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

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## INTRODUCTION

Defendant City of Chicago ("City"), by its counsel, Edward N. Siskel, Corporation Counsel for the City of Chicago, hereby files its reply in support of its motion to dismiss 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," and together with VC, "Complaints") under Federal Rules of Civil Procedure 12(b)(1) and 12(b)(6).[1]

With the exception of Plaintiff Page, no Plaintiff creates or seeks to display its own advertising content. Instead, Plaintiffs are an advertising company and rideshare drivers who wish to receive money for displaying third-party advertisements. That interest is insufficient to give Plaintiffs standing to assert a First Amendment claim on behalf of themselves or their would-be advertisers against the Ordinance. Furthermore, any First Amendment claim fails under the Central Hudson test, which applies to regulations of commercial speech. And for the same reasons that the Ordinance survives First Amendment scrutiny, it satisfies rational-basis review, and Plaintiffs' equal protection claims therefore fail.

Nothing in Plaintiffs' responses to the City's motion rescues their claims from dismissal. Plaintiffs' arguments that the Ordinance is subject to strict scrutiny are based on fundamental misunderstandings of the applicable law. Further, Plaintiffs fail to show that the Ordinance fails under Central Hudson because they offer nothing to counter the City's logical and common-sense justifications for the Ordinance. For the reasons set forth in the City's opening memorandum and this reply, the Court should dismiss Plaintiffs' complaints in their entirety.

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[1] As in the City's opening memorandum, use of the term "Plaintiffs" includes the Vugo Plaintiffs and Intervenor Meents. When necessary, the City distinguishes the two by referring to "Vugo Plaintiffs" or "Intervenor."

## ARGUMENT

### I. All Plaintiffs Lack Standing To Challenge The Ban On Interior Advertising, And Only Plaintiff Page Has Standing To Challenge The Ban On Exterior Advertising.

As the City has explained, see City's Mem. in Supp. of Mot. to Dismiss ("Mem.") at 5-6, a plaintiff must establish that it meets the requirements not only for Article III standing, but also prudential standing. G & S Holdings LLC v. Cont'l Cas. Co., 697 F.3d 534, 540 (7th Cir. 2012). To establish prudential standing, a litigant must base its challenge on its own legal rights and interests, not those of third parties. Dunnet Bay Constr. Co. v. Borggren, 799 F.3d 676, 689 (7th Cir. 2015). Plaintiffs (except Plaintiff Page) fail to show, in either their Complaints or responses, that their claims are based on their own rights and interests in protected speech.

All of Plaintiffs' arguments as to why they have standing are unavailing. Intervenor first claims that the Ordinance implicates rideshare drivers' own First Amendment interests, arguing that the Ordinance "specifically curtails their right to engage in speech activities in and on their vehicles," effectively "entirely" banning them from advertising. Drivers' Resp. In Opp'n ("Drivers' Resp.") at 4-5. But no Plaintiff other than Page alleges that they personally wish to engage in speech, by advertising their services or otherwise expressing their views. Instead, Plaintiffs seek ad revenues. Loss of revenue is not a First Amendment violation. See, e.g., The Pitt News v. Fisher, 215 F.3d 354, 366 (3d Cir. 2000); AMSAT Cable Ltd. v. Cablevision, 6 F.3d 867, 871 (2d Cir. 1993); Warner Cable Commc'ns, Inc. v. City of Niceville, 911 F.2d 634, 638 (11th Cir. 1990) ("The inquiry for First Amendment purposes is not concerned with economic impact; rather, it looks only to the effect of this ordinance upon freedom of expression."). Thus, Plaintiffs' First Amendment interests are not burdened by the Ordinance.[2]

[2] Intervenor also cites Sorrell v. IMS Health, Inc., 564 U.S. 552, 570 (2011), for the idea that the dissemination of information is protected by the First Amendment. But in that case, the plaintiffs were

Moreover, while Intervenor argues that rideshare drivers enjoy standing as "recipients" of speech, Drivers' Resp. at 5, the drivers are merely the conduits for advertising messages; it is the passengers who will actually "receive" the advertisements by seeing or watching them.[3] Thus, Virginia State Board of Pharmacy v. Virginia Citizens Consumer Council, Inc., which addressed a seller's ability to convey a message about its own product to a customer, is inapposite. 425 U.S. 748, 756-57 (1976). Indeed, the Supreme Court's holding that First Amendment protections extend to the recipients of information, see id., indicates that the entities with standing to challenge the Ordinance on First Amendment grounds would be third party advertisers who generate speech about their products, or the rideshare customers who receive it, but not Plaintiffs, who do neither.

