No. _____

IN THE

Supreme Court of the United States

LYFT, INC.,

Petitioner,

v.

PEOPLE OF THE STATE OF CALIFORNIA, ET AL.,

Respondents.

On Petition for a Writ of Certiorari to the California Court of Appeal

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

Whether the Federal Arbitration Act preempts state law authorizing public officials to pursue claims for individualized monetary relief in court for the benefit of individuals who agreed to resolve those claims in arbitration, thereby circumventing those individuals' arbitration agreements.

PARTIES TO THE PROCEEDINGS

Petitioner Lyft, Inc., was defendant and appellant below.

Respondents Uber Technologies, Inc., Raiser-CA, LLC, Uber-USA, LLC, and Portier, LLC were also defendants and appellants below.

Respondents the People of California and California Labor Commissioner Lilia García-Brower were plaintiffs and respondents below.

RULE 29.6 STATEMENT

Petitioner Lyft, Inc. is a publicly held corporation with no parent corporation. Based on Lyft's knowledge from publicly available U.S. Securities and Exchange Commission filings, no publicly held corporation or entity owns ten percent or more of Lyft's outstanding common stock.

RELATED PROCEEDINGS

The proceedings directly related to this petition are:

In re Uber Technologies Wage and Hour Cases, No. S282614 (Cal. Jan. 17, 2024)

In re Uber Technologies Wage and Hour Cases, No. A166355 (Cal. Ct. App. Sept. 28, 2023)

In re Uber Technologies Wage and Hour Cases, No. CJC-21-005179 (Cal. Super. Ct. Sept. 1, 2022)

People v. *Superior Court*, No. S278933 (Cal. May 3, 2023) and No. A167203 (Cal. Ct. App. Feb. 23, 2023)

García-Brower v. *Superior Court*, No. S278946 (Cal. May 3, 2023) and No. A167201 (Cal. Ct. App. Feb. 23, 2023)

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OTHER AUTHORITIES

Jane R. Flanagan, *Alt-Enforcers: The Emergence of State Attorneys General As Workplace Rights Enforcers*, 95 Chi.-Kent L. Rev. 103 (2020) 30

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National Consumer Law Center, *Consumer Protection in the States: A 50-State Evaluation of Unfair and Deceptive Practices Laws* (Mar. 2018), *available at* https://filearchive.nclc.org/udap/udap-report.pdf 30

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PETITION FOR WRIT OF CERTIORARI

Petitioner Lyft, Inc. respectfully petitions for a writ of certiorari to review the judgment of the California Court of Appeal.

OPINIONS BELOW

The opinion of the California Court of Appeal (Pet.App.1a) is published at 95 Cal.App.5th 1297. The California Supreme Court's order denying review (Pet.App.44a) is unpublished. The order of the California Superior Court denying Defendants' motions to compel arbitration (Pet.App.30a) is unpublished.

JURISDICTION

The Court of Appeal issued its opinion on September 28, 2023 (Pet.App.1a), and the California Supreme Court denied timely filed petitions for review on January 17, 2024 (Pet.App.44a). See S. Ct. R. 13.1. This Court has jurisdiction under 28 U.S.C. 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The relevant provisions are reproduced in the appendix to this Petition. See Pet.App.45a.

INTRODUCTION

The Federal Arbitration Act (FAA) "renders agreements to arbitrate enforceable as a matter of federal law." *Viking River Cruises* v. *Moriana*, 596 U.S. 639, 650 (2022). But time and again, this Court's review has been necessary to safeguard that federal right against efforts by the States, through increasingly creative devices, to undermine arbitration agreements.

This case concerns the newest such device: authorizing a State's public officials to pursue claims for monetary relief in court on behalf of individuals who

agreed to resolve those *very claims* in arbitration. Here, Lyft and the drivers who use its ridesharing platform agreed to arbitrate any disputes in streamlined, one-on-one arbitration proceedings. But the California Attorney General and California Labor Commissioner have attempted to sidestep those arbitration agreements by filing suit against Lyft on behalf of a large group of drivers, bringing claims the drivers could have asserted themselves and seeking individualized monetary relief *payable to the drivers*. The California Court of Appeal approved of that stratagem in a deeply flawed FAA preemption analysis, concluding that any public official at any level of government can litigate a claim for the specific monetary benefit of any individual by simply ignoring the individual's contrary agreement to arbitrate.

In so holding, the court below incorrectly regarded itself as bound by one of this Court's decisions and deepened a state/federal split on FAA preemption. Multiple state courts of last resort have—like the court below—given state public officials *carte blanche* to override private parties' choice of an arbitral forum, making arbitration agreements subject to state-agency veto for more than one-quarter of the U.S. population. And all of those courts have concluded that this Court's decision in *EEOC* v. *Waffle House*, 534 U.S. 279 (2002), dictates that outcome. They have done so even though *Waffle House* does not address FAA preemption; rather, it concerns a *federal* agency exercising enforcement authority under a *federal* statute and involves no issue of state law. Only this Court can disabuse the state courts of their view that *Waffle House* dictates their mistaken erasure of arbitration agreements. And only this Court can resolve the irrec-

oncilable conflict with the federal courts of appeals created by the decision below and the other state-court decisions.

Review is especially critical here because the rule adopted by the California Court of Appeal represents an existential threat to the FAA. It is deeply antithetical to the "'purposes and objectives' of the FAA," *Lamps Plus* v. *Varela*, 587 U.S. 176, 183 (2019), to allow identical claims to the ones that parties agreed to arbitrate to proceed in a judicial forum, with any monetary relief destined for the pockets of people who could otherwise recover that money only in arbitration, just because a State has authorized public officials to proceed in that way. That *nullifies* arbitration agreements, allowing States to override any prohibitions in those agreements on class or other representative actions, claim joinder, and the like. Moreover, the logic of the decision below would equally justify deputizing private citizens to litigate claims in court on behalf of (and for the direct pecuniary benefit of) whole classes of individuals who signed arbitration agreements. That would render the FAA—and this Court's many careful decisions enforcing the FAA—a dead letter in any State that wanted to make it so.

STATEMENT OF CASE

1. The Federal Arbitration Act (FAA) "requires courts to enforce the bargain of the parties to arbitrate." *Marmet Health Care Ctr.* v. *Brown*, 565 U.S. 530, 532-533 (2012). Specifically, Section 2 of the FAA directs that arbitration agreements "shall be valid, irrevocable, and enforceable, save upon such grounds as exist at law or in equity for the revocation of any contract." 9 U.S.C. 2.

This Court has often described the FAA "as reflecting * * * a 'liberal federal policy favoring arbitration.'"

AT&T Mobility v. *Concepcion*, 563 U.S. 333, 339 (2011) (quoting *Moses H. Cone Mem'l Hosp.* v. *Mercury Constr.*, 460 U.S. 1, 24 (1983)); *accord Epic Sys.* v. *Lewis*, 584 U.S. 497, 505 (2018). Indeed, as the Court has recognized, Congress enacted the statute in the first place to combat "hostility to arbitration agreements." *Concepcion*, 563 U.S. at 339.

This Court has frequently applied federal-preemption principles to combat such hostility—much of which has emanated from California. Although the FAA does not "purport[] to alter background principles of state contract law regarding the scope of agreements" or "who is bound by them," *Arthur Andersen* v. *Carlisle*, 556 U.S. 624, 630 (2009), "state law is preempted to the extent it 'stands as an obstacle to the accomplishment and execution of the full purposes and objectives' of the FAA," *Lamps Plus*, 587 U.S. at 183 (quoting *Concepcion*, 563 U.S. at 352). This Court has held, for example, that the FAA preempts state laws that prohibit parties to arbitration agreements from waiving any right to class-action or claim-joinder procedures, see *Concepcion*, 563 U.S. at 341-344 (involving California law); *Viking River*, 596 U.S. at 659-662 (same), or that require exhaustion of state administrative remedies before proceeding to arbitration, see *Preston* v. *Ferrer*, 552 U.S. 346, 354-359 (2008) (same). Such state laws "defeat the ability of parties to control which claims are subject to arbitration," *Viking River*, 596 U.S. at 660, and "hinder speedy resolution of the controversy" in an arbitral forum, *Preston*, 552 U.S. at 358—which are exactly the kinds of arbitration-related benefits that the FAA was enacted to protect.

The Court also has frequently emphasized the broad sweep of the FAA. Recently, the Court ex-

plained that "nothing in the FAA categorically exempts claims belonging to sovereigns from the scope of § 2." *Viking River*, 596 U.S. at 652 n.4.

2. a. Lyft operates a ridesharing platform that connects passengers looking for rides with drivers who want to provide rides. When signing up for the platform, drivers are asked to agree to resolve any future disputes with Lyft in binding arbitration on an individual, non-representative basis. Drivers may opt out of that arbitration agreement, but most do not.

In this case, public officials in California brought California state-court actions (which have been coordinated) on behalf of all drivers in the State who use the Lyft platform. Various plaintiffs—including the California Attorney General, certain City Attorneys, and the California Labor Commissioner (collectively, the "public officials" or "officials"), Pet.App.1a-4a & n.2—allege that Lyft has violated California statutes by misclassifying drivers as independent contractors rather than employees.[1]

Drivers can and do pursue cases against Lyft based on alleged misclassification and alleged violation of the same statutes the public officials rely on in this matter. See Cal. Bus. & Prof. Code § 17204 (authorizing claims by aggrieved individuals); see also, *e.g.*, Cal. Lab. Code §§ 1194, 1194.2 (same). Many drivers pursue such cases in private arbitration. And when drivers have filed such cases in court, judges have routinely compelled such matters to bilateral arbitration between the driver and Lyft, because that is what the parties agreed to and what the FAA and this Court's precedents require. See, *e.g.*, *Osvatics* v. *Lyft*, 535 F.

[1] The public officials assert the same claims against Uber.

Supp. 3d 1, 9-22 (D.D.C. 2021) (Ketanji Brown Jackson, J.); *Rogers* v. *Lyft, Inc.*, 452 F. Supp. 3d 904, 918, 921 (N.D. Cal. 2020), *aff'd,* 2022 WL 474166 (9th Cir. Feb. 16, 2022); *Brunner* v. *Lyft*, 2019 WL 6001945, at *1 (N.D. Cal. Nov. 14, 2019).

Drivers are thus quite capable of pursuing monetary relief from Lyft on their own behalves in arbitration. Yet the public officials here seek that same monetary relief, payable to *specific* drivers, in court. In other words, they assert that monetary harm was allegedly suffered by individual drivers as a result of Lyft's alleged actions—and that any money ultimately collected as a result of the officials' suit is to be meted out to those drivers, just as a recovery in a class action is distributed to members of the class. Pet.App.2a-3a, 47a-48a, 62a-78a, 83a-85a, 118a-122a.

The public officials base their requests for that form of monetary relief on various California statutory provisions that authorize suits on behalf of aggrieved individuals. The Attorney General and City Attorneys seek relief under a state statute that authorizes "[a]ny person" to "pursue representative claims or relief *on behalf of others*" in order "to *restore to any person in interest any money or property* * * * which may have been acquired by means of * * * unfair competition." Cal. Bus. & Prof. Code § 17203 (emphasis added); see Pet.App.2a. Moreover, legal "limitations" governing class actions "do not apply to claims" brought under that statute "by the Attorney General, or any district attorney, county counsel, city attorney, or city prosecutor in [California]." Cal. Bus. & Prof. Code § 17203; see *id.* § 17204; Cal. Civ. Proc. Code § 382. Meanwhile, the Labor Commissioner seeks relief under a state statute that authorizes the Commissioner to "prose-

cute action for the collection of wages and other moneys *payable to employees*." Cal. Lab. Code § 98.3(b) (emphasis added); see Cal. Lab. Code § 248.5(e) (suit "to collect legal or equitable relief *on behalf of the aggrieved*" (emphasis added)); Cal. Lab. Code § 1193.6 (suit to "recover" amounts "*owing to any employee*" (emphasis added)); Pet.App.47a-48a.

The public officials also seek some other forms of relief, none of which are at issue here. They ask for relief that would diffusely affect drivers going forward (*i.e.*, an injunction that would force Lyft to change its business practices) and that would inure directly to the State's benefit (*i.e.*, civil penalties to be paid into State coffers). Pet.App.2a-3a.

b. In the California trial court, Lyft moved to compel arbitration of the public officials' claims for individualized monetary relief on behalf of drivers who entered into arbitration agreements with Lyft. Lyft argued that the FAA preempts state law that would allow public officials to circumvent those arbitration agreements by bringing claims in court for monetary relief on behalf of and in lieu of those drivers, even though the drivers are contractually bound to arbitrate those very claims. Pet.App.4a-5a. Lyft did not seek to compel arbitration of the officials' claims for injunctive relief or civil penalties payable to the State. Pet.App.4a.

The trial court denied Lyft's motions to compel (as well as similar motions filed by Uber). Pet.App.43a. That court relied on this Court's decision in *EEOC* v. *Waffle House*, 534 U.S. 279 (2002), which concluded that, in light of the "unambiguous[]" text and "detailed [federal] enforcement scheme" set forth in Title VII and the ADA, the FAA does not bar the EEOC from seeking relief "in a judicial forum" for the benefit of

employees who signed arbitration agreements. *Id.* at 287, 292, 296. According to the trial court, there is no relevant distinction between the federal action at issue in *Waffle House* and the public officials' claims under state law in this case. Pet.App.32a-39a.

c. The California Court of Appeal affirmed in a published opinion. Pet.App.29a.

The Court of Appeal held that the FAA does not preempt state law that authorizes public officials to pursue in court claims for monetary relief that would have been required to be resolved in arbitration had those claims had been brought by the individuals who are actually aggrieved. Pet.App.20a. Like the trial court, the Court of Appeal relied heavily on this Court's decision in *Waffle House*. See Pet.App.10a ("We hold that, under *Waffle House*, the [public officials] are not bound by [the] arbitration agreements."). The Court of Appeal deemed it irrelevant that *Waffle House* concerned a federal agency suing under a federal statute and thus did not address preemption of state law by the FAA. Instead, the Court of Appeal ruled that *Waffle House* stands for the broad proposition that *any* "government body exercising express statutory authority" may seek "'victim-specific' relief" in court regardless of the existence of an underlying arbitration agreement. Pet.App.16a.

The Court of Appeal also relied on the fact that the public officials "are not parties to the arbitration agreements" that Lyft "entered into with [its] drivers." Pet.App.6a. The Court dismissed the suggestion that the officials could be bound as non-signatories—in the same way that "assignees" and "similarly situated third parties seeking to present claims held by [others]" are bound—by adopting the categorical rule that

"a government body exercising express statutory authority to seek judicial relief (including 'victim-specific' relief) cannot be barred from doing so" by "arbitration agreements between private parties." Pet.App.9a, 16a, 19a. That was so, the Court reasoned, because whenever public officials are "exercising their statutory authority to enforce the law," the result is an "independent civil enforcement action[]," Pet.App.10a, 17a—regardless of whether the relief sought by the officials "could be sought by individual drivers on their own behalf" or whether "judgment in the present action could be preclusive of certain issues in future arbitrations" brought by the aggrieved individuals. Pet.App.18a, 21a.

The California Supreme Court denied Lyft's timely petition for review. Pet.App.44a.

REASONS FOR GRANTING PETITION

The holding of the court below eviscerates the protections of the FAA and disregards this Court's repeated admonitions that arbitration agreements must be respected and enforced. If states can deputize public officials to litigate in court claims for monetary relief on behalf of individuals who are bound by arbitration agreements, then the enforceability of those agreements will turn on States' whims rather than on the parties' contracts. The FAA was enacted to foreclose precisely that result. This Court's review is urgently needed to halt the trend of States authorizing public officials to circumvent valid agreements to arbitrate—especially because courts in those States have split with decisions of federal courts of appeals and have done so based on the mistaken conclusion that this Court has already resolved the question presented.

I. There Is A Stark Conflict In Authority Given That State Courts, Including The Court Below, Mistakenly Regard Themselves As Bound By Language In One Of This Court's Decisions

State courts, including the court below and multiple state courts of last resort, have split from federal courts of appeals on the question whether the FAA preempts state law that authorizes public officials to disregard private parties' arbitration agreements when bringing claims for monetary relief on behalf of those parties. And the state courts have taken that position because they incorrectly believe themselves bound by this Court's decision in *Waffle House*, even though that decision is distinguishable and, indeed, does not involve any preemption question at all. Because only action by this Court can correct such a misapprehension, review would be warranted on that ground alone, even absent any conflict in authority. Here, however, the existence of a clear conflict provides an even more powerful reason for this Court to step in.

A. 1. In this case, the Court of Appeal held that the FAA does not preempt state law permitting public officials to sue in court in their so-called "law enforcement capacities" for individualized monetary relief on behalf of people or entities who signed arbitration agreements. *E.g.*, Pet.App.20a-21a. In rejecting the argument that such state laws stand as an obstacle to the accomplishment of the purposes of the FAA, that court repeatedly relied on this Court's decision in *Waffle House*. Pet.App.12a, 16a-17a, 26a.

The issue in *Waffle House* was whether the FAA blocked the EEOC from seeking "victim-specific relief in court" under the ADA on behalf of employees who

had agreed to arbitrate with their employers. 534 U.S. at 284, 288, 296. The Court concluded that nothing in the FAA "undermine[d] the detailed [federal] enforcement scheme created by Congress" in federal anti-discrimination statutes. *Ibid.*

Yet the court below understood *Waffle House* to have definitively held that *no* "public enforcement agency"—whether federal, state, or local—can ever be affected by an arbitration agreement between "private parties," even when the agency seeks "victim-specific relief" on behalf of one of those parties. *E.g.*, Pet.App.12a, 16a-17a, 26a. Based on that understanding, the Court of Appeal regarded *Waffle House* as definitively dictating the outcome here. For instance, that court stated that an order compelling arbitration here would "effectively negate *Waffle House*." Pet.App.26a. The court also rejected Lyft's reliance on one of this Court's more recent arbitration cases by stating that the decision in question "did not cite *Waffle House* and did not state it was altering or limiting the holding in that case." Pet.App.12a (citing *Viking River*, 596 U.S. at 652 n.4).[2]

2. The court below reached the same conclusion as courts of last resort in New York, Massachusetts, Iowa, Virginia, and Ohio and as an intermediate appellate court in Minnesota. All of those courts have

[2] Other California Court of Appeal decisions, from multiple districts, have all reached the same mistaken conclusion as the court below—each in reliance on *Waffle House*. See *People* v. *Maplebear*, 81 Cal. App. 5th 923, 932-940 (2022) (refusing to compel arbitration of City Attorney's claim for restitution on behalf of individuals and characterizing *Waffle House* as "binding authority"); *Dep't of Fair Emp. & Hous.* v. *Cisco Sys.*, 82 Cal. App. 5th 93, 98-104 (2022) (similar); *Crestwood Behav. Health* v. *Lacy*, 70 Cal. App. 5th 560, 580-590 (2021) (similar).

held that the FAA is no bar to allowing state public officials to disregard arbitration agreements in order to obtain individualized monetary relief for individuals who are required to seek such relief only in arbitration. And all of those courts have regarded themselves to be bound by *Waffle House*, which they have read to apply to public officials at all levels of government and to displace more generally applicable FAA-preemption precedent.

The decision of the New York Court of Appeals in *People* v. *Coventry First*, 915 N.E.2d 616 (N.Y. 2009), which was one of the first state-court decisions to seize on *Waffle House* as dispositive of the question presented here, is emblematic. In that case, the court held that the New York Attorney General could "seek[] damages" in court "on behalf of the owners of life insurance policies" harmed by alleged bid-rigging, even though the policy owners had entered into arbitration agreements with the defendants that covered the alleged bad acts. *Id.* at 617-620. The court declared that *Waffle House* "stands for two broad propositions": first, "that pro-arbitration policy goals do not require a government agency to give up its statutory enforcement authority in favor of arbitration," and second, that a "government agency may seek relief specific to a victim who agreed to arbitrate claims, because * * * that relief is best understood as part of the vindication of a public interest." 915 N.E.2d at 619. The court ultimately concluded that "defendants' arguments" in favor of FAA preemption "fail in light of [that] United States Supreme Court precedent." *Ibid.*

The much more recent decision of the Supreme Court of Virginia in *NC Financial Solutions of Utah* v. *Commonwealth ex rel. Herring*, 854 S.E.2d 642 (Va. 2021), is similar. There, the court held that FAA

preemption did not apply and that the Virginia Attorney General could therefore "seek[] 'victim-specific' relief, including restitution for individual consumers, when" pursuing a consumer-protection "enforcement action in a judicial forum," regardless of "arbitration agreements between [the defendant] and the individual consumers." *Id.* at 643-647. And there, again, the court understood *Waffle House* to dictate that result, explaining that "[t]he holding in *Waffle House* * * * was primarily based on the scope of the FAA and the limitations of the underlying arbitration agreement rather than the specific provisions of" the federal laws that the EEOC was enforcing in that case. *Id.* at 647.

The decisions of the Massachusetts, Iowa, Ohio, and Minnesota courts are of a piece. Each of those courts relied heavily on *Waffle House* to rule that the FAA is no obstacle to a state public-official action that advances claims for monetary relief based on alleged harm to individuals who are required to arbitrate any disputes with the defendant who has purportedly caused the harm. In those courts' view, "[t]he essential point of *Waffle House* is that the FAA's reach does not extend to a public agency," so "it should not matter whether a federal or a state * * * enforcement regime is at issue." *Rent-A-Ctr.* v. *Iowa Civ. Rts. Comm'n*, 843 N.W.2d 727, 736 (Iowa 2014); *see id.* at 728-741 (holding that Iowa Civil Rights Commission could prosecute administrative employment-discrimination action and "grant[] relief specific to" a "complaining employee" who had agreed "to arbitrate all employment-related claims"); *Taylor* v. *Ernst & Young*, 958 N.E.2d 1203, 1206, 1210-1213 (Ohio 2011) (holding that underlying arbitration agreement did not affect ability of Ohio insurance superintendent, acting as liquidator of an insolvent insurance company, to assert claims against

accounting firm for negligence and fraudulent transfer); *Joulé* v. *Simmons*, 944 N.E.2d 143, 148, 152 (Mass. 2011) (holding that Massachusetts Commission Against Discrimination could prosecute administrative action seeking "relief specific to the complaining individual," including reinstatement and backpay, "notwithstanding [any] arbitration provision in the parties' [employment] agreement"); *State ex rel. Hatch* v. *Cross Country Bank*, 703 N.W.2d 562, 566-571 (Minn. Ct. App. 2005) (holding that Minnesota Attorney General could seek "restitution under the parens patriae doctrine * * * for all [credit-card holders] injured by" invasion-of-privacy tort despite arbitration provision in card-holder agreement).[3]

3. a. The decision below and each of those other state-court decisions rests on a grave misreading of *Waffle House*, which is not binding or even especially relevant in assessing whether the FAA preempts *state law* that runs roughshod over arbitration agreements.

Waffle House is not a preemption case because it addresses only how to reconcile *federal* statutes—the FAA and the ADA.[4] Based on the determination that the "statutory text" of the ADA "unambiguously authorize[d] the EEOC to obtain" compensatory and punitive damages on behalf of individual employees "in a judicial forum," the Court in *Waffle House* declined to

[3] The decision of the intermediate appellate court in Minnesota is binding on all lower courts in that State absent review by the Minnesota Supreme Court. See *Sefkow* v. *Sefkow*, 427 N.W.2d 203, 213 (Minn. 1988).

[4] The ADA authorizes the EEOC "to exercise the same enforcement powers, remedies, and procedures that are set forth in Title VII" when "enforcing the ADA's prohibitions against employment discrimination on the basis of disability." *Waffle House*, 534 U.S. at 285.

read the FAA—a statute enacted many decades before the ADA—as overriding the "detailed enforcement scheme created by Congress." 534 U.S. at 287-292, 295-296.

The Court in *Waffle House* had no occasion to consider whether the FAA would have preempted a *state* statute, and its analysis cannot be extrapolated from one context to the other. See *Perry* v. *Thomas*, 482 U.S. 483, 491 (1987) (cautioning that discussion of arbitration in context of "*federally created* rights" was inapplicable to "issue of federal pre-emption of *state-created* rights"). That is because when two federal laws are at play, "[i]t is this Court's duty to interpret Congress's statutes as a harmonious whole rather than at war with one another." *Epic*, 584 U.S. at 502; see *Waffle House*, 534 U.S. at 297 (noting that the Court was not "authorize[d] * * * to balance the competing policies of the ADA and the FAA"). By contrast, when a state statute is at issue in a preemption case, the Supremacy Clause dictates that this Court cannot "preserve state-law rules that stand as an obstacle to the accomplishment of the [federal statute's] objectives." *Concepcion*, 563 U.S. at 343.[5]

Moreover, cases decided after *Waffle House* that *do* concern state law emphatically teach that state public officials are not beyond the reach of the FAA. In *Preston* v. *Ferrer*, 552 U.S. 346 (2008), for example, this Court held that the FAA preempted a state statute requiring parties to exhaust administrative remedies before the state Labor Commissioner—even though it

[5] For that reason, a decision by this Court on the merits of this case will not directly affect the ability of federal agencies or officials to seek in court restitution, disgorgement, or similar individualized monetary remedies that are authorized by federal statute.

was argued that "[a]llowing parties to proceed directly to arbitration * * * would undermine the Labor Commissioner's ability to stay informed of potentially illegal activity"—because "[r]equiring initial reference of the parties' dispute to the Labor Commissioner would * * * hinder speedy resolution of the controversy." 552 U.S. at 358. And more recently, in *Viking River*, this Court clarified in no uncertain terms that "nothing in the FAA categorically exempts claims belonging to sovereigns from the scope of" the FAA. 596 U.S. at 652 n.4. Special treatment of "law enforcement officials," Pet.App.19a-20a, by state courts cannot be squared with those precedents.

b. Because the state courts' holdings stem from a unanimous and emphatic misunderstanding of *Waffle House*, only action by this Court can set those courts on the right course. Given the last fifteen years of state-court decisions, there is little reason to hope that the States in question will change their approach, and every reason to expect that more state courts of last resort and other state appellate courts will—like the court below—join in disregarding the commands of the FAA so as to place more power in the hands of the relevant State's own agencies and officials.

This Court often grants review to address lower courts' erroneous extensions or interpretations of its own precedents, even in the absence of a split in authority. See, *e.g.*, Pet.9, *Home Depot USA* v. *Jackson*, No. 17-1471 (Apr. 23, 2018) (arguing that certiorari was warranted "absent a circuit conflict" because the courts of appeals had erroneously relied on "broad language in [one of] this Court's decision[s]" to misinterpret a statute), *cert. granted*, 139 S. Ct. 51; *Bank of Am.* v. *City of Miami*, 581 U.S. 189, 210 (2017) (Thomas, J., concurring in part) (noting that the Court

"granted review, despite the absence of a circuit conflict, to decide whether" certain language from this Court's earlier opinions had "survived" later decisions). That is particularly appropriate in arbitration cases given that "[i]t is a matter of great importance" that state courts, which are "most frequently called upon to apply" the FAA, "adhere to a correct interpretation" of that federal statute. *Nitro-Lift Techs.* v. *Howard*, 568 U.S. 17, 17-18 (2012). And it is alone enough to warrant review here.

B. The state courts' dogged misapplication of *Waffle House* is hardly the only reason that this Court's review is warranted, however. The decision below and the other state-court decisions reaching the same result conflict with decisions of the federal courts of appeals, including post-*Waffle House* decisions.

