

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

VUGO, INC., DONALD DEANS, DENISE
JONES, GLOUSTER BROOKS, and
PATRICIA PAGE,

Plaintiffs,

and

MURRAY MEENTS, individually, and on
behalf of all others similarly situated,

Plaintiff-Intervenor,

v.

CITY OF CHICAGO, an Illinois municipal
corporation,

Defendant.

Case No. 17-cv-864

Hon. Elaine E. Bucklo

**DEFENDANT CITY OF CHICAGO'S LOCAL RULE 56.1(a)(3)
STATEMENT OF UNDISPUTED MATERIAL FACTS**

Defendant City of Chicago (the "City"), by its counsel, Edward N. Siskel, Corporation Counsel for the City, hereby submits its Local Rule 56.1(a)(3) statement of material facts to which there are no genuine issues and which entitle the City to judgment on the Amended Complaint of Plaintiffs Vugo, Inc. ("Vugo"), Donald Deans, Denise Jones, Gloucester Brooks, and Patricia Page ("VC") and the Drivers' Complaint in Intervention of Plaintiff-Intervenor Murray Meents ("MC"), as a matter of law.

I. Parties

1. Plaintiff Vugo is a Delaware corporation headquartered in Minneapolis, Minnesota that has developed an application that facilitates the display of commercial advertising inside transportation network provider ("TNP") vehicles via a tablet or similar

device, which is mounted on a vehicle's headrest directly in front of a rear-seat passenger.

VC ¶¶ 10, 16-17, 20. Plaintiffs Donald Deans, Denise Jones, Glouster Brooks, and Patricia Page are drivers who regularly operate TNP vehicles within the City. Id. ¶¶ 11-14. Plaintiff Page also has a personal business through which she provides face painting services, paints murals, and produces other artwork for a fee. Id. ¶ 14. She previously advertised her business on the outside of the vehicle she uses to provide TNP services. Id.

2. Intervenor-Plaintiff Murray Meents (“Intervenor”) drives a TNP vehicle in the City and is a resident of Illinois. MC ¶ 14. He purports to represent a class of “[a]ll persons lawfully registered to operate transportation network vehicles in the City of Chicago between September 2, 2014 and the present[.]” Id. ¶ 16.

3. Defendant City of Chicago is a municipal entity organized under the Constitution and laws of the State of Illinois located in Cook County, Illinois. VC ¶ 15; MC ¶ 15; Def.’s Ans. to VC ¶ 15; Def.’s Ans. to MC ¶ 15.

II. Jurisdiction and Venue

4. Plaintiffs and Intervenor raise claims under the First and Fourteenth Amendments of the United States Constitution and Article I, Section 2 and Article I, Section 4 of the Illinois Constitution, and, accordingly, this Court has subject-matter jurisdiction over this action pursuant to 28 U.S.C. §§ 1331, 1343, 2201, and 42 U.S.C. § 1983 and supplemental jurisdiction under 28 U.S.C. § 1367(a).

5. The City of Chicago is located within the Northern District of Illinois of the United States District Court, and accordingly, venue is proper under 28 U.S.C. § 1391.

III. Undisputed Material Facts

The City's Regulation of TNPs

6. Chapter 9-115 of the Municipal Code of Chicago ("MCC") sets forth the City's ordinances regulating TNPs, which are commonly referred to as "rideshare" companies, such as Uber, Lyft, and Via. MCC § 9-115-010 et seq.; Ex. 1 (Bapat Decl.) ¶ 5. Transportation network services are provided by individuals who use their own personal cars to drive passengers for hire, as regulated by City ordinance, see MCC § 9-115-010 et seq., and pursuant to terms between the individual and the particular TNP company that they are working with. Ex. 1 (Bapat Decl.) ¶ 6.

7. MCC § 9-115-130 states: "Commercial advertisements shall not be displayed on the exterior or in the interior of a transportation network vehicle."

8. The City of Chicago's Department of Business Affairs and Consumer Protection ("BACP") is responsible for overseeing the City's regulation of TNP companies and TNP drivers. Ex. 1 (Bapat Decl.) ¶ 2.

