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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
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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
1760), or Chapter 8 (commencing with Section 1831) of Part 2 of Division 1 of the Insurance
Code.” AB 5 § 2(b)(1).

27 ⁴ AB 5 exempts from the provision concerning medical occupations “employment settings
28 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

1 Data Collector, on Tuesdays and Fridays, in exchange for which he receives a commission check.

2 54. At all relevant times, Mr. Crossley worked as an independent contractor, entering
3 into separate contracts with the Company Plaintiffs or similarly-situated entities on a petition-by-
4 petition basis. The flexibility associated with his independent contracting work is such that he can
5 work in a manner that best accommodates his wife and children's respective schedules, without
6 worrying about the regimented "clock punching" attendant to employment. Mr. Crossley views his
7 time as being worth far more to him than it would be to a potential "employer," and is also able to
8 earn more from working in a flexible, independent, capacity than he would if considered to be an
9 "employee" for one or more of the Company Plaintiffs.

10 ***Bart Bailey***

11 55. Bart Bailey is, as mentioned above, an individual residing in Temecula, California.
12 Mr. Bailey is married, with three adult children and four adult stepchildren, along with seventeen
13 grandchildren. Following 10 years of service in the United States Navy, Mr. Bailey worked in the
14 fire and safety industry for approximately 15 years. In 2014, Mr. Bailey and his wife began working
15 in the insurance industry, but due to the extremely high cost of procuring insurance-related "leads,"
16 Mr. Bailey began driving for Lyft and Uber in order to earn extra money. As the combined income
17 from his insurance work and driving was inadequate to make ends meet, Mr. Bailey began collecting
18 signatures for ballot initiatives and referenda as a source of income supplementation. For the last
19 two years, Mr. Bailey has worked nearly every day as a Collector, driving for Lyft and Uber, and/or
20 selling insurance policies.

21 56. To facilitate his work as a Collector, Mr. Bailey typically gathers signatures in
22 storefronts, at festivals, at parades, or any other outdoor opportunity that is available. Mr. Bailey
23 then sells those signatures to one of the Company Plaintiffs, or a similarly-situated Data Processor,
24 at a fixed dollar amount that varies from petition to petition.

25 57. Like Mr. Crossley, Mr. Bailey at all relevant times worked as an independent
26 contractor, entering into separate contracts with the Company Plaintiffs or similarly-situated entities
27 on a petition-by-petition basis. The flexibility associated with his independent contracting work is
28 such that he can work in whatever capacity he chooses, more or less, or not at all, on any given day.

1 Also like Mr. Crossley, Mr. Bailey views his time as being worth far more to him than it would be
2 to a potential "employer," and is also able to earn more from working in a flexible, independent,
3 capacity than he would if considered to be an "employee" for one or more of the Company Plaintiffs.

4 58. Messrs. Crossley and Bailey, and Collectors generally, are customarily engaged in
5 the work of signature gathering, performing work for multiple Data Processors on many measures.

6 ***The Adverse Effect of AB 5's Enforcement***

7 59. If AB 5 were enforced against Plaintiffs to require reclassifying the Collectors as
8 employees, and to thus deny the Data Processors the ability to independently contract with
9 Collectors, the Company Plaintiffs and similarly-situated Data Processors would be forced to
10 change their business model. Existing independent contracts between the Data Processors and the
11 Collectors would be invalidated, depriving many part-time Collectors of the opportunity to work in
12 the manner that provides the most flexibility for them.

13 60. Indeed, there are thousands of Collectors in California, and Data Processors like the
14 Company Plaintiffs separately contract with myriad Collectors like the Individual Plaintiffs. If
15 Company Plaintiffs and other Data Processors are forced to change their business models to employ
16 all Collectors, or to stop doing business in the State because of an inability to employ all of the
17 Collectors they utilize, it will harm both their actual employees and the Collectors with whom they
18 contract.

