LAW & MOTION CALENDAR
TENTATIVE RULINGS

April 18, 2024

Judge Melissa R. McCormick
Dept. CX104

Department CX104 hears law and motion on Thursdays at 2:00 p.m.

Court reporters: Official court reporters typically are not provided in this department for any proceedings. If the parties desire the services of a court reporter, the parties should follow the procedures set forth on the court's website at www.occourts.org.

Tentative rulings: The court endeavors to post tentative rulings on the court's website by 9:00 a.m. the day of the hearing. Tentative rulings may not be posted in every case. Please do not call the department for tentative rulings if tentative rulings have not been posted.

Submitting on tentative rulings: If all parties intend to submit on the tentative ruling and do not desire oral argument, please advise the courtroom clerk or courtroom attendant by calling (657) 622-5304. Please do not call the department unless all parties submit on the tentative ruling. If all parties submit on the tentative ruling and so advise the court, the tentative ruling will become the court's final ruling and the prevailing party shall give notice of the ruling.

Appearances and public access: Appearances, whether in person or remote, must comply with Civil Procedure Code section 367.75, California Rule of Court 3.672, Orange County Superior Court Local Rule 375, and Orange County Superior Court Appearance Procedure and Information—Civil Unlimited and Complex (pub. 9/9/22).

Unless the court orders otherwise, remote appearances will be conducted via Zoom. All counsel and self-represented parties appearing via Zoom must check in through the court's civil remote appearance website before the hearing begins. Check-in instructions are available on the court's website.

The public may attend hearings by coming to court or via remote access as described above.

Photographing, filming, recording and/or broadcasting court proceedings are prohibited unless authorized pursuant to California Rule of Court 1.150 or Orange County Superior Court Local Rule 180.

Non-appearances: If nobody appears for the hearing and the court has not been notified that all parties submit on the tentative ruling, the court shall determine whether the matter is taken off calendar or the tentative ruling becomes the final ruling. The court also might make a different order. *See Lewis v. Fletcher Jones Motor Cars, Inc.* (2012) 205 Cal.App.4th 436, 442 n.1.

NO.	CASE NAME	MATTER
1	Bond v. KPG Healthcare LLC 2020-01140084	<u>Plaintiff's Motion for Final Approval of Class Action Settlement</u> The court has reviewed and considered the papers, including the supplemental papers, filed in support of plaintiff's motion for final approval of a class action settlement. The court thanks counsel for counsel's efforts regarding class member Coleman. The court grants the motion as follows:

		$5,000.00 for enhancement award to plaintiff; $272,256.44 for attorneys' fees; $12,488.35 for litigation costs; and $9,750.00 for settlement administration costs. The final accounting hearing is scheduled for April 17, 2025 at 9:00 a.m. in Department CX104. Plaintiff is ordered to give notice.
2	Ramos, et al. v. Hyatt Die Cast and Engineering Corporation–South, et al. 2020-01174518	Plaintiffs' Motion for Final Approval of Class Action and PAGA Settlement The court has reviewed and considered the papers filed in support of plaintiffs' motion for final approval of an $852,679.11 class action and PAGA settlement. The court has the following questions and comments: 1. *Solis v. Partners Personnel-Management Services*, Case No. 2021-01209210 remains pending. Do the parties intend to dismiss that case? If so, when? If not, how do the parties propose to resolve that case? 2. The amount of attorneys' fees requested exceeds the "not to exceed" amount approved in the court's November 9, 2024 order (ROA 171). Why? Is it because the triggering of the escalator clause resulted in a larger Gross Settlement Amount? 3. The settlement administrator's fees exceed the "not to exceed" amount approved in the court's November 9, 2024 order (ROA 171). Why? In addition, the settlement administrator should submit an invoice substantiating the claimed costs. 4. Plaintiffs' counsel seeks reimbursement for postage, copy, and online research costs. Counsel should provide legal authority demonstrating that each of these costs may be awarded. Plaintiffs should also provide an invoice substantiating and explaining the $10,628 "Secretariat/Economists expert fee." 5. As to the proposed order and judgment (ROA 177): a. Counsel's information should be removed from the caption page; b. The caption and other references in the proposed order and judgment to the "class action settlement" should be revised to state "class action and PAGA settlement"; c. The proposed order and judgment should state that no disputes were received;

		d. Paragraph 16 is inconsistent with the paragraphs 18 and 19 of the settlement agreement. Rather than attempting to restate the releases in the proposed order and judgment, the parties may prefer to state that the claims are released as set forth in the Settlement Agreement; e. The last sentence of paragraph 17 should state that the court retains jurisdiction "pursuant to Civil Procedure Code section 664.6" to enforce the settlement, the final approval order, and the judgment; f. Paragraph 18 should be revised to state: "The final accounting hearing is scheduled for April 17, 2025 at 9:00 a.m. in Department CX104. Plaintiffs shall submit a final accounting report at least 9 court days before the final accounting hearing regarding the status of the settlement administration. The final report must include all information necessary for the court to determine the total amount actually paid to class members and any amounts tendered to the State Controller's Office under the unclaimed property law." g. If the settlement administrator maintained a website for this case, the proposed order and judgment should state that the settlement administrator will post a copy of the order and judgment on the website for 180 days. If not, the proposed order and judgment should otherwise address how notice of entry of judgment will be given. The hearing on plaintiffs' motions for final approval is continued to <u>August 22, 2024 at 2:00 p.m.</u> in Department CX104 to enable the parties to address and respond to the above issues. *See also* Department CX104 Guidelines for Approval of Class Action Settlements and PAGA Settlements (www.occourts.org). A supplemental brief shall be filed at least 9 court days before the hearing and shall address as necessary each of the above points. Plaintiff is ordered to give notice, including to the LWDA, and to file a proof of service. Plaintiff must also serve the LWDA with any supplemental documents, and file a proof of service.
3	Solis v. Partners Personnel-Management Services, LLC, et al. 2021-01209210	<u>Status Conference</u> In a concurrently-issued ruling in *Ramos, et al. v. Hyatt Die Cast and Engineering Corporation-South*, Case No. 2020-01174518, the court continued the hearing on plaintiffs' motion for final approval of a class action and PAGA settlement to August 22, 2024 at 2:00 p.m. in Department CX104. One of the questions for the parties to address in their supplemental filings is how the parties propose to resolve this case. *See*

