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The Honorable Barbara J. Rothstein

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

DRAMMEH, ET AL.,

Plaintiffs,

v.

UBER TECHNOLOGIES INC., ET AL.,

Defendants.

Civil Action No. 2:21-cv-202-BJR

ORDER GRANTING PLAINTIFFS’  
MOTION TO STRIKE OR SEVER THIRD-  
PARTY COMPLAINT; DENYING MOTION  
FOR STAY; GRANTING MOTION FOR  
PROTECTIVE ORDER

**I. INTRODUCTION**

Plaintiffs Amie Drammeh and Yusuoha Ceesay, representing the estate of Chernob Ceesay (“Chernob”) (collectively, “Plaintiffs”) filed this lawsuit against defendants Uber Technologies, Inc. (“Uber”) and Rasier LLC (together, “Defendants”) alleging that Uber’s negligence caused the wrongful death of Chernob, who was a driver for Uber and was killed by two passengers.<sup>1</sup> Dkt. No. 15. Defendants have filed a third-party complaint against the passengers that killed Chernob, Olivia Breanna-Lennon Bebic and Devin Kekoa Wade (“Third-Party Defendants”), alleging that they are

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<sup>1</sup> The two passengers, referred to herein as Third-Party Defendants, have not been found guilty of this crime, and their criminal trial is in October. However, for purposes of this Order, the Court will proceed as if the allegations against them are true.

1 obligated to indemnify Defendants if Plaintiffs' claims succeed, and therefore that their third-party  
2 claims should be tried together with Plaintiffs' claims against Defendants. *See* Dkt. No. 31. Before  
3 the Court is Plaintiffs' motion to strike or sever the third-party complaint (Dkt. No. 41), Defendants'  
4 motion to stay this case (Dkt. No. 33), and Defendants' motion for a protective order (Dkt. No. 35).  
5 Having reviewed the motions, the record of the case, and the relevant legal authorities, the Court  
6 will grant Plaintiffs' motion to strike or sever the third-party complaint, deny Defendants' motion  
7 for a stay, and grant Defendants' motion for a protective order. The reasoning for the Court's  
8 decision follows.

## 10 II. BACKGROUND

11 On December 13, 2020, Chernov, acting as a driver for Uber in and around Issaquah,  
12 Washington, received a ride request from an Uber account created by Third-Party Defendants. Dkt.  
13 No. 15 ¶¶ 1, 45. Although Third-Party Defendants allegedly fabricated the account and used an  
14 unverified form of payment, the Uber app nevertheless allowed them to request a ride. *Id.* ¶ 1.  
15 Chernov accepted the request and picked up Third-Party Defendants. *Id.* ¶ 47. While Chernov was  
16 driving them to their purported destination, Third-Party Defendants stabbed Chernov in the back of  
17 the neck, and the car veered off the road and hit a tree. *Id.* ¶¶ 47-50. Chernov died before emergency  
18 personnel arrived. *Id.* ¶ 50. Two days later, state police found and arrested Third-Party Defendants.  
19 *Id.* ¶ 52. Third-Party Defendants' criminal trial is set for October 18, 2021. Dkt. No. 33 at 2-3.

20 Plaintiffs allege that Uber was aware that its drivers were at high risk of assault and failed  
21 to take measures to prevent Chernov's murder. *See* Dkt. No. 15. Defendants answered and admitted  
22 that Chernov was an Uber driver using the Uber app, but denied that they were negligent. *See* Dkt.  
23 No. 46.

24 Plaintiffs did not sue Third-Party Defendants, but Defendants filed a third-party complaint  
25 impleading them. *See* Dkt. No. 31. Defendants claim that Third-Party Defendants must indemnify  
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1 them for any damages assessed against Defendants, based on theories of contribution, equitable  
2 indemnity, and contractual indemnity. *See id.* Plaintiffs moved to strike or sever the third-party  
3 claims, arguing that they are meritless and that their inclusion in the case would prejudice Plaintiffs  
4 and confuse the jury. *See* Dkt. No. 41.

