

BARRY, McTIERNAN & WEDINGER, P.C.

10 Franklin Avenue

Edison, New Jersey 08837

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY**

**Newark Cab Association, Newark Taxi
Owner Association, Teterboro Airport
Limousine Service, Abbas Abbas, Petro
Abdelmessieh, Sayev Khellah, Michael W.
Samuel, and George Tawfik, individually,
and by certain plaintiffs on behalf of others
similarly situated,**

Plaintiffs,

V.

Defendant, City of Newark)

Hon.

No.

JURY TRIAL DEMANDED

VERIFIED COMPLAINT

Plaintiffs Newark Cab Association, Newark Taxi Owner Association, Teterboro Airport Limousine Service, Abbas Abbas, Petro Abdelmessieh, Sayev Khellah, Michael W. Samuel, and George Tawfik complain against Defendant City of Newark (“**City**”) as follows.

The Plaintiffs are collectively referred to as “**Transportation Plaintiffs.**” The subset of Transportation Plaintiffs consisting of Abbas Abbas, Petro Abdelmessiah, Sayev Khellah, Michael W. Samuel, and George Tawfik sue on behalf of themselves and all other similarly situated medallion owners. Plaintiff Teterboro Airport Limousine Service sues on behalf of itself and similarly situated limousine operators.

Overview

1. Plaintiffs are individuals and entities engaged in the licensed taxi and limousine industry in Newark, New Jersey. They have brought this case because the City of Newark has arbitrarily violated their constitutional rights by applying burdensome and costly taxi and limousine regulations to them, while permitting *de facto* taxi companies such as

Case 2:16-cv-04681-WHW-CLW Document 1 Filed 08/02/16 Page 2 of 48 PageID: 2
as Uber (also known as Transportation Network Companies, or “TNCs”) to operate without complying with those requirements or incurring the very significant costs the City imposes on Plaintiffs. Both the Plaintiffs and the TNCs engage in the very same business – driving individual passengers for hire (“For-Hire Transportation”).

2. The City is violating Plaintiffs’ constitutional rights to just compensation, equal protection and due process by arbitrarily:

- (a) Requiring taxi operators to buy expensive City taxi licenses (known as “medallions”) – which are property, not mere licenses – that have in recent years cost over \$500,000 each, while destroying their most essential property right and much of their value by allowing the *de facto* taxis to operate without them.
- (b) Imposing more onerous burdens on the taxi industry, as compared to *de facto* taxi companies such as Uber even though both engage in the same business – For-Hire Transportation. The City requires members of the taxi industry to spend hundreds of thousands of dollars *per taxi* to engage in the taxi business and to comply with its vast set of regulations, while the City permits the *de facto* taxi companies to compete in the same business for a small fraction of the cost, and under fewer and much laxer rules.
- (c) Imposing extensive, costly and burdensome safety-related obligations on the taxi and limousine industry, but not on the TNCs.

3. The For-Hire Transportation business consists of four simple elements, whether the service is provided by a taxi, a limousine, or a TNC: a driver, a vehicle, a passenger and payment. These elements do not depend on how the connection between driver and passenger is made, whether visual (by street hail or taxi queue), or electronic (by telephone, smartphone or web site).

4. For decades, the City of Newark has heavily regulated all For-Hire

Transportation providers under uniform rules. The rules were designed to protect the public, regulate traffic, address congestion and provide public service. They consist of the following:

- (a) Taxi and limousine drivers must comply with regulations requiring detailed qualifications, background checks, application fees, and must obtain special commercial licenses;
- (b) Taxi and limousine vehicles must be serviced and inspected regularly by the City;
- (c) Taxi fares must be measured and imposed by meters with City-mandated rates that cannot be altered; and
- (d) All operators must carry expensive primary commercial liability insurance for taxis and limousines that are effective at all times even when vehicles are off duty.

5. In addition, the City requires taxi owners to pay large sums for the exclusive license to engage in the business of For-Hire Transportation. For decades, taxi owners accepted these burdens and expenses as part of a *quid pro quo* with the City for the exclusive rights granted. The City promised, in return, that taxi owners, and the taxi affiliations and drivers who operate taxis, would have the exclusive right to provide For-Hire Transportation to individual passengers. In reliance on the City's decades-long promise of exclusivity, taxis, limousines, and related businesses have invested hundreds of millions of dollars.

6. The Transportation Plaintiffs have brought this lawsuit because the City now permits Uber, by agreement with the City ("**Uber-Newark Exclusive Agreement**") (**See Attached Exhibit A**), to operate under much laxer and less expensive rules, even though they engage in the same business as Transportation Plaintiffs – For-Hire Transportation, *i.e.*, they provide passenger transportation in cars for money.

7. Uber does exactly the same thing that traditional taxi companies do. The company dispatches drivers to passengers who pay fares based on the time and distance traveled. That Uber dispatches the car and driver via smartphone does not distinguish their

8. Use of a smartphone app does not change the nature of the business. It does not alter the need for uniform rules for all who engage in it. Use of an app merely provides an alternative means of dispatch and payment. The service provided remains For-Hire Transportation. An app does not make a car safer, qualify or train a driver, protect the passenger, or insure the public when accidents occur. Because cars, drivers and passengers exist and travel in the real world, not the virtual world, the same public safety concerns exist regardless of how passenger and driver connect. Therefore, the rules governing the activity should be substantially the same for all. Because they are not, the City is giving an unfair competitive advantage to Uber, which operates under fewer, less expense and laxer regulations.

9. Among the rules the City imposes on traditional taxis and limousines are:

- (a) Traditional taxis must buy and display the license that the City required as the exclusive gateway to the right to provide For-Hire Transportation. In recent years the cost of these City-issued and City-required medallions often exceeded \$500,000 per taxi. But the City has not required the *de facto* taxi companies to purchase a medallion;
- (b) The City requires limousine operators to operate cars that are no more than three and a half years old. No vehicle can be more than seven years old. Moreover, all for-hire vehicles are subject to City inspections every six months. But, the City allows Uber to deploy private drivers in their own personal cars of any age or condition that, until recently, were subject to no inspection requirement. Even under the Uber-Newark Exclusive Agreement, there is still no age requirement, and vehicles will be subject to inspection under laxer standards than those applying to taxis and limousines;
- (c) The City requires taxi and limousine operators to maintain expensive primary

commercial liability insurance that applies at all times. But, until the recent Agreement with the City, the *de facto* taxi companies were not required to carry such commercial insurance. In other words, Newark knowingly permitted Uber to give uninsured rides to unwary Newark residents and visitors. Even under the Uber-Newark Exclusive Agreement, the City allows the *de facto* taxi companies to carry sub-standard, non-primary insurance;

- (d) The City requires taxi and limousine drivers to obtain special commercial driver's licenses. Taxi drivers must complete orientation courses and receive a passing score on a driver's license exam. Taxi and limousine drivers must submit a licensing application with fees and undergo a rigorous background check by the Newark Police Department. Until the Uber-Newark Exclusive Agreement, the City was not enforcing its own laws requiring the drivers of *de facto* taxis to meet any of these requirements. Even under the Agreement, the City will not require *de facto* taxi drivers to obtain a taxi or limousine driver's license or undergo the training to acquire one, or to be vetted by the Newark Police Department.
- (e) The City sets meter rates for traditional taxis that apply to all taxi rides. Yet the City permits the *de facto* taxi companies to charge any rate, and to impose large surcharges during times of high demand. This pricing policy not only harms the public, but gives the *de facto* taxi companies an unfair competitive advantage in recruiting drivers from traditional taxi companies.
- (f) A short, but not complete list of the requirements for traditional taxis that are not required of *de facto* taxis is:

Drivers

- 1- Must be over 18, have a license for over 1 year, before applying for a Hack License, and then must pay for and maintain a Hack license
- 2- Must take and pay for orientation course
- 3- Must take an exam and score at least 70% on it
- 4- Must undergo and pay for background check by police department, with requirement of being fingerprinted
- 5- Must pay annual fee for license
- 6- Are responsible to Taxi commissioner
- 7- Are subject to fines for items such as violation of dress code, failure to keep trip record, conduct, refusal to take passenger, front seat passenger. These fines increase with repeat offenses and a 4th offense requires a hearing with the commissioner.
- 8- Take and pass a drug test conducted by State authorities.
- 9- Must be New Jersey resident for at least one year
- 10- Must be able to read, write and speak the English language
- 11- Must be a citizen or Legal Alien.

Vehicles

- 1- Need to have a medallion which must be paid for
- 2- Age of vehicle is regulated
- 3- Size of vehicle is regulated
- 4- Subject to inspections every 6 months
- 5- Must be equipped with a meter
- 6- Subject to fines for cleanliness

Financial Responsibility

- 1- Have to be covered by primary insurance at all times, by an insurance company licensed to do business in New Jersey
- 2- Amount to be charged is regulated at all times, and is not be altered for high volume or low volume trips
- 3- Must pay for and maintain medallion
- 4- Are subject to Port Authority Laws and Newark Laws, whereas the Uber drivers who are being ticketed are having most of their r violations waived by the Newark Municipal Prosecutor

10. Such arbitrary favoritism damages the Transportation Plaintiffs by reducing their revenues. It also serious handicaps their ability to compete fairly against the *de facto* taxi companies to recruit drivers, which threatens to destroy their businesses entirely.

