

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

CHAMBER OF COMMERCE OF THE
UNITED STATES OF AMERICA, and

RASIER, LLC

Plaintiffs,

v.

CITY OF SEATTLE *et al.*

Defendants.

Case No. 17-cv-00370-RSL

**PLAINTIFFS' MOTION FOR
INJUNCTION PENDING APPEAL**

NOTING DATE: August 18, 2017

Pursuant to Rule 62(c) of the Federal Rules of Civil Procedure, Plaintiffs respectfully request that this Court enter an injunction pending their forthcoming appeal from this Court's order granting the City's motion to dismiss. Plaintiffs ask the Court to continue to enjoin Defendants (collectively, "the City") from implementing or enforcing Seattle Ordinance 124968 until the Ninth Circuit issues its mandate in that appeal. Prior to filing this motion, counsel for Plaintiffs conferred with counsel for the City, who advised that the City opposes this request.

This Court granted a preliminary injunction on April 4, 2017, based on the Chamber's antitrust preemption claim. ECF No. 49. The City's appeal from that order is currently pending in the Ninth Circuit. No. 17-35371. On August 1, this Court issued an order granting the City's

1 motion to dismiss the suit for failure to state a claim, which resolved the antitrust preemption
2 claim and all other claims. ECF No. 66. The Court has yet to enter final judgment, however,
3 and it stated in the order that the preliminary injunction will remain in place until it rules on a
4 separate suit that also challenges the Ordinance. *Id.* at 28. The Chamber plans to appeal this
5 Court’s ruling and hereby requests an injunction of the Ordinance pending that appeal.

6 A court is authorized to grant an injunction pending appeal from a “final judgment that
7 grants, dissolves, or denies an injunction.” Fed. R. Civ. P. 62(c). This Court’s dismissal order
8 qualifies: it is a final judgment that denies Plaintiffs’ claims for injunctive relief. The standard
9 for issuing an injunction pending appeal is the same as that for issuing a preliminary injunction.
10 *Se. Alaska Conservation Council v. U.S. Army Corps of Eng’rs*, 472 F.3d 1097, 1100 (9th Cir.
11 2006); *Dex Media West v. City of Seattle*, No. C10-1857, 2011 WL 1869330, at *1 (W.D. Wash.
12 May 16, 2011). Plaintiffs must show *either* a likelihood of success on appeal, irreparable injury
13 absent an injunction, a balance of hardships favoring Plaintiffs, and advancement of the public
14 interest, *or* “serious questions” going to the merits of the appeal and a balance of hardships
15 tipping sharply in Plaintiffs’ favor (along with the other two factors). *Alliance for the Wild
16 Rockies v. Cottrell*, 632 F.3d 1127, 1135 (9th Cir. 2011); *Se. Alaska Conservation Council*,
17 472 F.3d at 1100 (“serious questions” test applies to injunctions pending appeal).

18 This Court has already conclusively resolved these questions in the affirmative in its
19 order granting the Chamber’s motion for a preliminary injunction. *See* ECF No. 49. The Court
20 concluded that the Chamber has raised serious questions going to the merits of its antitrust
21 preemption claim, that the hardships tip sharply in its favor, that irreparable injury is likely
22 absent an injunction, and that the public interest favors an injunction to preserve the status quo.
23 *Id.* at 2–5, 17–18. Nothing has changed in the interim. “[F]orcing the driver coordinators to
24 disclose their most active and productive drivers is” still “likely to cause competitive injury that
25 cannot be repaired once the lists are released,” and the driver coordinators’ “innovative
26 [business] model” is still “likely to be disrupted in fundamental and irreparable ways if the

1 Ordinance is implemented.” *Id.* at 17. The balance of hardships still “strongly favors the
2 Chamber” because “[a]gainst the likelihood of competitive injury caused by the disclosure of a
3 subset of prolific drivers and the potential destruction of the existing business model, the City
4 has not articulated any harm that will arise from an injunction other than that it would delay the
5 implementation of the Ordinance according to its internal time line.” *Id.*¹ And the public will
6 still “be well-served by maintaining the status quo while” the “novel, ... complex” issues
7 “resid[ing] at the intersection of national politics that have been decades in the making” are
8 “given careful judicial consideration,” now by the Court of Appeals. *Id.* at 17–18.

9 Finally, it is still true that Plaintiffs have shown “serious questions” going to the merits of
10 (at a minimum) their “novel” and “complex” antitrust preemption claim. *Id.* The order granting
11 the City’s motion to dismiss does not change that, because, as relates to the merits, the legal
12 standard applicable to the City’s motion to dismiss is different from the standard for a
13 preliminary injunction or an injunction pending appeal. For an injunction, a court must conclude
14 only that there are “serious questions going to the merits.” *Wild Rockies*, 632 F.3d at 1135. To
15 grant a motion to dismiss for failure to state a claim, however, the court must actually decide the
16 merits. The combined conclusion of this Court’s two rulings is that Plaintiffs have shown
17 “serious questions” on the merits but, in the Court’s view, have not established an ultimate
18 entitlement to relief. The former conclusion justifies an injunction pending appeal. Moreover,
19 because the issues in this case are purely legal and the Ninth Circuit’s review will therefore be
20 *de novo*, nothing in this Court’s merits ruling detracts from or undermines its earlier judgment
21 that the antitrust preemption claim presents serious questions for a reviewing court.

22 In sum, the Court should grant an injunction pending appeal for the same reasons it
23 granted the preliminary injunction, as well as the additional reasons set forth in the Chamber’s
24 briefs supporting its motion for preliminary injunction, *see* ECF Nos. 2 & 43. In the alternative,

25 ¹ Of course, Plaintiffs will cooperate with the City in seeking expedition of their appeal to
26 ensure that any injunction pending appeal is in place no longer than reasonably necessary.

1 if the Court denies the request for an injunction pending appeal, Plaintiffs respectfully request
2 that the Court maintain the preliminary injunction or otherwise enjoin the City from
3 implementing or enforcing the Ordinance until the Court of Appeals rules on a motion for an
4 injunction pending appeal that Plaintiffs will promptly file with that court.

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6 Dated: August 3, 2017

Respectfully submitted,

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1 **CERTIFICATE OF SERVICE**

2 I hereby certify that on August 3, 2017, I electronically filed the foregoing with the Clerk
3 of the Court using the CM/ECF system which will send notification of such filing to the parties
4 who have appeared in this case

5 DATED: August 3, 2017 at Seattle, Washington.

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