UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

DAN CLARK, TAMI DUNLAP, ALI HASSAN, JENNIFER IMMEL, GARY KUNZE, ELISABETH LOWE, DALE MONTZ, ABDI MOTAN, FREDRICK RICE, MICHAEL RIEBS, and FIREW TESHOME, Plaintiffs, v. CITY OF SEATTLE, SEATTLE DEPARTMENT OF FINANCE AND ADMINISTRATIVE SERVICES, and FRED PODESTA, in his official capacity as Director of the Seattle Department of Finance and Administrative Services, Defendants.	NO. **COMPLAINT FOR INJUNCTIVE RELIEF, DECLARATORY JUDGMENT, AND DAMAGES**

Plaintiffs Dan Clark, Tami Dunlap, Ali Hassan, Jennifer Immel, Gary Kunze, Elisabeth Lowe, Dale Montz, Abdi Motan, Fredrick Rice, Michael Riebs, and Firew Teshome, by and through their undersigned attorneys, hereby file this Complaint and allege as follows:

INTRODUCTION

1. On December 23, 2015, the City of Seattle ("Seattle") enacted an Ordinance Relating to Taxicab, Transportation Network Co., and For-Hire Vehicle Drivers ("Ordinance") sanctioning

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Seattle to certify "exclusive driver representative[s]" ("EDR") that will "be the sole and exclusive representative of all for-hire drivers operating within the City for a particular driver coordinator, and authorized to negotiate, obtain and enter into a contract that sets forth terms and conditions of work applicable to all of the for-hire drivers employed by that driver coordinator." Seattle Municipal Code ("SMC") § 6.310.110.

2. An EDR's certification will require that a driver coordinator only do business in Seattle with independent drivers willing to accept the EDR's representation and contract, and vice versa. Drivers and driver coordinators will otherwise have to cease doing business with one another.

3. An EDR's certification will also require that independent drivers associate themselves with an EDR to do business with a driver coordinator and prohibit the drivers from individually speaking and contracting with a driver coordinator about their business relationship.

4. Plaintiffs Clark, Dunlap, Hassan, Immel, Kunze, Lowe, Montz, Motan, Rice, Riebs, and Teshome are independent drivers who provide transportation services to individuals in Seattle, Washington, and who do business with driver coordinators.

5. Plaintiffs seek a declaration that the Ordinance is unlawful and an order enjoining the City from enforcing the Ordinance, as well as nominal and compensatory damages, because:

a. The Ordinance violates the Supremacy Clause to the United States Constitution, U.S. CONST. art. VI, cl. 2, and 42 U.S.C. § 1983, because it authorizes and regulates conduct prohibited by the National Labor Relations Act ("NLRA") Sections 8(b)(4) and 8(e), 29 U.S.C. §§ 158(b)(4), 158(e), which preempts the Ordinance;

b. The Ordinance violates the First Amendment to the United States Constitution, as secured against state infringement by the Fourteenth Amendment and 42 U.S.C. § 1983,

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because it deprives drivers of their freedom of speech and compels drivers to associate with an exclusive representative and its expressive activities; and

c. The Ordinance violates the Supremacy Clause and 42 U.S.C. § 1983, because it requires conduct prohibited by the Drivers' Privacy Protection Act, 18 U.S.C. § 2722(a).

JURISDICTION AND VENUE

6. This Court has jurisdiction over this case pursuant to 28 U.S.C. § 1331 because it arises under the First and Fourteenth Amendments to the United States Constitution, and 28 U.S.C. § 1343 because Plaintiffs seek relief under 42 U.S.C. § 1983. This Court has authority under 28 U.S.C. §§ 2201 and 2202 to grant declaratory relief and other relief based thereon.

7. Venue is proper in this Court pursuant to 28 U.S.C. § 1391 because the claims arise in this judicial district; Plaintiffs do business in this judicial district; and Defendants are found in this judicial district.

PARTIES

8. Uber Technologies, Inc., along with its wholly owned subsidiaries Uber USA, LLC and Raiser, LLC (collectively "Uber"), and Lyft, Inc. ("Lyft"), are companies that offer smartphone applications that allow individuals who seek transportion to connect with independent drivers who wish to provide that transportation. Uber and Lyft are driver coordinators within the meaning of SMC § 6.310.110.

9. Plaintiff Dan Clark is a for-hire driver in Seattle, Washington. Since June 2015, Mr. Clark has provided, and continues to provide, transportation services in his four-door vehicle through use of both Uber's and Lyft's ride-referral application programs. Plaintiff is not a "qualifying driver" within the meaning of SMC § 6.310.110 and Finance and Administrative Services Directors Rule-1 (hereinafter FHDR) for both Uber and Lyft due to FHDR-1

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requirement that he must have driven at least fifty-two (52) trips originating or ending within Seattle city limits. *See* Ordinance § 2; FHDR-1, p.3, .n.3.