11. The arbitrary favoritism is particularly harmful to individual owner-operators like Plaintiff Abbas Abbas. Mr. Abbas emigrated from Egypt to the United States in 1991. His

pursuit of the American Dream began when he found work as a taxi driver in Newark, New Jersey. In 1997, in reliance on the promises inherent in the City Taxi Regulations, Mr. Abbas purchased his first taxi medallion by taking on the risk of a substantial loan. He later purchased a second medallion. Then, in 2013, Uber began operating in Newark. Uber vehicles picked up and dropped off passengers within the City without obtaining taxi medallions. Within one year, Mr. Abbas' business dropped 60%-70%. The market value of his and all Newark taxi medallions plummeted by more than 50%. These drastic changes occurred because the City allowed Uber, a *de facto* taxi company, to flout the law with open impunity by operating unlicensed vehicles and drivers with no medallions and not requiring them to comply with City Taxi regulations.

12. Mr. Abbas' hardship parallels the stories of other Newark taxi drivers and medallion owners. Michael W. Samuel's family has worked in the Newark taxi industry for over thirty years. Mr. Samuel inherited several medallions that his family had acquired over the years in compliance with Newark regulations. He went on to purchase four medallions from 2011-2013 relying on the promises inherent in the City Taxi Regulations. Mr. Samuel made those purchases by taking out substantial loans against his family's existing medallions. Since Uber's arrival in Newark in 2013, and the City's subsequent failure to regulate Uber's *de facto* taxi service, Mr. Samuel has struggled to stay afloat. He struggles to make his monthly loan payments because the value of his medallions has fallen to less than what he owes the bank. The City's failure to regulate Uber from 2013-2016 created the unlawful disparity that caused Mr. Samuel's and the entire Newark taxi industry's current predicament. The 2016 Uber-Newark Exclusive Agreement legalizes this disparity.

13. Drivers of both traditional and *de facto* taxis are usually independent contractors. Many choose to drive for the providers who offer the most attractive compensation package. These compensation packages can result in higher total fares, despite the fact that they occur, in

the case of the *de facto* taxis, with less City regulation. By requiring traditional taxis to operate under burdensome regulations and to charge only City-dictated prices, while allowing *de facto* taxis to pay lower fees and charge fares that escalate well above taximeter fares at times of high demand, the City has given the *de facto* taxi companies an unfair advantage in recruiting drivers. Transportation Plaintiffs have, as a result, lost many drivers to the *de facto* taxi companies, resulting in lost revenue and a higher percentage of idle taxis.

14. While the Equal Protection Clause often permits government to draw distinctions that are rationally related to legitimate governmental interests, the distinctions summarized above and detailed below do not pass constitutional muster. They are arbitrary, fundamentally unfair, and unconstitutional. The City has arbitrarily forced participants in the same business to operate by very different rules. Transportation Plaintiffs are entitled to damages resulting from the City's imposition of unequal rules, and to injunctive relief in order to restore the level playing field that had previously governed the business of For-Hire Transportation in the City.

15. The constitutional protections of equal protection and due process rest on bedrock principles of fundamental fairness. Under our constitutional system, government must apply reasonable rules fairly to similarly situated persons. People engaging in the same business activity must be held to the same rules. The rules must rationally relate to a legitimate governmental objective. The City's disparate treatment of Transportation Plaintiffs violates all of these principles.

16. Principles of fundamental fairness also include the constitutional right to just compensation when the government takes private property. That right is particularly important where, as here, the government itself created the property right, sold it to private parties and developed a system under which hundreds of private parties were induced and *required by government* to invest and risk hundreds of millions of dollars as a precondition to engaging lawfully in business.

17. These constitutional protections – equal protection, due process and just compensation – allow people to take investment risks and allow businesses to compete fairly. These safeguards and protections from arbitrary government action distinguish the United States and other mature democracies from other corrupt and arbitrary forms of government.

Summary of Relevant Facts

18. Defendant City of Newark is charged by state law with the power and duty of regulating the use of its streets. Based on that authorization, the City regulates the taxi and limousine businesses in the City of Newark by promulgating and enforcing elaborate, highly-detailed and very restrictive ordinances and regulations controlling virtually every aspect of the taxi and limousine businesses. The administration of Mayor Ras Baraka's predecessor, Mayor Cory Booker, even oversaw a Taxicab Inspection Unit within the Newark Police Department. The Taxicab Inspection Unit instructed Newark police officers on how to verify compliance with taxicab insurance regulations, license renewal rules, and rigorous vehicle safety inspections. Prior to Uber's arrival in 2013 and Mayor Baraka's refusal to regulate their *de facto* taxi service, the City of Newark, through its Police Department, was committed to the fair regulation of the entire for-hire vehicle industry.

19. The hallmark of the marketplace in transportation services created by the City's regulations had been competition on a level playing field within a highly-regulated industry. To ensure public safety and reasonable returns to taxi operators, the City issues a limited number of medallions permitting the exclusive operation of the taxi business, subject to the City's detailed and stringent requirements. Newark sets a cap on the number of medallions in the City at 600. The City also sets uniform metered rates for transportation by taxi. Taxi owners and operators worked in a competitive environment, all subject to the same regulations – until the advent of the *de facto* taxi companies that gives rise to this Complaint.

20. An established market for the purchase, sale and financing of medallions existed

that was recognized, supported and regulated by City ordinances and regulations. In reliance on this structure, taxi owners, operators, lenders and others have purchased medallions and operated taxis, directly or through leases to drivers. Individual medallions, allowing the owner to operate a single taxi, until recently sold for over \$500,000.

21. Starting in approximately 2013, certain transportation providers began to offer taxi and limousine services in Newark in open and blatant disregard of applicable City Taxi and Limousine Regulations, including the law requiring taxi medallion ownership. These providers (the “*de facto* taxi companies”) include Uber Technologies, Inc. (“Uber”).

22. Since commencing operations in the City, the *de facto* taxi companies have operated unlicensed taxi and limousine services in open violation of City law to which the City deliberately turned a blind eye. Like the Transportation Plaintiffs, their operations consisted of the four basic elements of For-Hire Transportation: they received requests for transportation from the public, contacted drivers or operators to dispatch vehicles to transport the public for hire, collected the fares for transportation using customer credit cards, and paid the drivers for the services they provide after deducting a percentage off the fare as their charge. They metered the trips and computed and collected the fares based purportedly on distance travelled and time elapsed. Although they functioned in all material respects as for-hire vehicles, they did not acquire or lease taxi medallions or limousine licenses and they operated in violation of City ordinances, rules, and regulations that then governed taxis and limousines (the “**City Taxi and Limousine Regulations**” or “**Regulations**”) upon which Transportation Plaintiffs’ investment-backed expectations were and are based. In addition, the “limousine” or “livery” services they offer are actually *de facto* taxi and limousine services because their fare structure is apparently based on time and distance, as in the case of taxis and limousines.

23. Despite the fact that there is no meaningful difference between licensed taxi and limousine businesses and the businesses of the *de facto* taxi companies, the City applied

virtually none of the requirements of the City Taxi and Limousine Regulations to the *de facto* taxi companies.

24. After knowingly permitting the *de facto* taxi companies to flout the City Taxi Regulations with impunity, allowing those providers to expand and flourish at the expense of the Transportation Plaintiffs, the City purported to legitimize their activity by entering into the Uber-Newark Exclusive Agreement with Uber in 2016.

25. On April 15, 2016, Newark officials announced that Mayor Ras Baraka's office had reached a "tentative agreement" with Uber that would allow Uber to operate in the City. Details of the agreement were announced later in April. Under the agreement, Uber would be required to pay the City \$10 million over a ten year period in order to operate in the City. The City Council adopted the ordinance on May 10, 2016.

26. The City's decision not to apply the City Taxi Regulations to the *de facto* taxi companies after adoption of the Uber-Newark Exclusive Agreement ratifies and codifies the City's prior unconstitutional regulatory and enforcement regime. It has disrupted long-settled expectations and imposed very serious adverse consequences on the Transportation Plaintiffs, who engaged in the taxi and limousine business in Newark in costly reliance upon and in compliance with the market created by the City Taxi Regulations. The City's decision threatens the existence of long-established businesses created in reliance on the City's taxi and limousine regulatory structure.

27. At the time of Uber's arrival in 2013, Newark taxi medallions had a market value of more than \$500,000. The value of those medallions was premised upon generations of buyers and sellers relying upon the City Regulations. Within a couple of months, the value of the medallions plummeted. By 2016, the market value of had fallen more than 50% to under \$220,000 per medallion. Some medallions were selling for under \$200,000. The City's failure to fairly regulate *de facto* taxis like Uber created a severe economic disadvantage for the taxi

industry and gave Uber a strong, competitive advantage in Newark.

28. Because the City has not been and will not be applying the City Taxi Regulations to the *de facto* taxi companies, the public is deprived of important protections that govern the for-hire vehicle industry. Protections such as driver background checks, rigorous vehicle inspections, and vehicle age restrictions are either weakened or non-existent as to Uber. Anyone with a valid driver's license, personal car insurance, and a car – no special driver's license or prior experience required – can offer Uber services to the public at a price determined by adding to a base fare a metered rate (which can be found on Uber's website) based on the time and distance travelled. Such services are provided by drivers and in vehicles that do not satisfy the City requirements applicable to licensed taxi or limousine operators.

