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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

CHAMBER OF COMMERCE OF THE
UNITED STATES OF AMERICA,
Plaintiff,

v.

CITY OF SEATTLE,

SEATTLE DEPARTMENT OF FINANCE
AND ADMINISTRATIVE SERVICES,

and

FRED PODESTA, in his official capacity as
Director, Finance and Administrative
Services, City of Seattle,
Defendants.

Case No.

COMPLAINT

INTRODUCTION

1. The City of Seattle seeks to turn well-settled antitrust and labor law on its head through an unprecedented Ordinance that would allow independent contractors to fix the price they pay for using ride-referral technology. The illegal Ordinance—entitled an Ordinance Relating to Taxicab, Transportation Network Company, and For-Hire Vehicle Drivers—applies only to individuals working as independent contractors, and purports to enable those distinct economic actors to form a union to collude on the prices and terms of their contracts with

1 companies that provide ride-referral services. There are good reasons why this Ordinance is
2 unprecedented and why none of the other approximately 40,000 municipal entities in this Nation
3 has previously tried to authorize collective bargaining by independent contractors: such an action
4 is barred by well-established law under the Sherman Act and the National Labor Relations Act,
5 among other laws.

6 2. The Chamber of Commerce of the United States of America files this civil action
7 seeking (1) a declaration that the City’s Ordinance is unlawful, (2) a temporary restraining order
8 against its enforcement, issued before April 3, 2017, (3) a preliminary injunction against its
9 enforcement, pending final judgment in this case, and (4) a permanent injunction against its
10 enforcement. Absent judicial intervention, the City of Seattle and thousands of other
11 municipalities would be free to adopt their own disparate regulatory regimes, which would
12 balkanize the market for independent-contractor services and inhibit the free flow of commerce
13 among private service providers around the Nation.

14 3. The unfettered ability of individuals to go into business for themselves has long
15 been an important engine of American economic growth. This entrepreneurial tradition is an
16 exceptional feature that distinguishes our economy from much of the rest of the world.

17 4. The power of America’s entrepreneurial spirit has only grown as technology has
18 transformed the way Americans can do business. One of the most recent manifestations of that
19 trend is the so-called “on demand” economy, which harnesses several technological
20 revolutions—such as the Internet, GPS, and smartphones and tablet computers—to connect
21 individual service providers with customers. This innovation has dramatically increased the
22 flexibility of independent contractors to conduct business where, when, and as much or as little
23 as they choose in a variety of business enterprises—transporting passengers, performing delivery
24 services, providing lodging, or other work—with as many (or as few) different entities or
25 customers as they wish. As a result, the stay-at-home parent may work during school hours; the
26

1 student may do so between classes; and others may work only as long as it takes to achieve a
2 particular financial goal, such as remodeling a home or paying off credit card debt.

3 5. Federal law has traditionally allowed the competitive market to regulate these
4 private agreements between independent economic actors free from governmental interference.
5 This allows individuals the freedom to negotiate the arrangement that best suits his or her
6 individual circumstances. Thus, Congress expressly determined that independent contractors
7 should not be subject to collective bargaining obligations under the National Labor Relations Act
8 (“NLRA”), amending the NLRA to make this exclusion explicit after the National Labor
9 Relations Board (“NLRB” or “Board”) and the courts held otherwise. And the Federal Trade
10 Commission has likewise repeatedly made clear that collective bargaining amongst these
11 independent service providers would constitute an illegal restraint on trade.

12 6. It is against this backdrop of market freedom that the “on demand” economy has
13 flourished in recent years. Nowhere are these changes more apparent than in the for-hire
14 transportation sector. Many companies now offer riders the ability to contact for-hire drivers
15 through smartphone applications (“apps”) that can immediately connect a rider with the driver
16 nearest to her location, providing quick access to transportation. These arrangements, in turn,
17 have increased flexibility and efficiency on the part of for-hire drivers.

18 7. These developments are not limited to technology companies. Many traditional
19 taxicab and limousine companies have long used flexible independent-contractor arrangements
20 to provide services to customers. And some traditional taxicab and limousine companies have
21 likewise deployed their own apps for use by independent-contractor drivers and riders. As a
22 result of these diverse approaches, for-hire transportation is more widely available, more
23 convenient, and offers better service to the public than in years past. And just as importantly, it
24 provides business opportunities for a broad and diverse group of individuals who value the
25 flexibility that it provides and the entrepreneurial spirit that it rewards.

1 8. The City of Seattle’s Ordinance would restrict the market freedom relied upon by
2 all for-hire drivers who are part of independent-contractor arrangements, whether with a
3 transportation-app company, a traditional taxicab company, or a limousine service. Under the
4 guise of regulating public safety, the Ordinance at issue would, for the first time anywhere in the
5 United States, insert a third-party labor union into the relationship between independent
6 contractors and companies and require agreements that would fix wages and prices in violation
7 of the nation’s antitrust and labor laws. Indeed, the Ordinance explicitly requires for-hire drivers
8 and their partners to reach anticompetitive agreements by engaging in collective bargaining that
9 federal law does not permit. Nothing in the Washington State law upon which the City relies
10 authorizes the City’s actions, and federal antitrust and labor laws explicitly prohibit them.

11 9. If allowed to stand, Seattle’s Ordinance would threaten one of the most vibrant,
12 cutting edge sectors of the economy. The most recent available data demonstrates that there are
13 nearly 40,000 general purpose local governments in the United States. *See* U.S. Census Bureau,
14 Census of Governments (2012). If Seattle is permitted to adopt and implement its Ordinance
15 here, then approximately 40,000 other municipalities may attempt to do so as well. But
16 permitting thousands of separate and independent collective bargaining regimes for independent
17 contractors would inflict significant costs upon the for-hire transportation sector and, more
18 broadly, undermine the flexibility, efficiency, and choice that accompany independent contractor
19 arrangements. In short, Seattle’s Ordinance reflects a broadside attack on the fundamental
20 premises of independent contractor arrangements, as well as the nascent on-demand economy
21 that relies on it. Federal labor and antitrust laws were designed precisely to avoid this result, and
22 to encourage innovation and the free flow of commerce among private service providers across
23 the Nation.

24 10. Accordingly, Plaintiff, the Chamber of Commerce of the United States of
25 America (“Chamber”), seeks a declaration, pursuant to 28 U.S.C. §§ 2201 and 2202, that the
26 City of Seattle’s Ordinance Relating to Taxicab, Transportation Network Company, and For-

1 Hire Vehicle Drivers, adding Section 6.310.735 to the Municipal Code, (1) violates and is
2 preempted by federal antitrust law; (2) is preempted by the National Labor Relations Act, 29
3 U.S.C. § 151 et seq.; (3) violates the federal rights of the Chamber’s members; (4) is not
4 authorized by the Revised Code of Washington §§ 46.72.001 and 81.72.200; (5) violates the
5 Washington Consumer Protection Act, Revised Code of Washington Chapter 19.86, and (6)
6 violates the Washington Public Records Act, Washington Revised Code Chapter 42.56. Plaintiff
7 also seeks immediate and also permanent injunctive relief prohibiting Defendants from enforcing
8 the Ordinance.

