Wesley Hottot, WA Bar No. 47539*
Keith Diggs, WA Bar No. 48492*
INSTITUTE FOR JUSTICE
10500 N.E. 8th Street, Suite 1760
Bellevue, WA 98004-4309
Telephone: (425) 646-9300
Facsimile: (425) 990-6500
whottot@ij.org
kdiggs@ij.org

Julie M. Hamilton, ESQ. SBN 199155
Leslie Gaunt, ESQ. SBN 265689
2835 Camino del Rio S., Suite 100
San Diego, CA 92108
Telephone: (619) 278-0701
Facsimile: (619) 278-0705
julie@jmhamiltonlaw.com
leslie@jmhamiltonlaw.com

Attorneys for Prospective Intervenors

* Admitted *pro hac vice*

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN DIEGO, HALL OF JUSTICE

SAN DIEGO TRANSPORTATION ASSOCIATION, a California corporation; JOE CIPRIAN, an individual; JANAN INSURANCE AND FINANCIAL SERVICES, INC., a California Corporation d/b/a Jaden Express; CURTIS BECKER, an individual d/b/a Curtis Cab; RONALD HAWKINS, an individual d/b/a Andy's Cab; SAVATAR SAHOU, an individual; USA CAB, LTD., a California Corporation, Petitioners, vs.	GENERAL CIVIL (CEQA) CASE NO.: 37-2015-00008725-CU-TT-CTL **PROSPECTIVE INTERVENORS' MEMORANDUM IN OPPOSITION TO PETITIONERS' REQUEST FOR PRELIMINARY INJUNCTION; [PROPOSED] ORDER**

SAN DIEGO METROPOLITAN TRANSIT SYSTEM, f/k/a San Diego Metropolitan Transit Development Board, a California public agency; and DOES 1-100 inclusive, Respondent,	
ABDIKADIR ABDISALAN, an individual; and ABDULLAHI HASSAN, an individual, Prospective Intervenors.	Judge: Hon. Ronald S. Prager Dept: C-71 Petition Filed: March 13, 2015 Hearing Date: April 28, 2015 Hearing Time: 9:00 a.m.

Prospective Intervenors Abdikadir Abdisalan and Abdullahi Hassan oppose Petitioners' request for preliminary injunctive relief and file the following opposition papers by leave of Court, which was granted by the Honorable Ronald S. Prager at the ex parte hearing held April 14, 2015.

Prospective Intervenors' opposition is based on the following memorandum of points and authorities, the attached Declarations of Abdikadir Abdisalan and Abdullahi Hassan opposing Petitioners' request, Petitioners' pleadings and other papers, including their Verified Petition for Writ of Mandate Under the California Environmental Quality Act and Code of Civil Procedure and Complaint for Declaratory Relief and Inverse Condemnation ("Verified Petition"), all other papers and records filed in this case, and the arguments presented at the April 14, 2015 ex parte hearing and at the April 28, 2015 hearing on the preliminary injunction and Order to Show Cause.

For the reasons below, Prospective Intervenors respectfully ask the Court to deny Petitioners' request for a preliminary injunction and to sign their proposed order to that effect. (See **Exhibit C**.)

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases **Page**

Statutes & Rules

Other Authorities

INTRODUCTION

The Court should not issue a preliminary injunction because Petitioners have not made the extraordinary showing of a likelihood of success on the merits and because halting the taxi permitting process now would seriously disadvantage the Prospective Intervenors, and many other taxi drivers, while continuing the process would not harm Petitioners, who will keep their permits. MTS's new permitting process will not harm the environment, either, it may even benefit the environment to have more zero and low-emission taxicabs on the road taking people to work and putting people to work.

Petitioners are unlikely to succeed on the merits for three reasons. First, permitting for-hire vehicles is not a "project" under CEQA, as the California Public Utilities Commission decided earlier this month when it passed comprehensive regulations allowing Uber and Lyft to operate statewide. Second, even if taxi permitting were a "project," the "project" here was not, as Petitioners suggest, the permitting of "an infinite number of new taxicabs" (Pet'rs' Mem. in Supp. of Ex Parte App. for TRO ("Pet'rs' Mem.") at 12). Only *current* taxi drivers have the opportunity to apply for permits and they have to meet strict criteria. During the pendency of this case, at most, about 800 new permits will be issued in a city of 1.3 million people. Not all of the 802 people who have so far expressed interest in permits will actually obtain them; those that do will be *current* drivers operating zero or low-emissions vehicles that they own, rather than operating the older vehicles they currently lease from other people. Increasing access to taxi permits in this way is a policy decision the City has the discretion to make, and that MTS has the discretion to implement, without conducting an environmental review. Finally, the ultimate thrust of Petitioners' lawsuit is not their environmental claim, but their inverse condemnation claim, which seeks money damages from MTS for the supposed devaluation of their taxi permits. That claim is squarely foreclosed by California and U.S. Supreme Court precedent. Petitioners case is, therefore, unlikely to succeed on the merits.

But even if Petitioners had a winning legal theory (and they do not), no preliminary injunction is warranted because the balance of the hardships tips strongly in favor of Prospective Intervenors (and other taxi drivers) and it tips strongly against Petitioners' private interests as the owners of more than 60% of San Diego's existing permits. If an injunction is granted, Abdi and Abdullahi will be set back

months, possibly years, in their quest for self-employment. There is no harm in denying the injunction—at worst, current taxi drivers will introduce a fleet of new environmentally friendly cabs to San Diego's streets. Petitioners will be free to continue operating their taxi services, just without the government's protection from new competition. For these reasons, the Court should deny Petitioners' request for a preliminary injunction.

FACTS

The Court is by now familiar with the personal circumstances of Prospective Intervenors Abdikadir Abdisalan and Abdullahi Hassan by virtue of their pending motion to intervene. (See Mot. to Intervene & Mem. in Supp. at 2-3.) In brief, the two men have been working for years to obtain a single taxi permit each, so that they may go into business for themselves and gain more control over their lives. (See Abdisalan Decl. ¶¶ 3–23; Hassan Decl. ¶¶ 3–25.) Petitioners' argument for preliminary injunctive relief depends on the idea that serious environmental harm will result from these two men, and 800 other taxi drivers, having the *opportunity* to apply for permits of their own. (See Pet'rs' Mem. at 1 (predicting MTS's application process will "double, triple or increase City taxicab permits by fourfold or more [which] will assuredly impact the local environment").) Petitioners' environmental concerns are overstated and skewed by Petitioners' personal financial interest.

During the pendency of this case, it is perhaps plausible that there will be a doubling of San Diego's 993 current taxi permits (*i.e.*, one cab for every 1,300 people in the city). But it seems unlikely. MTS has so far received 802 interest forms from people who want to *apply* for taxi permits—almost all of whom, like the Prospective Intervenors, want only one permit. (See Klein Decl. in Supp. of Pet'rs' Ex Parte App. for TRO, Ex. E, at 5–6 (MTS Mem. re "New Permit Processing" dated March 25, 2015); Abdisalan Decl. ¶ 11; Hassan Decl. ¶ 15.) These early applicants have priority over later people in the sense that their applications will be processed before MTS accepts any more. (Klein Decl. Ex. E at 5.) Latecomers, MTS says, will face "an extremely long wait" before they can apply. (*Id.*) This is because it will take MTS "many, many months" to process the first 802 applications. (*Id.* at 6.) The soonest one of those applicants might complete the process is June, if all goes according to plan. (*Id.*) The rate at which subsequent permits are issued will be limited by many things, including MTS's ability to inspect

no more than one cab at a time (*id.* at 5), the pace at which people complete MTS's detailed application process, and the fact that some applicants will fail to qualify or complete the process. At most, there will be about 800 new taxi permits in a city of 1.3 million people—or about 725 people per cab.

The true number of new permits will likely be lower. MTS has strict criteria for owning a new taxi permit. Would-be permit owners must:

- Be at least 21 years old;
- Provide evidence of at least six-month's experience as a taxi driver or manager of a for-hire transportation service;
- Not have violated any statute, ordinance, or regulation within the last five years if the same violation could have resulted in suspension or revocation of a taxi permit;
- Pay an initial nonrefundable permit fee of $3,000 and a $600 yearly regulatory fee;
- Pass a vehicle inspection;
- Obtain insurance; and
- Submit a sworn application showing all of the following:
- Data sufficient to show financial responsibility;
- Proof that their cab is no older than 10 years of the model age, and does not have a salvage title;
- Proof that the cab meets California Air Resources Board criteria for zero emissions/low emissions vehicles;
- Proof that the cab is compliant with the Americans With Disabilities Act;
- Proof that the cab is equipped with GPS;
- The proposed color scheme, insignia, and other business markings for the new company;
- A customer service and customer complaint plan;
- A statement of all of the charges that customers will pay;
- A plan for administrative functions, vehicle maintenance, and off-street storage for the cab when it is not in use.
- A radio dispatch plan incorporating 24-hour staffing and computerized dispatch; and

- Any other information that the CEO of MTS may decide to require.

(Verified Pet. Ex. A at 8–9, 18 (Ordinance 11 §§ 1.3, 1.4, 1.9(a)); **Exhibit A**: MTS For-Hire Vehicle Permit Fees, online at http://www.sdmts.com/Taxi/TaxiApplicationFees.asp (last visited Apr. 21, 2015).) Not everyone who paid $50 to submit an interest form will also pay $3,000 to formally apply,[1] and of those that do apply, not all will qualify for a permit. There is no danger of "an unlimited number of permits" requiring the Court's immediate action. (See Pet'rs' Mem. at 1.) Even if the Court assumes the massive environmental impact that Petitioners foresee—a three- or four-fold increase in the number of permits—still, the supposed environmental impact of MTS's permitting procedure is unlikely to be felt by anyone, anywhere before the Court can resolve this case.

