



**SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN FRANCISCO**

Document Scanning Lead Sheet

Jul-09-2018 3:36 pm

Case Number: CGC-18-563803

Filing Date: Jul-09-2018 3:36

Filed by: MARIA BENIGNA GOODMAN

Image: 06407548

ORDER

PEOPLE OF THE STATE OF CALIFORNIA VS. TURO INC. ET AL

001C06407548

Instructions:

Please place this sheet on top of the document to be scanned.

1 Prepared by the Court

FILED
San Francisco County Superior Court

JUL 09 2018

CLERK OF THE COURT

BY: [Signature]
Deputy Clerk

8 **SUPERIOR COURT OF CALIFORNIA**

9 **County of San Francisco**

10 Department No. 302

12 PEOPLE OF THE STATE OF
13 CALIFORNIA,

14 Plaintiff,

15 v.

16 TURO, INC., et al,

17 Defendants.

No. CGC-18-563803

ORDER: 1) SUSTAINING WITHOUT LEAVE
TO AMEND THE PEOPLE'S DEMURRER TO
ALL FOUR CAUSES OF ACTION IN TURO'S
CROSS-COMPLAINT AND 2) OVERRULING
THE CITY'S DEMURRER TO ALL FOUR
CAUSES OF ACTION IN TURO'S CROSS-
COMPLAINT

18
19
20 AND RELATED CROSS-ACTION

22 A hearing was held on June 20, 2018 on the demurrer by cross-defendants People of the
23 State of California and the City and County of San Francisco to all four causes of action alleged
24 in the cross-complaint filed by Turo, Inc. Deputy City Attorneys Natalie Orr and Jaime Delaye
25

1 appeared for the People and the City. Matthew Brown, Benjamin Kleine and Bethany Lobo of
2 Cooley LLP appeared for Turo.

3 During the hearing I orally ruled on three of the five issues raised by the demurrer. Those
4 rulings are: 1) the People's demurrer to all four causes of action is sustained without leave to
5 amend as to all four causes of action because there is no statutory or other authority to allege
6 claims against the People; 2) the City's demurrer to all four causes of action on the grounds that
7 those claims add nothing to the defenses alleged in Turo's answer is overruled because Turo's
8 cross-complaint seeks injunctive relief which is significant relief not encompassed in Turo's
9 answer; and 3) the City's demurrer to the first cause of action alleging that there is no statutory
10 or regulatory basis for the City to compel Turo to comply with the City's off-airport car rental
11 requirements is overruled because Turo has adequately alleged that the City's demand that Turo
12 comply with those requirements is not grounded in any authority. I now confirm those oral
13 rulings.

14 At the conclusion of the hearing I took the remaining two issues – the City's demurrer to
15 the third and fourth causes of action for violations of the Dormant Commerce Clause and the
16 Equal Protection Clauses in the US and California Constitutions – under submission so that I
17 could more fully consider the parties' written and oral arguments in light of the applicable case
18 law. Based on my determination that both the third and fourth causes of action are adequately
19 alleged, I now issue this order sustaining the People's demurrer to all four causes of action
20 without leave to amend and overruling the City's demurrer to all four causes of action.

21 The City argues that Turo's Dormant Commerce Clause claim fails as a matter of law
22 because Turo has not alleged that the fees the City seeks to impose on Turo burdens interstate
23 commerce and the City's imposition of those fees is in its role as a market participant rather than
24 a regulator. The City argues that Turo's Equal Protection Clause claim fails because there is a
25 rational basis for treating TNCs and Turo users differently and Turo has not alleged that every

1 conceivable basis for the differential treatment between TNCs and Turo lacks a rational basis.
2 For pleading purposes and only for pleading purposes, I disagree with the City's arguments.

