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6 UNITED STATES DISTRICT COURT
7 SOUTHERN DISTRICT OF CALIFORNIA
8

9 MICHAEL CROSSLEY; BART BAILEY;
10 LET THE VOTERS DECIDE, LLC; VALLEY
DIRECT MARKETING LLC; IN THE FIELD,
11 INC.; DISCOVERY PETITION
MANAGEMENT LLC; PIR DATA
12 PROCESSING INC.; CAROLYN OSTIC dba
VOTER DIRECT, and CHRIS
13 BRENTLINGER dba BAY AREA
PETITIONS,
14 Plaintiff,
15 v.
16 STATE OF CALIFORNIA; XAVIER
17 BECERRA, in his capacity as Attorney General
of the State of California; and "JOHN DOE," in
18 his/her official capacity,
19 Defendants.

Case No. '20CV0284 GPC JLB
**CLASS ACTION COMPLAINT FOR
VIOLATION OF FEDERAL AND
CALIFORNIA CONSTITUTIONAL
RIGHTS, DECLARATORY,
INJUNCTIVE, AND OTHER RELIEF
DEMAND FOR JURY TRIAL**

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1 Plaintiffs MICHAEL CROSSLEY and BART BAILEY (collectively, the “Individual
2 Plaintiffs”), and LET THE VOTERS DECIDE, LLC, VALLEY DIRECT MARKETING LLC, IN
3 THE FIELD, INC., DISCOVERY PETITION MANAGEMENT LLC, PIR DATA PROCESSING,
4 INC., CAROLYN OSTIC dba VOTER DIRECT, and CHRIS BRENTLINGER dba BAY AREA
5 PETITIONS (collectively, “Company Plaintiffs”) allege as follows:

6 **INTRODUCTION**

7 1. Via this Complaint, Plaintiffs seek declaratory, injunctive, and other relief
8 determining that California Assembly Bill 5 (“AB 5”)—a recently enacted statute that became
9 effective on January 1, 2020—is unconstitutional.

10 2. Alternatively, Plaintiffs seek declaratory and injunctive relief determining that the
11 Individual Plaintiffs, and the similarly-situated “Collectors” described herein, are independent
12 contractors—rather than employees—under the so-called “ABC test” imposed by AB 5.

13 **PARTIES AND JURISDICTION**

14 3. The Company Plaintiffs, for purposes relevant to the captioned action, are data
15 processing entities (which entities will generally be referred to herein as “Data Processors”) that
16 utilize individuals and businesses (referred to herein as “Collectors”) to collect signatures from
17 registered voters on various ballot initiatives and referenda throughout the United States, including
18 California. The Individual Plaintiffs are two such Collectors, having rendered services to various
19 of the Company Plaintiffs pursuant to separately-executed independent contracts.

20 4. Plaintiff Michael Crossley is an individual Collector who at all relevant times herein
21 has resided in Riverside, California and provided the signature collection services discussed herein
22 in and around the City of Riverside.

23 5. Plaintiff Bart Bailey is an individual Collector who at all relevant times herein has
24 resided in Temecula, California, and provided the signature collection services discussed herein in
25 and around Riverside and San Diego Counties.

26 6. Plaintiff Let The Voters Decide, LLC is a Data Processor organized and existing
27 under the laws of the State of California that has to date utilized independent contractors such as
28 Messrs. Crossley and Bailey to collect signatures from registered voters on various ballot initiatives

1 and referenda throughout the State of California. Let The Voters Decide, LLC does business within
2 the State of California, including this district.

3 7. Plaintiff Valley Direct Marketing LLC is a Data Processor organized and existing
4 under the laws of the State of California that has to date utilized independent contractors such as
5 Messrs. Crossley and Bailey to collect signatures from registered voters on various ballot initiatives
6 and referenda throughout the State of California. Valley Direct Marketing LLC does business within
7 the State of California, including this district.

8 8. Plaintiff In The Field, Inc. is a Data Processor organized and existing under the laws
9 of the State of California that has to date utilized independent contractors such as Messrs. Crossley
10 and Bailey to collect signatures from registered voters on various ballot initiatives and referenda
11 throughout the State of California. In The Field, Inc. does business within the State of California,
12 including this district.

