

Agenda: Item 3

Consideration of Amendments to Rules 4.C.1, 5.K.1 and 6.A.11:

Eliminating Prepayments/Deposits and Converting the Industry to Daily Shifts (Gas and Gates) Only [ACTION]

CITY AND COUNTY OF
SAN FRANCISCO



TAXI COMMISSION
MAYOR GAVIN NEWSOM

COMMISSIONERS TELEPHONE (415) 554-7737

PAUL GILLESPIE, PRESIDENT, ext. 3
PATRICIA BRESLIN, VICE PRESIDENT
RICHARD BENJAMIN, COMMISSIONER, ext. 1
TOM ONETO, COMMISSIONER, ext. 6
MIN PAEK, COMMISSIONER, ext. 7
R. JAMES SLAUGHTER, ext. 4
SUSAN SUVAL, COMMISSIONER, ext. 5

JORDANNA THIGPEN, EXECUTIVE DIRECTOR

TO: Honorable Commissioners
FROM: Jordanna Thigpen
RE: Prepayments and Proposed Rules
DATE: August 6, 2008

Attached please find a copy of a Resolution passed unanimously by the Board of Supervisors on August 5, 2008. Please note that the final Resolution number will be provided at the TXC meeting on Tuesday.

This Resolution specifically provides that the Taxi Commission is urged to adopt rules prohibiting the collection of prepayments/deposits/etc. Therefore, a TXC Resolution with proposed rules to effectuate the Board's directive is attached to this memorandum.

Also attached are the following:

- EDD Guidelines which the State provides to taxicab companies for purposes of distinguishing employees vs. independent contractors
- A copy of an order from Tracy v. Yellow Cab (1996, San Francisco Superior Court # 938786)

At the hearing, staff will provide a presentation of the various agencies involved in the background of this situation including employee regulation, the status of California taxicab drivers as independent contractors vs. employees. We have also invited representatives from the Department of Industrial Relations and the Employment Development Department.

The TXC Resolution would amend existing Rules to prevent the collection of any monies for prepayments or deposits. It would require the industry to convert to color-scheme controlled gas and gates only and would eliminate long-term leases. It would prevent medallion holders from leasing their medallions to any other party. However, some amendments have already been suggested and will be presented at the hearing.

One of the outstanding policy concerns with eliminating long term-leases involve drivers who have invested in vehicles and paid lease fees for long-term leases. One solution for that is to grandfather existing long term leases (that are otherwise complying with existing rules, such as the three-layer lease rule) and to prevent any new ones. Some drivers and medallion holders with long term leases are working great, while others are riddled with brokers. The TXC uncovered yet another case of a broker operating a vehicle for a medallion holder with at least two drivers, one of whom has not had an A-card in two years. This same broker unscrupulously demanded \$18,000 from one of the long-term lease drivers just for the privilege of signing up with him for four years, plus an additional \$3,000 per month and the purchase of the vehicle.

Brokers are only mentioned because by eliminating the ability of medallion holders to lease their medallions, the Commission would be eliminating the possibility for brokers to operate in the industry. However as noted there are many policy concerns for discussion.

1 [Urging Yellow Cab Cooperative to not require prepayments or deposits from taxicab drivers.]

2
3 **Resolution urging Yellow Cab Cooperative, Inc. not to require deposits or prepayments**
4 **from taxicab drivers as a condition of employment or contract and urging the Taxi**
5 **Commission to adopt rules prohibiting the collection of deposits or prepayments.**

6
7 WHEREAS, Yellow Cab Cooperative now seeks to implement a policy requiring drivers
8 to deposit certain amounts with the company as a condition of continued employment or
9 contract as high as \$1,930 by August 15, 2008; and

10 WHEREAS, Various courts have interpreted the status of California taxicab drivers as
11 employees or independent contractors depending on the amount of control factors present in
12 the employment relationship; and,

13 WHEREAS, One of those control factors suggested by the California State
14 Employment Development Department is the prepayment or deposit of lease fees for terms of
15 at least 28 days; and

16 WHEREAS, The decision in *Tracy v. Yellow Cab Cooperative* (1996, San Francisco
17 Superior Court No. 938786) specifically prohibits the defendant and other taxicab companies
18 from collecting deposits from drivers; and,

19
20 WHEREAS, This policy is damaging to the San Francisco taxicab industry and to the
21 lives of the drivers who would be required to produce these sums of money; and now
22 therefore be it

23 RESOLVED, That the Board of Supervisors urges Yellow Cab Cooperative to comply
24 with the mandate of *Tracy v. Yellow Cab Cooperative* and not require drivers to pre-pay
25 deposits or other monies for any term of time beyond a per-shift basis, and, be it

1 FURTHER RESOLVED, That the Board of Supervisors urges the Taxi Commission to
2 adopt a rule prohibiting the collection of monies, whether called "deposits," "prepayments," or
3 any other term, other than daily gate fees, from shift drivers as a condition of employment or
4 contract; and, be it

5 FURTHER RESOLVED, That the Board of Supervisors urges the Taxi Commission to
6 adopt a rule requiring payment of gate fees at the end of each driver's shift.

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JORDANNA THIGPEN, EXECUTIVE DIRECTOR

August 13, 2008

At the meeting of the Taxi Commission on Tuesday, August 12, 2008 the following resolution(s) and finding(s) were adopted:

RESOLUTION NO. 2008-XX

WHEREAS, the Taxi Commission wishes to prevent taxicab companies from requiring deposits, prepayments, or other monetary sums from individual taxi drivers as a condition of driving a taxicab vehicle with a particular company; and

WHEREAS, there are currently no rules to prohibit taxi companies from requiring monies from drivers, although the 1996 case of Tracy v. Yellow Cab Cooperative (San Francisco Superior Court No. 938786) does prevent deposits; and

WHEREAS, the problem of medallion brokers and other individuals operating a black market within the legitimate San Francisco taxicab industry is endemic and is destroying the fabric of the industry; and

WHEREAS, the Taxi Commission understands that particular companies and particular medallion holders are operating medallion permits in an unlawful manner that contribute to the problem of brokers; and

WHEREAS, the existing rules limiting leases to three layers are inadequate and do not provide sufficient penalties for medallion holders, taxi companies, and drivers who are violating the law; and

WHEREAS, the Taxi Commission wishes to address these problems with the following amendments to the Rules and Regulations; and

Rule 4.C.1: *All Medallion Holders must operate taxicab vehicles on a "gas and gates" or per-shift basis only. Gate fees may only be paid and collected to the Color Scheme Holder at its business premises at the beginning of the Medallion Holder's shift. No Medallion Holder may lease a vehicle to or otherwise employ any Driver or any other person for the purpose of operating the taxicab vehicle associated with his medallion. and Color Scheme Holder shall limit the layers of medallion or permit leases to three (3) layers (e.g. Medallion Holder to Color Scheme to Driver. No Taxicab Driver may lease a permit or medallion, either on a per-shift basis or for any term of time from anyone other*

