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7 Attorneys for Plaintiff,  
8 **Jane Doe, individually and on**  
9 **behalf of all others similarly**  
10 **situated**

11 SUPERIOR COURT of the STATE of CALIFORNIA  
12 COUNTY of SAN LUIS OBISPO

13 **Jane Doe, individually and on behalf of all**  
14 **others similarly situated,**

15 **Plaintiff,**

16 vs.

17 **LYFT, Inc.; Jason Lamont Fenwick; and**  
18 **Does 1-100,**

19 **Defendants.**

CASE NO. : 19CV-0010

20 **COMPLAINT for DAMAGES**

21 [a Representative Class Action Lawsuit]

- 22 1. Negligent Supervision and Retention
- 23 2. Trespass
- 24 3. Fraud
- 25 4. Intentional Misrepresentation
- 26 5. Negligent Misrepresentation
- 27 6. Assault
- 28 7. Sexual Battery
8. Violation of Ca Civ. Code § 51.7 (Ralph Act)

ELECTRONICALLY

FILED

1/9/2019 3:45 PM

SAN LUIS OBISPO SUPERIOR COURT  
BY Carol L. McGulrk Deputy Clerk

9. Violation of Ca Civ. Code § 52.1 (Bane Act)
10. Intentional Infliction of Emotional Distress
11. Negligence
12. Violation of Business & Professions Code §17200 et, seq.

Plaintiff JANE DOE, by and through undersigned counsel James McKiernan Lawyers, as her Complaint against Defendants LYFT, INC., JASON LAMONT FENWICK, and DOES 1-100 (collectively, "Defendants"), hereby alleges as follows:

### INTRODUCTION

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*"We go the extra mile for safety"* ... LYFT, Inc. says ... for the more than **one million rides** LYFT, Inc. does **per day**!

Logan Green, CEO and Co-founder of Lyft proclaims that – for its more than **350 million rides** per year:

*"Safety is our top priority and it is our goal to make every ride safe, comfortable, and reliable. Since the beginning we have worked hard to design policies and features that protect our community."*

After being dropped off at her home around midnight by a Lyft driver, Jane Doe woke up the next morning in her bed bruised, naked and bleeding from her intimate private parts.

The entire assault by the Lyft driver was captured on a home video surveillance system, amounting to approximately 30 minutes.

The Lyft driver was arrested and remains incarcerated in San Luis Obispo County jail on a \$500,000 bail for sexual assault and battery charges pending a felony trial.

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4. The true names and capacities, whether corporate, associate, individual or otherwise of Defendants DOES 1 through 100, inclusive, are unknown to Ms. Doe who therefore sues said defendants by fictitious names. Each of the defendants designated herein as a DOE is legally responsible in some manner for the events and happenings herein referred to and caused injuries and damages proximately thereby to Ms. Doe, as herein alleged. Ms. Doe will seek leave to amend this Complaint to show their names and capacities when the same have been ascertained.

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## FACTUAL BACKGROUND

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1.

**MS. DOE was SEXUALLY ASSAULTED by a LYFT EMPLOYEE**

8. Lyft contends that it is an "*industry pioneer setting the gold-standard for safety in designing every part of Lyft with safety front of mind...*"

9. LYFT, Inc. advertises itself as the *tipsy taxi* for the world and, according to Robert Grant, Director of Global Policy for rideshare services and passenger safety, LYFT, Inc. provides "*an alternative to drinking and driving!*"

10. Jane Doe's "safe trip home" on the evening of November 4, 2018 was anything but ... and will trouble her and traumatize her for the rest of her life.

11. Jane Doe was drunk that evening when she entered the Lyft vehicle and had blacked out by the time she arrived at her home ... where she was escorted into her home by the Lyft driver, Mr. Fenwick.

12. Once inside, Mr. Fenwick placed the unconscious Jane Doe in her bed and then proceeded to wander around her home, snooping and checking for other occupants and closing curtains in preparation for his sexual assault and so as not to be seen - entirely oblivious to the home surveillance video system recording his every action.

13. Once comfortable that he would not be observed, Mr. Fenwick proceeded over the next 30 minutes to *fondle, paw, kiss, molest* and *disrobe* the unconscious Jane Doe, eventually *removing* her underwear in order to *orally perform* sex acts upon her and to *penetrate* her intimate orifices. Mr. Fenwick took several breaks during the encounter to

1 surveil the interior of the house once again for others present, next took several cell phone  
2 pictures of himself with the unconscious Jane Doe, and then resumed his sexual assault.  
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5 14. Upon completing his sexual assault upon Jane Doe, Mr. Fenwick left her  
6 naked in her bed, picked up Jane Doe's cell phone **Lyft app** so that he could issue a **\$20 tip**  
7 to himself for the Lyft ride and then departed Jane Doe's home for his next pick-up.  
8

9 **2.**

10 **LYFT'S LOW FARES, HIGH EMPLOYEE TURNOVER and LIMITED**  
11 **BACKGROUND CHECKS**  
12

13 15. Lyft entered the market for cab transportation in 2012 under the name  
14 "Zimride." Lyft gathered market share by undercutting the costs of its competitors - other  
15 taxi services.

16 16. With the exception of "surge pricing," Lyft's regular fares are intentionally set  
17 lower than the cost of traditional taxi and cab services. (It is easy for Lyft to intentionally  
18 undercut the fares of other taxi and cab companies because cab fares are set by local  
19 ordinances, are published, and do not unpredictably increase with demand, as Lyft's fares do  
20 during periods of "surge pricing.") Lyft further undercuts the cost of traditional cabs and taxi  
21 services where riders are often expected to tip 15-20% of the base fare by not requiring Lyft  
22 passengers to tip their drivers.

23 17. Lyft's strategy is an effective one. The company controls at least 20% of  
24 America's rideshare market. In 2017, the company more than doubled the 162.6 million rides  
25 it provided in 2016 and became available in all 50 states. The company's funding increased  
26 from \$1 billion in new capital to \$1.5 billion in 2017. Lyft's total revenue is growing at a  
27 faster rate than Uber, its primary competitor.

