

**SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
CIVIL DIVISION**

DISTRICT OF COLUMBIA	:	Case Number: 2024-CAB-4751
	:	Judge: Shana Frost Matini
v.	:	Next Court Date: October 14, 2025
	:	Event: Hearing
YAZAM INC. d/b/a EMPOWER	:	

**EMPOWER’S AND NON-PARTY JOSHUA SEAR’S
FURTHER COMPLIANCE UPDATE [CORRECTED]**

Pursuant to this Court’s order, Defendant Empower and Non-Party Joshua Sear provide this further update on Empower’s progress, at Mr. Sear’s direction, toward compliance with the Court’s injunction that it cease operations as a digital dispatch service and private sedan business.

Specifically, *Empower is changing to a no-contract business model in the District*, the result of which will be that it no longer operates as a private vehicle-for-hire company, private sedan business, and digital dispatch service as those terms are defined and have been interpreted by the Court of Appeals. As described in more detail below, Empower is in the process of amending its Software as a Service (SaaS) agreement with drivers so that the agreement no longer applies to or governs anything about drivers’ use of Empower’s software and services relating to any rides originating or terminating in the District. Once software changes are complete and updated, if a driver wants to provide such rides they will be able to use the platform for free and without entering into any contract with Empower whatsoever. Empower will have no obligations to provide services to users in the District, and users of its free software will have no obligations to Empower.

The Court of Appeals made crystal clear, *and the District conceded* that Empower would not be a PSB or DDS were it to have no contract whatsoever with drivers. *Yazam I*, 310 A.2d at

622-25; *see also supra* p.2-3 & n.1. *Yazam I*, Empower disagreed that its subscribers were providing their ride services to consumers “in contract with” Empower. *Id.* at 623. The Court of Appeals, however, held that the “contract between Empower and its subscribers” was sufficient to satisfy the “**contractual relationship requirement.**” *Id.* at 622, 624.

The Court was incredibly clear, however, and the District never disputed, that at a minimum there must at least be **some** contract between Empower and drivers. The only question was whether Empower’s SaaS agreement made Empower a PSB and DDS. The Court of Appeals explicitly made this clear at oral argument. In response to questions from Judge Deahl, ***the District agreed and acknowledged*** that, with a no-contract business model in the District, Empower would **not** be operating as a private vehicle-for-hire company and would **not** be subject to DFHV regulation (including any registration requirements). Moreover, in response to Judge McLeese’s observation that the statutory definition of a “Digital dispatch” rises and falls on the same “in contract with” requirement, the District conceded (with some understatement) that it would be a “very hard case” for DFHV to try to establish that Empower is a DDS if there were no applicable contract between Empower and drivers in the District. The relevant colloquy went as follows:

JUDGE DEAHL: Let me just give a slightly different business model that maybe Yazam will pivot to later. Let’s say they don’t have any contract with the drivers. What they do is that they just provide an open platform. Any drivers who want to set rates and come on this platform, you’re welcome to do it. We’re not charging subscription fees, we don’t have any requirements, we’re just going to run on, you know, ad-based revenue. Do you think, if Yazam switched to that business model—there are no contracts with the drivers, they provide a digital dispatch platform for people to provide ride services—are they still a private vehicle-for-hire company, and are their drivers private vehicle-for-hire operators, if that’s the business model?

AAG RASINARIU: So in that hypothetical we’re assuming there’s no contract at all, right, not just a written contract?

JUDGE DEAHL: Yes.

AAG RASINARIU: So in that case I think that the company would fall out of the definition of a private vehicle-for-hire company, but it would still be a digital dispatch service, so it would still be a mobile application that is connecting passengers to operators that are providing vehicle-for-hire services, unless I guess the operators are providing their services completely free of charge.

JUDGE MCLEESE: Doesn't that depend on the definition of operator, which wraps you back around to, at least arguably it wraps you back around to 16(C) and what makes somebody an operator, which then wraps back around to a contract. So it seems a little blurry to me whether they could be a digital dispatch company [sic]. It would depend on how you construe the word operators in that definitional provision.

