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ELECTRONICALLY
FILED
Superior Court of California,
County of San Francisco
05/09/2019
Clerk of the Court
BY: ANNA TORRES
Deputy Clerk

11 Attorneys for Defendants
12 UBER TECHNOLOGIES, INC.; RASIER, LLC;
13 and RASIER-CA, LLC

14 SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN FRANCISCO

15 UNLIMITED JURISDICTION

16 LAURA OWENS,

17 Plaintiff,

18 v.

19 Z Aid ESSAM SALEH ALKURDI, an
20 individual; UBER TECHNOLOGIES, INC.,
21 a Delaware Corporation; RASIER, LLC, a
22 Delaware limited liability corporation;
23 RASIER-CA, LLC, a Delaware limited
24 liability Corporation; BRUCE ROBERT
25 BROGDEN, an individual; NU FOREST
26 PRODUCTS, INC., a California Corporation;
27 and DOES 1-20, Inclusive,

28 Defendants.

No. CGC-19-575032

**DEFENDANT RASIER, LLC'S
ANSWER TO COMPLAINT**

**JUDGE: Garrett L. Wong
DEPT: 610**

TRIAL DATE: None Set

CMC: September 4, 2019 at 10:30AM

Complaint Filed: April 4, 2019

29 COMES NOW, Defendant RASIER, LLC (hereinafter "Defendant"), severing itself from
30 all other co-defendants, and answering the Complaint (hereinafter "Complaint") on file herein as
31 follows:

32 1. Inasmuch as the Complaint is not verified under the provisions of Section 431.30
33 of the California Code of Civil Procedure, this answering Defendant denies generally each, every
34 and all of the allegations in said Complaint, and the whole thereof, including denial of all sums

1 and amounts alleged, to be alleged or otherwise.

2 **SEPARATE AFFIRMATIVE DEFENSES**

3 2. This answering Defendant does not, by stating the matters set forth in these
4 defenses, allege or admit that it has the burden of proof and/or persuasion with respect to any of
5 these matters, and does not assume the burden of proof or persuasion as to any matters to which
6 Plaintiff has the burden of proof or persuasion.

7 **FIRST AFFIRMATIVE DEFENSE**

8 **[Apportionment of Fault]**

9 3. As and for a separate and affirmative defense to the Complaint and to each
10 purported cause of action contained therein, this answering Defendant is informed and believes
11 and based thereon alleges: Defendant denies it was negligent in any fashion with respect to the
12 damages, losses, injuries and debts claimed by the Plaintiff in the Complaint on file herein;
13 however, if this answering Defendant is found to be negligent (which supposition is denied and
14 merely stated for the purpose of this affirmative defense), then this answering Defendant
15 provisionally alleges that Defendant's negligence is not the sole and proximate cause of the
16 resultant damages, losses and injuries alleged by Plaintiff and that the damages awarded to
17 Plaintiff, if any, be apportioned according to the respective fault of the parties, persons, and
18 entities, or their agents, servants, and employees who contributed to and/or caused said resultant
19 damages as alleged, according to the proof presented at the time of trial. That to assess any greater
20 percentage of fault and damages against this answering Defendant in excess of this answering
21 Defendant's percentage of fault would be a denial of California equal protection and due process
22 and Federal equal protection and due process, all guaranteed by the respective Constitutions.

23 **SECOND AFFIRMATIVE DEFENSE**

24 **[Comparative Fault]**

25 4. As and for a separate and affirmative defense to the Complaint and to each
26 purported cause of action contained therein, this answering Defendant is informed and believes
27 and based thereon alleges: The injuries to the Plaintiff, if any, were sustained in that Plaintiff
28 failed to exercise ordinary and reasonable care or caution concerning the matters alleged in

1 the Complaint; and such negligence on Plaintiff's part constitutes a bar to any recovery by said
2 Plaintiff, or in the alternative, the recovery, if any, by said Plaintiff should be reduced in proportion
3 to the extent such negligence was a cause of Plaintiff's injuries and damages, if any.

