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11 **NO FEE – CAL. GOVT. CODE § 6103**

13 SUPERIOR COURT OF THE STATE OF CALIFORNIA

14 COUNTY OF SAN FRANCISCO

15 UNLIMITED JURISDICTION

17 **PEOPLE OF THE STATE OF CALIFORNIA,**

18 Plaintiff,

19 v.

21 **UBER TECHNOLOGIES, INC., A DELAWARE
CORPORATION; LYFT, INC., A DELAWARE
CORPORATION; AND DOES 1-50, INCLUSIVE,**

22 Defendants.

Case No. CGC-20-584402

**THE PEOPLE'S MEMORANDUM OF
POINTS AND AUTHORITIES IN
SUPPORT OF MOTION FOR
PRELIMINARY INJUNCTION**

Hearing Date: August 6, 2020
Hearing Judge: Hon. Ethan P. Schulman
Time: 1:30 p.m.
Place: Dept. 302

Date Action
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I. INTRODUCTION AND RELIEF REQUESTED

The People of the State of California (the People) bring this Motion for a Preliminary Injunction against Uber Technologies, Inc. (Uber) and Lyft, Inc. (Lyft) (collectively, Defendants) pursuant to section 17203 of the Unfair Competition Law and section 2750.3 of the Labor Code.

The People seek to enjoin Defendants’ unlawful misclassification of their ride-hailing drivers (Drivers) as independent contractors, as defined in the accompanying Proposed Order.¹

Defendants continue to violate the law despite the unambiguous directives of Assembly Bill 5 (2018-2019 Reg. Sess.) (A.B. 5), which the Legislature expressly declared was intended to restore “protections to potentially several million workers who have been denied [the] basic workplace rights that all employees are entitled to under the law.” (A.B. 5, § 1, subd. (e).)

Defendants cannot overcome the presumption under A.B. 5 that Drivers are their employees. Because the People are likely to succeed on the merits in this enforcement action, a presumption arises that the potential harm to the public outweighs the potential harm to Defendants. (*IT Corp. v. County of Imperial* (1983) 35 Cal.3d 63 (*IT Corp.*)). Defendants cannot meet their burden of rebutting the *IT Corp* presumption. Defendants’ misclassification deprives Drivers of workplace protections, forces law-abiding businesses to compete on an un-level playing field, and leaves the public to foot the bill for the ill-effects of Defendants’ actions. The People request that the court grant its motion for a preliminary injunction to prevent the serious ongoing harms caused by Defendants’ continued unlawful misclassification of their Drivers.

II. FACTUAL BACKGROUND

Defendants are transportation companies that offer ride-hailing services. They hire Drivers

¹ Under the Proposed Order, “Drivers” are defined as the following two categories of individuals: *First Category*: All individuals who drive for Uber as ride-hailing drivers in the State of California at any time during the pendency of this action, and who (1) signed up to drive as a ride-hailing driver directly with Uber or an Uber subsidiary under their individual name or with a fictional/corporate name and (2) are paid by Uber or an Uber subsidiary directly under their individual name or with a fictional/corporate name for their services as ride-hailing drivers. *Second Category*: All individuals who drive for Lyft as ride-hailing drivers in the State of California at any time during the pendency of this action and who (1) signed up to drive directly with Lyft or a Lyft subsidiary as ride-hailing drivers under their individual name or with a fictional/corporate name and (2) are paid by Lyft or a Lyft subsidiary directly under their individual name or with a fictional/corporate name for their services as ride-hailing drivers.

1 to provide rides to customers (Passengers). Passengers request rides via Defendants’ smartphone
2 applications (the Uber App, the Lyft App, or App). While Defendants are distinct business
3 entities and set their own policies, they operate under virtually identical ride-hailing models. For
4 the core operative facts of a misclassification analysis, any differences between these companies
5 are neither material nor determinative. Defendants have misclassified, and continue to
6 misclassify, Drivers as independent contractors instead of employees, depriving these workers of
7 social insurance, minimum wage, and other fundamental protections under California law.

8 **A. Defendants Hire, Screen, and Unilaterally Designate Drivers as**
9 **Independent Contractors.**

10 The essential requirements to be a Driver are: (1) to have an ordinary, non-commercial
11 driver’s license; (2) to have an eligible four-door passenger vehicle that is licensed, registered,
12 and insured; (3) to have a smartphone; (4) to meet a minimum age requirement; and (5) to have at
13 least one year of licensed driving experience in the United States.² Drivers must affirm that they
14 own or have the legal right to operate the vehicle in which they will transport Passengers.³
15 Defendants also prescribe which vehicles Drivers may use and their maintenance standards.⁴
16 Defendants do not require Drivers to have any professional license, specialized experience, or
17 training.⁵

18 Before being hired, Drivers must submit to a background check, and Drivers remain subject
19 to periodic background checks.⁶ Each Defendant requires Drivers to agree to standard-form
20 contracts and addenda (Driver Agreements), which unilaterally designate Drivers as independent

21 ² *Uber*: Declaration of Minsu Longiaru (Lon. Dec.), Ex. 1, §§ 2.3, 2.5(c), Ex. 2, at pp. 2-3,
22 Ex. 3; Declaration of Tammie Jean Lane (Lane Dec.) ¶ 10; Declaration of Linda Salamone
(Salam. Dec.) ¶ 4. *Lyft*: Lon. Dec., Exs. 4-6; Declaration of Edan Alva (Alva Dec.) ¶ 16.

23 ³ *Uber*: Lon. Dec., Ex. 1, § 2.5(c). *Lyft*: Lon. Dec., Ex. 7, §10(b).

24 ⁴ *Uber*: Lon. Dec., Ex. 1, § 2.5(c), Ex. 8, at p. 3 [“Vehicle Info.”] ¶2 & [“Proper Mainten.
25 & Upkeep”] ¶7, Exs. 9-11; Declaration of Luz Laguna (Lag. Dec.) ¶¶ 9, 11-12. *Lyft*: Lon. Dec.,
26 Ex. 7, § 10(b), (d), Exs. 12-14; Alva Dec. ¶ 18; Declaration of Eduardo A. Romero (Rom. Dec.) ¶
27 8.

28 ⁵ *Uber*: Lon. Dec., Ex. 2, at pp. 2-3; Declaration of Amado Alarcon (“Alar. Dec.”) ¶ 13;
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30 Dec.) ¶ 8; Declaration of Jose Funes (Fun. Dec.) ¶ 5; Lag. Dec. ¶¶ 7, 10; Lane. Dec. ¶ 10. *Lyft*:
31 Lon. Dec., Ex. 5 at p. 11; Rom. Dec. ¶ 9. *Uber/Lyft*: Salam. Dec. ¶ 5.

32 ⁶ *Uber*: Lon. Dec., Ex. 1, § 2.5(a)-(b), Ex. 8, at p. 7 (“How Uber enforces our...”), ¶ 4, Ex.
33 15. *Lyft*: Lon. Dec., Ex. 5, at pp. 5-9, Ex. 16, at pp.1-3; Alva Dec. ¶ 16. *Uber/Lyft*: Salam. Dec. ¶
34 4.

1 contractors and set the terms and conditions under which Drivers may provide rides.⁷

2 **B. Defendants Exclusively Control Passenger Fares, Fees, and Driver**
3 **Compensation.**

4 Defendants set the financial terms of all fares, including setting the amount of the ride fare,
5 and billing Passengers for the entire fare amount.⁸ After a ride ends, Passengers pay Defendants
6 through the App.⁹ Defendants retain and designate a portion of these fares as fees and
7 commissions.¹⁰ Defendants set Drivers' compensation unilaterally and pay Drivers directly.¹¹
8 Defendants also use rewards programs and financial incentives to compensate Drivers for
9 completing rides at certain times, places, and under other conditions set by Defendants.¹²
10 Defendants retain the authority to adjust or withhold part or all of a Driver's fare.¹³

11 **C. Defendants Require Drivers to Work Through their Respective Apps.**

12 Drivers can only receive ride assignments while logged into the App.¹⁴ Similarly,
13 Passengers can only request a ride through the company's App or website.¹⁵ Drivers cannot hire
14 others to drive on their App account on their behalf, nor assign their rights to use the App without
15 the Defendant's permission.¹⁶

16 ⁷ *Uber*: Lon. Dec., Ex. 1, § 1.1, Exs. 8, 20, 21, 26, 54; Chan. Dec. ¶¶ 9-11, Exs. 3, 6, 7-9;
17 Dom. Dec. ¶ 8; Fun. Dec. ¶ 5; Lag. Dec. ¶ 8; Lane Dec. ¶ 9. *Lyft*: Lon. Dec., Ex. 7, §19, Exs. 22,
28, 50, 53; Rom. Dec. ¶ 12; Declaration of James Wiest ("Wiest Dec.") ¶ 10.

18 ⁸ *Uber*: Lon. Dec., Ex. 20, § 5; Chan. Dec. ¶¶ 37-40, Exs. 13-15; Declaration of Jovaughn
19 Curry re: Uber ("Uber User Dec.") ¶ 38; Dom. Dec. ¶ 14; Lag. Dec. ¶ 22; Lane. Dec. ¶¶ 26-28.
Lyft: Lon. Dec., Ex. 7, § 4; Declaration of Jovaughn Curry re: Lyft ("Lyft User Dec.") ¶ 50; Rom.
20 Dec. ¶ 25; Wiest Dec. ¶ 28. *Uber/Lyft*: Salam. Dec. ¶ 11.

21 ⁹ *Uber*: Uber User Dec. ¶ 38. *Lyft*: Lyft User Dec. ¶ 50

22 ¹⁰ *Uber*: Lon. Dec., Ex. 21, at p. 2 ["Our Service Fees"]; Chan. Dec. ¶¶ 37, 39, Exs. 7, 13-
23 15. *Lyft*: Lon. Dec., Ex. 22, §§ 4-5.

24 ¹¹ *Uber*: Lon. Dec., Ex. 21, at pp. 1 ("Fares; Gratuity"), 2-3 ["Rider Payment" & "Limited
25 Agency"], Exs. 23-24; Alar. Dec. ¶ 28; Chan. Dec. ¶¶ 37-42, Exs. 13-15; Lag. Dec. ¶ 23; Lane
26 Dec. ¶¶ 26-28. *Lyft*: Lon. Dec., Ex. 4, at p. 7 ("How do I get paid?"), Ex. 7, § 5, Ex. 22, § 1; Alva
27 Dec. ¶¶ 42-43, 45; Rom. Dec. ¶¶ 25, 30; Wiest Dec. ¶¶ 25, 28.

28 ¹² *Uber*: Lon. Dec., Exs. 25-26; Ex. 27, at pp. 8, 169; Chan. Dec. ¶¶ 46-47, Exs. 16-20,
Salam. Dec. ¶¶ 17, 20. *Lyft*: Lon. Dec., Exs. 28-33, Ex. 34, at pp. 138-139; Alva Dec. ¶¶ 34-37.

¹³ *Uber*: Lon. Dec., Ex. 21, at p. 3 ["Adjustments; Disputes"]. *Lyft*: Lon. Dec., Ex. 22, at
p. 2, § 3 ["Payments, Adjustments and Settlement"].

¹⁴ *Uber*: Lon. Dec., Ex. 35, at pp. 1-2; Lag. Dec. ¶ 16; Salam. Dec. ¶ 14. *Lyft*: Lon. Dec.,
Ex. 36, at pp. 1-2; Alva Dec. ¶¶ 19-20; Romero Dec. ¶¶ 13, 18; Wiest Dec. ¶ 14.