9 **JURISDICTION AND VENUE**

10 11. This Court has jurisdiction over the subject matter of this civil action under
11 28 U.S.C. § 1331 because it arises under the Constitution and laws of the United States, and
12 under 28 U.S.C. § 1337 because it arises under an Act of Congress regulating commerce. This
13 Court has jurisdiction to review the state law claims under 28 U.S.C. § 1367, because they form
14 part of the same case or controversy as the claims arising under the Constitution and laws of the
15 United States.

16 12. This Court also has jurisdiction under 28 U.S.C. § 1332 because the amount in
17 controversy satisfies the statutory requirements, and the suit is between citizens of different
18 States. Plaintiff is incorporated in the District of Columbia, and its principal place of business is
19 in the District of Columbia. Defendants are citizens of Washington.

20 13. Venue is proper in this judicial district under 28 U.S.C. § 1391(b) because a
21 substantial portion of the events giving rise to this action occurred in this judicial district and
22 because the Defendants reside or are found in this judicial district.

23 **PARTIES**

24 14. Plaintiff is a non-profit organization created and existing under the laws of the
25 District of Columbia, headquartered at 1615 H Street, N.W., Washington, D.C. The Chamber is
26 the world’s largest federation of businesses and associations, directly representing 300,000

1 members and indirectly representing the interests of more than three million U.S. businesses and
2 professional organizations of every size, in every industry sector, and from every geographic
3 region of the country. Of particular relevance here, the Chamber routinely advocates on matters
4 of federal antitrust and labor relations policy and represents the interests of its members in
5 antitrust and labor relations matters before the courts.

6 15. Some of the Chamber’s members operate taxicab, transportation network, and for-
7 hire vehicle businesses within the jurisdictional limits of the City of Seattle, and thus are subject
8 to the Ordinance. Some of these members contract with fifty (50) or more for-hire drivers, and
9 thus are subject to the Ordinance’s driver-reporting requirements, along with its collective-
10 bargaining and anti-retaliation provisions.

11 16. First, Chamber member Uber Technologies, Inc., along with its wholly owned
12 subsidiaries Uber USA, LLC and Rasier, LLC (collectively, “Uber”), is a technology company
13 that connects individuals looking for transportation (“riders”) with independent transportation
14 providers looking for passengers (“drivers”). Decl. of Brooke Steger ¶ 3. Uber’s product is a
15 smartphone application, the Uber App, which allows riders and drivers to connect based on their
16 location. *Id.* For-hire drivers who use the Uber App to generate referrals are independent
17 contractors, not Uber employees. *Id.* ¶ 9, 14. They use the Uber App to generate leads for their
18 businesses. *Id.* ¶ 8–9. Uber contracts with more than fifty for-hire drivers in the Seattle area. *Id.*
19 ¶ 15.

20 17. Second, Chamber member Lyft, Inc. (“Lyft”) is a technology company that local
21 transportation providers can use to receive trip requests from members of the public. Lyft
22 developed and licenses a mobile software application (“the Lyft App”), which allows riders to
23 request and receive transportation services from drivers. Decl. of Todd Kelsay, ¶ 4–7. Drivers
24 who use the Lyft App to generate referrals are independent contractors, not Lyft employees.
25 *Id.* ¶ 8. Lyft contracts with more than fifty for-hire drivers in the Seattle area. *Id.* ¶ 10.

1 18. Third, Chamber member Eastside for Hire (“Eastside”) provides dispatch services
2 in the Seattle area. Decl. of Bashi Katar ¶ 2. Eastside uses advertising and preexisting client
3 bases to generate transportation requests from passengers, who call, text, or email to request a
4 ride, and refers these requests to drivers via mobile data terminal. *Id.* ¶ 5. Eastside contracts
5 with more than fifty drivers, who are independent contractors, not employees. *Id.* ¶¶ 4,7.

6 19. In bringing this lawsuit, the Chamber seeks to vindicate the interests of these
7 members and, more broadly, the interests of many more members and non-member businesses
8 that would be harmed if thousands of municipalities were permitted to establish a balkanized
9 system of labor law for independent contractors. The individual members themselves are not
10 indispensable to the proper resolution of the case.

11 20. Defendant City of Seattle (the “City”) is a municipality of the State of
12 Washington.

13 21. Defendant Seattle Department of Finance and Administrative Services
14 (“SDFAS”) is a municipal agency of the City and is the agency charged in the Ordinance with
15 responsibility for administering and enforcing the portions of the Ordinance at issue in this
16 action.

17 22. Defendant Fred Podesta is the Director of SDFAS and the officer of SDFAS
18 charged in the Ordinance with responsibility for administering and enforcing the portions of the
19 Ordinance at issue in this action. Mr. Podesta is sued in his official capacity.

20 **FACTUAL ALLEGATIONS**

21 **I. THE FOR-HIRE TRANSPORTATION BUSINESS**

22 23. Individuals use for-hire transportation services to meet many of their
23 transportation needs, particularly in urban areas where owning and operating a vehicle may be
24 impractical or expensive.

25 24. Many drivers working in the for-hire transportation industry have traditionally
26 operated as independent contractors, and this tradition continues today. These drivers accept

1 street hails or rely on taxicab companies or black-car or limousine services to connect them to
2 customers. Taxi and limousine companies typically maintain an office or dispatch center where
3 consumers needing service could call and request it, and the dispatch center then communicates
4 with its drivers to fulfill rider requests.

5 25. In addition to traditional taxicab and limousine services, advancing technology
6 over the last several years, and in particular the advent of smartphones, tablets, and their
7 applications, has further expanded the flexibility that comes from working as an independent
8 contractor, including in the for-hire transportation industry. Companies such as Uber and Lyft
9 have developed ride-referral applications that allow a rider requesting service to automatically
10 communicate his or her location, and for computer systems to match that potential rider with an
11 available driver who is physically close to the customer. The applications permit a rider to link a
12 credit or debit card to his or her account, which automatically deducts the correct fare for the ride
13 taken. Finally, the applications also permit riders to provide real-time feedback regarding their
14 experience, allowing almost immediate operational changes that better serve both riders and
15 drivers. Drivers are also able to provide feedback regarding experiences with their riders.

16 26. These new ride-referral applications provide a number of benefits to the cities in
17 which they operate and, particularly, to consumers. The Federal Trade Commission has
18 acknowledged that these benefits include “providing customers with new ways to more easily
19 locate, arrange, and pay for passenger motor vehicle transportation services,” more efficiently
20 allocating resources, helping to “meet unmet demand for passenger motor vehicle transportation
21 services,” and “improv[ing] service in traditionally underserved areas.” Federal Trade
22 Commission Comments on Chicago Proposed Ordinance O2014-1367, at 3 (Apr. 15, 2014),
23 <http://bit.ly/2iWIdHw>. Seattle’s Mayor, in a statement refusing to sign the Ordinance, likewise
24 noted the “valuable new tools” that these arrangements provide to City residents. Mayor
25 Comments on TNC Ordinance (Dec. 14, 2015), [murray.seattle.gov/mayor-comments-on-tnc-](http://murray.seattle.gov/mayor-comments-on-tnc-ordinance)
26 [ordinance](http://murray.seattle.gov/mayor-comments-on-tnc-ordinance).

