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FILED
San Francisco County Superior Court

AUG 10 2020

CLERK OF THE COURT

BY: _____ Deputy Clerk

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN FRANCISCO

**PEOPLE OF THE STATE OF
CALIFORNIA,**

Plaintiff,

**UBER TECHNOLOGIES, INC., a
Delaware corporation; LYFT, INC., a
Delaware corporation; and DOES 1-50,
inclusive,**

Defendants.

No. CGC-20-584402

**ORDER ON PEOPLE'S MOTION FOR
PRELIMINARY INJUNCTION AND
RELATED MOTIONS**

INTRODUCTION AND SUMMARY

On May 5, 2020, the Attorney General of California, joined by the City Attorneys of Los Angeles, San Diego, and San Francisco, filed this action on behalf of the People of the State California seeking injunctive relief, restitution, and penalties against Defendants Uber Technologies, Inc. (Uber) and Lyft, Inc. (Lyft). The complaint asserts that Uber and Lyft have misclassified their ride-hailing drivers as independent contractors rather than employees in violation of Assembly Bill No. 5 (2019-20 Reg. Sess.) (A.B. 5), which took effect on January 1, 2020. That statute is intended to ensure that all workers who meet its criteria receive the basic rights and protections guaranteed to employees under California law. The People's complaint states causes of action for violations of A.B. 5 and of the Unfair Competition Law, Bus. & Prof. Code § 17200 (UCL). On June 25, the People moved for a preliminary injunction enjoining Defendants from classifying their drivers as independent contractors, and from violating any provisions of the Labor Code, the Unemployment Insurance Code, and the wage orders of the Industrial Welfare Commission with regard to their drivers.

Defendants oppose the motion. They have also filed three additional motions: a motion to stay the litigation; a demurrer and motion to strike the complaint; and a motion to compel arbitration. Defendants' motions have in common an attempt to delay or avoid a determination whether, as the People allege, they are engaged in ongoing and widespread violations of A.B. 5, a state law that went into effect more than seven months ago, and that codified the California Supreme Court's April 2018 ruling in *Dynamex Operations West, Inc. v. Superior Court* (2018) 4 Cal.5th 903. Defendants are not entitled to an indefinite postponement of their day of reckoning. Their threshold motions are groundless.

Defendants seek to stay the litigation until the Ninth Circuit rules on Uber's pending constitutional challenge to A.B. 5; until the November 2020 election, when the voters will consider Proposition 22, an initiative sponsored by Uber and Lyft that would exempt them from the requirements of A.B. 5; or until the final disposition of numerous lawsuits and arbitrations in which similar claims have been raised. None of Defendants' pleas for further delay is persuasive. The district court denied Uber's request for a preliminary injunction, finding that Uber had not

1 shown a likelihood of success or even raised serious questions as to the validity of A.B. 5. That
2 Uber and Lyft are attempting to persuade the voters to change that law, an effort that may or may
3 not succeed, is no reason for this Court to refrain from deciding the issues currently before it.
4 Finally, none of the pending lawsuits and arbitrations can displace the Legislature's express
5 statutory grant of authority to the Attorney General and City Attorneys to seek injunctive relief to
6 prevent the continued misclassification of employees as independent contractors, and none is
7 likely in the near term to resolve the issues presented here in a broadly-applicable ruling. (See
8 Part I, pp. 6-10, *infra*.)

9 Next, Uber demurs to the complaint on the grounds that the People have not properly joined
10 it with Lyft in this action, but instead should have brought two different actions. That technical
11 objection lacks merit, as the People's claims against Defendants are nearly identical and
12 considerations of judicial economy and efficiency support their resolution in a single action.
13 Uber, the largest of the ride-hailing companies in California, is not prejudiced one whit by its
14 inclusion in this lawsuit with its smaller competitor. Its contention that the People have failed to
15 allege any violations of the predicate laws (e.g., the Labor Code, Unemployment Insurance Code,
16 and city ordinances) on which the second cause of action is based is also meritless. (See Part II,
17 pp. 11-13, *infra*.)

18 Third, both Defendants move to compel arbitration of the People's claim for restitution,
19 arguing that although the People are not a party to an arbitration agreement with them, they are
20 acting on behalf of drivers who are bound by such agreements. Even if that novel argument were
21 persuasive, there is no need for the Court to decide Defendants' motions to compel at this time.
22 They are directed only to one type of relief sought by the People on one of its two causes of
23 action, and therefore cannot affect the outcome of the People's motion for a preliminary
24 injunction. (See Part III, pp. 13-14, *infra*.)

25 In the ordinary case, in deciding whether to issue a preliminary injunction, a court must
26 weigh two interrelated factors: (1) the likelihood that the prevailing party will ultimately prevail
27 on the merits and (2) the relative interim harm to the parties from issuance or nonissuance of the
28 injunction. However, where, as here, a governmental entity is seeking to enjoin the violation of a

1 statute which specifically provides for injunctive relief, those requirements are relaxed. Because
2 the Legislature has already determined by enacting the statute that any violation of it would be
3 against the public interest, the moving party need only show a reasonable probability of
4 prevailing, and a presumption arises that public harm will result if an injunction does not issue.
5 Further, the court need not examine the relative actual harms to the parties unless the defendant
6 shows that it would suffer grave or irreparable harm from the issuance of the preliminary
7 injunction. And even then, a court may conclude that an injunction is proper. Defendants
8 contend that this standard does not apply here because the People are seeking a mandatory rather
9 than a prohibitory injunction. Even under the higher standard they contend applies, however, the
10 Court concludes that the preliminary injunction sought by the People is warranted. (See Part
11 IV(A), pp. 14-17, *infra*.)

12 First, the People have amply demonstrated a reasonable probability of prevailing on their
13 claim that Defendants are misclassifying their drivers. Defendants' contrary arguments lack
14 merit. Defendants argue first that A.B. 5 does not apply to them at all because they are not
15 "hiring entities," or because they are exempt from that legislation. This argument flies in the face
16 of Uber's conflicting claims in federal litigation and of Defendants' concerted effort to overturn
17 the statute. Within days of its enactment, Uber filed suit in federal court asserting that A.B. 5
18 unconstitutionally "targets" its business, and, as discussed above, it has urged this Court to stay
19 this litigation until its appeal in that case can be decided. And, of course, Defendants are major
20 supporters of Proposition 22, a measure on the November 2020 ballot that would exempt their
21 businesses from A.B. 5. Defendants make no attempt to explain away these glaring
22 inconsistencies. Regardless, Defendants' contention that they are not hiring entities within the
23 meaning of the statute cannot be squared with the undisputed reality that they hire and contract
24 with drivers. (See Part IV(B)(2), pp. 19-21, *infra*.)

25 Whether Defendants' drivers should be classified as employees or independent contractors
26 is governed by the so-called ABC test established by the Supreme Court's unanimous *Dynamex*
27 decision, which A.B. 5 codified. Under that test, a person providing labor or services for
28 remuneration "shall be considered an employee rather than an independent contractor" unless the

1 hiring entity demonstrates that three conditions are satisfied: “(A) The person is free from the
2 control and direction of the hiring entity in connection with the performance of the work, both
3 under the contract for the performance of the work and in fact. (B) The person performs work
4 that is outside the usual course of the hiring entity’s business. [and] (C) The person is customarily
5 engaged in an independently established trade, occupation, or business of the same nature as that
6 involved in the work performed.” (Lab. Code § 2750.3(a)(1); see Part IV(B)(1), pp. 18-19, *infra*.)
7 Because Defendants cannot possibly satisfy the “B” prong of that test, the likelihood that the
8 People will prevail on their claim that Defendants have misclassified their drivers is
9 overwhelming; there is no need to address the other two prongs of the test.

10 It’s this simple: Defendants’ drivers do not perform work that is “outside the usual course”
11 of their businesses. Defendants’ insistence that their businesses are “multi-sided platforms”
12 rather than transportation companies is flatly inconsistent with the statutory provisions that
13 govern their businesses as transportation network companies, which are defined as companies that
14 “engage in the transportation of persons by motor vehicle for compensation.” It also flies in the
15 face of economic reality and common sense. And it is irreconcilable with the Supreme Court’s
16 directive in *Dynamex* that California’s employee classification standard should be interpreted and
17 applied broadly to include all persons who can reasonably be viewed as working in the hiring
18 entity’s business. To state the obvious, drivers are central, not tangential, to Uber and Lyft’s
19 entire ride-hailing business. (See Part IV(B)(3), pp. 22-27, *infra*.)

20 Turning to the equities, the People have shown that substantial public harm will result if the
21 Court declines to issue an injunction. The controlling legal standard creates a presumption of
22 harm where, as here, a party is violating a statute that was enacted to protect the public. In the
23 specific context involved here, both the Legislature and our Supreme Court have found that the
24 misclassification of workers as “independent contractors” deprives them of the panoply of basic
25 rights and protections to which employees are entitled under California law, including minimum
26 wage, workers’ compensation, unemployment insurance, paid sick leave, and paid family leave.
27 They have also found that depriving employees of those rights has ripple effects on law-abiding
28 competing businesses, and on the public generally. (See Part IV(C), pp. 27-29, *infra*.)

