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Attorneys for Plaintiffs and the Settlement Class

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN FRANCISCO

COORDINATION PROCEEDING SPECIAL TITLE [RULE 3.550]

POSTMATES CLASSIFICATION CASES

Included Actions:

Winns v. Postmates, Inc., No. CGC-17-562282 (San Francisco Superior Court)

Rimler v. Postmates, Inc., No. CGC-18-567868 (San Francisco Superior Court.)

Brown v. Postmates, Inc., No. BC712974 (Los Angeles Superior Court)

Santana v. Postmates, Inc., No. BC720151 (Los Angeles Superior Court)

Vincent v. Postmates, Inc., No. RG19018205 (Alameda County Superior Court)

Altounian v. Postmates, Inc., No. CGC-20-584366 (San Francisco Superior Court)

CASE NO. CJC-20-005068

CASE NO. CGC-18-567868

DECLARATION OF SHANNON LISS-RIORDAN IN SUPPORT OF PLAINTIFFS' MOTION FOR ATTORNEYS' FEES, COSTS, AND SERVICE AWARDS

Date: November 3, 2021

Time: 2:00 p.m.

Judge: Hon. Suzanne R. Bolanos

I, Shannon Liss-Riordan, declare as follows:

1. I am a partner at the law firm of Lichten & Liss-Riordan, P.C., and am lead attorney and class counsel for the Plaintiff class in the above-captioned matter. I submit this declaration in support of Plaintiffs' Motion for Attorneys' Fees, Costs and Service Awards. I have personal knowledge of the information set forth herein.

2. As set forth at greater length in Plaintiffs' Motion for Final Approval of Class Action Settlement, I believe this settlement has produced an excellent result for the class, providing substantial monetary relief of $32 million to cover misclassification claims for Postmates delivery drivers in California.

PROFESSIONAL BACKGROUND

3. I am a member of the bar in California, Massachusetts, and New York. I am a partner in the law firm of Lichten & Liss-Riordan, P.C. I have practiced exclusively in the field of employment law on the side of employees for my entire two decade legal career. My specialty for most of my legal career has been wage and hour class actions, with a particular focus on class actions regarding independent contractor misclassification and arbitration issues.

4. I am an honors graduate of Harvard College (A.B., 1990) and Harvard Law School (J.D., 1996). Following law school and prior to practicing at Pyle Rome, I served as a law clerk for two years for U.S. District Court Judge Nancy F. Atlas in the Southern District of Texas.

5. I am a frequent invited speaker at seminars sponsored by such organizations as the National Employment Lawyers Association, the American Bar Association, Massachusetts Continuing Legal Education, the Massachusetts Bar Association, and other organizations on various topics regarding employment law, class actions, and wage and hour litigation. A particular focus that I have frequently been invited to speak on over the last fifteen years has been issues concerning arbitration and class actions.

6. I have been featured by many major publications for my accomplishments representing low wage workers in a variety of industries. These publications include San

Francisco Magazine (**Exhibit A**), the Los Angeles Times (**Exhibit B**), the Wall Street Journal (**Exhibit C**), the ABA Journal (**Exhibit D**), the Recorder (**Exhibit E**), Mother Jones (**Exhibit F**), Politico (**Exhibit G**), the Boston Globe (**Exhibits H** and **I**), and Law360 (**Exhibit J**). Politico included me on its list of the *"Top 50 thinkers, doers and visionaries transforming American politics"* in 2016. Exhibit G. San Francisco Magazine stated in its profile of me that "Liss-Riordan has achieved a kind of celebrity unseen in the legal world since Ralph Nader sued General Motors." Exhibit A.

7. Last year, I recognized by Benchmark Litigation as the national Labor & Employment Employee-Side Attorney of the Year. Each year since 2008, I have been selected for inclusion in Best Lawyers in America (Chambers). Our firm, and my law partner and I have consistently been ranked in recent years in the top tier for our practice area. The 2013 edition referred to me as "*the reigning plaintiffs' champion*", and the 2015 edition said I am "*probably the best known wage class action lawyer on the plaintiff side in this area, if not the entire country*".

8. I have gained a reputation as the preeminent lawyer across the country challenging the use of independent contractors in the so-called gig economy. I brought the first lawsuit nationally challenging misclassification in the gig economy industry in the landmark case, O'Connor v. Uber (N.D. Cal.) Civ. A. No. 13-3826. Since filing that case in 2013, I have litigated against every major gig economy company (Uber, Lyft, GrubHub, DoorDash, Postmates, Instacart, Handy, and others) in states around the country (including California, Massachusetts, New York, Illinois, and Pennsylvania). I have pursued these cases vigorously, through frequent appeals and using creative tactics, and have obtained landmark rulings that have developed the law in this area. My work has incited a slew of follow-on cases against all of these gig economy companies, particularly in California.

9. When these claims have been compelled to arbitration, which has happened frequently, I pioneered the tactic of bringing mass arbitrations against these companies. That tactic, too, has been repeatedly copied by other counsel.

10. My firm was the first to obtain class certification in these cases, in our litigation against Uber, both in O'Connor v. Uber Technologies, Inc. (N.D. Cal., Sept. 1, 2015, No. C-13-3826 EMC) 2015 WL 5138097, at *1; O'Connor v. Uber Technologies, Inc. (N.D. Cal. 2015) 311 F.R.D. 547, *rev'd and remanded on other grounds* (9th Cir. 2018) 904 F.3d 1087, and the more recent (and currently pending) James v. Uber Technologies Inc. (N.D. Cal. 2021) 338 F.R.D. 123, 129. We were also the first firm (and only, to date) to take a gig economy misclassification case to trial. That case, Lawson v. Grubhub, Inc. (N.D. Cal. 2018) 302 F.Supp.3d 1071, *vacated and remanded* (9th Cir., Sept. 20, 2021, No. 18-15386) 2021 WL 4258826, was filed in 2015, tried in 2017, appealed in 2018, and just recently we prevailed on appeal at the Ninth Circuit, which remanded with an order for the district court to apply the ABC test to the plaintiff's claims. See Lawson v. Grubhub, Inc. (9th Cir., Sept. 20, 2021, No. 18-15386) 2021 WL 4258826.

11. I obtained the ruling from the California Supreme Court declaring the *Dynamex* decision retroactive in Vazquez v. Jan-Pro Franchising International, Inc. (2021) 10 Cal.5th 944 [273 Cal.Rptr.3d 741, 478 P.3d 1207]. There, the Ninth Circuit held that the ABC test would apply to an alleged franchisor and emphasized the strength of the ABC test. See Vazquez v. Jan-Pro Franchising International, Inc. (9th Cir. 2021) 986 F.3d 1106. I have obtained a number of other significant appellate rulings in California in this area of law. For example, I recently prevailed in Medina v. Equilon Enterprises, LLC (Cal. Ct. App., Sept. 10, 2021) 2021 WL 4128882, reversing the trial court's grant of summary judgment to the defendant and recognizing Shell to be a joint employer of employees working in service stations run by smaller intermediary franchise-like entities. In Maplebear dba Instacart v. Busick (2018) 26 Cal.App.5th 394, I persuaded the Court of Appeal to reject an attempt by Instacart to avoid an arbitration ruling that had allowed a class arbitration to proceed. I also obtained the first ruling on summary judgment in favor of plaintiffs under the Dynamex ABC test in Johnson v. VGC-IS, LLC (Cal. Sup., July 18, 2018) Case No. 30-2015-00802813, which held that a strip club

misclassified dancers under this test and applied the ABC test to a variety of claims, including claims for expense reimbursement (a hotly disputed issue in this area of law).

12. The following is a summary of just some of our firm's litigation against gig economy companies. In our initial litigation against Uber, we defeated two separate summary judgment motions filed by Uber, under the more difficult Borello standard for misclassification. See O'Connor v. Uber Techs., Inc. (N.D. Cal. 2015) 82 F. Supp. 3d 1133 (denying summary judgment to Uber on misclassification issue); O'Connor v. Uber Techs., Inc. (N.D. Cal. 2015) Civ. A. No. 13-3826, Dkt. 499 (denying partial summary judgment on Plaintiffs' claim under Cal. Lab. Code § 351). We won a significant victory holding Uber's arbitration clause not to be enforceable, see O'Connor v. Uber Technologies, Inc. (N.D. Cal. 2015) 150 F.Supp.3d 1095, which was eventually overturned on appeal (after a court denied approval of a $100 million settlement I had reached), see O'Connor v. Uber Technologies, Inc. (9th Cir. 2018) 904 F.3d 1087). In our current case against Uber, the court has certified a class of Uber drivers who opted out of arbitration. See James v. Uber Technologies Inc. (N.D. Cal. 2021) 338 F.R.D. 123, 129.

13. At the outset of the pandemic, my firm also brought a series of cases against Uber and Lyft in California and Massachusetts, challenging the companies' failure to provide paid sick leave to drivers to the detriment of the drivers and the public. I settled one of these cases against Uber, which led to the establishment of a program providing financial assistance to thousands of drivers during the pandemic. See Verhines v. Uber Techs. Inc., (N. D. Cal.) Civ. A No. 20-01886-EMC. We are continuing to appeal the denial of a preliminary injunction in other cases, including Rogers v. Lyft, Inc. (9th Cir., No. 20-15689), and Cunningham v. Lyft, Inc. (D. Mass. 2020) 450 F.Supp.3d 37, where the court agreed that Lyft drivers are exempt from arbitration under the transportation worker exemption of the FAA. I am currently also litigating on behalf of Uber drivers for misclassification in New York and Illinois. See Davarci v. Uber Technologies, Inc. (No. 20-CV-9224, S.D.N.Y.); Leaks v. Uber Techs. Inc., (No. 20-cv-0643, N.D. Ill).

14. Similarly, I have aggressively litigated in numerous other misclassification cases against gig economy companies, including Lyft, GrubHub, DoorDash, Caviar, and Instacart. See, e.g., Cotter v. Lyft, Inc. (N.D. Cal. 2015) 60 F. Supp. 3d 1067 (denying summary judgment for Lyft); Lawson v. Grubhub, Inc. (N.D. Cal. July 10, 2017) 2017 WL 2951608, at *1 (denying summary judgment for GrubHub); Busick v. Maplebear Inc. dba Instacart, JAMS Ref. No. 1100081511 (successfully defended clause construction in a class arbitration); Groves v. Maplebear dba Instacart (Sept. 2, 2020, L.A. Sup. Ct.) BC695401 (approving class settlement for California drivers); Cole v. Square Inc. dba Caviar (L.A. Sup. Ct. Nov. 4, 2020) BC719079 (approving class settlement for California drivers); Marciano v. DoorDash, (Cal. Sup. Ct. July 12, 2018) CGC-15-548101 (approving class settlement for California drivers); Seifu v. Lyft, (June 1, 2021) Appeal No. B301774 (affirming denial of motion to compel arbitration of PAGA claims); Talbot v. Lyft Inc. (S.F. Sup. Ct. Oct. 19, 2018) CGC-18-566392 (court denied motion to compel arbitration for a subset of Lyft drivers); Cunningham v. Lyft, Inc. (D. Mass., May 22, 2020) 2020 WL 2616302, at *1, *appeal pending*, First Cir. No. 20-1567 (holding Lyft drivers exempt from the FAA under the transportation worker exemption); Marciano v. DoorDash, Inc., CGC-18-567869 (San Francisco Super. Ct.); Austin v. DoorDash, Inc., No. 1:17-cv-12498 (D. Mass.); Roussel v. DoorDash, Inc., Case No. CGC-19-572934) (San Francisco County Super. Ct.); Emmanuel v. Handy Technologies, Inc. (1st Cir. 2021) 992 F.3d 1 (litigated a bench trial regarding the enforceability of app-based cleaning company's arbitration clause).

15. Other gig companies my firm has sued include: Rev (a remote transcription service), VIPKid (a remote ESL tutoring service), Zum (a rideshare service geared towards transporting children), Deliv (a same-day delivery service), Saucey (a remote alcohol delivery company), and Shipt (delivery service). In our case against Zum, we filed a writ petition for review of an important issue regarding arbitration of PAGA claims and prevailed on appeal. See Contreras v. Superior Court of Los Angeles County (2021) 61 Cal.App.5th 461 [275 Cal.Rptr.3d 741, 61 Cal.App.5th 461].

1 16. My firm has also secured groundbreaking victories in a pair of cases against
2 Amazon on behalf of Amazon Flex delivery drivers, refusing to enforce Amazon's arbitration
3 clause, holding the drivers are exempt from the Federal Arbitration Act ("FAA"), 9 U.S.C. § 1,
4 *et seq*. under the transportation worker exemption. See Waithaka v. Amazon.com, Inc. (1st Cir.
5 2020) 966 F.3d 10, *cert. denied* (U.S., June 21, 2021) 2021 WL 2519107, *reh'g denied* (U.S.,
6 Aug. 2, 2021) 2021 WL 3275777; Rittmann v. Amazon.com, Inc. (9th Cir. 2020) 971 F.3d 904,
7 *cert. denied* (2021) 141 S.Ct. 1374 [209 L.Ed.2d 121].
8 17. Other significant appeals I have won include: Roes, 1-2 v. SFBSC Management,
9 LLC (9th Cir., Dec. 11, 2019) 2019 WL 6721190 (agreeing with our objection to a class
10 settlement, reversing approval where the settlement included a reversion, an inadequate notice
11 process, and provided less than 4% recovery of potential classwide damages on primary
12 claims); Vazquez v. Jan-Pro Franchising International, Inc. (9th Cir. 2021) 986 F.3d 1106
13 (holding that landmark Dynamex decision applies to misclassification claims against "cleaning
14 franchisor", and applies to top-tier company in multi-tier "fissured employment" scheme;
15 providing guidance on strength of ABC test for employment misclassification; and reinstating
16 wage claims on behalf of janitors who challenged paying for their jobs and other wage
17 violations); Haitayan v. 7-Eleven, Inc. No. 18-55462 (9th Cir. 2019) (reinstating wage claims
18 against 7-Eleven and reversing district court's denial of injunction for plaintiffs and potential
19 class members facing choice of pursuing wage claims or keeping their jobs); Maplebear dba
20 Instacart v. Busick (2018) 26 Cal.App.5th 394 (rejecting attempt to vacate arbitrator award
21 certifying wage class action on behalf of Instacart drivers); Khanal v. San Francisco Hilton, Inc.
22 (9th Cir. 2017) No. 15-15493 (reversing order holding wage claims brought by union
23 employees preempted by LMRA); Williams v. Jani–King of Philadelphia Inc. (3d Cir. 2016)
24 837 F.3d 314 (affirming class certification in case challenging cleaning workers' classification
25 as independent contractor "franchisees" under Pennsylvania law); Marzuq v. Cadete Enterprises,
26 Inc. (1st Cir. 2015) 2015 U.S. App. LEXIS 21301 (Dunkin Donuts general managers could be
27 eligible for overtime pay by proving management was not their primary duty, distinguishing
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1982 First Circuit Burger King precedent, which had held fast food managers to be overtime-exempt); Travers v. Flight Systems & Services (1st Cir. 2015) 2015 U.S. App. LEXIS 21671 (affirming jury verdict in favor of skycap who was terminated in retaliation for leading class action wage complaint challenging policy affecting skycaps' tips and reinstating claim for front pay); Villon v. Marriott, Hawaii Supreme Court No. 11-747 (July 15, 2013) (holding that wait staff employees could recover under Hawaii wage law for service charges not remitted to them); Depianti v. Jan-Pro Franchising International, Inc. (2013) 465 Mass. 607 (Massachusetts Supreme Judicial Court held that national company could not evade liability for independent contractor misclassification by virtue of it not having direct contracts with the workers); Taylor v. Eastern Connection Operating, Inc. (2013) 465 Mass. 191 (SJC held Massachusetts independent contractor law applicable to work performed in New York for Massachusetts company); Matamoros v. Starbucks Corp. (1st Cir. 2012) 699 F.3d 129 (holding that Starbucks violated Massachusetts Tips Law by allowing shift supervisors to share in tip pool); Awuah v. Coverall North America, Inc. (2011) 460 Mass. 484 (SJC established the damages awardable for independent contractor misclassification under Massachusetts law, finding it to violate Massachusetts wage law and public policy to charge employees for a job); DiFiore v. American Airlines, Inc. (2009) 454 Mass. 486 (SJC held airline liable for Tips Law violation despite fact that skycap employees were directly employed by an intermediary company), *rev'd on federal preemption grounds*, (1st Cir. 2011) 646 F.3d 81, *cert. denied* (2011) 132 S. Ct. 761; Skirchak v. Dynamics Research Corporation (1st Cir. 2007) 508 F.3d 49 (First Circuit struck down class arbitration waiver in employer's arbitration policy); Gasior v. Massachusetts General Hospital (2006) 446 Mass. 645 (SJC determined that discrimination claims, including claims for punitive damages, survive the plaintiff's death); Smith v. Winter Place LLC d/b/a Locke-Ober Co., Inc. (2006) 447 Mass. 363 (SJC held employees engaged in protected activity by making internal complaints of wage violations); Dahill v. Boston Police Department (2001) 434 Mass. 233 (SJC decided that Massachusetts law would diverge from federal law in prohibiting discrimination against individuals with correctable disabilities, resulting in hiring of hearing-impaired police

officer candidate and jury verdict of $850,000); Cooney v. Compass Group Foodservice, et al. (2007) 69 Mass. App. Ct. 632 (Appeals Court held that servers were entitled as a matter of law to receive proceeds of service charges added to function bills); King v. City of Boston (2008) 71 Mass. App. Ct. 460 (Appeals Court reversed grant of summary judgment in sex discrimination suit, finding that plaintiffs could show that Boston Police Department discriminated against female superior officers by not providing them with separate locker rooms).