19 61. Through the signature collection process described herein, the Individual Plaintiffs
20 and Company Plaintiffs collectively perform an important civic service through which significant
21 issues of public interest are aired and vetted through votes placed at the ballot box on Election Day.
22 Indeed, since 2000, publicly-beneficial laws such as the following germinated from exactly the
23 process described herein:

- 24 a. Proposition 20 (March 2000): Directing a portion of California state lottery
25 proceeds to the purchase of student textbooks.
26 b. Proposition 32 (November 2000): Imposing political campaign spending
27 limits and disclosure requirements.
28 c. Proposition 41 (March 2002): Setting aside \$200 million in bond money for

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- voting modernization.
- d. Propositions 46 and 47 (November 2002): Collectively setting aside billions of dollars in bond money for housing, emergency shelter, and educational facilities.
 - e. Proposition 58 (March 2004): Requiring the balancing of the State of California's budget.
 - f. Proposition 63 (November 2004): Increasing taxes to expand mental health services.
 - g. Propositions 1B-1E and 84 (November 2006): Collectively setting aside billions of dollars in bond money for highway safety, air quality, housing, emergency shelter, educational facilities, disaster preparedness, and flood control.
 - h. Propositions 3 and 12 (November 2008): Collectively setting aside nearly \$2 billion in bond money for children's hospitals and home/farm purchasing assistance for veterans.
 - i. Proposition 41 (June 2014): Setting aside \$600 million in bond money to provide multifamily housing to veterans.
 - j. Proposition 1 (November 2014): Setting aside \$7.12 billion in bond money for California's water system.
 - k. Proposition 58 (November 2016): Repealing bilingual education restrictions.
 - l. Proposition 68 (June 2018): Setting aside \$4 billion in bond money for parks, environmental protection, and water infrastructure.
 - m. Proposition 72 (June 2018): Excluding rainwater capture systems from property tax assessments.
 - n. Propositions 1 and 4 (November 2018): Collectively setting aside billions in bond money for housing programs, veterans home loans, and children's hospitals.
 - o. Proposition 12 (November 2018): Banning sale of meat from animals

1 confined in spaces below specific sizes.

2 62. In absence of the relief sought herein, the ineluctable reduction in the number of
3 Collectors will cause a chilling effect on the collective ability of the Plaintiffs to perform this civic
4 service, and a resulting chilling effect on the ability of interested parties to seasonably secure public
5 support for the placement of important initiatives on the election ballot.

6 63. Moreover, the contracts between most Data Processors, including the Company
7 Plaintiffs herein, and Collectors explicitly classify, or otherwise treat, the Collectors as independent
8 contractors. Those contracts make clear that the Data Processors do not have certain obligations to
9 the Collectors as employees under the Labor Code, and also that the Collectors do not have the same
10 obligations to the Data Processors as they would if the latter were traditional “employers.” If AB 5
11 were enforced to require Data Processors to reclassify Collectors, the described contracts would
12 become invalid, unlawful, or otherwise unenforceable. Similarly, enforcement of AB 5 in such a
13 manner would require Data Processors to reclassify Collectors as employees, imposing major
14 administrative, payroll, legal, and other burdens on them, and possibly forcing them out of business.

15 64. Collectors, too, could face reduced work opportunities and more taxes, as
16 reclassification would make it more difficult for them to claim federal income tax deductions for
17 business expenses and could preclude them from benefiting from other tax deductions. Perhaps even
18 more fundamentally, whereas Collectors can currently choose to collect wherever and whenever
19 they wish, totally controlling their own schedule and income opportunities, an employment model
20 is invariably based on set shifts in a dedicated location during set hours. To insist on a wholesale
21 reclassification would thus have highly adverse effects on Collectors’ pocketbooks and calendars.

22 65. These adverse consequences for workers could be especially substantial for the vast
23 majority of Collectors who work for—and choose among—multiple Data Processors when
24 searching for work opportunities. Instead of being an independent service provider who can pick
25 and choose which tasks to perform and where to perform them, the new employees will have to pick
26 one “employer” to work for—and do so under the direction of that new employer. The flexibility
27 described above would be replaced with a rigid and inflexible 9-to-5 business model, to the
28 detriment of Data Processors, Collectors, California voters, and the public at large.

FIRST CAUSE OF ACTION

(Declaratory Relief: Violation of the U.S. Constitution's Equal Protection Clause)

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3 66. Plaintiffs reallege and reincorporate Paragraphs 1 through 65 of this Complaint as
4 though fully set forth herein.

5 67. AB 5 violates the Equal Protection Clause of the Fourteenth Amendment of the
6 United States Constitution because it draws classifications between various categories of workers
7 without a rational basis for distinction. Likewise, the statute draws irrational distinctions between
8 independent service providers and non-independent service providers that perform substantially the
9 same work, disfavoring independent service providers relative to similarly situated non-independent
10 service providers. Laws unconstitutionally singling out a certain class of citizens for disfavored legal
11 status or general hardships are rare. AB 5 is such an exceptional and invalid form of legislation.