The rule in the Third Circuit is the opposite of the rule the state courts have adopted. In *Olde Discount* v. *Tupman*, 1 F.3d 202 (3d Cir. 1993), the Third Circuit held that state securities-enforcement officials could not seek rescission of a purchaser-broker stock transaction on behalf of stock purchasers who had agreed to arbitrate claims arising out their relationship with their broker. See *id.* at 203-204. Both judges in the *Olde Discount* majority examined the FAA and agreed that state officials cannot nullify "the contractual rights of * * * parties" by "adjudicat[ing] administratively the very same questions * * * that th[ose parties] themselves could pursue only within an arbitration." *Id.* at 209 (opinion of Greenberg, J.); *id.* at 215 (Rosenn, J., concurring).

One of those judges, Judge Greenberg, concluded that the State's "pursuit of the rescission remedy [was] preempted by the FAA." 1 F.3d at 209-210 (opinion of Greenberg, J.). He reasoned that because the State's

"claims * * * would be subject to arbitration if pursued by the [stock purchasers] themselves," allowing the state officials to pursue a recission remedy "would render [the defendant's] right to arbitration meaningless." *Id.* at 208-209. And he was unpersuaded by the very same arguments that the Court of Appeal found dispositive below—*i.e.*, that "the state's enforcement action implicate[d] the public interest" and that state officials were "not parties to the arbitration clause." *Id.* at 209-210.

Judge Rosenn, meanwhile, arrived at the same disposition "by way of contract law rather than the doctrine of preemption," because in his view the state officials' "pursui[t] of "the remedy of rescission" was nothing more than an "'end run' around the terms of the arbitration agreement." 1 F.3d at 215-216 (Rosenn, J., concurring). But he acknowledged that the FAA "protect[ed]" the contractual arbitration right in question and that the contract-law principles on which he relied were bolstered by the "strong federal policy in favor of arbitral dispute resolution" that the FAA embodies. *Id.* at 215-216.

The decision below and the other state-court decisions also stand in tension with decisions of the Ninth Circuit—which means that state courts and federal courts have reached different results that affect the very same geographical area. See *DIRECTV* v. *Imburgia*, 577 U.S. 47, 53 (2015). Most notably, in *Quackenbush* v. *Allstate Ins.*, 121 F.3d 1372 (9th Cir. 1997), the Ninth Circuit invoked the force of the FAA in requiring the California Insurance Commissioner, proceeding in his role as liquidator of an insurance company, to arbitrate his claims against a reinsurer based on an arbitration agreement between the insurance company and the reinsurer. *Id.* at 1379-1382.

The court explained that the FAA required enforcement of the "valid arbitration agreement * * * covering the disputed claims" and rejected the Commissioner's argument that "the liquidation court, by virtue of" its "public responsibilities," is in a "better position to adjudicate the state-law issues" than a "lay arbitrator." *Id.* at 1382; see, *e.g.*, *Bennett* v. *Liberty National Fire Ins.*, 968 F.2d 969, 972 (9th Cir. 1992) (Montana Insurance Commissioner "bound by" arbitration agreement between insurer and another party where Commissioner "st[ood] in the shoes of [an] insolvent insurer" to "enforce [its] contractual rights"); see also *Chao* v. *A-One Med. Servs.*, 346 F.3d 908, 923 (9th Cir. 2003) (Secretary of Labor was in privity with employee, for purposes of *res judicata*, where she was "suing for employee-specific rights" to "recoup [the employee's] individual economic loss"); *California* v. *IntelliGender*, 771 F.3d 1169, 1179-1182 (9th Cir. 2014) (similar).[6]

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[6] To be sure, not every federal court is in complete accord with the decisions of the Third and Ninth Circuits. See *Iberia Credit Bureau* v. *Cingular Wireless*, 379 F.3d 159, 175 (5th Cir. 2004) (reasoning that arbitration provision prohibiting class arbitration was not unconscionable because (among other reasons) the state attorney general could still "pursue restitutionary relief on behalf of a class of aggrieved consumers"); see also *Keane* v. *ALPS Fund Servs.*, 2020 WL 7321055, at *5 (D. Mass. Dec. 11, 2020) (ruling that "an arbitration agreement cannot preclude [a state] administrative agency enforcement action"); *Charter Commc'ns* v. *Derfert*, 510 F. Supp. 3d 8, 14-21 (W.D.N.Y. 2021); *Charter Commc'ns* v. *Jewett*, 573 F. Supp. 3d 742, 757 (N.D.N.Y. 2021); *SBM Site Servs.* v. *Alvarez*, 2018 WL 735388, at *1-5 (D. Neb. Jan. 19, 2018), *report and recommendation adopted*, 2018 WL 734170 (D. Neb. Feb. 6, 2018). As a general matter, however, federal courts are less likely than state courts to be solicitous of state public officials and more likely to conclude that the FAA preempts state law in this area.

II. The Decision Below Is Irreconcilable With This Court's Precedents

Even apart from all of those highly problematic aspects of the lower court's decision, this Court's review is warranted because the decision conflicts with this Court's precedents.

The "hostility to arbitration agreements" that prompted enactment of the FAA manifested itself in "'a great variety' of 'devices and formulas' declaring arbitration against public policy." *Concepcion*, 563 U.S. at 339, 342. Mindful of that history, this Court has emphasized the importance of remaining "alert to new devices and formulas that would achieve much the same result." *Epic*, 584 U.S. at 509 (quoting *Concepcion*, 563 U.S. at 342).

The rule adopted by the Court of Appeal here is just such a device. The court's decision rests on two facts that are common to nearly all state-law enforcement schemes authorizing public officials to pursue monetary relief on individuals' behalf. First, the court observed that the Attorney General, City Attorneys, and Labor Commissioner "are not parties to the arbitration agreements at issue," Pet.App.8a, because—unsurprisingly—they had not actually signed the agreements between Lyft and the drivers who use its platform. Second, the court determined that the government officials were not "prox[ies] for the drivers" because "[t]he public officials who brought these actions" were "authorized by statute to bring the claims at issue here and to seek the relief they request." Pet.App.8a, 21a. In other words, the Court of Appeal held that public officials may wipe away private parties' arbitration agreements, while passing along any monetary recovery to those parties, so long as the state legislature has authorized the officials to do so.

That holding flouts this Court's FAA preemption precedents. It is difficult to imagine a rule that more completely "'stands as an obstacle to the accomplishment and execution of the full purposes and objectives' of the FAA," *Lamps Plus*, 587 U.S. at 183 (quoting *Concepcion*, 563 U.S. at 352), than one that authorizes state public officials to end run private arbitration agreements by asserting in court claims for monetary relief on behalf of individuals who are contractually obligated to arbitrate all claims against the very parties that the public officials have sued. Such a rule impermissibly "defeat[s] the ability of parties to control which claims are subject to arbitration," *Viking River*, 596 U.S. at 660, because it vests public officials—rather than the contracting parties—with the ultimate decision-making authority over where an individual's right to monetary relief will be adjudicated, see *Perry*, 482 U.S. at 489 (FAA "withdrew the power of the states to require a judicial forum for the resolution of claims which the contracting parties agreed to resolve by arbitration").

That rule also deprives the contracting parties of the benefits of arbitration's "efficient, streamlined procedures." *Concepcion*, 563 U.S. at 344. It potentially leaves arbitrators nothing to do but apply previously issued judicial rulings, see Pet.App.18a (refusing to discount the possibility that "the present action will have preclusive effect in drivers' individual arbitrations")—or, at the very least, subjects defendants to duplicative proceedings in court and in arbitration. And it permits public officials to bring representative actions on behalf of a large group of individuals, including what amounts to a state-wide "class" of individuals, even where those individuals' arbitration

agreements expressly forbid class or other mass actions and require one-on-one claim resolution by an arbitrator.

The Court of Appeal tried to evade preemption by characterizing the state Attorney General and Labor Commissioner as bringing "their *own* statutory claims" rather than "derivative claims." Pet.App.18a-19a, 21a (emphasis added). But this Court is "not required to take the labels affixed by state courts at face value in determining whether state law creates a scheme at odds with federal law." *Viking River*, 596 U.S. at 654 n.6. On the contrary, just as States may not openly "discriminat[e] on [their] face against arbitration," States may not adopt "a[] rule that covertly accomplishes the same objective." *Kindred Nursing Centers* v. *Clark*, 581 U.S. 246, 251 (2017); see, *e.g.*, *Viking River*, 596 U.S. at 650 ("[E]ven rules that are generally applicable as a formal matter are not immune to preemption by the FAA.").

Here, the public officials who brought the claims at issue unquestionably stand in the shoes of the drivers for whom they seek to recover direct monetary compensation—with that money to be turned over to the drivers at the conclusion of the suit. The California Attorney General is proceeding under a state statute authorizing him to pursue "relief on behalf of others," Cal. Bus. & Prof. Code § 17203, and the California Supreme Court has elsewhere recognized that the Attorney General's "primary purpose" in bringing a claim under that statute "is to recover lost property on behalf of" individuals allegedly injured by an unlawful practice—a role that is "quintessentially" akin to a "conservator" or "trustee." *California* v. *Altus Fin.*, 36 Cal. 4th 1284, 1305 (2005). The California Labor Commis-

sioner is proceeding under a state statute that authorizes her to seek "moneys payable to employees," Cal. Lab. Code § 98.3(b)—and when she takes such "action to collect wages or benefits on behalf of a worker," she acts only "as a trustee of the monies collected." *Rebolledo* v. *Tilly's*, 228 Cal. App. 4th 900, 914 (2014). Moreover, the Court of Appeal recognized that the driver-specific relief requested by all of the public officials in this case could also "be sought by individual drivers on their own behalf." Pet.App.21a.

Thus, the simple fact is that the public officials' claims are identical to, and coextensive with, the individual drivers' claims. In any other situation with any other plaintiffs, blackletter law would preclude the drivers from avoiding their arbitration agreements by transferring their claims to a third party to litigate in court. See, *e.g.*, *GE Energy Power Conversion France SAS* v. *Outokumpu Stainless USA*, 140 S. Ct. 1637, 1643-1644 (2020); *DMS Servs.* v. *Superior Ct.*, 205 Cal. App. 4th 1346, 1353 (2012); 21 *Williston on Contracts* § 57:19 (4th ed. 2023).

Accordingly, the failure of the court below to deem the public officials' claims preempted by the FAA, despite the many decisions of this Court dictating that result, cries out for review. This Court has not hesitated in the past to grant certiorari to correct a State's failure to enforce the FAA, through preemption or otherwise. Notably, that has been true even where no split in authority existed and the question presented was specific to one State—often, California. See, *e.g.*, *Viking River*, 596 U.S. at 643 (certiorari to California Court of Appeal to decide whether FAA "preempt[ed] a rule of California law that invalidate[d] contractual waivers of the right to assert representative claims under California's Labor Code Private Attorneys General

Act of 2004"); *DIRECTV*, 577 U.S. at 50-53 (certiorari to California Court of Appeal to decide whether FAA preempted interpretation of the phrase "law of your state" to include California law invalided by this Court's decision in *Concepcion*); *Kindred Nursing*, 581 U.S. at 248 (certiorari to consider Kentucky rule that "a general grant of power [of attorney] * * * does not permit a legal representative to enter into an arbitration agreement"). Review is equally or more warranted in this case.

III. The Question Presented Is Exceptionally Important, And This Case Presents An Ideal Vehicle To Address It

A. Whether the FAA preempts state law that permits public officials to bring claims for monetary relief on behalf of individuals who have signed binding agreements to arbitrate those claims, with that relief to be turned over to those individuals at the end of the officials' suit, is a pressing question that is urgently in need of resolution by this Court. The question is arising in the lower courts with increasing frequency. And the decision below—like the other state-court decisions that have reached a similar result—allows a State to effectively erase a binding arbitration agreement, and thereby ignore any limitation in that agreement on mass actions, through a simple stratagem. Absent FAA preemption, that stratagem would render a large swath of this Court's arbitration decisions a dead letter and would severely disrupt a wide range of established business arrangements that depend on resolving disputes through non-representative arbitration.

1. Over the last decade and a half, this Court has taken great pains to ensure that parties enjoy the "right to *arbitrate*" in a "meaningful sense." *Viking*

River, 596 U.S. at 651. In *Concepcion*, this Court held that States cannot "[r]equir[e] the availability of class-wide arbitration" because such a mandate "interferes with fundamental attributes of arbitration." 563 U.S. at 344. This Court reaffirmed that principle in *Epic*, where it again held that the FAA protects access to the *benefits* of arbitration, *i.e.*, "its speed and simplicity and inexpensiveness." *Epic*, 584 U.S. at 509. And once more in *Viking River*, this Court found preempted "[a] state rule imposing an expansive rule of joinder in the arbitral context" because it "defeat[ed] the ability of parties to control which claims are subject to arbitration." 596 U.S. at 660. In other words, this Court has consistently held that the FAA is incompatible with rules that have the effect of coercively funneling otherwise arbitrable claims into litigation or that threaten the parties' ability to agree on simple bilateral arbitration. See *id.* at 656, 661.

The holding below creates just such a rule, and it permits enforcement of state law that is entirely incompatible with the FAA. Under the reasoning adopted by the Court of Appeal and the decisions of courts in other States, a state legislature can effectively *nullify* arbitration agreements—including agreements that contain a bar on class actions or other forms of group actions. All the legislature must do is authorize public officials to pursue in court claims for monetary relief on behalf of individuals bound by such agreements, give those individuals the right to any monetary recovery that results from the officials' suits, and then declare by legislative fiat that the officials' claims are somehow "independent" of the individuals' claims. Pet.App.17a, 21a.

Under such a regime, the claims of individuals who are bound to arbitrate will instead be litigated *en*

masse in a judicial forum by public officials. And that will be true even where, as here, the arbitration agreements in question expressly forbid proceeding as part of a class or other large group of claimants. See, *e.g.*, William H. Pryor Jr., *A Comparison of Abuses and Reforms of Class Actions and Multigovernment Lawsuits*, 74 Tul. L. Rev. 1885, 1886 (2000).

Such public-official litigation would almost certainly preclude the individuals from later pursuing those same claims in arbitration. See Pet.App.18a (reserving preclusion question). In any event, defendants would be forced to defend against the relevant claims in court, which is exactly what arbitration agreements enforceable under the FAA are supposed to prevent.

Perhaps worse still, the reasoning of those decisions would readily encompass an additional extension of that arbitration-nullification stratagem—one that would not require any involvement at all by public officials. Under those decisions' logic, a State could deputize *private persons* who have not signed arbitration agreements (and who perhaps have no connection whatsoever to the relevant parties and facts) to bring claims on behalf of those who have signed arbitration agreements, so long as the non-signatories are deemed to be private attorneys general bringing "sui[t] in their law enforcement capacities" and are "authorized" under a state statute "to seek the relief they request." Pet.App.20a-21a.

Such suits by "private attorney generals" would share all of the negative features of public-official suits while removing constraints on circumvention of arbitration agreements like limited resources or prosecutorial discretion. The suits brought by private plaintiffs could be conducted on behalf of a large group or a class of individuals who would otherwise be bound to

arbitrate in standard bilateral arbitrations that do not involve anyone but the target of the relevant claim. And those suits could end with the private plaintiffs simply turning over the bulk of the monetary recovery to those very individuals, as the public officials in this case are bound to do by statute. See pp.6-7, 22-23, *supra*. That would make every single arbitration agreement vulnerable to displacement by roving, self-appointed attorneys general and their contingency-fee-based lawyers.

2. a. The problem is especially acute in California.

First, absent FAA preemption, expansively framed California state statutes create almost infinite opportunities for public officials to litigate in court precisely the claims for monetary relief to individuals that those same individuals would be bound to resolve in arbitration. The laws at issue in this case, for example, cover a wide range of subject matter. One of those laws authorizes public officials to pursue restitution on behalf of anyone harmed by "*any* unlawful, unfair or fraudulent business act or practice." Cal. Bus. & Prof. Code § 17200 (emphasis added); see *id.* §§ 17203-04. That intentionally "broad, sweeping language" was designed to "'borrow[]' violations of other laws," thereby treating *any* allegedly unlawful conduct by a business "as [an] unlawful practice[]" that is "independently actionable." *Abbott Lab'ys* v. *Superior Ct. of Orange Cnty.*, 9 Cal. 5th 642, 651-652 (2020). As a result, a whole host of public officials, ranging from the Attorney General to district and even city attorneys, see Cal. Bus. & Prof. Code § 17204, can pursue nearly any claim for relief on behalf of any individual against any business operating in California.

Moreover, the California legislature has recently gone so far to *codify* the holding below—in direct response to this very case—in a statute that expressly sets arbitration agreements to the side. That statute authorizes "the Attorney General, a district attorney, a city attorney, a county counsel, or any other city or county prosecutor" to seek individualized monetary relief under the California Labor Code and provides that "*private arbitration [agreements] shall have no effect* on the[ir] authority" to do so. Cal. Lab. Code §§ 180, 182 (emphasis added).

Second, California would not have to do much to extend its laws to encompass suits of the same nature brought by private parties rather than public officials. California already has a statute authorizing a private person to assert Labor Code violations "on behalf of the state" against that person's employer in litigation brought on behalf of a large group of other employees. *Iskanian* v. *CLS Transp.*, 59 Cal. 4th 348, 360 (2014), *abrogated in part by Viking River*, 596 U.S. 639. A few changes to that statute's standing requirement and scope of available relief—both perfectly plausible under state law, see *id.* at 387 ("In crafting [that statute], the Legislature could have chosen to deputize citizens who were not employees of the defendant employer")—and it will not require any action by a public official to force litigation of claims that the FAA requires to be arbitrated.

This case is therefore very much in keeping with California's long history of attempts to undermine arbitration agreements. For example, before reversals by this Court, California classified "most collective-arbitration waivers in consumer contracts as unconscionable," *Concepcion*, 563 U.S. at 340; rendered a

post-*Concepcion* class-arbitration waiver unenforceable by interpreting the phrase "law of your state" to include "*invalid* California law," *DIRECTV*, 577 U.S. at 55; sought to impose mandatory class procedures in arbitration, see *Lamps Plus*, 587 U.S. at 189; conditioned "the enforceability of an arbitration agreement on the availability" of an expansive claim-joinder rule, *Viking River*, 596 U.S. at 660; and refused to compel arbitration where the dispute concerned wage collection, see *Perry*, 482 U.S. at 484, or where a state administrative agency had original jurisdiction over a dispute, see *Preston*, 552 U.S. at 351-352.

The rule adopted by the court below is just a different way for California to accomplish those *very same aims*, in one fell swoop, by side-stepping binding arbitration agreements rather than attempting to impose direct limitations on them. See *Epic*, 584 U.S. at 509 (emphasizing importance of remaining "alert to new devices and formulas that would achieve much the same result"). And if that were permissible, then this Court's considerable body of arbitration decisions would be side-stepped at the very same time.

b. Those problems certainly are not limited to California. Under the reasoning of the decision below, it would be "trivially easy" for *any* State "to undermine the [FAA]—indeed, to wholly defeat it." *Kindred Nursing*, 581 U.S. at 255.

That is already happening in many States. As discussed above, courts of last resort in numerous States have issued decisions very similar to the decision below, thereby permitting public officials in those States to stand in the shoes of individuals who are required to arbitrate while erasing the arbitration agreements that bind those individuals. See pp.11-14, *supra*.

The problem is also likely to spread. Every State has laws, in some form or another, that permit public officials to seek monetary relief that is to be turned over to individuals on whose behalf those officials bring claims. See, *e.g.*, National Consumer Law Center, *Consumer Protection in the States: A 50-State Evaluation of Unfair and Deceptive Practices Laws* 28 (Mar. 2018), *available at* https://filearchive.nclc.org/udap/udap-report.pdf; Jane R. Flanagan, *Alt-Enforcers: The Emergence of State Attorneys General As Workplace Rights Enforcers*, 95 Chi.-Kent L. Rev. 103, 104-107, 111-115 (2020); Margaret S. Thomas, *Parens Patriae and the States' Historic Police Power*, 69 SMU L. Rev. 759, 761-764, 796-800 (2016). And the decision below provides every State in the country that has not already gone down the same path as California with a clear roadmap for rendering any arbitration agreement entirely defunct.

3. Allowing States to strike such a fatal blow to the FAA has extremely troubling practical implications. If that kind of legal regime were permissible, businesses could no longer count on the efficiencies of arbitration to resolve potential disputes with customers, employees, or contractors, as public officials (or private attorneys general) would hold ultimate veto power over the parties' choice of an arbitral forum.

No arbitration agreement, on any subject matter or in any industry, would be safe. That is evidenced by the range of claims that States have *already* placed beyond the reach of the FAA's protections in these kinds of cases—running the gamut from consumer suits, see *Coventry First*, 915 N.E.2d at 617-618 (bid-rigging); *NC Fin.*, 854 S.E.2d at 643-644 (unfair lending practices), to employment disputes, *Joulé*, 944 N.E.2d at 145-9147 (pregnancy discrimination); *Rent-A-Ctr.*, 843

N.W.2d at 728-729 (same); to run-of-the-mill tort actions, see *Hatch*, 703 N.W.2d at 565-567 (invasion of privacy).

Moreover, limitations in arbitration agreements on seeking class-type relief would simply be swept aside. Disputes would be resolved in public-official (or private-attorney-general) litigation that reproduces all of the worst features of class actions, because it aggregates many individuals' claims and poses a threat of devastatingly large monetary liability. At the same time, that litigation would be free of the formal restrictions—such as those pertaining to class certification and rights of absent class members—that cabin private class actions. See, *e.g.*, Myriam Gilles & Gary Friedman, *After Class: Aggregate Litigation in the Wake of* AT&T Mobility *v.* Concepcion, 79 U. Chi. L. Rev. 623, 660-661 (2012).

In short, businesses that rely on arbitration agreements would be severely harmed by being forced to engage in costly, burdensome litigation over monetary relief in lieu of arbitration. And there is simply no need for States to intervene on individuals' behalf for their direct monetary benefit, because arbitration provides an effective and efficient mechanism for those individuals to resolve their disputes and because public officials can (as in this case) pursue other kinds of remedies. This Court should not allow that kind of wholesale displacement of federal law requiring enforcement of arbitration agreements.

B. This case offers an ideal vehicle for this Court to address the question presented.

This case involves an entirely clean legal issue. The decision below extensively discusses the question presented, which was squarely teed up and preserved

at every stage of the case, including in Lyft's unsuccessful petition for review in the California Supreme Court. There are no factual disputes to resolve with respect to Lyft's arbitration agreements with the drivers, which the Court of Appeal "assume[d] * * * [were] bind[ing on] drivers who entered them."[7] Pet.App.6a n.9. And the legal question for this Court to resolve is focused and dispositive of the arbitration issue in this case. Lyft sought to compel arbitration of *only* the public officials' claims for driver-specific monetary relief and raised no challenge to the officials' ability to seek remedies in court that diffusely benefit individuals bound by arbitration agreements and are more classically "public" in character, such as injunctions, regulatory sanctions, or civil penalties.

The state-court decision here is also preferable to a federal-court decision as a means of resolving the question presented. Ancillary procedural issues, such as abstention or lack of complete diversity, might muddy the waters in a federal case involving FAA preemption of public-official suits like the one here. But no such issues exist in this case.

Indeed, this Court has recognized that, because "State courts rather than federal courts are most frequently called upon" to apply the FAA, "[i]t is a matter of great importance" that state courts "adhere to a correct interpretation" of that particular "legislation." *Nitro-Lift*, 568 U.S. at 17-18. And while the decision below was issued by one of California's intermediate

[7] Indeed, Lyft's arbitration agreements have been routinely enforced by state and federal courts. See, *e.g.*, *Cunningham* v. *Lyft*, 17 F.4th 244, 249-253, 255 (1st Cir. 2021); *Osvatics*, 535 F. Supp. 3d at 9-22.

appellate courts, this Court has frequently granted review of decisions by those very courts, including in multiple arbitration cases. See, *e.g.*, *Viking River*, 142 S. Ct. 734 (2021) (mem.); *DIRECTV*, 575 U.S. 911 (2015) (mem.); *Preston*, 551 U.S. 1190 (2007) (mem.); see also, *e.g.*, *Sheetz* v. *Cnty. of El Dorado*, 144 S. Ct. 477 (2023) (mem.). Notably, unlike in many other States, a decision by any district or division of the California Court of Appeal is binding on *all* trial courts in the State. See *Auto Equity Sales* v. *Superior Ct. of Santa Clara Cnty.*, 57 Cal. 2d 450, 455 (1962); see p.11 n.2, *supra* (discussing other California Court of Appeal decisions from across the State holding the same thing as the decision below).

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

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April 16, 2024

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APPENDIX A

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT
DIVISION FOUR

In re UBER TECHNOLOGIES WAGE AND HOUR CASES.

A166355

(San Francisco County Super. Ct.
No. CJC-21-005179; J.C.C.P. No. 5179)

[Filed September 28, 2023]

In these coordinated proceedings, defendants Uber and Lyft[1] appeal after the trial court denied their motions to compel arbitration of claims brought against them in civil enforcement actions by the People of the State of California (the People)[2] and by the Labor Commissioner through the Division of Labor Standards Enforcement (DLSE).[3] We conclude the court correctly denied the motions because the People and the Labor Commissioner are not parties to the arbitration agreements invoked by Uber and Lyft. We therefore affirm.

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[1] The defendants are (1) Uber Technologies, Inc., and certain of its affiliated entities (collectively, Uber), and (2) Lyft, Inc. (Lyft).

[2] The Attorney General of California, joined by city attorneys of the cities of Los Angeles, San Diego, and San Francisco, brought the action on behalf of the People.

[3] The DLSE is a division within the Department of Industrial Relations. (Lab. Code, §§ 21, 79.) We will use the terms DLSE and Labor Commissioner interchangeably.

I. BACKGROUND

A. *The People's and the Labor Commissioner's Actions Against Uber and Lyft*

In May 2020, the People filed this action. In their operative complaint, the People allege Uber and Lyft violated the Unfair Competition Law (Bus. & Prof. Code, § 17200 et seq.) (UCL) by misclassifying their California ride-share and delivery drivers as independent contractors rather than employees, thus depriving them of wages and benefits associated with employee status.[4] The People allege the misclassification harms workers, competitors, and the public. The People seek injunctive relief, civil penalties, and restitution under the UCL. (Bus. & Prof. Code, §§ 17203, 17204, 17206.) The People also seek injunctive relief under the statutory scheme established by Assembly Bill No. 5 (2019–2020 Reg. Sess.) (Assembly Bill 5), specifically Labor Code section 2786,[5] which authorizes such relief to prevent misclassification of employees as independent contractors.

The People sought, and the trial court entered, a preliminary injunction prohibiting Uber and Lyft from misclassifying their drivers as independent contractors in violation of Assembly Bill 5. (*People v. Uber Technologies, Inc., supra,* 56 Cal.App.5th at pp. 281–282.) We affirmed in an October 2020 opinion. (*Id.* at p. 316.) Following the passage of Proposition 22,

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[4] We discussed the People's claims and other relevant background more fully in *People v. Uber Technologies, Inc.* (2020) 56 Cal.App.5th 266, 273, 274–282.

