



1 justify its opposition.”<sup>1</sup> The party seeking a continuance bears the burden of showing the specific  
2 facts it hopes to elicit in discovery, that there is reason to believe the facts sought exist, and that  
3 the facts are essential to oppose summary judgment. Family Home and Fin. Center, Inc. v. Fed.  
4 Home Loan Mortg. Corp., 525 F.3d 822, 827 (9th Cir. 2008). The party must also show that it  
5 has diligently pursued discovery. Qualls By and Through Qualls v. Blue Cross of Cal., Inc., 22  
6 F.3d 839, 844 (9th Cir. 1994). If the requesting party cannot support its request for a  
7 continuance, the Court may proceed to summary judgment. Id. If, on the other hand, an  
8 appropriate showing is made, the Court may “(1) defer considering the motion or deny it; (2)  
9 allow time to obtain affidavits or declarations or to take discovery; or (3) issue any other  
10 appropriate order.” Fed. R. Civ. P. 56(d).

11 By agreement of the parties, discovery in this matter has not yet commenced. See Dkt.  
12 # 98 at 1. Plaintiffs have filed a motion for summary judgment seeking a determination that the  
13 City’s Ordinance is preempted by federal antitrust laws because it authorizes per se illegal group  
14 boycotts and/or price fixing.<sup>2</sup> Dkt. # 100. Defendants, in responding to the motion for summary  
15 judgment, intend to argue that the “labor” exemption to the federal antitrust laws applies. 15  
16 U.S.C. § 17 (“The labor of a human being is not a commodity or article of commerce” subject to  
17 regulation under the Clayton Act). The argument is not frivolous,<sup>3</sup> and discovery from ride  
18 referral services and drivers regarding (a) whether the for-hire drivers are selling their labor, as  
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20 <sup>1</sup> Subdivision (d) of Rule 56 “carries forward without substantial change the provisions of  
21 former subdivision (f).” Fed. R. Civ. P. 56, Advisory Committee Note to the 2010 Amendments.


22 <sup>2</sup> Seattle amended the Ordinance in January 2019 to eliminate the provisions authorizing  
23 collective bargaining over the nature and amount of payments between drivers and ride referral  
24 companies. See Dkt. # 100-1.

25 <sup>3</sup> Plaintiffs argue that the labor exemption applies only in the context of an employer-employee  
26 relationship, not to independent contractors. The exemption uses the phrase “labor of a human being,”  
however, and a recent Supreme Court decision makes clear that, at the time the Clayton Act was written,  
even the narrower term “employment” encompassed both master-servant relationships and independent  
contractors. New Prime Inc. v. Oliviera, \_\_\_ U.S. \_\_\_, 139 S. Ct. 532, 542-44 (2019).

1 opposed to a product or service that qualifies as a commodity under the antitrust laws, (b) the  
2 nature and scope of the drivers' entrepreneurial investments in training, vehicles, and other  
3 business expenditures, and (c) the drivers' control over the supply of whatever commodity they  
4 are selling is needed to support the argument. In addition, defendants hope to be able to show  
5 that the product the ride referral companies are selling - namely, ready access to a private car and  
6 driver at a predetermined (fixed) price - requires a certain degree of cooperation between and  
7 among the drivers in order to make the product available at all. If that is the case, the per se rules  
8 of illegality under the antitrust laws may be inapplicable, and the Court would have to decide  
9 whether the undeniable restraint on trade arising from that cooperation is nevertheless reasonable  
10 in that it allows the product to be offered and does not unnecessarily restrict competition or  
11 decrease output. See Am. Needle, Inc. v. Nat'l Football League, 560 U.S. 183, 203 (2010);  
12 NCAA v. Bd. of Regents of Univ. of Okla., 468 U.S. 85, 98-103 (1984). Discovery regarding  
13 what powers and authority the drivers cede to the ride referral companies, the process by which  
14 the ride referral applications can generate a single ride option at a fixed price, and the market  
15 appeal and efficiencies of the coordinated selling arrangement will inform the initial  
16 determination of whether the activities at issue here can only be carried out jointly.

17 Defendants have shown that the facts they hope to elicit from further discovery are  
18 essential to oppose summary judgment and, given the procedural posture of this case, they have  
19 not yet had an opportunity to pursue their investigation of these matters. For all of the foregoing  
20 reasons, the motion for a 56(d) continuance (Dkt. # 103) is GRANTED. In light of the delay in  
21 ruling on this motion, the Clerk of Court is directed to renote plaintiffs' motion for summary  
22 judgment (Dkt. # 100) on the Court's calendar for Friday, November 22, 2019.

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24 Dated this 4th day of June, 2019.

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26 Robert S. Lasnik  
United States District Judge