SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

OMAHA LLC and VULCAN CARS LLC,	
	Index No. _____________
Petitioners,	
	Motion Sequence No. ___
v.	
	AFFIDAVIT OF RONEN BEN DAVID IN SUPPORT OF PRELIMINARY INJUNCTION AND TEMPORARY RESTRAINING ORDER
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,	
Respondents.	

STATE OF NEW YORK)
ss.:
COUNTY OF NEW YORK)

Ronen Ben David, being duly sworn, deposes and says:

1. I am the Chief Executive Officer of Juno USA LP ("Juno" or the "Company"). I have served as CEO since February 2018, and served in various other leadership roles at Juno since April 2015.

2. I submit this Affidavit in support of Petitioners' motion for a preliminary injunction and temporary restraining order to enjoin Respondents New York City Taxi and Limousine Commission (the "TLC") and Meera Joshi from enforcing the driver minimum pay rule passed by the TLC on December 4, 2018 (the "Utilization-Based Rule" or "Rule").

3. The statements made herein are based on my personal knowledge and experience, as well as my review of Juno's internal records, the TLC's Utilization-Based Rule and related materials, and the report upon which the Rule is based (the "Parrott Report").

Juno and Petitioners

4. Juno is a technology company that connects independent contractor for-hire drivers with passengers seeking rides. Since Juno launched in New York City in 2016, it has attempted to set itself apart from other ride-hail companies through its emphasis on, and commitment to, the fair and ethical treatment of its drivers. Juno's entire business model is premised on the theory that if it treats its drivers better than the competition, it will succeed. Indeed, because of Juno's fair and equitable treatment of its drivers, it has the highest retention rate among its competitors: 60% of Juno drivers are still using the app after one year.

5. In 2017, Juno was acquired by international ride-hail company Gett, which shares Juno's vision. Gett, like Juno, believes that "if you treat drivers better, they will treat riders better." The companies have remained committed to operating in New York City through black car bases Omaha LLC and Vulcan Cars LLC ("Petitioners").

6. While Juno may currently be smaller than its main ride-hail competitors in New York City, since its inception, the Company has fought to gain drivers, customers and market share in New York City.

7. Petitioners are wholly-owned subsidiaries of Juno and are regulated as black car base owners by the TLC. Petitioners dispatch pre-arranged trips (via the Juno smartphone application or "app") to TLC-licensed for-hire vehicles ("FHVs"), which are independently owned, leased, or rented – and operated by TLC-licensed FHV drivers.

8. As of the date of this Affidavit, Petitioners dispatch approximately 35,000 combined daily trips via the Juno app in New York City.

The TLC Rule and its Impact on
<u>Juno and New York City's Ride-Hail Industry</u>

9. On December 4, 2018, the TLC adopted the Utilization-Based Rule that, if not stopped, will have a severe adverse impact on Juno and the New York City ride-hail industry.

10. I understand that the Rule is an attempt to provide drivers with protections relating to their income. Juno and I wholeheartedly support paying drivers a fair and sustainable wage. Unfortunately, the TLC's Rule seeks to establish a driver wage that is unfair and irrational, and threatens to disproportionately harm Juno and the very drivers the Rule ostensibly seeks to protect.

11. As I understand it, the Rule establishes a new pay standard that will apply to four ride-hail companies in New York City that dispatch, on average, ten thousand or more trips per day, which the TLC refers to as "high-volume" FHV services. The Rule establishes this minimum pay based, in part, on each company's specific "utilization rate." As used in the Rule and the Parrott Report commissioned by the TLC, "utilization" refers to the percentage of time that drivers who are available to accept dispatches from a base spend actually transporting passengers on trips for that base. Thus, it appears that the utilization rate is calculated by dividing the total amount of time the drivers spend transporting passengers by the total amount of time they are logged into a company's app.

12. Under the Rule, a company's lower utilization rate results in higher minimum driver pay. This disproportionately harms companies that, through no fault of their own, may have lower utilization rates due to a variety of factors outside of their control. These factors may include the acceptance rate of the drivers, the size and age of the company, the relative popularity and awareness of the app, the flexibility the company offers drivers in accepting rides, the willingness of drivers to accept trips from that app over others, and the profiles of the drivers

of that app. For instance, Juno drivers typically accept far less than 100% of available rides and are not penalized in any way for declining trips. This means that Juno is offering more rides than its drivers are actually accepting, and because the drivers are independent contractors, Juno cannot dictate which trips they choose to accept.

