UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

JORGE MENDOZA, Plaintiff-Appellant, v. UBER TECHNOLOGIES, INC., Defendant-Appellee.	No. 20-55567 D.C. No. 2:19-cv-09741-FMO-JPR Central District of California, Los Angeles ORDER (Filed Jun. 25, 2020)

Before: GRABER, WARDLAW, and R. NELSON, Circuit Judges.

A review of the record demonstrates that this court lacks jurisdiction over this appeal because the order challenged in the appeal is not final or appealable. *See* 28 U.S.C. § 1291; *Dees v. Billy*, 394 F.3d 1290, 1294 (9th Cir. 2005) (district court order staying judicial proceedings and compelling arbitration is not appealable). Consequently, this appeal is dismissed for lack of jurisdiction.

DISMISSED.

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

JORGE MENDOZA, Plaintiff, v. UBER TECHNOLOGIES INC., Defendant.	Case No. CV 19-9741-FMO (JPR) ORDER ACCEPTING FINDINGS AND RECOMMENDATIONS OF U.S. MAGISTRATE JUDGE (Filed May 4, 2020)

The Court has reviewed the Complaint, records on file, and Report and Recommendation of U.S. Magistrate Judge. *See* 28 U.S.C. § 636. On April 10, 2020, Plaintiff filed objections to the R. & R.; Defendant responded on April 27. Plaintiff's objections mostly either repeat arguments he made in his opposition to the motion to compel arbitration or improperly raise entirely new arguments. None of his objections undermine the reasoning of the R. & R.

Plaintiff first argues that his agreement with Uber was a "contract of employment." (*See* Objs. at 3-5.) But the Magistrate Judge did not reach that issue (*see* R. & R. at 9), and this Court sees no need to either. Plaintiff then raises new arguments about why he qualifies as a "worker" "engaged in interstate commerce" under the narrow exception to the Federal Arbitration Act, 9 U.S.C. § 1, citing regulations pertaining to other areas of law. (*See* Objs. at 5-7.) None of that

undermines the authority cited by the Magistrate Judge (and Defendants, *see* Resp. at 3-9) holding that because Plaintiff neither crossed state lines nor transported goods in his work as an Uber driver, his business did not involve interstate commerce. (*See* R. & R. at 7-9.)

Plaintiff then proceeds to challenge – again, for the first time – the delegation provision in his arbitration agreements with Uber, claiming that it's unconscionable. (Objs. at 8-12.) But the Ninth Circuit has already rejected that argument as to essentially identical provisions, from Uber's contracts of 2013 and 2014 as opposed to the 2014 and 2015 agreements at issue here. *See Mohamed v. Uber Techs., Inc.*, 848 F.3d 1201, 1207-08 (9th Cir. 2016) (as amended) ("Neither delegation provision was unconscionable."). Nothing Plaintiff says in his Objections provides any reason for this Court not to find itself bound by *Mohamed*; indeed, he doesn't even mention that case.

Finally, Plaintiff for the first time asks that the Court allow him to conduct discovery into whether he qualifies as a worker in interstate commerce. (Objs. at 12-14.) But he has not pointed to any facts that are in dispute: he acknowledges that he has never transported anyone across state lines and does not transport goods. (*Id.* at 5-8.) Moreover, this is not a class action, so only facts pertaining to Plaintiff matter. No information needs to be discovered to decide Defendant's motion.

Having reviewed de novo those portions of the R. & R. to which Objections have been filed, the Court accepts the findings and recommendations of the Magistrate Judge. It therefore is ORDERED that:

1. Defendant's motion to compel arbitration and for a stay is GRANTED.

2. No later than five days from the date of this order, Defendant's counsel must provide Plaintiff with detailed written instructions on what he needs to do to initiate the arbitration process. The instructions must be accompanied by all the forms he needs to initiate and complete the arbitration process. Defendant must file proof of service of the arbitration instructions no later than seven days from the date of this order.

3. This action is STAYED pending resolution of the arbitration proceedings. The Clerk is directed to administratively close the case. *See Dees v. Billy*, 394 F.3d 1290, 1293-94 (9th Cir. 2005).

DATED: May 4, 2020

/s/
FERNANDO M. OLGUIN
U.S. DISTRICT JUDGE

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

JORGE MENDOZA, Plaintiff, v. UBER TECHNOLOGIES INC., Defendant.	Case No. CV 19-9741-FMO (JPR) REPORT AND RECOMMENDATION OF U.S. MAGISTRATE JUDGE (Filed Mar. 25, 2020)

This Report and Recommendation is submitted to the Honorable Fernando M. Olguin, U.S. District Judge, under 28 U.S.C. § 636 and General Order 05-07 of the U.S. District Court for the Central District of California.

PROCEEDINGS

On November 13, 2019, Plaintiff filed a civil-rights Complaint alleging due process violations under the 14th Amendment, citing 42 U.S.C. § 1983, and unfair business practices under California law. (Compl. at 1, 3-7, 16-19.) His claims arise from Defendant's termination of his Uber driver account, allegedly without notice, a hearing, or any investigation, based on a rider's complaint that he was intoxicated. (*Id.* at 2-3.)

