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

ZEHN-NY LLC; ZWEI-NY LLC; ABATAR, LLC; UNTER LLC; UBER TECHNOLOGIES INC.,

Plaintiffs,

v.

THE CITY OF NEW YORK,

Defendant.

Index No.

Hon.

Complaint

COMPLAINT

Zehn-NY LLC, Zwei-NY LLC, Abatar, LLC, Unter LLC, and Uber Technologies

Inc.("Plaintiffs"), by and through their undersigned counsel, hereby allege as follows:

PRELIMINARY STATEMENT

1. On August 14, 2018, the City of New York (the "City") enacted Local Law 147, which professes to address the problem of traffic congestion particularly in Manhattan's Central Business District ("CBD"). The law, among other things, imposes a one-year cap on for-hire vehicle ("FHV") licenses, requires that the Taxi and Limousine Commission ("TLC") study congestion and other industry matters during the period of the cap, and delegates to the TLC permanent FHV capping power-a power Mayor Bill de Blasio threatened recently as three weeks ago would be deployed.

2. The City enacted the cap despite the negative effect it would have on residents outside Manhattan, where most Uber trips occur. It did so even though the only official report issued by the City found that growth in population, tourism, pedestrians, construction activity, and deliveries-not FHVs-were the principal causes of congestion. It did so even though experts have uniformly recommended addressing congestion with comprehensive congestion pricing, which would reduce congestion and raise money for the City's crumbling public transportation system. It did so even though no study has endorsed a cap on FHVs as a solution to the problem of congestion. It did so even though it conflicts with State anti-congestion legislation enacted in April 2018 upon the recommendations of Governor Andrew Cuomo's Fix NYC Advisory Panel convened in late 2017. And it did so without first conducting its own study of the issue, instead choosing an unfortunate, irresponsible and irrational "ban first, study later" approach.

3. Rather than rely on alternatives supported by transportation experts and economists, the City chose to significantly restrict service, growth and competition by the for-hire vehicle industry, which will have a disproportionate impact on residents outside of Manhattan who have long been underserved by yellow taxis and mass transit. The City made this choice in the absence of any evidence that doing so would meaningfully impact congestion, the problem the City was ostensibly acting to solve.

4. For decades, the taxicab industry enjoyed virtual immunity from competition in New York City, and historically has underserved areas of the City other than Manhattan, which has disproportionately affected lower-income neighborhoods and areas with substantial minority populations. Under New York law, only taxicabs may pick up riders via street hails in Manhattan south of West 110th Street and south of East 96th Street. With few exceptions, FHVs may, by

law, only provide ride services to consumers who have pre-arranged service. Prior to the arrival of app-based FHV services, FHVs held only a small and steady share of the total number of forhire vehicle trips.

5. The City's subway system also has long been over capacity, underfunded, and poorly maintained, and its defects disproportionately affect lower-income neighborhoods and areas with substantial minority populations. As the Fix NYC Advisory Panel recognized, any meaningful plan to reduce congestion in New York City depends upon fixing the subway system. Consistent with the Advisory Panel's recommendations, the State's April 2018 legislation to address congestion rests upon making those improvements.

6. FHV services, including Uber and the New Yorkers who have become for-hire drivers using Uber's technology, have significantly increased consumer choice in recent years and have brought significant benefits to historically underserved areas of the City especially those outside of Manhattan. Since 2013, Uber has done this by providing a smartphone application and service that matches requests from riders to drivers who provide for-hire service and allows for payment via credit card ("Uber App"). Uber has innovated to provide options such as the more affordable Pool option in the Uber App. These innovations and the efforts of new drivers have brought significant benefits to the City, while also increasing economic opportunities for people who want to become drivers. Residents who live in and/or travel to places where "cabs don't stop" now can access an affordable and reliable ride. Whereas, according to the TLC, more than 92% of taxi trips originate in Manhattan, the majority of trips on the Uber platform now occur outside of Manhattan. On the Uber platform far more trips occur at off-peak times than at peak times, and trips on the Uber platform are growing the fastest in areas that have been traditionally

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underserved by conventional forms of transportation, including lower-income areas, predominantly minority areas, and areas without ready subway access.

7. Local Law 147 is unlawful in several respects. First, the City exceeded its statutory authority. Under New York State General Municipal Law § 181, the State grants cities the power to cap taxicabs but not app-based or other types of FHVs, and prior legislative efforts to give New York City and other cities that power have failed.

8. Second, the cap legislation is preempted by State law enacted in April 2018 that is specifically designed to implement a phased, comprehensive, and interconnected strategy recommended by the Fix NYC Advisory Panel for addressing the interrelated issues of congestion and improving public transportation in New York City and in particular, for outer borough residents.

9. Third, having usurped legislative power from the State and regulated in a manner that is at odds with the State's own exercise of its authority, the City next unconstitutionally delegated legislative power to the TLC, a City agency, to *permanently cap* the number of FHVs following the one-year cap with no prescribed constraint on the agency's discretion and without any further involvement by the Council. This provision (Local Law 147 § 3) is doubly unlawful. Just as the City lacks the power to impose any cap, it lacks the power to give the TLC the power to cap. Moreover, even if the State had chosen to give New York City this power (it did not), the City could not constitutionally give the legislative power as to whether to impose a cap and what cap to impose to an administrative agency because the decision to set the number of vehicles that are entitled to FHV licenses would be an exercise of *legislative* power that the City may not delegate away from the elected Council to the unelected TLC.

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Fourth, the City's cap on the number of FHV licenses is an unlawful 10. anticompetitive arrangement because it restrains trade by restricting output. The arrangement has extensive anticompetitive effects in restricting competition by FHV services throughout the City, including in historically underserved areas. The City has not identified any benefits to competition that would result from restricting supply through a FHV cap, and there are none. The anticompetitive effects of this arrangement thus outweigh any procompetitive benefits. Indeed, the City admits that it conducted no study prior to imposing the cap that would support a determination whether there are any benefits at all, even benefits unrelated to competition. The City's prior 2016 government study of the impact of FHVs on traffic congestion attributed the decline in CBD speeds to growth in population, tourism, pedestrians, construction activity, and deliveries—and explicitly concluded that the declines were *not* attributable to growth in FHV services. Office of the Mayor, City of New York, For-Hire Vehicle Transportation Study at 5, 11 (Jan. 2016) (emphasis added). The City Council conducted no further study since that time to determine whether any subsequent speed declines are attributable to an increased number of FHV licenses or to other factors, such as the ones identified in the 2016 study. Nor did the Council study the potential impact of a cap or other legislation on the tremendous benefits to competition and to citizens' (both riders' and drivers') lives that FHVs have brought to the City, particularly (for riders) in areas that had been traditionally underserved by the taxicab industry.

11. Fifth, the City enacted both of these unlawful provisions in a fundamentally irrational and therefore unconstitutional way. As discussed, the City imposed the cap without conducting any study measuring the costs and benefits of the proposed legislation. By choosing

5

to ban first and study later, the City has blamed FHVs for a problem without making any attempt to determine whether capping FHVs would meaningfully address the problem.

12. Additionally, the City required a study to be conducted during the period of the cap. As the statutory language reflects, the contemplated "study" is entirely results-driven. Among other topics, the study is focused on FHV driver income, the extent to which FHVs contribute to congestion, traffic safety, FHV usage, and access to FHV services in different geographic areas. Local Law 147 § 3 codified as NYC Admin. Code § 19-550. Nowhere does the statute authorizing the "study" identify other potential contributors to congestion, apart from FHVs.

13. Further, the "study" will not be used by the Council to make future capping decisions because the Council has delegated the power to impose future caps to the TLC. While it purports to provide for an examination of for-hire "vehicle utilization standards," including the effect of FHVs on "traffic congestion," the legislation does not require the TLC to assess the impact of alternative possible causes of congestion-like the use of private cars, parking, bike lanes, growth in population, tourism, pedestrians, construction activity, and deliveries, among others—or critically analyze appropriate alternative solutions to the congestion problem. It also does not require the TLC to analyze the impact of the cap in light of the State's legislation enacted just months before, including the State's imposition of a congestion surcharge for FHV trips and use of those funds to fund public transportation improvements. Nor does it require analysis of the interplay between the cap and other legislation enacted by the Council, such as that requiring minimum per minute and mile payments to drivers. This is less a "study" and more a

"post hoc rationalization" of a remedy the City appears to have already selected. One need look no further than Mayor de Blasio's recent comments for confirmation of this.