[5] The injunctive relief provision of Assembly Bill 5 was originally codified as Labor Code section 2750.3, subdivision (j) (Stats. 2019, ch. 296, § 2) and was later transferred to section 2786 (Stats. 2020, ch. 38, §§ 1–2). (See *People v. Uber Technologies, Inc., supra,* 56 Cal.App.5th at p. 274, fn. 3.)

which altered the standards for determining whether app-based drivers are independent contractors (Bus. & Prof. Code, § 7451), the People and Uber and Lyft stipulated to dissolve the preliminary injunction, which had been stayed since it was entered. The People's operative first amended and supplemental complaint clarifies that the People seek injunctive relief to the extent Proposition 22 is unconstitutional or otherwise invalid.[6]

In August 2020, the Labor Commissioner filed separate actions against Uber and Lyft, pursuant to her enforcement authority under the Labor Code. (E.g., Lab. Code, §§ 61, 90.5, 95, 98.3, subd. (b).) The Labor Commissioner alleges Uber and Lyft have misclassified drivers as independent contractors and have thus violated certain Labor Code provisions and wage orders. The Labor Commissioner seeks injunctive relief, civil penalties payable to the state, and unpaid wages and other amounts alleged to be due to Uber's and Lyft's drivers, such as unreimbursed business expenses.[7]

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[6] The validity of Proposition 22 under the state constitution is a question now pending before the California Supreme Court. (*Castellanos v. State of California* (2023) 89 Cal.App.5th 131, review granted June 28, 2023, S279622.)

[7] As noted, the People and the Labor Commissioner filed their actions pursuant to statutory authority as public enforcement officials. (Bus. & Prof. Code, §§ 17203, 17204, 17206; Lab. Code, §§ 2786, 61, 90.5, 95, 98.3, subd. (b).) Their actions are not private attorney general actions, i.e., they are not actions "brought by an aggrieved employee on behalf of himself or herself and other current or former employees" as authorized by the Labor Code Private Attorneys General Act of 2004 (Lab. Code, § 2698 et seq.) (PAGA). (Lab. Code, § 2699, subd. (a).) They are direct enforcement actions by public prosecutors acting under specific statutory grants of prosecutorial authority.

The People's action and the Labor Commissioner's actions were coordinated (along with other cases not involved in this appeal)[8] as part of *Uber Technologies Wage and Hour Cases*.

B. *Uber's and Lyft's Motions To Compel Arbitration Based on Their Arbitration Agreements With Drivers*

As we noted in *People v. Uber Technologies, Inc.*, *supra*, 56 Cal.App.5th at p. 312, fn. 24, foreshadowing this appeal, Uber and Lyft filed motions to compel arbitration in the People's action; they also filed similar motions in the Labor Commissioner's actions. Uber and Lyft sought to require arbitration of those actions to the extent they seek remedies that Uber and Lyft characterize as "driver-specific" or " 'individualized' " relief, such as restitution under the UCL and unpaid wages under the Labor Code.

Uber's and Lyft's motions did not seek to compel arbitration of the People's and the Labor Commissioner's requests for civil penalties and injunctive relief, but they nonetheless asked the court to stay those portions of the actions pending completion of any driver arbitrations. Finally, as an alternative to their requests to compel arbitration, Uber and Lyft asked the court to strike the People's and the Labor Commissioner's requests for restitution and certain other relief.

In their motions, Uber and Lyft relied on arbitration agreements they entered into with drivers. The agreements require drivers to arbitrate on an individual basis most disputes arising from their relationship with

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[8] According to the parties' briefs in this appeal, those other cases (which also allege misclassification of employees as independent contractors) were brought by private parties under PAGA.

Uber or Lyft. The People and the Labor Commissioner are not parties to the agreements.

Following coordination, the parties filed additional briefing pertaining to the motions, and the trial court heard argument on August 26, 2022. On September 1, 2022, the court entered an order denying Uber's and Lyft's motions.

Uber and Lyft appealed.

II. DISCUSSION

Uber and Lyft contend the arbitration agreements they entered into with their drivers require that portions of the civil enforcement actions brought by the People and the Labor Commissioner be compelled to arbitration. If this court orders arbitration, they argue, the remaining portions of the People's and the Labor Commissioner's actions should be stayed. We conclude, as the trial court did, that there is no basis to compel arbitration.

A. *Standard of Review*

"Whether an arbitration agreement binds a third party is a legal question we review de novo." (*Department of Fair Employment and Housing v. Cisco Systems, Inc.* (2022) 82 Cal.App.5th 93, 99 (*Cisco*).)

B. *The People and the Labor Commissioner Are Not Bound by Uber's and Lyft's Arbitration Agreements with Their Drivers*

Both the federal government and California have strong public policies " 'in favor of arbitration as an expeditious and cost-effective way of resolving disputes.' " (*People v. Maplebear Inc.* (2022) 81 Cal.App.5th 923, 930 (*Maplebear*).) But "[e]ven though the ' " 'law favors contracts for arbitration of disputes between parties' [citation], ' "there is no

policy compelling persons to accept arbitration of controversies which they have not agreed to arbitrate . . . .” ’ ” ’ ” (*Id.* at p. 931.)

The trial court correctly concluded there is no basis to compel arbitration here because the People and the Labor Commissioner are not parties to the arbitration agreements Uber and Lyft entered into with their drivers. Uber and Lyft contend arbitration nevertheless should be compelled on the basis of either (1) federal preemption or (2) equitable estoppel. We disagree.[9]

1. Preemption

Uber and Lyft argue the Federal Arbitration Act (9 U.S.C. § 1 et seq.) (FAA) precludes the People and the Labor Commissioner from pursuing in court some of the types of relief they seek in their enforcement actions, including restitution under the UCL and unpaid wages and business expenses of drivers under the Labor Code. Characterizing these forms of relief as “individualized” or “driver-specific,” they argue that, because such relief may benefit individual drivers, any claim seeking it “belong[s]” to the drivers (and the People and the Labor Commissioner only “stand[] in the [drivers’] shoes,” while the drivers are the “real parties in interest”). Thus, they conclude, those portions of the People’s and the Labor Commissioner’s actions must be compelled to arbitration. We disagree.

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[9] Because we hold the People and the Labor Commissioner are not bound by the arbitration agreements between Uber and Lyft and their drivers, we need not address (1) the Labor Commissioner’s argument that Uber and Lyft have not provided sufficient evidence of such agreements because they produced no signed agreements, or (2) defendants’ contentions that the agreements are valid and binding as between the parties who entered them. We will assume for purposes of this opinion that the arbitration agreements bind drivers who entered them.

The United States Supreme Court has emphasized that, while the FAA embodies a strong federal policy in favor of enforcing parties' agreements to arbitrate, that policy is founded on the parties' consent, and there is no policy in favor of requiring arbitration of disputes the parties have not agreed to arbitrate. (*Viking River Cruises, Inc. v. Moriana* (2022) 596 U.S. __, __ [142 S.Ct. 1906, 1918] (*Viking River*) ["the 'first principle' of our FAA jurisprudence" is "that '[a]rbitration is strictly "a matter of consent" ' "]; *id.* at p. __ [142 S.Ct. at p. 1917]; *E.E.O.C. v. Waffle House, Inc.* (2002) 534 U.S. 279, 294 (*Waffle House*) ["Because the FAA is 'at bottom a policy guaranteeing the enforcement of private contractual arrangements,' [citation], we look first to whether the parties agreed to arbitrate a dispute, not to general policy goals, to determine the scope of the agreement."].)

" ' 'Whether an agreement to arbitrate exists is a threshold issue of contract formation and state contract law." [Citations.] "The party seeking to compel arbitration bears the burden of proving the existence of a valid arbitration agreement." ' [Citation.] 'Because arbitration is a matter of contract, generally " 'one must be a party to an arbitration agreement to be bound by it or invoke it.' " ' [Citation.] 'However, both California and federal courts have recognized limited exceptions to this rule, allowing nonsignatories to an agreement containing an arbitration clause to compel arbitration of, or be compelled to arbitrate, a dispute arising within the scope of that agreement.' [Citation.] ' " 'As one authority has stated, there are six theories by which a nonsignatory may be bound to arbitrate: "(a) incorporation by reference; (b) assumption; (c) agency; (d) veil-piercing or alter ego; (e) estoppel; and (f) third party beneficiary." ' " ' " (*Maplebear*, *supra*, 81 Cal.App.5th at pp. 931–932.)

Here, as noted, the People and the Labor Commissioner are not parties to the arbitration agreements at issue. And none of the above theories supports compelling their claims to arbitration. We reject Uber's and Lyft's suggestion that the People and the Labor Commissioner should be bound because they allegedly are mere proxies for Uber's and Lyft's drivers. (See *Cisco*, *supra*, 82 Cal.App.5th at p. 99 [addressing a similar claim; noting the "proxy" theory was "along [the] lines" of the assumption, agency, and alter ego theories].)

The relevant statutory schemes expressly authorize the People and the Labor Commissioner to bring the claims (and seek the relief) at issue here. (Bus. & Prof. Code, §§ 17203, 17204, 17206 [authority for Attorney General and other public prosecutors to sue in the name of the People under the UCL]; Lab. Code, § 2786 [authority under Assembly Bill 5]; *id.*, §§ 61, 90.5, 95, 98.3, subd. (b) [Labor Commissioner's authority].) The public officials who brought these actions do not derive their authority from individual drivers but from their independent statutory authority to bring civil enforcement actions, and, as we discuss further below, there is no basis for binding them to arbitration agreements Uber and Lyft entered with drivers.

a. Waffle House *Establishes the Drivers' Arbitration Agreements Do Not Bar the People and the Labor Commissioner from Seeking Judicial Relief*

In *Waffle House*, the United States Supreme Court held that the federal Equal Employment Opportunity Commission (EEOC) is not bound by employee arbitration agreements because it has the ability to determine whether to file suit and what relief to pursue. (*Waffle House, supra*, 534 U.S. at pp. 291, 282, 285, 297–298.) An employee's agreement to arbitrate certain claims does not bar the EEOC from pursuing "victim-specific

judicial relief" (as well as injunctive relief) in its own action. (*Id.* at pp. 282, 285, 297–298.) The high court rejected arguments that the EEOC's claims in this setting are "derivative" and that the EEOC is a "proxy for the employee." (*Id.* at pp. 297–298.)

Recent decisions by California appellate courts have followed *Waffle House*, holding that public agencies bringing enforcement actions as authorized by statute are not bound by arbitration agreements between private parties. In *Maplebear*, a case very similar to this one, the San Diego City Attorney brought an enforcement action under the UCL on behalf of the People, alleging Instacart misclassified its shoppers as independent contractors. (*Maplebear*, *supra*, 81 Cal.App.5th at p. 926.) The trial court denied Instacart's motion to compel arbitration, and the appellate court affirmed, holding that, under *Waffle House*, arbitration agreements between Instacart and its shoppers were not binding on the People. (*Maplebear*, at pp. 926–927, 935.)

The *Maplebear* court rejected Instacart's contention that the FAA supported a contrary result because the People allegedly were "deputized" by the shoppers. (*Maplebear*, *supra*, 81 Cal.App.5th at pp. 934–935.) Instead, the court held, the City of San Diego was acting in its own law enforcement capacity to seek relief under the UCL. (*Maplebear,* at p. 934.) The court explained that "the FAA is not concerned with the ability of the State of California to prosecute violations of the Labor Code and to seek civil penalties and related relief for those violations under the UCL. Contrary to Instacart's assertion, the Shoppers are not the real party in interest in this case, the People are." (*Id.* at p. 935.)

Similarly, in *Cisco*, *supra*, 82 Cal.App.5th at p. 97, the appellate court addressed whether the

Department of Fair Employment and Housing (now named the Civil Rights Department) could be "compelled to arbitrate an employment discrimination lawsuit when the affected employee agreed to resolve disputes with the employer through arbitration." Affirming the trial court's denial of a motion to compel arbitration, the appellate court held the Department could not be required to arbitrate because it did not agree to do so. (*Ibid.*) The *Cisco* court rejected the employer's claim that the Department should be bound because it was a "proxy" for the employee and was "not acting independently." (*Id.* at p. 99.)

Instead, the *Cisco* court explained, the Department acts independently and pursuant to express statutory authority when it sues for violations of the Fair Employment and Housing Act. (*Cisco*, *supra*, 82 Cal.App.5th at pp. 99–100, 103–104, citing *Waffle House*, *supra*, 534 U.S. at p. 291.) "As an independent party, the Department cannot be compelled to arbitrate under an agreement it has not entered." (*Cisco,* at p. 104; see *Crestwood Behavioral Health, Inc. v. Lacy* (2021) 70 Cal.App.5th 560, 581–585 [recognizing, following *Waffle House*, that the Labor Commissioner has independent statutory authority to investigate and obtain victim-specific relief under the Labor Code and to protect the public interest, regardless of whether an individual employee's claim has been compelled to arbitration].)

We agree with the analysis in *Maplebear* and *Cisco.* We hold that, under *Waffle House*, the People and the Labor Commissioner are not bound by arbitration agreements they did not enter. The FAA does not preclude them from exercising their statutory authority to enforce the law and to seek appropriate remedies, including injunctive relief and civil penalties, as well as restitution and other "victim-specific judicial relief."

(*Waffle House*, *supra*, 534 U.S. at p. 282; *id.* at pp. 285, 297–298.) The trial court correctly so held. As we discuss below, Uber's and Lyft's arguments to the contrary are not persuasive.

b. Viking River *Provides No Basis for Reversal*

Uber and Lyft contend the high court's decision in *Viking River* requires that the People and the Labor Commissioner be bound to Uber's and Lyft's arbitration agreements with their drivers. We disagree. *Viking River* involved a different issue—whether California's rule invalidating waivers of representative claims under PAGA is preempted by federal law. (*Viking River*, *supra*, 596 U.S. at p. __ [142 S.Ct. at p. 1913]; see *Adolph v. Uber Technologies, Inc.* (2023) 14 Cal.5th 1104, 1113–1114 [discussing *Viking River*].) In this case, the actions brought by the People and the Labor Commissioner are not private attorney general actions under PAGA. The PAGA plaintiff in *Viking River*, a former employee of the defendant, had signed an agreement to arbitrate any dispute arising out of her employment (*Viking River,* at p. __ [142 S.Ct. at pp. 1915–1916]), and the high court did not address any claim that a plaintiff who was a nonsignatory to the agreement should be bound.

Uber and Lyft dwell on language in a footnote in *Viking River* (footnote 4), in which the high court stated that, "[a]lthough the terms of [9 U.S.C.] § 2 limit the FAA's enforcement mandate to agreements to arbitrate controversies that 'arise out of' the parties' contractual relationship,[10] disputes resolved in PAGA

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[10] Section 2 of the FAA (9 U.S.C. § 2) states in relevant part: "A written provision in . . . a contract evidencing a transaction involving commerce to settle by arbitration a controversy thereafter arising out of such contract or transaction . . . shall be valid,

actions satisfy this requirement. The contractual relationship between the parties is a but-for cause of any justiciable legal controversy between the parties under PAGA, and 'arising out of' language normally refers to a causal relationship. [Citation.] And regardless of whether a PAGA action is in some sense also a dispute between an employer and the State, nothing in the FAA categorically exempts claims belonging to sovereigns from the scope of [9 U.S.C.] § 2." (*Viking River*, *supra*, 596 U.S. at p. __, fn. 4 [142 S.Ct. at p. 1919, fn. 4].) This passage, Uber and Lyft tell us, supports their effort to bind the People and the Labor Commissioner to arbitration agreements with their drivers.

We disagree. In our view, the cited passage establishes that, when an employee who has agreed to arbitrate claims against an employer brings a PAGA action, then (even if that action could be said to be a dispute between an employer and the state) the FAA requires that the employee submit to arbitration any claim covered by the agreement, because the claim arises out of the contractual relationship between the parties. (*Viking River*, *supra*, 596 U.S. at p. __, fn. 4 [142 S.Ct. at p. 1919, fn. 4]; *id.* at p. __ [142 S.Ct. at pp. 1915–1916].) As we read it, the passage addresses *which claims* (brought by a plaintiff who was a signatory to an arbitration agreement) are to be submitted to arbitration pursuant to the FAA's mandate. (*Viking River*, at p. __, fn. 4 [142 S.Ct. at p. 1919, fn. 4].) The *Viking River* court did not cite *Waffle House* and did not state it was altering or limiting the holding in that case. And nowhere in footnote 4 or elsewhere in the *Viking River* opinion did the high court state it was addressing or expanding the category of *litigants* who

irrevocable, and enforceable, save upon such grounds as exist at law or in equity for the revocation of any contract . . . ."

are covered by the FAA's mandate to include public enforcement agencies who did not agree to arbitrate any claims against the employer.

Indeed, as noted above, far from suggesting parties should be bound to arbitrate where they have not agreed to do so, the *Viking River* court emphasized that "the 'first principle' of our FAA jurisprudence" is "that '[a]rbitration is strictly "a matter of consent." ' " (*Id.* at p. __ [142 S.Ct. at p. 1918]; accord, *Cisco*, supra, 82 Cal.App.5th at p. 103 [noting that *Viking River* "reaffirmed . . . that arbitration is a matter of consent and a party cannot be compelled to arbitrate absent a contractual basis for concluding the party agreed to do so"].) We reject Uber's and Lyft's argument that *Viking River* supports reversal here.

The other cases cited by Uber and Lyft in support of their preemption argument similarly do not require arbitration by a public enforcement agency that is not a party to an arbitration agreement. Instead, the cited cases involve plaintiffs who agreed to arbitrate certain types of disputes, and the issue raised on appeal was which claims or relief pursued by those plaintiffs were subject to arbitration in light of their agreements and the FAA. (E.g., *Epic Systems Corp. v. Lewis* (2018) 584 U.S. __, __ [138 S.Ct. 1612, 1619–1621] [employee agreed to arbitrate employment-related disputes on an individual basis; FAA required enforcing this agreement and precluding employee's effort to pursue claims in court as representative of a class]; *Cruz v. PacifiCare Health Systems, Inc.* (2003) 30 Cal.4th 303, 309–310, 317–318 [consumer-plaintiff was alleged to be bound by arbitration agreement; his request for restitution under the UCL was arbitrable]; *Esparza v. KS Industries, L.P.* (2017) 13 Cal.App.5th 1228, 1235, 1239, 1246 [employee-plaintiff agreed to arbitrate employment-related claims and later brought PAGA

action; appellate court held that, under then-applicable *Iskanian*[11] framework, the employee's claims for unpaid wages for himself and other employees "retain their private nature and continue to be covered by the" FAA].) Uber and Lyft cite no case holding a state government body or official that did not agree to arbitration can be barred from enforcing the law in court based on an arbitration agreement entered by others.

Defendants' reliance on *Preston v. Ferrer* (2008) 552 U.S. 346 is also misplaced. *Preston* held that, "when parties agree to arbitrate all questions arising under a contract, state laws lodging primary jurisdiction in another forum, whether judicial or administrative, are superseded by the FAA." (*Id.* at pp. 349–350.) The *Preston* court distinguished *Waffle House*, noting that in that case, "the Court addressed the role of an agency, not as adjudicator but as prosecutor, pursuing an enforcement action in its own name . . . ." (*Preston*, at p. 359.) Here, of course, the People and the Labor Commissioner are acting as prosecutors, not adjudicators. *Waffle House*, not *Preston*, controls.

Similarly unpersuasive is Uber's and Lyft's reliance on the statement in *Department of Industrial Relations v. Continental Casualty Co.* (1996) 52 Cal.App.4th Supp. 1, 3, that the Legislature, through Labor Code provisions authorizing the DLSE to collect wages or benefits on behalf of a worker without assignment, "intended to put the DLSE right into the shoes of the worker for the purpose of such wage litigation." Based on this conclusion, the appellate division in *Department of Industrial Relations* held that the DLSE (like a wage earner) was exempt from a

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[11] *Iskanian v. CLS Transportation Los Angeles, LLC* (2014) 59 Cal.4th 348 (*Iskanian*), overruled in part by *Viking River*, *supra*, 596 U.S. at p. __ [142 S.Ct. at p. 1924].

statutory notice requirement. (*Ibid.*) The court addressed no question of arbitrability and did not suggest the DLSE or other public agency is bound to an arbitration agreement it did not enter. We decline to read the court's brief, general statement as authority for a proposition it did not consider.

Nor do *Howitson v. Evans Hotels, LLC* (2022) 81 Cal.App.5th 475 and *Department of Fair Employment and Housing v. Lucent Technologies, Inc.* (9th Cir. 2011) 642 F.3d 728, two other cases cited by defendants, persuade us reversal is warranted. Those decisions held, in contexts unrelated to arbitration, that the legislative conferral of standing to sue does not necessarily establish the named plaintiff is the real party in interest. (*Howitson*, at pp. 488–489, 491–492 [in PAGA action, the state is the real party in interest, although an aggrieved employee has standing to sue; therefore, for purposes of claim preclusion, an employee's individual lawsuit and her later PAGA action were not brought by the same party][12]; *Lucent Technologies*, at p. 738 & fn. 4 [while state statute "support[ed] a finding that California is a real party in interest for the purposes of standing," the statutory language "fail[ed] to render it a real party in the controversy for the purposes of [federal] diversity jurisdiction"].) Neither case addresses any issue relating to arbitrability or holds that a public enforcement agency must arbitrate its claims because the relief it obtains may benefit individuals.

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[12] Code of Civil Procedure section 367 ("Every action must be prosecuted in the name of the real party in interest, except as otherwise provided by statute.").

c. *Defendants' Efforts To Distinguish* Waffle House *Are Not Persuasive*

In a separate line of attack, Uber and Lyft contend that *Waffle House* is distinguishable, in part because it involved claims for victim-specific relief brought by a federal agency,[13] and that *Maplebear* and *Cisco* (which applied the *Waffle House* holding to suits by state government actors) are distinguishable or were incorrectly decided. We reject these arguments and hold *Waffle House* applies here.

It is, of course, true that *Waffle House* involved a federal agency (the EEOC) suing under a federal anti-discrimination statute, the Americans with Disabilities Act (ADA). (*Waffle House*, *supra*, 534 U.S. at pp. 282–283.) But in our view, the court's analysis and holding apply here and establish that a government body exercising express statutory authority to seek judicial relief (including "victim-specific" relief) cannot be barred from doing so on the ground the agency is supposedly a mere "proxy" of an individual employee who entered an arbitration agreement. (*Id.* at pp. 282, 285, 297–298; accord, *Maplebear*, *supra*, 81 Cal.App.5th at pp. 926–927, 934–935; *Cisco*, *supra*, 82 Cal.App.5th at pp. 99–100, 103–104.) As with the agencies in *Waffle House*, *Maplebear*, and *Cisco*, the People and the Labor Commissioner are not parties to the arbitration agreements invoked in this case, and they may pursue their claims in court.

Uber and Lyft argue the statutory schemes at issue here differ in certain respects from the one in *Waffle House*, including as to whether the government agency

[13] Uber also states *Waffle House* "predates" the high court's "modern arbitration decisions." *Waffle House* has not been overruled, and we will follow it.

has an exclusive right to pursue claims and whether it is bound by the same statute of limitations as a private individual. (*Waffle House*, *supra*, 534 U.S. at pp. 291, 287, 297.) But in our view, the *Waffle House* court's statements on these points do not provide a basis to depart from its holding. Like the EEOC (*id.* at pp. 291–292), the People and the Labor Commissioner decide whether to bring claims within their statutory authority, and their ability to do so does not depend on the consent or approval of individual employees. Despite variations in the statutory schemes at issue, we conclude *Waffle House* applies here. The People and the Labor Commissioner are not acting as proxies for drivers but bringing independent civil enforcement actions, and they are not barred from seeking judicial relief by arbitration agreements they did not enter. (See *id.* at pp. 297–298.)

As to *Maplebear* and *Cisco*, Uber and Lyft contend those cases are distinguishable, in part because the defendants there sought to compel larger portions of the civil enforcement actions to arbitration. But in both cases the relief sought by the public enforcement agencies included restitution or other victim-specific relief (*Maplebear*, *supra*, 81 Cal.App.5th at p. 928; *Cisco*, *supra*, 82 Cal.App.5th at p. 98), and the appellate courts held that no portion of those actions should be compelled to arbitration, because the public prosecutors had not agreed to arbitrate. (*Maplebear*, at pp. 926–927, 935; *Cisco*, at pp. 97, 104.) For the reasons we have discussed, we agree.

d. *The People's and the Labor Commissioner's Exercise of Their Statutory Law Enforcement Authority Does Not Pose an Obstacle to the FAA*

Uber and Lyft argue that, where state agencies are involved, their pursuit of restitution and other statutory remedies that may benefit individual employees

should be held to be preempted because such agency action stands as an "obstacle to the accomplishment of the FAA's objectives." (Citing *AT&T Mobility LLC v. Concepcion* (2011) 563 U.S. 333, 343, 352.) We do not agree. As discussed, the FAA does not embody a policy in favor of compelling arbitration of disputes in the absence of consent. (*Viking River, supra,* 596 at p. __ [142 S.Ct. at p. 1918]; *Waffle House*, *supra*, 534 U.S. at p. 294.)

Uber contends the People's and the Labor Commissioner's pursuit of restitution and similar relief in court will interfere with drivers' arbitration agreements because a judgment in the present action could be preclusive of certain issues in future arbitrations, thus causing drivers to "forever lose the ability to bring their claims in the arbitral forum they agreed to." The People dispute Uber's claim that the present action will have preclusive effect in drivers' individual arbitrations. We need not resolve this point. Even if there could be some future preclusive effect on ongoing or future arbitrations, Uber presents no authority requiring that litigation in court by nonparties to an arbitration agreement must be barred whenever it is possible such litigation could affect an arbitration between signatories to an agreement requiring that form of dispute resolution in their private relations.

Uber also argues that individual drivers cannot avoid arbitration by assigning or transferring their claims to another individual, and Uber asserts "that is exactly what is happening here." Lyft similarly contends that, if a "third party" such as "a successor in interest, assignee, bankruptcy trustee, or class action representative," sought to pursue "a driver's claim for monetary relief," the driver's arbitration agreement "would control." But as discussed, the People and the Labor Commissioner are pursuing their own statutory

claims. They are not assignees or other similarly situated third parties seeking to present claims held by drivers. (*DMS Services, LLC v. Superior Court* (2012) 205 Cal.App.4th 1346, 1353 [The "exceptions to the general rule that one must be a party to an arbitration agreement to invoke it or be bound by it 'generally are based on the existence of a relationship between the nonsignatory and the signatory, such as principal and agent or employer and employee, where a sufficient "identity of interest" exists between them.' "].) The People and the Labor Commissioner also are not acting as class representatives as would an employee representing other similarly situated employees. Finally, for the same reason, Uber is incorrect in describing the People and the Labor Commissioner as "nominal part[ies] controlling the litigation of drivers' claims" and as the drivers' "litigation counsel."

Uber suggests in its reply brief that a nonsignatory plaintiff such as the People should be compelled to arbitration without regard to whether the nonsignatory has any relationship with a party to the arbitration agreement, so long as the nonsignatory's claims can be said to arise out of the contract that contains the agreement. In support, Uber cites *Viking River*, *Epic Systems*, and *Concepcion*, but those cases do not support Uber's argument. In each case, the individual plaintiff or plaintiffs bringing a PAGA claim (*Viking River*) or seeking to represent a plaintiff class (*Epic Systems*, *Concepcion*) had entered an arbitration agreement. (*Viking River*, *supra*, 596 U.S. at p. __ [142 S.Ct. at pp. 1915–1916]; *Epic Systems Corp. v. Lewis, supra,* 584 U.S. at p. __ [138 S.Ct. at pp. 1619–1621]; *AT&T Mobility LLC v. Concepcion, supra,* 563 U.S. at p. 336.) As we have discussed, none of these cases holds that public law enforcement officials must arbitrate their statutory claims when they have

not agreed to do so and have no preexisting relationship with the parties to the arbitration agreement.

Finally, Lyft asserts that state law should not permit public enforcement agencies to bring claims "on behalf of" individual drivers who entered arbitration agreements, because if that is permissible, then state law could similarly "deputize" a private citizen to bring suit on behalf of a person who has agreed to arbitration, a result that Lyft contends would run afoul of the California Supreme Court's decision in *Iskanian, supra,* 59 Cal.4th 348. That argument is not well taken.