Plaintiffs also claim to enjoy expanded prudential standing merely because they have brought a First Amendment claim. While the overbreadth doctrine allows parties to litigate speech claims on behalf of others, that exception does not apply to commercial speech. See e.g., Bates v. State Bar of Arizona, 433 U.S. 350, 380-81 (1977) (declining to apply the overbreadth doctrine "to professional advertising, a context where it is not necessary to further its intended objective").[4] The overbreadth doctrine allows a plaintiff to challenge a law on behalf of a third

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pharmaceutical manufacturers seeking (unlike Plaintiffs here) to market their own products. See id. at 563-66.

[3] Intervenor's assertion that his complaint "explicitly states that [drivers] are interested in receiving advertisements in rideshare vehicles" is incorrect. Drivers' Resp. at 6. The complaint states only that rideshare drivers "wish to display commercial advertisements on the exterior and/or in the interior of their transportation network vehicles" and "wish to earn income by displaying commercial advertisements on the exterior and/or in the interior of their transportation network vehicles." MC ¶¶ 41-42.

[4] See also Metromedia, Inc. v. City of San Diego, 453 U.S. 490, 504 n.11 (1991) ("[T]he overbreadth doctrine, under which a party whose own activities are unprotected may challenge a statute by showing that it substantially abridges the First Amendment rights of parties not before the court, will not be applied in cases involving commercial speech."); Broadrick v. Oklahoma, 413 U.S. 601, 613 (1973) (calling the overbreadth doctrine "strong medicine" that "has been employed by the Court sparingly and only as a last resort").

party based on the risk that the law would force the third party to forego its speech rights or face criminal prosecution to vindicate them. See Eisenstadt v. Baird, 405 U.S. 438, 445 n. 5 (1972). But those concerns are not present with commercial speech, because third-party commercial entities have many readily available outlets for their commercial speech and are less likely to be cowed from asserting their own interests directly. See Bd. of Trustees of State Univ. of N.Y. v. Fox, 492 U.S. 469, 482-84 (1989) (the overbreadth exception does not apply to commercial speech because the speaker's economic motivations make the speech unlikely to be "crushed by overbroad regulation"); The Pitt News, 215 F.3d at 364-65 (holding that student newspaper lacked standing to challenge ban on alcohol ads on behalf of third-party advertisers who could advertise elsewhere).

Given that the overbreadth doctrine does not apply in the commercial speech context, it is unsurprising that the cases relied upon by Plaintiffs in an attempt to demonstrate standing all involve overbreadth challenges to regulations affecting non-commercial speech. For example, Plaintiffs cite Metromedia for the idea that "commercial speakers *do* have standing to challenge restrictions on commercial speech even if the message is about a product or service that is not the speaker's." Pls.' Resp. to Mot. to Dismiss ("Pls.' Resp.") at 2. But the cited section of the opinion reveals that the Court carefully distinguished between "commercial speech" as a category of speech, and those people who have a "'commercial interest' in protected speech" – i.e., non-commercial speech. Metromedia, 453 U.S. at 504 n.11. The language from Metromedia Plaintiffs quote pertains only to the category of individuals with a "commercial interest" in noncommercial speech; it does not support Plaintiffs' standing merely because they have a commercial interest in commercial speech. Indeed, the Court explicitly stated that "the overbreadth doctrine . . . will not be applied in cases involving 'commercial speech.'" Id.

