New York Taxi Workers Alliance

National TWA, AFL-CIO, Intl. Transport Workers' Federation

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Commissioner / Chair Meera Joshi
NYC Taxi and Limousine Commission
33 Beaver Street, 22nd Floor
New York, NY 10004

Dear Commissioner Joshi,

Greetings. On behalf of the 21,000-member New York Taxi Workers Alliance, I am writing to follow up on our conversation about the Driver Protection Unit's decisions to not seek enforcement of TLC rules governing vehicle owner or agent conduct. Over all, it has been dismaying to learn that complaints by drivers are processed in an entirely different manner than complaints against drivers; in every case, the differential treatment disadvantages the drivers. In some cases, the TLC simply takes no action even where there is a clear violation of the rules.

Such patterns erode drivers' trust in the TLC, creating the impression that the Commission will prosecute drivers as aggressively as the law allows, with minimal investigation, while looking the other way when corporate respondents commit *prima facie* violations of TLC rules, with thousands of dollars at stake. Most troublingly, given the overwhelmingly minority makeup of the driver population, and the overwhelmingly non-minority makeup of the agents in this industry, TLC's selective enforcement of its rules has the impact of creating a racially discriminatory enforcement scheme.

Our concerns about the DPU's inability to fairly prosecute owner and agent violations is amplified by the fact that the TLC will soon be charged with the responsibility of regulating the terms of FHV leases and financing and FHV driver pay. As mandatory arbitration is nearly universal in the app-based FHV sector, it is essential that the TLC develop a robust culture and practice of enforcement against wrongdoing by corporate licensees as the stakes for drivers will soon be much higher.

We write to bring this to your direct attention with the hope that complaints against corporate licensees will be enforced by the DPU and that the TLC will establish parity between its enforcement procedure and culture, regardless of whether the respondents are drivers or corporations.

The TLC maintains disparate prosecutorial procedures for complaints made about driver conduct, and corporate licensee conduct, respectively.

In our conversations with the DPU, we have been dismayed to learn that the TLC handles complaints made by drivers in a completely different manner than it does complaints made about drivers.

We have long understood that when passengers make complaints about drivers, the TLC's only inquiry is whether the allegations, if true, constitute a violation of TLC rules. No inquiry is made regarding whether or not complaining witnesses can provide corroborating evidence, and the TLC does not contact drivers before a summons is issued. Drivers are not given an opportunity to present exculpatory evidence to prosecutors before the agency decides to issue a customer complaint summons. Drivers are not even presented with the underlying evidence of the charges against them until a hearing is held. Yet, even when a complaining witness' testimony is clearly contradicted by documentary evidence at a hearing, TLC does not withdraw the charges, allowing OATH to sustain charges against drivers.[1]

By contrast, it appears that the TLC always makes sure to check in with potential corporate respondents to get their side of the story before deciding whether or not to issue a summons.

In this pre-summons hearing process, after allowing corporate respondents to explain their side of the story, it seems that the TLC is looking to determine whether or not there is any difference between the complaining witness' version of events, and the potential respondents. From what we've seen, if there is, the TLC will not issue a summons. Needless to say, this is not the standard applied for consumer complaints against drivers.

> **Example**: Driver One approached the DPU with a complaint that the FHV leasing company he obtained a vehicle from had electronically forged his signature onto a contract that extended his payment obligations by several weeks and several thousands of dollars.
>
> Mr. One's car was out of service due to the vehicle owner/leasing company's failure to renew the FHV license on time. When he returned to the leasing company's garage, he was told to sign an electronic signature box that did not display any contract or other text, "in order to get your car back." Later, he found his signature from that date imposed onto to a second vehicle lease agreement. Additionally, nothing in this second contract voided the previous contract, simply creating an additional obligation of tens of thousands of dollars on top of the previous contract.

