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DC-16-16470

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CAUSE NO. _____

SARAH MILBURN, JOHN MILBURN, and CAROLYN
MILBURN,*Plaintiffs,*

v.

UBER TECHNOLOGIES, INC.; RASIER, LLC;
UBER USA, LLC; AMERICAN HONDA MOTOR
CO., INC.; HONDA MOTOR CO., LTD.; ARIAN
YUSUFZAI, and DAWOOD KOHISTANTI a/k/a
DAWOOD HOHISTANTI,*Defendants.*

IN THE DISTRICT COURT OF

DALLAS COUNTY, TEXAS

F-116TH JUDICIAL DISTRICT

**PLAINTIFFS' ORIGINAL PETITION, REQUEST FOR DISCLOSURE,
AND REQUEST FOR A JURY TRIAL**

Plaintiffs Sarah Milburn, John Milburn and Carolyn Milburn (the "Milburns") file this Original Petition and assert the following allegations and claims against Defendants Uber Technologies, Inc., Rasier, LLC, American Honda Motor Co., Inc., Honda Motor Co., Ltd., Arian Yusufzai, and Dawood Kohistanti and pray for their damages as follows:

**I.
INTRODUCTION**

1. This lawsuit involves catastrophic injuries to a young woman, Sarah Milburn, who tried to make safe and responsible decisions. However, two corporations—Uber and Honda--failed to provide her with the safety she reasonably expected, and as a result, she has suffered life-changing injuries and faces a lifetime of physical impairment and challenges as a result of quadriplegia paralysis. Had these corporations acted responsibly as good corporate citizens and enforced a culture of safety, Sarah would not be catastrophically injured. This lawsuit seeks accountability of these corporations and a change in how they do business to protect our communities and so that other passengers do not have to endure what Sarah has suffered and will continue to endure for the rest of her life.

II.
**PREYING ON OUR COMMUNITY’S DESIRE FOR SAFETY AND CONVENIENCE:
THE STORY OF UBER AND ITS DRIVE FOR PROFITS**

2. Uber Technologies, Inc. is an international corporation that was founded in 2009 by two young entrepreneurs in Northern California. In the span of just 7 years, it has expanded to doing business in over 66 countries and more than 500 cities worldwide. Uber’s aggressive expansion has driven up its valuation to over \$60 billion in advance of a much-speculated initial public stock offering, and it has been called “the most valuable startup in the world.”¹

3. Unfortunately for the public, this remarkable and historic accumulation of value and money by Uber has not been done in a responsible and safe manner. Instead, Uber has become the archetype of a corporation that put profits in front of people.

4. Uber operates a vehicle for hire car service—a business that is not “new”. Vehicle-for-hire business began nearly four centuries ago in Paris and London when horse-drawn carriages transporting passengers around town for a charge. By the early 1900s, gas-powered taxis first started operating in New York City and utilized “meters” to calculate the distance of the trip and thus the fare. The taxi industry grew as the automobile industry grew.

5. A major technological advance in taxis arrived in the 1940s with the use of two-way radios. These radios allowed the use of dispatch offices. With the radios, passengers could call into the dispatch offices to request a taxi, and the dispatcher could communicate with the taxi on the two way radio and tell the taxi where the passenger was that needed a ride. For the next 70 years, the two-way radio dispatch model predominated the taxi industry.

6. When Uber began in 2009, its major technological breakthrough was a method to improve upon the two-radio dispatch model by utilizing the exploding growth of “smartphones” and created a downloadable application. With Uber’s smartphone application, instead of calling a dispatch center and asking for a ride, passengers could open the application and, with a click on the screen, indicate they need a ride. Uber’s computers then communicate with Uber’s drivers via an application on the drivers’ smartphone (usually provided by Uber) and tell the drivers where to go—just like the old radio dispatch would do. For all of its glitz and technology, Uber is little more than just that: a computerized worldwide dispatch center running a taxi service just like which has existed since the 1940s in this country.

¹ See e.g., Evan Comen, “Uber is the World’s Most Valuable Startup”, Wall Street 24/7, October 16, 2016, available at: <http://247wallst.com/apps-software/2016/10/16/uber-is-the-worlds-most-valuable-startup/>



*Different Technologies;
Same Business: Transporting Passengers for Pay*

7. Despite the fact that Uber functions just like a taxi service, Uber has tried to avoid the regulation and liabilities of the taxi service model. Uber seeks a significant competitive advantage (and therefore a greater opportunity to profit) over traditional taxis by attempting to exempt themselves from regulations that otherwise govern taxi cab and limousine services. Instead, Uber attempts to call itself a “technology company” or what is sometimes called a “transportation network company” (TNC) and denies that it is operating a taxi service. Uber invests significant funds in lobbying governmental bodies to accept that concept. However, Uber’s attempts to re-frame its business just place the method (smartphone application dispatch vs. two-way radio dispatch) over the substance of what the business is (transporting passengers to destinations for money). At the end of the day, Uber is no different than any taxi or car service company that has existed for decades.

8. Another way that Uber has tried to obtain a competitive advantage is by mis-classifying its drivers as independent contractors. Because Uber’s goal is to maximize profits, it does not want all of the liabilities that attach to classifying its drivers as “employees.” Uber is concerned that if its drivers are employees, then Uber has to comply with all federal and state regulations regarding employees, which include tax issues, paying of overtime, and providing all other government-mandated employee benefits. That would cut into Uber’s profits, so Uber has refused to treat its drivers as employees, and as a result, Uber has been subjected to litigation all across the country from its drivers.

