**IN THE UNITED STATES DISTRICT COURT**
**NORTHERN DISTRICT OF ILLINOIS, EASTERN DIVISION**

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| VUGO, INC., DONALD DEANS, DENISE JONES, GLOUSTER BROOKS, and PATRICIA PAGE,<br><br>Plaintiffs,<br><br>and<br><br>MURRAY MEENTS, individually, and on behalf of all others similarly situated,<br><br>Plaintiff-Intervenor,<br><br>v.<br><br>CITY OF CHICAGO, an Illinois municipal corporation<br><br>Defendant. | ) | Case No. 17-cv-864<br><br>Judge Elaine E. Bucklo |

**THE CITY'S MEMORANDUM IN SUPPORT OF ITS MOTION TO DISMISS PLAINTIFFS' AND PLAINTIFF-INTERVENOR'S COMPLAINTS**

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Plaintiffs[1] are participants in the ridesharing industry, in which "transportation network providers" – companies such as Uber or Lyft – arrange for people to use their own cars to transport passengers for a fee and set the terms and conditions of the ride. Unlike taxis, which are typically hailed by a passenger standing on the sidewalk as vehicles drive by, ridesharing vehicles cannot be hailed on the street. Instead, ridesharing trips are arranged by a customer first downloading a ridesharing company's smartphone app and agreeing to the terms of service, and then using that app to request and confirm a ride in advance. See generally Ill. Transp. Trade Ass'n v. City of Chicago, 839 F.3d 594, 596, 598 (7th Cir. 2016).

Plaintiffs allege that a City of Chicago ("City") ordinance prohibiting commercial advertising on the exterior and interior of ridesharing vehicles, see Municipal Code of Chicago ("MCC") 9-115-130 (the "Ordinance"), constitutes an unlawful restriction of speech and a violation of equal protection under the federal and Illinois Constitutions.

Plaintiffs' claims fail as a matter of law. Because the Ordinance only restricts commercial speech, Plaintiffs' free speech claim is evaluated under the test set forth in Central Hudson Gas & Electric Corp. v. Public Service Commission of New York, 447 U.S. 557 (1980). Under that test, commercial speech receives less protection than other speech, and a government regulation is lawful so long as the regulation directly advances a substantial governmental interest and burdens no more speech than necessary to further that interest. Here, the City's restriction on advertising in and on ridesharing vehicles directly advances the City's substantial interests in traffic safety, aesthetics, and passenger comfort by reducing visual clutter that can be distracting to other drivers or pedestrians and intrusive to passengers. In addition, the restriction burdens no more commercial speech than necessary because it applies precisely to locations

[1] The term Plaintiffs henceforth includes Plaintiff-Intervenor Meents. The term Complaints includes the Amended Complaint of Plaintiffs Vugo, Inc., Donald Deans, Denise Jones, Glouster Brooks, and Patricia Page ("VC") and the Drivers' Complaint in Intervention of Plaintiff-Intervenor Murray Meents ("MC").

where allowing commercial advertising would thwart these interests. Moreover, Plaintiffs' challenge to the Ordinance's restriction on interior advertising fails for the separate reason that Plaintiffs lack standing: None of the Plaintiffs allege that they themselves generate any commercial advertising content that they wish to show inside ridesharing vehicles, and the Ordinance therefore does not injure them by preventing them from engaging in commercial expression inside vehicles. Finally, Plaintiffs' equal protection claim, which is governed by the more deferential rational basis standard, fails because the City has rational justifications for restricting advertisements in and on ridesharing vehicles, but not taxis or private vehicles.

For these reasons, which are explained fully below, the Complaints should be dismissed.

