COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss. **SUPERIOR COURT**
C.A. NO. 2084CV01519-BLS1

ANDREA JOY CAMPBELL, in her official capacity as ATTORNEY GENERAL for the COMMONWEALTH OF MASSACHUSETTS,

Plaintiff,

v.

UBER TECHNOLOGIES, INC. and LYFT, INC.,

Defendants.

ATTORNEY GENERAL'S PROPOSED CONCLUSIONS OF LAW AS TO LYFT, INC.

INTRODUCTION

For the purposes of the Commonwealth's Wage and Hour Laws, every person "performing any services … shall be considered an employee," unless the putative employer satisfies its burden of proving each prong of the three-part test for independent contractor status set forth in G.L. c. 149, § 148B(a). Since 2011, Defendant Lyft, Inc. ("Lyft") has engaged thousands of drivers in Massachusetts to provide transportation for its rideshare business and treats the drivers that are transporting Lyft riders from point A to point B as independent contractors, rather than employees. But Lyft has not satisfied its burden under Section 148B(a) to classify these drivers as independent contractors. Because the trial evidence conclusively establishes that (1) individuals who drive for Lyft perform services for the company and (2) that Lyft cannot meet its burden on all of Section 148B's three prongs, the Court should declare that drivers are Lyft's employees, rather than independent contractors, under Section 148B(a).

As to Section 148B(a)'s "threshold" requirement, the Attorney General has established that drivers perform services for Lyft because they provide the very service—rides on demand—that Lyft sells. Drivers perform this service each time they transport a rider, with Lyft taking its share of the rider payment for each ride a driver provides and earning more revenue as drivers complete more rides—in other words, the revenue that flows to Lyft from its rideshare business is directly dependent on drivers' work of transporting riders. The service drivers perform generates substantial revenue for Lyft and is so necessary to its business that without drivers their present business model would cease to exist. The trial evidence thus more than sufficiently establishes the provision of services under Section 148B(a) and, separately, refutes Lyft's argument that it is just a passive go-between on trip transactions between drivers and riders.

Because the Attorney General has established that drivers perform services for Lyft, Lyft must refute the presumption that drivers are employees by establishing each prong of Section

148B(a)'s three-part test. It cannot carry that burden for any portion of the relevant period (*i.e.*, July 2017 through the present).

On Section 148B(a)'s first prong, Lyft cannot establish that drivers are "free from control and direction" in connection with the rides they provide for riders, "both under [their] contract … *and* in fact." G.L. c. 149, § 148B(a)(1) (emphasis added). Before drivers can receive ride requests through Lyft's App they must accept detailed terms and conditions that Lyft imposes on them in voluminous driver agreements. In these mandatory agreements, Lyft retains sole control over, among other things, assigning rides, setting rider fares, setting driver compensation, setting and collecting the service fees Lyft keeps from each ride a driver provides, tracking and monitoring the locations of drivers, and issuing driver suspensions and deactivations. Lyft unilaterally drafts the terms in the agreements and also retains the sole right to modify those agreements. In addition to its right to control drivers, Lyft exercises control in-fact over drivers through its use of algorithmic management systems that govern nearly every aspect of a driver's performance of the ride itself. Some of Lyft's means of control over drivers, such as setting and enforcing ride quality standards, are explicit, while other means of control, such as the use of matching, pricing, and incentives, are deeply imbedded in Lyft's algorithmic processes but equally important in controlling the behavior of drivers.

Lyft also cannot meet its burden under Section 148B(a)'s second prong because drivers' services are not provided "outside the usual course" of Lyft's business. Indeed, drivers are essential to Lyft's Ridesharing business because they provide the very transportation services that Lyft sells. Lyft holds itself out as a transportation service to the public and its investors, contracts with passengers to provide rides "on demand," and then depends on drivers to furnish this service. Because Lyft retains a portion of each ride's fare, drivers generate substantial revenue for Lyft that

increases as drivers provide more rides; and without drivers to transport customers, Lyft would forgo this revenue and be unable to deliver the service they sell to riders.

Finally, Lyft cannot meet its burden under Section 148B(a)'s third prong to show that drivers are "customarily engaged in an independently established business." The trial evidence establishes that Lyft unilaterally sets rider fares and driver pay rates, establishes the ride types that a driver can provide and does not allow drivers to offer differentiated product or services on the App, controls the payment processing system (and thus bear the risk of loss of non-payment for the services), and precludes drivers from taking steps to establish and promote themselves as independent entrepreneurial businesses. As well, the trial evidence shows that drivers are integral to Lyft's Ridesharing business, do not have a proprietary interest in a going concern that can be sold or transferred, and are subject to deactivation by Lyft for failing to meet Lyft's standards.

Accordingly, because Lyft cannot establish any—much less all—of the statutory requirements of independent contractor status, this Court should declare that drivers are Lyft's employees under G.L. c. 149, § 148B(a), and issue an injunction preventing Lyft from continuing to misclassify drivers.

PROPOSED CONCLUSIONS OF LAW

I. DRIVERS PERFORM SERVICES FOR LYFT WHEN THEY PERFORM RIDES FOR RIDERS.

1. In asking whether the worker is "performing any service" for the putative employer, the Legislature intentionally designed Section 148B(a)'s threshold question to be a simple, unidirectional inquiry. *See Patel v. 7-Eleven, Inc.*, 489 Mass. 356, 362 (2022) (quoting *Tze-Kit Mui v. Mass. Port Auth.*, 478 Mass. 710, 712 (2018)) (Under Massachusetts law, "the plain language of [a] statute" is "'the principal source of insight into legislative intent,'" and where the "statutory language is clear and unambiguous," the statute must be applied as written).

2. The ordinary meaning of the three words that the Legislature used in crafting the phrase "performing any service" confirms this. A "statute must be interpreted according to the intent of the Legislature ascertained from all its words construed by the ordinary and approved usage of the language, considered in connection with the cause of its enactment, the mischief or imperfection to be remedied and the main object to be accomplished, to the end that the purpose of its framers may be effectuated." *Patel*, 489 Mass. at 362-63 (quoting *Harvard Crimson, Inc. v. President & Fellows of Harvard College*, 445 Mass. 745, 749 (2006)).

3. Working through the three words in the threshold phrase, the plain meaning of the first word—"perform"—is "to begin and carry through to completion; do" or "to take action in accordance with the requirements of; fulfill." The Am. Heritage Dictionary 921 (2d 3d. 1982); *accord* Webster's II New Riverside Univ. Dictionary 873 (1984) ("Webster's II").[1] "Any," meanwhile, means "one or some, regardless of sort, quantity, or number." Webster's II, at 115; *see Dep't of Hous. & Urb. Dev. v. Rucker*, 535 U.S. 125, 131 (2002) (quoting *United States v. Gonzales*, 520 U.S. 1, 5, (1997)) ("As we have explained, 'the word 'any' has an expansive meaning, that is, 'one or some indiscriminately of whatever kind.'"). And although dictionaries define the term "service" to have a number of meanings, the most relevant here are "employment in duties or work for another" or "an act of assistance or benefit to another or others; favor." The Am. Heritage Dictionary 1121 (2d ed. 1982); *accord* Webster's II, at 1066.[2] Taken together, a

[1] When a statutory phrase is not specifically defined by the Legislature, as is the case with "performing any service" in Section 148B, the words must be "construed according to the common and approved usage of the language," G.L. c. 4, § 6, ¶ 3, which may be reflected in dictionary definitions. *See Drake v. Leicester*, 484 Mass. 198, 200 (2020).

[2] Significantly, the Supreme Judicial Court has construed the statutory term "service" quite similarly in an analogous context, defining it to mean "an act done for the benefit or at the command of another" or "action or use that furthers some end or purpose: conduct or performance that assists or benefits someone or something." *Comm'r of Rev. v. AMIWoodbroke, Inc.*, 418 Mass.
(footnote continued)

worker who takes any action that assists or benefits the putative employer "perform[s]" a "service" under Section 148B(a).

4. A broad interpretation of the phrase "performing any service" is warranted because Section 148B(a) is a remedial statue that "should be a given a construction that furthers, not defeats, its purpose." *See, e.g.*, *Monell v. Boston Pads, LLC*, 471 Mass. 566, 576 (2015) ("[T]here is no question that the independent contractor statute is a remedial statute" and therefore "should be given a construction that furthers, not defeats, its purpose."); *see also Patel*, 489 Mass. at 360 (noting "the Legislature's broad, remedial intent" in enacting Section 148B). This necessarily includes the interpretation of the statute's threshold phrase, which triggers the presumption that a worker is an employee. G.L. c. 149, § 148B(a). Indeed, as the SJC explained in *Depianti v. Jan-Pro Franchising Int'l., Inc.*, "[i]n light of the statute's broad remedial purpose, 'it would be error to imply … a limitation where the statutory language does not require it.'" 465 Mass. 607, 621 (2013) (quoting *Psy-Ed Corp. v. Klein*, 459 Mass. 697, 708 (2011)) (rejecting a narrowing of the threshold question to only those circumstances "where the putative employer and the putative employee have entered into a contract together").

5. A broad interpretation of the phrase "performing any service" is also supported by the Legislature's deliberate insertion of the word "any" into the threshold phrase before the bill codifying Section 148B was enacted in 1990. *See* Addendum at 4 (legislative history of St. 1990, c. 464, "An Act Enhancing the Enforcement of Labor Laws"). The original draft of Section

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92, 95 (1994) (quoting Webster's Third New Int'l Dictionary 2075 (1961) in construing the phrase "services performed" in tax statutes G.L. c. 63 §§ 33 and 39A (1992 ed.)). The SJC did so in the context of concluding that the issuing of interest-free loans from a subsidiary to a parent corporation was a "service[e] performed," noting in the process that its precedent "support[s] a broad interpretation of the term 'services'" and that such an interpretation "gives effect to the statute's broad remedial purpose." *Id.*

148B(a) did not include the word "any." *Id.* at 1-2. That the Legislature chose to include a word with such an expansive meaning, *see Rucker*, 535 U.S. at 131; *Sciaba Constr. Corp. v. Frank Bean, Inc.*, 43 Mass. App. Ct. 66, 69 (1997) ("We read the phrase 'any Subcontractor' in the indemnity clause to mean precisely that, any subcontractor."), conclusively establishes that it intended to broadly define the scope of services that a worker could perform for a putative employer. [3]

6. Additionally, courts do not construe the threshold inquiry to impose a heavy burden on parties asserting a misclassification claim. Quite the contrary: the cases recognize that the threshold burden is modest, with the focus of the analysis in most Section 148B cases quickly turning to the three-pronged ABC test, under which the employer carries the burden.

7. In the leading case on the interpretation and scope of Section 148B(a)'s threshold question (*Sebago v. Boston Cab Dispatch, Inc.*, 471 Mass. 321 (2015)), the SJC held that taxicab drivers performed services for *two different* entities. 471 Mass. at 331. The drivers performed a service for the radio association defendants because "[t]he revenue flowing to the radio association" was "directly dependent on the drivers' work of transporting passengers," even though the drivers "were not required to perform services for the radio associations." *Id.* at 331. Similarly, despite an "opaque" factual record," the SJC assumed that the drivers could also have provided a service to the taxi medallion owner defendants by driving lease taxicabs with

[3] Read hyperliterally, "performing any service" conceivably could encompass an action as miniscule as a favor. But the Attorney General does not understand such purely gratuitous endeavors to fall within Section 148B(a)'s threshold inquiry. And, in any event, for the reasons addressed *infra*, this Court need not tarry with the outer bounds of the "performing any service" inquiry. *See also Sebago v. Boston Cab Dispatch, Inc.*, 471 Mass. 321, 329 (2015) ("'[O]ur respect for the Legislature's considered judgment dictates that we interpret the statute to be sensible, rejecting unreasonable interpretations unless the clear meaning of the language requires such an interpretation.'") (quoting *DiFiore v. Am. Airlines, Inc.*, 454 Mass. 486, 490-91 (2009)).

advertisements sold by the medallion owners, because such a service would have "increased the value" of the medallions and "facilitated the sale of advertising space." *Id.* at 331.[4]

8. Although the service in question must benefit the putative employer, there is no requirement in Section 148B(a) that the activities of the worker be directed solely toward the putative employer. It is enough that services be for the putative employer's customers.[5] Likewise because Section 148B(a)'s threshold question is unidirectional, asking only whether the individual "perform[s] any services," evidence of the services that the putative employer purports to provide to the worker is irrelevant to the threshold inquiry.

A. Drivers Perform a Service for Lyft Because the Revenue Flowing to Lyft from the Ride is "Directly Dependent" on Drivers' Transportation of Riders.

9. The SJC has determined that the threshold question's low evidentiary burden is satisfied when the revenue flowing to the putative employer is directly dependent on the worker's performance of the service. *Sebago*, 471 Mass. at 331. And while *Sebago*'s revenue-focused direct-dependence approach to Section 148B(a)'s threshold inquiry does not necessarily define the full scope of "services" covered by the statute, it perfectly illustrates how low the worker's burden is for establishing that they are "performing any service" for the putative employer.

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[4] The SJC's revenue-focused direct dependence analysis has been repeatedly deployed to explain why a worker has satisfied the threshold inquiry. In *Da Costa v. Vanguard Cleaning Sys., Inc.*, for instance, the Superior Court explained that the franchisee-plaintiffs performed a service for a commercial cleaning company, the top layer of a "three-tier franchise structure," because the company's revenue … [wa]s directly dependent on the commercial cleaning work of the plaintiffs and other unit franchisees" and the company's structure effected an "end run" around Section 148B(a). 34 Mass. L. Rptr. 483, 2017 WL 4817349, at *5 (Mass. Super. Ct. Sept. 29, 2017). Similarly, in *Ruggiero v. Am. United Life Ins. Co.*, the District Court, in a brief, revenue-centric analysis, explained that an insurance agent performed two "distinct" services for the defendant insurance company. 137 F. Supp. 3d 104, 113, 118 (D. Mass. 2015) (services performed were (1) selling "at least some insurance products on behalf of" the company and (2) by "recruit[ing], train[ing], and supervis[ing] career agents who also sold insurance products" for the company).

[5] It would be a similarly hyper-literal interpretation of "services" to say that only those activities that a worker does within the company's four walls can be "services" for the company.

10. Applying *Sebago*'s "direct dependence" test here, drivers perform services for Lyft by providing the very service—"rides on demand"—that Lyft is selling. The trial evidence establishes that the revenue flowing to Lyft from its Ridesharing business is "directly dependent" on drivers' transportation of riders, for at least *three* reasons. *Sebago*, 471 Mass. at 331.