9. Uber is also concerned that if its drivers are employees or if Uber is determined to “control” its drivers, then Uber is automatically responsible for its drivers’ negligence and any damages that result from its drivers’ negligence under legal doctrines such as *respondeat superior*. Given that Uber claims over one million rides a day, that potential liability threatens Uber’s rapacious desire to maximize profits.

10. This has resulted in conflicting desires for Uber. On the one hand, Uber wants to promote its brand and try to ensure quality in its service. However, in its desire to avoid any responsibility (under regulation or civil liability) for its drivers, in documents and civil pleadings Uber disclaims any “control” over its drivers. Uber takes the position that it does not assert any control over its drivers to the point it does not promulgate or enforce safety policies for fear this might be seen as control. For Uber, it would rather be able to claim the drivers are independent contractors than make a concerted effort to provide a safe service.

11. Uber does not stop at merely disclaiming any connection with its drivers. Uber has gone further to insulate itself by setting up an elaborate and opaque system of shell companies that are subsidiaries of Uber. Some information about Uber’s labyrinthine system can be gleaned from public filings in lawsuits involving Uber. Two of those shell entities are Rasier, LLC and Uber USA, LLC. Both are wholly-owned subsidiary companies of Uber and appear to exist only on paper. Uber sets up these shell entities to interact with the drivers so that Uber can claim another layer of distance. However these shell entities are nothing more than alter egos and corporate fictions of Uber. These shell entities are designed to circumvent the law and further mislead the public.

12. For instance, Uber created Rasier, and drivers (such as the driver in this case) sign an agreement with Rasier—not Uber. As part of that agreement, when passengers are transported and a fee is earned, part of the fee goes to the driver and part allegedly goes to Rasier. Unbeknownst to the public that is looking for a ride from Uber, Uber allows the passengers to be misled by not making clear that the driver purports to be affiliated with Rasier. Apparently the money earned by Rasier goes back to Uber. The exact mechanism of this arrangement is not known, but discovery in this case will answer such questions. What is apparent is that the entire system is just a fiction created by Uber to shield itself from a relationship with the drivers while Uber profits from the very rides the drivers provide.

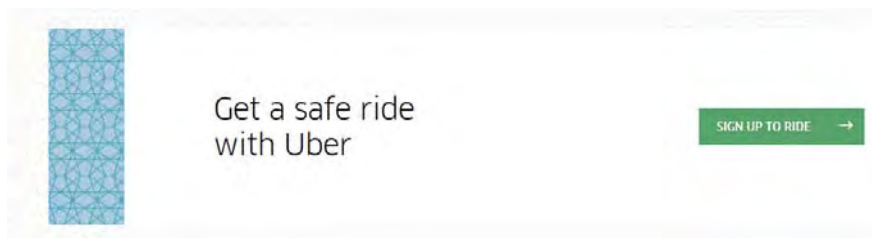
13. Uber’s efforts to disclaim its drivers as employees is ultimately unavailing. Uber’s subsidiaries are, as a matter of law, Uber’s alter egos. Further Uber retains the right of control over its drivers such that, as a matter of law, the drivers are clearly Uber’s agents, employees, or co-venturers for purposes of liability. Nevertheless, in its ill-advised attempts to claim otherwise, Uber subjects all of its passengers to unnecessary dangers.

III.
UBER’S CALLOUS AND MISLEADING CLAIMS REGARDING SAFETY

14. On its website, Uber claims to make a commitment to its passengers like Sarah and to our community to keeping people and communities safe:²



Uber promotes its commitment to safety by marketing its product as providing a “safe ride:”



15. Uber markets its service as a safe ride because that is what passengers want. But such claims are little more than fraud. In order to induce paying passengers to give Uber money, it falsely and recklessly promotes the idea that its rides are safe. However, Uber does virtually nothing to ensure that passengers are safe once they get in the car. Just in the last year, several lawsuits have exposed Uber’s fraudulent safety claims and have led to Uber having to pay tens of millions of dollars and to stop defrauding the public with its misleading claims.

16. In preying on passengers, Uber once claimed it had “industry-leading” background checks. However, district attorneys in San Francisco and Los Angeles sued Uber for the reason that Uber’s background checks were minimal and less than what are used for licensed taxi drivers. The District Attorneys showed that Uber’s background checks failed to prevent dozens of criminals from driving for Uber in those cities, including several registered sex offenders and a convicted murderer. After agreeing to pay up to \$25,000,000.00 to settle that case, Uber also has to stop using the misleading and false claim that its background checks were “industry-leading.”

² See <https://www.uber.com/ride/safety/> (last accessed 12/22/16).

17. Similarly, a class action lawsuit in California was brought by a class of passengers complaining of the safety-related advertising Uber utilizes. Uber had been advertising that Uber rides were “safer than a taxi” and claiming that it was “the safest ride on the road” despite its virtually non-existent safety policies. Again Uber had to settle such a lawsuit, agreeing to pay \$28.5 million and change its safety-related advertising. Further, Uber had to stop scamming its customers by adding a “Safe Ride Fee” on top of the actual service charge. Uber still charges the fee, but now just calls it a “booking fee.”

18. Uber’s pattern of behavior demonstrates a clear intention to mislead the public about the safety of its service when it is much less safe than other options. Yet despite the continual lawsuits and tens of millions in settlements, Uber still tries to prey upon passengers’ desire for safety.

