Case No. G066530

COURT OF APPEAL OF THE STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT, DIVISION THREE

ARTHUR GONZALES,
Petitioner-Plaintiff,

v.

THE SUPERIOR COURT OF ORANGE COUNTY,
Respondent,

HAI LI; UBER TECHNOLOGIES, INC.,
Real Parties in Interest.

From the Superior Court of Orange County
Hon. Deborah C. Servino, Dept. C21 (657-622-5221)
Case No. 30-2023-01344596-CU-PA-CJC

PROPOSED AMICI CURIAE BRIEF OF THE CHAMBER OF COMMERCE OF THE UNITED STATES OF AMERICA AND CALIFORNIA CHAMBER OF COMMERCE

Joshua Patashnik, State Bar No. 295120
PERKINS COIE LLP
11452 El Camino Real, Ste 300
San Diego, California 92130-2080
Telephone: +1.858.720.5700
Facsimile: +1.858.720.5799
JPatashnik@perkinscoie.com

Attorneys for Proposed Amici Curiae Chamber of Commerce of the United States of America and California Chamber of Commerce

CERTIFICATE OF INTERESTED ENTITIES OR PERSONS

Non-parties Chamber of Commerce of the United States of America and California Chamber of Commerce certify that there are no interested entities or persons that must be listed in this Certificate under California Rules of Court, Rule 8.208.

DATED: March 23, 2026

Respectfully submitted,

PERKINS COIE LLP

By: */s/ Joshua Patashnik*
Joshua Patashnik

Attorneys for Proposed Amici Curiae Chamber of Commerce of the United States of America and California Chamber of Commerce

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INTRODUCTION

California voters knew exactly what they were doing when they passed Proposition 22. They sought to preserve the gig economy—the flexible, on-demand work arrangements that benefit drivers, consumers, and communities across the state—and to free the companies that power it from the threat of open-ended litigation. They did so by defining, clearly and comprehensively, the relationship between app-based drivers and network companies: drivers are independent contractors, not employees or agents. That definition is not limited to any particular corner of the law. It governs the whole relationship, in all its legal dimensions, including for purposes of tort liability.

Petitioner asks this Court to read Proposition 22 as having no effect on network companies' vicarious liability for the alleged torts of their app-based drivers. That theory cannot be squared with the text voters enacted, the purposes they sought to advance, or the careful balance of protections and obligations that Proposition 22 put in place. Proposition 22 requires network companies to carry $1 million in primary liability insurance per ride to compensate for damages resulting from accidents. It also requires network companies to screen and train their drivers, and take concrete steps to prevent dangerous driving. These measures serve the same goals as vicarious liability—deterrence, compensation, and equitable risk allocation—while keeping the gig economy open, affordable, and available to the millions of Californians who depend on it. The Court should reject Petitioner's attempt to unravel that carefully considered scheme.

ARGUMENT

I. Proposition 22 comprehensively defines the relationship between app-based drivers and network companies, including for purposes of determining vicarious liability

Petitioner offers this Court a false dichotomy, arguing that Proposition 22 must be either a labor statute or a tort statute. In fact, it is neither; it is a relationship statute. It defines "the relationships between app-based drivers and network companies." (*Castellanos v. State* (2023) 89 Cal.App.5th 131, 159, aff'd in part (2024) 16 Cal.5th 588.) It defines that relationship as a non-employment, non-agency relationship. (Bus. & Prof. Code, § 7451.) And that definition governs the *whole* relationship, in all its legal aspects. That interpretation of Proposition 22 follows straightforwardly from its plain text.

Proposition 22 specifies that "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 [certain] conditions are met." (Bus. & Prof. Code, § 7451.) Petitioners do not dispute that Proposition 22's conditions are met here. See Pet. 7-9. Notably, the text of Section 7451 includes no caveats, qualifiers, or limitations on the word "relationship." It simply refers to "the app-based driver's relationship with a network company," full stop.