13. The Rule does not sufficiently account for drivers who drive for more than one ride-hail company. This is a major problem because multi-app drivers comprise the majority of the New York market. All or virtually all of Juno's drivers also drive for other FHV bases or ride-hail companies such as Uber or Lyft. In fact, Juno has exclusively recruited drivers who already drive for larger ride-hail companies. Juno has attempted to increase the overall "utilization" of these drivers by increasing the number of potential trips available to them without adding new drivers to the pool and thus without adding congestion to New York City. The new Rule essentially punishes Juno for doing so by assigning it a lower utilization rate and thus requiring it to pay its drivers more than competitors. I understand that when a driver is logged onto more than one app, the TLC will split that driver's "idle time" equally to each of the apps the driver is logged into when calculating utilization rates. This will hurt smaller companies like Juno because it will effectively raise the utilization rates of larger companies by reducing their drivers' idle time simply by virtue of their drivers logging into other apps to find trips.

14. I understand that some ride-hail companies have policies that may require their drivers to accept a certain number of trips, while Juno does not.[1] Juno's decision not to impose a trip-acceptance requirement on its drivers is another example of its efforts to provide flexibility

[1] The one caveat is where Juno's geographical tracking technology determines that a driver is waiting in line at the airport to pick up a passenger, in which case the app will place the driver offline as the driver cannot accept any trips during that time.

and support to its drivers. But this driver-friendly feature will result in Juno having a lower utilization rate, and therefore being required to pay its drivers more than its competitors pay their drivers for providing the same transportation services. Thus, it no longer will be feasible for Juno to continue its driver-flexibility policy if the Rule is allowed to stand, to the detriment of its drivers.

15. Additionally, the TLC's minimum pay formula fails to account for the bonuses and promotions that companies offer their drivers to encourage them to use certain ride-hail apps. Companies like Juno pay these amounts, which can be significant, directly out-of-pocket, but inexplicably are given no credit in the TLC's pay formula for making such payments.

16. In what appears to be an effort to temporarily fix the issues described above, the TLC's Rule provides an "Initial Utilization Rate" for the first twelve months following the effective date of the Rule, unless a company petitions for a company-specific rate during that time period. The Rule states that this will be the "aggregate" Utilization Rate of all bases, as calculated by the TLC. It is not at all clear what this means, and in any event, companies with higher utilization rates can opt out of this "aggregate" rate in favor of using their higher company-specific utilization rate. These details are enormously consequential because they essentially dictate ride-hail companies' costs.

17. In addition, in order to compensate drivers for time spent returning to the City without a passenger on trips that end outside of the City, the Rule assigns a utilization rate of 50% for all companies resulting in a per minute rate of $0.574 and per mile rate of $1.262 for wheelchair accessible vehicles ("WAVs") and $1.636 for non-WAVs for time spent and miles driven outside of the City.

18. Relying on what little detail the Rule does provide, and making assumptions based on that limited information, I estimate that the new Rule will cost Juno upwards of an additional approximately $2.5 million per month over its current costs, unless Juno increases its fares to cover the difference.

19. Where Juno's mandated driver pay is higher than its competitors, this will cause customers to use other ride-hail companies that can afford to offer lower fares, as well as higher driver bonuses and incentives, based on their size and/or higher utilization rates under the TLC's formula. These are lost customers that Juno may never be able to win back. Moreover, a smaller customer base will mean fewer fares for Juno drivers, which will further lower Juno's "utilization rate," compounding the damage done by the Rule.

20. The harm that the Rule will impose on Juno stretches beyond financial damage. To succeed in the new regulatory environment caused by the Rule, Juno will have no choice but to impose new restrictions on its drivers, cut back on the services it provides them and limit its growth. The Rule will thus cause immeasurable and irreparable harm to Juno's business and reputation.

21. Accordingly, for at least these reasons, a more sound and effective driver rule can and should be developed. Juno stands ready to support such a rule, as long as it is fair and reasonable to all parties affected.

By:____________________
Ronen Ben David
Chief Executive Officer of Juno USA LP

Sworn to me before this
28 day of January, 2019.

____
Notary Public

BRIAN SUNBERG
Notary Public-State of New York
No. 01SU6379271
Qualified in New York County
My Commission Expires August 13, 2022

BRIAN SUNBERG NOTARY PUBLIC STATE OF NEW YORK

PRINTING SPECIFICATIONS STATEMENT

1. Pursuant to N.Y.C.R.R. § 202.70(g), Rule 17, I hereby certify that the foregoing affidavit 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 (Footnote: 10 point)
   Line Spacing: Double

2. The total number of words in the foregoing affidavit, inclusive of point headings and exclusive of the caption, the signature block and the certificate of compliance is 1,624 words.

Dated: New York, New York
January 28, 2019

/s/ George A. Zimmerman