Summary of the Plaintiffs' Claims

29. The City's unequal treatment of the Transportation Plaintiffs and the *de facto* taxi companies, as described herein, is contrary to the City's own economic interests, is fundamentally unfair, and is unconstitutional. Substantially the same rules should apply to everyone engaging in substantially the same business.

30. In New Jersey (i) medallions have all of the attributes of property and (ii) the City's issuance of medallions and its regulatory scheme constitute a contract between the City and medallion owners. These rights give rise to four federal claims (Counts I-IV) and three pendent state law claims (Counts V-VII).

31. The Court has federal question jurisdiction over Counts I-IV under 28 U.S.C. §§ 1331 and 1343, and supplemental jurisdiction over Counts V-VII under 28 U.S.C. §1367.

32. Count I is brought under 42 U.S.C. § 1983. It alleges that the City has violated the Takings Clause of the Fifth Amendment to the United States Constitution, applicable to the states under the Due Process Clause of the Fourteenth Amendment. Because medallions are property under New Jersey law, medallion owners, and lenders holding security interests in

medallions own property that may not be taken by the City without payment of just compensation. Before the City allowed the invasion of the *de facto* taxi companies, if someone wanted to provide taxicab services in the City, the City required that he or she buy or lease a medallion and comply with the City Taxi Regulations. In return, the medallion owner received the exclusive right to provide taxi services in the City. A hallmark of property is the right to exclude, and exclusivity was an essential element of the medallion owners' property rights and determined the value of those rights. Without compensation to the medallion owners or the lenders holding security interests in the medallions, the City has permitted and continues to permit the *de facto* taxi companies to usurp and trespass upon the exclusive property rights of medallion owners by providing those services without buying or leasing medallions or complying with the City Taxi Regulations. The City has thereby taken exclusive rights from medallion owners and transferred them to the *de facto* taxi companies without any compensation, let alone the just compensation that the Takings Clause requires.

33. Counts II and III are brought under 42 U.S.C. § 1983. They allege that the City's unequal treatment of the Transportation Plaintiffs and the *de facto* taxi companies violates the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution by permitting the *de facto* taxi companies to engage in the *de facto* taxi business without incurring the costs and limitations of complying with applicable law, while requiring the Transportation Plaintiffs and others similarly situated to comply with the City's extensive and costly taxi and limousine regulations, including the requirements to: purchase a medallion previously costing in excess of \$500,000 for each taxi; pay annual license fees of \$300; maintain commercial liability and worker's compensation insurance; operate only newer, regularly inspected vehicles; satisfy driver-licensing requirements, and pay thousands of dollars annually per medallion in City and State fees and taxes measured solely from the operation of the for-hire transportation businesses that the *de facto* taxi companies are permitted to operate without paying such taxes.

34. The fees and taxes paid by the Transportation Plaintiffs are generated from operation of the same business of for-hire transportation that the *de facto* taxi companies have been permitted to operate in without paying such fees and taxes.

35. By failing to collect such fees and taxes from the *de facto* taxi companies, or enforce the Taxi or Limousine regulations, the City is, upon information and belief, losing significant annual revenue. The *de facto* taxi companies are receiving an unwarranted competitive advantage over taxi and limousine operators who pay such taxes and otherwise comply with the City Taxi and Limousine Regulations. Indeed, the City has provided the *de facto* taxi companies with an inexplicable financial windfall by allowing them to operate outside the regulations.

36. The fees and taxes imposed by the new Uber-Newark Exclusive Agreement are far lower than those imposed on the Transportation Plaintiffs, and lower than the total funds that would be generated through continued enforcement against TNCs, and therefore will not come close to remedying the unfair imbalance. The *de facto* taxi companies keep the unpaid fees and taxes as profit, on top of the additional profits they garner by not being required to comply with the many other regulations requiring that they obtain adequate commercial insurance, submit their drivers' vehicles to City inspections, maintain their drivers' vehicles, and operate newer cars.

37. Count IV is brought under 42 U.S.C. § 1983 for the City's violation of substantive due process under the Fourteenth Amendment to the United States Constitution. By failing to enforce the City Taxi Regulations against the *de facto* taxi companies before the effective date of the Uber-Newark Exclusive Agreement, the City denied the Transportation Plaintiffs their substantive due process rights.

38. The City's unauthorized and unconstitutional decision to suspend the law is more egregious because it knows that Uber vehicles are operating illegally. Before the Uber-Newark

Exclusive Agreement, Newark Mayor Ras Baraka instructed City police officers to target Uber vehicles operating at Newark Liberty International Airport and Newark Penn Station. City officials said that they would ticket and tow Uber vehicles at the airport and train station. The Uber-Newark Exclusive Agreement now allows Uber to continue its illegal operations.

39. Count V seeks damages for the City's breach of its contracts with Plaintiffs. Those contracts require that the City limit the conduct of the taxi business exclusively to parties who hold medallions or other taxi-service related licenses as "affiliations" or "dispatch" services, and otherwise require compliance with the City Taxi Regulations.

40. The City Taxi Regulations grant the exclusive rights to operate taxi and taxi-related businesses only to licensed providers of public transportation services.

41. City Taxi Regulations include the following ordinance provisions regarding the exclusive rights of the owners of medallions to operate taxis:

(a) No person shall operate or permit a taxicab owned or controlled by him/her to operate as a taxicab upon the streets of the City of Newark without first having obtained a taxicab license and/or a license renewal from the Manager, after review by the Taxicab Commission.

(b) It shall be unlawful or a violation of this chapter for taxicabs licensed in other municipalities or state to receive passengers in the City of Newark and regularly discharging passengers originating in other municipalities or states in the City of Newark without obtaining a license from the Manager, Division of Taxicabs. (R.O. 1966 C.S. § 24:13; Ord. 6 S+FA, 5191)

Newark Municipal Code 34:1-3.

42. The City Taxi Regulations include numerous provisions regulating the sale and transfer of medallions, including the following:

No taxicab license may be sold, assigned or otherwise transferred without the consent of the Manager upon recommendation of the Taxicab Commission. A license may be transferred to another person to be used in a bona fide operation of a taxicab business, with the consent of the Manager upon recommendation of the Taxicab Commission upon the filing of an application, as provided in Section 34:14 of these Revised General Ordinances, and upon payment of a transfer fee of five hundred (\$500.00) dollars and in the case of a transfer to a corporation, a copy of the certificate of incorporation issued by the State of New Jersey and the name of its registered agent shall also be filed; provided that if a corporation wishes to transfer a taxicab license to another corporation to be used in a bona fide operation of a taxicab business, and not less than seventy five (75%) percent

ownership of each corporation rests with the same person or group of persons, then upon application and upon filing of a certificate of incorporation issued by the State of New Jersey and the name of its registered agent, and the consent of the Manager upon recommendation of the Commission, and upon payment of an administrative fee of one hundred (\$100.00) dollars, the license shall be transferred. No transfer may be made during the month of November.

Newark Municipal Code 34:1-7.

43. Further, the City Taxi Regulations limits the number of licenses issued and in use at one time to 600, confirming the exclusive rights to operate taxi and taxi-related businesses to a limited number of licensed providers of public transportation services.

44. The City Taxi Regulations contain several provisions regarding the enforcement of the exclusive rights of medallion owners to operate taxis, including the following:

(b) It shall be unlawful and a violation of this chapter for any person to operate any vehicle not licensed under this chapter in such a manner as to be misleading or tend to deceive or defraud the public into believing the vehicle is a taxicab or is being operated as a taxicab.

Newark Municipal Code 34:1-21. This and other enforcement provisions constitute a part of the promise by the City to medallion purchasers and lenders that the City will support the exclusivity and market value provisions by removing unlawful taxicabs from the streets and fining violators heavily.

45. By permitting the *de facto* taxi companies to operate without fully complying with City Taxi Regulations, the City has breached its contract with the Medallion Owner Plaintiffs. It has also breached its contracts based on taxi and limousine laws and regulations with all the other Transportation Plaintiffs, whose business depends upon and operates in reliance of the equal and consistent application of applicable City taxi and limousine regulations. The City is responsible for damages for (i) the Transportation Plaintiffs' current and future loss of business to the *de facto* taxi companies, (ii) all diminution in the market value of the Transportation Plaintiffs' medallions, (iii) all cash or the value of other collateral that Plaintiffs will be required to provide to its lenders as additional security due to the diminution in market value of City medallions, and (iv) any damages to medallion lenders that currently rely on the medallion

46. Count VI is pleaded in the alternative to Count V and seeks damages under principles of promissory estoppel. For many years the City has sold and taxed the sales of medallions as part of the comprehensive regulatory program it established and fostered that, among other things, establishes the total number of licenses and guarantees license owners the exclusive right to provide taxi services in Newark. This regulatory program constitutes the City's promise to license owners and lenders holding security interests in licenses that, subject to compliance with the obligations under the City Taxi Regulations, the City will provide the exclusive rights and benefits summarized above that include:

- (i) exclusivity, *i.e.*, only license owners will be permitted to operate taxis,
- (ii) market support, *i.e.*, the City will cap the total number of licenses and resell medallions so as not to impair materially the property right in or value of medallions, and
- (iii) enforcement, *i.e.*, the City will impound and fine vehicles violating the exclusivity promise by providing taxi services without licenses.