1 On the other side of the balance, Defendants do not show that they will suffer “grave or
2 irreparable” harm from the issuance of an injunction. While they undoubtedly will incur costs in
3 order to restructure their businesses, the costs are only those required in order for them to bring
4 their businesses into compliance with California law. Moreover, these are costs that Defendants
5 should have begun incurring more than two years ago, when the Supreme Court handed down its
6 unanimous *Dynamex* decision. As another court has observed, “rather than comply with a clear
7 legal obligation, companies like [Uber and] Lyft are thumbing their noses at the California
8 Legislature, not to mention the public officials who have primary responsibility for enforcing
9 A.B. 5.” (*Rogers v. Lyft, Inc.* (N.D. Cal. Apr. 7, 2020), 2020 WL 1684151, at *2, *appeal filed*
10 (Apr. 17, 2020), No. 20-15700.)) It is high time that they face up to their responsibilities to their
11 workers and to the public. (See Part IV(D), pp. 29-32, *infra*.)

12 I. MOTIONS TO STAY

13 Both Defendants have filed motions to stay this action.¹ The motions ask the Court to stay
14 the action, and therefore refrain from deciding the People’s motion for a preliminary injunction,
15 for essentially three reasons: (1) to await the outcome of an appeal pending before the Ninth
16 Circuit, *Olson v. Becerra*, in which Uber raises constitutional challenges to A.B. 5; (2) to await
17 the voters’ decision regarding an initiative on the November 2020 ballot, Proposition 22, that
18 would, if enacted, classify certain app-based drivers as independent contractors; and (3) to await
19 the resolution of the issues posed here in other cases pending in state and federal courts, including
20 pending Private Attorneys General Act (PAGA) actions in state court, as well as in thousands of
21 individual arbitration proceedings. The Court is unpersuaded by any of these arguments either
22 that a stay of the entire action is mandated or that it should exercise its discretion to stay the
23 action or the hearing on the People’s motion.

24 *First*, Defendants’ argument that the Court should await the outcome of the Ninth Circuit
25 appeal and/or other pending cases raising constitutional challenges to A.B. 5 is unconvincing. As
26 Uber acknowledges, the district court in *Olson* *denied* its request for preliminary injunctive relief.

27 ¹ Both Defendants seek to stay the action at least until the outcome of the November 2020
28 election is known.

1 (Mot. to Stay at 10, 13.) It did so in no uncertain terms, finding that “Plaintiffs have not shown
2 either a likelihood of success on the merits or that serious questions exist as to any of their claims
3 highlighted in this motion.” (*Olson v. California* (C.D. Cal., Feb. 10, 2020), 2020 WL 905572, at
4 *13, *appeal filed*, No. 20-55267 (Mar. 11, 2020).) State statutes come clothed with “a strong
5 presumption of constitutionality” (*California Housing Finance Agency v. Patitucci* (1978) 22
6 Cal.3d 171, 175, and trial courts should be “ ‘extremely cautious . . . to enjoin law enforcement
7 officials from enforcing an ordinance obviously approved and adopted by duly elected
8 representatives of the people.’ ” (*Cohen v. Board of Supervisors* (1986) 178 Cal.App.3d 447,
9 453.) The mere fact that a party may have filed litigation challenging a statute duly enacted by
10 the Legislature does not disable the People from enforcing the law, nor does it relieve courts of
11 their obligation to enforce the law as it currently exists. (Cf. *Hunt v. Superior Court* (1999) 21
12 Cal.4th 984, 999 [appellate court reviews injunction under the law in effect at the time the
13 appellate court renders its opinion].) If the rule were otherwise, those dissatisfied with state laws
14 would have every incentive to file litigation in order to force lengthy delays in their
15 implementation while their challenges wend their way through the court system. As the People
16 point out, Defendants have not cited a single California case where a court stayed an enforcement
17 action pending resolution of a separate challenge to that law. (Cf. Code Civ. Proc. § 526(b)(4)
18 [an injunction cannot be granted “[t]o prevent the execution of a public statute by officers of the
19 law for the public benefit”].)² This Court will not duck its obligation to rule on a matter properly
20 before it based on speculation that current law may be struck down or modified in the future.

21 Moreover, while Uber asserts that it “*will* raise in this case” the same constitutional issues
22 that it raises in *Olson* (Mot. to Stay at 14 (emphasis added)), those issues are not currently before
23 this Court.³ In any event, a Ninth Circuit decision is at best many months away.⁴ The Legislature

24 ² Of course, a court may enjoin the implementation of a statute if it determines that there
25 are serious questions raised as to its validity on constitutional or other grounds. Despite extensive
26 litigation since A.B. 5 was enacted in September 2019, however, Defendants do not point to any
27 ruling striking it down or enjoining its implementation, with the exception of a single ruling that
28 turned on a unique issue of federal preemption relating to aspects of the trucking industry. (*Cal. Trucking Assn. v. Becerra* (S.D. Cal. 2020) 433 F.Supp.3d 1154.)

³ Uber asserts in opposition to the People’s motion for a preliminary injunction that A.B. 5
(continued...)

1 and the California Supreme Court have determined that misclassification of workers has
2 significant adverse effects on workers, businesses, and the public generally, effects that this Court
3 is unwilling to ignore. This Court therefore declines to exercise its discretion to stay this action.
4 (*Caifa Prof. Law Corp. v. State Farm Fire & Cas. Co.* (1993) 15 Cal.App.4th 800, 804 [“It is
5 black letter law that, when a Federal action has been filed covering the same subject matter as is
6 involved in a California action, the California court has the discretion but not the obligation to
7 stay the state court action.”].)

8 *Second*, Defendants’ argument that the Court should stay the action because of the prospect
9 that they will be “whipsawed” if this Court issues an injunction and the voters then enact
10 Proposition 22, thereby undoing the Court’s ruling, is singularly unpersuasive.⁵ If, as the People
11 contend, Defendants are currently violating state law, it is no answer to say that they should be
12 given a pass to continue doing so to see if they can muster their considerable financial resources
13 to persuade the voters to change the law in their favor. Moreover, as the People emphasize, even
14 if the ballot initiative passes, it would not moot out the People’s prayer for remedies for past
15 violations.

16 *Third*, Defendants’ claim that the People delayed unduly in bringing their motion is
17 unconvincing. Labor Code section 2750.3, which expressly authorized the People to bring this
18 action, did not become effective until January 1, 2020. In any event, delay is “merely one of
19 many factors bearing on irreparable injury.” (*Nutro Products, Inc. v. Cole Grain Co.* (1992) 3
20 Cal.App.4th 860, 866 [affirming preliminary injunction sought eight months after filing of

21 _____
22 (...continued)
23 is unconstitutional, but it offers no argument or authority in support of that conclusory assertion.
(Uber Opp. to PI Mot. at 16-17.)

24 ⁴ That court’s docket reflects that it is considering setting the case for oral argument in
25 November or December 2020 or January 2021. There can be no assurance that the Ninth Circuit
will issue its decision in “a few short months.” (Uber Opp. to PI Mot. at 33.)

26 ⁵ Proposition 22, the Protect App-Based Drivers and Services Act, would provide that
27 app-based rideshare and delivery drivers are independent contractors and not employees or agents
28 with respect to their relationship with a network company if certain conditions are met.
(*Qualified Statewide Ballot Measures*, Cal. Secretary of State,
<https://www.sos.ca.gov/elections/ballot-measures/qualified-ballot-measures>).

1 action].) Moreover, the point cuts both ways, since it is Defendants' own lengthy delay in
2 complying with controlling California law that prompted the People to file this motion in the first
3 instance. Uber's contention that a further delay would cause the People no significant harm (Mot.
4 to Stay at 15) is inconsistent with the controlling legal standard and with the People's showing
5 that the misclassification of workers causes significant harms to workers, businesses, and the
6 public generally. (See Part IV(C), pp. 27-29, *infra*.)

7 *Fourth*, the Court disagrees that a stay is required either by comity or by the doctrine of
8 exclusive concurrent jurisdiction just because similar issues may have been raised in other actions
9 brought by private parties now pending in federal and state courts. Here, the claims are asserted
10 on behalf of the People of the State of California, under a statutory provision that explicitly
11 confers standing on the Attorney General and the City Attorneys to prosecute an action for
12 injunctive relief to prevent the continued misclassification of employees as independent
13 contractors. (Lab. Code § 2750.3(j).) That provision evinces the Legislature's express intent that
14 such actions proceed unhindered, and it reflects a strong countervailing policy that renders the
15 usual rule of concurrent jurisdiction inapplicable. (*People ex rel. Garamendi v. American*
16 *Autoplan, Inc.* (1993) 20 Cal.App.4th 760, 769-770, 774 [concluding that the rule is "a judicial
17 rule of priority or preference" that does not divest a court of jurisdiction, and "is not a defense to
18 a request for a preliminary injunction"].)⁶

19 The parties, claims, and requested relief in the PAGA cases are all different from those in
20 the People's enforcement action here. "An employee suing under PAGA 'does so as the proxy or
21 agent of the state's labor law enforcement agencies.'" (*Kim v. Reins International California,*
22 *Inc.* (2020) 9 Cal.5th 73, 81 (emphasis deleted).) Thus, an individual plaintiff in a PAGA action
23 is asserting a representative claim on behalf of other aggrieved employees, standing in the shoes

24
25 ⁶ The Legislature undoubtedly was aware when it enacted A.B. 5 of lawsuits that had been
26 brought challenging Defendants' practice of classifying their drivers as independent contractors,
27 and of judicial decisions in those cases, some of which are discussed below. (See, e.g., *Estate of*
28 *McDill* (1975) 14 Cal.3d 831, 839 [the Legislature is deemed to be aware of judicial decisions
already in existence and to have enacted a statute in light thereof].) In enacting section 2750.3(j),
the Legislature plainly intended to authorize public authorities, notwithstanding that pending
litigation, to bring actions such as this one.

