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SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF LOS ANGELES

UNLIMITED JURISDICTION

Coordination Proceeding Special Title (Rule 3.550) LYFT ASSAULT CASES[1]	JUDICIAL COUNCIL COORDINATION PROCEEDING NO. 5061 **DEFENDANT LYFT, INC.'S OPPOSITION TO PETITION FOR COORDINATION** Hearing Date: November 20, 2019 Time: 11:00 a.m. Dept. 14 Petition Filed: September 4, 2019

[1] Because not every plaintiff alleges assault, the caption "Lyft Assault Cases" is inaccurate and overbroad, in addition to being unnecessarily prejudicial. Given the diversity of allegations and the fact that all plaintiffs allege vicarious liability for a driver's conduct, and akin to the *Massage Envy Franchising Cases* proceeding discussed below, Lyft respectfully suggests that the proceeding be captioned "Lyft, Inc. Driver Cases."

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INTRODUCTION

The Petition before the Court is not a conventional petition to secure coordination of similar complex cases filed in different California counties.[2] It is an improvident and unprecedented invitation under California Civil Procedure Code §§ 404 and 404.1 to make San Francisco Superior Court a national clearinghouse for claims against San Francisco-based companies that arise out of individual incidents that occurred largely in other states—claims that will involve considerable discovery in those other states and also will be governed in significant measure by the law of those states. The logic of the Petition would mean that all claims against a California-based company—wherever the underlying incidents arise, and however much the disputed facts occurred elsewhere and other states' laws govern the contested legal issues—could be brought in California courts and coordinated. That surely was not the intent in enacting §§ 404 and 404.1, and it would tax the already-overburdened docket of the Superior Courts.

The cases at issue involve allegations of sexual misconduct by independent-contractor drivers using the Lyft "app" (*i.e.*, ride-sharing platform). Plaintiffs' allegations are disturbing to Lyft, which places passenger safety at the heart of its mission. No person should have to endure sexual misconduct of any kind. The Petition, however, presents the question how the judicial system can best handle these cases. For purposes of coordination, two factors are of overriding importance: that the allegations of misconduct are not the same, and that the majority of incidents did not occur in California.

Plaintiffs' counsel seeks coordination in San Francisco Superior Court of 23 cases[3] alleging 38 incidents that occurred in 29 different cities across 19 states—from Marlborough, Massachusetts to Tacoma, Washington. The majority of the alleged incidents—***22*** of 38—

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[2] "Petition" refers to Petitioners' memorandum in support of the "Application ... for Complex Designation, Petition for Coordination, and Request for Stay" (Sept. 4, 2019) filed by Levin Simes Abrams LLP. "Joinder" refers to the "Response in Support of Petition for Coordination" (Sept. 23, 2019) filed by Estey & Bomberger LLP.

[3] Lyft understands that plaintiffs' counsel seeks coordination of 20 cases filed in San Francisco Superior Court plus 3 additional cases: The Petition (filed by the Levin Simes law firm) identified 13 cases the firm filed in San Francisco Superior Court, along with 2 cases filed in other counties by other law firms. The Joinder (filed by the Estey & Bomberger law firm) identified a further 6 cases—all filed in San Francisco. Estey Bomberger and Lyft jointly filed an add-on notice of an additional case filed in Los Angeles; and there is another case filed by Levin Simes in San Francisco.

occurred in other states and involved out-of-state plaintiffs, drivers, and witnesses.[4] The cases involving these 22 alleged out-of-state incidents do not belong in California courts at all. Every *forum non conveniens* factor except the plaintiff's choice of forum (or, more specifically, their California-based counsel's choice of forum) weighs in favor of dismissal,[5] and the similar § 404.1 considerations explain why coordination would be inefficient and inappropriate.

First, each case is different. Each case arises from a different incident of alleged sexual misconduct by a driver, involving a different passenger. The one common factor is that each plaintiff asserts that she or he commissioned a ride using the Lyft app. But in each case, one does not even reach questions of Lyft's liability (whether vicarious, or for negligent screening of drivers or misrepresentation) unless the plaintiff first proves the driver's misconduct, along with other case-specific facts. In short, case-specific facts predominate. That was the Sacramento Superior Court's conclusion in the *Massage Envy Franchising Cases*, in which the court declined to coordinate 8 cases alleging 13 individual instances of sexual assault—all of which occurred in California—by masseurs at Massage Envy franchise locations. *See Massage Envy Franchising Cases*, JCCP No. 4997, Order Denying Petition for Coordination, at 3 (Super. Ct., Sacramento Cty. June 24, 2019) (Request for Judicial Notice ["RFJN"], Ex. A). Notwithstanding common causes of action for vicarious liability and negligent hiring, the court reasoned that proving one assault would have no determinative effect on any of the other cases. All the more so here, where the majority of incidents did not occur in California.

