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9 The Chamber of Commerce of the  
10 United States of America

**ELECTRONICALLY  
FILED**

*Superior Court of California,  
County of San Francisco*

**09/30/2020  
Clerk of the Court**

**BY: JUDITH NUNEZ  
Deputy Clerk**

11 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

12 **CITY AND COUNTY OF SAN FRANCISCO**

13 **UNLIMITED JURISDICTION**

14 CASE No. CGC-20-584789

15 THE PEOPLE AND STATE OF  
16 CALIFORNIA,

17 Plaintiff,

18 v.

19 DOORDASH, INC., and DOES 1 through 10,  
20 inclusive,

21 Defendants.

**APPLICATION TO FILE AMICUS  
CURIAE BRIEF; AMICUS CURIAE  
BRIEF IN SUPPORT OF DEFENDANTS  
DOORDASH, ET AL. OPPOSING  
MOTION FOR PRELIMINARY  
INJUNCTION**

22 Date: October 5, 2020

23 Judge: Hon. Anne-Christine Massullo

24 Time: 9:15 a.m.

25 Place: Dept. 304

26 Date Action Filed: June 16, 2020

27 Trial Date: None Set

28 **APPLICATION TO FILE AMICUS CURIAE BRIEF;  
AMICUS CURIAE BRIEF IN SUPPORT OF DEFENDANTS DOORDASH, et al.  
OPPOSING MOTION FOR PRELIMINARY INJUNCTION**

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**Application to File Amicus Curiae Brief**

Amicus curiae the Chamber of Commerce of the United States of America (the “Chamber”) hereby applies pursuant to Code of Civil Procedure section 128 and this court’s inherent powers for leave of court to file the attached amicus curiae brief. “Courts have inherent power, separate from any statutory authority, to control the litigation before them and to adopt any suitable method of practice, even if the method is not specified by statute or by the Rules of Court.” (*Amtower v. Photon Dynamics, Inc.* (2008) 158 Cal.App.4th 1582, 1595.) Although not addressed by the California Rules of Court, the superior court’s authority to permit participation by amicus curiae was recognized by the California Supreme Court in *In re Marriage Cases* (2008) 43 Cal.4th 757, 791, fn. 10 (superseded by constitutional amendment on other grounds): “[T]he superior court, in exercising its traditional broad discretion over the conduct of pending litigation, retained the authority to determine the manner and extent of these entities’ participation as amici curiae that would be of most assistance to the court.” (See, e.g., *Ramon v. County of Santa Clara* (2009) 173 Cal.App.4th 915, 922; *McFarland v. City of Sausalito* (1990) 218 Cal.App.3d 909, 912; *In re Veterans’ Industries, Inc.* (1970) 8 Cal.App.3d 902, 924.) Examples of trial courts that have permitted the filing of amici curiae briefs include *California Attorneys, etc. v. Schwarzenegger* (2009) 174 Cal.App.4th 424, 431, and *Union Bank of California v. Superior Court* (2005) 130 Cal.App.4th 378, 386.

“Amicus curiae presentations assist the court by broadening its perspective on the issues raised by the parties.” (*Bily v. Arthur Young & Co.* (1992) 3 Cal.4th 370, 405, fn. 14.) As explained below, amicus has a significant interest in the legal issues implicated by the District Attorney’s request for a preliminary injunction in this case and believe the court would benefit from additional briefing on the specific issues addressed by the attached brief.<sup>1</sup>

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<sup>1</sup> No party or counsel for a party in the pending case authored the proposed amicus curiae brief in whole or in part or made a monetary contribution intended to fund the preparation or submission of the proposed brief. No person or entity other than the amicus, its members, or its counsel made a monetary contribution intended to fund the preparation or submission of the proposed brief.

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### Interest of Amicus Curiae

The Chamber of Commerce of the United States of America is the world’s largest business federation. It represents approximately 300,000 direct members and indirectly represents the interests of more than three million companies and professional organizations of every size, in every industry sector, and from every region of the country—including throughout California. An important function of the Chamber is to represent the interests of its members in matters before Congress, the Executive Branch, and the courts. To that end, the Chamber regularly files amicus curiae briefs in cases, like this one, that raise issues of concern to the nation’s business community. Indeed, the Chamber routinely files amicus curiae briefs in cases in the California courts, including cases involving labor and employment matters.

