IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION TWO

JANE DOE LSA 78, Plaintiff and Appellant, v. UBER TECHNOLOGIES, INC. and RASIER-CA LLC Defendants and Respondents.	A175234 (SF Superior Court Case No. CGC-21-59247 Hon. Ethan Schulman, Judge) Appeal from Judgment entered 10/01/2025

APPLICATION FOR PERMISSION TO FILE AMICUS BRIEF and BRIEF OF THE CIVIL JUSTICE ASSOCIATION OF CALIFORNIA, CALIFORNIA CHAMBER OF COMMERCE, and AMERICAN TORT REFORM ASSOCIATION AS AMICI CURIAE SUPPORTING DEFENDANTS AND RESPONDENTS

Calvin House (Bar No. 134902)
calvin.house@gphlawyers.com
Gutierrez, Preciado & House, LLP
3020 E. Colorado Boulevard
Pasadena, CA 91107
T: 626-449-2300 | F: 626-449-2330

Attorneys for Amici Curiae
CIVIL JUSTICE ASSOCIATION OF CALIFORNIA,
CALIFORNIA CHAMBER OF COMMERCE
and AMERICAN TORT REFORM ASSOCIATION

Document received by the CA 1st District Court of Appeal.

Table of Contents

Table of Contents 2

Table of Authorities 3

Application for Permission to File Amicus Brief 5

Amicus Brief 8

A Introduction 8

B Plaintiff's instruction would make common carriers insurers against crimes they could not prevent, contrary to the fault-based foundation of California tort law. 9

C The nondelegable-duty doctrine has never been used to make a common carrier liable for an independent contractor's crimes. 10

D Plaintiff's rule would reach far beyond rideshare platforms, to businesses and public agencies throughout California. 12

E Plaintiff's rule would circumvent Proposition 51 by making a defendant that did not cause the harm pay the assailant's share 13

F Because the Legislature and the voters have already decided how transportation network companies should protect riders, any rule of absolute liability should come from them. 14

Conclusion 17

Certificate of Compliance 18

Document received by the CA 1st District Court of Appeal.

Table of Authorities

Cases

Berger v. Southern Pacific Co.
(1956) 144 Cal.App.2d 1 11

Eli v. Murphy
(1952) 39 Cal.2d 598) 11

Evangelatos v. Superior Court
(1988) 44 Cal.3d 1188..... 5

Gomez v. Superior Court
(2005) 35 Cal.4th 1125 ..... 8, 9, 12

K.M. v. Grossmont Union High School Dist.
(2022) 84 Cal.App.5th 717 14

Lopez v. Southern Cal. Rapid Transit Dist.
(1985) 40 Cal.3d 780..... 8, 9

Maloney v. Rath
(1968) 69 Cal.2d 442..... 11

Saelzler v. Advanced Group 400
(2001) 25 Cal.4th 763 10

Squaw Valley Ski Corp. v. Superior Court
(1992) 2 Cal.App.4th 1499 12

Srithong v. Total Investment Co.
(1994) 23 Cal.App.4th 721 14

Toland v. Sunland Housing Group, Inc.
(1998) 18 Cal.4th 253 10

Treadwell v. Whittier (1889)
80 Cal. 574 12

Weidenfeller v. Star & Garter
(1991) 1 Cal.App.4th 1 14

Document received by the CA 1st District Court of Appeal.

Statutes

Bus. & Prof. Code, § 7451 15

Bus. & Prof. Code, § 7458 15

Bus. & Prof. Code, § 7459 15

Civ. Code, § 1431.1 13

Civ. Code, § 1431.2 13

Civ. Code, § 1714 9

Civ. Code, § 2100 ..... 9, 12

Civ. Code, § 2168 12

Pub. Util. Code, § 5430 15

Pub. Util. Code, § 5431 15

Pub. Util. Code, § 5433 15

Pub. Util. Code, § 5445.2 15

Rules

Cal. Rules of Court, rule 8.200 5

Cal. Rules of Court, rule 8.204 18

Other Authorities

Rest.2d Torts, § 409 10

Document received by the CA 1st District Court of Appeal.