Second, because the majority of cases involve alleged out-of-state incidents, coordination would be significantly more costly for the parties and more time-consuming for the court. ***All the discovery*** that Lyft requires regarding the out-of-state incidents and out-of-state plaintiffs will take place outside California, requiring the California court to issue commissions for third-party depositions and document discovery—and limiting its ability to enforce discovery orders directly.

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[4] Plaintiffs' counsel has stated that they will soon file additional cases, *see, e.g.*, Petition, Decl. of R. Abrams (Sept. 4, 2019), ¶ 24, the vast majority of which Lyft has reason to believe also involve out-of-state incidents.

[5] Lyft has so far moved for dismissal or stay on *forum non conveniens* grounds in 10 cases. In the 6 cases in which plaintiffs to date have filed oppositions, they do not dispute that their home state is an adequate alternative forum.

And, because each plaintiff must establish both the driver's alleged misconduct and damages through discovery from out-of-state drivers, witnesses, law enforcement, healthcare providers, and other non-California sources, much of the discovery that plaintiffs require also is outside California. Attempting to coordinate significant out-of-state discovery from California is certain to slow down these cases and compound the costs for the parties and the court.

Third, coordination will not eliminate inconsistent rulings because the cases will be governed by the law of different states. No matter how rigorously consistent the court's reasoning, coordination of California and out-of-state cases would almost certainly result in inconsistent rulings, because a California court would be required to apply, for example, New York law to tort claims arising in New York and involving a New York plaintiff and driver. Even as to the California plaintiffs, the court's rulings would likely differ from case to case because the alleged facts necessarily differ from case to case.

Fourth, to the extent pretrial proceedings require the appearance in California of third-party witnesses or their counsel, coordination would be unusually inconvenient for them, given that 22 of the 38 incidents allegedly took place as far away as Florida, Massachusetts, and New York. Were the cases to remain coordinated for trial in California, the court could not compel the appearance of these out-of-state witnesses, including the alleged assailant, law-enforcement and medical personnel, and key damages witnesses.

Fifth, § 404 is a mechanism to achieve efficient coordination of similar cases that have been filed in different California counties. Here, 20 of the 23 filed cases—and 20 of the 21 served cases—have been filed in the same court. The one served case that was filed in a court other than San Francisco Superior Court has progressed beyond two rounds of demurrers and into discovery. Thus, while plaintiffs' counsel has identified cases for coordination filed "in different courts," Cal. Civ. Proc. Code § 404, the one non-San Francisco case that has been served is at a different stage than the San Francisco cases, and the Petition and Joinder fail to demonstrate any efficiencies will result from coordinating these differently situated actions.

For all these reasons, the Court should deny coordination.

BACKGROUND

Lyft is a ride-sharing company with its headquarters in San Francisco. It maintains a software platform that connects people seeking a ride with drivers offering them. Drivers who wish to use the platform must (among other things) register with Lyft, submit to and pass a background check (as the complaints concede), and agree to Lyft's Terms of Service. Lyft uses a vendor with expertise in background checks, and it searches six separate databases that include, collectively, global, national, state, and local data. Lyft also has implemented first-of-its-kind, and still-unique, safety measures in the for-hire transportation industry, and recently announced a partnership with the 145-year-old firm ADT to develop additional safety features. After a driver passes the background screenings and is approved by Lyft, he or she may use the Lyft platform to offer rides, or not, whenever and wherever the driver chooses.

There are 23 pending complaints. They allege ***38*** incidents perpetrated by ***37*** different drivers in ***29*** cities and ***19*** states.[6] Of the 38 incidents, less than half (16) occurred in California. Appendix A, attached to the declaration filed with this brief, identifies the cases Lyft understands to be included in the coordination request, the court in which each case was filed, how the case was brought to the Court's attention, the law firm representing the plaintiff(s) in each case, and where the alleged incidents underlying the cases occurred.

