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March 24, 2016

VIA ECF AND ELECTRONIC MAIL

Honorable Analisa Torres (U.S.D.J.)
United States District Court Southern District of New York
500 Pearl Street
New York, New York 10007

Re: Melrose Credit Union, et al. v. City of New York, et al., 15 Civ. 9042(AT)(SDNY)

Your Honor:

This office represents defendants, the City of New York, the New York City Taxi & Limousine Commission ("TLC") and Meera Joshi in her official capacity as Chair of TLC, in the above-referenced action. We are writing a joint letter with counsel for plaintiffs, Todd Higgins, Esq., to raise a discovery dispute in accordance with Rules II(C) and III(A)(i) of this Court's Individual Rules and Practice. In addition, defendants file this pre-motion conference letter requesting a conference for permission to file a motion to stay discovery in accordance with Fed. R. Civ. P. 26(c).

Counsel for the parties have met and conferred in accordance with this Court's rules. In addition to the exchange of correspondence on discovery, on March 14, 2016 at 3:00 p.m., counsel for plaintiffs and defendants met and conferred via telephone to discuss discovery issues; said conversation was approximately thirty minutes in duration.

Background of Discovery Dispute:

On or about February 11, 2016, plaintiffs served Notices of Deposition of four TLC witnesses, including a notice to depose TLC Commissioner/Chair Meera Joshi. Said notices were received by counsel for defendants on February 16, 2016. As plaintiffs had indicated that they would be amending their complaint and this Court granted plaintiffs until March 7, 2016 to do so, defendants objected to producing witnesses for depositions since it was defendants' position that we could not adequately prepare for a deposition on a complaint that was no longer operational, as well as scheduling conflicts for the noticed times would not permit them to occur as noticed. Although plaintiffs did not agree with defendants' position, plaintiffs offered to have

said depositions heard in the week following service of the amended complaint. In addition, on or about March 7, 2016, defendants received plaintiffs' demands for the production of documents dated March 4, 2016. Plaintiffs' counsel reached out to defendants' counsel to schedule a meet and confer to discuss possible dates for depositions. As set forth above, that meet and confer occurred on March 14, 2016.

Defendants' Position:

After evaluating plaintiffs' amended complaint and plaintiffs' demands for the production of documents received last week, and upon determining that defendants would again request permission to file a motion to dismiss all claims in this case,¹ defendants determined that they would request a stay of discovery pursuant to Fed. R. Civ. P. 26(c). As this Court is aware, after following this Court's Individual Rules of Practice Rule III(B)(i), on March 21, 2016, defendants requested permission to file a motion to dismiss all claims in the amended complaint. See Docket No. 50. This is no surprise as defendants indicated at the conclusion of the January 26, 2016 oral argument on plaintiffs' motion for a preliminary injunction, after this Court converted argument into the Rule 16 initial pre-trial conference, that defendants intended to file a dispositive motion on the complaint.

As it is defendants' position that the scope of discovery sought is broad and would be burdensome, as well as the fact that defendants believe that all of plaintiffs' claims (and certainly many) fail as a matter of law, coupled with the fact that perhaps many of the plaintiffs themselves will be dismissed as a result of a decision on defendants' anticipated dispositive motion, it would be a waste of resources and inefficient to engage in such broad and far reaching discovery seeking documents and information pertaining to TLC's entire regulatory framework wherein many of the laws and rules challenged by plaintiffs have been in effect for multiple decades. Moreover, unless the claims are proceeding in the event that defendants' motion to dismiss is not granted in whole or part, subjecting government officials to deposition at this early stage of the litigation, including subjecting Commissioner Joshi, a high ranking government official, to deposition that is not narrowed in scope or duration, absent a showing that she possesses unique personal knowledge unavailable from other sources, would be burdensome for defendants. Defendants will lay out in greater detail in their motion for a stay of discovery, detailed examples of the breadth of the discovery sought by plaintiffs and case law in support of defendants' motion.

Plaintiffs' Position:

Plaintiffs respectfully oppose a stay of discovery pending Defendants' anticipated motion to dismiss the Amended Complaint. The parties specifically agreed to a four-month discovery

¹ In response to the initial complaint, in accordance with this Court's special rules for the filing of motions to dismiss, defendants wrote to plaintiffs' counsel indicating defendants' intent to seek permission to file a motion to dismiss on January 29, 2016. In response to that letter request, on February 5, 2016, plaintiffs' counsel wrote to the Court indicating plaintiffs intended to file an amended complaint (Docket No. 45). This Court granted plaintiffs until March 7, 2016 to file their amended complaint. See Docket No. 46.

schedule, as set forth in the Case Management Plan that was approved by the Court on January 26, 2016. In accordance with the Case Management Plan, the parties have already exchanged initial disclosures, and Defendants have also served interrogatories and document requests. In turn, Plaintiffs have served targeted document requests, responses to which are due April 4, 2016, as well as initial party deposition notices for a total of four specifically identified TLC employees that are important to this litigation: Rodney Stiles, Joanne Rausen, Allan Fromberg, and Meera Joshi. Mr. Stiles and Ms. Rausen have both submitted detailed factual affidavits on behalf of the TLC in connection with this dispute; Mr. Fromberg is specifically identified in the Amended Complaint as having engaged in direct email communications with one of the Plaintiffs concerning what Plaintiffs allege was the false and misleading calculation of monthly average medallion transfer prices posted to the TLC's website each month; and Ms. Joshi is the TLC official ultimately responsible for many of the actions complained of in the Amended Complaint. Ms. Joshi also has repeatedly spoken and written about the regulatory structure of the for-hire industry with the emergence of companies like Uber Technologies, Inc., Lyft, Inc. and Gett, Inc., and has made numerous material statements about the continuing disparate regulatory treatment of the medallion taxicab industry, as well as the market value of the taxicab medallion.

While Plaintiffs anticipate ultimately identifying and seeking documents and testimony from additional party and non-party witnesses as fact discovery continues, we believe that the foregoing initial round of discovery requests is the opposite of overbroad, burdensome or prejudicial. Plaintiffs have been extremely mindful of the early stage of this litigation, including the parties' ongoing preliminary injunction and anticipated dispositive motion practice, and have purposely taken a measured approach to moving forward with fact discovery in accordance with the Case Management Plan, while also seeking to avoid unnecessary discovery disputes. Among other things, Plaintiffs have not yet sought documents or testimony from any other government employees or elected officials with oversight responsibilities for medallion sales and the TLC's policies towards the medallion taxicab industry, even though several of them are likely to have personal knowledge highly relevant to this dispute. Plaintiffs believe that they have struck the appropriate balance while adhering to the Case Management Plan, and ask that discovery be permitted to continue accordingly.

For all of the foregoing reasons, the parties wish to raise this discovery dispute with the Court and defendants seek a pre-motion conference granting defendants permission to file a motion staying discovery.

Respectfully submitted,



Michelle Goldberg-Cahn
Assistant Corporation Counsel

cc: Todd A. Higgins, Esq. - Counsel for Plaintiffs