

Case Nos. A160701 & A160706

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIRST APPELLATE DISTRICT, DIVISION FOUR

PEOPLE OF THE STATE OF CALIFORNIA,

Plaintiff and Respondent,

v.

UBER TECHNOLOGIES, INC. AND LYFT, INC.,

Defendants and Appellants.

Appeal from the Superior Court, County of San Francisco
Case No. CGC-20-584402
The Honorable Ethan P. Schulman

**Application for Leave to File *Amici Curiae* Brief and Proposed Brief of *Amici Curiae* Public Rights Project and 15 Civil Rights, Gender Justice, and Worker Rights Organizations
In Support of Plaintiff and Respondent**

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APPLICATION FOR LEAVE TO FILE *AMICI CURIAE* BRIEF

Prospective *amici curiae* Public Rights Project, A Better Balance, Center for Popular Democracy, ChangeLab Solutions, Equal Justice Society, Equal Rights Advocates, National Center for Law and Economic Justice, National Center for Lesbian Rights, National Partnership for Women and Families, National Women's Law Center, One Fair Wage, Open Markets Institute, People's Parity Project, Public Counsel, Towards Justice, and Women's Law Project respectfully submit this Application for Leave to File *Amici Curiae* Brief in Support of People of the State of California, Plaintiff and Respondent. The proposed brief is provided herein following the Application. The proposed brief provides information regarding how Defendants' continued misclassification of its drivers results not only in lower wages but also in fewer avenues for redress for sexual harassment of drivers and for fewer protections for drivers' health and safety generally and particularly during the COVID-19 pandemic, while subjecting drivers to predatory financial arrangements.

STATEMENT OF INTEREST

Amici curiae are national and California-based nonprofit organizations that work to advance economic justice, public health, and civil rights, including the right to be protected from discrimination on the basis of race and sex, through litigation and policy advocacy. *Amici* are familiar with the harmful impact of

worker misclassification on wages and benefits, and how misclassification enables these companies to pass social and other economic burdens onto workers. *Amici* have extensive experience advocating on behalf of low-wage workers, women, people of color, and immigrants. *Amici* have a strong interest in this case because the ongoing practices of Uber and Lyft as they currently operate will irreparably harm hundreds of thousands of misclassified workers, including in the specific ways outlined herein.

Public Rights Project (“PRP”) works at the intersection of community organizing and government enforcement, with a specific focus on catalyzing equitable and community-based enforcement. Spurred by a mission to bridge the gap between the promise of laws and the lived experience of communities of color as well as other historically marginalized groups, PRP has focused considerable attention advocating for enforcement of the ABC test against businesses exploiting workers in the fissured economy as well as connecting government enforcement agencies with organizations that support affected workers.

A Better Balance (“ABB”) is a national legal advocacy organization dedicated to promoting fairness in the workplace and helping employees meet the conflicting demands of work and family. Through legislative advocacy, litigation, research, public education, and technical assistance to state and local campaigns,

ABB is committed to helping workers care for themselves and their families without risking their economic security.

ChangeLab Solutions is a national organization that advances equitable laws and policies to ensure healthy lives for all. ChangeLab Solutions prioritizes communities whose residents are at highest risk for poor health. Its multidisciplinary team of lawyers, planners, policy analysts, and other professionals works with state and local governments, advocacy organizations, and anchor institutions to create thriving communities.

The **Center for Popular Democracy** (“CPD”) works to create equity, opportunity and a dynamic democracy in partnership with high-impact base-building organizations, organizing alliances, and progressive unions. CPD strengthens collective capacity to envision and win an innovative pro-worker, pro-immigrant, racial and economic justice agenda. CPD builds the power of communities to ensure the country embodies its vision of an inclusive, equitable society—where people of color, immigrants, working families, women, and LGBTQ communities thrive together, supported by a resilient economy and political institutions that reflect their priorities.

The **Equal Justice Society** (“EJS”) is transforming the nation’s consciousness on race through law, social science, and the arts. Led by President Eva Paterson, EJS’s legal strategy aims to broaden conceptions of present-day

discrimination to include unconscious and structural bias by using social science, structural analysis, and real-life experience. Currently, EJS targets its advocacy efforts on school discipline, special education, and the school-to-prison pipeline, race-conscious remedies, and inequities in the criminal justice system. The Oakland, California-based nonprofit also engages the arts and artists in creating work and performances that allow wider audiences to understand social justice issues and struggles.

Equal Rights Advocates (“ERA”) is a national non-profit legal advocacy organization dedicated to protecting and expanding economic and educational access and opportunities for women and girls. Since 1974, ERA has been fighting to protect and advance rights and opportunities for women and people of all gender identities through groundbreaking litigation and bold policy reform initiatives. ERA has represented thousands of workers in gender discrimination matters at all stages of litigation, from the administrative agency level up to and including the U.S. Supreme Court, including employees of federal contractors. ERA has also appeared as amicus curiae in numerous class actions and other high-impact cases involving issues of gender discrimination as well as the interpretation and enforcement of employment-related civil rights laws.

The **National Center for Law and Economic Justice** (“NCLEJ”) advances economic justice for low-income families, individuals, and communities across the

country through impact litigation, policy advocacy, and support of grassroots organizing. NCLEJ fights discrimination against people of color, women, immigrants, and works to build systems that provide economic security and full participation in society for all. NCLEJ has worked extensively to secure low-income workers' rights to the full protection of labor and employment laws, including litigation representing misclassified and historically excluded workers.

The **National Center for Lesbian Rights** (“NCLR”) is a national nonprofit legal organization dedicated to protecting and advancing the civil rights of lesbian, gay, bisexual, transgender, and queer people and their families through litigation, public policy advocacy, and public education. Since its founding in 1977, NCLR has played a leading role in securing fair and equal treatment for LGBTQ people and their families in cases across the country involving constitutional and civil rights. NCLR has a longstanding commitment to racial and economic justice and our community's most vulnerable, and its work includes advocating to improve workers' rights and representing LGBTQ people in employment cases in courts throughout the country.

The **National Partnership for Women & Families** is a national, non-profit, non-partisan organization that works to change policy and culture. The National Partnership grounds itself in the lived experience of women and families, particularly those who face the greatest barriers to equity and opportunity. The

Partnership focus on issues that increase equity, health, and economic justice and how they impact women's ability to thrive and fully participate in our society. The Partnership accomplishes its work through advocacy in both the public and private sectors and at the federal, state, and local levels. The Partnership's strategies include: policy research and analysis; technical assistance to policymakers, media, and allies; leadership and participation in diverse coalitions and stakeholder relationships, public education, and public engagement. In all of the Partnership's work it seeks to amplify the leadership of grassroots groups and women of color who are fighting for social justice.

The **National Women's Law Center** ("NWLC") is a nonprofit legal advocacy organization dedicated to the advancement and protection of women's legal rights and the rights of all people to be free from sex discrimination. Since 1972, NWLC has worked to secure equal opportunity for women and has advocated to ensure that women can live free of sex discrimination. NWLC focuses on issues of key importance to women and their families, including economic security, workplace justice, education, and health, with particular attention to the needs of low-income women and those who face multiple and intersecting forms of discrimination. NWLC has participated as counsel or amicus curiae in a range of cases before state and federal courts to secure the equal treatment of women under the law, including in the workplace. The NWLC Fund

houses and administers the Legal Network which helps people facing sex discrimination and harassment at work find attorneys and the TIME'S UP Legal Defense Fund that funds selected cases of workplace sexual harassment.

One Fair Wage is a national organization working to improve wages and working conditions for tipped and other service workers nationwide, including ending all subminimum wages. One Fair Wage engages tipped and other service workers, “high road” employers, and consumers nationwide through organizing, civic engagement, policy advocacy, and narrative shift work.

The **Open Markets Institute** (“OMI”) is a non-profit organization dedicated to promoting fair and competitive markets. It does not accept any funding or donations from for-profit corporations. Its mission is to safeguard our political economy from concentrations of private power that undermine fair competition and threaten liberty, democracy, and prosperity. OMI regularly provides expertise on antitrust law and competition policy to Congress, federal agencies, courts, journalists, and members of the public.

