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21 **UNITED STATES DISTRICT COURT**

22 **NORTHERN DISTRICT OF CALIFORNIA – SAN FRANCISCO DIVISION**

23 SPENCER VERHINES and CHRISTOPHER
 24 JAMES, individually and on behalf of all
 25 others similarly situated,

26 Plaintiffs,

27 v.

28 UBER TECHNOLOGIES, INC.,

Defendant.

Case No. 3:20-cv-01886-EMC

**DEFENDANT UBER TECHNOLOGIES,
 INC.’S SURREPLY IN OPPOSITION TO
 PLAINTIFF VERHINES’S EMERGENCY
 MOTION FOR PRELIMINARY
 INJUNCTION**

Date: April 1, 2020
 Time: 10:00 a.m.
 Place: Telephonic
 Judge: Honorable Edward M. Chen

Action Filed: March 12, 2020
 Trial Date: none set

I. INTRODUCTION

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2 Plaintiff James's new declaration does not solve any of the problems with Plaintiff Verhines's
3 preliminary injunction motion and (lack of a) showing that Plaintiffs face irreparable harm. As an
4 initial matter, James does not allege that he is sick; therefore, he would not be eligible for sick pay
5 under California or local sick pay regimes. Instead, James claims that he is subject to quarantine
6 because he traveled from London in the past few weeks. Under the unique circumstances created by
7 the global COVID-19 pandemic, the federal government and Uber have developed tailored programs
8 to support the public policy goals of quarantining to flatten the curve. Uber sponsors a generous
9 financial support program for drivers affected by COVID-19—a program which exceeds California
10 sick-leave law for employees, and is supplemented by new federal legislation that aids the self-
11 employed. Uber has paid James and over 1,400 other drivers in the United States under this program.
12 Conversely, because James does not allege he is sick, if he were an employee, he would not be entitled
13 to *any* paid leave under state or local law. And even if he were sick, James has already obtained more
14 than the financial relief he seeks through his misclassification case. Therefore, he has no standing and
15 no grounds for seeking a preliminary injunction on his own behalf. Likewise, James has no grounds
16 to seek any relief on behalf of drivers who have signed arbitration agreements with Uber, given that he
17 is admittedly not a party to any such agreement. The motion should be denied.

II. ARGUMENT

A. James Cannot Seek Injunctive Relief, Especially on a Class-Wide Basis

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19
20 *First*, James has not personally suffered economic harm because Uber already has paid him
21 more than California law would entitle him to if he were a sick employee. *See* Part B, *infra*.

22 *Second*, the addition of James as a plaintiff does not solve any of the threshold barriers to
23 issuance of a preliminary injunction. *See* Opp. 8-17. For example, James—like Verhines—cannot
24 represent a putative class of drivers who have agreed to individually arbitrate their claims because he—
25 like Verhines—is a named plaintiff in *Colopy* who has opted out of arbitration. *See* Chang Decl. ¶ 10;
26 Opp. 11-12; Supp. Opp. 3. Verhines and James lack standing to challenge the arbitration agreement
27 (which the Ninth Circuit has held enforceable) because they opted out of that agreement (if the Court
28 questions whether the arbitration agreement is enforceable, Uber requests the opportunity to brief that

1 issue). *See id.* All of the other reasons a preliminary injunction is improper as to Verhines—such as
 2 claim splitting (Opp. 16-17)—apply equally to James.

3 **B. James’s Improper Reply Evidence Does Not Establish a Likelihood of Success or**
 4 **Irreparable Injury**

5 Plaintiffs’ submission of new evidence with a reply brief is completely improper,¹ but even if
 6 the Court considers it, the addition of James and his declaration to this case does not change the result.

7 *First*, there is no evidence—or even factual *allegations*—showing that James (or Verhines)
 8 would qualify for paid leave under California, San Francisco, or Los Angeles law even if they were
 9 employees. Supp. Opp. 2-3. Neither James nor Verhines alleges he is sick. Neither alleges that he
 10 meets the eligibility criteria under the California sick pay law (e.g., that they have worked at least 30
 11 days in California). Similarly, neither alleges he meets the eligibility criteria under the Los Angeles or
 12 San Francisco sick pay laws. James thus has shown neither that he would be entitled to state or local
 13 paid leave, nor that its denial has injured him.

14 *Second*, James cannot assert any possible injury, let alone an *irreparable* injury, given that he
 15 would *lose* relief under the federal laws if he were to become an employee. As Uber has explained,
 16 *self-employed* drivers can obtain federal paid sick leave under the Families First law—but Uber
 17 employees cannot, because Uber has more than 500 employees. *See* Dkt. 28 (Opp.) at 6-7, 21-22. In
 18 their reply, Plaintiffs ignore the provision that makes these benefits available to the self-employed.
 19 Dkt. 35 (Reply) at 14; H.R. 6201 § 7002(a).