		4/15/24 Order Re Motion for Final Approval of Class Action & PAGA Settlement (Case No. 2020-01174518). The April 18, 2024 status conference is continued to August 22, 2024 at 2:00 p.m. in Department CX104. The parties are ordered to file a joint status conference statement at least 5 court days before the hearing. Clerk to give notice.
4	Sepulveda v. BaronHR West, Inc. 2022-01285973	Plaintiff Beatriz A. Miguel Sepulveda's Motion to Compel Responses to Form Interrogatories—General Plaintiff Beatriz A. Miguel Sepulveda moves to compel defendant BaronHR West, Inc. to provide responses to plaintiff's Form Interrogatories—General (Set One). Defendant has not served responses to the Form Interrogatories—General (Set One). For the following reasons, plaintiff's unopposed motion is granted. Due to defendant's failure to serve timely responses to the interrogatories, defendant has "waive[d] any right to exercise the option to produce writings under Section 2030.230, as well as any objection to the interrogatories, including one based on privilege or on the protection for work product . . . ." Cal. Civ. Proc. Code § 2030.290(a). Defendant BaronHR West, Inc. shall provide responses, without objections, to plaintiff's Form Interrogatories—General (Set One) by May 1, 2024. Plaintiff's request for sanctions is granted. Defendant BaronHR West, Inc. shall pay sanctions in the amount of $660.00 to plaintiff by May 1, 2024. *See, e.g.*, Cal. Civ. Proc. Code § 2023.010(d); *id.* § 2030.290(c). Plaintiff to give notice. Plaintiff Beatriz A. Miguel Sepulveda's Motion to Compel Responses to Special Interrogatories Plaintiff Beatriz A. Miguel Sepulveda moves to compel defendant BaronHR West, Inc. to provide responses to plaintiff's Special Interrogatories (Set One). Defendant has not served responses to the Special Interrogatories (Set One). For the following reasons, plaintiff's unopposed motion is granted. Due to defendant's failure to serve timely responses to the interrogatories, defendant has "waive[d] any right to exercise the option to produce writings under Section 2030.230, as well as any objection to the interrogatories, including one based on privilege or on the protection for work product . . . ." Cal. Civ. Proc. Code § 2030.290(a). Defendant BaronHR West, Inc. shall provide responses, without objections, to plaintiff's Special Interrogatories (Set One) by May 1, 2024. Plaintiff's request for sanctions is granted. Defendant BaronHR West Inc. shall pay sanctions in the amount of $660.00 to

		plaintiff by May 1, 2024. *See, e.g.*, Cal. Civ. Proc. Code § 2023.010(d); *id.* § 2030.290(c). Plaintiff to give notice. Plaintiff Beatriz A. Miguel Sepulveda's Motion to Compel Responses to Requests for Production Plaintiff Beatriz A. Miguel Sepulveda moves to compel defendant BaronHR West, Inc. to provide responses to plaintiff's Requests for Production (Set One). Defendant has not served responses to plaintiff's Requests for Production (Set One). For the following reasons, plaintiff's unopposed motion is granted. Due to defendant's failure to serve timely responses to the requests, defendant has "waive[d] any objection to the demand, including one based on privilege or on the protection for work product . . . ." Cal. Civ. Proc. Code § 2031.300(a). Defendant BaronHR West, Inc. shall produce documents and provide responses, without objections, to plaintiff's Requests for Production (Set One) by May 1, 2024. Plaintiff's request for sanctions is granted. Defendant BaronHR West, Inc. shall pay sanctions in the amount of $660.00 to plaintiff by May 1, 2024. *See, e.g.,* Cal. Civ. Proc. Code § 2023.010(d); *id.* § 2031.300(c). Plaintiff to give notice. Status Conference The court has read and considered the parties' joint status conference statement filed April 4, 2024 (ROA 89), and based thereon continues the April 18, 2024 status conference to August 15, 2024 at 9:00 a.m. in Department CX104. The parties are ordered to file a joint status conference report at least five court days before the hearing. Clerk to give notice.
5	Uber Technologies, Inc., et al. v. California Department of Industrial Relations, Division of Occupational Safety and Health, et al. 2023-01330884	Defendants' Demurrers to Complaint Defendants California Department of Industrial Relations—Division of Occupational Safety and Health and Jeff Killip, in his capacity as Chief of the Division of Occupational Safety and Health (together, the "State Defendants"), demur to plaintiffs Uber Technologies, Inc., Uber USA, LLC, Rasier-CA, LLC, Rasier, LLC and Portier, LLC's complaint. Defendants LaShon Hicks, James Jordan, Roberto Moreno and Karen VanDenBerg (together, the "Driver Defendants") also demur to plaintiffs' complaint. For the following reasons, the demurrers are sustained without leave to amend. *Background* On August 1, 2022 Cal/OSHA issued three citations to plaintiff Uber Technologies, Inc. alleging that Uber failed to establish,

