

CAUSE NO: _____

JIMENA MARTINEZ	§	IN THE _____ DISTRICT COURT
<i>Plaintiff,</i>	§	
	§	
	§	
v.	§	OF
	§	
UBER TECHNOLOGIES, INC.,	§	
RAISER, LLC, UBER USA, LLC,	§	
AND RICARDO MELENDEZ, II	§	
<i>Defendants.</i>	§	EL PASO COUNTY, TEXAS

PLAINTIFF’S ORIGINAL PETITION AND JURY DEMAND

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW Jimena Martinez, Plaintiff, in the above-entitled and numbered cause, complaining of Defendants Uber Technologies, Inc., Raiser, LLC, Uber USA, LLC, and Ricardo Melendez, II, and would respectfully show the Court the following:

I. DISCOVERY

1.01 Pursuant to Rule 190.1 of the Texas Rules of Civil Procedure, Plaintiff intends to conduct discovery in this case under level 3 as outlined in Rule 190.4 Texas Rules of Civil Procedure.

II. PARTIES

2.01 Plaintiff Jimena Martinez is an individual and resident of El Paso County, Texas and brings this claim individually. The last three digits of her social security number are 345.

2.02 Defendant Uber Technologies, Inc. (hereafter “Uber”) is a foreign for-profit corporation organized and existing under the laws of the State of Delaware with its principal place of business located at 800 Market Street, San Francisco, California 94102. Uber Technologies, Inc. may be served with process by service through its registered agent, CT Corporation at 1999 Bryan Street, Suite 900, Dallas, Texas 75201-3136.

2.03 Defendant Raiser, LLC (hereafter “Raiser”) is a foreign limited liability company organized and existing under the laws of the State of Delaware, whose principal place office is located at 182 Howard Street #8, San Francisco, California 94105. Raiser, LLC may be served with process through its registered agent, CT Corporation at 1999 Bryan Street, Suite 900, Dallas, Texas 75201-3136.

2.04. Defendant Uber USA, LLC (hereafter “Uber USA”) is a foreign limited liability company organized and existing under the laws of the State of Delaware, whose principal office is located at 1455 Market Street, Fl. 4, San Francisco, California 94103. Uber USA, LLC may be served with process by serving the Texas Secretary of State, 1019 Brazos Street, Austin, Texas 78701 as its agent for service because Defendant engages in business in Texas but has not designated or maintained a registered agent for service of process in Texas.

2.05 Defendant Ricardo Melendez, II (hereafter “Melendez”) is an individual and resident of El Paso, Texas. Defendant Melendez may be served with process at his last known address at 3345 Voss Drive, El Paso, Texas 79936, or wherever he may be found.

III. JURISDICTION AND VENUE

3.01 Venue is proper in El Paso County, Texas pursuant to TEX. CIV. PRAC. & REM CODE § 15.002(a)(1), because it is the county in which all or a substantial part of the events or missions giving rise to the claim occurred.

3.02 The amount of Plaintiff’s damages is substantial and well in excess of the jurisdictional minimums of this Court. Many elements of damage, including pain, suffering and mental anguish in the past and future, past and future physical impairment, and future lost earning capacity, cannot be determined with mathematical precision. Furthermore, the determination of many of these elements of damage is peculiarly within the province of the jury. Plaintiff does not at this time

seek any certain amount of damages for any of these elements of damage but would instead rely upon the collective wisdom of the jury to determine an amount that would fairly and reasonably compensate Plaintiff. However, Plaintiff affirmatively pleads that the monetary damages sought are \$1,000,000.00 (one million dollars) or more and will fall within the limits set out in in TEX. R. CIV. P. 47(c)(5). Plaintiff also seeks judgment for all other relief to which Plaintiff is entitled. Plaintiff reserves the right to file an amended pleading on this issue should subsequent evidence show this figure to be either too high or too low.

