

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss

SUPERIOR COURT DEPARTMENT
OF THE TRIAL COURT

ANDREA JOY CAMPBELL, in her official)
capacity as ATTORNEY GENERAL for the)
COMMONWEALTH OF)
MASSACHUSETTS,)
PLAINTIFF,)
v.)
UBER TECHNOLOGIES, INC., and LYFT,)
INC.,)
DEFENDANTS.)

CIVIL ACTION NO. 2084CV01519-BLS1

CORRECTED JOINT PRE-TRIAL MEMORANDUM

The Parties submit this joint pre-trial memorandum addressing the issues enumerated in the Court’s Scheduling Order dated May 17, 2023. *See* Dkt. 169, ¶ 4.

1. Case Description

Plaintiff Andrea Joy Campbell, in her official capacity as Attorney General for the Commonwealth of Massachusetts (the “Attorney General”), seeks a declaratory judgment under G.L. c. 231A, § 1, that Defendants Uber Technologies, Inc. (“Uber”) and Lyft, Inc. (“Lyft”) (collectively, the “Defendants”) improperly misclassify drivers as independent contractors, rather than employees under G.L. c. 149, § 148B(a).

Under G.L. c. 149, § 148B(a), there is a presumption that “an individual performing any service . . . shall be considered to be an employee.” “Once [the party alleging misclassification] has shown the performance of services for the putative employer, the alleged employer may rebut the presumption by establishing each of the . . . three prongs [under G.L. c. 149, § 148B(a)] by a preponderance of the evidence.” *See Patel v. 7-Eleven, Inc.*, 489 Mass. 356, 360 (2022). These three

prongs are:

- 1) the individual is free from control and direction in connection with the performance of the service, both under his contract for the performance of service and in fact; and
- 2) the service is performed outside the usual course of the business of the employer; and
- 3) the individual is customarily engaged in an independently established trade, occupation, profession or business of the same nature as that involved in the service performed.

G.L. c. 149, § 148B(a).

Attorney General's Position

At trial, the Attorney General plans to present evidence that (1) the drivers provide services for the Defendants and (2) neither Uber nor Lyft can overcome the presumption that these drivers are employees by establishing their burden under all three prongs of Section 148B(a).

Uber and Lyft's Position

At trial, Defendants plan to present evidence that drivers are properly classified as independent contractors because (1) the Attorney General cannot meet their burden of establishing that drivers perform services for Uber or Lyft, as they are in a business-to-business relationship; and (2) drivers are free from Uber's and Lyft's control and direction, perform services outside the regular course of business of Uber and Lyft, and are engaged in an independent trade. In addition, Uber and Lyft plan to present evidence applicable to their affirmative defenses.

2. Pre-Trial Motion Schedule

The Parties anticipate motion practice during the pre-trial phase to address *Daubert* motions and motions in limine. The Parties have discussed schedules for briefing such motions and respectfully propose for the court's consideration the following schedules:

Motion Type	Motion Served	Response Served	Reply Served/Rule 9A Packet Filed	Argument
Daubert	March 18	April 8	April 18	April 25
Limine	April 8	April 18	April 18 (no reply)	April 25

The Parties have a dispute regarding whether Plaintiff must produce materials created by Plaintiff's expert Dr. Lindsey Cameron. The Parties are meeting and conferring regarding the dispute, but it may need to be submitted for resolution by the Court before the final pre-trial conference scheduled for April 25 to ensure that any materials that must be produced are made available to Defendants with sufficient time to prepare for trial. If necessary, the Parties will meet and confer regarding a briefing schedule and request a hearing on the Court's calendar.

3. Trial Exhibits and Deposition Designations

A. Expected Volume of Trial Exhibits

- The Attorney General generally expects to introduce several hundred exhibits per Defendant. The Attorney General will work to pare down the total number of exhibits depending on, for example, the number of witnesses to be called at trial.
- Uber generally expects to introduce 200-300 exhibits. Uber is working with the Attorney General to explore ways to reduce the number of driver witnesses and exhibits by allowing deposition designations.
- Lyft generally expects to introduce 100-200 exhibits. Lyft is working with the Attorney General to pare down the total number of exhibits.

