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San Francisco County Superior Court

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ALAN CARLSON, Clerk
BY: DAN MACDUFF
Deputy Clerk

CALIFORNIA SUPERIOR COURT

CITY AND COUNTY OF SAN FRANCISCO

DEPARTMENT NUMBER EIGHT

JOSEPH TRACY, et al., Plaintiffs, vs. YELLOW CAB COOPERATIVE, et al., Defendants.	)	NO. 938786 ORDER GRANTING PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT AND TO ADD CLASS REPRESENTATIVE; ORDER DENYING DEFENDANTS' MOTION TO DISMISS OR DECERTIFY CLASS

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

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

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

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

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

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

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

I. PROCEDURAL ISSUES.

Defendants' request for a continuance is denied. In order to get their continuance, defendants must meet the requirements of

CCP §437c(h). Defendants have had more than ample opportunity to conduct discovery. As early as the status conference in January 1996, defendants knew of the upcoming summary judgment motion, yet failed to conduct even Mr. Tracy's deposition.

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

The court was frankly surprised to learn for the first time when it read the defendants opposing papers that counsel would object to the less than 28 days notice of this motion. Considering the history of discussions regarding cross summary judgment

motions, dated virtually from the time of single assignment to Judge Cahill, as well as the fact that defense counsel knew the briefing schedule for more than a month before the motion was to be filed, to seriously consider this objection, would be to permit defense counsel to "sand bag" the opposing party and this court. Obviously, this is unacceptable and the court denies counsel's 28 day notice objection.

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

Plaintiffs caused themselves problems by failing to serve their motion earlier, however, their actions did not prejudice defendants in any significant way. Defense counsel had the papers in their possession in time to adequately respond, or to ask the

court for a short extension of time to file their opposition. Also, when they did file their opposition defendants did not dispute any of the 56 facts presented by plaintiffs. This court denies defendants' request to deny the motion because it was served at 6:03 p.m.

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

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

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

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

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

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

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

II. SUMMARY JUDGMENT ANALYSIS

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

A. 17200 Claims

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

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

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

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

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

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

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

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

(a) "All Necessary Control" exercised by Defendants

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

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

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

Defendants keep files on each of their drivers which include

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

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

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

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

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

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

with drivers' skills).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

III. CLASS ACTION PORTION OF THIS CASE

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

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

seq.[2]

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

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

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

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

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

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

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

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

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

THE COURT HEREBY ORDERS as follows:

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

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

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

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

IT IS SO ORDERED.

DATED: October 22 1996

William Cahill

Judge William Cahill
San Francisco Superior Court