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SUPERIOR COURT OF CALIFORNIA  
COUNTY OF SAN FRANCISCO  
DEPARTMENT 304

THE PEOPLE OF THE STATE OF CALIFORNIA,

Plaintiff,

v.

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

Defendants.

Case No. CGC-21-590442

FURTHER ORDER RE THE PEOPLE OF THE STATE OF CALIFORNIA'S MOTION FOR PRELIMINARY INJUNCTION

**INTRODUCTION**

The above-entitled matter came on regularly for hearing on Wednesday, September 22, 2021. Following the hearing, the Court entered an order directing supplemental briefing. After the supplemental briefing, the Court held a second hearing on Tuesday, November 16, 2021. The Court provided the parties a further tentative ruling before the continued hearing. The appearances are as stated in the record. Having reviewed and considered the arguments and written submissions of all parties and being fully advised, the Court denies the motion.

**BACKGROUND**

**I. The September 23, 2021 Order**

The Court found a strong likelihood that the ABC test will govern the question of whether certain

1 Pros are properly classified as independent contractors. (See Sept. 23, 2021 Order, 8.) The Court found  
2 that Plaintiff is likely to prevail on the merits pursuant to the ABC test. (See *id.* at 20, 22.) Taking those  
3 two findings together, the Court found that Plaintiff is likely to prevail on the merits and that there is a  
4 strong likelihood that Plaintiff will be able to show that Defendant is not currently in compliance with the  
5 law. (See *id.* at 24.)

6 The Court found that the injunction sought in the moving papers was improper because it  
7 precluded Defendant from taking permissible legal pathways to compliance. (*Id.* at 24-25.) The Court  
8 directed supplemental briefing to allow Plaintiff to cure the defects in the proposed injunction and to  
9 permit briefing on the balancing of the harms that would be imposed by an amended proposed injunction.  
10 (See *id.* at 24-29.) Specifically, the Court directed a meet and confer process regarding the language of a  
11 proposed injunction followed by “simultaneous supplemental briefs regarding the propriety of the  
12 amended preliminary injunction and the manner in which that preliminary injunction may mitigate and/or  
13 cause harm during the pendency of this action,” followed by simultaneous reply briefs. (*Id.* at 28-29.)

## 14 **II. The Supplemental Briefing**

15 Pursuant to the September 23, 2021 Order, the parties submitted two rounds of contemporaneous  
16 supplemental briefing. Plaintiff filed the operative proposed injunction on October 15, 2021. (See Oct.  
17 15, 2021 Proposed Order.) At oral argument, Plaintiff proposed, as an alternative, entry of the October  
18 15, 2021 Proposed Order with paragraph 5 removed. The parties dispute whether entry of the proposed  
19 injunction, with or without modification, is proper.

### 20 **LEGAL STANDARD**

21 The governing legal standard is set forth in the September 23, 2021 Order. (See Sept. 23, 2021  
22 Order, 5.)

### 23 **DISCUSSION AND ANALYSIS**

24 Plaintiff contends that an injunction should issue because Plaintiff has demonstrated a strong  
25 likelihood of prevailing on the merits. (Plaintiff’s Opening Supplemental Brief, 8.) Plaintiff asserts that  
26 this in itself is sufficient to establish that the issuance of a preliminary injunction is in the public interest  
27 and mitigates any concerns about the harms caused by an erroneous decision. (*Id.* at 8, 12-13.) Further,  
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1 Plaintiff argues that Defendant has not offered evidence of irreparable harm sufficient to trigger a  
2 balancing analysis. (*Id.* at 8-11.) If a balancing analysis is reached, Plaintiff argues that the balance tilts  
3 in favor of entry of a preliminary injunction. (*Id.* at 11-20.)

4 Notwithstanding the Court's prior order and the limited scope of the supplemental briefing,  
5 Defendant summarily maintains that Plaintiff is unlikely to prevail on the merits at trial. (Defendant's  
6 Supplemental Reply Brief, 4, 6.) Defendant more strenuously argues that the balance of harms tilts  
7 strongly against the entry of a preliminary injunction because the proposed preliminary injunction will  
8 not prevent harm, but will cause harm to Defendant and affected Pros. (See Defendant's Opening  
9 Supplemental Brief, 12-16; Defendant's Supplemental Reply Brief, 6-10.)

10 First, the Court finds no basis to revisit its prior determination that Plaintiff has a strong likelihood  
11 of success on the merits. Second, the Court finds that Defendant has shown that adoption of a  
12 preliminary injunction would cause it grave or irreparable harm, such that the Court must consider and  
13 balance the actual consequences of granting or denying interim relief. Third, having considered and  
14 balanced those consequences, taking into consideration Plaintiff's strong likelihood of success on the  
15 merits, the Court denies Plaintiff's request for an interim preliminary injunction.

16 **I. *IT Corp.***

17 In *IT Corp.*, a governmental entity sought a preliminary injunction to enjoin an alleged violation of  
18 a zoning ordinance that specifically provided for injunctive relief. (*IT Corp. v. County of Imperial* (1983)  
19 35 Cal.3d 63, 66.) There, after finding that IT Corp. was disposing of unauthorized waste at Superstition  
20 Hills, the trial court issued a preliminary injunction that prohibited IT Corp. from doing so. (*Id.* at 68-  
21 69.)

22 The California Supreme Court began with the well-settled proposition that the decision to grant a  
23 preliminary injunction rests in the sound discretion of the trial court. (*Id.* at 69.) In general, the  
24 California Supreme Court has instructed trial courts to consider (1) the likelihood that the plaintiff will  
25 prevail on the merits at trial and (2) the interim harm that the plaintiff is likely to sustain if the injunction  
26 were denied as compared to the harm that the defendant is likely to sustain if the preliminary injunction  
27 were issued. (*Id.* at 69-70.)

