

SAN FRANCISCO INTERNATIONAL AIRPORT

Second Cease and Desist Letter Sent to Turo from the City of San Francisco in 2017

CITY AND COUNTY OF SAN FRANCISCO



DENNIS J. HERRERA
City Attorney

OFFICE OF THE CITY ATTORNEY

LUKE W. BOWMAN
Deputy City Attorney

Direct Dial: (650) 821-5075
Email: luke.bowman@sfgov.org

September 13, 2017

Via U.S. Mail and Email

Michelle Fang, Esq.
Chief Legal Officer
RelayRides, Inc. a/k/a Turo
667 Mission Street, Floor 4
San Francisco, CA 94105
michelle@turo.com

Re: RelayRides, Inc. a/k/a Turo ("Turo") – Operations at San Francisco International Airport

Dear Ms. Fang:

This letter responds to your August 28, 2017 letter to Mr. Jeff Littlefield, Chief Operating Officer of the San Francisco International Airport ("Airport" or "SFO"). As I previously stated in my letter to you dated November 2, 2016, the San Francisco City Attorney's Office represents the Airport, and all future communications from Turo's legal team should be directed to this office.

I have reviewed your August 28, 2017 letter, by which you re-assert the same arguments made in your October 26, 2016 email to the Airport Director, Mr. Ivar Satero. My November 2, 2016 letter, to which I never received a response, already addresses each of the arguments in both of your items of correspondence. I have enclosed my prior letter for your reference.

To sum up the Airport's position, Turo generates revenue through its SFO car rental transactions, some of which, as you acknowledge, take place on Airport property by way of curbside delivery. These car rental transactions exist because of the presence of the Airport and are a direct result of the investment in Airport facilities by the City and County of San Francisco. Turo markets its SFO "car rentals" on its website, advertising that passengers can "rent the perfect vehicle," "skip the rental car counter," and take advantage of "curbside delivery" so as to "never wait at the rental car counter again". Because Turo is acting as a rental car company at SFO, marketing itself as a rental car company at SFO, and directly competing with rental car companies at SFO, it cannot continue such operations without a valid off-airport rental car permit. *See Alamo Rent-a-Car, Inc. v. Board of Supervisors*, 221 Cal. App. 3d 198, 208 (1990).¹

¹ Your letter fails to address how Turo's business model falls outside the broad definition of a "rental company" under the California Civil Code, namely "a person or entity in the business of renting passenger vehicles to the public." Cal. Civ. Code 1939.01(a).

Letter to Turo
September 13, 2017
Page 2

Indeed, Turo is not merely an “online marketplace” as you claim. According to Turo’s website, Turo provides liability insurance, roadside assistance, and a 24/7 customer service line; screens and verifies the identities of prospective renters who fill out profiles on Turo’s website; sets minimum rental durations; sets car prices with owner consent based on an algorithm designed to maximize profits; enforces a series of policies governing all rentals, including a gas policy, cancellation policy, extension and late return policy, and late fees; processes all bookings and payments through its website; and retains a portion of the rental fees as profit. What’s more, Turo provides valet lots for owners and renters to exchange vehicles, including a lot just off Airport property in San Bruno, which it uses to facilitate its SFO rental car transactions. Turo must abide by the same permitting and fee requirements that apply to other companies engaged in similar practices.

Your preemption arguments under the Communications Decency Act, 47 U.S.C. Section 230, lack merit. Nothing in SFO’s permit requirements seeks to hold Turo liable for online content generated by third parties. As your letter acknowledges, the Communications Decency Act can relieve providers of interactive computer services from liability arising from content created by third parties. *See* 49 U.S.C. Section 230(c). It would not, however, relieve Turo of liability for its own independent actions and website content - such as actively advertising its SFO operations, vigorously marketing its SFO curbside delivery option, and providing a physical location near Airport property to facilitate vehicle rentals. *See Fair Housing Council of San Fernando Valley v. Roommates.Com, LLC*, 521 F.3d 1157, 1168 (9th Cir. 2008); *Airbnb, Inc. v. City and County of San Francisco*, 217 F.Supp.3d 1066, 1074 (N.D. Cal. 2016); *Doe v. Internet Brands, Inc.*, 824 F.3d 846, 850-51 (9th Cir. 2016).

Your argument under the California Insurance Code also lacks merit. California Insurance Code Section 11580.24 addresses which insurance policies apply, and what insurance is required, in the context of a “personal vehicle sharing program”.² It does not determine whether SFO may require a permit or impose fees for the use of, or derivation of commercial benefit from, Airport roadways and facilities. Moreover, Section 11580.24(a) only applies to noncommercial vehicle sharing where “[t]he annual revenue received by the vehicle’s owner . . . does not exceed the annual expenses of owning and operating the vehicle,” which does not describe Turo’s business model. Cal Ins. Code Section 11580.24(a)(2). As I noted in my prior letter, Turo is facilitating car rental transactions for profit-driven owners with *fleets* of vehicles for rent.

Airport staff has repeatedly conveyed its congestion and fair competition concerns to Turo. Now, given that Turo has elected to terminate its permits at SFO – the only mechanism through which it can operate legally here – the Airport does not see the benefit of scheduling any further meetings. Importantly, SFO terminated Turo’s permits following Turo’s July 11, 2017 email, in which it represented to the Airport Director that it would “shut down the activities that were conducted under Permit #4336.” It is now clear that Turo misrepresented its real intentions, which were to expand its operations to include services that were never permitted under its permits (e.g., curbside delivery) and avoid payment of applicable permit fees in order to unfairly undercut its competition.

As stated in the Airport’s cease and desist letter dated August 24, 2017, which I have also enclosed for your reference, Turo must cease its SFO car rental operations and remove all reference to SFO from its website and other online platforms. Alternatively, Turo must execute

² Your letter provides no evidence that the State of California has designated Turo as a “personal vehicle sharing program”.

Letter to Turo
September 13, 2017
Page 3

and comply with the terms of an off-airport car rental permit with SFO. If Turo fails to promptly comply with this Airport directive, the Airport intends to proceed with legal action.

Very truly yours,

DENNIS J. HERRERA
City Attorney



Luke W. Bowman
Deputy City Attorney

cc: Jeff Littlefield, Chief Operating Officer
Leo Fermin, Chief Business and Finance Officer

Enclosures:
Letter from L. Bowman to M. Fang, November 2, 2016
Cease and Desist Letter from SFO to Turo, August 24, 2017