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6 It is the Court’s understanding that no discovery has yet been produced in this case, because  
7 Defendants seek a protective order before sharing confidential commercial information with  
8 Plaintiffs. *See* Dkts. 35, 44. Additionally, Defendant’s seek a stay of discovery until Third-Party  
9 Defendants’ trial is complete. Dkt. No. 33. Defendants argue that they will not be able to take  
10 discovery from Third-Party Defendants before their trial, because they will invoke their Fifth  
11 Amendment right against self-incrimination. *Id.* at 4-5.

### 12 III. DISCUSSION

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14 The Court will first address Plaintiffs’ motion to strike or sever Defendants’ third-party  
15 complaint.

#### 16 A. Plaintiffs’ Motion to Strike or Sever the Third-Party Complaint

17 Federal Rule of Civil Procedure 14, which governs third-party impleading, states that “[a]  
18 defending party may, as third-party plaintiff, serve a summons and complaint on a nonparty who is  
19 or may be liable to for all or part of the claim against it.” Fed. R. Civ. Pro. 14(a)(1). “The purpose  
20 of this rule is to promote judicial efficiency by eliminating the necessity for the defendant to bring  
21 a separate action against a third individual who may be secondarily or derivatively liable to the  
22 defendant for all or part of the plaintiff’s original claim.” *Southwest Admrs., Inc. v. Rozay’s*  
23 *Transfer*, 791 F.2d 769, 777 (9th Cir. 1986) (citation omitted). The Court has discretion to strike a  
24 third-party complaint when “it will disadvantage the existing action.” *Id.* (citation omitted).  
25 Furthermore, the third-party plaintiff must show that Third-Party Defendants “[are] or may be  
26 liable” for the claims brought against it. The Ninth Circuit has interpreted this to mean that “there  
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1 must . . . exist a substantive basis for the third-party defendant's liability.” *Kim v. Fujikawa*, 871  
2 F.2d 1427, 1434 (9th Cir. 1989). Therefore, in addition to considering the effect a third-party  
3 complaint would have on the existing action, the Court has the discretion to strike the complaint if  
4 it fails to state a claim.

5  
6 Defendants’ third-party claims are essentially three mechanisms for shifting liability to  
7 Third-Party Defendants: contribution, equitable indemnity, and contractual indemnity. Plaintiffs  
8 move to strike or sever all three claims. The Court addresses each claim in turn.

9 ***1. Contribution***

10 Contribution is “the right of one who has paid a common liability to recover a portion of the  
11 payment from another tortfeasor who shares in that common liability.” *Kottler v. State*, 963 P.2d  
12 834, 837 (Wash. 1998). Defendants argue that they have a right of contribution against Third-Party  
13 Defendants, stating that the latter “are obligated to provide an equitable contribution to any  
14 judgment or settlement herein awarded in direct proportion to the amount of tortious conduct of  
15 each Third-Party Defendant.” Dkt. No. 31, ¶¶ 25-26. Plaintiffs counter that, under Washington  
16 law, contribution is only available to “two or more persons who are jointly and severally liable.”  
17 RCW 4.22.040(1); Dkt. No. 41 at 6. Furthermore, as Plaintiffs point out, Washington courts have  
18 made clear “that joint and several liability under RCW 4.22.070 applies only to damages caused by  
19 negligence and that negligent defendants may not apportion liability to intentional tortfeasors.”  
20 *Rollins v. King Cnty Metro Transit*, 199 P.3d 499, 503 (Wash. Ct. App. 2009) (citation omitted).  
21 The Court finds that Plaintiffs are correct that, since Third-Party Defendants are intentional  
22 tortfeasors, Defendants have no claim for contribution against them. Intentional tortfeasors cannot  
23 be jointly and severally liable with Defendants.

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26 Furthermore, under the statute, joint and several liability is generally not available in  
27 Washington, “unless a listed exception applies.” *Id.* at 838-39; *see* RCW 4.22.070. Here,

1 Defendants do not argue or plead that any listed exception applies. Because they fail to allege a  
2 basis for joint and several liability, Defendants cannot claim a right a contribution against Third-  
3 Party Defendants.

