FILED
San Francisco County Superior Court

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CLERK OF THE COURT
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SUPERIOR COURT OF CALIFORNIA

COUNTY OF SAN FRANCISCO

DEPARTMENT 304

THE PEOPLE OF THE STATE OF CALIFORNIA,

Plaintiff,

v.

DOORDASH, INC., ET AL.,

Defendants.

Case No. CGC-20-584789

ORDER RE (1) DEFENDANT DOORDASH, INC.'S DEMURRER TO PLAINTIFF'S SECOND AMENDED COMPLAINT; (2) DEFENDANT DOORDASH, INC.'S MOTION TO STRIKE PORTIONS OF PLAINTIFF'S SECOND AMENDED COMPLAINT; AND (3) DEFENDANT DOORDASH, INC.'S MOTION TO STAY PROCEEDINGS

INTRODUCTION

The above-entitled matters came on regularly for hearing on Tuesday, February 9, 2021. The appearances are as stated in the record. Having reviewed and considered the arguments and written submissions[1] of all parties and being fully advised, the Court overrules the demurrer, denies the motion to strike, and grants in part and denies in part the motion to stay.[2]

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[1] On February 11, 2021, the Court issued an order asking the parties to provide concise supplemental briefs addressing whether this Court should stay this action, including resolution of the pending motions, ninety days to await an appellate decision in *The People of the State of California v. Maplebear, Inc.*, D077380. On February 17, 2021, the Court of Appeal issued an unpublished decision resolving the appeal. On February 19, 2021, the parties duly submitted concise supplemental briefs submitting that the *Maplebear* appeal does not warrant a stay because an unpublished decision has been issued.

[2] The unopposed requests for judicial notice that Defendant made in connection with its opening papers for the demurrer and motion to strike are granted. The significance of the supplemental request for judicial notice, which is opposed, is taken up in the body.

BACKGROUND

The operative Second Amended Complaint ("SAC") contains two causes of action: (1) A direct cause of action for violation of Labor Code § 2775 predicated on worker misclassification; and (2) An Unfair Competition Law ("UCL") claim that derives from the alleged misclassification. (See SAC ¶¶ 84-93.) Three motions are before the Court. Through those motions, Defendant seeks to secure dismissal of the case or, in the alternative, an order striking certain allegations and staying these proceedings. Plaintiff opposes the motions.

DISCUSSION AND ANALYSIS

I. Demurrer

A. Legal Standard

A party may demur where, *inter alia*, "[t]he court has no jurisdiction of the subject of the cause of action alleged in the pleading[,]" "[t]here is another action pending between the same parties on the same cause of action[,]" or "[t]he pleading does not state facts sufficient to constitute a cause of action." (Code of Civ. Proc., § 430.10(a), (c), (e).)

A demurrer admits all material facts properly pleaded, but not contentions, deductions, or conclusions of fact or law. (*Blank v. Kirwan* (1985) 39 Cal.3d 311, 318.) The complaint is given a reasonable interpretation, reading it as a whole and its parts in their context. (*Ibid.*) In reviewing a demurrer, the court also considers matters that may be judicially noticed. (*Ibid.*)

B. Labor Code §§ 2775, 2786

On January 1, 2020, Labor Code § 2750.3 went into effect. The original Complaint in this action, alleging a violation of the UCL based on misclassification under Labor Code § 2750.3, was filed on June 16, 2020. (See Complaint ¶ 86.)

Effective September 4, 2020, Labor Code § 2750.3 was repealed. On the same day, Labor Code §§ 2775 and 2786, among others, went into effect. Labor Code §§ 2775 and 2786 are still in effect.

Pursuant to Labor Code § 2775, for the purposes of the Labor Code, the Unemployment Insurance Code, and the Industrial Welfare Commission wage orders, subject to certain exceptions:

> [A] person providing labor or services for remuneration shall be considered an employee rather than an independent contractor unless the hiring entity demonstrates that the following conditions are satisfied:

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

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

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

(Lab. Code, § 2775(b)(1).)

Since September 4, 2020, Plaintiff, a district attorney, has had express statutory authority to bring "an action for injunctive relief to prevent the continued misclassification of employees as independent contractors" "in a court of competent jurisdiction" "in the name of the people of the State of California[.]" (Lab. Code, § 2786.) Labor Code § 2786 expressly provides that the remedy afforded therein is "[i]n addition to any other remedies available[.]" (*Ibid.*)

C. Proposition 22 – Business & Professions Code § 7448, Et Seq.

In the fall of 2020, the California voters approved Proposition 22. As a result, the Protect App-Based Services Act, codified at Business & Professions Code § 7488, et seq., went into effect on December 16, 2020.

