

Cause No. _____

RICH O'TOOLE,	§	IN THE DISTRICT COURT OF
	§	
Plaintiff,	§	
	§	
V.	§	HARRIS COUNTY, TEXAS
	§	
UBER TECHNOLOGIES, INC.;	§	
ABDALLAH AHMED; and	§	
CHASE MICHAEL BOYER	§	
	§	
Defendants.	§	_____ JUDICIAL DISTRICT

PLAINTIFF'S ORIGINAL PETITION & JURY DEMAND

TO OUR HONORABLE JUDGE AND JURY OF HARRIS COUNTY CITIZENS:

Plaintiff Rich O'Toole ("Mr. O'Toole") files this Original Petition against Defendants Uber Technologies, Inc. ("Uber"); Abdallah Ahmed ("Mr. Ahmed"); and Chase Michael Boyer ("Mr. Boyer") (together, "Defendants"), and would respectfully show the following:

■ DISCOVERY CONTROL PLAN ■

1.1 Mr. O'Toole intends to conduct discovery under Level 2 of Texas Rule of Civil Procedure 190.

■ PARTIES ■

2.1 Rich O'Toole is a proud Aggie, Houstonian, and native Texan who has worked hard to build a burgeoning career in the music industry (<http://www.richotoole.com/>), including 17 Top Ten Hits on Texas radio, more than one million plays on Spotify, and the chance to open for the Josh Abbot Band and country music legend Willie Nelson. Until

Defendants' negligent conduct caused him to sustain a broken neck and other serious injuries on February 25, 2017, Mr. O'Toole was looking forward to headlining the Houston Livestock Show and Rodeo "World's Championship Bar-B-Que Contest" show the next week to start the cross-country media and performances rollout of his sixth album, "American Kid." Country music Hall of Famer Conway Twitty may have confirmed what many Texans already know: "You learn the most from life's hardest knocks," and Defendants' negligent conduct pushed Mr. O'Toole off a concert, radio, and album promotion plan more than two years in the making. As outlined further below, while "American Kid" still reached No. 5 on the iTunes country chart, No. 48 on Billboard's nationwide country chart, and No. 3 on the Billboard regional chart with Rich O'Toole pushing himself to the limits in ongoing medical care and rehabilitation, the bad knocks inflicted by the Defendants came with spectacularly bad timing and impact on his ability to push his career to the next step of success.

2.2 Defendant, UBER TECHNOLOGIES, INC. ("Uber") is a foreign corporation, operated for the purposes of accumulating monetary profit that does business in a systematic and continuous manner throughout the State of Texas. Uber may be served with process by serving its registered agent, CT Corporation System, 1999 Bryan Street, Suite 900, Dallas, Texas 75201..

2.3 Defendant Abdallah Ahmed is a natural person who was last known to reside in the State of Texas. Mr. Ahmed may be served by personal service at the place of residence identified in the police report for the incident, ABDALLAH AHMED, 3017 Curtis Drive, Amarillo, Texas 79109.

2.4 Defendant, CHASE MICHAEL BOYER (“Mr. Boyer”) is a natural person who was last known to reside in the State of Texas. Mr. Boyer may be served by personal service at the place of residence identified in the police report for the incident, Chase Michael Boyer, 401 Houston, Borger, Texas 79007.

■ VENUE & JURISDICTION ■

3.1 Venue is proper in Harris County because Defendant Uber maintains a principal office in Harris County, Texas, under Tex. Civ. Prac. & Rem. Code § 15.002(a)(3). Venue is proper over all Defendants under Tex. Civ. Prac. & Rem. Code § 15.005, since venue over one defendant creates venue over all defendants in all claims or actions arising out of the same occurrence.

3.2 Based on the hundreds of thousands of dollars of medical bills incurred to date, lost pre-booked performances, and the physical and mental impacts that Mr. O’Toole has been working hard to attempt to overcome, Mr. O’Toole seeks monetary relief in an amount well over \$1,000,000. The career and physical losses inflicted already point to damages many times in excess of the jurisdictional limits of the Court. Mr. O’Toole therefore reserves the right to modify the amount and type of relief sought in the future.

■ FACTUAL BACKGROUND ■

4.1 “Instant” or “overnight” success for a musician almost never happens that way. Rich O’Toole built a following from his early days playing for his fellow Aggies in College Station, Texas by steady development of musical talents that he has been blessed to share. After almost two years of work in studios from Nashville to Los Angeles, “American Kid” was ready for launch with both country and mainstream

music fans eager to hear his unique brand of high-energy, heartfelt music. As with any true craftsman, Rich O'Toole had poured his time, talent, and treasure into creating something truly groundbreaking for his career. He was fully prepared for dozens of radio bookings and performances already scheduled across the country to share his music with his loyal fans and open the ears of new ones.