Plaintiffs foreseeably and detrimentally relied on these promises by collectively investing hundreds of millions of dollars to purchase licenses, incur debt to finance such purchases, lend money to finance the purchases secured by the medallions, and/or create and operate taxi affiliations.

47. Count VII seeks damages under principles of equitable estoppel. The City's enactment and past enforcement of the City Taxi Regulations, as well as its sales of medallions, constitute affirmative acts by the City upon which the Transportation Plaintiffs reasonably relied to their detriment as summarized in the preceding paragraph. The City is estopped from creating the *de facto*, and, recently, the *de jure*, system under which the *de facto* taxi companies are allowed to provide taxi services without being required to comply with the obligations imposed upon Transportation Plaintiffs, who undertook such obligations in reliance on the exclusive, regulated medallion system.

48. The recently enacted Uber-Newark Exclusive Agreement creates a separate class of smartphone-dispatched transportation providers to accommodate the *de facto* taxi companies and attempt to render legal their illegal operations.

49. Among numerous equal protection violations reflected in the City's actions and in the Uber-Newark Exclusive Agreement are: (i) the Uber-Newark Exclusive Agreement purports to legalize hundreds or thousands of *de facto* taxis driven by individuals without chauffeur licenses or adequate training, who would not have to incur the cost of buying medallions and who would pay lower annual fees on a per vehicle basis than medallion owners; (ii) the Uber-Newark Exclusive Agreement places the City's imprimatur on a separate and unequal class of public transportation available only to privileged individuals with smartphones and credit cards, resulting in a disparate impact on minority, disabled and elderly populations; (iii) the Uber-Newark Exclusive Agreement imposes sharply reduced public safety requirements on the *de facto* taxi companies, as compared to the Transportation Plaintiffs, regarding vehicle age and other operating requirements; and (iv) the Uber-Newark Exclusive Agreement, when combined with the influx of hundreds or thousands of drivers who would pay virtually nothing to the City to operate as *de facto* taxis, is destroying the investments of persons and firms that have expended large sums to purchase and operate under the City's long-standing, exclusive medallion system. Because the Uber-Newark Exclusive Agreement codifies an uneven playing field and destroys the investment-backed expectations of medallion owners and lenders, including their exclusive rights to operate taxis, it violates Plaintiffs' rights.

**The City Has Entered into an Unprecedented Illegal
Agreement with Uber and Placed Plaintiffs
in an Unfair Competitive Position**

50. Newark has always understood that Uber was operating illegally in the City. In January 2016, Newark Chief Municipal Prosecutor Evans C. Anyanwu sent a letter to Uber stating that all of its drivers operating at and around Newark Penn Station and Newark Liberty

International Airport were violating the City's Taxi Regulations. A copy of this letter is attached as **Exhibit B**. The letter warned that after February 22, 2016, continued violation of the City's laws would result in civil and criminal penalties for Uber and its drivers. Mayor Ras Baraka issued a statement that all commercial vehicles must obtain a license to operate at the train station or airport. He also said that all commercial drivers have to be investigated, fingerprinted and have medallions.

51. In March 2016, Mayor Baraka attempted to carry out his threat by instructing City police officers to target Uber vehicles operating at Newark Liberty International Airport and Newark Penn Station. The city was unable to carry out this enforcement action because the Port Authority blocked the City from ticketing or towing any Uber cars. Port Authority Police have told City police that they were not authorized to operate at the airport.

52. The City later announced that it would not be towing cars. A City spokesperson said that the opposition from the Port Authority played no part in its decision. However, a few days later, City officials once again changed course and said that they would ticket and tow Uber and vehicles at the airport and train station.

53. In an attempt to create a long-term solution for unlicensed Uber operations, the City proposed a law in March 2016 that would require TNC drivers to pay a \$750 yearly license fee and an annual "Transportation Network License" fee of \$250. Mayor Baraka stated that the ordinance was written with the intent of regulating ridesharing services in a way similar to yellow taxicabs.

54. In April 2016, the City once again changed directions and the City Council heard a proposal in which Uber and drivers would have to pay a \$1,000 fee to serve Newark Airport and Newark Penn Station. In response to this proposal, Uber threatened to withdraw from the City, claiming the fees subject its drivers to more fees than those imposed on taxis.

55. Despite understanding that Uber is operating illegally, later in April 2016, Mayor Baraka's office announced an agreement with Uber the City said would keep Uber in Newark,

economic development and leadership in technology. Under the agreement, Uber will pay the City \$1 million a year for 10 years for permission to operate in Newark and Uber will provide \$1.5 million in liability insurance for all drivers. Uber would also have a nationally-accredited third party provider conduct background checks on all of its drivers and enforce a zero-tolerance drug and alcohol abuse policy. The Port Authority sought to block the deal because under state law, it has control over airport contracts.

56. Although Mayor Baraka and the Uber New Jersey General Manager touted the benefits of the agreement, many in the taxi industry said the deal was unfair because it treats taxis and Uber differently. For instance, while taxis must purchase medallions to operate, there is no such requirement for Uber. Also, while taxi drivers must undergo fingerprint based criminal background checks, Uber's background checks are conducted by a third-party not using a fingerprint-based system. To our knowledge, Newark has never entered into a contract allowing a for-hire vehicle company to operate without proper licensing or background checks.

57. The illegality of Newark agreement has been recognized by another New Jersey City, which also owns land where Newark Airport is located. In Elizabeth, New Jersey, which owns part of the land on which a Newark Airport terminal is located, the City Council considered an ordinance that would prevent ride-hailing companies from picking up at an airport terminal located on its land and at City train stations. Elizabeth Mayor Christian Bollawage said he would not enforce any ban because the Port Authority has sole control over airport operations and the proposed ordinance is unenforceable.

The Parties

58. Plaintiffs Abbas Abbas, Petro Abdelmessieh, Sayev Khellah, Michael W. Samuel, and George Tawfik are individual Newark taxi medallion owners operating in Newark, New Jersey. Mr. Abbas owns two (2) taxi medallions, Mr. Abdelmessieh owns eighteen (18)

medallions, Mr. Khellah owns ten (10) medallions, Mr. Samuel owns seventeen (17) medallions and Mr. Tawfik owns five (5) medallions.

59. Plaintiffs Newark Cab Association and Newark Taxi Owner Association are nonprofit organizations organized under the laws of New Jersey. The address of the Newark Cab Association is P.O. Box 2597, Elizabeth, New Jersey 07207. The address of the Newark Taxi Owner Association is P.O. Box 247, Colonia, New Jersey 07067. The objectives of these nonprofit organizations include representing and furthering the interests of its members in, among other things, fair and uniform enactment and enforcement of laws governing the transportation industry.

60. Plaintiff Teterboro Airport Limousine Service is a limousine company with its principal place of business at 99 Moonachie Avenue, Teterboro, New Jersey 07608. Teterboro Airport Limousine Service owns and operates approximately fifteen (15) licensed limousines in the State of New Jersey.

**Transportation Services Provided
by the *De Facto* Taxi Companies**

61. Uber is a corporation organized and existing under the laws of the State of Delaware. Uber maintains its principal place of business at 182 Howard St. #8, San Francisco, California. Uber currently offers three forms of for-hire vehicle service in Newark through a smartphone application:

a. UberX:

Through UberX, a passenger uses the app to ask Uber to send an ordinary, unmarked private vehicle to a designated location. Uber sends the request to private operator/drivers who have contracted with Uber to accept its dispatches. Those operator/drivers are not required to have taxi or limousine licenses, and may operate virtually any type of unmarked car of any condition. Uber recruits and contracts with such operator/drivers, building a fleet that functions as the equivalent of a taxi

service. If the operator chooses to accept the dispatch, Uber notifies the passenger of the operator's name, the type of vehicle and expected time of arrival. The fare is computed by Uber using information from the smartphone's GPS system, based on distance and time rates set by Uber. Uber has regularly adjusted its standard UberX rates. On or about July 28, 2016, its rates were: a \$1.05 base fare, plus \$0.15 per minute plus \$0.85 per mile, plus as \$1.60 "Booking Fee," with a \$6.55 minimum fare and a \$5.00 cancellation fee. However, through its "surge pricing" program, Uber regularly inflates these rates by factors during periods of high demand. By comparison, the City's established base taximeter rates for licensed taxis as of that date for a single passenger were: \$2.15 base fare, \$0.35 for each 1/8 mile, \$0.35 for each minute of waiting time, a \$1.00 fee for suitcases over 24 inches in length, with no minimum (other than the base fare), no cancellation fee, and no "surge" pricing. Newark Municipal Code 34:1-25.

b. UberXL:

Through what it refers to as "UberXL," Uber offers a service similar to UberX, except that it uses larger SUVs to provide room for multiple passengers. A passenger uses the app to request that Uber send an ordinary, unmarked private SUV (*e.g.* Toyota Highlander, Honda Pilot, Acura MDX) to a designated location. As with UberX, Uber sends the request to private operator/drivers of SUVs who have contracted with Uber to accept its dispatches. Those operator/drivers are not required to have chauffeur licenses, and may operate virtually any type of unmarked SUV of any condition. If the operator chooses to accept the dispatch, Uber notifies the passenger of the operator's name, the type of vehicle and expected time of arrival. The fare is computed by Uber using information from the smartphone's GPS system, based on distance and time rates set by Uber. As of July 28, 2016, the minimum standard rates in

Newark for UberXL were: \$1.50 base fare, plus \$0.18 per minute, plus \$1.55 per mile, plus a \$1.60 “Booking Fee,” with a \$7.60 minimum fare and a \$5.00 cancellation fee.

c. UberBlack and UberSUV:

Through what it refers to as “UberBlack” and “UberSUV,” a passenger uses the app to ask Uber to send either a “black car” or an SUV to a designated location. Uber sends the request to private drivers operating large cars or SUVs, whom Uber has recruited as part of its fleet. If the Uber operator chooses to accept the dispatch, Uber notifies the passenger of the operator/driver’s name, the type of vehicle and expected time of arrival. The fare is calculated by Uber, using the smartphone’s GPS system, based on distance and time rates set by Uber. As of July 28, 2016, the standard rates in Newark (when Uber is not employing “surge pricing”) for UberBlack were: \$7.00 base fare, plus \$0.65 per minute, \$3.75 per mile, with a \$15.00 minimum fare and a \$10.00 cancellation fee. As of July 28, 2016, the standard rates in Newark for UberSUV were a \$14.00 base fare, plus \$0.80 per minute, \$4.50 per mile, with a \$25 minimum fare and a \$10.00 cancellation fee. The fare is paid to Uber via the passenger’s credit card registered with Uber.