¹⁵ *Uber*: Lon. Dec., Ex. 37, at p. 4 ¶ 2. *Lyft*: Lon. Dec., Ex. 38, at pp. 1-3.

¹⁶ *Uber*: Lon. Dec., Ex. 1, §§ 2.1, 2.4(a), 12.3, Ex. 8, at p. 2 ["Account Sharing"]. *Lyft*:
Lon. Dec., Ex. 7, at p. 3, § 3, ¶ 1, p. 9, § 9(k), (n).

1 Uber prohibits Passengers from requesting Drivers to deliver rides outside of its system,
2 and prohibits Drivers from contacting Passengers after a ride has been completed.¹⁷ Lyft
3 prohibits Drivers from accepting Passenger requests for rides outside of its system, and prohibits
4 Drivers from asking Passengers for their contact information.¹⁸ Both Defendants prohibit Drivers
5 from accepting street hails, soliciting Passengers to pay for fares outside of Defendants' system,
6 and having anyone other than the Passenger and the Passenger's authorized guests in the car
7 while driving for the Defendant.¹⁹

8 **D. Defendants Control the Assignment of Passengers to Drivers Through the**
9 **App.**

10 Upon receiving a ride request from a Passenger, Defendants direct a single Driver to that
11 Passenger.²⁰ Each Defendant determines which Driver is dispatched to which Passenger,
12 including, within each Defendant's discretion, whether to assign a Driver any rides at all.²¹ In the
13 App, Drivers can only "see" the Passenger they have been assigned to, not all the Passengers in
14 the area.²²

15 Defendants give Drivers approximately 15 seconds to accept or decline a ride request.²³
16 Drivers are not free to accept or decline ride requests without repercussions. For example, Uber
17 sends Drivers a notification on the App informing them that, "declining based on destination or
18 refusing too many trips may result in fewer requests."²⁴ When Uber Drivers consistently decline

19 _____
20 ¹⁷ *Uber*: Lon. Dec., Ex. 8, at pp. 2 ["Unwanted Contact"], 6 ["Street Hails & Other
Unacceptable Activities"].

21 ¹⁸ *Lyft*: Lon. Dec., Ex. 52 ¶ 3, Ex. 7, at pp. 25-26, § 18, Ex. 39, at p. 3 ["Only accept rides
through the App"]; *Wiest* Dec. ¶ 21.

22 ¹⁹ *Uber*: Lon. Dec., Ex. 8, at pp. 3 ["Extra Passengers"], 6 ["Street Hails & Other
Unacceptable Activities"]. *Lyft*: Lon. Dec., Ex. 39, at p. 3 ["Only accept rides through the App"],
23 Ex. 36, at p. 2 ["Heads Up"]; Ex. 7, at p. 10, § 10(c).

24 ²⁰ *Uber*: Lon. Dec., Ex. 35, at p. 2, Ex. 40, at pp. 2-3, Ex. 41; Chan. Dec. Ex. 10; Lane
Dec. ¶ 24; *Uber* User Dec. ¶ 22. *Lyft*: Lon. Dec., Ex. 36, at pp. 2-3; *Wiest* Dec. ¶ 13; *Lyft* User
Dec. ¶¶ 31-32.

25 ²¹ *Uber*: Lon. Dec., Ex. 1, at p. 4, § 2.6(a), p. 9, § 6.4, Ex. 40 ¶¶ 2-3; Chan. Dec. Ex. 10.
Lyft: Lon. Dec., Ex. 7, at p. 2, § 1, p. 13, § 12, ¶¶ 2-4.

26 ²² *Uber*: Chan. Dec. ¶ 28, Ex. 10; Lag. Dec. ¶ 15; Lane Dec. ¶¶ 21, 24; Salam. Dec. ¶ 14.
Lyft: Alva Dec. ¶ 39; *Wiest* Dec. ¶ 13.

27 ²³ *Uber*: Lon. Dec., Ex. 41, p. 1; Chan. Dec. ¶ 25; Ala. Dec. ¶ 21; Lane Dec. ¶ 21. *Lyft*:
Lon. Dec., Ex. 36, at p. 3; Alva Dec. ¶ 39; Rom. Dec. ¶ 16.

28 ²⁴ *Uber*: Chan. Dec. ¶ 34, Ex. 11.

1 consecutive ride requests, Uber may temporarily log them out of the App.²⁵ Lyft Drivers who do
2 the same have lowered Acceptance Rates, which can result in losing access to certain App
3 features.²⁶ For example, Lyft Drivers must maintain a 90% Acceptance Rate to see a Passenger’s
4 destination information before accepting a ride.²⁷ For both companies, Drivers who persistently
5 cancel ride requests after accepting them risk deactivation (i.e. termination).²⁸

6 **E. Defendants Monitor, Discipline, and Terminate Drivers.**

7 After a Driver accepts a ride request, Defendants track the Driver’s location and provide
8 Passengers with the Driver’s estimated arrival time.²⁹ Drivers can be penalized if Defendants
9 determine they chose an inefficient route.³⁰ Defendants also instruct Drivers on how to interact
10 with Passengers, including appropriate topics of conversation (e.g., “Don’t comment on
11 appearance” (Uber) or “If your passenger does feel like talking, stick to neutral topics” (Lyft)).³¹
12 Defendants impose broad customer service standards, like treating Passengers with respect.³²

13 Drivers must notify Defendants, through their Apps, of: (1) acceptance of the Passenger’s
14 trip request, (2) arrival at the pick-up location, and (3) start and end of the trip.³³ Defendants also
15 monitor Drivers’ location, braking and acceleration, Passenger communications (such as text
16 messages and calls), and other user-generated data.³⁴ Defendants use this data for supervisory

17 _____
18 ²⁵ *Uber*: Lon. Dec., Ex. 8, at p. 7 ¶ 1 [“Delivery, Order, & Trip Acceptance”]; Chan. Dec.
¶ 34, Exs. 11-12.

19 ²⁶ *Lyft*: Lon. Dec., Ex. 42, at pp. 1, 3.

20 ²⁷ *Lyft*: Lon. Dec., Ex. 43, at p. 6 [“Gold”]; Alva Dec. ¶¶ 39-40; Rom. Dec. ¶ 15.

21 ²⁸ *Uber*: Lon. Dec., Exs. 44-45. *Lyft*: Lon. Dec., Ex. 7, p. 17, § 16(2); Ex. 46, p. 3 ¶ 1
22 [“Cancellation Policy”].

23 ²⁹ *Uber*: Lon. Dec., Ex. 1, § 2.10(a), Ex. 37, p. 3 [“Meet your driver”], Ex. 47 ¶ 5. *Lyft*:
24 Lon. Dec., Ex. 48, at p. 1, Ex. 49, at p. 2 [“Getting to the passenger”], Ex. 50, at p. 3, § 2.B
25 [“Location Information/Drivers”].

26 ³⁰ *Uber*: Lon. Dec., Ex. 8, at p. 6 [“Fraud”] ¶ 2, Ex. 51b. *Lyft*: Lon. Dec., Ex. 22, at p. 2 ¶
27 3.

28 ³¹ *Uber*: Lon. Dec., Ex. 8, at p. 2 [“Sexual Assault”] ¶ 2, Item 2. *Lyft*: Lon. Dec., Ex. 52
¶¶ 2, 9.

³² *Uber*: Lon. Dec., Ex. 8, at p. 1 [“Treat Everyone with Respect”]; p. 2 [“Threatening &
Rude Behavior”]. *Lyft*: Lon. Dec., Ex. 53, at p. 2 [“Be Respectful”]; Wiest Dec. ¶ 23; Rom. Dec.
¶ 21.

³³ *Uber*: Lon. Dec. Ex. 35, at pp. 2-3; Salam. Dec. ¶ 14; Dom Dec. ¶ 13. *Lyft*: Lon. Dec.,
Ex. 36, p. 2; Wiest Dec. ¶¶ 14, 16.

³⁴ *Uber*: Lon. Dec., Ex. 54, at p. 3, § III.A.2 ¶ 1 [“Location data”], 4, § III.A.2 ¶ 4
[“Communications data”], 5, § III.B.2, ¶ 2 [“unsafe driving”], Ex. 55; Lag. Dec. ¶ 21. *Lyft*: Lon.
Dec., Ex. 50, at p. 3, § 2.B [“Location Information”], pp. 3-4, § 2.B [“Device Info.”], p. 4, § 2.B

1 purposes, such as investigating, disciplining, and terminating Drivers.³⁵

2 Defendants monitor Drivers by prompting Passengers to answer questions, provide
3 feedback, and rate Drivers on a scale of one to five stars after the completion of every ride.³⁶

4 These ratings are to Defendants' benefit, as they use them to manage their Drivers. Defendants
5 unilaterally set acceptable average performance ratings, which Drivers must maintain or face
6 discipline, suspension, or termination.³⁷

7 Defendants handle and investigate Passenger complaints.³⁸ During investigations into
8 complaints, Defendants can unilaterally suspend Drivers from the App.³⁹ Defendants can also
9 discipline Drivers, including by deducting pay.⁴⁰ Finally, Defendants retain the right to terminate
10 Drivers without notice for low ratings, disrespectful conduct, unsafe driving, or any other action
11 the companies deem inconsistent with their policies, which they set at their discretion.⁴¹

12 **F. By Misclassifying their Drivers as Independent Contractors, Defendants**
13 **Deprive Drivers of Critical Protections Under California Law.**

14 Defendants do not guarantee Drivers a minimum wage for all hours worked under state

15 _____
16 ["Communications Between Riders & Drivers"].

17 ³⁵ *Uber*: Lon. Dec., Ex. 54, at p. 5, §§ III.B.1-2, p. 6, § III.B.3, pp. 6-7, § III.B.9. *Lyft*:
18 Lon. Dec., Ex. 50, at p. 6, § 3 ["Providing the Lyft Platform," "Security & Safety," "Customer
19 Support"]; Wiest Dec. ¶ 24.

20 ³⁶ *Uber*: Lon. Dec., Ex. 1, at pp. 5-6, § 2.9, Ex. 8, at p. 6 ["Ratings"], Ex. 56; Chan. Dec.,
21 Ex. 21 ["Compliments"], Exs. 22-23 ["Ratings"]. *Lyft*: Lon. Dec., Exs. 57-58; Alva Dec. ¶ 30.

22 ³⁷ *Uber*: Lon. Dec., Ex. 1, at pp. 5-6, § 2.9, Ex. 8, at pp. 6-7 ["Ratings"], Ex. 56, at p. 2
23 ["Ratings Are Important"]; Lag. Dec. ¶ 19. *Lyft*: Lon. Dec., Ex. 7, at § 16(b)(2), Ex. 53, at p. 4
24 ["To Keep Your Lyft Account in Good Standing"], Ex. 57, at p. 2 ["Defining a Good Rating"];
25 Alva Dec. ¶ 32.

26 ³⁸ *Uber*: Lon. Dec., Ex. 51. *Lyft*: Lon. Dec., Ex. 59.

27 ³⁹ *Uber*: Lon. Dec., Ex. 8, at p. 7 ["How Uber enforces our guidelines"]. *Lyft*: Lon. Dec.,
28 Ex. 7, at p. 17, § 16(3), Ex. 60, at p. 4 ¶ 4.

⁴⁰ *Uber*: Lon. Dec., Ex. 21, at p. 3 ["Adjustments; Disputes"]. *Lyft*: Lon. Dec., Ex. 22, at
p. 2, § 3 ["Lyft reserves the right to adjust or withhold..."].