~~than the Medallion Permit Holder or the Color Scheme Company under which the permit or medallion is operating, either on a per shift basis or for any term of time from anyone other than the Medallion Permit Holder or the Color Scheme Company under which the permit or medallion is operating.~~

Rule 5.K.1: ~~Every Medallion Holder and Color Scheme Holder must operate taxicab vehicles on a "gas and gates" or per-shift basis only. Gate fees may only be paid and collected to the Color Scheme Holder at its business premises at the beginning of the Driver's shift. No Color Scheme Holder may lease a vehicle to or otherwise employ any Driver or any other person for the purpose of operating the taxicab vehicle associated with a medallion for any term longer than one shift. No Color Scheme Holder may collect monies from any driver as a prepayment, deposit, or for any other purpose. Violation of this Rule shall create an extremely strong presumption for revocation of a color scheme permit. shall limit the layers of medallion or permit leases to three (3) layers (e.g. Medallion Holder to Color Scheme to Driver. No Taxicab Driver may lease a permit or medallion, either on a per shift basis or for any term of time from anyone other than the Medallion Permit Holder or the Color Scheme Company under which the permit or medallion is operating, either on a per shift basis or for any term of time from anyone other than the Medallion Permit Holder or the Color Scheme Company under which the permit or medallion is operating.~~

Rule 6.A.11: ~~All Taxicab Drivers must operate taxicab vehicles on a "gas and gates" or per-shift basis only. Gate fees may only be paid and collected to the Color Scheme Holder at its business premises at the beginning of the Driver's shift. Drivers are not required to give any monies to Color Schemes for any purpose and are encouraged to report any requests to the Taxi Commission. No Taxicab Driver may lease a permit or medallion, either on a per shift basis or for any term of time from anyone other than the Medallion Holder or the Color Scheme Holder under which the permit or medallion is operating.~~

THEREFORE BE IT RESOLVED, that the Taxi Commission adopts the amendments described above.

**AYES:
ABSENT:**

**NOES:
RECUSED:**

Respectfully submitted,

Jordanna Thigpen
Executive Director

TAXICAB INDUSTRY

Taxicab drivers typically operate taxicabs under one of three business arrangements:

1. The taxicab company acknowledges the driver as an employee.
2. The driver owns and operates the taxicab, independently arranges fares, and personally pays for required licenses, permits, and insurance.
3. The driver performs services as a lease driver on either a fixed-fee or percentage-of-receipts basis.

Under the first arrangement, the taxicab driver is subject to the direction and control of the taxicab company and would be considered a common law employee (refer to Information Sheet: Employment, DE 231). Under the second arrangement, the taxicab driver independently makes business decisions related to the taxicab service. Since the driver is not subject to the direction and control of the taxicab company, the driver would be considered self-employed. Under the third arrangement, determining whether a driver is an employee or self-employed person requires a detailed analysis of the business arrangement. How the industry-specific details of the arrangement impact the employment status of drivers who lease a taxicab on a fixed-fee or percentage-of-receipts basis is discussed below.

FIXED-FEE DRIVERS AS EMPLOYEES IN THE TAXICAB INDUSTRY

There is a strong indication that taxicab drivers who lease taxicabs on a fixed-fee basis under all of the following circumstances are employees. Therefore, there is a high probability that drivers classified as independent contractors are incorrectly classified when the drivers:

- Lease the taxicab on a daily basis or pay the lease fee at the end of every shift.
- Do not have a financial interest in a business and are not subject to a financial risk of loss.
- Are not involved in a separate and distinct business of their own.
- Perform work that is a regular part of the taxicab company's business.
- Can be terminated by the taxicab company without liability by termination or nonrenewal of the lease agreement.

FIXED-FEE DRIVERS AS INDEPENDENT CONTRACTORS IN THE TAXICAB INDUSTRY

There is a strong indication that taxicab drivers who lease their taxicab on a fixed-fee basis are independent contractors when they:

- Do not perform services under the direction and control of the taxicab company. They are free to conduct their business however they choose.

- Do not rely on the company for their customers. They secure their customers on their own with only an occasional referral from the company. They are not required to accept any referral.
- Prepay to lease a taxicab for a period of at least 28 days.
- Choose their shifts to drive the taxicab.
- Must be provided advance notice of termination or nonrenewal of the lease agreement by the taxicab company or the company may be liable for damages under the terms of the agreement. Drivers are liable for unpaid lease fees when they withdraw from the agreement early, and lease agreements provide provisions for arbitration of disputes.

DRIVERS WHO LEASE TAXICABS BASED ON A PERCENTAGE OF THEIR RECEIPTS

The California Unemployment Insurance Appeals Board (CUIAB) has held taxicab drivers to be employees when the following circumstances apply:

- The drivers pay a percentage of what they earn to the taxicab company in order to lease a taxicab.
- Since the taxicab company's income depends on how much revenue is generated by the driver, the company may attempt to increase that income by placing controls and requirements on the drivers, such as assigning shifts, requiring the maintenance of trip sheets, and paying for all advertising.
- The drivers do not have a substantial investment in the business, are not subject to an entrepreneurial risk of loss, and do not have a distinct business of their own.
- The work performed by the drivers is a regular part of the taxicab company's business, and drivers can terminate or be terminated without any liability.

IMPACT OF GOVERNMENTAL REQUIREMENTS

Local governments commonly mandate that a taxicab company exercise certain controls over taxicab drivers and the company's operation of vehicles. Depending on the jurisdiction, such controls may include, but are not limited to, driver dress codes, maintenance of trip records, restrictions on and requirements for the driver's use of the vehicle, response time goals and handling of dispatches, required color schemes, driver and company licensing, driver training, and a variety of requirements to ensure transportation accessibility and public safety. Such mandates are not viewed as being evidence of control and are given no weight in making the ultimate determination.

However, if the company expands upon or exceeds the government mandates, then the requirements are considered in determining the amount of control exercised over the drivers.

MAJOR COURT CASE

In Santa Cruz Transportation, Inc. v. Unemployment Insurance Appeals Board (1991) 235 CA 3d 1363; 1 Cal Rptr 2d 641, the Appeals Court held that the drivers who paid the taxicab company a fixed-fee to lease a taxicab were employees of the company. Therefore, any fixed-fee lease driver who operates in a manner similar to the drivers described in the Santa Cruz Transportation decision would be an employee. Refer to the chart below that lists the elements cited in the court decision and the weight the CUIAB and the courts will give to each.