Efforts to narrow that "relationship" to merely a "labor relationship" would contradict the text itself. Proposition 22 addresses both employment *and* agency when defining the driver-network company relationship. (Bus. & Prof. Code, § 7451 ["not an employee or agent"].) Proposition 22 provides that the

definition applies "[n]otwithstanding any other provisions of law, including, but not limited to, the Labor Code." (Bus. & Prof. Code, § 7451.) The phrase "[n]otwithstanding any other provisions of law" has "special interpretive importance," signaling a "broad application overriding all other code." (*Isaak v. Superior Court* (2022) 73 Cal.App.5th 792, 798-799; accord, e.g., *People v. Tillman* (1999) 73 Cal.App.4th 771, 784-785 [phrase makes "rules so promulgated … controlling over both statutory and decisional law"].)

While concepts of employment and agency are both relevant to tort and contract law, agency as a concept independent from employment is foreign to labor and employment law. Indeed, an "agent is one who represents another, called the principal, in dealings with third persons." (Civ. Code, § 2295.) In other words, the use of the term "agent" inherently implicates the relationship between the putative principals and the third parties that putative agent has "dealings with." (*Ibid.*) That term would become surplusage if "relationship" in the statute were limited to only "labor" relationships. And a reading that makes "some words surplusage is to be avoided." (*Moyer v. Workmen's Comp. Appeals Bd.* (1973) 10 Cal.3d 222, 230.)

Petitioner fails to point to anything in the text that indicates that "relationship" in Section 7451 relates to labor law but not to tort law. And if there were any question on that score, Section 7451 answers it by specifying that the phrase "any other

provisions of law includ[es]" the "Labor Code" but is "not limited to" it.

Once defined, the nature of the relationship between app-based drivers and network companies has consequences for any area of law for which relationships are relevant. For tort law, that means vicarious liability and *respondeat superior*, which are "based upon a relationship between two parties." (*Franklin v. Santa Barbara Cottage Hosp.* (2022) 82 Cal.App.5th 395, 404.) Under that doctrine, tort "liability is imposed on a defendant *solely* because of his or her *relationship* with a co-tortfeasor." (*Schreiber v. Lee* (2020) 47 Cal.App.5th 745, 753-754, italics added.) Specifically, liability exists "because of the relationship of the parties, as principal-agent." (*Benton v. Sloss* (1952) 38 Cal. 2d 399, 403.) But Proposition 22 disclaims any principal-agent relationship (Bus. & Prof. Code § 7451), and so precludes vicarious liability based on that relationship. Accordingly, as Uber notes, trial courts throughout California have consistently dismissed vicarious-liability claims against network companies that satisfy the statute's conditions. (Return at pp. 33-34 & fn. 1.)

Petitioner's reading of Proposition 22 also overlooks the close historical relationship between classification and vicarious liability. "The distinction between independent contractors and employees arose at common law to limit one's vicarious liability for the misconduct of a person rendering service to him." (*S.G. Borello & Sons, Inc. v. Dept. of Industrial Relations* (1989) 48 Cal.3d 341, 350; see also *Dynamex Operations West v. Superior Court* (2018) 4 Cal.5th 903, 927 [same].) The plain text of

Proposition 22 makes clear that it governs the relationship between app-based drivers and network companies in all respects—but it is especially indefensible to suggest that Proposition 22 does not govern in the context of limiting vicarious liability, which has always been a defining feature of what it means to be an independent contractor. (See *ibid.*)

II. Treating app-based drivers as independent contractors for purposes of vicarious liability advances the policy goals of Proposition 22

Section 7451 is the centerpiece of Proposition 22's "new balance of benefits and obligations" for app-based drivers. (*Castellanos*, *supra*, 89 Cal.App.5th at p. 161.) The voters sought to "preserv[e] access to app-based rideshare and delivery services that are beneficial to consumers, small businesses, and the California economy." (Bus. & Prof. Code, § 7449, subd. (e).) That access enables drivers to benefit from "flexible work opportunities" and the public to benefit from "convenient and affordable transportation" and "affordable and convenient delivery options for grocery stores, restaurants, retailers, and other local businesses and their patrons." (*Id.* § 7449, subds. (c)-(d).) But those benefits would be seriously threatened if network companies faced limitless vicarious liability. So voters sensibly restricted vicarious liability by declaring that app-based drivers are neither employees nor agents of network companies. (*Id.* § 7451.)

