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12 Attorneys for Plaintiffs Lydia Olson,
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 13 Uber Technologies, Inc.

14
 15 UNITED STATES DISTRICT COURT
 CENTRAL DISTRICT OF CALIFORNIA
 16 WESTERN DIVISION

17 LYDIA OLSON; MIGUEL PEREZ;
 18 POSTMATES INC.; and UBER
 TECHNOLOGIES, INC.,

19 Plaintiffs,

20 v.

21 STATE OF CALIFORNIA; XAVIER
 22 BECERRA, in his capacity as Attorney
 General of the State of California; and
 23 "JOHN DOE," in his official capacity,

24 Defendants.

CASE NO. 2:19-cv-10956

**COMPLAINT FOR VIOLATION OF
 FEDERAL AND CALIFORNIA
 CONSTITUTIONAL RIGHTS,
 DECLARATORY, INJUNCTIVE,
 AND OTHER RELIEF**

DEMAND FOR JURY TRIAL

25 Plaintiffs Lydia Olson and Miguel Perez (together, "Individual Plaintiffs"), and
 26 Postmates Inc. ("Postmates") and Uber Technologies, Inc. ("Uber") (together,
 27 "Company Plaintiffs") file this Complaint for declaratory, injunctive, and other relief
 28 determining that California Assembly Bill 5 ("AB 5")—a recently enacted statute that

1 becomes effective on January 1, 2020—is unconstitutional. AB 5 violates the Equal
2 Protection and Due Process Clauses of the Fourteenth Amendment to the United States
3 Constitution, the Ninth Amendment to the United States Constitution, and the Contracts
4 Clause of Article I of the United States Constitution, as well as the Equal Protection
5 Clause, Inalienable Rights Clause, Due Process Clause, Baby Ninth Amendment, and
6 Contracts Clause of the California Constitution.

7 **INTRODUCTION**

8 1. Plaintiffs bring this lawsuit to protect their constitutional rights and defend
9 their fundamental liberty to pursue their chosen work as independent service providers
10 and technology companies in the on-demand economy.

11 2. AB 5 is an irrational and unconstitutional statute designed to target and
12 stifle workers and companies in the on-demand economy.

13 3. The on-demand economy is a free-market system in which Plaintiffs Lydia
14 Olson and Miguel Perez, along with other independent service providers like them, have
15 enjoyed opportunities to earn money when and where they want, with unprecedented
16 independence and flexibility. These opportunities have been made possible by mobile
17 applications (“apps”) operated by network companies that connect consumers requesting
18 certain services with independent providers of those services. Network companies that
19 operate these apps, like Company Plaintiffs, are sometimes referred to as “app-based
20 platforms,” “network companies,” or “platform companies.” Those independent service
21 providers who find their customers using the network companies’ mobile apps may be
22 referred to as “app-based independent service providers,” performing “on-demand
23 work.”

24 4. Plaintiffs Olson and Perez choose to work as independent service providers
25 in the modern app-based on-demand economy as a means of earning a substantial or
26 supplementary income while maintaining the right to decide when, where, and how they
27 work. In fact, hundreds of thousands of Californians choose to provide these services—
28 such as providing transportation to a passenger or delivering food, groceries, and other

1 goods—and enjoy an unprecedented level of flexibility and freedom without the
2 restrictions, limitations, and burdens of traditional employment.

3 5. Such independent service providers like Individual Plaintiffs are able “to
4 integrate work into their existing lifestyles, to manage it along with other work, and to
5 assemble what amounts to a form of income insurance,” thereby gaining the ability “to
6 create their own financial stability.”¹ For example, Plaintiff Olson uses on-demand work
7 to supplement her primary income while still ensuring that she can always care for her
8 husband, who has multiple sclerosis, whenever he needs her. Plaintiff Perez uses on-
9 demand work more regularly to earn a more substantial income than he previously did
10 as a trucker, while still making it to all of his son’s little league games. Other fathers
11 too choose app-based on-demand referrals for the flexibility to work around children’s
12 soccer games or ballet performances. An aspiring comedian might choose to perform
13 transportation services referred through an app so that she can attend an audition without
14 checking with her boss. A student might choose to use a delivery platform for referrals
15 to earn money between classes. A retiree might use an app’s referrals to supplement
16 fixed income and for social interaction. A military spouse might choose to work in the
17 on-demand economy to help ease the burdens of frequent relocation. Others might
18 choose it as a way to supplement “traditional” full-time work or to bridge the gap
19 between salaried positions.² In short, these independent workers can work as much, or
20 as little, as they want in order to accommodate family, social, professional, academic,
21 and other commitments.³

22
23 ¹ Intuit and Emergent Research, *Dispatches from the New Economy: The On-Demand*
24 *Economy Worker Study*, at 4-5, June 2017, [https://fddocuments.us/document/
dispatches-from-the-new-economy-the-on-the-underlying-dynamics-affecting-
the.html](https://fddocuments.us/document/dispatches-from-the-new-economy-the-on-the-underlying-dynamics-affecting-the.html).

25 ² AB 5’s principal sponsor has indicated that the law was specifically designed to
26 address people who have a full-time job and choose to supplement their income with
27 side work. @LorenaSGonzalez, Twitter (Dec. 19, 2019, 6:29 AM), [https://twitter.
com/LorenaSGonzalez/status/1207669238481092610](https://twitter.com/LorenaSGonzalez/status/1207669238481092610) (AB 5 “was in response to
people who have a job but have to work side hustles”).

28 ³ For many other examples of the flexibility afforded by on-demand work, see
O’Connor v. Uber Techs. Inc., No. CV-13-03826-EMC (N.D. Cal. July 9, 2015)

1 6. Because app-based work empowers individuals to generate income on a
2 flexible schedule, “[m]any people choose this mode of work, even when they have other
3 options.”⁴ Even with record low levels of unemployment, hundreds of thousands of
4 Californians are flocking to on-demand work. Instead of a daily commute, an outdated
5 workplace hierarchy, and the daily grind of an inflexible 9-to-5 job, these workers enjoy
6 the freedom to be their own bosses, set their own hours, and earn income whenever they
7 want. Many such workers also choose to “multi-app”—i.e., simultaneously use the apps
8 of several app-based network companies. By using multiple apps at the same time—
9 e.g., Uber, Postmates, Grubhub, and DoorDash—independent service providers can
10 more easily find service requests to perform, including multiple service requests at the
11 same time, thereby maximizing their potential for earnings during the time period that
12 they choose to make themselves available. Plaintiffs Olson and Perez both regularly
13 multi-app to increase convenience and enhance their earnings.

14 7. Plaintiff Olson holds an MBA from the University of California, Davis, and
15 was employed in several management positions before becoming an independent
16 business owner in 2011. She runs a consulting firm that works with small businesses
17 and churches. Shortly after Ms. Olson started her consulting business, her husband was
18 diagnosed with multiple sclerosis, and she was grateful that, as an independent business
19 owner, she had the flexibility to take time off to care for him when needed. In addition
20 to her consulting work, Ms. Olson began using the Uber and Lyft apps for driving
21 referrals to supplement her primary income while still maintaining the flexibility to
22 support her husband. Given her husband’s illness and the fact that she has little or no
23 notice of when she will have to take time off to care for him, as well as her consulting
24 business, Ms. Olson could not give up the flexibility that she has as an independent
25 service provider in exchange for a more traditional work arrangement.

27 (Dkt. 307); Evangelis Declaration Exhibits 1–40, *O’Connor v. Uber Techs. Inc.*, No.
28 CV-13-03826-EMC (N.D. Cal. July 9, 2015) (Dkt. 299).

⁴ Intuit and Emergent Research, *supra* note 1, at 3.

1 8. Plaintiff Perez likewise has relied on the freedom and flexibility he has as
2 an independent contractor to support his family. He once drove a big rig as a
3 commercial, class A truck driver for FedEx on a regular graveyard shift. He disliked the
4 inflexible schedule and long hours because of how little time he got to spend with his
5 wife and children, and he found that he was constantly getting injured on the graveyard
6 shift. Mr. Perez's dissatisfaction led him to look for other work, and he decided to
7 experiment with running his own on-demand business on his own terms by accepting
8 referrals for consumers looking for rides or deliveries from several on-demand apps.
9 Now running his own delivery business, Mr. Perez gets to decide when he starts work
10 and when he stops. He is able to be his own boss and tailor his work to be present for
11 all the important life events for his children. And he has nearly doubled his earnings
12 from when he was a truck driver, allowing his wife to quit her job and spend more time
13 with their daughter.

14 9. Individual Plaintiffs experience these benefits from on-demand work as
15 tangible and central to their and their families' well-being and quality of life; these
16 benefits represent foundational and critical gains that they realize every day from being
17 their own bosses.

18 10. The app-based on-demand economy also has benefited consumers. The
19 advanced technologies of app-based network companies like Company Plaintiffs have
20 reduced the costs associated with finding and hiring independent service providers,
21 eliminated barriers to enter markets with high initial setup costs, increased convenience
22 for independent service providers and consumers, and lowered prices for numerous
23 services by making it easy to connect independent service providers directly with paying
24 consumers. As a result, consumers "have flocked to these networked services because
25 of the added convenience, lower prices, and higher quality services."⁵ Millions of
26

27 ⁵ Will Rinehart, *The Modern Online Gig Economy, Consumer Benefits, and the*
28 *Importance of Regulatory Humility*, American Action Forum (Nov. 19, 2015),
<https://www.americanactionforum.org/research/the-modern-online-gig-economy-consumer-benefit-and-the-importance-of-regula/>.

1 California consumers and brick and mortar businesses, and the state's economy as a
2 whole, have benefited from the services of these independent service providers and the
3 on-demand economy.

4 11. Some of the many benefits to consumers, small businesses, and the public
5 from the on-demand economy include providing convenient and affordable
6 transportation, reducing impaired and drunk driving, improving mobility and access to
7 local merchants for seniors and individuals with disabilities, providing new
8 transportation options for families who cannot afford a vehicle, fostering growth of small
9 businesses that are able to reach a broader market, and providing new, affordable, and
10 convenient consumer-outreach options for local businesses and their patrons.

11 12. These benefits to workers, consumers, merchants, and the public as a whole
12 have been fueled by technology companies, like Company Plaintiffs, creating and
13 operating websites, apps, and other technologies that instantly connect independent
14 service providers willing to perform a service with consumers willing to pay for the
15 service. For example, among other apps, Plaintiff Uber operates an app-based platform
16 that connects consumers looking for a ride with drivers looking for such riders. Plaintiff
17 Postmates operates an app-based platform that connects (i) consumers wishing to
18 purchase goods (such as food) with (ii) merchants and (iii) independent couriers willing
19 to deliver the purchased goods. Other network companies operate online platforms that
20 match independent service providers with persons willing to pay someone to perform
21 any multitude of other services.

22 13. Importantly, the only service that network companies provide is access to
23 an app. Neither Company Plaintiff hires drivers or delivery persons. They are
24 technology companies that create and operate apps, which facilitate the connection of
25 consumers and independent service providers, so that consumers can hire an independent
26 service provider to perform particular services.

27 14. Network companies have been an engine of economic growth, innovation,
28 and work opportunities in California, across the country, and around the world.

1 15. Rather than embrace how the on-demand economy has empowered
2 workers, benefited consumers, and fueled economic growth, some California legislators
3 have irrationally attacked it. California Assemblywoman Lorena Gonzalez, in
4 particular, published an Op-Ed in the *Washington Post* in September 2019 unfairly
5 attacking on-demand work, Uber, and other network companies.⁶

6 16. This hostility towards the on-demand economy held by Assemblywoman
7 Gonzalez and many of her colleagues in the California legislature ultimately led to the
8 passage of AB 5. Assemblywoman Gonzalez was the lead drafter, sponsor, and
9 proponent of the bill. The California legislature passed AB 5 on September 11, 2019; it
10 was signed into law on September 18, 2019; and it is scheduled to take effect on January
11 1, 2020.