4.2 On February 25, 2017, Rich O'Toole stood on the cusp of a new chapter when he trusted Defendant Uber and its driver, Mr. Ahmed, to get him to dinner before a performance later that night in Amarillo. Unfortunately, as a result of Defendants' negligence and gross negligence, as detailed further below, the trajectory of Mr. O'Toole's career crashed like the car Mr. Ahmed was recklessly driving. That evening, Mr. Ahmed got lost driving in the course and scope of his employment for Uber, and while trying to operate Defendant Uber's App, Mr. Ahmed stopped his vehicle in the middle of the highway and was rear-ended at high speed by Mr. Boyer's vehicle ("the incident in question"). The impact of Mr. Boyer's vehicle on the rear of Mr. Ahmed's vehicle fractured Mr. O'Toole's neck at the C6 level and caused serious and continuing injuries to his spine and other parts of his body. Only by emergency neurological surgery, and with the thoughts and prayers of his family, friends and fans, was Mr. O'Toole saved from being permanently paralyzed. The continuing effect on Mr. O'Toole of Defendants' negligence and gross negligence, however, remains unremedied.

4.3 While Rich O'Toole was building his career, Uber was creating a corporate behemoth by changing, and in some cases, breaking, the rules for commercial passenger

transport. Aside from the widely reported issues of management dysfunction, unequal and demeaning treatment of women among its workforce, and avoidance of local consumer protections with “greyball” tactics throughout the nation, Uber has consistently promoted the fiction that its drivers are “independent contractors” from which it can reap enormous profits while avoiding any responsibility for their misconduct. Calling itself a “transportation network company,” Uber has in large part based its business model on this fiction, even though Uber retains control over the employment of drivers such as Mr. Ahmed.

4.4 Although Uber has consistently attempted to evade the responsibilities that come with its control of drivers such as Mr. Ahmed and their conduct, Uber remains fully liable for Mr. Ahmed under the legal doctrine of respondeat superior, as Mr. Ahmed and the other Uber drivers were at all relevant times employees, and/or actual, apparent, ostensible or estoppel agents and/or representatives of Uber. Mr. Ahmed was acting as an employee and was in the course and scope of his employment for Uber, further demonstrated by Uber’s control of Mr. Ahmed and other Uber drivers by the means listed below, and others:

- 1) Uber sets fare prices without driver input and drivers may not negotiate fares;
- 2) If a driver takes a circuitous route, Uber may modify the charges to the customer;
- 3) Uber retains control over customer contact information and mandates communications between customers and drivers remain within the Uber App;

- 4) Uber's business model depends upon having a large pool of non-professional drivers, and as demonstrated by Mr. Ahmed's competency to drive and operate the app requires no apparent specialized skills needed to drive for Uber;
- 5) Uber also controls other aspects of the manner and means by which drivers may offer rides through the Uber App, including requiring drivers to accept all ride requests when logged into the App or face potential discipline;
- 6) Uber also requires drivers to: dress professionally; send the customer who has ordered a ride a text message when the driver is 1-2 minutes away from the pickup location; keep their radios either off or on limited types of stations; open the door for the customer; and pick up the customer on the correct side of the street where the customer is standing; and
- 7) Uber retains the right to terminate drivers at will.

4.5 As a result of Uber, Mr. Ahmed, and Mr. Chase's negligence and gross negligence in causing the incident in question, and because Mr. Ahmed and Mr. Chase failed to operate their vehicles in a safe and reasonable manner, Mr. O'Toole sustained very serious and permanent injuries, including but not limited to his neck, chest, and body generally.

4.6 Due to the injuries suffered in the incident in question, Mr. O'Toole has suffered severe injuries, physical impairment, lost wages, pain and suffering, emotional damage, and medical bills. Whereas Mr. O'Toole had an active lifestyle before the incident, he now experiences a loss of his ability to engage in his regular life and work activities without pain, numbness, and tingling. These injuries and the subsequent medical care and ongoing treatment have resulted in severe limitations and restrictions in his daily life.

4.7 As a result of Defendants' actions and/or omissions, including by and through Uber's employee Mr. Ahmed, acting in the course of and scope of his employment for Uber, Mr. O'Toole requires and is reasonably expected to sustain damages for past and future medical care, loss of earnings in the past and future, and other legal injuries. Nothing Mr. O'Toole did or failed to do caused or in any way contributed to cause the injuries sustained.

