



INDEPENDENT DRIVERS GUILD

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February 13, 2024

NYSCEF & Federal Express Priority Overnight

Hon. J. Mabelle Sweeting, J.S.C.
Supreme Court of the State of New York
New York County, Part 62
80 Centre St., Room 279
New York, NY 10013

Re: NYTWA, et al. v. Do, et al.
Index No. 160795/2023
**Non-Party Independent Drivers Guild's Letter Request for, *Inter Alia*,
Leave to Appear Amicus Curiae and to File an Amicus Brief**

Dear Hon. Sweeting:

Please accept this letter on behalf of non-party Independent Drivers Guild (“IDG”) in support of its request to appear amicus curiae with regard to the above referenced Article 78 Proceeding (the “**Proceeding**”).¹ Particularly, IDG writes to respectfully request that this Court (1) grant IDG leave to (i) appear amicus curiae and (ii) file an amicus brief for the Court’s consideration in opposition to Petitioners’ pending Order to Show Cause seeking, *inter alia*, a temporary restraining order (“**TRO**”) and an injunction enjoining TLC’s October 18, 2023, decision to open applications for Electric Vehicle (“**EV**”) For-Hire Vehicle (“**FHV**”) licenses (the “**OTSC**”) (Motion Sequence No. 001) (*see* Dkt. [37-43](#)); and (2) accept this letter motion in lieu of

¹ The Proceeding was bought by petitioners New York Taxi Workers Alliance (“**TWA**”), Amara Sanogo (“**Sanogo**”), and Richard Chow (“**Chow**”) (collectively, “**Petitioners**”) against respondents David Do, as Commissioner and Chair of the New York City Taxi & Limousine Commission (“**Do**”), the New York City Taxi & Limousine Commission (“**TLC**”), and the City of New York (“**NYC**”) (collectively, “**Respondents**”).



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a formal motion on behalf of IDG or otherwise grant IDG leave to file a formal motion seeking the relief sought herein.²

As is detailed below, this Proceeding involves questions of important public interest concerning, among other things, EV FHV licensing upon which IDG seeks to contribute to assist the Court. IDG is in a unique position to do so given that it is an FHV driver-led and driver-powered advocacy group fighting to improve working conditions of rideshare drivers nationwide—and has successfully done so for years since its founding in 2016—warranting an appearance *amicus curiae* and to file its proposed Amicus Brief (the “**Amicus Brief**”). Indeed, as the mission statement on IDG’s website succinctly puts it, “[IDG’s] **primary mission is to unite drivers in the fight for the right to collectively bargain, which is the only way to stop driver exploitation by giving drivers the power to negotiate equitable work conditions for themselves.**” Driversguild.org, About IDG (Feb. 3, 2024), <https://driversguild.org/about-us/>. IDG’s vast experience in the transportation industry includes, among other things, representing approximately 80,000 FHV drivers in New York City and acting as an advocate for over 250,000 rideshare drivers across New York, New Jersey, Connecticut, Massachusetts, Illinois, and Florida. IDG has thousands of member drivers to whom it supplies a wide array of member services, including advocacy and legal assistance. Given its involvement in the for-hire transportation industry, IDG believes it can offer the Court unique insight that would assist the Court with its determination regarding the OTSC. As such, IDG’s requests to, *inter alia*, appear *amicus curiae* and to file an Amicus Brief in opposition to Petitioners’ OTSC, and IDG’s requests herein should be granted.