19. Uber has particularly focused on targeting passengers who might be out at a restaurant or bar at night consuming alcoholic beverages and who want to do the responsible thing by not operating a motor vehicle after consuming alcohol. Riding on the back of decades of “sober driver” advertising by public interest groups, Uber has tried to profit on that concept. Uber has even installed kiosks in some cities near where patrons might consume alcoholic beverages offering “Uber Safe” rides in which people blow into a Breathalyzer and, if the kiosk calculates alcohol content in excess of the legal limit, an Uber car is automatically hailed:



20. Uber also markets heavily around holidays when people may be out celebrating with alcoholic beverages and offers discounts to be—as their press releases say—“Everyone’s Designated Driver.”

≡ **UBER** Newsroom

Everyone’s Designated Driver

Uber uses such language to induce business from safety-conscious people who want to be safe and responsible for their own sake and the sake of the communities in which they live. Sadly, “safety” is just

a marketing term for Uber, and Uber does nothing to ensure that its “designated drivers” are any more safe than those who are driving under the influence.

21. Uber’s unsafe practices have and foreseeably will continue to lead to devastating consequences for its passengers until Uber accepts or learns that the price for those human costs are greater than the amount of money Uber saves by abandoning safety policies.

**IV.
SARAH MILBURN BECOMES THE HUMAN COST OF
UBER’S LACK OF A CULTURE OF SAFETY**

22. On the evening of November 14, 2015, twenty-three year old Sarah Milburn was home in Dallas on a break from college at Oklahoma State University where she was a senior. That evening Sarah went to meet her friends, and they decided to meet some more friends at another location in Uptown Dallas. Sarah and her friends were enjoying the holiday and catching up on what had been happening in their lives.

23. As the night came to a close, Sarah and her friends decided to responsibly not drive their cars, but to get a car service to transport them. They were the exact type of people that Uber targets with its advertising about being “Everyone’s Designated Driver.” One of Sarah’s friends used his phone to ask Uber to pick them up and take them to another location.

24. Uber dispatched Arian Yusufzai to pick up Sarah and her friends. Uber had a business relationship and contractual agreement with Yusufzai to be an Uber driver, despite the fact that Yusufzai had a criminal background from running a gambling den and possessing (and possibly distributing) the illegal drug K2. A criminal background search would turn this up. A simple internet browser search would turn up newspaper articles from 2014 specifically naming Yusufzai and Dawood Kohistani and describing their arrest by the Wise County Sheriff’s Office, including the Wise County Sheriff’s statement “They had K2 under the counter. You had to know they had it and ask for it.”³

25. When Uber dispatched Yusufzai, he was driving a 2011 Honda Odyssey (Vin No. 5FNRL5H63BB092665) minivan owned by Dawood Kohistani. Uber knew or should have known what kind of car Yusufzai was driving. Uber knew or should have known that Yusufzai did not own the car he was driving. Uber knew or should have known that Yusufzai was driving a car owned by Dawood Kohistani who was arrested and convicted of committing crimes with Yusufzai. Uber knew

³ See “Pair busted on gambling charges.” WISE COUNTY MESSENGER, May 24, 2014. Available at <http://www.wcmessenger.com/2014/news/pair-busted-on-gambling-charges/> (accessed on February 25, 2016)

or should have known that Kohistani's vehicle was not insured as Kohistani failed to maintain the state-mandated insurance.

26. Yusufzai went to the location as instructed by Uber and picked up six people, including Sarah, in Kohistani's minivan.

27. Sarah sat in the middle seat of the third row. Responsibly, she put her seat belt on despite the odd design of the third row seatbelt.

28. After picking up the passengers, Uber's driver began driving them to the destination. The police report indicates that Uber's driver was driving at excessive speeds. As Uber's driver approached the intersection of McKinney Avenue and N. Fitzhugh Avenue, the traffic control light turned red requiring him to stop. According to the police report, Uber's driver nevertheless ran the red light. As Uber's driver was almost through the intersection, the minivan was struck on the side by a Ford F150 pickup truck being driven by 47 year old Richard Deleon.⁴ Following impact, the minivan rolled onto its left side and top before coming to rest near the curb.

29. Sarah was instantly hurt. The Honda Odyssey was not crashworthy. Despite wearing her seatbelt, the Honda Odyssey's seatbelt for the middle seat in the third row was not designed safely or malfunctioned. As a result, Sarah was not safely restrained in the collision, and her head flew forward into the seat in front of her causing a spinal injury.

30. At the scene, Sarah could not move and remained buckled into the third row. All of the other passengers managed to escape the collision without serious injuries. Eventually an ambulance and emergency medical technicians arrived, extracted Sarah from her seatbelt, and took her to Baylor University Medical Center.

31. In the early hours of November 15, John Milburn was woken from sleep by his phone ringing. It was a call that every parent fears. John answered and it was one of the EMT's explaining that his daughter Sarah had been in a collision, was seriously hurt, and was being taken to Baylor. John woke his wife Carolyn and they immediately went to the hospital where they learned a devastating truth: Sarah's neck had been fractured and she was rendered a quadriplegic.

32. Sarah now lives at home with her father and mother where the harsh reality of their lives is faced every day. Sarah will need on-going medical care and assistance for the rest of her life. John and Carolyn do what any parent would do: commit all of their resources and lives to trying to help their daughter, including waking up every few hours every night to roll Sarah in her bed and perform medical

⁴ Deleon fled the scene but was later apprehended. Deleon has been cleared of all criminal wrongdoing and Dallas County did not proceed with any charges against him.

procedures like catheterizing her. While the Milburns remain a strong and supportive family unit, the life that they all knew before this tragedy is gone forever.

