

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NASSAU

-----X
KIMBERLY S. THOMPSON,

Plaintiff,

-against-

MICHAEL MARTINEZ, JULIO MARTINEZ,
DANIEL RUSSELL and LYFT, INC.,

Defendants.
-----X

Index No.: 617310/2023

**VERIFIED
AMENDED ANSWER
WITH CROSSCLAIMS**

The defendant, DANIEL RUSSELL, by his attorneys, MORRIS DUFFY ALONSO FALEY & PITCOFF, upon information and belief, answers the plaintiff's Complaint herein as follows:

1. Denies any knowledge or information sufficient to form a belief as to the truth of the allegations contained in the paragraphs or subdivisions of the Complaint designated: "1," "2," "3," "4," "5," "6," "7," "8," "9," "10," "11," "12," "13," "14," "15," "16," "17," "18," "19," "20," "21," "24," "25," "26," "27," "28," "29," "30," "31," "32," "33," "34," "39," "40," "41," "42," "43," and "49."

2. Admits each and every allegation contained in the paragraphs or subdivisions of the Complaint designated: "22," and "23."

3. Denies each and every allegation contained the paragraphs or subdivisions of the Complaint designated: "35," "36," "37," "38," "44," "45," "46," "47," "48," and "50."

AS AND FOR A FIRST AFFIRMATIVE DEFENSE

4. Any damages which may have been sustained by the plaintiff were contributed to in whole or in part by the culpable conduct of the plaintiff, pursuant to Section 14-A, CPLR.

AS AND FOR A SECOND AFFIRMATIVE DEFENSE

5. The Court lacks personal jurisdiction over the answering defendants.

AS AND FOR A THIRD AFFIRMATIVE DEFENSE

6. Pursuant to CPLR 4545(c), if it be determined or established that plaintiff has received or with reasonable certainty shall receive the cost of medical care, dental care, custodial care or rehabilitation services, loss of earnings or other economic loss, and that the same shall be replaced or indemnified, in whole or in part from any collateral source such as insurance (except for life insurance), social security (except for those benefits provided under title XVIII of the Social

Security Act), workers' compensation or employee benefit programs (except such collateral source entitled by law to liens against any recovery of the plaintiff), then and in that event answering defendants hereby plead in mitigation of damages the assessment of any such cost or expense as a collateral source in reduction of the amount of the award by such replacement or indemnification, minus an amount equal to the premiums paid by the plaintiff for such benefits for the two year period immediately preceding the accrual of this action and minus an amount equal to the projected future cost to the plaintiff of maintaining such benefits and as otherwise provided in CPLR 4545(c).

AS AND FOR A FOURTH AFFIRMATIVE DEFENSE

7. If the plaintiff was not wearing seat belts at the time of the accident, answering defendants plead the failure to wear same, or to wear same properly, in mitigation of damages.

AS AND FOR A FIFTH AFFIRMATIVE DEFENSE

8. The Court lacks jurisdiction over the answering defendants due to improper service of process.

AS AND FOR A SIXTH AFFIRMATIVE DEFENSE

9. Defendant asserts Section 15-108 of the General Obligations Law and will ask the Court that the defendant be entitled to a set-off for any settlements, releases or discontinuances.

AS AND FOR A SEVENTH AFFIRMATIVE DEFENSE

10. The defendant was not negligent because they were faced with an emergency situation, not of their own making, and acted as a reasonable prudent person would act in the same emergency.

AS AND FOR A EIGHTH AFFIRMATIVE DEFENSE

11. The plaintiff's sole and exclusive remedy is confined and limited to the benefits and provisions of Article 51 of the Insurance Law of the State of New York.

**AS A BASIS FOR AFFIRMATIVE RELIEF AND AS AND
FOR A FIRST CROSS-CLAIM AGAINST CO-DEFENDANT(S),
MICHAEL MARTINEZ AND JULIO MARTINEZ
ANSWERING DEFENDANT(S) ALLEGES:**

12. If plaintiff(s) sustained injuries and damages as alleged in the Complaint through any fault other than the plaintiff(s)' own fault, then such damages were sustained due to the sole fault of the co-defendant(s), and if plaintiff(s) should obtain and/or recover judgment against the answering defendant(s), then the co-defendant(s) shall be liable pursuant to common law for the full indemnification of the answering defendant(s).

