

3. The absence of medallion taxis that passengers can get into is an especially acute problem for mobility-disabled New Yorkers because most of the New York City subway system lacks elevators and is otherwise unusable by people with disabilities.

4. More than 1.6 million New Yorkers have some type of disability and approximately 60,000 are wheelchair-users. In addition, New York City's growing elderly population includes many residents who now rely on wheelchairs to move about the city.

5. Without an accessible medallion taxi, New Yorkers and visitors with mobility disabilities are deprived of all that New York City offers – going to work, to school, visiting family and friends, and attending educational, cultural, entertainment and political events.

6. The New York City medallion taxi fleet has been overwhelmingly inaccessible for years.

7. Each day, countless New Yorkers with mobility disabilities are excluded from participating in city life because the city's dearth of accessible medallion taxis leaves them with no practical means to travel from one location to another.

8. The failure of the Taxi Commission to make its fleet of medallion taxis accessible has many serious negative financial consequences. Inaccessible medallion taxis hurt the public, the business community, and the taxpayers. The failure discourages conventions and conferences from coming to New York City, and prevents people from patronizing businesses of all kinds.

9. The Taxi Commission's perpetuation of an inaccessible medallion taxi fleet also forces disabled men, women, children, and seniors to utilize inferior alternatives such as paratransit, which is far less convenient and far more expensive to taxpayers than making accessible taxis available.

10. Recently, the Taxi Commission has made policy decisions which have resulted in a medallion taxi fleet which is even more unusable by disabled men and

women than it was previously. Defendants have made the policy decision to approve for use as medallion taxis sport utility vehicles (“SUV”), which are too high for wheelchair-users to enter, and hybrids, which have trunks too small to accommodate even a folding wheelchair.

11. Although the Taxi Commission’s recent Taxi of Tomorrow initiative is intended to select the next vehicle that will be used as the standard taxicab of New York, this initiative is non-binding, subject to present and future political considerations, provides no guarantee that the Taxi Commission will select a vehicle which is accessible, and the Taxi Commission can change its plans about this initiative at any time.

JURISDICTION

12. This is an action for declaratory and injunctive relief brought pursuant to Section 504 of the Rehabilitation Act of 1973 (“Rehabilitation Act”), 29 U.S.C. § 794, *et seq.*, Title II of the Americans with Disabilities Act (“ADA”), 42 U.S.C. § 12131, *et seq.*, and the New York City Human Rights Law (“NYCHRL”), N.Y.C. Admin. Code §8-101 *et seq.* This Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1343.

13. This Court has jurisdiction to issue declaratory relief pursuant to 28 U.S.C. §§ 2201 and 2202.

VENUE

14. Pursuant to 28 U.S.C. § 1391(b), venue is proper in the District in which this Complaint is filed, because Defendants are located within this District, a substantial part of the events or omissions giving rise to the claims alleged herein occurred in this District, and the property that is the subject of this action is situated in this District.

PARTIES

15. Plaintiff Christopher Noel is a resident of New York City with a mobility disability that causes him to rely on a wheelchair. He is a qualified individual with a

disability within the meaning of all applicable statutes and a member of the proposed class.

16. Mr. Noel is employed as outreach manager for a healthcare benefits advising non-profit in New York City. On a daily basis, his job requires him to travel to various appointments around the city, making presentations to different groups and consulting one-on-one with individuals. Because he cannot rely on accessible medallion taxis to travel to different parts of the city within any given workday, he must rely on buses and paratransit, which involve extended waits and indirect routes, making his workday much less convenient and far less efficient than it would be if he had ready access to medallion taxis. On more than one occasion, he has hailed an accessible medallion taxi, only to discover that the folding ramp in the cab was bolted shut and the purported accessible medallion taxi could not function as an accessible medallion taxi at all.

17. Mr. Noel is otherwise qualified to participate in the program, service, and/or activity offered by Defendants and is being excluded from participation in, denied the benefits of, and subjected to discrimination under the program, service, and/or activity of public transportation through demand responsive service, as operated and overseen by Defendants, solely by reason of his disability.

18. Plaintiff Simi Linton, Ph.D. is a resident of New York City with a mobility disability that causes her to rely on a power wheelchair. She is a qualified individual with a disability within the meaning of all applicable statutes and a member of the proposed class.