The **People’s Parity Project** is a nationwide network of law students and new attorneys organizing to unrig the legal system and build a justice system that values people over profits. As members of the legal profession, the People’s Parity Project network believes that it has a responsibility to demystify—and dismantle—the coercive legal tools that have stacked the system against the people. It is

fighting for a civil legal system that works for working people, especially workers of color, women, and low-wage, precarious, immigrant, disabled, and LGBTQ+ workers.

Public Counsel is the nation's largest public interest law firm specializing in the delivery of pro bono services. Founded in 1970, Public Counsel is dedicated to advancing equality, justice and economic opportunity by delivering pro bono legal services and impact litigation to low-income individuals and communities in Los Angeles County. In 2019, Public Counsel served more than 15,000 clients and conducted impact litigation on behalf of millions of people. Public Counsel advocates for civil rights across program areas, including employment, immigration, housing, and education. Public Counsel's Women and Girls' Rights Project provides direct legal services to low-wage women workers including on issues of misclassification and wage theft. Public Counsel also works in coalition with local and statewide organizations to advocate for policies that support low-income workers and their families.

Towards Justice is a non-profit legal organization that supports workers in challenging systemic impediments to worker power through impact litigation, strategic policy advocacy, and collaboration with workers. As part of its work, Towards Justice advocates on behalf of gig-economy workers suffering from

rampant misclassification, which makes those workers vulnerable to exploitation and undermines the bargaining power of workers everywhere.

The **Women’s Law Project** (“WLP”) is a nonprofit public interest law firm with offices in Philadelphia and Pittsburgh, Pennsylvania. The WLP seeks to create a more just and equitable society by advancing the rights and status of women and LGBTQ+ people throughout their lives through high impact litigation, policy advocacy, public education, and individual counseling. Founded in 1974, the WLP has a long and effective track record on a wide range of legal issues related to women and LGBTQ+ people’s health, legal, and economic status. Economic justice and equality is a high priority for WLP. To this end, WLP has supported legislation and policies that would ensure labor protections apply to “gig workers,” to whom employers have historically denied protections they provide to traditional employees.

As distinct from the parties, *amici* write to focus on harms to drivers such as sexual harassment and assault, lack of worker safety—particularly during the pandemic—and predatory leasing and rental arrangements. The proposed brief highlights how these harms are enabled and promoted by Uber and Lyft’s illegal misclassifications. *Amici* urge the Court to consider the proposed brief in determining that the trial court’s preliminary injunction was both appropriate and necessary.

Accordingly, *amici* respectfully request that the Court grant their Application for Leave and consider the following proposed *amici curiae* brief.

DATED: October 6, 2020

Respectfully submitted,

/s/ Jill E. Habig
JILL E. HABIG
Public Rights Project

[PROPOSED] *AMICI CURIAE* BRIEF
IN SUPPORT OF PLAINTIFF AND RESPONDENT

INTRODUCTION

Uber and Lyft are engaging in practices that are at the forefront of harmful workplace upheaval;¹ these companies' actions are leading the charge to normalize worker exploitation in the "gig" economy. Over much of the past decade, Uber and Lyft have persuaded many state and local regulators to push aside the rights and interests of workers. They have needed to do so, because the business "innovation" at the heart of their operations is an unlawful one—the misclassification of their workforce as independent contractors. By using terms such as "driver partners" and referring to themselves as "technology companies" when they are undoubtedly transportation companies, Uber and Lyft have mesmerized many into believing that this new-fangled arrangement—described as enabling a "side hustle"—was a win-win-win for workers, consumers, and the economy. Promises made by these companies, however, have not been promises kept. At every turn, the workers bear the brunt of the additional burdens passed on by the companies. Workers have lost income, benefits, and workplace protections to the financial advantage of the

¹ *See, e.g.*, David Weil, *The Fissured Workplace: Why Work Became So Bad for So Many and What Can Be Done to Improve It* (Harv. University Press, 2017).

companies, which has allowed for significant market penetration throughout California, around the country, and globally.

Uber and Lyft were already required by law to treat their workers as employees before A.B. 5 went into effect.² California statutory law now makes even more explicit the illegality of their enterprises, and *amici* write with strong opposition to Uber and Lyft's appeal of the trial court's preliminary injunction. Uber and Lyft should be enjoined from misclassifying their workforce because they are depriving drivers of obtaining a minimum wage, overtime compensation, paid leave and other benefits and protections, and they are depriving the State of California of tax revenue.

The misclassification perpetrated by these two enterprises has been utilized not only to steal wages and deny crucial benefits, but to pass social and other economic burdens onto the drivers, many of which exact a significant cost beyond lost compensation in a paycheck. Making matters worse, and demonstrating the noxious nature of the companies' predation, both Uber and Lyft have marketed products or other offerings to their drivers, including vehicle leasing or rental

² See, e.g., *Dynamex Operations v. Superior Court*, 4 Cal. 5th 903 (2018).

arrangements, that are necessitated by the very economic insecurity that their misclassification exacerbates.³

The proposed brief provides information regarding how Defendants' continued misclassification of its drivers results not only in lower wages but also in fewer avenues for redress for sexual harassment of drivers, fewer protections for drivers' health and safety generally and particularly during the COVID-19 pandemic, while subjecting drivers to predatory financial terms. These harms affect most of Uber and Lyft's workforces, and are especially damaging to drivers of color given the systemic and interpersonal racism they confront daily.

ARGUMENT

I. Uber and Lyft Have Made Their Drivers Vulnerable to Harassment and Assault Due to Misclassification

Uber and Lyft drivers experience harassment and assault at alarming rates.⁴ By misclassifying workers, minimizing their own responsibility, and limiting their intervention, Uber and Lyft have left drivers more vulnerable to this abuse and

³ *Amici* write with a specific focus on some of the harms caused by the misclassification of Uber and Lyft's workforces. These are not the only harms at issue in this litigation, however. Uber and Lyft also cause extensive public harms ranging from pollution and traffic to passenger health and safety.

⁴ Selina Wang, *The Dark Realities Women Face Driving for Uber and Lyft*, Bloomberg (Dec. 18, 2018) <https://www.bloomberg.com/news/articles/2018-12-18/the-dark-realities-women-face-driving-for-uber-and-lyft>.

inadequately protected both before and after it occurs. When drivers are properly classified as employees, Uber and Lyft will have greater legal obligations and financial incentives to take measures to prevent harassment, discrimination, and assault from occurring, and to protect drivers when they are harassed or assaulted.⁵ Indeed, Lyft concedes that “claims of discrimination, harassment and retaliation under civil rights laws” may rise if its drivers were no longer misclassified.⁶ Additionally, if properly classified, drivers will be able to organize into a legally-recognized union to push for additional safeguards.

A. Drivers Encounter High Rates of Harassment and Assault

Uber and Lyft drivers face a disturbing risk of harassment and assault while on the job. The companies knew that this likely would be the case when they entered the market, given the track record for drivers more generally. According to

⁵ Although the California Fair Employment and Housing Act (“FEHA”) holds employers liable for sexual harassment of independent contractors that the employer knew or should have known, this section explains how such protections are insufficient so long as drivers continue to be misclassified. Cal. Gov. Code § 12940(j)(1). Moreover, if this court were to apply Uber and Lyft’s logic that neither are “hiring entit[ies]” because drivers are not persons “providing labor or services for remuneration,” Cal. Lab. Code § 2775, the companies would similarly fail to constitute “employers” under FEHA, thereby exempting them from any liability for sexual harassment, whether a failure to prevent or remedy.

⁶ Lyft, Inc. Form S-1 Registration Statement, *EDGAR*, Securities and Exchange Commission (Mar. 1, 2019) <https://www.sec.gov/Archives/edgar/data/1759509/000119312519059849/d633517ds1.htm>.

the Occupational Safety and Health Administration (“OSHA”), taxi drivers in general are some of the workers most vulnerable to violence in the country: drivers are 20 times more likely to be murdered on the job than other types of workers.⁷ This risk of harassment and assault is particularly acute among women drivers, who make up a much larger proportional share of Uber and Lyft drivers than traditional taxi drivers.⁸

Uber and Lyft have only recently begun to publish safety reports, which reveal that rideshare drivers are subject to harassment and assault in frightening numbers. Between 2017 and 2018, seven Uber drivers died from physical assaults on the job.⁹ More than 1,200 sexual assaults of drivers were reported to Uber from U.S. rides in 2018.¹⁰ Extensive reporting by various media outlets confirm that

⁷ Occ. Safety and Health Admin, *OSHA Fact Sheet* (2010) <https://www.osha.gov/Publications/taxi-driver-violence-factsheet.pdf>.

