SUPERIOR COURT OF CALIFORNIA

COUNTY OF SAN FRANCISCO

BENJAMIN VALDEZ, et al.,

Plaintiffs,

vs.

UBER TECHNOLOGIES, INC., et al.,

Defendants.

Case No. CGC-20-587266

ORDER DENYING PLAINTIFFS' EX PARTE APPLICATION FOR TEMPORARY RESTRAINING ORDER

On October 22, 2020, plaintiffs in this case filed a putative class action against Uber Technologies, Inc. and associated entities under Labor Code §§1101 and 1102. The suit alleges that Uber's campaign for Proposition 22 on its driver app is unlawful. Now, six days before the election that will decide Prop 22, plaintiffs move ex parte to enjoin all "coercive" campaigning on Uber's app. The application for a temporary restraining order is denied.

To begin, the request for extraordinary injunctive relief is belated. According to plaintiffs, Uber's driver app campaign began in August. (Amd. Memo 3:12.) Why plaintiffs waited months to sue and seek injunctive relief is not explained, and such delay casts doubt on their case. (See *O'Connell v. Sup. Ct.* (2006) 141 Cal.App.4th 1452, 1481; *Lusk v. Krejci* (1960) 187 Cal.App.2d 553, 556.) Indeed, standing alone, delay in seeking injunctive relief can be the basis for its denial. (Id.)

Turning to the familiar two-pronged test for whether a preliminary injunction should issue or not, both prongs favor Uber. (*Butt v. State of California* (1992) 4 Cal.4th 668, 677-78.)

Importantly, "the relative interim harm to the parties from issuance or non-issuance" is the *interim* harm. (Id.) Here, that interim is the next six days. On November 3, Californians will vote Proposition 22 up or down, Uber's campaign will of necessity end and thus any TRO enjoining Prop 22 campaigning would be effectively moot.

Plaintiffs' claimed interim harm is "political coercion" by Uber. (Amd. Memo 14:24.) However, plaintiffs' papers point to no Uber driver who has been in any way punished for not cooperating with the Proposition 22 campaign or for advocating against it. Even drivers who complain about the Uber campaign claim minimal change to their behavior.[1] No reason exists to believe that this lack of harm will change during the six days Uber's campaign continues.

On the other hand, Uber claims harm from violation of core First Amendment rights – rights of both Uber and its drivers. Two features of the proposed TRO are particularly repugnant to free speech rights.

First, temporary restraining orders that "forbid speech activities" are "classic examples of prior restraints," and are "the most serious and the least tolerable infringement on First Amendment Rights." (*Alexander v. U.S.* (1993) 509 U.S. 544, 550; *Nebraska Press Ass'n v. Stuart* (1976) 427 U.S. 539, 559.) As our California supreme court states, this is particularly true of injunctions against political speech. (*Wilson v. Sup. Ct.* (1975) 13 Cal.3d 652, 658.)

Second, plaintiffs' proposed TRO would require Uber to disseminate *plaintiffs'* messages – e.g., to "inform" drivers that they have "the right to vote…against Proposition 22 or not vote at all." (Not. 1:13-22.) This compelled political speech would "require even more immediate and

[1] See, e.g., Doe Dec. ¶7 ("I responded once to the pop-up that I support Proposition 22"); Castellanos Dec. ¶6 (when pop-up allowed him to click "Yes on Prop 22" or "OK," he clicked the latter).

urgent grounds" than the compelled silence of a prior restraint. (*Janus v. Am. Fed'n* (2018) 138 S.Ct. 2448, 2464.)[2]

Plaintiffs argue, without citation, that "Uber's challenged communications lack First Amendment protection because they are false and misleading." (Amd. Memo 12:27-28.) However, U.S. Supreme Court precedents "leave no doubt that the truth or falsity of a statement on a public issue is irrelevant to the question whether it should be repressed in advance of publication." (*Wilson,* 13 Cal.3d at 658.)

The TRO test's other prong is "the likelihood that the moving party will ultimately prevail on the merits." (*Butt,* 4 Cal.4th at 677-78.) The factors already addressed apply here as well. It is unlikely that plaintiffs will ultimately prevail on the merits.[3]

Dated: October 28, 2020

Richard B. Ulmer Jr.
Judge of the Superior Court

[2] Internal citations and quote marks are omitted from this order.
[3] This order assumes for argument's sake that Uber drivers are currently its employees.

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I, the undersigned, certify that I am an employee of the Superior Court of California, County Of San Francisco and not a party to the above-entitled cause and that on October 28, 2020 I served the foregoing **order denying Plaintiff's ex parte application for temporary restraining order** on each counsel of record or party appearing in propria persona by causing a copy thereof to be served electronically by email sent to the email addresses indicated below.

Date: October 28, 2020

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