E-FILED
Transaction ID: 1-19-1328
File Date: 7/1/2019 2:17 PM
Thomas D. Palella
Clerk of the Appellate Court
APPELLATE COURT 1ST DISTRICT

Case No. _____

In the
Appellate Court of Illinois
First Judicial District

JANE DOE,

Plaintiff-Movant,

v.

LYFT, INC., ANGELO MCCOY; and STERLING INFOSYSTEMS, INC. d/b/a STERLING TALENT SOLUTIONS,

Defendant-Respondent.

On Appeal from the Circuit Court of Cook County, Illinois
County Department, Law Division, Case No. 17 L 11355
Hon. Patricia O'Brien Sheahan, Judge Presiding

JANE DOE'S APPLICATION FOR LEAVE TO APPEAL PURSUANT TO ILLINOIS SUPREME COURT RULE 308

J. Timothy Eaton
Jonathan B. Amarilio
Allison E. Czerniak
Ioana M. Guset
TAFT STETTINIUS & HOLLISTER LLP
111 E. Wacker Drive, Suite 2800
Chicago, Illinois 60601
Tel.: 312.527.4000
teaton@taftlaw.com
jamarilio@taftlaw.com
acerniak@taftlaw.com
iguset@taftlaw.com

Timothy S. Tomasik
Patrick J. Giese
Patrick M. Grim
TOMASIK KOTIN KASSERMAN, LLC
161 N. Clark Street, Suite 3050
Chicago, Illinois 60601
Tel.: 312.605.8800
tim@tkklaw.com

Attorneys for Plaintiff-Movant Jane Doe

INTRODUCTION AND CERTIFIED QUESTIONS

As the circuit court characterized it, "[t]his case arises from a heinous criminal act." SR273.[1] "On the night of July 7, 2017, Jane Doe was abducted, driven to a dark alley, zip tied, and sexually assaulted at knife point in the back seat of a vehicle operated by defendant Angelo McCoy, who was a driver for Lyft at the time. Jane Doe used Lyft's app to hail a ride. Through the Lyft app, Lyft provided McCoy to be her driver." SR274. The attack was nothing short of brutal, involving multiple acts of oral, vaginal and anal penetration.

In the wake of this attack, Jane filed suit against Lyft, Inc., its driver background screening service Sterling Infosystems, Inc., and McCoy. As to Lyft, Jane claimed that it is not only directly liable for negligently hiring, supervising and retaining McCoy given his prior criminal record, but also vicariously liable for the assault, battery and false imprisonment committed by its driver. SR17-21. Jane also brought a claim for fraud against Lyft arising from its marketing campaigns, which tell the public that Lyft offers a safe alternative to taxicabs and other common carriers, that "[s]afety is our top priority," that the public should "let us be your designated driver," that Lyft "work[s] hard to design policies and features that protect our community," and that passengers "use Lyft because they feel safe with our drivers," among other things, when Lyft actually does much less to protect its passengers' safety than it leads them to believe. SR4; SR11-12; SR18.

Lyft moved to dismiss Jane's vicarious liability claims, arguing that it cannot be held liable for McCoy's actions under the doctrine of *respondeat superior* because those actions were taken outside the scope of his employment. SR30. Jane responded that Lyft

---

[1] Plaintiff's Ill. S. Ct. R. 308(c) supporting record is referenced herein as "SR__."

can nonetheless be held vicariously liable because it is a common carrier, and even if Lyft is not a common carrier, Illinois common law provides that transportation companies that are similar to common carriers should be held to the same high duty of care as common carriers, provided those companies exercise control over their passengers' safety while transporting them. SR38.

Lyft replied that it is not a common carrier and it cannot be held to a heightened duty of care because it is specially exempted from common carrier status by Section 25(e) of the Transportation Network Providers Act, 625 ILCS 57/1 *et seq*. ("TNPA"), which states that rideshare companies "are not common carriers, contract carriers or motor carriers, as defined by applicable State law, nor do they provide taxicab or for-hire vehicle service." 625 ILCS 57/25(e). Although the TNPA was meant to protect rideshare passengers, Lyft argued that Section 25(e) of the statute protects rideshare companies (also known as Transportation Network Companies ("TNCs")) from vicarious liability when their drivers attack their passengers. SR53.

Jane responded that the TNPA's Section 25(e) is unconstitutional because it violates the ban on special legislation found in article IV, section 13 of the Illinois Constitution, and because the manner of its passage violated the "three-readings rule" found in article IV, section 8(d) of the Illinois Constitution. Ill. Const. art. IV, §§ 8(d), 13. SR62. Jane further argued that regardless of the constitutionality of Section 25(e), rideshare companies cannot evade Illinois common law holding non-common carriers to a heightened duty of care when they exercise control over their passengers' safety. *Id*. This is consistent with the approach reflected in the Restatement of Torts, which explains that the traditional "special relationships," including that between common carriers and their

passengers, are not meant to be exclusive and are evolving toward "a recognition of the duty to aid or protect in any relation of dependence." Restatement (Second) of Torts § 314(A), cmt. b (1965).

The circuit court granted Lyft's partial motion to dismiss without prejudice, finding that because acts of sexual assault are deemed to be outside the scope of employment, Jane's vicarious liability claims against Lyft are precluded under the doctrine of *respondeat superior* unless she can establish that Lyft owed her a heightened duty of care, such as that owed by common carriers to their passengers. SR273. And the circuit court found that Section 25(e) "is a carve out for TNCs," establishing as a matter of law that Lyft is not a common carrier. SR275. The court left open the question of whether a heightened duty should be imposed on Lyft under the common law, regardless of Section 25(e), because it exercises control over its passengers' safety similar to the control exercised by common carriers over their passengers.

The circuit court also found that Jane's common law and constitutional arguments raised important issues of first impression, the immediate appeal of which would materially advance the termination of the case. SR280. On June 4, 2019, the circuit court therefore certified the following questions to this Court under Illinois Supreme Court Rule 308:

1. Does Section 25(e) of the Transportation Network Providers Act, 625 ILCS 57/25(e), which states that transportation network companies (TNCs) "are not common carriers," preclude TNCs, such as Lyft, from otherwise being subject to the highest duty of care under common law, like that of a common carrier's elevated duty to its passengers?

2. If TNCs are precluded from being subject to a common carrier's elevated duty of care to passengers, is the Transportation Network Providers Act, including Section 25(e), a constitutional exercise of the legislature's power?

Id.

These certified questions present issues of law and first impression for which substantial bases for differences of opinion exist. Further, an immediate answer to these legal questions from this Court will not only materially advance the termination of this litigation, but also have a substantial and immediate impact on the ridesharing public's safety. Jane therefore respectfully requests that the Court grant this application and answer the certified questions with the full benefit of briefing.

STATEMENT OF FACTS

I. Factual background

On July 7, 2017, Jane was out with her friends on Hubbard Street in Chicago's River North neighborhood celebrating a new job offer she recently received. As the night drew to a close, Jane did what Lyft told her and many millions of others to do, call a Lyft for safe transportation home. SR15-16. Jane used Lyft's mobile phone application ("app") to hail a Lyft vehicle, which soon arrived with McCoy as its driver. *Id*. Jane believed she was safely on her way home and fell asleep in the backseat of the vehicle. Jane did not know that the driver Lyft selected for her had a criminal history spanning three decades. SR13.

Rather than take her home, McCoy drove Jane to a dark and secluded alley, woke her, zip-tied her hands, and brutally sexually assaulted her at knife point. SR1. The rape involved multiple acts of oral, vaginal and anal penetration. McCoy then left Jane in the backseat of the vehicle and began to drive away, his intended destination unknown to this day. Despite the attack, Jane had the presence of mind to escape from the Lyft vehicle when McCoy momentarily stopped at a traffic light. She ran to a nearby car, pleaded for help, and was immediately driven away to safety and medical care. SR2. This is not an unusual occurrence.

Lyft is a popular and rapidly expanding ridesharing transportation company, providing on-demand ride-hailing transportation to tens of millions of members of the general public in hundreds of cities in the United States each year, and earning billions of dollars in revenue. SR2-4. As one of the two major ridesharing transportation companies in the United States, Lyft has created a market of considerable transportation convenience to the general public, but it has done so at a dangerous price to its passengers. While Lyft advertises its transportation service as a safe alternative to other means of transportation, particularly taxicabs, and makes targeted efforts to attract young women as passengers, its expansion has been fueled by lax safety practices, resulting in hundreds of reported sexual assaults. SR8-12.

For instance, Lyft uses third-party background check companies like Sterling with widely-publicized histories of deficient performance. SR7-9. Rather than using qualified security professionals to investigate the criminal histories of driver applicants, it has been reported that Sterling outsources the work to low-paid and unqualified nonprofessionals in the Philippines and India, who have little understanding of the often incomplete legal records they are made to review. Rosalind Adams, *A Lyft Driver With a Criminal Record Was Charged With Rape. So Why Was He Even Behind the Wheel?*, Buzzfeed News (May 30, 2019, 8:01 PM), https://www.buzzfeednews.com/article/rosalindadams/lyft-sterling-background -checks.[2]

[2] Although this specific news article was not part of the record below, Illinois courts may—and Jane asks this Court to—take judicial notice of matters of public record where doing so will aid in the efficient disposition of a case. *Village of Riverwoods v. BG Ltd. P'ship*, 276 Ill. App. 3d 720, 724 (1st Dist. 1995). Jane suggests that such notice is especially appropriate here, given the procedural posture of the case.

Lyft and Uber also lobby state legislatures and local governments to exempt themselves from regulation and, in some cases, insert poison pill provisions into regulatory efforts meant to temper the rideshare industry's worst failings. SR7. Section 25(e) of the TNPA, at issue here, illustrates such efforts.

The TNPA began in 2014 as House Amendment No. 1 to Senate Bill 2774, a wholly unrelated bill addressing the Public Accounting Act. SR145; SR149; SR161; SR165. The Illinois Constitution requires all bills to be read out three times before they may be voted upon. Ill. Const. art. IV, § 8(d). But following the first and second reading of S.B. 2774, its contents were entirely stripped and replaced with House Amendment No. 1, creating the TNPA, on December 2, 2014, one day before the end of the legislative session and the same day of S.B. 2774's third reading. SR149; SR161; SR165. House Amendment No. 1 was a complete rewrite of the legislation on an unrelated subject, and yet it assumed the same procedural posture as the prior bill. The new bill not only watered down stricter ridesharing regulations previously vetoed by then-Governor Quinn, it also contained for the first time Section 25(e), which, as discussed below, Lyft argues immunizes rideshare companies from common carrier status and the legal liability that attends that label. The newly rewritten bill was then quickly debated and voted on by both houses the following day, December 3, 2014, the very last day of 98th General Assembly. SR165; SR189-211. The bill was signed into law by outgoing Governor Quinn on his final day in office. SR165.

Although the House floor debate on S.B. 2774 was abbreviated because of the manner in which it was rushed through the legislature at the last moment, even that truncated discussion shows that the bill's House sponsor introduced it by stating that its

purpose was "to protect our constituent's [*sic*] safety." SR190. All but one provision of the statute supports that statement—Section 25(e).

Specifically, the bill (now statute): provided insurance requirements (625 ILCS 57/10); provided driver qualification requirements (625 ILCS 57/15; 625 ILCS 57/30(e)); prohibited discriminatory practices against passengers (625 ILCS 57/20); required zero-tolerance drug and alcohol policies (625 ILCS 57/25(a)); required passenger complaint procedures (625 ILCS 57/25(b)-(c)); required rideshare vehicles meet state safety and emissions standards (625 ILCS 57/25(d)); regulated how rideshare companies could charge their passengers fairly and provide passengers with fare and trip records (625 ILCS 57/30(a)-(b), (d)); required rideshare companies to provide passengers with drivers' identities and license plate information (625 ILCS 57/30(c)); and even allowed taxicabs (which are subject to the highest duty of care) to use rideshare company apps to pick up passengers (625 ILCS 57/30(f)). Standing in sharp relief from all these provisions was Section 25(e), which Lyft argues shelters ridesharing companies from common carrier status and from any duty of care to protect their passengers from attacks by their drivers. 625 ILCS 57/25(e).