19. Dr. Linton is a filmmaker, writer, and consultant who works primarily in New York City. She often travels throughout the city for work, social, and speaking engagements, as well as for doctors' appointments. Because of how difficult it is to obtain an accessible taxi, Dr. Linton must rely on either the bus system, which is slow

and unreliable, or a private transportation company, which typically charges more than double the price that a taxi would cost.

20. Dr. Linton, a lifelong New Yorker, has attempted to hail taxis on numerous occasions over the years, but has only succeeded in hailing an accessible taxi twice. She regularly experiences taxis that see her wheelchair and pass her by, and also experiences problems due to taxi drivers who are inexperienced with the access features of their vehicle.

21. Dr. Linton is otherwise qualified to participate in the program, service, and/or activity offered by Defendants and is being excluded from participation in, denied the benefits of and subjected to discrimination under, the program, service, and/or activity of public transportation through demand responsive service, as operated and overseen by Defendants, solely by reason of her disability.

22. Plaintiff United Spinal Association (“United Spinal”) is a national disability rights and veterans service organizations founded in 1946. It is a New York based not-for-profit organization that seeks to advance the rights and well-being of persons with disabilities, including those who require transportation services that are accessible to persons with disabilities.

23. United Spinal currently has approximately 12,000 members nationwide. Approximately 900 members of United Spinal reside in New York City and many more visit New York City on a regular basis. Many such members are having difficulty using or are completely unable to use medallion taxis because, by virtue of the acts and/or omissions of Defendants alleged herein, they cannot effectively obtain an accessible taxi.

24. The mission of United Spinal is to provide and create access to resources, enabling people with spinal cord injuries to fulfill their potential as active members of their communities. United Spinal drafted significant portions of the ADA and continues to advocate for the rights of people with disabilities through state and federal legislation, the courts, grassroots advocacy, and education.

25. United Spinal currently expends substantial time and resources on advocacy work concerning policies and practices that affect people with disabilities in New York City. The comprehensive services offered by United Spinal include: providing assistance to veterans navigating benefit programs; funding spinal cord research and education; organizing the largest annual spinal cord disabilities conference in the country; advocating for the civil rights of its members; keeping members informed of legislative and advocacy issues; providing technical assistance and repair programs to wheelchair-users; and advocating for accessible travel.

26. United Spinal itself has been injured as a direct result of Defendants actions and omissions as alleged herein. United Spinal's interests are adversely affected because it must expend resources, as it is doing in this lawsuit, advocating for its constituents who are harmed by Defendants' discriminatory policies and practices. United Spinal has suffered injury in the form of diversion of these resources and frustration of its mission.

27. In addition, one or more members of United Spinal have been injured as a direct result of Defendants' discriminatory policies and practices and would have standing to sue in their own right.

28. United Spinal can bring this action on behalf of its members because the interests at stake are germane to United Spinal's purpose and only injunctive and declaratory relief are requested which do not require the participation of individual members in the lawsuit.

29. Plaintiff The Taxis for All Campaign ("Taxis for All") is a coalition of disability rights organizations and individuals in New York City dedicated to the goal of having all yellow medallion taxis be wheelchair accessible. The member groups of the Taxis for All campaign include the Anti-Discrimination Center of Metro New York, Brooklyn Center for Independence of the Disabled, Center for Independence of the Disabled in New York, Disabilities Network of New York City, Disabled in Action of Metropolitan New York, 504 Democratic Club, New York Lawyers for the Public

Interest, New York City Chapter, National Multiple Sclerosis Society and United Spinal Association.

30. Taxis for All was founded in 1996 in New York City by disability rights advocates in New York City who were frustrated by the inaccessibility of New York City medallion taxis and the inability of people with disabilities to get around in the city. For the past 14 years Taxis for All has and continues to expend substantial time and resources on advocacy work concerning transportation difficulties faced by people with disabilities. Their efforts include lobbying for legislative solutions, raising awareness, and organizing roll-in demonstrations at taxi stands to protest the inaccessibility of New York City taxis.

31. Taxis for all itself has been injured as a direct result of Defendants actions and omissions as alleged herein. Taxis for All's interests are adversely affected because it must expend resources, as it is doing in this lawsuit, advocating for its constituents who are harmed by Defendants' discriminatory policies and practices.

32. In addition, one or more members of Taxis for All have been injured as a direct result of Defendants' discriminatory policies and practices and would have standing to sue in their own right. Taxis for All can bring this action on behalf of its members because the interests at stake are germane to its purpose.

33. Plaintiff 504 Democratic Club ("Democrats 504") is a New York City-based coalition of Democrats working towards inclusion of people with disabilities in the political and social fabric of society and was founded in 1983.