## 4 **2. Equitable Indemnity**

5 The doctrine of equitable indemnity allows a plaintiff to recover attorneys' fees from a  
6 defendant whose acts or omissions exposed the plaintiff to litigation. "The doctrine is referred to  
7 as the ABC Rule because of its three elements: (1) A acts wrongfully toward B, (2) that wrongful  
8 act 'exposes or involves B in litigation with C,' and (3) 'C was not connected with' A's 'wrongful  
9 act . . . toward B.'" *Porter v. Kirkendoll*, 449 P.3d 627, 636 (Wash. 2019) (quoting *Manning v.*  
10 *Loidhamer*, 538 P.2d 136, 138-39 (Wash. 1975)). Importantly, "Washington courts require an  
11 exceptionally close causal nexus between Party B's exposure to litigation and the wrongful act or  
12 omission by Party A." *Woodley v. Benson*, 901 P.2d 1070, 1073 (Wash. Ct. App. 1995). Namely,  
13 "[i]f Party A's conduct is *not the only cause* of Party B's involvement in the litigation, and  
14 particularly if Party B's own conduct contributed to Party B's exposure in the litigation, an action  
15 [for equitable indemnity] will not lie." *Id.* (emphasis added).

16 Here, Defendants assert that A (Third-Party Defendants) acted wrongfully toward B  
17 (Defendants) by creating a fraudulent account in the Uber app, and that this act exposed Defendants  
18 to litigation with C (Plaintiffs). *See* Dkt. No. 48 at 7-8. However, Defendants third-party complaint  
19 does not contain any allegations that would establish that Third-Party Defendants' fraudulent use  
20 of the Uber app was the *only* cause of Defendants' exposure to litigation. *See* Dkt. No. 31 ¶¶ 18-  
21 24.

22 Furthermore, no reasonable jury could find that Defendants were exposed to this litigation  
23 solely because Third-Party Defendants created a fake Uber account. Such a finding would  
24 necessarily require a determination that Third-Party Defendants' *murder* of Cherno had no part in  
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1 causing Defendants' exposure to this *wrongful death* action. No reasonable jury could find that to  
2 be true. Additionally, Defendants' claim for equitably indemnity cannot be predicated on the act  
3 of murdering Chernov, because that was an act committed by A (Third-Party Defendants) against C  
4 (Plaintiffs), not against B (Defendants). Therefore, Defendants cannot plausibly state a claim for  
5 equitable indemnity, and the Court strikes that claim.  
6

### 7 **3. Contractual Indemnity**

8 Defendants' final theory of liability, contractual indemnity, rests on a provision in Uber's  
9 Terms of Service contract, which users must accept before using the Uber app, that reads:

10 You agree to indemnify and hold Uber and its affiliates and their officers, directors,  
11 employees, and agents harmless from any and all claims, demands, losses, liabilities,  
12 and expenses (including attorneys' fees), arising out of or in connection with: (i)  
13 your use of the Services or services or goods obtained through your use of the  
14 Services; (ii) your breach or violation of any of these Terms; (iii) Uber's use of your  
User Content; or (iv) your violation of the rights of any third party, including Third  
Party Providers

15 Dkt. No. 31 ¶ 9. Plaintiffs argue (1) that the provision is insufficiently clear to indemnify Uber  
16 against its own negligence, and (2) that, even if the provision does purport to indemnify Uber, it is  
17 void as against public policy.<sup>2</sup> See Dkt. No. 41 at 11-14; Dkt. No. 52 at 6-8. The Court will address  
18 these arguments in turn.  
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23 <sup>2</sup> Plaintiffs also argue that Defendants' contractual indemnity claim is not ripe, because Defendants  
24 have not made any payment to Plaintiffs in the form of a settlement or an award of damages.  
25 *Central Wash. Refrigeration, Inc. v. Barbee*, 946 P.2d 760, 764-65 ("It is settled law that indemnity  
26 actions accrue when the party seeking indemnity pays or is legally adjudged obligated to pay  
27 damages to a third party."). However, the Court agrees with Defendants that, as a general matter,  
unripe indemnity claims may be brought against third-party defendants in the same action as the  
underlying claim against which a third-party plaintiff seeks indemnification, if impleading is in line  
with Rule 14's goal of judicial efficiency. See Dkt. No. 48, at 6-7.

