

RECEIVED, 01/09/2020 01:32:36 PM, Clerk, Supreme Court

## **EXHIBIT 1**

1 UNITED STATES DISTRICT COURT  
2 SOUTHERN DISTRICT OF FLORIDA

3 CASE NO. 17-24103-CIV-COOKE/GOODMAN

4  
5 TIKD SERVICES, LLC,  
6 Plaintiff,

7 vs.

8 THE FLORIDA BAR, MICHAEL J. HIGER,  
9 JOHN F. HARKNESS, LORI S. HOLCOMB,  
10 et al,

11 Defendants.

12 -----X

13  
14 2800 Ponce de Leon Boulevard  
15 Coral Gables, Florida  
16 Thursday, June 21, 2018  
17 9:17 a.m.

18  
19 DEPOSITION OF CHRISTOPHER RILEY

20  
21 Taken before IRENE L. ELLIOTT,  
22 Registered Professional Reporter and Notary  
23 Public in and for the State of Florida at Large,  
24 pursuant to Notice of Taking Deposition in the  
25 above cause.

1           (Thereupon, a document was marked Gold  
2           Exhibit No. 3: Material from the TIKD  
3           website, for Identification.)

4           Q.    Let me show you what I've marked as Gold  
5    3.   You recognize this as material from the TIKD  
6    website?

7           A.    I haven't flipped through all of it, but  
8    it appears to be information from our website.

9           Q.    And you'll see the Bates numbers on it  
10   are from The Florida Bar, the TFB on them?

11          A.    I see that.

12          Q.    You testified before The Florida Bar  
13   last spring, correct?

14          A.    I believe so, yes.

15          Q.    Did you provide a series of documents or  
16   exhibits for that testimony?

17          A.    I believe that we did.

18          Q.    Do you know if this printout of the  
19   website was one of them?

20          A.    I recall that it seems like we provided  
21   our website, yes.

22          Q.    Let me ask you, it looks like somebody  
23   has handwritten page numbers over to the right-hand  
24   side.  If you start to flip through, you'll see  
25   two, three, four, et cetera.  It's Page 14 that I

1 want you to look at, which is Bates numbered TFB  
2 453.

3 A. I see that.

4 Q. And this is, again, Gold Exhibit 3. You  
5 recognize that is from the frequently asked  
6 questions section of the TIKD web page?

7 A. I would just clarify that I believe it  
8 is from the FAQ section at the time this was  
9 produced and not necessarily what it is today.

10 Q. And so it has frequently asked questions  
11 and then the answer from TIKD, correct?

12 A. Correct.

13 Q. And the question here is, do I have to  
14 pay my lawyer separately. And then the answer from  
15 TIKD is no. A portion of what you pay to TIKD will  
16 go correctly to your lawyer. The amount you pay to  
17 TIKD is all you will ever have to pay. That's what  
18 it says, correct?

19 A. Correct.

20 Q. And that has not been changed as of  
21 today, has it?

22 A. I don't know if it has or not.

23 Q. I looked at the website two nights ago  
24 and it's still the same.

25 A. If you say so.

1 Q. When it says a portion of what you pay  
2 to TIKD will go directly to your lawyer, that's not  
3 completely true, is it?

4 A. I agree that given that it comes to us  
5 and the lawyer, that is not completely true.

6 Q. It's not as if you take in a credit card  
7 or debit card and take two payments off of it, one  
8 for TIKD and one for the lawyer; you take one  
9 payment?

10 A. That is correct.

11 Q. And out of that payment, you pay the  
12 lawyer?

13 A. That is correct.

14 Q. You know, there's a dispute in this  
15 case, and I guess in the proceedings before The  
16 Florida Bar, as to whether TIKD engages in fee  
17 splitting with lawyers. You're aware of that  
18 controversy?

19 A. I'm aware of the conversation, although  
20 my understanding is that is not the scope  
21 specifically of UPL; but it's outside of my  
22 expertise.

23 Q. It would be more of a problem for the  
24 lawyers who are working for TIKD if they're engaged  
25 in fee splitting with a non-lawyer, because The Bar

1 rules apply to lawyers, correct?

2 A. I don't know if that's true or not, but  
3 I believe you.

4 Q. And as I understand it, it's TIKD's  
5 position that it does not engage in fee splitting  
6 with lawyers, correct?