34. Democrats 504 has approximately 350 members who are from all five boroughs, and include a diverse group of people with disabilities, public officials, friends and family who support the concepts set forth in Section 504 of the Rehabilitation Act of 1973 and the Americans with Disabilities Act of 1990. Many of these members are having difficulty using or are completely unable to use medallion taxis because, by virtue of the acts and/or omissions of Defendants alleged herein, they cannot effectively obtain an accessible medallion taxi.

35. Democrats 504 currently expends substantial time and resources on advocacy work concerning policies and practices that affect people with disabilities in New York City. Over the years, Democrats 504 has provided the leadership for starting many community activities. These activities include the Disability Independence Day March, held on the anniversary of the passage of the Americans with Disabilities Act, the annual Disability Budget and Policy Agenda, and advocacy work on behalf of city employees with disabilities. Democrats 504 participated in the founding of, and provides much of the leadership for the Taxis for All Campaign, dedicated to bringing wheelchair-accessible taxis and liveries to New York City.

36. Democrats 504 itself has been injured as a direct result of Defendants' actions and omissions as alleged herein. Democrats 504's interests are adversely affected because it must expend resources, as it is doing in this lawsuit, advocating for its constituents who are harmed by Defendants' policies and practices. Democrats 504 has suffered injury in the form of diversion of these resources and frustration of its mission.

37. In addition, one or more members of Democrats 504 have been injured as a direct result of Defendants' discriminatory policies and practices and would have standing to sue in their own right. Democrats 504 can bring this action on behalf of its members because the interests at stake are germane to Democrat 504's purpose and only injunctive and declaratory relief are requested, which do not require the participation of individual members in the lawsuit.

38. Plaintiff Disabled In Action ("DIA"), founded in 1970, is a nonprofit civil rights membership organization committed to ending discrimination against people with all disabilities.

39. DIA consists primarily of, and is directed by, people with disabilities. DIA's members include residents with disabilities throughout New York City. Many of DIA's members are having difficulty using or are completely unable to use medallion

taxi because, by virtue of the acts and/or omissions of Defendants alleged herein, they cannot effectively obtain an accessible medallion taxi.

40. DIA's objectives include promoting the ability of persons with disabilities to live independently. To that end, DIA works for the passage of laws that affirm and defend the rights of people with disabilities. In addition, DIA works to educate government officials, community leaders and the general public about disability issues and plans and participates in public demonstrations to draw attention to these issues.

41. DIA has and continues to expend substantial time and resources on advocacy work concerning policies and practices that affect disabled residents of New York City. For instance, DIA advocated for passage of Local Law 58, the 1987 NYC Building Code amendment requiring that all commercial and residential buildings include accessible features in common areas and dwelling units when newly constructed or renovated. DIA also has participated in legal actions against New York City for its holding a public Town Hall meeting at an inaccessible site, against the federal government for noncompliance with the ADA at fifteen federal courthouses in New York City, against the New York City Human Rights Commission for failure to provide written material in alternate formats, and against the New York City MTA for not operating Access-A-Ride in compliance with the ADA.

42. DIA itself has been injured as a direct result of Defendants' actions and omissions as discussed herein. DIA's interests are adversely affected because it must expend resources, as it is doing in this lawsuit, advocating for its constituents who are harmed by Defendants' policies and practices. DIA has suffered injury in the form of diversion of these resources and frustration of its mission.

43. In addition, one or more members of DIA have been injured as a direct result of Defendants' discriminatory policies and practices and would have standing to sue in their own right. DIA can bring this action on behalf of its members because the interests at stake are germane to DIA's purpose and only injunctive and declaratory relief

are requested, which do not require the participation of individual members in the lawsuit.

44. Defendant New York City Taxi and Limousine Commission is a city agency established in 1971 by the New York City Charter (“Charter”). NY City Charter § 2300.

45. The Taxi Commission is run by a nine-member commission, and one of the nine members is designated as the chairman and chief executive officer. *Id.* § 2301(a) and (c).

46. The purpose of the Taxi Commission is the “continuance, further development and improvement of taxi and limousine service in the city of New York.” NY City Charter § 2300.

47. The Charter further defines the purpose of the Taxi Commission as “consonant with the promotion and protection of the public comfort and convenience to adopt and establish an overall public transportation policy governing taxi . . . services as it relates to the overall public transportation network of the city; to establish certain rates, standards of service, standards of insurance and minimum coverage; standards for driver safety, standards for equipment safety and design; standards for noise and air pollution; and to set standards and criteria for the licensing of vehicles, drivers and chauffeurs, owners and operators engaged in such services.” NY City Charter § 2300.