9. The City does not itself physically inspect TNP vehicles other than those seeking to be certified as wheelchair accessible vehicle TNPs. Ex. 1 (Bapat Decl.) ¶ 7. Rather, TNP companies are responsible for ensuring that TNP vehicles have passed a required annual inspection. Id.; MCC § 9-115-110.

10. On January 30, 2017, Plaintiff Patricia Page received an Administrative Notice of Ordinance Violation for violating MCC § 9-115-130 for displaying commercial advertising on the exterior of her vehicle while using it to provide transportation network services for Uber. VC ¶ 40; Ex. 4 (Page Dep.) Dep. Ex. 4. The advertisements that triggered the violation are below:



The City's Interests in Regulating Commercial Advertising on the Exterior of TNPs

11. Commercial advertising on the exterior of vehicles can be distracting to other drivers, who are intended to see the advertising, as the purpose of placing commercial advertisements on the exterior of a vehicle is to draw the attention of other drivers and pedestrians in order to get them to “look at” the advertisement. Ex. 5 (Jones Dep.) 66:13-24, 69:11-17. Plaintiff Page testified that she advertised her business on the rear of her TNP vehicle so that “the person behind [her],” as well as “other drivers,” would see it and take down her contact information. Ex. 4 (Page Dep.) 49:3-14, 27:2-7. See also Ex. 6 (Brooks Dep.) 38:4-39:2.

12. Intervenor Meents testified that “every square inch of [his] car is a potential real estate” for commercial advertisements and that if he had the opportunity he “would decorate [his] car just like a race car driver.” Ex. 7 (Meents Dep.) 12:2-4, 45:16-19.

13. Plaintiff Brooks acknowledged that visual distractions can impact traffic safety “by drivers not paying attention to what they’re doing on the road.” Ex. 6 (Brooks Dep.) 41:19-42:2.

14. Plaintiff Jones testified that it might be “too distracting” to have exterior advertisements “all over” her vehicle. Ex. 5 (Jones Dep.) 53:5-13.

15. Plaintiff Page testified that other drivers who see an advertisement on a TNP vehicle might try to take a picture of the information in the advertisement with their cell phone while driving, which would require locating the cell phone, unlocking the cell phone or getting past the home screen, going into the camera application, taking the photo, and presumably putting the cell phone back down, with the entire process taking approximately 5 to 20 seconds. Ex. 4 (Page Dep.) 29:4-30:9.

16. Plaintiff Page acknowledged that it is “unsafe” for a driver to take a photo while driving, Ex. 4 (Page Dep.) 31:1-18, and Intervenor Meents acknowledged that taking a photo while driving is distracting, Ex. 7 (Meents Dep.) 74:4-17.

17. Plaintiff Page testified that drivers could also attempt to write down information contained in advertisements on other vehicles while driving, and they would have to find something to write on, which could potentially take “longer than 20 seconds[.]” Ex. 4 (Page Dep.) 49:15-50:1; 32:9-15. She acknowledged that drivers attempting to write information down while driving “would make driving less safe.” Id. at 32:9-15. Intervenor Meents acknowledged that other drivers may try to write advertisement information down if they could locate a pen and paper. Ex. 7 (Meents Dep.) 74:21-75:4.

18. Plaintiff Page testified that other drivers might also attempt to create a note in their phone in order to document information in an advertisement, which would take “about 20 seconds” and could make driving less safe. Ex. 4 (Page Dep.) 32:19-33:4.

19. Plaintiff Deans testified that even if he could advertise on the exterior of his vehicle “[i]t would have to be something removable” because he would not want advertising on his vehicle when using it to drive his family. Ex. 8 (Deans Dep.) 24:7-24. He also testified that he would not want a “loud and ugly” advertisement on his vehicle because “I wouldn’t want my car to look like that. It might affect my ratings.” Id. at 30:11-22.

20. Rupal Bapat, Deputy Commissioner for the Public Vehicle Operations Division in the City’s Department of Business Affairs and Consumer Protection, testified that the “the volume is very different” between taxicabs and TNP vehicles, as taxicabs are limited to 6,999 vehicles while there is no limitation on the number of personal vehicles that can be used as TNP vehicles and operate in the City. Ex. 3 (Bapat Dep.) 146:3-147:2; Ex. 1 (Bapat Decl.) ¶¶ 8, 17.