[1] *See*, TLC v. Thierno Diallo, Summons 10061619C, finding Mr. Diallo guilty of refusal where the complaining witness had testified that she had properly contained dogs in appropriate containers when Mr. Diallo refused her service. Mr. Diallo produced photographs he had taken, showing the dogs loose on the street, while the complaining witness held a shopping cart at her side. He also introduced a recording he had made where he repeatedly told the complaining witness, "I can't take the dog if it's not in a case." Despite this evidence, he was found guilty of refusal. Mr. Diallo's independent evidence directly contradicted the witness' hearing testimony and her 311 complaint. He appealed, and the refusal charge was remanded for a new hearing. What is most dismaying about this case is that after an appeal, on remand, the TLC still pursued the refusal charge against Mr. Diallo even though it had already seen the clearly exculpatory evidence at the initial hearing. Although Mr. Diallo prevailed at the remanded hearing, one wonders why TLC would not use its prosecutorial discretion to withdraw a charge that was clearly based on an inaccurate complaint. While Mr. Diallo could only prevail thanks to his documentary evidence, it is worth noting that, at other times, the TLC has summonsed drivers for the act of taking pictures of complaining witnesses during incidents that would later lead to TLC summonses. *See*, *e.g.*, *TLC v. Kabore*, Summons No. CV10077276S, charging respondent with "Threats, Harassment, and Abuse" for taking a photograph of the complaining witness' vehicle.

DPU told Mr. One that it would not pursue enforcement of TLC's rule against fraud by FHV vehicle owners because the leasing company denied Mr. One's allegations and that the case would be "your word against theirs." This seems a strange stance for the TLC to take with Mr. One as the TLC has never backed away from swearing contests when drivers are respondents. Almost every consumer complaint involving driver conduct during a trip is merely a matter of "your word against theirs," yet the TLC requires no higher evidentiary standard before issuing driver summonses. Stranger still, is the fact that Mr. One did have corroborating evidence: a copy of the second contract provided him shows an identical signature of his time stamped with the exact same second appearing on multiple pages of the contract he allegedly agreed to. Of course, it would be impossible to produce multiple, identical signatures at the same exact second. Most surprisingly, the TLC did not question the character of the company's management even though the FHV owner attempted to mislead the TLC about the amount of total payments Mr. One had made by over $20,000 by providing the TLC with outdated records.

Further TLC also said it did not want to pursue a complaint because it could not identify a detriment to Mr. One, apparently not viewing the creation of thousands of dollars of additional contractual liability procured through forgery as a detriment. We cannot recall a time when the TLC required a detriment to the passenger before issuing summonses against drivers for conduct such as failing to provide a receipt, or failing to turn the taximeter on as soon as the trips begins. Presumably, TLC pursues these summonses because the rules require specific conduct by drivers and failure to follow those rules requires enforcement, without any inquiry into whether a complainant suffers any detriment.

Consistently, TLC's approach to prosecution betrays a distrust of, or worse, animus to its drivers. When customers complain of driver conduct, it seems that allegations are taken at face value, yet a driver's word alone is insufficient even for a summons to be issued.

The TLC has declined to enforce its rules where there are *prima facie* violations, punishing drivers for having "unclean hands" for conduct that falls outside TLC's purview, all the while protecting corporate licensees' financial interests.

NYTWA members have found the TLC unwilling to issue summonses against corporate licensees even when there is undisputed, *prima facie* evidence of rule violations that often involve thousands of dollars' worth of improper charges. Again, this is in sharp contrast to an expansive interpretation of rules governing driver conduct and pursuit of zealous prosecution and creative legal theories against drivers.

Example: ***Driver Two****: Wage Theft and Unreturned Deposit Funds:* Like many taxi drivers trying to make ends meet as the City failed to regulate the unchecked growth of the FHV sector, Mr. Two found himself burdened with the full cost of weekly DOV payments after his driving partner left him and he was unable to find another partner to drive with.

Faced with the choice of continuing to work with his car from Taxi Company A, while paying for both shifts and facing impossibly impoverishing take-home pay, or breaking the contract and finding another taxi, Mr. Two chose the latter.

After Mr. Two returned the taxicab he had been leasing to Taxi Company A, and had received his last paycheck, a Taxi Company A manager found Mr. Two and literally grabbed his last paycheck out of his hands. TLC Rule 58-21(f) requires owners and agents to pay drivers all credit card monies received weekly. This obligation is affirmative and absolute—nothing in the Rules allows exceptions that would excuse wage theft under any circumstances. Nonetheless, the TLC sanctioned Taxi Company A's wage theft saying it would not seek to recover Mr. Two's stolen wages because Mr. Two had "unclean hands." Similarly, the TLC refused to enforce Rule 58-21(e)(4)(iv)(B) which requires owners to remit pro-rated amounts of a deposit to drivers every week during the pendency of the lease. During the lease, Taxi Company A never remitted pro-rated portions of the deposit to Mr. Two although it should have. To be clear, Taxi Company A's obligation to remit portions of the deposit was a pre-existing obligation that All-Taxi violated each and every week during the pendency of the lease, long before Mr. Two returned his car. Nonetheless, the TLC decided that Mr. Two had no right to receive portions of his deposit back that were due to him each week, because he returned his vehicle.