7 A. I believe that is our position.

8 Q. Seeing as your web page says a portion  
9 of what the customer pays to TIKD will go to the  
10 lawyer, and, as you testified, the money is paid to  
11 TIKD and then TIKD in fact pays the lawyer out of  
12 that money, how is that not fee splitting?

13 A. So the answer is more technical than a  
14 lay person can describe, but my understanding is  
15 that the term fee splitting does not necessarily  
16 mean what we would assume in a colloquial sense,  
17 that the term fee splitting is a specific  
18 definition, I assume, as part of the rules of The  
19 Florida Bar.

20 And my understanding of that definition  
21 is that whole section covers payments in the  
22 reverse, a lawyer receiving a payment and sharing  
23 that fee with somebody in exchange for a referral  
24 or something similar.

25 And my understanding is that the

1 technical definition or writing of the rule does  
2 not apply to the process of charging a customer for  
3 a service. To be clear, TIKD is paid for a  
4 service, TIKD has a separate obligation to pay a  
5 lawyer to provide a separate service to a customer,  
6 and my understanding is that that does not fit the  
7 definition of fee splitting.

8 Q. I thought you might say that, that it's  
9 the direction in which the payment comes in, and  
10 tell me if I'm mischaracterizing you, because I  
11 think what you're saying is your understanding is  
12 it could be fee splitting if the money is paid to  
13 the attorney who pays a portion out to a nonlawyer,  
14 but if it goes in the other direction, it's money  
15 that comes into a nonlawyer who pays a lawyer out  
16 of it, and that's not fee splitting.

17 A. My understanding is that's one of the  
18 factors, but not necessarily the exclusive factor.  
19 My understanding is it's a combination of the fact  
20 that the flow is in the opposite direction, as the  
21 rule is written, combined with the fact that, as I  
22 understand it, per our terms of service and per our  
23 policies, we are not receiving a payment from a  
24 customer, part of which is an attorney fee.

25 We are receiving a payment from a

1 customer for services that we are providing them,  
2 and then separately we have an obligation, through  
3 a relationship, to pay a lawyer for services we are  
4 providing him, not unlike insurance companies that  
5 people have discussed before, though, of course, we  
6 do not contend that that applies to us.

7 Q. You make the distinction that what  
8 you're receiving isn't partly an attorney fee,  
9 you're receiving fees for your services out of  
10 which you happen to be paying an attorney.

11 But didn't we talk about this earlier?  
12 Every customer you ever represented in the State of  
13 Florida you have retained an attorney for them,  
14 correct?

15 A. I don't know. Again, I don't know if  
16 any cases were --

17 Q. I mean, you don't offer a service that  
18 doesn't involve retaining an attorney, correct?

19 MR. KUNTZ: Object to the form.

20 A. We do offer services that don't involve  
21 retaining an attorney. We offer the ability to pay  
22 over time and these other things, and as part of a  
23 package, one component is the attorney.

24 Q. Whatever service you provide, if it's a  
25 payment over time or some other service, always as



1 part of that service package is the retaining of an  
2 attorney for the customer, correct?

3 A. In the State of Florida, I believe  
4 that's true.

5 Q. And let me ask you about the direction  
6 in which the payment goes. If that were the  
7 correct distinction between whether there's  
8 improper fee splitting or fair and aboveboard fee  
9 splitting, wouldn't it be pretty easy to come up  
10 with a work around for that?

11 I mean, couldn't a lawyer just have the  
12 money paid to the referral service and the referral  
13 service pays the lawyer and you avoid the problem?

14 MR. KUNTZ: Object to the form.

15 A. I wouldn't want to speculate as to  
16 whether --

17 Q. It's not too difficult to structure a  
18 system in which you can turn the payment in the  
19 other direction and the exact same fee can be split  
20 in the exact same way, right?

21 A. From a purely operational perspective,  
22 it doesn't seem like something that would be  
23 complicated to me; but beyond that, I wouldn't  
24 know.

25 Q. On TIKD's website, do you disclose to

1 your customers the amount that will be paid to the  
2 attorney?