Application for Permission to File Amicus Brief

The Civil Justice Association of California (CJAC), the California Chamber of Commerce (CalChamber) and the American Tort Reform Assocition (ATRA) apply for permission to file the attached amicus brief pursuant to California Rules of Court, rule 8.200(c), supporting Defendants and Respondents Uber Technologies, Inc., Rasier, LLC, and Rasier-CA, LLC.

CJAC is a nonprofit organization whose members are businesses from a broad cross section of industries. CJAC's principal purpose is to educate the public and its governing bodies about how to make laws determining who gets paid, how much, and by whom when the conduct of some causes harm to others – more fair, certain, and economical. Toward this end, CJAC regularly appears as amicus curiae in numerous cases of interest to its members. CJAC and its members are particularly interested in the application of Proposition 51, the Fair Responsibility Act of 1986. Under its former name, the Association for California Tort Reform (ACTR), CJAC was a driving force behind the efforts to get Proposition 51 passed, as the Supreme Court recognized in its opinion upholding the constitutionality of Proposition 51. (*Evangelatos v. Superior Court* (1988) 44 Cal.3d 1188, 1212, fn. 16.)

CalChamber is a non-profit business association with approximately 11,000 members, both individual and corporate, representing 25% of the state's private sector workforce and virtually every economic interest in the state of California. While CalChamber represents several of the largest corporations in

Document received by the CA 1st District Court of Appeal.

California, 70% of its members have 100 or fewer employees. CalChamber acts on behalf of the business community to improve the state's economic and jobs climate by representing business on a broad range of legislative, regulatory and legal issues.

ATRA is a broad-based coalition of businesses, corporations, municipalities, associations, and professional firms that have pooled their resources to promote reform of the civil justice system with the goal of ensuring fairness, balance, and predictability in civil litigation. For more than three decades, ATRA has filed amicus briefs in cases like this one involving important product liability and related issues.

The members of CJAC, CalChamber and ATRA include businesses that transport the public and businesses that contract for transportation services, and all of them depend on a tort system that ties liability to fault and causation. Plaintiff asks this Court to hold that every common carrier is liable, without regard to its own care and without regard to causation, for intentional crimes committed by the independent contractors who carry the passengers. The attached amicus brief explains how far that rule would reach beyond the parties to this appeal, how it would override the comparative-fault principles the voters adopted in Proposition 51, and why a change of that magnitude should be left to the Legislature. The brief will assist the Court by providing a broader perspective on those questions than the parties' briefs provide.

No party to this appeal or counsel for a party authored the proposed amicus brief in whole or in part, or made a monetary

Document received by the CA 1st District Court of Appeal.

contribution intended to fund the preparation or submission of the brief. No person or entity other than amicus, its members, or their counsel made a monetary contribution intended to fund the preparation or submission of the brief.

October 13, 2026

Calvin House
Gutierrez, Preciado & House, LLP
Attorneys for Amici Curiae
Civil Justice Association of California,
California Chamber of Commerce and
American Tort Reform Association

Document received by the CA 1st District Court of Appeal.

Amicus Brief

A Introduction

The jury found that Uber fell short of the heightened standard of care owed as a common carrier but also found that the shortfall was not a substantial factor in causing the Plaintiff's injuries. Her injuries were inflicted by an independent driver who committed a crime. The Plaintiff argues that the jury should not have been asked about causation at all. Under the instruction she requested, it was enough that Uber engaged the driver. If that were the rule, a common carrier would be liable for an assault by the person who carries its passengers whether or not the carrier did anything wrong, whether or not anything it could have done would have prevented the assault, and whether the person who committed it was an employee or an independent contractor. That would make common carriers insurers of their passengers against the crimes of others, which the Supreme Court has repeatedly said they are not. (*Gomez v. Superior Court* (2005) 35 Cal.4th 1125, 1130; *Lopez v. Southern Cal. Rapid Transit Dist.* (1985) 40 Cal.3d 780, 785.)