3.03 The Court has personal jurisdiction over Uber and its subsidiary alter egos Raiser and Uber USA. The Court has personal jurisdiction over the Uber, Raiser, and Uber USA as they are engaged in business in Texas and have purposefully availed themselves of the privilege of conducting business in El Paso County and in Texas. Continuously and systematically since 2012, the Uber, Raiser, and Uber USA have targeted and marketed their services to El Paso County citizens. Continuously and systematically since 2012, the Uber, Raiser, and Uber USA have contracted with residents of Texas who are drivers for the purpose of providing services in Texas and in El Paso County. Continuously and systematically since 2012, the Uber, Raiser, and Uber USA have contracted with residents of Texas who seek and receive car services from drivers in and around Texas communities. These continuous and systematic contacts with Texas are so substantial that Uber, Raiser, and Uber USA are essentially “at home” in Texas. Further, the potential claims in this case arise from or relate to the Uber, Raiser, and Uber USA’s contacts with Texas such that those contacts with Texas are substantially connected to the operative facts of this proceeding.

IV. FACTS

4.01 At the time of the subject collision, Defendant Melendez was employed by Uber, Rasier and/or Uber USA as a driver, and was working in the scope of his employment. Further, Defendant Melendez was at all relevant times an employee and/or actual, apparent, ostensible, and/or estoppel agent, and/or representative, of Uber, Rasier and/or Uber USA. Uber, Rasier and Uber USA entities are hereafter referred to jointly as “Uber Entities”.

4.02 This is an action for damages for personal injuries to Jimena Martinez arising out of a motor vehicle collision occurring on or about June 29, 2017 involving a vehicle operated by an Uber Entities driver, Defendant Melendez. At the time of the collision, Plaintiff Martinez was a back right-seat passenger in Defendant Melendez’s vehicle.

4.03 Defendant Melendez was traveling westbound on 3600 E. Paisano Ave in El Paso County, Texas, which is a 2-lane one-way roadway for westbound traffic. At the same time, a 16-year-old driver was headed south on the US 54 frontage road. The US 54 southbound frontage road is a 2-lane one-way roadway. The intersection at 3600 E. Paisano Ave and the US 54 southbound frontage road is controlled by a signal light. At the time of the collision, the signal light was green for the southbound traffic and red for westbound traffic. Defendant Melendez disregarded the red-light at the intersection and caused a collision with the 16-year-old driver traveling southbound the frontage road. Defendant Melendez was charged with a red-light violation, and the investigating officer listed the only contributing factor as Defendant Melendez’s “driver inattention”.

4.04 Due to the accident, Plaintiff Martinez sustained severe bodily injuries, including closed head trauma, a scalp contusion, abrasions, bruises, and a joint separation of the right shoulder, which required surgical repair.

4.05 The Uber Entities use an application dispatch system to communicate with drivers, which inescapably causes their drivers to be distracted while driving. The dispatch system receives pick-up requests from requesting users and identifies a plurality of proximate drivers in relation to each of the requesting users. For each requesting user, the dispatch system runs a matching operation, using relevant factors, to select an optimal driver from the group proximate drivers to service the pick-up request. This requires Uber Entities drivers' to constantly check their smartphone for rides and destinations. The Uber Entities knowingly require their drivers to use their phones while driving, which in turn causes their drivers to be distracted, inattentive, and which leads to collisions such as this.

V. CAUSES OF ACTION

Negligence of Defendant Melendez

5.01 Defendant Melendez violated § 544.007 of the Texas Transportation Code for failing to comply with an applicable official traffic-control device.

5.02 Defendant Melendez's breach of the duty imposed by the aforementioned statute is negligence *per se* and proximately caused the injuries to Plaintiff, specified herein.

5.03 Defendant Melendez was guilty of negligence in other respects including the following:

- a. In disregarding a traffic signal;
- b. In failing to maintain proper attention;
- c. In failing to keep a proper lookout;
- d. In operating a vehicle in a careless manner;
- e. In failing to timely apply the brakes of his vehicle in order to avoid the collision in question;
- f. In driving in a reckless manner;
- g. In failing to yield the right-of-way;

- h. In failing to maintain an assured clear distance;
- i. In failing to control his speed; and
- j. In failing to take proper evasive action.