		implement and maintain an Injury Illness and Prevention Program and written COVID-19 Prevention Program, and failed to maintain records. Complaint (ROA 2) ¶¶ 43, 48, 49; State Defendants' Request for Judicial Notice Ex. A; Driver Defendants' Request for Judicial Notice Ex. A. On August 23, 2022 Uber filed an administrative appeal of those citations before the California Department of Industrial Relations Occupational Safety and Health Appeals Board. Complaint (ROA 2) ¶ 46. Among other affirmative defenses, Uber asserted it is not an employer as defined in the Labor Code, and Cal/OSHA lacks jurisdiction over it pursuant to Business and Professions Code section 7451. State Defendants' Request for Judicial Notice Ex. B; Driver Defendants' Request for Judicial Notice Ex. B. Proposition 22 added sections 7448 to 7467 to the Business and Professions Code. Section 7451 provides, "Notwithstanding any other provision of law, including, but not limited to, the Labor Code, the Unemployment Insurance Code, and any orders, regulations, or opinions of the Department of Industrial Relations or any board, division, or commission within the Department of Industrial Relations, an app-based driver is an independent contractor and not an employee or agent with respect to the app-based driver's relationship with a network company" if the following conditions are met: (a) The network company does not unilaterally prescribe specific dates, times of day, or a minimum number of hours during which the app-based driver must be logged into the network company's online-enabled application or platform. (b) The network company does not require the app-based driver to accept any specific rideshare service or delivery service request as a condition of maintaining access to the network company's online-enabled application or platform. (c) The network company does not restrict the app-based driver from performing rideshare services or delivery services through other network companies except during engaged time. (d) The network company does not restrict the app-based driver from working in any other lawful occupation or business. Bus. & Prof. Code § 7451. On March 15, 2023 the Driver Defendants moved for party status in the Appeals Board proceeding, alleging they were "'affected employee[s].'" Complaint (ROA 2) ¶ 47. The Appeals Board Administrative Law Judge granted the Driver Defendants' motion. The May 8, 2023 order granting the motion for party status states: "It is noted that this is not a final determination

		on the merits of the issue as to whether the Drivers are employees or independent contractors within the jurisdictional context at issue between the parties. Rather, this determination pertains only to the motion for party status so that the Drivers may participate in the proceeding as a party." State Defendants' Request for Judicial Notice Ex. C; Driver Defendants' Request for Judicial Notice Ex. F. On June 12, 2023 Uber filed a petition for reconsideration of the order granting party status. State Defendants' Request for Judicial Notice Ex. D. The petition for reconsideration remains pending before the Appeals Board. The same day Uber filed its petition for reconsideration with the Appeals Board, plaintiffs filed the instant lawsuit. Plaintiffs' complaint alleges two causes of action for declaratory relief, one against the State Defendants and one against the Driver Defendants. Both causes of action seek a declaration "that the Driver Defendants are independent contractors." Complaint (ROA 2) ¶¶ 92, 102. *Discussion* In ruling on a demurrer, a court must accept as true all allegations of fact contained in the complaint. *Blank v. Kirwan* (1985) 39 Cal.3d 311, 318. A demurrer challenges only the legal sufficiency of the affected pleading, not the truth of the factual allegations in the pleading or the pleader's ability to prove those allegations. *Cundiff v. GTE Cal., Inc.* (2002) 101 Cal.App.4th 1395, 1404-05. Questions of fact cannot be decided on demurrer. *Berryman v. Merit Prop. Mgmt., Inc.* (2007) 152 Cal.App.4th 1544, 1556. Because a demurrer tests only the sufficiency of the complaint, a court will not consider facts that have not been alleged in the complaint unless they may be reasonably inferred from the matters alleged or are proper subjects of judicial notice. *Hall v. Great W. Bank* (1991) 231 Cal.App.3d 713, 718 n.7. A party generally must exhaust administrative remedies before seeking relief in court. *Contractors' State License Bd. v. Superior Court* (2018) 28 Cal.App.5th 771, 778; *see also Coachella Valley Mosquito & Vector Control Dist. v. California Public Employment Relations Bd.* (2005) 35 Cal.4th 1072, 1080. The exhaustion rule "'is not a matter of judicial discretion, but is a fundamental rule of procedure . . . binding upon all courts.'" *Contractors' State License Bd.*, 28 Cal.App.5th at 779 (quoting *Abelleira v. District Court of Appeal* (1941) 17 Cal.2d 280, 293). "The Supreme Court has characterized the exhaustion rule as '"'a jurisdictional prerequisite to resort to the courts.'"'" *Contractors' State License Bd.*, 28 Cal.App.5th at 779. "'"In the context of administrative proceedings, a controversy is not ripe for adjudication until the administrative process is completed and the agency makes a final decision that results in a direct and immediate impact on the parties."'" *Tejon Ranch Estate, LLC v. City of Los Angeles* (2014) 223 Cal.App.4th 149, 156. A