12 17. Assemblywoman Gonzalez and other legislators who voted for AB 5 have
13 publicly and repeatedly stated that their purpose in supporting the statute is to force
14 network companies to change the classification of workers who use their technology
15 from “independent contractors” to “employees” and thus restructure their businesses. In
16 other words, their goal is to deprive workers of the flexibility and freedom of their
17 current independent status, and instead place them under the authority, control, and
18 direction of an employer.

19 18. This overt hostility to on-demand work has manifested in Assemblywoman
20 Gonzalez’s request that executive officials unfairly, and with overt bias, use the law to
21 target network companies for immediate enforcement actions. She explicitly added
22 authorization for the City Attorneys of California’s largest cities to bring enforcement
23 actions under AB 5 against Company Plaintiffs.⁷ And she has repeatedly encouraged
24

25 ⁶ Lorena Gonzalez, *The Gig Economy Has Costs. We Can No Longer Ignore Them*,
26 *Wash. Post* (Sept. 11, 2019), <https://www.washingtonpost.com/opinions/2019/09/11/gig-economy-has-costs-we-can-no-longer-ignore-them/>.

27 ⁷ Carolyn Said, *Uber: We’ll Fight in Court to Keep Drivers as Independent*
28 *Contractors*, *San Francisco Chronicle* (Sept. 11, 2019), <https://www.sfchronicle.com/business/article/Uber-We-ll-fight-in-court-to-keep-drivers-as-14432241.php>
 (“Uber’s attitude spurred Gonzalez to add a last-minute provision to AB 5 allowing

1 immediate enforcement actions against network companies.⁸ At least one such City
 2 Attorney also publicly stated support for this expansion of enforcement authority under
 3 AB 5 and expressed his intent to use this authority “to do the job” directed by
 4 Assemblywoman Gonzalez.⁹ Other state and city officials have similarly stated their
 5 intent to bring enforcement actions against network companies, including Company
 6 Plaintiffs.

7 19. AB 5 is a vague and incoherent statute that does not accomplish what its
 8 sponsors have stated they sought to achieve. Company Plaintiffs maintain that (among
 9 other things) they are not hiring entities under AB 5 and can establish that app-based
 10 independent service providers are not employees under the ABC test.¹⁰

11 20. But if the enforcers of AB 5—such as Defendants, executive officials, or
 12 the four city attorneys whom AB 5 purports to deputize into enforcers of state law—
 13 were to succeed in carrying out the intent of AB 5’s sponsors, this would deprive
 14 independent service providers such as Individual Plaintiffs of the flexibility they so value
 15 working in the on-demand economy. And it would impose economic, administrative,
 16 and other costs on platform companies such as Company Plaintiffs by requiring them to

17 the state attorney general, city attorneys of cities with populations of over 750,000,
 18 and local prosecutors to sue companies that misclassify workers, she said.”).

19 ⁸ @LorenaSGonzalez, Twitter (Nov. 21, 2019, 8:05 AM), <https://twitter.com/LorenaSGonzalez/status/1197546573158158336?s=20>.

20 ⁹ Said, *supra* note 7 (quoting statement of San Francisco City Attorney Dennis Herrera
 21 on AB 5’s inclusion of enforcement authority for city attorneys and touting “his
 22 record of taking on cases about worker pay and benefits,” including having “already
 23 filed several cases against Uber and Lyft”).

24 ¹⁰ In arbitrations in California and New York, Company Plaintiffs have prevailed in
 25 establishing that the independent service providers who use their platforms are not
 26 employees under the “ABC test.” The federal government has likewise concluded
 27 that independent service providers are not employees under the Federal Labor
 28 Standards Act or the National Labor Relations Act. U.S. Dep’t of Labor, Wage &
 Hour Div., Opinion Letter FLSA2019-6 (Apr. 29, 2019) (recognizing that app-based
 on-demand workers are “independent contractors” under the Fair Labor Standards
 Act); Advice Memorandum from Jayme L. Sophir, Assoc. Gen. Counsel, Div. of
 Advice, Nat’l Labor Relations Bd. to Jill Coffman, Reg’l Dir., Region 20, Nat’l Labor
 Relations Bd. 15 (Apr. 16, 2019) (concluding that UberX and UberBLACK drivers
 are independent contractors under the National Labor Relations Act). Nothing in this
 Complaint should be read to waive or forfeit any argument Company Plaintiffs would
 make in an enforcement action brought against them under AB 5.

1 fundamentally restructure their business models. If found to have violated AB 5,
2 Company Plaintiffs could be subject to civil penalties and even criminal punishment.
3 For some companies, the burdens of restructuring their businesses and the potential
4 penalties from the threatened enforcement of AB 5 could force them to stop doing
5 business in California.

6 21. If AB 5 were enforced against Company Plaintiffs in a manner consistent
7 with the sponsors' stated intent to require reclassification of workers in the on-demand
8 economy, it would harm many independent service providers who prefer to provide
9 services on their own schedules via the app-based platforms that network companies
10 operate. Inevitably, forced reclassification would eliminate the flexibility and
11 entrepreneurship that is the foundation of platform-based work. And that, in turn, would
12 reduce the number of people who are able to earn money via on-demand work. "[A]
13 lucky few will secure full-time jobs," but the rest will be forced "right out of a stable
14 income stream."¹¹ For example, according to one study, requiring rideshare company
15 Lyft to reclassify its drivers as employees and to adopt formal work schedules for those
16 new employees would lead to more than 300,000 fewer drivers in California.¹² The
17 displacement of hundreds of thousands of workers who rely on the current arrangement
18 and for whom the performance of this work is possible only if they maintain agency over
19 the conditions in which they choose to do this work would cause them irreparable injury.

20 22. AB 5 has already forced one company to terminate entirely its relationship
21 with hundreds of independent service providers with only a lucky few receiving
22 positions as employees.¹³ Other companies are replacing independent service providers
23

24 ¹¹ Bonnie Kristian, *How California's New Gig Economy Law Could Put Freelancers*
25 *Out of Business* (Oct. 24, 2019), <https://theweek.com/articles/873453/how-californias-new-gig-economy-law-could-freelancers-business>.

26 ¹² Beacon Economics LLC, *How Many Drivers Would Lyft Recruit Under a Traditional*
27 *Work Arrangement? An Analysis*, at 2, Aug. 2019, <https://images.kusi.com/wp-content/uploads/2019/09/Beacon-Economics-August-2019.pdf>.

28 ¹³ *See, e.g.*, Carlos Garcia, *Vox Media Fires Hundreds of Freelance Writers Over California 'Gig Economy' Law—And They're Tweeting Angrily About It* (Dec. 16, 2019), <https://www.theblaze.com/news/ca-gig-economy-law-gets-writers-fired>.

1 in California with workers from out of state as a result of AB 5.¹⁴ And at least two
2 lawsuits have already been filed seeking to enjoin and invalidate AB 5 as
3 unconstitutional and/or preempted by federal law.¹⁵

4 23. In a thinly veiled attempt to conceal their irrational intent to target and harm
5 network companies, legislators framed the statute as merely codifying the three-prong
6 worker classification test from *Dynamex Operations West, Inc. v. Superior Court of Los*
7 *Angeles*, 416 P.3d 1 (Cal. 2018). But the statute does much more than that. *Dynamex*
8 adopted an “ABC test” to determine whether a worker is an employee, not an
9 independent contractor, for purposes of California’s wage orders, which are “quasi-
10 legislative regulations” that “impose obligations relating to the minimum wages,
11 maximum hours, and a limited number of very basic working conditions (such as
12 minimally required meal and rest breaks) of California employees.” *Id.* at 5 & n.3. AB
13 5 goes much further, and codifies the ABC test for not only wage orders but also for the
14 California Unemployment Insurance Code and the entirety of the California Labor Code.
15 It also attaches the threat of criminal sanctions by making misclassification a
16 misdemeanor or even a felony under California law pursuant to penalties provided for
17 in the existing Labor Code.¹⁶

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19
20 ¹⁴ See, e.g., Jeff Lasky, *Concerns Raised As California’s Independent Contractor Law*
21 *Is Set To Take Effect*, ABC10 News (Dec. 27, 2019), <https://www.10news.com/news/local-news/questions-and-concerns-from-workers-with-controversial-independent-contractor-law-about-to-take-affect>.

22 ¹⁵ See, e.g., Complaint, *Am. Society of Journalists and Authors, Inc. v. Becerra*, No.
23 2:19-cv-10645 (C.D. Cal. Dec. 17, 2019).

24 ¹⁶ The California Labor Code requires employers to provide numerous benefits to their
25 employees, including minimum wage (Cal. Lab. Code § 1194 (West 2019)); overtime
26 compensation (*id.*); indemnification for business expenses (*id.* § 2802); meal and rest
27 periods (*id.* § 226.7); and workers’ compensation (*id.* § 3700). Under the Labor
28 Code, employers are subject to criminal and civil liability for numerous violations,
including violation of provisions related to overtime, meal periods, alternative
workweeks, makeup work time, and rest days (*see, e.g., id.* § 553); failing to pay
minimum wage (*id.* § 1199); failing to comply with various wage withholding
provisions (*id.* § 225); failing to comply with itemized paystub requirements (*id.*
§ 226.6); and failing to make required payments to a health or welfare fund, pension
fund, vacation plan, or similar benefit fund (*id.* § 227).

1 24. The irrationality of AB 5 is confirmed by its laundry list of exemptions.
2 AB 5 spends only a few lines of text adopting the ABC test. The vast majority of the
3 statute is a list of exemptions that carve out of the statutory scope dozens of occupations,
4 including direct salespeople, travel agents, grant writers, construction truck drivers,
5 commercial fisherman, and many more. There is no rhyme or reason to these
6 nonsensical exemptions, and some are so ill-defined or entirely undefined that it is
7 impossible to discern what they include or exclude. For example, some types of workers
8 are excluded (e.g., a delivery truck driver delivering milk) while others performing
9 substantively identical work are not excluded (e.g., a delivery truck driver delivering
10 juice). The statute exempts “Professional service providers . . . [such as] fine artist
11 services” (AB 5 § 2(c)(2)(B)(i)-(xi)), but does not define “fine artist services,” leaving
12 individuals guessing whether or not they qualify for the exemption at great financial risk.
13 Nor is there any rational reason why an individual who chooses to earn income by direct
14 selling Tupperware is exempt, and yet, if that same person earns extra income by
15 offering driving services, there is no exemption.

16 25. This targeting of app-based workers and platforms and treating them
17 disparately from traditional workers violates the Equal Protection Clauses of the United
18 States and California Constitutions. There is simply no rational basis for subjecting
19 exempt occupations and non-exempt occupations to different rules and burdens. Where,
20 as here, the breadth of a statute is so disjointed with the reasons offered for it that the
21 statute seems inexplicable by anything but animus toward the class it is designed to
22 affect, the statute lacks a rational relationship to legitimate state interests and violates
23 equal protection. And where, as here, there does not appear any reason why the
24 California legislature would choose those carve-outs other than to respond to the
25 demands of political constituents, the law is unconstitutional even under the most
26 minimal “rational basis” standard of judicial review.

27 26. And to the extent AB 5 is enforced against on-demand workers and
28 companies in a manner consistent with the sponsors’ stated intent to require

1 reclassification of workers in the on-demand economy, AB 5 violates the inalienable
2 rights and due process clauses of the California Constitution, as well as the Fourteenth
3 Amendment to the United States Constitution. App-based independent service providers
4 and the companies that operate the platforms they use have a constitutional right to
5 pursue the occupation of their choice—not to be forced to be employees when they are
6 independent, or to be forced to be taxi or delivery companies when they are technology
7 companies. And platform companies have a constitutionally protected interest in
8 running their businesses free from unreasonable governmental interference, including
9 statutes that irrationally classify and target them as a politically disfavored group.