The claims of driver misconduct vary dramatically. Most plaintiffs assert that they used the Lyft app to initially match with the driver, but at least one does not. All of the allegations are disturbing, but they also are different: some allege rape; others, being yelled at or grabbed or made afraid; a few, being subjected to lewd or harassing comments. No two plaintiffs allege the same set of facts, just as, with one exception, no two allege misconduct by the same driver or identify a witness in common with the other incidents—not surprisingly, as the incidents occurred in so many different places across the country.

And although the complaints largely repeat the same causes of action, the applicable law varies. For example, some of the alleged incidents occurred in states with statutes that expressly

[6] Alabama, Arizona, California, Florida, Illinois, Louisiana, Massachusetts, Michigan, Minnesota, Nevada, New Jersey, New York, North Carolina, Ohio, South Carolina, Utah, Virginia, Washington, and Wisconsin.

exempt or limit the scope of tort liability for ride-sharing companies from common-carrier obligations; other incidents occurred in states where the applicability of common-carrier obligations to ride-sharing companies is a matter of common law.

THE CASES DO NOT WARRANT COORDINATION

The request for coordination is atypical. The cases do not concern a mass tort: plaintiffs do not allege that they were injured in the same catastrophic accident or by the same environmental contamination. Nor, like many instances of coordinated litigation, do they allege they used the same defective drug or medical device. The sole common thread in the cases is that plaintiffs used the Lyft app to match with a driver. Everything else—the circumstances of the incident, the character of the driver's misconduct, the nature of the plaintiff's injury, the findings of any police investigation of the incident, the driver's background, the then-existing statutory background-check procedures, the witnesses to the alleged incident—is ***not*** common. And those uncommon elements not only predominate, but will involve extensive discovery from out-of-state sources. It is for this reason that the request for coordination is unprecedented in its reach: it asks a California court to coordinate cases that arise from alleged misconduct by different people, with different victims,[7] in different locales, thereby implicating different states' laws.

Coordination under these circumstances will not "promote the ends of justice," Cal. Civ. Proc. Code § 404.1, but will instead create headache, delay, and increased expenses for both sides. Section 404.1 requires consideration of seven factors: (1) whether "common question[s] of fact or law" predominate; (2) whether coordination will promote the "efficient utilization" of judicial resources; (3) the effect of coordination on the "calendar of the courts"; (4) "the convenience of parties, witnesses, and counsel"; (5) the "relative development," or stage, of the actions; (6) the risk of "duplicative and inconsistent rulings"; and (7) the "likelihood of settlement ... should coordination be denied." None of the factors affirmatively weighs in favor of

[7] Many individuals who have been sexually assaulted prefer the term "survivor," but plaintiffs' counsel use the term "victim" in blog posts on their websites; accordingly Lyft uses it here. *See, e.g.*, Levin Simes Abrams Files More Lyft Rape and Sexual Assault Lawsuits, https://www.levinsimes.com/lyft-rape-sexual-assault-lawsuit-update/ (last visited Nov. 5, 2019).

coordination, and the first six weigh strongly against it.[8]

A. Common Questions of Law or Fact Do Not Predominate Where the Underlying Claims Are Separate Incidents of Sexual Misconduct.

As plaintiffs' counsel concede, the "[t]rials of each plaintiff's claim will present ***unique*** issues," for they allege 38 instances of assault, harassment, or other misconduct that differ in time, place, perpetrator, and victim (among other things). Joinder at 9.[9]

Neither the Petition nor the Joinder point to any collection of cases as varied as these that have been coordinated under §§ 404 and 404.1. On the other hand, as noted above, the Sacramento Superior Court declined to coordinate sexual-assault claims brought by 13 plaintiffs even though they raised similar legal issues, because "resolution of those issues of law will be determined by the individual facts of each plaintiff's case. ..." *Massage Envy*, RFJN Ex. A, at 3. In *Massage Envy*, as here, plaintiffs asserted vicarious liability and negligent hiring, supervision, and retention claims. But, as the court explained, "a determination that a plaintiff in one case was sexually assaulted by a masseuse will have no determinative effect whatsoever on whether a plaintiff in another case was sexually assaulted by a different masseuse." *Id.* That reasoning applies with greater force to the Petition, which seeks coordination of cases alleging 16 California incidents, along with 22 incidents in 18 other states.

