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SUPERIOR COURT OF THE STATE OF CALIFORNIA

CITY AND COUNTY OF SAN FRANCISCO

UNLIMITED JURISDICTION

THE PEOPLE OF THE STATE OF CALIFORNIA,

Plaintiff,

v.

HANDY TECHNOLOGIES, INC., and DOES 1 through 10, inclusive,

Defendants.

CASE NO. CGC-21-590442

**APPLICATION FOR LEAVE TO FILE
AMICUS CURIAE BRIEF IN SUPPORT OF
THE PEOPLE'S MOTION FOR
PRELIMINARY INJUNCTION**

Hearing Date: September 16, 2021
Judge: Hon. Anne-Christine
Massullo

Time: 11:00 a.m.

Place: Dept. 304

Date Action Filed: May 17, 2021

Trial Date: None Set

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APPLICATION TO FILE AMICUS CURIAE BRIEF

To the Honorable Anne-Christine Massullo, Judge of the Superior Court:

Public Rights Project, joined by California Domestic Workers Coalition; Centro Legal de la Raza; Chinese Progressive Association; The Employee Rights Advocacy Institute for Law & Policy; Equal Justice Society; Gig Workers Collective; Gig Workers United – Michigan; National Employment Law Project; People’s Parity Project; Rideshare Drivers United; and Veena Dubal, hereby request leave of the court to file the *amicus curiae* brief attached as Exhibit A in support of the People’s motion for a preliminary injunction.

As explained in detail below, *amici* are organizations and advocates committed to the protection of workers’ rights. *Amici* write to share with the Court their deep knowledge of worker exploitation through misclassification in general as well as information relating specifically to the experiences of Handy workers. Among other things, *amici* offer additional information and insight that demonstrate a preliminary injunction should issue. Under *IT Corp. v. Cty. of Imperial*, 35 Cal. 3d 63 (1983), the government is given the benefit of a presumption when it champions the public interest in an enforcement action. *Id.* at 73. Without question, the equities clearly favor the People in this case. The People have shown that the harm to workers and to the public is extensive and far outweighs any purported *and* cognizable harm that Handy might muster in its forthcoming opposition. Assuming *arguendo* that Handy can show *any* burden that extends beyond the cost associated with coming into compliance with the law (an obligation that existed well before this lawsuit was filed and one that does not count in the Court’s balance of the equities, *e.g.*, *People ex rel. Reisig v. Acuna*, 182 Cal. App. 4th 866, 882 (2010)), *amici* write here to underscore the various impacts of Handy’s misclassification.

There is good cause to allow *amici*’s application for leave to file, because of their collective perspective on the issues presented and the value of the information provided as it relates to the questions before this Court. Additionally, the brief is timely submitted.

This brief has not been funded or authored by any party in this action.

IDENTITY AND INTEREST OF AMICI

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Amici are a collection of 11 organizations and a law professor committed to the protection of workers from exploitation and abuse. As explained in detail in this brief with respect to Handy’s workforce, misclassification has especially pernicious effects because it requires workers to absorb additional costs, burdens, and risks associated with their jobs – without associated benefits – forcing them to often work for subminimum wages and to be left unprotected from harassment and injury. Across industries, the fractured workplace continues to undercut the dignity of labor in America and leaves workers with no meaningful safety net to protect them. All workers need these protections, especially when their employers, seeking profits at the expense of their workforce, intentionally turn a blind eye to give the appearance of an arms-length arrangement.

Our organizations collectively pursue a variety of strategies, including legislative advocacy, administrative policy reform, and both public and private enforcement in the courts, to ensure that workers are valued and protected. Some of our groups focus specifically on domestic workers and other workers who function primarily in private homes, often out of sight and exposed to significant hardship by either unkind or abusive employers. Other organizations in this collection of *amici* have particular expertise in the area of immigrant workers or other especially vulnerable groups. Through our extensive collective experience in organizing and advocacy, we understand the challenges low-wage workers, including Handy’s workforce, face and draw upon that deep experience in submitting this brief.

We know that strong worker protections often are hollow if they are not rigorously enforced. Many of our organizations advocated for the passage of Assembly Bill 5 (hereinafter “AB 5”) in California as well as similar laws in other jurisdictions, and subsequently have pushed for rigorous enforcement of that law. Given the multitude of challenges, including and especially arbitration provisions, that individual workers confront in protecting their rights, public enforcement is crucial if not indispensable to the protection of these hard-earned rights. We stand in strong support of the enforcement action in this case, because of its correct application of the AB 5 standard to Handy and because of the public commitment to the protection of rights of vulnerable

1 workers. We urge this Court to grant the request for a preliminary injunction and to order Handy to
2 properly classify its workforce as employees under AB 5 immediately.

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

10 The **California Domestic Workers Coalition** is a domestic worker led, statewide alliance
11 of community-based organizations, domestic employers, worker centers, labor unions, faith groups,
12 students, and policy advocates. The Coalition has come together to confront a history of exclusion
13 to basic labor protections and to advance the rights and dignity of domestic workers and their
14 communities across the state.

15 **Centro Legal de la Raza** is a legal services agency protecting and advancing the rights of
16 low-income, immigrant, Black, and Latinx communities through bilingual legal representation,
17 education, and advocacy. By combining quality legal services with know-your-rights education and
18 youth development, Centro Legal de la Raza ensures access to justice for thousands of individuals
19 throughout Northern and Central California.