1 In particular, where a legislative body has provided for injunctive for a violation of a statute or  
2 ordinance, the California Supreme Court ruled that “a showing by a governmental entity that it is likely  
3 to prevail on the merits should give rise to a presumption of public harm.” (*Id.* at 71-72.) However, that  
4 presumption does not constitute an irrebuttable presumption in favor of entering a preliminary injunction.  
5 (*Ibid.*) Accordingly, the California Supreme Court provided: “Where a governmental entity seeking to  
6 enjoin the alleged violation of an ordinance specifically provides for injunctive relief establishes that it is  
7 reasonably probable it will prevail on the merits, a rebuttable presumption arises that the potential harm  
8 to the public outweighs the potential harm to the defendant. If the defendant shows that it would suffer  
9 grave or irreparable harm from the issuance of the preliminary injunction, the court must then examine  
10 the relative actual harms to the parties. ... Once the defendant has made such a showing, an injunction  
11 should issue only if—after consideration of both (1) the degree of certainty of outcome on the merits, and  
12 (2) the consequences to each of the parties of granting or denying interim relief—the trial court concludes  
13 that an injunction is proper. At this stage of the analysis, no hard and fast rule dictates which  
14 consideration must be accorded greater weight by the trial court. For example, if it appears fairly clear  
15 that the plaintiff will prevail on the merits, the trial court might legitimately decide that an injunction  
16 should issue even though the plaintiff is unable to prevail in a balancing of the probable harms. On the  
17 other hand, the harm which the defendant might suffer if an injunction were issued may so outweigh that  
18 which the plaintiff might suffer in the absence of an injunction that the injunction should be denied even  
19 though the plaintiff appears likely to prevail on the merits. ... The ultimate goal of any test to be used in  
20 deciding whether a preliminary injunction should issue is to minimize the harm which an erroneous  
21 interim decision may cause.” (*Id.* at 72-73 [footnote omitted].)

22 In the case before it, the California Supreme Court held that the public entity was entitled to a  
23 presumption that it would suffer greater harm if the injunction were not issued than IT Corp. would if the  
24 injunction were issued because it demonstrated that it was reasonably probable that IT Corp. was  
25 processing unauthorized waste at Superstition Hills. (*Id.* at 75.) Further, the California Supreme Court  
26 held that IT Corp. failed to make a showing of grave or irreparable harm to rebut the presumption even  
27 though the injunction would cause IT Corp. substantial economic loss of waste disposal and  
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1 transportation revenues because IT Corp. would still be able to process certain authorized types of waste  
2 at Superstition Hills. (*Ibid.*)

## 3 II. *Uber*

4 In *Uber*, the People brought an enforcement action against Uber and Lyft seeking to enjoin them  
5 from improperly classifying drivers using their ride-hailing platforms as independent contractors rather  
6 than employees. (*People v. Uber Technologies, Inc.* (2020) 56 Cal.App.5th 266, 273.) The People  
7 alleged that misclassification deprived drivers of a host of benefits to which they were entitled, gave  
8 Uber and Lyft an unfair advantage against competitors, and cost the public significant sums in lost tax  
9 revenues and increased social-safety-net expenditures. (*Ibid.*) The trial court issued a preliminary  
10 injunction that restrained Uber and Lyft from classifying their drivers as independent contractors. (*Ibid.*)  
11 Finding no abuse of discretion in granting the preliminary injunction, the Court of Appeal affirmed its  
12 issuance. (*Ibid.*)<sup>1</sup>

13 The *Uber* Court ruled that the *IT Corp.* framework applies whether a proposed injunction is  
14 mandatory or prohibitory. (*Id.* at 283-86.) In so doing, the *Uber* Court explained that the burdens of  
15 coming into compliance with the injunction are taken into account under the *IT Corp.* framework in  
16 determining whether defendants face grave or irreparable harm and, if so, in the weighing of relative  
17 harms. (*Id.* at 285.)

18 At the first step of the *IT Corp.* analysis, the Court of Appeal found that the People had shown  
19 “more than a reasonable probability” of prevailing on the merits. (*Id.* at 286-302.)

20 At the second step of the *IT Corp.* analysis, the Court of Appeal noted that Uber and Lyft had  
21 submitted extensive evidence of the harm they claimed they would suffer by the issuance of an erroneous  
22 preliminary injunction. (*Id.* at 302-03.) The Court of Appeal expressed some doubt as to whether Uber  
23 and Lyft had shown grave or irreparable harm – noting that a prohibition from violating the law does not  
24 constitute grave or irreparable harm and that the financial burdens identified did not rise to the level of  
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26 <sup>1</sup> Although the Court of Appeal affirmed the issuance of the preliminary injunction, the Court of Appeal  
27 substantially delayed its effective date. (See *Uber*, 56 Cal.App.5th at 282, 282 n.15, 317.) One effect of  
28 doing so was that Proposition 22, a ballot initiative that was pending when *Uber* was decided, was  
enacted before the preliminary injunction went into effect. After remittitur, this Court entered an order  
granting a joint request to dissolve the preliminary injunction in that action, made on the basis of the  
defendants’ contention that they complied with Proposition 22.

1 irreparable harm. (*Id.* at 306.) However, the Court of Appeal did not enter a holding on the second step,  
2 instead observing that there was “evidence of disruption to defendants’ businesses” and the legal  
3 principle that courts must “consider the potential harm caused by an *erroneous* interim decision[,]” the  
4 Court of Appeal “assume[d] that if the injunction were ultimately determined to have been wrongly  
5 entered, the harm to defendants could fairly be considered grave or irreparable.” (*Id.* at 307 [emphasis in  
6 original].)

7 At the third step of the *IT Corp.* analysis, the Court of Appeal held that the trial court acted within  
8 its discretion in balancing the harms identified by the parties. (*Ibid.*) The Court of Appeal explained that  
9 even if the plaintiff was unable to prevail on the balancing of the harms, the trial court could still have  
10 properly entered the preliminary injunction because it found it fairly clear that the People would prevail  
11 on the merits. (*Id.* at 307.) As the reviewing court, the Court of Appeal explained that it must defer to  
12 the trial court’s exercise of discretion so long as the trial court properly understood its discretion as a  
13 legal matter and made a choice that was within the permissible range of legal options before it. (*Id.* at  
14 307.) Faced with “compelling policy arguments favoring both sides of the choice the court faced[,]” “the  
15 trial court had a reserve of discretionary power under *IT Corp.* to choose between the contending  
16 positions, with inevitable trade-offs entailed either way.” (*Id.* at 307-08.) The Court of Appeal explained  
17 that the trial court’s duty, sitting in equity, was to arrive at a just solution taking into account the public  
18 interest. (*Id.* at 308.) The Court of Appeal ruled that the trial court did so, applying the balancing test at  
19 the final step of the *IT Corp.* analysis on the basis of record evidence and the likelihood of success on the  
20 merits. (*Id.* at 307-13.) The Court of Appeal explained that the trial court did not err in issuing a  
21 preliminary injunction because the “trial court found that rectifying the various forms of irreparable harm  
22 shown by the People more strongly serves the public interest than protecting Uber, Lyft, their  
23 shareholders, and all of those who have come to rely on the advantages of online ride-sharing delivered  
24 by a business model that does not provide employment benefits to drivers” based on a proper  
25 consideration of the harms shown in the record and an “overwhelming likelihood” that the People would  
26 prevail at trial. (*Id.* at 312-13.)