The statute includes a series of findings and declarations. (See Bus. & Prof. Code, § 7449.) The statute provides that "recent legislation has threatened to take away the flexible work opportunities of hundreds of thousands of Californians, potentially forcing them into set shifts and mandatory hours, taking away their ability to make their own decisions about the jobs they take and the hours they work." (Bus. & Prof. Code, § 7449(d).) Further, the statute provides that "[a]pp-based rideshare and delivery drivers deserve economic security. This chapter is necessary to protect their freedom to work independently, while also providing these workers new benefits and protections not available under current law. These benefits and protections include a healthcare subsidy consistent with the average contributions required under the Affordable Care Act (ACA); a new minimum earnings guarantee tied to 120 percent of minimum wage with no maximum; compensation for vehicle expenses; occupational accident insurance to cover on-the-job injuries; and protection against discrimination and sexual harassment." (Bus. & Prof. Code, § 7449(f).)

The statute also includes a statement of purposes: "(a) To protect the basic legal right of Californians to choose to work as independent contractors with rideshare and delivery network companies

throughout the state. [¶] (b) To protect the individual right of every app-based rideshare and delivery driver to have the flexibility to set their own hours for when, where, and how they work. [¶] (c) To require rideshare and delivery network companies to offer new protections and benefits for app-based rideshare and delivery drivers, including minimum compensation levels, insurance to cover on-the-job injuries, automobile accident insurance, health care subsidies for qualifying drivers, protection against harassment and discrimination, and mandatory contractual rights and appeal processes. [¶] (d) To improve public safety by requiring criminal background checks, driver safety training, and other safety provisions to help ensure app-based rideshare and delivery drivers do not pose a threat to customers or the public." (Bus. & Prof. Code, § 7450.)

Business & Professions Code § 7451 provides: "Notwithstanding any other provision of law, including, but not limited to, the Labor Code, the Unemployment Insurance Code, and any orders, regulations, or opinions of the Department of Industrial Relations or any board, division, or commission within the Department of Industrial Relations, an app-based driver is an independent contractor and not an employee or agent with respect to the app-based driver's relationship with a network company if the following conditions are met: [¶] (a) The network company does not unilaterally prescribe specific dates, times of day, or a minimum number of hours during which the app-based driver must be logged into the network company's online-enabled application or platform. [¶] (b) The network company does not require the app-based driver to accept any specific rideshare service or delivery service request as a condition of maintaining access to the network company's online-enabled application or platform. [¶] (c) The network company does not restrict the app-based driver from performing rideshare services or delivery services through other network companies except during engaged time. [¶] (d) The network company does not restrict the app-based driver from working in any other lawful occupation or business." (Bus. & Prof. Code, § 7451; see also Bus. & Prof. Code, § 7463 [definitions][3].)

Other provisions set forth the network companies' obligations to app-based drivers. (See, e.g., Bus. & Prof. Code, § 7453-7455.)

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[3] "App-based driver" and "network company" are defined terms. These definitions must also be satisfied for Business & Professions Code § 7451 to be implicated.

D. Whether Proposition 22 Bars Plaintiff's Misclassification Claims

Defendant's lead argument in support of the present demurrer is that Proposition 22 precludes Plaintiff's claims for relief. This argument has two broad premises: (1) Plaintiff has not pled a claim that is viable in a post-Proposition 22 world; and, (2) even if Plaintiff pled a claim that was viable before Proposition 22 went into effect, Proposition 22 either abates those claims or operates retroactively to preclude those claims. For the reasons that follow, the Court denies Defendant's attempt to invoke Proposition 22 as a bar to this action on a demurrer.

