

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

DALER SINGH, DBA GILZIAN ENTERPRISE LLC, DANIELLE EVE TAXI LLC, EAC TAXI LLC, DEC TAXI LLC, EC TAXI LLC, CHIPS AHOY TAXI LLC, ECDC TAXI LLC and DYRE TAXI LLC individually and on behalf of all others similarly situated,

Index No. 701402/2017

Hon. Kevin J. Kerrigan, J.S.C.

Plaintiffs,

-against-

THE CITY OF NEW YORK and THE NEW YORK CITY TAXI AND LIMOUSINE COMMISSION,

Defendants.

**REPLY MEMORANDUM OF LAW IN FURTHER SUPPORT OF PLAINTIFFS’
MOTION TO COMPEL THE TESTIMONY OF MEERA JOSHI AND IN OPPOSITION
TO DEFENDANTS’ CROSS-MOTION FOR A PROTECTIVE ORDER AND TO QUASH**

PRELIMINARY STATEMENT

As detailed in Plaintiffs’ motion papers, the arguments that Defendants advance in opposition to the motion to compel and in support of their cross-motion for a protective order and to quash the depositions of Meera Joshi and Ashwini Chhabra were made and rejected at the Compliance Conference Part, which ordered the depositions proceed by December 31, 2018. Defendants make the same arguments again at greater length—that the witnesses are too high in the pecking order to be deposed and that their testimony would add nothing meaningful. Meanwhile, they blatantly mischaracterize the nature of Plaintiffs’ claims and the reasons that Plaintiffs seek the testimony of Ms. Joshi and Mr. Chhabra, both of whom crafted the TLC policy that allowed the unprecedented ballooning of the black car fleet, which in turn decimated the value of the medallions that Defendants sold to Plaintiffs at auction. But that their arguments

are repeated and belabored does not improve their merits or permit relief from the Compliance Conference Order.

I. DEFENDANTS IGNORE THAT THERE IS ALREADY A COURT ORDER PERMITTING THE DEPOSITIONS

Defendants' motion barely mentions the Compliance Conference Order that provides that Ms. Joshi and Mr. Chhabra should be deposed by December 31. Defendants do not even deny that they already argued during the compliance conference—as they do again here—that they should be allowed to select the witnesses to be deposed, that there was no need to depose Ms. Joshi, and that she should not be deposed because she is a “high-ranking” official. Nor do Defendants make any argument that is grounds for upsetting an existing order issued after a full argument. To be sure, the order permits Defendants to move for a protective order. But Defendants failed to move until well after Plaintiffs formally sought the testimony of both witnesses, as contemplated by the Compliance Conference Order, and after they refused to produce their witnesses in response to a deposition notice and a subpoena.

II. JOSHI AND CHHABRA LIKELY PLAYED KEY ROLES IN FORMULATING THE POLICIES THAT DESTROYED THE VALUE OF THE MEDALLIONS THAT THE TLC SOLD TO PLAINTIFFS

Defendants badly mischaracterize the nature of Plaintiffs' claim. They say that Plaintiffs' complaint is “that their medallions are currently worth less than they anticipated.” Def. Br. 5. In truth, the claim is not only that the medallion values have dropped precipitously, but that the TLC caused the crash. More specifically, after selling medallions to Plaintiffs and taking in nearly \$400 million from the auctions, the TLC licensed tens of thousands of black cars, which caused the unprecedented crash in medallion values. This conduct constituted a breach of the duty of good faith and fair dealing implicit in every contract under New York law.

The amended complaint alleges in detail that, after the auctions, the TLC proceeded to issue licenses to an unprecedented number of black cars. *See, e.g.*, ¶ 5.¹ Thus, while at the time of the auctions, there had been about 10,000 such cars operating in the city, there are now approximately 100,000. ¶ 98; *see also* Jake Offenhartz, *Cab Drivers Say City's Failure To Regulate Uber Is 'Killing Us,'* Gothamist, May 4, 2018. Plaintiffs allege that these licenses were issued to black car bases and black cars that did not qualify under the TLC's own rules and regulations and that, by issuing the licenses, the TLC caused the crash. ¶¶ 95-99. The TLC could only do so by failing to enforce the licensing standards mandated by the NYC Administrative Code and by TLC rules at the time of the auctions—and which remain on the books today.

Despite Defendants' repeated attempts to mock Plaintiffs' claim, this Court has already sustained it. When Defendants attempted to re-argue their theory, this Court concluded, "How the defendants allegedly violated the implied covenant should be evident from the plaintiffs' twenty-seven page amended complaint containing 180 separately numbered paragraphs." NYSCEF #166 at 4 (order denying Defendants' motion for reargument of motion to dismiss).