Defendant moved to compel arbitration and for a stay on December 27, 2019. Plaintiff opposed the motion on January 17, 2020, and Defendant filed a Reply on February 3.

For the reasons discussed below, the undersigned recommends that the District Judge grant Defendant's motion and stay this action pending arbitration.

BACKGROUND

Uber offers a smart-phone application for drivers to connect with riders looking for transportation. (Mot., Rosenthal Decl. ¶ 3.) Drivers must create an account with a unique username and password to use Uber's services. (*Id.* ¶ 6.) To access requests from prospective riders on the Uber app, drivers must first electronically accept a service agreement with an Uber subsidiary, such as Rasier, LLC. (*Id.* ¶ 5; Mot., Fishman Decl. ¶ 4.)After creating an account, a driver is required to select, "YES, I AGREE" to the service agreement, confirming that he has reviewed and agrees to its terms. (Rosenthal Decl. ¶ 7 & Exs. A, B.) Upon clicking "YES, I AGREE" once, he must confirm acceptance a second time by clicking it again.[1] (*Id.* ¶ 8 & Exs. C, D.)

Plaintiff signed up to use the Uber app as a driver. (Compl. ¶ 6; Rosenthal Decl. ¶ 5.) He accepted Rasier's November 10, 2014 online service agreement on December 4, 2014, and its December 11, 2015 technology-services agreement on December 11, 2015.(Fishman Decl. ¶ 5 & Exs. A, B.)

---

[1] These features distinguish the service agreement here, and its arbitration provision, from the one at issue in *Wilson v. Huuuge, Inc.*, 944 F.3d 1212, 1221 (9th Cir. 2019), in which the court refused to compel arbitration because a user of the Huuuge app never had to "affirmatively assent" to any terms of use.

The December 2015 agreement contained an arbitration provision prominently highlighted on the first page, stating in relevant part:

> **IMPORTANT: PLEASE NOTE THAT TO USE THE UBER SERVICES, YOU MUST AGREE TO THE TERMS AND CONDITIONS SET FORTH BELOW. PLEASE REVIEW THE ARBITRATION PROVISION SET FORTH BELOW CAREFULLY, AS IT WILL REQUIRE YOU TO RESOLVE DISPUTES WITH THE COMPANY ON AN INDIVIDUAL BASIS, EXCEPT AS PROVIDED IN SECTION 15.3, THROUGH FINAL AND BINDING ARBITRATION UNLESS YOU CHOOSE TO OPT OUT OF THE ARBITRATION PROVISION. BY VIRTUE OF YOUR ELECTRONIC EXECUTION OF THIS AGREEMENT, YOU WILL BE ACKNOWLEDGING THAT YOU HAVE READ AND UNDERSTOOD ALL OF THE TERMS OF THIS AGREEMENT (INCLUDING THE ARBITRATION PROVISION) AND HAVE TAKEN TIME TO CONSIDER THE CONSEQUENCES OF THIS IMPORTANT BUSINESS DECISION. IF YOU DO NOT WISH TO BE SUBJECT TO ARBITRATION, YOU MAY OPT OUT OF THE ARBITRATION PROVISION BY FOLLOWING THE INSTRUCTIONS PROVIDED IN THE ARBITRATION PROVISION BELOW.**

(*Id.*, Ex. B at 1 (emphasis in original).) Plaintiff didn't opt out of the arbitration provision (*id.* ¶ 6) and does not contend otherwise.[2]

> Section 15.3 states in large print:
>
> IMPORTANT: This Arbitration Provision will require you to resolve any claim that you may have against the Company or Uber on an individual basis, except as provided below, pursuant to the terms of the Agreement unless you choose to opt out of the Arbitration Provision.

(*Id.*, Ex. B at 16.) Under a subheading "*How This Arbitration Provision Applies*," section 15.3 requires a driver to arbitrate disputes, stating as follows:

> **[T]his Arbitration Provision is intended to apply to the resolution of disputes that otherwise would be resolved in a court of law or before any forum other than arbitration, with the exception of proceedings that must be exhausted under applicable law before pursuing a claim in a court of law or in any forum other than arbitration. Except as it otherwise provides, this Arbitration Provision requires all such disputes to be resolved only by an arbitrator through final and binding arbitration on an**

---

[2] The November 2014 agreement included a similar provision (Fishman Decl., Ex. A at 1), as to which Plaintiff also didn't opt out (*id.* ¶ 6).

