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October 24, 2016

VIA ECF
Honorable Analisa Torres (U.S.D.J.)
United States District Court Southern District of New York
500 Pearl Street
New York, New York 10007

Re: Melrose Credit Union, et al. v. City of New York, et al., 15 Civ. 9042(AT)(SDNY)

Your Honor:

This office represents the defendants in the above-referenced action. We write to apprise the Court of two recently-issued decisions from the U.S. Court of Appeals for the Seventh Circuit in cases cited to and relied upon by the parties in their papers submitted in support of and opposition to defendants' motion to dismiss, currently *sub judice*. Specifically, on October 7, 2016, the Seventh Circuit, issued decisions in Joe San Felippo Cabs., Inc. v. City of Milwaukee, No. 16-1008, 2016 U.S. App. LEXIS 18265 (7th Cir. Oct. 7, 2016) and Illinois Transp. Trade Ass'n v. City of Chicago, No. 16-2009, 2016 U.S. App. LEXIS 18285 (7th Cir. Oct. 7, 2016).

The Seventh Circuit affirmed the Eastern District of Wisconsin's decision in Joe San Felippo. The Court concluded that plaintiffs' takings claims failed as a matter of law. With respect to Illinois Transport., the Seventh Circuit affirmed the portions of the Northern District of Illinois Court's decision granting the municipality's motion to dismiss the claims, and reversed the portion of the District Court's opinion denying the City of Chicago's motion to dismiss the plaintiffs' Equal Protection claim. The Seventh Circuit dismissed plaintiffs' equal protection claim noting that "there are enough differences between taxi service and TNP service to justify different regulatory schemes." Illinois Transp., 2016 U.S. App. LEXIS, at *11. The Court found that electronic app companies, such as Uber, have an entirely "different business model" than taxis, "[f]or example, you can't hail an Uber vehicle on the street; you must use a smartphone app to summon an Uber car." Id. at *4.

Respectfully submitted,

Michelle Goldberg-Cahn
Assistant Corporation Counsel

cc: Todd A. Higgins, Esq. – Counsel for Plaintiffs (via ECF)

Crosby & Higgins LLP

October 27, 2016

Honorable Analisa Torres
United States Courthouse
500 Pearl St.
New York, NY 10007-1312

Matter No. 41900-102

VIA ECF AND ELECTRONIC MAIL

Re: Melrose Credit Union, et al. v. City of New York, et al., Civil Action No. 15-cv-9042

Dear Judge Torres:

This law firm represents Melrose Credit Union, Progressive Credit Union, LOMTO Federal Credit Union, Taxi Medallion Owner Driver Association, Inc., League of Mutual Taxi Owners, Inc., KL Motors, Inc., Safini Transport, Inc., White & Blue Group Corp., FIMA Service Co., Inc., Carl Ginsberg, and Joseph Itzchaky (collectively, the "Plaintiffs"), in connection with the above-referenced action. I am writing in order to briefly respond to the letter filed by Defendants on October 24, 2016, concerning the Seventh Circuit's recent decisions in *Joe San Felippo Cabs., Inc. v. City of Milwaukee*, No. 16-1008, 2016 WL 5864565 (7th Cir. Oct. 7, 2016), and *Illinois Transp. Trade Ass'n v. City of Chicago*, No. 16-2009, 2016 WL 5859703 (7th Cir. Oct. 7, 2016), affirming the dismissal of regulatory takings claims alleged in both actions, and reversing Judge Sharon Johnson Coleman's refusal to dismiss an equal protection claim in *Illinois Transp.* As briefly set forth below, Plaintiffs respectfully submit that the Seventh Circuit's cavalier treatment of the transportation industry in Chicago and Milwaukee is of no consequence to the legal issues pending before this Court concerning the for-hire transportation industry in the City of New York.

As an initial matter, neither the Seventh Circuit's decision in *Joe San Felippo Cabs*, nor its decision in *Illinois Transp.*, impacts the analysis before this Court on Plaintiffs' takings claim, because the central question considered in both of those cases was whether licensed taxicabs in Milwaukee and Chicago have a *right* to exclude others from the market, in addition to the right to operate taxicabs. Here, however, there is no dispute about the existence of a right to exclude, because New York City taxicab medallion owners enjoy not only a protected property interest in the right to operate taxicabs, but critically, they also possess an express *statutory right to hail exclusivity*, pursuant to New York state law. In other words, taxicab medallion owners indisputably have a statutory right to exclude others from the market for hails—a paid for

property interest expressly vested by the legislature in "*existing and future taxicabs*." *See* N.Y. Assemb. B. 8691, 235th Sess., at § 11 (2011). Plaintiffs have thus properly alleged reasonable investment backed expectations in a protected property interest in the statutory right to hail exclusivity, upon which the value of a taxicab medallion is anchored, and Plaintiffs have likewise properly alleged that Defendants have engaged in a regulatory taking of that property interest for which just compensation is due. *See, e.g.,* Amended Complaint (Docket No. 47) at ¶¶ 161-84, 318-27, 356-64; *see also Ganci v. N.Y.C. Transit Auth.*, 420 F. Supp. 2d 190, 195 (S.D.N.Y. 2005); and *Penn Cent. Transp. Co. v. City of New York*, 438 U.S. 104 (1978). Accordingly, the nature of the takings claims at issue in Milwaukee and Chicago are wholly inapposite to the takings claim in this action.