Plaintiffs may not rely on the First Amendment rights of parties not before the court for standing in a case involving only commercial speech. See id.[5]

Finally, Plaintiffs argue that they should enjoy prudential standing to bring claims on behalf of third parties because there are "practical obstacles" preventing would-be advertisers from asserting their own claims. Pls.' Resp. at 3. The only practical obstacle Plaintiffs reference is that advertisers do not own a rideshare vehicle upon which to place ads. Id. But that is not a practical obstacle to advertisers asserting a claim that the Ordinance impacts their ability to express their commercial message. Relaxation of the prudential limitations on standing is thus unnecessary and inappropriate here.[6]

For the above reasons, Plaintiffs lack standing to bring their free speech claims, with the exception of Plaintiff Page as to the exterior advertising ban.

## II. Reed Did Not Overrule Central Hudson And Thus Intermediate Scrutiny Applies.

As the City explained in its opening brief, because the Ordinance regulates only commercial speech, it should be evaluated under the standard set out in Central Hudson Gas & Electric Corporation v. Public Service Commission of New York, 447 U.S. 557 (1980). Plaintiffs argue that the Central Hudson test applies only to "restrictions on commercial speech that do not discriminate based on the content of speech" and that strict scrutiny should apply here

[5] Similarly, although the Seventh Circuit has recognized that some First Amendment claims warrant a relaxation of prudential limitations on standing, see Penny Saver Pubs., Inc. v. Vill. of Hazel Crest, 905 F.2d 150, 154 (7th Cir. 1990), it has done so with reference to overbreadth doctrine in a case involving a claim that a vague ordinance had a chilling effect on speech, see id. (citing Broadrick, 413 U.S. at 612).

[6] While Plaintiffs argue that standing to bring a First Amendment claim is so well-established as to not be challenged, Pls.' Resp. at 3, prudential standing, unlike Article III standing, is not a mandatory inquiry for the Court. G & S Holdings LLC, 697 F.3d at 540. It is up to the parties to assert a prudential standing challenge. Id. Thus, the fact that the defendants in the single case cited by Plaintiffs, Lavey v. City of Two Rivers, 171 F.3d 1110 (7th Cir. 1999), did not raise prudential standing hardly means that the City has no basis for challenging Plaintiffs' prudential standing here.

because the Ordinance is based on the commercial content of speech. Pls.' Resp. at 6. This argument misconstrues Central Hudson and seeks an unsupported extension of Reed v. Town of Gilbert, 135 S. Ct. 2218 (2015).

Although Reed explained the general principle that content-based restrictions on speech should be evaluated under strict scrutiny, id. at 2226-27, it did not overrule Central Hudson or the myriad other cases distinguishing between restrictions on commercial and non-commercial speech. And where the Supreme Court has not renounced one of its precedents, the case remains binding on the lower courts until overruled by the Supreme Court itself, even if some might believe that later decisions undermine the rationale for the precedent. See State Oil Co. v. Khan, 522 U.S. 3, 20 (1997); Rodriguez de Quijas v. Shearson/Am. Express, Inc., 490 U.S. 477, 484 (1989). Indeed, the Supreme Court did not even mention commercial speech in Reed, as the restrictions at issue applied only to non-commercial speech, and post-Reed lower courts have rejected the notion that Reed subjects commercial speech to strict scrutiny. See, e.g., Dana's R.R. Supply v. Atty. Gen., Fla., 807 F.3d 1235, 1246 (11th Cir. 2015); RCP Pubs. Inc. v. City of Chi., 204 F. Supp. 3d 1012, 1017-18 (N.D. Ill. 2016); Peterson v. Vill. of Downers Grove, 150 F. Supp. 3d 910, 927-28 (N.D. Ill. 2015). Thus, Central Hudson remains the controlling authority in this case.