18. Cases that I have won at trial include: Norrell v. Spring Valley Country Club (class action jury verdict for waitstaff) (Mass. Super. 2017); Travers v. Flight Services & Systems (D. Mass. 2014) C.A. No. 11-10175 (skycap terminated in retaliation for leading class action); DiFiore et al. v. American Airlines, Inc. (D. Mass. 2008) C.A. No. 07-10070 (verdict for plaintiff skycaps challenging $2 per bag charge for curbside check-in); Benoit, et al. v. The Federalist, Inc. (Mass. Super. 2007) C.A. No. 04-3516 (verdict for plaintiff class for violation of Massachusetts Tips Law); Calcagno, et al. v. High Country Investor, Inc., d/b/a Hilltop Steak House (Mass. Super. 2006) C.A. No. 03-0707 (verdict for plaintiff class for violation of Massachusetts Tips Law); Bradley et al. v. City of Lynn et al. (D. Mass. 2006) 443 F.Supp.2d 145 (verdict for plaintiff class where federal court held following bench trial that Commonwealth's entry level firefighter hiring examination has disparate impact on minorities and violated Title VII); Collins v. Commonwealth (Mass. Super. Court 2007) (jury verdict in favor of state police trooper who had been disqualified from employment because of his kidney transplant); Bingham v. Lynn Sand & Stone, 93-BEM-1491 (MCAD 2003) (finding of discrimination by MCAD after public hearing that company failed to hire African American truck driver applicant because of his race); Hernandez v. Winthrop Printing Co. (Suffolk Superior Court 2002) (jury verdict in favor of Native American/Mexican plaintiff who was terminated in retaliation for complaining of race discrimination); Sprague v. United Airlines, Inc. (D. Mass 2002) 2002 WL 1803733 (judgment of $1.1 million in a discrimination case brought by deaf airline mechanic who had been denied employment based on disability); Dahill v. Boston Police Department (2001) 434 Mass. 233 (Supreme Judicial Court decided that

Massachusetts law would diverge from federal law in prohibiting discrimination against individuals with correctable disabilities, resulting in hiring of hearing-impaired police officer candidate and jury verdict of $850,000).

19. In addition to the cases described above, I have also participated in numerous arbitration hearings (and have filed many mass arbitrations). I have also litigated and obtained favorable court rulings in many dozens of cases on summary judgment, class certification, and numerous other issues related to wage and hour law, class actions, and arbitration clauses. Through many of these cases, my firm and I have pioneered groundbreaking precedents in a variety of industries, establishing that workers have been misclassified as independent contractors. These industries include the cleaning industry, adult entertainment industry, trucking industry, call center industry, and others. For more information about these cases and others I have litigated, see the profiles cited in paragraph 6 and our firm's website, www.llrlaw.com.

20. In addition to class action cases that I have won, or resolved successfully, I and my firm have also worked on many such cases for which we received no compensation at all because the cases were ultimately not successful. Examples of such cases include:

- In the Uber misclassification litigation referenced above, my firm invested thousands of hours and hundreds of thousands of dollars only to see many of our gains erased by the Ninth Circuit Court of Appeals with the stroke of a pen. In O'Connor v. Uber Techs. Inc., Civ. A. No. 13-3826-ECM (N.D. Cal.), we litigated a class action on behalf of Uber drivers for misclassification and related Labor Code violations. After defeating Uber's two summary judgment motions and engaging in months of extensive briefing regarding arbitration issues and class certification and extensive discovery, we succeeded in certifying a class of hundreds of thousands of drivers. On the eve of trial, I negotiated a $100 million settlement. After a number of competing counsel filed objections to the settlement, the court did not approve it. Shortly thereafter, the Ninth Circuit decertified the class, leaving all but a tiny fraction of the proposed settlement class bound by individual arbitration agreements. I eventually settled on behalf of a much smaller class of drivers, but the firm's lodestar in that settlement exceeded the fee award (and hundreds of thousands of Uber drivers missed out on a chance at recovery) because of the Ninth Circuit's decision, underscoring the incredible risk under which our contingency practice operates.

- In addition, our firm has litigated over the last several years many other cases against "gig economy" companies for misclassifying workers as independent contractors for which we have received, and are likely to receive, no or very little compensation. For example, in two such cases we have litigated Taranto, et al. v. Washio, Inc., No. CGC-15-546584 (SF. Sup.) and Iglesias v. Homejoy, Inc. (N.D. Cal.) No. 15-cv-01286-EMC, the companies shut down during the litigation, leaving the workers with no or little payment for their claims and our firm with no or little reimbursement for our fees and expenses.

- I spent several years litigating on behalf of Boston and Chicago cab drivers, alleging that they have been misclassified as independent contractors under state law. In the litigation on behalf of the Boston cab drivers, the trial court ruled that the plaintiffs were likely to succeed on the merits of their claims and entered an injunction against the transfer of assets by the owner of Boston Cab Dispatch, an order that was worth more than $200 million, and which was affirmed on appeal. See Sebago v. Tutunjian (2014) 85 Mass. App. Ct. 1119. That result was, however, unexpectedly reversed on appeal by the Supreme Judicial Court, Sebago v. Boston Cab Dispatch, Inc. (2015) 471 Mass. 321, and that entire litigation, including many hundreds of hours of attorney time, went uncompensated. Similarly, the litigation on behalf of Chicago cab drivers was unsuccessful, and the firm was not compensated for that work either. See Enger v. Chicago Carriage Cab Co. (N.D. Ill. 2014) 77 F. Supp. 3d 712, *aff'd* (7th Cir. 2016) 812 F.3d 565.

- Likewise, our firm has advanced many hundreds of thousands of dollars in expert expenses and incurred thousands of hours of unpaid attorney time for cases challenging discrimination in promotional exams for police officers in Massachusetts. Although we were successful at trial in an earlier case challenging entry level exams for firefighters and police officers, see Bradley v. City of Lynn (D. Mass. 2006) 443 F. Supp. 2d 145, we lost a follow-up case after 9 years of litigation, Lopez v. City of Lawrence, Massachusetts (D. Mass. June 11, 2010) 2010 WL 2429708, *1, aff'd 2016 WL 2897639 (1st Cir. May 18, 2016).

21. In short, a plaintiffs-side contingency practice like ours, in which we are able to steadfastly fight legal battles that extend for years, attempting to advance the rights of low wage workers who could not afford to pay out-of-pocket for counsel -- and fighting until we have achieved victory or what we believe to be a fair and adequate resolution -- is only made possible by the nature of contingency fee work. These examples of cases cited above that we have

litigated tenaciously, including those we have fought unsuccessfully, never would have been possible—nor would many other cases for which we have taken tremendous risks over the years, many of which we have succeeded in, and some of which we have disappointingly not—were it not for contingency fees we have been able to recover for our successful litigation. Our firm charges a standard one-third contingency fee in the vast majority of our cases, but many plaintiffs' attorneys are charging even more than one-third in their fee agreements for wage and hour clients; a number have been charging 40% in recent years. Thus, in my experience, an attorneys fee award of 33% to 40% or even more reflects the fair market value of what is typically negotiated ex ante by workers in wage-and-hour cases like this one.

DESCRIPTION OF MY TIME SPENT ON THIS LITIGATION

22. Since the filing of the *Rimler v. Postmates* and *Lee v. Postmates* cases on behalf of California Postmates cases in spring of 2018, I conservatively estimate that I have spent to date at least 600 hours working on my firm's cases against Postmates, which are part of this global settlement. I have reviewed the time records of the other attorneys at my firm in order to estimate the hours I have worked on these cases.

23. My time was primarily spent as follows:

- I spent a substantial amount of time reviewing and editing court filings. These included substantial briefing regarding the enforceability of Postmates' arbitration clause in Rimler and Lee (including appellate briefing on this issue in Rimler), and briefing to the federal district court and Ninth Circuit in Lee seeking interlocutory review of the trial court's order rejecting application of the Federal Arbitration Act's transportation worker exemption.

- I have also spent significant time throughout these cases communicating with Plaintiffs and other Postmates delivery drivers, communicating with defense counsel and counsel co-counsel for the other Plaintiffs, preparing for two separate mediations, attending mediation and engaging in further settlement negotiations over the course of many months with defense counsel.[1]

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[1] I have not kept contemporaneous records of my time in many years, but courts have consistently awarded fees based on my reasonable estimates of my time spent litigating cases; many courts have awarded fees based upon reasonable estimates of time spent, even without (*cont'd*)

- Finally, I have spent an extensive amount of time editing settlement approval briefing, including two Motions for Preliminary Approval, a Reply in support of Preliminary approval, multiple Oppositions to Motions to Intervene, Responses to Objections, an Opposition to an Ex Parte application, and no fewer than five Supplemental Briefs in support of Settlement Approval, as well as the instant Motion for Attorneys' Fees and concurrently filed Motion for Final Approval).

24. The work performed on this case was for the primary benefit of the settlement class. Each of these cases was filed as a class action and/or PAGA action, explicitly intended to benefit other similarly situated delivery drivers. Much of our time spent working on these cases involved briefing motions to compel arbitration intended to resist enforcement of Postmates' class action waiver. Even the work of our firm on the individual arbitrations we initiated against Postmates was intended to primarily benefit the class insofar as our hope was to obtain discovery and favorable rulings in arbitration that we could then move to confirm in court and/or use to inform our litigation in the class cases. We integrated our work on these individual arbitration cases with our other litigation against Postmates to avoid redundancies or duplication of efforts, and we used data from drivers who signed up to pursue arbitrations in connection with our settlement negotiations and attempts to value the claims in the case. Pursuing these arbitration cases against Postmates also sent a clear message that even enforcement of its

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contemporaneous records. See Brinskele v. United States (N.D. Cal., May 22, 2014, No. C13MISC80094JSWDMR) 2014 WL 4832263, at *2 ("Based upon the court's familiarity with this litigation and counsel's work, the court is able to assess the reasonableness of the hours claimed by counsel without the need to inspect contemporaneous time records."); see also Kilopass Tech., Inc. v. Sidense Corp. (N.D. Cal. 2015) 82 F. Supp. 3d 1154, 1169; Rodgers v. Claim Jumper Rest., LLC (N.D. Cal. Apr. 24, 2015) 2015 WL 1886708, *10; In re Rossco Holdings, Inc. (C.D. Cal. May 30, 2014) 2014 WL 2611385, *8 ("In California, an attorney need not submit contemporaneous time records in order to recover attorney fees"); Cotton v. City of Eureka, Cal. (N.D. Cal. 2012) 889 F. Supp. 2d 1154, 1177; Ackerman v. W. Elec. Co. (9th Cir. 1988) 643 F. Supp. 836, 863-64 (N.D. Cal. 1986), *aff'd,* 860 F.2d 1514 (noting that "the Ninth Circuit requires only that the affidavits be sufficient to enable the court to consider all the factors necessary to determine a reasonable attorney's fee award …California law is in accord with the Ninth Circuit view."); Slimfold Mfg. Co. v. Kinkead Indus., Inc. (Fed.Cir.1991) 932 F.2d 1453, 1459.

arbitration clause would not allow Postmates to escape the time and expense of litigation of its Labor Code violations, thereby motivating Postmates to pursue a global peace.

25. The 600 hours I estimate I have spent already on this litigation does not account for future work that will be spent preparing for the final approval hearing and overseeing the remainder of the settlement including the notice process, any challenges from settlement class members, distribution of settlement funds, and communicating with class members about the settlement. I conservatively estimate the remaining work will require at least an additional 50 additional hours of time from myself, reviewing and revising briefing, preparing for and attending the final approval hearing, and dealing with logistics of the settlement. See Beckman v. KeyBank, N.A. (S.D.N.Y. 2013) 293 F.R.D. 467, 481–82 (noting that "[i]n wage and hour cases, Class Counsel is often called upon to perform work after the final approval hearing, including answering class member questions, answering questions from the claims administrator, and negotiating and sometimes litigating disagreements with defendants about administering the settlement and distributing the fund…[b]ecause class counsel will be required to spend significant additional time on this litigation in connection with implementing and monitoring the settlement, the multiplier will actually be significantly lower because the award includes not only time spent prior to the award, but after in enforcing the settlement.") (internal citations and quotations omitted).

MY HOURLY RATE

26. I believe an hourly rate of $950 for my services rendered in class action litigation in California is a reasonable rate. Most recently, I was awarded an hourly rate of $900/hour in a lodestar analysis for a fee petition for a New York arbitration case I took to hearing and won. Given that last year I was named the top employment lawyer in the country by Benchmark Litigation, I believe I merit the top rate that courts have recognized for top-tier litigators, which has exceeded $1,000 per hour in recent years. See, e.g., MSC Mediterranean Shipping Co. Holding S.A. v. Forsyth Kownacki LLC, 2017 WL 1194372, at *3 (S.D.N.Y. Mar. 30, 2017)

(finding reasonable the rate of $1,048.47 charged by partners at Gibson Dunn, which represents Defendant DoorDash in this matter); S. Bank N.A. v. Dexia Real Estate Capital Mkts., 2016 WL 6996176, at *8 (S.D.N.Y. Nov. 30, 2016) (approving rates of up to $1,055 per hour). I have been awarded similar rates in connection with other gig economy settlements approved by California courts in recent years, and this modest increase reflects rising rates with the passage of time. See O'Connor v. Uber Techs., Inc., 2019 WL 4394401, at *11 (N.D. Cal. Sept. 13, 2019) (approving settlement with my rate calculated at $850/hour for lodestar cross-check); Groves v. Maplebear Inc. dba Instacart, (L.A. Sup. Ct.) BC695401 (same); Cole v. Square Inc. dba Caviar (L.A. Sup. Ct. Nov. 4, 2020) BC719079 (same); see also Cotter v. Lyft Inc., 2017 WL 1033527 (N.D. Cal. Mar. 16, 2017) (Dkt. No. 310) ($800/hour); Singer v. Postmates (N.D. Cal. April 25, 2018) 4:15-cv-01284-JSW (same).