1 of “the Labor Commissioner and other agencies.” (*Id.*; accord, *Esparza v. KS Industries, L.P.*
2 (2017) 13 Cal.App.5th 1228, 1241 [“the employee plaintiff represents the same legal right and
3 interest as those agencies—namely, the recovery of civil penalties that otherwise would have
4 been assessed and collected by the Labor and Workforce Development Agency”].) The same is
5 true of class actions. As the People point out, when a private plaintiff brings a UCL action as a
6 class representative, “an action by the People lacks the fundamental attributes of a consumer class
7 action filed by a private party.” (*People v. Pacific Land Research Co.* (1977) 20 Cal.3d 10, 18.)
8 “An action filed by the People seeking injunctive relief and civil penalties is fundamentally a law
9 enforcement action designed to protect the public and not to benefit private parties.” (*Id.* at 17.)

10 Finally, the undeniable reality is that none of the various actions to which Defendants
11 point—including what Uber contends are “thousands of individual arbitrations” and mediations
12 (Mot. to Stay at 11 & fn. 1)—is likely any time soon, if ever, to resolve the issues presented here
13 in a broadly applicable ruling. Because Defendants’ arbitration agreements foreclose drivers
14 from seeking and arbitrators from granting class-wide relief, the outcome of any of those
15 arbitrations will affect only the individual driver involved, rather than deciding the
16 misclassification issue as to all of Defendants’ hundreds of thousands of drivers in California.

17 *Fifth*, Uber argues that Code of Civil Procedure section 1281.4 mandates a stay of this
18 litigation because it has filed a motion to compel arbitration of the UCL claim in this action and
19 because there are thousands of individual arbitrations that “involve the same drivers and the same
20 claims as in this action.” (Mot. to Stay at 20.) However, section 1281.4, by its terms, applies
21 only if a court has ordered “arbitration of a controversy which is an issue involved” in the judicial
22 action. (Code Civ. Proc. § 1281.4.) “Controversy” refers to “any question arising between
23 parties to an [arbitration] agreement.” (*Id.* § 1280(c).) The People are not a party to any
24 arbitration agreement with Defendants, and are not the same as Defendants’ drivers. The pending
25 arbitrations involving individual drivers are entirely distinct from this law enforcement action by
26 the Attorney General and three City Attorneys pursuant to an express grant of statutory authority
27 under Labor Code section 2570.3.
28

II. DEMURRER AND MOTION TO STRIKE

Uber (but not Lyft) has filed a demurrer to the People's complaint. The demurrer is brought on two grounds: that Uber and Lyft may not properly be joined as defendants in the same action; and that the People have failed to plead the elements of the predicate statutory violations underlying the People's UCL claim. Uber's technical objections warrant little discussion.

Under California's permissive joinder statute, persons may be joined in one action as defendants if there is asserted against them:

(1) Any right to relief jointly, severally, or in the alternative, in respect of or arising out of the same transaction, occurrence, or series of transactions or occurrences and if any question of law or fact common to all these persons will arise in the action; or

(2) A claim, right, or interest adverse to them in the property or controversy which is the subject of the action.

(Code Civ. Proc. § 379(a).) The right to relief arising out of the same transaction or series of transactions "is construed broadly. It is sufficient if there is any factual relationship between the claims joined." (Weil & Brown, *California Practice Guide: Civil Procedure Before Trial* (The Rutter Group 2020) ¶ 2:221.) Further, Uber and Lyft share a common adverse interest in the controversy which is the subject of this action: their alleged misclassification of their drivers.

In any event, a demurrer for misjoinder lies only if the defendant can show from the face of the complaint that it would be prejudiced by the misjoinder. "[T]he defendant is entitled to a favorable ruling only when he can show some prejudice suffered or some interests affected by the misjoinder. . . . A proper defendant is seldom injured by the joinder of unnecessary or improper parties, and his demurrer ought to be overruled." (*Anaya v. Superior Court* (1984) 160 Cal.App.3d 228, 231, fn. 1.) "Demurrers on the ground of misjoinder lie only when the defect appears on the face of the complaint or matters judicially noticed." (*Royal Surplus Lines Ins. Co., Inc. v. Ranger Ins. Co.* (2002) 100 Cal.App.4th 193, 198.) Uber's contention that it faces a "substantial likelihood of prejudice" if it is joined with Lyft because the two companies are "fundamentally different companies with different business models" (Dem. at 9) does not appear from the face of the complaint, which pervasively alleges exactly the opposite: that "[e]ach

1 Defendant” follows substantially identical business practices, and that the two companies are
2 nearly indistinguishable in key aspects of their operation and relationship to their drivers. (E.g.,
3 Compl. ¶¶ 31-61, 64-68, 71-85.)⁷ To the extent there are minor factual differences between the
4 two Defendants that are material to the propriety of injunctive relief (the Court finds none), they
5 can considered in connection with the People’s motion for a preliminary injunction. If necessary,
6 the Court retains authority to bifurcate or order separate trials later in the proceedings. (Code
7 Civ. Proc. § 379.5; *Royal Surplus Lines Ins. Co., Inc.*, 100 Cal.App.4th at 205.) As the People
8 correctly observe, their joinder of Defendants serves the very purpose of the joinder statutes: to
9 further efficiency and judicial economy. (See *Petersen v. Bank of America* (2014) 232
10 Cal.App.4th 238, 249-250, 253 [joinder statutes should be liberally construed to promote
11 efficiency and conserve judicial resources].)

12 Uber’s further argument that the complaint does not state a claim under the UCL because it
13 does not allege any violations of the predicate laws (e.g., the Labor Code, Unemployment
14 Insurance Code, and city ordinances) on which the second cause of action is based lacks merit.
15 The People’s complaint is crystal clear that it premises its claim for relief not upon Uber’s
16 treatment of “a single driver” (Dem. at 13) or group of drivers. Rather, the complaint makes the
17 overall claim that Defendants have misclassified all of their drivers as independent contractors
18 rather than employees (Compl. ¶¶ 31-77) and that, as a result, Defendants have violated
19 “requirements relating to minimum wages, overtime wages, business expenses, meal and rest
20 periods, wage statements, paid sick leave and health benefits, and social insurance programs.”
21 (*Id.* ¶ 90.) The detailed supporting allegations are sufficient to allege the predicate violations
22 upon which the People’s UCL claim is based. (See *id.* ¶¶ 91-115, 121-123.) The People need not
23 allege evidentiary facts at the pleading stage. (E.g., *Birke v. Oakwood Worldwide* (2009) 169

24
25 ⁷ Uber asserts that “[t]he face of the Complaint makes clear that Uber and Lyft” are
26 distinct, but that assertion is unconvincing. Uber cites only three charging allegations from the
27 127-paragraph complaint to support its contention. Those paragraphs refer to both companies’
28 ongoing experiments with various software features (¶ 57) and to their IPO prospectuses’
discussion of the centrality of drivers to their business strategies (¶¶ 69-70). They do not
remotely show that the two companies are so different that deciding the common factual and legal
issues presented by the People’s motion in a single action would deprive Uber of due process.

1 Cal.App.4th 1540, 1548 [“A plaintiff need not plead evidentiary facts supporting the allegation of
2 ultimate fact. [Citation.] The pleading is adequate so long as it apprises the defendant of the
3 factual basis for the claim.”].) In addition, the People’s allegation that Defendants’
4 misclassification of their drivers violates Labor Code section 2750.3 (Compl. ¶ 123) is itself
5 sufficient to support the first cause of action. (See *PH II, Inc. v. Superior Court* (1995) 33
6 Cal.App.4th 1680, 1682 [“A demurrer does not lie to a portion of a cause of action.”].)⁸

7 III. MOTIONS TO COMPEL ARBITRATION

8 Both Defendants have moved to compel arbitration of a portion of the People’s UCL cause
9 of action. In the alternative, Defendants seek an order striking that claim for restitution “to the
10 extent it is subject to arbitration.” (Lyft Mot. at 2, 15; Uber Mot. at 8.)⁹ The motions are brought
11 on the ground that although the People are not a party to any arbitration agreement with
12 Defendants, the claim seeks restitution on behalf of individual drivers who are bound by
13 arbitration agreements with Defendants to arbitrate those claims and should be deemed the real
14 parties in interest as to that prayer. Defendants do not contest that by its UCL cause of action, the
15 People also seek to recover injunctive relief and civil penalties, and that the People are entitled to
16 pursue both of those forms of relief in this action. (See Lyft Mot. at 1.)

17 As Lyft acknowledges, the issue presented by Defendants’ motions presents an open
18 question: “whether someone who is not a party to an arbitration agreement may bring a
19 representative action pursuant to Business and Professions Code section 17204 for restitution on
20 behalf of injured consumers who are parties to the arbitration agreement.” (*Cruz v. Pacificare*
21 *Health Systems, Inc.* (2003) 30 Cal.4th 303, 320, fn. 7.) None of the California cases cited by

22
23 ⁸ Uber’s perfunctory fallback motion to strike adds nothing of substance to its demurrer.
24 Motions to strike are disfavored, and their use should be “cautious and sparing.” (*PH II, Inc.*, 33
Cal.App.4th at 1683.)

25 ⁹ Both Defendants acknowledge that some of their drivers have opted out of arbitration,
26 although they assert without further detail that the “vast majority” have not done so. (Lyft Mot. at
27 3, fn. 6; Shah Decl. ¶ 23; Uber Mot. at 10; Rosenthal Decl. ¶ 15 [“the majority of Drivers” did not
28 opt out]; cf. Uber Mot. at 13 [asserting that “many” drivers opted out].) However, without
knowing which drivers entered into the arbitration agreements, the Court cannot very well compel
arbitration of the claims brought on their behalf, as opposed to claims brought on behalf of drivers
who opted out. On that ground alone, the motions to compel fall short.