13 9. Plaintiff Discovery Petition Management LLC is a Data Processor organized and
14 existing under the laws of the State of California that has to date utilized independent contractors
15 such as Messrs. Crossley and Bailey to collect signatures from registered voters on various ballot
16 initiatives and referenda throughout the State of California. Discovery Petition Management LLC
17 does business within the State of California, including this district.

18 10. Plaintiff PIR Data Processing Inc. is a Data Processor organized and existing under
19 the laws of the State of California that has to date utilized independent contractors such as Messrs.
20 Crossley and Bailey to collect signatures from registered voters on various ballot initiatives and
21 referenda throughout the State of California. PIR Data Processing Inc. does business within the
22 State of California, including this district.

23 11. Plaintiff Carolyn Ostic is an individual doing business as a sole proprietorship called
24 Voter Direct, and is a Data Processor doing business within the State of California who has to date
25 utilized independent contractors such as Messrs. Crossley and Bailey to collect signatures from
26 registered voters on various ballot initiatives and referenda throughout the State of California. Ms.
27 Ostic does business within the State of California, including this district.

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1 12. Plaintiff Chris Brentlinger is an individual doing business as a sole proprietorship
2 called Bay Area Petitions, and is a Data Processor doing business within the State of California who
3 has to date utilized independent contractors such as Messrs. Crossley and Bailey to collect signatures
4 from registered voters on various ballot initiatives and referenda throughout the State of California.
5 Mr. Brentlinger does business within the State of California, including this district.

6 13. Defendant State of California is a sovereign State.

7 14. Defendant Xavier Becerra is being sued in his official capacity as the Attorney
8 General of the State of California, with authority to enforce AB 5.

9 15. Defendant "John Doe" is a placeholder designation for any unidentified California
10 official who has authority, or purports to have authority, to enforce AB 5 against Company
11 Plaintiffs, in the event that additional officials must be included as defendants in this lawsuit in order
12 to afford Plaintiffs complete relief.

13 16. In light of the constitutional underpinnings of this action, this Court has subject
14 matter jurisdiction pursuant to 28 U.S.C. sections 1331 1343(a)(3), and 1367.

15 17. Venue is proper in this District on each of the grounds specified in 28 U.S.C. section
16 1391(b)(1) through (b)(3).

17 18. With respect to the declaratory relief sought via this Complaint, an actual controversy
18 exists between the parties concerning the constitutionality and validity of AB 5, as well as in regards
19 to whether or not the Collectors are properly deemed "employees" under the "ABC test" imposed
20 by AB 5, in that (1) Plaintiffs contend that AB 5 is unconstitutional and invalid, and that the
21 Individual Plaintiffs and other Collectors remain independent contractors even under the ABC test,
22 while (2) Defendants contend that AB 5 is constitutional and valid, and Plaintiffs further believe
23 that Defendants contend that Collectors are employees under the ABC test. A declaration that the
24 statute is invalid or that the Collectors are not employees thereunder, and/or an injunction against
25 AB 5's enforcement (either in general or specifically relative to a reclassification of the Collectors
26 as employees) would resolve the controversy, and Plaintiffs' right to such relief is thus appropriate
27 for adjudication pursuant to 27 U.S.C. sections 2201 and 2202, as well as Federal Rules of Civil
28 Procedure 57 and 65.

1 19. A preliminary injunction enjoining Defendants from enforcing AB 5 against
2 Company Plaintiffs would preserve the status quo and protect Plaintiffs' rights during the pendency
3 of this action, and a permanent injunction would protect those rights after this action concludes.

4 **CLASS ACTION ALLEGATIONS**

5 20. Class Definition: Plaintiffs bring this suit as a class action pursuant to Federal Rule
6 of Civil Procedure, Rule 23, on behalf of themselves and all other similarly-situated persons and
7 entities as a member of a Class defined as follows:

8 a. All Data Processors who utilize Collectors within the State of California to
9 collect signatures from registered voters on various ballot initiatives and referenda within California
10 as described herein, and who treat those Collectors as independent contractors.

