

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

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MARCELINO HERVIAS and WILLIAM GUERRA,

Index No.:

Petitioners,

**VERIFIED PETITION  
PURSUANT TO  
CPLR § 7803(1)**

-against-

THE CITY OF NEW YORK, THE NEW YORK CITY  
TAXI AND LIMOUSINE COMMISSION, and MEERA  
JOSHI, in her Capacity as Chair of the New York City Taxi  
And Limousine Commission,

Respondents.

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**PRELIMINARY STATEMENT**

1. This is a special proceeding brought by MARCELINO HERVIAS and WILLIAM GUERRA (“Petitioners”) through their attorneys, GERSTMAN SCHWARTZ & MALITO, LLP, under Article 78 of the CPLR and Section 52-04(a)(4) of Title 35 of The Rules of the City of New York seeking an order directing the CITY OF NEW YORK (“City”), NEW YORK CITY TAXI AND LIMOUSINE COMMISSION (“TLC”), and MEERA JOSHI (“Chair”), in her capacity as the Chair of the TLC, (collectively “Respondents”) to establish and enforce standards to ensure all Licensees are and remain financially stable, which is a duty that the Respondents failed to perform even though it is enjoined upon the Respondents by law.

**PARTIES TO THE PROCEEDING**

2. Petitioner Marcelino Hervias is a taxicab medallion owner residing in New Jersey, county of Middlesex.

3. Petitioner William Guerra is a taxicab medallion owner residing in New York, county of Queens.

4. Respondent City of New York is a municipal corporation operating by virtue of and pursuant to the laws of the State of New York. At all times relevant to this special proceeding, the City was and is responsible for the policy, practice, supervision, and conduct of its officers and agencies. The City's principal place of business is City Hall, New York County, New York 10007.

5. Respondent TLC is a New York City Charter-created agency operating by virtue of and pursuant to the laws of the City of New York. At all times relevant to this special proceeding, the TLC was and is responsible for the policy, practice, supervision, and conduct of its employees. Furthermore, its purpose is to develop and improve taxi and limousine services in New York City by establishing and enforcing standards governing taxis, liveries, for-hire vehicles, commuter vans, and wheelchair accessible transportation services. The TLC has a principal place of business in New York County.

6. Respondent Meera Joshi is sued in her capacity as the Chair and the Chief Executive Officer of the TLC. At all times relevant to this special proceeding, she held and continues to hold the position of Chair of the TLC. The Chair is in charge of the TLC and has the authority to employ, assign, and superintend the duties of such officers and employees as may be necessary to carry out the TLC's duties. The TLC has a principal place of business in New York County.

#### **JURISDICTION AND VENUE**

7. This Court has jurisdiction over Petitioners' claims pursuant to CPLR §§ 7801 and 7803(1).

8. Venue is proper pursuant to CPLR §§ 7804(b) and 506(b) as the Respondents refused to perform duties specifically enjoined upon them by law in New York County.

## FACTUAL BACKGROUND

### I. The History of the Taxicab Regulatory Framework

9. Before 1935, the taxi industry in New York was unregulated. During the 1920s and 1930s, there was an oversupply of taxis, which resulted in traffic congestion, a fare-cutting race to the bottom, unacceptably low driver wages, inadequately insured vehicles, and other unsafe and illegal activities. *See The New York City Taxicab Fact Book*, Schaller Consulting at 22 (March 2006).

10. The City Board of Alderman enacted an ordinance sponsored by Alderman Lew Haas in 1937, which established the medallion system and capped the number of issuable medallions. *See id.*

11. As a result of the aforementioned licensing scheme, there are four primary kinds of vehicles operating in New York City: (1) yellow medallion taxi vehicles, (2) non-medallion street hail liveries (also known as green cars), (3) non-medallion For-Hire Vehicles, and (4) non-medallion commuter van / paratransit vehicles.