1 27. To receive transportation requests via the new ride-referral applications, drivers
2 pay a technology licensing fee to the company that owns the application, which is a percentage
3 of the fare that the rider pays. The companies that own the applications collect the fee and any
4 other related fees from the riders on behalf of drivers, subtract their technology licensing fee, and
5 remit the remainder to the drivers. Fares vary based on the length of the ride, quality of vehicle
6 requested, and the time of day and the day of the week. These latter variations are based on
7 supply and demand; weekend evenings are more popular times than mid-morning weekdays, for
8 example, and thus the same ride may cost more if taken during the former than the latter. This
9 dynamic pricing ensures service reliability by correcting supply/demand imbalances—it
10 guarantees that people who request a ride during a time of high demand will get one, and that
11 more drivers simultaneously will hit the road to increase supply and lower prices once again.

12 28. Drivers who receive ride requests from these software apps choose when they
13 work, choose where they work, and operate in their own vehicle. These flexible, driver-selected
14 schedules permit a stay-at-home dad to work only while his children are at school, or a student to
15 work between her classes or on weekends. Drivers are not required to work any particular
16 amount of time each week, allowing a parent to attend school functions, a student to decide not
17 to work during finals, or an employee of another business to supplement his or her income
18 temporarily. The benefits to drivers from these flexible arrangements are significant and well-
19 documented. *See Hall & Krueger, An Analysis of the Labor Market for Uber's Driver-Partners*
20 *in the United States* (Jan. 22, 2015), <http://bit.ly/1zsBmfR>.

21 29. Drivers may, if they choose to, contract with more than one service, driving with
22 a black-car company or a limousine service one day, Uber for one day (or one trip), Lyft the next
23 day (or trip), and another comparable service for transporting either people or goods the next.
24 Indeed, many drivers simultaneously accept ride requests from more than one company,
25 operating multiple software applications at the same time to ensure the greatest volume of trip
26 requests. Drivers are free to receive ride requests from any service they choose on a ride-by-ride

1 basis, and turnover is significant; the population of drivers working with a particular service
2 changes from week to week as new drivers sign up, and others decide to stop using the service,
3 either temporarily or permanently. In short, despite the Ordinance’s one-size-fits-all approach,
4 there is no “typical” driver.

5 30. Thanks to the innovations pioneered by these software companies, barriers to
6 entry for this work are low. They generally require the individual to have attained a certain age
7 (usually 18 or 21), have a valid drivers’ license, pass a background check, and have a vehicle
8 suitable for transporting passengers. Communications with the transportation network company
9 occur through a smartphone application designed, operated, maintained, and updated by the
10 company.

11 31. Since these technological changes revolutionized the for-hire transportation
12 industry, millions of people worldwide have signed up with these app-based companies as
13 drivers and potential riders. Many consumers, particularly in urban areas, now use these services
14 as their principal form of transportation. And many workers who require a flexible work
15 schedule and might otherwise be unable to find work or supplement their income now earn
16 money working as for-hire drivers.

17 32. Some drivers have challenged their status as independent contractors in various
18 jurisdictions. For example, a group of drivers in California have alleged that they are employees,
19 rather than independent contractors, and thus are subject to various state and federal employment
20 laws. *E.g.*, Complaint, *O’Connor v. Uber Techs., Inc.*, No. 3:13-cv-03826 (N.D. Cal.).

21 33. Similarly, the International Brotherhood of Electrical Workers previously filed a
22 petition with the National Labor Relations Board (“NLRB” or “Board”) claiming that Uber
23 drivers are “employees” within the NLRA, and seeking to represent them. *Uber USA, LLC*,
24 NLRB Case No. 29-RC-168855 (Pet. filed Feb. 2, 2016). And a few drivers have argued before
25 the Board that they should be considered “employees” under the NLRA, rather than independent
26 contractors. *See Mamdooh “Abe” Ramzi Husein*, NLRB Case No. 14-CA-158833 (Pet. filed

1 Aug. 27, 2015); *Catherine London & John Billington*, NLRB Case Nos. 20-CA-160720, 20-CA-
2 160717 (Pets. filed Sept. 24, 2015). The NLRB has also petitioned for enforcement of
3 administrative subpoenas against Uber, noting that a threshold issue in the cases pending before
4 it is whether the drivers are employees or independent contractors, and that the Board has
5 broadened the scope of its investigation to determine “whether *all* drivers subject to” Uber’s
6 licensing agreement are employees. Memorandum in Support of Application at 3, *NLRB v. Uber*
7 *Techs., Inc.*, No. 3:16-cv-987 (N.D. Cal. Feb. 29, 2016). The NLRB has not yet definitively
8 resolved whether or not these individuals are “employees” under the NLRA.

9 **II. THE ORDINANCE**

10 34. The Seattle City Council unanimously (8-0) passed the Ordinance Relating to
11 Taxicab, Transportation Network Company, and For-Hire Vehicle Drivers on December 14,
12 2015. Having previously expressed concerns about the Ordinance’s “several flaws,” Mayor
13 Murray refused to sign it, returning it to the Council unsigned on December 23, 2015. *See*
14 Mayor Comments on TNC Ordinance (Dec. 14, 2015). The Ordinance became law pursuant to
15 section 1.04.020 of the Seattle Municipal Code without the Mayor’s approval on January 22,
16 2016.

17 35. The Ordinance establishes a collective-bargaining scheme unique to the City of
18 Seattle through which “for-hire drivers” collectively negotiate the terms of their contractual
19 relationships with “driver coordinators.” Ordinance § 1(I).

20 36. A “driver coordinator” includes any entity that “contracts with” for-hire drivers
21 “for the purpose of assisting them with, or facilitating them in, providing for-hire services to the
22 public.” *Id.* § 2. Driver coordinators include, but are not limited to, “taxicab associations, for-
23 hire vehicle companies, and transportation network companies,” (*id.*), including companies like
24 Uber and Lyft.

1 37. The Ordinance applies only to for-hire drivers who are independent contractors,
2 not employees. Ordinance § 6 (“The provisions of this ordinance do not apply to drivers who are
3 employees under 29 U.S.C. § 152(3)).