⁸ For example, 19 percent of Uber drivers and 30 percent of Lyft drivers are women, compared to just one percent of taxi drivers in New York City. *Id.*

⁹ Uber, *U.S. Safety Report 57* (Dec. 5, 2019), https://www.uber-assets.com/image/upload/v1575580686/Documents/Safety/UberUSSafetyReport_201718_FullReport.pdf.

¹⁰ Anna North, *It’s Not Just Passengers Being Assaulted in Ubers. Drivers Are at Risk, Too.*, Vox (Dec. 7, 2019) <https://www.vox.com/2019/12/7/20998646/uber-safety-report-sexual-assault-lyft-cases>.

Uber and Lyft drivers experience extensive sexual harassment by their passengers.¹¹

B. Uber and Lyft’s Existing Policies and Practices Fail to Prevent Harassment and Assault and Protect Drivers

California law makes it an unlawful employment practice for an employer “to fail to take all reasonable steps necessary to prevent discrimination and harassment from occurring.” Cal. Gov. Code § 12940(k). These protections also extend to retaliation against those who allege discrimination or harassment. *Taylor v. City of L.A. Dep’t. of Water & Power*, 144 Cal. App. 4th 1216, 1240 (2006). Precisely because Uber and Lyft have structured their business models around misclassifying drivers as independent contractors, and therefore attempted to create the *appearance* of minimal control over their workers, both companies have developed practices that leave drivers more vulnerable to harassment and assault. For example, neither company verifies the identity of passengers, who sign up through the application and can immediately begin requesting rides. Similarly, riders are not required to provide photographs on their profiles. This means that riders can utilize aliases or ride under another person’s name to avoid accountability for their conduct.

¹¹ See, e.g., Jason Abbruzzese, *Uber Riders and Drivers Share Fears about Safety after Company Releases Assault Numbers*, NBC News (Dec. 6, 2019) <https://www.nbcnews.com/tech/tech-news/uber-riders-drivers-share-fears-about-safety-after-company-releases-n1097446>.

As a result of this business model, in which Uber and Lyft disclaim responsibility for their drivers, the companies have failed to police their platforms adequately. In addition, they have failed to implement a number of safety suggestions recommended by OSHA, such as installing barriers between riders and passengers, creating silent alarms with an external light to alert the public, or improving lighting within vehicles.¹² Uber and Lyft have taken some safety measures in response to criticism in recent years, for example creating in-application “panic buttons,” though these measures mostly focus on protecting passengers.¹³ Instead of treating these common sense safety precautions as a baseline, Uber and Lyft have moved in the opposite direction and left drivers to implement safety precautions at their own expense. Worse yet, this failure to address driver safety compounds existing economic inequalities.¹⁴ If drivers were properly classified as employees, they might also be entitled to organize into a

¹² *OSHA Fact Sheet, supra* n.7.

¹³ Drivers have commented that the in-application emergency button is difficult to use while driving. Marissa Perlman, *15 Minutes Of Terror: Uber Driver Attacked By Woman On Freeway*, CBS Sacramento (Oct. 7, 2019) <https://sacramento.cbslocal.com/2019/10/07/uber-driver-attacked-by-woman-freeway>.

¹⁴ For example, a recent study found that female Uber drivers earn seven percent less on average than male drivers, in part because female drivers are less likely to work in high-crime areas or places where they are likely to encounter intoxicated passengers. Cody Cook et al., *The Gender Earnings Gap in the Gig Economy: Evidence from over a Million Rideshare Drivers 2*, Rev. Econ. Stud. (May 2020) <https://web.stanford.edu/~diamondr/UberPayGap.pdf>.

union in order to advocate for these and other safety protections.¹⁵ Such collective action has been shown to empower workers to push for stronger health and safety protections.¹⁶ Similarly, unionization is particularly instrumental for women and people of color, given the extensive pay disparities they experience across economic sectors, and the important role unions can play in fighting for equal pay.¹⁷

On top of this, Uber and Lyft designed a system that encourages drivers to endure harassment or assault. Many drivers who have been harassed or assaulted are reluctant to defend themselves against their perpetrators because of Uber and Lyft's rating systems, which give passengers enormous power over drivers' fortunes.¹⁸ Due to strong competition among drivers for high ratings, a single bad

¹⁵ While some jurisdictions have passed laws that protect drivers as a result of organizing from taxi drivers these laws do not apply to Uber and Lyft. For example, many jurisdictions have passed laws requiring taxi companies to report data about incidents and to post notices in their vehicles announcing steep criminal penalties for passengers who assault drivers. Lauren Kaori Gurley, *Drivers Say Reporting Assault to Lyft is 'Extremely Traumatic'*, Vice (Oct. 4, 2019) https://www.vice.com/en_us/article/7x57zd/drivers-say-reporting-assault-to-lyft-is-extremely-traumatic.

¹⁶ Aaron Sojourner, *Unionized workers are more likely to assert their right to a safe and healthy workplace*, The Conversation (Sept. 2, 2020) <https://tinyurl.com/y4q7z9eq>.

¹⁷ See, e.g., National Women's Law Center, *Union Membership is Critical for Equal Pay* (Mar. 9, 2018), <https://nwlc.org/resources/union-membership-critical-womens-wage-equality/>.

¹⁸ Marissa Miller, *How Bad Uber Ratings Affect Drivers' Careers — And Why You Shouldn't Be Scared to Report Bad Behavior*, MIC (Jan. 31, 2020)

review from a passenger could result in less favored status or termination.¹⁹

Drivers report a reluctance to speak up in the moment when harassment occurs because they fear retaliation by the rider.²⁰ Researchers have also found that Uber’s rating system reflects racial and ethnic bias among passengers, and drivers of color who already face unjust low ratings may be disproportionately pressured to tolerate mistreatment.²¹

C. Uber and Lyft Have Failed to Take Corrective Actions

State and federal anti-discrimination laws incentivize employers to rigorously review allegations of sexual harassment and assault in the workplace.

See, e.g., Holly D. v. Cal. Inst. of Tech., 339 F.3d 1158, 1177 (9th Cir. 2003)

(liability turns on “whether the employer’s actions as a whole established a

<https://www.mic.com/p/how-bad-uber-ratings-affect-drivers-careers-why-you-shouldnt-be-scared-to-report-bad-behavior-17865617>.

¹⁹ *Id.*

²⁰ Selina Wang, *Dark Realities of Uber, Lyft: Women Drivers Speak About On-Job Harassment*, Bus. Standard (Dec. 18, 2018), https://www.business-standard.com/article/international/dark-realities-of-uber-lyft-women-drivers-speak-about-on-job-harassment-118121801089_1.html.

²¹ Alex Rosenblat et al., *Discriminating Tastes: Customer Ratings as Vehicles for Bias*, Data Soc’y (Oct. 2016), https://datasociety.net/pubs/ia/Discriminating_Tastes_Customer_Ratings_as_Vehicles_for_Bias.pdf. A number of recent news stories have highlighted the extreme mistreatment of rideshare drivers of color. *See, e.g.,* Ben Kesslen, *Arizona CEO Seen on Video Hurling Racist Slur at Uber Driver is ‘Relieved of his Duties’*, NBC News (Feb. 6, 2020) <https://www.nbcnews.com/news/us-news/arizona-ceo-seen-video-hurling-racist-slur-uber-driver-relieved-n1131381>.

reasonable mechanism for prevention and correction”) (citation omitted); Cal. Gov. Code § 12940(j)(1) (unlawful if the company, or its agents or supervisors, knows or should have known of the harassment but “fails to take immediate and appropriate corrective action”). Remedies for sexual harassment should be reasonably calculated to end the harassment, *Ellison v. Brady*, 924 F.2d 872, 882 (9th Cir.1991), and often include some form of disciplinary measures, *Yamaguchi v. U.S. Dep’t of the Air Force*, 109 F.3d 1475, 1482 (9th Cir. 1997).

