

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

TAXIFLEET MANAGEMENT LLC, AJB TAXI MANAGEMENT INC., 521 WEST 21<sup>ST</sup> ST. MANAGEMENT CORP, WINNERS GARAGE INC., WESTWAY TAXI MANAGEMENT LLC, CAROLYN PROTZ, RICHARD CHOW, NICOLAE HENT and WILLIAM GUERRA,

Index No. 161920/2018

**AMENDED VERIFIED PETITION**

*Petitioners,*

-against-

THE STATE OF NEW YORK, THE CITY OF NEW YORK, THE NEW YORK CITY TAXI & LIMOUSINE COMMISSION, and MEERA JOSHI, in her capacity as the Commissioner of the New York City Taxi and Limousine Commission.

*Respondents.*

**PRELIMINARY STATEMENT**

1. In recent years, both private companies and state governmental entities have watched the decimation and destruction of a public industry that is a staple of New York City: medallion taxicabs.

2. For years, the State of New York and New York City promised medallion taxicabs that they would be able to operate in a regulated industry for hails in for-hire transportation within the bounds of New York City and, in exchange, medallion taxicab owners paid New York City millions (if not billions) of dollars for that exclusive right.

3. Notwithstanding the express promises made to medallion taxicab owners, in or about 2013, app-based transportation companies entered the market that offered consumers the

same private, convenient rides, with immediate pickups, in effect, an electronic hail, that medallion taxicabs had to offer and infringing on their exclusivity to do hail pickups. Those app-based transportation companies, however, did not face the same barriers to entry, did not face the same regulations, and did not incur the massive fixed costs that medallion taxicabs were forced to incur. In other words, in derogation of the exclusive medallion rights that the City sold, the City and State allowed private companies to cripple the medallion taxicab industry.

4. In the face of unregulated competitors, the medallion taxicab industry suffered devastating losses of ridership, foreclosures on loans that were taken to purchase the once extremely valuable exclusive medallion licenses, and a lack of funding from investors who were now looking to lend money to the medallion taxicabs' unregulated competitors.

5. Beyond financial loss, the medallion taxicab industry suffered even greater loss, including, but not limited to, eight (8) medallion taxicab industry professionals who took their own lives because their lives' work – investing into and operating medallion taxicabs – was destroyed, while the State and City watched the industry collapse.

6. While the medallion taxicab industry has (somehow) survived the onslaught of app-based transportation providers over the past five years, now, Respondents seek to drive the final nail in the proverbial coffin by making medallion taxicab rides so financially unattractive to consumers that the industry is sure to collapse in its entirety.

7. Specifically, the New York State Legislature and Taxi and Limousine Commission seek to drive up the cost to ride in a taxicab medallion through the imposition of “congestion taxes,” to the point where riders will be forced to pay five dollars and eighty cents (\$5.80) for a cab ride before the car even moves (consisting of \$2.50 required to start the meter, \$2.50 for the

congestion tax, \$0.50 for the MTA tax, and \$0.30 per ride in connection with the taxi improvement fund).

8. Equally important, taxis have technology systems in the back of the vehicles that give information concerning each and every ride to an independent monitor of that information which information is accessible to the TLC at any time. Transportation Network Companies (“TNC”), such as Uber and Lyft, have no such technology systems, and the State and City are planning to allow TNCs to self-report. Given the history of one such TNC which has deceived its drivers, the public, and government agencies, most recently being fined \$750,000 in California for failing to follow a zero tolerance policy toward drunk driving it had previously agreed upon with the State, this difference in treatment is nothing less than arbitrary and capricious and unconscionable. Clearly, the Respondents’ imposition and attempts to enforce such a tax is arbitrary, not rationally related to a substantial state interest, and inconsistent with Constitutional principles.

9. Recognizing the requirement that any tax imposed upon the medallion taxicab industry must be “supported by a rational legislative purpose,” the State argues that the tax is necessary to reduce congestion on New York City streets.

10. However, New York City already has a congestion policy, called the medallion cab system. First, there is a legally and environmentally mandated cap or ceiling on the number of medallions allowed, to prevent an overabundance of cars and congestion. Second, medallion owners paid huge license fees for the right to operate and be in Manhattan. Third, the Haas Act, enacted in 1937, limited the number of medallion licenses and, therefore, the number of taxicabs driving in New York City, reducing unnecessary traffic congestion.

11. Not only have taxicab medallion owners paid hundreds of thousands of dollars - and sometimes more than one million dollars - for that right to be in Manhattan, they also pay numerous annual fees and charges to New York City to maintain that license.

12. Having already paid for the right to be in Manhattan, imposing yet another congestion pricing surcharge on the medallion industry – in addition to the fifty cent surcharge that is already charged to medallion taxicabs to help support the MTA - is totally unfair and arbitrary.

13. Accordingly, the State’s justification – that the purpose of the tax is to reduce traffic congestion - is without merit and is a clear attempt to favor TNCs and rid itself of the medallion taxicab industry.

