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SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN FRANCISCO

UNLIMITED JURISDICTION

PEOPLE OF THE STATE OF CALIFORNIA, Plaintiff, **v.** **UBER TECHNOLOGIES, INC., A DELAWARE CORPORATION; LYFT, INC., A DELAWARE CORPORATION; AND DOES 1-50, INCLUSIVE,** Defendants.	Case No. CGC-20-584402 **COMPLAINT FOR INJUNCTIVE RELIEF, RESTITUTION, AND PENALTIES** **[VERIFIED ANSWER REQUIRED PURSUANT TO CODE OF CIVIL PROCEDURE SECTION 446]**

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Plaintiff, the People of the State of California ("People"), by and through Xavier Becerra, Attorney General of the State of California; Michael N. Feuer, Los Angeles City Attorney; Mara W. Elliott, San Diego City Attorney; and Dennis J. Herrera, San Francisco City Attorney, bring this action against Uber Technologies, Inc. ("Uber"), Lyft, Inc. ("Lyft"), and Does one through fifty (collectively "Defendants"), and allege as follows:

INTRODUCTION

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

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

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

overcome this presumption by establishing each of the three factors embodied in the strict "ABC" test.

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

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

6. But rather than own up to their legal responsibilities, Uber and Lyft have worked relentlessly to find a work-around. They lobbied for an exemption to A.B. 5, but the Legislature declined. They utilize driver contracts with mandatory arbitration and class action waiver provisions to stymie private enforcement of drivers' rights. And now, even amid a once-in-a-century pandemic, they have gone to extraordinary lengths to convince the public that their unlawful misclassification scheme is in the public interest. Both companies have launched an aggressive public relations campaign in the hopes of enshrining their ability to mistreat their workers, all while peddling the lie that driver flexibility and worker protections are somehow legally incompatible.

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

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

9. The State's laws against employee misclassification protect all Californians. They protect workers by ensuring they receive the compensation and benefits they have earned through the dignity of their labor. (*Dynamex, supra*, 4 Cal.5th at p. 952.) They protect "law-abiding" businesses from "unfair competition," and prevent the "race to the bottom" that occurs when businesses adopt "substandard wages" and "unhealthy [working] conditions," threatening jobs and worker protections across entire industries. (*Id.* at pp. 952, 960.) They protect the tax-paying public, who is often called upon to "assume responsibility" for "the ill effects to workers and their families" of exploitative working arrangements. (*Id.* at p. 952-53.) They are a lifeline and bulwark for the People against the "erosion of the middle class and the rise in income inequality." (A.B. 5, § 1(c).)

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

JURISDICTION AND VENUE

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

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

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

PARTIES

I. PLAINTIFF

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

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

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

17. The San Diego City Attorney, Mara W. Elliott, has the statutory authority to bring actions in the name of the People of the State of California to enforce California's UCL. As the City Attorney of a city with population in excess of 750,000, she also has the express statutory authority under A.B. 5 to bring an action for injunctive relief to prevent the continued misclassification of employees. (Lab. Code, § 2750.3(j).)

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

II. DEFENDANTS

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

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

21. The true names or capacities of Defendants sued as Doe Defendants 1 through 50 are unknown to the People. The People are informed and believe, and on this basis, allege that each of the Doe Defendants, their agents, employees, officers, and others acting on their behalf, as well as subsidiaries, affiliates, and other entities controlled by Doe Defendants 1 through 50 (hereafter collectively referred to as "DOES 1 through 50"), are legally responsible for the conduct alleged herein. The names and identities of defendants DOES 1 through 50 are unknown to the People, and when they are known the People will amend this Complaint to state their names and identities.