Although the bill's sponsor did not discuss Section 25(e) during the floor debate, he acknowledged that the bill was the result of "negotiations with Uber" and its language "encapsulates that agreement" reached with Uber, which included an agreement to pass the bill quickly before the close of the legislative session. SR189; SR192; SR197-98.

Demonstrating the hurried manner in which normal deliberative procedures were eschewed in favor of quick action on the bill, the same sponsor announced in the middle of the floor debate that he had just received a text message confirming Lyft's support for

the bill. SR198. When the sponsor was asked shortly thereafter if sex offenders could drive ridesharing vehicles under the rewritten bill, he answered that "my sense is that it's safe to assume, not only is there a legal prohibition from [sex offenders] working there, but Uber and Lyft are hopefully going to have challenges placing that person into employment." SR202. In other words, the sponsor assumed that Lyft could not and would not hire drivers who presented a danger to their passengers. He was wrong. As Jane has alleged, Lyft often hires dangerous criminals who go on to attack their passengers. SR8-12. Section 25(e) was designed by Uber and Lyft to allow them to continue to do so with little or no consequence to their bottom line.

Rising in opposition to the hasty manner in which the bill was presented, one lawmaker said that ridesharing companies "like Uber and Lyft" presented "serious issues" that needed to be addressed by meaningful regulation in the normal course. SR195. "For an example, the security of passengers, background checks for drivers. You know, you want to make sure that when you're picked up and taken to your home that the driver's not 'Joe the sexual assaulter.'" *Id*. The representative said that while he supported the competition ridesharing companies presented to taxicab companies, he was "more for protecting consumers" than promoting the business interests of Lyft and Uber, and this rewritten version of the bill failed to accomplish that goal. SR195-97.

Another lawmaker added his concern that the bill favored Lyft and Uber at the expense of their traditional transportation competitors like taxicab companies, stating: "I still have a number of concerns about this. I think there's a major gap. I think we are somewhat picking winners and losers in an industry that provides the same service, so I think we need to continue work on this," rather than pass the bill. SR206. The legislation

nonetheless passed, and in a bill meant to protect rideshare passengers, Lyft and Uber inserted Section 25(e), which states that they "are not common carriers, contract carriers or motor carriers, as defined by applicable State law, nor do they provide taxicab or for-hire vehicle service" (625 ILCS 57/25(e)), undermining the very passenger protections the bill was meant to establish.

II. Procedural history

Lyft brought a motion pursuant to 735 ILCS 5/2-615 to dismiss counts III and IV of Jane's complaint, which sought to hold Lyft vicariously liable for the assault and battery, as well as the false imprisonment committed by its driver. SR30.[3] Lyft argued that it cannot be held vicariously liable for McCoy's actions under the doctrine of *respondeat superior* because they were taken outside the scope of his employment. Jane responded that Lyft can be held vicariously liable because even if Lyft is not a common carrier by statute, Illinois common law allows non-common carrier transportation companies to be held to the same high duty of care as common carriers, provided those companies exercise control over their passengers' safety while transporting them. SR38.

Lyft replied that Section 25(e) of the TNPA specially immunizes it from common carrier status and any heightened duty of care triggered by that status. SR53. Jane responded that the TNPA's Section 25(e) is unconstitutional because it violates the ban on

---

[3] Although, at the height of the 2018 #MeToo movement, Lyft announced to the public through a nationwide marketing campaign that it would no longer force victims of sexual assault at the hands of its drivers into mandatory arbitration proceedings (*see* Sara Ashley O'Brien, CNN, *Lyft joins Uber to end forced arbitration for sexual assault victims*, May 15, 2019, 3:03 PM, https://money.cnn.com/2018/05/15/technology/lyft-forced-arbitration/index. html), Lyft also brought a separate motion to dismiss attempting to force Jane out of court and into arbitration. The circuit court determined that Jane was entitled to discovery before she could be denied access to the court. SR318.

special legislation found in article IV, section 13 of the Illinois Constitution, and because the manner of its passage violated the "three-readings rule" found in article IV, section 8(d) of the Illinois Constitution. Ill. Const. art. IV, §§ 8(d), 13; SR62. Consistent with the doctrine of constitutional avoidance, Jane further argued that regardless of the constitutionality of Section 25(e), Lyft is still subject under Illinois common law to the highest duty of care because it performs the same basic function as a common carrier (*i.e.*, transporting passengers), and because its passengers similarly place their safety in Lyft's hands when using its transportation services. SR81.

The circuit court entered an order finding that this was "a seminal case of first impression" meeting the requirements for certification under Supreme Court Rule 308, and later entered a separate order certifying the two questions referenced above for immediate appeal. SR269-71. When preparing for that appeal, Jane's counsel observed that the circuit court's orders did not clearly state whether the relevant parts of Lyft's partial motion to dismiss were granted or denied, and therefore raised the issue with the court in a motion to clarify, pointing out that Rule 308 requires a ruling on a dispositive motion as a necessary precedent to the appellate court obtaining jurisdiction. Lyft took a different view, incorrectly arguing that the order certifying the question was itself sufficient to confer jurisdiction on this Court, and no ruling on its motion to dismiss was required. The circuit court vacated its certification order and took the matter under advisement, eventually agreeing with Jane that it was required to rule on Lyft's motion before it could certify questions to this Court under Rule 308. SR272-74.

On June 4, 2019, the circuit court granted Lyft's partial motion to dismiss without prejudice, finding that because acts of sexual assault are deemed to be outside the scope of

employment, Jane's vicarious liability claims against Lyft were precluded unless she could establish that Lyft owed her a heightened duty of care, such as that owed by common carriers to their passengers. SR273. And the circuit court found that Section 25(e) "is a carve out for TNCs," establishing as a matter of law that Lyft is not a common carrier. SR275.

However, before it addressed the constitutionality of Section 25(e), the circuit court found that Jane violated Illinois Supreme Court Rule 19 by failing to give the Illinois Attorney General proper notice of her constitutional challenges to the statute. R276. In doing so, the court did not address the fact that Jane provided the Attorney General with such notice, and the Attorney General acknowledged in writing that it received Jane's Rule 19 notice and declined the opportunity to intervene in the matter—all of which was of record SR266; SR268.[4] The court nevertheless analyzed the constitutional question because, it said, Supreme Court Rule 18 only prevented it doing so if it found the TNPA unconstitutional. SR276.

While the circuit court agreed with Jane that Section 25(e) discriminates in favor of ridesharing companies like Lyft, the court found that the legislative history "provides a wide array of justifications" for such discrimination, although the court clearly identified

[4] The circuit court specifically said that "Rule 19 notice was not served upon the Attorney General's office prior to the February 8, 2019 hearing" on Lyft's motion to dismiss. SR276. The TNPA was raised for the first time in Lyft's reply supporting its motion to dismiss. Jane was granted leave to file a sur-reply, in which she answered that Section 25(e) of the TNPA was unconstitutional, and Lyft was given leave to file a sur-sur-reply. SR53; SR62. Jane provided notice to the Attorney General soon after Lyft filed its sur-sur reply, and made clear to the court that she would agree to any extension requested by the Attorney General's Office to allow it time to review the case. SR266. The Attorney General notified the parties on February 19, 2019, that it would not intervene, raising no objection or complaint that it received insufficient notice of Jane's constitutional challenge. SR268. The court then decided to proceed with ruling on the matter.

only one such justification; namely, the legislature's policy decision "to promote and enable the growth of TNCs in the state of Illinois." SR277; SR279.[5] The court did not ask if that justification of providing rideshare companies with a competitive advantage was a sufficiently rational and legitimate ground to affirm the constitutionality of Section 25(e), but rather said that it was "not currently tasked" with engaging in that analysis because "the Illinois legislature has made that decision already." SR278. The court said that a holding which found "that Lyft ought to be treated like a common carrier despite this legislation would undermine [the legislature's] intent" to leave ridesharing companies comparatively unregulated. SR279.

The circuit court went on to address Jane's common law arguments, finding that rideshare companies like Lyft are similar to common carriers in that they will "take any member of the public who would hail" their vehicles, and said that "in the absence of the TNPA, it is likely that they would owe a heightened duty to their passengers." *Id*. Although the court held that it was bound to follow the TNPA and exempt Lyft from common carrier status, it said that Jane's common law arguments that rideshare companies should be subject to the same high duty of care as common carriers "are well-taken." SR280. The court said it thus "does not hold at this time that different theories of liability brought in an amended complaint would be similarly barred," and "[w]hether plaintiff can plead around

---

[5] Quoting Lyft's counsel, the court also said that there is "'about five pounds of legislative history'" for the TNPA, giving the impression that there was a robust floor debate on S.B. 2774. SR277. This is incorrect. Among other similar tactics, Lyft actively conflated the legislative histories of different proposed ridesharing regulation bills, with different legislative histories, including a bill that never became law, in order to convey that misimpression. *See*, *e.g.*, SR244 (misleadingly attributing statements made in the legislative history of H.B. 4075 with the legislative history of S.B. 2774).

the TNPA by pleading a heightened duty of care under common law" was another "issue of first impression." *Id*.[6]

The circuit court did not rule on the merits of Jane's procedural challenge to the TNPA, finding that "[w]hile plaintiff correctly notes that the procedural hook the legislature used to pass the TNPA was abnormal, she does not allege that the legislature itself violated any legislative or constitutional procedural rules." R277. This is inaccurate. Jane expressly challenged the manner in which the TNPA was enacted in violation of article IV, section 8(d) of the Illinois Constitution, and the court's certified questions account for that constitutional argument. SR80.

The circuit court ultimately found that the constitutionality of Section 25(e) of the TNPA, and the issue of whether rideshare companies like Lyft can be held to a heightened duty of care under Illinois common law, are legal issues of first impression that meet the requirements of Rule 308, and therefore certified the two questions identified above for immediate appeal. SR280. The court then stayed the case, pending the disposition of this appeal. *Id*.

ARGUMENT

Supreme Court Rule 308 provides a mechanism for parties to request certification of a question of law to the appellate court where (1) "there is a substantial ground for difference of opinion," and (2) "an immediate appeal from the [circuit court's] order may materially advance the ultimate termination of the litigation." Ill. S. Ct. R. 308(a). As these

---

[6] Jane attaches hereto as an exhibit a proposed Second Amended Complaint, illustrating the type of allegations she would make in this regard if permitted to do so. Although Jane was given leave by the circuit court to replead this claim, the court in certifying the above-stated questions made clear that she could not amend her complaint against Lyft before this appeal was resolved. Ex. 1; SR280.

facts demonstrate, several pivotal questions are presented in this case. First, and in accordance with the doctrine of constitutional avoidance, it must be determined whether Illinois common law allows rideshare companies like Lyft to be subject to the same heighted duty of care that common carriers owe to their passengers. Further, it must be determined whether Section 25(e) of the TNPA exempts rideshare companies like Lyft from vicariously liability for attacks committed by their drivers against their passengers and, if so, whether that statutory provision is constitutional. These are pure questions of law, questions of first impression, and questions that satisfy the requirements for Rule 308 certification.

I. The common law and constitutional questions at the center of this case present critical legal issues on which there are substantial grounds for differences of opinion.

The first prong of Rule 308 certification requires that an order involve a question of law as to which there is a substantial ground for difference of opinion. Ill. S. Ct. R. 308(a). Although the rule offers no guidance as to what constitutes a substantial ground for difference of opinion, the case law discussing it demonstrates that cases of first impression satisfy this standard. *Costello v. Governing Bd. of Lee Cty. Special Educ. Ass'n*, 252 Ill. App. 3d 547 (2nd Dist. 1993). As the trial court found, this case presents several issues of first impression.

A. The issue of whether rideshare companies can be held under Illinois common law to the same high duty of care to which common carriers are held is a question of first impression on which there are substantial grounds for differences of opinion.

Illinois law holds that employers and principals are generally not responsible for sexual assaults committed by their employees or agents because such criminal actions are considered to be outside the scope of employment. *Deloney v. Bd. of Educ. of Thornton*

Twp., 281 Ill. App. 3d 775, 783-85 (1st Dist. 1996); *but see Doe v. Clavijo*, 72 F.Supp.3d 910, 914 (N.D. Ill. 2014) (holding out the possibility without deciding that Illinois courts might find a sexual assault committed by a police officer is done within the scope of employment).