12. A “Taxicab” is a “motor vehicle, yellow in color, bearing a Medallion indicating that it is licensed by the Commission...” 35 RCNY § 51-03. A “medallion” is “the numbered plate originally issued by the Commission and affixed to the outside of a Taxicab as physical evidence that the Taxicab has been licensed to operate as a Medallion Taxicab.” *Id.* And the terms “Medallion Taxicab” and “Taxicab” “may be used interchangeably.” *Id.*

13. A “Street Hail Livery” is a For-Hire or paratransit vehicle “authorized to accept persons by hail” in a specified “Hail Zone.” *Id.*

14. A “For-Hire Vehicle” “is a motor vehicle licensed by the Commission to carry Passengers for-hire in the City, which: (1) has a seating capacity of 20 or fewer passengers[,] (2)

has three or more doors[,] [and] (3) is not a Taxicab, a Commuter Van, or an authorized bus....”  
*Id.*

15. There are three types of for-hire vehicles: (1) black cars, (2) livery vehicles, and (3) luxury limousines. *See* RCNY § 59A-03. For-hire vehicles must schedule to pick up their customers by prearrangement. *See* RCNY § 80-19(c)(1).

## II. The Inequities

16. As a preliminary matter, a “hail” is a “request, either through a verbal (audio) action such as calling out, yelling, or whistling, and/or visible physical action such as raising one’s hand or arm, or through an electronic method such as an E-Hail App, for on-demand Taxicab or Street Hail Livery service at the metered rate of fare as set [by the TLC.]” RCNY § 51-03. Notably, yellow taxicabs and street-hail liveries are the only vehicles which may respond to a hail.

17. In exchange for the exclusive right to respond to hails anywhere in New York City, *see* N.Y.C. Admin. Code § 19-502(1) (permitting “taxicab[s]” by definition to “accept hails from passengers in the street”), taxicabs pay significant sums for their respective medallions and subject themselves to a burdensome regulatory framework that does not apply to black cars.

### (i) Caps on Number of Vehicles—But Not for Black Cars

18. Specifically, “[y]ellow and green cabs have fleets whose sizes are restricted by law—15,237 and 18,000 vehicles, respectively.” *For-Hire Vehicle Transportation Study*, City of New York, Office of the Mayor at page 8 (Jan. 2016) (internal footnote omitted).<sup>1</sup> The current number of operational taxicabs in New York City is capped at 13,587. *See 2016 TLC Factbook*, New York City Taxi and Limousine Commission at 1 (last visited Jan. 28, 2017).<sup>2</sup> Another 1,650

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<sup>1</sup> *For-Hire Vehicle Transportation Study*, City of New York, Office of the Mayor (Jan. 2016), <http://www1.nyc.gov/assets/operations/downloads/pdf/For-Hire-Vehicle-Transportation-Study.pdf>

<sup>2</sup> *2016 TLC Factbook*, New York City Taxi and Limousine Commission at 1 (last visited Jan. 28, 2017), [http://www.nyc.gov/html/tlc/downloads/pdf/2016\\_tlc\\_factbook.pdf](http://www.nyc.gov/html/tlc/downloads/pdf/2016_tlc_factbook.pdf).

have been authorized but not yet actioned. *For-Hire Vehicle Transportation Study*, City of New York, Office of the Mayor at page 8 (Jan. 2016).

19. Meanwhile, no such cap exists on for-hire vehicles; in fact, in a recent study, New York City specifically advised against the implementation of such a cap: “The study **does not recommend a cap on for hire vehicles at this time.**” *Id.* at 11 (emphasis in original).

20. Yet just two years ago, on June 30, 2015, the Chair testified before the New York City Council in the following manner: “[T]here is no real growth control mechanism in the FHV [(for-hire vehicles)] industry. For yellow taxis, the number of medallions is set by state and local law. For green taxis, the number of permits that can be issued is set by state law and findings from a market analysis TLC performs between each issuance period. For commuter vans, new authorities are subject to DOT review of community needs and TLC approval. ***But for FHV’s, TLC currently has no authority to limit the number of licenses. They stand alone in the private for-hire world as the sector without a meaningful growth oversight mechanism.***” Testimony of Meera Joshi, NYC Taxi & Limousine Commission Commissioner/Chair, *Int. No. 842 & Int. No. 847*, City Council Committee on Transportation (June 30, 2015) (emphasis added).

21. There are currently 7,676 street-hail liveries licensed by the TLC. *See 2016 TLC Factbook*, New York City Taxi and Limousine Commission (last visited Jan. 28, 2017)

22. There are currently 66,604 for-hire cars licensed by the TLC. *Id.* According to the New York Times, Uber, which operates primarily black cars, is affiliated with 46,000 of these for-hire cars. Winnie Hu, *Yellow Cab, Long a Fixture of City Life, Is for Many a Thing of the Past*, NY Times (Jan. 15, 2017).