Respondents' Brief explains why that rule is not California law. The amici write to explain why it should not become California law, and what adopting it would mean beyond this case. The rule would not be confined to rideshare platforms but would extend to any business that qualifies as a common carrier under California's broad statutory definition. By preventing juries from assigning responsibility based on fault, the rule would override the comparative-fault principles that California voters adopted in Proposition 51. It would displace choices the

Document received by the CA 1st District Court of Appeal.

Legislature and the voters have already made about how transportation network companies should protect riders. That change should come, if at all, from the Legislature.

B Plaintiff's instruction would make common carriers insurers against crimes they could not prevent, contrary to the fault-based foundation of California tort law.

It is a bedrock principle of California tort law that a person is responsible for injury caused by "his or her want of ordinary care or skill in the management of his or her property or person." (Civ. Code, § 1714, subd. (a).) Although common carriers "must use the utmost care and diligence" for their passengers' "safe carriage" (Civ. Code, § 2100), that higher standard of care does not make them "insurers of their passengers' safety." (*Gomez*, *supra*, 35 Cal.4th at p. 1130, quoting *Lopez*, *supra*, 40 Cal.3d at p. 785.) When a passenger is assaulted by a fellow passenger, the carrier is liable "only where, in the exercise of the required degree of care, the carrier has or should have knowledge from which it may reasonably be apprehended that an assault on a passenger may occur, and has the ability in the exercise of that degree of care to prevent the injury." (*Lopez*, *supra*, 40 Cal.3d at p. 791.) Common carriers "will not automatically be liable, regardless of the circumstances, for any injury suffered by a passenger at the hands of a fellow passenger." (*Ibid.*)

The Plaintiff attempts to distinguish *Gomez* and *Lopez* by noting that those decisions involved assaults by fellow passengers, not by a carrier's own agents. But an independent driver who commits a crime for his own purposes is not acting as

Document received by the CA 1st District Court of Appeal.

anyone's agent. Calling the carrier's duty "nondelegable" does not convert the independent driver's crime into the carrier's conduct.

By focusing on her argument that Uber had a "nondelegable" duty, the Plaintiff ignores the requirement that a plaintiff seeking to recover damages for negligence must show that "breach was a proximate or legal cause of her injury." (*Saelzler v. Advanced Group 400* (2001) 25 Cal.4th 763, 772.) Although she insists that her rule would not impose strict liability because the jury would still have to find that the driver's conduct was wrongful, that ignores the fact that the driver was independent. His conduct is not attributable to Uber.

Plaintiff defends her rule by arguing that it assures that, when a negligently caused harm occurs, the injured party will be compensated by the person whose activity caused the harm. But the jury found that Uber's conduct did *not* cause the Plaintiff's harm. The independent driver caused her harm.

C The nondelegable-duty doctrine has never been used to make a common carrier liable for an independent contractor's crimes.

The general rule is that the employer of an independent contractor is not liable for the contractor's torts. (*Toland v. Sunland Housing Group, Inc.* (1998) 18 Cal.4th 253, 259, quoting Rest.2d Torts, § 409.) The contractor controls the work, is in the best position to prevent harm in doing it and is answerable for his or her own torts. The nondelegable-duty exception to the rule applies only in defined settings, such as

- where a statute or regulation places a specific safety obligation on a particular party, such as the Vehicle

Document received by the CA 1st District Court of Appeal.

Code's requirement that vehicles have working brakes (*Maloney v. Rath* (1968) 69 Cal.2d 442), or

- where a public franchise authorizes an activity that is dangerous unless carefully conducted, such as operating as a licensed highway carrier (*Eli v. Murphy* (1952) 39 Cal.2d 598).

As explained in the Respondents' Brief at pages 36-43, those exceptions do not apply to Uber.

