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13 SUPERIOR COURT OF CALIFORNIA
14 COUNTY OF SAN FRANCISCO

15 PEOPLE OF THE STATE OF CALIFORNIA,
16 Plaintiff,
17 v.
18 UBER TECHNOLOGIES, INC., A
19 DELAWARE CORPORATION; LYFT, INC., A
20 DELAWARE CORPORATION; AND DOES 1-
21 50, INCLUSIVE,
22 Defendants.

23 CASE NO. CGC-20-584402
24 **APPLICATION TO FILE AMICUS CURIAE
25 BRIEF IN SUPPORT OF THE PEOPLE’S
26 MOTION FOR PRELIMINARY
27 INJUNCTION**
28 Hearing Date: August 6, 2020
Hearing Judge: Hon. Ethan P. Schulman
Time: 1:30 p.m.
Place: Dept. 302
Date Action Filed: May 5, 2020
Trial Date: None Set

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APPLICATION TO FILE AMICUS CURIAE BRIEF

To the Honorable Ethan Schulman, Judge of the Superior Court:

Public Rights Project, joined by People’s Parity Project, One Fair Wage, and the Lawyers’ Committee for Civil Rights of the San Francisco Bay Area hereby request leave of the court to file the amicus brief attached as **Exhibit A** in support of the People’s motion for preliminary injunction. This brief has not been funded or authored by any party in this action.

IDENTITY AND INTEREST OF AMICI

Amici are a collection of organizations that advocate for civil rights and worker and consumer protections. Beyond fighting for fundamental fairness and equality of opportunity in our economy, we are committed to ensuring that justice is made real in the lives of vulnerable workers. Corporate abuse and imbalances of economic power have left workers exposed at every turn, especially workers in low-wage jobs. Collectively, we fight so that workers have access to necessary benefits and protections, are compensated justly, and do not suffer the trauma of harassment and discrimination in the workplace. Our advocacy focuses on workers of color, immigrant workers, and others from historically marginalized groups. Specifically, as it applies to this matter, we have advocated in support of stronger worker protections both at the state and federal levels, including for the aggressive enforcement of A.B. 5.

Public Rights Project works at the intersection of community organizing and government enforcement, with a specific focus on catalyzing equitable and community-based enforcement. Spurred by a mission to bridge the gap between the promise of laws and the lived experience of communities of color as well as other historically marginalized groups, PRP has focused considerable attention advocating for enforcement of the ABC test against businesses exploiting workers in the fissured economy as well as connecting government enforcement agencies with organizations that support affected workers.

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EXHIBIT A

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ARGUMENT

Uber and Lyft stand at the vanguard of workplace upheaval;¹ they have led the charge to normalize worker exploitation in the “gig” economy. Over much of the past decade, Uber and Lyft have persuaded many state and local regulators to push aside the rights and interests of workers. They have needed to do so, because the business “innovation” at the heart of their operations is an unlawful one – the misclassification of their workforce as independent contractors. By using terms such as “driver partners” and referring to themselves as “technology companies” when they are undoubtedly transportation companies, Lyft and Uber have mesmerized many into believing that this new-fangled arrangement—described as the advent of the “side hustle”—was a win-win-win for workers, consumers, and the economy. Promises made by these companies, however, have not been promises kept. At every turn, the workers are the ones always carrying additional burdens passed on by the companies. Workers have lost income, benefits, and protections to the strategic advantage of the companies, which has allowed for significant market penetration throughout California, around the country, and globally.

Uber and Lyft were required by law to treat their workers as employees before A.B. 5 went into effect.² California statutory law now makes crystal clear the illegality of their enterprises, and *amici* offer full-throated support to the People’s motion for a preliminary injunction. *Amici* write separately to emphasize a crucial theme in the overall story of these companies. The very misclassification perpetrated by these two enterprises have been utilized not only to steal wages and deny crucial benefits, but to pass social and other economic burdens onto the drivers, many of which exact a significant cost beyond lost compensation in a paycheck. Making matters worse, and demonstrating the noxious nature of the companies’ predation, both Uber and Lyft have marketed

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¹ See, e.g., David Weil, *The Fissured Workplace: Why Work Became So Bad for So Many and What Can Be Done to Improve It* (Harv. University Press, 2017).

² See, e.g., *Dynamex Operations v. Superior Court*, 4 Cal. 5th 903 (2018).

1 products or other offerings to their drivers, including vehicle leasing or rental arrangements, that
2 are necessitated by the very economic insecurity that their misclassification exacerbates.

3 Uber and Lyft should be enjoined from misclassifying their workforce, because the harms
4 extend well beyond lost wages. Without perceived legal obligations to protect their workforce, Lyft
5 and Uber not only fail to adequately address sexual harassment and other forms of discrimination
6 faced by their workers, but, in some instances, have even gone so far as to retaliate against workers
7 for reporting such incidents. Their conduct to date underscores their fervent commitment to an
8 economic model, not to people, and especially not to their drivers. Similar conclusions can be
9 drawn when it comes to the health and safety of their workforce. Uber and Lyft have minimal
10 safety requirements for their fleets, do not take measures to promote health and well-being, and
11 have not done nearly enough to protect their workforce during the COVID-19 pandemic. The
12 injunction should be granted, and the misclassification must cease.³

14 **A. Lyft and Uber Have Made Their Drivers Vulnerable to Harassment and**
15 **Assault Through Misclassification**

16 Uber and Lyft drivers experience harassment and assault at alarming rates.⁴ By
17 misclassifying workers, minimizing their own responsibility, and limiting their intervention, Uber
18 and Lyft have left drivers vulnerable to this abuse. When drivers are properly classified as
19 employees, Uber and Lyft will have greater legal obligations and financial incentives to protect
20 drivers when they are harassed or assaulted, and drivers will be able to organize for safeguards.