The Chamber has a strong interest in this proceeding. Its members use independent contractors extensively and rely on the flexibility of independent contractor relationships—work arrangements that have promoted innovation and growth for businesses and contractors alike. In this case, the District Attorney asks this court to upend the status quo in which gig economy delivery workers have long benefited from flexibly operating as independent contractors by entering a mandatory injunction reclassifying those workers as employees. This request is based on a cramped understanding of California law and, if adopted by this court, would substantially impair the ability of the Chamber’s members to enter into vital independent contractor relationships.

Amicus therefore has a significant interest in how this court interprets and applies California law governing independent contractor relationships. In particular, the court may benefit from additional briefing on the substantial adverse public policy consequences that would result from an order granting a preliminary injunction here. The Chamber, given the breadth of its membership and its leadership in the overall business community, offers its perspective on the broader consequences of a mandatory injunction that would radically restructure the on-demand economy at a perilous time in the nation’s (and California’s) history. Given the dramatic consequences for consumers, individuals, and businesses, the court would be better served to act

1 deliberately and prudently, rather than to accept the District Attorney’s call to reform the gig  
2 economy. This amicus brief focuses on those subjects.

3 For the foregoing reasons, the Chamber asks this court to exercise its discretion and allow  
4 the amicus brief to be filed.

### 5 **Brief of Amicus Curiae**

#### 6 **I. Introduction**

7 The District Attorney maintains that plaintiffs are entitled to a preliminary injunction  
8 because it is “unambiguous” under California law that DoorDash has misclassified as  
9 independent contractors rather than employees the persons, known as Dashers, who pick up  
10 meals prepared by restaurants and deliver them to customers. (Mot., p. 7.) Not so.

11 Determining whether a worker is an employee or an independent contractor may at times  
12 be a challenging matter. As the Supreme Court acknowledged in *Dynamex Operations West,  
13 Inc. v. Superior Court* (2018) 4 Cal.5th 903: “ ‘Few problems in the law have given greater  
14 variety of application and conflict in results than the cases arising in the borderland between  
15 what is clearly an employer-employee relationship and what is clearly one of independent,  
16 entrepreneurial dealing.’ ” (*Id.* at p. 927, quoting *National Labor Relations Bd. v. Hearst  
17 Publications, Inc.* (1944) 322 U.S. 111, 121; *S. G. Borello & Sons, Inc. v. Dept. of Industrial Rel.  
18* (1989) 48 Cal.3d 341, 355 [noting “the inherently difficult determination whether a provider of  
19 service is an employee or an excluded independent contractor”].) Correctly describing the nature  
20 of the services provided by DoorDash requires an understanding of the current gig economy and  
21 the place that technology companies like DoorDash occupy in that economy. There is no need  
22 for this court to rush to judgment before the facts and law have been fully explored, particularly  
23 when its ruling will have significant consequences for providers of web-based platforms.

24 Most important, while denying the motion for preliminary injunction will preserve the  
25 status quo, granting a preliminary injunction would cause irreparable injury and harm the public  
26 interest by forcing DoorDash to stop performing critical functions during a global pandemic.  
27 This would hurt the restaurants that rely on DoorDash to connect them with customers and

1 Dashers, the Dashers who depend on the income they receive, and the customers who need a safe  
2 and efficient means of obtaining food. Now is not the time to deprive the public of DoorDash’s  
3 crucial services. This court should preserve the status quo while it carefully considers these  
4 complex and important issues.