> **individual basis only and not by way of court or jury trial. . . .**

(*Id.* at 18 (emphasis in original).) Two paragraphs later, the section states that it applies to any dispute concerning "termination," civil-rights claims, or "state statutes, if any, addressing the same or similar subject matters, and all other similar federal and state statutory and common law claims." (*Id.*) The agreement also provides, in a so-called "delegation clause," *Grice v. Uber Techs., Inc.*, No. CV 18-2995 PSG (GJSx), 2020 WL 497487, at *5 (C.D. Cal. Jan. 7, 2020), that "[a]ll such matters" as the "interpretation or application" of the arbitration provision, "including the enforceability, revocability, or validity" of it, are to be "decided by an Arbitrator." (Fishman Decl., Ex. B at 18.)

DISCUSSION

Plaintiff contends that he is exempt from the Federal Arbitration Act, and thus Defendant's arbitration provision, because he is a "transportation worker" engaged in "interstate commerce." (Opp'n at 2-4.) He argues that dropping off or picking up passengers at Los Angeles International Airport, which he did, constitutes interstate commerce. (*Id.* at 3.)

I. Applicable Law

Congress enacted the Federal Arbitration Act in 1925 in response to hostility from courts to the enforcement of arbitration agreements. *Circuit City Stores, Inc. v. Adams*, 532 U.S. 105, 111 (2001); *see also AT&T*

Mobility LLC v. Concepcion, 563 U.S. 333, 344 (2011) ("The 'principal purpose' of the FAA is to 'ensur[e] that private arbitration agreements are enforced according to their terms.'" (citation omitted and alteration in original)). The FAA compels judicial enforcement of a wide range of written arbitration agreements. *Circuit City*, 532 U.S. at 111. It extends to all contracts "evidencing a transaction involving commerce," 9 U.S.C. § 2, but exempts "contracts of employment of seamen, railroad employees, or any other class of workers engaged in foreign or interstate commerce," *id.* § 1.

Section 4 of the FAA allows "[a] party aggrieved by the alleged failure, neglect, or refusal of another to arbitrate under a written agreement for arbitration [to] petition any United States district court . . . for an order directing that such arbitration proceed in the manner provided for in such agreement." "Because the FAA mandates that 'district courts *shall* direct the parties to proceed to arbitration on issues as to which an arbitration agreement has been signed,'" courts must determine "(1) whether a valid agreement to arbitrate exists, and if it does, (2) whether the agreement encompasses the dispute at issue." *Grice*, 2020 WL 497487, at *4 (quoting *Cox v. Ocean View Hotel Corp.*, 533 F.3d 1114, 1119 (9th Cir. 2008) (emphasis in original)).

To decide whether a valid arbitration agreement exists, a court applies "ordinary state-law principles that govern the formation of contracts." *First Options of Chi., Inc. v. Kaplan*, 514 U.S. 938, 944 (1995). In California, "[e]very contract requires mutual assent or consent, . . . and ordinarily one who signs an

instrument which on its face is a contract is deemed to assent to all its terms." *Marin Storage & Trucking, Inc. v. Benco Contracting & Eng'g, Inc.*, 89 Cal. App. 4th 1042, 1049 (2001) (citations omitted).

Doubts about the scope of arbitration must be resolved in favor of it. *Grice*, 2020 WL 497487, at *4 (citing *Moses H. Cone Mem'l Hosp. v. Mercury Constr. Corp.*, 460 U.S. 1, 24-25 (1983)). When an arbitration agreement exists, the FAA requires courts to compel arbitration "in accordance with the terms of the agreement." 9 U.S.C. § 4; *see also Concepcion*, 563 U.S. at 344.

II. Analysis

Plaintiff does not dispute that he assented to the December 2015 service agreement, including the arbitration provision. He claims only that the provision does not apply to him because he was engaged in interstate commerce, citing § 1 of the FAA.

A court must "decide for itself" whether § 1's exemption applies before ordering arbitration. *New Prime Inc. v. Oliveira*, 139 S. Ct. 532, 537 (2019). This is true even when the contract at issue contains a delegation clause, giving an arbitrator authority to decide whether the parties' particular dispute is subject to arbitration. *Grice*, 2020 WL 497487, at *5 (citing *New Prime*, 139 S. Ct. at 537). A plaintiff has the burden of proving the exemption applies. *Id.*

Plaintiff contends he was engaged in interstate commerce because he "dropped off or picked up many

passengers at Los Angeles International Airport in the State of California several times." (Opp'n at 3.) For the § 1 exemption to apply, he must demonstrate that his contract with Uber was a "contract of employment" and, because he is not a "seaman" or "railroad worker," that he falls within § 1's residual clause: "any other class of workers engaged in foreign or interstate commerce." *See Grice*, 2020 WL 497487, at *5. If he cannot show both, arbitration should be compelled. *See id.* at *9.