In the relevant passage from *Iskanian* (which Lyft quotes only in part), the court explained that its holding on the PAGA issues raised there "would not permit a state to circumvent the FAA by, for example, deputizing employee A to bring a suit for the individual damages claims of employees B, C, and D. This pursuit of victim-specific relief *by a party to an arbitration agreement* on behalf of *other parties to an arbitration agreement* would be tantamount to a private class action, whatever the designation given by the Legislature." (*Iskanian*, *supra*, 59 Cal.4th at pp. 387–388, italics added.) "Under [the high court's decision in] *Concepcion*, such an action could not be maintained in the face of a class waiver." (*Id.* at p. 388.)

The *Iskanian* court's statement that the state could not designate a party to an arbitration agreement to pursue the individual damages claims of other parties to the agreement has no bearing on the issues presented here. As discussed, the People and the Labor Commissioner are not parties to the arbitration agreements who have been improperly "deputize[d]" to bring suit for other such parties. They are nonparties to the agreements who are suing in their law enforcement capacities and pursuing statutorily authorized remedies. That Lyft can imagine a different scenario

that might violate the FAA provides no basis for reversal here.

Underlying Uber's and Lyft's preemption arguments is their assertion that the People's and the Labor Commissioner's claims in these actions (to the extent they seek restitution or other relief that may benefit individual drivers) are really the "drivers' claims" or claims that "belong to drivers." We have rejected this argument. As discussed, the People and the Labor Commissioner are authorized by statute to bring the claims at issue here and to seek the relief they request. The fact some of that relief might benefit individual drivers (or could be sought by individual drivers on their own behalf) does not transform the claims brought here into derivative claims brought by a proxy for the drivers.

2. Equitable Estoppel

Uber and Lyft argue that, apart from federal preemption, the People and the Labor Commissioner are bound by the drivers' arbitration agreements based on equitable estoppel. Here, too, we disagree. The trial court correctly held there is no basis for equitable estoppel on this record.

a. *Equitable Estoppel Does Not Apply*

As we have discussed, the general rule is that " '[t]he right to arbitration depends on a contract, and a party can be compelled to submit a dispute to arbitration only if the party has agreed in writing to do so.' [Citation.] 'Even the strong public policy in favor of arbitration does not extend to those who are not parties to an arbitration agreement or who have not authorized anyone to act for them in executing such an agreement.' " (*Jensen v. U-Haul Co. of California* (2017) 18 Cal.App.5th 295, 300 (*Jensen*).) But as also noted above, "there are circumstances under which

persons who have not signed an agreement to arbitrate are bound to do so," including " ' "estoppel." ' " (*Ibid.*)

Specifically, "[a] nonsignatory plaintiff may be estopped from refusing to arbitrate when he or she asserts claims that are 'dependent upon, or inextricably intertwined with,' the underlying contractual obligations of the agreement containing the arbitration clause. [Citation.] 'The focus is on the nature of the claims asserted . . . . [Citations.] That the claims are cast in tort rather than contract does not avoid the arbitration clause.' [Citation.] Rather, ' "[*t*]*he plaintiff's actual dependence on the underlying contract in making out the claim against the nonsignatory . . . is . . . always the* sine qua non *of an appropriate situation for applying equitable estoppel*." ' [Citation.] '[E]ven if a plaintiff's claims "touch matters" relating to the arbitration agreement, "the claims are not arbitrable unless the plaintiff relies on the agreement to establish its cause of action." ' [Citation.] 'The fundamental point' is that a party is 'not entitled to make use of [a contract containing an arbitration clause] as long as it worked to [his or] her advantage, then attempt to avoid its application in defining the forum in which [his or] her dispute . . . should be resolved.' " (*Jensen*, *supra*, 18 Cal.App.5th at p. 306; accord, *DMS Services, LLC v. Superior Court*, *supra*, 205 Cal.App.4th at p. 1354 ["The reason for this equitable rule is plain: One should not be permitted to rely on an agreement containing an arbitration clause for its claims, while at the same time repudiating the arbitration provision contained in the same contract."].)

The trial court correctly concluded equitable estoppel does not apply here because the People's and the Labor Commissioner's claims are not founded on Uber's and Lyft's contracts with their drivers. Instead, as the court recognized, the People and the Labor

Commissioner are seeking to enforce the UCL and the Labor Code and are not seeking to enforce or take advantage of any portion of Uber's and Lyft's contracts with their drivers. Indeed, as the court noted, the People and the Labor Commissioner "take the position that those contracts violate California law requiring Defendants to classify their drivers as employees."

As defendants note, the People's and the Labor Commissioner's complaints refer to certain provisions of the contracts between defendants and their drivers in outlining the nature of their relationship. But referring to the contract is not sufficient; for equitable estoppel to apply, the plaintiff must rely on the contract in asserting its claims. (*Goldman v. KPMG, LLP* (2009) 173 Cal.App.4th 209, 218.) Plaintiffs here seek no relief under the contracts, and their claims do not rely on them.

The cases cited by defendants do not persuade us that equitable estoppel applies. For example, the present case is different from *JSM Tuscany, LLC v. Superior Court* (2011) 193 Cal.App.4th 1222, 1239–1240, on which both defendants rely for the principle that a nonsignatory plaintiff may in some instances be bound to arbitrate under principles of equitable estoppel. *JSM Tuscany* involved a group of closely related plaintiffs under common ownership, some of whom were signatories to the contracts that contained the arbitration agreements, and all of whom brought claims that were based on obligations imposed by those contracts. (*Id.* at pp. 1239–1242, 1226 & fn. 2.) Here, there is no preexisting relationship between the People and the Labor Commissioner on the one hand, and the drivers

who agreed to arbitrate on the other.[14] And in any event, as discussed, neither plaintiff presents claims that depend on, or are inextricably intertwined with, the obligations imposed by defendants' contracts with their drivers. We decline to hold the doctrine of equitable estoppel bars government law enforcement actions in these circumstances.

Nor does *Garcia v. Pexco, LLC* (2017) 11 Cal.App.5th 782, also cited by defendants, persuade us it would be inequitable for the People's and the Labor Commissioner's actions to proceed in court. In *Garcia*, an employee bound by an arbitration agreement with his employer, a staffing company (Real Time), brought statutory wage claims against the staffing agency and the company where the employee had been assigned to work (Pexco), making "no distinction" between them. (*Id.* at pp. 784–785.) Because the claims arose out of the plaintiff's employment relationship with Real Time, and the arbitration agreement clearly covered statutory claims against Real Time (*id.* at pp. 786–788), the appellate court held that, "[o]n

[14] See *Jensen*, *supra*, 18 Cal.App.5th at p. 301 (" 'The California cases binding nonsignatories to arbitrate their claims fall into two categories. In some cases, a nonsignatory was required to arbitrate a claim because a benefit was conferred on the nonsignatory as a result of the contract, making the nonsignatory a third party beneficiary of the arbitration agreement. In other cases, the nonsignatory was bound to arbitrate the dispute because a preexisting relationship existed between the nonsignatory and one of the parties to the arbitration agreement, making it equitable to compel the nonsignatory to also be bound to arbitrate his or her claim.' "); see also *JSM Tuscany, LLC v. Superior Court*, *supra*, 193 Cal.App.4th at p. 1240, fn. 20 ("[I]t is difficult to conceive of a situation in which a nonsignatory party can state a valid claim *based on the contract*, without having some legal relationship with a signatory of the contract or being a third party beneficiary of the contract.").

these facts, it is inequitable for the arbitration about Garcia's assignment with Pexco to proceed with Real Time, while preventing Pexco from participating" (*id.* at p. 787). We find no similar inequity here, where the plaintiffs have not agreed to arbitrate with anyone and do not seek an " 'advantage' " (*Jensen*, *supra*, 18 Cal.App.5th at p. 306) under an employment contract while ignoring its arbitration clause, but instead seek statutory remedies for defendants' allegedly wrongful refusal to treat their drivers as employees.

Finally, in *Machado v. System4 LLC* (2015) 471 Mass. 204, 210, 212–216, 205 [28 N.E.3d 401], cited by defendants, the court held equitable estoppel applied where plaintiff franchisees brought misclassification and other claims against two defendants, one of whom was not a party to the arbitration agreement signed by the plaintiffs. The court concluded that the franchise agreement was significant to the plaintiffs' claims, and that the plaintiffs had alleged "concerted misconduct" by the defendants. (*Id.* at pp. 212–216.) We are not persuaded a similar result is appropriate here. In addition to the differing factual settings (including that the plaintiffs here are not signatories to any arbitration agreement), we conclude, as discussed, that the misclassification claims asserted in this case are not "dependent upon, or founded in and inextricably intertwined with, the underlying contractual obligations of" Uber's and Lyft's contracts with their drivers. (*Goldman v. KPMG, LLP, supra,* 173 Cal.App.4th at p. 218.)

b. *Application of Equitable Estoppel Is Unwarranted*

We also agree with the trial court that equitable estoppel does not apply here because, under California law, as our Supreme Court has stated, "it is clear 'that neither the doctrine of estoppel nor any other

equitable principle may be invoked against a governmental body where it would operate to defeat the effective operation of a policy adopted to protect the public.' " (*Kajima/Ray Wilson v. Los Angeles County Metropolitan Transportation Authority* (2000) 23 Cal.4th 305, 316, citing *County of San Diego v. Cal. Water etc. Co.* (1947) 30 Cal.2d 817, 826.) The trial court may have overstated the point a bit in suggesting that, if the People and the Labor Commissioner were forced into arbitration, it "would *nullify* the important public policies underlying the UCL and the Labor Code." (Italics added.) But we do think the result sought by Uber and Lyft here would fundamentally undermine those policies. Semantics aside, we agree with the trial court that the outcome Uber and Lyft urge would "effectively negate" *Waffle House* and the other case law we have discussed above establishing that an arbitration agreement between private parties does not bar a public enforcement agency from seeking judicial relief, including victim-specific relief. Thus, even if the elements of equitable estoppel were otherwise established, we would decline to apply it here.

Uber asserts that only the remedies of injunctive relief and civil penalties serve "a public function," while restitution "is mainly about restoring property to those owed." This argument does not persuade us equitable estoppel should apply here. We note initially that, under the orders sought by defendants, even the People's and the Labor Commissioner's requests for injunctive relief and civil penalties would be stayed pending completion of any ordered arbitrations. But in any event, we do not agree that an effort by public enforcement officials to obtain restitution of money allegedly taken illegally from citizens can be fairly characterized as not serving a public purpose in the context of the equitable estoppel issue raised here. The Legislature

decided to include restitution as a remedy obtainable by public prosecutors under the UCL (along with injunctive relief and civil penalties) (Bus. & Prof. Code, §§ 17203, 17204, 17206), and we decline to hold that they actually act as surrogates for private parties when they seek it.

The defendants' reliance on *State of California v. Altus Finance* (2005) 36 Cal.4th 1284 (*Altus Finance*) is similarly unpersuasive. In *Altus Finance*, the Supreme Court held that, under applicable Insurance Code provisions, when the Insurance Commissioner is acting as conservator of an insolvent insurance company, the Commissioner has the exclusive right to protect the interests of individual policyholders and creditors. (*Id.* at pp. 1303–1305.) In that context, the Attorney General may not seek restitution for the benefit of creditors under the UCL "without trespassing on the Commissioner's role." (*Altus Finance,* at p. 1306; see *id.* at pp. 1303–1304, 1307.) In contrast, the Insurance Code does not preclude the Attorney General in a UCL action from pursuing public injunctive relief or civil penalties payable to the state. (*Altus Finance,* at pp. 1307–1308.)

The *Altus Finance* court explained: "It is true that the Attorney General is the state's chief law enforcement officer, and that restitution may have a collateral law enforcement effect, punishing the wrongdoer against whom restitution is sought. But the primary purpose of the Attorney General's attempt at restitution is to recover lost property on behalf of an insolvent insurer's creditors and policyholders. As such, he seeks to perform an action that is quintessentially within the scope of the Commissioner's power as conservator and trustee of the insolvent company." (*Altus Finance*, *supra*, 36 Cal.4th at p. 1305.) In this case, by contrast, there is no conflict between spheres of

authority conferred on different public officers. Nor is there anything in the governing statutory text that we might compare to the limit on law enforcement power involved in *Altus Finance*. While that case involved an Insurance Code provision that established an "express limit" on the authority of the Attorney General to seek restitution (*Altus Finance*, *supra*, 36 Cal.4th at p. 1303), there is no comparable provision here that limits the relief obtainable by the People under the UCL, and there is nothing that persuades us the available types of relief should be treated differently for purposes of the equitable estoppel analysis.

C. *Other Issues: Defendants' Requests for Orders Staying or Striking Portions of These Actions*

1. The Stay Requests

Since we conclude there is no basis to compel arbitration of any of the People's or the Labor Commissioner's claims or requests for relief, we need not address Uber's and Lyft's arguments that, if some claims were compelled to arbitration, the other portions of these actions (the portions that are not arbitrable) should be stayed pending completion of the individual arbitrations.

2. Lyft's Motion to Strike

As noted, Uber's and Lyft's motions to compel arbitration included alternative requests that the trial court strike plaintiffs' complaints to the extent they sought restitution and certain other relief. In its order denying the motions to compel, the trial court denied the alternative motions to strike.

Lyft renews its request on appeal,[15] arguing briefly that, if this court does not compel arbitration, it should "strike the driver-specific remedies that are subject to arbitration," to "avoid creating a conflict with the FAA," because such remedies are arbitrable as between Lyft and its drivers. Even assuming the denial of Lyft's motion to strike is reviewable in this appeal under Code of Civil Procedure section 1294.2[16] (which the People dispute), we find no basis to strike the assertedly "preempted" remedies. For the reasons we discussed in part II.B.1, *ante*, the People's and the Labor Commissioner's requests for judicial relief, including victim-specific relief, are not preempted.

III. DISPOSITION

The order denying Uber's and Lyft's motions to compel arbitration of, and to stay, the People's and the Labor Commissioner's actions is affirmed. The People and the Labor Commissioner shall recover their costs on appeal.

STREETER, J.

WE CONCUR:

BROWN, P. J.

FINEMAN, J.[*]

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[15] Uber does not challenge the denial of its motion to strike.

[16] Code of Civil Procedure section 1294.2 provides in part that, "[u]pon an appeal from" an order denying a motion to compel arbitration, "the court may review the decision and any intermediate ruling, proceeding, order or decision which involves the merits or necessarily affects the order or judgment appealed from, or which substantially affects the rights of a party."

[*] Judge of the Superior Court of California, County of San Mateo, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

APPENDIX B

SUPERIOR COURT OF CALIFORNIA COUNTY OF SAN FRANCISCO DEPARTMENT 304

COORDINATION PROCEEDING SPECIAL TITLE [RULE 3.550]

UBER TECHNOLOGIES WAGE AND HOUR CASES

THIS ORDER RELATES TO:

People of the State of California v. Uber Technologies, Inc., et al.,
No. CGC-20-584402 (San Francisco Super. Ct.)

Garcia-Brower v. Uber Technologies, Inc., et al.,
No. RG20070281 (Alameda County Super. Ct.)

Garcia-Brower v. Lyft, Inc., et al.,
No. RG20070283 (Alameda County Super. Ct.)

Case No. CJC-21-005179

JUDICIAL COUNCIL COORDINATION PROCEEDING NO. 5179

ORDER DENYING DEFENDANTS' MOTIONS TO COMPEL ARBITRATION OF THE PEOPLE'S AND LABOR COMMISSIONER'S CASES

Defendants' motions to compel arbitration of the People's and the Labor Commissioner's cases and to stay, and Defendants' alternative motions to strike, came on for hearing before the Court on August 26, 2022. All parties appeared through their counsel of record. The matter was reported. For the following reasons, the Court denies Defendants' motions in their entirety.

PROCEDURAL BACKGROUND

In these coordinated actions, Plaintiffs allege that

Uber and Lyft misclassified passenger drivers and/or food delivery drivers as independent contractors under the "ABC" worker-classification test established by Assembly Bill No. 5 (A.B. 5), which took effect on January 1, 2020. This order concerns three of the actions brought by governmental plaintiffs: one brought by the People of the State of California (the People), represented by the Attorney General and the City Attorneys of San Francisco, Los Angeles, and San Diego; and two separate enforcement actions brought by the Labor Commissioner through the Division of Labor Standards and Enforcement (DLSE).[1] Those actions seek injunctive relief, restitution, and penalties under the Private Attorneys General Act of 2004, Lab. Code § 2698 *et seq.* (PAGA), the Labor Code, and the Unfair Competition Law, Bus. & Prof. Code § 17200 *et seq.* (UCL).

Defendants Uber and Lyft filed motions to compel arbitration in each of the cases before they were included in this coordinated proceeding. Lyft also filed an alternative motion seeking to strike Plaintiffs' requests for restitution, arguing that even if Plaintiffs may not be compelled to arbitrate under agreements to which they are not parties, it nevertheless would be improper for the government to seek such "driver-specific relief' because it is arbitrable as between Defendants and their drivers, as well as an alternative motion to stay. In their motions, Defendants generally argue that although the People and the Commissioner are not parties to Defendants' arbitration agreements with their drivers, Plaintiffs' claims arise out of those

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[1] The DLSE is a division within the California Department of Industrial Relations, which in turn is a department within the California Labor and Workforce Development Agency ("LWDA"). This Order uses the terms "DLSE" and the "Labor Commissioner" interchangeably.

agreements, and the restitutionary relief they seek will be paid directly to the drivers. Thus, both Defendants' motions to compel arbitration in the People's case are limited to the People's claim for restitution under the UCL, which Defendants characterize as "individualized" relief. Defendants moved to compel arbitration of the Labor Commissioner's separate enforcement actions or, in the alternative, to strike on the same grounds.

Defendants have now renewed those motions here. The People and the Labor Commissioner oppose the motions.

By stipulation and order filed July 6, 2022, the Court permitted extensive supplemental briefing on the motions to address the U.S. Supreme Court's decision in *Viking River Cruises* v. *Moriana* (2022) 142 S.Ct. 1906, as well as other recent authority.

DISCUSSION

I. Controlling Precedent Mandates Denial of Defendants' Motions To Compel The People and The Commissioner To Arbitrate Their Claims Under Private Arbitration Agreements To Which They Are Not Parties.

Although the parties have spilled a great deal of ink addressing the issues presented by these motions, they are readily resolved. It is undisputed that neither the People nor the Commissioner is a party to any of the arbitration agreements with Defendants' drivers that serve as the basis for Defendants' motions. Further, the People and the Commissioner act as public prosecutors when they pursue litigation to enforce the UCL and the Labor Code, and each is independently empowered to seek civil penalties, injunctive relief, and other remedies to vindicate the public interest. As such, they are independent of Defendants' drivers, and cannot be bound

by Defendants' private arbitration agreements with those persons. Under controlling authority, Defendants' motions must be denied. (*E.E.O.C.* v. *Waffle House, Inc.* (2002) 534 U.S. 279; *Department of Fair Employment and Housing v. Cisco Systems, Inc.* (Aug. 5, 2022) 2022 WL 3136003; *People v. Maplebear Inc.* (July 28, 2022) 81 Cal.App.5th 923, 2022 WL 2981169.)

Maplebear is indistinguishable. There, the San Diego City Attorney brought an enforcement action on behalf of the People against Maplebear dba Instacart. The People alleged that Instacart unlawfully misclassified its employees (referred to as "Shoppers") as independent contractors, and asserted one cause of action under the UCL alleging Instacart's misclassification of workers was unlawful under the Labor Code and an unfair business practice. In the complaint's prayer for relief, the People sought civil penalties authorized by the UCL, injunctive relief requiring Instacart to properly classify its employees, and restitution to the misclassified employees for unpaid wages, overtime, and rest breaks, missed meals, and reimbursement for expenses necessary to perform the work. (2022 WL 2981169 at *2.)[2] In response, "Instacart filed a motion to compel a portion of the People's case—the prayers for injunctive relief and restitution—to arbitration based on its agreements with Shoppers." (*Id.* (footnote omitted).) The trial court

[2] Defendants attempt to distinguish *Maplebear* on the ground that it focused "primarily" on the injunctive relief claim. However, nothing in the holding of that case turned on the "primary" relief sought by the People, nor would such a test be workable in practice. Significantly, the court there specifically rejected Instacart's request to compel only "a portion of the People's case" to arbitration—precisely the relief Defendants seek here.

denied the motion, concluding Instacart had not met its burden to show the existence of a valid agreement to arbitrate between it and the People. (*Id.* at *3.) On appeal, Instacart asserted that "its agreements with Shoppers required the court to compel arbitration of the claims here because the City of San Diego's lawsuit is brought primarily to effectuate the rights of the Shoppers, whom Instacart characterizes as the real parties in interest." (*Id.*)

The Court of Appeal disagreed and affirmed the trial court's order denying the motion to compel arbitration. As the court noted, Instacart conceded that the City was not a signatory to its arbitration agreements with Shoppers. (*Id.* at *4.) Instacart argued, however, that "the City is bound by the agreements because it is, in effect, representing, or seeking to validate the individual employment law rights of, the Shoppers," who it asserted were the real parties in interest in the case. (*Id.*) As a result, Instacart argued that "the City's injunctive relief and restitution claims here are private claims of the Shoppers that must be compelled to arbitration." (*Id.*) The court disagreed. As it explained, "[t]he People are not deputized by the UCL to vindicate the individual rights of Instacart's Shoppers. Rather, the City of San Diego is acting in its own law enforcement capacity 'to seek civil penalties for Labor Code violations traditionally prosecuted by the state.'" (*Id* at *6, *quoting Iskanian v. CLS Transportation Los Angeles, LLC* (2014) 59 Cal.4th 348, 388.) In light of that independent authority, the court squarely rejected Instacart's contention that the Shoppers were the "real parties in interest" in the case: "Contrary to Instacart's assertion, the Shoppers are not the real party in interest in this case, the People are." (*Id.* (footnote omitted).)

The court followed *E.E.O.C. v. Waffle House, Inc.*

(2002) 534 U.S. 279, which it found to be "the relevant binding authority." (*ld.*)[3] In *Waffle House*, the High Court held that an agreement between an employer and an employee to arbitrate employment-related disputes does not bar the EEOC from pursuing victim-specific judicial relief, such as backpay, reinstatement and damages, in an enforcement action alleging that the employer violated federal law, the Americans with Disabilities Act. The Court of Appeals had attempted to draw the same distinction that Defendants urge here between injunctive and victim-specific relief, ruling that the EEOC is barred from obtaining the latter. (*Id* at 290.) The Supreme Court reversed, holding "whenever the EEOC chooses from among the many charges filed each year to bring an enforcement action in a particular case, the agency may be seeking to vindicate a public interest, not simply provide make-whole relief for the employee, *even when it pursues entirely victim-specific relief."* (*Id.* at 295 (emphasis added.)) That an employee has signed a mandatory arbitration agreement does not limit the remedies available to the EEOC or "authorize the courts to balance the competing policies of the ADA and the FAA or to second-guess the agency's judgment concerning which of the remedies authorized by law that it shall seek in any given case." (*Id.* at 297.)

The *Maplebear* court found *Waffle House* to be squarely on point. (81 Cal.App.5th at *6.) As it explained,

> Like the EEOC in *Waffle House,* the City is indisputably not a party to any arbitration agreement with Instacart. No individual shopper has control over this litigation and the

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[3] In view of that language, Defendants' insistence that *Waffle House* is "irrelevant" is unavailing.

> City did not need any individual Shopper's consent to bring the action. Like the EEOC, the City is in command of the process and controls both the litigation strategy and disposition of any recovery obtained for the employees. Just like the statutory authorization that gives the EEOC authority to pursue discrimination cases against employers, even where parallel private statutory claims may also lie, the UCL provides the City of San Diego with the same type of independent authority to assert UCL claims, including claims to enjoin unlawful and unfair business practices and obtain restitution for those who have been harmed by those practices.
>
> Further, as the trial court found, the City's claims for civil penalties and injunctive relief seek to vindicate public harms. That the complaint also includes victim-specific restitution does not make the case private in nature. Rather, as *Waffle House* held, a government enforcement action that includes monetary relief for the victims of the unlawful activity advances a public purpose because while punitive damages benefit the individual employee, they also serve an obvious public function in deterring future violations.
>
> In addition, California courts have consistently held that the primary interest of law enforcement actions under the UCL is protecting the public, not private interests.

(*Id.* at *7-*8 (cleaned up).)

Maplebear also rejected Instacart's reliance on the *Broughton-Cruz* rule, which Lyft raised at the hearing. In *Maplebear,* Instacart argued that "the People's UCL claims for restitution, employee reclassification,

and an injunction requiring Instacart to comply with the Labor Code are private in nature, and any benefits to the public from that relief are merely incidental, and therefore the claims are arbitrable." (*Id.* at *9 (cleaned up).) The court found that "the premise of this argument is flawed because it is based on rules that apply where the plaintiff entered an arbitration agreement with the defendant and the relief sought is private. The *Broughton-Cruz* rule—which precludes arbitration of injunctive relief claims that benefit the public and requires arbitration of claims seeking restitution and injunctive relief which primarily benefits the individual plaintiff—do[es] not apply here, where there is no agreement between the parties to arbitrate and the case is a law enforcement action brought for public benefit." (*Id.* (footnote omitted).

Finally, for the same fundamental reason, the court rejected Instacart's claim that the trial court's order must be reversed "because it creates a new exception to the FAA for law enforcement actions," characterizing its framing of the issue as erroneous. "As discussed, the FAA requires courts to enforce arbitration agreements. The FAA does not require courts to expand the contours of the agreement to compel non-parties, here the government, to arbitration." (*Id.* at *9.)

Even more recently, in *Department of Fair Employment and Housing v. Cisco Systems, Inc.* (Aug. 5, 2022) 2022 WL 3136003, the Sixth District Court of Appeal reached precisely the same result, holding that the Department of Fair Employment and Housing cannot be compelled to arbitrate an employment discrimination lawsuit when the affected employee agreed to resolve disputes with the employer through arbitration because the Department did not agree to do so. Just as in *Maplebear,* the court emphasized that "[a]s the public arm of the enforcement procedure, the

Department acts independently when it sues for FEHA violations." (*Id.* at *3 (footnote omitted).) "The ability to decide whether to file an action and the ability to pursue relief separate from what can be obtained by an employee confirm that the Department operates as an independent party in an enforcement lawsuit," not merely as the employee's "proxy." (*Id.,* citing *Waffle House,* 534 U.S. at 291.) Even if the employee is a "real party in interest" because the Department seeks at least some remedies for the employee, "it does not undermine or conflict with the Department having an independent interest in FEHA enforcement." (*Id.*) In short,

> The Department acts independently when it exercises the power to sue for FEHA violations. As an independent party, the Department cannot be compelled to arbitrate under an agreement it has not entered.

(*Id.* at *5.) The court also noted that its reasoning was consistent with decisions by the Ninth Circuit Court of Appeals and other states declining to require administrative enforcement agencies to arbitrate without their consent. (*Id.*; see also *Crestwood Behaviorial Health, Inc. v. Lacy* (2021) 70 Cal.App.5th 560, 581-585 [recognizing, following *Waffle House,* that Labor Commissioner has independent statutory authority to investigate and obtain victim-specific relief under the Labor Code and to protect the public interest, regardless of whether the individual employee's claim has been compelled to arbitration].)

These cases constitute binding precedent and are dispositive of Defendants' motions.[4] Here, precisely as

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[4] Uber's reliance on a decision by another department of this Court in *People v. Doordash, Inc.,* No. CGC-20-584789, is improper. Trial court orders have no precedential value. *(Bolanos*

in these cases, it is undisputed that the People and the Commissioner are not parties to Defendants' private arbitration agreements with their drivers. Further, both the People and the Commissioner have independent statutory authority to file suit to enforce the UCL and the Labor Code, which furthers the public interests in those statutory schemes. It follows that they may not be compelled to arbitrate their claims under agreements they did not enter, regardless of whether they are seeking relief that will redound to the drivers' benefit.

