

1 GIBSON, DUNN & CRUTCHER LLP  
THEODORE J. BOUTROUS, JR., SBN 132099  
2 tboutrous@gibsondunn.com  
THEANE EVANGELIS, SBN 243570  
3 tevangelis@gibsondunn.com  
BLAINE H. EVANSON, SBN 254338  
4 bevanson@gibsondunn.com  
HEATHER L. RICHARDSON, SBN 246517  
5 hrichardson@gibsondunn.com  
333 South Grand Avenue  
6 Los Angeles, CA 90071-3197  
Telephone: 213.229.7000  
7 Facsimile: 213.229.7520

8 Attorneys for Defendant  
Uber Technologies, Inc.

9 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
10 FOR THE COUNTY OF SAN FRANCISCO  
11

12 PEOPLE OF THE STATE OF CALIFORNIA,

13 Plaintiff,

14 v.

15 UBER TECHNOLOGIES, INC., a Delaware  
Corporation; LYFT, Inc., a Delaware  
16 Corporation; and DOES 1-150, Inclusive,

17 Defendants.

CASE NO. CGC-20-584402

**UBER'S *EX PARTE* APPLICATION FOR  
STAY OF PRELIMINARY INJUNCTION  
PENDING APPEAL; MEMORANDUM OF  
POINTS AND AUTHORITIES IN SUPPORT  
THEREOF**

Hon. Ethan P. Schulman  
Department 302

**HEARING:**

Date: August 13, 2020  
Time: 11:00 a.m.

Action Filed: May 5, 2020  
Trial Date: None Set

1 **TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:**

2 **PLEASE TAKE NOTICE THAT** on August 13, 2020, at 11:00 a.m., or as soon as the matter  
3 may be heard before the Honorable Ethan P. Schulman of the San Francisco County Superior Court,  
4 Department 302, located at 400 McAllister Street, San Francisco, California 94102, Defendant Uber  
5 Technologies, Inc. will and hereby does move this Court *ex parte* for an order staying the preliminary  
6 injunction issued by this Court on August 10, 2020, under California Code of Civil Procedure section  
7 916, subdivision (a), pending completion of Uber’s appeal.

8 This application is made on the following grounds: *first*, this Court’s preliminary injunction is  
9 mandatory, not prohibitory, because it “drastically change[s] the status quo by compelling Lyft [and  
10 Uber] to reclassify all of its hundreds of thousands of California drivers as employees” (*Rogers v. Lyft,*  
11 *Inc.* (Super.Ct. Apr. 30, 2020) 2020 WL 2532527, at \*7), and thus it is automatically stayed pending  
12 appeal (Code Civ. Proc. § 916, subd. (a)); *second*, even if the Court concludes that the preliminary  
13 injunction is prohibitory, the Court should exercise its discretion to stay the injunction pending appeal  
14 because Uber will present substantial merits questions on appeal and suffer catastrophic and  
15 irreversible harm if the injunction is not stayed; and *third*, even if the Court declines to stay the  
16 injunction for the duration of Uber’s appeal, the Court should at least temporarily stay the injunction  
17 while Uber files a petition for writ of supersedeas in the Court of Appeal.

18 As explained in the Declaration of Theane Evangelis, counsel for Uber gave notice of this *ex*  
19 *parte* application in accordance with California Rule of Court 3.203 at 1:42 p.m. on August 11, 2020,  
20 by email, to Plaintiff’s counsel and counsel for Defendant Lyft, Inc. (Declaration of Theane Evangelis  
21 ¶ 2.) The *ex parte* notice was timely and included all the information required by Rule of Court 3.1204.  
22 Counsel for Lyft stated that it did not oppose the relief sought and would appear at the *ex parte* hearing.  
23 (*Id.* ¶ 3.) Counsel for Plaintiff stated that Plaintiff opposed the relief sought and would appear at the  
24 hearing. (*Ibid.*)