1. Whether Plaintiff Must Plead Around the Business & Professions Code § 7451 Exemption

Defendant's Proposition 22 arguments assume that Defendant complies with Proposition 22. In the demurrer briefing, this assumption is implicit. However, in the reply in support of the companion motion to strike, Defendant makes two pertinent arguments: (1) The burden is on Plaintiff to plead facts showing that Proposition 22 is inapplicable; and, in the alternative, (2) Judicially noticeable material read in conjunction with the operative complaint shows that Proposition 22 applies. (Reply re Motion to Strike, 5-10.)[4] Opposing the demurrer, Plaintiff argued that Proposition 22 does not displace the default presumption that workers are employees, such that Plaintiff is not required to plead that Proposition 22 is inapplicable – it is Defendant's burden to establish that Proposition 22 applies as an affirmative defense. (Opposition, 8.)[5] For the reasons that follow, the Court concludes that Plaintiff is not required to plead around Proposition 22. DoorDash bears the burden of demonstrating that the conditions of Business & Profession Code § 7451 are satisfied where it relies on that exception to defeat a misclassification claim brought pursuant to Labor Code § 2775.

First, consistent with the statutes set forth above, Business & Professions Code § 7451 sets forth a narrow exemption or safe harbor from the application Labor Code § 2775. The test set forth in Labor Code § 2775 governs the evaluation of whether "a person providing labor or services for remuneration" is an employee or independent contractor unless an exception exists. (See, e.g., Lab. Code, §§ 2775(b),

[4] Unless otherwise noted, record citations are to the materials filed in connection with the motion being discussed in the pertinent section of the order.

[5] Plaintiff's opposition to the demurrer was filed before Defendant's reply in support of the motion to strike. Accordingly, Plaintiff could not respond to the reply argument in writing.

2776 ["Section 2775 and the holding in Dynamex do not apply to a bona fide business-to-business contracting relationship, as defined below, under the following conditions:"].) Business & Professions Code § 7451 is drafted in the same way as the Labor Code exemptions to Labor Code § 2775. It states that notwithstanding other provisions of law, implicitly including Labor Code § 2775, an "app-based driver" is an independent contractor in his or her relationship with "a network company" "if" specified "conditions are met[.]" (Bus. & Prov. Code, § 7451.)[6]

Second, in California, the independent contractor exemption to wage and hour and workers' compensation law has regularly been treated as an affirmative defense. (See *Dynamex Operations W. v. Superior Court* (2018) 4 Cal.5th 903, 956-58, 957 n.24 [wage and hour context]; *S.G. Borello & Sons, Inc. v. Dep't of Industriaul Relations* (1989) 48 Cal.3d 341, 349 [workers' compensation]; Lab. Code, §§ 2775(b)(1) [placing the burden of proving independent contractor status on hiring entity], 3357, 5705(a).)

Third, Business & Professions Code § 7451 does not explicitly state whether the worker or the hiring entity bears the burden of demonstrating that the conditions set forth in the statute are satisfied.[7]

Fourth, Court finds it consistent with the intent of the voters, the policies of the state of California, and existing law to require a hiring entity to demonstrate that the factual predicates of Business & Professions Code § 7451 are met to secure the benefit of the exemption from the requirements of, among other things, the Labor Code.[8]

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[6] Defendant seems to contend that Business & Professions Code § 7451 is not an exception to Labor Code § 2775. (Reply re Motion to Strike, 7.) Defendant notes that the former is more specific than the latter. (*Ibid.*) But exceptions are necessarily more specific than general rules. (Compare, e.g., Lab. Code, §§ 2775(b)(1), 2776.) Second, Defendant notes both that Proposition 22 was enacted in the Business & Professions Code with "[n]otwithstanding any other provision of law" language, which indicates an intention to supersede earlier statutes. (Reply re Motion to Strike, 6-7.) These points are consistent with Proposition 22 creating a narrow exception to the Labor Code § 2775 test. Proposition 22 supersedes Labor Code § 2775 if, and only if, certain conditions are met. (See *Imperial Merchant Services, Inc. v. Hunt* (2009) 47 Cal.4th 381, 389 [it is a well-settled rule of statutory construction that, if possible, the codes are to be read together and blended into each other as though there was but a single statute].) Put differently, the Court agrees with Defendant's contention that Proposition 22 supersedes Labor Code § 2775 if Proposition 22 applies. But that is how exceptions to general rules always work. The issue taken up here is whether the Court can hold on a demurrer that Proposition 22 applies in this case.

[7] Labor Code § 2775, in contrast, expressly places the burden on the "hiring entity." (Lab. Code, § 2775(b)(1).)