Plaintiffs argue that merely singling out commercial speech for regulation is a content-based distinction that triggers strict scrutiny. Pls.' Resp. at 5-7; Drivers' Resp. at 8. But the Supreme Court has made clear that although regulations of commercial speech are, by definition, content-based, they are subject only to intermediate scrutiny. See Metromedia, 453 U.S. at 568 ("If commercial speech is to be distinguished, it must be distinguished by its content.") (internal quotation marks omitted); Cent. Hudson, 447 U.S. at 562-64 n.6 ("In most other contexts, the

First Amendment prohibits regulation based on the content of the message. Two features of commercial speech permit regulation of its content. . . ."). See also Jordan v. Jewel Food Stores, Inc., 743 F.3d 509, 516 (7th Cir. 2014) (noting that the "starting point" definition for commercial speech is speech that "proposes a commercial transaction."); CTIA-The Wireless Ass'n v. City of Berkeley, 139 F. Supp. 3d 1048, 1061 n.9 (N.D. Cal. 2015) ("Ironically, the classification of speech between commercial and noncommercial is itself a content-based distinction. Yet it cannot seriously be contended that such classification itself runs afoul of the First Amendment."). In short, Central Hudson and its progeny presume that regulations of commercial speech are content-based, yet such regulations are reviewed under intermediate, rather than strict, scrutiny.

Plaintiffs argue in the alternative that the Ordinance should be subject to strict scrutiny as a content and speaker-based regulation because it restricts commercial advertisements only on or in ridesharing vehicles and not taxis or private vehicles. Drivers' Resp. at 7-14. Plaintiffs misconstrue the meaning of content-neutrality under the First Amendment. "A regulation that serves purposes unrelated to the content of expression is deemed neutral, even if it has an incidental effect on some speakers or messages but not others." Ward v. Rock Against Racism, 491 U.S. 781, 791 (1989). Here, the City's restriction turns not on the speaker, viewpoint, or message of any ad, but solely on the location of commercial advertising.

For this reason, Intervenor's lengthy discussion of Sorrell v. IMS Health, Inc. misses the point. See Drivers' Resp. at 8-13. While Sorrell involved commercial speech, the Supreme Court found that fact inconsequential because, on its face, the challenged law targeted a specific group of speakers – pharmaceutical manufacturers – and prohibited them, and only them, from accessing prescriber information and using it to market their products, while that information

remained "available to an almost limitless audience." 564 U.S. at 573. Furthermore, the restriction "turn[ed] on nothing more than a difference of opinion" with the plaintiffs' message. Id. at 579. The Ordinance contains no such speaker and viewpoint-based restriction, as it prohibits all commercial advertising in or on ridesharing vehicles, regardless of who the speaker is or the product or service advertised. All commercial advertisements are banned from the interior and exterior of ridesharing vehicles, but advertisers are free to use the full range of other available advertising spaces and methods. In consequence, Sorrell dictates no stricter review of the Ordinance than Central Hudson prescribes.[7]

Finally, Plaintiffs' assertion that the "only legitimate reason . . . to treat commercial speech less favorably than noncommercial speech is preventing commercial speech that concerns an unlawful activity or is false or misleading" blatantly misinterprets Central Hudson. See Pls.' Resp. at 6-7. To be sure, Central Hudson allows the government to restrict speech relating to unlawful activity or that is false or misleading. 447 U.S. at 564. But that is merely the first inquiry under the test. The rest of the Central Hudson analysis addresses what happens when the commercial speech is lawful, and it allows the government to restrict lawful commercial speech if the remaining factors of the test are satisfied. Id. Accordingly, Central Hudson applies to all regulations of commercial speech, even lawful and truthful speech. For these reasons, the Court should apply intermediate scrutiny as required under Central Hudson.

[7] Intervenor's citation to 44 Liquormart, Inc. v. Rhode Island, 517 U.S. 484 (1996), is also inapposite. Indeed, Intervenor fails to acknowledge that the cited portions of the opinion are not the holding of the Court, but the plurality opinion of Justice Stevens. See id. at 488-89 (explaining that Parts I, II, VII, and VIII constitute the opinion of the court). The Supreme Court itself held that Rhode Island's categorical ban on the advertisement of retail liquor prices was unconstitutional simply because it "abridge[d] speech in violation of the First Amendment." Id. at 516. "The opinion for the Court did not provide a rationale for its conclusion that the ban violated the First Amendment, and no opinion addressing the First Amendment violation commanded a majority of the Court." Anheuser-Busch, Inc. v. Schmoke, 101 F.3d 325, 328 (4th Cir. 1996). Thus, the case does not support Intervenor's argument that a departure from Central Hudson review is warranted here.