## BACKGROUND

According to the Ordinance, "[c]ommercial advertisements shall not be displayed on the exterior or in the interior of a transportation network vehicle." MCC 9-115-130. Plaintiff Vugo Inc. ("Vugo") operates a mobile media network that enables ridesharing drivers to display video advertisements on their tablet devices, which are mounted on their vehicles' headrests directly in front of a rear-seat passenger. VC ¶¶ 16-17, 20. Vugo does not generate any advertising content itself, but merely provides a medium for third-party advertisers to show their ads inside ridesharing vehicles. VC ¶¶ 17, 35. Similarly, the other Plaintiffs, who are ridesharing drivers, allege they are interested in displaying ads generated by third parties on the interior and exterior of their vehicles – through Vugo's software or otherwise. VC ¶¶ 11-14, 38; MC ¶¶ 14, 41.

The Complaints contain the same two counts: Count I alleges that the Ordinance violates free speech protections of the federal and Illinois Constitutions, VC ¶¶ 43-51; MC ¶¶ 47-55, and Count II alleges violations of the Equal Protection Clauses of the federal and Illinois Constitutions, VC ¶¶ 52-62; MC ¶¶ 56-66. Plaintiffs seek declaratory and injunctive relief, and

Plaintiff-Intervenor Meents seeks relief on behalf of a putative class of all ridesharing drivers registered to operate in the City from September 4, 2014 to the present. VC ¶ 4; MC ¶¶ 6, 16.

## LEGAL STANDARD

Federal Rule of Civil Procedure 12(b)(1) requires dismissal when the Court lacks subject matter jurisdiction to hear the case. On a Rule 12(b)(1) motion, the plaintiff bears the burden of proving that jurisdiction is proper and must allege facts sufficient to establish that subject matter jurisdiction exists. Silha v. ACT, Inc., 807 F.3d 169, 173-74 (7th Cir. 2015). A necessary element for the Court to have jurisdiction is "that a litigant have 'standing' to challenge the action sought to be adjudicated in the lawsuit." Valley Forge Christian Coll. v. Ams. United for Separation of Church & State, Inc., 454 U.S. 464, 471 (1982).

To survive a motion to dismiss pursuant to Rule 12(b)(6), "a complaint must contain sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009) (quoting Bell Atl. Corp. v. Twombly, 550 U.S. 544, 570 (2007)). Although well-pleaded factual allegations are presumed true for purposes of a motion to dismiss, legal conclusions and conclusory allegations that merely recite a claim's elements are not presumed true. Munson v. Gaetz, 673 F.3d 630, 632-33 (7th Cir. 2012).

## ARGUMENT

### I. Plaintiffs' Free Speech Claim Under The Federal And Illinois Constitutions Should Be Dismissed.

Count I alleges that the Ordinance violates free speech protections of the federal and state constitutions. VC ¶¶ 43-51; MC ¶¶ 47-55. As a restriction on commercial advertisements on the interior and exterior of ridesharing vehicles, the Ordinance is a restriction on commercial speech. Both the United States Supreme Court and Illinois Supreme Court have long held that this type of speech, defined as that which proposes a commercial transaction, warrants less constitutional

protection than other forms of expression. See, e.g., Cent. Hudson, 447 U.S. at 562-63 ("The Constitution therefore accords a lesser protection to commercial speech than to other constitutionally guaranteed expression."); Desnick v. Dep't of Prof. Reg., 171 Ill. 2d 510, 520-21, 665 N.E.2d 1346, 1353-54 (1996) (commercial speech not owed same protections as non-commercial speech).