[8] A worker who is classified as an independent contractor under Business & Professions Code § 7451 has rights that are not available to an ordinary independent contractor. The Court does not address the appropriate burden of proof where a worker who has been classified as an independent contractor contends that he or she should have been classified as a Business & Professions Code § 7451 independent contractor.

In interpreting a statute, the role of the court is to determine the intent of the Legislature or, in the case of a ballot measure, the intent of the electorate. (See *People v. Superior Court* (2018) 4 Cal.5th 299, 307 ["*Lara*"]; see also *Imperial Merchant Services*, 47 Cal.4th at 387.) The Court begins with the text of the statute and gives the words their usual and ordinary meaning. (*Imperial Merchant Services*, 47 Cal.4th at 387.) The statute's plain meaning controls unless its words are ambiguous. (*Id.* at 387-88.) If the statutory language permits one or more reasonable interpretation, courts may consider other aids, such as the statute's purpose, legislative history, and public policy. (*Id.* at 388.)

When allocating the burden of proof, the general rule is that where a statute has exemptions, exceptions, or matters which will avoid the statute, the burden is on the claimant to show that he or she falls within that category. (*Simpson Strong-Tie Co., Inc. v. Gore* (2010) 49 Cal.4th 12, 23.) Although the ordinary rules governing the allocation of the burden of proof may be disregarded for policy reasons in exceptional circumstances, those exceptions are few and narrow. (See *id.* at 25.)

Here, Business & Professions Code § 7451 is ambiguous as to the burden of proof because it does not address the issue. However, as discussed above, Defendant is invoking Business & Professions Code § 7451, a narrow exemption, to seek protection from a Labor Code § 2775, a general statute. The rule set forth in *Simpson Strong-Tie* controls, Defendant bears the burden of proving that the narrow exemption set forth in Business & Professions Code § 7451 applies. (See *id.* at 23-26; see also *Imperial Merchant Services*, 47 Cal.4th at 389.)[9]

This result comports with the intent of the electorate in enacting Business & Professions Code § 7451 and public policy. As noted above, California law has long placed the burden on the hiring entity to establish that a worker is not an employee. Defendant argues that Proposition 22 marks a substantial break from California law regarding independent contractor classification. The Court disagrees. Proposition 22, as codified, is a multi-dimensional working protection statute. The statute is intended to redress two evils: (1) The inability to choose to work as an independent contractor; and (2) The

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[9] In *James v. Uber Technologies Inc.* (N.D. Cal. Jan. 26, 2021) 2021 WL 254303, at *18, a District Court held that a plaintiff has the burden of pleading and proving that a defendant failed to satisfy Business & Professions Code § 7451's requirements. That holding was not supported by a citation and is arguably dicta, as it was rendered in the context of a class certification motion where the burden was on Plaintiff to demonstrate that the question could be answered on a class-wide basis regardless of the ultimate burden of proof. In any event, the Court finds the discussion of the burden of pleading and proving that a defendant failed to satisfy the requirements of Business & Professions Code § 7451 in *James* unpersuasive.

inadequacy of compensation paid to workers who were classified as independent contractors. (See Bus. & Prof. Code, §§ 7449(e)-(f), 7450(a)-(c).) It has a narrow application and supplants California law within its narrow scope by creating a new breed of "independent contractor." (Bus. & Prof. Code, 7451.) Where a hiring entity relies on the statute to deny workers the full benefits of employment, it is consonant with the statutory purpose – worker protection – and the established policies of this state reflected in prior classification decisions to require the hiring entity to prove that the statute applies.

2. Whether the Demurrer Record Demonstrates that Defendant Complied with Proposition 22 at All Relevant Times

Plaintiff summarily alleges that DoorDash does not meet the obligations of Proposition 22. (SAC ¶ 14.) The Court agrees with DoorDash's assertion that the allegation is conclusory. (See Reply re Motion to Strike, 8.) But, in accordance with the discussion above, the question is not whether Plaintiff alleged facts showing that the Proposition 22 safe harbor is inapplicable, the question is whether the alleged facts, supplemented by any proper request for judicial notice, show that the Proposition 22 safe harbor applies. The record is insufficient to find that the Proposition 22 safe harbor applies here.

