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13 SUPERIOR COURT OF THE STATE OF CALIFORNIA
14 COUNTY OF SAN FRANCISCO
15 UNLIMITED JURISDICTION

16 PEOPLE OF THE STATE OF CALIFORNIA,
acting by and through DENNIS J. HERRERA
17 AS CITY ATTORNEY OF SAN
FRANCISCO,

18
19 Plaintiff,

20 vs.

21 TURO INC., and DOES 1-100, inclusive,
22 Defendants.

23
24 TURO INC.,
Cross-Complainant,
25 vs.

26 CITY AND COUNTY OF SAN
27 FRANCISCO,
28 Cross-Defendant.

Case No. CGC-18-563803

Reservation No: 012050302-17

**MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
SAN FRANCISCO'S AND THE PEOPLE'S
MOTION FOR SUMMARY ADJUDICATION
OF THE FIRST AND SIXTH CLAIMS
IN TURO'S FIRST AMENDED
CROSS-COMPLAINT FOR DECLARATORY
RELIEF AND THE SIXTEENTH
AFFIRMATIVE DEFENSES IN TURO'S
VERIFIED AMENDED ANSWER**

Hearing Date: February 21, 2020
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INTRODUCTION

1
2 From October 2013 through August 2017, Turo Inc. (“Turo”) operated at the San Francisco
3 International Airport (the “Airport” or SFO”) under an off-airport rental car company permit. Under
4 that permit, Turo was required to pick up its customers at SFO’s remote Rental Car Center (“RCC”),
5 to which customers rode the AirTrain, and shuttle them from the RCC to Turo’s off-airport valet lot.
6 There, Turo’s attendants help customers rent cars that had been dropped off by Turo’s hosts. Turo
7 collected an AirTrain Fee of up to \$20 per contract from its customers, and would have paid a 10%
8 Gross Receipts Charge had its monthly revenues ever exceeded \$83,333, which they did not. In July
9 2017 Turo cancelled its off-airport rental car permit, and represented that it would stop operating at
10 SFO. But despite being served with a cease and desist letter by SFO, Turo continues its unlawful,
11 unpermitted operations at SFO to this day. Unlike permitted off- and on-Airport rental car companies,
12 Turo no longer collects the AirTrain fee and does not pay SFO any Gross Receipts Charge on its SFO
13 revenues. Turo must either obtain a permit from SFO or stop operating there.

14 In an effort to avoid regulation of its on-airport activities by SFO, Turo claims it is not a “rental
15 car company” but instead is only an internet-based platform that allows its users to share rental cars.
16 Turo’s first cross claim seeks a declaration that “Turo and its Users are not rental car companies under
17 California law.” Turo’s Corrected First Amended Cross Complaint for Declaratory Relief (“ACC”) at
18 28:2-3. But the undisputed facts show that Turo meets the definition of being a rental car company
19 under California law because it is an “entity in the business of renting passenger vehicles to the
20 public.” Cal. Civ. Code § 1939.01(a). This legal issue is now ripe for summary adjudication.

21 In a related argument, Turo’s sixth cross claim seeks declaratory relief that SFO is violating
22 Turo’s equal protection rights by not treated it like allegedly “similarly situated” Transportation
23 Network Companies (“TNCs”) such as Uber or Lyft. ACC at 27:15-23. Turo cannot carry its heavy
24 burden of demonstrating that SFO has no rational basis to treat Turo like a rental car company, rather
25 than like a TNC. Since Turo is competing with traditional rental car companies, it makes perfect sense
26 for SFO to treat it like a rental car company. Doing so does not impose any undue burdens on Turo,
27 but merely creates a level playing field for Turo to compete with other rental car companies at SFO.
28 Turo’s sixth cross claim and related sixteenth defense should be summarily adjudicated against Turo.

FACTUAL BACKGROUND

1
2 SFO is one of the busiest airports in the world. In 2018, nearly 58 million passengers traveled
3 through SFO, and each day approximately 95,000 vehicles used its 1.5 miles of roadways. Cheong
4 Decl. ¶ 3-4. SFO regulates commercial vehicles that conduct business on Airport property, requiring
5 permits, payment of fees, and compliance with designated traffic routes. Permitting and fee collection
6 are essential tools that enable SFO to control its property and roadways. *Id.* SFO has a duty to collect
7 such revenues in order to comply with federal mandates to generate sufficient income to be as
8 financially self-sustaining as possible. 49 U.S.C. § 47101(a)(13); 49 U.S.C. § 47107(a)(13)(A).

9 There are two types of permitted rental car companies that operate at SFO – “on-airport” and
10 “off-airport” – each of which is subject to a set of permit and fee requirements. By a competitive
11 bidding process, on-airport rental car companies have obtained leases for physical space at the SFO
12 RCC. Off-airport rental car companies maintain business locations off SFO property, but are required
13 to collect and drop off their customers at the RCC. El Gord Decl. ¶¶ 4-5. In fiscal year 2016-2017,
14 there were approximately 1.7 million on-airport rental car transactions and approximately 100,000 off-
15 airport car rental transactions. *Id.* Ex. B; Cheong Decl. ¶ 5.

16 Both on- and off-airport rental car companies are required to collect from their SFO customers
17 an AirTrain Fee which is currently \$16 per rental contract. Permitted off-airport rental car companies
18 pay a charge equal to 10% of annual gross receipts in excess of \$1 million from SFO rental car
19 transactions. El Gord Decl. ¶ 6. Fees collected from on- and off-airport rental car companies in fiscal
20 year 2016-2017 constituted 11.4% of SFO’s operating budget. Mann Decl. ¶ 12.

21 **I. TURO IS A RENTAL CAR COMPANY THAT CONDUCTS UNPERMITTED** 22 **COMMERCIAL ACTIVITY AT SFO DIRECTLY AND THROUGH ITS AGENTS.**

23 **A. Turo Is A Rental Car Company.**

24 Turo is an international web-based rental car company that matches individual car owners with
25 prospective renters. Turo lists cars on its website and mobile applications; directs users how to
26 conduct transactions at airports; provides a tailored search function for prospective renters; processes
27 reservations and payment; and retains a percentage (usually 25%) of the proceeds from each rental
28 transaction. Turo sells insurance coverage to both car owners and renters, and provides 24/7 roadside

1 assistance and 24-hour customer support. Thompson Decl. Exs. A ¶¶ 2, 5, N (at 16:11-17:25; No. 5,
2 18:18- 19:9), U. Turo leases a valet lot near SFO, where its attendants help customers rent cars.
3 Clements Decl. Ex. A. For transactions that take place there, Turo has offered additional services such
4 as car washes. Clements Decl. Ex. B.

