IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK

STANFORD MILLER, CESAR SALAS VALDEZ, FABION LEWIS, GEORGE NUMFOR, and ELIJAH SMITH, on behalf of themselves and all others similarly situated,

Plaintiffs,

v.

CITY OF NEW YORK, DAVID DO, in his official capacity as Commissioner of the New York City Taxi and Limousine Commission, and ROSIANA HINDS, KAREEM ABDURRAHMAN, MANUEL CHUVA GALARZA, SHAWANDA RICHARDSON, GURJEET SAHOTA, PARTHA NATH, HONG LIANG LUO, GANESH RAMLALL, EDWARD HILTON, and OFFICERS JOHN DOE 1–6, sued in their individual capacities and official capacities as officers of the Taxi and Limousine Commission,

Defendants.

Case No. 23-cv-65-PKC-RML

PLAINTIFFS' MEMORANDUM OF LAW IN OPPOSITION TO DEFENDANTS' MOTION TO DISMISS PLAINTIFFS' FIRST AMENDED COMPLAINT

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INTRODUCTION

Every day, undercover New York City Taxi and Limousine Commission ("TLC") officers lurk at the departure terminals of JFK and LaGuardia Airports to enforce New York City's Street Hail Law through sting operations. The law prohibits drivers without TLC licenses from picking up paying passengers to combat two problems: a black market of drivers making a living as off-the-books taxis without proper safety and insurance credentials—endangering passengers and harming the licensed taxi market—and the scourge of sex trafficking that so often goes hand-in-hand with that black market. A violation of this law results in an automatic and hefty $1,500 fine.

But the TLC's undercover airport stings aren't focused on those black-market drivers at all. Instead, they overwhelmingly target ordinary drivers without regard to whether they exhibit a desire to pick up an illegal fare or show any other predisposition to violate the law. Rather than focus on objective indicators that would lead the TLC to target the sort of actors the law was designed to capture, the TLC's undercover officers overwhelmingly target people of color based on biased assumptions about who will fall for their toolbox of deceptive tactics that unquestionably constitute entrapment: stopping drivers as they let out passengers, inventing sob stories about being stranded, pleading to pay for a ride, and *even when the drivers hesitate or decline to do so*, repeatedly badgering, cajoling, and pestering them into agreeing to drive the undercover officer.

The result of this intentionally discriminatory scheme is that people of color receive the vast majority of the tickets from the TLC's undercover officers and far more than their fair share: 86.5% of these $1,500 summonses go to people of color, even though people of color make up only 56% of drivers dropping off passengers at the airports, and the majority of drivers "caught" are merely dropping off friends and family, not professional drivers (black market or otherwise). But that's no problem for the TLC, since entrapment cannot be raised a defense in the administrative adjudications of these summonses and the $1,500 fine still makes its way back to the TLC's coffers.

The Plaintiffs here are five of the many victims of the TLC's entrapment scheme. Each is a person of color who was merely dropping off passengers when an undercover officer approached, barreled past their initial resistance, and bullied them into accepting a fare. Each was hit with a $1,500 fine in response. And each suffered a deprivation of their constitutional rights.

The $1,500 penalty, when imposed against victims of the TLC's entrapment scheme like the Plaintiffs, who show no inclination to violate the law and are first- (and only-) time offenders, violates the Eighth Amendment's excessive fines ban. These Plaintiffs are nothing like the black-market drivers for whom the hefty $1,500 penalty was designed, and the substantial sanction is grossly disproportionate to the Plaintiffs' conduct. In 2012, the minimum fine increased from $200 to $1,500; the $1,300 increase was meant for black-market drivers, not people like the Plaintiffs. Defendants' only real response is that the Plaintiffs are within the class of people the law meant to capture because they violated it and this Court should defer to the City Council's judgment on the appropriate penalty—a circular argument that would render the Eighth Amendment toothless.

The Defendants' selective enforcement of the Street Hail Law also violates the Plaintiffs' right to equal protection. The overwhelming statistical evidence in the Complaint—which shows that the TLC selectively targeted this entrapment scheme at people of color—is based on an analysis of 3,444 summonses issued over four years (data extracted through FOIL requests only after counsel observed this pattern among its legal services clients). And the statistics are consistent with the experience of countless victims whose only distinguishing factor in being targeted by the TLC is that they were not white. On this claim, the Defendants principally contend the Plaintiffs haven't alleged a comparator group and that the City can't be held liable since it lacked awareness. The first is baffling, as the Complaint and basic common sense leave no doubt that drivers of color are similarly situated to white drivers. And the latter disregards settled law that, at this stage, the City's acquiescence to this biased practice can be inferred from the pervasiveness of the practice.

The Defendants also make a trio of non-merits challenges, but each fails. They argue that some officers have qualified immunity, but they admit that anyone who "should have been aware" of the discriminatory practices violated clearly established rights. The Complaint amply alleges that. They also contend that one Plaintiff's equal protection claim is time-barred but ignore that his claim is governed by a discovery rule. And they try to escape the consequences of their actions by raising a contractual waiver far too vague to accomplish a forfeiture of constitutional rights.

In short, the TLC's appalling practices fail to serve any legitimate public safety function. "The function of law enforcement is the prevention of crime and the apprehension of criminals. Manifestly, that function does not include the manufacturing of crime." *Sherman v. United States*, 356 U.S. 369, 372 (1958). But regardless of whether these operations serve any valid purpose, they plainly violate the United States Constitution. Thus, the Defendants' motion should be denied.

BACKGROUND

I. The Street Hail Law.

For-hire vehicles are an important transportation option for New Yorkers and visitors to the City. To ensure that those vehicles operate safely and to safeguard passengers' interests, the City imposes licensure and insurance requirements on drivers. *See* N.Y.C. Admin. Code § 19-505. But for as long as those rules have existed, a black market of professional drivers has flouted them.

The City Council enacted the Street Hail Law to deter and punish actors in that black market, and the statutory scheme is designed with professional, repeat offenders in mind. The Street Hail Law makes it illegal not just to operate a for-hire vehicle without a for-hire license—the provision at issue here—but also for an owner to "permit" another person to use their car for illegal for-hire business—a provision that prohibits loaning out cars in return for a cut of the proceeds. N.Y.C. Admin. Code § 19-506(b)(1). And the problem of unlicensed drivers finding ways to reenter the black market is sufficiently serious that the law provides that, when rental vehicles

are used in violation of the Street Hail Law, the City need not prove the rental company's participation in the unlawful business; rather, to avoid liability, the company must prove as "an affirmative defense" that it didn't "have any reason to know that the person to whom it was rented or leased would operate" the vehicle for-hire. *Id.* § 19-506(b)(3). Reflecting the degree to which some unlicensed drivers operate openly, the law even includes a provision prohibiting unlicensed drivers from marketing a car with the label "taxi," "cab," or "for hire vehicle." *Id.* § 19-506(c)(1).