48. The Taxi Commission’s jurisdiction also extends to regulating and supervising “transportation of persons by licensed vehicles for hire in the city” over rates of fare, standards, and conditions of service. NY City Charter § 2303(b)(a).

49. The Taxi Commission is a “public entity” within the meaning of 42 U.S.C. § 12131.

50. Defendant David Yassky, sued here in his official capacity, is Chairman and Commissioner of the Taxi Commission and is thus responsible for, and a participant in, the actions and/or omissions of the Taxi Commission.

FACTUAL ALLEGATIONS

51. New York City has more taxis than any major American city, with nearly 43 medallion taxis per square mile.

52. Only 1.8% of New York City's medallion taxis are accessible to wheelchair-users.

Readily available transportation by taxi is critical in New York City

53. Access to medallion taxis is essential to life in New York City. Medallion taxis enable both residents of and visitors to New York City to function productively in a fast-paced city and to quickly travel to and from home, school, work and to cultural and social outings, and more.

54. Medallion taxis are particularly important for wheelchair-users because these residents and visitors have the most limited access to other transportation options such as the subway, private automobiles, and bus systems.

55. Most of New York City's subway is inaccessible to users with mobility disabilities. Elevators are frequently out of service, even at the subway stops that are theoretically accessible. The lack of other transportation options increases disabled New Yorkers' need to rely on medallion taxis for accessible transportation.

56. On June 27, 2010, the Metropolitan Transportation Authority ("MTA") eliminated many city bus routes which further limited transportation options for many New Yorkers who use wheelchairs.

57. Access-A-Ride, the local paratransit service, is a time-consuming and inefficient means by which to travel.

58. Access-A-Ride service is also currently being reduced by the MTA.

59. The diminished capacity of Access-A-Ride further exacerbates the need that wheelchair-users have for accessible taxis.

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Defendants' service and activity offered to New York City residents

60. Defendants offer a program, service, and/or activity to New York City residents and visitors by providing public transportation through demand responsive service in the form of medallion taxis.

61. The Taxi Commission sets policy regarding the types and characteristics of vehicles that are used to provide demand responsive public transportation in New York City.

62. The Taxi Commission has jurisdiction over “the development and effectuation of a broad public policy of transportation . . . as it relates to forms of public transportation in the city, including innovations and experimentation in relation to type and design of equipment, modes of service and manner of operation.” NY City Charter § 2303(b)(9).

63. The Taxi Commission also has jurisdiction over “assistance to the business community and industry of public transportation affected by this chapter in aid of continuation, development and improvement of service and the safety and convenience of the public, including assistance in securing federal and state grants.” NY City Charter § 2303(b)(10).

64. Under the Taxi Commissions authority to develop and effectuate broad public policy standards for transportation, the agency promulgates many aspects of public transportation through demand responsive service.

65. The Taxi Commission controls how many medallions are issued and at what price, thereby controlling the number of taxis that are in service.

66. Medallions must be purchased through an auction and can cost as much as \$825,000 each.

67. The Taxi Commission sets safety and emissions standards for vehicles approved as taxis. The Taxi Commission also performs vehicle inspections on each

vehicle three times each year. If a vehicle does not pass this inspection, it faces sanctions from the Taxi Commission

68. The Taxi Commission decides which vehicles are allowed to operate as medallion taxis in New York City.

69. By deciding which vehicles it approves as taxis, the Taxi Commission sets public policy regarding the characteristics of the city's medallion taxi fleet.

70. By determining the type of vehicles allowed in circulation, the Taxi Commission determines whether or not the vehicles are accessible.

71. Only three of the 16 types of cars, vans and SUVs which the Taxi Commission allows on the road as medallion taxis are wheelchair accessible.

72. Of the 13,237 medallion taxis in New York City, only 240 or 1.8%, have a ramp or lift to make them accessible by wheelchair-users.

73. Defendants have known for years that New York City residents and visitors with mobility disabilities experience extreme difficulty getting accessible medallion taxis when they need them.

74. Defendants continue to allow the use of inaccessible medallion taxis which results in men, women, and children with disabilities being denied the benefit of and access to the service of public transportation through demand responsive service in the form of medallion taxis.