27. The requested rate is also reasonable based on my knowledge of fees awarded in other cases to top plaintiffs' attorneys in California. See, e.g., Independent Living Center of S. Cal. v. Kent, (C.D. Cal. 2020) 2020 U.S.Dist. LEXIS 13019 (approving rates for senior partners between $965 and $1,025); Dimry v. Bert Bell/Pete Rozelle NFL Player Ret. Plan (N.D. Cal. Dec. 22, 2018) 2018 WL 6726963, *1 (three years ago, approving the hourly rate of $900 for partner in ERISA case); Civil Rights Educ. & Enf't Ctr. v. Ashford Hosp. Tr., Inc. (N.D. Cal. Mar. 22, 2016) 2016 WL 1177950, *5 (five years ago, approving an hourly rate of $900 for highly experienced partner); Nat'l Fed'n of the Blind of Cal. v. Uber Techs., Inc. (N.D. Cal. Dec. 6, 2016, No. 14–cv–4086–NC) Order Granting Final Approval and Attorneys' Fees (Dkt. No. 139) (five years ago, approving hourly rates of $900 and $895 for senior partners).

HOURS AND RATES FOR OTHER ATTORNEYS AND STAFF WHO HAVE WORKED ON THESE CASES

28. Along with me, the primary attorney at our firm who worked on these cases has been Michelle Cassorla, an associate at our firm. Ms. Cassorla is a *summa cum laude* graduate of Cornell University (B.A., 2007) and a *cum laude* graduate of Georgetown Law School (J.D.,

2013), who has practiced in the area of labor and employment law for the past five years. Ms. Cassorla was named a SuperLawyers Rising Star in 2020 and 2021. I am familiar with Ms. Cassorla's work on this case, as I have been responsible for assigning work tasks related to this case to her, have supervised her on such tasks, and have seen her work on such tasks. Ms. Cassorla served as the main point of contact throughout the case for the named plaintiffs, interviewed and obtained documents and information from the named plaintiffs, engaged in discovery in the Albert case, drafting almost every brief filed in our firm's litigation in Rimler, Lee, and Albert, reviewed data analysis regarding damages and penalties, and drafted our mediation statements. Ms. Cassorla also spent substantial time fielding inquiries from class members and directing our paralegal staff's work on the case.

29. I believe an hourly rate of $500 for Ms. Cassorla's services rendered in class action litigation is a reasonable rate. This rate is based on my knowledge of fees awarded in other cases to attorneys of approximately her experience and position within a law firm. See, e.g., Villalpando, 3:12-cv-04137-JCS, Dkt. No. 344-1 at ¶ 74 (asserting $500 hourly rate for plaintiffs-side wage and hour attorney admitted in 2014); McKibben v. McMahon (C.D. Cal., Feb. 28, 2019) 2019 WL 1109683, at *14 (approving $480/hour for attorney with six years of experience).

30. Adelaide Pagano is a partner at our firm who has assisted on this case, including by drafting initial PAGA letters and other tasks related to the initiation of the Rimler and Lee cases. Ms. Pagano is a *summa cum laude* graduate of Macalester College (B.A., 2009) and a *cum laude* graduate of Harvard Law School (J.D., 2014). Ms. Pagano has been named a Rising Star by SuperLawyers every year since 2018. I am familiar with Ms. Pagano's work on this case, as I have been responsible for assigning work tasks related to this case to her, have supervised her on such tasks, and have seen her work on such tasks.

31. Ms. Pagano has significant experience working on gig economy misclassification cases, as she was the primary attorney who assisted me in the O'Connor litigation as well as our firm's litigation against Instacart in Massachusetts and California and our firm's prior case and

current case against DoorDash. I believe an hourly rate of $600 for Ms. Pagano's services rendered in class action litigation is a reasonable rate. This rate is based on my knowledge of fees awarded in other cases to attorneys of approximately her experience and position within a law firm. See, e.g., Jean-Pierre v. J&L Cable TV Svcs. Inc., Civ. A. No. 1:18-cv-11499-MLW (D. Mass. Aug. 31, 2021), Dkt. No. 148 (approving hourly rate of $600 for Lichten & Liss-Riordan partner Matthew Thomson with commensurate experience); AdTrader, Inc. v. Google LLC (N.D. Cal., Mar. 24, 2020) 2020 WL 1921774, at *8, *appeal dismissed* (9th Cir. 2021) 7 F.4th 803 (approving "hourly rate of $855 per hour for junior partners and of counsel attorneys" in class action for breach of contract); Superior Consulting Servs., Inc. v. Steeves-Kiss, (N.D. Cal. May 11, 2018) 2018 WL 2183295, at *5 ("[D]istrict courts in Northern California have found that rates of $475 to $975 per hour for partners... are reasonable."); Perfect 10, Inc. v. Giganews, Inc., (C.D. Cal. Mar. 24, 2015) 2015 WL 1746484, at *15-*20 (approving billing rates of $610-$750 for junior partner as reasonable), *aff'd*, (9th Cir. 2017) 847 F.3d 657; Independent Living Center of S. Cal. v. Kent (C.D. Cal. 2020) 2020 U.S.Dist.LEXIS 13019 (approving rates of $640 per hour for 2015 graduate).

32. Anne Kramer is an associate at our firm who assisted with this case, including by performing research, drafting PAGA letters, complaints, and by communicating with many of our firm's arbitration clients. Ms. Kramer is a graduate of University of Wisconsin - Madison (B.S., 2012) and a *cum laude* graduate of Boston College Law School (J.D., 2016). Ms. Kramer has substantial experience working on our firm's other gig economy misclassification cases, including cases against Uber, Lyft, Caviar, Zum, VIPKid, and numerous other companies. She was named a Rising Star by Super Lawyers in 2020. I am familiar with Ms. Kramer's work on this case, as I have been responsible for assigning work tasks related to this case to her, have supervised her on such tasks, and have seen her work on such tasks.

33. I believe an hourly rate of $450 for Ms. Kramer's services rendered in class action litigation is a reasonable rate given her experience in the field of wage and hour law, and misclassification in the gig economy in particular. This rate is based on my knowledge of fees

awarded in other cases to attorneys of approximately her experience and position within a law firm. See, e.g., Campbell v. Best Buy Stores, L.P., (C.D. Cal. June 23, 2015) 2015 U.S. Dist. LEXIS 186976, at *27 (assigning hourly rates from $450-$475 to attorneys with 5.5-6.5 years of experience in its lodestar analysis for a class action); Retta v. Millennium Products, Inc. (C.D. Cal., Aug. 22, 2017) 2017 WL 5479637, at *12 (assigning hourly rates from $400-$425 to attorneys with 5-7 years of experience in its lodestar analysis for a class action); Kries v. City of San Diego, (S.D. Cal. Jan. 13, 2021) 2021 U.S. Dist. LEXIS 6826, at *27 (assigning a $400 hourly rate to an attorney with 6 years of experience in its lodestar analysis for a Fair Labor Standard Act case).

34. Zachary Rubin is an associate at our firm who assisted with Ninth Circuit briefing in the Lee case. Mr. Rubin is a graduate of Cornell University (B.S., 2012) and Brooklyn Law School (J.D., 2015). Mr. Rubin has substantial experience working on our firm's other independent contractor misclassification cases, including cases against Bimbo Bakeries, Omnicare, and Snyder's-Lance. He was named a Rising Star by Super Lawyers in 2021. I am familiar with Mr. Rubin's work on this case, as I have been responsible for assigning work tasks related to this case to him, have supervised him on such tasks, and have seen him work on such tasks.

35. I believe an hourly rate of $450 for Mr. Rubin's services rendered in class action litigation is a reasonable rate given his experience in the field of wage and hour law, and independent contractor misclassification in particular. This rate is based on my knowledge of fees awarded in other cases to attorneys of approximately his experience and position within a law firm. See, e.g., Campbell v. Best Buy Stores, L.P., (C.D. Cal. June 23, 2015) 2015 U.S. Dist. LEXIS 186976, at *27 (assigning hourly rates from $450-$475 to attorneys with 5.5-6.5 years of experience in its lodestar analysis for a class action); Retta v. Millennium Products, Inc. (C.D. Cal., Aug. 22, 2017) 2017 WL 5479637, at *12 (assigning hourly rates from $400-$425 to attorneys with 5-7 years of experience in its lodestar analysis for a class action); Kries v. City of San Diego, (S.D. Cal. Jan. 13, 2021) 2021 U.S. Dist. LEXIS 6826, at *27 (assigning a $400

hourly rate to an attorney with 6 years of experience in its lodestar analysis for a Fair Labor Standard Act case).

36. Additionally, several law clerks have performed work on this case. I believe an appropriate rate for these individuals is $275/hour. See, e.g., McKibben, 2019 WL 1109683, at *14 (approving rate of $225/hour for law clerks in 2019).

37. A number of paralegals at our firm worked extensively on this litigation, including Rebecca Shuford, Mary Franco, Maria Jose Cedeno, Kady Matsuzaki, Stephen Kirkpatrick, Josh Heskel, and Nicole Peer.

38. Ms. Cassorla and I assigned work related to this case to each of these individuals. Ms. Franco and Ms. Cedeno have worked primarily on communicating with class members and the named plaintiffs over email and/or telephone regarding the progress of litigation and, and as the primary legal assistants on this case, proofreading and preparing documents for filing. Kady Matsuzaki, Stephen Kirkpatrick, Josh Heskel, and Nicole Peer have spent considerable time corresponding with clients, including putative class members, including after notice of the settlement was distributed, regarding questions about the settlement, and have assisted the attorneys in preparing these individuals' files and documents. Rebecca Shuford is a senior paralegal and data analyst at the firm, and she spent substantial time assisting with damages calculations in preparation for mediation.

39. I believe an hourly rate of $225 for these paralegals' services rendered in class action litigation is a reasonable rate. These rates are based on my knowledge of fees awarded in other cases to paralegals of approximately their experience and position within a law firm. See McKibben v. McMahon (C.D. Cal., Feb. 28, 2019) 2019 WL 1109683, at *14 (approving rates ranging from $335 for senior paralegals to $175 for junior paralegals); Broomfield v. Craft Brew All., Inc., (N.D. Cal. Feb. 5, 2020) 2020 WL 1972505, at *12 (assigning a $250 hourly rate to paralegals in its lodestar analysis for a class action); Hefler v. Wells Fargo & Co., (N.D. Cal. Dec. 17, 2018) 2018 WL 6619983, at *14 (finding reasonable $245-$350 hourly rates for paralegals in its lodestar analysis for a class action); WB Music Corp. v. Royce Int'l Broad.

Corp., (C.D. Cal. July 9, 2018) 2018 WL 6177237, at *5 (assigning a $250 hourly rate to paralegals in its lodestar analysis for a copyright infringement case); 700 Valencia St. LLC v. Farina Focaccia & Cucina Italiana, LLC, (N.D. Cal. Feb. 8, 2018) 2018 WL 783930, at *4 (finding reasonable $335-$355 hourly rates for paralegals in its lodestar analysis for an unlawful detainer case); Nitsch v. DreamWorks Animation SKG Inc., (N.D. Cal. June 5, 2017) 2017 WL 2423161, at *9 (finding reasonable hourly rates up to $290 for paralegals in its lodestar analysis for a class action).

40. My firm's costs in our litigation against Postmates in these matters is $29,284.18. These costs include filing fees, charges associated with providing courtesy copies and mailings to the court, ordering hearing transcripts, mediation fees for two separate mediation sessions, and costs associated with travel to hearings (prior to the switch to remote proceedings in March 2020).

41. Based on the above figures, I calculate our firm's total lodestar in this litigation to be approximately $1,031,218.13 including expenses of litigation and estimated additional hours to be spent on the case, preparing for and attending the final approval hearing, and working with the Settlement Administrator to effectuate the terms of the settlement. The chart below summarizes the fees for the firm's attorneys and staff:

Attorney	Rate	Hours	Est. Future Hours	Total Hours	Total
Shannon Liss-Riordan	$950	600	50	650	$570,000.00
Adelaide Pagano	$600	35.75		35.75	$21,450.00
Michelle Cassorla	$500	512.1	50		$281,050.00
Anne Kramer	$450	17.05		17.05	$7,672.50
Zachary Rubin	$450	30.55		30.55	$13,747.50
Law Clerks	$275	20.85		20.85	$5,733.75

Paralegal Staff	$225	402.7	50	452.7	$101,857.50
Costs					$29,706.88
Total:			**150**		$1,031,218.13

42. Additionally, the lodestars for the other Plaintiffs' firms involved in the litigation are set forth below and in their supporting declarations, each of which provides substantiation of their hourly rates and the time they spent on these cases. The work of these other firms was critical to obtaining the results we have achieved in this case. First, the fact that these various cases existed, all bringing claims based on Postmates' misclassification of its drivers, brought tremendous pressure to bear on Postmates. The company was faced with the prospect of litigating this battle on multiple fronts, across state and federal courts and in arbitration and against numerous different firms. This pressure was crucial to motivating Postmates throughout this process to reach a deal rather than face the prospect of continued litigation on many fronts.

43. Since the preliminary approval hearing, the plaintiffs in the two remaining cases that are part of these coordinated cases, Brown v. Postmates, Inc., No. BC712974 (Los Angeles Superior Court), and Altounian v. Postmates, Inc., No. CGC-20-584366 (San Francisco Superior Court), have also agreed to resolve their claims through this settlement. See Exhibit A to Decl. of Shannon Liss-Riordan ISO Motion for Final Approval. This Declaration, along with the instant Motion and the Motion for Final Approval, will be uploaded on the settlement website so that class members have notice of this proposed revision to the settlement (which does not affect the relief to be received by settlement class members).

44. The fees and costs for these firms demonstrate that the total lodestar for all firms is **$5,279,774.69**, as summarized here:

Firm	Lodestar
Lichten & Liss-Riordan, P.C.	$1,031,218.13
Mostafavi Law Group	$2,395,957.00
The Bainer Law Firm	$63,097.36
The Parris Law Firm	$543,381.71
Zimmerman Reed	$1,084,595.50
Moss Bollinger	$161,525.00
TOTAL:	**$5,279,774.69**

45. Based on this this total lodestar, Plaintiffs' fee request of $8,960,000 thus results in an overall multiplier of 1.7. I believe this multiplier is warranted, based on the excellent results obtained for the class and the combined efforts of Plaintiffs' counsel in this case, which were instrumental in bringing DoorDash to the table and extracting this historic result for the settlement class. Courts in the Ninth Circuit have "routinely awarded" multipliers in "the 1x to 4x range." Perks v. Activehours, Inc. (N.D. Cal., Mar. 25, 2021) 2021 WL 1146038, at *8, and courts will often award higher multipliers where the circumstances warrant it because of the excellent results obtained, complexity of the case, and risks involved. See, e.g., Craft v. County of San Bernardino (C.D. Cal. 2008) 624 F.Supp.2d 1113, 1123 (awarding 25% of common fund, equivalent to a 5.2 multiplier) (collecting cases); Stevens v. SEI Investments Company (E.D. Pa., Feb. 28, 2020) 2020 WL 996418, at *13 (holding that "multiples ranging from 1 to 8 are often used in common fund cases" and awarding fees equivalent to a multiplier of 6.16). Indeed, multipliers in the range of 5x to 10x are not uncommon and some courts have even been known to award higher multipliers. See, e.g., In re Merry–Go–Round Enterprises, Inc. (Bankr.D.Md.2000) 244 B.R. 327 (40% award for $71 million fund awarded, resulting in a cross-check multiplier of 19.6); Stop & Shop Supermarket Co. v. SmithKline Beecham Corp.