Defendants criticize these cases as incorrectly decided, although they correctly recognize they are binding on this Court. Their efforts to distinguish or avoid them are unpersuasive. Only one warrants brief discussion here.

Defendants argue that arbitration is compelled by the FAA and *Viking River.* But both *Maplebear* and *DFEH* squarely rejected that argument. After the Court of Appeal issued its original opinion in *Maplebear,* it granted rehearing and vacated that opinion to consider *Viking River.* After doing so, however, it reissued its original opinion essentially unchanged, adding a footnote explaining that "[b]ecause this case does not concern PAGA claims and because the City of San Diego is not a party to Instacart's arbitration agreement with its Shoppers, *Viking River* has no impact on this appeal." (81

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v. Superior Court (2008) 169 Cal.App.4th 744, 761.) In any event, that ruling addressed a different issue: whether the People were barred by res judicata from seeking restitution under the UCL on behalf of drivers who had entered into a class action settlement releasing the same claims. It did not involve a motion to compel arbitration, nor did it hold that the People may be bound by private arbitration agreements to which they are not parties.

Cal.App.5th *6 at fn. 4.) Similarly, the DFEH court made clear that *Viking River* "reaffirmed, consistent with what we say here, that arbitration is a matter of consent and a party cannot be compelled to arbitrate absent a contractual basis for concluding the party agreed to do so." (2022 WL 3136003, at *4; see *Viking River,* 142 S.Ct. at 1923 ["The most basic corollary of the principle that arbitration is a matter of consent is that a party can be forced to arbitrate only those issues it specifically has agreed to submit to arbitration. This means that parties cannot be coerced into arbitrating a claim, issue, or dispute absent an affirmative contractual basis for concluding that the party *agreed* to do so." (cleaned up; emphasis original)].) The same conclusion follows inescapably here.

Finally, Defendants make the alternative argument that the People and the Labor Commissioner may be required to arbitrate their restitution claims under the equitable estoppel doctrine. "Generally speaking, one must be a party to an arbitration agreement to be bound by it or invoke it. The strong public policy in favor of arbitration does not extend to those who are not parties to an arbitration agreement, and a party cannot be compelled to arbitrate a dispute that he has not agreed to resolve by arbitration." (*Westra v. Marcus & Millichap Real Estate Investment Brokerage Co., Inc.* (2005) 129 Cal.App.4th 759,763 (cleaned up).) "However, both California and federal courts have recognized limited exceptions to this rule, allowing nonsignatories to an agreement containing an arbitration clause to compel arbitration of, or be compelled to arbitrate, a dispute arising within the scope of that agreement." (*DMS Services, LLC v. Superior Court* (2012) 205 Cal.App.4th 1346,1352-1353.)

Under the equitable estoppel doctrine, as

summarized in Defendants' authorities, "a nonsignatory defendant may invoke an arbitration clause to compel a signatory plaintiff to arbitrate its claims when the cause of action against the nonsignatory are intimately founded in and intertwined with the underlying contract obligations." (*Alliance Title Co., Inc. v. Boucher* (2005) 127 Cal.App.4th 262, 271 (cleaned up); see also, e.g., *JSM Tuscany, LLC v. Superior Court* (193 Cal.App.4th 1222, 1237 [same].) The instant motions present the obverse situation: Defendants, who are signatories of the arbitration agreements with their drivers, are seeking to compel the People and the Labor Commissioner, *nonsignatory* strangers to those agreements, to arbitrate their claims. (See, e.g., *Jensen v. U-Haul Co. of California* (2017) 18 Cal.App.5th 295, 307 [criticizing moving defendant for conflating "two separate and distinct issues" of whether a signatory plaintiff's claims sufficiently relate to or arise from a contract as to fall within the scope of the arbitration clause and "whether a *nonsignatory* plaintiff's claims are so dependent on and inextricably intertwined with the underlying contractual obligations of the agreement containing the arbitration clause that equity requires those claims to be arbitrated"].) For at least two reasons, even if the doctrine could properly be applied against a nonsignatory under certain narrow circumstances, this is not such a case.

First, as the People and the Labor Commissioner correctly observe, their claims under the UCL and the Labor Code are not founded in Defendants' contracts with their drivers. "The reason for this equitable rule is plain: One should not be permitted to rely on an agreement containing an arbitration clause for its claims, while at the same time repudiating the arbitration provision contained in the same contract." (*DMS Services, LLC,* 205 Cal.App.4th at 1354.)

Merely "making reference to" an agreement with an arbitration clause is not enough. (*Goldman v. KPMG, LLP* (2009) 173 Cal.App.4th 209, 218.) Here, the People and the Labor Commissioner are "only seeking to enforce the UCL" and the Labor Code, and are "clearly not seeking to enforce or otherwise take advantage of any portion" of Defendants' contracts with their drivers"; indeed, they take the position that those contracts violate California law requiring Defendants to classify their drivers as employees. (*UFCW & Employers Benefit Trust v. Sutter Health* (2015) 241 Cal.App.4th 909, 929.) "The doctrine of equitable estoppel has no application." (*Id;* see also *Stafford v. Rite Aid Corporation* (9th Cir. 2020) 998 F.3d 862, 866-867 [equitable estoppel did not require pharmacy customer who filed putative class action under UCL and CLRA alleging that pharmacy fraudulently inflated reported prices of prescription drugs to insurance companies to submit claims to arbitration under pharmacy's contracts with pharmacy benefits managers, where plaintiff was not seeking damages for breach of those contracts]; *Namisnak v. Uber Technologies, Inc.* (9th Cir. 2020) 971 F.3d 1088, 1095 [plaintiffs' claims under the ADA were fully viable without reference to Uber's Terms and Conditions, which contained arbitration clause, so equitable estoppel did not apply]; *Jensen,* 18 Cal.App.5th at 295 [affirming denial of motion to compel arbitration where "plaintiffs do not rely or depend on the terms of the rental agreement . . . in asserting their claims," which are "fully viable" without reference to the terms of that agreement].)

Second, it is long been the law in California that "neither the doctrine of estoppel nor any other equitable principle may be invoked against a governmental body where it would operate to defeat the effective operation of a policy adopted to protect the

public." (*Kajima/Ray Wilson v. Los Angeles County Metropolitan Transp. Authority* (2000) 23 Cal.4th 305, 316, quoting *San Diego County v. California Water & Tel. Co.* (1947) 30 Cal.2d 817, 826.) Here, applying the doctrine of equitable estoppel to preclude the People and the Labor Commissioner from litigating their unfair business practice and Labor Code claims would nullify the important public policies underlying the UCL and the Labor Code, and would effectively negate the controlling body of authority discussed above.

CONCLUSION

For the foregoing reasons, Defendants' motions to compel arbitration and to stay as to the People's and the Labor Commissioner's cases, and their alternative motions to strike, are denied.

IT IS SO ORDERED.

[Signature]
Ethan P. Schulman
Judge of the Superior Court

Dated: September 1, 2022

APPENDIX C

No. S282614

IN THE SUPREME COURT OF CALIFORNIA

In re UBER TECHNOLOGIES WAGE AND HOUR CASES.

(Ct. of Appeal, First Appellate District, Division Four – No. A166355)

[Filed January 17, 2024]

En Banc

The petitions for review are denied.

Evans, J., was recused and did not participate.

Guerrero
Chief Justice

APPENDIX D

1. United States Constitution, Article IV states:

All Debts contracted and Engagements entered into, before the Adoption of this Constitution, shall be as valid against the United States under this Constitution, as under the Confederation.

This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.

The Senators and Representatives before mentioned, and the Members of the several State Legislatures, and all executive and judicial Officers, both of the United States and of the several States, shall be bound by Oath or Affirmation, to support this Constitution; but no religious Test shall ever be required as a Qualification to any Office or public Trust under the United States.

2. 9 U.S.C. § 2 states:

A written provision in any maritime transaction or a contract evidencing a transaction involving commerce to settle by arbitration a controversy thereafter arising out of such contract or transaction, or the refusal to perform the whole or any part thereof, or an agreement in writing to submit to arbitration an existing controversy arising out of such a contract, transaction, or refusal, shall be valid, irrevocable, and enforceable, save upon such grounds as exist at law or in equity for the revocation of any contract or as otherwise provided in chapter 4.

APPENDIX E

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF ALAMEDA

LILIA GARCIA-BROWER, in her official capacity as Labor Commissioner for the State of California,

Plaintiff,

v.

LYFT, INC.; DOES 1-20, inclusive, Defendants.

FIRST AMENDED COMPLAINT FOR INJUNCTIVE RELIEF, DAMAGES AND PENALTIES FOR (1) WILLFUL MISCLASSIFICATION OF EMPLOYEES AS INDEPENDENT CONTRACTORS, (2) FAILURE TO PAY MINIMUM WAGE, (3) FAILURE TO PAY OVERTIME WAGES, (4) FAILURE TO PAY WAGES FOR REST PERIODS, (5) FAILURE TO PAY REST PERIOD PREMIUM PAY, (6) FAILURE TO INDEMNIFY EMPLOYEES FOR BUSINESS EXPENSES, (7) FAILURE TO PROVIDE ITEMIZED WAGE STATEMENTS, (8) FAILURE TO COMPLY WITH PAID SICK LEAVE REQUIREMENTS, (9) FAILURE TO TIMELY PAY EARNED WAGES UPON SEPARATION FROM EMPLOYMENT, (10) FAILURE TO TIMELY PAY EARNED WAGES DURING EMPLOYMENT, (11) FAILURE TO PROVIDE NOTICE OF EMPLOYMENT INFORMATION
(No fee per Labor Code §§ 101, 101.5 and Government Code § 6103)
VERIFIED ANSWER REQUIRED PURSUANT TO CCP § 446

[FILED November 18, 2020]

Plaintiff, LILIA GARCIA-BROWER, in her official

capacity as Labor Commissioner for the State of California, alleges as follows:

THE PARTIES TO THIS ACTION

1. Plaintiff is the Labor Commissioner for the State of California, and Chief of the Division of Labor Standards Enforcement ("DLSE" or "Plaintiff") of the Department of Industrial Relations for the State of California. (Labor Code §§ 21, 79.)

2. Plaintiff is authorized to enforce all provisions of the Labor Code and Industrial Welfare Commission ("IWC") orders governing wages, hours and working conditions of California employees. (Labor Code §§ 61, 90.5(b), and 95(a)). It is the policy of the State of California to "vigorously enforce minimum labor standards in order to ensure employees are not required or permitted to work under substandard unlawful conditions or for employers that have not secured the payment of compensation, and to protect employers who comply with the law from those who attempt to gain a competitive advantage at the expense of their workers by failing to comply with minimum labor standards." (Labor Code § 90.5.)

3. As part of her enforcement powers, Plaintiff is authorized, pursuant to Labor Code § 98.3(b), to prosecute actions for the collection of wages and other moneys payable to employees or to the State arising out of an employment relationship or order of the IWC. Labor Code § 217 expressly empowers the Labor Commissioner to enforce the provisions of Labor Code §§ 200-244, which include the Code section requiring payment of premium pay for failure to comply with IWC wage order meal and rest period requirements, and Code sections authorizing penalties for an employer's failure to timely pay wages due to employees during employment or upon separation of

employment, or for an employer's failure to comply with requirements pertaining to itemized wage statements. Plaintiff is expressly authorized, pursuant to Labor Code § 226.8, to enforce that Code section which prohibits the willful misclassification of employees as independent contractors. Labor Code § 248.5 expressly authorizes the Labor Commissioner to enforce the paid sick leave requirements set out in Labor Code §§ 245-249. Labor Code § 1193.6 expressly authorizes the Labor Commissioner to file and prosecute a civil action to recover unpaid minimum wages or unpaid overtime compensation, owed to any employee under Labor Code §§ 1171-1206 or under any IWC order. Furthermore, Plaintiff is authorized, pursuant to Labor Code § 1194.5, to seek injunctive relief to prevent further violations of any of the laws, regulations or IWC orders governing wages, hours of work, and working conditions for employees. Labor Code § 2802 expressly empowers the Labor Commissioner to file a court action to recover amounts due under that section, which requires employers to indemnify employees for business expenses.

4. At all relevant times herein, Defendant Lyft, Inc. (hereinafter "Lyft") has been registered with the Secretary of State as a Delaware corporation, engaged in the business of transportation as a ride hailing service, with its principal business office located in the City and County of San Francisco. Lyft provides on-demand transportation services throughout all counties in California. Lyft makes use of an on-demand transportation mobile application (hereinafter "app") to engage the services of its drivers, to receive orders from customer passengers, to assign and schedule its drivers to provide transportation services to those customer passengers, to collect the amounts owed by those customers (based on prices set

by defendants) for those transportation services, and to pay its drivers for the services they provided to these customer passengers. The work performed by these drivers – driving – constitutes the very core of Lyft's business. Moreover, Lyft retains and/or exercises substantial control over its drivers, with restrictions on when, where and how the work may be performed.

5. The true names or capacities of defendants sued as Doe Defendants 1 through 20 are unknown to Plaintiff. Plaintiff is informed and believes, and on that basis, alleges that each of the Doe Defendants, their agents, employees, officers, and others acting on their behalf, are legally responsible for the conduct alleged herein. Plaintiff will amend her complaint to set forth the true names and capacities of the Doe Defendants and the allegations against them as soon as they are ascertained.

6. Each of the defendants was at all times mentioned herein an agent, partner, joint venturer, and/or representative of each of the other defendants and was at all times acting within the scope of such relationship

JURISDICTION AND VENUE

7. The Superior Court has personal jurisdiction over each defendant named above because (1) each defendant is headquartered in or is a resident of the State of California, (2) each defendant is authorized to and conducts business in and across the State of California, and (3) each defendant otherwise has sufficient minimum contacts with and purposefully avails itself of the markets of this State, thus rendering the Superior Court's jurisdiction consistent with traditional notions of fair play and substantial justice. Lyft has its principal place of business at 185 Berry Street, Ste. 5000, San Francisco, CA 94107.

8. Venue is proper under Code of Civil Procedure § 395.5, because Lyft operates in and thousands of the illegal acts described below occurred in the County of Alameda.

BACKGROUND ALLEGATIONS

9. Lyft is a company that sells rides. As stated in its U.S. Securities and Exchange Commission Form S-1 Registration Statement, filed in March 2019, Lyft's mission is to "Improve people's lives with the world's best transportation." From its start-up in 2012, Lyft made a calculated business decision to misclassify its drivers as independent contractors rather than employees. At all times since the inception of Lyft's business, defendants have continued to misclassify their drivers as a means of unlawfully depriving these workers of a host of statutory protections applicable to employees, in direct contravention of California law.

10. To provide the hundreds of thousands of drivers needed to support the business model, Lyft solicits and employs a massive workforce of over 100,000 drivers throughout California for the purpose of transporting Lyft's customers. This driver workforce performs the service for which customers pay Lyft—transportation.

11. Lyft has been classified by the California Public Utilities Commission (CPUC) as a transportation network company (TNC). The CPUC defines a TNC as "a company or organization operating in California that provides transportation services using an online-enabled platform to connect passengers with drivers using their personal vehicles." The CPUC has also classified Lyft as a charter-party carrier (TCP), which includes passenger transportation. The CPUC has authorized Lyft to provide services for "the transportation of persons by

motor vehicle for compensation, whether in common or contract carriage, over any public highway in this state." (Pub. Util. Code § 5360.) The transportation of passengers for compensation within California requires operating authority from the CPUC, unless limited exemptions apply—such as taxicab service (which is subject to local city and county regulation) and medical transportation vehicles. (Public Utilities Code §§ 226 and 5353.)

12. On June 9, 2020, the CPUC issued a Scoping Memo and Ruling in Rulemaking 12- 12-001 and stated that, based upon the enactment of AB 5 (Labor Code § 2750.5, codification of the "ABC" test), "for now, TNC drivers are presumed to be employees…" The CPUC's public comment period on the AB 5 question closed on August 7, 2020.

13. Through this misclassification, Lyft has engaged in a deliberate scheme to evade its obligations under California law – including, but not limited to the obligation to pay its drivers no less than the applicable minimum wage for all hours worked, to pay overtime compensation for overtime hours worked, to provide paid, duty-free rest periods during the workday, to reimburse the drivers for the cost of all equipment and supplies needed to perform their work and for work-related personal vehicle mileage, to provide paid sick leave, to provide accurate itemized wage deduction statements and other required notices containing required employment-related information, and to timely pay all wages owed during each driver's period of employment and upon separation of employment.

14. Lyft's unlawful business model, premised upon misclassification of employees as independent contractors, is built upon the misconception that employees can be designated as independent contractors and deprived of the benefits and security

of the employment relationship if certain words are used to misclassify the relationship in a contract between the worker and the hiring entity.

15. In an opinion piece in the San Francisco Chronicle titled "Open Forum: Uber, Lyft ready to do our part for drivers" dated June 12, 2019, Lyft acknowledged its drivers face serious concerns because of their misclassification as independent contractors and not employees, including "earnings stability [and] protections on the job…" Lyft, however, decried the possibility of properly classifying its drivers as employees, claiming that "a change to the employment classification of ride-share drivers would pose a risk to our business."

16. Recognizing the serious problem of misclassification and the harms it inflicts on workers, law-abiding businesses, taxpayers, and society as a whole, the California Legislature enacted Assembly Bill 5, which took effect on January 1, 2020. (Assem. Bill No. 5, 2019-2020 Reg. Sess. ("A.B. 5").) A.B. 5 codified and extended the California Supreme Court's unanimous decision in Dynamex Operations W., Inc. v. Superior Court (2018) 4 Cal.4th 903 ("Dynamex"). California law is clear: for the full range of protections afforded by the Industrial Welfare Commission ("IWC") wage orders, the Labor Code, and the Unemployment Insurance Code, workers are generally presumed to be employees unless the hiring entity can overcome this presumption by establishing each of the three factors in the strict "ABC" test: (A) the worker is free from the control and direction of the hiring entity in connection with the performance of the work, both under the contract for the performance of the work and in fact; (B) the worker performs work that is outside the usual course of the hiring entity's business; and (C) the worker is customarily engaged in an

independently established trade, occupation or business of the same nature as the work performed. (Lab. Code § 2750.3(a)(1); Dynamex, supra, 4 Cal.5th at 957.)

17. Because the hiring entity must establish each of the three factors in the ABC test in order to lawfully classify a worker as an independent contractor, the hiring entity's failure to establish any one part of the ABC test results in the classification of the worker as an employee rather than an independent contractor. (Dynamex, supra, 4 Cal. 5th at 963.)

18. On August 10, 2020, San Francisco Superior Court Judge Ethan Schulman issued an Order granting the People of California and multiple City Attorneys' Motion for Preliminary Injunction against Uber Technologies, Inc. and Lyft, Inc., enjoining and restraining them and their subsidiaries from misclassifying their drivers as independent contractors in violation of Labor Code § 2750.3. (People of California, et al. v. Uber Technologies, Inc. et al., San Francisco Superior Court Case No. CGC-20-584402.) The preliminary injunction covers Lyft's drivers. On October 22, 2020, the First District Court of Appeal affirmed the trial court's preliminary injunction.

19. Lyft is a transportation company in the business of providing on-demand transportation services to customer passengers to their destination of choice at a price set, and controlled, by Lyft. The drivers who perform this work are employees of Lyft. The drivers provide Lyft's customer passengers with the transportation services that Lyft sells. Lyft publicly holds itself out to the public as providing transportation services in the form of on-demand rides.

20. As noted by federal District Judge Vince Chhabria in an order issued in 2020, “it is now clear that drivers for companies like Lyft must be classified as employees.” Chhabria explained, “California’s new A.B. 5, which was passed in September 2019 and became operative January 1, 2020, makes clear that a company’s workers must be classified as employees if the work they perform is not outside the usual course of the company’s business… That test is obviously met here: Lyft drivers provide services that are squarely within the usual course of the company’s business, and Lyft’s argument to the contrary is frivolous.” “But rather than comply with a clear legal obligation, companies like Lyft are thumbing their noses at the California Legislature, not to mention the public officials who have primary responsibility for enforcing A.B. 5.” (Rogers v. Lyft Inc. (N.D. Cal. April 7, 2020) --- F.Supp.3d ---, 2020 WL 1684151.)

21. The work that drivers perform is central to Lyft’s business. The fact that Lyft uses a cell phone or computer app as the instrumentality by which it hires its drivers, secures orders from customer passengers, communicates with its drivers regarding customer passenger orders, assigns work to its drivers, collects payments from customer passengers, and pays its drivers, does not transform Lyft from a transportation business into anything else. Without its drivers, Lyft’s transportation business would not exist. Lyft cannot overcome the presumption that all of its drivers are employees because it cannot establish that any of its drivers “perform work that is outside the usual course of [Lyft’s] business,” as required under the “B prong” of the ABC test.

22. At all times relevant herein, Lyft requires its drivers, as a condition of employment, to enter into written agreements that, inter alia, restrict the

manner in which the drivers are to perform their work. These agreements, drafted by Lyft, include standardized terms and conditions concerning the drivers' work and terms of compensation.

23. Lyft determines which drivers are eligible to provide transportation services.

24. Lyft sets restrictions on the types of vehicles the drivers may drive and the standards drivers must meet.

25. Lyft retains the right to terminate drivers or pause their ability to pick up customer passengers at any time based upon terms, conditions and policies unilaterally set by Lyft.

26. Lyft sets the fares customer passengers must pay for transportation services provided by drivers.

27. Lyft collects fare payments directly from customer passengers. Lyft reserves the right to increase the "service fee" charged to drivers.

28. Lyft has at all times unilaterally retained the right to change the fares charged to customer passengers at any time. Drivers' compensation is generally fares minus the "service fee" and "platform fee" Lyft charges, tolls, taxes and ancillary fees. Lyft's unilateral right to change fares at any time creates and maintains its right to control drivers' compensation.

29. Lyft sets the compensation that Lyft pays its drivers for transportation services provided to customer passengers.

30. Lyft handles claim and fare reconciliation, invoices and resolution of customer passenger and driver complaints.

31. Lyft retains all control to resolve driver

complaints, compensation disputes, and conflicts between drivers and customer passengers.

32. Lyft monitors drivers' work hours and logs off drivers if they have been providing transportation services for 12 hours, prohibiting drivers from providing transportation services for six hours following the 12-hour period.

33. Lyft retains the right to dock a driver's pay if a customer passenger complains about the transportation service provided by the driver, such as an inefficient route.

34. Lyft tracks drivers through its app. Drivers are required to notify Lyft of the status of the transportation service, including accepting the customer passenger's request, arrival to pick up at the customer passenger's location, start of the trip and end of the trip. Lyft monitors and controls each driver's behavior while using the app.

35. Lyft sets and enforces specific rules for drivers to control customer passengers' ride experience. Defendants' detailed rules are designed to protect, build and enhance the Lyft reputation, brand and value. For example, drivers are given instructions on vehicle cleanliness, music, and prohibited topics of conversation with customer passengers.

36. Drivers may be suspended or terminated at Lyft's sole discretion. Lyft may stop dispatching rides through the app if it decides, again at its sole discretion, that a driver has acted inappropriately or violated one of its rules or standards. Such consequences may be issued for driver behavior that Lyft considers undesirable, such as refusing to accept or cancelling too many rides, refusing to accept or cancelling rides to certain locations, inadequate passenger satisfaction ratings, and using trip routes

Lyft deems inefficient.

37. Lyft monitors and controls its drivers through its customer passengers rating system, which evaluates drivers' performance. Lyft uses these ratings to discipline or terminate drivers.

38. Lyft develops and make use of algorithms to direct driver behavior. For example, Lyft periodically and unilaterally implements "surge pricing" to mobilize drivers to drive in geographic areas and during times as needed to provide transportation services to Lyft customer passengers, and upon securing the services of a sufficient number of drivers to respond to customer needs, Lyft unilaterally cancels the "surge."

39. Lyft uses its authority to discipline drivers who attempt to precipitate "surge pricing" as a means of increasing driver compensation. For example, Lyft announced that drivers would be deactivated (i.e., suspended or terminated) for engaging in the practice of temporarily going out of service by turning off the app before flight arrivals or other events likely to trigger an increase in demand for rides, in order to force Lyft's algorithms to implement "surge pricing." Through this threat of discipline, Lyft prevents drivers from undertaking efforts to maximize their compensation.

40. Lyft instructs its drivers on the character and quality of on-demand transportation services to be provided to customer passengers.

41. Lyft enforces its quality standards by controlling compensation and threatening deactivation to achieve the on-demand transportation service that Lyft has promised its customer passengers.

42. In the event of noncompliance or customer passenger complaints, Lyft may exercise its right to terminate a driver.

43. Lyft constantly monitors, surveils and reviews drivers' performance. Lyft tracks its drivers' hours, locations, movements, quality of service and other information while drivers are logged on to the Lyft app. Lyft uses this data for its own business purposes, in addition to controlling its drivers.

44. Lyft's agreements require drivers to acknowledge that a driver's failure to accept Lyft customer passenger requests for transportation creates a negative experience for those customer passengers' use of Lyft's mobile app.

45. Lyft's agreements further require that drivers possess the appropriate and current level of training, expertise and experience to provide transportation services in a professional manner with due skill, care and diligence; and maintain high standards of professionalism, service and courtesy.

46. Lyft drivers are subject to background and driving record checks in order to remain eligible to provide transportation services to Lyft customer passengers.

47. Both under their contracts with Lyft and in fact, none of Lyft's on demand transportation drivers have ever been free from the control and direction of Lyft in connection with the performance of their work for Lyft. As such, Lyft cannot meet the requirements of the "A prong" of the ABC test, and therefore cannot overcome the presumption that all of its drivers are employees, not independent contractors.

48. Lyft drivers are not engaged in an independently established trade, occupation, or

business of the same nature as the work they perform for Lyft. Instead, drivers are transporting Lyft's customer passengers to generate income for Lyft.

49. There is no specialized skill required to transport Lyft's customer passengers by driving a vehicle.

50. Lyft does not require its drivers to hold a special license; only a driver's license is required.

51. Lyft drivers are not required to hold the necessary licenses and permits to operate an independent on-demand transportation trade, occupation or business, including but not limited to operating authority from the CPUC or a local taxi authority for the transportation of passengers for compensation within California, and in practice generally do not hold any business licenses or take any steps to set up an independent business beyond driving for Lyft.

52. Both under their contracts with Lyft and in fact, none of Lyft's on demand transportation drivers are engaged in an independently established trade, occupation, or business, and as such, Lyft cannot meet the requirements of the "C prong" of the ABC test, and therefore cannot overcome the presumption that all of its their drivers are employees, not independent contractors.

53. Lyft is subject to IWC Wage Order 9-2001, which applies to the "transportation industry." The transportation industry is defined in the order as "any industry, business, or establishment operated for the purpose of conveying persons or property from one place to another whether by rail, highway, air, or water, and all operations and services in connection therewith; and also includes storing or warehousing of goods or property, and the repairing, parking, rental,

maintenance, or cleaning of vehicles."

54. IWC Wage Order 9-2001 has been in effect since January 1, 2001, and provides various substantive employee protections, including requirements for payment of no less than the minimum wage for all hours worked, payment of overtime compensation for overtime hours worked, paid rest periods, premium pay for failure to provide required paid rest periods, and a provision that employers must provide employees with tools or equipment required by the employer or necessary for the performance of the job. These IWC wage order requirements are valid, operative and enforceable as state law. (Labor Code §§ 1185, 1197, 1198, 1200.)