1 Defendants addressed the issue presented here: whether a governmental law enforcement agency
2 with express standing to enforce the UCL may seek restitution on behalf of individual victims of
3 unfair competition. The parties' briefing on the motions raises a number of complex and
4 contested issues, including the applicability of the transportation worker exemption from the FAA
5 (9 U.S.C. § 1), FAA preemption, and the applicability of the U.S. Supreme Court's holding in
6 *E.E.O.C. v. Waffle House, Inc.* (2002) 534 U.S. 279 that an arbitration agreement between an
7 employer and an employee does not bar the EEOC from pursuing victim-specific judicial relief,
8 such as reinstatement and back pay, in an enforcement action alleging that the employer violated
9 federal law. There is no need for the Court to decide those issues at this time, since Defendants'
10 motions are directed only to one type of relief sought by the People on one of its two causes of
11 action, and cannot affect the outcome of the People's motion for a preliminary injunction.
12 Accordingly, the Court defers any ruling on these motions.¹⁰

13 IV. MOTION FOR PRELIMINARY INJUNCTION

14 A. Legal Standard

15 Where, as here, a governmental entity seeks to enjoin an alleged violation of a statute which
16 specifically provides for injunctive relief, the traditional two-factor test for injunctive relief—the
17 likelihood that the plaintiff will prevail on the merits, and the balance of interim harms—does not
18 apply. Instead, “[w]here a governmental entity seeking to enjoin the alleged violation of an
19 ordinance [or statute] which specifically provides for injunctive relief establishes that it is
20 reasonably probable it will prevail on the merits, a rebuttable presumption arises that the potential
21 harm to the public outweighs the potential harm to the defendant.” (*IT Corp. v. County of*
22 *Imperial* (1983) 35 Cal.3d 63, 72.) In other words, “[o]nce a governmental entity establishes that
23 it will probably succeed at trial, a presumption should arise that public harm will result if an
24 injunction does not issue.” (*Id.*) Our Supreme Court explained the reasoning underlying this

25
26 ¹⁰ In light of the partial nature of the motions to compel—which seek arbitration of only
27 one of three types of relief sought in one of the People's two causes of action—Uber's contention
28 that the Court may not grant Plaintiff's motion for a preliminary injunction without first deciding
them (Opp. at 9, 16) is mistaken. Lyft informs the Court in its motion to compel arbitration that it
is “amenable to the Court hearing it at a later date.” (Lyft Not. of Mot. at 2.)

1 presumption: “Where a legislative body has enacted a statutory provision proscribing a certain
2 activity, it has already determined that such activity is contrary to the public interest. Further,
3 where the legislative body has specifically authorized injunctive relief against the violation of
4 such a law, it has already determined (1) that significant public harm will result from the
5 proscribed activity, and (2) that injunctive relief may be the most appropriate way to protect
6 against that harm.” (*Id.* at 70.)¹¹

7 On the other side of the balance, only “[i]f the defendant shows that it would suffer *grave*
8 *or irreparable harm* from the issuance of the preliminary injunction” must “the court . . . then
9 examine the relative actual harms to the parties.” (*Id.* (emphasis added).) And even if a defendant
10 makes such a showing, a trial court may conclude that an injunction is proper after considering
11 “both (1) the degree of certainty of the outcome on the merits, and (2) the consequences to each
12 of the parties of granting or denying interim relief.” (*Id.*) “For example, if it appears fairly clear
13 that the plaintiff will prevail on the merits, a trial court might legitimately decide that an
14 injunction should issue even though the plaintiff is unlikely to prevail in a balancing of the
15 probable harms. On the other hand, the harm which the defendant might suffer if an injunction
16 were issued may so outweigh that which the plaintiff might suffer in the absence of an injunction
17 that the injunction should be denied even though the plaintiff appears likely to prevail on the
18 merits.” (*Id.* at 72-73; see also, e.g., *Water Replenishment Dist. of Southern Calif. v. City of*
19 *Cerritos* (2013) 220 Cal.App.4th 1450, 1464 [because defendant city did not establish it would
20 suffer grave or irreparable harm from issuance of the preliminary injunction, trial court need not
21 examine the relative actual harm to the parties]; *People ex rel. Brown v. Black Hawk Tobacco,*
22 *Inc.* (2011) 197 Cal.App.4th 1561, 1571 [same].)

23 Defendants argue that this standard does not apply where the government is seeking a
24 mandatory preliminary injunction rather than a prohibitory injunction, and that instead a higher
25 standard should apply: that a “mandatory injunction . . . is not permitted except in extreme cases,

26
27 ¹¹ Federal courts take a similar view. (See *Olson*, 2020 WL 905572, at *15 [“The Court
28 agrees that ‘[t]he public interest may be declared in the form of a statute’ and is not served by the
preliminary injunction Plaintiffs seek”].)

1 where the right thereto is clearly established, and it appears that irreparable injury will flow from
2 its refusal.” (*Board of Supervisors v. McMahon* (1990) 219 Cal.App.3d 286, 295.) However, the
3 Court rejects Defendants’ premise. An injunction that restrains a defendant’s continued violation
4 of state law is prohibitory in nature; any aspects of such an injunction that “require defendants to
5 engage in affirmative conduct are merely incidental to the injunction’s objective to prohibit
6 defendants from further violating California’s . . . laws.” (*People ex rel. Brown v. iMergent, Inc.*
7 (2009) 170 Cal.App.4th 333, 342 [collecting authorities].)

8 In any event, Defendants cite no case in which a court declined to apply the *IT Corp.*
9 standard merely because the government was seeking a mandatory rather than a prohibitory
10 injunction. The law is to the contrary. (See *People ex rel. Feuer v. FXS Management, Inc.*
11 (2016) 2 Cal.App.5th 1154, 1157, 1162 [affirming preliminary injunction abating a medical
12 marijuana business as a nuisance, presuming the existence of public harm because it was not
13 authorized by city ordinance]; *City of Corona v. AMG Outdoor Advertising, Inc.* (2016) 244
14 Cal.App.4th 291, 299 [affirming mandatory preliminary injunction requiring defendants to
15 remove billboard that was erected without a permit in violation of city ordinance, applying the *IT*
16 *Corp.* standard].) Nor does the distinction make any sense: if the Legislature has enacted a statute
17 that specifically authorizes injunctive relief for its violation, why should a court be more reluctant
18 to issue an injunction against a defendant that has entirely refused to comply with the statute, as
19 opposed to a defendant that has partially complied but is engaging in some new prohibited
20 practice? Regardless, the issue is academic, since the Court finds that injunctive relief is
21 warranted under either standard. (See *People ex rel. Herrera v. Stender* (2012) 212 Cal.App.4th
22 614, 630 [affirming mandatory preliminary injunction requiring defendants, an immigration
23 lawyer and law firm, to provide notice to clients that another lawyer who had resigned from the
24 firm was not authorized to practice law].)¹²

25 ¹² Defendants also point to this Court’s refusal to issue a mandatory injunction seeking
26 reclassification of Lyft’s drivers in *Rogers v. Lyft, Inc.* (S.F. Super. Ct. April 30, 2020) 2020 WL
27 2532527, *appeal filed*, A160182 (May 21, 2020). However, *Rogers* presented a very different
28 situation: it was brought by three individual drivers, all of whom were parties to arbitration
agreements with Lyft; the factual basis for the application for emergency injunctive relief was
“sparse” (*id.* at *6, fn. 5 & *8); it sought provisional relief pending arbitration, which is subject to
(continued...)

1 Here, both A.B. 5 and the UCL specifically provide for injunctive relief. The motion is
2 brought under Labor Code § 2750.3(j), which expressly authorizes the Attorney General and city
3 attorneys to bring “an action for injunctive relief to prevent the continued misclassification of
4 employees as independent contractors,” and the Business and Professions Code, which likewise
5 “provides broad authority for an injunction.” (*People ex rel. Brown v. Black Hawk Tobacco, Inc.*,
6 197 Cal.App.4th at 1568.)¹³ As discussed below, the People have easily shown a reasonable
7 probability that they will prevail on the merits. Further, Defendants have not shown that they
8 would suffer such grave or irreparable harm if an injunction were to issue requiring them to
9 comply with California law that would outweigh the harms to their drivers, other businesses, and
10 the public generally if the Court were to deny the People’s motion. Accordingly, the People’s
11 motion for a preliminary injunction must be granted.

12 **B. The People Are Likely To Prevail On The Merits Of Their Claim That**
13 **Defendants Are Violating A.B. 5.**

14 The People have shown a reasonable probability (indeed, an overwhelming likelihood) of
15 prevailing on the merits of their claim that Defendants are violating A.B. by misclassifying their
16 drivers as independent contractors. In order to assess that claim, it is necessary first to examine
17 A.B. 5 itself and the Supreme Court’s *Dynamex* decision, which it was intended to codify.

18
19 (...continued)
20 additional statutory requirements (*id.* at *7); and it sought reclassification of Lyft’s drivers only
21 for the narrow purpose of qualifying them for a single benefit, paid sick leave under state law,
22 where they were already eligible for greater benefits under federal law. This action, in contrast, is
23 brought by the People pursuant to an express statutory authorization to seek injunctive relief to
24 prevent the continued misclassification of employees; the People’s motion is based on an
25 extensive factual record; the claims on which is based are not subject to mandatory arbitration;
26 and it seeks broad-based relief.

