

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK

x

GLYKA TRANS LLC; MICDEE LLC; CITY  
BOYS CORP.; MAMADY SANOU;  
MOHAMMOD KAYUM; YELLOW CAB  
SLSJET MANAGEMENT CORP.; and  
WINNERS GARAGE, INC.,

Index No. 100578/2015

Petitioners,

**VERIFIED PETITION**

v.

THE CITY OF NEW YORK; THE NEW YORK  
CITY TAXI AND LIMOUSINE COMMISSION;  
and MEERA JOSHI, in her capacity as Chair of the  
New York City Taxi and Limousine Commission,

Respondents.

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Petitioners Glyka Trans LLC, Micdee LLC, City Boys Corp., Mamady Sanou,  
Mohammad Kayum, Yellow Cab SLSJET Management Corp., and Winners Garage, Inc., by and  
through their attorneys, Cuti Hecker Wang LLP, for their Petition allege as follows:

**NATURE OF THE ACTION**

1. This case is about the arbitrary, discriminatory, and otherwise unlawful decision  
by the New York City Taxi & Limousine Commission (the “TLC”) to allow non-medallion black  
cars, especially Uber cars, to pick up passengers via smartphone “e-hails.”

2. The TLC’s regulations expressly equate an e-hail with a conventional street hail.  
But the TLC nonetheless permits Uber cars and other non-medallion cars to be e-hailed,  
effectively eviscerating the hail exclusivity to which yellow medallion taxis have been entitled  
under state and local law for decades. The TLC’s decision to allow companies like Uber to pick

up e-hails – even though Uber is not required to shoulder the enormous financial burden of purchasing medallions and is not bound by the fare limitations and other significant restrictions that apply to yellow taxis in consideration for their hail exclusivity – enables Uber to compete unfairly with yellow taxis, dramatically altering the economics of the industry and robbing medallion owners of the basic entitlement the City sold them in exchange for hundreds of millions of dollars.

3. State and local law have long made clear that yellow medallion taxis (and in the outer boroughs, green cars) have the exclusive right to pick up passengers through hails, and that black cars may pick up passengers only through pre-arrangement. In exchange for the hail exclusivity that state and local law bestow upon yellow taxis, yellow taxi drivers must purchase or lease medallions (which cost owners hundreds of thousands of dollars to purchase, and which cost drivers thousands of dollars per month to lease), and they may not charge more than regulated meter rates. Black car drivers need not purchase or lease medallions, and they may charge passengers whatever the free market bears. But black cars may not pick up passengers through hails. If a passenger wants a black car, he or she must pre-arrange to be picked up at some point in the future.

4. An e-hail is a hail, not a pre-arrangement, for two basic reasons. First, e-hail apps enable passengers to hail vehicles immediately, not at some point in the future. A passenger cannot use Uber's app to pre-arrange to be picked up and taken to the airport on Thursday at noon. Uber's app only enables a passenger to request to be picked up immediately, just like a street hail. Second, Uber's app connects passengers and drivers directly and automatically, without a dispatcher, just like a street hail. Because e-hail apps hail cars immediately, not in the future, and because they do not use a dispatcher, e-hails are hails, not pre-arrangements.

5. The TLC recently confirmed that it agrees with this common-sense notion by promulgating rules that define and regulate the e-hailing of yellow taxis and green livery cars. Yellow taxis and green cars both are allowed to pick up street hails, but green cars are prohibited from picking up street hails in Manhattan south of East 96th Street or West 110th Street or at the airports. The new TLC rules sensibly define a “Hail” to include *both* street hails *and* e-hails, and they confirm that green cars may not accept either street hails or e-hails in the prohibited exclusionary zones. 35 RCNY § 51-03 (defining “Hail” to include any “request, either through 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 though an electronic method such as an E-Hail App*”) (emphasis added); *id.* § 54-11(f) (confirming that green cars may “accept passengers by hail from the street *or by E-Hail App* only in the Hail Zone”) (emphasis added). But although the TLC correctly recognizes that an e-hail is a hail, and although it correctly recognizes that it would violate yellow taxis’ hail exclusivity in the exclusionary zones to allow green cars to pick up e-hails there, the TLC’s rules nonetheless allow non-medallion black cars to pick up e-hails everywhere. That makes no sense and is fundamentally unfair.

6. Moreover, even if an e-hail were a pre-arrangement rather than a hail – though it is not – Uber’s business model still would be unlawful for at least three reasons. First, Uber’s e-hail app calculates the distance of a trip through a crude and imprecise GPS system that does not meet the specification or inspection requirements that apply to yellow taxis. Second, Uber connects passengers and drivers through a computer system that is independent of the six licensed base stations through which it operates in New York City. Uber therefore violates the TLC rules that require New York City black cars to be dispatched by their base station from the physical location of the base station. Third, Uber violates the TLC rules that require that all

black cars must be owned either by a franchisee or by a member of a cooperative that operates the base station. Uber's drivers are neither franchisees nor cooperative members.

7. Nor did the TLC engage in the required environmental review under the State Environmental Quality Review Act ("SEQRA") and City Environmental Quality Review procedure ("CEQR") prior to exempting black cars from its e-hail rules, allowing over 14,000 Uber cars (more than the total number of yellow medallion taxis) to cruise the streets of New York City for e-hails with no analysis whatsoever of the impact of this massive and unprecedented increase in the number of hail vehicles on traffic, pollution, and other aspects of the City's environment.

8. The TLC's failure to apply its e-hail rules to black cars, and its inexplicable decision to turn a blind eye to Uber's failure to comply with the base station rules and to state and local environmental laws, effects an unconstitutional taking of medallion owners' property without just compensation. Throughout the years, the City has generated hundreds of millions of dollars in revenue by auctioning taxi medallions that entitle their owners to hail exclusivity. Medallions are a transferrable commodity that until recently were worth over \$1 million each – and which lenders routinely accepted as collateral for large and otherwise unsecured loans – precisely because the hail exclusivity that the City created and sold is so valuable. By allowing non-medallion black car companies to pick up e-hails, the City has severely compromised the investment-backed expectations of the medallion taxi industry, including both the owners who invested in medallions and the lenders who provided financing relying upon the reasonable expectation that the City would not change rules that have become part of the fabric of New York City in the middle of the game.

9. The TLC's arbitrary scheme also hurts both the Metropolitan Transportation Authority and the effort to accommodate people with disabilities because black car companies like Uber are exempt from the obligation to pay either the MTA tax or the accessibility surcharges that apply to yellow taxi fares. Indeed, whereas the TLC's new requirement that half of all yellow taxis must become accessible by 2020 begins to phase in next year, black cars are not required to be accessible.

10. The consequences of the TLC's decision to allow non-medallion black car companies like Uber to compete on a radically uneven playing field, and to flout the basic rules that apply to everyone else, are difficult to overstate. During the last two years, e-hail apps have become prevalent; soon they will be ubiquitous. Under the TLC's arbitrary and discriminatory scheme, driving for Uber is more attractive than driving a yellow taxi for two basic reasons. First, driving for Uber is cheaper because Uber drivers need not shoulder the financial burden of purchasing or leasing a medallion. Second, unlike yellow taxi drivers, Uber drivers are not limited to accepting the regulated, metered-fare rates. Uber drivers benefit from the "surge" pricing that Uber charges whenever demand for its vehicles increases. Not surprisingly, cab drivers are flocking from yellow taxis to Uber black cars in droves, the medallion taxi industry is suffering from a historic driver shortage, and the value of medallions is plummeting. Unless the TLC complies with state and local law and applies its rules to companies like Uber, yellow medallion taxis will soon become extinct.

#### **JURISDICTION AND VENUE**

11. This Court has personal jurisdiction over Respondents pursuant to CPLR § 301.

12. Venue is proper in this County pursuant to CPLR 503, 504, and 505.

## PARTIES

13. Petitioner Glyka Trans LLC (“Glyka Trans”) is a domestic limited liability corporation headquartered in Queens County.

