

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF QUEENS

-----	X	
	:	
MELROSE CREDIT UNION, MONTAUK CREDIT	:	<u>Index No.</u>
UNION, PROGRESSIVE CREDIT UNION, and LOMTO	:	
FEDERAL CREDIT UNION,	:	
	:	
Petitioners,	:	
	:	
-against-	:	<u>VERIFIED PETITION</u>
	:	
	:	
THE CITY OF NEW YORK; BILL DE BLASIO, in his	:	
Official Capacity as the Mayor of the City of New York;	:	
THE NEW YORK CITY TAXI & LIMOUSINE	:	
COMMISSION; MEERA JOSHI, in her Official Capacity	:	
as the Chair of the New York City Taxi and Limousine	:	
Commission; and ERIC T. SCHNEIDERMAN, in his	:	
Official Capacity as the Attorney General of the State of	:	
New York,	:	
	:	
Respondents.	:	
-----	X	

Petitioners Melrose Credit Union, Montauk Credit Union, Progressive Credit Union and LOMTO Federal Credit Union, by and through their attorneys, Crosby & Higgins LLP, as and for their Verified Petition, allege as follows:

**PRELIMINARY STATEMENT**

1. This Article 78 proceeding arises from the devastating failure of the New York City Taxi & Limousine Commission (the "TLC") to discharge its nondiscretionary obligations in accordance with the New York City Charter (the "Charter"), by upholding taxicab medallion owners' exclusive, statutory right to accept hails, amidst the proliferation of smartphone technology being used by companies like Uber Technologies, Inc. ("Uber") to troll the streets of

New York City picking up illegal hails. Petitioners seek to prevent the imminent collapse of the taxicab medallion market, and along with it, the entire taxicab industry.

2. This proceeding is not about averting some far away, distant crisis. Rather, this proceeding is about one thing—and only one thing. It is about compelling the TLC to immediately abide by and enforce medallion owners’ exclusive right to hails before this industry is completely destroyed. New York State law expressly guarantees that exclusive right, and this is what anchors the value of every medallion purchased from New York City. Without it, the taxicab medallion is worthless.

3. As set forth below, Petitioners provide financing for taxicab medallion owners and have long served as the financial lifeblood to the taxicab industry. Petitioners have worked closely with medallion owners and the TLC to provide billions of dollars in financing for private medallion sales, as well as for TLC medallion auctions, based on the fair market value of the medallion. Petitioners collectively hold security interests in approximately 5,331 medallions, securing \$2.47 billion dollars in loans. *See Kaufman Aff. at ¶3; Familant Aff. at ¶3; Kay Aff. at ¶3; Jimenez Aff. at ¶3.*<sup>1</sup>

4. Until recently, the fair market value of the taxicab medallion, which is determined for the industry by the TLC, has been stable. This market stability has allowed Petitioners, all of which are federally insured non-profit corporations, to provide affordable medallion financing to their members without ever experiencing a loss with the underlying collateral.

---

<sup>1</sup> The *Affidavit of Alan Kaufman in Support of the Verified Petition and Order to Show Cause* shall be cited herein as “Kaufman Aff. at ¶ \_\_\_\_,” the *Affidavit of Robert Familant in Support of the Verified Petition and Order to Show Cause* shall be cited herein as “Familant Aff. at ¶ \_\_\_\_,” the *Affidavit of Richard Kay in Support of the Verified Petition and Order to Show Cause* shall be cited herein as “Kay Aff. at ¶ \_\_\_\_,” and the *Affidavit of Louis Jimenez in Support of the Verified Petition and Order to Show Cause* shall be cited herein as “Jimenez Aff. at ¶ \_\_\_\_.”

5. As a direct result of the TLC's failure to uphold and enforce the hail laws, and its most recent unlawful attempt to exceed its authority and legitimize Uber's acceptance of illegal hails, the value of the medallion has dropped by more than forty percent in a matter of months. The fair market value of an individual medallion is now less than \$675,000, and the pace of deterioration is accelerating. *See Kaufman Aff. at ¶5.*

6. Petitioners have warned Respondents that unless the TLC begins enforcing medallion owners' exclusive right to hails, including with respect to on-demand electronic hails ("E-Hails"), and unless the TLC immediately compels companies like Uber to stop illegally accepting E-Hails, the value of the taxicab medallion will continue to drop, until it soon becomes worthless. *See Higgins Aff. at ¶3.*<sup>2</sup>

7. Petitioners have warned Respondents that as the market value of the medallion continues to drop, so too does Petitioners' ability to make new loans secured by them. Petitioners have warned Respondents that as medallion financing evaporates, even performing medallion loans that contemplate significant end-of-term balloon payments, as most of them do, cannot be refinanced or repaid by the borrower. *See id. at ¶3; Kaufman Aff. at ¶7.*

8. Petitioners have warned Respondents that as those loans start to fail, a cascade of foreclosures is certain to follow, causing the medallion market to collapse. Petitioners have warned Respondents that if the medallion market collapses, so too will the entire taxicab industry. *See Higgins Aff. at ¶3; Kaufman Aff. at ¶8.*

9. The time for warnings is now over. The crisis is upon us. The TLC's shocking disregard for the facts, and its inexplicable refusal to enforce the hail laws against Uber, have

---

<sup>2</sup> The Affirmation of Todd A. Higgins, Esq. in Support of the Verified Petition and Order to Show Cause shall be cited herein as "Higgins Aff. at ¶ \_\_\_\_"

driven New York City almost to the point of no return—the unprecedented destruction of an industry brought about by the same people entrusted to uphold the law.<sup>3</sup>

10. The evidence of a gathering disaster, triggered by the arbitrary and unlawful actions of the TLC, is now clear and overwhelming. In the absence of the preliminary and permanent injunctive and declaratory relief requested by Petitioners, the incalculable destruction and chaos that will follow is certain to be devastating to the economy, while irreparably harming the lives of the tens of thousands of men and women who earn their living in the taxicab industry. It will leave a scar on New York City for decades to come.

### **SUMMARY OF PROCEEDINGS**

11. Petitioners provide much of the financing for taxicab medallion transactions in New York City. For example, Petitioner Melrose Credit Union (“Melrose”) alone holds a security interest in more than three thousand taxicab medallions serving as collateral for approximately \$1.3 billion in medallion loans. *See Kaufman Aff. at ¶3.*

12. Petitioners are all federally insured, non-profit corporations. Over the years, Petitioners have provided the financing for thousands of medallion transactions, generating hundreds of millions of dollars in auction and tax revenue for New York City, and far more in economic activity for the metropolitan region. New York City sold approximately 1,400 medallions between 2006 and 2014, generating roughly \$800 million in revenue for New York City’s budget. *See Higgins Aff. at ¶9.*

---

<sup>3</sup> Even for-hire black car services that Uber is supposed to be competing with for prearranged rides have now challenged the TLC’s inexplicable lack of enforcement concerning Uber’s E-Hails. For example, XYZ Two Way Radio Service, Inc. (“XYZ”) and Elite Limousine plus, Inc. (“ELITE”), two black car bases in New York City, filed a petition in Queens County dated May 7, 2015, alleging that the TLC is unlawfully allowing Uber to illegally accept E-Hails. XYZ and Elite allege that in restricting black cars to pre-arranged rides, but allowing Uber to illegally expand to also accept E-Hails, the TLC has created an “unfair and unlawful double standard in the industry.” *See V. Pet., XYZ Two Way Radio Service, Inc. v. The City of New York*, 005693/2015.



13. New York City also collects taxes on the transfer of medallions in private sale transactions, and the MTA collects a fifty cents per-trip tax surcharge added to every taxicab fare. *See* 35 RCNY § 58-03(x), 58-26(a)(3) (2015). In 2014 alone, the MTA reportedly collected approximately \$80 million in tax revenue from this fare surcharge.

14. Beyond the numbers, the ultimate significance of the taxicab industry can be found in the lives of the thousands of small business owners that Petitioners have supported for many years, frequently immigrants who arrived in this country seeking only the freedom and opportunity to work as hard as they could to build a better future for themselves and for their families. Many of these entrepreneurs started out driving medallion taxicabs for someone else, often twelve hours a day, seven days a week, until they were able to save enough for the down payment on a taxicab medallion of their own.