4 38. The City’s Director of Finance and Administrative Services (“Director”),
5 currently Defendant Podesta, is authorized to administer and enforce the collective-bargaining
6 regime, which proceeds in several steps. *Id.* First, an entity seeking to be designated as a
7 drivers’ union—or “qualified driver representative” (“QDR”)—must submit a request to the
8 Director pursuant to regulations to be issued by the Director. *Id.* § 3(C). Once the Director
9 approves one or more QDRs, those QDRs can notify driver coordinators who contract with more
10 than fifty drivers of their intent to seek to represent their drivers. *Id.* § 3(C)(2). Driver
11 coordinators must then provide all QDRs that have given notice with the names, addresses, email
12 addresses, phone numbers, and driver license numbers of “all qualifying drivers they hire,
13 contract with, or partner with” as of that particular date, other than those with whom the driver
14 coordinator has an employer/employee relationship. *Id.* § 3(D); Director’s Rule FHDR-1,
15 <http://bit.ly/2mphh8s>. The City has defined “qualifying driver” as a for-hire driver that has (1)
16 contracted with a driver coordinator for the 90 days “immediately preceding the commencement
17 date,” and (2) has driven “at least 52 trips” in Seattle “during any three-month period in the 12
18 months preceding the commencement date.” Director’s Rule FHDR-1. The QDRs then have
19 four months to obtain consent from a majority of listed drivers to represent them in dealings with
20 the driver coordinator, including collective bargaining. If a majority of a driver coordinator’s
21 drivers consent to the representation, the Director must certify the QDR as the “exclusive driver
22 representative” (“EDR”) “for all drivers for that particular driver coordinator,” representing all
23 drivers who do business with that driver coordinator and, correspondingly, preventing the driver
24 coordinator from doing business with any drivers who do not wish to be represented by, or to
25 work under the terms negotiated by, the EDR. *Id.* § 3(F)(2).

1 39. The Ordinance permits drivers to authorize more than one QDR to represent them
2 in dealings with the driver coordinator. Accordingly, if more than one QDR obtains signatures
3 from a majority of a particular coordinator’s drivers, the Director is required to certify the QDR
4 who received the most signatures as the EDR. *Id.*

5 40. The Ordinance permits a QDR to be certified as an EDR based on its having
6 obtained authorization from a majority of the drivers contained on the list that the driver
7 coordinator provides, regardless of whether those individuals still constitute a majority of the
8 drivers of a particular driver coordinator as of the date of the certification months later. The
9 Ordinance permits a “majority” to be determined using “statistical methods” required by the
10 Director; depending on how this provision is implemented, such methods may or may not
11 produce selection of an EDR by an actual majority of drivers who contract with a particular
12 driver coordinator. *Id.* § 3(F)(1). Worse, because of the City’s definition of “qualifying driver,”
13 *supra* ¶ 38, there is no doubt that an EDR will be certified based on less than an actual majority.

14 41. Once an EDR is certified, the driver coordinator is obligated to meet with the
15 EDR “and negotiate in good faith certain subjects to be specified in rules or regulations
16 promulgated by the Director, including, but not limited to, best practices regarding vehicle
17 equipment standards; safe driving practices; the manner in which the driver coordinator will
18 conduct criminal background checks of all prospective drivers; the nature and amount of
19 payments to be made by, or withheld from, the driver coordinator to or by the drivers; minimum
20 hours of work, conditions of work, and applicable rules.” *Id.* § 3(H)(1). The Director does not
21 participate in the negotiation.

22 42. If the EDR and the driver coordinator reach an agreement, they are required to
23 submit it to the Director, who is charged with determining whether the agreement effectuates the
24 Ordinance’s policies. If the Director determines that it does, then the agreement is binding on
25 the parties. If not, the Director sends it back to the parties with “a written explanation of the
26 failure(s) and, at the Director’s discretion, recommendations to remedy the failure(s).” *Id.*

1 § 3(H)(2)(b). No agreement between a driver coordinator and an EDR becomes effective until
2 the Director “determines its adherence” to city law and policy. *Id.* § 3(H)(2)(c). However, the
3 Ordinance does not give the Director authority to dictate an agreement’s terms or otherwise
4 supervise the EDR.

5 43. When a collective-bargaining agreement becomes effective, a driver coordinator
6 is not only bound by the terms of the agreement, but is also forbidden from making changes “to
7 subjects” covered by the Ordinance without first “meeting and discussing those changes in good
8 faith with the EDR, even if the driver coordinator and EDR have not included terms concerning
9 such subjects in their agreement.” *Id.* § 3(J)(3).

10 44. If the driver coordinator and EDR do not reach an agreement, both entities are
11 obligated to submit to “interest arbitration upon the request of the other,” and the arbitrator then
12 submits what he or she believes is “the most fair and reasonable agreement” to the Director for
13 approval. *Id.* § 3(I)(1)–(3). Again, if the Director finds that the agreement “fails to fulfill” the
14 Ordinance’s requirements, he “shall remand the agreement to the interest arbitrator with a written
15 explanation of the failure(s) and, at the Director’s discretion, recommendations to remedy the
16 failure(s).” *Id.* § 3(I)(4)(b). Still, the Ordinance likewise does not give the Director authority to
17 directly negotiate or dictate the terms of an agreement, or otherwise supervise the EDR.

18 45. The Ordinance expressly allows an EDR to demand that the agreement—later
19 approved by the Director—“require membership of for-hire drivers in the EDRs
20 entity/organization within 14 days of being hired, contracted with, or partnered with by the driver
21 coordinator to provide for-hire transportation services to the public.” *Id.* § 3(H)(4). Given the
22 great diversity among the work schedules and preferences of for-hire drivers, this arrangement
23 will allow a subset of drivers at a particular point in time to set terms for other drivers who do
24 not wish to join a union and may be disadvantaged by the bargain struck.

25 46. The Ordinance also contains a provision prohibiting any driver coordinator from
26 engaging in any act of “retaliat[ion] against any for-hire driver for exercising the right to

1 participate in the representative process,” and from making any “offer to provide money or
2 anything of value to any for-hire driver with the intent of encouraging the for-hire driver to
3 exercise, or to refrain from exercising, that right.” *Id.* § 3(K). It is also unlawful for a driver
4 coordinator to “[i]nterfere with, restrain, or deny the exercise of, or the attempt to exercise,” any
5 right the Ordinance protects. *Id.* The Director has authority to enforce this provision, after
6 investigation and a hearing, and to assess a penalty of up to \$10,000 per day for non-compliance.
7 *Id.*, § 3(M). The anti-retaliation provision may also be enforced through a private right of action
8 brought in Washington State court. *Id.*, § 3(M)(3).

9 47. The Director is authorized to investigate alleged violations of the Ordinance, and
10 to enforce it through, among other things, imposition of a “daily penalty of up to \$10,000 for
11 every day the violator fails to cure the violation.” *Id.* § 3(M)(1). The Ordinance’s terms
12 governing provision and use of driver lists, good faith bargaining and interest arbitration
13 obligations, and anti-retaliation are also enforceable through a private right of action in
14 Washington State court. *Id.* § (3)(M)(3). Courts enforcing these provisions are permitted to
15 award “all remedies available at law or in equity appropriate to remedy any violation,” including
16 reasonable attorneys’ fees and costs. *Id.*

17 **III. THE CITY’S IMPLEMENTATION OF THE ORDINANCE**

18 48. The City has implemented the Ordinance by funding it with a new tax,
19 promulgating regulations, setting a commencement date, and designating at least one QDR.