21. As of December 2017, there were 117,557 TNP vehicles registered with the City. Ex. 1 (Bapat Decl.) ¶ 8. For January through August of 2017, the following number of total trips per month for all TNP companies combined were reported to the City:

MONTH	TOTAL TRIPS
January, 2017	6,419,076
February, 2017	6,181,114
March, 2017	7,274,372
April, 2017	6,855,126
May, 2017	7,163,789
June, 2017	7,138,318
July, 2017	7,324,342
August, 2017	7,342,026

Ex. 1 (Bapat Decl.) ¶ 9.

22. Taxicabs in the City are required to be licensed, and each licensed taxicab is issued a medallion metal plate, which displays the license number of the vehicle and must be affixed to the exterior hood of the taxicab. Ex. 1 (Bapat Decl.) ¶ 10; MCC §§ 9-112-270, 9-112-280. As of December 1, 2017, there were 6,907 licensed taxicabs in the City; 4,793 of those were in active status and 987 were in foreclosure status. Ex. 1 (Bapat Decl.) ¶ 18. These are the two statuses that are authorized to pick up and transport passengers. Id.

23. City records, available on the City's Data Portal at <https://data.cityofchicago.org/Transportation/Taxi-Trips/wrvz-psew>, indicate that for January through July of 2017, the following number of taxi trips per month were reported to the City:

MONTH	REPORTED TRIPS
January, 2017	1,040,262
February, 2017	1,016,484
March, 2017	1,293,745
April, 2017	1,187,501
May, 2017	1,132,690
June, 2017	1,092,557
July, 2017	925,711

Ex. 1 (Bapat Decl.) ¶ 19.

24. Taxicabs are the only motor vehicles permitted to accept street hails in the City. Ex. 1 (Bapat Decl.) ¶¶ 11, 23. A street hail is when a passenger standing in public observes a nearby taxicab and signals to that taxicab, typically by raising an arm or calling to the taxicab, that the passenger desires a ride in the taxicab. Id. ¶ 6.

25. TNP vehicles may not accept street hails. Ex. 1 (Bapat Decl.) ¶ 6; MCC § 9-115-180(d)-(e). Instead, a passenger uses the TNP's application ("app") to pre-arrange a ride, meaning a potential passenger contacts a registered TNP vehicle through the app to request a ride in exchange for a fare. Ex. 1 (Bapat Decl.) ¶ 6; Ex. 9 (Flessner Dep.) 32:1-6. Prior to requesting a ride, the passenger must download the app and agree to the TNP's terms of service. Ex. 1 (Bapat Decl.) ¶ 6.

26. Taxicabs must charge a rate of fare set by the MCC that is based on time and distance travelled, and which is measured by taximeter. Ex. 1 (Bapat Decl.) ¶ 13; MCC § 9-112-600. The City regulates many additional areas of the taxicab industry. For example, the City sets the maximum lease rates for taxi chauffeurs to lease a taxicab; periodically reviews maximum lease rates; regulates taxi affiliations, which are associations of taxicab license holders organized and incorporated for the purpose of providing members with a Chicago business address, registered telephone number, uniform color scheme, trade name or emblem, an approved two-way dispatch system, insurance, and designation of an authorized registered agent; and sets the rules for the sale or transfer of medallions and the conditions for fitness of ownership of medallions. Ex. 1 (Bapat Decl.) ¶ 14. The City also mandates that all taxicabs be physically inspected at the City's vehicle inspection facility for safety and compliance with the MCC and rules and regulations. Ex. 1 (Bapat Decl.) ¶ 16; MCC § 9-112-050.

27. TNP vehicles are not required to charge a metered fare set by ordinance and instead may “charge compensation for service based on distance travelled or time elapsed during service, or based on distance travelled and time elapsed during service, or a flat prearranged fare, or a suggested donation.” MCC § 9-115-200; Ex. 1 (Bapat Decl.) ¶ 6.