FACTUAL ALLEGATIONS

I. UNDER *DYNAMEX* AND A.B. 5, CALIFORNIA USES THE ABC TEST TO DETERMINE EMPLOYEE STATUS.

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

23. Under the ABC test, for a worker to be properly classified as an independent contractor rather than an employee, a hiring party, such as Uber or Lyft, has the burden of

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

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

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

25. For the purpose of this Complaint, "Drivers" refers to individuals who fall into one or both of the following two categories. *First Category*: All individuals who have driven for Uber as ride-hailing drivers in the State of California at any time since May 5, 2016 and who (1) signed up to drive as a ride-hailing driver directly with Uber or an Uber subsidiary under their individual name or with a fictional/corporate name *and* (2) are/were paid by Uber or an Uber subsidiary directly under their individual name or with a fictional/corporate name for their services as ride-hailing drivers. *Second Category*: All individuals who have driven for Lyft as ride-hailing drivers in the State of California at any time since May 5, 2016 and who (1) signed up to drive directly with Lyft or a Lyft subsidiary as ride-hailing drivers under their individual name or with a fictional/corporate name *and* (2) are/were paid by Lyft or a Lyft subsidiary directly under their individual name or with a fictional/corporate name for their services as ride-hailing drivers. "Passengers" refer to individuals who receive Uber and/or Lyft ride-hailing services through such Drivers.

26. Each Defendant operates a ride-hailing transportation service in which Passengers may request and pay for on-demand rides from either Defendant by using that Defendant's

smartphone application (the "Uber App," the "Lyft App," "App" or "Defendant's App" respectively, and collectively, "Apps" or "Defendants' Apps").

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

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

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

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

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

31. Since first launching their ride-hailing services, each Defendant has misclassified, and continues to misclassify, its Drivers as independent contractors instead of employees.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

45. Each Defendant provides its Drivers with their work and pay by controlling the dispatch of individual Passengers to individual Drivers through each Defendant's App. Each Defendant's App controls which Drivers receive which ride requests and when.

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

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

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

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

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

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

52. Each Defendant specifies detailed rules for Drivers to follow to create a uniform ride experience from which each Defendant derives its brand recognition, reputation, and value.

These rules, which each Defendant bills as "suggestions" or "tips," cover matters such as music, how to pick-up Passengers, and what its Drivers can and cannot say to the Passengers.

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

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

55. Each Defendant determines the type of data and feedback its Drivers and Passengers may submit via its App. Each Defendant also defines on what basis its Passengers and Drivers may provide feedback through its App.

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

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

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

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

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

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

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

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

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

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

65. Each Defendant is financially integrated with and dependent on its Drivers. Each Defendant only generates income for its ride-hailing business if its Drivers transport and provide

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

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

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

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

69. Lyft's prospectus for its 2019 initial public offering ("IPO") describes how its overall business strategy depends on its Drivers. Lyft describes its growth strategy as "continu[ing] to add density to our ridesharing marketplace *by attracting and retaining drivers* to our platform to

further improve the rider experience." (See Lyft SEC S-1, p. 1 [Filing Date: March 1, 2019], emphasis added.) The prospectus identifies a "key factor" affecting Lyft's performance as "*maintaining an ample number of drivers* to meet rider demand in our ridesharing marketplace." (Id., at p. 88, emphasis added.) In response to the fundamental question underlying Lyft's business model, "Why Lyft Wins," Lyft's IPO prospectus definitively answers: because Lyft is "Driver-Centric." (*Id.*, at p. 3.)

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

88. It is evident that neither Uber nor Lyft can meet their burden of showing that their Drivers are independent contractors under California's ABC test for misclassification as adopted in *Dynamex, supra*, 4 Cal.5th 903, and as codified in A.B. 5. Under Part A of the ABC test, Defendants exercise control over their Drivers through their Apps, which, in combination with their policies, function like algorithmic managers that effectively supervise Defendants' Drivers like human managers. Under Part B of the ABC test, Drivers perform services within

Defendants' usual course of business—providing on-demand rides. Under Part C of the ABC test, Defendants cannot show that Drivers have established independent businesses.

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

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

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

1. Minimum Wages

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

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

93. Defendants do not pay their Drivers for all their hours worked. Examples where each Defendant fails to pay its Drivers include, but are not limited to, time spent refueling, time spent

cleaning and maintaining their vehicles, time spent for off-duty rest periods, time spent driving to and returning from rides, and time spent logged on and monitoring each Defendant's App for ride requests. Defendants cannot provide on-demand rides without the performance of these tasks.

94. Defendants have failed—and continue to fail—to meet their minimum wage obligations with respect to their Drivers, including hours that are entirely unpaid and hours that are paid at less than the applicable minimum wage.