However, Illinois law has also made room for important exceptions to this general rule when the need for doing so arises. Taxicabs, for instance, are common carriers, and common carriers may be held liable for intentional and even criminal acts committed outside the scope of an employee or agent's employment. *McNerney v. Allamuradov*, 2017 IL App (1st) 153515, ¶¶ 75-76; *see also Gress v. Lakhani Hospitality, Inc.*, 2018 IL App (1st) 170380, ¶ 16 (innkeeper had duty to protect guest from rape by hotel employee); *Green v. Carlinville Community Unit School District No. 1*, 381 Ill. App. 3d 207, 212-13 (4th Dist. 2008) (school district had duty to protect student bus passenger from sexual assault by driver). "Illinois courts recognize that common carriers owe a heightened duty of care" to their passengers. *McNerney*, 2017 IL App (1st) 153515, ¶ 76. "The high duty of care owed by a common carrier to its passengers is 'premised on the carrier's *unique control over its passengers' safety*.'" *Id*. (quoting *Doe v. Sanchez*, 2016 IL App (2d) 150554, ¶ 39) (emphasis added).

The same is true in other contexts as well. *Gress*, 2018 IL App (1st) 170380, ¶ 16 ("since the ability of one of the parties to provide for his own protection has been limited in some way by his submission to the control of the other, a duty should be imposed upon the one possessing control (and thus the power to act) to take reasonable precautions to protect the other from assaults") (quoting *Hills v. Bridgeview Little League Ass'n*, 195 Ill. 2d 210, 244 (2000)). In fact, the same decisive element, control over another's

safety, self-evidently underlies all four of the traditional "special relationships," including the relationship between common carriers and their passengers—it is the common denominator.

Illinois common law has expanded the special relationship test and common carrier exception to impose the highest duty of care on transportation providers that are not common carriers, but nonetheless exercise control over their passengers' safety

Illinois courts have expanded this exception beyond common carriers to include transportation companies that do not meet the legal definition of a common carrier, but are sufficiently similar to common carriers to warrant application of the same heightened duty. For example, the appellate court in *Green v. Carlinville Community Unit School District No. 1* considered this issue in the context of public school buses, specifically doing so in a suit alleging that a bus driver sexually assaulted a student passenger, and answering whether the school district that provided the busing service owed its student passengers the highest duty of care. *Green*, 381 Ill. App. 3d at 209, 211. As Lyft contends here, the school district argued that it could not be held liable for sexual assaults committed by its drivers because it was not a common carrier and the trial court agreed, entering summary judgment in the school district's favor. *Id*. at 210.

The appellate court in *Green* had a different opinion. Although it agreed that the school district did not fit the legal definition a common carrier, the court found dispositive the fact that the school district was "performing the same basic function [as a common carrier], transporting individuals," and "[l]ike a passenger on a common carrier, a student on a school bus cannot ensure his or her own personal safety but must rely on the school district to provide fit employees to do so." *Id*. The appellate court thus concluded that school districts operating buses should and do owe their student passengers the highest

duty of care because, like common carrier passengers, the school district's passengers rely on the school district to supply safe drivers. *Id*. It is, in other words, a question of control and dependence. This is consistent with the appellate court's recognition in comparable contexts that "[a] special relationship exists where, *inter alia*, one voluntarily takes custody of another so as to deprive the other of his normal opportunities for protection." *Stearns v. Ridge Ambulance Svc., Inc.*, 2015 IL App (2d) 140908, ¶ 18 (further noting that "the term 'custody' is not used in a particularly technical sense"); *Gress*, 2018 IL App (1st) 170380, ¶ 16.

This decision was also consistent with the Restatement (Second) of Torts, which says that the four traditional "special relationships" (*i.e.*, common carrier/passenger, innkeeper/guest, landowner/invitee, and guardian/ward) "are not intended to be exclusive, and are not necessarily the only ones in which a duty of affirmative action for the aid or protection of another may be found." Restatement (Second) of Torts § 314(A), cmt. b. The Restatement thus explains that "[t]he law appears . . . to be working slowly toward a recognition of the duty to aid or protect in any relation of dependence." *Id.*; *see also Stearns*, 2015 IL App (2d) 140908, ¶ 18 (discussing the possibility that "in addition to the four [special relationships] that have been recognized" by Illinois courts, "there may be other special relationships that give rise to a duty").

The appellate court reached a similar conclusion in *Doe v. Sanchez*, another sexual assault case in which the court found (when reviewing the issue under Supreme Court Rule 308) that a private school bus contractor is not a common carrier, and expanded *Green* to hold that private busing companies owe their student passengers the same high duty of care that common carriers owe to their passengers. 2016 IL App (2d) 150554, ¶¶ 23, 33. The

court explained that the dispositive consideration was one of control. "[T]he high duty of care a common carrier owes its passengers is premised on the carrier's *unique control* over its passengers' safety." *Id*. ¶ 39 (emphasis added). "Likewise, a school bus driver is in unique control over the safety of students because he or she is often the only adult present during the commute." *Id*.

The reviewing court in *Sanchez* rejected the contractor's argument that it could not be held vicariously liable for its driver's sexual assault, explaining that, regardless of the *respondeat superior* doctrine, common carriers and transportation companies acting like common carriers have a "nondelegable duty" to protect their passengers' safety. *Id*. ¶¶ 46, 52, 50, 55. "[I]f the conduct of an employee violates a nondelegable duty of the employer, the employer may be liable regardless of whether the employee's misconduct took place within the scope of employment." *Id*. ¶ 50.

Illinois common law has therefore already evolved to recognize the need to impose the highest duty of care on transportation providers that are not common carriers, but nonetheless exercise a level of control over their passengers' safety, which creates a relationship of dependence and warrants the imposition of the same high duty of care imposed on common carriers. However, Illinois common law has not addressed whether that principle should apply to rideshare companies. Lyft has and will argue that this principle should not apply to it, and that *Green* and *Sanchez* should be narrowly limited to contexts involving students intentionally injured on school buses. But that argument ignores the logic underlying and connecting all the authority discussed above, which explains that the reason courts impose the highest duty of care on common carriers and non-common carriers alike (among other relationships) is because they have similar levels

of control over their passengers' safety. This relationship of control and dependence is one that Lyft does everything it can to foster for its business, regularly targeting its marketing at vulnerable demographics, especially young women, and then does everything it can to reject when presented with the harmful consequences. Lyft should not be permitted to claim the benefits of that relationship while disclaiming its costs and thereby forcing its victims to shoulder the terrible burden created by its reckless operations.

Section 25(e) does not abrogate Lyft's common law duty to protect its passengers from attacks by its drivers

Lyft argues that Section 25(e) of the TNPA shields it from any duty to protect its passengers from attacks by its drivers and from any liability when those attacks occur because it is not a common carrier. Lyft further argues that *Green* and *Sanchez* should not be interpreted as applying to rideshare companies, even if they are like common carriers, because doing so would undermine the legislature's supposed intent of relieving rideshare companies from any duty and liability in circumstances like these, especially because *Green* predates the TNPA. In fact, under Illinois law, the opposite is true.

The assumption underpinning Lyft's position, that Section 25(e) allows it to evade its duty and any liability when its drivers attack its passengers, contradicts well-established principles governing legislative abrogation of common law.

> Common law rights and remedies remain in full force in this state unless *expressly* repealed by the legislature or modified by court decision. A legislative intent to alter or abrogate the common law must be *plainly* and *clearly* stated. As a consequence, "Illinois courts have limited all manner of statutes in derogation of the common law to their express language, in order to effect the least—rather than the most—alteration in the common law."

McIntosh v. Walgreens Boots Alliance, Inc., 2019 IL 123626, ¶ 30. (quoting *Rush Univ. Med. Ctr. v. Sessions*, 2012 IL 112906, ¶ 16) (citation omitted) (emphasis added).

If Section 25(e) removes Lyft's common law duty to protect its passengers, and essentially immunizes rideshare companies from vicarious liability for attacks committed by their drivers, it must do so "plainly," "clearly" and "expressly." *McIntosh*, 2019 IL 123626, ¶ 30. And yet, strictly construed, Section 25(e) addresses only whether rideshare companies are common carriers. That provision says *nothing* about whether rideshare companies can be held to the same high duty of care as common carriers because they exercise control over their passengers' safety, as the court found was true in *Green* and *Sanchez*—cases that likewise involved non-common carriers held to the same high duty of care. Section 25(e) could have been drafted to account for that gap, but it was not. Indeed, contrary to Lyft's position, the legislature is presumed to have been aware of the *Green* decision. *Ill. Landowners Alliance, NFP v. Ill. Commerce Comm'n*, 2017 IL 121302, ¶ 44 (courts presume the legislature is aware of their published decisions). Therefore, the fact that Section 25(e) does not plainly, clearly and expressly address this issue means that it does nothing to relieve Lyft of its relevant duty or to otherwise immunize Lyft from vicarious liability in situations like that at issue here.

Lyft, of course, disagrees, but the salient point for purposes of this application is that the issue of whether the reasoning applied in *Green* and *Sanchez* should be understood or expanded to protect the passengers of rideshare companies is a question of first impression. And the answer to that question affects not only Jane's ability to seek recompense in this case, but also the safety of millions more. Jane respectfully submits that if attacks like the one she suffered are to be redressed, and possibly prevented, this question should be answered immediately so that effect can be given to the legislators' stated purpose of enacting the TNPA—to "protect our constituent's safety." SR190.

B. The constitutionality of Section 25(e) of the TNPA is, for several reasons, also a question of first impression on which there are substantial grounds for differences of opinion.

1. The issue of whether Section 25(e) of the TNPA violates the constitutional ban on special legislation is a question of first impression.

Jane contends that Section 25(e) of the TNPA is unconstitutional for two reasons. First, Section 25(e) is unconstitutional special legislation. The Illinois Constitution provides that "[t]he General Assembly shall pass no special or local law when a general law is or can be made applicable. Whether a general law is or can be made applicable shall be a matter for judicial determination." Ill. Const. 1970, art. IV, § 13. This clause "expressly prohibits the General Assembly from conferring a special benefit or exclusive privilege on a person or a group of persons to the exclusion of others similarly situated." *Best v. Taylor Mach. Works*, 179 Ill. 2d 367, 391 (1997).

The purpose and application of the Constitution's ban on special legislation

The prohibition against special legislation is meant "to prevent arbitrary legislative classifications that discriminate in favor of a select group without a sound, reasonable basis." *Best*, 179 Ill. 2d at 391. This ban arose in response to the General Assembly's abuse of the legislative process by favoring and enriching certain economic interests at the expense of others, and was designed to prevent the government from "'advance[ing] the interest of the few against the many . . . that the weak might be protected from the will of the strong . . . [and] that one class or interest should not flourish by the aid of the government, whilst another is oppressed with all the burdens.'" *Id*. at 391-92 (quoting I Debates and Proceedings of the Constitutional Convention of the State of Illinois 578 (remarks of Delegate Anderson)).

The Illinois Supreme Court has explained that "the prohibition against special legislation is the 'one provision in the legislative articles that specifically limits the lawmaking power of the General Assembly.'" *Id*. at 391 (citation omitted). The ban on special legislation is therefore not merely aspirational, but "deeply embedded in the constitutional jurisprudence of this state" (*id*. at 391), carrying with it unique and real force in our constitutional system to strike down legislation that favors one class or economic interest over another. *See, e.g.*, *Allen v. Woodfield Chevrolet, Inc*., 208 Ill. 2d 12 (2003) (striking provision of statute that conferred special protections on automobile dealers from consumer fraud claims); *Best*, 179 Ill. 2d 367 (striking legislative cap on noneconomic damages); *Wright v. Central Du Page Hosp. Ass'n*, 63 Ill. 2d 313 (1976) (striking cap on damages in medical malpractice actions); *Grace v. Howlett*, 51 Ill. 2d 478 (1972) (striking classifications that conditioned recovery for personal injuries on whether the negligent driver was using a vehicle for commercial or private purposes); *Skinner v. Anderson*, 38 Ill. 2d 455 (1967) (striking shortened statute of limitations for actions against architects and contractors); *Grasse v. Dealer's Transp. Co.*, 412 Ill. 179 (1952) (striking discriminatory classifications of employers, employees, and third-party tortfeasors in workers' compensation statute).