20 The **Chinese Progressive Association** educates, organizes, and empowers low income and
21 working class, immigrant Chinese community in San Francisco to build collective power with
22 other oppressed communities to demand better living and working conditions and justice for all
23 people.

24 The **Employee Rights Advocacy Institute for Law & Policy** (The Institute) is the
25 National Employment Lawyer Association (NELA)'s partner organization. The Institute's mission
26 is to advance workers' rights through research, thought leadership, and education for policymakers,
27 advocates, and the public. Working hand-in-hand, NELA and The Institute reach broadly, engaging
28 advocates, organizations, coalitions, legislators, academics, agency officials, media, and the public

1 to create a more just workplace. The Institute aspires to a future in which all workers are treated
2 with dignity and respect; workplaces are equitable, diverse, and inclusive; and the well-being of
3 workers is a priority in business practices.

4 **The Equal Justice Society (EJS)** is transforming the nation’s consciousness on race
5 through law, social science, and the arts. EJS’s legal strategy aims to broaden conceptions of
6 present-day discrimination to include unconscious and structural bias by using social science,
7 structural analysis, and real-life experience. EJS has a strong interest in combatting discrimination
8 and structural racism in the workplace and other fundamental institutions and in promoting race
9 equity for workers.

10 **Gig Workers Collective** is a grassroots movement of worker-led worker organizing. Gig
11 Workers Collective’s origins came from a group of workers that banded together in the absence of
12 any formal organization or institution to address grievances with gig companies. Formally founded
13 in February of 2020, and born out of years of organizing Instacart workers, Gig Workers Collective
14 exists not only to extend the impact and reach of existing organizing, but also to facilitate new
15 organizing by workers who have traditionally not been included in the discourse around the gig
16 economy.

17 **Gig Workers United in Michigan** is a collective group of app-based gig workers
18 dedicated to taking on corporate giants by creating local statewide campaigns, activating the
19 community, and empowering other gig workers to take action.

20 **The National Employment Law Project (NELP)** is a nonprofit legal organization with
21 more than fifty years of experience advocating for the employment and labor rights of underpaid
22 and unemployed workers. For decades, NELP has focused on the ways in which various work
23 structures, such as mislabeling workers as independent contractors, exacerbate income and wealth
24 inequality, the segregation of workers by race and gender into poor quality jobs, and the ability of
25 workers to come together to negotiate with business over wages and working conditions. NELP has
26 litigated directly and participated as amicus curiae in numerous cases. NELP has provided
27 Congressional and state testimony addressing the issue of employment relationships and
28 independent contractors, including misclassification by companies in the app-based economy.

1 **The People’s Parity Project** is a movement of attorneys and law students organizing for a
2 democratized legal system, which values people over profits, builds the power of working people,
3 and opposes subordination of any form. PPP is dismantling a profession that upholds corporate
4 power and building a legal system that is a force for justice and equity. Its work focuses on
5 building power for working people in the civil legal system through organizing, policy innovation,
6 political education, and solidarity.

7 **Rideshare Drivers United** is an independent drivers’ organization of over 19,000 drivers
8 in California, fighting for the full rights, fair pay, and dignity for all app-based drivers.

9 **Veena Dubal** is a Professor of Law at the University of California, Hastings College of
10 Law (*for identification purposes only*). Professor Dubal’s research focuses on the intersection of
11 law, technology, and precarious work. Within this broad frame, she uses empirical methodologies
12 and critical theory to understand (1) the impact of digital technologies and emerging legal
13 frameworks on the lives of workers, (2) the co-constitutive influences of law and work on identity,
14 and (3) the role of law and lawyers in solidarity movements. Professor Dubal has been cited by the
15 California Supreme Court, and her scholarship has been published in top-tier law review and peer-
16 reviewed journals.
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1 Dated: July 30, 2021

Respectfully submitted,

2
3 /s/ Martha Cardenas Delgadillo

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EXHIBIT A

1 MARTHA CARDENAS DELGADILLO, SBN 335513

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1 **SUMMARY OF ARGUMENT**

2 *Amici* fully support and join in the arguments made by the People in connection with their
3 motion for a preliminary injunction. We write separately to emphasize several crucial points to this
4 Court as part of its review of the pending motion. Our submission is informed in large part by
5 extensive and direct interaction with Handy workers, both in California and across the country.
6 Over the past 18 months, Public Rights Project has connected with 180 Handy workers (72 of
7 whom are based in California). Through online surveys as well as in-depth interviews, Public
8 Rights Project has acquired extensive information about how Handy operates and the experiences
9 of its workforce. These conversations strongly inform our argument.

10 *First*, Handy workers are clearly misclassified under every component of the AB 5
11 standard. *Amici* focus here on Prong C to provide additional information not included in the
12 People’s brief. Based solely on the Prong C analysis of the AB 5 standard, Handy’s workforce is
13 misclassified. Information provided by numerous Handy workers shows that they are not engaged
14 in independent businesses. *Second*, assuming *arguendo* that Handy can show *any* burden that
15 extends beyond the cost associated with coming into compliance with the law, *amici* write here to
16 underscore the various impacts of Handy’s misclassification. Workers are routinely denied pay for
17 time actually worked, they are never compensated for their travel between jobs, they must cover
18 work-related expenses, and they are regularly charged unreasonable and excessive fines by Handy.
19 As a result, workers can receive subminimum wages for the time they work for Handy. In sum,
20 workers bear all of the risk and are financially penalized for Handy’s misclassification. These
21 significant harms (and more) demonstrate the clear need for a preliminary injunction to issue.