B. Trial Exhibits Schedule

The Parties have negotiated the dates to identify trial exhibits and pose objections to those exhibits and respectfully propose for the Court's consideration the following schedule:

	Affirmative List Proffered	Objections	Submission of Agreed and Contested Exhibits to Court
Trial Exhibits	April 11	April 23	May 6

C. Deposition Designations

The Parties have negotiated a proposed schedule for designating deposition transcripts and have built in time for responses and counter designations, plus a period for motion practice if needed. The Parties respectfully propose for the Court's consideration the following schedule for deposition designations:

	Affirmative Designations Proffered	Objections and Counter Designations	Objections to Counters and Counter Counter Designations
Depo Designation	March 25	April 5	April 19

D. Handling of Trial Exhibits

The Parties are in discussions about jointly proposing a process for the labelling and handling of trial exhibits and can provide this to the Court when the parties have finalized the proposal.

4. Estimated Length of Trial

Given the number of witnesses expected to be called in this matter, the Parties estimate that the trial will take 5-6 weeks. This estimate is based on a weekly schedule that entails the majority of days being 9am-1pm. The Parties note that the trial will span two court holidays: Memorial Day (May 27) and Juneteenth (June 19). The parties will work together to ensure that trial time is fairly allocated between the parties and will make a proposal for the allocation by the final pretrial conference.

5. Testifying Experts

The Parties have each identified testifying experts, exchanged expert reports, and exchanged rebuttal reports. The Parties have completed all but two expert depositions as of February 8. Two remaining expert depositions will be completed by February 16. At this point, the Parties are still determining whether and to what extent to challenge the admissibility of any expert testimony, but intend to serve any such motion in accordance with the schedule proposed in Part 2 above ("Pre-Trial Motion Schedule"). Below is a list of each testifying expert identified by the respective Parties.

A. Attorney General's Experts

- Lindsey Cameron, Ph. D. Dr. Cameron is an assistant professor of management at the Wharton School of the University of Pennsylvania in Philadelphia, PA. Dr. Cameron specializes in organizational control and management. Dr. Cameron will provide expert opinions as to Uber's and Lyft's use of organizational control in the context of their respective businesses.
- Daniel Leistra-Jones. Mr. Leistra-Jones is Principal at Industrial Economics, Inc., a consulting firm that specializes in financial and corporate analysis, with particular emphasis on corporate finance. Mr. Leistra-Jones will provide expert opinions as to each Defendants' corporate finances and revenues.
- David Weil, Ph. D. Dr. Weil is a professor of social policy and economics at the Heller School for Social Policy and Management at Brandeis University. Dr. Weil will provide expert opinions as to each Defendants' business models.
- Chris Arning. Mr. Arning specializes in applied semiotics, which is the study of signs and symbols and their use or interpretation in brand strategy and marketing theory. Mr. Arning is Founder-Director of Creative Semiotics Ltd, a consultancy specializing in semiotics based in London. Mr. Arning will provide expert opinions as to Uber's and Lyft's public-facing brand and marketing materials.
- Ilana Bryant is marketing consultant and founder of Special Forces Agency, Inc., a marketing consulting firm. Ms. Bryant will provide expert opinions as to the value proposition that Uber and Lyft communicate to their customers via Uber and Lyft's internal and public-facing branding and marketing materials.
- James Parrott, Ph. D. Dr. Parrott has a background in labor economics and is the Director of Economic and Fiscal Policies at the Center for New York City Affairs at The New School in New York City. Dr. Parrott will provide rebuttal expert opinions addressing points raised by Defendants' experts, Paul Oyer, Ph.D., Christopher Stanton, Ph.D., and E. Deborah Jay, Ph.D.