Whether legislation runs afoul of this prohibition involves a dual inquiry. Courts first ask whether the statutory provision at issue discriminates in favor of a select group and, if so, whether the classification created by the statutory provision is arbitrary. *Allen*, 208 Ill. 2d at 22. A special legislation challenge is generally judged under the same standards applicable to an equal protection challenge, although—importantly—its unique nature provides additional protection to those against whom the statute discriminates. *Best*,

179 Ill. 2d at 393. "The hallmark of an unconstitutional classification is its arbitrary application to similarly situated individuals without adequate justification or connection to the purpose of the statute." *Id.* at 396.

Where, as here, the statute or statutory provision under consideration does not affect a fundamental right or involve a subject classification, it is judged under the rational basis test. *Allen*, 208 Ill. 2d at 22. "Under this standard, a court must determine whether the statutory classification is rationally related to a legitimate State interest." *Best*, 179 Ill. 2d at 393 (internal quotation marks and citation omitted). Courts invalidate statutes under this test where they "have an artificially narrow focus and . . . appear to be designed primarily to confer a benefit on a particular private group without a reasonable basis, rather than to promote the general welfare." *Id.* at 395. To survive this inquiry, "'it must appear that the particular classification is based upon some real and substantial difference in kind, situation or circumstance in the persons or objects on which the classification rests, and which bears a rational relation to the evil to be remedied and the purpose to be attained by the statute.'" *Allen*, 208 Ill. 2d at 29 (quoting *Grasse*, 412 Ill. at 193-94).

The circuit court's misapplication of special legislation analysis

Here, the circuit court accepted that Section 25(e) of the TNPA discriminates in favor of ridesharing companies like Lyft, but, respectfully, the court failed to answer whether that classification was based on any real and substantial differences between rideshare companies and their competitors, and the court abrogated its responsibility to answer whether the basis for the legislature's discrimination is sufficiently related to a legitimate state interest. While the court said that it found the legislature's discrimination in favor of ridesharing companies was not arbitrary, it did not properly engage in the analysis needed to reach that conclusion, saying instead that it need not answer that

question because the legislature had already done so. SR278 (stating that "the Court is not currently tasked with determining whether TNCs and taxis are so distinguishable in kind as to warrant different governance [because] [t]he Illinois legislature has made that decision already"). The court simply concluded that the legislature meant to provide a competitive advantage to ridesharing companies and the court was obliged to defer to that decision by affirming the constitutionality of the TNPA. SR278-79.

Had the circuit court engaged in the required analysis, Jane respectfully suggests that it would have found that Section 25(e) is not adequately connected to the purpose of the TNPA to survive even rational basis review, nor is it based on any real and substantial difference between rideshare companies and their competitors. It is economic favoritism and nothing more.

Section 25(e) of the TNPA runs counter to the legislature's stated purpose of enacting the statute—to promote passenger safety

Courts examining whether a statutory provision constitutes special legislation look first to the stated purpose of the legislation and consider whether the portion challenged as special legislation promotes that purpose. *Allen*, 208 Ill. 2d at 29. Here, the stated purpose of the TNPA is to protect the public and passenger safety. As the bill's sponsor said, the TNPA was meant to "protect our constituent's safety [*sic*]," not shelter rideshare companies from legal liability when their drivers attack their passengers. SR190.

All but one of the TNPA's provisions promote some aspect of passenger safety. For instance, like taxicab regulations, the TNPA requires: criminal background screenings of drivers (625 ILCS 57/15); automobile liability insurance coverage (625 ILCS 57/10); zero-tolerance drug and alcohol policies (625 ILCS 57/25(a)-(c)); non-discrimination policies for the benefit of potential passengers (625 ILCS 57/20); and the provision of drivers'

personal identifying information to their passengers (625 ILCS 57/30(c)). The statute also contains a preemption provision clarifying that local governments, including home rule units, cannot regulate rideshare companies in a manner less restrictive than the TNPA, leaving room for supplemental safety regulations at the local level. 625 ILCS 57/32.

Standing in sharp relief from these and all other provisions of the TNPA is Section 25(e), the only provision that undermines, rather than promotes, passenger safety and the general welfare. Indeed, by specially sheltering ridesharing companies like Lyft from common carrier status, Section 25(e) not only potentially immunizes them from legal liability in cases like this, but as the trial court recognized it actually disincentivizes them from taking reasonable precautions to ensure their drivers do no harm to their passengers. SR280. This special protection thus undercuts the purpose of the legislation and promotes reckless behavior by rideshare companies, which can aggressively expand their operations with little or no legal consequence or concern about the quality of their drivers. This bears no rational relation to the protection of public and passenger safety.

When evaluating a statutory provision challenged as special legislation, "the court must consider the natural and reasonable effect of the legislation on the rights affected by the provision" to determine if it has a rational basis. *Best*, 179 Ill. 3d at 394. In *Grasse*, for example, the Supreme Court struck down a provision of the Workers' Compensation Act that automatically transferred to the employer, in some instances, an employee's common law right of action against a third-party tortfeasor. 412 Ill. 179. The provision had the effect of dividing injured employees into arbitrary classes based on whether or not the third-party tortfeasor was also bound by the act. One class was deprived of the right to recover compensatory damages from the tortfeasor while the other was not, despite the fact that the

victims in both classes might be equally free of fault. *Id*. at 196-97. The provision thus created a recovery gap. In fact, in some circumstances, such as where the employer was insolvent, it could work to deprive the injured employee of any recovery. *Id*. The Supreme Court held that this inequitable outcome, which was inconsistent with the ameliorative purpose of the statute, could not stand. *Id*. at 199.

The same is true here. Section 25(e) stands out as an anomaly from the remainder of the TNPA's purpose and it has the natural, probable, and perhaps inevitable consequence of denying victims of sexual assault and other similar misconduct a recovery. The circuit court described this as a "recovery gap" and suggested that "[t]he legislature may find this case and others like it to be an appropriate catalyst for revising the [TNPA]." SR279-80. The reality recognized by the court is that victims of sexual assault in these circumstances will generally not be able to recover much, if anything, from their attackers. Unless victims like Jane can show that a rideshare company violated a narrow band of other duties, such as a failure to adequately screen drivers, application of Section 25(e) may bar them from recovering anything, even from the rideshare companies that put them in their attackers' hands. This is no accident. It is precisely the inequitable outcome Lyft and Uber designed Section 25(e)—however imperfectly—to achieve. And yet the victim of a sexual assault at the hands of a taxicab driver would face no such bar, unless perhaps the taxicab driver was hailed through Lyft or Uber's app. Thus, as in *Grasse*, similarly situated plaintiffs would be subject to radically different outcomes for no reason but to protect a favored interest. This does nothing to advance the stated purpose of the TNPA.

Section 25(e) of the TNPA is not based on any real and substantial difference between rideshare companies and their competitors

There is also no difference between rideshare companies like Lyft and their taxicab competitors substantial enough to justify the discrimination embodied in Section 25(e). Lyft sells rides. The provision of transportation services to the public is its core function. While, in the context of litigation, Lyft usually characterizes itself as merely a technology company, that assertion ignores the reality of the situation and has been rightly rejected before. As the United States District Court for the Northern District of California stated in a case involving Uber:

> Uber's self-definition as a mere "technology company" focuses exclusively on the mechanics of its platform (*i.e.*, the use of internet enabled smartphones and software applications) rather than on the substance of what Uber actually does (*i.e.*, enable customers to book and receive rides). This is an unduly narrow frame. Uber engineered a software method to connect drivers with passengers, but this is merely one instrumentality used in the context of its larger business. Uber does not simply sell software; it sells rides. Uber is no more a "technology company" than Yellow Cab is a "technology company" because it uses CB radios to dispatch taxi cabs . . . . Indeed, very few (if any) firms are not technology companies if one focuses solely on how they create or distribute their products. If, however, the focus is on the substance of what the firm actually does . . . it is clear that Uber is most certainly a transportation company, albeit a technologically sophisticated one. In fact, as noted above, Uber's own marketing bears this out, referring to Uber as "Everyone's Private Driver," and describing Uber as a "transportation system" and the "best transportation service in San Francisco."

O'Connor v. Uber Tech., Inc., 82 F. Supp. 3d 1133, 1141-42 (N.D. Cal. 2015); *but see Illinois Transportation Trade Association v. City of Chicago*, 839 F.3d 594 (7th Cir. 2016) (rejecting in distinguishable circumstances a claim that *any* difference in the regulation of rideshare and taxicab companies constituted an equal protection violation).

These statements apply with equal force to Lyft and to ridesharing companies generally. For instance, Lyft claims that its services are fundamentally different from

taxicab services because its vehicles are hailed through smartphone apps. But of course the same is true for taxicabs today, which have similar apps that passengers may use to hail rides. *See*, *e.g.*, http://mobileapp.gocurb.com. The TNPA even specifically allows taxicabs to use ridesharing companies' apps to transport passengers. 625 ILCS 57/30(f). Thus, in reality, that distinction is nonexistent. Lyft also directly compares itself to taxicab services in its marketing campaigns, and says on its website that it provides "a ride whenever you need one," further describing itself to the public as "your friend with a car," illustrating that, when outside of the courtroom, Lyft openly characterizes itself as a transportation company. Tracey Lien, *Lyft CEO Logan Green has a plan that's far bigger than ride-hailing*, Los Angeles Times (Aug. 12, 2016). Other purported differences relied on by ridesharing companies like Lyft to attempt distinguish themselves from taxicabs are equally illusory, as Jane will explain if this application is granted.

The point is that Lyft sells rides. It is as much in the business of selling transportation as taxicab, railroad, and bus companies. At bottom, rideshare companies are engaged in a for-profit enterprise based on the provision of transportation services, and there are no real and substantial differences between them and their more traditional competitors sufficient to justify the unique preference shown to them in Section 25(e) of the TNPA. Respectfully, the trial court erred in refusing to consider any of these facts and to analyze them in the required legal framework.

Nonetheless, as the trial court and parties agree, the question of whether Section 25(e) of the TNPA violates the Illinois Constitution's special legislation clause is a question of first impression, and thus a question on which substantial grounds for a difference of opinion exist. The trial court's decision reflects Lyft's position on that issue. Jane

disagrees, contending that the bill's content and legislative history demonstrates that the TNPA was meant to protect consumers, and Section 25(e) was added at the last moment by Uber and Lyft to absolve them of responsibility for their decision to prioritize profits over passenger safety. The legislature was, in the plainest terms, hoodwinked at the expense of our citizenry's safety. This is an issue of the gravest import. If attacks like the one Jane suffered here are to be redressed, and possibly prevented, it too is a question that must be answered now to protect Illinois' ridesharing public.

2. The issue of whether Section 25(e) of the TNPA violates the three-readings rule is also a question of first impression.

The Illinois Constitution requires that all bills "shall be read by title on three different days in each house" prior to passage. Ill. Const. art. IV, § 8(d). The object of this provision is to keep legislators advised of proposed legislation by calling it to their attention on three separate occasions. *Gibelhausen v. Daley*, 407 Ill. 25, 48 (1950). Although this constitutional requirement does not require the reading process start anew after each amendment, that is only true of amendments germane to the general subject matter of the original bill. *Id*. at 46. An amendment is "germane" in this context when there is a "common tie . . . in the tendency of the provision to promote the object and purpose of the act to which it belongs." *Id*. at 47. Therefore, where, as here, "there was a complete substitution of a new bill under the original number, dealing with a subject which was not akin or closely allied to the original bill, and which was not read three times in each House, after it has been so altered, [it is] in clear violation" of the three-readings rule. *Id*. at 48.

As described above, that is precisely what occurred with S.B. 2774, which addressed the regulation of public accountants and was wholly unrelated to House Amendment No. 1 (the TNPA), and yet was completely replaced by it at the last moment

of the legislative session, and in violation of the three readings requirement. SR145; SR149; SR161; SR165. This is exactly the kind of abuse of the legislative process that the three-readings rule was designed to end.