The Petition's contention that "the facts specific to [plaintiffs'] individual assault ... are secondary to the theories of liability that predominate," Petition at 18, is mistaken for two reasons. *First*, theories of liability succeed or fail depending on their application to the facts. While plaintiffs' counsel argues at one point that "[t]hese cases are all premised on the same operative facts," Petition at 6, at another point they admit that each plaintiff's claim "will present

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[8] Additionally, coordination under § 404 is limited to "complex" actions. But plaintiffs' counsel did not designate 11 cases "complex" when they were filed in San Francisco. *See Jane Doe 1 v. Lyft Inc. et al.*, No. CGC-19-578124; *Jane Doe 2 v. Lyft Inc. et al.*, No. CGC-19-578122; *India Matheson v. Lyft Inc. et al.*, No. CGC-19-578123; *Jennifer Hardin v. Lyft Inc. et al.*, No. CGC-19-578280; *Jane Doe 3 v. Lyft Inc. et al.*, No. CGC-19-578278; *Jane Doe 4 v. Lyft Inc. et al.*, No. CGC-19-578286; *Mary Espinosa v. Lyft Inc. et al.*, No. CGC-19-578282; *Jill Berquist v. Lyft Inc. et al.*, No. CGC-19-578643; *Margarita Bicana v. Lyft Inc., et al.*, No. CGC-19-578645; *Justin Kran v. Lyft Inc. et al.*, No. CGC-19-578647; *Stephanie Nan v. Lyft Inc. et al.*, No. CGC-19-578640.

[9] All emphases are added unless otherwise indicated.

unique issues" and thus should not be "coordinated or joined for trial," Joinder at 9.[10] Counsel is quite right. Consider that each plaintiff asserts claims of vicarious liability against Lyft. The predicate for those claims is an individual injury caused by a driver's misconduct vis-à-vis a passenger, *see, e.g.*, *Lisa M. v. Henry Mayo Newhall Mem'l Hosp.*, 12 Cal. 4th 291, 296 (1995); without that predicate plaintiff-by-plaintiff proof, the vicarious claims against Lyft fail. Plaintiffs also assert misrepresentation claims that depend on individual proof of reliance, *see, e.g.*, *Cadlo v. Owens-Ill., Inc.*, 125 Cal. App. 4th 513, 519 (2004), and may well involve different alleged misrepresentations communicated in different ways. Thus, when the Petition asserts that "[t]he ***only*** differences in each Petitioners' case are the facts specific to their [sic] individual assault and the damages stemming therefrom," Petition at 18, it refers to the very facts that are front and center. Cases can hardly be said to present common issues if the primary actor, the primary misconduct, and the primary victim are all different from case to case, as they are here. To say that those differences are the "only" differences between the cases is like saying the "only" difference between the California Supreme Court and the United States Supreme Court is that they have different judges.

Second, plaintiffs' theories of liability may come to the fore at trial (in jury instructions) or at the close of discovery (in dispositive motions). But plaintiffs' counsel seeks "coordination solely for ***pretrial*** purposes," Joinder at 9; *see also* Petition at 1—*i.e.*, primarily for purposes of discovery. The bulk of that discovery will not be common, because it will concern the incident, the driver, and the passenger. That plainly is true for the underlying claims of assault and harassment at the core of each case. And it is true as well for the claims of intentional and negligent misrepresentation that all plaintiffs bring, which require proof that Lyft made a

[10] Personal-injury cases generally involve unique claims. *See Jolly v. Eli Lilly & Co.*, 44 Cal. 3d 1103, 1123 (1988) ("[M]ajor elements in tort actions for personal injury—liability, causation, and damages—may vary widely from claim to claim, creating a wide disparity in claimants' damages and issues of defendant liability, proximate cause, liability of skilled intermediaries, comparative fault, informed consent, assumption of the risk and periods of limitation."). Courts reject class-action certification where common issues of fact do not predominate, as is typically true for personal-injury cases. *See id.* at 1125 ("[P]ersonal-injury mass-tort class-action claims can rarely meet the community of interest requirement in that each member's right to recover depends on facts peculiar to each particular case."); *Kennedy v. Baxter Healthcare Corp.*, 43 Cal. App. 4th 799, 810 (1996) (denying class certification when individual questions "clearly predominate in determining liability, causation, damages and defenses.")