22 **I. OVERVIEW OF HANDY WORKERS AND THEIR EXPERIENCES**

23 Over the past 18 months, Public Rights Project has communicated with 180 Handy workers
24 from 21 states. We connected with these workers through online outreach. All of them have
25 responded to online surveys, and 30 have participated in in-depth interviews.

26 ***Who the workers are:*** 72% of them work for Handy in California, with about 40% in
27 Northern California and 60% in Southern California. Handy workers are predominantly people of
28 color: 77% of those responding to our inquiries identify as Black or Latino. Many of the workers

1 reported that Handy is their primary source of income, with almost half of the workers (47%)
2 putting in more than 30 hours per week performing home cleaning and maintenance work.

3 ***How the workers came to work for Handy:*** Some were former professionals who were
4 forced to turn to home cleaning when the pandemic or other upheavals in their lives put them out of
5 work. For example, Tashia said:

6 I was an energy consultant, and the business went under. I'm forty-seven years old
7 and have three children and three stepchildren with my fiancé. I was looking for
8 regular work, but I also needed to apply for everything I could to get some money
coming in the door. That's how I found Handy.¹

9 For other workers, Handy has been a part of a broader mix of gig work, including food delivery,
10 errands, and fulfillment performed to make ends meet while they took care of family members or
11 went back to school.

12 ***What types of work they perform for Handy:*** These workers perform a wide variety of
13 tasks for Handy, but the core of the work that they do is home cleaning, with 2 in 3 responding
14 workers (66%) reporting that they do cleaning jobs for Handy. Slightly more than half (53%) report
15 that they assemble furniture for Handy. Furniture assembly is a growing segment of Handy's
16 business; corporate partnerships with companies like Walmart, Costco, and Crate & Barrel use
17 Handy workers to do installation and assembly of furniture purchased by customers at those
18 retailers.² Smaller percentages of Handy workers do other types of work for Handy, with almost 4
19 in 10 (37%) saying they do home improvement, 3 in 10 (30%) providing moving services, and 2 in
20 10 (22%) performing landscaping and lawn care. Most Handy workers (60%) perform more than
21 one type of work for Handy, with workers reporting that it is hard to get as many hours as they
22 need if they limit themselves to one kind of work.

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26 ¹ Telephone interview of Tashia, Connecticut (Oct. 28, 2020).

27 ² See Handy, Help, <https://help.handy.com/hc/en-us> (showing that customers at certain major
28 retailers are able to pre-purchase installation services with Handy at check-out).

1 **II. HANDY WORKERS ARE MISCLASSIFIED UNDER AB 5 BECAUSE THEY ARE**
2 **NOT INDEPENDENTLY IN THE BUSINESS OF PROVIDING HOME SERVICES**

3 Handy workers are misclassified under each prong of the AB 5 standard. Under Prong C of
4 the ABC test,³ workers must be “customarily engaged in an independently established trade,
5 occupation, or business of the same nature as the work performed for the hiring entity” in order to
6 qualify as independent contractors. *Dynamex v. Superior Court*, 4 Cal. 5th 903, 917 (2018). Handy
7 has the burden to show that its Pros (Handy’s term for its workers) “independently ha[ve] made the
8 decision to go into business for himself or herself” and “generally take[] the usual steps to establish
9 and promote his or her independent business—for example, through incorporation, licensure,
10 advertisements, routine offerings to provide services of the independent business to the public or to
11 a number of potential customers, and the like.” *Id.* at 962. Handy cannot make such a showing
12 because the experience of its workforce belies such a proposition and because Handy’s policies
13 press against the pursuit of such opportunities.

14 **A. Handy Pros Do Not Have Independent Businesses**

15 Most Handy workers have not taken steps to establish independent businesses of the same
16 nature as Handy. Fewer than 5% of workers reported that they had set up an LLC or other form of
17 independent business.⁴ Rather than operating independent home cleaning and maintenance
18

19 ³ California law, first set forth in *Dynamex*, and subsequently codified and expanded through AB 5,
20 provides that workers must be treated as employees unless the hiring entity establishes the
following, which is otherwise known as the ABC test:

21 (A) that the worker is free from the control and direction of the hirer in connection with the
22 performance of the work . . . ;

23 (B) that the worker performs work that is outside the usual course of the hiring entity’s
24 business; *and*

25 (C) that the worker is customarily engaged in an independently established trade,
26 occupation, or business of the same nature as the work performed for the hiring entity.

27 Cal. Lab. Code § 2775 (emphasis added). *Amici* incorporate by reference pp. 17-28 of the People’s
28 brief, which demonstrate that Handy fails to meet Prongs A and B of the ABC test.

29 ⁴ Several of the respondents to our survey have established LLCs or other corporate entities, though
the businesses appear unrelated to their work for Handy. As a result, the true percentage is likely
even lower.