(E.D. Pa.) 2005 WL 1213926 ($100 Million class fund in antitrust case, with an award of 20% of the fund, which amounted to a multiplier of 15.6).

46. Further, I believe this multiplier is warranted because the excellent results obtained for the class go far beyond any settlement reached with a gig economy company before; the PAGA penalties of $3 million that will be paid to the state far exceed other settlements that have been routinely approved; and the substantial monetary relief being paid to the class is one of the largest such settlement against one of these companies to date. The combined efforts of Plaintiffs' counsel in this case, which were instrumental in bringing Postmates to the table and extracting an excellent result for the settlement class should be rewarded with a substantial multiplier (should the Court elect to use the lodestar method).

CLASS REPRESENTATIVES SERVICE AWARDS

47. Under the terms of the settlement, Plaintiffs are also requesting service awards of $5,000 each for the thirteen named plaintiffs involved in the consolidated cases involved in this settlement.[2] Of these plaintiffs, I have personal knowledge of the contributions of Jacob Rimler, Giovanni Jones, Dora Lee, Kellyn Timmerman, and Josh Albert, each of whom worked with our firm as a class and/or PAGA representative, seeking to bring claims on behalf of similarly situated aggrieved Postmates delivery drivers. These plaintiffs each joined the effort to hold Postmates accountable under the Labor Code in the wake of the Dynamex decision in April 2018, and each has been in close contact with my firm ever since, through every step of the litigation and settlement process. Each of these drivers have sent us voluminous documents and have reviewed filings in these cases and answered our questions about Postmates' practices.

[2] With the addition of Brown v. Postmates, Inc. and Altounian v. Postmates, Inc. to the settlement, Plaintiffs now seek a total of $65,000 in incentive payments ($5,000 for each of the thirteen named plaintiffs). Plaintiffs will apprise settlement class members of this change by posting this Declaration and Attorneys' Fees Motion and Motion for Final Approval on the settlement website.

48. I have reviewed the Declarations submitted by Named Plaintiffs Jacob Rimler, Giovanni Jones, Dora Lee, Kellyn Timmerman, and Josh Albert, and I agree with the substance of their declarations. Their involvement in the case was instrumental in obtaining the settlement. In addition, all of these individuals contributed to the litigation by spreading word of it to other drivers and encouraging them to support the case and to claim in the settlement. In my practice, I am well aware of the risks that workers face in putting their names on high profile cases, which can impact future job opportunities. It is only because some workers are willing to step forward on behalf of others, in the face of these risks, that this type of litigation can be pursued at all. Here, this litigation has gone on for years, and these named plaintiffs have remained committed and steadfast in fulfilling their roles as representatives of the class.

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

Executed on October 12, 2021, in Boston, Massachusetts.

By: ______________________
Shannon Liss-Riordan

EXHIBIT A

SanFrancisco magazine

Uber’s Worst Nightmare

Diana Kapp | Photo: Justin Kaneps | May 18, 2016

Shannon Liss-Riordan just put a $100 million dent in the sharing economy giant. She’s out for a lot more than that.

The most reviled woman in Silicon Valley was badly in need of some coffee.

It was 8:40 a.m. on the Friday before Super Bowl Sunday, and Shannon Liss-Riordan had just arrived in the café of the Westin St. Francis, one arm pulling a rolling suitcase, the other carrying a still-warm laptop. Wearing a black blazer, black pants, and black leather boots, the attorney stood out among the throngs of jersey-clad football fans overtaking the lobby—an all-business peregrine falcon among so many colorful squawking parakeets. “Don’t ask,” she exhaled apologetically, having rolled up 25 minutes late. “You wouldn’t believe how many motions we’ve filed in the last 48 hours.”

That morning’s stupor, like so many before it, would prove worthwhile. After months of drafting briefs into the wee hours, cramming for the California bar exam (necessary because she wasn’t yet licensed to practice law in the state), and continuous, body-clock-wrecking cross-country flights, Liss-Riordan would soon win the largest settlement of her career: $100 million for 385,000 Uber drivers in California and Massachusetts who’d sued the company for misclassifying them as freelancers rather than employees. Ultimately, the deal, which was announced on April 21, came together secretly and hurriedly, in a flurry of meetings over two weeks in April. While legal pundits are still debating the settlement’s winners and losers (the New York Times chalked up a victory for Uber; Mother Jones called it for the workers), one thing

is certain: By preempting the scheduled June 20 trial, Uber avoided having to face off against Liss-Riordan, who was eager to go for the jugular.

When I met her on Super Bowl Friday, Liss-Riordan was brimming with confidence that she could convince a San Francisco jury that Uber's drivers were not independent contractors, as the company contended, but in fact employees, highly controlled by management and due a host of protections conferred by decades of hard-fought labor battles. Now, two months later, she is almost rueful about the resolution. "I was so looking forward to this trial," she tells me on the Saturday after news of the settlement broke.

For months before its climax, Liss-Riordan's class action lawsuit had taken on bellwether status in Silicon Valley. Many onlookers believed that the ruling would finally resolve the worker-classification debate looming scythe-like over the head of the new sharing economy. Some predicted that, should Liss-Riordan prevail, the suit could cripple Uber, kill other startups in their cradles, and, hell, maybe even end the whole trendy "gig economy" sector as a whole. That the suit didn't slay Uber once and for all doesn't mean that it didn't inflict major pain on it. Asked to list the most important reforms assured by the $100 million settlement, Liss-Riordan touts the deal's ability to bolster drivers' job security; to force Uber to implement a more favorable tipping policy; and to give workers the means to organize as a group, granting them representation "akin to what unions provide."

But that's not everything she was gunning for, I suggest—drivers still won't be considered employees under the settlement. "I only settled, and I would only settle," she responds, "because I believe what we achieved is a significant achievement in the lives of drivers." (This contention was strongly disputed earlier this week by several lawyers pursuing their own class-action cases against Uber. "She has single-handedly stuck a knife in the back of every Uber driver in the country," one of them told Bloomberg.) But more to the point, Liss-Riordan says, she's far from finished with Uber and its myriad cousins. The round-one bell may have dinged, but the attorney intends to continue her crusade on behalf of workers, calling large corporations to the mat and wringing major concessions and siphoning huge sums from them when necessary.

Independent contractors, a class of worker that is expected to characterize 40 percent of all U.S. laborers by 2020, are due no benefits, guarantee of hours, or minimum wage, enabling the enterprises that employ them to keep labor costs low. But if this galaxy of free agents suddenly has to be treated like employees, with all the expensive benefits that the status conveys—well, let's just say that Silicon Valley offers Liss-Riordan a wealth of opportunity. In fact, when I called her to talk about the Uber settlement, she told me she had just selected the last of the furniture for her new Geary Street office. That's right, the first annex of Liss-Riordan's Boston-based firm will soon open in San Francisco. It'll be located right off of Union Square.

When I visited her in January in Boston's Back Bay neighborhood, where her firm, Lichten & Liss-Riordan, PC, is headquartered, Liss-Riordan stood outside her office and gestured at the businesses lining the block. Dunkin Donuts, Boston Cab, Lord & Taylor, Starbucks—at one time or another, she has sued all of them for labor violations. "Yes," she laughed, "it gets pretty hard avoiding all my companies."

Uber came into Liss-Riordan's sights in 2012 when, during a dinner in San Francisco, a friend whipped out his phone to show off a cool new app. She saw the cars crawling around his screen and immediately grokked the model—back in Boston, she was representing cab drivers who wanted the benefits allotted to employees. Seeing the glint in her eye, her friend blurted, "Don't you dare. Do not put them out of business!"

Liss-Riordan sealed a major victory on December 9 of last year, when the class action lawsuit she had filed on behalf of 8,000 California Uber drivers in 2013 was upgraded by a San Francisco judge to include basically every single Uber driver in California—more than half of the company's current U.S. workforce. Suddenly, the Wall Street Journal was calling her "one of the most influential and controversial figures in Silicon Valley," and her lawsuit was threatening the very existence of the world's largest privately held company (current valuation: approximately $68 billion, greater than Ford, Honda, and GM).

The crux of her case was whether the sharing economy habit of using contractors rather than fully vested employees violates basic labor laws. It was a question that could potentially affect the fortunes of dozens of would-be and actual unicorns in Silicon Valley, including Google Express, Postmates, Handy, Caviar, Instacart, GrubHub, DoorDash, Jolt, and Lyft, all of which Liss-Riordan is in some stage of suing. Indeed, the attorney could throw a stone at any car driving down Post Street, and chances are that she would hit a vehicle delivering food or passengers or packages for one of the new-economy businesses that she is after.

True to her nickname, Sledgehammer Shannon—bequeathed to her by the American Airlines skycaps she represented in a 2008 tip-skimming case—Liss-Riordan, 47, has been smashing up corporate America through rapid-fire class action lawsuits for a decade and a half (she currently has some 80 suits in motion). Beyond what's visible outside her firm's front door in Boston, her victims include Federal Express, Harvard University, almost every major U.S. airline, and the strip joint Centerfolds. Her newest clients are teachers for testing giant Kaplan, who claim they are being deprived of overtime pay, and stage actors working for studios "owned by people like Danny DeVito and Tim Robbins." Broadly, she is out to advance the wage-and-hour corner of labor law, basically everything related to compensation for hourly-wage Americans, who, she believes, are faring worse than ever. "I'm not feeling good about the big picture," she says. "The labor movement has obviously been in sharp decline, which has seriously impacted worker welfare. It's very important to push back against this rollback."

Over the years, Liss-Riordan's firm, which typically takes one-third of what it wins and charges nothing when it loses, has pulled in more than $200 million for its class action clients. And in the process, Liss-Riordan has achieved a kind of celebrity unseen in the legal world since Ralph Nader sued General Motors. At a three-day Department of Labor "Future of Work" symposium last December in Washington, D.C., attendees in the hallways were leaping into Liss-Riordan's orbit to take selfies with her. This is not normal for plaintiff's attorneys in the wage-and-hour racket. "She hadn't spoken on a panel," says the National Employment Law Project's Cathy Ruckelshaus, who was at the conference. "She was just recognized."

Liss-Riordan's path to legal stardom began with the renowned feminist labor activist and congresswoman Bella Abzug, who hired her soon after she graduated from Harvard. She had no special connections to Abzug, or to anyone else, but simply copied the number of every New York–based women's organization out of the phone book and started dialing. "I loved [Abzug's] big ideas, and her big hats," she reminisces. The office photographs of Abzug marching in union protests moved Liss-Riordan. "It was inspiring to see her have an idea and make it happen," she says. "That's what made me desire law school, so I could do something bigger."

Her progressive leanings, though, had been baked in long before that. The progeny of socialists (her maternal great-grandfather organized unions with Samuel Gompers), Shannon Liss grew up in Meyerland, Texas, the daughter of a Reagan Democrat dad and a liberal mother. At age five she professed that when she married, she would hyphenate her last name "because it was the only way that made any sense." (Her husband and three children all use Liss-Riordan.) She excelled in math and science, starting a math club in high school that wound up being voted "most organized in the country." ("I never knew there was such a contest," she says. "I was just doing my thing.")

In 1992, she left Abzug to stage a conference featuring Anita Hill, fresh from the carnival of the Clarence Thomas harassment hearings. Through this work, she met Gloria Steinem, who introduced her to Rebecca Walker, a Yale student whose treatise on modern-day feminism, "Becoming the Third Wave," had just appeared in Ms. magazine. Over burritos in the Village, the pair hashed out how to turn Walker's ideas into action. First up was Freedom Summer 1992, a cross-country bus tour to register women voters. Hillary Clinton blew them off after committing to meet the bus in Little Rock, which partly explains why Liss-Riordan is now feeling the Bern. Ultimately, though, she yearned to fix the system from within, while Walker wanted to stay outside of it. Laws needed to be changed. People needed to be held accountable. So in 1993, Liss-Riordan headed to Harvard Law School to work on just that.

She opened Lichten & Liss-Riordan, PC, in 2009, breaking off, along with one of her mentors, Harold Lichten, from an established labor-law firm. "I work for her now," laughs Lichten, a messy professor type who, at 18, quit the University of Pennsylvania basketball team rather than get the required crew cut. Clearly, the two bond over heeding their first principles. Liss-Riordan bought a Cambridge pizza joint in 2012 after she won a back-pay lawsuit for the employees, which helped push the restaurant into bankruptcy. After purchasing it, she made most of the employees part-owners and renamed the pizzeria the Just Crust.

The day I shadowed her in Boston, Liss-Riordan was a whirl of motion. At one point, while we were chatting in her office, the reception desk buzzed and she disappeared down an exposed-brick stairwell hung with vintage photos of workers—seamstresses, a 1930s-era stripper. She returned with a redheaded woman in jeans, whom she motioned to sit at the conference table.

"I was very interested in what you sent me," Liss-Riordan said, plopping down beside her. The woman was a massage therapist at Harvard University's Center for Wellness. "Were you able to do any snooping around to see if there were other pockets [of contractors] around campus with similar setups?" the attorney asked. The woman said not yet. Liss-Riordan followed with a run of questions: How many hours do you work? Thirty a week. Who sets your schedule? Management. Who buys your equipment? They do. Do you pay for your own insurance? Yes. If there was a client you had before that you didn't like, could you say you'd rather not take them again? The woman shook her head: No way. Liss-Riordan glanced through the documents the

woman had slid her. “There is a good argument that you have been misclassified as a contractor,” she said, then suggested they go after sick and holiday pay, and perhaps benefits like free Harvard courses.

“Didn’t you go to Harvard?” the woman inquired timidly. “I read that on your website.” Liss-Riordan responded with a laugh: “I’ve sued Harvard twice before. They gave me two degrees, so I’m not sure they appreciate it.” (She roomed there with YouTube CEO Susan Wojcicki.) The woman asked if she would lose her job. “I’m scared,” she said. “No, no way,” Liss-Riordan retorted. “It’s scary, but you are doing the right thing. Actually, that it’s Harvard protects you. They know they can’t get away with misbehaving.”

Over the years, Liss-Riordan has sought employee status for truck drivers, call-center workers, home cleaners, even exotic dancers. “It’s just the next logical extension to take it into these on-demand jobs, where it’s pretty clear these low-wage workers are not running their own businesses,” says the National Employment Law Project’s Ruckelshaus, who has worked with Liss-Riordan on several cases. A lawyer defending one of Liss-Riordan’s suits spins her MO in another way: “She’s found this tiny niche, and now she’s just exploiting the hell out of it.”

Indeed, her power-to-the-worker rhetoric flies in the face of many of Silicon Valley’s prized principles and has earned her some well-funded enemies. The very labor laws she defends, says veteran VC Len Baker of Sutter Hill Ventures, are “encrusted with so much crap they just really bog us down.” Sam Altman, who heads the prolific startup hatchery Y Combinator, believes that “individual flexibility and freedom” should trump current laws that tie employees to employer. “I definitely think it’s bad to make everyone de facto full-time employees,” he says. The whole point of the on-demand economy, maintains Eric Goldman, director of the High Tech Law Institute at the Santa Clara University School of Law, “is to allow more granular ways of people providing their services.” This new, frictionless, seamless way of parsing tasks and connecting available labor to paying work, says Baker, is “just much more efficient economically.”