Limits on commercial speech are evaluated under an intermediate level of scrutiny described in Central Hudson, which is more deferential to the government's balancing of interests than the strict scrutiny applied to certain restrictions on other forms of speech. 447 U.S. at 562-63; Desnick, 171 Ill. 2d at 521; 665 N.E.2d at 1353-54 (applying Central Hudson to limits on commercial speech under both U.S. and Illinois Constitutions). Central Hudson held that a restriction on commercial speech is lawful so long as (1) the regulation supports a substantial government interest, (2) the regulation directly and materially advances that interest, and (3) the regulation is narrowly drawn so that it is not more extensive than necessary to serve that interest. 447 U.S. at 564. Under this test, the government may justify its restriction by reference to the text of the enactment, history, logic, or common sense; it is not necessary for the government to point to studies or evidence. See Act Now to Stop War & End Racism Coal. v. Dist. of Columbia, 846 F.3d 391, 408-09 (D.C. Cir. 2017); Second Amendment Arms v. City of Chicago, 135 F. Supp. 3d 743, 759 (N.D. Ill. 2015). Accordingly, a claim under Central Hudson can be resolved on a motion to dismiss. See Second Amendment Arms, 135 F. Supp. 3d at 759 (granting motion to dismiss challenge to commercial speech restriction).

Despite Plaintiffs' various allegations to the contrary, Central Hudson provides the appropriate standard governing the claim in Count I.[2] And as the City shows below, the

[2] Plaintiffs appear to argue that Central Hudson is no longer good law in light of the Supreme Court's decision in Reed v. Town of Gilbert, 135 S. Ct. 2218 (2015). This argument is incorrect, but for present

Ordinance meets the Central Hudson test because the City's interests in regulating commercial advertisements on and in ridesharing vehicles are substantial, the Ordinance directly advances those interests, and it burdens no more speech than necessary.[3] Initially, however, the City demonstrates that most of the claims in this case should be dismissed for lack of standing.

**A. All Plaintiffs lack standing to challenge the ban on interior advertising, and only Plaintiff Page has standing to challenge the ban on exterior advertising.**

In order to have standing, a litigant must do more than simply satisfy Article III's requirement that there be a case or controversy; the litigant must also satisfy requirements of prudential standing. G & S Holdings LLC v. Continental Cas. Co., 697 F.3d 534, 540 (7th Cir. 2012). Prudential standing requires a plaintiff to base its challenge on its own legal rights and interests and not those of third parties, id., and it demands that a plaintiff's complaint fall within the zone of interests protected by the law involved, Winkler v. Gates, 481 F.3d 977, 979 (7th Cir. 2007). Here, to have prudential standing, a plaintiff would need to allege that they wish to express a commercial message about their own product or service, because that is the interest protected by commercial speech doctrine. In Central Hudson, the Court justified its protection of commercial speech on grounds that consumers would benefit from the dissemination of

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purposes it is also unavailing because "only the Supreme Court may overrule one of its own precedents." See Levine v. Heffernan, 864 F.2d 457, 461 (7th Cir. 1988). Indeed, this Court recently rejected the very argument Plaintiffs make here: "[A]bsent an express overruling of Central Hudson, which most certainly did not happen in Reed, lower courts must consider Central Hudson and its progeny – which are directly applicable to the commercial-based distinctions at issue in this case – binding." Peterson v. Vill. of Downers Grove, 150 F. Supp. 3d 910, 928 (N.D. Ill. 2015).

[3] Alternatively, the Ordinance can be upheld as a valid time, place, and manner restriction, which is evaluated under an intermediate standard of review that is "substantially similar" to the Central Hudson test for commercial speech. Bd. of Trustees of State Univ. of N.Y. v. Fox, 492 U.S. 469, 477 (1989). That is, content-neutral restrictions on the time, place, or manner of any type of speech – commercial or non-commercial – are permissible "so long as they are designed to serve a substantial governmental interest and do not unreasonably limit alternative avenues of communication." City of Renton v. Playtime Theatres, Inc., 475 U.S. 41, 47 (1986); see also Taxi Cabvertising, Inc. v. City of Myrtle Beach, 26 F. App'x 206, 208 (4th Cir. 2002) (per curium) (ban on taxi rooftop advertising signs upheld as valid time, place, and manner restriction).

knowledge that the creators of commercial speech have about their own products. 447 U.S. at 561-64, n.6; see also Bates v. State Bar of Ariz., 433 U.S. 350, 381 (1977) (explaining speech protections for "advertiser [that] seeks to disseminate information about a product or service that he provides").

