

**IN THE DISTRICT COURT OF DOUGLAS COUNTY, KANSAS
CIVIL DEPARTMENT**

**JORDAN MCGRAIN, individually and)
on behalf of THE ESTATE OF ELSA)
REESE MCGRAIN, and ANNA)
MCGRAIN,**)

Plaintiff,)

v.)

**DOORDASH, INC., a Delaware)
Corporation;**)

**DOORDASH COMMERCE)
PLATFORM, LLC, a Delaware Limited)
Liability Company;**)

**DOORDASH ESSENTIALS, LLC, a)
Delaware Limited Liability Company;**)

**DOORDASH G&C, LLC, a Delaware)
Limited Liability Company;**)

and)

WILLIAM KLINGLER,)

Defendants.)

Case No. _____

Division _____

JURY TRIAL DEMANDED

PLAINTIFFS' ORIGINAL PETITION FOR DAMAGES

COME NOW, Plaintiffs JORDAN MCGRAIN, individually and as the representative of THE ESTATE OF ELSA REESE MCGRAIN, and ANNA MCGRAIN, bring this action for damages against the Defendants DOORDASH, INC.; DOORDASH COMMERCE PLATFORM, LLC; DOORDASH ESSENTIALS, LLC; DOORDASH G&C, LLC; and WILLIAM KLINGLER and state as follows:

I.

Jurisdiction and Venue

1. This Court has personal jurisdiction over Defendants pursuant to K.S.A. § 60-308(b) because Defendants transact business within Kansas and committed a tortious act within Kansas, from which this cause of action arises.
2. Venue is proper in Douglas County, Kansas, under K.S.A. § 60-604 because the cause of action arose in this county and Defendant William Klingler resides in this county.
3. This action is not removable to federal court under the “forum-defendant rule.” *See* 28 U.S.C. § 1441(b)(2).

II.

Parties.

4. Plaintiff Jordan McGrain is an adult resident and citizen of Nebraska. He is the surviving father of Elsa Reese McGrain and a wrongful death beneficiary under the applicable wrongful death statute. He brings suit herein both on his own behalf and on behalf of the Estate of Elsa Reese McGrain.
5. Plaintiff Anna McGrain is an adult resident and citizen of Nebraska. She is the surviving mother of Elsa Reese McGrain and a wrongful death beneficiary under the applicable wrongful death statute.
6. Defendant DoorDash, Inc. is a Delaware corporation with its principal place of business in San Francisco, California.

7. Defendant DoorDash Commerce Platform, LLC is a Delaware limited liability company with its principal place of business in San Francisco, California.

8. Defendant DoorDash Essentials, LLC is a Delaware limited liability company with its principal place of business in San Francisco, California.

9. Defendant DoorDash G&C, LLC is a Delaware limited liability company with its principal place of business in San Francisco, California. This Defendant and all foregoing Defendants are, collectively, "**DoorDash**."

10. Defendant William Klingler is an individual and citizen of Kansas with his residence at 1721 East 24th Street, Lawrence, Kansas 66046. He may be served with process at this address or wherever he may be otherwise found.

III.

Factual Background

11. DoorDash operates a commercial, app-based delivery platform, dispatching drivers to deliver goods from merchants to customers for a fee.

12. DoorDash exercises significant control over the details, means, methods, and material aspects of the delivery services performed by drivers using its platform, rendering such drivers its agents and/or employees for purposes of tort liability.

13. DoorDash has a duty to the public to ensure that the drivers operating on its platform are qualified and safe.

14. DoorDash knew or should have known of the risk that its application allows and encourages unauthorized and unvetted third party drivers to use approved drivers' accounts to make deliveries, a practice commonly known as account sharing. DoorDash

continuously ratifies and approves such conduct while accepting money for deliveries completed by unvetted drivers.

15. Despite this foreseeable risk, DoorDash failed to implement or enforce reasonable safeguards, such as identity verification technology, to ensure the person performing a delivery is the approved account holder. Additionally, and in the alternative, at all times, DoorDash has had access to data and facts allowing it to verify the identity of the actual users of its application and chose to ignore such data and facts even when it was known or knowable that an unvetted, unauthorized driver was completing deliveries on DoorDash's behalf.

16. DoorDash's refusal to police its own platform is a business decision that prioritizes profit over the safety of the public, including the citizens of Douglas County.