15. For these hardworking men and women, the image of a yellow taxicab is the very symbol of the American dream and New York’s promise that if you work hard, pay your taxes, and play by the rules, the government will be there to uphold its end of the bargain. It is that enduring commitment, reflected in the stories behind every taxicab medallion in New York City, which is now under siege because of the TLC’s inexplicable failure to respect the core right underpinning the value of the medallion—the exclusive right to hails.

16. Hail exclusivity has been the law in New York since 1937, and it remains the law today, as reflected most recently in the HAIL ACT, which provides that: “[I]t shall remain the exclusive right of existing and future taxicabs licensed by the TLC as a taxicab to pick up passengers via street hail . . . .No driver of any for-hire vehicle shall accept a passenger within the city of New York by means other than pre-arrangement . . . .” Ch. 62, Laws of New York § 11 (2012) (amending Ch. 602, Laws of New York (2011)).

17. Notwithstanding the laws of New York, companies like Uber, which allow passengers to use smartphone applications to E-Hail on-demand service, have circumvented almost eighty years of regulation to build a parallel, unlicensed taxicab network.

18. Moving faster than the speed of regulation, Uber has engineered an unprecedented, broad daylight heist of the taxicab hail market, flooding the streets of New York City with a technology linked network of on-demand for-hire vehicles (“FHV”) — a network that that has now grown to nearly fifteen thousand Uber vehicles — already far outnumbering the number of medallion taxicabs. *See Higgins Aff.* at ¶18.

19. Wait times for Uber E-Hails have plummeted as its network of linked FHVs has grown. The average wait time for an Uber vehicle is barely two minutes in Manhattan, and the actual response times are often faster. *See Higgins Aff.* at ¶19.

20. Looking ahead, Uber has announced plans to increase the number of vehicles in its network to more than thirty thousand. With the influx of Uber vehicles being added to the network every month, there will soon be an Uber vehicle waiting on every street corner of Manhattan, making Uber E-Hails nearly instantaneous. *See Higgins Aff.* at ¶18.

21. Boasting that its service is “faster and cheaper than a taxi,” Uber only offers its service to passengers that are currently ready to travel. Astonishingly, Uber’s application cannot be used to prearrange future travel — the only thing that FHV services are legally permitted to do under New York law. *See Higgins Aff.* at ¶16.

22. Against this backdrop, on January 29, 2015, the TLC adopted its first set of “E-Hail Rules,” which became effective 30 days later. *See Higgins Aff.* at ¶2. In its Statement of Basis and Purpose for the E-Hail Rules, which “apply to medallion owners, application developers, taxicab drivers, and Street Hail Livery drivers who may accept E-Hails,” the TLC

explained that the rules “will allow passengers to summon taxicabs and Street Hail Liveries in New York City by E-Hail and to make E-Payments.” *See id.*

23. As part of the E-Hail Rules, the TLC for the first time defined the term “Hail,” and made the definition applicable to all of its rules. Specifically, a “Hail” was defined as:

[a] request, either through a verbal (audio) action such as calling out, yelling, or whistling, and/or a visible physical action such as raising one’s hand or arm, or through an electronic method such as an E-Hail App, for on-demand Taxicab or Street Hail Livery service at the metered rate of fare as set forth in § 58-26 and § 82-26 of these Rules by a person who is currently ready to travel.

35 R.C.N.Y. § 51-03 (2015). *See id.*

24. In other words, the TLC adopted a definition of “Hail” that takes the traditional concept of the street hail, indisputably reserved exclusively to licensed medallion taxicabs, and combines it together with the modern concept of an E-Hail.

25. The inclusion of E-Hails in the definition of “Hail” is consistent not only with New York law, but also with common sense and the reality that an on-demand E-Hail accomplishes exactly the same thing as a traditional street hail—on demand service for passengers ready to travel. It is also consistent with the position taken by the TLC on the record in prior legal proceedings that challenged a pilot study of the E-Hail Rules.

26. Accordingly, on April 3, 2015, Petitioner Melrose sent a letter to the TLC, along with a letter to Mayor de Blasio, asking that they immediately begin enforcing Title 19 of the Administrative Code with respect to the massive, ongoing violation of New York law by smartphone application providers and base station operators such as Uber that are offering on-demand E-Hail service through FHV’s, particularly in light of the TLC’s own newly adopted rules making clear that an on-demand E-Hail constitutes a hail. *See Higgins Aff.* at ¶3.

27. Melrose specifically asked that the TLC affirm its commitment to enforcing medallion owners' exclusive right to hails, including E-Hails, and asked that at a minimum, the TLC immediately suspend any smartphone application provider or base operator that continues to offer on-demand E-Hail service with FHVs for passengers that are currently ready to travel, including Uber. *See id.*

28. Melrose pointed out to Mayor de Blasio that the failure to enforce the law has already cost New York City hundreds of millions of dollars in lost enforcement revenue, while pushing the industry to the brink of collapse. *See id.*

29. Melrose also warned Mayor de Blasio that the TLC's failure to discharge its statutory duty, and its illegal attempt to take hail exclusivity away from medallion owners, has placed New York City at risk of liability for more than \$15 billion in regulatory taking claims resulting from the destruction of medallion values.<sup>4</sup> *See id.*

30. On April 14, 2015, Melrose met with several New York City officials to discuss the concerns outlined in the letters to the TLC and Mayor de Blasio, as set forth above. At this meeting, Melrose once again reiterated the importance of enforcing New York's hail laws and of upholding the taxicab medallion. Melrose also sought confirmation that the TLC would start taking action. *See Kaufman Aff.* at ¶9.

31. As a result of this meeting, Melrose understood that the TLC would soon adopt new rules governing the acceptance of E-Hails —rules that Melrose believed would include some form of a fifteen minute prearrangement time requirement (the "15 Minute Rule"), which

---

<sup>4</sup> Petitioners intend to commence a separate action arising from New York City's destruction of the taxicab medallion, in violation of the Takings Clause of the Fifth Amendment to the United States Constitution, and its violation of the Takings Clause of Article I, § 7 of the New York State Constitution.

is a topic that Melrose and others have repeatedly raised, in order for an E-Hail dispatch to an FHV to qualify as a form of prearranged service. *See* Kaufman Aff. at ¶10.

32. Melrose was also asked to defer any legal challenge concerning E-Hails to allow the TLC an opportunity to address the situation. Expecting TLC action, Melrose agreed to defer the filing of this Verified Petition. *See* Kaufman Aff. at ¶11.

33. On April 20, 2015, the TLC wrote to Petitioners' counsel in response to the April 3, 2015 letter referenced above. Incredibly, the TLC advised Melrose that it now "disputes the very premise that an electronic app cannot both be used to electronically hail a yellow taxicab and pre-arrange prompt FHV service." *See* Higgins Aff. at ¶4. The TLC also wrote that it planned "further rule-making in the near future regarding apps and how they can be used," and asked Melrose to review those rules and share any concerns, including "those related to the concerns expressed in [Melrose's] letter." *See id.*

34. Thereafter, on or about April 28, 2015, the TLC published an additional set of proposed rules concerning smartphone applications, formally referred to as the "Proposed FHV Dispatch Application Rules," (the "Supplemental E-Hail Rules"). Rather than adopt a regulatory framework that respects taxicab medallion owners' exclusive right to hails, including on-demand E-Hails, while allowing smartphone applications to be used to electronically prearrange FHV travel in the future, the TLC instead proposed rules that appear intended to legitimize the acceptance of on-demand E-Hails by everyone, or at the very least, to authorize them for Uber. *See* Higgins Aff. at ¶5.

