

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION**

VUGO, INC., DONALD DEANS, DENISE	)
JONES, GLOUSTER BROOKS, and PATRICIA	)
PAGE,	)
	)
Plaintiffs,	)
	)
and	)
	)
MURRAY MEENTS,	)
	)
Plaintiff-Intervener,	)
	)
v.	)
	)
CITY OF CHICAGO,	)
an Illinois municipal corporation,	)
	)
Defendant.	)

Case No. 17-cv-864  
The Hon. Judge Elaine E. Bucklo

**PLAINTIFFS’ AND PLAINTIFF-INTERVENER’S COMBINED  
STATEMENT OF FACTS IN SUPPORT OF THEIR  
MOTION FOR SUMMARY JUDGMENT**

Plaintiffs and Plaintiff-Intervener submit, pursuant to Local Rule 56.1(a)(3), their Statement of Facts in Support of their Motion for Summary Judgment.

**The Parties**

1. Plaintiff Vugo, Inc. is a corporation organized under the laws of Delaware, that produces software designed to provide passengers of TNP vehicles, such as Uber and Lyft, with entertainment in the form of videos and interactive screen content, that includes commercial advertising on an electronic tablet inside the TNP vehicle. Ex. A, Dep. James Bellefeuille, 17:1-18:21. Its headquarters is in Minneapolis, Minnesota, and provides its software in the United States and in other countries. *Id.* at 12:8-14.

2. Plaintiff Donald Deans is a TNP driver for the services Uber and Lyft. He regularly drives for Uber and Lyft in the City of Chicago. Ex. B, Dep. Donald Deans, 8:7-15, 11:6-10. Plaintiff Deans wishes to place commercial ads in his rideshare vehicle, including ads provided by Vugo. Ex. B, 15:8-19. Plaintiff Deans is prevented from doing so because of the City's advertising ban on or inside ridesharing vehicles. Ex. B, 20:7-11.

3. Plaintiff Denise Jones is a TNP driver for the services Uber and Lyft. She regularly drives for Uber and Lyft in the City of Chicago. Ex. C, Dep. Denise Jones, 7:14-9:3. Plaintiff Jones wishes to place commercial ads in her rideshare vehicles, including ads provided by Vugo. Ex. C, 21:17-22. Plaintiff Jones is prevented from doing so because of the City's advertising ban on or inside ridesharing vehicles. *Id.*

4. Plaintiff Gloucester Brooks is a TNP driver for the services Uber and Lyft. He regularly drives for Uber and Lyft in the City of Chicago. Ex. D, Dep. Gloucester Brooks, 15:23-16:19. Plaintiff Brooks wishes to place commercial ads in his rideshare vehicle, including ads provided by Vugo. Ex. D, 24:13-23. Plaintiff Brooks is prevented from doing so because of the City's advertising ban on or inside ridesharing vehicles. *Id.*

5. Plaintiff Patricia Page is an artist who provides face painting services at events and paints murals and other art work for a fee. Ex. E, Dep. Patricia Page, 7:13, 10:20-11:9. She previously advertised her painting services on her vehicle. *Id.* at 16:13-17:13. To supplement her income, Ms. Page became a TNP driver for the service Uber. *Id.* at 8:23-24. Ms. Page drives for Uber approximately once a week during times when her painting business is slower, as in the winter, when there are less events that require face painting. *Id.* at 10:15-11:12.

6. Plaintiff-Intervener Murray Meents is a TNP driver for the service Uber. He regularly drives for Uber in the City of Chicago. Ex. F, Dep. Murray Meents, 6:24-7:3, 8:15-9:12.

7. Defendant City of Chicago is an Illinois municipal corporation located in Cook County, Illinois. Am. Compl. ¶ 15; Ans. ¶ 15.