Notably, the nondelegable-duty exception only makes a hirer answer for the contractor's failure to perform the delegated work with care. Plaintiff cites no California decision that has relied on it to make a hirer liable for an independent contractor's crime. The California case on which the Plaintiff principally relies—*Berger v. Southern Pacific Co.* (1956) 144 Cal.App.2d 1—concerned the duty owed by a common carrier to protect passengers from assaults *by its employees*. The court explained that the carrier's liability for such an assault "is materially affected by the relationship of master and servant," and it approved an instruction that the porter was the defendant's "agent or employee" acting "within the scope of his authority." (144 Cal.App.2d at pp. 7-8.) The Court of Appeal did not discuss whether there was a duty to protect passengers from an independent contractor's crimes.

Document received by the CA 1st District Court of Appeal.

D Plaintiff's rule would reach far beyond rideshare platforms, to businesses and public agencies throughout California.

The Plaintiff's proposed rule would extend to the many businesses and public agencies that fall within the broad definition of common carrier found in Civil Code section 2168:

> Everyone who offers to the public to carry persons, property, or messages, excepting only telegraphic messages, is a common carrier of whatever he thus offers to carry.

Based on that definition, courts have applied the heightened duty of section 2100 to the operator of a roller coaster or similar amusement park ride (*Gomez*, *supra*, 35 Cal.4th at p. 1136), a ski resort's chairlift (*Squaw Valley Ski Corp. v. Superior Court* (1992) 2 Cal.App.4th 1499), and the owner of a building elevator (*Treadwell v. Whittier* (1889) 80 Cal. 574). The category also includes bus and shuttle operators, ferries, tour operators, and public transit systems.

Many of those businesses rely on contractors. Transit agencies contract with private companies to operate bus routes and paratransit service. Hotels, airports, universities, hospitals, and employers contract out shuttle service. Resorts and entertainment venues engage contractors for operations, maintenance, and security. Under existing California law, each of those carriers owes its passengers the utmost care and is liable when its own failure to exercise that care causes injury. Under Plaintiff's rule, each would also be liable, without regard to its own care and without regard to causation, for any assault that a contractor's worker commits against a passenger.

Document received by the CA 1st District Court of Appeal.

Nor would Plaintiff's rule be confined to sexual assault, or even to assault. Her theory is that the carrier's duty of safe carriage itself cannot be delegated. If that is so, a carrier would be liable for anything a contractor's worker does to a passenger in the course of a trip, from theft to a fistfight, regardless of what the carrier did or could have done to prevent it.

E Plaintiff's rule would circumvent Proposition 51 by making a defendant that did not cause the harm pay the assailant's share.

Plaintiff's rule would also undermine comparative-fault system that California voters adopted 40 years ago with their approval of Proposition 51. Under that system, in personal injury actions, "[e]ach defendant shall be liable only for the amount of non-economic damages allocated to that defendant in direct proportion to that defendant's percentage of fault." (Civ. Code, § 1431.2, subd. (a).) The voters adopted that rule because of the unfairness of the "deep pocket" system:

> Some governmental and private defendants are perceived to have substantial financial resources or insurance coverage and have thus been included in lawsuits even though there was little or no basis for finding them at fault. Under joint and several liability, if they are found to share even a fraction of the fault, they often are held financially liable for all the damage. The People—taxpayers and consumers alike—pay for these lawsuits in the form of higher taxes, higher prices and higher insurance premiums.

(Civ. Code, § 1431.1, subd. (b).) To remedy those inequities, the voters declared that "defendants in tort actions shall be held financially liable in closer proportion to their degree of fault." (*Id.*, at subd. (c).)

Document received by the CA 1st District Court of Appeal.