It is hardly surprising that California voters chose to protect the gig economy and the flexibility that defines it. The model benefits drivers and consumers alike.

On the driver side, the rise of rideshare and delivery platforms has created new job opportunities for drivers of all stripes, especially those who want or need flexible arrangements. By working independently—when, where, how, and for whom they wish—drivers who are constrained from taking traditional 9-to-5 jobs can still boost their income. A parent can work around school functions; a retiree can supplement savings; an artist can work in between shows; a person with a long commute can make extra money by driving someone else home. Independent work allows workers to take control of their earning potential and to decide how to spend their time. (See Bus. & Prof. Code, § 7449, subd. (b).)

What's more, many app-based drivers choose to contract with multiple companies simultaneously to ensure the greatest volume of work. Independent contractors may take full advantage of the flexible working relationship by "toggling back and forth between different … companies and personal clients, and by deciding how best to obtain business" such that profits are "increased through their initiative, judgment, or foresight." (*Saleem v. Corp. Transp. Grp., Ltd.* (2d Cir. 2017) 854 F.3d 131, 144, internal quotation marks and alterations omitted.) For these reasons and more, in "survey after survey, gig workers report that the primary benefit of gig work is flexibility." (U.S. Chamber of Commerce, Employment Policy Division, *Ready, Fire, Aim: How State Regulators Are Threatening the Gig Economy and Millions of Workers and Consumers*, at p. 36 (Jan. 2020)

<https://bit.ly/3z0bKuF> [as of Mar. 19, 2026].) Simply put, they "like[] being their 'own boss.'" (*Id.* at pp. 17, 36.)

On the consumer side, the gig economy makes it easier for Californians to find a ride or food, and at affordable prices. Those benefits have redounded particularly to traditionally underserved communities. For example, many lower-income Americans live in "food deserts"—areas with low access to stores selling fresh, healthy food. Yet 90% of people living in food deserts have at least one digital food access option—and the service rate exceeds 95% in food deserts within metropolitan areas. (George & Tomer, *Delivering to Deserts: New Data Reveals the Geography of Digital Access to Food in the U.S.*, Brookings (May 11, 2022) <https://brook.gs/3NI3YcG> [as of Mar. 19, 2026].)

Imposing "indeterminate liability" on network companies in the form of *respondeat superior* or other vicarious-liability doctrines would risk "over-deterring socially productive activities." (*S. Cal. Gas Leak Cases* (2019) 7 Cal.5th 391, 406.) The risk of "endless litigation" (*id.* at p. 410) stemming from vicarious liability would certainly raise costs, and could well eliminate the availability of certain services altogether. It may also prompt network companies to cut back on the flexibility that app-based drivers value so highly. (See Bus. & Prof. Code, § 7449, subd. (b); *ante*, pp. 13-15.)

In lieu of vicarious liability, voters chose to protect third parties against the risk of accidents involving app-based drivers by imposing specific obligations on network companies. Network companies like Uber must, among other things, adequately

screen potential app-based drivers (Bus. & Prof. Code, § 7458); ensure that drivers receive adequate safety training (*id.* § 7459) and sexual-harassment prevention training (*id.* § 7457); take steps to prevent drowsy driving (*id.* § 7461) and intoxicated driving (*id.* § 7460); and work with law enforcement to address emergency situations (*id.* § 7460.5). They must also carry $1 million worth of primary liability insurance coverage for each ride to cover "death, personal injury, and property damage" proximately caused by accidents involving app-based drivers. (Pub. Util. Code, § 5433, subd. (b)(1); see also Bus. & Prof. Code, § 7455, subds. (a), (f) [describing other insurance requirements].)