1           a.       *Uber’s Indemnification Provision Covers Injuries Caused by Its Own*  
2                    *Negligence.*

3           Plaintiffs argue that Uber’s indemnification provision should not be read to include the  
4 company’s own negligence because the provision “does not expressly and unequivocally commit  
5 the customer to indemnify Uber for losses resulting from Uber’s own negligent acts.” Dkt. No. 52  
6 at 7. However, an indemnification provision need not use the word “negligence” to be clear and  
7 unequivocal. *See id.* at 837; *Scott v. Pacific West Mountain Resort*, 834 P.2d 6, 9-10 (Wash. 1992)  
8 (“[M]any courts have held that clear and unambiguous exculpatory language can eliminate  
9 negligence liability without expressly using the word ‘negligence.’ . . . We agree.”). Furthermore,  
10 Plaintiffs do not cite case law supporting their interpretation of the language in the Uber contract.  
11 In *Scott*, a case Plaintiffs rely on elsewhere, the Washington Supreme Court held that an  
12 indemnification provision purporting to “‘hold harmless . . . from all claims’ logically include[d]  
13 negligent conduct.” *Scott*, 834 P.2d at 10. Similarly, Uber’s provision states that users agree to  
14 “indemnify and hold Uber . . . harmless from any and all claims, demands, losses, liabilities, and  
15 expenses” arising out of their use of Uber’s services. Dkt. No. 31 ¶ 9. Accordingly, the Court finds  
16 that Uber’s indemnification provision covers injuries resulting from its own negligence.  
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19           b.       *Uber’s Indemnification Provision Is Subject to the Same Public Policy*  
20                    *Standard as an Exculpatory Clause.*

21           Plaintiffs argue that, if the provision in Uber’ Terms of Service is read to indemnify Uber  
22 for its own negligence, then the provision would be akin to an exculpatory clause. Exculpatory  
23 clauses are invalid as against public policy if the six factors set forth in *Wagenblast* are present:

24           [T]he attempted but invalid exemption involves a transaction which exhibits some  
25 or all of the following characteristics. [1] It concerns a business of a type generally  
26 thought suitable for public regulation. [2] The party seeking exculpation is engaged  
27 in performing a service of great importance to the public, which is often a matter of  
practical necessity for some members of the public. [3] The party holds himself out  
as willing to perform this service for any member of the public who seeks it, or at  
least for any member coming within certain established standards. [4] As a result

1 of the essential nature of the service, in the economic setting of the transaction, the  
2 party invoking exculpation possesses a decisive advantage of bargaining strength  
3 against any member of the public who seeks his services. [5] In exercising a superior  
4 bargaining power the party confronts the public with a standardized adherence  
5 contract of exculpation, and makes no provision whereby a purchaser may pay  
6 additional reasonable fees and obtain protection against negligence. [6] Finally, as  
7 a result of the transaction, the person or property of the purchaser is placed under  
8 the control of the seller, subject to the risk of carelessness by the seller or his agents.

9 *Wagenblast v. Odessa Sch. Dist.*, 758 P.2d 968, 971 (Wash. 1988) (citation omitted).

10 Defendants' primary response is that indemnification provisions are distinct from  
11 exculpatory clauses, and thus these six factors should not be applied. Dkt. No. 48 at 4-6.  
12 Defendants attempt to distinguish the case on which Plaintiffs most heavily rely, *Scott*, by arguing  
13 that "[i]n holding that the exculpatory clause was valid, the court rejected the plaintiffs' attempt to  
14 argue that the 'hold harmless' language means that the provision was an indemnity clause and not  
15 an exculpatory clause." *Id.* at 5. Defendants' interpretation attempts to bypass the explicit language  
16 of *Scott* downplaying any distinction between exculpatory and indemnification provisions.  
17 Specifically, the *Scott* court stated that, "although there is a distinction in definition between  
18 exculpatory clauses and indemnity clauses, in these settings they both attempt to shift ultimate  
19 responsibility for negligence and so are generally construed by the same principles of law." *Scott*,  
20 758 P.2d at 10.