10. Plaintiff Tami Dunlap is a for-hire driver in Seattle, Washington. Since December 2014, Ms. Dunlap has provided, and will continue to provide starting again in the summer, transportation services in her four-door vehicle through use of Uber's ride-referral application program. Plaintiff is not a "qualifying driver" within the meaning of SMC § 6.310.110 due to the FHDR-1 requirement that she must have driven at least fifty-two (52) trips originating or ending within Seattle city limits. *See* Ordinance § 2; FHDR-1, p.3, n.3.

11. Plaintiff Ali Hassan is a for-hire driver in Seattle, Washington. Since January 2016, Mr. Hassan has provided, and continues to provide, transportation services in his four-door vehicle through use of Uber's ride-referral application program. Plaintiff is a "qualifying driver" within the meaning of SMC § 6.310.110 and FHDR-1 at all relevant times hereto.

12. Plaintiff Jennifer Immel is a for-hire driver in Seattle, Washington. Since February 2015, Ms. Immel has provided, and continues to provide, transportiation services in her four-door vehicle through use of Uber's ride-referral application program. Plaintiff is a "qualifying driver" within the meaning of SMC § 6.310.110 and FHDR-1 at all relevant times hereto.

13. Plaintiff Gary Kunze is a for-hire driver in Seattle, Washington. Since December 2015, Mr. Kunze has provided, and continues to provide, transportation services in his four-door vehicle through use of Uber's ride-referral application program. Since February 2016, Mr. Kunze also provided transportation services in his four-door vehicle through use of Lyft's ride-referal application program. Plaintiff is a "qualifying driver" within the meaning of SMC § 6.310.110 and FHDR-1 for Uber and Lyft at all relevant times hereto.

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14. Plaintiff Elisabeth Lowe is a for-hire driver in Seattle, Washington. Since February 2015, Ms. Lowe has provided, and continues to provide, transportation services in her sports utility vehicle through use of Uber's ride-referral application programs. For roughly six to nine months in 2015, Ms. Lowe also provided transportation services in her sports utility vehicle through use of Lyft's ride-referal application program, and renewed her provision of transportation through Lyft's ride-referal application in March 2017. Plaintiff is a "qualifying driver" within the meaning of SMC § 6.310.110 and FHDR-1 for Uber at all relevant times hereto, but not for Lyft due to being inactive during the January 17, 2016 – January 17, 2017. *See* Ordinance § 2; FHDR-1, p. 2.

15. Plaintiff Dale Montz is a for-hire driver in Seattle, Washington. Since October 2015, Mr. Muntz has provided, and continues to provide, transportation services in his four-door vehicle through use of Uber's ride-referral application program. Plaintiff is a "qualifying driver" within the meaning of SMC § 6.310.110 and FHDR-1 at all relevant times hereto.

16. Plaintiff Abdi Motan is a for-hire driver in Seattle, Washington. Since June/July 2014, Mr. Motan has provided, and continues to provide, transportation services in his personal four-door vehicle through use of Uber's ride-referral application program. Plaintiff is a "qualifying driver" within the meaning of SMC § 6.310.110 and FHDR-1 at all relevant times hereto.

17. Plaintiff Frederick (Ty) Rice is a for-hire driver in Seattle, Washington. Since July 2015, Mr. Rice has provided, and continues to provide, transportation services in his four-door vehicle through use of Uber's ride-referral application program. Plaintiff is a "qualifying driver" within the meaning of SMC § 6.310.110 and FHDR-1 at all relevant times hereto.

18. Plaintiff Michael Riebs is a for-hire driver in Seattle, Washington. Since August 2015, Mr. Riebs has provided, and continues to provide, transportation services in his four-door vehicle

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through use of Uber's ride-referral application program. Plaintiff is a "qualifying driver" within the meaning of SMC § 6.310.110 and FHDR-1 at all relevant times hereto.

19. Plaintiff Firew Teshome is a for-hire driver in Seattle, Washington. Since August 2014, Mr. Teshome has provided, and continues to provide, transportation services in his personal four-door vehicle through use of Uber's ride-referral application program. Plaintiff is a "qualifying driver" within the meaning of SMC § 6.310.110 and FHDR-1 at all relevant times hereto.

20. Defendant City of Seattle is a municipality of the State of Washington.

21. Defendant Seattle Department of Finance and Administrative Services ("SDFAS") is a municipal agency of Seattle and is the agency charged with administering and enforcing the Ordinance's provisions at issue in this action.

