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14

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

17

18 LYDIA OLSON; MIGUEL PEREZ;   CASE NO. 2:19-cv-10956
   POSTMATES INC.; and UBER
   TECHNOLOGIES, INC.,
19   **COMPLAINT FOR VIOLATION OF**
              Plaintiffs,   **FEDERAL AND CALIFORNIA**
20   **CONSTITUTIONAL RIGHTS,**
        v.   **DECLARATORY, INJUNCTIVE,**
21   **AND OTHER RELIEF**
   STATE OF CALIFORNIA; XAVIER
22 BECERRA, in his capacity as Attorney **DEMAND FOR JURY TRIAL**
   General of the State of California; and
23 "JOHN DOE," in his official capacity,

24   Defendants.

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.

INTRODUCTION

7

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 Economy Worker Study*, at 4-5, June 2017, https://fdocuments.us/document/

24   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 side work. @LorenaSGonzalez, Twitter (Dec. 19, 2019, 6:29 AM), https://twitter.

27   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)

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 Instead of a daily commute, an outdated workplace hierarchy, and the daily grind of an inflexible 9-to-5 job, these workers enjoy the freedom to be their own bosses, set their own hours, and earn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

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

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

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

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

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

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

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[5] Will Rinehart, *The Modern Online Gig Economy, Consumer Benefits, and the 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/.

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