4 **THIRD AFFIRMATIVE DEFENSE**

5 **[Assumption of Risk]**

6 5. As and for a separate and affirmative defense to the Complaint, and to each
7 purported cause of action contained therein, this answering Defendant is informed and believes
8 and based thereon alleges: Plaintiff knowingly, willingly and voluntarily assumed the risk of all
9 damages, if any.

10 **FOURTH AFFIRMATIVE DEFENSE**

11 **[Equitable Indemnity]**

12 6. As and for separate and affirmative defense to the Complaint, and to each purported
13 cause of action contained therein, this answering Defendant is informed and believes and based
14 thereon alleges: Any and all events, happenings, injuries and damages set forth in the Complaint,
15 if any, were proximately caused and contributed to by the acts and/or omissions of Plaintiff, and
16 such acts and/or omissions totally bar or reduce any recovery on the part of Plaintiff.

17 **FIFTH AFFIRMATIVE DEFENSE**

18 **[No Duty]**

19 7. As and for a separate and affirmative defense to the Complaint, and to each
20 purported cause of action contained therein, this answering Defendant is informed and believes
21 and based thereon alleges: Any recovery on the Complaint, or any claim for relief averred therein,
22 is barred to the extent this answering Defendant owed no duty to Plaintiff.

23 **SIXTH AFFIRMATIVE DEFENSE**

24 **[No Causation]**

25 8. As and for a separate and affirmative defense to the Complaint, and to each
26 purported cause of action contained therein, this answering Defendant is informed and believes
27 and based thereon alleges: To the extent Plaintiff suffered damages, which Defendant denies, such
28 injury or damage was not proximately caused by any conduct or inaction of this answering

1 Defendant, or was not foreseeable, or both.

2 **SEVENTH AFFIRMATIVE DEFENSE**

3 **[Alleged Injury or Damage Caused by Others]**

4 9. As and for a separate and affirmative defense to the Complaint, and to each
5 purported cause of action contained therein, this answering Defendant is informed and believes
6 and based thereon alleges: To the extent Plaintiff suffered injury or damage, which Defendant
7 denies, such injury or damage was caused by the action or conduct of others, not this answering
8 Defendant.

9 **EIGHTH AFFIRMATIVE DEFENSE**

10 **[Existing Prior Injury]**

11 10. As and for a separate and affirmative defense to the Complaint, and to each
12 purported cause of action contained therein, this answering Defendant is informed and believes
13 and based thereon alleges: To the extent Plaintiff suffered injury or damage, which Defendant
14 denies, such injury or damage was sustained prior to the incident alleged by the Plaintiff in the
15 Complaint on file herein.

16 **NINTH AFFIRMATIVE DEFENSE**

17 **[Uncertainty]**

18 11. As and for a separate and affirmative defense to the Complaint, and to each
19 purported cause of action contained therein, this answering Defendant is informed and believes
20 and based thereon alleges: Plaintiff's Complaint and the allegations thereof are uncertain, vague
21 and ambiguous.

22 **TENTH AFFIRMATIVE DEFENSE**

23 **[Limitation on Damages]**

24 12. As and for a separate and affirmative defense to the Complaint, and to each
25 purported cause of action contained therein, this answering Defendant is informed and believes
26 and based thereon alleges: Plaintiff's Complaint seeks an award of improper damages, including
27 but not limited to medical damages beyond those permitted by law.

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ELEVENTH AFFIRMATIVE DEFENSE

[Offset]

13. As and for a separate and affirmative defense to the Complaint, and to each purported cause of action contained therein, this answering Defendant is informed and believes and based thereon alleges: The costs incurred, or paid by the Plaintiff, if any, for repair of property damage, medical care, dental care, custodial care or rehabilitation services, loss of earning or other economic loss, in the past or future, were or will, with reasonable certainty be replaced or indemnified, in whole or in part, from one or more collateral source, including by or through insurance available to the Plaintiff under the terms of the Patient Protection and Affordable Care Act, and as such the Defendant is entitled to have any award reduced in the amount of such payments.

TWELFTH AFFIRMATIVE DEFENSE

[Howell v. Hamilton Meats]

14. As and for a separate and affirmative defense to the Complaint and to each purported cause of action contained therein, this answering Defendant is informed and believes and based thereon alleges: Plaintiff’s recovery for past medical expenses or other economic loss or benefit, if any, is limited to the lesser of the amount paid or the reasonable value of those services or benefits.