KEY ELEMENTS IN THE SANTA CRUZ TRANSPORTATION CASE	WEIGHT GIVEN TO ELEMENTS IN THE SANTA CRUZ TRANSPORTATION CASE
The terms of the lease allowed the company to terminate the drivers.	The right to terminate at will is strong evidence of employment. The right to terminate conveys an inherent power of the company over the driver. The company could choose not to renew the lease of a driver without advance notice or liability. This would be strong evidence of an employment relationship and would be given high weight.
The drivers could be terminated under the lease agreement if they did not maintain good relations with the public.	The company exercised control over the actions and behavior of the drivers by requiring them to always have a good relationship with the public. Failure to do so would result in the termination of the driver. With this right, the company can demand many things of the driver, and the driver, fearing loss of his or her job, would be obliged to follow such demands. High weight would be given to this element.
The lease agreement designated the time period when the shift began and ended.	When the drivers are not allowed to set their own hours of work, the company is directing and controlling their services. This element is given medium to high weight. When shift drivers lease a taxicab for 12 hours a day or 12-hour shifts over a period of a week and leases are allowed only when they are available for the shift requested, drivers cannot set their own hours and are not free to work when they choose.
The drivers were required to schedule their meal breaks with the dispatcher.	If the dispatcher has control over when breaks are taken, this is strong evidence of control over the drivers and would be given high weight as an employment element. If the drivers are only required to give notice of breaks to the dispatcher, the element would be given low weight.
The drivers were prohibited from using the taxicab for personal use.	The company controlled the use of the taxicabs by the drivers. This element would be given medium weight.
The drivers were required to accept charge slips from certain customers.	The company exercised control over the services by requiring the acceptance of alternative methods of payment. This was evidence that the company had the right to control the services, and that right was complete and authoritative. This alone is strong evidence of an employer-employee relationship and is given high weight.
The drivers were required to conform to a company dress code.	A specific dress code, such as the wearing of uniforms, is given high weight and is strong evidence of employment. A general dress code, (for example, "neat appearance") would be given low weight.
The drivers were required by the company to account for fares they received by a daily trip sheet and there was no evidence that the city required the drivers to maintain trip sheets.	Required reports are viewed as "review of work" which is strong evidence of the taxicab company's right to control the drivers. This element is weighted high as an indicator of employment. Having drivers complete city or governmental agency required reports is an element given no weight.

Table continued on next page.

**KEY ELEMENTS IN THE
SANTA CRUZ TRANSPORTATION CASE (CONT.)**

**WEIGHT GIVEN TO ELEMENTS IN THE
SANTA CRUZ TRANSPORTATION CASE (CONT.)**

The work did not require the expertise of a skilled professional.	Operating a taxicab does not require a high level of technical skill and this element would be given high weight. A lower level of technical skill is strong evidence of employment.
The drivers did not advertise their services.	If the company holds itself out as a taxicab service and does all advertising, this would be strong evidence that the drivers are working in the furtherance of the company's business and would be given medium to high weight.
The taxicab company operated a fleet of cabs for public carriage.	The taxicab company was in the business of providing taxicab services, not leasing taxicabs. This element would be given high weight.
The taxicab company's name was on the taxicab.	The company's name on the taxicab was an indication that the driver represented the taxicab company and the driver performed services in the furtherance of the company's business. This element would be given medium to low weight.
The drivers' work was part of the regular business of the taxicab company.	The drivers' services were performed as an integral part of and in direct furtherance of the company's business, which indicates employment. This element would be given high weight.
The taxicab company owned the taxicab.	The drivers did not have a significant investment in providing their services (for example, own their cab, own medallions or the permits necessary to operate a taxicab, etc.). This was strong evidence of employment and is given high weight. A daily lease is not considered a significant investment and does not create an entrepreneurial risk of loss associated with an independent contractor.
The taxicab company owned the municipal taxicab license.	The drivers operated under the company's license. This is an element receiving high weight as evidence of employment.
The drivers depended on the company's dispatcher for their livelihood.	If the drivers are required to use the company's dispatcher in order to secure business, this is strong evidence that the company is controlling the services performed by the drivers. This element would be given high weight.
The customers called the taxicab company for taxicab services; the taxicab company arranged for the performance of the services.	If the customers generally secure the services of the drivers through the company, this would be an employment element as the drivers depend on the taxicab company for business. If the drivers secure business on their own and could accept or reject referrals from the company dispatcher, this would be an indication of independent contractor status. This element would receive high weight.

ADDITIONAL INFORMATION

This information sheet describes the most common circumstances in the taxicab industry and how those circumstances affect whether a taxicab driver's services are performed as an employee or independent contractor. If you have questions about the employment classification of taxicab drivers, you can visit your nearest Employment Tax Office listed in the California Employer's Guide (DE 44) and on our Web site at www.edd.ca.gov/taxrep.taxloc.htm#taxloc. You may also contact us at 1-888-745-3886.

EDD is an equal opportunity employer/program. Auxiliary aids and services are available upon request to individuals with disabilities. Requests for services, aids, and/or alternate formats need to be made by calling 1-888-745-3886 (voice), or TTY 1-800-547-9565.

#1
E.D. 929-5726 (Re: Contract)
15-57

ENDORSED
FILED
San Francisco County Superior Court

OCT 22 1996

ALAN CARLSON, Clerk
BY: DAN MACDUFF
Deputy Clerk

CALIFORNIA SUPERIOR COURT
CITY AND COUNTY OF SAN FRANCISCO
DEPARTMENT NUMBER EIGHT

12	JOSEPH TRACY, et al.,	)	NO. 938786
13	<u>Plaintiffs,</u> TAXI-DRIVER	)	ORDER GRANTING
14	vs.	)	PLAINTIFFS' MOTION
15	YELLOW CAB COOPERATIVE, et al.,	)	FOR SUMMARY JUDGMENT
16	Defendants.	)	AND TO ADD CLASS
17		)	REPRESENTATIVE;
		)	ORDER DENYING
		)	DEFENDANTS' MOTION
		)	TO DISMISS OR
		)	DECERTIFY CLASS

19 Plaintiffs' motion for Summary Judgment came on regularly in
20 Department Eight of this Court on July 24, 1996, the Honorable
21 William Cahill, Judge Presiding. Plaintiffs' Motion to Add Class
22 Representative and defendants' motion to dismiss or decertify the
23 class aspect of this case came on regularly in Department Eight of
24 this Court on August 8, 1996. After reviewing all the papers
25 submitted and the file in this matter the court issues the
26 following ruling:

1 On August 7, 1995, this case was singly assigned by the
2 Presiding Judge to Judge William Cahill for all purposes. In early
3 February 1996, this court, after consulting with counsel set July
4 11, 1996 as a hearing date for the parties cross-motions for
5 summary judgment. After setting the above schedule, there were at
6 least three and maybe more Status Conferences and hearings, at
7 which the progress on these cross summary judgment motions was
8 discussed. On May 30, 1996, this Court, after consultation with
9 both Plaintiffs' and Defendants' counsel, re-calendared the hearing
10 dates for the cross-motions for July 24, 1996, as well as dates for
11 filing the pleadings. The court is unaware of any requests for
12 continuances or any objection to any date on which a pleading was
13 required to be filed.