20 49. On July 1, 2016, the City implemented a new tax to fund the Ordinance, in the
21 form of a four-cent increase (from \$0.10 to \$0.14) in the per-ride license fee that is assessed on
22 and paid quarterly by transportation network companies.

23 50. On December 29, 2016, the Director promulgated a set of regulations
24 implementing the Ordinance. *See* Director’s Rules FHDR-1–FHDR-4, <http://bit.ly/2iFF1k5>.
25 The rules govern the process for designating an EDR, the subjects of collective bargaining, and
26 other aspects of the Ordinance. According to the regulations, the mandatory subjects of

1 collective bargaining include “[t]he nature and amount of payments to be made by, or withheld
2 from, the driver coordinator to or by the drivers.” FHDR-4, <http://bit.ly/2j7dsmr>. Any subject
3 not listed in the Ordinance or the regulations is a permissible subject of bargaining. *Id.*

4 51. Along with these regulations, the Director designated January 17, 2017, as the
5 Ordinance’s commencement date.

6 52. On March 3, 2017, the Director designated the International Brotherhood of
7 Teamsters Local 117 as a QDR under the Ordinance. On March 7, Local 117 gave notice to
8 Chamber members Uber Technologies, Lyft, Inc., and Eastside For Hire that Local 117 seeks to
9 become an EDR for all drivers who contract with those companies.

10 **IV. INJURY FROM THE ORDINANCE**

11 53. Under § 3(D) of the Ordinance, Uber, Lyft, and Eastside must disclose its driver
12 information to Local 117 by April 2, 2017. Failure to comply will result in an administrative
13 penalty of up to \$10,000 per day, and is also enforceable through a private right of action.
14 Ordinance § 3(M)(1)(d), 3(M)(3). Disclosure of these materials will injure Uber, Lyft, and
15 Eastside, which treat this information as confidential, proprietary, trade secret information; and it
16 will injure the drivers themselves, many of whom consider their personally identifiable
17 information, and their work with these driver coordinators, to be confidential.

18 54. The Chamber’s members have incurred substantial tax costs as a direct result of
19 the Ordinance. Under the City’s licensing fee, which was imposed to fund the collective-
20 bargaining program, transportation network companies have been forced to pay an increase of
21 \$.04 per ride since July 1, 2016.

22 55. The Chamber’s members have already incurred, and will continue to incur,
23 substantial other costs as a direct result of the Ordinance. Because they work principally with
24 independent contractors, these members have little to no experience with labor relations matters,
25 including union organizing, negotiating contracts with unions, and other related matters. In order
26 to prepare for the organizing and bargaining activity that the Ordinance contemplates, these

1 companies are beginning to engage labor relations experts, and may be required to recruit and
2 hire labor relations personnel for their own staff. The Chamber’s members have also started to
3 expend and will continue expending both time and money to educate their drivers about the
4 disadvantages of choosing to be represented by an EDR.

5 56. Seattle’s collective-bargaining Ordinance will seriously disrupt the business of the
6 Chamber’s members. Uber and Lyft have created an innovative business model that depends on
7 partnering with independent contractors. The Ordinance’s collective-bargaining scheme is a
8 drastic departure from that business model, and complying with the Ordinance will require costly
9 changes to these businesses. They will be required to navigate the union organization process,
10 meet at the collective-bargaining table, negotiate over an open-ended list of subjects, form a
11 collective-bargaining agreement, and comply with its terms. The Ordinance essentially requires
12 driver coordinators to treat independent contractors as employees—a change so disruptive that it
13 could cause these companies to become unprofitable in Seattle.

14 **COUNT ONE: VIOLATION OF THE SHERMAN ANTITRUST ACT**

15 57. Plaintiff incorporates by reference the allegations contained in all the preceding
16 paragraphs.

17 58. Under section 1 of the Sherman Antitrust Act, a “contract, combination in the
18 form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several
19 States” is illegal. 15 U.S.C. § 1. As the Supreme Court has repeatedly held, this provision
20 forbids independent economic actors—such as independent contractors—from colluding on the
21 prices they would accept for their services or otherwise engaging in concerted anticompetitive
22 action in the marketplace. *See, e.g., FTC v. Super. Ct. Trial Lawyers Ass’n*, 493 U.S. 411, 422
23 (1990); *FTC v. Ind. Fed’n of Dentists*, 476 U.S. 447, 457–58 (1986); *Nat’l Soc’y of Prof’l Eng’rs*
24 *v. United States*, 435 U.S. 679, 693–95 (1978). Specifically, collective bargaining by
25 independent contractors over the price of a service is per se illegal under section 1 of the
26 Sherman Act. *Nat’l Soc’y of Prof’l Eng’rs*, 435 U.S. at 692–93.

1 59. The Ordinance unlawfully authorizes for-hire drivers to engage in this per se
2 illegal concerted action by forming a cartel (under the aegis of a QDR), speaking as a single unit
3 through an exclusive representative (an EDR), and engaging in horizontal fixing of prices and
4 contractual terms.

5 60. The anticompetitive behavior contemplated by the Ordinance restrains or
6 substantially affects interstate commerce because, for example, for-hire drivers and driver
7 coordinators in Seattle serve out-of-state passengers, transport passengers across state lines,
8 generate revenues from out-of-state sources, and use interstate highways and interstate
9 telecommunications equipment. Drivers frequently receive ride requests for rides that cross
10 county and state borders.

11 61. Through their enactment and enforcement of the Ordinance, including their
12 approval and endorsement of concerted action by EDRs and of the terms of anticompetitive
13 agreements, Defendants have committed and conspired to commit violations of the Sherman Act.

14 62. The collective-bargaining scheme created through the Ordinance will have the
15 anticompetitive effect of shielding drivers from competition. To give just a few examples,
16 drivers could negotiate for a cap on the number of active drivers, limits on the types of vehicles
17 that can be used, or limits on the maximum or minimum number of hours that drivers must be
18 available. Each of these terms would limit the entry of new drivers and reduce the availability of
19 transportation for riders.

20 63. As a direct result of the Defendants' illegal conspiracy and restraint of
21 competition, Plaintiff's members will suffer injury of a type the antitrust laws are intended to
22 prevent. For example, unions such as the Teamsters will seek to reduce the prices paid to app-
23 based companies for the use of their ride referral applications. As a result of the collective-
24 bargaining process, those companies also will incur additional costs of doing business with the
25 conspirators, such as reimbursement of driver's expenses or payment of other benefits.
26 Traditional for-hire companies that provide dispatch services for independent-contractor drivers

1 will suffer similar injuries, as they will be forced to accept reduced prices and incur additional
2 costs for offering dispatch service to drivers. All of these increased costs, which are due to
3 decreased competition among independent contractors, threaten the viability of companies that
4 provide ride-referral services. And ultimately, the decrease in competition will harm consumers,
5 who will pay more for personal transportation but receive poorer service.