1 businesses, Handy workers we spoke to fall into three main categories, all of which are consistent
2 with being employees of the company. Half of respondents were gig workers who essentially
3 function as part-time workers for a number of companies.⁵ The second largest category, at 28% of
4 workers, worked at Handy on a part-time basis to supplement their income at a non-gig job. The
5 third largest category – about 20% of workers – are students or recent graduates who were
6 preparing for work in fields outside of home cleaning and maintenance.

7 California courts have made clear that Prong C “requires an existing, not potential, showing
8 of independent business operation.” *Garcia v. Border Transp. Grp., LLC*, 28 Cal. App. 5th. 558,
9 574 (2018). “[I]t is not enough to show that the individuals are free to engage in similar activities
10 for others or work as employees for others.” *Midwest Prop. Recovery v. Job Serv. of N.D.*, 475
11 N.W.2d 918, 924 (N.D. 1991) (cited in *Dynamex*, 4 Cal. 5th at 962 n.30). Here, the facts
12 demonstrate that Handy’s workers may work for multiple companies, but they are not operating
13 independent businesses. Instead, they are seeking to make a living by working across various
14 platforms.

15 **B. Handy’s Practices Discourage Pros from Exercising the Type of Agency**
16 **Associated with Running an Independent Business**

17 Handy’s business practices actively impede workers from operating an independent
18 business. Handy imposes a fine on workers for setting up additional business outside of the app
19 with its customers.⁶ Handy also limits workers’ abilities to communicate directly with customers to
20 a 24-hour window before a job, by which point the worker would be charged for cancelling.⁷ *See*,

21 ⁵ Working for other companies that may also misclassify their workers cannot constitute evidence
22 that Pros have established an independent business. *See, e.g., Brock v. Superior Care, Inc.*, 840
23 F.2d 1054, 1060 (2d Cir. 1988) (“employees may work for more than one employer without losing
their benefits under the [federal Fair Labor Standards Act]”).

24 ⁶ Handy, *How to avoid fees on the Handy Platform*, [https://prohelp.handy.com/hc/en-
us/articles/115011604148-How-to-avoid-fees-on-the-Handy-Platform](https://prohelp.handy.com/hc/en-us/articles/115011604148-How-to-avoid-fees-on-the-Handy-Platform) (charging Pros a fee for
25 offering services to customers outside of the Handy platform) (last visited: Jul. 30, 2021).

26 ⁷ *See* Handy, *Claiming Jobs FAQ*, <http://pros.handy.com/claiming-jobs-faqs> (stating that
27 customer’s full address and phone number is made available only on the booking day) (last visited:
28 Jul. 30, 2021). This practice is not standard in the home services industry. Handy competitors
TaskRabbit and Thumbtack both allow workers and customers to ask each other questions and
align on expectations before a job is accepted.

1 e.g., *In re Appeal of Hendrickson’s Healthcare Serv.*, 462 N.W.2d 655, 658 (S.D. 1990)
2 (concluding that restrictions on hours and ability to work separately with clients combined with
3 termination for violation resulted in home health aides being employees of the company). Not
4 being able to consult with clients before accepting a job prevents workers from negotiating with
5 customers about the scope of a job – or even assessing it – and making an informed decision about
6 whether to accept it. As a result, Handy workers routinely accept jobs outside of their skill level
7 and spend extra time and expense having to acquire tools they were not aware they would need.

8 Industriousness is not rewarded, either. Handy precludes Pros from negotiating the pay or
9 hours of the job once more information is obtained. Workers are required to spend three full hours
10 at cleaning jobs, even if they have finished early.⁸ Adding more paid time to a job in the app is at
11 the customer’s sole discretion; much more frequently, workers report that customers fail to do this
12 and that they work without pay for fear that clients will retaliate with a bad review if they refuse.
13 As a result, workers are not rewarded for their hustle to either secure additional business from a
14 customer while on a job site or for finishing early and moving on to another job. These types of
15 practices are highly relevant to the independent operation analysis in Prong C. *See, e.g., Boston*
16 *Bicycle Couriers v. Deputy Dir. of Div. of Emp’t and Training*, 778 N.E.2d 964, 969 n.13 (Mass.
17 App. Ct. 2002) (applying the ABC test and considering whether an individual worker is free to
18 operate an independent business enterprise and perform services without hindrance from the
19 employing unit as a factor for Prong C).⁹ The inability to negotiate pricing or scope of jobs is
20 particularly damning for Handy’s claims of independence. *See, e.g., Scantland v. Jeffrey Knight*,

21
22 ⁸ Handy, *Do I have to stay the whole time?*, [https://prohelp.handy.com/hc/en-](https://prohelp.handy.com/hc/en-us/articles/218448838-Do-I-have-to-stay-the-whole-time)
23 [us/articles/218448838-Do-I-have-to-stay-the-whole-time](https://prohelp.handy.com/hc/en-us/articles/218448838-Do-I-have-to-stay-the-whole-time) (last visited: Jul. 30, 2021). Handy
24 regularly requires workers to stay beyond the allotted three hours to complete a job (without
25 additional pay), but they cannot leave if finished early (without permission of the customer).

26 ⁹ Under the FLSA, which utilizes a less-exacting standard to determine classification of a worker,
27 the skill level and training required of a worker is central to the analysis of independence. *See, e.g.,*
28 *Keller v. Miri Microsystems LLC*, 781 F.3d 799, 809 (6th Cir. 2015) (“[I]f the worker’s training
period is short, or the company provides all workers with the skills necessary to perform the job,
then that weighs in favor of finding that the worker is indistinguishable from an employee.”); *Perez*
v. Super Maid, LLC, 55 F. Supp. 3d 1065, 1077–78 (N.D. Ill. 2014) (concluding that workers for
cleaning service were employees based in part on the low-skill work involved). Handy has minimal
training and skill levels are not assessed.

