MEMORANDUM

SUPREME COURT QUEENS COUNTY
CIVIL TERM PART 2

HON. ALLAN B. WEISS

MELROSE CREDIT UNION MONTAUK CREDIT UNION, PROGRESSIVE CREDIT UNION AND LOMTO FEDERAL CREDIT UNION,

Petitioners,

-against-

THE CITY OF NEW YORK, BILL DE BLASIO, in his Official Capacity as the Mayor of the City of New York, THE NEW YORK CITY TAXI & LIMOUSINE COMMISSION, MEERA JOSHI, in her Official Capacity as the Chair of the New York Taxi and Limo Commission and ERIC T. SCHNEIDERMAN, in his Official Capacity as the Attorney General of the State of New York,

Respondents.

Index No. 6443/15

Motion Date: 6/22/15

Motion Seq. No. :1

Respondent City of New York, respondent Bill De Blasio, the Mayor of the City of New York, respondent New York City Taxi and Limousine Commission (TLC), and respondent Meera Joshi, the Chair of the New York City Taxi and Limousine Commission, have moved for an order pursuant to CPLR 3211(a)(3), (5), and (7) and CPLR 7804(f) dismissing this Article 78 proceeding brought against them.

This case arises from the introduction of new technologies in the ground transportation industry that are used to dispatch vehicles and to connect passengers with drivers. The use of a smartphone application to obtain a ride has blurred the distinction between a street hail and a pre-arrangement and has disturbed the balance of economic interests within the industry.

The petitioners are four federally insured, non-profit credit unions that provide financing for New York City taxi medallion owners who purchase the medallions from the City of New York. The city sold approximately 1,400 medallions between 2006 and

2014, raising approximately $800,000,000 in revenue for its treasury. The petitioners hold security interests in 5,331 medallions for which they have made loans totaling approximately 2.47 billion dollars. The petitioners essentially allege that the business activity of companies like Uber Technology, Inc. (UTI) and its affiliated entities has encroached upon the exclusive right of medallion taxis to pick up passengers who "hail" them in certain areas of the City of New York. The petitioners allege that the service provided by Uber type companies has caused the value of medallions to plummet as much as 40% in recent months, and the petitioners warn of credit contraction and numerous foreclosures.

There are three relevant classes of vehicles that are available for passenger hire in New York City: (1) yellow medallion taxis, (2) green taxis, and (3) non-medallion for hire vehicles, including black cars, luxury limousines, and livery vehicles (collectively For- Hire Vehicles or FHV's). A medallion is a yellow plate issued by the TLC and purchased at an auction that is fastened to the hood of the taxi. (*See*, NYC Adm Code §19-502 [h].) " 'For-hire vehicle' means a motor vehicle carrying passengers for hire in the city, with a seating capacity of twenty passengers or less, not including the driver, other than a taxicab, coach, ***." (NYC Adm Code §19-502[g].) A livery vehicle is defined by its affiliation with a base station and is neither a black car nor a luxury limousine. (*See*, NYC Adm Code §19-502 [s},[t].) "'Black car' means a for-hire vehicle dispatched from a central facility whose owner holds a franchise from the corporation or other business entity which operates such central facility, or who is a member of a cooperative that operates such central facility, where such central facility has certified to the satisfaction of the commission that more than ninety percent of the central facility's for-hire business is on a payment basis other than direct cash payment by a passenger." (NYC Adm Code §19-502[u].)

NYC Adm Code §19-502 (l) provides: " 'Taxi', 'taxicab' or 'cab' means a motor vehicle carrying passengers for hire in the city, designed to carry a maximum of five passengers, duly licensed as a taxi cab by the commission and permitted to accept hails from passengers in the street." (*See, Greater New York Taxi Ass'n v. New York City Taxi and Limousine Com'n,* 25 NY3d 600 [2015].) 35 RCNY§51-03,"Definitions," contains references to "street hails," which, the court infers, are those made through calling out, whistling, or gestures by passengers near the curb.

