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**UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE**

DAN CLARK, TAMI DUNLAP, ALI HASSAN,  
JENNIFER IMMEL, GARY KUNZE,  
ELISABETH LOWE, DALE MONTZ, ABDI  
MOTAN, FREDRICK RICE, MICHAEL RIEBS,  
and FIREW TESHOME,

Plaintiffs,

v.

CITY OF SEATTLE, SEATTLE DEPARTMENT  
OF FINANCE AND ADMINISTRATIVE  
SERVICES, and FRED PODESTA, in his official  
capacity as Director of the Seattle Department of  
Finance and Administrative Services,

Defendants.

NO.

**COMPLAINT FOR INJUNCTIVE  
RELIEF, DECLARATORY  
JUDGMENT, AND DAMAGES**

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

**INTRODUCTION**

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

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

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

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

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

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

17 a. The Ordinance violates the Supremacy Clause to the United States Constitution,  
18 U.S. CONST. art. VI, cl. 2, and 42 U.S.C. § 1983, because it authorizes and regulates conduct  
19 prohibited by the National Labor Relations Act (“NLRA”) Sections 8(b)(4) and 8(e), 29 U.S.C.  
20 §§ 158(b)(4), 158(e), which preempts the Ordinance;

21 b. The Ordinance violates the First Amendment to the United States Constitution, as  
22 secured against state infringement by the Fourteenth Amendment and 42 U.S.C. § 1983,  
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1 because it deprives drivers of their freedom of speech and compels drivers to associate with an  
2 exclusive representative and its expressive activities; and

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

5 **JURISDICTION AND VENUE**

6 6. This Court has jurisdiction over this case pursuant to 28 U.S.C. § 1331 because it arises  
7 under the First and Fourteenth Amendments to the United States Constitution, and 28 U.S.C.  
8 § 1343 because Plaintiffs seek relief under 42 U.S.C. § 1983. This Court has authority under 28  
9 U.S.C. §§ 2201 and 2202 to grant declaratory relief and other relief based thereon.

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

13 **PARTIES**

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

19 9. Plaintiff Dan Clark is a for-hire driver in Seattle, Washington. Since June 2015, Mr.  
20 Clark has provided, and continues to provide, transportation services in his four-door vehicle  
21 through use of both Uber’s and Lyft’s ride-referral application programs. Plaintiff is not a  
22 “qualifying driver” within the meaning of SMC § 6.310.110 and Finance and Administrative  
23 Services Directors Rule-1 (hereinafter FHDR) for both Uber and Lyft due to FHDR-1  
24

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

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

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

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

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

1 14. Plaintiff Elisabeth Lowe is a for-hire driver in Seattle, Washington. Since February 2015,  
2 Ms. Lowe has provided, and continues to provide, transportation services in her sports utility  
3 vehicle through use of Uber's ride-referral application programs. For roughly six to nine months in  
4 2015, Ms. Lowe also provided transportation services in her sports utility vehicle through use of  
5 Lyft's ride-referral application program, and renewed her provision of transportation through Lyft's  
6 ride-referral application in March 2017. Plaintiff is a "qualifying driver" within the meaning of SMC  
7 § 6.310.110 and FHDR-1 for Uber at all relevant times hereto, but not for Lyft due to being  
8 inactive during the January 17, 2016 - January 17, 2017. *See* Ordinance § 2; FHDR-1, p. 2.

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

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

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

21 18. Plaintiff Michael Riebs is a for-hire driver in Seattle, Washington. Since August 2015,  
22 Mr. Riebs has provided, and continues to provide, transportation services in his four-door vehicle  
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1 through use of Uber’s ride-referral application program. Plaintiff is a “qualifying driver” within the  
2 meaning of SMC § 6.310.110 and FHDR-1 at all relevant times hereto.

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

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

8 21. Defendant Seattle Department of Finance and Administrative Services (“SDFAS”) is a  
9 municipal agency of Seattle and is the agency charged with administering and enforcing the  
10 Ordinance’s provisions at issue in this action.

11 22. Defendant Fred Podesta is Director of SDFAS (“Director”) and is the officer responsible  
12 for administering and enforcing the Ordinance’s provisions at issue in this action. Mr. Podesta is  
13 sued in his official capacity.