22. Defendant Fred Podesta is Director of SDFAS ("Director") and is the officer responsible for administering and enforcing the Ordinance's provisions at issue in this action. Mr. Podesta is sued in his official capacity.

FACTS

I. The Ordinance & Director Rules

23. On December 23, 2015, Seattle enacted the Ordinance amending Seattle's Municipal Code to authorize the election of EDRs for taxicabs, transportation network companies, and for-hire vehicle drivers who drive for a driver coordinator. *See* Ordinance. Pursuant to SMC § 1.04.020, the Ordinance became effective on January 22, 2016.[1]

24. On December 29, 2016, the Director promulgated limited rules addressing the "Qualifying Drivers and Lists of Qualifying Drivers," FHDR-1; "Application Process for Designating a Qualifyied Driver Representative," FHDR-2; "Certification of an Exclusive Driver

[1] Due to the Ordinance's incorporation into the Seattle Municipal Code, all references will be to the codified section unless a citation to the Ordinance is necessary.

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Representative," FHDR-3; and "Subjects of Bargaining between a Driver Coordinator and an Exclusive Driver Representative," FHDR-4.

25. A "[f]or-hire driver" ("driver") is "any person in physical control of a taxicab, for-hire vehicle, or transportation network company endorsed vehicle who is required to be licensed under this chapter. The term includes a lease driver, owner/operator, or employee, who drives taxicabs, for-hire vehicles, or transportation network company endorsed vehicles." SMC § 6.310.110.

26. A "[q]ualifying driver" is "a for-hire driver, who drives for a driver coordinator," SMC § 6.310.110, who "[w]as hired by or began contracting with, partnering with or maintaining a contractual relationship with a particular Driver Coordinator at least 90 days prior to [January 17, 2017]," and who "[d]rove at least 52 trips originating or ending within Seattle city limits for a particular [d]river [c]Coordinator during any three-month period in the 12 months preceding" January 17, 2017, FHDR-1, p. 2.

27. A "'Driver coordinator'" is "an entity that hires, contracts with, or partners with for-hire drivers for the purpose of assisting them with, or facilitating them in, providing for-hire services to the public. For the purposes of this definition, 'driver coordinator' includes but is not limited to taxicab associations, for-hire vehicle companies, and transportation network companies." SMC § 6.310.110.

28. A "[t]ransportation network company" ("TNC") is "an organization whether a corporation, partnership, sole proprietor, or other form, licensed under this chapter and operating in the City of Seattle that offers prearranged transportation services for compensation using an online-enabled TNC application or platform to connect passengers with drivers using their personal vehicles and that meets the licensing requirements of Section 6.310.130 and any other requirements under this chapter." *Id.*

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29. The Ordinance states that "[t]he provisions of this ordinance do not apply to drivers who are employees under 29 U.S.C. § 152(3)." Ordinance § 6. For this reason, qualifying drivers subject to the Ordinance are independent contractors who have business relationships with their driver coordinators.

30. A "[q]ualified driver representative" ("QDR") is "an entity that assists for-hire drivers operating within the City for a particular driver coordinator in reaching consensus on desired terms of work and negotiates those terms on their behalf with driver coordinators," and is an organization seeking to be qualified as an EDR. SMC §§ 6.310.110, 6.310.735.F; FHDR-3.

31. An EDR, in turn, is a "qualified driver representative, certified by the Director to be the sole and exclusive representative of all for-hire drivers operating within the City for a particular driver coordinator, and authorized to negotiate, obtain and enter into a contract that sets forth terms and conditions of work applicable to all of the for-hire drivers employed by that driver coordinator." SMC § 6.310.110.

32. The organizations that can be QDRs, and ultimately EDRs, are "labor organizations," as that term is defined in 29 U.S.C. § 152(5), or agents or affiliates of labor organizations, given the requirements of SMC § 6.310.110.735.B and FHDR-2.

33. A QDR becomes an EDR under the Ordinance if it obtains and submits to the Director statements of interest "from at least a majority (i.e., 50% + 1) of qualifying drivers from the driver list." FHDR-3, p. 2; SMC § 6.310.735.F.1.

34. The Ordinance authorizes a QDR to cause Seattle to coerce driver coordinators to assist the QDRs campaign to represent those drivers. Among other things, QDR's can cause Seattle to: coerce driver coordinators to produce drivers' personal information to the QDR, SMC § 6.310.735.D, FHDR-1, pp. 3–4; coerce driver coordinators and drivers to submit to a card-check

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recognition procedure, SMC § 6.310.735.F, FHDR-3; coerce driver coordinators not to provide, or offer to provide, money or anything of value to drivers with the intent of encouraging those drivers to resist or not support the QDR, SMC § 6.310.735.K; and coerce driver coordinators not to interfere with, restrain, or deny a QDR in the exercise of rights granted to it by the Ordinance, *id.*; *see also* SMC § 6.310.735.M (enforcement provisions).