Because the § 1 exemption is narrow, it exempts from the FAA "only 'contracts of employment of transportation workers.'" *Id.* at *5 (quoting *Circuit City*, 532 U.S. at 119). Transportation workers include those "actually engaged in the movement of goods in interstate commerce." *Circuit City*, 532 U.S. at 112 (citation omitted) (surveying court-of-appeal decisions). *But see Singh v. Uber Techs. Inc.*, 939 F.3d 210, 221-26 (3d Cir. 2019) (reviewing cases and rejecting transport-of-goods requirement). The most obvious such example is someone who directly transports goods interstate by, for instance, delivering packages from one state to another. *Veliz v. Cintas Corp.*, No. C 03-1180 SBA., 2004 WL 2452851, at *3 (N.D. Cal. Apr. 5, 2004), *modified on recons.* by 2005 WL 1048699 (N.D. Cal. May 4, 2005).

By his own admission, Plaintiff did not cross state lines. (*See* Opp'n, Mendoza Decl., Ex. A.) His average trip distance was 6.4 miles, with a duration of 18.14 minutes. (Reply, Contreras Decl. ¶ 6.) Wholly intrastate transportation offered by taxi companies is purely local activity, even when that transportation is

part of a broader, interstate journey. *See United States v. Yellow Cab Co.*, 332 U.S. 218, 230-32 (1947) (using taxicabs for transport to railroad stations was too tangential to interstate commerce to fall within Sherman Act), *overruled on other grounds by Copperweld Corp. v. Independence Tube Corp.*, 467 U.S. 752 (1984). More recently, numerous courts have found that rides to and from the airport do not constitute interstate commerce, particularly when no goods are involved. *See, e.g., Grice*, 2020 WL 497487, at *8 (finding persuasive cases holding that drivers who transport people locally do not fall within § 1 exemption); *Scaccia v. Uber Techs., Inc.*, No. 3:18-cv-00418, 2019 WL 2476811, at *4 (S.D. Ohio June 13, 2019) (former Uber driver not in class of workers engaged in interstate commerce even though he transported passengers across state lines because no transport of goods), *accepted by* 2019 WL 4674333 (S.D. Ohio Sept. 25, 2019), *appeal filed*, No. 19-4062 (6th Cir. 2019); *Gray v. Uber*, Inc., No. 8:18-cv-3093-T-30SPF, 2019 WL 1785094, at *2 (M.D. Fla. Apr. 10, 2019) (denying recons.) ("Plaintiff did not argue or demonstrate that his position with Uber required him to transport goods in interstate commerce."), *appeal dismissed*, No. 19-11576- F, 2019 WL 3408912 (11th Cir. June 18, 2019).

Because Plaintiff's work as an Uber driver did not involve crossing state lines or transporting goods, he does not fit within the § 1 exemption for a transportation worker who is "engaged in . . . interstate commerce." *Cf. Singh*, 939 F.3d at 226 (remanding for determination of whether Uber driver engaged in

interstate commerce when his submissions showed that he "frequently transported passengers on highway across state lines").[3] Thus, his resistance to arbitration fails regardless of whether his agreement with Uber was a "contract of employment." *See Grice*, 2020 WL 497487, at *9. And because the arbitration provision here contains a delegation clause, which Plaintiff has not specifically challenged, it is up to the arbitrator to decide whether his particular dispute falls within the scope of the provision. *Rent-A-Center, West, Inc. v. Jackson*, 561 U.S. 63, 72-73 (2010).

RECOMMENDATION

It therefore is recommended that the District Judge accept this Report and Recommendation, grant

---

[3] Similarly, *Uber Techs., Inc. v. Patel*, No. CPF-17-515894 (S.F. Super. Ct. Nov. 26, 2019), cited by Plaintiff (Opp'n at 3) and discussed in a recent news article, *see* Joel Rosenblatt, *Uber Drivers Who Make Airport Runs Get a Boost in Pay Fight*, Bloomberg Law, Daily Labor Report, Nov. 26, 2019, does not support Plaintiff's position. There, the court simply granted a discovery request "to develop facts relevant to the extent to which Uber drivers engage in interstate commerce"; it did not decide the issue. Order Granting Labor Comm'r's Disc. Req., *Patel*, No. CPF-17-515894.

Defendant's Motion to Compel Arbitration and Stay Action, and order the case stayed pending arbitration.

DATED: March 25,2020

/s/ Jean Rosenbluth
JEAN ROSENBLUTH
U.S. MAGISTRATE JUDGE

JORGE MENDOZA
15540 VANOWEN ST #113
VAN NUYS, CA 91406

In pro per

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

JORGE MENDOZA, Plaintiff, vs. **UBER TECHNOLOGIES INC,** Defendant	Case No. CV19-09741-FMO-JPR **(1) DEPRIVATION OF RIGHTS UNDER 42 U.S.C. § 1983;** **(2) VIOLATION OF XIV AMENDMENT OF THE CONSTITUTION** **(3) UNFAIR BUSINESS PRACTICES** **[JURY TRIAL DEMANDED]**

Comes Now Plaintiff JORGE MENDOZA, who hereby brings against UBER TECHNOLOGIES INC, This complaint is based on the following arguments, all exhibits attached hereto if there is one, and any other evidence wish this Court may wish to consider in the Discovery process.