The penalties, too, are tailored to professional, repeat offenders. Initially, a violation came with a fine ranging from $200 to $500. First Am. Compl. ¶¶ 13–14, ECF No. 19 ("FAC"). But that failed to stem the business of illegal operators by what the head of the TLC described as "hustlers, sharpshooters and lawbreakers." *Harrell v. City of New York*, 138 F. Supp. 3d 479, 485 & n.6 (S.D.N.Y. 2015). So, over the next several years, the Council empowered officers to seize vehicles pending adjudication and allowed for forfeiture of vehicles involved in three proven violations, and increased the potential maximum fine to $1,500. FAC ¶¶ 37–40; N.Y.C. Admin. Code § 19-506(h). Still unsuccessful, the Council ratcheted up the penalties once again in 2012, this time also motivated by the revelation that the "sex trafficking industry flourishes on, even relies upon" unlicensed for-hire vehicles.[1] To address those problems, the 2012 amendments raised the civil fine to an automatic $1,500 and allowed forfeiture upon two violations. FAC ¶¶ 14, 40; N.Y.C. Admin. Code § 19-506(e), (h).[2]

The Street Hail law also provides for criminal penalties, but in practice, the TLC never criminally charges anyone only for operating without a license. FAC ¶¶ 34–36. In 2015, the City

[1] Hr'g on Proposed Int. 0735-2011 and 0725-2011 by Comm. on Transp. & Women's Issues at 6:5-6 (Dec. 14, 2011) ("Hr'g Tr, https://legistar.council.nyc.gov/View.ashx?M=F&ID=1691952&GUID=57C64EC0-FC92-429C-9B20-609D13FB4005; *see also* FAC ¶ 14.

[2] The 2012 amendments also imposed anti-sex-trafficking educational requirements on properly licensed drivers. *See* N.Y.C. Admin. Code § 19-505(q)

disclosed that it was not aware of any case in which a violation was "prosecuted criminally as a stand-alone offense." *Harrell*, 138 F. Supp. 3d at 486 n.10. Quarterly enforcement reports the TLC provides to the City Council under N.Y.C. Admin. Code § 19-506(m) show that this pattern has persisted. Although the City issued over 1,500 summonses in the first half of 2023, it filed no criminal charges[3]—including for repeat offenders. Yet notably, the City has previously disclosed a practice of settling with *third-time* violators for only $1,150. *Harrell*, 138 F. Supp. 3d at 486 n.9.

II. The TLC's Revenue-Generating Sting Operations.

For years, the TLC has poured daily resources into sting operations carried out at JFK and LaGuardia Airports to "enforce" the Street Hail Law, N.Y.C. Admin. Code § 19-506(b). The TLC's sting operations rely on undercover TLC officers who invent sob stories to beg, grovel, and cajole drivers into providing rides, exploiting drivers' compassion, and repeatedly badgering drivers who rejected the officers' initial entreaties. FAC ¶¶ 5, 58–59, 109. To identify targets for each sting, however, the undercover officers do not focus on any conduct by the drivers; instead, they selectively target drivers of color based on beliefs, stereotypes, and assumptions about the powerlessness, precarious financial condition, and mutual aid traditions of immigrant communities and communities of color, which the TLC believes it can exploit. *Id.* ¶¶ 8, 117.

A geocoding and surname analysis of four years of data on Street Hail Law summonses—obtained by counsel through FOIL requests from the TLC—revealed that 86.5% of the Street Hail Law summonses issued from undercover operations at JFK and LaGuardia Airports went to people of color, even though people of color make up only 56% of people who drop off passengers at the airports. *Id.* ¶¶ 4, 20, 124, 127. And since the stings are focused on race rather than actual

[3] TLC, 1st Quarter of 2023 Report, a860 gpp.nyc.gov/concern/nyc_government_publications/vq27zr46g?locale=en; TLC, 2nd Quarter of 2023 Report, a860-gpp.nyc.gov/concern/nyc_government_publications/4x51hm92p?locale=en.

indicia of a desire to pick up a fare, most of the people targeted are just dropping off friends or family and are not professional drivers. *Id.* ¶ 106.

But regardless of who ends up with a summons, the TLC ends up with badly needed money. *Id.* ¶ 110. Historically, the TLC generated a "significant amount" of its miscellaneous revenue from its sale of Taxi Medallions.[4] But by mid-2014, with medallion values dropping and its budget at stake, the TLC began raising revenue through various discriminatory practices,[5] including the undercover scheme at issue here. Since 2017, the TLC has collected over $5 million from individuals for Street Hail Law violations. *Id.* ¶ 9.

These substantial revenues are attributable not just to the frequency of the TLC's stings, but also the difficulty people face contesting summonses. By only issuing civil summonses, the TLC eliminates the possibility of an entrapment defense, which is unavailable in adjudications of summonses in front of the Office of Administrative Trials and Hearings ("OATH"). *Id.* ¶ 100. On top of that, "[h]earsay is *admissible* in an administrative proceeding," *49th St. Mgmt. Co. v. Taxi & Limousine Comm'n*, 716 N.Y.S.2d 391, 394 (2000) (emphasis added), a fact the TLC exploits by maintaining a policy of not requiring its officers to record their undercover operations. The

[4] Rpt. on the Fiscal 2023 Prelim Plan for the TLC, at 5 (Mar. 16, 2022), https://council.nyc.gov/budget/wp-content/uploads/sites/54/2022/03/TLC.pdf. For example, between November 2013 and March 2014, the TLC's medallion sales raised "approximately $359 million for the City." Rpt. of the Taxi Medallion Task Force, at 13 (Jan. 2020), https://council.nyc.gov/data/wp-content/uploads/sites/73/2020/01/Taxi-Medallion-Task-Force-Report-Final.pdf.

[5] James Fanelli *Public Advocate and NYCLU Call for Probe of City's 'Illegal Cab' Seizures*, DNAinfo (July 22, 2014), https://www.dnainfo.com/new-york/20140722/long-island-city/public-advocate-nyclu-call-for-probe-of-citys-illegal-cab-seizures/ (documenting cases where people "who were driving family members, friends or neighbors were slapped with [TLC] summonses and had their cars seized. The drivers, many of whom did not speak English, had to prove their innocence weeks later . . . . [Public Advocate Letitia] James called on the City Council to hold a hearing 'so that TLC can explain why these instances are happening, why so many communities of color are receiving summonses, and what they are doing to prevent them from happening in the future.").

combined effect is that the undercover officers need not appear in-person and respondents have no objective record to contest officers' hearsay statements. FAC ¶¶ 110–12. Faced with the lack of a meaningful opportunity to be heard and the severity of the $1,500 fine, many sting targets settle with the TLC for significant sums to avoid the likelihood of a $1,500 fine. *Id.* ¶¶ 65, 77, 89, 113.

