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COMJD

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**DISTRICT COURT
CLARK COUNTY, NEVADA**

HANNON OVERHOLT, an individual;)
)
Plaintiff,)
)
vs.)
)
)
CORY BIENIEMY, an individual; RAISER,)
)
LLC, a Foreign Corporation dba UBER; and)
)
DOES I-V, and ROE CORPORATIONS VI-)
)
X; inclusive,)
)
Defendants.)
)

Case No.:
Dept. No.:

**COMPLAINT AND
DEMAND FOR JURY TRIAL**

COMES NOW Plaintiff, HANNON OVERHOLT, by and through his attorneys CRAIG W. DRUMMOND, ESQ., and LIBERTY A. RINGOR, ESQ., of DRUMMOND LAW FIRM, and for causes of action against the Defendants, allege as follows:

GENERAL ALLEGATIONS

1. That all times relevant hereto, Plaintiff, HANNON OVERHOLT, was, and now is a resident of the County of Clark, State of Nevada.
2. That at all times relevant hereto, Defendant, CORY BIENIEMY, (hereafter "BIENIEMY") was, and now is, a resident of the County of Clark, State of Nevada.

1 3. That at all times relevant hereto, Defendant, RAISER, LLC, was, and now is, a
2 Delaware Corporation licensed and doing business in the County of Clark, State of Nevada.

3 4. That at all times relevant hereto, Defendant, RAISER, LLC, was operating as a ride-
4 share company in the County of Clark, State of Nevada, known commonly as “UBER.”

5 5. That at all times relevant hereto, Defendant, RAISER, LLC, was doing business in
6 the County of Clark, State of Nevada.

7 6. That hereafter Defendant, RAISER, LLC, will be referred to in this Complaint by its
8 commonly used name of “UBER.”

9 7. That the true names and capacities, whether individual, corporate, associate, or
10 otherwise, of the Defendant DOES I through V and ROE CORPORATIONS VI through X,
11 inclusive, is presently unknown to Plaintiff who, therefore, sues said Defendants by such fictitious
12 names. Plaintiff is informed and believes and thereon alleges that each of the Defendants
13 designated herein as Doe and/or Roe is negligently, recklessly, and/or intentionally responsible in
14 some manner for the events and happenings herein referred to and negligently, recklessly, and/or
15 intentionally caused injuries and damages proximately thereby to the Plaintiff as herein alleged;
16 that at the time of the incident, which is the subject of this Complaint, these unknown individuals
17 or entities may have been responsible for the hiring, training, supervision of Defendant,
18 BIENIEMY, in the operation of a motor vehicle, and his interaction and assault of Plaintiff on
19 May 15, 2018. When the names of these entities or individuals become known, that Plaintiff will
20 ask leave of this Court to amend this Complaint to insert the true names and capacities of said
21 Defendants, Does and/or Roes, when same have been ascertained by Plaintiff, together with
22 appropriate charging allegations, and to join such Defendants in this action.

23 8. That at all times relevant hereto, Defendant, BIENIEMY, was operating a motor
24 vehicle, picking up and dropping off passengers, and interacting with passengers in his employment
25 role as a driver for Defendant, UBER.

26 9. That at all times relevant hereto, Defendant, UBER, held itself out to the general
27 public on their website stating the process for a driver to earn money from UBER is as follows:
28 “Open the app. Tap GO and you will be matched with a rider nearby. Swipe to accept a request. Get

1 easy-to-follow directions for a smooth pickup. Earn after every trip. Easily track your progress
2 toward your daily and weekly goals.”

3 10. That at all times relevant hereto, Defendant, UBER, held itself out to the general
4 public regarding driver employment screenings as follows: “Before anyone can drive with Uber,
5 they must undergo a multi-point review of driving history and criminal history. Screenings check
6 for moving violations, drinking- and drug-related offenses, violent crime, and felonies. If a potential
7 driver qualifies, they still have to remain in good standing with the law to stay in the Uber
8 community.”

9 11. That on or about May 15, 2018, Plaintiff was a passenger in an Uber-purchased ride
10 in a vehicle operated by Defendant, BIENIEMY.

11 12. That the ride was purchased from UBER by non-party, Mr. Buck Bower, with a trip
12 beginning at Larry Flint’s Hustler Club in the County of Clark, State of Nevada.

13 13. That non-party, Mr. Bower, at some point exited the vehicle with the UBER app
14 remaining on and charging the credit card of Mr. Bower.

15 14. That upon Mr. Bower exiting the vehicle, he authorized the trip to continue with
16 UBER to take Plaintiff to his residence, located at or near 8450 West Charleston Boulevard, Las
17 Vegas, Nevada 89117.

18 15. That upon arriving at the residence for Plaintiff, a verbal altercation began
19 concerning the ride to the residence and the amount of tip that Defendant, BIENIEMY, was
20 requesting from Plaintiff.