On the other hand, Petitioners by their own reckoning control more than 60% of San Diego's current taxi permits. (Hueso Decl. in Supp. of Pet'rs' Ex Parte App. for TRO ¶¶ 2 & 8 (stating that Petitioners represent the owners of more than 600 of the 993 current permits).) Without an injunction, they will be able to continue using their permits without interruption. They can sell their permits for whatever the market will bear. At the same time, Petitioners' current fleet of cabs have been grandfathered until 2020, and as a result, they do not have to comply with the environmental restrictions that will apply to all new vehicles. (Verified Pet. Ex. A at 8–9, Ordinance 11 § 1.4(e) (requiring that "[p]ermits held prior to April 1, 2015 by corporations and LLCs shall meet all of the screening criteria included in [the new permitting policy] by February 12, 2020.").) Petitioners retain other competitive advantages as well—for example, they operate well-established taxi services—they just are not entitled to maintain through litigation the government's longstanding, but now rescinded policy of protecting them from any new competition. Petitioners speculate that they will lose millions because of the new permitting system, but even if that turns out to be the case, it is not a harm from which the Court can protect them.

[1] The true cost of permitting is much higher. Drivers must purchase a less than ten year-old, ADA-compliant zero or low-emission vehicle certified by the State of California. They must partner with an existing radio service—such as Yellow Cab—for 24-hour dispatch. They need insurance. Vehicles have to be repainted and businesses created. All told, the process could easily cost more than $50,000.

ARGUMENT

Petitioners do not satisfy the standard for a preliminary injunction and the Court should, therefore, deny their request. The Court has discretion to grant or deny a preliminary injunction based on: "(1) the likelihood that the party seeking the injunction will ultimately prevail on the merits, and (2) the balance of harm presented, *i.e.*, the comparative consequences of the issuance and nonissuance of the injunction." (*Saltonstall v. City of Sacramento* (2014) 231 Cal.App.4th 837, 856 (quoting *Common Cause v. Board of Supervisors* (1989) 49 Cal.3d 432, 441–42).) The burden is on the party seeking the injunction to show all of the necessary elements. (*Id.* (citing *O'Connell v. Superior Court* (2006) 141 Cal.App.4th 1452, 1481).) Petitioners have not carried their burden, and thus their request for extraordinary relief should be denied.

I. PETITIONERS' CLAIMS ARE UNLIKELY TO SUCCEED ON THE MERITS.

A. Petitioners' CEQA Claim Depends on an Incorrect Reading of "Project".

Petitioners' CEQA claim will not succeed on the merits because taxi permitting is not a "project" and therefore no environmental analysis was required. There are two basic reasons for this. First, MTS's permitting program does not fit CEQA's definition of "project." Second, Petitioners point to no authority holding that taxi permitting triggers CEQA review, while the California Public Utilities Commission has specifically held it does not.

Taxi permitting is not a "project" under CEQA for three distinct reasons: (1) because it does not have the requisite "potential for resulting in . . . physical change in the environment"; (2) because it is "administrative"; and (3) because, under CEQA, one challenges the actions of the lead agency, and MTS was not the lead agency, the City Council was. (See 14 Cal. Code Regs. § 15378(a)(3), (b)(5), (c) & (d).)

First, new taxis will not necessarily mean adverse environmental impacts, they may in fact help. That is precisely what the California Public Utilities Commission recently held when it approved new regulations allowing Uber, Lyft, and other transportation network companies ("TNCs") to operate statewide and, in doing so, rejected the argument that CEQA applies any time a regulation could plausibly result in an increase in for-hire vehicles. (**Exhibit B**: Order Granting Limited Rehearing of Decision 13-09-045 (Apr. 11, 2014), PUC Decision No. 14-04-022, at 2–4, online at

http://docs.cpuc.ca.gov/PublishedDocs/Published/G000/M089/K077/89077611.PDF (last visited Apr. 21, 2015).) The Commission observed that its TNC regulations were directed at regulating the TNC industry, not necessarily encouraging its growth. (*Id.* at 4.) But even if its policy were designed to *expand* the TNC industry, the Commission believed that CEQA would not apply because "it is not at all foreseeable that adverse environmental impacts would worsen. Car share programs may effectively remove other cars from the road, and actually decrease emissions." (*Id.*) The same is true here: The fact that MTS is processing applications for new taxi permits does not mean that MTS is affirmatively putting an unlimited number of taxis on the roads and, even if MTS had an affirmative policy of placing hundreds of new cabs on the roads (which it does not), still, taxis *replace* cars. New taxis will not harm the environment because taxis only move people that would otherwise be behind the wheel themselves. Even a substantial increase in the number of taxis may actually *decrease* the total number of private vehicles. If the California Public Utilities Commission can give Uber and Lyft the green light to operate an unlimited number of vehicles statewide without any CEQA review, then 800 new zero and low-emissions taxis can hit the streets in San Diego without any CEQA review. There is simply no realistic chance of environmental harm from allowing 800 new for-hire vehicles in a city of 1.3 million.

Second, taxi permitting is not a "project" because MTS is performing a purely administrative function on behalf of the City and the agency's actions "will not result in direct or indirect physical changes in the environment." (See 14 Cal. Code Regs. § 15378(b)(5).) MTS does not have a policy of setting the correct number of taxis on the road—that was the City Council's former policy, which the Council has now rescinded. MTS now has an administrative and enforcement role. MTS's policy is to grant drivers permits fairly, in accordance with City policy. This administrative role is exempt from the definition of "project." (*Id.*)

Third, MTS has no CEQA obligations because its permitting activities are "ministerial" not "discretionary." If *any* public entity is responsible for placing more cabs on the roadways, it is the City Council, not MTS, whose only role is determining who qualifies for a permit under the City's policy. Petitioners argue that MTS has broad discretion in this case because the MTS Board held a vote before adopting the Council's policy and in the process rejected a single change—a requirement that security

cameras be kept running in taxis at all times—among many other changes. (Pet'rs' Mem. at 12-13.) MTS rejected the Council's direction on security cameras only because it deemed it illegal under California law. (See Klein Decl. Ex. M at 2-3.) But, in any case, the definition of "project" does not mean each separate governmental approval; it only means the approval by the "lead agency." (See 14 Cal. Code Regs. § 15378(c) & (d).). The "lead agency" here was the City, not MTS.

The City's conclusion that CEQA does not apply was correct as a matter of law. Petitioners cite not a single case involving government permitting of for-hire vehicles. (Pet'rs' Mem. at 9 (citing "projects" involving real estate developments, adding plastic piping as an acceptable building material, forming a new school district, increasing bus fare, and approving a regional transportation plan).) Prospective Intervenors, too, have been able to identify no authority for the idea that permitting for-hire vehicles is a "project." The only clear authority they *have* found points to the opposite conclusion, given that the Public Utilities Commission earlier this month held that regulations governing Uber and Lyft vehicles did not trigger CEQA. (See **Exhibit B** at 3–4.)

Finally, Prospective Intervenors doubt this is "environmental litigation," as Petitioners claim. (See Pet'rs' Mem. in Supp. of Ex Parte App. for TRO at 19.) Petitioners are not environmentalists; they are taxi companies. They are deploying CEQA in this case in an effort to stop a new crop of competitors from doing the *exact same thing* that they do: operating cabs. The new crop of cabs will be newer and either zero or low-emission vehicles, while Petitioners' vehicles have been grandfathered so that they will operate older, conventional vehicles until 2020. Unsurprisingly, this type of CEQA action—in which the petitioner uses the environmental law in an effort to maintain its position in the marketplace—has already been rejected by the courts. (See *Waste Management of Alameda County, Inc. v. County of Alameda* (2000) 79 Cal.App.4th 1223, 1235 ("CEQA is not a fair competition statutory scheme. . . . [the plaintiff's] commercial and competitive interests are not within the zone of interests CEQA was intended to preserve or protect and cannot serve as a beneficial interest for purposes of the standing requirement."); *cf. Save the Plastic Bag Coalition v. City of Manhattan Beach* (2011) 52 Cal.4th 155, 169–70 (clarifying that the holding in *Waste Management* addresses only "an attempt to use CEQA to impose regulatory burdens on a business competitor, with no demonstrable concern for

protecting the environment" and that "[s]uch an attempt would be equally improper" whether brought by an individual or a corporation).) This Court should likewise reject the use of CEQA as a tool to maintain market dominance and, accordingly, it should reject Petitioners' argument that CEQA applies to this case.

B. Petitioners' Inverse Condemnation Claim Is Baseless.

Petitioners want more than an environmental review. Petitioners want money damages. (See Verified Pet. ¶¶ 46–50 & p. 14 ln. 24–26 (seeking "compensatory damages according to proof at trial" and attorneys' fees).) Petitioners' damages claim is based on an inverse condemnation theory that is foreclosed by California and U.S. Supreme Court precedent.

