

1 Todd M. Friedman (SBN 216752)  
 2 Adrian R. Bacon (SBN 280332)  
 3 LAW OFFICES OF TODD M. FRIEDMAN, P.C.  
 4 21550 Oxnard St., Suite 780  
 5 Woodland Hills, CA 91367  
 6 Phone: 323-306-4234  
 7 Fax: 866-633-0228  
 8 tfriedman@toddfllaw.com  
 9 abacon@toddfllaw.com  
 10 *Attorneys for Plaintiff*

11 **UNITED STATES DISTRICT COURT**  
 12 **SOUTHERN DISTRICT OF CALIFORNIA**

	)	Case No. <u>'20CV0429 L BGS</u>
MARIANO BENITEZ, individually and	)	
on behalf of all others similarly situated,	)	<b><u>CLASS ACTION</u></b>
	)	
Plaintiff,	)	<b>COMPLAINT FOR VIOLATIONS</b>
	)	<b>OF:</b>
vs.	)	
	)	1. NEGLIGENT VIOLATIONS
LYFT CAPITAL INC., and DOES 1	)	OF THE TELEPHONE
through 10, inclusive, and each of them,	)	CONSUMER PROTECTION
	)	ACT [47 U.S.C. §227(b)]
	)	2. WILLFUL VIOLATIONS
Defendant.	)	OF THE TELEPHONE
	)	CONSUMER PROTECTION
	)	ACT [47 U.S.C. §227(b)]
	)	3. NEGLIGENT VIOLATIONS
	)	OF THE TELEPHONE
	)	CONSUMER PROTECTION
	)	ACT [47 U.S.C. §227(c)]
	)	4. WILLFUL VIOLATIONS
	)	OF THE TELEPHONE
	)	CONSUMER PROTECTION
	)	ACT [47 U.S.C. §227(c)]
	)	
	)	<b><u>DEMAND FOR JURY TRIAL</u></b>

26

27 Plaintiff MARIANO BENITEZ (“Plaintiff”), individually and on behalf of

28 all others similarly situated, alleges the following upon information and belief

1 based upon personal knowledge:

2 **NATURE OF THE CASE**

3 1. Plaintiff brings this action individually and on behalf of all others  
4 similarly situated seeking damages and any other available legal or equitable  
5 remedies resulting from the illegal actions of LYFT CAPITAL Inc. (“Defendant”),  
6 in negligently, knowingly, and/or willfully contacting Plaintiff on Plaintiff’s  
7 cellular telephone in violation of the Telephone Consumer Protection Act, 47.  
8 *U.S.C. § 227 et seq.* (“TCPA”) and related regulations, specifically the National  
9 Do-Not-Call provisions, thereby invading Plaintiff’s privacy.

10 **JURISDICTION & VENUE**

11 2. Jurisdiction is proper under 28 *U.S.C. § 1332(d)(2)* because Plaintiff,  
12 a resident of California, seeks relief on behalf of a Class, which will result in at  
13 least one class member belonging to a different state than that of Defendant, a  
14 Florida company. Plaintiff also seeks up to \$1,500.00 in damages for each call in  
15 violation of the TCPA, which, when aggregated among a proposed class in the  
16 thousands, exceeds the \$5,000,000.00 threshold for federal court jurisdiction.  
17 Therefore, both diversity jurisdiction and the damages threshold under the Class  
18 Action Fairness Act of 2005 (“CAFA”) are present, and this Court has jurisdiction.

19 3. Venue is proper in the United States District Court for the Central  
20 District of California pursuant to 28 *U.S.C. § 1391(b)* and because Defendant does  
21 business within the State of California and Plaintiff resides within the County of  
22 Los Angeles.

23 **PARTIES**

24 4. Plaintiff, MARIANO BENITEZ (“Plaintiff”), is a natural person  
25 residing in Chula Vista, California, and is a “person” as defined by 47 *U.S.C. § 153*  
26 (39).

27 5. Defendant, LYFT CAPITAL Inc. (“Defendant”) is a business finance  
28 company, and is a “person” as defined by 47 *U.S.C. § 153 (39)*.