21 The relevant provision in Uber's Terms of Service contains both the word "indemnify" and  
22 the term "hold harmless," indicating that the same provision is intended to both indemnify and  
23 exculpate. Thus, the contract itself recognizes an equivalence between these two concepts.  
24 Moreover, an indemnification clause would have the same practical effect as an exculpatory clause  
25 in this context. As explained in *Scott*, "[a]n exculpatory clause purports to deny an injured party  
26 the right to recover damages from the person negligently causing the injury. An indemnification  
27 clause attempts to shift responsibility for the payment of damages to someone other than the



1 negligent party, usually back to the injured party, thus likely producing the same result as an  
2 exculpatory clause.” *Id.* Based on this analysis, and the lack of any other relevant support for  
3 Defendants’ position, the Court finds that Uber’s indemnification provision is subject to the public  
4 policy analysis set forth in *Wagenblast*.

5  
6 *c. Conducting a Public Policy Analysis of Uber’s Indemnification Provision  
Would Be Inappropriate at This Stage.*

7 Although the Court has determined that Uber’s indemnification clause should be scrutinized  
8 under the *Wagenblast* factors, the Court lacks sufficient information to apply those factors at this  
9 stage. The *Wagenblast* analysis calls for the Court to determine the nature of transactions between  
10 Uber and its customers and the characteristics of the service Uber provides to the public. Currently,  
11 the facts germane to this analysis are disputed by the parties. For example, in their Answer,  
12 Defendants deny the allegation that “Uber offers to carry and transport members of the general  
13 public and holds itself out to the public as an on-demand form of transportation available to anyone  
14 who wants to use it.” *See* Dkts. 15 ¶ 35; 46 ¶ 35. Defendants similarly deny that Uber functions  
15 like a taxi service. *See* Dkts. 15 ¶ 36; 46 ¶ 36. Defendants admit only that Uber’s app is “available  
16 to the general public to download . . . and that neither independent drivers nor riders are charged a  
17 fee to download [the app].” Dkt. No. 46 ¶ 38.  
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20 In essence, the parties dispute whether Uber is a transportation company, akin to a taxi  
21 service, or whether it is a technology company that connects independent drivers to customers but  
22 does not itself provide transportation. *See* Dkt. No. 46 at 12 (“Uber is a technology company and  
23 not a transportation company.”). The Court cannot determine, for the purpose of a public policy  
24 analysis, whether the service Uber provides is essential to the public without first determining what  
25 that service is and how it is provided. That determination, however, cannot be made based on the  
26 facts currently before the Court.  
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1           **4.       Defendants’ Third-Party Claim Is Likely to Confuse the Jury and Disadvantage**  
2           **the Existing Action.**

3           Plaintiffs argue that, regardless of whether Defendants’ third-party claims are found to be  
4           meritless, the Court should nevertheless strike or sever them because including them would place  
5           Plaintiffs at a disadvantage in the existing action. Dkt. No. 52 at 8-10. Plaintiffs’ overarching  
6           argument is that “[Defendants’] true purpose in trying to implead [Third-Party Defendants] is to  
7           confuse the issues and jury, and to delay litigation.” *Id.* at 10. Plaintiffs reason that “Uber’s claims  
8           against [Third-Party Defendants] ‘are of a different character’ than Plaintiffs’ negligence claims  
9           against Uber.” *Id.* Whereas Plaintiffs’ claims focus on Uber’s relationship with its drivers,  
10          Defendants’ claims depend on the company’s relationship with its passengers.<sup>3</sup> Dkt. No. 52 at 8  
11          (citation omitted).  
12

