

**IN THE SUPERIOR COURT OF THE DISTRICT OF COLUMBIA  
CIVIL DIVISION**

KOLAWOLE J. AKINADEWO, et. al

*Plaintiffs*

v.

DISTRICT OF COLUMBIA  
TAXICAB COMMISSION

Case No.

**ORAL HEARING REQUESTED**

**MOTION FOR TEMPORARY RESTRAINING ORDER  
AND FOR PRELIMINARY INJUNCTION**

Pursuant to Superior Court Civil Rules 12-I and 65, Plaintiffs request the Court issue a temporary restraining order and preliminary injunction to enjoin the enforcement of D.C. Municipal Regulations 31-603 and 31-605 until D.C. taxicab drivers, including Plaintiff drivers are given a reasonable and realistic time to comply.

As more fully set out in the accompanying memorandum of points and authorities, the grounds for this motion are:

1. The regulations adopted by Defendants are arbitrary and capricious as applied to D.C. taxicab drivers, including Plaintiff drivers. The regulations have a severe impact on Plaintiffs' property rights and deprive Plaintiffs of their ability to earn "reasonable and just compensation" as required by D.C. Code §50-302(a)(2).

2. If the regulations unlawfully adopted by Defendants are allowed to continue in effect, the Plaintiffs will suffer irreparable injury, including the loss of their ongoing business.

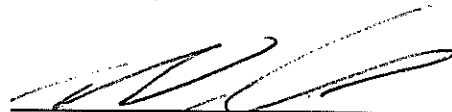
3. The Defendants will suffer no harm by delaying the implementation of the regulations until the Plaintiffs have a reasonable opportunity to comply. The deadlines unilaterally implemented by the Commission for compliance are arbitrary and Plaintiffs simply seek to preserve the *status quo*.

4. The public interest will not be disserved by the issuance of an injunction while D.C. taxi drivers, including Plaintiff drivers, have a reasonable and realistic opportunity to comply with the regulations. To the contrary, the public interest will affirmatively be served by having available taxi drivers for D.C. taxi riders.

Pursuant to Rule 12-I(a) the undersigned certifies, that despite diligent efforts, the consent of Defendants.

WHEREFORE, Plaintiffs respectfully requests that the Court grant Plaintiffs Motion for Temporary Restraining Order and Preliminary Injunction.

Respectfully submitted,



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Dated: November 5, 2013

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KOLAWOLE J. AKINADEWO, et. al

*Plaintiffs*

v.

DISTRICT OF COLUMBIA  
TAXICAB COMMISSION

*Defendant.*

**MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT  
OF PLAINTIFFS' MOTION FOR TEMPORARY RESTRAINING ORDER  
AND PRELIMINARY INJUNCTION**

Pursuant to Rule 65 of the Superior Court Rules of Civil Procedure, Plaintiffs, by their undersigned counsel, submit this Memorandum of Points and Authorities in Support of their Motion for Temporary Restraining Order and Preliminary Injunction.

**FACTUAL BACKGROUND**

**I. Modern Taxi Meter System**

**a. Promulgation of MTS Regulation**

On May 17, 2013, the District of Columbia Taxicab Commission (“Commission”) issued a Notice of Formal Rulemaking in which it adopted a new regulation regarding the Modern Taximeter System (“MTS”) for taxicabs, which was later codified at D.C. Municipal Regulation Section 31-603. 60 D.C. Reg 6993 – 7021 (May 17, 2013). The new MTS regulation required that beginning on September 1, 2013, “[e]ach taxicab shall operate only with an MTS unit that allows a passenger to make a cash payment or cashless payment, which shall be the decision of the passenger.” D.C. Mun. Reg. § 31-603.2. The MTS consists of a meter, credit card reader, and

tablet with log-in functions, all of which are dependent on cellular reception in order to function properly. *See* D.C. Mun. Reg. § 31-603. All costs associated with obtaining an MTS unit, including installation, certification, operation, and compliance with applicable law are the burden of the individual taxicab owners. *Id.* at § 31-603.6. Further, with the installation of the MTS, taxicab drivers are obligated to pay to the Commission twenty five cents (\$0.25) for every cash or credit card fare. D.C. Mun. Regs. § 31-801.7(b)(2).