At other times, the TLC has disclaimed involvement in contractual issues it views as outside the purview of TLC rules, and that the propriety of such charges should be left to the court to decide. Yet, by declining to prosecute a prima facie rule violation on the grounds that a contract has been breached, TLC is implicitly adjudicating issues outside its purview. In Mr. Two's case, this is all the more inappropriate as Taxi Company A never took action against Mr. Two for alleged breach of the lease agreement. The TLC should not be in the business of preemptively granting offsets to owners based on damages that the TLC believes an owner may be entitled to in civil court. If the TLC claims it does not want to get involved in issues being litigated in civil court, it should enforce its rules and let parties pursue their contractual rights in court.

TLC's position is that Mr. Two's decision not to grind out the next year of his life for mere dollars on the hour to honor his contract constituted "unclean hands." The irrelevance of invoking an equitable doctrine in the context of a regulatory framework aside[2], it is disturbing that the TLC believes that equity demands a forfeiture of preexisting regulatory rights when a driver has been forced to choose between honoring a contract and avoiding starvation wages.

[2] While Taxi Company A may assert contractual rights at law and equity, Mr. Two is of course seeking a vindication of his rights pursuant to the Rules of the City of New York. The more appropriate equitable maxim here would be *Aequitas sequitur legem* (Equity follows the law; interpreted as "Equity will not allow a remedy that is contrary to law.") In any case, such an invocation of the doctrine of unclean hands misunderstands that maxim within the role of equity. The doctrine of unclean hands applies to prohibit a party from profiting by his own wrong and at its essence seeks to root out bad faith claims. Given the unprecedented financial crisis plaguing drivers across the industry, it is dismaying to see that the TLC views a driver's attempt to avoid the most disastrous kind of poverty as an act of bad faith to be punished by inaction on wage theft, creating a situation for already-struggling drivers that is simply crushing. In the current climate of financial desperation, where the worst-case scenario has repeated itself with grim regularity, it is surprising that the TLC would not enforce against clear violations of its rules, where doing so could give drivers some financial relief from a crisis not of their making, but which they, more than anyone, have had to bear the consequences.

In this case, the invocation of equitable doctrines and prosecutorial discretion is a non sequitur. As a TLC licensee, Taxi Company A has an absolute obligation to comply with TLC rules. Mr. Two's only recourse when Taxi Company A violates TLC rules is through TLC enforcement as drivers lack a private right of action to enforce rules through litigation.[3] On the other hand, Mr. Two's alleged breach of the lease contract is not subject to TLC jurisdiction, but Taxi Company A is free to enforce its contractual rights in civil court. If Mr. Two has breached, Taxi Company A can find a remedy in civil court and if Taxi Company A has violated TLC rules, then the TLC should pursue enforcement. In denying to pursue enforcement the TLC has shut the only door open to Mr. Two to vindicate to his rights, while Taxi Company A may sue Mr. Two in civil court. This is not equity.

Having recognized the desperation that drivers in the past year are facing, it is all the more disappointing that the TLC views Mr. Two's attempt to escape impossible weekly debt without a partner as bad faith breach or unclean hands, undeserving of prosecution of wage theft.

Example: ***Driver Three***: Similar to Mr. Two, Mr. Three had to return his vehicle to Taxi Company A after he was unable to find a partner. Similarly, the TLC refused to enforce rule 58-21(e)(4)(iv)(B) and ensure the return of pro-rated portions of his deposit to him. Taxi Company A did not credit a pro-rated portion of the $3,000 deposit that Mr. Three paid as required by TLC rule 58-21(e)(4) and Taxi Company A's contract with Mr. Three. Again, the TLC stated that Mr. Three had unclean hands because he had returned the taxicab to Taxi Company A prior to the end of the contractual term.