10 27. In addition, if enforced against independent service providers like
11 Individual Plaintiffs and network companies such as Company Plaintiffs in a manner
12 consistent with the sponsors' stated intent to require reclassification of workers in the
13 on-demand economy, AB 5 also would violate the Contracts Clauses of the United States
14 and California Constitutions. The on-demand economy is built upon a structure of
15 contracts in which consumers are connected via apps with independent service
16 providers, not employees. *See, e.g., Lawson v. Grubhub Inc.*, 302 F. Supp. 3d 1071,
17 1093 (N.D. Cal. 2018) (holding that a driver who used the Grubhub platform to perform
18 deliveries is an "independent contractor" under California law); *cf.* U.S. Dep't of Labor,
19 Wage & Hour Div., Opinion Letter FLSA2019-6 (Apr. 29, 2019) (recognizing that app-
20 based independent service providers are "independent contractors" under the Fair Labor
21 Standards Act); Advice Memorandum from Jayme L. Sophir, Assoc. Gen. Counsel, Div.
22 of Advice, Nat'l Labor Relations Bd. to Jill Coffman, Reg'l Dir., Region 20, Nat'l Labor
23 Relations Bd. 15 (Apr. 16, 2019) (concluding that UberX and UberBLACK drivers are
24 independent contractors under the National Labor Relations Act). Company Plaintiffs
25 have entered into millions of contracts with independent service providers (including
26 with Individual Plaintiffs), and millions of contracts with users of their apps, in reliance
27 on the pre-AB 5 framework. If Defendants are able to use the threat of enforcement of
28 AB 5 to force Company Plaintiffs to reclassify independent service providers as

1 employees (even if these workers are correctly classified as independent contractors),
2 that would completely upend this entire contractual landscape, and—at the very least—
3 substantially impair the existing contractual relationships, rendering many of them
4 invalid, and forcing Company Plaintiffs to enter into new contracts with dramatically
5 different obligations. There is no significant and legitimate public purpose—only
6 irrational animus—for this legislative attempt to incite enforcement of AB 5 against
7 network companies in a manner that would impair preexisting contracts, and harm
8 network companies and independent service providers alike.

9 28. Plaintiffs support the goal of protecting workers and clarifying California’s
10 rules surrounding worker classification, but singling out network companies and
11 subjecting them to different rules is an improper, ineffectual, and unconstitutional means
12 of furthering that objective. It irreparably harms network companies and app-based
13 independent service providers by denying their constitutional rights to be treated the
14 same as others to whom they are similarly situated. These and other adverse
15 consequences also would undermine the public’s interest in having access to the app-
16 based platforms that network companies have created, with the attendant benefits of
17 being able to hire independent service providers on demand with the click of a button.

18 29. For these reasons, the Court should declare that AB 5 is unconstitutional
19 and invalid, and preliminarily and permanently enjoin all enforcement of AB 5 against
20 Company Plaintiffs.

21 PARTIES

22 30. Plaintiff Lydia Olson is a driver who resides in Antelope, California and
23 uses the Uber platform to get leads for passenger requests to transport passengers in the
24 Sacramento and San Francisco Bay areas.

25 31. Plaintiff Miguel Perez is an independent courier who resides in Canyon
26 Country, California, and uses the Postmates platform to get leads for delivery requests
27 in the Los Angeles County area.

28

1 32. Plaintiff Postmates is a technology company that operates an online
2 marketplace and mobile app-based platform that connects individual consumers seeking
3 to order food or other goods with local merchants (such as restaurants and retail stores),
4 and if the consumer seeks delivery of a purchase, with independent couriers who use the
5 Postmates platform to receive delivery referral notifications and choose whether to
6 accept the consumer's offer to pick up and complete the requested delivery.

7 33. Plaintiff Uber is a technology company that licenses and operates an online
8 and mobile app-based platform that connects individuals in need of goods or services
9 with those willing to provide them.

10 34. Defendant State of California is a sovereign State.

11 35. Defendant Xavier Becerra is being sued in his official capacity as the
12 Attorney General of California. In that capacity, he has authority to enforce AB 5.

13 36. Defendant "John Doe" is a placeholder designation for any unidentified
14 California official who has authority, or purports to have authority, to enforce AB 5
15 against Company Plaintiffs, in the event that additional officials must be included as
16 defendants in this lawsuit in order to afford Plaintiffs complete relief.

17 JURISDICTION AND VENUE

18 37. This civil action arises under the United States Constitution and the Fifth
19 and Fourteenth Amendments thereof, the California Constitution, and 42 U.S.C. § 1983.

20 38. This Court has subject matter jurisdiction over this action under 28 U.S.C.
21 §§ 1331 and 1367.

22 39. This Court also has jurisdiction under 28 U.S.C. § 1343(a)(3) to redress
23 deprivations "under color of any State law, statute, [or] ordinance . . . of any right,
24 privilege or immunity secured by the Constitution of the United States . . ."

25 40. Declaratory relief is authorized by 28 U.S.C. §§ 2201 and 2202, as well as
26 Federal Rule of Civil Procedure 57.

27 41. Injunctive relief is authorized by Federal Rule of Civil Procedure 65.

28 42. Venue is proper in this district under 28 U.S.C. § 1391(b).

1 43. An actual controversy exists between the parties concerning the
2 constitutionality and validity of AB 5. A declaration that the statute is invalid and/or an
3 injunction against its enforcement would resolve the controversy.

4 44. A preliminary injunction enjoining Defendants from enforcing AB 5
5 against Company Plaintiffs would preserve the status quo and protect Plaintiffs' rights
6 during this proceeding, and a permanent injunction would protect their rights after this
7 proceeding ends.

8 **FACTS**

9 **I. Assembly Bill 5's Sponsors Attempt to Codify And Extend The Reach Of The**
10 ***Dynamex* "ABC Test."**

11 45. On December 3, 2018, California Assemblywoman Lorena Gonzalez
12 introduced AB 5. According to the bill, its purpose is to "codify the decision of the
13 California Supreme Court" in *Dynamex Operations West, Inc. v. Superior Court of Los*
14 *Angeles*, 416 P.3d 1 (Cal. 2018), and to "clarify the decision's application in state law."
15 AB 5 § 1(d).

16 46. *Dynamex* adopted a three-factor test—or "ABC test"—to determine
17 whether a worker is an independent contractor or an employee for purposes of the
18 California Industrial Welfare Commission's wage orders. The wage orders provide
19 minimum wage, maximum hour, and working condition requirements for specific
20 industries.

21 47. The wage order at issue in *Dynamex* imposes wage and hour obligations for
22 companies that "employ" workers, which the wage order defines as "to engage, suffer,
23 or permit to work." Construing that specific language, *Dynamex* concluded that workers
24 are presumed to be employees for purposes of the wage order unless three conditions
25 are met:

26 A. The individual is free from control and direction in connection with the
27 performance of the service, both under his contract for the performance of
28 service and in fact;

1 B. The service is performed outside the usual course of the business of the
2 employer; and

3 C. The individual is customarily engaged in an independently established
4 trade, occupation, profession or business of the same nature as that
involved in the service performed.

5 416 P.3d at 48.

6 48. Although *Dynamex* applied the ABC test solely for purposes of California’s
7 wage orders, AB 5 codifies the ABC test for purposes of those wage orders, *and* expands
8 it to apply to the entirety of the California Labor Code, *and* the California
9 Unemployment Insurance Code. *See Garcia v. Border Transp. Grp., LLC*, 28 Cal. App.
10 5th 558, 561, 570 (2018) (explaining that “*Dynamex* did not purport to [apply] in every
11 instance where a worker must be classified as either an independent contractor or an
12 employee,” and that “*Dynamex* does not apply” to “non-wage-order claims” (emphasis
13 omitted)).

14 49. Specifically, Section 2 of AB 5 adds a new provision to Article 1 of the
15 California Labor Code, § 2750.3, that incorporates the ABC test verbatim. Section 3(i)
16 of AB 5 amends the definition of “employee” in the Labor Code by linking that
17 definition to the new § 2750.3. And Section 4 of AB 5 amends Section 606.5 of the
18 Unemployment Insurance Code to incorporate the definition of “employee” in Section
19 621 of the Code—a provision that, in turn, Section 5 of AB 5 amends to also incorporate
20 *Dynamex*’s ABC test. The Unemployment Insurance Code requires employers to pay
21 unemployment insurance contributions for all of their employees. *See Cal. Unemp. Ins.*
22 *Code* §§ 976, 977 (West 2019). Employers must also account for administrative costs
23 associated with withholding unemployment insurance taxes, paying them over to the
24 State, keeping extensive records of these transactions, and complying with recurring
25 reporting requirements. *See id.* §§ 13020, 13021.

26 50. AB 5 also transforms employment regulations into potential criminal
27 liability. Any employer who fails to withhold or pay these taxes, regardless of intent,
28 could be guilty of a misdemeanor and subject to fines up to \$1,000 for each occurrence

1 and up to one year of imprisonment. *Id.* § 2118. Additionally, employers who fail to
 2 comply with numerous Unemployment Insurance Code provisions and regulations are
 3 potentially liable for dozens of penalties. *See generally* Cal. Emp’t Dev. Dep’t, Penalty
 4 Reference Chart (2018), https://www.edd.ca.gov/pdf_pub_ctr/de231ep.pdf. Just a
 5 handful of examples include fines for failing to report the hiring of a new or rehired
 6 “employee” within the prescribed time limit (Cal. Unemp. Ins. Code § 1088); failing “to
 7 file a report of wages of each of [its] workers on magnetic media or other electronic
 8 means” (*id.* § 1114(b)); filing a false statement of withholdings to an “employee”
 9 (*id.* § 13052); or failing to supply a required “identifying number” (*id.* § 13057(a)).

10 51. AB 5 states that it may be enforced by the California Attorney General or
 11 “a city attorney of a city having a population in excess of 750,000, or by a city attorney
 12 in a city and county or, with the consent of the district attorney, by a city prosecutor in
 13 a city having a full-time city prosecutor in the name of the people of the State of
 14 California upon their own complaint or upon the complaint of a board, officer, person,
 15 corporation, or association.” AB 5 § 2(j). The lawsuits may seek injunctive relief “to
 16 prevent the continued misclassification of employees as independent contractors,”
 17 “[i]n addition to any other remedies available.” *Id.*

18 52. At least one city attorney has already stated an intent to use this
 19 enforcement authority against Company Plaintiffs “to do the job.”¹⁷ And Lorena
 20 Gonzalez, the bill’s lead sponsor, publicly “ask[ed] the 4 big City Attorneys offices to
 21 file for injunctive relief on 1/1/20” against Company Plaintiffs.¹⁸

22 **II. The Exemptions In Assembly Bill 5 Target The Statutory Scope To The On-** 23 **Demand Economy.**

24 53. AB 5 spends only a few lines adopting *Dynamex*’s ABC test for the entire
 25 California Labor Code and California Unemployment Code. The vast majority of the
 26

27 ¹⁷ *See Said, supra* note 7.

28 ¹⁸ @LorenaSGonzalez, Twitter (Nov. 21, 2019, 8:05 AM), <https://twitter.com/lorenasgonzalez/status/1197546573158158336>.

1 statute is a morass of complicated provisions exempting dozens of occupations from that
2 test.

3 54. The legislature added these carve-outs to AB 5 solely for interest groups
4 and labor.