75. It is difficult, if not impossible, for people with disabilities to utilize the few accessible cabs because the chances of finding an accessible taxi to hail are very low, given the low number in circulation.

76. The Taxi Commission has approved two recent policy changes regarding its taxi fleet that have made it more difficult for those with disabilities to access taxis, thus making the taxi fleet overall less accessible.

77. The Taxi Commission has permitted replacing the Ford Crown Victoria sedans that have been used as taxis for many years with hybrid vehicles and SUVs.

78. Both the approved hybrids and SUVs pose new access barriers that were not present with the Crown Victorias.

79. Trunk space in hybrids is typically much smaller than the trunk space in Ford Crown Victorias, and many folding wheelchairs do not fit into the trunk of hybrid sedans approved by the Taxi Commission.

80. The SUVs that the Taxi Commission has approved as taxi vehicles are less accessible to many disabled people than the Crown Victoria. The difference in seat height of the newly approved SUVs (as comparable to Crown Victorias) prevents an individual from transferring from his or her wheelchair to a higher taxi seat.

81. The higher seats on the newly approved SUVs are too high for someone trying to make a lateral transfer from wheelchair to taxi seat to do so independently or safely.

82. Men, women and children who use wheelchairs have a particular need for door-to-door public transportation through demand responsive service during bad weather. Precipitation can destroy the delicate electrical systems that power motorized wheelchair-users, so individuals using this type of equipment cannot be out in the elements the way an ambulatory person can.

83. The accumulation of snow, ice, and rain along sidewalks or in curb cuts makes it difficult, if not impossible, for wheelchairs to travel along the sidewalks.

84. Many people with mobility disabilities also have safety concerns about traveling alone or certain distances or at night, making them more likely to need a taxi than their nondisabled peers.

The Taxi of Tomorrow Initiative

85. In 2007, The Department of Citywide Administrative Service introduced the Taxi of Tomorrow initiative. This initiative seeks to select the next vehicle that will be used as the standard taxicab of New York.

86. The Taxi of Tomorrow political initiative is non-binding. There is no guarantee that the Taxi Commission will actually do anything, and the Taxi Commission can change its plans about this initiative at any time.

87. In particular, any purported commitment to accessibility with respect to the Taxi of Tomorrow is non-binding.

88. The Taxi of Tomorrow initiative is considering the following criteria for selecting this taxi: safety; passenger experience; driver comfort and amenities; purchase price and ongoing maintenance and repair costs; environmental impact throughout the vehicle's life cycle; physical footprint (interior room); wheelchair access; and "iconic design" that will identify the new taxi with New York City.

89. The Taxi of Tomorrow has announced three vehicles that are finalists for the vehicle that will be selected for the next New York taxi.

90. Two of the three finalist vehicles are inaccessible, and if mandated, would result in a fleet of inaccessible vehicles.

CLASS ACTION ALLEGATIONS

91. Pursuant to Rule 23(b)(2) of the Federal Rules of Civil Procedure, the named Plaintiffs bring this action for injunctive and declaratory relief on their own behalf, on behalf of their members, and on behalf of all persons similarly situated and all residents in and visitors to New York City with mobility disabilities who have been and are currently being discriminated against by Defendants' actions and omissions as alleged herein. The class the named Plaintiffs seek to represent consists of all people with mobility disabilities who need and want to use New York City medallion taxis.

92. The persons in the class are so numerous that joinder of all members of the class is impracticable and the disposition of their claims in a class action is a benefit to the parties and to the Court.

93. Data from the United States Census conducted in 2000 indicate that more

than 1.6 million residents over the age of 21 in New York City self-identify as having a disability. Such data further show that more than 220,000 non-institutionalized New York City residents over the age of 16 have a sensory disability, which includes visual disabilities, and more than 588,000 non-institutionalized New York City residents over the age of 16 have a physical disability, which includes mobility disabilities.

94. There is a well-defined community of interest in the questions of law and fact involved affecting the parties to be represented, in that Plaintiffs' members and individuals in the class will continue to be denied access to medallion taxis.

95. Common questions of law and fact predominate, including the question of whether Defendants' failure to provide an accessible public transportation through demand responsive service violates the Rehabilitation Act of 1973, ADA and the NYCHRL and discriminates against individuals with disabilities.

96. The claims of the named Plaintiffs, or their members, are typical and are not in conflict with the interests of the class as a whole. Defendants' course of conduct and violation of the law as alleged herein has caused Plaintiffs and class members to be deprived of the opportunity to effectively utilize Defendant's program, service and/or activity. Therefore, all class members will suffer the same or similar injuries for the purposes of the injunctive and declaratory relief sought. Plaintiffs' claims are thereby representative of and co-extensive with the claims of the class.