Arguing that the safe harbor applies, Defendant relies on its "Dasher Agreement" to attempt to prove that there "can be no genuine dispute that" it "meets the conditions set forth in Prop 22." (*Id.* at 8-10.) Even if judicially noticed and properly introduced on reply, the contract cannot, at least on demurrer, support the finding requested. First, the contract describes only contractual provisions, it does not prove real-world conduct. There is a difference between undertaking a contractual obligation and complying with that obligation. The existence of a contract does not prove compliance in the real world. All that is relevant to the safe harbor in Business & Professions Code § 7451(a)-(d) is real-world conduct. Accordingly, assuming that the contractual provisions laid out in the Dasher Agreement comport with Business & Professions Code § 7451(a)-(d), the contract cannot prove compliance on a demurrer. Second, the contract provided was last updated on December 16, 2020, there is no record before the Court regarding the terms of earlier contracts. (See Lipshutz Decl. ISO Supplemental RJN re Motion to Strike, Ex. A; see also Supplemental RJN re Motion to Strike, 2-3 [asserting, without citation, that earlier versions of the contract were "materially similar" to the one submitted to the Court].)

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3. Abatement and Retroactivity

Defendant argues that Proposition 22 bars the present action either by abating the action or through retroactive application. As discussed above, both arguments require the finding that Defendant complied with Proposition 22 at all relevant times. The Court cannot make that finding on a demurrer. Accordingly, the Court does not reach the abatement and retroactivity issues.

E. Exclusive Concurrent Jurisdiction and Statutory Plea of Abatement

Marciano v. DoorDash, Inc. is one of several actions that has been filed in California state courts seeking civil penalties for Labor Code violations flowing from alleged misclassification pursuant to the Private Attorneys General Act. (See RJN, 2; Lipshutz Decl., Exs. A-J.) Defendant argues that this case should be stayed because the *Marciano* Court is exercising exclusive concurrent jurisdiction over the dispute between the State and DoorDash and pursuant to a statutory plea of abatement. (Demurrer, 19-21; Reply, 14.) Defendant's arguments are unpersuasive.

1. Background Law

Under the rule of exclusive concurrent jurisdiction, when two California superior courts have concurrent jurisdiction over the subject matter and all parties involved in litigation, the first to assume jurisdiction has exclusive and continuing jurisdiction over the subject matter and all parties involved until such time as all necessarily related matters have been resolved. (*People ex rel. Garamendi v. American Autoplan, Inc.* (1993) 20 Cal.App.4th 760, 769-70.) The rule is based upon the public policies of avoiding conflicts that might arise between courts if they were free to make contradictory decisions or awards relating to the same controversy and preventing vexatious litigation and multiplicity of suits. (*Id.* at 770.) The rule of exclusive concurrent jurisdiction is a rule of policy and countervailing policies may make the rule inapplicable. (*Ibid.*) However, where the rule applies and the conditions are met, a stay is mandatory. (*Id.* at 770-71.)

The rule of exclusive concurrent jurisdiction is similar to a statutory plea of abatement. (*Id.* at 770.) Under a statutory plea of abatement, the prior pending action and the subsequent action must include identical parties and causes of action. (*Ibid.*) The rule of exclusive concurrent jurisdiction has been interpreted more broadly and applied more expansively. (*Ibid.*) Unlike a statutory plea in abatement, the rule of exclusive concurrent jurisdiction does not require absolute identity of parties,

causes of action, or remedies sought in the initial and subsequent actions. (*Ibid.*) If the court exercising original jurisdiction has the power to bring before it all necessary parties, the fact that the parties to the second action are not identical does not preclude application of the rule. (*Ibid.*) Moreover, the remedies sought in the separate actions need not be precisely the same so long as the court exercising original jurisdiction has the power to litigate all the issues and grant all relief to which any parties might be entitled under the pleadings. (*Ibid.*)

2. *Marciano*

On July 11, 2018, Cynthia Marciano filed her First Amended Complaint alleging one cause of action for civil penalties pursuant to PAGA. (Lipshutz Decl., Ex. C at ¶¶ 25-28.) The parties in *Marciano* have submitted a proposed class action and PAGA settlement in *Marciano* that is intended to resolve the claims raised in several cases. (See *id.*, Ex. I.) The release contemplated in the *Marciano* settlement applies to PAGA claims, among others, and runs through December 31, 2020. (See *ibid.*)

3. Exclusive Concurrent Jurisdiction

Defendant argues that the *Marciano* Court has jurisdiction over the subject matter and parties involved in this action because the PAGA claims in *Marciano* involve a dispute between a private attorney general acting on behalf of the State and Defendant and this action is a dispute between a district attorney acting on behalf of the State and Defendant. (Demurrer, 20.) Further, Defendant argues that the *Marciano* Court has the power to bring all necessary parties before it and to grant all the relief to which any of the parties may be entitled because the PAGA settlement in *Marciano* would bind the state. (*Ibid.*) Defendant asserts that allowing this case to go forward would risk a double recovery and upset the process of finalizing the settlement in *Marciano*. (*Id.* at 20-21.)[10] The Court is not persuaded that the doctrine of exclusive concurrent jurisdiction is properly invoked here.

