

HORVITZ & LEVY

Business Arts Plaza
3601 W. Olive Ave., 8th Fl.
Burbank, CA 91505
818.995.0800

August 18, 2020

Presiding Justice Stuart R. Pollak
and Associate Justices
California Court of Appeal
First Appellate District, Division Four
350 McAllister Street
San Francisco, CA 94102-7421

Re: ***People v. Lyft, Inc. et al.***
People v. Uber Technologies, Inc.
Court of Appeal Case Nos. A160701, A160706
Amicus curiae letter in support of petitions for writ of supersedeas

Honorable Justices,

We write on behalf of amicus curiae The Chamber of Commerce of the United States of America (the Chamber) urging this court to grant the petitions for writ of supersedeas filed by appellants Lyft, Inc. and Uber Technologies, Inc. We respectfully ask for permission to file this amicus letter.

As explained in the writ petition and below, the Superior Court's preliminary injunction orders Lyft and Uber to dramatically restructure their business operations in California. Such an order is plainly a mandatory injunction subject to an automatic stay pending appeal under well-established precedent. At minimum, given the serious disruptions that will occur if Lyft and Uber are required to comply with the injunction in the next few weeks (loss of business in California for the companies, loss of income for millions of drivers and loss of critical services for the public at a time when public transportation is fraught with peril due to the COVID-19 public health crisis), this court should issue a discretionary stay of the injunction so that the propriety of the injunction can be tested through a full appellate process in this court.

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Authority for permitting this amicus letter

Petitions for writs of supersedeas are governed by California Rules of Court, rule 8.112. Although that rule does not expressly address amicus briefs or letters in support of a petition for writ of supersedeas, case law makes clear that the court has discretion to accept amicus briefs. (See, e.g., *Leung v. Verdugo Hills Hospital* (2008) 168 Cal.App.4th 205, 211, fn. 3 [granting request to file amicus brief in support of petition for writ of supersedeas].)

By way of analogy to petitions for writ of mandate, California Rules of Court, rule 8.487 expressly permits the filing of amicus briefs after an appellate court issues an alternative writ or order to show cause. (Cal. Rules of Court, rule 8.487(e)(1).) However, the Advisory Committee comment, California Rules of Court, rule 8.487 makes clear that amicus letters are also permissible *before* a court issues an alternative writ or order to show cause:

Subdivisions (d) and (e). *These provisions do not alter the court's authority to request or permit the filing of amicus briefs or amicus letters in writ proceedings in circumstances not covered by these subdivisions, such as before the court has determined whether to issue an alternative writ or order to show cause or when it notifies the parties that it is considering issuing a peremptory writ in the first instance.*

(Emphasis added.) Indeed, one court has stated in a published opinion that the filing of amicus letters in connection with a writ petition was one factor the court considered in deciding whether to issue an order to show cause. (*Regents of University of California v. Superior Court* (2013) 220 Cal.App.4th 549, 557-558 [noting that amicus letters were filed in support of a writ petition and that “based on the amici curiae submissions we have received” the matter “appears to be of widespread interest” such that writ review was appropriate]; see *Los Angeles County Bd. of Supervisors v. Superior Court of Los Angeles County* (2015) 235 Cal.App.4th 114 [185 Cal.Rptr.3d 842, 847] [“The Association of Southern California Defense Counsel, as amicus curiae, filed a[n] [amicus] letter in support of issuance of the writ”], revd. on another ground in (2016) 2 Cal.5th 282.)

Therefore, we ask the court to consider this amicus letter in deciding whether to grant Lyft’s and Uber’s petitions for writ of supersedeas.

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Interest of amicus curiae

The Chamber is the world’s largest business federation. It represents approximately 300,000 direct members and indirectly represents the interests of more than three million companies and professional organizations of every size, in every industry sector, and from every region of the country—including throughout California. An important function of the Chamber is to represent the interests of its members in matters before Congress, the executive branch, and federal and state courts. To that end, the Chamber regularly files amicus curiae briefs in cases, like this one, that raise issues of concern to the business community. Indeed, the Chamber routinely files amicus curiae briefs in cases in the California courts, including cases involving labor and employment matters.