NYC Code § 19-504(a)(1) provides in relevant part: "No motor vehicle other than a duly licensed taxicab shall be permitted to accept hails from passengers in the street." Yellow medallion taxis can pick up passengers who hail them anywhere in New York City and also have certain exclusive rights to pick up passengers through hails in particular areas of New York City.(*See, Greater New York Taxi Ass'n v. State*

21 NY3d 289 [2013].) The part of Manhattan that is south of East 96th Street and West 110th Street, an area where yellow medallion taxis have exclusive rights, is known as the central business district. (*See*, *Greater New York Taxi Ass'n v. State, supra*.) Green taxis, not required to have a medallion and created in 2011 primarily to service street hails in the outer boroughs, can answer street hails anywhere in New York City except in areas reserved for yellow medallion taxis.

"In contrast to yellow cabs, livery vehicles are prohibited from picking up street hails and may accept passengers only on the basis of telephone contract [sic] or other prearrangement (see Administrative Code of City of N.Y. § 19–507[a] [4]). The livery client contacts a 'base station' that dispatches a livery vehicle to the requested location (Administrative Code of City of N.Y. § 19–511)." (*Greater New York Taxi Ass'n v. State, supra* at 297.) Black cars also cannot pick up hailing passengers anywhere in the City of New York. "No driver of any for-hire vehicle shall accept a passenger within the city of New York by means other than prearrangement with a base unless said driver is operating either a (i) taxicab licensed by the TLC with a medallion affixed thereto, or (ii) a vehicle with a valid HAIL license and said passenger is hailing the vehicle from a location where street hails of such vehicles are permitted." (Chapter 9 of the Laws of 2012, §11.) A hail license essentially authorizes a vehicle to pick up passengers by street hail in New York City except in areas reserved for yellow medallion taxis. (*See*, Chapter 9 of the Laws of 2012, §12[r].) Black cars must be dispatched through their affiliated base station with passenger pick-up scheduled for a specific time and place."A Driver must not solicit or pick up Passengers other than by prearrangement through a licensed Base, or dispatch of an Accessible Vehicle." (35 RCNY § 55-19.)

Thus, under existing law and regulations, yellow medallion taxis and green taxis in unrestricted areas are the only vehicles authorized to transport passengers who hail them on the street, and FHV's are only permitted to service passengers who make pre-arrangements with a base station.

In May 2011, the practical difference between a hail and a pre-arrangement became blurred with the introduction of smart phone applications that operate in the FHV sector. While the number of cars available to respond to an e-hail and the speed of the response made the e-hail in some ways similar to the street hail, nevertheless, the TLC permitted FHV vehicles to use the smart phone apps. According to Joanne Rausen, the Assistant Commissioner for Data and Technology of the TLC : " In order to encourage the development of new technologies and services, while at the same time protecting the riding public, TLC permitted app use in the FHV sector on the condition that app providers;(1) obtain a TLC issued FHV base license; or (2) enter into an agreement with an existing TLC-licensed base to act as a referral and advertising service for such base."

Rausen states that "as many as 42 percent of all FHV's are affiliated with bases that reported having passenger-facing smartphone apps," and "passengers using smartphones to schedule FHV service can do so by utilizing one of the 76 different apps reported to TLC by 134 different bases."

The New York City Taxi and Limousine Commission (TLC) also started a pilot program which allowed yellow medallion taxis to arrange passenger pickups by way of smart phone applications. According to Rausen, "Accessing medallion taxis through an app is a form of pre-arrangement," and " [n]othing in the governing statutes or rules prohibits medallion taxis from accepting rides via pre-arrangement." The pilot program withstood a legal challenge by members of the black car industry. (*See, Black Car Assistance Corp. v. City of New York*, 110 AD3d 618 [2013].) The Appellate Division, First Department, held that (1) the pilot program did not violate the TLC's authority under the city charter to regulate and supervise experimentation; (2) "the program complies with Administrative Code § 19–511(a) requiring the licensing of communications systems upon such terms as TLC deems advisable," and (3) the pilot program did not violate Administrative Code § 19–507(a)(2), which prohibits drivers from refusing, "without justifiable grounds, to take any passenger or prospective passenger to any destination within the city."