To all this, Liss-Riordan simply responds: Bogus. She finds the cult of contract labor “really kind of scary, a great loophole” that’s allowing corporations to screw the little guys. In her view, companies like Uber blatantly skirt minimum-wage and overtime-pay rules, which have been in place since the New Deal. By classifying drivers as contractors, Uber can fire them at will, have them run down their own cars and tires while avoiding having to reimburse them the IRS-mandated 57.5 cents (now 54) per mile for wear and tear, and sidestep mandates for workers’ compensation and health insurance. The legal framework behind this “might be one of the sharpest attacks on workers we’ve seen in a long time,” Liss-Riordan says. “The rhetoric is, ‘But oh, this is good for the worker—be this on-demand worker, and you’ll have this freedom.’ But they are not their own bosses. Technology has created more extreme ways that employers can take advantage of workers. They are tethered to their phone. There are constant ratings, surge incentives, and data tracking their behavior at times, with more pull than a human manager would have.”

Silicon Valley, naturally, would like to come up with another way to get around this existential divide. “The best thing would be a new categorization” for gig-economy workers, says Altman, “because these people really lie somewhere between traditional notions of contractor and employee.” But Liss-Riordan has a standard retort for this third-category concept: “Why is there this call for dismantling these protections that have been fought for over decades in order to

help a $50 billion company get richer, while the drivers are making less and less and paying Uber's business expenses?" To her, the notion that flexibility is incompatible with full-time employment is a cop-out. "Plenty of companies let workers set their own schedules," she says. "If it costs Uber more to make everyone employees, they should just take a bigger cut and at least be transparent about all this."

Back in December, in U.S. District Court Judge Edward M. Chen's domain high above the city, Liss-Riordan strenuously objected to Uber's move of emailing every driver a new contract, which had to be signed for drivers to continue working. Buried within the fine print was a clause that rendered signers ineligible to join any future class action lawsuits, instead mandating arbitration to resolve grievances. Liss-Riordan finds it infuriating, if somewhat vindicating, that companies have turned to such clauses as a way of dodging responsibility. "They didn't even deign to talk to class counsel before sending out a communication to my clients," she said to the judge. "I would urge the court to consider the arguments that Uber should not be able to curtail liability. Not on the 14th page of an email on an iPhone." Judge Chen ruled in her favor, overriding Uber's arbitration agreement and allowing drivers to file suit as a class.

Arbitration clauses like the one Judge Chen struck down are increasingly being used by companies as a legal end-around. The Supreme Court has strengthened the power of these clauses in recent years, on the grounds that individual mediations are a more efficient means of resolving disputes. But to Liss-Riordan, the shift serves only to protect big business: "I just think it's reprehensible that the Supreme Court has allowed all these companies that are blatantly breaking the law to protect themselves."

It was Uber's arbitration clause that ultimately sent Liss-Riordan's suit careening to a settlement. When the U.S. Court of Appeals for the Ninth Circuit, on April 5, agreed to hear Uber's appeal, "it was not a good sign at all," she says. If Judge Chen's decision to override the arbitration agreement was reversed by the Ninth Circuit, her clients could be left high and dry. "Uber made it known they would appeal this all the way to the Supreme Court if they could," she says. And given the deadlocked state of the court at the moment, the odds of a 4–4 decision leaving the lower court's ruling in place seemed too risky. "There's just a lot of uncertainty," she says.

During our meeting at the Westin, I asked Liss-Riordan if she viewed her lawsuits as primarily having a policing function on bad-acting companies like Uber, or if she believed that she had a shot at challenging the constitutionality of arbitration clauses. She was circumspect. "There are so many ways that companies can evade the laws," she said. "If you chase them in litigation, they can just keep changing the arbitration clause a little bit. For them, they are like this magic bullet."

Using lawsuits, Liss-Riordan is trying to combat these corporate shenanigans by bringing old-fashioned collective bargaining to the new economy. And increasingly, other jurisdictions are taking a similar approach. Seattle just passed a law allowing Uber drivers to organize, and new legislation aimed at enabling gig workers to bargain collectively was recently introduced before the California legislature. (The bill was pulled before a final vote.) The Teamsters are now reportedly attempting to create an independent drivers' "association" akin to a union. "Lawsuits like hers are already having an impact," says Arun Sundararajan, professor at the New York University Stern School of Business and the author of The Sharing Economy: The End of Employment and the Rise of Crowd-Based Capitalism. The fundamental benefit of these

lawsuits, he says, is in “getting us on a path toward a better solution to funding our social safety net."

Liss-Riordan is never one to relent unless forced. Says her partner Lichten, admiringly, “She’s like a pit bull with a Chihuahua in her mouth.” Among the concessions Uber had to make to reach the April settlement was forgoing its practice of firing drivers without cause. “That’s a pretty big deal,” says Santa Clara University law professor Goldman. What’s more, drivers will no longer be deactivated for a low rate of pickups, will receive a warning before losing their job, and can contest a termination before a panel of their peers. An even bigger deal, Liss-Riordan says, was convincing the judges in both her Uber and Lyft cases to deny summary judgment. What this means is that companies will not be able to do away with lawsuits of this nature quickly and painlessly. “They were saying that any company that finds itself with a lawsuit for misclassification can find itself in front of a jury. And that’s big,” she says. “It’s a big price to put an end to the case, and it will continue to give companies pause before they play fast and loose with these rules.”

There is evidence of this already. On-demand players such as Instacart, Shyp, Zirtual, and Honor have recently shifted course, reclassifying some of their workers as employees. “Everyone who wants to be Uber of the next thing—they’ve been watching these battles,” Liss-Riordan says. And, she is quick to point out, Uber may be paying $100 million to make this suit go away, but it hasn’t gotten the employment-classification monkey off its back. “No court has decided here whether these drivers are employees or independent contractors,” she says. At multiple times during our phone conversation in April, Liss-Riordan returned to her favorite point: “This was a settlement. Nothing has been decided.”

Before hanging up, I pushed her on my last question: What is your next chess move against Uber? Is this fight over? She hemmed and hawed over what to reveal publicly, before finally relenting. “Oh, OK,” she said, grinning audibly on the other end of the line. “You can say I’m not done with this company.”

Originally published in the June issue of San Francisco

EXHIBIT B

Los Angeles Times

Meet the attorney suing Uber, Lyft, GrubHub and a dozen California tech firms

Attorney Shannon Liss-Riordan says too many Silicon Valley firms flout labor laws at the expense of low-wage workers (Aram Boghosian / For the Times)

By Tracey Lien • Contact Reporter

JANUARY 24, 2016, 10:19 AM | SAN FRANCISCO

Shannon Liss-Riordan made a name for herself defending workers against FedEx, American Airlines and Starbucks in wage and hour lawsuits.

If you're a business executive and she's knocking at your door, it probably means your company has been accused of doing something few Americans have much tolerance for: ripping off the little guy.

So, if you're an executive in Silicon Valley — where businesses are lauded for disrupting the old way of doing things, tearing down the hierarchies of the past, making the world a better place — you'd think you'd get a pass, right?

“

It just doesn't make a lot of sense to me why we should throw all these worker protections out the window to help a $50-billion company like Uber.

- Shannon Liss-Riordan

Hardly. After slapping on-demand transportation company Uber with a class-action lawsuit over driver misclassification in 2013, the Boston lawyer has been busy, filing a dozen similar lawsuits against California tech firms.

Silicon Valley companies may think they're a breed apart, but to Liss-Riordan, too many of them are too similar to the big corporations she's fought in the past, companies she says flout labor laws for profit at the expense of low-wage workers.

Where some see Silicon Valley innovation, Liss-Riordan sees an old power struggle, wrapped in an app.

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Liss-Riordan hasn't kept track of how many miles she's logged between Boston and San Francisco since she started litigating against companies in the on-demand economy. But she's now treated as a regular at the federal courthouse in San Francisco, where she's often seen dragging a roller bag of legal documents in and out of the towering gray building.

An opposing attorney in one of her cases saw her around so much he challenged whether she should be allowed to file so many lawsuits in the state when she isn't a member of the State Bar of California.

If he'd hoped to deter her, it didn't work. Liss-Riordan responded by registering to take the California bar exam in February. Once admitted, she plans to open an office in San Francisco.

Liss-Riordan carries herself more like an activist than a lawyer. At first, she comes off as approachable, friendly even. But her partner at Boston law firm Lichten & Liss-Riordan, Harold Lichten, describes her as having the heart of a grass-roots organizer with the tenacity of "a pit bull with a Chihuahua in its mouth."

She knows her stuff and can get really academic, but without making people feel dumb.

Opponents have accused her of being opportunistic and taking advantage of young companies who don't know legal rules. She counters by saying that the cases she's filing aren't about semantics. They're about people getting ripped off.

The on-demand economy — driven by smartphone apps with which people can instantly hail a ride, order a meal or book a house cleaner — is booming in California. Ride-hailing companies such as Uber and Lyft have achieved multibillion-dollar valuations from a business model that uses independent contractors to fulfill a core function of their businesses. Although they compete directly against the taxi industry, they've labeled themselves "technology companies" — intermediaries that simply connect willing workers with paying customers.

Which would be fine, Liss-Riordan said, if they were also treating their workers as independent contractors.

In the lawsuits she filed against Uber, Lyft, food-delivery companies DoorDash and GrubHub, and on-demand laundry service Washio, she alleges that these firms exert the kind of control that employers would have over employees — without providing any of the benefits employees, by law, are entitled to.

In response to her efforts, these companies have hired legal big guns. Uber, for example, hired Gibson Dunn, a global law firm routinely recognized by industry groups as one of the top litigators in America.

There's a good reason they're fighting so hard. A Liss-Riordan victory could put companies such as Uber and GrubHub on the hook for costs that would eat deeply into their profit margins. Labor experts estimate that their cost of doing business would increase by 30% to cover payroll taxes, unemployment insurance and workers' compensation. Costs would rise even more with overtime payments and — particularly in the Lyft and Uber cases, in which drivers use their own vehicles and pay for their own gas — expense reimbursements.

Could big firms such as Uber and Lyft afford it? Liss-Riordan believes so. But in Silicon Valley, where sky-high profit margins lead to enormous company valuations that could translate into staggering returns on investment, any increase in the cost of doing business poses a threat. After all, Uber didn't become the world's most highly valued private company by paying for its drivers' gas.

If the companies are to be believed, any significant changes to their business model would fall on the drivers. The Ubers and Lyfts of the world argue that recognizing workers as employees would come at the cost of flexible working hours, which is the reason many people sign up to drive for an on-demand service.

Liss-Riordan huffs at the notion. Smaller companies such as Shyp (on-demand shipping), Munchery (on-demand meal delivery) and Luxe Valet (on-demand valet parking) have been able to do it while retaining some flexibility, although their workers now have scheduled shifts.

"These companies just don't want to do it because it's going to cost more," she said. "And there's nothing stopping them from giving their workers flexible schedules."

She almost has to fight back an eye roll when she hears the on-demand economy's defense.

"It just doesn't make a lot of sense to me why we should throw all these worker protections out the window to help a $50-billion company like Uber when the workers who are actually doing the work are struggling and need those protections," she said.

She speaks with an urgency. As she delivers each statement, one can imagine a concurrent thought bubble floating above her head in which she grabs people by the shoulders and shakes them: “Can’t you see? Can’t you see why this matters?”

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Liss-Riordan has brought this kind of fight to big and small players alike. She’s taken on Starbucks and American Airlines (both were accused of skimming tips from workers) and sued a Massachusetts strip club and a pizza chain (the former classified its dancers as independent contractors but expected them to share their tips with managers and bouncers. The latter was a case in which kitchen staff members were forced to give back their overtime wages or lose their jobs).

Her track record is strong: In Massachusetts, she’s won worker-misclassification and tip cases against Starbucks and FedEx. Her lawsuit against the strip club triggered a wave of similar lawsuits across the state. After her lawsuit drove the pizza chain out of business, she bought one of the restaurants herself and turned it into a profit-share pizza joint.

“Overall she really cares about workers and advancing the law for workers,” said Lichten, who has known her for 20 years. “She’s very good about rolling up her sleeves and meeting with clients to explain to them what’s going on.”

There’s big money to be made in this area, of course. Class-action lawsuits can lead to hefty payouts, with lawyers walking away with up to a third of what their clients are awarded. In a recent class action over worker misclassification involving FedEx Ground (Liss-Riordan was not the plaintiff’s attorney), the company announced a $228-million settlement with 2,300 California-based drivers.

Liss-Riordan doesn’t charge an upfront fee — so if she doesn’t win, she gets nothing.

Her critics have been blunt, accusing her of taking advantage of confusing and arcane laws to reap a windfall for her clients and her firm.

“I have a lot of respect for Shannon, but I do see this cottage industry she's created around the tip statute as becoming abusive toward employers,” attorney Ariel D. Cudkowicz, who defended several Liss-Riordan-led lawsuits, told the Boston Globe in 2008.

Others have pointed out that sometimes companies have good intentions but simply misinterpret the law.

Before they get the chance to figure it out, lawsuits like Liss-Riordan’s can “knock them out of business,” said attorney Robert Berluti, who went up against Liss-Riordan in the Massachusetts stripper case.

Some of her cases have taken more than a decade to resolve. In 2011, she took on a case representing a skycap who was fired in retaliation for participating in a class-action lawsuit; that was a five-year process.

“She kept fighting without getting paid,” said her former client in the skycap case, Joe Travers, 50. According to Travers, Liss-Riordan continued to represent him even when the court reversed his victory. She recently won an appeal on his behalf.

“It’s amazing someone would continue to fight for you even when there might not be anything for them in the end,” he said. “She just doesn’t like people taking advantage of other people.”

Liss-Riordan doesn’t seem fazed by her critics or the size of the industry she’s taking on. In her eyes, no company — innovator, disruptor, whatever else they want to call themselves — deserves a free pass.

When asked whether she’s been known to be intimidated by anyone — a company, an industry, another law firm — Liss-Riordan’s former colleague, attorney Nicole Horberg Decter, had this to say: “Ha-ha-ha!”

Then, after a moment: “I don’t think of Shannon as someone who is intimidated by anything. When she takes on an issue, she’s not taking on a company, she’s taking on an industry. I think that’s very powerful. So, no, she is not intimidated at all.”

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EXHIBIT C

THE WALL STREET JOURNAL.

Meet the Boston Lawyer Who's Putting Uber on Trial

Shannon Liss-Riordan has become one of the most influential—and controversial—figures in Silicon Valley

Boston attorney Shannon Liss-Riordan represents drivers who say Uber has illegally classified them as freelancers and not employees. PHOTO: JOSH ANDRUS FOR THE WALL STREET JOURNAL

By
LAUREN WEBER and RACHEL EMMA SILVERMAN
Nov. 4, 2015 11:47 a.m. ET

BOSTON—With a raft of lawsuits challenging Uber Technologies Inc. and other startups that summon workers at the touch of an app, attorney Shannon Liss-Riordan has become one of the most influential—and controversial—figures in Silicon Valley.

In her main suit against Uber, Ms. Liss-Riordan represents drivers who say the ride-service company has illegally classified them as freelancers and not employees, barring them from reimbursements for their expenses, among other protections. She is also suing Lyft, Postmates and others over the labor model on which they depend. The legal battles put Ms. Liss-Riordan, who also owns a pizzeria with her husband, at the center of the debate over the status of on-demand workers in the U.S.