35. On or about April 29, 2015, Petitioners' counsel contacted Christopher Wilson, Deputy Commissioner and General Counsel for the TLC, in response to the TLC's April 20, 2015 letter, and in response to the proposed Supplemental E-Hail Rules. Specifically,

Petitioners' counsel requested an explanation from the TLC as to why the 15 Minute Rule was not included in the Supplemental E-Hail Rules, and asked for confirmation that enforcement against illegal on-demand E-Hails would begin, as indicated by New York City officials two weeks earlier. *See Higgins Aff. at ¶6.*

36. In response, Deputy Commissioner Wilson advised that no 15 Minute Rule would be forthcoming, and that the TLC now takes the position that on-demand E-Hails by FHV's, including Uber, do not violate TLC rules or a medallion owner's hail exclusivity rights. *See Higgins Aff. at ¶6.*

37. According to the TLC, the definition of a hail apparently now turns on the swipe of a finger on a passenger's smartphone,<sup>5</sup> so that under the E-Hail and Supplemental E-Hail Rules (collectively referred to as the "E-Hail Regulations"), an E-Hail does not constitute a "Hail" if the electronic request for on-demand service by a passenger ready to travel "hails" an Uber rather than a medallion taxicab.

38. Deputy Commissioner Wilson further advised that the TLC was not planning any enforcement action concerning on-demand E-Hails by FHV's. *See Higgins Aff. at ¶6.* The TLC has scheduled a hearing for public comment on the newly proposed Supplemental E-Hail Rules for May 28, 2015 and may vote to formally adopt and implement them immediately thereafter. *See Higgins Aff. at ¶5.*

39. The Code provides that, "[n]o rule or regulation promulgated subsequent to the effective date of this local law may be *inconsistent with or supersede* any provision of this local

---

<sup>5</sup> On the Uber application, a passenger can either pay a service charge to Uber, and hail a licensed medallion taxicab through the "Uber T" service, which transmits the on-demand E-Hail to a participating medallion taxicab, or with one swipe of the finger, the passenger can switch to "Uber X," and transmit the exact same on-demand E-Hail to an Uber FHV. Not surprisingly, almost all Uber E-Hails are transmitted to their own FHV's.

law.” N.Y.C. Admin. Code § 19-503(b) (2015) (emphasis added). The TLC does not have the authority to promulgate rules or regulations that are inconsistent with Title 19.

40. The TLC lacks authority to promulgate rules that permit FHV’s to pick up on-demand E-Hails. Unless blocked, the TLC’s actions will destroy nearly eighty years of hail exclusivity and with it, the value of a taxicab medallion. Accordingly, Petitioners seek to prohibit the TLC from adopting, implementing, or enforcing the E-Hail Regulations, to the extent those rules authorize FHV’s to illegally accept on-demand E-Hails. Petitioners also seek in these proceedings to compel the TLC to perform its duty to promulgate and enforce rules prohibiting illegal hails, including on-demand E-Hails.

41. Petitioners likewise seek to compel the Mayor to direct the TLC to perform its duties, or to otherwise cause the New York City Police Department to enforce the law and thereby protect and uphold the taxicab medallion owners’ exclusive right to hails.

42. On April 30, 2015, Melrose wrote to Attorney General Eric T. Schneiderman, requesting his assistance in compelling the TLC to enforce the law – specifically the taxicab medallion owners’ exclusive right to accept hails, including on-demand E-Hails. The HAIL ACT expressly grants enforcement jurisdiction to the State of New York. *See Higgins Aff.* at ¶7.

43. As of the date of this Verified Petition, the Attorney General has not responded to Melrose’s request. As a result, Petitioners also seek in these proceedings to compel the Office of the Attorney General to investigate, bring appropriate action, and enforce or facilitate the enforcement of the New York State HAIL ACT.

44. To summarize, illegal E-Hail activity now threatens to destroy the taxicab medallion and with it, the entire taxicab industry. The New York State Comptroller’s Office sounded the alarm in its March 2015 Review of the Financial Plan of the City of New York:

The City is counting on the receipt of \$1.3 billion from the sale of the remaining 1,650 taxi medallions, which will be spread out during fiscal years 2015 and 2019 (a longer period of time than previously anticipated). In FY 2014, the City sold 350 of the 2,000 new taxi medallions that were authorized by State law in 2011, generating \$359 million (more than \$1 million per new medallion sold). The Taxi and Limousine Commission (TLC) plans to hold the next auction this spring, though an exact date has not been set. Recently, the growing presence of new for-hire vehicle services like Lyft and Uber, which offer electronic hailing and payment through smartphone applications, have changed the market value of current medallions and could affect the value of new medallions at auction.

*See Higgins Aff. at ¶8.*

45. New York City's Comptroller reached the same conclusion in his own comments released in March 2015: "Growing competition from ridesharing companies such as Uber and Lyft is believed to be affecting the market value of existing taxi medallions. We believe the ripple effect in the industry poses a risk to the value of new taxi medallions at auction." *See Higgins Aff. at ¶9.*

46. The situation has now materially worsened. Taxicab ridership losses are rapidly mounting as Uber continues to misappropriate more and more E-Hails every day. In fact, TLC data through March 2015 confirms a steep decline in taxicab trips and meter revenue, with losses accelerating since the second half of 2014. Year over year data for March 2015, for example, shows that taxi trips are down almost 15% and meter revenue is down more than 9%. *See Higgins Aff. at ¶10.* As more FHV's are added to Uber's network every day, ridership losses for medallion taxicabs will be crushing.

47. Meanwhile, the once robust secondary market for taxicab medallions is all but frozen, and medallion auctions have been postponed indefinitely. Borrowers are falling behind on their monthly loan payments, and performing loans will soon fail as they mature with balloon



payments that medallion owners cannot afford to pay. The resulting liquidation will drive taxicab medallion prices even lower, until at last the medallion is declared worthless.

48. The threat of a collapsing medallion market, massive taxicab medallion foreclosures, and a cascading collapse of the industry is real and imminent—a sequence of events that will cause incalculable harm to the economy of New York City. As Supreme Court Justice Oing recently described the situation in weighing a medallion foreclosure: “It’s like people listening to the Federal Reserve, I’m trying to avoid seizure here because of the ripple effect. It’s a fragile situation.” *See Higgins Aff.* at ¶11; *Kaufman Aff.* at ¶8

49. Accordingly, Petitioners seek preliminary and permanent injunctive and declaratory relief and a judgment: (1) compelling Respondents to perform their statutory duty to enforce the hail laws, including with respect to illegal E-Hails by FHV’s; (2) compelling Respondents to perform their statutory duty to promulgate rules and regulations enforcing Title 19; (3) prohibiting Respondents from exceeding their authority by enforcing rules and regulations that are inconsistent with the hail laws, including those approved by the TLC on January 29, 2015, to the extent those rules authorize FHV’s to accept on-demand E-Hails; (4) prohibiting Respondents from exceeding their authority by adopting rules and regulations that are inconsistent with the hail laws, including those proposed by the TLC on or about April 28, 2015, to the extent those rules authorize FHV’s to accept on-demand E-Hails; and (5) declaring that Respondents’ existing rules and regulations, including those approved by the TLC on January 29, 2015, are arbitrary and capricious and therefore null and void.

### **JURISDICTION AND VENUE**

50. This Court has personal jurisdiction over Respondents pursuant to N.Y. C.P.L.R. 301, 311, 312 and 7802 (McKinney 2014).

51. Venue is proper in Queens County pursuant to N.Y C.P.L.R. 503, 504 and 505 (McKinney 2014).

### **PARTIES**

52. Petitioner Melrose Credit Union (“Melrose”) is a federally insured, non-profit corporation duly organized under the laws of New York. Melrose is a provider of financing for taxicab medallions in New York City, with its principal place of business at 139-30 Queens Boulevard, Briarwood, New York 11435. Melrose currently holds a security interest in 3,110 taxicab medallions, as collateral for 3,055 medallion loans totaling approximately \$1.56 billion. Melrose’s current membership stands at 24,322. *See* Kaufman Aff. at ¶3.

53. Petitioner Progressive Credit Union (“Progressive”) is a federally insured, non-profit corporation duly organized under the laws of New York. Progressive is a provider of financing for taxicab medallions in New York City, with its principal place of business at 131 West 33rd Street, Suite 700, New York, New York 10001-2908. Progressive currently holds a security interest in 1,432 taxicab medallions, as collateral for 928 medallion loans totaling approximately \$722 million. Progressive’s current membership stands at 3,860. *See* Familant Aff. at ¶3.