The essence of Petitioners' inverse-condemnation theory is that the price at which they can privately sell a taxi permit has already fallen from about $120,000 to something less than $100,000 per permit. Petitioners say they can't calculate exactly how much money MTS should pay them, but if this case proceeds, they propose to establish the *true* value of a taxi permit before the recent reforms and the *true* value now, and they expect the government to pay them the difference. (See *id.*) In other words, Petitioners ask the Court to stop the permitting process now for an environmental review, but later, they want the Court to decide the fact-intensive question of what their permits are truly worth. If this were a winning inverse-condemnation theory (and it is not), MTS could end up paying more than $12 million to Petitioners, who allege they own more than 600 of San Diego's taxi permits, which they say have dropped at least $20,000 in value since the new permitting process began. Although, Petitioners warn that the final dollar amount may be higher, if their predictions of market chaos later come to pass.[2]

Petitioners do not have a winning inverse-condemnation claim under either the California Constitution or the U.S. Constitution. California courts have specifically held that current taxi permit owners do not suffer a regulatory taking of their property when cities grant more people the

[2] Petitioners only fact witness, Tony Hueso, says in his declaration that, as recently as January 2015, City taxi permits sold for between $130,000 and $150,000 and that now they sell for less than $100,000. (Decl. of Jose Antonio ("Tony") Hueso in Supp. of Ex Parte App. for TRO ¶¶ 9 & 11.) Mr. Hueso correctly observes that Petitioners enjoy a market advantage today—scarce permit supply—that they will not enjoy tomorrow. But it does not follow that tomorrow Petitioners' permits will have *no value*. Their permits can still be put to use or they can be sold to someone else, like Prospective Intervenors, who want to purchase them for a reasonable price.

opportunity to hold taxi permits. (*Luxor Cab Co. v. Cahill* (1971) 21 Cal.App.3d 551, 558 (rejecting current owners' takings and substantive due process challenge on the ground that permits are nonexclusive rights to use public roadways); *cf. Cotta v. City & Cnty. of S.F.* (2007) 157 Cal.App.4th 1550, 1560 ("California courts have consistently held that taxicab drivers do not obtain any vested right in the grant of permission to operate taxicabs on the public roadways.").) Current U.S. Supreme Court precedent holds that there is no compensable taking, and thus no inverse condemnation cause of action, unless the property owner is deprived of all economically beneficial use of his property. (*Lucas v. S.C. Coastal Council* (1992) 505 U.S. 1003, 1019.) In *Lucas*, for example, a man was deprived of all functional use of the shoreline portion of his property and still the Supreme Court held that he had no takings claim because there were other portions of the property that he could use. (*Id.* at 1006-10, 1030-32) Here, by contrast, nothing has been taken from Petitioners. They remain free to use their permits to make money as taxi services or to sell their permits. There is therefore no plausible basis for Petitioners' allegations that MTS has "destroyed the market for taxi permits" and so deprived them of "all market value in the permits they purchased through the free market[.]" (Verified Pet. ¶ 48.) The fact that Petitioners have lost the government's longstanding protection from normal market forces is not a basis for an inverse condemnation claim for damages against the government. There has never been a constitutional right to prevent new competition. Indeed, San Diego's taxi reforms open the door to exactly the kind of entrepreneurial opportunities that cities should be encouraging, and there is absolutely nothing unconstitutional about that.

II. THE BALANCE OF HARDSHIPS FAVORS PROSPECTIVE INTERVENTORS AND OTHER TAXI DRIVERS, NOT PETITIONERS.

Even if the Court believes that Petitioners are likely to succeed on the merits, it should still deny their request for a preliminary injunction because the balance of hardships tips strongly in favor of Prospective Intervenors and strongly against Petitioners' interests as the owners of more than 60% of San Diego's current taxi permits. Although weighing the relative hardships is only necessary if the Court holds that Petitioners are likely to win, Petitioners wrongly suggest that they are *so* likely to win that the Court need not balance the hardships at all. That is not the case.

A. The Court Must Weigh the Balance of Hardships.

Initially, Prospective Intervenors are compelled to note that balancing the relative hardships is a critical part of the Court's preliminary injunction analysis. There are two prongs to this analysis and Petitioners ask the Court to ignore the second prong—balancing harms—because they believe their likelihood of success is so great that it could not be outweighed by any hardship to anyone else. (Pet'rs' Mem. at 16 (assuming that "because Petitioner's showing of the likelihood of success is sufficient, there need be no showing that the balance of harms tips in its favor.").) Petitioners are incorrect as a matter of law.

First, Petitioners did not make a "sufficient" showing of likelihood of success on the merits. (See pp. 5–10 above.) Second, they rely on *Common Cause of California v. Board of Supervisors* (1989) 49 Cal.3d 432, 447, for the idea that courts perform no hardship analysis where there is "sufficient" evidence of a likelihood of success. (Pet'rs' Mem. at 16.) But that portion of *Common Cause* is about a commonsense idea: "the likelihood of success on the merits and the balance-of-harm analysis are ordinarily 'interrelated' factors in the decision to issue a preliminary injunction." (49 Cal.3d at 446–47.) Nothing in *Common Cause* relieves the party seeking a preliminary injunction of its obligation to demonstrate *some* real-world harm to its own interests, if the injunction is denied, and to demonstrate *substantially less* real-world harm to others, if the injunction is actually granted. Petitioners have made no meaningful effort to carry that burden in this case, which is fatal to their request for interim relief.

For example, in *White v. Davis* (2003) 30 Cal.4th 528, the California Supreme Court reversed a preliminary injunction granted in a case challenging the State's disbursement of funds without a budget bill. (*Id.* at 534.) The Court held that the relative harms weighed against the plaintiff, a single taxpayer, who was trying to stop the whole State from disbursing money during a budget impasse. (*Id.* at 557–61.) The trial court abused its discretion in *White* by failing to balance the harms properly, particularly because (in words that could also describe the situation in this case) there was a "lack of clear authority supporting the merits of plaintiffs' broad claim[.]" (*Id.* at 557.) The Supreme Court

specifically rejected Petitioners' reading of *Common Cause* and held that balancing hardships is essential even where there is a strong showing of likelihood of success:

> [A]lthough [*Common Cause*] indicates that in some instances a trial court may grant a preliminary injunction upon a sufficiently strong showing of likelihood of success even when the party seeking the injunction cannot show that the balance of harms "tips" in its favor, the decision in *Common Cause* did *not* suggest that when a party makes a sufficient showing of likely success on the merits a trial court need not consider the relative balance of hardships *at all*, or that when the balance of hardships dramatically favors the denial of a preliminary injunction a trial court nonetheless may grant a preliminary injunction on the basis of the likelihood-of-success factor alone. As noted, a principal objective of a preliminary injunction "is to minimize the harm which an *erroneous* interim decision may cause" and thus a court faced with the question whether to grant a preliminary injunction cannot ignore the possibility that its initial assessment of the merits, prior to a full adjudication, may turn out to be in error.

(*White*, 30 Cal.4th at 561 (emphasis in original).)[3]

As these authorities demonstrate, courts should always conduct a balance-of-harms analysis before granting a preliminary injunction. As shown below, the outcome of that balancing favors Prospective Intervenors. But the Court need not weigh the relative hardships at all because, as in *White*, there is a "lack of clear authority supporting the merits of [Petititioners'] broad claim," which is by itself sufficient to deny Petitioners' request for a preliminary injunction. (See *id.* at 557.)

B. The Balance of Hardships Tips Strongly in Favor of Would-be Permit Owners and the Public, and It Tips Strongly Against Petitioners.

In analyzing the hardships, it helps to understand that the status quo is no longer a capped number of taxi permits. That status quo was done away with by the City Council in November 2014 and Petitioners elected not to sue the City over the change. The status quo now is different: MTS is in the process of permitting people, in the sense that it has sold places in line to apply for taxi permits. For the drivers in the line, the permitting process has already begun, just as it has begun for the two Prospective

[3] Petitioners also cite *Pleasant Hill Bayshore Disposal, Inc. v. Chip-It Recycling, Inc.* (2001) 91 Cal.App.4th 678, 696. (Pet'rs' Mem. at 16.) In *Pleasant Hill*, the First District Court of Appeal affirmed a preliminary injunction against a recycling company based on clear authority holding that it was violating another company's exclusive franchise to collect garbage. (*Id.*) Nevertheless, the *Pleasant Hill* court engaged in a balance-of-harms analysis and upheld the injunction only because the recycling company's "modest size and staff as compared to" the franchise-holder "[was] not properly a part of the relative harms factor." (*Id.*) The case suggests that balancing harms is *always* necessary.

Intervenors. Both men paid $50 to join the line on March 4, just two days into the 30-day interest period. They are preparing applications, naming their companies, arranging loans, and shopping for cars. (Abdisalan Decl. ¶¶ 11–16; Hassan Decl. ¶¶ 15–19.) For these men and other drivers, maintaining the status quo means allowing MTS to continue the permitting process until the Court can resolve the merits.

If an injunction is granted, Abdi and Abdullahi will lose their places in line. They will no longer have any legal right to access affordable taxi permits and therefore no practical ability to go into the taxi business for themselves. After years of work aimed at self-employment, both men will have to continue leasing taxi permits. This means they will continue paying people like Petitioners large portions of their earnings every week, and it means their lives will continue to be controlled by the owners of the cabs they drive. It means Abdi will continue to have little control over his schedule, lacking the flexibility to take even one day off a week because he has to make lease payments regardless of whether he drives. It means Abdi will have less time with his five children. It means Abdullahi faces the dilemma of losing his lease or going to see his wife and children abroad, something he wants to do more. (Abdisalan Decl. ¶¶ 5–7, 19–21; Hassan Decl. ¶¶ 9, 12–13, 18.) If the Court grants an injunction, the two men will have to live with these consequences for the foreseeable future.