⁴¹ *Uber*: Lon. Dec., Ex. 1, at p. 1 ¶ 3 [Platform Access Agreement, incorporating
requirements of Community Guidelines (Lon. Ex. 8)], p. 8, § 5.3 ["Deactivation"], Ex. 8
[Community Guidelines describing grounds on which Uber Drivers can be deactivated, including
but not limited to, low ratings (p. 6, "Ratings"), disrespectful conduct (p. 1, "Treat Everyone with
Respect"), unsafe driving (p. 3, "Be Alert," p. 5 "Follow All Laws"), and other conduct (p. 1, ¶ 2,
"[T]here will always be unforeseen events..."); Ala. Dec. ¶¶ 24-26; Chan. Dec., Ex. 25
["Multiple Reports Can Lead to Deactivation"]; Salam. Dec. ¶ 22; Lag. Dec. ¶¶ 19, 20, 27. *Lyft*:
Lon. Dec., Ex. 7, at § 9 ["Restricted Activities"], § 10 ["Driver Representations, Warranties, and
Agreements"], § 16 ["Term and Termination"], Ex. 53, at pp. 1, 3, 4; Alva Dec. ¶¶ 31-32;
Romero Dec. ¶¶ 22-23; Wiest Dec. ¶ 24.

1 and local laws; instead, for a given trip, Drivers earn a base fare plus per-minute and per-distance
2 rates for the time and distance from pickup to drop-off.⁴² Drivers can earn extra money from
3 “incentives” offered by Defendants (e.g., “earn \$30 extra for completing 20 trips this week”).⁴³
4 Defendants do not compensate Drivers for any time other than that spent ferrying Passengers to
5 their destinations, such as time spent refueling, cleaning, and maintaining their vehicles; driving
6 to and returning from rides; driving to “high demand areas”; and monitoring Defendants’ App for
7 ride requests.⁴⁴ Defendants do not compensate Drivers for overtime.⁴⁵

8 Defendants do not reimburse Drivers for expenses necessary to perform their work.⁴⁶
9 Drivers bear the expense of providing a smart phone and a passenger vehicle.⁴⁷ Drivers are not
10 reimbursed for other expenses, such as car registration, insurance, gas, maintenance, parking fees,
11 and smart phone data usage.⁴⁸ Defendants do not offer paid rest breaks or overtime pay despite
12 encouraging Drivers to work longer hours.⁴⁹ They also do not provide Drivers with, *inter alia*,
13 workers’ compensation coverage or paid sick days as required for employees under state and
14 local law.⁵⁰ Because Defendants insist on misclassifying their Drivers as independent

15 _____
16 ⁴² *Uber*: Lon. Dec., Ex. 21, at pp. 1-2 [“Fares; Gratuity,”] ¶ 1, Ex. 61, at p. 2 [“Standard
Trip Fare”]. *Lyft*: Lon. Dec., Ex. 22, p. 1 [“Driver Fare”] ¶ 1, Ex. 62, at p. 3, ¶ 3 [“Lyft ride fare
includes”].

17 ⁴³ *Uber*: Chan. Dec. ¶¶ 46, 47, Exs. 16-20; Dom. Dec. ¶¶ 18-19; Fun. Dec. ¶¶ 20-21; Lane
18 Dec. ¶¶ 30-31. *Lyft*: Alva Dec. ¶¶ 34-36; Rom. Dec. ¶¶ 27-29; Wiest Dec. ¶ 20; Lon. Dec., Ex.
19 23, pp. 2, 4, Ex. 25 [“How do driver promotions work?”], Ex. 28 [Lyft Driver Rewards Terms
and Conditions], Ex. 43 [Lyft Rewards]. See also *supra*, fn. 11.

20 ⁴⁴ *Uber*: Alar. Dec. ¶ 20; Chan. Dec. ¶¶ 29, 48; Dom. Dec. ¶ 11; Lag. Dec. ¶¶ 13, 26; Lane
21 Dec. ¶¶ 23, 33. *Lyft*: Lon. Dec., Ex. 63, at p. 13 [“Why does my pay fluctuate?”]; Alva Dec. ¶
22 36; Wiest Dec. ¶¶ 11, 18, 22. *Uber/Lyft*: Rom Dec. ¶¶ 32-33; Salam. Dec. ¶¶ 16, 18, 25. See also
23 *supra*, fn. 42.

24 ⁴⁵ *Uber*: Alar. Dec. ¶ 31; Chan. Dec. ¶ 45; Dom. Dec. ¶¶ 3, 11; Fun. Dec. ¶ 12. *Lyft*:
25 Salam. Dec. ¶ 13; Wiest. Dec. ¶ 26.

26 ⁴⁶ *Uber*: Lon. Dec., Ex. 1, at p. 3, § 2.3; Fun. Dec. ¶ 12; Lane Dec. ¶ 32. *Lyft*: Lon. Dec.,
27 Ex. 7, at p. 16, § 14(4); Alva Dec. ¶¶ 27-28; Rom. Dec. ¶ 31; Wiest Dec. ¶ 19.

28 ⁴⁷ *Uber*: Alar. Dec. ¶ 34. *Lyft*: Alva Dec. ¶¶ 26-28; Wiest Dec. ¶ 19; Rom. Dec. ¶ 31.
Uber/Lyft: Salam. Dec. ¶ 25.

⁴⁸ *Uber*: Alar. Dec. ¶ 14 ; Chan. Dec. ¶ 16; Fun. Dec. ¶ 12; Lane Dec. ¶¶ 32, 37; Dom.
Dec. ¶ 11. *Lyft*: Alva Dec. ¶¶ 26-28; Rom. Dec. ¶ 31; Wiest Dec. ¶ 19. *Uber/Lyft*: Salam. Dec.
¶ 25.

⁴⁹ *Uber*: Alar. Dec. ¶¶ 31-32; Chan. Dec. ¶¶ 44-45; Dom. Dec. ¶ 11; Fun. Dec. ¶ 12; Lag.
Dec. ¶¶ 25-26; Lane Dec. ¶ 29. *Lyft*: Rom. Dec. ¶ 34; Wiest Dec. ¶¶ 26, 27. *Uber/Lyft*: Salam.
Dec. ¶¶ 13, 24.

⁵⁰ *Uber*: Lon. Dec., Ex. 1, at p. 7, § 3.3, Ex. 64; Alar. Dec. ¶¶ 35-37; Lane Dec. ¶ 37;
Dom. Dec. ¶ 11. *Lyft*: Lon. Dec., Ex. 65; Rom. Dec. ¶ 36.

1 contractors, they do not comply with state payroll obligations applicable to employers. For
2 example, they do not transmit state Unemployment Insurance Fund or Disability Fund
3 contributions.⁵¹

4 III. ARGUMENT

5 Here, the People seek a preliminary injunction to halt Defendants' unlawful
6 misclassification of their Drivers under A.B. 5 and California's Unfair Competition Law (UCL)
7 (Bus. & Prof. Code, § 17200, *et seq.*),⁵² both of which specifically authorize injunctive relief.
8 (See Bus. & Prof. Code, § 17203; Lab. Code § 2750.3, subd. (j).) Because the People are
9 government entities seeking a preliminary injunction to enjoin violation of a statute that
10 authorizes injunctive relief, the People's request is governed by the standard set forth by the
11 California Supreme Court in *IT Corp*, *supra*, 35 Cal.3d 63.

12 Under *IT Corp*, "the second traditional [preliminary injunction] factor of weighing the
13 relative harm to the parties usually does not apply." (*People ex rel. Brown v. Black Hawk*
14 *Tobacco, Inc.* (2011) 197 Cal.App.4th 1561, 1571 (*Black Hawk*) [applying the *IT Corp* standard
15 to UCL claim].) Upon establishing a reasonable likelihood of prevailing on the merits, "a
16 rebuttable presumption arises that the potential harm to the public outweighs the potential harm to
17 the defendant." (*Ibid.*) The rationale is straightforward. "Where a legislative body has enacted a
18 statutory provision proscribing a certain activity, it has already determined that such activity is
19 contrary to the public interest." (*IT Corp*, *supra*, 35 Cal.3d at p. 70.)

20 The People are entitled to a preliminary injunction prohibiting Defendants from continuing
21 to unlawfully misclassify their Drivers as independent contractors because: (1) the People are
22 likely to prevail on the merits and, therefore, a rebuttable presumption arises that harm to the
23 public outweighs potential harm to Defendants; (2) Defendants cannot demonstrate irreparable or
24

25 ⁵¹ *Uber*: Lane Dec. ¶ 39; Dom. Dec. ¶5. *Lyft*: Rom. Dec. ¶ 38; Alva Dec. ¶ 14.

26 ⁵² "Unfair competition" means and includes "any unlawful, unfair or fraudulent business
27 act or practice" (Bus. & Prof. Code, § 17200). By proscribing "any unlawful" business
28 practice, "section 17200 'borrows' violations of other laws and treats them as unlawful practices"
that the unfair competition law makes independently actionable. (*State Farm Fire & Casualty Co.*
v. Superior Court (1996) 45 Cal.App.4th 1093, 1103.)

1 grave harm; and (3) even if, *arguendo*, Defendants could demonstrate such harm, the injunction
2 should still issue. (*IT Corp, supra*, 35 Cal.3d at p.72.)

3 **A. The People have a Strong Likelihood of Success on the Merits because**
4 **Uber and Lyft Cannot Meet the ABC Test.**

5 California applies the ABC test to determine when workers must be classified as employees
6 for purposes of the state’s wage and hour laws, workplace safety laws, anti-retaliation laws,
7 workers’ compensation laws, unemployment insurance laws, and state disability insurance and
8 family leave laws. (Lab. Code § 2750.3, subd. (a)(1); Unemp. Ins. Code §§ 606.5, 621.) The test
9 is rooted in the California Supreme Court’s landmark decision in *Dynamex Operations W., Inc. v.*
10 *Superior Court* (2018) 4 Cal.5th 903, 952, 956–57 (*Dynamex*), which adopted the ABC test as an
11 interpretation of the “very broad definition” of an employee under the “suffer or permit to work”
12 standard in California’s Industrial Wage Orders. In A.B. 5, the California Legislature codified
13 the *Dynamex* decision and clarified the test’s application to a wide range of California
14 employment laws. (A.B. 5, § 1, subd. (d).)

15 Under the ABC test, a worker is an employee and not an independent contractor, *unless* the
16 hiring entity meets its burden of satisfying each of the following three conditions: (A) the worker
17 is free from the control and direction of the hiring entity in connection with the performance of
18 the work, both under the contract for the performance of the work and in fact; (B) the worker
19 performs work that is outside the usual course of the hiring entity’s business; and (C) the worker
20 is customarily engaged in an independently established trade, occupation, or business of the same
21 nature as that involved in the work performed. (Lab. Code § 2750.3, subd. (a)(1); see generally
22 *Dynamex, supra*, 4 Cal.5th at pp. 956-957.)

23 “It bears emphasis that in order to establish that a worker is an independent contractor
24 under the ABC standard, the hiring entity is required to establish the existence of each of the three
25 parts of the ABC standard.” (*Dynamex, supra*, 4 Cal.5th at 963.) Neither Uber nor Lyft can
26 satisfy *any* part —much less all three parts—of the ABC test. Each Defendant employs Drivers
27 who perform work in the usual course of its business. Each Defendant exercises control over its
28 Drivers in the performance of their work. And Drivers do not operate independent businesses of

1 their own. Because Drivers are presumptively employees, and because Defendants cannot rebut
2 this presumption, the merits weigh heavily in favor of the People.