California case law has reiterated the Fair Employment and Housing Act’s (“FEHA”) requirement for employers to promptly investigate discrimination claims both as a means to prevent and to remedy discrimination in the workplace. *See, e.g., Northrop Grumman Corp. v. Workers’ Comp. Appeals Bd.*, 103 Cal. App. 4th 1021, 1035-36 (2002) (“[p]rompt investigation of a discrimination claim is a necessary step by which an employer meets its obligation to ensure a discrimination-free work environment”); *Washington v. Cal. City Corr. Ctr.*, 871 F. Supp. 2d 1010, 1027 (E.D. Cal. 2012). A thorough investigation involving detailed fact-gathering, interviews (and sometime re-interviews), the sharing of written findings, and other thorough steps are often needed to ensure the

sufficiency and accuracy of the review. *See, e.g., Silva v. Lucky Stores, Inc.*, 65 Cal. App. 4th 256 (1998).²²

While *amici* acknowledge that Uber and Lyft have taken some reluctant steps forward, their track record reflects indifference to the extensive reports of sexual harassment of their drivers. They know that their drivers—especially their women drivers and drivers of color—are subjected to significant harassment, yet are unwilling to do enough to prevent and remedy it.

When drivers report harassment or assault, Uber and Lyft often fail to take any corrective action, or to communicate any such action, if taken, to victims. In early 2020, Reuters interviewed 15 Uber drivers who reported their harassment or assault to the company, none were informed about what steps (such as commencement of an investigation or temporary suspension of the account of the alleged perpetrator), if any, Uber was taking to address their claims.²³ As one woman who drives for both Uber and Lyft wrote: “Try being a woman driver and filing a complaint about a rider. . . . You never hear back and in most cases, the

²² Both state and federal regulations make clear that businesses can be liable for the harassment caused by third parties. *See, e.g.,* 29 C.F.R. § 1604.11(e).

²³ Tina Bellon, *FOCUS-Uber’s Challenge to Balance Driver Safety with Customer Privacy*, Reuters (Mar. 10, 2020) <https://www.reuters.com/article/uber-safety-drivers/focus-ubers-challenge-to-balance-driver-safety-with-customer-privacy-idINL8N2AA308>.

rider continues to be able to use the platform.”²⁴ Many drivers have described the trauma and intense alienation of being disregarded and abandoned by their employer after an already painful incident.²⁵ For a prolonged period, Uber’s policies forbid investigators from showing too much empathy toward those drivers reporting harassment.²⁶ In many circumstances, when a passenger or driver is the victim of harassment or assault, Uber and Lyft simply prevent that driver/rider pair from being matched again, which does nothing to protect other riders or drivers.²⁷ Given Uber and Lyft’s commitments to minimizing responsibility for their workers, their lack of adequate infrastructure for responding to extensive allegations of harassment or assault is unsurprising.

D. Uber and Lyft Have Retaliated Against Drivers

Under FEHA it is an unlawful employment practice for any employer “to discharge, expel, or otherwise discriminate against any person because the person has opposed any practices forbidden under this part or because the person has filed a complaint, testified, or assisted in any proceeding under this part.” Cal. Gov. Code § 12940(h). To establish a *prima facie* case of retaliation, a plaintiff must

²⁴ Gurley, *supra* n.15.

²⁵ *Id.*

²⁶ Mattie Kahn, *Eight People a Day on Average Are Sexually Assaulted in an Uber, According to Uber*, Glamour (Dec. 5, 2019) <https://www.glamour.com/story/uber-safety-report-sexual-assault>.

²⁷ Gurley, *supra* n. 15

show that (1) he engaged in a protected activity, (2) the employer subjected him to an adverse employment action, and (3) a causal link existed between the protected activity and the employer's action. *Day v. Sears Holdings Corp.*, 930 F. Supp. 2d 1146, 1176 (C.D. Cal. 2013) (citing *Nazir v. United Airlines, Inc.*, 178 Cal. App. 4th 243, 287 (2009)). It is unquestionably the policy of California law to protect workers who come forward to report harassment and discrimination.

Uber and Lyft do not share this view. In addition to failing to resolve complaints, Defendants have also punished some drivers for reporting instances of sexual harassment including sexual assault. In some cases, Uber and Lyft have deactivated the accounts of drivers who filed reports. While some of these drivers eventually had their accounts restored, they lost wages during the period of deactivation.²⁸ To add insult to injury, Uber and Lyft have refused in some instances to cooperate with law enforcement when a victim files a police complaint.²⁹ In some reported cases, Lyft has refused to even provide victims with information about the identity of their assailants, which would be necessary to procure a temporary restraining order.³⁰

²⁸ *Id.*

²⁹ Maria Cramer, *19 Women Sue Lyft as Sexual Assault Allegations Mount*, N.Y. Times (Dec. 5, 2019) <https://www.nytimes.com/2019/12/05/business/lyft-sexual-assault-lawsuit.html>.

³⁰ *Id.*

E. Uber and Lyft Fail to Provide Resources for Victims

Uber and Lyft's persistent misclassification of drivers as independent contractors means that drivers who are victimized lack access to critical post-incident resources like employer-provided health care,³¹ workers' compensation, or paid leave. One Lyft driver named Samuel described how he was brutally physically assaulted by a passenger who pushed him into a steep ravine and stole his car. Lyft did not pay for Samuel's significant hospitalization costs, his stolen iPhone 7, the value of his wallet, or the three months that he spent recovering from his injuries without pay.³² Uber drivers have reported similar experiences to Samuel, after being physically assaulted and incurring steep medical expenses.³³ Drivers dealing with the emotional consequences of harassment or assault are

³¹ By contrast, employees would have certain entitlements to healthcare. Under the Affordable Care Act, large employers with 50 full-time employees must provide 95 percent of their full-time employees with affordable, minimum-value health care benefits or pay penalties. *See* 26 U.S.C. § 4980. In California, certain municipal ordinances set an even higher standard for employee healthcare. For example, the San Francisco Health Security Ordinance requires medium-sized and large firms with employees to spend a designated minimum amount per hour of work on health benefits for their employees each month. S.F. Admin. Code § 14.1 *et seq.* (requiring certain firms to spend a minimum amount on health benefits for employees); *see also Health Care Security Ordinance Administrative Guidance: B. Covered Employers*, San Francisco Office Of Labor Standards Enforcement (Jan. 6, 2016), <https://sfgov.org/olse/b-covered-employers>.

³² Gurley, *supra* n.15.

³³ Debbie Berkowitz, *Gig Economy Workers Injured on the Job Should Get Workers' Comp Protections*, Quartz (June 24, 2016) <https://qz.com/715131/gig-economy-workers-injured-on-the-job-should-get-workers-comp-protections>.

similarly left to fend for themselves.³⁴ Had these drivers been properly classified as employees, they would have been provided the compensation and benefits that other workers receive when injured or harmed in the line of work.

II. Uber and Lyft’s Misclassifications Leads to Disregard of Driver Health

Uber and Lyft’s failure to prevent and respond adequately to incidents of sexual assault and harassment are just one example of their poor records on safety. Pushing drivers to exhaustion is yet another. The companies compete with each other, among other ways, by reducing passengers’ wait times. To minimize response times, both companies require many idle drivers to be available at all times and locations.³⁵ While drivers need passengers in order to earn any income, both companies have incentives to ensure drivers are idle for long periods, during which the companies pay nothing. This business model is only possible due to misclassification; otherwise Uber and Lyft would be required to compensate

³⁴ For example, one San Diego Uber driver detailed how she experienced debilitating panic after being sexually assaulted by two passengers. She was not eligible for any compensation during the period of time that she spent working with a psychiatrist to address her trauma before returning to work. Avi Asher-Schapiro, *Uber Still Doesn’t Get It: Company Docs Reveal Flimsy Plan for Injured Workers*, *The Intercept* (June 28, 2017) <https://theintercept.com/2017/06/28/uber-but-for-workers-comp-companys-plan-neglects-injured-drivers>.