### **Jurisdiction and Venue**

8. This Court has original jurisdiction over this action under 28 U.S.C. §§ 1331, 1343, and 2201 because Plaintiffs and Plaintiff-Intervener allege violations of the First and Fourteenth Amendments to the United States Constitution and brought these claims pursuant to 42 U.S.C. §§ 1983 and 1988. This Court also has supplemental jurisdiction pursuant to 28 U.S.C. § 1367(a) because Plaintiffs and Plaintiff-Intervener allege violations of Article I, Section 2 and Article I, Section 4 of the Illinois Constitution, which are closely related to the federal claims. Am. Compl. ¶ 4; Ans. ¶ 4.

9. Venue is proper under 28 U.S.C. § 1391 because Defendant City of Chicago resides in the Northern District of Illinois. Am. Compl. ¶ 4; Ans. ¶ 4.

### **The City of Chicago's Ban on Commercial Advertisements on or in TNP Vehicles**

10. In May, 2014, the City of Chicago adopted an ordinance regulating transportation network providers (or “ridesharing service providers”), such as Uber and Lyft, the people who drive for those services (“transportation network drivers”), and the vehicles they use to transport passengers (“transportation network vehicles”). Chi. Ordinance No. SO2014-1367 (the “Ordinance”). Am. Compl. ¶ 25; Ans. ¶ 25. Relevant to this case, the Ordinance prohibits the display of all “[c]ommercial advertisements . . . on the exterior or in the interior of a transportation network vehicle.” Chi. Mun. Code 9-115-130 (the “commercial ad ban”). Am.

Compl. ¶ 26; Ans. ¶ 26. Transportation Network Drivers are subject to a fine of \$500 – \$1,000 for displaying advertisements in or on vehicles. Chi. Mun. Code 9-115-130; Am. Compl. ¶ 28; Ans. ¶ 28.

11. The Municipal Code of Chicago (MCC) defines various terms relevant to this action. In particular, it states: “Transportation Network Service” means a prearranged transportation service offered or provided for compensation using an Internet-enabled application or digital platform to connect potential passengers with Transportation Network Drivers. “Transportation Network Driver” means an individual affiliated with a Transportation Network Provider or with a person who is affiliated with a provider to transport passengers for compensation using a Transportation Network Vehicle. “Transportation Network Vehicle” means any vehicle used to provide a Transportation Network Service. Chi. Mun. Code § 9-115-010; Am. Compl. ¶ 27; Ans. ¶ 27.

12. The companies Uber, Lyft, and Via are examples of Transportation Network Providers that operate in Chicago. Ex. G, Dep. Rupal Bapat, 140:10-19. Drivers for said companies are considered “Transportation Network Drivers” under the Ordinance. The vehicles that the drivers operate are considered “Transportation Network Vehicles” under the Ordinance. Ex. G, 140:10-19.

13. Uber, Lyft and Via have similar business models, for all purposes relevant to this action. By way of example, Uber connects passengers with Transportation Network Drivers through an Internet application. Passengers request a ride on the Uber application and a driver, operating his or her personal vehicle, accepts the request and then drives to the passenger’s location to pick up the passenger. Uber’s application allows the driver and passenger to see each other’s name and the passenger is given the driver’s vehicle’s license plate number. The driver

then takes the passenger to his or her destination. The passenger automatically pays the driver through the app, which stores the passenger's credit card. Ex. G, 65:1-5. This interaction would be considered a "Transportation Network Service" under the Ordinance.

14. The Chicago Municipal Code ("Code") allows taxicabs to display commercial advertisements on or inside those vehicles with a permit. Chi. Mun. Code 9-112-410; Am. Compl. ¶ 29; Ans. ¶ 29.

15. Only paid advertising on taxicabs requires a permit in order to display it. Taxicabs advertising themselves on their vehicles need not obtain a permit for such advertising. Ex. G, 96:22 - 97:4.

16. The City has issued advertising permits to numerous taxicab licensees, and numerous taxicab vehicles do in fact display advertising signs or devices on their exterior, interior, or both. Compl. ¶ 30; Ans. ¶ 30.