14. Just three weeks ago, Mayor de Blasio confirmed the City's intent to impose caps regardless of any study, stating, "we're going to put ongoing caps in place on the for hire vehicles." Transcript: Mayor de Blasio Appears Live on the Brian Lehrer Show (Jan. 25, 2019), https://www1.nyc.gov/office-of-the-mayor/news/059-19/transcript-mayor-de-blasio-appears-livethe-brian-lehrer-show. Likewise, and in the same interview, he cited caps as necessary to ensure minimum driver payments, without even mentioning legislation enacted at the same time (and not challenged by Uber) to require such payments. Far from helping drivers, the caps will limit the economic opportunity of those who wish to use their own vehicles to provide such services instead of paying higher prices to rent vehicles.

15. Because of the unlawfulness of the provisions of Local Law 147 that impose a cap on FHV licenses and that delegate legislative power to the TLC to impose such caps now and in the future, they should be enjoined by the Court.

PARTIES

16. Plaintiff Uber Technologies Inc. ("Uber") is a technology company headquartered in San Francisco, California. Uber licenses software that enables independent third-party transportation providers to receive and respond to requests for prearranged transportation from interested riders. As the ultimate parent company of the Uber Bases, Uber earns a share of revenue from trips dispatched by the Uber Bases.

17. Plaintiffs Zehn-NY, LLC ("Zehn-NY"), Zwei-NY LLC ("Zwei-NY"), Abatar LLC ("Abatar"), Unter LLC ("Unter") (collectively, the "Uber Bases") are direct, wholly-owned

subsidiaries of Uber USA, LLC and indirect, wholly-owned subsidiaries of UTI. Uber Bases "dispatch," within the TLC's parlance, FHVs that TLC-licensed drivers possess and operate to transport riders who have requested a ride using the Uber App. The cap imposed by Local Law 147 harms the Uber Bases and Uber by artificially limiting the number of vehicles for the Uber Bases to dispatch requests to and thereby impeding growth in riders and trips and the revenue the Uber Bases and Uber can earn.

18. Defendant the City of New York (the "City") is a municipal corporation duly incorporated and existing pursuant to the laws of the State of New York.

JURISDICTION

19. This Court has jurisdiction pursuant to CPLR 3001. The Court also has jurisdiction over this action pursuant to its general jurisdiction under the New York Constitution Art. VI § 7, and New York Judiciary Law § 140-b.

20. Venue is proper pursuant to CPLR 504(3). Local Law 147 was passed by the City and signed into law by Mayor De Blasio in New York County, and enforcement and implementation occurred and will continue to occur in New York County.

FACTUAL ALLEGATIONS

A. **Uber And Its Driver-Partners Have Significantly Increased The Competitiveness Of The For-Hire Vehicle Industry In New York City And Brought Significant Benefits To Traditionally Underserved Areas**

21. Under New York City law, only licensed vehicles may provide For Hire Vehicle service within New York City. NYC Admin. Code § 19-504(a)(1). The term "For Hire Vehicle" or "FHV"—as defined by New York City and the TLC—includes multiple types of vehicles but excludes taxicabs. The New York City Administrative Code defines "For-hire vehicle," in part,

as a "motor vehicle carrying passengers for hire in the city, with a seating capacity of twenty passengers or less, not including the driver, other than a taxi cab." NYC Admin. Code § 19-502(g). The TLC's definition of "For-Hire Vehicle" is substantively identical: "a motor Vehicle licensed by the Commission to carry Passengers for-hire in the City, which: (1) Has a seating capacity of 20 or fewer Passengers; (2) Has three or more doors; (3) Is not a Taxicab, a Commuter Van, or an authorized bus as defined by NYS law." RCNY § 51A-03(g).

22. Taxicabs are separately defined, in part, as a motor vehicle "duly licensed as a taxicab by the commission and permitted to accept hails from passengers in the street." NYC Admin. Code § 19-502(1). By contrast, FHVs are not permitted to accept street-hails. Instead, they accept trips pre-arranged in various ways, including by telephone, website, or app. See, e.g., NYC Admin. Code § 19-504(a)(1)("No motor vehicle other than a duly licensed taxicab shall be permitted to accept hails from passengers in the street.").

23. Multiple types of vehicles are classified as FHVs. Pursuant to the TLC's rules and definitions, vehicles that are not taxicabs and that affiliate with an FHV base are classified as livery vehicles, Black Cars, or luxury limousines depending on the type of base with which the vehicle is affiliated. For example, the TLC defines "livery" as a "For-Hire Vehicle that is affiliated with a Livery Base Station." RCNY § 59A-03(j). "Luxury Limousine" is similarly defined as an FHV that affiliates with a luxury limousine base. RCNY § 59A-03(1). Black Cars are defined as vehicles that must affiliate with a Black Car Base, and Black Car Bases are permitted to dispatch Black Cars. RCNY § 59A-03(b)(c).

24. The TLC defines "For-Hire Base" like the Uber Bases as "the Commissionlicensed business for dispatching For-Hire Vehicles and the physical location from which For-

Hire Vehicles are dispatched." RCNY § 59A-03(e). The TLC definition further provides that a For-Hire Base "can be any of the following: (1) A Black Car Base, (2) A Livery Base (or Base Station), (3) A Luxury Limousine Base." RCNY 59A-03(e). The Uber Bases, Zehn-NY and Zwei-NY, are TLC-licensed Black Car Bases, and the Uber Base, Abatar, is a TLC-licensed Livery Base. The Uber Base, Unter, is a TLC-licensed Luxury Limousine Base.

25. Prior to the arrival of Uber in New York City in 2013, the taxicab industry faced only limited competition internally or from the FHV industry. As reflected at page 10 of the City Council's Committee on For-Hire Vehicles' Committee Report, the number of taxicab trips and FHV trips remained essentially static in New York City through 2013, with taxicabs accounting for more than four times as many trips annually as the remaining categories of FHVs combined. The Council of the City of New York's Committee on For-Hire Vehicles, *Committee Report* at 10 (Aug. 8, 2018) ("Aug. 8, 2018 Committee Report").

26. The State of New York has long authorized the City of New York and other municipalities to cap taxicabs (but not FHVs), and New York City has historically done so. The predictable result has been poor customer service, demand that exceeds supply, and overall negative rider experience. Those adverse effects have been particularly acute for riders in the outer boroughs and for people of color for whom taxicabs have not been a reliable option.

27. Uber and drivers who use the Uber App significantly increased the competitiveness of the FHV segment by enabling riders to request and prearrange trips via the Uber App, by enabling drivers to be matched with riders and receive payments, and by working to facilitate a growth in the supply of available drivers and for-hire vehicles. Uber has worked hard to enable increased transportation options, empowering New Yorkers throughout the City to get a

ride in minutes, including in neighborhoods long ignored by yellow taxis and underserved by public transit. In New York City, the majority of trips facilitated by the Uber App now happen in the outer boroughs, where the Uber platform has seen, and continues to see, the fastest growth.

28. The competitive benefits that Uber and the app-based FHV segment have brought have been particularly striking outside of the New York City CBD and in traditionally underserved areas. The City Council's August 8, 2018 Committee Report acknowledges these benefits and demonstrates through the following chart the significant growth in FHV vehicle usage that has occurred in such areas:



Aug. 8, 2018 Committee Report at 27.

29. According to the Committee's Chart, the largest growth in trips has occurred in the outer boroughs where many areas have experienced growth of over 100% in the 2016-2017 period alone, and many other areas have experienced growth of more than 200%. At the same time, some areas of Manhattan experienced no or negative growth in the number of trips.

30. Uber's data shows the same basic trend as the Committee's data. Since the first quarter of 2016, the number of trips facilitated via the Uber App that both start and end outside of the CBD has quadrupled. The number of trips on the Uber platform outside the CBD now dwarfs the number of trips in the CBD. As the graph below shows, in the second quarter of 2018, 24.0 million Uber trips began and ended outside the CBD. By contrast, just 7.4 million Uber trips began and ended in the CBD.



31. Similarly, the number of trips using the UberPOOL option (which

disproportionately occur in the outer boroughs) has increased significantly over this period, growing from over 2.2 million in the first quarter of 2016 to over 15.3 million in the second quarter of 2018. The number of UberPool trips that took place exclusively in the outer boroughs has increased more than tenfold from the first quarter of 2016 to the second quarter of 2018 to

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just over 9.9 million. As of the second quarter of 2018, 91% of UberPool trips started or ended in the outer boroughs.

32. As the chart below reflects, the growth in trips at peak times on the Uber platform is primarily from trips outside the CBD. Growth in trips at peak times within the CBD is minimal. The same pattern applies when analyzing the total number of trips. The total number of trips at peak times is far higher outside the CBD than inside the CBD. And the total number of off-peak trips outside the CBD is also far greater than the total number of peak trips within the CBD.