54. Petitioner LOMTO Federal Credit Union (“Lomto”) is a federally insured, non-profit corporation duly organized under the laws of the United States. Lomto is a provider of financing for taxicab medallions in New York City, with its principal place of business at 50-24 Queens Boulevard, Woodside, New York 11377. Lomto current holds a security interest in 647 taxicab medallions, as collateral for 628 medallion loans totaling approximately \$138 million. Lomto’s current membership stands at 3,250. *See* Kay Aff. at ¶3.

55. Petitioner Montauk Credit Union (“Montauk”) is a federally insured, non-profit corporation duly organized under the laws of New York. Montauk is a provider of financing for taxicab medallions in New York City, with its principal place of business at 111 West 26th Street, New York, New York 10001-6802. Montauk currently holds a security interest in 142 taxicab medallions, as collateral for 108 medallion loans totaling approximately \$50 million. Montauk’s current membership stands at 2,869. *See Jimenez Aff.* at ¶3.

56. Respondent City of New York is a municipal corporation duly incorporated and existing pursuant to the laws of the State of New York.

57. Respondent Bill de Blasio is the Mayor of the City of New York (the “Mayor”). The Mayor is an elected official who serves as the chief executive officer of New York City. The New York City Charter prescribes the position of Mayor and his rights, duties, and responsibilities.

58. The Mayor is responsible for executing the City’s laws and directing City agencies in a manner consistent with the law. The Mayor designates one member of the TLC who acts as Chairman and Chief Executive Officer.

59. Respondent New York City Taxi & Limousine Commission is a New York City charter-mandated agency, responsible for licensing and regulating New York City’s taxicabs and liveries, and implementing transportation initiatives in a manner consistent with law. Meera Joshi is a commissioner and the Chair and Chief Executive Officer of the TLC.

60. The TLC was created by Chapter 65 of the New York City Charter (the “Charter”) and is governed by the Charter and Title 19 of the New York City Administrative Code (the “Code”). Both the Code and the Charter are creatures of New York state law. N.Y.C. Charter (2004); N.Y.C. Admin. Code §19 (2015)

61. Respondent Meera Joshi is the Chair and Chief Executive Officer of the TLC. She is responsible for interpreting and enforcing the rules and for the actions and omissions challenged in this proceeding.

62. Respondent Eric T. Schneiderman is the Attorney General of the State of New York . In his official capacity, he is the head of the law department of the state of New York.

### **DETAILED FACTUAL BACKGROUND**

#### **A. The Regulatory Framework For Taxicab Hails**

63. Taxis have been part of transportation policy in New York City since the dawn of the modern age, and licensed medallion taxicabs have possessed the exclusive statutory right to hails for almost as long. Time and again, courts have recognized the potential hazards of unregulated public transportation and turned back challenges to the government's right to reasonable regulation. *See, e.g., Rudack v. Valentine*, 163 Misc. 326 (N.Y. Sup. Ct. 1937).

64. The medallion licensing system was created by New York City with the passage of the Haas Act of 1937. In exchange for the price paid to the City for a taxicab medallion, and in exchange for subjecting the operation of their taxi businesses to onerous regulation in service of the public interest, medallion owners were granted the exclusive right to hails. This bargained for exchange continues to the present day.

65. In 2012, the New York State legislature enacted the HAIL ACT to ensure that some of New York's most vulnerable residents – disabled passengers – would have access to safe and reliable public transportation. According to the legislative findings, “the public health, safety and welfare of the residents of the state of New York traveling to, from and within the city of New York is a matter of substantial state concern, including access to safe and reliable mass transportation such as taxicabs.” Ch. 62, Laws of New York § 1 (2012) (amending Ch. 602,

Laws of New York (2011)). Among other things, the HAIL ACT authorizes the issuance of up to two thousand new hail licenses for vehicles that are accessible to individuals with disabilities, to help ensure “adequate and reliable transportation [is] accessible to individuals with disabilities in the city of New York.” Ch. 62, Laws of New York § 1 (2012) (amending Ch. 602, Laws of New York (2011)).<sup>6</sup>

66. In order to accomplish its legislative purpose, the HAIL ACT makes it a point to expressly reaffirm the bargain struck with taxicab medallion owners in exchange for purchasing a medallion: i.e., the exclusive statutory right to hails.

67. Specifically, the HAIL ACT provides that: “[I]t shall remain the exclusive right of existing and future taxicabs licensed by the TLC as a taxicab to pick up passengers via street hail in such areas of the City of New York wherein HAIL license holders are prohibited from accepting such passengers. All vehicles licensed by the TLC as taxicabs shall be permitted to pick up passengers via street hail from any location within the city of New York . . . .” Ch. 62, Laws of New York § 11 (2012) (amending Ch. 602, Laws of New York (2011)).

68. Likewise, the HAIL ACT provides that: “No driver of any for-hire vehicle shall accept a passenger within the city of New York by means other than pre-arrangement with a base unless said driver is operating either a (i) taxicab licensed by the TLC with a medallion affixed thereto, (ii) a vehicle with a valid HAIL license and said passenger is hailing the vehicle from a

---

<sup>6</sup> Under certain specified circumstances, the Hail Act authorizes the TLC to issue Hail Accessible Interborough licenses, or HAIL licenses. This authorization creates the right for designated HAIL vehicles, now referred to by the TLC as Street Hail Liveries, to pick up hails as medallion taxicabs do when outside the HAIL exclusionary zone. The HAIL exclusionary zone is defined as the airports of New York City and the area of New York City in Manhattan south of East 96th Street and West 110th Street. A HAIL vehicle is defined as a for-hire vehicle having a taximeter and a TLC-sanctioned trip recording system, licensed by the TLC to carry for hire passengers and authorized to accept hails, provided that such authorization prohibits accepting hails in the HAIL exclusionary zone. *See* Ch. 62, Laws of New York §§ 4 (b-f), 11 (2012) (amending Ch. 602, Laws of New York (2011)).

location where street hails of such vehicles are permitted.” Ch. 62, Laws of New York § 11 (2012) (amending Ch. 602, Laws of New York (2011)).

69. Consistent with the HAIL ACT, the Code provides that: “[n]o motor vehicle other than a duly licensed taxicab shall be permitted to accept hails from passengers in the street.” N.Y.C. Admin. Code § 19-504 (a)(1) (2015). Correspondingly, the Code also providing that “[n]o driver of a for-hire vehicle...shall accept passengers unless the passengers have engaged the use of the for-hire vehicle on the basis of telephone contract or prearrangement.” N.Y.C. Admin. Code § 19-507(a)(4) (2015).

70. The TLC was created in 1971 by Local Law 12 to regulate and improve taxi and livery services in New York City. The TLC is required to regulate and supervise the “business and industry of transportation of persons by licensed vehicles for hire in the city, pursuant to provisions of [Chapter 65],” and to adjudicate charges of violations of the “administrative code and rules promulgated thereunder.” N.Y.C. Charter § 2303 (2004).

71. The Code mandates that the TLC “shall promulgate such rules and regulations as are necessary to exercise the authority conferred upon it by the charter and to implement the provisions of this chapter.” N.Y.C. Admin. Code § 19-503(a) (2015).

72. The Code also states that “[n]o rule or regulation promulgated subsequent to the effective date of this local law may be inconsistent with or supersede any provision of this local law.” N.Y.C. Admin. Code § 19-503(b) (2015).