28 18. Though Lyft continues to expand and thrive, its profits are not shared by

1 drivers. Lyft's desire to stay competitive results in Lyft drivers earning very little. Many  
2 drivers actually lose money while driving for Lyft as Lyft takes a 20% to 25% cut of the fare.  
3 While Lyft claims that drivers can earn up to \$20 per hour in bigger cities, and more  
4 depending on the city where they work and the hours they choose to drive, Lyft does not  
5 adjust its earnings estimate to include the price of the Lyft driver's gas, vehicle maintenance,  
6 insurance and taxes. After adjusting for these expenses, Lyft drivers make considerably less  
7 than what Lyft claims. Many drivers make less than minimum wage after considering  
8 expenses such as vehicle maintenance and fuel.

9 19. Lyft drivers are unlikely to remain employed by Lyft for long. Ride-hailing  
10 jobs have an extremely high turnover rate. The majority of drivers have been driving for six  
11 months or less, and 18% have been driving for less than two months.

12 20. Lyft's steep turnover rate creates a problem for the company as they are  
13 constantly in need of replenishing new drivers. Lyft's relentless demand for new drivers  
14 incentivizes the company to hire quickly and ignore transportation industry standards for the  
15 selection of drivers. Thus, Lyft is motivated to forego stringent background checks on  
16 drivers and instead conduct abbreviated checks which fail to weed out bad actors.

17 21. Lyft outsources its background checks of prospective employees/drivers to  
18 Sterling BackCheck. Sterling BackCheck, also known as Sterling Talent Solution, advertises  
19 the speed of their service. "Hire Fast with Confidence" reads the homepage of their website.  
20 Sterling BackCheck provides a variety of different types of checks (for criminal records,  
21 motor vehicle records, social security number traces, etc.) and claims all their services are  
22 "fast and reliable."

23 22. Lyft's background checks only pull up an applicant's DMV driving record and  
24 national and county level criminal background going back seven years. Drivers' applications  
25 will only be rejected if they are registered on the United States Department of Justice  
26 National Sex Offender Public Website, have been convicted of a violent felony, convicted of  
27 misdemeanor assault, battery, or domestic violence, or convicted of driving under the  
28 influence within the past seven years. Convictions that occurred more than 7 years prior to

1 the background check will not show on the background check, nor will any recent offenses  
2 that did not result in a conviction. Given Lyft's limited background checks, dangerous  
3 drivers are often hired by Lyft.

4 23. Further, Lyft only requires that applicants provide it with information about  
5 themselves, including their social security number, name, and address. Lyft cannot ensure  
6 that this information is truly associated with the applicant since a unique biometric identifier  
7 - such as a fingerprint - is not used. Fingerprinting is widely required for taxi, bus, and  
8 limousine drivers, as well as for employees in various jobs that serve the public, because of  
9 the protection the process provides. Lyft claims fingerprinting is a hassle that discourages  
10 new drivers from joining, yet the company submits to this requirement in New York City  
11 and Houston, places where fingerprints are required for Lyft drivers and markets where Lyft  
12 thrives despite the additional "hassle" that fingerprinting adds to the application process.

13 24. In recent years, Lyft has been criticized for misleading potential drivers and  
14 passengers about their background checks. After San Francisco and Los Angeles District  
15 Attorneys sued Lyft (and Uber) in December 2017 for falsely advertising the quality of their  
16 background checks, Lyft agreed to stop making misleading statements about how far back  
17 the background checks go and promised to cease comparing its background checks to the  
18 more extensive checks conducted by taxi operators, which require fingerprinting.

19 25. Concurrent with Lyft's need to replenish the number of Lyft drivers on the  
20 road, the company has relaxed their standards to allow for more new applicants to be  
21 approved. Content on a 2013 version of Lyft's website states drivers can have "no more than  
22 two moving violations" on their record. The 2018 standard allows drivers to have "three  
23 moving violations in the past three years." This is not the only standard Lyft has morphed to  
24 continue accruing new drivers. In 2013 the company required driver to be "age 23 or older  
25 with a US driver's license for one or more years," while it now requires drivers to be just 21  
26 or older. Lyft loosened their standards to encourage more drivers to get on the roads, in  
27 apparent disregard to the consequences.

28 26. Lyft's business model relies on hiring new drivers, fast. Lyft's website and

1 advertisements relate how easy it is to become a driver. Its website reads, "*we'll be using*  
2 *faster, easier ways for applicants to get approved and hit the road driving with Lyft.*"  
3 Indeed, last year Lyft made it even simpler for drivers to get approved by cancelling the  
4 Mentor Program, which had required that new drivers meet with an established Lyft driver,  
5 who inspected the new driver's car, explained how to use the app, and observed the  
6 applicant's driving ability. Drivers can now be approved and hired in less than a week, and  
7 some are approved and hired in less than 48 hours after completing Lyft's application.

8  
9 **3.**

10 **LYFT'S INDIFFERENCE to SEXUAL ASSAULTS COMMITTED by LYFT**  
11 **DRIVERS**  
12

13 27. Sexual harassment and assaults by Lyft drivers are so pervasive that websites  
14 are dedicated to maintaining databases of assaults and other crimes committed by Lyft  
15 drivers. Although the incidents detailed in these databases illustrate Lyft's utter failure to  
16 properly and adequately screen its drivers, they are hardly a comprehensive list of the total  
17 misconduct and assaults committed by Lyft employees. It is well-established that only about  
18 one-third of sexual assaults are reported to authorities as some victims of sexual assault are  
19 too humiliated to come forward. Other women fear being embroiled in a criminal justice  
20 system which often makes their sexual histories a target at trial. Many others fear retaliation  
21 from their attackers - a fear especially acute in sexual assaults committed by Lyft drivers  
22 who often know exactly where their victims live and work. Below are some recently  
23 reported sexual assaults committed by Lyft's drivers:

- 24  
25 1. In May 2018, CNN, after analyzing police reports, federal court records and  
26 County databases across the United States, found that over the last four years,  
27 over 120 rideshare drivers, including Lyft drivers, sexually assaulted their  
28 passengers, including kidnapping, sexual battery and rape.