33. While the growth in the number of FHV licenses has *not* corresponded with a significant growth in the number of FHV trips in the CBD during peak times, it has corresponded with many appreciable benefits to lower-income communities. Uber usage has grown significantly in lower-income areas. From the first quarter of 2016 to the present, the number of trips that began in zip codes from the lowest income quartile (0-25%) has quintupled. Further, the

number has quadrupled in zip codes from the second lowest income quartile (25-50%) and tripled in zip codes from the third lowest (50-75%).



As a result, in the second quarter of 2018, there were approximately 10 million trips starting in zip codes in the lowest income quartile compared to approximately 2 million in the first quarter of 2016. Further, whereas the number of trips in such zip codes was 25% of what it was in the highest income quartile in the first quarter of 2016, it is now more than two-thirds that number.

34. Additionally, far more trips in lower-income areas are facilitated via the Uber App and other app-based companies than by taxicabs. As recognized by an independent study conducted by the Tri-State Transportation Campaign, the number of pick-ups of lower-income riders facilitated by app-based companies dwarfs the number of pick-ups by taxicabs. Tri-State Transportation Campaign, Hire Congestion, Lower Speeds: Is It Time to Cap For-Hire Vehicles (June 2018), available at http://www.tstc.org/wp-content/uploads/2018/06/Hire-Congestion.pdf. As the chart below shows, it is only at higher incomes that the number of pick-ups is

approximately the same, and only at incomes of \$200,000 or more where taxicab pick-ups are

higher.



Tri-State Transportation Campaign, Hire Congestion, Lower Speeds at 8.

35. Uber App usage similarly has grown significantly in zip codes where a majority

of the population comes from a racial minority group. The number of trips that began or ended in

15

these predominantly minority zip codes more than quadrupled from the first quarter of 2016





36. As with lower-income communities, the benefits Uber has provided to

predominantly minority zip codes vastly outweigh the benefits provided by taxicabs in those zip codes. As reflected in the following chart, in the first two quarters of 2018, the number of trips completed via the Uber App that originated or ended in majority-minority taxi zones (zones defined by the TLC for taxi pickups in New York City) was more than double the number of such trips by taxicabs.

16



Number of Trips That Start or End in Majority-Minority Taxi Zones – Q1 and Q2 2018

37. Further, whereas trips that originate or end in majority-minority taxi zones make up a majority of trips completed via the Uber App, they make up less than one-third of taxicab trips.

17



% of Trips That Start or End in Majority-Minority Taxi Zones – Q1 and Q2 2018

38. The Uber App also plays a key role addressing demand in areas lacking ready subway access. Since the first quarter of 2016, the number of trips completed via the Uber App that began or ended in zip codes that lack subway entrances has more than tripled since the first quarter of 2016, with over 7.8 million trips in the second quarter of 2018. Likewise the number of trips that began and ended in these zip codes has quintupled since the first quarter of 2016 with more than one million trips in the second quarter of 2018.

В. New York State Law Does Not Grant New York City the Power to Limit the Number of For-Hire Vehicles

39. New York State General Municipal Law § 181 governs which jurisdictions within

New York State may or may not limit the number of FHV licenses and provides in full:

The municipal officers and boards in the several cities, towns and villages of this state now having the authority to enact ordinances, may adopt ordinances regulating:

- 1. The registration and licensing of taxicabs and may limit the number of taxicabs to be licensed and the county of Westchester may adopt ordinances regulating the registration and licensing of taxicabs and limousines and may limit the number to be licensed; the county of Nassau may adopt ordinances regulating the registration of taxicabs and limousines; and the county of Suffolk may adopt local laws or ordinances regulating the registration of taxicabs, limousines, and livery vehicles; the county of Rockland may adopt local laws or ordinances regulating the registration and licensing of taxicabs, limousines, and livery vehicles and may limit the number to be licensed; and the county of Dutchess may adopt local laws or ordinances regulating the registration and licensing of taxicabs, limousines and livery vehicles; and the county of Ulster may adopt local laws or ordinances regulating the registration and licensing of taxicabs, limousines, and livery vehicles.
- 2. Parking and passenger pick-up and discharge by taxicabs, limousines and livery vehicles. Establishment of such local laws or ordinances and regulations regulating parking and passenger pick-up and discharges may be based upon recommendations from municipal planning officials or other public entities and may address and take into consideration such factors, including, but not limited to, geographic areas, vehicle type, limiting the number of parked vehicles and activities undertaken while parked, and periods of idling.

N.Y. GMU § 181.

40. Since 1956, when New York General Municipal Law § 181 was enacted, it has been amended eight times. Six of those amendments authorized certain, enumerated counties to regulate the licensing and registration of certain kinds of vehicles. Amended L.1992, c. 829, § 1; L.2003, c. 430, § 1, eff. Sept. 1, 2003; L.2012, c. 382, § 1, eff. Aug. 17, 2012; L.2016, c. 287, § 1, eff. Aug. 31, 2016; L.2016, c. 289, § 1, eff. Aug. 31, 2016.

41. Each of these six amendments separately identified the county being granted the right, as well as the scope of the right, including whether that county also had the right to limit the number of licenses for limousines and/or livery vehicles. For example, in 2016, New York

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General Municipal Law § 181was amended to include Ulster County. L.2016, c. 289, § 1, eff. Aug. 31, 2016 ("and the county of Ulster may adopt local laws or ordinances regulating the registration and licensing of taxicabs, limousines, and livery vehicles."). In 2012, it was amended to include Rockland County. L.2012, c. 385, § 1, eff. Aug. 17, 2012 ("and the county of Rockland may adopt local laws or ordinances regulating the registration and licensing of taxicabs, limousines, and livery vehicles and may limit the number to be licensed.").

42. New York General Municipal Law § 181 thus uniformly grants all "cities, towns and villages" in New York State the power to "adopt ordinances" regulating the "registration and licensing of taxicabs" and separately to "limit the number of taxicabs to be licensed." N.Y. GMU § 181(1). Additionally, it grants all "cities, towns and villages" the power to regulate "[p]arking and passenger pick-up and discharge by taxicabs, limousines and livery vehicles." Id.

43. At the same time, New York General Municipal Law § 181 grants no cities, towns and villages the power to limit the number of vehicles other than taxicabs. Instead, New York General Municipal Law § 181 expressly distinguishes between the regulation of "registration and licensing" of taxicabs, limousines, and livery vehicles, and limits on the number of those vehicles. *Id.* It grants all cities the power to limit the number of taxicabs and no cities the power to limit the number of limousines and livery vehicles. Id. Further, it grants only two counties the power to limit the number of limousines and livery vehicles (Westchester for limousines and Rockland for both) and does not grant any cities, towns, or villages that power. Id.

44. In 2015 and 2016, the New York State Legislature considered amending New York General Municipal Law § 181 to expand the taxicab-only capping authorization granted to cities —including New York City—through the introduction of Senate Bill S3538. Whereas New

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York General Municipal Law § 181 permitted cities to "limit the number of taxicabs," New York Senate Bill S3538 proposed to authorize cities to "limit the number of taxicabs, **limousines and livery vehicles**." N.Y. Senate Bill S3538 (2016) (original version) (bolded language indicates proposed addition to statutory text). This proposal was not pursued after legislators, in amendments to Senate Bill S3538, removed "limousines and livery vehicles" from the proposed capping authority. N.Y. Senate Bill S3538A (2016), N.Y. Senate Bill S3538B (2016). An amended version passed the legislature that would have given cities, towns, and villages the authority to regulate the "registration and licensing" of "limousines, livery and transportation network company vehicles" but not the power to cap the number of such vehicles. N.Y. Senate Bill S3538B (2016). The Governor ultimately vetoed that bill because as the Governor explained in a veto statement, the State had not yet authorized TNCs to operate statewide. Statement Accompanying Veto #269, Veto Jacket for N.Y Senate Bill 3538-B (Nov. 28, 2016).

45. The State subsequently enacted separate regulatory regimes for New York City and the rest of the State, neither of which authorized local jurisdictions to cap the number of forhire vehicles. In April 2017, it gave jurisdictions with populations of over 100,000 (other than New York City) the authority to prohibit pick-up by TNC vehicles entirely and otherwise provided for exclusive state regulation of TNCs in such jurisdictions. 2017 N.Y. Sess. Law Ch. 59 (A3009C) Part AAA § 14 codified as N.Y. GMU § 182(1), (3) (stating that cities and counties with populations of over 100,000 "may prohibit the pick-up of any person by a transportation network company" and that the "section shall not apply to a city with a population of one million or more"); *see also* 2017 N.Y. Sess. Law Ch. 59 (A3009C) Part AAA § 2 codified as N.Y. Veh. & Traf. Law § 1700. The law contained various provisions governing such issues as licensing,

background checks for drivers, required disclosures to passengers, and insurance. 2017 N.Y. Sess. Law Ch. 59 (A3009C) Part AAA § 2 codified as N.Y. Veh. & Traf. Law §§ 1691-1700. Under the statute, "TNC" referred to companies that "us[e] a digital network to connect transportation network company passengers to transportation network company drivers who provide TNC prearranged trips." 2017 N.Y. Sess. Law Ch. 59 (A3009C) Part AAA § 2 codified as N.Y. Veh. & Traf. Law §1691(3).