11. *First*, Lyft's Ridesharing business only makes money if its drivers transport riders. *See People v. Uber Tech., Inc.*, 56 Cal. App. 5th 266, 292 (Cal. Ct. App. 2020) (quoting *Cunningham v. Lyft, Inc.*, 2020 WL 261302 at *10) ("Lyft ignores that the drivers are 'provid[ing] transportation services to riders,' and that service ... is the service for which Lyft is being paid by riders."). [6] [redacted] AG FF 284-287. Lyft recognizes this per-ride revenue when the ride is complete (*i.e.*, after the driver's performance of the service—transporting a rider—is complete). AG FF 249. And the fees Lyft collects on each ride are derived from the difference between the rider's payments on the ride (which Lyft determines) and what the driver earns on the ride (which Lyft also determines) and are collected after the ride is completed. AG FF 150-154, 156, 248, 246. [7] *Cf. Sebago*, 471 Mass.

[6] The cited District Court decision in *Cunningham* regarded the plaintiffs' motions for a preliminary injunction. While an earlier order, in *Cunningham v. Lyft, Inc.*, 450 F.Supp.3d 37 (D. Mass. 2020), denying Lyft's Motion to Compel Arbitration and Stay Proceedings Pending Arbitration, was later reversed by the First Circuit on appeal, the First Circuit's reversal was not on the basis of the likelihood of success on the merits, and thus did not touch the District Court's evaluation of whether drivers performed services for Lyft. *See Cunningham v. Lyft*, 17 F.4th 244, 254 (1st Cir. 2021).

[7] Although not directly pertinent to Section 148B(a)'s threshold inquiry, Lyft provides the drivers performing the rides such limited information about ride pricing that they do not know either the amount Lyft is charging the rider or the amount of fees (booking and service) that Lyft is collecting on a ride until *after* the ride is complete. AG FF 40, 151, 154. *See infra*, CL 47-50.

at 331 (no services performed by drivers where drivers paid a flat fee for use of the medallions and the putative employer's income was not dependent on rides/services provided).

12. *Second*, Lyft acknowledges that it does not earn much (if any) revenue from its Ridesharing business *but for* drivers' performance of rides for riders. *Subcont. Concepts, Inc. v. Comm'r of Div. of Unemp't Assist.*, 86 Mass. App. Ct. 644, 647 (2014) (driver "provided services" for company by delivering goods for its clients, who hired the company to supply them delivery drivers). If a ride is not completed, Lyft admits it does not collect a service fee or otherwise generate revenue from its provision of the services it claims to provide to riders and drivers. AG FF 255-258. In other words, Lyft's ridesharing business is not viable without drivers' performance of rides for riders.[8]

13. *Third*, whether in its filings with the SEC, statements on Earnings Conference Calls, or in public statements, Lyft and its leading executives routinely confirm how drivers' services are integral to the value of the business. They regularly tell investors that Ridesharing revenues are a primary source of Lyft's value, *see* AG FF 294-296, that Lyft takes a share of each ride a driver provides and that this benefit's Lyft's bottom line, *see* AG FF 274-283, and that they have a superior supply of drivers (as compared to competitors) to meet the demand for ride requests, *see* AG FF 326, 369-370. Lyft's CEO David Risher, has even attributed Lyft's ability to attract passengers to drivers and the service they perform: "They're coming in because of the brand, because of the service, [and] because of our driver community." AG FF 335.

14. Because drivers provide a revenue-generating service necessary to sustain Lyft's business each time they transport a rider, the trial evidence overwhelmingly satisfies Section

[8] Relatedly, Lyft does not know the portion of revenue attributable to the discrete services that it states it provides drivers and riders (*i.e.*, matching, payment processing, verification of the quality of market participants). AG FF 255-258.

148B(a)'s low threshold burden for establishing that a worker is performing a service. *Sebago*, 471 Mass. at 331.

B. Because Section 148B(a)'s Threshold Question is Unidirectional, Asking Only Whether the Worker "Perform[s] Any Service" for the Putative Employer, Evidence of the Services that Lyft Purports to Provide to Drivers and Riders is Irrelevant to the Threshold Inquiry.

15. Because the sole question in Section 148B(a)'s threshold inquiry is whether drivers are "performing any services" for Defendants, *see supra*, CL 1-8, for the *four* reasons set out below, the factual question of whether Lyft provides services to drivers is not relevant to, and has no place in, the threshold inquiry.

16. *First*, as a textual matter, Section 148B(a) is clear that the threshold inquiry is unidirectional, asking exclusively whether the worker performs any service for the putative employer. G.L. c. 149, § 148B(a). The inquiry does not encompass the additional question of whether the putative employer performs any service for the worker. *See, e.g., Joslyn v. Chang*, 445 Mass. 344, 352 (2005) ("The duty of the court [is] to adhere to the very terms of the statute, and not, upon imaginary equitable considerations, to escape from the positive declarations of the text."). Nor does it contemplate a court resolving the threshold inquiry through a complex assessment of the relative weight of the services exchanged between the parties. G.L. c. 149, § 148B(a).

17. *Second*, the SJC has repeatedly described the threshold question in unidirectional terms. *See, e.g.*, *Patel*, 489 Mass. at 370 (noting that Section 148B(a) analysis "begins with a threshold determination whether the putative employee 'perform[s] any service' for the alleged employer"); *Sebago*, 471 Mass. at 329 ("The threshold question is whether the plaintiffs provided services to the defendants."); *Depianti*, 465 Mass. at 621 (quoting Section 148B(a)) ("First, 'an individual performing any service' is presumed to be an employee."); *Somers v. Converged*

Access, Inc., 454 Mass. 582, 589 (2009) ("Under § 148B(a), an individual who performs services shall be considered to be an employee…."). And it has never engaged in a balancing test when answering the threshold question, let alone given any consideration to services that the putative *employer* purportedly provides to the putative *employee*. *See, e.g., Sebago*, 471 Mass. at 331 (examining only whether the drivers performed any service for the radio associations and medallion owners). All of this is for good reason: the statute's threshold question contemplates a simple, unidirectional inquiry, with no provision for the consideration of supposed services the employer purports to provide to the employee. *Tyler v. Michaels Stores, Inc.*, 464 Mass. 492, 495 (2013) ("[K]eeping in mind the rule that the actual words chosen by the Legislature are critical to the task of statutory interpretation").

18. *Third*, the amendment to Section 148B(a) in 1990 that inserted the threshold phrase "performing any service" was part of the Legislature's rational solution to the significant burdens that misclassification imposes on workers, law-abiding employers, and the Commonwealth. Subsequent legislative developments with Section 148B(a) make clear that since 1990 the Legislature has sought to strengthen (not weaken) the statute. *See* An Advisory from the Attorney General's Fair Labor Division on M.G.L. c. 149, § 148B, 2008/1 ("AG Advisory 2008/1") at 2 (discussing Legislature's expansion of Section 148B(a) presumptive employee status between 1990 and 2004) (available at: https://rb.gy/plgusd).

19. *Fourth*, there is no reason to read non-textual restrictions into Section 148B(a)'s plain text, such that the statute would provide less protection for workers than intended by the Legislature, particularly where the SJC has been loath to do so. *See Depianti*, 465 Mass. at 621 (error to imply limitation—there, requiring an employment contract for Section 148B(a) to apply—where the statutory language does not require it); *Somers*, 454 Mass. at 591-92 (rejecting two equitable arguments regarding the meaning of Section 148B(a) because, as to the first, "[n]one

of the statutory criteria speaks of the employer's intent; rather all speak of the nature of the service provided," and, as to the second, "[h]ad the Legislature been concerned with th[e] risk [of worker windfalls], it would not have written [Section 148B] to impose strict liability on employers").

20. Accordingly, the Court should give no weight, for purposes of the threshold inquiry, to the variety of services that Lyft purports to provide to users (*i.e.*, drivers and riders). *See, e.g.,* Lyft's Proposed Findings of Fact ("LFF") ¶ 3 ("Lyft provides a number of services that bring together these drivers and riders and enable them to transact with each other, which was very difficult before intermediaries like Lyft."); LFF ¶ 208 ("Lyft's matching algorithm reduces search costs for riders and drivers to find each other by efficiently proposing pairings of riders with nearby drivers."), ¶ 220 ("The Lyft platform provides several services to riders and drivers that promote trust and safety on the platform."), ¶ 236 ("Lyft's platform provides a two-way ratings system, which aims to increase trust between riders and drivers."), ¶ 252 ("Lyft provides customer service to both drivers and riders to promote their use and enjoyment of the Lyft application and to increase trust and safety on the platform."), ¶ 258 ("One service that Lyft provides to drivers is a pricing algorithm that determines prices for rides facilitated by the Lyft platform."). [9]

[9] In any event, Lyft's contrary argument rests on a logical fallacy—that the presence of one (*i.e.*, the services they claim to provide to drivers) establishes the absence of the other (*i.e.*, that drivers do not perform *any* services for the companies). But even under Lyft's characterization of its relationship with drivers, it is still plausible that services flow simultaneously in the other direction, too. *See Sebago*, 471 Mass. at 331 (drivers performed a service for the radio association defendants because "[t]he revenue flowing to the radio association" was "directly dependent on the drivers' work of transporting passengers"). Indeed, the radio association defendants in *Sebago* performed a much less sophisticated version of the matching services that Lyft provides for drivers, *see* 471 Mass. at 324 (mentioning "certain enumerated dispatch services" provided by the radio dispatch defendants to their members), but the SJC did not consider these services as part of the threshold inquiry, *id.* at 331. Because the threshold inquiry is not a balancing test, there is no reason to consider the services purportedly flowing from Lyft to drivers. All that matters is the unidirectional inquiry set forth in the statute's express text.

21. For the above reasons, the Court should find that drivers' performance of rides for riders satisfies the threshold inquiry in Section 148B(a). Drivers are therefore presumed to be Lyft's employees and the burden of proof shifts to Lyft to establish that it can meet each of Section 148B(a)'s three prongs. Because, as explained below, the trial evidence demonstrates that Lyft cannot meet its burden under Section 148B(a), the Court should grant judgment for the Attorney General.

II. LYFT CONTROLS AND DIRECTS DRIVERS' PERFORMANCE OF SERVICES FOR RIDERS, DOING SO BOTH UNDER THE CONTRACTS FOR PERFORMANCE AND IN FACT.

22. Under Section 148B(a)'s first prong, Lyft must establish that drivers are "free from control and direction in connection with the performance of the service, both under [their] contract for the performance of service *and* in fact." G.L. c. 149, § 148B(a)(1) (emphasis added). As the Supreme Judicial Court has recognized, the use of the term "and" makes the Section 148B(a)(1) test itself "conjunctive." *Depianti*, 465 Mass. at 622. Thus, "a company asserting that a worker is an independent contractor must show that the individual is free from its control *both* as a matter of contract and as a matter of fact." *DaSilva v. Border Transfer of MA, Inc.*, 296 F. Supp. 3d 389, 400 (D. Mass. 2017) (emphasis in original). The worker, meanwhile, can establish misclassification by prevailing on just one branch of the test. *Id.*

23. As detailed below, Lyft cannot satisfy either component of Section 148B(a)'s first prong because it, by contract, retains control over nearly every material aspect of drivers' performance of rides and, in practice, exercises control over nearly every aspect of drivers' performance of services. In strikingly similar circumstances, the highest appellate courts in Pennsylvania and New York have held that app-based drivers and couriers are not free from the company's direction and control. *Lowman v. Unemp't Comp. Bd. of Rev.*, 235 A.3d 278, 303-04 (Pa. 2020) (Uber driver an employee under Pennsylvania's unemployment compensation law

based on "weighty" "indicia of control"); *Matter of Vega*, 35 N.Y.3d 131, 137-38 (2020) (Postmates' couriers employees due to company's control over assignments, compensation, and route tracking); *Matter of Lowry*, 189 A.D.3d 1863, 1865-66 (N.Y. App. Div. 2020) ("Uber exercised sufficient control over drivers to establish an employment relationship" for purposes of New York's unemployment compensation law). This Court should reach the same conclusion here.

A. In Its Various Agreements with Drivers, Lyft Retains Control Over Nearly Every Material Aspect of Drivers' Performance of Rides.

24. "[C]ourts commonly look to contractual language as a starting point for assessing how a worker ought to be classified." *Machado v. System4, LLC*, 471 Mass. 204, 214 (2015). Specifically, they examine "the degree of control and direction *retained* by the employing entity over the services performed." *Athol Daily News v. Bd. of Rev. of Div. of Unemp't Assist.*, 439 Mass. 171, 176-77 (2003) (emphasis added);[10] *see Machado*, 471 Mass. at 214 (citing *Rainbow Dev. LLC v. Mass Dep't Indus. Accidents*, 2005 WL 3543770, at *3 (Mass. Super. Nov. 17, 2005)) ("examining written provisions of agreement to assess whether entity, despite classifying workers as independent contractors, asserted control over worker performance by way of contract").

25. Lyft's lengthy and complex agreements with drivers establish a web of contractual provisions that empowers Lyft to retain control of nearly every aspect of drivers' work. To provide rides through the App, drivers must accept a contract Lyft calls the "Terms of Service" ("ToS"). AG FF 19-21. *See Balles v. Babcock Power, Inc.*, 476 Mass. 565 571 n.12 (2017) (internal quotation omitted) ("The interpretation of a contract constitutes a question of law for the court."). In the ToS, Lyft describes that drivers and Lyft are in "a direct business relationship," that the

[10] Due to the nearly identical language in the first and third prongs of Section 148B(a) and G.L. c. 151A, § 2 (regarding unemployment compensation), courts often look to cases interpreting the same prong of the other statute. *Somers*, 454 Mass. at 589 (citing *Athol*, 439 Mass. at 175 (interpreting c. 151A)).

relationship between drivers and Lyft is "solely that of independent contracting parties," and that drivers disclaim the existence of an "employment relationship." AG1727 § 19. But proclamations about drivers' classification status in form agreements like the ToS do not control, *see, e.g., Boston Bicycle Couriers, Inc. v. Deputy Dir. of Div. of Unemp't Assist.*, 56 Mass. App. Ct. 473, 484 (2002) (court must look beyond how the contracts label Defendants' relationship with drivers *and* disregard "boilerplate language," "designations," and "labels," inserted to avoid liability, as all carry no meaning if they are inconsistent with control retained in the contract or the facts of the relationship), especially where Lyft retains the control by contract over every key aspect of the ride. The *nine* examples that follow illustrate the control retained by Lyft in its various agreements with drivers. *See also DaSilva v. Border Transfer of MA, Inc.*, 377 F. Supp. 3d 74, 95 (D. Mass. 2019) ("A worker does not qualify as an independent contractor merely because his employer declines to exercise an extensive right to control reserved in an employment contract.").