62. Uber also deploys what it calls “surge pricing” to charge customers a multiple of its standard applicable rates and minimum fares during periods of high demand. Under this policy, at certain times Uber charges its customers fares to ride in ordinary ‘UberX’ cars, UberXL SUVs, or UberBlack or UberSUV cars at higher rates than are legally permissible under the taximeter rates established by the City Taxi Regulations. (Plaintiff taxi operators and all other Newark taxi operators are not permitted to engage in such “surge pricing.”)

**Uber Operates as an Unlicensed Business in Violation of City
and State Taxi and Limousine Regulations**

63. Uber provides services that are identical in all material respects to the services offered by the Transportation Plaintiffs and other firms and individuals that operate in compliance with City and State Taxi and Limousine Regulations. Uber provides the following services to the public:

- (a) Like the Transportation Plaintiffs, they offer, arrange for, and dispatch transportation services;
- (b) Like the Transportation Plaintiffs, Uber uses a metering system based on distance and time to determine the fare; the metering systems are GPS-based and use a smartphone as the hardware; and
- (c) Uber charges a fee for arranging the transportation.

64. Uber also provides UberBlack, a so-called black car/limousine service and UberSUV, a “premium” SUV service. UberBlack and UberSUV provide *de facto* taxi services because the cost of transportation is based on a meter-based fare determination. They are taxis in every respect except that the cars are big and black. Not only are Uber’s black cars and SUVs acting as unlicensed taxis, they are doing so in violation of City law that prohibits limousines from using metering devices to determine fares. *See Newark Municipal Code 34:2-1* (defining an “autocab,” or limousine, in part as a motor vehicle that “charges a fare or price agreed upon in advance between the operator and passenger.”)

65. Although the *de facto* companies are engaging in the same business activity as Transportation Plaintiffs, they operate in violation of numerous requirements of State law and the City Regulations. By entering into this Agreement with Uber, the City has ratified the unlawful disparities that exist between Uber and licensed taxis and limousines. These disparities systematically impose more onerous requirements on Transportation Plaintiffs as compared to Uber, giving the latter a substantial competitive advantage with licensing, insurance, driver

qualifications, vehicle qualifications, fares and other important matters.

66. Many of the regulatory requirements described below that the City has imposed and continues to impose upon the Transportation Plaintiffs have no equivalent in the Agreement between the City and Uber. And even where the Agreement does regulate Uber, it not only does so less rigorously, but also often permits Uber to police itself, creating a substantial competitive advantage generally prohibited for the Transportation Plaintiffs.

67. For example, as described below, City Regulations require taxi and limousine drivers to undergo a background check administered by the Newark Police Department, while it permits Uber to oversee its own checks of drivers. The State requires limousine drivers to pass a drug test conducted by State authorities, while the Agreement will permit Uber to develop its own drug policy that need not include drug tests. Furthermore, the City requires all limousines to be newer than seven years old and all taxis and limousines to be regularly maintained while the Agreement includes no such requirements for Uber vehicles.

Disparate Treatment Regarding Insurance

68. Among the many ways in which the City has created an unfair playing field is its disparate treatment of Transportation Plaintiffs and Uber concerning liability insurance.

69. City and State Taxi Regulations require taxi medallion owners to carry public liability insurance from an insurance company “duly licensed to transact business under the insurance laws of this State or a company registered to do business in the State[.]” with a minimum coverage of \$35,000 in liability coverage. New Jersey Statutes 48:16-3; Newark Municipal Code 34:1-2. Limousine owners are required to file “an insurance policy of a company licensed to transact business under the insurance laws of this State in the sum of \$1,500,000” for liability coverage. New Jersey Statutes 48:16-14; Newark Municipal Code 34:2-5.

70. The costs imposed on Transportation Plaintiffs under this requirement are

substantial; typically between \$6,000 and \$9,000 per year per taxi for automobile liability coverage and \$3,600 per year per limousine for automobile liability coverage.

71. Until the Agreement between Uber and the City, the City failed to require Uber to carry any insurance coverage for its for-hire vehicle service despite the fact that the Taxi and Limousine Regulations required such insurance.

72. The obligations the City imposes on Uber pursuant to the Agreement are weaker and far less costly than those the City continues to impose on taxis and limousines. Among the differences are:

- (a) the insurance is not required to be issued by an insurance company “licensed to transact business” in New Jersey; and
- (b) the insurance is not required to be primary, and can be excess, which means it can be written by a company without the licensure and reserve requirements mandated under New Jersey law.

Thus, while the Agreement requires Uber to carry a policy providing \$1.5 million in coverage during the time when a driver accepts and provides a ride, the coverage is of doubtful effectiveness because it can be obtained via a cheaper excess policy from a substandard insurance company that is not required to maintain reserves as required under New Jersey law for primary carriers or to comply with other requirements of insurance companies licensed in New Jersey. The result, apart from imposing greater costs and burdens on the Transportation Plaintiffs, is that the City requires less protection to the riding public using the *de facto* taxis.

73. The City’s imposition of unequal insurance requirements for companies engaging in the same activity lacks a rational basis, and adds to the competitive disadvantage the City is imposing upon Transportation Plaintiffs.

Disparate Treatment Regarding License Fees

74. The City Taxi Regulations require every taxi to have a medallion, which in recent

years has cost over \$500,000 per car. In addition, medallion owners are required to pay an annual license fee of \$300. Newark Municipal Code 34:1-6. The City Limousine Regulations require limousine owners to pay an annual license fee of \$250. Newark Municipal Code 34:2-7.

75. The City does not require Uber vehicles to purchase a medallion or anything equivalent to a medallion. Moreover, once Uber pays the City its annual fee of \$1 million dollars (with \$3 million up front in the first year), the City allows Uber vehicles to operate without paying any annual licensing fees like the ones incumbent upon taxis and limousines under existing regulations.

76. The City's imposition of unequal license fee requirements for companies engaging in the same activity lacks a rational basis, and adds to the competitive disadvantage the City is imposing upon Transportation Plaintiffs.

Disparate Treatment Regarding Fares and Fees Paid By the Public

77. City Taxi Regulations set maximum meter rates for taxis. *See* Newark Municipal Code 34:1-25. Uber sets its own rates based on time and distance metered by smartphone GPS data.

78. The Agreement aggravates this disparity by purporting to legalize Uber's practice of setting its own fares, including engaging in "surge pricing," while continuing to prohibit the Transportation Plaintiffs from similarly adjusting fares.

79. The absence of required, uniform rates gives Uber a substantial competitive advantage over Transportation Plaintiffs. Uber uses its computer algorithms to determine rates, while the City dictates rates to the Medallion Plaintiffs, even though Uber vehicles and taxicabs engage in identical transportation activity at the very same time. As a result, Uber is permitted to charge below the taximeter rates when it wishes, and to charge higher rates at times of high demand when customer choice is limited. These pricing differences help Uber attract customers (and build brand loyalty) at certain times and give them an edge over Transportation

Plaintiffs in the recruitment of drivers.

80. The disparate treatment regarding fares and fees lacks any rational basis and adds to the competitive disadvantage the City is imposing upon Transportation Plaintiffs.

Disparate Treatment Regarding Driver Background and Qualifications

81. City Taxi and Limousine Regulations require drivers to obtain special taxicab and limousine driver's license before they can operate a taxicab or limousine in the City. The requirements for obtaining a taxicab driver's license include: ownership of a taxi medallion, the completion of an orientation class once every three years, and receiving a 70% score on a taxicab driver's license exam. Newark Municipal Code 34:1-9. Furthermore, an applicant for either a taxicab or a limousine driver's license must have been a New Jersey resident for at least one year, must be able to read, write and speak the English language, and must be a "citizen or legal alien" of the United States. Newark Municipal Code 34:1-10; 34:2-8.

82. Both taxi and limousine drivers are subject to background checks conducted by the Newark Police Department. Newark Municipal Code 34:1-12; 34:2-9. The Newark Police Department must conduct an investigation of the applicant, which must include an analysis of the applicant's driving and police record and may include the applicant to be photographed and fingerprinted. *Id.* Limousine drivers must undergo drug testing that is approved by a government agency. New Jersey Statutes 48:16-22.3b.