14. Glyka Trans owns an independent (“owner must drive”) taxi medallion that it purchased in July 2013 for \$1.1 million. The value of that medallion has decreased substantially as a result of black cars, especially Uber cars, accepting e-hails in New York City.

15. Glyka Trans authorizes a leasing company to manage its medallion in exchange for a monthly fee. From July 2013 until February 2015, the leasing company paid Glyka Trans a monthly fee of \$3,500. Starting in February 2015, the leasing company reduced that monthly rate to \$3,000.

16. Petitioner Micdee LLC (“Micdee”) is a domestic limited liability corporation headquartered in Queens County.

17. Micdee owns an independent (“owner must drive”) taxi medallion that it purchased in February 2014 for \$710,000. The value of that medallion has decreased substantially as a result of black cars, especially Uber cars, accepting e-hails in New York City.

18. Micdee authorizes a leasing company to manage its medallion in exchange for a monthly fee. Until February 2015, the leasing company paid Micdee a monthly fee of \$3,500. Starting in February 2015, the leasing company reduced that monthly rate to \$3,000.

19. Due to the plummeting value of taxi medallions, Micdee’s monthly loan payment for its medallion jumped from \$2,437 per month to \$3,945 per month in March 2015.

20. Petitioner City Boys Corp. (“City Boys”) is a domestic corporation headquartered in Queens County.

21. City Boys owns two accessible taxicab medallions, which it purchased from the TLC at an auction in 2008 for a total of \$1.25 million. The value of those medallions has decreased substantially as a result of black cars, especially Uber cars, accepting e-hails in New York City.

22. City Boys authorizes a leasing company to manage its medallions in exchange for a monthly fee. From October 2013 until December 2014, the leasing company paid City Boys a monthly fee of \$3,500 per medallion. Starting in December 2014, the leasing company reduced that monthly rate to \$3,000 per medallion.

23. Petitioner Mamady Sanou is an individual who resides in Bronx County.

24. Shortly after immigrating to the United States, Mr. Sanou began leasing and driving a yellow medallion taxi in 2009.

25. During the period from February 2013 through December 2013, Mr. Sanou earned a gross income of \$92,540.56. By contrast, during the period from February 2014 through December 2014, he earned a gross income of \$79,886.42, a decrease of 13.7%. (The month of January is excluded from these figures for purposes of accuracy, because Mr. Sanou was out of the country and not working during January 2014.)

26. Petitioner Mohammad Kayum is an individual who resides in Queens County.

27. Shortly after immigrating to the United States, Mr. Kayum began driving a yellow taxi in 2008. He now owns and drives a yellow taxi and leases a medallion from a leasing company.

28. From 2013 to 2014, Mr. Kayum's average revenue per shift decreased by 16.8% (from \$249.31 to \$207.39). During the first two months of 2015, his average revenue per shift was just \$169.17, a drop of 32.1% from the 2013 average.

29. Mr. Kayum sub-leases his taxi vehicle to two other drivers for the shifts when he is not working. Until approximately February 2014, Mr. Kayum received a total weekly rate of \$1,190 from the two additional drivers. Due to the shortage of drivers, however, Mr. Kayum has had to consistently reduce those rates since February 2014, and he now receives a total weekly rate of \$960 from the two drivers, a decrease of 19.3%.

30. From 2013 to 2014, the total number of trips by Mr. Kayum and the additional drivers of his taxi decreased by 18.1% (from 13,027 to 10,664).

31. Petitioner Yellow Cab SLSJET Management Corp. (“SLSJET”) is a domestic corporation headquartered in Queens County.

32. SLSJET manages 264 taxi medallions, including 237 mini-fleet medallions (24 of which are accessible medallions) and 27 individual medallions (one of which is an accessible medallion).

33. Comparing the second half of 2013 with the second half of 2014, the average monthly revenue SLSJET collected per medallion decreased by 7.6% (from \$7,799 to \$7,204).

34. During that same time period, the total number of lost shifts (in which a medallion that SLSJET manages was not being leased by a driver) increased nearly twenty-five-fold (from 353 to 8,727).

35. From 2008 (when SLSJET began a daily double-shift operation) until January 2015, SLSJET charged the maximum medallion lease rates permitted by TLC rules. In January 2015, because of the shortage of drivers, SLSJET was forced to reduce its medallion lease rates by \$10 per shift across the board.

36. Even with the lease-rate reductions, SLSJET has had difficulty retaining drivers. There are 876 drivers who worked with SLSJET during 2014 but have not worked with the



company at all in 2015. By comparison, SLSJET only registered a total of 791 new drivers in 2014. There are an additional 127 drivers who worked with SLSJET in January 2015 but have not worked with the company since then, and 129 drivers who worked with SLSJET in February 2015 but have not worked with the company since then. By comparison, SLSJET registered only 90 new drivers in January 2015 and 60 new drivers in February 2015.

37. Petitioner Winners Garage Inc. (“Winners Garage”) is a domestic corporation with headquarters in Queens County.

38. Winners Garage manages 56 taxi medallions.

39. Until recently, Winners Garage charged the maximum medallion lease rates permitted by TLC rules. In January 2015, in order to prevent drivers from leaving, Winners Garage was forced to reduce the medallion lease rates for 10% per shift across the board.

40. Due to the shortage of drivers, Winners Garage has reduced the number of medallions it manages by allowing contracts to expire. Winners Garage managed 68 medallions during the first three quarters for 2013, but it managed only 57 during the last two quarters of 2014 and currently manages only 56.

41. Even after reducing the number of medallions it manages, Winners Garage has still had a substantial amount of “downtime” in which its medallions are not being leased. The quarterly number of trips per medallion operated by Winners Garage decreased by 12.3% from 2013 to 2014 (from 3,385 to 2,967).

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

43. Respondent New York City Taxicab & Limousine Commission is an administrative agency for the City of New York, created by § 2300 of the New York City

Charter. At all times relevant hereto, the TLC was and remains responsible for formulating, proposing, promulgating, and enforcing the rules and taking the actions challenged in this proceeding.

44. Respondent Meera Joshi is the Chair and Chief Executive Officer of the TLC. She is responsible for interpreting and enforcing the rules and taking the actions challenged herein.

### **FACTUAL ALLEGATIONS**

#### **A. Yellow Taxi Hail Exclusivity and the Onerous Restrictions that Accompany It**

45. There are two basic categories of vehicles that are available for hire in New York City: (i) yellow medallion taxis and (ii) non-medallion for-hire vehicles.

46. Yellow medallion taxis generally have the exclusive right to pick up hails in New York City. *See* N.Y.C. Admin. Code § 19-502(l) (defining a “taxi” as a “motor vehicle carrying passengers for hire in the city . . . and permitted to accept hails from passengers in the street”). Yellow taxis may pick up hails anywhere. Green cars (also known as “street-hail livery” vehicles, which were created in 2011 in order to service demand for street hails in the outer boroughs, and which are not required to have medallions) are prohibited from picking up hails in Manhattan south of East 96th Street or West 110th Street or at the airports but may pick up hails outside these excluded zones. N.Y. Tax L. § 1280(o) (defining “HAIL vehicle” as “a for-hire vehicle . . . authorized to accept hails from prospective passengers in the streets of the city, provided that such authorization shall prohibit the pick-up of passengers by street hail at airports and by street hail or pre-arranged call in Manhattan south of east ninety-sixth street and south of west one hundred tenth street . . .”); 35 RCNY § 82-13 (“A Street Hail Livery Licensee must

ensure that the Driver of the Street Hail Livery accepts passengers by hail from the street only in the Hail Zone.”); *id.* § 51-03 (“**Hail Zone** is the area in which Street Hail Liveries are permitted to accept passengers by hail in the street. The Hail Zone is all areas of New York City except: (1) Manhattan south of East 96th St. and West 110th St. (2) The New York City Airports.”).

47. The 2012 state law creating the green outer borough hail cars expressly confirms that “it shall remain the exclusive right of existing and future [yellow medallion] taxicabs licensed by the TLC as a [yellow medallion] taxicab to pick up passengers via street hail” in the excluded zones. Chapter 602, Laws of New York 2012, § 11 (amending Ch. 602 of Laws of New York 2011).