2. In October 2018, a Lyft driver, taking home a female passenger from a pub at 10 PM to her home in Van Nuys, California, sexually assaulted her as she was exiting his car - resulting in criminal charges against him for kidnapping with the intent to commit a sexual assault, rape, sexual penetration with a foreign object and sexual battery under a \$2.2 million bail.
3. In May 2018, a teenager in Ontario, Canada requested a Lyft to pick up her and her boyfriend. After the driver dropped off the boyfriend, he groped the woman, sped down the highway, and held her against her will in the car. "*I'm scared,*" the teen managed to text her mother.
4. In May 2018, a Lyft driver in Waterford Township, Michigan assaulted his female passenger after she refused to accept his offer of \$1000 in exchange for sexual intercourse.
5. In April 2018, a 29-year old woman in Oakland, California requested a Lyft to take her to a friend's home. Her Lyft driver instead drove her to his own home, where he gave her marijuana and sexually assaulted her while she was unconscious.
6. In December 2017, a woman in Cardiff, California hailed a Lyft driver to take her home. Instead, the driver viciously and brutally raped her. The incident left lacerations on the woman's nose and arms, as well as tissue damage from the sexual assault.
7. In October 2017, a 16-year-old boy in Davie, Florida was assaulted by his Lyft driver when, after dropping the boy off at home after school, the Lyft driver

1 followed the boy into his home and made the boy perform oral sex on him. In this  
2 case the Lyft driver was arrested on suspicion of committing an unlawful sex act  
3 with a minor.  
4

5 8. In July 2017, a Lyft driver in Cook County, Illinois assaulted a woman after  
6 she fell asleep during her ride home. He later drove her into an alley, got into the  
7 backseat, grabbed the woman by her throat and tied her hands behind her back  
8 using zip ties, then raped her.  
9

10 9. In June 2016, a Lyft driver picked up a woman in Chicago, Illinois. He asked  
11 her to sit in the front seat and touched her thighs, without her permission,  
12 throughout the ride. When the driver arrived at his passenger's home, he kept the  
13 doors locked, requesting that the woman invite him inside. While she was  
14 trapped in the car, he grabbed her and forcefully tried to kiss her. After the ride,  
15 the driver called the woman multiple times, and found her on Snapchat. A few  
16 days after the incident, the driver called the woman and threatened her, claiming  
17 it was her fault he was fired. "*Listen, bitch*" the driver said in his voicemail,  
18 "*You got them to fire me at Lyft. I'm going to fuck your ass up.*" His victim was  
19 terrified, knowing the driver had her address and phone number.  
20

21 28. Lyft's advertisements primarily target a female audience. In the company's  
22 early days, founder John Zimmer explained Lyft's signature pink color was used partially  
23 because the company was originally intended "*just for women.*"

24 29. Lyft is similarly aware that some of its drivers have been accused of and  
25 committed sexual assaults and battery. A number of states, including California, have  
26 launched investigations into Lyft, alleging the company routinely fails to adequately screen  
27 its drivers and routinely hires drivers with criminal histories.

28 30. Lyft has also been exposed over privacy issues. Lyft was forced to open an

1 investigation into whether employees violated Lyft's own privacy policy when they viewed  
2 customer's data without consent. A Lyft employee anonymously alleged online that some  
3 employees had tracked Lyft rides taken by their partners or tracked information about  
4 celebrities who had utilized the app, gaining access to their phone numbers and addresses.

6 4.

7 **LYFT FAILS to COOPERATE with LAW ENFORCEMENT INVESTIGATIONS of**  
8 **DRIVER MISCONDUCT**  
9

10 31. The agreement between Lyft and its drivers expressly allows Lyft to disclose  
11 information about its drivers' identities at Lyft's sole discretion. Lyft's drivers must  
12 effectively waive their right to privacy, while Lyft may disclose their identity to whomever  
13 the company chooses. Lyft drivers grant the company a "*non-exclusive, worldwide,*  
14 *perpetual, irrevocable, royalty-free, transferable, sub-licensable right and license to*" the  
15 information they provide.

16 32. Lyft requires extensive and specific standards be met before the company will  
17 consider law enforcement requests for information. Among the many requirements, all  
18 requests must be typed, signed and stamped by a law enforcement officer with jurisdiction in  
19 the area, must contain detailed information including all known email addresses, names, and  
20 aliases of the subject, plus the requestor's name, department, title, address, and phone  
21 number, and details regarding exactly what information is requested, why it is being  
22 requested, how it pertains to the investigation, and the applicable law or act under which the  
23 data is requested.

24 33. Even after a report of sexual assault or harassment committed by a Lyft  
25 driver, Lyft generally does not divulge information regarding its driver to passengers or law  
26 enforcement agencies absent a subpoena. Of the 798 law enforcement requests for  
27 information Lyft received in 2017, the company fully complied with just 418 requests.

28 34. This policy effectively has two consequences. *First*, it undermines the ability

1 of the police to contact the Lyft driver and make a complete investigation of the incident.  
2 This discourages police agencies from making a recommendation to District Attorneys'  
3 offices to file complaints against Lyft drivers. **Second**, the policy of non-cooperation with  
4 law enforcement agencies means that Lyft has provided its drivers with tacit assurance that  
5 their misconduct may not be detected by law enforcement.

6  
7 **5.**

8 **DRIVERS like MR. FENWICK are LYFT EMPLOYEES and LYFT is**  
9 **LIABLE for their TORTIOUS COUNDUCT**  
10

11 35. Ms. Doe contends that Mr. Fenwick was a Lyft **employee** at the time of the  
12 sexual assault.