14. Indeed, while traffic congestion has admittedly grown over the past few years, the number of medallion taxicabs has remained stagnant during that same period while the number of black cars has increased by approximately 200%. Thus, to suggest that medallion taxicabs are a contributing factor to increased traffic congestion when the number of taxicabs has remained constant over the same period is simply beyond comprehension.

15. Moreover, any “congestion tax” that truly wanted to deal with congestion and not revenue, would also need to deal with trawling - cars that remain in the congestion pricing zone when not operating - and all other vehicles (commercial or otherwise) that enter that zone. Imposing a congestion pricing surcharge on only for hire vehicles is the height of arbitrary and capricious.

16. Simply put, the decision to impose a congestion tax upon the taxicab industry in an effort to reduce congestion on New York City streets is the very definition an arbitrary exercise of taxing power meant to punish a struggling industry, and should be stricken as unconstitutional.

17. But even if we are to set aside the arbitrary nature of the tax itself, the New York City Taxi and Limousine Commission has failed to implement the necessary regulations to enforce or monitor the administration of the tax.

18. Without the implementation of those necessary regulations by the Taxi and Limousine Commission, the already crippled taxi industry will suffer even greater losses, as taxicab owners and operators will be forced to pay additional taxes, fines, and face suspension, all because the Taxi and Limousine Commission failed to implement proper oversight and reporting standards for the so-called “congestion tax.”

19. Accordingly, to the extent that the tax is deemed enforceable at all, Petitioners seek the entry of a permanent injunction, barring the enforcement of the congestion tax until such time that the New York City Taxi and Limousine Commission adopts rules and regulations governing the administration, oversight, and enforcement of the subject tax.

20. If the State is going to insist upon killing the medallion taxicab industry and make riding medallion taxicabs prohibitively expensive, the medallion taxicab industry cannot be denied the right to protect its property interests and take a final stand.

21. Thus, in this action, Petitioners initially seek declaratory relief from this Court, seeking a declaration that the State’s attempt to impose this tax upon the medallion taxicab industry arbitrary, capricious and, therefore, invalid.

22. Alternatively, if this Court were to find that the tax is not unconstitutional, Petitioners assert claims against all Respondents based upon the deprivation of Petitioners’ due process rights – both substantive due process rights and equal protection rights.

23. Moreover, Petitioners assert that the regulations that the Taxi and Limousine Commission have proposed (but not passed) violate the New York State Constitution, as they seek

to impose different taxes upon different companies that are engaged in substantially similar businesses and violate the “Home Rule Provisions” of the New York State Constitution.

24. Clearly, Petitioners have suffered, and will continue to suffer a deprivation of their constitutional, statutory, and inalienable rights, for which they already paid for by purchasing medallions from the City. For the reasons set forth herein, Petitioners’ requested relief should be granted and the “congestion tax” should not be enforced against them, or any medallion taxicab owner/operator.

### **THE PARTIES**

25. Petitioners are each owners of medallion taxicabs that operate in New York City.

26. Petitioners Taxifleet Management LLC, AJB Taxi Management Inc., 521 West 21<sup>st</sup> St. Management Corp, Winners Garage Inc., and Westway Taxi Management LLC are licensed agents that collectively, own and/or manage over seven thousand (7,000) taxicabs that operate in New York City, in the “taxi zone” in Manhattan.

27. Petitioners Richard Chow, Nicolae Hent and William Guerra are individuals that own and operate individual taxicab medallions in New York City and operate within the “taxi zone” in Manhattan.

28. More specifically, petitioner Nicolae Hent emigrated from Romania in 1985 and sought the American dream by purchasing a taxicab medallion in 1990. While Mr. Hent had used his medallion taxicab to each a living for over two decades, the rise of unchecked and unregulated app-based transportation providers has decimated his income and destroyed his investment.

29. Additionally, petitioner Richard Chow emigrated to the United States from Myanmar (formerly known as Burma). Mr. Chow purchased a medallion taxicab in 2006 and was able to earn a living from his medallion taxicab for several years. Mr. Chow’s brother, Kenny,

also purchased a medallion taxicab after seeing how well the medallion taxicab industry had treated Mr. Chow. Following the entry of unregulated app-based for hire transportation vehicles into the market in 2015, however, Mr. Chow and Kenny's fortunes changed and their medallion taxicab-based businesses suffered greatly. In fact, Kenny's business suffered so much that Kenny was compelled to take his own life.

30. Petitioner Carolyn Protz is also a medallion taxicab owner, having received her medallion as a gift from her mother-in-law in 1989. While the medallion Ms. Protz owned generated approximately \$3,000 per month in income through 2015, the introduction of app-based transportation companies had caused her income to decline more than fifty percent, with further decline expected (potentially to zero) due to increased regulations from the Taxi and Limousine Commission concerning wheelchair accessibility requirements. While her medallion taxicab was once thought to be the source of Ms. Protz's retirement income, recent events have made that is no longer the case.