27 ¹³ Bus. & Prof. Code section 17203 authorizes a court to enjoin “[a]ny person who
28 engages, has engaged, or proposes to engage in unfair competition” within the meaning of the
UCL and to “make such orders or judgments . . . as may be necessary to prevent the use or
employment by any person of any practice which constitutes unfair competition . . . , or as may be
necessary to restore to any person in interest any money or property, real or personal, which may
have been acquired by means of such unfair competition.” Section 17204 specifically authorizes
the Attorney General and certain city attorneys, among other public officials, to prosecute actions
for relief under the UCL upon their own complaint or upon the complaint of a person who has
suffered injury in fact and has lost money or property as a result of the unfair competition.

1 **1. A.B. 5 and the California Supreme Court’s *Dynamex* Decision**

2 The Legislature enacted A.B. 5, and it was signed into law by the Governor, in September
3 2019, and it became effective on January 1, 2020. (Stats. 2019, ch. 296, codified at Lab. Code §§
4 2750.3, 3351, and Unemp. Ins. Code §§ 606.5 and 621.) The Legislature declared its intent to
5 “codify the decision of the California Supreme Court in *Dynamex* and [to] clarify the decision’s
6 application in state law.” (*Id.* § 1(d).) That decision established the ABC test for determining
7 when a person shall be considered an employee rather than an independent contractor. Under that
8 test, for purposes of the Labor Code, the Unemployment Insurance Code, and the wage orders of
9 the Industrial Welfare Commission, “a person providing labor or services for remuneration shall
10 be considered an employee rather than an independent contractor unless the hiring entity
11 demonstrates that all of the following conditions are satisfied”:

12 (A) The person is free from the control and direction of the hiring entity in
13 connection with the performance of the work, both under the contract for the
14 performance of the work and in fact.

15 (B) The person performs work that is outside the usual course of the hiring entity’s
16 business.

17 (C) The person is customarily engaged in an independently established trade,
18 occupation, or business of the same nature as that involved in the work
19 performed.

20 (Lab. Code § 2750.3(a)(1).) Thus, unless the hiring entity can demonstrate that all three of the
21 conditions or “prongs” are satisfied, the person shall be considered an employee. (*Id.*)¹⁴

22 *Dynamex* involved a complaint by two delivery drivers, suing on their own behalf and on
23 behalf of a class of similarly situated drivers, against *Dynamex*, a nationwide package and
24 document delivery company, alleging that it had misclassified its delivery drivers as independent
25 contractors rather than employees. After the trial court certified a class action, finding that the
26 common issues relating to the proper classification of the drivers as employees or as independent

27 ¹⁴ Subdivision (b) expressly exempts a number of different occupations from the ABC
28 test. (§ 2750.3(b)(1)-(7).) Subdivision (c) also exempts a variety of contracts for professional
services, while subdivisions (d) through (h) exempt a number of other relationships and
industries. None refers, directly or indirectly, to drivers who work for transportation network
companies such as Defendants.

1 contractors predominated over potential individual issues, Dynamex unsuccessfully sought to
2 decertify the class, and then filed a writ proceeding in the Court of Appeal regarding the proper
3 definitions of “employ” and “employer” for purposes of the wage orders. The Supreme Court
4 granted review to decide that issue.

5 After an extensive review of California and out-of-state judicial decisions regarding the
6 employee or independent contractor distinction, the Court held that “the wage order’s suffer or
7 permit to work definition must be interpreted broadly to treat as ‘employees,’ and thereby provide
8 the wage order’s protection to, *all* workers who would ordinarily be viewed as *working in the*
9 *hiring business.*” (4 Cal.5th at 916 (emphasis original).) In particular, the Court held that “in
10 determining whether . . . a worker is properly considered the type of independent contractor to
11 whom the wage order does not apply, it is appropriate to look to a standard, commonly referred to
12 as the ‘ABC’ test, that is utilized in other jurisdictions in a variety of contexts to distinguish
13 employees from independent contractors.” (*Id.*) On the facts disclosed by the record, the Court
14 went on to hold, the trial court’s class certification order was correct as a matter of law under this
15 ABC test, and the Court of Appeal’s judgment therefore was affirmed. (*Id.* at 917.)

16 17 **2. A.B. 5 Applies To Defendants’ Transportation Network Companies**

18 Defendants contend first that A.B. 5 does not apply to them at all, either because they are
19 not “hiring entities” within the meaning of the legislation or because their businesses fall within
20 one or more of the statutory exemptions. That contention is impossible to square with
21 Defendants’ own litigation positions, and lacks merit in any event.

22 *First*, in the same breath as Defendants argue that they are not subject to A.B. 5, they urge
23 the Court to stay this litigation until the Ninth Circuit can decide the constitutionality of that
24 legislation, insisting that a decision in their favor will moot this case. But if A.B. 5 does not even
25 apply to Defendants, why would the Court need to stay this litigation until its validity has been
26 determined? Indeed, the inconsistency goes even deeper. One week after A.B. 5 went into effect
27 on January 1, 2020, Uber, Postmates, and two individual drivers filed the *Olson* action, seeking a
28 preliminary injunction enjoining the enforcement of A.B. 5 against those companies and their

1 drivers. (*Olson*, 2020 WL 905572, at *3.) Uber argued in that case that “AB 5 targets gig
2 economy companies and workers and treats them differently from similarly situated groups.” (*Id.*
3 at *5.) Indeed, pointing to “the bill sponsor’s alleged refusal to consider an exemption for gig
4 economy companies,” Uber and its co-plaintiffs argued “that AB 5’s supporters ‘did their best to
5 limit the scope of the law *only* to the [transportation] network companies.’” (*Id.* at *8.) The
6 district court agreed with plaintiffs’ assertion that “the record contains some evidence that AB 5
7 targeted Company Plaintiffs and other gig economy companies, and that some lawmakers’
8 complaints specifically complained about Uber.” (*Id.* at *9 (footnote omitted); see also *id.* at *11
9 [quoting references in plaintiffs’ complaint and motion “to ‘forced reclassification’ as if Uber’s
10 and Postmates’ drivers necessarily transform into employees under AB 5”]).¹⁵ Yet here, Uber
11 contends that the same legislation it asserts in federal court “targeted” its business does not, in
12 fact, apply to it at all. It is difficult for the Court to take seriously such contradictory positions.

13 *Second*, Defendants’ position that A.B. 5 does not apply to them lacks merit as a matter of
14 statutory interpretation and logic. Defendants assert that they are not “hiring entities” within the
15 meaning of A.B. 5 because their drivers do not provide services to them and Defendants do not
16 pay remuneration to drivers for their services. Nonsense.

17 Contrary to Defendants’ argument, A.B. 5 does not establish any “threshold requirement”
18 to show that the putative employer is a hiring entity that must be met before applying the ABC
19 test. The ABC test focuses on the individual worker, not on the employer: “a person providing
20 labor or services for remuneration is considered an employee rather than an independent
21 contractor unless the hiring entity demonstrates that the following conditions are satisfied.” (Lab.
22 Code § 2750.3(a)(1).) It is readily apparent that the legislation’s use of the undefined term
23 “hiring entity” was intended to avoid using the term “employer,” and is synonymous with the
24 more cumbersome phrase “the person to whom service is rendered” that was commonly used
25 under the *Borello* test that predated the enactment of A.B. 5. (See *Ayala v. Antelope Valley*
26 *Newspapers, Inc.* (2014) 59 Cal.4th 522, 531, quoting *Borello*, 48 Cal.3d at 350 [under *Borello*,

27 ¹⁵ At the same time, Uber and Postmates “insist[ed] that their drivers qualify as
28 independent contractors even under the ABC test.” (*Id.* at *10; see also *id.* at *11 (same).)

1 “the principal test of an employment relationship [was] whether *the person to whom service is*
2 *rendered* ha[d] the right to control the manner and means of accomplishing the result desired”
3 (emphasis added)]; see also Lab. Code § 3357 [“Any person rendering service for another, other
4 than as an independent contractor, or unless expressly excluded herein, is presumed to be an
5 employee.”].) As discussed above, A.B. 5 was intended to *broaden* the definition of an
6 employee. Defendants offer no reason to believe that the Legislature intended to negate or
7 undermine that objective by at the same time narrowing the category of businesses responsible for
8 hiring workers. Moreover, contrary to Defendants’ misreading, nothing in the plain statutory
9 language requires that the “remuneration” be paid *directly* by the “hiring entity,” only that the
10 individual must be “providing labor or services for remuneration.” Uber and Lyft’s hundreds of
11 thousands of drivers plainly are not providing their labor for free.

12 In any event, Defendants *are* hiring entities. The Public Utilities Code explicitly recognizes
13 that Uber and Lyft are hiring entities, since it provides that a transportation network company
14 “shall not contract with, employ, or retain a driver” who has been convicted of certain criminal
15 offenses. (Pub. Util. Code § 5445.2(a)(2), (3).) Under any conceivable reading of that language,
16 those activities—contracting with, employing, or retaining drivers—constitute “hiring.”
17 Defendants do not contest the People’s showing that they set drivers’ qualification standards,
18 solicit applications, conduct background checks and in-person interviews with applicants, engage
19 certain applicants as drivers while rejecting others, and enter into standard form contracts with
20 drivers. Defendants’ insistence that they are not “hiring entities” blinks economic reality, and is
21 inconsistent with the Supreme Court’s direction in *Dynamex* that California’s employee
22 classification standard should be “interpreted and applied broadly to include within the covered
23 employee category *all* individuals who can reasonably be viewed as working ‘*in the [hiring*
24 *entity’s] business.*’” (5 Cal.4th at 953.)¹⁶

25 ¹⁶ Uber’s half-hearted argument, joined by Lyft, that its transportation network business is
26 exempt from A.B. 5 as a “bona fide business-to-business contracting relationship” (Lab. Code §
27 2750.3(e)) or “the relationship between a referral agency and a service provider” (*id.* § 2570.3(g))
28 is risible. Under the familiar maxim of statutory construction *expressio unius est exclusio*
alterius, had the Legislature meant to exempt Defendants’ well-known ride-hailing businesses, it
would have done so explicitly. (See *Sierra Club v. State Bd. of Forestry* (1994) 7 Cal.4th 1215,
(continued...))