## III. The Ordinance Is A Valid Restriction On Commercial Speech.

### A. The Court May Resolve a Central Hudson Claim on a Motion to Dismiss.

Under Central Hudson, restrictions on commercial speech are evaluated according to the following test: (1) if the communication is neither misleading nor related to unlawful activity, the restriction warrants First Amendment scrutiny; for it to withstand such scrutiny, (2) the government must assert a substantial interest in support of its regulation, (3) the regulation must directly and materially advance that interest, and (4) the regulation must be narrowly drawn so that it is not more extensive than necessary to serve that interest. 447 U.S. at 564-65.

As a threshold matter, contrary to the Vugo Plaintiffs' assertion, see Pls.' Resp. at 8, this Court may properly determine whether the Ordinance satisfies the four Central Hudson factors on a 12(b)(6) motion. Plaintiffs' assertion that the City must present evidence in support of the third and fourth Central Hudson factors, Pls.' Resp. at 13, is unfounded. As the D.C. Circuit recently held, intermediate scrutiny does not require governments to justify distinctions or exemptions in speech restrictions with studies or evidence. Act Now to Stop War & End Racism Coal., 846 F.3d 391, 406-09 (D.C. Cir. 2017). Rather, the government may justify a regulation by reference to the text of the enactment, history, or common sense and logic. See id. at 408 (the justification for a distinction "is less a matter to be established by empirical evidence than it is the result of a straightforward line of reasoning"); see also Nat'l Ass'n of Mfrs. v. Taylor, 582 F.3d 1, 16 (D.C. Cir. 2009) (rejecting First Amendment challenge against mandatory lobbyist disclosure rules where supported by "value judgment based on common sense of people's representatives"); Lavey v. City of Two Rivers, 171 F.3d 1110, 1116 (7th Cir. 1999) (holding that decision to exempt certain types of signs from regulation was justified without factual evidence and that a local legislature was not required "to make a voluminous record in order to

justify such common-sense exceptions"); Second Amendment Arms v. City of Chi., 135 F. Supp. 3d 743, 759 (N.D. Ill. 2015) (granting motion to dismiss challenge to commercial speech restriction). In sum, this Court may determine, based on logic and common sense, that the Ordinance is narrowly drawn to directly advance substantial interests, and it may grant the City's motion to dismiss on that basis.

**B. It Is Undisputed That the City Has Asserted Substantial Interests.**

As the City has explained, see Mem. at 6-8, it has substantial interests in aesthetics, traffic safety, and passenger comfort. Any one of these interests, standing alone, is enough to satisfy the second Central Hudson factor. See Fla. Bar. v. Went For It, Inc., 515 U.S. 618, 624 n.1 (1995). Plaintiffs concede that two of them – traffic and aesthetics – "are substantial." Pls.' Resp. at 8. And the City's interest in passenger comfort is also a substantial interest. Plaintiffs dispute this, arguing that passenger comfort is merely an attempt to prevent people from "hearing certain messages based on their content." Pls.' Resp. at 9. But the point of the Ordinance is not to shield passengers from particular advertisements they may find disagreeable, but rather to spare passengers from having to sit through noisy and intrusive commercial advertisements of any sort, regardless of their content. This concern is particularly acute with respect to a vehicle interior, where riders are a captive audience. The Supreme Court has determined "that the municipalities have a weighty, essentially esthetic interest in proscribing intrusive and unpleasant formats for expression." Members of City Council of City of L.A. v. Taxpayers for Vincent, 466 U.S. 789, 806 (1984). For example, the Court upheld a prohibition of political advertising on city buses, holding that the city was entitled to protect unwilling viewers against intrusive advertising. Lehman v. City of Shaker Heights, 418 U.S. 298, 302-04 (1974). Here, rideshare

passengers would be an audience held captive by interior ad displays, implicating a substantial interest in avoiding intrusive forms of advertising.