**b. Inability to Comply with the MTS Regulation Despite Good Faith Compliance**

The MTS is plagued with poor cellular reception quality and frequent log-in problems, including failing to timely start when a passenger first gets into the vehicle, failing to timely start when a taxicab driver begins his or her workday, losing cellular reception during a fare and failing to record all metered mileage, losing cellular reception at the end of a fare and failing to make credit payment possible, and taking an unreasonable amount of time to print receipts and therefore causing a taxicab driver to block traffic at the end of fares. (*See* Gebresalassie Aff. ¶¶ 15-16; Mazanderan Aff. ¶ 12; Zewdu Aff. ¶¶ 13-14; Olorunfemi Aff. ¶¶ 13-14). Due to the poor cellular reception quality and frequent log-in problems with the MTS, Plaintiffs have been forced to refuse patrons who cannot pay cash (Mazanderan Aff. ¶ 12), lose money on fares when poor cellular reception quality causes the meter to fail to record mileage (Gebresalassie Aff. ¶¶ 15-16; Mazanderan Aff. ¶ 12; Zewdu Aff. ¶¶ 13-14), take fares “off-meter” and charge customers for fares on a non-meter basis (Olorunfemi Aff. ¶¶ 13-14), take credit cards payments using credit cards readers other than those integrated into MTS (Olorunfemi Aff. ¶¶ 13-14), drive in and around the District of Columbia without a working MTS system (Zewdu Aff. ¶¶ 13-14; Olorunfemi Aff. ¶¶ 13-14), and stall traffic while waiting for the MTS system to function, (Zewdu Aff. ¶¶ 13-14). By some or all of the aforementioned acts, Plaintiffs who installed the

MTS within the arbitrary deadline set by the Commission are nevertheless in violation of D.C. Municipal Regulation Section 31-603's requirements that a taxicab be equipped with a functioning MTS that maintains a data connection sufficient to record metered fares and allow for digital payments and/or of D.C. Municipal Regulation Section 31-603.10's prohibitions on operating a taxicab if the MTS unit is not functioning properly, limiting service or refusing to provide service based on the passenger's choice of payment method, or participating in a transaction involving taxicab service in the District of Columbia where the fare, rates, charges, or payment does not comply with the Commission's regulations. Under the circumstances, despite good faith efforts at compliance, Plaintiffs were unable to comply with the September 1, 2013 deadline to equip a taxicab with a fully functioning MTS that meets the Commission's technical specification.

The penalties for failing to comply with the requirement of a fully functioning MTS are severe. Pursuant to D.C. Municipal Regulation Section 31-612, a taxi driver who operates a vehicle without approved equipment is subject to fines between \$100 and \$750, impoundment of his vehicle, confiscation of his MTS unit or other meter, and suspension, revocation, or non-renewal of his license.

## **II. Dome Light Requirement**

### **a. Promulgation of Dome Light Regulation**

On November 14, 2012, the Commission issued a Notice of Formal Rulemaking in which it adopted a new regulation regarding Dome Lights in taxicabs, which was later codified at D.C. Municipal Regulation Section 31-605. 60 D.C. Reg. 1173-1174 (February 1, 2013). The new Dome Light regulation required that "[n]o later than April 30, 2013, all licensed taxicabs in the District of Columbia shall be equipped with the Commission-approved Dome Lights and Taxi

Number System.” D.C. Mun. Reg. § 31-605.1. The regulatory deadline of April 20, 2013 was then pushed back by subsequent non-regulatory communications by the Commission. In a May 28, 2013 press release, the Commission announced two certified manufacturers of the Dome Light, stated that installation of the Dome Light could begin June 1, 2013, and provided that “[a]ll DC taxis are required to be outfitted with the new standardized Dome Light by August 31, 2013.” Government of The District of Columbia Taxicab Commission, *DC Taxicab Commission Announces Dome Light Manufacturers* (May 28, 2013), available at

<http://washingtondispatcher.com/clients/washingtondispatcher/DomeLightsPressRelease.pdf>.