31. Petitioner William Guerra, an immigrant from Cuba, bought a taxicab medallion in 1984 as both a job and an investment. With the proceeds of his investment from his medallion taxicab, Mr. Guerra built a life in America. That all changed, however, when app-based transportation providers entered the New York City transportation market. While Mr. Guerra was previously only a few years away from retirement, that dream is now a distant memory.

32. The State of New York is one of the fifty (50) states of the United States of America and is the fourth (4<sup>th</sup>) most populous state in the Union. The State of New York is responsible for enacting, enforcing and promoting the laws that are passed by its Legislature. The current chief executive of the State of New York is Andrew Cuomo.

33. The City of New York is a municipality organized and existing under the laws of the State of New York. At all times relevant to this proceeding, the City, acting through the Taxi and Limousine Commission, was responsible for the implementation and enforcement of all Taxi and Limousine Commission rules and regulations.

34. The Taxi and Limousine Commission is an administrative agency of the City of New York. Pursuant to section 2300 of the City Charter, it is the purpose of the Taxi and Limousine Commission to, *inter alia*, “adopt and establish an overall public transportation policy governing taxi, coach, limousine, wheelchair accessible van services and commuter van services as it relates to the overall public transportation network of the city.” In other words, the Taxi and Limousine Commission is the enforcement arm for the tax at issue in this case.

35. Respondent Meera Joshi is sued in her official capacity as the Commissioner, Chairperson and Chief Executive Officer of the Taxi and Limousine Commission. At all times relevant to this proceeding, Joshi has been responsible for the enforcement of Taxi and Limousine Commission regulations.

### **FACTS COMMON TO ALL COUNTS**

#### **A. The NYC Taxicab Medallion System**

36. The yellow taxicab has become an iconic symbol of New York City, as over seventy percent (70%) of Manhattan households remain car-free.

37. Through the yellow cab (and, later, green cab) program, the City, through the New York City Taxi and Limousine Commission, made sure that drivers and vehicles conformed to minimum safety standards by enacting rules and regulations.

38. Indeed, the rules and regulations are such an integral aspect of the operation of yellow taxicabs that a taxicab driver cannot undertake any action that is not formally sanctioned by the Taxi and Limousine Commission.

39. For example, taxicab drivers are prohibited from charging passengers different fees based upon supply and demand (a/k/a “surge pricing”), taxicab drivers cannot offer their passengers discounted rates, and taxicab drivers cannot take any action that is inconsistent with the strict rules promulgated by the Taxi and Limousine Commission.

40. Indeed, each taxicab must display established pricing lists promulgated by the Taxi and Limousine Commission that advise passengers of the prices that they are being charged, and cannot charge passengers any fees that are not displayed on those lists.

41. By further example, taxicab drivers are limited in the geographic range in which they are allowed to operate and can only accept fares that originate within the boundaries of New York City or at the airports.

42. Along with the licensing and regulation of taxi cab drivers, New York City also caps the number yellow taxicabs available for operation in the city by issuing a limited number of taxicab medallions.

43. In order to drive a cab in New York City, each taxicab must be associated with a taxicab medallion.

44. New York City taxi medallions are organized into two legal ownership categories: independent medallions and corporate medallions (also known as minifleet medallions). Each

medallion type is further classified as accessible medallions<sup>1</sup>, alternative fuel medallions<sup>2</sup>, and unrestricted medallions<sup>3</sup>.

45. An independent medallion is a taxicab license in which the owners typically operate as owner-drivers who own both the medallion and/or the taxi vehicle. Income for owners of independent medallions is derived from the fares and tips received from passengers, less the cost of owning, maintaining, and operating a vehicle and medallion. Historically, these immigrant owner-drivers leased their taxis to a second driver for additional income, but with the introduction of TNCs, second drivers are rarer in the transportation industry. Approximately forty percent (40%) of medallions are independent medallions.

46. A minifleet medallion is a class of taxicab license that may be owned in groups of at least two. The owners of minifleet medallions own multiple medallions and some maintain a fleet of taxi vehicles that are leased to drivers on a per shift basis. Income for fleet owners is derived both from medallion lease fees that are set and regulated by the New York City Taxi and Limousine Commission, and from the operation of their own minifleet. Currently, approximately sixty percent (60%) of the medallions are mini-fleets, and can be operated twenty-four (24) hours per day.

47. Currently, New York City limits the number of taxicab medallions to less than 14,000 medallions, meaning that, at most, no more than the number of yellow and green taxicabs authorized by the Taxi and Limousine Commission – a small fraction of the number of vehicles

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<sup>1</sup> Accessible medallions are restricted medallions valid for use only with an accessible taxicab. §51-03 TLC Rules and Regulations.

<sup>2</sup> Alternative fuel medallions are restricted medallions valid for use only with a vehicle powered by compressed natural gas or a hybrid electric vehicle. §51-03 TLC Rules and Regulations.