Admittedly, the Illinois Supreme Court has previously deferred to the legislature on this issue pursuant to the "enrolled-bill doctrine," viewing it as a separation of powers issue. *Geja's Café v. Metro. Pier & Expo. Auth.*, 153 Ill. 2d 239, 258-59 (1992). However the Supreme Court has also expressly reserved the right to revisit that question if, as demonstrated here, the legislature continues to abuse the legislative process and ignore this constitutional requirement. *Id*. at 260. If ever there were a case calling on the Supreme Court to revisit this issue, this is it. While this Court may not be able to make that decision, Jane raises the issue to preserve it for further review by the Supreme Court.

II. A definitive answer to these questions will materially advance the litigation.

The second prong for Rule 308 certification requires that the answer to the proposed question materially advance the litigation in some way. This requirement is generally interpreted as requiring that an answer to a certified question either be dispositive of the case or some substantial portion thereof. Further, Rule 308 is modeled on 28 U.S.C. § 1292(b), which is similar except that the federal rule explicitly requires the question raised be a "controlling" one. *See* Ill. S. Ct. R. 308, Comm. Cmts. (1979); *Schoonover v. American Family Ins. Group*, 230 Ill. App. 3d 65, 69 (4th Dist. 1992). Illinois courts thus often look to section 1292(b) jurisprudence when interpreting Rule 308, recognizing such authority "is important in interpreting the rule's provisions." *Voss v. Lincoln Mall Mgmt. Co.*, 166 Ill. App. 3d 442, 446 (1st Dist. 1988). And in the context of section 1292(b), the phrase "may materially advance the ultimate termination of the litigation" is interpreted liberally

to include the advancement of a potential settlement. *Sterk v. Redbox Automated Retail, LLC*, 672 F.3d 535, 536-37 (7th Cir. 2012).

Here, immediate resolution of the question of Lyft's duty to its passengers and its claimed immunity under Section 25(e) of the TNPA will be dispositive of a large part of this case. If the Court determines that Lyft may be held vicariously liable under Illinois law for attacks committed by its drivers on its passengers, then Lyft will be strongly incentivized to do all it can to avoid a trial at which its lax safety practices will fully be exposed to public scrutiny, and which will likely end with a sizeable verdict for Jane. A decision from this Court in Jane's favor will also fundamentally affect Lyft's legal exposure throughout the state and perhaps persuade Lyft to change its business practices to prioritize the safety of its passengers over maximizing profits. Conversely, if Lyft prevails, a substantial portion of Jane's claims in this case will be fully and finally resolved. A definitive resolution of these legal questions may therefore result in the disposal of all or a large part of this case. This second prong therefore also weighs heavily in favor of Rule 308 certification.

CONCLUSION

This case satisfies both requirements for certification under Supreme Court Rule 308. The first certification prong, necessitating a legal issue for which there is a substantial ground for difference of opinion, is satisfied several times over because this case presents multiple issues of first impression. And the second prong, necessitating a finding that an immediate appeal is likely to materially advance the ultimate termination of the litigation or some portion thereof, is also satisfied in the ways discussed immediately above. Aside from those requirements, however, Jane respectfully asks this Court to recognize that her case presents issues of the most serious and immediate import to public safety. The

question of Lyft's liability here will impact the safety of everyone in Illinois who uses ridesharing transportation, hopefully for the better.

WHEREFORE, and for all the reasons stated above, Plaintiff Jane Doe respectfully requests that this Court grant this application for leave to appeal pursuant to Illinois Supreme Court Rule 308 and thereby answer the following certified questions:

1. Does Section 25(e) of the Transportation Network Providers Act, 625 ILCS 57/25(e), which states that transportation network companies (TNCs) "are not common carriers," preclude TNCs, such as Lyft, from otherwise being subject to the highest duty of care under common law, like that of a common carrier's elevated duty to its passengers?

2. If TNCs are precluded from being subject to a common carrier's elevated duty of care to passengers, is the Transportation Network Providers Act, including Section 25(e), a constitutional exercise of the legislature's power?

Jane further requests any other relief this Court deems appropriate.

Dated: July 1, 2019

Respectfully submitted,

JANE DOE, *Plaintiff-Movant*,

By: *s/ Jonathan B. Amarilio*
One of Her Attorneys

J. Timothy Eaton
Jonathan B. Amarilio
Allison E. Czerniak
Ioana M. Guset
TAFT STETTINIUS & HOLLISTER LLP
111 E. Wacker Drive, Suite 2800
Chicago, Illinois 60601
Tel.: 312.527.4000
teaton@taftlaw.com
jamarilio@taftlaw.com
acerniak@taftlaw.com
iguset@taftlaw.com

Timothy S. Tomasik
Patrick J. Giese
Patrick M. Grim
TOMASIK KOTIN KASSERMAN, LLC
161 N. Clark Street, Suite 3050 Chicago,
Illinois 60601
Tel.: 312.605.8800
tim@tkklaw.com

Attorneys for Plaintiff-Movant Jane Doe

EXHIBIT

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, LAW DIVISION

JANE DOE, Plaintiff, v. LYFT, INC.; ANGELO MCCOY; and STERLING INFOSYSTEMS, INC. d/b/a STERLING TALENT SOLUTIONS, Defendants.	No. 17 L 11355

SECOND AMENDED COMPLAINT AT LAW

Plaintiff, JANE DOE, by and through her attorneys, TOMASIK KOTIN KASSERMAN, LLC, and complaining of the Defendants, LYFT, INC.; ANGELO MCCOY ("MCCOY"), and STERLING INFOSYSTEMS, INC. d/b/a STERLING TALENT SOLUTIONS ("STERLING"); states:

GENERAL ALLEGATIONS

I. Defendant LYFT – A Transportation Networking Company

1. This action arises from a calculated, violent, savage sexual assault perpetrated by LYFT driver MCCOY against LYFT passenger JANE DOE. On July 7, 2017 and into the early hours of July 8, 2017, LYFT driver MCCOY accosted JANE DOE with a knife, zip-tied JANE DOE's hands, and brutally and sexually assaulted JANE DOE in the back seat of a LYFT vehicle in a secluded alley. LYFT driver MCCOY's vicious attack on LYFT passenger JANE DOE included, but was not limited to, vaginal sexual assault.

2. After the vicious assault, LYFT driver MCCOY then drove from the alley. JANE DOE managed to escape from the LYFT vehicle when LYFT driver MCCOY stopped at a busy intersection on Chicago's north side.

3. Defendant LYFT, INC. ("LYFT" or "Company") is a popular and rapidly expanding "ride hailing" public transportation company and common or other transportation carrier, which exercises control over its passengers and provides transportation to the general public. As such, LYFT is directly liable for its negligent hiring, supervision and retention of LYFT driver MCCOY, directly liable for advertising misrepresentations holding out their transportation services as a safer alternative to taxis for women like plaintiff DOE, and is vicariously liable for its agents and employees, such as defendant MCCOY, under the doctrine of *respondeat superior* and because it owes its passengers a nondelegable duty of care. Accordingly, LYFT is vicariously liable for its employees' and actual and/or apparent agents' intentional and negligent torts, whether or not such acts are committed within the scope of employment. A common or other transportation carrier, which exercises control over its passengers and their safety, must exercise the highest degree of safety for its passengers.

4. Since its inception in 2008, LYFT has grown rapidly into a multi-billion dollar enterprise with operations throughout the United States. LYFT boasts on its web site of its recent $7.5 billion valuation as a result of its most recent funding round, closing at $600 million. (https://blog.lyft.com/posts/2017/4/10/lyft-raises-new-capital-to-continue-growth). LYFT's phenomenal growth is due in large part to lax hiring and security screening processes and evasion of regulations that make it easy for individuals to become LYFT drivers. At the same time, LYFT has fraudulently marketed itself as a safer, better alternative to other methods of transportation, particularly targeting young intoxicated women and late night passengers.

5. LYFT's conduct evidences a conscious attitude and corporate policy of "profits over people" characterized by a willful disregard of the rights and safety of its passengers.

6. LYFT is a transportation networking company that provides a mobile application as an online enabled platform connecting passengers with drivers using personal vehicles. LYFT is a wildly popular and rapidly expanding "transportation network company," whose digital smartphone application ("App") allows people to order and pay for rides through their phones. Since starting in San Francisco in December 2008, LYFT has grown to operate in approximately 552 cities in the United States. The Company had a reported 315,000 regularly active drivers by the end of 2015. In October 2016, LYFT's CEO indicated that the company was on track to complete 17 million rides for the month.

7. LYFT connects drivers and passengers through a downloadable App called "LYFT." Individuals who have downloaded the App use it to make a transportation request. LYFT matches the rider with a LYFT driver who, also signed into the LYFT App, picks up the rider and drives them to a destination. LYFT chooses what information to provide to the drivers and when to provide it. LYFT typically does not disclose the rider's destination until the ride begins. App users must pay LYFT for the ride with a credit card authorized through the App. LYFT establishes the rate for a given ride (rates are variable depending on demand levels, promotional deals, and other factors), collects the fare, pays the driver a share of the fare collected, and retains the remainder. LYFT drivers typically remain unaware of the total amount LYFT collects for a particular ride.

8. To provide rides quickly and efficiently, LYFT's business model requires a large pool of drivers to transport the general public. To accomplish this, LYFT solicits and retains tens of thousands of non-professional drivers. LYFT markets to potential drivers on its website, where

it states: “Whether you’re trying to offset costs of your car, cover this month’s bills, or fund your dreams, Lyft will get you there. So, go ahead. Be your own boss.” After these drivers are hired by LYFT, LYFT makes the drivers available to the public to provide transportation services through its App.

A. LYFT – A Common or Other Transportation Carrier Under Illinois Law Exercising Control Over its Passengers.

9. LYFT offers to carry and transport members of the general public, and holds itself out to the public generally and provides such services for profit.

10. LYFT messaging and advertisements contain statements such as: “Riding with Lyft costs less than a taxi, which makes getting around wallet-friendly. Count on Lyft to get you around cities big and small, all over the United States.” Thus, LYFT communicates that it is a transportation company providing rides to the general public. Other LYFT advertising states or otherwise suggests that it offers a safe alternative to other transportation providers.

11. In 2016, LYFT provided 160 million rides to members of the public, up from 53 million in 2015.

12. LYFT is available to the general public through the App available for anyone to download on a smartphone.

13. Neither drivers nor riders are charged a fee to download the LYFT App. LYFT’s sole source of revenue is from charges to riders for trips taken.

14. LYFT charges customers standardized fees for car rides, setting its fare prices without driver input. Drivers may not negotiate fares.

15. LYFT policy prohibits drivers from refusing to provide services based on race, national origin, religion, gender, gender identity, physical or mental disability, medical condition, marital status, age, or sexual orientation.

16. LYFT expects its drivers to comply with all relevant state, federal, and local laws governing the transportation of riders with disabilities, including transporting service animals. LYFT specifically instructs its drivers on accessibility for riders with disabilities.

B. LYFT Employs Tens of Thousands of Drivers Who Lack Specialized Skills

17. LYFT's business model depends on having a large pool of non-professional drivers to transport the general public.

18. There are no specialized skills needed to drive for LYFT. By its own admission, anyone can drive for LYFT if they meet the minimum requirements of being over 21 years of age with a valid U.S. driver's license, at least one year of driving experience in the U.S., and an eligible four-door vehicle. LYFT does not charge a fee for driver applications.

19. By its own admission, jurisdictions that have strict regulations on driver qualifications make it difficult for LYFT to hire enough drivers.

20. LYFT controls its drivers' contacts with its customer base and considers its customer list to be proprietary information.

21. LYFT does not charge drivers a fee to receive notifications of ride requests mediated through the LYFT App.

22. LYFT's fare prices for riders are set exclusively by the Company and its executives. Drivers have no input on fares charged to customers. Drivers are not permitted to negotiate with customers on fares charged. LYFT retains the right and the ability to adjust charges to riders if the Company determines that a driver took a circuitous route to a destination.

23. LYFT processes the fare for each ride. It does not give the drivers information about the amount of the fare charged to the riders. LYFT then pays the drivers directly.

24. LYFT provides auto insurance for drivers that do not maintain sufficient insurance on their own. Insurance provided by LYFT covers incidents occurring while a driver is connected online with the LYFT App, with coverage increasing when a passenger is in the vehicle.