3 A. I don't believe that we do.

4 Q. When you actually enter into a formal  
5 contract with a customer after they submit their  
6 bill and you run through the process and the lawyer  
7 accepts the case, do you at that time tell the  
8 customer how much TIKD is going to pay the lawyer?

9 A. I don't believe so, no.

10 MR. KUNTZ: Jim, you got a half hour.  
11 Actually, a little less.

12 MR. MCGUIRE: We will see what we can  
13 get through.

14 Q. Since we've got Gold Exhibit 3 that has  
15 the materials from the website on it, could you  
16 turn back to the first page of that, and let me ask  
17 you as sort of a preliminary question, how does  
18 TIKD or does TIKD advertise for customers in  
19 Florida?

20 A. TIKD does not presently advertise for  
21 customers in Florida.

22 Q. Does it still have a website up and  
23 running?

24 A. It does have a website.

25 Q. Do you consider the website a form of

1 advertisement?

2 A. Yes.

3 Q. Was there a time when TIKD was  
4 advertising in the State of Florida?

5 A. What's your definition of advertising?  
6 With the website, always in addition to that.

7 Q. Putting the website aside, was there a  
8 time that TIKD was advertising in the State of  
9 Florida?

10 A. Yes.

11 Q. What types of advertising was it  
12 engaging in?

13 A. We would use radio advertising, we've  
14 used billboard advertising, we've used social media  
15 advertising, we've used sponsorship opportunities  
16 with sporting events, et cetera.

17 Q. Have you done any TV advertising?

18 A. I do not believe we have done any TV  
19 advertising.

20 Q. Have you advertised at Marlin's games,  
21 the baseball team?

22 A. Yes.

23 Q. Are you doing that this year?

24 A. We are, yes.

25 Q. Is that ongoing?

1           A.     It's active, yes.

2           Q.     So when you said currently the only  
3 thing was the website --

4           A.     I did not think of that, but you are  
5 correct.

6           Q.     When did TIKD launch its business in  
7 Florida; when did it first begin to accept  
8 customers?

9           A.     I believe we started to accept customers  
10 in what we called the beta format, which was just  
11 essentially a more crude version and not a lot of  
12 advertising, right around the time of the Miami  
13 Herald article we discussed. So maybe October-ish  
14 of, I guess that would be 2015.

15          Q.     2016?

16          A.     2016.

17          Q.     And after that time, when you first  
18 began accepting some customers in the State of  
19 Florida, did the advertising ramp up for a while?

20          A.     The advertising has varied  
21 month-to-month, but, generally speaking, it  
22 increased over time.

23          Q.     At its maximum, do you have a ballpark  
24 of how much you were spending on advertising per  
25 month?

1           A.     In Florida, I couldn't say precisely.  
2     At its peak, probably a couple of hundred thousand  
3     dollars a month.

4           Q.     TIKD provides services in California as  
5     well?

6           A.     That's correct.

7           Q.     So if I access the TIKD website from a  
8     computer in California, am I going to get the same  
9     website with the same information that I get when I  
10    access it in Florida?

11          A.     You will get, to my understanding, the  
12    same website, but a different web app.

13          Q.     But when you say the same website, for  
14    example, the frequently asked questions, will those  
15    be the same on both websites?

16          A.     Yes.

17          Q.     Has TIKD, over its time in Florida, made  
18    any effort to determine whether its advertising is  
19    working?

20          A.     Yes, it's fair to say we have.

21          Q.     And what efforts have you made?

22          A.     We track our expend in various mediums  
23    against number of orders, we track, to the extent  
24    that you can for some mediums, factors such as  
25    clicks, conversions, et cetera, and you try to tie

1 those back to the medium in which you advertise.

2 Q. Did TIKD come to any conclusions about  
3 whether any particular form of advertising was the  
4 most effective?

5 A. Really, it's a hard thing to measure,  
6 because when you're running radio ads and social  
7 media ads, it's hard to know whether maybe the  
8 person specifically heard it on the radio and then  
9 saw the ad, but if they didn't hear it on the  
10 radio, maybe they wouldn't have clicked the ad.

11 I'm not being difficult, but it's a  
12 question we have oscillated back and forth from  
13 over time. I think we generally believe that  
14 social media was the highest return medium, but  
15 caveated with it's a very interdependent system.