12 68. No sophisticated economic analysis is required to see the pretextual nature of
13 California's proffered explanations for AB 5's differential treatment. There is no rational distinction
14 between Data Processors and many of the companies granted exemptions under AB 5, nor between
15 many other groups of exempted (e.g., optometrists) versus non-exempted (e.g., ophthalmologists)
16 groups. The California Legislature's focus on some businesses, but not others, and its willingness
17 to grant a laundry list of pell-mell company exemptions in order to spare those types of companies
18 the costs and burdens of complying with AB 5, demonstrates irrational animus against non-
19 exempted companies in violation of the latter's equal protection rights. This type of singling out, in
20 connection with a rationale so weak that it undercuts the principle of non-contradiction, fails to meet
21 even the relatively easy standard of rational basis review.

22 69. Strict scrutiny review applies because AB 5 is designed to burden certain companies
23 and industries and, if enforced against Collectors like the Individual Plaintiffs and Data Processors
24 like the Company Plaintiffs such as to force reclassification of the former group, would burden the
25 fundamental rights of Data Processors and Collectors to pursue their chosen professions and
26 determine when and how they earn a living.

27 70. In addition, there is no rational basis for favoring some businesses and disfavoring
28 others relative to the application of the ABC test. For example, AB 5 ostensibly exempts business-

1 to-business services, freelance writers, grant writers, graphic designers, insurance agents, direct
2 sellers, manicurists, hair dressers, and real estate agents. The independence, autonomy, and other
3 characteristics of these types of workers are substantially similar to Collectors like the Individual
4 Plaintiffs.

5 71. If the California Legislature's goal in enacting AB 5 truly was to protect workers
6 from perceived harms caused by perceived misclassification and to prevent employers from skirting
7 their earnings and safety obligations, the statute would not contain the dozens of exemptions that
8 leave so many workers outside of its purportedly protective umbrella. Where, as here, the breadth
9 of the statute is so untethered from the reasons offered for it that the statute seems inexplicable by
10 anything but animus toward those who remain non-exempted, the statute lacks a rational relationship
11 to legitimate state interests. And where, as here, the exclusion of certain workers from licensing
12 requirements is inconsistent with asserted state interests, the law violates equal protection.

13 72. This sort of malicious, irrational, and plainly arbitrary action by state officials defeats
14 AB 5 under the rational relation test.

15 73. The manner in which AB 5's exemptions were created further confirms that the
16 statute violates the Equal Protection Clause. Many exemptions resulted from "back door" deals and
17 political favors to industry groups, neither of which reflect a valid legislative purpose.¹¹ For
18 example, "among truckers, only those who tow disabled vehicles or haul building construction
19 materials obtained exemptions."¹²

20 74. Legislatures may not draw lines for the purpose of arbitrarily excluding individuals,
21 including by doing so as a concession to one constituent but not another. Yet, the sponsors of AB 5
22 included the exemptions solely in response to the demands of political constituents.

23 75. Moreover, although its legislative proponents claim that the statute will prevent
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25 ¹¹ See George Skelton, Labor Won Big With Bill to Rewrite California Employment Law—But
26 It's Flawed, L.A. Times (Sept. 12, 2019), [https://www.latimes.com/california/story/2019-09-](https://www.latimes.com/california/story/2019-09-11/skelton-ab5-independent-contractors-california-employment-law)
27 [11/skelton-ab5-independent-contractors-california-employment-law](https://www.latimes.com/california/story/2019-09-11/skelton-ab5-independent-contractors-california-employment-law) ("How do you qualify for an
28 exemption? Answer: pressure and persistence. Better also hire a lobbyist. And, of course, it helps
to be a political supporter." (internal quotation marks omitted)).

¹² Skelton, *supra* note 11.

1 “exploitation” of independent service providers, if enforced consistent with AB 5 sponsors’ stated
2 intent, AB 5 will void the Collectors’ valuable contracts with the Data Processors and cripple their
3 fundamental right to pursue their lawful occupation, while simultaneously carving out a laundry list
4 of exemptions for dozens of classes of independent contractors who are, by the logic employed by
5 AB 5’s proponents, equally “exploited” by the businesses with whom they contract. By the
6 sponsors’ logic, AB 5 makes it more likely that workers in the exempted businesses will be
7 “exploited,” given that the statute excludes those workers from the Dynamex standard to which they
8 would otherwise be subject for certain wage order claims. Thus, AB 5 is so untethered from the
9 reasons offered for it that it is inexplicable by anything but animus toward the class it is designed to
10 affect, lacks a rational relationship to legitimate state interests, and violates equal protection.