22 **1. High Rates of Harassment**

23 Uber and Lyft drivers face a disturbing risk of harassment and assault while on the job.
24 According to the Occupational Safety and Health Administration (“OSHA”), taxi drivers in general

26 ³ *Amici* write with a specific focus on the harms caused by the misclassification of Uber’s and
27 Lyft’s workforces. These are not the only harms at issue in this litigation, however. Lyft and Uber
cause extensive public harms ranging from pollution and traffic to passenger health and safety.

28 ⁴ Selina Wang, *The Dark Realities Women Face Driving for Uber and Lyft*, Bloomberg (Dec. 18,
2018) <https://www.bloomberg.com/news/articles/2018-12-18/the-dark-realities-women-face-driving-for-uber-and-lyft>.

1 are some of the most vulnerable workers in the country: drivers are 20 times more likely to be
2 murdered on the job than other types of workers.⁵ Uber and Lyft have only recently begun to
3 publish safety reports, which reveal that rideshare drivers are subject to harassment and assault at
4 frightening rates. Between 2017 and 2018, seven Uber drivers died from physical assaults on the
5 job.⁶ More than 1,200 sexual assaults of drivers were reported to Uber from U.S. rides in 2018.⁷ It
6 is highly likely that rideshare drivers are subjected to even more harassment and assault than taxi
7 drivers because a much higher percentage of rideshare drivers are women.⁸

9 2. Policies Do Not Protect Drivers

10 Precisely because Uber and Lyft have structured their business models around
11 misclassifying drivers as independent contractors, and therefore attempted to create the *appearance*
12 of minimal control over their workers, both companies have developed practices that leave drivers
13 more vulnerable to harassment and assault. For example, neither company verifies the identity of
14 passengers, who sign up through the application and can immediately begin requesting rides.
15 Currently, when a passenger or driver is the victim of harassment or assault, Uber and Lyft simply
16 prevent that driver/rider pair from being matched again, which does nothing to protect other riders
17 or drivers.⁹ If drivers were properly classified as employees, Uber and Lyft would have legal and
18 economic incentives to police their platforms and ban harassers and assailants.
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22 ⁵ Occ. Safety and Health Admin, *OSHA Fact Sheet* (2010),
<https://www.osha.gov/Publications/taxi-driver-violence-factsheet.pdf>.

23 ⁶ Uber, *U.S. Safety Report 57* (Dec. 5, 2019), [https://www.uber-](https://www.uber-assets.com/image/upload/v1575580686/Documents/Safety/UberUSSafetyReport_201718_FullReport.pdf)
24 [assets.com/image/upload/v1575580686/Documents/Safety/UberUSSafetyReport_201718_FullRep](https://www.uber-assets.com/image/upload/v1575580686/Documents/Safety/UberUSSafetyReport_201718_FullReport.pdf)
25 [ort.pdf](https://www.uber-assets.com/image/upload/v1575580686/Documents/Safety/UberUSSafetyReport_201718_FullReport.pdf).

26 ⁷ Anna North, *It's Not Just Passengers Being Assaulted in Ubers. Drivers Are at Risk, Too.*, Vox
27 (Dec. 7, 2019) [https://www.vox.com/2019/12/7/20998646/uber-safety-report-sexual-assault-lyft-](https://www.vox.com/2019/12/7/20998646/uber-safety-report-sexual-assault-lyft-cases)
28 [cases](https://www.vox.com/2019/12/7/20998646/uber-safety-report-sexual-assault-lyft-cases).

⁸ For example, 19 percent of Uber drivers and 30 percent of Lyft drivers are women, compared to
just one percent of taxi drivers in New York City. *Id.*

⁹ Lauren Kaori Gurley, *Drivers Say Reporting Assault to Lyft is 'Extremely Traumatic'*, Vice (Oct.
4, 2019) [https://www.vice.com/en_us/article/7x57zd/drivers-say-reporting-assault-to-lyft-is-](https://www.vice.com/en_us/article/7x57zd/drivers-say-reporting-assault-to-lyft-is-extremely-traumatic)
[extremely-traumatic](https://www.vice.com/en_us/article/7x57zd/drivers-say-reporting-assault-to-lyft-is-extremely-traumatic).

1 As a result of this business model, in which Uber and Lyft disclaim responsibility for their
2 drivers, the companies have also failed to implement a number of safety suggestions recommended
3 by OSHA, such as installing barriers between riders and passengers, creating silent alarms, or
4 providing audio/video surveillance within vehicles.¹⁰ Uber and Lyft have taken some safety
5 measures in response to criticism in recent years, for example creating in-application “panic
6 buttons,” but these measures mostly protect passengers.¹¹ Instead of treating these common sense
7 safety precautions as a baseline, Uber and Lyft have moved in the opposite direction and left
8 drivers to implement safety precautions at their own expense. Worse yet, this failure to address
9 driver safety compounds existing economic inequalities.¹² If drivers were properly classified as
10 employees, they would be entitled to organize under the National Labor Relations Act in order to
11 advocate for these and other safety protections.¹³

13 On top of this, Uber and Lyft designed a system that encourages drivers to endure
14 harassment or assault. Many drivers who have been harassed or assaulted are reluctant to defend
15 themselves against their perpetrators because of Uber and Lyft’s rating systems, which give
16 passengers enormous power over drivers’ fortunes.¹⁴ Due to strong competition among drivers for
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19 ¹⁰ *OSHA Fact Sheet*, *supra* n.5. OSHA also recommends emergency radios for drivers and
20 improved vehicle lighting. *Id.*

21 ¹¹ Drivers have commented that the in-application emergency button is difficult to use while
22 driving. Marissa Perlman, *15 Minutes Of Terror: Uber Driver Attacked By Woman On Freeway*,
CBS Sacramento (Oct. 7, 2019) <https://sacramento.cbslocal.com/2019/10/07/uber-driver-attacked-by-woman-freeway>.

23 ¹² For example, a recent study found that female Uber drivers earn seven percent less on average
24 than male drivers, in part because female drivers are less likely to work in high-crime areas or
25 places where they are likely to encounter intoxicated passengers. Cody Cook et al., *The Gender
Earnings Gap in the Gig Economy: Evidence from over a Million Rideshare Drivers 2*, Rev. Econ.
Stud. (May 2020) <https://web.stanford.edu/~diamondr/UberPayGap.pdf>.