More conflictingly, the Commission’s website provides that “All licensed DC taxicabs are required to have the new standardized Dome Light installed by November 1, 2013.” District of Columbia Taxicab Commission, *Dome Light* (2013) <http://dctaxi.dc.gov/page/dome-light>.

**b. Inability to Comply with the Dome Light Regulation Despite Good Faith Compliance**

Plaintiffs and class members who have made multiple good-faith efforts to acquire a Dome Light have not been able to acquire a Dome Light as of November 1, 2013 because of a shortage of Dome Lights and installers. (Zewdu Aff. ¶¶ 16-17; Olorunfemi Aff. ¶¶ 17-18; Akinadewo Aff. ¶ 14; Gebresalassie Aff. ¶ 17; Tessema Aff. ¶ 10). The Commission has authorized just two manufacturers and twelve installation locations for the Dome Light, who must service approximately 5,000 taxicabs. *See DC Taxicab Commission Announces Dome Light Manufacturers*, available at <http://washingtondispatcher.com/clients/washingtondispatcher/DomeLightsPressRelease.pdf>; District of Columbia Taxicab Commission, *Installation Locations* (2013) [http://dctaxi.dc.gov/sites/default/files/dc/sites/dc%20taxi/page\\_content/attachments/Installation%20Locations-AA\\_1.pdf](http://dctaxi.dc.gov/sites/default/files/dc/sites/dc%20taxi/page_content/attachments/Installation%20Locations-AA_1.pdf). The effect of these restrictions has been to impair Plaintiffs’ ability to comply with the regulations. Installers have required Plaintiffs to join

waitlists of indefinite lengths and been unable to state how many days or weeks after November 1, 2013 Dome Lights will be available for installation. (See Tessema Aff. ¶ 10, Zewdu Aff. ¶¶ 16-17). For instance, Plaintiff Girma Tessema tried but could not get an appointment to have the Dome Light installed by the deadline. (Tessema Aff. ¶ 10). As a result, Plaintiff's Tessema's taxi was impounded on the morning of November 1, 2013 and Plaintiff Tessema will lose the use of his taxi until an installer can give him an appointment off the waitlist for Dome Lights. (Tessema Aff. ¶ 10). Plaintiff Tessema does not know when he will receive an appointment and must simply wait by the phone. (*Id.*)

Similarly, Plaintiff Manny Zewdu made approximately ten visits in October 2013 to five authorized retailers in search of a Dome Light and was consistently told that the Dome Lights were out of stock. (Zewdu Aff. ¶¶ 16-17). Even after expending six hours searching for a Dome Light, Plaintiff Zewdu was not able to locate a Dome Light as of November 1, 2013. (*Id.*) Under these circumstances of the marketplace, Plaintiffs have been unable to comply with the regulation regardless of efforts at good faith compliance.

Yet, under D.C. Mun. Reg. § 31-612, impoundment is a guaranteed consequence of operating a vehicle without approved equipment. As a result, not only has Plaintiff Tessema had his taxicab impounded, but Plaintiffs Gebresalassie, Olorunfemi, Akinadewo, and Ruffin have all been forced to forfeit the use of their taxicabs until they can obtain a Dome Light at an indefinite date because of the risk of imminent impoundment (Tessema Aff. ¶¶ 11-12; Gebresalassie Aff. ¶ 17; Olorunfemi Aff. ¶¶ 21-24; Akinadewo Aff. ¶ 15).

