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8 Attorneys for Plaintiff Angela McRay
 9 on behalf of herself and all others
 similarly situated,

10 **UNITED STATES DISTRICT COURT**
 11 **NORTHERN DISTRICT OF CALIFORNIA**

13 ANGELA MCRA Y, individually and on behalf
 of all others similarly situated,

14 Plaintiff,

16 v.

17 UBER TECHNOLOGIES, INC,

18 Defendant.

Case No. _____

CLASS ACTION COMPLAINT

1. FAILURE TO REIMBURSE FOR BUSINESS EXPENSES (CAL. LAB. CODE § 2802, WAGE ORDER 9-2001)
2. MINIMUM WAGE (CAL. LABOR CODE §§ 1197, 1194, 1182.12, 1194.2, 1197.1, 1199, WAGE ORDER 9-2001)
3. UNLAWFUL AND/OR UNFAIR BUSINESS PRACTICES (CAL. BUS. & PROF. CODE §§17200-17208)
4. OVERTIME (CAL. LAB. CODE § 1194, 1198, 510 AND 554, WAGE ORDER 9-2001)
5. FAILURE TO PROVIDE PROPER ITEMIZED PAY STATEMENTS (CAL. LABOR CODE § 226(A), WAGE ORDER 9-2001)
6. DECLARATORY JUDGMENT (28 U.S.C. §§2201-02)

1 **I. INTRODUCTION**

2 1. Uber is a car service, which engages thousands of drivers across the state of
3 California who can be hailed and dispatched through a mobile phone application to transport
4 riders. Uber is based in San Francisco, California, and it does business across the United States
5 and extensively throughout California.

6 2. As described further below, Uber has misclassified its drivers, including Plaintiff
7 Angela McRay, as independent contractors when they should be classified under California law
8 as employees. Based on the drivers' misclassification as independent contractors, Uber has
9 unlawfully required drivers to pay business expenses (including but not limited to the cost of
10 maintaining their vehicles, gas, insurance, phone and data expenses, and other costs) in violation
11 of Cal. Lab. Code § 2802. Uber has also failed to guarantee and pay its drivers minimum wage
12 for all hours worked and it has failed to pay overtime premiums for hours worked in excess of
13 eight hours per day or forty hours per week in violation of Cal. Lab. Code §§ 1182.12, 1194.2,
14 1194, 1197, 1197.1, 1198, 1199, 510, and 554. Uber has also failed to provide proper itemized
15 wage statements that include all the requisite information, including hours worked and hourly
16 wages and that are accessible outside the Uber Application in violation of Cal. Lab. Code §
17 226(a). Uber's continued misclassification of its drivers as independent contractors is willful
18 misclassification in violation of Cal. Labor Code § 226.8.

19 3. Indeed, the California legislature has now passed a statute known as Assembly
20 Bill 5 (or "AB5"), which codifies the 2018 California Supreme Court decision, Dynamex
21 Operations W., Inc. v. Superior Court, 4 Cal. 5th 903, 416 P.3d 1 (2018), reh'g denied (June 20,
22 2018), under which an alleged employer cannot justify classifying workers as independent
23 contractors who perform services within its usual course of business. It has been widely
24 recognized by the California legislature, including the bill's author, that the purpose and intent of
25 this statute is to ensure that companies, including specifically Uber, stop misclassifying their
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1 workers as independent contractors. Although Uber attempted to obtain a “carve-out” from this
2 statute, it did not obtain such an exemption, and the legislature passed the statute so that it would
3 include Uber drivers. Nevertheless, Uber has publicly stated that it intends to defy this statute
4 and continue to classify its drivers as independent contractors – in violation of the express intent
5 of the California legislature. This ongoing defiance of the law constitutes a willful violation of
6 California law.

7
8 4. Plaintiff brings these claims on behalf of herself and all other similarly situated
9 pursuant to Fed. R. Civ. P. 23. She seeks recovery of damages for herself and the class, as well
10 as declaratory and injunctive relief, requiring Uber to reclassify its drivers as employees in
11 California.

12 **II. PARTIES**

13 5. Plaintiff Angela McRay is an adult resident of Pittsburg, California, where she has
14 worked as an Uber driver since November 2016.