26 ¹³ While some jurisdictions have passed laws that protect drivers as a result of organizing from taxi
27 drivers these laws do not apply to Uber and Lyft. For example, many jurisdictions have passed
28 laws requiring taxi companies to report data about incidents and to post notices in their vehicles
announcing steep criminal penalties for passengers who assault drivers. Gurley, *supra* n.9.

¹⁴ Marissa Miller, *How Bad Uber Ratings Affect Drivers’ Careers — And Why You Shouldn’t Be
Scared to Report Bad Behavior*, MIC (Jan. 31, 2020) <https://www.mic.com/p/how-bad-uber-ratings-affect-drivers-careers-why-you-shouldnt-be-scared-to-report-bad-behavior-17865617>.

1 high ratings, a single bad review from a passenger could result in less favored status or
2 termination.¹⁵ Drivers report a reluctance to speak up in the moment when harassment occurs
3 because they fear retaliation by the rider.¹⁶ Researchers recently found that Uber’s rating system
4 reflects racial and ethnic bias among passengers, and drivers of color who already face unjust low
5 ratings may be disproportionately pressured to tolerate mistreatment.¹⁷

6 **3. Failure to Take Corrective Action**

7
8 When drivers report harassment or assault, Uber and Lyft often fail to take any corrective
9 action, or to communicate that action to victims. In early 2020, Reuters interviewed 15 Uber
10 drivers who reported their harassment or assault to the company, and none were informed about
11 what steps, if any, Uber was taking to address their claims.¹⁸ As one woman who drives for both
12 Uber and Lyft wrote, “[t]ry being a woman driver and filing a complaint about a rider. . . . You
13 never hear back and in most cases, the rider continues to be able to use the platform.”¹⁹ Many
14 drivers have described the trauma and intense alienation of being disregarded and abandoned by
15 their employer after an already painful incident.²⁰ Given Uber and Lyft’s commitments to
16 minimizing responsibility for their workers, their inadequate infrastructure for responding to
17 allegations of harassment or assault is unsurprising.
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¹⁵ *Id.*

21 ¹⁶ Selina Wang, *Dark Realities of Uber, Lyft: Women Drivers Speak About On-Job Harassment*,
22 *Bus. Standard* (Dec. 18, 2018), https://www.business-standard.com/article/international/dark-realities-of-uber-lyft-women-drivers-speak-about-on-job-harassment-118121801089_1.html.

23 ¹⁷ Alex Rosenblat et al., *Discriminating Tastes: Customer Ratings as Vehicles for Bias*, *Data Soc’y*
24 (Oct. 2016), https://datasociety.net/pubs/ia/Discriminating_Tastes_Customer_Ratings_as_Vehicles_for_Bias.pdf.
25 f. A number of recent news stories have highlighted the extreme mistreatment of rideshare drivers
26 of color. *See, e.g.*, Ben Kessler, *Arizona CEO Seen on Video Hurling Racist Slur at Uber Driver is ‘Relieved of his Duties’*, *NBC News* (Feb. 6, 2020) <https://www.nbcnews.com/news/us-news/arizona-ceo-seen-video-hurling-racist-slur-uber-driver-relieved-n1131381>.

27 ¹⁸ Tina Bellon, *FOCUS-Uber’s Challenge to Balance Driver Safety with Customer Privacy*,
28 *Reuters* (Mar. 10, 2020) <https://www.reuters.com/article/uber-safety-drivers/focus-ubers-challenge-to-balance-driver-safety-with-customer-privacy-idINL8N2AA308>.

¹⁹ Gurley, *supra* n.9.

²⁰ *Id.*

4. Retaliation Against Drivers

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2 Worse, some drivers are seemingly penalized for reporting. In some cases, Uber and Lyft
3 have deactivated the accounts of drivers who filed reports. While some of these drivers eventually
4 had their accounts restored, they lost wages during the period of deactivation.²¹ If drivers were
5 employees, they would be protected from termination after reporting an incident.²² To add insult to
6 injury, Uber and Lyft have refused in some instances to cooperate with law enforcement when a
7 victim files a police complaint.²³ In some reported cases, Lyft has refused to even provide victims
8 with information about the identity of their assailants, which would be necessary to procure a
9 temporary restraining order.²⁴
10

5. Lack of Resources for Victims

11
12 Uber and Lyft's persistent misclassification of drivers as independent contractors means
13 that drivers who are victimized lack access to critical post-incident resources like employer-
14 provided health care,²⁵ workers' compensation, or paid leave. One Lyft driver named Samuel
15 described how he was brutally physically assaulted by a passenger who pushed him into a steep
16 ravine and stole his car. Lyft did not pay for Samuel's significant hospitalization costs, his stolen
17 iPhone 7, the value of his wallet, or the three months that he spent recovering from his injuries
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21 ²¹ *Id.*

22 ²² Cal. Gov. Code § 12940(j).

23 ²³ Maria Cramer, *19 Women Sue Lyft as Sexual Assault Allegations Mount*, N.Y. Times (Dec. 5, 2019) <https://www.nytimes.com/2019/12/05/business/lyft-sexual-assault-lawsuit.html>.

24 ²⁴ *Id.*

25 ²⁵ By contrast, employees would have certain entitlements to healthcare. Under the Affordable
26 Care Act, large employers with 50 full-time employees must provide 95 percent of their full-time
27 employees with affordable, minimum-value health care benefits or pay penalties. *See* 26 U.S.C.
28 § 4980. In California, certain municipal ordinances set an even higher standard for employee
healthcare. For example, the San Francisco Health Security Ordinance requires medium-sized and
large firms with employees to spend a designated minimum amount per hour of work on health
benefits for their employees each month. S.F. Admin. Code § 14.1 *et seq.* (requiring certain firms
to spend a minimum amount on health benefits for employees); *see also Health Care Security
Ordinance Administrative Guidance: B. Covered Employers*, San Francisco Office Of Labor
Standards Enforcement (Jan. 6, 2016), <https://sfgov.org/olse/b-covered-employers>.