14 Despite all of this advance planning, all of which involved
15 consultation with counsel for both sides, defendants chose not to
16 file any summary judgment motion, and did not contest any of
17 plaintiffs' 56 undisputed facts.¹ In addition, defendants' counsel
18 did not set the named plaintiff Joseph Tracy's deposition until
19 April 22, 1996, then canceled it, even though Mr. Tracy was
20 available. Subsequently, the deposition was not even started until
21 July 22, 1996, two days before the long scheduled summary judgment
22

23 ¹Under CCP § 437c(b) the opposition papers "shall include a
24 separate statement which responds to each of the material facts
25 contended by the moving party to be undisputed, indicating whether
26 the opposing party agrees or disagrees that those facts are
27 undisputed." "Failure to comply with this requirement of a separate
statement may constitute a sufficient ground, in the court's
discretion, for granting the [summary judgment] motion." Buehler
v. Alpha Beta Co. (1990) 224 Cal.App.3d 729, 735.

1 hearing, over four and one-half years after the complaint was filed
2 (for some period of time there was a stay in effect for settlement
3 discussions) and days after defendants' opposition to the motion
4 was due.

5 In contrast, the record shows that plaintiffs completed the
6 necessary discovery, responded to all of defendants' discovery in a
7 timely manner and filed and served their motion timely.

8 This court is concerned that such a significant issue as the
9 employment status of many San Francisco taxicab drivers will be
10 decided under these procedural circumstances, but the court also
11 finds that the record before it is sufficient to do so. For
12 instance, virtually all of the plaintiffs' undisputed facts comes
13 from testimony of the taxicab company officials, people who
14 certainly know how their industry operates. In addition, defense
15 counsel has submitted, well after the hearing, deposition excerpts
16 from Mr. Tracy. Plaintiffs have objected to the consideration of
17 this evidence, and the objection is sustained, however the court,
18 because the issues are so significant, did review this late
19 evidence to insure that it did not contain any facts which would
20 alter a finding for plaintiffs. Finding none, and finding that
21 plaintiffs' have met their burden of proof under CCP § 437c, this
22 court will grant summary judgment for Plaintiffs.

23
24 I. PROCEDURAL ISSUES.

25 Defendants' request for a continuance is denied. In order
26 to get their continuance, defendants must meet the requirements of
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1 CCP §437c(h). Defendants have had more than ample opportunity to
2 conduct discovery. As early as the status conference in January
3 1996, defendants knew of the upcoming summary judgment motion, yet
4 failed to conduct even Mr. Tracy's deposition.

5 Defendants argue that plaintiffs' summary judgment motion
6 must be denied because the briefing schedule agreed upon on May 30,
7 1996, in chambers did not provide defendants with the usual twenty-
8 eight day notice pursuant to CCP § 437c. Defendants ignore the
9 fact that the dates were not unilaterally imposed on them, but were
10 set, by agreement, after consultation between the attorneys and the
11 court and at no time before filing their opposition did defendants
12 object to the briefing schedule. In addition, the defendants fail
13 to state in their papers that they had the full 14 days required
14 under CCP §437c to file their opposition. (Moving papers were to
15 be served by July 3 and opposition was not due until July 17.
16 Reply papers were due July 22 and the hearing was held on July 24.)
17 Under the court's schedule, all parties had the usual amount of
18 time for briefing a summary judgment motion. The only time that
19 was shortened was the court's preparation time, which was shortened
20 to two days instead of the usual five days; (the last day for
21 filing a reply brief is usually five days before the hearing under
22 CCP §437c(b)).

23 The court was frankly surprised to learn for the first time
24 when it read the defendants opposing papers that counsel would
25 object to the less than 28 days notice of this motion. Considering
26 the history of discussions regarding cross summary judgment
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1 motions, dated virtually from the time of single assignment to
2 Judge Cahill, as well as the fact that defense counsel knew the
3 briefing schedule for more than a month before the motion was to be
4 filed, to seriously consider this objection, would be to permit
5 defense counsel to "sand bag" the opposing party and this court.
6 Obviously, this is unacceptable and the court denies counsel's 28
7 day notice objection.

8 The next procedural objection raised by defendants is that
9 defense counsel received service of the moving papers after "6:00
10 p.m. and was not delivered to a person in charge of that office."
11 This argument is also unavailing and defendant was not prejudiced.
12 According to the Declaration of Christopher Ho filed with the
13 plaintiffs' reply brief, his office gave the summary judgment
14 motion and moving papers to a messenger at 4:35 p.m., on July 3,
15 1996, the date service was to be made on defendants' counsel. The
16 papers were delivered and signed for at defense counsel's office at
17 about 6:05 p.m., but after a secretary in that office called and
18 told Mr. Ho that "I've been instructed to tell you that we haven't
19 received the motion yet and our office is closed". In addition,
20 Mr. Ho faxed the points and authorities directly to Mr. Bennett,
21 lead counsel for defendant, in his offices in San Diego on July 3
22 at 6:45 p.m.

23 Plaintiffs caused themselves problems by failing to serve
24 their motion earlier, however, their actions did not prejudice
25 defendants in any significant way. Defense counsel had the papers
26 in their possession in time to adequately respond, or to ask the
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1 court for a short extension of time to file their opposition.
2 Also, when they did file their opposition defendants did not
3 dispute any of the 56 facts presented by plaintiffs. This court
4 denies defendants' request to deny the motion because it was served
5 at 6:03 p.m.

6 Next, defendants argue that summary judgment motions in a
7 class action case can not be considered by the court until after
8 the class opt-out period is over. Defendants rely on Home Savings
9 & Loan v. Superior Court (1974) 42 Cal.App.3d 1006 and Home Savings
10 & Loan v. Superior Court (1976) 54 Cal.App.3d 208 to support this
11 argument. Under the so-called Home Savings rule, a court cannot
12 decide the merits of a claim in a class action suit before the opt
13 out period expires in order to protect against one-way intervention
14 (where class members can opt out if the decision on the merits is
15 adverse to their interests, thereby avoiding the court's decision
16 and preserving their rights).