26. *First*, in the ToS, Lyft retains control over drivers' ability to access the App by requiring drivers to create and register an account with Lyft while itself retaining the ability to temporarily or permanently deactivate the driver's account without notice. AG1769 (02.06.18, §§ 9-10, 16); AG1770 (08.26.19); AG1771 (11.27.19); AG1772 (12.09.20); AG1773 (04.01.21); AG1727 (01.22.24). *See Weiss v. Loomis, Sayles & Co., Inc.*, 97 Mass. App. Ct. 1, 7-8 (2020) (indicium of control where business retains the rights in contract to terminate, suspend, or otherwise discipline a worker "at will without reason"); *Lowman*, 235 A.3d at 303-04, 305 (Uber "retain[ing] the right to deactivate" driver another "weighty" indicial of control). As provided in the ToS and Lyft's Community Guidelines (which drivers must also accept before gaining access to drive on the App, *see* AG FF 21), Lyft may deactivate a driver for a broad range of reasons, including violating any of Lyft's guidelines or agreements, engaging in what Lyft describes as "restricted activities," "fall[ing] below Lyft's star rating or cancellation threshold," or engaging in

any activities risking "the safety of the Lyft community or third parties." AG1727 §§ 9-10, 16. And Lyft can immediately deactivate drivers by suspending or deactivating a driver, conducting its own investigation, and determining whether the driver's attempts to cure the violation were to "Lyft's reasonable satisfaction." AG1727 §§ 9-10, 16; *see also* AG1732 at 4456 (Community Guidelines 3.28.24 ("Anyone who doesn't take these guidelines – and Lyft's Terms of Service – seriously may be permanently removed from the Lyft platform.").

27. *Second*, Lyft, in the ToS, retains nearly all rights to determine when, how, and which rides a driver receives through the App. AG1727 § 1 (drivers allow Lyft to determine which ride requests to provide to a driver based on various "factors" and "other considerations" chosen by Lyft); AG1773 § 1 (identical); AG1772 § 1 (identical). This leaves Lyft with full discretion whether to provide a driver a ride request. *See Lowman*, 235 A.3d at 306 ("Even with the Driver App activated, whether or not [driver] would have the opportunity to provide a ride service was determined by Uber which, by way of algorithm, determines which available driver will be offered an assignment"). And Lyft, through the ToS, expressly limits the sharing of a rider's contact information with a driver. AG1772 at 4409 (indicating that Lyft does not share rider and driver contact information with one another, unless to resolve a lost item). Consequently, Lyft, by contract, does not allow for drivers to obtain future opportunities to provide rides for particular riders outside of the App. AG1772 at 4409; *see also* AG1727 at 4405 (same). *See Lowman*, 235 A.3d at 306 ("Driver could not build his own client base under the auspices of his Uber relationship because his contract limits his communications with customers to the Uber App and are permitted only for the purpose of providing rides through Uber.").

28. *Third*, Lyft retains the right to determine the price of the ride for the rider, the driver earnings, and the amount of its own revenue on the ride. *See Driscoll v. Worcester Telegram & Gazette*, 72 Mass. App. Ct. 709, 715 (Mass. App. Ct. 2008) (right to unilaterally determine the

price of the service being sold to the customer is one indicator of control); *Lowman*, 235 A.3d at 303-04 (Uber's "pay structure" a "weighty" indicia of control). According to Lyft's "Driver Addendum" (another agreement that drivers must accept before gaining access to drive on the App, *see* AG FF 21-22), Lyft will "charge the Rider an amount calculated or determined by Lyft." AG 1730 at § 4. Similarly, Lyft determines the compensation to be earned by the driver. AG 1730 at § 1 (setting forth driver earnings and prescribing numerous methods that Lyft may, "at Lyft's discretion," use to calculate a driver's earnings). And finally, Lyft controls the entire process for collecting payment from the Rider. AG 1730 at § 3 ("Lyft will collect the payments owed to [a driver] by Riders and other third parties as [a driver's] limited payment collection agent").

29. *Fourth*, in the Driver Addendum, Lyft retains control over the receipt and handling of rider payments. AG1165 at 0796. *See Driscoll*, 72 Mass. App. Ct. at 715 (business' retention of contractual right to require customers to pay the company directly for services, rather than the worker, is an indicium of control); *Lowman*, 235 A.3d at 306 (contractual requirement to use Uber's "payment processing functionality" evidence of control). All payments by riders must occur through the App. AG 1730 at § 6 (Driver Add., Jan. 22, 2024) (Lyft acts as the driver's "limited payment collection agent" and "will collect payments owed to you"). As such, Lyft retains the right to adjust or withhold payment to a driver for a variety of reasons. AG 1730 at § 3 (right to withhold or adjust payment for (i) fraud or abuse, (ii) to "resolve a Rider complaint", or (iii) ending a ride "at a location that is different than the destination submitted through the Lyft App"); *see Lowry*, 189 A.D.3d at 1866 (noting that Uber reserves the right to adjust the fare charged to the rider). Lyft places few limitations on its decision to withhold or adjust driver payments, conceding only that such a decision will be "exercise[d] in a reasonable manner." AG 1730 at § 3.

30. *Fifth*, Lyft retains the control to solicit, record, and maintain rider ratings of drivers and then either reward or punish drivers based on the ratings. *See Vargas v. Spirit Delivery &*

Distrib. Servs., Inc., 245 F. Supp. 3d 268, 282 (D. Mass. 2017) (finding that putative employer's clients sent customer satisfaction surveys asking customers to grade drivers' performances, and maintained and accessed "performance matrices" for all drivers to determine whether drivers would receive a bonus, or whether warning or termination was needed). In its ToS, Lyft explains that it has the authority to "deactivate [a driver's] account immediately" if a driver "fall[s] below Lyft's star rating . . . threshold." AG1727 at ¶ 16. The extent of Lyft's unilateral control of star ratings is also evident in the fact that nowhere in Lyft's ToS or any other agreement does Lyft actually state what numerical star rating threshold Lyft uses to determine deactivation. FF 73; *see generally* AG1727. Lyft retains broad discretion whether to reinstate deactivated drivers, providing that the company will do so only if the driver can "cure the issue to Lyft's reasonable satisfaction." AG 1727 § 16; *see Driscoll*, 72 Mass. App. Ct. at 712, 714-15 (newspaper publisher/distributor "used customer complaints as a method of monitoring carrier performance" and "could discharge a carrier because of customer complaints"); *Lowman*, 235 A. 3d. at 305 ("Uber supervised [driver's] work, using passenger ratings of his services.").

31. *Sixth*, Lyft uses the driver agreements to impose behavioral standards for drivers' performance of rides. *See Hogan v. InStore Group, LLC*, 512 F. Supp. 3d 157, 178 (D. Mass. 2021) (express retention of the control in the contract is enough to influence behavior of workers governed by that policy). For instance, Lyft's Community include statements about "respect[ing] personal differences and keep[ing] your judgments to yourself," or "making sure it's OK before sharing a personal story, making a phone call, or turning up the volume on your party playlist." AG FF 25.

32. *Seventh*, Lyft retains sole discretion in contract for vehicle requirements. *See Subcont. Concepts*, 86 Mass. App. Ct. at 646, 648 (contract requirements for how courier maintains personal vehicle used for deliveries indicative of direction and control); *Lowman*, 235 A.3d at 284

(Uber required driver's vehicle meet its criteria to be authorized for use). While drivers are permitted to use their personal vehicles to provide rides, any vehicle they use must meet vehicle requirements that are set by Lyft. AG FF 86. Lyft has regional vehicle requirements, which list the vehicle models that Lyft allows drivers to use and specifies certain aspects of the car's condition and appearance. *See, e.g.*, AG FF 86; AG1680 ("what you need to drive with Lyft in Massachusetts"). Lyft's Community Guidelines also set vehicle expectations. AG1084 at 0045 (stating "[y]ou give five stars for great experiences with your driver . . ., like excellent service, a squeaky-clean car").

33. *Eighth*, Lyft imposes a system of virtual supervision over drivers by retaining the right to collect and monitoring drivers' location data. *See Lowman*, 235 A. 3d. at 304-05 ("in the virtual world in which Uber operates, it monitor[s] and supervise[s] [drivers'] provision of driving services"). To this end, Lyft collects "precise location when [drivers] open and use the app, including while the app is running in the background." AG 1728 § 2 (Lyft Privacy Policy). Lyft retains the rights to collect highly granular location information and mobile sensor data "such as speed, direction, height, acceleration, deceleration." AG 1728 § 2. Lyft broadly retains the right to collect and use drivers' personal data for reasons including, providing a "secure and safe experience" and "encourag[ing] safe driving behavior and avoid unsafe activities." AG 1728 § 3. Lyft also retains the right to use drivers' data to improve the Lyft platform, "[p]erform research, testing, and analysis," and "[m]onitor and improve [Lyft's] operations and processes." AG 1728 § 3.

34. *Finally*, Lyft retains the unilateral ability in contract to modify or supplement its various agreements with drivers. *See, e.g.*, AG 1727 § 2 (ToS); AG1769; AG1771; AG1772;

AG1773; AG1615.[11] If drivers do not accept the modifications, Lyft reserves the right to limit them from accessing the App. AG 1727 § 2 (ToS) AG1082 § 12.1. Additionally, drivers may not decline modifications to information hyperlinked in the ToS as "such modifications shall be effective when posted," and includes applicable terms that are incorporated into the ToS by reference. AG1727 § 2; *see id.* § 5 (hyperlink to Driver Addendum), *id.* at 4371 (hyperlink to Lyft's Community Guidelines), *id.* § 7 (hyperlink to Privacy Policy), *id.* § 8 (hyperlink to Lyft Rewards).

B. In Practice, the Relationship Between Lyft and Drivers is One Where Lyft Exercises Control Over Nearly Every Aspect of Drivers' Performance of Services.

35. On top of retaining significant control over drivers in the various driver agreements, Lyft controls and directs the material aspects of drivers' performance of services for riders. *See Athol,* 439 Mass. at 177-78 (test for control in fact centers on whether the worker has "freedom from supervision 'not only as to the result to be accomplished but also as to the means and methods that are to be utilized in the performance of the work.'"). The inquiry focuses on the actual relationship between the parties and turns on whether the "'worker's activities and duties [were] actually … carried out with minimal instruction.'" *Sebago*, 471 Mass. at 332 (quoting AG Advisory 2008/1); *Ruggiero v. Am. United Life Ins. Co.*, 137 F. Supp. 3d 104, 113 (D. Mass. 2015) ("the crux of the inquiry is in the *actual* relationship between the parties, and whether the plaintiff performs his work in fact 'with minimal instruction'").

36. As detailed below, when a driver agrees to perform transportation services, Lyft controls the material aspects of the ride from start to finish, determining the sequence of requirements drivers must follow, offering ride requests to drivers, setting prices, and supervising

[11] Lyft has updated the Terms of Service, Driver Addendum, Privacy Policy, and Community Guidelines repeatedly over the relevant period. *See* AG FF 19, 22-24, 26.

the driver's work until their performance of the service—the ride—is complete. *See infra*, CL 39-53. More broadly, Lyft establishes and enforces standards of quality and continuously gauges whether drivers are meeting or failing those standards. *See infra*, CL 54-63. And, finally, while the decision to log into the App resides with individual drivers, Lyft uses extensive measures to influence when, where, and for how long drivers will work once they make themselves available to perform rides. *See infra*, CL 64-67.

1. Lyft's driver application process.

37. Courts consider whether a company requires workers to submit to an application process or interview process before the worker can begin work as part of the indicia of control. *See Weiss*, 97 Mass. App. Ct. at 8 (company interviewed worker first). Here, Lyft controls who can drive using the Lyft App by requiring drivers to complete a driver application process. AG FF 9-16. As part of its application process, Lyft requires drivers to, among other things, create an account with Lyft, provide detailed information about the driver's vehicle including the color, year, make, and model, complete a community safety education course, respond to a series of questions about the driver's driving schedule and use of other apps, and agree to the various driver agreements. FF 9-16. Lyft rejects some drivers and sometimes places drivers on an applicant waitlist. FF 17-18.

38. As part of this process, Lyft makes clear that drivers may not allow third parties to use their Lyft account to provide rides. FF 14, AG1727 (ToS stating "you may not allow other persons to use your User account"). This too is an indicium of control. *Driscoll*, 72 Mass. App. Ct. at 715 ("prohibited the use of substitute carriers with delivery histories that it did not deem acceptable"); *DaSilva*, 377 F. Supp. 3d at 95-96 (drivers are permitted "to either send replacement drivers to cover their routes or simply not take routes for those days" and "can hire and fire helpers and secondary drivers and decide how much to pay them.").

2. Lyft controls the ride from start to finish.

a. Drivers must follow a regimented set of steps in the App to receive ride requests and complete rides.

39. Lyft's active involvement in each step of the ride demonstrates the significant level of control the company exerts over drivers' performance of rides. *See Subcont. Concepts*, 86 Mass. App. Ct. at 648 (requirement that worker perform task according to a sequence of steps prescribed by the putative employer is an indicium of control); *see also Lowman*, 235 A. 3d at 304 (without [Uber's Driver App], [the driver] could provide no service. It was the sole means by which he connected, met, or interfaced with a passenger."). To receive ride requests, a driver must let Lyft know they are available to work by pressing an icon in the App. AG FF 33, 35. Lyft controls whether drivers receive ride requests through the App. AG FF 35. When notifying drivers of the availability of a ride request, Lyft provides them with limited information about the ride and rider—just the first name of the rider, the rider's star rating, the rider's approximate pickup location, the rider's approximate drop off location, and the amount that driver will earn if the driver accepts the ride request. AG FF 38. Lyft then limits drivers' time to evaluate and accept ride requests to approximately 15 seconds, offering the request to another driver if the first one fails to respond within this window of time. AG FF 36. *See Lowry*, 189 A.D.3d at 1864-66 (considering the 15 seconds the driver has to accept the customer's request as part of substantial evidence to supporting conclusion that Uber exercised sufficient control over drivers to establish an employment relationship).

40. If the driver accepts the ride request, Lyft provides driving directions for the driver to navigate to the pickup location. AG FF 39. Once the driver navigates to the pickup location, they must then swipe another icon in the App to notify Lyft. The App then tells the driver to "wait" for the rider and displays a clock counting down from five minutes. AG FF 41. Once the rider

enters the vehicle, the driver presses an icon that says "slide to pickup." *Id.* And when the driver delivers the rider to the destination, they must notify Lyft of this by swiping an icon in the App to complete the ride. AG FF 47.