97. The named Plaintiffs are adequate class representatives because they and/or their members do not have any conflicts of interest with other class members, and will prosecute the case vigorously on behalf of the class.

98. The attorneys representing the class are experienced both in disability law and in class action institutional litigation. Counsel representing the plaintiff class is qualified to fully prosecute this litigation and possesses adequate resources to see this matter through to resolution. Plaintiffs will fairly and adequately represent and protect the interests of the class.

99. Defendants have acted and/or failed to act on grounds generally applicable to the class as a whole, thereby making appropriate final declaratory and injunctive relief with respect to the class as a whole.

FIRST CAUSE OF ACTION
FOR VIOLATION OF SECTION THE REHABILITATION ACT OF 1973, 29
U.S.C. § 794, ET SEQ.

100. Plaintiff re-alleges and incorporates herein all previously alleged paragraphs of the Complaint.

101. Section 504 of the Rehabilitation Act provides that “no otherwise qualified individual with a disability in the United States . . . shall, solely by reason of his or her disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance.” 29 U.S.C. § 794(a).

102. An “individual with a disability” is defined under the statute, in pertinent part, as “an individual who has a physical or mental impairment that substantially limits one or more major life activities of such individual.” 29 U.S.C. § 705(20)(B) (referencing 42 U.S.C. § 12102). “Otherwise qualified” means a person who meets the essential eligibility requirements for participation in, or receipt of benefits from, that program or activity. 28 C.F.R. § 39.103.

103. Plaintiff’s members include, and Plaintiff represents, qualified individuals with disabilities within the meaning of the applicable statutes. Plaintiffs are otherwise qualified to participate in the program or activity of public transportation through demand responsive service, in the form of medallion taxis, offered by Defendants.

104. The Taxi Commission has jurisdiction over “assistance to the business community and industry of public transportation affected by this chapter in aid of continuation, development and improvement of service and the safety and convenience of the public, including assistance in securing federal and state grants.” NY City Charter § 2303(b)(10).

105. Upon information and belief, Defendants’ program or activity of providing public transportation through demand responsive service in the form of medallion taxis, has received substantial federal financial assistance.

106. The term “discrimination” as defined by Section 504 of the Rehabilitation Act includes the failure of a public entity operating a demand responsive system “to purchase or lease a new vehicle for use on such system, for which a solicitation is made after the 30th day following July 26, 1990, that is not readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs, unless such system, when viewed in its entirety, provides a level of service to such individuals equivalent to the level of service such system provides to individuals without disabilities.” 42 U.S.C. § 12144.

107. Defendants do not provide equivalent service to individuals with disabilities and are excluding persons with mobility disabilities from participating in and receiving the benefits of the program or activity of public transportation through demand responsive service in the form of medallion taxis.

108. Plaintiffs have no adequate remedy at law, and unless the relief herein is granted, Plaintiffs and their members will suffer irreparable harm in that they will

continue to be discriminated against and denied access to the program or activity operated and overseen by Defendants.

SECOND CAUSE OF ACTION
FOR VIOLATION OF THE AMERICANS WITH DISABILITIES ACT,
42 U.S.C. § 12131, ET SEQ.

109. Plaintiff re-alleges and incorporates herein all previously alleged paragraphs of the Complaint.

110. Title II of the Americans with Disabilities Act, 42 U.S.C. § 12132, provides that “no qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any such entity.”

111. The term “disability” includes physical and mental impairments that substantially limit one or more major life activities. 42 U.S.C. § 12102(2). The named Plaintiffs, members of Organizational Plaintiffs, and the class Plaintiffs seeks to represent are people who have mobility disabilities that substantially limit the major life activities of walking, standing, and/or moving about in their communities without mobility aids. Thus, Plaintiffs’ members are, or Plaintiffs represent, qualified individuals with disabilities within the meaning of 42 U.S.C. § 12102, 42 U.S.C. § 12131, and 28 C.F.R. § 35.104.

112. A “public entity” includes state and local governments, their agencies, and their instrumentalities. 42 U.S.C. § 12131(1). Defendant qualifies as a public entity within the meaning of 42 U.S.C. § 12131 and 28 C.F.R. § 35.104.