<sup>3</sup> Unrestricted medallions are medallions that are valid for use with any vehicle. §51-03 TLC Rules and regulations.

driving through Manhattan on a daily basis - could operate in New York City (including all five boroughs) at any given time.

48. One reason that the medallions issued by the Taxi and Limousine Commission are limited is that the Taxi and Limousine Commission regulations require, as a matter of law, that the taxicabs associated with each medallion must operate in New York City streets – and not held in storage - for a certain amount of time each year.

49. As a matter of basic economics, the restricted supply of taxicab medallions led to increased values that individuals and entities paid to own and operate those medallions.

50. As a result, taxicab medallion owners have paid New York City billions of dollars for the right to operate in New York City, including, most importantly, the “Taxi Exclusionary Zone” in Manhattan. This “Taxi Exclusionary Zone” was set up in or about 2012 and gave taxicabs the exclusive right to operate in the very area that, described below, is the “congestion zone” that is the subject of the challenged tax.

51. Comparatively, competing transportation services were not required to pay such enormous entry or license fees to New York City for the right to operate and, therefore, have much more manageable costs and debt service to operate on a daily basis, and little to no barriers to entry into the market.

**B. The Impact of For Hire Vehicles and Smartphone Enabled Transportation Companies on the Taxicab Medallion System**

52. Since the advent of technology enabled disruptive transportation app companies, such as Uber and Lyft, there has been a worldwide change in the for-hire vehicle (“FHV”) transportation industry.

53. Indeed, since its entry into New York City five (5) years ago, transportation app companies have accounted for approximately forty-eight percent (48%) of all trips provided by the taxi/for-hire sector as a whole.

54. Private transportation app companies also have the ability to set their own pricing and have advantages, such as surge pricing, that are unavailable to medallion taxicabs, as those FHV transportation services are not subject to the same strict rules as medallion taxicabs.

55. Thus, if FHV transportation services are required to charge additional fees to their customers, those companies have the flexibility to adjust their pricing to remain competitive in the marketplace and ensure that passengers do not feel the “sting” of the additional fees.

56. Unlike medallion taxicabs, FHV transportation is not limited to pick up in the geographic regions of New York City, and often travel well beyond the city’s borders.

57. Moreover, unlike medallion taxicabs, FHV transportation is not required to charge fifty cents per ride (MTA taxicab surcharge) for the taxicab and hail vehicle trip tax in the Metropolitan Commuter Transportation District, nor are they required to charge thirty cents per ride in connection with the taxi improvement fund. Moreover, FHV transportation does not have the same onerous accessibility requirements that are imposed upon medallion taxicabs.

58. Clearly, the invasion of app-based FHV transportation has had a negative effect on the yellow taxicab industry, due to the disparate regulations applied to a new private party entering a regulated market.

59. Some of the most significant things that transportation network companies (TNC’s) such as Uber and Lyft have been allowed to do that have materially adversely affected traditional taxicab medallions are: (i) surge or demand pricing; (ii) using vehicles that are not subject to an accessibility mandate for fifty percent (50%) of their vehicles by 2020 (which is required of the

medallion taxicab industry); and (iii) providing on-demand taxi service through black cars, liveries, sedans and limousines, with smartphones.

60. The devastation caused to the yellow taxicab industry was further exacerbated in 2018, when eight (8) taxicab drivers and medallion owners took their own lives due to the dramatic losses that they incurred in connection with their taxicab medallion ownership and operation.

61. The rapid expansion of FHV companies has also seriously eroded New York City's mass transit system, as more individuals opt to use easily accessible app-based private transportation, rather than buses or subways.

**C. New York State Conducts an Investigation into Congestion in New York City Traffic**

62. With the growth of FHV and other vehicles travelling through New York City, in October 2017, New York Governor Andrew Cuomo appointed a task force to make recommendations toward the goals of reducing traffic congestion in central Manhattan.

63. In or about January 2018, that task force issued its report.

64. The task force found that:

The rapid growth in internet "app" or "on-demand" based transportation services has contributed significantly to recent congestion spikes. NYC TLC data indicates the number of trips and the number of total vehicle hours for app-based FHV's have both dramatically increased since 2013 [], while the number of yellow taxi trips and vehicle hours in the CBD are in steep decline.

65. Indeed, the task force found that, with respect to medallion taxicabs, the number of rides provided to the public by medallion taxicabs fell by over 100,000 trips per day since 2013. In other words, while congestion and gridlock continue to grow in New York City, it is certainly not the fault of the medallion taxicabs. During that same time, TNCs operated more than five times the number of medallion taxicabs on New York City streets.

66. In response to their findings, the task force recommended a cordon-based congestion pricing system for the Manhattan Central Business District (i.e. 60<sup>th</sup> Street to Battery Park) that would apply to personal automobiles and trucks, as well as a surcharge on taxi and other for-hire trips within Manhattan.

67. Without discriminating against any particular industry, the task force recommended a tax of \$11.52 for passenger cars, \$25.34 for trucks, and a taxicab/FHV tax of up to \$5 per trip.