41. In addition, from the start to finish of each ride, drivers must keep the App open and running. AG FF 33-47; *see Lowman*, 235 A.3d at 304-05 ("In the virtual world in which Uber operates, it monitored and supervised [the driver's] provision of driving services."). This means that while drivers are providing rides, they are never out of Lyft's sight. *Id.* at 305 (Uber's tracking technology "gave Uber real-time reporting on the progress of the service [the driver] provided"). This is further illustrated by the fact that Lyft tracks drivers via GPS data throughout the course of a ride and monitors whether the driver is on course to the correct destination. FF 42. When Lyft detects that a driver has not made enough progress to a destination or when a driver has driven off the expected course Lyft sends drivers in-App messages about their progress on the ride. FF 43-46. Where Lyft, through the App, remains so involved in real-time in the actual driving assignment—knowing drivers' location at all times when they are logged in, checking on driver progress, and receiving real-time reporting on the service drivers provide, including the time it takes for each ride—this is a strong indicium of control over the drivers' work. *See Lowman*, 235 A.3d at 305.

b. Lyft limits driver interaction with riders.

42. Lyft exercises additional control over drivers' performance of services by managing and mediating complaints from riders, rather than having riders and drivers directly interact. AG FF 114-124; *see Hogan,* 512 F. Supp. 3d at 178 (customer complaints routed back to the company rather than to individual workers); *Lowman*, 235 A.3d at 306. Lyft solicits feedback from riders in the form of ratings and comments through the App, but does not provide riders' feedback directly to drivers. AG FF 118-121. Instead, Lyft reviews rider feedback and determines

what information to share with drivers and what corrections Lyft believes drivers should make. AG FF 118-121. Lyft will text and email drivers to inform them of customer (rider) complaints and direct the driver to Lyft tutorials and Lyft's Help Center in order to improve. AG FF 83, 99-102. *See Vega*, 35 N.Y.3d at 138 (putative employer's handling of customer complaints an indicium of control). Lyft further determines, based on those complaints, if disciplinary action should be taken against the driver. AG FF 98-102.

43. Besides mediating communication between riders and drivers, Lyft limits the free exchange of ride-related information between the rider and driver. AG FF 115. This too is control. *See, e.g., Lowman*, 235 A.3d at 292 (Uber does not provide drivers with customer contact information). Lyft gives the driver 15 seconds to evaluate information about the ride. AG FF 36. While considering the ride request, the driver does not know the amount the rider is paying for the ride. AG FF 40, 154. After the ride ends, Lyft does not tell the driver what the rider was charged for the trip. AG FF 48, 154. The rider's payment is collected by a third-party payment processor determined by Lyft and the driver has no right or opportunity to ask for payment from the rider directly. AG FF 48.

c. Lyft uses its matching algorithm to control the assignment of rides to drivers.

44. As a further indicium of control over the performance of the ride, Lyft determines the assignment of rides to drivers. AG FF 33, 35, 129-142. *See Lowman,* 235 A.3d at 306 ("whether or not [the driver] would have the opportunity to provide a ride service was determined by Uber which, by way of its algorithm, determines which available driver will be offered an assignment"), *Vega,* 35 N.Y. 3d at 137-38 (Postmates' couriers are employees due to company's control over assignments, compensation, and route tracking). To do so, Lyft developed and maintains a

sophisticated matching algorithm to evaluate potential matches of riders and drivers, and then select the pairing in accordance with Lyft's internal company objectives. AG FF 125-142.

45. [redacted] AG FF 125-142. [redacted] AG FF 138. [redacted][12] AG FF 143-144.

46. [redacted] FF 145-149. Finally, to keep drivers working longer on the App, Lyft's matching algorithm also assigns some drivers a ride request for a subsequent ride while the driver is already underway with an existing ride, a ride assignment process called "queued rides." AG FF 57, 58-60. Once the driver completes the ride already underway, Lyft directs the driver to a new pickup location for the next ride. AG FF 58-60.

[12] [redacted] FF143-144.

d. Lyft unilaterally determines the amount to charge riders for rides and the amount that drivers are paid for performing the ride.

47. The ability to determine the amount of compensation of the worker and the price of the goods or service for the end user (*i.e.*, customer) is also a significant factor for control. *See Driscoll*, 72 Mass. App. Ct. at 715. ("WT & G carriers did not own the newspapers, which remained the property of WT & G, nor could they sell the papers at a price higher than that established by WT & G"); *Vega*, 35 N.Y.3d at 138 (Postmates unilaterally sets the delivery fees and bills the customers directly through the app); *Lowman*, 235 A.3d at 304 (Uber unilaterally determines the passenger fares and the driver's percentage); *Lowry*, 189 A.D.3d at 1864-65 (Uber unilaterally calculates the fare for the rider). Here, the trial evidence establishes that Lyft exercises control over *both* the price of the service and the compensation of the driver.

48. As to rider prices, Lyft exerts unilateral control over the prices charged to riders. Drivers have no knowledge until *after* a ride is completed what rider price Lyft has set for the ride or the fee that Lyft intends to collect from the ride. AG FF 150, 154, 161-168. And even if drivers were able to persuade a rider to tell them the amount they were charged for the ride, drivers are not able to negotiate this amount with Lyft. *Id.*

49. As to driver compensation, Lyft unilaterally determines the compensation drivers receive and its calculation of that compensation. AG FF 150-153, 173-189. Significantly, driver compensation is not directly connected to rider prices, allowing Lyft to set driver compensation based on Lyft's determination of a driver's willingness to work. AG FF 158. Drivers cannot negotiate changes in the amount of earnings they receive for providing a ride with Lyft. AG FF 150-153.

50. Additionally, as part of the assessment of a putative employer's control through pricing mechanisms, courts look at whether the putative employer unilaterally adds or modifies

fees or charges to the end consumer. *See Lowry*, at 1864-65 (discussing Uber's ability to charge riders a cancellation fee). Lyft's control of pricing is evident in this case by Lyft's imposition of various additional fees on riders, including cancellation fees on riders who cancel a ride request, and damage fees for riders who cause damage to a driver's vehicle. AG FF 123-124, 152. At times, Lyft also unilaterally adjusts the rider price after the driver has completed the trip—in some cases refunding or crediting a rider. AG FF 124.

e. Lyft controls the payment process by accepting payment from the rider and separately paying the driver.

51. To gauge control in-fact, courts also assess the extent of control that the putative employer has over collecting payments from the customer and paying the worker. *See Driscoll*, 72 Mass. App. Ct. at 715 (facts supporting control in-fact where "WT & G's customers paid WT & G directly and WT & G paid the carrier"). In the context of app-based work, courts have found significant indicia of control when the company collected payments from customers (*i.e.*, riders), retained its fees, and then paid the worker. *See Lowman*, 235 A.3d at 73 (noting that Uber collects the fares, retains its service fee, and then pays the driver); *Vega*, 35 N.Y.3d at 138 (relevant to control in-fact that company directly pays the couriers their compensation); *Lowry*, 189 A.D.3d at 1864-65 (Uber collects the customer's payment through the app at the completion of the trip, subtracts a service fee for itself, and then pays the driver the remainder).

52. Here, the evidence shows that Lyft controls the payment process. It maintains the payment information of each rider and charges each rider for the full price of the ride. AG FF 48-52. The driver does not collect payment directly from the rider, nor does the driver even know the amount the rider is paying for the ride. AG FF 48-52. Rather, to collect the rider payment, Lyft directs third-party payment processors (ones that Lyft has chosen) to charge the rider a specified amount, acquire those funds from the rider's designated account, and deposit the funds into a Lyft-

controlled bank account. AG FF 48-50. Payment of the driver happens separately from the process to charge the rider. AG FF 51-52. Lyft pays drivers from funds in a Lyft-controlled account on the direction of Lyft; the payment processor draws those funds according to Lyft's instructions and sends them to a driver as per Lyft's instructions. AG FF 51-52.

53. Control is also shown when the putative employer (as opposed to the individual performing services) is the one that bears the loss when a consumer fails to pay. *See Vega*, 35 N.Y.3d at 138 (Postmates bears the loss when customers do not pay); *Lowry*, 189 A.D.3d at 1864-65 (Uber bears the loss if it cannot collect the fare). Here, the evidence shows that Lyft has so separated the driver pay-out and rider pay-in process that Lyft bears the loss if a rider's payment fails. AG FF 49.

3. Lyft further controls drivers using a rider feedback system.

a. Lyft controls drivers by suspending or deactivating those drivers who fail to follow Lyft's quality and performance requirements.

54. Control is also present when the business can terminate, suspend, or otherwise discipline the worker. *See Weiss*, 97 Mass. App. Ct. at 7-8. [redacted]. AG FF 63-79, 88-113. The threat of deactivation ensures that drivers provide services in a manner consistent with the company's objectives of ensuring a positive experience for its customers—the riders. AG FF 63-64. For instance, Lyft enforces its star ratings thresholds to control the quality of each driver's service by disciplining them when they do not meet quality standards reflected by Lyft's ratings thresholds.

AG FF 65-75.[13] Similarly, Lyft has a cancellation threshold for drivers that it enforces through suspensions and deactivations. AG FF 76-79.

55. [redacted]. AG FF 88-113. [redacted] AG FF 89-95.

56. Lyft also controls the processes drivers must follow to be reactivated. Deactivated drivers are entirely dependent on Lyft's discretion as to whether or not the company will reinstate their driving account. AG FF 111-112. While a driver can appeal their deactivation, that appeal is made to Lyft, and deactivations due to low ratings are usually irreversible. AG FF 111-112.

b. Lyft controls drivers by using a system for evaluating and rating drivers.

57. An employer's supervision and monitoring of a worker's performance is indicative of control. *DaSilva*, 377 F. Supp. 3d at 95. This includes the use of a customer rating system to evaluate a worker's performance. *See O'Connor v. Uber Tech., Inc.*, 82 F. Supp. 3d 1133, 1150-51 (N.D. Cal. 2015) (Uber's rating system is an integral part of Uber's ability to "monitor drivers" and ensure that drivers adhere to Uber's "quality control" requirements).

13 [redacted]

58. Here, although Lyft presents its star rating system as a reciprocal tool for riders and drivers to rate one another, the evidence shows that Lyft uses its star rating system to align driver behavior with the company's objectives. AG FF 65-75. This ratings system is so central to the control of drivers that at the end of every ride a driver receives a star rating on a scale of one five stars and drivers cannot opt out of being rated. AG FF 65-75. [14]

59. Lyft uses the star ratings to make decisions about which drivers it will permit to use the App. [redacted] Lyft monitors a driver's star rating and any comments that a rider submits about a driver. AG FF 65-75. Moreover, Lyft tells drivers their star ratings in the aggregate and informs drivers of ways to get higher ratings. AG FF 70, 97-101 (discussing emails and text messages from Lyft to drivers about improving a driver's star ratings, telling drivers "how to improve," "if your rating doesn't improve, your account could be deactivated"). [redacted] AG FF 75, 88-102. All of this has the effect of enforcing Lyft's standards of quality and causing drivers to adjust their behavior to conform to Lyft's expectations. AG FF 63-64.

60. [redacted] AG FF 76-79. Although Lyft tells drivers it has a cancellation threshold which can trigger deactivation, Lyft does not disclose the precise threshold or even how Lyft calculates the threshold—leaving drivers subject

[14] Lyft prompts riders to rate and comment on a driver's performance at the end of a ride, and if the rider fails to rate the driver's performance Lyft adds a default star rating of 5 stars. AG FF 65-68.

to Lyft's near total discretion. AG FF 76. [redacted]

[redacted] AG FF 79.

4. Lyft uses a loyalty program, called Lyft Rewards, to measure and control driver productivity and driver turnover.

61. While Lyft presents Lyft Rewards as an optional benefit for drivers, every driver is automatically enrolled in Lyft Rewards and Lyft uses the program to set and reinforce certain desired driver behaviors that align with the company's business goals. AG FF 221. In designing the program in this manner, Lyft Rewards functions as a mechanism to control the "mode, manner and means" by which the worker performs the service at issue. *Athol,* 439 Mass. at 177.

62. To earn rewards through the program drivers must maintain a certain star rating level and attain points by completing rides in areas that Lyft has indicated are busy areas. AG FF 218-220. Lyft sends emails and in-app messages telling drivers how many points they need, when to driver, and what ratings they need to keep to move up a level. AG FF 226-228. As such, Lyft Rewards serves to bring drivers online at busy times and into busy areas and leads those drivers to accept more rides. AG FF 221. Drivers have to continuously exhibit these behaviors to maintain their status in the program. AG FF 225.

63. [redacted]

5. Lyft controls the availability of drivers to perform rides.

64. Lyft's narrative that drivers can provide rides when they want, accept only the ride leads they prefer, and perform personal tasks while waiting for certain types of ride requests in no way undercuts a conclusion that drivers should be classified as employees under Section 148B(a)(1). While it is true that these items, in some contexts, are traditional indicia of independent contractor status, *see Comm'r of the Div. of Unemp't Assist. v. Town Taxi of Cape Cod, Inc.*, 68 Mass. App. Ct. 426, 430 (2007), in this instance they orbit on the periphery of the relationship between Lyft and drivers. *See Lowman*, 235 A.3d at 307 ("that Uber's business model does not require regularly scheduled work hours from its workforce does not translate into an automatic independent contractor relationship"). The core of that relationship is when drivers are performing services (*i.e.*, transporting riders from point A to point B). And as described above, Lyft exercises significant control over every aspect of the ride. *See supra*, CL 37-53.

65. In situations like this one (where a company exercises such significant control over the worker's performance of the service), Section 148B(a)(1) should not be construed to permit Lyft the ability to escape the consequences of its behavior simply by creating public-facing service rules that appear to allow workers some flexibility over when they perform that service. *Depianti*, 465 Mass. at 620 (quoting *Taylor v. E. Connection Operating, Inc.*, 465 Mass. 191, 198 (2013)) (Section 148B's purpose "is 'to protect workers by classifying them as employees, and thereby grant them the benefits and rights of employment, where the circumstances indicate that they are, in fact, employees.'"). This is particularly true where the construction of those service rules is entirely within the company's control (as is the case with Lyft). *See id.* at 621 (quoting *Cumpata v. Blue Cross Blue Shield of Mass., Inc.*, 113 F. Supp. 2d 164, 168 (D. Mass. 2000)) ("The Wage Act is meant to protect employees from the dictates and whims of shrewd employers.").

66. The shrewdness of Lyft's business model is that both its strict control over *how* drivers perform rides and its flexibility over *when* drivers perform rides benefit Lyft's primary business objectives. Indeed, Lyft exercises such significant control over *how* the ride is performed because its business model is premised on riders believing that they will receive the same overall customer experience regardless of the driver that they are matched with. Meanwhile, Lyft chooses to exercise such little public-facing control over *when* drivers work because (1) it advances Lyft's narrative that drivers are independent contractors and, thereby, (2) allows Lyft to avoid the costs of maintaining a labor force. This permits Lyft to construct the work arrangement around the smallest increment possible (the ride itself) so Lyft keeps costs down during periods of low demand, while allowing it to scale up quickly to meet periods when demand is high (such as during the morning commute or after a large concert). *See Lowman*, 235 A.3d at 307 ("that Uber allows all of its licensed drivers to work at their own discretion [] evidences a decision that there are a sufficient number of individuals with access to the Driver App to ensure that, despite erratic schedules, there will always be a driver available to service passengers requesting Uber's service").

