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

OMAHA LLC and VULCAN CARS LLC,	:	
Petitioners,	:	Motion Seq. No. 001
v.	:	Index No. 650574/2019
NEW YORK CITY TAXI AND LIMOUSINE COMMISSION and MEERA JOSHI, in her official capacity as Chair, Commissioner, and Chief Executive Officer of the New York City Taxi and Limousine Commission,	:	(Masley, J.)
Respondents.	:	

REPLY MEMORANDUM OF LAW IN FURTHER SUPPORT OF PETITIONERS' ARTICLE 78 PETITION AND MOTION FOR PRELIMINARY INJUNCTION

SKADDEN, ARPS, SLATE,
MEAGHER & FLOM LLP
George A. Zimmerman
Alexander C. Drylewski
Abigail E. Davis
Four Times Square
New York, New York 10036
Phone: (212) 735-3000

KAPLAN RICE LLP
Joseph A. Matteo
142 West 57th Street, Suite 4A
New York, New York 10019
Phone: (212) 235-0300

Attorneys for Petitioners

TABLE OF CONTENTS

TABLE OF AUTHORITIES

CASES

RULES

PRELIMINARY STATEMENT

In support of their Petition and motion for preliminary injunction, Petitioners[1] explained that the TLC's Utilization-Based Rule suffers from serious fundamental flaws and its implementation would have devastating effects on the New York ride-hail industry and the very drivers it purports to protect. Unfortunately, six weeks since the Rule first took effect, Petitioners' warnings have been correct. Costs have increased for riders, demand for Juno's services has decreased, and hourly earnings for Juno's drivers have fallen, despite Juno's business model aimed at helping drivers increase their overall utilization. (*Infra* Section III.B.) These effects, which will only get worse while the Rule is allowed to stand, are directly contrary to the TLC's stated goals.

First, the TLC has now admitted that the Rule seeks to compensate drivers for "both trip time *and non-trip time*," including "when a passenger is not in the vehicle." (*Infra* Section I.A.) This violates the TLC's legislative mandate to establish minimum pay standards "for a trip dispatched," thus requiring annulment as *ultra vires*.

Second, the Rule is arbitrary and capricious because it relies on a "utilization rate" component that the TLC admittedly does not understand and is *still attempting to study*. (*Infra* Section I.B.) As Petitioners' experts have explained, this component lacks a reasoned basis, ignores the realities of the ride-hail market, and creates an unfair "winner take all" scenario that disproportionately harms new entrants and companies like Juno while damaging the entire

---

[1] Unless otherwise indicated, all capitalized terms shall have the same meanings ascribed to them in Petitioners' Verified Article 78 Petition ("Pet.") and opening brief ("Pet. Br."). All emphasis is added and citations to "Ex. __" are to the exhibits of the Drylewski Affirmation submitted in connection with the Petition (NYSCEF No. 6).

industry. Rather than meaningfully address these arguments, the TLC argues that the Court should not consider Petitioners' experts at all — a position that is contrary to New York law.

Finally, the TLC's laches argument lacks all merit. (*Infra* Section II.) The TLC continued to revise and clarify the Rule and record until mid-January. Petitioners filed this action on January 30 — weeks later and well within the four-month statute of limitations. The TLC cannot have it both ways by continuing to modify the Rule and bolster its support, yet claim that Petitioners should have brought suit on a still-developing record. *Ganzi v Ganzi, Jr.*, 2018 WL 6308662, at *9 (Sup. Ct. N.Y. Cty. Nov. 15, 2018) (Masley, J.). Moreover, the TLC does not, and cannot, identify any prejudice based on Petitioners' timing.

* * * *

Petitioners stand ready to support a fair, reasoned minimum pay rule — indeed, Juno has historically paid its drivers more and taken lower commissions than its larger competitors. (Pet. ¶ 2.) The TLC's Rule, however, does not achieve this laudable goal, but rather harms drivers and the industry. It should not be permitted to stand.