6 64. The state-action doctrine does not immunize Defendant’s anticompetitive
7 conduct. That doctrine provides antitrust immunity only if “the actions in question are an
8 exercise of the State’s sovereign power.” *N.C. State Bd. of Dental Exam’rs v. FTC*, 135 S. Ct.
9 1101, 1110 (2015). For purposes of this exception, private conduct is an exercise of the State’s
10 sovereign power only if (1) the conduct is authorized by a “clearly articulated” and
11 “affirmatively expressed” state policy, and (2) the conduct is “actively supervised” by the State.
12 *Id.*

13 65. Neither of those requirements is met here. No provision of Washington law
14 clearly articulates or affirmatively authorizes collective bargaining for independent contractors
15 generally, or specifically authorizes for-hire drivers to collectively bargain with driver
16 coordinators over the prices and terms for which drivers’ services will be offered. Furthermore,
17 the Ordinance does not (and cannot) ensure that the State of Washington will actively supervise
18 the collective bargaining process and results to the extent required. *Id.* at 1116.

19 66. The anticompetitive conduct the Ordinance requires is also not immunized from
20 antitrust liability by either the statutory or non-statutory labor exemptions to the antitrust laws.
21 Among other things, these exemptions do not protect combinations of independent business
22 people, as opposed to combinations of employees covered by federal labor law. *Am. Medical*
23 *Ass’n v. United States*, 317 U.S. 519, 536 (1943). The Ordinance exempts from coverage anyone
24 who is in an employer/employee relationship under federal labor law (see Ordinance § 6), and
25 consequently does not encompass the relationships to which the federal antitrust labor
26 exemptions apply.

1 67. As a result of Defendants’ violation of the Sherman Antitrust Act as alleged
2 herein, Plaintiff is entitled to injunctive and declaratory relief and an award of its attorneys’ fees
3 pursuant to 15 U.S.C. § 26.

4 **COUNT TWO: PREEMPTION UNDER THE SHERMAN ANTITRUST ACT**

5 68. Plaintiff incorporates by reference the allegations contained in all the preceding
6 paragraphs.

7 69. The Supremacy Clause of the Constitution of the United States provides that
8 federal law is the “supreme Law of the Land” and therefore it preempts state and local laws that
9 interfere with or are contrary to federal law. U.S. Const. art. VI, cl. 2. A preempted state law
10 conflicts with and violates the U.S. Constitution.

11 70. The Ordinance unlawfully authorizes for-hire drivers to engage in this *per se*
12 illegal concerted action by forming a cartel (under the aegis of a QDR), speaking as a single unit
13 through an exclusive representative (an EDR), and engaging in horizontal fixing of prices and
14 contractual terms. And it requires driver coordinators to participate in such activity by
15 compelling them to bargain over the price and terms for which the independent contractors’
16 services will be offered to the public and forbidding any driver from entering into a different
17 arrangement with a driver coordinator with whom he contracts.

18 71. By purporting to authorize concerted anticompetitive conduct in violation of the
19 Sherman Act, and by placing pressure on private parties to violate the Sherman Act in order to
20 comply with the Ordinance, the Ordinance conflicts with and is preempted by the Sherman Act.

21 **COUNT THREE: MACHINISTS PREEMPTION UNDER THE**
22 **NATIONAL LABOR RELATIONS ACT**

23 72. Plaintiff incorporates by reference the allegations contained in all the preceding
24 paragraphs.

1 73. The principal federal statute regulating labor relations is the National Labor
2 Relations Act, 29 U.S.C. § 151 *et seq.* The NLRA sets forth the rules governing employees’
3 rights to bargain collectively with their employer regarding the terms and conditions of
4 employment, and proscribes as unfair labor practices certain activities by both employers and
5 labor organizations. *See* 29 U.S.C. §§ 157, 158.

6 74. The NLRA preempts any state regulation of broad swaths of labor-related
7 activity, such as collective bargaining. *See Chamber of Commerce v. Brown*, 554 U.S. 60
8 (2008); *Machinists v. Wisc. Emp’t Relations Comm’n*, 427 U.S. 132, 140 (1976). In *Machinists*,
9 the Court recognized that Congress intended certain conduct to be unregulated by government
10 and left to “the free play of economic forces,” and that “Congress struck a balance of protection,
11 prohibition, and laissez-faire in respect to union organization, collective bargaining, and labor
12 disputes.” *Brown*, 554 U.S. at 65. Accordingly, States may not regulate “within a zone
13 protected and reserved for market freedom” by the NLRA. *Id.* at 66.

14 75. In determining whether Congress meant to insulate a particular zone of activity
15 from state regulation, “[w]hat Congress left unregulated is as important as the regulations that it
16 imposed.” *Golden State Transit Corp. v. City of Los Angeles*, 493 U.S. 103, 110 (1989).

17 76. Here, Congress expressly determined that independent contractors should be
18 unregulated and excluded them from collective-bargaining requirements. 29 U.S.C. § 152(3)
19 (“The term ‘employee’ . . . shall not include any individual . . . having the status of an
20 independent contractor.”). This provision reflects Congress’s intent to ensure that independent
21 contractors remain regulated by “the free play of economic forces,” or market forces, rather than
22 by collective bargaining. Independent contractors are of a fundamentally different character than
23 the other categories of employees, such as agricultural workers and public employees, that are
24 excluded from the NLRA’s coverage, and Congress intended that they remain entirely
25 unregulated.

1 77. If Defendants are permitted to implement and enforce the Ordinance, other local
2 governments may also seek to regulate collective bargaining for independent contractors in a
3 manner different from the one chosen by the City of Seattle. Subjecting independent contractor
4 relationships to thousands of different bargaining schemes is contrary to Congressional intent in
5 enacting the NLRA. Doing so would be particularly chaotic for Chamber members who operate
6 across the country, but would be problematic even for those operating in a more restricted
7 geographic area, who may be forced to follow different rules in Seattle than, for example,
8 Tacoma. The NLRA was enacted to eliminate, rather than impose, such significant burdens on
9 commerce.

10 78. In addition to covering those whom Congress did not intend should be covered,
11 the Ordinance imposes other requirements that are antithetical to the NLRA's comprehensive
12 collective bargaining scheme. In particular, Congress has explicitly left unregulated both the
13 terms of collective bargaining agreements, and each side's use of economic leverage to convince
14 the other to reach agreement. *NLRB v. Int'l Union of Marine and Shipbuilding Workers of America*, 361 U.S. 477, 485–89 (1960).
15 The Ordinance regulates both: it regulates the terms of collective bargaining agreements by
16 permitting the Director to disapprove of the parties' negotiated agreement, and it regulates each
17 side's use of economic leverage by requiring interest arbitration and imposing substantial
18 monetary penalties for failures to comply with certain of its provisions.