67. Lyft also points to incentives, which it uses to increase the supply of drivers available to provide rides at particular times or locations, as another indicia of its lack of direction and control over drivers' behavior. But the operational reality is that incentives are another mechanism Lyft can deploy to scale up the supply of drivers available to provide rides (as opposed maintaining a constant labor force), *see* AG FF 190-196, and it can do so in a manner that encourages specific behaviors by drivers that benefit the company, *see, e.g.,* AG FF 193 (discussing Lyft's "optimal strategy" for driver earnings is to have drivers "drive at the times and places Lyft needs them most, stay online, and accept all of the trips we offer them"); AG FF 195 (through incentives "it's important that drivers are motivated to drive not only more in general, but also at specific times and in specific places where demand is higher"). And like a driver's base

pay, Lyft unilaterally determines the amount of incentives payments based on its estimates of supply and demand, deploys incentives to steer drivers to areas in which Lyft has identified higher rider demand, and controls incentive payments by selecting which driver can receive which bonus or incentive. AG FF 190-208, 453.

III. DRIVERS PERFORM SERVICES WITHIN THE "USUAL COURSE OF BUSINESS" OF LYFT WHEN THEY TRANSPORT RIDERS

68. Under Section 148B(a)'s second prong, Lyft must establish that the service drivers perform falls "outside the usual course of the business." G.L. c. 149, § 148B(a)(2). The controlling interpretation of Section 148B(a)'s second prong is set forth by the SJC in *Sebago*, 471 Mass. at 333-36, and further discussed by the Appeals Court in *Carey v. GateHouse Media Massachusetts Inc.,* 92 Mass. App. Ct. 801 (2018). Although there is "[n]o single test [that] controls the ["outside the usual course of business] inquiry," *GateHouse*, 92 Mass. App. Ct. at 805, the two courts have collectively identified three factors that bear on the outcome: (1) whether the service the individual is performing is necessary to the putative employer's business or merely incidental; (2) how the business self-describes itself; and (3) what other arguments the putative employer advanced. *Sebago*, 471 Mass. at 333-36 (addressing the first two factors); *GateHouse*, 92 Mass. App. Ct. at 805-11 (discussing all three factors).

A. Lyft's Ridesharing Business is Directly Dependent on the Rides that Drivers Perform.

69. The primary factor in the usual course of business inquiry is whether the service the worker is performing is necessary to the business of the employing unit or merely incidental. *Sebago*, 471 Mass. at 333; *GateHouse*, 92 Mass. App. Ct. at 807. For the reasons set out below, the services drivers perform are necessary, as opposed to merely incidental, to Lyft's Ridesharing business. *See infra*, CL 75-102. This conclusion is supported by the operational realities of Lyft's business model. *See infra*, CL 103-114.

1. The Service an Individual is Performing is Necessary (as Opposed to Merely Incidental) to an Employer's Usual Course of Business When the Business is Directly Dependent on the Success of the Worker's Endeavors.

70. In both *Sebago* and *GateHouse*, the critical factual inquiry that drove the courts' necessary/incidental analysis was whether the business was "directly dependent on the success of the [workers'] endeavors." *Sebago*, 471 Mass. at 334-35; *GateHouse*, 92 Mass. App. Ct. at 810. And significantly, the facts specific to this inquiry lead the two courts to divergent outcomes on Prong 2. *See Sebago*, 471 Mass. at 333-36 ("[T]he medallion owners' leasing business is not directly dependent on the success of the drivers' endeavors;" same for "radio associations" that dispatched drivers); *GateHouse*, 92 Mass. App. Ct. at 805-11 (opposite).

71. In *Sebago*, the SJC determined that taxi-drivers' efforts were incidental to the usual course of business of both the medallion owners and the radio dispatch associations. *Sebago*, 471 Mass. at 334-35. The court's conclusion as to the driver-medallion owner relationship was based on (a) the "*medallion owners [] not [being] concerned with the result of the plaintiff[-taxi drivers'] operations" and (b) the drivers not remitting a percentage of their revenues to the companies*. 471 Mass. at 334 (emphasis added). Turning to the driver-radio association relationship, the court looked at the "realities of the radio associations' actual business operations" as well as the "regulatory framework in which those operations occur," finding that the applicable regulation required medallion owners to purchase dispatch services regardless of how often those services were used in the transportation of passengers. *Id.* at 335 ("[T]he radio associations' raison d'etre … is to provide dispatch services to medallion owners—a service that is funded by medallion owners and only incidentally dependent on drivers.").

72. By contrast, the Appeals Court determined that the newspaper delivery drivers in *GateHouse* fell on the necessary side of the necessary/incidental inquiry when determining the

usual course of business of the defendant, a newspaper publisher. 92 Mass. App. Ct. at 805-11. The principal reason for the court's determination was that GateHouse was "very much concerned with the results of the [drivers'] operations" and its "*business [wa]s ... directly dependent on the success of drivers' endeavors*." *Id*. at 810 (internal quotation omitted) (emphasis added). This was because the employer collected a per unit price such that the employer benefitted as the worker sold more. *Id*. at 809.

73. The Appeals Court also offered several additional suggestions for when a worker's services are likely to be more necessary than incidental to the employer's business. They included: (1) if the putative "employer takes an active role in securing [customers] for its drivers to service," *GateHouse*, 92 Mass. App. Ct. at 808; *see id*. at 809 ("GateHouse books customers for its drivers."); (2) if the putative employer "deals directly with potential customers" when securing customers for the drivers, *id*.; (3) if the putative employer employs a "staff in a sales department that works to increase [customers]," "retain existing [customers]," and "obtain new [customers] in particular territories, *id*. at 808-09; (4) if the putative employer actively encourages drivers to generate additional customers, *id*. at 809 (providing free samples and "bount[ies] for each subscription [drivers] obtain); (5) if the customer pays the putative employer directly (as opposed to the employee), *id*.; (6) if the customer provides specific instructions/complaints to the putative employer (as opposed to the driver directly), with the putative employer then "conveying this information to the drivers" via a "system," *id*.; and (7) if the putative employer maintains "contractual disincentives to poor delivery service, as well as contractual incentives for expanding delivery service to new customers, *id*. at 810.

74. In addition to addressing case-specific facts, both *Sebago* and *GateHouse* discussed the "instructive" distinction between necessary and incidental services set out in two contrasting exemplar cases discussed in the section of the Attorney General's 2008 advisory on the meaning

of Section 148B's second prong. *Sebago*, 471 Mass. at 333-34; *GateHouse*, 92 Mass. App. Ct. at 808 (the exemplars "further illuminate[] the distinction between necessary and incidental services"). The two exemplars were (1) a limousine company where drivers "leased" the limousines ("necessary") and (2) a taxi company where drivers leased medallions ("incidental"). The services were described as necessary to the employer's usual course of business where limousine drivers "picked up customers who had 'booked' limousine services with [the putative employer]" and *"paid a percentage of their commissions to [the putative employer], thus establishing a financial interdependence, or a direct financial stake with the limousine company."* *Id*. at 808 (quoting *Sebago*, 471 Mass. at 334) (emphasis added). By contrast, a driver's services were depicted as incidental to the putative employer's usual course of business where the driver paid flat fees to lease the taxi medallions, medallion owners were "not concerned with the operation of the cabs or the results of their operation," and those owners' "leasing business [was] not directly dependent on the success of the drivers' endeavors." *Sebago*, 471 Mass. at 333-34; *GateHouse*, 92 Mass. App. Ct. at 808 ("drivers rendered no services for" the medallion-leasing businesses).

2. Drivers' Services are Necessary, as Opposed to Merely Incidental, to Lyft Because Lyft's Business is Directly Dependent on the Success of the Drivers' Endeavors.

75. For the seven reasons that follow, application of the *Sebago* and *GateHouse* factors compels a conclusion that drivers' services are necessary (as opposed to merely incidental) to Lyft's Ridesharing business.

a. Lyft collects a per-ride fee such that it benefits as drivers perform more rides.

76. Lyft's business is directly dependent on the success of drivers' performance of rides where Lyft's revenue directly relies on the completion of rides by drivers, such that its revenue

increases as drivers perform more rides. *See GateHouse*, 92 Mass. App. Ct. at 809-10 (newspaper delivery drivers work in the usual course of publisher's business where its revenue increases as drivers perform more work); *see also Sebago*, 471 Mass. at 333-34 (discussing *O'Hare-Midway Limo. Serv., Inc. v. Baker*, 232 Ill. App. 3d 108, 111 (Ill. App. Ct. 1992) (drivers' payment of percentage of commissions to limousine company established a "financial interdependence" or "direct financial stake" indicative of employment relationship)). Indeed, the trial evidence conclusively establishes that Lyft collects a per-ride price such that its revenue is directly dependent on drivers completing rides. Lyft's Ridesharing revenue is derived from the fees Lyft collects from Ridesharing trips completed by drivers, comprising Lyft's commission from the ride. AG FF 156-159, 252-254. The amount of the fee, which is variable, is solely determined by Lyft. AG FF 251-254. This alone is sufficient to show that Lyft is "financial[ly] interdepend[ent]" with drivers. *See GateHouse*, 92 Mass. App. Ct. at 808 (Where newspaper publisher collected a per unit price such that it benefitted as newspaper delivery drivers sold more units, held that publisher was "very much concerned with the results of the [drivers'] operations" and its "*business [wa]s ... directly dependent on the success of drivers' endeavors*.") (emphasis added).

77. [redacted] *See* AG FF 284-287. And Lyft acknowledges that the natural consequence of it deriving its revenue from per-ride commissions is that without riders requesting rides, and without drivers successfully completing them, it does not collect any revenue. AG FF 257-258.

78. Further demonstrating its reliance on the transportation service performed by drivers, Lyft also values its Ridesharing business according to metrics like "Rides," meaning

completed rides, and "Bookings," which reflects the "total dollar value of transportation spend" by riders on completed rides. *See* AG FF 269-271, 303.

79. Lyft also values its business according to Revenue as a Percentage of Bookings, which it defines as its revenue for a period divided by Bookings for the same period. AG FF 272. Revenue as a Percentage of Bookings is another word for Lyft's "take rate" on Ridesharing rides, and Lyft considers it a "key measure" of its ability to increase the amount of time that drivers are performing rides during the time that they are logged into Lyft's Ridesharing App. AG FF 273-274. As drivers perform more rides, Lyft believes that leads to an increase in either Lyft's Bookings, in Lyft's revenue, or both. AG FF 275.

b. Lyft takes an active role in securing customers for drivers to transport.

80. That Lyft "takes an active role in securing [customers] for its drivers to service," including "book[ing] customers for its drivers," is an additional indication that the rides drivers provide are necessary to Lyft's transportation business. *See GateHouse,* 92 Mass. App. Ct. at 808, 809. Courts routinely find that where a business contracts to provide customers a service, individuals who furnish that service are employees because they work within the employer's "usual course of business." *See, e.g.*, *Awuah v. Coverall N. Am., Inc.,* 707 F. Supp. 2d 80, 82, 84-85 (D. Mass. 2010) (janitorial workers employees of company that contracted with, and directly billed, customers for cleaning services the misclassified workers performed); *Martins v. 3PD, Inc.,* 2013 WL 1320454, at *13- 14 (D. Mass. 2013) (delivery drivers' services within usual course of business for company that held itself out as a last-mile delivery company and directly contracted with customers to provide those delivery services); *Rainbow Dev.,* 2005 WL 3543770, at *3 (company that "provide[d] its customers with the [auto detailing] services that [its] employees

perform[ed]" had misclassified those workers because, in part, without them the company "would cease to operate").

81. Lyft's Ridesharing business consists of connecting riders in need of transportation with drivers who provide rides, through Lyft's App. Lyft pre-arranges these rides by matching each rider to an available driver in the App. *See* AG FF 1-2. [redacted] AG FF 129-132.

82. Even after Lyft has emitted an initial ride assignment to a driver, it continues its matching process and may "swap" rider and driver assignments where a more efficient one has been found. AG FF 147. [redacted] AG FF 148.

83. Crucial to Lyft's ability to persuade riders to request rides on its App are "improving service levels," which for Lyft means lowering ETAs facing riders—the time it takes a driver to pick up a rider—and improving the pricing that faces a rider. AG FF 267. Lyft recognizes that when it "improv[es] service levels," its Revenue per Active Rider increases. AG FF 266. As a result, Lyft focuses on ensuring it has adequate driver supply in order to decrease the

rate of "prime time" pricing (or elevated pricing facing riders), and to make ETAs "faster." AG FF 326.

84. [redacted] AG FF 137-138. [redacted] AG FF 138.

85. Additionally, the total number of riders who use Lyft's Ridesharing app to receive a completed ride from a driver, a metric that Lyft refers to as Active Riders, is material to Lyft's financial condition and long-term revenue growth potential. AG FF 299-300. This is because Lyft views this key metric as a reflection of how well Lyft is delivering a great experience for riders. AG FF 301.

c. Lyft employs a sales department that works to attract riders to its App.

86. Given how critical the recruitment of riders to its Ridesharing App is, Lyft devotes significant resources to marketing the transportation services provided on its platform to the public. By way of example, Lyft's marketing campaign in 2018 communicated a theme of a reliable, convenient car ride on-demand, as a better way to get around a city than traditional alternatives; and in 2022, Lyft's advertising efforts communicated Lyft as a simple and stress-free transportation service. AG FF 378-435. Like the employer in *GateHouse*, Lyft thus takes an active role in efforts to "increase [customers]," "retain existing [customers], and "obtain new [customers] in particular territories." *GateHouse*, 92 Mass. App. Ct. at 808-809. During the period of 2017 through 2023, Lyft spent in excess of $93.96M on these marketing campaigns. *See* AG FF 394, 399, 404, 408, 414, 418, 421.

87. And these efforts by Lyft result in more riders using its App for Ridesharing services. For example, on Lyft's Q1 2019 Earnings Conference Call, Lyft CFO Brian Roberts stated that "the number of quarterly active riders increased . . . due to the wider market adoption of ride-sharing and *our* initiatives to attract and retain riders." AG FF 324 (emphasis added). On Lyft's Q3 2021 Earnings Conference Call, CEO John Zimmer stated that Lyft "continue[s] to see a very long runway to both add riders and capture more of their individual spend on transportation. *Our work in addressing the $1 trillion transportation market opportunity is just getting started.*" AG FF 327 (emphasis added).