The Chamber appeared as amicus curiae in the trial court proceedings giving rise to these petitions and wishes to appear as amicus curiae before this court now.

No party or counsel for a party in the pending case authored the proposed amici curiae brief in whole or in part or made a monetary contribution intended to fund the preparation or submission of the proposed brief. No person or entity other than the amici, its members, or its counsel made a monetary contribution intended to fund the preparation or submission of the proposed brief.

Argument

Lyft and Uber are entitled to a petition for writ of supersedeas as a matter of law because the trial court’s order is a mandatory injunction.

The general rule (subject to many exceptions) is that “the perfecting of an appeal stays proceedings in the trial court upon the judgment or order appealed from or upon the matters embraced therein or affected thereby” (Code Civ. Proc., § 916, subd. (a).) On appeal from an order granting a preliminary injunction, the appeal automatically stays enforcement of the injunction if the injunction is “‘mandatory’” but not if it is “‘prohibitory.’” (*Hayworth v. City of Oakland* (1982) 129 Cal.App.3d 723, 727 (*Hayworth*)).

“[A]n injunction is considered to be mandatory [rather than prohibitory] where it requires affirmative action and changes the status quo.” (*Hayworth, supra*, 129 Cal.App.3d at pp. 727-728.) Stated another way, the injunction “‘is mandatory

if it has the effect of compelling performance of a substantive act and necessarily contemplates a change in the relative rights of the parties at the time the injunction is granted,'” but it is prohibitory “‘if its effect is to leave the parties in the same position as they were prior to the entry of the judgment.’” (*Paramount Pictures Corp. v. Davis* (1964) 228 Cal.App.2d 827, 835-836.)

Under well-established California law, an aggrieved party is entitled to supersedeas as a matter of right when a trial court refuses to recognize the automatic stay, i.e., it is not a matter of appellate court discretion whether to grant supersedeas. (See *Byington v. Superior Court* (1939) 14 Cal.2d 68, 70 (*Byington*) [“It is well settled that . . . an injunction mandatory in character is automatically stayed by appeal”]; *Feinberg v. One Doe Co.* (1939) 14 Cal.2d 24, 29 (*Feinberg*) [“it is unnecessary for us to balance or weigh the arguments with reference to the possible irreparable injury to appellants or respondents as would be necessary if the question of the issuance of the writ was solely a matter of our discretion”]; *Zappettini v. Buckles* (1914) 167 Cal. 27, 31 [“[T]he case before us is one, then, where the appeal being regularly taken, the statute in terms stays execution of the judgment, and this court is without any discretionary power in the matter. It can only enforce the law, regardless of the possible loss or hardship to the respondent.”], overruled on other grounds in *Di Blasi v. Di Blasi* (1930) 209 Cal. 753, 754; Eisenberg, Cal. Practice Guide: Civil Appeals and Writs (The Rutter Group 2019) ¶ 7:272 (hereafter Eisenberg) [“In these circumstance, the appellate court need not consider the ordinary criteria of irreparable harm and merits of appeal [citation] in granting supersedeas,” citing *Estate of Dabney* (1951) 37 Cal.2d 402, 408].)

The trial court’s injunction is obviously a mandatory one. The court’s order requires Lyft and Uber to radically restructure their business models and alter their contractual obligations with their drivers, transmogrifying them from independent contractors to employees. The trial court’s order is based upon the mistaken premises that it is a simple and routine matter to switch hundreds of thousands of independent contractors to employees. To begin with, as Uber and Lyft have shown, they are likely to employ fewer drivers under such a model. And substantial work is involved in terminating existing contractual relationships with drivers in order to create new protocols and procedures for hiring drivers as employees. This kind of forced change is the hallmark of a mandatory injunction. Regardless of the merits of the injunction, in no way can the trial court’s preliminary injunction be characterized as merely “maintaining the status quo” pending trial. An injunction, such as this one, that requires such a major restructuring of businesses is plainly mandatory and, thus, is automatically stayed to ensure a meaningful opportunity for appellate review under

settled California law discussed above. An automatic stay is particularly important where an injunction orders a business to completely alter its business model in response to a new law that has not yet been examined by the appellate courts.