III. TLC's Undercover Stings Against the Plaintiffs.

The five Plaintiffs are all people of color who were subjected to the TLC's illegal scheme. After dropping off passengers at JFK Airport, each was approached by undercover TLC officers, who either started begging for a ride and badgering them or engaged the Plaintiffs in conversation to learn where they lived or intended to drive back to, after which they badgered them for a ride. FAC ¶¶ 45–46, 57–58, 69–70, 81–82, 93. None of the Plaintiffs had ever received a Street Hail summons before and none was engaged in any related criminal activity. *Id.* ¶¶ 54, 66, 78, 90, 103. Two of the Plaintiffs—Miller, a construction and food service worker, and Valdez, a building superintendent—were simply dropping off family or friends. *Id.* ¶¶ 43–44, 55–56. The other three dropped off rideshare passengers (and even then, Smith had his next ride lined up). *Id.* ¶ 93.

Plaintiff Valdez's experience is illustrative. Mr. Valdez, who has limited English proficiency, had just dropped off his father at JFK Airport in July 2022 when he was approached by an unknown man who asked if he was a taxi driver. *Id.* ¶ 57. After learning that Mr. Valdez was heading to the Bronx, the man asked to be taken to Yankee Stadium. *Id.* ¶ 58. Mr. Valdez repeatedly told the man no, but the man kept badgering and guilting Mr. Valdez until he relented. *Id.* ¶¶ 59–60. The two Plaintiffs (Miller and Smith) who challenged their summonses before OATH both lost after hearings in which they attempted to raise the fact that they were entrapped, leading to the imposition of a $1,500 civil fine on each of them. *Id.* ¶¶ 52–53, 99–101. The other three Plaintiffs settled their violations, each paying $500. *Id.* ¶¶ 65, 77, 89.

STANDARD OF REVIEW

At this stage, the court must "accept well pleaded factual assertions as true" and "draw all reasonable factual inferences in favor of the plaintiff." *Lynch v. City of N.Y.*, 952 F.3d 67, 76 (2d Cir. 2020). "[W]hether a complaint's factual allegations plausibly give rise to an entitlement to relief does not impose a probability requirement at the pleading stage; it simply calls for enough fact to raise a reasonable expectation that discovery will reveal evidence of illegal conduct." *Id.* at 75.

ARGUMENT

I. The Complaint States a Plausible Claim Under the Eighth Amendment That the $1,500 Street Hail Fines Are Excessive Fines.

To determine whether a fine violates the Eighth Amendment's Excessive Fines Clause, courts apply a two-part test. *United States v. Viloski*, 814 F.3d 104, 108 (2d Cir. 2016). The first asks whether the penalty is punitive and therefore a "fine" within the meaning of the Eighth Amendment. *Id.* at 109. Here, the Defendants concede that the Street Hail Law is a fine. *See* Defendants' Memorandum of Law in Support of Their Motion to Dismiss ("Mot.") at 6.

Under the second step, a fine is unconstitutional if it "is grossly disproportional to the gravity of a defendant's offense." *Viloski*, 814 F.3d at 110 (quoting *United States v. Bajakajian*, 524 U.S. 321, 334 (1998)). Disproportionality is measured by the four "*Bajakajian* factors": "(1) the essence of the crime of the defendant and its relation to other criminal activity, (2) whether the defendant fits into the class of persons for whom the statute was principally designed, (3) the maximum sentence and fine that could have been imposed, and (4) the nature of the harm caused by the defendant's conduct." *Id.* No one factor is dispositive, and a fine may be unlawful even if only some are satisfied. For example, in *Farina v. Metropolitan Transportation Authority*, 409 F. Supp. 3d 173 (S.D.N.Y. 2019), the Court refused to dismiss an Excessive Fines claim where two factors weighed for the plaintiff, one against him, and the last could not be adequately assessed without

discovery. *Id.* at 201–03. Here, all four factors support the same conclusion: the punishments imposed on the Plaintiffs to enforce the Street Hail Law are unconstitutionally excessive.

A. Plaintiffs' Minor Offenses Are Unrelated to Other Criminal Activity.

The first factor evaluates the "essence" of the defendant's conduct, with a focus on "willful participation" in the alleged violation and the relationship to other illegal activity. *Viloski*, 814 F.3d at 113. In *Bajakajian*, for instance, the Supreme Court, on the way to declaring the fine at issue excessive, described the essence of the conduct in muted terms: it was willful—the defendant (in a criminal appeal) hadn't reported currency when traveling—but it was a one-time offense and the money was legally obtained. 524 U.S. at 337–38.

Here, the Plaintiffs' violations do not reach even that level of culpability. Their offenses derived from the TLC's long-running, manipulative scheme to drum up Street Hail Law violations. *See* FAC ¶ 5. The Plaintiffs lacked any predisposition to violate the Street Hail Law, but were nonetheless caught up in this manufactured dragnet—entrapped by overzealous TLC officers who fabricated a range of manipulative stories to guilt drivers into "accepting" a ride even after *each Plaintiff* initially refused. *See id.* ¶¶ 5, 45, 54, 58, 66, 69, 78, 81–82, 90, 93, 103, 152. And *no* Plaintiff had a prior violation. *See id.* These were, in short, ordinary people who did not initiate the ride-hails, but were pressured into them; who did not seek payment as part of a deliberate effort to generate income; and whose violations, at bottom, could be described as "willful," if at all, only in the most literal sense of the word. *See Farina*, 409 F. Supp. 3d at 201–02 (holding that 14 violations caused by underfunding an E-Z Pass account were minor, were not tied to other civil or criminal violations, did not threaten public safety, and were therefore disproportional to a $1,305 fine).