28. The appearance of taxicabs and TNP vehicles is regulated differently. Rupal Bapat testified that taxicab and TNPs are two different industries and that “[t]axicabs look like a commercial vehicle, and our ordinances and rules mandate it looks like a commercial vehicle. TNPs are personal use vehicles, so we have different rules.” Ex. 3 (Bapat Dep.) 148:4-13. She also testified that taxicabs are required to “have full body paint jobs with signage requirements. The taxicab number has to be on the side door panels and the rear, the top light has to have the affiliation name on it . . . [and] a medallion metal plate on the hood.” *Id.* at 147:10-148:4.

29. The City regulates many of the physical aspects of taxicabs relating to vehicle equipment, visual appearance, and operating systems. Among other things, City ordinances and regulations require that taxicabs: have a roof-top light fixture that displays the taxi’s medallion number and is able to indicate the taxi’s availability for hire; install an approved taximeter; use GPS systems; comply with standards for the interior space, including seat upholstery type and air conditioning levels; install either a security camera or a safety partition that separates the back seats from the front seats; include required signage in the interior that advises passengers of certain laws and rights; and display specific paint jobs and trade dress on the vehicle exterior, including distinct approved color schemes and affiliation logos, the medallion number in four locations at a minimum height of four inches, and a 311 public safety bumper sticker. Ex. 1 (Bapat Decl.) ¶ 12.

30. The City has authorized advertising on the exterior of taxicabs in only two specific locations: the side door panel, and the rooftop. MCC § 9-112-410; Ex. 1 (Bapat Decl.) ¶ 21. Such advertising is permissible only upon receipt of a permit from BACP. MCC § 9-112-410(a)-(b); Ex. 1 (Bapat Decl.) ¶ 21. Taxicabs are already required under City regulations to have rooftop fixtures that show their medallion number and their availability for hire, and to display trade dress and taxi company affiliations on the side door panel, so allowing advertising in these same locations does not materially alter the appearance or add to the visual clutter of taxicabs beyond that already required for identification purposes. Ex. 1 (Bapat Decl.) ¶ 12. Further, the equipment used to display these advertisements is required to be inspected at the City's taxicab inspection facility in order to ensure that the equipment is securely affixed to the vehicle. Id. ¶ 21.

31. As of September 22, 2017, there were 29 active taxicab exterior side panel advertising permits, which would allow for the display of advertising on the side door of a taxicab, and there were 1,487 active taxi exterior rooftop advertising permits. Ex. 1 (Bapat Decl.) ¶ 24.

32. Rupal Bapat testified that prohibiting advertising on TNPs allows one to “distinguish between taxis and TNPs” and helps prevent people from hailing TNP vehicles in a traditional sense, which would result in an illegal ride. Ex. 3 (Bapat Dep.) 145:7-22, 63:21-64:6; 65:1-20. The impromptu and unarranged nature of street hails necessitates that taxicabs be visually distinguishable at a distance from other vehicles, including TNP vehicles, so that prospective passengers can see taxis sufficiently in advance of their approach and have enough time to hail them. Ex. 1 (Bapat Decl.) ¶ 23.

33. Exterior advertisements may include phone numbers through which a prospective passenger could contact a TNP driver directly to request a ride. Ex. 4 (Page Dep.) 28:9-22. Plaintiff Page testified that the BACP inspector who issued an administrative notice of ordinance violation to her for exterior advertising informed her that displaying her contact information on her vehicle “was not allowed while driving for Uber” because a passenger could call her and she could then pick them up without going through the TNP platform. *Id.* at 24:18- 25:6. Plaintiff Page’s exterior advertisement for her face painting business listed her cell phone number as the contact number. *Id.* at 28:7-10. A person on the street who saw that advertisement and who called the number would be able to speak to Page while she was driving her vehicle and request a ride. *Id.* at 28:11-17.

34. Plaintiff Jones testified that she would not want advertising on her car when using it for personal reasons because she is not “on duty” and indicated advertisements attract the attention of potential passengers “[l]ike, if you see a bus driver, you know, you just automatically want them to have them get -- have them pick you up in the bus. If they’re off duty, they’re not working at the time.” Ex. 5 (Jones Dep.) 53:23-54:10.