5 55. Under Section 2(a)(2) of the statute, the exempted workers are governed by
6 the alternative “control-of-the-work” test from *S.G. Borello & Sons, Inc. v. Department*
7 *of Industrial Relations*, 769 P.2d 399 (Cal. 1989); AB 5 thus does not apply *Dynamex*
8 to these exempted workers. The *Borello* test uses a multi-factor balancing analysis—
9 where no one factor is dispositive—to determine whether a worker is an employee or an
10 independent contractor. Courts applying this test have concluded that app-based
11 independent service providers are independent contractors, not employees. *See, e.g.,*
12 *Lawson*, 302 F. Supp. 3d at 1093 (concluding after a bench trial that a worker who
13 provided delivery services to customers via Grubhub “was an independent contractor”
14 and “not an employee” under the *Borello* test). Signaling that the exemptions were
15 meant to allow independent contractor relationships to continue for the exempted
16 businesses, Assemblywoman Gonzalez stated that *Borello* “was weighted heavily
17 against . . . trying to prove misclassification.”¹⁹

18 56. The statutory exemptions carve out most types of workers traditionally
19 considered to be independent contractors, with a glaring and intentional exception: app-
20 based independent service providers.

21 57. AB 5’s exemptions include:

22 a. Workers engaged in occupations requiring licenses, *see* AB 5 § 2(b)(1)-
23 (4), (6), including:

24 i. licensed insurance agents and other individuals requiring an
25 insurance license;²⁰

26
27 ¹⁹ @LorenaSGonzalez, Twitter (Dec. 25, 2019, 10:57 AM), <https://twitter.com/LorenaSGonzalez/status/1209911130522406913?s=20>.

28 ²⁰ Specifically, “[a] person or organization who is licensed by the Department of Insurance pursuant to Chapter 5 (commencing with Section 1621), Chapter 6

- ii. licensed individuals in the medical profession (physicians, surgeons, dentists, podiatrists, psychologists, and veterinarians), so long as they are providing medical or professional services to or by a health care entity;²¹
- iii. licensed attorneys, architects, engineers, private investigators, and accountants;
- iv. registered or licensed securities broker-dealers or investment advisers; and
- v. commercial anglers working on American (but not foreign) vessels.

b. Direct sales workers as described in Section 650 of the California Unemployment Insurance Code. AB 5 § 2(b)(5).

- i. A direct sales salesperson generally is anyone “engaged in the trade or business of primarily in person demonstration and sales presentation of consumer products, including services or other intangibles, in the home.” Cal. Unemployment Ins. Code § 650(a).

c. Professional service providers, *see* AB 5 § 2(c)(2)(B)(i)-(xi), including those who provide:

- i. marketing services;
- ii. human resources services;
- iii. travel agent services;
- iv. graphic design services;
- v. grant writing services;

(commencing with Section 1760), or Chapter 8 (commencing with Section 1831) of Part 2 of Division 1 of the Insurance Code.” AB 5 § 2(b)(1).

²¹ AB 5 exempts from the provision concerning medical occupations “employment settings currently or potentially governed by collective bargaining agreements.” AB 5 § 2(b)(2).

- vi. fine artist services;
 - vii. services of agents licensed by the U.S. Treasury to practice before the IRS;
 - viii. payment processing agent services;
 - ix. photography or photojournalist services;
 - x. services provided by a freelance writer, editor, or newspaper cartoonist;²² and
 - xi. services provided by a licensed esthetician, electrologist, manicurist, barber, or cosmetologist.
- d. Real estate licensees and repossession agencies. AB 5 § 2(d)(1)-(2).
 - e. “[B]usiness-to-business contracting relationship[s],” subject to certain conditions. AB 5 § 2(e).
 - f. Contractors and subcontractors in the construction industry, subject to certain conditions. AB 5 § 2(f).
 - g. Subcontractors providing construction trucking services—*i.e.*, “hauling and trucking services provided in the construction industry”—subject to certain conditions. AB 5 § 2(f)(8).
 - h. Referral agencies and service providers, subject to certain conditions. AB 5 § 2(g).
 - i. Motor clubs and individual motor club service providers. AB 5 § 2(h).

58. There is no rhyme or reason to these exemptions. For example, it makes no sense to exempt certain workers depending on what *type* of license they have. Drivers who transport passengers and use the Uber app for black car referrals, for instance, obtain government-issued business licenses for their transportation businesses. Yet AB 5 treats them differently from other independent workers who must obtain licenses for *their* businesses. There is no rational basis for such disparate treatment.

²² This exemption applies to a “freelance writer, editor, or newspaper cartoonist who does not provide content submissions to the putative employer more than 35 times per year.” AB 5 § 2(c)(2)(B)(x).

1 59. Many of the exemptions are wholly arbitrary. For example, a delivery truck
 2 driver is exempt when delivering milk, but not when delivering juice, fruit, baked goods,
 3 or meat products. *See* AB 5 § 5(c)(1)(A). A commercial fisherman is exempt when
 4 working on an American vessel, but not a foreign vessel. *See id.* § 2(b)(6). And a
 5 freelance editor or writer is exempt if she publishes 35 submissions per year per
 6 “putative employer,” but not if she publishes 36. *See id.* § 2(c)(2)(B)(x). When asked
 7 about this 35-submission cutoff, Assemblywoman Gonzalez said: “Was it a little
 8 arbitrary? Yeah.”²³ News articles report that “employers and workers in other industries
 9 including truck drivers, therapists, and entertainers say it is unclear how AB 5 will affect
 10 them, leading some to take precautionary measures and others to say they hope a court
 11 will clarify the matter soon.”²⁴

12 60. AB 5 does not identify any data, studies, reports, or other justification or
 13 explanation for its exemptions.

14 61. The legislature included many of the exemptions as political favors or to
 15 politically favored groups without any valid legislative purpose or rational basis, to the
 16

17 ²³ Katie Kilkenny, “*Everybody Is Freaking Out*”: *Freelance Writers Scramble to Make*
 18 *Sense of New California Law*, *The Hollywood Reporter* (Oct. 17, 2019),
 19 <https://www.hollywoodreporter.com/news/everybody-is-freaking-freelance-writers-scramble-make-sense-new-california-law-1248195> (internal quotation marks omitted) (quoting Assemblywoman Gonzalez). It already has triggered companies such as Vox Media to announce they are ending contracts with hundreds of freelancers in California. *See, e.g.,* Megan McArdle, *How a law aimed at Uber and Lyft is hurting freelance writers*, *Washington Post* (Dec. 19, 2019), <https://www.washingtonpost.com/opinions/2019/12/19/how-law-aimed-uber-lyft-is-hurting-freelance-writers/>; James Barrett, *The Daily Wire* (Dec. 17, 2019), <https://www.dailywire.com/news/sb-nation-writers-lose-jobs-because-of-new-california-law-democrat-behind-law-says-its-not-all-bad-gets-smacked-apologizes>. This aspect of the law is challenged in a lawsuit pending in this Court. *See American Society of Journalists and Authors, Inc. v. Becerra*, No. 2:19-cv-10645 (C.D. Cal. filed December 17, 2019). That lawsuit and outcry prompted Assemblywoman Gonzalez to solicit ideas for ways to carve-out even more workers—but not those who use on-demand apps—on Twitter, less than two weeks before the law takes effect. @LorenaSGonzalez, Twitter (Dec. 19, 2019, 9:47 AM), <https://twitter.com/LorenaSGonzalez/status/1207719056272310273>.

27 ²⁴ Katy Grimes, *California’s Independent Contractors Are About to Become Dependent Employees – or Unemployed*, *California Globe* (Dec. 17, 2019), <https://californiaglobe.com/section-2/californias-independent-contractors-are-about-to-become-dependent-employees-or-unemployed/>.

1 detriment of the platform companies. At least one legislator warned during the debate
 2 over AB 5’s passage that the legislation “undermines the principle of equal treatment
 3 under the law and deprives many Californians the right to be their own bosses, by
 4 exempting some industries over others.”²⁵

5 62. In the months preceding the passage of AB 5, the California Labor
 6 Federation circulated a one-page form that business groups could complete to request an
 7 exemption from the statute. These “opt out” forms were the idea of Assemblywoman
 8 Gonzalez’s staff and her staff, in turn, worked to amend the bill to create additional
 9 exemptions based upon the relative interest from labor groups in specific businesses
 10 seeking an exemption. This process played out repeatedly and is responsible for the
 11 irrational and arbitrary results of the final bill.²⁶ Assemblywoman Gonzalez touted the
 12 fact that the bill reflected the union’s bare political interests to irrationally benefit friends
 13 and harm others, explaining at the time of its passage in the California Assembly that “I
 14 am a Teamster I am the union.”²⁷

15 **III. California Legislators Confirm In Public Statements That They Intended To** 16 **Target Network Companies.**

17 63. In the weeks immediately before and after the California legislature passed
 18 AB 5 on September 11, 2019, the primary supporters of the statute, and the interest
 19 groups that lobbied for it, repeatedly disparaged the on-demand economy and confirmed
 20 that their purpose in promoting and voting for the statute was to target and harm network
 21 companies.

23 ²⁵ Christine Mai-Duc and Lauren Weber, *It Isn’t Just Uber: California Prepares for*
 24 *New Gig Worker Rules...and Confusion*, Wall Street Journal (Dec. 17, 2019),
 25 <https://www.wsj.com/articles/confusion-in-california-as-gig-worker-law-set-to-take-effect-11576590979>.

26 ²⁶ In addition, Assemblywoman Gonzalez has promised a “part 2 to the bill,” apparently
 27 to add more exemptions for politically favored groups. @LorenaSGonzalez, Twitter
 (Nov. 21, 2019, 7:45 AM), <https://twitter.com/lorenasgonzalez/status/1197541485056409611?s=12>.

28 ²⁷ @LorenaGonzalez, Twitter (May 30, 2019, 7:23 AM), <https://twitter.com/lorenasgonzalez/status/1134087876390428672?s=21>.

1 64. For example, AB 5’s sponsor, Assemblywoman Gonzalez, stated that AB
2 5 was directed at network companies, with comments such as the following:

- 3 a. On September 9, 2019, while defending AB 5, Assemblywoman
4 Gonzalez accused platform companies like Uber and Postmates of
5 engaging in “wage theft.”²⁸
- 6 b. On September 11, 2019, Assemblywoman Gonzalez criticized network
7 companies like Uber and Postmates, stating that they “rely on a contract
8 workforce” and, according to her, AB 5 will stop such “gig economy
9 companies” from relying on independent contractors.²⁹
- 10 c. On September 12, 2019, Assemblywoman Gonzalez stated that
11 California has “allowed a great many companies—including ‘gig’
12 companies such as Uber . . . to rely on a contract workforce, which
13 enables them to skirt labor laws, exploit working people and leave
14 taxpayers holding the bag.”³⁰
- 15 d. On September 18, 2019, Assemblywoman Gonzalez stated that Uber’s
16 Chief Legal Counsel is “full of sh*t.”³¹
- 17 e. On September 26, 2019, Assemblywoman Gonzalez proposed
18 legislation that would mandate that Uber publicly disclose sensitive
19 information in its internal investigations.

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21
22 ²⁸ @LorenaSGonzalez, Twitter (Sept 9, 2019, 6:29 PM), <https://twitter.com/LorenaSGonzalez/status/1171234109999341569>.

23 ²⁹ Gonzalez, *The Gig Economy Has Costs*, *supra* note 6.

24 ³⁰ Glenn Jeffers, *Legislature OKs Bill to Curb “Gig” Workers; Uber Vows to Ignore*,
25 *Daily Journal* (Sept. 12, 2019), <https://www.dailyjournal.com/articles/354215>; *see also* George Skelton, *Labor Won Big With Bill To Rewrite California Employment Law—But It’s Flawed*, *L.A. Times* (Sept. 12, 2019), <https://www.latimes.com/california/story/2019-09-11/skelton-ab5-independent-contractors-california-employment-law>.