5 **II. Denying the motion for a preliminary injunction will preserve the status quo and**  
6 **avoid irreparable injury**

7 **A. Requirements for issuing a preliminary injunction**

8 The purpose of a preliminary injunction is to preserve the status quo and prevent  
9 irreparable harm while the merits of the controversy are being decided. “As its name suggests,  
10 a *preliminary* injunction is an order that is sought by a plaintiff *prior to a full adjudication of the*  
11 *merits of its claim*. [Citation.] To obtain a preliminary injunction, a plaintiff ordinarily is  
12 required to present evidence of the irreparable injury or interim harm that it will suffer if an  
13 injunction is not issued pending an adjudication of the merits.” (*White v. Davis* (2003) 30  
14 Cal.4th 528, 554, original italics; *Costa Mesa City Employees’ Assn. v. City of Costa Mesa*  
15 (2012) 209 Cal.App.4th 298, 305 [the purpose of a preliminary injunction “ ‘is to preserve the  
16 status quo until a final determination following a trial’ ”].)

17 Before granting a preliminary injunction, a court must consider the harmful consequences  
18 that would be caused by a preliminary decision that turns out to be incorrect. “[A] principal  
19 objective of a preliminary injunction ‘is to minimize the harm which an *erroneous* interim  
20 decision may cause, [citation]’ and thus a court faced with the question whether to grant a  
21 preliminary injunction cannot ignore the possibility that its initial assessment of the merits, prior  
22 to a full adjudication, may turn out to be in error.” (*White v. Davis, supra*, 30 Cal.4th at p. 561,  
23 original italics.)

24 **B. Disrupting a major source of food delivery and employment during a**  
25 **worldwide pandemic and record unemployment would cause irreparable**  
26 **injury and harm the public interest**

27 These are not normal times. The services that DoorDash provides to restaurants,  
28 customers, and Dashers have taken on heightened importance due to the global pandemic. For

1 the many restaurants that have suffered from the pandemic’s restrictions, DoorDash’s web-based  
2 platform offers a lifeline by connecting them with both customers who need food and Dashers  
3 who can pick up and deliver that food. Operating a restaurant is a risky business even during the  
4 best of times. The competition is stiff and the profit margin may be small. The pandemic forced  
5 restaurants to close temporarily and has severely restricted the number of customers they may  
6 serve upon reopening. Take-out orders have become critical to restaurants’ ability to stay in  
7 business and continue to employ their workers. But many restaurants lack the means to  
8 effectively solicit customers online or deliver the food they prepare.

9 DoorDash’s web-based technology facilitates this transaction. It provides a well-known  
10 app (and website) that informs potential customers of local restaurants that accept orders. It  
11 displays the menus and permits the customers to place their orders and submit payment.  
12 DoorDash locates a Dasher who is available to pick up and deliver the order and distributes the  
13 customer’s payment to the restaurant and Dasher, keeping a percentage for its service as  
14 facilitator.

15 DoorDash also provides a crucial service to customers. It is difficult for persons who are  
16 sheltering in place, especially those at increased risk, to obtain food. DoorDash expands  
17 people’s options for safely obtaining a wide array of prepared meals.

18 Finally, DoorDash provides an important source of income for Dashers in a time of  
19 record unemployment. Millions of recently displaced individuals need work—which does not  
20 necessarily mean that they need formal *employment*. Dashers are able to choose when and how  
21 much to work, enabling them to supplement income from other jobs or choose when and where  
22 they are comfortable providing services (which is especially important for high-risk individuals).  
23 Requiring DoorDash to reclassify Dashers as employees would eliminate the work-life flexibility  
24 that independent contractors enjoy.

25 In sum, forcing DoorDash to fundamentally alter the way it does business would  
26 irreparably harm not only DoorDash, but also the public as a whole—including the restaurants  
27 that depend on DoorDash, the employees of those restaurants, the customers who need food

1 delivered safely, and the Dashers who need income. It is hard to imagine a worse scenario in  
2 which to grant the preliminary relief the District Attorney seeks.

3 **C. The District Attorney has not shown that a preliminary injunction is**  
4 **necessary to avoid irreparable harm**

5 The District Attorney makes no attempt to show that the relative harms favor granting the  
6 preliminary injunction, nor would it be possible for him to do so. Denying the motion for  
7 preliminary injunction would preserve the status quo by permitting DoorDash to continue  
8 operating its business as it was designed to operate and has for years. No irreparable harm would  
9 result from this court denying the motion for a preliminary injunction.