All but one of the Plaintiffs lack this interest entirely. Except for Plaintiff Page, no Plaintiff alleges that they wish to communicate about products or services that they themselves offer for sale. Instead, they would operate only as conduits for the advertising content generated by third-party vendors. See VC ¶¶ 17, 38; MC ¶¶ 41-42. Only Plaintiff Page alleges that she seeks to promote her own services while operating a ridesharing vehicle, but even then, she alleges only an intent to do so on the exterior of her vehicle. VC ¶¶ 40-41. Thus, all Plaintiffs lack prudential standing to bring a First Amendment challenge to the Ordinance's restriction on exterior advertising, and only Page has standing to challenge the restriction on interior advertising.

For this reason, Plaintiffs' free speech claims should be dismissed as to all Plaintiffs but Page, and her claim against the interior advertising ban should also be dismissed.

**B. The Ordinance is a valid restriction on commercial speech.**

Regardless of whether Plaintiffs properly have standing, Count I should still be dismissed because it fails to state a claim, as the Ordinance satisfies Central Hudson.

**1. The City has substantial interests in traffic safety, aesthetics, and passenger comfort.**

Although "a single substantial interest is sufficient to satisfy Central Hudson's first prong," Fla. Bar. v. Went For It, Inc., 515 U.S. 618, 624 n.1 (1995), the Ordinance serves several interests – promoting traffic safety, aesthetics, and passenger comfort – that courts often hold to be substantial government interests justifying restrictions on advertising or signage. See, e.g.,

Metromedia, Inc. v. City of San Diego, 453 U.S. 490, 507-08 (1981) ("traffic safety and the appearance of the city . . . are substantial governmental goals"); Vill. of Schaumberg v. Citizens for Better Env't, 444 U.S. 620, 636 (1980) (interest in protecting public from "undue annoyance" is substantial); Members of City Council of City of Los Angeles v. Taxpayers for Vincent, 466 U.S. 789, 805 (1984) (cities have strong interest in protecting public from "unwanted exposure to certain methods of expression"); CBS Outdoor v. Vill. of Plainfield, 959 F. Supp. 2d 1054, 1064 (N.D. Ill. 2013) ("[T]raffic safety and aesthetic concerns are widely-recognized as legitimate state interests that may be addressed through the regulation of signs.").

The City's interest in traffic safety applies in particular to advertising on the exterior of a ridesharing vehicle because ads are intentionally placed there precisely to attract the attention of other drivers and pedestrians, which can distract them while they are driving or walking near streets. Plaintiff Page, for instance, seeks to post an ad on the sides and rear of her vehicle, intending for onlookers, including other drivers, to take note of her business description and contact information. VC ¶¶ 40-41.

The City's interests in aesthetics and passenger comfort apply to internal and external ads, but they are particularly acute with respect to the vehicle interior, where any advertisement would be posted within a foot or two of a passenger. These riders are a clear example of a "captive audience," which courts have recognized as a group whose discomfort or annoyance may be addressed by stronger restrictions on speech. See Lehman v. City of Shaker Heights, 418 U.S. 298, 302, 304 (1974) (validating ban on political posters on the interior of a public bus due in part to "the risk of imposing upon a captive audience"); Frisby v. Schultz, 487 U.S. 474, 484-85 (1988) (validating ordinance prohibiting picketing near or about a residence); Anderson v. Milwaukee Cnty., 433 F.3d 975, 980 (7th Cir. 2006) (validating ban on distributing literature on

public buses). Under this line of cases, speech restrictions are upheld where "the degree of captivity makes it impractical for the unwilling viewer [] to avoid exposure." Hill v. Colorado, 530 U.S. 703, 718 (2000) (citations removed).