Taxi Company A also did not provide Mr. Three with the $77 lease credit, each week, required for certain WAV taxicabs and did not list the $77 credit amount on his weekly receipts, in violation of TLC Rules 58-21(c)(4)(ii)(B) and 58-21(g)(3)(vi)(E), respectively. Taxi Company A's contract also required the Lessee to receive a weekly credit of $77.

After the lease ended, Mr. Three went to Taxi Company A's office to ask for a check for the WAV related credits and, an employee named Max told him to "get the fuck out," that he wasn't "going to get any fucking check," and then threatened to call the police. As has been made clear thousands of times in prosecutions against drivers, the use of profanity alone constitutes "Threats, Harassment, or Abuse" under the TLC Rules.[4] The analogous rule governing Agent conduct, Rule 63-08(f) contains identical language to that contained in Rule 80-12(e) and former Rule 54-12(f), which all state that "While performing the duties and responsibilities of a Licensee, a Licensee must not threaten, harass, or abuse any person."

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[3] *See*, *De la Rosa v. All Taxi Mgt., Inc.*, 107 A.D.3d 553 (1st Dep't 2013), *lv denied* 22 N.Y.3d 1057 (2014). Given the nature of Taxi Company A's violations, it would be inconceivable to imagine Mr. Two not getting relief for wage theft if the law permitted him to bring a case on his own in a court of competent jurisdiction.

[4] *See Taxi and Limousine Commission v. Mamadou Diallo,* Summons No. 10082209C (Aug. 1, 2017), citing *Taxi and Limousine Commission v. Shabier Ahmed*, Lic. No. 467445 (April 22, 2009); Decision of Commissioner/Chair Daus in *Taxi and Limousine Commission v. Zbigniew Sobczak*, OATH Index. No. 1691/08 (April 7, 2008).

> The TLC did see fit to arrange for restitution related to the WAV credits alone, but did nothing to address Taxi Company A's failure to remit deposit amounts to Mr. Three, or its manager's harassment of Mr. Three. It is unclear why Mr. Three's "unclean hands" prevented TLC from ensuring that one pre-existing payment obligation—the WAV credits—would be enforced, while another—the deposit amounts— would simply be ignored. Nor is it clear why Taxi Company A's verbal harassment of Mr. Three was simply disregarded. In 2017, the TLC issued countless summonses to drivers for threats, harassment and abuse. Unfortunately, TLC's inaction here sends the message to drivers that while there is zero tolerance for inappropriate driver conduct on the job, the TLC believes that taxi medallion agents may treat drivers however they wish with impunity.

TLC's position that, through "unclean hands," a driver forfeits his right to regulatory enforcement seems entirely at odds with the TLC's standard for pursuing complaints against drivers. It does not appear that the TLC has ever let consumer misconduct stand in the way of a complaint being issued against a driver. In one case, *Taxi & Limousine Commission v. Billy Abdel Elgebede*, the TLC pursued a complaint against a driver, who was found guilty of failing to engage the meter at the beginning of the trip and refusal, despite the fact that the complaining witness had become so disorderly that the respondent had to call the police. After the police arrived, the complaining witness told the driver, as confirmed by audio recording played at the hearing:

> Go back to your fucking country and die… You dumb motherfucker. I will kick your ass to get respect. … You dumb motherfucker. Go back to your country Africa or wherever you're from. … If you come back here and open the door, I will beat the shit out of you. … I hate stupid people, stupid black people. … You guys [the police] are obviously on his side. Shut the fuck up.[5]

Notwithstanding the complaining witness' unclean hands, TLC saw no reason not to pursue this complaint through to an adjudication resulting in hundreds of dollars of fines and a refusal conviction.

Mr. Elgebede's case does not appear to be an outlier. The TLC fought through four hearings, three appeals, and an appeal to the Chairperson against NYTWA member Mohammud Rashid, on the incorrect theory that an alleged unreasonable route necessarily establishes an overcharge, despite the fact the Respondent had to call the police on the complaining witness, who became so disorderly that he kicked and broke the TLC-mandated braille plaque in Mr. Rashid's green taxi. *Taxi & Limousine Commission v. Mohammud H. Rashid*, Summons No. 10039730C, Hearing Officer Decision (April 27, 2015). *See also*, *e.g.*, *Taxi & Limousine Commission v. Anis Rahman*, OATH Hearings Division Appeals Unit (June 20, 2018) (Complaint issued against driver for using profanity where use of profanity was mutual and complaining witness damaged respondent's vehicle by kicking it); *Taxi & Limousine Commission v. Shahidul Islam*, OATH-TLT Appeals Unit (Jul. 8, 2015) (Driver had to call police because complaining witness would not pay the fare. Charge dismissed on appeal); *Taxi & Limousine v. Arshad Chaudhary*,

[5] *Taxi & Limousine Commission v. Billy Abdel Elgebede*, OATH Hearings Division Appeal Unit (Jan. 25, 2018).