19 79. In sum, the Ordinance conflicts with federal labor policy as embodied in the
20 NLRA because it imposes a collective-bargaining scheme on independent contractors, whose
21 labor practices Congress intended should remain unregulated, and also regulates both the content
22 of collective bargaining agreements and the economic leverage each side may use in reaching
23 agreement, both of which are unregulated by the NLRA. The Ordinance is therefore preempted.

1 **COUNT FOUR: GARMON PREEMPTION UNDER THE**
2 **NATIONAL LABOR RELATIONS ACT**

3 80. Plaintiff incorporates by reference the allegations contained in all the preceding
4 paragraphs.

5 81. The NLRA also preempts state resolution of issues committed to the exclusive
6 jurisdiction of the National Labor Relations Board, as well as state regulation of any activity
7 arguably protected or prohibited by Sections 7 and 8 of the NLRA. *San Diego Building Trades*
8 *Council v. Garmon*, 359 U.S. 236 (1959).

9 82. An individual need only be “arguably” covered by the NLRA in order for a state’s
10 regulation of that individual to be preempted. *Id.* at 245–47; *see also Bud Antle, Inc. v. Barbosa*,
11 45 F.3d 1261 (9th Cir. 1994).

12 83. On its face, the Ordinance does not apply to individuals who are employees under
13 the NLRA; it applies only to independent contractors. *See* § 6 (“The provisions of this
14 Ordinance do not apply to drivers who are employees under 29 U.S.C. § 152(3)”).

15 84. To determine whether a driver coordinator has complied with the Ordinance’s
16 requirement to provide a QDR with a list of covered drivers, and has otherwise complied with
17 the Ordinance’s provisions, the Director will be required to determine whether the drivers at
18 issue are “employees” under the NLRA and are thus exempt from the Ordinance’s coverage, or
19 whether they are independent contractors and within the Ordinance’s scope. *See* § 6; § 3(M).
20 This determination is subject to judicial review in the state courts. *Id.*, § 3(M). The
21 determination, however, of whether an individual is subject to the NLRA is one that Congress
22 left to the exclusive jurisdiction of the NLRB. *See, e.g., Marine Eng’rs Beneficial Ass’n v.*
23 *Interlake Steamship Co.*, 370 U.S. 173 (1962) (determination as to whether individuals are
24 supervisors exempt from NLRA coverage is within the NLRB’s exclusive jurisdiction).

25 85. The NLRB has not definitively resolved the employee status of drivers who
26 receive ride requests from software applications. Therefore, the Ordinance injects the state

1 courts into matters subject to the NLRB’s exclusive jurisdiction, and presently pending before
2 the NLRB, before the NLRB has resolved the question. As a result, the Ordinance is preempted
3 by federal labor law. *See Marine Eng’rs Beneficial Ass’n*, 370 U.S. at 185 (“The need for
4 protecting the exclusivity of NLRB jurisdiction is obviously greatest when the precise issue
5 brought before a court is in the process of litigation through procedures originating in the Board.
6 While the Board’s decision is not the last word, it must assuredly be the first.”).

7 86. Section 8(e) of the NLRA prohibits agreements between labor organizations and
8 employers where the employer agrees “to cease doing business with any other person.” 29
9 U.S.C. § 158(e). Section 8(b)(4) of the NLRA prohibits a labor organization from
10 “threaten[ing], coerc[ing], or restrain[ing] any person engaged in commerce or in an industry
11 affecting commerce” for the purpose of “forcing or requiring . . . a self-employed person to join
12 any labor or employer organization or to enter into any agreement which is prohibited by
13 subsection (e) of this section” or “forcing or requiring any person . . . to cease doing business
14 with any other person . . .” 29 U.S.C. § 158(b)(4).

15 87. The Ordinance requires driver coordinators to enter into agreements with EDRs
16 that will prevent driver coordinators from doing business with drivers who choose not to be
17 represented by, or who choose not to work under the terms of agreements negotiated by, the
18 EDRs. The Ordinance also permits agreements that would force self-employed drivers to
19 become members of an EDR should they wish to contract with a particular driver coordinator.
20 By requiring such agreements, which arguably violate Sections 8(e) and 8(b)(4) of the NLRA,
21 the Ordinance is preempted by federal labor law.

22 **COUNT FIVE: VIOLATION OF FEDERAL RIGHTS, 42 U.S.C. § 1983**

23 88. Plaintiff incorporates by reference the allegations contained in all the preceding
24 paragraphs.

25
26

1 89. Federal law provides a civil cause of action to any person who is deprived by
2 another, acting under color of state law, of rights or privileges guaranteed by the Constitution or
3 laws of the United States. See Rev. Stat. § 1979, 42 U.S.C. § 1983.

4 90. Defendants, acting under color of state and local law, and through their
5 enactment, threatened enforcement, and enforcement of the Ordinance as alleged herein, have
6 deprived Plaintiff's members of their rights under the NLRA to be free from "governmental
7 interference with the collective-bargaining process," *Golden State Transit*, 493 U.S. at 109, and
8 their rights under the antitrust laws to be free from combinations and conspiracies in restraint of
9 trade.

10 91. Pursuant to 28 U.S.C. § 2201 and 42 U.S.C. § 1983, Plaintiff is therefore entitled
11 to a declaration that Defendants, by their enactment, threatened enforcement, and enforcement of
12 the Ordinance, have violated the rights of Plaintiff's members under the NLRA and the federal
13 antitrust laws.

14 92. As a further result of Defendants' violation of the rights of Plaintiff's members as
15 alleged herein, Plaintiff is entitled to an award of its attorneys' fees pursuant to 42 U.S.C.
16 § 1988.

17 **COUNT SIX: MUNICIPAL ACTION UNAUTHORIZED**
18 **BY WASHINGTON LAW**

19 93. Plaintiff incorporates by reference the allegations contained in all the preceding
20 paragraphs.

21 94. The authority of a municipality in Washington "is limited to those powers
22 expressly granted and to powers necessary or fairly implied in or incident to the power expressly
23 granted" by state law. *Arborwood Idaho, LLC v. City of Kennewick*, 89 P.3d 217, 225 (Wash.
24 2004).

25 95. The Ordinance is not authorized by the Washington state statutes upon which the
26 City relied to pass it. Those statutes allow local regulation of for-hire vehicles operating within

1 their jurisdiction, including: (a) regulating entry into the business and licensure; (b) controlling
2 rates charged to riders for transportation services; (c) regulating routes traveled by for-hire
3 vehicles; (d) establishing safety and equipment requirements; and (e) other requirements
4 necessary to ensure safe and reliable for-hire transportation service. *See* R.C.W. § 46.72.160
5 (for-hire vehicles); R.C.W. § 81.72.210 (taxis).