I. Petitioners’ Proceeding, Petition, and Causes of Action

As a brief background, Petitioners commenced this Proceeding by filing their Petition (the “**Petition**”) against Respondents on November 2, 2023. (*See* Dkt. [1](#).) At the center of Petitioners’ causes of action are contentions that the TLC’s decision to open applications for FHV licenses for EVs made on October 18, 2023, (the “**Decision**”) in connection with Section 59A-06(a)(1) of title 35 of Rules of City of New York (“**RCNY**”) (the “**Rule**”) was, *inter alia*, improper and illegal. Petitioners assert the following purported causes of action: (1) a First Cause of Action for, violation of the City’s Administrative Procedure Act (“**CAPA**”) because the Decision was allegedly made without notice-and-comment rule making and is therefore *ultra vires*; (2) a Second Cause of Action for alleged violation of 35 RCNY § 59A-06(a)(1) because the Decision was *ultra vires* as TLC was to issue a discrete number of new FHV licenses after meaningful review of enumerated factors; and (3) a Third Cause of Action asserting that the Decision is allegedly arbitrary and capricious because TLC did not properly assess the policy outcomes. (*See, e.g.*, Dkt. [1](#).)³

II. Petitioners’ OTSC and TRO

² IDG proceeds with the instant letter rather than by Notice of Motion or an Order to Show Cause in light of, *inter alia*, the directive in the second Interim Order as set forth below instructing the Parties to first obtain leave of court for any future filings on the OTSC and the shortened timeframe leading up to the February 14th hearing.

³ On December 13, 2023, Respondents filed their Amended Verified Answer (*see* Dkt. [75](#)), and Petitioners filed a Verified Reply to Respondents’ Verified Answer on December 13, 2023 (*see* Dkt. [89](#)).



Simultaneously with filing their Petition, Petitioners also filed their OTSC. Petitioners seek a judgment vacating and annulling the Decision, restrains, and a preliminary injunction, and they further argue, *inter alia*, that there is a likelihood of success on the merits of their causes of action because TLC's Decision purportedly violates CAPA, is *ultra vires*, and is arbitrary and capricious because TLC did not properly assess the policy outcomes of the Decision. (*See, e.g.*, Dkt. [43](#).) Particularly, the OTSC seeks an Order: (1) pursuant to CPLR § 7806, issuing a judgment vacating and annulling the TLC's reinstatement of the EV FHV license Rule; (2) pursuant to CPLR § 6301, (i) enjoining Respondents, pending a determination by the Court on the Petition, from any further implementation of the challenged reinstatement of the EV FHV license Rule, (ii) enjoining Respondents, pending a determination by the Court on the Petition, from issuing new EV FHV licenses, (iii) enjoining Respondents, pending a determination by the Court on the Petition, from accepting applications for new EV FHV licenses, and (iv) enjoining Respondents, pending a determination by this Court on the Petition, from processing applications for new EV FHV licenses; (3) for other relief; and (4) as initially proposed but subsequently modified as is detailed below, a TRO enjoining Respondents, pending a determination by the Court on the Petition, from issuing new EV FHV licenses, accepting applications for new EV FHV licenses, and processing applications for new EV FHV licenses. (*See* Dkt. [41](#).)

On November 8, 2023, Your Honor, following a hearing and oral argument, signed the proposed OTSC with, *inter alia*, modifications as to the TRO. (*See* Dkt. [53](#).) Regarding the TRO, the Court cited to its Interim Order dated November 9, 2023 (*see* Dkt. [54](#)), which granted the TRO with certain modifications that differ from the original TRO having the effect of (1) enjoining Respondents, as of 9:00 a.m. on November 13, 2023, pending a determination of the Petition by the Court, from (i) accepting applications for new EV FHV licenses and (ii) if such applications are not received by 9:00 a.m. on November 13, 2023, issuing new EV FHV licenses; and (2) permitting Respondents to accept and process any application for a new EV FHV license that it receives prior to 9:00 a.m. on November 13, 2023, and may issue an EV FHV license to a qualified applicant. (*See id.*) Respondents filed opposition to the OTSC (*see* Dkt. [68-69](#)), and Petitioners filed a reply (*see* Dkt. [76-88](#).) Respondents filed a sur-reply (*see* Dkt. [99-104](#)), and Petitioners filed a sur-reply as well (*see* Dkt. [105](#)).⁴

The OTSC is returnable on February 14, 2024, at 10:00 a.m. for a remote hearing via Microsoft Teams before Your Honor (*see* Dkt. [98](#)), and IDG accordingly makes its instant requests in anticipation thereof. As detailed below, the OTSC should be denied in its entirety.