1           6.     The above named Defendant, and its subsidiaries and agents, are  
2 collectively referred to as “Defendants.” The true names and capacities of the  
3 Defendants sued herein as DOE Defendants 1 through 10, inclusive, are currently  
4 unknown to Plaintiff, who therefore sues such Defendants by fictitious names.  
5 Each of the Defendants designated herein as a DOE is legally responsible for the  
6 unlawful acts alleged herein. Plaintiff will seek leave of Court to amend the  
7 Complaint to reflect the true names and capacities of the DOE Defendants when  
8 such identities become known.

9           7.     Plaintiff is informed and believes that at all relevant times, each and  
10 every Defendant was acting as an agent and/or employee of each of the other  
11 Defendants and was acting within the course and scope of said agency and/or  
12 employment with the full knowledge and consent of each of the other Defendants.  
13 Plaintiff is informed and believes that each of the acts and/or omissions complained  
14 of herein was made known to, and ratified by, each of the other Defendants.

15                                 **FACTUAL ALLEGATIONS**

16           8.     Beginning in or around October 16, 2017, Defendant contacted  
17 Plaintiff on Plaintiff’s cellular telephone number ending in -7919, in an attempt to  
18 solicit Plaintiff to purchase Defendant’s services.

19           9.     Defendant used an “automatic telephone dialing system” as defined  
20 by *47 U.S.C. § 227(a)(1)* to place its call to Plaintiff seeking to solicit its services.

21           10.    Defendant contacted or attempted to contact Plaintiff from telephone  
22 number (214)659-5024 and (954)780-8831 confirmed to be Defendant’s number.

23           11.    Defendant’s calls constituted calls that were not for emergency  
24 purposes as defined by *47 U.S.C. § 227(b)(1)(A)*.

25           12.    During all relevant times, Defendant did not possess Plaintiff’s “prior  
26 express consent” to receive calls using an automatic telephone dialing system or an  
27 artificial or prerecorded voice on his cellular telephone pursuant to *47 U.S.C. §*  
28 *227(b)(1)(A)*.

1 13. Further, Plaintiff's cellular telephone number ending in -7919 was  
2 added to the National Do-Not-Call Registry on or about April 30, 2019.

3 14. Defendant placed calls soliciting its business to Plaintiff on his cellular  
4 telephone ending in -7919 on April 10, 2019.

5 15. Such calls constitute solicitation calls pursuant to 47 C.F.R. §  
6 64.1200(c)(2) as they were attempts to promote or sell Defendant's services.

7 16. Plaintiff received at least one solicitation call from Defendant within  
8 a 12-month period.

9 17. Defendant called Plaintiff in an attempt to solicit its services and in  
10 violation of the National Do-Not-Call provisions of the TCPA.

11 18. Upon information and belief, and based on Plaintiff's experiences of  
12 being called by Defendant after being on the National Do-Not-Call list for several  
13 years prior to Defendant's initial call, and at all relevant times, Defendant failed to  
14 establish and implement reasonable practices and procedures to effectively prevent  
15 telephone solicitations in violation of the regulations prescribed under 47 U.S.C. §  
16 227(c)(5).

17 **CLASS ALLEGATIONS**

18 19. Plaintiff brings this action individually and on behalf of all others  
19 similarly situated, as a member the two proposed classes (hereafter, jointly, "The  
20 Classes").

21 20. The class concerning the ATDS claim for no prior express consent  
22 (hereafter "The ATDS Class") is defined as follows:

23 All persons within the United States who received any  
24 solicitation/telemarketing telephone calls from  
25 Defendant to said person's cellular telephone made  
26 through the use of any automatic telephone dialing  
27 system or an artificial or prerecorded voice and such  
28 person had not previously consented to receiving such  
calls within the four years prior to the filing of this  
Complaint

1  
2 21. The class concerning the National Do-Not-Call violation (hereafter  
3 “The DNC Class”) is defined as follows:

4 All persons within the United States registered on the  
5 National Do-Not-Call Registry for at least 30 days, who  
6 had not granted Defendant prior express consent nor had  
7 a prior established business relationship, who received  
8 more than one call made by or on behalf of Defendant  
9 that promoted Defendant’s products or services, within  
10 any twelve-month period, within four years prior to the  
11 filing of the complaint.

12 22. Plaintiff represents, and is a member of, The ATDS Class, consisting  
13 of all persons within the United States who received any collection telephone calls  
14 from Defendant to said person’s cellular telephone made through the use of any  
15 automatic telephone dialing system or an artificial or prerecorded voice and such  
16 person had not previously not provided their cellular telephone number to  
17 Defendant within the four years prior to the filing of this Complaint.