6 96. The Ordinance goes beyond the enumerated grants of regulatory power in R.C.W.
7 §§ 46.71.160 and 81.72.210. First, the Ordinance attempts to regulate third-party businesses that
8 independently contract with the drivers of for-hire vehicles, but the City has no such authority.
9 Second, the Ordinance attempts to require collective bargaining for wages, hours and working
10 conditions of for-hire drivers, but the City has no such authority.

11 97. Accordingly, the City lacks authority to promulgate and enforce the Ordinance.

12 **COUNT SEVEN: VIOLATION OF WASHINGTON**
13 **CONSUMER PROTECTION ACT**

14 98. Plaintiff incorporates by reference the allegations contained in all the preceding
15 paragraphs.

16 99. Washington’s Consumer Protection Act prohibits “[e]very contract, combination,
17 in the form of trust or otherwise, or conspiracy in restraint of trade or commerce.” R.C.W.
18 § 19.86.030.

19 100. As with the Sherman Act, horizontal price fixing is a *per se* violation of the
20 Consumer Protection Act. *See Ballo v. James S. Black Co.*, 692 P.2d 182, 186 (Wash. Ct. App.
21 1984).

22 101. The Ordinance unlawfully authorizes for-hire drivers to engage in *per se* illegal
23 concerted action by forming a cartel (under the aegis of a QDR), speaking as a single unit
24 through an exclusive representative (an EDR), and engaging in horizontal fixing of prices and
25 contractual terms. And it requires driver coordinators to participate in such activity by
26 compelling them to bargain over the price and terms for which the independent contractors’

1 services will be offered to the public and forbidding any driver from entering into a different
2 arrangement with a driver coordinator with whom he contracts.

3 102. By purporting to authorize concerted anticompetitive conduct in violation of the
4 Consumer Protection Act, and by placing pressure on private parties to violate the Consumer
5 Protection Act in order to comply with the Ordinance, the Ordinance conflicts with and is
6 preempted by the Consumer Protection Act.

7 103. Plaintiff's members will suffer injury as a direct result of the Ordinance's restraint
8 of competition. For example, under the Ordinance, unions such as the Teamsters will seek to
9 reduce the prices paid to app-based companies for the use of their ride referral applications. As a
10 result of the collective-bargaining process, those companies also will incur additional costs of
11 doing business with the conspirators, such as reimbursement of driver's expenses or payment of
12 other benefits. Traditional for-hire companies that provide dispatch services for independent-
13 contractor drivers will suffer similar injuries, as they will be forced to accept reduced prices and
14 incur additional costs for offering dispatch service to drivers. All of these increased costs, which
15 are due to decreased competition among independent contractors, threaten the viability of
16 companies that provide ride referral services. And ultimately, the decrease in competition will
17 harm consumers, who will pay more for personal transportation.

18 104. The state-action provision does not immunize the anticompetitive conduct that the
19 Ordinance compels. *See* R.C.W. § 19.86.160. Under Washington law, the state-action provision
20 must be construed narrowly, and municipalities cannot authorize anticompetitive conduct by
21 private parties absent clear and express authorization from the State. *Robinson v. Avis Rent A*
22 *Car System, Inc.*, 22 P.3d 818, 821-23 (Wash. Ct. App. 2001). The City has no authorization
23 from the State to authorize independent drivers to fix prices and to compel driver coordinators to
24 participate in that collusion.

1 **COUNT EIGHT: VIOLATION OF WASHINGTON PUBLIC RECORDS ACT**

2 105. Plaintiff incorporates by reference the allegations contained in all the preceding
3 paragraphs.

4 106. Washington’s Public Records Act prohibits disclosure of public records that are
5 protected by any “other statute which exempts or prohibits disclosure of specific information or
6 records.” R.C.W. § 42.56.070(1).

7 107. Washington’s Trade Secret Act is an “other statute” that prohibits disclosure of
8 trade secrets. *See* R.C.W. § 19.108.010(4).

9 108. The Ordinance compels driver coordinators to provide “all QDRs” with “the
10 names, addresses, email addresses (if available), and phone number (if available) of all
11 qualifying drivers they hire, contract with, or partner with.” Ordinance § 3(D).

12 109. The lists of driver information held by the Chamber’s members are trade secrets
13 because they (1) contain a compilation of information that (2) “derives independent economic
14 value” from not being known to competitors, and (3) prior to the Ordinance, the information had
15 been a closely guarded secret. R.C.W. § 19.108.010(4).

16 110. Under the Ordinance, the driver lists are “public records.” R.C.W. § 42.56.010.
17 For example, they contain “information relating to” the City’s collective bargaining scheme,
18 which is a “governmental or proprietary function,” and they are “used” by the City to implement
19 the collective bargaining scheme. *Id.*

20 111. The Ordinance conflicts with and is preempted by the Public Records Act because
21 the Ordinance compels disclosure of the driver lists, which are trade secrets contained in public
22 records and are protected from disclosure under R.C.W. § 42.56.070(1).

23 **PRAYER FOR RELIEF**

24 WHEREFORE, Plaintiff asks for judgment against Defendants, and respectfully prays
25 that the Court:

1 A. Issue a judgment declaring that Seattle City Ordinance No. 118499 (Municipal
2 Code Ch. 6.310.735) is unenforceable in its entirety because it:

3 1. Violates and is preempted by the Sherman Antitrust Act as an unlawful
4 restraint of trade and not exempt from the antitrust laws by virtue of state action immunity or
5 immunity under the statutory and non-statutory labor exemptions to the antitrust laws;

6 2. Is preempted by the National Labor Relations Act in that it attempts to
7 regulate the activity of independent contractors that Congress intended should go unregulated by
8 labor law; it attempts to regulate other aspects of employment, such as the content of collective
9 bargaining agreements and the use of economic leverage in negotiations, that Congress intended
10 should remain unregulated; it requires the Director and Washington State courts to resolve issues
11 committed to the exclusive jurisdiction of the National Labor Relations Board; and it requires
12 driver coordinators to enter into agreements that are arguably prohibited by Section 8 of the
13 National Labor Relations Act; and

14 3. Violates the rights of Plaintiff secured by the Constitution and laws of the
15 United States; and

16 4. Is unauthorized by R.C.W. §§ 46.71.160 and 81.72.210, and, as such, the
17 City had no authority to enact it; and

18 5. Violates and is preempted by the Washington Consumer Protection Act
19 because the Ordinance authorizes an illegal conspiracy in restraint of trade; and

20 6. Violates and is preempted by the Washington Public Records Act.

21 B. Before April 3, 2017, temporarily enjoin Defendants from implementing,
22 enforcing or otherwise applying the Ordinance;

23 C. Pending final judgment in this case, preliminarily enjoin Defendants from
24 implementing, enforcing or otherwise applying the Ordinance;

25 D. Permanently enjoin Defendants from implementing, enforcing or otherwise
26 applying the Ordinance;

1 E. Award costs and attorneys' fee pursuant to any applicable statute or authority; and

2 F. Issue such other relief as the Court may deem just and appropriate.

3 Dated: March 9, 2017

Respectfully submitted,

4 By: s/ Timothy J. O'Connell

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