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1 **III. Step One – Likelihood of Success on the Merits**

2 The Court addressed the likelihood of prevailing on the merits in its September 23, 2021 Order  
3 and did not permit supplemental briefing on the issue. (See Sept. 23, 2021 Order, 7-22.) Defendant’s  
4 unauthorized supplemental arguments do not persuade the Court to modify its ruling.

5 In Defendant’s opening supplemental brief, Defendant argued that Defendant is making product  
6 changes to address the reasons the Court provided in its September 23, 2021 Order for finding that  
7 Plaintiff is likely to prevail on the merits. (See Defendant’s Opening Supplemental Brief, 5-6.) To that  
8 end, Defendant discussed why it contends that various product changes it intends to complete by March  
9 2022 will bring it into compliance with the law. (*Id.* at 6-12.) In Defendant’s reply brief, Defendant goes  
10 one step further. There, Defendant asserts, without citation, that because it will change its business  
11 practices to bring itself into compliance before trial, Plaintiff is not likely to succeed at trial.  
12 (Defendant’s Supplemental Reply Brief, 4, 6.)

13 First, the Court does not interpret this line of argument as a request to reconsider the Court’s  
14 ultimate ruling on the likelihood of success on the merits. Second, to the extent this line of argument  
15 could be construed as a request for reconsideration, the only clear argument Defendant has offered for a  
16 different result is premised on the assertion that certain changes to its business model will be completed  
17 by March 2022. The evidentiary support for that assertion is a declaration providing a “best estimate” of  
18 March 2022 as a completion date for some of the relevant changes. (See Supp. DeGracia Decl. ¶¶ 10-  
19 11.) The Court is not persuaded by Defendant’s cursory assertion that the Court should evaluate  
20 Plaintiff’s likelihood of success on the merits considering generally described changes to Defendant’s  
21 business model that Defendant estimates will be completed in advance of trial. Accordingly, the Court  
22 does not reconsider this aspect of its September 23, 2021 Order.

23 **IV. Step Two – Grave or Irreparable Harm to Defendant**

24 Because this case involves public entities that have demonstrated a likelihood of success on the  
25 merits in connection with a statute that provides for injunctive relief, a rebuttable presumption of public  
26 harm has arisen. (See *IT Corp.*, 35 Cal.3d at , 71-72, 75; *Uber*, 56 Cal.App.5th at 283-84.) If Defendant  
27 has not demonstrated that the issuance of an injunction will result in grave or irreparable harm to it, then  
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1 an injunction must issue. (See *IT Corp.*, 35 Cal.3d at 72-73, 75.) If Defendant has demonstrated that the  
2 issuance of an injunction will result in grave or irreparable harm to it, then the Court must decide whether  
3 it is proper to issue an injunction after consideration of both (1) the degree of certainty of outcome on the  
4 merits, and (2) the consequences to each of the parties of granting or denying interim relief. (See *id.* at  
5 72-73; *Uber*, 56 Cal.App.5th at 283-84.) As set forth below, Defendant has demonstrated that the  
6 issuance of an injunction would cause it grave or irreparable harm. Accordingly, the Court must proceed  
7 to step three of the *IT Corp.* analysis.

8 Defendant argues that it will suffer grave or irreparable harm if the Court enters the requested  
9 preliminary injunction because (1) Defendant would be required to temporarily shut down its business  
10 until it could modify its operations to comply with Labor Code § 2777; (2) Defendant would be required  
11 to invest resources in modifying its business operations; (3) Defendant would be put at a competitive  
12 disadvantage vis-à-vis its competitors to the extent it modifies its business practices to comply with the  
13 preliminary injunction. (Defendant's Opening Supplemental Brief, 13-16; Defendant's Supplemental  
14 Reply Brief, 6-8.) Plaintiff contends that (1) the Court may not consider any costs of complying with the  
15 law as grave or irreparable harm; and (2) Defendant's evidence does not support a finding of grave or  
16 irreparable harm. (Plaintiff's Opening Supplemental Brief, 8-11; Plaintiff's Supplemental Reply Brief, 5,  
17 13-16.)

18 First, the Court credits Defendant's evidence that issuance of the preliminary injunction will  
19 require at least a temporary suspension of the line of business implicated by this action throughout the  
20 state of California. (DeGracia Decl. ¶¶ 29-31 [if Defendant were required to reclassify Pros as  
21 employees, Defendant would need to temporarily shut down its California business and incur millions of  
22 dollars in redevelopment costs and lost business]; Supp. DeGracia Decl. ¶¶ 3-12 [outlining changes  
23 Defendant is making to business in attempt to comply with the law as it understands it pursuant to the  
24 September 23, 2021 Order without reclassifying its workers as employees and stating that if it is required  
25 to make the payments required by the October 15, 2021 Proposed Order in the interim, it would have no  
26 choice but to shut down the affected services]; Oct. 15, 2021 Proposed Order ¶¶ 1-2, 4-5.) The Court is  
27 not persuaded that the testimony provided by Defendant lacks credibility, even read in the context of the  
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1 exhibits Plaintiff identifies. (See Plaintiff’s Opening Supplemental Brief, 8-11; Plaintiff’s Supplemental  
2 Reply Brief, 13-16.)<sup>2</sup>

3         Second, the Court notes that Plaintiff has expressly refused to take a position as to whether any of  
4 Defendant’s competitors, as identified in the record, properly classify their workers as independent  
5 contractors. (See Plaintiff’s Supplemental Reply Brief, 16 n.7; Oct. 29, 2021 Chau Decl. ¶¶ 3-10;  
6 Defendant’s Opening Supplemental Brief, 9-10, 15-16; Reply, 8 n.6; Oct. 15, 2021 Singla Decl., Exs. A-  
7 H.) This lends credence to the proposition that Defendant will be put at a competitive disadvantage if it  
8 is preliminarily enjoined from operating its business while its competitors continue in the same business  
9 unabated, particularly if Defendant is forced to shut down an entire line of business in California.  
10 Indeed, Plaintiff posits that if Defendant is forced to shut down a line of business, one theoretical result  
11 would be to redirect business to other companies – Amazon, TaskRabbit, and Thumbtack – as to whose