17. On or about November 6, 2025, Elsa Reese McGrain was lawfully jogging in Lawrence, Kansas.

18. At the same time, Defendant Klingler was operating a motor vehicle while actively making deliveries for DoorDash.

19. Defendant Klingler was an unvetted, unauthorized DoorDash driver who was unfit to operate a commercial delivery vehicle.

20. Defendant DoorDash should have known, or actually knew, of facts suggesting Defendant Klingler's identity and his use of the DoorDash application to further DoorDash's business purposes.

21. Defendant DoorDash actually knew, or should have known upon a reasonable vetting, facts showing Defendant Klingler's unfitness to operate a commercial

delivery vehicle, including but not limited to his having a suspended driver's license and his numerous previous convictions for crimes such as driving under the influence, bypassing ignition interlock device requirements, drug possession, and various traffic safety infractions.

22. Defendant DoorDash knew and or should have known that Defendant Klingler was the driver completing these deliveries in furtherance of its business. Despite access to facts showing that Defendant Klingler was completing orders for DoorDash, Defendant DoorDash nevertheless entrusted its delivery driving platform to Klingler and endangering the public, including Ms. McGrain.

23. As a direct and proximate result of Defendant DoorDash's vetting failures, Defendant Klingler an unfit driver operated a vehicle to complete a delivery on DoorDash's behalf, and caused it to strike Ms. McGrain resulting in her death.

24. The death of Elsa McGrain was a direct and proximate result of the negligent, grossly negligent, culpable, and reckless conduct of Defendants. Her surviving parents now sue for her wrongful death.

IV.

Claims for Relief

A. *Wrongful Death/Survival - Negligence, Gross Negligence, and Recklessness (Against All Defendants)*

25. Plaintiff incorporates the allegations in the preceding paragraphs.

26. DoorDash owed a duty of reasonable care to the public, including Elsa McGrain, to operate its business and platform in a safe manner.

27. DoorDash breached this duty by, among other things, failing to implement and enforce reasonable policies and procedures to ensure the safety of the public, including its failure to verify the identity of individuals making deliveries on its platform.

28. DoorDash's conduct created and profited from a business model that foreseeably allowed dangerous individuals to circumvent its background check process.

29. Defendant William Klingler further owed a duty to the public, including Elsa McGrain, to operate his motor vehicle in a safe and reasonable manner.

30. Defendant Klingler breached this duty by, among other things, failing to keep a proper lookout, failing to control his vehicle, operating his vehicle at an unsafe speed, and failing to exercise the degree of care required by the circumstances.

31. As a direct and proximate result of Defendant Klingler's negligence, Elsa McGrain was struck by his vehicle and sustained fatal injuries.

32. As a direct and proximate result of Defendants' negligence and gross negligence, an unvetted and dangerous driver was operating a vehicle on its behalf, causing the death of Elsa McGrain.

33. DoorDash's failure to implement basic safeguards, despite the obvious and extreme risk of harm to the public, demonstrates a conscious disregard for the rights and safety of others and constitutes gross negligence and recklessness.

B. Wrongful Death/Survival - Negligent Hiring, Selection, Monitoring, Supervision, and Retention (Against DoorDash)

34. Plaintiff incorporates the allegations in the preceding paragraphs.

35. DoorDash had a duty to the public to exercise reasonable care in the hiring, selection, monitoring, supervision, and retention of its drivers to ensure they are fit and competent.

36. DoorDash breached this duty by creating and maintaining a system that allowed it to effectively hire and retain a driver who was either unknown and unverified, or actually known to be unfit to operate a delivery vehicle.

37. The driver who killed Elsa McGrain was incompetent and unfit to be a delivery driver, a fact DoorDash knew or would have known had it exercised reasonable care in its hiring, selection, monitoring, supervision, and retention practices.

38. DoorDash's negligence in its hiring, selection, monitoring, supervision, and retention practices was a direct and proximate cause of the death of Elsa McGrain.

C. Wrongful Death/Survival - Negligence Per Se (Against All Defendants)

39. Plaintiff incorporates the allegations in the preceding paragraphs.

40. Kansas public-safety statutes impose mandatory duties intended to protect pedestrians and the public from unsafe drivers and unsafe commercial driving practices, including statutes requiring (a) licensure and lawful driving privileges, and (b) the exercise of due care to avoid colliding with pedestrians. Decedent Elsa McGrain was a member of the class of persons whom these laws are intended to protect.