16 Q. So turning back to Gold 3, which is a  
17 printout from the website, on the first page there  
18 is essentially two columns. There's a comparison  
19 with TIKD and without TIKD, correct?

20 A. Yes.

21 Q. Do you know whether these are the  
22 current statements that appear in those two columns  
23 on the website today?

24 A. I don't know if they are or not. It  
25 seems to me that we changed them, but I don't

1 remember.

2 Q. Are these statements true?

3 A. I would have to take them one by one,  
4 but I don't think we would have put them up there  
5 if we didn't believe that they were true.

6 Q. The first statement in the with TIKD  
7 column says: Get all the benefits of a court  
8 challenge along with the convenience of simply  
9 paying your fine, correct?

10 A. Correct.

11 Q. And you believe that to be true?

12 A. Yes, I believe that to be true.

13 Q. The next statement says: Avoid points  
14 on your license and thousands in higher insurance  
15 costs, correct?

16 A. Correct.

17 Q. With TIKD, you cannot guarantee a driver  
18 they won't get points on their license, can you?

19 A. No, of course not.

20 Q. So that statement is false, that with  
21 TIKD you will avoid points on your license?

22 A. I don't agree with that. If you look at  
23 data probabilistically, overwhelmingly, from a  
24 probability perspective, those who exercise their  
25 rights with respect to their tickets are more

1 likely to avoid points.

2 We don't characterize the degree to  
3 which they avoid them, and we certainly don't claim  
4 that we guarantee that you won't get them; but the  
5 evidence absolutely supports that, on a broad  
6 basis, people who challenge their ticket receive  
7 points less frequently than people who do not.

8 Q. I don't necessarily disagree with  
9 anything that you said. That's a fairly nuanced  
10 description of how points may be avoided, but  
11 that's not what the website says, does it?

12 A. I think it does. I think saying avoiding  
13 points to me reads as less likely to get points  
14 than if you did something else.

15 Q. But are the words less likely in there?

16 A. No.

17 Q. And probabilistically isn't in there.

18 A. That's not in there.

19 Q. In effect, if you go deeper into the  
20 website, there's a discussion of the idea that if  
21 you get points on your license, TIKD will refund  
22 the amount you paid, correct?

23 A. I believe that is in there.

24 Q. So on TIKD's own website, there's an  
25 acknowledgment that, in fact, even if you use TIKD,



1     you may get points on your license.

2             A.     Certainly.

3             Q.     The next one in the TIKD column says:  
4     Get extra time to pay while avoiding late fees and  
5     other negative actions. Do you see that?

6             A.     I do.

7             Q.     Extra time to pay what?

8             A.     So the intent of the statement is to  
9     reference our payment plan, our ability to pay over  
10    time. So the idea there, that without using TIKD,  
11    you have -- the time varies. Say you get a \$400  
12    ticket. You have to pay the full \$400 within 30  
13    days. There's a stat out there that's heard a lot,  
14    that literally about 40 percent of the population  
15    cannot clear a \$400 check within 30 days.

16            So this is a very valuable service, that  
17    customers without TIKD would be in a real financial  
18    bind, have to forego a car payment or a rent  
19    payment or something like that, or maybe just not  
20    be able to pay it at all, in which case they  
21    receive late fees, possibility of license  
22    suspended.

23            So by providing our pay over time  
24    service, that same customer with TIKD could come  
25    make a smaller payment now. That payment stops the

1 clock, for lack of a better phrase, on the late fee  
2 period, which allows people to have more time to  
3 pay over time and avoid late fees.

4 Q. When people use that -- what's it  
5 called, the pay over time plan?

6 A. We branded it Better Pay.

7 Q. When someone uses Better Pay with TIKD,  
8 how much time do they have to pay the amount that's  
9 owed to TIKD?

10 A. The exact terms vary over time, I  
11 believe, but generally today, I think today two  
12 months in total. So you make an upfront payment at  
13 the time of us accepting the customer, another  
14 payment is due one month later and the final  
15 payment is due two months later.

16 Q. What's the interest rate you're  
17 charging? For example, upfront the fee that  
18 someone would have to pay today would be \$400, but  
19 if they want to use Better Pay, what would they be  
20 paying in total?