73. In accordance with this mandate, the TLC has promulgated rules and regulations limiting hails to licensed “taxicabs,” and confirming that FHV’s “must not solicit or pick up Passengers other than by prearrangement.” 35 R.C.N.Y. § 55-19(a) (2015). In return for hail exclusivity, the TLC imposes upon medallion owners onerous requirements with which they

must comply: taxi rates set by the TLC (35 R.C.N.Y. § 58-26 (2015)); taxi driver licensing requirements (35 R.C.N.Y. § 54-40 (2015)); Taxi Accessibility Fees (35 R.C.N.Y. § 58-16(f) (2015)); taxi surcharges of thirty cents per trip to subsidize taxicab accessibility (35 R.C.N.Y. § 58-26(g) (2015)) and fifty cents per trip to fund MTA operations (35 R.C.N.Y. §§ 58-03(x), 58-26(a)(3) (2015)); taxi drivers must collect and make available detailed trip records (35 R.C.N.Y. § 58-22 (2015)); taxis must be one of the few vehicle models that the TLC has approved (35 R.C.N.Y. §§ 67-04 to 67-06 (2015)); taxis must comply with TLC requirements for a variety of features, including paint, finish, lighting, upholstery, seats, winds, air conditioner, and roof lights (35 R.C.N.Y. §§ 67-06 to 67-17 (2015)); taxis must comply with TLC specifications for taximeters, partitions, in-vehicle camera systems, credential holders, and “T-PEP” taxicab technology (35 R.C.N.Y. §§ 67-09 to 67-15 (2015)); taxis must be retired from service after specified lengths of time (35 R.C.N.Y. § 67-18 (2015)); and half of all taxis must be accessible to people with disabilities (35 R.C.N.Y. § 58-50 (2015)). These rules and regulations, most of which apply only to medallion taxicabs, are designed to advance the public interest. In doing so, however, they also exact a heavy price for taxicab medallion owners and taxicab drivers, and significantly constrain the operation of their businesses.

**B. The Taxicab Medallion Market**

74. Taxicab medallions are sold in private transactions and at public auction, all of which are regulated by the TLC. The taxicab medallion, and with it, the exclusive right to accept hails,<sup>7</sup> has long been recognized as private property—a transferrable commodity that until recently was worth well over \$1 million each. *See Higgins Aff.* at ¶7.

---

<sup>7</sup> The TLC has consistently reinforced the taxicab medallion owners’ property interest in the statutory right to hail exclusivity by representing to perspective medallion purchasers at TLC auctions that they were bidding to acquire the exclusive right to hails.

75. Once classified by type, new medallions are sold in lots and auctioned by sealed bids with the TLC Chairperson setting the minimum price for medallions sold. Any bids below the minimum price set by the TLC are rejected. All bids must comply with a strict set of TLC rules, including a letter of commitment, deposit, and required certifications. 35 RCNY § 13 (2015).

76. Once the bidding period has closed, the bids are opened in public, and the winning bids are announced at the public sale and later published in the City Record and on the TLC's website.

77. Medallion auctions have generated a tremendous amount of revenue for New York City. Specifically, New York City auctioned taxicab medallions in 1996 and 1997, realizing approximately \$85 million in revenue from the sale of 400 medallions. Between 2006 and 2013, New York City auctioned approximately 1,050 medallions, generating an additional \$486 million in revenue. *See Higgins Aff.* at ¶¶8-9.

78. Most recently, in fiscal year 2014, New York City reportedly sold 400 taxicab medallions, generating nearly \$338 million in revenue. New York City has also budgeted for medallion sales between 2015 and 2019, anticipating \$1.6 billion in revenue for its budget. *See Higgins Aff.* at ¶¶8-9.

79. New York City also receives a five percent transfer tax on sales of taxicab medallions based on fair market value. N.Y.C. Admin. Code §§ 11-1401 (2015). The TLC establishes the fair market value of medallions for purposes of the transfer tax based on the average sales price of the previous month's transfers. *See Higgins Aff.* at ¶12.

80. If the price of a taxicab medallion transfer is more than \$10,000 below fair market value, as determined by the TLC, the purchaser must obtain a tax waiver letter from the



Department of Finance and/or pay the transfer tax based on the TLC's fair market value calculation. *See Higgins Aff.* at ¶12.

81. As it now turns out, it appears that the TLC deliberately manipulated the price of taxicab medallions, until at least sometime in 2014, by overstating the monthly average price of taxi medallions published on the TLC website, which was then relied upon by industry participants, including to underwrite medallion loans. Specifically, it appears that the TLC purposely omitted from its monthly average prices, any medallion transfers that were more than 10% below the highest transfer price from the prior month—thereby driving higher medallion transfer taxes and ultimately higher auction prices for medallions being purchased from New York City. *See Higgins Aff.* at ¶13.

82. For example, the TLC reported average medallion prices in November 2013 of \$1,050,000, while the actual average was only \$900,000, approximately 14.3% lower than Commission's posted average. Similarly, in September 2014, the TLC reported an average medallion price of \$1,045,000, when in fact the only transfer that month apparently closed at \$900,000. *See Higgins Aff.* at ¶7.

83. The TLC's apparent manipulation of medallion prices, and its subsequent failure to enforce hail laws, has serious implications for the integrity of the public securities market. There are numerous publicly traded companies, including Medallion Financial Corporation ("NASDAQ:TAXI"), that are reportedly seeing investors taking large short positions in their stock, the wisdom of which may well depend on the TLC's continued failure to enforce the hail laws with respect to E-Hails. *See Higgins Aff.* at ¶24.

84. Incredibly, Commissioner Joshi recently claimed that medallion prices were an “‘artificial bubble’ created by a few outsized transactions;” a stunning contention given that it

now appears from the evidence that any artificial bubble in taxicab medallion prices was actually created and orchestrated by the TLC itself, or possibly even the Commissioner herself. *See Higgins Aff.* at ¶7.

85. Commissioner Joshi has also claimed that the TLC “doesn’t get into the business of valuing.” *See Higgins Aff.* at ¶7. This cannot be true, however, because the TLC is specifically charged with setting the minimum upset price at auctions in accordance with § 65-05(b)(1) of the TLC rules, which states that “[t]he Chairperson will set a minimum upset price for Medallions to be sold.” 35 R.C.N.Y. §65-05(b)(1) (2015). Moreover, the TLC is responsible for determining the fair market value of a medallion for purposes of the transfer taxes paid by medallion purchasers, rendering false and misleading Commissioner Joshi’s assertion that the TLC is not involved in setting values and prices for medallions.

86. In light of the facts, and given the false and misleading information disseminated by the TLC concerning the fair market value of medallions, Melrose has requested that the New York State Attorney General investigate. *See Higgins Aff.* at ¶7.

**C. The Emergence of Uber and the Rise of Illegal E-Hails**

87. In March 2009, Uber was founded as a ridesharing company that allowed passengers to connect with drivers using software applications on their smartphones. Headquartered in San Francisco, California, Uber has reportedly spread to fifty-eight countries and operates in more than 300 cities. *See Higgins Aff.* at ¶14.

88. Passengers wishing to use Uber must download the smartphone application, create an account, and input credit card information. Once logged into the application, passengers are provided with a map showing the location of available cars and the approximate travel time of the closest car to the passenger’s location. *See Higgins Aff.* at ¶13.

89. When a passenger electronically hails an Uber FHV, the application sends the request directly to the closest available driver who must then accept or decline the request. If the Uber driver declines the request, it is then automatically forwarded to the next closest driver. *See Higgins Aff. at ¶13.*

90. Uber operates its business as an on-demand electronic hailing service. According to Uber, its service is “[b]etter, *faster*, and cheaper than a taxi.” Uber’s own website and promotional materials make clear that Uber’s service is “*always booked on-demand* by making a request through the app.” In other words, every ride provided by Uber is an on-demand E-Hail. Indeed, the *only* feature that Uber does not offer to passengers is the ability to prearrange a ride. *See Higgins Aff. at ¶16.*

91. In 2011, Uber entered the New York City Market. Although Uber traditionally seeks to operate as an application provider that facilitates the connection between drivers and passengers, rather than as a traditional taxi or livery service, the business model that Uber adopted in New York City is markedly different.

92. Confronted with the statutory framework for public transportation in New York City, and faced with the seemingly reasonable expectation of TLC enforcement action, Uber chose to obtain a license from the TLC. Thereafter, the TLC allowed Uber to obtain licenses for FHV bases, and FHV licenses for its network of affiliated drivers.