35. In addition to TNPs, other types of regulated public passenger vehicles, such as liveries, ambulances, and horse drawn carriages, are not permitted to have interior or exterior advertising. Ex. 2 (Ortiz Dep.) 69:20-70:6; Ex. 3 (Rupal Dep.) 61:24-62:20.

The City’s Interests in Regulating Commercial Advertising Inside TNPs

36. Vugo’s software allows for TNPs to display commercial advertisements on tablet devices in the backseat of TNP vehicles. VC ¶¶ 16-17; Ex. 10 (Bellefeuille Dep.) 28:16-18.

37. Vugo has stated that TNP passengers are a “captive, confined audience” and that “[p]assengers in rideshare vehicles are not only captive but also one of the most sought-after

audiences today.” Ex. 11 at PLS-0258; Ex. 12 at PLS-0073, PLS-0075; Ex. 13 (Vugo website) at 2.

38. Robert Flessner, CEO of Vugo, testified that Vugo’s software “is effectively just a delivery mechanism for content. It’s up to the licensee to determine what content they want to put on that.” Ex. 9 (Flessner Dep.) 42:9-42:13. See also Ex. 10 (Bellefeuille Dep.) 18:11-15. He also testified that while Vugo’s software allows for other content, such as entertainment, to be displayed to passengers, showing advertising is “the easiest way to monetize” their software. Ex. 9 (Flessner Dep.) 108:24-109:4. See also Ex. 10 (Bellefeuille Dep.) 88:19-24.

39. Plaintiff Brooks acknowledged that passengers could find interior advertisements “annoying.” Ex. 6 (Brooks Dep.) 55:9-12.

40. Plaintiff Page testified that she would not advertise her own business on the interior of her TNP vehicle because “it’s too much in your face” for passengers who are “captive” and have “no other alternative” to being stuck in the car. Ex. 4 (Page Dep.) 67:7-17, 68:13-14, 68:24-69:5.

41. Robert Flessner testified that the context and relevancy of an advertisement “makes or breaks whether or not an advertisement is [] worthwhile” to a viewer, and acknowledged that advertisements that are not relevant could possibly annoy viewers. Ex. 9 (Flessner Dep.) 21:2-24:2, 89:15-17. Flessner also testified that in some circumstances fewer ads could lead to a better passenger experience. Id. at 87:17-19, 115:13-23.

42. James Bellefeuille, COO of Vugo, testified that showing non-relevant advertisements to passengers could cause the passenger to feel “upset or annoyed”, and acknowledged that there are some passengers “who can be upset or annoyed even when an ad is relevant . . . because they just don’t like seeing ads.” Ex. 10 (Bellefeuille Dep.) 165:16-166:17.

43. James Bellefeuille stated that “[s]ome people wont [sic] stand for advertising no-matter what.” Ex. 10 (Bellefeuille Dep.) Dep. Ex. 2 at 9.

44. James Bellefeuille testified that the reason the TNP industry has been successful compared to the taxi industry is because “the market’s willing to pay for high quality passenger experiences.” Ex. 10 (Bellefeuille Dep.) 67:18-24.

45. A representative from Lyft stated in an email to Vugo that “the brand team explicitly does not want advertising in-car.” Ex. 15 at PLS-0095.

46. James Bellefeuille wrote that Uber discouraged drivers from showing advertisements in their vehicles, as “[i]t is Uber’s goal to make the rider experience as smooth and comfortable as possible . . . We don’t believe that in-ride advertising enhances the ride experience, and we discourage driver partners from working with third party in-ride advertisers such as [Vugo].” Ex. 10 (Bellefeuille Dep.) Dep. Ex. 3 at 1.

47. Vugo’s software collects certain information regarding a passenger’s trip, such as origination and destination point, in order to attempt to tailor advertisements to that passenger. Vugo refers to this as “trip intent” technology. Ex. 9 (Flessner Dep.) 130:16-132:11; Ex. 10 (Bellefeuille Dep.) 97:7-98:20; Ex. 13 (Vugo website) at 2.