3 **1. Defendants fail Part B of the ABC test because Drivers perform work**
4 **within Defendants’ usual course of business.**

5 Under Part B, “all individuals who can reasonably be viewed as working ‘in the hiring
6 entity’s business [citation]” are employees of that business. (See *Dynamex, supra*, 4 Cal. 5th at p.
7 959, emphasis in original.) To classify Drivers as independent contractors, Uber and Lyft bear
8 the burden of showing that their Drivers perform work that is outside the usual course of their
9 business. (Lab. Code § 2750.3, subd. (a)(1)(B); *Dynamex, supra*, 4 Cal.5th at pp. 959-961.)
10 Defendants, which operate with substantially similar business models, cannot meet this burden.

11 Other courts have already recognized this. A California district court judge, analyzing Part
12 B, recently noted: “[D]rivers provide services that are squarely within the usual course of the
13 company’s business and Lyft’s argument to the contrary is frivolous.” (*Rogers v. Lyft* (N.D. Cal.
14 Apr. 7, 2020) No. 20-CV-01938-VC, 2020 WL 1684151, at *2 (*Rogers*)). Similarly, a
15 Massachusetts district court judge found under Part B that a group of Lyft-driver Plaintiffs “have
16 a substantial likelihood of success on the merits of their misclassification claim” because “the
17 realities of Lyft’s business ... encompass[] the transportation of riders” and Drivers perform
18 services “necessary to the business” of Lyft. (*Cunningham v. Lyft* (D. Mass. May 22, 2020) No.
19 1:19-CV-11974-IT, 2020 WL 2616302, at *10, 12 (*Cunningham*)). In determining whether
20 Drivers perform work outside the usual course of Defendants’ business, a court must first define
21 Defendants’ usual course of business.

22 **a. Uber and Lyft are transportation companies in the business of**
23 **providing rides.**

24 The plain facts compel the conclusion that Defendants’ “usual course” of business is
25 providing rides to Passengers. Simply put, Defendants sell rides. Passengers contact Defendants
26 to get rides. Passengers book and pay for rides through each Defendant’s App. Rides are what
27 Passengers pay the ride-hailing companies for, and providing rides is what the Defendants do.
28

1 Uber and Lyft attempt to avoid this reality by selectively characterizing themselves as
2 “technology companies” or “software platforms.” This self-serving argument lacks merit and has
3 been rejected by a growing litany of courts. (See, e.g., *Rogers, supra*, 2020 WL 1684151, at *2
4 “[R]ather than comply with a clear legal obligation (under Part B) companies like Lyft are
5 thumbing their noses at the California Legislature”]; *Cunningham, supra*, 2020 WL
6 2616302, at * 10 [“The ‘realities’ of Lyft’s business are no more merely ‘connecting’ riders and
7 drivers than a . . . car repair shop’s business is merely connecting car owners and mechanics.”];
8 *Cotter v. Lyft* (N.D. Cal. 2015) 60 F.Supp.3d 1067, 1078 [“[T]he argument that Lyft is merely a
9 platform . . . is not a serious one”]; *Namismak v. Uber Technologies, Inc.* (N.D. Cal. Mar. 13,
10 2020) No. 17-cv-6124-RS, 2020 WL 1283484, at *4 [“Uber’s claim that it is ‘not a transportation
11 company’ strains credulity”]; *O’Connor v. Uber Technologies, Inc.* (N.D. Cal. 2015) 82 F.
12 Supp. 3d 1133, 1144 (*O’Connor*) [“Uber is no more a ‘technology company’ than Yellow Cab is
13 a ‘technology company’ because it uses CB radios to dispatch taxi cabs”].)

14 When marketing to Passengers—and seeking to sell their services—Uber and Lyft
15 accurately market themselves as transportation companies. They promise Passengers “Rides on
16 Demand” (Uber) and Passengers wishing to use their services click a button that states, “Get a
17 Ride” (Lyft). (*Uber*: Lon. Dec., Ex. 66, at p. 3. *Lyft*: *id.*, Exs. 67, 68, at pp. 1-2 [“Get a ride
18 whenever you need one” “get picked up, on demand, in minutes.”].) In earlier years, when Uber
19 and Lyft were familiarizing the public with their services, Uber trademarked the slogan,
20 “Everyone’s Private Driver” and Lyft trademarked the slogan, “Your Friend with a Car.” (*Uber*:
21 *id.*, Ex. 69; *Lyft*: *id.*, Ex. 70.) Uber and Lyft continue to hold themselves out to the general
22 public as transportation services. (*Uber*: *id.*, Ex. 71 [stating the company is “giving riders a way
23 to get from point A to point B”]; *Lyft*: *id.*, Ex. 72, at p. 2 ¶¶ 2-3 [describing itself as “the world’s
24 best transportation” and planning to lead and create “the next generation of transportation
25 services”].)

26 Uber and Lyft’s business models are founded on the rides they sell. Uber and Lyft generate
27 revenues by fees, derived from selling rides to Passengers provided by their Drivers. Uber and
28 Lyft do not hide their financial dependence on Drivers. Each company’s 2019 Initial Public

1 Offering prospectus describes Drivers as the lifeblood of their business strategy. Lyft’s
2 prospectus identifies a “key factor” affecting its business performance as “maintaining an ample
3 number of drivers to meet rider demand,” while Uber’s prospectus warns that “[a]ny decline in
4 the number of Drivers . . . would reduce the value of our network and would harm our future
5 operating results.” (*Lyft*: Lon. Dec., Ex. 34, at pp. 87-88. *Uber*: *Id.*, Ex. 27, at p. 30.) The facts
6 are clear: Uber and Lyft do not sell software, they sell rides, and are clearly in the business of
7 transportation.

8 **b. Drivers provide the rides that Uber and Lyft sell.**

9 Having established that Defendants’ usual course of business is to sell on-demand rides, it
10 is evident that Drivers perform the core service of that business. Under Part B, workers perform
11 work within the company’s usual course of business if their services are “not ‘merely incidental
12 to’ [the hiring entity’s] business, but rather, [are] an ‘integral part of’ that business [citation].”
13 (*Gonzales v. San Gabriel Transit, Inc.* (2019) 40 Cal.App.5th 1131, 1155.)

14 For example, as the *Dynamex* Court noted, if “a retail store hires an outside plumber to
15 repair a leak in a bathroom on its premises or hires an outside electrician to install a new electrical
16 line, the services of the plumber or electrician are not part of the store’s usual course of business.”
17 (*Dynamex, supra*, 4 Cal.5th at 959.) In contrast, the *Dynamex* court found that “when a bakery
18 hires cake decorators to work on a regular basis on its custom-designed cakes,” or “when a
19 clothing manufacturing company hires work-at-home seamstresses” to produce dresses based on
20 cloth and patterns supplied by the company, the workers are part of the hiring entity’s usual
21 business operation. (*Id.*, at pp. 959-960.) Here, just like the workers who decorate the cakes sold
22 by a bakery, or the seamstresses who sew dresses to be later sold by a clothing company, Drivers
23 perform driving services to provide what Defendants sell—an on-demand ride.

24 And just like the cake decorators and seamstresses were integrated into the businesses of
25 their employer, so too are Drivers integrated into the transportation businesses of Defendants.
26 Indeed, what allows Defendants to generate the service they sell—a branded, on-demand ride in
27 minutes—is Defendants’ thorough administration of Drivers’ labor. Far from mere platforms,
28 dispatch services, or neutral intermediaries that incidentally “match” or coordinate Drivers and

1 Passengers, Defendants select and qualify Drivers, monitor and enforce performance standards,
2 handle customer complaints, match Drivers and Passengers, and set all the terms and conditions,
3 including the financial terms, of a ride. (See *supra*, at pp. 13-17; *Dynamex, supra*, 4 Cal.5th at p.
4 903, fn. 29, citing *Appeal of Niadni, Inc.* (N.H. 2014) 166 N.H. 256, 262 [finding musician’s
5 services were within the usual course of a resort’s business where the resort “does not merely
6 coordinate entertainment” but regularly hosts performances, maintains amenities to facilitate
7 entertainment, and advertises upcoming performances].)

8 Simply put, Defendants’ ride-hailing business would not exist without Drivers providing
9 the rides. Drivers clearly perform work within Defendants’ usual course of business and
10 Defendants fail Part B. Defendants’ failure to satisfy one requirement of the ABC test, on its
11 own, shows a substantial likelihood that the People will prevail on the merits at trial. (*Dynamex*,
12 *supra*, 4 Cal.5th at p. 964.) This can and should end the inquiry. Nonetheless, Defendants also
13 fail to satisfy Parts A and C of the ABC test.

14
15 **2. Defendants fail Part A of the ABC test because they exercise control
 over Drivers’ performance of their work.**

16 Part A considers whether the “worker is free from the control and direction of the hiring
17 entity in the performance of the work, both under the contract for the performance of the work
18 and in fact.” (*Dynamex, supra*, 4 Cal.5th at p. 958; Lab. Code § 2750.3, subd. (a)(1)(A).)
19 Significantly, “a business need not control the precise manner or details of the work” in order to
20 be found an employer under Part A. (*Dynamex, supra*, 4 Cal.5th at p. 958.)⁵³ Instead, a business
21 need only to maintain “all necessary control” over its putative employees. (*Ibid.*) Defendants
22 exercise such control here.

23 Here, the inquiry centers on the degree of control Defendants exert while Drivers are on-
24 duty. The fact that Drivers may ostensibly choose when to log on and off the App does not
25 preclude employee status. *Dynamex* drives this point home. The Court cites with approval a

26 ⁵³ *Dynamex* invokes the *Borello* test in explaining the level of “necessary control” that a
27 business must exercise to be found an employer under Part A. (*Dynamex, supra*, 4 Cal.5th at p.
28 958, citing *S.G. Borello & Sons, Inc. v. Dept. of Indus. Rel.* (1989) 48 Cal.3d 341, 356-357
(*Borello*)). Apart from *Dynamex*, all the California cases cited in this section, III.A.2, were
decided under the *Borello* standard.

1 Vermont Supreme Court case in which a clothing manufacturer that provided patterns and yarn to
2 at-home workers to sew its clothes exercised sufficient control to be an employer under Part A,
3 even though the workers worked on their own machines, at their own pace, and on days and times
4 of their own choosing. (*Dynamex, supra*, 4 Cal.5th at p. 958, fn. 27, citing *Fleece on Earth v.*
5 *Dept. of Employment and Training* (Vt. 2007) 923 A.2d 594.) The Vermont Supreme Court
6 explained: “To reduce part A of the ABC test to a matter of what time of day and in whose chair
7 the knitter sits when the product is produced ignores the protective purpose of the [applicable]
8 law.” (*Ibid.*)

9 These principles apply with particular force to the transportation industry. A line of
10 California cases establishes that even when drivers determine their own schedules, the businesses
11 can still exercise all necessary control, and thus the businesses fail Part A. (See, e.g., *Air*
12 *Couriers Internat. v. Employment Development Dept.* (2007) 150 Cal.App.4th 923, 926, 939
13 [finding drivers were employees as a matter of law despite the fact that “drivers determined their
14 own schedules”]; *JKH Enterprises, Inc. v. Dept. of Indus. Relations* (2006) 142 Cal.App.4th
15 1046, 1051, 1064-1065 (*JKH*) [finding that drivers were employees as a matter of law despite the
16 fact they were “not required to work either at all or on any particular schedule”]; accord, *Olson v.*
17 *California* (C.D. Cal., Feb. 10, 2020) No. 2:19-cv-10956, 2020 WL 905572 at *14 [noting that
18 “even if AB 5 enforcement actions require reclassification of gig economy drivers, Company
19 Plaintiffs [including Uber] could still offer [drivers] flexibility and freedom while treating them as
20 employees.”].)