AAG RASINARIU: I think that would be a very hard case if there's no sort of contract at all between the operators and the company then perhaps it would fall outside of the definition.¹

That business model—one in which “there's no sort of contract at all between the operators and the company” that applies to drivers' use of Empower's software and services in the District—is exactly what Empower is changing to in the District. While Empower has always maintained that drivers are not providing any services, let alone private vehicle-for-hire services, in contract with Empower, once Empower *has no contract* with drivers that applies to those drivers' use of Empower's software and services in the District there is no debating that those drivers are no longer providing any “private vehicle-for-hire service ***in contract with***” Empower (D.C. Code § 50-301.03(16C)) and that Empower will not be a “private vehicle-for-hire company” under District law (*id.* § 50-301.03(16B)).

The District has already conceded—and correctly so—that this means Empower will “fall out of the definition of a private vehicle-for-hire company” (and therefore the corresponding regulatory definition of a PSB). And for the reasons articulated by Judge McLeese, and acknowledged (albeit reluctantly) by the District, Empower will also no longer be a DDS, because

¹ The oral argument is not, to Empower's knowledge, transcribed. The Court of Appeals has published a video recording of the oral argument available at www.youtube.com/live/iOPYi_HpgUY. The portion excerpted here is located at 28:20-30:02 of that recording.

that also requires the existence of drivers who are operating “in contract with” the company. By the District’s explicit admission, Empower will not be operating as a PSB or DDS in the District, and will be in compliance with the Court’s injunction.

3. Empower and its team remain hard at work and committed to achieving compliance with the Court’s injunction by this Friday.

First, Empower is in the process of finalizing amendments to its SaaS agreement with drivers—so that it no longer applies to or governs any aspect of their use of Empower’s software and services in the District. In turn, Empower will have no obligation of any kind to drivers in connection with use of its software and services in the District. Empower is confident that the finalization of these changes will happen no later than Friday. Once finalized, *all* drivers who use the platform will be notified of the new SaaS agreement that will govern their use of the platform.

Once the amended SaaS agreement is finalized and drivers are notified, no contract with drivers will apply to any ride activity in the District. Indeed, any driver who uses Empower’s software and services solely in the District will not have any SaaS agreement with Empower at all, and will pay no subscription fees. Empower will have no contractual obligation to provide its software or services to such drivers.

Second, Empower’s back-end software engineers are in the process of coding and testing software changes to ensure that any activity that occurs in the District is completely disregarded for all purposes by its subscription manager (consistent with the SaaS agreement no longer applying to such activity). They are also coding and testing software changes that will make sure Empower no longer collects dispute-resolution fees in connection with any activity that occurs in the District, again consistent with the changes being made to the SaaS agreement.

Third, Empower’s front-end software engineers—who work on the mobile apps—have designed and coded messaging to users of both the driver-facing and rider-facing mobile applications. Messages will be displayed to drivers, before they accept any ride request originating from or terminating in the District, making clear that any ride activity in the District is not subject to any contract between Empower and the driver. Similarly, messages will be displayed to riders, after they input any pick-up and/or drop-off location within the District and before they enter their ride request, alerting them that any ride activity in the District will not subject to any contract between Empower and the driver.

Fourth, as soon as the back-end and front-end software changes are coded, tested, and ready for delivery—which Empower expects to happen by Friday morning—the updated software will be submitted to the Apple App Store and Google Play Store. The updated software will need to be approved by the App Store and Play Store, but that usually (with rare exceptions) happens within 24 hours (and often within just a few hours).

To be clear, having to take these steps is ***not*** what Empower wants. It is ***not*** how Empower prefers to operate in the District. It will hurt Empower’s business. But it is the method of compliance that will do the least harm to the public, which Empower cares deeply about even if the District does not. DFHV *forcing* Empower to adopt this no-contract business model in the District by obstructing Empower from successfully registering as a PSB and DDS is not only illegal (and subject to a pending appeal), it is incredibly counterproductive to any possible legitimate regulatory or policy goals. But once these changes are fully released, DFHV will have succeeded, against all conceivable public interest, in ensuring that Empower is no longer operating as a PSB or DDS in the District. And Empower will be in full compliance with the Court’s injunction enforcing DFHV’s demand.

Dated: October 8, 2025

Respectfully submitted,

By: /s/ Matthew Madden

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CERTIFICATE OF SERVICE

I hereby certify that on October 8, 2025, I filed the forgoing document using the Court's electronic filing system, which gave notice to all counsel of record.

Dated: October 8, 2025

/s/ Matthew Madden

Matthew M. Madden