11 b. All Collectors who, pursuant to independent contractor relationships with
12 Data Processors, collect signatures from registered voters on various ballot initiatives and referenda
13 within California as described herein.

14 21. Numerosity: The proposed class is sufficiently numerous in that there are
15 approximately two dozen Data Processors operating within the State of California, utilizing a
16 plethora of Collectors to perform the signature collection work described herein. Class members
17 are so numerous and widely-dispersed throughout the State of California that joinder of all class
18 members is impracticable.

19 22. Common Questions of Fact and Law: Common questions of fact and law exist as to
20 all members of the class and predominate over any questions affecting solely individual members
21 of the class. Among the questions of fact and law that predominate over any individual issues are:

22 a. Whether AB 5 violates the Equal Protection Clause of the Fourteenth
23 Amendment of the United States Constitution because it draws classifications between various
24 categories of workers without a rational basis for distinction;

25 b. Whether AB 5 violates the Article I, Section 3(b)(4) of the California
26 Constitution because it draws classifications between various categories of workers without a
27 rational basis for distinction;

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1 c. Whether AB 5 violates Article I, Section 1 of the California Constitution by
2 infringing on the rights of Data Processors and Collectors to pursue their chosen profession;

3 d. Whether AB 5 violates the Due Process Clause of the Fourteenth Amendment
4 of the United States Constitution because it interferes with the rights of Data Processors and
5 Collectors to pursue their chosen profession;

6 e. Whether AB 5 violates Article I, Section 7 of the California Constitution by
7 infringing on the rights of Data Processors and Collectors to pursue their chosen profession;

8 f. Whether AB 5 violates the Due Process Clause of the Fourteenth Amendment
9 of the United States Constitution because it constitutes a state law interfering with Data Processors'
10 and Collectors' right to petition, and to solicit support or opposition to political initiatives, and thus
11 "abridg[es] the freedom of speech, or of the press, or of the right of people peaceably to assemble";

12 g. Whether AB 5 violates Article I, Section 7 of the California Constitution
13 because it interferes with Data Processors' and Collectors' right to petition, and to solicit support or
14 opposition to political initiatives, and thus constitutes an unlawful restraint on political speech;

15 h. Whether AB 5 violates Article I, Sections 2 and 3 of the California
16 Constitution because it interferes with Data Processors' and Collectors' right to freely speak, write,
17 and publish political speech, to petition government for redress grievances, and to assemble freely
18 to consult for the common good, and thus constitutes an unlawful restraint on political speech;

19 i. Whether AB 5 violates the Ninth Amendment to the United States
20 Constitution by divesting Data Processors and Collectors of the right to work on their own terms;

21 j. Whether AB 5 violates the Article I, Section 24 of the California Constitution
22 by divesting Data Processors and Collectors of the right to work on their own terms;

23 k. Whether AB 5 violates Article I, Section 10 of the United States Constitution
24 because it impairs Data Processors and Collectors from entering into and maintaining bargained-for
25 contracts;

26 l. Whether AB 5 violates Article I, Section 9 of the California Constitution
27 because it impairs Data Processors and Collectors from entering into and maintaining bargained-for
28 contracts; and

1 m. Whether Collectors are appropriately designated as employers or independent
2 contractors under AB 5's ABC test.

3 23. Typicality: The claims of the Individual Plaintiffs and Company Plaintiffs are typical
4 of those held by the Data Processors and Collectors, respectively.

5 24. Representation: The Individual Plaintiffs and Company Plaintiffs, and the
6 undersigned counsel, will fairly and adequately protect the interests of the class.

7 **FACTUAL BACKGROUND**¹

8 ***The Dynamex Decision and Assembly Bill 5's Origins***

9 25. On December 3, 2018, California Assemblywoman Lorena Gonzalez introduced AB
10 5. According to the bill, its purpose was to "codify the decision of the California Supreme Court"
11 in Dynamex Operations West, Inc. v. Superior Court of Los Angeles, 416 P.3d 1 (Cal. 2018)
12 ("Dynamex"), and to "clarify the decision's application in state law." AB 5 § 1(d).