48. There are several subcategories of for-hire vehicles, including black cars, livery vehicles, and luxury limousines. *See* 35 RCNY §§ 59A-03(b), (j), (l); N.Y.C. Admin. Code § 19-502. This case focuses on black cars because nearly all of the cars that Uber operates in New York City are black cars; Uber operates no livery vehicles and relatively few luxury limousines.) Black cars are strictly prohibited from picking up hails anywhere in New York City, whether in the green car excluded zones or not. Black cars (like all for-hire vehicles, including livery vehicles and luxury limousines) may pick up passengers only by pre-arrangement. *See* Chapter 602, Laws of New York 2012, § 11 (amending Ch. 602 of Laws of New York 2011) (“No driver of any for-hire vehicle shall accept a passenger within the city of New York by means other than a pre-arrangement with a base station . . . .”); 35 RCNY § 55-19(a) (providing that black car drivers “must not solicit or pick up Passengers other than by prearrangement through a licensed Base”).

49. In exchange for the hail exclusivity to which yellow taxis are entitled under state and local law and the TLC’s rules, yellow taxis are subject to numerous burdensome restrictions

that do not apply to black cars. Most importantly, a yellow taxi must have a medallion – the metal plate issued by the TLC that must be affixed to the hood of a taxi and display its license number. Medallions are a transferrable commodity that until recently were worth over \$1 million each precisely because the hail exclusivity that accompanies them is so valuable. Because medallions are so expensive, most of them are financed, and the debt service – often thousands of dollars per month – typically is among the most significant expenses of a medallion owner.

50. Daily shift vehicles lease for between \$105.00 and \$129.00 per 12-hour shift, which includes both the vehicle and the lease. 35 RCNY § 58-21(c). For those drivers who lease so-called “driver-owned vehicles,” medallions lease for between \$952.00 and \$1,114.00 per week. 35 RCNY § 58-21(c).

51. In addition to the medallion requirement, taxis are subject to numerous other restrictions that do not apply to not apply to black cars. For example:

52. Yellow taxi drivers may charge passengers only the rates set by the TLC (35 RCNY § 58-26).

53. Medallion owners may lease yellow taxis to drivers only within the lease caps set by the TLC (35 RCNY § 58-21).

54. Yellow taxis must be one of the few vehicle models that are approved by the TLC (35 RCNY §§ 67-04 to 67-06).

55. Yellow taxis must be hacked up to comply with TLC requirements for a variety of features, including paint, finish, lighting, upholstery, seats, windows, air conditioner, and roof lights (35 RCNY §§ 67-06 to 67-17).

56. Yellow taxis must be equipped with taximeters, partitions, in-vehicle camera systems, credential holders, and “T-PEP” taxicab technology systems, all of which must comply with TLC specifications (35 RCNY §§ 67-09 to 67-15).

57. Yellow taxis must be retired from service after specified lengths of time as short as three years (35 RCNY § 67-18).

58. Yellow taxi drivers must have a Taxicab Driver’s License, which, among other prerequisites, requires completion of the 80-hour Authorized Taxicab Training course (35 RCNY § 54-04).

59. Yellow taxi drivers must collect and make available to the TLC through the T-PEP system detailed trip records, including locations, times, number of passengers, and method of payment (35 RCNY § 58-22).

60. Yellow taxi drivers must pay a Taxi Accessibility Fee as set by the TLC (35 RCNY § 58-16(f)).

61. Yellow taxi drivers must collect and provide to the TLC a Taxi Taxicab Improvement Surcharge of thirty cents per trip to subsidize taxicab accessibility (35 RCNY § 58-16(g)).

62. Yellow taxi drivers must collect an MTA Tax of fifty cents per tip, which is provided to the Metropolitan Transportation Authority to fund its operations (35 RCNY §§ 58-03(x), 58-26(a)(3)).

63. Recently promulgated regulations require that half of all yellow taxis must be accessible to people with disabilities (35 RCNY § 58-50).

64. In stark contrast, black cars are not subject to any of the above restrictions that apply to yellow taxis. For example:

65. Black cars may charge rates higher than those set by the TLC for yellow taxis and need only file a rate schedule with the TLC (35 RCNY § 59B-23).

66. Black cars are not subject to lease caps.

67. Black cars need not be a vehicle model that the TLC has approved.

68. Black cars need not be “hacked up” because they are not required to be equipped with taximeters, partitions, or technology systems (35 RCNY §§ 59A-31 to 33).

69. Black cars are not subject to mandatory retirement until they are a minimum of five years old, and many are not subject to mandatory retirement at all (35 RCNY § 59A-28(d)).

70. Black car drivers need only a For-Hire Driver’s License, which does not require completion of the 80-hour Authorized Taxicab Training course (35 RCNY § 55-04).

71. Black cars are not required to collect MTA taxes, Taxi Accessibility Fees, or Taxicab Improvement Surcharges (35 RCNY 58-50).<sup>1</sup>

72. Black cars need not be accessible to persons with disabilities.

73. There thus is a clearly delineated trade-off. The hail exclusivity to which yellow taxis are entitled is economically valuable. But the significant economic benefit of hail exclusivity comes with the significant cost of purchasing or leasing a medallion and the many other onerous restrictions that apply to yellow taxis but not to black cars. The extent to which operating a yellow taxi is preferable to operating a black car is reflected in the market price of a medallion.

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<sup>1</sup> Thus, every fare that a black car e-hail diverts from a yellow taxi reduces the MTA’s revenue by fifty cents and the accessibility fund by thirty cents.

**B. The City Generates Hundreds of Millions of Dollars In Revenue By Auctioning Medallions With the Promise of Hail Exclusivity**

74. The City has received hundreds of millions of dollars in revenue from selling taxi medallions in recent years. The City auctioned taxi medallions for the first time in 1996 and 1997, realizing approximately \$85 million in revenue from the sale of 400 medallions. Affirmation of Daniel Mullkoff, March 31, 2015 (“Mullkoff Aff.”), Ex. 1. Between 2006 and 2014, the City auctioned approximately 1,450 more medallions, generating an additional approximately \$824 million in revenue. *See* Mullkoff Aff., ¶ 38. On top of that nearly \$1 billion in revenue, the City reaps a five percent transfer tax on sales of medallions between private individuals. N.Y.C. Admin. Code §§ 11-1401 *et seq.* The City created this lucrative market and generated these very substantial revenues by selling the promise of hail exclusivity to those who purchased and/or repurchased medallions.

**C. The Rise of Uber’s Illegal E-Hailing Service**

75. Against this regulatory backdrop, companies like Uber recently began offering services that enable passengers to hail vehicles electronically by using a smartphone application. Smartphone e-hails have the potential to create significant efficiencies by connecting passengers to drivers directly and immediately.

76. The TLC was quick to recognize this potential. In late 2012, it created a pilot program through which yellow taxis and green cars were permitted to accept e-hails through smartphone apps subject to certain rules. Mullkoff Aff., Ex. 2. The TLC concluded that the pilot program was a success and, in January 2015, approved permanent e-hail rules that permit yellow taxis and green cars to pick up e-hails through TLC-regulated smartphone apps. *Id.*, Ex. 3.

77. Uber's service does the same thing but with black cars rather than taxis. Uber's users provide their credit card information in advance when they first download and install the app. When a user is ready to travel, the Uber app displays a map showing the user the precise locations of available cars and provides the approximate travel time of the closest available car to the user's location. If the user e-hails a car, the e-hail is immediately and automatically transmitted to the available cars in the vicinity. There is no dispatcher, and there is no time lag between the user's push of the button and the drivers' receipt of the e-hail. Uber's app does not enable a passenger to pre-arrange to be picked up at some point in the future. An Uber user is able to hail a car only for immediate pickup. *Id.*, Ex. 4 (Uber website stating that "Uber is always booked on-demand by making a request through the app" and that "[w]e automatically connect you with the closest driver to get you picked up as quickly as possible").