11 76. Plaintiffs have no adequate remedy at law.

12 WHEREFORE, Plaintiffs pray for relief as hereinafter set forth.

13 **SECOND CAUSE OF ACTION**

14 **(Declaratory Relief: Violation of the California Constitution’s Equal Protection Clause)**

15 77. Plaintiffs reallege and reincorporate Paragraphs 1 through 76 of this Complaint as
16 though fully set forth herein.

17 78. For substantially the same reasons as described in the First Cause of Action, AB 5
18 violates Article I, Section 3(b)(4) of the California Constitution.

19 79. Plaintiffs will be deprived of equal protection under the law in violation of the
20 California Constitution if AB 5 is enforced against them.

21 WHEREFORE, Plaintiffs pray for relief as hereinafter set forth.

22 **THIRD CAUSE OF ACTION**

23 **(Declaratory Relief: Violation of the California Constitution’s Inalienable Rights Clause)**

24 80. Plaintiffs reallege and reincorporate Paragraphs 1 through 79 of this Complaint as
25 though fully set forth herein.

26 81. AB 5 violates Article I, Section 1 of the California Constitution, which provides:
27 “All people are by nature free and independent and have inalienable rights. Among these are
28 enjoying and defending life and liberty, acquiring, possessing, and protecting property, and pursuing

1 and obtaining safety, happiness, and privacy.”

2 82. AB 5 violates this provision because it infringes the rights of the Data Processors and
3 Collectors to pursue their chosen profession, which is an essential component of liberty, property,
4 happiness, and privacy. Signature collection work is an occupation, even if it is a specific or
5 particular one. AB 5 infringes the right to pursue this occupation. It also infringes the rights of the
6 Data Processors, Collectors, and Data Processors’ downstream clients to make contracts governing
7 their occupations and purchases, and to associate with one another. The freedom to enter into their
8 own work agreements, and to buy services from willing sellers, is of paramount importance to Data
9 Processors, Collectors, and customers. The right to pursue their chosen occupation is the very
10 essence of the Collectors’ and Data Processors’ personal freedom and opportunity. Indeed, to the
11 extent it is enforced to reclassify the Collectors as employees, AB 5 deprives both the Collectors
12 and Data Processors of these rights by forbidding them from entering into their chosen work
13 arrangements—that of independent service providers, with the flexibility and autonomy that entails.
14 Such enforcement would also impose massive obligations on both the Data Processors (who must
15 comply with a host of laws governing employers) and the Collectors (who must comply with duties
16 that bind employees, such as the duty of loyalty to one’s employer). In addition, mandatory
17 reclassification would not only replace the Collectors’ chosen working relationships with an entirely
18 different one, but it also would force many Collectors out of work entirely, because the Data
19 Processors cannot hire every Collector as an employee.

20 83. The interference with, and deprivation of, the above-listed rights is unreasonable and
21 arbitrary. AB 5 is not narrowly tailored to any compelling governmental interest, nor is it the least
22 restrictive means to serve any such end. It is not even rationally related to any legitimate
23 governmental interest. It has no substantial relation to the public, health, safety, or morals, or to the
24 general welfare, and it is incongruous with any legitimate purpose the government may proffer.
25 Further, AB 5 is unrelated to serving any interest in worker protection because it outlaws working
26 relationships of the workers’ own choosing and undermines their flexibility and autonomy by
27 imposing rigid and duty-laden employer/employee relationships.

28 WHEREFORE, Plaintiffs pray for relief as hereinafter set forth.

1 **FOURTH CAUSE OF ACTION**

2 **(Declaratory Relief: Violation of the U.S. Constitution's Due Process Clause—Right To**
3 **Pursue Chosen Occupation)**

4 84. Plaintiffs reallege and reincorporate Paragraphs 1 through 83 of this Complaint as
5 though fully set forth herein.

6 85. For substantially the same reasons as set forth in the Third Cause of Action, AB 5
7 violates the Due Process Clause of Section 1 of the Fourteenth Amendment to the United States
8 Constitution.