1 without pay.²⁶ Uber drivers have reported similar experiences to Samuel, after being physically
2 assaulted and incurring steep medical expenses.²⁷ Drivers dealing with the emotional consequences
3 of harassment or assault are similarly left to fend for themselves.²⁸ Had these drivers been properly
4 classified as employees, they would have been provided the compensation and benefits that other
5 workers receive when injured or harmed in the line of work.

6 **B. Uber and Lyft Take Advantage of Their Drivers through Predatory Financial**
7 **Arrangements and by Saddling Them with Hidden Costs**

8 Uber and Lyft employ policies and practices designed to take advantage of the economic
9 insecurity created by misclassification. These practices compound the harms of misclassification
10 by exposing drivers to unexpected and cumulative costs that further suppress earnings.

11 **1. Misleading Drivers About Earnings**

12 Uber and Lyft have a record of issuing misleading statements that perniciously glamorize
13 the financial opportunities for rideshare drivers. In reality, over half of their drivers earn less than
14 minimum wage in their state.²⁹ For example, the Federal Trade Commission (FTC) brought an
15 action against Uber for misleading members of the public for over two years about potential driver
16 income levels and auto loan opportunities that resulted in a \$20 million settlement.³⁰ Uber's
17 website from at least May 2014 to August 2015 featured a post which misleadingly claimed that
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21 ²⁶ Gurley, *supra* n.9.

22 ²⁷ Debbie Berkowitz, *Gig Economy Workers Injured on the Job Should Get Workers' Comp*
Protections, Quartz (June 24, 2016) <https://qz.com/715131/gig-economy-workers-injured-on-the-job-should-get-workers-comp-protections>.

23 ²⁸ For example, one San Diego Uber driver detailed how she experienced debilitating panic after
24 being sexually assaulted by two passengers. She was not eligible for any compensation during the
25 period of time that she spent working with a psychiatrist to address her trauma before returning to
26 work. Avi Asher-Schapiro, *Uber Still Doesn't Get It: Company Docs Reveal Flimsy Plan for*
Injured Workers, The Intercept (June 28, 2017) <https://theintercept.com/2017/06/28/uber-but-for-workers-comp-companys-plan-neglects-injured-drivers>.

27 ²⁹ Stephen Zoepf, *The Economics of Ride Hailing, Revisited*, Mass. Inst. Tech. Ctr. Energy &
28 Envtl. Pol'y Res. (Mar. 5, 2018), <http://ceepr.mit.edu/files/papers/2018-005%20Authors%20Statement.pdf>.

³⁰ Stipulated Order and Permanent Injunction for Monetary Judgment at 3, *Federal Trade Commission v. Uber Technologies, Inc.*, No 3:17-cv-00261 (N.D. Cal. Jan. 19, 2017).

1 Uber drivers' median income was more than \$74,000 in San Francisco, when in actuality less than
2 10 percent of drivers earned this figure, which did not account for the costly offset of driver
3 expenses.³¹ The FTC alleged that these statements violated federal law because they constituted
4 deceptive acts and preyed on Uber drivers' vulnerable financial status as low-wage workers.³²
5 Although Lyft has escaped the scrutiny of the FTC, drivers have brought private suits alleging
6 similar false advertising claims.³³

7 **2. Predatory Leasing and Rental Terms**

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9 For both Uber and Lyft, promises of "greater access to opportunity," especially for
10 "members of underserved communities,"³⁴ are contradicted by the realities of driver earnings,
11 especially after accounting for overhead costs including car leasing or rental, vehicle upkeep,
12 insurance, gas, and cell phone bills. If drivers were properly classified, Uber and Lyft would not be
13 able to push these costs onto low-wage workers.³⁵ Uber and Lyft have done more than simply shift
14 the cost burden: they have generated a captive audience for their financial products and
15 arrangements by instituting onerous vehicle requirements and targeting drivers who may not have
16 ready access to credit and financing.³⁶

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19 ³¹ Complaint at 5-6, *Federal Trade Commission v. Uber Technologies, Inc.*, No 3:17-cv-00261 (N.D. Cal. Jan. 19, 2017).

20 ³² *Id.* at 10-11 (alleging violations of 15 U.S.C. § 45(a), which prohibits "unfair or deceptive acts or practices in or affecting commerce").

21 ³³ Courtney Jorstad, *Lyft Didn't Honor \$1,000 Bonuses, Class Action Says*, Top Class Actions (Mar. 17, 2015) <https://topclassactions.com/lawsuit-settlements/lawsuit-news/51860-lyft-didnt-honor-1000-bonuses-class-action-says/>; Jenie Mallari-Torres, *False Advertising Allegations Filed Against Lyft by Georgia Driver*, Legal Newsline (Sep. 20, 2018) <https://legalnewsline.com/stories/511572756-false-advertising-allegations-filed-against-lyft-by-georgia-driver>.

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24 ³⁴ *Economic Opportunities*, Uber, <https://www.uber.com/us/en/community/economic-opportunities/>.

25 ³⁵ *See, e.g.*, Cal. Code Regs. Tit. 8 § 11090(9)(B) (requiring employers in the transportation industry to furnish employees with equipment "necessary to the performance of a job").

26 ³⁶ For example, UberXL drivers cannot use vehicles with "aftermarket seating modifications, such as installed seats" or vans in San Francisco. *Vehicle Requirements: San Francisco Bay Area*, Uber, <https://www.uber.com/us/en/drive/san-francisco/vehicle-requirements/>. Lyft similarly prohibits the use of 26 models of subcompact vehicles "[i]n order to provide a comfortable rider experience."