Ridesharing vehicle cabins are substantially smaller than the inside of the passenger buses considered in Lehman and Anderson, and advertisements within ridesharing vehicles are therefore even more imposing on riders. Indeed, Vugo's entire business model relies upon the captive attention of ridesharing passengers by broadcasting messages on electronic screens barely more than a foot away from the riders' faces. See VC ¶ 20. And the content is even more invasive because Vugo uses information from a passenger's ridesharing account to commercially target the rider. See id. ¶ 22. The City therefore has a strong interest in reducing the intrusion to passengers caused by these advertisements.

**2. The Ordinance directly advances the City's interests.**

The Ordinance satisfies the second Central Hudson factor because the advertising restriction directly advances the City's substantial interests in traffic safety, aesthetics, and passenger comfort. In Metromedia, 453 U.S. at 508-11, the Supreme Court described the harms caused by advertising on billboards, which, like the exterior advertising at issue here, is directed toward drivers. Regarding traffic safety, the Court cited favorably to a finding of the California Supreme Court that "billboards are intended to, and undoubtedly do, divert a driver's attention from the roadway." Id. at 508. The Court refused to question "the accumulated, common-sense judgment of local lawmakers and of the many reviewing courts that billboards are real and substantial hazards to traffic safety." Id. at 509. As to aesthetics, the Court held that it "is not speculative to recognize that billboards by their very nature, wherever located and however constructed, can be perceived as an 'esthetic harm.'" Id. at 510. Even though aesthetic harm is "necessarily subjective, defying objective evaluation," it was within San Diego's authority and

discretion to identify and target what it deemed to be visual blight. Id. And the same goes for harms to passenger comfort. See Vincent, 466 U.S. at 805 (certain types of expression "may legitimately be deemed a public nuisance" by elected representatives). Thus, the identified harms were inherent to the billboards and signs themselves, and prohibiting them directly advanced governmental interests. Metromedia, 453 U.S. at 508-11.

Here, the City has identified the same safety and aesthetic harms caused by commercial advertising on the outsides of ridesharing vehicles, and even greater harm to the passenger experience arising from intrusive advertising inside the vehicles. The City directly addresses these concerns by prohibiting the advertising. See Supersign of Boca Raton, Inc. v. City of Ft. Lauderdale, 766 F.2d 1528, 1531 (11th Cir. 1985) (relying on Metromedia to hold that a vehicle advertising ban directly advanced the city's traffic safety and aesthetic interests).

Contrary to Plaintiffs' suggestion, the fact that the advertising ban applies solely to ridesharing vehicles, but not taxis or private vehicles not used for ridesharing, does not disqualify the Ordinance under Central Hudson. See VC ¶¶ 49-50; MC ¶¶ 53-54. For one, Plaintiffs' argument is that the Ordinance does not sweep broadly enough, rather than that the Ordinance is too broad. But courts have rejected this "underinclusiveness" argument. In Supersign, 766 F.2d at 1529, Fort Lauderdale generally prohibited ads on all vehicles except taxicabs, buses, and vehicles promoting and used for the owner's business. Even though the threat to aesthetics and traffic safety from ads on taxis might have been the same as that on the prohibited vehicles, the Eleventh Circuit upheld the law, reasoning that by prohibiting even some advertisements on vehicles, "the City solves some of its traffic problem and reduces the total number of unsightly advertisements." Id. at 1531. Likewise, in Metromedia, the Supreme Court rejected the argument that San Diego's decision to exempt signs located on the site of a business that

advertised the business's services from its general ban on billboards "denigrates its interest in traffic safety and beauty." Metromedia, 453 U.S. at 510-11. Rather, even the partial ban moved San Diego's aesthetic and safety interests forward. Id. Accordingly, even if ridesharing vehicles and taxis equally detracted from the City's safety and aesthetic interests, the City may, consistent with the First Amendment, restrict advertising only as to ridesharing vehicles because doing so eliminates at least some of the problem and therefore advances the City's interests.