83. Prior to the Agreement with Uber, the City failed to require any driver qualification requirements or any background checks for Uber vehicle drivers. Thus, Uber dispatched drivers did not hold a taxicab driver's license or a limousine driver's license. Even though their driving and police records had not been subject to any review, Uber drivers provided transportation services to both Newark residents and visitors. While taxi and limousine owners had to apply for licensing and wait for the City to process their application, Uber was able to dispatch drivers as quickly as they wanted.

84. The Agreement legalizes this disparity. The background check and license requirements continue to apply in all respects to drivers for Transportation Plaintiffs. At the same time, while the Agreement imposes some requirements on the *de facto* taxi drivers, the Agreement allows Uber to deploy drivers without taxi or limousine licenses and to oversee its own third-party background checks (rather than require ones conducted by the Newark Police Department.) Moreover, unlike limousine drivers, Uber drivers are not required to undergo government-regulated drug testing. Rather, Uber is required to “implement a zero tolerance drug and alcohol policy” which may or may not include drug testing. *See* Agreement paragraph 7.

85. Uber’s Agreement with the City allows it to avoid the more burdensome driver qualification requirements that Newark continues to impose upon the transportation plaintiffs. The City has decided to excuse Uber from these important safety requirements upon Uber’s immediate payment of \$3 million to the City and \$1 million annually thereafter.

86. Upon information and belief, there have been customer complaints in cities around the country about Uber drivers engaging in sexual assault, sexual harassment, and other inappropriate behavior. The lax screening requirements imposed on the *de facto* taxi companies increase the likelihood of such occurrences.

87. The City’s disparate treatment regarding driver qualifications lacks a rational basis because Uber drivers perform the same service as other for-hire vehicle drivers—the only difference being their use of smartphone app. With this Agreement, the City has arbitrarily excluded Uber drivers from important safety requirements that other for-hire vehicle drivers must satisfy. Being excluded from important safety requirements is the cost of doing business in Newark—\$3 million up front followed by \$1 million per year.

Disparate Treatment Regarding Vehicle Age and Inspections

88. City Taxi Regulations require that taxis be inspected every six months to ensure safe operating conditions. Newark Municipal Code 34:1-19. Taxis must be outfitted

with a proper car seat if a child under the age of five will be a passenger. Newark Municipal Code 34:1-18. Furthermore, every taxi must install and maintain a “functioning help/distress signal light system” with one light mounted on the front center of the vehicle and another on the rear bumper. *Id.* Taxis must also be kept in a clean and sanitary condition at all times. Newark Municipal Code 34:1-20.

89. City Limousine Regulations require new limousines to be newer than forty-two months old and all limousines to be newer than seven years old. Newark Municipal Code 34:2-20. The City also requires limousines, like taxis, to be inspected every six months, to provide car seats when a child is a passenger, and to be kept in a clean and sanitary condition. Newark Municipal Code 34:2-13; 34:2-14; 34:2-15.

90. Under the terms of its Agreement with Uber, the City does not require that Uber vehicles undergo a thorough inspection. Rather, Uber vehicles are inspected just like every other car in New Jersey—once every two years. *See* Agreement paragraph 8; New Jersey Statutes 39:8-1. The City does not require Uber vehicles to install safety lights like taxis, or to provide for car seats like other for-hire vehicles. There is not even the minimal requirement (which is imposed on taxis and limousines) that Uber vehicles appear in a clean and sanitary condition.

91. The City’s disparate treatment regarding vehicle age, condition, inspections and safety features lacks a rational basis, and adds to the competitive disadvantage the City is imposing upon Transportation Plaintiffs.

Other Forms of Disparate Treatment

92. Taxi drivers are prohibited from working at Newark Airport until one year after the issuance of their taxi driver’s license. Newark Code 34:1-13. No such prohibition exists for Uber drivers since they are not required to obtain taxi driver’s licenses.

93. The City sets a cap on the number of taxi medallions in the City at six hundred (600). Newark Municipal Code 34:1-5 (c). There is no cap on the number of Uber vehicles that

may operate in Newark at any one time.

94. City Taxi Regulations impose stringent rules regarding a taxicab's usage of a taximeter. *See Newark Code 34:1-24*. Uber vehicles are not required to equip a taximeter since the City imposes no metered rate limits on Uber vehicles.

95. City Regulations require limousine owners to have a principal place of business, a base, or the majority of his/her business in the City of Newark. Newark Municipal Code 34:2-2. No such requirement exists for Uber vehicles.

96. City Taxi Regulations require trade insignia and the City-mandated rate of fares to be painted upon the outside of every taxicab operating in the City. Newark Municipal Code 34:1-26; 34:1-26. Uber vehicles have never been subject to any similar regulation.

97. The foregoing is not an exhaustive list of all respects in which the *de facto* taxi companies provide taxi and limousine services in violation of City and State requirements regarding taxis and limousines.

98. The City has vigorously enforced and continues to vigorously enforce the City Regulations against the Transportation Plaintiffs, who are regularly required to appear at administrative hearings to respond to citations alleging violations of the Regulations, and sometimes pay substantial fines when the allegations have been sustained. The City has issued only a few nominal citations and impoundments against the drivers of cars dispatched by the *de facto* taxi companies despite the fact that every ride they dispatched and every dime they charged and collected prior to the Uber-Newark Exclusive Agreement was done in open and blatant disregard and violation of the City Regulations.

Class Allegations – Medallion Class

99. The plaintiffs that own medallions, Abbas Abbas, Petro Abdelmessieh, Sayev Khellah, Michael W. Samuel, George Tawfik (“Medallion Owner Plaintiffs”), seek damages on behalf of themselves and all other medallion owners within the class alleged below pursuant to

All individuals or entities that owned a City of Newark taxicab medallion at any time between January 1, 2013 to the present.

100. The Medallion Class satisfies all of the prerequisites stated in Rule 23(a):

- (1) The Medallion Class is numerous. There are approximately 600 medallions owned by a minimum of 400 persons or entities.
- (2) There are questions of law and fact common to all members of the Medallion Class, including, without limitation, whether the City has violated the Takings Clause, Equal Protection Clause, Due Process Clause and breached the contracts it has with each member of the Medallion Class.
- (3) The claims of the Medallion Owner Plaintiffs are typical of the claims of the members of the Medallion Class. They stand in an identical relationship with the City and have identical reciprocal rights and obligations concerning the City.
- (4) The Medallion Owner Plaintiffs will fairly and adequately represent the interests of the Medallion Class. They have no interests antagonistic to the Medallion Class. They seek injunctive relief and damages on behalf of, and which will benefit, all members of the Medallion Class. They are represented by counsel who are competent and experienced in civil rights and class action litigation, and who should be appointed as class counsel pursuant to Rule 23(g).

101. The Medallion Class satisfies Rule 23(b)(2) because the City has been acting in a manner that applies generally to the Medallion Class, so that final declaratory and injunctive relief in favor of the Medallion Class as a whole is appropriate.

102. The Medallion Class satisfies Rule 23(b)(3) because questions of law and fact common to Medallion Class members predominate over any questions affecting only individual members, and a class action is superior to other available methods for fairly and efficiently adjudicating the controversy.

Count I – Violation of the Takings Clause

103. Plaintiffs incorporate and reallege paragraphs 1-102.

104. The Takings Clause of the Fifth Amendment to the United States Constitution, incorporated as to the states under the Due Process Clause of the Fourteenth Amendment, provides that the City may not take property unless it is for a public purpose and just compensation is paid to the property owner.

105. Medallions are property interests under New Jersey law.

106. Medallion Owner Plaintiffs and the Medallion Class own property that may not be taken by the City without payment of just compensation.

107. Without compensation to the Medallion Class, the City has permitted and, via the enactment of the Uber-Newark Exclusive Agreement has expressly authorized, the *de facto* taxi companies to usurp and trespass upon the exclusive property and contract rights of the Medallion Class members by providing *de facto* taxi services without buying or leasing medallions or otherwise complying with the City Taxi Regulations. The City has thereby taken those exclusive property and contract rights from the Medallion Class without any compensation, let alone the just compensation that the Takings Clause requires.

108. Plaintiffs and the Medallion Class are entitled to the following relief under

Count I:

- a. An injunction enjoining the City from continuing to violate the Takings Clause Act by allowing the *de facto* taxi companies to operate *de facto* taxis without medallions or compliance with the City Taxi Regulations;

- b. Just compensation resulting from the City's takings, which consists of:
 - i. For the Medallion Owner Plaintiffs and the Medallion Class, an amount equal to the diminution in medallion value caused by the City's failure to require the *de facto* taxi companies to acquire medallions and otherwise to enforce the City Taxi Regulations against the *de facto* taxi companies and/or amounts of cash or the value of other collateral they may be required to provide to their lenders to maintain the loan-to-value ratio required under their financing agreements;
- c. An award of the Plaintiffs' attorneys' fees and litigation expenses;
- d. Such other relief as the Court deems appropriate.