The closely watched Uber case, which continues in federal court in San Francisco on Wednesday, won class-action status in September and could go to trial as early as next year. A final verdict against Uber in this case could change how the firm does business with its drivers and send shocks through the on-demand economy.

Uber's lawyers have argued that it is a software platform connecting car owners with people seeking rides, and not the manager of a fleet of drivers. The $51 billion venture-backed company has no plans to settle and is willing to fight the case to the Supreme Court if necessary, according to people familiar with its legal strategy.

In Ms. Liss-Riordan, Uber faces a tenacious opponent who has fought hard to enforce worker protections that, she says, many employers would like to erode, although some attorneys and other advocates question whether her pursuit of that principle always serves her plaintiffs.

Shelby Clark, CEO of Peers, which provides services for independent contractors (such as reviews of what it's like to work for an on-demand firm), said he is glad Ms. Liss-Riordan has drawn attention to the ambiguous status of some workers, but added, "I fear that more harm than good can come from these lawsuits. I don't necessarily think she's speaking on behalf of the average worker."

Ms. Liss-Riordan counters that there's no reason Uber can't offer drivers flexibility—the prime benefit Uber and other on-demand firms pitch to potential workers—while still providing them basic labor protections. "That's a false choice," she said.

She has logged victories in the field of wage and hour law, bringing employers includingStarbucks Corp. and her alma mater, Harvard University, into compliance with state

and federal laws governing workers' pay and employment status. Strategically using each ruling to build the next, her cases have targeted FedEx Corp., cleaning firms, and a strip club called King Arthur's Lounge over the classification of their workers.
With the suits against on-demand startups, her goal is nothing less than shaping the definition of employment in the fast-evolving digital economy. Although she isn't closed to the prospect of a settlement, "I would like to play this out and make some law," she said.

She first learned about Uber in 2012, during dinner with a friend in San Francisco. Her companion pulled out his phone and gushed to her about an app "that had changed his life," she recalled.

"I could see instantly what was going on" in terms of the labor model, she said. Recognizing the glint in her eye, Ms. Liss-Riordan's companion said, "you're going to put this company out of business, aren't you?"

That hasn't happened, and Ms. Liss-Riordan said she doesn't think the reclassification of drivers would threaten Uber's existence. But friends and associates cite her ferocious work ethic and near-evangelical belief in her clients' claims as assets in high-stakes battles. She extends cases for years even after her battle seems to be lost, and several times has petitioned the Supreme Court—so far unsuccessfully—to take up legal questions that circuit courts decided against her.

Her doggedness is already manifest in the Uber case. After the company submitted 400 statements from drivers who said they preferred the flexibility of gig labor, Ms. Liss-Riordan directed a paralegal to contact around 50 of those same drivers, most of whom said that they would like to be employees if it meant having their expenses reimbursed.

"When the opposing counsel is popping open their champagne, thinking a case is over, she comes back at them. She's indefatigable. And it drives management firms crazy that she won't give up," said her law partner, Harold Lichten.

Her fervor can raise eyebrows among opposing counsel. "Sometimes she's so inflamed about the issue and the people she represents that she won't come to settlement even when that's in her and

her clients' best interest," said Boston lawyer Ellen Kearns of Constangy, Brooks, Smith & Prophete LLP, who has squared off against Ms. Liss-Riordan.

The pizzeria was also the product of a crusade. In 2010 she sued a pizza chain and its owners for siphoning employee paychecks to pay a fine for federal labor violations. The chain filed for bankruptcy two years later, and Ms. Liss-Riordan wound up buying the Cambridge location, called The Upper Crust, at auction for $220,000. Among her first acts as restaurateur, she set up a plan for sharing profits with the pizzeria's employees and re-christened it The Just Crust.

The Uber case will be a key test of Ms. Liss-Riordan's belief that New Deal-era labor laws are adequate to respond to the emergence of an on-demand economy.

It applies only to California workers, but Ms. Liss-Riordan has set her sights further. "I'm hoping that if we're successful, it could then be expanded nationwide," she said.

Write to Lauren Weber at lauren.weber@wsj.com and Rachel Emma Silverman at rachel.silverman@wsj.com

EXHIBIT D

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NATIONAL PULSE

Do janitorial firms cash in by misclassifying workers as independent contractors?

POSTED SEP 01, 2014 09:20 AM CDT

BY WENDY N. DAVIS

Shannon Liss-Riordan: Janitorial firms cash in by misclassifying workers as independent contractors. Photo by Carl Tremblay.

When Pius Awuah, an immigrant from Ghana, agreed to purchase a cleaning franchise from the janitorial giant Coverall for more than $14,000, he believed the business would earn $3,000 per month.

The Lowell, Massachusetts, resident used his savings and credit cards to put up more than $8,000, while Coverall arranged to deduct the rest from his future earnings. The company gave him clients, at least at first, but the expected revenue didn't materialize, partly because some of them were spread so far apart that he couldn't realistically travel to every site. After a few months, Coverall took away some of the business it had previously given to Awuah, claiming the clients weren't satisfied.

In the end, Awuah typically took in less than $1,300 per month, according to court papers. Now Awuah is among the lead plaintiffs in a class action that could reshape the janitorial industry.

For decades, a handful of large cleaning companies have run their businesses on the franchise model, rather than hiring employees. Coverall, Jani-King, Jan-Pro, CleanNet and a few others routinely market themselves to immigrants like Awuah, often by advertising in foreign-language newspapers.

The immigrants are promised the chance to run their own, potentially lucrative businesses—provided they pay hefty franchise fees, which can run as high as $30,000. But for many, the reality is that they don't receive enough work to be able to support themselves, much less recoup their initial investments. In some cases, the immigrants say they pay additional fees to have a client assigned to them, only to lose that client on the grounds that the client supposedly wasn't satisfied with their work.

OWNER OR EMPLOYEE?

"The janitorial industry seems to be on the cutting edge of figuring out how to cheat people out of their wages," says Chicago attorney Christopher Williams, who represents plaintiffs in a lawsuit against CleanNet.

"This is their business practice, and they've been very devoted to it," says Catherine Ruckelshaus, general counsel and program director at the National Employment Law Project, a New York City-based nonprofit that has filed friend-of-the-court briefs in several lawsuits against cleaning companies. "It's a very lucrative way to run their business."

In the past, numerous individuals have sued cleaning services companies for breach of contract, often alleging that they were duped into shelling out money for the franchises. Many of those lawsuits resulted in confidential settlements.

Recently, however, some of the immigrants have banded together in class actions claiming they were never truly franchise owners at all but, rather, employees—meaning that they're entitled to receive at least the minimum wage for the time they worked as janitors. In many cases, that amounts to only a few months because they couldn't afford to continue working for such small revenue.

Awuah's lawsuit, filed in 2007, centers on allegations that Coverall treated the franchise "owners" like employees, in that the company controlled every aspect of the jobs, from the uniforms and badges they wore to the clients they received.

The plaintiffs also argue that they are employees under the state of Massachusetts' expansive definition of the term, which provides that people are employees if they're in the same line of business as the employer.

U.S. District Judge William Young sided in a 2010 decision with Awuah and other purported "franchisees," writing that they were in the same line of work—that is, the commercial cleaning services trade—as Coverall.

Coverall, a Boca Raton, Florida-based corporation with about 5,000 franchisees, argued that it was in the franchising business, not the commercial cleaning business.

Young specifically rejected that contention. "Describing franchising as a business in itself, as Coverall seeks to do, sounds vaguely like a description for a modified Ponzi scheme—a company that does not earn money from the sale of goods and services, but from taking in more money from unwitting franchisees to make payments to previous franchisees," wrote Young, granting the plaintiffs partial summary judgment.

Coverall is appealing to the 1st U.S. Circuit Court of Appeals at Boston. The corporation says its regular activities consist of "selling franchises, promoting the Coverall brand, centrally soliciting customer contracts, and providing billing and collections services to franchise owners."

Coverall adds that Young's interpretation of the law would lead to what it calls absurd results about who was or wasn't an employee. "Franchisors of health clubs would be in the 'business' of providing fitness services, and franchisors of car dealerships would be in the 'business' of selling cars."

'TRYING TO CRY WOLF'

The lobbying group International Franchise Association, based in D.C., is backing Coverall in the appeal, arguing that Young's decision could sweep in such companies as McDonald's and Dunkin' Donuts.

Gregg Rubenstein of Boston, the Nixon Peabody lawyer who represents the franchise trade group, adds that Young didn't need to issue such a broad ruling. "There were lots of ways to reach the result without implicating franchising writ large," he says. For instance, Young could have found fault with the contracts between Coverall and the plaintiffs, without going so far as to say they were employees.

But Shannon Liss-Riordan, the Boston attorney for Awuah and others, says the argument is ridiculous.

"They're trying to cry wolf in order to get out of this judgment we won," she says of Coverall. She adds that companies like McDonald's don't control which customers go to which stores or suddenly take business away from a franchise owner.

"McDonald's has set up a structure by which independent business owners can run fast-food stores," says Liss-Riordan, who has spent the last decade representing people who claim they were duped into purchasing franchises.

Meanwhile, Young's decision in the Coverall case, if upheld on appeal, could leave franchisors vulnerable to a range of new lawsuits, including those for civil rights violations, says Dallas attorney Deborah Coldwell, chair of the ABA Forum on Franchising.

Coldwell suggests, for instance, that in a case of sexual harassment, employees of franchisees could sue the deep-pocketed corporations if the business was considered an employer.

"Plaintiffs' counsel are glomming on to the Coverall decision to expand the liability of franchisors," she says. "This Coverall case has opened stricter scrutiny of employer-employee situations."

The 1st Circuit is expected to decide soon whether those who purchased Coverall franchises are actually employees, but that upcoming ruling won't be the only word on the matter.

Other cases are pending throughout the country. Several lawsuits have resulted in settlements. CleanNet, for instance, agreed in 2013 to pay $7.5 million to settle a class action in Massachusetts, while Coverall agreed to settle a lawsuit in California.

Others, however, including one against Jani-King, are still contested.

In that case, U.S. District Judge Samuel Conti in the Northern District of California ruled in 2012 that Jani-King was not an employer under California law. “Jani-King did not exercise sufficient control over plaintiffs to render them employees,” Conti wrote. “Plaintiffs had the discretion to hire, fire and supervise their employees, as well as determine the amount and manner of their pay.”

The ruling didn’t dispose of the case. Conti said that the franchise owners were entitled to go to trial on a variety of other allegations, including that Jani-King violated its contract and didn’t act in good faith.

For now, however, the trial proceedings in that case are on hold while plaintiffs appeal to the 9th Circuit. The franchisees argue that Conti’s ruling enables Jani-King “to evade its obligations under the Labor Code through subterfuge.”

Whether that argument will carry the day isn’t clear, given that California’s laws differ from those in Massachusetts. “In Massachusetts we happen to be fortunate enough to have very protective laws,” Liss-Riordan says.

This article originally appeared in the September 2014 issue of the ABA Journal with this headline: “Cleaning Up: Losing money, immigrant franchise owners claim they are employees and should be paid a salary.”

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EXHIBIT E

THERECORDER

Uber's Least Favorite Lawyer Strikes Again

Marisa Kendall 01/06/2016

SAN FRANCISCO — The plaintiffs lawyer who's forged a place as Uber's legal nemesis launched a fresh attack this week seeking employee protections for dozens of drivers who won't be included in her huge class action.
Boston-based attorney Shannon Liss-Riordan sued Uber Technologies Inc. on behalf of drivers left out of *O'Connor v. Uber* because they drove through intermediary limo companies or used corporate names.

U.S. District Judge Edward Chen of the Northern District of California found their situations could be varied enough to preclude class treatment.

"We're not going to leave them out in the cold," Liss-Riordan said. "We represent these individuals and we want to be sure to protect their rights."

In an email, an Uber spokeswoman pointed out: "The federal district court already rejected plaintiff's request to certify a class of these groups, whose circumstances vary widely and who have control over how they use the app."

The **suit** filed Monday in San Francisco Superior Court names 78 plaintiffs, and Liss-Riordan said she expects to add more as drivers continue to contact her.

Uber has estimated about 10,000 drivers were excluded from the *O'Connor* litigation, compared to the 150,000 in the class that Chen certified.

Ironically, the man whose name is attached to the case, lead plaintiff Douglas O'Connor, was among those excluded because he drove for Uber through a third-party company. He's named as a plaintiff in the new suit.

The *O'Connor* case is set for a June trial in the Northern District of California. Liss-Riordan will argue her clients are Uber employees and must receive employee benefits, reimbursement for driving expenses, and compensation for tips she claims the company illegally withheld. Uber maintains its drivers are independent contractors because they have the freedom to control factors such as the hours and schedules they work and the routes they drive. Chen **certified** a class of California drivers in September, and **expanded** the class last month. Uber is represented by Gibson, Dunn & Crutcher partner Theodore Boutrous Jr.

Liss-Riordan argues the plaintiffs in her new case also are Uber employees, even though they drove through intermediaries.

For now Liss-Riordan is litigating the excluded drivers' claims individually, as they may not be eligible for class treatment under a new arbitration agreement Uber rolled out last month. "This is the type of result you see," Liss-Riordan said, referring to her ponderous suit, "when there is a high degree of interest in a case and employees aren't allowed to pursue claims as a class action."

Contact the reporter at ***mkendall@alm.com****.*

EXHIBIT F

Mother Jones

Meet "Sledgehammer Shannon," the Lawyer Who Is Uber's Worst Nightmare

—Hannah Levintova on Wed. December 30, 2015 6:00 AM PDT

Miriam Migliazzi and Mart Klein

In early 2012, on a visit to San Francisco, Shannon Liss-Riordan went to a restaurant with some friends. Over dinner, one of her companions began to describe a new car-hailing app that had taken Silicon Valley by storm. "Have you seen this?" he asked, tapping Uber on his phone. "It's changed my life."

Liss-Riordan glanced at the little black cars snaking around on his screen. "He looked up at me and he knew what I was thinking," she remembers. After all, four years earlier she had been christened "an avenging angel for workers" by the *Boston Globe*. "He said, 'Don't you dare. Do not put them out of business.'" But Liss-Riordan, a labor lawyer who has spent her career successfully fighting behemoths such as FedEx, American Airlines, and Starbucks on behalf of their workers, was way ahead of him. When she saw cars, she thought of drivers. And a lawsuit waiting to happen.

Four years later, Liss-Riordan is spearheading class-action lawsuits against Uber, Lyft, and nine other apps that provide on-demand services, shaking the pillars of Silicon Valley's much-hyped sharing economy. In particular, she is challenging how these companies classify their workers. If she can convince judges that these so-called micro-entrepreneurs are in fact employees and not independent contractors, she could do serious damage to a very successful business model—Uber alone was recently valued at $51 billion—which relies on cheap labor and a creative reading of labor laws. She has made some progress in her work for drivers. Just this month, after Uber tried several tactics to shrink the class, she won a key legal victory when a judge in San Francisco found that more than 100,000 drivers can join her class action.

21 MILLION

Americans work as independent contractors.

"These companies save massively by shifting many costs of running a business to the workers, profiting off the backs of their workers," Liss-Riordan says with calm intensity as she sits in her Boston office, which is peppered with framed posters of Massachusetts Sen. Elizabeth Warren. The bustling block below is home to two coffee chains that Liss-Riordan has sued. If the Uber case succeeds, she tells me, "maybe that will make companies think twice about steamrolling over laws."

"Uber is obviously a car service," she says, and to insist otherwise is "to deny the obvious."

