay, and/or Public Holiday (...) Pay as required by the Respondents' contractual duties and/or statutory obligations pursuant to the *Act Respecting Labour Standards*?
 - ii. If the answer to Common Issue (c) is "yes," did the Respondents fail to make employer contributions to the Applicable Statutory Deductions Legislation? If so, have the Respondents been unjustly enriched?

- (d) Are the Class Members entitled to an award of punitive damages based on the Respondents' conduct? If so, in what amount?
- (e) (...) Are the New Arbitration Clause and/or Class Action Waiver implemented by the Respondents on or around August 26, 2020 unenforceable on the basis that they (...), *inter alia*:
 - i. (...) are contrary to the *Act Respecting Labour Standards*; and/or,
 - ii. (...) breach principles of contract formation; and/or
 - iii. are abusive clauses?

IDENTIFY the conclusions sought by the class action to be instituted as being the following:

GRANT the Petitioner's action against the Respondents on behalf of all Class Members;

DECLARE that the Respondents are liable to the Class Members for the following:

- i. breach of the *Act Respecting Labour Standards*;
- ii. breach of contract; and,
- iii. unjust enrichment.

CONDEMN the Respondents, solidarily, to pay to the Petitioner and each Class Member an amount for pecuniary damages, to be determined at trial, as well as interest at the legal rate and the additional indemnity provided for at article 1619 of the *Civil Code of Québec*, from the date of service of the Application for Authorization to Institute a Class Action and to Obtain the Status of Representative;

CONDEMN the Respondents, solidarily, to pay to the Petitioner and the Class Members the amount of \$10,000,000 as punitive damages as well as interest at the legal rate and the additional indemnity provided for at article 1619 of the *Civil Code of Québec*, from the date of service of the Application for Authorization to Institute a Class Action and to Obtain the Status of Representative;

ORDER (...) collective recovery of the claims for pecuniary damages for all (...) Class Members and individual liquidation of the claims of Class Members in accordance with articles 595 to 598 of the *Code of Civil Procedure*, or, alternatively, the individual recovery of claims for pecuniary

damages for all Class Members in accordance with articles 599 to 601 of the *Code of Civil Procedure*;

ORDER collective recovery of the claims for punitive damages for all Class Members and individual liquidation of the claims of Class Members in accordance with articles 595 to 598 of the *Code of Civil Procedure*;

THE WHOLE with judicial costs, including fees for notices and experts.

DECLARE that any Class Member who has not requested his/her/their exclusion from the Class be bound by any judgment to be rendered (...) in the class action, in accordance with the law;

FIX the deadline for exclusion at sixty (60) days after the date of the notice to Class Members, at the expiry of which Class Members who have not requested their exclusion will be bound by any judgment to be rendered;

ORDER the publication of a notice to Class Members in accordance with article 576 of the *Code of Civil Procedure*, in a manner and form to be determined by this Honourable Court;

REFER the record to the Chief Justice so that he may fix the district in which this class action is to be brought and the judge before whom it will be heard;

THE WHOLE with judicial costs, including expert fees and notice publication fees.

MONTREAL, November 17, 2023

Woods s.e.n.c.r.l./LLP

Woods LLP

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Winnipeg, November 17, 2023

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No.: 500-06-001238-233

**SUPERIOR COURT
DISTRICT OF MONTREAL
PROVINCE OF QUÉBEC**

MARAL YERETZIAN

Petitioner

v.

UBER PORTIER CANADA INC. et als.

Respondents

**AMENDED APPLICATION FOR
AUTHORIZATION TO INSTITUTE A CLASS
ACTION AND TO OBTAIN THE STATUS OF
REPRESENTATIVE**
(Articles 574 and following of the *Code of Civil
Procedure*)

ORIGINAL

Mtre. Laurence Ste-Marie
Mtre. Ioana Jurca
Mtre. Simon-Alexandre Poitras
File No.: 7501-1

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