

United States District Court
Northern District of California

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

IN RE: UBER TECHNOLOGIES, INC.,
PASSENGER SEXUAL ASSAULT
LITIGATION

MDL No. 3084 CRB

**PRETRIAL ORDER NO. 10: FACT
SHEET IMPLEMENTATION
ORDER**

This Order Relates To:
ALL ACTIONS

This Pretrial Order (“PTO” or “Order”) governs the form, schedule for completion, and service of personal injury Plaintiff Fact Sheets (“PFS”) and Defendant Fact Sheets (“DFS”) in this MDL. This Order applies to Defendant Uber Technologies Inc., Rasier, LLC, and Rasier-CA, LLC (collectively, “Uber”), and all Plaintiffs and their counsel in: (a) all actions transferred to In re: Uber Technologies, Inc. Passenger Sexual Assault Litigation (“MDL-3084”) by the Judicial Panel on Multidistrict Litigation (“JPML”) and (b) to all related actions directly filed in or removed to this MDL in this Court.

In entering this order and the appended fact sheets, the Court resolves the parties’ numerous disputes over the form and content of the PFS and DFS. A few general observations are in order. With respect to the PFS, the Court has resolved some disputes in Plaintiffs’ favor and others in Uber’s. The Court has tried to avoid questions that are potentially confusion, questions that ask for duplicative information or information not readily available to a given plaintiff, and questions asking for information of limited relevance or that are unlikely to be useful at the stage in the proceedings. Much of what

1 Uber asks for in the PFS may ultimately be discoverable, but the appropriate question—for
2 the PFS and DFS alike—is whether including a given question in a fact sheet will
3 efficiently advance these coordinated proceedings, or whether that information might be
4 better sought later, when individual cases are being worked up for trial. The Court
5 regarded requests going to common issues, or issues that might otherwise help the parties
6 and the Court to manage the litigation at this relatively early stage, as more appropriate for
7 inclusion in the fact sheets.¹

8 With respect to the DFS, the Court largely rejects Uber’s contention that the DFS is
9 a categorically inappropriate vehicle for document production. MDL fact sheets frequently
10 include requests for production, as Plaintiffs correctly point out. Here, although the same
11 documents could certainly be sought through Rule 34, there are advantages to including
12 the requests in the DFS. Doing so ensures that the production of certain key documents
13 occurs early in each case and on a rolling basis as new cases join the MDL. It can thereby
14 facilitate more effective coordination of these proceedings—for example, the possible
15 division of the cases into sub-categories or the selection of bellwethers. The Court notes
16 that the parties are basically in agreement on the substance of the information that should
17 be addressed in the DFS, although they diverge on how the DFS should address itself to a
18 given category of information. For example, Uber’s proposal would simply have it check
19 “yes” or “no” as to whether Uber conducted a background check on a given driver.

20 Plaintiffs’ proposal, by contrast, would require Uber to produce all the background checks
21 it conducted on the drivers. The latter is a superior solution for the background checks,
22 which, where they exist, will be highly relevant, and which nothing in the record suggests
23 would be unduly difficult for Uber to produce. The same is true of the customer support
24 tickets about given drivers (although the Court has narrowed the language of this request
25 somewhat) and the driver account status logs. By contrast, the same cannot be said for
26 information like pre- and post-trip GPS data, whose relevance to a given case will likely

27 _____
28 ¹ These principles also explain why the Court has included certain document requests in
the DFS but has excluded the disputed document requests from the PFS.

1 depend on the specific contours of the alleged incident. And some requests, like Plaintiffs’
2 request for “communication logs,” are simply too broad for inclusion in the fact sheets,
3 given their potential utility.