After graduating from Harvard Law School in 1996, Liss-Riordan was working at a boutique labor law firm when she got a call from a waiter at a fancy Boston restaurant. He complained that his manager was keeping a portion of his tips and wondered if that was legal. Armed with a decades-old Massachusetts labor statute she had unearthed, Liss-Riordan helped him take his employer to court—and won. "This whole industry was ignoring this law," Liss-Riordan recalls. Pretty quickly, she became the go-to expert for employees seeking to recover skimmed tips. And before she knew it, her "whole practice was representing waitstaff."

In November 2012, she won a $14.1 million judgment for Starbucks baristas in Massachusetts. After a federal jury ordered American Airlines to pay $325,000 in lost tips to skycaps at Boston's airport, one of the plaintiffs dubbed her "Sledgehammer Shannon." When one of her suits caused a local pizzeria to go bankrupt, she bought it, raised wages, and renamed it The Just Crust.

29%

of the jobs added between 2010 and 2014 were for independent contractors.

Mother Jones

Liss-Riordan estimates that she's won or settled several hundred labor cases for bartenders, cashiers, truck drivers, and other workers in the rapidly expanding service economy. Lawyers around the country have sought her input in their labor lawsuits, including one that resulted in a $100 million payout to more than 120,000 Starbucks baristas in California.

(The ruling was later overturned on appeal.) In a series of cases that began in 2005, she has won multimillion-dollar settlements for FedEx drivers who had been improperly treated as contractors and were expected to buy or lease their delivery trucks, as well as pay for their own gas.

Her Uber offensive began in late 2012, when several Boston drivers approached her, alleging that the company was keeping as much as half of their tips, which is illegal under Massachusetts law. Liss-Riordan sued and won a settlement in their favor. But while looking more closely at Uber, she confirmed the suspicion that had popped up at that dinner in San Francisco: The company's drivers are classified as independent contractors rather than official employees, meaning that Uber can forgo paying for benefits like workers' compensation, unemployment, and Social Security. Uber can also avoid taking responsibility for drivers' business expenses such as fuel, vehicle costs, car insurance, and maintenance.

Ride-app drivers working more than 40 hours a week report earning a yearly average of

$36,580

before expenses like gas.

Mother Jones

In August 2013, Liss-Riordan filed a class-action lawsuit in a federal court in San Francisco, where Uber is based. Her argument hinged on California law, which classifies workers as employees if their tasks are central to a business and are substantially controlled by their employer. Under that principle, the lawsuit says, Uber drivers are clearly employees, not contractors. "Uber is in the business of providing car service to customers," notes the complaint. "Without the drivers, Uber's business would not exist." The suit also alleges that Uber manipulates the prices of rides by telling customers that tips are included—but then keeps a chunk of the built-in tips rather than remitting them fully to drivers. The case calls for Uber to pay back its drivers for their lost tips and expenses, plus interest.

Uber jumped into gear, bringing on lawyer Ted Boutrous, who had successfully represented Walmart before the Supreme Court in the largest employment class action in US history. Uber tried to get the case thrown out, arguing that its business is technology, not transportation. The drivers, the company contended, were independent businesses, and the Uber app was simply a "lead generation platform" for connecting them with customers.

"Why should we tear apart laws that have been put in place over decades to help a $50 billion company at the expense of workers?"

Techspeak aside, Liss-Riordan has heard all this before. When she litigated similar cases on behalf of cleaning workers, the cleaning companies claimed they were simply connecting broom-pushing "independent franchises" with customers. When she won several landmark cases brought by exotic dancers who had been misclassified as contractors, the strip clubs

argued that they were "bars where you happen to have naked women dancing," Liss-Riordan recounts with a wry smile. "The court said, 'No. People come to your bar *because* of that entertainment. Adult entertainment. That's your business.'"

Uber has spent more than

$1 MILLION

lobbying against regulations in California since 2013. It is said to have set aside at least $1 billion for future regulatory fights as it expands abroad.

Mother Jones

Uber's argument is pretty similar to that of the strip clubs. "Uber is obviously a car service," she says, and to insist otherwise is "to deny the obvious." An Uber spokesperson wouldn't address that characterization, but said that drivers "love being their own boss" and "use Uber on their own terms: they control their use of the app, choosing when, how and where they drive."

Some observers have suggested creating a new job category between employee and contractor. But Liss-Riordan is tired of hearing that labor laws should adapt to accommodate upstart tech companies, not the other way around: "Why should we tear apart laws that have been put in place over decades to help a $50 billion company like Uber at the expense of workers who are trying to pay their rent and feed their families?"

For the most part, courts have sided with her. Last March, a federal court in San Francisco denied Uber's attempt to quash the lawsuit, calling the company's reasoning "fatally flawed" (and even citing French philosopher Michel Foucault to make its point). In September, the same court handed Liss-Riordan and her clients a major victory by allowing the case to go forward as a class action. The judge in the Lyft case has called the company's argument—nearly identical to Uber's—"obviously wrong." Last July, the cleaning startup HomeJoy shut down, implying that a worker classification lawsuit filed by Liss-Riordan was a key reason.

The company has been valued at

$51 BILLION.

Mother Jones

Meanwhile, other sharing-economy startups are changing the way they do business. The grocery app Instacart and the shipping app Shyp—Liss-Riordan has cases pending against both—have announced they will start converting contractors to full employees. Liss-Riordan says that's her ultimate goal: to protect workers in the new economy, not to kill the innovation behind their jobs. "This is not going to put the Ubers of the world out of business," she says.

One of her opponents has played a more creative offense. Last fall, the laundry-delivery app Washio convinced a judge that Liss-Riordan had no right to practice law in California. Liss-Riordan easily could have relied on a local lawyer to head the case, but instead she signed up to take the California bar exam in February. "Their plan kind of backfired," she says. "I expect they'll be seeing more of me, rather than less."

EXHIBIT G

POLITICO

POLITICO50

Shannon Liss-Riordan

Attorney

For questioning who the sharing economy is taking for a ride.

Suzanne Kreiter/The Boston Globe/Getty Images

To most people in Silicon Valley, the "sharing economy" represents a transformational business model—a new kind of company, and a new kind of work, poised to revolutionize the economy and free workers from the chains of a single employer

To Shannon Liss-Riordan, the sharing economy is a huge yellow light, and she's been arguing in courts that what companies tout as "bold" and "disruptive" isn't much more than a clever packaging of a corporate strategy to rip off workers. She points out that Lyft and Uber drivers, along with most workers in the sharing economy, are classified as independent contractors, which means that, by law, they don't receive many labor protections available to actual employees, including the minimum wage, overtime pay, worker safety protections, unemployment insurance, health insurance and more.

Since 2013, Liss-Riordan has represented thousands of Uber and Lyft drivers in cases across the country. In April, Uber agreed to settle two of those class-action cases, in Massachusetts and California, for up to $100 million, offering to provide a fuller explanation to drivers who might be banned from the app and allowing them to form "drivers' associations," quasi-unions that will meet with Uber each year but do not have collective bargaining rights. Although a federal judge in August rejected the settlement, sending the two sides back to negotiations, the point of Liss-Riordan's litigation is increasingly clear: Even a brave new workplace is still a workplace, and the new companies of the sharing economy don't have a free pass to use the halo of innovation to mask old-fashioned strong-arming. It's a fight with 50-state consequences.

EXHIBIT H

boston.com

Skycaps and waiters find a legal champion

By Jonathan Saltzman
Globe Staff / April 29, 2008

Days after a federal jury ordered American Airlines to pay a group of nine local skycaps more than $325,000 in lost tips, the plaintiffs and their legal team celebrated with a boisterous dinner at Ruth's Chris Steak House at Boston's Old City Hall.

The skycaps ordinarily spend their workdays lifting heavy baggage onto carts at Logan International Airport's curbside, but on this recent evening they raised wine glasses and beer mugs over plates of rib eye steaks to toast their lead lawyer, Shannon Liss-Riordan, whom they dubbed "Sledgehammer Shannon."

The dinner party got superb service, Liss-Riordan said, which is hardly surprising; she recently filed class-action suits on behalf of waiters and waitresses at the upscale restaurant who have accused management of skimming their tips, too.

Since 2001, Liss-Riordan, a partner in a modest-size law firm in downtown Boston, has brought at least 40 lawsuits on behalf of waiters, bartenders, and other service workers in Massachusetts who say their employers cheated them out of tips.

She took an obscure 1952 state law that protects tip-dependent workers, who can legally be paid less than minimum wage, and has used it to reap millions of dollars in awards and settlements. Lawyers outside Massachusetts have adopted her strategy, including the lawyers who recently won a $100 million award for baristas at Starbucks cafes in California.

A Harvard Law School graduate who helped found a feminist activist group in the early

1990s, Liss-Riordan originally wanted to be a civil rights lawyer. Instead, the Houston native has become something of an avenging angel for workers who rely on customers' generosity as they carry plates of sirloin and scrod, mix mojitos and martinis, and hoist luggage.

"It's hard work," Liss-Riordan, 38, said of such jobs. "It's physically tiring, it's stressful, and you have to be good dealing with people. They work hard for those tips, and part of the problem with the industry is a lot of managers and owners look at the tips and think, 'They shouldn't be making that much money.' So they want to take a piece of it, or subsidize their labor costs for other employees."

Her clients speak of her almost reverently. Don Benoit, one of about 40 waiters who successfully sued the former Federalist restaurant in Boston in Suffolk Superior Court last year for failing to give them all of the 21 percent service charge added to bills at private functions, called her "brilliant." A former American Airlines skycap who expects to get about $3,000 in back tips from the airline said Liss-Riordan champions the "kickstand of corporate America."

But critics say she has manipulated an arcane and confusing law to reap a windfall for her clients and firm. If such litigation continues, detractors say, awards could skyrocket as a result of a state law passed this month mandating that employers pay triple damages for violations of so-called wage-and-hour laws. Critics say the suits hurt fragile businesses and, sometimes, her clients' co-workers.

"I have a lot of respect for Shannon, but I do see this cottage industry she's created around the tip statute as becoming abusive toward employers," said Ariel D. Cudkowicz, who has defended many restaurants, hotels, and Gillette Stadium against Liss-Riordan's suits, reaching out-of-court settlements in several. The prospect of large awards, he said, is "very alluring" to plaintiffs and their lawyers. Liss-Riordan's firm keeps one-third of the money it obtains for clients.

Liss-Riordan first made national headlines in the early 1990s when she joined the daughter of writer Alice Walker and helped founded the Third Wave, a nonprofit group that led voter registration drives in the wake of the Anita Hill-Clarence Thomas

hearings.

After graduating from Harvard Law in 1996 and clerking for a federal judge in Texas, she joined the firm Pyle, Rome, Lichten & Ehrenberg and has been there since. Her mentor, Harold L. Lichten, a well-known labor and employment lawyer, said she is "the smartest, most pugnacious, and toughest attorney I've ever met."

It is not uncommon for him to arrive at their Tremont Street office in the morning only to find Liss-Riordan at her desk after working through the night, he said, "which is particularly amazing given that she has three kids." Liss-Riordan's husband is a writer and stay-at-home father.

Most of her suits allege violations of a state law that prohibits management at restaurants, bars, and hotels from taking a portion of tips reserved for waiters and bartenders who can legally be paid as little as $2.63 an hour, well below the state's minimum wage of $8 an hour.

Some restaurants say other employees, including managers and maitre d's, deserve a share of tips because they sometimes serve food and drinks and also earn relatively low wages. But Liss-Riordan says that if those workers deserve more money, owners should raise their pay.

Defendants have included the Four Seasons Hotel, the Weston Golf Club, Northeastern University, the Palm, and Ruth's Chris, whose Boston lawyer declined to comment. One of the biggest awards came in 2006 when an Essex County jury ordered Hilltop Steakhouse in Saugus to pay an estimated $2.5 million in damages to wait staff, but both sides settled out of court before the judgment became final.

In 2004, the Legislature expanded the 1952 statute to cover employees outside the food and beverage industries, paving the way for Liss-Riordan's skycaps suit. In that complaint, skycaps contended the airline violated the tips law when it began charging passengers a $2-per-bag fee for curbside check-in service in September 2005. Skycaps testified that tips plunged because many passengers mistakenly thought the workers kept the $2 fee and were reluctant to tip on top of it.

The airline countered that it put up signs specifying that the fee excluded tips. But the jury sided with the plaintiffs, ordering the airline on April 7 to turn over all the fees to the skycaps. They will receive amounts ranging from $3,066 to $64,138, Liss-Riordan said. She has since filed similar suits on behalf of skycaps from United Airlines and US Airways.

Her co-counsel in about half the cases has been Hillary Schwab, a 34-year-old partner at the firm.

Lawyers elsewhere in the country have followed Liss-Riordan's lead. Last month, a San Diego County judge ordered Starbucks to pay at least 120,000 baristas in California more than $100 million in tips and interest to cover gratuities that the company handed over to shift supervisors.

Starbucks condemned the ruling and said the judge did not consider the interests of shift supervisors who "deserve their fair share of the tips." Nonetheless, Liss-Riordan wasted no time filing similar suits in Massachusetts and New York on behalf of baristas there.

Several people in the restaurant and hotel business say such litigation harms the industry. William Sander, general manager of the Fifteen Beacon Hotel, location of the former Federalist restaurant, criticized a December verdict siding with wait staff who said management illegally shared their tips with private dining room coordinators. He said the law was unclear about which employees were entitled to tips.

If restaurants are forced to pay managers more, he said, "you'll end up closing 90 percent of the restaurants in the country."

That's hogwash, said Liss-Riordan.

A well-managed business, she said, "does not dip into tips to make ends meet."

EXHIBIT I

The Boston Globe Business

Lawyer fights for low-wage workers' rights

Shannon Liss-Riordan has built her reputation representing those who say they were wronged

By Katie Johnston | GLOBE STAFF DECEMBER 23, 2012

SUZANNE KREITER/GLOBE STAFF

Harvard educated Shannon Liss-Riordan had wanted to be a civil rights attorney.

Strippers denied wages and tips. Pizza makers swindled out of overtime pay. Cleaning ladies, taxi drivers, and truckers forced to pay franchise fees while being treated like hourly employees.

From a 20th-floor office with sweeping views of Beacon Hill, Shannon Liss-Riordan and

her team of lawyers have represented them all. In the three and a half years since Lichten & Liss-Riordan opened its doors, the law firm has won tens of millions of dollars for low-wage workers, often immigrants, who claim to have been wronged by their employers.

In the process, Liss-Riordan has won admiration as a champion of blue-collar workers and a reputation as a tough litigator putting entire industries on notice for breaking wage and hour laws. She is also seen by critics as a media-hungry attorney who uses obscure laws to scare companies away from Massachusetts — and reaps millions of dollars while her low-wage clients collect a few thousand apiece.

Liss-Riordan says she and her firm are doing important work, giving employees the ability to fight back against huge companies that are mistreating their workers in order to save money.

"There are just so many ways that employers take advantage of low-wage workers," she said. "Especially among immigrant workers, they think they're not going to step up and challenge abuses. They think they can take advantage of them because they don't speak English. And it has a depressing effect on the whole labor force."

Liss-Riordan, 43, had planned to be a civil rights attorney until she found her calling in employment litigation. The Harvard-educated lawyer and her partner, Harold Lichten, focus on class-action lawsuits involving independent contractor and tips violations. The firm's nine lawyers have represented thousands of clients, who include waiters, FedEx drivers, cable installers, call center employees, skycaps, and janitors.

Among their biggest victories: a $14 million judgment against Starbucks Corp. for violating a Massachusetts law that prevents supervisors from sharing in baristas' tips.

The docket

A sample of employment lawsuits filed by Lichten & Liss-Riordan.