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12  
13 <sup>2</sup> In short, Plaintiff argues that Defendant has a demonstrated ability to tailor compensation and monitor  
14 Pros, such that the Court should discredit testimony from Defendant’s declarant to the effect that  
15 Defendant would have to shut down its California business if a preliminary injunction is entered because  
16 it cannot, as a practical matter, secure a stay of that injunction. (See Supp. DeGracia Decl. ¶ 12; Oct. 15,  
17 2021 Proposed Order ¶¶ 4-5; Plaintiff’s Supplemental Reply Brief, 13-16.) The Court is not persuaded  
18 that the facts highlighted by Plaintiff render the bottom-line representation in the declaration incredible.  
19 First, there is no conflict between the present declaration and the public-policy-oriented press release  
20 identified by Plaintiff. (Compare Supp. DeGracia Decl. ¶ 12; with Oct. 15, 2021 Supp. Stillman Decl.,  
21 Ex. 7; Plaintiff’s Supplemental Reply Brief, 13-14.) Second, if proven, the existence of payment systems  
22 in certain states that allow Defendant to ensure a minimum wage of \$15 per hour and a contribution of  
23 \$1.25 per hour to a benefit contributions fund does not demonstrate that Defendant has systems in place to  
24 make all payments that would be required by the proposed preliminary injunction, although it does tend to  
25 support the proposition that Defendant has experience with implementing such systems that would lend  
26 credence to their time estimates. (Compare Supp. DeGracia Decl. ¶ 12; with Oct. 15, 2021 Proposed  
27 Order ¶ 5; Oct. 15, 2021 Supp. Stillman Decl., Ex. 9; Plaintiff’s Supplemental Reply Brief, 14.) Notably,  
28 however, this line of argument depends on the Court (1) considering inadmissible hearsay – an out-of-  
court statement from Gig Worker Advocates – for the truth of the matter asserted and (2) assuming that a  
negotiated agreement to pay Pros “\$15 for every hour they work on the platform” is tantamount to a  
negotiated agreement to pay a minimum wage of \$15 per hour worked under California law. Third,  
Plaintiff argues that Defendant does have “systems to” “know what happens on any job” because  
Defendant has Pros fill out progress reports on the Handy App and collects customer feedback, including  
in resolving customer complaints and issuing fines. (See Plaintiff’s Supplemental Reply Brief, 15; Supp.  
DeGracia Decl. ¶ 12.) Whether the methods by which Defendant may collect information reported by  
Pros or customers constitute “systems to” “know what happens on any job” is a matter that may be  
subject to reasonable debate – the declarant’s testimony on the issue does not render his core testimony  
incredible. Fourth, and similarly, Plaintiff argues that Defendant does have “systems to” track travel time  
and distance because it can use location tracking. (See Plaintiff’s Supplemental Reply Brief, 14-15; Supp.  
DeGracia Decl. ¶ 12.) While the Court finds the testimony on this point less clear, the Court does not find  
that this testimony detracts from the testimony to the effect that if Defendant were required to make the  
payments required by paragraph 5 of the proposed preliminary injunction in the near term, Defendant  
would have no choice but to shut down the affected services. (See Supp. DeGracia Decl. ¶ 12; Oct. 15,  
2021 Proposed Order ¶¶ 4-5.)

1 legal compliance Plaintiff refrains from opining. (See Plaintiff’s Supplemental Reply Brief, 16, 16 n.7;  
2 DeGracia Decl. ¶ 30 [Defendant will lose business if it is forced to temporarily suspend its operations].)

3 Third, the Court underscores that it is evaluating whether Defendant will suffer grave or  
4 irreparable harm if the Court erroneously issues a preliminary injunction. (See *Uber*, 56 Cal.App.5th at  
5 283, 302, 307; *IT Corp.*, 35 Cal.3d at 73.) Accordingly, the Court is not persuaded that it may disregard  
6 harms raised by Defendant that can be described as costs of complying with the law, as the Court has  
7 interpreted it. (Compare Plaintiff’s Supplemental Opening Brief, 8-9, 9 n.2.)<sup>3</sup> The Court may discount  
8 those harms based on the likelihood of success at the third step of the *IT Corp.* analysis, but it may not  
9 deny Defendant the benefit of the third step of the *IT Corp.* analysis by disregarding them entirely at step  
10 two. (See, generally, *Uber*, 56 Cal.App.5th at 307 [if it is fairly clear that the plaintiff will prevail on the  
11 merits, a trial court might legitimately decide that an injunction should issue even though the plaintiff is  
12 unable to prevail on the balancing of probable harms].)<sup>4</sup>

13 Fourth, the Court finds that the harms identified by Defendant include harms that can properly be  
14 described as grave or irreparable.

15 The Court is not persuaded that financial injuries identified by Defendant, such as the costs that  
16 would be incurred to operate a business in compliance with a preliminary injunction and/or the lost sales  
17 during a temporary shutdown, are categorically excluded from constituting grave or irreparable harm.  
18 (Compare DeGracia Decl. ¶¶ 29-31; Supp. DeGracia Decl. ¶¶ 3-12; with Plaintiff’s Opening  
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20 <sup>3</sup> Plaintiff cites *People ex rel. Reisig v. Acuna* (2010) 182 Cal.App.4th 866, 882 for the proposition that  
21 the costs of coming into compliance with the law do not constitute grave or irreparable harm in the  
22 context of a preliminary injunction. (Plaintiff’s Opening Supplemental Brief, 8-9, 9 n.2.) There, the  
23 Court of Appeal summarily stated that defendants could not “claim harm from any restriction in the  
24 activities that constitute the public nuisance.” (*Reisig*, 182 Cal.App.4th at 882.) But, in the specific  
25 context of step two of the *IT Corp.* analysis, the *Uber* Court recently acknowledged *Reisig* before  
26 confirming that the harm to a defendant that the trial court properly considers is the harm caused by  
27 erroneously issuing a preliminary injunction. (*Uber*, 56 Cal.App.5th at 306-07.) This Court follows  
28 *Uber*. Accordingly, this Court must consider the potential harm caused by an erroneous interim decision  
– by issuing a preliminary injunction that is not warranted by the law – at the second step of the *IT Corp.*  
analysis. (*Id.* at 307.)

<sup>4</sup> Plaintiff argues that if Defendant has suffered irreparable harm here, then governmental entities would  
never be able to get a preliminary injunction because defendants would always be able to show irreparable  
harm. (Plaintiff’s Supplemental Reply Brief, 17 n.8.) First, this misstates the law. A defendant does not  
defeat a motion for preliminary injunction by a governmental entity merely by showing that it will suffer  
irreparable harm if the preliminary injunction is erroneously granted. Second, the Court is not persuaded  
that the irreparable harms claimed here are claimed in every case.