13 26. Dynamex adopted a three-factor test—or "ABC test"—to determine whether a
14 worker is an independent contractor or an employee for purposes of the California Industrial Welfare
15 Commission's wage orders. The wage orders provide minimum wage, maximum hour, and working
16 condition requirements for specific industries.

17 27. The wage order at issue in Dynamex imposes wage and hour obligations for
18 companies that "employ" workers, which the wage order defines as "to engage, suffer, or permit to
19 work." Construing that specific language, Dynamex concluded that workers are presumed to be
20 employees for purposes of the wage order unless three conditions are met:

21 _____
22 ¹ Please note that large portions of Paragraphs 25 through 43 herein, which provide background
23 concerning the contents, brokering, vetting, and implementation of AB 5, are duplicative and/or
24 derivative of material contained in the complaint filed by the law firm of Gibson, Dunn & Crutcher
25 LLP in the case of Olson et al. v. State of California et al. (United States District Court for the
26 Central District of California, Case No. 2:19-cv-10956-DMG-RAO). This background is well-
27 researched, and the undersigned has included it here in order to provide a more fulsome
28 understanding of AB 5's origins. The undersigned gives full credit to the Gibson, Dunn firm for its
collection and presentation of this information. Various other passages in this Complaint, including
certain portions of Paragraphs 59, 60, and 63 through 65, and various of the charging allegations
contained in the First through Fifth, Ninth through Thirteenth, and Fifteenth Causes of Action, are
also derivative of those contained in the Olson complaint. This duplication/derivation in no way
minimizes the accuracy of the listed allegations as they relate to Plaintiffs herein.

1 A. The individual is free from control and direction in connection
2 with the performance of the service, both under his contract for the
performance of service and in fact;

3 B. The service is performed outside the usual course of the business
4 of the employer; and

5 C. The individual is customarily engaged in an independently
6 established trade, occupation, profession or business of the same
nature as that involved in the service performed.

7 416 P.3d at 48.

8 28. Although Dynamex applied the ABC test solely for purposes of California's wage
9 orders, AB 5 codifies the ABC test for purposes of those wage orders, and expands it to apply to the
10 entirety of the California Labor Code and the California Unemployment Insurance Code. See Garcia
11 v. Border Transp. Grp., LLC, 28 Cal.App.5th 558, 561, 570 (2018) (explaining that "Dynamex did
12 not purport to [apply] in every instance where a worker must be classified as either an independent
13 contractor or an employee," and that "Dynamex does not apply" to "non-wage-order claims"
14 (emphasis omitted)).

15 29. Specifically, Section 2 of AB 5 adds a new provision to Article 1 of the California
16 Labor Code, Section 2750.3, that incorporates the ABC test verbatim. Section 3(i) of AB 5 amends
17 the definition of "employee" in the Labor Code by linking that definition to the new Section 2750.3.
18 And Section 4 of AB 5 amends Section 606.5 of the Unemployment Insurance Code to incorporate
19 the definition of "employee" in Section 621 of the Code—a provision that, in turn, Section 5 of AB
20 5 amends to also incorporate Dynamex's ABC test. The Unemployment Insurance Code requires
21 employers to pay unemployment insurance contributions for all of their employees. See Cal. Unemp.
22 Ins. Code §§ 976, 977 (West 2019). Employers must also account for administrative costs associated
23 with withholding unemployment insurance taxes, paying them over to the State, keeping extensive
24 records of these transactions, and complying with recurring reporting requirements. See id. §§
25 13020, 13021.