25. LYFT provides its drivers with logo stickers for their windshield and rear window and trains them that these stickers must be displayed in a uniform manner.

26. LYFT attempts to impose uniformity in the conduct of its drivers. LYFT policy mandates that all drivers: (i) Dress professionally; (ii) Send the customers requesting rides a text message when the driver is 1-2 minutes away from the pickup location; (iii) Keep the radio either off or on "soft jazz or NPR;" (iv) Open the door for riders; (v) Pick up customers on the correct side of the street where the customer is standing; (vi) In some cities, LYFT requires drivers to display a LYFT sign in the windshield; and (vii) LYFT encourages drivers to offer breath mints and water to riders.

27. LYFT retains a fee of approximately 20-25% of every ride charged to a customer.

28. LYFT retains the right to terminate drivers at will, with or without cause. LYFT uses rider feedback to discipline or terminate drivers.

29. LYFT processes and deals with customer complaints regarding drivers, and maintains the driver rating system used by customers.

30. In some locations, LYFT rewards drivers that maintain a high acceptance rate for ride requests, total number of hours online, total number of completed trips, and positive customer rating by providing a "Power Driver Bonus" and an "Average Hourly Guarantee" that sets a specific hourly pay that drivers receive, tantamount to a wage.

31. At times, LYFT incentivizes drivers to remain employees by paying a minimum rate to log into the App, accept 90% of ride requests, and be online 50 out of 60 minutes. The result

of such incentive programs is that drivers are guaranteed a minimum amount of pay from LYFT regardless of actual work performed, tantamount to a salary.

C. Systemic Deficiencies in LYFT's Employment and Supervision of its Drivers

32. To become a driver for LYFT, individuals apply through LYFT's website. The application process is entirely online and involves filling out a few short forms and uploading photos of a driver's license, vehicle registration, and proof of insurance. LYFT does not verify that the documents submitted are accurate or actually pertain to the applicant.

33. LYFT does not verify vehicle ownership. Rather, it only requires that the vehicle is registered and is not more than twelve years old.

34. Neither LYFT nor its third-party vendors require driver applicants to attend training classes on driving skills or using mobile Apps while driving.

35. Neither LYFT nor its third-party vendors require driver applicants to pass road vehicle tests or vision and hearing exams.

36. LYFT is and has been aware that its security screening processes are insufficient to prevent incompetent and unsafe applicants from successfully registering as LYFT drivers.

37. Upon information and belief, LYFT lobbies state and local governments to allow LYFT to conduct its own background checks of driver applicants instead of having municipalities perform the more stringent security screening applied to traditional taxi drivers. LYFT has successfully persuaded lawmakers in several states to keep background check requirements for its drivers limited.

38. Upon information and belief, even where authorized to do so, however, LYFT does not perform its own background checks. Rather, LYFT generally outsources background checks of driver applicants to third party vendors, such as Defendant STERLING, that do not perform

stringent background checks. The background checks run potential drivers' social security numbers through databases similar to those held by private credit agencies, which only go back for a period of seven years and do not capture all arrests and/or convictions. The background checks conducted by private companies for LYFT do not require fingerprinting for comparison against Department of Justice, Federal Bureau of Investigation, and Chicago Police Department databases. Neither LYFT nor the third-party vendors it uses for background checks verifies that the information provided by applicants is accurate or complete.

39. In Chicago, it has been reported that the city of Chicago has demanded that LYFT replace its background checker, Defendant STERLING, review all of its drivers, and conduct random audits.

40. The application process to become a LYFT driver is simple, fast, and designed to allow the Company to hire as many drivers as possible while incurring minimal associated costs. Such cost saving, however, is at the expense of riders, especially female riders. Specifically, at no time during the application process does LYFT or its third-party background check vendor, acting on LYFT's behalf, do any of the following: (i) Conduct Live Scan biometric fingerprint background checks of applicants; (ii) Conduct in-person interviews of applicants; (iii) Verify vehicle ownership; (iv) Verify that social security numbers and other personal identification numbers submitted in the application process in fact belong to the applicants; (v) Require applicants to attend training classes on driving skills; (vi) Require applicants to attend training classes to prevent harassment, including sexual harassment of customers; (vii) Require applicants to attend training classes to hone skills needed to safely use mobile Apps while driving; (viii) Require applicants to pass written examinations beyond basic "city knowledge" tests; (ix) Require applicants to pass road vehicle tests; and (x) Require applicants to pass vision and hearing exams.

41. As a result of LYFT's deficient security screening, drivers who have been arrested, charged, and/or convicted of violent crimes, theft, armed robbery, DWI, driving with a suspended license, and multiple moving violations successfully register as LYFT drivers and can and do get matched with LYFT ride requests through the LYFT App, exposing riders to dangerous and potentially violent situations without their knowledge.

42. LYFT does not verify that the individual operating a vehicle is the individual registered as a LYFT driver. Thus, even if applicants do not pass the LYFT security screening process, it is still possible for such individuals to pick up LYFT customers as ostensible LYFT drivers.

43. LYFT does nothing to ensure that its drivers are not intoxicated or under the influence of drugs or medication while providing transportation for LYFT customers.

44. LYFT does not verify whether its drivers are armed or concealing any weapons when they pick up LYFT customers.

45. Because of LYFT's deficient security screening, its customers have no idea with whom they are riding.

46. According to www.whosdrivingyou.org, at the time of filing this complaint, drivers for LYFT and other ride-sharing companies have allegedly perpetrated 333 sexual assaults, 78 assaults, 14 kidnappings, and have been responsible for 40 deaths.

47. Concerns about inadequate screening and the threat LYFT drivers pose to their riders are well known to LYFT and its executives. In the years 2015 and 2016 alone, dozens of crimes committed by LYFT drivers against their riders were reported, ranging from theft to sexual assault, kidnapping, and rape. LYFT drivers have also been reported driving drunk.

48. LYFT has placed profits over safety by deliberately lowering the bar for drivers in

order to rapidly expand its network of drivers and, thus, its profits. This is a calculated decision by senior executives to allow LYFT to dominate the emerging rideshare market at the expense of public safety.

49. LYFT has accomplished its aggressive expansion by inviting people without skills or experience to become LYFT drivers, flouting licensing laws and vehicle safety and consumer protection regulations, implementing lax hiring standards, and making it as easy as possible for anyone to become and remain a driver.

50. Consistent with its policy of putting profits before public safety, LYFT deliberately focuses its hiring and retention efforts on branding and appearances, encouraging clean dress, and encouraging drivers to offer water and mints to customers, while simultaneously avoiding rigorous background checks and other efforts aimed at safety. LYFT holds itself out as a safe, reliable provider of transportation services with the standards of safety that consumers expect from a large, reputable, well-run corporation.

51. Crimes committed by LYFT drivers have become so commonplace that LYFT has prepared and recycled on numerous occasions a canned statement expressing regret but assuring the news media that LYFT "stands ready" to assist in subsequent investigations:

a. In a November 2, 2017 statement to the media following an alleged rape of a LYFT passenger by a LYFT driver in Austin, Texas, LYFT issued the following statement: "These allegations are incredibly disturbing. . . .[W]e stand ready to assist law enforcement."

b. In an October 8, 2017 statement to the media following an alleged kidnapping of LYFT passengers near Orlando, Florida, LYFT issued the following statement: "What's being described here is completely inappropriate. . . . We stand ready to assist law enforcement in any investigation."

c. In an August 3, 2017 statement to the media following an alleged rape of a LYFT passenger by a LYFT driver in Rancho Bernardo, California, LYFT issued the following statement: "What is being described here is horrifying. . . . We have

reached out to law enforcement for additional information and stand ready to assist in their investigation."

d. In a July 24, 2017 statement to the media following the incident alleged in this Complaint, LYFT issued the following statement: "These allegations are sickening and horrifying . . . We stand ready to assist law enforcement in their investigation."

52. Despite LYFT's assurances that it "stands ready to cooperate with law enforcement," in JANE DOE's case, LYFT failed to respond to inquiries from the Chicago Police Department and did not operate a 24 hour help line for overnight Chicago Police Department officers to contact in furtherance of their investigation.

D. LYFT Fraudulently Markets Itself as a Safer, Better Alternative to Taxis

53. Nevertheless, LYFT has misled and continues to knowingly mislead the public about the safety and security measures it employs to protect its passengers. Despite the known deficiencies in LYFT's security screening processes, LYFT holds itself out to the public as "safe." Rather than inform riders of its security failures or correct the flaws, LYFT presents itself to customers as "design[ing] safety into every part of LYFT."

54. LYFT has misrepresented to its customers on its website that: "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. People say they use LYFT because they feel safe with our drivers, which is a product of this commitment."

55. LYFT has actively fostered and successfully cultivated an image among its customers of safety and superiority to public transportation and traditional taxis.

56. LYFT has not taken steps to correct its public image of safety. Instead, because of LYFT's ongoing aggressive marketing, most LYFT customers are generally unaware of the real risks presented by LYFT's own drivers, and continue to believe a ride with LYFT is a safer and better alternative.

57. Though, in certain circumstances, a LYFT ride can be less expensive than a traditional taxi, LYFT rides are often more expensive. This is true, in part, because of a practice called "prime time" pricing, in which LYFT unilaterally increases its fees by a multiplier based on demand conditions. While intended to ensure that rides go to those who need them most, in effect, prime time pricing ensures that rides during peak hours go to those willing to pay the most.

58. Riders, such as plaintiff JANE DOE reasonably rely on LYFT's representations and promises about its safety and security measures including driver screening and background check procedures. LYFT's riders choose to utilize LYFT's service as a result of this reliance.

E. LYFT's Marketing Targets Intoxicated Female Riders

59. As part of marketing itself as a better, safer alternative, LYFT particularly targets the market of intoxicated, late night riders. By its own admission, LYFT is "your new designated driver."

60. In 2016, LYFT collaborated with Budweiser to "combat drunk driving." The press release goes on to state "everybody deserves a designated driver, even if you are on a tight budget."

61. LYFT does not inform its riders that hailing a ride after drinking also puts those same riders in peril from the LYFT drivers themselves. The safe and stylish image LYFT aggressively cultivates suggests to its customers that riding while intoxicated with LYFT is safer than doing the same with a traditional taxi. By marketing heavily to young persons who have been drinking, while claiming that rider safety is its top priority, LYFT is actually putting its customers at grave risk.

62. LYFT knew that its representations and promises about rider safety were false and misleading, yet continued to allow its passengers to believe in the truth of its representations and promises, and to profit from its passengers' reliance on such representations and promises.

F. LYFT Knew Its Representations About Safety Were False, and Knew that Its Hiring Processes Were Deficient

63. Based on the aforementioned, sexual assaults by LYFT drivers against passengers are not isolated or rare occurrences. They are part of a known pattern of heinous, but avoidable, attacks.

64. Upon information and belief, due to general underreporting of sexual crimes, these media-reported assaults represent only a small fraction of the number of actual sexual assaults perpetrated by LYFT drivers against riders.

65. Upon information and belief, LYFT operated its business with knowledge of the weaknesses in screening procedures but accepted those weaknesses because those weaknesses facilitated and permitted LYFT to hire more (though unsafe) drivers to increase the size of LYFT's fleet. LYFT actively pushed its background check contractors to increase speed over quality, which invited mistakes and permitted dangerous drivers, like MCCOY, to be approved to drive for LYFT, despite that his background included information demonstrating that he would be dangerous to LYFT customers.

G. MCCOY was an Actual and/or Apparent Agent of LYFT, a Common or Other Transportation Carrier Exercising Control Over its Passengers, and LYFT is Liable for Intentional Torts Under Illinois Law

66. At all times relevant, plaintiff JANE DOE relied on LYFT's calculated, targeted marketing, including the cloaking of the LYFT vehicle with LYFT trade dress, to inform her belief that MCCOY was an actual and/or apparent agent of LYFT.

67. At all times relevant, LYFT held itself out as a provider of transportation services, and safe transportation services, and JANE DOE neither knew nor should have known that MCCOY was not an employee or agent of LYFT.