For their part, Petitioners offer no evidence of any specific harm that they will experience without an injunction. Nor could they. With or without an injunction, Petitioners will retain their current permits, they will continue to operate taxi services, they remain free to sell their permits and free to seek more permits under the new system. An injunction might serve Petitioners' business interests—*i.e.*, keeping out new competitors—but that is a classic monetary injury that cannot support a preliminary injunction and, in any event, it is not a valid cause of action under state or federal law.

Perhaps because they have no harm of *their own*, Petitioners express concerns about harms that *other people* might face without an injunction. (Pet'rs' Mem. at 17 (predicting "[w]idespread confusion and claims to vested rights or damages will abound if the application, interview and inspection processes persist and are later halted or issued permits are withdrawn. The San Diego taxicab industry that Petitioner has worked to preserve, protect, and enhance will be compromised by the ensuing chaos and

declarations of blame.").) Petitioners' concerns are misplaced. Without an injunction, Prospective Intervenors (and 800 other current taxi drivers) will have the *opportunity* to apply for permits. New permits will bring newer cabs and greater competition to San Diego's taxi market. Those new cabs will be better vehicles environmentally. Their driver-owners will be better off, if only because they will have more control over their work and destinies. There will be enough cabs on the street for people to find a service that fits their needs and rely on it for everyday transportation. But there will not be a flood of taxis in the near term—the application process is too long and exacting for that to be a real danger. The length of the application process is itself a reason to allow MTS to continue moving forward—an injunction now would set the agency back months, possibly years, in its effort to fulfill the City Council's permitting policy.

Allowing MTS to proceed with the permitting process would be good for everyone's interests, except Petitioners' personal financial interests. That being the case, the balance of hardships tips strongly against Petitioners, while it tips strongly in favor of Prospective Intervenors, other taxi drivers, MTS, and the riding public generally. On this basis alone, the Court should deny Petitioners' request for a preliminary injunction, even if the Court believes that Petitioners are likely to succeed on the merits.

CONCLUSION

For the reasons stated above, the Court should deny Petitioners' request for a preliminary injunction and enter the order below.

Dated: April 21, 2015

Respectfully submitted,

By: _____

Wesley Hottot
Attorney for Prospective Intervenors

Exhibit A

For-Hire Vehicle Permit Fees

Under California State Public Utilities Code Section 120266, taxicab regulatory activities administered by MTS must generate full cost recovery. The following fees have been adopted by the Chief Executive Officer to fund the program.

Permit application

All except one-year transferable taxicab (Plus $300 for each permit in excess of one)	$3,000
Plus additional charge if applicant is a corporation	$500
One-year transferable San Diego taxicab (Plus $200 for each permit in excess of one)	$1,750
Plus additional charge if applicant is a corporation	$400
Transfer clearance	$200 per permit (one-year transferable San Diego taxicab)
Initial per-vehicle permit issuance regulatory fee based on length of permit holder experience	200% of yearly regulatory fee or 100% prorated yearly regulatory fee
Permit holder yearly regulatory fee	$600 per vehicle

Exhibit B

Decision 14-04-022 April 10, 2014

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking on Regulations Relating to Passenger Carriers, Ridesharing, and New Online-Enabled Transportation Services.	Rulemaking 12-12-011 (Filed December 20, 2012)

ORDER GRANTING LIMITED REHEARING OF DECISION 13-09-045, MODIFYING CERTAIN HOLDINGS, AND DENYING REHEARING OF THE REMAINING PORTION OF THE DECISION, AS MODIFIED

I. INTRODUCTION

On October 23, 2013, the Taxicab Paratransit Association of California ("TPAC") and Uber Technologies, Inc. ("Uber") filed timely applications for rehearing of Decision (D.) 13-09-045 ("Decision"). In the Decision, the Commission adopted regulations applicable to new entrants in the transportation industry labelled Transportation Network Companies ("TNCs"). TNCs are defined as organizations, "operating in California that provide [] prearranged transportation services for compensation using an online-enabled application (app) or platform to connect passengers with drivers using their personal vehicles." (Decision, at p. 2.)

In its application for rehearing TPAC alleges: (1) the Decision violates the California Environmental Quality Act ("CEQA"); (2) the TNCs are operating as taxis, which are exempt from Commission regulation, and the Commission failed to undertake the appropriate analysis; (3) the Decision violates the Equal Protection Clause of the United States and California Constitution; and (4) the Decision conflicts with the Public Utilities Code by exempting TNCs from certain charter party carrier ("TCP") requirements. Uber's application for rehearing alleges that Uber does not provide

transportation services, and therefore the Commission cannot exercise jurisdiction over its operations.

We have carefully considered all the arguments presented by rehearing applicants, and are of the opinion that limited rehearing of certain issues in the Decision is warranted, as explained below. We are also convinced that some modifications of the remaining holdings are appropriate, in order to explain our holdings and rationale more clearly. After the granting of limited rehearing, and after making certain modifications to the remainder of the Decision, rehearing on the Decision is otherwise denied. We emphasize that, despite the limited rehearing we are granting today, our fundamental holdings regarding our jurisdiction over TNCs, and the appropriate regulatory oversight, remain intact.

II. DISCUSSION

A. TPAC REHEARING

1. CEQA

TPAC argues that the Decision violates CEQA, Public Resources Code section 21000 et seq. According to TPAC, the Decision is subject to CEQA, "which requires the Commission to follow a specific review process if its actions may have an environmental impact." (TPAC App. Rehg., at p. 3.) TPAC particularly takes issue with our statement that we will convene a workshop in one year to hear stakeholders on issues related to TNC regulation, specifically including CEQA. (Decision, at p. 34) TPAC argues that we cannot defer CEQA compliance to a later date. In addition, TPAC asserts that we cannot rely on any CEQA "exemption," because there is no evidence or analysis to support such an exemption. TPAC's arguments fail because the Decision and the adopted regulations are not a CEQA project, and therefore, the Commission was not required to fulfill any CEQA requirements. TPAC's point, however, that we failed to adequately explain our CEQA holdings is well-taken, and we will modify these holdings in order to more accurately reflect our rationale.

The California Legislature enacted CEQA in 1970 with the intent of requiring public agencies to consider the environmental implications of their actions

when they carry out projects or approve private projects. (Pub. Resources Code, §§ 21000, 21001.1.) The application of CEQA is triggered by an agency's discretionary action or approval, and the CEQA review requirements do not apply when an agency does not make any discretionary decision. (Pub. Resources Code, § 21080.) Moreover, a discretionary decision is only a CEQA project if it "may cause either a direct physical change in the environment, or a reasonably foreseeable indirect change…." (Pub. Resources Code, § 21065) If an activity is not a CEQA project, CEQA does not require any environmental review. (Pub. Resources Code, § 21080.)

In this case, no CEQA review was required because the regulations the Commission adopted do not constitute a CEQA project. Although a Rulemaking and the act of adopting regulations can be considered an agency action and a project (see *Dunn-Edwards v. Bay Area Air Quality Management District* (1995) 9 Cal.App.4th 644), those regulations would only be a CEQA project if there were a direct physical impact or a reasonably foreseeable indirect change. (Pub. Resources Code, § 21065.)

Here, we adopted a limited number of safety regulations applicable to existing and future TNC operations. These regulations include insurance regulations, driver safety regulations, and other provisions regarding fee payment, discrimination, and identification. (Decision, at pp. 26-33) Our requirements are largely "paper" requirements, and they do not have any direct physical impact on the environment. Notably, TPAC does not identify any particular adopted regulation and specifically identify how that regulation would impact the environment.

In addition to the fact that there is no direct physical impact, there also is no "reasonably foreseeable indirect change" caused by the Decision. Significantly, when we issued the Decision, TNC operations were already well-established. The Decision neither encourages nor discourages these operations, and that is not our intent. All the Decision does is impose certain regulatory and safety requirements on TNCs that are already operating, or may be in the future. There is no indication that these new requirements will either increase or decrease TNC operations. While the regulations may assist TNCs because they provide some regulatory framework, and the ability to operate legally, they

also may interfere and limit TNC operations, since they impose new requirements. Since the Decision does not change the physical status quo, directly or indirectly, there is no reasonably foreseeable indirect change that will occur.

TPAC argues that we did not consider the greenhouse gas impacts of the transportation sector. TPAC wrongly assumes the Decision creates or encourages the TNC industry, which it does not. Again, the Decision imposes regulatory requirements on already existing operations. But even if the Decision expanded the TNC industry, it is not at all foreseeable that adverse environmental impacts would worsen. Car share programs may effectively remove other cars from the road, and actually decrease emissions. In any event, since TNCs were already in operation before the Decision, the Decision would not be causing those impacts, either directly or indirectly.

TPAC's suggestion that we were required to conduct an initial study before determining the extent to which CEQA applies, is similarly misplaced. Pursuant to CEQA, if an agency action is not a CEQA project, it is not subject to the requirements of CEQA at all. (See Pub. Resources Code, § 21065.) Therefore, because the Decision has no direct physical impact or reasonably foreseeable indirect impact, none of the requirements of CEQA apply. TPAC cites authority regarding projects that are "exempt" from CEQA, arguing that we did not go through the required CEQA processes for determining an exemption. That authority is not applicable here, because, as we clarify in today's order, we hold that the Decision and adopted regulations are not a CEQA project, not that they are exempt from CEQA.

