

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF RICHLAND )  
 )  
Tracy Harvey, )  
 )  
 )  
Plaintiff, )  
 )  
v. )  
 )  
Jennifer Evely and Lyft, Inc. d/b/a Lyft )  
Drives South Carolina, Inc., )  
 )  
Defendants. )

IN THE COURT OF COMMON PLEAS  
FIFTH JUDICIAL CIRCUIT  
C/A NO. 2022-CP-40-00583

**ORDER GRANTING PLAINTIFF’S  
MOTION FOR A RULE TO SHOW  
CAUSE AND MOTION TO COMPEL**

**RECEIVED**  
**Mar 10 2023**  
**SC Court of Appeals**

Date of Hearing: November 30, 2022  
Appearances: Karlen Senn on behalf of Plaintiff

THIS MATTER is before the court on the Plaintiff’s Motion for a Rule to Show Cause and Motion to Compel against Uber Technologies, Inc. and Rasier, LLC (collectively “Uber”). After being notified of the hearing, Uber did not attend. The Court, having reviewed the Plaintiff’s Motion and Exhibits and hearing from Plaintiff, GRANTS Plaintiff’s Motion and directs Uber to comply with Plaintiff’s Subpoena.

**HISTORY OF THE CASE/DISPUTE**

This case arises out of a motor vehicle collision where Plaintiff was rear-ended by Defendant Jennifer Evely, a Lyft driver, while she was using the Lyft mobile application. Defendant Evely was also a driver for Uber at the time of the collision.

On May 4, 2022 Plaintiff properly served a subpoena on Uber Technologies and Rasier, LLC via certified mail, restricted delivery, with return receipt requested to its Registered Agent, which was signed and returned. On November 4, 2022 Uber objected to the subpoena asserting boilerplate objections. Plaintiff’s counsel responded to Uber’s letter on November 6, 2022 seeking to enforce the subpoena. Uber refused to fully comply with the subpoena and has not itemized of

provided a privilege log of documents withheld.

### **DISCUSSION & FINDINGS**

The rights of discovery provided by the rules give the trial lawyer the means to prepare for trial, and when these rights are not accorded, prejudice must be presumed. *Samples v. Mitchell*, 329 S.C. 105, 113-114, 495 S.E.2d 213, 215 (Ct. App. 1997) (citing *Downey v. Dixon*, 294 S.C. 42, 46, 362 S.E.2d 317, 319 (Ct. App. 1987)).

I find that Uber Technologies, Inc. and Rasier, LLC have intentionally chosen to ignore and disregard Plaintiff's subpoena. I find that Uber Technologies, Inc. and Rasier, LLC did not provide the complete file of Defendant Evely, as requested in Plaintiff's subpoena. Based on the above facts, as well as Rule 37, SCRPC, and other applicable law, this Court hereby finds that Uber Technologies, Inc. and Rasier, LLC willfully violated the discovery process.

I FURTHER FIND that an award of attorney's fees and costs in this matter are warranted, for Uber Technologies, Inc. and Rasier, LLC's refusal to comply with a validly issued subpoena.

Plaintiff's counsel, Karlen K. Senn and Brooklyn A. O'Shea, submitted affidavits of attorney's fees and costs. Attorney Senn's affidavit noted that she has been licensed to practice law in South Carolina since 2014, and that her current hourly rate is Four Hundred Fifty and no/100 (\$450.00) Dollars per hour. Attorney O'Shea's affidavit noted that she has been licensed to practice law in South Carolina since 2016, is managing partner of her firm, and that her current hourly rate is Four Hundred Fifty and no/100 (\$450.00) Dollars per hour. The Court finds both Attorney Senn's and Attorney O'Shea's hourly rate of Four Hundred Fifty and no/100 (\$450.00) Dollars per hour to be reasonable. In doing so, the Court notes it is aware of both Attorney Senn's and Attorney O'Shea's reputations in the legal community and recognizes the complex nature of the present case, which is a personal injury case involving corporate defendants.

Attorneys Senn and O'Shea submitted affidavits documenting a total of 14.15 hours worked on this discovery dispute, which included time expended on efforts to enforce the subpoena, as well as the time associated with the Motion for a Rule to Show Cause and Motion to Compel, and Thirty-One and 74/100 (\$31.74) Dollars in costs for the filing fee. Plaintiff seeks attorneys' fees of Six Thousand Three hundred and Sixty-Seven Dollars and 50/100 Dollars (\$6,367.50). Having been provided with the motion, supporting memorandum, and exhibit packet, and considering the information presented at the hearing, the court finds it likely that Attorneys Senn and O'Shea accurately presented the amount of time expended on this discovery dispute.

The court finds that Defendants must collectively pay O'Shea Law Firm, LLC Six Thousand Three Hundred and Ninety-Nine Dollars and 24/100 Dollars (\$6,399.24), for attorney's fees and costs within thirty (30) days of the date of this order.

### **CONCLUSION**

Plaintiff's Motion for Rule to Show Cause and Motion to Compel is GRANTED. Plaintiff's request for attorneys fees and costs is GRANTED. Uber Technologies, Inc. and Rasier, LLC are ordered to fully comply with Plaintiff's May 4, 2022 Subpoena and provide complete responses within ten (10) days. Uber Technologies, Inc. and Rasier, LLC are ordered to pay Six Thousand Three Hundred and Ninety-Nine Dollars and 24/100 Dollars (\$6,399.24), for attorney's fees and costs within thirty (30) days of the date of this order for violating the South Carolina Rules of Civil Procedure.

AND IT IS SO ORDERED.

[JUDGE'S E-SIGNATURE TO FOLLOW]



Richland Common Pleas

**Case Caption:** Tracy Harvey vs Jennifer Evely , defendant, et al

**Case Number:** 2022CP4000583

**Type:** Order/Other

So Ordered

Jean H. Toal