The actions that allowed the massive growth of the black car fleet and that allowed black cars to compete directly with medallion taxis were actions by policymakers, not junior employees. Indeed, even Mayor de Blasio has admitted that "the failure to impose a cap [on new ride-hailing licenses] back [in 2015] allowed the ride-sharing industry to flood the market, which he said 'destroyed' the wages of workers across the industry." Yoav Gonen, *De Blasio: Capping ride-hail licenses in 2015 might have saved cabbies' lives*, NY Post, Dec. 21, 2018.²

¹ Citations to "¶ ___" refer to paragraphs in Plaintiffs' Amended Class Action Complaint (the "Complaint"). NYSCEF #9.

² For the Court's convenience, a true and correct copy of this article is annexed as Exhibit 1 to the Affirmation of Daniel L. Ackman in Support of Plaintiffs' Motion to Compel the Testimony of Meera Joshi and in Opposition to Defendants' Cross-Motion for a Protective Order and to

If her deposition proceeds, Ms. Joshi may admit that the licenses were issued in defiance of legal standards or she may testify that Plaintiffs' allegations are false. She may agree with Plaintiffs about what caused the crash or she may posit other reasons. But she cannot possibly say that she played no role in the events that are the subject of this action.

Mr. Chhabra, meanwhile, was the deputy commissioner in charge of policy before he suddenly left the TLC to join Uber Technologies Inc. ("Uber"), the main beneficiary of the new regulatory regime. He, too, cannot deny involvement in the events at issue, first as a TLC official and later as an Uber executive.

III. THERE IS NO CASE THAT HOLDS A TLC COMMISSIONER IS A HIGH-RANKING OFFICIAL IMMUNE FROM BEING DEPOSED

There is no provision of the CPLR that states or implies that a commissioner may not be deposed. While Defendants maintain that, to obtain a deposition of "a high-ranking government official, a party must establish that such high-ranking official has information that cannot be obtained from any other source," Def. Br. 2, they cite only two cases, each quite brief and at least a quarter century old, and neither concerning a TLC official. In truth, there is no law that makes such witnesses immune from discovery. Instead, "a party seeking a deposition of a high-ranking official must show that the 'official has information that cannot be obtained from any other source and that a deposition would not interfere significantly with the official's ability to perform his or her governmental duties.'" *Matter of Torres v City of New York*, 39 Misc 3d 558, 566 [Ct Cl 2013] (internal citations and quotations omitted). Notwithstanding Defendants' contention that "public comments by a public official do not provide a basis for requiring the head of [an] agency to be deposed," Def. Br. at 10, Plaintiffs do not contend that the mere fact that Ms. Joshi has made statements to the media regarding matters relevant to this case makes her testimony

Quash (hereinafter, the "Ackman Affirmation" or "Ackman Aff.").

material. Rather, unlike in *Matter of Torres*, as the individual in charge of the policy of the TLC during the years following the auctions, Ms. Joshi has “unique firsthand knowledge as to the circumstances involved in this case.” *Matter of Torres*, 39 Misc 3d at 566. In circumstances such as these, where the government official was personally involved in the events giving rise to the litigation, courts have directed depositions to go forward. *See, e.g., Lederman v Giuliani*, 2002 US Dist LEXIS 19857, *1 [SD NY, Oct. 17, 2002, No. 98 Civ. 2024(LMM)]; *Gibson v Carmody*, 1991 US Dist LEXIS 11225, *1 [SD NY, Aug. 14, 1991, No. 89 Civ. 5358 (LMM)]. While a few cases apply the “high-rank” defense even to *former* officials, the rationale behind the policy in such cases is absent. A deposition would not interfere at all with the ability of the officials at issue here to perform their governmental duties—particularly in the case of Mr. Chhabra who, as a former employee, has no such duties.

Moreover, no case has ever held that a TLC chair (much less a former deputy commissioner) is a high-ranking official as to preclude a deposition. Most of the cases invoking this judge-made rule either concern mayors or governors or heads of large departments like the New York Police Department (“NYPD”) and the Department of Education, with tens of thousands of employees, or involve uncontested determinations that an official is “high-ranking”—or both. Lawsuits against these departments typically involve the conduct of particular police officers or school teachers or principals who are acting in a way that is unlawful and inconsistent with policies established by commissioners. None of the cases Defendants cite involve TLC commissioners or deputy commissioners (and certainly not former commissioners), and Defendants misrepresent the import of others.³

³ *See Matter of Torres*, 39 Misc 3d at 565 (plaintiffs did not dispute that NYPD Commissioner was a high-ranking government official); *Hipolito Colon v New York City Bd. of Educ.*, 2008 NY Misc LEXIS 8650, at *8 [Sup Ct, NY County, May 6, 2008, No. 115361/2006] (granting