Moreover, Plaintiffs' underinclusiveness argument fails for the separate reason that the City may reasonably determine that allowing advertising on ridesharing, taxi, and private vehicles do not present the same problem, and that the harm from ridesharing advertising is more acute. In Metromedia, the Court held that San Diego could reasonably believe that "offsite advertising, with [its] periodically changing content, presents a more acute problem than does onsite advertising," which merely advertises a business' own service on the site of the business. Id. at 511-12.

Here, common sense supports the City's determination that ridesharing vehicles are more prone than private vehicles to be used as platforms for advertising. By definition, ridesharing vehicles are personal vehicles that are put into commercial use by the owner during times when he or she is not using the vehicle for personal reasons – i.e., when the vehicle otherwise would be parked. The City may reasonably conclude that ridesharing vehicles will be on the road more often than purely private vehicles and that demand for advertising on ridesharing vehicles will therefore be greater. And that means that ridesharing vehicles would be more likely to have advertising than private vehicles, and that allowing advertising in or on ridesharing vehicles would therefore present a greater threat to the City's interests. Indeed, Plaintiffs' allegations support this common-sense notion. See MC ¶ 36 (alleging that taxi advertisements are

"ubiquitous," but making no similar allegation for private vehicles). Further, Vugo's entire business model is built around the assumption that ridesharing attracts more people to view ads. See VC ¶ 23 ("Vugo's platform shows ads only when a rideshare driver has a passenger."). Thus, the need to ban advertising on ridesharing vehicles is "more acute" than on private vehicles. See Metromedia, 453 U.S. at 511. Similarly, as to taxis, the City may reasonably conclude that there are fewer taxis on the road than ridesharing vehicles. The number of taxis allowed to operate in the City is regulated and controlled by the City's issuance of taxi licenses (known as "medallions"). Ill. Transp. Trade Ass'n v. City of Chicago, 134 F. Supp. 3d 1108, 1110 (N.D. Ill. 2015) (6,800 taxi licenses issued by the City), aff'd, 839 F.3d at 599. No similar restrictions apply to the number of vehicles than may be put into use as ridesharing vehicles.[4]

In addition, the City may permissibly conclude that countervailing interests warrant allowing taxis to display advertising. By permitting certain advertising on taxis,[5] the City has reasonably determined that the City's traffic and visual blight concerns may yield for this limited subset of vehicles in order to allow taxis to take advantage of a revenue stream that helps them recoup some of the costs of complying with regulatory requirements that apply to taxis but not to ridesharing vehicles. See Metromedia, 453 U.S. at 512 (refusing to override San Diego's judgment that "in a limited instance," its aesthetic and safety interests "should yield" in order to advance other interests). As the Seventh Circuit has explained in the course of upholding the

[4] See also, e.g., Leonor Vivanco, Number of Chicago taxi drivers hits 10-year low as ride-share companies take off, Chicago Tribune, Dec. 17, 2016 (http://www. chicagotribune.com/news/ct-chicago-taxi-driver-decline-met-20161214-story.html) (approximately 90,000 ridesharing drivers in the City) (attached as Exhibit A hereto); Aamer Madhani, Chicago taxi group asks appellate court to even playing field with Uber, USA Today, Sep. 19, 2016 (https://www.usatoday.com/story/news/ 2016/ 09/19/chicago-taxi-group-asks-appellate-court-even-playing-field-uber/90706852/) (same) (attached as Exhibit B hereto).

[5] Even as to taxis, the right to display ads is limited. The City requires taxis to obtain a permit for each advertising sign or device to be placed on or in the vehicle, and permitting decisions are based upon aesthetics, safety, and comfort considerations. See MCC 9-112-410.