"positive assertion" (*i.e.*, a guarantee of safety) and that the plaintiff saw and relied on the alleged misrepresentation. *See, e.g.*, *Yanase v. Auto. Club of So. Cal.*, 212 Cal. App. 3d 468, 473 (1989) (tour company not liable for mugging that took place at a motel listed in its guidebook because the guidebook made no positive assertions regarding the safety or security measures taken at the hotel). Discovery about what was communicated, what was heard or read, and what was relied on is specific to each plaintiff. Also not common to the cases is the discovery regarding Lyft's allegedly negligent screening and approval of drivers. That claim requires proof—as to each accused driver—that he was, or became, unfit to perform the work for which he was retained and that Lyft knew or should have known it. *See Doe v. Capital Cities*, 50 Cal. App. 4th 1038, 1054 (1996).[11] Discovery as to that issue concerns each driver's background and past conduct and, therefore, is not common, but driver-specific.

As discussed in more detail below, the law, like the facts, is not common across the cases. Because the majority of the claims arise from out-of-state conduct, other states' laws likely will apply to some, if not all, of the issues before the court. Thus, contrary to plaintiffs' mere assertion, coordination will ***not*** "promote uniform, consistent rulings," Petition at 19—a separate factor weighing against coordination. While the legal questions may be similar, the analysis and conclusions necessarily will vary between the California and non-California incidents, among the non-California incidents for the 18 states already implicated by the pending cases, and indeed among the California incidents, given the application of different facts to the law.

These cases therefore fail to satisfy the first and sixth factors for coordination. Common questions of law and fact do not predominate, and coordination will not diminish the possibility of inconsistent rulings.

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[11] Each plaintiff must establish that Lyft "'knew or should have known' that [the driver] was unfit" in the *specific* way that led to the alleged harm. *See Capital Cities*, 50 Cal. App. 4th at 1054; *Federico v. Superior Court*, 59 Cal. App. 4th 1207, 1212–15 (1997) (finding no negligent hiring where an employee previously convicted of molestation of minors was hired to teach at a school for adults, even though it was foreseeable he would come into contact with minors as a result of his work).

B. Coordination Will Not Result in the Efficient Use of Judicial Resources or Convenience of the Parties, Counsel, and Witnesses.

Far from promoting judicial efficiency or convenience for the parties, counsel, and the witnesses, coordination would create additional work for the court and impose additional costs on the parties, with the prospect of slowing down the entire pretrial process.

Discovery. Consider the coordination of discovery. With regard to the claims arising from the 22 incidents that occurred outside California, both plaintiffs and Lyft will be seeking documents and witness testimony outside California. To obtain that out-of-state discovery, the parties:

- Will require commissions from the court authorizing discovery in the other jurisdictions.
- Must then take those commissions and begin a parallel process in the other jurisdictions to secure subpoenas for testimony and documents—which in some states involves opening a court matter. *See, e.g.*, N.J. Ct. R. 4:11-4(a); Ill. Sup. Ct. R. 204(b).
- If a third party fails to respond, delays, or objects, there is no ready recourse to the coordinating court for relief. *See, e.g.*, Wis. Stat. § 887.24(6)(a) ("An application to the circuit court for a protective order or to enforce, quash, or modify a subpoena issued under this section will commence a special proceeding.").

Completing this process for multiple third-party witnesses and document custodians—more than 200 subpoenas if there were, on average, just 10 witnesses and document custodians per out-of-state case—would unquestionably increase litigation costs and likely would delay the completion of discovery. Put differently, the fact that the majority of the cases involve out-of-state conduct puts much of the customary work of a coordinating court outside its direct control.

Choice of Law. That same fact means that the coordinating court's determination of legal issues will be more cumbersome and less efficient, because it will require the court to undertake *seriatim* choice-of-law analyses (i) as to each case alleging an out-of-state incident (ii) for 19 states (iii) regarding each legal issue. *See Wash. Mut. Bank, FA v. Superior Court*, 24 Cal. 4th

906, 920 (2001) ("A separate conflict of laws inquiry must be made with respect to each issue in the case."). This requires more elaborate briefing by the parties and more detailed decisionmaking by the court.