³⁵ James A. Parrott & Michael Reich, *A Minimum Compensation Standard for Seattle TNC Drivers* (July 2020) at 21, https://irle.berkeley.edu/files/2020/07/Parrott-Reich-Seattle-Report_July-2020.pdf.

workers for time spent waiting to pick up passengers. The long hours drivers spend in vehicles in search of fares pose both acute and long-term risks for drivers, particularly during a global pandemic.³⁶

A. Uber and Lyft Drivers Suffer from Fatigue

As Uber and Lyft drivers spend more time on the platform, driver fatigue has become an increasingly significant concern. Uber and Lyft have not implemented meaningful protocols to protect drivers and passengers from the harms of driver fatigue.³⁷ Properly classified drivers benefit from fatigue-related safety precautions like intermittent break requirements. For example, long-haul truckers in California cannot drive more than 11 hours in a 14-hour window, are required to take a 30-minute break within the first five hours of their shift, and must take a 10-hour break before resuming.³⁸ Until recently, Uber and Lyft did not

³⁶ The phenomenon is often referred to as “dead miles” in which drivers are waiting to be summoned and are not making any money. See Jay Cassano, *How Uber Profits Even While Its Drivers Aren’t Earning Money*, Vice (Feb. 2, 2015) https://www.vice.com/en_us/article/wnxd84/how-uber-profits-even-while-its-drivers-arent-earning-money.

³⁷ See, e.g., Michael Berneking et al., *The Risk of Fatigue and Sleepiness in the Ridesharing Industry: An American Academy of Sleep Medicine Position Statement*, J. Clinical Sleep Med. (Apr. 15, 2018) <https://jcsm.aasm.org/doi/10.5664/jcsm.7072>.

³⁸ *Interstate Truck Driver’s Guide to Hours of Service*, Federal Motor Carrier Safety Administration (Oct. 2016) at 4-6, https://www.fmcsa.dot.gov/sites/fmcsa.dot.gov/files/docs/Drivers_Guide_to_HOS_2016.pdf; Xavier Becerra, *California Attorney General and Labor Commissioner*

have any similar requirements. Both companies now limit drivers to 12 hours on the platform per day, although a driver could use the two platforms back-to-back in the same day.³⁹ Lyft requires only a six-hour break after 12 hours of use of the platform and does not mandate any breaks during that 12-hour period.⁴⁰ Given the difficulty many drivers have earning a sufficient income, many push the boundaries of these requirements, which places them at higher risk of accidents.⁴¹ Uber and Lyft have little incentive to minimize such accidents because their current position is that they cannot be held vicariously liable for any resulting injuries caused by their “independent” drivers.⁴²

Comments Opposing American Bus Association Petition for Determination of Preemption of California Meal and Rest Period Rules (June 10, 2019) <https://oag.ca.gov/system/files/attachments/press-docs/ca-ag-lc-comments-fmcsa-2019.pdf>. They are likewise limited to 60 hours of driving in any seven-day period if the company does not operate vehicles every day of the week, or 70 in any eight day period if the company does.

³⁹ Sergio Avedian, *Safety, Physical, & Mental Health Risks of Being an Uber & Lyft Driver*, Rideguru (Oct. 25, 2019), <https://ride.guru/content/newsroom/safety-physical-mental-health-risks-of-being-an-uber-lyft-driver>.

⁴⁰ *Taking Breaks and Time Limits in Driver Mode*, Lyft <https://help.lyft.com/hc/en-us/articles/115012926787-Taking-breaks-and-time-limits-in-driver-mode>.

⁴¹ Sleep deprived drivers are far more likely to get into an auto accident. *See, e.g.*, Brain C. Tefft, *Acute Sleep Deprivation and Risk of Motor Vehicle Crash Involvement*, AAA Foundation for Traffic Safety (Dec. 2016), <https://aaafoundation.org/acute-sleep-deprivation-risk-motor-vehicle-crash-involvement/>.

⁴² *See, e.g.*, Defendant Uber Techs., Inc.’s Answer to Plaintiff’s Unverified Complaint for Damages, *Fahrbach v. Gafurov*, No. CGC-13-533103 (Cal. Super. Ct. Sept. 6, 2013); Answer and Affirmative Defenses of UberTechs., Inc.,

B. Drivers Suffer from Long-Term Health Effects

Spending long hours in a vehicle also exacts a significant physical toll on Uber and Lyft drivers over time. Studies of taxi drivers have found that prolonged sitting while driving creates musculoskeletal disorders and chronic pain.⁴³ In focus groups, drivers mentioned how the sedentary nature of the job caused pain throughout their bodies, which worsened over time.⁴⁴ Drivers mentioned stress, fatigue, muscle and skeletal pain as the top health issues they had experienced as a result of driving for Uber and Lyft.⁴⁵ More than half the drivers had also experienced headaches, sleep deprivation, and depression from driving, as well as dehydration, kidney issues, diabetes, hypertension, and heart problems.⁴⁶

Adding to the physical toll of driving long hours, the stress of unpredictable earnings and low pay has exacerbated harms to the drivers. When Uber and Lyft launched, they offered promotions to drivers that enabled them to earn a

RasierLLC, and Rasier-CALLC to Plaintiffs' Complaint at 6, *Liu v. Uber Techs., Inc.*, CGC-14-536979 (Cal. Super. Ct. Jan. 27, 2014).

⁴³ Martha Ockenfels-Martinez & Lili Farhang, *Driving Away Our Health*, Human Impact Partners (Aug. 2019) at 14, https://humanimpact.org/wp-content/uploads/2019/08/DrivingAwayHealthReport_2019.08final-compressed.pdf.

⁴⁴ *Id.*

⁴⁵ *Id.* at 12.

⁴⁶ *Id.*; also see Emma Bartel et al, *Stressful by Design: Exploring Health Risks of Ride-share Work*, 14 J. Transport & Health 1 (2019) (finding ride-share drivers face physical and mental health risks distinct to ride-share work, as compared to other forms of driving, like acute stress, weight gain, and muscle pain).

meaningful income while driving 30 or 40 hours a week. Now that the companies have drastically cut rates, many drivers sit in their vehicles for 60 or 70 hours a week to earn the same amount, which increases risks to their health.⁴⁷

C. Uber and Lyft’s COVID-19 Response Has Been Inadequate

Uber and Lyft are doing the bare minimum to follow regulatory guidelines with regards to COVID-19, and the companies have prioritized cost-savings over driver safety. Their failure to adequately protect drivers has tragically resulted in drivers contracting the virus, and in some cases, even death.⁴⁸ OSHA provided guidance to rideshare companies regarding driver and rider safety on May 14, 2020.⁴⁹ While Uber and Lyft have adopted several of the less impactful recommendations, they have failed to implement the most effective known

⁴⁷ Ockenfels-Martinez & Farhang, *supra* n.43

at 6-7, 14 (“[Drivers] must [now] drive longer and longer hours to reach the same income targets . . . [I]n 2013, drivers could make \$10 by driving 2.36 miles. By 2016, drivers had to travel [4.71 miles] to earn that same \$10.”); *see also* Noam Scheiberm, *How Uber Uses Psychological Tricks to Push Its Drivers’ Buttons*, N.Y. Times (Apr. 2, 2017)

<https://www.nytimes.com/interactive/2017/04/02/technology/uber-drivers-psychological-tricks.html> (detailing various methods Uber has implemented to “prod drivers into working longer and harder—and sometimes at hours and locations that are less lucrative for them”).

⁴⁸ Joshua Emerson Smith, *A COVID-19 Death Renews Questions of Responsibility of Uber and Lyft to Drivers*, L.A. Times (July 25, 2020) <https://www.latimes.com/california/story/2020-07-25/covid-19-death-uber-lyft-drivers>.