PARTIES

1. Plaintiff is an individual California resident former Driver of Uber Technologies for 4 years (11/2014-12/2018)

2. Defendant Uber Technologies Inc is a California Corporation located on 1455 MARKET ST 4TH FL SAN FRANCISCO CA 94103 with CT Corporation System as Agent of process located on 818 SEVENTH STREET STE 930, LOS ANGELES, CA 90017, acting also as a state actor.

JURISDICTION AND VENUE

3. The Court has subject matter jurisdiction over the action pursuant to XIV Amendment of the Constitution of the United States Of America for violations of the Due Process protected by the highest statute of law in America.

4. Pursuant to supplemental jurisdiction, and attendant and related cause of action, ' arising from the same nucleus of operative facts and arising out of the same transaction, is also brought under California Law

5. Venue is proper in this court pursuant to 28 USC Section 1391(b) and is founded on the fact that the substantial part of the events or omissions giving rise to the claim occurred in this district.

FACTUAL ALLEGATIONS

6. Plaintiff worked for 4 years as Uber Taxi Driver for Defendant.

7. Plaintiff had always best conduct ever and as a result of that he had maintained the highest rating and obtained very good reputation with Defendant UBER Technologies Inc.

8. On December 8, 2018 Defendant Uber Technologies inc informs Plaintiff that a rider claimed Plaintiff was intoxicated and proceed to suspend Plaintiff.

9. Around that time Plaintiff told Defendant Uber that he can prove that the claim was 100% false and to prove that asseveration would submit alcohol test to Defendant's office. Plaintiff also asked Uber if the rider felt that way why he/she did not stop the ride and ask to get out and call 911.

10. Defendant Uber Technologies Inc never accepted the evidence against the false claim, they did proceed to deactivate the account of Plaintiff without any further investigation. This caused Plaintiff damages, stress and innumerable problems that will be exposed in the Discovery process.

I. FIRST CAUSE OF ACTION: VIOLATION OF THE XIV AMENDMENT OF THE AMERICAN CONSTITUTION (DUE PROCESS) (On behalf of Plaintiff and against all defendants)

> All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State ***deprive any person of life, liberty, or property, without due process of law***; nor deny to any person within its jurisdiction the equal protection of the laws.

11. Plaintiff re-pleads and incorporates by reference, as if fully set forth again herein, the allegations contained in all prior paragraphs of this complaint.

12. Under the XIV amendment of the Constitution "No person . . . nor be deprived of life, liberty, or property, without due process of law.."

13. However Defendant deprived Plaintiff of this only property which was his contract with defendant, without any further investigation or minimum reasonable compulsory process. As we know a fundamental shift in the ***concept of property*** occurred with recognition of society's growing economic reliance on government benefits, employment, and contracts.

14. They terminated the agreement and deactivated the account leaving Plaintiff out of the Uber system without hearing or at least reviewing the evidence Plaintiff had.

15. ***"Procedural Due Process.***- SECTION 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

15.1. ***Due process*** requires that the procedures by which laws are applied must be evenhanded, so that individuals are not subjected to the arbitrary exercise of government power.

15.2. Exactly ***what procedures are needed to satisfy due process***, however, will vary depending on the circumstances and subject matter involved. A basic threshold issue respecting whether due process is satisfied is whether the government conduct being examined is a part of a criminal or civil proceeding. 15.3. The appropriate framework for assessing procedural rules in the field of criminal law is determining whether the procedure is offensive to the concept of fundamental fairness.

15.4. ***In civil contexts***, however, a balancing test is used that evaluates the government's chosen

procedure with respect to the private interest affected, the risk of erroneous deprivation of that interest under the chosen procedure, and the government interest at stake.

15.5. ***Non-Judicial Proceedings***.—*A* court proceeding is not a requisite of due process. Administrative and executive proceedings are not judicial, yet they may satisfy the Due Process Clause.

15.6 ***The Requirements of Due Process***.—Although due process tolerates variances in procedure "appropriate to the nature of the case," it is nonetheless possible to identify its core goals and requirements. First, "Procedural due process rules are meant to protect persons not from the deprivation, but from the mistaken or unjustified deprivation of life, liberty, or property." Thus, the required elements of due process are those that "minimize substantively unfair or mistaken deprivations" by enabling persons to contest the basis upon which a state proposes to deprive them of protected interests.

15.7 ***The core of these requirements*** is: **(1) notice** and a (2) **hearing** before an (3) **impartial tribunal**. Due process may also require an (4) **opportunity for confrontation** and (5) **cross-examination**, and for (6) **discovery**; that a decision be made based on the record, and that a party be allowed to be represented by counsel.

(1) ***Notice***.

Mullane v. Central Hanover Bank & Trust Co., 339 U.S. 306, 314 (1950). See also Richards v. Jefferson County, 517 U.S. 793 (1996)

"An elementary and fundamental requirement of due process in any proceeding which is to be accorded finality is notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections." This may include an obligation, upon learning that an attempt at notice has failed, to take "reasonable followup measures" that may be available.