48. Vugo’s trip intent technology uses an “estimation of intent” of the passenger, and accordingly might show a series of advertisements based on inaccurate assumptions, which would lead to less relevant advertisements. Ex. 9 (Flessner Dep.) 155:9-156:7.

49. Vugo’s software also allows an advertiser to pay to have priority for their advertisements over other advertisements that might be shown, and would have the option of a blanket campaign for all passengers, regardless of whether the advertisement was otherwise relevant to the passenger. Ex. 9 (Flessner Dep.) 138:9-143:10. See also Ex. 16 at PLS-0127 ¶ 9.

50. Plaintiff Jones testified that “everyone in the car, the driver and the passenger, should feel comfortable with whatever is going on in the car.” Ex. 5 (Jones Dep.) 83:19-24.

51. Audio or video content played in the backseat is potentially distracting to TNP drivers. Ex. 5 (Jones Dep.) 85:5-86:10; Ex. 9 (Flessner Dep.) 122:13-17. Under Vugo’s software, the TNP driver does not have any control over the volume or visual display of audio and visual content in the backseat. Ex. 9 (Flessner Dep.) 121:12-23.

52. Plaintiff Jones testified that she has concerns about the potential content of media available for interior displays in part because of “carpooling; Uberpool and Lyft Line. Some passengers might not -- Some passengers would be okay, some passengers wouldn’t. I think that would be the issue. Having carpooling and having that available might be a problem.” Ex. 5 (Jones Dep.) 82:2-8. She further testified that “passengers might be in an argument between themselves about what should be on the screen.” Id. at 82:9-13.

53. An additional method of interior advertisements includes companies such as “Cargo”, which provides “a mobile vending unit” placed on the armrest between the driver and front passenger seat that provides free and paid items such as fun sized candy packets, phone chargers, and gum. Ex. 5 (Jones Dep.) 26:19-27:15, 29:5-12, 30:3-5. Companies might choose to offer their products for free through Cargo in an effort to market or promote a product to TNP passengers. Id. at 42:3-5, 43:9-11.

54. In order to purchase an item through Cargo, a passenger goes to Cargo’s website during the ride, types in the TNP driver’s code, and selects an item. Ex. 5 (Jones Dep.) 30:10-21. Once a passenger has selected a free or paid item through the Cargo website during a ride, the TNP driver receives a text message alerting them of the sale. The driver will then have to read

the text message, open the Cargo box, and give the item or items to the passenger. Id. at 31:8-13, 46:23-47:17.

55. Denise Jones, who has used the Cargo service while driving a TNP vehicle, testified that giving a passenger an item while driving is “too much of a struggle. . . . it’s too dangerous.” Ex. 5 (Jones Dep.) 38:2-18, 40:20-41:21.

56. In addition to regulating the physical aspects of taxicabs, the City also sets extensive service-oriented regulations for taxicabs, including the requirement that all taxicabs must generally charge a metered rate of fare set by the City, which must be calculated by a taximeter approved by the City and with rates clearly displayed in the vehicle. Ex. 1 (Bapat Decl.) ¶ 13; MCC §§ 9-112-510, 9-112-600. The City also imposes mandatory requirements upon taxicabs “to have rear seat equipment that is capable of processing non cash forms of payment” such as credit cards, and this equipment is typically referred to as a passenger information monitor (“PIM”). Ex. 2 (Ortiz Dep.) 88:12-89:22; Ex. 1 (Bapat Decl.) ¶ 15; MCC § 9-112-510.

57. A PIM is a small video screen, which is securely installed in the rear passenger compartment of a taxicab and is integrated with the taximeter. Ex. 3 (Bapat Dep.) 105:1-19; Ex. 2 (Ortiz Dep.) 77:8-20, 87:21-88:7; Ex. 1 (Bapat Decl.) ¶ 15. A PIM typically includes a swipe strip and keypad that allows a passenger to pay by credit card. Ex. 1 (Bapat Decl.) ¶ 15. It also typically includes a small video screen that provides visual information about the ride, such as the total fare, and also displays prompts and information regarding the status of the credit card transaction. Id. Further, the City requires all new PIMs to be audio accessible for blind or low-vision taxicab passengers by, for instance providing audio prompts concerning the ride. Id.