88. In public statements to investors, Lyft has also explained that it focuses its rider growth efforts on riders who "can drive the most profitable growth." AG FF 328. This reflects a strategic effort by Lyft to "increase[e] ride frequency" and "captur[e] *our share* of higher-value users and more valuable rides" in order to increase the revenue Lyft generates per Active Rider. AG FF 328 (emphasis added).

d. Lyft deals directly with potential rider customers when securing riders for the drivers.

89. In soliciting and booking riders for drivers, Lyft deals directly with riders at all points of the ride. *See GateHouse*, 92 Mass. App. Ct. at 808-09. Both riders and drivers interact with Lyft's App in order to request rides (riders), or provide rides (drivers), from point A to point B. *See* AG FF 1, 33-56, 149. When a rider opens the App to start "shopping" for a ride, Lyft provides the riders a list of available services (*e.g.*, Lyft XL, Lyft XL Black), its estimated prices for those rides, and approximate pick-up time and time to arrival. *See* AG FF 149, 161-162, 170, 177.

90. In requesting a ride, riders provide specific instructions to Lyft, who then conveys the information to drivers throughout the process: upon request, the rider lets Lyft know of their

selected product type, and Lyft matches the rider with drivers who provide that ride product; upon pairing the rider with a potential driver, Lyft provides the driver only the approximate pick-up and destination of the rider; upon acceptance of the request by the driver, Lyft provides the exact pick-up location of the rider; upon pick-up, Lyft provides the driver with the rider's exact destination address; and upon drop-off, the rider informs Lyft of the payment method they wish to use, and that payment is processed by Lyft's App and third-party contractors. *See* AG FF 33-62.

91. The extent to which drivers are involved in the ride request process is limited to receiving ride requests from Lyft in the App, pressing a button in the App to inform Lyft that they accept a given request, picking up the rider and transporting them to their desired destination, and informing Lyft that they have completed the ride upon drop-off. *See* AG FF 33-62.

e. Riders pay Lyft directly, and Lyft unilaterally sets the prices of rides and driver earnings.

92. Riders pay Lyft directly (as opposed to drivers) for completed rides, and Lyft exercises exclusive control over the payment process. *See GateHouse*, 92 Mass. App. Ct. at 809 (that customer pays the putative employer directly, as opposed to the employee, is additional factor showing services were more necessary than incidental). Payments from riders are transmitted directly to an account established by Lyft, from which Lyft's third-party payment contractors disburse driver earnings at the direction of Lyft after determining its share of the payment. AG FF 48-56. And as stated above, Lyft deducts its service fee directly from the rider payment during this payment process. AG FF 247; *see GateHouse*, 92 Mass. App. Ct. at 808 (citing *O'Hare-Midway Limousine Serv., Inc. v. Baker*, 232 Ill. App. 3d 108, 173 (1992)) (the fact that limousine drivers "paid a percentage of their commissions to [the employer]" showed a "financial interdependence," or a "direct financial stake" with the employer).

93. Lyft furthermore determines the rider prices and driver earnings on each ride. AG FF 150-189. [redacted]

f. Riders provide their complaints and feedback to Lyft directly, who conveys this information to drivers via its ratings system.

94. Lyft also deals directly with customer complaints and feedback, as it limits any post-ride interaction between the rider and the driver. *See GateHouse*, 92 Mass. App. Ct. at 809 (finding drivers performed work in usual course of business where the customer provided specific instructions and complaints to the putative employer, with the employer then "conveying this information to the drivers" via a "system."). At the end of each ride, riders are prompted to rate the driver and provide additional feedback. AG FF 65-69. And Lyft collects these ratings and feedback and reports them to the driver, which can take the form of rating improvement coaching, warnings, suspension, or even deactivation. AG FF 73-75.

g. Lyft uses driver incentives and disincentives to manage its labor supply in order to meet the needs of its rider customers.

95. Consistent with the trial evidence that shows the customer for Lyft's Ridesharing business is the rider, *see* CL 75-94, Lyft structures its driver incentive and disincentive system to

(1) manage its labor supply of drivers to meet the level of rider demand and (2) do so in a manner that meets the quality of service that riders expect from Lyft. AG FF 213-216 (Bonus Zones and Personal Power Zones), 190-212 (planned driver incentives), 217-236 (Lyft Rewards), 453. *See GateHouse*, 92 Mass. App. Ct. at 809-810 (drivers' services are necessary to putative employer's business where the employer actively encourages drivers to generate additional customers, and maintains "contractual disincentives to poor delivery service").

96. Using financial incentives such as Bonus Zones and other planned driver incentives, Lyft encourages its drivers to drive at times, places, and frequencies that are needed to meet rider demand, all the while prioritizing a good experience for riders. According to Lyft, "[I]f what Lyft really cares about is providing a good experience to those riders, it's important that drivers are motivated to drive not only more in general, but also at specific times and in specific places where demand is higher." AG FF 195.

97. To Lyft, Bonus Zones are an incentive focused on "driver engagement" and to increase driver availability in the zones designated by Lyft. AG FF 214. Bonus Zones replaced a previous real-time incentive called Personal Power Zones, as Lyft deemed Bonus Zones to be a "superior product" because "it was more effective at motivating drivers to choose to drive more hours using the Lyft platform." AG FF 215. And an increase in driver hours generally translates into more completed trips, which ultimately benefits Lyft's bottom-line. AG FF 196.

98. In addition to real-time incentives like Bonus Zones, Lyft uses planned incentives to incentivize drivers to drive "busy" hours or increase their productivity, by completing a certain number of consecutive trips. AG FF 209-212.

99. Lyft plans these incentive programs using two separate algorithms, which function to forecast supply and demand to identify expected supply shortages, as well as when, where, and how much to deploy driver incentives in a given region. AG FF 197-208. It undergoes

experimentation with these incentive programs and measures their success based upon an increase in total driver hours. AG FF 208.

100. [redacted]

AG FF 217-236 (explaining Lyft Rewards program). Under Lyft Rewards, drivers who meet certain star ratings and points thresholds (earning points by completing rides during busy hours) set by Lyft can unlock certain rewards related to the work they do to provide rides. *See* AG FF 218-221 (describing rewards like the ability to see the ride destination when accepting a ride, or "Priority Mode").

101. After launching its Lyft Rewards program in 2020, Lyft began assigning "driver value scores" to measure drivers based on their productivity and value to Lyft. AG FF 229. [redacted]

102. In sum, the trial evidence establishes that not only is Lyft directly dependent on the success of drivers' endeavors but also that Lyft takes an active, controlling, role in coordinating all material aspects of drivers' transportation of riders. Lyft is therefore much more than a platform where drives connect with rider, and drivers' services are necessary, as opposed to merely incidental, to the company's usual course of business.

B. Lyft's Self-Description is Consistent with its Operational Realities and Further Indicates that its Usual Course of Business is in Transportation.

103. Another factor in the necessary/incidental determination is the employer's self-description of its business. *See Sebago*, 471 Mass. at 333 ("We have recognized that a purported employer's own definition of its business is indicative of the usual course of that business."); *GateHouse*, 92 Mass. App. Ct. at 805 (citing *Athol*, 439 Mass. at 175) ("[T]he manner in which a business defines itself is relevant to determining its usual course of business."). But importantly, a business' self-description is a *secondary* factor that "do[es] not override the realities of [its] actual business operations or the regulatory framework in which those operations occur." *Sebago*, 471 Mass. at 335; *see also GateHouse*, 92 Mass. App. Ct. at 805 n.9 (citing *Sebago*, 471 Mass. at 335) ("wording of defendant entities' advertising, although helpful to [employees'] claim of employee status, did 'not override the realities of the [entities'] actual business operations.").

104. As part of the self-description analysis in *GateHouse*, the Court evaluated more than just an employer's self-description. 92 Mass. App. Ct. at 805. It also considered "how [the employer] advertised and otherwise held themselves out," the company's "annual corporate filings," and "its agreements with [the workers]." *Id.* at 805-06. And the court then went on to assess the meaning of the descriptions, doing so in the context of the operational realities of the putative employer's business. *Id.* at 806. *See Sebago*, 471 Mass. at 335 (a company's self-description should match "what the company does").

105. Here, Lyft's self-descriptions in its regulatory filings with the SEC and in investors calls relating to disclosures set forth in those filings; public statements by key executives; and

branding and marketing materials are consistent with the operational realities of its usual course of business described above.[15]

106. In its regulatory filings with the SEC, Lyft confirms the operational realities described above. It lays out that revenue generation from its Ridesharing business is dependent on fees collected from completed rides, *see* AG FF 244-258, 259-273; identifies the significant revenue that these fees mean for Lyft's bottom line, *see* AG FF 284-287; describes the value of its Ridesharing business using a series of metrics that concern the completion of trips, *see* AG FF 288-304; and acknowledges that it manipulates its "take rate" on rides, *see* AG FF 274-283. Lyft also states that its mission is to ""[i]mprove people's lives with the world's best transportation." AG FF 305.

107. In statements during earnings calls, Lyft's CEO and other high-ranking executives have consistently portrayed Lyft as in the business of transportation, with their drivers performing the transportation service that Lyft offers to riders. *See* AG FF 326-327. For instance, these executives describe Lyft's mission as "improv[ing] people's lives with the world's best transportation." AG FF 327. Lyft's co-founder and President has even described Lyft as having a "*singular focus on consumer transportation*." AG FF 327 (emphasis added). They also mention that Lyft takes a share of each ride a driver provides and that this benefits Lyft's bottom line. *See* AG FF 324-325, 328-329. And they emphasize how Lyft's Ridesharing revenues are a primary source of Lyft's value. AG FF 324. They also focus on metrics that underscore the relationship between Ridesharing bookings and Lyft's financial outlook, *see* AG FF 325;[16] draw attention to

[15] For a publicly traded company, this self-description can come, in part, through statements made by company representatives to the company's investors and to the general public.

[16] On Lyft's Q4 2023 Earnings Conference Call, Lyft CFO Erin Brewer stating, "…while rider demand continued to increase, we were able to convert more ride intents into completed rides. (footnote continued)

the number of drivers on the company's network as a means of emphasizing the superiority of Lyft's supply of drivers, *see* AG FF 326; and emphasize Lyft's efforts to attract and retain a supply of drivers to meet rider demand, *see id.*[17]

108. Lyft's CEO and other high-ranking executives have made similar statements about the operational realities of Lyft's business in public forums. These include describing Lyft as a source of transportation services, *see* AG FF 334-335,[18] 339,[19] 343, 345, 377; identifying riders as Lyft's customers, *see* AG 337, 341,[20] 360, 362, 364, 372; portraying rides provided by drivers to riders as *Lyft* rides, AG FF 358, 360, 364, 372, 376; Lyft's focus on superior rider experience, *see* AG FF 358,[21] 360, 362, 364; describing drivers as essential to providing a superior rider

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The combination of these factors supported our accelerated rides growth along with improving service levels, including significantly less prime time year over year and faster ETAs. We ended the year healthier and stronger, which is reflected in our financial performance."

[17] On Lyft's Q2 2023 Earnings Conference Call, David Risher stated, "Prime time, also called surge pricing by Uber, is where you basically don't have enough driver supply, so you have to price it high so it can sense more drivers out there and to also sort of suppress demand. That's a bad form of price raising. It's a particularly bad form because riders hate it with a fiery passion. And so we're trying to really get rid of it. And because we've got such good driver in supply, which we've worked really hard to get, it's decreased significantly."

[18] Mr. Zimmer: "One, we've been and will always be focused on what we can control and what we do and that's paying off. People are choosing Lyft. You've seen our market share go from just over 20% to nearly 40% across the United States. And yes, Lyft is focused on consumer transportation, focused on North American, and focused on taking care of our drivers and passengers and that's paying off."

[19] Mr. Zimmer: "That was the original tagline was, Lyft was your friend with a car and that other company was everyone's private driver. And so it's lasted…"

[20] Mr. Zimmer: "And as we move towards transportation as a service, there's going to be a lot more need for drivers …."

[21] Mr. Risher: "I'm not ruling it out, but really the focus is gonna be on picking you up on-time, matching, price, making sure you get dropped off on-time, that's the focus."

experience, *see* AG FF 362; and emphasizing the control Lyft exerts over the quality and reliability of the ride itself, *see* AG FF 368-369, 370, 372, 374, 376.

109. Lyft's branding conveys a similar, transportation-focused message. Indeed, from 2017 through the present, Lyft has consistently described itself through its public facing brand communications, including its succession of mission statements and marketing efforts, as a provider of transportation services. AG FF 378-440. The successive iterations of Lyft's publicly stated brand mission, "to improve people's lives with the world's best transportation," and "to help redesign cities around people, not cars, and make seamless and affordable mobility available to all," have been foundational to the company's marketing efforts. AG FF 385, 393, 398, 402-403. Similarly, through its marketing efforts, Lyft has established itself in the public consciousness as a provider of safe, reliable, and convenient transportation. AG FF 345, 408, 467, 469. To this end, its advertising has consistently and effectively sought to position Lyft as a source for purchasing transportation services, as well as offering an attractive employment opportunity to the potential drivers needed to provide such services. AG FF 358, 360, 364, 372, 376, 387-391, 436-440.

C. Lyft is Much More than a "Platform Company" or Intermediary.

110. Though Lyft attempts to assert in this case its core business is merely to furnish a platform for drivers and riders to connect, this contention rests on "a false dichotomy between the administrative and operational aspects of their business." *Sebago*, 471 Mass. at 330. *See Cotter v. Lyft, Inc.*, 60 F.Supp.2d 1067, 1078 ("Lyft concerns itself with far more than simply connecting random users of its platform. It markets itself to customers as an on-demand ride service, and it actively seeks out those customers. It gives drivers detailed instructions about how to conduct themselves. Notably, Lyft's own drivers' guide and FAQs state that drivers are 'driving for Lyft.' Therefore, the argument that Lyft is merely a platform, and that drivers perform no service for Lyft, is not a serious one.") (internal citations omitted).

111. The SJC recently rejected the "we're just a platform" defense in an analogous context due to the company's level of involvement in the provision of the service. *Mass. Port Auth. v. Turo, Inc.*, 487 Mass. 235, 246 (2021). In that case, Turo described itself as "an online platform" that connects vehicle owners with persons seeking to rent cars on a short-term basis. *Turo*, 487 Mass. at 237. The SJC rejected Turo's claim that, because it was just a platform, it did not aid or abet the vehicle owners' trespass at Logan Airport when the owners dropped off rental vehicles there in violation of Massport regulations. *Id.* at 246. The Court concluded that "by providing the online platform that identifies Logan Airport as a pick-up or drop-off location, providing substantial liability insurance, and collecting payments from users for transactions occurring at Logan Airport[,]" Turo "actively participated in or substantially assisted in the ongoing trespass" at Logan. *Id.* at 246.

