

12 CIV 0784

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

X-----X

KOFFI AKA and ROBERT CARNIOL, individually
and on behalf of all others similarly situated,

Plaintiffs,

-against-

**CLASS ACTION
COMPLAINT**

DAVID YASSKY, THE NEW YORK CITY TAXI
AND LIMOUSINE COMMISSION, and THE CITY
OF NEW YORK,

Defendants.

X-----X



NATURE OF THE ACTION

1. This action is to vindicate the right New York City taxi drivers to be free from unconstitutional, warrantless invasions of their privacy using Global Positioning System (GPS) tracking devices.

2. GPS is a satellite-based technology capable of tracking an individual's precise location and movement twenty-four hours a day, and of creating a detailed record of a person's daily activities, habits, and interests. In *United States v. Jones*, 565 U. S. ___ (2012), a decision issued on January 23, 2012, the United States Supreme Court held the that the state's installation of a GPS device in a vehicle and its use of that device to monitor the vehicle's movements constitutes a "search" under the Fourth Amendment to the Federal Constitution. In 2009, the New York Court of Appeals had reached the same conclusion in *People v. Weaver*, 12 N.Y.2d 433, 882 N.Y.S.2d 357 (2009).

3. Because GPS tracking is a search under the New York Constitution as well as the Federal Constitution, use of GPS technology to track individuals must be authorized by a warrant based on probable cause or by a recognized exception to the

warrant requirement. Nevertheless, the New York City Taxi and Limousine Commission (TLC) has prosecuted hundreds of individuals for overcharging passengers. In many cases, including Mr. Carniol's, the TLC ultimately revoked hack licenses solely on the basis of GPS tracking evidence, without even a single complaining witness complaining or testifying against them.

4. Plaintiffs submit that the evidence allowed against plaintiffs and their fellow taxi drivers, who are businessmen engaged in a private trade, was gathered in violation of the Constitution, leading to prosecution, the loss of their livelihoods, and substantial fines.

PARTIES

5. Plaintiff Koffi Aka is a NYC taxi driver and a resident of Queens County.

6. Plaintiff Robert Carniol is a resident of Bronx County and was a licensed NYC taxi driver until August 15, 2011.

7. Defendant TLC is an agency of the City of New York with its headquarters in New York County and the bulk of its operations in Queens County.

8. Defendant the City of New York is a municipality of the State of New York.

9. Defendant David Yassky is Chairman of the TLC and one of its nine commissioners.

JURISDICTION AND VENUE

10. This action arises under the Fourth, Fifth and Fourteenth Amendments to the United States Constitution and the Civil Rights Act of 1871, 42 U.S.C. § 1983.

11. The jurisdiction of this Court is predicated upon 28 U.S.C. §§ 1331, 1343(4), and 2201.

12. The acts complained of occurred in part in the ___ District of New York and venue is lodged in this Court pursuant to 28 U.S.C. § 1391(b).

JURY DEMAND

13. Plaintiffs demand a jury trial.

FACTUAL BACKGROUND

14. Unlike other workers who may be protected by civil service standards or by contract, taxi drivers are independent businessmen.

15. Taxi driver's licenses are protected only by public law and by the state and federal constitutions. The political voice of taxi drivers is likewise muted as 91% are first generation immigrants, with the largest group, 43% of the total, from South Asia, principally India, Pakistan, and Bangladesh.

The TLC Imposes Mandatory GPS Tracking Technology

16. Starting in 2007, the TLC mandated that all NYC medallion taxis must be equipped with its so-called Taxi Technology System or TTS. The TTS system includes a GPS tracking device that uses a Global Positioning System or GPS. According to Garmin Ltd., a leading manufacturer of GPS devices, GPS "is a satellite-based navigation system made up of a network of 24 satellites placed into orbit by the U.S. Department of Defense. GPS was originally intended for military applications, but in the 1980s, the government made the system available for civilian use. GPS works in any weather conditions, anywhere in the world, 24 hours a day." Garmin website at <http://www8.garmin.com/aboutGPS/>. The New York Court of Appeals characterized GPS as a "sophisticated and powerful technology that is easily and cheaply deployed and has virtually unlimited and remarkably precise tracking capability." *People v. Weaver*, 12 N.Y. 3d at 441, 882 N.Y.S.2d at 361.