25 Pursuant to California Rule of Court 3.1202(a), the names, addresses, telephone number, and  
26 email address for the attorneys representing other parties in this matter are:

27 ///

28 ///

1 **Attorneys for Plaintiff:**

2 Satoshi Yanai, Esq. 3 Minsu D. Longiaru, Esq. 4 Marisa Hernández-Stern, Esq. 5 Mana Barari, Esq. 6 E. Erandi Zamora-Gradiano, Esq. 7 OFFICE OF THE ATTORNEY GENERAL 8 1515 Clay Street, 20th Floor 9 P.O. Box 70550 10 Oakland, California 94612-0550 11 Telephone: (510) 879-1300 12 Satoshi.Yanai@doj.ca.gov 13 Minsu.Longiaru@doj.ca.gov 14 Marisa.Hernandez-Stern@doj.ca.gov 15 Mana.Barari@doj.ca.gov 16 Erandi.Zamora@doj.ca.gov 17 Sean.Puttick@doj.ca.gov	Yvonne R. Meré, Esq. Molly J. Alarcon, Esq. Sara J. Eisenberg, Esq. Matthew D. Goldberg, Esq. OFFICE OF THE SAN FRANCISCO CITY ATTORNEY 1390 Market Street, Sixth Floor San Francisco, California 94102-5408 Telephone: (415) 554-3800 Yvonne.Mere@sfcityatty.org Molly.Alarcon@sfcityatty.org Sara.Eisenberg@sfcityatty.org Matthew.Goldberg@sfcityatty.org Shinobu.Ichino@sfcityatty.org Martina.Hassett@sfcityatty.org
Michael Bostrom, Esq. OFFICE OF THE LOS ANGELES CITY ATTORNEY 200 North Spring Street, 14th Floor Los Angeles, California 90012 Telephone: (213) 978-1867 michael.bostrom@lacity.org david.torres@lacity.org danitza.munoz@lacity.org	Mark Ankcorn, Esq. Kevin B. King, Esq. Marni Von Wilpert, Esq. OFFICE OF THE SAN DIEGO CITY ATTORNEY 1200 Third Avenue, Suite 1100 San Diego, California 92101-4100 Telephone: (619) 236-6220 MAnkcorn@sandiego.gov KBKing@sandiego.gov MVonWilpert@sandiego.gov marissag@sandiego.gov

17 **Attorneys for Defendant Lyft, Inc:**

18 Christa M. Anderson, Esq. 19 Rachael E. Meny, Esq. 20 R. James Slaughter, Esq. 21 Brook Dooley, Esq. 22 Eric H. MacMichael, Esq. 23 Elizabeth McCloskey, Esq. 24 KEKER, VAN NEST & PETERS LLP 25 633 Battery Street, San Francisco, CA 94111- 26 1809 27 Telephone: 415.391.5400 28 canderson@kvn.com rmeny@keker.com rslaughter@keker.com bdooley@keker.com emacmichael@keker.com emccloskey@keker.com LYFTSUB@keker.com	Rohit K. Singla, Esq. Jeffrey Y. Wu, Esq. Justin Raphael, Esq. MUNGER, TOLLES & OLSON LLP 560 Mission Street, 27th Floor San Francisco, CA 94105 Telephone: 415.512.4000 rohit.singla@mto.com jeffrey.wu@mto.com justin.raaphael@mto.com
--	---

1 Uber previously filed an unopposed *ex parte* application for an order extending time to respond  
2 to the complaint, and an *ex parte* application for an order striking, or alternatively granting leave to  
3 submit response to, the Declaration of Michael Reich.

4 Uber's *ex parte* application is based on this notice, the attached application and memorandum  
5 of points and authorities, the Declarations of Theane Evangelis and Brad Rosenthal in support thereof,  
6 all papers on file in this action, all matters of which judicial notice may be taken, and upon such oral  
7 and documentary evidence as the Court may permit at or prior to the hearing of this matter.