9 86. In addition, California businesses have a constitutionally protected interest in
10 operating free from unreasonable governmental interference. Businesses are therefore protected
11 from baseless or invidiously discriminatory standards and have a right to be free from excessive and
12 unreasonable government conduct intentionally directed toward them to force them out of business.

13 87. The Legislature's circuitous path to legitimate ends, when a direct path is available,
14 shows that AB 5 lacks a rational basis. If California wanted to provide independent service
15 providers, like Collectors, access to certain benefits and protections, it could have passed more direct
16 and less restrictive measures to achieve that end.

17 88. The language and effect of the statute—combined with the back-room dealing that
18 led to its laundry list of irrational exemptions—creates a "wholly arbitrary" standard in violation of
19 due process.

20 WHEREFORE, Plaintiffs pray for relief as hereinafter set forth.

21 **FIFTH CAUSE OF ACTION**

22 **(Declaratory Relief: Violation of the California Constitution's Due Process Clause: Right To**
23 **Pursue Chosen Occupation)**

24 89. Plaintiffs reallege and reincorporate Paragraphs 1 through 88 of this Complaint as
25 though fully set forth herein.

26 90. For substantially the same reasons set forth in Third and Fourth Causes of Action,
27 AB 5 violates the Due Process Clause of Article I, Section 7 of the California Constitution.

28 WHEREFORE, Plaintiffs pray for relief as hereinafter set forth.

1 **SIXTH CAUSE OF ACTION**

2 **(Declaratory Relief: Violation of the U.S. Constitution's Due Process Clause—Impermissible**
3 **Restriction on Political Speech)**

4 91. Plaintiffs reallege and reincorporate Paragraphs 1 through 90 of this Complaint as
5 though fully set forth herein.

6 92. The First Amendment to the United States Constitution, as made applicable to the
7 States via the Fourteenth Amendment to the United States Constitution, prohibits the enactment of
8 any law “abridging the freedom of speech, or of the press, or of the right of people peaceably to
9 assemble.” Any state law that infringes on any of these rights is a violation of the Due Process
10 Clause of the Fourteenth Amendment.

11 93. The protections collectively afforded by the First and Fourteenth Amendments
12 include the right to petition, and to solicit support or opposition to political initiatives.

13 94. As noted, various laws of public benefit have come to exist as a direct result of the
14 signature collection process discussed herein, including those noted in Paragraph 61, *supra*. The
15 continuing raising, vetting, and adoption of similar measures of public benefit would be directly
16 threatened if AB 5 was allowed to force a reclassification of Collectors as employees rather than
17 independent contractors. The situation is made all the more acute when, as discussed above, there
18 is no legitimate basis for treating Collectors differently from other, similarly-situated independent
19 service providers.

20 WHEREFORE, Plaintiffs pray for relief as hereinafter set forth.

21 **SEVENTH CAUSE OF ACTION**

22 **(Declaratory Relief: Violation of the California Constitution's Due Process Clause:**
23 **Impermissible Restriction on Political Speech)**

24 95. Plaintiffs reallege and reincorporate Paragraphs 1 through 94 of this Complaint as
25 though fully set forth herein.

26 96. For substantially the same reasons set forth in the Sixth Cause of Action, AB 5
27 violates the Due Process Clause of Article I, Section 7 of the California Constitution.

28 WHEREFORE, Plaintiffs pray for relief as hereinafter set forth.

1 **EIGHTH CAUSE OF ACTION**

2 **(Declaratory Relief: Violation of California Constitution, Article I, Sections 2 and 3)**

3 97. Plaintiffs reallege and reincorporate Paragraphs 1 through 96 of this Complaint as
4 though fully set forth herein.

5 98. Article I, Section 2(a) of the California Constitution provides that “[e]very person
6 may freely speak, write, and publish his or her sentiments on all subjects, being responsible for the
7 abuse of this right. A law may not restrain or abridge liberty of speech or press.” Article I, Section
8 3 of the California Constitution states that “[t]he people have the right to instruct their
9 representatives, petition government for redress of grievances, and assemble freely to consult for
10 the common good.” For substantially the same reasons as set forth in the Sixth and Seventh Causes
11 of Action, AB 5 violates both of these provisions.