17 Plaintiffs, relying on Frazier v. City of Richmond (1986)
18 184 Cal.App.3d 1491 and Rule 23(b)(2) of the Federal Rules of Civil
19 Procedure (used by California courts), argue that the Home Savings
20 rule does not apply in this case because plaintiffs primarily seek
21 injunctive and declaratory relief, and not damages. In Rule
22 23(b)(2) actions, (actions for injunctive relief), notice to class
23 members is not mandatory but merely discretionary. In Frazier, the
24 court "decline[d] to expand the scope of Home Savings" to Rule
25 23(b)(2) actions finding that the rationale of Home Savings was
26 inapplicable to actions for injunctive relief. Frazier, 184

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1 Cal.App.3d at 1502. Under this and other authority cited by
2 plaintiffs, this court finds that plaintiffs' summary judgment
3 motion may be decided prior to the completion of the opt-out
4 period.

5 Even if the Home Savings rule applied to actions seeking
6 injunctive relief, and the court could not decide plaintiffs'
7 summary judgment motion until after the opt-out period is complete,
8 there is no reason to delay the actual hearing as long as the
9 ruling is made after the opt-out period is complete. In this case
10 the opt-out period expired on August 21, 1996, therefore ruling on
11 this motion at this time is appropriate.

12 In addition, defendants have never shown any indication that
13 they would defend this case any less vigorously depending on the
14 number of class members ultimately determined. Indeed, the
15 injunctive relief sought by the current drivers would bind the
16 defendants regardless of the members of the class.

17 Next, defendants argue that they are entitled to stop the
18 decision on this motion because they want to file new affirmative
19 defenses. They have however, failed to cite any case that permits
20 a defendant to get a continuance on a summary judgment motion
21 because a party is intending to file some more affirmative
22 defenses. In addition, after the revisions of CCP § 437c,
23 plaintiffs no longer have to disprove affirmative defenses before
24 meeting their burden of proof on a summary judgment motion.
25 Therefore this is not a basis upon which the court will deny
26 summary judgment.

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1 Finally, since the hearing on this motion, the court has
2 learned that defendant Taxi Service, Inc. (dba City Cab) has filed
3 bankruptcy. The automatic bankruptcy stay is in effect as to that
4 defendant and nothing in this order applies to that defendant. The
5 automatic stay does not affect the remaining defendants.
6

7 II. SUMMARY JUDGMENT ANALYSIS

8 Plaintiffs' motion asks this court to decide the legal issue
9 on which this entire case is based: are taxicab drivers independent
10 contractors or are they employees under California law entitled to
11 workers' compensation insurance and unemployment insurance?
12

13 A. 17200 Claims

14 Business and Professions Code § 17200 ("17200") permits this
15 court to enjoin "any unlawful, unfair or fraudulent business act or
16 practice." In this case all elements of a 17200 claim are met.
17 Defendants are in the "business" of transporting members of the
18 public for hire. Separate Statement of Undisputed Facts, ("UF"), ¶¶
19 1-4. The conduct complained of constitutes a "practice" within the
20 meaning of 17200. From November 1987 virtually until the present,
21 defendants have required thousands of people seeking to drive their
22 taxicabs to do so under the Taxicab Lease Agreement. UF ¶5; Yellow
23 Cab Co-Operative, Inc. V. Workers' Compensation Appeals Board
24 (1991) 226 Cal.App.3d 1288, 1293. The Taxicab Lease Agreement used
25 under defendants new "choice of status" system (implemented by all
26 defendants within the last year) does not differ from the previous
27

1 system in any material respect. UF ¶7; see Exhibits A-D (exhibits
2 A and B thereto) and Exhibit E to Declaration of Christopher Ho in
3 support of plaintiffs' summary judgment motion; (see also
4 discussion infra).

5 Under statute and case law, the practices complained of are
6 "unlawful" and "unfair" for purposes of 17200. Labor Code § 3357
7 provides that any person rendering service to another is presumed
8 to be an employee, except as specifically excluded from that status
9 by law. Similarly, Labor Code § 5705 establishes that where an
10 injured worker was performing service for a putative employer, the
11 employer has the burden of proving that the worker was not an
12 employee. Labor Code § 3353 further defines an independent
13 contractor as "any person who render service for a specified
14 recompense for a specified result, under the control of his
15 principal as to the result of his work only and not as to the means
16 by which such result is accomplished." The Unemployment Insurance
17 Code adopts the "usual common law rules applicable in determining
18 the employer-employee relationship." Unempl. Ins. Code §621(b).

19 Based on these statutory tenets, the courts have further
20 elucidated the employee-independent contractor distinction. S.G.
21 Borello & Sons v. Department of Industrial Relations (1989) 48
22 Cal.3d 341 ("Borello") (holding that employment relationship
23 established where the principal "retains all necessary control" over
24 the manner in which the work is accomplished, and also citing to
25 "secondary indicia" of employment status); Yellow Cab Co-Operative.
26 Inc. v. Workers' Compensation Appeals Board (Edwinson) (1991) 226

27

1 Cal.App.3d 1288 ("Edwinson") (reaffirming presumptions contained in
2 Labor Code §§ 3357 and 5705(a), following Borello, and finding
3 taxicab driver was employee notwithstanding his being signatory to
4 a "lease agreement" where, *inter alia*, he was instructed by the
5 taxicab company where to pick up passengers and on use of the
6 radio, where the company assigned his shifts, and where he was
7 subject to unilateral termination by the company); and Santa Cruz
8 Transportation, Inc. v. Unemployment Insurance Appeals Board (1991)
9 235 Cal.App.3d 1363 ("Santa Cruz") (following Borello, and finding
10 taxicab driver was employee where, *inter alia*, taxicab company was
11 able to terminate its drivers and unilaterally designate shift
12 times, and where no special skill required to drive a taxicab).

13
14 (1.) Plaintiffs' Evidence of Employer-Employee Relationship

15 In support of their motion, plaintiffs submitted extensive,
16 undisputed and material facts based on admissible and reliable
17 evidence generally describing the operation of the San Francisco
18 taxicab industry and the extent to which defendants retain all
19 necessary control over the manner in which plaintiffs perform the
20 work of driving defendants' taxicabs. Plaintiffs' evidence
21 consists almost entirely of the materially identical versions of
22 the "Taxicab Lease Agreement" utilized by each defendant throughout
23 the relevant time period, which specifies certain of the terms and
24 conditions of drivers' work, other documents obtained from
25 defendants in the course of discovery, and the deposition testimony
26 of defendants' officers and agents. Additionally, plaintiffs
27

1 submitted declarations from individuals who have driven or still
2 drive taxicabs for defendants under the "Taxicab Lease Agreement."
3 The latter declarations were limited to the questions of marketing
4 and promotional skill, if any, utilized by individual taxicab
5 drivers, and the extent of drivers' reliance on the dispatch
6 services provided by defendants. In this case, the undisputed
7 facts leave no doubt that the plaintiffs are employees under the
8 authority cited above.