26 30. AB 5 also transforms employment regulations into potential criminal liability. Any
27 employer who fails to withhold or pay these taxes, regardless of intent, could be guilty of a
28 misdemeanor and subject to fines up to \$1,000 for each occurrence, as well as up to one year of

1 imprisonment. Id. § 2118. Additionally, employers who fail to comply with numerous
2 Unemployment Insurance Code provisions and regulations are potentially liable for dozens of
3 penalties. See, generally, Cal. Emp’t Dev. Dep’t, Penalty Reference Chart (2018),
4 https://www.edd.ca.gov/pdf_pub_ctr/de231ep.pdf. Just a handful of examples include fines for
5 failing to report the hiring of a new or rehired “employee” within the prescribed time limit (Cal.
6 Unemp. Ins. Code § 1088); failing “to file a report of wages of each of [its] workers on magnetic
7 media or other electronic means” (id. § 1114(b)); filing a false statement of withholdings to an
8 “employee” (id. § 13052); or failing to supply a required “identifying number” (id. § 13057(a)).

9 31. AB 5 states that it may be enforced by the California Attorney General or “a city
10 attorney of a city having a population in excess of 750,000, or by a city attorney in a city and county
11 or, with the consent of the district attorney, by a city prosecutor in a city having a full-time city
12 prosecutor in the name of the people of the State of California upon their own complaint or upon
13 the complaint of a board, officer, person, corporation, or association.” AB 5 § 2(j). The lawsuits
14 may seek injunctive relief “to prevent the continued misclassification of employees as independent
15 contractors,” in addition to “any other remedies available.” Id.

16 ***AB 5’s Exemptions***

17 32. AB 5 spends only a few lines adopting Dynamex’s ABC test for the entire California
18 Labor Code and California Unemployment Code. The vast majority of the statute is a morass of
19 complicated provisions exempting dozens of occupations from that test, which carve-outs were
20 added by the Legislature solely for interest groups and labor.

21 33. Under Section 2(a)(2) of the statute, the exempted workers are governed by the
22 alternative “control-of-the-work” test from S. G. Borello & Sons, Inc. v. Department of Industrial
23 Relations, 769 P.2d 399 (Cal. 1989) (“Borello”); AB 5 thus does not apply Dynamex to these
24 exempted workers.

25 34. The Borello test uses a multi-factor balancing analysis—where no one factor is
26 dispositive—to determine whether a worker is an employee or an independent contractor. Signaling
27 that the exemptions included in AB 5 were meant to allow independent contractor relationships to
28 continue for the exempted businesses, Assemblywoman Gonzalez stated that Borello “was weighted

1 heavily against. . . trying to prove misclassification.”²

2 35. The statutory exemptions carve out most types of workers traditionally considered to
3 be independent contractors, including:

4 a. Workers engaged in occupations requiring licenses, see AB 5 § 2(b)(1)-(4),
5 (6), including:

6 i. licensed insurance agents and other individuals requiring insurance
7 license;³

8 ii. certain licensed individuals in the medical profession (physicians,
9 surgeons, dentists, podiatrists, psychologists, and veterinarians), so
10 long as they are providing medical or professional services to or by a
11 health care entity;⁴

12 iii. licensed attorneys, architects, engineers, private investigators, and
13 accountants;

14 iv. registered or licensed securities broker-dealers or investment
15 advisers; and

16 v. commercial anglers working on American (but not foreign) vessels.

17 b. Direct sales workers as described in Section 650 of the California
18 Unemployment Insurance Code. AB 5 § 2(b)(5).

19 i. A direct sales salesperson generally is anyone “engaged in the trade
20 or business of primarily in person demonstration and sales
21 presentation of consumer products, including services or other
22

23 ²@LorenaSGonzalez, Twitter (Dec. 25, 2019, 10:57 AM),
24 <https://twitter.com/LorenaSGonzalez/status/1209911130522406913?s=20>.

25 ³ Specifically, “[a] person or organization who is licensed by the Department of Insurance
26 pursuant to Chapter 5 (commencing with Section 1621), Chapter 6 (commencing with Section
27 1760), or Chapter 8 (commencing with Section 1831) of Part 2 of Division 1 of the Insurance
28 Code.” AB 5 § 2(b)(1).

⁴ AB 5 exempts from the provision concerning medical occupations “employment settings
currently or potentially governed by collective bargaining agreements.” AB 5 § 2(b)(2).

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intangibles, in the home.” Cal. Unemployment Ins. Code § 650(a).