93. As FHV bases and vehicles, Uber and its drivers are subject to the laws governing all FHV in New York. Among other things, Uber vehicles must be dispatched on a pre-arranged basis for future travel through their affiliated base station, and Uber drivers are strictly prohibited from accepting hails anywhere in New York City. *See Ch. 62, Laws of New York*

(2012) (amending Ch. 602, Laws of New York (2011)); N.Y.C. Admin. Code § 19 (2015); 35 R.C.N.Y. §§ 54-54.

94. Since entering the New York City market, the number of licensed FHV drivers associated with Uber has skyrocketed. Uber now boasts approximately 16,000 drivers, and plans to add an additional 10,000 drivers in 2015. *See Higgins Aff.* at ¶17.

95. Within the five boroughs of New York City, there are now 14,088 FHVs affiliated with the Uber network. Uber plans to soon increase the number of linked FHVs in its network to more than 30,000. *See Higgins Aff.* at ¶18.

96. Passenger wait times for Uber E-Hails have all but disappeared in recent months, as its network of linked FHVs has grown exponentially. The average wait time for an Uber vehicle in Manhattan is now barely two minutes; actual response time is often faster than that. *See Higgins Aff.* at ¶19. With the steady stream of new FHVs being added to its network every day, there will soon be an Uber vehicle standing on every street corner in New York City, making response times to Uber's E-Hails virtually instantaneous.

97. With the number of FHVs participating in Uber's network rising, and average wait times dropping, the number of illegal Uber E-Hail rides taking place in New York City each day has surged. In September 2014, Uber vehicles were reportedly making approximately 34,000 trips in New York City per day, on average; by February 2015, Uber vehicles were reportedly picking up approximately 100,000 E-Hails per day, on average. *See Higgins Aff.* at ¶20.

#### **D. The TLC Proposes E-Hail Rules for Licensed Taxicabs**

98. In late 2012, the TLC announced the creation of a pilot program to study the use of smartphone applications to electronically "Hail" taxicabs. The program, offered to all

taxicabs, allowed the TLC to study the real world impact of E-Hailing applications, including patterns of passenger usage and any safety impacts. *See Higgins Aff.* at ¶23.

99. The announcement of the E-Hail pilot program was initially met with opposition. *See Higgins Aff.* at ¶21. Specifically, in *Black Car Assistance Corp. v. The City of New York*, 2013 WL 1808082 (N.Y. Sup. Ct. 2013), *aff'd*, 110 A.D.3d 618 (N.Y. App. Div. 2013), the FHV industry challenged the E-Hail pilot.

100. As part of that case, on February 14, 2013, the TLC represented to the court that “e-hail apps are just that; they’re hails.” *See Higgins Aff.* at ¶21. Specifically, Corporation Counsel, acting on behalf of the TLC, stated the following:

Ms. Goldberg-Cahn:<sup>8</sup> at hotels, at apartments, they have lights that they could flash on to indicate to a cab that somebody wishes to be picked up. So they’re not waving (simulating) for their frantic hail; they’re coming—

The Court: That’s essentially a hail. It’s equivalent. I know those signs; I responded to those signs 40 years ago, whenever it was.

Mrs. Goldberg-Cahn: But that’s what we’re saying this is. These e-hail apps are just that; they’re hails. It’s somebody indicating that they want to be picked up within a – within a prescribed area, without saying where they’re going, without saying their race or gender or color, without saying what the fare will be and how much it will be; just, “I want a hail.”

....

And there’s nothing in the TLC’s rules that really define what a “hail” is and says that a hail is limited to sight. What these e-hails are allowing to do is a sort of look to a little bit more, broader than your sight but not stray too far off the course.

*See Higgins Aff.* at ¶21.

101. The TLC subsequently confirmed in its briefing that E-Hails are a product of “newly available technology” that “allow passengers to hail a taxicab electronically,” confirming

---

<sup>8</sup> Michelle Goldberg-Cahn was the Assistant Corporation Counsel for the office of Michael A. Cardozo, appearing on behalf of the TLC.

the obvious fact that electronic “hails” are simply a modern form of the traditional street hail—and thus, belong exclusively to medallion taxicabs. *See Higgins Aff.* at ¶22.

102. The TLC ultimately prevailed and the pilot program was implemented on April 26, 2013. *See Higgins Aff.* at ¶23.

103. Although originally scheduled to last for twelve months, the TLC subsequently extended the pilot for another twelve months, setting a pilot end date for April 2015. *See Higgins Aff.* at ¶23. According to the TLC, the pilot program was a success and confirmed that E-Hail applications benefit the transportation market in New York City, while posing no additional risk to passenger safety or taxicab ride accessibility. *See Higgins Aff.* at ¶2.

**E. The TLC Fails to Enforce its Own E-Hail Rules**

104. On January 29, 2015, the TLC adopted its E-Hail Rules, which became effective 30 days later. *See Higgins Aff.* at ¶2.

105. In its Statement of Basis and Purpose for the E-Hail Rules, the TLC explained that the rules “will allow passengers to summon taxicabs and Street Hail Liveries in New York City by E-Hail and to make E-Payments.” *See Higgins Aff.* at ¶2.

106. According to the TLC, its goal in adopting the E-Hail Rules was to “accommodate new technology into the taxi industry while taking into account the needs of E-Hail application developers, drivers, vehicle owners and passengers.” *See Higgins Aff.* at ¶2.

107. As part of the E-HAIL Rules, the TLC for the first time officially defined the term “Hail,” and made the definition generally applicable to all TLC rules and regulations. Specifically, the TLC defined the term “Hail” as follows:

[a] request, either through a verbal (audio) action such as calling out, yelling, or whistling, and/or a visible physical action such as raising one’s hand or arm, or through an electronic method such as an E-Hail App, for on-demand Taxicab or

Street Hail Livery service at the metered rate of fare as set forth in § 58-26 and § 82-26 of these Rules by a person who is currently ready to travel.

35 R.C.N.Y. § 51-03 (2015).

108. Thus, the TLC correctly recognized that the use of a smartphone application to electronically “hail” a driver “on-demand ... by a person who is currently ready to travel,” is simply a modern-day version of the traditional hail, precisely as the TLC argued on the record to the Court in *Black Car Assistance Corp. v. The City of New York*, 2013 WL 1808082 (N.Y. Sup. Ct. 2013), *aff’d*, 110 A.D.3d 618 (N.Y. App. Div. 2013).

109. In addition, the new E-Hail Rules define an E-Hail Application as:

A Software program licensed by the TLC under Chapter 78 residing on a smartphone or other electronic device and integrated with the TPEP or LPEP which performs one or more of the following functions:

- 1) allows a passenger to identify the location(s) of available *Taxicabs or Street Hail Liveries* in a given area and allows a *Taxicab or Street Hail Livery Driver* to identify the location of a passenger who is currently ready to travel;
- 2) allows a passenger to *hail* a *Taxicab or Street Hail Livery* via the electronic device;
- 3) allows a *Taxicab or Street Hail Livery Driver* to receive a *hail* request from such a passenger if the application provides for connecting a passenger to a *Taxicab or Street Hail Livery Driver*; or
- 4) E-Payment.

35 R.C.N.Y. § 51-03 (2015).

110. The definition adopted by the TLC likewise makes clear that an E-Hail application may only allow passengers currently ready to travel to identify and electronically “Hail” an on-demand taxicab or Street Hail Livery.

111. In other words, the TLC definition does not permit an E-Hail Application to electronically “Hail” an on-demand FHV—i.e., to E-Hail an Uber.<sup>9</sup>

112. This is further reinforced by § 78-21(d)(2) of Chapter 78 of the TLC’s Rules, as amended by the new E-Hail Rules, which states that:

“[t]he E-Hail Application must not transmit requests for transportation or Hails to any driver who is not validly licensed to drive a Taxicab or Street Hail Livery or who is operating a Vehicle that does not have a Valid Taxicab License, per the listings on the TLC’s Current Licensees webpage.”

35 R.C.N.Y. § 78-21(d)(2) (2015).

113. Notwithstanding the adoption of the E-Hail Rules, Uber continues to allow passengers currently ready to travel to identify and electronically “Hail” all of Uber’s FHV drivers for on-demand E-Hail service. *See Higgins Aff.* at ¶15.