8  
9 DATED: August 11, 2020

10 GIBSON, DUNN & CRUTCHER LLP  
11 THEODORE J. BOUTROUS JR.  
12 THEANE EVANGELIS  
13 BLAINE H. EVANSON  
14 HEATHER L. RICHARDSON

15 By: /s/ Theane Evangelis  
Theane Evangelis

16 Attorneys for Defendant  
17 Uber Technologies, Inc.  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23

## I. INTRODUCTION

On August 10, 2020, this Court issued a preliminary injunction enjoining Uber (and Lyft) “from classifying their Drivers as independent contractors in violation of Labor Code section 2570.3.” As the Court explained just a couple months ago, this is a *mandatory* injunction: this “sweeping mandatory injunctive relief [would] affect the rights of many tens of thousands of Lyft [and Uber] drivers who are not before the Court.” (*Rogers v. Lyft, Inc.* (Super.Ct. Apr. 30, 2020) 2020 WL 2532527, at \*6 (*Rogers*)). The Court’s characterization of the injunctive relief sought in *Rogers* applies fully here—this is “a mandatory injunction that would *drastically change the status quo* by compelling Lyft [and Uber] to reclassify all of its hundreds of thousands of California drivers as employees.” (2020 WL 2532527, at \*7, emphasis added.) The Court should issue a brief order clarifying that its injunction is *mandatory* and automatically stayed once Uber notices its appeal.

Even if the Court deems the injunction prohibitory, it should stay the injunction pending appeal, given the substantial questions of first impression Uber’s appeal will raise and the catastrophic and irreparable harm that will result from the fundamental restructuring of Uber’s Rides app that would be required to comply with the injunction. In fact, Uber will almost certainly be forced to shut off the Rides platform in California if the injunction goes into effect, which would irreparably harm Uber and all who rely on its Rides app to generate income for them and their families—particularly in the midst of a pandemic. The injunction should be stayed (regardless whether the Court deems it mandatory or prohibitory) while the Court of Appeal decides whether such drastic and irrevocable change is required.

At a minimum, an interim stay should be granted to allow Uber to seek a writ of supersedeas from the Court of Appeal. Such a short stay of a few weeks is undoubtedly warranted given the enormous consequences at issue.

## II. BACKGROUND

24  
25  
26  
27  
28

Plaintiff filed this action against Uber and Lyft on May 5, 2020. On June 25, 2020, Plaintiff moved for a sweeping preliminary injunction requiring Uber and Lyft to reclassify hundreds of thousands of drivers as employees.

Uber opposed Plaintiff’s motion for preliminary injunction on numerous grounds, including that it had implemented a host of changes to its platform to ensure compliance with AB 5. (See, e.g.,

1 Declaration of Brad Rosenthal in support of Uber’s Opposition to Plaintiff’s Motion for Preliminary  
2 Injunction (“First Rosenthal Decl.”) ¶¶ 13–40; Evangelis Decl., Ex. A at pp. 19, 34–39, 48–51.) Uber  
3 also argued that it is not a “hiring entity” subject to AB 5, and even if it were, that it can satisfy each  
4 prong of the ABC test because drivers who use Uber’s platform control their own businesses, set their  
5 own prices, and work how and when they see fit. (See Evangelis Decl., Ex. A at pp. 39–51.) Uber  
6 further argued that an injunction is unwarranted given Plaintiff’s failure to present any evidence that it  
7 would suffer harm in the absence of immediate injunctive relief, and given the overwhelming and  
8 undisputed evidence of harm to Uber and the drivers and riders who use its app. (See *id.* at pp. 54–78.)

9 On August 10, 2020, the Court ruled for Plaintiff, and “enjoined and restrained [Defendants]  
10 from classifying their Drivers as independent contractors in violation of Labor Code section 2570.3,”  
11 and “from violating any provisions of the Labor Code, the Unemployment Insurance Code, and the  
12 wage orders of the Industrial Welfare Commission with regard to their Drivers.” (Order at 32–33.)  
13 Acknowledging that Defendants had requested a stay of any injunction pending appellate review, the  
14 Court stayed the injunction for ten days. (*Id.* at p. 33 & fn. 24; see Evangelis Decl., Ex. A at p. 102.)