17. The City does not prohibit commercial advertisements on or in ordinary passenger vehicles that are not used as taxicabs or for ridesharing. Compl. ¶ 31; Ans. ¶ 31.

### **Plaintiffs' Testimony**

18. Plaintiff Vugo licenses software to fleet operators. Ex. A, 26:1-3. This software allows passengers to view in-car entertainment in rideshare vehicles. Ex. A, 17:1-19.

19. Under Vugo's operating agreement, Vugo provides its software to be used in fleet vehicles, and ad revenue from Vugo's content is split between Vugo, the fleet operator, and the driver. Ex. A, 29:8-30-8.

20. Vugo controls the content that is displayed via its software, but does listen to feedback regarding its content. Ex A, 33:17-34:11.

21. Although Vugo would like to provide its services to non-fleet rideshare drivers, it currently only does so for the purpose of beta-testing its software. Ex. A, 22:24-23:6. Vugo's decision to contract with fleet operators instead of individual drivers was based at least in part on Chicago's ban on advertising in rideshare vehicles. Ex. A, 38:13-39:12.

22. Vugo's software allows passengers to turn the volume all the way down, effectively muting the volume. Ex. A, 101:12-13.

23. Vugo's software allows passengers to dim the brightness of the display to near black. Ex. A, 101:17-18.

24. On January 30, 2017, Plaintiff Page was ticketed for having commercial advertising on her vehicle while driving for Uber. Ex. E, Dep. Patricia Page, Ex. 4, Page was found to have violated the Ordinance, but was not fined. *Id.*

#### **Testimony of Defendant's Witnesses**

25. Rupal Bapat is the Deputy Commissioner of the City of Chicago's Department of Business Affairs and Consumer Protection. Ex. G, 9:3-15. The division is responsible for public vehicle operations, including the administration of ordinances relating to taxicabs and TNP vehicles. Ex. G, 87:15-88:17. Bapat's department oversees taxicab applications for advertising permits. Ex. G, 90:6-15.

26. Javier Ortiz is the Manager of Business Compliance Investigations for the Department of Business Affairs and Consumer Protection. Ex. H, Dep. Javier Ortiz, 8:2-16. He previously served as the Chief Consumer Services Supervisors for the same department. Ex. H, 8:24-9:3. Part of Ortiz's job responsibilities included regulating advertisements in and on taxicabs and TNP vehicles. Ex. H, 40:13-22.

27. Kevin McDonald is a Special Assistant for the Public Vehicle Inspection division of the Department of Business Affairs and Consumer Protection. Ex. I, Dep. Kevin McDonald, 8:4-18. His division is responsible for inspecting taxicabs and wheelchair accessible TNP vehicles. Ex. I, 15:2-10. The division works to ensure that taxicabs operate in a safe manner. Ex. I, 52:21-24.

28. Under the Ordinance, all commercial advertisements are prohibited on/in TNP vehicles, regardless of the content of the advertisement(s). It is inconsequential whether the commercial advertisement(s) is for legal or illegal products or if the content is truthful or untruthful. Ex. G, 110:13-112:3.

29. TNP drivers violate the commercial ad ban in Chi. Mun. Code 9-115-130 for displaying commercial advertisements regardless of whether the advertisement is likely to cause a safety hazard. Ex. H, 110:9-111:3.

30. TNP drivers violate the commercial ad ban in Chi. Mun. Code 9-115-130 for displaying a commercial advertisement, regardless of whether the advertisement causes passenger discomfort and regardless of the advertisement's size, shape, color, location, or volume level on/in the TNP vehicle. Ex. H, 111:4-21.

31. TNP drivers violate the commercial ad ban in Chi. Mun. Code 9-115-130 for advertising, even if the commercial advertisement is not offensive or morally questionable. Ex. H, 111:21-24.