17. There is no statute authorizing or suggesting that the TLC require installation of GPS devices in taxicabs. However, the TLC has acted on its own by rule. By its rules, the TLC requires that every taxicab contain such a tracking device as part of a so-called "Taxi Technology System." Specifically, TLC Rule 1-11G, provides:

The owner of any taxicab required to be equipped with a taxicab technology system shall contract to procure such equipment on or before August 1, 2007. Except as provided in this subdivision, the owner shall install a taxicab technology system no later than the compliance date set forth in section 1-01 of this chapter.

18. The technology must include “hardware and software that provides ... (iii) trip data collection and transmission required by section 3-06 of this title, and (iv) data transmission with the passenger information monitor required by section 3-07 of this title.”

19. TLC Rule 3-06 requires that each taxicab be capable of transmitting to the commission “at pre-determined intervals established by the Chairperson”:

[T]he taxicab license number; the taxicab driver’s license number; the location of trip initiation; the time of trip initiation; the number of passengers; the location of trip termination; the time of trip termination; the metered fare for the trip; and the distance of the trip.

20. Thus the TLC requires that all taxis and taxi drivers continuously transmit to the TLC or its agents by use of GPS their locations at all times. While taxis must have this technology installed, nothing in the TLC’s rules permits (or even mentions) the TLC to use GPS data to prosecute taxi drivers either criminally or administratively.

21. There is no state statute or city ordinance that allows the TLC to use GPS tracking data for purposes of prosecuting an individual taxi driver such as Mr. Carniol.

22. The installation and use of this technology is mandatory regardless of the consent of the taxicab owner or the taxi driver.

The TLC Assures the Federal Court, the Public, and Taxi Drivers that the Technology Will Not be Used for Individual Tracking

23. In 2007, before the Court of Appeals decided *Weaver* and before these rules took effect, a group of drivers and the New York Taxi Workers Alliance filed a federal lawsuit in which they made a facial challenge to the rules and sought an injunction against their taking effect. (*Alexandre et al v. New York City Taxi and*

Limousine Comm'n et al, 07 Civ. 8175 (SDNY)).

24. The *Alexandre* plaintiffs advanced *federal* privacy claims. The federal court rejected those claims, finding that GPS tracking was not (at least not in 2007) deemed a search for purposes of the Fourth Amendment. *Alexandre*, 2007 WL 2826952 (S.D.N.Y. 2007). Thus, despite the protests by drivers, the technology rules took effect.¹

25. In briefs submitted during the *Alexandre* litigation, the TLC and the City of New York assuaged the court's concerns with its assurance that the GPS and related technology would be used only for limited purposes, such as general regulation and information gathering. The purported benefits of the technology—according to the TLC's court papers— included: (1) the collection of “an enormous body of information to the TLC's regulatory analysis;” (2) enabling the TLC “to conduct automated comprehensive analyses of pick up points, drop-off points, trip time and distance and passenger counts;” (3) the assisting “in locating passengers' lost property;” and (4) allowing the drivers to “eliminate the obligation” of completing handwritten trip sheets.

26. Nowhere in its briefs or affidavits did the TLC ever mention or suggest it would or might use the GPS data to track or investigate particular drivers or gain evidence for prosecutions.

27. Judge Berman rejected the challenge, citing federal cases that, the Court stated, led to the conclusion that GPS tracking is not a search for purposes of the Fourth Amendment. 2007 WL 2826952 (S.D.N.Y. 2007). The decision emphasized that the technology would eliminate the need for drivers to fill out trip sheets by hand and the convenience to passengers who could use credit cards.

28. The TLC, in its “Statement of Basis and Purpose,” which was submitted in support of its rulemaking, stated the reasons for its technology and GPS mandate. In

¹ A similar challenge was rejected by another federal district court judge in *Buliga v. New York City Taxi & Limousine, Comm'n*, 2009 U.S. Dist. LEXIS 94024 (S.D.N.Y. 2007). This decision likewise pre-dated *Weaver* and was based solely on federal law.

this regulatory statement, the TLC noted that the technology could “assist in the recovery of lost property;” that it would allow for “centralized data” to permit the “complex analysis of taxicab activity in the five boroughs for policy purposes; that it would “enable passengers to follow their route on a map;” and that it would “provide a valuable resource for statistical purposes.” There was no mention of using GPS data to investigate or prosecute taxi drivers.