21 New York’s highest appellate court recently applied a similar line of reasoning to find that
22 gig economy couriers for Postmates, who had “some independence to choose their work schedule
23 and delivery route,” were nonetheless misclassified as independent contractors under New York
24 State’s “right to control” test. (See *Matter of Vega* (N.Y., Mar. 26, 2020, No. 13) 2020 WL
25 1452612 at *3.) The Court emphasized that while couriers are on duty, Postmates exerts
26 “complete control over the means by which it obtains customers, how the customer is connected
27 to the delivery person, and whether and how its couriers are compensated.” (*Ibid.*)
28

1 Here too, when Drivers are on-duty, there is no question that Defendants exercise all
2 necessary control. Drivers’ essential duties are to drive Passengers from Point A to Point B in a
3 four-door car with an ordinary, non-commercial driver’s license. (See *supra*, at p. 13:9-17.) Like
4 the taxi drivers in *Yellow Cab*, to any extent that the Drivers here retain any independence in
5 performing the work, that independence is “inherent in the work and was not the product of any
6 specialized skill or expertise.” (See *Yellow Cab Cooperative, Inc. v. Workers’ Comp. Appeals*
7 *Bd.* (1991) 226 Cal.App.3d 1288, 1299 (*Yellow Cab*)). Where, as here, no specialized skills are
8 required, the level of “necessary control” that a hiring entity must exercise to be deemed an
9 employer is diminished. (*Borello, supra*, 48 Cal.3d at pp. 356-357.)

10 By obtaining clients in need of a service and supplying the workers to provide it, a hiring
11 entity “retain[s] all necessary control over the operation as a whole,” and thereby over its
12 workers. (See *JKH, supra*, 142 Cal.App.4th at p.1064 [applying this rationale in determining that
13 delivery drivers were employees].) Here, Defendants obtain Passengers who book rides through
14 the App. (See *supra*, at pp. 14:11-13, 15:9-11.) They unilaterally set Passenger fares, determine
15 Driver payment formulas, and handle billing. (*Id.* at p. 14:3-10.) They control the assignment of
16 Drivers to Passengers. (*Id.* at p. 15:9-11.) They decide which Drivers have access to which ride
17 requests, from which Passengers, and when. (*Id.* at p. 15:10-13.)

18 That Defendants exercise all necessary control is manifest not only in their control over
19 their operations, but also in their control over Drivers. Defendants’ five-star rating system, in
20 which Passengers monitor Drivers for compliance with customer service standards, and their
21 App’ continuous tracking of Drivers’ location and estimated arrival time, all ensure that Drivers
22 deliver services timely and in accordance with Defendants’ customer service standards. (See
23 *supra*, at p. 16:7-11, 17:2-6.) Indeed, “[t]his level of monitoring, where drivers are potentially
24 observable at all times” arguably gives Defendants “a tremendous amount of control over the
25 ‘manner and means’ of its drivers’ performance” —one that far exceeds the control exerted by
26 many employers in more traditional settings. (See *O’Connor, supra*, 82 F.Supp.3d at pp. 1151-
27 1152; cf. *JKH, supra*, 142 Cal.App.4th at p. 1052, 1064 [finding delivery drivers were employees
28 despite employer only having “a vague idea of where its ... drivers are during the business day”].)

1 Defendants also exert all necessary control over Drivers through the omnipresent threat of
2 termination for myriad reasons — low Passenger ratings, reports of disrespectful conduct, unsafe
3 driving, or any other action Defendants deem inconsistent with their policies. (See *supra*, at p.
4 17:2-11; *Borello, supra*, 48 Cal.3d at p. 350 [noting that employer’s “right to discharge at will,
5 without cause” is “strong evidence in support of an employment relationship”].) Defendants’
6 authority, which includes the power to terminate Drivers for non-compliance with broad
7 standards like “Be Safe,” “Be Respectful,” and “Be Helpful,” (*Lyft*: Lon. Dec., Ex. 53, at p. 2),
8 and “Treat Everyone With Respect” and “Help Keep One Another Safe” (*Uber: id.*, Ex. 8, at p.
9 1), fits squarely within Defendants’ right of control. (See *Alexander v. Fed Ex* (9th. Cir. 2014)
10 765 F.3d 981, 990 [agreement that required drivers to comply with “standards of service”
11 including broad requirements to “[f]oster the professional image and good reputation” of the
12 company and conduct business activities with “proper decorum” supported right to control].)

13 Far from being a hands-off dispatch service, Defendants’ policies and conduct reveal “an
14 obvious interest in the drivers’ performance *as drivers*.” (*Yellow Cab, supra*, 226 Cal.App.3d at p.
15 1299, emphasis in original.) The threat of termination, Drivers’ lack of specialized skills, the
16 control Defendants exercise over their ride-hailing operations, and the direct and indirect controls
17 Defendants exert over their Drivers, all point to the conclusion that Uber and Lyft cannot prove
18 that Drivers are free from their control under Part A.

19 **3. Defendants fail Part C of the ABC test because Drivers are not**
20 **customarily engaged in an independently established trade,**
21 **occupation, or business.**

22 To satisfy Part C, a hiring entity must prove that the worker “is customarily engaged in an
23 independently established trade, occupation, or business of the same nature as that involved in the
24 work performed” for the putative employer. (Lab. Code, § 2750.3, subd. (a)(1)(C).) Critically,
25 Part C requires “that the worker is *engaged* in an independent business, not that he or she *could*
26 *have* become so engaged.” (*Garcia v. Border Transportation Group, LLC* (2018) 28 Cal.App.5th
27 558, 570 (emphasis in original) (*Garcia*).) Here, a Driver is simply someone with access to a
28 passenger vehicle and smartphone. To drive for Defendants, a Driver must download an App and
“as a condition of hiring, [] enter into a contract that designates [him or her] an independent

1 contractor.” (*Dynamex, supra*, 4 Cal.5th at p. 962; see *supra* at p. 13:18-14:1.) Such Drivers
2 have not “independently made the decision to go into business for [themselves].” (*Dynamex,*
3 *supra*, 4 Cal.5th at p. 962.) Defendants cannot meet their burden to establish otherwise.

4 Defendants may contend that driving for multiple ride-hailing companies turns Drivers into
5 independent contractors. This argument misconstrues Part C. Part C requires more than
6 “show[ing] that [] individuals are free to engage in similar activities for others or work as
7 employees for others.” (*Garcia, supra*, 28 Cal.App.5th at pp. 573–574, quoting *Midwest*
8 *Property Recovery, Inc. v. Job Service of North Dakota* (N.D. 1991) 475 N.W.2d 918, 924.) The
9 mere fact that a worker may perform similar work for another hiring entity does not, in itself,
10 shield both entities from liability for misclassification. Holding down multiple part-time jobs
11 does not convert a worker into an independent contractor.

12 The type of worker the *Dynamex* court highlights as “realistically understood ... as *working*
13 *in his or her own independent business*” — “an independent plumber or electrician” and the
14 like—provide a guidepost for the working arrangements that satisfy Part C. (*Dynamex, supra*, 4
15 Cal.5th at pp. 949, 953 (emphasis in original).) Drivers differ substantially from these examples.

16 First, unlike plumbers and electricians, driving a passenger-sized vehicle is not an
17 independently established trade or occupation that requires particular skill or training. (See
18 *Yellow Cab, supra*, 226 Cal.App.3d at p. 1299 [explaining that a taxi driver’s skill “is such that it
19 can be done by employees rather than specially skilled independent workmen”].) If anything,
20 Defendants’ marketing to prospective Drivers of the low barriers to entry to ride-hailing
21 undercuts the notion that Drivers are in a meaningful economic position to ply their trade.⁵⁴

22 Second, unlike plumbers and electricians, Drivers are not independent businesspeople
23 who pursue and negotiate their own transactions with customers. Drivers do not take steps to
24 establish and promote themselves as an independent business, such as incorporation, advertising,
25 specialized licensure, or independently offering their services to the public.⁵⁵ Drivers cannot

26 ⁵⁴ See *Uber*: Alar. Dec. ¶¶ 9, 11, 13-15; Chan. Dec. ¶¶ 6-8; Dom. Dec. ¶¶ 7-9; Fun. Dec. ¶
27 5; Rom. Dec. ¶¶ 7-11. *Lyft*: Alva Dec. ¶¶ 16-17, 22; Rom. Dec. ¶¶ 7-11; Salam. Dec. ¶¶ 4-5;
28 Wiest Dec. ¶ 9.

⁵⁵ See *Uber*: Ala. Dec. ¶ 13; Chan. Dec. ¶56; Fun. Dec. ¶¶ 3-7; Lag. Dec. ¶ 16; Dom. Dec.
¶9. *Lyft*: Alva Dec. ¶¶ 21-22; Salam. Dec. ¶9.

1 build a business by hiring others to drive on their App account, or by transporting anyone other
2 the Passenger’s authorized guests while driving for a Defendant. (See *supra*, at p. 14:12-15:7.)
3 Drivers cannot offer on-demand rides on terms and conditions that differ from those set by
4 Defendants. (*Id.*, at pp. 13:19-14:1.) Instead, Defendants procure and control the assignment of
5 Passengers to Drivers. (*Id.*, at p. 15:9-14.) Crucially, Defendants —not Drivers— set the
6 compensation Drivers derive from their services. (*Id.*, at p. 14:6-10.) Drivers cannot
7 independently negotiate the prices of rides with Passengers. (*Id.*, at p. 14:3-5.)

8 Third, unlike independently established plumbers or electricians, Drivers do not exercise
9 meaningful entrepreneurial control over business decisions. “Essentially, part (c) requires the
10 employing unit to demonstrate that the worker is performing services as ‘an entrepreneur.’”
11 (*Subcontracting Concepts, Inc. v. Commissioner of Div. of Unemployment Assistance* (2014) 86
12 Mass.App.Ct. 644, 649.) In circumstances where, as here, “drivers [do] not set their own rates
13 but [are] paid according to the number and distance of fares they carr[y],” courts will find “little
14 entrepreneurial character in the work.” (*Yellow Cab, supra*, 226 Cal.App.3d at p. 1391.)

15 Defendants hide the limited entrepreneurial discretion of Drivers’ work in plain sight. In its
16 “*Drivers’ Guide to Pay*,” Lyft answers the question, “What’s the best strategy to earn more?”
17 with “Drive when and where it’s busiest.” (*Lyft: Lon. Dec., Ex. 63*, at p. 14.) The limited
18 decisions left to Drivers—like where and when to drive—are not sufficiently entrepreneurial to
19 show that while Drivers are driving for Defendants, Drivers are engaged in independently
20 established businesses. (See, e.g., *Santa Cruz Transportation, Inc. v. Unemployment Ins. Appeals*
21 *Bd.* (1991) 235 Cal.App.3d 1363, 1376 [finding that risk is not entrepreneurial when earnings do
22 not vary with skill].)

23 Far from the plumbers and electricians cited by the *Dynamex* court, Drivers are much more
24 akin to the low-wage, janitorial “franchisees” that the Massachusetts Supreme Judicial Court in
25 *Coverall North America v. Com’r of Div. of Unemployment Assistance* (2006) 447 Mass. 852
26 (*Coverall*), found to be employees under Part C. Like the janitorial franchisor in *Coverall*,
27 Defendants negotiate pricing directly with Passengers and bill Passengers. (*Id.* at p. 858.)
28 Defendants provide an overall “plan” or framework for Drivers’ delivery of services. (*Ibid.*)

1 Defendants benefit from any growth in Drivers’ so-called independent “businesses” because
2 Passengers pay Defendants – not Drivers – for the rides Drivers provide. (*Ibid.*) Under such
3 circumstances, Drivers are more aptly characterized as “wearing the hat of an employee of the
4 employing company” than “wearing the hat of [their] own independent enterprise.” (*Id.* at pp.
5 858-859.)