THIRTEENTH AFFIRMATIVE DEFENSE

[Patient Protection and Affordable Care Act]

15. As and for a separate and affirmative defense to the Complaint and to each purported cause of action contained therein, this answering Defendant is informed and believes and based thereon alleges: Plaintiff is excluded from recovering any amounts which have been, or will, indemnify Plaintiff, for any past or future claimed medical expenses, health care, life care, or other economic loss or benefit that is offered, or provided under or in connection with the Patient Protection and Affordable Care Act.

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FOURTEENTH AFFIRMATIVE DEFENSE

[Failure to Obtain Health Insurance]

16. As and for a separate and affirmative defense to the Complaint and to each purported cause of action contained therein, this answering Defendant is informed and believes and based thereon alleges: In the event Plaintiff has failed to obtain health insurance coverage available to Plaintiff, which he is eligible to obtain under the Patient Protection and Affordable Care Act, Plaintiff has failed to mitigate Plaintiff’s damages and cannot recover for such failure.

FIFTEENTH AFFIRMATIVE DEFENSE

[Failure to Utilize Health Insurance Benefits]

17. As and for a separate and affirmative defense to the Complaint and to each purported cause of action contained therein, this answering Defendant is informed and believes and based thereon alleges: To the extent Plaintiff failed to take reasonable steps to utilize the resources, service benefits, and coverage available to Plaintiff under the Patient Protection and Affordable Care Act, Plaintiff has failed to mitigate Plaintiff’s damages and cannot recover for such failure.

SIXTEENTH AFFIRMATIVE DEFENSE

[Affordable Care Act and Future Damages]

18. As and for a separate and affirmative defense to the Complaint and to each purported cause of action contained therein, this answering Defendant is informed and believes and based thereon alleges: Plaintiff will be limited to the reasonable value, if any, of future medical services available to Plaintiff under the Affordable Care Act.

SEVENTEENTH AFFIRMATIVE DEFENSE

[No Injury or Damage]

19. As and for a separate and affirmative defense to the Complaint, and to each purported cause of action contained therein, this answering Defendant is informed and believes and based thereon alleges: This answering Defendant denies Plaintiff suffered any injury or damage whatsoever, and further denies it is liable to Plaintiff for any injury or damage claimed or for any injury or damage whatsoever.

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EIGHTEENTH AFFIRMATIVE DEFENSE

[Vicarious Liability]

20. As and for a separate and affirmative defense to the Complaint and to each purported cause of action contained therein, this answering Defendant is informed and believes and based thereon alleges: This answering Defendant denies Plaintiff suffered any injury or damage whatsoever, and further denies it is vicariously liable for the acts of other parties.

NINETEENTH AFFIRMATIVE DEFENSE

[Fails to State Facts – General]

21. As and for a separate and affirmative defense to the Complaint and to each purported cause of action contained therein, this answering Defendant is informed and believes and based thereon alleges: The Complaint, and each purported cause of action contained therein, fails to state facts sufficient to constitute a cause of action against this answering Defendant.

TWENTIETH AFFIRMATIVE DEFENSE

[Statute of Limitations]

22. As and for a separate and affirmative defense to the Complaint and to each purported cause of action contained therein, this answering Defendant is informed and believes and based thereon alleges: Each said cause of action is barred by the applicable statute of limitations, including but not limited to, California Code of Civil Procedure Sections 335.1, 337, 337.1, 337.15, 338, 339, 340 and/or 343.

TWENTY-FIRST AFFIRMATIVE DEFENSE

[Failure to Mitigate Loss]

23. As and for a separate and affirmative defense to the Complaint, and to each purported cause of action contained therein, this answering Defendant is informed and believes and based thereon alleges: If Plaintiff suffered any damage as a result of the allegations set forth in the Complaint, Plaintiff is not entitled to recover from this answering Defendant any sum of damages due to Plaintiff's failure to take reasonable efforts to mitigate the damages said Plaintiff allegedly incurred.