12 WHEREFORE, Plaintiffs pray for relief as hereinafter set forth.

13 **NINTH CAUSE OF ACTION**

14 **(Declaratory Relief: Violation of the U.S. Constitution’s Ninth Amendment)**

15 99. Plaintiffs reallege and reincorporate Paragraphs 1 through 98 of this Complaint as
16 though fully set forth herein.

17 100. For substantially the same reasons set forth in the Third through Eighth Causes of
18 Action, AB 5 violates the Ninth Amendment to the United States Constitution.

19 101. The language and history of the Ninth Amendment reveal that the Framers of the
20 Constitution believed that there are additional fundamental rights, protected from governmental
21 infringement, which exist alongside those fundamental rights specifically mentioned in the first
22 eight constitutional amendments. The right to work on one’s own terms—as an independent service
23 provider, rather than an employee—is one of those fundamental rights.

24 WHEREFORE, Plaintiffs pray for relief as hereinafter set forth.

25 **TENTH CAUSE OF ACTION**

26 **(Declaratory Relief: Violation of the California Constitution’s Baby Ninth Amendment)**

27 102. Plaintiffs reallege and reincorporate Paragraphs 1 through 101 of this Complaint as
28 though fully set forth herein.

1 103. For substantially the same reasons set forth in the Third through Ninth Causes of
2 Action, AB 5 violates Article I, Section 24 of the California Constitution.

3 WHEREFORE, Plaintiffs pray for relief as hereinafter set forth.
4

5 **ELEVENTH CAUSE OF ACTION**

6 **(Declaratory Relief: Violation of the California Constitution's Due Process Clause)**

7 104. Plaintiffs reallege and reincorporate Paragraphs 1 through 103 of this Complaint as
8 though fully set forth herein.

9 105. For substantially the same reasons as described in the First through Tenth Causes of
10 Action, Company Plaintiffs would be deprived of due process in violation of Article I, Section 7 of
11 the California Constitution if AB 5 is enforced against them as the statute's sponsors intend.

12 WHEREFORE, Plaintiffs pray for relief as hereinafter set forth.

13 **TWELFTH CAUSE OF ACTION**

14 **(Declaratory Relief: Violation of the U.S. Constitution's Contracts Clause)**

15 106. Plaintiffs reallege and reincorporate Paragraphs 1 through 105 of this Complaint as
16 though fully set forth herein.

17 107. Article 1, Section 10 of the Constitution provides: "No state shall...pass any...Law
18 impairing the Obligation of Contracts."

19 108. Company Plaintiffs are parties to valid contracts with the Collectors, including
20 Individual Plaintiffs. These contracts establish that the Collectors are independent contractors for
21 the purposes of their work.

22 109. If AB 5 were enforced consistent in a way that required the Data Processors to
23 reclassify Collectors as employees, the above-mentioned contracts between the Data Processors and
24 the Collectors, including the Company Plaintiffs' contracts with the Individual Plaintiffs, would be
25 invalidated.

26 110. Such reclassification of the Collectors would substantially impair existing contracts
27 between the Data Processors and the Collectors, including the Company Plaintiffs' contracts with
28 the Individual Plaintiffs.

1 111. The classification of the Collectors as independent contractors under the existing
2 contracts between the Data Processors and the Collectors, including the Company Plaintiffs'
3 contracts with the Individual Plaintiffs, is a critical feature of the Data Processors' total contractual
4 relationship with the Collectors.

5 112. If AB 5 were enforced in a way that required reclassification of the Collectors as
6 employees, it would severely modify a key contractual right in existing contracts between the Data
7 Processors and the Collectors, including the Company Plaintiffs' contracts with the Individual
8 Plaintiffs.

9 113. If AB 5 were enforced in a way that required reclassification of the Collectors as
10 employees, it would impose new obligations under the existing contracts between the Data
11 Processors and the Collectors—including the Company Plaintiffs' contracts with the Individual
12 Plaintiffs—that the Data Processors and the Collectors did not voluntarily agree to undertake, such
13 as providing health insurance, unemployment coverage, and other employment benefits.

14 114. If AB 5 were enforced in a way that required reclassification of the Collectors as
15 employees, it would wipe out numerous contractual obligations between the Data Processors and
16 the Collectors, including those between the Company Plaintiffs and the Individual Plaintiffs, under
17 their existing contracts.

18 115. If AB 5 were enforced in a way that required reclassification of the Collectors as
19 employees, it would eliminate the critical flexibility that the Collectors, including the Individual
20 Plaintiffs, are guaranteed under their existing contracts with the Company Plaintiffs and other Data
21 Processors.