■ FIRST CAUSE OF ACTION –
Negligence and Negligence Per Se ■

5.1 Mr. O'Toole re-alleges and incorporates each allegation contained in Paragraphs 1-4.7 of this Petition as if fully set forth herein.

5.2 The acts and omissions of Defendants (including Defendant Uber legally and morally responsible for its employee Mr. Ahmed under the legal doctrine of respondeat superior) constitute negligence and negligence per se in that Defendants failed to exercise ordinary care in operating their vehicles in a safe and reasonable manner, causing the incident in question. Defendants' negligence and gross negligence proximately caused legal injuries to Mr. O'Toole.

5.3 The negligent, careless and reckless disregard of duty of Defendants consisted of, but is not limited to, the following acts and omissions in violation of V.T.C.A. Transportation Codes §544.004(a), §545.401(a), and §545.351(a) pursuant to the doctrine of *negligence per se*, which mandates that:

§545.401(a) A person commits an offense if the person drives a vehicle in willful or wanton disregard for the safety of persons or property.

§545.351(a) An operator may not drive at a speed greater than is reasonable and prudent under the circumstances then existing.

5.4 Uber is also independently negligent for the manner in which it requires drivers such as Defendant Abdallah to utilize its Uber App, as the distraction effect on drivers such as Mr. Ahmed can be readily seen to cause the incident in question and similar injuries and deaths by operation of the Uber App on roadways of Texas.

■ SECOND CAUSE OF ACTION —
Gross Negligence ■

6.1 Mr. O'Toole re-alleges and incorporates each allegation contained in Paragraphs 1-5.4 of the Petition as if fully set forth herein.

6.2 The acts and omissions of Defendants, in conscious disregard of the safety of persons such as Mr. O'Toole, also rose to the level that would constitute gross negligence, in that Defendants acting through its employees/agents/representatives recklessly and dangerously failed to carry out its important safety obligations (or ratified such misconduct), justifying exemplary damages. Viewed objectively from the standpoint of Defendants at the time of the occurrences, the acts and omission involved an extreme degree of risk, considering the probability and magnitude of the potential harm to others; and Defendants had actual, subjective awareness of the risk involved, but nevertheless proceeded with conscious indifference to the rights, safety and welfare of others. As a result of the gross neglect of Defendants, Mr. O'Toole was injured.

5.3 Exemplary damages are therefore mandated for Defendants' misconduct and violations of law.

■ RESULTING LEGAL DAMAGES ■

6.1 The negligence of Defendants caused Mr. O'Toole to sustain actual damages. Mr. O'Toole is entitled to be compensated for the personal injuries and damages sustained, as well as the resulting legal damages. Mr. O'Toole has sustained physical pain and mental anguish and in reasonable probability will continue to suffer physical pain and mental anguish in the future. Mr. O'Toole has suffered and in reasonable probability will continue to suffer physical impairment and disfigurement in the future. Mr. O'Toole has suffered a loss of earning capacity in the past and in reasonable probability is expected to suffer a loss of earning capacity in the future. Because of the nature and severity of the injuries, Mr. O'Toole required medical treatment in the past and will, in reasonable probability, require additional medical treatment in the future. Charges for such medical treatment that have been made in the past and those which will in reasonable probability be made in the future have been and will be reasonable charges made necessary by the occurrence in question.

6.2 As a result of Defendants' negligence, Mr. O'Toole has sustained damages in excess of the minimum jurisdictional limits of this Court.

6.3 The gross negligence of Defendants' also mandates an award of exemplary damages to deter and punish the misconduct of Defendants.

6.4 Mr. O'Toole is entitled under law to the recovery of prejudgment and post-judgment interest at the maximum legal rate.

WHEREFORE, PREMISES CONSIDERED, Mr. O'Toole prays that upon final trial therein, Mr. O'Toole recover the damages as specified above from Defendants, plus costs of Court, pre-judgment and post-judgment interest at the legal rate, and such other and further relief, general and special, at law and in equity, to which Plaintiff may show himself justly entitled under the facts and circumstances.

Respectfully submitted,



A handwritten signature in black ink, appearing to read 'Michael Doyle', written over a horizontal line.

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**ATTORNEYS FOR PLAINTIFF
RICH O'TOOLE**

JURY DEMAND

Mr. O'Toole hereby demands a trial by jury, a right enshrined in the Constitutions of the United States of America and the State of Texas and preserved by the sacrifices of many. The necessary jury fee has been paid.



MICHAEL PATRICK DOYLE

Unofficial Copy Office of Chris Daniel District Clerk