

# Daily Journal

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## Top Labor & Employment Lawyers 2020

### Rachael E. Meny

Coronavirus closures forced Meny, a Kecker Van Nest partner, and other lawyers to attend a federal court hearing via Zoom in April over a new potential class action by Lyft drivers seeking reclassification.

Surprisingly, the virus was the topic of the hearing. “What made it so unusual was that the plaintiffs tried to use the fact of Covid-19 as a basis to achieve immediate injunctive relief,” said Meny, who represents Lyft. The drivers contended that their request for reclassification as employees should be granted on an emergency basis. “They argued—and this was problematic—that the court should issue the injunction because as non-employee contractors they would have an incentive to keep driving even if sick and would possibly spread the virus. But as employees they would get sick leave, or so their argument went.”

Meny and Kecker partner R. James Slaughter pointed out to U.S. District Judge Vince G. Chhabria of San Francisco that as independent contractors the drivers had flexibility to not work if sick, but if reclassified as employees their sick leave would be available only on an accrual basis.

“So their claim of immediacy was factually not correct,” she said. “Also, under the CARES Act there could be benefits that would apply if they remained contractors,” she added, referring to the Coronavirus Aid, Relief, and Economic Security Act. *Rogers*

*v. Lyft Inc.*, 3:20-cv-01938 (N.D. Cal., filed March 19, 2020).

Chhabria didn’t buy the drivers’ claim of urgency. In a subsequent order, he noted that the lawsuit “was filed hurriedly in an attempt to capitalize on the coronavirus pandemic” and was “riddled with defects.” He rejected the drivers’ request that he issue an emergency order without reference to the arbitration clause in their contracts. Chhabria granted Meny’s motion to compel arbitration and sent the case to state court for a ruling on the type of relief sought.

When the plaintiffs renewed their bid for emergency injunctive relief before a San Francisco Superior Court judge they again were again turned away. Judge Ethan P. Schulman, like Chhabria, granted Meny’s motion to compel arbitration. He also noted that any modest benefit an injunction would afford a small subset of drivers would risk the eligibility of all Lyft drivers to receive substantially greater relief under the CARES Act. The plaintiffs have appealed both decisions. Meny has led or co-led Kecker’s representation of Lyft in misclassification cases for more than five years.

Meny, the co-lead counsel for Google Inc. in arbitration over its breach of contract and unfair competition claims against former employees Anthony Levandowski and Lior Ron, noted that the arbitrators’ final \$179 million award was confirmed by the San Francisco Superior Court on March 4, 2020.



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Levandowski was indicted in August 2019 for alleged trade secret theft in his move from Google to Uber Technologies Inc.

— John Roemer