(1.2) In addition, ***the notice*** must be sufficient to enable the recipient to determine what is being proposed and what he must do to prevent the deprivation of his interest. ***Goldberg v. Kelly, 397 U.S. 254, 267-68 (1970)***

(1.3) Ordinarily, ***service of the notice*** ***(Armstrong v. Manzo, 380 U.S. 545, 550 (1965); Robinson v. Hanrahan, 409 U.S. 38 (1974); Greene v. Lindsey, 456 U.S. 444 (1982).)*** must be reasonably structured to assure that the person to whom it is directed receives it. Such notice, however, need not describe the legal procedures necessary to protect one's interest if such procedures are otherwise set out in published, generally available public sources.

(2) ***Hearing.***

Mathews v. Eldridge. 424 U.S. 319. 333 (1976). "Parties whose rights are to be affected are entitled to be heard." Baldwin v. Hale, 68 U.S. (1 Wall.) 223, 233 (1863).

"Some form of hearing is required before an individual is finally deprived of a property [or liberty] interest." This right is a "basic aspect of the duty of government to follow a fair process of decision making when it acts to deprive a person of his possessions. The purpose of this requirement is not only to ensure abstract fair play to the individual. Its purpose, more particularly, is to protect his use and possession of property from arbitrary encroachment. . . ." Thus, the notice of hearing and the opportunity to be heard "must be granted at a meaningful time and in a meaningful manner."

(3) Impartial Tribunal.

Goldberg v. Kelly, 397 U.S. 254, 271 (1970)

Just as in criminal and quasi-criminal cases, an impartial decision maker is an essential right in civil proceedings as well. "The neutrality requirement helps to guarantee that life, liberty, or property will not be taken on the basis of an erroneous or distorted conception of the facts or the law. . . . At the same time, it preserves both the appearance and reality of fairness . . . by ensuring that no person will be deprived of his interests in the absence of a proceeding in which he may

present his case with assurance that the arbiter is not predisposed to find against him."

(4) ***Confrontation and Cross-Examination.***

Goldberg v. Kelly. 397 U.S. 254, 269 (1970). See also ICC v. Louisville & Nashville R.R., 227 U.S. 88, 93-94 (1913). Cf. § 7(c) of the Administrative Procedure Act, 5 U.S.C. § 556(d).

"In almost every setting where important decisions turn on questions of fact, due process requires an opportunity to confront and cross-examine adverse witnesses." Where the "evidence consists of the testimony of individuals whose memory might be faulty or who, in fact, might be perjurers or persons motivated by malice, vindictiveness, intolerance, prejudice, or jealousy," the individual's right to show that it is untrue depends on the rights of confrontation and cross-examination. "This Court has been zealous to protect these rights from erosion. It has spoken out not only in criminal cases, . . . but also in all types of cases where administrative . . . actions were under scrutiny."

(5) ***Discovery.***

Greene v. McElroy, 360 U.S. 474, 496 (1959), quoted with approval in Goldberg v. Kelly, 397 U.S. 254, 270 (1970).

The Court has never directly confronted this issue, but in one case it did observe in dictum that "where governmental action seriously injures an individual, and

the reasonableness of the action depends on fact findings, the evidence used to prove the Government's case must be disclosed to the individual so that he has an opportunity to show that it is untrue."

Some federal agencies have adopted discovery rules modeled on the Federal Rules of Civil Procedure, and the Administrative Conference has recommended that all do so. There appear to be no cases, however, holding they must, and there is some authority that they cannot absent congressional authorization.

(6) ***Decision on the Record.***

The exclusiveness of the record is fundamental in administrative law. *See* § 7(d) of the Administrative Procedure Act, 5 U.S.C. § 556(e). However, one must show not only that the agency used *ex parte* evidence but that he was prejudiced thereby. Market Street R.R. v. Railroad Comm'n, 324 U.S. 548 (1945) (agency decision supported by evidence in record, its decision sustained, disregarding *ex parte* evidence).

Goldberg v. Kelly, 397 U.S. 254, 271 (1970) (citations omitted).

Although this issue arises principally in the administrative law area, it applies generally. "The decision maker's conclusion . . . must rest solely on the legal rules and evidence adduced at the hearing. To demonstrate compliance with this elementary requirement, the decisionmaker should state the reasons for his

determination and indicate the evidence he relied on, though his statement need not amount to a full opinion or even formal findings of fact and conclusions of law."

16. ***Why Defendant needs to respect the Due Process of Law protected by the Constitution of the United States?***

A) Defendant is not immune to the application of the Constitution, specifically to due process.

B) They are not immune to the application to the Constitution because they are **state regulated organization for public safety.**

C) Also they are under Judicial Intervention in regards to a Public Safety.

D) Public Safety is a public policy to protect passengers from danger.

E) In the case of Transportation Network Company (TNC) as Uber, Lyft, etc they are strictly regulated by the state delegating on **them the** *power of punishing* **drivers that are Driving Under The Influence,** becoming in this respect state agency to public safety.