1 Supplemental Brief, 8-9.)

2 One ground for the Court of Appeal's holding in *Uber* was that substantial evidence supported the  
3 trial court's finding that drivers were suffering ongoing irreparable harm. (See *Uber*, 56 Cal.App.5th at  
4 309, 312.) In support of that finding, the Court of Appeal explained that the damages defendants caused  
5 by misclassifying drivers as independent contractors were immeasurable in the absence of the  
6 employment records that defendants failed to maintain, such that injunctive relief was appropriate to put  
7 an end to the irreparable financial harm that was ongoing. (See *id.* at 311-12.) In so doing, the Court of  
8 Appeal cited *Friedman v. Friedman* (1993) 20 Cal.App.4th 876, 890 for the proposition that monetary  
9 loss does not constitute irreparable harm unless the amounts are unrecoverable. (*Id.* at 311.)  
10 Accordingly, *Uber* stands for the proposition that certain types of monetary harm can support a finding of  
11 irreparable harm in preliminary injunction proceedings.<sup>5</sup>

12 The Court is persuaded that, consistent with the reasoning in *Uber*,<sup>6</sup> the economic harms claimed  
13 by Defendant in this case are grave or irreparable. Plaintiff has not identified any mechanism whereby  
14 Defendant could be reimbursed for the development costs incurred complying with an erroneous  
15 preliminary approval order or for the loss of business occasioned by the entry of a preliminary injunction  
16 with which Defendant could not comply without shutting down a line of its business in California.  
17 Moreover, Plaintiff has not identified any mechanism available to remedy the loss of goodwill or market

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19 <sup>5</sup> In *Uber*, the Court of Appeal acknowledged federal authority finding irreparable harm in incurring large  
20 costs in restricting business and losing customer goodwill. (See *Uber*, 56 Cal.App.5th at 305-06 [citing  
21 *American Trucking Ass'ns v. City of Los Angeles* (9th Cir. 2009) 559 F.3d 1046, 1058].) At the same  
22 time, the Court of Appeal cited *IT Corp.* for the proposition that the financial burdens claimed by Uber  
23 and Lyft did not rise to the level of irreparable harm. (*Id.* at 306 [citing *IT Corp.*, 35 Cal.3d at 75].)  
24 However, the Court's observations about irreparable harm to Uber and Lyft were dicta insofar as the  
25 Court of Appeal held that the trial court's entry of a preliminary injunction was correct assuming that  
26 Uber and Lyft would suffer grave or irreparable harm as a result of an erroneous interim decision. (*Id.* at  
27 307.) Moreover, the California Supreme Court in *IT Corp.* did not say that economic loss is categorically  
28 excluded from constituting grave or irreparable harm, but that IT Corp. failed to establish that there would  
be "harm sufficient" to constitute grave or irreparable injury where it would still be able to use the waste  
site to process authorized waste. (*IT Corp.*, 35 Cal.3d at 75.)

<sup>6</sup> To be sure, as explained above, the *Uber* Court held that irreparable harm to employees was ongoing  
without reaching a holding, one way or the other, as to irreparable harm to Uber and Lyft. While one  
important focus of the rationale set forth in *Uber* is the harm suffered by the employees and the harm  
suffered by the employers would focus on the substantial importance of the timely payment of wages and  
benefits to employees, the rationale also relies on difficulty measuring losses in monetary terms and, more  
generally, the unavailability of relief through a claim for damages. (See *Uber*, 56 Cal.App.5th at 311-12.)  
These latter rationales apply equally here, such that the Court is unable to reach a different result pursuant  
to the rationales set forth in *Uber*.

1 share that would flow from erroneously shutting down Defendant's business while its competitors remain  
2 in operation. Accordingly, the Court is persuaded that Defendant has identified grave or irreparable  
3 harms that would flow from an erroneous interim decision.

4 Fifth, the Court is not persuaded that striking paragraph 5 from the proposed preliminary  
5 injunction, as Plaintiff proposed at the hearing, prevents grave or irreparable harm to Defendant from an  
6 erroneous decision.

7 If adopted without paragraph 5, the preliminary injunction would permit Defendant to effectively  
8 stay the application of the preliminary injunction to preclude it from classifying Covered Pros as  
9 independent contractors for an additional 90 days<sup>7</sup> from the date the preliminary injunction is entered  
10 while it attempts to comply with Labor Code § 2777 as this Court has interpreted it. (See Oct. 15, 2021  
11 Proposed Order ¶¶ 1-2, 4.) During that period, the parties may present, and the Court will resolve, any  
12 disputes concerning whether Defendant's modifications are sufficient to bring Defendant into compliance  
13 with Labor Code § 2777. (See *id.* at ¶ 4.)

14 If Defendant persuades the Court that its proposed modifications are sufficient and successfully  
15 implements them before the provision in the preliminary injunction prohibiting Defendant from  
16 classifying Covered Pros as independent contractors takes effect, then the Court will monitor  
17 Defendant's ongoing compliance pursuant to the preliminary injunction, but do nothing more. (See *ibid.*)  
18 If Defendant fails to persuade the Court that the changes are sufficient to comply with Labor Code §  
19 2777 or fails to implement the changes before the 120 calendar days have passed from the date the  
20 preliminary injunction has entered, Defendant will be enjoined from classifying Covered Pros as  
21 independent contractors 120 calendar days after the preliminary injunction was entered. (See *id.* at ¶¶ 1-  
22 2, 4.)

23 If Defendant is enjoined from classifying Covered Pros as independent contractors 120 calendar  
24 days after the preliminary injunction is entered, Defendant will suffer grave or irreparable harm because  
25 it will be forced to shut down a line of its business. (See *Supp. DeGracia* ¶ 12.)<sup>8</sup> That is, if paragraph 1

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27 <sup>7</sup> The provision of the proposed preliminary injunction enjoining Defendant from classifying Covered  
28 Pros as independent contractors would go into effect 30 calendar days after it is entered. (See Oct. 15,  
2021 Proposed Order ¶ 1.)

<sup>8</sup> To the extent that the DeGracia declarations do not close the door to Defendant being able to operate in

1 of the preliminary injunction goes into effect 120 calendar days from this order, Defendant will suffer  
2 grave or irreparable harm if the Court's decisions, including its initial analysis of the merits and future  
3 rulings concerning the adequacy of Defendant's modifications and the implementation of the same, are  
4 erroneous. Put another way, if the preliminary injunction actually enjoins Defendant from any real-world  
5 conduct related to the classification of Covered Pros as independent contractors, then erroneous  
6 preliminary decisions will cause grave or irreparable harm to Defendant.

7 Removing paragraph 5 from the proposed preliminary injunction reduces the risk of grave or  
8 irreparable harm to Defendant only insofar as it reduces the chance that the operative term of the  
9 proposed preliminary injunction will ever go into effect. But the Court will consider the potential harm  
10 from the proposed preliminary injunction if its operative term does go into effect.