TPAC also takes issue with the Decision's statement that it will consider CEQA issues a year from the Decision. (Decision, at p. 74.) TPAC correctly notes that we failed to clearly explain that, in fact, the Decision is not a CEQA project. More accurately stated, we will reconsider the application of CEQA if we undertake further actions in connection with TNC operations, in order to determine whether those future actions may trigger the application of CEQA. To be clear, no actions the Commission has taken to date concerning TNC participants or operations, constitute a CEQA project. We will modify the Decision to more clearly reflect our rationale.

2. TCPs and Commission Jurisdiction

TPAC next argues that we erred in finding that TNCs are TCPs subject to our jurisdiction. According to TPAC, the Decision undertook an incorrect analysis in determining that TNCs are TCPs, and neglected to consider whether TNCs are taxis, exempt from Commission regulation pursuant to section 5353. TPAC further contends that we erred in relying on the concept of "prearrangement" as determinative of our jurisdiction.

a) Section 5351 et seq. and the Decision's Analysis

TPAC alleges that Decision mistakenly focuses its jurisdiction analysis on whether TNCs are engaging in transportation for compensation, and whether the services are prearranged. (TNC App. Rehg., at p 6.) Instead, according to TPAC, the correct analysis pursuant to section 5351 et seq., is first to look at whether TNCs are TCPS, and then whether a relevant exemption applies. Contrary to TPAC's argument, we correctly analyzed the necessary elements to determine that TNCs are TCPs subject our jurisdiction.

Section 5351 et seq. lays out guidelines for our jurisdiction over TCPs. Charter party carriers, or TCPs, are defined as, "every person engaged in the transportation of persons by motor vehicle for compensation, whether in common or contract carriage, over any public highway in this state." (§ 5360.) Section 5360.5 further holds that:

> (a) Charter party carriers of passengers shall operate on a prearranged basis within this state.
>
> (b) For the purposes of this section, "prearranged basis" means that the transportation of the prospective passenger was arranged with the carrier by the passenger, or a representative of the passenger, either by written contract or by telephone.

Section 5360 charter-party carriers are subject to Commission, as opposed to local, jurisdiction (see § 5371 et seq.) unless the entity falls within one of the numerous exemptions specified in section 5353. As relevant to TPAC's application for rehearing,

section 5353 provides that, "This chapter does not apply to … (g) Taxicab transportation service licensed and regulated by a city or county by ordinance or resolution, rendered in vehicles designed for carrying not more than eight persons excluding the driver." (§ 5353 (g).)

The Commission's analysis addresses the essential elements of these statutory standards. The Decision first concludes that TNCs are not exempted from state regulation (Decision, at pp. 12-18). It next addresses whether the TNCs transport passengers for compensation (Decision, at p. 18), and whether TNCs operate on a prearranged basis. (Decision, at p. 20.) While TPAC asserts that the Commission incorrectly focused on compensation and prearrangement rather than TCP or taxicab status, TPAC fails to recognize that these are overlapping concepts. Because compensation is a required factor for TCP status pursuant to section 5360, and compensation is a disputed element in the section 5360 definition, the discussion of compensation is essentially a discussion of whether the section 5360 definition is met.

Similarly, TPAC's suggestion that we failed to conduct an analysis of whether any section 5353 exemption applies to TNCs (TPAC App. Rehg., at p. 6) is incorrect. The Decision addresses the section 5353 (h) ridesharing exemption (Decision, at pp. 44-52), as well as discussing whether the TNCs should be considered taxis. The Decision states, "Unlike taxi cabs, which may pick up passengers via street hails, PU Code § 5360.5 requires that charter party carriers operate on a prearranged basis." (Decision, at p. 20.) In this sentence, we explained that prearrangement distinguishes TNCs from taxis. The section goes on to discuss how TNCs meet the prearrangement criteria.

We acknowledge, however, that our discussion of TNCs' regulatory status and whether TNCs are taxis can be improved. We discuss TPAC's allegations in further detail below, and will modify the Decision to reflect this explanation. In addition, in today's order, we add appropriate findings and conclusions to the Decision.

b) Taxis v. Charter-Party Carriers

TPAC takes issue with the Decision's definition of prearrangement, and the idea that prearrangement determines whether transportation provider is a TCP or a taxi. TPAC further argues that it is up to local governments, as opposed to the Commission, to determine what constitutes taxi service. Contrary to TPAC's assertions, we correctly relied on prearrangement in determining whether TNCs are charter party carriers. Moreover, it is within our jurisdiction to determine whether TNCs are TCPs subject to our jurisdiction.

(1) Prearrangement and Taxi Service

The Decision identifies "prearrangement" as the main defining characteristic of TCPs, explaining that charter party carrier service must be prearranged, "[u]nlike taxicabs…." (Decision, at p. 20.) The Decision concludes:

> We find that TNCs operate on a prearranged basis. PU Code § 5360.5 does not define "prearranged," and we are reluctant to impose a minimum time requirement as some other jurisdictions have done. Instead, we are guided by the plain meaning of "prearranged" as something arranged in advance, which has been our custom and practice in interpreting "prearranged" at the Commission. For example, our information packet for prospective TCP applicants says that all transportation performed by TCPs must be arranged beforehand, and the driver must have a completed waybill in his or her possession at all times during the trip.

(Decision, at p. 20.)

TPAC relies solely on *Babaiean Transp. Co.v. Southern California Transit Co.* (1992) 45 Cal.P.U.C.2d 85 in support of its position that the Decision relies on a new and incorrect interpretation of prearrangement. In *Babaeian*, we considered whether defendant Southern California Transit Corporation was operating illegally as a taxi service, in violation of its TCP authority. Based on our findings that the defendant, "paints his vehicles like a taxi, advertises to taxi customers, operates almost entirely on short notice for short distances, carriers 1 or 2 passengers per trip, and leases vehicles to

drivers," the Commission concluded that defendant provided taxi service. (*Babaeian*, at p. 88.)

TPAC particularly relies on our holding in *Babaeian* that, "interpreting the rule to allow the majority of transportation service to be short notice or immediate response, gives the effect of allowing a charter-party carrier to operate a taxi service." (*Babaeian*, at p. 88.) While TPAC notes that *Babaeian*, decided over twenty years ago, used a different standard for prearrangement and TCP service than that discussed in the TNC Decision, this does not show that the Decision's standard is in error. As Lyft, Inc. notes in its response, since *Babaeian* was decided in 1992, both the Commission and the Legislature have repeatedly declined to adopt any time dependent standard for prearrangement. In addition to the fact that *Babaeian* can be distinguished on its facts (the defendant also represented itself as a taxi), it also has been effectively superseded or overruled. Moreover, it is clearly settled that the Commission is not bound by its precedent, unlike a court. (*In re Pacific Gas & Electric Co.* (1988) 30 Cal.P.U.C.2d 189, 223-225; see also *Postal Telegraph-Cable Company v. Railroad Commission* (1925) 197 Cal. 426, 436; § 1708.) Therefore, even if the Decision were inconsistent with decades-old holdings in *Babaeian*, that would not demonstrate legal error in the Decision.

Moreover, both the Legislature and the Commission have rejected using any time period as a standard for prearrangement. The Legislature defines and explains "prearrangement" twice in the Public Utilities Code. Section 5360.5 unambiguously provides that prearrangement means the passenger and carrier arranged the transportation "either by contract or telephone." (§ 5360.5 (b).) By its plain language, this section only requires a contract or telephone contact, and contains no type of time restrictions. Similarly, section 5381.5, enacted in 2004, provides that the Commission must ensure TCP transportation is occurring on a prearranged basis by requiring a waybill that includes information on how the service was procured, as well as the name of a passenger. In the Legislature's efforts to ensure the prearrangement requirement is being followed, and crack down on bandit taxis, at no time did it adopt any particular time period, or whether there was short notice, as a requirement. The Legislature revisited

prearrangement again in 2012, when it specifically allowed electronic waybills. (§ 5381.5) Again, there is no suggestion in the amendments that the length of the wait time should be any type of requirement for prearrangement.

We also convincingly rejected any time requirement for carrier prearrangement in our implementation of the TCP statutes. All of our definitions of prearrangement are consistent with the legislative directives. Accordingly, General Order (GO) 157-D provides that a traditional TCP driver must have a waybill with the details of the arrangement, including name of a passenger and how the trip was arranged.

In 2002, we opened *Rulemaking to Examine Whether the Regulations Regarding Prearrangement of Charter-Party Transportation Contained in GO 157-C should be Revised* [Rulemaking (R.) 02-08-002]. As the title indicates, the Rulemaking examined the requirements "regarding prearrangement of transportation by charter-party carriers…." (*Opinion Issuing GO 157-D* [D.05-02-033], at p. 1.) Ultimately, we decided to stay with an amended version of the previous definition of prearrangement – only requiring a waybill. (*Id*., at p. 2.) We cited the 2004 legislative action adopting section 5381.5, which contains a similar waybill requirement and does not contain any sort of time prerequisite. (*Ibid*.)

Applying these principles to TNCs, they meet the requirement for prearranged travel as long as they have waybills which describe the arrangements. There is no requirement that prearrangement be for any particular amount of time. Section 5381.5 concerning prearrangement also explicitly allows for electronic waybills, as of January 2014.

(2) Other Factors

TPAC also contends that the Decision erred in relying solely on prearrangement to determine that TNCs were not providing taxi service. (TPAC App. Rehg., at p. 6.) According to TPAC, there are other factors that determine whether a transportation service is a taxicab, and therefore exempt from Commission regulation pursuant to section 5353 (g).