On January 29, 2015, the TLC approved new rules (the E-Hail Rules) dealing with the licensure of e-hail applications in taxis. The new rules concerned, inter alia, what the TLC called an "E-hail" and an "E-Payment." Section 1 of the Rules provided in relevant part: " E-Hail is a Hail requested through an E-Hail Application." " E-Hail Application or E-Hail App. A Software program licensed by the TLC under Chapter 78 residing on a smartphone or other electronic device ***." "Hail. A request, either through a verbal (audio) action such as calling out, yelling, or whistling, and/or a visible physical action, such as raising one's hand or arm, or through an electronic method, such as an E-Hail App, for on-demand Taxicab or Street Hail Livery service at the metered rate of fare as set forth in §58-26 and §82-26 of these Rules by a person who is currently ready to travel."

Uber Technology, Inc. (UTI) and its affiliated entities (collectively Uber) provide ground transportation services in New York City through black car bases. UTI developed a smart phone app which enables passengers to obtain transportation services through its use. Passengers download the Uber app to their smartphones and create an account with UTI, placing a credit card number with UTI. When a passenger uses the Uber app, it displays a map showing the locations of available vehicles and informs the passenger of the approximate travel time of the closest available vehicle to the passenger's location. After a passenger requests transportation, the Uber app transmits the request to the nearest

available driver who is signed in to the Uber app. If the driver declines the request or does not accept the request within fifteen seconds, the request is sent to the next closest driver. The driver providing service receives a percentage of the payment made to Uber. In January, 2015 Uber reported that it had approximately 16,000 drivers actively accepting passengers through the Uber app.

Uber does not regard its drivers as employees, and its does not operate, lease, or own its vehicles. Uber purports to "partner' with its drivers, and some of these drivers, affiliated with other ground transportation companies, make a side deal with Uber to drive its customers while also driving for the other companies.

On May 27, 2015, the petitioners, who regard Uber and similar companies as " a parallel, unlicensed, taxicab network" that circumvents eighty years of regulation, began the instant special proceeding, which according to the petition, " seek[s] to prevent the imminent collapse of the taxicab medallion market, and along with it, the entire taxicab industry." They have seized upon the TLC's promulgation of rules on or about January 29, 2015 (the E-Hail Rules) which permit yellow and green taxis to pick up passengers via "e-hails" using a TLC approved smart phone application. The petitioners assert that the new rules make clear that an e-hail is a hail–not a pre-arrangement, and they argue that black car companies like Uber may not pick up passengers via a hail. The petitioners seek, inter alia, to compel the TLC to enforce rules and regulations prohibiting black car companies like Uber from responding to hails.

On or about April 24, 2015, the TLC published proposed rules (the E-Dispatch Rules) pertaining to the dispatch of FHV's, including rules pertaining to electronic dispatch via apps. The TLC approved the rules on June 22, 2015, and the rules, which include a definition of an electronic dispatch ("Dispatch arranged through a licensed FHV Dispatch Application") and a Pre-Arranged Trip (" A Pre-Arranged Trip, for a Street Hail Livery, is a trip commenced by a Passenger pre-arranging a trip through a Base, by telephone, smartphone application" [emphasis added], website, or other method") took effect on July 29, 2015. (The promulgated rules may be found on the internet,) The rules provide that all entities that dispatch FHV vehicles, including by way of smart phone applications, must obtain a license and must conform to uniform protection and safety standards. According to Rausen, the rules "seek to, inter alia, establish uniform standards for smartphone apps utilized by FHV companies, license all apps, require the provision of important information to the passenger, establish standards to protect private information *** clarify that SHL's [Street Hail Livery] may accept dispatch by app, restrict the location at airports where FHV's may accept an electronic dispatch via app ***and require bases to have a way for all customers to contact the base with customer service related issues and complaints."