21 16. That, at some point, Defendant, BIENEMY, physically attacked Plaintiff, causing
22 bodily injuries to Plaintiff.

23 17. That the attack by Defendant, BIENIEMY, to Plaintiff caused Plaintiff to be on the
24 ground with the limited ability to move.

25 18. That the attack occurred over a dispute about the amount of money for Plaintiff to
26 tip Defendant, BIENIEMY, for the UBER ride.

27 19. That Defendant, BIENIEMY, fled the location of the attack, and did not report the
28 attack or the injuries to Plaintiff to law enforcement, or to medical personnel.

1 20. That at all times relevant hereto, the UBER “app” was on, and Defendant,
2 BIENIEMY, was operating his vehicle as an UBER driver.

3 21. That the attack occurred within the scope of Defendant, BIENIEMY’s employment
4 relationship with Defendant, UBER.

5 22. That the attack of Plaintiff by Defendant, BIENIEMY, was committed within the
6 course of providing of a ride to Plaintiff.

7 23. That it is foreseeable that a driver for Defendant, UBER, would have a dispute with
8 a passenger regarding the driver’s satisfaction as to if he/she received a tip, and the amount of such
9 tip.

10 24. That the attack of Plaintiff by Defendant, BIENIEMY, was legally foreseeable.

11 25. That on September 24, 2018, Defendant, BIENIEMY, pled guilty in Las Vegas
12 Justice Court case 18F11071X to Assault, in violation of NRS 200.471.2a and Battery, in violation
13 of NRS 200.481.2a, with Plaintiff, OVERHOLT, as the named victim, and was convicted of both
14 charges.

15 **FIRST CAUSE OF ACTION**
16 **(Negligence as to all Defendants)**

17 26. Plaintiff repeats and realleges the allegations above, as though fully set forth herein.

18 27. That at said time and place of this incident, Defendants, as aforesaid, and each of
19 them, and/or Defendants’ agents or employees, so intentionally, negligently, and/or recklessly
20 interacted with Plaintiff, OVERHOLT, on May 15, 2018, so as to proximately cause said injuries to
21 Plaintiff.

22 28. That as a direct and proximate result of the intentional, negligent and/or reckless
23 conduct of the Defendants, individually, as well as their agents, servants and/or employees, as
24 aforesaid, Plaintiff suffered various injuries to his person, required medical care, and also suffered
25 great pain, suffering, disfigurement and anxiety.

26 29. That as a direct and proximate result of the intentional, negligent, and/or reckless
27 conduct of the Defendants, their agents, servants and/or employees, as aforesaid, Plaintiff was
28 required to seek medical care and to undergo medical treatment, in a sum to be determined at trial.

1 30. Defendants' acts were willful, malicious, fraudulent and oppressive, and in a
2 conscious disregard of Plaintiff's rights and safety. Defendants should be punished by the
3 imposition of punitive damages in an amount to be more specifically determined by the trier of fact
4 at trial, to punish Defendants for their conduct in this case, and also deter Defendants from any
5 further or similar conduct in the future.

6 31. That as a direct and proximate result of the intentional, negligent, and/or reckless
7 conduct of the Defendants, and each of them, as aforesaid, Plaintiff was required to obtain the
8 services of an attorney to prosecute this action and is, therefore, entitled to reasonable attorney's
9 fees, interest, plus costs incurred herein.

10 **SECOND CAUSE OF ACTION**
11 **(Negligent Hiring, Training, Supervision and Retention)**

12 32. Plaintiff repeats and realleges the allegations contained in the preceding paragraphs
13 as though fully set forth herein.

14 33. That Defendant, UBER, and DOE/ROE Defendants, and each of them, had a duty to
15 exercise due care in its dealings with the Plaintiff and in the selection, training, supervision,
16 oversight, direction, retention and control of its employees, agents, servants, joint venturers,
17 independent contractors, retained by it to provide secure transportation.

18 34. That Defendants, and each of them, had a duty to exercise due care in selecting,
19 training, supervising, overseeing directing, retaining and controlling its employees, agents, servants,
20 joint venturers, independent contractors in order to provide responsible transportation personnel and
21 supervising the same while performing their duties.

22 35. That Defendants breached their duty to Plaintiff resulting in serious and disabling
23 injuries to Plaintiff.

24 36. That the acts of the employees of each of the Defendants were fully authorized,
25 ratified, and approved by the employer and all other Defendants.

26 37. The acts and omissions of Defendants, and each of them, were intentional, willful,
27 oppressive, fraudulent and done in a conscious and deliberate disregard of Plaintiff's rights and
28

1 safety, and Plaintiff is entitled to punitive damages in a sum to be determined at the time of trial to
2 punish and deter Defendants' reprehensible conduct in the future.

3 38. That as a direct and proximate result of the negligent, intentional, and/or reckless
4 conduct of the Defendants and each of them, as aforesaid, the Plaintiff was required to obtain the
5 services of an attorney in order to prosecute this action, and is entitled to recover reasonable
6 attorney's fees plus interest and costs of suit.