1 *Inc.*, 721 F.3d 1308, 1315 (11th Cir. 2013) (applying FLSA and analyzing factors such as “whether
2 they could work for others, whether they could earn additional income from customers, and close[]
3 monitor[ing] the quality of their work”).

4 When companies control the meaningful economic aspects of the operation, and workers
5 “lack[] the ability to exercise true initiative within the business model,” they are generally found to
6 be employees. *Hopkins v. Cornerstone Am.*, 545 F.3d 338, 346 (5th Cir. 2008). Any limited
7 independence that Pros experience is not enough to satisfy Prong C. Developing rapport with
8 customers for good ratings and the ability to earn more by taking on more work cannot overcome
9 the presumption of the workers’ status as employees. *See, e.g., McFeeley v. Jackson St. Ent., LLC*,
10 825 F.3d 235, 243 (4th Cir. 2016) (explaining that salesmanship-like conduct, such as maintaining
11 a rapport with customers, is not indicative of independence status when advertising, pricing, and
12 choice of clientele are determined by hiring entity); *Usery v. Plumbing Equip., Co.*, 527 F.2d 1308
13 (5th Cir. 1976) (same).

14 **III. HANDY’S UNLAWFUL MISCLASSIFICATION CAUSES IRREPARABLE HARM** 15 **TO ITS WORKERS**

16 Handy harms its workers through exploitative policies that arise out of the unlawful
17 misclassification of the workforce. Handy’s policies and practices deceive workers about their
18 compensation, push costs onto them, and demand significant lengths of uncompensated time. Many
19 of these harms would be remedied, at least in part, if Handy properly classified its workforce.

20 **A. Handy Workers Are Not Properly Compensated for Time Spent Working and** 21 **Forced to Shoulder Significant Job-Related Expenses**

22 Pros are forced to absorb costs relating to their employment, resulting in significant wage
23 theft. They incur uncompensated expenses, work multiple hours off the clock, and are not paid for
24 their travel time. In addition, Handy regularly imposes fines on workers for a variety of alleged
25 policy violations, which further diminish take-home earnings and pressure workers to work longer
26 for less pay.¹⁰

27 ¹⁰ *See* Niels vans Doors, *Late for a job in the gig economy? Handy will dock your pay*, Quartz (Oct.
28 3, 2018), <https://qz.com/work/1411833/handy-charges-fees-to-its-workers-for-being-late-or->

1 **1. Handy Fails to Pay Pros for All of the Time Actually Spent Working**

2 Handy’s payment structure gives extraordinary power to Handy and its customers, leaving
3 Pros exposed to exploitation. Though California law requires that employees be paid for all hours
4 worked, Pros are not currently afforded those protections. *See* Cal. Lab. Code § 204 (“All wages,
5 other than those mentioned in Section 201, 201.3, 202, 204.1, or 204.2, earned by any person in
6 any employment are due”). Handy decides which jobs to make available to workers and only
7 shows workers a limited amount of information about a job, including its general location, its date
8 and time, and the amount of expected pay.¹¹ Before a worker has claimed a job, Handy does not
9 provide the customer’s contact information, so the worker has no way to further ascertain the scope
10 of the job. In some instances, a worker may learn too late that a job may take longer than expected
11 or that the task is beyond the Pro’s skill level, but since the Pro has accepted the job, they have no
12 choice but to complete it or be fined up to \$50.¹²

13 Handy also fails to ensure a customer does not demand tasks beyond those originally
14 requested and fails to provide compensation for subsequent additional work. In fact, Handy
15 facilitates and permits customers to exceed the scope of the original listing without having to
16 compensate the worker. While workers can petition to change bookings, Handy often chooses to
17 ignore or deny such requests. Only the customer can change a booking through the app.¹³ Eighty-
18 four percent of Handy workers reported that they frequently had to work off the clock without
19 compensation to complete their assigned tasks. Pros say they work in excess of the agreed-to time

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22 [canceling-jobs/](#) (one Handy worker reported being \$1,000 in debt to the company without ever
23 being deactivated).

24 ¹¹ Even then, the information is not always reliable. The information provided are only estimates,
25 resulting in many workers being underpaid. Nearly three-quarters of Handy Pros responding to our
26 survey reported that they have received less pay than expected on jobs.

27 ¹² Handy refers to these charges as fees. Throughout this brief, *amici* use the term “fines” because
28 that is a more apt description. A fine is “a sum imposed as punishment for an offense.” *See, e.g.,*
29 *Fine*, Merriam-Webster Dictionary, <https://www.merriam-webster.com/dictionary/fine> (last visited:
30 Jul. 30, 2021). Handy imposes fines for violations of the terms and conditions of employment.

31 ¹³ Handy, *Adjust Booking Hours*, [https://help.handy.com/hc/en-us/articles/215563597-Adjust-
32 booking-hours](https://help.handy.com/hc/en-us/articles/215563597-Adjust-booking-hours) (last visited: Jul. 30, 2021).