68. At all times relevant, JANE DOE did not choose MCCOY, but relied upon LYFT to provide safe transportation services.

H. LYFT Knew or Should Have Known that MCCOY Has a Criminal History That Included Charges for Theft, DUI, and Multiple Weapons Charges, That Made Him a Danger to LYFT Passengers, Including JANE DOE

69. On or around December 10, 2013, MCCOY was arrested for and charged with retail theft, a crime of dishonesty and sentenced on January 3, 2014.

70. On or around March 6, 2003, MCCOY was arrested for and charged with possession of cannabis.

71. On or around September 5, 1999, MCCOY was arrested for and charged with driving under the influence of alcohol.

72. On or around February 21, 1998, MCCOY was arrested for and charged with possession of cannabis.

73. On or around October 17, 1994, MCCOY was arrested for and charged with possession of a firearm, and convicted on March 8, 1995.

74. On or around August 6, 1989 was arrested for and charged with participating in mob action and failing to disperse.

75. On March 12, 1986, MCCOY was arrested for and charged with unlawful use of a weapon.

I. Following the Sexual Attack, LYFT Cut Off JANE DOE's Access to the LYFT App, and After JANE DOE Reported the Horrific Sexual Assault She Had Endured, LYFT Emailed and Referred JANE DOE to lyft.com/help

76. On or around July 8, 2017, JANE DOE reported to LYFT that one of its drivers had sexually assaulted her.

77. LYFT's "Trust & Safety" Department responded that they were "happy to cooperate" with law enforcement, but only upon receipt of "a subpoena or formal legal order."

78. In a particularly callous and indifferent response, rather than provide assistance, LYFT cut off JANE DOE's access to the LYFT App and referred her to a generic "Help" portion of LYFT's website: http://lyft.com/help.

II. Plaintiff, JANE DOE

79. At all relevant times, Plaintiff JANE DOE resided in Cook County, Illinois.

80. Plaintiff JANE DOE began using LYFT long before the incident. JANE DOE believed and relied on LYFT's targeted, focused marketing and representations that it was a safe, high-quality car service. She believed LYFT was safe based on LYFT advertising, and from her experience taking LYFT rides with friends who already had the LYFT App. She rode in cars decorated with the LYFT logo and trade dress, and was impressed by the deliberate appearance, which LYFT had cultivated, that these were well-maintained, clean cars, driven by professional LYFT drivers employed by LYFT. At all relevant times, JANE DOE believed that LYFT was a well-operated and well-managed, reputable corporation that employed safe drivers.

81. The LYFT logo has gained a near iconic status on roads in Chicago and nationwide, and was instantly recognizable to JANE DOE:

82. For years before the incident, plaintiff JANE DOE saw numerous LYFT advertisements representing that LYFT offered safer and cleaner rides than taxis provided, and

that it was a safe and reliable option for female passengers. She was exposed to this advertising in a variety of ways, including contact through email, internet advertising, local advertising, and through the App itself.

83. Plaintiff JANE DOE relied on and continued to rely on LYFT's advertisements regarding safety, professionalism, and reliability in choosing to ride with LYFT on a repeat basis.

84. At approximately 11:00 p.m. on July 7, 2017, Plaintiff JANE DOE ordered a LYFT vehicle using the LYFT App.

85. Shortly thereafter, LYFT driver MCCOY picked up plaintiff JANE DOE. She got into his vehicle based on her understanding that he was a professional driver, that he was a LYFT employee acting on LYFT's behalf, and that he was vetted by LYFT and held to what she believed were LYFT's high standards of safety and professionalism.

86. Immediately following plaintiff JANE DOE's entering the vehicle, and unbeknownst to JANE DOE, MCCOY cancelled the ride and travelled away from plaintiff JANE DOE's intended destination. JANE DOE sat in the back seat of the LYFT vehicle. JANE DOE fell asleep shortly after entering the vehicle. After driving for approximately 15 minutes, MCCOY pulled the LYFT vehicle into a secluded alley on Chicago's north side.

87. Shortly after parking in the secluded alley, MCCOY exited the LYFT vehicle, and re-entered the vehicle through a rear door. LYFT driver MCCOY took LYFT passenger JANE DOE's smartphone. LYFT driver MCCOY then brandished and threatened LYFT passenger JANE DOE with a knife, before zip-tying her hands. LYFT driver MCCOY then repeatedly, violently, and savagely sexually assaulted JANE DOE.

III. LYFT'S Terms And Conditions Are Not Binding On Plaintiff

88. When a prospective customer downloads the LYFT App to her phone, she is directed to a screen bearing the Lyft logo, and the registration process can be completed without opening or viewing the Terms and Conditions.

89. At no point did plaintiff JANE DOE assent to or agree to the Terms and Conditions to the LYFT App.

90. At no point did LYFT require that she view the Terms and Conditions.

91. At no point did LYFT require that she open an electronic link to the Terms and Conditions, nor did the App make it appear that there was a link she could follow to read the Terms and Conditions.

92. At no point was plaintiff JANE DOE asked to affirm that she had read the Terms and Conditions.

93. The full Terms and Conditions were never mailed, emailed, or otherwise provided to plaintiff JANE DOE.

94. The Terms and Conditions are deliberately hidden, and difficult to access, navigate, and read should a rider wish to find them.

95. LYFT retains the exclusive right to unilaterally change the Terms and Conditions. It includes a provision in its Terms and Conditions that contractual changes are effective once posted on its website.

96. Plaintiff JANE DOE was not provided conspicuous notice of the existence of applicable contract terms when she downloaded the App.

97. Plaintiff JANE DOE was not required to, nor did she, review any applicable contract terms.

COUNT I

JANE DOE v. LYFT, INC.

Negligence, Negligent Hiring, Negligent Supervision and Negligent Retention

1-96. Plaintiff realleges and repeats paragraphs 1 - 96, as though fully set forth herein.

98. LYFT owed plaintiff JANE DOE a duty of reasonable care in the hiring, training, and supervision of its drivers.

99. On and before July 7, 2017, LYFT breached that duty in one or more of the following respects:

a. Failed to conduct an adequate background check of MCCOY;

b. Failed to deny MCCOY authority to operate as a LYFT driver;

c. Permitted MCCOY to pose a danger and threat to the riding public, including plaintiff JANE DOE;

d. Failed to conduct an in-person interview of MCCOY to determine his fitness to engage with vulnerable riders, such as plaintiff JANE DOE;

e. Failed to conduct Live Scan biometric fingerprint background checks of applicants;

f. Failed to conduct in-person interviews of applicants; and/or

g. Failed to require applicants to attend training classes to prevent harassment, including sexual harassment of customers.

100. As a proximate result of one or more of the aforementioned negligent acts, plaintiff was caused to be violently attacked and sexually assaulted, and suffered severe and permanent personal and pecuniary injuries.

WHEREFORE, Plaintiff JANE DOE, demands judgment against LYFT, INC. in an amount in excess of the minimum amount required for jurisdiction in the Law Division of the Circuit Court of Cook County.

COUNT II

JANE DOE v. LYFT, INC.

Fraud

1-96. Plaintiff realleges and repeats paragraphs 1 - 96, as though fully set forth herein.

97. LYFT made false representations and false promises.

98. LYFT falsely represented to plaintiff JANE DOE that it provided a safe alternative to driving at night after drinking. LYFT represented that its drivers were properly screened and were safe. LYFT promised that it was better and safer than a taxi or public transit. LYFT promised plaintiff JANE DOE the safest ride possible.

99. LYFT falsely represented to plaintiff JANE DOE that its rides were safe and that its drivers were safe.

100. LYFT knew these representations were false and intended for customers like JANE DOE to rely on them.

101. LYFT knew that its security screening was deficient, that its background checks were below industry standards and that its drivers were not trained or supervised, or given sexual harassment and abuse standards. LYFT knew that numerous women had been assaulted by LYFT drivers. LYFT knew that it was not safe for intoxicated women to get into cars with its drivers. LYFT intentionally concealed these facts and deliberately represented the opposite – that its drivers offered the safest options for solo women who have consumed alcohol seeking late night transportation.

102. Plaintiff JANE DOE relied on LYFT's deliberate misrepresentations to her detriment, which caused her serious, permanent harm. If plaintiff JANE DOE had known the facts LYFT concealed about its service, its security screening, and its drivers, she would not have accepted a ride with MCCOY. LYFT failed to provide plaintiff JANE DOE with a safe ride.

WHEREFORE, Plaintiff, JANE DOE, demands judgment against LYFT, INC. in an amount greater than the jurisdictional limit of the Law Division of the Circuit Court of Cook County.

COUNT III

JANE DOE v. LYFT, INC.

Assault and Battery

1-96. Plaintiff realleges and repeats paragraphs 1 - 96, as though fully set forth herein.

97. At all times relevant, MCCOY was acting within the scope of his employment as an actual and/or apparent agent of LYFT, INC. when he accepted the fare via the LYFT app and picked up JANE DOE, and at all relevant times.

98. At all times relevant, JANE DOE was a lawful passenger in the aforementioned LYFT vehicle, which was being operated for the benefit of LYFT, INC.

99. At said time and place, MCCOY made unwanted and unpermitted sexual physical contact with JANE DOE that included, but was not limited to, vaginal sexual assault, and continued to make contact with JANE DOE despite her objections and physical attempts to stop him.

100. The aforementioned contact by MCCOY was without the consent of JANE DOE and was without provocation, cause or necessity.

101. LYFT, INC., as a common or other transportation carrier exercising control over its passengers and their safety, owed the highest and nondelegable duty of care to provide a safe environment for its patrons that were lawfully in its vehicles.

102. At the time and place aforesaid, the plaintiff was injured physically and emotionally as a direct result of the assault and battery by MCCOY, individually, and as an actual and/or apparent agent of LYFT, INC.

103. As a direct and proximate result of the aforesaid sexual assault and battery of the Defendants, JANE DOE was then and there caused to suffer extreme anguish, pain and suffering, and will in the future suffer extreme mental anguish, pain and suffering, all of which injuries are permanent and they have been and will keep JANE DOE from attending to her ordinary affairs and duties and have caused her to become liable for large sums of money for medical and hospital care and attention.

WHEREFORE, Plaintiff, JANE DOE, demands judgment against LYFT, INC. in an amount greater than the jurisdictional limit of the Law Division of the Circuit Court of Cook County.

COUNT IV

JANE DOE v. LYFT, INC.

False Imprisonment

1-96. Plaintiff realleges and repeats paragraphs 1 - 96, as though fully set forth herein.

97. LYFT driver MCCOY, as an actual and/or apparent agent and/or employee, refused to let JANE DOE exit his car. As a result, JANE DOE was confined in the LYFT vehicle against her will.

98. LYFT driver MCCOY intentionally deprived JANE DOE of her freedom of movement by use of physical barriers, force, threats of force, and menace.

99. The confinement compelled JANE DOE to stay in the car for some time against her will and without her consent.

100. JANE DOE was harmed by MCCOY's conduct.

WHEREFORE, Plaintiff, JANE DOE, demands judgment against LYFT, INC. in an amount greater than the jurisdictional limit of the Law Division of the Circuit Court of Cook County.

COUNT V

JANE DOE v. ANGELO MCCOY

Assault and Battery

1-96. Plaintiff realleges and repeats paragraphs 1 - 96, as though fully set forth herein.

97. At said time and place, MCCOY made unwanted and unpermitted sexual physical contact with JANE DOE that included, but was not limited to, vaginal sexual assault, and continued to make contact with JANE DOE despite her objections and physical attempts to stop him.

98. The aforementioned contact by MCCOY was without the consent of JANE DOE and was without provocation, cause or necessity.

99. At the time and place aforesaid, the plaintiff was injured physically and emotionally as a direct result of the assault and battery by MCCOY.

100. As a direct and proximate result of the aforesaid sexual assault and battery of the Defendants, JANE DOE was then and there caused to suffer extreme anguish, pain and suffering, and will in the future suffer extreme mental anguish, pain and suffering, all of which injuries are permanent and they have been and will keep JANE DOE from attending to her ordinary affairs

and duties and have caused her to become liable for large sums of money for medical and hospital care and attention.

WHEREFORE, Plaintiff, JANE DOE, demands judgment against ANGELO MCCOY in an amount greater than the jurisdictional limit of the Law Division of the Circuit Court of Cook County.

