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12

13 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
14 **CITY AND COUNTY OF SAN FRANCISCO**
15

16 THE PEOPLE OF THE STATE OF
CALIFORNIA,

17 Plaintiff,

18 v.
19

20 DOORDASH, INC., and DOES 1 through 10,
inclusive,

21 Defendants.
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28

CASE NO. CGC-20-584789

**DEFENDANT DOORDASH, INC.'S NOTICE
OF MOTION TO STAY PROCEEDINGS
AND MOTION TO STAY PROCEEDINGS;
MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT THEREOF**

[[Proposed] Order filed concurrently herewith]

Department 304
Honorable Judge Anne-Christine Massullo

SAC Filed: November 23, 2020
Hearing Date: February 3, 2021
Hearing Time: 9:15 a.m.
Trial Date: None set

ELECTRONICALLY
FILED
Superior Court of California,
County of San Francisco
12/21/2020
Clerk of the Court
BY: JUDITH NUNEZ
Deputy Clerk

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

2 **PLEASE TAKE NOTICE THAT** on February 3, 2021 at 9:15 a.m. or as soon thereafter as the
3 matter may be heard before the Honorable Anne-Christine Massullo of the San Francisco Superior Court,
4 Department 304, located at 400 McAllister Street, San Francisco, California 94102, Defendant DoorDash,
5 Inc. will, and hereby does, move this Court pursuant to Code of Civil Procedure section 128(a) for an order
6 staying proceedings in this action pending the completion of substantially similar litigation.

7 DoorDash has demurred to Plaintiff's Second Amended Complaint ("SAC") and asked the
8 Court to dismiss this action in its entirety or hold it in abatement pursuant to the doctrine of exclusive
9 concurrent jurisdiction. (See Demurrers at pp. 7–8.) If it does not do so, the Court nevertheless should
10 exercise its "inherent power to stay [these] proceedings in the interests of justice and to promote judicial
11 efficiency" pending the resolution of *Marciano v. DoorDash, Inc.*, No. CGC-18-567869 (S.F. Super.
12 Ct.), a Private Attorneys General Act action before another department of the San Francisco Superior
13 Court similarly alleging that workers who perform deliveries through DoorDash's platform are
14 misclassified as independent contractors, and seeking similar relief. (*Freiberg v. City of Mission Viejo*
15 (1995) 33 Cal.App.4th 1484, 1489.) Plaintiff will not suffer prejudice as a result of the requested stay.

16 This Motion is made pursuant to Code of Civil Procedure section 128(a), the common law rule
17 of exclusive concurrent jurisdiction, and the court's inherent authority; it is based on this Notice and
18 Motion to Stay Proceedings, the accompanying Memorandum of Points and Authorities in support
19 thereof, DoorDash's Demurrers to Plaintiff's SAC and the Memorandum of Points and Authorities and
20 other documents filed in support thereof, all records and pleadings on file with the Court in this matter,
21 all other matters of which the Court may take judicial notice, and all further evidence and argument
22 that may be presented in reply to any opposition to this Motion or at the hearing on the Motion.

23
24 Dated: December 21, 2020

GIBSON, DUNN & CRUTCHER LLP

25
26 By:  _____

27 Joshua Lipshutz

28 Attorneys for Defendant DOORDASH, INC.

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INTRODUCTION

DoorDash has demurred to Plaintiff's Second Amended Complaint ("SAC") on the basis that Proposition 22 ("Prop 22") abates this action and independently bars all of Plaintiff's claims. (See Demurrers at pp. 11–19.) Alternatively, the Court should hold this case in abatement pursuant to the doctrine of exclusive concurrent jurisdiction pending resolution of *Marciano v. DoorDash, Inc.*, No. CGC-18-567869 (S.F. Super. Ct.), a Private Attorneys General Act ("PAGA") action before another department of the San Francisco Superior Court similarly alleging that workers who perform deliveries on DoorDash's platform ("Dashers") are misclassified as independent contractors, and seeking similar relief. (See Demurrers at pp. 19–21.)

If the Court does not dismiss this action in its entirety, or hold it in abatement pursuant to the doctrine of exclusive concurrent jurisdiction, it nevertheless should exercise its discretion to stay these proceedings pending the resolution of *Marciano*, which is awaiting court approval of a class-action and PAGA settlement that would resolve the same unpaid wage claims of the same class members on whose behalf Plaintiff seeks restitution here, and that would "bind[] ... the state." (*Arias v. Superior Court* (2009) 46 Cal.4th 969, 985–986 ["[T]he judgment in [a PAGA] action is binding ... on government agencies."].) This Court has inherent authority to manage its own docket to achieve efficiencies for itself, for counsel, and for litigants by staying these proceedings pending resolution of an earlier-filed action raising the same claims and addressing the same controversy asserted by Plaintiff here. (See, e.g., *Landis v. N. Am. Co.* (1936) 299 U.S. 248, 254; *Walker v. Superior Court* (1991) 53 Cal.3d 257, 267; *Freiberg v. City of Mission Viejo* (1995) 33 Cal.App.4th 1484, 1489.)

The passage of Proposition 22 ("Prop 22") provides a compelling case for the Court to exercise its inherent authority. Whatever urgency Plaintiff may once have claimed in this suit has evaporated, as Plaintiff has acknowledged by withdrawing its motion for preliminary injunction. And even if Plaintiff (wrongly) claims that it may still seek some relief on behalf of Dashers for alleged historic violations of the repealed ABC worker classification test, that is precisely the relief the plaintiffs in *Marciano* are seeking for themselves—and that DoorDash has agreed to provide in a class-action and PAGA settlement of that case, in the amount of \$88.5 million. A motion for preliminary approval of the revised settlement is pending before the *Marciano* court (Hon. Andrew Cheng). If this Court does not

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