5 In addition to screening prospective renters to protect against fraud and identity theft, Turo
6 offers car owners free professional photography of vehicles, a pricing algorithm to set rental car prices,
7 and the stated ability to repossess a rental car not returned on-time. Turo also has a detailed “Terms of
8 Service” governing rentals, including a minimum rental duration, a late fee schedule, policies
9 governing cancellation, extension of rental and late returns, smoking, pets, fuel, tolls, security deposit,
10 street parking, nondiscrimination, and community guidelines. Thompson Decl. Ex. N. In sum, Turo
11 standardizes and controls its customers’ rental car experience down to the smallest details.

12 Turo relies on airports like SFO to build its rental car business. Turo’s airport transactions
13 account for a significant portion of its gross revenue. The average transaction value of Turo rentals at
14 airports nationwide is greater than Turo’s non-airport transactions. Clements Decl. Ex. C.¹

15 In addition to operating as a rental car business, Turo has repeatedly described itself as and
16 advertises that it is a rental car company.²

- 17 • Turo’s website has an “Airport car rental” page, which lists SFO as a
“TOP AIRPORT.” Thompson Decl. Ex. B.
- 18 • Turo’s website lists SFO among its “NEARBY CAR RENTAL LOCATIONS.”
Thompson Decl. Ex. C at 3.
- 19 • “RENT THE CAR. Own the adventure.” Thompson Decl. Ex. D at 3.
- 20 • “RENT THE Perfect Vehicle.” Thompson Decl. Ex. E.
- 21 • “Rent better cars.” Thompson Decl. Ex. F at 1.
- 22 • “Pick up your rental or get it delivered, wherever you need it, up to 35% less than
traditional agencies.” Thompson Decl. Ex. F at 2.
- 23 • “Rent Cars With Turo.” Thompson Decl. Ex. G.

24 ¹ The Clements Declaration is being lodged conditionally under seal because Turo has
25 routinely designated most of its production as “confidential” without any apparent basis. The People
26 disagree with most of Turo’s confidential designations, and reserve their right to oppose any motion
from Turo to permanently seal the attachments to the Clements declaration. Turo’s overdesignation of
materials as confidential prevents the People from discussing their specific contents in this MPA.

27 ² The descriptions of Turo’s website and Turo’s promotional materials contained in this brief
28 were in place at the time the People’s complaint was filed. Since the filing of this action, Turo has
altered some of its advertisements and web pages to avoid using terms like “rent.” The People believe
that these semantic differences reflect no change in Turo’s operations.

1 Turo's Verified Amended Answer to the People's Complaint admits that Turo has made many
2 statements describing itself as a car rental service. Thompson Decl. Ex. A, Turo's Verified Answer
3 ("Answer", filed July 30, 2018) ¶¶ 18-30.

4 Turo's own insurance documents and internal communications likewise acknowledge that Turo
5 is a rental car company. Clements Decl., Exs. D, E and F [marked confidential].

6
7 **B. Turo Conducts Its Business At SFO.**

8 Turo offers rental car services at SFO in a variety of different ways. First, as its website makes
9 clear, Turo offers its customers pick-up and drop-off services to and from SFO. On the "Airport car
10 rental" page of Turo's website, Turo lists SFO as one of its "TOP AIRPORTS." Thompson Decl.
11 Ex. B. Similarly, Turo's "San Francisco" page lists "SFO Airport" as one of the suggested "NEARBY
12 CAR RENTAL LOCATIONS." Thompson Decl. Ex. C at 3. The same page says: "AIRPORT
13 PICKUP AVAILABLE," followed by the names of SFO, Oakland, and San Jose airports. *Id.* When a
14 prospective renter clicks the "Search SFO" button, the renter is directed to a long list of car listings
15 displayed under the words "Curbside Delivery ... 200+ cars available at San Francisco International
16 Airport." Thompson Decl. Ex. H. Turo has also created and posted video tutorials on its website –
17 "4 tips to improve your listing," "How to earn more on Turo," and "How to benefit from delivery," –
18 which highlight the value to Turo hosts of delivering the rental cars directly to renters at SFO. *See*
19 Turo, *Video tutorials*, <https://turo.com/tutorials> (last visited December 6, 2019).³

20 Turo's website aggregates listings that offer SFO pick ups and drop offs under a single easily
21 searchable page called "CAR RENTALS AT SFO Airport." Thompson Decl. Ex. I. When
22 prospective renters in San Francisco click the search box on Turo's homepage to input their desired
23 location, a dropdown menu pre-populated by Turo lists "SFO - San Francisco International Airport,
24 San Francisco, CA" as the first suggested location. *Id.* at 2. In addition, Turo's template to create a
25 car listing prompts car owners to select whether they are willing to deliver to SFO and wish to set a
26

27 ³ Produced as CCSF00305743-CCSF00305743;CCSF00305746-CCSF00305746;
28 CCSF00305747-CCSF00305747; CCSF00305749-CCSF00305749; CCSF00305751-CCSF00305751;
CCSF00305758-CCSF00305758; CCSF00305762-CCSF00305762; CCSF00305764-CCSF00305764.

1 surcharge for airport delivery. *See, e.g.*, Thompson Decl. Exs. J, K. Turo’s “market guide” for the
2 “SF Bay Area” states: “Since more than half of all renters in the [SF Bay Area] market are out-of-town
3 travelers, San Francisco International Airport (SFO) and the surrounding cities, such as Millbrae and
4 San Bruno, receive the most amount of bookings.” Thompson Decl. Ex. L at 4.