ARGUMENT

I. THE RULE SHOULD BE ANNULLED

A. The TLC Concedes That the Rule Compensates for Non-Trip Time

Local Law 150 authorized the TLC to establish driver pay "for a trip dispatched." (Pet. ¶ 39.) Despite this, the TLC now "admit[s] that the FHV Driver Pay Rule seeks to minimally compensate drivers for the total time, both trip time *and non-trip time*, they are working for the Large FHV Companies." (Answer ¶ 18; *id.* ¶ 125 ("The UR component is designed to compensate drivers . . . *when a passenger is not in the vehicle*."); Opp. 11.) This admission confirms that the Rule's utilization rate component is not only arbitrary and capricious, but it also violates Local Law 150. *Natale v. N.Y.C. Bd. of Educ.*, 2019 WL 233142, at *2 (Sup. Ct.

N.Y. Cty. Jan. 4, 2019) (Masley, J.) ("'An administrative agency cannot impose a penalty not provided for by statute or by its own rules or regulations and written policies'").

The TLC argues that Administrative Code § 19-549(a) allows it to "consider a 'vehicle utilization standard in establishing the pay formula.'" (Opp. 18.) But there is no "vehicle utilization standard" in effect, now or when the Rule was passed — in fact, the TLC's required study of such standards has not even been completed. (Pet. ¶ 79.) The Rule is thus premature at best, arbitrary at worst, and in all cases beyond the plain language of Local Law 150.[2] *Albany Law Sch. v. New York State Office of Mental Retardation & Dev. Disabilities*, 19 N.Y.3d 106, 120 (2012) ("[T]he text of a provision is the clearest indicator of legislative intent . . . .").[3]

B. <u>The Rule Is Arbitrary and Capricious</u>

The Rule is also arbitrary and capricious because it ties driver pay to companies' "utilization rates" — even though the TLC has not done any analysis of "utilization rates" or what causes them. (Pet. ¶¶ 65-74; Mundy Aff. ¶¶ 41-55.) It thus requires companies to compensate drivers for "idle time" (and the idle time of all other drivers of that app) which may

---

[2] The TLC erroneously argues that "the City Council cited the specific formula that TLC adopted . . . thus indicating the formula was consistent with the law." (Opp. 17.) But nothing in the report states that the Council approved the utilization rate component. Rather, the "Analysis" section further reinforces that the law "would require TLC to establish minimum payment standards *<u>for trips dispatched</u>*." (Heinzen Aff. Ex. A 32.) In any event, the TLC cites no case law for the untenable proposition that a City Council report can somehow trump the plain language of the enabling legislation itself. *City of New York v. Stringfellow's of N.Y., Ltd.*, 253 A.D.2d 110, 116 (1st Dep't 1999).

[3] The Rule also violates Local Law 150 because it fails to provide a weekly payment calculation option, as required. (Pet. ¶ 92.)

be caused by a number of factors outside of the companies' control — including rider demand and the drivers themselves, who operate as independent contractors. (Mundy Aff. ¶¶ 52-54.) Worse still, the Rule unfairly imposes *different* pay standards on competing companies offering the exact same service. Not only is there no basis in the record to support such treatment, but this will cause severe anti-competitive effects that disproportionately harm companies like Juno, which has historically sought to *increase* overall driver utilization by providing more trip opportunities to existing Uber and Lyft drivers. (Pet. ¶¶ 75-83; Tenn Aff. ¶¶ 17-33.)[4]

The TLC's opposition fails to meaningfully address these problems and, in some instances, ignores them altogether. While Respondents recount the "hours of public testimony, written comments, and stakeholder meetings" in connection with the Rule (Opp. 2), those efforts focused on confirming that a pay standard is warranted — a conclusion with which Petitioners do not disagree.[5] However, the TLC spent precious little time analyzing *the proposed solution* — *i.e.*, a Rule based on "utilization rate" that lacks any foundational support (or even understanding) of the factors or consequences involved.

1. Petitioners' Expert Affidavits Support Petitioners' Claims

Rather than respond to the merits of Petitioners' expert affidavits, the TLC argues that

---

4 The TLC argues that smaller companies are not disproportionately hurt because Uber is charging a "higher fare" than Petitioners. (Opp. 15 n.7.) But the cited exhibit does not support this assertion. (Heinzen Aff. Ex. AA.) Even more significantly, the TLC's argument misses the point that smaller companies are disproportionately harmed because they are unable to absorb the Rule's mandated costs the same way a larger competitor can.