23. Unlike the taxicabs or green cabs, for-hire services are free to continuously increase the number of vehicles on the road. As noted by the Chair, “[r]ecent trends demonstrate the

potentially problematic consequences of a system without a growth control mechanism. Growth in the FHV industry in the past several years has been tremendous. Since 2011 about 25,000 new FHV's have joined the fleet. There are now nearly 63,000 FHV's, a 66% increase from just four years ago. We [(the TLC)] have strong reason to believe that, without Council action, growth in the FHV is expected to continue." Testimony of Meera Joshi, NYC Taxi & Limousine Commission Commissioner/Chair, *Int. No. 842 & Int. No. 847*, City Council Committee on Transportation (June 30, 2015).

24. Upon information and belief, this unrestrained growth in the for-hire sector creates an unbalanced—in the words of the Chair, “cannibalizing”—environment. *Id.*

25. The Chair has explained that although she believes “the pie of overall for-hire passengers is expanding, it may not be expanding as rapidly as the supply of vehicles.” *Id.*

26. Upon information and belief, unrestricted and constantly increasing numbers of for-hire cars on the road translates to fewer taxicab drivers and faster for-hire service than traditional taxicabs can provide. Today, “[m]any taxi drivers have abandoned yellow cabs for ride-hailing apps in recent years, leaving cars idle in garages — a sharp turn from the days when those garages kept waiting lists because they had more potential drivers than cars.” Winnie Hu, *As Uber Woos More Drivers, Taxis Hit Back*, NY Times (Mar. 18, 2017).

27. Upon information and belief, the for-hire industry’s unlimited growth potential as opposed to the government-imposed cap on taxicabs and green cabs has created substantial financial inequities for licensees.

**(ii) Caps on Fares for Taxis—But Not for Black Cars**

28. The TLC sets the rates that yellow taxicabs may charge their customers. 35 RCNY § 58-26. But black cars are not required to comply with the yellow taxicab rate cap; indeed, they

may charge more so long as a rate schedule is filed with the TLC. RCNY § 59B-23. In its recent study, New York City noted the asymmetry: “Yellow and green cab prices are fixed and clearly displayed for the customer. A livery passenger can get a price quote from the dispatcher or driver. [Black car] E-dispatch customers do not receive a firm fare quote in advance, an information asymmetry that can be exacerbated with so-called ‘surge’ pricing.” *For-Hire Vehicle Transportation Study*, City of New York, Office of the Mayor at page 8 (Jan. 2016). “Surge pricing” is “the practice of raising prices when demand for rides exceeds available vehicles in an area for some period of time.” *Id.* For example, “Uber’s ‘surge pricing’ model...permits fares to rise up to *ten times* the standard fare during times of high demand.” *Meyer v. Kalanick*, 174 F.Supp.3d 817, 821 (S.D.N.Y. 2016).

**(iii) Exclusionary Hail Zones for Green Cabs—But Not for Black Cars**

29. As mentioned above, only taxicabs and street-hail liveries may respond to a hail—not black cars or other for-hire vehicles.

30. Although they are permitted to respond to hails, street-hail livery services may only respond to hails within a certain “Hail Zone,” RCNY § 82-13, which includes “all areas of New York City except (1) Manhattan south of East 96th St. and West 110th St. [and] (2) [t]he New York City Airports.” RCNY § 51-03. This area excepted from the “Hail Zone” is preserved for the yellow cabs, which respond to hails in that zone. The Rules make this clear by labeling these streets as the “Hail Exclusionary Zone” for street-hail liveries. *See id.*

31. This TLC-created scheme—for the preservation of the industry—was premised on this division between types of services. *See* Exhibit A. But as the City’s recent transportation study admits, “[t]he market segmentation that once existed has substantially eroded. Yellow cabs once obtained passengers almost exclusively through street hails and taxi stands, including at airports.