OATH-TLT Appeals Unit (Aug. 9, 2013) (Same); *Taxi & Limousine Commission v. Mohamed I. Diallo* OATH Appeals Unit Mar. 25, 2016) (Complaint still issued for driver "rudely" asking what the customer's exact address was, even where complaining witness became disorderly and respondent needed to call the police.)

Even where the TLC finds a violation, and seeks restitution for drivers, it does not issue summonses or stipulations of settlement which could act as deterrents for wage theft by corporate respondents.

In Mr. Three's case, discussed above, the TLC found that Taxi Company A violated TLC rules by failing to apply WAV credits to Mr. Three's lease costs. Although the TLC attempted to mediate the dispute and ensure restitution for Mr. Three's WAV funds, the TLC never issued a summons or even a stipulation of settlement to Taxi Company A which would have resulted in a guilty plea. Clearly, a goal of the TLC's disciplinary schemes for all licensees is deterrence. Aside from restitution, TLC rules governing driver protection contain financial penalties, and multiple violations can lead to suspension or revocation of a corporate license. Such a procedure represents a complete departure from the prosecutorial policy TLC follows in enforcing the driver rulebook. Taxi Company A's violation in this case was obvious, well documented and egregious. What policy goal is served by foregoing prosecution, obtaining financial penalties, and a guilty plea on the licensee's record as TLC does with driver-licensees? If legitimate policy goals have guided TLC to favor mediation over prosecution, why has mediation not been offered to driver-respondents?

As with driver penalties for refusals, TLC and City Council penalties for overcharges by drivers imagine a scheme in which the consequences for violation are so high that bad actors are either deterred from violations or, if not, lose the privilege of a TLC license. Yet, Taxi Company A has faced almost no consequences for its continued willful violations of TLC rules. Bad corporate actors in the taxi and FHV industries can only take one lesson from the apparent gentlemen's agreement not to prosecute them: it pays to break the TLC rules. If agents see that the worst thing that can happen to them if they violate TLC rules, and steal thousands of dollars from drivers, is that TLC will make them return the stolen money, with no fine, no administrative disciplinary record, no risk of suspension or revocation, what would deter them from trying? If even half of the drivers whom agents fleece gain restitution, but agents face no further punishment, they will simply keep violating TLC rules until they get caught, pay back those drivers who file complaints, and keep fleecing the rest.

Again, I cannot put too fine a point on this: there is simply no precedent, in NYTWA's 22 years of organizing, for the TLC finding a violation of TLC rules, of any seriousness, and not even issuing a summons against a driver-respondent, let alone where the TLC has uncontroverted evidence that a licensee stole thousands of dollars from another party. It is simply inconceivable to imagine the TLC treating any driver as it has treated Taxi Company A.

The TLC interprets the scope of its rules expansively towards creative and zealous prosecution of drivers, while failing to enforce rules against driver conduct.

In addition to the violations described above, the DPU has failed to address Taxi Company A's practice of charging every driver who Taxi Company A alleges has broken a lease contract a $5,000 penalty, regardless of Taxi Company A's actual damages. Taxi Company A charges this $5,000 penalty regardless of whether there are three years left on a driver's lease, or three months. It charges this penalty, when the returned taxi cab goes unleased for two months or for one day, after the initial driver returns it. Such a practice plainly violates TLC rules, the NY Uniform Commercial Code, and principles of contract law requiring damages to be remedial rather than punitive.[6]

In some cases, Taxi Company A suffered no damages because it simply re-leased the car to another driver after the cancellation so quickly that the initial driver's deposit covered any unpaid lease money during the period when the taxicab was not used. One such driver, Driver Four, forfeited a $952 deposit after he returned a vehicle that was not functioning properly. Taxi Company A sued Mr. Four for $5,000 even though TLC records indicate that the taxicab sat empty for only one day after Mr. Four returned it, and was then consistently in use with new drivers. In that case, Taxi Company A actually made more than it would have absent the return of the vehicle because it lost only one day's lease, but retained his entire $952 deposit. Other similar examples, where drivers' deposits covered all of Taxi Company A's actual damages, as proven by TLC records, are cited in NYTWA's prior correspondence with Deputy Commissioner Wilson.