114. In fact, a passenger currently ready to travel in New York City only needs to swipe his or her finger to the left or right on the Uber application in order to switch from sending an E-Hail to a licensed medallion taxicab, as permitted by TLC rules, to sending an E-Hail to an Uber FHV, in clear violation of law. *See Higgins Aff.* at ¶15.

115. These actions by Uber, and others acting in similar fashion, constitute clear and continuous violations of the HAIL ACT, Title 19 of the Code, and even the TLC’s own rules and regulations.

116. To illustrate, § 78-21(d)(2), as amended by the new E-Hail Rules, prohibits transmission of requests for “transportation or Hails” to any driver “who is not validly licensed

---

<sup>9</sup> The fact that E-Hails are subject to hail exclusivity is further evidenced by the fact that the “E-Hail Rules” adopted by the TLC on January 29, 2015 prohibit even Hail Liveries from accepting E-Hails in the Hail exclusionary zone. Plainly, FHV’s must likewise be prohibited from accepting E-Hails in the Hail exclusionary zone, or any other place in New York City for that matter.



to drive a Taxicab or Street Hail Livery or who is operating a Vehicle that does not have a Valid Taxicab License.” 35 R.C.N.Y. § 78-21(d)(2) (2015). Uber is violating this rule.

117. Likewise § 59B-02, states that “Unlicensed Activity specifically includes the activities listed in § 19-506 and § 19-528 of the Administrative Code, and can subject the violator to the seizure and possible forfeiture of the vehicle involved.” 35 R.C.N.Y. § 59B-02 (2015). Uber is violating this rule.

118. Likewise, § 59B-02 and § 19-506(b)(1), state that “any person who shall permit another to operate ... or offer to operate for hire any vehicle as a taxicab ... without first having obtained or knowing that another has obtained a license for such vehicle pursuant to the provisions of section 19-504 of this chapter, shall be guilty of a violation.” 35 R.C.N.Y. §§ 19-506(b)(1), 59B-02 (2015). Uber is violating this rule.

119. Likewise, § 19-506(b)(2) states that “[a]ny person who shall permit another to operate ... or offer to operate for hire any vehicle licensed as a ... for-hire vehicle in the city in a manner that is beyond the scope of the activities permitted by such vehicle’s license shall be guilty of a violation.” 35 R.C.N.Y. § 19-506(b)(2) (2015). Uber is violating this rule.

120. Likewise, § 19-528(a) states that “[i]t shall be unlawful for any person required to be licensed pursuant to the provisions of this chapter to engage in any trade, business or activity for which a license is required without such license.” 35 R.C.N.Y. § 19-528(a) (2015). Uber is violating this rule.

121. Likewise, § 55-03(h) and § 55-03(d)(1) state that for all black car trips, the car must be dispatched “through” and “from” the “physical location” of its affiliated base station, and for a passenger that has scheduled a pick-up in the future. 35 R.C.N.Y. §§ 55-03(h), (d)(1) (2015). Uber is violating this rule.

122. Petitioners have pleaded with Respondents to take action to uphold the hail laws, as is required by their non-discretionary statutory obligations, including with respect to the pervasive ongoing violation of law by FHV's like Uber, that are illegally misappropriating millions of E-Hails from medallion taxicabs.

123. As discussed above, on April 3, 2015, Petitioner Melrose sent a letter to the TLC, along with a letter to Mayor de Blasio, asking that they immediately begin enforcing Title 19, particularly in light of the TLC's own rules making clear that an on-demand E-Hail by a passenger currently ready to travel constitutes a hail. *See Higgins Aff.* at ¶3.

124. On April 14, 2015, Melrose met with several New York City officials to reiterate the request for enforcement of the hail laws. As a result of this meeting, Melrose believed that the TLC would begin taking action. At their request, and expecting action, Melrose agreed to defer the filing of this Petition. *See Kaufman Aff.* at ¶¶9-11.

125. On or about April 29, 2015, Petitioners' counsel contacted Christopher Wilson, Deputy Commissioner and General Counsel for the TLC, and again asked for confirmation that TLC enforcement against illegal E-Hails would begin, as indicated by New York City officials two weeks earlier. *See Higgins Aff.* at ¶6.

126. In response, Deputy Commissioner Wilson advised Petitioners' counsel that the TLC now takes the position that on-demand E-Hails by Uber do not violate a taxicab medallion owner's hail exclusivity rights. Reversing course from positions that the TLC itself previously took on the record, the TLC now claims that an E-Hail does not actually constitute a "Hail" if the electronic request for on-demand service by a passenger currently ready to travel is sent to an Uber, rather than to a taxicab. *See Higgins Aff.* at ¶6.

127. Neither the TLC nor the Mayor have taken any action to uphold the hail laws, including with respect to illegal on-demand E-Hails by FHV's like Uber. Instead, on or about April 28, 2015, the TLC published the Supplemental E-Hail Rules. Rather than adopt a regulatory framework that respects taxicab medallion owners' exclusive right to hails, including on-demand E-Hails, the Supplemental E-Hail Rules appear intended to legitimize the acceptance of on-demand E-Hails by everyone, or to at least allow them for Uber.

128. On April 30, 2015, Melrose sent a letter to Attorney General Schneiderman, requesting the assistance of the Attorney General in compelling the TLC to comply with and enforce the law – specifically the taxicab medallion owners' exclusive right to accept hails, including on-demand E-Hails.

129. As of the date of this Verified Petition, the Office of the Attorney General has not responded to Melrose's request either. *See Higgins Aff.* at ¶7.

**F. Respondents' Actions Threaten to Collapse the Medallion Market**

130. If allowed to stand, Respondents' arbitrary and unlawful actions will eviscerate nearly eighty years of hail exclusivity, destroying the value of a taxicab medallion and with it, the entire taxicab industry.

131. The evidence now makes clear that collapsing medallion values, caused by the rapid and unchecked acceleration of illegal E-Hails by Uber, is not only real, but is in fact worsening.

132. The threat of a cascading collapse of the entire taxicab industry, triggered by the arbitrary and unlawful actions of the TLC is real and imminent—a sequence of events that will cause incalculable damage to the City of New York and irreparable harm to the tens of thousands of men and women that work in the taxicab industry.

## **FIRST CAUSE OF ACTION**

(N.Y. C.P.L.R. 7803(1): Mandamus to Compel Enforcement of the Code with Respect to Hail Exclusivity)

133. Petitioners hereby incorporate each of the foregoing paragraphs as if fully set forth herein.

134. The Respondents have certain mandatory duties under New York State law, the Code and the Charter with respect to the regulation and supervision of taxi and limousine service in the City including enforcement. *See* Ch. 62, Laws of New York (2012) (amending Ch. 602, Laws of New York (2011); N.Y.C. Admin. Code § 19 (2015).

135. Respondents have failed to perform certain mandatory duties under New York State law, the Code and the Charter with respect to the regulation and supervision of taxi and limousine service in the City, including with respect to enforcement.

136. Among other failures, the Respondents failure to enforce the new E-Hail Rules against FHV's, including Uber, is a failure to perform a mandatory duty.

137. Among other failures, the Respondents failure to enforce New York State law, the Code and the Charter with respect to taxicab medallion owners' exclusive right to hails is a failure to perform a duty.

138. Petitioners have been and will continue to be harmed by the Respondents' failure to perform their mandatory duties with respect to enforcement unless they are compelled to act.

## **SECOND CAUSE OF ACTION**

(N.Y. C.P.L.R. 7803(1): Mandamus to Compel the Promulgation of Rules and Regulations Necessary to Implement the Provisions of Title 19)

139. Petitioners hereby incorporate each of the foregoing paragraphs as if fully set forth herein.

140. Respondents have certain mandatory duties under New York State law, the Code and the Charter with respect to the regulation and supervision of taxi and limousine service in the City, including the promulgation of rules and regulations necessary to implement the provisions of Title 19 of the Code. N.Y.C. Admin. Code § 19 (2015).

141. Respondents have failed to perform certain mandatory duties under New York State law, the Code and the Charter with respect to the regulation and supervision of taxi and limousine service in the City, including the promulgation of rules and regulations necessary to implement the provisions of Title 19 of the Code. N.Y.C. Admin. Code § 19 (2015).