4 This said, the Court’s decision to exclude any given request or category of
5 information from the PFS or DFS does not reflect a ruling on that information’s
6 discoverability. In some instances, information that the Court has left out of the fact sheets
7 may be highly relevant to certain cases, or even to most cases. The exclusion of any
8 question or request from the fact sheets should be taken to mean only that the Court
9 determined that requiring such information in a fact sheet would not, on balance, serve to
10 resolve the coordinated cases before it efficiently, promptly, and fairly. On the other hand,
11 Court has not ordered the inclusion in the fact sheets of any information that is not
12 discoverable.

13 **1. Online Platform**

14 The Court hereby appoints BrownGreer, PLC (“BrownGreer”) to serve as the online
15 platform for the data management of the PFS and DFS. The parties are directed to utilize
16 BrownGreer’s platform, “MDL Centrality,” to fulfill their PFS and DFS obligations as
17 detailed below and also, directly or through their designated representatives, to enter into a
18 contract with the company specifying the services to be provided, the costs of such
19 services, and the parties’ payment obligations. BrownGreer shall work with the parties to
20 compile all necessary data. The parties shall serve their respective PFS, DFS, and
21 responsive documents to the requests for production of documents by uploading them to
22 MDL Centrality. Uploading the responsive discovery to MDL Centrality shall constitute
23 effective service.

24 **2. Production of Bona Fide Ride Receipts**

25 As previously ordered, Plaintiffs will either submit bona fide ride receipts or the
26 ride information detailed in PTO No. 5 (dkt. 175 at 2–3) by February 15, 2024, for cases
27 on file in this MDL as of February 1, 2024, and within 14 days of filing, transfer, or
28 removal to this Court for all cases filed, transferred, or removed after February 1, 2024.

1 Plaintiffs shall serve the bona fide ride receipt, if located, or all ride information required
2 by PTO No. 5, if the receipt is not located, by uploading the bona fide ride receipt or ride
3 information to MDL Centrality, identifying each with the name of the Plaintiff to whom
4 the bona fide ride receipt or ride information applies, and by the associated case number.

5 **3. Plaintiff Fact Sheets**

6 The Court has approved a PFS that includes a variety of written authorizations for
7 the release of records (“Authorizations”). See Exhibit 1. Each Plaintiff must submit a
8 completed PFS, and executed Authorizations, through MDL Centrality pursuant to the
9 terms of this Order.

10 The obligation to comply with this PTO and to provide a PFS shall fall solely on the
11 individual counsel representing a Plaintiff. As with all case-specific discovery, Plaintiffs’
12 Lead Counsel and the members of the Plaintiffs’ Steering Committee are not obligated to
13 conduct case-specific discovery for Plaintiffs by whom they have not been individually
14 retained. In addition, Plaintiffs’ Lead Counsel and the members of the Plaintiffs’ Steering
15 Committee have no obligation to notify counsel for Plaintiffs whom they do not represent
16 of Defendants’ notice of overdue or deficient discovery nor to respond to any motion
17 practice pertaining thereto.

18 **4. Defendant Fact Sheets**

19 The Court has approved a DFS that includes document requests. See Exhibit 2.

20 Uber must submit a completed DFS and documents responsive to the requests in the
21 DFS (“Responsive Documents”) pursuant to the terms of this Order. However, if the ride
22 receipt or ride information submitted by a Plaintiff is insufficient to allow Uber Defendants
23 to identify a specific trip associated with the Plaintiff’s alleged incident, then the Uber
24 Defendants need not complete Section II (Uber Trip Information). Likewise, if the ride
25 receipt or ride information submitted by a Plaintiff is insufficient to allow Uber Defendants
26 to identify a driver associated with the Plaintiff’s alleged incident, then the Uber
27 Defendants need not complete Section III (Driver Information) and Section IV (Incidents).

28 If a Plaintiff for whom Uber was previously unable to identify a specific trip and/or

1 driver provides, via service via MDL Centrality, supplemental ride information, or a ride
2 receipt not previously produced, and if this supplemental ride information or ride receipt
3 allows Uber Defendants to identify a specific trip and/or driver not previously identified,
4 Uber Defendants shall, within 90 days of receipt of this supplemental information,
5 complete and serve a supplemental DFS, which includes the information previously
6 lacking.