TLC's failure to act, even where there is a clear violation of TLC rules, and the failure to address a patently unreasonable charge, stands in stark contrast to TLC's willingness to enforce the letter of the law against drivers in all cases, and to stretch the bounds of TLC rules against drivers to accommodate expansive and zealous prosecutorial theories.

That the TLC does not see fit to pass judgment on the reasonableness of a $5,000 cancellation fee where Taxi Company A suffers $0 in actual damages from such a cancellation, seems surprising considering that the TLC does not hesitate to enforce its more subjective rules against drivers. By contrast, the TLC finds no issue with passing judgment on the reasonableness of a driver's route, which it believes deviated by one click of the meter—**fifty cents**—from the shortest available route. In Stipulation CV10080203S, the TLC issued a stipulation of settlement, seeking a guilty plea for the following alleged violation: "Respondent took a route that was approximately 0.2 miles longer than the shortest reasonable route." In another case,

[6] As detailed in prior correspondence with the TLC, the assessment of such a cancellation fee violated TLC rules because 1.) ATM's contract failed to provide the proper protections for drivers that are a necessary prerequisite under TLC regulation to charging a cancellation fee and; 2.) The cancellation fee was unreasonable on its face as it bears no relation to any actual damages. Liquidated damages are considered unreasonable and unenforceable as penalties where damages can be easily ascertained and where the amount stipulated bears no relation to the loss. *See*, N.Y. U.C.C. 2-A-504 (governing liquidated damages in the lease context); N.Y. U.C.C. 2-718 (sales context); *Agerbrink v. Model Serv. LLC.*, 196 F.Supp.3d 412 (S.D.N.Y. 2016); *Truck Rent-A-Center, Inc. v. Puritan Farms 2nd, Inc.*, 41 N.Y.2d 420 (1977); *In re United Merchants and Manufacturers, Inc.*, 674 F.2d 134, 141 (2d Cir. 1982); *Berland v. Gino Fashion Tuxedos, Inc.*, 103 Misc.3d 139(A) 814 N.Y.S.2d, 2005 NY. Misc. LEXIS 2993 (App. Term 2d Dep't Dec. 30, 2005) (Applying UCC §2-A-504(1)); NY UCC §2-A-504(1). *See also,* Restatement 2d of Contracts, § 356(1); *Id*, at Comment A.

TLC sought unreasonable route and overcharge violations for a driver travelling from LaGuardia Airport to Midtown, who took the highway route to the Midtown Tunnel (as taught in taxi school), rather than taking surface streets to the Queensboro Bridge.

On more than twenty occasions in 2017, the TLC issued $300 summonses to drivers for discourtesy for using the wrong tone of voice. *See*, *e.g.* CV10091670S ("Respondent driver spoke to complaining witness in a raised tone of voice"); CV10088708S ("Respondent driver spoke to complaining witness in a hostile tone of voice"); CV10089698S ("Respondent driver spoke to complaining witness in a condescending tone of voice"); CV10085953S ("Respondent driver spoke to complaining witness in a rude tone of voice.") It is difficult to imagine a more subjective way to break the law than by speaking in an improper tone, yet this did not deter TLC prosecutors when the respondents were drivers. Here, I cannot emphasize enough how the way that the TLC wields its prosecutorial discretion against driver-respondents contrasts with TLC's failure to prosecute *prima facie* violations committed by corporate respondents. Meanwhile, the TLC declines to use its discretion and prosecute wage theft violations under the Cancellation Fee where drivers struggling to make ends meet have suffered $5,000 in penalties where such a fee is clearly excessive compared to the Agent's actual loss, if any.