The petitioners purport to be aggrieved by the E-Hail and E-Dispatch Rules, which allegedly are inconsistent with exclusive rights granted to medallion taxis by law. NYC Code 19-503(b) provides in relevant part: "No rule or regulation promulgated subsequent to the effective date of this local law may be inconsistent with or supersede any provision of this local law ***." The petitioners complain that the "TLC now claims that an E-Hail does not actually constitute a "Hail" if the electronic request for on demand service by a passenger currently ready to travel is sent to an Uber [vehicle] rather than to a taxicab."

In deciding this case, the court is mindful that it must be " careful to avoid *** the fashioning of orders or judgments that go beyond any mandatory directives of existing statutes and regulations and intrude upon the policy-making and discretionary decisions that are reserved to the legislative and executive branches." (*Klostermann v. Cuomo,* 61 NY2d 525, 541 [1984]; .*Gonzalez v. Village of Port Chester,* 109 AD3d 614 [2013].) It is not the court's function to adjust the competing political and economic interests disturbed by the introduction of Uber type apps..

The petitioners first cause of action is in the nature of mandamus to compel (*see*, CPLR 7801, 7803[1]; *Regini v. Board of Educ. of Bronxville Union Free Schools,* 128 AD3d 1073 [2015]) the respondents to enforce laws and regulations permitting only taxis to respond to street hails. "The extraordinary remedy of mandamus will lie only to compel the performance of a ministerial act and only when there exists a clear legal right to the relief sought ***." (*Ogunbayo v. Administration for Children's Services,* 106 AD3d 827 [2013]; *Daniels v. Lewis,* 95 AD3d 1011 [2012] [failure to state a cause of action]). "Mandamus to compel is appropriate only where a clear legal right to the relief sought has been shown, the action sought to be compelled is one commanded to be performed by law and no administrative discretion is involved " (*New York Civil Liberties Union v. State of New York,* 3 AD3d 811, 813-814 [2004]; *Clayton v. New York City Taxi & Limousine Com'n*, 117 AD3d 602 [2014] [discretionary government function--motion to dismiss granted].) Mandamus may be obtained "to compel acts that officials are duty-bound to perform." (*Klostermann v. Cuomo*, *supra* at 540; *Gonzalez v. Village of Port Chester*, supra [grant of taxicab licenses was not a ministerial act that could be compelled by mandamus].)

"The extraordinary remedy of mandamus is available in limited circumstances only to compel the performance of a purely ministerial act which does not involve the exercise of official discretion or judgment, and only when a clear legal right to the relief has been demonstrated ***." (*Rose Woods, LLC v. Weisman,* 85 AD3d 801, 802 [2011] [emphasis added]; *Wisniewski v. Michalski*, 114 AD3d 1188 [2014] ; *Gonzalez v. Village of Port Chester*, *supra*.)

"[M]andamus does not lie to enforce the performance of a duty that is discretionary, as opposed to ministerial ***." (*New York Civil Liberties Union v. State,* 4 NY3d 175, 184 [2005].) "A discretionary act involves the exercise of reasoned judgment which could typically produce different acceptable results whereas a ministerial act envisions direct adherence to a governing rule or standard with a compulsory result ***." (*New York Civ. Liberties Union v. State of New York*, *supra*, 184; *Gonzalez v. Village of Port Chester, supra*.) "The act sought to be compelled must be ministerial, nondiscretionary and nonjudgmental, and be premised upon specific statutory authority mandating performance in a specific manner ***." (*Brown v. New York State Dept. of Social Services,* 106 AD2d 740, 741 [1984]; *New York Civil Liberties Union v. State of New York*, *supra*.)