78. An e-hail is a hail, not a pre-arrangement. With an e-hail, as with a conventional street hail, a passenger looking for a cab signals to drivers who are in the area – whether through the wave of a hand or by pushing a button on a smartphone screen – that he or she wishes to be picked up immediately. In both situations, the passenger interacts directly with the driver, not with a dispatcher. In neither situation is the passenger pre-arranging to be picked up at some point in the future. Indeed, the primary reason why Uber is so attractive to passengers is that the wait time is *de minimis*. Uber boasts that the median wait time for a vehicle hailed through its app is just 2 minutes and 25 seconds in Manhattan and 3 minutes and 8 seconds in the other boroughs. *Id.*, Ex. 5.



79. Nearly all of Uber’s drivers drive black cars.<sup>2</sup> None of Uber’s black cars is subject to the medallion requirement, the fare and lease caps, or the numerous other onerous restrictions that apply to yellow taxis and green cars. Indeed, Uber’s black cars are free to charge passengers whatever they want. During peak demand times, Uber subjects passengers to “surge” pricing, charging them a multiple of its standard rates. *See id.*, Ex. 10. And Uber is not required to pay either the MTA tax or the accessibility surcharge – each of which increases yellow taxi fares.

80. When Uber first entered the New York City market it took the strained position that it was not subject to the TLC’s jurisdiction and was not required to comply with any of the TLC’s base station or other licensing requirements, asserting that it supposedly was a mere technology company that provided no actual transportation services. *See id.*, Ex. 11. Uber eventually relented – accepting that its cars, drivers, and passengers do not travel in a virtual world but rather in a physical world of real streets, populated by real vehicles and real people – and associated its service with six licensed base stations through which its cars operate. *See id.*, Exs. 6, 8. But even if e-hails were pre-arrangements rather than hails, Uber’s service still violates the TLC’s black car base station rules in several ways.

81. First, Uber connects passengers and drivers through a computer system that is independent of the licensed black car base stations through which it operates in New York City. Uber therefore violates the rules that require New York City black cars to be dispatched “through” and “from” the “physical location” of their base station. 35 RCNY § 55-03(h)

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<sup>2</sup> Uber’s “UberT” service, which permits e-hailing of medallion taxis, is a very small part of its New York City business and is not at issue here. Uber operates a small number of luxury limousines and no livery vehicles. *See Mullkoff Aff.*, Exs. 6, 7 (noting that Weiter LLC, Hinter LLC, Schmecken LLC, Danach-NY LLC, and Unter LLC are black car bases owned by Uber); Exs. 8, 9 (noting that Grun LLC is a luxury limousine base owned by Uber).

(providing, for all for-hire vehicles, that a black car’s base station “is the Commission-licensed business for dispatching For-Hire Vehicles and the physical location from which For-Hire Vehicles are dispatched”); *id.* § 59A-03(e) (same); *id.* § 59B-03(f) (same); *id.* § 59A-03(c) (providing that a black car base station must be the “central dispatch facility”; *id.* § 59B-03(c)(same); *id.* § 55-19(a) (proving that black car pre-arrangements must be made “through a licensed Base”); *id.* § 59A-11(e)(3) (emphasizing with *italics* that a black car must be “dispatched *from* its affiliated Base”) (emphasis in original); *id.* § 59B-15(a) (providing that a black car base station “must maintain a principal place of business in a commercially zoned area, from which affiliated Vehicles and Drivers can be dispatched”); *id.* § 59B-15(d) (providing that “no For-Hire Vehicle can be dispatched from any location other than the location specified in the Base License”).

82. Second, Uber violates the TLC’s rules requiring that all black cars must be owned either by a franchisee or by a member of a cooperative that operates the base station. *Id.* §§ 55-03(d)(2), 59A-03(c)(2), 59B-03(c)(2), 59B-08(b). Uber’s drivers are neither franchisees nor cooperative members.

83. Uber’s drivers also rate their passengers, and a passenger’s rating is visible to a driver before the driver accepts the passenger’s e-hail. *Mullkoff Aff.*, Exs. 12, 13. This rating system invites drivers to violate 35 RCNY § 55-20, which prohibits black car drivers from refusing to pick up passengers except under narrowly prescribed circumstances

84. Uber’s User Terms and Conditions emphasize that Uber is “a technology platform” that “does not provide transportation” services “or function as a transportation carrier.” *Mullkoff Aff.*, Ex. 14. “Uber has no responsibility or liability” to passengers “relating to any transportation” provided by its black car drivers. *Id.* Uber’s passengers are required to

acknowledge and agree that they “may be exposed to situations involving” black car drivers “that are potentially unsafe, offensive, harmful to minors, or otherwise objectionable,” and that passengers use Uber’s e-hail app at their “own risk and judgment.” *Id.* Uber “shall not have any liability arising from or in any way related to” any injuries that a passenger may sustain. *Id.*

85. In the short period since it entered the New York City market, Uber has expanded rapidly. Although Uber has strenuously resisted disclosing its data to the TLC as the TLC’s regulations require of all black car companies, 35 RCNY § 59B-19(a), the three months of trip data that Uber recently (and belatedly) disclosed demonstrate that its number of rides per day rose by a third – from 25,681 to 34,271 – in just 90 days. Mullkoff Aff., Ex. 15. (According to that same data, the smartphone hailing app Lyft provided an average of 3,866 rides per day in September 2014, which was just its second full month operating in New York City. *Id.*) Uber CEO Travis Kalanick asserted in January 2015 that the number of Uber rides in New York City is quadrupling each year. *See id.*, Ex. 16. Uber reported in January 2015 that there were approximately 16,000 drivers in New York City actively accepting hails through the Uber app, *id.*, Ex. 17 at 15, and Uber plans to add 10,000 additional drivers in 2015. *Id.*, Ex. 18. There are now approximately 14,088 for-hire vehicles affiliated with Uber bases in the city – more than the 13,587 taxi medallions in circulation. *Id.*, Ex. 19.

86. Since Uber began operating in New York City, it has repeatedly violated the TLC’s regulations. For example, when Uber first entered the New York City market, it took the strained position that it was not subject to the TLC’s jurisdiction and did not need to operate through licensed drivers or through licensed base stations. *See id.*, Ex. 11. After it reluctantly agreed to operate through licensed drivers and licensed base stations, Uber then refused to release its trip data to the TLC, complying only after the TLC suspended five of Uber’s six New

York City bases and Uber’s appeal of that decision was rejected. *Id.*, Ex. 20. A TLC spokesperson stated that Uber was denied a license for an additional base in New York City because “they are unfit to hold an additional license based on [a] history of non-compliance with respect to other base licenses they hold.” *Id.*, Ex. 21.<sup>3</sup>

**D. The City Arbitrarily Exempts Black Cars From Its Regulation of E-Hails**

87. In 2013, the TLC began a pilot program through which yellow taxis and green cars were permitted, on a temporary and experimental basis, to use e-hail apps to pick up passengers. On or about January 29, 2015, the TLC declared the pilot program a success and promulgated a set of rules that govern e-hails on a permanent basis. Mullkoff Aff., Ex. 3.

88. The new rules sensibly provide that an e-hail is a hail. TLC Rule 51-03 defines an “E-Hail” as “a Hail made through an E-Hail application.” 35 RCNY § 51-03. A “Hail” is in turn defined as any “request, either through 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 though an electronic method such as an E-Hail App*” (emphasis added). Thus, the new rules treat a conventional hail and an e-hail the same way. Whether one hails a cab by waving, yelling, whistling, or pressing a button on a smartphone screen is immaterial.