The Defendants nevertheless contend that the essence of the Plaintiffs' alleged violations is severe because "the City has deemed unlawful operation of a for-hire vehicle to be a serious offense that presents a threat to health and safety." Mot. at 6. But this circular argument improperly

ignores the Plaintiffs' specific conduct, which is what matters, and instead focuses on the abstract purposes underlying the law. Accepting that would subvert the case-by-case factual inquiry the Supreme Court has mandated into an across-the-board evaluation of a statute's goals.[6]

B. The Plaintiffs Are Not the Class of People the Street Hail Law Targets.

The facts alleged in the Complaint also make clear that the Plaintiffs are not within the class of people the City Council enacted the Street Hail Law to regulate. *See Bajakajian*, 524 U.S. at 323 (defendant who failed to disclose lawfully obtained currency to be used to repay debt was not within class of persons for whom currency-disclosure law was designed: "money launderers, drug traffickers, and tax evaders"). As the legislative history shows, the City Council enacted the Street Hail Law to protect ride-seekers from unlicensed or uninsured professional drivers who make a living by competing with properly licensed taxi drivers and to prevent human and sex trafficking. N.Y.C. Local Law No. 90 of 1989, Council Int. No. 957-A, § 1 (Nov. 22, 1989); Hr'g Tr. at 6:5–7; 8:23–25, 9:2–3; FAC ¶¶ 37, 40, 153. That's obviously not the Plaintiffs. They are ordinary people who simply dropped off their family members or who are Uber drivers with a history of going to the airport but *not* soliciting illegal rides on the side—all who had no intent to profit. *See* FAC ¶¶ 45, 54, 57, 66, 68, 78, 80, 90, 92, 103. What's more, they were insured, *id.* ¶ 153, and each had no history of violating the Street Hail Law or any other crimes. *Id.* ¶¶ 54, 66, 78, 90, 103. Recall that the minimum fine in 2012 was only $200. *Id.* ¶ 14. The automatic $1,300 increase was meant to deter professional black-market drivers and sex-trafficking, not people like Plaintiffs. *Id.*

The Defendants' contention that the Street Hail Law was designed to regulate as "all

[6] The Defendants' "health and safety" argument is further belied by their decision to prosecute these violations civilly instead of criminally. Given the nature of these purportedly "serious offenses," it is unclear why TLC officers chose to manufacture violations, badger drivers relentlessly to the point of entrapment, and then prosecute such "serious" offenses only civilly.

drivers operating a for-hire vehicle in the City without a TLC license," Mot. at 7, is both unsupported and wrong. This claim appears to be drawn from the fact that the ordinance prohibits all drivers who lack TLC licenses from accepting fares. But, again, this misunderstands the inquiry. *Bajakajian* shows that a defendant does not come within the "relevant class of persons" solely by violating a punitive statute. If it did, the inquiry would always come out in the government's favor. Instead, the analysis is focused on whether the person who receives a fine is the type of person the lawmakers targeted when enacting the punitive statute. These Plaintiffs are unquestionably not.

The Defendants' argument that Plaintiffs' OATH "convictions" and settlements are proof that the Plaintiffs fall within the class of individuals that the Street Hail Law is intended to punish, *see* Mot. at 7–8, suffers from the same flaw. Violating the relevant statute does not automatically bring a person within the "class of persons" the punitive statute targets. And this argument ignores both the reality of the TLC's enforcement and prosecution scheme *and* that the results in the Plaintiffs' cases reveal little about their conduct. OATH improperly bars respondents from raising an entrapment defense and accepts officers' affidavits as evidence rather than requiring in-person testimony—procedural impediments that make it very difficult to defend against a summons. FAC ¶¶ 100–11. The Plaintiffs' unsuccessful defenses and willingness to entertain a settlement are a product of this reality, not proof that they come within the class of persons the statute targets. *Id.*

The Defendants also try to single out three Plaintiffs (Lewis, Numfor, and Smith) as predisposed to pick up unlicensed street hails since they drive for Uber. Mot. at 7. But this argument ignores the Complaint's allegations that must be taken as true. Lewis and Numfor repeatedly refused the undercover officers' pleas for a ride, precisely because they knew the Street Hail Law barred them from picking up passengers at JFK. FAC ¶¶ 69, 81–82. And Smith, for his part, was already on his way to pick up another Uber passenger, *id.* ¶ 93—a fact the Defendants ignore, since it makes it unlikely he would have stopped for a street hail absent TLC's entrapment.

Uber drivers have a steady stream of passengers to pick up via the Uber App and don't need to resort to picking up illegal fares. They aren't like the traditional type of unlicensed professional drivers who prompted passage of the Street Hail Law many years before Uber even existed.

C. The TLC Always Imposes a Uniform Amount for Street Hail Violations, Regardless of the Gravity of the Offense.

The third *Bajakajian* factor considers the maximum sentence and fine that could have been imposed relative to the offense committed. *United States v. Varrone*, 554 F.3d 327, 323 n.4 (2d Cir. 2009). This too weighs in favor of the Plaintiffs. The City Council determined that the automatic $1,500 fine provides sufficient deterrent and punishment for the most serious violations. But the gravity of the Plaintiffs' violations fell well below that, rendering the $1,500 fines they received disproportionate. The TLC's own conduct confirms this. It had as a standard practice of settling with *third-time* violators for only $1,150—a punishment for proven recidivists that is $350 less than the amount the TLC imposed on the Plaintiffs. *See Harrell*, 138 F. Supp. 3d at 486 n.9.[7]

The Defendants' sole response is to claim that where there is no discretion in the amount of a fine, this factor is neutral. While some courts have accepted that view, this Court should reject it. The fact that there is no discretion doesn't bar finding a disparity between the punishment and the offense. "[T]he ultimate question before the court"—when considering the *Bajakajian* factors—"is how the amount of the [fine] [compares] to the gravity of the defendant's offense." *Varrone*, 554 F.3d at 323 n.4. As the City is still applying the maximum of what the law allows, the Plaintiffs' conduct must be similarly serious. But here the gravity of the offense is minor relative to the fines.

[7] That the TLC's settlement factored in what was appropriate punishment is confirmed by its practice of settling for only $1,000 when a driver's vehicle was seized. *See id*. Seizure provides no monetary value, so lowering the settlement amount reflects concern for overall punishment.

D. The Plaintiffs Caused No Harm Whatsoever.

The fourth factor evaluates the gravity of the harm caused by the defendant, not the general harm the law seeks to correct. *Viloski*, 814 F.3d at 114. Where the harm is "minimal" and "affect[s] only one party, the Government, in a relatively minor way," this factor supports a finding of gross disproportionality. *O'Diah v. TBTA-Triborough Bridge & Tunnel Auth.*, 2021 WL 2581446, at *6 (S.D.N.Y. June 23, 2021). That's precisely the case here, as Plaintiffs caused no "physical, personal, or economic harm." FAC ¶ 155. This is especially true since the "passengers" who hounded the Plaintiffs for rides were actually undercover officers seeking to entrap unsuspecting drivers. *Id.*

The Defendants, nonetheless, identify two purported harms: (1) depriving TLC-licensed drivers of potential business, and (2) the City's interest in deterrence and promoting compliance with its laws. Mot. at 8–9. Both alleged harms lack merit here. To begin, the Plaintiffs' *actual* conduct did not deprive TLC-licensed drivers of any potential business, encourage others to commit Street Hail Law violations, or otherwise harm the integrity of the TLC's regulatory scheme. *See O'Diah*, 2021 WL 2581446, at *6. Thus, this purported harm is absent. What's more, the Plaintiffs have alleged that they accepted the rides only after being ensnared in the TLC's entrapment scheme. FAC ¶¶ 2, 5, 9, 104–13. So even if the theoretical harm were considered, it was a one-time event—a single fare—which is the most minimal harm possible under the law.