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27 ³¹ @MikeBlountSac, Twitter (Sept. 18, 2019, 1:22 PM), <https://twitter.com/mikeblountsac/status/1174403405478936578> (quoting Assemblywoman Gonzalez;
28 alteration in original).

- 1 f. On November 21, 2019, Assemblywoman Gonzalez publicly asked the
 2 City Attorneys in California’s four largest cities to immediately file for
 3 injunctive relief under AB 5 against network companies on January 1,
 4 2020.³² She later clarified that the goal was to target “large companies”
 5 that run such platforms.³³
- 6 g. On November 25, 2019, Assemblywoman Gonzalez encouraged app-
 7 based independent service providers to file unemployment insurance
 8 claims.³⁴
- 9 h. On November 27, 2019, Assemblywoman Gonzalez took sides in a
 10 pending litigation, opposing Uber’s effort to enforce its arbitration
 11 agreement with drivers.³⁵
- 12 i. On December 29, 2019, the *Los Angeles Times* reported that
 13 Assemblywoman “Gonzalez said she is open to changes in the bill next
 14 year, including an exemption for musicians—but not for app-based ride-
 15 hailing and delivery giants.”³⁶

16 65. Other lawmakers who supported AB 5 similarly attacked the on-demand
 17 economy and made clear that their vote was focused on platform companies like
 18 Company Plaintiffs.

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 20
 21 ³² @LorenaSGonzalez, Twitter (Dec. 25, 2019, 10:12 AM), <https://twitter.com/LorenaSGonzalez/status/1209899767355961344?s=20>.

22 ³³ @LorenaSGonzalez, Twitter (Nov. 21, 2019, 8:05 AM), <https://twitter.com/LorenaSGonzalez/status/1197546573158158336?s=20>.

23 ³⁴ @LorenaSGonzalez, Twitter (Nov. 25, 2019, 2:21 PM), <https://twitter.com/LorenaSGonzalez/status/1199090860329033728?s=20>; @LorenaSGonzalez,
 24 Twitter (Nov. 25, 2019, 1:22 PM), <https://twitter.com/LorenaSGonzalez/status/1199075844888489984?s=20>.

25 ³⁵ @LorenaSGonzalez, Twitter (Nov. 27, 2019, 4:16 AM), <https://twitter.com/LorenaSGonzalez/status/1199663397123579905?s=20>.

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 27 ³⁶ Margot Roosevelt, *New Labor Laws Are Coming To California. What’s Changing*
 28 *In Your Workplace?*, L.A. Times (Dec. 29, 2019), <https://www.latimes.com/business/story/2019-12-29/california-employment-laws-2020-ab5-minimum-wage>.

- 1 a. On July 10, 2019, California Assembly Speaker Anthony Rendon
 2 defended AB 5 by stating that “the gig economy is . . . a continuation of
 3 hundreds of years of corporations trying to screw over workers,” and
 4 asserted that, with AB 5, “we’re in a position to do something about
 5 that.”³⁷
- 6 b. On September 7, 2019, California State Assemblywoman Buffy Wicks
 7 advocated for AB 5 and stated that “just because your employer uses a
 8 smartphone app, doesn’t mean they should be able to misclassify you as
 9 an independent contractor.”³⁸

10 66. Representatives from the California Labor Foundation, which was the
 11 principal lobbying group supporting AB 5, similarly attacked the on-demand economy
 12 while lobbying legislators to pass the bill:

- 13 a. On September 11, 2019, the California Labor Foundation tweeted a link
 14 to a *New York Times* article titled: “Take That ‘Gig’ and Shove It: A
 15 California bill would make it harder for companies like Uber to take
 16 advantage of workers.”³⁹
- 17 b. On September 13, 2019, the California Labor Foundation tweeted a
 18 statement about AB 5 that said: “We cannot allow technology to be
 19 used as an excuse to exploit workers.”⁴⁰

22 ³⁷ @Rendon63rd, Twitter (July 10, 2019, 4:40 PM),
 23 <https://twitter.com/Rendon63rd/status/1149101100928159744>; see also Miriam
 24 Pawel, *You Call It the Gig Economy. California Calls It “Feudalism,”* N.Y. Times
 25 (Sept. 12, 2019), [https://www.nytimes.com/2019/09/12/opinion/california-gig-](https://www.nytimes.com/2019/09/12/opinion/california-gig-economy-bill-ab5.html)
 26 [economy-bill-ab5.html](https://www.nytimes.com/2019/09/12/opinion/california-gig-economy-bill-ab5.html) (internal quotation marks omitted) (quoting Speaker
 27 Rendon).

26 ³⁸ @BuffyWicks, Twitter (Sept. 7, 2019, 6:57 AM), <https://twitter.com/BuffyWicks/status/1170335312758706177?s=20>.

27 ³⁹ @CaliforniaLabor, Twitter (Sept. 12, 2019, 1:11 PM), <https://twitter.com/CaliforniaLabor/status/1172241240903094273>.

28 ⁴⁰ @CaliforniaLabor, Twitter (Sept. 13, 2019, 7:33 AM), <https://twitter.com/CaliforniaLabor/status/1172518612482981888>.

1 c. On September 18, 2019, the California Labor Foundation’s Legislative
 2 Director tweeted a quotation from an article that said: “California has
 3 the highest poverty rate of any state. Gig jobs are part of this travesty.
 4 By rejecting the exploitative gig business model, this victory is the most
 5 significant action against poverty, precarity & homelessness in recent
 6 memory.”⁴¹

7 67. These well-funded lobbying efforts by “old economy” companies
 8 accomplished their mission to target network companies for irrational treatment: As
 9 enacted, AB 5 spends the majority of its text exempting dozens of occupations from its
 10 reach—after spending just a few words on its purported purpose of codifying
 11 *Dynamex*. Absent from the long list of exemptions are network companies. That was
 12 no accident. Gonzalez vowed from the beginning that network companies would not
 13 make the list: “It’s not going to happen,” she pledged.⁴² And after AB 5 passed, she
 14 tweeted in celebration that she had “fought so hard for #AB5 with no gig carve-outs.”⁴³

15 68. In short, the principal legislative supporters and lobbyists behind AB 5 had
 16 one goal in mind: target platform companies in an attempt to force them to reclassify
 17 the independent service providers who operate on their platforms to employees.⁴⁴

18
 19 ⁴¹ @Unionista27, Twitter (Sept. 18, 2019, 7:42 AM), <https://twitter.com/unionista27/status/1174332775215714304>.

20 ⁴² Margot Roosevelt, *California Bill Curbing Use of Contractors Would Not Exempt Uber, Lyft, Other Tech Firms*, L.A. Times (Mar. 26, 2019), <https://www.latimes.com/business/la-fi-uber-lyft-employee-contractor-bill-20190326-story.html>.

21 ⁴³ Lorena Gonzalez (@LorenaSGonzalez), Twitter (Sept. 22, 2019, 12:16 PM), <https://twitter.com/LorenaSGonzalez/status/1175851372526194689>.

22 ⁴⁴ This animus is a widely recognized fact. *See, e.g.*, Rachel Uranga, *Port Truckers Brake for AB 5*, L.A. Bus. J. (Oct. 4, 2019), <https://labusinessjournal.com/news/2019/oct/04/port-truckers-brake-ab5logistics-companies-drivers/> (“AB5 takes direct aim at ride-share services Uber Technologies Inc. and Lyft Inc”); David Brunori, *Contractors, Employees And The Sharing Economy: SALT In Review*, Law360.com (Sept. 20, 2019), <https://www.law360.com/tax-authority/articles/1201352/contractors-employees-and-the-sharing-economy-salt-in-review> (“While [AB 5] does not actually say it, it is clearly aimed at modern companies like Uber and Lyft—and increasingly more business in the sharing economy space.”); Kristian, *supra* note 11 (“A.B. 5’s primary target is gig employers like ridesharing apps Uber and Lyft, whose drivers are classified as contract workers, not employees.”).

1 **IV. Substantial Civil And Criminal Penalties May Attach To State And Private**
2 **Enforcement Actions Against Company Plaintiffs.**

3 69. As explained above, AB 5 codifies the ABC test in a new Section 2750.3
4 of the Labor Code. Dozens of provisions of the Labor Code provide criminal penalties
5 for violations, in addition to any civil penalties that also may attach.

6 70. A few examples of the criminal penalties in the Labor Code that network
7 companies could be threatened with if Defendants enforce AB 5 against them in the
8 manner consistent with the sponsors' stated intent include:

- 9 a. Labor Code § 553: Misdemeanor for violation of provisions related
10 to overtime, meal periods, alternative workweeks, makeup work
11 time, and rest days.
- 12 b. Labor Code § 1199: Misdemeanor punishable by a fine and/or
13 imprisonment for up to 30 days for failing to pay minimum wage.
- 14 c. Labor Code § 225: Misdemeanor for violating certain provisions
15 regarding wage withholdings.
- 16 d. Labor Code § 226.6: Misdemeanor punishable by a fine of up to
17 \$1,000 and/or imprisonment of up to one year for failing to comply
18 with itemized paystub requirements.
- 19 e. Labor Code § 227: Felony punishable by imprisonment of up to five
20 years and/or a fine of up to \$1,000 for failing to make certain
21 required payments to a health or welfare fund, pension fund,
22 vacation plan, or similar benefit fund.

23 71. AB 5 also extends the ABC test to the Unemployment Insurance Code,
24 which imposes civil penalties for various violations, including:

- 25 a. Unemployment Insurance Code § 1088.5(e): Fine of \$24 per
26 employee for failing to report the employee's hire within a specified
27 time.

1 b. Unemployment Insurance Code § 1112(a): Penalty of 15% for
2 failure to pay unemployment contributions when due.

3 c. Unemployment Insurance Code § 1126.1: Fine of \$100 per
4 unreported employee for failure to register as an employer.

5 72. The Private Attorneys General Act also authorizes employees to sue to
6 recover civil penalties for Labor Code violations, including misclassification. *See*
7 Cal. Labor Code §§ 2698 *et seq.* Employees may sue on behalf of themselves, other
8 employees, or the State of California. In addition to seeking any civil penalties that
9 the Labor and Workforce Development Agency may assess under the Labor Code,
10 the Act allows the private plaintiffs to seek a civil penalty of \$100 “for each
11 aggrieved employee per pay period” for an “initial violation,” and \$200 “for each
12 aggrieved employee per pay period for each subsequent violation.” *Id.* § 2699(f)(2).

13 73. There are millions of app-based independent service providers in
14 California. Company Plaintiffs separately contract with thousands of independent
15 service providers like Individual Plaintiffs, many of whom use the app-based
16 platforms of multiple network companies simultaneously. If network companies are
17 forced to change their business models or to stop doing business in the State in a
18 manner consistent with the sponsors of AB 5’s expressed intent, it will harm their
19 actual employees. It also will harm the independent service providers with whom
20 the network companies contract. If network companies could continue to operate in
21 California, their economic model may look radically different if AB 5 is enforced
22 against them in a manner consistent with the sponsors’ state intent—and cost work
23 opportunities for thousands of independent service providers.

