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6 **UNITES STATED DISTRICT COURT**
7
8 **NORTHERN DISTRICT OF CALIFORNIA**

9 **A. Ganji**, an individual and on behalf of all
10 others similarly situated,

11
12 Plaintiff,

13 vs.

14 **Lyft, Inc.**,

15 Defendants.
16
17
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Case No. _____

CLASS ACTION COMPLAINT

DEMAND FOR JURY TRIAL

19
20 **CLASS ACTION COMPLAINT**

21 Plaintiff A. Ganji, individually and on behalf of all others similarly situated, complains
22 and alleges as follows based on personal knowledge as to himself, on the investigation of his
23 counsel, and on informaiton and belief as to all other matters. Plaintiff believes that substantial
24 evidentiary support will exist for the allegations set forth in this complaint after a reasonably
25 opportunity for discovery.

26 **NATURE OF THE CASE**

27 1. Plaintiff brings this action for legal and equitable remedies resulting from the
28 illegal actions of Lyft, Inc. in negligently, knowingly, or willfully transmitting unsolicited,

1 autodialed SMS or MMS text messages, *en masse*, to Plaintiff’s cellular device and the cellular
2 devices of numerous other individuals across the county, in violation of the Telephone Consumer
3 Protection Act, 47 U.S.C. §227 (“TCPA”).

4 **PARTIES**

5 2. Plaintiff is, and all times mentioned herein was, an individual and a “person” as
6 defined by 47 U.S.C. §153(39) and a citizen and resident of the State of California.

7 3. Defendant Lyft, Inc. (“Lyft”) is and at all times mentioned herein was, a “person”
8 as defined by 47 U.S.C. §153(39). Lyft is a transportation company that provides rides to its
9 customers throughout the United States via a mobile application. Defendant maintains its
10 corporate headquarters in San Francisco, California.

11 **JURISDICTION AND VENUE**

12 4. This court has subject-matter jurisdiction over this putative class action lawsuit
13 pursuant to 28 U.S.C. §1331 and 47 U.S.C. §227.

14 5. Personal jurisdiction and venue are proper in this district because Lyft maintains
15 its corporate headquarters in this district and the claims alleged herein arose in substantial part in
16 this district.

17 **THE TELEPHONE CONSUMER PROTECTION ACT OF 1991**

18 6. To address consumer complaints regarding certain telemarketing practices,
19 Congress enacted the TPCA, 47 U.S.C. §227, in 1991. The TPCA regulates, *inter alia*, the use
20 of automated telephone equipment or “autodialers,” to make any call, including sending a text
21 message, to a wireless number absent an emergency or the “prior express consent” of the party
22 called. 47 U.S.C. §227(b)(1)(A)(iii).

23 7. According to findings by the Federal Communication Commission (“FCC”),
24 which is vested with authority to issue regulations implementing the TPCA, such autodialed calls
25 are prohibited because automated or prerecorded telephone calls are a greater nuisance and
26 invasion of privacy than live solicitation calls, and receiving and addressing such calls can be
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28

1 costly and inconvenient. The FCC also recognized that wireless customers are charged for such
2 incoming calls whether they pay in advance or after the minutes are used.

3
4 8. One of the most prevalent bulk advertising methods employed by companies
5 today involves the use of “Short Message Services” or “SMS,” which is a system that allows for
6 the transmission and receipt of short text messages to and from wireless telephones. Another
7 similar service called “Multimedia Messaging Services” or “MMS” is based upon and similar to
8 the SMS system, but also permits the transmission of photos and videos via text message.

9
10 9. SMS and MMS text messages are directed to a wireless device using the
11 telephone number assigned to the device. When an SMS or MMS message is successfully
12 transmitted, the recipient’s wireless phone rings to alert him or her that a message has been
13 received. Because wireless telephones are carried on their owner’s person, SMS and MMS
14 messages are received virtually anywhere in the world.

15
16 10. Unlike more conventional advertisements, SMS and MMS message
17 advertisements can actually cost their recipients money because wireless phone users must pay
18 their wireless service providers either for each text message they receive or incur a usage
19 allocation deduction to their text messaging plan, regardless of whether the message is
20 authorized.

21
22 11. Moreover, the transmission of an unsolicited SMS or MMS text message to a
23 cellular device is distracting and aggravating to the recipient and intrudes upon the recipient’s
24 seclusion.

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26 **FACTUAL ALLEGATIONS COMMON TO ALL CLAIMS**

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28 12. Plaintiff is, and at all times mentioned herein was, the subscriber of the cellular
telephone number at (9**) ***-3350 (the “3350 Number”). The 3350 Number is, and at all
times mentioned herein was, assigned to a cellular telephone service as specified in 47 U.S.C.
§227(b)(1)(A)(iii).