### **III. Request for a Stay**

On September 27, 2013, Ferline Buie, acting on behalf the affected taxicab drivers, sent a letter to the Commission requesting a stay of the regulations. (Affidavit of Ferline Buie (Buie

Aff.) ¶ 5). On October 16, 2013, Ms. Buie and a group of taxicab drivers met with City Administrator Allan Lew to again request a stay of the regulations. (Buie Aff. ¶ 6). On or about October 29, 2013, Ms. Buie received a letter from the Commission that reflected a refusal to stay the regulations. (Buie Aff. ¶ 8). Ms. Buie contacted the Commission by telephone and it reiterated its position that it would not stay the regulations (Buie Aff. ¶ 9). Since November 1, 2013, the Plaintiffs, through their representatives, have continued to seek a stay of enforcement of the dome light and MTS regulations. (Buie Aff. ¶ 10).

## ARGUMENT

### **I. Legal Standard**

Plaintiffs seek a temporary restraining order and preliminary injunction against Defendant pursuant to Rule 65 of the Superior Court Rules of Civil Procedure.

To obtain a preliminary injunction, the moving party must establish:

(1) that there is a substantial likelihood [they] will prevail on the merits; (2) that [they are] in danger of suffering irreparable harm during the pendency of the action; (3) that more harm will result to [them] from the denial of the injunction than will result to the defendant from its grant; and, in appropriate cases, (4) that the public interest will not be disserved by the issuance of the requested order.

*In re Estate of Reilly*, 933 A.2d 830, 834 (D.C. 2007). To obtain a temporary restraining order, Plaintiffs must make the same showing, except that they must show a danger of irreparable harm during the time required to brief, argue, and decide their motion for preliminary injunction, and that the Defendants will not suffer greater harm during the same time period.

As demonstrated below, Plaintiffs have satisfied all requirements for a temporary restraining order and preliminary injunction and the Court should issue an order directing the Defendant to refrain from enforcing the regulations at issue.



**II. Plaintiffs Are Likely to Succeed on the Merits.**

**a. The Timeframe for Implementation of Regulations 31-603 and 31-605 Is Arbitrary and Capricious.**

Regulation 31-603 mandates that each D.C. taxi driver, including Plaintiff drivers, purchase and have the required MTS equipment installed and operational by the unilaterally imposed date of October 1, 2013 (the “implementation date”). The approved MTS unit must be purchased from a payment system provider (PSP) approved by the Defendant and installed by a MTS installation business approved by the Defendant. By October 1, 2013, each taxicab driver was required to have a fully functioning MTS unit that includes, but is not limited to, a mechanism for the passenger to select their preferred payment method (either cash or credit card), uses a 3G or better cellular data connection and is equipped with a global positioning satellite (GPS).

The MTS is a synchronized system that connects the onboard meter with a computerized payment mechanism through a cellular data connection. A specific requirement of the new system is that passengers cannot be charged an amount through the MTS unit other than that displayed on the taximeter. D.C. Mun. Reg. §31-603.8(e). In fact, a driver that seeks to collect a fare other than the one displayed on the meter is subject to penalties for noncompliance. As the evidence submitted demonstrates, however, the MTS unit is currently dysfunctional and ineffective.

Because of poor reception and frequent log-in problems, D.C. taxi drivers including the Plaintiff drivers and other class members have been forced to bear the burdens of these admitted deficiencies by, among other things, refusing to transport patrons who cannot pay cash for the stated fare (Mazanderan Aff. ¶ 2), losing money on fares when the meter fails to properly and

accurately record mileage (Gebresalassie Aff. ¶ 2 ; Mazanderan Aff. ¶ 2; Zewdu Aff. ¶ 2), taking fares “off-meter” and charging customers on a different basis (Olorunfemi Aff. ¶¶ 1-2), taking credit card payments using other credit cards readers not integrated into MTS (Olorunfemi Aff. ¶¶ 1-2), driving in and around the District of Columbia without a working MTS system (Zewdu Aff. ¶¶ 2; Olorunfemi Aff. ¶¶ 1-2), and stalling and impeding traffic while waiting for the MTS system to function (Zewdu Aff. ¶¶ 2).