1 **3. Drivers Do Not Perform Work That Is Outside The Usual Course of**
2 **Defendants' Businesses.**

3 As noted above, under the ABC test, Defendants' drivers are presumptively employees, and
4 Defendants bear the burden to show otherwise. In order to determine whether Defendants can
5 met their burden, the Court need only decide that Defendants cannot satisfy *one* of the three
6 prongs of the ABC test. (See *Dynamex*, 4 Cal.5th at 963 [because "a hiring entity's failure to
7 satisfy any one of the three parts itself establishes that the worker should be treated as an
8 empoloyee for purposes of the wage order, a court is free to consider the separate parts of the
9 ABC standard in whatever order it chooses."].) Here, this Court need only address the "B" prong
10 in order to find that the People have shown, at the very least, a reasonable probability of
11 prevailing on their claim.

12 The "B" prong of the test asks whether "[t]he person performs work that is outside the usual
13 course of the hiring entity's business." (Lab. Code § 2750.3(a)(1)(B).) As a matter of logic, in
14 order to answer that question, one has to identify in the first instance the nature of the entity's
15 "usual business operation." Let's do that: Defendants are regulated by the California Public
16 Utilities Commission as transportation network companies (TNCs). (Pub. Util. Code §§ 5430-
17 5450.) Article 7, which applies to TNCs, was added to Chapter 8 of the Public Utilities Code,
18 "Charter-Party Carriers of Passengers," effective January 1, 2015. Sections 5360 and 5360.5
19 define charter-party carriers as "every person engaged in the transportation of persons by motor
20 vehicle for compensation" on a prearranged basis. Section 5431 defines a TNC as a specialized
21 type of charter-party carrier: "an organization . . . operating in California that provides
22 prearranged transportation services for compensation using an online-enabled application or
23 platform to connect passengers with drivers using a personal vehicle." (*Id.* § 5431(c).) In
24 enacting these provisions, the Legislature expressly found that the California Public Utilities
25 Commission (CPUC), which is responsible for regulating TNCs under these provisions, "has

26

27 (...continued)

28 1230 ["if exemptions are specified in a statute, [a court] may not imply additional exemptions
unless there is a clear legislative intent to the contrary."].) In any event, none of the requirements
of either statutory exemption is met here. (See People's Reply at 23-24.)

1 initiated regulation of transportation network companies as a new category of charter-party
2 carriers.” (*Id.* § 5440(a).)¹⁷ These California statutes governing Defendants’ businesses, not what
3 may be said by Defendants’ experts or “in the economic literature and under the securities laws,”
4 (Lyft Opp. at 31), are dispositive as to the nature of those businesses: they are “engaged in the
5 transportation of persons by motor vehicle for compensation.”

6 Despite these controlling statutory provisions, Defendants stoutly deny the reality that they
7 are in the business of transporting passengers for compensation. Instead, they assert that they are
8 merely “multi-sided platforms” that operate as “matchmakers” to facilitate transactions between
9 drivers and passengers. Uber goes even farther, asserting that the platform itself—the smartphone
10 app—is Uber’s business, and that its “actual employees” work in engineering, product
11 development, marketing, and operations “in order to improve the properties of the app.” (Uber
12 Opp. at 25.) Uber contends that “[t]he work performed by drivers—transporting riders—is thus
13 outside the ordinary course of Uber’s business because it is not comparable to the work
14 performed by Uber’s employees.” (*Id.*)

15 Uber’s argument is a classic example of circular reasoning: because it regards itself as a
16 technology company and considers only tech workers to be its “employees,” anybody else is
17 outside the ordinary course of its business, and therefore is not an employee. Were this reasoning
18 to be accepted, the rapidly expanding majority of industries that rely heavily on technology could
19 with impunity deprive legions of workers of the basic protections afforded to employees by state
20 labor and employment laws.

21 This is not the first time that Defendants have made this argument. In a pre-*Dynamex* case,
22 exactly as here, Uber asserted that the presumption of employment did not apply to its drivers
23 because they do not provide a service to it. “The central premise of this argument is Uber’s
24 contention that it is not a ‘transportation company,’ but instead is a pure ‘technology company’

25 ¹⁷ Under the statutory scheme, TNCs are required to maintain specified insurance
26 coverage and to disclose that coverage and limits of liability to participating drivers (*id.* §§ 5432,
27 5433); to cooperate with claims coverage investigations into accidents involving participating
28 drivers (*id.* § 5435); to maintain the privacy of TNC passengers’ personally identifiable
information (*id.* § 5437); and to conduct criminal background checks of participating drivers (*id.*
§ 5445.2).

1 that merely generates ‘leads’ for its transportation providers through its software. Using this
2 semantic framing, Uber argues that [drivers] are simply its customers who buy dispatches that
3 may or may not result in actual rides. . . . Thus, Uber passes itself off as merely a technological
4 intermediary between potential riders and potential drivers.” (*O’Connor v. Uber Technologies,*
5 *Inc.* (N.D. Cal. 2015) 82 F.Supp.3d 1133, 1141.) Judge Edward Chen of the U.S. District Court
6 for the Northern District of California found this argument “fatally flawed in numerous respects.”
7 (*Id.*) First, it focuses too narrowly on the technology Uber developed, which “is merely one
8 instrumentality used in the context of its larger business. Uber does not simply sell software; it
9 sells rides.” (*Id.*) Focusing on “the substance of what the firm actually does . . . , it is clear that
10 Uber is most certainly a transportation company, albeit a technologically sophisticated one.” (*Id.*)
11 “Even more fundamentally, it is obvious drivers perform a service for Uber because Uber simply
12 would not be a viable business without its drivers.” (*Id.* at 1142 (footnote omitted).) Thus, “it
13 strains credulity to argue that Uber is not a ‘transportation company’ or otherwise is not in the
14 transportation business; it strains credulity even further to argue that Uber drivers do not provide
15 Uber a valuable service.” (*Id.* at 1144.) “Uber’s drivers provide an ‘indispensable service’ to
16 Uber, and the firm ‘could not more survive without them’ than it could without a working
17 smartphone app.” (*Id.*) Grounding its holding in logic, common sense, and prior California case
18 law, the court held as a matter of law that “Uber’s drivers render service to Uber, and thus are
19 Uber’s presumptive employees.” (*Id.* at 1145.)

20 A number of other courts have reached exactly the same conclusion. (See, e.g.,
21 *Cunningham v. Lyft, Inc.* (D.Mass. May 22, 2020) 2020 WL 2616302, at *10 [“despite Lyft’s
22 careful self-labeling, the realities of Lyft’s business—where riders pay Lyft for rides—
23 encompasses the transportation of riders. The ‘realities’ of Lyft’s business are no more merely
24 ‘connecting’ riders and drivers than a grocery store’s business is merely connecting shoppers and
25 food producers, or a car repair shop’s business is merely connecting car owners and mechanics.
26 Instead, focusing on the reality of what the business offers its customers, the business of a grocery
27 stores is selling groceries, the business of a car repair shop is repairing cars, and Lyft’s
28 business—from which it derives its revenue—is transporting riders.”]; *Namisnak v. Uber*

1 *Technologies, Inc.* (N.D. Cal. Mar. 12, 2020) --- F.Supp.3d ----, 2020 WL 1283484, at *4
2 ["Uber's claim that it is 'not a transportation company' strains credulity, given the company
3 *advertises itself* as a 'transportation system.'"]; *Crawford v. Uber Technologies, Inc.* (N.D. Cal.
4 Mar. 1, 2018) 2018 WL 1116725, at *4 [rejecting Uber's argument that it is not "primarily
5 engaged in the business of transporting people," but instead is a "a technology company that is
6 engaged in the business of facilitating networking between drivers and riders."]; *Cotter*, 60
7 F.Supp.3d at 1078 ["the argument that Lyft is merely a platform, and that drivers perform no
8 service for Lyft, is not a serious one."].¹⁸

9 The Supreme Court's *Dynamex* decision, which the Legislature codified in A.B. 5,
10 significantly illuminates the purpose and meaning of this prong of the test. In discussing that
11 factor, the Court stated that "one principal objective of the suffer or permit to work standard is to
12 bring within the 'employee' category *all* individuals who can reasonably be viewed as working
13 '*in the [hiring entity's] business*' [citation], that is, all individuals who are reasonably viewed as
14 providing services to the business in a role comparable to that of an employee, rather than in a
15 role comparable to that of a traditional independent contractor. [Citations.] Workers whose roles
16 are most clearly comparable to those of employees include individuals whose services are
17 provided within the usual course of the business of the entity for which the work is performed and
18 thus who would ordinarily be viewed by others as working in the hiring entity's business and not
19 as working, instead, in the worker's own independent business." (5 Cal.4th at 959.) The Court
20 provided several illustrative examples:

21 Thus, on the one hand, when a retail store hires an outside plumber to repair a leak in a
22 bathroom on its premises or hires an outside electrician to install a new electrical line, the

23 ¹⁸ Indeed, even before the California Supreme Court's *Dynamex* decision and the
24 enactment of A.B. 5, a number of courts had held that the question whether Uber and Lyft drivers
25 were employees, at a minimum, raised disputed issues of fact that precluded finding as a matter of
26 law that their drivers were independent contractors. (See, e.g., *Cotter*, 60 F.Supp.3d at 1078-1081
27 [genuine issues of fact existed as to whether Lyft retained right to control drivers, and thus
28 whether they were employees or independent contractors]; *Doe v. Uber Techs., Inc.* (N.D. Cal.
2016) 184 F.Supp.3d 774, 783 [holding at motion to dismiss stage that plaintiff drivers "alleged
sufficient facts that an employment relationship may plausibly exist"]; *O'Connor*, 82 F.Supp.3d
at 1138 [finding a triable issue of fact as to whether Uber drivers are employees].) Even then, a
court could have found a reasonable probability that Defendants were violating California law.