6 Defendants may *label* their Drivers as independent contractors, but at the end of the day, it
7 is Uber and Lyft—not their Drivers—who are establishing an independent business, and who are
8 largely reaping the risks and rewards of that business. Defendants cannot show that Drivers are
9 engaged in an independently established trade, occupation, or business under Part C.

10 **B. Defendants Cannot Overcome the Presumption Favoring the Issuance of**
11 **the Preliminary Injunction Because They Will Not Suffer Grave or**
12 **Irreparable Harm.**

13 The People have established a strong likelihood of prevailing under one or more parts of the
14 ABC test. As such, under *IT Corp*, the burden shifts to Defendants to show that they “would
15 suffer grave or irreparable harm from the issuance of the preliminary injunction.” (*IT Corp*,
supra, 35 Cal.3d at p. 72.) Defendants cannot make such a showing.

16 Purported harms stemming from Defendants’ unlawful misclassification of Drivers are not
17 cognizable. As *IT Corp* sets forth, “[t]he ultimate goal of any test to be used in deciding whether
18 a preliminary injunction should issue is to minimize the harm which an erroneous interim
19 decision may cause.” (*IT Corp, supra*, 35 Cal.3d at p. 73.) As a result, only harms that arise from
20 the preliminary injunction’s interference with Defendants’ *legal* rights may count towards
21 Defendants’ showing of irreparable harm. “Not even all irreparable harm, but only irreparable
22 harm to legal rights, should count. If the defendant has no right [to engage in a particular course
23 of conduct], any harm he suffers from an injunction against doing so comes not from the dangers
24 of the interlocutory decision, but from the substantive law.” (Leubsdorf, *The Standard for*
25 *Preliminary Injunctions* (1978) 91 Harv. L.Rev. 525, 541; see also *IT Corp, supra*, 35 Cal.3d at p.
26 73 [citing Leubsdorf’s article in forming preliminary injunction standard].)

27 Here, the People seek a preliminary injunction to prohibit Defendants from continuing to
28 misclassify their Drivers. Any harms Defendants allege that arise from the preliminary

1 injunction’s prohibition on Defendant’s unlawful conduct should not be considered by the court.
2 (See *People ex rel. Reisig v. Acuna* (2010) 182 Cal.App.4th 866, 882 [finding that defendants
3 cannot claim harm from restriction of activities that constitute public nuisance]; see also *Triad*
4 *Systems Corp. v. Southeastern Exp. Co.* (9th Cir. 1995) 64 F.3d 1330, 1338 [finding that
5 defendant “cannot complain of the harm that will befall it when properly forced to desist from its
6 infringing activities”].)

7 There is no reason that Uber and Lyft cannot play by the rules. It has been more than two
8 years since the California Supreme Court set forth the ABC test in *Dynamex*. Defendants “cannot
9 legitimately claim surprise” or that they “have not had time to adjust [their] business model.”
10 (*People v. Maplebear, Inc.* (Cal. Super. Ct. Feb. 18, 2020) No. 2019-48731-CU-MC-CTL.) Uber
11 and Lyft have elsewhere admitted that the harms they would face from reclassifying their Drivers
12 as employees, would be, at their core, financial. Uber stated: “If, as a result of legislation or
13 judicial decisions, we are required to reclassify Drivers as employees ... we would incur
14 significant additional expenses for compensating Drivers” (*Uber*: Lon. Dec., Ex. 27, at p.
15 28.) Lyft echoed: “Legal proceedings related to these driver [misclassification] claims,
16 individually or in the aggregate, could have a material impact on our business, financial
17 condition, and results of operation.” (*Lyft: id.*, Ex. 34, at p. 154.)

18 Though, like most businesses, Uber and Lyft have been impacted by the pandemic, any
19 representations of irreparable economic hardship should be taken with a grain of salt. Defendants
20 are among our nation’s largest and wealthiest corporations. As of March 30, 2020, Uber reported
21 \$9.0 billion in unrestricted cash, cash equivalents, and short-term investments, and Lyft reported
22 \$2.7 billion in the same categories. (*Uber*: Lon. Dec., Ex. 73, at p. 1. *Lyft: id.* Ex. 74, at p. 2.) If
23 Defendants claim they cannot carry out their business absent unlawful and unfair business
24 practices, then they must change their methods of doing business. Defendants cannot legitimately
25 claim that irreparable harm arises from merely being required to comply with the law.
26
27
28

1 **C. The Preliminary Injunction Should Issue, Even Assuming *Arguendo* That**
2 **Defendants Can Show Irreparable Harm.**

3 Because under *IT Corp*, the “weighing [of] the relative harm to the parties usually does not
4 apply,” it is only in circumstances where a defendant has shown “grave or irreparable harm” that
5 a court must engage in a balancing of the harms. (*Black Hawk, supra*, 197 Cal.App.4th at 1571.)
6 Generally, under *IT Corp*, “the clearer the violation, the less the trial court need be concerned
7 with the balancing of harm.” (*IT Corp, supra*, 35 Cal.3d at p. 72, fn. 5.) Since the People have
8 established a high likelihood that they will prevail on the merits, the court may issue the
9 injunction based on the clarity of Defendants’ statutory violation alone, including any single part
10 of the ABC test. This is consistent with the bedrock principle, long recognized under California
11 law, that “[c]ourts of equity may, and frequently do, go much farther both to give and withhold
12 relief in furtherance of the public interest than they are accustomed to go when only private
13 interests are involved.” (*Socialist Workers etc. Committee v. Brown* (1975) 53 Cal.App.3d 879,
14 889, citing *Yakus v. United States* (1944) 321 U.S. 414, 440–441.)

15 In addition to the favorable legal standard, here the balance of harms tips sharply in favor of
16 the People. An astonishing range of violations and associated harms—to Drivers, law-abiding
17 businesses, and the public—flow from Defendants’ unlawful misclassification of their Drivers.
18 (See *Dynamex, supra*, 4 Cal.5th at pp. 912–913.) These harms undermine the “critically
19 important objectives” served by California’s ABC test, such as: ensuring low income workers’
20 wages and conditions despite their weak bargaining power; “ensuring that . . . responsible
21 companies are not hurt by unfair competition from competitor businesses that utilize substandard
22 employment practices”; and ensuring that the public is not “left to assume responsibility for the ill
23 effects to workers and their families resulting from substandard wages or unhealthy and unsafe
24 working conditions.” (*Id.* at pp. 952–953.) These harms outweigh any countervailing harms
25 Defendants would experience as a result of the issuance of the injunction.
26
27
28

1 **1. Defendants’ unlawful misclassification causes irreparable harm to**
2 **Drivers.**

3 The People have a substantial interest in protecting all workers from exploitative labor
4 practices. The thousands of Drivers throughout California who are subject to Defendants’
5 unlawful misclassification are vital members of our communities, workforce, and families.⁵⁶
6 California courts have long recognized that protecting workers from sub-standard working
7 conditions also protects public and community welfare. (*Gould v. Maryland Sound Industries,*
8 *Inc.* (1995) 31 Cal.App.4th 1137, 1148; see also *Cash v. Winn* (2012) 205 Cal.App.4th 1285,
9 1297 [“State wage and hour laws reflect the strong public policy favoring protection of workers’
10 general welfare and society’s interest in a stable job market.”], internal quotation marks omitted.)
11 A.B. 5 expressly declares that “[i]t is ...the intent of the Legislature ... to ensure workers who are
12 currently exploited by being misclassified as independent contractors ... have the basic rights and
13 protections they deserve under the law, including a minimum wage, workers’ compensation if
14 they are injured on the job, unemployment insurance, paid sick leave, and paid family leave.”
15 (A.B. 5, § 1, subd. (e).)

16 As misclassified workers, Drivers are stripped of the fundamental wage and hour
17 protections that otherwise apply to employees, including: minimum and overtime wages for all
18 hours worked, itemized wage statements under Labor Code section 226, and indemnification
19 under Labor Code section 2802 for the vehicle and maintenance expenses that Defendants force
20 Drivers to pay.

21 Defendants’ failure to reimburse Drivers for vehicle expenses alone causes massive losses
22 to Drivers. (See *supra*, at p. 18:8-11.) According to a recent study co-authored by Uber’s Chief
23 Economist, “[a] typical Uber driver covers about 20 miles in one hour.” (Hall et al., *The Gender*

24 _____
25 ⁵⁶ Although Defendants’ ridership has dropped off during the pandemic, Ride-hailing has
26 been designated as an essential business, and substantial numbers of Drivers continue driving for
27 Defendants. As of May 2020, Uber and Lyft reported that rides are down 70 percent overall from
28 a year ago, but even this is still a large number of rides. The number of rides is also growing as
the economy reopens. (Bursztynsky, *Lyft reports 26% growth in rides for May as states begin to*
reopen, but the worst is far from over (June 2, 2020) CNBC <<https://tinyurl.com/ybbgejqv>> [as of
June 18, 2020]; Chapman, *Uber’s Ride-Hailing Recovery Comes Slowly With Business Down*
70% (June 3, 2020) Bloomberg <<https://tinyurl.com/ycptrbpv>> [as of June 18, 2020].)

1 *Earnings Gap in the Gig Economy*, Stanford University (May 2020)

2 <<https://tinyurl.com/ybfdvl2q>> [as of June 22, 2020], p. 45.) At the current Internal Revenue
3 Service (IRS) rate of 57.5 cents per mile, Uber drivers classified as employees would on average
4 be entitled to \$11.50 per hour in vehicle-related business expense reimbursements that they are
5 not receiving while classified as independent contractors. (See Internal Revenue Service Notice
6 2020-05, (May 2020) <<https://tinyurl.com/yc54j9xf>> [as of June 22, 2020], p. 3; *Gattuso v.*
7 *Harte-Hanks Shoppers, Inc.* (2007) 42 Cal.4th 554, 569 [affirming IRS rate as a presumptively
8 reasonable measure of vehicle-related expenses under California Labor Code section 2802].)

9 Defendants also do not compensate Drivers for overtime, despite the significant number of
10 Drivers who work overtime hours.⁵⁷ (See *supra*, at p. 18:7.) Nor do Defendants compensate
11 Drivers for any time other than time spent transporting Passengers to their destinations, despite
12 the fact that under California law, Uber and Lyft are obligated to pay Drivers the minimum wage
13 *for each hour worked.* (*Armenta v. Osmose, Inc.* (2005) 135 Cal.App.4th 314, 324.)⁵⁸ Drivers
14 routinely engage in other work for which they legally should be, but are not compensated, such as
15 time spent refueling, cleaning, and maintaining their vehicles, off-duty rest periods, and driving to
16 and returning from rides while monitoring the App for ride requests. (See *supra*, at p. 17:14-
17 18:7.) Defendants' failure to pay Drivers *any* wages for these "hours worked" violates state and
18 local minimum wage laws.