46. For New York City, as discussed in greater detail in section E *infra*, the Fix NYC Advisory Panel issued a set of recommendations aimed at improving the City's unique transportation issues, including the related issues of congestion and the City's stressed public transportation infrastructure. Then, in April 2018, it enacted a law that was based upon the study's recommendations that the State implement a phased and interconnected plan for addressing both congestion and the aging public transportation system. 2018 N.Y. Sess. Law Ch. 59 (S7509C). The law did not include caps, but instead relied upon, among other things, congestion pricing for for-hire vehicles and the use of the proceeds of the congestion pricing to fund critically-needed transportation improvements, including in the outer boroughs, before imposing congestion pricing on other types of vehicles as well.

C. The City Council Unlawfully Imposes A One-Year Ban On The Issuance Of For-Hire Vehicle Licenses And Unlawfully Gives The TLC The Power To **Impose Future Caps At Whatever Level It Deems Appropriate**

47. On August 14, 2018, after an extensive lobbying campaign by the taxicab industry, Mayor de Blasio signed into law a package of five bills limiting competition in, and imposing TLC regulation on many aspects of the FHV industry. These laws included Local Law 149's creation of a new category of "high-volume for-hire services" licenses that require

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applicants to meet various requirements, including a business plan and compiling and relinquishing confidential trip and revenue data. Additionally, Local Law 150 calls for the TLC to establish a method for determining minimum earnings for certain FHV drivers.

48. As part of this package, the Council enacted Local Law 147. That law provides in pertinent part:

The taxi and limousine commission shall not issue new for-hire vehicle licenses for 12 months after the effective date of this local law, during which period the commission shall submit a report to the council every 3 months on the impact of this section on vehicle ridership throughout the city.

Local Law 147 § 1(a) (emphasis added) (hereinafter the "FHV cap"). The only mandatory exception to the cap is for wheelchair accessible vehicles, Local Law 147 § 1 (c), which represent only a small percentage of vehicles (and most vehicles cannot be converted to become wheelchair accessible). The law also delegates power to the TLC to grant additional licenses during the twelve-month period—but does not require it to do so—upon certain determinations. Local Law 147 § 1 (e). To date, the TLC has neither made such determinations nor established procedures for doing so.

49. This law exceeded the Council's power. Under State law, the City lacks the power to cap the number of FHV licenses.

50. During the period of the ban, Local Law 147 § 3 further requires that the TLC study several enumerated factors during the one-year cap on FHV licenses including (i) driver income, (ii) traffic congestion, (iii) the contribution of various for hire vehicles to such congestion, (iv) traffic safety, (v) vehicle utilization rates, (vi) access to services in different geographic areas, (vii) the number of hours that drivers have made themselves available to accept

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dispatches, (viii) driver income and well-being, and (ix) such other topics as the commission and the department of transportation deem appropriate. Local Law 147 § 3.

51. Based on the results of this purported study, the TLC

"shall review the number of for-hire vehicle licenses on a periodic basis, but not less than once annually, and based on such review may regulate the number of for-hire vehicle licenses issued pursuant to section 19-504."

Id. codified as NYC Admin. Code § 19-550. This provision thus purports to give the TLC permanent power to cap.

52. Even if the State had chosen to give New York City this power (it did not), the City could not constitutionally delegate that power to an administrative agency. The complex decision to set the number of FHVs that are entitled to licenses would be a legislative power that the City may not delegate away from the City's elected officials. It involves numerous fundamentally legislative decisions, including, but not limited to, determining the rights of new FHV licensees to pursue their chosen occupation and the rights of those who live in underserved areas to transportation, weighing those rights in light of the impact of a cap on those areas and the likely impact of FHVs on congestion in the CBD, and the feasibility and preferability of other legislative and regulatory options such as congestion pricing or improving the subway and bus systems.

53. The City also has exempted the City's elected officials from ever having to consider what policy should govern New York City in the wake of whatever the study reveals or other facts that become apparent. It not only has delegated the power to the TLC to study and make recommendations based on that study, but also to make the final legislative decision on

whether to permanently cap for hire vehicle licenses and how many for-hire vehicles should be permitted to serve New Yorkers.

D. The City's Cap Was Irrationally Imposed Without Study, And Will Inflict Significant Anti-Competitive Harm, Including to Traditionally Underserved Communities, Without Offsetting Procompetitive Benefits or Meaningfully **Improving Congestion**

54. The City Council admitted that it adopted this unprecedented cap without first studying FHVs' impact on congestion.

55. Councilmembers (particularly those from areas that have previously been poorly served by the taxicab industry) remarked on the highly suspect and irrational nature of this approach during the debate over the bill. As stated by Council Member Mark Gjonaj of the Bronx during the vote, "On 144B, we've already experienced the lack of service in the outer boroughs. It was during TLC's regulation that allowed it to happen, and I'm not sure when we decided to put a freeze or a cap or a pause on something to do a study. Typically, we perform studies, and that'll determine the course of action that we should take." Transcript of the Minutes of the City Council Stated Meeting (Aug. 8, 2018) at 84:18-25. Council Member Inez D. Barron of Brooklyn similarly remarked, "This industry that has expanded has provided a great service, and I think that perhaps if a study had been done prior to the legislation, we would see what it is in fact we needed to do to bring some equity to the situation." Id. at 79:7-11.

56. Rather than making a considered decision as to the causes of increased congestion and the most appropriate methods for dealing with those causes, the City blamed and capped FHVs without an empirical study.

57. The City also has constructed a study apparently designed to provide a post hoc justification for a cap imposed by the TLC. The Council also provided for a study of the cap

while enacting five bills in total impacting the FHV industry. The enactment of five bills with a variety of provisions governing the FHV industry, including, for example, minimum driver pay provisions that will affect pricing and demand, will confound the TLC's and Department of Transportation's ability to assess the impact of the cap separate from the other legislative measures all enacted into law as well as a set of legislative measures. Further, it will confound the ability to study the impact of a set of legislative measures the State enacted on congestion pricing in April 2018, as discussed in the next section.

58. The metric used by the Council in its Committee Report to reflect congestion was decreased average vehicle and taxi speeds in the CBD and Midtown Core. Aug. 8, 2018 Committee Report at 19, 21. However, as the report acknowledges, a prior January 2016 study by the Office of the Mayor concluded that reductions in vehicular speeds "was caused primarily 'by increased freight movement, construction activity, and population growth." Id. at 19 (quoting For-Hire Vehicle Transportation Study at 5). The study further concluded, "E-dispatch is a contributor to overall congestion, but did not drive the recent increase in congestion in the CBD." For-Hire Vehicle Transportation Study at 5. In enacting the five bills, the Council did not analyze whether, and/or to what extent, subsequent declines in traffic speeds from 2015 to 2017 resulted from the same or additional causes.

59. Additionally, the Council did not study whether a cap would have even the slightest efficacy in addressing congestion in the CBD (even assuming arguendo in the absence of any evidence that app-based FHVs are meaningfully contributing to it). Nor did it study whether the cap will instead diminish or eliminate the benefits that app-based FHVs and an expansion of FHVs have brought and would otherwise bring to New York City residents outside of the CBD.

60. Those benefits are both undeniable and massive. As reflected in section A, trips outside the CBD have more than quadrupled since the first quarter of 2016 alone, far outpacing growth in the CBD; and, in the second quarter of 2018, there were sixteen million more trips entirely outside the CBD than trips that took place entirely in the CBD. Moreover, trips that exclusively took place outside the CBD far exceeded trips that began or ended in the CBD. The same holds true for UberPool trips. UberPool trips that took place exclusively in the outer boroughs has increased more than tenfold from the first quarter of 2016 to the second quarter of 2018 to just over 9.9 million. The cap either will reverse or reduce these improvements for residents outside of Manhattan, depending upon its duration and extent. Further, the permanent delegation of capping authority to the TLC has significantly interfered with business planning and forecasting by leaving uncertain the number of licensed FHVs that will be available in the future to accept trip requests in New York City via the Uber App. It also has required allocation of resources to tasks that otherwise would not have been necessary at all or required to the same extent, including new technologies for sharing vehicle licenses and driver-education efforts.