The trial court's refusal to acknowledge the automatic stay sets a harmful precedent where businesses may be forced to restructure while being effectively deprived of their right to appeal. This concern is not limited to just Lyft and Uber. It applies to any other business which may find itself subject to a claim that it must immediately restructure its business before an appeal can be heard. Denying a stay on appeal would force those companies to undergo radical restructuring, disrupting or even suspending their operations at a time when the public depends on them for critical services in the midst of the COVID-19 crisis.

Lyft and Uber are also entitled to a discretionary stay under Code of Civil Procedure section 923.

Code of Civil Procedure section 923 gives this court broad discretion to stay trial court proceedings pending the resolution of an appeal. (*Davis v. Custom Component Switches, Inc.* (1970) 13 Cal.App.3d 21, 27 (*Davis*).) “The writ of supersedeas has the function of preserving a court’s jurisdiction while the court rules on the merits of an appeal, and [Code of Civil Procedure] section 923 is specifically designed to accomplish that purpose.” (*Id.* at p. 28.) The writ “ensure[s] that the subject matter of the appeal is still in existence at the time the appeal is decided.” (*Id.* at p. 26; see *Estate of Sam Lee* (1945) 26 Cal.2d 295, 296 [function of writ of supersedeas “is to maintain the subject matter of the proceeding until the final determination thereof in order that the appellant may not lose the fruits of a meritorious appeal”]; *In re Manuel P.* (1989) 215 Cal.App.3d 48, 72 [writ is designed to “protect the appellant from injury in the case of reversal”].) Supersedeas is particularly appropriate in cases where there is “grave danger” that the appellants’ compliance with the judgment would cause their “appeal . . . [to] be rendered less effective as a remedy.” (*Kentfield v. Kentfield* (1935) 4 Cal.2d 585, 588.)

The Chamber is concerned about the chaos and harm that would be wrought in any industry if injunctions that direct a wholesale change in how an industry operates are not stayed so that the defendants can avail themselves of their right to appeal. Here, Lyft and Uber will either be required to shut down their operations in California or massively restructure them before this court has an opportunity to

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determine whether the preliminary injunction was appropriate. It is not in the best interests of California's economy for its innovative businesses, such as Lyft and Uber, to be forced to make that choice before appellate review has run its course. Nor is it in the public interest to deprive people of critical services while a business scrambles to fundamentally restructure its operations (only to have to revert to its prior structure if it prevails on appeal). This is not how industry should be regulated in California, and it is not how the appellate process should work. An appeal raising significant issues such as this one should be permitted to proceed in its ordinary course. Accordingly, at minimum, Lyft and Uber are entitled to a discretionary writ of supersedeas.

Respectfully submitted,

HORVITZ & LEVY LLP
JEREMY B. ROSEN
STEVEN S. FLEISCHMAN
FELIX SHAFIR

By: _____



Steven S. Fleischman

Attorneys for Amicus Curiae
**THE CHAMBER OF COMMERCE OF THE
UNITED STATES OF AMERICA**

cc: See attached Proof of Service

PROOF OF SERVICE

**The People v. Lyft, Inc. et al.
Case Nos. A160701, A160706**

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

At the time of service, I was over 18 years of age and not a party to this action. I am employed in the County of Los Angeles, State of California. My business address is 3601 West Olive Avenue, 8th Floor, Burbank, CA 91505-4681.