- c. Professional service providers, *see* AB 5 § 2(c)(2)(B)(i)-(xi), including those who provide:
 - i. marketing services;
 - ii. human resources services;
 - iii. travel agent services;
 - iv. graphic design services;
 - v. grant writing services;
 - vi. fine artist services;
 - vii. services of agents licensed by the U.S. Treasury to practice before the IRS;
 - viii. payment processing agent services;
 - ix. photography or photojournalist services;
 - x. services provided by a freelance writer, editor, or newspaper cartoonist,⁵ and
 - xi. services provided by a licensed esthetician, electrologist, manicurist, barber, or cosmetologist.
- d. Real estate licensees and repossession agencies, AB 5 § 2(d)(1)-(2).
- e. “[B]usiness-to-business contracting relationship[s],” subject to certain conditions. AB 5 § 2(e).
- f. Contractors and subcontractors in the construction industry, subject to certain conditions. AB 5 § 2(f).
- g. Subcontractors providing construction trucking services—*i.e.*, “hauling and trucking services provided in the construction industry”—subject to certain conditions. AB 5 § 2(f)(8).

⁵ This exemption applies to a “freelance writer, editor, or newspaper cartoonist who does not provide content submissions to the putative employer more than 35 times per year.” AB 5 § 2(c)(2)(B)(x).

1 h. Referral agencies and service providers, subject to certain conditions. AB 5
2 § 2(g).

3 i. Motor clubs and individual motor club service providers. AB 5 § 2(h).

4 36. There is no rhyme or reason to these exemptions, and many of them are wholly
5 arbitrary. For example, a delivery truck driver is exempt when delivering milk, but not when
6 delivering juice, fruit, baked goods, or meat products. See AB 5 § 5(c)(1)(A). A commercial
7 fisherman is exempt when working on an American vessel, but not a foreign vessel. Id. § 2(b)(6).
8 An ophthalmologist is exempt, but an optometrist is not. Id. § 2(b)(2). And a freelance editor or
9 writer is exempt if she publishes 35 submissions per year per “putative employer,” but not if she
10 publishes 36. Id. § 2(c)(2)(B)(x). When asked about this 35-submission cutoff, Assemblywoman
11 Gonzalez said: “Was it a little arbitrary? Yeah.”⁶ News articles report that “employers and workers
12 in other industries including truck drivers, therapists, and entertainers say it is unclear how AB 5
13 will affect them, leading some to take precautionary measures and others to say they hope a court
14 will clarify the matter soon.”⁷

15 37. AB 5 does not identify any data, studies, reports, or other justification or explanation
16 for its exemptions.

17 38. The Legislature included many of the exemptions as political favors or to politically
18 favored groups without any valid legislative purpose or rational basis. At least one legislator warned
19 during the debate over AB 5’s passage that the legislation “undermines the principle of equal
20 treatment under the law and deprives many Californians the right to be their own bosses, by
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22 ⁶ Katie Kilkenny, “Everybody Is Freaking Out”: Freelance Writers Scramble to Make Sense of
23 New California Law, The Hollywood Reporter (Oct. 17, 2019),
24 <https://www.hollywoodreporter.com/news/everybody-is-freaking-freelancewriters-scramble-make-sense-new-california-law-1248195> (internal quotation marks omitted) (quoting Assemblywoman Gonzalez).
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26 ⁷ Katy Grimes, California’s Independent Contractors Are About to Become Dependent Employees
27 - or Unemployed, California Globe (Dec. 17, 2019), <https://californiaglobe.com/section-2/californias-independent-contractors-are-about-to-become-dependent-employees-or-unemployed/>.
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1 exempting some industries over others.”⁸

2 39. In the months preceding the passage of AB 5, the California Labor Federation
3 circulated a one-page form that business groups could complete to request an exemption from the
4 statute. These “opt out” forms were the idea of Assemblywoman Gonzalez’s staff, who then in turn
5 worked to amend the bill to create additional exemptions based upon the relative interest from labor
6 groups in specific businesses seeking an exemption. This process played out repeatedly and is
7 responsible for the irrational and arbitrary results of the final bill.⁹ Indeed, Assemblywoman
8 Gonzalez touted the fact that the bill reflected the unions’ bare political interests to irrationally
9 benefit friends and harm others, explaining at the time of its passage in the California Assembly that
10 “I am a Teamster I am the union.”¹⁰