**C. The Ordinance Directly Advances the City's Substantial Interests.**

The Ordinance satisfies the third Central Hudson factor because it directly advances the City's substantial interests. As to traffic safety, Plaintiffs do not contest that banning commercial advertising on the exterior of ridesharing vehicles reduces the total number of distractions on the road, promoting traffic safety. Instead, Plaintiffs claim that "[i]t is the City's burden to prove with evidence that commercial advertisements on the inside and outside of the rideshare vehicles would affect traffic safety *more than other things* visible to drivers that the City has not banned[.]" Pls.' Resp. at 10. But this is not the test under Central Hudson. Rather, the City must only demonstrate that the Ordinance directly and materially advances a substantial interest. Central Hudson, 447 U.S. at 564. That burden does not require the City to prove that the regulated speech poses more of a problem for traffic safety than "other things" on the road, or to address all safety concerns at once. A regulation of only "some advertisement vehicles" is nonetheless valid under Central Hudson because it allows the City "to solve[] some of its traffic problems and reduces the total number of unsightly advertisements," even if other sources of distraction remain. Supersign of Boca Raton, Inc. v. City of Fort Lauderdale, 766 F. 2d 1528, 1529-32 (11th Cir. 1985) (upholding a prohibition on advertisements on all vehicles except taxicabs, buses, and vehicles promoting and used for the owner's business, even though "the prohibited category pose[d] no more of a threat to aesthetics or traffic safety than the category falling outside the terms of the prohibition").

The Ordinance also directly advances the City's interest in aesthetics. While Plaintiffs argue that aesthetics are limited solely to an advertisement's size or structure, Pls.' Resp. at 10,

aesthetic concerns are not so limited. For example, in Metromedia, the Supreme Court found that an ordinance that banned off-premises advertising, regardless of the size or other physical features of the signs, furthered the government's substantial interest in aesthetics. 453 U.S. at 507-08. The Court did not hamstring the government's ability to regulate by allowing only restrictions on the size or style of billboards, since "[i]t 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. Accordingly, Plaintiffs are wrong that the only way the City can regulate aesthetics is by limiting the size or appearance of ads; advertisements can be restricted altogether. Furthermore, Plaintiffs acknowledge that the City may further its interest in aesthetics by limiting the "number" of ads on the road. See Pls.' Resp. at 10. That is precisely what the Ordinance does—it restricts the total number of ads on vehicles in the City, thereby directly and materially advancing the City's aesthetic interests.

Plaintiffs' assertion that passenger comfort is not directly advanced by the Ordinance is likewise flawed. Plaintiffs first argue that the "captive audience" cases the City cites, see Mem. at 7-8, apply only to "speech on government property, not in private vehicles," Pls.' Resp. at 11. While each of these cases did involve public property, that fact was relevant only in determining what level of scrutiny applied, not whether the regulations furthered a substantial governmental interest. See Hill v. Colorado, 530 U.S. 703, 718 (2000) (focusing on the asserted governmental interest not the nature of the property); Frisby v. Schultz, 487 U.S. 474, 482 (1988); Lehman, 418 U.S. at 302–03 (noting that the nature of the forum was important "in determining the degree of protection afforded by the Amendment to the speech in question."); Anderson v. Milwaukee Cnty., 433 F.3d 975, 980 (7th Cir. 2006) (considering the nature of the forum for purposes of determining what level of scrutiny to apply). Customers of a rideshare vehicle are just as captive

an audience as users of public transit, who likewise "do not have to ride" in any particular mode of transit. Pls.' Resp. at 11. Accordingly, the City's interest in protecting captive audiences from intrusive forms of expression is not limited to expression that occurs on public property.