California courts routinely apply Proposition 51 when a negligent defendant is sued for failing to prevent an intentional assault, allowing the jury to allocate fault between the negligent defendant and the assailant. (See, for example *Weidenfeller v. Star & Garter* (1991) 1 Cal.App.4th 1, 5-6 (armed assault in the negligent defendant's parking lot); *K.M. v. Grossmont Union High School Dist.* (2022) 84 Cal.App.5th 717, 732-733 (sexual abuse by a high school teacher).) Had the jury found that Uber's breach was a substantial factor in causing Plaintiff's harm, it would have allocated fault between Uber and the driver who assaulted her, and Uber would have been liable for non-economic damages in proportion to its own share.

Plaintiff's rule would bypass that allocation entirely. A defendant whose liability rests on a nondelegable duty answers for the contractor's fault as though it were its own, and courts have held that Proposition 51 does not permit such a defendant to reduce its liability by the contractor's share. (*Srithong v. Total Investment Co.* (1994) 23 Cal.App.4th 721, 728.) Under Plaintiff's rule, Uber, which the jury found did *not* cause Plaintiff's harm, would be liable for all of the damages caused by the driver's crime. That is exactly the unfair result that Proposition 51 was adopted to prevent.

F Because the Legislature and the voters have already decided how transportation network companies should protect riders, any rule of absolute liability should come from them.

The Legislature and the voters have addressed how transportation network companies like Uber must protect riders, and they did not choose the rule Plaintiff proposes. The

Document received by the CA 1st District Court of Appeal.

companies were placed under the oversight of the Public Utilities Commission. (See Pub. Util. Code, §§ 5430, 5431, subd. (c).) The statutory framework has prescribed specific safety obligations, including criminal background checks of drivers and categories of convictions that disqualify a driver (Pub. Util. Code, § 5445.2), along with minimum insurance coverage for trips (Pub. Util. Code, § 5433).

In 2020, the voters adopted Proposition 22, which provides that app-based drivers who meet its conditions are independent contractors, not employees. (Bus. & Prof. Code, § 7451.) Proposition 22 also added its own safety requirements, including criminal background checks and sexual assault and misconduct training for drivers. (Bus. & Prof. Code, §§ 7458, 7459.) Although Plaintiff argues that Proposition 22 does not apply to her ride, the rule she asks this Court to adopt would govern all future cases, which will arise under Proposition 22.

Those enactments reflect deliberate choices about what transportation network companies must do to protect riders and about the independent-contractor relationship between those companies and drivers. None of them makes a transportation network company an insurer against crimes by drivers that the required safety measures could not prevent.

Whether common carriers should become insurers of their passengers against third parties' crimes, and if so how that liability should be financed and limited, are questions with large consequences for the cost and availability of transportation throughout the state. Businesses required to insure against

Document received by the CA 1st District Court of Appeal.

harms they cannot prevent must pass the cost on to customers, reduce service, or withdraw from markets where the cost is highest. Those effects would fall hardest on riders who depend on affordable transportation, including riders in communities with limited public transit. The Legislature can study those consequences, hear from everyone affected, and write a rule with limits. A court deciding a single appeal on a single record cannot.

Document received by the CA 1st District Court of Appeal.

Conclusion

The jury found that Uber's conduct did not cause Plaintiff's injuries. Plaintiff's proposed instruction would have made that finding irrelevant and required Uber to pay for a crime it did not cause and could not have prevented. That rule has no basis in California law. It would reach every common carrier in the state and the public agencies that contract for transportation, and it would override the comparative-fault principles the voters adopted in Proposition 51. The Court should affirm the judgment.

October 13, 2026

Calvin House
Gutierrez, Preciado & House, LLP
Attorneys for Amici Curiae
Civil Justice Association of California,
California Chamber of Commerce and
American Tort Reform Association

Document received by the CA 1st District Court of Appeal.

Certificate of Compliance

Counsel of Record hereby certifies that, pursuant to Rule 8.204(c)(1) of the California Rules of Court, the enclosed Respondents' brief is produced using 13-point Roman type including footnotes and contains approximately 3,325 words, which is less than the total words permitted by the Rules of Court. Counsel relies on the word count of the computer program used to prepare this brief.

s/ Calvin House

Document received by the CA 1st District Court of Appeal.