14 **FACTS**

15 **I. The Ordinance & Director Rules**

16 23. On December 23, 2015, Seattle enacted the Ordinance amending Seattle’s Municipal  
17 Code to authorize the election of EDRs for taxicabs, transportation network companies, and for-  
18 hire vehicle drivers who drive for a driver coordinator. *See* Ordinance. Pursuant to SMC §  
19 1.04.020, the Ordinance became effective on January 22, 2016.<sup>1</sup>

20 24. On December 29, 2016, the Director promulgated limited rules addressing the  
21 “Qualifying Drivers and Lists of Qualifying Drivers,” FHDR-1; “Application Process for  
22 Designating a Qualified Driver Representative,” FHDR-2; “Certification of an Exclusive Driver  
23

24 <sup>1</sup> Due to the Ordinance’s incorporation into the Seattle Municipal Code, all references will be to the codified section unless a citation to the Ordinance is necessary.

1 Representative,” FHDR-3; and “Subjects of Bargaining between a Driver Coordinator and an  
2 Exclusive Driver Representative,” FHDR-4.

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

7 26. A “[q]ualifying driver” is “a for-hire driver, who drives for a driver coordinator,” SMC §  
8 6.310.110, who “[w]as hired by or began contracting with, partnering with or maintaining a  
9 contractual relationship with a particular Driver Coordinator at least 90 days prior to [January 17,  
10 2017],” and who “[d]rove at least 52 trips originating or ending within Seattle city limits for a  
11 particular [d]river [c]oordinator during any three-month period in the 12 months preceding”  
12 January 17, 2017, FHDR-1, p. 2.

13 27. A “Driver coordinator” is “an entity that hires, contracts with, or partners with for-hire  
14 drivers for the purpose of assisting them with, or facilitating them in, providing for-hire services to  
15 the public. For the purposes of this definition, ‘driver coordinator’ includes but is not limited to  
16 taxicab associations, for-hire vehicle companies, and transportation network companies.” SMC §  
17 6.310.110.

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

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

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

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

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

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

20 34. The Ordinance authorizes a QDR to cause Seattle to coerce driver coordinators to assist  
21 the QDRs campaign to represent those drivers. Among other things, QDR’s can cause Seattle to:  
22 coerce driver coordinators to produce drivers’ personal information to the QDR, SMC §  
23 6.310.735.D, FHDR-1, pp. 3-4; coerce driver coordinators and drivers to submit to a card-check  
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1 recognition procedure, SMC § 6.310.735.F, FHDR-3; coerce driver coordinators not to provide,  
 2 or offer to provide, money or anything of value to drivers with the intent of encouraging those  
 3 drivers to resist or not support the QDR, SMC § 6.310.735.K; and coerce driver coordinators not  
 4 to interfere with, restrain, or deny a QDR in the exercise of rights granted to it by the Ordinance,  
 5 *id.*; *see also* SMC § 6.310.735.M (enforcement provisions).

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

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

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

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

1           7. Rules that apply to drivers including discipline, termination or deactivation.  
2 FHDR-4, p. 2; SMC § 6.310.735.H.1. An EDR can also negotiate for a clause that “require[s]  
3 membership of for-hire drivers in the EDR’s entity/organization within 14 days of being hired,  
4 contracted with, or partnered with by the driver coordinator to provide for-hire transportation  
5 services to the public.” SMC § 6.310.735.H.4.

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

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

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

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

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

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

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

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

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

### 19 III. The Plaintiff Drivers

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

22 47. Plaintiffs and similarly situated drivers use an Uber or Lyft developed and licensed  
23 smartphone ride-referral application (respectively "Uber App" and "Lyft App") that allows  
24

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

4 48. As part of the application process for using the Uber and Lyft Apps, an individual  
5 submits a copy of his or her driver's license to Uber or Lyft. On information and belief, Uber and  
6 Lyft obtain the individual's driver license number from his or her submitted driver's license, and  
7 may obtain other personal information about the individual from his or her driver's license and/or  
8 from the vehicle registrations that Uber and Lyft must obtain to comply with SMC §  
9 6.310.260(A)(2)(g).

