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October 22, 2018

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PARALEGALS

PRACTICE DEDICATED TO LITIGATION
AND NEGOTIATION MATTERS

VIA ELECTRONIC FILING

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street, 2nd Floor North
P.O. Box 3265
Harrisburg, PA 17105-3265

Re: **John F. Peoples v. Lyft, Inc.**
Docket No. C-2018-3000667

Dear Secretary Chiavetta:

Enclosed for filing is the Memorandum of Law in Support of Plaintiff's Complaint in the above-referenced proceeding. Copies will be provided as indicated on the Certificate of Service.

Respectfully submitted,

BOCHETTO AND LENTZ, P.C.

Kiersty DeGroot

Enclosures

cc: Honorable F. Joseph Brady
Certificate of Service

The Code provides that “[w]here transportation network services are offered. . . A transportation network company may not unlawfully discriminate against a prospective passenger or unlawfully refuse to provide service to a certain class of passengers or certain localities.” 66 Pa.C.S.A. § 2604.3. Indeed, “[e]ach licensed transportation network company must adopt a policy of nondiscrimination regarding individuals with disabilities.” *Id.*

Plaintiff is a legally blind and disabled individual. He cannot drive and relies almost exclusively on transportation network companies for access to food and other necessities. In practice, Plaintiff will use the Lyft application on his phone to “call” a Lyft driver to his location. When the Lyft driver arrives, Plaintiff will communicate to the driver that he is vision-impaired and needs the driver’s assistance to enter the vehicle.

When a driver is unable to understand Plaintiff’s request, the driver cannot aid Plaintiff. Instead, the driver will drive away, abandoning Plaintiff and engaging in blatant discriminatory practice. Lyft, as a transportation network company, is required to ensure that service is not unlawfully refused to disabled passengers.

Plaintiff attempted to resolve this matter by strongly indicating to other Lyft drivers that he would need English-speaking drivers. Rather than address Plaintiff’s disability needs, Lyft chose to instead permanently ban Plaintiff from the Lyft platform. As a result, Lyft has utterly failed to exercise nondiscrimination towards its disabled passengers.

Plaintiff believes that Lyft additionally refused him service because of “damage” to vehicles. If true, this is again an act of blatant discrimination. Plaintiff is unable to control his excretory system, and as a result is often unable to detect any leakage that may accompany this disability. Though he wears forms of adult protection, that is only one line of defense against

damage to a vehicle and it is completely out of his control. Plaintiff acknowledges this fact of his life, and has in fact compensated drivers for damage when charged via Lyft's phone application. If Lyft were to argue that such disability is not welcome in their vehicles, it is a clear act of refusing service to passengers based on disability alone.

The Pennsylvania Public Utility Commission has acknowledged that:

Long standing legal precedent dictates that the [Public Utility] Commission has exclusive jurisdiction to adjudicate allegations of a utility's failure to meet its obligations under the Code. Our jurisdiction, therefore, necessarily extends to allegations of discrimination of any kind by a public utility in rates and/or services. Further, our regulations specifically prohibit discriminatory practices in certain industries including taxicab and generation supply services.

Craig Jackson, C-2016-2565262, 2018 WL 4185485, at *3 (Aug. 27, 2018) (internal citations omitted).

While § 2603 has only been enacted for two years and has yet to be analyzed by Pennsylvania Courts, discrimination claims against taxi companies and transportation network companies in other contexts is instructive.

Within Title III, § 12184 prohibits private entities “primarily engaged in the business of transporting people” from discriminating against people with disabilities in the use and enjoyment of “specified public transportation” services.¹ Discrimination under this section includes: (1) failing to make a reasonable modification required for extending service to an individual with a disability when the modification would not fundamentally alter the nature of

¹ 42 U.S.C. § 12184 (2012). “Specified public transportation” is defined as “transportation by bus, rail, or any other conveyance (other than by aircraft) that provides the general public with general or special service (including charter service) on a regular and continuing basis.” 42 U.S.C. § 12181(10) (2012).

provider's the service; (2) excluding individuals from using a service due to a lack of auxiliary aids that the service provider could offer without undue burden; and (3) leaving in place readily removable physical or communication barriers that limit an individual with disabilities' ability to use the provider's transportation service.

In addition to complying with § 12184's statutory prohibitions, transportation providers must also adhere to the Department of Transportation's corresponding regulations, 49 C.F.R. §§ 37.1 to .215.² This regulation not only prohibits taxi services from refusing to serve people with disabilities that can use a taxi, but also prohibits taxi services from refusing to assist passengers with mobility devices or charging people with disabilities higher fares.