Livery services worked primarily in neighborhoods that were not well served by yellow cabs. Black cars mainly served corporate clients through advanced bookings, primarily in Manhattan.” *For-Hire Vehicle Transportation Study*, City of New York, Office of the Mayor at page 7 (Jan. 2016). “The rise of e-dispatch services have blurred the traditional line between medallion cabs, which can offer street-hail service, and non-taxi for-hire vehicles that offer pre-arranged service. *With the quick arrival of a car at the tap of a button, the distinctions that yielded differential regulatory treatment across black and yellow cars are less relevant*, and the City must adapt its traditional frameworks to support the new entrants that do not squarely fit into traditional categories.” *Id.* at 1 (emphasis added).

32. However, the reason for this erosion within the industry is self-created by the Respondents. Even though the right to respond to a hail remains the province and duty of yellow taxicabs and street-hail liveries (while black cars are only allowed to pick up passengers by prearrangement), and even though there was a strict separation in the zones within which each kind of vehicle was permitted to operate (so much so that street-hail liveries are not allowed to respond to e-hails outside of their specified zone (*see* RCNY § 80-19(b) & RCNY § 51-03 (defining “Hail Exclusionary Zone” and “Pre-Arranged Exclusionary Zone))), the TLC decided—without explanation—that black cars may respond to *e-hails* everywhere even though they cannot respond to *hails* anywhere.

33. This is because, based on the Respondents’ regulations, an “e-hail” is only a “hail” (which can only be responded to by a yellow taxicab or green cab) when the consumer uses an e-hail app to summon a taxicab or street-hail livery. But when a customer makes the same gesture through an e-hail app to summon a black car, as opposed to a taxi or street-hail livery, that e-hail



is not considered a hail. Apparently, an e-hail is considered a hail when a taxicab or street-hail livery is involved but it is a prearrangement when a black car responds.

34. In this way, the Respondents exempted black cars from the e-hail rules that apply to taxicabs and street-hail liveries, and in the process of doing so, undermined the exclusivity that once belonged to taxicabs and green cabs. The TLC was concerned enough for the well-being of the taxicabs to keep street-hail liveries from encroaching outside of their specified zone—regardless of whether the street-hail livery is responding to a hail or e-hail. But free-roaming black cars responding to e-hails are not required to bear any such restrictions.

**(iv) Lease Caps—But Not for Black Cars**

35. A lease cap is the maximum rate a taxicab owner can charge a driver leasing the owner's taxicab. *See* RCNY § 58-21(c). Yellow taxicab owners are subject to lease caps when they lease their medallions. *See* RCNY § 58-21.

36. But black cars are not subject to lease caps.

**(v) Rigorous TLC-Approved Vehicle Restrictions—But Not for Black Cars**

37. Yellow taxicab owners may only operate specific TLC-approved vehicles. *See* RCNY § 67-04-67-05.2.

38. But black cars are not subject to these rigorous restrictions. *See* RCNY § 59C.

**(vi) Taxis Must be “Hacked Up”—But Not Black Cars**

39. Before a yellow taxicab may be put on the road, it must be “hacked-up” to meet specific TLC requirements. *See* RCNY § 51-03 (defining “hack-up” to mean “outfit[ing] a vehicle as a Medallion Taxicab and obtain[ing] approval from the Commission for that vehicle to serve as a Taxicab for the first time.”). The taxicab “hack-up” rules require an extensive list of changes to be made to the vehicle—including paint, finish, and lighting; installation of taximeters; partitions;

distress signal lights; in-vehicle camera systems; credential holders; and “taxicab technology system (T-PEP),” which collects and transmits extensive data to the TLC. *See* RCNY §§ 67-06-67-17).

40. But black cars are not required to be “hacked up” and equipped with the same equipment as a taxicab, and the extensive T-PEP requirements apply by definition to yellow taxicabs—not black cars. *See* 51-03 (noting that T-PEP “provides the following core services to *Taxicabs...*”). Similar to taxicabs, street-hail liveries have an LPEP system requirement. *See* RCNY § 82-41.

41. In its 2016 transportation study, the City made the same observation: “Yellow and green taxis have *far more stringent data requirements than non-taxi for-hire* vehicles, which have, for years, only been required to report manually. This is in contrast to the steady stream of data collected by the Taxi Passenger Enhancements Project (T-PEP) system in the yellow sector and Street Hail Livery Passenger Enhancements Project (LPEP) system in the green sector.” *For-Hire Vehicle Transportation Study*, City of New York, Office of the Mayor at page 8 (Jan. 2016) (emphasis added).

