

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

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In the Matter of
NEW YORK TAXI WORKERS ALLIANCE;

Petitioner,

For a Judgment Pursuant to Article 78
of the Civil Practice Law and Rules

Verified Petition

-against-

**THE NEW YORK CITY TAXI & LIMOUSINE
COMMISSION; DAVID DO, AS COMMISSIONER
AND CHAIR OF THE NEW YORK CITY TAXI &
LIMOUSINE COMMISSION; THE CITY OF NEW
YORK**

Respondents.

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Preliminary Statement

1. This is an Article 78 proceeding to declare unlawful and enjoin implementation of the Taxi and Limousine Commission's ("TLC") pilot program that would issue 2,500 licenses for a new type of Street-Hail Livery ("SHL") vehicle or "green taxi" that, oddly, cannot be hailed on the street, and would additionally issue 2,500 new for-hire vehicle ("FHV") licenses for these SHLs (the "SHL Pilot Program"). *See*, Street Hail Livery Pilot Program Resolution (May 3, 2023), available at https://www.nyc.gov/assets/tlc/downloads/pdf/SHL_Pilot_Resolution_05_03_2023.pdf (Date accessed: May 13, 2023), attached as Exhibit A to the annexed affirmation of Zubin Soleimany (the "Soleimany Aff.")

2. TLC's proposal to create non-hailable SHLs is in direct conflict with state law, which defines SHLs by their essential characteristic: their ability to be hailed on the street like a

taxi. A non-hailable SHL is simply not an SHL under controlling state law; rather, TLC is slapping a new SHL decal on what is otherwise a conventional FHV, in an apparent effort to avoid its obligations under City law and its own rules regarding the necessary procedure for issuance of further FHV licenses.

3. TLC's proposal comes after years of unchecked growth in the FHV industry, which led the City Council to create parameters for the future issuance of FHV licenses, having recognized the harms of vehicle oversaturation on driver income, as an ever-growing pool of vehicles and drivers were forced to compete for a finite amount of work.

4. The Administrative Code and TLC rules require the TLC to take concrete steps to assess the impact of new FHV licenses before issuing further FHV licenses. In addition to blatantly conflicting with state law, the SHL Pilot program unlawfully bypasses these requirements by superimposing on top of the established limits on FHV licenses a new set of FHV licenses that are seemingly justified as allowing the operation of "Pilot SHLs" which, within their geographical limits, operate in all material respects as the equivalent of standard FHV's.

5. While the Council's action limiting further FHV licensing brought stability to the taxi and FHV industries, the COVID-19 pandemic upended the industry shortly thereafter; although drivers have largely returned to work at pre-pandemic levels, ridership has not, and trip counts are still down significantly for FHV's and for the taxi/FHV industry as a whole, leaving drivers on average, with less work than they had pre-pandemic. *See Taxi and Ridehailing Usage in New York City* (website), available at <https://toddwtschneider.com/dashboards/nyc-taxi->

[ridehailing-uber-lyft-data/](#) (Date accessed: May 13, 2023), attached as Exhibit B to the Soleimany Aff. (graphing daily FHV ridership statistics as represented in TLC-collected datasets).¹

6. The addition of 2,500 new cars to the roads at this juncture will further dilute driver earnings, at a time when trip volume and driver workload have still not fully recovered from the pandemic's impact, as nothing about these licenses will prevent them from operating with High-Volume For-Hire Vehicle ("HVFHV") services, such as Uber and Lyft.

7. Yet, despite having worked to prepare the SHL Pilot Program for nearly a year,² the TLC provided around four days' notice of the Program before a vote, with no meaningful opportunity for public review and comment.

8. The proper purpose of pilot programs is to allow agencies to experiment with a novel regulatory approach or technology for a limited period to see if it is workable and worthwhile before committing to long-term regulatory change. TLC claims with a straight face that it needs two years to figure out if street hail liveries that, paradoxically, can't be street hailed can work safely and efficiently as FHV's. Of course, TLC already knows that non-hailable FHV's are workable because it currently licenses 100,000 of them that perform hundreds of thousands of trips every day, and have done so for decades. *See, NYC TLC August 2022 For-Hire Vehicle License Review: Report and Determination* available at <https://www.nyc.gov/assets/tlc/downloads/pdf/license-pause-report-2022-08.pdf>, attached as Exhibit C to the Soleimany Aff. ("August 2022 FHV License Report"); *Taxi and Ridehailing Usage, supra*, Ex. B.

¹ Exact figures for the statistics in the exhibit's graphs can be seen by viewing the graphs on the website, and positioning the cursor over a point in the line graph to view the number of vehicles, drivers, or rides, for a given month.

² *See*, Video of TLC Public Hearing (May 3, 2023) ("Public Hearing Video") available at <https://livestream.com/nyctaxi/commmeeting05032023/videos/236062874> (Date Accessed: May 13, 2023), at the five minute, twenty-one second (5:21) mark (Chair David Do stating "This is something that we worked for, over the better part of one year, since I started, and we're calling this pilot the SHL pilot.")

9. What TLC is really doing here is an end-run around its obligations under state and City law. The TLC does not have the authority to defy the commands of legislation enacted by the State Legislature and by the City Council.

10. The SHL Pilot Program is a brazen abuse of TLC's limited pilot program powers.

11. If TLC believes it can properly license 2,500 new FHV's through a pilot program in this manner, nothing would prevent TLC from issuing 5,000 or 10,000 further licenses. If TLC believes it can assert its pilot powers for policy experimentation to avoid state law requirements that SHLs be hailable, it could just as well launch a pilot that aims to experiment with reducing the burden on vehicle owners of state mandated minimum insurance requirements for FHV's. Plainly, the law cannot allow this.