2. Overtime Wages

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

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

97. Defendants have failed—and continue to fail—to meet these overtime pay obligations with respect to their Drivers.

3. Business Expenses

98. The law requires Drivers to be paid or reimbursed for the necessary expenses in performing their work.

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

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

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

102. Defendants have failed—and continue to fail—to meet these expense reimbursement obligations with respect to their Drivers.

4. Meal and Rest Periods

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

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

105. Defendants have failed—and continue to fail—to meet these meal and rest period obligations with respect to their Drivers.

5. Wage Statements

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

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

108. Defendants have failed—and continue to fail—to meet these wage statement obligations with respect to their Drivers.

6. Paid Sick Leave and Health Benefits

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

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

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

112. Defendants have failed—and continue to fail—to meet these sick leave and health care expenditure obligations with respect to their Drivers.

7. Social Insurance Programs

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

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

115. Defendants have failed—and continue to fail—to meet these social insurance program obligations with respect to their Drivers.

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

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

117. Defendants' misclassification of their Drivers allows both companies to unlawfully reduce a substantial portion of the labor and vehicle fleet costs they would otherwise incur if they

lawfully classified and compensated their Drivers as employees, including reimbursing Drivers for their vehicle maintenance and fuel expenses.

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

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

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

FIRST CAUSE OF ACTION

INJUNCTIVE RELIEF, RESTITUTION, AND PENALTIES FOR VIOLATIONS OF BUSINESS AND PROFESSIONS CODE SECTION 17200

(Against all Defendants)

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

122. Defendants have engaged, and continue to engage, in acts or practices that are unlawful, unfair, or fraudulent and which constitute unfair competition within the meaning of section 17200 of the Business and Professions Code. These acts or practices include, but are not limited to, the following:

a. Failing to classify Drivers as employees as required by Labor Code section 2750.3, I.W.C. Wage Order 9-2001, and California law;

b. Failing to pay Drivers at least the California minimum wage for all time worked as required by Labor Code sections 1182.12, 1182.13, 1194, 1197, I.W.C. Wage Order 9-2001, section 4 (currently $13.00 per hour for employers with 26 or more employees), and the California Minimum Wage Order (MW-2019);

c. Failing to pay Drivers who worked in San Francisco at least the San Francisco minimum wage for all time worked as required by the San Francisco Minimum Wage Ordinance, San Francisco Administrative Code, Chapter 12R (currently $15.59 per hour);

d. Failing to pay Drivers who worked in Los Angeles at least the Los Angeles minimum wage for all time worked as required by the Los Angeles Minimum Wage Ordinance, Los Angeles Municipal Code, Chapter 18, Article 7, section 187.00 et seq. (currently $14.25 per hour);

e. Failing to pay Drivers who worked in San Diego at least the San Diego minimum wage for all time worked as required by the City of San Diego Earned Sick Leave and Minimum Wage Ordinance, San Diego Municipal Code, Chapter 3, Article 9, Division 1 (currently $13.00 per hour);

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

SECOND CAUSE OF ACTION

INJUNCTIVE RELIEF FOR VIOLATIONS OF A.B. 5 (Labor Code § 2750.3) (Against all Defendants)

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

125. A.B. 5 permits an action for injunctive relief to prevent the continued misclassification of employees as independent contractors. (Lab. Code, § 2750.3(j).) This action may be prosecuted by the Attorney General, or by a City Attorney of a city having a population in excess of 750,000, or by a City Attorney in a city and county.

126. Each Defendant continues to misclassify its Drivers as independent contractors.

127. The People seek an order of this Court, pursuant to Labor Code section 2750.3(j), to prevent the continued misclassification of each Defendant's Drivers as independent contractors.

PRAYER FOR RELIEF

WHEREFORE, the People pray for the following relief:

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

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

3. Pursuant to Business and Professions Code section 17206, that each Defendant be assessed a civil penalty in an amount up to $2,500 for each violation of Business and Professions Code section 17200 et seq., as proven at trial;

4. Pursuant to Business and Professions Code section 17206.1, that each Defendant be assessed an additional civil penalty in an amount up to $2,500 for each violation of the UCL perpetrated against a senior citizen or disabled person, as proven at trial;

5. Pursuant to Labor Code section 2750.3(j), an order to prevent each Defendant from continuing to misclassify its Drivers as independent contractors;

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

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

Dated: May 5, 2020

Respectfully Submitted,

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