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<sup>3</sup> Uber’s non-compliance with the TLC’s regulatory scheme is consistent with allegations that the company has disregarded government regulation in numerous other cities in which it operates. *See, e.g.*, Mullkoff Aff., Ex. 22 (“Uber has a reputation for ignoring government regulations, choosing instead to deal with legal issues after its services have become established in an area. In the past it’s received cease-and-desist letters from Boston, LA and Pittsburgh, among others.”), Ex. 23 (describing lawsuits brought against Uber by cities of Los Angeles, San Francisco, and Portland). A Wall Street Journal article quoted Uber CEO Travis Kalanick describing Uber’s dismissive attitude toward a cease-and-desist letter served on the company by the San Francisco Municipal Transportation Agency: “The thing is, a cease and desist is something that says, ‘Hey, I think you should stop,’ and we’re saying, ‘We don’t think we should.’ The only way to deal with that is to be taken to court, and we never went to court.” *Id.*, Ex. 24.

89. Further demonstrating its agreement that an e-hail is a hail, the TLC issued a rule confirming that green cars, which are not permitted to accept street hails south of East 96th Street or West 110th Street in Manhattan or at the airports, likewise may not accept e-hails in those excluded zones. *See* 35 RCNY § 54-11(f) (confirming that green cars may “accept passengers by hail from the street *or by E-Hail App* only in the Hail Zone”) (emphasis added).

90. Without any explanation, however, the TLC arbitrarily defined “Hail” to exclude all non-medallion black cars. The definition of “Hail” includes e-hails, but *only* those e-hails requesting on-demand “Taxicab or Street Hail Livery service at the metered rate of fare” (“Taxicab” being a defined term meaning yellow taxi, and “Street Hail Livery” service being a defined term meaning green car). For some unknown reason – the TLC did not explain its reasoning – the TLC chose to exempt all black cars from its rules subjecting e-hails to all of the restrictions that apply to conventional hails.

91. Use of an e-hail software application does not change the nature of the business to which the app applies. Use of an app merely provides an alternative means of dispatch and payment.

92. The TLC engaged in no environmental impact review before exempting black cars from its e-hail rules, notwithstanding the massive increase in the number of for-hire vehicles cruising the City’s streets for hails.

**E. The Economic Harm to Medallion Owners**

93. Uber’s explosive growth and brazen encroachment upon the hail exclusivity that belongs to medallion owners have caused Petitioners to suffer very significant economic harm, both to the value of their medallions and to their incomes.

94. Petitioners have suffered substantial economic harm as a result of black cars, especially Uber cars, accepting e-hails. *See supra*, ¶¶ 13-41.

95. The average price of a medallion rose steadily for decades until the spring of 2013, when it reached a peak of \$1,320,000 for corporate medallions and \$1,045,000 for individual medallions. Mullkoff Aff., Ex. 25. The average price of a medallion has dropped at least 25% since then, and it continues to fall. *Id.*, Ex. 26.

96. During the same period, yellow taxis have faced steadily declining passenger numbers and revenues. According to data maintained by the TLC, the average number of yellow taxi trips per day decreased by approximately 8% between 2012 and 2014, and by approximately 5.3% just between 2013 and 2014. *Id.*, Ex. 27. Total yellow taxi fares have dropped sharply as well, by approximately \$80 million from 2013 to 2014. *Id.*, Ex. 28. Petitioners have suffered specific decreases in their revenues. *See supra*, ¶¶ 15, 18, 22, 25, 28-30, 33-36, 39-41.

97. Lenders are beginning to foreclose on medallion owners who no longer can service the loans they took out to buy the medallions from the City. *See, e.g.*, Mullkoff Aff., Ex. 29 (showing that Citibank is now foreclosing on at least 90 medallions owned by one individual). Medallion owners such as Petitioner Micdee have likewise seen their monthly loan payments increase dramatically. *See supra* ¶ 19.

98. Petitioners also face an acute shortage of drivers because thousands of yellow taxi drivers have left, opting instead to drive for Uber. Over ten percent of the 50,000 taxi drivers citywide already have done so. Mullkoff Aff., Ex. 30.<sup>4</sup> This driver shortage has caused

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<sup>4</sup> Numerous Uber drivers have alleged that Uber has lured drivers to the company by making false representations about average earnings and other employment conditions. *See, e.g.*, *id.*, Ex. 31 (describing disparity between Uber's representations about driver income and actual incomes); Ex. 32 (describing multiple class-action lawsuits brought by drivers against Uber).

Petitioners SLSJET and Winners Garage to face a significant number of lost shifts, in which the medallions they operate are not leased. *See supra*, ¶¶ 34, 41. The driver shortage has likewise forced several of the petitioners to reduce their lease rates in order to retain drivers. *See supra*, ¶¶ 29, 35, 39.

**F. The TLC’s Decision to Allow Black Cars to Accept E-Hails Is Unlawful**

99. There is no rational explanation for the TLC’s decision to bestow a wholesale exemption upon black cars from its rules otherwise providing that e-hails are treated the same way as conventional hails. The availability of e-hailing apps does not change the basic nature of the taxi business. E-hailing apps are convenient mechanisms for vehicle dispatch and fare payment, nothing more. Companies like Uber cannot be permitted to use e-hail apps as a basis for ignoring the clear rules that establish what the various categories of vehicles are permitted to do and which are supposed to apply neutrally to all of the industry’s players.

100. The TLC understands that an e-hail is a hail, not a pre-arrangement. A pre-arrangement is a request for service at some point in the *future*. Although reasonable people might disagree about exactly how far into the future a passenger must be booking a trip for it to constitute a pre-arrangement as opposed to a hail, surely an electronic request for *immediate* pickup – made directly and automatically by a passenger to a driver without a dispatcher – is not a pre-arrangement. Because this conclusion is inescapable, the TLC confirmed through its new rules that an e-hail generally must be treated the same way as a conventional hail, regardless of whether it is made by “calling out, yelling or whistling,” by “raising one’s hand or arm,” or “though an electronic method such as an E-Hail App.” 35 RCNY § 51-03.

101. The TLC’s rules governing black car base stations further confirm that an e-hail is not a pre-arrangement. Black car drivers must be affiliated with a licensed black car base station.

35 RCNY § 59A-11(e). The rules require that, for all pre-arranged black car trips, the car must be dispatched “through” and “*from*” the “physical location” of its base station. 35 RCNY § 55-03(h) (providing, for all for-hire vehicles, that a black car’s base station “is the Commission-licensed business for dispatching For-Hire Vehicles and the physical location from which For-Hire Vehicles are dispatched”); *id.* § 59A-03(e) (same); *id.* § 59B-03(f) (same); *id.* § 59A-03(c) (providing that a black car base station must be the “central dispatch facility”; *id.* § 59B-03(c)(same); *id.* § 55-19(a) (providing that black car pre-arrangements must be made “through a licensed Base”); *id.* § 59B-15(a) (providing that a black car base station “must maintain a principal place of business in a commercially zoned area, from which affiliated Vehicles and Drivers can be dispatched”); *id.* § 59B-15(d) (providing that “no For-Hire Vehicle can be dispatched from any location other than the location specified in the Base License”). Lest there be any doubt about whether these regulations mean what their plain language says, the TLC italicized the word “*from*” in requiring that black cars be “dispatched *from* its affiliated Base” in § 59A-11(e)(3).

102. By contrast, Uber’s e-hail app connects the passenger and driver directly and automatically. *See Mullkoff Aff.*, Ex. 4. The base station plays no role in the e-hail process. Because an e-hail is not dispatched through the base station, and because it is not dispatched from the physical location of the base station, an e-hail is not a pre-arrangement.

103. Not only do the TLC’s pre-existing base station rules confirm that an e-hail is not a pre-arrangement, and not only did the TLC recognize in its new rules that an e-hail is a hail, but the TLC expressly confirmed that, because an e-hail is a hail, green cars cannot accept e-hails in the excluded zones in which they are prohibited from accepting conventional hails. 35 RCNY § 54-11(f) (confirming that green cars may “accept passengers by hail from the street or by



E-Hail App only in the Hail Zone”). The TLC plainly understands that it would untenably undermine the hail exclusivity to which yellow taxis are entitled in the excluded zones if green cars were permitted to pick up e-hails where they are prohibited from picking up conventional hails. The same logic applies to e-hails of black cars.