13 36. There is a rebuttable presumption that a worker is an employee. In  
14 determining whether a worker is an employee or independent contractor, courts have applied  
15 the economic reality test enunciated in *S.G. Borrello & Sons, Inc. v. Dept. of Industrial*  
16 *Relations*. Under Borello, the most significant factor is whether the person to whom service  
17 is rendered (the employer or principal) has control (or right to control) the worker as to the  
18 work done and the manner and means in which it is performed.

19 37. By obtaining the customers in need of its cab services and providing the  
20 drivers to transport them, Lyft retains all necessary control over the operation as a whole.

21 38. Lyft controls its drivers' contacts with its customer base and considers its  
22 customer list to be Lyft's proprietary information.

23 39. Fares are set exclusively by Lyft.

24 40. Lyft collects the fare, paying a percentage to the driver who is not aware of  
25 the amount of the fare charged.

26 41. Lyft chooses what information to provide drivers and when to provide it. For  
27 example, Lyft conveys the rider's requested destination to the driver only after the driver has  
28 accepted the pick-up request.

1           42.     Lyft provides auto insurance for drivers that do not maintain sufficient  
2 insurance on their own.

3           43.     Lyft requires that its drivers affix Lyft logos on their vehicles.

4           44.     Lyft issues guidelines regarding how drivers should behave while using the  
5 app. One rule states drivers “*should never ask for the contact information of a passenger.*”  
6 Other rules include “*avoid discussing sensitive subjects such as dating, politics, religion,*  
7 *and sexual orientation*” and “*discrimination of any kind is not allowed on the platform.*”

8           45.     Lyft tracks their drivers' acceptance rates. Though a driver has the right to  
9 accept or ignore any ride request, declined and cancelled requests negatively impact a  
10 driver's acceptance rate, which Lyft uses to determine whether a driver employee is eligible  
11 for incentives.

12          46.     Lyft processes and deals with customer complaints and maintains the driver  
13 rating system used by customers.

14          47.     To encourage drivers to become employees, Lyft offers drivers bonuses and  
15 advertises cash incentives for new drivers to come on board.

16          48.     Recently, in **Berwick v. Uber Technologies, Inc.**, the Labor Commissioner  
17 of California ruled that an Uber driver was an employee. The Labor Commissioner applied  
18 the Borrello factors where the court held the employer need not exercise control over the  
19 work details to find an employer-employee relationship if (1) the principal retains pervasive  
20 control over the operation as a whole, (2) the worker's duties are an integral part of the  
21 operation, and (3) the nature of the work makes detailed control unnecessary. The  
22 Commissioner determined that although Uber holds itself out as nothing more than a  
23 technological platform (like Lyft), in reality, “[Uber] is involved in every aspect of the  
24 operation.” [Uber and Lyft provide nearly identical services and business models.]

25          49.     Moreover, the Labor Commissioner in **Berwick** determined that the driver  
26 “was integral to Defendant's [Uber's] business” because Uber is in business to provide  
27 transportation services to passengers, and without drivers to transport those passengers,  
28 Uber's “business would not exist.” It also found the driver to be low-skilled and lacking any

1 “managerial” skills that could affect a profit or loss. It found that that the driver's only assets  
2 were her car and labor.

3 50. A recent California Supreme Court case, **Dynamex Operations W., Inc. v.**  
4 **Superior Court**, articulated a new test for determining whether a worker is an employee or  
5 independent contractor. Under the new test, not only is the burden on the hiring entity to  
6 establish that the worker is an independent contractor, but the hiring entity must  
7 affirmatively establish all of the following three factors [called the “ABC test”] to negate a  
8 worker's status as an employee: (A) that the worker is free from control and direction of the  
9 hiring entity in connection with the performance of the work, both under the contract for the  
10 performance of the work and in fact; (B) that the worker performs work that is outside the  
11 usual course of the hiring entity's business; and (C) that the worker is customarily engaged in  
12 an independently established trade, occupation, or business of the same nature as the work  
13 performed. **Dynamex Operations W., Inc. v. Superior Court** (2018) 4 Cal. 5th 903, 956-  
14 57. Lyft will be unable to satisfy this “ABC” test and will be unable to rebut the presumption  
15 that Lyft drivers are employees.

16 51. Federal District Courts in California have also refused to dismiss claims in  
17 rejecting the argument that rideshare drivers are independent contractors. One court has also  
18 certified a collective action under the Fair Labor Standards Acts for Uber drivers alleging  
19 they were misclassified. Even if classified as independent contractors, Lyft cannot  
20 reasonably disclaim liability for its drivers' intentional torts since the pervasiveness of sexual  
21 assault among Lyft drivers makes sexual assaults “*not so unusual or startling that it would*  
22 *seem unfair to include the loss resulting from it among the costs of the employer's*  
23 *business.*” **Farmers Ins. Group v. County of Santa Clara** (1995) 11 Cal. 4th 992, 1004.

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6.

**LYFT is SUBJECT to a HEIGHTENED STANDARD of CARE as a  
COMMON CARRIER**

52. “Everyone who offers to the public to carry persons... is a common carrier of whatever he thus offers to carry. Hence, a common carrier within the meaning of Civil Code section 2168 is any entity which holds itself out to the public generally and indifferently to transport goods or persons from place to place for profit.”

53. Lyft has offered to carry and transport members of the general public. Lyft has also held itself out to the public generally to provide such services for profit.

54. Lyft is available to the general public through its mobile application and provides transportation to the general public.

55. Lyft reportedly reached 375.5 million rides in 2017.

56. Lyft claims that it has the largest coverage area of any rideshare service in the USA, covering more than 94% of the country.

57. Recently, in **Doe v. Uber Technologies, Inc.**, in denying Uber's motion to dismiss, the court rejected Uber's argument that it is not a common carrier, but, merely a “broker” of transportation services. In reaching its decision, the court found that:

a. Uber's services are available to the general public and that Uber charges customers standardized fees for car rides; and

b. Uber “offers to the public to carry persons,” thereby bringing it within California's definition of common carrier for tort purposes.