35. The personal information the driver coordinator is required to produce to a QDR includes the "names, addresses, email addresses (if available), and phone number (if available) of all qualifying drivers . . . hire[d], contract[ed] with, or partner[ed] with," SMC § 6.310.735.D, in addition to their "[v]alid for-hire driver licenses/permit number (issued by King County/City of Seattle)" and their valid Washington State driver's license number or other state's driver's license number if permitted to use it on their for-hire driver's license or permit application, FHDR-1, p. 3.

36. Upon certification, an EDR gains legal authority to act as "the sole and exclusive representative of all for-hire drivers operating within the City for a particular driver coordinator," and has the "authori[ty] to negotiate, obtain and enter into a contract that sets forth terms and conditions of work applicable to all of the for-hire drivers employed by that driver coordinator," SMC § 6.310.110, to include those drivers who oppose the EDR, do not want to associate with the EDR, and do not want the EDR to speak and contract for them.

37. An EDR has legal authority to speak, meet, negotiate, and contract for all drivers with a driver coordinator over the following mandatory subjects defined by the Director:

1. Best practices regarding vehicle equipment standards[;]
2. Safe driving training and/or practices[;]
3. The manner in which the driver coordinator will conduct criminal background checks of all prospective drivers[;]
4. The nature and amount of payments to be made by, or withheld from, the driver coordinator to or by the drivers[;]
5. Minimum hours of work[;]
6. Driver's conditions of work[; and]

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7. Rules that apply to drivers including discipline, termination or deactivation.

FHDR-4, p. 2; SMC § 6.310.735.H.1. An EDR can also negotiate for a clause that "require[s] membership of for-hire drivers in the EDR's entity/organization within 14 days of being hired, contracted with, or partnered with by the driver coordinator to provide for-hire transportation services to the public." SMC § 6.310.735.H.4.

38. Driver coordinators are compelled to meet and negotiate only with the EDR over the terms of their business relationship with drivers, and with no other party. FHDR-4, pp. 2–3; SMC § 6.310.735.H.1. Drivers are prohibited from individually meeting, negotiating, and/or contracting with driver coordinators over their business relationship terms. Drivers and driver coordinators are also prohibited from changing any aspects of their business relationship that are the subjects of collective bargaining "even if [they] have not included terms concerning such subjects in their agreement" unless, and until, the driver coordinator "meet[s] and discuss[es] those changes in good faith with the EDR," SMC § 6.310.735.J.3

39. An EDR's certification requires that a driver coordinator only do business in Seattle with drivers willing to tolerate that union's representation, and not do business with drivers unwilling to tolerate it. Conversely, an EDR's certification requires that drivers unwilling to tolerate that union's representation not do business in Seattle with an affected driver coordinator.

40. The Ordinance further compels driver coordinators to enter into an agreement with an EDR dictating the terms and conditions of the driver coordinators business relationship with drivers by authorizing mandatory interest arbitration if a driver coordinator refuses to enter into such an agreement within ninety (90) days of certification. *See* SMC § 6.310.735.I.

41. The resulting agreement between driver coordinators and EDRs must be submitted to the Director for approval in order to be effective. *See* SMC §§ 6.310.735.H.2, 735.I.4, & 735.J.

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Upon the Director's approval, the agreement between the driver coordinator and EDR will be binding on all drivers who do business with that driver coordinator, irrespective of whether each individual driver approves of the agreement's terms.

42. Certification of an EDR, therefore, will require driver coordinators to enter into an agreement with the EDR that requires the driver coordinators only do business in Seattle with drivers willing to abide by the terms of the EDR's agreement, and not do business with drivers who do not. Conversely, drivers who are unwilling to abide by the terms of the EDR's agreement will have to cease doing business with the affected driver coordinators.

43. On February 13, 2017, Teamsters Local 117 submitted an application to be a QDR. Teamsters Local 117 is a "labor organization," as that term is defined in 29 U.S.C. § 152(5), as demonstrated by the documents Teamsters Local 117 submitted with its QDR application and by its filing with United States Department of Labor.

44. On March 3, 2017, the Director certified Teamsters Local 117 as a QDR. *See* Letter from Fred Podesta to Teamsters Local 117 (Mar. 3, 2017), https://www.seattle.gov/business-regulations/taxis-for-hires-and-tncs/for-hire-driver-collective-bargaining.

45. On March 7, 2017, Teamsters Local 117 gave notice to Uber and Lyft that it seeks to represent drivers who do business with Uber and Lyft. As discussed below, the drivers targeted for collectivization include the Plaintif Drivers.