32. Taxicabs may display advertisements so long as the content is not offensive or morally questionable. Ex. H, 82:2-8.

33. When considering taxicab applications for advertising permits, there is no review of the content of the proposed advertisement. Ex. G, 92:19-22. Bapat stated, "So we don't really

review the content because the content can change. You're permitting having the ability to do advertising on the rooftop or ability to have advertising on the side-door panel for a year." Ex. G, 96:16-20.

34. The City does not inspect the content of rooftop signage displaying ads on taxicabs; rather, it inspects the rooftop signage equipment to ensure it is properly bolted, secured and within technical specifications; the goal is to ensure the equipment does not detach from the taxicab during transit. Ex. G, 92:23-94:6. Once the permit is issued for the equipment, the taxicab can display any content it chooses. Ex. G, 94:7-95. So long as rooftop advertisement equipment is secure, the taxicab will pass the City's inspection. Ex. G, 103:20-104:3. There is no safety inspection for side-panel door advertisements on taxicabs. Ex. G, 103:20-104:3.

35. The City permits taxicabs to have interior displays, called Personal Information Monitors (PIMs) that contain video and audio features. The City does not review the content of advertisements displayed on PIMs. Ex. G, 97:5-8; 107:2-10. The City allows commercial advertising on PIMs Ex. G, 108:13-18.

36. While the volume on PIMs in taxicabs can be muted, the display may not be turned off. Ex. G, 109:4-21.

37. Bapat does not believe advertising on top of taxicabs would lead to passenger discomfort. Ex. G, 118:2-15.

38. Bapat does not believe there is a safety issue with exterior ads on the side of taxicabs. Ex. G, 107:2-10.

39. Ortiz was not sure how an advertisement would cause passenger discomfort. Exhibit H, 101:11-13



40. Vehicle inspector McDonald has never encountered an exterior taxicab advertisement that he determined to be distracting to drivers or pedestrians. Likewise he has never encountered a taxicab advertisement that would cause a safety hazard. Ex. I, 60:18-61:24; 62:1-12.

41. No one has ever instructed McDonald to consider whether a taxicab advertisement would create traffic or safety hazards. Ex. I, 72:16-73:12.

42. The City does not review advertising content on or in taxicabs unless the advertisement is alleged to be in furtherance of illegal activity, depicts nudity, or is fraudulent or deceptive. Ex. G, 95:8-15; 97:14-19. In doing so, the City takes a reactive, not a proactive approach. It reviews taxicab advertising content only when receiving a citizen complaint, not before the advertisement is displayed to the public. Ex. G, 95:16-96:10.

43. The City's mechanism for reviewing complaints relating to taxicab advertisements involves receiving complaints via 3-1-1, Ex. G, 123:4-125:21; 130:21-131:10, and reviewing the content of the advertisement on a case-by-case basis to ensure it is in compliance with the Code. Ex. G, 131:11-132:11; 132:23-133:5; 134:3-14.

44. The City uses this mechanism to review and/or remove advertisements that are offensive or unsafe. Ex. H, 101:3-10.

45. The City has reviewed individual complaints for interior video ads being too loud or too bright. Such complaints were handled on a case-by-case basis. Ex. G, 135:4-137:21. However, Bapat stated taxicab advertisement volume is not an imminent threat to public safety. Ex. G, 137:14-21.

46. During an inspection of an individual taxicab advertisement, other taxicabs continue to display interior and exterior advertisements; the City does not prohibit all taxicab

advertisements based on a singular complaint from a citizen or taxi customer. Ex. G, 139:10-140:9.

47. In addition to accepting complaints about taxicab advertisements, the City's 3-1-1 phone number is currently set up to accept and review complaints about TNP vehicles. Ex. G, 126:19-127:10.

**Dated: October 5, 2018**

Respectfully submitted,

**VUGO, INC., DONALD DEANS,  
DENISE JONES, GLOUSTER  
BROOKS, AND PATRICIA PAGE**

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