12. Should more FHV's actually be needed to serve the public, or in specific geographic areas, the TLC can only issue such additional licenses after it meets its obligation to review the current number of FHV licenses and state of the industry, prior to making appropriate adjustments pursuant to the procedures set forth in the Administrative Code and its own rules. It has not done so here.

13. Petitioner seeks an order annulling and vacating and enjoining implementation of TLC's *ultra vires* SHL Pilot Program and a declaratory judgment declaring the SHL Pilot Program arbitrary and capricious.

PARTIES

14. Petitioner New York Taxi Workers Alliance ("NYTWA") is a non-profit membership-based organization consisting of New York City taxicab, High Volume FHV³, and

³ High Volume FHV ("HVFHV") services currently include Uber and Lyft. *See* 35 R.C.N.Y. Chapter 51-03 (defining high volume for-hire vehicle services as central dispatch facilities that have a passenger-facing dispatch tool and dispatch more than 10,000 trips in the City per day).

green taxi drivers, which was founded in 1998 with the express purpose of seeking to improve the lives and working conditions of professional taxi and for-hire vehicle (“FHV”) drivers. The members of NYTWA are taxi and FHV drivers who work in New York City, including in the areas encompassed in the new SHL pilot program. When the number of FHV’s operating in these areas is increased, NYTWA members face lost trips and lost earnings, the very perils that led the City Council to impose the cap on FHV licenses in Local Law 147. NYTWA exists for the purpose of protecting and advancing the rights and interests of its members in preserving conditions that will permit them to earn a living, including in connection with preserving reasonable limitations on the number of FHV licenses. NYTWA members were granted intervention to defend the City Council’s legislation limiting the further issuance of FHV licenses, *Zehn-NY LLC v. City of New York*, 2019 NY Slip Op 31540 (U), 2019 N.Y. Misc. LEXIS 2907 (Sup. Ct. N.Y. Co. May 30, 2019), and the NYTWA has appeared as *amicus curiae* in support of the TLC’s regulations implementing such limitations (*Zehn-NY LLC v. TLC*, Index No. 159195/2019 (Sup. Ct. N.Y. Co), Doc. No. 102), as NYTWA’s members have a direct interest in avoiding the “loss of income resulting from diluted fare revenue without regulation of FHV’s.” *Zehn v. City*, at *1.

15. Respondent New York City Taxi and Limousine Commission (“TLC”) is the City agency responsible for regulation of New York City’s taxicab and for-hire vehicle industries. Its principal office is located at 33 Beaver Street, in New York, NY.

16. Respondent David Do is the Chair and a Commissioner of the TLC. His office is also located at 33 Beaver Street.

17. Respondent City of New York (“City”) is a municipal corporation duly incorporated and existing under the laws of the state of New York.

JURISDICTION

18. This Court has jurisdiction in this matter pursuant to CPLR Article 78, under C.P.L.R. §§ 7801, 7803(2), and 7803(3). The Pilot Program is a final determination of the agency which Petitioner challenges as made in violation of lawful procedure, affected by an error of law, and arbitrary and capricious.

VENUE

19. Venue is properly set in New York County pursuant to C.P.L.R. §§7804 and 506(a) and 506(b). The determination complained of was made within the First Judicial District, and the Respondents have their primary places of business in New York County.

LEGAL FRAMEWORK

The New York HAIL Act and Street Hail Liveries

20. In 2012, in response to a finding that most New Yorkers and visitors to the City of New York “do not currently have sufficient access to legal, licensed taxicabs available for street hails[.]” the New York State legislature passed the HAIL Act, A08691A /S06118-A (2012).

21. The HAIL Act created a new class of TLC licensed for-hire vehicle which could accept street hails in the outer boroughs and in uptown Manhattan, north of E. 96th and W. 110th streets, called “HAIL vehicles” under state law.

22. As the HAIL Act’s name, and TLC’s later designation of HAIL vehicles as “street hail liveries” imply, the essential, defining characteristic of SHLs is that they may be hailed on the street by prospective passengers. The HAIL Act created a license for each such vehicle that “authorizes a designated vehicle to pick up passengers by street hail[.]” *Id.*, at §4(b).

23. State law further defines a HAIL vehicle as “a for-hire vehicle having a taximeter and a TLC-sanctioned trip record system and subject to a HAIL license.” *Id.*, at § 4(f).

24. In addition to street hails, HAIL licensees may pick up prearranged trips, including prearranged trips that end in the HAIL exclusionary zone or begin at the airports. HAIL Act, § 4(c) (“A HAIL vehicle shall be permitted to accept passengers by prearranged call at airports and outside the HAIL exclusionary zone.”)⁴

25. The TLC then promulgated rules pursuant to the HAIL Act to regulate the application process as well as the operation of SHLs. *See* 35 R.C.N.Y., Chapter 82, “Street Hail Livery Service.”

26. Chapter 82 reiterates the HAIL Act’s requirements that SHLs be available for street hail and prearranged service, are equipped with taximeters, as well as establishing further equipment requirements that are not required by state law.

27. Generally,⁵ “a Street Hail Livery license may only be used with a For-Hire Vehicle licensed by the Commission under Chapter 59A” of the TLC rules. 35 R.C.N.Y. § 82-06(b)(1).

28. An SHL permit, or HAIL license, is distinct from an FHV license. A HAIL license “authorizes a designated vehicle to pick up passenger by street hail[.]” HAIL Act, § 4(b), A08691A /S06118-A (2012), whereas an FHV license, by itself, allows only for the operation of a for-hire vehicle and does not allow the operator to pick up street hails. N.Y.C. Admin. Code § 19-504(a)(1).