22 116. If AB 5 were enforced in a way that required reclassification of the Collectors as
23 employees, it would severely undermine the contractual bargain between the Data Processors and
24 the Collectors, including the Company Plaintiffs and the Individual Plaintiffs, under the existing
25 contracts, because AB 5 eliminates the very essence of the contractual bargain in these existing
26 contracts.

27 117. If AB 5 were enforced in a way that required reclassification of the Collectors as
28 employees, it would substantially interfere with the reasonable expectations under existing contracts

1 between the Data Processors and the Collectors, including the Company Plaintiffs' contracts with
2 the Individual Plaintiffs, because reclassification eliminates the primary value of those contracts.

3 118. The Company Plaintiffs and the Individual Plaintiffs had no reason to anticipate that
4 AB 5, if enforced in a way that required reclassification of the Collectors as employees, would
5 effectuate a dramatic departure from California's prior treatment of the existing contracts between
6 the Data Processors and the Collectors, including the Company Plaintiffs' contracts with the
7 Individual Plaintiffs, when they bargained for these contracts.

8 119. The classification of the Collectors, including the Individual Plaintiffs, as
9 independent contractors in the existing contracts between the Data Processors and the Collectors,
10 including the Company Plaintiffs' contracts with the Individual Plaintiffs, had "obvious value" and
11 was a significant factor in the Company Plaintiffs' bargaining expectations when entering into these
12 contracts.

13 120. AB 5's purported reclassification of the Collectors, including the Individual
14 Plaintiffs, as employees of the Data Processors, including the Company Plaintiffs, prevents the
15 parties from safeguarding or reinstating the rights held in the existing contracts.

16 121. AB 5 is not drawn in an appropriate and reasonable way to advance a significant and
17 legitimate public purpose; to the contrary, AB 5 has no legitimate public purpose because the statute
18 was enacted to target and harm entities like Company Plaintiffs.

19 122. AB 5's impairment of the existing contracts between the Company Plaintiffs and the
20 Collectors, including the Individual Plaintiffs, was not drawn with moderation and reason because
21 it was drawn with the spirit to target and harm the Company Plaintiffs.

22 123. AB 5's irrational exemptions demonstrate California did not exercise the police
23 power in passing it, but instead sought to provide a benefit to special interests while harming other
24 groups, like Company Plaintiffs.

25 124. AB 5 does not reasonably advance the purpose of protecting workers because its
26 exemptions leave numerous workers outside of its scope without any rational rhyme or reason.

27 125. AB 5's arbitrary and internally inconsistent/incompatible nature demonstrates that it
28 was not enacted to protect any broad societal interest.

1 126. AB 5's ostensible legislative purpose of helping workers is "suspect" because the
2 Legislature exempted some workers and groups from its purview, while not exempting similar other
3 workers and groups, without explaining the necessity for such exemptions to advance AB 5's
4 legislative purpose.

5 127. The forced reclassification AB 5's sponsors intended would unreasonably and
6 substantially impair the existing contracts between the Data Processors and the Collectors, including
7 the Company Plaintiffs' contracts with the Individual Plaintiffs, because an evident and more
8 moderate course would have served the State's purported purpose equally well.

9 128. If forced reclassification as employees was necessary to protect workers, then the
10 California Legislature would not have irrationally some workers, but not similarly-situated others,
11 from its purview.

12 129. In light of the above, AB 5 violates the Contracts Clause of the United States
13 Constitution, and this violation is actionable under 42 U.S.C. section 1983.

14 WHEREFORE, Plaintiffs pray for relief as hereinafter set forth.

15 **THIRTEENTH CAUSE OF ACTION**

16 **(Declaratory Relief: Violation of the California Constitution's Contracts Clause)**

17 130. Plaintiffs reallege and reincorporate Paragraphs 1 through 129 of this Complaint as
18 though fully set forth herein.

19 131. For substantially the same reasons as described in the Ninth Cause of Action,
20 enforcement of AB 5 against Company Plaintiffs also would violate Article I, Section 9 of the
21 California Constitution, which provides that a "law impairing the obligation of contracts may not
22 be passed."

