

**IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE**

BENCHMARK CAPITAL PARTNERS VII,  
L.P., a Delaware limited partnership,

Plaintiff,

v.

TRAVIS KALANICK,

Defendant,

and

UBER TECHNOLOGIES, INC., a Delaware  
corporation,

Nominal Defendant.

C.A. No. 2017-0575-SG

**[PROPOSED] VERIFIED COMPLAINT IN INTERVENTION**

Intervenor Plaintiffs Sofreh LP and Stephen Russell (collectively, “Intervenors”), by and through their undersigned attorneys, file this [Proposed] Verified Complaint in Intervention (the “Complaint in Intervention”) against Plaintiff and Defendant in Intervention Benchmark Capital Partners VII, L.P. (“Benchmark”).

**INTRODUCTION**

1. On August 10, 2017, Benchmark initiated this action against Travis Kalanick, the co-founder and former CEO of Uber Technologies, Inc. (“Uber”), and Uber, as a nominal defendant. In its complaint (the “Complaint”),

Benchmark alleges that Kalanick improperly obtained the right to designate three voting common directors for seats on Uber's board of directors (the "Board") through a June 1, 2016 Uber Amended and Restated Voting Agreement (the "Voting Agreement"), to which Uber's principal investors, including Benchmark and Intervenors, are parties. Benchmark seeks to revise the Voting Agreement to either deprive the common stockholders of the right to elect three additional directors designated by Kalanick, or, in the alternative, to impose restrictions found nowhere in the Voting Agreement on Kalanick's ability to designate directors for the Board seats.

2. Benchmark's claims are deficient in numerous respects, but first and foremost they were filed in the wrong forum. Benchmark's claims are subject to the Voting Agreement's mandatory arbitration provision, and therefore the Delaware Court of Chancery lacks subject matter jurisdiction over Benchmark's Complaint.

3. As investors in Uber as well as parties to the Voting Agreement, Intervenors have direct and substantial interests in ensuring that the Voting Agreement's arbitration provision is adhered to and enforced. Accordingly, Intervenors seek a declaration that this Court lacks subject matter jurisdiction over Benchmark's Complaint because of the mandatory arbitration

provision in the Voting Agreement and, therefore, this litigation must be dismissed or, alternatively, stayed in favor of arbitration.<sup>1</sup>

### **THE PARTIES**

4. Intervenor Plaintiff Sofreh LP is a California limited partnership with its principal place of business at 505 Howard Street, Suite 1000, San Francisco CA 94105. Sofreh LP is, and was at all relevant times, an investor in Uber. Upon information and belief, Sofreh LP is a party to the Voting Agreement as the ultimate assignee of shares from another party to the Voting Agreement. Shervin Pischevar is Manager of Sofreh LLC, which is the General Partner of Sofreh LP.

5. Intervenor Plaintiff Stephen Russell is a natural person. Russell is, and was at all relevant times, an investor in Uber. Russell is a party to the Voting Agreement. Russell resides in California, with his principal place of business at 799 Market Street, San Francisco, CA 94103.

6. Plaintiff and Defendant in Intervention Benchmark is a Delaware limited partnership with its principal place of business at 2965 Woodside Road, Woodside, CA 94062. Benchmark is a party to the Voting Agreement.

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<sup>1</sup> Intervenor has reviewed Kalanick's Opening Brief in Support of His Motion to Dismiss or Stay in Favor of Arbitration, dated August 17, 2017, and believe that the arguments made and relief requested therein are appropriate.

7. Defendant Travis Kalanick is a natural person. Kalanick is the co-founder and former CEO of Uber. Kalanick is, and was at all relevant times, an investor in Uber. Kalanick is a party to the Voting Agreement. Upon information and belief, Kalanick resides in California, with his last known principal place of business at 1455 Market Street, San Francisco, CA 94103.

8. Nominal Defendant Uber is allegedly named a party by Benchmark for the sole purpose of ensuring that the Court can grant appropriate relief, and Benchmark does not seek damages from Uber. Uber is a Delaware corporation with its principal place of business at 1455 Market Street, San Francisco, CA 94103. Uber is a party to the Voting Agreement.

### **JURISDICTION AND VENUE**

9. Intervenors contest that this Court can exercise subject matter jurisdiction over Benchmark's Complaint, but they are appearing in this action to protect their rights as investors in Uber and as parties to the Voting Agreement and to ensure that Benchmark's claims arising out of the Voting Agreement will be submitted to arbitration as required by the arbitration provision contained therein.

10. Accordingly, neither this Complaint in Intervention nor the accompanying Motion to Intervene should be considered a concession by Intervenors that the Court has subject matter jurisdiction over this case.

## **FACTUAL BACKGROUND**

11. On August 10, 2017, Benchmark initiated this action against Kalanick and Uber. Benchmark's Complaint revolves around Benchmark's allegation that Kalanick improperly obtained the power to designate three directors to new seats on Uber's Board through the June 2016 amendments to the Voting Agreement. Benchmark seeks to eliminate the three directorships provided for under the Voting Agreement or, alternatively, to impose limitations on Kalanick's designation of directors to these seats.

12. Benchmark's first cause of action is against Kalanick and Uber as nominal defendant for invalidation of stockholder consents pursuant to 8 *Del. C.* § 225(b). This cause of action seeks to invalidate the June 2016 stockholder consent that approved amendments to the Uber Certificate of Incorporation to add three additional directors to Uber's Board. As Benchmark's Complaint admits, the certificate amendment was related to the amendment of the Voting Agreement providing for the Class B stockholders to elect the three additional directors and for Kalanick to designate the three directors to be elected. Benchmark Compl. ¶¶ 4-6, 10, 76-78. Benchmark claims that Kalanick procured the consents of Benchmark and other stockholders by fraudulent statements and intentional concealment of material information.