1 In some cases, these “innovative” financial arrangements are predatory on their face; they
2 are textbook examples of predatory inclusion, the process by which lenders offer much-needed
3 financial services on exploitative terms that limit or eliminate long-term benefits.³⁷ These
4 arrangements can affect job mobility, as drivers effectively become trapped in relationships with
5 these companies as consumers and workers. Such practices also disproportionately affect drivers of
6 color, who have a much harder time accessing credit because of widespread discrimination in the
7 financial markets.³⁸ One such example is Uber’s Vehicle Solutions Program, which, from
8 November 2013 to April 2016, offered both current and prospective drivers predatory auto
9 installment loans through partnerships with three subprime auto lenders.³⁹ During this time period
10 Uber advertised that drivers could lease cars for “payments as low as \$17 per day,”⁴⁰ when in fact,
11 from late 2013 to April 2015 the median weekly payment for Vehicle Solutions Program leases
12 was over \$200.⁴¹ Uber also advertised to *lenders* that the leases made through the Program would
13 have an “implied APR of 19.5%”—well above industry average at the time for consumers with
14 subprime credit scores.⁴²

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18 *Vehicle Requirements*, Lyft, <https://help.lyft.com/hc/en-us/articles/115013077448-Vehicle-requirements#sub>. HyreCar, a car rental service for Uber and Lyft drivers, estimated in December
19 2019 that up to 40 percent of drivers lack “qualifying vehicles” given these requirements. Steven
20 Finlay, *Car Dealers in ‘Best Position’ to Serve Uber, Lyft Drivers*, Wards Auto (Dec. 23, 2019),
<https://www.wardsauto.com/dealers/car-dealers-best-position-serve-uber-lyft-drivers>.

21 ³⁷ See generally Louise Seamster & Raphaël Charron-Chénier, *Predatory Inclusion and Education*
Debt: Rethinking the Racial Wealth Gap, 4 Soc. Currents 199, 199 (2017).

22 ³⁸ For example, a 2018 study found that 62.5 percent of drivers of color received more costly auto
23 loan terms than less-qualified white drivers. Lisa Rice & Erich Schwartz Jr., *Discrimination When*
Buying a Car: How the Color of Your Skin Can Affect Your Car-Shopping Experience, Nat’l Fair
24 Hous. Alliance, at 5 (Jan. 2018), [https://nationalfairhousing.org/wp-](https://nationalfairhousing.org/wp-content/uploads/2018/01/Discrimination-When-Buying-a-Car-FINAL-1-11-2018.pdf)
25 *content/uploads/2018/01/Discrimination-When-Buying-a-Car-FINAL-1-11-2018.pdf*. See
26 generally Charles Lewis Nier III, *The Shadow of Credit: The Historical Origins of Racial*
Predatory Lending and Its Impact Upon African American Wealth Accumulation, 11 Univ. Pa. J.L.
& Soc. Change 131 (2007).

27 ³⁹ See Complaint at 8, *Federal Trade Commission v. Uber Technologies, Inc.*, No 3:17-cv-00261
(N.D. Cal. Jan. 19, 2017).

28 ⁴⁰ *Id.* at 9.

⁴¹ *Id.*

⁴² *Id.* at 9-10.

1 Additionally, Uber and Lyft both offer short-term car rentals, often targeting drivers who
2 have poor credit or are in desperate need of flexible income.⁴³ The onerous terms and conditions of
3 these programs can create further hardship for drivers. For example, Lyft imposes unique
4 restrictions on drivers who rent cars through its Express Drive program, mandating they provide 20
5 rides a week to keep the car and prohibiting them from making money using their vehicles to work
6 for other services.⁴⁴ Additionally, drivers who rent through Express Drive are paid less per mile
7 than other Lyft drivers, and rental costs through the Express Drive program are significantly higher
8 than comparable rentals from dealerships.⁴⁵

10 **3. Gaps in Insurance Coverage**

11 Vehicle insurance coverage policies present yet another example of how misclassification
12 forces drivers to absorb additional costs. If Uber and Lyft drivers were properly classified as
13 employees, the companies would be incentivized to offer more robust insurance coverage, because
14 they could be held vicariously liable for the actions of their employee-drivers.⁴⁶ Presently,
15 however, Uber's and Lyft's vehicle insurance for drivers offers thin coverage and fails to cover
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18 ⁴³ Eric Newcomer & Olivia Zaleski, *Uber's Subprime Leases Put Drivers on Road, But Leave*
19 *Some Shackled*, Seattle Times (June 1, 2016) [https://www.seattletimes.com/business/ubers-](https://www.seattletimes.com/business/ubers-subprime-leases-put-drivers-on-road-but-leave-some-shackled)
20 *Your Car, You Drive*, Jacobin (Apr. 3, 2020) [https://www.jacobinmag.com/2020/04/lyft-express-](https://www.jacobinmag.com/2020/04/lyft-express-drive-coronavirus-pandemic-drivers)
21 *drive-coronavirus-pandemic-drivers*.

22 ⁴⁴ *Express Drive*, Lyft, <https://www.lyft.com/expressdrive>. These requirements and restrictions
seriously undermine Lyft's assertion that drivers are independent contractors free of Lyft's control.

23 ⁴⁵As of May 2019, rental payments started at \$219 a week and rose as high as \$479 a week in New
24 York. By comparison, ride-hailing drivers in some markets who rent a comparable car from a
25 dealership can pay less than \$160 a week, including the cost of insurance. One driver in Los
26 Angeles, Sinakhone Keodara, started frequently sleeping in the car he rents from Lyft. He reported
27 paying close to \$2,000 to rent the car and pay for gas each month. Until the weekly rental fee was
28 paid, Lyft placed a hold on drivers' accounts, preventing them from withdrawing any income.

Keodara said he at times had to overdraw his bank account to fill the tank. Johana Bhuiyan, *Lower*
Pay and Higher Costs: The Downsides of Lyft's Car Rental Program, L.A. Times (May 20, 2019)
<https://www.latimes.com/business/technology/la-fi-tn-lyft-express-drive-20190520-story.html>.