19 As low-wage workers with unpredictable working conditions, misclassified Drivers are
20 forced to labor under a business model that denies them even the modicum of economic security

21 _____
22 ⁵⁷ Uber and Lyft are obligated to pay Drivers overtime premiums for hours worked in
23 excess of eight per day or forty per week, and all hours worked on the seventh consecutive day of
24 work in a workweek. (Lab. Code, § 510, subd. (a); Cal. Code Regs., tit. 8, § 11090(3)(A).) Like
25 the minimum wage requirements, these overtime requirements are unwaivable. (Lab. Code, §
26 1194; *Gentry v. Superior Court* (2007) 42 Cal.4th 443, 455.) In a recent survey, more than one-
27 third of San Francisco Uber and Lyft drivers reported working more than 40 hours per week, on
28 average, for one of the Defendants. (Benner et al., *On-Demand and On the Edge: Ride-Hailing &*
Delivery Workers in San Francisco (May 5, 2020) U.C. Santa Cruz
<<https://tinyurl.com/yb3qys7k>> [as of June 22, 2020].)

⁵⁸ This obligation applies whether Uber and Lyft's compensation scheme is characterized
as a piece-rate payment plan or something else. (See Lab. Code, § 226.2 [establishing that piece
rate payment plans are subject to the same obligations regarding minimum wages, overtime
wages, and payment for all hours worked].)

1 guaranteed by minimum wage and other fundamental wage and hour laws.⁵⁹ California courts
2 have long recognized the state policy that wages are special debts whose prompt payment is vital
3 to the health and welfare of workers and their families. (See *Smith v. Superior Court* (2006) 39
4 Cal.4th 77, 82 [“‘[W]ages are not ordinary debts,’ and ‘because of the economic position of the
5 average worker ... it is essential to the public welfare that he receive his pay when it is due.’”]; see
6 also Assem. Bill No. 263 (2013-2014 Reg. Sess.), § 1, subd. (b) [“When a worker is denied wages
7 ... there is an immediate and irreparable harm to the worker and his or her family.”].) Drivers
8 suffer immediate, continuing, and irreparable harm every day that Defendants are permitted to
9 continue their unlawful conduct. (See *Carrillo v. Schneider Logistics, Inc.* (C.D. Cal. 2011) 823
10 F.Supp.2d 1040, 1045 [granting preliminary injunction enforcing wage-related recordkeeping
11 requirements for low-wage workers because “lost wages or delays in compensation threaten or
12 impair their ability to meet basic needs, [and] such harms are irreparable”].)

13 Drivers’ average earnings, when accounting for unreimbursed expenses, place them
14 squarely among our State’s most vulnerable low-wage workers.⁶⁰ (*Dynamex, supra*, 4 Cal.5th at
15 p. 952 [emphasizing the need to “ensure that such workers are provided at least the minimal
16 wages and working conditions ... necessary to enable them to obtain a subsistence standard of
17 living and to protect the workers’ health and welfare”].) Many Drivers work full-time and
18 struggle to support their families.⁶¹ The pandemic has placed Drivers’ everyday vulnerability in

19 ⁵⁹ The state minimum wage is currently \$13.00 per hour. (Lab. Code, § 1182.12.)
20 California’s cities and counties are expressly permitted to establish a higher minimum wage. (See
21 Cal. Const. Art. XI, § 7; see also S.F. Admin. Code, § 12R.4 (E) [establishing \$15.59 hourly
22 minimum wage]; L.A. Municipal Code, § 187.02 [establishing \$14.25 hourly minimum wage].)

23 ⁶⁰ See, e.g., Mishel, *Uber and the Labor Market* (May 15, 2018) Economic Policy Institute
24 [finding that, after deducting fees and expenses, Uber driver compensation averages \$11.77 an
25 hour] <<https://tinyurl.com/y9m59zkd>> [as of June 22, 2020]; Campbell, *2019 Uber and Lyft
26 Driver Survey* (Nov. 19, 2019) Rideshare Guy [finding that, after deducting fees and expenses,
27 Lyft driver compensation averages \$11.55 an hour] <<https://tinyurl.com/y8aj2ryt>> [as of June 22,
28 2020]; see also Said, *He Drives 60 Hours a Week for Uber. He’s Still Homeless*, S.F. Chronicle
(Sept. 22, 2019) [describing “migrant drivers” who live out of their cars because they cannot
afford to make ends meet] <<https://tinyurl.com/yd9j6doc>> [as of June 22, 2020]; Benner et al.,
supra, fn. 57, at pp. 28, 30 [estimating that 20% of Uber and Lyft ride-hailing drivers surveyed in
San Francisco may be earning nothing after accounting for expenses].

⁶¹ See Benner et al., *supra*, fn. 57, at pp. 17, 22 [finding that of San Francisco Uber and
Lyft ride-hailing drivers surveyed, a little over 70% worked more than 30 hours per week and
nearly 50% financially supported others, including 40% supporting children]. Defendants often
highlight that a majority of their drivers work 10 hours a week or less. However, as Benner et al.

1 even starker relief. Drivers provide essential transportation services. Yet they labor without the
2 health and welfare protections of California’s employment laws, causing a multitude of
3 interconnected and compounding harms.

4 Despite Drivers’ significant risk of occupational injury (due to car crashes and, recently,
5 exposure to COVID-19), Defendants do not provide workers’ compensation coverage,
6 contributing to delay and uncertainty with access to medical care.⁶² They do not comply with
7 state occupational safety and health laws, further increasing Drivers’ risk of occupational injury.⁶³
8 They do not offer Drivers sick leave as required under state or local laws, hindering access to
9 medical treatment.⁶⁴ They do not withhold and transmit Disability Fund contributions, rendering
10 Drivers presumptively ineligible for State Disability Insurance and Paid Family Leave, further
11 impoverishing disabled Drivers, or interfering with Drivers’ ability to bond with a new child.⁶⁵
12 Nor do they regularly report wage data and contribute to the State’s Unemployment Insurance
13 (UI) Trust Fund, discouraging Drivers from applying for such vital benefits and increasing delay
14

15 _____
16 explain, there is a difference between a “[r]epresentative sample of on-demand work being done”
17 and a “representative sample of workers.” (*Id.* at pp. 4-5.) When one examines the *work*
18 performed on Defendants’ ride-hailing Apps, it is performed in large part by a minority of full-
19 time drivers who contribute disproportionately to Defendants’ bottom line. These Drivers are the
20 most economically dependent on Defendants and the most vulnerable to their unlawful conduct.

21 ⁶² See California Dept. of Insurance and California Public Utilities Commission, *Joint*
22 *Study of Transportation Network Company (TNC) Insurance Coverage Requirements in*
23 *California* (Dec. 31, 2017), at pp. 21, 23 [finding that from 2014 to 2016, insurance companies
24 incurred \$185.6 million in payouts on 9,377 claims related to traffic accidents involving ride-
25 hailing vehicles across California] <<https://tinyurl.com/ybsbkv6l>> [as of June 22, 2020]; see also
26 Cal. Lab. Code §§ 5402, subd. (c), 4610 [setting medical care timelines under workers’
27 compensation].

28 ⁶³ See Occupational Safety & Health Admin., *Adding Inequality to Injury: The Costs of*
29 *Failing to Protect Workers on the Job* (June 2015), at p. 8 [finding that misclassification increases
30 the likelihood of workplace injuries by diminishing employers’ compliance with occupational
31 safety and health requirements and making employers less likely to invest in safety]
32 <<https://tinyurl.com/y8kj4uzt>> [as of June 22, 2020].

33 ⁶⁴ See Miller et al., *Paid Sick Days and Health: Cost Savings from Reduced Emergency*
34 *Department Visits* (Nov. 14, 2011) Inst. for Women’s Policy Research, at p. 7 [finding workers
35 without paid sick days are more likely to delay needed medical care, which can turn minor health
36 problems into more serious and costly ones] <<https://tinyurl.com/y7htdjqh>> [as of June 22, 2020].

37 ⁶⁵ See Applebaum et al., *Leaves that Pay: Employer & Worker Experiences with Paid*
38 *Family Leave in California*, Center for Economic & Policy Res. (2011), at p. 25 [finding lack of
39 access to paid family leave can interfere with parents’ ability to bond with or care for a new baby
40 or adopted child] <<https://tinyurl.com/ycp26hq8>> [as of June 22, 2020].

1 and difficulty for those who do.⁶⁶ (See *Cal. Dept. of Human Res. Dev. v. Java* (1971) 402 U.S.
2 121, 131-32 [acknowledging time-sensitive statutory purpose of UI benefits, which is “[to]
3 provide cash to a newly unemployed worker ‘at a time when otherwise [they] would have nothing
4 to spend’”].)

5 When economically vulnerable Drivers are denied their legally required wages and
6 benefits, they are left precariously juggling the necessities of life, including food, housing, and
7 transportation. (Fun. Dec. ¶ 24, Dom. Dec. ¶ 21.) Some Drivers feel that they are playing a game
8 of “Russian Roulette” with their financial security. (Alva Dec. ¶ 29.) They begin each workday
9 with the uncertainty of what their wages will be. (Dom. Dec. ¶ 16.) The financial precarity has
10 left several drivers unable to pay their rent and struggling with housing. (Dom. Dec. ¶ 17, Fun.
11 Dec. ¶ 24, Lane Dec. ¶ 41.) Drivers who work 50 to 70 hours a week have struggled to afford
12 medical care and sometimes even food (Fun. Dec. ¶¶ 22, 25), and an unexpected expense of \$400
13 has the potential to destroy all of a Driver’s savings. (Wiest Dec. ¶¶ 19, 30.) In addition, because
14 Drivers’ livelihoods depend on customer ratings, Drivers feel forced to ignore harassment and
15 discrimination from Passengers. (Sala. Dec. ¶ 22.; Chan. Dec. ¶ 54.) Defendants’ conduct
16 irreparably harms the health and welfare of Drivers, their families, and our communities.

17
18 **2. Defendants’ unlawful misclassification causes irreparable harm to
law-abiding competitors.**

19 Misclassification creates unfair competition for law-abiding businesses who honor their
20 obligations to their employees, yet are forced to compete with Defendants’ unlawful business
21 model. (See *Dynamex, supra*, 4 Cal.5th at p. 913 [condemning “the unfair competitive advantage
22 th[at] business may obtain over competitors that properly classify similar workers as
23 employees”].) The anti-competitive harms generated by Defendants’ unlawful misclassification
24 strike at the heart of the state’s commitment “to vigorously enforce minimum labor standards in

25 ⁶⁶ See Harnett, *Uber and Lyft Officially Owe California Unemployment Money. Will the*
26 *State Get it Back?* KQED (May 5, 2020) [noting that because Defendants claim Drivers are
27 independent contractors, Drivers who seek state unemployment insurance benefits face an uphill
28 battle in receiving state UI benefits, including establishing their earnings and legal status as
employees] <<https://tinurl.com/v9snrxbu>> [as of Jun 22, 2020]; see also *Uber*: Alar. Dec. ¶ 37;
Dom. Dec. ¶ 5; *Lyft*: Rom. Dec. ¶ 38; Alva Dec. ¶¶ 13-14; Wiest. Dec. ¶¶ 29-30.

1 order ... *to protect employers* who comply with the law from those who attempt to gain a
2 competitive advantage at the expense of their workers by failing to comply with minimum labor
3 standards.” (Cal. Labor Code, § 90.5, subd. (a) [italics added].)