An Article 78 proceeding in the nature of mandamus may be dismissed pursuant to CPLR 3211(a)(7): (1) where it does not seek to compel the performance of a ministerial act (*see*, *Clayton v. New York City Taxi & Limousine Com'n*, *supra*; *New York Civil Liberties Union v. State of New York, supra* at 813 ["we find no error in Supreme Court's determination that plaintiffs also essentially seek relief in the nature of mandamus to compel registration review of their schools pursuant to 8 NYCRR 100.2(p), but fail to state a claim for such relief because the administrative action they seek is discretionary rather than ministerial"]) and/or (2) where the allegations of the petition do not show that there is a "clear legal right" to relief. (*See*, *Burch v. Harper*, 54 AD3d 854 [2008].)

The cases concerning mandamus to compel an administrative body to enforce the law are not easily reconciled. (*Compare, Jurnove v. Lawrence*, 38 AD3d 895 [2007] "while the courts will not interfere with the exercise by law enforcement officials of their broad discretion to allocate resources and devise enforcement strategies, mandamus will lie if they have abdicated their responsibilities by failing to discharge them, whatever their motive may be"] *with*, *Church of Chosen v. City of Elmira*, 18 AD3d 978 [2005] ["With respect to the alleged code violations by petitioners' neighbors, the decision to enforce a municipal code rests in the discretion of the public officials charged with its enforcement and relief in the nature of mandamus is simply unavailable "], *and Mayes v. Cooper,* 283 AD2d 760, 761 [2001] [petition to compel the enforcement of local zoning ordinance does not lie to compel the performance of "such a discretionary function"].) But even under the *Jurnove* test, mandamus to compel does not lie in this case, because, as the parties' submissions have shown, the TCL, actively engaged in regulating the introduction of new smart phone technology in the ground transportation industry, has not "abdicated" its responsibilities to enforce the law.

This case fundamentally concerns an administrative determination to classify and treat passenger communications to companies like Uber as a type of pre-

arrangement rather than as a hail. In determining whether the petitioners have a cause of action in the nature of mandamus to compel, the court need not rule on the legality of the administrative classifications. It is enough for the court to find that this discretionary matter lies at the heart of this case and intertwines with any duty of the TLC to enforce its rules and regulations pertaining to hails. It is enough for the court to find that this is not a case where no administrative discretion is involved (*see*, *New York Civil Liberties Union v. State of New York, supra*), but rather one involving "the exercise of reasoned judgment." (*New York Civ. Liberties Union v. State of New York*, *supra* at 184.) Mandamus " does not lie to compel an act which involves an exercise of judgment or discretion ***" (*Brusco v. Braun*, 84 NY2d 674, 679 [1994].), and the first cause of action is not adequate because it does not involve a " purely ministerial act." (*Rose Woods, LLC v. Weisman*, *supra* at 802.)

The petitioners also do not have a cause of action for relief in the nature of mandamus because the pleadings and submissions do not show a clear right to relief. "Where, as here, evidentiary material is submitted and considered on a motion to dismiss a complaint pursuant to CPLR 3211(a)(7), and the motion is not converted into one for summary judgment, the question becomes whether the plaintiff has a cause of action, not whether the plaintiff has stated one ***." (*Hallwood v. Incorporated Village of Old* Westbury,130 AD3d 571 [2015]; *Agai v. Liberty Mut. Agency Corp*., 118 AD3d 830 [2014]*; Fishberger v. Voss*, 51 AD3d 6272 [2008].) The respondents' submissions on this motion refute any allegations in the petition concerning a clear right to relief. Rausen alleges: "The purpose of the E-Hail Rules was to officially set forth detailed rules governing the operation of electronic app services in taxis. The rules promulgated on January 29, 2015 in no way pertain to FHV service or the conduct of FHV drivers in providing FHV service. The rules strictly pertain to allowing yellow medallion taxis and the green Street Hail Livery ("SHL") vehicles to utilize electronic apps to connect with prospective yellow and green taxi passengers." A clear right to relief cannot be found on the basis of a set of rules which the administrative agency does not regard as having any relevance to FHV vehicles. "An agency's interpretation of its own regulations 'is entitled to deference if that interpretation is not irrational or unreasonable '." (*IG Second Generation Partners L.P. v. New York State Div. of Housing and Community Renewal* 10 NY3d 474, 481 [2008] quoting *Matter of Gaines v. New York State Div. of Hous. & Community Renewal*, 90 NY2d 545, 549 [1997].)