33. Sarah had trusted Uber and its driver to drive in a safe manner. Uber failed her. Sarah had trusted that wearing her seatbelt would restrain her in a collision. Honda failed her. These two corporations failed to act in a responsible and safe manner, and Sarah Milburn and her parents must now bear the consequences of these two corporation's failures. The Milburns bring this lawsuit to right this wrong and to hopefully prevent, to the extent possible, a tragedy like this from falling upon any other unsuspecting member of the community.

V. PARTIES

34. Plaintiffs John and Carolyn Milburn are residents of Dallas County. John and Carolyn are the natural parents of Sarah Milburn. Sarah Milburn resides with her parents in Dallas County where they care for and assist her with daily living.

35. Defendant Uber Technologies, Inc. is a foreign for-profit corporation organized and existing under the laws of the State of Delaware with a principal place of business at 800 Market St., San Francisco, CA 94102. **Uber Technologies, Inc. maintains and may be served with process by service through its registered agent, CT Corporation at 1999 Bryan St., Suite 900, Dallas, TX 75201-3136.**

36. Defendant Rasier, LLC is a foreign limited liability company organized and existing under the laws of the State of Delaware, whose principal office is 182 Howard St. #8, San Francisco, CA 94105. **Rasier, LLC maintains and may be served with process by service through its registered agent, CT Corporation, 1999 Bryan St., Suite 900, Dallas, TX 75201-3136.**

37. Defendant Uber USA, LLC is a foreign limited liability company organized and existing under the laws of the State of Delaware, whose principal office is 1455 Market St., Fl. 4, San Francisco, CA 94013. **Uber USA, LLC may be served with process by serving the Texas Secretary of State, 1019 Brazos St., Austin, TX 78701 as its agent for service** because defendant engages in business in Texas but has not designated or maintained a resident agent for service of process in Texas.

38. Rasier, LLC and Uber USA, LLC are wholly-owned subsidiaries of Uber Technologies, Inc. and are mere alter egos or conduits by which Uber Technologies, Inc. does business. These three entities are referred to collectively in this petition as "Uber" or "Uber Entities" as appropriate.

39. Defendant American Honda Motor Co., Inc. is a foreign business corporation that regularly sells products and does business in the State of Texas and is organized and existing under the

laws of the State of California, whose principal office is 1919 Torrance Blvd., Torrance, CA 90501-2746. **American Honda Motor Co. may be served with process through its registered agent CT Corporation System, 1999 Bryan St., Suite 900, Dallas, TX 75201.**

40. Defendant Honda Motor Co., Ltd. is a Japanese corporation which regularly sells products and does business in the State of Texas. Honda Motor Co. may be served with process pursuant to the Hague Convention by serving a copy of Plaintiffs' Original Petition and a copy of the Citation on Honda Motor Corp., Ltd., 2-1-1 Minami Aoyama, Minato-ku, Tokyo 107-8556, Japan, and **by serving a copy of Plaintiffs' Original Petition and a copy of the Citation on its wholly-owned and controlled alter ego and subsidiary, American Honda Motor Co., Inc., by and through its registered service agent at the following address: CT Corporation System, 1999 Bryan St., Suite 900, Dallas, TX 75201.**

41. American Honda Motor Co., Inc. is the wholly-owned subsidiary of Honda Motor Co., Ltd. and is the alter ego and conduit by which Honda Motor Co., Ltd. does business in the United States. These two entities are referred to collectively in this petition as "Honda".

42. Defendant Arian Yusufzai is an individual who resides at **3434 Whitney Dr., Frisco, TX 75034** and may be served there.

43. Defendant Dawood Kohistani is an individual who resides at **3434 Whitney Dr., Frisco, TX 75034** and may be served there. Kohistani is also known as Dawood Hohistani. Records show either spelling. Plaintiffs will use the spelling reflected in DPS of Kohistani in this petition but are bringing suit under either name/spelling.

44. Defendants Yusufzai and Kohistani worked together to provide driver services to Uber passengers like the Plaintiff Sarah Milburn. Yusufzai drove Kohistani's Honda Odyssey with Kohistani's permission. Yusufzai and Kohistani working together are sometimes referred to as the "Uber Driver" in this petition.

VI. JURISDICTION AND VENUE

45. Venue is proper in Dallas County, Texas under TEXAS CIVIL PRACTICE & REMEDIES CODE 15.002(a)(1) because Dallas County is the county in which all or a substantial portion of the claims arose. The Court has jurisdiction over the underlying lawsuit because the amount in controversy exceeds this court's minimum jurisdictional requirements.

46. Venue is also proper under Dallas County Local Rules 1.06 and 1.07, as venue was established and vested in Dallas County in the related case Cause No. DC-16-05491, *In re Sarah Milburn* that was pending in the 116th Judicial Court.

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

48. The Court has personal jurisdiction over American Honda Motor Co., Inc. and its parent corporation Honda Motor Co., Ltd. as together they are engaged in business in Texas and have purposefully availed themselves of the privilege of conducting business in Dallas County and in Texas. The Honda entities connections with Texas have been continue and systematic including regularly marketing, advertising, and selling Honda cars in Texas. These continuous and systematic contacts with Texas are so substantial that Honda is essentially “at home” in Texas. Further, the potential claims in this case arise from or relate to the Honda entities’ contacts with Texas such that those contacts with Texas are substantially connected to the operative facts of this proceeding.