Section 603.10 of the Regulations issued by the Defendant prohibits the operation of a taxi if the MTS unit is not functioning properly. Due to the operational deficiencies, D.C. taxi drivers including the Plaintiff drivers and other class members are forced to either violate D.C. Regulations by not having a “functioning” MTS or refrain from driving. A driver risks serious penalties including, impoundment of his or her vehicle, confiscation of the MTS unit, fines up to \$750, and suspension, revocation or non-renewal of his or her taxi license despite the fact that the driver has completely satisfied the obligation to purchase and install the required equipment from the vendors designated by the Defendant. Consequently, despite their good faith efforts to comply with the Regulations, D.C. taxi drivers including the Plaintiff drivers and other class members are vulnerable to the complete confiscation of their livelihood and property.

Similarly, D.C. Municipal Regulation Section 31-605 required drivers’ taxis, including Plaintiff drivers’ taxis, to be equipped with Commission-approved Dome Lights and Taxi Number Systems no later than November 1, 2013. Like the MTS units, the Dome Lights must be installed by a limited number of vendors unilaterally selected and approved by the Defendant. Despite the Commission’s inherent knowledge of the number of taxis that would need to install the Dome Lights, Defendant failed to arrange for an adequate number of authorized dealers and installers. This failure resulted in a shortage of Dome Lights available for installation and the

vendors authorized by the Defendant were incapable handling the request for installation in any reasonably timely manner. As a result, D.C. taxi drivers including the Plaintiff drivers and other class members who have made multiple good-faith efforts to acquire a Dome Light by the arbitrary deadline set by the Commission have been unable to comply with the regulation. There are simply not enough Dome Lights or installers for the approximately 7,000 D.C. taxi drivers affected by the regulations. Once again, Defendant bears the burden of the inadequacy of the number of approved vendors because it exclusively controlled the installation process. Its failure to secure sufficient vendors and inventory has caused injury and harm to the drivers, including the Plaintiff drivers.

Again, D.C. taxi drivers including the Plaintiff drivers and other class members are forced to risk the imposition of penalties or abstain from operating their vehicles. For example, Plaintiff Girma Tessema is currently on a waitlist to have his dome light installed. Plaintiff Tessema, however, was unable to get an appointment by the November 1, 2013 deadline. Plaintiff Tessema's taxi was impounded on the morning of November 1, 2013 and he will lose the use of his taxi until he is removed from the waitlist. (Tessema Aff. ¶ 2). Similarly, Plaintiff Manny Zewdu made approximately ten visits in October 2013 to five authorized retailers in search of a Dome Light and was consistently told by each vendor that it was out of stock. (Zewdu Aff. ¶ 2-3). Even after expending six hours searching for a Dome Light, Plaintiff Zewdu was not able to locate one as of November 1, 2013. (*Id.*)

Given the circumstances, full compliance with the regulations is impossible within the arbitrary deadline set by the Commission. The Commission mandated the type of units and lights as well as the businesses authorized to install these devices. D.C. taxi drivers, including the Plaintiff drivers and other class members, cannot reasonably be expected to comply with the

regulatory deadlines set by the Commission while facing operational impediments out of their control.

**b. Regulations 31-603 and 31-605 Are Arbitrary and Capricious Because They Deprive Plaintiffs of Their Right to Just Compensation and Fail to Adequately Protect Drivers from Unsafe Environments.**

The Establishment Act charges the Commission with the duty to “[e]stablish reasonable rates for taxicab service for the transportation of passengers and their property within the District, including all charges incidental and directly related to the provision of taxicab services.” D.C. CODE § 50-307(c)(1) (LexisNexis 2012). Additionally, the Establishment Act endeavors to “maintain a taxicab transportation system which provides owners and operators of taxicabs with reasonable and just compensation for their services. . . .” § 50-302(a)(2).