15 6. The above-named plaintiff has brought this action on her own behalf and on
16 behalf of all others similarly situated, namely all other individuals who have worked as Uber
17 drivers in California who have not released all of their claims against Uber.

18 7. Defendant Uber Technologies, Inc. (“Uber”) is a corporation headquartered in
19 San Francisco, California.

20 **III. JURISDICTION**

21 8. This Court has jurisdiction over the state law claims asserted here pursuant to the
22 Class Action Fairness Act, 28 U.S.C. § 1332(d)(2), since Defendant is a California citizen and,
23 upon the filing of this complaint, members of the putative plaintiff class reside in states around
24 the country; there are more than 100 putative class members; and the amount in controversy
25 exceeds \$5 million.

1 at times arrive from, or are traveling to destinations, out of state, such as arriving at or leaving
2 train stations or airports.

3 27. Uber does not reimburse drivers for any expenses they incur while working for
4 Uber, including, but not limited to the cost of maintaining their vehicles, gas, insurance, and
5 phone and data expenses for running the Uber Application. Drivers incur these costs as a
6 necessary expenditure to work for Uber, which California law requires employers to reimburse.
7

8 28. Uber has violated Cal. Lab. Code §§ 1194, 1197 by failing to assure that drivers,
9 including Angela McRay, make the applicable minimum wage for all hours worked, after
10 accounting for their expenses and other deductions taken from their pay. The hours they work
11 include hours spent transporting passengers, driving to pick up passengers, and driving between
12 rides while awaiting the next ride.

13 29. Uber has violated Cal. Lab. Code §§ 1194, 1198, 510 and 554 by failing to pay its
14 drivers like Angela McRay the appropriate overtime premium for all overtime hours worked
15 beyond forty per week or eight per day. Ms. McRay has worked more than eight hours per day
16 and more than forty hours per week at various times since she began driving for Uber in
17 November 2016 and was never paid the appropriate premium for hours worked beyond eight per
18 day or forty per week. The hours that drivers such as Ms. McRay have worked include hours
19 spent transporting passengers, driving to pick up passengers, and driving between rides while
20 awaiting the next ride.

21 30. Uber has violated Cal. Lab. Code § 226(a) by failing to provide proper itemized
22 wage statements that include all the requisite information required by California law, including
23 hours worked and hourly wages and has failed to provide pay statements that are accessible to
24 drivers outside of the Uber Application.

25 31. On April 30, 2018, the California Supreme Court issued its decision in Dynamex
26 Operations W., Inc. v. Superior Court, 4 Cal. 5th 903, 416 P.3d 1 (2018), reh'g denied (June 20,
27

1 2018), which makes clear that Uber drivers should be classified as employees rather than as
2 independent contractors under California law for purposes of wage-and-hour statutes like the
3 ones at issue here. Under the “ABC” test adopted in Dynamex, in order to justify classifying the
4 drivers as independent contractors, Uber would have to prove that its drivers perform services
5 outside its usual course of business (in addition to other requirements), which it cannot do.
6 Notwithstanding this decision, Uber has willfully continued to misclassify its drivers as
7 independent contractors.
8

9 32. Furthermore, the California legislature has now taken steps to clarify and codify
10 the Dynamex decision by passing Assembly Bill 5, which has been passed by the California
11 legislature and is expected to be signed into law by the governor imminently. However, Uber
12 has nevertheless publicly and defiantly stated, including through its General Counsel Tony West,
13 that it will not classify its drivers as employees.¹ Uber has stated that it will not reclassify its
14 drivers, even though the legislature has clearly intended for Uber to be covered by this statute;
15 indeed, the author of the statute, Assemblywoman Lorena Gonzalez, has made clear that Uber
16 (and similar “gig economy” companies) would not be exempted from the law. Uber specifically
17 lobbied to obtain a “carve-out” exemption from the law, which it did not receive from the
18 legislature.
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25 ¹ See Conger, Kate and Noam Scheiber, Confusion and Defiance Follow California’s New
26 Gig-Worker Law, NEW YORK TIMES (Sept. 11, 2019); Miller, Cheryl, Uber's Top Lawyer Vows
Fight as California Embraces Sweeping New Labor Rules, THE RECORDER (Sept. 11, 2019).