VII.

CAUSES OF ACTION AGAINST THE UBER ENTITIES

A. CAUSE NO. 1: Negligence

49. Plaintiffs incorporate all prior paragraphs in support of this cause.

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

51. Uber breached its duties to Sarah Milburn 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 Sarah and other passengers;
- c. Failing to use ordinary care in the hiring of Yusufzai to drive passengers;
- d. Failing to use ordinary care in the supervising, retaining, monitoring, or training of Yusufzai as an employee to drive passengers;
- e. Failing to use ordinary care in selecting Yusufzai as a driver as Yusufzai was incompetent or unfit to be a driver for hire;
- f. Failing to use ordinary care in exercising whatever control Uber retained over Yusufzai;
- g. Failing to use ordinary care in referring Sarah and her friends to Yusufzai for transportation;
- h. Failing to adopt, implement, and enforce safety policies;
- i. Through its employed driver transporting Sarah, failing to maintain a safe and proper lookout;
- j. Through its employed driver transporting Sarah, failing to maintain a safe speed;
- k. Through its employed driver transporting Sarah, failing to stop at a red stop light;
- l. Through its employed driver transporting Sarah, failing to comply with all traffic laws;
- m. Through its employed driver transporting Sarah, operating the Odyssey in this case while it was not in a reasonably safe condition; and
- n. Failure to perform the transportation service bargained for with care, skill, and faithfulness so as not to injure Sarah and the other passengers during the performance of the contracted-for transport.

52. The above acts or omissions by Uber Entities were a producing and/or proximate cause of Plaintiffs' injuries and the resulting damages Plaintiffs seek in this suit. Plaintiffs pray that, following a verdict, all such damages asserted below be awarded against the Uber Entities.

B. CAUSE NO. 2: Negligence Under the Highest Degree of Care Because Uber is a Common Carrier

53. Plaintiffs incorporate all prior paragraphs in support of this cause.

54. At all relevant times, Uber and its affiliates were acting as a common carrier as Uber was in the business of carrying passengers and held itself out for hire by the public. Uber solicits and operates a public transportation service. The business of Uber is the transport for hire of paying public passengers, and that transportation is not incidental to any other purpose for Uber but rather is the primary mode of making money. If the public did not seek transportation for pay from Uber, Uber would have no business and would not exist.

55. As a common carrier, Uber owed the highest degree of care in the operation of the conveyance of its passengers and in the boarding and alighting of passengers. That degree of care is that which would be exercised by a very cautious and prudent person under the same or similar circumstances.

56. Uber publicly solicited and operated a vehicle for hire transportation service to and for the citizens of Dallas County, including Sarah Milburn and her friends. Sarah Milburn and her friends requested that Uber transport them. Uber agreed and dispatched its driver Yusufzai. At all relevant times Uber controlled Yusufzai as an employee, agent, or joint venturer. Uber owed Sarah the highest degree of care as a common carrier.

57. Uber violated that highest degree of care in the following particulars:

- a. Failing to act as a very cautious or prudent company would under the same or similar circumstances;
- b. Failing to exercise a high degree of care to avoid a foreseeable risk of injury to Sarah and other passengers;
- c. Failing to exercise a high degree of care in the hiring of Yusufzai to drive passengers;
- d. Failing to exercise a high degree of care in the supervising, retaining, monitoring, or training of Yusufzai as an employee to drive passengers;
- e. Failing to exercise a high degree of care in selecting Yusufzai as a driver as Yusufzai was incompetent or unfit to be a driver for hire;
- f. Failing to exercise a high degree of care in exercising whatever control Uber retained over Yusufzai;
- g. Failing to exercise a high degree of care in referring Sarah and her friends to Yusufzai for transportation;
- h. Failing to exercise a high degree of care in adopting, implementing, and enforcing safety policies;
- i. Through its employed driver transporting Sarah, failing to maintain a safe and proper lookout;

- j. Through its employed driver transporting Sarah, failing to maintain a safe speed;
- k. Through its employed driver transporting Sarah, failing to stop at a red stop light;
- l. Through its employed driver transporting Sarah, failing to comply with all traffic laws; and
- m. Through its employed driver transporting Sarah, operating the Odyssey in this case while it was not in a reasonably safe condition.

58. The above acts or omissions by Uber Entities were a producing and/or proximate cause of Plaintiffs' injuries and the resulting damages Plaintiffs seek in this suit. Plaintiffs pray that, following a verdict, all such damages asserted below be awarded against the Uber Entities.

C. CAUSE NO. 3: Negligent Undertaking under Restatement (Second) of Torts § 323

59. Plaintiffs incorporate all prior paragraphs in support of this cause.

60. Uber undertook, for pecuniary benefit, to arrange and dispatch drivers to customers who requested car services and thus assumed a duty, inter alia, to select, train, monitor, regulate, and control the drivers and cars used to ensure that the driver and car dispatched would be safe under the Restatement (Second) of Torts § 323. Further, Uber assumed the duty to provide a safe trip and to warn or protect passengers from foreseeable dangers under the Restatement (Second) of Torts § 323.

61. Having assumed those duties, Uber was negligent as set forth in the preceding causes in paragraphs 49 and 54.

62. The above acts or omissions by Uber Entities were a producing and/or proximate cause of Plaintiffs' injuries and the resulting damages Plaintiffs seek in this suit. Plaintiffs pray that, following a verdict, all such damages asserted below be awarded against the Uber Entities.