5.04 Each of the foregoing acts or omissions of Defendant Melendez, singularly or in combination with others, constituted negligence and/or negligence *per se*, which was a proximate cause of the above-referenced occurrence and Plaintiff's injuries and damages.

Negligence of Uber Entities

5.05 At all relevant times, the Uber Entities owed a duty to Plaintiff and other passengers to act with reasonable care. This duty arises by virtue of its employment, agency, joint liability with, or control of Defendant Melendez; out of the foreseeability of the risks involved in transporting passengers; by application of the risk-utility test; and by contract.

5.06 The Uber Entities breached their duties to Plaintiff by acting or failing to act as a reasonably prudent company would act under the same or similar circumstances, including but not limited to the following:

- a. Failing to act with ordinary care;
- b. Failing to exercise reasonable care to avoid a foreseeable risk of injury to Plaintiff and other passengers;
- c. Failing to use ordinary care in the hiring of Defendant Melendez to drive passengers;
- d. Failing to use ordinary care in the supervising, retaining, monitoring, or training of Defendant Melendez as an employee to drive passengers;
- e. Failing to use ordinary care in selecting Defendant Melendez as a driver for hire;
- f. Failing to use ordinary care in exercising whatever control Uber retained over Defendant Melendez;
- g. Failing to adopt, implement, and enforce safety policies;

- h. Failure to perform the transportation service bargained for with care, skill, and faithfulness so as not to injure Plaintiff during the performance of the contracted-for transport;
- i. For requiring Defendant Melendez to operate a handheld device while operating his vehicle; and
- j. For creating a system of dispatching and communicating with drivers that would necessarily lead to driver inattention and distraction.

5.07 The above acts or omissions by the Uber Entities were a producing and/or proximate cause of Plaintiff's injuries and the resulting damages Plaintiff seeks in this suit.

5.08 At all relevant times, the Uber Entities and Defendant Melendez were acting as a common carrier as they were in the business of carrying passengers and held themselves out for hire by the public. The Uber Entities and Defendant Melendez solicit and operate a public transportation service. The business of the Uber Entities and Defendant Melendez is the transport for hire of paying public passengers, and that transportation is not incidental to any other purpose for the Uber Entities and Defendant Melendez, but rather is the primary mode of making money. If the public did not seek transportation for pay from the Uber Entities and Defendant Melendez, they would have no business and would not exist.

5.09 As a common carrier, the Uber Entities and Defendant Melendez owed the highest degree of care in the operation of the transport of their passengers. Specifically, a high degree of care is defined as that degree of care that would be exercised by a very cautious and prudent person under the same or similar circumstances. The Uber Entities publicly solicited and operated a vehicle for hire transportation service to and for the citizens of El Paso County, including Plaintiff. Plaintiff requested that the Uber Entities transport her. Uber agreed and dispatched its driver Defendant Melendez. At all relevant times, the Uber Entities controlled Defendant Melendez as an employee, agent, or joint venturer.

B. Gross Negligence

5.10 The Uber Entities are Transportation Network Companies that provide transportation services to those people who need a ride. The Uber Entities drivers log into their company account on their smartphones and indicate they are available to accept a fare. When a dispatch by text has come in informing them a customer has requested a ride, drivers only have 15 seconds to tap the phone, indicating they received the message and will accept the fare. During those 15 seconds, drivers must look at their phone, note the location of the fare, and decide whether it is one they want to accept. If they do not respond in 15 seconds, they lose the fare and it goes to another driver. By not acting within those 15 seconds means the driver loses the fare and the opportunity to make money. If drivers are logged into the system but fail to respond to several calls in a row, they are suspended and not allowed to drive for a period of time. This means drivers must be vigilant about responding to the alerts they receive from their smartphones if they want to maintain their ability to accept ride requests and ultimately make money. Not only does the driver become visually distracted by looking away from the road, but also cognitively distracted by thinking and making decisions about things other than driving.