29. That is, in order for a vehicle to properly operate as an SHL, it must first be a TLC-licensed For-Hire Vehicle, and then must separately be licensed as an SHL. In tandem, the two

⁴ *See* HAIL Act, §4(c) (defining the Hail Exclusionary Zone as “airports in the city of New York in which a HAIL vehicle is prohibited from pick-up of passengers by street hail and that area of the city of New York in Manhattan south of east ninety-sixth street and south of west one hundred tenth street in which a HAIL vehicle is prohibited from pick-up of passengers by street hail or pre-arranged call.”) *See also* 35 R.C.N.Y. § 51-03 (providing a similar definition of “Hail Exclusionary Zone.”)

⁵ TLC rules also permit medical paratransit vehicles to be licensed as SHLs, however TLC’s Pilot SHL Program documents do not seem to contemplate the licensing of any Pilot SHLs as paratransit vehicles. *See* SHL Pilot Program Resolution, Ex. A, at 1.

licenses allow for legal operation of both prearranged trips, and street hails outside of the HAIL exclusionary zone. 35 R.C.N.Y. § 82-06(b)(1).

TLC's FHV Licensing Powers and Limitations

30. To operate a For-Hire Vehicle, including an SHL, in New York City, one must possess an FHV license issued by the TLC. N.Y.C. Admin. Code § 19-504(a)(1). *See* Paras. 23, 25 *supra*.

31. Under the Administrative Code, the TLC's power to issue further FHV licenses is not unrestricted, and must account for factors such as whether additional licenses are necessary in order to provide adequate service in different geographic areas of the city, and the impact of such licenses on driver pay. *See* N.Y.C. Admin. Code §19-550.

32. These restrictions were enacted in 2018, when, in response to the economic crisis created by the unfettered growth of high-volume For-Hire Vehicle services such as Uber and Lyft, the City Council passed Local Law 147 of 2018 ("Local Law 147"), which restricts the number of, and manner in which the TLC may issue additional FHV licenses. Local Law No. 147 (2018) of City of New York, § 1.

33. In addition, Local Law 147 mandated a one year pause in the issuance of FHV licenses.⁶ Local Law 147, §1(a). During the twelve-month licensing pause, TLC was directed to conduct a study that considered factors such as driver income and well-being, the number of hours drivers are available to accept dispatches, vehicle utilization rates, and traffic safety and congestion. N.Y.C. Admin. Code § 19-550(a).

⁶ Local Law 147 provided for a few exceptions to the one year pause, such as issuing new licenses to new Wheelchair Accessible Vehicles. Local Law 147, §§1(b)-(e). It provided no such automatic exception for issuing FHV licenses to SHLs.

34. Local Law 147, codified in part at N.Y.C. Admin. Code § 19-550(b), directs the TLC to adjust the number of FHV licenses “[b]ased on the results of the study [described above...] review the number of for-hire vehicle licenses on a periodic basis [...] and based on such review [...] regulate the number of for-hire vehicle licenses issued.” N.Y.C. Admin. Code § 19-550(b); (b)(2).

35. The TLC has since promulgated rules, “pursuant to section 19-550 (b)(2) of the Administrative Code of the City of New York,” that create an annual review process in which the Commission will “determine the number of For-Hire Vehicle Licenses, if any, to issue in the twelve months following such review and the types of vehicles to which the Commission will issue such new Licenses.” 35 R.C.N.Y. § 59A-06(a)(1). In each review, the TLC will consider a variety of factors, including driver pay and outer borough service. *Id.* The reviews will be published on the TLC’s website. *Id.* While this rule likewise creates exceptions for WAV vehicles and vehicles purchased pursuant to certain lease-to-own agreements executed prior to Local Law 147’s effective date, it contains no such exception for SHLs.

TLC Pilot Programs

36. TLC may approve pilot programs for limited purposes, on subjects within its already enumerated powers.

37. The TLC derives its pilot program powers from Section 2303(b)(9) of the N.Y. City Charter, which states that the TLC’s regulatory powers shall extend to

The development and effectuation of a broad public policy of transportation affected by this chapter as it relates to forms of public transportation in the city, including innovation and experimentation in relation to type and design of equipment, modes of service and manner of operation, which *for limited purposes* and *limited periods of time* may depart from the requirements otherwise established for licensed vehicles pursuant to this chapter. (Emphasis added).

38. Notably, TLC's ability to depart from certain requirements, extends to those established "pursuant to this chapter," that is to TLC *regulations* established pursuant to the power given to TLC by the Charter.

39. Pursuant to Charter § 2303(b)(9), in 2010, the TLC promulgated a sub-chapter of rules governing its use of pilot programs. *See* TLC Rules, Chapter 52, Subchapter C: Pilot Programs, 35 R.C.N.Y. § 52-21 *et seq.*

40. Nothing in Chapter 52 of the TLC rules, and certainly nothing in the City Charter or state law would empower the TLC to override State and City legislation or to engage in pilot programs that directly conflict with duly enacted state and city laws.

41. The TLC may only institute pilot programs for limited purposes and limited periods, operating within its already enumerated powers; it may not use pilot programs to expand its regulatory powers outside of the public scrutiny provided by the legislative process or City Administrative Procedure Act ("CAPA")-compliant rulemaking.

FACTS

Background

Vehicle Oversaturation Contributes to Declining Driver Income

42. Prior to the City Council's passage of Local Law 147 in 2018, the City had not regulated the number of FHV's. Drivers in all sectors of the taxi and FHV industry had suffered from a loss of income, as app-based FHV services expanded and drivers faced competition from the explosive growth in FHV's on City streets. Despite gaining increasing market share, app-based FHV drivers also saw incomes fall year after year. *See*, James Parrott and Michael Reich, *An Earnings Standard for New York City's App-Based Drivers* (July 2018), at 19-20, attached as Exhibit D to the Soleimany Aff.