112. As in *Turo*, Lyft does far more than act as a mere "go-between." *Turo*, 487 Mass. at 242-43. For individual rides, Lyft controls almost every element of the transaction, including screening drivers, matching drivers to riders, setting the price of rides, collecting rider fares, setting drivers' earnings and its own share of the rider fare, remitting payment to drivers, monitoring the ride and activities of drivers, and serving as the point of contact (and decision maker) for rider complaints regarding drivers. *See* CL 37-53. This degree of involvement, and the overarching fact that Lyft relies on what drivers do (transporting riders), explains why so many other courts applying the prong of California's misclassification law that is nearly identical to Prong 2 of Section 148B(a) have rejected "platform" defenses by ridesharing entities like Uber and Lyft in other misclassification cases. *See People v. Uber Techs., Inc.*, 56 Call App. 5th 266, 294-95 (Cal. Ct. App. 2020) (repudiating platform defense and collecting cases); *see also Cotter v. Lyft, Inc.*, 60 F. Supp. 3d 1067, 1078 (N.D. Cal. 2015) (Lyft's assertion that its drivers perform services only for their riders, while Lyft is an uninterested bystander of sorts, merely furnishing a platform that

allows drivers and riders to connect … is obviously wrong."); *Rogers v. Lyft, Inc.*, 452 F.Supp.3d 904, 911 (N.D. Cal 2020) ("Lyft drivers provide services that are squarely within the usual course of the company's business, and Lyft's argument to the contrary is frivolous.").

113. As well, both the SJC and the First Circuit have rejected a close cousin of the platform argument in analytically similar circumstances, concluding that Section 148B(a)'s second prong precludes package delivery couriers for companies that arranged deliveries from being treated as independent contractors because the couriers are acting in the usual course of business for those companies when they deliver packages. *See Chambers v. RDI Logistics, Inc.*, 476 Mass. 95, 102 (2016) ("A delivery driver for a motor carrier necessarily will be performing services within 'the usual course of business of the employer' whenever … delivery services are part of its usual course of business."); *Sebago*, 471 Mass. at 330 (quoting *Mass. Delivery Ass'n v. Coakley*, 769 F.3d 11, 21 n.4 (1st Cir. 2014) ("[C]ouriers deliver packages for delivery companies. There can be no dispute that they act in the course of business for the delivery companies, even if one performs the deliveries and the other arranges the deliveries.")) (emphasis added). Because it makes no analytical difference under Section 148B(a) that drivers transport passengers, and not packages, and that Lyft arranges the transportation, and not the deliveries, prong two "requires that [Lyft] use employees rather than independent contractors to [perform] those services." *Chambers*, 476 Mass. at 102.

114. Finally, Lyft's "platform" argument is inconsistent with Massachusetts law, which specifies that transportation network companies like Lyft and drivers perform the same service—a prearranged ride. *See* G.L. c. 159A1/2, § 3(a) ("All transportation network companies and transportation network drivers shall provide services in the form of a pre-arranged ride using a digital network."); *see also id.* at § 1 (defining "services" as "the offering or providing of pre-arranged rides for compensation or on a promotional basis to riders … through the [TNC]'s digital

network."). In other words, the very legislative act that Lyft contends allows it to escape its obligations under Section 148B establishes that drivers are performing services as part of Lyft's usual course of business.

IV. DRIVERS DO NOT PERFORM RIDES AS AN INDEPENDENT ENTREPRENEURIAL ENTERPRISE.

115. The third prong of Section 148B(a) requires that the individual is "customarily engaged in an independently established trade, occupation, profession or business of the same nature as that involved in the service performed." G.L. c. 149, § 148B(a)(3). The critical inquiry is "whether 'the worker is capable of performing the service to anyone wishing to avail themselves of the services or, conversely, whether the nature of the business compels the worker to depend on a single employer for the continuation of the services.'" *Weiss*, 97 Mass. App. Ct. at 9-10 (quoting *Sebago*, 471 Mass. at 336). The "insignia" of a worker being customarily engaged in an independently established business is if the worker has "a freestanding, independent entrepreneurial business in which [they have] a proprietary interest." *Boston Bicycle*, 56 Mass. App. Ct. at 480.

116. In *Weiss*, the Appeals Court explained that "[t]he determination whether this statutory prong is satisfied 'must be based upon a comprehensive analysis of the totality of the relevant facts and circumstances of the working relationship,'" with "'[n]o one factor [being] outcome-determinative.'" 97 Mass. App. Ct. at 10 (quoting *Boston Bicycle*, 56 Mass. App. Ct. at 484). Significantly, the court emphasized that the facts should be viewed through the lens of the "*reality*" of the worker's circumstances. *Id*. (emphasis added).

117. For the reasons explained below, Lyft cannot satisfy its burden under Section 148B(a)'s third prong because the trial evidence demonstrates that drivers do not "perform services

as an entrepreneur" and are instead very much dependent on Lyft for virtually all aspects of their work. *See Weiss*, 97 Mass. App. Ct. at 10.

A. Drivers Do Not Exercise Meaningful Entrepreneurial Control Over the Provision of Their Services.

118. The trial evidence demonstrates that the relationship between Lyft and drivers is not "independent" but rather than "an intertwining and an interdependent working relationship between [drivers] and [Lyft]." *Boston Bicycle*, 56 Mass. App. Ct. at 481.

119. First, Lyft provides "essential equipment" to drivers, namely, the driver App. *See Boston Bicycle*, 56 Mass. App. Ct. at 482 (interdependence between putative employer and worker evident where putative employer provides a worker "essential equipment"). To be eligible to receive a ride request through Lyft, drivers must have access to Lyft's driver App. AG FF 33. This is because Lyft, through the App, offers ride requests to drivers, orchestrates sequence of the ride, facilitates communications between the rider and driver, effectuates the payment collection process, and oversees the rating process. *See supra*, CL 37-60.

120. Second, Lyft sets the prices for customers and the earnings for workers. *Boston Bicycle*, 56 Mass. App. Ct. at 483 (company's setting of the compensation to workers and prices to customers are indicia of interdependence). *Compare Athol*, 439 Mass. at 182 (Prong 3 satisfied where newspaper delivery carriers could set their own prices for the newspaper they sold) *with Coverall N. Am., Inc. v. Com'r of Div. of Unemp't Assist.*, 447 Mass. 852, 858 (2006) (worker an employee for the purposes of unemployment where her employer controlled the prices she charged). Much like *Boston Bicycle,* Lyft sets the "rates paid to drivers … and sets the prices charged for [services]." *Id.* In fact, drivers are much more akin to the low-wage janitorial "franchisees" that the SJC found to be employees in *Coverall*, as they have no control over the price that Lyft charges riders for rides, their earnings are set by Lyft, and Lyft determines the

amount that it retains from each completed trip. AG FF 150-189; *Coverall*, 447 Mass. at 858-59 (claimant an employee where she was "required to allow [the employer] to negotiate contracts and pricing directly with clients, bill clients, and [to follow] a daily cleaning plan"). As well, Lyft controls the process for collecting and processing the payment, including collecting the fare amount from the driver, collecting Lyft's share of the ride (*i.e.*, the service fee that forms Lyft's revenue on the ride), and providing the driver with their share of the ride. AG FF 48-52. And the primary way that drivers can earn more money from driving is to complete more rides and/or to seek to achieve incentives offered by Lyft (*i.e.*, drive when it is busiest). AG FF 191-196.

121. Third, Lyft has the unilateral right to end its relationship with drivers. *Boston Bicycle*, 56 Mass. App. Ct. at 483 (citing *AFM Messenger Serv. Inc. v. Dept. of Emp't Sec.*, 198 Ill.2d 380 (2001)) (company's "right to terminate a [worker] and end the relationship for any reason" is another indicator that a worker is not independent from the putative employer).[22] Here, Lyft reviews ratings feedback about drivers and can deactivate drivers without warning, including in the middle of a day based upon a poor rating from a rider or myriad other reasons. AG FF 28, 64, 75, 79, 92, 94, 98, 109-111.

122. Finally, Lyft, and not the driver, coordinates with riders concerning all material aspects of the ride. *Boston Bicycle*, 56 Mass. App. Ct. at 483; *see also Coverall*, 447 Mass. at 858–859 ("[T]he claimant only cleaned at the locations Coverall provided and was provided with a plan of action and directed to follow it by Coverall supervisors..."). Here, Lyft handles ride requests by riders, determines the price for riders, and matches riders with drivers. AG FF 33-172. It then

[22] In *Boston Bicycle*, the Appeals Court relied on *AFM*, an Illinois Supreme Court decision where, among other factors, the putative employer had the ability to terminate their relationship with drivers at any time. 56 Mass. App. Ct. at 483. Of particular significance in *AMF* was that "a driver's business existed only by reason of the driver's employment with [the employer], which was subject to termination, at which time the driver would be unemployed." *Id.*

provides drivers with directions to pick up the riders, tells drivers the riders' destinations, and then monitors the rides for quality and safety. AG FF 39-47. After the ride, Lyft processes the ride payments and prompts riders to rate drivers. AG FF 48-56, 65-71. And Lyft does all this to build its brand as well as its ongoing relationships with riders. AG FF 453.

123. For all these reasons, drivers are "compelled to rely heavily" on Lyft to be matched with riders. *Coverall*, 447 Mass. at 858–859; *see also Boston Bicycle,* 56 Mass. App. Ct. at 482 ("[employer] did not make an adequate showing that [worker] held himself out as an independent businessman performing courier services for any community of potential customers").

B. Drivers are an Integral Part of Lyft's Ridesharing Business, and Without Them Lyft Could Not Operate.

124. Further reflecting the "dependent intertwining" between Lyft and drivers is the trial evidence showing that drivers are undeniably an "integral part of [Lyft's Ridesharing] business," as without them Lyft's Ridesharing business "could not operate." *Boston Bicycle*, 56 Mass. App. Ct. at 483. This is true for at least four reasons: *first,* for reasons explained extensively *supra* as well as in the Attorney General's Proposed Findings of Fact, nearly all of Lyft's revenue from its ridesharing business is derived from the fees that Lyft collects from every ride completed by drivers. *See supra*, CL 76-77; AG FF 244-258, 284-287. Lyft does not generate revenue from Ridesharing but for drivers performing rides. AG FF 255-258.

125. *Second,* under its decoupled pricing system, the fees Lyft collects on each ride are derived from the difference between the rider's payments on the ride (which Lyft determines) and what the driver earns on the ride (which Lyft also determines). AG FF 156-160. The fee that Lyft collects per ride is variable and set by Lyft based on rider price elasticity. AG FF 163, 171-172. To garner revenue on a ride, Lyft therefore relies on having a sufficient number of available drivers

accepting rides to ensure that riders complete rides on Lyft's Ridesharing App and that those rides are profitable for Lyft. AG FF 137-138, 294-295, 445.

126. *Third*, what follows from the above two points is that Lyft directly benefits from drivers' fare volume, because as drivers perform more rides, Lyft earns more revenue. This is because as bookings (*i.e.* total rider fares) increase, Lyft's revenue also increases (as a direct output of bookings). *See* AG FF 250, 269-270.

127. *Finally*, without drivers, Lyft would simply not be able to meet the demand for rides on the platform. Indeed, Lyft frequently touts its superior driver supply as a reason for its competitive advantage. *See, e.g.*, AG FF 325 (David Risher on Lyft's Q1 2023 Earnings Conference Call: "So, in Q1, we have the most drivers in about three years, which is really pretty exciting for us, and we see this growth has accelerated in Q1 for the first time in the year on the driver supply side. And obviously, it's very important for our business and for our riders as well."). And Lyft expends resources to move drivers into areas with high rider demand, to ensure a good rider experience. *See* AG FF 195 ("[I]f what Lyft really cares about is providing a good experience to those riders, it's important that drivers are motivated to drive not only more in general, but also at specific times and in specific places where demand is higher."); [redacted]

[redacted]

C. Lyft Precludes Drivers from Taking Steps to Establish and Promote Themselves as Independent Entrepreneurial Businesses.

128. The absence of "proprietary interest in a going concern which [can be] sold or transferred" further highlights the lack of a freestanding, independent entrepreneurial business. *Boston Bicycle*, 56 Mass. App. Ct. at 481. Drivers lack a proprietary interest here for at least *four* reasons.

129. *First*, drivers providing on-demand transportation and delivery services to riders largely depend on apps like Lyft for earnings opportunities. *Boston Bicycle*, 56 Mass. App. Ct. at 483 n.16 (citing *AFM*, 198 Ill.2d at 380) (drivers were [not] able to operate their 'delivery businesses' without the benefit of a relationship with AFM, or another messenger service like AFM").

130. *Second*, Lyft treats every driver as an independent contractor. AG FF 3-4. It does not give any individualized consideration to whether or why a driver is an independent contractor. *Id*. And drivers have no opportunity to employ or subcontract another to drive for them (as a typical entrepreneurial business might). *See* CL 38; *see also Lowman*, 235 A.3d at 306 (subcontracting prohibition "strongly militates against a finding that [a driver] is independently engaged in a business").

131. *Third*, Lyft offered no facts establishing that *all* drivers have a proprietary interest in any independent business that can be developed, sold, or transferred. Rather, the only value that most drivers are able to generate from their business is the earnings they receive when they perform a ride. *See* AG FF 150-154, 173-189 (drivers receive a set pay per ride, drivers receive no added compensation for tenure, and drivers cannot negotiate high compensation from Lyft). Drivers' relationship with Lyft is therefore much more akin to an employer-employee relationship, where the employee performs work in return for renumeration by the employer. *See* AG FF 173-189.[23]

132. *Fourth*, drivers have limited access to rider information such that they could develop an independent clientele for their transportation services outside of the Lyft App. *See* AG

[23] Even for the small percentage of drivers that operate an independent business, many of those businesses are much more akin to the low-wage, janitorial "franchisees" that the SJC found to be employees in *Coverall*, 447 Mass. at 858-59 (claimant an employee where she was "required to allow [the employer] to negotiate contracts and pricing directly with clients, bill clients, and [to follow[] a daily cleaning plan").

FF 114-117. For instance, when a driver or ride communicates with one another through Lyft's App, Lyft anonymizes all contact information to mask the phone number of each driver and rider, and any feedback from a particular rider is anonymized when shared with the driver. *See* AG 70, 115-116.

V. THE COURT SHOULD ENTER AN INJUNCTION TO ENSURE THAT LYFT AFFORDS DRIVERS THE BENEFITS AND PROTECTIONS THAT FLOW FROM BEING CLASSIFIED AS AN EMPLOYEE UNDER SECTION 148B(a).