7 **5. Discovery Mechanism**

8 The effect of a Party's response to the questions contained in the PFS and DFS shall
9 be considered the same as interrogatory responses, and where documents are requested, as
10 responses to requests for production under the Federal Rules of Civil Procedure, and these
11 responses will be governed by the standards applicable to written discovery under the
12 Federal Rules of Civil Procedure.

13 A PFS or DFS is served without prejudice to the Parties' right to propound
14 additional discovery. The Parties do not waive their rights to assert objections permitted
15 under the Federal Rules of Civil Procedure to any additional discovery.

16 **6. PFS and DFS Deadlines**

17 The following PFS and DFS deadlines shall apply:

18 **a. Cases filed on or before the date of March 26, 2024:**

19 For cases directly filed in this judicial district and entered on the MDL 3084 docket
20 on or before March 26, 2024 and for cases the JPML transfers to MDL 3084 on or before
21 March 26, 2024, each Plaintiff must complete and submit a PFS and execute applicable
22 Authorizations, and Uber Defendants must complete and submit a DFS and produce
23 responsive documents, within 60 days after March 26, 2024. A case shall be deemed
24 transferred to MDL 3084 either: (a) on the date the Clerk enters a certified copy of the
25 JPML's Conditional Transfer Order on the docket of this Court, or (b) where transfer is
26 contested, the date of transfer in any subsequent order from the JPML.

27 **b. Cases filed after the date of March 26, 2024:**

28 For cases directly filed in this judicial district and entered on the MDL 3084 docket,

1 and for cases the JPML transfers to MDL 3084 after March 26, 2024, each Plaintiff must
 2 complete and submit a PFS and execute applicable Authorizations within 30 days of the
 3 case being filed in, removed to, or transferred to MDL 3084. The Uber Defendants must
 4 complete and submit a DFS and produce Responsive Documents, within 30 days after a
 5 given plaintiff serves the ride receipt or ride information form in accordance with PTO No.
 6 5 and this Order.

7 **7. Procedures for Serving Completed Plaintiff and Defendant Fact**
 8 **Sheets and Associated Documents**

9 Within the deadlines prescribed for the PFS in the prior section, Plaintiffs shall
 10 serve the completed PFS and Authorizations upon Uber's counsel. Service shall be
 11 accomplished by uploading the verified PFS to MDL Centrality in the relevant Plaintiff's
 12 case file and by producing all Authorizations and Responsive Documents in the same
 13 manner and format as detailed in the ESI protocol, with a cover letter identifying the
 14 Plaintiff and case number to which the production applies.

15 Within the deadlines prescribed for the DFS in the prior section, Uber shall serve
 16 the completed DFS and Responsive Documents upon Plaintiff's counsel. Service shall be
 17 accomplished by uploading the verified DFS to MDL Centrality in the relevant Plaintiff's
 18 case file and by producing all Responsive Documents in the same manner and format as
 19 detailed in the ESI protocol, with a cover letter identifying the Plaintiff and case number to
 20 which the production applies.

21 **8. Substantial Completeness of PFS and DFS**

22 The PFS and DFS submission must be substantially complete, which means a Party
 23 must:

- 24 1. Answer all applicable questions (Parties may answer questions in good
 25 faith by indicating "not applicable," "I don't know," or "unknown");
- 26 2. Include a signed Declaration (for a PFS) or Certification (for a DFS);
- 27 3. Provide duly executed record release Authorizations (for a PFS); and
- 28 4. Produce the requested documents to the extent such documents are in the

1 Party's possession, custody, or control.

2 If a Party considers a PFS or DFS to be materially deficient, a deficiency notice
3 outlining the purported deficiency(ies) shall be served on the deficient Party's attorney of
4 record via MDL Centrality. The deficient party will have thirty (30) days to correct the
5 alleged deficiency(ies).