In view of the foregoing, the answering defendant(s) is/are entitled to complete common law indemnification for all loss, damage, cost or expense, including, without limitation, judgments, attorneys' fees, court costs and the cost of appellate proceedings from the co-defendants.

**AS A BASIS FOR AFFIRMATIVE RELIEF AND AS AND
FOR A SECOND CROSS-CLAIM AGAINST CO-DEFENDANT(S),
MICHAEL MARTINEZ AND JULIO MARTINEZ
ANSWERING DEFENDANT(S) ALLEGES:**

13. If plaintiff(s) was/were caused to sustain injuries and damages at the time and place set forth in plaintiff(s)' Complaint through any carelessness, recklessness and negligence other than plaintiff(s)' own, those damages arose in whole or in part from the acts of co-defendant(s), and if any judgment is recovered herein by plaintiff against answering defendant(s), then the answering defendant(s) will be damaged thereby and will be entitled to apportionment or indemnification, in whole or in part, on the basis of proportionate responsibility or obligation to indemnify co-defendant(s).

**AS A BASIS FOR AFFIRMATIVE RELIEF AND AS AND
FOR A THIRD CROSS-CLAIM AGAINST CO-DEFENDANT(S),
MICHAEL MARTINEZ AND JULIO MARTINEZ
ANSWERING DEFENDANT(S) ALLEGES:**

14. If the plaintiff(s) was/were caused to sustain injuries and damages at the time and in the manner set forth in the Complaint through any carelessness, recklessness or negligence other than that of plaintiff(s)' own, which is expressly denied, such injuries and damages will have been caused, brought about and sustained solely by reason of the active, primary and affirmative negligence, carelessness and wrongdoing of the co-defendant(s), by their agents, servants and/or employees, without any negligence on the part of the answering defendant contributing thereto, or if there be any negligence on the part of this defendant, the same was merely passive and secondary in nature.

15. That by reason of the foregoing, if the plaintiff(s) recover(s) any judgment against the answering defendant(s), then answering defendant(s) is/are entitled to be fully indemnified by the co-defendant(s), in a like amount, together with the costs and disbursements, expenses and attorneys' fees of the defense of this action by reason of the active and primary negligence of the co-defendant(s).

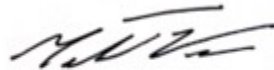
WHEREFORE, answering defendant(s) demand(s) judgment dismissing the Complaint as to the defendant(s), with costs and further demand(s) that the ultimate rights of the answering defendant(s) and co-defendant(s), as between themselves, be determined in this action, and that answering defendant(s) has/have judgment over and against co-defendant(s) for all or a part of any

verdict or judgment which may be obtained by the plaintiff against answering defendant(s), together with the costs, interest and disbursements of this action.

Dated: New York, New York
March 27, 2024

Yours etc.,

MORRIS DUFFY ALONSO FALEY & PITCOFF



By: _____

Michael Vicario
Attorneys for Defendant
DANIEL RUSSELL
Office and Post Office Address
101 Greenwich Street, 22nd Floor
New York, New York 10006
T: (212) 766-1888
F: (212) 766-3252
Our File No.: (PRG) 76768

TO:
GREGORY SPEKTOR & ASSOCIATES, P.C.
Attorneys for Plaintiff
One Cross Island Plaza, Suite 203C
Rosedale, NY 11422
(718) 528-5272

LEWIS BRISBOIS BISCAARD & SMITH LLP
Attorneys for Defendant
LYFT, INC.
77 Water Street, 21st Floor
New York, NY 10005
212.232.1300

DEFENDANTS
JULIO MARTINEZ
309 W. 2TH STREET
NORFOLK, VA 23517

MICHAEL MARTINEZ
17 Henry Street
Roosevelt, NY 11475

Explore Litigation Insights

Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

Real-Time Litigation Alerts



Keep your litigation team up-to-date with **real-time alerts** and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

Advanced Docket Research



With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

Analytics At Your Fingertips



Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

LAW FIRMS

Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

FINANCIAL INSTITUTIONS

Litigation and bankruptcy checks for companies and debtors.

E-DISCOVERY AND LEGAL VENDORS

Sync your system to PACER to automate legal marketing.