Defendant's argument ignores the difference between the present action and a PAGA action. The only remedy a private attorney general such as Marciano can pursue on behalf of the state is civil

[10] Defendant argues that the Court would interfere with the policies of Proposition 22 by allowing this case to go forward contrary to the electorate's intention of stopping such lawsuits and notwithstanding the fact that the claims have been "eviscerated" by Proposition 22. (Demurrer, 21.) Even if such an intention can properly be ascribed to the electorate, it would apply only insofar as Defendant complied with Proposition 22 at all relevant times. It is Defendant's burden to prove that fact, and it has not been proven on the present demurrer.

penalties for Labor Code violations. (See Lab. Code, § 2699(a), (f); *Arias v. Superior Court* (2009) 46 Cal.4th 969, 980-81; *Iskanian v. CLS Transportation Los Angeles, LLC* (2014) 59 Cal.4th 348, 360, 378-82 [describing PAGA action as a type of qui tam action for civil penalties]; *Kim v. Reins International California, Inc.* (2020) 9 Cal.5th 73, 80-81; *ZB, N.A. v. Superior Court* (2019) 8 Cal.5th 175, 184-86.) In the present action, Plaintiff, a district attorney, is seeking restitution and injunctive relief that is not available in a PAGA action and UCL-based civil penalties that are not available to a private plaintiff. (See Bus. & Prof. Code, §§ 17203-17204, 17206; Lab. Code, § 2786.) Even if Marciano and the district attorney can be described as the same party because they both represent the interests of the state,[11] the prerequisites for a stay based on exclusive concurrent jurisdiction are not present here because there has been no showing that the *Marciano* Court has power to grant all relief Plaintiff seeks in this action.[12]

Defendant's argument is also contrary to the policy of this state embodied relevant statutes, which is to punish and prevent Labor Code violations and to enjoin unfair competition. (*Iskanian*, 59 Cal.4th at 387 [purpose of PAGA is to penalize and deter employers who violate California's labor laws]; Bus. & Prof. Code, §§ 17203-17204 [authorizing district attorney to seek restitution and injunctive relief as may be necessary to prevent the use of any practice that constitutes unfair competition or to restore any to any person any interest in money or property that may have been acquired by means of unfair competition]; Lab. Code, § 2786 [authorizing district attorney to seek injunctive relief to prevent misclassification].) Even if the prerequisites for a stay pursuant to the doctrine of exclusive concurrent jurisdiction were present, the doctrine would not apply because staying this action is contrary to clear countervailing public policy. (See *Garamendi*, 20 Cal.App.4th at 770 [doctrine of exclusive concurrent jurisdiction is based on policy, countervailing policy considerations may render the rule inapplicable].)

[11] *California v. IntelliGender, LLC* (9th Cir. 2014) 771 F.3d 1169 does not help DoorDash. There, the Ninth Circuit ruled that the Anti-Injunction Act precluded the state from securing restitution through the UCL on behalf of individuals who had already received restitution for the UCL violation through a class action settlement but did not preclude the state from seeking other remedies, such as civil penalties available through the UCL and "broad injunctive relief." (*IntelliGender*, 771 F.3d at 1172, 1176-82.) The Ninth Circuit held, among other things, that the UCL class action could not bind the state in its sovereign capacity where the state asserted both public and private interests. (*Id.* at 1177.) Here, Defendant, through its demurrer, seeks to do just that.

[12] This is true even if the *Marciano* action encompasses a claim for restitution under the UCL. Plaintiff here is seeking a prospective injunction under the Labor Code and civil penalties under the UCL. To the extent Defendant believes these remedies will be unavailable because it complied and complies with Proposition 22, that fact is not established on the present record.