1 without pay on three out of every five jobs, with workers staying an average of 35 minutes past the
2 original booking time.

3 Some customers even try to intimidate workers into staying past the original booking time
4 without compensation by threatening them with a bad review. Handy’s customer rating system –
5 and the crucial role it plays in determining compensation – exacerbates these problems. Workers
6 often feel obligated to stay and work extra unpaid time to receive a good rating, even without
7 compensation. Customer ratings determine the type of jobs that are available to workers and how
8 much they get paid. Handy’s website expressly states that falling under a certain customer rating
9 can get a worker deactivated.¹⁴

10 Pros reported multiple attempts to contact Handy seeking additional compensation for time
11 worked beyond what was listed. In many instances, Handy did not respond or refused to adjust the
12 payments, even though Handy had sufficient information available to it to know how long the Pro
13 spent at a job.

14 **2. Handy Penalizes Workers with Excessive Fines**

15 California law expressly prohibits employers from collecting or receiving any part of an
16 employee’s wages. Cal. Lab. Code § 221. This means that an employer cannot withhold wages for
17 mistakes or to punish employees for policy violations – exactly what Handy’s fines do.¹⁵ Cal. Lab.
18 Code § 224. Misclassification enables Handy to circumvent the law and leaves workers’ wages
19 unprotected.

20 **i. Fines Are Charged with Great Frequency**

21 Handy has a slew of fines ranging from \$10 to \$50, designed to maximize its own profits,
22 reduce worker wages, and push costs associated with customer satisfaction onto workers.¹⁶ Handy
23

24 ¹⁴ Handy, *How Do Ratings Work?*, [https://prohelp.handy.com/hc/en-us/articles/217290667-How-
25 do-ratings-work-](https://prohelp.handy.com/hc/en-us/articles/217290667-How-do-ratings-work-) (last visited: Jul. 30, 2021).

26 ¹⁵ See *Hudgins v. Neiman Marcus*, 34 Cal. App. 4th 1109, 1123 (1995) (explaining wage
27 deductions that, in essence, represented what would otherwise be standard business losses arise
28 from employee or customer misconduct or error were in violation of Cal. Lab. Code § 221).

¹⁶ See Handy, *supra* n.6 (charging Pros a fee for offering services to customers outside of the
Handy platform).

1 out to customer service telling them I wasn't feeling well. They told me to just cancel
2 the job. I asked them if they could cancel it on their end so I wouldn't get the fee, but
3 they were adamant about me cancelling. They didn't give me any other options, and
4 it was going to be a \$50 charge on a \$30 job. I was like fine, I guess I have to just do
5 the job. They didn't ask any follow up questions about symptoms I had; they just told
6 me to cancel. One of my symptoms was in line with COVID.²⁰

7 Flexibility is one of the core benefits of being an independent contractor. A job where
8 workers are fined for being sick or attending the birth of their child is not flexible.

9 **3. Handy Does Not Pay Workers the Wages They Are Owed**

10 Based on data analysis from our survey, Handy's misclassification of workers causes
11 workers to make below California's minimum wage. This is most evident with cleaners, who
12 constitute about 66% of Handy workers.²¹ According to its website, Handy promises cleaners in
13 California can earn between \$15 to \$25 an hour, and Pros report working an average of 25 hours
14 per week.²² Under California Labor Code § 1182.12, employers with 26 or more employees must
15 pay their employees at least \$14 an hour, and employers must pay for expenses incurred in the
16 discharge of duties, *see id.* § 2802. Handy, however, does not reimburse workers for transportation
17 or cleaning supplies.²³ When accounting for these costs, cleaners who earn Handy's starting wage
18 of \$15 an hour actually make around \$10.29 to \$10.79 an hour, depending on where they live and
19 if they use their own vehicle or public transport to travel between jobs.

20 Not only do many cleaners make below minimum wage, but when accounting for time
21 worked off the clock, travel time between jobs, and break periods, Pros work roughly six additional

22 ²⁰ Telephone interview of Eric, California (Mar. 26, 2020).

23 ²¹ This figure comes from our survey of Handy workers.

24 ²² Handy, *Job Rate and Processing Fees*, [https://prohelp.handy.com/hc/en-
25 us/articles/115015961167-Job-Rate-and-Processing-Fees](https://prohelp.handy.com/hc/en-us/articles/115015961167-Job-Rate-and-Processing-Fees) (last visited: Jul. 30, 2021).

26 ²³ Our survey found that the average Handy worker spends \$64 per week on cleaning supplies.
27 Across the platform, workers reported working multiple Handy gigs three days per week with an
28 average travel time of 41 minutes between each gig, or 123 minutes per week of uncompensated
travel time. Most employers use the mileage reimbursement method, which multiplies the work-
required miles driven by a predetermined amount that approximates the per-mile cost of owning
and operating an automobile. *See, e.g., Gattuso v. Harte-Hanks Shoppers, Inc.*, 42 Cal. 4th 554,
564 (2007).