13          Rather than dispute this characterization of the issues presented by Plaintiffs’ complaint and  
14          the third-party complaint, Defendants argue that striking their third-party complaint is “premature”  
15          because nothing is yet being presented to a jury, that there is some factual overlap between their  
16          claims and Plaintiffs’, and that it is more efficient to decide these common questions of fact in a  
17          single action. Dkt. No. 48 at 12-13.  
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19          The Court agrees with Plaintiffs. The third-party claims present entirely different issues.  
20          Rather than achieving efficiency, keeping the third-party claims in this action would unduly  
21          complicate discovery and trial. Most importantly, presenting Defendants’ third-party claims would  
22          run the risk of confusing the jury. Defendants last remaining third-party claim (contractual  
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25 <sup>3</sup> The Court notes that other “[c]ourts [have] especially disapproved of third-party claims asserted  
26 against parties who are plainly judgment-proof” (Dkt. No. 52 at 9), *see, e.g., Valdez v. Farmington*,  
27 580 F. Supp. 19, 21 (D.N.M. 1984) (court may refuse impleader where third party is, “in reality, a  
‘strawman defendant,’” and impleader “is simply a litigation tactic”), a fact which is abundantly  
clear in the case before the Court.

1 indemnity) is a contract claim against Uber passengers. Plaintiffs' complaint brings tort claims on  
2 behalf of an Uber driver. There is an obvious risk that a jury would not fully understand the  
3 separation between the two claims and would instead assume that they were being asked to decide,  
4 between Uber or Third-Party Defendants, who was more responsible for Chernov's death, which  
5 would be a misapprehension of the nature of this case and would prejudice Plaintiffs' action. It is  
6 far more appropriate for Defendants to bring their claims in a separate action. The Court will sever  
7 Defendants contractual indemnity claim against Third-Party Defendants from this action.<sup>4</sup>

9 **B. Defendants' Motion for a Protective Order**

10 Defendants have moved for a protective order shielding its discovery responses that include  
11 "confidential, proprietary and/or commercially-sensitive information" from public disclosure. *See*  
12 Dkt. No. 35. Defendants request that the protective order cover, among other things, documents  
13 related to its financial condition and revenue, copies of settlement agreements and insurance  
14 policies, and incident reports from Uber's "independent drivers." *Id.* at 6-8. In drafting their  
15 proposed protective order, Defendants largely adhered to the Western District of Washington's  
16 Model Stipulated Protective Order. Defendants made two modifications to the Model Protective  
17 Order: first, they added language to the effect that sanctions for discovery practices are appropriate  
18 only "after the party has had a reasonable opportunity to cure any prohibited designation." Dkt.  
19 No. 50 at 8; second, Defendants added a requirement that Plaintiffs make challenges to Defendants'  
20 confidentiality designations within 30 days of the designation. *Id.* at 9.

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24 <sup>4</sup> Likewise, Defendants' claim for a declaratory judgment as to "the respective liabilities of  
25 [Defendants] and Third-Party Defendants for such damages [claimed by Plaintiffs]" (Dkt. No. 31 ¶  
26 33) would essentially ask the jury to apportion fault between Defendants and Third-Party  
27 Defendants as though they are all defendants to Plaintiffs' claims, when in fact Third-Party  
Defendants are not. Therefore, the Court will sever the claim for declaratory judgment because it  
is likely to confuse the jury.

1 Federal Rule of Civil Procedure 26(c)(1) empowers the Court to issue a protective order  
2 shielding a party's discovery responses from public disclosure when the party demonstrates "good  
3 cause." Fed R. Civ. P. 26(c)(1). In demonstrating good cause, the moving party must point to a  
4 "specific prejudice or harm [that] will result if no protective order is granted." *Phillips ex rel.*  
5 *Estates of Byrd v. General Motors Corp.*, 307 F.3d 1206, 1210-11 (9th Cir. 2002). The Rule  
6 specifically authorizes protective orders that "requir[e] that a trade secret or other confidential  
7 research, development, or commercial information not be revealed or be revealed only in a specified  
8 way." Fed R. Civ. P. 26(c)(1)(G).