4. Statutory Plea of Abatement

Defendant does not clearly delineate between its statutory plea of abatement arguments and its exclusive concurrent jurisdiction arguments. (Demurrer, 20-21; Reply, 14.) Accordingly, the Court understands Defendant to be making a statutory plea of abatement on the same grounds that it is invoking the doctrine of exclusive concurrent jurisdiction. Abatement is not appropriate where the first action cannot afford the relief sought in the second. (*Lawyers Title Ins. Corp. v. Superior Court* (1984) 151 Cal.App.3d 455, 459.) Accordingly, abatement is improper here.

II. Motion to Strike

A. Legal Standard

"The court may, upon a motion made pursuant to Section 435, or at any time in its discretion, and upon terms it deems proper: [¶] (a) Strike out any irrelevant, false, or improper matter inserted in any pleading. [¶] (b) Strike out all or any part of any pleading not drawn or filed in conformity with the laws of this state, a court rule, or an order of the court." (Code of Civ. Proc., § 436.) "The grounds for a motion to strike shall appear on the face of the challenged pleading or from any matter of which the court is required to take judicial notice." (Code of Civ. Proc., § 437(a).)

B. Injunctive Relief

Consistent with its argument in demurrer, Defendant argues that it classifies its delivery workers as independent contractors in compliance with Proposition 22 such that injunctive relief is unavailable. (Motion, 7-9.) As discussed above, Labor Code § 2775 applies to the classification question unless Defendant can demonstrate that it satisfies the requirements of Business & Professions Code § 7451. Defendant's attempt to resolve that issue on the pleadings is premature.

C. Other Relief

Pursuant to Defendant's demurrer arguments that this action must be abated and that Proposition 22 operates retroactively to bar this action, Defendant argues that all other claims for relief under the UCL must be stricken. (Motion, 9.) As with the demurrer, the request to strike the prayer for relief is premature. Among other things, it assumes Defendant satisfies the conditions of Business & Professions Code § 7451.

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D. Compliance with Proposition 22

In paragraph 14 of the SAC, Plaintiff notes that conditions must be satisfied to classify a worker as an independent contractor under Proposition 22 and that certain benefits inure to workers who are classified as independent contractors under Proposition 22, before alleging that Defendant does not meet the obligations of Proposition 22. (SAC 14.) Quoting only the last sentence of the paragraph out of context – that is, "DoorDash does not meet the obligations of Proposition 22" – Defendant asserts that Plaintiff's allegation is an "unadorned conclusion of law" that should be stricken. (Motion to Strike, 9-10.) Reading the paragraph as a whole in context, as the Court is obligated to do, the Court understands Plaintiff to be alleging that Defendant did not satisfy one or more of the obligations listed in the paragraph. This is a mixed allegation of fact and law that gives Defendant notice of a universe of potential violations that are being alleged. The Court does not find the allegation irrelevant, false, or improper and declines to strike it. The extent to which the allegation should or must be taken as true in ruling on a demurrer is discussed, to the extent necessary, in connection with the demurrer itself.

III. Motion to Stay

In the event that the Court does not stay this action pursuant to the doctrine of exclusive concurrent jurisdiction, Defendant moves the Court to exercise its inherent power to stay this case pending resolution of *Marciano*. (Motion to Stay, 6-7.) This argument is directed to the Court's inherent power to stay proceedings in the interests of justice and to promote judicial efficiency. (See *id.* at 6; *Freiberg v. City of Mission Viejo* (1995) 33 Cal.App.4th 1484, 1489.)

The argument comes in two steps. First, prospective relief is off the table with the passage of Proposition 22. (Motion, 7.) Second, Plaintiff's attempts to secure retrospective relief should not go forward until *Marciano* has been litigated and the effect of that litigation on this case, including the effect of the potential settlement of that case on this one, has been determined. (*Id.* at 6-7.) In particular, Defendant summarily argues that a stay will avoid duplicative litigation, prevent the risk of a double recovery, and guard against the risk of independent judgments. (*Ibid.*)

The Court invited the parties to discuss "(1) whether the resolution of *Marciano* is likely to allow the parties to streamline this litigation, such that the delay caused by a stay is likely to be rewarded by litigation efficiencies that benefit the parties and the Court; and (2) the extent to which a stay in this action

would impair or delay litigation" at oral argument. Defendant contended that focusing the parties' energy on the applicability of Proposition 22 until *Marciano* is resolved will be the most efficient means of resolving the case. Plaintiff contended that there has been no showing of a benefit from a stay that justifies delaying discovery on any front.