113. The term “designated public transportation” includes transportation by bus,

rail, or any other conveyance that provides the general public with general or special service on a regular and continuing basis. 42 U.S.C. § 12141(2). New York City's medallion taxis provide service to the general public and operate on a regular and continuing basis and thus falls within the definition of "designated public transportation."

114. The term "demand responsive system" includes any system of providing designated public transportation which is not a fixed route system. 42 U.S.C. § 12141(1). "Fixed route system" is defined as a system of providing designated public transportation on which a vehicle is operated along a prescribed route according to a fixed schedule. 42 U.S.C. § 12141(3). New York City's medallion taxis do not operate along a prescribed route according to a fixed system and so are properly considered a demand responsive system under 42 U.S.C. § 12141(1).

115. The term "discrimination" within the meaning of 42 U.S.C. § 12132 includes the failure of a public entity operating a demand responsive system to purchase or lease a new vehicle for use on such system, for which a solicitation is made after the 30th day following July 26, 1990, that is not readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs, unless such system, when viewed in its entirety, provides a level of service to such individuals equivalent to the level of service such system provides to individuals without disabilities. 42 U.S.C. § 12144.

116. Congress authorized the United States Department of Transportation to promulgate regulations interpreting the ADA. 42 U.S.C. § 12149. One of these regulations, codified at 49 C.F.R. § 37.77, defines the provision of "equivalent service" in a demand responsive system. The provision of equivalent service is defined as when the

service available to individuals with disabilities, including individuals who use wheelchairs, is provided in the most integrated setting appropriate to the needs of the individual and is equivalent to the service provided other individuals with respect to the following service characteristics: response time; fares; geographic area of service; hours and days of service; restrictions or priorities based on trip purpose; availability of information and reservations capability; and any constraints on capacity or service availability.

117. The Taxi Commission does not provide “equivalent service” to riders with disabilities and is in violation of both 49 C.F.R. § 37.77 and 42 U.S.C. § 12144.

118. Defendants have entered into contractual and/or other arrangements with private entities to operate demand responsive service within New York City and has failed to ensure that the private entities meet the requirements under the ADA that would apply to Defendants if Defendants provided the service directly, in violation of 49 C.F.R. §37.23.

119. Congress directed the Department of Justice (“DOJ”) to write regulations implementing Title II’s prohibition against discrimination. 42 U.S.C. § 12134. Pursuant to this mandate, the DOJ has issued regulations defining the forms of discrimination prohibited by Title II of the ADA. 28 C.F.R. § 35.101 *et. seq.*

120. Defendants, through contractual, licensing and/or other arrangements and relationships, are currently denying qualified individuals with disabilities the opportunity to participate in or benefit from the transportation services provided by Defendants and is otherwise limiting qualified individuals with disabilities in the enjoyment of rights, privileges, advantages, and/or opportunities enjoyed by others receiving those aids,

benefits or services, in violation of 28 C.F.R. §35.130(b)(1)(i) and 28 C.F.R. §35.130(b)(1)(vii)

121. By making the policy decision to maintain a taxi fleet which is 98.2% inaccessible to men, women and children with disabilities Defendants deny qualified individuals with disabilities the opportunity to participate in a service, program, or activity that is not separate or different in violation of 28 C.F.R. §35.130(b)(2).

122. Defendants, directly and/or through contractual or other arrangements utilize criteria and/or methods of administration that have the effect of subjecting qualified individuals with disabilities to discrimination on the basis of their disability, in violation of 28 C.F.R. § 35.130(b)(3)(i).

123. Defendants have failed to make necessary reasonable modifications in their policies, practices, or procedures to avoid discrimination on the basis of disability, in violation of 28 C.F.R. §35.130(b)(7).

124. Defendants' acts and omissions alleged herein are in violation of the equal access to transportation requirements set forth in Title II of the Americans with Disabilities Act, 42 U.S.C. § 12131, *et. seq.*, and the regulations promulgated thereunder, and constitute discrimination on the basis of disability against Plaintiffs and class members.

125. Defendants' conduct constitutes an ongoing and continuous violation of the ADA and unless restrained from doing so, defendants will continue to violate said law.

126. The actions and/or inactions of Defendants as alleged herein discriminate against Plaintiffs and class members because of their disabilities by excluding them from accessing and utilizing the services, programs and/or activities offered by Defendants.

127. Plaintiff's class has no adequate remedy at law, and unless the relief requested herein is granted, Plaintiff's members and the class that Plaintiff seeks to represent will suffer irreparable harm in that they will continue to be discriminated against and denied access to the programs, services, and activities operated and overseen by Defendants. Consequently, Plaintiffs are entitled to injunctive relief pursuant to section 203 of the ADA, 42 U.S.C. §12133, and attorney's fees.