3 The applicable test to determine whether Turo has adequately alleged a Dormant
4 Commerce Clause violation is set forth in *Northwest Airlines, Inc. v. City of Kent, Michigan*
5 (1994) 510 US 355, 369. This test applies because Turo has alleged that the "majority" of its
6 users "who arrange to meet a Turo car owner at SFO arrive from out-of-state and have pre-
7 arranged their Turo booking prior to their arrival." This allegation, which I must accept as true,
8 shows that in a great many instances a Turo transaction involving an SFO pickup is part of
9 continuous interstate travel, which is an ample predicate to trigger the application of the test
10 enunciated in *Northwest Airlines* (which the City, perhaps more accurately, refers to as the
11 "Evansville test"). (*Lil' Man in the Boat, Inc. v. City and County of San Francisco* (ND CA
12 2017) 2017 WL 3129913 *5 (applying *Northwest Airlines* to a Dormant Commerce Clause
13 challenge to landing fees imposed by the City on a commercial charter boat company that
14 provided transportation services for locals and out-of-state visitors)). Per *Northwest Airlines*, a
15 governmental fee that is imposed to defray the cost of facilities used by the party against whom
16 the fee is imposed violates the Dormant Commerce Clause if it is not based on a "fair
17 approximation of the use of the facilities." Turo has adequately alleged that the off-airport rental
18 car fees that the City seeks to impose on it are not a fair approximation of its users' use of SFO
19 facilities.

20 Case law on the question of whether the market participant doctrine exempts a
21 government-owned airport from Dormant Commerce Clause scrutiny shows that there is not a
22 single answer for all purposes. While some challenged conduct by government-owned airports
23 has been found to have been taken in the government's role as a market participant, other
24 challenged conduct has been found to have been taken as a market regulator. (See, e.g., *Four T's,*
25 *Inc. v. Little Rock Municipal Airport Commission* (8th Cir. 1997) 108 F. 3d 909 (market
participant); *Aeroground, Inc. v. City and County of San Francisco* (ND CA 2001) 170 F. Supp.

1 2d 950 (market regulator); *Cedarhurst Air Charter v. Waukesha County* (ED WI 2000) 110 F.
2 Supp. 2d 891 (market regulator); *Air Transport Association of America v. City and County of*
3 *San Francisco* (ND CA 1998) 992 F. Supp. 1149, *affirmed and remanded* (9th Cir. 2001) 266
4 F.3d 1064 (market regulator)). The answer turns on the nature and purpose of the challenged
5 conduct, not that it was taken by a government-owned airport.

6 Because the fees challenged by Turo are imposed not for the rental or use of counter or
7 parking space, but as a result of the City's creating a "marketplace" for Turo and other
8 companies who do not have airport presences, the City is acting as a market regulator not a
9 market participant. This distinction is recognized, albeit briefly, in *Four T's*, 108 F. 3d at 912, a
10 case relied on by the City. In holding that a government-owned airport acted as a market
11 participant when it charged fees for rental of counter and parking spaces, the Eighth Circuit
12 distinguished and impliedly approved *Airline Car Rental v. Shreveport Airport Authority* (WD
13 LA 1987) 667 F. Supp 303 which held that a government-owned airport acted as a market
14 regulator when it imposed fees on off-airport rental car companies that transported customers
15 from the airport to their off-airport facilities. *Shreveport*, which has never been overruled or
16 criticized, is factually very similar to this case and its reasoning is fully in accord with all market
17 participant doctrine cases I have read and thus I adhere to its reasoning. Moreover, it is
18 significant that in advocating for the application of the market participant doctrine, the City
19 never identifies the "market" that both it and Turo's users participate nor is it easy to conceive
20 what that market would be. This is in contrast to the easily identifiable market for rental space
21 that both the City and on-airport rental car companies participate.