29. The TLC never stated its desire to track drivers for investigatory purposes of any kind. Indeed it disavowed that intention in statements on its website in the form of a list of Frequently Asked Questions (FAQ). The following questions and answers appear under “Driver Frequently Asked Questions”:

Is the TLC going to use this technology to track drivers?

No, the TLC will only use this technology to provide those customer service improvements described here. Even more importantly for drivers, the TLC is replacing the current hand-written trip sheets with automatic electronic trip sheets which are limited to collecting pick-up, drop-off, and fare information, all of which are already required. This technology will also provide TLC with credit card tip information.

Will my trip/fare information be transmitted to the Internal Revenue Service (IRS)?

No, your fare information will not be automatically sent to the IRS. There will be no changes to the current system, in which the IRS must send a subpoena to the TLC requesting trip sheet information.

Will the systems be used to issue speeding tickets or other similar infractions?

No, there are no plans to issue tickets for speeding or other similar infractions using the systems.

30. Thus, in a series of statements to the federal court, to the public, and to taxi drivers, the TLC averred that its technology mandate was not designed for or geared towards the use of GPS to track, follow, or prosecute taxi drivers. But now, as detailed below, the TLC has used the devices for just that purpose, resulting in the revocation of license based on TLC tracking, and despite the complete lack of evidence from anything

other than GPS tracking and the related mandatory taxi technology.

31. Sometime in 2008 or 2009, the TLC learned from passenger complaints that a cabdriver named Wasim Khalid Cheema had allegedly overcharged passengers.

32. Sometime in early 2010, the TLC has stated that it learned that certain taxi driver had been overcharging passengers by engaging the Rate 4 button on their taximeters.

33. In the course of investigating the allegations against Cheema, the TLC reviewed its computer tracking records of Cheema's trips up until the time of the passenger complaints as well as in the months after the passengers complained (but before the TLC charged Cheema with violation of its overcharge rules.)

34. On information and belief, the TLC learned that Cheema had persistently engaged Rate 4 (that is on nearly every trip) within the five boroughs of New York for a period of months.

35. Following the Cheema investigation, the TLC expanded its review of computer records to include substantially all of the city's roughly 42,000 yellow taxi drivers.

36. On information and belief, the TLC never attempted to obtain a warrant from any judge or judicial officer to allow its tracking or its search of computer records.

37. There were no exigent circumstances that would have made it impossible or even inconvenient for the TLC to secure a search warrant.

38. At that time, neither the TLC nor any of the defendants had any cause or reason to suspect that plaintiffs had engaged in overcharging passengers.

39. The TLC had never received a single complaint from any passenger alleging that plaintiffs had overcharged any passenger.

40. Plaintiffs were included in the investigation of taxi drivers generally.

41. The TLC reviewed plaintiffs' individual trips and movements using its

GPS records and technology.

42. The TLC never asked plaintiffs' consent to do track their individual movements.

43. Likewise, the TLC never asked the consent of any taxi driver for consent to review his individual records and movements.

44. The TLC was at this time engaged in a search for evidence to be used in potential criminal or administrative prosecutions.

45. Over time, the TLC shared its records with various prosecuting agencies including the Department of Investigation and the New York County District Attorney.

The TLC 'Discovers' an '\$8.3 Million' Scam

46. At 4:04 in the afternoon of March 12, 2010, the TLC issued press release via e-mail under the subject heading "Taxi Scammers." After apologizing for the late-afternoon information "drop," the release announced that it had "discovered" that "35,558 [taxi] drivers" had "illegally overcharged at least one passenger" over a 26-month period by manually switching the taxi meter from Rate Code 1 (default setting used for trips inside NYC) to Rate Code 4, the rate that applies to out-of-city trips. The release specified that the overcharges had occurred on precisely "1,872,078 trips" and that the "total" overcharge was "\$8,330,155, or an average of \$4.45 per trip." March 12, 2010 Press Release.