5 Second, Turo uses Uber and Lyft to transport its customers between the Airport and an off-
6 Airport valet lot operated by Turo. Turo offers car owners a service, Turo Valet, which permits a car
7 owner to deliver the car to an SFO traveler by leaving it in the Turo lot near SFO. Turo arranges for
8 Uber or Lyft to transport the passenger renting that car to and from SFO curbside. Thompson Decl.
9 Ex. M at 1. Specifically, when a car renter lands at SFO, the renter simply texts the keyword “TURO”
10 to a (650) number and Turo arranges and pays for the Uber or Lyft ride to the Turo Valet lot. *Id.*
11 Similarly, when the renter returns the rented car to the Turo Valet lot, Turo will order and directly pay
12 for an Uber or Lyft ride to take the renter to SFO curbside. *Id.* Turo Valet is an integral component of
13 Turo’s SFO business model. A large percentage of its trips and revenues are associated with its valet
14 lot. Clements Decl. Exs. G, H, and I.

15 In addition, since the beginning of 2018, Turo has been contracting with ProntoDelivr to
16 deliver cars directly from the car owner to the car renter curbside at SFO, and to pick up the car at
17 SFO upon its return by the renter. Turo’s website advertises ProntoDelivr’s door-to-door service –
18 including to and from SFO. Clements Decl. Ex. J; Thompson Decl. Ex. P. The Turo-ProntoDelivr
19 contract requires ProntoDelivr to promptly respond to ride requests and contains a set price that
20 ProntoDelivr may charge Turo renters for delivering or picking up a vehicle at SFO curbside.
21 Clements Decl. Ex. K.

22 Turo is aware its delivery of rental cars curbside is illegal and has taken steps to evade
23 detection of this activity, using third parties to evade SFO’s cease and desist orders, and counting on
24 Airport traffic congestion to hide its activities from SFO traffic enforcement officers. Clements Decl.
25 Exs. L, M and N.

26 **C. Turo Does Not Have A Permit To Conduct Its Rental Car Business At SFO.**

27 Turo does not currently possess a permit to operate an off-airport rental car company at SFO,
28 but it operated at SFO from October 29, 2013 through August 10, 2017 pursuant to an Off-Airport

1 Rental Car Business Permit under the corporate name "RelayRides." El Gord Decl. ¶ 9 and Ex. C.
2 When Turo first started operating at SFO, SFO staff enthusiastically welcomed Turo and announced
3 their new operations at SFO to the press. Thompson Decl. Ex. O. In July 2017, Turo requested
4 termination of its permit, representing to SFO that it would cease operations at the Airport. The permit
5 terminated effective August 10, 2017. El Gord Decl. ¶ 13 & Exs. F, G. But Turo did not cease
6 operations, causing SFO on August 24, 2017 to serve Turo with a notice to cease and desist operations
7 at SFO. *Id.* ¶ 14 & Ex. H. Turo nonetheless continues its SFO operations unabated to this day. Turo
8 currently operates internationally at over 300 airports. Thompson Decl. Ex. A ¶ 9. But as far as
9 San Francisco is aware, Turo has not obtained a single permit to operate lawfully at any airport in this
10 country.

11 LEGAL STANDARD

12 Summary judgment is proper if "all the papers submitted show there is no triable issue as to
13 any material fact and the moving party is entitled to judgment as a matter of law." Code Civ. Proc.
14 §437c(c). The statute "imposes an affirmative duty on the trial court to grant a motion for summary
15 judgment in an appropriate case." *Preach v. Monter Rainbow* (1993) 12 Cal.App.4th 1441, 1450.

17 LEGAL ARGUMENT

18 I. SFO HAS THE RIGHT TO REGULATE OFF-AIRPORT RENTAL CAR COMPANIES 19 AND TO CHARGE THEM FEES.

20 The Airport has the authority to regulate Turo and charge appropriate fees for operating on
21 Airport property, pursuant to City Charter, state law, and SFO Rules and Regulations.

22 San Francisco's Charter, section 1.101, authorizes the City to "make and enforce all ordinances
23 and regulations in respect to municipal affairs, subject only to the restrictions and limitations provided
24 in this Charter." Regulation of airports and airport transportation services is a municipal affair. *Stagg*
25 *v. Mun. Court*, 2 Cal. App. 3d 318, 322 (1969). Because the City owns SFO, its municipal affairs
26 authority specifically includes authority to regulate the use of SFO property, including SFO roadways
27 and facilities. (See S.F., Cal. Charter art. IV, § 4.115 [giving Airport Commission charge of, among
28 other things, the management, operation, use and control of all Airport property].)

1 Government Code Section 50474 expressly gives all cities the power, in connection with the
2 erection, improvement, expansion, or maintenance of a municipally owned airport, to “(b) [e]xact
3 charges, fees, and tolls, and enforce liens for their payment [and] (f) [r]egulate the use of the airport
4 and facilities and other property or means of transportation within or over the airport.” Public Utilities
5 Code Section 21690.7 grants broad discretion to Airport Commissions to “promote the development of
6 commerce and tourism by (a) securing a diversity of airport services; (b) avoiding wasteful duplication
7 of such services; (c) securing to the users of airports safe, courteous, and quality service; (d) limiting
8 or prohibiting business competition which is destructive of the ends of promoting commerce and
9 tourism in the state; (e) allocating limited airport resources to promote such ends; and (f) fostering
10 California’s image as a commercial and tourist center.”

11 Government Code Section 50474.1 specifically authorizes SFO to require rental car companies
12 to collect a fee from their customers for use of the AirTrain between the terminals and the RCC.⁴ SFO
13 requires both on-airport and off-airport rental car companies to conduct business at the RCC. The
14 RCC houses counters for on-airport companies and pickup points for off-airport company courtesy
15 cars or shuttles. El Gord Decl. ¶¶ 4-5. Thus pursuant to Government Code Section 50474.1, SFO
16 requires both on-airport and off-airport rental car companies to collect from their customers a
17 transportation fee per rental car contract for the use of the AirTrain, which is currently \$16. *Id.* at ¶ 6.