1 **V. CLASS ACTION ALLEGATIONS**

2 33. The class representative, Angela McRay, has brought this action as a class action
3 pursuant to Rule 23 of the Federal Rules of Civil Procedure on behalf of Uber drivers who have
4 worked for Uber in California.

5 34. The class representative and other class members have uniformly been
6 misclassified as independent contractors.

7 35. The members of the class are so numerous that joinder of all class members is
8 impracticable.

9 36. Common questions of law and fact regarding Uber's conduct exist as to all
10 members of the class and predominate over any questions affecting solely any individual
11 members of the class. Among the questions of law and fact common to the class are:
12

- 13 a. Whether the work performed by class members—providing transportation service
14 to customers—is within Uber's usual course of business, and whether such
15 service is fully integrated into Uber's business;
- 16 b. Whether class members have been required to work under Uber's direction and
17 control;
- 18 c. Whether class members are engaged in an independently established business or
19 occupation while they are transporting Uber customers;
- 20 d. Whether class members have been required to bear the expenses of their
21 employment, such as expenses for their vehicles, gas, and other expenses;
- 22 e. Whether class members have suffered other violations of the California Labor
23 Code and Wage Orders, as described herein.

24 37. The class representative is a member of the class, who suffered damages as a
25 result of Defendant's conduct and actions alleged herein.
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1 expenditures, failing to ensure that they receive minimum wage for all hours worked, overtime
2 pay, and other protections of California's Labor Code and Wage Orders, contravenes California
3 state law.

4 44. As a result of the factual allegations above, Plaintiff and all Uber drivers in
5 California have suffered actionable harm, as they are not properly compensated for their work
6 for Uber.

7 45. Plaintiff seeks an order of this Court pursuant to 28 U.S.C. §§2201-02 and Fed. R.
8 Civ. P. 57 declaring that, as a result of its misclassification of its drivers, Uber has violated the
9 California Labor Code and Wage Orders and declaring that Uber must comply with the Labor
10 Code and Wage Orders.

11 46. The injunction that Plaintiff seeks is in the nature of a public injunction and is not
12 solely for the benefit of herself and other Uber drivers. Instead, ordering Uber to comply with
13 the California Labor Code is in the public interest because Uber's violation of the Labor Code
14 and Wage Orders diminishes labor standards more generally in the California economy and
15 particularly in the transportation industry. Complying competitors are put at a disadvantage
16 when companies such as Uber flout the Labor Code and Wage Orders by misclassifying their
17 employees as independent contractors. Public funds are also impacted by these violations
18 because the state incurs costs in supporting and providing services to employees who are not
19 properly paid and do not even receive minimum wage. The California Supreme Court made a
20 strong statement in the recent Dynamex decision – and the California legislature has now
21 reinforced that statement by passing Assembly Bill 5 -- of the importance to the public good of
22 employers properly classifying their workers as employees. That public interest is harmed by an
23 employer such as Uber ignoring the decision and continuing to classify its employees as
24 independent contractors.
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COUNT IV
Minimum Wage

**Violation of Cal. Lab. Code §§ 1197, 1194, 1182.12, 1194.2, 1197.1, 1199;
Wage Order 9-2001; San Francisco Minimum Wage Ordinance;
Los Angeles Citywide Minimum Wage Ordinance;
Los Angeles County Minimum Wage Ordinance**

51. Plaintiff realleges and incorporates by reference the allegations in the preceding paragraphs as if fully alleged herein. Uber’s conduct, as set forth above, in failing to ensure its drivers receive minimum wage for all hours worked as required by California law, violates Cal. Lab. Code §§ 1197, 1194, 1182.12, 1194.2, 1197.1, 1199 and Wage Order 9-2001 (as well as the higher minimum wage rates established by the San Francisco Minimum Wage Ordinance, the Los Angeles Citywide Minimum Wage Ordinance, and the Los Angeles County Minimum Wage Ordinance, for those drivers who worked in those jurisdictions).

52. This claim is brought on behalf of a class of similarly situated individuals who have worked as drivers for Uber in the state of California.