47. While no reason was given for announcing the news late on a Friday afternoon, the release came just days before former TLC chairman Matthew Daus, who had been in office for 14 years, left the agency. (Daus was replaced as chairman by David Yassky on March 24, 2010.) While the TLC later averred that its investigation was set off by its finding that a single taxi driver had employed Rate 4 to overcharge a passenger, it has never claimed or even suggested that there was probable cause or even reasonable suspicion to scour the GPS records of thousand of taxi drivers or the plaintiffs

here. *See* “Previous Taxi Fraud Cases, but No Red Flags,” NY Times, March 17, 2010.

48. At the administrative hearing, Pansy Mullings, the TLC’s enforcement director admitted it had no reason to suspect that Mr. Carniol (or any other particular driver had overcharged passengers. Carniol Trial Tr. 61-62, 251. Indeed, Ms. Mullings admitted that there were few complaints by actual passengers—this despite the hundreds of thousands, if not millions, of supposed overcharges. Trial Tr. 27, 33-34. And it is also despite the fact that, overall, the TLC receives roughly *twenty thousand* civilian complaints (of all kinds) annually. Trial Tr. 24-25.

49. Even after the TLC publicized the alleged Rate 4 problem and it was widely reported in print, radio and television, just “a couple” of alleged victims came forward. Trial Tr. 34-35. Nor has the TLC ever claimed any exigent circumstances that would have made it impossible or even inconvenient to secure a search warrant.

50. In its initial announcement, and many times since then, the TLC admitted it made its discovery of the alleged scam by “using GPS technology installed in taxicabs.” Even as it was offering these extravagant—and ultimately unsupportable—accusations of widespread abuse, the TLC was constrained to note that while the overcharges were on “over 1.8 million trips ... there were 361 million taxi trips during” the 26-month period in question so “the illegal fare was only charged in 0.5% of all trips.”

51. The press release added: “The information has been referred to the Department of Investigation,” and added that it would be “moving forward on administrative enforcement, which includes seeking revocation for the most serious offenders. Finally, the release quotes Mayor Bloomberg as saying, “[S]ome of these people could face serious charges,” that is criminal charges.

52. The media picked up the story eagerly and without question. The New York Post headline shouted: “Taxi drivers scammed passengers to the tune of \$8M by rigging meters.” The Daily News ran its story under the headline, “36,000 city cabbies

overcharged passengers by \$8.3M in widespread meter scam.” The New York Times announced: “New York Cabs Gouged Riders Out of Millions.” Daus, the soon-to-be-departing Commissioner, told the Times: “We have not seen anything quite this pervasive. It’s very disturbing.” To the Post, Daus opined, “I think these people are criminals.”

The TLC Backtracks from Its Story

53. Just 10 days later, however, the TLC admitted that the account it had aggressively marketed was wildly inaccurate. Chairman Daus admitted, “[A] fairly significant number” of the incidents resulted in no additional charges, suggesting they might have been simple mistakes. NY Times, March 22, 2010; Village Voice, March 23, 2010. The agency’s press release of May 14, 2010 offered a revised version of the story. It now stated: “21,819 taxicab drivers overcharged passengers a total of 286,000 times ... for a total estimated overcharge of almost \$1.1 million”—not “\$8,330,155.” The TLC did not explain how its initial numbers, stated with such precision, had been so far wrong, or why its new version was more credible.

54. Rather than accept responsibility for the errors, Daus claimed “The numbers that the press reported”—which were precisely the numbers the TLC announced—were misleading. As to its methods, the TLC allowed: “Each taxicab is equipped with a taxi technology system device that records certain data about each trip ... including ... the dates, times, and locations of each pick-up and drop-off.” But the TLC never claimed in this press statement (or before or since) that it had probable cause for warrant permitting it to track the locations of taxi drivers for months and years and to use the fruits of its tracking to prosecute those drivers.