B. Uber Technologies, Inc.'s Experts

- Christopher Stanton, Ph.D.: Dr. Stanton is the Marvin Bower Associate Professor of Business Administration in the Entrepreneurial Management Unit of Harvard Business School, with an expertise in, among other things, labor economics and organizational economics from the perspective of understanding work arrangements. Dr. Stanton will present an expert empirical analysis of the extent to which drivers who use the Uber or Lyft rideshare platforms also use one another's platforms to find work opportunities (an activity commonly referred to as "multi-apping") and present expert testimony on the characteristics of drivers who use both platforms more frequently versus those who do not.
- Justin McCrary, Ph.D.: Dr. McCrary is the Paul J. Evanson Professor of Law at Columbia Law School, and an economist with expertise in economic modeling, econometric and statistical methods, law and economics, and labor economics, among other subjects. Dr. McCrary will provide expert economic analysis of Uber's business and the nature of the work performed by drivers who use the Uber app, including on Uber's nature as a multi-sided platform company; the high degree of flexibility and independence of drivers using the platform; and the harm caused to Uber, drivers, and riders if Massachusetts were to require drivers using the Uber platform to be reclassified as employees of Uber. Dr. McCrary will also provide rebuttal expert opinions addressing points raised by Plaintiff's experts Mr. Leistra-Jones and Dr. David Weil.
- Terrence W. August, Ph.D.: Dr. August is a Business School Professor at the University of California, San Diego with expertise in economic modeling, economics of information systems, economics of information security, and operations management. Dr. August will provide expert opinions on the structure and operation of multi-sided platform companies, including how multi-sided platforms structure connections between users of the platforms and charge for their transaction-facilitating services, and how the Uber platform compares to other platform companies. Dr. August will also provide rebuttal expert opinions addressing points raised by Plaintiff's experts Mr. Chris Arning and Ms. Ilana Bryant.
- Steven Tadelis, Ph.D.: Dr. Tadelis is a Professor of Economics, Business and Public Policy, and the Sarin Chair in Leadership and Strategy at the Haas School of Business, University of California, Berkeley. Dr. Tadelis has an expertise in economics, including the economic and statistical analysis of topics in e-commerce and the economics of the internet, industrial organization, and microeconomics, among other subjects. Dr. Tadelis will provide rebuttal expert opinions addressing points raised by Plaintiff's expert Dr. Lindsey Cameron.
- Professor On Amir, Ph.D.: Dr. Amir is the Wolfe Family Presidential Endowed Chair in Life Sciences, Innovation, and Entrepreneurship, and Professor of Marketing at the Rady School of Management, University of California, San Diego, with an expertise in marketing management, consumer behavior, business analytics, marketing strategy,

market research, branding, and pricing, among other subjects. Dr. Amir will provide rebuttal expert opinions addressing points raised by Plaintiff's experts Mr. Chris Arning and Ms. Ilana Bryant.

C. Lyft, Inc.'s Experts

- Christopher Stanton, Ph.D.: Dr. Stanton is the Marvin Bower Associate Professor of Business Administration in the Entrepreneurial Management Unit of Harvard Business School, with an expertise in, among other things, labor economics and organizational economics from the perspective of understanding work arrangements. Dr. Stanton will present an expert empirical analysis of the extent to which drivers who use the Uber or Lyft rideshare platforms also use one another's platforms to find work opportunities (an activity commonly referred to as "multi-apping") and present expert testimony on the characteristics of drivers who use both platforms more frequently versus those who do not.
- Catherine Tucker, Ph.D.: Dr. Tucker is the Sloan Distinguished Professor of Management Science and Professor of Marketing at MIT Sloan. Dr. Tucker has expertise in studying the evolution of business models in the digital era. Dr. Tucker will provide expert opinions on and economic analysis on the nature of Lyft's business and why the theory that Lyft is in the transportation business is inconsistent with economic principles. Dr. Tucker will provide rebuttal expert opinions addressing points raised by Plaintiff's experts Mr. Leistra-Jones, Dr. David Weil, Mr. Chris Arning, Ms. Ilana Bryant, and Dr. Lindsey Cameron.
- Paul Oyer, Ph.D.: Dr. Oyer is the Mary and Rankine Van Ande Entrepreneurial Professor and Professor of Economics at the Graduate School of Business (GSB) of Stanford University. Dr. Oyer is a labor economist specializing in the economics of organizations and human resources practices. Dr. Oyer will provide expert opinions regarding the flexibility and earnings opportunities available to drivers who use Lyft, data regarding how drivers use the platform and economic analysis regarding how requiring Lyft to classify drivers as employees would jeopardize flexibility and earnings opportunities for drivers. Dr. Oyer will provide rebuttal expert opinions addressing points raised by Plaintiff's experts Mr. Leistra-Jones, Dr. David Weil, and Dr. Lindsey Cameron.
- E. Deborah Jay, Ph.D.: Dr. Jay is a principal and founder of Jay Survey Strategies LLC, and specializes in survey design, and all phases of survey methodology, including questionnaire design, sampling, data collection, data processing, qualitative and quantitative data analysis. Dr. Jay will provide expert opinions related to a telephone survey with a representative sample of adults who used the Lyft driver platform to connect with riders in Massachusetts between 2019 and 2021.