III. IDG Should Be Granted Leave to Appear Amicus Curiae and Thereafter File an Amicus Brief in Opposition to Petitioners' OTSC

⁴ A second Interim Order was issued dated January 8, 2024, providing, *inter alia*, that, following the Parties filing letter applications in which Petitioners sought leave to amend the scope of the existing TRO, Respondents sought leave to file a sur-reply, and, if accepted, Petitioners also sought leave to file a brief reply, (i) Petitioners and Respondents were each permitted to file their respective reply papers pursuant to the schedule set forth therein, (ii) the Parties must first obtain leave of court for any future filings on the OTSC, (iii) and scheduled a remote hearing on February 14, 2024. (*See* Dkt. [98](#).)



IDG should be granted leave to appear amicus curiae and, upon granting that relief, should also be granted leave to file an amicus brief in opposition to Petitioners' OTSC because (1) this Proceeding undoubtedly involves questions of important public interest and IDG is in a unique position to weigh in to aid in the Court's determination, and (2) various criteria are met that warrant granting IDG's requests, including that this Proceeding involves questions of important public interest.

i. *This Proceeding Involves Questions of Important Public Interest*

"The function of an 'amicus curiae' is to call the court's attention to law or facts or circumstances in a matter [sic] . . . that might otherwise escape its consideration . . ." *Kruger v. Bloomberg*, [768 N.Y.S.2d 76](#), 80 (Sup. Ct. N.Y. Co. 2003) (quoting *Kemp v. Rubin*, [187 Misc 707](#), 708 (Sup. Ct. Queens Co. 1946). "In cases involving questions of important public interest leave is generally granted to file a brief as amicus curiae." *Id.* (citation omitted); see also *Matter of Colmes v. Fisher*, [271 N.Y.S. 379](#), 380 (Sup. Ct. Erie Co. 1934) ("[i]n cases involving questions of important public interest leave is generally granted to file a brief as amicus curiae"); *Empire State Ass'n of Assisted Living, Inc. v. Daines*, [887 N.Y.S.2d 452](#), 455-56 (Sup. Ct. Albany Co. 2009) ("[w]here a case involves 'questions of important public interest leave is generally granted to file a brief as amicus curiae'" (quoting *Kruger*, [768 N.Y.S.2d at 76](#))).

Indeed, this Proceeding involves questions of important public interest, and IDG is also in a unique position to weigh in on those questions of important public interest to assist with the Court's decision on the OTSC. At the center of the OTSC, and the associated TRO that should be vacated upon denying the OTSC, is the Petitioners' challenge to the TLC's Decision to issue EV FHV licenses under the subject Rule. By that Decision, TLC can potentially proceed with accepting applications and issuing new EV FHV licenses to qualified applicants. If Petitioners succeed on their motion, a judgment would issue vacating and annulling the TLC's Decision. That circumstance would profoundly impact the many FHV drivers whom IDG represents and for whom IDG advocates. Indeed, IDG represents and advocates for thousands of FHV drivers, including in New York City and New York State (and in multiple other states), and therefore IDG is in a unique position to provide insight and to assist the Court in rendering its decision. Accordingly, the OTSC demonstrably concerns questions of public interest, and IDG should be granted leave to appear amicus curiae and file its Amicus Brief.

ii. *Criteria Are Met Warranting Granting IDG's Requests*

Additionally, regarding Article 78 proceedings, several criteria are considered in evaluating requests for amicus curiae status, including the following: "(1) whether the movant seeking amicus curiae status moves by order to show cause; a motion by order to show cause seeking amicus is the preferable procedure as the trial court can then set an expeditious return date and procedure for providing notice by specifying how the parties are to be served, so as not to interfere with the main action; (2) whether the affidavit/affirmation in support indicates the movant's interest in the issues to be briefed and sets forth the issues, with a proposed brief attached;