23 WHEREFORE, Plaintiffs pray for relief as hereinafter set forth.

24 **FOURTEENTH CAUSE OF ACTION**

25 **(Declaratory Relief: Non-Employee Status Under AB 5's ABC Test)**

26 132. Plaintiffs reallege and reincorporate Paragraphs 1 through 131 of this Complaint as
27 though fully set forth herein.

28 133. In the alternative to the relief sought elsewhere in this Complaint, Plaintiffs seek a

1 declaration that the Individual Plaintiffs remain independent contractors when working as Collectors
2 for the Company Plaintiffs. In that regard, and as discussed above, an actual controversy has arisen
3 and now exists between Plaintiffs and Defendants relating to their respective rights and duties.
4 Specifically, a present and justiciable dispute exists with regard to whether the Individual Plaintiffs
5 are employees under the ABC test imposed by AB 5, in that (a) Plaintiffs contend that the Individual
6 Plaintiffs are independent contractors, while (b) Defendants apparently contend that the Individual
7 Plaintiffs are employees.

8 134. Given the existence of the above-referenced dispute between the parties, a
9 declaration from this Court regarding the status of the Individual Plaintiffs under the ABC test is
10 proper under 27 U.S.C. sections 2201 and 2202, as well as Federal Rule of Civil Procedure 57, and
11 necessary in order for Plaintiffs and similarly-situated persons and entities to be apprised of their
12 rights and duties relative to Collector classification. Such a declaration will also alleviate the need
13 for Plaintiffs to risk a "violation" of AB 5.

14 WHEREFORE, Plaintiffs pray for relief as hereinafter set forth.

15 **FIFTEENTH CAUSE OF ACTION**

16 **(Injunctive Relief)**

17 135. Plaintiffs reallege and reincorporate Paragraphs 1 through 134 of this Complaint as
18 though fully set forth herein.

19 136. Defendants should be preliminarily and permanently enjoined from enforcing AB 5
20 against Company Plaintiffs.

21 137. If enforcement of AB 5 was to force the reclassification of the Individual Plaintiffs
22 from independent contractors to employees, the Individual Plaintiffs would suffer severely and
23 irreparably. As independent contractors, the Individual Plaintiffs rely heavily on their independence
24 and flexibility for their income, and to provide for their families. Absent an injunction, they will
25 suffer severe and irreparable harm.

26 138. If required to reclassify the Collectors as employees, the Company Plaintiffs would
27 incur immediate injury for which there is no adequate remedy at law, including because the statute
28 violates their constitutional rights, threatens their business models, and forces them to incur

1 unrecoverable administrative and compliance costs. Constitutional violations constitute per se
2 irreparable harm.

3 139. Forced reclassification also would require the Company Plaintiffs to retrain staff,
4 consult with legal counsel, and develop new compensation, benefits, and other policies.

5 140. These injuries would result directly from enforcement of AB 5, and could not be
6 adequately compensated by money damages, and would be irreparable absent preliminary and
7 permanent injunctive relief.

8 141. These injuries are preventable and redressable with appropriate injunctive relief that
9 prevents Defendants from giving effect to or enforcing the statute against the Company Plaintiffs.

10 142. The balance of harms weighs in favor of injunctive relief. Defendants cannot claim
11 an interest in the enforcement of an unconstitutional law. Nor can they plausibly claim harm from
12 an injunction prohibiting enforcement of a statute that purports merely to clarify preexisting law.

13 143. The public interest favors injunctive relief because many members of the public
14 depend on their contractor status as a way to earn income without the burdens and rigid demands of
15 a traditional 9-to-5 job.

16 144. Moreover, enforcement of AB 5 to classify Collectors as employees would, as noted
17 above, have an irreparably harmful chilling effect on the ability of interested parties to seasonably
18 secure public support for the placement of important initiatives on the election ballot.

19 WHEREFORE, Plaintiffs pray for relief as follows:

20 **PRAAYER FOR RELIEF**

21 Plaintiffs ask this Court to order appropriate relief, including, but not limited to, the
22 following:

23 1. Enter a judgment declaring that AB 5 is invalid and unenforceable against Company
24 Plaintiffs because enforcement as intended by the statute's sponsors would violate the equal
25 protection clauses of the United States Constitution and the California Constitution;

26 2. Enter a judgment declaring that AB 5 is invalid and unenforceable against Company
27 Plaintiffs because enforcement as intended by the statute's sponsors would violate the Inalienable
28 Rights Clause of the California Constitution, due process clauses of the California Constitution and