24 **V. If AB 5 Were Enforced Against Company Plaintiffs In A Manner Consistent**
25 **With The Sponsors’ Stated Intent To Require Reclassification Of Their**
26 **Independent Contractors As Employees, It Would Cause Substantial**

1 **Economic And Non-Economic Harms—To The Independent Service**
2 **Providers, Companies, And Many Others.**

3 74. Company Plaintiffs, and many other similarly situated companies in
4 California and across the country, built their businesses by creating apps, websites, and
5 other technologies for the on-demand economy. These companies operate on-demand
6 app-based platforms that connect those willing to pay for a service with those willing to
7 provide it. It is because independent service providers have the flexibility, freedom, and
8 independence to pick and choose which jobs they want to perform and when they want
9 to perform them that the business model has been so successful. Many workers would
10 stop doing on-demand work if they no longer had this freedom and were, instead, forced
11 into a formal employer-employee relationship with set hours, inflexible schedules,
12 supervision, and other rigid formalities that attach to such a relationship. This decrease
13 in app-based independent service providers would result in substantial economic and
14 non-economic harm to the network companies, and even more significant harm to the
15 workers who are denied this source of income and to customers who are denied the
16 convenience, efficiency, reasonable prices, and availability of app-based on-demand
17 services.

18 **A. Lydia Olson**

19 75. Lydia Olson is an independent driver who uses the Uber app (and other
20 apps) to find passengers.

21 76. Ms. Olson needs the flexibility that comes with being an independent
22 service provider. She takes care of her husband, who has multiple sclerosis. Given his
23 illness, it is not always foreseeable when she will be needed. In the past, she has taken
24 several days, or even weeks, off from work to care for him. Thus she requires not only
25 a stable and consistent income, but also flexibility in her hours. It would be much
26 harder—and perhaps impossible—to be able to care for her husband when she needs to,
27 if she were an employee. Ms. Olson holds an MBA from the University of California,
28 Davis, has personal experience as an employee in several management positions, and

1 based on her experience does not believe a position as an employee would provide her
2 the flexibility she needs.

3 77. Ms. Olson runs her own consulting company. This business varies
4 substantially in terms of how many hours it demands from her. To help stabilize her
5 income, she uses the Uber app to connect with riders. As an independent service
6 provider, when the consulting business is slower, she can pick up more opportunities on
7 the Uber app. When it is busier, she can use the app less frequently—or stop entirely,
8 and pick it up again when she has more time. She values the ability to use Uber to
9 supplement her income as needed, sometimes a little and sometimes a lot. That would
10 not be possible if she had a fixed schedule, needed to work a certain number of hours
11 per week, or was prevented from working a certain number of hours in a given week.

12 **B. Miguel Perez**

13 78. Plaintiff Miguel Perez is a courier who uses the Postmates app to run his
14 own delivery business.

15 79. Mr. Perez previously drove a truck on the graveyard shift for FedEx
16 Corporation. He did not feel safe working overnight and did not like the rigidity of
17 working a regular shift.

18 80. Mr. Perez now runs his own delivery business primarily using Postmates,
19 although he also uses many other platforms like Caviar, Grubhub, DoorDash, and Uber
20 Eats when he finds fewer or less convenient referrals on Postmates.

21 81. Mr. Perez earns approximately double what he previously earned driving
22 for FedEx and feels safer as a result of not having to work the graveyard shift. Because
23 of the extra money he has made running his own delivery business, his wife was able to
24 quit her job to spend more time with family. Additionally, because Mr. Perez earns his
25 income working for himself, he can deduct his business expenses from his taxes.

26 82. Mr. Perez values the flexibility of working for himself. He can take off
27 whenever he wants to spend time with his family—whether for vacations or just to see
28 his son play little league baseball—without requesting permission or even telling

1 anyone. He never has to go into an office or attend trainings or meetings. He also can
2 accept or decline delivery requests at his option and often does so if a delivery address
3 is too far away, it looks like it will take too long before the food is ready, or parking will
4 be a big problem. He has learned the streets and merchants in the Los Angeles area well,
5 and he sets his own pace and uses his own strategy to get deliveries to his customers
6 efficiently.

7 83. Mr. Perez does not want to work as someone else's employee again. That
8 would upend his life. He also fears that if Defendants are able to use the threat of
9 enforcement under AB 5, consistent with the sponsors' stated intent, to force platform
10 companies and independent service providers into rigid employer-employee
11 relationships, platform companies will simply not be able to hire everyone who uses
12 their apps as employees. Many of these workers will no longer be able to enjoy the
13 flexibility he appreciates so much—and they will lose important sources of income for
14 themselves and their families on which they have relied for years.

15 **C. Postmates**

16 84. Postmates is a technology company that operates an online marketplace and
17 mobile platform (the "Postmates App") connecting local merchants, consumers, and
18 independent couriers to facilitate the purchase, fulfillment, and, when applicable, local
19 delivery of anything from takeout to grocery goods from merchants to the consumers.
20 When the consumers place delivery requests from the local merchants, such as
21 restaurants or grocery stores, through Postmates' App, nearby independent couriers
22 receive a notification and can choose whether to accept the consumer's offer to pick up
23 and complete the requested delivery.

24 85. To begin making deliveries using the Postmates app, a courier must, among
25 other things, execute a "Fleet Agreement," which provides: "The Parties intend this
26 Agreement to create the relationship of principal and independent contractor and not that
27 of employer and employee."
28

1 86. Each courier is free to use the Postmates app as much or as little as he or
2 she wants—there is no set schedule, minimum-hours requirement, or minimum-delivery
3 requirement. When a customer requests a delivery using the Postmates app, the app
4 sends basic information about the delivery request to the closest available couriers, who
5 may accept, reject, or ignore the request. It is entirely up to them.

6 87. If AB 5 were enforced against Plaintiffs in a manner consistent with the
7 sponsors' stated intent to require reclassifying these couriers as employees and thus deny
8 Postmates the ability to contract with independent couriers, Postmates would be forced
9 to change this business model.

10 **D. Uber**

11 88. Uber is a technology company that develops proprietary software used to
12 create digital marketplaces, operated through app-based platforms (the “Uber Apps”).
13 Through the use of proprietary algorithms, the Uber Apps connect individuals in need
14 of goods or services with those willing to provide them.

15 89. The most widely used Uber marketplace is operated through the Uber
16 Rides App. Riders download the Uber Rider App and independent drivers download
17 the Uber Driver App, and in combination, the apps, connect riders to vehicles operated
18 by independent service providers. The Uber Rides Apps are used in cities throughout
19 the world and facilitates the transportation of millions of riders each day. Using the
20 Uber Ride App, riders can connect with available transportation providers based on their
21 location offering a variety of transportation options.

22 90. To begin using the Uber Driver App, any driver must, among other things,
23 execute a “Technology Services Agreement,” which provides, in bold text: “the
24 relationship between the parties under this Agreement is solely that of independent
25 contracting parties,” and “this Agreement is not an employment agreement, nor does it
26 create an employment relationship.”

27 91. There is no typical driver who uses the Uber Driver App. Drivers have a
28 number of individual choices that will determine their work circumstances. Each

1 independent driver is free to use the Uber Driver App as much or as little as he or she
2 wants—there is no set schedule, minimum-hours requirement, or minimum-ride or
3 minimum-delivery requirement. Drivers use their own vehicles and tools, manage their
4 own vehicle maintenance, oversee their own appearance and manner of serving riders,
5 and determine their own driving routes and other aspects of the rides they give to riders.

6 92. Many drivers who use the Uber Drivers App marketplace provide
7 transportation services to earn supplemental income when convenient for them while
8 working as an employee of an employer. Other drivers accept referrals from the Uber
9 Drivers App marketplace when convenient for them and work one or more freelance
10 jobs, such as a property manager, realtor, or graphic designer. Still other drivers have
11 no employer and selectively accept referrals from the Uber Drivers App, perhaps
12 because they care for a loved one who is sick; they have small children; or they have
13 other commitments that prevent them from regularly accepting referrals. *See*
14 *Declarations of Putative Class Members, O'Connor v. Uber Techs. Inc.*, No. CV-13-
15 03826-EMC (N.D. Cal. July 9, 2015) (Dkt. 307); Evangelis Declaration Exhibits 1–40
16 *O'Connor v. Uber Techs. Inc.*, No. CV-13-03826-EMC (N.D. Cal. July 9, 2015) (Dkt.
17 299) (charts compiling these declarations, demonstrating heavy variation across drivers
18 who use the Uber App).

19 93. As with other network companies, if AB 5 were enforced against Plaintiffs
20 in a manner consistent with the sponsors' stated intent to reclassify drivers in California
21 as employees, it would invalidate Uber's Technology Services Agreement with the
22 drivers, deprive many part-time drivers of the opportunity to accept referrals from the
23 Uber Drivers App, and impose substantial costs and burdens on Uber that, ultimately,
24 would harm consumers.

25 * * *

26 94. Many other network companies use apps and similar technology to pair
27 workers with customers willing to pay for the performance of a certain task. If AB 5
28 were enforced against Plaintiffs in a manner consistent with the sponsors' stated intent

1 to classify these independent service providers as employees of the companies, it would
2 force the companies to incur huge costs. It also would allow fewer people to work in
3 the on-demand economy. One study, for example, found that reclassification would
4 increase an app-based transportation company's operating costs by 20% and lead to
5 approximately 300,000 fewer drivers in California.⁴⁵

6 95. Reducing the number of drivers would mean longer wait times and reduced
7 service areas for consumers, undermining the on-demand marketplace of Uber and other
8 network companies. Whereas the independent service providers can currently choose to
9 take an on-demand opportunity (or not) wherever they happen to be, an employment
10 model is invariably based on set shifts in a dedicated location during set hours.

11 96. Moreover, the contracts between many platform companies and
12 independent service providers treat—and/or explicitly classify—the workers as
13 independent service providers. These contracts make clear that the companies do not
14 have certain obligations to the workers as employees under the Labor Code, and also
15 that the independent service providers do not have the same obligations to the platform
16 companies as they would if those companies were traditional “employers.” If AB 5 were
17 enforced against Plaintiffs in a manner consistent with the sponsors’ stated intent to
18 require platform companies to reclassify independent service providers as employees,
19 these contracts would become invalid, unlawful, or otherwise unenforceable.

20 97. If AB 5 were enforced against Plaintiffs in a manner consistent with the
21 sponsors’ stated intent to require platform companies to reclassify independent service
22 providers as employees, this would impose major administrative, payroll, legal, and
23 other burdens on them. The massive costs that enforcement of AB 5 would force upon
24 many platform companies were not lost on California lawmakers; imposing these costs
25 was their intent.

26 98. Independent service providers too could face reduced work opportunities
27 and more taxes, as reclassification would make it “more difficult for them to claim

28 ⁴⁵ See Beacon Economics LLC, *supra* note 12, at 2.

1 federal income tax deductions for business expenses” and could preclude them from
2 benefiting from other tax deductions.⁴⁶

3 99. These adverse consequences for workers could be especially substantial for
4 those who “multi-app” when searching for work opportunities. Instead of being an
5 independent service provider who can operate several apps at once to pick and choose
6 which tasks to perform and where to perform them, the new employees will have to pick
7 one “employer” to work for—and do so under the direction of that new employer. The
8 flexibility that has defined the on-demand economy, fueled its growth, and empowered
9 independent service providers would be replaced with the rigid and inflexible 9-to-5
10 business model to the detriment of network companies, independent service providers,
11 and, ultimately, consumers.

12 COUNT I

13 **Declaratory Relief: Violation of the U.S. Constitution’s Equal Protection Clause**

14 100. Plaintiffs incorporate all other paragraphs of this Complaint.

15 101. AB 5 violates the Equal Protection Clause of the Fourteenth Amendment
16 of the United States Constitution because it draws classifications between network
17 companies and non-network companies without a rational basis for distinguishing
18 between the two groups.

19 102. Likewise, the statute draws irrational distinctions between independent
20 service providers and non-independent service providers that perform substantially the
21 same work, disfavoring independent service providers relative to similarly situated non-
22 independent service providers. Laws unconstitutionally singling out a certain class of
23 citizens for disfavored legal status or general hardships are rare. AB 5 is such an
24 exceptional and invalid form of legislation.