III. The Plaintiff Drivers

46. Plaintiffs Clark, Dunlap, Hassan, Immel, Kunze, Lowe, Montz, Motan, Rice, Riebs, and Teshome are for-hire drivers who do business with Uber and/or Lyft in Seattle, Washington.

47. Plaintiffs and similarly situated drivers use an Uber or Lyft developed and licensed smartphone ride-referral application (respectively "Uber App" and "Lyft App") that allows

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Plaintiffs and other drivers to receive trip requests directly from potential passengers who use a rider version of the Uber/Lyft-based smartphone application, to process payments from those passengers, and to provide feedback on the passengers.

48. As part of the application process for using the Uber and Lyft Apps, an individual submits a copy of his or her driver's license to Uber or Lyft. On information and belief, Uber and Lyft obtain the individual's driver license number from his or her submitted driver's license, and may obtain other personal information about the individual from his or her driver's license and/or from the vehicle registrations that Uber and Lyft must obtain to comply with SMC § 6.310.260(A)(2)(g).

49. To use the Uber App, the driver enters into an agreement with Uber that is dependent upon the product that he or she would like to provide transportation under, e.g., "uberHop," "uberX," "uberPool," "uberEats," "uberXL," "UberSelect," "UberBlack," and "UberSUV." Similarly, to use the Lyft App, the driver enters into an agreement with Lyft that is dependent upon the product that he or she would like to provide transportation under, e.g., "Line," "Lyft," "Plus," and "Premier." Plaintiffs use these ride-referral applications as follows:

a. Plaintiff Clark owns his own vehicle, which is a four-door sedan, and utilizes it to drive as an independent driver under the "uberX" and "uberPool" options on the Uber App, and under the"Line" and "Lyft" options on the Lyft App.

b. Plaintiff Dunlap owns her own vehicle, which is a four-door sedan, and utilizes it to drive as an independent driver under the "uberX" option on the Uber App.

c. Plaintiff Hassan leases a four-door sedan, and utilizes it to drive as an independent driver under the "uberX" option on the Uber App.

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d. Plaintiff Immel owns her own vehicle, which is a four-door sedan, and utilizes it to drive as an independent driver under the "uberX," "uberPool," "UberBlack," and "UberSelect" options on the Uber App.

e. Plaintiff Kunze owns his own vehicle, which is a four-door sedan, and utilizes it to drive as an independent driver under the "UberX" and "UberPool" options on the Uber App, and under the"Line" and "Lyft" options on the Lyft App.

f. Plaintiff Lowe uses several vehicles to drive as an independent driver under the "UberSelect," "uberXL," "UberSUV" and "UberPool" options on the Uber App, and under the "Line," "Lyft," and "Plus" options on the Lyft App.

g. Plaintiff Montz owns his own vehicle, which is a four-door sedan, and utilizes it to drive as an independent driver under the "uberHop," "uberX," and "uberPool" options on the Uber App.

h. Plaintiff Motan owns his own vehicle, which is a four-door sedan, and utilizes it to drive as an independent driver under the "uberX" option on the Uber App.

i. Plaintiff Rice owns his own vehicle, which is a four-door sedan, and utilizes it to drive as an independent driver under the "uberX" and "Uber Select" options on the Uber App.

j. Plaintiff Riebs owns his own vehicle, which is a four-door sedan, and utilizes it to drive as an independent driver under the "uberX," "uberPool," "UberBlack," and "UberSelect" options on the Uber App.

k. Plaintiff Teshome owns his own vehicle, which is a four-door sedan, and utilizes it to drive as an independent driver under the "uberX" and "uberPool" options on the Uber App.

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50. Plaintiffs and similarly situated drivers are not required to use the Uber App or Lyft App for a set number of hours each week. They can use the apps whenever they choose, for however long they choose, and can choose to utilize other methods for obtaining passengers, such as other mobile based ride-referral applications. Plaintiffs and drivers are also able to accept or reject a trip request from a potential passenger.

51. Plaintiffs Clark, Dunlap, Hassan, Immel, Kunze, Lowe, Montz, Motan, Rice, Riebs, and Teshome each have an independent contractor's business relationship with Uber and/or Lyft. On information and belief, the relationship of other drivers who use the Uber App or Lyft App is an independent contractor's business relationship.

52. While Plaintiffs and other drivers' relationship with Uber and Lyft, respectively, are that of independent contractors, Uber and Lyft are still "employer[s]" within the meaning of 29 U.S.C. § 152(2) because Uber and Lyft employ individuals in an industry affecting interstate commerce, such as administrative, clerical, and technical employees. Uber and Lyft are also a "person" within the meaning of 29 U.S.C. §§ 158(b)(4), 158(e).