7
8 **THIRD CAUSE OF ACTION**
(Battery as to Defendant, Cory Bieniemy)

9 39. Plaintiff repeats and realleges the allegations contained in the preceding paragraphs
10 as though fully set forth herein.

11 40. That Defendant, BIENIEMY, made intentional, willful and unlawful use of fact or
12 violence upon the Plaintiff, causing bodily harm while in the course and scope of his employment
13 with Defendant, UBER.

14 41. The acts and omissions of Defendant, BIENIEMY, was intentional, willful,
15 oppressive, fraudulent and done in a conscious and deliberate disregard of Plaintiff's rights and
16 safety while in the course and scope of his employment with, Defendant, UBER, and Plaintiff is
17 entitled to punitive damages in a sum to be determined at the time of trial to punish and deter
18 Defendants' reprehensible conduct in the future.

19 42. That as a direct and proximate result of the negligent, intentional, and/or reckless
20 conduct of Defendant, BIENIEMY, as aforesaid, Plaintiff was required to obtain the services of an
21 attorney in order to prosecute this action, and is entitled to recover reasonable attorney's fees plus
22 interest and costs of suit.

23 **FOURTH CAUSE OF ACTION**
24 **(Respondent Superior as to Defendant Raiser, LLC dba Uber)**

25 43. Plaintiff repeats and realleges the allegations contained in the preceding paragraphs
26 as though fully set forth herein.

1 44. Employers, masters, and principals are vicariously liable for the torts committed by
2 their employees, servants, and agents if the tort occurs while the employee, servant, or agent was
3 acting in the course and scope of employment.

4 45. That the Defendant, UBER, and DOE/ROE Defendants, were the employers,
5 masters, and principals of each other, the remaining Defendants, and other employees, agents,
6 independent contractors, and/or representatives who negligently failed to maintain a safe and
7 hazard-free environment for the general public, including the Plaintiff.

8 46. That upon information and belief and at all times herein mentioned, CORY
9 BIENIEMY, was an employee, agent, independent contractor, or similar title of Defendant, UBER,
10 and was acting within the course and scope of said employment and agency, with the knowledge,
11 permission, and consent of Defendant, UBER.

12 47. Any and all liability of Defendant, UBER's employees and/or agents, is imputed to
13 Defendants, and each of them, under the doctrine of respondeat superior and/or NRS 41.130, which
14 states:

15 Except as otherwise provided in NRS 41.745, whenever any person shall suffer
16 personal injury by wrongful act, neglect, or default of another, the person causing the
17 injury is liable to the person injured for damages; and where the person causing the
18 injury is employed by another person or corporation responsible for his conduct, that
19 person or corporation so responsible is liable to the person injured for damages.

20 48. That Defendant, UBER, is vicariously liable and/or jointly and severally liable for
21 the negligence of Defendant, BIENIEMY, and/or Defendant's agents, or employees, under the
22 doctrine of respondeat superior, which directly and proximately resulted in Plaintiff's aforesaid
23 damages.

24 49. That at said time and place, Defendant, BIENIEMY, and/or Defendant's agents, or
25 employees, so negligently, intentionally, and/or recklessly operated, managed, controlled,
26 performed work, as to proximately cause said injuries to Plaintiff. The act and omissions of the
27 Defendant's agents or employees was done within the scope of their agency and/or employment
28 relationship and Defendant, UBER, is liable under the theory of respondeat superior.

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50. That Defendant, UBER, is liable to the Plaintiff for the negligence of Defendant, BIENIEMY, and/or Defendant's agents, or employees, under the doctrine of respondeat superior, the provisions of NRS 41.130, and/or otherwise by operation of law.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for relief from the Defendants, and each of them, for all causes of actions, as follows:

1. For a sum to be determined for past and future medical expenses;
2. For a sum to be determined for past and future pain and suffering;
3. For a sum to be determined for past and future physical and mental pain, suffering, anguish, and disability;
4. For general damages in excess of \$15,000.00;
5. For special damages in excess of \$15,000.00;
6. For a sum to be determined at trial for punitive damages;
7. For reasonable attorney's fees, costs, and interest for having to prosecute this matter.
8. For such other relief as the Court deems just and proper.

DATED this 23rd day of November, 2018.

DRUMMOND LAW FIRM, P.C.

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DEMAND FOR JURY TRIAL

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2 Plaintiff, HANNON OVERHOLT, by and through his attorneys, CRAIG W.
3 DRUMMOND, ESQ., and LIBERTY A. RINGOR, ESQ., of DRUMMOND LAW FIRM, P.C.,
4 hereby demand a jury trial of all the issues in the above matter.

5
6 DATED this 23rd day of November, 2018.

7 DRUMMOND LAW FIRM, P.C.

8
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