The Defendants' deterrence theory fares no better. Courts do not view deterrence as a valid justification where the person fined did not encourage anyone else to break the law or undermine the core principles of the law. *See Farina*, 409 F. Supp. 3d at 202–03 (deterrence an insufficient harm to justify a $1,305 fine); *O'Diah*, 2021 WL 2581446, at *6 (defendant's harm was "either abstract or far-fetched" where plaintiff inadvertently failed to pay E-Z Pass tolls and no evidence suggested he had "encourage[d] others to evade tolls" or "harm[ed] the integrity of [the] tolling system."). Tellingly, the Defendants' cases involved the imposition of modest penalties for toll or

parking violations (*e.g.*, $50 or $65 per violation), but where each plaintiff committed numerous violations and was effectively flouting the law. *See Rojas v. Triborough Bridge & Tunnel Auth.*, 2022 WL 748457, at *13 (S.D.N.Y. Mar. 10, 2022) (Rojas had 73 separate unpaid tolls); *Tsinberg v. City of New York*, 2021 WL 1146942, at *8 (S.D.N.Y. Mar. 25, 2021) (plaintiff had 11 total unpaid tickets) (cited by Mot. at 8–9). Here, the $1,500 fine for each Plaintiff's first and sole violation is far too high to be supported solely by deterrence or any other abstract harms. FAC ¶ 156.[8]

Each of the four factors thus demonstrates that the fines imposed on the Plaintiffs violate the Eighth Amendment. At a minimum, it is not the case that no reasonable juror could, taking these allegations as true, conclude that the fines are "grossly disproportionate" to the conduct of the offense, a factual question ultimately for the jury. *See Farina*, 409 F. Supp. 3d at 202–03 & n.4.

II. The Complaint States a Claim for an Equal Protection Clause Violation.

The Complaint states an Equal Protection Clause claim under two closely related theories: (1) a "*Pyke* claim" that a discriminatory purpose was one motivating factor"—even if not a "dominant" one or the "primary purpose"—for selectively targeting drivers, *Saget v. Trump*, 345 F. Supp. 3d 287, 301 (E.D.N.Y. 2018) (citing *Pyke v. Cuomo*, 258 F.3d 107, 109 (2d Cir. 2001)); FAC ¶ 115; and (2) a "*LeClair* claim" that the Defendants enforced their facially neutral policy with animus towards people of color. *See Hu v. City of N.Y.*, 927 F.3d 81, 91 (2d Cir. 2019); FAC ¶ 115. As the Defendants acknowledge, the principal difference between these two methods for showing

[8] The Defendants' remaining argument—that this Court should defer to the legislature or else the City in "its determination of the appropriate fine levels," Mot. at 6–7—also lacks merit. The purpose of the Excessive Fines Clause is to "limit[] the government's power to extract [excessive] payments, whether in cash or in kind, as punishment for some offense." *Austin v. United States*, 509 U.S. 602, 609–10 (1993) (cleaned up). While legislative judgments are entitled to *some* deference, such deference is not limitless and is overcome where, as here, the government's penalties are "grossly disproportional to the gravity of the defendant's offense." *Viloski*, 814 F.3d at 113.

an equal protection violation is that a *LeClair* claim requires an allegation that a similarly situated comparator was treated more favorably, but a *Pyke* claim does not. *See* Mot. at 11.

The Complaint contains more than sufficient allegations to support both theories. A statistical "imbalance is often a telltale sign of purposeful discrimination." *Int'l Bhd. of Teamsters v. United States*, 431 U.S. 324, 339 n.20 (1977). And "in certain circumstances, 'statistics alone may be sufficient' to create a plausible inference of discriminatory intent under the Equal Protection Clause." *I.S. by & through Disla v. Binghamton City Sch. Dist.*, 486 F. Supp. 3d 575, 606 (N.D.N.Y. 2020) (quoting *Burgis v. New York City Dep't of Sanitation*, 798 F.3d 63, 69 (2d Cir. 2015)).

That is the case here. By applying well-established geocoding and surname methods to analyze 3,444 undercover airport summonses over a four-year period, the Complaint alleges and describes "extremely statistically significant" disparities in how the TLC enforced the law against similarly situated drivers of color and white drivers. FAC ¶ 128. The analysis shows that people of color are estimated to be 56% of the people who drop off passengers at the NYC airports, but were 86.5% of the people the TLC issued summonses, while white drivers are estimated to be 44% of the people who drop off passengers but only 13.5% of those who received summonses. *Id.* ¶¶ 122–29. These numbers, in statistical terms, show a "two-tailed P value [] less than 0.0001." *Id.* ¶ 129. When a p-value is *smaller* than .05—meaning that the chances of the result randomly occurring are less than 5%—"the result is statistically significant." *Davison v. Ventrus Biosciences, Inc.*, 2014 WL 1805242, at *8 n.7 (S.D.N.Y. May 5, 2014) (citation omitted). Here, the p-value of 0.0001 is *500 times* smaller than 0.05, and the odds of this result randomly occurring is less than 1 in 1,000. *See* Stats Direct, P-Values, https://www.statsdirect.com/help/basics/p_values.htm.

That's enough on its own to establish intentional discrimination, but the Complaint also includes more than just statistical evidence. It specifically alleges the discriminatory motivations and assumptions of the TLC and its officers that led them to selectively target people of color,

including that they believe people of color will be more willing to fall for the stings, more easily exploited by traditions of helping fellow community members, more likely to need extra cash, less likely to have resources to defend violations, more likely to quickly settle violations, and less likely to be English proficient. FAC ¶¶ 8, 117. And it explains how each named Plaintiff was selectively targeted by officers who *each* had a large racial disparity in issuing summons—ranging from 82.5% issued to people of color at the *low end* to 100% at the high end. *Id.* ¶¶ 24–29, 43–103, 130.

This Court and other courts in this Circuit have denied motions to dismiss equal protection selective enforcement claims based on far less detailed factual allegations of bias and no statistical evidence at all. *See, e.g.*, *John v. Lewis*, 2017 WL 1208428, at *16 (E.D.N.Y. Mar. 31, 2017) (Chen, J.) (holding by alleging the City had a policy of directing stop and frisk at Black men and he is Black, "Plaintiff has sufficiently alleged an equal protection claim," and citing *Aikman v. Cty. of Westchester*, 491 F. Supp. 2d 374, 383 (S.D.N.Y. 2007) (plaintiff stated a claim where he alleged a traffic law was "applied in an intentionally discriminatory race-based manner" to him), and *Wright v. Yacovone*, 2012 WL 5387986, at *20 (D. Vt. Nov. 2, 2012) (denying motion to dismiss where the plaintiff alleged the defendants treated him differently due to a mistaken belief he was "Arab")).