⁴⁹ *COVID-19 Guidance for Rideshare, Taxi, and Car Service Workers*, OSHA (2020), <https://www.osha.gov/Publications/OSHA4021.pdf>.

measure to stop asymptomatic transmission for all its drivers: installation of plexiglass partitions between drivers and riders. Uber and Lyft, however, have largely touted their distribution of hand sanitizer and face masks.⁵⁰ Lyft has launched a plan to provide 60,000 partitions for drivers without cost,⁵¹ but that policy covers only 3 percent of its 1.9 million drivers in the United States and Canada.⁵² For the remainder of Lyft's drivers, Lyft has built an online store from which drivers can purchase partitions. If properly classified, Uber and Lyft would be required to provide Personal Protective Equipment (PPE) at no cost to drivers.⁵³ As part of its COVID-19 response, Uber also promised financial support for drivers with underlying health conditions.⁵⁴ However, multiple drivers with

⁵⁰ See also Caroline Bologna, *Is it Safe to Take an Uber Lyft or Taxi During Coronavirus?*, Huffington Post (June 15, 2020), https://www.huffpost.com/entry/safe-uber-lyft-taxi-coronavirus_1_5ee15384c5b6b74caf872e23 (noting that taxis have plexiglass and companies are subject to standardized cleaning protocols).

⁵¹ Sarah Ashley O'Brien, *Lyft is Providing Some Drivers with Vehicle Partitions for Free, while Others Will Have to Pay*, CNN (July 17, 2020), <https://www.cnn.com/2020/07/17/tech/lyft-vehicle-partitions/index.html>.

⁵² Lyft, *supra* n. 6.

⁵³ *Bendix Forest Products Corp. v. Division of Occupational Safety and Health*, 25 Cal. 3d 465 (Cal. 1979).

⁵⁴ Dara Kerr, *Uber Expands Drivers' COVID-19 Sick Pay by a Little After Being Sued*, CNET (May 1, 2020), <https://www.cnet.com/news/uber-expands-driver-sick-pay-by-a-little-bit-after-being-sued/>.

underlying health conditions reported that Uber shut down their accounts after seeking said support and rejected or ignored requests for sick pay.⁵⁵

By misclassifying their drivers, Uber and Lyft seek to avoid their legal responsibility under California and federal law to provide paid sick time—even in the middle of a pandemic. California state law gives private sector employees the right to earn and use paid sick time, while many California cities provide additional sick time rights by local law.⁵⁶ In addition, the federal government, the state of California, and some localities have stepped up to guarantee additional emergency paid sick time in response to COVID-19.⁵⁷ Yet by denying that their

⁵⁵ Tyler Sonnemaker, *Uber Promised to Pay Drivers Who Couldn't Work Because of the Coronavirus*, Business Insider (Apr. 2, 2020), <https://www.businessinsider.com/uber-sick-pay-drivers-eligible-covid-19-coronavirus-financial-assistance-2020-3>.

⁵⁶ Cal. Lab. Code § 245 *et seq.*; Berkeley Code § 13.100.010 *et seq.*; Emeryville Code § 5-37.01 *et seq.*; Los Angeles Code § 187.00 *et seq.* and § 188.00 *et seq.*; Oakland Code § 5.92.010 *et seq.*; San Diego Code § 39.0101 *et seq.*; San Francisco Code Chapter 12W; Santa Monica Code § 4.62 *et seq.*

⁵⁷ Pub. L. No. 116-127, 134 Stat. 178 (Mar. 18, 2020); Cal. Lab. Code §§ 248–248.1 (West 2020); Long Beach (Long Beach, Cal., Mun. Code ch. 8.110); City of Los Angeles (Supplemental Paid Sick Leave Due to COVID-19, L.A., Cal. Pub. Order (May 19, 2020)); Los Angeles County (Los Angeles Cty., Cal., Code ch. 8.200); Oakland (Oakland, Cal., Protecting Workers and Communities During a Pandemic – COVID-19 Emergency Paid Sick Leave Ordinance (May 12, 2020) (to be codified at Oakland, Cal., Mun. Code ch. 5.94)); City of Sacramento (Sacramento, Cal., Ordinance No. 2020-0026 (June 30, 2020)); Sacramento County (Sacramento Cty., Cal. Ordinance No. 1593 (Sept. 1, 2020)); San Francisco (S.F., Cal., Ordinance No. 58-20 (Apr. 6, 2020)); San Jose (San Jose, Cal., Ordinance No. 30390 (Apr. 7, 2020)); San Mateo County (San Mateo Cty., Cal., Emergency Ordinance to Establish Supplemental Paid Sick Leave for COVID-19

drivers are employees, Uber and Lyft in effect purport to be excluded from these clear legal requirements, leaving their drivers without the protections they need and to which they have the right by law.

Compounding this problem, Uber and Lyft's own internal policies not only fail to meet their legal obligations as employers, but are insufficient on their face. Uber and Lyft require a positive test result to be eligible for its newly-implemented COVID-specific sick leave policy.⁵⁸ Such a policy is woefully inadequate. Drivers need health insurance to cover the costs of the test and sick time to await results of testing. As a consequence of Uber and Lyft's policies, drivers will be reluctant to seek a test in the first place, and by the time a positive test result arrives, the driver will have already exposed passengers and others to the virus. Policies that enable workers to take time off when they suspect exposure or believe that they have symptoms—as their legal rights as employees already guarantee—are necessary to be effective.

Denying drivers paid sick time has devastating consequences for both their health and public health, especially as drivers have become essential workers

Related Reasons for Employees of Employers with 500 or More Employees (July 7, 2020)); Santa Rosa (Santa Rosa, Cal., Ordinance No. 2020-006 (July 7, 2020)); Sonoma County (Sonoma Cty., Cal. Urgency Paid Sick Leave Ordinance (Aug. 18, 2020)).

⁵⁸ *Status Report: COVID-19 Support Uber Drivers and Delivery People*, Uber (May 21, 2020) <https://www.uber.com/newsroom/status-report-covid-19-support>.

continuing to interact with the public each day during the pandemic. Paid sick time is an essential tool for fighting the spread of infectious disease.⁵⁹ This impact has never been more important, with the Centers for Disease Control and Prevention recommending that the best way to prevent the spread of the novel coronavirus includes avoiding close contact with people who are sick and staying at home while sick.⁶⁰ In addition, public health experts agree that sick presenteeism—showing up to work with symptoms of, or potential exposure to, COVID-19—creates significant risks of transmission.⁶¹ Paid sick time is an essential tool for fighting sick presenteeism: people without paid sick time are 1.5 times more likely than people with paid sick time to go to work with a contagious illness.⁶² When Uber and Lyft leave drivers dependent on each dollar of their earnings with no choice

⁵⁹ See Vicky Lovell, *Paid Sick Days Improve Public Health by Reducing the Spread of Disease*, Institute for Women’s Policy Research (Feb. 2006), available at <https://core.ac.uk/download/pdf/71339327.pdf>.

⁶⁰ *Coronavirus Disease 2019 (COVID-19): Prevention and Treatment*, Centers for Disease Control and Prevention, <https://www.cdc.gov/coronavirus/2019-ncov/about/prevention-treatment.html> (last visited Oct. 6, 2020).

⁶¹ See, e.g., Jill Margo, *Presenteeism is the New COVID-19 Risk as People Return to Work*, Financial Review (May 8, 2020), <https://www.afr.com/policy/health-and-education/presenteeism-the-new-covid-19-risk-as-people-return-to-work-20200508-p54r1y>.

⁶² Tom W. Smith & Jibum Kim, *Paid Sick Days: Attitudes and Experiences*, National Opinion Research Center at the University of Chicago (June 2010), <http://www.nationalpartnership.org/research-library/work-family/psd/paid-sick-days-attitudes-and-experiences.pdf>.

but to continue working while sick, the companies place the health of their workers, their customers, and the public at large at risk.

III. Uber and Lyft Have Taken Advantage of Their Drivers through Predatory Financial Arrangements and By Saddling Them with Hidden Costs

Uber and Lyft employ policies and practices designed to take advantage of the economic insecurity created by misclassification. These practices compound the harms of misclassification by exposing drivers to unexpected and cumulative costs that further suppress earnings.

A. Uber and Lyft Have Misled Drivers About Earnings

Uber and Lyft have a record of misleading its workers by perniciously glamorizing the financial opportunities for rideshare drivers. In reality, over half of their drivers earn less than minimum wage in their state.⁶³ Indeed, the Federal Trade Commission (FTC) brought an action against Uber for misleading members of the public for over two years about potential driver income levels and auto loan opportunities that resulted in a \$20 million settlement.⁶⁴ Uber's website from at

⁶³ Stephen Zoepf, *The Economics of Ride Hailing, Revisited*, Mass. Inst. Tech. Ctr. Energy & Envtl. Pol'y Res. (Mar. 5, 2018), <http://ceepr.mit.edu/files/papers/2018-005%20Authors%20Statement.pdf>.