61. The Council was well aware of the growth in FHV trips outside the CBD. The Aug. 8, 2018 Committee Report contains the chart entitled 2017 FHV + Taxi Growth: Strongest in Outer Boroughs, supra ¶ 28, which starkly illustrates the tremendous improvement in transportation options that companies like Uber and FHV drivers have brought to the outer boroughs in New York City. Aug. 8, 2018 Committee Report at 27. The chart also shows that most areas of Manhattan and the midtown core have experienced limited growth, no growth at all, or declines. Id. The Report further acknowledges that in "recent years there has been significant growth in FHV coverage in the outer boroughs. 46% of app-based FHV trips do not either start or

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end in the Manhattan core." Id. at 26. The Report, however, makes no attempt to determine the impact of a cap on that growth or to explain why a cap would not simply redound to the disadvantage of the outer boroughs and preempt further improvements in transportation options in those areas. See id. at 20-27.

62. The Council also failed to account for the fact that the greatest growth, and the largest number of trips, both within and outside the CBD, are taking place at off-peak times. Again, the Committee Report fails to present a single reason to believe that a cap will not simply reduce transportation options rather than alleviate congestion in the CBD during peak times. Instead, the City simply presumed that the cap would alleviate congestion in the CBD during peak hours without studying the question at all. See id. at 20-27.

App-based FHVs have similarly brought tremendous benefits to lower-income 63. areas and provide far more trips in such areas than taxicabs. The rate of FHV trip growth is highest in these communities. Thus, these communities acutely will feel the cap's impact, which will limit transportation options.

64. The issue of income distribution across app-based FHV pick-ups is also a prime example of the anti-competitive impact and irrationality of the Council's refusal to conduct any systematic study of the issue prior to enacting this unprecedented FHV cap. The Committee Report asserts that the demographic of individuals with a college degree and earn over \$50,000 and "who are between the ages of 25-34" is "twice as likely to use [app-based FHVs] as individuals who are less educated, less affluent, and older." Aug. 8, 2018 Committee Report at 22. Such statements are meaningless even assuming their accuracy. App-based FHVs provide far more trips to lower-income communities than taxicabs, and are growing at a far faster rate

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among those communities than in higher-income communities. Thus, regardless of whether the average Uber customer earns more than \$50,000 (which is hardly a marker of wealth in New York City), companies like Uber provide tremendous benefits to lower-income communities. The Council conducted no analysis of the likely impact of the cap on lower-income communities. Any such analysis would have demonstrated that the adverse impact on these communities is likely to be considerable. The same is true of the impact of app-based FHVs on majority-minority communities. The taxicab industry's history of racial discrimination is well-documented and was the subject of much comment during the debate over the regulation of app-based FHVs. Jeffery C. Mays, Uber Gains Civil Rights Allies Against New York's Proposed Freeze: "It's a Racial

Issue," New York Times (July 29, 2018), available at

https://www.nytimes.com/2018/07/29/nyregion/uber-cap-civil-rights.html.

65. For example, Council Member Robert E. Cornegy, Jr., who voted against the legislation, stated:

> "I'm a shared economy enthusiast overall and a supporter of shared economy platforms in a larger context," said Cornegy. "Anecdotally, I took my family to the [Intrepid] Museum on the West Side recently and stood on the curb as cab after cab passed us by. I'm very wary of supporting an industry that has discriminated against me."

Stephen Witt, Cornegy, Ampry-Samuel Weigh In On Council Measure To Halt Ride-Hailing App Growth, Kings County Politics (Aug. 7, 2018), available at https://www.kingscountypolitics.com/cornegy-ampry-samuel-weigh-in-on-council-measure-tohalt-ride-hailing-app-growth/. Similarly, the Reverend Al Sharpton, the President and Founder of National Action Network and national Civil Rights leader, explained: "Ride hailing services are a critical part of our transportation system, especially in communities outside of Manhattan where

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taxis don't go. Since apps have launched in New York City, all New Yorkers can get an affordable ride—no matter where you live or what you look like." Uber Microsite Reveals Increased Brooklyn Destinations, Kings County Politics (May 22, 2018), available at https://www.kingscountypolitics.com/uber-microsite-reveals-increased-brooklyn-destinations/. Likewise, the Reverend W. Franklyn Richardson told the New York Times that Uber: "gives safe transportation to people in communities where the cabs don't stop, where the color of your skin prohibits you from access." Winnie Hu, Uber, Surging Outside Manhattan, Tops Taxis in New York City, New York Times (Oct. 12, 2017), available at

https://www.nytimes.com/2017/10/12/nyregion/uber-taxis-new-york-city.html.

66. Uber's growth rate in communities with a majority of racial minorities is far higher than its growth in majority-white communities. As with lower-income communities, these communities will disproportionately feel the impact of the cap.

67. Many New Yorkers living in the outer boroughs cannot rely upon public transportation to satisfy their transportation needs where taxicabs will not. Many communities do not have subway stops at all. Uber has enabled significant improvements in transportation options in those areas as well.

68. New Yorkers' needs for transportation alternatives are greater than ever. Even where communities have access to subways, the subway system has problems. As of July 23, 2018, "the on-time rate for trains hover[ed] near 65 percent on weekdays." Emma G. Fitzsimmons, They Vowed to Fix the Subway a Year Ago. On-Time Rates Are Still Terrible, New York Times (July 23, 2018), available at https://www.nytimes.com/2018/07/23/nyregion/nycsubway-delays-failure.html. "Signal problems and car equipment failures occur twice as

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frequently as a decade ago." Brian M. Rosenthal, et al., How Politics and Bad Decisions Starved New York's Subways, New York Times (Nov. 18, 2017), available at

https://www.nytimes.com/2017/11/18/nyregion/new-york-subway-system-failure-delays.html.

69. Exacerbating this problem, NYC public transportation is underfunded. The MTA's "budget for subway maintenance has barely changed, when adjusted for inflation, from what it was 25 years ago." Id.

70. NYC public transportation is overcrowded, as ridership has nearly doubled in the past 20 years. Id. In addition, the population of NYC has grown significantly, especially in the last decade. Between 2000 and 2010, according to the U.S. Census Bureau, New York City added over 166,800 residents. United States Census Bureau, Population Distribution and *Change: 2000 to 2010* (Mar. 2011), available at

https://www.census.gov/prod/cen2010/briefs/c2010br-01.pdf. And from 2010 to July 2017 the City added 447,565 residents. New York City Department of City Planning, Current Estimates of New York City's Population (July 2017), available at https://www1.nyc.gov/site/planning/datamaps/nyc-population/current-future-populations.page.

71. The systemic problems of subway delays and overcrowding impact all New Yorkers, but disproportionately affect the outer boroughs. In a 2017 survey by the New York City Comptroller, residents of the outer boroughs reported significantly worse subway service than residents of Manhattan. 68% of Bronx respondents graded subway service a "D" or an "F" on an "A" through "F" scale, compared to 41% of Queens respondents, 37% of Brooklyn respondents, and 21% of Manhattan respondents. The Human Cost of Subway Delays: A Survey of NYC Riders, New York City Comptroller (July 8, 2017), available at

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https://comptroller.nyc.gov/reports/the-human-cost-of-subway-delays-a-survey-of-new-york-cityriders/.

72. Poor subway options and inadequate subway service disproportionately disadvantage low-income New Yorkers, many of whom live in the outer boroughs. Nicole Gorton and Maxim Pinkovskiy, *Why New York City Subway Delays Don't Affect All Riders Equally*, Federal Reserve Bank of New York (June 27, 2018), available at libertystreeteconomics.newyorkfed.org/2018/06/why-new-york-city-subway-delays-dont-affect-all-riders-equally.html. As reflected in a 2018 report from the Federal Reserve Bank of New York, low-income New Yorkers tend to live outside the city center and have longer commutes, resulting in more opportunities to experience subway delays. *Id.* The report also found that New Yorkers with the longest commutes live far from other subway lines or stations, which makes it harder to switch trains when there is a service interruption. *Id.* Residents of lower-income communities are more likely to be reprimanded at work, lose wages, or suffer other consequences as a result of subway delays. *The Human Cost of Subway Delays: A Survey of NYC Riders.*

73. The Council expressed concern that app-based FHV ridership might be substituting for public transportation, but as Liya Palagashvili, an economics professor at State University of New York-Purchase, explained, "The decline in subway ridership is coming from off-peak hours and ridership within and between the boroughs outside Manhattan" where "the subway is the least reliable." Liya Palagashvili, *Actually, Curbing Uber Won't Relieve Heavy Traffic*, New York Times (Aug. 2, 2018) available at

https://www.nytimes.com/2018/08/02/opinion/uber-new-york-city-traffic-de-blasio.html. As Professor Palagashvili further reports:

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The neighborhoods farthest from Manhattan were the same neighborhoods that have seen the largest growth in ride-hailing usage.