D. CAUSE NO. 4: Fraud by Uber

63. Plaintiffs incorporate all prior paragraphs in support of this cause.

64. Prior to and at all material times, Uber represented to the public and Sarah Milburn that Uber provided safe transportation services and that Uber was committed to safety. Such representations were material to Sarah in accepting a ride with the Uber driver. Uber's representation was false as Uber does not enforce even a bare minimum of safety policies. Uber was aware its representations were false, and yet continued to make such representations with the intention of soliciting customers, including Sarah Milburn and her friends. Sarah and her friends relied upon the representations that the ride was being provided by Uber and in a safe manner. But for the false representations, Sarah would not have gotten in Yusufzai's car.

65. Uber's fraud is a proximate cause of Plaintiffs' damages. Plaintiffs pray that, following a verdict, that all such damages asserted below be awarded against the Uber Defendants.

VIII.
CAUSES OF ACTION AGAINST HONDA DEFENDANTS

A. CAUSE NO. 5: Strict Liability and Negligence Claims

66. Plaintiffs incorporate all prior paragraphs in support of this cause.

67. Sarah Milburn acted responsibly by using the seatbelt in the Honda Odyssey (the "Vehicle"). Unfortunately for Sarah, the Honda was designed in an unsafe manner and was not crashworthy. As a result, she was profoundly injured when a foreseeable collision occurred.

68. The Vehicle at issue in this suit was designed, manufactured, constructed, marketed and/or distributed by and through the agents and/or representatives of Honda.

69. Honda was regularly engaged in the business of supplying or placing products, like the Vehicle in question, in the stream of commerce for use by the consuming public, including by Uber and passengers like Sarah. Further, such conduct was solely for commercial purposes.

70. The Vehicle remained unchanged from the time it was originally manufactured, distributed and sold by Honda until it reached the point where Sarah was a passenger and ultimately led to her injuries. Stated another way, the Vehicle was defective and in an unreasonably dangerous condition at all times until it ultimately caused Sarah's injuries and damages.

71. At the time the Vehicle was placed into the stream of commerce, it was, or should have been, reasonably expected and foreseeable that it would be used by persons such as Sarah in the manner and application in which it was being used at the time Sarah suffered her catastrophic injuries.

72. There were no mandatory safety standards or regulations adopted and promulgated by the federal government or an agency of the federal government that were applicable to the Vehicle at the time of manufacture and that governed the product risk that allegedly caused harm. Alternatively, the design of the Vehicle did not comply with mandatory safety standards or regulations adopted by the federal government that were applicable to the vehicle model at the time of the manufacture and governed the risks that caused Sarah's injuries. Again, in the alternative, in the event that such standards were in effect, and they were complied with, they were nonetheless inadequate to protect the public from unreasonable risks of injury or danger, or the manufacturer, before or after marketing the Vehicle, withheld or misrepresented the information or material relevant to the federal government's or agencies' determination of adequacy of the safety standards or regulations at issue in the action.

73. With respect to the design of the Vehicle, at the time it left the control of Honda, there were safer alternative designs. Specifically, there were alternative designs that, in reasonably probability, would have prevented or significantly reduced the risk of injury to Sarah. Furthermore, such safer alternative designs were economically and technologically feasible at the time the product left the control of the Honda by the application of existing or reasonably achievable scientific knowledge without substantially impairing the utility of the vehicle model or otherwise increasing the risk of injury.

74. At the time the Vehicle left the control of Honda, it was defective and unreasonably dangerous in that it was not adequately designed, manufactured or marketed to minimize the risk of injury. By way of example and without limitation, the product in question was unreasonably and dangerously defective because the seatbelt failed to appropriately restrain Sarah, causing her catastrophic injuries. Further, the pre-sale and post-sale warnings and instructions were inadequate to remedy the unreasonable danger.

75. The above unreasonably dangerous defects in the Vehicle in question were a proximate and producing cause of Sarah's damages.

76. Honda breached its duty of care and was thus negligent by:

- a. Designing and distributing the Vehicle model with a design standard that was intended to meet the minimum government regulations, instead of safely designing the vehicle to reasonably minimize injuries in foreseeable accidents;
- b. Failing to adequately monitor the performance of its vehicles in the field to ensure that they were reasonably minimizing injuries and deaths in foreseeable accidents;
- c. Failing to adequately test the vehicle model to ensure that it would be reasonably safe in foreseeable accidents;
- d. Failing to adequately test the vehicle model's seatbelt system to ensure that it would perform as intended and be reasonably safe in foreseeable accidents;
- e. Designing and manufacturing the Vehicle with a third-row seatbelt system that was defective and dangerous;
- f. Designing and manufacturing the Vehicle with a seatbelt system that was defective and dangerous;
- g. Failing to provide adequate warnings and instructions with the Vehicle; or
- h. Failing to provide adequate post-sale warnings, recalls or retrofits after Honda knew, or should have known, that the vehicle model was defective and unreasonably dangerous.

77. The above acts or omissions by the Honda Defendants were a producing and/or proximate cause of Plaintiffs' injuries and the resulting damages Plaintiffs seek in this suit. Plaintiffs

pray that, following a verdict, all such damages asserted below be awarded against the Honda Defendants.

IX.