1 uncompensated hours a week. That means Handy cleaners who make \$15 an hour lose about
2 \$4,500 in wages per year, while cleaners who make \$25 an hour lose approximately \$7,500.²⁴

3 Given the high costs workers must pay to work for Handy, the fact that they work an
4 additional one-fifth of their work week unpaid, and the excessive fines that regularly cut into their
5 paychecks, it comes as no surprise that some Handy workers are in debt to the company. One
6 cleaner went through a “very difficult period in her personal life, forcing her to cancel many of the
7 jobs she had previously claimed.”²⁵ She accumulated over \$1,000 of debt to Handy. Handy never
8 contacted her about her debt or deactivated her account to stop her from continuing to incur fees.
9 Although Handy has not taken action, the threat of a potential lawsuit keeps the worker from
10 deactivating her account. Because of Handy’s misclassification, workers not only regularly make
11 below minimum wage, but often lose money to the platform. “At one point, I just thought this
12 whole thing was just a scam,” Handy worker Patricia said.²⁶

13 **B. Handy Has Made Its Workers Vulnerable to Harassment and Assault Due to**
14 **Their Misclassification and Overall Inaction**

15 By misclassifying workers, minimizing their own responsibility, and limiting its
16 intervention, Handy has left workers vulnerable to a variety of harms, including and especially
17 sexual harassment and assault by customers. Handy’s approach has been to ignore their workers’
18 reports, not investigate misconduct, and sometimes retaliate against those who complain. Handy
19 attempts to absolve itself of all responsibility because its workers are independent contractors, but
20 under Cal. Gov. Code § 12940(j)(1), Handy already has a duty to prevent and take appropriate
21 remedial action when a worker is harassed, whether the worker is an employee or an independent
22 contractor. Handy’s business model is geared towards passing risks on to workers and prioritizing
23 customers, which means workers’ experiences are ignored.

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26 ²⁴ See Appendix A (outlining calculations *amici* utilized to arrive at these figures).

27 ²⁵ Doors, *Late for a job in the gig economy? Handy will dock your pay*, *supra* n.10.

28 ²⁶ Telephone interview of Patricia, California (Feb. 18, 2020).

1 **1. Handy Workers Suffer from High Rates of Harassment and Feel**
2 **Immense Pressure to Endure It**

3 Our survey results indicate that 60% of responding Handy workers had been sexually
4 assaulted or harassed by customers while working for Handy.²⁷ This data is consistent with other
5 studies. Workers who work in isolated spaces report higher than average rates of sexual harassment
6 and assault as isolation leaves workers vulnerable to abusers who may feel emboldened by a lack
7 of witnesses.²⁸

8 Many Handy workers who have been harassed or assaulted are reluctant to defend
9 themselves because of Handy’s rating systems, which gives customers enormous power over
10 workers’ fortunes. Negative reviews drop a worker’s rating, limiting the types of jobs and amount
11 of pay a worker receives. If their rating dips below 4.2 stars, Handy can deactivate them. Zakiyah,
12 a single mother of four, was coerced into letting a customer touch her because she feared
13 retaliation. She describes her experience:

14 He wanted more, so I gave in and did what he needed me to do 'cause I needed the
15 pay I was promised. It was for rent and my bills. I felt nasty about myself and my
body. It just came out of the blue. I would have never taken the job if I knew.²⁹

16 **2. Handy Systematically Fails to Act in Response to Harassment**

17 When Handy workers report harassment or assault, Handy consistently fails to take
18 corrective action. Of the eight workers who reported incidents to Handy, only five received

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20 ²⁷ Public Rights Project found no statistically significant difference based on gender in
experiencing sexual harassment or assault while working for Handy.

21 ²⁸ A UCLA program interviewed 84 domestic workers across California with 23% of respondents
22 reporting an experience of some type of sexual harassment or sexual assault at their worksites.
UCLA Labor Occupational Safety and Health Program, *Hidden Work, Hidden Pain: Injury*
23 *Experiences of Domestic Workers in California* (Jul. 2020), [https://losh.ucla.edu/wp-](https://losh.ucla.edu/wp-content/uploads/sites/37/2020/06/Hidden-Work-Hidden-Pain.-Domestic-Workers-Report.-UCLA-LOSH-June-2020-1.pdf)
24 [content/uploads/sites/37/2020/06/Hidden-Work-Hidden-Pain.-Domestic-Workers-Report.-UCLA-](https://losh.ucla.edu/wp-content/uploads/sites/37/2020/06/Hidden-Work-Hidden-Pain.-Domestic-Workers-Report.-UCLA-LOSH-June-2020-1.pdf)
[LOSH-June-2020-1.pdf](https://losh.ucla.edu/wp-content/uploads/sites/37/2020/06/Hidden-Work-Hidden-Pain.-Domestic-Workers-Report.-UCLA-LOSH-June-2020-1.pdf); Researchers from Johns Hopkins University School of Nursing, Oregon
25 Health and Science University, and the University of Oregon examined workplace violence in
“consumer-driven home care models” in Oregon. Of the 83 home care workers they interviewed,
26 41% reported experiencing sexual harassment at their worksites, and 14% reported experiencing
sexual violence. Lindsay Nakaishi, et al., *Exploring Workplace Violence among Home Care*
27 *Workers in a Consumer-Driven Home Health Care Program*, 61 WORKPLACE HEALTH & SAFETY,
441 (2013), <https://journals.sagepub.com/doi/pdf/10.1177/216507991306101004>.

28 ²⁹ Telephone interview of Zakiyah, New York (Sept. 3, 2020).