		party "may not evade the exhaustion requirement by filing an action for declaratory or injunctive relief." *Contractors' State License Bd.*, 28 Cal.App.5th at 780. The issue of whether Cal/OSHA has jurisdiction to issue citations to Uber remains pending before the Appeals Board. Uber contends in the ongoing Appeals Board proceeding that Cal/OSHA "does not have jurisdiction to open an inspection or issue Citations relating to ride-share drivers pursuant to Business and Professions Code Section 7451." State Defendants' Request for Judicial Notice Ex. B; Driver Defendants' Request for Judicial Notice Ex. B. Uber also contends in the Appeals Board proceeding that it is not the Driver Defendants' employer. State Defendants' Request for Judicial Notice Ex. B; Driver Defendants' Request for Judicial Notice Ex. B. The May 8, 2023 Appeals Board order granting the Driver Defendants' motion for party status states that the issue of the application of section 7451 to the Driver Defendants has not been finally adjudicated before the Appeals Board: "[T]his [order granting party status] is not a final determination on the merits of the issue as to whether the Drivers are employees or independent contractors within the jurisdictional context at issue between the parties. Rather, this determination pertains only to the motion for party status so that the Drivers may participate in the proceeding as a party." State Defendants' Request for Judicial Notice Ex. C; Driver Defendants' Request for Judicial Notice Ex. F. In addition, in its petition for reconsideration of the May 8, 2023 Appeals Board order, Uber asked the Appeals Board to stay the May 8, 2023 order and a May 10, 2023 discovery order. State Defendants' Request for Judicial Notice Ex. D. One reason Uber cited as ostensible support for a stay is the filing of the instant action, which strongly implies plaintiffs seek a ruling from the superior court to be applied in the ongoing administrative proceedings before the Appeals Board. State Defendants' Request for Judicial Notice Ex. D (at 12:20-22) ("Further, Uber is filing an action for Declaratory Relief to seek a determination, in a competent court, that Uber is in compliance with Proposition 22 and that the Drivers are not employees"). Declaratory relief for this purpose is not appropriate. *See, e.g.*, *Public Employees' Retirement Sys. v. Santa Clara Valley Transportation Auth.* (2018) 23 Cal.App.5th 1040, 1046. In sum, the exhaustion doctrine applies to plaintiffs' claims, and plaintiffs have not exhausted the administrative remedies. The doctrine requiring exhaustion of administrative remedies is subject to exceptions. *Coachella Valley*, 35 Cal.4th at 1080; *Public Employment Relations Bd. v. Superior Court* (1993) 13 Cal.App.4th 1816, 1827. Exhaustion of administrative remedies may be excused when a party claims the agency lacks authority, statutory or otherwise, to resolve the underlying dispute between the parties. *Coachella Valley*, 35 Cal.4th at

		1081-82. "In deciding whether to entertain a claim that an agency lacks jurisdiction before the agency proceedings have run their course, a court considers three factors: the injury or burden that exhaustion will impose, the strength of the legal argument that the agency lacks jurisdiction, and the extent to which administrative expertise may aid in resolving the jurisdictional issue." *Id.* at 1082. In regard to the first factor, plaintiffs have not demonstrated that they will suffer any unusual or irreparable injury if they are required to complete the ongoing proceeding before the Appeals Board before seeking judicial review. Nor have plaintiffs demonstrated there is a significant public interest in obtaining a definitive resolution of the issue before the Appeals Board. Furthermore, to the extent there is a significant public interest in the broader question of the validity of section 7451, a case addressing whether that section conflicts with article XIV, section 4 of the California Constitution, and thus requires Proposition 22 to be deemed invalid, is currently pending in the California Supreme Court. *Castellanos v. State of California*, Case No. S279622 (review granted Jun. 28, 2023). The first factor weighs against judicial intervention. In regard to the second factor, plaintiffs argue "[d]efendants have not offered a hint of an argument . . . that Cal[/]OSHA could possibly have jurisdiction to cite Uber for alleged safety issues related to [the] Driver Defendants." Opp. (ROA 274) at 17:2-4. *Coachella Valley* states the contrary, i.e., the second factor addresses the strength of the legal argument that the agency lacks jurisdiction to resolve the underlying dispute between the parties. *See Coachella Valley*, 35 Cal.4th at 1082 ("exhaustion of administrative remedies may be excused when a party claims that 'the agency lacks authority, statutory or otherwise, to resolve the underlying dispute between the parties'"); *see also Edgren v. Regents of University of Cal.* (1984) 158 Cal.App.3d 515, 520-21 (lack of jurisdiction exception to exhaustion requirement did not apply to Regents' administrative grievance procedure for plaintiff's termination). In addition, for section 7451 to apply, Uber must show that it complies with section 7451's requirements before its drivers may be classified as independent contractors. *See James v. Uber Techs. Inc.* (N.D. Cal. 2021) 338 F.R.D. 123, 145. Plaintiffs agree resolution of this issue will require at least some fact discovery. *See* Opp. (ROA 274) at 19:16-17 ("minimal discovery will show that Driver Defendants fall squarely within the language of Prop 22"). Indeed, plaintiffs have served discovery in this case to the Driver Defendants seeking factual information regarding the application of section 7451 to the Driver Defendants. *See, e.g.*, Plaintiffs' Separate Statements (ROA 92, 94, 98, 102, 108, 112, 114, 116, 120, 124, 126, 128, 136, 140, 142, 144). The second factor weighs against judicial intervention.