41. DoorDash's business practices, by failing to include reasonable identity verification safeguards, created a system that facilitated, enabled, and encouraged the violation of Kansas public safety statutes.

42. On information and belief, at the time of the collision, Defendant Klingler violated one or more Kansas public-safety statutes, including K.S.A. 8-1535, K.S.A. 8-1557 (no unreasonable speed for conditions and hazards, K.S.A. 8-1533 (driver duties regarding pedestrians/crosswalk right-of-way), and K.S.A. 8-15,111 (prohibition on texting/communications while driving). At all relevant times, Defendant Klingler was acting as an employee and/or agent of Defendant Doordash, rendering DoorDash vicariously liable for such violations.

43. Independently, DoorDash's failure to implement and enforce reasonable identity-verification safeguards foreseeably enabled and facilitated unapproved and unvetted individuals to perform deliveries using DoorDash accounts, creating a system that facilitated violations of Kansas statutes designed to prevent unqualified drivers from operating vehicles for another's business, including K.S.A. 8-265 (employing a person to operate a motor vehicle without the proper license/class) and statutes requiring lawful licensure and driving privileges, including K.S.A. 8-235 (driver's license required) and K.S.A. 8-262 (driving while license canceled, suspended, or revoked). DoorDash's conduct, which facilitated the violation of these statutes, constitutes negligence *per se*.

44. The statutory violations described above were a direct and proximate cause of the collision and the death of Elsa Reese McGrain.

D. Wrongful Death/Survival - Negligent Entrustment (Against DoorDash)

45. Plaintiff incorporates the allegations in the preceding paragraphs.

46. By granting access to its commercial delivery platform, DoorDash effectively entrusts and permits the use of a motor vehicle for its business purposes.

47. DoorDash knew or should have known that its system allowed incompetent and unfit drivers to operate on its platform.

48. DoorDash negligently entrusted its platform to Defendant Klingler, who was unvetted and unfit to drive safely.

49. DoorDash's negligent entrustment of its commercial delivery platform was a direct and proximate cause of the death of Elsa McGrain.

E. Wrongful Death/Survival - Products Liability (Against DoorDash)

50. Defendant DoorDash designed, manufactured, created, sold, and/or placed into the stream of commerce the DoorDash application, a software or algorithmic product with sufficient similarities to a tangible product to subject it to product liability law. At all relevant times, the DoorDash application was defective due to unreasonably dangerous condition, specifically the propensity of the application to encourage and approve motor vehicle food deliveries by unvetted, unauthorized, incompetent drivers who endanger the public.

51. Such defective condition arose from the design of the DoorDash application, the inadequacy of the warnings and instructions that accompanied the application, and the application's departures from its intended design as manufactured. At all relevant times, a safer alternative design existed for the application that was practically, scientifically, and economically feasible.

52. The specific defective condition of the DoorDash application directly and proximately caused the death of Elsa McGrain.

53. Defendant DoorDash is strictly liable for the unreasonably dangerous condition of the DoorDash application and its causation of Elsa McGrain's death.

54. Defendant DoorDash is further subject to liability for its negligent design, manufacture, instruction, and failure to warn with respect to the DoorDash application.

F. Wrongful Death/Survival - Vicarious Liability (Respondeat Superior) (Against DoorDash)

55. Plaintiff incorporates the allegations in the preceding paragraphs.

56. At the time of the collision, Defendant Klingler was engaged in the business of DoorDash, completing a delivery dispatched by DoorDash, and acting for the financial benefit of DoorDash.

57. At all relevant times, Defendant Klingler was an agent and/or employee of Defendant DoorDash, acting within the course and scope of his agency and/or employment.

58. At all relevant times, Defendant DoorDash held out that Defendant Klingler was acting on its behalf and for its benefit, induced the public to rely on that representation.

59. At all relevant times, Defendant DoorDash accepted the benefits of Defendant Klingler's delivery actions taken on its behalf and ratified the actions as being taken on its behalf and for its benefit.

60. The driver acted negligently and negligently *per se* in the operation of his vehicle, proximately causing the death of Elsa McGrain.

61. Under the doctrine of *respondeat superior*, DoorDash is vicariously liable for the negligence of its agents/employees, including Defendant Klingler.

V.