### 15 III. ARGUMENT

#### 16 A. The Injunction Is Mandatory and Thus Automatically Stayed Pending Appeal

17 Because the injunction is mandatory, Uber’s notice of appeal from the injunction requires an  
18 automatic stay pending appeal. Plaintiff previously urged the Court not to decide whether the  
19 injunction is mandatory or prohibitory, and thus the Court declined to do so. (Evangelis Decl., Ex. A  
20 at pp. 11–12.) But now that the Court has issued an injunction, the Court should clarify that the  
21 injunction is mandatory (as it was in *Rogers*)—and thus stayed while Uber’s appeal is pending. (See  
22 Code Civ. Proc. § 916, subd. (a); Evangelis Decl., Ex. A at p. 12 [Plaintiff acknowledging that whether  
23 the injunction is mandatory or prohibitory “has ... appellate consequences”].)

24 “[A]n appeal automatically stays mandatory injunctions.” (*Agricultural Labor Relations Bd. v.*  
25 *Super. Ct.* (1983) 149 Cal.App.3d 709, 716.) An injunction is mandatory where, as here, “it compels  
26 performance of an affirmative act that changes the position of the parties” and thus “upset[s] the status  
27 quo.” (*Davenport v. Blue Cross of California* (1997) 52 Cal.App.4th 435, 452 (*Davenport*); see also  
28 *URS Corp. v. Atkinson/Walsh Joint Venture* (2017) 15 Cal.App.5th 872, 884 [injunction is “mandatory

1 in effect if its enforcement would be to change the position of the parties and compel them to act in  
2 accordance with the judgment rendered”] (*URS*.) By contrast, an injunction is “prohibitory” if  
3 “its effect is to leave the parties in the same position as they were prior to the entry” of the injunction—  
4 that is, it “preserve[s] the status quo.” (*URS*, 15 Cal.App.5th at p. 884; *Paramount Pictures Corp. v.*  
5 *Davis* (1964) 228 Cal.App.2d 827, 838.) “Regardless of its wording” (*Rogers*, 2020 WL 2532527, at  
6 \*7 fn. 7), “[t]he substance of the injunction, not the form, determines whether it is mandatory or  
7 prohibitory” (*Davenport*, 52 Cal.App.4th at p. 447; see also *URS Corp.*, 15 Cal.App.5th at p. 884  
8 “[c]ourts are not ‘bound by the form of the injunction order but will look to its substance to determine  
9 its real nature’”], quoting *Feinberg v. One Doe Co.* (1939) 14 Cal.2d 24, 28 (*Feinberg*)).

10 This Court has already held that an injunction reclassifying drivers as “employees” is  
11 mandatory. In *Rogers*, the plaintiffs—just like Plaintiff here—sought “an order enjoining Lyft ‘from  
12 misclassifying its drivers in California as independent contractors.’” (2020 WL 2532527, at \*1.) As  
13 the Court explained, such a “reclassification” injunction is mandatory: “Plaintiffs’ application does  
14 not seek preliminary injunctive relief to preserve the status quo pending a final judgment, .... Rather,  
15 it seeks a mandatory injunction that would drastically *change* the status quo by compelling Lyft to  
16 reclassify all of its hundreds of thousands of California drivers as employees.” (*Id.* at at \*7 [citation  
17 omitted].)