1 services of the plumber or electrician are not part of the store's usual course of business and
2 the store would not reasonably be seen as having suffered or permitted the plumber or
3 electrician to provide services to it as an employee. [Citation.] On the other hand, when a
4 clothing manufacturing company hires work-at-home seamstresses to make dresses from
5 cloth and patterns supplied by the company that will thereafter be sold by the company
6 [citations], or when a bakery hires cake decorators to work on a regular basis on its custom-
designed cakes [citation], the workers are part of the hiring entity's usual business operation
and the hiring business can reasonably be viewed as having suffered or permitted the
workers to provide services as employees.

7 (*Id.* at 959-960.) In *Dynamex*, the Court found there was a sufficient commonality of interest
8 with respect to prong B to permit plaintiff delivery drivers' claim of misclassification to be
9 resolved on a class basis. (4 Cal.5th at 965.) The Court explained that the defendant's "entire
10 business is that of a delivery service. Unlike other types of businesses in which the delivery of a
11 product may or may not be viewed as within the usual course of the hiring company's business,
12 here the hiring entity is a delivery company and the question whether the work performed by the
13 delivery drivers within the certified class is outside the ordinary course of its business is clearly
14 amenable to determination on a class basis." (*Id.* (footnote omitted).)

15 Defendants' position cannot survive even cursory examination. Far from "merely
16 incidental" to Defendants' transportation network businesses, drivers' work—the work of
17 transporting customers for compensation—is "an integral part" of those businesses. (See *id.* at
18 961, fn. 29; see also *Cotter*, 60 F.Supp.3d at 1069 ["[Drivers'] work is central, not tangential, to
19 Lyft's business."].) Defendants' entire business is that of transporting passengers for
20 compensation. Unlike an independent plumber or electrician who may visit a retail store on one
21 occasion to perform a single, limited task such as repairing a leak or installing a new electrical
22 line, Defendant's drivers are part of their usual, everyday business operations, and their work falls
23 squarely within the ordinary course of that business.¹⁹ In short, under any reasonable
24 understanding of the English language, an Uber or Lyft driver can only be viewed "as working in
25 the hiring entity's business." (Accord, *Rogers v. Lyft, Inc.*, 2020 WL 1684151, at *2 ["Lyft

26 ¹⁹ Uber places considerable emphasis on recent changes to its model, including a
27 modification that allows drivers to have input into fare-setting. While those changes to Uber's
28 algorithm and practices may have some bearing on the other prongs of the ABC test, none alters
the analysis as to whether drivers' work is outside the ordinary course of Uber's business.

1 drivers provide services that are squarely within the usual course of the company's business, and
2 Lyft's argument to the contrary is frivolous."].²⁰

3
4 **C. Substantial Public Harm Will Result If An Injunction Does Not Issue.**

5 As discussed above, the controlling legal standard gives rise to a presumption that public
6 harm will result if an injunction does not issue where, as here, a public agency seeking to enjoin
7 the alleged violation of a statute which specifically provides for injunctive relief establishes that it
8 is reasonably probable it will prevail on the merits. But the Court need not rely solely on that
9 bare presumption. Both the California Supreme Court and the Legislature have clearly delineated
10 the harms—to drivers, to businesses, and to the public generally—that result from employers'
11 misclassification of their employees.

12 In *Dynamex*, the Supreme Court explained that "the question whether an individual worker
13 should properly be classified as an employee or, instead, as an independent contractor has
14 considerable significance for workers, businesses, and the public generally":

15 On the one hand, if a worker should properly be classified as an employee, the hiring
16 business bears the responsibility of paying federal Social Security and payroll taxes,
17 unemployment insurance taxes and state employment taxes, providing worker's
18 compensation insurance, and, most relevant for the present case, complying with numerous
19 state and federal statutes and regulations governing the wages, hours, and working
20 conditions of employees. The worker then obtains the protection of the applicable labor
21 laws and regulations. On the other hand, if a worker should properly be classified as an
22 independent contractor, the business does not bear any of those costs or responsibilities, the
23 worker obtains none of the numerous labor law benefits, and the public may be required
24 under applicable laws to assume additional financial burdens with respect to such workers
25 and their families.

26 (4 Cal.5th at 912-913; see also *Cotter*, 60 F.Supp.3d at 1069 ["The answer is of great
27 consequence for the drivers, because the California Legislature has conferred many protections on
28 employees; while independent contractors receive virtually none."].) The Court went on to
observe that "[a]lthough in some circumstances classification as an independent contractor may
be advantageous to workers as well as to businesses, the risk that workers who should be treated

²⁰ Defendants' assertion that drivers (and also, presumably, passengers) are "outside the usual course of [their] business[es]" would come as startling news, the Court is convinced, to any layperson. It is equally unpersuasive to this Court.

1 as employees may be improperly classified as independent contractors is significant in light of the
2 potentially substantial economic incentives that a business may have in mischaracterizing some
3 workers as independent contractors. Such incentives include the unfair competitive advantage the
4 business may obtain over competitors that properly classify similar workers as employees and
5 that thereby assume the fiscal and other responsibilities and burdens that an employer owes to its
6 employees. In recent years, the relevant regulatory agencies of both the federal and state
7 governments have declared that the misclassification of workers as independent contractors is a
8 very serious problem, depriving federal and state governments of billions of dollars in tax revenue
9 and millions of workers of the labor law protections to which they are entitled.” (*Id.* at 913
10 (footnote omitted).)

11 When it enacted A.B. 5, the Legislature with the Supreme Court’s recognition that
12 misclassification of workers results in “harm to misclassified workers who lose significant
13 workplace protections,” “unfairness to employers who must compete with companies that
14 misclassify,” and “the loss to the state of needed revenue from companies that use
15 misclassification to avoid obligations such as payment of payroll taxes, payment of premiums for
16 workers’ compensation, Social Security, unemployment, and disability insurance.” (A.B. 5, Stats.
17 2019, ch. 296, § 1(b).) It found that “[t]he misclassification of workers as independent
18 contractors has been a significant factor in the erosion of the middle class and the rise of income
19 inequality.” (*Id.* § 1(c).) In a broad summary of its intent, the Legislature declared:

20 It is also the intent of the Legislature in enacting this act to ensure workers who are
21 currently exploited by being misclassified as independent contractors instead of recognized
22 as employees have the basic rights and protections they deserve under the law, including a
23 minimum wage, workers’ compensation if they are injured on the job, unemployment
24 insurance, paid sick leave, and paid family leave. By codifying the California Supreme
25 Court’s landmark, unanimous Dynamex decision, this act restores these important
26 protections to potentially several million workers who have been denied these basic
27 workplace rights that all employees are entitled to under the law.

28 (*Id.* § 1(e).)

It bears emphasis that these harms are not mere abstractions; they represent real harms to
real working people. The People’s motion is supported by numerous declarations of individual

1 drivers who testify that although they work grueling hours for Defendants for their livelihoods
2 and to support their families, they receive no payment for overtime, rest or meal breaks, restroom
3 breaks, or time spent waiting for fares, driving to pick up passengers, or “deadheading” on a
4 return trip; they are not reimbursed for business expenses, such as the costs of vehicle inspection,
5 automobile rent or maintenance, insurance, gasoline, or cleaning their vehicles, or cell phone use;
6 they do not receive health insurance or sick leave, and therefore receive no pay if they are sick
7 and have to take a day off; they do not receive paid family leave to take care of a sick child or
8 spouse; and they may not qualify for or receive state unemployment benefits. That these drivers
9 may temporarily qualify for emergency federal benefits during the pandemic does not
10 fundamentally alter the precariousness of their financial existence, which is directly attributable to
11 Defendants’ refusal to classify and treat them as employees entitled to protection under California
12 law. The harms that would result if an injunction does not issue are substantial indeed.

13 **D. The Asserted Harm To Defendants Is Not Grave Or Irreparable, And In Any**
14 **Event Does Not Outweigh the Harm To Drivers, Businesses, and The General**
15 **Public In The Absence of An Injunction.**

16 Defendants have not shown that the harm to them from issuance of an injunction requiring
17 them to comply with California law would be “grave or irreparable.” Even if they could, they
18 have not shown that any harm to them would outweigh the harm to drivers, competing businesses,
19 and the general public in the absence of an injunction.

20 Defendants assert that if they are required to comply with A.B. 5 and to to reclassify their
21 drivers as employees, they would suffer significant harms. In particular, they assert that an
22 injunction will cause two categories of harm: (1) the costs and other harms associated with the
23 restructuring of Defendants’ businesses in California; and (2) the harms to Defendants’ drivers,
24 including the risk that some drivers may unable to continue earning income if Defendants do not
25 offer them continued work as employees, and the risk that their reclassification as employees may
26 jeopardize their eligibility for emergency federal benefits available to them as self-employed
27 workers during the COVID-19 pandemic. The Court does not question that the requested
28 injunction may have adverse effects, although they are difficult reliably to predict and quantify.