		The third factor also weighs against judicial intervention. Plaintiffs argue "Cal[/]OSHA does not have any specialized expertise in employment classification." Opp. (ROA 274) at 19:25-26. That is not the inquiry for the third factor in this case. The third factor here addresses the extent to which the Appeals Board's expertise "may aid in resolving the jurisdictional issue." Plaintiffs do not dispute that the Appeals Board has extensive experience and expertise in applying worker classification tests. That the Appeals Board proceeding may involve a new or different test does not demonstrate that the Appeals Board's expertise will not aid in resolving the jurisdictional issue, particularly where that inquiry, as discussed above, may involve factual analysis. The third factor weighs against judicial intervention. Plaintiffs also argue the futility exception applies and that the Appeals Board will not provide Uber with due process. Failure to exhaust administrative remedies is excused if it is clear that exhaustion would be futile. *Coachella Valley*, 35 Cal.4th at 1080. "'The futility exception requires that the party invoking the exception "can positively state that the [agency] has declared what its ruling will be on a particular case."'" *Id.* at 1080-81. In addition, "[i]f the [administrative] remedy provided does not itself square with the requirements of due process the exhaustion doctrine has no application." *Bockover v. Perko* (1994) 28 Cal.App.4th 479, 486. On January 26, 2024 the Appeals Board moved ex parte (ROA 260) for leave to intervene as a defendant in this case. The court denied the ex parte application without prejudice to the Appeals Board filing and serving a motion for leave to intervene on regular notice. ROA 269. As of today's date, the Appeals Board has not done so. Plaintiffs argue the Appeals Board's attempt to intervene shows the Appeals Board is not neutral and that its decision in the ongoing proceeding will be adverse to Uber. These arguments lack merit. In its ex parte application, the Appeals Board stated it "takes no position on the substantive question of whether [the] Driver Defendants are independent contractors under Proposition 22." Ex Parte App'n (ROA 260) at 9:22-23; *see also id.* at 9:30-10:3 ("[T]he Appeals Board is a neutral adjudicative entity with no vested interest in the success or failure of any party on the merits of the citations or the Proposition 22 arguments. The Appeals Board's interest lies primarily in the preservation of its institutional, adjudicative role, administrative autonomy, and ensuring that its statutory scheme under the Cal/OSH Act is properly interpreted and enforced."). The Appeals Board's ex parte application demonstrates neither a lack of neutrality nor a declaration of what its ruling will be. *See Coachella Valley*, 35 Cal.4th at 1080-81 ("'The futility exception requires that the party invoking the exception "can

		positively state that the [agency] has declared what its ruling will be on a particular case""). Plaintiff also argue the second cause of action seeks different, broader relief than the first cause of action and "is not limited by the Cal[/]OSHA proceedings" (Opp. (ROA 274) at 11:45), and that therefore the demurrer to the second cause of action should be overruled. The complaint belies this claim. The first and second causes of action seek identical relief and, moreover, seek relief that expressly implicates the Appeals Board proceeding. *Compare* Complaint ¶ 91 (first cause of action) ("A ripe, actual controversy therefore exists between the Parties as to whether the Driver Defendants are independent contractors under the governing test set forth by Prop 22, and thus, whether the proceedings before Cal/OSHA properly concern 'employees' and a 'place of employment' or not") and ¶ 92 (first cause of action) ("Uber is entitled to a declaratory judgment that the Driver Defendants are independent contractors") *with* Complaint ¶ 101 (second cause of action) ("A ripe, actual controversy therefore exists between the Parties as to whether [the] Driver Defendants are independent contractors under the governing test set forth by Prop 22, and thus, whether the proceedings before Cal/OSHA properly concern 'employees' and a 'place of employment' or not") and ¶ 102 (second cause of action) ("Uber is entitled to a declaratory judgment that [the] Driver Defendants are independent contractors"). Plaintiffs do not dispute the Appeals Board proceeding remains ongoing. Accordingly, plaintiffs' failure to exhaust administrative remedies cannot be cured by amendment. Defendants' demurrers are sustained without leave to amend. The State Defendants' Request for Judicial Notice (ROA 190, 207) is granted. The Driver Defendants' Request for Judicial Notice (ROA 192, 194) and Supplemental Request for Judicial Notice (ROA 288, 296) are granted. Plaintiffs' Request for Judicial Notice (ROA 278, 280) is granted. The State Defendants' objection (ROA 284) to Exhibit C to plaintiffs' Request for Judicial Notice is overruled. A court may take judicial notice of the existence of a document in a court file, including the truth of results reached, but a court may not take judicial notice of the truth of hearsay statements in decisions and court files. *Richtek USA, Inc. v. UPI Semiconductor Corp.* (2015) 242 Cal.App.4th 651, 658. The State Defendants to give notice and to submit a proposed judgment of dismissal by May 2, 2024. <u>Status Conference</u> The court has reviewed the parties' joint status conference statement filed April 11, 2024 (ROA 302). In a concurrently-issued order, the court sustained defendants' demurrers to plaintiffs' complaint without leave to amend. The status