On August 18, 2020, I served true copies of the following document(s) described as **AMICUS CURIAE LETTER IN SUPPORT OF PETITIONS FOR WRIT OF SUPERSEDEAS** on the interested parties in this action as follows:

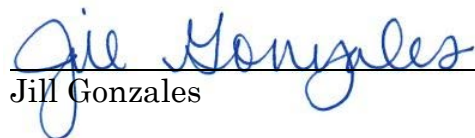
SEE ATTACHED SERVICE LIST

BY MAIL: I enclosed the document(s) in a sealed envelope or package addressed to the persons at the addresses listed in the Service List and placed the envelope for collection and mailing, following our ordinary business practices. I am readily familiar with Horvitz & Levy LLP's practice for collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service, in a sealed envelope with postage fully prepaid.

BY E-MAIL OR ELECTRONIC TRANSMISSION: Based on a court order or an agreement of the parties to accept service by e-mail or electronic transmission via Court's Electronic Filing System (EFS) operated by ImageSoft TrueFiling (TrueFiling) as indicated on the attached service list:

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on August 18, 2020, at Burbank, California.



Jill Gonzales

SERVICE LIST
The People v. Lyft, Inc. et al.
Case Nos. A160701, A160706

Satoshi Yanai Minsu D. Longiaru Marisa Beth Hernandez-Stern Mana Barari Rosa Erandi Zamora Office of the Attorney General 1515 Clay Street, 20th Floor P.O. Box 70550 Oakland, CA 94612-0550	Counsel for Plaintiff and Respondent THE PEOPLE OF THE STATE OF CALIFORNIA
Michael J. Bostrom Office of the Los Angeles City Attorney 200 North Spring St., 14th Floor Los Angeles, CA 90012	Counsel for Plaintiff and Respondent THE PEOPLE OF THE STATE OF CALIFORNIA
Mark D. Ankcorn Kevin B. King Marni Lynn Von Wilpert San Diego City Attorney's Office 1200 Third Avenue, Suite 1100 San Diego, CA 92101-4100	Counsel for Plaintiff and Respondent THE PEOPLE OF THE STATE OF CALIFORNIA
Yvonne R. Mere Molly J. Alarcon Sara J. Eisenberg Matthew D. Goldberg Office of the San Francisco City Attorney 1390 Market Street, Sixth Floor San Francisco, CA 94102	Counsel for Plaintiff and Respondent THE PEOPLE OF THE STATE OF CALIFORNIA
Office of the Attorney General 455 Golden Gate Avenue - Suite 11000 San Francisco, CA 94102-7004	Counsel for Plaintiff and Respondent THE PEOPLE OF THE STATE OF CALIFORNIA
Rohit K. Singla Jeffrey Y. Wu Justin P. Raphael Munger, Tolles & Olson LLP 560 Mission Street, 27th Floor San Francisco, CA 94105-3089	Counsel for Defendant and Appellant LYFT, INC.

Benjamin G. Barokh
Munger, Tolles & Olson LLP
350 South Grand Avenue, 50th Floor
Los Angeles, CA 90071-3426

Counsel for Defendant and Appellant
LYFT, INC.

Christa M. Anderson
Rachael E. Meny
R. James Slaughter
Brook Dooley
Eric H. MacMichael
Elizabeth K. McCloskey
Keker, Van Nest & Peters LLP
633 Battery Street
San Francisco, CA 94111-1809

Counsel for Defendant and Appellant
LYFT, INC.

Theane Evangelis
Theodore J. Boutrous
Blaine H. Evanson
Heather Lynn Richardson
Gibson, Dunn & Crutcher LLP
333 S Grand Ave.
Los Angeles, CA 90071

Counsel for Defendant and Appellant
UBER TECHNOLOGIES, INC.

Hon. Ethan Schulman
San Francisco Superior Court
400 McAllister Street, Dept. 302
San Francisco, CA 94102-4514

Trial Judge • Case No. CGC20584402