68. The task force did not recommend that *only* the taxicab and FHV industry be charged congestion taxes, nor did the task force recommend that medallion taxicabs be charged different rates than those charged to FHV vehicles. The surcharge applied to *all* vehicles.

69. Importantly, the task force, recognizing the legal implications that could arise out of these taxes, recommended that, prior to the implementation of any tax, the regulations promulgated by the Taxi and Limousine Commission *must* be reformed.

70. Specifically, the task force advised that:

Massive shifts have taken place within NYC's transportation service industry and action must be taken to reexamine State and local laws and regulations that guide it. As an example, the lines between livery, black car, and app-based transportation companies have not blurred beyond recognition; regulations must be updated to accurately guide the industry.

**D. New York State Legislature Adopts Article 29-C**

71. In response to the recommendations of Governor Cuomo's task force, on or about April 12, 2018, the New York State Legislature adopted Article 29-C of the New York State Tax Law, which is more commonly known as Tax Law §1299 *et seq.*

72. Article 29-C, on its face, makes clear that the purpose of the tax is to address traffic congestion in Manhattan. Indeed, the tax itself is entitled "Congestion Surcharge." Moreover,

nowhere in the text of Article 29-C does it state that the statute was enacted for any purpose other than to regulate traffic congestion.

73. Article 29-C, however, did not adopt all recommendations of the task force, that measures to regulate traffic be applied to all vehicles that enter into Manhattan. Instead, Article 29-C addresses only congestion pricing relating to for-hire transportation, including medallion taxicabs and FHV transportation.

74. Article 29-C provides that:

In addition to any other tax or assessment imposed by this chapter or other law, there is hereby imposed, beginning on January first, two thousand nineteen, a surcharge on forhire transportation trips of two dollars and seventy-five cents for each such trip that originates and terminated in the congestion zone, for each such trip that originates anywhere in the state and terminates within the congestion zone, for each such trip that originates in the congestion zone and terminates anywhere in this state, and for each such trip that originates anywhere in the state, enters into the congestion zone while in transit, and terminates anywhere in the state.

75. Article 29-C also provides that:

In addition to any other tax or assessment imposed by this chapter or other law, beginning on January first, two thousand nineteen, there is hereby imposed on transportation provided by pool vehicles a surcharge of seventy-five cents for each person that both enters and exits the pool vehicle in the state, and who is picked up in, dropped off in, or travels through the congestion zone.

76. Article 29-C also imposes obligations upon administrative agencies that enforce the tax referenced therein.

77. For example, Article 29-C provides that:

All regulatory agencies *must* adjust any fares that are authorized by them to include for surcharge imposed by this article, and must require that any meter or other instrument used in any forhire vehicle regulated by it to calculate fares be adjusted to include the surcharge.

78. Article 29-C further provides that “[n]either the failure of a regulatory agency to adjust fares nor the failure to adjust a meter or other instrument used in a forhire vehicle to calculate fares shall relieve any person liable for the surcharge imposed by this article from the obligation to pay such surcharge.”

79. In other words, even if the Taxi and Limousine Commission fails to implement appropriate regulations that would allow medallion taxicabs to charge the Congestion Tax to passengers, or otherwise fails to implement regulations that would allow for the adjustment of the taximeters used to calculate fares, the owners of medallion taxicabs would *still* be required to pay New York State \$2.50 per ride, eliminating the idea that the Congestion Tax would be “passed on to passengers and separately stated on any receipt that is provided to such passengers.”

80. Article 29-C further requires administrative agencies to take specific steps to enforce the tax, including, but not limited to: (i) creating and distributing form applications for certificates of registration; (ii) issuing certificates of registration; and (iii) collecting monthly returns from each vehicle that collects the tax.

81. Notwithstanding the enactment of Article 29-C, the New York Legislature did not provide any guidance as to what steps would be necessary to ensure that taxicab medallion vehicles or FHV transportation would actually track and enforce the tax.

82. Article 29-C provides, vaguely, that all individuals liable for the tax must make available for review: “records of every trip provided or arranged by such person, or provided through the use of a forhire vehicle owned or leased by such person, including all amount paid, charged, or due thereon, in such form as the commissioner may require.” It does not, however, state how those records are to be provided or kept or whether taxicab meters may be altered to

track those records. Instead, the duty to establish those rules were left to the administrative agencies.

83. Article 29-C also imposes obligations upon the Taxi and Limousine Commission to “cooperate with and assist the commissioner to effectuate the purposes of this article and the commissioner’s responsibilities hereunder.”

**E. New York City Taxi and Limousine Commission Proposes Rules Concerning Article 29-C**

84. Following the Legislature’s adoption of Article 29-C, the Taxi and Limousine Commission proposed new rules concerning the congestion tax.