5 Notably, the TLC's affidavit focuses on driver pay issues with Uber and Lyft but is conspicuously silent as to Juno. (Heinzen Aff. ¶¶ 20-21.)

they should be disregarded as "outside the administrative record." (Opp. 10.) In a proceeding under CPLR 7803(3), however, "*any* competent and relevant proof is admissible to show that the underlying material on which the [agency] based its determination has no basis in fact." *Grossman v. Rankin*, 43 N.Y.2d 493, 503 (1977); *Mandle v. Brown*, 5 N.Y.2d 51, 65 (1958); *Poster v. Strough*, 299 A.D.2d 127, 142–43 (2d Dep't 2002).[6]

Moreover, Petitioners' affidavits illustrate why the Rule should be annulled. While the TLC argues that company-specific utilization rates are necessary because drivers incur costs while on a company's platform even when not on a trip, (Opp. 11), as Dr. Mundy explains, drivers are likely to remain logged into the Juno app even when traveling to pick up or complete a trip for another app or non-app service, or for any number of other reasons. (Mundy Aff. ¶¶ 42-49.) This is reflected in the fact that Juno's drivers accept far fewer than all trips Juno offers them. (Ben David Aff. ¶ 12.) The TLC never analyzed the role of *driver acceptance rates* as they relate to "utilization" and thus conflates the time a driver is logged into an app with the time a driver is actually working for that company.[7]

The TLC argues that "it is absurd" that drivers would ignore dispatches because "a large majority" are full-time drivers. (Opp. 11.) This unsupported guesswork is incorrect. Even if a

---

[6] Respondents complain that Juno never testified at the public hearings or submitted written comments, but cite no authority for the proposition that public comments are a pre-requisite to bringing suit. They also ignore that Juno discussed the Rule with the TLC before it was passed and expressed serious concerns with it as drafted. (Ben David Reply Aff. ¶¶ 10-11.)

[7] For this reason, the TLC's argument that without company-specific utilization rates a driver would be paid less for the same trip (Opp. 11) is wrong. A driver would make the exact same amount per trip, but not be paid for *non*-trip time while logged into that app.

driver works "full-time" (and the TLC's analysis of this is flawed (Mundy Aff.¶¶ 57-58 & n.2)), this does not mean that the driver is working full-time for that company. "[M]ost ride-hail drivers make themselves available to take trips from multiple apps at any given time," and will necessarily ignore dispatches from one company when responding to another — *including companies that are not subject to the Rule*. (*Id.* ¶¶ 41, 52, 66-67.)

The TLC's argument that the Rule "reasonably splits" idle time for multi-app drivers fails to address Petitioners' explanation that this method is ill-considered because it hurts companies like Juno while benefiting their incumbent competitors. (Pet. ¶¶ 70-72; Tenn Aff. ¶¶ 30-33.) Nor is Respondents' resort to the "Initial Utilization Rate Period" and review of company-specific utilization rates availing. (Opp. 22-23.) As explained below, the TLC will calculate *future* company-specific rates based on rides that occur over the Initial Period, so Juno will be forced to change its current business model now — which aims at increasing existing Uber and Lyft drivers' overall utilization by offering more trips to fill their idle time — in order to attempt to avoid negative impacts on its company-specific utilization rate as calculated by the TLC.[8]

2. Respondents' Remaining Justifications for the Rule Lack Merit

The TLC relies heavily on the Parrott Report to support the Rule (Opp. 8), but as Dr. Mundy explains, the Parrott Report suffers from myriad analytical flaws, ignores the realities of

---

[8] The TLC contends that Lyft's model is similar because it also dispatches Uber-affiliated drivers (Opp. 12), but this is no answer at all: the fact that the Rule hurts *two* companies that may seek to increase overall driver utilization makes the Rule worse, not better. Although the TLC also argues that "Via has significantly less affiliated vehicles than Uber and Lyft, yet retains the highest UR" (Opp. 13), this is a non-sequitur. As Petitioners' expert has explained, Via is an industry outlier that employs a completely different ride-hail method that focuses on shared rides (Tenn Aff. ¶ 11 n.4), thus making any comparison apples-to-oranges.

the ride-hail industry, and relies upon faulty data. (Mundy Aff. ¶¶ 56-72); *see St. James Nursing Home v. DeBuono*, 12 A.D.3d 921, 923-24 (3d Dep't 2004). While the TLC refers to the Parrott Report's so-called "simulations" (Opp. 8), they are facially defective as a matter of simple economics. As one example, the Parrott Report predicts that the Rule will increase both driver pay per trip *and* demand. (Ex. K at 53.) But the two are inversely related: as driver pay increases, fares will increase, resulting in a *decrease* in demand and thus fewer trips.[9]

The TLC also misconstrues Dr. Mundy's criticisms of the Rule and the Parrott Report. His point is not that the Rule is arbitrary simply because it is a "new policy" (Opp. 13), but rather because it is based on a report by non-industry experts who demonstrated a lack of knowledge of the realities of the ride-hail industry — including basing their study on a small pool of drivers who are not representative of the New York market (let alone Juno drivers in particular). (Mundy Aff. ¶¶ 41, 70.)