This extra burden is not a small thing. The choice-of-law analyses before the coordinating court may not be straightforward or sign-posted with precedent. For example, 21 states have statutes that define a "common carrier" to exclude ride-sharing companies like Lyft, including 7 of the states in which alleged incidents occurred.[12] In the other 29 states and the District of Columbia, whether common-carrier responsibilities apply to ride-sharing companies is governed primarily by common law. This can make for an elaborate choice-of-law analysis where, as in one case, the plaintiff alleges that the driver picked her up in New York (a state in which Lyft is not a common carrier, by statute), assaulted her in New Jersey (a common-law state), then returned her to New York. Further complicating the analysis, a number of the relevant states enacted laws in 2017 and 2018 that created regulatory requirements specific to ride-sharing companies. The coordinating court may have to apply those laws, perhaps interpreting them for the first time.

The point is not that a coordinating court cannot or should not perform choice-of-law analyses; California courts do so all the time. The point is that it is inefficient and burdensome for a California court to do so here. After all, the coordinated proceeding would not involve just one or two out-of-state cases. The ***majority*** of the pending cases and claims arise from out-of-state incidents, and plaintiffs' counsel have publicly suggested they are prepared to file more than forty additional cases (the vast majority, Lyft has reason to believe, involving alleged out-of-state incidents). Thus, coordination will not "avoid[] repeated adjudication of common questions of law and fact," Petition at 19; coordination will instead put before the court additional questions of law that must be answered before the cases can proceed. Those questions must be addressed *seriatim* under the laws of 19 (or more) states. Neither the Petition nor Joinder even consider the choice-of-law issues that are certain to arise.

[12] *See* Ala. Code § 32-7C-21(a); Fla. Stat. § 627.748(2); 625 Ill. Comp. Stat. 57/25(e); Mich. Comp. Laws § 257.2127(1); N.Y. Veh. & Traf. Law § 1692; Va. Code § 46.2-2000; Wis. Stat. § 194.01(1).

And those issues, along with the burden of attempting to manage discovery in cases involving incidents in 19 states, renders empty the Joinder's suggestion that "coordination will unburden the calendar of courts in some of California's most congested jurisdictions." Joinder at 8; *see also* Petition at 19. Indeed, coordinating the cases will promote congestion, as the court is forced to address legal and discovery issues that result *from coordination itself*—an independent factor rendering the Petition unwarranted.

Witnesses. Plaintiffs' counsel states that "[t]he pretrial phase of each of these cases is likely to involve a substantial amount of documentary evidence and discovery from numerous witnesses." Joinder at 5. They go even further and asserts that "[c]oordination will ... advance the convenience of the witnesses to the actions." Joinder at 7. But both the Petition and Joinder fail to explain how this can possibly be true for the 22 incidents that occurred in other states. There are sure to be numerous witnesses with relevant knowledge as to each incident and the plaintiff's alleged damages—the plaintiff, the driver, law-enforcement personnel, medical providers, and friends, family, and colleagues of the plaintiff and driver—and all likely are located in the state where the incident occurred. And were the cases to remain coordinated for trial, those witnesses would be inconvenienced by having to come to California to testify.[13] Or they will refuse, and California juries—evaluating the merits of a claim of assault that took place outside of California—will be forced to rely solely on the recorded depositions of out-of-state witnesses. "[I]t is manifestly always more satisfactory and desirable, in jury cases in particular, to present the testimony first hand. ..." *Carr v. Stern*, 17 Cal. App. 397, 408 (1911); *accord* Cal. Civ. P. Code § 2025.620(c)(3) (recognizing "the importance of presenting the testimony of witnesses orally in open court"). The convenience of witnesses cannot weigh in favor of coordination, given that the majority of claims arise from out-of-state incidents.

Even where the California claims are concerned, it is not clear that San Francisco is convenient for the larger number of witnesses. Of the 16 California claims, 13 arise from incidents that took place in Central or Southern California. Apart from convenience, non-parties

[13] In the context of venue, the inconvenience of travel to California militates against a California forum. *See Rubio v. Monsanto Co.*, 181 F. Supp. 3d 746, 763 (C.D. Cal. 2016) (convenience of non-party witnesses is more significant than that of parties because "party witnesses can be compelled to testify regardless of the forum in which the case is litigated").

in those cases may be beyond the subpoena power of San Francisco Superior Court.