85. As set forth above, Taxi and Limousine Commission rules and regulations are necessary for medallion taxicab operators because, for example, absent rules and regulations concerning the proposed tax, medallion taxicab owners/operators cannot charge passengers the tax and, instead, must bear the burden of the tax themselves. This, of course, is in direct contrast with Article 29-C, which requires that the passengers, and not the operators of for hire vehicles, bear the burden of the tax.

86. In its published “statement of basis and purpose” of the rules concerning the congestion tax, the Taxi and Limousine Commission wrote that:

Beginning January 1, 2019, the State will assess a Congestion Surcharge of \$2.50 per trip in yellow taxis, or \$2.75 per trip in For-Hire Vehicles. For Shared Rides the surcharges is reduced to \$0.75 per passenger. If the passenger requests a Shared Ride, the trip is entitled to the Shared Ride surcharge even if no other passenger joins.

87. While the proposed rules do address some of the requirements of Article 29-C, the regulations wholly fail to address many issues that medallion taxicab drivers face on a daily basis, leaving large gaps in the application and enforcement of the proposed tax.

88. For example, while most riders will pay for medallion taxicab fares with a credit card, the proposed regulations fail to address whether the driver is responsible for the five percent (5%) surcharge affiliated with processing the credit card fare for the surcharge or whether the passenger – consistent with the mandates of Article 29-C – is responsible for the credit card processing fee.

89. By further example, the proposed regulations fail to address how a passenger may select a “Shared Ride,” and be subjected only to the seventy-five cent (\$0.75) tax. Indeed, absent any regulations concerning the selection of a “Shared Ride” option, summonses and litigation is inevitable as issues arise concerning whether a passenger actually made the oral representation that they wanted a “Shared Ride” option that is subject to a lower tax.

90. Moreover, notwithstanding the clear mandate in Article 29-C that the Taxi and Limousine Commission assist the Commissioner of the New York State Department of Taxation and Finance by, *inter alia*, furnishing all written, computerized, automated, or electronic records in the Taxi and Limousine Commission’s possession or in the possession of its agents, the Taxi and Limousine Commission elected to not obtain that required information from TNCs and, instead, provided those companies with the opportunity to self-regulate and self-police the imposition of the Congestion Tax.

91. The Taxi and Limousine Commission published proposed rules to implement the congestion surcharge for the public’s review. Consistent with applicable rules and past practices, the Taxi and Limousine Commission published the proposed rules far in advance to evaluate the proposed rules and get feedback from the general public.

92. Moreover, the proposed rules are published so that all affected by the proposed rule can become intimately familiar with the proposed rules, as proposed rules become effective thirty

(30) days after they are published in the City Record, and not a day earlier. *See* CAPA §1043(f)(1)(C).

93. Not surprisingly, the proposed rules concerning the Congestion Tax faced extraordinary backlash, especially in light of the fact that medallion taxicabs – which have remained stagnant in number over the past five years – were not a contributing factor to increased congestion in New York City, yet faced immediate and irreparable harm in the form of an expensive tax.

94. Indeed, the tax would be the single largest increase to medallion taxicab metered fares in history and would invariably lead to the decline in ridership as history has shown whenever there was an increase to the metered fare. This is especially so, when considering the fact that TNCs have the ability to absorb the tax and further reduce medallion taxicabs' ability to remain competitive.

95. On November 28, 2018, the Taxi and Limousine Commission held a hearing concerning the proposed rules. The public showed up to the hearing in staggering numbers.

96. In light of the negative views of the proposed rules and the numerous issues presented during the meeting, the Taxi and Limousine Commission did not hold a vote on the proposed rule and failed to take any steps to enact the proposed regulations.

97. To date, the Taxi and Limousine Commission has not passed any regulations reflecting the mandates of Article 29-C, has not issued any new rules to medallion taxicab drivers, or even provided medallion taxicab drivers with new signs to post in their vehicles that inform passengers of the proposed tax.

98. Nonetheless, even if the Taxi and Limousine Commission were to now vote on and approve the proposed regulations on the date that this Petition is filed, those rules would still not take effect before the January 1, 2019 deadline set forth in Article 29-C.

**F. The Disparate Threatened Harm to the Taxicab Industry**

99. Setting aside the fact that there are no regulations in place to enforce Article 29-C or that the tax imposed upon taxicabs is arbitrary (due to the fact that medallion taxicabs are not a contributing factor to increased congestion in New York City), the tax poses a debilitating disparate impact upon the medallion taxicab industry.

100. Indeed, respondent Meera Joshi has recognized that the tax is, effectively, a death sentence to the medallion taxicab industry, stating that:

The fact that it will cost \$5.80 to step into a taxi cab now is going to be devastating for the taxi industry. [...] The other sectors [...] have more flexibility. They have to add \$2.75 on but they're not bound to a metered fare, so they can reduce the price of the trip so that the passenger doesn't feel the effect of the \$2.75

101. In light of the suicides of eight (8) medallion taxicab drivers and owners in 2018 – attributable directly to the financial hardships already incurred by the medallion taxicab industry as a direct result of the introduction of app-based transportation providers – it is clear that additional impositions on medallion taxicabs has a much greater impact than mere financial ruin.