The chronic mechanical failures of the MTS units, however, deprive D.C. taxi drivers including the Plaintiff drivers and other class members of just compensation for their services in violation of the Establishment Act. As explained in section II (b), drivers are forced to take less than fair compensation for their services due to malfunctioning MTS units. When there is an interruption in the cellular data connection, the meter and credit card machines stop running. Notwithstanding the malfunction of the equipment, drivers must continue to drive passengers to their designated location while the meter is inoperable. Moreover, the Regulation specifically mandates passengers may not be charged any amount through the MTS unit other than that shown on the taximeter. D.C. taxi drivers including the Plaintiff drivers and other class members, therefore, are required to accept an amount below the fair value of their services. Further, if passengers do not have cash, drivers may not receive any compensation. This is unquestionably a violation of the Establishment Act.

In addition, Regulation 31-605 fails to adequately protect drivers from unsafe conditions. The regulation requires that the LED portion of the dome light go “dark” when the taxicab is not available for hire. D.C. Mun. Reg §31-605.5 The on/off switch on the Commission-mandated Dome Light, however, is located outside of the vehicle on the passengers-side. In order to completely turn off the Dome Light, drivers must get out of their vehicles, walk around to the passengers-side, and physically turn off the Dome Light. This unnecessarily requires drivers to place themselves in potentially dangerous situations to comply with the arbitrary requirement of the regulations.

**c. As Applied, Regulations 31-603 and 31-605, Deprive Plaintiffs of Their Constitutional Right to Property Without Just Compensation.**

The Fifth Amendment prohibits the taking of private property for public use without just compensation. Courts consider two general factors to determine whether a regulatory taking has occurred: (1) the “character of the governmental action;” and (2) “the economic impact of the regulation on the claimant and, particularly, the extent to which the regulation has interfered with distinct investment-backed expectation.” *Potomac Dev. Corp. v. District of Columbia*, 28 A.3d 531, 539 (D.C. 2011).

As applied, the MTS and Dome Light regulations violate D.C. taxi drivers’, including the Plaintiff drivers’ and other class members’, constitutional property rights. Specifically, given the significant technical malfunctions of the MTS units and shortage of Dome Lights and installation vendors, full compliance with the regulations is impossible within the arbitrary deadline set by the Commission. As a result, drivers are subject to significant penalties for non-compliance despite their good-faith efforts. As shown above, D.C. taxi drivers including the Plaintiff drivers and other class members have either had their taxis impounded and/or been

forced to curtail the use and enjoyment of their taxis indefinitely because of the risk of impoundment, license revocation, and license non-renewal.

**III. Plaintiffs Will Suffer Irreparable Injury in the Absence of an Injunction.**

Harm is irreparable if the threat of injury is imminent and well-founded, and the injury itself would be incapable of being redressed after a final hearing on the merits. *Wieck v. Sterenbuch*, 350 A.2d 384, 388 (D.C. 1976). A violation of constitutional rights constitutes a *per se* irreparable harm. *District of Columbia v. Eastern Trans-Waste of Md., Inc.*, 758 A.2d 1, 15 (D.C. 2000). In this case, D.C. Taxi drivers have been deprived of their property rights without just compensation. As described in Part II(c)-(d), the regulations violate drivers', including Plaintiff drivers', constitutional property rights. Drivers have either already been deprived of their taxicabs because of impoundment or face imminent danger of being deprived of their taxicabs due to impoundment, license revocation and license non-renewal.

Additionally, economic loss constitutes irreparable harm if the economic loss threatens the very existence of the movant's business or deprives the movant of a livelihood. *See Sampson v. Murray*, 415 U.S. 61, 90 (1974); *District of Columbia v. Eastern Trans-Waste of Md., Inc.*, 758 A.2d 1, 15 (D.C. 2000); *Zirkle v. District of Columbia*, 830 A.2d 1250, 1257 (D.C. 2003); *Bonds v. Heyman*, 950 F. Supp. 1202 (D.D.C. 1997). *See also Doran v. Salem Inn, Inc.*, 422 U.S. 922, 932 (1975) (A "substantial loss of business and perhaps even bankruptcy" absent preliminary injunctive relief shows "irreparable injury.")