11 ***AB 5’s Penalty Provisions***

12 40. As explained above, AB 5 codifies the ABC test in a new Section 2750.3 of the Labor
13 Code. Dozens of provisions of the Labor Code provide criminal penalties for violations, in addition
14 to any civil penalties that also may attach.

15 41. A few examples of the criminal penalties in the Labor Code with which companies
16 could be threatened if Defendants enforce AB 5 against them in the manner consistent with the
17 sponsors’ stated intent include:

18 a. Labor Code § 553: Misdemeanor for violation of provisions related to
19 overtime, meal periods, alternative workweeks, makeup work time, and rest
20 days.

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22 ⁸ Christine Mai-Due and Lauren Weber, It Isn’t Just Uber: California Prepares for New Gig
23 Worker Rules...and Confusion, Wall Street Journal (Dec. 17, 2019),
24 <https://www.wsj.com/articles/confusion-in-california-as-gig-worker-law-set-totake-effect-11576590979>.

25 ⁹ In addition, Assemblywoman Gonzalez has promised a “part 2 to the bill,” apparently to add
26 more exemptions for politically favored groups. @LorenaSGonzalez, Twitter (Nov. 21, 2019, 7:45
AM), <https://twitter.com/lorenasgonzalez/status/1197541485056409611?s=12>.

27 ¹⁰ @LorenaGonzalez, Twitter (May 30, 2019, 7:23 AM),
28 <https://twitter.com/lorenasgonzalez/status/1134087876390428672?s=21>.

- 1 b. Labor Code § 1199: Misdemeanor punishable by a fine and/or imprisonment
2 for up to 30 days for failing to pay minimum wage.
- 3 c. Labor Code § 225: Misdemeanor for violating certain provisions regarding
4 wage withholdings.
- 5 d. Labor Code § 226.6: Misdemeanor punishable by a fine of up to \$1,000
6 and/or imprisonment of up to one year for failing to comply with itemized
7 paystub requirements.
- 8 e. Labor Code § 227: Felony punishable by imprisonment of up to five years
9 and/or a fine of up to \$1,000 for failing to make certain required payments to
10 a health or welfare fund, pension fund, vacation plan, or similar benefit fund.

11 42. AB 5 also extends the ABC test to the Unemployment Insurance Code, which
12 imposes civil penalties for various violations, including:

- 13 a. Unemployment Insurance Code § 1088.5(e): Fine of \$24 per employee for
14 failing to report the employee's hire within a specified time.
- 15 b. Unemployment Insurance Code § 1112(a): Penalty of 15% for failure to pay
16 unemployment contributions when due.
- 17 c. Unemployment Insurance Code § 1126.1: Fine of \$100 per unreported
18 employee for failure to register as an employer.

19 43. The Private Attorneys General Act also authorizes employees to sue to recover civil
20 penalties for Labor Code violations, including misclassification. See Cal. Labor Code §§ 2698 et
21 seq. Employees may sue on behalf of themselves, other employees, or the State of California. In
22 addition to seeking any civil penalties that the Labor and Workforce Development Agency may
23 assess under the Labor Code, the Act allows the private plaintiffs to seek a civil penalty of \$100 "for
24 each aggrieved employee per pay period" for an "initial violation," and \$200 "for each aggrieved
25 employee per pay period for each subsequent violation." *Id.* § 2699(f)(2).

26 ***The Company Plaintiffs and the Signature Collection Process***

27 44. The Company Plaintiffs are Data Processors that utilize Collectors like the Individual
28 Plaintiffs to collect signatures from registered voters on various ballot initiatives and referenda

1 throughout the United States, including California.