**COUNT I**  
**(Action for Declaratory Relief Against New York State)**

102. Petitioners repeat and restate the preceding paragraphs of their Petition, as though set forth fully at length herein.

103. The State of New York acted arbitrarily and capriciously by imposing a tax on medallion taxicabs – and not all vehicles traveling on the streets of New York – even though data

conclusively demonstrates that medallion taxicabs are not a contributing factor to increased congestion in New York State.

104. In other words, the Congestion Tax is so arbitrary that, in reality, the tax is not an exercise of the State's taxing power and, instead, involves the exercise of unlawful means targeted at eliminating the medallion taxicab industry.

105. By failing to implement a tax that actually addresses traffic congestion in New York City and, instead, implementing a tax that unreasonably and arbitrarily restricts Petitioners' property interests, the State of New York has violated the rights guaranteed to all citizens under the New York and United States Constitutions.

106. Pursuant to CPLR 3001 *et seq.*, Petitioners seek a declaration from this Court that Article 29-C of the New York State Tax law is unlawful, invalid, and unenforceable, as it violates the New York and United States Constitutions.

107. Unless the relief requested herein is granted, Petitioners will suffer irreparable harm and damages. The harm is irreparable because it may not be recoverable from the Taxi and Limousine Commission or others, and because the harm suffered is not quantifiable in monetary damages.

**COUNT II**  
**(Violation of Substantive Due Process Rights)**

108. Petitioners repeat and restate the preceding paragraphs of their Petition, as though set forth fully at length herein.

109. The Due Process Clause of the New York and United States Constitutions provide that no person shall "be deprived of live, liberty, or property, without due process of law."

110. Petitioners possessed protected property interests in their medallions, which provide Petitioners with the right to operate medallion taxicabs in Manhattan and the exclusive right to pick up street hails on New York City Streets.

111. Respondents, through the imposition and enforcement of the Congestion Tax, deprive Petitioners of their medallion taxicabs through suspensions, fines for the failure to remit the Congestion Tax (especially where that tax cannot be passed on to passengers), and other regulatory prohibitions related to the Congestion Tax.

112. Respondents, while authorized to regulate business that affects the public health, safety and welfare, may not, through regulation deprive Petitioners of their right to conduct a lawful business unless Petitioners can show that such deprivation is reasonably related to the State's interest sought to be protected.

113. Under the due process provisions of the United States Constitution and the New York Constitution, a law that purports to be an exercise of police power must not be arbitrary, unreasonable, or patently beyond the necessities of the case, that the means which it employs must have a real and substantial relation to the object sought to be attained.

114. The Congestion Tax is not rationally related to any legitimate governmental interest.

115. On its face, the Congestion Tax is imposed on FHV's for the purpose of reducing traffic congestion in Manhattan. Indeed, the statute itself is named "Congestion Surcharge."

116. The Governor's task force on traffic congestion, the legislative history, the fixed liability, and the draconian imposition of additional fees upon the medallion taxicab industry all reflect the Legislature's illegitimate interest in imposing an undue burden on the medallion taxicab industry, without actually resolving any issues concerning traffic congestion in Manhattan.

117. Black cars – non-medallion FHV's with TLC license plates – cause congestion on New York City streets, and that problem has exacerbated in recent years, with the introduction of app-based transportation providers such as Uber and Lyft.

118. While the number of medallion taxicabs has stayed constant (or even decreased, with foreclosures on medallions due to the rapidly declining prices of medallions) and the number of rides decreasing by nearly fifty percent (50%), it cannot be argued that medallion taxicabs are the cause of marketed *increases* in traffic congestion over the past five years.

119. Thus, there is no rational relationship between the Congestion Tax and reduced congestion in New York City, and the Congestion Tax is arbitrary and capricious.

120. Accordingly, the Congestion Tax violates the Due Process clause of the New York and United States Constitutions.

121. Moreover, the Congestion Tax violates Petitioners' due process rights, as it is an unconstitutional Bill of Attainder that singles out Petitioners and FHV's for punishment in connection with increased traffic congestion in New York City and prejudices the guilt of Petitioners and FHV's.

122. As a direct and proximate result of Respondents' unlawful conduct, Petitioners have suffered, and will continue to suffer, actual damages and irreparable harm.

**COUNT III**  
**(Equal Protection Under the Law)**

123. Petitioners repeat and restate the preceding paragraphs of their Petition, as though set forth fully at length herein.

124. At the time of the events described herein, Petitioners had a clearly established Constitutional right under the Fourteenth Amendment of the United States Constitution, to be secure within a state's jurisdiction against intentional and arbitrary discrimination.

125. Respondents intentionally treated Petitioners differently from others vehicles that travel in Manhattan streets and contribute to traffic, including, but not limited to, the millions of other cars and trucks that travel within the bounds of New York City, and there is no rational basis for the difference in treatment.