City's differential treatment of ridesharing vehicles and taxis, ridesharing vehicles are "less heavily regulated" than taxis; among other things, ridesharing vehicles are not subject to the same requirements governing driver and vehicle qualifications, licensing, and insurance that apply to taxis. Ill. Transp. Trade Ass'n, 839 F.3d at 596. In addition, unlike taxis, whose rates are fixed by the City, ridesharing vehicles are free to set their own fares. Id.; see also, e.g., MCC 9-112-010, -020, -270 (taxis must purchase medallions); MCC 9-112-510 (taxis must install working taximeter to calculate distances and rates).

Moreover, ridesharing vehicles are specifically prohibited from being flagged down for service by street hail, see MCC 9-115-180(e), but the core feature of taxis is that they can accept street-hailing customers. The City therefore has an interest in making sure that people are able to identify taxi vehicles from a distance, so that customers may flag them down. Allowing exterior advertising on taxis furthers this interest because it helps give taxis a distinct appearance that separates them from other vehicles on the road. On the other hand, no such interest exists with respect to ridesharing vehicles since their rides are arranged in advance over a smartphone app, which transmits a photograph and description of the vehicle at the time a ride is arranged, see MCC 9-115-180(g), so the customer knows exactly which vehicle to look for. Thus, the City has less reason to set aside its legitimate interests in safety, aesthetics, and comfort to allow ads on ridesharing vehicles. And as the Supreme Court has held, the First Amendment does not "require that the Government make progress on every front before it can make progress on any front." United States v. Edge Broad. Co., 509 U.S. 418, 434 (1993).

**3. The City's interests would not be served as well by a more limited restriction on commercial speech.**

Finally, the Ordinance satisfies the last prong of Central Hudson because it sweeps no more broadly than necessary to accomplish the City's goals. This element requires

> a "fit" between the legislature's ends and the means chosen to accomplish those ends . . . that is not necessarily perfect, but reasonable; that represents not necessarily the single best disposition but one whose scope is in proportion to the interest served, that employs not necessarily the least restrictive means but a means narrowly tailored to achieve the desired objective.

Fla. Bar, 515 U.S. at 632 (citations omitted).

The harms addressed by the Ordinance here are caused by the advertisements themselves. See Supersign, 766 F.2d at 1532 ("[E]ach advertising vehicle . . . contributes to the problem."). The City can therefore address this harm by banning the advertising; indeed, it is likely the only means to eliminate the harm. See Metromedia, 453 U.S. at 508 ("obviously the most direct and perhaps the only effective approach to solving the problems [billboards] create is to prohibit them"); CBS Outdoor, 959 F. Supp. 2d at 1063-64 ("Banning billboards has long been considered to be a reasonable regulation of expression that is narrowly tailored to serve interests of aesthetics and traffic concerns."). Outright prohibitions of signs have been upheld under strict scrutiny as well. Vincent, 466 U.S. at 808 (by banning signs on public property, "the City did no more than eliminate the exact source of the evil it sought to remedy").

Rather than render the Ordinance constitutionally deficient, as Plaintiffs suggest, the Ordinance's limited application to ridesharing vehicles (and not taxis or private vehicles) shows why it should be upheld. Because the Ordinance restricts commercial speech only as to ridesharing vehicles, Plaintiffs "are free to convey information to the consuming public [] through a variety of other means, including buses and taxis." Supersign, 766 F.2d at 1532; see also Metromedia, 453 U.S. at 508 (exceptions to general ban on billboards shows that the city "has gone no further than necessary in seeking to meet its ends"). Indeed, in separate briefing in this matter, Plaintiff Meents conceded that the Ordinance leaves untouched several mediums to exercise commercial speech rights, including advertisements on "taxi-cabs, passenger vehicles,

TV, radio, billboards, etc." Drivers' Reply to Vugo's Resp. in Opp. to Mot. to Intervene (Dkt. No. 17) at 12. Although Meets argued there that only advertising corporations like Vugo can speak through these venues, he does not explain or offer any authority as to why these venues are not also available to ridesharing drivers. Thus, the limited application of the Ordinance supports its tailoring to the City's balance of substantial interests.