Id. (citing Tim Mulligan, New York City Transit executive vice president). FHVs are thus helping to fill in the gaps for riders in areas with unreliable public transportation without contributing to traffic congestion.

74. Unsurprisingly, the Council did not cite a single study that recommended a temporary or permanent cap as a rational or equitable way of addressing congestion. Instead studies (including those cited by the Council) have recommended alternative measures, "including implementing trip fees, congestion pricing, increasing the number of bus lanes, and implementing traffic signal timing." Aug. 8, 2018 Committee Report at 23. See also Tri-State Transportation Campaign, *Hire Congestion, Lower Speeds* (rejecting caps and recommending congestion pricing as a means of addressing traffic congestion).

75. Terming the FHV cap as an attempt "to kill the best news for city transportation in decades," the Wall Street Journal correctly observed that "[f]ewer for-hire cars will hit New Yorkers in the outer boroughs the hardest" and that "[u]nlike yellow cabs, which predominate in dense Manhattan, app-based rides are a lifeline for people in the Bronx and Queens." Editorial, New York's Latest Uber Assault: Mayor de Blasio and the City Council try to rescue the taxi cartel, Wall Street Journal (Aug. 7, 2018), available at https://www.wsj.com/articles/new-yorkslatest-uber-assault-1533683368.

76. The City scapegoats FHVs. But, New Yorkers who desperately need transportation alternatives are making the choice to use the Uber and other FHV apps to request rides from FHV drivers. The City has unlawfully-and irrationally-legislated an anti-

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competitive FHV cap that will only hurt New Yorkers, particularly in underserved areas, without offering offsetting procompetitive benefits or reducing congestion.

E. The Cap is Preempted By The State's 2018 Enactment of a Set of **Interconnected Measures For Addressing Congestion and Improving Public Transportation**

77. In April 2018, the State of New York enacted various measures to address the related problems of traffic congestion in the New York Central Business District and improving public transportation, with a focus on improving public transportation for outer borough residents. These measures were part of a phased strategy that (unlike the City's cap provisions) resulted from a study.

78. That study recognized that multiple sources have contributed to New York's increased congestion problems and that addressing congestion therefore requires a multifaceted solution. In the State's strategy, FHVs play a critical role, but not as a menace to be capped and scapegoated for the City's congestion ills. Instead, the State has chosen to turn FHV trips into a means to generate revenue to solve one aspect of the congestion problem by requiring riders to bear the cost of congestion to which they contribute through congestion pricing and then using resulting proceeds for public transportation improvements. Those improvements, in turn, are important to a strategy for improving public transportation options, reducing congestion over the long-term, and imposing congestion pricing on a wider scale, such as on delivery trucks and private vehicles.

79. These measures implemented recommendations proposed by the Fix NYC Advisory Panel, a state advisory panel convened by the Governor in late 2017. The Advisory Panel consisted of a mix of community representatives, government officials, and business

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leaders and was supported by staff from New York's State transportation agencies and the HNTB Corporation. Unlike the City, the Advisory Panel based its recommendations on its examination of previous pricing proposals, international case studies, current data and research, and transportation modeling scenarios as well as its own joint discussions. The Governor tasked the Advisory Panel "with developing recommendations to address the severe traffic congestion problems in Manhattan's CBD and identify sources of revenue to fix the ailing subway system." Fix NYC Advisory Panel Report at 3 (Jan. 19, 2018) ("Fix NYC Report"), available at http://www.hntb.com/HNTB/media/HNTBMediaLibrary/Home/Fix-NYC-Panel-Report.pdf

80. The Advisory Panel's report identified numerous causes of increased congestion. Those causes included: (1) the reduction in available roadway capacity because of the installation of pedestrian plazas, bike lanes, and dedicated bus lanes, (2) increased truck volumes fueled by the rise of e-commerce, (3) increased pedestrian traffic and increased tourism, (4) inadequate enforcement of traffic laws leading to various problematic conditions including double parking and the frequent blocking of dedicated bus lanes leading to declines in bus speeds, (5) increased app-based FHV traffic, and (6) increased bus traffic coupled with declining parking space available for bus traffic. Fix NYC Report at 4, 7-8, 17. The Advisory Panel's acknowledgement of the multiple causes of congestion contrasts with the City's decision to cap without prior study and then to conduct a study that does not examine alternative causes of congestion.

81. The Advisory Panel further explained that, as discussed above, the "subway system has suffered from years of overcrowding and neglected maintenance resulting in chronic breakdowns and delays." Id. at 4. "Even after short-term remedies are implemented, additional funding will be required for the transformative upgrades the system requires." Id. The panel also

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emphasized that the improvements were particularly needed in the City's outer boroughs. Id. at

15.

82. To address these problems, the Advisory Panel recommended a multi-step strategy consisting of a number of interconnected measures to raise revenue to improve public transportation while implementing a phased congestion pricing plan that forces people in the most congested areas to pay for the costs of the congestion they generate. It summarized its approach as follows:

"a comprehensive, phased congestion reduction plan that steps up enforcement of existing traffic laws and initiates transit improvements for the outer boroughs and suburbs. As confidence is restored in the subway system, it becomes appropriate to implement a surcharge on taxi and FHV trips in the CBD, followed by the installation of a zone pricing program, first for trucks, and then for all vehicles entering Manhattan's CBD below 60th Street."

Fix NYC Report at 14. In making this recommendation, it drew on the experience of other cities, including London and Stockholm, which "invested in public transportation improvements in advance of implementing a zone pricing system, including substantial capacity expansion to accommodate diverted commuters." *Id.*

83. The Advisory Panel described a "phased approach" as "essential for a congestion reduction and revenue generation program in NYC." *Id.* It further stated that a "methodical approach, coupled with an ongoing awareness of how the myriad other transportation projects underway around NYC impact residents and their mobility, will ensure the congestion reduction program's success in the long run." *Id. See also id.* at 11-13 (describing the congestion pricing experiences of Singapore, London, Stockholm, and Milan).

84. As recommended by the Advisory Panel, "Phase One initiates investments to improve transit connectivity between the CBD and the outer boroughs and suburbs and calls for
immediate stepped up enforcement by NYPD of existing traffic laws," specifically traffic laws that address moving violations that lead to congestion. Id. at 4, 15-16. "Phase Two calls for a surcharge on taxi and FHV trips in the CBD" beginning in 2019. Id. at 4, 19. "Phase Three features the installation of a zone pricing program, first for trucks, and then for all vehicles, entering Manhattan's CBD below 60th Street." Id. at 4.

The report states that the "goal of Phase Two is to raise additional revenues to 85. provide funding to meet ongoing subway and transit improvement needs and potentially reduce the number of vehicles in the CBD." Id. at 19. Consistent with this goal, it specifically recommended that the revenue generated by the Phase Two surcharge be used for subway transportation improvements. Id. at 19 ("Revenue raised under these various surcharge options should flow to the MTA to be utilized for the SAP and for transit improvements in the outer boroughs or suburban counties, including bus systems."). The Advisory Panel recommends that Phase 2 commence in 2019 and also estimates the amount of revenue the surcharge will generate depending upon the fee amount, the time of day to which it is applied, and whether it applies to a region south of 60th Street or south of 96th Street. Id. at 20.

86. The Report further explained that the basic purpose of congestion pricing is to force the source of the congestion to bear its costs, thereby allowing the market to determine the efficient level of congestion. As explained in the Advisory Panel report:

> The precipitous decline in vehicle speeds within the Manhattan CBD to near walking speed is a signal that those who choose to drive into the most congested part of the City are not bearing the full cost of that choice. In the economics literature, this situation represents a classic case of a negative externality and indicates the presence of a severe market failure. A fee set at the appropriate level addresses that failure by compelling drivers to internalize the full social cost of their travel choices, which is why several international cities have opted for zone pricing.

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Fix NYC Report at 11-12 (emphasis added).

87. Several months later, the State of New York adopted various measures recommended by the panel and report to implement this strategy. As an initial matter, the State appropriated funds to pay for its share of the Subway Action Plan (\$418 million) developed by the Chairman of the Metropolitan Transportation Authority. 2018 N.Y. Sess. Law Ch. 59 (\$7509C) Part VV § 1. The Subway Action Plan itself consists of two phases. MTA, *NYC Subway Action Plan*, available at

<u>http://www.mtamovingforward.com/files/NYC_Subway_Action_Plan.pdf</u>. The first phase addresses key drivers of 79% of the major incidents causing failures and delays. *Id*. The second phase will focus on modernizing the system. *Id*.

88. The law also contains provisions designed to ensure that the City pays for its share (also \$418 million) of the Subway Action Plan improvements. 2018 N.Y. Sess. Law Ch. 59 (S7509C) Part VV § 4. If the City does not pay its share, the law requires the State comptroller to use state funds that otherwise would have gone to New York City to pay the City's share of the Subway Action Plan. *Id*.