2006

AMERICAN AIRLINES

Complaint Airline's $2 charge per bag for curbside check-in, which passengers mistook for skycap tips.
Outcome A $325,000 award to nine skycaps was reversed by federal appeals court; a national class action is pending.

2007

COVERALL NORTH AMERICA INC.

Complaint Misclassifying janitorial

Liss-Riordan is the legal force behind more than 100 Upper Crust workers, mostly Brazilian immigrants, who allege the now-bankrupt Boston pizza chain cheated them out of overtime pay.

She is also the lawyer who persuaded a federal judge in Boston to rule that Coverall North America Inc. owed $3 million for illegally collecting franchise fees from 100 cleaning workers. Suits are pending against a half-dozen major cleaning companies nationally.

Workers believe having Liss-Riordan on their side gives them the power to fight back.

"We can go up against a corporation and get our voice heard," said Gerardo Vazquez, one of the lead plaintiffs in a federal class-action lawsuit against the cleaning company Jan-Pro Franchising International Inc.

Vazquez alleges that Jan-Pro charged him $10,000 to buy a franchise, but controlled his accounts and didn't give him enough work to make a living.

Jeffrey Rosin, a Boston lawyer representing Jan-Pro, said Vazquez has no case because he bought his franchise from a California firm that holds regional rights to use the Jan-Pro name but is independent from Jan-Pro Franchising International.

Complaint Misclassifying janitorial workers as independent contractors, requiring them to pay franchise fees and insurance, and unfair and deceptive business practices.
Outcome Damages of $3 million awarded to 100 workers; Coverall appealing. About 100 additional individual arbitration cases pending.

KING ARTHUR'S LOUNGE
Complaint Misclassifying exotic dancers as independent contractors, requiring them to pay shift fees out of tips and tip out other employees.
Outcome Court ruled in favor of plaintiffs, confidential settlement reached for about 80 workers.

2008

STARBUCKS CORP.
Complaint Inclusion of shift supervisors in tip pool with baristas.
Outcome Federal court awarded $14 million to 11,000 baristas, final judgement could grow to $20 million. Identical case pending in New York.

2008-2012

FOUR SEASONS and other hotels in Hawaii; **DUNKIN' DONUTS FRANCHISEES; HARVARD UNIVERSITY**
Complaint Not allowing waitstaff to keep all tips, or not distributing service charges to the waitstaff.
Outcome Cases pending. Won and settled dozens of similar cases, including $4 million settlement with Harvard Club.

"The facts are being twisted and convoluted to sway public and legislative opinion," Rosin said. "It's not an appropriate case to say that [Liss-Riordan is] vindicating the rights of workers because, from Massachusetts to California, Jan-Pro franchisees are testifying they are running independent, profitable businesses."

The International Franchise Association said these lawsuits are hurting the state's economy. Each new franchise that opens creates an average of 40 jobs, said Dean Heyl, director of state government relations for the association, but businesses have become reluctant to bring those opportunities here.

"This litigation has definitely had a chilling effect on franchises entering Massachusetts," Heyl said.

Class-action lawsuits make up the majority of Lichten & Liss-Riordan's caseload. Class actions are key to making companies obey wage and hour laws, Liss-Riordan said, because the cost of legal awards in cases brought by individual workers rarely affects the bottom line. Multiply that by 1,000, though, and executives start paying attention, she said.

The ability to file class actions has come under fire following a recent US Supreme Court decision that makes it easier for employers to insist on worker arbitration agreements.

2010

UPPER CRUST

Complaint Extorting back-wage payments from workers ordered by the Department of Labor.
Outcome Class action certified, scheduled for trial in August. Also pursuing claims in bankruptcy proceeding and against owners.

SYSTEM4 COMMERCIAL CLEANING and ROBERT HALF

Complaint Attempts to use arbitration agreements to prevent class actions.
Outcome Lower courts have ruled for workers; appeals by companies pending.

2012

SEVERAL LARGE BOSTON CAB COMPANIES, THEIR OWNERS, and CITY OF BOSTON

Complaint Misclassifying taxi drivers as independent contractors, requiring them to pay shift fees and expenses.
Outcome Case in progress, no trial date set.

"

'There are just so many ways that employers take advantage of low-wage workers.'

Arbitration takes place out of the public scrutiny of courts, with confidential results, so a favorable outcome for one worker can't be used to help another. Cases may have to be filed individually and the worker could be required to share in the legal costs.

Liss-Riordan recently argued against this "privatization of justice" before the state Supreme Judicial Court. She told the justices her client should be allowed to bring a class-action suit against System4 Commercial Cleaning, regardless of the company's - arbitration-only agreement.

If the SJC rules in her favor, it could set a precedent for other states to find limitations in the Supreme Court decision. But a loss would reinforce the federal ruling, a major setback for practices like hers.

Already, a 2004 Coverall arbitration agreement has kept a group of workers from being a part of her class-action case. In response, her firm filed 100 individual arbitration claims, and forced the company to foot the bill.

Preserving the ability to file class-action lawsuits is vital, said Michael Harper, a Boston University law school professor, because workers need high-powered lawyers to take on big companies, and lawyers need a big group of plaintiffs to make it worth their while.

"The little people don't often have claims that without a class action would be worth pursuing," Harper said.

Indeed, Liss-Riordan's firm gets a third of the money its clients are awarded.

Nicholas Carter, a Boston attorney who has argued several tips cases against Liss-Riordan, said her firm is taking advantage of a restrictive state law that doesn't allow even a low-paid fast food shift manager to share money left in the tip jar.

"The plaintiff's bar is chasing the money and is not protecting the rights of the employees," Carter said.

The lawyers at Lichten & Liss-Riordan get paid only when they win. A $325,000 ruling — and five years of work — on behalf of American Airlines skycaps who claimed they were cheated out of tips was wiped out on appeal. The firm has yet to see a dime of the $3 million judgment against Coverall because it's tied up in appeals.

Liss-Riordan likes to get creative to help the workers she represents.

Last week at an auction selling off 10 Upper Crust locations, she and a co-investor bought the restaurant lease and equipment in Harvard Square. She plans to give employees ownership shares in the restaurant, and is considering naming it The Just Crust.

She also dreams of starting a worker-owned cleaning firm.

“It excites me to try to put the pieces of the puzzle together to create new ways to support workers and give them a leg up in the tug of war between workers and corporations,” she said.

Liss-Riordan is not shy about seeking out media coverage, which alerts other workers about their rights — and attracts new clients. But press coverage can complicate a case, some lawyers say, prompting companies to fight harder and lobby politicians to change the law in their favor.

The way Liss-Riordan sees it, the more awareness the better. Her firm has cases pending in 10 states — a number of which cover workers nationally — and she frequently hears from lawyers around the country. A California attorney who contacted her for advice on tips cases, for instance, went on to win a $100 million judgment against Starbucks in 2008.

As these cases spread, Liss-Riordan hopes unscrupulous companies will change their ways, and that workers who fought back will pave the way for others to be treated fairly.

“For years, many employers have operated their businesses thinking they held the entire deck of cards,” said Philip Gordon, president of the Massachusetts Employment Lawyers Association.

“Thanks to lawyers like Shannon, many of those employers are straightening out their act, and many employees who have suffered years of pay theft are finally getting their due.

“Talk about a legacy,” he said.

Katie Johnston can be reached at kjohnston@globe.com.

EXHIBIT J

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Worker Rights Atty Blazes Trail With Whole Foods, Uber Cases

By **Brian Dowling and Chris Villani**

Law360 (July 24, 2020, 9:02 PM EDT) -- Shannon Liss-Riordan knew it had been a long night when she noticed the morning light breaking and birds chirping outside.

Sitting in her makeshift office in tiny Barnard, Vermont, a small town where Nobel Prize winner Sinclair Lewis also had a summer home, the attorney from Lichten & Liss-Riordan PC had been hard at work redrafting **a complaint** against Whole Foods Inc.

Her grocery-worker clients said the supermarket and its parent company, Amazon Inc., had simultaneously pretended to support the Black Lives Matter movement while also disciplining employees who wore BLM face masks during the coronavirus pandemic, even firing one worker the day before Liss-Riordan's Sunday-into-Monday all-nighter.

"We planned to file first thing Monday morning, and then my lead plaintiff was fired Saturday and that changed everything. We had to ask to get her reinstated," Liss-Riordan said. "I think I was editing until 6 a.m. and then up again before eight to put the final touches on it."

Liss-Riordan has made a career out of representing workers and taking on massive companies. The defendants in her firm's numerous class action lawsuits include **Uber**, **Lyft**, **FedEx**, **IBM**, Michael Bloomberg, **the city of Boston** and, now, Jeff Bezos' companies.

How many class actions does she have pending?

"I can't even tell you," she said, laughing. "It's a lot."

A quick search through the federal docket shows Liss-Riordan listed as an attorney on four dozen still-open civil and bankruptcy cases since 2000. In addition to the Whole Foods suit, she is representing Uber and Lyft workers in one case, and Amazon delivery drivers in another, who are seeking to be classified as employees rather than independent contractors.

Her longtime legal partner, Harold Lichten, said that after two decades of practicing law, Liss-Riordan has her eyes set beyond the run-of-the-mill employment claims.

"She sees her calling as going after some of the larger global issues, not just the wage and hour issues," he said. "She's looking for the trailblazing case."

With the coronavirus pandemic and protests against racial injustice shining a spotlight on workers' rights, it's a unique time and opportunity for attorneys willing to take a chance on a case that doesn't follow a well-established legal framework.

As the "new normal" takes shape with every big or small decision that employers and workers make, Liss-Riordan said the opportunity for that sort of impactful litigation is ripe, as is a chance for profound systemic change.

Since the virus began to spread in the U.S., Liss-Riordan said she, Lichten and the rest of the firm's attorneys and staff have been working "around the clock." It was clear to her from the

outset that the pandemic would disproportionately affect her clients.

In the Uber and Lyft case, the firm lost an emergency injunction motion for employee status that cited the public health crisis, although a Massachusetts federal judge said the drivers could still prevail on their underlying misclassification claim.

"Right away, I saw the impact on the Uber and Lyft drivers we have been representing for years," she said. "We have been focused on their wage issues and having to pay for their own expenses and what a toll that takes on them. It became so apparent the injustice of them not even getting paid sick leave, and what better time than a global pandemic to point out the fact that these are essential workers who should be entitled to their basic rights."

Liss-Riordan said there has been a discernible shift in the public perception of gig workers since the pandemic began and people started to rely even more on services like Instacart and Amazon Prime.

"It's been at these very difficult times in our nation's history that some of the greatest movement forward happened," she said, noting that Congress passed the Fair Labor Standards Act after the Great Depression.

"There is more recognition of the enormous income inequality we have in this country and the plight of workers not getting their rights and companies not recognizing and acknowledging the protections workers need," Liss-Riordan continued. "I think the sentiment is shifting, and I think it's an opportunity for great advances to be made."

So Liss-Riordan has tried to match the moment by opening up new fronts in her ongoing battles with Uber and Lyft and through new suits like the one against Whole Foods. Most of her cases against the ride-hailing companies are in Massachusetts and California. The pandemic has made things a little easier, allowing her to hop on Zoom for a hearing instead of a cross-country flight.

Her home office has recently been decluttered, having been filled with leftover campaign materials from her unsuccessful bid to unseat Massachusetts U.S. Sen. Ed Markey in the Democratic primary. Instead, it will be Markey and U.S. Rep. Joe Kennedy III, the grandson of former Attorney General Robert F. Kennedy and grand-nephew of the 35th president, who will battle it out.

Like many working professionals, Liss-Riordan has had to share her home workspace with her children. She said her three teenagers are interested in her work and in social justice. They came to her campaign events and knocked on doors for U.S. Rep. Ayanna Pressley, D-Mass., and Suffolk County District Attorney Rachael Rollins, a pair of unapologetically progressive candidates, both elected in 2018.

Liss-Riordan said the experience of running for the Senate further motivated her work as a labor lawyer.

"It was such a fabulous opportunity to think more expansively," she said. "There is clearly more political openness now to real change. Joe Biden, who ran as a more centrist candidate, has been moving left and heeding a lot of the calls from labor advocates."

With Democrats "possibly on the verge of retaking the White House and the Senate," Liss-Riordan said they need to be "ready to act."

Asked if he was relieved when Liss-Riordan stepped back from politics and decided to continue practicing at the firm, Lichten paused, then answered, "No, I wanted what was best for her."

"We would have been fine either way," Lichten said of the firm, adding that it wouldn't have hurt having his former partner in public office — a possibility he's not ruling out.

"I'm not sure she's done," Lichten said. "Once you get that politics bug, I think it stays with you a little bit."

As a Democrat and longtime activist herself, Liss-Riordan has not shied away from calling out her own party. She slammed Boston Mayor Marty Walsh for declaring war on racism while defending a police promotional exam twice found to be discriminatory in a long-running suit led by Lichten & Liss-Riordan PC.

Liss-Riordan organized a protest at City Hall just before the city announced it would appeal a judgment in favor of minority officers who say they were denied promotions because of the exam. The city recently signaled its intent to take the case to the First Circuit.

"It's shocking that people in power can say one thing they think their base wants to hear and then do something completely different," she said. "Marty Walsh may say all these things and then continues to fight us tooth and nail and spend hundreds of thousands of taxpayer dollars to defend a racist exam in court."

Liss-Riordan represented former campaign workers in a lawsuit against Bloomberg that alleged the billionaire failed to pay the staffers of his 2020 White House bid. She criticized him over reports he purchased a Colorado ranch for $45 million, saying a small fraction of that amount could have resolved the claims that have spawned multiple lawsuits.

As she has taken on powerful figures and corporate giants, it comes as little surprise that Liss-Riordan has made some adversaries in the BigLaw world.

She calls Labor Secretary Eugene Scalia her "arch-nemesis" from his time as a partner at Gibson Dunn & Crutcher LLP — one of the firms that gig-economy companies hired to fight off Liss-Riordan's cases — and his ongoing Labor Department efforts to make it easier for businesses to classify workers as independent contractors. The two have never been opposing counsel on a case.

"Some defense counsel I have good, long-standing relationships with," she said. "Others are not as nice, but we do what we have to do when we battle it out in court."

A representative from the Labor Department declined to comment on Liss-Riordan's description of Scalia. A handful of other attorneys who have litigated across from her also declined to comment.

While the pandemic has spotlighted many inequities, including those endured by gig workers, Liss-Riordan said there is a real chance things could worsen for that group if Uber, Lyft and others are allowed to continue classifying their workers as independent contractors.

"I worry about what the future of work looks like in this country," she said. "Whenever we emerge from this pandemic if these companies continue to get away with misclassifying their employees, what if other companies watching these battles play out start looking at that and say, 'We are going to bring workers back and make them all independent contractors. Wouldn't that be easier and cheaper and better for society to get them back working?'"

In recent weeks, there has been some good news for her crusade. The First Circuit **sided** with Liss-Riordan's argument that Amazon can't force its delivery drivers to arbitrate employment claims, finding that they qualify as transportation workers engaged in interstate commerce under the Federal Arbitration Act.

Without being able to force workers into arbitration — where employees' claims are generally heard on an individual basis — companies like Uber would have to face a whole class of employees in court and reckon with the possibility of a costly settlement.

Liss-Riordan plans to continue the work that she has been doing in a firm that has swelled in size in recent years to about a dozen attorneys and at least as many staff. She has also not ruled out another political campaign and said her recent experience might lend itself to again running for something on the national stage.

"I've been excited to be back in the courtroom, but we'll see what the future holds," she said.

--Editing by Jill Coffey.

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