58. As Lyft and Uber provide nearly identical services and share a very similar business model, California courts will likely regard Lyft as a common carrier. As a common carrier, Lyft owed Ms. Doe a heightened duty of care, and is vicariously liable for both its driver's intentional and negligent torts, regardless of whether such acts were committed within the scope of employment.

59. Moreover, California recognizes the Nondelegable Duties Doctrine which

1 prevents a party from absolving itself from liability for failing to protect the safety of others  
2 by contracting it away and imputes liability to the hirer of an independent contractor when  
3 the work delegated involves an unreasonable risk of harm and can lawfully be performed  
4 only under a license or franchise granted by public authority.

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6 7.

7 **CLAIMS FOR RELIEF**

8  
9 **FIRST CAUSE of ACTION**

10 **(NEGLIGENT SUPERVISION and RETENTION - against LYFT)**

11  
12 60. Ms. Doe alleges and reasserts the preceding paragraphs as if fully set forth  
13 herein.

14 61. Lyft owed Ms. Doe and the general public a duty of reasonable care in the  
15 supervision and retention of its drivers.

16 62. Lyft breached that duty of care in the supervision of and/or retention of its  
17 drivers. At all relevant times, there was an employment and/or agency relationship between  
18 Lyft and Mr. Fenwick. Lyft knew or should have known through proper and thorough  
19 interview, intake, review of rider feedback and other indicators that Mr. Fenwick was unfit  
20 and incompetent and that this unfitness and incompetence to perform the work for which he  
21 was hired created a risk to Lyft passengers. Lyft knew or should have known that Fenwick  
22 could not be trusted to act properly without being closely supervised. Mr. Fenwick's  
23 unfitness and incompetence created a nondelegable duty owed by Lyft and created a  
24 particular risk to Ms. Doe, in fact, harming Ms. Doe.

25 63. Lyft's negligence in supervising and retaining Mr. Fenwick was a substantial  
26 factor, if not the sole proximate cause, in causing Ms. Doe's harm including general and  
27 special damages.

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**SECOND CAUSE of ACTION**  
**(TRESPASS - against ALL DEFENDANTS)**

64. Ms. Doe alleges and reasserts all of the preceding paragraphs as if fully set forth herein.

65. During the course and scope of employment, Mr. Fenwick intentionally trespassed upon and within Ms. Doe’s residence.

66. Mr. Fenwick's conduct was a substantial factor in causing Ms. Doe harm, including general and special damages.

67. Mr. Fenwick committed his tortious and wrongful acts in the course and scope of his employment with Lyft and as an employee and/or agent of Lyft. Therefore, Lyft is liable for Mr. Fenwick's trespass into Ms. Doe’s home and responsible for damages caused by said conduct under the principles of vicarious liability, including the doctrine of *respondeat superior*.

**THIRD CAUSE of ACTION**  
**(FRAUD - against LYFT)**

68. Ms. Doe alleges and reasserts all of the preceding paragraphs as if fully set forth herein.

69. Lyft intentionally and falsely represented to Ms. Doe that its rides were safe, its drivers were properly screened and that its screening process was superior to that utilized by competing cab companies. These material representations were knowingly false when made and were reasonably relied on by Ms. Doe.

70. Lyft particularly markets itself as a safer transportation alternative for women. Lyft's marketing contains numerous pictures of smiling women entering and exiting vehicles, who are meant to appear “*safe*.”

71. The safe and stylish image Lyft aggressively cultivates suggests to its customers that riding with Lyft is safer than doing the same with a traditional taxi. By

1 marketing heavily to young women, while claiming that rider safety is its top priority, Lyft is  
2 actually putting its female customers at grave risk.

3 72. Lyft knew that its representations and promises about rider safety were false  
4 and misleading yet continued to allow its riders to believe in the truth of its representations  
5 and promises, and to profit from its riders' reliance on such representations and promises.

6 73. Lyft represented to Ms. Doe that “[w]e designed safety into every part of  
7 Lyft, providing everyone in the car ultimate peace of mind.”

8 74. Lyft knew that its security screening was deficient, that its background checks  
9 were below industry standards, and that its drivers were not trained or supervised, instructed  
10 on sexual harassment and abuse standards, or provided with any sexual harassment  
11 prevention training. Lyft knew that numerous women had been sexually assaulted and  
12 harassed by Lyft drivers and knew it had done nothing to prevent the assaults and  
13 harassment.

14 75. Lyft knew these representations to the public, and Ms. Doe, were false and  
15 misleading, or at the very least, made these representations recklessly and without regard for  
16 their truth.

17 76. Lyft intended that customers like Ms. Doe would rely on these false and  
18 misleading representations and promises to choose Lyft as their ride service.

19 77. Lyft's intentional and false representations and promises caused Ms. Doe  
20 harm, including general and special damages.

21 78. Ms. Doe reasonably relied on Lyft's false and misleading misrepresentations  
22 in riding with Mr. Fenwick.

23 79. Ms. Doe's reliance on Lyft's false misrepresentations was a substantial factor  
24 in causing her harm. Lyft failed to provide Ms. Doe with a safe ride. If Ms. Doe had known  
25 the true facts or knew what Lyft had concealed about its deficient service, its failed security  
26 screening, and its untrained drivers, she would not have accepted a ride with Mr. Fenwick.

27 80. Lyft's intentional misrepresentations to increase its profits constitutes fraud,  
28 oppression and/or malice, and was in conscious disregard of the rights and safety of others,

1 including Ms. Doe, such as to warrant the imposition of punitive damages pursuant to Civil  
2 Code section 3294.

3  
4 **FOURTH CAUSE of ACTION**  
5 **(INTENTIONAL MISREPRESENTATION - against LYFT)**  
6

7 81. Plaintiff alleges and reasserts all of the preceding paragraphs as if fully set  
8 forth herein.