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

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

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

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

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

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

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

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

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

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

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

21 k. Plaintiff Teshome owns his own vehicle, which is a four-door sedan, and utilizes it  
22 to drive as an independent driver under the “uberX” and “uberPool” options on the Uber  
23 App.  
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1 50. Plaintiffs and similarly situated drivers are not required to use the Uber App or Lyft App  
2 for a set number of hours each week. They can use the apps whenever they choose, for however  
3 long they choose, and can choose to utilize other methods for obtaining passengers, such as other  
4 mobile based ride-referral applications. Plaintiffs and drivers are also able to accept or reject a trip  
5 request from a potential passenger.

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

10 52. While Plaintiffs and other drivers' relationship with Uber and Lyft, respectively, are that  
11 of independent contractors, Uber and Lyft are still "employer[s]" within the meaning of 29 U.S.C.  
12 § 152(2) because Uber and Lyft employ individuals in an industry affecting interstate commerce,  
13 such as administrative, clerical, and technical employees. Uber and Lyft are also a "person" within  
14 the meaning of 29 U.S.C. §§ 158(b)(4), 158(e).

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

18 54. Certification of an EDR for Uber drivers will:

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

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

24

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

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

6 55. Certification of an EDR for Lyft drivers will:

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

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

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

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

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

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

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

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

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

### 18 CLAIMS FOR RELIEF

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

### 21 **COUNT I**

#### 22 *The Ordinance is preempted by NLRA Section 8(e).*

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



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

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

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

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

16 66. The Ordinance requires or authorizes conduct arguably prohibited by NLRA Section  
17 8(e) because an EDR’s certification requires driver coordinators to cease doing business with  
18 drivers who are not represented by the EDR and to enter into agreements with the EDR requiring  
19 the driver coordinator to cease doing business with drivers not represented by the EDR and/or not  
20 subject to the EDR’s agreement.

21 67. The Ordinance deprives Plaintiffs and similarly situated drivers of rights and interests  
22 protected by NLRA Section 8(e), and is preempted by the Supremacy Clause and 42 U.S.C. §  
23 1983.

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**COUNT II**

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

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

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

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

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

3 71. The Ordinance deprives Plaintiffs and similarly situated drivers of rights and interests  
 4 protected by NLRA Section 8(b)(4), and is preempted by the Supremacy Clause and 42 U.S.C. §  
 5 1983.

### 6 **COUNT III**

#### 7 ***The Ordinance is Preempted by the NLRA's Secondary Pressure Provisions.***

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

14 73. The Ordinance regulates a field of conduct fully regulated by NLRA Sections 8(b)(4) and  
 15 8(e), because it regulates the manner and means by which unions can pressure and contract with  
 16 driver coordinators and drivers to influence and control how they do business with one another.  
 17 To the extent that the Ordinance does not authorize conduct arguably prohibited by NLRA  
 18 Sections 8(b)(4) and 8(e), the Ordinance authorizes conduct that Congress intended to be  
 19 unregulated and left to the free play of economic forces. Consequently, the Ordinance deprives  
 20 Plaintiffs and similarly situated drivers of rights and interests protected by federal law, and is  
 21 preempted by the Supremacy Clause and 42 U.S.C. § 1983.

### 22 **COUNT IV**

#### 23 ***The Ordinance Violates the First and Fourteenth Amendments to the 24 United States Constitution and 42 U.S.C. § 1983.***

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

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

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

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

20 78. For these reasons, the Defendants, by and through the Ordinance, threaten to, and will,  
21 violate Plaintiffs and other drivers' First Amendment speech and associational rights, as those  
22 rights are secured against infringement by the Fourteenth Amendment to the United States  
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1 Constitution and 42 U.S.C. § 1983. No compelling or otherwise sufficient state interest justifies this  
2 infringement on the Plaintiffs and other drivers' First Amendment rights.

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

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

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

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COUNT V

*The Ordinance is Preempted by the Drivers' Privacy Protect Act*

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

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

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

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

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

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

3 **PRAYER FOR RELIEF**

4 Wherefore, Plaintiffs request that this Court:

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

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

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

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

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

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

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

20 Dated: March 10, 2017

21 s/ David M.S. Dewhirst  
22 David M.S. Dewhirst, WSBA # 48229

23 s/ James G. Abernathy  
24 James G. Abernathy, WSBA #48801  
c/o Freedom Foundation

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