18 23. Plaintiff represents, and is a member of, The DNC Class, consisting  
19 of all persons within the United States registered on the National Do-Not-Call  
20 Registry for at least 30 days, who had not granted Defendant prior express consent  
21 nor had a prior established business relationship, who received more than one call  
22 made by or on behalf of Defendant that promoted Defendant’s products or services,  
23 within any twelve-month period, within four years prior to the filing of the  
24 complaint.

25 24. Defendant, its employees and agents are excluded from The Classes.  
26 Plaintiff does not know the number of members in The Classes, but believes the  
27 Classes members number in the thousands, if not more. Thus, this matter should  
28 be certified as a Class Action to assist in the expeditious litigation of the matter.

25. The Classes are so numerous that the individual joinder of all of its

1 members is impractical. While the exact number and identities of The Classes  
2 members are unknown to Plaintiff at this time and can only be ascertained through  
3 appropriate discovery, Plaintiff is informed and believes and thereon alleges that  
4 The Classes includes thousands of members. Plaintiff alleges that The Classes  
5 members may be ascertained by the records maintained by Defendant.

6 26. Plaintiff and members of The ATDS Class were harmed by the acts of  
7 Defendant in at least the following ways: Defendant illegally contacted Plaintiff  
8 and ATDS Class members via their cellular telephones thereby causing Plaintiff  
9 and ATDS Class members to incur certain charges or reduced telephone time for  
10 which Plaintiff and ATDS Class members had previously paid by having to retrieve  
11 or administer messages left by Defendant during those illegal calls, and invading  
12 the privacy of said Plaintiff and ATDS Class members.

13 27. Common questions of fact and law exist as to all members of The  
14 ATDS Class which predominate over any questions affecting only individual  
15 members of The ATDS Class. These common legal and factual questions, which  
16 do not vary between ATDS Class members, and which may be determined without  
17 reference to the individual circumstances of any ATDS Class members, include,  
18 but are not limited to, the following:

- 19 a. Whether, within the four years prior to the filing of this  
20 Complaint, Defendant made any telemarketing/solicitation call  
21 (other than a call made for emergency purposes or made with  
22 the prior express consent of the called party) to a ATDS Class  
23 member using any automatic telephone dialing system or any  
24 artificial or prerecorded voice to any telephone number  
25 assigned to a cellular telephone service;
- 26 b. Whether Plaintiff and the ATDS Class members were damaged  
27 thereby, and the extent of damages for such violation; and
- 28 c. Whether Defendant should be enjoined from engaging in such

1                   conduct in the future.

2           28. As a person that received numerous telemarketing/solicitation calls  
3 from Defendant using an automatic telephone dialing system or an artificial or  
4 prerecorded voice, without Plaintiff's prior express consent, Plaintiff is asserting  
5 claims that are typical of The ATDS Class.

6           29. Plaintiff and members of The DNC Class were harmed by the acts of  
7 Defendant in at least the following ways: Defendant illegally contacted Plaintiff  
8 and DNC Class members via their telephones for solicitation purposes, thereby  
9 invading the privacy of said Plaintiff and the DNC Class members whose telephone  
10 numbers were on the National Do-Not-Call Registry. Plaintiff and the DNC Class  
11 members were damaged thereby.

12           30. Common questions of fact and law exist as to all members of The  
13 DNC Class which predominate over any questions affecting only individual  
14 members of The DNC Class. These common legal and factual questions, which do  
15 not vary between DNC Class members, and which may be determined without  
16 reference to the individual circumstances of any DNC Class members, include, but  
17 are not limited to, the following:

- 18           a. Whether, within the four years prior to the filing of this  
19 Complaint, Defendant or its agents placed more than one  
20 solicitation call to the members of the DNC Class whose  
21 telephone numbers were on the National Do-Not-Call Registry  
22 and who had not granted prior express consent to Defendant and  
23 did not have an established business relationship with  
24 Defendant;
- 25           b. Whether Defendant obtained prior express written consent to  
26 place solicitation calls to Plaintiff or the DNC Class members'  
27 telephones;
- 28           c. Whether Plaintiff and the DNC Class member were damaged

1                   thereby, and the extent of damages for such violation; and

2           d.       Whether Defendant and its agents should be enjoined from  
3                   engaging in such conduct in the future.