9 82. Lyft falsely represented to Ms. Doe that its rides were safe ("*[w]e designed*  
10 *safety into every party of Lyft... providing everyone in the car ultimate peace of mind*"),  
11 that its drivers were properly screened and that its screening process was superior to that  
12 utilized by competing cab companies. These representations were false and relied on by Ms.  
13 Doe.

14 83. Lyft knew that these representations were false when made, or alternatively  
15 Lyft knew the representations were recklessly made without regard for their truth.

16 84. Lyft intended that riders, including Ms. Doe, rely on its representations in  
17 choosing Lyft over other transportation services and options.

18 85. Ms. Doe reasonably relied on Lyft's misrepresentations in riding with Mr.  
19 Fenwick.

20 86. Lyft's false representations and promises harmed Ms. Doe, including general  
21 and special damages.

22 87. Ms. Doe's reliance on Lyft's misrepresentations was a substantial factor in  
23 causing her harm. If Ms. Doe had known the facts Lyft concealed about its service, its  
24 security screening, and its drivers, she would not have accepted a ride with Mr. Fenwick.

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28 ///

1 **FIFTH CAUSE of ACTION**

2 **(NEGLIGENT MISREPRESENTATION - against LYFT)**

3 88. Plaintiff alleges and reasserts all of the preceding paragraphs as if fully set  
4 forth herein.

5 89. Lyft falsely represented to Ms. Doe that its rides were safe ("*[w]e designed*  
6 *safety into every party of Lyft... providing everyone in the car ultimate peace of mind*"),  
7 that its employed drivers were properly screened and that its screening process was superior  
8 to that utilized by competing cab companies. These representations were false and relied on  
9 by Ms. Doe.

10 90. Lyft had no reasonable basis for making those false representations to Ms.  
11 Doe regarding safety and reliability of its service.

12 91. Even if Lyft may have believed that its representations were true, Lyft had no  
13 reasonable grounds for believing the representation were true when they were made.

14 92. Nevertheless, Lyft intended that customers, including Ms. Doe, rely on its  
15 representations in choosing Lyft over other transportation services and options.

16 93. Ms. Doe reasonably relied on Lyft's misrepresentations in riding with Mr.  
17 Fenwick.

18 94. Lyft's false representations and promises caused Ms. Doe harm, including  
19 general and special damages exceeding the minimum jurisdictional limit of this court.

20 95. Ms. Doe's reliance on Lyft's misrepresentations was a substantial factor in  
21 causing her harm. If Ms. Doe had known the facts Lyft concealed about its service, its  
22 security screening, and its drivers, she would not have accepted a ride with Mr. Fenwick.

23  
24 **SIXTH CAUSE of ACTION**

25 **(ASSAULT - against ALL DEFENDANTS)**

26 96. Ms. Doe alleges and reasserts all of the preceding paragraphs as if fully set  
27 forth herein.

28 97. Mr. Fenwick intended to cause harmful or offensive touching or contact with

Ms. Doe.

98. Ms. Doe reasonably believed that she was about to be touched in a harmful or an offensive manner.

99. Ms. Doe did not consent to contact with Mr. Fenwick.

100. Ms. Doe was harmed physically and mentally by contact with Mr. Fenwick.

101. Mr. Fenwick's conduct was a substantial factor in causing Ms. Doe's harm.

102. Mr. Fenwick committed his tortious and wrongful acts in the course and scope of his employment with Lyft and as an employee and/or agent of Lyft. Therefore, Lyft is liable for Mr. Fenwick's assault of Ms. Doe and responsible for damages caused by said conduct under the principles of vicarious liability, including the doctrine of *respondeat superior*.

#### SEVENTH CAUSE of ACTION

##### (SEXUAL BATTERY - against ALL DEFENDANTS)

103. Ms. Doe alleges and reasserts all of the preceding paragraphs as if fully set forth herein.

104. Mr. Fenwick intended to cause harmful and offensive touching or contact with Ms. Doe.

105. Mr. Fenwick undertook a sexually offensive touching and contact with Ms. Doe.

106. Ms. Doe did not consent to the touching and contact, amounting to a sexual assault by Mr. Fenwick.

107. Ms. Doe was harmed by Mr. Fenwick's sexual assault.

108. Mr. Fenwick committed his tortious and wrongful acts in the course and scope of his employment with Lyft and as an employee and/or agent of Lyft. Therefore, Lyft is liable for Mr. Fenwick's sexual battery of Ms. Doe and responsible for damages caused by said conduct under the principles of vicarious liability, including the doctrine of *respondeat superior*.

**EIGHTH CAUSE of ACTION**  
**(VIOLATION of CAL. CIV. CODE § 51.7 [RALPH ACT] - against ALL**  
**DEFENDANTS)**

109. Ms. Doe alleges and reasserts all of the preceding paragraphs as if fully set forth herein.

110. During the course and scope of employment, Mr. Fenwick violated Ms. Doe's right to be free from threat of violence or intimidation by threat of violence.

111. Ms. Doe is informed and believes, and on that basis, alleges that Mr. Fenwick threatened Ms. Doe with violence because Ms. Doe is a female and one who had been drinking alcohol.

112. As a direct and proximate result of Mr. Fenwick's actions, as herein alleged, Ms. Doe was harmed and has suffered and continues to suffer special and general damages and extreme physical and emotional distress, humiliation, mental and physical pain, and other damages in an amount to be proven at trial. Mr. Fenwick's conduct was a substantial factor in causing Ms. Doe's harm. Lyft is also liable for Mr. Fenwick's conduct and responsible for damages caused by said conduct under principles of vicarious liability, including the doctrine of *respondeat superior*.

113. The above-referenced acts of Mr. Fenwick were authorized or ratified by officers or managing agents of Lyft, and were done intentionally and with malice and, therefore, entitle Ms. Doe to an award of punitive damages pursuant to California Civil Code § 3294. As a further direct and proximate result of Defendants' actions, as herein alleged, Ms. Doe has incurred, and continues to incur, legal fees, costs, and other expenses in the prosecution of this matter.