18 Rule 3.3(D) of SFO’s Rules and Regulations states: “No person shall enter or remain on
19 Airport property and buy, sell, peddle or offer for sale or purchase any goods, merchandise, property
20 or services of any kind whatsoever, to, on, or from Airport property, without the express written
21 consent of the Director or the Director’s duly authorized representative.” It continues: “No person
22 shall operate or promote a business on Airport property . . . without first obtaining a valid permit,
23 lease, or other written permission granted by the Director.” Similarly, Rule 9.2 of SFO’s Rules and
24 Regulations states: “No person shall operate or promote a business on Airport property without first
25

26 ⁴ “An airport operated by a city and county may require a rental car company, in writing, to
27 collect a fee from its customers on behalf of the airport for the use of an airport-mandated common use
28 . . . transit system operated for the movement of passengers between the terminal and a consolidated
on-airport rental car facility.” Gov’t Code § 50474.1(a). San Francisco is the only “city and county”
in California.

1 obtaining a valid Airport Operating Agreement, permit, lease, or other written permission granted by
2 the Airport Director.”

3 Turo is not exempt from these laws or regulations, or from paying SFO fees, merely because
4 some portion of its business occurs off-airport. *Alamo Rent-A-Car, Inc. v. Bd. of Supervisors of*
5 *Orange Cty.*, 221 Cal. App. 3d 198, 207-08 (1990) (holding off-airport Alamo Rent-A-Car’s use of
6 airport roadways make it subject to airport fees).

7
8 **II. SAN FRANCISCO IS ENTITLED TO SUMMARY ADJUDICATION ON TURO’S**
9 **FIRST CROSS CLAIM BECAUSE TURO IS A RENTAL CAR COMPANY.**

10 Turo’s claims that SFO has no authority to require it to collect the gross receipts charge or the
11 AirTrain Fee from its customers. ACC, Cause of Action 1. Turo asserts that it is not a “rental car
12 company” as provided in Section 50474.1 and seeks a declaration “that Turo and its Users are not
13 rental car companies under California law.” ACC at 28:2-3.

14 Turo is subject to SFO’s requirements that it obtain an off-airport rental car company permit
15 and collect the Gross Receipts Charge and the AirTrain Fee as a condition of its operation at SFO,
16 because Turo is a rental car company.

17
18 **A. Turo Is A Business That Enables The Public To Rent Passenger Cars And**
19 **Therefore Falls Within The Statutory Definition Of “Rental Company.”**

20 California Civil Code Section 1939.01(a) defines a “rental company” as “a person or entity in
21 the business of renting passenger vehicles to the public.”⁵ As set forth above, Turo is a rental car
22 company. (See above, Fact Section I.A.) Indeed, that is Turo’s entire business model. Turo’s
23 advertisements and promotional materials – directed to car owners, prospective renters, and the
24 general public – state that its customers can rent cars through Turo’s website. Thompson Decl. Ex. A
25 at ¶¶ 18-30 [Turo’s Answer admitting many of these facts] and Exs. B-M.

26
27 ⁵ The Insurance Code and the Vehicle Code have similar definitions which also turn on the
28 question of whether an entity is “in the business” of renting vehicles to the public. Cal. Ins. Code
§ 1758.89(d); Cal. Veh. Code § 11752(f).

1 Given these indisputable and in many cases admitted facts, the question of whether Turo is a
2 rental car company may readily be resolved as a matter of law. The legal question is one of statutory
3 interpretation: what does it mean to be “in the business of renting passenger vehicles to the public?”
4 Civil Code § 1939.01(a). The California Supreme Court has held that the “goal of statutory
5 construction is to ascertain and effectuate the intent of the Legislature,” and “[o]rdinarily, the words of
6 the statute provide the most reliable indication of legislative intent.” *People v. Jefferson*, 21 Cal.4th
7 86, 94 (1999). The plain meaning of Section 1939.01’s definition of “rental company” is clearly broad
8 enough to encompass the activities of an entity like Turo.

9 Turo argues that it cannot be a rental car company because it does not own the passenger cars
10 that members of the public rent through its website. But Turo’s argument finds no support in the
11 language of the statute. Instead, Turo’s alternative reading of Section 1939.01(a) effectively removes
12 the term “in the business of” from the statute. Presumably the Legislature included the “in the
13 business of” language in the statute for a reason, so that the statute would cast a broad net around car
14 rental transactions. Turo’s reading also seeks to add language to Section 1939.01(a) that is not there,
15 in an effort to exempt its business model from the scope of the statute. Turo reads the statute as if it
16 defined a “rental company” to be “a person or entity renting *its own* passenger vehicles to the public.”
17 Section 1931.01(a) (with italicized words added). That reading violates cardinal rules of statutory
18 construction by treating the “in the business of” language as surplusage (*Arnett v. Cal Cielo*, 14 Cal.
19 4th 4, 22 (1996) [“Courts should give meaning to every word of a statute if possible.”]), and also by
20 adding in language to the statute to create an exemption not contemplated by the Legislature. “Words
21 may not be inserted in a statute under the guise of interpretation.” *City of Sacramento v. Pub.*
22 *Employees’ Ret. Sys.*, 22 Cal. App. 4th 786, 793-794 (1994).

23 California Civil Code Section 1931.01(a) should be read broadly to apply to Turo for another
24 reason: the statutory provisions governing rental car transactions are remedial statutes enacted by the
25 Legislature to protect consumers who rent cars. Civil Code Section 1931’s predecessor statute, Civil
26 Code Section 1936, “was primarily designed to protect consumers against rental car company
27 overcharges for collision damage waivers . . . and for the cost of repairing cars damaged during a
28 rental.” *Schnall v. Hertz Corp.* 78 Cal. App. 4th 1144, 1154-55 (2000). Moreover, the Legislature

1 explicitly included broad consumer protection provisions in the statute. For example, Section
2 1939.13(b) provides, in part, “[a] rental company shall not engage in any unfair, deceptive, or coercive
3 conduct to induce a renter to purchase the damage waiver, optional insurance, or another optional good
4 or service.” The canons of statutory construction require that the terms of such remedial statutes be
5 read broadly, so that consumers will benefit from these protections regardless of whether they happen
6 to rent a car on Turo’s website or on, say, Avis’s website. “The rule of law in the construction of
7 remedial statutes requires great liberality, and wherever the meaning is doubtful, it must be so
8 construed as to extend the remedy.” *People ex rel. Dept. of Transportation v. Muller* 36 Cal. 3d 263,
9 269 (1984).