In fact, TLC commissioners and deputy commissioners have routinely testified in civil cases. TLC Commissioner Matthew Daus testified in *Nnebe v Daus*, 644 F3d 147, 152 [2d Cir 2011] (citing Daus's testimony), and *Rothenberg v Daus*, while he was commissioner. Ackman Aff., Ex. 2. Commissioner Daus also testified in *Padberg v McGrath-McKechnie*, while he was deputy commissioner and general counsel of the TLC. Ackman Aff., Ex. 3. His predecessor, Diane McGrath-McKechnie, also testified in *Padberg*. Ackman Aff., Ex. 4. Deputy TLC commissioners have also been deposed. Charles Fraser, for example, testified in both *Rothenberg* and *Nnebe* while he was deputy commissioner and general counsel of the TLC. Joseph Eckstein, then the former deputy TLC commissioner for adjudications, also testified in *Rothenberg*.

More recently, Ms. Joshi was called *by the City* as a trial witness in *Nnebe*, as was Mr. Fraser, a former TLC general counsel. Both testified about their practices allegedly in compliance with TLC rules. Judge Sullivan, in his post-trial findings of fact, found that he could not credit Ms. Joshi's testimony. *Nnebe v Daus*, 2014 US Dist LEXIS 110751, *35 [SD NY, Aug. 8, 2014, No. 06-CV-4991 (RJS)]. Ms. Joshi's apparent difficulty in testifying truthfully may shed light on the City's eagerness to avoid her being deposed in this case.

IV. PRIOR WITNESSES WERE NOT KNOWLEDGEABLE ABOUT THE TLC'S RECENT PRACTICES IN DEROGATION OF CITY LAW

Defendants insist that municipal defendants have the right to determine which of its officers with knowledge of the facts underlying the litigation may appear for pretrial examination. For this proposition, they cite one 37-year-old single-paragraph decision, *D'Ulisse v Oyster Bay*, 81 AD2d 825, 826 [2d Dept 1981]. More recently, the Second Department has

protective order precluding the deposition of the chancellor of the Board of Education because plaintiff did not show that information of previously-deposed witness was not adequate); *Consolidated Petroleum Terminal, Inc. v Port Jefferson*, 427 NYS2d 66, 67 [2d Dept 1980] (allowing deposition of former chairman of Village Planning Board “[b]ecause his agency’s recommendation played some part in the decision to enact the zoning amendment”).

stated, “For purposes of depositions, a corporate entity has the right to designate, *in the first instance*, the representative who shall be examined.” *Giordano v New Rochelle Mun. Hous. Auth.*, 84 AD3d 729, 731 [2d Dept 2011] (internal citations omitted) (emphasis added). Even *D’Ulisse* states, “[W]hen it becomes apparent that the knowledge of the proffered official or officials is inadequate to produce testimonial and documentary evidence material and necessary to the prosecution of the action ... plaintiffs may petition the court for production of additional witnesses.” 81 AD2d at 826. To show that additional depositions are warranted, the party seeking testimony may demonstrate that “the representatives already deposed had insufficient knowledge, or were otherwise inadequate, and that there is a substantial likelihood that the persons sought for depositions possess information which is material and necessary to the prosecution of the case.” *Giordano*, 84 AD3d at 731 (internal citations omitted).

Here, the City has selected seven witnesses for Plaintiffs to depose. Not one of them claimed any policy-making role for the agency and none claimed knowledge as to who devised the policies at issue. TLC Director of Programs Daniel Timmeny, for example, testified, “I am not strictly a policy expert,” and referred policy questions to others. Timmeny Tr. at 100:12-21.⁴ TLC Director of Applicant Licensing Christopher Tormey testified that he did play a role in licensing black cars, but that he worked off a “checklist” and that he had never even read the definition of a black car stated in the NYC Code. *See, e.g.*, Tormey Tr. at 67:2-9, 95:16-19, 27:23-28:2.⁵ TLC Assistant Commissioner for Data and Technology Rodney Stiles had previously worked in the policy group at TLC, but he admitted that he did not know if the TLC

⁴ Citations to “Timmeny Tr. at ___” refer to pages and lines in the transcript of the deposition testimony of Daniel Timmeny. *See Ackman Aff.*, Ex. 5. The relevant pages of all deposition transcripts cited herein are attached as exhibits to the Ackman Affirmation.