		conference scheduled for April 18, 2024 at 2:00 p.m. in Department CX104 is vacated. Clerk to give notice.
6	Lyft, Inc. v. California Department of Industrial Relations, Division of Occupational Safety and Health, et al. 2023-01368387	<u>Defendants' Demurrers to Complaint</u> Defendants California Department of Industrial Relations—Division of Occupational Safety and Health and Jeff Killip, in his capacity as Chief of the Division of Occupational Safety and Health (together, the "State Defendants"), demur to plaintiff Lyft, Inc.'s complaint. Defendants Roberto Moreno, Ricardo Valladeres and Karen VanDenBerg (together, the "Driver Defendants") also demur to Lyft's complaint. For the following reasons, the demurrers are sustained without leave to amend. *Background* On August 1, 2022 Cal/OSHA issued three citations to Lyft alleging that Lyft failed to establish, implement and maintain an Injury Illness and Prevention Program and written COVID-19 Prevention Program, and failed to maintain records. Complaint (ROA 2) ¶ 33; State Defendants' Request for Judicial Notice Ex. A; Driver Defendants' Request for Judicial Notice Ex. A. On August 22, 2022 Lyft filed an administrative appeal of those citations before the California Department of Industrial Relations Occupational Safety and Health Appeals Board. Complaint (ROA 2) ¶ 36. Among other affirmative defenses, Lyft asserted it is not an employer as defined in the Labor Code and/or Title 8 Safety Orders, and Cal/OSHA lacks jurisdiction over it pursuant to Business and Professions Code section 7451. State Defendants' Request for Judicial Notice Ex. B; Driver Defendants' Request for Judicial Notice Ex. C. Proposition 22 added sections 7448 to 7467 to the Business and Professions Code. Section 7451 provides, "Notwithstanding any other provision of law, including, but not limited to, the Labor Code, the Unemployment Insurance Code, and any orders, regulations, or opinions of the Department of Industrial Relations or any board, division, or commission within the Department of Industrial Relations, an app-based driver is an independent contractor and not an employee or agent with respect to the app-based driver's relationship with a network company" if the following conditions are met: (a) The network company does not unilaterally prescribe specific dates, times of day, or a minimum number of hours during which the app-based driver must be logged into the network company's online-enabled application or platform. (b) The network company does not require the app-based driver to accept any specific rideshare service or delivery service request as a condition of

maintaining access to the network company's online-enabled application or platform.

(c) The network company does not restrict the app-based driver from performing rideshare services or delivery services through other network companies except during engaged time.

(d) The network company does not restrict the app-based driver from working in any other lawful occupation or business.

Bus. & Prof. Code § 7451.

On March 15, 2023 the Driver Defendants moved for party status in the Appeals Board proceeding, alleging they were "'affected employee[s].'" Complaint (ROA 2) ¶ 37. The Appeals Board Administrative Law Judge granted the Driver Defendants' motion. The June 1, 2023 order granting the motion for party status states: "[T]he question under consideration is not the merits of the jurisdictional issue of employee versus independent contractor status. . . . [¶] [T]he granting of party status is not a dispositive finding as to the jurisdictional issue of employee versus independent contractor status. This determination pertains only to the motion for party status so that the Drivers may participate in the proceeding as a party." State Defendants' Request for Judicial Notice Ex. C (at 2, 3); Driver Defendants' Request for Judicial Notice Ex. B (at 2, 3).

On April 13, 2023 Lyft moved to bifurcate the administrative proceeding to resolve first the issue of whether Lyft's drivers are independent contractors under section 7451. Driver Defendants' Request for Judicial Notice Ex. G. On July 28, 2023 the Appeals Board ALJ granted Lyft's motion. The order states: "For the Division to have jurisdiction to issue a citation, the workers that are the subject of a citation must be employees, not independent contractors. . . . As such, whether an employee-employer relationship exists between Lyft and the drivers may be dispositive of the entire matter. If the drivers are determined to be properly classified as independent contractors, then the citations must be dismissed on that basis alone." State Defendants' Request for Judicial Notice Ex. D; Driver Defendants' Request for Judicial Notice Ex. H. The order thus concludes that "[t]he hearing shall be bifurcated with the initial hearing set to consider the issue of whether an employment relationship exists between Lyft and its drivers." State Defendants' Request for Judicial Notice Ex. D; Driver Defendants' Request for Judicial Notice Ex. H.

Lyft filed the instant lawsuit on December 19, 2023. Lyft's complaint alleges two causes of action for declaratory relief, one against the State Defendants and one against the Driver Defendants. Both causes of action allege "[a] ripe, actual controversy . . . exists between the Parties as to whether the Driver Defendants are independent contractors under the