Second, with respect to the Equal Protection analysis in *Illinois Transp.*, the Seventh Circuit found only that, in Chicago, there are "enough differences" between licensed taxicabs and transportation network providers ("TNPs") to support differing regulations. *See Illinois Transp.*, 2016 WL 5859703 at *4. New York City, however, presents a very different regulatory structure, one in which all participants in the market are ostensibly regulated as for-hire transportation providers. Tellingly, the defendant in *Illinois Transp.*—the City of Chicago—has consistently, albeit fictitiously, claimed that taxicabs and TNPs such as Uber provide fundamentally different services and operate on entirely different business models, thereby justifying Chicago's disparate treatment. Here, however, Defendants have disavowed any such supposed rationale for disparate treatment by repeatedly admitting that these businesses *are in fact* identical in all material respects in New York City. Defendant Meera Joshi made this point as clear as it could possibly be made on August 2, 2016:

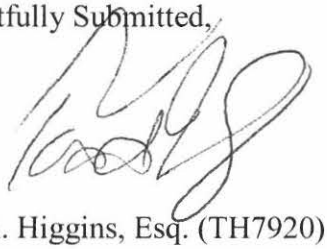
> I also wan[t to] start by clarifying, from [the TLC's] perspective, there is not a distinction between taxi and ride share. All of this is a service where you pay a driver to take you from one place to another, and you can do it by Smartphone, you can do it by sticking your hand in the air, you can do it by calling a traditional base. But the risks and the responsibilities and the benefits are identical. So, we look at this as one service, and regulate it accordingly. That means we regulate it consistently. Whether you're an Uber driver or an Uber vehicle, or a taxi vehicle, you're going to come under our regulatory scheme . . . . So, we don't see a distinction between ride-share and taxi. And, actually, ride-share is not really in our vocabulary. They're all for-hire vehicles. They're vehicles that you pay someone to take you from one place to another.

See Docket No. 67 at 2, Exhibit 1. Defendants cannot avoid their own admissions by continuing to argue otherwise before this Court—particularly at the pleading stage, where it is Plaintiffs' well-pled allegations that are entitled to the presumption of truth in the first place. Indeed, Plaintiffs sufficiently alleged that medallion taxicabs and FHVs are similarly situated for

purposes of the Equal Protection Clause, and they have properly alleged that Defendants lack a rational basis for the disparate treatment. *See* Docket No. 47 at ¶¶ 185-281, 310-17; *see also Clubside, Inc. v. Valentin*, 468 F.3d 144, 159 (2d Cir. 2006).

Finally, Defendants' letter failed to note that while the Seventh Circuit favorably referenced the ruling in *Boston Taxi Owners Ass'n, Inc. v. City of Boston*, 2016 WL 1274531 (D. Mass. March 31, 2016) with respect to its analysis of a takings claim brought by taxicab companies in Boston, it did not criticize or otherwise take issue with Judge Gorton's holding in *Boston Taxi Owners* that the plaintiffs there sufficiently stated a claim for violations of the Equal Protection Clause. *See Boston Taxi Owners*, 2016 WL 1274531 at *6 ("The City may not treat the two groups unequally and then argue that the results of that unequal treatment render the two groups dissimilarly situated and, consequently, not subject to equal protection analysis. Such circular logic is unavailing . . . . The fact that taxicabs also may initiate rides through street hails and accept other forms of payment does not necessarily mean they are dissimilarly situated to TNCs for the purpose of equal protection analysis"). Indeed, Your Honor has also previously considered Judge Gorton's ruling in *Boston Taxi Owners,* finding it to be a "well-reasoned opinion." *See* Docket No. 57 at 2.[1]

Respectfully Submitted,



Todd A. Higgins, Esq. (TH7920)

Cc: Michelle Goldberg-Cahn, Esq.
(Via ECF)

[1] The Seventh Circuit's decisions in *Joe San Felippo Cabs* and *Illinois Transp.*, both of which were authored by Judge Posner, also appear to be grounded in judicial policy preferences rather than disciplined application of the law to the facts alleged in those cases. Indeed, Judge Posner referred to Judge Coleman's equal protection analysis in *Illinois Transp.,* as a "fallacy," and harshly criticized her for inserting a "personal belief that there are no significant differences between taxi and TNP service," even though those were exactly the well-pled facts alleged by the plaintiffs in that action, and they were entitled to a presumption of veracity at the pleading stage. *See Illinois Transp.*, 2016 WL 5859703 at *4; *see also* Second Amended Complaint at ¶ 26, Docket No. 92, *Illinois Transp. Trade Ass'n v. City of Chicago*, No. 1:14-cv-00827. Ironically, Judge Posner attacked Judge Coleman on this basis, but then proceeded to blanket the Court's analysis with his own personal beliefs, calling the taxicab industry in Milwaukee an "oligopoly," comparing for-hire vehicles in Chicago to "cats" and "dogs," and warning that imposing equal protection of the laws in the for-hire transportation industry would cause "economic progress [to] grind to a halt," leaving society with "horse and buggies" and "the telegraph." *See Illinois Transp., 2016 WL 5859703 at* *2; *see also Joe San Felippo Cabs*, 2016 WL 5864565 at *2. However well intentioned, Judge Posner's indifference to the real world, well-pled grievances of ordinary hard-working citizens does not properly reflect the governing law or the facts alleged—it merely illustrates Judge Posner's own economic policy preferences.