These obligations serve the same basic policy objectives as vicarious liability, but in a way that reduces litigation and makes costs more predictable. The California Supreme Court has "articulated three reasons for applying the doctrine of respondeat superior:" (1) "to prevent recurrence of the tortious conduct"; (2) "to give greater assurance of compensation for the victim"; and (3) "to ensure that the victim's losses will be equitably borne by those who benefit from the enterprise that gave rise to the injury." (*Mary M. v. City of Los Angeles* (1991) 54 Cal.3d 202, 209.) Proposition 22 covers all of those bases. Its requirements regarding safety and training are aimed at preventing future accidents. And its requirement that network companies pay for insurance that compensates victims of accidents achieves an equitable distribution of benefits and burdens without the litigation expense and uncertainty that vicarious liability often entails. As illustrated by the facts of this case, in which

Petitioner is suing to recover damages from a low-speed collision with no apparent injuries, a $1 million insurance policy will ensure adequate compensation in the vast majority of cases.

"The modern justification for vicarious liability is a rule of policy, a deliberate allocation of a risk." (*Hinman v. Westinghouse Elec. Co.* (1970) 2 Cal.3d 956, 959.) Given that Proposition 22 serves the same policy goals as vicarious liability in a manner that is tailored to the specific circumstances of network companies, app-based drivers, and their customers, the voters understandably decided to classify app-based drivers as independent contractors for all purposes, including tort law.

CONCLUSION

The Court should discharge the order to show cause and deny the petition for writ of mandate.

DATED: March 23, 2026

Respectfully submitted,

PERKINS COIE LLP

By: */s/ Joshua Patashnik*

Joshua Patashnik (SBN 295120)
PERKINS COIE LLP
11452 El Camino Real Suite 300
San Diego, California 92130-2080
Telephone: 858.720.5700
Facsimile: 858.720.5799
JPatashnik@perkinscoie.com

Attorneys for Proposed Amici Curiae Chamber of Commerce of the United States of America and California Chamber of Commerce

CERTIFICATE OF WORD COUNT

Pursuant to rule 8.204(c) of the California Rules of Court, I hereby certify that the text of this brief consists of 2,075 words, including footnotes, according to the word count feature of the computer program used to prepare this brief.

Dated: March 23, 2026 **PERKINS COIE LLP**

By: */s/ Joshua Patashnik*
Joshua Patashnik

Attorneys for Proposed Amici Curiae Chamber of Commerce of the United States of America and California Chamber of Commerce

PROOF OF SERVICE

I, Joshua Patashnik, declare:

I am a citizen of the United States and employed in San Diego County, California. I am over the age of eighteen years and not a party to the within-entitled action. My business address is 11452 El Camino Real, Ste 300, San Diego, California 92130-2080.

On, March 23, 2026, I electronically filed, via my electronic service address (JPatashnik@perkinscoie.com), the attached following document:

PROPOSED AMICI CURIAE BRIEF OF THE CHAMBER OF COMMERCE OF THE UNITED STATES OF AMERICA AND CALIFORNIA CHAMBER OF COMMERCE

with the Clerk of the court using the TrueFiling system, which then sends electronic notification of such filing to each of the following electronic case participants:

Timothy Michael Kowal Kowal Law Group, APC 2901 W. Coast Highway Suite 200 Newport Beach, CA 92663 Chad Anthony Gerardi Law Offices of Chad A. Gerardi 488 S. Glassell Street Orange, CA 92866 Chris Purcell Purcell Law 802 French Street Santa Ana, CA 92701	Attorneys for Petitioner, Arthur Gonzales

The Superior Court of Orange Respondent Hon. Deborah Servino, Dept C21 700 Civic Center Drive Santa Ana, CA 92701	Respondent
John M. Fedor Case Harvey Fedor 402 W Broadway Ste 1100 San Diego, CA 92101-3344	Attorneys for Real Party in Interest, Hai Li
Cristina Maria Ciminelli Yukevich Calfo & Cavanaugh 355 S. Grand Avenue, 15th Floor Los Angeles, CA 90071	Attorneys for Real Party in Interest, Uber Technologies, Inc.

I hereby certify that I have this day mailed a copy of the attached document by U.S. First Class Mail to each of the following non-electronic case participants:

Superior Court of California
County of Orange
700 Civic Center Drive
Santa Ana, CA 92701

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on March 23, 2026, at San Diego, California.

/s/ Joshua Patashnik
Joshua Patashnik