In addition to violating drivers' right to property, the new regulations create a danger of irreparable harm to drivers' ability to earn a livelihood. State authority to make municipal regulations and ordinances cannot arbitrarily interfere with the constitutional rights to carry on a lawful business, make contracts, or use and enjoy property. *Dobbins v. Los Angeles*, 195 U.S.

223 (1904). The property right to earn a livelihood, by following the ordinary occupations of life, is protected by the Constitution under the guarantees of the 14th Amendment. *Terrace v. Thompson*, 263 U.S. 197 (1923).

Taxicab drivers are independent owners of their businesses and their livelihood is directly tied to their ability to use their property. Drivers have already had their taxis impounded, been forced to refrain from using their taxis for fear of imminent impoundment, or been forced to curtail their use of their property because of malfunctioning equipment. Section 31-612 would further subject Plaintiffs to the revocation and non-renewal of their licenses for operating without approved equipment. Given the nature of the taxi driver profession, there is no way for D.C. taxi drivers including the Plaintiff drivers and other class members to follow their professions without the use of their taxis or without hacking licenses. Thus, D.C. taxi drivers including the Plaintiff drivers and other class members are put in the impossible position of either refraining from their professions indefinitely until dome light supply can meet demand and MTS systems function properly as required by the Commission, or losing their licenses and future ability to be taxi drives. The economic therefore lose their entire livelihoods as a result of the regulations.

Finally, irreparable harm in a private action may be based on harm to the general public. *Mississippi Power & Light Co. v. United Gas Pipe Line Co.* 760 F.2d 618, 623 (5th Cir. 1985). Courts analyze whether there would be irreparable harm to the public if the preliminary injunction is denied. *Northern Indiana Pub. Service Co. v. Carbon County Coal Co.*, 799 F.2d 265, 280 (7th Cir. 1986); *see also*, in *Mississippi Power & Light Co. v. United Gas Pipe Line Co.*, 760 F.2d at 623 (holding a preliminary injunction to prevent future overcharges was proper even though the only “irreparable injury” claimed was the adverse impact of future overcharges on the public).

Here, the general public is in danger of suffering irreparable harm because the regulations create a taxi shortage by requiring compliance and creating circumstances where good faith compliance, given the timeframe is impossible. D.C. taxi drivers including the Plaintiff drivers and other class members have either had their taxis impounded or been forced to curtail hacking because their taxis cannot meet the regulations' requirements despite good faith efforts. As a result, there are currently fewer taxis on the streets available to the general public. As a result of this shortage, members of the general public will suffer irreparable harm if preliminary relief is not granted because there will be no way to remedy the harms created by the shortage following the conclusion of this legal action.

**IV. The Balance of Harms Favors Plaintiffs.**

The Defendant will suffer no harm from a temporary delay in the adaptation of the new taxicab regulations. Plaintiffs seek only to preserve the *status quo*. The Commission and D.C. taxi drivers can continue to operate under the previous regulations for the additional time period needed for the new MTS units to operate effectively and more dome lights be produced and installed. Time is not of the essence here; the September 1, 2013 and November 1, 2013 deadline announced by the Commission are simply unilaterally selected and imposed arbitrary dates.

**V. The Public Interest Will not Be Disserved by the Issuance of an Injunction.**

The public interest will not be disserved by the issuance of a temporary restraining order and an injunction pending final judgment in this case. To the contrary, having taxis available for hire and uniform and consistent payment options will affirmatively serve the public interest. If the regulations are not stayed, taxi drivers will be forced to take their cars out of service while they wait to get off installation waiting lists and for the glitches in the MTS units to be resolved.