25 103. No sophisticated economic analysis is required to see the pretextual nature
26 of California’s proffered explanations for AB 5’s differential treatment. There is no

27 ⁴⁶ Howard Gleckman, *Will California’s New Labor Law Change the Way Gig Workers*
28 *Are Taxed?*, Tax Policy Ctr. (Sept. 20, 2019),
<https://www.taxpolicycenter.org/taxvox/will-californias-new-labor-law-change-way-gig-workers-are-taxed>.

1 rational distinction between network companies and many of the non-network
2 companies granted exemptions under AB 5. The California legislators' focus on
3 subjecting network companies to AB 5, and their willingness to grant a laundry list of
4 non-network company exemptions in order to spare those types of companies the costs
5 and burdens of complying with AB 5, demonstrates irrational animus against network
6 companies in violation of their equal protection rights. This type of singling out, in
7 connection with a rationale so weak that it undercuts the principle of non-contradiction,
8 fails to meet even the relatively easy standard of rational basis review.

9 104. Strict scrutiny review applies because AB 5 is designed to burden, and if
10 enforced against independent service providers like Individual Plaintiffs and network
11 companies such as Company Plaintiffs in a manner consistent with the sponsors' stated
12 intent would burden, the fundamental rights of network companies and workers to
13 pursue their chosen profession and determine when and how they earn a living.

14 105. In addition, there is no rational basis for targeting network companies for
15 disfavored treatment. For example, AB 5 ostensibly exempts business-to-business
16 services, freelance writers, grant writers, graphic designers, insurance agents, direct
17 sellers, manicurists, hair dressers, and real estate agents. The independence, autonomy,
18 and other characteristics of these types of workers are substantially similar to app-based
19 independent service providers.

20 106. If the California legislature's goal in enacting AB 5 truly were to protect
21 workers from perceived harms caused by perceived misclassification and to prevent
22 employers from skirting their earnings and safety obligations, the statute would not
23 contain the dozens of exemptions that leave so many workers outside of its purported
24 protective umbrella. Where, as here, the breadth of the statute is so discontinuous with
25 the reasons offered for it that the statute seems inexplicable by anything but animus
26 toward the class it is designed to single out, the statute lacks a rational relationship to
27 legitimate state interests. And where, as here, the exclusion of certain workers from
28

1 licensing requirements is inconsistent with asserted state interests, the law violates equal
2 protection.

3 107. Not only is animus toward the on-demand economy the only *possible*
4 explanation for the express exemption of a litany of similarly situated companies but not
5 platform companies, but it is also the *actual* explanation for the scheme. The public
6 record is filled with statements by California legislators who voted for the bill, including
7 the sponsor of AB 5, attacking platform companies specifically, targeting such
8 companies in their support of AB 5, and stating their view that AB 5 will stop the
9 purported “unscrupulous” business practices of such companies.

10 108. This sort of malicious, irrational, and plainly arbitrary action by state
11 officials defeats AB 5 under the rational relation test.

12 109. The manner in which AB 5’s exemptions were created further confirms that
13 the statute violates the Equal Protection Clause. Many exemptions resulted from “back
14 door” deals and political favors to industry groups—*i.e.*, not a valid legislative purpose.⁴⁷
15 For example, “among truckers, only those who tow disabled vehicles or haul building
16 construction materials obtained exemptions.”⁴⁸ Platform companies also sought an
17 express exemption as the statute was moving through the California legislature, but were
18 denied exemptions.

19 110. Legislatures may not draw lines for the purpose of arbitrarily excluding
20 individuals, including by doing so as a concession to one constituent but not another.
21 Yet, the sponsors of AB 5 included the exemptions solely in response to the demands of
22 political constituents.

23 111. Moreover, although its legislative proponents claim that the statute will
24 prevent “exploitation” of independent service providers, if enforced consistent with AB
25 5’s sponsors’ stated intent to prevent network companies from contracting with

26 _____
27 ⁴⁷ See Skelton, *supra* note 30 (“How do you qualify for an exemption? Answer:
28 pressure and persistence. Better also hire a lobbyist. And, of course, it helps to be a
political supporter.” (internal quotation marks omitted)).

⁴⁸ Skelton, *supra* note 30.

1 independent contractors, AB 5 will instead void their valuable contracts with network
2 companies and cripple their fundamental right to pursue their lawful occupation, while
3 simultaneously carving out a laundry list of exemptions for dozens of classes of
4 independent contractors who are, by the logic employed by AB 5’s proponents, equally
5 “exploited” by the businesses with whom they contract. By the sponsors’ logic, AB 5
6 makes it more likely that workers in the exempted businesses will be “exploited,” given
7 that the statute excludes those workers from the *Dynamex* standard they would otherwise
8 be subject to for certain wage order claims. Thus, AB 5 is so discontinuous with the
9 reasons offered for it that it is inexplicable by anything but animus toward the class it is
10 designed to affect, lacks a rational relationship to legitimate state interests, and violates
11 equal protection.

12 112. Plaintiffs have no adequate remedy at law.

13 **COUNT II**

14 **Declaratory Relief: Violation of the California Constitution’s Equal Protection
15 Clause**

16 113. Plaintiffs incorporate all other paragraphs of this Complaint.

17 114. For substantially the same reasons as described in Count I, AB 5 violates
18 Article 1, Section 3(b)(4) of the California Constitution.

19 115. Plaintiffs will be deprived of equal protection under the law in violation of
20 the California Constitution if AB 5 is enforced against them.

21 **COUNT III**

22 **Declaratory Relief: Violation of the California Constitution’s Inalienable Rights
23 Clause**

24 116. Plaintiffs incorporate all other paragraphs of this Complaint.

25 117. AB 5 violates Article I, Section 1 of the California Constitution, which
26 provides: “All people are by nature free and independent and have inalienable rights.
27 Among these are enjoying and defending life and liberty, acquiring, possessing, and
28 protecting property, and pursuing and obtaining safety, happiness, and privacy.”

1 118. AB 5 violates this provision because it infringes the rights of network
2 companies and independent service providers to pursue their chosen profession, which
3 is an essential component of liberty, property, happiness, and privacy. On-demand work
4 is an occupation, even if it is a specific or particular one. AB 5 infringes the right to
5 pursue this occupation. It also infringes the rights of network companies, independent
6 service providers, and customers to make contracts governing their occupations and
7 purchases, and to associate with one another. The freedom to enter into their own work
8 agreements, and to buy services from willing sellers, are of paramount importance to
9 network companies, independent service providers, and customers. The right to pursue
10 their chosen occupation is the very essence of independent service providers' and
11 network companies' personal freedom and opportunity.

12 119. To the extent it is enforced consistent with the sponsors' intent of forcing
13 network companies to reclassify independent service providers as employees, AB 5
14 deprives network companies and independent service providers of these rights by
15 forbidding them from entering into their chosen work arrangements—that of
16 independent service providers, with the flexibility and autonomy that entails. The
17 sponsors of AB 5 seek to destroy the chosen occupation of independent service providers
18 and platform companies—to make independent service providers like Plaintiff Perez and
19 Plaintiff Olson into employees, and to make technology companies like Uber and
20 Postmates into delivery companies. And in doing so, they would impose massive
21 obligations on both network companies—which must comply with a host of laws
22 governing employers—and independent service providers—who must comply with
23 duties that bind employees, such as the duty of loyalty to one's employer. In addition,
24 mandatory reclassification would not only replace independent service providers'
25 chosen working relationships with an entirely different one, but it also would force many
26 independent service providers out of their lines of work entirely, because network
27 companies cannot hire every on-demand worker as an employee.

28

1 120. The interference with, and deprivation of, these rights is unreasonable and
2 arbitrary. AB 5 is not narrowly tailored to any compelling governmental interest, nor is
3 the least restrictive means to serve any such end. It is not even rationally related to any
4 legitimate governmental interest. It has no substantial relation to the public, health,
5 safety, or morals, or to the general welfare, and it is not congruous with any legitimate
6 purpose the government may proffer. For example, AB 5 is unrelated to serving any
7 interest in worker protection because it outlaws working relationships of the workers'
8 own choosing and undermines their flexibility and autonomy by imposing rigid and
9 duty-laden employer-employee relationships on the on-demand economy. Any overlap
10 with traditional employment is both minimal and irrelevant. The current employment
11 regulatory structure is not a rational fit for the on-demand economy; rather, it impedes
12 the convenience and flexibility that are at its heart. Moreover, AB 5 plainly does not
13 serve consumer needs; the actual incidence of any harm the government could proffer is
14 extremely rare. Rather, AB 5 is motivated by animus towards the on-demand economy
15 and its occupations, and a desire to protect politically favored constituents. These
16 purposes show that any proffered rational basis for AB 5 is illusory.

17 **COUNT IV**

18 **Declaratory Relief: Violation of the U.S. Constitution's Due Process Clause**
19 **(Right To Pursue Chosen Occupation)**

20 121. Plaintiffs incorporate all other paragraphs of this Complaint.

21 122. For substantially the same reasons set forth in Count III, AB 5 violates the
22 Due Process Clause of Section 1 of the Fourteenth Amendment to the United States
23 Constitution.

24 123. In addition, California businesses have a constitutionally protected interest
25 in operating free from unreasonable governmental interference. Businesses are therefore
26 protected from baseless or invidiously discriminatory standards and have a right to be
27 free from excessive and unreasonable government conduct intentionally directed toward
28 them to force them out of business.

1 124. The public record is replete with evidence showing that California
2 legislators supported AB 5 in an effort to isolate and harm platform companies, if not
3 put them out of business.

4 125. The legislature’s circuitous path to legitimate ends, when a direct path is
5 available, shows that AB 5 lacks a rational basis. If California wanted to provide
6 independent service providers access to certain benefits and protections, it could have
7 passed more direct and less-restrictive measures to achieve that end. For example,
8 platform companies advocated for legislation that would allow for creation of an
9 independently administered “portable benefits” fund into which all rideshare companies
10 would pay.⁴⁹ The fund would pay for a series of benefits chosen by drivers, including
11 paid sick leave, paid time off, and disability coverage if a driver could not work due to
12 an accident while driving.⁵⁰ Independent service providers would own these benefits
13 and keep them irrespective of what type of on-demand work they performed.

14 126. The malicious and arbitrary purpose of the statute—combined with the
15 back-room dealing that led to its laundry list of irrational exemptions—creates a “wholly
16 arbitrary” standard in violation of due process.

COUNT V

Declaratory Relief: Violation of the California Constitution’s Due Process Clause (Right To Pursue Chosen Occupation)

19 127. Plaintiffs incorporate all other paragraphs of this Complaint.

20 128. For substantially the same reasons set forth in Counts III and IV, AB 5
21 violates the Due Process Clause of Article I, Section 7 of the California Constitution.
22

23
24
25 ⁴⁹ See, e.g., Open Letter from David Rolf, President, SEIU 775, Dara Khosrowshahi,
26 CEO, Uber, & Nick Hanauer, Founder, Civic Venture Partners, *An Open Letter to
27 Business, Labor and Government: Building a Portable Benefits System for Today’s
28 World* (Jan. 23, 2017), [https://ubernewsroomapi.10upcdn.com/wp-content/
uploads/2018/01/Portable-Benefits-Principles-FINAL.pdf](https://ubernewsroomapi.10upcdn.com/wp-content/uploads/2018/01/Portable-Benefits-Principles-FINAL.pdf).

⁵⁰ See Uber Commc’ns & Policy Team, *Moving Work Forward in California*, Medium
(Aug. 29, 2019), [https://medium.com/uber-under-the-hood/moving-work-forward-
in-california-7de60b6827b4](https://medium.com/uber-under-the-hood/moving-work-forward-in-california-7de60b6827b4).