55. While the TLC had now conceded its initial numbers were wrong by a factor of six in terms of trips and incorrect by a factor of eight in terms of dollar value, the media still presented the “scam” as pervasive. Despite its initial numbers being

wildly off the mark, expressed utter confidence that it was (now) correct. Nevertheless, to date, with the exception of one or two drivers, the TLC has not claimed that any actual passenger has claimed that he or she was overcharged. Trial Tr. 27, 229, 491.

56. Its allegations are based on its use of GPS technology (as well as the technology that transfers the GPS data to vendors' computers and then to the TLC) only.

57. At trial Ms. Mullings admitted that the TLC's prosecution of Mr. Carniol have been a practical impossibility. Trial Tr. 63-64. Ms. Mullings' testimony also confirmed that the TLC had no probable cause to track Mr. Carniol.

The TLC's Prosecution Offensive

58. The May 14 press release, apparently certain that its restated numbers were correct, outlined the TLC's prosecution strategy. The agency announced it was "in the process of initiating license revocation proceedings against taxicab drivers who were identified with 50 or more overcharges. Drivers with evidence of between 10 and 49 overcharges would have the option to surrender their TLC license or face fines ranging from \$1,000 to \$5,000. Drivers with less than 10 overcharges would be reviewed on a case by case basis."

59. Based on its revised numbers asserted, the TLC said it still intended to revoke the licenses of at least 633 drivers, and possibly more than 2300, some of whom had gained, by the TLC's accounting, less than \$50 from the alleged scam.

60. Later, the terms of the settlement offers changed. The stipulated penalty would vary depending on the number of alleged overcharges. Any driver with more than 120 violations would have to surrender his taxi driver's license (and pay a fine). Drivers with fewer violations would have to pay a fine of \$100 per violation, but could remain licensed.

The Allegations against Aka

61. On or around December 7, 2011, a TLC prosecutor sent Mr. Aka a letter and an OATH petition, comprising formal charges against him.

62. The petition alleged that Mr. Aka had committed a total of 40 times in a 24-month period starting in February 2008.

63. On or around January 25, 2012, the TLC offered to settle its action against Mr. Aka, allowing him to keep his hack license if he paid a \$3,000 fine. If Mr. Aka refused the offer, the TLC indicated it would seek to revoke his license. It also claimed to have prevailed in revocation hearings in “similar” cases, omitting that the vast majority of cases in which the TLC had prevailed were ex parte, where the cabdriver did not appear.

64. On January 27, 2012, the TLC and Mr. Aka, who was at this point represented by counsel, appeared for a settlement conference at OATH. At the urging of Mr. Aka’s counsel, the OATH judge agreed to stay the matter (taking it “off calendar”) pending the resolution of constitutional issues in actions pending in New York State Supreme Court and in Federal District Court.

The Allegations against Carniol

65. On June 21, 2010, the TLC sent a letter to Mr. Carniol claiming he “deliberately and intentionally overcharged passengers on 91 separate occasions.” The letter asked him to “agree to the revocation of [his] TLC license.” While he would not be required to admit guilt, the letter stated that he would have to wait one year before reapplying and that “the facts surrounding the stipulation” would be considered upon reapplication.

66. The letter’s “Option 2” paragraph contains several deceptive and misleading statements. First, it states that the driver would “face permanent license revocation.” This is false as the TLC’s Rule 2-87C says specifically that a driver found to have violated Rule 2-34 can reapply after a year. It then states: “A similar Rate 4

overcharge case has already been decided before OATH resulting in permanent license revocation (*See TLC v. Cheema, Index no. 10450*).” First, there is nothing in the OATH decision about a “permanent” revocation. The statement is simply false. Second, it omits that Cheema did not appear for the hearing, so the charges were uncontested. It omits the fact that the TLC alleged that Cheema overcharged passengers by \$50,000, a sum many times in excess what was allegedly overcharged by others.

67. The “settlement” letter was also deceptive in that in the *Cheema* case, the TLC received a passenger complaint and “found that similar complaints had been made” against him. For Carniol there were no complaints, not one.

68. In the *Cheema* case, despite the fact that the hearing was *ex parte*, the TLC corroborated its trip sheets not just with passenger complaints, but through an analysis of Cheema’s receipts, comparing them to both a driver of the same taxi and the average driver. (Cheema’s receipts were vastly greater).