⁴⁶ Lauren Geisser, *Note: Risk, Reward, And Responsibility: A Call To Hold Uberx, Lyft, And Other*
Transportation Network Companies Vicariously Liable For The Acts Of Their Drivers, 89 S. Cal.
L. Rev. 317, 322 (2016); *also see* Restatement (Second) of Torts § 409 (1965).

1 substantial periods of time when drivers are working, which exposes drivers to additional personal
2 insurance costs and risks for additional expenses arising from accidents that do occur.

3 Uber and Lyft delineate two periods of time that are relevant for insurance coverage: (1)
4 when drivers are waiting to be matched with passengers; and (2) when drivers are driving to pick
5 up a passenger or are driving with the passenger.⁴⁷ When drivers are waiting to be matched with
6 passengers, the companies' insurance policies only cover third-party injuries and property damage
7 (up to \$50,000 per person and \$25,000 for property damage) and do not cover any injuries to the
8 driver or damage to the vehicle itself.⁴⁸ This time is significant, as drivers can spend 40 percent of
9 their time waiting to be matched.⁴⁹ If drivers want supplemental insurance, they have to incur
10 additional costs, which can be substantial.⁵⁰ As a result, most drivers drive without any additional
11 coverage.⁵¹ Driving without additional coverage poses significant risks—insurance companies
12 often deny claims when drivers are working for Uber or Lyft and, in some cases, will drop drivers
13 from their policies altogether. Drivers who get into accidents may be required to pay large sums
14 out-of-pocket for any injuries they may have sustained or for damage to their vehicles.⁵²

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17 Although Uber and Lyft provide more extensive coverage when drivers are picking up or
18 driving their passengers, the deductibles for these “heightened” coverage plans are very high:

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20 ⁴⁷ *Insurance FAQ*, Lyft, <https://www.lyft.com/driver/insurance#faq>; *Auto Insurance to Help*
21 *Protect You*, Uber, [https://help.uber.com/driving-and-delivering/article/insurance-
22 ?nodeId=a4afb2ed-75af-4db6-8fdb-dccecfcc3fd7](https://help.uber.com/driving-and-delivering/article/insurance-?nodeId=a4afb2ed-75af-4db6-8fdb-dccecfcc3fd7); Mark Fitzpatrick, *Uber and Lyft: Car Insurance*
23 *for Ridesharing*, Value Penguin (June 13, 2019) [https://www.valuepenguin.com/how-ridesharing-
24 affects-your-auto-insurance](https://www.valuepenguin.com/how-ridesharing-affects-your-auto-insurance).

25 ⁴⁸ Lyft, *supra* n.47; Uber *supra* n.47.

26 ⁴⁹ James A. Parrott & Michael Reich, *A Minimum Compensation Standard for Seattle TNC Drivers*
27 (July 2020) at 52, [https://irle.berkeley.edu/files/2020/07/Parrott-Reich-Seattle-Report_July-
28 2020.pdf](https://irle.berkeley.edu/files/2020/07/Parrott-Reich-Seattle-Report_July-2020.pdf).

29 ⁵⁰ In some cases, the cost can be equivalent to a quarter of profits, forcing drivers to pick up more
30 rides to make up the cost. Fitzpatrick, *supra* n.47.

31 ⁵¹ A survey of drivers found that 77 percent of drivers have no additional insurance, and 32 percent
32 of drivers find the costs of extra insurance to be prohibitive. Elizabeth Renter & Diamond
33 Richardson, *Many Uber, Lyft Drivers are Underinsured, Survey Finds*, NerdWallet (Feb. 29, 2016)
34 <https://www.nerdwallet.com/blog/insurance/rideshare-drivers-lack-insurance/>.

35 ⁵² Adam Cecil, *The Insurance Secret that Uber Doesn't Want You to Know*, Policy Genius (Oct. 8,
36 2014) <https://www.policygenius.com/blog/insurance-secret-uber-doesnt-want-know/>.

1 Lyft's is \$2,500⁵³ and Uber's is \$1,000.⁵⁴ (Most insurance companies offer deductibles between
2 \$500 to \$1,000.)⁵⁵ These high deductibles enable Lyft and Uber to push many costs entirely onto
3 drivers, since many accidents involve minimal damage that do not exceed their deductibles.⁵⁶

4 When Uber and Lyft push the costs of auto insurance coverage onto drivers, it
5 disproportionately affects drivers of color, who already suffer from a racial tax in insurance
6 premiums. In 2019, the California Department of Insurance conducted an investigation that found
7 insurers sold higher priced auto insurance policies to people of color and low-income drivers.⁵⁷
8 This practice can lead people of color to pay rates that are 26% higher than their white
9 counterparts.⁵⁸ Consequently, Uber's and Lyft's insurance practices compound existing racial
10 inequalities.
11

12 C. Uber's and Lyft's Misclassification Leads to Disregard of Driver Health

13 Uber and Lyft compete with each other by reducing passengers' wait times. To minimize
14 response times, both companies require many idle drivers to be available at all times and
15 locations.⁵⁹ So while drivers need passengers in order to earn any income, both companies have
16 incentives to ensure drivers are idle for long periods, during which the companies pay nothing.
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19 ⁵³ *Insurance*, Lyft, <https://help.lyft.com/hc/en-us/articles/115013080548-Insurance>.

20 ⁵⁴ Uber, *supra* n.47.

21 ⁵⁵ *Your Guide to Deductibles and California Car Insurance*, AIS Insurance Specialist (June 21, 2016) <https://blog.aisinsurance.com/2016/06/21/guide-to-deductibles-and-california-car-insurance/>.

22 ⁵⁶ Gina Pogol, *Essential Car Insurance For Auto Repairs*, Insurance.com (Jan. 29, 2020) <https://www.insurance.com/auto-insurance/coverage/insurance-for-auto-body-repairs.html>.

23 ⁵⁷ Greg Iacurci, *California Tries to Curb Discrimination in Auto Insurance Pricing*, CNBC (Dec. 24, 2019) <https://www.cnbc.com/2019/12/24/california-tries-to-curb-discrimination-in-auto-insurance-pricing.html>.