9
10 (a) *"All Necessary Control" exercised by Defendants*

11 Defendants exercise "all necessary control" over their
12 drivers. The defendants control all significant terms of the
13 taxicab cab drivers work. From the manner in which drivers are
14 hired to the conditions of their work, defendants exercise the
15 prototypical types of "pervasive" control indicative, under the
16 cases, of an employer-employee relationship.

17 Defendants evaluate those who seek to drive their taxicabs,
18 requiring applications, collecting background information,
19 conducting interviews, and checking references. UF ¶9. If they
20 are approved by defendant, prospective lease drivers sign the
21 Taxicab Lease Agreement, the terms of which are non-negotiable. UF
22 ¶ 10. Defendants unilaterally define the material conditions of
23 working as a taxicab driver, including without limitation the
24 rental fees for their vehicles, any modifications to the "Taxicab
25 Lease Agreement," the amount of "security deposits" which must be
26 posted by lease drivers and the amounts chargeable thereto in the

27

1 event of accidents, and the vehicles drivers are assigned and the
2 hours that drivers work. UF ¶¶10-14; 20-23. Defendants conduct
3 "orientation programs" for those who are approved to become lease
4 drivers. These instruct the drivers about defendants' operation,
5 and may also include information about use of the radio and the
6 taximeter, the defendant's dispatch system, the proper method of
7 filling out waybills, how to redeem company scrip and vouchers,
8 police code requirements, and procedures to follow in case of
9 accidents. At the same time, defendants supply their drivers with
10 city maps, tips on driving, safety information, and copies of
11 police and airport regulations governing taxicab operations. UF ¶¶
12 15-18. In addition, defendants enter into "paratransit" and other
13 contracts that require them to train and discipline their drivers.
14 UF ¶19. Other controls exercised by defendants over drivers' daily
15 work include requiring their drivers to inspect their taxicabs
16 before their shift and to report any defects (UF ¶26), return their
17 taxicabs to the company gas station for inspection at the end of a
18 shift (UF ¶27), and advertise their status as "self-employed
19 lessees" (UF ¶28). Defendants also maintain and operate dispatch
20 systems. Through those systems, defendants collect requests from
21 the public for taxicab rides. UF ¶¶ 30,31. Defendants'
22 dispatchers or dispatch computers allocate passengers to driver,
23 and control which drivers are notified of potential customers. UF
24 ¶32. Drivers utilized the dispatch service to locate passengers.
25 UF ¶¶31-32.

26 Defendants keep files on each of their drivers which include
27

1 personal information and may include driver evaluations, accident
2 reports, records of complaints or compliments about the driver, and
3 even records of the drivers' disputes with defendants or other
4 drivers. UF ¶35. "Liability to discharge for disobedience or
5 misconduct is strong evidence of control." Edwinson 226 Cal.App.3d
6 at 1298. Defendants also retain the right to terminate drivers'
7 leases at will. UF ¶36. "[S]trong evidence in support of an
8 employment relationship is the right to discharge at will, without
9 cause." Borello, 48 Cal.3d at 350; Santa Cruz, 235 Cal.App.3d at
10 1372.

11
12 (b) "Secondary Indicia" of Control are Manifest in
Defendants' Relationship With Their Drivers

13 The secondary indicia of control identified in the case law
14 are manifest in defendants' relationship with their drivers.
15 Drivers are an integral part of defendants' business. As in
16 Edwinson, "the enterprise could no more survive without them than
17 it could without working cabs." Edwinson, 226 Cal.App.3d at 1294.
18 Indeed, the duration of the relationship between defendants and
19 their drivers is indefinite, unlike the typical independent
20 contractor relationship; absent notice by either party, the Taxicab
21 Lease Agreement is presumed to be automatically renewed. UF ¶37.

22 Drivers neither possess special skills, nor engage in a
23 distinct trade or occupation. UF ¶38-39. Taxicab drivers do not
24 engage in a skilled profession which could be characterized as a
25 "distinct trade or calling" warranting true independent contractor
26 status. Borello, 48 Cal.3d at 356-57 (work involved no peculiar
27

1 skills; workers engaged in no distinct trade or calling); Edwinson,
2 226 Cal.App.3d at 1292-94 ("[t]he work did not involve the kind of
3 expertise that requires entrustment to an independent
4 professional").

5 The nature of the defendants' taxicab operations is such
6 that drivers have no meaningful way to influence how much profit
7 they make in the course of their work. Nor do drivers face a
8 significant risk of financial loss. UF ¶¶46-47. For example,
9 drivers have no control over the amount they charge passengers in
10 fares. UF ¶40. Nor do drivers use marketing skills to publicize
11 their personal availability to provide taxicab services. UF ¶41.
12 They do not use personalized business cards or place advertisements
13 in newspapers or telephone directories as a means of promoting
14 themselves. UF ¶¶41-43. Through the voucher and scrip systems,
15 defendants structure the financial arrangements between the drivers
16 and certain of defendants' customers. Drivers must accept such
17 forms of payment from those passengers and redeem them for cash at
18 the end of their shifts. UF ¶¶44, 45. The lack of opportunity for
19 profit or loss mirrors that found in the cases of Borello, 48
20 Cal.3d at 355-58 (share farmers "incur[red] no opportunity for
21 "profit" or "loss"); Edwinson, 226 Cal.App.3d at 1301 ("drivers did
22 not set their own rates but were paid according to the number and
23 distance of fares that they carried. . . . There is no evidence
24 that earnings varied with the drivers' skills, entrepreneurial or
25 otherwise."); Santa Cruz, 235 Cal.App.3d at 1368, 1375-76 (driver
26 charged fares approved by city, no indication that earnings varied

27

1 with drivers' skills).

2 Plaintiffs' evidence establishes that defendants'
3 relationship with their drivers is an employer-employee
4 relationship. Under the statutory and case law, defendants'
5 business practice of categorizing plaintiffs as independent
6 contractors is unlawful and may be enjoined by this court.

7 In addition, this court finds that defendants' business
8 practice is unfair under 17200. A practice is "unfair" if "it
9 offends an established public policy." People v. Casa Blanca
10 Convalescent Homes (1984) 159 Cal.App.3d 509, 530. In identifying
11 what constitutes a "public policy" the Casa Blanca court looked to
12 "statutes, the common law or . . . other established concepts of
13 unfairness." Id. Because the practices complained of are
14 "unlawful" within the meaning of 17200 based on the directly
15 applicable case law, they violate the public policy of this state
16 and are "unfair" as well.