Finally, in response to Petitioners' argument that the Rule will adversely affect congestion and deprive historically underserved areas of New York (Pet. ¶¶ 84-87), the TLC argues that ride-hail companies will not completely forego "all" trips to underserved areas. (Opp. 12 (emphasis in original).) This is a red herring. Petitioners never claimed that "all" trips to underserved areas would stop. But because lower-demand areas may have the effect of lowering a company's "utilization rate" as the TLC calculates it, the Rule incentivizes companies and drivers to make *fewer* trips to underserved areas and increase fares for such trips, all of which

---

[9] (*Id.* at 57; Tenn Aff. ¶ 37 (higher fares lead to lower customer demand).)

will hurt customers and businesses in those areas. (Tenn Aff. ¶¶ 35-37.)[10]

II. PETITIONERS' CLAIMS ARE TIMELY AND NOT BARRED BY LACHES

The TLC's laches argument (Opp. 3) is an exercise in revisionist history. While the TLC claims that "Petitioners waited almost two months from the vote approving the final version of the rule," (*id.* at 4), it elides the fact that the Rule and record remained in flux until mid-January. (Pet. ¶¶ 55-57.) Nearly three weeks after the Rule was passed in December 2018, the TLC made fundamental modifications, including splitting driver "idle time." (*Id.*) The TLC also explained that the effective date would be extended from January 10 to February 1, 2019. (*Id.* ¶ 55 n.38.) In the interim, the TLC released a supplemental expert report on or around January 15, 2019 titled "Revised Estimates for the New Pay Requirement"[11] and published a January 11 public "Industry Notice" memorializing the February 1 effective date. (*Id.*)

While the Rule and record were still in flux, Petitioners could not fully develop their challenges or determine their precise harms. *See N.Y. State Ass'n of Ctys. v. Axelrod*, 78 N.Y.2d 158, 165 (1991); *Ganzi*, 2018 WL 6308662, at *9 ("[C]hallengers must have a clear indication of the facts giving rise to the legal action before the laches clock begins to tick."). After understanding in January that the TLC intended to begin enforcing the Rule "as is" without further changes, Petitioners promptly filed on January 30 — weeks later and well within the four-month statute of limitations. *See* CPLR 217. Accordingly, there was no "lengthy neglect or omission to assert a right" that could bar Petitioners' claims. *Saratoga Cty. Chamber of*

---

10 The Rule is also unreasonable because it paints all four companies with the same broad brush, despite dramatically different circumstances and daily dispatching volumes. (Pet. ¶¶ 17, 88-89.)

11 http://www.centernyc.org/the-new-york-city-app-based-driver-pay-standard-revised.

Commerce, Inc. v. Pataki, 100 N.Y.2d 801, 816 (2003).

Nor has there been any prejudice to the TLC. *See Capruso v. Vill. of Kings Point*, 23 N.Y.3d 631, 641 (2014). The TLC itself extended the effective date of the Rule, continually changed and clarified the Rule after it was passed, and had approximately one month to respond to the Petition. This is a far cry from the case upon which the TLC relies, where the respondents "were forced to attempt to formulate a defense to a variety of complex challenges within a matter of days." *Cantrell v. Hayduk*, 45 N.Y.2d 925, 927 (1978). There is also no prejudice to drivers because they are currently being paid pursuant to the Rule. (Heinzen Aff. ¶ 74.)[12]

III. THE MOTION FOR A PRELIMINARY INJUNCTION SHOULD BE GRANTED

A. Petitioners Have Demonstrated a Likelihood of Success on the Merits

For all of the reasons described above, as well as in Petitioners' opening submissions, Petitioners have demonstrated that they are likely to succeed on the merits of their claims.[13]

---

[12] The TLC's cited cases (Opp. 4 n.2.) are distinguishable because plaintiffs waited much longer to file and respondents had taken prejudicial acts in the meantime. *See, e.g.*, *Schulz v. State*, 81 N.Y.2d 336, 348 (1993) (plaintiffs waited nearly a year after law passed to challenge it and over $377 million in bonds had been sold in reliance on law). The TLC's reliance on *Clair v. City of New York*, 144 A.D.3d 98 (1st Dep't 2016), is misplaced as the court there held that respondents *could not* rely on laches.