COUNT VI

JANE DOE v. MCCOY

False Imprisonment

1-96. Plaintiff realleges and repeats paragraphs 1 - 96, as though fully set forth herein.

97. LYFT driver MCCOY, as an actual and/or apparent agent and/or employee, refused to let JANE DOE exit his car. As a result, JANE DOE was confined in the LYFT vehicle against her will.

98. LYFT driver MCCOY intentionally deprived JANE DOE of her freedom of movement by use of physical barriers, force, threats of force, and menace.

99. The confinement compelled JANE DOE to stay in the car for some time against her will and without her consent.

100. JANE DOE was harmed by MCCOY's conduct.

WHEREFORE, Plaintiff, JANE DOE, demands judgment against ANGELO MCCOY in an amount greater than the jurisdictional limit of the Law Division of the Circuit Court of Cook County.

COUNT VII

JANE DOE v. STERLING TALENT SOLUTIONS

Negligence

1-96. Plaintiff adopts and alleges paragraphs 1-96 as though fully set forth herein.

97. On and before July 7, 2017, STERLING was a corporation in the business of providing commercial criminal background checks doing business in Chicago, Cook County, Illinois.

98. On and before said time and place, STERLING had a registered agent at 801 Adlai Stevenson Drive in Springfield, Illinois.

99. Before said time and place, STERLING contracted with Defendant LYFT, INC., to conduct criminal background checks of potential LYFT drivers who would be operating LYFT vehicles in Chicago, Cook County, Illinois.

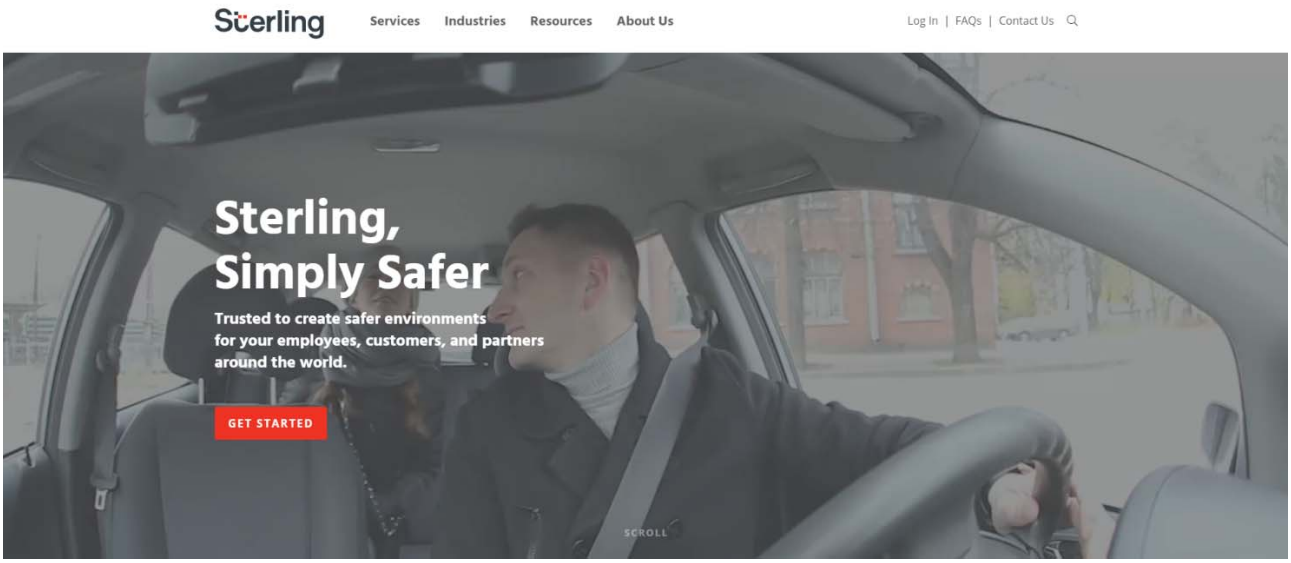
100. Before said time and place, STERLING conducted criminal background checks of LYFT drivers, including ANGELO MCCOY.

101. At all relevant times, STERLING has marketed itself as providing "comprehensive background screening services."

102. At all relevant times, STERLING has marketed itself specifically to the "sharing/gig economy" including LYFT, INC.

103. At all relevant times, STERLING has marketed itself and stated its "commitment to keep companies and consumers safe."

104. At all relevant times, STERLING has marketed itself as being "trusted to create safer environments for your . . . customers." For instance, STERLING has brandished this slogan on its web site across a video of a driver providing ride share services:



105. Media have reported the many failures in STERLING's background checking process, including difficult or impossible time crunches and inadequate labor forces, that have led to the hiring of sex offenders, violent criminals, and at least one driver who has been sentenced to prison for 90 months on charges of aiding terrorism.

106. Media have reported that STERLING had a "maniacal focus on growth" that STERLING employees believed contributed to an environment that was prone to errors.

107. At all relevant times, and upon information and belief, STERLING's business platform was built on speed instead of accuracy, which led to numerous mistakes, including failing to report to LYFT what may have been a disqualifying theft conviction for MCCOY.

108. On and before said time and place, STERLING had a duty to exercise ordinary care to guard against injuries which naturally flow as a reasonably probable and foreseeable consequence of its actions, which included the duty to guard LYFT passengers like JANE DOE from the consequences of failing to adequately screen drivers with criminal backgrounds.

109. On and before said time and place, STERLING, was negligent in one or more of the following respects:

a. Failed to conduct an adequate background check of ANGELO MCCOY; and/or

b. Failed to report to Lyft criminal conviction(s) that would have disqualified ANGELO MCCOY from driving for Lyft.

110. As a proximate result of one or more of the foregoing negligent acts and/or omissions of Defendant, STERLING, Plaintiff was sexually assaulted, and suffered personal and pecuniary injuries.

WHEREFORE, Plaintiff, JANE DOE, demands judgment against Defendant, STERLING INFOSYSTEMS, INC. d/b/a STERLING TALENT SOLUTIONS, in an amount in excess of the minimum amount required for jurisdiction in the Law Division of the Circuit Court of Cook County, Illinois.

COUNT VIII

JANE DOE v. STERLING TALENT SOLUTIONS

Negligence – Voluntary Undertaking (Pled in the Alternative)

1-96. Plaintiff adopts and alleges paragraphs 1-96 as though fully set forth herein.

97. On and before July 7, 2017, STERLING was a corporation in the business of providing commercial criminal background checks doing business in Chicago, Cook County, Illinois.

98. On and before said time and place, STERLING had a registered agent at 801 Adlai Stevenson Drive in Springfield, Illinois.

99. Before said time and place, STERLING contracted with Defendant LYFT, INC., and/or Defendant, LYFT ILLINOIS, INC., to conduct criminal background checks of potential LYFT drivers who would be operating LYFT vehicles in Chicago, Cook County, Illinois.

100. Before said time and place, STERLING conducted criminal background checks of LYFT drivers, including ANGELO MCCOY.

101. On and before said time and place, STERLING voluntarily undertook a duty to exercise reasonable care in conducting background checks of LYFT drivers who transport members of the general public, including JANE DOE.

102. On and before said time and place, STERLING, was negligent in one or more of the following respects:

a. Failed to conduct an adequate background check of ANGELO MCCOY; and/or

b. Failed to report to Lyft criminal conviction(s) that would have disqualified ANGELO MCCOY from driving for Lyft.

103. As a proximate result of one or more of the foregoing negligent acts and/or omissions of Defendant, STERLING, Plaintiff was sexually assaulted, and suffered personal and pecuniary injuries.

WHEREFORE, Plaintiff, JANE DOE, demands judgment against Defendant, STERLING INFOSYSTEMS, INC. d/b/a STERLING TALENT SOLUTIONS, in an amount in excess of the minimum amount required for jurisdiction in the Law Division of the Circuit Court of Cook County, Illinois.

TIMOTHY S. TOMASIK

Timothy S. Tomasik
Patrick J. Giese
Patrick M. Grim
TOMASIK KOTIN KASSERMAN, LLC
161 N. Clark Street
Suite 3050
Chicago, Illinois 60601

J. Timothy Eaton
Jonathan B. Amarilio
TAFT STETTINIUS & HOLLISTER LLP
111 E. Wacker Drive,
Suite 2800
Chicago, Illinois 60601

Of Counsel
James P. McKay

Case No. _____

In the
Appellate Court of Illinois
First Judicial District

JANE DOE,

Plaintiff-Movant,

v.

LYFT, INC., ANGELO MCCOY; and STERLING INFOSYSTEMS, INC. d/b/a STERLING TALENT SOLUTIONS,

Defendant-Respondent.

On Appeal from the Circuit Court of Cook County, Illinois
County Department, Law Division, Case No. 17 L 11355
Hon. Patricia O'Brien Sheahan, Judge Presiding

NOTICE OF FILING

TO: *See Certificate of Service*

PLEASE TAKE NOTICE THAT on the **1st day of July, 2019**, we caused to be filed (electronically submitted), with the Appellate Court of Illinois, First Judicial District, **Jane Doe's Application for Leave to Appeal Pursuant to Illinois Supreme Court Rule 308**, **the Supporting Record to the Application, and the Supreme Court Rule 328 Affidavit for the Supporting Record**, copies of which are hereby served upon you.

Dated: July 1, 2019

Respectfully submitted,

JANE DOE, *Plaintiff-Movant*,

By: *s/ Jonathan B. Amarilio*
One of Her Attorneys

J. Timothy Eaton
Jonathan B. Amarilio
Allison E. Czerniak
Ioana M. Guset
TAFT STETTINIUS & HOLLISTER LLP
111 E. Wacker Drive, Suite 2800
Chicago, Illinois 60601
Tel.: 312.527.4000
teaton@taftlaw.com
jamarilio@taftlaw.com
acerniak@taftlaw.com
iguset@taftlaw.com

Timothy S. Tomasik
Patrick J. Giese
Patrick M. Grim
TOMASIK KOTIN KASSERMAN, LLC
161 N. Clark Street, Suite 3050 Chicago,
Illinois 60601
Tel.: 312.605.8800
tim@tkklaw.com

Attorneys for Plaintiff-Movant Jane Doe

CERTIFICATE OF SERVICE

The undersigned, pursuant to the provisions of 1-109 of the Illinois Code of Civil Procedure, and Ill. S. Ct. R. 12, hereby certifies and affirms that the statements set forth in this instrument are true and correct, except as to matters therein stated to be on information and belief and as to such matters the undersigned certifies as aforesaid that he verily believes the same to be and that he caused the foregoing **Notice of Filing** and**, Jane Doe's Application for Leave to Appeal Pursuant to Illinois Supreme Court Rule 308**, **the Supporting Record to the Application, and the Supreme Court Rule 328 Affidavit for the Supporting Record,** to be sent to the parties listed below on this 1st day of July, 2019, by *electronic mail* and *electronically through the Odyssey Electronic Service*, from the offices of Taft Stettinius & Hollister LLP before the hour of 5:00 p.m.:

Timothy S. Tomasik
Patrick J. Giese
Tomasik Kotin Kasserman, LLC
161 North Clark Street, Suite 3050
Chicago, IL 60601
tim@tkklaw.com
pat@tkklaw.com
Attorneys for Plaintiff Doe

Anthony J. Carballo
Martin Syversten
FREEBORN & PETERS LLP
311 S. Wacker Drive, Suite 3000
Chicago, IL 60606
(312) 360-6000
tcarballo@freeborn.com
msyversten@freeborn.com
Attorneys for Defendant, Lyft, Inc.

Beth A. Stewart (*pro hac vice*)
Emily A. Rose (*pro hac vice*)
WILLIAMS & CONNOLLY LLP
725 Twelfth Street, N.W.
Washington, DC 20005
(202) 434-5000
bstewart@wc.com
erose@wc.com
Attorney for Defendant Lyft, Inc.

Kathy Nielson – knielson@reedsmith.com
Michael O'Neil – Michael.oneil@reedsmith.com
Bruce R. Van Baren – bvanbaren@reedsmith.com
Jennifer Ikka - jil
Reed Smith LLP
10 S. Wacker Drive, 40th Floor
Chicago, Illinois 60606-7507

/s/ *Jonathan B. Amarilio*