Alternatives. The rationale for proposing coordination before San Francisco Superior Court comes down to this: "Lyft's headquarters are in San Francisco, thus the vast majority of Lyft's corporate witnesses and documents are most likely in San Francisco." Joinder at 9. That fact, when considered on its own, may appear to make San Francisco a convenient forum for Lyft. But coordination is not necessary to simplify and streamline discovery from the company for the plaintiffs. Lyft is prepared to agree that documents produced by the company, and depositions taken from corporate witnesses, in one case will be deemed produced and taken in the other cases. Lyft also is willing to identify and produce, without formal document requests, certain basic documents (*e.g.*, records relating to the rides at issue). As only two law firms represent nearly all of the plaintiffs, it should be possible to reach agreement on such mutually-beneficial matters.

In the California-incident cases, absent the complicating considerations of the out-of-state cases, counsel, in the Joinder's words, should be able to "proceed[] with discovery in a cooperative manner," Joinder at 7, and, in addition to sharing Lyft discovery, agree on a common timetable.

C. The Relative Development of the Actions Weighs Against Coordination.

Coordination is intended to bring together two or more "civil actions ... pending in different courts." Cal. Civ. Proc. Code § 404. The Petition satisfies that condition, as 20 cases were filed in the San Francisco Superior Court and served on Lyft, and 3 in other counties. But the relative development of the 20 San Francisco cases versus the 3 other cases weighs against coordinating all of them in one court.

The 20 cases are at a very early stage. In none has there been any discovery. Motions for dismissal on *forum non conveniens* grounds (or demurrer) are pending in 7 of them. The 3 non-San Francisco cases are different. Discovery is underway (after two rounds of demurrers) in the single served case filed outside San Francisco, *Jane Doe v. Lyft, Inc. et al.*, No. BC-705652 (Super. Ct, Los Angeles Cty. filed May 11, 2018). And the remaining non-San Francisco cases, one of which was pleaded as a class action, have not been served three and six months, respectively, after being filed. *See Jane Doe 1, et al., individually and on behalf of all others*

similarly situated v. Lyft, Inc. et al., No. 19CV-0434 (Super. Ct., San Luis Obispo Cty. filed July 24, 2019); *Gillian C. v. Lyft, Inc. et al.*, No. 19STCV13758 (Super. Ct., Los Angeles Cty. filed Apr. 22, 2019). The Petition and Joinder fail to account for these differences or to explain how coordinating the San Francisco cases with the non-San Francisco cases—in particular, the case in which discovery is underway and a putative class action—will create efficiencies. Appending those cases to the differently situated, San Francisco-filed cases will only delay them, or the 20 San Francisco cases.

D. The Likelihood of Settlement Does Not Favor Coordination.

As explained above, common questions of fact and law do not predominate; coordination does not serve the convenience of anyone (with the possible exception of Lyft's corporate witnesses); given the out-of-state claims, coordination places an extra burden on judicial resources and court calendars while failing to prevent multiple rulings that may be inconsistent as a result of the application of different state laws; and the cases are at different stages. That these § 404.1 factors weigh against coordination warrants denial of the Petition.

The remaining § 404.1 factor—the likelihood of coordination promoting settlement—does not alter the balance. Plaintiffs "intend to vigorously pursue their claims in this litigation and expect that Defendants will do the same." Joinder at 8. The utility of coordination, the Petition says, is court supervision of "organized plans for mediation or settlement." Petition at 19; *see also* Joinder at 8–9. But a court can do that in any case, whether coordinated with others, or not. And it is noteworthy that one of just two law firms that support the Petition represents almost all plaintiffs. Should there ever be a prospect of global settlement, the parties will have no difficulty finding one another. For now, coordination cannot change the fundamental fact that each plaintiff's factual circumstances, injuries, and damages are unique. And neither the Petition nor the Joinder explains how coordination will make settlement more likely in those circumstances.

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The Petition and Joinder treat California's coordination statue—a statute intended to facilitate the coordination of ***California-based cases***—as license to create a multidistrict litigation along the lines of that authorized by federal statute, 28 U.S.C. § 1407. Coordination here cannot

be fairly compared to a federal MDL. Cases subject to MDL pretrial coordination are transferred back to their home districts for trial. If the Court orders coordination and elects to keep all of the cases in California, not only will all remain here, but others will follow. That would turn California (and San Francisco Superior Court) into the national clearinghouse for Lyft tort litigation, as well as the tort litigation of other ride-sharing companies based in San Francisco. And, by the same logic, any technology, bioscience, or other company headquartered in San Francisco whose work has national scope.[14]

Such an application of § 404 would add considerably to the more-than-16,000 cases filed each year in the San Francisco Superior Court. Those 16,000 cases are not created equal, however, and the cases here involving out-of-state incidents will involve (i) significant third-party discovery that is not, as a practical matter, subject to coordination by a California court, plus (ii) troublesome choice-of-law analyses. Burden abounds: either plaintiffs' counsel is envisioning a very long coordinated discovery period, to ensure that the parties have sufficient time to take out-of-state discovery and engage in motions practice under the law of 19 (or more) states, or they are ignoring that coordination will produce the very inefficiencies they contend it will yield.