55. The California Supreme Court issued its decision in Dynamex on April 30, 2018, construing IWC Order 9-2001, holding that all of the protections of that wage order are available to employees employed by employers covered by the wage order, and that the hiring entity must establish all three factors of the ABC test in order to overcome the presumption of employee status. As this decision merely construed existing provisions of the IWC wage order, it applies retroactively with respect to the enforcement of requirements under the IWC orders and Labor Code provisions related to IWC wage order requirements.

56. Labor Code requirements that are wholly unrelated to IWC wage order requirements did not become subject to the ABC test until the effective date of AB 5, on January 1, 2020. Prior to January 1, 2020, the determination of whether a worker was an employee or an independent contractor, for the purpose of those Labor Code requirements wholly unrelated to IWC orders, was governed by S. G. Borello & Sons, Inc. v. Department of Industrial Relations (1989) 48 Cal.3d 341 ("Borello"), under which there is

a rebuttable presumption of employee status, which may be challenged by the hiring entity through a multi-factor test under which no one factor is necessarily determinative, though certain factors are considered more significant than others. Even under Borello, Lyft's drivers were employees rather than independent contractors.

57. Emergency Rule 9 of the California Rules of Court, as revised on May 29, 2020, provides that notwithstanding any other law, the statutes of limitations for civil causes of action that exceed 180 days are tolled from April 6, 2020 to October 1, 2020. The limitations periods for the following causes of action are governed by this Emergency Rule.

FIRST CAUSE OF ACTION: WILLFUL MISCLASSIFICATION OF EMPLOYEES AS INDEPENDENT CONTRACTORS (Labor Code § 226.8)

58. Plaintiff incorporates by reference all of the allegations set forth hereinabove.

59. Under Labor Code § 226.8, it is unlawful for any person or employer to willfully misclassify an employee as an independent contractor. The statute provides that a person or employer found to have engaged in a pattern or practice of willful misclassification shall be subject to a civil penalty of not less than $10,000 for each such violation (and up to $25,000 for each such violation), in addition to other penalties or fines permitted by law.

60. At all times relevant herein, Lyft has engaged in a continuing pattern and practice of willfully misclassifying all of its drivers as independent contractors, notwithstanding that under California law, all of these drivers have been and are employees of Lyft, thereby violating Labor Code § 226.8.

61. Lyft is liable for civil penalties under Labor Code § 226.8 in the amount of not less than $10,000 for each Lyft driver misclassified as an independent contractor.

62. Unless enjoined by this Court from misclassifying its drivers as independent contractors, and from thereby denying these drivers the protections available to employees under the Labor Code and IWC Wage Order 9-2001, Lyft will continue to misclassify its drivers as independent contractors and thereby continue to deny them the protections available to employees under the Labor Code and IWC Wage Order 9-2001.

SECOND CAUSE OF ACTION: FAILURE TO PAY NOT LESS THAN THE MINIMUM WAGE FOR ALL HOURS WORKED (Labor Code § 1197; IWC Order 9-2001, § 4)

63. Plaintiff incorporates by reference all of the allegations set forth hereinabove.

64. Labor Code § 1197 and IWC Order 9-2001, § 4 require employers to pay their employees not less than the applicable minimum wage for all "hours worked," which includes all time the employee is suffered or permitted to work, whether or not required to do so, and all time the employee is subject to the employer's control. (IWC Order 9-2001, § 2(H).) This compensable time includes time spent transporting customer passengers, time spent traveling from one job location to another during the course of a workday, time spent waiting for passengers to show up at the designated pick-up point, time spent cleaning the driver's vehicle to conform to Lyft's requirements, or obtaining the required tools, equipment and supplies necessary to perform work, and on-call time during which the driver has logged on as "active" or "available" on the

Lyft app during which the driver is required or expected to accept available on-demand transportation jobs, or is subject to adverse employment consequences for declining to accept an available job. The applicable minimum wage is the minimum wage required under state law, or the minimum wage required under an applicable local ordinance, whichever is higher. Employers must also pay separate hourly compensation for "non-productive" hours worked. Unlike the federal rule, under California law, the employer cannot average the total compensation for a pay period to determine whether its minimum wage obligations were met. (Armenta v. Osmose, Inc. (2005) 135 Cal.App.4th 314, 321-325; Gonzalez v. Downtown L.A. Motors, LP (2013) 215 Cal.App.4th 36, 50-54.)

65. At all times relevant herein, Lyft employed 26 or more employees, and thus, was subject to minimum wage requirements based on that number of employees. Lyft drivers worked the requisite number of hours required to trigger minimum wages required under applicable local ordinances.

66. Labor Code § 226.2 applies to employees who are paid on a piece-rate basis for any work performed during a pay period, and requires that payment be made to such employees for "non-productive time" on an hourly basis separate from the compensation derived through piece-rate earnings, at an hourly rate that is not less than the applicable minimum wage. The statute defines "non-productive time" as "time under the employer's control, exclusive of rest and recovery periods, that is not directly related to the activity being compensated on a piece-rate basis."

67. At all times relevant herein, Lyft has compensated its drivers for their services on a piece-rate basis, with Lyft paying the drivers a specified amount per ride, based on the distance and/or time

spent in transporting each customer passenger from pick-up to drop-off. Lyft has not paid any compensation to its drivers for the activities that constitute "non-productive time" within the meaning of section 226.2, including travel time driving from one customer passenger's location to another, time spent waiting for a customer passenger to arrive at the designated pick-up location, time spent procuring tools, equipment or supplies in order to perform transportation services, time spent cleaning the driver's vehicle to conform to Lyft's requirements, and on-call time during which the driver has logged on as "active" or "available" on the Lyft app and is required or expected to accept available transportation jobs, or is subject to adverse employment consequences for declining to accept an available job. Lyft may not "borrow" from wages paid to drivers for productive time to meet the independent obligation to pay for all "non-productive," uncompensated hours worked. Such a scheme is in direct violation of Armenta v. Osmose, Inc. (2005) 135 Cal.App.4th 314.

68. Lyft's failure to pay for the above-described non-productive time constitutes a violation of Labor Code § 226.2, and a violation of the obligation to pay no less than the applicable minimum wage for all hours worked, as specified at Labor Code § 1197, and IWC Order 9-2001, § 4(A). Under these provisions, Lyft's drivers are entitled to payment of the applicable minimum wage for all such uncompensated time.

69. Labor Code § 1194.2 provides that in any action filed by the Labor Commissioner pursuant to Labor Code § 1193.6 to recover unpaid minimum wages owed to any employees, the employees shall be entitled to recover, in addition to the unpaid minimum wages, liquidated damages in an amount equal to the wages unlawfully unpaid and interest thereon.

70. Lyft's drivers who are owed unpaid minimum wages stemming from its failure to pay wages for "non-productive time" within the meaning of Labor Code § 226.2, are therefore entitled to recover, in addition to the unpaid minimum wages, liquidated damages from Lyft pursuant to Labor Code § 1194.2.

71. Labor Code § 1197.1(a) provides for the imposition of civil penalties against an employer or other person acting as an officer or agent of the employer, for paying less than the applicable minimum wage for any hours worked by an employee. Section 1197.1 sets the amount that must be awarded for an intentional initial violation at $100 for each underpaid employee for each pay period for which the employee was underpaid, in addition to an amount sufficient to recover underpaid wages, liquidated damages pursuant to Labor Code § 1194.2, and any applicable penalties pursuant to Labor Code § 203; and the amount that must be awarded for each subsequent violation, whether intentional or not, at $250 for each underpaid employee for each pay period for which the employee was underpaid, in addition to an amount sufficient to recover underpaid wages, liquidated damages pursuant to Labor Code § 1194.2, and any applicable penalties pursuant to Labor Code § 203.

72. Lyft's failure to pay at least the applicable minimum wage to its drivers for "non- productive" hours worked was intentional, within the meaning of Labor Code § 1197.1(a), and subjects Lyft to civil penalties as provided by that statute.

THIRD CAUSE OF ACTION: FAILURE TO PAY OVERTIME COMPENSATION FOR OVERTIME HOURS WORKED
(Labor Code § 510; IWC Order § 3(A))

73. Plaintiff incorporates by reference all of the allegations set forth hereinabove.

74. Labor Code § 510 and IWC Order 9-2001, § 3(A) require payment of overtime compensation, at not less than one and one-half times the employee's regular rate of compensation, for all hours worked in excess of 8 hours and up to 12 hours in any workday, for all hours worked in excess of 40 hours in any workweek, and for the first 8 hours worked on the seventh day of work in any one workweek; and payment of overtime compensation at not less than twice the employee's regular rate of compensation for all hours worked in excess of 12 hours in any workday, and for all hours worked in excess of 8 hours on the seventh day of work in any one workweek.

75. At all relevant times herein, Lyft has failed to pay overtime compensation to its drivers who work more than 8 hours in a workday or 40 hours in a workweek or for any work performed on the seventh day of work in any one workweek, thereby violating Labor Code § 510 and IWC Order 9-2001, § 3(A).

76. Lyft owes overtime compensation to its drivers who have performed overtime work as provided by Labor Code § 510 and IWC Order 9-2001, § 3(A).

77. Labor Code § 558 provides for the imposition of a civil penalty as to "any employer or other person acting on behalf of an employer who violates, or causes to be violated" Labor Code § 510 or any provision regulating hours or days of work in any IWC order. Section 510 sets the amount that must be awarded for an initial violation at $50 for each underpaid employee

for each pay period for which the employee was underpaid in addition to an amount sufficient to recover underpaid wages, and the amount that must be awarded for each subsequent violation at $100 for each underpaid employee for each pay period for which the employee was underpaid in addition to an amount sufficient to recover underpaid wages.

78. As a consequence of Lyft's failure to pay required overtime compensation to its drivers, Lyft is subject to civil penalties for violations committed as provided by Labor Code § 558.

FOURTH CAUSE OF ACTION: FAILURE TO PAY WAGES FOR REST PERIODS (Labor Code § 226.2; IWC Order 9-2001, § 12(A))

79. Plaintiff incorporates by reference all of the allegations set forth hereinabove.

80. IWC Order 9-2001, § 12(A) requires every employer to authorize and permit employees to take paid rest periods, with such rest periods expressly deemed to constitute "hours worked." Under Section 12(A) of this IWC order, such "authorized rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof," with no duty to provide a rest period to an employee whose daily work time is less than three and one-half hours. Thus, one paid rest period must be made available to the employee if the employee works at least three and one-half hours but not more than six hours in a day, a second paid rest period must be provided to the employee if the employee works more than six hours and up to 10 hours in a day, and a third paid rest period must be provided to the employee if the employee works more than 10 hours and up to 14 hours in a day, etc. Section 12(A) of the IWC Order

expressly provides that these required rest periods "shall be counted as hours worked from which there shall be no deduction from wages." Because such rest periods are "counted as hours worked," they must be paid at not less than the minimum wage, in accordance with § 4(A) of the Wage Order.

81. Labor Code § 226.2 requires employers to provide their employees who are compensated on a piece-rate basis with separate hourly compensation for required rest periods, in an amount not less than the higher of (a) the average hourly rate for each workweek under a formula set out in the statute, or (b) the applicable minimum wage. Payment of piece-rate compensation does not serve to provide any compensation for required rest periods.

82. At all times relevant herein, Lyft has failed to provide any separate, hourly compensation to its drivers for required rest periods. These required rest periods have been completely uncompensated by Lyft. As such, Lyft violated the requirements set forth in IWC Order 9-2001 and Labor Code § 226.2 that paid rest periods be made available to employees.

83. As a consequence of Lyft's failure to pay its drivers for required rest periods, each driver is entitled to payment of unpaid wages for each such required rest period in an amount not less than the higher of the applicable minimum wage, or the driver's average hourly wage rate under the formula set at Labor Code § 226.2.

84. As a further consequence of Lyft's failure to pay its drivers any wages for their required rest periods, thereby violating the requirement set out in the Labor Code and IWC Order for payment of not less than the minimum wage for all hours worked, Lyft's drivers are entitled to liquidated damages under

Labor Code § 1194.2 in an amount equal to the unpaid minimum wages plus interest.

85. Lyft's failure to pay its drivers at least the applicable minimum wage for their required rest periods was intentional, within the meaning of Labor Code § 1197.1, and subjects defendants to civil penalties.

FIFTH CAUSE OF ACTION: FAILURE TO PAY REST PERIOD PREMIUM PAY (Labor Code § 226.7(c); IWC Order 9-2001, § 12(B))

86. Plaintiff incorporates by reference all of the allegations set forth hereinabove.

87. Labor Code § 226.7(c) provides that if an employer fails to provide an employee with a rest period "in accordance with a state law, including … an applicable … order of the Industrial Welfare Commission," the employer shall pay the employee one additional hour of pay at the employee's regular rate of compensation for each workday that the rest period is not provided. A similar requirement is set out at IWC Order 9-2001, § 12(B).

88. By failing to provide any compensation to their drivers for required rest periods, Lyft failed to provide rest periods "in accordance with … [the] applicable … order of the Industrial Welfare Commission," as specified at IWC Order 9-2001, § 12(A).

89. As a consequence of Lyft's failure to provide legally mandated, paid rest periods to their drivers, Lyft is subject to the premium pay provisions of Labor Code § 226.7(c) and IWC Order 9-2001, § 12(B), under which Lyft's drivers are entitled to payment of one hour of rest period premium pay for each workday that

a required paid rest period was not provided in accordance with the wage order's requirements. Lyft has failed to pay its drivers for legally mandated rest periods and therefore owes them one hour of premium pay for each day in which three and one half hours or more were worked.

90. Labor Code § 558 provides that any employer, or other person acting on behalf of an employer, who violates or causes to be violated, a section of this chapter (Labor Code § 500, et seq.) or any provision regarding hours and days of work in any order of the IWC shall be subject to a civil penalty, in addition to the underpaid wages which must be paid to the affected employees. Similar authorization for these civil penalties is found at IWC Order 9-2001, § 20.

91. The failure to pay its employees required rest period premium pay subjects Lyft to civil penalties under Labor Code § 558 and IWC Order 9-2001, § 20.

SIXTH CAUSE OF ACTION: FAILURE TO INDEMNIFY EMPLOYEES FOR NECESSARY BUSINESS EXPENSES
(Labor Code § 2802; IWC Order 9-2001, § 9)

92. Plaintiff incorporates by reference all of the allegations set forth hereinabove.

93. Labor Code § 2802 requires every employer to indemnify each of its employees for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of the employee's duties, or of his or her obedience to the directions of the employer. In accord, IWC Order 9-2001, § 9 requires employers to pay for, or indemnify employees for required tools or equipment necessary for the performance of the job. Pursuant to Labor Code § 2804, any contract or agreement, express or implied, made by any employee to waive the benefits of these

protections is null and void.

94. During the COVID-19 pandemic, Lyft created a "company store" for its drivers to purchase safety and/or personal protective equipment ("PPE"), such as face masks, sanitizing wipes, sanitizing spray, and physical partitions separating Lyft's customer passengers from the driver. Defendants know that these items are required for drivers to perform their work safely. The costs Lyft drivers have incurred purchasing products to protect their own health and safety during the COVID-19 pandemic, in addition to that of Lyft's customer passengers, were reasonable and incurred as the direct result of discharging their duties to provide transportation services to Lyft customer passengers and/or at the direction of Lyft.

95. Lyft is required to pay for required safety devices, safeguards and equipment purchased by its drivers, including those purchased in response to the COVID-19 pandemic. (Labor Code §§ 6400, 6401 and 6403.)

96. At all relevant times herein, in following the directions issued by defendants or in order to carry out their job duties, defendants' drivers have been required to purchase various items or services including but not limited to: (a) fuel, (b) vehicle, vehicle washes, supplies for vehicle cleaning and maintenance, vehicle repair tools and supplies, (c) tolls, (d) insurance, including but not limited to automobile insurance, to insure the activities of the driver while performing transportation services for defendants, (e) cell phone and cell phone service in order to remain connected to the Lyft app through which the drivers receive job assignments, (f) taxes, (g) ancillary fees, and (h) workers' compensation insurance. Lyft's drivers have been required to use their own vehicles to drive from assignment to

assignment during the workday, thus incurring expenses for the mileage driven for these purposes, including but not limited to the cost of fuel, vehicle maintenance and depreciation. Lyft knew that its drivers were incurring these business expenses. Lyft's drivers' business expenses were reasonable and incurred as the direct result of discharging their duties to provide transportation services to Lyft customer passengers and/or at the direction of Lyft. As such, the expenses incurred by Lyft's drivers for these items and services must be reimbursed by Lyft pursuant to Labor Code § 2802.

97. Lyft has failed to indemnify its drivers for any of the above-listed incurred necessary business expenses, thereby violating Labor Code § 2802 and IWC Order 9, § 9. Lyft's drivers are entitled to indemnification from Lyft for these expenses in accordance with Labor Code § 2802 and IWC Order 9, § 9.

98. Labor Code § 2699(f) provides for a civil penalty for violations of "all provisions of this code except those for which a civil penalty is specifically provided," in the amount of $100 for each aggrieved employee per pay period for an initial violation, and $200 for each aggrieved employee per pay period for each subsequent violation. Lyft is subject to this civil penalty for its violations of Labor Code § 2802.

99. Prior to filing this action, the Labor Commissioner served a written notice upon Lyft, by certified mail, of the allegations set out in this cause of action, the facts and theories in support of these allegations, and a demand for payment of amounts due for civil penalties stemming from these violations, pursuant to Labor Code §§ 2802 and 2699(f).

SEVENTH CAUSE OF ACTION:
FAILURE TO PROVIDE ITEMIZED WAGE STATEMENTS
(Labor Code § 226)

100. Plaintiff incorporates by reference all of the allegations set forth hereinabove.

101. Labor Code § 226(a) requires employers provide their employees, semi-monthly or at the time of payment of wages, an accurate, written itemized wage statement showing: (1) gross wages earned, (2) total hours worked, (3) the number of piece rate units earned and any applicable piece rate if the employee is paid on a piece rate basis, (4) all deductions, (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the employee and the last four digits of the employee's social security number or some other employee identification number, (8) the name and address of the legal entity that is the employer, and (9) all applicable hourly rates in effect during the pay period, and the corresponding number of hours worked at each hourly rate.

102. Labor Code § 226(e) provides that an employee suffering injury as a result of a knowing and intentional failure by an employer to comply with subdivision (a) is entitled to recover the greater of all actual damages or $50 for the initial pay period in which a violation occurs and $100 per employee for each violation in a subsequent pay period, not to exceed $4,000 per employee. Subdivision (e) further provides that an employee is deemed to suffer an injury for purposes of this statute if the employer fails to provide a wage statement, or if the employer fails to provide accurate and complete information as required by one or more of the nine items specified in subdivision (a) and the employee cannot promptly and

easily determine, from the provided wage statement alone, gross or net wages paid during the pay period, or total hours worked by the employee during the pay period, or the number of piece rate units earned and all applicable piece rates, or all hourly rates in effect during the pay period and the number of hours worked at each hourly rate.

103. At all relevant times herein, Lyft failed to provide its drivers with any written itemized wage deduction statements, or the wage deduction statements that were provided failed to provide accurate and complete information as to one or more of the nine items specified in Labor Code § 226(a), such that the drivers could not promptly and easily determine, from any such provided wage statements, their total hours worked during the pay period, or the number of piece rate units earned and all applicable piece rates, or all of the hourly rates that were in effect during the pay period and the number of hours worked at each hourly rate.

104. Lyft's failure to comply with Labor Code § 226(a) has been knowing and intentional, and as a consequence of said failure, all of Lyft's drivers have suffered injury within the meaning of Labor Code § 226(e), such that each driver is entitled to liquidated damages in the amount of $50 for the initial pay period of non-compliance, and $100 for each subsequent pay period of non- compliance, in an amount not to exceed $4,000 per driver.

105. Lyft's failure to comply with Labor Code § 226(a) further subjects it to civil penalties pursuant to Labor Code § 226.3.

106. Labor Code § 226.3 states that an employer who violates Labor Code § 226(a) shall be subject to a civil penalty in the amount of $250 per employee per

violation in an initial citation and $1,000 per employee for violation in a subsequent citation for which the employer fails to provide the employee a wage statement or fails to keep the records required by Labor Code § 226(a). The civil penalties provided in this section are in addition to any other penalty provided by law.

EIGHTH CAUSE OF ACTION: FAILURE TO COMPLY WITH PAID SICK LEAVE REQUIREMENTS (Labor Code §§ 245-249)

107. Plaintiff incorporates by reference all of the allegations set forth hereinabove.

108. In 2014, the State Legislature enacted the Healthy Workplaces, Healthy Families Act of 2014 ("HWHF Act"), under which any employee who, on or after July 1, 2015, works in California for the same employer for 30 or more days within a year of commencement of employment is entitled to paid sick days as specified at Labor Code §§ 246-246.5. The HWHF Act further requires, at Labor Code §§ 246(i), 247 and 247.5, that every employer maintain records of hours worked and paid sick leave accrued and used by its employees, conspicuously display certain information about employees' rights to paid sick leave, and to provide such information to its employees on itemized wage statements each time wages are paid. The HWHF Act further requires an employer to issue timely payment for sick leave no later than the payday for the next regular payroll period after sick leave was taken, pursuant to Labor Code § 246(n).

109. In September 2020, the State Legislature passed AB 1867, which amended the HWHF to add section 248.1 to the Labor Code. The Governor signed the legislation into law on October 9, 2020, and the

amendment took immediate effect.

110. Labor Code § 248.1 requires non-food sector employers with 500 or more employees to provide covered employees with supplemental paid sick leave for COVID-19 related reasons. Pursuant to Labor Code § 248.1(e), non-food sector employers with 500 or more employees were required to provide supplemental paid sick leave to covered employees beginning on September 19, 2020.

111. Non-food sector employers with 500 or more employees are required to provide covered employees timely payment of supplemental paid sick leave, notice of the availability of supplemental paid sick leave, and a wage statement or other writing on the employee's designated pay date indicating the amount of available supplemental paid sick leave. Non-food sector employers with 500 or more employees are also required to keep records of used and available supplemental paid sick leave. Labor Code § 248.1(d) incorporates the requirements of section 246(i) to provide a wage statement or other writing indicating the amount of available supplemental paid sick leave; the requirements of section 246(n) to provide payment for sick leave taken no later than the payday for the next regular payroll period after the sick leave was taken; the requirements of section 247 to provide notice to employees of supplemental paid sick leave; and the requirements of section 247.5 to keep records of used and available supplemental paid sick leave.

112. Lyft employs 500 or more employees nationwide. At all relevant times, Lyft has been a "hiring entity" within the meaning of Labor Code § 248.1(a)(3) and its drivers have been "covered workers" within the meaning of Labor Code § 248.1(a)(2).

113. Lyft has never provided for the accrual of paid sick time or supplemental paid sick leave to its drivers, and has never provided paid sick days or supplemental paid sick leave to its drivers. Lyft has also failed to comply with the requirements to provide notice to its drivers of paid sick leave and supplemental paid sick leave under section 247 and to provide a wage statement or other writing to its drivers indicating the amount of available paid sick leave and supplemental paid sick leave required by section 246(i). Lyft has never provided its drivers with the information required by Labor Code § 247.5, thereby violating requirements of the HWHF Act.

114. Labor Code § 248.5(c) states that where the Labor Commissioner files a civil action to secure compliance with the HWHF Act, the Labor Commissioner is entitled to recover the costs of investigating and remedying the violation, with the violating employer subject to an order to pay the State a sum of not more than $50 for each day a violation occurs or continues for each employee whose rights under the HWHF Act were violated. The Labor Commissioner has incurred and continues to incur such costs, thereby subjecting Lyft to liability under this provision.

115. Labor Code § 248.5(b) provides, generally, that if Labor Code § 248.5(a) is violated appropriate relief includes, but is not limited to, payment of the sick days unlawfully withheld and payment of an additional sum in the form of an administrative penalty. If paid sick days were unlawfully withheld, three times the amount of paid sick days withheld are owed to the employee, or two hundred and fifty dollars ($250), whichever is greater but not to exceed an aggregate of four thousand dollars ($4,000). If the violation results in harm to the employee or person,

the administrative penalty shall include fifty dollars ($50) for each day or portion thereof that the violation occurs or continued, not to exceed an aggregate penalty of four thousand dollars ($4,000).

116. Labor Code § 248.5(c) states that where the Labor Commissioner files a civil action to secure compliance with the HWHF Act, the Labor Commissioner is entitled to recover the costs of investigating and remedying the violation, with the violating employer subject to an order to pay the State a sum of not more than $50 for each day a violation occurs or continues for each employee whose rights under the HWHF Act were violated. The Labor Commissioner has incurred and continues to incur such costs, thereby subjecting Defendants to liability under this provision.

117. Labor Code § 248.5(e) provides that in any action brought by the Labor Commissioner against an employer or other person violating the HWHF Act, available relief shall include the payment of liquidated damages for each employee in the amount of $50 for each day that the employee's rights under the HWHF Act were violated, up to a maximum of $4,000 per employee.

118. As a consequence of Lyft's violations of the HWHF Act, Lyft is liable for liquidated damages payable to its drivers, in the amounts specified in Labor Code § 248.5(e).

NINTH CAUSE OF ACTION: FAILURE TO TIMELY PAY EARNED WAGES UPON SEPARATION OF EMPLOYMENT (Labor Code §§ 201, 202, 203)

119. Plaintiff incorporates by reference all of the allegations set forth hereinabove.

120. Labor Code § 201 requires an employer that discharges an employee to pay all earned and unpaid wages to such employee immediately upon discharge. Labor Code § 202 requires an employer to pay all earned and unpaid wages to an employee who quits within 72 hours of quitting, unless the employee provided 72 hours prior notice of intention to quit, in which case the earned and unpaid wages must be paid to the employee at the time of quitting.

121. Labor Code § 203(a) provides that an employer that willfully fails to pay a separated employee all earned and unpaid wages in accordance with Sections 201 or 202 shall be required to pay a penalty to such employee in an amount equal to the employee's per diem wage rate multiplied by 30 days, unless all required wages were paid within 30 days of the date the wages were due under Sections 201 or 202 (in which case the Section 203 penalties only run from the date the wages were due until the date they were paid), or unless the action to recover the wages is filed within 30 days of the date the wages were due under Sections 201 or 202 (in which case the Section 203 penalties only run from the date the wages were due until the date the lawsuit was filed). Under Labor Code § 203(b), suit may be filed for penalties due under the statute at any time before expiration of the statute of limitations on an action for wages on which the penalties arose.

122. Lyft's failure to timely pay its drivers their earned wages, including minimum wages, rest period wages, rest period premium wages, and/or overtime wages required under IWC Wage Order 9-2001, in a timely manner upon separation from employment as required by Labor Code §§ 201 and 202, was willful within the meaning of Labor Code § 203. Lyft is therefore subject to statutory penalties pursuant to

Labor Code § 203, as to all drivers who separated from employment with Lyft.

TENTH CAUSE OF ACTION: FAILURE TO TIMELY PAY EARNED WAGES DURING EMPLOYMENT (Labor Code §§ 204, 210)

123. Plaintiff incorporates by reference all of the allegations set forth hereinabove.

124. Labor Code § 204 requires that during the course of an employee's employment, all wages earned are due and payable on the regularly scheduled payday, and no less frequently than twice per month, with labor performed between the 1st and 15th days of any month to be paid not later than the 26th of the month, and labor performed between the 16th and last day of the month to be paid not later than the 10th day of the following month.