104. Yet the TLC inexplicably chose not to protect yellow taxi hail exclusivity from black car e-hailing. That makes no sense. If an e-hail is a hail – which it plainly is, as the TLC’s own rules reflect – then there is no rational reason to allow black cars, which are not allowed to pick up hails anywhere, to pick up e-hails everywhere. Nor has the TLC offered any reason for the gaping exemption to the new e-hailing rules that it bestowed upon the black car industry. Without comment or explanation, the TLC arbitrarily defined “Hail” to exclude all non-medallion black cars. The definition of “Hail” includes e-hails, but *only* those e-hails requesting “Taxicab or Street Hail Livery service at the metered rate of fare” (“Taxicab” being a defined term meaning yellow taxi, and “Street Hail Livery” service being a defined term meaning green car). That makes as much sense as defining “speeding” to include the act of exceeding the applicable speed limit in yellow taxis but not black cars. It falls well short of the reasoned decision-making that the law demands of administrative agencies.

105. There is no rational basis for prohibiting green cars from picking up e-hails where they may not pick up street hails, while giving black cars free reign to pick up e-hails even where they may not pick up street hails. In both cases, an e-hail is a hail, and in both cases, yellow taxis have been given hail exclusivity in exchange for the hundreds of millions of dollars that the City induced medallion owners to pay for their medallions. The fact that the City generated nearly \$1 billion in revenue by selling hail exclusivity to yellow taxi medallion owners makes the TLC’s failure to enforce state and local law and its own rules all the more egregious.

106. The TLC’s decision to exempt black cars from its decision that an e-hail is a hail is arbitrary and capricious and an error of law. State and local law make clear that the TLC has no discretion to allow non-medallion black cars to pick up hails with impunity. Chapter 602, Laws of New York 2012, § 11 (amending Ch. 602, Laws of New York 2011) (2012 state law creating green cars, which reaffirmed that “it shall remain the exclusive right of existing and future [yellow medallion] taxicabs licensed by the TLC as a [yellow medallion] taxicab to pick up passengers via street hail” in the excluded zones); N.Y.C. Admin. Code § 19-507(a)(4) (entitled “Mandatory penalties” and requiring that the TLC “*shall* fine any driver, or suspend or revoke the driver’s license of any driver” of a non-medallion black car who picks up a passenger other than by “prearrangement”). The TLC should be directed to enforce its e-hail rules against black cars.

**G. The TLC’s Decision to Exempt Black Car E-Hail Meter Systems From Its Specification and Inspection Rules Is Unlawful**

107. The TLC regulates the manner in which yellow medallion taxi meters calculate fares based on distance and time.

108. Yellow taxi meters must comply with Handbook 44 of the United States Department of Commerce National Institute of Standards and Technology, which sets forth specifications, tolerances, and other technical requirements for weighing and measuring devices. 35 RCNY § 58-26(a)(1)(iv).

109. All taxi meters must be tested by authorized TLC inspectors upon installation and again on an annual basis. *Id.* § 58-39(e).

110. The TLC imposes these stringent specification and testing and requirements because it recognizes that it is of paramount importance to ensure that passengers are being charged appropriate fares based on the actual distance travelled.

111. Because the TLC understands that e-hail apps that are not subject to the rigorous requirements of Handbook 44 and that have not been tested may not be reliable, the TLC's new e-hail rules specifically prohibit the use of e-hail apps to compute distance traveled. Only an approved and regularly inspected taxi meter may be used to compute distance. 35 RCNY §§ 54-17(m)(2), 58-26(j)(2), 78-21(b)(2), 82-26(j)(2).

112. Without explanation, however, the TLC has exempted Uber's black cars from this important requirement, allowing Uber's unregulated and uninspected e-hail app – which apparently relies on rudimentary, imprecise GPS data – to compute the distance traveled for each trip.

113. That is arbitrary and capricious. The TLC cannot credibly contend that there is any sound reason for strictly prohibiting yellow taxis from using e-hail apps to compute distance but nonetheless giving black cars free reign to do so.

#### **H. The TLC's Decision to Allow Black Cars to Violate Its Base Station Rules Is Unlawful**

114. Even assuming for the sake of argument that an e-hail is a pre-arrangement rather than a hail – though it is not – e-hail apps such as Uber's nonetheless violate the TLC's longstanding rules for black-car bases. As discussed in the previous section, in order for a trip to be a valid pre-arrangement such that a black car is allowed to pick up a passenger, the car must be dispatched “through” the base station and “from” the “physical location” of the base station. *See supra* at ¶¶ 81, 101 (citing 35 RCNY §§ 55-03(h), 59A-03(e), 59B-03(f), 59A-03(c),

59B-03(c), 55-19(a), 59A-11(e)(3) (emphasis in original), 59B-15(a), and 59B-15(d)). But Uber's e-hail app connects the passenger and driver directly and automatically. The base station plays no role in the e-hail process. Because an e-hail is not dispatched "through" the base station, and because it is not dispatched "from" the "physical location" of the base station, Uber's e-hails violate the TLC's longstanding rules for black-car bases.

115. The mandatory language in the numerous regulations cited above confirms that the TLC has no discretion to allow Uber to ignore the TLC's black car base station dispatch requirements with impunity. The TLC should be directed to enforce its base station dispatch rules against Uber.

116. Uber also violates the TLC's rules requiring that all black cars must be owned either by a franchisee or by a member of a cooperative that operates the base station. *Id.* §§ 55-03(d)(2), 59A-03(c)(2), 59B-03(c)(2), 59B-08(b). Uber's drivers are neither franchisees nor cooperative members.

117. Just as there are significant trade-offs between owning yellow medallion taxis versus non-medallion for-hire vehicles, so too are there significant trade-offs between owning black cars versus livery vehicles or other categories of non-medallion for-hire vehicles. For example, livery vehicle base stations must maintain a parking space for every two cars with which it is associated. RCNY §§ 59B-15(j)(2), 59B-05(b), 59B-21(e). Uber does not wish to operate livery vehicles through livery base stations because it does not wish to shoulder the cost of maintaining some 8,000 parking spaces for its nearly 16,000 cars. So Uber operates black cars through black car base stations, which are not subject to this parking space requirement. But Uber must not be permitted to have its cake and eat it too. Uber cannot both operate black cars through black car base stations, thereby avoiding the parking space requirement that applies to

livery vehicles, and also ignore the franchise and/or cooperative ownership requirements that apply to black car divers and black car base stations.

118. The TLC has repeatedly emphasized the importance of strictly enforcing the restrictions that constrain the manner in which black car and livery vehicles may operate. The TLC specifically prohibits the “cross-class dispatching” of for-hire vehicles (for example, livery bases dispatching black cars or vice versa) because “cross-class dispatching erodes the distinction between Livery service and Black Car service.” Mullkoff Aff., Ex. 33. As the TLC has explained:

To reflect the fact that Livery bases serve their surrounding communities, the Administrative Code sets extensive requirements for bases that can dispatch Livery vehicles, and Black Car bases do not meet these requirements. For example, the Administrative Code requires bases that dispatch Livery vehicles to maintain off-street parking and affiliate a minimum number of vehicles. These requirements were meant to ensure that a Livery base serving a community had enough vehicles to provide the needed service and enough parking available for these vehicles as not to encumber the community’s ability to find street parking of its own. Black Car bases do not meet these requirements and allowing them to dispatch Livery vehicles subverts the intent of the Administrative Code.

*Id.* Directly tying this concern to the increasing prevalence of e-hail technology, the TLC explained more recently that “[t]he purpose of the cross-class dispatch prohibition is to preserve important vehicle class distinctions” required by statute “*that were becoming blurred by the spread of smartphone applications.*” *Id.*, Ex. 34 (emphasis supplied). The TLC thus recognizes that companies like Uber may not pick and choose which of the various black car and livery vehicle base station requirements they wish to heed and which requirements they wish to ignore. Uber either operates black car base stations or livery vehicle base stations, and the TLC has no discretion to turn a blind eye to Uber’s systemic violation of the important requirements that apply to each base station type.