COUNT VI

Declaratory Relief: Violation of the U.S. Constitution’s Ninth Amendment

129. Plaintiffs incorporate all other paragraphs of this Complaint.

130. For substantially the same reasons set forth in Counts III, IV, and V, AB 5 violates the Ninth Amendment to the U.S. Constitution.

131. The language and history of the Ninth Amendment reveal that the Framers of the Constitution believed that there are additional fundamental rights, protected from governmental infringement, which exist alongside those fundamental rights specifically mentioned in the first eight constitutional amendments. The right to work on one’s own terms—as an independent service provider, rather than an employee—is one of those fundamental rights.

COUNT VII

Declaratory Relief: Violation of the California Constitution’s Baby Ninth Amendment

132. Plaintiffs incorporate all other paragraphs of this Complaint.

133. For substantially the same reasons set forth in Counts III, IV, V, and VI, AB 5 violates Article I, Section 24 of the California Constitution.

COUNT VIII

Declaratory Relief: Violation of the California Constitution’s Due Process Clause

134. Plaintiffs incorporate all other paragraphs of this Complaint.

135. For substantially the same reasons as described in Counts I through VII, Company Plaintiffs would be deprived of due process in violation of Article I, Section 7 of the California Constitution if AB 5 is enforced against them as the statute’s sponsors intend.

COUNT IX

Declaratory Relief: Violation of the U.S. Constitution’s Contracts Clause

136. Plaintiffs repeat and incorporate all other paragraphs of this Complaint.

137. Article 1, Section 10 of the Constitution provides: “No state shall . . . pass any . . . Law impairing the Obligation of Contracts.”

1 138. Company Plaintiffs are parties to valid contracts with the independent
2 service providers who operate on their platforms, including Individual Plaintiffs. These
3 contracts establish that the workers are independent contractors for the purposes of their
4 work found by using the app-based platforms of the Company Plaintiffs.

5 139. If AB 5 were enforced consistent with the sponsors' intent in a way that
6 required Company Plaintiffs to reclassify independent service providers who use their
7 apps as employees, this would invalidate these existing contracts between Company
8 Plaintiffs and the independent service providers who operate on their platforms,
9 including Company Plaintiffs' contracts with Individual Plaintiffs.

10 140. Such reclassification of the independent service providers who operate on
11 Company Plaintiffs' platforms would substantially impair existing contracts between
12 Company Plaintiffs and the independent service providers, including Individual
13 Plaintiffs.

14 141. The classification of independent service providers under the existing
15 contracts between Company Plaintiffs and the independent service providers, including
16 Individual Plaintiffs, is a critical feature of Company Plaintiffs' total contractual
17 relationship with the independent service providers who operate on Company Plaintiffs'
18 platforms.

19 142. If AB 5 were enforced consistent with the sponsors' intent in a way that
20 required reclassification of independent service providers as employees, it would
21 severely modify a key contractual right in existing contracts between Company Plaintiffs
22 and the independent service providers, including Individual Plaintiffs.

23 143. If AB 5 were enforced consistent with the sponsors' intent in a way that
24 required reclassification of independent service providers as employees, it would impose
25 new obligations under the existing contracts between Company Plaintiffs and the
26 independent service providers, including Individual Plaintiffs, that Plaintiffs and the
27 independent service providers did not voluntarily agree to undertake, such as providing
28 health insurance, unemployment coverage, and other employment benefits.

1 144. If AB 5 were enforced consistent with the sponsors' intent in a way that
2 required reclassification of individual service providers as employees, it would wipe out
3 numerous contractual obligations between Company Plaintiffs and independent service
4 providers, including Individual Plaintiffs, under their existing contracts.

5 145. If AB 5 were enforced consistent with the sponsors' intent in a way that
6 required reclassification of individual service providers as employees, it would eliminate
7 the critical flexibility that independent service providers, including Individual Plaintiffs,
8 are guaranteed under their existing contracts with Company Plaintiffs.

9 146. If AB 5 were enforced consistent with the sponsors' intent in a way that
10 required reclassification of individual service providers as employees, it would severely
11 undermine the contractual bargain between Company Plaintiffs and the independent
12 service providers, including Individual Plaintiffs, under the existing contracts between
13 Company Plaintiffs and independent service providers, including Individual Plaintiffs,
14 because AB 5 eliminates the very essence of the contractual bargain in these existing
15 contracts.

16 147. If AB 5 were enforced consistent with the sponsors' intent in a way that
17 required reclassification of individual service providers as employees, it would
18 substantially interfere with the reasonable expectations under existing contracts between
19 Company Plaintiffs and independent service providers, including Individual Plaintiffs,
20 because reclassification eliminates the primary value of those contracts.

21 148. Company Plaintiffs and Individual Plaintiffs had no reason to anticipate
22 that AB 5, if enforced consistent with the sponsors' intent in a way that required
23 reclassification of individual service providers as employees, would effectuate a
24 dramatic departure from California's prior treatment of the existing contracts between
25 Company Plaintiffs and independent service providers, including Individual Plaintiffs,
26 when they bargained for these contracts.

27 149. The classification of independent service providers, including Individual
28 Plaintiffs, as independent contractors in the existing contracts between Company

1 Plaintiffs and independent service providers, including Individual Plaintiffs, had
2 “obvious value” and was a significant factor in Company Plaintiffs’ bargaining
3 expectations when entering into these contracts.

4 150. AB 5’s purported reclassification of independent service providers,
5 including Individual Plaintiffs, as employees of Company Plaintiffs prevents the parties
6 from safeguarding or reinstating the rights held in the existing contracts.

7 151. AB 5 is not drawn in an appropriate and reasonable way to advance a
8 significant and legitimate public purpose.

9 152. AB 5 has no legitimate public purpose because the statute was enacted to
10 target and harm platform companies.

11 153. AB 5’s impairment of the existing contracts between Company Plaintiffs
12 and independent service providers, including Individual Plaintiffs, was not drawn with
13 moderation and reason because it was drawn with the spirit to target and harm Company
14 Plaintiffs.

15 154. AB 5’s irrational exemptions demonstrate California did not exercise the
16 police power in passing it, but instead sought to provide a benefit to special interests
17 while harming Company Plaintiffs.

18 155. AB 5 does not reasonably advance the purpose of protecting workers
19 because its exemptions leave numerous workers outside of its scope without any rational
20 rhyme or reason.

21 156. AB 5’s narrow focus on Company Plaintiffs demonstrates that AB 5 was
22 not enacted to protect any broad societal interest.

23 157. AB 5’s ostensible legislative purpose of helping workers is “suspect”
24 because the legislature excluded similarly situated workers without explaining the
25 necessity for such exemptions to advance its legislative purpose.

26 158. The forced reclassification AB 5’s sponsors intended would unreasonably
27 and substantially impair the existing contracts between Company Plaintiffs and
28

1 independent service providers, including Individual Plaintiffs, because an evident and
2 more moderate course would have served the State’s purported purpose equally well.

3 159. If forced reclassification of independent service providers, including
4 Individual Plaintiffs, as employees was necessary to protect workers, then the California
5 Legislature would not have irrationally exempted from reclassification, without
6 explanation, numerous categories of Individual Plaintiffs engaged in the exact same
7 conduct as independent service providers, including Individual Plaintiffs.

8 160. AB 5 therefore violates the Contracts Clause of the U.S. Constitution, and
9 this violation is actionable under Section 1983 of Title 42 of the U.S. Code.

10 **COUNT X**

11 **Declaratory Relief: Violation of the California Constitution’s Contracts Clause**

12 161. Plaintiffs incorporate all other paragraphs of this Complaint.

13 162. For substantially the same reasons as described in Count IX, enforcement
14 of AB 5 against Company Plaintiffs as intended by the statute’s sponsors also would
15 violate Article I, Section 9 of the California Constitution, which provides that a “law
16 impairing the obligation of contracts may not be passed.”

17 **COUNT XI**

18 **Injunctive Relief**

19 163. Plaintiffs incorporate all other paragraphs of this Complaint.

20 164. Defendants should be preliminarily and permanently enjoined from
21 enforcing AB 5 against Company Plaintiffs.

22 165. If enforcement of AB 5 were to force the reclassification of Individual
23 Plaintiffs from independent contractors to employees, Individual Plaintiffs would suffer
24 severely and irreparably. Individual Plaintiffs both rely heavily on this independence
25 and flexibility for their income, and because they care for ailing and struggling family
26 members. Absent an injunction, they will suffer severe irreparable harm.

27 166. If required to reclassify independent service providers as employees,
28 Company Plaintiffs would incur immediate injury for which there is no adequate remedy
at law, including because the statute violates their constitutional rights, threatens their

1 business models, and forces them to incur unrecoverable administrative and compliance
2 costs. Constitutional violations constitute *per se* irreparable harm.

3 167. Forced reclassification also would require Company Plaintiffs to retrain
4 staff, consult with legal counsel, and develop new compensation, benefits, and other
5 policies.

6 168. These injuries would result directly from enforcement of AB 5 in a manner
7 consistent with the sponsors' stated intent to require reclassification of workers in the
8 on-demand economy against Company Plaintiffs, cannot be adequately compensated by
9 money damages, and would be irreparable absent preliminary and permanent injunctive
10 relief.

11 169. These injuries are preventable and redressable with appropriate injunctive
12 relief that prevents Defendants from giving effect to or enforcing the statute against
13 Company Plaintiffs.

14 170. The balance of harms weighs in favor of injunctive relief. Defendants
15 cannot claim an interest in the enforcement of an unconstitutional law. Nor can they
16 plausibly claim harm from an injunction prohibiting enforcement of a statute that
17 purports merely to clarify preexisting law.

18 171. The public interest favors injunctive relief because many members of the
19 public depend on their contractor status as a way to earn income without the burdens
20 and rigid demands of a traditional 9-to-5 job.

21 172. Moreover, depriving the public of the ability to transact with on-demand
22 contractors would increase prices, increase wait times, and reduce access to important
23 services, particularly in low-income and rural areas.

24 **PRAYER FOR RELIEF**

25 Plaintiffs ask this Court to order appropriate relief, including, but not limited to,
26 the following:

- 27 A. enter a judgment declaring that AB 5 is invalid and unenforceable against
28 Company Plaintiffs because enforcement as intended by the statute's

1 sponsors would violate the equal protection clauses of the United States
2 Constitution and the California Constitution;

3 B. enter a judgment declaring that AB 5 is invalid and unenforceable against
4 Company Plaintiffs because enforcement as intended by the statute's
5 sponsors would violate the Inalienable Rights Clause of the California
6 Constitution, due process clauses of the California Constitution and the
7 Fourteenth Amendment to the United States Constitution, the Ninth
8 Amendment to the United States Constitution, and/or the Baby Ninth
9 Amendment to the California Constitution;

10 C. enter a judgment declaring that AB 5 is invalid and unenforceable against
11 Company Plaintiffs because enforcement would violate the contracts
12 clauses of the United States Constitution and/or the California Constitution;

13 D. enter a preliminary injunction, pending final resolution of this action,
14 enjoining Defendants from taking any action to enforce AB 5 against
15 Company Plaintiffs;

16 E. enter a permanent injunction enjoining Defendants from taking any action
17 to enforce AB 5 against Company Plaintiffs;

18 F. grant Plaintiffs an award of reasonable attorney's fees under 42 U.S.C.
19 § 1988; and

20 G. grant Plaintiffs such additional or different relief as the Court deems just
21 and proper.

22
23 Dated: December 30, 2019

24
25 By: /s/ Theane Evangelis
26 Theane Evangelis
27 Attorney for Plaintiffs
28

DEMAND FOR JURY TRIAL

Plaintiffs demand trial by jury on all issues so triable.

Dated: December 30, 2019

By: /s/ Theane Evangelis
Theane Evangelis

Attorney for Plaintiffs