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TWENTY-SECOND AFFIRMATIVE DEFENSE

[Estoppel]

24. As and for a separate and affirmative defense to the Complaint, and to each purported cause of action contained therein, this answering Defendant is informed and believes and based thereon alleges: Each and every cause of action or purported cause of action contained in the Complaint is barred by the Doctrine of Estoppel.

TWENTY-THIRD AFFIRMATIVE DEFENSE

[Waiver]

25. As and for a separate and affirmative defense to the Complaint, and to each purported cause of action contained therein, this answering Defendant is informed and believes and based thereon alleges: Each and every cause of action or purported cause of action contained in the Complaint is barred by the Doctrine of Waiver.

TWENTY-FOURTH AFFIRMATIVE DEFENSE

[Laches]

26. As and for a separate and affirmative defense to the Complaint, and to each purported cause of action contained therein, this answering Defendant is informed and believes and based thereon alleges: Each and every cause of action or purported cause of action contained in the Complaint is barred by the Doctrine of Laches.

TWENTY-FIFTH AFFIRMATIVE DEFENSE

[Unclean Hands]

27. As and for a separate and affirmative defense to the Complaint, and to each purported cause of action contained therein, this answering Defendant is informed and believes and based thereon alleges: Each and every cause of action or purported cause of action contained in the Complaint is barred by the Doctrine of Unclean Hands.

TWENTY-SIXTH AFFIRMATIVE DEFENSE

[Collateral Estoppel]

28. As and for a separate and affirmative defense to the Complaint, and to each purported cause of action contained therein, this answering Defendant is informed and believes

1 and based thereon alleges: Each and every cause of action or purported cause of action contained
2 in the Complaint is barred by the Doctrine of Collateral Estoppel.

3 **TWENTY-SEVENTH AFFIRMATIVE DEFENSE**

4 **[Voluntary Conduct]**

5 29. As and for a separate and affirmative defense to the Complaint, and to each
6 purported cause of action contained therein, this answering Defendant is informed and believes
7 and based thereon alleges: Plaintiff has engaged in conduct with respect to the activities and/or
8 property which are the subject of the Complaint, and by reason of said activities and conduct, is
9 estopped from asserting any claims or damages or seeking any other relief against this answering
10 Defendant.

11 **TWENTY-EIGHTH AFFIRMATIVE DEFENSE**

12 **[Damages Uncertain]**

13 30. As and for a separate and affirmative defense to the Complaint, and to each
14 purported cause of action contained therein, this answering Defendant is informed and believes
15 and based thereon alleges: Plaintiff's damages, if any, are speculative, uncertain and not capable
16 of being determined by a trier of fact.

17 **TWENTY-NINTH AFFIRMATIVE DEFENSE**

18 **[Intervening Superseding Causes]**

19 31. As and for a separate and affirmative defense to the Complaint, and to each
20 purported cause of action contained therein, this answering Defendant is informed and believes
21 and based thereon alleges: The damages of which Plaintiff complains were proximately caused
22 or contributed to by the acts of other defendants, persons and/or other entities. Such acts were an
23 intervening, supervening and superseding cause of the injuries and damages, if any, of which the
24 Plaintiff complains, thus barring Plaintiff from any recovery against this answering Defendant.

25 **THIRTIETH AFFIRMATIVE DEFENSE**

26 **[No Vicarious or Agency Liability]**

27 32. As and for a separate and affirmative defense to the Complaint, Defendant alleges
28 that at no time or place set forth in the Complaint did any other defendant or third person alleged

1 to be at fault operate as the agent or employee of Defendant, such that Defendant can be held
2 vicariously liable for their acts. Should any other defendant or third party be deemed to have any
3 affiliation with this Defendant, then such other defendant or third party was independently
4 responsible for their own means and methods. Accordingly, the doctrines of respondeat superior
5 and agency are inapplicable and this answering Defendant has no vicarious liability for acts or
6 omissions by said other defendants or third parties.

7 **THIRTY-FIRST AFFIRMATIVE DEFENSE**

8 **[Independent Contractor]**

9 33. As and for a separate and affirmative defense to the Complaint, and as to each and
10 every cause of action contained therein, this answering Defendant alleges that the Complaint and
11 each cause of action set forth therein are barred, in whole or in part, under the independent
12 contractor defense, as the independent third-party transportation provider was an independent
13 contractor responsible the independent third-party transportation provider's own means and
14 methods, making the doctrine of respondeat superior inapplicable.