		governing test set forth by Proposition 22, and thus, whether the proceedings before Cal/OSHA properly concern 'employees' and a 'place of employment' or not." Complaint (ROA 2) ¶¶ 73, 83. The first cause of action seeks a declaration "that the Driver Defendants are not within the jurisdiction of Cal/OSHA." *Id.* ¶ 74. The second cause of action seeks a declaration "that the Driver Defendants are independent contractors." *Id.* ¶ 84. On January 11, 2024 Lyft filed a motion to stay the Appeals Board proceeding pending resolution of this lawsuit. State Defendants' Request for Judicial Notice Ex. F; Driver Defendants' Request for Judicial Notice Ex. I. Lyft argued the Appeals Board should stay that proceeding because this lawsuit "between the same parties presents th[e] very same threshold and dispositive jurisdictional issue" as in the pending Appeals Board proceeding, i.e., "[w]hether drivers who use the Lyft platform are independent contractors under Proposition 22." State Defendants' Request for Judicial Notice Ex. F (at 3:3-7); Driver Defendants' Request for Judicial Notice Ex. I (at 3:3-7). The Appeals Board ALJ denied Lyft's motion to stay on February 22, 2024, finding, *inter alia*, that Lyft "has not exhausted its administrative remedies because the administrative appeal brought by [Lyft] has not been brought to a final decision and is pending before the undersigned ALJ." State Defendants' Supplemental Request for Judicial Notice Ex. M; Driver Defendants' Supplemental Request for Judicial Notice Ex. A. *Discussion* In ruling on a demurrer, a court must accept as true all allegations of fact contained in the complaint. *Blank v. Kirwan* (1985) 39 Cal.3d 311, 318. A demurrer challenges only the legal sufficiency of the affected pleading, not the truth of the factual allegations in the pleading or the pleader's ability to prove those allegations. *Cundiff v. GTE Cal., Inc.* (2002) 101 Cal.App.4th 1395, 1404-05. Questions of fact cannot be decided on demurrer. *Berryman v. Merit Prop. Mgmt., Inc.* (2007) 152 Cal.App.4th 1544, 1556. Because a demurrer tests only the sufficiency of the complaint, a court will not consider facts that have not been alleged in the complaint unless they may be reasonably inferred from the matters alleged or are proper subjects of judicial notice. *Hall v. Great W. Bank* (1991) 231 Cal.App.3d 713, 718 n.7. A party generally must exhaust administrative remedies before seeking relief in court. *Contractors' State License Bd. v. Superior Court* (2018) 28 Cal.App.5th 771, 778; *see also Coachella Valley Mosquito & Vector Control Dist. v. California Public Employment Relations Bd.* (2005) 35 Cal.4th 1072, 1080. The exhaustion rule "'is not a matter of judicial discretion, but is a fundamental rule of procedure . . . binding upon all courts.'" *Contractors' State License Bd.*, 28 Cal.App.5th at 779 (quoting *Abelleira v. District Court of Appeal* (1941) 17 Cal.2d 280, 293). "The Supreme Court has characterized the exhaustion rule as

		‘“‘a jurisdictional prerequisite to resort to the courts.’”’” *Contractors’ State License Bd.*, 28 Cal.App.5th at 779. “‘“In the context of administrative proceedings, a controversy is not ripe for adjudication until the administrative process is completed and the agency makes a final decision that results in a direct and immediate impact on the parties.”’” *Tejon Ranch Estate, LLC v. City of Los Angeles* (2014) 223 Cal.App.4th 149, 156. A party “may not evade the exhaustion requirement by filing an action for declaratory or injunctive relief.” *Contractors’ State License Bd.*, 28 Cal.App.5th at 780. The issue of whether Cal/OSHA has jurisdiction to issue citations to Lyft remains pending before the Appeals Board. Lyft contends in the ongoing Appeals Board proceeding that Cal/OSHA “does not have jurisdiction because the subject Drivers at issue in the Citation are not employees of [Lyft] under Business and Professions Code Sections 7451 *et seq.* . . . .” State Defendants’ Request for Judicial Notice Ex. B; Driver Defendants’ Request for Judicial Notice Ex. C. Lyft also contends in the Appeals Board proceeding that it did not employ the drivers. State Defendants’ Request for Judicial Notice Ex. B; Driver Defendants’ Request for Judicial Notice Ex. C. The June 1, 2023 Appeals Board order granting the Driver Defendants’ motion for party status states that the issue of the application of section 7451 to the Driver Defendants has not been finally adjudicated before the Appeals Board: “[T]he question under consideration is not the merits of the jurisdictional issue of employee versus independent contractor status. . . . [¶] [T]he granting of party status is not a dispositive finding as to the jurisdictional issue of employee versus independent contractor status. This determination pertains only to the motion for party status so that the Drivers may participate in the proceeding as a party.” State Defendants’ Request for Judicial Notice Ex. C (at 2, 3); Driver Defendants’ Request for Judicial Notice Ex. B (at 2, 3). The July 28, 2023 the Appeals Board order granting Lyft’s motion to bifurcate makes the same point, as the order directs that the initial hearing—which has not yet occurred—will “consider the issue of whether an employment relationship exists between Lyft and its drivers.” State Defendants’ Request for Judicial Notice Ex. D; Driver Defendants’ Request for Judicial Notice Ex. H. The February 22, 2024 Appeals Board order denying Lyft’s motion to stay reiterates that the Appeals Board proceeding remains pending and addresses, “[a]s part of [the] appeal,” “the Division’s jurisdiction over [Lyft’s] relationship with the drivers,” and Lyft’s argument “that [the drivers] are independent contractors pursuant to the passage of Proposition 22, codified as California Business and Professions Code sections 7448 et seq.” State Defendants’ Supplemental Request for Judicial Notice Ex. M; Driver Defendants’ Supplemental Request for Judicial Notice Ex. A; *see also id.* (“Here, [Lyft] has