Although prearranged travel is not the sole factor that distinguishes TCPs from taxis, it is correctly considered to be the primary factor. TPAC argues that because the section 5353 (g) taxi exemption leaves taxi service undefined, it is left to the local jurisdictions to decide taxi characteristics. Although TPAC cites section 5353 (g)'s taxi exemption, it neglects to consider the entire scheme of the Passenger Charter-Party Carriers Act ("Act"). (§ 5351 et seq.) Other sections of the Act demonstrate the Legislature's view that prearrangement is the primary defining characteristic of TCP service. The Legislature highlighted this requirement in section 5360.5, where prearrangement is the only TCP requirement specifically laid out in the preliminary article. The Legislature again emphasized prearrangement as determinative of TCP status in 2004, when it amended the Code to address the issue of illegal taxi operations by carriers. It addressed that issue by requiring waybills as evidence that the prearrangement requirement was being met. (See § 5381.5.)

Certainly, there are factors besides street hails that could indicate a carrier is operating as a taxicab. In a number of cases, the Commission has identified factors, which, in addition to hailing, could indicate illegal taxi operations. (See *Babaeian*, *supra*, at p. 88 ["defendant paints his vehicle like a taxi"]; *San Gabriel Transit, Inc. v. Titan Capital Corp.* [D.03-02-008] (2003) 2003 Cal. PUC LEXIS 113 [accepting taxi requests/vouchers, advertising as taxicab]; *Transportation Investments, Inc. v. Valley Cab* [D.83-03-012] (1983) Cal. PUC LEXIS 489 [identification and advertisement as taxicabs, taximeters, cars that resemble cabs].) The most common characteristics of taxis that TCPs must avoid, other than offering spontaneous service, or hails, are identifying the vehicle as a taxi, by paint, taxi lights, the use of taximeters (see G0 157-D, § 3.03), and representing the service as taxi service in advertisements or otherwise. TNCs do not have these taxi characteristics.

TPAC cites four characteristics of taxi service under the Los Angeles Municipal Code that it contends TNCs meet. These are: (1) use of self-propelled vehicles designed to carry under eight persons; (2) equipped with taximeters; (3) for-hire transportation on the streets of Los Angeles, and (4) under the direction of passengers as

opposed to a defined route. (TPAC App. Rehg., at pp. 9-10.) As Lyft notes, 1, 3, and 4 are characteristics which are shared by many legitimate TCPs, and have never been judged to be indicative of illegal taxi operations. The Decision acknowledges that TNCs share many characteristics with taxis. (Decision, at p. 12.) The fact that they have these things in common does not demonstrate error.

TPAC is also incorrect in its assertion that TNCs use taximeters. TPAC exclusively relies on the City of Los Angeles Municipal Code definition, which defines taximeter as "a device that automatically calculates at predetermined rate or rates, and indicates the charge for hire of the vehicle." (City of Los Angeles Muni. Code § 71.00, TPAC App. Rehg., at p. 9, fn 43.) However, that same ordinance states that taxicabs must be *equipped* with such devices, which clearly does not apply to transportation apps. Moreover, despite the City of Los Angeles Definition, other local jurisdictions have definitions of taximeter that clearly exclude smartphone apps. For instance, San Francisco defines a taximeter as "a device ***attached*** to a Motor Vehicle for Hire…." (SF Muni. Code, § 1102.) Los Angeles County provides, "Every taximeter should be placed so that the reading dial showing the amount to be charged shall be well-lighted and readily discernible at all times by passengers." (LA County Muni. Code, § 7.80.320.) All of these definitions indicate that taximeters are meters that are part of the vehicle. Therefore, under the relevant definitions, TNC apps do not qualify as taximeters.

c) Local Determination of Taxi Service

TPAC contends that because the State granted local jurisdictions with authority to regulate taxi services pursuant to Government Code section 53075.5, State agencies are without power to override this regulation. (TPAC App. Rehg., at p. 9.) Accordingly, TPAC suggests the Commission's TNC analysis is flawed since it fails to defer to local jurisdictions. TPAC's assertion lacks merit.

Government Code section 53075.5 provides that:

> Notwithstanding [Public Utilities Code § 5351 et seq.], every city or county shall protect the public health, safety and welfare by adopting an ordinance or resolution in regard to taxicab transportation service rendered in vehicles designed

> for carrying not more than eight persons, excluding the driver, which is operated with the jurisdiction of the city or county.

TPAC argues that when this is read in conjunction with section 5353 (g) (exempting "Taxicab transportation service licensed and regulated by a city or county"), "it becomes clear that the Legislature effectively directed local governments to establish the scope of the taxicab exemption to the Commission's general jurisdiction." (TPAC App. Rehg., at p. 9.)

To the extent TPAC suggests that the Commission is powerless to make determinations about the limits of our TCP jurisdiction, its claim is not credible. Regardless of the status of local authority over taxicabs, we clearly have state jurisdiction over TCPs. (See § 5351 et seq.) Therefore, even if an argument for concurrent jurisdiction could be made, there is no legitimate argument that we lack jurisdiction to determine the limit of our TCP jurisdiction. As is clear from the many TCP v. taxi Commission cases TPAC cites (i.e. *Babaeian*), we have been making these determinations for decades.

TPAC essentially proposes how conflicts between our TCP regulation and local taxi regulation should be resolved. TPAC's contention, however, is entirely hypothetical, because there is no indication in this proceeding that local jurisdictions consider TNCs to be taxicabs. As discussed above, contrary to TPAC's arguments, the definitions TPAC cites from local ordinances do not indicate that TNCs are taxis. (See § 2(B)(2).) Most significantly, in the Rulemaking, no local jurisdiction claimed TNCs were taxis or objected to the Commission's assertion of TCP jurisdiction over the TNCs. Although TPAC cites San Francisco's concerns early in the proceeding that "electronic hails" are similar to street hails (see TPAC App. Rehg., at p. 8, fn 38; SFMTA Feb. 11, 2013 Reply), ultimately neither San Francisco nor any other local jurisdiction objected to the Commission's assertion of TCP jurisdiction over TNCs, or contended TNCs were taxis. (See, e.g., August 19, 2013 SFMTA Comments.) Finally, TPAC has not shown any instance where the any local jurisdictions have attempted to license or

regulate TNCs, such as by any enforcement action undertaken. Although TPAC's position is that TNCs are unlawful taxis, no local authority has officially taken that position.

Even if there were some type of conflict with local jurisdictions, general legal principles concerning State and Commission preemption indicate that our determinations about our jurisdiction are paramount to local regulation. "In any conflict between action by a municipality and a lawful order of the Commission the latter prevails." (*Harbor Carriers v. City of Sausalito*, *supra*, 46 Cal.App.3d 773, 775.) As a practical matter, local pronouncements are not uniform, as is clear with the taximeter definitions. Because uniformity is required, only the Commission can make definitive determinations about the limits to its TCP jurisdiction.

3. Equal Protection

TPAC next contends that the Decision violates the Equal Protection Clauses of the United States and California Constitutions because the Decision treats TNCs differently from taxis even though they provide the same services.

The Equal Protection Clause in the United States Constitution is contained in the 14th amendment, which provides, "No State shall... deny to any person within its jurisdiction the equal protection of the laws." In evaluating a claim under the equal protection clause, the courts first look to whether the two groups are similarly situated for the purposes of the law being challenged. (*Cooley v. Superior Ct.* (2002) 29 Cal.4th 228, 253.) "If persons are not similarly situated for purposes of the law, an equal protection claim fails at the threshold. [Citations]" (*Walgreen Co. v. San Francisco* (2010) 185 Cal.App.4th 424, 434.) Where the persons are similarly situated and the challenged classification does not involve a suspect class or fundamental right, the next inquiry is whether there is a rational basis for the disparate treatment. (*Id*., at p. 435.)

Here, TPAC claims that TNCs are similarly situated to taxis for the public safety purposes of the Decision. In support of its contention, TPAC again cites a number of shared characteristics including primarily short trips, and use of city streets. (TPAC App. Rehg. at pp. 15-16.) Much of this argument reiterates TPAC's earlier argument that

TNCs are, in fact, taxicabs. But the Commission has rejected that contention, and found as a legal and factual matter that TNCs are TCPs, and not taxis.

Because TNCs are not taxicabs, they are not similarly situated for the safety purposes of the Decision, and TPAC's equal protection argument fails. Unlike taxis, TNCs are not subject to the safety jurisdiction of local agencies. TPAC argues that the Commission, "attempts to give TNCs special dispensation" (TPAC App. Rehg., at p. 18), and "[t]here is no rational basis for treating TNCs differently from taxicabs in order to protect the public interest…." (TPAC App. Rehg., at p. 18.) These arguments ignore the largest difference between TNCs and taxis for the safety purposes of the Decision -- that we have jurisdiction over TNCs and we do not have jurisdiction over taxis. (See § II.) As discussed, this jurisdiction difference, which is established by statute, is largely based on the prearrangement requirement. (§ 5360.5.)

The Decision can only adopt safety regulations for TNCs, and we can only apply our regulations to TNCs, because the Commission cannot regulate taxis. Again, unlike taxis, TNCs are not regulated by the local authorities. There was little dispute that new safety regulations applicable to TNCs were needed. There would be no need for additional safety regulations to apply to taxis, since as TPAC notes, taxi safety is extensively regulated by local jurisdictions. Moreover, no local jurisdiction has imposed safety regulations on TNC operations. Given this difference, there can be no serious argument that taxis and TNCs are similarly situated for the safety purposes of the Decision.