10
11 **B. Because Rental Transactions Are Not Merely Incidental To Turo’s Business
12 Model, Turo Is In The Business Of Renting Passenger Vehicles To The Public.**

13 As a matter of statutory interpretation, the Legislature’s choice to define a “rental company” as
14 an entity “in the business of” renting passenger vehicles to the public is significant, and must be given
15 its natural meaning. The California Supreme Court considered the issue of how to determine whether
16 an entity is “in the business of” doing a particular activity in *Sentry Select Ins. Co v. Fidelity &
17 Guaranty Ins. Co.*, 46 Cal.4th 204 (2009). There, the Ninth Circuit asked the California Supreme
18 Court to decide between two tests that lower courts had used to determine whether an entity was
19 “engaged in the business of renting or leasing motor vehicles, without operators” within the meaning
20 of former Insurance Code Section 11580.9(b). *Id.* at 206. One line of cases held that “the focus
21 should be on the factual circumstances surrounding the lease of the particular commercial vehicle” at
22 issue. *Id.* at 207, citing *Western Carriers Ins. Exchange v. Pacific Ins. Co.*, 211 Cal. App. 3d 112
23 (1989). Another line of cases instead suggested that to make this determination, “courts should look to
24 the nature of the insured’s primary business.” *Id.*, citing *Travelers Indem. Co. v. Maryland Cas. Co.*,
25 41 Cal.App.4th 1538, 1546 (1996). The California Supreme Court found it unnecessary to resolve this
26 conflict, because a Legislative amendment mooted the issue going forward and the trucking company
27 in question was plainly in the business of leasing motor vehicles under either test.

1 This conclusion was unavoidable under the *Western Carriers* test, which focuses narrowly on
2 whether the particular truck at issue had been commercially leased prior to the accident.⁶ That fact
3 was undisputed in *Sentry Select*. *Id.* at 208. The facts of *Western Carriers* are also instructive on how
4 broadly that case interpreted the concept of being “engaged in the business of renting or leasing motor
5 vehicles.” *Western Carriers* involved an agreement that allowed a trucking company to use a farming
6 company’s trailers for free during cotton season, in exchange for the trucking company’s allowing the
7 farming company to use its tractors for free during melon season. *Western Carriers*, 211 Cal. App. 3d
8 at 117-118. This arrangement did not involve the payment of any money, or even a written lease. The
9 court nevertheless ruled that the purpose of this arrangement was “unquestionably commercial” and
10 held that the companies were engaged in the business of leasing commercial vehicles. *Id.* at 118; see
11 also *Mission Ins. Co. v. Hartford Accident & Indem. Co.*, 160 Cal. App. 3d 97, 100 (1984) [holding
12 that a construction company that only occasionally leased trailers to a transport company for a nominal
13 fee, so that transport company would reciprocate when needed by the construction company, was
14 nevertheless still in the business of leasing motor vehicles.].

15 Under the more stringent test adopted in *Travelers*, in order to be engaged in the business of
16 renting or leasing motor vehicles, “renting or leasing activities must be a regular part of the insured’s
17 business.” *Travelers*, 41 Cal. App. 4th at 1546. The trucking company at issue in *Travelers* was
18 primarily in the business of moving and storage. It did not lease vehicles to the general public, and
19 only rarely leased them to independent contractors with whom it had preexisting agreements. While
20 the company made a slight profit on such leases, they were “wholly incidental to its business of
21 moving and storage.” *Id.* at 1547. In contrast, the trucking company involved in *Sentry Select* leased
22 out over three quarters of its fleet. *Sentry Select*, 46 Cal. 4th at 207. The Supreme Court therefore had
23 no difficulty concluding that, even under the *Travelers* test, the leasing activities at issue in *Sentry*
24 *Select* were “unquestionably ‘a regular part of [its trucking] business.’” *Id.* at 214, quoting *Travelers*,
25 41 Cal. App. 4th at 1546. While the Supreme Court did not have to choose between the two tests on
26

27 ⁶ The amendment to Insurance Code Section 11580.9 essentially adopted this test. Under the
28 amended statute, “the renting or leasing of commercial vehicles without operators in the course of any
business can qualify” under Section 11580.9. *Sentry Select*, 46 Cal.4th at 207 [emphasis in original].

1 the facts of *Sentry Select*, it nonetheless noted that it disagreed with the *Travelers* test when
2 “substantial income is realized from the leasing activity.” *Id.*

3 Like the trucking company in *Sentry Select*, Turo is “in the business of renting passenger
4 vehicles to the public” as a matter of law, regardless of which test is used. The *Western Carriers* test
5 is easily satisfied, because each and every Turo transaction involves the renting of a car by a member
6 of the public. The *Travelers* test is also easily satisfied, because such car rental transactions represent
7 Turo’s main line of business – indeed, its only one. Again, like the trucking company in *Sentry Select*,
8 Turo realizes “substantial income” from this renting activity. *Id.* Renting cars can in no way be
9 described as “incidental” to Turo’s business. Renting cars is how Turo makes money. If Turo isn’t in
10 the business of renting cars to the general public, then neither is Avis. Indeed, the traditional market
11 for renting passenger vehicles to the public is the very market that Turo is attempting to disrupt.
12 Clements Decl. Ex O. If Turo has invented a better business model for renting cars and is successful
13 in growing its market share, so be it. But Turo must play by the same rules as the other rental car
14 companies if it wants to do business at SFO.

15 **C. Even Assuming Many Turo Users Are Engaged In Personal Vehicle Sharing,
16 That Does Not Prevent Turo From Still Being A Rental Car Company.**

17 Turo tries to avoid the plain language interpretation of Section 1939.01 by arguing that it
18 cannot be a “rental company” because it is merely an internet platform that facilitates the rental of cars
19 owned by others. Turo claims that it is therefore not a rental car company but rather a “personal
20 vehicle sharing program” (“PVSP”) as defined under the California Insurance Code. ACC ¶ 30.
21 But the two concepts are not mutually exclusive. In other words, Turo can be, and is, “in the business”
22 of renting other people’s cars to the public. Such rentals are not merely an incidental aspect of Turo’s
23 business model – they are Turo’s core business. Turo’s arguments concerning its purported PVSP
24 status are therefore immaterial.