CONCLUSION

Petitioners cannot satisfy six of the seven § 404.1 criteria; and the remaining factor does not weigh in favor of coordination. The Court should deny the Petition.

DATED: November 6, 2019

WARREN METLITZKY
CONRAD & METLITZKY LLP

DATED: November 6, 2019

BETH STEWART
WILLIAMS & CONNOLLY LLP
Attorneys for Defendant Lyft, Inc.

[14] There is no reason to think that observant counsel following the ruling in this matter would not attempt to use the coordination mechanisms of § 404 in Los Angeles to center all tort-based litigation against Los Angeles-based companies in Los Angeles Superior Court, regardless of the location of the victim, tortfeasor, and underlying torts.

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SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF LOS ANGELES

UNLIMITED JURISDICTION

Coordination Proceeding Special Title (Rule 3.550) LYFT ASSAULT CASES[1]	JUDICIAL COUNCIL COORDINATION PROCEEDING NO. 5061 **DECLARATION OF BETH A. STEWART IN SUPPORT OF LYFT, INC.'S OPPOSITION TO THE PETITION FOR COORDINATION** Hearing Date: November 20, 2019 Time: 11:00 a.m. Dept. 14 Petition Filed: September 4, 2019

[1] Lyft, Inc. incorporates the first footnote of its Opposition to the Petition for Coordination objecting to the caption for this proceeding.

I, Beth A. Stewart, declare as follows:

1. I am a partner at the firm of Williams & Connolly LLP, attorneys of record for Defendant Lyft, Inc. I am licensed to practice law in the District of Columbia, and have secured approval to appear *pro hac vice* in two of the matters included in the instant Petition for Coordination: *Jane Doe 4 v. Lyft, Inc. et al.*, San Francisco Superior Court Case No. CGC-19-578286; and *Jane Roe 1, et al. v. Lyft, Inc., et al.*, San Francisco Superior Court Case No. CGC-19-578975. The following facts are known to me personally, and if called upon as a witness, I could testify to them competently.

2. The content of Appendix A includes information found in the complaints in each of the actions noticed in the September 4, 2019 "Application … for Complex Designation, Petition for Coordination, and Request for Stay," filed by Levin Simes Abrams, and the September 23, 2019 "Response in Support of Petition for Coordination," filed by Estey & Bomberger LLP. The complaints were attached to declarations accompanying those filings.

3. Appendix A also includes information found in the complaints filed in *Jane Doe v. Lyft, Inc. et al.*, Los Angeles Superior Court Case No. BC705652 (filed May 11, 2019), which was noticed as a potential add-on case on September 24, 2019, and *Jane Doe 7 v. Lyft, Inc. et al.*, San Francisco Superior Court Case No. CGC-19-580014 (filed October 16, 2019), in which Levin Simes is the counsel of record for the plaintiff. Lyft expects that all pending deadlines in the latter action will be continued pending the Court's ruling on the Petition for Coordination.

4. Appendix A is attached to this declaration as Exhibit 1.

5. The complaint in *Jane Doe v. Lyft, Inc. et al.*, Los Angeles Superior Court Case No. BC705652, is attached to this declaration as Exhibit 2.

6. The complaint in *Jane Doe 7 v. Lyft, Inc. et al.*, San Francisco Superior Court Case No. CGC-19-580014, is attached to this declaration as Exhibit 3.

7. I understand that the operative complaints in *Gillian C. v. Lyft Inc. et al.*, Los Angeles Superior Court Case No. 19STCV13758 (filed April 22, 2019), and *Jane Doe 1, et al., individually and on behalf of others similarly situated v. Lyft Inc. et al.*, San Luis Obispo Superior Court Case No. 19CV-0434 (filed July 24, 2019), which were identified in the Levin Simes September 4, 2019 Petition for Coordination have not been served on Lyft. Certified copies of