17
18 (2) The Implementation of Defendants' "Choice of Status"
19 System Does Not Enable Them To Avoid Summary Judgment

20 Within the last year, defendant cab companies have
21 implemented a "choice of status" system, giving drivers the choice
22 of leasing a taxicab as an independent contractor or signing an
23 employer-employee agreement. However, all but six to eight of the
24 over 1900 drivers continue to drive under essentially the same
25 Taxicab Lease Agreement, and do so under the same actual conditions
26 of work that existed before the "choice of status" system was
27 implemented. UF ¶¶7,55,56.

1 The presence of defendants' "choice of status" system has
2 little bearing upon the core analysis of the drivers' employee
3 status. Nothing in the relevant decisions suggests that the
4 presence of a true choice would have been a primary, let alone
5 dispositive, factor in the ultimate determination of a workers'
6 status. Indeed, the California Supreme Court noted in Borello that
7 the alleged voluntariness of an election of independent contractor
8 status hardly obviates public policy concerns over permitting
9 parties to contract around statutory protections:

10
11 The growers suggest that by signing the printed agreement
12 after full explanations, the share farmers expressly agree
13 they are not employees and consciously accept the attendant
14 risks and benefits. However, the protections conferred by
15 the [Workers' Compensation] Act have a public purpose beyond
16 other things, the statute represents society's recognition
17 that if the financial risk of job injuries is not placed
18 upon the businesses which produce them, it may fall upon the
19 public treasury.

20
21 Borello, 48 Cal.3d at 358. In any event, the discussions of
22 "choice" in the cases are dicta; in none of the cases did the courts
23 find that the employer offered any meaningful choice of status, and
24 thus the "choice" issue was never reached.

25
26 B. Whether the Taxicab Drivers are Employees or
27 Independent Contractors Is the Only Issue that Need Be
Decided to Grant Summary Judgment in this Case

28 Defendants' argue that this court cannot grant summary
29 judgment in this case because plaintiffs' motion is directed only
30 to the issue of whether the drivers are employees or independent
31 contractors and does not dispose of the entire action because

1 plaintiffs' complaint alleges twelve separate unfair and/or
2 unlawful business practices. Defendants argue that the pleadings
3 play a critical role in a motion for summary judgment and urge
4 that, in a summary judgment motion, the factual submission must
5 track the averments in the pleadings so that it is clear to what
6 the opposing party must respond.

7 Summary judgment shall be granted if all the papers
8 submitted show that there is no triable issue as to any material
9 fact and that the moving party is entitled to judgment as a matter
10 of law (C.C.P. Sec. 437c (c)). In plaintiffs' complaint they
11 allege twelve separate unfair and/or unlawful business practices.
12 They have, to this court's satisfaction, shown they are entitled to
13 judgment because they have prevailed on the issue that the taxicab
14 drivers are employees. This finding alone is enough to find that
15 the practice of classifying the drivers otherwise is an unfair
16 business practice under Sec. 17200 that should be enjoined. There
17 is simply no need to take evidence, or require the court to make
18 findings on the remainder of the allegations. If plaintiffs, at
19 trial, had simply submitted the evidence it did and nothing else,
20 while defendants did not contest any of these facts at all, a
21 judgment under Sec. 17200 would be appropriate. Evidence on the
22 other issues is simply not needed.

23 In this motion, plaintiffs attack defendants'
24 characterization of the drivers as independent contractors. This
25 misclassification of drivers is the core practice from which all
26 other tangible wrongs described in the complaint emanate. An order

1 enjoining defendants from classifying their drivers as independent
2 contractors will, a fortiori, also preclude them from engaging in
3 the practices illustrated in the complaint and its two causes of
4 action. Therefore, this court finds that plaintiffs' motion does
5 dispose of this action in its entirety and is appropriately treated
6 as one for summary judgment.

7 Defendants also argue that plaintiffs' motion does not
8 dispose of the entire case, (and therefore is not an appropriate
9 summary judgment motion), because the class action portion of the
10 case does not have an adequate class representative and therefore
11 cannot be granted. This argument is addressed below.

12
13 III. CLASS ACTION PORTION OF THIS CASE

14 On May 13, 1996, this court certified a class of all taxicab
15 drivers, current and former, who drove under a Taxicab Lease
16 Agreement for defendants at any time since November 25, 1987. The
17 court designated lead plaintiff Joseph Tracy, a current lease
18 driver with defendant Luxor Cab Company, as the representative of
19 that class.

20 On July 16, 1996, this court recertified the class to
21 include only "drivers who drove under a taxicab Lease Agreement
22 with any of the four defendant taxicab companies at any time from
23 November 25, 1987 through the present, and who are no longer
24 currently driving under any Taxicab Lease Agreement with any
25 defendant company." This recertification of the class excluded
26 current drivers, allowing their claims to proceed under 17200 et

1 seq.²

2 On August 8, 1996, Defendants moved to dismiss the class
3 aspects of the case, or in the alternative to decertify the class
4 for want of a representative plaintiff, and plaintiffs moved to add
5 Brian Gaffney as a class representative. Plaintiffs also maintain
6 that Joseph Tracy remains an adequate class representative and may
7 be allowed to continue in that capacity.

8
9 A. Plaintiffs' Motion to Add Brian Gaffney as a Class
10 Representative

11 Trial courts "maintain some measure of flexibility in the
12 trial and pretrial of a class action," to modify orders as
13 litigation proceeds. Vasquez v. Superior Court (1971) 4 Cal.3d
14 800, 821. The court's order changing the definition of the class
15 in this case makes addition of a new class representative
16 appropriate at this time.

17 From September through December 1989, Brian Gaffney drove a
18 taxicab for defendant Taxi Service, Inc. (dba City Cab). Mr
19 Gaffney was a signatory to a lease agreement and posted a cash bond
20 with City Cab. Further, Mr. Gaffney has been a named party to this
21 action since the day the complaint was filed so Mr. Gaffney may be
22 added as a class representative without the need for further
23 discovery.

24
25 ²The court recognizes that the status in this lawsuit of so-
26 called "medallion holder" drivers may be in need of clarification.
27 The court clarifies that its decision and judgment do not apply to
those of defendants' taxicab drivers who hold their own medallions.

1 After review of all papers filed in connection with this
2 motion and plaintiffs' original motion for class certification,
3 this court finds that the addition of Brian Gaffney as a class
4 representative will serve the interests of drivers whose interests
5 will be adjudicated in this action by providing a typical and able
6 class representative for former drivers. Accordingly, plaintiffs'
7 motion to add Brian Gaffney as a class representative is GRANTED.