**(vii) Taxis must be 50% Accessible by 2020—But Not Black Cars**

42. Yellow taxicabs must be 50% accessible to those with disabilities by 2020. *See* RCNY § 58-50; *2016 TLC Factbook*, New York City Taxi and Limousine Commission (last visited Jan. 30, 2017).

43. But black cars are not held to the same accessibility standard.

44. Furthermore, upon information and belief, this 50% accessibility mandate has caused the yellow taxicabs to lose drivers who do not want to drive accessible cars because of their inefficiency and tendency to require additional maintenance than other model cars.

**(viii) Quick Mandatory Retirement Time Limits—But Not for Black Cars**

45. Yellow taxicabs are required to retire from service within a period that can be as short as three years. *See* RCNY § 67-18.

46. But the vehicle retirement requirement for black cars was repealed. *See* RCNY § 59A-28 (noting subsection (d) was repealed); *Final Rule for Agency Action*, Statement of Basis and Purpose, New York Taxi and Limousine Commission (June 23, 2016) (noting that Mayor De Blasio signed four bills, one of which “eliminate[s] the vehicle retirement requirement for Black Cars”).<sup>3</sup>

**(ix) Yellow Taxicab Fees, Surcharges, and Taxes—But Not for Black Cars**

47. Yellow taxicabs are required to pay a Taxi Accessibility Fee that is set by the TLC, *see* RCNY § 58-16(f), collect a thirty cent per trip Taxicab Improvement Surcharge for the Taxicab Improvement Fund, *see* RCNY § 58-16(g), and collect a fifty cent per trip MTA Tax to fund Metropolitan Transportation Authority operations. *See* RCNY §§ 58-03(w) (defining “MTA Tax” as fifty cents), 58-26(a)(3) (outlining where the MTA Tax applies).

48. But black cars are not required to pay Taxi Accessibility Fees, collect Taxicab Improvement Surcharges for the Taxicab Improvement Fund, or pay an MTA Tax.

**III. Lacking Standards to Establish, Ensure & Maintain Financial Stability**

49. The Respondents have the specific power and “duty” to “[e]stablish and enforce standards to ensure all Licensees are and remain financially stable.” RCNY § 52-04(a)(4).

50. Upon information and belief, the Respondents have not established and have therefore failed to enforce standards that ensure all Licensees are and remain financially stable.

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<sup>3</sup> *Final Rule for Agency Action*, Statement of Basis and Purpose, New York Taxi and Limousine Commission (June 23, 2016) [http://www.nyc.gov/html/tlc/downloads/pdf/proposed\\_rules\\_fhv\\_bills\\_package.pdf](http://www.nyc.gov/html/tlc/downloads/pdf/proposed_rules_fhv_bills_package.pdf).

51. In its recent transportation study, the City noted that “[w]here there were once yellow and green cabs that took on passengers through street hails, and black cars and livery that did not, these lines are no longer so clear. Through the use of apps that let customers ‘e-hail’ and summon ‘e-dispatches’ yellow and green cabs, black cars, and livery cars are now in direct competition for the same passengers.” *For-Hire Vehicle Transportation Study*, City of New York, Office of the Mayor at page 7 (Jan. 2016). The City thereafter stated that “[d]ifferential regulations for taxis compared to other categories of for-hire vehicles limit traditional yellow taxis’ ability to compete effectively with e-dispatch services....” *Id.* at 9.

52. In fact, in its study “recommendations,” the City emphasized that “New York needs a *level playing field* among yellow, green, black and e-dispatch services, with differences in regulations or standard driven by clear policy goals....” *Id.* (emphasis added).

53. These written statements by the City demonstrate that standards to ensure the financial stability of all Licensees—specifically yellow taxicabs—are lacking and have yet to be implemented.

54. The City’s express words aside, the free-falling value of the yellow taxicab medallion market is an additional example of financial instability among Licensees. Taxicabs are licensees. *See* 51-03. Therefore, the TLC has the specific power and duty to establish and enforce standards that will ensure yellow taxicabs are and remain financially stable.