**THIRD CAUSE OF ACTION FOR VIOLATION OF THE NEW YORK CITY
HUMAN RIGHTS LAW, N.Y.C ADMIN. CODE § 8-101 ET. SEQ.**

128. Plaintiff re-alleges and incorporates herein all previously alleged paragraphs of the Complaint.

129. The NYCHRL, N.Y.C. Admin. Code § 8-107(4)(a), provides that “[i]t shall be an unlawful discriminatory practice for any person, being the owner, lessee, proprietor, manager, superintendent, agent or employee of any place or provider of public accommodation because of the actual or perceived . . . disability . . . status of any person directly or indirectly, to refuse, withhold from or deny to such person any of the accommodations, advantages, facilities or privileges thereof . . .”

130. The term “person” includes governmental bodies or agencies. N.Y.C. Admin. Code § 8-102(1). The Taxi Commission is a governmental body or agency and thus Defendants qualify as a person within the meaning of N.Y.C. Admin. Code § 8-102(1).

131. The term “place or provider of public accommodation” includes providers, whether licensed or unlicensed, of goods, services, facilities, accommodations, advantages or privileges of any kind, and places whether licensed or unlicensed, where goods, services, facilities, accommodations, advantages or privileges of any kind are

extended, offered, sold or otherwise made available. N.Y.C. Admin Code § 8-102(9). Medallion taxi service constitutes a public accommodation as it is a service, accommodation, advantage, or privilege offered to the general public and thus falls within the meaning of N.Y.C. Admin Code § 8-102(9).

132. The NYCHRL additionally requires that any person prohibited from discriminating under Section 8-107 on the basis of disability “shall make reasonable accommodation to enable a person with a disability to “enjoy the right or rights in question provided that the disability is known or should have been known by the covered entity.” N.Y.C. Admin. Code § 8-107(15). The term “covered entity” is defined as a person required to comply with any provision of Section 8-107 which includes Defendants under N.Y.C. Admin. Code § 8-102(1).

133. Defendants’ policies and practices serve to directly and indirectly refuse, withhold from and/or deny people with mobility disabilities access to the public accommodation of medallion taxi service in violation of N.Y.C. Admin. Code § 8-107(4)(a).

134. The Taxi Commission qualifies as a covered entity and must make the reasonable accommodations necessary to allow people with mobility disabilities to enjoy the right of access to the public accommodation of medallion taxi service as required by N.Y.C. Admin. Code § 8-107(15).

FOURTH CAUSE OF ACTION
FOR DECLARATORY RELIEF

135. Plaintiff re-alleges and incorporates herein all previously alleged paragraphs of the Complaint.

136. Plaintiff contends that Defendants have failed and are failing to comply with applicable laws prohibiting discrimination against persons with disabilities in violation of Section 504 of the Rehabilitation Act, 29 U.S.C. § 794, *et seq.*, Title II of the ADA, 42 U.S.C. § 12131 *et seq.*, and the NYCHRL, N.Y.C. Admin. Code §8-101 *et seq.*

137. Defendants disagree with Plaintiffs' contention.

138. A judicial declaration is necessary and appropriate at this time in order that each of the parties may know their respective rights and duties and act accordingly.

139. WHEREFORE, Plaintiff prays for relief as set forth below.

PRAYER FOR RELIEF

Plaintiff prays for judgment as follows, including but not limited to:

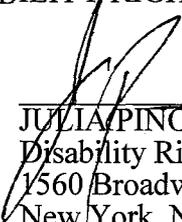
- A. For an order finding and declaring that Defendants' acts and practices as alleged herein violate the Rehabilitation Act of 1973;
- B. For an order finding and declaring that Defendants' acts and practices as alleged herein violate the Americans with Disabilities Act;
- C. For an order finding and declaring that Defendants' acts and practices as alleged herein violate the New York City Human Rights Law.
- D. For injunctive relief prohibiting Defendants from continuing to violate the Rehabilitation Act, Americans with Disabilities Act, and the New York City Human Rights Law through the policies and practices alleged herein;
- E. An award of Plaintiff's reasonable attorney's fees and costs; and
- F. Such other and further relief as the Court may deem just and proper.

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Dated: New York, NY
January 12, 2011

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*Motions for admission *pro hac vice* pending

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