1 responses from Handy. When Handy does bother to respond to emails reporting sexual assault or
2 harassment, its responses are slow, generic and vague. For example, David reported a customer
3 touching him without his consent, Handy told him this was “a personal thing” and he should deal
4 with it on his own.³⁰ Not a single worker reported that Handy investigated their report or notified
5 them of any corrective action against the customer who harassed or assaulted them.

6 **3. Handy Retaliates Against Workers Who Have Been Harassed**

7 Some Handy workers are penalized for reporting sexual harassment, which constitutes
8 unlawful retaliation against an employee. *See, e.g.*, Cal. Gov. Code § 12940(j). Several workers
9 who left gigs in which customers sexually harassed them not only lost income from the incomplete
10 job but were charged fines. Handy refused to reimburse these workers. Even worse, a worker was
11 deactivated because they reported their harasser. One worker, Patricia, decided to leave the app
12 because of her experience:

13 A guy came to the door completely naked once. I said, ‘This is not for me anymore.’
14 I told Handy about it. I was so nervous. I sent them a message as I was leaving saying
15 I wasn’t going into that house cause I wasn’t comfortable. No one was supposed to
16 be there. I got docked for it because I left. I tried, but they never got back to me to
return the fee, never got back to me at all. I said forget it, I’m not doing this anymore.
It made me so angry that I got docked for stuff that wasn’t my fault.³¹

17 Handy’s misclassification of its Pros also means that workers lack access to critical post-incident
18 resources like employer-provided health care, workers’ compensation, or paid leave.

19 **CONCLUSION**

20 For the foregoing reasons and for the reasons stated in support of the People’s motion for
21 preliminary injunction, this Court should grant the request for a preliminary injunction and order
22 Handy to properly classify its Pros as employees.
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25 Dated: July 30, 2021

Respectfully submitted,

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27 ³⁰ Telephone interview with David, Illinois (Mar. 25, 2021).

28 ³¹ Telephone interview of Patricia, California (Feb. 18, 2020).

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/s/ Martha Cardenas Delgadillo

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Appendix A – Handy Housecleaner Wages

Compensated Work Time	Expenses	Uncompensated Work Time
Range of pay: \$15/hour - \$25/hour ³²	Supplies: \$64 per week = \$2.56/hr	Unpaid work time off the clock: 2.8 hrs/week ³³
Average hours per week (as reported by workers): 25	Mileage reimbursement: \$0.50/hr ³⁴ -OR- Public transport SoCal: \$1/hr Public transport NorCal: \$0.85/hr ³⁵	Unpaid travel time between jobs: 2.05 hrs/week ³⁶
	Employer’s share of Social Security earnings & Medicare taxes: \$1.15/hr to \$1.91/hr ³⁷	Unpaid Breaks: 1 hr/week ³⁸
Actual wages: \$10.29/hr to \$20.03/hr³⁹	Total uncompensated costs: Supplies + transport + taxes = \$4.21/hr to \$5.32/hr	Total uncompensated time: 5 hours, 51 minutes per week Total uncompensated wages: \$87.75 to \$146.25 per week

³² Handy, *Job Rate and Processing*, <https://prohelp.handy.com/hc/en-us/articles/115015961167-Job-Rate-and-Processing-Fees> (last visited: Jul. 30, 2021).

³³ Pros reported working an average of 35 minutes past the original booking on three out of every five jobs.

³⁴ California provides for 56 cents per mile for reimbursement. Cal. Dep’t. of Hum. Res., *2021 Mileage Reimbursement Rates for Use of Personal Vehicle* (2021), <https://tinyurl.com/3rtf5yb2> (last visited: Jul. 30, 2021). Pros reported travelling an average of seven and a half miles between jobs, three times per week.

³⁵ Metro, *Fares*, Metro, <https://www.metro.net/riding/fares/> (last visited: Jul. 30, 2021); AC Transit, *Fares*, AC Transit, <https://www.actransit.org/fares> (last visited: Jul. 30, 2021). In southern California, a monthly Metro pass costs \$100. In northern California, a monthly AC Transit pass costs \$84.60.

³⁶ Workers average 41 minutes of unpaid travel time between jobs, and work three stacked shifts per week.

³⁷ The combined percentage of Medicare taxes and Social Security earnings contributed by an employer is 7.65% of earnings. Soc. Sec. Admin., *FICA & SECA Tax Rates*, <https://www.ssa.gov/oact/progdata/taxRates.html> (last visited: Jul. 30, 2021).

³⁸ Pros work over six hours (but under eight) three times a week, meaning they should receive two paid ten-minute breaks, three times a week. Indus. Welfare Comm’n, Order No. 5-2001, *Regulating Wages, Hours and Working Conditions in the Public Housekeeping Industry* (2002), <https://www.dir.ca.gov/TWC/IWCArticle5.pdf>. It is possible workers are uncompensated for up to 90 minutes of paid meal periods a week, amounting to an additional \$22.50 to \$37.50 of lost wages per week. *See* Cal. Lab. Code § 512(a).

³⁹ This estimate does not provide any form of health insurance for workers. Factoring in the roughly six uncompensated hours Pros work in addition to their reported 25 hours per week, Pros meet the 30-hour requirement for employer-subsidized health insurance under the Shared Responsibility for Employers Regarding Health Coverage final rule. *Affordable Care Act (ACA) Guidelines*, CalPERS, <https://www.calpers.ca.gov/page/employers/policies-and-procedures/aca-guidance> (last visited: Jul. 30, 2021).