1 13. Lyft is a transportation company that has experienced explosive growth since its
2 founding in 2012. In just five years, its yearly revenue has increased to more than \$1 billion. Lyft
3 attributes the revenue growth in 2017 to “significantly reduce[d] sales and marketing expenses.”¹
4

5 14. In truth, however, in 2016, Lyft started shifting part of its marketing budget to its
6 “Concierge” program to gain access to new customers. The “Concierge” program obtains
7 cellphone numbers from the customers of third-party entities without the cellphone subscribers’
8 consent. Lyft then contacts the cellphone subscribers via text message even though the persons
9 never agreed to having their cellphone numbers shared with Lyft nor did they agree to receive
10 any text messages from Lyft.

11 15. Lyft’s “Concierge” program is especially nefarious because Lyft does not inform
12 the persons that they are receiving the text message as part of Lyft’s “Concierge” Program, nor
13 does Lyft give the persons the ability to opt out of receiving text messages from Lyft.

14 16. Plaintiff is one such cellphone subscriber who received unsolicited text messages
15 from Lyft through Lyft’s “Concierge” program. On January 18, 2018, Lyft transmitted or caused
16 to be transmitted, by itself or through an intermediary or intermediaries, the below four text
17 messages to the 3350 Number without Plaintiff’s express consent, written or otherwise.
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¹ *Lyft’s revenue growth is nearly triple Uber’s*, CNET, available at <https://www.cnet.com/news/lyfts-revenue-growth-is-nearly-triple-ubers-at-168-percent-in-fourth-quarter-2017/> (last accessed October 16, 2018).

1 17. These text messages were unwanted and unsolicited because Plaintiff has (1)
2 never signed up to use Lyft nor given Lyft permission to send him text messages; (2) never been
3 to Future Ford, Lincoln & Hyundai of Concord much less requested a ride from them; (3) never
4 given Ford permission to send him text messages; and (4) never permitted Ford to allow third
5 parties like Lyft to send him text messages.
6

7 18. The complained of text messages constituted calls that were clearly not made for
8 emergency purposes as defined by 47 U.S.C. §227(b)(1)(A)(i).

9 19. Because Plaintiff is alerted by his cellular device, by auditory or visual means,
10 whenever he receives a text message, the unsolicited text messages that Lyft transmitted to
11 Plaintiff's cellular device invaded Plaintiff's privacy and intruded upon Plaintiff's seclusion
12 upon receipt.

13 20. Plaintiff was not able to request that the texts end or to voice a complaint to a real
14 person because the text messages contained no method of opting-out of such messages.

15 21. All telephone contact by Lyft and/or its affiliates, subsidiaries, or agents to
16 Plaintiff occurred via an "automated telephone dialing system" as defined by 47 U.S.C. §
17 227(b)(1)(A).

18 22. Specifically, Lyft utilized an "automated telephone dialing system" because the
19 text messages to the 3350 Number and to the other Class members' cellular devices were sent
20 from a telephone number used to message *en masse*; because Lyft's automated dialing
21 equipment includes features substantially similar to a predictive dialer, inasmuch as it is capable
22 of making numerous calls or texts simultaneously (all without human intervention); and because
23 the hardware and software used by Lyft to send such messages have the capacity to store,
24 produce, and dial random or sequential numbers, or receive and store lists of telephone numbers,
25 and to dial such numbers, *en masse*, in an automated fashion and without human intervention.
26

27 23. And indeed, Lyft actually transmitted the text messages at issue in this case to
28 Plaintiff and all other putative class members in an automated fashion and without human

1 intervention, with hardware and software that stores, produces and dials random or sequential
2 numbers.

3 24. Neither Plaintiff nor the other members of the Class provided their “prior express
4 written consent” or any other form of consent to Defendant or any affiliate, subsidiary, or agent
5 of Lyft, to transmit SMS or MMS text messages to the 3350 Number or to any other numbers by
6 means of an “automatic telephone dialing system” within the meaning of 47 U.S.C.
7 §227(b)(1)(A).
8

9 **CLASS ACTION ALLEGATIONS**

10 25. Class Definition. Plaintiff brings this civil class action on behalf of himself
11 individually and on behalf of all other similarly situated persons as a class action pursuant to the
12 Federal Rule of Civil Procedure 23. The “Class” which Plaintiff seeks to represent is comprised
13 of and defined as follows:

14 All persons within the United States who between the inception of
15 Lyft’s “Concierge” program on or around January 12, 2016, to the
16 present, received one or more SMS or MMS text message(s) from
17 Lyft, Inc., or an affiliate, subsidiary, or agent of Lyft, Inc.

18 26. Lyft and its employees and agents are excluded from the Class.