F) They exercise their power by making policing decisions enforcing public safety rules, and punishing drivers that drive **under the influence of drugs or alcohol.**

G) That procedure is called Zero Tolerance and is a state regulated process that delegates on TNC companies power to enforce rules and protect public.

H) The State **Decision 13-09-045 Rulemaking 12-12-011** enacted a legal procedure for that. (see point 16)

I) The issue is that Defendant did not follow the legal procedure and did not respect due process.

J) Defendant applied a sanction on Plaintiff acting under the color of the law, because they wanted to exercise their delegated power from Zero Tolerance state regulation. However, they exceeded that power delegated by the state.

K) In order for an organization to be seen as governmental, private companies must be a state actor, meaning an organization that exercises "powers traditionally exclusive to the state", defined from the case Jackson v. Metropolitan Edison Co. and the action must have been originally and solely performed by the government (Rendell-Baker v. Kohn, Evans v. Newton).

L) In conclusion;

   a) Defendant is a state actor because:

      (1) Public Safety is a power traditionally exclusive to state

      (2) The state has delegated on TNC companies the power to enforce public safety rules (see Decision 13-09-045 September 19, 2013)

      (3) Therefore, Defendant became a state actor in regards to public safety

(4) As a state actor Defendant needs to observe due process established in the state regulation

(5) In this case, Defendant deprived Plaintiff of his contract which is considered property without observing due process.

16. The Decision 13-09-045 establishes a legal procedure for TNC companies. The Decision 13-09-045 September 19, 2013 establishes a legal procedure that Defendant did not respect. It is in the section called "**Safety Requirements**" and prescribes that:

> **"Promptly after a zero-tolerance complaint is filed, the TNC shall suspend the driver for further investigation"**

Safety Requirements

"d) TNCs shall institute a zero tolerance intoxicating substance policy with respect to drivers as follows: 1. The TNC shall include on its website, mobile application and riders' receipts, notice/information on the TNC's zero-tolerance 39 TNCs must make their certificate of insurance public and the Commission will put this certificate on its website. R.12-12-011 COM/MP1/avs - 27 - policy and the methods to report a driver whom the rider reasonably suspects was under the influence of drugs or alcohol during the course of the ride. 2. The website and mobile application must include a phone number or in-app call

function and email address to contact to report the zero-tolerance complaint. **3. Promptly after a zero-tolerance complaint is filed, the TNC shall suspend the driver for *further investigation*.** 4. The website and mobile application must also include the phone number and email address of the Commission's Passenger Section: 1-800-894-9444 and CI_intake@cpuc.ca.gov."

16.1. **Further Investigation meaning.** Interpretation of the phrase "Further Investigation. The U.S. Supreme Court stated: "We begin with the familiar canon of statutory construction that the starting point for interpreting a statute is the language of the statute itself. Absent a clearly expressed legislative intention to the contrary, that language must ordinarily be regarded as conclusive.:" Consumer Product Safety Commission et al. v. GTE Sylvania, Inc. et al.,447 U.S. 102 (1980). "Mil interpreting a statute a court should always turn to one cardinal canon before all others. . . . [C]ourts must presume that a legislature says in a statute what it means and means in a statute what it says there." Connecticut Nat'l Bank v. Germain, 112 S. Ct. 1146, 1149 (1992). Indeed, "when the words of a statute are unambiguous, then, this first canon is also the last: 'judicial inquiry is complete!" 503 U.S. 249, 254.

16.2. What is FURTHER?

Further is a comparative form of far. It is also a verb.

1. Adverb. Further means to a greater extent or degree.

Inflation is below 5% and set to fall further.

The rebellion is expected to further damage the country's image.

2. Adverb. If you go or get further with something, or take something further, you make some progress.

They lacked the scientific personnel to develop the technical apparatus much further.

3. Adverb. If someone goes further in a discussion, they make a more extreme statement or deal with a point more thoroughly. To have a better comparison, we need to go further and address such issues as repairs and insurance.

4. Adverb. Further means a greater distance than before or than something else.

People are living further away from their jobs. He came to a halt at a crossroads fifty yards further on.

5. Adverb. Further is used in expressions such as 'further back' and 'further ahead' to refer to a point in time that is earlier or later than the time you are talking about.

Looking still further ahead, by the end of the next century world population is expected to be about ten billion.

6. Adjective. A further thing, number of things, or amount of something is an additional thing, number of things, or amount.

Further evidence of slowing economic growth is likely to emerge this week.

7. Transitive verb. If you further something, you help it to progress, to be successful, or to be achieved.Education needn't only be about furthering your career.