First, the Court finds a complete stay of these proceedings inappropriate. Defendant's position seems to be that (1) *Marciano* will resolve claims for restitution if the settlement is approved; and (2) Proposition 22 will resolve any requests for injunctive relief and/or UCL penalties that are beyond the scope of *Marciano*. (See Reply, 6-10.) Because the Court has overruled the demurrer targeted at the issues covered in (2), those issues will need to be litigated in this action regardless of what happens in *Marciano*. A delay of all proceedings on the issues covered in (2) will not serve any purpose. Accordingly, the request for a complete stay is rejected.

Second, although the present record is sparse, Court is persuaded that there is a benefit to a partial stay. To the extent Defendant's Proposition 22 arguments do not resolve the case in its entirety, resolution of the preclusive effect of any judgment in *Marciano* will need to be litigated. That cannot occur until judgment in *Marciano* is final. The Court is persuaded that resolution of that issue may narrow the scope of discovery, thereby reducing costs.

Third, the Court is also persuaded that there will be costs to staying litigation directed solely to claims for restitution in this case pending the resolution of *Marciano*. All other things being equal, this case can be resolved more expeditiously if discovery proceeds without delay. Moreover, a partial stay may cause discovery disputes to the extent the parties disagree as to whether the partial stay precludes certain discovery.

Pursuant to the foregoing considerations, the Court will impose a limited stay on discovery, as follows. With the exception of discovery addressing whether Defendant has properly classified Dashers as Proposition 22 independent contractors since Proposition 22 went into effect, which may proceed immediately, these proceedings are stayed through March 25, 2021. If the Court does not enter a further order regarding the stay, the stay will no longer be in effect on March 26, 2021.

The reason for this partial stay is as follows. Whether Defendant presently properly classifies Dashers as independent contractors is a relatively narrow issue that is likely to shape the case. Resolving

that issue first, while the *Marciano* settlement is being processed, may substantially reduce the cost of discovery in this action, justifying a moderate delay.

The reason that the stay is set to expire on March 25, 2021, absent a further order from the Court, is as follows. There is a Case Management Conference in this action scheduled for March 18, 2021 at 10:00 a.m. The parties will meet and confer to discuss a plan for efficiently and expeditiously litigating this action in advance of that conference. In so doing, the parties will consider how this stay will impact their preparation of the case and presentation of issues to the Court for resolution. To the extent both parties consent to do so, the parties are hereby authorized to address whether the stay should be extended in the Joint Case Management Conference Statement and at the Case Management Conference.[13] Any request to extend the stay should address: (1) When the *Marciano* judgment may be entered; (2) What work can be done in this case while the stay set forth above is in place; (3) What work cannot be done in this case while the stay set forth above is in place; and (4) Whether the stay is promoting the efficient and expeditious litigation of this action. These issues can be discussed in conjunction with the broader case management issues as the parties embark on discovery.

CONCLUSION AND ORDER

Defendant's demurrer is overruled. Defendant's motion to strike is denied. Defendant's motion to stay is granted in part and denied in part. Discovery addressed solely to claims for restitution, as opposed to other remedies, arising prior to December 31, 2020 is stayed through March 25, 2021. If the Court does not enter a further order regarding the stay, the stay will no longer be in effect on March 26, 2021.

IT IS SO ORDERED.

Dated: March 2, 2021

Anne-Christine Massullo
Judge of the Superior Court

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[13] Case Management Conferences are ordinarily not used to argue the parties' positions. However, in the interest of sparing the parties the cost of briefing a noticed motion to extend the stay, the Court is prepared to entertain the issue at a Case Management Conference on the basis of the Joint Case Management Conference Statement. To the extent a noticed motion to extend the stay may be required, the Court may on its own motion extend the stay to allow a noticed motion to be heard following the conference.

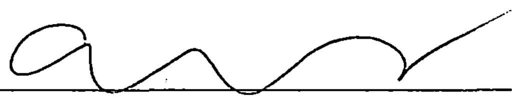
CERTIFICATE OF ELECTRONIC SERVICE
(CCP 1010.6(6) & CRC 2.251)

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 March 3, 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: March 3, 2021

T. Michael Yuen, Clerk

By: 

Ericka Larnauti, Deputy Clerk