10 **III. This court should not rush to judgment by ruling on the merits of this case before**  
11 **fully considering the facts and law**

12 The District Attorney alleges that DoorDash violates California law because it  
13 misclassifies its Dashers as independent contractors rather than employees. (Complaint, p. 2.)  
14 Recently, the California Legislature passed Assembly Bill No. 5 (2019-2020 Reg. Sess.), which  
15 determines whether a worker is an employee or an independent contractor using “the ‘ABC’  
16 test.” Part B of this test asks whether “the person performs work that is outside the usual course  
17 of the hiring entity’s business.” (Lab. Code § 2775, subd. (b)(1).)

18 There is no question that the Dashers in this case are in the business of picking up and  
19 delivering food orders. The District Attorney attempts to show that this is within the usual  
20 course of DoorDash’s business by alleging that “DoorDash is a business that delivers food.”  
21 (Complaint, p. 1.) But as DoorDash explains, it is neither a restaurant nor a delivery service; it is  
22 a technology company that provides an online platform that permits restaurants to find customers  
23 who wish to have food delivered, locate Dashers who are willing to pick up and deliver that  
24 food, and collect and distribute the payment for these products and services.

25 DoorDash’s business model is a part of the gig economy that, unlike more traditional  
26 business relationships, involves a triangular relationship between the service providers  
27 (restaurants and Dashers), the platform holder (DoorDash), and customers. The service

1 providers (restaurants and Dashers) sign up through the platform holder's system (DoorDash's  
2 app and website) to convey a willingness to provide the service (the restaurants to prepare meals  
3 and the Dashers to pick up and deliver those meals). The customer also signs up and indicates a  
4 desire to receive these services. DoorDash then matches the restaurants and Dashers with the  
5 customers, collects payment, and distributes the payment to the service providers, keeping a  
6 share for itself.

7         Were this court to accept the District Attorney's premise that DoorDash is a delivery  
8 company that employs drivers, rather than a technology company that provides web-based  
9 services, its holding would have a significant impact not just on DoorDash, but on many  
10 analogous web-based companies participating in the gig economy. This court should rule on that  
11 question (and related issues) only after it has had a full opportunity to consider all of the  
12 circumstances of the present case. Whether Dashers are employees or independent contractors  
13 will have far-reaching implications and should not be decided in the hurried context of a request  
14 for a preliminary injunction.

15 **IV. Conclusion**

16         The Chamber urges this court to deny the District Attorney's motion for a preliminary  
17 injunction.

18  
19 California Appellate Law Group LLP

20 Dated: September 16, 2020

21 /s/ Greg Wolff

Greg Wolff

Attorneys for Amicus Curiae

The Chamber of Commerce of the United States of  
22 America



1 **Proof of Service**

2 I, Kathryn Parker, declare as follows:

3 I am employed in the County of San Francisco, State of California, am over the age of  
4 eighteen years, and am not a party to this action. My business address is 96 Jessie Street, San  
5 Francisco, CA 94105. On September 30, 2020, I mailed the following document:

- 6 • **APPLICATION TO FILE AMICUS CURIAE BRIEF; AMICUS CURIAE**  
7 **BRIEF IN SUPPORT OF DEFENDANTS DOORDASH, ET AL. OPPOSING**  
8 **MOTION FOR PRELIMINARY INJUNCTION**

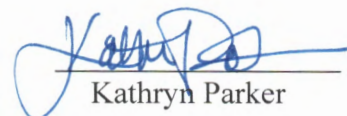
9 I enclosed a copy of the document identified above in an envelope and deposited the  
10 sealed envelope with the U.S. Postal Service, with the postage fully prepaid. The envelope was  
11 addressed as follows:

12 Evan H Ackiron  
13 Assistant District Attorney  
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23 I declare under penalty of perjury under the laws of the State of California that the  
24 foregoing is true and correct.

25 Executed on September 30, 2020.

26   
Kathryn Parker