Damages

62. As a direct and proximate result of the occurrence made the basis of this lawsuit, Decedent suffered severe personal injuries resulting in her death. Under K.S.A. § 60-208, Plaintiffs seek the following damages which are well in excess of \$75,000:

- Pre-death physical pain and suffering suffered by the Decedent;
- Pre-death mental and emotional distress and anguish suffered by the Decedent;
- Loss of earning capacity and inheritance;
- Loss of fringe benefits;
- Loss of services and support;
- Loss of nurture, guidance, care, attention, advice, counsel, protection, and instruction;
- Loss of enjoyment of life;
- Loss of pecuniary support;
- Loss of society, comfort, and companionship;
- Emotional distress, mental anguish, and bereavement;
- *Wentling* damages;
- Punitive damages under California law (or in the alternative, under Kansas law) for willful, wanton, egregious, and outrageous conduct.
- Interest on damages (pre- and post-judgment) in accordance with the law;
- Costs of court;

- Expert witness fees;
- Costs of copies of depositions; and
- Such other and further relief as the Court may deem just and proper.

VI.

Constitutional Challenge

63. Without conceding the applicability of any statutory damages caps, Plaintiffs herein challenge the constitutionality of all statutory language and/or case law establishing non-economic damage caps as set forth in Kansas statutes if deemed applicable. These statutes include, but are not limited to, Article 19 and 19a of the Kansas Rules of Civil Procedure. Plaintiffs hereby raise challenges, including but not limited to, equal protection, separation of powers, right to trial by jury, taking private property without just compensation, due process, free and open access to the courts and procedural.

Equal Protection Challenge

64. In limiting the amount of non-economic damages a plaintiff in a personal injury, wrongful death, or survival case may recover from a jury, Article 19 and 19a of Kansas Rules of Civil Procedure, including KSA 60-1903 and KSA 60-19a02, violate the guarantee of equal protection set forth in the Kansas Constitution.

65. In failing to provide an index for inflation on the limits for non-economic damages and limiting the liability of personal injury, wrongful death, or survival defendants with respect to those acting on their behalf, Article 19 and 19a of the Kansas Rules of Civil Procedure violate the guarantee of equal protection set forth in the Kansas Constitution.

Separation of Powers Challenge

66. In limiting the amount of non-economic damages a plaintiff in a personal injury, wrongful death, or survival case may recover in a trial by jury, Article 19 and 19a of the Kansas Rules of Civil Procedure violate the principle of Separation of Powers set forth in the Kansas Constitution in that it is the function of the Judiciary to remit verdicts.

Taking Private Property Without Just Compensation Challenge

67. In failing to provide an index for inflation on the limits for non-economic damages Article 19 and 19a of the Kansas Rules of Civil Procedure violate the Kansas Constitution by taking private property without just compensation.

Due Process Challenge

68. In limiting the amount of non-economic damages a plaintiff in a personal injury, wrongful death, or survival case may recover in a trial by jury, and in failing to provide an index for inflation on the limits for non-economic damages, Article 19 and 19a of the Kansas Rules of Civil Procedure violate the Kansas Constitution by depriving plaintiffs of due process of law without a rational basis that furthers a legitimate state interest.

Free and Open Access to the Courts Challenge

69. In limiting the amount of non-economic damages a plaintiff in a personal injury, wrongful death, or survival case may recover in a trial by jury, and in failing to provide an index for inflation on the limits for non-economic damages, Article 19 and 19a of the Kansas Rules of Civil Procedure violate the guarantee of open courts and certain remedies set forth in the Kansas Constitution by denying plaintiffs free and open access to

Kansas courts of justice and a certain remedy afforded for every injury.

Right to Trial by Jury Challenges

70. In limiting the amount of non-economic damages a plaintiff in a personal injury, wrongful death, or survival case may recover in a trial by jury, and in failing to provide an index for inflation on the limits for non-economic damages, Article 19 and 19a of the Kansas Rules of Civil Procedure violate the right to trial by jury set forth in the Kansas Constitution.

VII.

Prayer.

71. Plaintiff prays that Defendants be cited to appear and answer herein, and that upon final trial, Plaintiff have and recover judgment against Defendants, jointly and severally, for damages in an amount in excess of the minimum jurisdictional limits of this Court, together with pre-judgment and post-judgment interest at the highest rates allowed by law, costs of court, and for such other and further relief, both general and special, at law and in equity, to which Plaintiff may show itself to be justly entitled.

VIII.

Jury Trial Demanded.

72. Plaintiff demands a trial by jury on all issues so triable.

Respectfully submitted,

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* *pro hac vice application forthcoming*

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