142. Among other failures, Respondents have not promulgated rules and regulations that are consistent with upholding and enforcing the taxicab medallion owners' exclusive right to hails, particularly in light of recent E-Hailing activities by certain FHV's, including Uber.

143. Petitioners have been and will continue to be harmed by the Respondents' failure to perform these and other mandatory duties as described in this Verified Petition unless they are compelled to act by this court.

### **THIRD CAUSE OF ACTION**

#### **(N.Y. C.P.L.R. 7803(2): Prohibition from the Enforcement of Certain Existing Rules)**

144. Petitioners hereby incorporate each of the foregoing paragraphs as if fully set forth herein.

145. Petitioners ask this court to prohibit Respondents from enforcing any existing rules and regulations that are inconsistent with taxicab medallion owners' exclusive right to hails, including those adopted by the TLC on January 29, 2015.

146. The Respondents may not promulgate or enforce rules and regulations that are "inconsistent or supersede [Title 19 of the Code]". Title 19 of the Code states "[n]o motor

vehicle other than a duly licensed taxicab shall be permitted to accept hails from passengers in the street[s of New York City].” N.Y.C. Admin. Code § 19-504 (a)(1) (2015). Title 19 of the Code also states that “[n]o driver of a for-hire vehicle...shall accept passengers unless the passengers have engaged the use of the for-hire vehicle on the basis of telephone contract or prearrangement.” N.Y.C. Admin. Code § 19-507(a)(4) (2015).

147. Respondents have therefore promulgated rules and regulations that are inconsistent with Title 19 of the Code, including those rules and regulations adopted by the TLC on January 29, 2015.

148. Respondents have therefore proceeded without or in excess of their jurisdiction and authority.

149. Petitioners have been and will continue to be harmed by Respondents’ actions that are without and/or are in excess of their jurisdiction and authority unless and until they are prohibited from acting as such by this court.

#### **FOURTH CAUSE OF ACTION**

##### **(C.P.L.R. 7803(2): Prohibition from the Promulgation or Enforcement of Certain Future Rules)**

150. Petitioners hereby incorporate each of the foregoing paragraphs as if fully set forth herein.

151. Petitioners ask this court to prohibit Respondents from implementing or enforcing any rules or regulations in the future that are inconsistent with medallion owners’ exclusive right to hails, including those proposed on or about April 20, 2015 by the TLC, for which a public hearing has been scheduled for May 28, 2015.

152. The Respondents may not promulgate rules and regulations that are “inconsistent or supersede [title 19 of the Code].” Title 19 of the Code states “[n]o motor vehicle other than a

duly licensed taxicab shall be permitted to accept hails from passengers in the street[s of New York City].” N.Y.C. Admin. Code § 19-504 (a)(1) (2015). Title 19 of the Code also states that “[n]o driver of a for-hire vehicle...shall accept passengers unless the passengers have engaged the use of the for-hire vehicle on the basis of telephone contract or prearrangement.” N.Y.C. Admin. Code § 19-507(a)(4) (2015).

153. Respondents have therefore proposed rules and regulations that are inconsistent with Title 19 of the Code, including those proposed on April 20, 2015 by the TLC, for which a public hearing has been scheduled for May 28, 2015.

154. Respondents are therefore proceeding or are about to proceed without or in excess of their jurisdiction and authority.

155. Petitioners have been and will continue to be harmed by the Respondents’ actions and proposed actions that are without or are in excess of their jurisdiction and authority unless and until they are prohibited from acting as such by this court.

### **FIFTH CAUSE OF ACTION**

(N.Y. C.P.L.R. 7803(3): Mandamus to Review Determination/Declaratory Judgment)

156. Petitioners hereby incorporate each of the foregoing paragraphs as if fully set forth herein.

157. Respondents have promulgated and are enforcing certain rules and regulations that are inconsistent with taxicab medallion owners’ exclusive right to hails, including those approved by the TLC on January 29, 2015. *See Higgins Aff.* at ¶2.

158. The Respondents may not promulgate rules and regulations that are “inconsistent or supersede [Title 19 of the Code].” Title 19 of the Code states “[n]o motor vehicle other than a duly licensed taxicab shall be permitted to accept hails from passengers in the street[s of New

York City].” N.Y.C. Admin. Code § 19-504 (a)(1) (2015). Title 19 of the Code also states that “[n]o driver of a for-hire vehicle...shall accept passengers unless the passengers have engaged the use of the for-hire vehicle on the basis of telephone contract or prearrangement.” N.Y.C. Admin. Code § 19-507(a)(4) (2015).

159. Respondents have therefore promulgated rules and regulations that are inconsistent with Title 19 of the Code, including those rules and regulations approved by the TLC on January 29, 2015.

160. Respondents have therefore made a determination that was in violation of lawful procedure, was affected by an error of law, or was arbitrary and capricious or an abuse of discretion.

161. Petitioners have been and will continue to be harmed by the Respondents’ actions unless and until they are prohibited from acting as such by this court.

162. Petitioners therefore ask for a declaratory judgment that the rules and regulations promulgated by Respondents, including those approved by the TLC on January 29, 2015, are null and void because they were made in violation of lawful procedure, were affected by an error of law, or were arbitrary and capricious or an abuse of discretion.

#### **PRAYER FOR RELIEF**

WHEREFORE, Petitioners respectfully request that judgment be entered against Respondents as follows:

163. Compelling the Respondents’ duty to enforce Title 19 of the Code, particularly with respect to hail exclusivity.

164. Compelling the Respondents’ duty to enforce Title 19 of the Code, particularly with respect to its FHV rules.



165. Compelling the Respondents' duty to enforce Title 19 of the Code, particularly with respect to penalizing and fining FHV's for picking up hails in violation of the taxicab medallion owners' exclusive right to hails.

166. Compelling the Respondents to promulgate rules that implement Title 19 of the Code, including rules that uphold and enforce the taxicab medallion owners' exclusive right to hails.

167. Prohibiting the Respondents from enforcing rules that are inconsistent with or supersede Title 19 of the Code, including rules which are inconsistent with or supersede the taxicab medallion owners' exclusive right to hails.

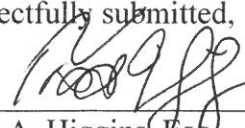
168. Prohibiting the Respondents from adopting, approving, or enforcing any future rules that are inconsistent with or supersede the Code, including rules which are inconsistent with or supersede the taxicab medallion owners' exclusive right to hails.

169. Declaring that the rules and regulations promulgated by Respondents, including those approved by the TLC on January 29, 2015, are null and void.

170. Any other such further and additional relief that the court deems necessary and/or proper.

Dated: May 26, 2015  
New York, New York

Respectfully submitted,

By:   
Todd A. Higgins, Esq.  
Crosby & Higgins, LLP  
477 Madison Avenue, 6<sup>th</sup> Floor  
New York, NY 10022  
Tel: (646) 452-2304  
Fax: (646) 452-2301

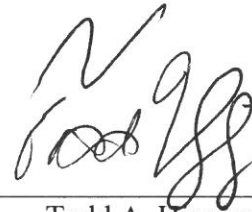
*Attorneys for Petitioners*

**VERIFICATION**

STATE OF NEW YORK     )  
  ) ss:  
COUNTY OF NEW YORK    )

TODD A. HIGGINS, ESQ., an attorney admitted to practice in the State of New York, being duly sworn, deposes and says: I am an attorney for the Petitioners in the within proceeding; I make this verification pursuant to CPRL 3020(d)(3); I have read the foregoing Petition and know the contents thereof; the same is true to my own knowledge, except as to the matters therein stated to be alleged on information and belief, and as to those matters, I believe them to be true.

Date: May 26, 2015  
New York, New York



\_\_\_\_\_  
Todd A. Higgins

Sworn to before me this 26<sup>th</sup> day of  
May, 2015

  
\_\_\_\_\_  
Notary Public

**COURTNEY B. DENKOVICH**  
Notary Public, State of New York  
No. 02DE6091788  
Qualified in Nassau County  
Commission Expires May 5, 2015