

Velva L. Price  
District Clerk  
Travis County  
D-1-GN-18-005842  
Ruben Tamez

D-1-GN-18-005842  
Cause No. \_\_\_\_\_

STATE OF TEXAS	)	IN THE DISTRICT COURT OF
	)	
Plaintiff,	)	
	)	
vs.	)	TRAVIS COUNTY, TEXAS
	)	
UBER TECHNOLOGIES, INC.	)	
	)	98TH
Defendant.	)	____ JUDICIAL DISTRICT

**PLAINTIFF’S ORIGINAL PETITION**

Plaintiff, the STATE OF TEXAS (“Plaintiff” or “State”) acting by and through the Attorney General of Texas, KEN PAXTON, brings this action against Defendant, UBER TECHNOLOGIES, INC. (“UBER” or “Defendant”) alleging violations of the Texas Deceptive Trade Practices – Consumer Protection Act, TEX. BUS. & COM. CODE ANN. § 17.41-17.63 (“DTPA”) and the Texas Identity Theft Enforcement and Protection Act, TEX. BUS. & COM. CODE ANN. § 521.001-152 (“ITEPA”) and states as follows:

**PUBLIC INTEREST**

1. Plaintiff has reason to believe Defendant has caused adverse effects to legitimate business enterprises which lawfully conduct trade and commerce in Texas and therefore, believes this action is in the public interest. *See* DTPA § 17.47(a).

**JURISDICTION AND VENUE**

2. This action is brought by the Attorney General of Texas, through his Consumer Protection Division, in the name of the STATE OF TEXAS and in the public interest pursuant to the authority granted by TEX. BUS. & COM. CODE ANN. § 17.47 of the DTPA, upon the ground that Defendant engaged in false, deceptive and misleading acts and practices in the course of trade and commerce as defined in, and declared unlawful by § 17.47(a) and (b) of the DTPA.

3. This action is further brought pursuant to § 521.151(b) of ITEPA which authorizes the attorney

general to enforce the ITEPA including violations of § 521.053(b) against persons who conduct business in this state and own or license computerized data that includes sensitive personal information.

4. Venue for this action properly lies in Travis County, Texas, pursuant to § 521.151(c) ITEPA and § 17.47(b) DTPA.

### **THE PARTIES**

5. Plaintiff, THE STATE OF TEXAS is represented by KEN PAXTON, Attorney General of the State of Texas, through his Consumer Protection Division.
6. Defendant is a Delaware corporation with its principal place of business at 1455 Market Street, San Francisco, California 94103.
7. As used herein, any reference to “UBER” or “Defendant” shall mean UBER TECHNOLOGIES, INC., including all its officers, directors, affiliates, subsidiaries, and divisions, predecessors, successors, and assigns doing business in the United States.

### **TRADE AND COMMERCE**

8. At all times described below, Defendant and its agents have engaged in conduct constituting “trade” and “commerce” as defined in Section 17.45(6) of the DTPA: “Trade’ and ‘commerce’ mean the advertising, offering for sale, sale, lease, or distribution of any good or service, of any property, tangible or intangible, real, personal, or mixed, and any other article, commodity, or thing of value wherever situated, and shall include any trade or commerce directly or indirectly affecting the people of this state.” UBER engaged in trade and commerce in the State of Texas in that UBER is a technology company that provides a ride hailing mobile application that connects drivers with riders. Riders hail and pay drivers using the UBER platform.

## **BACKGROUND**

9. Uber's Privacy Policy recognizes that users trust and rely on it to safeguard their personal information: "When you use Uber, you trust us with your information. We are committed to keeping that trust." In this regard, the frequently asked questions on Uber's Privacy Policy webpage state: "We take the security of your data seriously. Uber uses technical safeguards like encryption, authentication, fraud detection, and secure software development to protect your information. We also have an extensive team of data security and privacy experts working around the clock to prevent theft, fraud, or abuse of your information."
10. In November 2016, hackers contacted UBER to inform them that they had accessed and acquired UBER data and to demand payment in exchange for deleting the data.
11. UBER was able to determine the security vulnerability that the hackers had exploited and eliminate the vulnerability.
12. In December 2016, the hackers deleted the data.
13. Among the data the hackers acquired was personal information as defined in ITEPA § 521.052: name and driver's license information pertaining to some UBER drivers.
14. UBER did not disclose the data breach to affected UBER drivers in 2016 when the breach was discovered.
15. In August 2017, UBER named a new CEO, Dara Khosrowshahi.
16. In September 2017, Khosrowshahi was informed that UBER had suffered a data breach and ordered an investigation into the data breach, hiring a third party cyber security provider to conduct the investigation.
17. The cyber security provider verified the 2016 data breach, and, on November 21, 2017, UBER notified regulators and consumers of the 2016 breach.
18. UBER offered affected drivers free credit monitoring and identity theft protection.

**CAUSE OF ACTION I - DTPA**

19. The State of Texas re-alleges and incorporates by reference each and every preceding paragraph of this petition.
20. The State of Texas further alleges that Defendant has, in the conduct of trade or commerce engaged in false, misleading or deceptive acts or practices in violation of § 17.46(a) and (b) of the DTPA by:
- a. failing to implement and maintain reasonable security practices to protect the sensitive personal information it maintains for its users;
  - b. failing to disclose a data breach to affected users; and
  - c. representing to users that UBER protects the sensitive personal information of its users, when in fact the hackers were able to gain access to some UBER users personal information.