126. Respondents and other FHV's are similarly situated to other vehicles that travel in Manhattan – such as buses, commuter cars, and construction vehicles – whose primary purpose is to enter into Manhattan, travel on its streets, and contribute to commerce within Manhattan.

127. Respondents' actions and omissions, as described herein, were objectively unreasonable, arbitrary, irrational, and an abuse of discretion, thereby violating Petitioners' rights.

128. Respondents' conduct, as described herein, was also malicious and/or involved reckless, callous, and deliberate indifference to Petitioners' federally protected rights.

129. Respondents' extreme indifference to Petitioners' protected rights shocks the conscience and violated Petitioners' rights.

130. Respondents are not entitled to qualified immunity, absolute immunity, or quasi-judicial immunity for the complained of conduct because her actions, as set forth herein, were objectively unreasonable and a violation of established law.

131. As a direct and proximate result of Respondents' unlawful conduct, Petitioners have suffered, and will continue to suffer, actual damages and irreparable harm.

**COUNT IV**  
**(Violation of New York State Constitution Article XVI, Section 4)**

132. Petitioners repeat and restate the preceding paragraphs of their Petition, as though set forth fully at length herein.

133. The New York State Constitution, Article 16, Section 4 states:

Where the state has power to tax corporations incorporated under the laws of the United States there shall be no discrimination in the rates and method of taxation between such corporations and other corporations exercising substantially similar functions and engaged in substantially similar business within the state.

134. Nowhere in the New York State Constitution does it limit the scope of Article 16, Section 4, or otherwise state that Article 16, Section 4 applies solely to the banking industry.

135. Medallion taxicabs and FHV's exercise substantially similar functions and are engaged in substantially similar business within the State of New York.

136. The tax directly affects the operations of medallion taxicabs and FHV's because it is a compulsory contribution to state revenue, levied by the government, that is automatically added to the cost of each ride provided.

137. The Congestion Tax violates Article 16, Section 4 of the New York State Constitution because it attempts to impose different taxes upon medallion taxicabs and FHV's.

138. As a direct and proximate result of Respondents' unlawful conduct, Petitioners have suffered actual damages and irreparable harm.

**COUNT V**  
**(Violation of New York State Constitution Article IX, Section 2)**

139. Petitioners repeat and restate the preceding paragraphs of their Petition, as though set forth fully at length herein.

140. The Congestion Tax violates the plain language of Article IX, §2 of the New York State Constitution (the "Home Rule Provisions").

141. The Home Rule Provisions evidences a recognition that essentially local problems should be dealt with locally and that effective local self-government is the desired objective.

142. As a matter of Constitutional law, the State cannot usurp the powers of local municipalities to self-govern.

143. The Congestion Tax repeals, diminishes, impairs, and suspends the City's power to adopt, amend and repeal ordinances, resolutions and rules and regulations, which is a power that was specifically granted to the New York Taxi and Limousine Commission, as an arm of the New York City government.

144. Moreover, the Congestion Tax is a special law that was passed without the request of two-thirds of the total membership of New York City's legislative body, nor a request of the Mayor of New York City.

145. The Congestion Tax does not serve a substantial state concern that would allow the State to ignore the Home Rule Provisions and usurp regulatory powers that are the exclusive province of New York City.

146. Indeed, as set forth above, the Congestion Tax is unconstitutional – and therefore *cannot* serve a substantial State concern – as it does not bear a reasonable relationship to a legitimate, accompanying substantial State concern.

147. The Congestion Tax will not do anything to improve congestion on New York City streets and, in fact, threatens to *increase* congestion on New York City streets and worsen the MTA transportation system.

148. Furthermore, the Congestion Tax threatens the loss of *thousands* of jobs, irreparably harming the taxicab industry and reducing the ability of millions of New Yorkers to obtain access to “efficient transportation service.”

149. Moreover, the Congestion Tax imposes a heavy burden on many individuals with disabilities who are living on fixed incomes and are otherwise economically challenged because the Congestion Tax makes rides in wheelchair accessible vehicles prohibitively expensive. This limits the ability for people with disabilities to access transportation *at all*.

150. As a direct and proximate result of Respondents' unlawful conduct, Petitioners have suffered actual damages and irreparable harm.

**WHEREFORE**, Petitioners respectfully request that the Court grant judgment in their favor and against Respondents, and provide the following relief:

- a) A judgment pursuant to CPLR 3001 *et seq.* declaring that Article 29-C is unlawful and unenforceable as a matter of law;
- b) A permanent injunction preventing the enforcement of Article 29-C;
- c) Alternatively, a permanent injunction preventing the enforcement of Article 29-C until such time that the Taxi and Limousine Commission adopts rules and regulations that address the administration of the tax and all aspects of the medallion taxicab drivers and operators' responsibilities with respect to the tax;
- d) Such other relief available that may be considered appropriate under the circumstances, including attorneys' fees and costs of this proceeding, to the extent allowed by law.

Dated: New York, New York  
January 25, 2019

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