119. Uber’s drivers also rate their passengers, and a passenger’s rating is visible to a driver before the driver accepts the passenger’s e-hail. Mullkoff Aff., Ex. 12, 13. This rating system invites drivers to violate 35 RCNY § 55-20, which prohibits black car drivers from refusing to pick up passengers except under narrowly prescribed circumstances.

120. It is notable that Uber’s black car base stations are by far the largest base stations in the City. The largest base station that is not affiliated with Uber has 390 vehicles associated with it, whereas Uber’s base stations have between 1,278 and 4,798 vehicles associated with them for a total of approximately 13,408 affiliated vehicles – approximately 61% of the total black cars. Mullkoff Aff., Ex. 7. The TLC is not just unlawfully allowing Uber to violate its base station rules with impunity. It is allowing Uber to do so on an enormous and unprecedented scale.

**I. The TLC’s Decision to Allow Black Cars to Accept E-Hails Violates SEQRA and CEQR**

121. In enacting SEQRA, the Legislature expressly declared that its intent was to ensure that “the protection and enhancement of the environment, human and community resources shall be given appropriate weight with social and economic considerations in public policy.” N.Y. Env’tl. Conserv. Law (“ECL”) § 8-0103(7); 6 NYCRR § 617.1.

122. Toward that goal, SEQRA requires that an administrative agency must prepare an environmental impact statement (“EIS”) with respect to any agency action that may have “a significant effect on the environment.” ECL § 8-0109(2); 6 NYCRR § 617.3. An agency action is unlawful unless the agency either complies with the EIS requirement or issues a “negative declaration” finding that the action will not have a significant effect on the environment. 6 NYCRR § 617.3(b), (c). The agency must “make an initial determination whether an

environmental impact statement need be prepared” for the action “[a]s early as possible.” ECL § 8-0109(4); 6 NYCRR § 617.6(a)(1).

123. CEQR’s requirements are virtually identical to those of SEQRA.

124. The TLC has repeatedly acknowledged that the issuance of any new yellow taxi medallions triggers SEQRA’s EIS requirement because adding more taxis to the streets plainly increases traffic and pollution and otherwise significantly affects the environment. *See, e.g.,* Mullkoff Decl., Ex. 1 at 27-28 (discussing EISs conducted in 1989 and 2004 regarding additions of new medallions); Ex. 35 (Notice of Completion of EIS in 2013 regarding addition of accessible medallions).

125. Given that SEQRA’s EIS requirement is triggered by the issuance of any new yellow taxi medallions, surely it is triggered by the TLC’s decision to allow 14,000 Uber black cars to cruise the City’s streets and pick up e-hails – *more than the total number of yellow taxi medallions in circulation. Id., Ex. 19.*

126. The six black car base stations that Uber has rolled out already dwarf the size of the next largest base station – Uber currently operates 61% of the black cars in New York City – and Uber recently reported that it plans to add 10,000 additional black car drivers in New York City in 2015. *Id., Ex. 7, 18.*

127. Notwithstanding the massive expansion of the number of for-hire vehicles on the City’s streets that the TLC has permitted by exempting black cars from its e-hail rules, the TLC did not engage in the “hard look” that SEQRA and CEQR require. Instead, the TLC gave no

consideration whatsoever to the environmental consequences of allowing black cars to accept e-hails.<sup>5</sup>

**J. The TLC Has Taken Petitioners' Property Without Just Compensation**

128. The TLC's decision to allow black cars to pick up e-hails also violates the Takings Clauses of the Federal and State Constitutions because it deprives Petitioners of their property without just compensation.

129. The Takings Clause of the Fifth Amendment provides that "private property" shall not "be taken for public use, without just compensation."

130. Article I, § 7 of the New York Constitution likewise provides that: "Private property shall not be taken for public use without just compensation."

131. The manner in which the TLC has regulated Uber has very significantly interfered with – and eventually will totally destroy – the reasonable investment-backed expectations of those to whom it sold medallions. The City cannot credibly deny that Petitioners invested in their medallions based on the reasonable expectation that the City would continue to enforce the hail exclusivity that creates the medallions' economic value. Indeed, the City quite literally created the market for yellow taxi medallions – purposefully, in order to raise revenue – by designing a system through which medallions would be auctioned off (generating revenue) and then resold again and again in an active commodity market (with the City taking another 5% cut of every resale). The City allowed and encouraged the lending industry (including financial institutions such as Capital One, Signature Bank, Citibank, a variety of credit unions such as at

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<sup>5</sup> CEQR likewise requires agencies to study the potential impact on socioeconomic conditions such as local industries. *See* Mullkoff Decl., Ex. 36 (2014 CEQR Technical Manual, Ch. 5, "Socioeconomic Conditions"). Accordingly, the TLC's 2014 EIS analyzed the potential impact of the sale of new medallions on the "Value of a Yellow Taxicab Medallion" and "Taxicab Driver Income." *Id.*, Ex. 35 at 4-7.



Melrose Credit Union, Progressive Credit Union and League of Mutual Taxi Owners, and publicly traded companies such as Medallion Financial Group) to invest over \$2 billion financing these purchases and repurchases, providing the liquidity necessary to support this market. Taxi medallions are a transferrable commodity that until recently were worth over \$1 million each (about \$17 billion in the aggregate) precisely because the hail exclusivity that the City created and sold is so valuable. Taxi medallions are not mere revocable licenses that the City is free to extinguish on a whim. Medallions literally are tangible property – they are metal discs that must be affixed to the taxis’ hoods – that afford their owners the basic protections that the federal and state Constitutions afford to property owners.

132. By allowing non-medallion black cars to pick up e-hails, the City has upset the investment-backed expectations of the entire medallion taxi industry, including both the owners who invested and the lenders who provided the financing on the reasonable belief that black cars would not be permitted to pick up hails.

133. The character of the City’s conduct, moreover, strongly supports the conclusion that it acted unconstitutionally. The City purposefully enriched itself, raising nearly \$1 billion for its coffers, by creating a marketplace and selling medallion owners the exclusive right to pick up hails. The City invented, facilitated, cultivated, and encouraged the marketplace. Having profited so handsomely from creating and hawking hail exclusivity, the City cannot eviscerate that exclusivity by permitting black cars to pick up with impunity hails that have not been pre-arranged. The character of the City’s conduct is critical because the typical Takings Clause case does not involve a scenario in which the government itself has directly profited from creating the entitlement it is accused of taking without just compensation. The City’s conduct violates basic notions of fair play.

134. The City created property rights by selling medallion owners the exclusive right to pick up hails. The City may not interfere with the reasonable investment-backed expectations that it created by fundamentally changing the rules after it already has pocketed hundreds of millions of dollars. The TLC's unexplained decision to exempt black cars from its new e-hail regulations has had a severe negative impact on Petitioners. The Federal and State Constitutions entitle them to just compensation.

**FIRST CAUSE OF ACTION**  
**(Article 78 – Declaratory and Injunctive Relief)**

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

136. The TLC may not promulgate rules that are “affected by an error of law” or that are “arbitrary and capricious.” CPLR § 7803(3).

137. The TLC may not fail to perform a duty enjoined upon it by law. CPLR § 7803(1).

138. The TLC's decision to allow black cars to accept e-hails is arbitrary and capricious, an error of law, and a failure to perform a mandatory duty.

139. The TLC's decision to exempt black car e-hail meter systems from its specifications and inspection rules is arbitrary and capricious, an error of law, and a failure to perform a mandatory duty.

140. The TLC's decision to allow Uber to violate the TLC's base station dispatch rules is arbitrary and capricious, an error of law, and a failure to perform a mandatory duty.

141. The TLC's decision to allow Uber to violate the TLC's base station franchise/cooperative rules is arbitrary and capricious, an error of law, and a failure to perform a mandatory duty.

142. Petitioners have been and will continue to be harmed by the TLC's actions and omissions unless they are annulled, enjoined, and/or declared invalid.