The Defendants raise a single objection to the Equal Protection claim under the *LeClair* theory and a single objection to the *Pyke* theory. Both should be rejected.

They first argue that the *LeClair* claim fails because the Plaintiffs cannot rely on statistics alone to allege that similarly situated people were treated better. *See* Mot. at 11. But Plaintiffs don't. The Complaint alleges that that the Plaintiffs were "ordinary people" who were dropping off friends, family, or rideshare passengers, FAC ¶ 153; that "most people" caught up in the TLC's scheme aren't professional drivers, *id.* ¶ 106; and (thus unsurprisingly) "[t]here are no material differences"—such as a "predisposition to violate the Street Hail Law"—between the Plaintiffs and other drivers of color, on the one hand, and the white drivers, on the other, at JFK and LaGuardia.

Id. ¶ 119; *see Hu*, 927 F.3d at 96 (a comparator group is sufficient so long as it "bear[s] a reasonably close resemblance"). And the "common sense" that courts apply when evaluating pleadings supports that allegation: there is no reason why white people would drop off family, friends, and rideshare passengers in a manner different from people of color.[9] So by alleging that white people frequent the airport in large numbers but without being targeted at anywhere close to the same rate as people of color, FAC ¶¶ 118–20, the Plaintiffs have alleged that similarly situated white comparators have been treated better than the people of color who were targeted by the TLC.

Moreover, contrary to the Defendants' unsupported claim that statistics can't be used to identify comparators, Mot. at 11, the primary decision they rely on simply held that *at the summary judgment stage* the specific comparators the plaintiff identified in that case were dissimilar to the plaintiff. *Glover v. City of New York*, 2018 WL 4906253, at *14 (E.D.N.Y. Oct. 9, 2018). In contrast, here the Plaintiffs allege they and comparators *are* materially the same in that they were ordinary people dropping off their friends, family members, or rideshare passengers at the airport, but the Plaintiffs were targeted due to their race. FAC ¶¶ 3, 9, 106, 119, 167–70. As in *Glover*, summary judgment is the time to consider whether comparators are similarly situated, not the pleading stage.

For the *Pyke* claim, the Defendants concede that the Plaintiffs need not "plead the existence of similarly situated comparators," Mot. at 11. Nor do they challenge the well-accepted geocoding

[9] It's especially important that most victims of the TLC's scheme aren't professional drivers and instead are simply people "dropping off their friends or family at the airport when they are approached by undercover officers," FAC ¶ 106—an allegation informed by counsel's experience as a legal services organization dealing with hundreds of targeted drivers. Even if one were to assume that the proportion of rideshare drivers who are people of color is closer to the proportion of the summonses issued—an inference *against* the Plaintiff that would be improper to draw (and likely to be factually incorrect)—an entrapment scheme that targeted rideshare drivers still would not explain why the vast majority of other victims are people of color. Indeed, given this demographic composition of the victim pool, it's not clear whether there is *any* innocent explanation—let alone one so overwhelmingly powerful that it would render Plaintiffs' allegations implausible at the pleadings stage—for the grossly disproportionate impact of the TLC's scheme.

or surname analysis Plaintiffs applied to allege that 86.5% of the people given summonses via sting operations over four years are people of color. *Id.* Instead, they make a narrow objection that the Plaintiffs applied the wrong data point to estimate that 56% of the people who drop off passengers at the NYC airports are people of color and 44% are white, claiming that the Plaintiffs should have applied data that included drivers who reside outside NYC and those who drive rideshares. *Id.*

This is wrong for several reasons. First, statistical evidence is not even required to plead a selective enforcement claim. *See, e.g.*, *John*, 2017 WL 1208428, at *16. Second, at the pleading stage, the specific "factual allegation[] set forth in the complaint" that 56% of the people who drop off passengers at the airports are people of color must be "accept[ed] . . . as true," drawing "all reasonable inferences in favor of the plaintiff." *Id.* at *6 (citation omitted). Any purported "errors in methodology . . . go only to the weight of the evidence," which must be resolved by the factfinder at trial, not on a motion to dismiss. *Schering Corp. v. Pfizer Inc.*, 189 F.3d 218, 228 (2d Cir. 1999). Third, one of the data points Plaintiffs rely on to estimate the demographics of people who drop off passengers at the NYC airports *does* include people outside of the City, as one of the two statistics they cite covers the New York, New Jersey, and Pennsylvania Metro Area that extends well beyond New York City. FAC ¶ 125. And neither of the two data points excludes ride-share drivers. *See id.*

III. The Complaint States a *Monell* Claim for Municipal Liability.

The Plaintiffs have also adequately pleaded that the City had a "policy or custom" that violated their constitutional rights, thus allowing for municipal liability against the City under *Monell v. Dep't of Soc. Servs.*, 436 U.S. 658, 690–91 (1978). "[T]he pre-discovery pleading standard for a custom or practice is not a high bar." *DiPippo v. Cty. of Putnam*, 2019 WL 1004152, at *9 (S.D.N.Y. Feb. 28, 2019). "[A]t the pleading stage, *Monell* does not even require a Plaintiff to identify a specific policymaker who promulgated a policy or custom or an express rule or regulation." *Id.* (citing *Michael v. Cty. of Nassau*, 2010 WL 3237143, at *4 (E.D.N.Y. Aug. 11,

2010)). It only requires "plead[ing] that a city had a general unconstitutional policy" that "occurred frequently enough to produce an informal, policy, custom, or practice." *Id.*

While allegations of "a single incident," *Plair v. City of New York*, 789 F. Supp. 2d 459, 470 (S.D.N.Y. 2011), or "isolated acts by non-policymaking municipal employees are generally not sufficient to demonstrate a municipal custom, policy, or usage," *Hu*, 927 F.3d at 106, a complaint that "describe[s] multiple incidents over a long, continuous time period . . . gives rise to an inference of a policy or custom." *Rodriguez v. City of New York*, 2018 WL 1276826, at *7 (S.D.N.Y. Mar. 9, 2018) (cleaned up). When a complaint alleges such a widespread practice, it "impl[ies] the constructive acquiescence of senior policymaking officials," making it unnecessary for a complaint to identify a policymaker who was aware of that practice. *Hu*, 927 F.3d at 106.