58. While PIMs may have audio or video content, advertising is not the purpose of the PIM, the “purpose is primarily credit card transactions and processing.” Ex. 3 (Bapat Dep.) 104:4-24. PIMs serve an important regulatory purpose, as debit and credit card acceptance provide a convenience for passengers who prefer not to carry cash, have not had a chance to visit an ATM, or simply prefer to pay for day-to-day expenses with a debit or credit card. Ex. 1 (Bapat Decl.) ¶ 28. PIMs also provide a safety benefit to drivers, who may carry less cash the more customers pay with cards, thereby discouraging robbery attempts. Id.

59. Robert Flessner testified that traditionally video displays in taxicabs “have been focused on credit card processing using the taxi TV system as a means to subsidize the hardware cost” or to offset the cost of required equipment. Ex. 9 (Flessner Dep.) 98:24-99:1, 157:3-6, 158:23-159:5. See also Ex. 10 (Bellefeuille Dep.) 56:35-58:14.

60. MCC § 9-112-410 prohibits the display of advertising inside taxicabs unless the taxicab has a permit issued by the City for such advertising. MCC § 9-112-410

61. The PIM is the only place on the interior of a taxicab where advertising is permitted by the City. Ex. 1 (Bapat Decl.) ¶ 27. As of September 22, 2017, there were 613 active taxicab interior video permits, which allow for display of interior advertising on a PIM. Ex. 1 (Bapat Decl.) ¶ 31.

62. On numerous occasions, passengers have complained to the City that they find advertising on PIMs in taxicabs annoying or disruptive. Ex. 1 (Bapat Decl.) ¶ 30, Ex. C.

63. In a survey done in New York City, in response to a question about what passengers dislike most about taxicabs, 31.3% of passengers responded that “Taxi TV is annoying.” Ex. 14 (Taxi of Tomorrow Survey Results, New York City Taxi & Limousine Commission) at 4.

64. The City does not require a vehicle technology system like a PIM in TNP vehicles. Ex. 1 (Bapat Decl.) ¶ 32.

65. A PIM would be contrary to the TNP business model, as the TNP model does not allow for payments by credit card (or by any other method) in the vehicle; rather, passengers pay using the application. Ex. 1 (Bapat Decl.) ¶ 32; Ex. 2 (Ortiz Dep.) 115:4-10; Ex. 9 (Flessner Dep.) 157:3-6. In TNP vehicles, fares are agreed to over the TNP's app before a passenger enters a vehicle, payment must be made through the TNP platform using a credit card that the passenger already has on file with the TNP company, and TNP drivers are prohibited from accepting any fare directly. Ex. 1 (Bapat Decl.) ¶ 6.

66. Plaintiff Jones testified that "taxis have to pay more money to operate their business . . . Insurance, medallions, licenses" and that the "taxi industry feels like they're making less money in this climate where Uber and Lyft operates." Ex. 5 (Jones Dep.) 87:5-23.

67. James Bellefeuille testified that "taxis are dying, especially in Chicago. And when I say that, I mean that there's fewer taxis this year than there were last year, and that's because rideshare and other forms of transportation are replacing them." Ex. 10 (Bellefeuille Dep.) 22:5-9.

68. James Bellefeuille testified that one reason a person becomes a TNP driver rather than a taxicab driver is that the cost and expense of being a taxicab driver is greater than for a TNP driver since it is "cheaper" to use your own car than to own a medallion. Ex. 10 (Bellefeuille Dep.) 87:3-88:6.

69. The TNP industry has a high turnover rate of drivers. Robert Flessner testified that "ride share drivers tend not to stay on the platform very long" and that turnover rates on an annual basis were "as high as 96 percent." Ex. 9 (Flessner Dep.) 19:11-16.

Date: October 5, 2018

Respectfully submitted,

EDWARD N. SISSEL,
Corporation Counsel of the City of Chicago

By: /s/ Tara D. Kennedy
Assistant Corporation Counsel

Andrew W. Worsack
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