19 27. Plaintiff reserves the right to modify the definition of the Class (or add one or
20 more subclasses) after further discovery.

21 28. Plaintiff and all Class members have been impacted and harmed by the acts of
22 Lyft and/or its subsidiaries, affiliates and/or agents.

23 29. This Class Action Complaint seeks money damages and injunctive relief.

24 30. This action may properly be brought and maintained as a class action pursuant to
25 Federal Rule of Civil Procedure 23(a) and (b). This class action satisfies the numerosity,
26 typicality, adequacy, commonality, predominance and superiority requirements.

27 31. Upon application by Plaintiff’s counsel for certification of the Class, the Court
28 may also be requested to utilize and certify subclasses in the interests of ascertainability,
manageability, justice and/or judicial economy.

1 32. Numerosity. The number of persons within the Class is substantial, believed to
2 amount to tens of thousands of persons dispersed throughout the United States. It is, therefore,
3 impractical to join each member of the Class as a named Plaintiff. Further, the size and
4 relatively modest value of the claims of the individual members of the Class renders joinder
5 impractical. Accordingly, utilization of the class action mechanism is the most economically
6 feasibly means of determining and adjudicating the merits of this litigation.
7

8 33. Typicality: Plaintiff received at least one text message through the use of an
9 automatic telephone dialing system, without providing prior express written consent to the
10 Defendant within the meaning of the TCPA. Consequently, the claims of Plaintiff are typical of
11 the claims of the members of the Class, and Plaintiff's interests are consistent with and not
12 antagonistic to those of the other Class members he seeks to present. Plaintiff and all members
13 of the Class have been impacted by, and face continuing harm arising out of, Defendants'
14 violations or misconduct as alleged herein.

15 34. Adequacy: As Class representative, Plaintiff has no interests adverse to, or which
16 conflict with, the interests of the absent members of the Class, and is able to fairly and
17 adequately represent and protect the interests of such a Class. Plaintiff has raised viable statutory
18 claims of the type reasonably expected to be raised by members of the Class and will vigorously
19 pursue those claims. If necessary, Plaintiff may seek leave to amend this Class Action
20 Complaint to add additional Class representatives or assert additional claims.

21 35. Competency of Class Counsel: Plaintiff has retained and is represented by
22 experienced, qualified and competent counsel committed to prosecuting this class action. These
23 counsel are experienced in handling complex class action claims. Plaintiff and his counsel are
24 committed to vigorously prosecuting this action on behalf of the members of the Class, and have
25 the financial resources to do so. Neither Plaintiff nor his counsel has any interest adverse to
26 those of the other members of the Class.
27

28 36. Superiority. A class action is superior to other available methods for the fair and
efficient adjudication of this controversy because individual litigation of the claims of all Class

1 members is impracticable. Even if every member of the Class could afford to pursue individual
2 litigation, the Court system could not. It would be unduly burdensome to the courts in which
3 individual litigation of numerous cases would proceed. Individualized litigation would also
4 present the potential for varying, inconsistent or contradictory judgments, and would magnify the
5 delay and expense to all parties and to the court system resulting from multiple trials of the same
6 factual issues. By contrast, the maintenance of this action as a class action, with respect to some
7 or all of the issues presented herein, presents few management difficulties, conserves the
8 resources of the parties and of the court system and protects the rights of each member of the
9 Class. Plaintiff anticipates no difficulty in the management of this action as a class action. Class
10 wide relief is essential to compel compliance with the TCPA. The interest of Class members in
11 individually controlling the prosecution of separate claims is small because the statutory
12 damages in an individual action for violation of the TCPA are small. Management of these
13 claims is likely to present significantly fewer difficulties than are presented in many class claims
14 because the calls at issue are all automated and the Class members, by definition, did not provide
15 the prior express written consent required under the statute to authorize calls to their cellular
16 telephones.

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18 37. Additionally, the prosecution of separate actions by individual Class members
19 may create a risk of multiple adjudications with respect to them that would, as a practical matter,
20 be dispositive of the interests of the other members of the Class not parties to such adjudications
21 or that would substantially impair or impede the ability of such nonparty Class members to
22 protect their interests. The prosecution of individual actions by Class members could establish
23 inconsistent results and result in establishing incompatible standards of conduct for Defendant.

24
25 38. Defendant and/or its affiliates, subsidiaries, or agents have acted on grounds
26 generally applicable to the Class, thereby making final injunctive relief and corresponding
27 declaratory relief with respect to the Class as a whole appropriate. Moreover, on information and
28 belief, Plaintiff alleges that the TCPA violations complained of herein are substantially likely to
continue in the future if an injunction is not entered.