[13] The TLC argues that Petitioners must show "extraordinary circumstances" because a preliminary injunction is the "ultimate relief" they seek. (Opp. 20 n.11.) The ultimate relief Petitioners seek is for the Rule to be vacated, not enjoined. *Bd. of Managers of Wharfside Condo. v. Nehrich*, 73 A.D.3d 822 (2d Dep't 2010) (cited at Opp. 20 n.11) is distinguishable, as the movant sought to compel defendants to take actions to restore their condominium unit, which also constituted the ultimate relief sought. *Id.* at 824. That is not so here. *See Fusha Japanese*

(cont'd)

B. Petitioners Will Suffer, and Are Already Suffering, Irreparable Harm

Since the Rule went into effect on February 1, it has increased driver pay costs to Juno. (Ben David Reply Aff. ¶ 4.) Critically, as the TLC recognizes, "*damages are not available* in the instant proceeding" should the Rule be vacated. (Opp. 22 n.12; Pet. Br. 15 n.12); *Suttongate Holdings Ltd. v Laconm Mgmt. N.V.*, 2017 WL 1133449, at *3 (Sup. Ct. N.Y. Cty. Mar. 27, 2017) (Ramos, J.). While the TLC argues that the Initial Utilization Rate Period somehow makes Juno's damages "speculative" (Opp. 22-23), this makes no sense. The fact that Juno will incur *even greater costs* after the Initial Period expires does not change the fact that it has already incurred harm now.

To date, Juno has attempted to comply with the Rule and remain a viable business going forward by passing on the increased costs through higher fares — but this too has harmed Juno by decreasing its ridership. (Ben David Reply Aff. ¶ 5.) Juno calculates that its ridership has decreased by approximately 30% from last month alone, (*id.*), which is particularly striking because Juno was on an upward growth trend. (*Id.*)[14]

The Rule thus puts Juno between a rock and hard place: it will either incur substantial

---

(cont'd from previous page)

Rest., Inc. v. Fusha, No. 601917/04, 2004 WL 5488042, at *1 n.1 (Sup. Ct. N.Y. Cty. Aug. 12, 2004) (Ramos, J.) (distinguishing between preliminary injunction on one hand and "ultimate relief" on the other), *aff'd*, 17 A.D.3d 226 (1st Dep't 2005).

[14] The TLC's own experts acknowledged that increased fares will result in decreased demand. (Ex. K at 57.) While Juno has suffered adverse impacts as a direct result of the implementation of the Rule, it is continuing to analyze the precise magnitude attributable to the Rule as distinguished from the impact of other factors, including the recently-enacted TLC congestion surcharge. (*See* Ben David Reply Aff. ¶ 6 n.1.)

costs for which there is no available recovery, or it can pass on these costs and lose customers it may never regain. *See Bell & Co., P.C. v. Rosen*, 114 A.D.3d 411, 411 (1st Dep't 2014) ("[l]oss of business" is irreparable harm); *Almanzar v Rodriguez*, No. 6533124/2018, 2018 WL 3428570, at *2 (Sup. Ct. N.Y. Cty. 2018) (Masley, J.).[15] This not only constitutes harm to ***Juno's*** business and goodwill, but it also constitutes irreparable harm to Juno's ***drivers*** — *i.e.*, the very people whom the TLC seeks to protect. Since the Rule went into effect, the average hourly pay for Juno's drivers has decreased by approximately 17%. (Ben David Reply Aff. ¶ 6.)