The petitioners' second cause of action is captioned "NY CPLR 7803(1): Mandamus to Compel the Promulgation of Rules and Regulations Necessary to Implement the Provisions of Title 19." The second cause of action alleges, inter alia, that "[r]espondents have not promulgated rules and regulations that are consistent with upholding and enforcing the taxicab medallion owners' exclusive right to hails, particularly in light of recent E-Hailing activities by certain FHV's including Uber."

While mandamus to compel may lie where a statutory directive to an administrative body to promulgate rules is mandatory, not discretionary (*see, Neighbors Against Garbage v. Doherty*, 245 AD2d 81 [1997]), the petitioners did not allege that any specific provision of Title 19 of the Administrative Code directs the TLC to promulgate rules banning FHV's from responding to communications by passengers via an e-app. Moreover, the determination to treat the use of a Uber app as a type of pre-arrangement is a matter of administrative discretion, and the second cause of action does not involve a "purely ministerial act.." (*Rose Woods, LLC v. Weisman*, *supra* at 802.)

The petitioners' third cause of action is brought "to prohibit respondents from enforcing any existing rules and regulations that are inconsistent with taxicab medallion owners' exclusive right to hails, "including those adopted by the TLC on January 29, 2015 [The E-Hail Rules]." " NYC Code § 19-504(a)(1) provides in relevant part: "No motor vehicle other than a duly licensed taxicab shall be permitted to accept hails from passengers in the street.. NYC Code § 19-507(a)(4) provides:"No driver of a for-hire vehicle, other than a driver operating a for-hire vehicle with a valid HAIL license, shall accept passengers unless the passengers have engaged the use of the for-hire vehicle on the basis of telephone contract or prearrangement." The petitioners do not have a cause of action for Article 78 relief in the nature of prohibition. CPLR § 7803, "Questions raised," provides in relevant part: "The only questions that may be raised in a proceeding under this article are: ***2. whether the body or officer proceeded, is proceeding or is about to proceed without or in excess of jurisdiction; ***." (*See*, *Di Lorenzo v. Murtagh*, 36 NY2d 306 [1975].) "[A] petitioner seeking a writ of prohibition must demonstrate that: (1) a body or officer is acting in a judicial or quasi-judicial capacity, (2) that body or officer is proceeding or threatening to proceed in excess of its jurisdiction and (3) petitioner has a clear legal right to the relief requested ***." (*Garner v. New York State Dept. of Correctional Services,* 10 NY3d 358, 362 [2008]; *Rachelle v. Rice*, 112 AD3d 942 [2013]*; Sedore v. Epstein*, 56 AD3d 60 [2008].) The third cause of action fails on all three grounds. First, "prohibition does not lie against strictly administrative action, but only against judicial and quasi-judicial action. When brought against an administrative official, the latter must therefore be shown to be exceeding jurisdiction in some quasi-judicial capacity." (Siegel, NY Practice [4th Ed.], §559; *see*, *Morgenthau v. Erlbaum*, 59 NY2d 143 [1983].) Prohibition "may not issue against legislative, executive, or ministerial action ***." (*Morgenthau v. Erlbaum, supra* at 147.) An administrative agency engaged in rule-making acts in relation to the legislative function. (*See*, *Boreali v. Axelrod*, 71 NY2d 1, 13 [1987] [filling "in the details"].) Second, the TLC did not exceed its regulatory powers in adopting the E-Hail and E-Dispatch Rules since those powers are very broad. (*See*, *Greater N.Y. Taxi Assn. v New York City Taxi & Limousine Commn., supra* ["The City Council granted the TLC extremely broad authority to enact rules ***"].) The E-Hail Rules state in relevant part: " The Commission's authority for these rules is found section 2303 of the New York City Charter and sections 19-503 and 19-511 of the New York City Administrative Code."