4           31.     As a person that received numerous solicitation calls from Defendant  
5     within a 12-month period, who had not granted Defendant prior express consent  
6     and did not have an established business relationship with Defendant, Plaintiff is  
7     asserting claims that are typical of the DNC Class.

8           32.     Plaintiff will fairly and adequately protect the interests of the members  
9     of The Classes. Plaintiff has retained attorneys experienced in the prosecution of  
10    class actions.

11          33.     A class action is superior to other available methods of fair and  
12    efficient adjudication of this controversy, since individual litigation of the claims  
13    of all Classes members is impracticable. Even if every Classes member could  
14    afford individual litigation, the court system could not. It would be unduly  
15    burdensome to the courts in which individual litigation of numerous issues would  
16    proceed. Individualized litigation would also present the potential for varying,  
17    inconsistent, or contradictory judgments and would magnify the delay and expense  
18    to all parties and to the court system resulting from multiple trials of the same  
19    complex factual issues. By contrast, the conduct of this action as a class action  
20    presents fewer management difficulties, conserves the resources of the parties and  
21    of the court system, and protects the rights of each Classes member.

22          34.     The prosecution of separate actions by individual Classes members  
23    would create a risk of adjudications with respect to them that would, as a practical  
24    matter, be dispositive of the interests of the other Classes members not parties to  
25    such adjudications or that would substantially impair or impede the ability of such  
26    non-party Class members to protect their interests.

27          35.     Defendant has acted or refused to act in respects generally applicable  
28    to The Classes, thereby making appropriate final and injunctive relief with regard



1 to the members of the Classes as a whole.

2 **FIRST CAUSE OF ACTION**

3 **Negligent Violations of the Telephone Consumer Protection Act**

4 **47 U.S.C. §227(b).**

5 **On Behalf of the ATDS Class**

6 36. Plaintiff repeats and incorporates by reference into this cause of action  
7 the allegations set forth in the paragraphs above.

8 37. The foregoing acts and omissions of Defendant constitute numerous  
9 and multiple negligent violations of the TCPA, including but not limited to each  
10 and every one of the above cited provisions of *47 U.S.C. § 227(b)*, and in particular  
11 *47 U.S.C. § 227 (b)(1)(A)*.

12 38. As a result of Defendant's negligent violations of *47 U.S.C. § 227(b)*,  
13 Plaintiff and the Class Members are entitled an award of \$500.00 in statutory  
14 damages, for each and every violation, pursuant to *47 U.S.C. § 227(b)(3)(B)*.

15 39. Plaintiff and the ATDS Class members are also entitled to and seek  
16 injunctive relief prohibiting such conduct in the future.

17 **SECOND CAUSE OF ACTION**

18 **Knowing and/or Willful Violations of the Telephone Consumer Protection**  
19 **Act**

20 **47 U.S.C. §227(b)**

21 **On Behalf of the ATDS Class**

22 40. Plaintiff repeats and incorporates by reference into this cause of action  
23 the allegations set forth in the paragraphs above.

24 41. The foregoing acts and omissions of Defendant constitute numerous  
25 and multiple knowing and/or willful violations of the TCPA, including but not  
26 limited to each and every one of the above cited provisions of *47 U.S.C. § 227(b)*,  
27 and in particular *47 U.S.C. § 227 (b)(1)(A)*.

28 42. As a result of Defendant's knowing and/or willful violations of *47*

1 *U.S.C. § 227(b)*, Plaintiff and the ATDS Class members are entitled an award of  
2 \$1,500.00 in statutory damages, for each and every violation, pursuant to *47 U.S.C.*  
3 *§ 227(b)(3)(B)* and *47 U.S.C. § 227(b)(3)(C)*.

4 43. Plaintiff and the Class members are also entitled to and seek injunctive  
5 relief prohibiting such conduct in the future.

6 **THIRD CAUSE OF ACTION**

7 **Negligent Violations of the Telephone Consumer Protection Act**

8 **47 U.S.C. §227(c)**

9 **On Behalf of the DNC Class**

10 44. Plaintiff repeats and incorporates by reference into this cause of action  
11 the allegations set forth in the paragraphs above.

12 45. The foregoing acts and omissions of Defendant constitute numerous  
13 and multiple negligent violations of the TCPA, including but not limited to each  
14 and every one of the above cited provisions of *47 U.S.C. § 227(c)*, and in particular  
15 *47 U.S.C. § 227 (c)(5)*.