18 Although the injunction the *Rogers* plaintiffs sought used prohibitory language—enjoining Lyft  
19 from “misclassifying its drivers ... as independent contractors” (*id.* at p. \*1)—this Court looked beyond  
20 the “wording” and held that the injunction was mandatory because it “would ***drastically change the***  
21 ***status quo***” (*id.* at p. \*7 & fn.7, emphasis added). The Court followed *Agricultural Labor Relations*  
22 *Board*, which held that a supposedly “prohibitory” injunction ordering an employer “not ‘to continue’”  
23 its prior labor practices—which were allegedly unlawful—was, in fact, “mandatory and automatically  
24 stayed on appeal” because “[i]t compels [the employer] to take affirmative action.” (149 Cal.App.3d  
25 at p. 713; see also *Shoemaker v. Cty. of Los Angeles* (1995) 37 Cal.App.4th 618, 621, 624–625 & fn.4  
26 [injunction ordering defendants to “refrain from removing” plaintiff from administrative positions  
27 “undoubtedly mandatory in nature” because it “altered the status quo” and “ordered defendants to take  
28 affirmative steps to restore [plaintiff] to his administrative positions”]; *Feinberg*, 14 Cal.2d at pp. 27–

1 28 [injunction restraining defendants “from employing” worker “is in its essence and effect a  
2 mandatory injunction” because it “compel[s] affirmative action on the part of the defendants”].)

3 So too here. This injunction—just like in *Rogers*—“enjoin[s] and restrain[s] [Defendants] from  
4 classifying their Drivers as independent contractors.” (Order at pp. 32–33.) Although the Court  
5 observed in the Order that “[a]n injunction that restrains a defendant’s continued violation of state law  
6 is prohibitory in nature” (Order at p. 16),<sup>1</sup> as this Court (correctly) held in *Rogers*, merely “wording”  
7 an injunction to prohibit a violation state law does not dictate that it is prohibitory. (2020 WL 2532527,  
8 at \*7 fn. 7.) Rather, this injunction is mandatory because it “would *drastically change the status quo*  
9 by compelling Lyft [and now Uber] to reclassify all of its hundreds of thousands of California drivers  
10 as employees.” (2020 WL 2532527, at \*7, emphasis added.) An order enjoining Uber from classifying  
11 drivers as independent contractors is an order directing Uber to reclassify drivers as employees;  
12 workers are either employees or independent contractors—there is no other option. (See *id.* at \*1  
13 [injunction prohibiting “misclassifying [] drivers ... as independent contractors” is mandatory].)

14 The Court recognized in the Order that “[t]here can be no question” that the Court’s injunction  
15 will force Defendants “to change the nature of their business practices in significant ways.” (Order at  
16 p. 30.) That observation was correct: if the injunction is not stayed, Uber will be required to  
17 fundamentally restructure its business. And that cannot be done overnight. In fact, Uber will almost  
18 certainly have no choice but to shut down the Rides platform completely in California for a minimum  
19 of several months. (Declaration of Brad Rosenthal in support of Uber’s *Ex Parte* Application for Stay  
20 Pending Appeal (“Second Rosenthal Decl.”) ¶ 12.) If Uber’s Rides platform emerges from the  
21 restructuring, it will be a very different app.

22 The record before the Court demonstrates that it would take millions of dollars and months of

---

23  
24 <sup>1</sup> The Court’s Order cites *People ex rel. Brown v. iMergent, Inc.* (2009) 170 Cal.App.4th 333 for this  
25 point. But in *Brown*, the appellate court upheld an injunction that merely required the defendants to  
26 “abide by their [earlier] agreement”—in a stipulated judgment in a prior action—to “compl[y] with  
27 California’s consumer protection laws.” (170 Cal.App.4th at pp. 337, 343.) As the Court of Appeal  
28 explained, that injunction was prohibitory because forcing the defendants to comply with their own  
agreement merely “maintain[ed] the status quo.” (*Id.* at 343.) Notably, the injunction did *not* require  
the defendants to “to violate a contract, nor [did] it compel them to surrender any rights that were  
lawfully held when the injunction was issued.” (*Ibid.*) Here, by contrast, the injunction *does* require  
Uber to “violate” contracts with hundreds of thousands of drivers who sought out and agreed to an  
independent contracting relationship with Uber, and it requires Uber to “surrender” its right to conduct  
business as it has for nearly a decade in California.