24 ⁵⁸ *Id.*; see also Julia Angwin et al., *Minority Neighborhoods Pay Higher Car Insurance Premiums Than White Areas With the Same Risk*, ProPublica (Apr. 5, 2017), <https://www.propublica.org/article/minority-neighborhoods-higher-car-insurance-premiums-white-areas-same-risk> (finding "that minority zip codes were being charged 21 percent more than similarly risky non-minority zip codes" for auto insurance).

25 ⁵⁹ James A. Parrott & Michael Reich, *A Minimum Compensation Standard for Seattle TNC Drivers* (July 2020) at 21, https://irle.berkeley.edu/files/2020/07/Parrott-Reich-Seattle-Report_July-2020.pdf.

1 This business model is only possible due to misclassification; otherwise Uber and Lyft would be
2 required to compensate workers for time spent waiting to pick up passengers. The long hours
3 drivers spend in vehicles in search of fares pose both acute and long-term risks for drivers.⁶⁰

4 **1. Driver Fatigue**

5 As Uber and Lyft drivers spent more time on the platform, driver fatigue has become an
6 increasingly significant concern. Uber and Lyft have not implemented meaningful protocols to
7 protect drivers and passengers from the harms of driver fatigue.⁶¹ Properly classified drivers benefit
8 from fatigue-related safety precautions like intermittent break requirements. For example, long-
9 haul truckers in California cannot drive more than 11 hours in a 14-hour window, are required to
10 take a 30-minute break within the first five hours of their shift, and must take a 10-hour break
11 before resuming.⁶² Until recently, Lyft and Uber did not have any similar requirements. Both
12 companies now limit drivers to 12 hours on the platform per day, although a driver could use the
13 two platforms back-to-back in the same day.⁶³ Lyft requires only a six-hour break after 12 hours of
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18 ⁶⁰ The phenomenon is often referred to as “dead miles” in which drivers are waiting to be
19 summoned and are not making any money. See Jay Cassano, *How Uber Profits Even While Its*
20 *Drivers Aren’t Earning Money*, Vice (Feb. 2, 2015),
https://www.vice.com/en_us/article/wnxd84/how-uber-profits-even-while-its-drivers-arent-earning-money.

21 ⁶¹ See, e.g., Michael Berneking et al., *The Risk of Fatigue and Sleepiness in the Ridesharing*
22 *Industry: An American Academy of Sleep Medicine Position Statement*, J. Clinical Sleep Med.
(Apr. 15, 2018), <https://jcs.m.aasm.org/doi/10.5664/jcs.m.7072>.

23 ⁶² *Interstate Truck Driver’s Guide to Hours of Service*, Federal Motor Carrier Safety
24 Administration (Oct. 2016) at 4-6,
https://www.fmcsa.dot.gov/sites/fmcsa.dot.gov/files/docs/Drivers_Guide_to_HOS_2016.pdf;
25 Xavier Becerra, *California Attorney General and Labor Commissioner Comments Opposing*
26 *American Bus Association Petition for Determination of Preemption of California Meal and Rest*
27 *Period Rules* (June 10, 2019) <https://oag.ca.gov/system/files/attachments/press-docs/ca-ag-lc-comments-fmcsa-2019.pdf>. They are likewise limited to 60 hours of driving in any seven-day
28 period if the company does not operate vehicles every day of the week, or 70 in any eight day
period if the company does.

⁶³ Sergio Avedian, *Safety, Physical, & Mental Health Risks of Being an Uber & Lyft Driver*,
Rideguru (Oct. 25, 2019), <https://ride.guru/content/newsroom/safety-physical-mental-health-risks-of-being-an-uber-lyft-driver>.

1 use of the platform and does not mandate any breaks during that 12-hour period.⁶⁴ Given the
2 difficulty many drivers have earning a sufficient income, many push the boundaries of these
3 requirements, which places them at higher risk of accidents.⁶⁵ Uber and Lyft have little incentive to
4 minimize such accidents because their current position is that they cannot be held vicariously liable
5 for any resulting injuries caused by their “independent” drivers.⁶⁶

6 2. **Long-Term Health Effects**

7 Spending long hours in a vehicle also exacts a significant physical toll on Uber and Lyft
8 drivers over time. Studies of taxi drivers have found that prolonged sitting while driving creates
9 musculoskeletal disorders and chronic pain.⁶⁷ In focus groups, drivers mentioned how the
10 sedentary nature of the job caused pain throughout their bodies, which worsened over time.⁶⁸
11 Drivers mentioned stress, fatigue, muscle and skeletal pain as the top health issues they had
12 experienced as a result of driving for Uber and Lyft.⁶⁹ More than half the drivers had also
13 experienced headaches, sleep deprivation, and depression from driving, as well as dehydration,
14 kidney issues, diabetes, hypertension, and heart problems.⁷⁰

18 ⁶⁴ *Taking Breaks and Time Limits in Driver Mode*, Lyft <https://help.lyft.com/hc/en-us/articles/115012926787-Taking-breaks-and-time-limits-in-driver-mode>.

19 ⁶⁵ Sleep deprived drivers are far more likely to get into an auto accident. *See, e.g.*, Brain C. Tefft, *Acute Sleep Deprivation and Risk of Motor Vehicle Crash Involvement*, AAA Foundation for
20 Traffic Safety (Dec. 2016), <https://aaaafoundation.org/acute-sleep-deprivation-risk-motor-vehicle-crash-involvement/>.

21 ⁶⁶ *See, e.g.*, Defendant Uber Techs., Inc.’s Answer to Plaintiff’s Unverified Complaint for
22 Damages, *Fahrbach v. Gafurov*, No. CGC-13-533103 (Cal. Super. Ct. Sept. 6, 2013); Answer and
23 Affirmative Defenses of UberTechs., Inc., RasierLLC, and Rasier-CALLC to Plaintiffs’ Complaint
at 6, *Liu v. Uber Techs., Inc.*, CGC-14-536979 (Cal. Super. Ct. Jan. 27, 2014).