The Complaint easily clears the hurdle to plead a widespread custom or policy: it alleges the TLC's racially-biased enforcement of the Street Hail Law was its standard policy, practice, practice, and custom for years and the City acted intentionally and with deliberate indifference to the plaintiffs' constitutional rights; and to support this allegation the Complaint identifies *several thousand* incidents over four years based on the TLC's records, describes "extremely statistically significant" racial disparities in enforcement, and describes how TLC officers who *each* had a history of selectively targeting people of color targeted the five named Plaintiffs in January 2020, August 2021, and March, June, and July 2022. FAC ¶¶ 161–72; *id.* ¶¶ 3–8, 24–28, 109–10.

These allegations are hardly a few isolated acts or conclusory. They are detailed allegations showing a widespread pattern "over a long, continuous time period," which "gives rise to an inference of a policy or custom." *Rodriguez*, 2018 WL 1276826, at *7; *accord Tapia v. City of Chicago*, 2019 WL 3716915, at *5 (N.D. Ill. Aug. 7, 2019) ("The combination of [plaintiff's] statistical analyses [of the low number of women in a police unit], allegations of discriminatory practices, and description of her own experience is enough to plausibly allege a *Monell* claim against the City

for a widespread practice of discriminating against women" in that police unit).

The City's contrary argument fails. It argues that Plaintiffs must allege how policymakers developed direct knowledge of the TLC's widespread constitutional violations. For instance, the City claims that it's not enough for Plaintiffs to allege extreme racial disparities based on geocoding and surname analysis (that the City does not challenge); instead, it says the Plaintiffs must allege there was "race-related data on the summonses or elsewhere of which the City would be aware." Mot. at 14.[10] But that is not the law. And tellingly, the City relies exclusively on summary judgment decisions to attempt to set that high bar. *Id.* at 13–14. Instead, as explained, at the pleading stage, a widespread practice—especially a years-long one with thousands of victims like the ones here—is sufficient to state a custom-or-practice claim under *Monell*, because it supports an inference of knowledge and deliberate indifference. *Hu*, 927 F.3d at 106. That's because it's ordinarily plausible to infer that policymakers pay attention to common practices in the programs they run. And the City's contrary argument thus boils down to an assertion that it's *implausible* that policymakers paid any attention at *any point over many years* to what the TLC's officers were doing daily in a program that affected thousands of people and played an important role in sustaining the TLC's budget.[11]

IV. The Defendant Officers Are Not Entitled to Qualified Immunity.

The Officer Defendants wrongly claim that they are entitled to qualified immunity on the Equal Protection Clause claim. Qualified immunity exists to give public officials the breathing

[10] Of course, there *is* evidence "elsewhere" equivalent to "race-related data on the summonses," Mot. at 14. On any given day, observing TLC's stings or OATH's hearings would show a disparity. And as early as 2014, the City's Public Advocate—and other leaders—raised concerns publicly that people of color were taking the brunt of the TLC's Street Hail enforcement. *Supra* at 6 n.5.

[11] Should the Court hold that the Plaintiffs have not adequately pled a custom or practice at this stage, they would request an opportunity to amend to offer additional facts to support municipal liability, including that the TLC's Commissioner was expressly placed on notice in an April 19, 2022 letter from driver advocates that the TLC was enforcing the Street Hail Law in a racially discriminatory way and the TLC's leadership ratified and continued that discriminatory policy.

room necessary to perform their duties without fear of unknown liabilities. *Provost v. City of Newburgh*, 262 F.3d 146, 160 (2d Cir. 2001). But it has no application where, as here, public officials violate "clearly established" law—*i.e.*, law that is "sufficiently clear that every reasonable official would understand that what he is doing is unlawful." *Liberian Cmty. Ass'n of Connecticut v. Lamont*, 970 F.3d 174, 186 (2d Cir. 2020) (internal quotations omitted).

None of the Defendants here are entitled to qualified immunity on the Plaintiffs' equal protection claims. For well over a century, it's been the law that selective application of "a neutral law because of someone's race or national origin" violates the 14th Amendment's Equal Protection Clause. *Savino v. Town of Se.*, 983 F. Supp. 2d 293, 308 (S.D.N.Y. 2013), *aff'd*, 572 F. App'x 15 (2d Cir. 2014) (citing *Yick Wo v. Hopkins*, 118 U.S. 356, 373–74 (1886)). The Defendants concede this is "undisputed." Mot. at 16. That concession, combined with the Plaintiffs' core allegation that each individual Defendant carried out a practice of targeting the Plaintiffs and enforcing the Street Hail Law against them because of their race or national origin is sufficient to deny qualified immunity. FAC ¶¶ 24–28, 31, 47–48, 60–61 72, 84–85, 95, 130.

To avoid this straightforward result, the Defendants attempt to draw a distinction between two types of officers. They admit that undercover officers who take the first step in targeting drivers based on race or national origin have no qualified immunity. But they assert that the "assisting" officers—those who issue the summons after the undercover officer entraps the driver—have not violated a clearly established right. Mot. at 16–17.[12] But there is no "assisting officer" defense. A person who, "with knowledge of the illegality, participates in bringing about a violation of the

[12] This misguided argument does not apply to Defendants Hinds, Luo, and Galarza, the undercover officers who discriminatorily targeted Plaintiffs Miller, Number, and Valdez, respectively. FAC ¶¶ 24–25, 47, 61, 130. Indeed, Hinds and Luo go unmentioned in the Defendants' qualified immunity argument. As for Galarza, Defendants argue that he is entitled to immunity on Smith's claim, but overlook Valdez's claim, which alleges Garza was the undercover officer. *Id.* ¶ 60. Thus, even under their unsupported theory, these officers do not have immunity.

victim's rights but does so in a manner that might be said to be 'indirect'—such as ordering or helping others to do the unlawful acts, rather than doing them him- or herself"—is liable if their conduct causes the violation of a clearly established right. *Provost*, 262 F.3d at 155; *see Alla v. Verkay*, 979 F. Supp. 2d 349, 371 (E.D.N.Y. 2013) (holding that qualified immunity did not apply where the defendants knew that an order to arrest the plaintiff was unlawful). If an officer knows a driver has been targeted because of their race, issuing the summons—a necessary step in enforcing the law—violates the driver's clearly established rights just as much as targeting them to begin with.

In any event, even Defendants admit that the "assisting officers" would not be entitled to qualified immunity if they "should have been aware" when issuing summonses that race motivated the undercover officers. Mot. at 15–16. The Complaint alleges they were. The TLC's scheme overwhelmingly targets people of color. FAC ¶ 4. Each "assisting" officer's individual experience matches that pattern: of the total summonses issued by each, at least 84.2% (Abdurrahman) and as many as 100% (Nath) went to people of color. *Id.* ¶ 130. Those high percentages, combined with the lack of other distinguishing factors among drivers at the airport, offer more than a sufficient basis to conclude that the assisting officers knew their summonses were the final step in discriminatory enforcement of the law. Indeed, the Defendants admit that it would be sufficient to show that the number of stings in which the officers "participated" (as an undercover officer or the one issuing summons) disproportionately involved people of color. Mot. at 16. Though the Defendants contend that it's not enough to show just the disproportionate issuance of summons (*i.e.*, the percentages just described), the TLC's overall disparate enforcement permits an inference that the officer's total "participation" numbers would be similarly skewed.