1 effort to restructure the Uber Rides business model, including at least the following affirmative steps:

2     • Overhaul the Rides app from a platform that drivers can choose to use or turn off at their

3     leisure—which is not set up to onboard and manage drivers as classified employees or manage

4     transportation services—to a taxi-like “employment” system that forces drivers to work on a

5     schedule that attempts to meet fluctuating rider demand while also accounting for overtime and

6     other constraints (Second Rosenthal Decl. ¶¶ 5, 10);

7     • Build a human resource information system to track and manage drivers, including tracking

8     time and attendance, shifts, meal and rest break time, and wages and salaries (Second Rosenthal

9     Decl. ¶ 7);

10    • Create a new employment administration department to support this new “workforce” of

11    thousands of drivers, by hiring hundreds of HR representatives, recruiters, finance and

12    accounting staff, and management personnel to supervise drivers (Second Rosenthal Decl. ¶ 8;

13    Evangelis Decl., Ex. B ¶¶ 20–28);

14    • Onboard thousands of drivers who would ultimately be hired as employees, which will require,

15    among other things, training and orienting drivers; collecting, reviewing, and assessing I-9

16    Employment Eligibility Verification forms from each driver; preparing and updating employee

17    handbooks; and developing and conducting formal training sessions for drivers (Second

18    Rosenthal Decl. ¶ 9; Evangelis Decl., Ex. B ¶¶ 16–19); and

19    • Create new systems and software to generate schedules and track and control drivers’ location

20    and time, including meal and rest breaks (Second Rosenthal Decl. ¶ 10; Evangelis Decl., Ex. B

21    ¶¶ 29–35).

22     Because Uber will almost certainly need to shut down the Rides app while it builds these

23    departments and systems, millions of drivers who use the app to earn vital income will likely lose that

24    opportunity the day the injunction goes into effect—and that source of income will be lost for months,

25    at least. (Second Rosenthal Decl. ¶ 12; Evangelis Decl., Ex. A at pp. 33–78.) If Uber’s app emerges

26    from the California restructuring, it would not be the same platform—it will be forced to limit the

27    number of drivers who access the Uber Rides platform and exert significant control over the manner

28    and means of drivers’ performance (Second Rosenthal Decl. ¶ 11), which is contrary to the desires of

1 both drivers *and* riders (First Rosenthal Decl. ¶ 50; Baggett Decl. ¶ 13; Haghiri Decl. ¶¶ 5, 10–11, 13;  
2 Olson Decl. ¶¶ 17–29; Evangelis Decl., Ex. A at pp. 55, 78; *Amici Curiae* Brief of Communities-of-  
3 Color Organizations at pp. 11–16.)

4 These are all unquestionably changes to the status quo that render the injunction *mandatory*  
5 (*Rogers*, 2020 WL 2532527, at \*7 & fn. 7), which requires an automatic stay pending appeal (Code  
6 Civ. Proc. § 916, subd. (a)).

7 **B. Even if the Injunction Is Prohibitory, the Court Should Stay the Injunction**  
8 **Pending Appeal**

9 Even if the Court determines, contrary to its decision in *Rogers*, that the injunction is not  
10 mandatory, the Court should exercise its discretion and stay the injunction pending appeal to avoid the  
11 catastrophic and irreversible harm that would occur from the injunction becoming effective—harm that  
12 could not be unwound in the event the injunction is reversed.