CAUSES OF ACTION AGAINST DEFENDANTS YUSUFZAI AND KOHISTANTI

A. CAUSE NO. 6: Negligence

78. Plaintiffs incorporate all prior paragraphs in support of this cause.

79. At all relevant times, Defendant Yusufzai owed a duty of care to Sarah Milburn as a passenger in a car Yusufzai was operating. Yusufzai committed acts or omissions which constitute negligence and were a proximate cause of the Plaintiffs' injuries and damages.

80. Defendant Kohistani owed a duty of care to Sarah Milburn as a co-venturer or joint venturer with Yusufzai and Uber. Kohistani owned the Honda Odyssey and explicitly or constructively authorized Sarah Milburn to be a passenger in the Odyssey despite its dangerous condition. Kohistani also authorized Yusufzai to operate the motor vehicle negligently despite that Kohistani knew or should have known that Yusufzai was incompetent or reckless and was not licensed to transport passengers for pay. Yusufzai was acting within the scope of authority or agency conferred by Kohistani when the collision occurred. Kohistani is responsible directly, vicariously, or by ratification of Yusufzai negligent acts or omissions that are a proximate cause of the Plaintiffs' injuries in this case.

81. At all relevant times, Defendants Yusufzai and Kohistani had a duty to act as reasonably prudent operators of a motor vehicle in like or similar circumstances, including in carrying passengers for pay. They breached that duty through their acts and omissions, including but not limited to:

- a. Failing to maintain a safe and proper lookout;
- b. Failing to maintain a safe speed;
- c. Failing to stop at a red stop light;
- d. Failing to comply with all traffic laws;
- e. Operating the Odyssey in this case while it was not in a reasonably safe condition; and
- f. Failing to act with ordinary care.

82. The above acts or omissions by Yusufzai and Kohistani were a producing and/or proximate cause of Plaintiffs' injuries and the resulting damages Plaintiffs seek in this suit. Plaintiffs pray that, following a verdict, all such damages asserted below be awarded against Yusufzai and Kohistani.

X.
AGENCY AND JOINT LIABILITY

83. At all relevant times, the employees or agents of Uber whose conduct is implicated were in the course and scope of their employment or acting as agents of Uber such that Uber is liable for the conduct of those employees or agents.

84. At all relevant times, Yusufzai was an employee or agent of Uber and its affiliates and was acting in the course and scope of his employment or agency such that Uber is liable for Yusufzai's conduct.

85. At all relevant times, Uber retained some control over the manner in which Yusufzai performed his work, including telling Yusufzai the route, destination, and timing of the carriage of Sarah, as well as the right to establish policies and safety policies, and as such Uber is vicariously liable for Yusufzai's negligence.

86. At all relevant times, Uber had a nondelegable duty to perform its agreement to transport Sarah and her friends with reasonable care and skill and therefore Uber is vicariously responsible for the acts of Yusufzai.

87. At all relevant times, Yusufzai and the Uber Entities were acting under a concert of action as set forth in the Restatement (Second) of Torts § 876(c) and therefore Uber is equally responsible for the conduct of Yusufzai in running the red light and causing the collision that grievously injured Sarah. Under 876(c), Uber provided substantial assistance to Yusufzai and did so in a negligent manner as set forth above. Uber's involvement was a substantial factor in causing the tort, and therefore Uber is equally liable for Yusufzai's negligence.

88. At all relevant times, Uber, Rasier, LLC and Uber USA, LLC and Yusufzai were engaged in a joint enterprise because they had an agreement to transport passengers for pay, including Sarah, a common purpose to be carried out by the enterprise, a community of pecuniary interest, and an equal right to direct or control the enterprise.

89. At all relevant times, Uber, Rasier, LLC and Uber USA, LLC and Yusufzai were engaged in a joint venture or enterprise such that fundamental notions of fairness require that they be held jointly and severally liable for all damages in this case. Moreover, Uber, Rasier, LLC and Uber USA, LLC and Yusufzai assisted each other in or were otherwise agents of each other in negligently transporting Sarah Milburn such that fundamental notions of fairness require that they be held jointly and severally liable for all damages in this case.

90. At all relevant times, Rasier, LLC and Uber USA, LLC were alter egos of Uber Technologies, Inc. and were operated as a mere toll or business conduit of Uber. At all relevant times,

Rasier, LLC and Uber USA, LLC were corporate forms used as a sham to perpetuate a fraud on passengers seeking services from Uber. At all relevant times, Rasier, LLC and Uber USA, LLC were formed to evade existing legal obligations of Uber Technologies, Inc. At all relevant times, Rasier, LLC and Uber USA, LLC were used by Uber Technologies, Inc. to perpetuate an actual fraud regarding Uber's involvement in transportation services and for Uber's direct benefit. As such, Uber Technology Inc. should be directly or jointly liable for any action taken by or through Rasier or Uber USA.

**XI.
ALTERNATIVE PLEADING**

91. Any claim or cause set forth above is plead in the alternative to each other to the extent any inconsistency exists as permitted by TEXAS RULE OF CIVIL PROCEDURE 48.