125. Pursuant to Labor Code § 210, the failure to pay wages to employees as required by Labor Code § 204 subjects the person or entity that failed to pay such wages to a civil penalty of $100 for each failure to pay each employee for any initial non-willful and non-intentional violation, and a civil penalty of $200 plus 25 percent of the amount unlawfully withheld from each employee for each failure to pay each employee for any willful or intentional violation or for any subsequent non-willful and non-intentional violation.

126. Lyft's failure to pay required minimum wages, rest period wages, rest period premium pay, and overtime wages to its drivers on the pay days for which such wages were due under Labor Code § 204 violated the requirements of that statute, and these violations were willful or intentional, thereby subjecting Lyft to civil penalties under Labor Code § 210.

127. Prior to filing this action, the Labor Commissioner made a written demand upon Lyft for payment of amounts due for civil penalties under Labor Code §§ 204 and 210.

ELEVENTH CAUSE OF ACTION: FAILURE TO PROVIDE NOTICE OF EMPLOYMENT RELATED INFORMATION
(Labor Code § 2810.5 and § 2699 (f))

128. Plaintiff incorporates by reference all of the allegations set forth hereinabove.

129. Labor Code § 2810.5(a)(1) requires an employer, at the time of hiring, to provide each employee written notice, in the language the employer normally uses to communicate employment-related information to the employee, containing the following information:

(a) The rate or rates of pay and basis thereof, whether paid by the hour, shift, day, week, salary, piece, commission, or otherwise, including any rates for overtime, as applicable.

(b) Allowances, if any, claimed as part of the minimum wage, including meal or lodging allowances.

(c) The regular payday designated by the employer in accordance with the requirements of this code.

(d) The name of the employer, including any "doing business as" names used by the employer.

(e) The physical address of the employer's main office or principal place of business, and a mailing address, if different.

(f) The telephone number of the employer.

(g) The name, address, and telephone number of

the employer's workers' compensation insurance carrier.

(h) That an employee: may accrue and use sick leave; has a right to request and use accrued paid sick leave; may not be terminated or retaliated against for using or requesting the use of accrued paid sick leave; and has the right to file a complaint against an employer who retaliates.

(i) Any other information the Labor Commissioner deems material and necessary.

130. Labor Code § 2810.5(b) further mandates that employers "notify" their employees "in writing of any changes to the information set forth in the notice within seven calendar days after the time of the changes."

131. At all times relevant herein, Lyft failed to provide its drivers with the employment- related information required from employers at the time of hire, including but not limited to their rates of pay, whether paid by the hour, shift, day, week, salary, piece, commission, or otherwise, and all required information regarding paid sick leave.

132. At all times relevant herein, Lyft failed to provide its drivers written notice of any changes to the employment-related information required under Labor Code § 2810.5(a)(1), including but not limited to their rates of pay.

133. Lyft's failure to provide its drivers notice of the required employment-related information in Labor Code § 2810.5(a)(1), and provide its drivers timely notice of any changes in the employment-related information, such as rates of pay, constitutes a violation of Labor Code § 2810.5(a) and (b).

134. Lyft's violation of Labor Code § 2810.5(a) and (b) therefore subjects it to civil penalties under Labor Code § 2699(f).

135. Prior to filing this action, the Labor Commissioner served a written notice upon Lyft, by certified mail, of the allegations set out in this cause of action, the facts and theories in support of these allegations, pursuant to Labor Code §§ 2810.5 and 2699(f).

PRAYER FOR RELIEF

WHEREFORE, Plaintiff Lilia García-Brower, in her official capacity as Labor Commissioner for the State of California, prays for the following relief:

1. Entry of an order, pursuant to Labor Code §§ 226.8 and 1194.5, enjoining Lyft, and its officers, directors, managers and agents from misclassifying Lyft's drivers as independent contractors, and from failing to provide them with the protections available to employees under the Labor Code and IWC Order 9-2001, and requiring Lyft to post, on its Internet Web site and on its app a notice that sets forth that: (a) the court has found that Lyft has committed serious violations of the law by engaging in the willful misclassification of employees, (b) Lyft has changed its business practices in order to avoid committing further violations of the law prohibiting the misclassification of employees as independent contractors, (c) any employee who believes that he or she is being misclassified as an independent contractor may contact the Office of the State Labor Commissioner at a specified mailing address, email address, and telephone number, and (d) this notice is being posted pursuant to a court order;

2. Entry of judgment, in favor of Plaintiff in the amounts set forth below, or according to proof:

(a) Unpaid wages owed to Lyft's drivers, and interest thereon pursuant to Labor Code §§ 218.6 and 1194, as follows:

(i) Minimum wages pursuant to Labor Code § 1197 and IWC Order 9-2001 § 4;

(ii) Rest period wages pursuant to Labor Code § 226.2 and IWC Order 9-2001 § 12(A), and rest period premium wages pursuant to Labor Code § 226.7 and IWC Order 9-2001 § 12(B); and

(iii) Overtime wages pursuant to Labor Code § 510 and IWC Order 9-2001 § 3(A);

(iv) Payment of withheld sick days pursuant to Labor Code § 248.5;

(b) Liquidated damages owed to Lyft's drivers pursuant to Labor Code § 1194.2;

(c) Unreimbursed business expenses incurred by Lyft's drivers and interest thereon, pursuant to Labor Code § 2802 and IWC Order 9-2001 § 9;

(d) Liquidated damages for Lyft's failure to provide its drivers with complete and accurate itemized wage statements, pursuant to Labor Code § 226(e);

(e) Liquidated damages and penalties for Lyft's failure to comply with paid sick leave law requirements and compensation to the State for the costs of investigating and remedying the violations, pursuant to Labor Code § 248.5;

(f) Statutory penalties owed to Lyft's drivers for failure to timely pay wages upon separation from employment, pursuant to Labor Code § 203;

(g) Civil penalties payable to the State, for the following violations:

(i) Pursuant to Labor Code § 226.8, for Lyft's willful misclassification of employees as independent contractors;

(ii) Pursuant to Labor Code § 1197.1, for Lyft's minimum wage violations;

(iii) Pursuant to Labor Code § 558 and § 20 of IWC Order 9-2001, for Lyft's overtime and rest period violations; and

(iv) Pursuant to Labor Code § 210, for Lyft's failure to pay minimum wages, rest period wages, rest period premium pay, and overtime wages to their drivers on the pay days when such wages were due under Labor Code § 204;

(v) Pursuant to Labor Code § 226.3, for Lyft's failure to provide employees with wage statements that comply with the requirements of Labor Code § 226(a);

(vi) Pursuant to Labor Code § 2699(f), for Lyft's failure to reimburse its drivers for necessary business expenses as required by Labor Code § 2802; and

(vii) Pursuant to Labor Code § 2699(f), for Lyft's failure to provide its drivers notice of the required employment-related information in Labor Code § 2810.5(a) and (b).

3. An order granting Plaintiff her costs, and reasonable attorneys' fees in accordance with Labor Code §§ 226(e), 248.5(e), 1193.6, and 2802; and

4. Such other and further relief as the Court deems just and proper.

Dated: November 18, 2020

[SIGNATURE]
David M. Balter
Miles E. Locker
M. Colleen Ryan
Attorneys for the State
Labor Commissioner

APPENDIX F

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN FRANCISCO

COORDINATION PROCEEDING [SPECIAL TITLE RULE 3.550]

UBER TECHNOLOGIES WAGE AND HOUR CASES

[Applicable to the following included action:]

People of the State of California,

Plaintiff,

v.

Uber Technologies, Inc.; Rasier-CA, LLC; Rasier, LLC; Uber USA, LLC; Lyft, Inc.; and Does 4-50, inclusive,

Defendants.

Case No. CJC-21-005179

JUDICIAL COUNCIL COORDINATION PROCEEDING NO. 5179

FIRST AMENDED AND SUPPLEMENTAL COMPLAINT FOR INJUNCTIVE RELIEF, RESTITUTION, AND PENALTIES

[VERIFIED ANSWER REQUIRED PURSUANT TO CODE OF CIVIL PROCEDURE SECTION 446]

This document pertains to *People v. Uber Technologies, Inc., et al.*, in San Francisco Superior Court, Case No. CGC-20-584402

[FILED June 21, 2022]

Plaintiff, the People of the State of California ("People"), by and through Rob Bonta, Attorney General of the State of California; Michael N. Feuer, Los Angeles City Attorney; Mara W. Elliott, San Diego City Attorney; and David Chiu, San Francisco City Attorney, bring this action against Uber Technologies, Inc.; Rasier-CA, LLC; Rasier, LLC; Uber USA, LLC (individually, "Uber Defendant", collectively, "Uber" or "Uber Defendants"), Lyft, Inc. ("Lyft"), and Does four through fifty (collectively "Defendants"), and allege as follows:

INTRODUCTION

1. In their early stages, when Uber and Lyft started selling ride-hailing services in 2010 and 2012, respectively, they made the calculated business decision to misclassify their on-demand drivers as independent contractors rather than employees. Both companies have misclassified and—to the extent Proposition 22 is unconstitutional or otherwise invalid—continue to misclassify their drivers, exploiting hundreds of thousands of California workers in direct contravention of California law.

2. By misclassifying their drivers, Uber and Lyft evade the workplace standards and requirements that implement California's strong public policy in favor of protecting workers and promoting fundamental fairness for all Californians. This longstanding policy framework includes a comprehensive set of safeguards and benefits established by the State of California ("State"), cities, and counties, such as minimum wages, overtime premium pay, reimbursement for business expenses, workers' compensation coverage for on-the-job injuries, paid sick leave, and wage replacement programs like disability insurance and paid family leave. Uber and Lyft owe their drivers these benefits and protections.

3. Recognizing the serious problem of employee misclassification and the harms it inflicts on workers, law-abiding businesses, taxpayers, and society more broadly, the California Legislature enacted Assembly Bill 5, which took effect on January 1, 2020. (Assem. Bill No. 5 (2019-2020 Reg. Sess.) ("A.B. 5").) A.B. 5 codified and extended the California Supreme Court's landmark, unanimous decision in *Dynamex Operations W., Inc. v. Superior Court* (2018) 4 Cal.5th 903, rehg. denied (June 20, 2018) ("*Dynamex*"). California law is clear: for the full range of protections afforded by California's Wage Orders, Labor Code, and Unemployment Insurance Code, workers are generally presumed to be employees unless the hiring entity can overcome this presumption by establishing each of the three factors embodied in the strict "ABC" test.

4. Uber and Lyft cannot overcome this presumption with respect to their drivers. Uber and Lyft are traditional employers of these misclassified employees. They hire and fire them. They control which drivers have access to which possible assignments. They set driver quality standards, monitor drivers for compliance with those standards, and discipline drivers for not meeting them. They set the fares passengers can be charged and determine how much drivers are paid.

5. Uber and Lyft are transportation companies in the business of selling rides to customers, and their drivers are the employees who provide the rides they sell. The fact that Uber and Lyft communicate with their drivers by using an app does not suddenly strip drivers of their fundamental rights as employees.

6. But rather than own up to their legal responsibilities, Uber and Lyft have worked relentlessly to find a work-around. They lobbied for an exemption to A.B. 5, but the Legislature declined. They utilize driver contracts with mandatory arbitration and class

action waiver provisions to stymie private enforcement of drivers' rights. And now, even amid a once-in-a- century pandemic, they have gone to extraordinary lengths to convince the public that their unlawful misclassification scheme is in the public interest. Both companies have launched an aggressive public relations campaign in the hopes of enshrining their ability to mistreat their workers, all while peddling the lie that driver flexibility and worker protections are somehow legally incompatible.

7. Uber's and Lyft's motivation for breaking the law is simple: by misclassifying their drivers, Uber and Lyft do not "bear any of [the] costs or responsibilities" of complying with the law. (*Dynamex, supra*, 4 Cal.5th at p. 913.) When addressing investors, Uber pulls no punches: "Our business would be adversely affected if Drivers were classified as employees instead of independent contractors." (Uber Securities and Exchange Com. ("SEC") S-1, p. 28 [Filing Date: April 11, 2019].)

8. As one federal district judge recently observed: "[R]ather than comply with a clear legal obligation, companies like Lyft are thumbing their noses at the California Legislature" (*Rogers v. Lyft* (N.D. Cal. Apr. 7, 2020, No. 20-CV-01938-VC) __ F.Supp.3d __ [2020 WL 16484151, at *2].)

9. The State's laws against employee misclassification protect all Californians. They protect workers by ensuring they receive the compensation and benefits they have earned through the dignity of their labor. (*Dynamex, supra*, 4 Cal.5th at p. 952.) They protect "law-abiding" businesses from "unfair competition," and prevent the "race to the bottom" that occurs when businesses adopt "substandard wages" and "unhealthy [working] conditions," threatening jobs and worker protections across entire industries. (*Id.* at pp. 952, 960.) They protect the tax-paying public, who is

often called upon to "assume responsibility" for "the ill effects to workers and their families" of exploitative working arrangements. (*Id.* at p. 952-53.) They are a lifeline and bulwark for the People against the "erosion of the middle class and the rise in income inequality." (A.B. 5, § 1(c).)

10. The time has come to hold Uber and Lyft accountable for their massive, unlawful employee misclassification schemes. The People bring this action to ensure that Uber and Lyft ride-hailing drivers—the lifeblood of these companies—receive the full compensation, protections, and benefits they are guaranteed under law, to restore a level playing field for competing businesses, and to preserve jobs and hard-won worker protections for all Californians.

JURISDICTION AND VENUE

11. The Superior Court has original jurisdiction over this action pursuant to Article VI, Section 10 of the California Constitution.

12. The Superior Court has jurisdiction over each Defendant named above because: (i) each Defendant is headquartered in the State of California; (ii) each Defendant is authorized to and conducts business in and across this State; and (iii) each Defendant otherwise has sufficient minimum contacts with and purposefully avails itself of the markets of this State, thus rendering the Superior Court's jurisdiction consistent with traditional notions of fair play and substantial justice.

13. Venue is proper under Code of Civil Procedure section 393(a), because each Defendant named above is headquartered in the City and County of San Francisco and thousands of the illegal acts described below occurred in the City and County of San Francisco.

PARTIES

I. PLAINTIFF

14. Plaintiff is the People of the State of California, by and through: Rob Bonta, the Attorney General of the State of California; Michael N. Feuer, the Los Angeles City Attorney; Mara W. Elliott, the San Diego City Attorney; and David Chiu, the San Francisco City Attorney (collectively referred to as "Plaintiff" or the "People").

15. Rob Bonta is the Attorney General of the State of California and is the chief law officer of the State. (Cal. Const., art. V, § 13.) The Attorney General is empowered by the California Constitution to take whatever action is necessary to ensure that the laws of the State are uniformly and adequately enforced. He has the statutory authority to bring actions in the name of the People of the State of California to enforce California's Unfair Competition Law ("UCL"). (Bus. & Prof. Code, § 17200 et seq.) He also has the statutory authority to bring an action for injunctive relief to prevent the continued misclassification of employees under the Labor Code. (Lab. Code, § 2750.3, subd. (j) (A.B. 5), recodified at Lab. Code, § 2786.)

16. The Los Angeles City Attorney, Michael N. Feuer, has the statutory authority to bring actions in the name of the People of the State of California to enforce California's UCL. As the City Attorney of a city with population in excess of 750,000, he also has the express statutory authority under the Labor Code to bring an action for injunctive relief to prevent the continued misclassification of employees. (Lab. Code, § 2750.3, subd. (j) (A.B. 5), recodified at Lab. Code, § 2786.)

17. The San Diego City Attorney, Mara W. Elliott, has the statutory authority to bring actions in the

name of the People of the State of California to enforce California's UCL. As the City Attorney of a city with population in excess of 750,000, she also has the express statutory authority under the Labor Code to bring an action for injunctive relief to prevent the continued misclassification of employees. (Lab. Code, § 2750.3, subd. (j) (A.B. 5), recodified at Lab. Code § 2786.)

18. The San Francisco City Attorney, David Chiu, has the statutory authority to bring actions in the name of the People of the State of California to enforce California's UCL. As the City Attorney of a city and county, he also has the express statutory authority under the Labor Code to bring an action for injunctive relief to prevent the continued misclassification of employees. (Lab. Code, § 2750.3, subd. (j) (A.B. 5), recodified at Lab. Code, § 2786.)

II. DEFENDANTS

19. Defendant Uber Technologies, Inc. is a California corporation with its principal place of business in San Francisco, California.

20. At all relevant times, the People are informed and believe Defendant Rasier-CA, LLC ("Rasier-CA," previously named as DOE 1) has been a wholly owned subsidiary of Defendant Rasier, LLC ("Rasier," previously named as DOE 2), which is a wholly owned subsidiary of Defendant Uber Technologies, Inc. Both Rasier-CA and Rasier are limited liability companies formed in Delaware, with their principal place of business in San Francisco, California.

21. At all relevant times, the People are informed and believe Defendant Uber USA, LLC ("Uber USA," previously named as DOE 3) has been a wholly owned subsidiary of Defendant Uber Technologies, Inc. Defendant Uber USA, is a limited liability company

formed in Delaware with its principal place of business in San Francisco, California.

22. At all relevant times, all of the acts and omissions described in this First Amended and Supplemental Complaint by any Uber Defendant were duly performed by, and attributable to Uber Technologies, Inc., and some or all of the remaining Uber Defendants, each acting as principals, or as co-conspirators, alter egos, aiders and abettors, joint venturers, representatives, and/or express or implied agents with the knowledge, control, direction, and/or actual or ostensible authority of some or all of the other Uber Defendants. In doing the things alleged in this First Amended and Supplemental Complaint, each Uber Defendant acted within the course and scope of such agency, alter ego, joint venture, conspiracy, common enterprise, and/or common course of conduct. To the extent that Uber Defendants' conduct or omissions were performed by some Uber Defendants, some or all of the remaining Uber Defendants ratified the conduct or omissions. Any reference in this First Amended and Supplemental Complaint to any acts of Uber shall be deemed the acts of each Uber Defendant acting individually, jointly, or severally.

23. At all relevant times, Uber Defendants acted as alter egos of Uber Technologies, Inc. and some or all of the remaining Uber Defendants. There was and is a substantial unity of interest and ownership between Uber Technologies, Inc., and Rasier, Rasier-CA and Uber USA. Uber Defendants act and have acted as a single enterprise, and use the corporate form as a mere shell, instrumentality or conduit for themselves or their businesses. The People are informed and believe these actions include, but are not limited to, the following:

a. At all relevant times Rasier, Rasier-CA, and

Uber USA have been undercapitalized throughout the period of their operations and have maintained common financial control and intermingled assets, funds, and accounts, with some or all Uber Defendants.

b. At all relevant times, Uber Technologies, Inc. exercised extensive control over virtually every facet of the business of Rasier, Rasier-CA, and Uber USA, from broad policy decisions to routine matters of day-to-day operations. This includes, but is not limited to, policy and day-to-day operations decisions relating to California Drivers and their labor (such as the misclassification of such Drivers as independent contractors), Uber's smartphone application for California Drivers and Passengers, and Uber Defendants' ride-hailing transportation services. Uber Defendants have also disregarded their status as ostensibly separate corporations in the way they hold themselves out to California Drivers.

c. At all relevant times, Uber Defendants (1) used the same business location and employed the same employees and/or attorneys; (2) used the corporate entities to procure labor, services, or merchandise for another person or entity; and (3) used the corporate entities to shield against liability, including the liabilities alleged in this First Amended and Supplemental Complaint.

d. At all relevant times, Rasier, Rasier-CA, and Uber USA, were not only influenced and governed by Uber Technologies, Inc., but there was such a unity of interest and ownership that the individuality, or separateness of Rasier, Rasier-CA, and Uber USA, has ceased,

> and the facts are such that an adherence to the fiction of the separate existence of these entities would, under the particular circumstances, sanction a fraud or promote injustice.

24. At all relevant times, Uber Defendants engaged in a conspiracy, common enterprise, and common course of conduct, the purpose of which is and was to engage in the violations of law alleged in this First Amended and Supplemental Complaint, including, but not limited to, the misclassification of California Drivers as independent contractors rather than as employees. At all relevant times, each Uber Defendant knew or realized, or should have known or realized, that the other Uber Defendants were engaging or planned to engage in the violations of law alleged in this First Amended and Supplemental Complaint. Knowing or realizing that the other Uber Defendants were engaging in such conduct, each Uber Defendant nonetheless encouraged, facilitated, or assisted in the commission of those unlawful acts, and thereby aided and abetted the other Uber Defendants in the conduct.

25. Defendant Lyft, Inc. is a California corporation with its principal place of business in San Francisco, California.

26. The true names or capacities of Defendants sued as Doe Defendants 4 through 50 are unknown to the People. The People are informed and believe, and on this basis, allege that each of the Doe Defendants, their agents, employees, officers, and others acting on their behalf, as well as subsidiaries, affiliates, and other entities controlled by Doe Defendants 4 through 50 (hereafter collectively referred to as "DOES 4 through 50"), are legally responsible for the conduct alleged herein. The names and identities of defendants DOES 4 through 50 are unknown to the People, and

when they are known the People will amend this First Amended and Supplemental Complaint to state their names and identities.

FACTUAL ALLEGATIONS

I. UNDER *DYNAMEX* AND THE LABOR CODE, CALIFORNIA USES THE ABC TEST TO DETERMINE EMPLOYEE STATUS.

27. The California Supreme Court's 2018 decision in *Dynamex, supra*, 4 Cal.5th 903, along with the passage of A.B. 5, which went into effect January 1 of 2020, and subsequent amendments to the Labor Code, have established that the ABC test governs the determination of whether a worker is properly classified as an employee or independent contractor for purposes of the Labor Code, the Unemployment Insurance Code, and the Wage Orders of the Industrial Welfare Commission ("I.W.C.").

28. Under the ABC test, for a worker to be properly classified as an independent contractor rather than an employee, a hiring party, such as Uber or Lyft, has the burden of establishing that *all* of the following three conditions are satisfied: (A) the worker is free from the control and direction of the hiring entity in connection with the performance of the work, both under the contract for the performance of the work and in fact; (B) the worker performs work that is outside the usual course of the hiring entity's business; and (C) the worker is customarily engaged in an independently established trade, occupation, or business of the same nature as the work performed. (Lab. Code, § 2750.3, subd. (a)(1) (A.B. 5), recodified at Lab. Code § 2775, subd. (b)); see generally *Dynamex, supra*, 4 Cal.5th at p. 957.) These three requirements are referred to as Parts A, B, and C of the ABC test, respectively.

29. Because the hiring entity must establish all three parts of the ABC test in order to lawfully classify a worker as an independent contractor, the hiring entity's failure to satisfy any one part of the ABC test results in the worker in question being classified as an employee rather than an independent contractor. (*Dynamex, supra*, 4 Cal.5th at p. 963.)

II. EACH DEFENDANT OPERATES A TRANSPORTATION SERVICE THAT SELLS ON-DEMAND RIDES PROVIDED BY DRIVERS WHOM EACH DEFENDANT HAS MISCLASSIFIED AS INDEPENDENT CONTRACTORS.

30. The limitations period for this First Amended and Supplemental Complaint extends back to at least April 6, 2016, under Emergency Rule 9 of the California Rules of Court, as revised on May 29, 2020 ("Limitations Period").

31. For the purpose of this First Amended and Supplemental Complaint, "Drivers" refers to individuals who fall into one or both of the following two categories. *First Category*: All individuals who have driven for Uber as ride-hailing drivers in the State of California at any time during the Limitations Period 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/were 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 have driven for Lyft as ride-hailing drivers in the State of California at any time during the Limitations Period 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/were

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. "Passengers" refer to individuals who receive Uber and/or Lyft ride-hailing services through such Drivers.

32. Each Defendant operates a ride-hailing transportation service in which Passengers may request and pay for on-demand rides from Uber or Lyft by using that Defendant's smartphone application (the "Uber App," the "Lyft App," "App" or "Defendant's App" respectively, and collectively, "Apps" or "Defendants' Apps").

33. Each Defendant has hired hundreds of thousands of ride-hailing Drivers across the State of California to provide on-demand rides throughout the State to Passengers who book such rides through either Uber or Lyft's App.

34. Lyft was founded in 2012 as a ride-hailing service of Zimride. Zimride later changed its name to Lyft, and subsequently sold the "Zimride" component of its business (a long-distance carpooling service) to focus on offering on-demand rides. As of January 2, 2020, Lyft had a market capitalization of approximately $13 billion.

35. Uber was founded in 2009 as a ride-hailing service. As of January 2, 2020, Uber had a market capitalization of approximately $53 billion.

36. Among the various ride-hailing options offered by Defendants, by far the largest is an option in which individuals with non-commercial drivers' licenses provide on-demand rides to Passengers via each Defendant's App using ordinary passenger vehicles. Lyft refers to this on- demand option as a "Lyft." Uber refers to this option as "UberX."

III. UNDER THE ABC TEST, EACH DEFENDANT MISCLASSIFIES ITS DRIVERS.

37. Since first launching their ride-hailing services, and at all relevant times, each Defendant has misclassified and—to the extent Proposition 22 is unconstitutional or otherwise invalid—continues to misclassify its Drivers as independent contractors instead of employees.

38. Each Defendant requires its Drivers, as a precondition of providing rides through Defendant's App, to agree to standard-form contracts and addenda. Each Defendant's contracts and addenda contain standardized terms and conditions that each Defendant sets regarding its Drivers' work. Each Defendant's contracts and addenda also contain boilerplate language unilaterally designating each Defendant's Drivers as independent contractors.

A. Part A of the ABC Test ("control and direction")

39. Each Defendant retains all necessary control over its Drivers' work, which is to transport Passengers from point A to point B in a car.

40. Each Defendant's App, in combination with each Defendant's policies, functions like an algorithmic manager that effectively supervises its Drivers like a human manager.

41. Each Defendant determines what Drivers are eligible to provide ride-hailing services on its App and can change its Driver standards in its discretion.

42. Each Defendant dictates the types of cars its Drivers may use on its App, as well as the standards its Drivers' vehicles must meet. Each Defendant can change its vehicle standards in its discretion.

43. Drivers' tenure with each Defendant is for an indefinite time, but each Defendant retains the right to terminate or pause a Driver's tenure at any time in accordance with terms, conditions, and policies that each Defendant sets in its discretion.

44. Each Defendant sets the fares that Passengers pay for rides received through its App.

45. Each Defendant, not its Drivers, collects fare payments directly from Passengers.

46. Each Defendant sets the amount of compensation that it pays its Drivers for providing ride-hailing services to Passengers on its App.

47. Each Defendant handles invoicing, claim and fare reconciliation, and resolution of complaints that arise from its Drivers and Passengers.

48. Each Defendant mediates and resolves conflicts involving its Drivers in its discretion, ranging from Driver-Passenger disputes, to allegations of Driver or Passenger misconduct, to lost items, damaged vehicles, cleaning fees, and Driver complaints of not receiving the full amount of compensation for ride-hailing services provided through the App.

49. Each Defendant monitors its Drivers' work hours and logs a Driver off its App for six hours if the Driver reaches a twelve-hour driving limit.

50. Each Defendant does not freely permit its Drivers to choose their routes. For example, if a Passenger complains to a Defendant about the route used by a Driver, each Defendant reserves the right to adjust the fare if it decides that the Driver took an inefficient route.

51. Each Defendant provides its Drivers with their work and pay by controlling the dispatch of

individual Passengers to individual Drivers through each Defendant's App. Each Defendant's App controls which Drivers receive which ride requests and when.

52. Each Defendant controls and limits the information available to its Drivers and Passengers through each Defendant's App, which each Defendant may change at any time without notice.