Section 2303 of the City Charter broadly provides: "a. The jurisdiction, powers and duties of the commission shall include the regulation and supervision of the business and industry of transportation of persons by licensed vehicles for hire in the city, pursuant to provisions of this chapter." Section 19-503 broadly authorizes the TLC to "promulgate such rules and regulations as are necessary to exercise the authority conferred upon it by the charter and to implement the provisions of this chapter." The E-Dispatch Rules also state: " The Commission's authority for these rules is found section 2303 of the New York City Charter and sections 19-503 and 19-511 of the New York City Administrative Code." The TLC had sufficient regulatory authority to promulgate the E-Hail and E-Dispatch Rules since they concern "the regulation and supervision" of taxis, FHV's, and other vehicles transporting passengers. Moreover, the TLC, which may set public transportation policies and, in Rausten's words, "encourage the development of new technologies and services," had sufficient regulatory authority to treat app communications as both hails or pre-arrangements. The TLC had sufficient authority to treat the app communications differently depending on the needs of the particular segment of the ground transportation industry dealt with. Both the E-Hail and E-Dispatch Rules contain a "Statement of Basis and Purpose of Rule," demonstrating that the TLC had reasons for its actions. Third, the petitioners did not show a clear right to relief, since the E-Hail Rules do not apply to FHV's, and, in adopting the E-Dispatch Rules, the TLC had sufficient authority to treat electronic communications to FHV's as pre-arrangements. The E-Hail Rules and the E-Dispatch Rules are not inconsistent with NYC Code § 19-504(a)(1) or NYC Code § 19-507(a)(4) which do not restrict the TLC from treating electronic communications as hails or pre-arrangements according to proper, though different, regulatory purposes.

The petitioners' fourth cause of action is brought to prohibit the respondents from promulgating or enforcing rules permitting the electronic dispatch of FHV's. As discussed above, the petitioners do not have a cause of action for such relief. (*See*, *Garner v. New York State Dept. of Correctional Services, supra*; *Rachelle v. Rice*, *supra; Sedore v. Epstein*, *supra*.)

The petitioners' fifth cause of action is captioned ("NY CPLR 7803(3): Mandamus to Review Determination/Declaratory Judgment") They seek to set aside the E-Hail and E-Dispatch Rules as "affected by an error of law,***arbitrary and capricious, or an abuse of discretion." The petitioners do not have a cause of action for Article 78 relief. "Arbitrary action is without sound basis in reason and is generally taken without regard to the facts." (*Pell v. Board of Ed. of Union Free School Dist. No. 1 of Towns of Scarsdale and Mamaroneck, Westchester County,* 34 NY2d 222, 231 [1974].) The pleadings and submissions do not show that the TLC's actions were arbitrary and capricious. Moreover, as discussed above, the E-Hail Rules and E-Dispatch Rules are not inconsistent with any provision in the City Charter or Administrative Code, and the TLC did not abuse its discretion in treating electronic communications as hails or pre-

arrangements according to different regulatory purposes. To the extent that the fifth cause of action seeks a declaratory judgment, it is merely duplicative of that part of the cause of action which seeks Article 78 relief.(*See*, *Gable Transport, Inc. v. State*, 29 AD3d 1125 [2006].)

Accordingly, that branch of the cross motion which is for an order pursuant to CPLR 3211(a)(7) and CPLR 7804(f) dismissing the petition is granted. The remaining branches of the motion are denied as moot.

Settle order.

Dated: 9/8/15

J.S.C.