143. The TLC should be ordered to enforce its e-hail rules against black cars.

144. The TLC should be ordered to enforce its base station dispatch rules against Uber.

145. The TLC should be ordered to enforce its base station franchise/cooperative rules against Uber.

**SECOND CAUSE OF ACTION**  
**(Violation of NYC Charter § 2303(b)(4) – Declaratory and Injunctive Relief)**

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

147. The TLC's decision to allow black cars to pick up e-hails also violates the New York City Charter, which provides that "Additional taxicab licenses may be issued from time to time only upon the enactment of a local law providing therefor." NYC Charter § 2303(b)(4).

148. By permitting black cars to accept e-hails anywhere in the city, the TLC has effectively expanded the number of medallions in circulation without legislative authorization.

149. Petitioners have been and will continue to be harmed by the TLC's failure to enforce its e-hail rules against black cars.

150. The TLC should be ordered to enforce its e-hail rules against black cars.

**THIRD CAUSE OF ACTION**  
**(Violation of SEQRA and CEQR – Declaratory and Injunctive Relief)**

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

152. SEQRA, which is codified at N.Y. Env'tl. Conserv. Law § 8-0101 *et seq.*, requires that an administrative agency must prepare an environmental impact statement with respect to any agency action that may have a significant effect on the environment.

153. CEQR, which is codified at 43 RCNY § 6-01 *et seq.*, similarly requires that an administrative agency must prepare an environmental impact statement with respect to any agency action that may have a significant effect on the environment.

154. The TLC's decision to allow thousands of black cars to cruise the City's streets and pick up e-hails has had and will continue to have a significant effect on the environment.

155. The TLC failed to prepare the required environmental impact statement with respect to its decision to allow black cars to pick up e-hails.

156. The TLC failed to issue a negative declaration with respect to its decision to allow black cars to pick up e-hails.

157. The TLC's decision to allow black cars to pick up e-hails therefore violates SEQRA and CEQR.

158. The Court should declare that the TLC's decision to allow black cars to pick up e-hails therefore violates SEQRA and CEQR and direct the TLC to prohibit black cars from picking up e-hails.

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

#### **(42 U.S.C. § 1983 – Declaratory Relief, Injunctive Relief, and Damages – Takings Clause)**

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

160. The Takings Clause of the Fifth Amendment to the United States Constitution provides that “private property” shall not “be taken for public use, without just compensation.”

161. The Takings Clause applies to not only the paradigmatic physical taking but also to regulatory interferences, which transpire when some significant restriction is placed upon an owner’s property for which fairness and justice require that compensation be given.

162. The manner in which the TLC has regulated Uber has very significantly interfered with – and eventually will totally destroy – the reasonable investment-backed expectations of those to whom it sold medallions.

163. The City cannot credibly deny that Petitioners invested in their medallions based on the reasonable expectation that the City would continue to enforce the hail exclusivity that creates the medallions’ economic value. Indeed, the City quite literally created the market for yellow taxi medallions – purposefully, in order to raise revenue – by designing a system through which medallions would be auctioned off (generating revenue) and then resold again and again in an active commodity market (with the City taking another 5% cut of every resale).

164. The City allowed and encouraged the lending industry (including financial institutions such as Capital One, Signature Bank, Citibank, a variety of credit unions such as at Melrose Credit Union, Progressive Credit Union and League of Mutual Taxi Owners, and publicly traded companies such as Medallion Financial Group) to invest nearly \$1 billion

financing these purchases and repurchases, providing the liquidity necessary to support this market.

165. Taxi medallions are a transferrable commodity that until recently were worth over \$1 million each (about \$17 billion in the aggregate) precisely because the hail exclusivity that the City created and sold is so valuable. Taxi medallions are not mere revocable licenses that the City is free to extinguish on a whim. Medallions literally are tangible property – they are metal discs that must be affixed to the taxis’ hoods – that afford their owners the basic protections that the federal and state Constitutions afford to property owners.

166. By allowing non-medallion black cars to pick up e-hails, the City has upset the investment-backed expectations of the entire medallion taxi industry, including both the owners who invested and the lenders who provided the financing on the reasonable belief that black cars would not be permitted to pick up hails.

167. The character of the City’s conduct, moreover, strongly supports the conclusion that it acted unconstitutionally.

168. The City purposefully enriched itself, raising nearly \$1 billion for its coffers, by creating a marketplace and selling medallion owners the exclusive right to pick up hails. Having profited so handsomely from creating and hawking hail exclusivity, the City cannot eviscerate that exclusivity by permitting black cars to pick up with impunity hails that have not been pre-arranged. The character of the City’s conduct is critical because the typical Takings Clause case does not involve a scenario in which the government itself has directly profited from creating the entitlement it is accused of taking without just compensation.

169. The City’s conduct violates basic notions of fair play.

170. The City’s decision to allow black cars to pick up e-hails constitutes an unconstitutional taking of Petitioners’ property without just compensation.

171. As a direct and proximate result of the foregoing, Petitioners have been damaged in an amount to be determined at trial.

**FIFTH CAUSE OF ACTION**  
**(New York Constitution Article I, § 7**  
**Declaratory Relief, Injunctive Relief, and Damages – Takings Clause)**

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

173. Article I, § 7 of the New York Constitution likewise provides that: “Private property shall not be taken for public use without just compensation.”

174. For all of the foregoing reasons, the City’s decision to allow black cars to pick up e-hails constitutes an unconstitutional taking of Petitioners’ property without just compensation.

175. As a direct and proximate result of the foregoing, Petitioners have been damaged in an amount to be determined at trial.

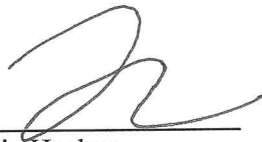
WHEREFORE, Petitioners respectfully request that judgment be entered against Respondents as follows:

- a. Declaring that the TLC’s decision to allow black cars to accept e-hails is arbitrary and capricious, an error of law, and a failure to perform a mandatory duty.
- b. Declaring that the TLC’s decision to exempt black car e-hail meter systems from its specifications and inspection rules is arbitrary and capricious, an error of law, and a failure to perform a mandatory duty.
- c. Declaring that the TLC’s decision to allow Uber to violate the TLC’s base station dispatch rules is arbitrary and capricious, an error of law, and a failure to perform a mandatory duty.

- d. Declaring that the TLC's decision to allow Uber to violate the TLC's base station franchise/cooperative rules is arbitrary and capricious, an error of law, and a failure to perform a mandatory duty.
- e. Declaring that the TLC's decision to allow black cars to pick up e-hails violates § 2303(b)(4) of the New York City Charter.
- f. Ordering the TLC to enforce its e-hail rules against black cars.
- g. Ordering the TLC to enforce its meter systems specifications and inspection rules against black cars.
- h. Ordering the TLC to enforce its base station dispatch rules against Uber.
- i. Ordering the TLC to enforce its base station franchise/cooperative rules against Uber.
- j. Declaring that the TLC's new e-hail rules are unlawful and that yellow medallion taxis are allowed to pick up e-hails on the same terms as black cars;
- k. Declaring that the City's decision to allow black cars to pick up e-hails constitutes an unconstitutional taking of Petitioners' property without just compensation;
- l. Awarding Petitioners appropriate damages;
- m. Awarding Petitioners attorneys' fees and costs; and
- n. Awarding Petitioners such other and further relief as this Court may deem just and proper.

Dated: March 31, 2015  
New York, New York

By: \_\_\_\_\_

  
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Daniel Mullkoff

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(212) 620-2600

*Attorneys for Petitioners*




**VERIFICATION**

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

ERIC HECKER, 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 CPLR 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 matter, I believe them to be true.

Date: March 31, 2015  
New York, New York

  
Eric Hecker

Sworn to before me this 31<sup>st</sup> day of  
March, 2015

Mariann Wang  
Notary Public

**MARIANN WANG**  
Notary Public, State of New York  
No. 02WA6109190  
Qualified in Kings County  
Commission Expires April 26, 2016