20 Moreover, on Friday, the United States enacted the CARES Act, under which all workers not
 21 otherwise covered by their respective States’ unemployment laws—like self-employed drivers—will
 22 receive 39 weeks of unemployment benefits, which can be used *retroactively* for the period beginning
 23 on January 27, 2020. *See* H.R. 748 §§ 2102(c)(3), 2102(a)(3)(A)(ii)(II), 116th Cong. (2020). The

24 ¹ As Uber explained, an amended complaint cannot expand what the motion requests. *See* Dkt. 36
 25 (Supp. Opp.) at 1-2. Further, James’s declaration is improper new reply evidence, and “the Court does
 26 not consider new arguments or evidence presented for the first time in a reply.” *In re Flash Memory*
 27 *Antitrust Litig.*, 2010 WL 2332081, at *15 (N.D. Cal. June 9, 2010); *see also Citcon USA, LLC v.*
 28 *RiverPay Inc.*, 2019 WL 2603219, at *3 (N.D. Cal. June 25, 2019) (rejecting a new declaration
 submitted with a preliminary injunction reply: The court “cannot consider [the] declaration because it
 is impermissible new evidence submitted on a reply brief in violation of Civil Local Rule 7-3(d)(1).”).
 Indeed, James’s declaration was just one piece in a pile of new evidence improperly submitted on reply
 along with a brief that exceeded the page limit (L.R. 7-3(c), 7-4(b)) and raised many new arguments.

1 benefits apply to anyone who is unavailable to work due to being “diagnosed with COVID-19 ... or ...
 2 experiencing symptoms ... and seeking a medical diagnosis” *or advised to self-quarantine*, and further
 3 extend to those who “ha[ve] to quit his or her job as a direct result of COVID-19,” among others. *Id.*
 4 § 2102(a)(3)(A)(ii)(I). These benefits are far more generous than traditional unemployment benefits,
 5 by around \$600 per week over the typical state unemployment payment rate. *Id.* §§ 2102(d)(1)(ii);
 6 2104(b)(1)(B). However, they are not available to individuals who are “eligible for regular
 7 compensation or extended benefits under State or Federal law”—namely, employees. *Id.*
 8 § 2102(a)(3)(A)(i). James’s alleged injury is entirely financial—he has not stated that he is sick or that
 9 he is driving in violation of the advice to self-quarantine—and these forms of federal relief will remedy
 10 it, whether or not they defeat his claim entirely (*contra* Reply 14 n.35).

11 *Third*, Uber also offers generous financial assistance for affected drivers, which undercuts any
 12 claim to irreparable injury in the absence of an injunction. In less than three weeks, Uber has paid
 13 more than 1,400 U.S. claims. Chang Decl. ¶ 6. James is one of them. Although Uber initially requested
 14 additional documentation, it has now approved his claim—and is ensuring that drivers in similar
 15 situations will get paid as well. *Id.* ¶¶ 8-9.

16 James received \$814.80 under Uber’s program. *Id.* ¶ 8. By contrast, a minimum-wage
 17 employee would be entitled to a maximum of \$288 under California law (three eight-hour sick days at
 18 the current minimum wage of \$12 per hour)—approximately *one third* that amount—for missing the
 19 same amount of work.² Uber’s payment, on top of federal assistance he would receive for his time
 20 spent not driving, obviates any “irreparable harm” James asserts. *SV3, LLC v. GG Distribution, Inc.*,
 21 2019 WL 1090772, at *3 (C.D. Cal. Feb. 6, 2019).³

22 III. CONCLUSION

23 The Court should deny the motion for a preliminary injunction.

24 ² See Cal. Labor Code § 246(d) (requiring only three days of paid sick leave per calendar year); *id.*
 25 § 1182.12(b)(1)(D) (setting forth current minimum wage).

26 ³ The non-party Ebadat and Farag declarations likewise do not show irreparable harm. They have no
 27 relevance to *Plaintiffs’* claim of irreparable harm. Ebadat states that he has been driving with a cough,
 28 but admits he did not qualify for a coronavirus test—and does not attempt to reconcile his behavior
 with Uber’s admonition against driving while sick. Dkt. 29 (Rosenthal Decl.) ¶ 25. Farag, like
 Verhines, claims only that he fears he *could* get sick at some point in the future.

1 DATED: March 30, 2020

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2 By: /s/ Theane Evangelis
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