For these reasons, the Ordinance meets the requirements of Central Hudson and should be upheld as a valid restriction on commercial speech. Count I therefore should be dismissed.

## II. Count II Fails To State A Claim Under The Equal Protection Clauses Of The Federal And Illinois Constitutions.

Count II alleges that the Ordinance's application to ridesharing vehicles, but not taxis or other private vehicles, violates equal protection. VC ¶¶ 52-62; MC ¶¶ 56-66. Equal protection challenges to economic regulations are evaluated according to the rational basis test. FCC v. Beach Commc'ns, Inc., 508 U.S. 307, 313-14 (1993). Under this standard, government-drawn distinctions bear "a strong presumption of validity" and must be upheld "if there is any reasonably conceivable state of facts that could provide a rational basis for the classification." Id.; see also Jenkins v. Leininger, 277 Ill. App. 3d 313, 322, 659 N.E.2d 1366, 1372-73 (Ill. App. Ct. 1995) (law is valid under rational basis review so long as it is "rationally related to a legitimate governmental purpose").

Only where a law "jeopardizes exercise of a fundamental right or categorizes on the basis of an inherently suspect characteristic" does an equal protection challenge face higher scrutiny. Nordlinger v. Hahn, 505 U.S. 1, 10 (1992). Plaintiffs' claim does not pertain to any fundamental right; instead, the Ordinance pertains to commercial speech, which is afforded less constitutional protection than other forms of speech. Cent. Hudson, 447 U.S. at 562-63; Desnick, 171 Ill. 2d at 520, 665 N.E.2d at 1353-54. Thus, even where an equal protection challenge implicates

commercial speech, rational basis remains the standard of review. See Posadas de Puerto Rico Assocs. v. Tourism Co. of Puerto Rico, 478 U.S. 328, 344 n.9 (1986) ("If there is a sufficient 'fit' between the legislature's means and ends to satisfy the concerns of the First Amendment, the same 'fit' is surely adequate under the applicable 'rational basis' equal protection analysis.").[6]

The City has already shown above why the Ordinance's application to ridesharing vehicles, and not taxis or private vehicles, is rational. See supra, § I.B.2. That is, first, advertising is more likely to be prevalent on ridesharing vehicles than private vehicles, and second, the City may conclude there are fewer taxis on the road than ridesharing vehicles and any harm caused by taxi advertising is offset by the City's countervailing interests. Even if these justifications were not sufficient to withstand intermediate scrutiny under Plaintiff's free speech challenge (which they are), they would nonetheless satisfy the lower rational basis standard applied here. See Michel v. Bare, 230 F. Supp. 2d 1147, 1159 (D. Nev. 2002) ("Whether or not the regulation directly advances these interests, as is required by the commercial speech doctrine, the regulation is at least 'reasonably related' to these legitimate government interests, and [it] therefore passes the equal protection challenge."). Plaintiffs' Count II should be dismissed.

WHEREFORE, for the foregoing reasons, the City respectfully requests that the Court dismiss the Vugo Complaint and Meents Complaint with prejudice and grant the City such further relief as this Court deems just and appropriate.

[6] See also Asian-Am. Cab Drivers Welfare Ass'n v. Shoenberger, 1992 WL 330046, at *11 (N.D. Ill. Nov. 5, 1992) (dismissing equal protection challenge to law precluding solicitation of customers by taxi drivers but not bus drivers because distinction was "not irrational"); Contest Promotions, LLC v. City & Cnty. of San Francisco, 100 F. Supp. 3d 835, 849 (N.D. Cal. 2015) ("[I]t would make little sense to hold that [the challenged sign restriction] survives the heightened scrutiny of the Central Hudson test[,] yet fails under the much more lenient rational basis review."); Taxi Cabvertising, 26 Fed. App'x at 208 (per curiam) (affirming denial of equal protection challenge to ban on taxi rooftop signs under rational basis).

Date: May 19, 2017

Respectfully submitted,

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