TPAC also contends that the Decision violates Article IV, section 16 of the California Constitution, which provides that "[a] local or special statute is invalid in any case if a general statute can be made applicable." (Cal. Const. Art. IV, §16 (b).) TPAC argues that the Decision is an invalid special law because the regulations, "remove TNCs from the taxicab regulatory scheme without justification." (TPAC App. Rehg., at p. 21.)

The California special statute clause has been interpreted as an equal protection provision, and therefore, the test is substantially the same as that for equal protection claims. (*County of Los Angeles v. Southern California Tel. Co*. (1948) 32

Cal.2d 378, 389.) Thus, the special statute provision, "does not preclude legislative classification but only requires that the classification be reasonable. [Citations.]" (*People v. Western Fruit Growers* (1943) 22 Cal.2d 494, 506.)

Contrary to TPAC's argument, the Decision would not constitute an invalid special law for the reasons discussed above regarding equal protection. There are significant and rational reasons that TNCs are treated differently than taxis, the most important being that the Commission is charged with regulating the safety of TCPs, including TNCs, while it has no jurisdiction over taxis. TPAC's assertion that the Commission removed TNCs from taxi regulation is inaccurate. It is the Public Utilities Code and not the Decision that provides for entirely different regulatory schemes for TCPs, such as TNCs, versus taxis.

For these reasons, TPAC's argument that the Decision violates equal protection lacks merit.

4. Public Utilities Code

TPAC's final arguments concern whether the Decision violates the Public Utilities Code provisions setting forth requirements for all TCPs. TPAC emphasizes that the Commission can only regulate TCPs, "to the extent that such is not inconsistent with the provisions of this chapter [Charter-party Carrier Act]…." (§ 5381.)

In summary, TPAC asserts that the Decision is inconsistent with the following provisions of the Public Utilities Code: (1) sections 5360, 5371, 5384 – charter-party carrier is defined as every person providing transportation, but the Commission is exempting the drivers from the permit requirement; (2) section 5391 requires adequate insurance, but the insurance provisions are not adequate; (3) sections 5374 and 1032(a)- Commission cannot issue a CPCN or permit unless mandatory substance abuse testing and certification requirements are followed; (4) section 5385.6 requires limousines to have special license plates, and TNCs operate limousines that do not meet that requirement; and (5) section 5401 requires that charges be based solely on mileage or time of use, and the Decision does not require this.

a) Section 5391 Insurance Requirement

TPAC argues that the Decision fails to meet the section 5391 requirement that the Commission shall "require the charter-party carrier … to procure…adequate protection against liability…." Although the section 5391 concept of "adequate" insurance is somewhat inexact, we recognize the need to revisit the insurance issues. Accordingly, the Assigned Commissioner has already issued an Assigned Commissioner Ruling directing further proceedings on the issue of adequate TNC insurance. For these reasons, we are granting rehearing on the insurance provisions in the Decision. Proceedings will occur as directed in the ACR. Through that process the insurance provisions will be reassessed.

b) Sections 5374 and 5385.6

TPAC highlights two statutory requirements for TCPs, mandatory drug testing and commercial license plate requirements that are not easily applied to the newly emerging TNC industry. TPAC argues that Decision fails to adhere to the requirements of sections 5374 and 1032.1 because it does not require the TNCs to provide for a mandatory controlled substance and alcohol testing certification program. In addition, TPAC alleges that the Commission fails to require TNCs to adhere to section 5385.6, which requires limousines to be equipped with special license plates issued and distributed by the Department of Motor Vehicles.

We acknowledge that the Decision does not fully address the application of these Public Utilities Code sections. Therefore, we will grant limited rehearing of the Decision on the issues of drug testing and commercial license plates.

c) Section 5384 Permit Requirement

As TPAC points out, section 5384 requires all charter-party carriers to obtain permits, and section 5360 defines charter-party carriers as "every person engaged in the transportation of persons by motor vehicles for compensation…." Therefore, according to TPAC, because drivers are persons engaged in transportation for compensation, they are carriers who must also obtain permits from the Commission. Although TPAC acknowledges that we have never required all employee-drivers to have

individual permits if they are under the supervision and control of the permit holder (GO 157-D § 5.03), TPAC argues that TNC drivers are not employees.

TPAC correctly notes that TNC drivers are not employees, as this is one of the characteristics that sets TNCs apart from the majority of TCPs. But the GO does not apply to TNCs, so the GO 157-D, section 5.03 requirement TPAC cites is inapposite. Section 5.03 illustrates, however, that the section 5384 TCP permit requirements are often applied to companies, and not individual drivers. Section 5357 defines person as "an individual, a firm, or a corporation." As we have consistently interpreted the permit requirement, drivers do not need to have individual permits, but rather the firm or corporation must have a permit. Although in the context of TNCs the drivers are not employees, they are clearly still agents connected with the firm. Thus, the Commission's current interpretation of the permit requirement for TNCs, as applying to the firm or corporation and not the individual drivers, is consistent with how the Commission has interpreted this provision for other types of TCPs, and is in accord with the statute.

d) Section 5401 Mileage and Time of Use

TPAC's final argument is that section 5401 requires that TCPs compute charges based on "vehicle mileage or time of use…" (§ 5401.) TPAC contends that TNCs have used other factors to determine charges. (TPAC App. Rehg., at p. 26.)

As Lyft notes, this is not an issue the Decision addresses, and therefore there is no provision in the Decision that conflicts with section 5401. Accordingly, TPAC does not demonstrate any legal error in the Decision. Section 5401 does not require any action from the Commission, but rather is directed at the TCPs. TPAC's allegation that TNCs have violated this provision is not appropriately raised in an application for rehearing on a Rulemaking that does not address the issue.

B. UBER REHEARING

Although the Decision does not actually rule on whether "Uber" is a TCP, in its application for rehearing, Uber asserts that it does not provide transportation services, and as such the Commission has no jurisdiction over it. According to Uber, it is just a "technology compan[y] that develop[s] software that allow a user to simply procure

transportation service from a licensed TCP holder or future TNC holder…." (Uber App. Rehg., at p. 2.) Uber alleges that we lack jurisdiction over Uber since it is not a transportation provider, and that we have unlawfully expanded our jurisdiction to include those who "facilitate transportation of passengers…." (Uber App. Rehg., at p. 2.)

The Commission held that TNCs are TCPs subject to the Commission's jurisdiction largely based on the fact that the TNCs receive compensation for transportation and that the transportation is prearranged. (Decision, at pp. 18-21.) The Decision defines TNCs as an entity:

> …that provides transportation services for compensation using an online-enabled app or platform to connect passengers with drivers using their personal vehicles. The primary distinction between a TNC and other TCPs is that a TNC connects riders to drivers who drive their personal vehicles, not a vehicle such as a limousine purchased primarily for a commercial purpose. To that end, a TNC is not permitted to itself own vehicles used in its operation or own fleets of vehicles.

(Decision, at p. 24.)

Based on this definition, the Decision concludes that Uber is not a TNC, because Uber drivers typically operate commercially licensed vehicles that are used for other TCP operations. (*Ibid*.) The Decision goes on to hold that uberX, in contrast, is a TNC because it involves the use of personal vehicles. (*Ibid*.) We left the issue of whether Uber is a TCP, despite the fact that it is not a TNC, to be determined in Phase II of this proceeding.

Uber suggests that our holdings about uberX are mistaken. According to Uber, uberX does not designate any type of transportation service, but rather is "one of several classes of car that users of the Uber App can request." (Uber App. Rehg., at p. 4, fn 11.) Uber asserts that its subsidiary, Rasier, LLC, contracts with drivers of personal vehicles who use the Uber App. and that the Commission should regulate Rasier, not

uberX as a TNC, but "only if and when Rasier applies to the Commission to become a TNC." (*Ibid*.)

We concede that we have scant information in this proceeding regarding the structure of Uber, any subsidiaries and their roles, and Uber has provided few citations on this subject in its application for rehearing. For this reason, rehearing on the issue of which portion or subsidiary of Uber is a TNC is warranted.

Because we are granting rehearing on the issue of uberX's status as a TNC there is no longer any ripe issue that Uber is challenging. This is particularly true because we have not yet ruled on Uber's TCP status. Notwithstanding the fact that Uber has no live controversy with the Decision, we are persuaded that our Finding of Fact 17 should be modified to more accurately track the statutory language. Moreover, we emphasize that our grant of rehearing on the limited issue of the TNC component of Uber's operations is in no way an endorsement of Uber's legal arguments.

III. CONCLUSION

For the above reasons, we will grant limited rehearing on certain issues as described below. We will also modify some of the remaining language in the Decision to better explain and clarify our reasoning. With these modifications, rehearing of the remaining portions of the Decision, as modified is denied.

THEREFORE, IT IS ORDERED that:

1. Limited rehearing is granted on the following issues: (1) the application of section 5391 (adequate insurance); (2) the application of section 5374 (mandatory drug testing); (3) the application of section 5385.6 (license plate requirement); and (4) whether uberX, or some other component or subsidiary of Uber, is a TNC.

2. The last sentence on page 34 continuing on to page 35 of the Decision is modified to read:

> Workshops topics will include, but not necessarily be limited to, a consideration of safety, competition, innovation, accessibility, congestion, the California Environmental Quality Act (in the event any new actions are proposed at that time), and other pollution related issues.