43. In requiring consideration of, *inter alia*, driver income when considering further FHV license issuance, Local Law 147 envisioned future limits on the number of FHV licenses as an essential part of a regulatory framework that sought to ensure fair and stable driver income. In the lead-up to its passage, a major study of app-based driver earnings found that, even among Uber's drivers alone, take home pay had decreased significantly between 2014 and 2017. *Id.*, at 19-20. The same study found that 85% of app-based drivers earned less than the equivalent of the New York State minimum wage, 40% had incomes low enough to qualify for Medicaid, and 18% had incomes low enough to qualify for SNAP. *Id.*, at 6, 14.

44. This crisis in driver earnings was driven in large part by the rapid rise in the number of for-hire vehicles. Among all sectors of transportation provided in TLC-licensed vehicles, viewed as a whole, vehicle supply outpaced trip demand: while the number of daily average trips performed by all sectors of TLC-licensed vehicles (taxicabs, street-hail liveries, and FHV's) grew 30.95% from 766,113 in 2016 to 1,003,184 in 2018, the number of active total TLC-licensed vehicles in all sectors grew 42.73%, from 72,853 in January 2016 to 103,983 in January 2018. *See*, 2018 TLC Factbook, attached as Exhibit E to the Soleimany Aff. (showing growth in average daily trips and active vehicles on graphs⁷ at pp. 3 and 1, respectively).

45. It was in this environment that City Council's For-Hire Vehicle Committee found that "[t]he app-based FHV sector is growing unsustainably and is now at crisis level." Aug. 2018 Report of the New York City Council For-Hire Vehicle Committee, at 9, attached as Exhibit F to the Soleimany Aff.

⁷ The Factbook and the graphs therein are cited for ease of access; the specific underlying numbers are available at <https://www.nyc.gov/site/tlc/about/industry-reports.page>, under "2018 Factbook Data."

46. As the crisis of unsustainability came to a head, a rash of driver suicides struck the City. Public attention was first called to many drivers' financial desperation when Douglas Schifter, a traditional Black Car driver, shot and killed himself on February 5, 2018, inside his FHV, which he had parked just outside the gates of City Hall. *See*, Ginia Bellafante, *A Driver's Suicide Reveals the Dark Side of the Gig Economy*, N.Y. TIMES (Feb. 6, 2018), available at <https://www.nytimes.com/2018/02/06/nyregion/livery-driver-taxi-uber.html>, and attached as Exhibit G to the Soleimany Aff. Mr. Schifter's suicide note, posted on Facebook, described the destruction of full-time work as a professional driver, 100-hour weeks that still would not provide enough income to prevent his descent into debt and poverty, and blamed politicians for allowing so many cars to flood the streets. *Id.*

47. As the FHV Committee's report acknowledged, by the summer of 2018, six (6) drivers believed to be facing financial hardship had taken their own lives during the year preceding the passage of Local Law 147. Tragically, the driver suicides continued through early 2019. *See*, Emma G. Fitzsimmons *Why are Taxi Drivers in New York Killing Themselves?* N.Y. TIMES, Dec 2, 2018, available at <https://www.nytimes.com/2018/12/02/nyregion/taxi-drivers-suicide-nyc.html>, attached as Exhibit H to the Soleimany Aff.; Georgette Roberts and Amanda Woods, *Lyft driver found dead in car as cabbie suicide epidemic continues*. N.Y. POST, Mar. 23, 2019, available at <https://nypost.com/2019/03/23/cabbie-suicide-epidemic-continues-as-ninth-man-found-dead-in-back-of-car/>, attached as Exhibit I to the Soleimany Aff.

48. It was in response to these conditions, across sectors of TLC-licensed drivers, that the Council sought to enact Local Law 147 for the benefit of all sectors of drivers. *See*, Emma G. Fitzsimmons and Aaron Robertson, *Taxi and Uber Drivers Are United in Backing a Cap on Ride-Hail Vehicles*, N.Y. TIMES (Aug. 6, 2018), at <https://www.nytimes.com/2018/08/06/nyregion/taxi->

[and-uber-drivers-are-united-in-backing-a-cap-on-ride-hail-vehicles.html](#), attached as Exhibit J to the Soleimany Aff. The New York Times reported that “With no new vehicles joining the app, Uber drivers say they will have less competition and could spend more of their day carrying passengers, instead of driving around in an empty car.” *Id.*

49. During a meeting of the Council’s For-Hire Vehicle Committee, Local Law 147’s prime sponsor noted that: “An average of 2,000 new vehicles are added to the city’s streets each month over saturating the market and making it difficult for drivers to earn a decent living in New York City. In fact, that is not sustainable.” Transcript of the Minutes of the Committee on For-Hire Vehicles (Aug. 8, 2018), at 7, attached as Exhibit K to the Soleimany Aff.

Post-Local Law 147 FHV License Numbers and Ridership During the City’s COVID Recovery

50. After the passage of Local Law 147, FHV numbers generally stabilized, with a modest reduction in overall numbers of active FHVs beginning in late 2019. *See Taxi and Ridehailing Usage, supra*, Ex. B.

51. At roughly the same time, TLC’s minimum pay rules went into effect for drivers of HVFHV services. These rules set forth a standard minimum level of pay per-mile and per-minute on each trip, but are not an hourly minimum pay rate. That is, while TLC’s initial driver pay rules aimed to produce a take-home pay rate of \$17.22/hour, these rules assumed a utilization rate of 58%. *See Driver Income and Lease Transparency Rules* (Adopted Dec. 4, 2018), available at https://www.nyc.gov/assets/tlc/downloads/pdf/driver_income_rules_12_04_2018.pdf, at 3-4 (explaining the function of the 58% utilization rate), attached as Exhibit L to the Soleimany Aff.⁸

⁸ Utilization rate means the time, in the aggregate, that drivers are engaged in transporting a passenger, out of the total time in which drivers are online and available to accept dispatches. *See* 35 R.C.N.Y. § 59D-03(j) (providing TLC’s full definition of “Utilization Rate.”)