16 46. As a result of Defendant's negligent violations of *47 U.S.C. § 227(c)*,  
17 Plaintiff and the DNC Class Members are entitled an award of \$500.00 in statutory  
18 damages, for each and every violation, pursuant to *47 U.S.C. § 227(c)(5)(B)*.

19 47. Plaintiff and the DNC Class members are also entitled to and seek  
20 injunctive relief prohibiting such conduct in the future.

21 **FOURTH CAUSE OF ACTION**

22 **Knowing and/or Willful Violations of the Telephone Consumer Protection**  
23 **Act**

24 **47 U.S.C. §227 et seq.**

25 **On Behalf of the DNC Class**

26 48. Plaintiff repeats and incorporates by reference into this cause of action  
27 the allegations set forth in the paragraphs above.

28 49. The foregoing acts and omissions of Defendant constitute numerous

1 and multiple knowing and/or willful violations of the TCPA, including but not  
2 limited to each and every one of the above cited provisions of *47 U.S.C. § 227(c)*,  
3 in particular *47 U.S.C. § 227 (c)(5)*.

4 50. As a result of Defendant's knowing and/or willful violations of *47*  
5 *U.S.C. § 227(c)*, Plaintiff and the DNC Class members are entitled an award of  
6 \$1,500.00 in statutory damages, for each and every violation, pursuant to *47 U.S.C.*  
7 *§ 227(c)(5)*.

8 51. Plaintiff and the DNC Class members are also entitled to and seek  
9 injunctive relief prohibiting such conduct in the future.

10 **PRAYER FOR RELIEF**

11 WHEREFORE, Plaintiff requests judgment against Defendant for the following:

12 **FIRST CAUSE OF ACTION**

13 **Negligent Violations of the Telephone Consumer Protection Act**

14 **47 U.S.C. §227(b)**

- 15 • As a result of Defendant's negligent violations of *47 U.S.C.*  
16 *§227(b)(1)*, Plaintiff and the ATDS Class members are entitled to and  
17 request \$500 in statutory damages, for each and every violation,  
18 pursuant to *47 U.S.C. 227(b)(3)(B)*.  
19 • Any and all other relief that the Court deems just and proper.

20 **SECOND CAUSE OF ACTION**

21 **Knowing and/or Willful Violations of the Telephone Consumer Protection**  
22 **Act**

23 **47 U.S.C. §227(b)**

- 24 • As a result of Defendant's willful and/or knowing violations of *47*  
25 *U.S.C. §227(b)(1)*, Plaintiff and the ATDS Class members are  
26 entitled to and request treble damages, as provided by statute, up to  
27 \$1,500, for each and every violation, pursuant to *47 U.S.C.*  
28 *§227(b)(3)(B)* and *47 U.S.C. §227(b)(3)(C)*.

- Any and all other relief that the Court deems just and proper.

**THIRD CAUSE OF ACTION**

**Negligent Violations of the Telephone Consumer Protection Act**

**47 U.S.C. §227(c)**

- As a result of Defendant’s negligent violations of *47 U.S.C. §227(c)(5)*, Plaintiff and the DNC Class members are entitled to and request \$500 in statutory damages, for each and every violation, pursuant to *47 U.S.C. 227(c)(5)*.
- Any and all other relief that the Court deems just and proper.

**FOURTH CAUSE OF ACTION**

**Knowing and/or Willful Violations of the Telephone Consumer Protection Act**

**47 U.S.C. §227(c)**

- As a result of Defendant’s willful and/or knowing violations of *47 U.S.C. §227(c)(5)*, Plaintiff and the DNC Class members are entitled to and request treble damages, as provided by statute, up to \$1,500, for each and every violation, pursuant to *47 U.S.C. §227(c)(5)*.
- Any and all other relief that the Court deems just and proper.

52. Pursuant to the Seventh Amendment to the Constitution of the United States of America, Plaintiff is entitled to, and demands, a trial by jury.

**Respectfully Submitted this 6th Day of March, 2020.**

LAW OFFICES OF TODD M. FRIEDMAN, P.C.

By: /s/ Todd M. Friedman  
Todd M. Friedman  
Law Offices of Todd M. Friedman  
Attorney for Plaintiff