89. Next, the State imposed a \$2.75 surcharge on each FHV trip, and a \$2.50 surcharge on each taxicab trip, that originates in, travels through, or terminates in the congestion zone. 2018 N.Y. Sess. Law Ch. 59 (S. 7509C) Part NNN § 2 codified as New York Tax Law § 1299-A. The statute defines the congestion zone as "the geographic area of the city of New York, in the borough of Manhattan, south of and excluding 96th street." 2018 N.Y. Sess. Law Ch. 59 (S7509C) Part NNN § 2 codified as New York.

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90. The law creates new funds for improving New York City public transportation and specifically requires the revenue from the surcharge to go to those funds. In particular, the law creates a "New York city transportation assistance fund" which "shall be kept separate from and shall not be commingled with any other moneys of the authority." 2018 N.Y. Sess. Law Ch. 59 (S7509C) Part NNN § 4 codified as N.Y. Pub. Auth. Law § 1270-i(1). The fund consists of three separate accounts: (i) the "subway action plan account," (ii) the "outer borough transportation account," and (iii) the "general transportation account." Id.

91. The "subway action plan account" is to be used "for the exclusive purpose of funding the operating and capital costs of the metropolitan transportation authority's New York city subway action plan." 2018 N.Y. Sess. Law Ch. 59 (S7509C) Part NNN § 4 codified as N.Y. Pub. Auth. Law § 1270-i(2). The other two accounts are specifically designed to improve public transportation options and reflect an emphasis on the outer boroughs. The "outer borough transportation account" is to be "used for the exclusive purpose of funding the operating and capital costs of metropolitan transportation authority facilities, equipment and services in the counties of Bronx, Kings, Queens, and Richmond, and any projects improving transportation connections from such counties to New York County." 2018 N.Y. Sess. Law Ch. 59 (S7509C) Part NNN § 4 codified as N.Y. Pub. Auth. Law § 1270-i(3). The "general transportation account" is to be "used for funding the operating and capital costs of the metropolitan transportation authority," such as for "infrastructure including construction, reconstruction, reconditioning and preservation of transportation systems, facilities and equipment, acquisition of property, and for operating costs including personal services, nonpersonal services, fringe benefits, and contractual

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services." 2018 N.Y. Sess. Law Ch. 59 (S7509C) Part NNN § 4 codified as N.Y. Pub. Auth. Law § 1270-i(4).

92. The law allocates the proceeds from the surcharge to the funds according to a precise formula and priority of distribution that varies on a yearly basis. After deducting for the State Comptroller's costs of collection and distribution, it requires the first distribution to go to the "subway action plan account" according to the following schedule: \$362 million in 2019, \$301 million in in 2020, and \$300 million for every year thereafter. 2018 N.Y. Sess. Law Ch. 59 (\$7509C) Part NNN § 2 codified as N.Y. Tax Law § 1299-H(b),(c).

93. The law requires the "next fifty million" collected or received in each year from 2019 forward to go to the "outer borough transportation account." 2018 N.Y. Sess. Law Ch. 59 (S7509C) Part NNN § 2 codified as N.Y. Tax Law § 1299-H(b),(d). It then requires any amounts collected that are in excess of those amounts to be provided to the general transportation account. 2018 N.Y. Sess. Law Ch. 59 (S7509C) Part NNN § 2 codified as N.Y. Tax Law §§ 1299-H(b),(e). The law makes clear that "[a]ny revenues deposited into the New York city transportation assistance fund" shall "not be diverted" into any other fund. 2018 N.Y. Sess. Law Ch. 59 (S7509C) Part NNN § 4 codified as N.Y. Pub. Auth. Law § 1270-i(6).

94. In choosing to regulate and cap the number of FHV licenses, the City is directly regulating the number of FHVs on the road — a core element of the State's phased strategy for addressing congestion. Further, by delegating permanent capping power to the TLC, the City is purporting to give a local regulatory agency permanent, unguided regulatory power over that core element of the state strategy.

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95. Not only did the City choose to regulate in this area without prior study, it did so without even acknowledging the State regulation. The committee reports for Local Law 147 and other FHV legislation adopted by the City do not even mention the State legislation, nor does the law itself, including the provisions governing future study of issues impacting FHVs. Such regulation is the polar opposite of the "methodical approach" called for by the Governor's Advisory Panel and adopted by the State.

96. The City's cap, and delegation of permanent capping power to the TLC, also conflict in various specific ways with the State legislation. The State plan specifically relies on FHV trips to fund a significant portion of the public transportation improvements that are central to the State's strategy for addressing congestion and improving transportation. Relatedly, FHV companies experience attrition on an annual basis when drivers cease using technology platforms, such as the Uber App. By reducing the number of trips that otherwise would occur under the State's congestion pricing plan and preventing new drivers from using their cars to provide trips, the City is directly and significantly interfering with the State plan by reducing the revenue that otherwise would be available for critical public transportation improvements. Further, by giving the TLC the permanent unconstrained authority to cap, it is giving the TLC the permanent and unconstrained power to limit the source of funds for these critically needed improvements once the 12-month cap expires.

97. The City's cap is further at odds with the immediate need and the next steps in the plan, which are contingent upon fixing the subways. *See Fix NYC Report* at 3 ("While subway delays have always been part of life in New York City (NYC), the frequency of delays and breakdowns in the subway system -- largely caused by overcrowding and deteriorating

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infrastructure -- require the development of a plan for *immediate action*. . . . The Panel believes the MTA must *first* invest in public transportation alternatives and make improvements in the subway system before implementing a zone pricing plan to reduce congestion. Before asking commuters to abandon their cars, we must *first* improve mass transit capacity and reliability") (emphasis added). For example, the City initiated its initial 12-month cap without study or analysis of its impact on the State's plan in a year where the State has anticipated generating well above \$400 million for the newly created state funds. MTA, *MTA 2019 Final Proposed Budget*, *Volume 2* (Nov. 2018) at II-54, available at http://web.mta.info/news/pdf/MTA-2019-Final-Proposed-Budget-Nov-Financial-Plan-2019-2022-Vol2.pdf

98. The City's reliance on capping FHVs likewise conflicts with the State's reliance on congestion pricing for FHVs rather than capping. As discussed above, the Advisory Panel expressly recognized that the purpose of congestion pricing is to set a fee at "the appropriate level," defined as the fee that "compel[s] drivers to internalize the full social cost of their travel choices." *Fix NYC Report* at 11-12. Use of an artificial cap to regulate the number of trips therefore conflicts with the State's use of congestion pricing for FHVs.

99. The City's cap also will confound the ability to study the impact of the State's efforts because the cap will be put into effect at the same time as the surcharge. The importance of the ability to conduct such a meaningful study was specifically emphasized in the Advisory Panel report. *Fix NYC Report* at 6 ("Fair and frequent review of the program and opportunities to make modifications when necessary are *critical* to earning and maintaining public support for the congestion reduction program. The panel recommends evaluation of these metrics twice a year,

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published in a report available to all, which assesses the efficacy of the surcharge and zone pricing programs.") (emphasis added).

100. The City's cap also conflicts with the State's efforts to address immediately the inadequate transportation options for outer borough residents. The State created a fund dedicated to improving public transportation in the outer boroughs, dedicated \$50 million per year in surcharge proceeds to that fund, declined to impose any surcharge on trips that take place exclusively in the outer boroughs, and delayed the imposition of broader congestion pricing for commuters based on the recommendation of the Advisory Panel that such residents should not be required to give up their cars until public transportation has improved. The State law also disproportionately benefited the outer boroughs by imposing a surcharge on pool rides (\$.075) that touch the congestion zone, a surcharge that is well under the \$2.75 and \$2.50 for non-pool FHV and taxi rides. As of the second quarter of 2018, 91% of UberPool trips started or ended in the outer boroughs. The City's capping legislation runs counter to the State law both by purporting to limit the designated source of the funds for outer borough public transportation for 12 months and by giving the TLC the ongoing permanent, unconstrained power to do so into the future. Further, it interferes with, and gives the TLC permanent ongoing power to interfere with, the concrete benefits (detailed above) that app-based FHVs have brought to the outer boroughs.

CAUSES OF ACTION

FIRST CAUSE OF ACTION The One-Year FHV Cap In Local Law 147 Is Null and Void Because It Exceeds The City's **Power Under State Law** (All Plaintiffs against Defendant)

101. Plaintiffs re-allege and incorporate by reference the allegations of all paragraphs above as if fully set forth herein.

43

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102. To enact legislation, the City must have power delegated by the State. The City

has never been delegated the power to cap FHV licenses.