⁶⁴ Stipulated Order and Permanent Injunction for Monetary Judgment at 3, *Federal Trade Commission v. Uber Technologies, Inc.*, No 3:17-cv-00261 (N.D. Cal. Jan. 19, 2017).

least May 2014 to August 2015 featured a post which misleadingly claimed that Uber drivers' median income was more than \$74,000 in San Francisco, when in actuality less than 10 percent of drivers earned this figure, which did not account for the costly offset of driver expenses.⁶⁵ The FTC alleged that these statements violated federal law because they constituted deceptive acts and preyed on Uber drivers' vulnerable financial status as low-wage workers.⁶⁶ Although Lyft has escaped the scrutiny of the FTC, drivers have brought private suits alleging similar false advertising claims.⁶⁷

Beyond specific illegal false and deceptive statements, Uber and Lyft have used false promises about driver earnings and expenses to gain market control, only to subsequently lower wages after drivers have already committed significant investments. Hrant Goregian, a full-time Uber driver for five years in Los Angeles, has described the phenomenon as follows: “[w]hat I feel Uber does is like if you throw a seed to the birds and bring them to the cage and close the cage on them.

⁶⁵ Complaint at 5-6, *Federal Trade Commission v. Uber Technologies, Inc.*, No 3:17-cv-00261 (N.D. Cal. Jan. 19, 2017).

⁶⁶ *Id.* at 10-11 (alleging violations of 15 U.S.C. § 45(a), which prohibits “unfair or deceptive acts or practices in or affecting commerce”).

⁶⁷ Courtney Jorstad, *Lyft Didn't Honor \$1,000 Bonuses, Class Action Says, Top Class Actions* (Mar. 17, 2015) <https://topclassactions.com/lawsuit-settlements/lawsuit-news/51860-lyft-didnt-honor-1000-bonuses-class-action-says/>; Jenie Mallari-Torres, *False Advertising Allegations Filed Against Lyft by Georgia Driver*, Legal Newline (Sep. 20, 2018) <https://legalnewline.com/stories/511572756-false-advertising-allegations-filed-against-lyft-by-georgia-driver>.

Uber made it seem so good. I purchased a hybrid car, then they started little by little to reduce the wages.”⁶⁸ As Uber and Lyft have grown and filed initial public offerings, this has meant huge payouts for its executives, but ever more meager earnings for drivers.⁶⁹

B. Uber and Lyft Profit Off of Predatory Leasing and Rental Terms

For both Uber and Lyft, promises of “greater access to opportunity,” especially for “members of underserved communities,”⁷⁰ are contradicted by the realities of driver earnings, especially after accounting for overhead costs including car leasing or rental, vehicle upkeep, insurance, gas, and cell phone bills. If drivers were properly classified, Uber and Lyft would not be able to push these costs onto low-wage workers.⁷¹ Uber and Lyft have done more than simply shift the cost burden: they have generated a captive audience for their financial products and arrangements by instituting onerous vehicle requirements and targeting drivers

⁶⁸ Michael Sainato, ‘*They treat us like crap*’: Uber drivers feel poor and powerless on eve of IPO, The Guardian (May 7, 2019) <https://www.theguardian.com/technology/2019/may/07/uber-drivers-feel-poor-powerless-ipo-looms>.

⁶⁹ *Id.*

⁷⁰ *Economic Opportunities*, Uber, <https://www.uber.com/us/en/community/economic-opportunities/>.

⁷¹ *See, e.g.*, Cal. Code Regs. Tit. 8 § 11090(9)(B) (requiring employers in the transportation industry to furnish employees with equipment “necessary to the performance of a job”).

who may not have ready access to credit and financing.⁷² Uber and Lyft argue that their drivers constitute “customers” who purchase products from the companies; what they fail disclose however, is that these drivers are only customers because of the deception and exploitation perpetuated by the companies.

In some cases, these “innovative” financial arrangements are predatory on their face; they are textbook examples of predatory inclusion, the process by which lenders offer much-needed financial services on exploitative terms that limit or eliminate long-term benefits.⁷³ These arrangements can affect job mobility, as drivers effectively become trapped in relationships with these companies as consumers and workers. Such practices also disproportionately affect drivers of color, who have a much harder time accessing credit because of widespread

⁷² For example, UberXL drivers cannot use vehicles with “aftermarket seating modifications, such as installed seats” or vans in San Francisco. *Vehicle Requirements: San Francisco Bay Area*, Uber, <https://www.uber.com/us/en/drive/san-francisco/vehicle-requirements/>. Lyft similarly prohibits the use of 26 models of subcompact vehicles “[i]n order to provide a comfortable rider experience.” *Vehicle Requirements*, Lyft, <https://help.lyft.com/hc/en-us/articles/115013077448-Vehicle-requirements#sub>. HyreCar, a car rental service for Uber and Lyft drivers, estimated in December 2019 that up to 40 percent of drivers lack “qualifying vehicles” given these requirements. Steven Finlay, *Car Dealers in ‘Best Position’ to Serve Uber, Lyft Drivers*, Wards Auto (Dec. 23, 2019), <https://www.wardsauto.com/dealers/car-dealers-best-position-serve-uber-lyft-drivers>.

⁷³ See generally Louise Seamster & Raphaël Charron-Chénier, *Predatory Inclusion and Education Debt: Rethinking the Racial Wealth Gap*, 4 Soc. Currents 199, 199 (2017).

discrimination in the financial markets.⁷⁴ One such example is Uber’s Vehicle Solutions Program, which, from November 2013 to April 2016, offered both current and prospective drivers predatory auto installment loans through partnerships with three subprime auto lenders.⁷⁵ During this time period Uber advertised that drivers could lease cars for “payments as low as \$17 per day,”⁷⁶ when in fact, from late 2013 to April 2015 the median weekly payment for Vehicle Solutions Program leases was over \$200.⁷⁷ Uber also advertised to *lenders* that the leases made through the Program would have an “implied APR of 19.5%”—well above industry average at the time for consumers with subprime credit scores.⁷⁸

⁷⁴ For example, a 2018 study found that 62.5 percent of drivers of color received more costly auto loan terms than less-qualified white drivers. Lisa Rice & Erich Schwartz Jr., *Discrimination When Buying a Car: How the Color of Your Skin Can Affect Your Car-Shopping Experience*, Nat’l Fair Hous. Alliance, at 5 (Jan. 2018), <https://nationalfairhousing.org/wp-content/uploads/2018/01/Discrimination-When-Buying-a-Car-FINAL-1-11-2018.pdf>. See generally Charles Lewis Nier III, *The Shadow of Credit: The Historical Origins of Racial Predatory Lending and Its Impact Upon African American Wealth Accumulation*, 11 Univ. Pa. J.L. & Soc. Change 131 (2007).

⁷⁵ See Complaint at 8, *Federal Trade Commission v. Uber Technologies, Inc.*, No 3:17-cv-00261 (N.D. Cal. Jan. 19, 2017).

⁷⁶ *Id.* at 9.

⁷⁷ *Id.*

⁷⁸ *Id.* at 9-10.

Additionally, Uber and Lyft both offer short-term car rentals, often targeting drivers who have poor credit or are in desperate need of flexible income.⁷⁹ The onerous terms and conditions of these programs can create further hardship for drivers. For example, Lyft imposes unique restrictions on drivers who rent cars through its Express Drive program, mandating they provide 20 rides a week to keep the car and prohibiting them from making money using their vehicles to work for other services.⁸⁰ Additionally, drivers who rent through Express Drive are paid less per mile than other Lyft drivers, and rental costs through the Express Drive program are significantly higher than comparable rentals from dealerships.⁸¹

⁷⁹ Eric Newcomer & Olivia Zaleski, *Uber's Subprime Leases Put Drivers on Road, But Leave Some Shackled*, Seattle Times (June 1, 2016) <https://www.seattletimes.com/business/ubers-subprime-leases-put-drivers-on-road-but-leave-some-shackled>; Jonah Walters, *If You Want to Keep Your Car, You Drive*, Jacobin (Apr. 3, 2020) <https://www.jacobinmag.com/2020/04/lyft-express-drive-coronavirus-pandemic-drivers>.