*REMEDIES UNDER THE DTPA*

21. The DTPA provides the following in cases brought by the State of Texas:
- a. Section 17.47(a) authorizes the consumer protection division to seek injunctive relief when it has reason to believe that any person is engaging in, has engaged in, or is about to engage in any act or practice declared to be unlawful by this subchapter, and that proceedings would be in the public interest;
  - b. Section 17.47(c)(1) provides that the consumer protection division may seek and recover a penalty of up to \$20,000.00 per violation; and
  - c. Section 17.47(d) further provides that the court may make such additional orders or judgements as are necessary to compensate identifiable persons or to restore money or property, real or personal.

## CAUSE OF ACTION II –ITEPA

22. The State of Texas re-alleges and incorporates by reference as if fully set out here the preceding paragraphs 1 through 21.

23. Section 521.002 of ITEPA defines sensitive personal information as follows:

(A) an individual's first name or first initial and last name in combination with any one or more of the following items, if the name and the items are not encrypted:

(i) social security number;

(ii) driver's license number or government-issued identification number; or

(iii) account number or credit or debit card number in combination with any required security code, access code, or password that would permit access to an individual's financial account; or

(B) information that identifies an individual and relates to:

(i) the physical or mental health or condition of the individual;

(ii) the provision of health care to the individual; or

(iii) payment for the provision of health care to the individual.

24. Section 521.052(a) of ITEPA provides that a business shall implement and maintain reasonable procedures, including taking any appropriate corrective action, to protect from unlawful use or disclosure any sensitive personal information collected or maintained by the business in the regular course of business.

25. Sections 521.053(a) and (b) of ITEPA provide in relevant part that:

a. “Breach of system security” means unauthorized acquisition of computerized data that compromises the security, confidentiality, or integrity of sensitive personal information maintained by a person, including data that is encrypted if the person accessing the data has the key required to decrypt the data;

- b. A person who conducts business in this state and owns or licenses computerized data that includes sensitive personal information shall disclose any breach of system security, after discovering or receiving notification of the breach, to any individual whose sensitive personal information was, or is reasonably believed to have been, acquired by an unauthorized person. The disclosure shall be made as quickly as possible, except as provided by Subsection (d) or as necessary to determine the scope of the breach and restore the reasonable integrity of the data system.
26. UBER conducts business in the State of Texas and owns or licenses computerized data that includes sensitive personal information as defined by ITEPA.
27. The UBER information the hackers acquired included sensitive personal information pursuant to ITEPA.
28. UBER violated § 521.053(b) of ITEPA, in that UBER suffered a breach of the security of its system data and failed to timely notify affected Texas residents of the fact that their sensitive personal information had been breached.
29. UBER violated § 521.052(a) of ITEPA, in that UBER failed to implement and maintain reasonable security measures to protect sensitive personal information from unlawful use or disclosure.

*REMEDIES UNDER ITEPA*

30. ITEPA authorizes the attorney general to recover civil penalties and provides in relevant part as follows:
- a. A person who violates this chapter is liable to this state for a civil penalty of at least \$2,000 but not more than \$50,000 for each violation. *See*, ITEPA § 521.151(a);
  - b. In addition to penalties assessed under ITEPA § 521.151(a), a person who fails to take reasonable action to comply with § 521.053(b) is liable to this state for a civil

penalty of not more than \$100 for each individual to whom notification is due under that subsection for each consecutive day that the person fails to take reasonable action to comply with that subsection. Civil penalties under this section may not exceed \$250,000 for all individuals to whom notification is due after a single breach. The attorney general may bring an action to recover the civil penalties imposed under this subsection. *See*, ITEPA § 521.151(a-1);

- c. Section 521.151(b) authorizes the attorney general to seek injunctive relief in cases where a person is engaging in, has engaged in, or is about to engage in conduct that violates ITEPA;
- d. Section 521.151(e) further provides, in relevant part, that the court may grant any other equitable relief that the court considers appropriate to prevent further harm to a victim of identity theft or a further violation of ITEPA; and
- e. Section 521.151(f) provides that the attorney general is entitled to recover reasonable expenses, including reasonable attorney's fees, court costs, and investigatory costs, incurred in obtaining injunctive relief or civil penalties, or both, under this section.

### **PRAYER**

**WHEREFORE**, the Plaintiff prays that this Honorable Court enter an Order:

- a. Finding that UBER has violated §§ 17.46(a) and (b) of the DTPA by engaging in the unlawful acts and practices alleged herein;
- b. Finding that UBER has violated ITEPA §§ 521.052(a) and 521.053(b) by engaging in the unlawful acts and practices alleged herein;
- c. Enjoining UBER from engaging in the deceptive acts and practices alleged herein;
- d. Requiring UBER to pay a penalty of up to \$20,000 per violation of the DTPA;
- e. Requiring UBER to pay at least \$2,000 but not more than \$50,000 for each violation

of ITEPA;

- f. Requiring UBER to pay an additional penalty of not more than \$100 for each individual to whom notification of a breach was due pursuant to § 521.053(b) of ITEPA for each consecutive day that Uber failed to take reasonable action to comply;
- g. Granting Plaintiff any other equitable relief that the court considers appropriate to prevent any additional harm to victims of identity theft or to prevent any further violations of ITEPA;
- h. Requiring UBER to pay all costs and fees for the prosecution and investigation of this action pursuant to Texas Government Code § 402.006(c); and
- i. Providing such other and further relief as the Court deems just, proper, and equitable under the circumstances.

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**ATTORNEYS FOR STATE OF TEXAS**