The TLC even persists in prosecuting drivers under theories that OATH and the courts have consistently rejected. For example, while the Court of Appeals has offered a clear definition of reckless driving, which OATH follows, the TLC continues to charge drivers with TLC's reckless driving rule where the complaints, on their face, do not make out a violation. The TLC has even gone so far as to try to shoehorn a parking violation into TLC's reckless driving rule.[7]

Where the TLC finds certain driver conduct opprobrious, but cannot plausibly claim a violation of any specific TLC rule, the TLC does not hesitate to charge drivers under the TLC's catch-all rules prohibiting "acts or omissions against the public interest." One NYTWA member was charged with a $350 violation and a possible 30-day suspension of his hack license for using a nebulizer to treat his severe asthma while in his cab. Without his nebulizer, he would not have been able to breathe.[8]

The TLC continues to prosecute drivers under theories that have been repeatedly rejected by OATH. One NYTWA member was found guilty of refusal for merely telling a passenger that he didn't think their luggage would fit in the trunk, before opening his trunk to see if it would. This member, Abdul Salam, had to file an Article 78 before TLC agreed to drop the refusal charge. What's most unsettling about Mr. Salam's case is that the TLC should have known from its own case law, if for no other reason, that such an act does not constitute a refusal. When faced with materially identical facts in a prior case, the OATH Trials Unit dismissed a refusal charge, and even then-Commissioner Matthew Daus did not disagree with OATH's decision.[9]

Similarly, the TLC continues to prosecute drivers for overcharges when they believe that a driver has taken an unreasonable route. Here again, the TLC has continued to pursue

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[7] *See*, *e.g. Taxi & Limousine Commission v. Abdul Latif* (OATH Appeals Unit June 22, 2016); *Taxi & Limousine Commission v. Irosh P. Maddumage* (OATH Appeals Unit, May 13, 2016).
[8] *Taxi and Limousine Commission v. Basel Elbehiry*, Summons 10052575C.
[9] *Taxi and Limousine Commission v. Singh*, OATH Index No. 984/07 (Jan. 26, 2007)

prosecuting under a theory that OATH has consistently rejected. Since 1996, OATH, in a decision affirmed by the TLC Chair, held that an unreasonable route did not constitute an overcharge.[10] Nonetheless, it is TLC's regular practice to pursue allegations of an unreasonable route as an overcharge, turning any disagreement about the best route into an allegation of theft. In these cases, TLC compares the cost of the trip taken, to what the TLC thinks the fare should have been based on a Google Maps printout reflecting traffic conditions at the time the prosecutor googled the trip, as opposed to when the trip was actually taken. Such a theory rests entirely on a speculative inference about the cost for the route not taken which the TLC cannot prove and cannot constitute substantial evidence. This continues despite OATH's clear standard that, "The elements needed to establish an overcharge violation] are laid out in *Reza* and are specific to the actual fare a driver charges in comparison to what the TLC-approved rate should have been for the specific route taken, not for whatever shorter route might have been available." When questioned on why the practice continues, the TLC cited the possibility that a driver could take a $300 detour in some cases which should be prosecuted as an overcharge, so prosecutors should be free to continue making the argument that one violation necessarily establishes two violations. Despite offering an extreme example to justify routine prosecution, the TLC routinely prosecutes on minor deviations from routes. The TLC's insistence on prosecuting almost all unreasonable route allegations as overcharges, against OATH's standard is in stark contrast to TLC's refusal to enforce even black and white violations of rules prohibiting overcharges against drivers.

The TLC must create parity in its prosecutorial procedures and standards, regardless of who the respondents are.

While the TLC has the potential to do a great deal of good for the 180,000-licensed drivers whose working conditions it may oversee, its current pattern of enforcement erodes drivers' trust in the agency, confirming drivers' worst impressions that the TLC exists only to discipline drivers rather than to fairly regulate the conduct of all of its licensees. The TLC must meaningfully and systematically address these prosecutorial discrepancies and failures especially before new rulemaking is enacted. As was noted in our Petition to Initiate Rulemaking, submitted on April 25, 2018, NYTWA sees enforcement against wage theft to be as critical as rulemaking on driver incomes and expenses, if raises are meant to actually be real for the drivers and their families.

Thank you for taking the time to consider these important issues. It is our sincere hope that the TLC will act swiftly to bring parity to its prosecutorial procedure.

Sincerely,

/s/ Zubin Soleimany

Zubin Soleimany, Staff Attorney
New York Taxi Workers Alliance

[10] *Taxi & Limousine Commission v. Panic*, OATH Index No. 1875/96 (Aug. 28, 1996), Modified on penalty, Comm'n Decision (Nov. 7, 1996).