1 39. Commonality and Predomination. There are well defined common questions of
2 fact and law that exist as to all members of the Class and that predominate over any questions
3 affecting only individuals of the Class. These common legal and factual questions, which do not
4 vary from Class member to Class Member and which may be determined without reference to
5 the individual circumstances of any class member include, but are not limited to, the following:

6 (a) Whether Defendant and/or its affiliates, subsidiaries, or agents made non-
7 emergency calls to Plaintiff and Class members' cellular phones using an automatic telephone
8 dialing system;

9 (b) Whether Defendant and/or its affiliates, subsidiaries, or agents can meet
10 their burden to show Defendant obtained prior express written consent (as defined by 47 C.F.R.
11 64.1200(f)(8)) to send the text messages complained of, assuming such an
12 affirmative defense is raised;

13 (c) Whether the complained of conduct was knowing and/or willful;

14 (d) Whether Defendant is liable for damages, and the amount of such
15 damages; and
16

17 (e) Whether Defendant and/or its affiliates, subsidiaries, or agents should be
18 enjoined from engaging in such conduct in the future.

19
20 **CLAIMS FOR RELIEF**

21 **FIRST CAUSE OF ACTION**

22 **NEGLIGENT VIOLATIONS OF THE TELEPHONE CONSUMER PROTECTION**

23 **ACT 47 U.S.C. § 227**

24 40. Plaintiff incorporates by reference the foregoing allegations as if fully set forth
25 herein.

26 41. The foregoing acts and omissions constitute negligent violations of the TCPA, by
27 Lyft, including but not limited to each of the above-cited provisions of 47 U.S.C. § 227.

28 42. As a result of the alleged negligent violation of 47 U.S.C. § 227, Plaintiff and

1 each member of the Class is entitled to an award of \$500.00 in statutory damages for each and
2 every SMS message transmitted in violation of the statute, pursuant to 47 U.S.C. §227(b)(3).

3 43. Plaintiff and all Class members are also entitled to, and do seek, injunctive relief
4 prohibiting such conduct violating the TCPA in the future.

5 44. Plaintiff and Class members also seek an award of attorneys' fees and costs.

6 **SECOND CAUSE OF ACTION**

7 **KNOWING AND/OR WILLFUL VIOLATION OF THE TELEPHONE CONSUMER**

8 **PROTECTION ACT 47 U.S.C. § 227**

9 45. Plaintiff incorporates by reference the foregoing allegations as if fully set forth
10 herein.

11 46. The foregoing acts and omissions constitute negligent violations of the TCPA,
12 including but not limited to each of the above-cited provisions of 47 U.S.C. § 227.

13 47. As a result of the alleged knowing and/or willful violations of 47 U.S.C. § 227,
14 Plaintiff and each member of the Class is entitled to treble damages of up to \$1,500.00 for each
15 and every SMS message transmitted in violation of the statute, pursuant to 47 U.S.C. §227(b)(3).

16 48. Plaintiff and all Class members are also entitled to, and do seek, injunctive relief
17 prohibiting such conduct violating the TCPA in the future.

18 49. Plaintiff and Class members also seek an award of attorneys' fees and costs.

19 **PRAYER FOR RELIEF**

20 WHEREFORE, Plaintiff, on behalf of himself and the Class, prays for relief and
21 judgment in their favor as follows:

22 A. As a result of the alleged negligent violations of 47 U.S.C. § 227(b)(1), Plaintiff
23 seeks for himself and each Class member \$500.00 in statutory damages, for each and every
24 call/message that violated the TPCA;

25 B. As a result of the alleged willful and/or knowing violations of 47 U.S.C. §
26 227(b)(1), Plaintiff seeks for himself and each Class member treble damages, as provided by
27 statute, up to \$1,500.00 for each and every text message that violated the TCPA;

28 C. Injunctive relief prohibiting such violation of the TCPA in the future;

1 D. An award of attorneys' fees and costs to counsel to Plaintiff and the Class;

2 E. An Order certifying this action to be a proper class action pursuant to Federal
3 Rule of Civil Procedure 23, establishing an appropriate Class and any Subclasses the Court
4 deems appropriate, finding that Plaintiff is the proper representatives of the Class, and appointing
5 the law firm representing Plaintiff as counsel for the Class; and

6 **DEMAND FOR JURY TRIAL**

7 Plaintiff, on behalf of himself and the Class, hereby demands a trial by jury pursuant to
8 Federal Rule of Civil Procedure 38(b) on all claims so triable.

9 ***

10 Respectfully submitted,

11
12 DATED: October 16, 2018

13 s/ Marcelo Di Mauro
14 Marcelo Di Mauro
LAW OFFICE OF MARCELO DI MAURO

15 *Counsel for Plaintiff and the Putative Class*
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