1 However, it cannot find that they would outweigh the harms to workers, businesses, and the
2 public discussed above.

3 As Defendants acknowledged at the hearing, the “sliding scale” approach to preliminary
4 injunctions applies here. (See *Butt v. State of California* (1992) 4 Cal.4th 668, 678 [“The trial
5 court’s determination must be guided by a ‘mix’ of the potential-merit and interim-harm factors;
6 the greater the plaintiff’s showing on one, the less must be shown on the other to support an
7 injunction.”].) For the reasons discussed above, the People’s showing on the merits is very
8 strong, and Defendants’ is exceedingly weak. That being so, even if the harm to Defendants were
9 “grave or irreparable,” the Court believes that an injunction would be warranted. (See *IT Corp.*,
10 35 Cal.3d at 72 [even if a defendant makes such a showing, a trial court may conclude that an
11 injunction is proper after considering “both (1) the degree of certainty of the outcome on the
12 merits, and (2) the consequences to each of the parties of granting or denying interim relief.”].)²¹

13 The Court is under no illusion that implementation of its injunction will be costless or easy.
14 There can be no question that in order for Defendants to comply with A.B. 5, they will have to
15 change the nature of their business practices in significant ways, such as by hiring human
16 resources staff to hire and manage their driver workforces. (See *Olson*, 2020 WL 905572, at *14
17 [“If the ABC test is found to require the reclassification of their drivers, Uber and Postmates
18 would also suffer significant harms associated with restructuring their businesses.”].) But that
19 argument, at root, is fundamentally one about the financial costs of compliance. Defendants’
20 contention that the costs of complying with existing law are properly considered irreparable is
21 questionable. (Cf. *People ex rel. Reisig v. Acuna* (2010) 182 Cal.App.4th 866, 882 [finding that
22 defendants cannot claim harm from any restrictions in activities found to constitute a public
23 nuisance].) But even if they are, those are costs that Defendants reasonably should have

24 ²¹ Defendants correctly stress that the People are seeking a preliminary injunction, not a
25 permanent injunction. However, even a preliminary injunction that alters the status quo does not
26 necessarily constitute an impermissible permanent injunction, since “it rests solely on the facts
27 presented to the trial court at the time of its issuance” and a full trial is still required to adjudicate
28 the ultimate rights in controversy. (*Integrated Dynamic Solutions, Inc. v. VitaVet Labs, Inc.*
(2016) 6 Cal.App.5th 1178, 1186 [affirming preliminary injunction that altered the status quo in
extreme case where the right to relief was clearly established].)

1 anticipated bearing at least since April 2018, when *Dynamex* was decided, and certainly since
2 September 2019, when A.B. 5 was enacted and signed into law.²² As one district court has
3 observed, “A.B. 5 contains no exception for wealthy corporations that disagree with the
4 Legislature’s policy judgment and would rather not spend money to effectuate that judgment.”
5 (*Rogers v. Lyft, Inc.*, 2020 WL at *2, fn. 1.)

6 The Court does not take lightly Defendants’ showing that a preliminary injunction may also
7 have an adverse effect on some of their drivers, many of whom desire the flexibility to continue
8 working as they have in the past, and may have commitments that make it difficult if not
9 impossible for them to become full-time or part-time employees.²³ As Defendants argued at the
10 hearing, those concerns are magnified by the sweeping scope of the injunction sought by the
11 People, and by the Court’s uncertainty as to how precisely Defendants will go about complying
12 with it. But if the injunction the People seek will have far-reaching effects, they have only been
13 exacerbated by Defendants’ prolonged and brazen refusal to comply with California law.
14 Defendants may not evade legislative mandates merely because their businesses are so large that
15 they affect the lives of many thousands of people.

16 Moreover, concerns about the effects of the Court’s injunction on drivers are substantially
17 mitigated by at least two factors. First, as Defendants themselves emphasize, the vast majority of
18 their drivers work on a casual or sporadic basis, for only a small number of hours per week, and
19 thus the effects on those drivers of a reorganization of Defendants’ businesses are likely to be
20 correspondingly minor. (See, e.g., Lyft Opp. to PI Mot. at 12; Tucker Decl. ¶ 76.) Second, the

21
22 ²² In its August 4, 2020 order, one of the questions the Court asked Defendants to address
23 at the hearing was: “What measures, if any, have Defendants taken to prepare to comply with
24 A.B. 5 (should it be held to apply to them) since it became effective on January 1, 2020? With
the Supreme Court’s April 2018 *Dynamex* decision?” Defendants conspicuously failed to
respond.

25 ²³ The Court gives no weight to Defendants’ surveys regarding how many of their drivers
26 wish to become employees or remain self-employed. A.B. 5 may be unpopular among some of
27 Defendants’ drivers, but a lawsuit is not a popularity contest. Nor, as Defendants and some *amici*
28 *curiae* argue, is it this Court’s role to decide whether A.B. 5’s effects on drivers will outweigh its
benefits. “Policy judgments underlying a statute are left to the Legislature; the judiciary does not
pass on the wisdom of legislation.” (*Vergara v. State of California* (2016) 246 Cal.App.4th 619,
643.)

1 ongoing effects of the pandemic have drastically reduced the demand for Defendants' services,
2 and even those drivers who are able to find work may elect not to do so to avoid exposing
3 themselves to the coronavirus. (See Uber Opp. to PI Mot. at 30 [referring to "an unprecedented
4 fall in demand for rides due to the pandemic"].) Now, when Defendants' ridership is at an all-
5 time low, may be the best time (or the least worst time) for Defendants to change their business
6 practices to conform to California law without causing widespread adverse effects on their
7 drivers.

8 In short, as the federal district court concluded in *Olson*,

9 Considering the potential impact to the State's ability to ensure proper calculation of low
10 income workers' wages and benefits, protect compliant businesses from unfair
11 competition, and collect tax revenue from employers to administer public benefit
12 programs, the State's interest in applying AB 5 to [Defendants] and potentially hundreds
of thousands of California workers outweighs [Defendants'] fear of being made to abide
by the law.

13 (*Olson*, 2020 WL 905572, at *16.) Although Defendants "have shown some measure of
14 likelihood of irreparable harm, the balance of equities and the public interest weigh in favor of
15 permitting the State to enforce this legislation." (*Id.*)

16 17 CONCLUSION AND ORDERS

18 For these reasons, Defendants' motions to stay this action are denied; Lyft's demurrer is
19 overruled and its motion to strike the People's complaint is denied; and the Court defers any
20 ruling on Defendants' motions to compel arbitration to a later hearing date to be set upon further
21 order of the Court.

22 The People's motion for a preliminary injunction is GRANTED, as follows:

- 23 1. During the pendency of this action, Defendants Uber Technologies, Inc. and Lyft, Inc.
24 are hereby enjoined and restrained from classifying their Drivers as independent
25 contractors in violation of Labor Code section 2570.3.
26
27
28

1 2. Defendants are further enjoined and restrained from violating any provisions of the
2 Labor Code, the Unemployment Insurance Code, and the wage orders of the Industrial
3 Welfare Commission with regard to their Drivers.

4 3. "Drivers" refers to the following two categories of individuals:

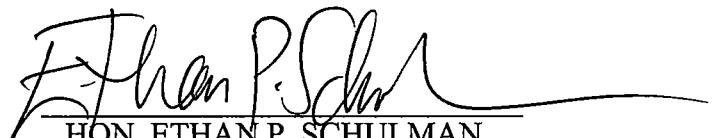
5 First Category: All individuals who drive for Uber as ride-hailing drivers in the State of
6 California at any time during the pendency of this action, and who (1) signed up to drive
7 as a ride-hailing driver directly with Uber or with an Uber subsidiary under their
8 individual name or with a fictional/corporate name and (2) are paid by Uber or an Uber
9 subsidiary directly under their individual name or a fictional/corporate name for their
10 services as ride-hailing drivers.

11 Second Category: All individuals who drive for Lyft as ride-hailing drivers in the State
12 of California at any time during the pendency of this action, and who (1) signed up to
13 drive as a ride-hailing driver directly with Lyft or with a Lyft subsidiary under their
14 individual name or with a fictional/corporate name and (2) are paid by Lyft or a Lyft
15 subsidiary directly under their individual name or a fictional/corporate name for their
16 services as ride-hailing drivers.

17 This injunction is stayed for a period of 10 days.²⁴ It shall remain in effect through and including
18 the trial of this matter or upon further order of this Court.

19
20 **IT IS SO ORDERED.**

21 Dated: August 10, 2020

22 
23 HON. ETHAN P. SCHULMAN
24 JUDGE OF THE SUPERIOR COURT

25
26 ²⁴ At the close of the hearing, Defendants requested that the Court temporarily stay any
27 injunction pending appellate review. The Court believes that a brief stay is appropriate under the
28 circumstances. (See Code Civ. Proc. § 918.) Because the People are the moving party, no
undertaking is required. (Code Civ. Proc. § 529(b)(3).)

I, the undersigned, certify that I am an employee of the Superior Court of California, County Of San Francisco and not a party to the above-entitled cause and that on August 10, 2020 I served the foregoing **Order on People's motion for preliminary injunction and related motions** on each counsel of record or party appearing in propria persona by causing a copy thereof to be served electronically by email sent to the email addresses indicated below:

Date: August 10, 2020


By: M.GOODMAN

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