V. Lewis's Equal Protection Claim Against Two TLC Officers is Timely.

The Defendants next erroneously argue that Plaintiff Lewis's equal protection selective enforcement claim against two TLC officers is untimely. They assert that Lewis's claim expired on

January 5, 2023, Mot. at 17, three years after he received his summons, and thus before the Plaintiffs' Complaint added the officers to the Amended Complaint filed on May 17, 2023.

Because the statute of limitations is an affirmative defense, when it is "unclear from plaintiff's complaint when" a claim accrued, courts will not dismiss. *Obanya v. Select Portfolio Servicing, Inc.*, 2015 WL 5793603, at *6 n.9 (E.D.N.Y. Sept. 30, 2015) (declining to dismiss RICO claim where complaint did not state when the injury was discovered). Section 1983 claims accrue "when the plaintiff knows or has reason to know of the injury which is the basis of his action[.]" *Covington v. City of N.Y.*, 171 F.3d 117, 121 (2d Cir. 1999). Thus, selective enforcement claims brought under Section 1983 (as here) do not accrue until the date the plaintiff discovers the police's discriminatory motive, not the date when the law was enforced. *Dique v. New Jersey State Police*, 603 F.3d 181, 186–88 (3d Cir. 2010). In *Dique*, for example, the plaintiff's claim that he was racially profiled was timely even though it was brought over a decade after police "purported to stop his car for a speeding violation." *Id.* at 188. That was because the claim did not *accrue* until "his attorney became aware of the extensive documents describing the State's pervasive selective-enforcement practices," allowing him to discover years later "that he might have a basis for an actionable claim." *Id.*

This shows the flaw in the Defendants' assumption that Lewis's claim accrued when his summons was issued and is thus time-barred. His claim accrued, instead, when he *learned* of the TLC's discriminatory practices, and the Complaint is silent on when that happened. So, because it "cannot be conclusively determined from the pleadings" when Lewis "learned of the injury," dismissal is unwarranted. *Storman v. Klein*, 2009 WL 10740175, at *1 (S.D.N.Y. Aug. 17, 2009).[13]

[13] If the Court holds that Mr. Lewis must allege when he learned of the City's discriminatory enforcement, he requests leave to amend his Complaint to do so. As in *Dique*, he learned after his attorneys conducted an investigation and within three-years of the filing of the amended complaint.

VI. Valdez, Numfor, and Lewis Did Not Waive Their Constitutional Claims.

The Defendants finally argue that Plaintiffs Valdez, Numfor, and Lewis waived their Eighth and Fourteenth Amendment claims by executing settlements to resolve the Street Hail Law violations the TLC enforced before OATH. *See* Mot. at 18–19 & Ex. A. Waivers of constitutional rights, however, must be clear, and the TLC's settlement agreements here were anything but.

"The Supreme Court has recognized that implied waivers of constitutional rights are disfavored, and 'a waiver of constitutional rights in any context must, at the very least, be clear.'" *Legal Aid Soc'y v. City of New York*, 114 F. Supp. 2d 204, 227 (S.D.N.Y. 2000) (quoting *Fuentes v. Shevin*, 407 U.S. 67, 95–96 (1972)). Thus, "waivers of fundamental rights . . . cannot be presumed or lightly inferred, and courts must indulge every reasonable presumption against waiver." *Intermor v. Inc. Vill. of Malverne*, 2007 WL 2288065, at *8 (E.D.N.Y. Aug. 8, 2007) (cleaned up). As such, "a release should not be read to include matters of which the parties had no intention to dispose." *Nat'l Helicopter Corp. of Am. v. City of New York*, 137 F.3d 81, 87 (2d Cir. 1998) (citations omitted).

Here, the TLC settlements fall far short of this high standard for waiving constitutional claims. First, and fatal to the Defendants' argument, the agreements do not mention that the Plaintiffs were waiving constitutional claims generally, let alone the specific ones at issue here. *See* Ex. A. Where, as here, an "[a]greement does not explicitly waive" specific constitutional "rights, there is no waiver of those rights[.]" *Legal Aid Soc'y*, 114 F. Supp. 2d at 227 (rejecting a waiver of First Amendment rights because a prior agreement did not "explicitly mention[] those rights").

Furthermore, the settlement terms are, at best, vague about what, if anything, is being released and what types of claims would be barred in the future. The TLC primarily relies on the general waiver provision: "Respondent and the TLC waive administrative and judicial review of this matter." Mot. at 18. In context, this clause is best interpreted as barring the respondents from seeking any further administrative adjudication before OATH of the allegation that they violated

§ 19-506(b)(1) or judicial review via an Article 78 proceeding. But that type of review—focused on the narrow factual question of whether respondent violated § 19-506(b)(1)—is distinct from a federal civil rights action where Plaintiffs (as here) assert that the City's policy and practice of enforcing the law violates the United States Constitution. *See NYTDA, Inc. v. City of New York*, 2014 WL 4274219, at *6–7 (E.D.N.Y. Aug. 28, 2014) (rejecting the City of New York's claim that a plaintiff waived constitutional claims challenging the "fair administration of the program as a whole" when a party agreed not to contest specific traffic violations).

Likewise, the only phrase in the agreement that mentions the waiver of specific claims is unclear about what is actually being waived. It says the "Respondent and the TLC . . . waive any claims for damages, costs, attorney's fees or other expenses arising out of this agreement." Ex. A. This too is ambiguous, as it is unclear what claims for damages could arise out of *this specific* agreement. The Defendants offer no explanation why this language must be interpreted to waive the Plaintiffs' right to challenge the City's unconstitutional policing practices over the Street Hail Law. Still, they ask the Court to grant them a much broader waiver than the TLC bargained for and to improperly "include matters of which the parties had no intention to dispose." *Nat'l Helicopter Corp. of Am.*, 137 F.3d at 87. Since a defendant carries the burden of proving waiver, *Adm'r of U.S. Small Bus. Admin. v. Contessa*, 2023 WL 2682509, at *8 (E.D.N.Y. Mar. 29, 2023) (collecting cases), the City's waiver defense must fail. Finally, at a minimum, the waiver cannot bar the Plaintiffs' selective enforcement claims, because the method in which the Plaintiffs were targeted and the Defendants' practice of targeting drivers of color have no connection to the settlement of the fines.

CONCLUSION

For the foregoing reasons, the Defendants' Motion to Dismiss should be denied.

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Respectfully submitted,

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