53. Uber and Lyft are "driver coordinator[s]" within the meaning of SMC § 6.310.110 because they each contract and partner with over fifty (50) for-hire drivers in Seattle for the purpose of assisting them with, or facilitating them in, providing for-hire service to the public.

54. Certification of an EDR for Uber drivers will:

a. compel Uber only to do business in Seattle with drivers represented by the EDR, and to enter into an agreement with the EDR that requires Uber only do business in Seattle with drivers represented by the EDR and that are subject to the EDR's agreement;

b. compel Plaintiffs and similarly situated drivers to accept the EDR's representation and abide by the EDR's agreement as a condition of doing business with Uber in Seattle;

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c. prohibit Plaintiffs and similarly situated drivers from individually speaking and contracting with Uber about the terms of their business relationship, and prohibit these parties from altering the terms of their business relationship without EDR interference; and

d. force Plaintiffs to associate with the EDR, its speech, and its contracts as a condition of doing business with Uber in Seattle.

55. Certification of an EDR for Lyft drivers will:

a. compel Lyft only to do business in Seattle with drivers represented by the EDR, and to enter into an agreement with the EDR that requires Lyft only do business in Seattle with drivers represented by the EDR and that are subject to the EDR's agreement;

b. compel Plaintiffs Clark, Kunze, and Lowe, and similarly situated drivers, to accept the EDR's representation and abide by the EDR's agreement as a condition of doing business with Lyft in Seattle

c. prohibit Plaintiffs Clark, Kunze, and Lowe, and similarly situated drivers, from individually speaking and contracting with Lyft about the terms of their business relationship, and prohibit these parties from altering the terms of their business relationship, without EDR interference; and

d. force Plaintiffs Clark, Kunze, and Lowe, and similarly situated drivers, to associate with the EDR, its speech, and its contracts as a condition of doing business with Lyft.

56. Plaintiffs strongly oppose these ramifications of the Ordinance. They do not want to be forced to associate with an EDR as a condition of doing business with Uber and/or Lyft, to have their business practices subject to a mandatory EDR agreement, or to have their individual right to speak and contract with Uber and/or Lyft suppressed and subordinated to that of an EDR.

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57. Plaintiffs wish to continue to use the Uber App and/or Lyft App to provide transportation services in the future. However, they and other drivers may cease doing business with Uber and/or Lyft, and may cease using the companys' Apps in Seattle, if compelled to accept the EDR's representation and abide by its agreement to do business with Uber and/or Lyft.

58. The Ordinance threatens Plaintiffs and other drivers with business and personal costs because certification of an EDR will compel Plaintifs and other drivers to either: (1) cease doing business with Uber and/or Lyft, and suffer the resulting loss of revenue and other costs, or (2) alter their business relationship with Uber and/or Lyft pursuant to the dictates of the EDR's agreement, which will govern, among other things, the hours drivers' may drive, the payments they receive, how they operate and maintain their vehicles, and whether they must pay compulsory fees to the EDR as a condition of doing business with Uber and/or Lyft.

59. The Ordinance's organizing provisions threaten Plaintiffs and other drivers with additional injury to their rights and interests, as the Ordinance requires disclosure of the drivers' personal information to a QDR and empowers a QDR to engage in a campaign against drivers and driver coordinators that is prohibited under NLRA Section 8(b)(4), 29 U.S.C. § 158(b)(4).

60. The Ordinance threatens Plaintiffs with the infliction of irreparable constitutional injury, as described below.

CLAIMS FOR RELIEF

61. Plaintiffs re-allege and incorporate by reference the paragraphs set forth above in each Count of their Complaint.

COUNT I
The Ordinance is preempted by NLRA Section 8(e).

62. NLRA Sections 8(b)(4) and 8(e), 29 U.S.C. §§ 158(b)(4) & 158(e), generally prohibit labor organizations from coercing and contracting with employers to cease doing business with

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other persons. As described below, the NLRA preempts the Ordinance because it authorizes labor organizations to coerce and contract with driver coordinators to cease doing business with independent drivers who do not want to be represented by that labor organization and/or subject to its collective bargaining agreements.

63. NLRA Section 8(e) provides, in relevant part, "[i]t shall be an unfair labor practice for any labor organization and any employer to enter into any contract or agreement, express or implied, whereby such employer ceases or refrains or agrees to cease or refrain from handling, using, selling, transporting or otherwise dealing in any of the products of any other employer, or to cease doing business with any other person . . ." 29 U.S.C. § 158(e).

64. Plaintiffs and other drivers subject to the Ordinance are both "persons" and persons "doing business" with driver coordinators within the meaning of NLRA Sections 8(b)(4) and 8(e).