## VI. No Security Bond Should be Required

Rule 65(c) of the D.C. Superior Court Rules of Civil Procedure governs the requirement of posting a security bond for a preliminary injunction or temporary restraining order. It is identical to Fed. R. Civ. P. 65(c), and our courts routinely follow federal court precedents in construing this rule. *See e.g., L'Enfant Plaza Properties, Inc. v. Fitness Systems, Inc.*, 354 A.2d 233,236-37 (D.C. 1976). It is well-established that, "under appropriate circumstances bond may be excused, notwithstanding the literal language of Rule 65(c)." *Wayne Chemical, Inc. v. Columbus Agency Service Corp.*, 567 F.2d 692, 701 (7th Cir. 1977).

When determining whether or not to require a bond courts consider two factors: (1) the possible loss to the enjoined party; and (2) the hardship that a bond requirement imposes on the applicant. *See Crowley v. Local No. 82, Furniture & Piano*, 679 F.2d 978 (1st Cir. 1982), *rev'd on other grounds*, 467 U.S. 526, 81 L. Ed. 2d 457, 104 S. Ct. 2557 (1984). When the applicant would face financial difficulty posting bond and the harm to the defendant is low - courts have not required the posting of a bond. *Id.* (upholding denial of bond where Union members would have had financial difficulty posting it, and where defendants faced low burden from absence of security); *see also, International Controls v. Vesco*, 490 F.2d 1334, 1356 (2d Cir. 1974), *cert. denied*, 417 U.S. 932, 41 L. Ed. 2d 236, 94 S. Ct. 2644 (1974) (noting that "the district court may dispense with security where there has been no proof of likelihood of harm to the party enjoined") (citations omitted); *Urbain v. Knapp Brothers Mfg.*, 217 F.2d 810 (6th Cir. 1954) (no bond required where defendant would not appear to face material damage); *Continental Oil v. Frontier Refinery*, 338 F.2d 780 (10th Cir. 1964) (no bond required where likelihood of harm to defendant is absent).

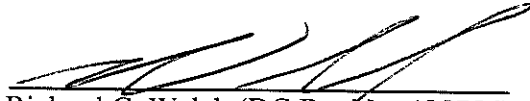
Here, Plaintiffs are taxicab drivers who make on average \$20,000 to \$30,000 a year. Additionally, the imposition of the regulations has caused financial hardship for the Plaintiffs. Because full compliance within the arbitrary timeframe of the Commission is impossible, Plaintiffs are forced to take their cars off the road or pay steep fines. This directly affects Plaintiffs ability to earn a livelihood.

Further, Defendant will not suffer material harm if this Court dispenses the security bond requirement. Plaintiffs are simply seeking to preserve the *status quo* until they have been given a reasonable amount of time to comply under the circumstances. If a bond is required, the Court should exercise its discretion and require only a nominal bond. *See, e.g., Natural Resources Defense Council, Inc. v. Morton*, 337 F. Supp. 167 (D.D.C. 1971) (\$100 bond); *Environmental Defense Fund v. Corps of Engineers of the U.S. Army*, 331 F. Supp. 925 (D.D.C. 1971) (\$1 bond).

### **CONCLUSION**

For the reasons stated above, Plaintiffs' motion for a temporary restraining order and preliminary injunction should be granted. Defendants' should be restrained and enjoined, pending further order of the Court, from implementing and enforcing D.C. Municipal Regulations. 31-603 and 31-605.

Respectfully submitted,



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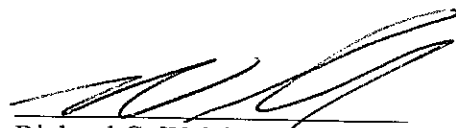
Dated: November 5, 2013

**CERTIFICATE OF SERVICE**

I, Richard C. Welch, do hereby certify that on this 5nd day of November, 2013, a true and correct copy of PLAINTIFFS' MOTION AND MEMORANDUM OF POINTS AND AURHORITIES OF PLAINTIFFS' MOTION FOR TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION has been served via personal service with Plaintiffs

Complaint and Summons on:

DISTRICT OF COLUMBIA  
TAXICAB COMMISSION  
2041 Martin Luther King Jr Avenue, SE  
Suite 204  
Washington, DC 20020

  
Richard C. Welch