Plaintiffs also take issue, again, with the fact that commercial advertisements are not restricted in every type of transportation in the City. As noted above, however, in order to satisfy Central Hudson, the City need not eradicate a problem in its entirety, so long as the regulation directly advances its substantial interest in some manner. Even if riders in other forms of transit may be subjected to intrusive advertisements, restricting ads in the interior of ridesharing vehicles will still address the problem. What's more, the City may reasonably conclude that interior advertising is less intrusive in taxis than it is in ridesharing vehicles, since taxi cabins already have a host of other signage and displays that provide consumer information to passengers.[8] Further, the video screens that might contain commercial advertisements in taxis also serve the practical function of allowing customers to pay for their ride with a credit or debit card, an issue not implicated by ridesharing vehicles, which are automatically paid for through the customers' rideshare accounts.[9]

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[8] See MCC § 9-112-010 et seq.; City of Chi. Taxicab Medallion License Holder Rules (Sept. 12, 2016), available at https://www.cityofchicago.org/content/dam/city/depts/dol/rulesandregs/TaxiMedallionLicenseHolderRules.pdf (hereinafter "Rule TX"). Taxicabs are required to display numerous items on their interior including a license card, a chauffeur card, taxicab meter rates and charges in a manner and size plainly visible to the passenger while riding in the back seat of the vehicle, the taximeter displaying the fare in a manner visible to the passenger, and a "LOOK" transportation safety sticker. MCC §§ 9-112-310, 9-112-500, 9-112-510; Rule TX4.02. There are numerous exterior requirements as well. See MCC §§ 9-112-270, 9-112-360, 9-112-490, 9112-410(3); Rule TX4.01, 4.05, 4.07, 5.01, 5.02.

[9] Taxicabs are required to have electronic equipment capable of processing non-cash forms of payment located in the rear passenger compartment. MCC § 9-112-510; Rule TX5.07. Notably, the "[r]ear seat swipe electronic equipment must be equipped with an interactive passenger display/screen." Rule TX5.07(e)(1). Conversely, rideshare drivers are prohibited from directly collecting fares. Rather, fares "must be processed only through the TNP platform." City of Chi. Transp. Network Provider Rules, Rule TNP5.08 (Jan. 1, 2017) available at https://www.cityofchicago.org/content/dam/city/depts/dol/rulesandregs/TNPRulesAmendedeffJan12017.pdf.

### D. 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 does not require the least restrictive means, but requires "a means narrowly tailored to achieve the desired objective." Fla. Bar, 515 U.S. at 632 (citations omitted).[10]

Intervenor asserts that the Ordinance is more restrictive than necessary because it "entirely quashes" commercial speech. Drivers' Resp. at 15-16. Even though the Ordinance prohibits all commercial advertising in ridesharing vehicles, this does not make it overly restrictive. Rather, it makes the Ordinance well-tailored, since the harm addressed by the Ordinance is caused by the advertisements themselves, see Supersign, 766 F.2d at 1532 ("[E]ach advertising vehicle . . . contributes to the problem."), and the best way to eliminate that harm is by prohibiting it. See Metromedia, 453 U.S. at 508 ("If the city has a sufficient basis for believing that billboards are traffic hazards and are unattractive, then obviously the most direct and perhaps the only effective approach to solving the problems they create is to prohibit them."). The Ordinance is narrowly tailored to achieve this objective, as it applies only to commercial advertising on or in ridesharing vehicles, and not to other commercial advertising. Indeed, Plaintiffs argue, contrary to Intervenor's position, that the Ordinance is under-inclusive, because it does not prohibit advertising on all forms of vehicles. Far from being a vice, Plaintiffs' point simply illustrates that the Ordinance is much narrower than it could be. Furthermore, despite declaring that "a more tailored law could have equally satisfied the Defendant's objectives," Drivers' Resp. at 17, Plaintiffs fail to offer any suggestion as to how the ban on commercial advertisements could be more finely tailored but just as effective.

[10] Intervenor contests only the final Central Hudson factor in his response and has thus waived any argument that the Ordinance does not satisfy the additional Central Hudson factors.

Plaintiffs' argument that the Ordinance is not narrowly tailored to passenger comfort because it does not prevent "offensive" non-commercial displays also fails. Pls.' Resp at 11-12. Common sense supports the conclusion that ridesharing vehicles, as a form of commercial transportation, are more prone to be used as platforms for commercial advertising than non-commercial speech. Indeed, Plaintiffs' allegations support this common-sense notion, as Vugo's entire business model is built around the assumption that ridesharing creates an audience for product advertisements (rather than, say, political speech), and Plaintiffs concede that commercial advertising is a lucrative business. See VC ¶ 23; MC ¶¶ 38, 40. There is no reason to expect that non-commercial displays on or in ridesharing vehicles would be as prevalent as commercial advertising, given the economic incentives to display commercial advertisements. The City's determination that it could further its goals by restricting only commercial advertisements is therefore supported by logic and common sense.