Count II – Violation of the Equal Protection Clause

**(Before Enactment of the Uber-Newark
Exclusive Agreement)**

109. Plaintiffs reallege paragraphs 1-102.

110. The City's actions in enforcing the City Taxi and Limousine Regulations against the Transportation Plaintiffs but not against the *de facto* taxi companies before signing the Uber-Newark Exclusive Agreement, denied Plaintiffs and the Medallion and Limousine Classes equal protection of the laws in that the *de facto* taxi companies were permitted to offer taxi and limousine services to the public without complying with the City Taxi or Limousine Regulations, while the Transportation Plaintiffs and the Medallion and Limousine Classes were not so permitted.

111. The Medallion Owner Plaintiffs and Medallion Class members, who have purchased costly medallions, and the Transportation Plaintiffs whose businesses depend upon the medallion system as the exclusive means to enter the taxi business, constitute a distinct business classification that was created and supported by long-standing City laws, regulations and

practices, including by the City's support of the medallion system. Against this unique historical background, the City violated the equal protection rights of the Medallion Class and the Transportation Plaintiffs by intentionally permitting and facilitating *de facto* taxi operations by the *de facto* taxi companies on an uneven playing field.

112. The City had no rational justification for the unequal application of the City Taxi and Limousine Regulations prior to implementing the Uber-Newark Exclusive Agreement. As described herein, the City's decision to apply the City Taxi Regulations unequally was not rationally related to any legitimate governmental interest, particularly because the administration was obligated to enforce its Regulations.

113. The Transportation Plaintiffs and the Medallion and Limousine Classes suffered and will continue to suffer direct and tangible injury and damages from the City's actions and inactions in that, without limitation, (i) the market and collateral value of the medallions and their marketability have been reduced by the unequal application of the City Taxi Regulations, (ii) all who operate Taxis and Limousines directly, or lease vehicles with medallions to drivers, were injured in that the revenues derived from their lawful operations have been and will continue to be reduced as a result of the *de facto* taxi companies' unlawful operation of unlicensed vehicles, and (iii) all who operate affiliations and dispatch services are required to meet and comply with a host of costly and burdensome City Taxi and Limousine Regulations while the *de facto* taxi companies are not required to comply.

114. The City's actions and inaction were intentional. The City and the Mayor were fully aware that the *de facto* taxi companies were operating in violation of the City Taxi and Limousine Regulations, issuing statements that all commercial vehicles must obtain a license and warning of enforcement efforts that would result in criminal and civil penalties.

115. Transportation Plaintiffs and the Medallion and Limousine Classes are entitled to the following relief under Count II:

a. Damages resulting from the City's unequal enforcement of the City Taxi and

Limousine Regulations;

b. An award of their attorneys' fees and litigation expenses;

c. Such other relief as the Court deems appropriate.

Count III – Violation of Equal Protection

**(After Enactment of the Uber-
Newark Exclusive Agreement)**

116. Plaintiffs reallege paragraphs 1-102

117. The City's aggravated its violation of the Equal Protection Clause through its implementation of the Uber-Newark Exclusive Agreement in April of 2016. The City of Newark continues to enforce the City Taxi and Limousine Regulations against the Transportation Plaintiffs but not against the *de facto* taxi companies, which now receives irrational and unequal treatment through the Uber-Newark Exclusive Agreement. In doing so, the City has denied and continues to deny Plaintiffs and the Medallion and Limousine Classes equal protection of the laws in that the *de facto* taxi companies are permitted to offer taxi and limousine services to the public under regulations far less costly and burdensome than the City Taxi and Limousine Regulations, while the Transportation Plaintiffs and the Medallion and Limousine Classes are not so permitted.

118. The Medallion Owner Plaintiffs and Medallion Class members, who have purchased costly medallions, and the Transportation Plaintiffs whose businesses depend upon the medallion system as the exclusive means to enter the taxi business, constitute a distinct business classification that was created and supported by long-standing City laws, regulations and practices, including by the City's support of the medallion system. Against this unique historical background, the City violated the equal protection rights of the Medallion Class and the Transportation Plaintiffs via the Uber-Newark Exclusive Agreement by intentionally permitting and facilitating *de facto* taxi operations by the *de facto* taxi companies on an uneven playing field.

119. The City has no rational justification for the significantly unequal application of laws to persons engaging in substantially the same business activity: applying the City Taxi and Limousine Regulations to Transportation Plaintiffs while applying the far less restrictive and costly terms of the Uber-Newark Exclusive Agreement to the *de facto* taxi companies. As described herein, the City's decision to apply unequal levels of regulation, the City Taxi and Limousine Regulations and the Uber-Newark Exclusive Agreement, to entities engaging in substantially the same business activity is not rationally related to any legitimate governmental interest.

120. The Transportation Plaintiffs and the Medallion and Limousine Classes are suffering and will continue to suffer direct and tangible injury and damages from the City's actions and inactions in that, without limitation, (i) the market and collateral value of the medallions and their marketability are being or will be reduced by the unequal application of the City Taxi and Limousine Regulations and Uber-Newark Exclusive Agreement, (ii) all who operate taxis directly or lease vehicles with medallions to drivers are being injured in that the revenues derived from their lawful operations have been and will continue to be reduced as a result of the *de facto* taxi companies' operation under the Uber-Newark Exclusive Agreement, and (iii) all who operate associations and dispatch services are

the *de facto* taxi companies are not required to comply.

121. The City's actions and inaction are intentional. The City and the Mayor were fully aware that the *de facto* taxi companies were operating in violation of the City Taxi and Limousine Regulations, issuing statements that all commercial vehicles must obtain a license and warning of enforcement efforts that would result in criminal and civil penalties.

122. The City aggravated its violation of the Equal Protection Clause through its implementation of the Uber-Newark Exclusive Agreement in April of 2016.

123. The Amendments exacerbate the unfair and unequal treatment between Uber drivers and Transportation Plaintiffs, and reinforce the need for injunctive relief to level the playing field. For example:

(1) *Driver qualifications.* The City requires taxi drivers to obtain special commercial licenses, complete orientation courses, pass a driver's license exam, pay licensing fees, and undergo a rigorous background check by the Newark Police Department. Under the Agreement, the City will not require *de facto* taxi drivers to obtain a taxi driver's license or undergo the training to acquire a licensing, or to be vetted by the Newark Police Department.

(2) *Vehicles.* The City requires limousine operators to introduce cars into use that are no more than three and a half years old to start, and can no longer operate if more than seven years old. But the City allows Uber to deploy private drivers in their own personal cars of any age or condition that, until recently, were subject to no inspection requirement. Even under the Uber-Newark Exclusive Agreement, private drivers will be permitted to use their own personal cars with no age requirement, and their vehicles will be subject to inspection under less stringent standards than those that apply to taxis and limousines.

(3) *Annual license fees.* Traditional taxis must buy and display the license that the City required as the exclusive gateway to the right to provide For-Hire Transportation. In recent years the cost of these City-issued and City-required medallions often exceeded \$500,000 per taxi. But the City has not required the *de facto* taxi companies to purchase a medallion.

(4) *Flexible pricing.* The City sets meter rates for traditional taxis that apply to all taxi rides. Yet the City permits the *de facto* taxi companies to charge any rate, and to impose large surcharges during times of high demand.

(5) *Insurance.* The City requires taxi and limousine operators to maintain expensive primary commercial liability insurance that applies at all times. Under the Uber-Newark Exclusive Agreement, the City allows the *de facto* taxi companies to carry sub-standard, non-primary insurance.

124. The City, in February of 2016, originally planned to enforce City Taxi Regulations and begin towing Uber cars from Newark Airport.

125. On May 4, 2016, the Newark City Council held a public hearing to discuss the Uber-Newark Exclusive Agreement. Less than a week later, the Uber-Newark Exclusive Agreement was adopted by the Newark City Council on May 10, 2016.

126. The Uber-Newark Exclusive Agreement will establish arbitrary and irrational procedures that will greatly benefit Uber Drivers to the detriment of the Transportation Plaintiffs.

127. Such arbitrary favoritism damages the Transportation Plaintiffs by reducing their revenues. It also seriously handicaps their ability to compete fairly against the *de facto* taxi companies to recruit drivers, which threatens to destroy their businesses entirely.

128. The foregoing disparities in Newark do not rationally relate to any legitimate governmental objective. They violate the rights to equal protection of the laws of the

and damages, and such other relief as the Court may be deemed just and proper.

Class Allegations – Limousine Class

129. The Limousine Plaintiffs seek injunctive relief and damages on behalf of themselves and all other limousine businesses within the class alleged below pursuant to Rules 23(a), (b)(2), (b)(3), and (g) of the Federal Rules of Civil Procedure. This class ("**Limousine Class**") consists of:

All individuals or entities that held a Limousine license pursuant to Title 34 Chapter 2 of the Revised General Ordinances of the City of Newark at any time between January 1, 2013 to the present.

130. The Limousine Class satisfies all of the prerequisites stated in Rule 23(a):

- (1) The Limousine Class is numerous. Upon information and belief, there are at least 25 licensed limousine companies in Newark with vehicles operated by hundreds of persons.
- (2) There are questions of law and fact common to all members of the Limousine Class, including without limitation whether the City has violated the Equal Protection Clause.
- (3) The claims of the Limousine Plaintiffs are typical of the claims of the members of the Limousine Class. They stand in an identical relationship with the City, and have identical reciprocal rights and obligations.
- (4) The Limousine Plaintiffs will fairly and adequately represent the interests of the Limousine Class. They have no interests antagonistic to the Limousine Class. They seek injunctive relief and damages on behalf of, and which will benefit, all members of the Limousine Class. They are represented by counsel who are competent and experienced in civil rights and class action litigation, and

who should be appointed as class counsel pursuant to Rule 23(g).