The utilization rate factors into TLC’s pay formula because both components of driver pay (mileage pay and time pay) is divided by a percentage utilization rate. Thus, for example, a driver would receive more for a mile drive at a

Should trips, for example, be spread out across a larger pool of drivers, each individual driver would perform fewer trips and earn less.

52. The TLC's initial pay rule formula dictated that when the aggregate driver utilization rate decreased, per-mile and per-minute pay rates would correspondingly increase to even out driver pay and produce the same intended hourly pay rate. *See id.* However, TLC recently amended its minimum driver pay rules such that, even if drivers were to receive fewer trips overall, their pay rates would not be adjusted to make up for the difference, unless the decrease in their aggregate utilization rate exceeded five percent. *See High-Volume For-Hire Service Updated Pay Standards* (Adopted Mar. 8, 2023), available at https://www.nyc.gov/assets/tlc/downloads/pdf/Statment_of_Substantial_Need_310_signed.pdf, attached as Exhibit M to the Soleimany Aff., now codified at 35 R.C.N.Y. § 59D-22(b)(1). Thus, TLC eliminated a substantial part of the safety net in its driver pay rules that could have otherwise operated to stabilize driver pay in the event of an aggregate decrease in trips per driver.

53. This is significant, as the COVID-19 pandemic upended ridership in the taxi and for-hire vehicle industries, which have yet to fully recover to pre-pandemic ridership levels. *See Taxi and Ridehailing Usage, supra*, Ex. B.

54. For example, in the High-Volume FHV sector, ridership has only returned to 86.3% of its pre-pandemic level. *See id.* (showing 641,461 average daily HVFHV trips in February 2023, compared to 749,129 in February 2020).

55. At the same time, the number of active HVFHV drivers has returned to 97.3% of its pre-pandemic level. *Id.* (showing 77,137 active HVFHV drivers in February 2023, compared to 79,282 in February 2020 in the field "Unique drivers per month"). In other words, there are nearly

payment rate of \$0.762 per mile divided by a utilization rate of 0.53, than a payment rate of \$0.762 per mile divided by a utilization rate of 0.58.

as many drivers as there were pre-COVID, all competing for a smaller pool of fares. The result was that there were only 8.4 trips per day per active driver in February 2023, compared to 9.5 trips per day per active driver in February 2020. *See id.*

56. Looking at trips across both the taxi and HVFHV sectors, combined, trips have only returned to 77.1% of their pre-pandemic level, while the number of active drivers in both sectors combined is now at 88.4% of its pre-pandemic level. *Id.* (showing trip totals for each sector: by combining average HVFHV trips and average daily taxi trips; and by combining total unique HVFHV drivers and taxi drivers in February 2023, compared to the same totals in February 2020).

57. TLC notes that as of August 2022, 4,724 FHV licenses were still in storage (i.e., not currently attached to a vehicle) and the total number of FHV licenses stood at over 100,000. August 2022 FHV License Report, Ex. C., at 4; at the same time, as noted *supra*, the number of active vehicles is nearly at prepandemic levels, and currently at over 74,000. *See, Taxi and Ridehailing Usage, supra*, Ex. B. While all of these licenses have already been issued, if they return to active service, they would even further dilute the pool of available work to drivers.

58. TLC has not articulated any need for further vehicles that would be issued under the SHL Pilot program to serve the riding public, whether in the outer boroughs, or in the City generally, particularly in light of the post-pandemic decline in trips per driver.

59. NYTWA members face immediate further dilution of their ability to receive work with the pending licensure of 2,500 new, unnecessary vehicles, increasing the available pool of vehicles by 3.5%. Because drivers bear their own vehicle expenses a 3.5% reduction in gross pay can amount to a roughly 6.2% reduction in net pay.⁹

⁹ For example, a driver who may annually earn \$70,000 in fare revenue, may incur \$30,000 in annual expenses (vehicle payments, commercial insurance, fuel, licensing costs, maintenance). Thus the difference between gross pay of \$70,000, reduced by 3.5% (\$67,550), means a diminution in take home pay from 40,000 to 37,550, or a 6.175% decrease in take home pay, at a time of historic recent inflation.

TLC's Practice of Open-ended Pilot Programs Evades Public Input and Democratic Processes

60. Recently, TLC has used its pilot program procedures to create indefinite and seemingly permanent changes to industry-wide policy.

61. For example, the TLC established a pilot program on March 29, 2018 that would allow taxis to offer flexible pricing, divorced from metered rates, ostensibly to experiment with such methods, study their outcomes and determine whether permanent rules offering such pricing flexibility would be appropriate. *See* Flex Fare Pilot Program Resolution (adopted Mar. 29, 2018), available at https://www.nyc.gov/assets/tlc/downloads/pdf/flex_fare_resolution_03_29.pdf, attached as Exhibit N to the Soleimany Aff. Notably, for taxi drivers, the pilot suspended the guaranteed rate of pay otherwise required by TLC rules, and offered no replacement minimum payment standard. *Id.*

62. The Flex Fare Pilot Program was slated to last only two years and during such pilot program the TLC was required to produce three interim reports and one final report making recommendations for a permanent policy regarding flexible taxi fare pricing. *See id.*, at 4-5, §§9(d)-(e).

63. More than *five years* after its adoption, the Flex Fare “pilot program” remains in effect, TLC has only produced one of the required studies,¹⁰ and no rules have been proposed, nor any other action taken, to ensure that drivers receive a fair standard of pay on these trips.