COUNT V
Overtime

Violation of Cal. Lab. Code §§ 1194, 1198, 510 and 554; Wage Order 9-2001

53. Plaintiff realleges and incorporates by reference the allegations in the preceding paragraphs as if fully alleged herein. Defendant’s conduct, as set forth above, in failing to pay its employees the appropriate overtime premium for overtime hours worked as required by California Law, violates Cal. Lab. Code §§ 1194, 1198, 510 and 554 and Wage Order 9-2001.

54. This claim is brought on behalf of a class of similarly situated individuals who have worked as drivers for Uber in the state of California.

COUNT VI

Failure to Provide Accurate Itemized Pay Statements
Violation of Cal. Lab. Code § 226(a), 226.3; Wage Order 9-2001

55. Plaintiff realleges and incorporates by reference the allegations in the preceding paragraphs as if fully alleged herein. Uber’s conduct, as set forth above, in failing to provide proper itemized wage statements, as required by California state law, violates Cal. Lab. Code §226(a) and Wage Order 9-2001.

56. This claim is brought on behalf of a class of similarly situated individuals who have worked as drivers for Uber in the state of California.

COUNT VII

Unfair Business Practices
Violation of Cal. Bus. & Prof. Code §17200, et seq.

57. Plaintiff realleges and incorporates by reference the allegations in the preceding paragraphs as if fully alleged herein. Uber’s conduct, as set forth above, violates the California Unfair Competition Law, Cal. Bus. & Prof. Code § 17200 et seq. (“UCL”). Uber’s conduct constitutes unlawful business acts or practices, in that Uber has violated California Labor Code §§ 2802, 1194, 1198, 510, 554, 1197, 1194, 1182.12, 1194.2, 1197.1, 1199, 226.8, and 226(a). As a result of Uber’s unlawful conduct, Plaintiff and class members suffered injury in fact and lost money and property, including, but not limited to business expenses that drivers were required to pay and wages that drivers were due. Pursuant to California Business and Professions Code § 17203, Plaintiff and class members seek declaratory and injunctive relief for Uber’s unlawful conduct and to recover restitution. Pursuant to California Code of Civil Procedure § 1021.5, Plaintiff and class members who worked for Uber are entitled to recover reasonable attorneys’ fees, costs, and expenses incurred in bringing this action.

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Respectfully submitted,

ANGELA MCRA Y, individually
and on behalf of all others similarly situated,

By their attorneys,

/s/ Shannon Liss-Riordan
Shannon Liss-Riordan, SBN 310719
Adelaide Pagano, *pro hac vice anticipated*
Anne Kramer, SBN 315131
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Dated: September 11, 2019

CIVIL COVER SHEET

The JS-CAND 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved in its original form by the Judicial Conference of the United States in September 1974, is required for the Clerk of Court to initiate the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

Angela McCray, on behalf of herself and all others similarly situated

(b) County of Residence of First Listed Plaintiff Contra Costa County (EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number) Shannon Liss-Riordan, Anne Kramer, Adelaide Pagano, Lichten & Liss-Riordan P.C. 729 Boylston Street Suite 2000 Boston MA 02116

DEFENDANTS

Uber Technologies Inc.

County of Residence of First Listed Defendant San Francisco County (IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff 3 Federal Question (U.S. Government Not a Party) 2 U.S. Government Defendant 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

Table with columns for Plaintiff (PTF) and Defendant (DEF) citizenship and incorporation status.

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Large table with categories: CONTRACT, REAL PROPERTY, TORTS, CIVIL RIGHTS, PRISONER PETITIONS, HABEAS CORPUS, OTHER, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES.

V. ORIGIN (Place an "X" in One Box Only)

- 1 Original Proceeding 2 Removed from State Court 3 Remanded from Appellate Court 4 Reinstated or Reopened 5 Transferred from Another District (specify) 6 Multidistrict Litigation-Transfer 8 Multidistrict Litigation-Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity): Class Action Fairness Act ("CAFA"), 28 U.S.C. 1332; Uniform Declaratory Judgment Act, 28 U.S.C. §§2201-02. Brief description of cause: Misclassification and related Labor Code violations; declaratory judgment that plaintiffs are Defendant's employees

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, Fed. R. Civ. P. DEMAND \$ CHECK YES only if demanded in complaint: JURY DEMAND: Yes No