13. Benchmark's second cause of action is against Kalanick and Uber as nominal defendant for invalidation of director appointment pursuant to 8 *Del. C.* § 225(a). This cause of action seeks to invalidate Kalanick's appointment of himself to Uber's Board pursuant to the Voting Agreement. Benchmark claims it is entitled to this relief based on allegations that Kalanick fraudulently obtained the Board seat that he appointed himself to through the June 2016 amendments to the Voting Agreement.

14. Benchmark's third cause of action is essentially the same as its first cause of action but specifically acknowledges that the amendment to the certificate is related to the amendment of the Voting Agreement. Benchmark alleges that "Kalanick fraudulently induced Benchmark's consent to the portions of the amended Certificate of Incorporation and Voting Agreement related to the three additional Board seats" by purportedly failing to disclose certain information. Benchmark Compl. ¶ 76. This cause of action seeks to prevent Kalanick from continuing to exercise his power under the Voting Agreement to designate directors to be elected by the Class B stock.

15. Benchmark's fourth cause of action is against Kalanick for declaratory judgment. This cause of action seeks a declaration and permanent injunction requiring Kalanick to be bound by certain statements he made in a June 20, 2017 letter regarding whom, pursuant to the Voting Agreement, he would

designate for two of the three Board seats. Benchmark seeks to compel Kalanick to execute a further amendment to the Voting Agreement implementing certain standards that modify his right to designate Board members for these seats.

16. Subject to two minor carveouts that are not applicable here, the arbitration clause in the Voting Agreement provides that “[a]ny unresolved controversy or claim arising out of or relating to this Agreement” shall be submitted to arbitration. Specifically, Section 5.18 of the Voting Agreement provides:

**5.18 Dispute Resolution.** Any unresolved controversy or claim arising out of or relating to this Agreement, except as (i) otherwise provided in this Agreement, or (ii) any such controversies or claims arising out of either party’s intellectual property rights for which a provisional remedy or equitable relief is sought, shall be submitted to arbitration by one arbitrator mutually agreed upon by the parties, and if no agreement can be reached within thirty (30) days after names of potential arbitrators have been proposed by the American Arbitration Association (the “AAA”), then by one arbitrator having reasonable experience in corporate finance transactions of the type provided for in this Agreement and who is chosen by the AAA. The arbitration shall take place in either the State of California, City of San Francisco, in accordance with the AAA rules then in effect, and judgment upon any award rendered in such arbitration will be binding and may be entered in any court having jurisdiction thereof. There shall be limited discovery prior to the arbitration hearing as follows: (a) exchange of witness lists and copies of documentary evidence and documents relating to or arising out of the issues to be arbitrated, (b) depositions of all party witnesses, and (c) such other depositions as may be allowed by the arbitrators upon a showing of good cause. Depositions shall be conducted in accordance with Section 5.8 hereof regarding governing law and this Section 5.18, the arbitrator shall be required to provide in writing to the parties the basis for the award or order of such arbitrator, and a court reporter shall record all hearings, with

such record constituting the official transcript of such proceedings. The prevailing party shall be entitled to reasonable attorney's fees, costs, and necessary disbursements in addition to any other relief to which such party may be entitled.

17. As the descriptions above make clear, each of Benchmark's claims arises out of or relates to the Voting Agreement and therefore each falls within the scope of the arbitration provision.

18. Consequently, this case should be dismissed pursuant to Court of Chancery Rule 12(b)(1) for lack of subject matter jurisdiction or, in the alternative, stayed in favor of arbitration.

### **CAUSE OF ACTION**

#### **COUNT I – DECLARATORY JUDGMENT (AGAINST BENCHMARK)**

19. Intervenors incorporate the foregoing allegations as if fully set forth herein.

20. By entering into the Voting Agreement, to which all parties in this action are parties, Benchmark agreed that “[a]ny unresolved controversy or claim arising out of or relating to this Agreement” shall be submitted to arbitration.

21. Benchmark's claims set forth in its Complaint arise out of and relate to the Voting Agreement and are therefore subject to the Voting Agreement's mandatory arbitration provision.

22. The parties' disagreement over the proper forum in which Benchmark's claims should be brought gives rise to an actual controversy that is ripe for judicial determination and requires expedited declaratory relief.

23. Accordingly, Intervenors seek a declaration that the Court lacks subject matter jurisdiction over Benchmark's Complaint because of the mandatory arbitration provision in the Voting Agreement and, therefore, this litigation must be dismissed pursuant to Court of Chancery Rule 12(b)(1) or, alternatively, stayed in favor of arbitration.

### **PRAYER FOR RELIEF**

WHEREFORE, Intervenors respectfully request:

A. a declaration from this Court that the Court lacks subject matter jurisdiction over Benchmark's Complaint because of the mandatory arbitration provision in the Voting Agreement;

B. an order dismissing Benchmark's Complaint pursuant to Court of Chancery Rule 12(b)(1) or, in the alternative, staying Benchmark's Complaint in favor of arbitration; and

C. such other and further relief as the Court may deem just and proper.

Dated: August 24, 2017

PRICKETT, JONES & ELLIOTT, P.A.

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