55. While the City claims that it “does not set the price of a medallion...[, letting] the market...set[] the price of the medallion [instead],” *see 2014 Taxicab Fact Book*, New York City Taxi and Limousine Commission at 12 (last visited Jan. 31, 2017),<sup>4</sup> the Respondents have created a strict regulatory scheme that directly impacts the value of a medallion on the market, which, in

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<sup>4</sup> *2014 Taxicab Fact Book*, New York City Taxi and Limousine Commission (last visited Jan. 31, 2017), [http://www.nyc.gov/html/tlc/downloads/pdf/2014\\_taxicab\\_fact\\_book.pdf](http://www.nyc.gov/html/tlc/downloads/pdf/2014_taxicab_fact_book.pdf).

turn, directly affects the financial stability of the licensees. Even the Chair at one time recognized that the “government needs to consider and sometimes create policies to account for externalities: that is, impacts on the rest of society that are the result of market transactions between parties.” Testimony of Meera Joshi, NYC Taxi & Limousine Commission Commissioner/Chair, *Int. No. 842 & Int. No. 847*, City Council Committee on Transportation (June 30, 2015).

56. In a 2004 TLC newsletter, the Respondents asserted that “New York City taxicab medallions have a long history as a solid investment with steady growth. Taxi medallions also provide both a reliable and consistent income and guaranteed employment. In addition, a medallion is collateral that can assist in home financing, college tuition, or even ‘worry free’ retirement.” See *Special Medallion Sale Issue*, TLC TIMES (Volume 3, Number 1, Winter 2004).

57. Until 2013, consistent with the 2004 TLC newsletter, the average price of a medallion continuously increased to well over one million dollars. See Exhibit B. By some accounts, the value of the medallion peaked at around 1.3 million. See Danielle Furfaro, *Taxi Medallion Owners Find Their Dreams Dashed by Uber, Lyft*, NY Post (July 5, 2016).<sup>5</sup>

58. Today, the City has shelved 1,650 medallions that have not yet been auctioned and some people cannot receive financing for a buyer looking to purchase a medallion for \$400,000. See *id.* Business Insider recently noticed that one person listed a medallion for a mere \$250,000 just a few months ago—a mere fraction of the price the same medallion would have sold for a few years ago. See Elena Holodny, *Uber and Lyft are Demolishing New York City Taxi Drivers*, Business Insider (Oct. 12, 2016).<sup>6</sup> Just a few weeks ago, the medallion’s value plummeted even further. According to the New York Post, the medallion just reached its lowest value of the 21<sup>st</sup>

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<sup>5</sup> Danielle Furfaro, *Taxi Medallion Owners Find Their Dreams Dashed by Uber, Lyft*, NY Post (July 5, 2016), <http://nypost.com/2016/07/05/city-lets-uber-and-lyft-cannibalize-the-american-dream/>.

<sup>6</sup> Elena Holodny, *Uber and Lyft are Demolishing New York City Taxi Drivers*, Business Insider (Oct. 12, 2016), <http://www.businessinsider.com/nyc-yellow-cab-medallion-prices-falling-further-2016-10>.

century when one was sold for \$241,000—that is, “less than one-fifth of what the cab-ownership tags were going for just four years ago.” Danielle Furfaro, *Taxi Medallions Reach Lowest Value of 21<sup>st</sup> Century*, New York Post (April 5, 2017).<sup>7</sup>

59. At this point, banking institutions are foreclosing on medallion owners at an alarming rate. See Erik Engquist & Andrew Hawkins, *Taxis Warn of Industrywide Collapse*, Crain’s New York Business (July 26, 2015) (noting that taxi-medallion owners have fallen behind on their loan payments to credit institutions and providing an example of 90 medallion foreclosures).<sup>8</sup> See also Exhibit C, 2016 Medallion Sales Charts, 2016 Medallion Transfers, New York City Taxi and Limousine Commission (demonstrating many foreclosures in 2016).<sup>9</sup>

**CAUSE OF ACTION**  
**(Mandamus Action to Compel Pursuant to CPLR § 7803(1))**

60. Petitioners repeat and re-allege each and every allegation set forth above in paragraphs “1” through “59” as if more fully set forth herein at length.

61. A mandamus action may be brought to compel a body or officer “to perform a duty enjoined upon it by law.” CPLR § 7803(1). The Respondents are proper parties to this action as they are a “body” or “officer” within the meaning of the statute. See CPLR § 7802(a).