8 As stated, supra, subsequent to the hearings on these
9 motions, defendant Taxi Service, Inc. (dba City Cab) has filed a
10 petition for bankruptcy. Defendants filed a Supplemental
11 Memorandum of Point and Authorities in Opposition to Motion to add
12 Brian Gaffney as a Designated Class Representative arguing that
13 City Cab's bankruptcy petition is an additional reason to deny
14 plaintiffs' motion to add Mr. Gaffney as a class representative.
15 This court finds that even while the bankruptcy stay for City Cab
16 is in effect, Mr. Gaffney remains entirely qualified to act as a
17 class representative. City Cab's notice of bankruptcy has no
18 impact whatever on his ability to represent the class. Although
19 Mr. Gaffney's individual monetary claims may now have to be pursued
20 in the bankruptcy forum, it is nonetheless clear that a named
21 plaintiff may continue to represent a class even if her individual
22 claims may no longer be advanced therewith. See Sogna v. Iowa
23 (1975) 419 U.S. 393, 402-03; Franks v. Bowman Transportation Co.,
24 Inc. (1976) 424 U.S. 747, 754-56; Kagan v. Gibraltar Savings & Loan
25 Ass'n (1984) 35 Cal.3d 582, 594; LaSala v. American Savings & Loan
26 Ass'n (1971) 5 Cal.3d 864, 872.

1
2 B. Defendants' Motion to Dismiss or Decertify the Class
3 Portion of this Case for Want of a Class Representative

4 In accord with the court's ruling regarding plaintiff's
5 motion to add Brian Gaffney as a class representative, defendants'
6 motions to dismiss or, in the alternative, decertify the class
7 action portion of this case for want of an adequate representative
8 are DENIED.

9 THE COURT HEREBY ORDERS as follows:

10 1. THE COURT FURTHER FINDS AND DECLARES that defendants'
11 classification of plaintiffs and similarly situated drivers as
12 independent contractors, whether pursuant to the "Taxicab Lease
13 Agreement" in use from November 25, 1987, until late 1995 or early
14 1996, or pursuant to the "choice of status" system in effect from
15 the latter dates through the present time (which utilizes the
16 "Taxicab Lease Agreement" as one of the "choices" offered drivers),
17 has constituted and continues to constitute an unfair and unlawful
18 business practice within the meaning of Business and Professions
19 Code § 17200 et seq. insofar as such misclassification has had the
20 purpose or effect of denying such drivers any benefit under
21 California law with respect to (1) workers' compensation insurance,
22 (2) unemployment insurance, and (3) paying a cash bond to
23 defendants as a condition of driving a taxicab.

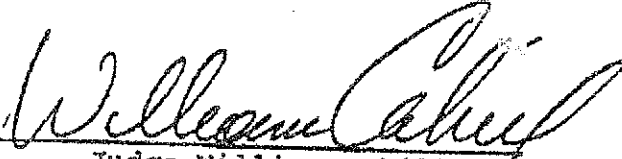
24 2. THE COURT PERMANENTLY ENJOINS defendant, their agents
25 and representatives, from classifying plaintiffs and similarly
26 situated drivers as independent contractors for purposes of denying
27

1 such drivers any benefit under California law with respect to (1)
2 workers' compensation, (2) unemployment insurance, and (3) paying a
3 cash bond to defendants as a condition of driving a taxicab, and
4 PERMANENTLY ENJOINS defendants, their agents and representatives,
5 from classifying plaintiffs as employees for such purposes in any
6 and all representations, whether oral, written or otherwise.

7 3. THE COURT FURTHER ORDERS defendants to restore, to all
8 plaintiffs who have been required to post bonds or "security
9 deposits" with defendants, any such monies held by defendants in
10 violation of Labor Code §§ 402 and 403. Restitution of such monies
11 shall be effected pursuant to a claims procedure to be established
12 by the court and administered by counsel for plaintiffs, with the
13 assistance and cooperation of defendants and their counsel.

14
15 IT IS SO ORDERED.

16 DATED: October 22, 1995

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18 
19 Judge William Cahill
20 San Francisco Superior Court
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up three fares "when available," suffers from vagueness and offers an easy excuse for drivers who do not meet this three pick up rule. They can always say that the fares were not available and, though secret shoppers can prove otherwise, there is no easy way of tracking the veracity of this claim.

Secret shoppers who participate in ramped availability surveys have reported the problems begin with the first line of contact, dispatchers, who too often immediately inform the caller that they simply do not have enough ramped vehicles in their company and thus the caller should call another company. An obvious response to such a complaint would be for the Commission to ensure that a sufficient number of ramped vehicles are available to any permitted dispatch service. For instance, ***it could elect to require ramped vehicles to subscribe to a dispatch service that has a minimum number of ramped vehicles. For that matter, the Commission could elect to limit dispatch companies to a minimum number of taxis, consistent with SF MTA's requirement that dispatch companies serving the disabled dispatch a minimum number of taxis. Alternatively, the Commission could examine the number of dispatch calls a dispatch company handles based on the self-reported numbers over the past couple of years and establish a cut-off beyond which a dispatch company could not renew its permit.***

Rule 8A9 dictates that all vehicles of any given color scheme must subscribe to the same dispatch service and there are policy reasons to support this rule (ease of identification in the event that customers need to contact the same cab company again). Thus, in the event that the Commission wished to restrict ramped medallion holders from affiliating with dispatch companies that have fewer than a set minimum number of ramped vehicles, affected color schemes would have two solutions: either go out of the ramped taxi business since the few ramped medallion holders in their company would be forced to subscribe to a different dispatch service and thus affiliate with another color scheme; in the alternative, the color scheme could elect to affiliate the entire fleet with another dispatch service that contains the minimum number of ramped vehicles.

In considering whether to require a minimum number of taxis within any dispatch company, it is important to note that SF MTA set a minimum number at 30 taxis per dispatch in order to contract with SF Paratransit and provide paratransit service. Even so, SF Paratransit and SF MTA made an exception in the case of one taxi company that has consistently failed in performance tests: American Taxi Company.

American Taxi Dispatch has only 16 taxis, yet it successfully lobbied this Commission and the Board of Supervisors to make an exception with the understanding that it wanted to participate in the paratransit program.*

At the very least, it would be reasonable for this Commission to require a minimum of thirty taxis within a dispatch company. Looking to the next lowest performing taxi dispatch, Regents, the Commission may wish to set the bar a little higher. Regents has 42 taxis under its dispatch service, including two ramped taxis; and, Regents has consistently failed

* The Executive Director of the Taxi Commission learned this fact during a phone conversation with staff of SF Paratransit. Should anyone question it or desire further verification, it is doubtless available over the history of recorded public meetings.