133. In this litigation, the Attorney General seeks a declaratory judgment that Lyft drivers are, and have been since at least 2017, Lyft's employees under G.L. c. 149, § 148B(a), and if it prevails, a permanent injunction requiring Lyft to treat its Massachusetts-based drivers as employees for the purposes of the wage-and-hour protections afforded employees under G.L. c. 149 & 151. *See* Complaint, Dkt. No. 1 at 16; Addendum 8-9 (Attorney General's Proposed Judgment). Where Lyft has misclassified drivers since at least 2017, an injunction is warranted to ensure that Lyft will obey the law and that drivers will receive the substantial benefits that they are entitled to as employees.

A. When the Attorney General Requests Injunctive Relief, the Court Need Only Conclude that Such Relief is in the Public Interest.

134. The Attorney General brought this action in the public interest as part of her statutory mandate to enforce Massachusetts laws governing wages, hours, and other aspects of the employment relationship. *See, e.g.*, G.L. 149, §§ 2, 5, 27C, and 148-150; G.L. c. 151, § 19; *see also* G.L. c. 12, § 10 (authorizing the Attorney General to "take cognizance of all violations of the law … affecting the general welfare of the people," and to bring "such criminal or civil proceedings … as [she] may deem to be for the public interest"). In a proceeding such as this one, where the Attorney General is acting under her "statutory obligation . . . to protect the protect the public interest," the standard for obtaining injunctive relief differs from the standard typically applied to

a private litigant.[24] *Com. v. ELM Med. Labs., Inc.,* 33 Mass. App. Ct. 71, 83 (1992) (permanent injunction); *Att'y Gen. v. Bach*, 81 Mass. App. Ct. 1126, *2 (2012) (permanent injunction). To that end, the court need only conclude that a permanent injunction would be in the public interest. *ELM Med. Labs.,* 33 Mass. App. Ct. at 83 ("The injunction, without doubt, is designed to protect the public interest. In cases brought by the Attorney General under the Consumer Protection Act, that is the proper standard."); *Bach*, 81 Mass. App. Ct. at 1126 *2 (quoting *Com. v. Mass. CRINC*, 392 Mass. 79, 88 (1984)) ("Where the AG requests injunctive relief, a judge need only conclude that such relief would be 'in the public interest.'"); *see also* G.L. c. 149, § 2 ("The attorney general shall, except as otherwise specifically provided, enforce the provisions of this chapter, and *shall have all necessary powers therefor*.") (emphasis added) & § 148B(e) ("Nothing in this section shall limit the availability of other remedies at law or equity.").[25]

135. For the reasons explained below, a permanent injunction is warranted in this case because several significant public interests will be harmed if Lyft is not permanently enjoined from misclassifying its drivers. Simply put, Lyft should be required to follow the law.

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[24] *See, e.g., Casual Male Retail Group, Inc. v. Yarbrough*, 527 F. Supp. 2d 172, 179 (D. Mass. 2007) (to receive a permanent injunction, a private party plaintiff must show (1) it has prevailed on the merits; (2) it would suffer irreparable injury without a permanent injunction; (3) the balance of the harms is in its favor; and (4) there would be no adverse effect on the public interest).

[25] The Attorney General need not establish that there would be no adverse effect on the public interest because an "injury to the legislatively prescribed public interest amounts to irreparable harm." *See Davis v. Cape Cod Hosp.*, 71 Mass. App. Ct. 1121 (2008); *see also CRINC*, 392 Mass. at 88-89 (enforcement of law presumed to be in the public interest). And, in any event, as explained *infra*, it is well-understood that legislative policy behind Section 148B was to prevent misclassification of workers as well as harms it causes to workers, government entities, and law-abiding employers. *See Somers*, 454 Mass. at 592.

B. Achieving the Legislative Purpose of Section 148B—Protecting Employees from Being Deprived of the Benefits They are Entitled to Under the Law Due to Misclassification as Independent Contractors—is in the Public Interest.

136. The Legislature, in enacting Section 148B, sought "to protect employees from being deprived of the benefits enjoyed by employees through their misclassification as independent contractors." *Somers*, 454 Mass. at 592. "Proper classification is important to the determination of the protections afforded to an individual under the [Commonwealth's Wage and Hour Laws]." *Patel*, 489 Mass. at 359. "Classification as an 'employee' generally entitles an individual to … a minimum wage, G.L. c. 151, § 1; overtime pay, G.L. c. 151, § 1B; and a private cause of action to enforce these rights, along with the ability to recover the costs of litigation, attorney's fees, and [treble damages]." *Id.* As well, it entitles the employee to earned sick leave under G.L. c. 149, § 148C, and protection against retaliation by employers, *see id.* § 148A.

137. In addition to depriving the misclassified worker of substantial employment-related rights, misclassification harms the Commonwealth, the federal government, and law-abiding employers. *Patel*, 489 Mass. at 359. As the SJC has explained:

> Employers who misclassify employees as independent contractors enjoy what might be viewed as a windfall. Misclassification permits an employer to avoid its statutory obligations to its workforce. Misclassification further allows employers to shift certain financial burdens to the Commonwealth and the Federal Government.[] In addition, misclassification "gives an employer … an unfair competitive advantage over employers who correctly classify their employees and bear the concomitant financial burden."

Id. (quoting *Somers*, 454 Mass. at 593).

138. The Attorney General's advisory on Section 148B, which has been repeatedly relied upon by the SJC, *see, e.g., Patel*, 489 Mass. at 388, makes a similar point, stating that "[t]he need for proper classification of individuals in the workplace is of paramount importance to the Commonwealth" and discussing how misclassification harms workers, the Commonwealth, taxpayers, and law-abiding business. AG Advisory 2008/1 at 1. So too do the Attorney General's

Labor Day Reports, which are issued to the public and contain guidance about the Commonwealth's wage and hour laws. For instance, in her 2018 Labor Day Report, the Attorney General explained how employers who misclassify workers are able to evade myriad workplace protections, including those under the National Labor Relations Act and state wage and hour laws, at a great cost to workers, responsible employers, and states generally. 2018 Labor Day Report at 7 (2018).[26] Similarly, the Attorney General explained in her 2023 Labor Day Report that employees who are misclassified are deprived of the rights granted to them under these laws, including the right to receive all wages they are owed and to be paid on time, the right to minimum wages and overtime, protection against employer retaliation, and access to important employee benefits. 2023 Labor Day Report at 18 (2023).[27] The 2023 Report also notes that misclassification is particularly common in gig economy work. *Id.*

139. Evincing the Commonwealth's interest in preventing significant consequences of misclassification, in March 2008, Governor Deval Patrick signed Executive Order No. 499 establishing the Commonwealth's Joint Task Force on the Underground Economy and Employee Misclassification. *See* Executive Order 499: Establish a Joint Enforcement Task Force on the Underground Economy and Employee Misclassification, March 12, 2008;[28] *See* COMMONWEALTH OF MASSACHUSETTS JOINT ENFORCEMENT TASK FORCE ON THE UNDERGROUND ECONOMY AND EMPLOYEE MISCLASSIFICATION, Annual Report at 2 (2009).[29] One of the Joint Task Force's

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[26] The Attorney General's 2018 Labor Day Report is available at: https://rb.gy/up9o2u.

[27] The Attorney General's 2023 Labor Day Report is available at: https://rb.gy/vjq9a3.

[28] Governor Patrick's Executive Order is available at: https://rb.gy/f6ik3b.

[29] The Annual Reports of the Joint Task Force and the Council on the Underground Economy are available at:

(footnote continued)

primary purposes was to combat employee misclassification by identifying industries and sectors where employee misclassification was the most prevalent and to target members' investigative and enforcement resources against those sectors, as well as transmit an annual report on the Task Forces activities during the preceding year. *Id.* at 35. Among other state agency members, the Attorney General's Fair Labor Division was a member of the Joint Task Force. *Id.* at 34-35. Subsequently, on June 26, 2014, Chapter 144 "An Act Restoring the Minimum Wage and Providing Unemployment Insurance Reforms" was signed into law and codified the Joint Task Force, making it a permanent fixture under the Executive Office of Labor and Workforce Development as the Council on the Underground Economy (CUE). *See* COMMONWEALTH OF MASSACHUSETTS COUNCIL ON THE UNDERGROUND ECONOMY, Annual Report at 4 (2015); *see also* G.L. c. 23, § 25 (describing statutory mandate and authority of the CUE).

140. The Joint Task Force's, and later the CUE's, Annual Reports provide further detail regarding the significant harms to the public interest that flow from misclassification. On top of the fact that misclassification tends to exploit the most vulnerable workers and deprive them of legal benefits and protections (*see* Annual Report (2013) at 19), these harms include:

a) Millions of dollars in lost payroll tax revenue, *see* Annual Report at 39 (2009); *see also* Annual Report at 18 (2010) (same); Annual Report at 15 (2011) (same); Annual Report at 20 (2012) (same); Annual Report at 11 (2016) (same); Annual Report at 14 (2017) (same);

b) Additional significant costs incurred by the Commonwealth, including providing health care coverage for uninsured workers, providing workers' compensation benefits, and unemployment assistance without employer contribution into the

https://tinyurl.com/mzy865p (2009)	https://tinyurl.com/ey466abv (2016)
https://tinyurl.com/s4mveh97 (2010)	https://tinyurl.com/34vn76zr (2017)
https://rb.gy/etoobo (2011)	https://tinyurl.com/5fxecr9r (2018)
https://shorturl.at/doqCK (2012)	https://tinyurl.com/yvr9jkhz (2019)
https://tinyurl.com/mwjrnsbj (2013)	https://tinyurl.com/ybsy7pu2 (2020)
https://tinyurl.com/238f3a56 (2014)	https://tinyurl.com/mtkw48h6 (2021)
https://tinyurl.com/263zdcbf (2015)	

Division of Unemployment Assistance fund, among other indirect costs, *see* Annual Report at 42 (2009); and

c) The fact that businesses that properly classify employees and follow all relevant statutes regarding employment are likely to be at a distinct competitive disadvantage, and, by paying the proper taxes and insurance premiums, in effect end up subsidizing those businesses that do not, *see* Annual Report at 42 (2009); *see also* Annual Report at 1-2 (2013) (same); Annual Report at 11 (2011) (same); Annual Report at 2 (2015) (same).

141. Workers who are wrongfully misclassified experience lower earnings. *See* COMMONWEALTH OF MASSACHUSETTS JOINT ENFORCEMENT TASK FORCE ON THE UNDERGROUND ECONOMY AND EMPLOYEE MISCLASSIFICATION, Annual Report at 3 (2014) (workers who are misclassified "are often paid sub-minimum wage, receive no overtime, and may face barriers to receiving workers' compensation and health care coverage, or be entirely ineligible for unemployment insurance (UI) or social security benefits"); *see also* Annual Report at 3 (2015) (same). Misclassification further depresses earnings for workers who must bear business costs, mileage, necessary equipment and supplies, and the employer's share of payroll taxes.

142. In addition to the harm imposed on workers, businesses that misclassify employees under Section 148B cause significant public harm by unfairly lowering their costs of business and avoiding expenses that their law-abiding competitors must absorb. *See, e.g., Somers*, 454 Mass. at 592; *Depianti*, 465 Mass. at 620. These include the costs of tracking working time and wages (G.L. c. 151, § 15), making timely payment of wages and issuing paystubs (G.L. c. 149, § 148), and paying for important safety-net benefits such as workers' compensation and unemployment insurance. *Somers*, 454 Mass. at 592; *See* COMMONWEALTH OF MASSACHUSETTS JOINT ENFORCEMENT TASK FORCE ON THE UNDERGROUND ECONOMY AND EMPLOYEE MISCLASSIFICATION, Annual Report at 3 (2014). By illegally avoiding these costs, companies that misclassify workers gain an unfair competitive advantage over employers that obey the law. *Somers*, 454 Mass. at 592; *see also See* COMMONWEALTH OF MASSACHUSETTS JOINT

ENFORCEMENT TASK FORCE ON THE UNDERGROUND ECONOMY AND EMPLOYEE MISCLASSIFICATION, Annual Report at 3 (2014).

143. These companies not only drive down their own expenses but also increase the cost of compliant employers. *See* COMMONWEALTH OF MASSACHUSETTS JOINT ENFORCEMENT TASK FORCE ON THE UNDERGROUND ECONOMY AND EMPLOYEE MISCLASSIFICATION, Annual Report at 3 (2014). Employers who misclassify their employees thus unfairly achieve a superior competitive position, forcing compliant peers to leave the market or conform to a developing norm of non-compliance, in either case worsening working conditions for workers throughout the sector. *See* COMMONWEALTH OF MASSACHUSETTS JOINT ENFORCEMENT TASK FORCE ON THE UNDERGROUND ECONOMY AND EMPLOYEE MISCLASSIFICATION, Annual Report at 3 (2014).

144. For these reasons, the SJC has made clear that Section 148B(a) is "a strict liability statute." *Somers*, 454 Mass. at 591 ("Good faith or bad, if an employer misclassifies an employee as an independent contractor, the employer must suffer the consequences.").

C. An Injunction Is Warranted to Ensure that Drivers Will Receive the Benefits They Are Entitled to as Employees.

145. Evidence specific to drivers in this case confirms that the public interest will benefit from an injunction that prevents Lyft from continuing to misclassify drivers. Here, Lyft has been misclassifying drivers as independent contractors since at least July 2017, in fact, this is at the core of Lyft's business model. AG FF 4-5. Absent an injunction, the many Massachusetts workers who drive for Lyft right now as well as those who will do so in the future would be denied the benefits and rights of employment. AG FF 10.

146. The number of hours individual drivers who have driven for Lyft without proper pay is substantial. AG FF 10. [redacted] AG FF 8. *See also* Official Report of the

State Auditor, Diana Dizoglio, Assessing Transportation Network Companies' Financial Obligations to Massachusetts Programs ("Auditor's Report"), April 30, 2024, at 3 (76,187 drivers had TNC vehicle inspections in a one-year period between September 2022 and August 2023).[30] logged onto the app, and 11% work the equivalent of a full-time shift or more. AG FF 13.

147. Lyft has not reimbursed drivers for business expenses they incur as a result of providing rides on the Lyft App. AG FF 5. Lyft has not paid drivers for their time spent waiting to receive a ride or driving between rides. AG FF 6. Lyft also does not pay drivers overtime pay for hours worked in excess of forty hours in a week. AG FF 7. And the Commonwealth's revenues and benefit programs have suffered considerably due to Lyft's failure to meet its state-law required financial contributions. *See, e.g.,* Auditor's Report at 3.

148. This evidence of harm strongly supports a finding that a permanent injunction is warranted in this matter.

[30] The Auditor's Report is available at: https://tinyurl.com/4s4tscj3.

Respectfully submitted,

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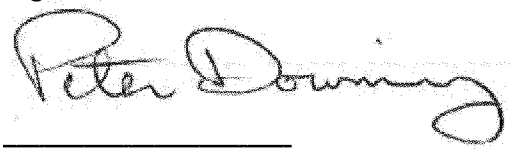

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