25 Turo’s argument also ignores the Insurance Code’s express limitation of its scope to “personal
26 vehicle sharing” of private passenger motor vehicles where:

27 The annual revenue received by the vehicle’s owner which was generated by the
28 personal vehicle sharing of the vehicle does not exceed the annual expenses of
owning and operating the vehicle, including depreciation, interest, lease
payments, auto loan payments, insurance, maintenance, parking, fuel, cleaning,

1 automobile repair, and costs associated with personal vehicle sharing, including,
2 but not limited to, the installation, operation, and maintenance of computer
hardware and software, signage identifying the vehicle as a personal sharing
vehicle, and any fees charged by a personal vehicle sharing program.

3 Cal. Ins. Code § 11580.24(a)(2). Turo’s policies do not limit the listing of vehicles on its platform to
4 those that satisfy this Insurance Code criteria. Indeed, Turo’s website contains many listing from its
5 “Power Hosts” – individuals whose vehicle rentals yield at least \$9,000 in revenue over a 91 day
6 period. Thompson Decl. Ex. Q, 106-107. Many of Turo’s Power Hosts own fleets of cars, which they
7 have purchased for the express purpose of renting the vehicles on the web platforms of Turo and other
8 “car sharing” companies, such as Getaround. Such individuals rent their cars through Turo in order to
9 make a profit, not merely to earn money to defray the expense of owning a car. Because the owner
10 receives revenues in excess of the cost of owning, maintaining, and renting the car, such vehicles do
11 not qualify under Section 11580.24(a)(2) as “personal vehicle sharing.” Turo’s listing of them, and
12 offering them for rent at SFO, also does not qualify it as a “personal vehicle sharing program” under
13 the statute.⁷ These for-profit rental car businesses on Turo’s platform do not meet the letter or the
14 spirit of the “sharing program” established by the California Legislature. Similarly, Turo also lists
15 commercially-insured vehicles owned by car dealerships that also are not eligible for a PVSP.

16 Thompson Decl. Exs. Q, R.

17 Even if California Insurance Code Section 11580.24 did apply (to the portion of the rental car
18 listings on Turo’s platform that meet the criteria of that statute), it would not preclude Turo from
19 qualifying as a rental car company for the purposes of an entirely different statutory scheme. In
20 statutory construction, “the cardinal rule [is] that the statute is to be construed so as to give effect to
21 the intent of the lawmakers Of prime importance in this inquiry are the particular objectives the
22 legislation seeks to achieve.” *Mercer v. Perez*, 68 Cal. 2d 104, 112 (1968) (internal citations omitted).
23 The language of Insurance Code Section 11580.24 and its legislative history demonstrate the
24 legislative objectives underlying the statute are to (1) avoid the cancellation of a personal automobile

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26 ⁷ Insurance Code Section 11580.24(b)(2) defines a “personal vehicle sharing program” as “a
27 legal entity qualified to do business in the State of California engaged in the business of facilitating the
28 sharing of private passenger vehicles for noncommercial use by individuals within the state.”
Insurance Code Section 11580.24(b)(3) defines a “private passenger motor vehicle” to be a vehicle
insured “under a personal automobile liability insurance policy insuring a single individual or
individuals residing in the same household”

1 liability insurance policy when vehicles are used as part of a personal vehicle sharing program; (2)
2 relieve the insurers from liability for loss occurring during the use of the insured vehicle in a PVSP;
3 and (3) require the PVSP to provide adequate insurance coverage while the vehicle is in use in the
4 program. Cal. Ins. Code § 11580.24(a), (c)(1), and (e) – (h).⁸ Nothing in the language of Section
5 11580.24, the entire Insurance Code, or the entire Civil Code suggests the Legislature intended to
6 preclude an entity qualifying as a “personal vehicle sharing program” from also qualifying as a “rental
7 car company” under a separate statutory scheme. Nor can Turo argue that the two are mutually
8 exclusive. Turo lists on its platform cars offered by commercial rental car companies and fleets of
9 cars owned by Turo’s for-profit hosts and auto dealerships, in addition to cars that may meet the
10 criteria of Insurance Code Section 11580.24(a)(2).

11 None of the statutory provisions governing rental car companies and PVSPs suggest that a
12 company cannot be both at the same time. “There is nothing novel or incongruous in subjecting a
13 business to the regulation of more than one agency or more than one code.” *Bodenhamer v. Superior*
14 *Court*, 178 Cal. App. 3d 180, 184 (1986). For example, if Avis were to start offering PVSP vehicles
15 for rent tomorrow (as it may), but also maintained its traditional rental car business, no one would
16 argue that Avis should now be exempt from regulation as a rental car company. Rather, Avis would
17 be subject to *additional* regulation as a PVSP. The same logic applies to Turo: if Turo is operating
18 both a PVSP and is “in the business of renting passenger vehicles to the general public,” then it is
19 subject to regulations of both types of entities and not exempt from the latter simply because some
20 portions of its operations also constitute the former. Otherwise, Turo’s commercial hosts, such as auto
21 dealerships, would be able to lease out their cars through Turo yet be exempt from the various
22 consumer protection provisions of California law that govern the rental car industry. Surely the

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24 ⁸ Turo alleges its car owners are not subject to SFO’s regulation of commercial operations on
25 Airport property because Section 11580.24(a) provides that “personal vehicle sharing” per the statute
26 is not “commercial” for purposes of insurance coverage. ACC at ¶30. Nothing in Section 11580.24
27 suggests that the Legislature intended this insurance-related prohibition to also prohibit SFO from
28 applying to such vehicles its Rules and Regulations governing commercial operations on Airport
property. To the contrary, the legislative history of AB 1871 demonstrates that the Legislature
understood that PVSPs might use vehicles owned by PVSP hosts “to supplement or replace company
owned fleets.” Thompson Decl. Ex. S (Assembly Report on AB 1871, as amended May 11, 2010, at
p. 3). To the extent a company operates using both PVSP vehicles and “company owned” fleets, it is
clearly a rental company within the meaning of the Civil Code.