VIII. RELATED CASE(S), IF ANY (See instructions):

JUDGE Edward M. Chen DOCKET NUMBER 13-cv-3826-EMC

IX. DIVISIONAL ASSIGNMENT (Civil Local Rule 3-2)

(Place an "X" in One Box Only) SAN FRANCISCO/OAKLAND SAN JOSE EUREKA-MCKINLEYVILLE

DATE 09/11/2019

SIGNATURE OF ATTORNEY OF RECORD

s/ Shannon Liss-Riordan

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS-CAND 44

Authority For Civil Cover Sheet. The JS-CAND 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved in its original form by the Judicial Conference of the United States in September 1974, is required for the Clerk of Court to initiate the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

- I. a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.
- b) County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the “defendant” is the location of the tract of land involved.)
- c) Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section “(see attachment).”
- II. Jurisdiction.** The basis of jurisdiction is set forth under Federal Rule of Civil Procedure 8(a), which requires that jurisdictions be shown in pleadings. Place an “X” in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.
- (1) United States plaintiff. Jurisdiction based on 28 USC §§ 1345 and 1348. Suits by agencies and officers of the United States are included here.
 - (2) United States defendant. When the plaintiff is suing the United States, its officers or agencies, place an “X” in this box.
 - (3) Federal question. This refers to suits under 28 USC § 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.
 - (4) Diversity of citizenship. This refers to suits under 28 USC § 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; **NOTE: federal question actions take precedence over diversity cases.**)
- III. Residence (citizenship) of Principal Parties.** This section of the JS-CAND 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.
- IV. Nature of Suit.** Place an “X” in the appropriate box. If the nature of suit cannot be determined, be sure the cause of action, in Section VI below, is sufficient to enable the deputy clerk or the statistical clerk(s) in the Administrative Office to determine the nature of suit. If the cause fits more than one nature of suit, select the most definitive.
- V. Origin.** Place an “X” in one of the six boxes.
- (1) Original Proceedings. Cases originating in the United States district courts.
 - (2) Removed from State Court. Proceedings initiated in state courts may be removed to the district courts under Title 28 USC § 1441. When the petition for removal is granted, check this box.
 - (3) Remanded from Appellate Court. Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.
 - (4) Reinstated or Reopened. Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.
 - (5) Transferred from Another District. For cases transferred under Title 28 USC § 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.
 - (6) Multidistrict Litigation Transfer. Check this box when a multidistrict case is transferred into the district under authority of Title 28 USC § 1407. When this box is checked, do not check (5) above.
 - (8) Multidistrict Litigation Direct File. Check this box when a multidistrict litigation case is filed in the same district as the Master MDL docket. Please note that there is no Origin Code 7. Origin Code 7 was used for historical records and is no longer relevant due to changes in statute.
- VI. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC § 553. Brief Description: Unauthorized reception of cable service.
- VII. Requested in Complaint.** Class Action. Place an “X” in this box if you are filing a class action under Federal Rule of Civil Procedure 23. Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction. Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.
- VIII. Related Cases.** This section of the JS-CAND 44 is used to identify related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.
- IX. Divisional Assignment.** If the Nature of Suit is under Property Rights or Prisoner Petitions or the matter is a Securities Class Action, leave this section blank. For all other cases, identify the divisional venue according to Civil Local Rule 3-2: “the county in which a substantial part of the events or omissions which give rise to the claim occurred or in which a substantial part of the property that is the subject of the action is situated.”
- Date and Attorney Signature.** Date and sign the civil cover sheet.

Civil Action No. _____

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))

This summons for *(name of individual and title, if any)* _____
was received by me on *(date)* _____.

I personally served the summons on the individual at *(place)* _____
_____ on *(date)* _____; or

I left the summons at the individual's residence or usual place of abode with *(name)* _____
_____, a person of suitable age and discretion who resides there,
on *(date)* _____, and mailed a copy to the individual's last known address; or

I served the summons on *(name of individual)* _____, who is
designated by law to accept service of process on behalf of *(name of organization)* _____
_____ on *(date)* _____; or

I returned the summons unexecuted because _____; or

Other *(specify)*:

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____ 0.00 _____.

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc:

ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Uber Hit with Driver Classification Class Action Leaning on Proposed Dynamex Law](#)