6 **9. Objections Reserved to PFS and DFS**

7 All objections to the admissibility of information contained in the PFS and DFS are
8 reserved; therefore, no objections shall be lodged in the responses to the questions and
9 requests contained therein. This paragraph, however, does not prohibit a Party from
10 withholding or redacting information based upon a recognized privilege. Documents
11 withheld on the basis of privilege shall be logged in accordance with the Court's
12 forthcoming Privileged Materials Order, Rule 502(d), and all parties shall continue to
13 comply with the Protective Order (dkt. 176) regarding produced information and
14 documents.

15 **10. Confidentiality of Data**

16 To the extent that the PFS or DFS requires the responding party to provide
17 confidential documents or information, the disclosure shall be governed by the Protective
18 Order and Stipulation and Order Re: Plaintiffs Who Wish to Proceed Anonymously (dkt.
19 174).

20 **11. Scope of Depositions and Admissibility of Evidence**

21 Nothing in the PFS or DFS shall be deemed to limit the scope of inquiry at
22 depositions and admissibility of evidence at trial. The scope of inquiry at depositions shall
23 remain governed by the Federal Rules of Civil Procedure. The Federal Rules of Evidence
24 shall govern the admissibility of information contained in responses to the PFS and DFS
25 and no objections are waived by virtue of providing information in any PFS or DFS.

26 **12. Rules Applicable to Plaintiffs' Authorizations**

27 As set forth above, Authorizations together with copies of such records, to the
28 extent that those records or copies thereof are in a Plaintiff's possession, custody, or

1 control, shall be provided with the PFS at the time that the Plaintiff is required to submit a
2 PFS pursuant to this Order.

3 In addition to the addressed Authorizations, Plaintiff's counsel shall also maintain
4 in their file unaddressed, executed Authorizations. Plaintiff's counsel shall provide
5 executed Authorizations to counsel for the MDL Defendants (or communicate an objection
6 to said request for authorizations) within 14 days of a request for such Authorizations.

7 Should Plaintiffs provide Authorizations that are undated, this shall not constitute a
8 deficiency or be deemed to be a substantially non-complete PFS. Defendants (or the
9 applicable records vendor) have permission to date (and where applicable, re-date) undated
10 Authorizations before sending them to records custodians.

11 If an agency, company, firm, institution, provider, or records custodian to whom
12 any Authorization is presented refuses to provide records in response to that Authorization,
13 Uber (or the applicable records vendor) shall notify a Plaintiff's individual representative
14 counsel and a designated individual from MDL Liaison Counsel. Upon notification,
15 counsel shall work together in good faith to resolve the records issue.

16 In the event a records custodian requires a proprietary authorization or other
17 particular form, Uber (or the applicable records vendor) will provide it to Plaintiff's
18 individual representative counsel who shall thereafter execute and return the proprietary
19 authorization or other particular form within 14 days.

20 Uber or its designees (including the applicable records vendor) shall have the right
21 to contact agencies, companies, firms, institutions, or providers to follow up on record
22 copying or production.

23 Counsel for each Plaintiff will have the right to obtain copies of all documents Uber
24 receives pursuant to Authorizations provided by that Plaintiff. The Parties will meet and
25 confer regarding the process and terms of Uber (and/or the applicable records vendor)
26 providing copies of documents obtained.


27 **13. Stipulated Revisions**

28 If, in light of the Court's rulings, the parties wish to stipulate to limited amendments

1 of the fact sheets or amendments to this Pretrial Order, they may do so by filing a
2 stipulation on the docket on or before March 25, 2024. Revisions will be subject to the
3 Court’s approval. The Court will not revise either this Order or the fact sheets unless the
4 parties agree on a given change. The Courtroom Deputy will email Word versions of the
5 fact sheets to the parties.

6
7 **IT IS SO ORDERED.**

8 Dated: March 19, 2024

9 
10 CHARLES R. BREYER
11 United States District Judge

12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
United States District Court
Northern District of California