64. In August of 2022, NYTWA’s counsel sent Chair Do a letter raising NYTWA’s concerns about the apparent open-ended nature of the Flex Fare Pilot Program, and raising questions about what legal basis, if any, existed for the continuation of taxi fare pricing (and driver

¹⁰ *See Pilot Programs* (website), available at <https://www.nyc.gov/site/tlc/about/pilot-programs.page> (Date accessed: May 13, 2023) (listing the Flexible Fare Pilot as a “Current Pilot” and linking to the only one of the required reports that TLC ever produced), attached as Exhibit O to the Soleimany Aff.

pay) outside of the metered rates. *See* Letter re: Flex Fare Pilot Program, from NYTWA to TLC, dated August 19, 2022, attached as Exhibit P to the Soleimany Aff.

65. Despite NYTWA raising concerns about the pilot's expiration, TLC has done nothing to codify its flexible fare pilot, either through CAPA-compliant rulemaking or issuing an extension of the pilot, nor has TLC performed any of the further studies required by the pilot itself.

TLC Launches the SHL Pilot Program

66. On April 27, the TLC issued a notice of a commission meeting noting that, just six days later, it would hold a Commission meeting on May 3, 2023 to vote on previously proposed rules as well as a newly announced "Street Hail Livery Pilot Program." Upon information and belief, TLC did not post the proposed pilot program resolution on its website until Friday, April 28.

67. The SHL Pilot Program creates a new permit, called the "pilot Street Hail Livery," that, somewhat paradoxically, cannot actually pick up street hails. SHL Pilot Program Resolution, Ex. A at 1. Instead, the pilot program creates an SHL that "focuses exclusively on pre-arranged trips." SHL Pilot Program Resolution, Ex. A at 2.¹¹

68. Because they can not accept street hails, pilot participants are not subject to the vehicle modification requirements that facilitate the pick-up of street hails. SHL Pilot Program Resolution, Ex. A, at 5 (listing the regulations pilot participants will be exempt from).

69. In addition to reissuing 2,500 SHL permits, the pilot program requires the issuance of an additional 2,500 FHV licenses, pursuant to N.Y.C. Admin. Code § 19-504 (requiring FHV

¹¹ Notably, SHLs have always been allowed to pick up pre-arranged trips prior to the pilot program, so long as they do not begin in the HAIL exclusionary zone; generally, the pilot program does not modify the geographical restrictions on SHLs, except for medical transport, as described in paragraph 75, *infra*.

licenses for all for-hire vehicles operating within the City); see also 35 R.C.N.Y. Chapter 82-06(b)(1) (requiring FHV licenses for all SHL permits not affiliated with a paratransit vehicle).

70. The TLC did not address in the Pilot Program Resolution or the presentation provided at the meeting how these additional FHV licenses would be issued, or whether they were necessary to meet an unmet demand for service.

71. The “New York City Taxi and Limousine Commission Resolution Approving Street Hail Livery Pilot Program,” posted on the TLC’s website and circulated to the Commissioners prior to the May 3 Commission meeting, describes the purpose of the pilot program as “test[ing] whether Street Hail Liveries (“SHLs”) can be used safely and efficiently without being equipped to accept Hails.” See SHL Pilot Program Resolution, Ex. A, at 1; see also *SHL Pilot Program* (Slideshow) (May 3, 2023), available at https://www.nyc.gov/assets/tlc/downloads/pdf/presentation_05_03_23.pdf, attached as Exhibit Q to the Soleimany Aff.

72. TLC’s feigned ignorance in this presentation is remarkable. One would hope that TLC knows by now that a non-street hailable, non-metered FHV can be used safely and efficiently, considering it currently has 100,000 FHVs that already do so, and that SHLs have *always* been available to do prearranged trips.

73. TLC’s contrived naivete does not render the resolution a *bona fide* “pilot program” just because TLC posits that it can provide answers to questions no one would seriously ask. The purpose of pilot programs is to experiment with something truly novel, and assess how well it may work before committing to regulatory change, not to create an end-run around proper rulemaking, or in this case, state and city law.

74. The Resolution also claims that the pilot program was designed to “streamline” the current “lengthy inspection process.” SHL Pilot Program Resolution, Ex. A, at 1, 2. Yet neither the SHL Pilot Program Resolution nor the May 3 presentation address why, instead of modifying any of its own rules requiring numerous vehicle modifications before using a vehicle to accept street hails, TLC would choose to “streamline” the inspection process by creating a new category of license class from whole cloth, that directly conflicts with state law.

75. At the May 3 meeting, in a presentation to the Commissioners, TLC Assistant General Counsel Daniel Goddin proffered yet another purpose for the pilot program than what TLC articulated in the SHL Pilot Program Resolution. Mr. Goddin described the purpose as threefold: (1) to “attack a lack of licensed vehicles for the non-high volume for-hire services that are competing out there,” (2) a desire to have these newly available vehicles place an emphasis on trips outside the exclusionary zone in Manhattan, allegedly in keeping with the original HAIL Act and Local Law 147, and (3) to ensure vehicles are available for non-emergency medical transportation regardless of where the trip begins. *See* Public Hearing Video, beginning at 6:50. TLC did not explain how this proposal for dispatch of medical transportation trips to Pilot SHLs, including within the HAIL Exclusionary Zone, does not directly conflict with the HAIL Act, which makes no exception for dispatching medical transportation trips in the HAIL Exclusionary Zone.