**XII.
PLAINTIFFS' DAMAGES SOUGHT FROM ALL DEFENDANTS**

A. Damages to Sarah Milburn

92. As a direct and proximate result of the negligent acts or omissions of the Defendants as set out above, Sarah Milburn has suffered in the past, and in all probability will, for the remainder of her life, continue to suffer from catastrophic, life-altering damages for which Plaintiffs now plead, including:

- a. Physical pain and suffering sustained in the past;
- b. Physical pain and suffering that, in reasonable probability, Sarah will sustain in the future;
- c. Mental anguish sustained in the past;
- d. Mental anguish that, in reasonable probability, Sarah will sustain in the future;
- e. Physical impairment sustained in the past;
- f. Physical impairment that, in reasonable probability, Sarah will sustain in the future;
- g. Loss of the enjoyment of life sustained in the past;
- h. Loss of the enjoyment of life that, in reasonable probability, Sarah will sustain in the future;
- i. Loss of consortium sustained in the past;
- j. Loss of consortium that, in reasonable probability, Sarah will sustain in the future;
- k. Reasonable and necessary medical expenses incurred in the past;

- l. Reasonable and necessary medical care expenses that, in reasonable probability, Sarah will incur in the future;
- m. Lost wages in past; and
- n. Loss of earning capacity that, in reasonable probability Sarah will sustain in the future.

93. All of the above damages are singularly and collectively within the jurisdictional limits of this Court, for which Plaintiffs now plead, jointly and severally, against Defendants.

B. Damages to John Milburn

94. As a direct and proximate result of the negligent acts or omissions of the Defendants as set out above, John Milburn has suffered in the past, and in all probability will, for the remainder of his life, continue to suffer from life-altering damages arising out of the particularly disturbing events of the catastrophic injuries suffered by his daughter Sarah for which Plaintiffs now plead, including:

- a. Loss of household services from Sarah sustained in the past;
- b. Loss of household services from Sarah that, in reasonable probability, John will sustain in the future;
- c. Lost wages in past;
- d. Loss of earning capacity that, in reasonable probability John will sustain in the future.
- e. Mental anguish in the past; and
- f. Mental anguish that, in reasonable probability, John will sustain in the future.

95. All of the above damages are singularly and collectively within the jurisdictional limits of this Court, for which Plaintiffs now plead, jointly and severally, against Defendants.

C. Damages to Carolyn Milburn

96. As a direct and proximate result of the negligent acts or omissions of the Defendants as set out above, Carolyn Milburn has suffered in the past, and in all probability will, for the remainder of her life, continue to suffer from life-altering damages arising out of the particularly disturbing events of the catastrophic injuries suffered by her daughter Sarah for which Plaintiffs now plead, including:

- a. Loss of household services from Sarah sustained in the past;
- b. Loss of household services from Sarah that, in reasonable probability, Carolyn will sustain in the future;
- c. Lost wages in past;
- d. Loss of earning capacity that, in reasonable probability Carolyn will sustain in the future.
- e. Mental anguish in the past; and

f. Mental anguish that, in reasonable probability, Carolyn will sustain in the future.

97. All of the above damages are singularly and collectively within the jurisdictional limits of this Court, for which Plaintiffs now plead, jointly and severally, against Defendants.

XIII.
EXEMPLARY DAMAGES SOUGHT AGAINST ALL DEFENDANTS

98. Plaintiffs allege that each and every negligent act or omission or fraud of Defendants and its agents, as set forth above, when viewed objectively from the standpoint of policymakers, involved an extreme degree of risk, considering the probability and magnitude of the physical harm to others and that Defendants had actual subjective awareness of the risks involved, but nevertheless proceeded with conscious indifference to the rights, safety or welfare of Sarah Milburn and other passengers like her and as such, such conduct amounts to gross negligence or malice, as those terms are defined by law, so as to give rise to an award of exemplary or punitive damages, for which Plaintiffs now plead against Defendants. Additionally, by reason of such conduct, Plaintiffs are entitled to and therefore assert a claim for punitive and exemplary damages in an amount sufficient to punish and deter Defendants, and other corporations like them, from such conduct in the future.

99. Additionally, each of the malicious and fraudulent acts of Uber independently give rise to an award of exemplary or punitive damages, for which Plaintiffs now plead against Uber in an amount sufficient to punish and deter Uber, and other corporations like them, from such conduct in the future.

XIV.
PRE-JUDGMENT AND POSTJUDGMENT INTEREST

100. The Milburns pray for pre-judgment and post-judgment interest to be awarded at the maximum legal interest rates allowable under the laws of the State of Texas.

XV.
REQUEST FOR A JURY TRIAL

101. The Milburns request a jury trial on all triable issues within a year of this filing and contemporaneously with the filing of this Petition submit the applicable fee.

XVI.
REQUEST FOR DISCLOSURE

102. Pursuant to TEXAS RULE OF CIVIL PROCEDURE 194, Defendants are requested to disclose all of the information and materials described in Rule 194.2. The written responses to the above requests for disclosure should conform to Rule 194.3 and the materials, documents, and/or copies of same should be produced in compliance with Rule 194.4. The written responses, materials, and documents are to be delivered to the ALDOUS\WALKER^{LLP}, 2311 Cedar Springs Road, Suite 200, Dallas, Texas 75201, as required following receipt of this request.

XVII.
PRAYER

103. The Milburns respectfully pray that Defendants be cited to appear and answer this suit, and that upon final determination of these causes of action, the Milburns receive a judgment against Defendants awarding Plaintiffs damages as follows:

- a. Actual, compensatory, consequential, exemplary, and punitive damages, in an amount in excess of the minimal limits of the Court;
- b. Costs of Court;
- c. Prejudgment interest at the highest rate allowed by law from the earliest time allowed by law;
- d. Interest on judgment at the highest legal rate from the date of judgment until collected; and
- e. All such other and further relief at law and in equity to which the Milburns may show themselves to be justly entitled.

Respectfully submitted,

/s/ Charla G. Aldous

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