11 **V. Step Three - The Consequences to Each of the Parties of Granting or Denying Interim Relief**

12 The foundational premise of Plaintiff's argument is that, where there is at least a reasonable  
13 likelihood of success on the merits, the harm to workers, law-abiding competitors, and the public, in  
14 terms of at least reduced tax revenues, flowing from an employer's decision to misclassify its workers  
15 outweighs the harm to the employer flowing from the interim imposition of the preliminary injunction.  
16 (See Plaintiff's Opening Supplemental Brief, 11-12; Plaintiff's Supplemental Reply Brief, 8-9, 9 n.1;  
17 *Uber*, 56 Cal.App.5th at 309-13.) The Court generally agrees with this foundational premise. Moreover,  
18 the Court agrees that Pros are suffering ongoing harm, including significant irreparable harm, because  
19 they are being classified as independent contractors when they should be classified as employees. (See  
20 *Uber*, 56 Cal.App.5th at 312.)

21 Nevertheless, in *IT Corp.* the California Supreme Court directed trial courts to issue a preliminary  
22 injunction that will visit grave or irreparable harm on a defendant only if, after considering both the  
23 degree of certainty of the outcome on the merits and the "consequences to each of the parties of granting  
24 or denying interim relief" the trial court "concludes that an injunction is proper." (*IT Corp.*, 35 Cal.3d at  
25 72; see also *Uber*, 56 Cal.App.5th at 283-84.) As detailed below, having considered the relevant factors

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27 some capacity under an employment model, they also persuasively support the inference that efforts to  
28 switch to an employment model will not be completed within 120 days as Defendant is attempting to  
switch to a Labor Code § 2777 independent contractor model. (DeGracia Decl. ¶¶ 29-31; Supp. DeGracia  
Decl. ¶ 12.)

1 in the context of the record presented, the Court does not conclude that a preliminary injunction is proper  
2 here.

3 First, the Court finds two points clear. One, if the Court denies the requested preliminary  
4 injunction, Defendant will continue operating its business in a way that treats covered Pros as if they are  
5 independent contractors even though Defendant should be treating covered Pros as employees for at least  
6 a period of several months.<sup>9</sup> Thus, covered Pros will suffer ongoing irreparable injury for at least a  
7 period of several months. (See Supp. DeGracia Decl. ¶¶ 3-11; Sept. 23, 2021 Order, 26; *Uber*, 56  
8 Cal.App.5th at 309, 311-12.) Two, Defendant will suffer direct and substantial irreparable harm if the  
9 preliminary injunction is erroneously entered. (See Supp. DeGracia Decl. ¶¶ 3-12; DeGracia Decl. ¶¶  
10 29-31; Sept. 23, 2021 Order, 26.)

11 Second, the Court finds it appropriate, under *IT Corp.*, to consider the effect granting or denying  
12 interim relief may have on preventing or causing harm. (See *IT Corp.*, 35 Cal.3d at 72 [court’s  
13 considerations should include “consequences to each of the parties of granting or denying interim  
14 relief”]; see also *Uber*, 56 Cal.App.5th at 308 [courts must take into account the public interest when  
15 assessing the propriety of injunctive relief].)

16 As it relates to Defendant, the analysis is straightforward. If the Court does nothing, Defendant  
17 will not be harmed. If the Court enters a preliminary injunction, Defendant will be harmed as outlined  
18 above. However, the strong probability that Plaintiff will prevail on the merits mitigates that harm, for  
19 the purposes of the step three balancing analysis. (See *IT Corp.*, 35 Cal.3d at 72-73 [if it appears fairly  
20 clear that the public entity plaintiff will prevail on the merits, a trial court “might legitimately” decide  
21 that an injunction should issue even though the plaintiff is unable to prevail in a balancing of the  
22 probably harms]; *Uber*, 56 Cal.App.5th at 307.)

23 As it relates to Pros, Defendant’s competitors, and the general public, the analysis is not so  
24 straightforward.

25 As noted above, the Court begins with the proposition that if it does not enter a preliminary  
26

27 <sup>9</sup> Defendant estimates that it will have completed sufficient changes to its operations that it may lawfully  
28 treat covered Pros as independent contractors in March 2022. (See Supp. DeGracia Decl. ¶¶ 3-11;  
Defendant’s Opening Supplemental Brief, 6-12.) Whether this turns out to be true turns on a legal  
analysis of the impact of future events. The Court does not reach that analysis here.

1 injunction, Defendant will irreparably harm covered Pros by misclassifying them as independent  
2 contractors for a period of at least several months. (See Supp. DeGracia Decl. ¶¶ 3-11; Sept. 23, 2021  
3 Order, 26; *Uber*, 56 Cal.App.5th at 309, 311-12.) Nevertheless, the Court does not find persuasive  
4 record evidence supporting the conclusion that entering the requested preliminary injunction will put  
5 Pros in a better position in the interim period between now and trial. (See Sept. 23, 2021 Order, 26-27.)<sup>10</sup>  
6 Entry of the requested order will not result in the reclassification of covered Pros or in payment of better  
7 compensation to Pros, but in a period of indeterminate duration in which covered Pros will not be able to  
8 secure work from Defendant during which time Defendant may seek to modify its business model so as  
9 to lawfully classify covered Pros as independent contractors. (See DeGracia Decl. ¶¶ 29-31; Supp.  
10 DeGracia Decl. ¶¶ 3-11.) During this time period, Pros may either secure work elsewhere, including by  
11 using services provided by Defendant's competitors, or not at all.<sup>11</sup> To the extent Pros secure work  
12 elsewhere, there is no indication, such as evidence that Defendant's competitors utilize an employee-

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14 <sup>10</sup> Plaintiff argues that the Legislature has already determined that injunctive relief is in the public interest,  
15 so the Court need not take up the issue. (See Plaintiff's Opening Supplemental Brief, 12-13.) The Court  
16 is not in full agreement. The three-step *IT Corp.* analysis requires the Court to consider the impact  
17 granting or denying interim relief will have in the time period before trial if the defendant will suffer  
18 grave or irreparable harm as a result of the requested injunctive relief. (See *IT Corp.*, 35 Cal.3d at 72-73.)  
19 This necessarily entails a consideration of the impact that entering the requested injunctive relief on a  
20 preliminary basis will have in an individual case. The Legislature has clearly expressed an intent to end  
21 misclassification by authorizing public prosecutors to enjoin the practice. (See Lab. Code, § 2786.) After  
22 a trial on the merits, there would be no reason for a trial court to concern itself with the short-term effects  
23 of such an injunction, including if the injunction is erroneously entered. But at the preliminary injunction  
24 stage, the Court must do so. Moreover, the statute is of broad application. The Court agrees that there  
25 would be a significant interim benefit to enjoining misclassification prior to trial in a market where work  
26 opportunities are available on an employment basis or where the enjoined defendant has the wherewithal  
27 to switch to an employment model. For example, if a market participant misclassifies its employees to  
28 offer services at a lower price than other market participants who use an employment model, there would  
be support for the inferences that workers would have better opportunities and law-abiding competitors  
would be protected from interim harm if the violator is forced to adopt an employment model or exit the  
market. But the preventable interim harm here must be measured on the unique facts the parties have  
developed in this case. The Court is unable to infer that such conditions hold here on the record  
presented.