The Rule imposes another form of irreparable harm on Juno by forcing it to change its driver-friendly business model to attempt to increase its "utilization rate" (as the TLC calculates it) and avoid having its mandated costs increase relative to its competitors. (*Id.* ¶¶ 7-8; *see i4i Ltd. P'ship v. Microsoft Corp.*, 598 F.3d 831, 861-62 (Fed. Cir. 2010), *aff'd*, 564 U.S. 91 (2011) (irreparable harm where party must "change its business strategy to survive"). Indeed, the TLC suggests that Juno should simply change its business model, including by "logging off drivers who do not accept trips," (Opp. 12, 14, 23), a practice that drivers have *complained about* to the TLC. (Heinzen Aff. ¶ 60.) Requiring Juno to change its business, which currently allows for maximum driver flexibility and offers drivers a way to increase their overall utilization when driving for multiple companies, will result in an incalculable loss of goodwill. The TLC's response that Juno should do so (Opp. 23-24) — even if such arbitrarily-compelled changes are

---

[15] For these reasons, the TLC's cited cases (Opp. 21-22) are inapposite, as the alleged harm was predicated on economic loss and the plaintiff had an adequate remedy at law.

contrary to drivers' best interests — only reinforces that relief is necessary.[16]

The Initial Utilization Rate Period does not alleviate these harms, as the TLC claims. (Opp. 23.) Juno has already lost customers during this period and will continue to do so while the Rule remains in place, thus leading to an ever-lower "utilization rate" calculation and thus ever- higher costs under the Rule. Moreover, the TLC will determine company-specific utilization rates for future pay standards based on Juno's utilization data during the Initial Utilization Rate Period.

C. <u>The Balance of Equities Weighs in Petitioners' Favor</u>

Juno's harms are ongoing and real, and although the TLC contends that the Rule "is intended to benefit the FHV drivers with a livable wage," the result of the Rule is just the opposite. If allowed to continue, the Rule will have disastrous effects on Juno, its drivers, and competition in the ride-hail industry — hurting companies, drivers and customers alike, increasing congestion, harming underserved areas, and chasing Juno, a company committed to providing maximum flexibility to drivers and increasing overall utilization, out of the market. All of these effects stand in direct derogation of the TLC's stated goals in passing the Rule.

---

[16] The TLC's cases on this point (Opp. 22) are readily distinguishable. *See City of Buffalo v. Mangan*, 49 A.D.2d 697, 697 (4th Dep't 1975) ("no urgent situation exist[ed]" because the plaintiff itself was able to preserve the status quo); *Bd. of Educ. of* Union Free *Sch. Dist. No. 3 v. Nat'l Educ. Ass'n of U.S.*, 63 Misc. 2d 338, 339, 341 (Sup. Ct. Suffolk Cty. 1970) (declining to enjoin "urgent advisory" which could not be enforced).

CONCLUSION

For the foregoing reasons and those set forth in Petitioners' opening submissions, the Court should grant Petitioners' motion for a preliminary injunction and vacate the Rule.[17]

Dated: New York, New York
March 12, 2019

SKADDEN, ARPS, SLATE
MEAGHER & FLOM LLP

/s/ George A. Zimmerman
George A. Zimmerman
Alexander C. Drylewski
Abigail E. Davis
Four Times Square
New York, New York 10036
Phone: (212) 735-3000
Fax: (212) 735-2000
george.zimmerman@skadden.com
alexander.drylewski@skadden.com
abigail.sheehan@skadden.com

KAPLAN RICE LLP
Joseph A. Matteo
142 West 57th Street, Suite 4A
New York, New York 10019
Phone: (212) 235-0300
Fax: (212) 235-0301
jmatteo@kaplanrice.com

Attorneys for Petitioners

---

[17] Contrary to Respondents' contention (Opp. 26), Petitioners are entitled to seek costs pursuant to CPLR 8101. *See Robles v. New York City Dep't of Citywide Admin. Servs.*, 48 Misc. 3d 888, 901 (Sup. Ct. N.Y. Cty. 2014) (Billings, J.).

PRINTING SPECIFICATIONS STATEMENT

1. Pursuant to N.Y.C.R.R. § 202.70(g), Rule 17, I hereby certify that the foregoing Memorandum of Law was prepared on a computer using Microsoft Word. A proportionally spaced typeface was used as follows:

   Name of Typeface: Times New Roman
   Point Size: 12
   Line Spacing: Double

2. The total number of words in the foregoing Memorandum of Law, inclusive of point headings and exclusive of the caption, table of contents, table of authorities, signature block and the certificate of compliance is 3,864 words.

Dated: New York, New York
March 12, 2019

/s/ George A. Zimmerman