53. When a Passenger requests an on-demand ride through Defendant's App, the App shows and matches that Passenger with only one Driver at a time, regardless of the number of nearby Drivers. Similarly, when a Driver is available to provide an on-demand ride, the App shows and matches that Driver with only one Passenger at a time, regardless of the number of nearby Passengers. Drivers and Passengers do not freely negotiate over the terms of an on- demand ride. Instead, they are selectively steered to one another through the centralized direction of the App.

54. Each Defendant's App hides from its Passengers key information about its Drivers' experience and vehicles, limiting Drivers' ability to differentiate themselves and increase their earnings in the way a true independent contractor or entrepreneur typically would.

55. Each Defendant's App allows its Drivers only approximately fifteen seconds to accept or reject a trip request.

56. Drivers for each Defendant who consistently do not accept or reject trip requests within the fifteen-second time limit may be temporarily logged out from each Defendant's App. The length of this bar is within each Defendant's discretion.

57. Each Defendant's App tracks its Drivers. Drivers for each Defendant must notify the respective

Defendant through its App of the Driver's trip status at every key step of the on- demand ride: (1) acceptance of the Passenger's ride request, (2) arrival to the pick-up location of the Passenger, (3) start of the trip, and (4) end of the trip. Each Defendant uses its App to constantly monitor and control its Drivers' behavior while its Drivers are logged into the App.

58. Each Defendant specifies detailed rules for Drivers to follow to create a uniform ride experience from which each Defendant derives its brand recognition, reputation, and value. These rules, which each Defendant bills as "suggestions" or "tips," cover matters such as music, how to pick-up Passengers, and what its Drivers can and cannot say to the Passengers.

59. Each Defendant retains the right to suspend or terminate its Drivers, or to cease dispatching ride requests to its Drivers through its App at any time if its Drivers behave in a way that Defendant deems inappropriate or in violation of a Defendant-mandated rule or standard. These Driver behaviors can include, among other infractions, canceling too many rides, not maintaining sufficiently high Passenger satisfaction ratings, or taking trip routes each Defendant deems inefficient.

60. Each Defendant monitors, and ultimately controls, its Drivers through feedback it solicits from its Passengers on every ride via a rating system that each Defendant uses to assess its Drivers' performance. Each Defendant's App solicits feedback and prompts its Drivers and Passengers to rate one another from one to five stars for each Defendant's benefit, as each Defendant uses the ratings for its own discipline of Drivers.

61. Each Defendant determines the type of data and feedback its Drivers and Passengers may submit

via its App. Each Defendant also defines on what basis its Passengers and Drivers may provide feedback through its App.

62. Each Defendant uses information from its Passenger ratings to make decisions about disciplining or terminating its Drivers. If the average rating of a Defendant's Driver falls below a certain threshold set by Defendant, Defendant may suspend or terminate that Driver from providing ride-hailing services on Defendant's App.

63. Each Defendant frequently experiments with software features that directly impact its Drivers, creating an environment in which Drivers are subject to ever-shifting working conditions, all determined in each Defendant's discretion. According to Lyft, "We frequently test driver incentives on subsets of existing drivers and potential drivers, and these incentives . . . could have other unintended adverse consequences." (See Lyft SEC 10-K, p. 20 [Filing Date: February 28, 2020].) According to Uber, "[t]here are over 1,000 experiments running on our platform at any given time." (Deb et al., Under the Hood of Uber's Experimentation Platform (Aug. 28, 2018), <https://eng.uber.com/xp/> (as of May 1, 2020).)

64. Each Defendant introduces and then takes away features from its App in accordance with its own business decisions. Each Defendant exerts control over its App, and thereby over its Drivers.

B. Part B of the ABC Test ("usual course of business")

65. Each Defendant's Drivers are engaged in work that is within the usual course of each Defendant's business: the provision of on-demand rides. Each Defendant is a transportation company that sells on-demand rides to its customers, i.e., its Passengers, who

book and pay for such rides through the Defendant's App.

66. Drivers provide the on-demand ride. They are an integrated and essential part of each Defendant's transportation business. The immediate availability and temporal convenience of an on-demand ride is the service that each Defendant sells to its Passengers.

67. Each Defendant publicly holds itself out to the public as a transportation company in the business of selling on-demand rides.

68. Lyft has trademarked the slogan, "Your Friend with a Car." Lyft advertises: "Get a Ride Whenever You Need One"; "A ride in minutes"; and "Our drivers are always nearby so you can get picked up, on demand, in minutes."

69. Uber has trademarked the slogan, "Everyone's Private Driver." Uber advertises: "We built Uber to deliver rides at the touch of a button"; "Always the ride you want"; "Request a ride, hop in, and go"; "Sign up to ride. Rides on demand"; and "Get a reliable ride in minutes, at any time and on any day of the year."

70. Each Defendant represents to Passengers that it prescribes the qualifications of Drivers on its App, as well as standards for Drivers' quality of services. Each Defendant bills its Passengers directly for the entire amount of the on-demand ride, and each Defendant's Passengers pay the fare for the service to each Defendant, not to the Driver. If a Passenger has an issue with the quality of the on-demand ride provided through Defendant's App, they report that problem to Defendant, and Defendant may refund or cancel the Passenger's fare.

71. Each Defendant is financially integrated with and dependent on its Drivers. Each Defendant only

generates income for its ride-hailing business if its Drivers transport and provide rides to its Passengers. Each Defendant sets the fare its Passengers pay, collects the entire amount of the fare from its Passengers, and then disburses a percentage of those fares to its Drivers as compensation for providing the on-demand ride its Passenger ordered while keeping the remainder of the fare for itself. Without its Drivers' labor to provide Defendant's service, the on-demand ride, each Defendant's ride-hailing business would not exist.

72. Defendants do not facilitate a marketplace or matchmaking service between independent Drivers and Passengers. Instead, they utilize their substantial resources and technology to shape every facet of the service they sell to Passengers—a branded, on-demand ride. To offer an on-demand ride, Defendants use their technology to choreograph the deployment of countless Drivers in a localized geographic area, and integrate themselves into every aspect of how those Drivers provide the service of getting Passengers to their destinations.

73. Far from being a mere technology company, each Defendant is deeply enmeshed in the provision of transportation services. Each Defendant controls its Passengers' access to its on- demand ride service and its Drivers' access to providing such services. Each Defendant prescribes qualifications for its Drivers, determines its Driver supply, and designs and monitors the level and quality of service that its Drivers must provide to Defendant's Passengers. Each Defendant sets the fees, pricing, and incentives on its rides, and each Defendant uses its App to distribute its Drivers across a geographic area to provide an on-demand ride at a price and quantity that each Defendant, in its business discretion, deems the most beneficial to its business model and delivery of services.

74. Each Defendant also engages in extensive data collection and surveillance of its Drivers, tracking its Drivers' hours, movements, quality of services, and other metrics from when the Drivers log on to Defendant's App until they log off. Each Defendant uses this data to monitor and make disciplinary decisions regarding its Drivers, as well as for other business purposes.

75. Lyft's prospectus for its 2019 initial public offering ("IPO") describes how its overall business strategy depends on its Drivers. Lyft describes its growth strategy as "continu[ing] to add density to our ridesharing marketplace *by attracting and retaining drivers* to our platform to further improve the rider experience." (See Lyft SEC S-1, p. 1 [Filing Date: March 1, 2019], emphasis added.) The prospectus identifies a "key factor" affecting Lyft's performance as "*maintaining an ample number of drivers* to meet rider demand in our ridesharing marketplace." (Id., at p. 88, emphasis added.) In response to the fundamental question underlying Lyft's business model, "Why Lyft Wins," Lyft's IPO prospectus definitively answers: because Lyft is "Driver-Centric." (*Id.*, at p. 3.)

76. Uber's prospectus for its 2019 IPO also describes how Drivers, and the labor they furnish providing on-demand rides, are the lifeblood of its business strategy. Uber does not mince words: "If we are unable to attract or maintain a critical mass of Drivers . . . our platform will become less appealing to platform users, *and our financial results would be adversely impacted* . . . . Any decline in the number of Drivers . . . using our platform *would reduce the value of our network and would harm our future operating results*." (See Uber SEC S-1, *supra*, at pp. 29-30, emphasis added.) Uber's business model begins and ends with its Drivers.

C. Part C of the ABC Test ("independently established trade, occupation, or business")

77. Each Defendant's Drivers are not engaged in an independently established trade, occupation, or business of the same nature as the work they perform for each Defendant. Driving itself is not a distinct trade, occupation, or business.

78. When driving for each Defendant, Drivers are not engaged in their own transportation business, but are instead driving Passengers and generating income for the respective Defendant.

79. There are no specialized skills or training necessary to drive passengers on a ride- hailing service. Consequently, each Defendant permits Drivers without any such skills or training to provide on-demand rides on its App. For example, both of Defendant's largest ride-hailing options, "Lyft" and "UberX," permit Drivers to offer ride-hailing services with an ordinary driver's license and a personal vehicle.

80. Each Defendant provides its Drivers with a necessary tool and instrumentality to perform their on-demand, ride-hailing services—its App.

81. Each Defendant's App is the exclusive means by which Passengers and Drivers can connect to, request, and provide each Defendant's on-demand rides.

82. Each Defendant's Drivers generally invest little to no capital to drive for each Defendant. To offer ride-hailing services on each Defendant's App, Drivers only need a smartphone and a car.

83. Each Defendant directly shapes its Drivers' earnings, and thereby effectively prevents its Drivers from attaining the profits and losses that would ordinarily be the hallmarks of running their own

independent businesses.

84. Each Defendant, not its Drivers, prescribes the key factors that determine its Drivers' earnings. Each Defendant sets the prices charged to its Passengers, and controls its Drivers' rate of pay, its Drivers' territory, the supply of its Drivers on the overall App, and the marketing and advertising of each Defendant's brand.

85. The limited economic levers that each Defendant leaves to its Drivers, such as whether to drive at busier times or for more hours, are not consistent with the level of decision- making normally exercised by entrepreneurs or those operating their own independent businesses.

86. Each Defendant limits its Drivers' ability to freely decline and cancel rides that Drivers think will be unprofitable.

87. Each Defendant limits its Drivers' ability to see all ride requests in an area, and thus to gauge their potential earnings based on demand for their services.

88. Each Defendant limits its Drivers' ability to share their accounts with other Drivers, thereby curtailing its Drivers' ability to individually expand their business offerings.

89. Each Defendant prohibits its Drivers from soliciting Passenger information, limiting the ability of its Drivers to market themselves independently for repeat rides outside of Defendant's App.

90. Each Defendant limits its Drivers' ability to take advantage of its App's financial incentives in an entrepreneurial fashion. Each Defendant specifically targets individual Drivers it invites to participate in various, time-limited financial incentives that, for example, reward Drivers for driving longer, or for driving

at certain times and places. These financial incentives are targeted to individual Drivers based on each Defendant's own opaque criteria as implemented by the algorithmic decision-making engines in its App. By selecting which Drivers will be invited to participate in which financial incentives and on what individualized terms, each Defendant, in effect, chooses which Drivers are financial "winners" and "losers." Each Defendant as the employer, not the Driver as an "entrepreneur," determines the Driver's earnings.

91. Each Defendant controls its Drivers' ability to earn compensation via its App, making trade-offs between its Drivers' earnings and the price each Defendant charges to Passengers to the benefit of each Defendant's profit.

92. Lyft describes these trade-offs in its 2019 annual SEC report reporting that "changes" made by Lyft "may be viewed positively from one group's perspective (such as riders)" and "negatively from another's perspective such as (drivers)." (See Lyft SEC 10-K, *supra*, at p. 24.)

93. Uber's SEC filings describe how the "greatest impact" on Uber's Take Rate (the company's "take" on the difference between the Passenger's fare on a ride and what the ride- hailing company pays out to the Driver) has "historically" come through Uber's unilateral "adjustments to Driver incentives." (See Uber SEC S-1, *supra*, at p. 100.) In its 2019 IPO prospectus, Uber freely admits the control it exerts over its Drivers' earnings—and the fact that Uber's own profit comes at its Drivers' expense: "[A]s we aim to reduce Driver incentives to improve our financial performance, we expect Driver dissatisfaction will generally increase." (*Id.*, at p. 30.)

IV. DEFENDANTS' UNLAWFUL MISCLASSIFICATION OF DRIVERS RESULTS IN UNLAWFUL AND UNFAIR BUSINESS PRACTICES.

94. It is evident that Defendants cannot meet their burden of showing that their Drivers are independent contractors under California's ABC test for misclassification as adopted in *Dynamex, supra*, 4 Cal.5th 903, and as codified in A.B. 5 and in subsequent amendments to the Labor Code. Under Part A of the ABC test, Defendants exercise control over their Drivers through their Apps, which, in combination with their policies, function like algorithmic managers that effectively supervise Defendants' Drivers like human managers. Under Part B of the ABC test, Drivers perform services within Defendants' usual course of business—providing on- demand rides. Under Part C of the ABC test, Defendants cannot show that Drivers have established independent businesses.

95. Uber claims that "Drivers are at the heart of our service" and Lyft claims that Drivers are "what makes Lyft ... Lyft." But by misclassifying their Drivers, Defendants have devised an unlawful business model that denies these very same Drivers the protections and benefits they have rightfully earned as employees, and thereby gained an unlawful and unfair competitive advantage in the marketplace. Defendants' misclassification scheme hurts vulnerable Drivers, undermines law-abiding competitors, evades Defendants' responsibility to contribute their share as employers into the State's social insurance programs, and harms taxpayers who are often called upon to address the negative consequences to Drivers and their families of Defendants' exploitative employment practices.

A. Defendants' unlawful misclassification deprives Drivers of their rights as employees.

96. Defendants' misclassification of their Driver workforce has allowed Defendants to gain an unlawful competitive advantage over their competitors by circumventing the protections and benefits that the law requires employers to provide to their employees. The laws violated by Defendants include, but are not limited to, requirements relating to minimum wages, overtime wages, business expenses, meal and rest periods, wage statements, paid sick leave and health benefits, and social insurance programs.

1. Minimum Wages

97. The law requires Drivers, as employees, to be paid the applicable state or local minimum wage for each hour worked, regardless of the compensation formula or method.

98. Defendants do not guarantee their Drivers a minimum wage under state and local laws. Instead, each Defendant pays its Drivers for completed rides based on the time and distance of the ride and other factors dictated by each Defendant, including, but not limited to, dynamic pricing pay surges, base rates, and minimum fares.

99. Defendants do not pay their Drivers for all their hours worked. Examples where each Defendant fails to pay its Drivers include, but are not limited to, time spent refueling, time spent cleaning and maintaining their vehicles, time spent for off-duty rest periods, time spent driving to and returning from rides, and time spent logged on and monitoring each Defendant's App for ride requests. Defendants cannot provide on-demand rides without the performance of these tasks.

100. At all relevant times, Defendants have failed and—to the extent Proposition 22 is unconstitutional or otherwise invalid—continue to fail to meet their minimum wage obligations with respect to their Drivers, including hours that are entirely unpaid and hours that are paid at less than the applicable minimum wage.

2. Overtime Wages

101. The law requires Drivers, as employees, to be paid the applicable overtime rate of pay (one-and-one-half times or two times the Drivers' regular rate of pay) for all hours worked in excess of forty per week, all hours worked in excess of eight per day, and all hours worked on the seventh consecutive day of work in a workweek.

102. Defendants do not pay their Drivers overtime as required by law, despite the fact that Drivers working overtime help Defendants to ensure the steady and constant supply of rides on which Defendants' businesses depend.

103. At all relevant times, Defendants have failed and—to the extent Proposition 22 is unconstitutional or otherwise invalid—continue to fail to meet these overtime pay obligations with respect to their Drivers.

3. Business Expenses

104. The law requires Drivers, as employees, to be paid or reimbursed for the necessary expenses in performing their work.

105. Drivers pay for business expenses they incur in the course and scope of performing their work for Defendants, including, but not limited to, vehicle expenses (wear-and-tear, registration, insurance, gas, maintenance, repairs, etc.) and phone and data expenses associated with using Defendants' Apps.

106. These expenses are substantial. For example, the Internal Revenue Service publishes a "standard mileage rate," which currently estimates the cost of operating a vehicle for business purposes at 57.5 cents per mile. Drivers provide ride-hailing services for Defendants using their vehicles, without any reimbursement for this significant, work-related expense.

107. Defendants impose all the costs of operating the vehicles necessary to perform their ride-hailing business on Drivers, though Defendants could not operate their ride-hailing business without them.

108. At all relevant times, Defendants have failed and—to the extent Proposition 22 is unconstitutional or otherwise invalid—continue to fail to meet these expense reimbursement obligations with respect to their Drivers.

4. Meal and Rest Periods

109. The law requires Drivers, as employees, to be provided with one 30-minute duty-free meal period for a work period of more than five hours, and a second 30-minute duty-free meal period for a work period more than ten hours. The law further requires Drivers, as employees, to be provided a ten-minute, paid, off-duty rest period for every four hours worked, or major fraction thereof. Authorized or required rest period time shall be counted as paid time worked.

110. Defendants do not provide for off-duty meal periods and do not authorize or permit paid, off-duty rest periods. Defendants do not provide a premium of one hour of pay at the employee's regular rate of compensation for each failure, as required by law.

111. At all relevant times, Defendants have failed and—to the extent Proposition 22 is unconstitutional or otherwise invalid—continue to fail to meet these

meal and rest period obligations with respect to their Drivers.

5. Wage Statements

112. The law requires Drivers to receive regular and complete itemized wage statements from Defendants, which include, as applicable, gross and net wages earned, hours worked, hourly wages, piece rate wages, rest period pay, and nonproductive time pay.

113. Defendants do not provide Drivers with itemized wage statements in conformance with California law.

114. At all relevant times, Defendants have failed and—to the extent Proposition 22 is unconstitutional or otherwise invalid—continue to fail to meet these wage statement obligations with respect to their Drivers.

6. Paid Sick Leave and Health Benefits

115. The law requires Drivers to be provided paid sick leave benefits as specified under California law and various local laws, including, but not limited to, the Los Angeles, San Diego, and San Francisco sick leave ordinances.

116. The law currently requires Drivers in San Francisco to receive health care expenditures of $3.08 per hour. In recent years the rate has ranged between $2.53 and $3.08 per hour.

117. Drivers do not accrue the paid sick leave benefits or receive the health care expenditures from Defendants that employers are required to provide under state and local law.

118. At all relevant times, Defendants have failed and —to the extent Proposition 22 is unconstitutional or otherwise invalid—continue to fail to meet these

sick leave and health care expenditure obligations with respect to their Drivers.

7. Social Insurance Programs

119. The law requires Defendants to remit contributions or take other mandatory actions under the State's social insurance programs, including, but not limited to, unemployment insurance, disability insurance, paid family leave, workers' compensation, and San Francisco's Paid Parental Leave Ordinance.

120. These programs are intended to provide wage replacement and other benefits in the event an employee loses a job, becomes disabled or injured (whether on the job or off), needs to care for a family member, or is otherwise unable to work.

121. At all relevant times, Defendants have failed—to the extent Proposition 22 is unconstitutional or otherwise invalid—continue to fail to meet these social insurance program obligations with respect to their Drivers as employees.

B. Defendants' unlawful misclassification harms law-abiding competitors and would-be competitors.

122. Defendants' unfair and unlawful treatment of their Drivers also confers an unfair advantage on Defendants over their law-abiding competitors and would-be competitors. Defendants utilize the illegitimate savings they gain from depriving their Drivers of the full compensation and benefits they earn as employees to offer their ride-hailing services at an artificially low cost, decimating competitors and generating billions of dollars in private investor wealth off the backs of vulnerable Drivers.

123. Defendants' misclassification of their Drivers allows both companies to unlawfully reduce a

substantial portion of the labor and vehicle fleet costs they would otherwise incur if they lawfully classified and compensated their Drivers as employees, including reimbursing Drivers for their vehicle maintenance and fuel expenses.

124. Because driver compensation, along with vehicle maintenance and fuel expenses, generally constitutes the lion's share of operating costs for a car service, Defendants' illicit savings allow them to gain an out-sized competitive advantage over other transportation providers. Defendants' misclassification scheme unlawfully shifts the substantial labor and vehicle costs of running a transportation service from well-resourced Defendants onto their under-resourced Drivers, placing law-abiding competitors who bear those costs themselves at a substantial competitive disadvantage.

125. In addition to avoiding paying Drivers for the full compensation and reimbursements they earn as employees under state and local wage and hour laws, Defendants also avoid paying their share of state and local payroll taxes and workers' compensation insurance premiums.

126. On information and belief, the illicit cost savings Defendants have reaped as a result of avoiding employer contributions to state and local unemployment and social insurance programs totals well into the hundreds of millions of dollars. Defendants' denial to Drivers of the full compensation and benefits they are guaranteed under law as employees pushes the total amount of Defendants' illicit cost savings over their law-abiding competitors—or would-be competitors who cannot enter the market—even higher.

FIRST CAUSE OF ACTION

INJUNCTIVE RELIEF, RESTITUTION, AND PENALTIES FOR VIOLATIONS OF BUSINESS AND PROFESSIONS CODE SECTION 17200 (Against all Defendants)

127. The People reallege and incorporate by reference each allegation contained in the above paragraphs as if fully set forth herein.

128. At all relevant times, Defendants engaged, and, to the extent Proposition 22 is unconstitutional or otherwise invalid, continue to engage, in acts or practices that are unlawful, unfair, or fraudulent and which constitute unfair competition within the meaning of section 17200 of the Business and Professions Code. Defendants Uber's and Lyft's acts or practices include, but are not limited to, the following:

a. Failing to classify Drivers as employees as required by Labor Code section 2750.3 (A.B. 5), recodified at Labor Code section 2775 et seq., I.W.C. Wage Order 9-2001, and California law;

b. Failing to pay Drivers at least the California minimum wage for all time worked as required by Labor Code sections 1182.12, 1182.13, 1194, 1197, I.W.C. Wage Order 9-2001, section 4, and the California Minimum Wage Order;

c. Failing to pay Drivers who worked in San Francisco at least the San Francisco minimum wage for all time worked as required by the San Francisco Minimum Wage Ordinance, San Francisco Administrative Code, Chapter 12R;

d. Failing to pay Drivers who worked in Los

Angeles at least the Los Angeles minimum wage for all time worked as required by the Los Angeles Minimum Wage Ordinance, Los Angeles Municipal Code, Chapter 18, Article 7, section 187.00 et seq.;

e. Failing to pay Drivers who worked in San Diego at least the San Diego minimum wage for all time worked as required by the City of San Diego Earned Sick Leave and Minimum Wage Ordinance, San Diego Municipal Code, Chapter 3, Article 9, Division 1;

f. Failing to pay Drivers the appropriate premium for overtime hours worked as required by Labor Code sections 510, 1194, 1198, and I.W.C. Wage Order 9-2001, section 3(A);

g. Failing to reimburse Drivers for business expenses and losses as required by Labor Code section 2802;

h. Failing to provide meal periods and pay meal period premiums as required by Labor Code sections 226.7, 512, and I.W.C. Order 9-2001, section 11;

i. Failing to authorize, permit, and pay for rest periods and rest period premiums as required by Labor Code section 226.7 and I.W.C. Wage Order 9-2001, section 12;

j. Failing to provide Drivers with itemized written statements as required by Labor Code section 226, and failing to maintain and provide Drivers with records as required by I.W.C. Wage Order 9-2001, section 7;

k. Failing to provide paid sick leave to Drivers as required by Labor Code section 246;

l. Failing to provide paid sick leave to Drivers who worked in San Francisco, as required by the San Francisco Paid Sick Leave Ordinance, San Francisco Administrative Code, Chapter 12W;

m. Failing to provide paid sick leave to Drivers who worked in Los Angeles, as required by the City of Los Angeles Paid Sick Leave Ordinance, Los Angeles Municipal Code section 187.00 et seq.;

n. Failing to provide paid sick leave to Drivers who worked in San Diego, as required by the City of San Diego Earned Sick Leave and Minimum Wage Ordinance, San Diego Municipal Code Chapter 3, Article 9, Division 1;

o. Failing to make health care expenditures on behalf of Drivers who worked in San Francisco as required by the San Francisco Health Care Security Ordinance, San Francisco Administrative Code, Chapter 14;

p. Failing to pay Drivers who worked in San Francisco as required by the San Francisco Paid Parental Leave Ordinance, San Francisco Police Code, Article 33H;

q. Failing to pay unemployment insurance taxes for Drivers as required by Unemployment Insurance Code section 976;

r. Failing to pay Employment Training Fund taxes for Drivers as required by Unemployment Insurance Code section 976.6;

s. Failing to withhold and remit State Disability Insurance taxes for Drivers as required by Unemployment Insurance Code section 986;

t. Failing to withhold and remit state income taxes for Drivers as required by Unemployment Insurance Code sections 13020 and 13021;

u. Failing to provide workers' compensation for Drivers as required by Labor Code section 3700; and

v. Failing to provide other rights and benefits to Drivers under the Labor Code, I.W.C. Wage Order 9-2001, and other local employee protection laws.

129. Each Defendant's misclassification of its Drivers as independent contractors and accompanying failure to comply with numerous provisions of the California Labor Code, including the employee classification provisions of Labor Code section 2750.3 (A.B. 5), recodified at Labor Code section 2775 et seq., and applicable local ordinances, constitutes an unlawful and unfair business practice and, therefore, violates California's Unfair Competition Law. (Bus. & Prof. Code, §17200 et seq.)

SECOND CAUSE OF ACTION

INJUNCTIVE RELIEF FOR VIOLATIONS UNDER THE LABOR CODE (Labor Code § 2786) (Against all Defendants)

130. The People reallege and incorporate by reference each allegation contained in the above paragraphs as if fully set forth herein.

131. The Labor Code permits an action for injunctive relief to prevent the continued misclassification of employees as independent contractors. (Lab. Code, § 2750.3, subd. (j) (A.B. 5), recodified at Lab. Code, § 2786.) This action may be prosecuted by the Attorney

General, or by a City Attorney of a city having a population in excess of 750,000, or by a City Attorney in a city and county.

132. At all relevant times, Defendants have misclassified, and—to the extent Proposition 22 is unconstitutional or otherwise invalid—continue to misclassify Drivers as independent contractors.

133. The People seek an order of this Court, pursuant to Labor Code section 2786 and to the extent Proposition 22 is unconstitutional or otherwise invalid, to prevent the continued misclassification of each Defendant's Drivers as independent contractors.

PRAYER FOR RELIEF

WHEREFORE, the People pray for the following relief:

1. Pursuant to Business and Professions Code section 17203, and to the extent that Proposition 22 is unconstitutional or otherwise invalid, that each Defendant, their successors, agents, representatives, employees, and all persons who act in concert with each Defendant, be permanently enjoined from engaging in unfair competition as defined in Business and Professions Code section 17200 et seq., including, but not limited to, the acts and practices alleged in this First Amended and Supplemental Complaint;

2. Pursuant to Business and Professions Code section 17203, that the Court enter all judgments as may be necessary to restore to any person in interest any money or property that may have been acquired by violations of Business and Professions Code section 17200 as may be proved at trial;

3. Pursuant to Business and Professions Code section 17206, that each Defendant be assessed a civil penalty in an amount up to $2,500 for each violation of

Business and Professions Code section 17200 et seq., as proven at trial;

4. Pursuant to Business and Professions Code section 17206.1, that each Defendant be

assessed an additional civil penalty in an amount up to $2,500 for each violation of the UCL perpetrated against a senior citizen or disabled person, as proven at trial;

5. Pursuant to Labor Code section 2786 and to the extent that Proposition 22 is

unconstitutional or otherwise invalid, an order to prevent each Defendant from continuing to misclassify its Drivers as independent contractors;

6. That the People recover their costs of suit; and

7. Such other and further relief that the Court deems appropriate and just.

Dated: June 17, 2022

Respectfully Submitted,

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