13 A court should issue a discretionary stay pending appeal when “necessary to protect the  
14 appellants from the irreparable injury they will necessarily sustain in the event their appeal is deemed  
15 meritorious.” (*Mills v. Cty. of Trinity* (1979) 98 Cal.App.3d 859, 861 (*Mills*)). Courts considering  
16 discretionary stays consider two issues: (1) whether the would-be appellant needs a stay to protect “the  
17 benefit of a reversal of the judgment against him,” and (2) whether it is “like[ly] that substantial  
18 questions will be raised on appeal.” (*Veyna v. Orange Cty. Nursery, Inc.* (2009) 170 Cal.App.4th 146,  
19 156-57; see also *People ex rel. San Francisco Bay Conservation & Dev. Comm'n v. Town of Emeryville*  
20 (1968) 69 Cal.2d 533, 537 [stay pending appeal was necessary because “difficult questions of law are  
21 involved and the fruits of a reversal would be irrevocably lost unless the status quo is maintained”]  
22 (*Emeryville*)). Both conditions for a stay are met here.

23 ***Irreparable Injury.*** As already explained, without a stay Uber will almost certainly have to  
24 shut down its Rides app completely in California—probably for many months, if not more than a year—  
25 while it attempts to restructure. (See discussion *supra* pp. 7–8; Second Rosenthal Decl. ¶ 12.) If the  
26 Court’s injunction is reversed on appeal, millions of California drivers will have needlessly lost the  
27 opportunity to make money with the Uber platform for several months, and many more riders will have  
28 been deprived transportation options as well. (See, e.g., *Amici Curiae* Brief of Communities-of-Color

1 Organizations at pp. 11–16.) Uber, drivers, and riders will all suffer an enormous loss that victory on  
2 appeal cannot remedy—the very definition of “irreparable injury.” (*Mills, supra*, 98 Cal.App.3d at p.  
3 861.) Even if Uber revives its Rides business in California under an employment model while the  
4 appeal is pending, it could not undo the loss of goodwill it will incur from riders and drivers alike from  
5 shutting down its business for months on end. (McCrary Decl. ¶¶ 42–43, 61–68; *Stuhlberg Int’l Sales*  
6 *Co. v. John D. Brush & Co.* (9th Cir. 2001) 240 F.3d 832, 841 “[e]vidence of threatened loss of ...  
7 goodwill” supports finding of irreparable harm]; *Donahue Schriber Realty Grp., Inc. v. Nu Creation*  
8 *Outreach* (2014) 232 Cal.App.4th 1171, 1185 [same].)

9 ***Substantial Legal Questions.*** Uber’s appeal also presents “difficult questions of law.”  
10 (*Emeryville, supra*, 69 Cal.2d at p. 537.) This Court’s Order is the *first* to consider (even if only  
11 preliminarily) whether Uber is a “hiring entity” under AB 5, or to determine that all drivers who use  
12 Uber are “employees” under AB 5. The questions raised by the Court’s holdings on these issues of  
13 first impression are at least “substantial.” (*Veyna*, 170 Cal.App.4th at 157.) For example, under the  
14 Court’s sweeping view of what constitutes a “hiring entity,” anyone who lists their empty guest house  
15 on Airbnb may be Airbnb’s “employee,” because they are using Airbnb to “provid[e] ... services for  
16 remuneration.” (Order at p. 21; see also Evangelis Decl., Ex. A at pp. 16–18, 39–51.) The same would  
17 be true under the Court’s view of prong “B” of the ABC test—because helping customers rent  
18 residential space is “part of [Airbnb’s] usual, everyday business operations,” anyone who lists a space  
19 for rental on Airbnb “can only be viewed ‘as working in the hiring entity’s business.’” (Order at p. 26;  
20 see also Evangelis Decl., Ex. A at pp. 18–21, 39–51.) Whether AB 5 extends this far should be decided  
21 by an appellate court before Uber and the drivers who use its Rides app are forced to bear the  
22 consequences of reclassification.