3. The heading of section 2.2.3. is modified to read:

2.2.3. TNCs Operate on a Prearranged Basis and are not Taxicabs

4. The following discussion is added on page 20 of the Decision before section 2.2.4.

> Pursuant to section 5353 the Commission's TCP jurisdiction does not apply to "Taxicab transportation service licensed and regulated by a city or county by ordinance or resolution, rendered in vehicles designed for carrying not more than eight persons excluding the driver." (§ 5353 (g).) Although prearranged travel is not the sole factor that distinguishes TCPs from taxis, it is correctly considered to be the primary factor.
>
> In a number of cases, the Commission has identified factors, which, in addition to hailing, could indicate illegal taxi operations. (See *Babaeian*, *supra*, at p. 88 ["defendant paints his vehicle like a taxi"]; *San Gabriel Transit, Inc. v. Titan Capital Corp.* [D.03-02-008] (2003) 2003 Cal. PUC LEXIS 113 [accepting taxi requests/vouchers, advertising as taxicab]; *Transportation Investments, Inc. v. Valley Cab* [D.83-03-012] (1983) Cal PUC LEXIS 489 [identification and advertisement as taxicabs, taximeters, cars that resemble cabs].) The most common characteristics of taxis that TCPs must avoid, other than offering spontaneous service, or hails, are identifying vehicles as taxis, by paint, taxi lights, the use of taximeters (see GO 157-D, § 3.03), and representing the service as taxi service in advertisements or otherwise. TNCs do not have these characteristics.
>
> Notably, TNCs do not use taximeters. The City of Los Angeles requires that taxicabs must be *equipped* with such taximeter devices, which clearly does not apply to transportation apps. (City of Los Angeles Muni. Code § 71.00.) Other local jurisdictions also have definitions of taximeter that clearly exclude smartphone apps. For instance, San Francisco defines a taximeter as "a device ***attached*** to a Motor Vehicle for Hire…." (SF Muni. Code, § 1102.) These definitions indicate that taximeters are meters that are part of the vehicle. Therefore, under the relevant definitions, TNC apps do not qualify as taximeters.

Therefore, in addition to prearrangement, because TNCs do not share other defining characteristics of taxicabs, they cannot be considered taxicabs.

5. The following paragraph is added after the end of the first paragraph on page 21 of the Decision:

Both the Legislature and the Commission have conclusively rejected using any time period as a standard for prearrangement. The Legislature defines and explains "prearrangement" twice in the Public Utilities Code. Section 5360.5 unambiguously provides that prearrangement means the passenger and carrier arranged the transportation "either by contract or telephone." (§ 5360.5 (b).) By its plain language, this section only requires a contract or telephone contact, and contains no type of time restrictions. Similarly, section 5381.5, enacted in 2004 provides that the Commission must ensure TCP transportation is occurring on a prearranged basis by requiring a waybill that includes information on how the service was procured, as well as the name of a passenger. Consistent with the legislative directives, the Commission also rejected any time requirement for carrier prearrangement in our implementation of the TCP statutes. Accordingly, General Order (GO) 157-D only provides that a traditional TCP driver must have a waybill with the details of the arrangement, including name of a passenger and how the trip was arranged.

6. Section 2.2.5. is added on page 35 of the Decision, as follows:

2.2.5. Application of the California Environmental Quality Act

TPAC argues that we our proposed TNC regulation are subject to CEQA, which requires the Commission to follow a specific environmental review prior taking an action that may have an environmental impact. No CEQA review is required prior to the adoption of today's TNC regulations because they do not constitute a CEQA project. Although a Rulemaking and the act of adopting regulations can be considered an agency action and a project (see *Dunn-Edwards v. Bay Area Air Quality Management District* (1995) 9 Cal.App.4th 644), those regulations would only be a CEQA project if there were a direct physical impact or a reasonably foreseeable indirect change. (Pub. Resources Code, § 21065.)

Here, we adopt a limited number of safety regulations applicable to existing and future TNC operations. These regulations include insurance regulations, driver safety regulations, and other provisions regarding fee payment, discrimination, and identification. Our requirements are largely "paper" requirements, and they do not have any direct physical impact on the environment. In addition to the fact that there is no direct physical impact, there also is no "reasonably foreseeable indirect change" caused by the Decision. Significantly, TNC operations are already well-established. We neither encourage nor discourage these operations. We simply impose certain regulatory and safety requirements on TNCs that are already operating, or may be in the future. There is no indication that these new requirements will either increase or decrease TNC operations. While the regulations may assist TNCs because they provide some regulatory framework, and the ability to operate legally, they also may interfere and limit TNC operations, since they impose new requirements. We are not changing the physical status quo, directly or indirectly, and there is no reasonably foreseeable indirect change that will occur.

7. Finding of Fact 17 is modified to read:

It is reasonable to exercise this Commission's broad grant of authority pursuant to PU Codes §§ 5381 and 701 to create the category of TNC as a subcategory of the existing category of TCP. A company or individual wishing to engage in transportation of passengers, including the facilitation of such transportation through online enabled apps, can choose either to get a traditional TCP license or a TNC permit.

8. Finding of Fact 38 is added to the Decision to read as follows:

Today's order and the adopted TNC regulations do not have any direct physical impact on the environment and will not result in any reasonably foreseeable indirect change.

9. Finding of Fact 39 is added to the Decision to read as follows:

TNC travel uses electronic waybills prior to service.

10. Finding of Fact 40 is added to the Decision to read as follows:

TNCs do not share defining characteristics of taxicabs, such as top lights and taximeters.

11. Finding of Fact 41 is added to the Decision to read as follows:

TNC online enabled apps are not taximeters.

12. Conclusion of Law 12 is added to the Decision to read as follows:

Because today's order and the adopted TNC regulations do not have any direct physical impact on the environment and will not result in any reasonably foreseeable indirect change the decision and regulations do not constitute a CEQA project.

13. Conclusion of Law 13 is added to the Decision to read as follows:

The Commission has no obligation pursuant to CEQA to review the environmental impact of today's order and the adopted TNC regulations, because they do not constitute a CEQA project.

14. Conclusion of Law 14 is added to the Decision to read as follows:

The prearrangement requirement in section 5360.5 is satisfied by arrangement by contract or telephone, and is verified through use of a waybill.

15. Conclusion of Law 15 is added to the Decision to read as follows:

Pursuant to Legislative and Commission directives, the concept of "prearrangement" does not require any particular length of time.

16. Conclusion of Law 16 is added to the Decision to read as follows:

TNCs engage in providing prearranged travel.

17. Conclusion of Law 17 is added to the Decision to read as follows:

Because TNCs engage in providing prearranged travel and do not share the defining characteristics of taxicabs, they are not taxicabs. TNCs are charter party carriers pursuant to section 5351 et seq., and are not exempt from Commission jurisdiction pursuant to section 5353 (g) (the taxicab exemption).

18. Limited rehearing on insurance related issues will be conducted through the proceeding described in the March 25, 2014 Assigned Commissioner Ruling in this proceeding.

19. Limited rehearing on the other issues listed in ordering paragraph 1, and the coordination of that rehearing with Phase II of this proceeding will be described in a future Assigned Commissioner Ruling to be issued within 30 days of today's order.

20. To the extent any holdings in today's order are inconsistent with any statements in D.13-09-045, those earlier statements are superseded.

21. Rehearing of the remaining portion of D.13-09-045, as modified herein, is denied.

This order is effective today.

Dated April 10, 2014, at San Francisco, California.

MICHAEL R. PEEVEY
President
MICHEL PETER FLORIO
CATHERINE J.K. SANDOVAL
CARLA J. PETERMAN
MICHAEL PICKER
Commissioners

Exhibit C

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN DIEGO, HALL OF JUSTICE

SAN DIEGO TRANSPORTATION ASSOCIATION, a California corporation; JOE CIPRIAN, an individual; JANAN INSURANCE AND FINANCIAL SERVICES, INC., a California Corporation d/b/a Jaden Express; CURTIS BECKER, an individual d/b/a Curtis Cab; RONALD HAWKINS, an individual d/b/a Andy's Cab; SAVATAR SAHOU, an individual; USA CAB, LTD., a California Corporation, Petitioners, vs. SAN DIEGO METROPOLITAN TRANSIT SYSTEM, f/k/a San Diego Metropolitan Transit Development Board, a California public agency; and DOES 1-100 inclusive Respondent, ABDIKADIR ABDISALAN, an individual; and ABDULLAHI HASSAN, an individual, Prospective Intervenors.	GENERAL CIVIL (CEQA) CASE NO.: 37-2015-00008725-CU-TT-CTL **[PROPOSED] ORDER DENYING PETITIONERS' REQUEST FOR PRELIMINARY INJUNCTION** Judge: Hon. Ronald S. Prager Dept: C-71 Petition Filed: March 13, 2015 Hearing Date: April 28, 2015 Hearing Time: 9:00 a.m.

Having considered Petitioners' ex parte application for a temporary restraining order and order to show cause on preliminary injunction, Petitioners' memorandum of points and authorities in support of the application and its attachments, the Respondents' memorandum in opposition and its attachments, Prospective Intervenors' memorandum in opposition and its attachments, Petitioners' reply in support, all other papers and records filed in this case, and the arguments presented at the April 14, 2015 ex parte hearing and the April 28, 2015 hearing on the Order to Show Cause, the Court DENIES Petitioners' request for a preliminary injunction.

IT IS SO ORDERED:

DATED: _____ _____

Hon. Ronald S. Prager, Judge of the Superior Court