76. The TLC did not explain how its proposed pilot program would accomplish this new set of purposes. The TLC did not explain, for example, why the pilot SHL permit holders would work for a non-high volume for-hire vehicle service when work for a high-volume service would likely provide more trips and thus more income; they did not explain why they wanted to have cars that focused on the outer boroughs when their own recent data suggests there is no unmet

service needs there¹²; nor did they explain why they believed pilot SHL permit holders would be more likely to accept Access-a-Ride trips in regions where they are otherwise prohibited from working, especially when, pursuant to TLC's 5 year-old expired flex fare pilot program, these trips generally pay below the metered rate. Flex Fare Pilot Report (June 2019), available at https://www.nyc.gov/assets/tlc/downloads/pdf/flex_fare_pilot_report_06_2019.pdf , at 5-6, attached as Exhibit R to the Soleimany Aff.

77. According to Mr. Goddin's presentation, the ultimate goals of the pilot program included assessing whether there was measurable demand for trips in the outer boroughs that would support full time work for drivers and whether non-emergency, Access-a-ride trips that began in the HAIL exclusionary zone would generate substantial income for drivers. *See* Public Hearing Video, beginning at 12:42. TLC did not address any of the data that the TLC currently collects that can provide preliminary answers to these questions: the TLC's own data, for example, suggests that there is not significant, unmet demand for outerborough trips. *See* August 2022 FHV License Report, Ex. C, at 5-6. Nor does the TLC address any data regarding the necessity for further vehicles to provide Access-a-Ride trips nor the income they generate, which should be accessible via the TLC's data on the Flex Fare Pilot Program.¹³ The TLC's most recent, and only, report on the matter, from June 2019, concludes with the acknowledgement that TLC "receives complaints that fare offers are too low." Flex Fare Pilot Report, Ex. R, at 7.

78. Nonetheless, Mr. Goddin informed the Commissioners that if the SHL Pilot Program Resolution was adopted, applications would open less than two weeks later, on May 16th. *See* Public Hearing Video, at 9:15.

¹² August 2022 FHV License Report, at 5-6.

¹³ The TLC notes in its most recent report on the Flex Fare pilot program that, at the time, Flex Fare pricing was primarily used to facilitate Access-a-Ride trips. Flex Fare Pilot Report, Ex. R, at 1.

79. Although members of the public, including members of the NYTWA were present to protest the program, consistent with TLC's pilot program rules, there was no opportunity for public input or comment at the Commission meeting.

80. The TLC provided no opportunity for the submission of written comments, public testimony, or any mode of public input on the SHL Pilot, despite Chair Do's admission that the pilot had "been in the works for nearly a year." Public Hearing Video, at 5:21.

81. All commissioners present voted to implement the SHL Pilot Program.

TLC Plans to Issue the Additional 2,500 FHV Licenses Necessary to Administer the Pilot Program Without Engaging in the Review Required by N.Y. Admin. Code § 19-550(b)(2) And Its Own Rules.

82. Within the prescribed geographic area of operation, the special Pilot SHL license created by the pilot program is for all material purposes indistinguishable from a FHV license.

83. N.Y. Admin. Code § 19-550(b)(2) requires that the TLC "review the number of for-hire vehicle licenses on a periodic basis," no less than once a year, and "based on such review," regulate the number of FHV licenses available.

84. The TLC further specified in its own rules at 35 R.C.N.Y. Chapter 59A-06(a)(1) that the TLC will engage in the review required by 19-550(b)(2) and "determine the number of For Hire Vehicle licenses to issue, if any, to issue in the twelve months following the review[.]" The Commission will review a number of factors, including "driver pay" and "outer borough service" and the results of the review will be posted on the Commission's website. 35 R.C.N.Y. § 59A-06(a)(1).

85. The FHV licensing limitations required under § 19-550 were most recently affirmed in August 2022. The TLC then determined not to issue any more licenses, other than the issuance of 1,000 licenses limited to attachment to electric vehicles, based on an apparent need to promote

the development of electric vehicle charging infrastructure. *See* August 2022 FHV License Report, Ex. C, at 8.

86. While N.Y. City Charter § 2303(b)(9) allows the TLC to “depart” from the regulations established pursuant to their authority to encourage “innovation and experimentation in relation to type and design of equipment, modes of service and manner of operation” of a broad transportation policy, the SHL pilot resolution does not include 35 R.C.N.Y. § 59A-06(a)(1) in the list of regulations it is departing from in the SHL pilot program. As such, it remains in full force, applicable to any further issuance of FHV licenses.

87. Already, the Commission has engaged in a number of such reviews.¹⁴ Prior to issuing 1,000 new electric vehicle licenses earlier this year, for example, the Commission reviewed the enumerated factors in 59A-06(a)(1) in its August 2022 FHV License Pause Report before concluding that there was sufficient demand to support 1,000 additional electric vehicle FHV licenses. *See* August 2022 FHV License Report, Ex. C.

88. Notably, the August 2022 review found that the license pause had likely not impacted outer-borough service, as wait times for outer borough trips had not increased. August 2022 FHV License Report, Ex. C, at 5-6.

89. Further, although 59A-06(a)(1) allows the TLC to consider “any other information it deems relevant to determine the number of Licenses to issue,” the August 2022 report does not consider the need for vehicles for non-high volume services or Access-a-ride trips, both of which the TLC stated as additional reasons to pursue the pilot other than the need for outer borough service. 35 R.C.N.Y. § 59A-06(a)(1); Public Hearing Video, beginning at 6:50.

¹⁴ While the current text of rule 59A-06(a)(1) states that the reviews will begin in February 2023, this is due to a rule change in January 2023 that altered the time period of the reviews from every six months to every twelve months; the text of the rule otherwise remained the same.

90. No reports have been issued since the August 2022 report.

91. Thus TLC has performed no review that could support the issuance of an additional 2,500 licenses as required by N.Y.C. Admin. Code § 19-550(b)(2) and 35 R.C.N.Y. § 59A-06(a)(1).