65. A driver coordinator, such as Uber and Lyft, would arguably violate NLRA Section 8(e) if it entered into an agreement with a labor organization whereby the driver coordinator agreed to cease doing business with independent contractors, drivers not represented by that labor organization, and/or not subject to its collective bargaining agreements.

66. The Ordinance requires or authorizes conduct arguably prohibited by NLRA Section 8(e) because an EDR's certification requires driver coordinators to cease doing business with drivers who are not represented by the EDR and to enter into agreements with the EDR requiring the driver coordinator to cease doing business with drivers not represented by the EDR and/or not subject to the EDR's agreement.

67. The Ordinance deprives Plaintiffs and similarly situated drivers of rights and interests protected by NLRA Section 8(e), and is preempted by the Supremacy Clause and 42 U.S.C. § 1983.

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COUNT II

The Ordinance is preempted by NLRA Section 8(b)(4).

68. NLRA Section 8(b)(4) provides, among other things, that it is an unfair labor practice for a labor organization "to threaten, coerce, or restrain any person engaged in commerce or in an industry affecting commerce, where in either case an object thereof is . . . (A) forcing or requiring any employer or self-employed person to join any labor or employer organization or to enter into any agreement which is prohibited by subsection (e); [or] (B) forcing or requiring any person to cease using, selling, handling, transporting, or otherwise dealing in the products of any other producer, processor, or manufacturer, or to cease doing business with any other person . . . ." 29 U.S.C. §§ 158(b)(4)(ii)(A), (B).

69. A labor organization would arguably violate NLRA Section 8(b)(4) if it threatened, coerced, or restrained drivers or driver coordinators, such as Uber and Lyft, with the goal of forcing and/or requiring: (1) self-employed drivers to join the labor organization; (2) driver coordinators to cease doing business with drivers not represented by that labor organization and/or not subject to its agreements; (3) driver coordinators to enter into a Section 8(e) agreement requiring it to cease doing business with drivers who are not represented by that labor organization and/or who are not subject to its agreements; and/or (4) drivers to cease using the products of a driver coordinator.

70. The Ordinance authorizes conduct arguably prohibited by Section 8(b)(4) by authorizing and empowering labor organizations to threaten, coerce, or restrain drivers and driver coordinators, such as Uber and Lyft, with the goal of forcing or requiring: (1) self-employed drivers to join the labor organization; (2) driver coordinators to cease doing business with drivers not represented by that labor organization and/or not subject to its agreements; (3) driver coordinators to enter into a Section 8(e) agreement requiring them to cease doing business with drivers not

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represented by that labor organization and/or not subject to its agreements; and/or (4) drivers to cease using the products of a driver coordinator.

71. The Ordinance deprives Plaintiffs and similarly situated drivers of rights and interests protected by NLRA Section 8(b)(4), and is preempted by the Supremacy Clause and 42 U.S.C. § 1983.

COUNT III
The Ordinance is Preempted by the NLRA's Secondary Pressure Provisions.

72. Congress, by and through NLRA Sections 8(b)(4) and 8(e), has fully regulated the manner and means by which unions can, and cannot, pressure and contract with employers and independent contractors to influence and control how they do business with other employers and/or independent contractors. Congress chose to prohibit certain union conduct in NLRA Sections 8(b)(4) and 8(e). The conduct Congress chose not to prohibit was intended to be unregulated by state and local governments, and left to the free play of economic forces.

73. The Ordinance regulates a field of conduct fully regulated by NLRA Sections 8(b)(4) and 8(e), because it regulates the manner and means by which unions can pressure and contract with driver coordinators and drivers to influence and control how they do business with one another. To the extent that the Ordinance does not authorize conduct arguably prohibited by NLRA Sections 8(b)(4) and 8(e), the Ordinance authorizes conduct that Congress intended to be unregulated and left to the free play of economic forces. Consequently, the Ordinance deprives Plaintiffs and similarly situated drivers of rights and interests protected by federal law, and is preempted by the Supremacy Clause and 42 U.S.C. § 1983.

COUNT IV
The Ordinance Violates the First and Fourteenth Amendments to the United States Constitution and 42 U.S.C. § 1983.

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74. The First Amendment to the United States Constitution guarantees each individual a right to freedom of speech and freedom of association. The government infringes on these First Amendment rights when it restricts an individual's right to speak with others and when it compels individuals to associate with or support an organization and its expressive activities.

75. The Ordinance grants an EDR legal authority to speak for drivers vis-à-vis a driver coordinator, to petition Seattle on behalf of drivers, and to enter into contracts on behalf of drivers with driver coordinators that are binding on those drivers. An EDR's certification will thereby compel drivers, as a condition of doing business with a driver coordinator, to associate themselves with an EDR, its speech, its contracting, and other expressive activities

76. An EDR's authority under the Ordinance to act as the sole and exclusive representative of drivers also prohibits or restricts drivers from speaking and contracting with driver coordinators regarding the terms of their business relationship individually and through associations other than their government-appointed EDR.