1 Legislature’s adoption of Insurance Code Section 11580.24 was not intended to produce such an odd
2 result.

3 Even assuming *arguendo* that many Turo transactions at SFO fall within the definition of
4 PVSP transactions for the purposes of the Insurance Code, Turo is still a “rental company” as defined
5 by the Civil Code. It just would happen to be a rental car company that rents some cars owned by
6 hosts who are engaged in personal vehicle sharing. The fact that Turo does not own the cars that are
7 rented through its platform does not give Turo *carte blanche* to ignore its obligations as an “entity in
8 the business of renting passenger vehicles to the public.” Cal. Civ. Code § 1939.01(a). Key among
9 those obligations is Turo’s duty to obtain an off-airport rental car company permit if it wishes to
10 continue to do business at SFO, to pay the applicable Gross Receipt Charge, to utilize the RCC, and to
11 collect the AirTrain fee. San Francisco is therefore entitled to summary adjudication on Turo’s first
12 cross claim for declaratory relief.

13
14 **III. SAN FRANCISCO IS ENTITLED TO SUMMARY ADJUDICATION ON TURO’S**
15 **SIXTH CROSS CLAIM, AND THE PEOPLE ARE ENTITLED TO SUMMARY**
16 **ADJUDICATION ON TURO’S SIXTEENTH AFFIRMATIVE DEFENSE,**
17 **BECAUSE SAN FRANCISCO HAS SEVERAL RATIONAL BASES FOR**
18 **TREATING TURO DIFFERENTLY THAN PERMITTED TNCs.**

19 Turo’s sixth cause of action alleges that SFO is violating Turo’s equal protection rights by
20 “purposefully overcharging Turo and its Users as compared to other similarly situated Transportation
21 Network Companies [TNCs], taxi and limousine companies, and their users without any rational basis
22 for doing so.” ACC at 27:19-21. Similarly, Turo’s sixteenth affirmative defense asserts that the
23 People’s claim is barred by the equal protection clauses of the Constitutions of the United States and
24 California. Answer at 21:23-26. Turo alleges that San Francisco’s requirement that Turo pay the 10%
25 Gross Receipts Charge and collect the \$16 AirTrain Fee from its renters violates its equal protection
26 rights. Turo asserts that it is similarly situated to TNCs such as Uber and Lyft, and to taxis and
27 limousines, which pay only \$4 or \$5 per trip. Thompson Ex. A ¶¶ 79-84; ACC ¶¶ 78-82.

28 San Francisco has a rational basis to treat Turo like an off-airport rental car company because it
is one. See Argument Section II *supra*. But even if Turo did not meet the statutory definition of a

1 rental car company for some reason, San Francisco would still have a rational basis to treat Turo more
2 like a rental car company and less like a TNC. Turo's equal protection claims fail as a matter of law
3 because (1) Turo is not similarly situated to TNCs, taxis, or limousines, and (2) San Francisco has a
4 rational basis for treating Turo like an off-airport rental car company rather than a TNC.

5 To prevail on its equal protection claims, Turo has the burden of proving that it is similarly
6 situated to a class of entities that San Francisco treats differently. *Kimel v. Fla. Bd. of Regents*, 528
7 U.S. 62, 83-84 (2000). Absent a suspect classification (*e.g.*, race, national origin, sex) or impingement
8 of a fundamental right (the right to travel, to vote, of free speech and assembly, *etc.*), San Francisco
9 need only have a rational basis for the differential treatment. *F.C.C. v. Beach Commc'ns*, 508 U.S.
10 307, 313-14 (1993).⁹ Under the rational basis test, a government action will be upheld so long as it is
11 "rationally related to a legitimate state interest." *City of New Orleans v. Dukes*, 427 U.S. 297, 303
12 (1976). SFO's regulations and classifications are "presumed valid, and this presumption is overcome
13 only by a 'clear showing of arbitrariness and irrationality.'" *Kawaoka v. City of Arroyo Grande*, 17
14 F.3d 1227, 1234 (9th Cir. 1994) (quoting *Hodel v. Indiana*, 452 U.S. 314, 331-332 (1981)). "[T]he
15 rational basis test is extremely deferential and does not allow inquiry into the wisdom of government
16 action." *Las Lomas Land Co., LLC v. City of Los Angeles*, 177 Cal. App. 4th 837, 858 (2009).

17 Equal Protection does not require that different things be treated as though they are the same.
18 *Briggs v. Brown*, 3 Cal. 5th 808, 842 (2017). Turo, as the party attacking SFO's classification of Turo
19 as something other than a TNC, taxi or limousine service, has the burden "to negative every
20 conceivable basis which might support it." *Heller v. Doe*, 509 U.S. 312, 320 (1993). "The Supreme
21 Court has long held that a law must be upheld under rational basis review if any state of facts
22 reasonably may be conceived to justify the classifications imposed by the law." *SmithKline Beecham*
23 *Corp. v. Abbott Labs.*, 740 F.3d 471, 481 (9th Cir. 2014) (internal quotation marks omitted).

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27 ⁹ The standards of review of government classifications under the Equal Protection Clauses of
28 both the California and the United States Constitutions are the same. *Wal-Mart Stores, Inc. v. City of Turlock*, 483 F. Supp. 2d 987, 1010 (E.D. Cal. 2006); *Manduley v. Superior Court*, 27 Cal.4th 537, 572 (2002).

1 **A. Turo Is Not Similarly Situated To TNCs, Taxis, or Limousines.**

2 Turo bears “a substantial burden” to demonstrate that it is “similarly situated in all material
3 respects” with TNCs. *Kansas Penn Gaming, LLC v. Collins*, 656 F.3d 1210, 1217 (10th Cir. 2011).
4 A strict reading of the “similarly situated” element is necessary to avoid creating “a flood of claims in
5 that area of government where discretion is high and variation is common.” *Id.* at 1218. A less
6 stringent application of the “similarly situated” requirement “could subject nearly all state regulatory
7 decisions to constitutional review in federal court and deny state regulators the critical discretion they
8 need to effectively perform their duties.” *Id.* Therefore, to prevail on its equal protection claim, Turo
9 must show that “no rational person could regard the circumstances of the plaintiff to differ from those
10 of a comparator to a degree that would justify the differential treatment on the basis of a legitimate
11 government policy.” *Id.*

12 Turo is not a TNC, taxi, or limousine. Turo is not registered as commercial transportation as
13 any other service would be, whether with the state (the California Public Utilities Commission
14 regulates TNCs and limousines) or the City (San Francisco regulates taxis). And the nature of Turo’s
15 transactions are fundamentally different from a commercial transportation transaction: With a TNC,
16 taxi, or limousine, a customer pays for a driver to transport the customer in a vehicle typically from
17 one location to another. With Turo, the customer pays to temporarily take possession of the vehicle
18 for a period of time.