24 ⁶⁷ Martha Ockenfels-Martinez & Lili Farhang, *Driving Away Our Health*, Human Impact Partners
25 (Aug. 2019) at 14, https://humanimpact.org/wp-content/uploads/2019/08/DrivingAwayHealthReport_2019.08final-compressed.pdf.

26 ⁶⁸ *Id.*

27 ⁶⁹ *Id.* at 12

28 ⁷⁰ *Id.*; also see Emma Bartel et al, *Stressful by Design: Exploring Health Risks of Ride-share Work*,
14 J. Transport & Health 1 (2019) (finding ride-share drivers face physical and mental health risks
distinct to ride-share work, as compared to other forms of driving, like acute stress, weight gain,
and muscle pain).

1 Adding to the physical toll of driving long hours, the stress of unpredictable earnings and
2 low pay has exacerbated harms to the drivers. When Lyft and Uber launched, they offered
3 promotions to drivers that enabled them to earn a meaningful income while driving 30 or 40 hours
4 a week. Now that the companies have drastically cut rates, many drivers sit in their vehicles for 60
5 or 70 hours a week to earn the same amount, which increases risks to their health.⁷¹

6 3. COVID-19 Response

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8 Uber and Lyft are doing the bare minimum to follow regulatory guidelines with regards to
9 COVID-19, and the companies have prioritized cost-savings over driver safety. OSHA provided
10 guidance to rideshare companies regarding driver and rider safety on May 14, 2020.⁷² While Uber
11 and Lyft have adopted several of the less impactful recommendations, they have failed to
12 implement the most effective known measure to stop asymptomatic transmission: installation of
13 plexiglass partitions between drivers and riders.⁷³ Retailers, grocery stores, and many other
14 businesses – many with much better air circulation than automobiles – have installed barriers to
15 protect their workforce. Uber and Lyft, instead, tout their distribution of hand sanitizer and face
16 masks.⁷⁴ Additionally, Uber promised financial support for drivers with underlying health
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20 ⁷¹ Ockenfels-Martinez & Lili Farhang, *supra* n.67

21 at 6-7, 14 (“[Drivers] must [now] drive longer and longer hours to reach the same income targets .
22 . . . [I]n 2013, drivers could make \$10 by driving 2.36 miles. By 2016, drivers had to travel [4.71
23 miles] to earn that same \$10.”); *see also* Noam Scheiber, *How Uber Uses Psychological Tricks to
24 Push Its Drivers’ Buttons*, N.Y. Times (Apr. 2, 2017)

25 [https://www.nytimes.com/interactive/2017/04/02/technology/uber-drivers-psychological-
26 tricks.html](https://www.nytimes.com/interactive/2017/04/02/technology/uber-drivers-psychological-tricks.html) (detailing various methods Uber has implemented to “prod drivers into working longer
27 and harder—and sometimes at hours and locations that are less lucrative for them”).

28 ⁷² *COVID-19 Guidance for Rideshare, Taxi, and Car Service Workers*, OSHA (2020),
<https://www.osha.gov/Publications/OSHA4021.pdf>.

⁷³ *See, e.g., Helping Lyft’s Driver Community*, Lyft,
<https://www.lyft.com/safety/coronavirus/driver>.

⁷⁴ *See also* Caroline Bologna, *Is it Safe to Take an Uber Lyft or Taxi During Coronavirus?*,
Huffington Post (June 15, 2020), [https://www.huffpost.com/entry/safe-uber-lyft-taxi-
coronavirus_1_5ee15384c5b6b74caf872e23](https://www.huffpost.com/entry/safe-uber-lyft-taxi-coronavirus_1_5ee15384c5b6b74caf872e23) (noting that taxis have plexiglass and companies are
subject to standardized cleaning protocols).

1 conditions.⁷⁵ However, multiple drivers with underlying health conditions reported that Uber shut
2 down their accounts after seeking said support and rejected or ignored requests for sick pay.⁷⁶

3 In addition, public health experts agree that sick presenteeism—showing up to work with
4 symptoms of, or potential exposure to, COVID-19—creates significant risks of transmission.⁷⁷
5 Uber and Lyft require a positive test result to be eligible for its newly-implemented COVID-
6 specific sick leave policy.⁷⁸ Such a policy is woefully inadequate Drivers need health insurance to
7 cover the costs of the test and sick time to await results of testing. As a consequence of Uber’s and
8 Lyft’s policies, drivers will be reluctant to seek a test in the first place, and by the time a positive
9 test result arrives, the driver will have already exposed passengers and others to the virus. Policies
10 that enable workers to take time off when they suspect exposure or believe that they have
11 symptoms are necessary to be effective.

12 CONCLUSION

13 For the foregoing reasons, the preliminary injunction should be granted.

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17 Respectfully submitted,

18 Dated: July 17, 2020

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23 ⁷⁵ Dara Kerr, *Uber Expands Drivers’ COVID-19 Sick Pay by a Little After Being Sued*, CNET
24 (May 1, 2020), <https://www.cnet.com/news/uber-expands-driver-sick-pay-by-a-little-bit-after-being-sued/>.

25 ⁷⁶ Tyler Sonnemaker, *Uber Promised to Pay Drivers Who Couldn’t Work Because of the*
26 *Coronavirus*, Business Insider (Apr. 2, 2020), <https://www.businessinsider.com/uber-sick-pay-drivers-eligible-covid-19-coronavirus-financial-assistance-2020-3>.

27 ⁷⁷ See., e.g., Jill Margo, *Presenteeism is the New COVID-19 Risk as People Return to Work*,
28 Financial Review (May 8, 2020), <https://www.afr.com/policy/health-and-education/presenteeism-the-new-covid-19-risk-as-people-return-to-work-20200508-p54r1y>.

⁷⁸ *Status Report: COVID-19 Support Uber Drivers and Delivery People*, Uber (May 21, 2020)
<https://www.uber.com/newsroom/status-report-covid-19-support>.

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