15 **THIRTY-SECOND AFFIRMATIVE DEFENSE**

16 **[Failure to State Cause of Action]**

17 34. As and for a separate and affirmative defense to the Complaint, a separate and
18 distinct affirmative defense, this answering Defendant is informed and believes and thereon
19 alleges: The Complaint, and each and every cause of action therein alleged against Defendant
20 fails to set forth facts sufficient to constitute a cause of action against this answering Defendant.

21 **THIRTY-THIRD AFFIRMATIVE DEFENSE**

22 **[Joint and Several Liability]**

23 35. As and for separate and affirmative defense, this answering Defendant alleges that
24 the liability of this answering Defendant for the non-economic damages claimed or proven by
25 Plaintiff shall be and is limited by California Civil Code § 1431.2.

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THIRTY-FOURTH AFFIRMATIVE DEFENSE

[Lack of Capacity to Sue]

36. As and for a separate and affirmative defense to the Complaint, and to each and every purported cause of action therein, this answering Defendant is informed and believes, and based thereon alleges: Plaintiff lacks legal capacity to sue, and is not the real party in interest, and is thus barred from any recovery against the answering Defendant.

THIRTY-FIFTH AFFIRMATIVE DEFENSE

[Sudden Emergency Doctrine]

37. As and for a separate affirmative defense to the Complaint, and to each purported cause of action contained therein, this answering Defendant is informed and believes, and based thereon alleges: Any and all claims that Plaintiff may have or have had against Defendant have been or will be barred by the sudden emergency doctrine.

THIRTY-SIXTH AFFIRMATIVE DEFENSE

[Consent]

38. As and for a separate and affirmative defense to the Complaint, and to each purported cause of action contained therein, this answering Defendant is informed and believes and based thereon alleges: Each and every cause of action or purported cause of action contained in the Complaint is barred due to the consent by Plaintiff to all actions alleged therein.

THIRTY-SEVENTH AFFIRMATIVE DEFENSE

[Contractual Indemnity]

39. As and for a separate and affirmative defense to the Complaint, Defendant is informed and believes, and thereon alleges: The independent third party transportation provider is contractually obligated to defend, indemnify and hold Defendant harmless for all claims asserted by Plaintiff.

THIRTY-EIGHTH AFFIRMATIVE DEFENSE

[Arbitration Agreement]

40. As and for a separate and affirmative defense, this answering Defendant is informed and believes and thereon alleges: This dispute is subject to an arbitration agreement

1 between Plaintiff and this answering Defendant, such that this matter is properly brought before a
2 qualified arbitrator rather than in the instant court.

3 **THIRTY-NINTH AFFIRMATIVE DEFENSE**

4 **[No Seatbelt Usage]**

5 41. As and for a separate and affirmative defense to the Complaint, and to each
6 purported cause of action therein, this answering Defendant is informed and believes, and thereon
7 alleges: Plaintiff's recovery is barred or proportionately reduced due to Plaintiff's failure to wear
8 the available restraining device or to wear it properly.

9 **FORTIETH AFFIRMATIVE DEFENSE**

10 **[Reserved Defenses]**

11 42. As and for a separate and affirmative defense to the Complaint, and to each
12 purported cause of action contained therein, this answering Defendant alleges that it presently has
13 insufficient knowledge or insufficient information upon which to form a belief as to whether it
14 may have additional, yet unasserted, affirmative defenses. Defendant therefore reserves the right
15 to assert additional affirmative defenses in the event discovery indicates it would be appropriate..

16
17 WHEREFORE, this answering Defendant prays for judgment as follows:

- 18 1. That Plaintiff takes nothing by virtue of Plaintiff's Complaint;
19 2. For costs of suit incurred herein; and
20 3. For such other and further relief as the court may deem just and proper.

21 DATED: May 9, 2019

BURNHAM BROWN

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23
24 ROBERT M. BODZIN
25 KATRINA R. DUREK
26 Attorneys for Defendants
27 UBER TECHNOLOGIES, INC.; RASIER, LLC;
28 and RASIER-CA, LLC