<sup>11</sup> Plaintiff argues that there is no evidence that Pros will actually be in a worse position, because there is  
no evidence that Pros will be unable to make up lost income opportunities. (Plaintiff's Supplemental  
Reply Brief, 16.) The Court agrees with this argument and is unpersuaded by Defendant's contentions  
that entering the requested injunctive relief will necessarily harm Pros through Defendant's market exit.  
(Compare Defendant's Opening Supplemental Brief, 14-15.) But the record also lacks evidence adequate  
to infer that Pros will actually be in a better position during the pendency of this litigation. Speculating  
that Pros will be able to make up lost income opportunities without evidence provides cold comfort.  
(Compare Plaintiff's Supplemental Reply Brief, 16.) This is particularly true where Plaintiff expressly  
disclaims the position that the obvious alternative sources of work opportunities would treat Pros any  
better, or even as well as, Defendant does. (See *id.* at 16 n.7.)

1 based business model, that such work is likely to confer the benefits of employee status or otherwise  
2 place Pros in a better position than they are currently in. (See Plaintiff's Supplemental Reply Brief, 16  
3 n.7.)<sup>12</sup> To the extent Defendant satisfies the preliminary injunction by lawfully treating covered Pros as  
4 Labor Code § 2777 independent contractors rather than employees, there is no evidence that covered  
5 Pros will be in a better position than they are without the preliminary injunction.<sup>13</sup> To the extent  
6 Defendant is unsuccessful in its attempts to do so, it is unclear whether at some point in the future  
7 Defendant may operate a business in California that treats all, or some subset of, the covered Pros as  
8 employees.<sup>14</sup>

9 During the hearing, Plaintiff argued that the foregoing discussion is speculative because it is not  
10 supported by evidence. The Court finds this argument unpersuasive for several reasons. First, the Court  
11 is satisfied that the immediate ramifications that entering interim injunctive relief will have on Pros,  
12 including their likely ability to secure work and the compensation they will receive therefor, are not so  
13 attenuated as to be disregarded in assessing whether a preliminary injunction should issue given the bases  
14 on which the preliminary injunction is sought. (See *Uber*, 56 Cal.App.5th at 307-08 [trial court has a  
15 reserve of discretion at the third step of the *IT Corp.* analysis to weigh compelling policy arguments  
16 favoring both sides of the choice the trial court faces to fulfill its duty to arrive at a just solution].)  
17 Second, Court's fundamental conclusion is that there is an absence of evidence in the record from which

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19 <sup>12</sup> Plaintiff argues that the Court should not withhold preliminary injunctive relief because Defendant's  
20 competitors may also violate the law because "two wrongs do not make a right." (Plaintiff's  
21 Supplemental Reply Brief, 16 n.7.) To be clear, the Court does not find that Defendant's conduct is  
22 "right." However, the Court does evaluate the likely interim consequences of entering a preliminary  
23 injunction. It is not proper to preliminarily enjoin every wrong; a fact-specific analysis is required. The  
24 Court finds it appropriate to consider basic information about the market that a preliminary injunction  
25 would be modifying in evaluating the interim consequences of that injunction. Ultimately, Plaintiff points  
26 to no evidence in the record that supports this Court finding that entering preliminary injunctive relief  
27 would have any interim effect, as to Pros, other than plucking them from the frying pan and casting them  
28 into the fire.

<sup>13</sup> Plaintiff argues that focusing on Labor Code § 2777 is improper because (1) complying with Labor  
Code § 2777 merely changes the test used to evaluate proper classification; and (2) there is no way to  
know if workers would be properly classified under a different test. (Plaintiff's Supplemental Brief, 9.)  
Again, the Court agrees with the points as stated. But Plaintiff had an opportunity to argue that it was  
likely to prevail under the alternative test and did not avail itself of it. (See Sept. 23, 2021 Order, 22.)  
The Court is left with the possibility that the changes Defendant makes to come into compliance will be  
of no material benefit to Pros, such that any benefit they receive from an interim order may be constrained  
to the benefits that inure to them during the suspension of Defendant's relevant service.

<sup>14</sup> The purpose of this observation is simply to underscore that the downstream effects of an interim  
injunction are, in the present case, too speculative to assess.



1 to infer, in the context of the limited record presented, that entering the proposed preliminary injunction  
2 will mitigate the interim harm to workers during the interim period in which it will be in effect. Third,  
3 the Court identified this evidentiary deficiency in its September 23, 2021 Order and authorized Plaintiff  
4 to submit a supplemental filing to address the issue. (See Sept. 23, 2021 Order, 26:8-12, 27:2-6, 28:7-10,  
5 29:2-4.) Although the supplemental filings included evidentiary submissions, they did not address this  
6 issue. The Court is constrained to work with the record that the parties have generated, and draws the  
7 inferences that are supported by the evidence. If the Court is unable to find evidence to support the  
8 inference that the interim benefit sought will be obtained if the Court grants the relief requested, then, in  
9 failing to adopt that inference, the Court is not speculating without evidence but refusing to do so.

10 As alluded to above, the Court is also unable to find that the proposed preliminary injunction will  
11 protect the interests of Defendant's law-abiding competitors because Plaintiff has not identified any  
12 participants in the relevant market that comply with the law, either by treating workers as employees or  
13 lawfully classifying them as independent contractors. (See Plaintiff's Supplemental Reply Brief, 16 n.7.)  
14 Of course, in the abstract it may be presumed that suspending the operation of a business that violates the  
15 law will provide space for law-abiding business to expand in the market or enter the market in the first  
16 instance. (See, generally, *Uber*, 56 Cal.App.5th at 278, 312.) But there is no evidence in the record that  
17 this presumption is justified in context, given the existence of market competitors and Plaintiff's  
18 ambivalence as to the lawfulness of their enterprises. (See Plaintiff's Supplemental Reply Brief, 16 n.7.)

19 For similar reasons, the Court is not persuaded that the proposed preliminary injunction will  
20 provide a meaningful public benefit, including by increasing payroll or workers' compensation tax  
21 collections, during the interim period prior to trial. Simply, the Court lacks sufficient information about  
22 the relevant market dynamics to make such a finding.<sup>15</sup>

23 Accordingly, although covered Pros are suffering ongoing irreparable harm, the Court is unable to  
24 find that the interim order requested<sup>16</sup> will improve their circumstances during the period prior to trial in

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26 <sup>15</sup> The Court does not mean to suggest that a great deal of information would be necessary. Indeed, if a  
single significant competitor or prospective market entrant operated on an employment-based model, that  
would substantially alter the foregoing considerations.