10 Defendants have convincingly demonstrated that many of their discovery responses will  
11 contain proprietary information about how the Uber app functions, Uber's financial condition, and  
12 Uber's business dealings. *See* Dkt. No. 35 at 6-8. Plaintiffs' arguments in response are largely  
13 misplaced. For example, Plaintiffs contend that "[b]y law, Plaintiffs are entitled to Uber's insurance  
14 policies." *Id.* at 10. However, Defendants are not seeking to withhold any insurance or other  
15 information from Plaintiffs; their protective order simply shields that information from public view.  
16 Similarly, Plaintiffs argue that "Uber is not entitled to an 'Attorneys' Eyes Only' (AEO) protective  
17 order," but Defendants are not seeking an AEO designation for any documents, and they explicitly  
18 disclaim that practice. *See* Dkt. No. 35 at 13 n.4. Plaintiffs also argue more generally that the  
19 proposed protective order is too broad and will cover virtually everything Uber produces. *See* Dkt.  
20 No. 44 at 11-12. However, the protective order will not deprive Plaintiffs of any of the information  
21 produced, and nowhere do Plaintiffs explain why the *public* would be prejudiced by not being able  
22 to access Uber's discovery disclosures. Furthermore, Plaintiffs are free to challenge Defendants'  
23 designations, and Defendants could be subject to sanctions if they are found to be abusing the  
24 protective order.  
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1           Accordingly, the Court hereby grants Defendants’ motion for a protective order, including  
2 the modifications Defendants made to the Model Protective Order, which the Court finds  
3 reasonable.

4           **C.     Defendants’ Motion for a Stay**

5           Defendants seek an order staying this case until after Third-Party Defendants’ trial in their  
6 criminal case, which is set to begin on October 18, 2021. Dkt. No. 33 at 2, 8. Defendants argue  
7 that discovery in this case necessarily involves seeking written responses or taking the depositions  
8 of Third-Party Defendants, and that doing so before their criminal trial could violate Third-Party  
9 Defendants’ Fifth Amendment rights against self-incrimination. *Id.* at 4-6. Furthermore,  
10 Defendants contend that, if Third-Party Defendants invoke their Fifth Amendment rights and do  
11 not respond to discovery requests, Defendants will be “unable to meaningfully conduct discovery  
12 on [Third-Party Defendants].” *Id.* at 7. In support, Defendants cite numerous cases in which courts  
13 stayed civil proceedings until a parallel criminal case concluded. *See id.* at 4-6.

14           The Court acknowledges that, to the extent discovery from Third-Party Defendants is  
15 necessary in this case, Fifth Amendment concerns could arise and hamper discovery. However, as  
16 Plaintiffs point out (*see* Dkt. No. 43 at 6), the bulk of discovery in this case does not concern Third-  
17 Party Defendants, and there is no reason why that discovery should be stayed until October. The  
18 Court has granted Defendants’ protective order, and Defendants are now obligated to begin  
19 responding to Plaintiffs’ requests. If the parties encounter difficulty in seeking discovery from  
20 Third-Party Defendants, then the parties should simply arrange to take discovery from them after  
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1 their trial is complete.<sup>5</sup> Therefore, the Court finds that a stay is not warranted, and discovery should  
2 proceed.

3 **IV. CONCLUSION**

4 For the foregoing reasons, Defendants' motion for a protective order (Dkt. No. 35) is  
5 **HEREBY GRANTED**. Defendants' motion for a stay (Dkt. No. 33) is **HEREBY DENIED**.  
6 Plaintiffs' motion to strike or sever the third-party complaint (Dkt. No. 41) is **HEREBY**  
7 **GRANTED**. The Court hereby strikes Defendants' contribution and equitable indemnity claims  
8 and severs Defendants' contractual indemnity and declaratory judgment claims.  
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10 Dated this 18th day of August 2021.

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Hon. Barbara J. Rothstein  
14 United States District Judge  
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26 <sup>5</sup> The Court recognizes that the discovery period in this case closes on October 20, 2021, two days  
27 after Third-Party Defendants' trial. If the parties need to extend that deadline or take depositions  
outside of the discovery period, they may make a request to that effect at the appropriate time.