5.11 The Uber Entities mandate that drivers use their phones. The Uber Entities drivers must use their phones to:

1. Notify nearby passengers they're available;
2. Accept new paying fares;
3. Navigate to the passenger pickup location;
4. Navigate to the drop off destination;
5. Accept payment for the ride;
6. Rate their passengers; and

7. Check for various Uber messages, rewards and incentives.

5.12 Distracted driving is any activity that takes a driver's eyes and attention off the road, such as texting, using a phone, or talking to passengers, according to the U.S. Department of Transportation, which sponsors the website Distraction.gov. The website calls distracted driving an "epidemic" and provides statistics to prove the claim. For instance, in 2016 alone 3,450 people were killed. Moreover, 391,000 were injured in motor vehicle crashes involving distracted drivers in 2015. Additionally, according to the Texas Department of Motor Vehicles, car accidents that are caused by distracted drivers are a very common issue in the state of Texas, as in virtually every U.S. state, and distracted driving is the reason for 23% of all car crashes in the United States. Even in light of this readily available information, the Uber Entities knowingly and without regard for the safety of the public, instituted a communication system that unavoidably causes their drivers to be distracted and inattentive, and which led to this collision.

5.13 The acts of negligence on the part of Defendants as set out above, were of such character as to make the Defendants guilty of gross negligence. The Defendants' acts of negligence when viewed objectively from the standpoint of the Defendants involved an extreme degree of risk, considering the probability and magnitude of the potential harm to others. Defendant had actual, subjective awareness of this risk, but nevertheless proceeded with conscious indifference to the rights, safety, and welfare of the Plaintiffs. The gross negligence of the Defendant was a proximate cause of the incident and of the injuries and damages suffered by the Plaintiffs. Because of Defendant's gross negligence, Plaintiffs seek and is entitled to an award of exemplary damages.

VI. DAMAGES

6.01 As a direct and proximate cause of Defendants' negligence, Plaintiff has suffered damages and personal injuries and, as provided by Texas Law, is entitled to recover for those damages.

Plaintiff has suffered damages as follows:

- a. Physical pain sustained in the past;
- b. Physical pain that, in reasonable probability, Plaintiff will sustain in the future;
- c. Mental anguish sustained in the past;
- d. Mental anguish that, in reasonable probability, Plaintiff will sustain in the future;
- e. Physical impairment sustained in the past;
- f. Physical impairment that, in reasonable probability, Plaintiff will sustain in the future;
- g. Lost wages sustained in the past;
- h. Loss of wage earning capacity that, in reasonable probability, Plaintiff will sustain in the future;
- i. Medical care expenses sustained in the past; and
- j. Medical care expenses that, in reasonable probability, Plaintiff will require in the future.

VII. PRAYER

7.01 WHEREFORE, PREMISES CONSIDERED, Plaintiff respectfully requests the Defendants be cited to appear and answer and that upon final trial by jury, Plaintiff recover against Defendants the following:

1. Actual Damages and Exemplary Damages;
2. Pre-judgment and post-judgment interest as allowed by law;
3. Costs of court; and
4. Such other, further and different relief to which Plaintiffs may show themselves justly entitled.

Respectfully submitted,

GLASHEEN, VALLES & INDERMAN, LLP
P.O. Box 1976 (79408-1976)
1302 Texas Avenue
Lubbock, Texas 79401
(806) 776-1332 – Direct
(806) 329-0595 – Facsimile
efile.jmedina@gvilaw.com

/s/ Jason Medina _____

Jason Medina
State Bar No. 24046417
Noe Valles
State Bar No. 00789697

ATTORNEYS FOR PLAINTIFF

JURY DEMAND

Plaintiff hereby respectfully demands a trial by jury in this cause and tenders the required fee.

/s/ Jason Medina _____

Jason Medina