6. Trial Fact Witnesses

A. Attorney General's Anticipated Trial Witnesses

Drivers

- Christopher Hansen, Ann Arbor, Michigan, as to his experience as a driver for Lyft in Massachusetts
- Rebekah Field, Ipswich, Massachusetts, as to her experience as a driver for Uber and Lyft in Massachusetts
- Robert Ciccarelli, Natick, Massachusetts, as to his experience as a driver for Lyft in Massachusetts
- Kyle Tsyvaer, Riverside, Rhode Island, as to his experience as a driver for Uber and Lyft in Massachusetts

Attorney General's Office

- Edward Cherubin, Senior Investigator, Office of the Attorney General, as to the authentication of documents and summaries of documents.

Uber Technologies Inc.

- depending upon the parties' ability to reach stipulations concerning authentication and/or admissibility of anticipated trial exhibits, the Attorney General expects to call one or more of the following yet to be identified witnesses:
 - one or more custodians of records for Uber
 - current or former executives of Uber who made statements (including on earnings calls and to the news media) contained in documents the Attorney General may introduce at trial

Lyft, Inc.

- depending upon the parties' ability to reach stipulations concerning authentication and/or admissibility of anticipated trial exhibits, the Attorney General expects to call one or more of the following yet to be identified witnesses:
 - one or more custodians of records for Lyft
 - current or former executives of Lyft who made statements (including on earnings calls and to the news media) contained in documents the Attorney General may introduce at trial

Third Parties

- depending upon the parties' ability to reach stipulations concerning authentication and/or admissibility of anticipated trial exhibits, the Attorney General expects to call one or more of the following yet to be identified witnesses:
 - one or more custodians of records of third-party marketing agencies from which the Attorney General obtained records pursuant to Rule 45 of the Massachusetts Rules of Civil Procedure

- one or more representatives of MediaRadar, Inc., 252 W 37th St, New York, NY 10018, as to authentication and collection of advertisements by Uber and Lyft

B. Uber's Anticipated Trial Witnesses

Third Parties:

- Bryan Amparo Mesa
- Alexander Baah
- Khalid Benlail
- Joshua Cambridge
- Aileen Debonis
- Raya Denny
- Rebekah Field
- Edward Gannon, Jr.
- Yewen Huang
- Kevin Hyland
- Richard Kambugu
- David Langlais
- Mary Ellen McAllister
- Jonathan Chabot
- Antonio Pereira
- Marc Pompee
- Bartek Sikora
- Kenneth Smock
- Dhiraj Tulachan
- Kyle Tysvaer
- Naser Zorrok

Attorney General's Office

- Lauren Moran, Chief of the Fair Labor Division, as to the Plaintiff's decision to bring this action and issues related to Plaintiff's positions on this action.

Uber Technologies Inc.

- Chad Dobbs, Director, Head of US City Operations, as to Uber and issues related to this action.

Department of Public Utilities .

- Ryan Hawkins, Former Director of the Transportation Network Company Division of the Massachusetts Department of Public Utilities, as to various requirements of Massachusetts laws and regulations applicable to Transportation Network Companies.
- Siya Mai, Director of the Transportation Network Company Division of the Massachusetts Department of Public Utilities, as to various requirements of Massachusetts laws and regulations applicable to Transportation Network Companies.

C. Lyft's Anticipated Trial Witnesses

Third Parties:

- John Bonham
- Alain Cabache
- Benjamin Chase
- Kevin Clark
- Steven Cordiero
- Raya Denny
- Mary-Ellen McAllister
- Octavio Mejia-Suarez
- David Moyer
- Ronald Skidmore
- Anthony Venezia
- Timothy Wilkins

Lyft:

- Jeremy Bird;
- Daniel Friedman;
- Olivia Henry;
- Brendan Joyce;
- Esin Karasabun;
- Titouan Jehl;
- David Riege.

7. Pre-Trial Order

The Parties have reviewed and understand the Court's June 14, 2023 pre-trial Order. In accordance with that Order, the Parties will file items 1-6 under Option 2 no later than May 6, 2024.

Respectfully Submitted,

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Dated: February 8, 2024

CERTIFICATE OF SERVICE

I, Felicia H. Ellsworth, hereby certify that on this 8th day of February 2024, a true copy of the foregoing Corrected Joint Pre-Trial Memorandum was served via email upon all other Parties.

/s/ Felicia H. Ellsworth

Felicia H. Ellsworth