114. Mr. Fenwick's conduct constituted fraud, oppression and/or malice, and was in conscious disregard of the rights and safety of Ms. Doe, such as to warrant the imposition of punitive damages pursuant to California Civil Code § 3294.

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**NINTH CAUSE of ACTION**  
**(VIOLATION of CAL. CIV. CODE § 52.1 [BANE ACT] - against ALL**  
**DEFENDANTS)**

115. Ms. Doe alleges and reasserts all of the preceding paragraphs as if fully set forth herein.

116. Defendants interfered with or attempted to interfere with Ms. Doe's clearly established rights under United States and California law, including but not limited to Ms. Doe's right of protection from bodily restraint or harm and personal insult (Civil Code § 43), by threats, intimidation, and coercion.

117. During the course and scope of employment, Mr. Fenwick intimidated Ms. Doe with threats of violence because Ms. Doe is a female and one who had been drinking.

118. Ms. Doe reasonably believed that if she exercised her rights guaranteed by the United States and California law, Mr. Fenwick would commit violence against her. Mr. Fenwick injured Ms. Doe to prevent her from exercising her rights.

119. As a direct and proximate result of Mr. Fenwick's actions, as herein alleged, Ms. Doe was harmed and has suffered and continues to suffer special and general damages and extreme physical and emotional distress, humiliation, mental and physical pain, and other damages in an amount to be proven at trial. Mr. Fenwick's conduct was a substantial factor in causing Ms. Doe's harm. Lyft is also liable for Mr. Fenwick's conduct and responsible for damages caused by said conduct under principles of vicarious liability, including the doctrine of *respondeat superior*.

120. As a further direct and proximate result of Defendants' actions, as herein alleged, Ms. Doe has incurred, and continues to incur, legal fees, costs, and other expenses in the prosecution of this matter.

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**TENTH CAUSE of ACTION**  
**(INTENTIONAL INFLICTION of EMOTIONAL DISTRESS - against ALL**  
**DEFENDANTS)**

121. Ms. Doe alleges and reasserts all of the preceding paragraphs as if fully set forth herein.

122. Lyft's employee, Mr. Fenwick, incidental to and while carrying out his job duties during the scope of his employment with Lyft, sexually assaulted and falsely imprisoned Ms. Doe. Mr. Fenwick abused a position of physical and apparent authority, where he had Ms. Doe at his mercy in her own bedroom in her house.

123. Mr. Fenwick's conduct toward Ms. Doe during the course and scope of employment was so extreme and outrageous as to exceed the bounds of decency in a civilized society.

124. Mr. Fenwick knew his conduct was likely to result in harm and mental distress.

125. Mr. Fenwick intended to and did intentionally or recklessly cause Ms. Doe to suffer severe emotional distress.

126. As a direct and proximate result of the aforementioned conduct, Ms. Doe has sustained and will sustain physical pain, mental suffering, loss of enjoyment of life, anxiety, humiliation, and severe emotional distress.

127. Mr. Fenwick's conduct was a substantial factor in causing Ms. Doe's harm. Lyft is also liable for the torts committed against Ms. Doe and responsible for damages caused by said conduct under principles of vicarious liability, including the doctrine of *respondeat superior*.

128. The above referenced acts of Mr. Fenwick were authorized or ratified by officers or managing agents of Lyft, and were done intentionally and with malice and, therefore, entitle Ms. Doe to an award of punitive damages.

129. Mr. Fenwick's conduct constituted fraud, oppression and/or malice, and was



1 in conscious disregard of the rights and safety of Ms. Doe, such as to warrant the imposition  
2 of punitive damages pursuant to California Civil Code § 3294.

3  
4 **ELEVENTH CAUSE of ACTION**  
5 **(NEGLIGENCE - against LYFT)**  
6

7 130. Ms. Doe alleges and reasserts all of the preceding paragraphs as if fully set  
8 forth herein.

9 131. Lyft is a common carrier who must carry passengers safely. As a common  
10 carrier, Lyft must use the highest care and vigilance of a very cautious person.

11 132. As a common carrier, Lyft is responsible for any, even the slightest,  
12 negligence and is required to do all that due care, vigilance, and foresight reasonably can  
13 provide under all the circumstances.

14 133. Lyft breached its duty of care in its actions towards Ms. Doe by failing to  
15 implement adequate safety measures to protect passenger safety while its passengers used  
16 Lyft ride services. At all relevant times to this Complaint, there were additional safety  
17 measures available to Lyft, including, but not limited to, monitoring Lyft's GPS tracking  
18 system for an overdue stay at the destination site at night, adding a panic button to the  
19 mobile application, pairing female drivers with female passengers, installing cameras in its  
20 vehicles, adding a post-trip safety check feature, installing a feature to verify that its drivers  
21 were the same individuals hired by Lyft, and/or cooperating with law enforcement.

22 134. Additionally, Lyft was negligent in its development, implementation, and use  
23 of the Lyft mobile application in such a manner so as to lead passengers, including Ms. Doe,  
24 to believe that they would remain safe throughout the ride.

25 135. As a direct and proximate result of the aforementioned conduct, Ms. Doe has  
26 sustained and will sustain physical pain, mental suffering, loss of enjoyment of life, anxiety,  
27 humiliation, and emotional distress.

28 136. As a direct and proximate result of the aforementioned, Ms. Doe has incurred

1 economic damages, including future therapy and medication expenses.

2 137. Lyft's negligence was a substantial factor in causing Ms. Doe's harm.

3  
4 **TWELTH CAUSE of ACTION**

5 **(BUSINESS & PROFESSIONS CODE § 17200 et seq. against LYFT)**

6  
7 138. Ms. Doe alleges and reasserts all of the preceding paragraphs as if fully set  
8 forth herein.