FIRST CAUSE OF ACTION

The Challenged Pilot Program Was Enacted In Excess Of The Agency's Legal Authority And Is In Direct Conflict With Controlling State Law

92. Petitioner repeats and re-alleges each paragraph above as if fully set forth herein.

93. This cause of action is brought pursuant to C.P.L.R. §§ 7803(1)-(3) and 7806.

94. The Commission exceeded its statutory authority by empowering itself to issue street-hail livery permits that may not be street-hailed, do not contain taximeters, and will perform certain prearranged trips in the HAIL Exclusionary Zone, in direct conflict with state law requiring street-hail liveries to be able to accept street hails.

95. The TLC's decision to issue SHL permits that cannot accept street hails directly violates the N.Y. HAIL Act.

96. The challenged pilot program is therefore *ultra vires*, in excess of statutory authority and affected by an error of law. It must therefore be set aside under C.P.L.R. §§7803 (1), (2), and (3). Petitioner is therefore entitled to a judgment under C.P.L.R. § 7806 vacating and annulling the challenged pilot program.

SECOND CAUSE OF ACTION

TLC's Failure To Conduct Any Review Required Under N.Y.C Admin Code 19-550(B) And 35 R.C.N.Y. § 59A-06 Prior To The Issuance Of 2,500 New For-Hire Vehicle Licenses.

97. Petitioner repeats and re-alleges each paragraph above as if fully set forth herein.

98. This cause of action is brought pursuant to C.P.L.R. §§ 7803(2)-(3) and 7806.

99. The TLC's decision to issue up to 2,500 new FHV licenses without conducting any review is a clear violation of N.Y.C. Admin. Code § 19-550(b) and 35 R.C.N.Y. § 59A-06(a)(1).

100. The challenged pilot program is affected by an error of law, and must be set aside under C.P.L.R. §§7803 (1), (2), and (3). Petitioner is therefore entitled to a judgment under C.P.L.R. § 7806 vacating and annulling the challenged pilot program.

THIRD CAUSE OF ACTION

The Challenged Pilot Program Is Arbitrary And Capricious

101. Petitioner repeats and re-alleges each paragraph above as if fully set forth herein.

102. This cause of action is brought pursuant to C.P.L.R. §§ 7803(3) and 7806.

103. The TLC's decision to issue 2,500 FHV licenses despite the TLC's own report suggesting there is no unmet need for the service the vehicles would provide is arbitrary and capricious.

104. TLC's asserted basis for the pilot program, that a two-year long study is needed to determine whether SHLs can operate safely and efficiently through only prearrangement is arbitrary and capricious where SHLs already operate through prearrangement, and the proposed Pilot SHLs would operate in an essentially identical manner to 100,00 FHVs whose operation TLC has sanctioned for decades.

105. The challenged pilot program is thus arbitrary and capricious, and must be set aside under C.P.L.R. § 7803(3). Petitioner is therefore entitled to a judgment under C.P.L.R. § 7806 vacating and annulling the challenged pilot program.

FOURTH CAUSE OF ACTION

Action for Declaratory Judgment

106. Petitioner repeats and re-alleges each paragraph above as if fully set forth herein.

107. This cause of action is brought pursuant to C.P.L.R. §§ 3001 and 3017(b).

108. There is an actual, substantial, and immediate controversy with respect to the SHL Pilot Program.

109. For the reasons set forth herein, Petitioner is entitled to a declaratory judgment that the SHL Pilot program is arbitrary and capricious and contrary to law and should be vacated and annulled.

WHEREFORE, Petitioner prays for judgment pursuant to Articles 30 and 78 of the Civil Practice Laws and Rules:

1. Issuing a judgment pursuant to C.P.L.R. § 7806 vacating and annulling the SHL Pilot Program.
2. Issuing a declaratory judgment pursuant to C.P.L.R. §§ 3001 and 3017(b) declaring that the SHL Pilot program is null, void, and invalid.
3. Enjoining the implementation of the SHL Pilot Program.
4. Ordering Respondents to pay Petitioner its costs, fees, and disbursements incurred in connection with this action pursuant to C.P.L.R. § 8101; and
5. Granting such other and further relief, as this Court deems just and proper.

Respectfully Submitted,

/s/ Zubin Soleimany
Zubin Soleimany, Esq.
Allison Langley, Esq.
New York Taxi Workers Alliance
31-10 37th Ave, Suite 300
Long Island City, NY 11101
Tel: (347) 470-4755
E-mail: zsoleimany@nytwa.org

Dated: May 15, 2023
Long Island City, NY

VERIFICATION

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

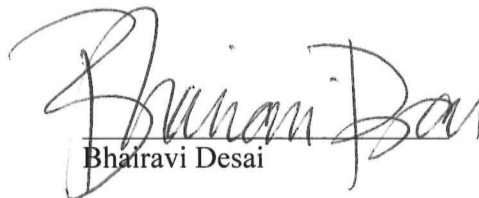
Bhairavi Desai, being duly sworn, deposes and says:

1. I am the Executive Director of the New York Taxi Workers Alliance, the petitioner in the within proceeding. As such I have personal knowledge regarding the facts of this proceeding.


2. I have read the attached Petition.

3. I assert that the facts contained in the Petition are true to my personal knowledge, except where the Petition says "upon information and belief," and as to those facts, I believe they are true.

Dated: Long Island City, NY
 May 15, 2023


 Bhairavi Desai

Sworn to before me this
 15th day of May, 2023


 NOTARY PUBLIC

ZUBIN DANIEL SOLEIMANY
 NOTARY PUBLIC, STATE OF NEW YORK
 Registration No. 02SO6325073
 Qualified in Queens County
 Commission Expires May 18, 2023