(3) whether the affidavit/affirmation in support indicates: (a) a showing that the parties are not capable of a full and adequate presentation and that movant could remedy this deficiency; or (b) that movant would invite the court's attention to the law or arguments which might otherwise escape its consideration; or (c) that its amicus curiae brief would otherwise be of special assistance to the court; and (4) whether the amicus curiae application or status would substantially prejudice the rights of the parties, including delaying the original action/proceeding; and (5) whether the case concerns questions of important public interest." *Kruger*, [768 N.Y.S.2d at 82](#). IDG's requests should be granted as the aforesaid criteria are present, as detailed below.

The First Criterion is met notwithstanding that IDG is proceeding by way of its instant letter rather than by a formal motion by Order to Show Cause (*see, supra*, fn.2) for several reasons. IDG has filed its letter expeditiously in advance of the OTSC hearing date, and that filing has provided the Parties with notice via email to their respective counsels through NYSCEF. Additionally, making its requests via this letter is consistent with the Court's directive in the second Interim Order that the Parties first obtain leave of court for any future filings on the OTSC. (*See* Dkt. [98](#).) As such, the instant letter and requests do not interfere with this Proceeding. Thus, the First Criterion is met.

The Second Criterion is also met as IDG indicates herein, and in its Amicus Brief and Affirmation annexed hereto as **Exhibit 1**, its interest in the issues to be briefed and sets forth the issues that it undertakes to address. To be sure, IDG is uniquely positioned to provide insight to the Court that may assist in the Court's determination of the OTSC, as IDG is a driver advocacy organization with thousands of members in New York City. Indeed, IDG operates in the transportation industry and represents and advocates for thousands of drivers, including drivers operating in the taxi and limousine space in New York City and throughout New York State (and other States). In light of that, IDG (and the many thousands of drivers it represents and advocates for stands to be deeply impacted by the outcome of the pending OTSC (and the effects of the associated TRO have already been felt) which may result in imposing draconian restrictions on the number of new EV FHV licenses that may be issued should Petitioners succeed. As such, IDG is in a position to brief, *inter alia*, the issues arising in connection with Petitioners' arguments that the Decision is allegedly arbitrary and capricious, and believes it can offer further insight in that regard and in opposition to the OTSC. Thus, the Second Criterion is met.

The Third Criterion is established because, among other things, IDG's Amicus Brief would otherwise be of special assistance to the Court given IDG's unique position as a driver advocacy organization. IDG's proposed Amicus Brief provides insight as to, among other things, the potential ramifications that would be felt by IDG and its New York City driver members stemming from a decision to grant the OTSC. IDG's Amicus Brief would also be of special assistance to the Court particularly with regards to providing clarity as to the adverse effects and burdens that would be felt by IDG's member drivers. (*See* **Ex. 1**, Amicus Brief.) Thus, the Third Criterion is established.

The Fourth Criterion is present here as no Party will be prejudiced upon the Court granting IDG's requests herein to appear amicus curiae and file its Amicus Brief. Indeed, the Parties have



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already appeared and argued their respective positions for and against the TRO and have also fully briefed the OTSC, and, therefore, have made their respective arguments for and against the OTSC and TRO known. As such, neither Party would be prejudiced by permitting IDG to appear and file its Amicus Brief. Thus, the Fourth Criterion is present.

Finally, the Fifth Criterion is established here as this Proceeding does indeed concern questions of public interest, which have a potential direct impact on the transportation industry as a whole and IDG as is demonstrated above. Thus, the Fifth Criterion is established.

Accordingly, the requisite criteria are met, and IDG's requests herein should be granted.

Based upon the foregoing, IDG respectfully requests that this Court grant it leave to (1) appear amicus curiae and (2) file an amicus brief for the Court's consideration in opposition to Petitioners' pending OTSC.

Respectfully Submitted,

Independent Drivers Guild

By: /s/Scott Cantone
Of Counsel

Cc: All parties via NYSCEF



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