Appendix D to Part 37 of the Department of Transportation regulations provides examples of what constitutes discrimination by a taxi service. *See, e.g.,* Section 37.29 Private Providers of Taxi Service, 49 C.F.R. pt. 37 app. D, subpt. B (2014) (“**It would be discrimination to pass up a passenger because he or she was blind or used a wheelchair . . .**”) (emphasis added).

In *Doud v. Yellow Cab of Reno, Inc.*,³ the District of Nevada granted plaintiffs' motion for partial summary judgment on their Title III claim alleging that the defendant company's cab driver refused service to a woman who used a portable scooter.

The facts in *Doud* were strong for the Plaintiffs: “[T]wo Yellow taxis—and a third from a different company—refused to pick the Douds up from Reno Airport's taxi line. As the Douds arrived at the airport taxi line, the first available taxi [driver] insisted that he could not transport

² 49 C.F.R. § 37.1 (2015) (“The purpose of this part is to implement the transportation and related provisions of titles II and III of the Americans with Disabilities Act of 1990.”).

³ No. 3:13-cv-00664-WGC, 2015 WL 895077, at *1, *15 (D. Nev. Mar. 3, 2015).

the Douds because his taxi was not equipped to transport people with physical disabilities. The second taxi in line, which was another Yellow taxi also refused to serve the Douds because, allegedly, his religious beliefs forbade him from transporting their service animals. In all, the Douds allege that they waited 45 minutes before they were able to secure a standard taxi.

During the second incident, the Yellow Cab driver refused to transport the Douds, telling Mrs. Doud that it was “against the law” to take them, despite her assurance that her scooter would fit in his taxi. Based on those facts, the Nevada District Court granted a preliminary injunction in favor of Plaintiffs, insuring that Yellow Cab would pick her up from the airport.

In *Ramos v. Uber Technologies, Inc.*,⁴ the plaintiffs broadly asserted causes of action against both Uber and Lyft for “Discrimination Against Mobility Impaired Citizens” in violation of § 12184, the ADA provision prohibiting discrimination by providers of public transportation services. Specifically, plaintiffs alleged that Uber and Lyft violated the ADA by failing to provide vehicle-for-hire services to mobility-impaired consumers. The Ramos court decided that plaintiffs’ complaint stated a plausible enough claim to survive the defendants’ motion to dismiss.

In *National Federation of the Blind of California v. Uber Technologies, Inc.*,⁵ a disability rights organization and three individuals alleged that Uber discriminated against blind persons by refusing to transport service dogs in violation of the ADA. Specifically, plaintiffs alleged that Uber operated a “travel service,” which qualifies as a public accommodation under 42 U.S.C. § 12181(b)(7)(F); therefore, the company violated § 12182(b) when its driver refused service to

⁴ No. SA-14-CA-502-XR, 2015 WL 758087, at *1 (W.D. Tex. Feb. 20, 2015).

⁵ Nat’l Fed’n of the Blind of California v. Uber Techs., Inc., 103 F.Supp.3d 1073 (N.D. Cal. 2015).

individuals with guide dogs. The Court found this sufficient for Plaintiff to survive a motion to dismiss.

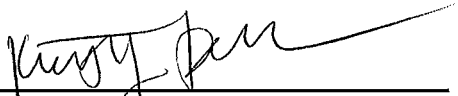
iii. Conclusion

In failing to treat Plaintiff as other customers would be treated, based on his disability and his subsequent requests for Lyft to correct their drivers' discriminatory behavior, Lyft has violated 66 Pa.C.S.A. §2604.3. Plaintiff requests, like the plaintiff in *Doud*, to simply be treated like any other customer who needs reasonable accommodations. Plaintiff simply wishes to have access to Lyft for basic necessities, and Lyft's unreasonable response in a total ban against him is a direct result of unlawful discrimination.

Respectfully submitted,

BOCHETTO & LENTZ, P.C.

Date: 10/21/18

By: 

Kiersty M. DeGroote
I.D. No. 326081
Attorney for the Plaintiff

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing has been via email upon the following persons, on October 22, 2018.

Michael W. Gang, Esquire
Devin T. Ryan, Esquire
Post & Schell, P.C.
17 North Second Street, 12th Floor
Harrisburg, PA 17101-1601

Date: October 22, 2018

BOCHETTO AND LENTZ, P.C.

By: 
Kiersty DeGroote