27 <sup>16</sup> The alternative request for a preliminary injunction that omits paragraph 5 of the proposed injunction  
28 does not change the Court's ultimate balancing. Removal of paragraph 5 would, in effect, result in a  
preliminary injunction permitting Defendant to continue classifying Covered Pros as independent

1 this litigation. At the same time, if this Court's ultimate<sup>17</sup> evaluation of the merits is incorrect, a premise  
2 that this Court views as very unlikely, then Defendant will be exposed to substantial irreparable harm  
3 prior to trial. Discounting the harm to Defendant in light of the strong likelihood that Plaintiff will  
4 prevail on the merits, the Court finds that a consideration of the consequences of entering a preliminary  
5 injunction tilts slightly against entry of such an order.

6 Nothing herein should be misconstrued as "bless[ing]" Defendant's business practices. (Compare  
7 Plaintiff's Supplemental Reply Brief, 12.) Should Plaintiff ultimately prevail on the merits, Plaintiff will  
8 be entitled to final injunctive relief. (Lab. Code, § 2786.) Moreover, if the Court is correct that  
9 Defendant is misclassifying its workers, then, although aspects of the harm are irreparable, mechanisms  
10 exist to provide workers with a substantial portion of their interim damages as well as civil penalties.  
11 (Compare *Uber*, 56 Cal.App.5th at 312 [noting that minimum wages, overtime wages, and meal and rest  
12 break premiums cannot be accurately calculated if records are not retained]; with *Donohue v. AMN*  
13 *Services, LLC* (2021) 11 Cal.5th 58, 74-77; *Anderson v. Mt. Clements Pottery Co.* (1946) 328 U.S. 680,  
14 686-88; *Ghazaryan v. Diva Limousine, Ltd.* (2008) 169 Cal.App.4th 1524, 1536 n.11 [disapproved on  
15 other grounds by *Noel v. Thrifty Payless, Inc.* (2019) 7 Cal.5th 955]; *Cicairos v. Summit Logistics, Inc.*  
16 (2005) 133 Cal.App.4th 949, 961; *Hernandez v. Mendoza* (1988) 199 Cal.App.3d 721, 727; see also, e.g.,  
17 Lab. Code, §§ 226.8, 2699.) To the extent interim injunctive relief is requested to provide a backstop to

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20 contractors for 120 days from entry of the proposed order, after which Defendant would satisfy the Court  
21 that it has restructured its business to meet the requirements of Labor Code § 2777 or Defendant would be  
22 required to shutter its relevant line of business until it meets those requirements or classifies Covered Pros  
23 as independent contractors. The alternative request reduces the weight on both sides of the balance – any  
24 benefit that may inure to workers or the public from the proposed injunction will be delayed but any  
25 detriment to Defendant will also be delayed, thus reducing the total time period that any interim injunctive  
26 relief will be in effect. Ultimately, the alternative request will either (1) have no discernible practical  
27 effect that is different from denying relief if Defendant comes into compliance; or (2) result in a  
28 temporary shutdown of Defendant's operation that is indistinguishable from the one that would occur  
presently, except that it will not be of as lengthy a duration because, at minimum, there will be less time  
between 120 days from now and trial than there is between today and trial. The result is that, should the  
alternative injunction have any impact at all, the relative weight on each side of the scale is the same as  
for the primary request for relief.

<sup>17</sup> The Court's ultimate merits determination is predicated on a consideration of several discrete and novel  
factors. While the Court is satisfied that there is a strong probability that its preliminary injunction  
analysis is correct as to the ultimate result, there is an increased risk that the Court's evaluation of specific  
factors may be incorrect. To the extent Defendant labors to comply with the Court's evaluation of each  
discrete factor to lift the preliminary injunction, there is an increased risk that Defendant will suffer some  
measure of harm attributable to an error in the Court's analysis.

1 ensure Defendant complies with the law, the backstop already exists by virtue of the pendency of this  
2 action.<sup>18</sup>

3 **CONCLUSION AND ORDER**

4 The motion is denied.

5 The parties should be prepared to set an early summer 2022 trial date on at least Plaintiff's claim  
6 for injunctive relief at the November 30, 2021 Case Management Conference.

7 IT IS SO ORDERED.

8  
9 Dated: November 17, 2021



10 Anne-Christine Massullo  
11 Judge of the Superior Court

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20 <sup>18</sup> First, Plaintiff argues that the alternative request for injunctive relief is appropriate because it provides a  
21 backstop to ensure that Defendant comes into compliance. However, the Court need not enter a  
22 preliminary injunction to set a backstop – as in all cases involving a request for temporary injunctive  
23 relief pending trial, the trial date is the backstop. Moreover, potential exposure to civil penalties  
24 throughout the pendency of this litigation will incentivize prompt efforts to come into compliance with  
25 the law. Erecting an edifice whereby the Court offers preliminary advisory opinions regarding the steps  
26 Defendant is taking to come into compliance before Defendant has even implemented those measures  
27 substantially increases the likelihood that the Court may enter an erroneous preliminary ruling that causes  
28 grave or irreparable harm to Defendant. For example, if the Court preliminarily misapplies any discrete  
factor of the Labor Code § 2777 analysis and Defendant structures its business on the basis of that  
application, as alluded to above, Defendant may find itself out of compliance with the law because it  
relied on the Court's preliminary analysis. Plaintiff has noted that it is not a business consultant – neither  
is the Court. Second, to the extent Plaintiff may contend that a simpler injunction that merely required  
Defendant to classify Covered Pros as independent contractors in compliance with Labor Code § 2777 or  
reclassify its independent contractors as employees, for all the reasons stated above the Court is not  
persuaded that such a preliminary injunction would achieve a benefit for the workers or the public in the  
interim period prior to trial.

**+CERTIFICATE OF ELECTRONIC SERVICE**  
(CCP 1010.6(6) & CRC 2.251)

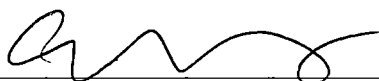
I, Ericka Larnauti, a Deputy Clerk of the Superior Court of the County of San Francisco, certify that I am not a party to the within action.

On November 18, 2021, I electronically served the attached document via File & ServeXpress on the recipients designated on the Transaction Receipt located on the File & ServeXpress website.

Dated: November 18, 2021

T. Michael Yuen, Clerk

By: \_\_\_\_\_



Ericka Larnauti, Deputy Clerk