21 A. So we don't calculate it on an interest  
22 fee basis. What we do do, which is important, is  
23 benchmark. So we charge is a service fee, and what  
24 we do is benchmark that fee against the service fee  
25 of a payment plan that would be offered in that

1 area, to the extent that there is one, in many  
2 cases there isn't one, by the government itself.

3 So, for instance, in Miami-Dade, I  
4 believe it's \$25, and our fee is set up, I believe,  
5 such that the customer would never pay more. So  
6 that's the comparison we make. If you were to go  
7 enter into a payment plan with Miami-Dade County,  
8 you would never pay us a service fee more than you  
9 would pay Miami-Dade County.

10 Q. But in that instance, there would be a  
11 \$25 service fee added on to the \$400 total fee that  
12 a prompt payer would have to pay. But the division  
13 of the payments wouldn't add additional revenue  
14 because it's taking longer to pay. Do you see what  
15 I'm saying?

16 A. I don't understand.

17 Q. Let's use easier numbers. Let's say  
18 that the payment that the customer is going to have  
19 to make to TIKD is \$100. If you add the \$25 fee on  
20 to that, it's \$125.

21 A. In this example.

22 Q. So will the three payments add up to a  
23 total of \$125?

24 A. In the example you gave, the three  
25 payments would add up to \$125. But to clarify, the

1 customer paying a hundred, their fine amount of  
2 their ticket would be something more than a  
3 hundred, and generally our payment plan, not in all  
4 cases, but I believe in most cases, even the amount  
5 they pay us plus the service fee in most cases  
6 still ends up being less than the face value of  
7 their ticket.

8 Q. Less than the face value of the ticket,  
9 but not necessarily less than the fine?

10 A. I'm not sure I understand.

11 Q. Isn't it the case that oftentimes your  
12 lawyers go out representing your customers and they  
13 achieve a result where there is no fine?

14 A. That is correct. The comparison we are  
15 making, to be clear, is to a customer who has a  
16 \$200 ticket. If they were to just go pay that  
17 ticket, they would be paying \$200. With TIKD, they  
18 would pay generally some amount less than \$200,  
19 call it \$175.

20 If they don't elect to use the pay over  
21 time, they would pay \$175. If they did in the  
22 State of Florida, they would never pay, as I  
23 understand, more than the 25. So even in that  
24 case, their total payment would be the 175 plus the  
25 25, which is equal to the face amount of their

1 ticket, yet they also have the ability to pay it  
2 over time and spread that payment.

3 Q. There's a payment at the time of  
4 engaging your services, then there's a payment a  
5 month later and another payment a month later?

6 A. Correct.

7 Q. Next on Gold Exhibit 3 it says: No  
8 court, no phone calls, no hassle, correct?

9 A. Correct.

10 Q. Do you know whether the lawyers working  
11 for TIKD ever call their clients?

12 A. Of course, we don't. The intent of this  
13 statement is that the customer doesn't have to get  
14 on the phone if they don't want to.

15 Q. Next in the with TIKD column it says:  
16 Pay less than your fine on select tickets. Are  
17 there tickets that are submitted to TIKD that you  
18 accept and provide a service on where the customer  
19 has to pay you the full value of their ticket?

20 A. So this is a non-Florida thing. There  
21 are other markets where we have participated where  
22 we occasionally had circumstances where we would  
23 not be able to offer an amount less than the fine  
24 amount. So that language was changed to reflect  
25 those scenarios.

1           Q.     When you testified before The Florida  
2 Bar, I think you testified that TIKD in Florida  
3 charged customers 80 percent of the face value of  
4 their ticket. Is that a constant number or does  
5 that number change?

6           A.     At the time of that hearing, as I  
7 recall, we had a flat, and this was very early on  
8 in the process, we just had a flat discount on  
9 everything. That is not true any more.

10           Now the amount varies much more  
11 depending on the specific ticket, the specific  
12 county, a bunch of factors that are determined by  
13 our pricing.

14           Q.     Do you know what the range of discounts  
15 is?

16           A.     I don't know. I don't think there's a  
17 discount less than five percent or so, and I think  
18 at the high end around a 30 percent or so discount.

19           Q.     On Gold 3, turning to the next column,  
20 it says without TIKD. The first X says: Points on  
21 your license and increased insurance costs, right?