Plaintiffs also challenge the fact that the advertising ban applies solely to ridesharing vehicles but not taxis or private vehicles. Pls.' Resp. at 13-14. This does not undermine the fit between the Ordinance and the City's asserted interests in traffic safety and aesthetics. As previously explained, there are numerous valid reasons why the City may choose to regulate commercial advertisements in and on ridesharing vehicles and not taxis, not least of which is the sheer number of ridesharing vehicles on the road, as compared to taxis. See Mem. at 11 n.4 (noting that the number of registered ridesharing vehicles—approximately 90,000—vastly exceeds the approximately 9,500 licensed taxi drivers in the City). Because there are far fewer taxis in the City than ridesharing vehicles, the harm caused by advertisements on ridesharing vehicles would be greater. Even if a fraction of rideshare drivers placed commercial advertising on the exterior of their vehicles, it would vastly increase the number of vehicles on City streets

causing distracting visual blight. Further, as previously noted, taxis already have a great deal of consumer safety signage on their interior and exteriors, as required by City ordinances, so additional visual items on or in taxis do not create an entirely new source of distraction in the way that advertisements on or in ridesharing vehicles do. These distinctions between ridesharing vehicles and other vehicles demonstrate the necessary fit between the Ordinance and the City's interests.

Finally, rather than rendering the Ordinance insufficient under Central Hudson, the Ordinance's limited scope shows why it should be upheld. The under-inclusiveness of which Plaintiffs complain means the Ordinance "does not completely suppress commercial speech," so that businesses "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"). Thus, the limited application of the Ordinance demonstrates that it is tailored to address the City's substantial interests, while restricting no more speech than necessary.

For these reasons, the Ordinance meets each factor of the Central Hudson test and should be upheld as a valid restriction on commercial speech.

**IV. Count II Fails To State An Equal Protection Claim.**

Plaintiffs' arguments in support of their equal protection claims amount to the assertion that because the Ordinance fails Central Hudson and strict scrutiny, it also fails under equal protection. Because Plaintiffs have failed to allege a violation of their First Amendment rights, as explained above, no heightened scrutiny applies to their equal protection claim. See Foxxxy Ladyz Adult World, Inc. v. Vill. of Dix, Ill., 779 F.3d 706, 719 (7th Cir. 2015) (applying rational

basis scrutiny to regulation of adult entertainment businesses because the plaintiff did not show that the law burdened its right to free speech); see also St. John's United Church of Christ v. City of Chicago, 401 F. Supp. 2d 887, 901 (N.D. Ill 2005) (explaining that when a First Amendment claim "has failed, the Supreme Court has applied only rational basis scrutiny in its subsequent review of an equal protection . . . claim based on the same facts"). To the extent Plaintiffs assert that heightened scrutiny applies to their equal protection claims, Pls' Resp. at 14, Drivers' Resp. at 18-19, neither response argues for a level of scrutiny beyond that imposed by Central Hudson. Because the Ordinance satisfies Central Hudson for the reasons discussed above, it would also satisfy the heightened scrutiny Plaintiffs seek on their equal protection claims and certainly satisfies rational basis review. Plaintiffs' equal protection claims should be dismissed accordingly.

**CONCLUSION**

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

Date: July 14, 2017

Respectfully submitted,

EDWARD N. SISKEL
Corporation Counsel of the City of Chicago

By: /s/ Tara D. Kennedy

Andrew W. Worseck
Tara D. Kennedy
City of Chicago, Department of Law
Constitutional and Commercial Litigation Division
30 North LaSalle Street, Suite 1230
Chicago, Illinois 60602
(312) 744-7129 / 744-9028

*Attorneys for Defendant City of Chicago*