2 45. The relationship between the Company Plaintiffs and Collectors like the Individual
3 Plaintiffs begins with either a brief informational meeting or an even less formal initial interaction
4 wherein the Company Plaintiffs explain to the Collectors how the signature collection process
5 works, and how the Collectors will be compensated for that collection.

6 46. Since the Collectors—some of whom are individuals, some of whom are businesses
7—are the ones who harvest the signatures at issue, the quantity and quality of their production of
8 signatures varies greatly, and is thus most easily facilitated via a piece rate commission system.
9 Once a Collector brings completed signature forms to a Data Processor, the Data Processor inspects
10 (and if necessary, improves) the quality of the petition forms for resale to its various downstream
11 clients.

12 47. The raw form in which the signatures are submitted by the collectors to the Data
13 Processors is almost always insufficient for turnover to the latter's clients, so the Data Processor's
14 visual inspection of the signatures (for completeness, rate of registered voters to nonregistered
15 voters, and the existence of non-qualified, deficient, and/or duplicate signatures) and refinement of
16 those signature batches is what separates the raw product the Data Processors buy from Collectors
17 from the end product the Data Processors' downstream clients need in order to qualify their
18 measures. The commissions the downstream clients pay the Data Processors for their batched,
19 refined signatures are later compared to the commissions paid the Collectors, and reconciled to
20 ensure the commissions calculated are correct.

21 48. The Data Processors' only interactions with the Collectors after the aforementioned
22 initial interactions referenced in Paragraph 45, *supra*, are when the Collectors come to the Data
23 Processors' office, at a time of their choosing, to turn over the petition forms/signatures and submit
24 an invoice for payment.

25 49. There is little uniformity in the time and manner in which Collectors work. Some
26 Collectors work full time, some work part-time, and some work in very short segments (sometimes
27 less than half an hour) per week. Similarly, the Collectors also utilize different venues for finding
28 the signatures. Some stand at fixed, public locations, some primarily work at public events, and

1 some walk door-to-door in their neighborhoods.

2 50. As evidenced by the above, Data Processors like the Company Plaintiffs have no
3 control whatsoever, and seek to exert none, over the time, place, and specific manner of the
4 Collectors' work. The Collectors alone choose when to work, where to work (and how to get there),
5 and how they will go about gathering the signatures at issue. Indeed, as a further emblem of their
6 independence, since the total amount of signatures any given campaign may need is fixed, the
7 Collectors have a vested interest in not disclosing to the Data Processors or their fellow Collectors
8 where or how they found the voters at issue. In short, the Collectors are "free from the control and
9 direction of the hiring entity in connection with the performance of the work, both under the contract
10 for the performance of the work and in fact." AB 5 § 2(a)(1)(A).

11 51. In addition, the work performed by the Collectors is fundamentally different from
12 that performed by the Data Processors, and thus "outside the usual course of the hiring entity's
13 business." AB 5 § 2(a)(1)(B). In that regard, the Collectors sole' relevant work task is to collect
14 voter signatures, and their sole relevant deliverable is the signatures themselves. The Data
15 Processors, on the other hand, play no role in the collection process, and instead focus their efforts
16 on the processing and packaging of the signatures for ultimate turnover to the downstream clients.

17 ***Michael Crossley***

18 52. Michael Crossley is, as mentioned above, an individual residing in Riverside,
19 California. Mr. Crossley is married, with four young children, including one-year-old twins. Mr.
20 Crossley has worked at a variety of jobs over the years, including as a car salesperson, selling
21 DirecTV units in retail stores, and operating as a solar array sales consultant. In 2015, Mr. Crossley
22 began working as a driver for Uber and Lyft to earn extra money. After he and his wife had their
23 third child in 2016, Mr. Crossley realized that he needed an additional income source in order to
24 support his family; thus, in 2017, he began to work as a Collector for various Data Processors,
25 including one or more of the Company Plaintiffs herein.

26 53. A typical "day in the life" for Mr. Crossley is to drop his twin boys off at school in
27 the morning, after which he goes to a local Walmart or similar public venue to engage in signature
28 collection. Usually, he turns in signatures to one of the Company Plaintiffs, or a similarly-situated