22 A party's allegation that it has been intentionally treated differently from another
23 similarly situated entity or person without a rational basis for the differential treatment suffices to
24 withstand a pleading motion even though the party has not negated every conceivable basis
25 which might support the differential treatment. *Genesis Environmental Services v. San Joaquin*
Valley Unified Air Pollution Control District (2003) 113 Cal. App. 4th 597, 607 illustrates this

1 rule. Relying on the elements for a “class of one claim” enunciated in *Village of Willowbrook v.*
2 *Olech* (2000) 528 US 562, 564, *Genesis* reversed a trial court’s order sustaining a demurrer to a
3 rational basis equal protection claim. *Genesis* stated that “requiring a plaintiff to plead factual
4 details that establish a negative, i.e., no rational basis for the difference in treatment might place
5 the plaintiff in the position of pleading matters beyond its knowledge and ability to find out prior
6 to discovery” and therefore is not required to withstand a demurrer for a class of one equal
7 protection claim.

8 Based on *Genesis*, Turo has adequately alleged a class of one claim by alleging that: 1)
9 the City intentionally treated it differently with regard to SFO fees than the City has treated
10 TNCs, 2) even though Turo users and TNCs are substantially similar with regard to the use of
11 SFO facilities, which is the reason why the City imposes SFO fees, 3) and the dissimilarity of
12 treatment lacks any rational basis as to the use of SFO’s facilities by Turo users and TNCs. The
13 City’s argument that there is a rational basis for the more favorable treatment of TNCs because
14 of the assertedly more time-consuming activities conducted by Turo users at SFO’s curbs is not
15 amenable to resolution on a demurrer. That argument is not based on anything that has been
16 alleged by Turo or that is judicially noticeable and requires factual development. Moreover,
17 liberally construing the cross-complaint and drawing reasonable inferences in favor of Turo, as I
18 am required to do on a demurer, a fair reading of Turo’s cross-complaint refutes that any
19 differences in pickup activities supports the differential treatment in imposition of fees.
20
21
22
23
24
25

//////

1 For the reasons stated at the June 20 hearing and in this order, cross-defendant People of
2 the State of California's demurrer to all four causes of action in the cross-complaint filed by
3 Turo, Inc. is sustained without leave to amend and cross-defendant City and County of San
4 Francisco's demurrer to all four causes of action in the cross-complaint filed by Turo, Inc. is
5 overruled.

6 IT IS SO ORDERED.

7 Dated: July 9, 2018

8 
9 _____
10 Harold Kahn
11 Superior Court Judge
12
13
14
15
16
17
18
19
20
21
22
23
24
25

SUPERIOR COURT OF CALIFORNIA
County of San Francisco

PEOPLE OF THE STATE OF CALIFORNIA,

Plaintiff,

vs.

TURO, INC. et al,

Defendant,

Case No. CGC-18-563803

CERTIFICATE OF MAILING
(CCP 1013a (4))

I, M. Goodman, a Deputy Clerk of the Superior Court of the County of San Francisco, certify that I am not a party to the within action.

On July 10, 2018, I served the attached:

- 1) Order 1) granting the people's motion for judgment on the pleadings with leave to amend as to the equitable defenses in Turo's answer to the complaint and 2) denying the motion as to the dormant commerce clause and equal protections affirmative defenses.
- 2) Order 1) sustaining without leave to amend the people's demurrer to all four causes of action in Turo's cross-complaint and 2) Overruling the City's demurrer to all four causes of action in turo's cross-complaint.

by placing a copy thereof in a sealed envelope, addressed as follows:

NATALIE ORR
DEPUTY CITY ATTORNEY
FOX PLAZA
1390 MARKET STREET, 6TH FL.
SAN FRANCISCO, CA 94102-5408

MATTHEW BROWN, ESQUIRE.
BETHANY LOBO, ESQUIRE.
COOLEY LLP
101 CALIFORNIA ST., 5TH
SAN FRANCISCO, CA 94111

and, I then placed the sealed envelopes in the outgoing mail at 400 McAllister Street, San Francisco, CA. 94102 on the date indicated above for collection, attachment of required prepaid postage, and mailing on that date following standard court practices.

Dated: July 10, 2018

T. MICHAEL YUEN, Clerk

By: 

M. Goodman, Deputy Clerk