COBUILD Advanced English Dictionary. HarperCollins Publishers

16.3. What is INVESTIGATION?

A term that means to examine and to look at carefully, discover the factor make a legal inquiry. TLD Example: Police conducted a thorough investigation of the accusations of wrongdoing made against the council member, but they could not file charges because they were unable to find any corroborating evidence. (Black's Law Dictionary)

16.4. What is FURTHER INVESTIGATION?

Further Investigation obviously is a procedure that needs to be followed reasonably after a reported incident to make a decision. The investigation is done to apply the right sanction or discharge the reported person.

M) Judicial Intervention. Defendant reached an agreement before Court in a ***class action.*** The Court imposed continuous Jurisdiction over Defendant to protect the interests of part of the public.

N) When a private entity fulfills state functions supervised by the State (Court) then it becomes an "actor state" and when it becomes an actor state it must comply with the

> Constitution in all its magnitude, including the 5th and 14th amendments that define the due process.

17. ***State action doctrine*** is a legal principle that the Fourteenth Amendment applies only to state and local governments, not to private entities. Under state action doctrine, private parties outside of government do not have to comply with procedural or substantive due process.

18. However, there are two exceptions to this rule for: public functions and Entanglement. These exceptions hold that private corporations performing government functions, such as handling law enforcement, would be subject to the Fourteenth Amendment.

19. Adding to the previous point, in some circumstances, a private entity can be a state actor for constitutional purposes. Specifically," 'The Supreme Court has articulated four tests for determining whether a private party's actions amount to state action: (1) the public function test; (2) the joint action test; (3) the state compulsion test; and (4) the governmental nexus test.' " Tsao v. Desert Palace, Inc., 698 F.3d 1128, 1140 (9th Cir. 2012) (alteration adopted) (quoting Franklin v. Fox, 312 F.3d 423, 444-45

II. SECOND CAUSE OF ACTION: DEPRIVATION OF RIGHTS

20. 42 U.S. Code § 1983.Civil action for deprivation of rights. Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress, except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.

21. Defendant deprived Plaintiff of his contract which is considered property without observing due process. This letter I received from defendant: "Thanks for taking the time writing in to us about your account, Jorge. We appreciate your eagerness to get back on the road. However, your account has been ***deactivated***. No deactivation decision is taken lightly or without investigation. As such, certain deactivation decisions, especially those related to zero-tolerance violations, are not eligible for appeal."

III. THIRD CAUSE OF ACTION: UNFAIR BUSINESS PRACTICES

22. Defendant deactivated my account permanently on December, 2018 without any investigation and in violation of my Constitutional rights to due process.

23. Defendant sent me a letter for permanent deactivation of my account:

> "Thanks for taking the time writing in to us about your account, Jorge. We appreciate your eagerness to get back on the road. However, your account has been deactivated. No deactivation decision is taken lightly or without investigation. As such, certain deactivation decisions, especially those related to zero-tolerance violations, are not eligible for appeal."
>
> "No process is 100 percent perfect and the range of issues that could lead to deactivation varies. For a decision as important as permanent deactivation, we want to make sure that drivers have a clear channel to engage with Uber and, where appropriate, get back on the road quickly."

24. In the letter they say that "No deactivation decision is taken lightly or without investigation" which is totally false because they have rejected the submission of my evidence alleging that I was not an employee and other nonsense.

45. Then when I have appealed to their decision they responded in the letter (see above) that "those related to zero-tolerance violations, are not eligible for appeal."

25. I am affected for those unfair business practices described above used by Defendant to deactivate my account because their excuses are lies and false accusations. And I believe this affects me and also many consumers who are desperate for an income and they accept Defendant offer of "great income and conditions" and sign contracts to work for Uber Technologies Inc.

26. 'This prong of California Business & Professions Code § 17200 is clear and ultimately, "an 'unfair' business practice occurs when that practice 'offends an established public policy or when the practice is immoral, unethical, oppressive, unscrupulous or substantially injurious to consumers.'" (Davis v. Ford Motor Credit Co. LLC, (2009) 179 Cal.App.4th 581, 595).

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray for relief as follows:

1. For a declaration that Defendants' actions, policies, and practices as alleged herein are unlawful;

2. For reinstatement;

3. For loss of income and all other compensation by reason of Defendants' unlawful actions, in an amount to be proven at trial;

4. For compensatory damages for Plaintiffs' emotional pain and suffering, in an amount to be proven at trial;

5. For punitive damages in an amount to be determined at trial;

6. For liquidated damages;

7. For interest on loss income, compensation, and damages, including pre- and post-judgment interest and an upward adjustment for inflation;

8. For an order enjoining Defendants from engaging in the unlawful acts complained of herein;

9. For reasonable attorneys' fees and costs of suit pursuant to 42 U.S.C. § 2000e-5(k), and other laws; and

10. For such other and further relief as this Court deems just and proper.

8/26/2019

/s/ Jorge Mendoza
Jorge Mendoza
In pro Per

DEMAND FOR JURY TRIAL

Plaintiffs demand a jury trial on all causes of action and claims to which they have a right to a jury trial.

8/26/2019

/s/ Jorge Mendoza
Jorge Mendoza
In pro Per