23 The injunction’s terms are also vague and overbroad. Plaintiff has admitted that Uber need not  
24 reclassify all drivers as employees to comply with the statute (Reply Br. at p. 25); as a result, even  
25 under Plaintiff’s view of the law, there are additional business changes Uber could make—granting  
26 even more independence to drivers—that could satisfy AB 5. Yet, Plaintiff did not ask for an injunction  
27 setting out the specific changes needed to satisfy the ABC test—instead, it sought and received a  
28 sweeping injunction requiring Uber to reclassify all drivers as employees *regardless* of their

1 circumstances and *even if* Uber makes further changes to increase driver independence. (Order at pp.  
2 32–33.) By preventing drivers from *ever* being classified as “independent contractors,” the injunction  
3 violates the requirement that an injunction “clearly define ... the conduct prohibited” (*Evans v. Evans*  
4 (2008) 162 Cal.App.4th 1157, 1167) and “go no further than is absolutely necessary” to protect the  
5 plaintiff’s rights (*People v. Mason* (1981) 124 Cal.App.3d 348, 354).

6 ***No Countervailing Harm to Plaintiff.*** The harm to Uber alone supports the grant of a  
7 discretionary stay—and the fact that a stay will not have any significant effect on Plaintiff even further  
8 supports granting it. (See *Mills*, 98 Cal.App.3d at p. 861 [granting stay because it “is necessary to  
9 protect the appellants from the irreparable injury,” while also noting, as further support, that “[a] stay  
10 will not result in disproportionate injury to respondent”].) Any monetary harm Plaintiff might incur as  
11 the result of a stay can easily be recovered in this case. The Court held that the primary harm Plaintiff  
12 would suffer absent an injunction is the lack of various taxes Defendants would pay if drivers were  
13 classified as employees. (Order at pp. 27–28 [quoting *Dynamex*, 4 Cal.5th at pp. 912–913].) But  
14 Plaintiff can seek monetary damages if it wins on the merits, and lost funds can be recovered. (*Mills*,  
15 98 Cal. App. 3d at p. 861 [stay-pending-appeal that allowed the appellant to take fees from the  
16 respondent did “not result in disproportionate injury to respondent, since excessive fees may easily be  
17 refunded” if the appellant lost]; see also *Friedman v. Friedman* (1993) 20 Cal.App.4th 876, 890 [if  
18 compensatory relief is available for a harm, it is not “irreparable”].)<sup>2</sup>

19 **C. At a Minimum, the Court Should Temporarily Stay the Injunction to Permit Uber**  
20 **to Petition the Court of Appeal for a Writ of Supersedeas**

21 Even if the Court declines to stay the injunction pending *completion* of Uber’s appeal, the Court  
22 should, at a minimum, exercise its discretion to *temporarily* stay the injunction while Uber files a  
23 petition for writ of supersedeas in the Court of Appeal. This limited relief will likely only require a  
24 stay for a few weeks.

25 \_\_\_\_\_  
26 <sup>2</sup> Although the Court also cited “harm to misclassified workers who lose significant workplace  
27 protections” and “unfairness to employers who must compete with companies that misclassify” as  
28 harms to Plaintiff absent an injunction (Order at p. 28), there is no evidence in the record that any  
worker’s rights have been violated or that any employer has been harmed. As Uber has explained, the  
vast majority of drivers have *rejected* Plaintiff’s demand that they be treated as “employees”—they  
value their independence and the ability to control their own work that Uber’s app provides.

1 **IV. CONCLUSION**

2 The Court should clarify that the injunction is mandatory and therefore automatically stayed  
3 pending Uber’s appeal. Even if the Court deems the injunction prohibitory, it should issue a stay to  
4 avoid the severe and irreparable harm that would result. At the very least, the Court should issue an  
5 interim stay so that Uber can petition the Court of Appeal for a writ of supersedeas.  
6

7 DATED: August 11, 2020

8 GIBSON, DUNN & CRUTCHER LLP  
9 THEODORE J. BOUTROUS JR.  
10 THEANE EVANGELIS  
11 BLAINE H. EVANSON  
12 HEATHER L. RICHARDSON

13 By: /s/ Theane Evangelis  
14 Theane Evangelis

15 Attorneys for Defendant  
16 Uber Technologies, Inc.  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28