⁵ Citations to “Tormey Tr. at ___” refer to pages and lines in the transcript of the deposition of Chris Tormey. *See Ackman Aff.*, Ex. 6.

had a policy of licensing Uber-affiliated black cars without regard to whether they are franchisees or members of a cooperative. Stiles Tr. at 44:14-45:25.⁶ Another witness the TLC selected, Angelique Meola, was involved in black car base licensing, but her role was essentially clerical. She reviewed license applications with the aid of a checklist, but had nothing to do with determining the items on the list. *See, e.g.*, Meola Tr. at 51:19-52:4.⁷ She also admitted that her practice was to check whether 10 cars affiliated with a base were listed on a cooperative agreement, but did not make any check as to the thousands of additional cars affiliated with the more than 20 Uber-affiliated bases. *See, e.g.*, Meola Tr. at 14:23-15:4, 40:4-23, 47:20-48:15. Later, Defendants proposed TLC Executive Director of Client Services Allison Siegel as a witness, who Defendants represented could testify as to the licensing of black cars and the criteria for licensing. But at her deposition, it became apparent she had no knowledge of either subject. Worse, the City's lawyers knew she lacked any knowledge, but never informed Plaintiffs until after the deposition had started. *See Ackman Aff.*, Ex. 9, 10.

Having deposed multiple witnesses who lack knowledge of the TLC's *de facto* policy or how it was made, Plaintiffs are entitled to question the policymakers whose actions and inaction constituted the violation of good faith and fair dealing and caused Plaintiffs' damages.⁸

⁶ Citations to "Stiles Tr. at ___" refer to pages and lines in the transcript of the deposition of Rodney Stiles. *See Ackman Aff.*, Ex. 7.

⁷ Citations to "Meola Tr. at ___" refer to pages and lines in the transcript of the deposition of Angelique Meola. *See Ackman Aff.*, Ex. 8.

⁸ Defendants also contend that, because "plaintiffs' counsel stipulated to withdraw, with prejudice," a notice seeking the testimony of Ms. Joshi and a subpoena to Mr. Chhabra during the *CGS Taxi* action, Plaintiffs are precluded from seeking their testimony in this case. *See NYSCEF #289* at 10-11. This stipulation was executed in a different case and, accordingly, is neither binding nor relevant in this action. Even if that stipulation controlled here, however, it contained two exceptions—that Plaintiffs could again seek this testimony if Defendants submitted affidavits from these individuals or included these individuals on a list of witnesses for trial—neither of which Defendants have offered here. Moreover, as discovery has continued, it has become abundantly clear that the witnesses proffered by Defendants are wholly insufficient.

V. COMMISSIONER JOSHI HAS MADE PUBLIC STATEMENTS ABOUT MEDALLION VALUES AND CHHABRA PRIVATELY DISCUSSED LICENSING UBER TAXIS WHEN HE WAS WITH THE AGENCY

While they seem desperate to avoid her answering questions under oath, Defendants cannot deny that Ms. Joshi played a critical role in the events pertaining to this action, currently as TLC chair and previously as general counsel. She has also made repeated public statements about the crisis in the medallion taxi industry. As noted in the Ackman Affirmation, in the spring of 2015, Ms. Joshi published an article discussing medallion values, claiming the decline was a “dip” from which prices could “rebound.” On June 30, 2015, Joshi testified to the City Council that for-hire vehicles (as opposed to yellow taxis) “stand alone in the private for-hire world as the sector without a meaningful growth oversight mechanism.” This statement, of course, ignores the licensing requirements that *did* meaningfully restrict that growth for decades. On May 17, 2017, Ms. Joshi testified to the City Council noting that “we have heard” from drivers that it is increasingly difficult to earn a living, but noted no relationship between that difficulty and TLC practices. Ackman Aff., Ex. 11. On September 25, 2017, Ms. Joshi made a statement to the City Council that noted the increase in the number of black cars and the decline in medallion values. *See* Ackman Aff., Ex. 12. She suggested that the price crash was not due to the Uber influx, but to a change in lending practices. *See id.* Plaintiffs are entitled to question Ms. Joshi regarding the policies that the TLC actually follows, her view as to whether those policies are compliant with existing rules and the effect of those policies on medallion values.

Meanwhile, e-mail correspondence with Mr. Chhabra during his tenure at the TLC, some of which was made available through Freedom of Information Law (“FOIL”) request, shows that he was in discussions with Uber while he was a TLC policymaker—and just before he went to work for Uber directly. According to press reports, Mr. Chhabra worked closely with

Uber while he was at the TLC “and exchanged about 1,200 e-mails with individuals using ‘@uber.com’ addresses.” R. Harshbarger and D. Prendergast, *City probing ex-TLC official after jump to Uber*, NY Post, Oct. 15, 2014.⁹ Accordingly, Plaintiffs are entitled to question Mr. Chhabra about the licensing of Uber bases, the appropriateness of those licenses, and their impact on medallion values.

CONCLUSION

Because Ms. Joshi and Mr. Chhabra, as key policy makers, have knowledge of events at issue in this action, and for all the reasons stated, Plaintiffs’ motion to compel should be granted and Defendants’ cross-motion should be denied.

Dated: New York, New York
January 4, 2019

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⁹ For the Court’s convenience, a true and correct copy of this article is annexed as Exhibit 13 to the Ackman Affirmation.