9 139. The Unfair Competition Law [UCL] prohibits "*unfair competition*," which is  
10 broadly defined as including "*any unlawful, unfair or fraudulent business act or practice*  
11 *and unfair, deceptive, untrue or misleading advertising and any act prohibited by Chapter 1*  
12 *(commencing with Section 17500) of Part 3 of Division 7 of the Business and Professions*  
13 *Code.*" Bus. & Prof. Code § 17200. The purpose of the UCL "*is to protect both consumers*  
14 *and competitors by promoting fair competition in commercial markets for goods and*  
15 *services.*" *Kasky v. Nike, Inc.*, 27 Cal.4<sup>th</sup> 939, 949 (2002).

16 140. Because Section 17200 is written in the disjunctive, a business act or practice  
17 need only be unlawful, unfair, *or* fraudulent to be considered "*unfair competition*" prohibited  
18 by the UCL. *Cel-Tech Commc'ns, Inc. v. Los Angeles Cellular Tel. Co.*, 20 Cal.4<sup>th</sup> 163, 180  
19 (1999).

20 141. Under the "*fraudulent*" prong, a business practice is prohibited if it is likely  
21 to mislead or deceive a reasonable consumer or, where the business practice is aimed at a  
22 particularly susceptible audience, a reasonable member of that target audience. *Lavie v.*  
23 *Procter & Gamble Co.*, 105 Cal.App.4<sup>th</sup> 496, 506-07 (2003).

24 142. Under the "*unfair*" prong, "a practice may be deemed unfair even if not  
25 specifically proscribed by some other law." *Cel-Tech*, *supra*, 20 Cal.4<sup>th</sup> at 180.

26 143. The UCL authorizes a civil action against "[a]ny person who engages, has  
27 engaged, or proposes to engage in *unfair competition*." Bus. & Prof. Code § 17203.  
28 "[P]erson includes "*natural persons, corporations, firms, partnerships, joint stock*

1 *companies, associations and other organizations of persons.” Id. §17201.*

2 144. The remedies for a violation of the UCL include injunctive relief and  
3 restitution. Bus. & Prof. Code §§ 17203, 17204.

4 145. LYFT, INC. is a “*person*” subject to the Unfair Competition Law, pursuant to  
5 Business and Professions Code § 17201.

6 146. LYFT, INC. has violated (and continues to violate) the Unfair Competition  
7 Law by engaging in the following business acts and practices:

8 (a) misleading consumers (that is, rideshare users, such as Jane Doe and  
9 others similarly situated) that it is safe to take a Lyft ride home late at night, as a female, in  
10 an intoxicated state and that you would be delivered safe, sound and un-assaulted to your  
11 home address or destination.

12 (b) failing to disclose that Lyft did not have a policy or procedure or  
13 software or proactive technology to alert the Lyft safety office that a Lyft vehicle was staying  
14 at the destination for an unusual, inordinate and/or excessive amount of time after the arrival  
15 at the destination reasonably creating a concern or, at least a reasonable suspicion, of  
16 mischief or misfeasance or malfeasance (to wit, trouble) in progress.

17  
18 **PRAYER FOR RELIEF**  
19

20 Wherefore, plaintiff prays judgment against Defendants, and each of them, as  
21 follows:

22 (1) For economic damages according to proof at trial;

23 (2) For pre-judgment and post-judgment interest  
24 according to law;

25 (3) For costs of suit and attorneys' fees to the fullest  
26 extent permitted by law;

27 (4) For statutory fines as permitted by law;

28 (5) Entry of declaratory judgment, stating that Lyft's

1 practices, policies and procedures subjected Ms. Doe to false  
2 imprisonment, sexual assault and sexual harassment;

3 (6) Enjoining Lyft from implementing or enforcing any  
4 policy, procedure, or practice that denies female customers the full  
5 and equal enjoyment of Lyft's services, and specifically enjoin Lyft  
6 to:

7 a. develop, implement, promulgate, and  
8 comply with a policy providing for the training of each and every  
9 driver/employee in the civil rights of customers, including but not  
10 limited to the areas of gender discrimination, sexual assault and  
11 sexual harassment;

12 b. develop, implement, promulgate and comply  
13 with a policy providing for reporting and investigation of  
14 complaints regarding civil rights abuses, including but not limited  
15 to issues of gender discrimination, sexual assault and sexual  
16 harassment;

17 c. develop, implement, promulgate and comply  
18 with a policy providing for disciplinary measures to be imposed  
19 upon any driver/employee found responsible for civil rights abuses,  
20 including but not limited to gender discrimination, sexual assault  
21 and sexual harassment;

22 d. develop, implement, promulgate and comply  
23 with a policy providing for mandatory fingerprinting testing to be  
24 included in the mobile application of any driver/employee  
25 applicant;

26 e. develop, implement, promulgate, and  
27 comply with a policy providing for the safety of its customers,  
28 including, but not limited to:

- 1 i. mandatory cameras inside each Lyft vehicle;  
2 ii. installation of a mobile application feature  
3 permitting female customers to specifically select female drivers;  
4 iii. installation of a “panic button” on the  
5 mobile application which would immediately alert both Lyft and  
6 local law enforcement of any unlawful behavior or conduct by its  
7 employees/drivers;  
8 iv. creation of software that alerts LYFT’s  
9 safety monitoring office of excessive time by the Lyft vehicle at the  
10 destination site; and  
11 v. creating of software that alerts LYFT’s  
12 safety monitoring office of deviations from the route to the  
13 destination site.

14 (7) For punitive and exemplary damages; and,

15 (8) For such other and further relief as the Court may  
16 deem proper.  
17

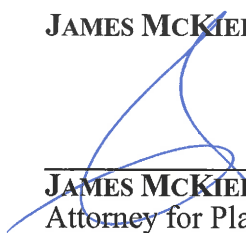
18 **DEMAND FOR JURY TRIAL**

19 Ms. Doe hereby demands a trial by jury.  
20  
21

22 **DATED: January 9, 2019**

**JAMES MCKIERNAN LAWYERS**

23  
24 **By:**

  
\_\_\_\_\_  
**JAMES MCKIERNAN, ESQ.**  
Attorney for Plaintiff,  
***Jane Doe, individually and on behalf***  
***of all others similarly situated***