		not exhausted its administrative remedies because the administrative appeal brought by [Lyft] has not been brought to a final decision and is pending before the undersigned ALJ."). In addition, as noted above, Lyft argued in its motion to stay the Appeals Board proceeding that the administrative proceeding should be stayed due to the pendency of this lawsuit. State Defendants' Request for Judicial Notice Ex. F; Driver Defendants' Request for Judicial Notice Ex. I. Lyft argued the Appeals Board should stay its proceeding because this lawsuit "between the same parties presents th[e] very same threshold and dispositive jurisdictional issue" as in the pending Appeals Board proceeding. State Defendants' Request for Judicial Notice Ex. F (at 3:3-7); Driver Defendants' Request for Judicial Notice Ex. I (at 3:3-7). Lyft also argued that a decision from this court "will carry the 'force of final judgment' and bind the Division from exercising jurisdiction over workplaces of rideshare drivers." State Defendants' Request for Judicial Notice Ex. F (at 7:4-6); Driver Defendants' Request for Judicial Notice Ex. I (at 7:4-6). In other words, Lyft seeks a ruling from the superior court to be applied in the ongoing administrative proceedings before the Appeals Board. Declaratory relief for this purpose is not appropriate. *See, e.g.*, *Public Employees' Retirement Sys. v. Santa Clara Valley Transportation Auth.* (2018) 23 Cal.App.5th 1040, 1046. In sum, the exhaustion doctrine applies to Lyft's claims, and Lyft has not exhausted the administrative remedies. The doctrine requiring exhaustion of administrative remedies is subject to exceptions. *Coachella Valley*, 35 Cal.4th at 1080; *Public Employment Relations Bd. v. Superior Court* (1993) 13 Cal.App.4th 1816, 1827. Exhaustion of administrative remedies may be excused when a party claims the agency lacks authority, statutory or otherwise, to resolve the underlying dispute between the parties. *Coachella Valley*, 35 Cal.4th at 1081-82. "In deciding whether to entertain a claim that an agency lacks jurisdiction before the agency proceedings have run their course, a court considers three factors: the injury or burden that exhaustion will impose, the strength of the legal argument that the agency lacks jurisdiction, and the extent to which administrative expertise may aid in resolving the jurisdictional issue." *Id.* at 1082. In regard to the first factor, Lyft has not demonstrated that it will suffer any unusual or irreparable injury if it is required to complete the ongoing proceeding before the Appeals Board before seeking judicial review. Nor has Lyft demonstrated there is a significant public interest in obtaining a definitive resolution of the issue before the Appeals Board. Furthermore, to the extent there is a significant public interest in the broader question of the validity of section 7451, a case addressing whether that section conflicts with article XIV, section 4 of the California Constitution, and thus requires Proposition 22 to be

		deemed invalid, is currently pending in the California Supreme Court. *Castellanos v. State of California*, Case No. S279622 (review granted Jun. 28, 2023). The first factor weighs against judicial intervention. In regard to the second factor, Lyft argues "[t]he issue it not whether the Appeals Board has jurisdiction to decide whether drivers are employees for purposes of a particular appeal but whether the Division had jurisdiction to issue citations." Opp. (ROA 78) at 16:4-7. *Coachella Valley* states the contrary, i.e., the second factor addresses the strength of the legal argument that the agency lacks jurisdiction to resolve the underlying dispute between the parties. *See Coachella Valley*, 35 Cal.4th at 1082 ("exhaustion of administrative remedies may be excused when a party claims that 'the agency lacks authority, statutory or otherwise, to resolve the underlying dispute between the parties'"); *see also Edgren v. Regents of University of Cal.* (1984) 158 Cal.App.3d 515, 520-21 (lack of jurisdiction exception to exhaustion requirement did not apply to Regents' administrative grievance procedure for plaintiff's termination). In addition, for section 7451 to apply, Lyft must show that it complies with section 7451's requirements before its drivers may be classified as independent contractors. *See James v. Uber Techs. Inc.* (N.D. Cal. 2021) 338 F.R.D. 123, 145. Lyft implicitly acknowledges this analysis requires at least some fact discovery, as Lyft states it intends to serve fact discovery "regarding [defendants'] position with respect to Proposition 22." Joint Initial Case Management Conference Statement (ROA 107) at 7:9-11. The second factor weighs against judicial intervention. The third factor also weighs against judicial intervention. Lyft argues the Appeals Board does not have any expertise in applying Proposition 22, and that the Appeals Board's expertise is in "applying broadly applicable classification standards that other courts regularly apply." Opp. (ROA 78) at 17:1. That the Appeals Board proceeding may involve a new or different worker classification test does not demonstrate that the Appeals Board's expertise will not "aid in resolving the jurisdictional issue," particularly where that inquiry, as discussed above, may involve factual analysis. The third factor weighs against judicial intervention. Lyft does not dispute the Appeals Board proceeding remains ongoing. Accordingly, Lyft's failure to exhaust administrative remedies cannot be cured by amendment. Defendants' demurrers are sustained without leave to amend. The State Defendants' Request for Judicial Notice (ROA 74, 32) and Supplemental Request for Judicial Notice (ROA 86, 90) are granted. The Driver Defendants' Request for Judicial Notice (ROA 28, 35) and Supplemental Request for Judicial Notice (ROA 94, 101) are granted.

		The State Defendants to give notice and to submit a proposed judgment of dismissal by May 2, 2024. <u>Initial Case Management Conference</u> The court has reviewed the parties' initial case management conference statement filed April 11, 2024 (ROA 107). In a concurrently-issued order, the court sustained defendants' demurrers to plaintiff's complaint without leave to amend. The initial case management conference scheduled for April 18, 2024 at 2:00 p.m. in Department CX104 is vacated. Clerk to give notice.