19 A Turo transaction is also different from commercial transportation because handing off
20 possession of a vehicle is more complicated than simply climbing into the back seat of a vehicle and
21 leaving the airport. Cheong Decl. ¶ 10. Turo instructs its renters and its hosts that they should check
22 identification, exchange a key, and inspect the vehicle for damage and take pictures during such
23 exchanges. Thompson Ex. T. In contrast, TNC drivers remain in possession of their cars and drive
24 away after dropping off their passengers. TNC drop offs are on average half as long as other
25 commercial vehicles like taxis. Cheong Decl. ¶ 10. SFO therefore has a rational basis for its concern
26 that Turo’s exchanges will take significantly longer than the typical TNC exchange. That Turo has
27 chosen to encourage and facilitate unlawful curbside pick ups at SFO does not render it similar to the
28

1 TNCs, taxis, and limousines that engage customers at curbside lawfully, *i.e.*, in accordance with their
2 SFO permits.

3 Moreover, each TNC, taxi, and limousine trip generates a fare that is only a fraction of the
4 revenue generated by a single rental car transaction by Turo. For example, the fare charged for an
5 UberX ride from SFO to Union Square in San Francisco ranges from \$28 - \$35.¹⁰ Thus the \$4 per trip
6 charge paid by TNCs will in many cases be a greater percentage of the TNC fare than the 10 percent
7 Gross Receipts Charge that SFO charges rental car companies. In contrast, the average value of a
8 rental car transaction at SFO is \$278 (El Gord Decl. ¶ 8 & Ex. B), and Turo's average SFO transaction
9 is more lucrative still. Clements Decl. Exs. A, P. This fact alone renders Turo dissimilar to TNCs,
10 taxis, and limousines, and similar to permitted off-airport rental car businesses. Like other car rental
11 businesses around SFO that owe a substantial portion of their customers – and revenues – to SFO air
12 traffic, Turo must pay its fair share to support SFO operations. It is rational for SFO to require that
13 Turo do so if Turo wishes to conduct business at the Airport.

14
15 **B. Treating Turo As A Rental Car Company
16 serves Legitimate Government Interests.**

17 SFO has a legitimate government interest in treating Turo as an off-airport rental car company.
18 SFO is required by federal law to be as financially self-sustaining as possible, and relies on its receipt
19 of Gross Receipts Charges and AirTrain Fees to help meet this goal. El Gord Decl. ¶ 3. There is no
20 question that Turo is competing with both off-airport and on-airport rental car companies for the
21 business of SFO travelers. If SFO were to allow Turo to operate at SFO at substantially lower charges
22 than those paid by permitted off-airport and on-airport rental car companies, Turo would gain an
23 unfair economic advantage. This would diminish the amount of revenue that SFO could collect from
24 permitted rental car companies, and incentivize the permitted companies to modify their business
25 practices to also avoid incurring the Gross Receipts Charge and the AirTrain Fee. Cheong Decl. ¶¶

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27 ¹⁰ Figures are taken from the Uber website's fare estimator. Uber, *How much does a ride with*
28 *Uber cost?*, <https://www.uber.com/fare-estimate/san-francisco-airport-sfo-to-union-square/> (last
visited December 6, 2019).

1 11-12. Protection of existing revenue sources is a legitimate government interest. *Park Shuttle N Fly,*
2 *Inc. v. Norfolk Airport Auth.*, 352 F. Supp. 2d 688, 700 (E.D. Va. 2004).

3 The Airport's inclusion of Turo and its users – who are engaged in the rental of passenger cars
4 – among the category of services required to pick up and drop off customers at the RCC is rationally
5 based on SFO's interest in reducing curbside and roadway congestion. The Airport built the RCC, and
6 requires rental car companies to do business there, to relieve congestion on the 1.5 miles of roadway
7 that lead to and past the terminals. The AirTrain Fee finances the construction, maintenance, and
8 operation of the AirTrain that makes this diversion of rental car traffic possible. The Airport's need to
9 reduce terminal curbside traffic is a rational basis for SFO's requirement that all rental car companies,
10 including Turo, use the RCC and the AirTrain. If Turo can escape this obligation, then other rental car
11 companies might also start operating as Turo does, in order to offer their customers the convenience of
12 curbside pick ups. The resulting increase in congestion would be significant. And the resulting lack
13 of use of the AirTrain and the RCC could greatly diminish the utility of SFO's investment in the
14 infrastructure of the AirTrain and the RCC. *Id.* ¶¶ 11-13. Therefore, SFO has several rational bases
15 to treat Turo as a rental car company.

16 Under rational basis review the government “has no obligation to produce evidence to sustain
17 the rationality of a statutory classification.” *Heller v. Doe*, 509 U.S. 312, 320 (1993). Moreover, “it is
18 entirely irrelevant for constitutional purposes whether the conceived reason for the challenged
19 distinction actually motivated the legislature.” *F.C.C. v. Beach Commc'ns, Inc.*, 508 U.S. 307, 315
20 (1993). “[A] legislative choice is not subject to courtroom fact-finding and may be based on rational
21 speculation unsupported by evidence or empirical data.” *Id.*

22 While under these authorities San Francisco has no burden to do so, San Francisco has come
23 forward here with evidence supporting its rational bases for not treating Turo like a TNC. See *e.g.*
24 Cheong Decl. ¶¶ 9-13. In addition, SFO's concerns about unfair competition among rental car
25 companies are amply supported in the contemporaneous records concerning the development of the
26 RCC and the AirTrain system.

27 In the original Resolution adopting the off-Airport rental car gross receipts charge (at 7%), the
28 Airport Commission noted the huge disparity between payments then being made by off-airport and

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Dated: December 6, 2019

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