77. The Ordinance permits an EDR to enter into an agreement with a driver coordinator "to require membership of for-hire drivers in the EDR's entity/organization within 14 days of being hired, contracted with, or partnered with by the driver coordinator." SMC § 6.310.735.H. The City and an EDR will compel Plaintiffs and other drivers to support speech and an expressive association by requiring that they join or financially support an EDR as a condition of doing business with a driver coordinator.

78. For these reasons, the Defendants, by and through the Ordinance, threaten to, and will, violate Plaintiffs and other drivers' First Amendment speech and associational rights, as those rights are secured against infringement by the Fourteenth Amendment to the United States

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Constitution and 42 U.S.C. § 1983. No compelling or otherwise sufficient state interest justifies this infringement on the Plaintiffs and other drivers' First Amendment rights.

79. Certification of an EDR will inflict on Plaintiffs and similarly situated drivers the irreparable harm and injury inherent in a violation of First Amendment rights, and for which there is no adequate remedy at law.

80. The Ordinance is unconstitutional both on its face, and as applied to Plaintiffs.

81. The Ordinance is invalid and unenforceable in its entirety because certification of an EDR is unlawful for the reasons stated in Counts I through IV, and the remainder of the provisions of the Ordinance are inoperable given this fact, rendering them non-severable. In the alternative, the Ordinance is unlawful to the extent the Court deems it unlawful.

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COUNT V

The Ordinance is Preempted by the Drivers' Privacy Protect Act

82. The Drivers' Privacy Protection Act ("DPPA") makes it "unlawful for any person knowingly to obtain or disclose personal information, from a motor vehicle record, for any use not permitted under [18 U.S.C. § 2721(b)]." 18 U.S.C. § 2722(a).

83. The Ordinance and its implementing rules requires driver coordinators to knowingly disclose to QDRs personal information from motor vehicle records, namely qualified drivers' "[v]alid for-hire driver license/permit number (issued by King County/City of Seattle)" and "[v]alid Washington State driver's license number or, where the driver was permitted to list a different state's driver's license number in the for-hire driver's license/permit application, driver's license number from that other state." FHDR-1, p.3.

84. The City seeks to compel driver coordinators Uber and Lyft to knowingly disclose to QDR Teamsters Local 117 the above-mentioned personal information from motor vehicle records, and potentially other personal information about qualified drivers that Uber and Lyft obtained from each qualified driver's motor vehicle records. Some of this personal information pertains to Plaintiffs who are qualified drivers.

85. The disclosure of personal information from motor vehicle records, and obtaining of personal information from motor vehicle records, required under the Ordinance are for uses not permitted under DPPA Section 2721(b), 18 U.S.C. § 2721(b).

86. The Ordinance, both on its face and as applied to Uber and Lyft, requires knowing disclosures and acceptance of personal information from motor vehicle records that are unlawful under DPPA Section 2722(a), 18 U.S.C. § 2722(a), and that will violate Plaintiffs' rights under DPPA Section 2724, 18 U.S.C. § 2724. Consequently, the Ordinance deprives Plaintiffs and

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similarly situated drivers of rights and interests protected by federal law, and is preempted by the Supremacy Clause and 42 U.S.C. § 1983.

PRAYER FOR RELIEF

Wherefore, Plaintiffs request that this Court:

A. Issue a declaratory judgment that the Ordinance is invalid and of no force or effect under the Supremacy Clause and 42 U.S.C. § 1983 because it is preempted by the NLRA and DPPA;

B. Issue a declaratory judgment that the Ordinance is unconstitutional under the First Amendment, as secured against state infringement by the Fourteenth Amendment to the United States Constitution and 42 U.S.C. § 1983, and thus is null and void;

C. Pending final judgment in this case, preliminarily enjoin Defendants from implementing or enforcing the Ordinance;

D. Permanently enjoin Defendants, their agents, and anyone acting in concert or in participation with them from enforcing the Ordinance;

E. Award Plaintiffs both nominal and compensatory damages from any losses they suffer as a result of the Ordinance during the pendency of this litigation;

F. Award Plaintiffs their costs and reasonable attorneys fees pursuant to the Civil Rights Attorneys' Fees Award Act of 1976, 42 U.S.C. § 1988; and

G. Grant such other and additional relief as the Court may deem just and proper.

Dated: March 10, 2017

s/ David M.S. Dewhirst
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s/ James G. Abernathy
James G. Abernathy, WSBA #48801
c/o Freedom Foundation

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