22           A.     Right.

23           Q.     That's not always true, is it?

24           A.     The extent of this statement is a  
25 comparison to just paying your ticket. So if a

1 customer just pays their ticket, that is, as I  
2 understand it, an admission of guilt and you will  
3 receive points on your license and your insurance  
4 costs will go up.

5 Q. Why don't the two columns say with TIKD  
6 and just pay your ticket?

7 A. I can't say. The intent was to compare  
8 just pay and using TIKD.

9 Q. Without TIKD, a lot of people use  
10 lawyers, right?

11 A. Without TIKD, some people use lawyers.  
12 The percent of people that use lawyers varies very  
13 dramatically, and Miami happens to be one where  
14 it's more frequent than others. In other parts of  
15 the country, it's much less frequent than it is  
16 here.

17 Q. So if a driver got a ticket without TIKD  
18 but hired a lawyer, they might get no points on  
19 their license, right?

20 A. That's right.

21 Q. And they might in fact pay less than  
22 they would have paid to TIKD, right?

23 A. That's right.

24 Q. So to the extent this statement says  
25 without TIKD you are going to get points on your

1 license and increased insurance costs, that's  
2 false, isn't it?

3 A. Again, the intent is to compare to just  
4 paying a ticket.

5 Q. And we all may have various intentions,  
6 but that's not what it says, is it?

7 A. It says without TIKD.

8 Q. The second point without TIKD says:  
9 Always pay the full amount. The same is true with  
10 respect to that statement, isn't it, that if  
11 somebody hires a lawyer, they may very well not pay  
12 the full amount of their ticket?

13 A. That's what I was saying. The intent  
14 is, the comparison is to just paying your ticket,  
15 in which you would always pay the full amount.

16 Q. And then the final one says: Additional  
17 costs and hassle of hiring a lawyer. Do you see  
18 that?

19 A. I do.

20 Q. So all the things in the column without  
21 TIKD doesn't necessarily assume you're not going to  
22 hire a lawyer, do they?

23 A. I think that is a fair point, yes.

24 Q. And in fact, you may have lower costs  
25 going to a lawyer to defend your traffic ticket,



1 right?

2 A. That is possible.

3 Q. So that statement is false, too, isn't  
4 it?

5 MR. KUNTZ: Object to the form.

6 A. I don't agree that it's false, but I do  
7 agree that it doesn't work for a comparison to just  
8 pay it.

9 Q. It's not false, but it's not true, is  
10 it?

11 MR. KUNTZ: Object to the form.

12 A. I believe it's true to the extent  
13 that -- if you're not using TIKD, your only other  
14 options are to just pay, which is covered by the  
15 previous three bullets, or go hire and deal with  
16 the hassle of hiring a lawyer. That is the intent  
17 of what we were trying to cover here.

18 Q. But it also says additional costs,  
19 correct?

20 A. Yes, but it is true that if you have a  
21 \$200 ticket, that you have an obligation and you  
22 enter into a separate agreement with a lawyer in  
23 which you have an obligation, it's true that it  
24 might work out that your obligation goes away; but  
25 at the time of entering in, that's an incremental

1 cost.

2 Q. It's misleading to say you are going to  
3 have additional costs with a lawyer, right?

4 A. I do not think that that's misleading.

5 Q. Even though sometimes it's not true?

6 MR. KUNTZ: Object to the form.

7 A. What I would contend is being missed is  
8 the fact that if you hire a lawyer, you have no  
9 certainty as to the outcome, and at the time of  
10 doing it, just purely from a mathematical  
11 perspective, you have an obligation of \$200, you're  
12 entering into an incremental liability of, in  
13 Florida, \$80, a hundred dollars, and that is an  
14 additional cost.

15 Q. Right, but when someone enters into an  
16 agreement with you, they have an immediate payment  
17 of, say, \$160 on a \$200 ticket. The person who  
18 hires the lawyer for \$80, their first payment is  
19 \$80, so it's half of your amount.

20 And if the lawyer gets the thing  
21 dismissed, they never pay anything more, right?

22 A. So that's accurate. There's people who  
23 value certainty of outcome and people who are happy  
24 to pay for a different probability of having to pay  
25 their fine amount.