62. “Before commencing a proceeding in the nature of mandamus, it is necessary to make a demand and await a refusal.” *Matter of Agoado v. Board of Educ. Of City School Dist. of the City of New York*, 282 A.D.2d 602 (2d Dep’t 2001). By letter dated March 1, 2017, Petitioners, through the undersigned, demanded that the “Taxi and Limousine Commission (TLC) establish

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<sup>7</sup> Danielle Furfaro, *Taxi Medallions Reach Lowest Value of 21<sup>st</sup> Century*, New York Post (April 5, 2017), <http://nypost.com/2017/04/05/taxi-medallions-reach-lowest-value-of-21st-century/>.

<sup>8</sup> Erik Engquist & Andrew Hawkins, *Taxis Warn of Industrywide Collapse*, Crain’s New York Business (July 26, 2015), <http://www.crainsnewyork.com/article/20150726/BLOGS04/150729886/taxis-warn-of-industrywide-collapse>

<sup>9</sup> 2016 Medallion Sales Charts, 2016 Medallion Transfers, New York City Taxi and Limousine Commission, <http://www.nyc.gov/html/tlc/html/archive/2016.shtml>.

and enforce standards to ensure all licensees are and remain financially stable, which is an unmet obligation belonging to the TLC.” See Exhibit D. Days later, by letter dated March 7, 2017, the Deputy Commissioner for Legal Affairs, Christopher C. Wilson, provided a careless response of one and one-half sentences, which the Petitioners understand to be a refusal. See Exhibit E.

63. “Mandamus is available only...to enforce a clear legal right where the public official has failed to perform a duty enjoined by law.” *Klein v. New York State Office of Temporary and Disability Assistance*, 84 A.D.3d 1378, 1380 (2d Dep’t 2011) (quoting *New York Civ. Liberties Union v. State of New York*, 4 N.Y.3d 175, 184 (NY 2005)). “Thus, mandamus does not lie to enforce the performance of a duty that is discretionary, as opposed to ministerial....A discretionary act ‘involve[s] the exercise of reasoned judgment which could typically produce different acceptable results whereas a ministerial act envisions direct adherence to a governing rule or standard with a compulsory result.” *New York Civ. Liberties Union v. State of New York*, 4 N.Y.3d 175, 184 (NY 2005) (quoting *Tango v. Tulevech*, 61 N.Y.2d 34, 41 (NY 1983)). More specifically, the “general principle [is] that mandamus will lie against an administrative officer only to compel him [or her] to perform a legal duty, and not to direct how he shall perform that duty.” *Klostermann v. Cuomo*, 61 N.Y.2d 525, 540 (NY 1984).

64. Under the Rules of the City of New York, the Respondents have the specific power and duty to “[e]stablish and enforce standards to ensure all Licensees are and remain financially stable.” 35 RCNY § 52-04(a)(4).

65. Due to the aforementioned inequities that exist within the Respondents’ artificially created regulatory scheme and the resulting ramifications associated with these inequities, all licensees are not financially stable. The Respondents have neither established nor enforced

standards that ensure all licensees are and remain financially stable. Yellow medallion taxicabs have been left particularly vulnerable.

### CONCLUSION

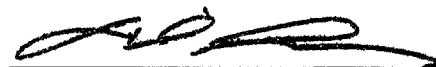
**WHEREFORE**, Petitioners respectfully request that a judgment be entered pursuant to CPLR Article 78:

- a) Directing and compelling the Respondents to establish and enforce standards to ensure all Licensees, including yellow medallion taxicabs, are and remain financially stable, which is a duty that the Respondents failed to perform even though it is enjoined upon the Respondents by law, and
- b) Granting such other and further relief as this Court deems just, proper, and equitable.

Dated: Garden City, New York  
May 1, 2017

Respectfully submitted,

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**VERIFICATION**

**DAVID M. SCHWARTZ, ESQ.**, being an attorney duly licensed to practice law in the State of New York, does hereby affirm under penalties of perjury pursuant to CPLR § 2106:

I am the attorney for the Petitioners in this proceeding. I have read the foregoing Petition and know the contents thereof to be true to my knowledge, except as to those matters therein stated upon information and belief, and as to those matters, I believe them to be true.

I maintain a business address in Nassau County, at 1399 Franklin Avenue, Suite 200, Garden City, New York 11530. This verification is being made by the undersigned, pursuant to CPLR § 3020(d)(3), as the Petitioners herein are located outside of the County of Nassau.

Dated: Garden City, New York  
May 1, 2017



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David M. Schwartz