4 By cutting costs at the expense of workers, Defendants gain a substantial and unlawful
5 competitive advantage. Barclays quantified the “cost savings” associated with Uber’s and Lyft’s
6 misclassification of its Drivers in state workers’ compensation alone as \$2,040 per employee per
7 year, totaling upwards of \$285 million and \$163 million per year, respectively.⁶⁷ Both estimates
8 are consistent with other sources, which estimate the illicit savings from misclassification
9 generally across industries to be from 15 to 39 percent in labor costs.⁶⁸

10 Defendants’ misclassification allows them to shift their labor, vehicle, and maintenance
11 costs onto Drivers, which confers an unfair marketplace advantage. Defendants have had a
12 profoundly destabilizing effect on the taxi industry.⁶⁹ Defendants’ unlawful misclassification
13 creates an unlevel playing field, exerting “a general downward pressure on wages in competing
14 businesses” and eroding the societal interest in strong labor markets. (*Dynamex, supra*, 5 Cal.5th
15 at p. 960.) During the current pandemic and related economic downturn, Defendants’ public and
16 private transportation competitors face a particular risk of irreparable harm.⁷⁰ Now is the time

17 ⁶⁷ Griswold, *How Much It Would Cost Uber and Lyft if Drivers Were Employees*, The
18 Quartz (June 14, 2019) <<https://tinyurl.com/y9ql6n74>> [as of June 22, 2020].

19 ⁶⁸ See National Employment Law Project, *1099’d: Misclassification of Employees as*
20 *“Independent Contractors”* (Apr. 2010), at p. 1 <<https://tinyurl.com/ycrd3nuk>> [as of June 23,
21 2020]; Habans, *Exploring the Costs of Classifying Workers as Independent Contractors: Four*
22 *Illustrative Sectors*, UCLA Inst. for Labor & Empl. (Dec. 2015), at p. 12 [analyzing trucking,
23 home health care, web developers, and construction] <<https://tinyurl.com/yaccprhp>> [as of June
24 22, 2020].

25 ⁶⁹ See, e.g., Carpenter, *Los Angeles Rethinks Taxis as Uber and Lyft Dominate the Streets*,
26 N.Y. Times (Jan. 12, 2020) [“The Los Angeles Department of Transportation estimates that taxi
27 business is down 75 percent since 2012, when Uber first rolled into town.”]
28 <<https://tinyurl.com/qtboerb>> [as of June 22, 2020]; PFM Group Consulting et al., *Evaluation*
29 *and Recommendations to Improve the Health of the Taxi Industry in San Francisco*, San
30 Francisco Municipal Transportation Authority (May 1, 2018), at pp. 4, 11 [finding that “[t]he taxi
31 industry’s distressed condition arises primarily from the rapid expansion of TNCs such as Uber
32 and Lyft in San Francisco,” and that only 17 percent of San Francisco medallions earn “a level of
33 income that is financially sustainable.”] <<https://tinyurl.com/y96pm2t3>> [as of June 22, 2020].

34 ⁷⁰ See, e.g., Bay City News Service, *Taxi Drivers Call on SFMTA for Relief as Business*
35 *Dramatically Drops*, SF Gate (Mar. 26, 2020) [quoting San Francisco Taxi Workers Alliance
36 Board Secretary, “With most of the city shut down, very few people are moving about. This is a
37 devastating blow to drivers. most of whom are immigrants with little to fall back on.”]
38 <<https://tinyurl.com/y94o65e2>> [June 22, 2020]; Lewis, *Pandemic Pushes Half of San Diego’s*

1 when such businesses need more protection – not less – from unfair competition.

2 **3. Defendants’ unlawful misclassification causes irreparable harm to**
3 **the public at large.**

4 Enjoining Defendants from continuing to misclassify their Drivers is also squarely within
5 the interest of the public at large. As *Dynamex* emphasized, when “minimum employment
6 standards” are unfulfilled, “the public will often be left to assume the responsibility of the ill
7 effects to workers and their families resulting from substandard wages or unhealthy and unsafe
8 working conditions.” (*Dynamex, supra*, 4 Cal.5th at p. 953.) Misclassified Drivers that lack
9 access to paid sick days and medical care through workers’ compensation pose risks to public
10 health by increasing the transmission of diseases.⁷¹

11 When misclassified workers without protections are laid off, cannot find a job, get sick, or
12 are injured on the job, taxpayers often end up bearing the costs. Here, Defendants fail their legal
13 obligations to pay Unemployment Fund and Employment Training Fund contributions, or
14 withhold and transmit State Disability Fund contributions. (Unemp. Ins. Code, §§ 976, 976.6,
15 986). These failures are no small matter. A University of California, Berkeley study found that if
16 Uber and Lyft treated their Drivers as employees, they would have paid \$413 million into the
17 State’s Unemployment Insurance Trust Fund from 2014-2019. (Jacobs et al., *What Would Uber*
18 *and Lyft Owe to the State Unemployment Insurance Fund?* (May 7, 2020) UC Berkeley Labor
19 Center <<https://tinyurl.com/y9dn3wuz> > [as of June 18, 2020].) “The Division of Labor

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21 *Taxis Off the Road* (May 18, 2020) CBS 8 [reporting that that 522 of the San Diego region’s 850
22 taxi permits have been temporarily surrendered between March 1 and May 9, 2020, and that “by
23 comparison, just 42 permits were surrendered during the same eight-week period of 2019”]
24 <<https://tinyurl.com/ydelv7vb>> [as of June 22, 2020].

25 ⁷¹ See, e.g., DeRigne et al., *Workers Without Access to Paid Sick Leave Less Likely to Take*
26 *Time Off Compared to Those With Paid Sick Leave* (2016) *Health Affairs*, at p. 525 [estimating
27 that employees who did not stay home infected an additional seven million people and that lack
28 of paid sick leave caused an additional 1,500 deaths during the 2009 H1N1 Influenza outbreak]
<<https://tinyurl.com/yd3okvjz> > [as of June 22, 2020]; State of California Executive Order N-62-
20 (May 6, 2020) [declaring that “the provision of workers’ compensation benefits related to
COVID-19 ... will reduce the spread ... and otherwise mitigate the effects of COVID-19 among
all Californians, thereby promoting public health and safety”] <<https://tinyurl.com/yceb3cue>> [as
of June 23, 2020].

1 Standards Enforcement estimates that the misclassification of workers [statewide] results in an
2 estimated annual loss of \$7 billion per year in payroll tax revenue to the state, that otherwise
3 could have supported General Fund programs for public safety, education, and public
4 infrastructure.” (Lon. Dec., Ex. 75, Assem. Com. on Labor & Employment, Background
5 Information of Assem. Bill. No. 5 (2018 – 2019 Reg. Sess.), at p. 3 (A.B. 5 Background Info.))

6 On a societal level, misclassification has “created an insurmountable challenge for working
7 families trying to make ends meet.” (Lon. Dec., Ex. 75, A.B. 5 Background Info, *supra*, at p. 2 ¶
8 3.) Misclassification harms society by contributing to “the erosion of the middle class and the rise
9 in income inequality.” (A.B. 5, § 1, subd. (c).) When corporations systematically misclassify
10 low-wage workers on a large scale, it undermines worker safety net programs, unfairly shifting
11 risk from large, well-resourced corporations to vulnerable, low-wage workers, and threatening the
12 societal interest in stable and sustainable labor markets.⁷²

13 **4. The balance of harms tips sharply in the People’s favor and an**
14 **injunction is in the public interest.**

15 Taken together, the harms to Drivers, law-abiding competitors, and the public at large,
16 leave no doubt that the balance of hardships tips heavily in favor of the People. The People’s
17 interest in protecting the health and welfare of Drivers and the public outweighs the costs that
18 would be incurred by Defendants finally abiding by the law. “‘Faced with ... a conflict between
19 financial concerns and preventable human suffering” a court should “‘have little difficulty
20 concluding that the balance of hardships tips decidedly’ in favor of the latter.” (*Golden Gate*
21 *Rest. Ass’n v. City & Cty of San Francisco* (9th Cir. 2008) 512 F.3d 1112, 1126 (*Golden Gate*),
22 quoting *Lopez v. Heckler* (9th Cir. 1983) 713 F.2d 1432, 1437.)

23 The Legislature’s decision to apply the ABC test to the employment status of ride-hailing
24 Drivers was extensively deliberated and demonstrates the public interest in ensuring Defendants’
25 compliance with the statute. (See, e.g., *Golden Gate, supra*, 512.F.3d at pp. 1126, 1127
26 [recognizing that the public interest may be declared in the statute when the legislators

27 ⁷² Lon. Dec., Ex. 75, A.B. 5 Background Info, *supra*, at p. 7, citing Veena Dubal, *The*
28 *Drive to Precarity: A Political History of Work, Regulation, & Labor Advocacy in San*
Francisco's Taxi & Uber Economies (2017) 38 BERKELEY J. OF EMPL. & LABOR LAW 73.

1 “considered that interest”].) The alleged adverse impacts of A.B. 5’s employee classification
2 requirements were the subject of exhaustive public debates and were considered but ultimately
3 rejected by public officials.⁷³ Defendants actively sought, and the Legislature denied them, an
4 exemption to A.B. 5.⁷⁴

5 Vulnerable Drivers who have been designated as essential to our community face serious
6 risks to their health, safety, and welfare by being denied basic workplace protections. Law-
7 abiding businesses, already facing adversity, are forced to compete on an unlevel playing field.
8 And the public is called upon, in a myriad of ways, to take responsibility for the public health,
9 social, and economic consequences of Defendants’ continuing violation of the law. The balance
10 of harms tips sharply in the favor of the People, where, absent a preliminary injunction, Drivers,
11 law-abiding businesses, and the public will continue to suffer these irreparable harms.

12 IV. CONCLUSION

13 “A.B. 5 contains no exception for wealthy corporations that disagree with the Legislature’s
14 policy judgment and would rather not spend money to effectuate that judgment.” (*Rogers, supra*,
15 2020 WL 1684151, at *3, n.1.) The People have established that they are likely to prevail on the
16 merits because Defendants cannot satisfy the ABC test. Defendants’ clear violations alone
17 justifies issuance of the injunction. Further, Defendants will suffer no grave or irreparable harm
18 from a prohibition on continuing to violate the law. To the extent this Court evaluates the harms,
19 the balance of hardships strongly favors the issuance of an injunction to protect Drivers, the
20 public, and fair competition from Defendant’s ongoing unlawful conduct. For the foregoing
21 reasons, the People’s motion should be granted.

22 _____
23 ⁷³ Lon. Dec. Ex. 76, Silicon Valley Leadership Group, letter to Senate Appropriations
24 Committee re: Opposition to A.B. 5, undated; Khosrowshahi et al., *Uber, Lyft Ready to Do Our*
25 *Part for Drivers*, S.F. Chronicle (Jun. 12, 2019) <<https://tinyurl.com/y3bkbajv>>; Assem. Com. on
26 Labor and Employment, Bill Analysis of AB 5 (2018-2019 Reg. Sess.) July 5, 2019, p. 2 [citing
27 research finding some of the “highest misclassification rates in the economy’s growth industries”
28 including in the app-based “on-demand” sector]; Lon. Dec. Ex. 77, *Lorena Gonzalez’s Closing*
Remarks in AB 5’s First Assembly Hearing (Apr. 5, 2019) YouTube (transcribed remarks, 2:57-
4:47) [recounting a conversation with a ride-hailing driver to illustrate the devastating impact of
misclassification.] (<<https://tinyurl.com/y75mok8a>> (timestamp 4:22-4:35) [as of Jun. 22, 2020].)

⁷⁴ Campbell, *California Just Passed a Landmark Law to Regulate Uber and Lyft*, Vox
(Sept. 18, 2019) [“Uber and Lyft, in particular, had been lobbying for an exemption to the bill in
the Senate.”] <<https://tinyurl.com/y5qdgpa6>> [as of Jun. 22, 2020].

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