131. The Limousine Class satisfies Rule 23(b)(2) because the City has been acting in a manner that applies generally to the Limousine Class, so that final declaratory and injunctive relief in favor of the Limousine Class as a whole is appropriate.

132. The Limousine Class satisfies Rule 23(b)(3) because questions of law and fact common to Limousine Class members predominate over any questions affecting only individual members, and a class action is superior to other available methods for fairly and efficiently adjudicating the controversy.

133. Plaintiffs in the Limousine Class are entitled to the following relief under Counts II and III:

- a. An injunction enjoining the City from unequal enforcement of the City Limousine Regulations and the Uber-Newark Exclusive Agreement, as amended;
- b. Damages to the Transportation Plaintiffs and the Limousine Class resulting from the City's unequal enforcement of City Limousine Regulations, and the Uber-Newark Exclusive Agreement;
- c. An award of their attorneys' fees and litigation expenses;
- d. Such other relief as the Court deems appropriate.

Count IV – Violation of Substantive Due Process Rights

134. Plaintiffs reallege paragraphs 1-102.

135. The City's administration of the City Taxi Regulations, applying them to the Transportation Plaintiffs, the Medallion Class and other licensed dispatch operators and affiliations, while choosing not to apply them to the *de facto* taxi companies, was arbitrary and capricious and deprived Plaintiffs of their property interests in their medallions and in the businesses they operate based upon the City Taxi Regulations.

136. Prior to the Uber-Newark Exclusive Agreement, neither State law nor City ordinances provided a basis for the City to ignore or effectively repeal the City Taxi

137. The Mayor was not authorized to grant express or tacit approval to the *de facto* companies to operate in violation of the City Taxi Regulations.

138. The City was well aware that it was obligated to enforce City Taxi Regulations and that executive officers of the City are not empowered to suspend the operation of the City Taxi Regulations.

139. Transportation Plaintiffs and the Medallion Class are entitled to the following relief under Count IV:

- a. Damages resulting from the City's failure prior to enactment of Uber-Newark Exclusive Agreement to enforce the City Taxi Regulations against the Uber;
- b. An award of Plaintiffs' attorneys' fees and litigation expenses;
- c. Such other relief as the Court deems appropriate.

Count V – Breach of Contract

140. Plaintiffs reallege paragraphs 1-102.

141. The City Taxi Regulations, coupled with the Transportation Plaintiffs' and Medallion Class members' reliance on such Regulations and their expenditure of very large sums of money to purchase medallions and operate the Transportation Plaintiffs' taxi-related businesses, including the businesses of dispatching taxis, operating taxi affiliations, leasing the right to operate taxis pursuant to licenses from the City, and loaning money to purchase medallions secured by the medallions subject to the City Taxi Regulations, give rise to contractual rights on the part of the Transportation Plaintiffs.

142. The resulting licenses to operate affiliations, dispatch services and to own medallions and the right to operate taxis pursuant to the ownership of licenses, give rise to a binding contractual relationship between the City and each of the Transportation Plaintiffs and

143. The Transportation Plaintiffs and the Medallion Class acted in reliance upon the licenses granted by the City in many important respects, including by paying large amounts for taxi licenses and creating businesses that relied upon the even-handed enforcement of the City Taxi Regulations against all who operate taxi-service businesses. It would be inequitable for the City to act in disregard of the contract rights that have arisen as a result of the City Taxi Regulations and the City’s history of enforcement thereof.

144. The City has materially breached the Regulated Taxi Operators’ Contract by allowing the *de facto* taxi companies to offer services that are virtually identical to the services offered by the Transportation Plaintiffs and the Medallion Class, but without requiring that they obtain licenses or otherwise comply with comparable law and regulations.

145. The City’s breach of the Regulated Taxi Operators’ Contract has damaged the Transportation Plaintiffs and the Medallion Class by causing loss of revenues and profits, and reducing the value of their businesses, assets and their taxi licenses.

146. The City is liable to Plaintiffs for all damages incurred.

147. To the extent such damages are difficult to compute or otherwise incapable of full compensation by money damages, Plaintiffs’ remedies at law are inadequate, and Plaintiffs are entitled to injunctive relief.

148. Plaintiffs and Medallion Class are entitled to the following relief under Count V:

- a. An award of their damages to the Transportation Plaintiffs and the Medallion Class for the City’s breach of the Regulated Taxi Operators’ Contract;
- b. An injunction enjoining the City from further breaches of the Regulated Taxi Operators’ Contract;
- c. An injunction requiring the City to enforce the exclusive licensing rules contained in the City Taxi Regulations against the Uber, or to otherwise permit

rules;

- d. Such other relief as the Court deems appropriate.

Count VI – Promissory Estoppel

149. Plaintiffs reallege paragraphs 1-102.

150. Count VI is pleaded in the alternative to Count V.

151. The City has agreed with and promised the Transportation Plaintiffs and the Medallion Class by means of the City Taxi Regulations and by the City's conduct in implementing them to maintain the exclusive rights of medallion owners to operate taxis and to maintain the market value of medallions.

152. The Transportation Plaintiffs and Medallion Class relied on such promises by, *inter alia*, investing millions of dollars to purchase medallions and/or to create and operate taxi affiliations, as more fully described above.

153. The Transportation Plaintiffs' and Medallion Class members' reliance on the City Taxi Regulations and City conduct in implementing the City Taxi Regulations was expected and foreseeable by the City. Indeed, the City intentionally induced such reliance to create and maintain a well-regulated, safe and orderly taxi system in Newark, and to realize for the City the large amounts of revenues that result from the operation of the Newark's taxi system pursuant to the City Taxi Regulations.

154. The Transportation Plaintiffs and Medallion Class members relied on the promises and actions of the City to their detriment.

155. Transportation Plaintiffs and the Medallion Class are entitled to the following relief under Count VI:

- a. An award of their damages for the City's breach of their promises;
- b. An injunction enjoining the City from further breaches of their promises;

- c. An injunction requiring the City to enforce the exclusive licensing rules contained in the City Taxi Regulations against the *de facto* taxi companies, or to otherwise permit Transportation Plaintiffs and the *de facto* taxi companies to operate under substantially the same rules;
- d. Such other relief as the Court deems appropriate.

Count VII – Equitable Estoppel

156. Plaintiffs reallege paragraphs 1-102.

157. The City's enactment and past enforcement of the City Taxi Regulations, as well as its sales of medallions, constitute affirmative acts by the City over the course of decades.

158. The Transportation Plaintiffs and Medallion Class members substantially and reasonably relied to their detriment upon these affirmative City acts by, *inter alia*, investing millions of dollars through purchasing medallions, financing medallions and/or creating and operating taxi affiliations.

159. The City is estopped from enabling and condoning a system of *de facto* taxi operation by *de facto* taxi companies that are not required to comply with the many obligations the City imposes upon the Transportation Plaintiffs and Medallion Class. Estoppel is necessary to remedy a serious injustice.

160. Transportation Plaintiffs and the Medallion Class are entitled to the following relief under Count VII:

- a. An award of their damages caused by the City's failure to enforce the City Taxi Regulations;
- b. An injunction requiring the City to enforce the exclusive licensing rules contained in the City Taxi Regulations against the *de facto* taxi companies, or to otherwise permit Transportation Plaintiffs and the *de facto* taxi companies to operate under substantially the same rules;

c. Such other relief as the Court deems appropriate.

* * * * *

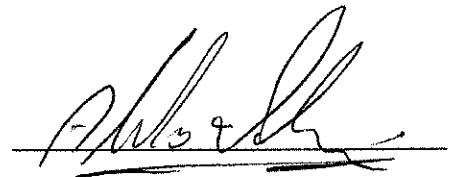
**PURSUANT TO FEDERAL RULE OF CIVIL PROCEDURE 38, PLAINTIFFS
DEMAND A TRIAL BY JURY ON ALL ISSUES SO TRIABLE**

VERIFICATION

I, Abbas Abbas, declare as follows:

1. I am the President of the Newark Cab Association.
2. I have personal knowledge of the taxi industry in Newark, New Jersey and the facts that gave rise to this complaint, and if called upon to testify I would competently testify as to the matters stated in this complaint.
3. I verify under penalty of perjury under the laws of the United States of America that the factual statements in this complaint are true and correct.

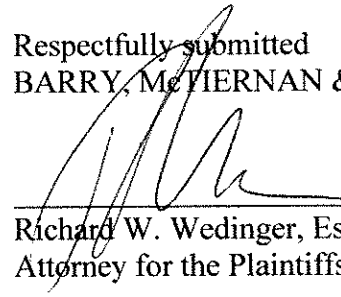
Executed on August 2, 2016.

A handwritten signature in black ink, appearing to read 'Abbas Abbas', written over a horizontal line.

Abbas Abbas

Newark Cab Association

Respectfully submitted
BARRY, McTIERNAN & WEDINGER, P.C.

A handwritten signature in black ink, appearing to read 'Richard W. Wedinger', is written over a horizontal line.

Richard W. Wedinger, Esq. / Atty ID 043111991
Attorney for the Plaintiffs

Dated: August 2, 2016