103. Local Law 147 § 1 (a) imposes a 12-month cap on the issuance of new FHV

licenses. This provision is ultra vires and unconstitutional.

104. By reason of the foregoing, an actual case and controversy exists and Plaintiffs respectfully request that the Court adjudge, declare and decree pursuant to CPLR 3001 and CPLR 3017(b) that the FHV cap in Local Law 147 § 1 (a) is unconstitutional, otherwise unlawful, and null and void.

SECOND CAUSE OF ACTION The Permanent Capping Power Given to the TLC in Local Law 147 Is Null and Void Because It Exceeds The City's Authority Under State Law (All Plaintiffs against Defendant)

105. Plaintiffs re-allege and incorporate by reference the allegations of all paragraphs above as if fully set forth herein.

106. The City not been delegated the power to cap FHV licenses.

107. Local Law 147 § 3 purports to give permanent capping power to the TLC. This

provision is ultra vires and unconstitutional.

108. By reason of the foregoing, an actual case and controversy exists and Plaintiffs

respectfully request that the Court adjudge, declare and decree pursuant to CPLR 3001 and CPLR

3017(b) that the permanent capping power given to the TLC in Local Law 147 § 3 is

unconstitutional, otherwise unlawful, and null and void.

THIRD CAUSE OF ACTION The One-Year FHV Cap In Local Law 147 Is Null and Void Because It Is Preempted By **State Law** (All Plaintiffs against Defendant)

44

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109. Plaintiffs re-allege and incorporate by reference the allegations of all paragraphs above as if fully set forth herein.

110. Local Law 147 § 1 (a) imposes a 12-month cap on the issuance of new FHV licenses. This provision is preempted by state law.

111. By reason of the foregoing, an actual case and controversy exists and Plaintiffs respectfully request that the Court adjudge, declare and decree pursuant to CPLR 3001 and CPLR 3017(b) that the FHV cap in Local Law 147 § 1 (a) is unconstitutional, otherwise unlawful, and null and void.

FOURTH CAUSE OF ACTION The Permanent Capping Power Given to the TLC in Local Law 147 Is Null and Void **Because It Is Preempted By State Law** (All Plaintiffs against Defendant)

112. Plaintiffs re-allege and incorporate by reference the allegations of all paragraphs above as if fully set forth herein.

113. Local Law 147 § 3 purports to give permanent capping power to the TLC. This

provision is preempted by state law.

114. By reason of the foregoing, an actual case and controversy exists and Plaintiffs

respectfully request that the Court adjudge, declare and decree pursuant to CPLR 3001 and CPLR

3017(b) that the permanent capping power given to the TLC in Local Law 147 § 3 is

unconstitutional, otherwise unlawful, and null and void.

FIFTH CAUSE OF ACTION Local Law 147 Unconstitutionally Delegates Power in Violation of the New York State **Constitution and New York City Charter** (All Plaintiffs against Defendant)

45

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115. Plaintiffs re-allege and incorporate by reference the allegations of all paragraphs above as if fully set forth herein.

116. Article IX § 1(a) of the New York State Constitution provides for a separation of powers between the legislative and executive branches of local government.

117. The New York City Charter provides that the New York City Council will be the "legislative body of the city" and that it "shall be vested with the legislative power of the city." N.Y. City Charter, Chapter 2 § 21.

118. Local Law 147 § 3 unlawfully delegates the legislative power to the TLC by authorizing it to regulate the number of new FHV licenses. Deciding whether to cap FHV licenses, and if so, at what level, are exercises of legislative power. The cap restrains competition, interferes with the right of drivers to earn a living, and if left in place will stymie the tremendous benefits that FHVs have brought to traditionally underserved areas of the City. The decision to impose and/or continue such harms is fundamentally legislative. Likewise, and even assuming without any basis that the Cap could have meaningful impact on congestion in some places in the City, the decision to privilege certain areas of the City over others is a fundamentally legislative power requiring the weighing of such hypothetical benefits against the harm to prospective drivers and to New Yorkers in traditionally underserved areas. Such value judgments are quintessentially legislative in nature.

119. Local Law 147 § 1 also delegates legislative power to the TLC. Under that section, even where more FHV licenses would benefit other areas of the City without meaningfully impacting congestion, the TLC has the discretion both whether to evaluate those

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issues and to decide whether to lift the cap without any standards governing when it must do so.

That decision also is fundamentally legislative and thus cannot be delegated to the TLC.

120. Local Law 147 §§ 1, 3 therefore contains unconstitutional and otherwise unlawful

delegations of legislative power to an unelected, administrative agency.

121. By reasons of the foregoing, an actual case and controversy exists and Plaintiffs

respectfully request that the Court adjudge, declare and decree pursuant to CPLR 3001 and CPLR

3017(b) that the delegations of capping power to the TLC in Local Law 147 §§ 1 and 3 are

unconstitutional and null and void.

SIXTH CAUSE OF ACTION

The FHV Cap In Local Law 147 Is An Anticompetitive Arrangement in Violation of the Donnelly Act (New York State General Business Law § 340) (All Plaintiffs against Defendant)

122. Plaintiffs re-allege and incorporate by reference the allegations of all paragraphs above as if fully set forth herein.

123. There is a market in New York City for providing transportation services to individuals.

124. Local Law 147 constitutes, reflects, and/or imposes a contract, agreement,

arrangement, and/or combination that significantly restrains the free exercise of trade, limits output, and restricts competition in this market by: (i) preventing drivers from obtaining licenses for vehicles that meet the City's licensing standards to provide for-hire transportation services, and (ii) preventing Uber and other companies from contracting with those drivers who want to use those vehicles to provide such services using Uber's technology. It thereby limits competition among Uber and its competitors and among for-hire drivers and the platforms they use and the taxicab industry.

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125. The anti-competitive effects of these restrictions well outweigh any pro-

competitive benefits. Local Law 147 deliberately restricts market output, and thus limits competition in a manner that depending on its length and duration, will reverse, stop, and/or slow the demonstrated growth of transportation options in underserved areas of the City. Further, and by its own admission, the City imposed the cap without conducting any study of the costs of the cap or any putative benefits.

SEVENTH CAUSE OF ACTION Local Law 147 Violates Plaintiffs' Right To Due Process Under Article I, Section 6 of the New York Constitution (All Plaintiffs against Defendant)

126. Plaintiffs re-allege and incorporate by reference the allegations of all paragraphs above as if fully set forth herein.

127. By prohibiting further issuance of FHV licenses, Defendant is depriving Plaintiffs of their liberty and property without due process of law. In particular, wholly without legal justification, Unter LLC, Zehn-NY, LLC, Zwei-NY, LLC and Abatar, LLC have been deprived of their liberty and property interest in contracting and doing business with drivers of new FHVs.

128. The restrictions also are not rationally related to any legitimate police power objective. Instead, by its own admission, Defendant has chosen to ban first and then study whether the regulations were necessary to advance its asserted goal of reducing traffic congestion in the Manhattan CBD. This approach deprived Defendant of the ability to make a rational decision as to whether a cap is likely to have any meaningful impact on traffic congestion and to weigh any asserted benefits against the harms that a cap is likely to cause to new drivers and to traditionally underserved areas of the City, including by stymieing the growth of FHV services in the outer boroughs as well as in lower-income and majority-minority areas. This approach was

all the more irrational in light of the fact that the City's prior study had concluded that causes other than the growth in FHVs had resulted in the decreased taxi and vehicle speeds that the City has used as a metric for traffic congestion. However, the City failed to conduct any analysis as to whether such causes could similarly have accounted for more recent asserted declines.

129. Local Law 147 also unconstitutionally imposes such restrictions in a manner that allows some to pursue their chosen profession, while preventing others who are equally qualified from doing so solely, based entirely on when they applied for their FHV licenses.

130. Defendant acted wholly without legal justification.

131. By engaging in this conduct, Defendant has violated, and unless enjoined will continue to violate, Plaintiffs' rights under the Due Process Clause of Article I, Section 6 of the New York Constitution.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully requests judgment against Defendant and that the Court:

- a. Declare that the FHV Cap in Local Law 147 § 1 is null and void and invalid;
- b. Declare that the purported delegation of capping power to the TLC in Local Law 147 § 3 is null and void and invalid.
- c. Permanently enjoin the further enforcement of the FHV Cap in Local Law 147 §1;
- d. Permanently enjoin the TLC from exercising the power to cap that Local Law 147 § 3 purports to delegate;

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- e. Enter judgment awarding Plaintiffs their attorneys' fees, costs and expenses of litigation;
- f. Grant Plaintiffs such other further relief as the Court deems just and appropriate.

Dated: New York, New York February 15, 2019 Respectfully submitted,

/s/ Karen Dunn

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50

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