⁸⁰ *Express Drive*, Lyft, <https://www.lyft.com/expressdrive>. These requirements and restrictions seriously undermine Lyft's assertion that drivers are independent contractors free of Lyft's control.

⁸¹ As of May 2019, rental payments started at \$219 a week and rose as high as \$479 a week in New York. By comparison, ride-hailing drivers in some markets who rent a comparable car from a dealership can pay less than \$160 a week, including the cost of insurance. One driver in Los Angeles, Sinakhone Keodara, started frequently sleeping in the car he rents from Lyft. He reported paying close to \$2,000 to rent the car and pay for gas each month. Until the weekly rental fee was paid, Lyft placed a hold on drivers' accounts, preventing them from withdrawing any income. Keodara said he at times had to overdraw his bank account to fill the tank. Johana Bhuiyan, *Lower Pay and Higher Costs: The Downsides of Lyft's Car Rental Program*, L.A. Times (May 20, 2019)

C. Uber and Lyft Provide Insufficient Insurance Coverage

Vehicle insurance coverage policies present yet another example of how misclassification forces drivers to absorb additional costs. If Uber and Lyft drivers were properly classified as employees, the companies would be incentivized to offer more robust insurance coverage, because they could be held vicariously liable for the actions of their employee-drivers.⁸² Presently, however, Uber and Lyft's vehicle insurance for drivers offers thin coverage and fails to cover substantial periods of time when drivers are working, which exposes drivers to additional personal insurance costs and risks for additional expenses arising from accidents that do occur.

Uber and Lyft delineate two periods of time that are relevant for insurance coverage: (1) when drivers are waiting to be matched with passengers; and (2) when drivers are driving to pick up a passenger or are driving with the passenger.⁸³

<https://www.latimes.com/business/technology/la-fi-tn-lyft-express-drive-20190520-story.html>.

⁸² Lauren Geisser, *Note: Risk, Reward, And Responsibility: A Call To Hold Uberx, Lyft, And Other Transportation Network Companies Vicariously Liable For The Acts Of Their Drivers*, 89 S. Cal. L. Rev. 317, 322 (2016); also see Restatement (Second) of Torts § 409 (1965).

⁸³ *Insurance FAQ*, Lyft, <https://www.lyft.com/driver/insurance#faq>; *Auto Insurance to Help Protect You*, Uber, <https://help.uber.com/driving-and-delivering/article/insurance-?nodeId=a4afb2ed-75af-4db6-8fdb-dccecfc3fd7>; Mark Fitzpatrick, *Uber and Lyft: Car Insurance for Ridesharing*, Value Penguin (June 13, 2019) <https://www.valuepenguin.com/how-ridesharing-affects-your-auto-insurance>.

When drivers are waiting to be matched with passengers, the companies' insurance policies only cover third-party injuries and property damage (up to \$50,000 per person and \$25,000 for property damage) and do not cover any injuries to the driver or damage to the vehicle itself.⁸⁴ This time is significant, as drivers can spend 40 percent of their time waiting to be matched.⁸⁵ If drivers want supplemental insurance, they have to incur additional costs, which can be substantial.⁸⁶ As a result, most drivers drive without any additional coverage.⁸⁷ Driving without additional coverage poses significant risks, because insurance companies often deny claims when drivers are working for Uber or Lyft and, in some cases, will drop drivers from their policies altogether. Drivers who get into

⁸⁴ Lyft, *supra* n.83; Uber *supra* n.83.

⁸⁵ James A. Parrott & Michael Reich, *A Minimum Compensation Standard for Seattle TNC Drivers* (July 2020) at 52, https://irle.berkeley.edu/files/2020/07/Parrott-Reich-Seattle-Report_July-2020.pdf.

⁸⁶ In some cases, the cost can be equivalent to a quarter of profits, forcing drivers to pick up more rides to make up the cost. Fitzpatrick, *supra* n.83.

⁸⁷ A survey of drivers found that 77 percent of drivers have no additional insurance, and 32 percent of drivers find the costs of extra insurance to be prohibitive. Elizabeth Renter & Diamond Richardson, *Many Uber, Lyft Drivers are Underinsured, Survey Finds*, NerdWallet (Feb. 29, 2016) <https://www.nerdwallet.com/blog/insurance/rideshare-drivers-lack-insurance/>.

accidents may be required to pay large sums out-of-pocket for any injuries they may have sustained or for damage to their vehicles.⁸⁸

Although Uber and Lyft provide more extensive coverage when drivers are picking up or driving their passengers, the deductibles for these “heightened” coverage plans are very high: Lyft’s is \$2,500⁸⁹ and Uber’s is \$1,000.⁹⁰ (Most insurance companies offer deductibles between \$500 to \$1,000.)⁹¹ These high deductibles enable Uber and Lyft to push many costs entirely onto drivers, since many accidents involve minimal damage that do not exceed their deductibles.⁹²

When Uber and Lyft push the costs of auto insurance coverage onto drivers, it disproportionately affects drivers of color, who already suffer from a racial tax in insurance premiums. In 2019, the California Department of Insurance conducted an investigation that found insurers sold higher priced auto insurance policies to

⁸⁸ Adam Cecil, *The Insurance Secret that Uber Doesn’t Want You to Know*, Policy Genius (Oct. 8, 2014) <https://www.policygenius.com/blog/insurance-secret-uber-doesnt-want-know/>.

⁸⁹ *Insurance*, Lyft, <https://help.lyft.com/hc/en-us/articles/115013080548-Insurance>.

⁹⁰ Uber, *supra* n.83.

⁹¹ *Your Guide to Deductibles and California Car Insurance*, AIS Insurance Specialist (June 21, 2016) <https://blog.aisinsurance.com/2016/06/21/guide-to-deductibles-and-california-car-insurance/>.

⁹² Gina Pogol, *Essential Car Insurance For Auto Repairs*, Insurance.com (Jan. 29, 2020) <https://www.insurance.com/auto-insurance/coverage/insurance-for-auto-body-repairs.html>.

people of color and low-income drivers.⁹³ This practice can lead people of color to pay rates that are 26% higher than their white counterparts.⁹⁴ Consequently, Uber and Lyft’s insurance practices compound existing racial inequalities.

⁹³ Greg Iacurci, *California Tries to Curb Discrimination in Auto Insurance Pricing*, CNBC (Dec. 24, 2019)

<https://www.cnbc.com/2019/12/24/california-tries-to-curb-discrimination-in-auto-insurance-pricing.html>.

⁹⁴ *Id.*; see also Julia Angwin et al., *Minority Neighborhoods Pay Higher Car Insurance Premiums Than White Areas With the Same Risk*, ProPublica (Apr. 5, 2017), <https://www.propublica.org/article/minority-neighborhoods-higher-car-insurance-premiums-white-areas-same-risk> (finding “that minority zip codes were being charged 21 percent more than similarly risky non-minority zip codes” for auto insurance).

CONCLUSION

For the foregoing reasons, the Court should affirm the trial court's preliminary injunction.

Respectfully submitted,

Dated: October 6, 2020

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WORD COUNT CERTIFICATION

Pursuant to Rule 8.204(c)(1) of the California Rules of Court, I certify that the Proposed Brief of *Amici Curiae* Public Rights Project, et al., in Support of Plaintiff and Respondent is proportionately spaced, has a typeface of 13 points or more and contains 7,574 words, including footnotes.

Dated: October 6, 2020

/s/ Jill E. Habig
JILL E. HABIG

**[PROPOSED] ORDER GRANTING LEAVE
TO FILE *AMICI CURIAE* BRIEF**

The application of the Public Rights Project, et al., for permission to file a brief as *Amici Curiae* having been read and filed, and good cause appearing: IT IS HEREBY ORDERED that Public Rights Project and 15 Civil Rights, Gender Justice, and Workers Rights Organizations are permitted to file the proposed brief attached to this application as *Amici Curiae*.

Dated: _____

Presiding Justice