69. The TLC has no “similar” evidence in this case. In *Cheema*, the TLC presented evidence that the respondent used Rate 4 “574 times” within a *one-month* period. That means, if true, that Rate 4 was triggered on nearly every trip. (In its petition against Mr. Aka, the TLC alleges 38 overcharges spread over two years. In its petition against Carniol, the TLC alleges that respondent employed Rate 4 five times in a two-month period, or roughly one trip out of 100.) In the *Cheema* case, the TLC presented evidence that “that respondent’s meter was functioning properly.”

70. There was no “similar” evidence against Carniol: No evidence that Carniol’s income exceeded that of other cabdrivers; no passengers complaining of overcharge. In short, the cases, both in terms of the charges and in terms of the nature and

quality of the evidence, are vastly dissimilar.² Thus the TLC began this action by attempting to induce settlements through a threatening letter rife with deceptive and misleading statements and material omissions.

71. Later, the TLC made a second settlement offer. It would allow Mr. Carniol to pay a \$10,000 fine and retain his license, or he could surrender his license, pay a \$600 fine and agree not apply for any new TLC license for one year. Mr. Carniol rejected the each of the settlement offers and insisted on a trial.

72. The TLC brought the action by a Notice of Petition dated February 11, 2001. The case was brought before the Office of Administrative Trials and Hearings, rather than before the TLC's own tribunal, whose judges routinely adjudicate alleged violations of the TLC rules. The Notice of Petition alleged "ninety (90) counts of violating Rule 2-34(a)" between April 12, 2009, and February 27, 2010, but did not state "the date, time, and place of" any of these alleged violations.

73. Five occasions were listed specifically, including dates, times and trip routes. But even as to these five trips, there is nothing in the petition stating the amount that Mr. Carniol actually charged or what he should have charged or whom he charged.

The Carniol OATH Trial

74. As noted by the presiding Administrative Law Judge, the TLC relied on documentary evidence as presented by Serge Royter, a TLC data analyst. CITE. According to Royter, Carniol engaged the "Rate 4" a button on his taximeter on 90 occasions. The "Rate 4" button is designed to double the mileage charge to passengers when the taxi leaves New York City and enters Westchester or Nassau County. The taxi

² Cheema's background and Mr. Carniol's also could hardly be less similar: Cheema had been "found guilty of various violations including: driving without TPEP; unsafe driving; disobeying taxi stand rules; operating an access vehicle without a proper training certificate; and driving without his hack license in a frame." Mr. Carniol has no TLC violations on his record. In 2008, Cheema had been already found guilty of overcharging a passenger in violation of TLC 2-34. Mr. Carniol had never been accused. Since 2007 Cheema has also received 11 DMV convictions. Carniol's DMV record, by contrast, is excellent.

technology system, Royter testified, told him where the Carniol's taxi was when the button was pressed. If the taxi was in the five boroughs, the TLC deemed it an overcharge in violation of TLC Rule 2-34.

75. The TLC did not offer any witness, or identify any individual who Mr. Carniol allegedly overcharged. Indeed, they admitted they knew of no such individual complaints. Trial Tr. 229.

76. The absence of even a single complaining witness is despite the fact that the use of Rate 4 is transparent to any passenger. When Rate 4 is engaged, the number "4" appears on the meter itself. When it is engaged, the metered fare – which is likewise visible—increases by 80 cents every fifth of a mile rather than 40 cents, as it would on Rate 1 (the standard city rate). Trial Tr. 229-30. The trip receipt, which must be offered and can be demanded, also indicates Rate 4 was engaged. *Id.*

77. Despite the fact that the use of Rate 4 cannot be hidden-- and would also be apparent to any passenger who knows what the normal fare is for a particular trip—not a single passenger complained about an overcharge by Mr. Carniol, let alone testified against him.

78. Nor was there any evidence that Mr. Carniol's income was any greater than the typical cab driver. Indeed, the TLC's witness admitted the alleged overcharges combined would have increased Mr. Carniol's income by "much less than one-half of 1%." Mr. Carniol completed more than 4800 trips during the period in question. And the TLC's witness could not even claim that there was any pattern—whether based on location or timing or destination type—as to which Mr. Carniol allegedly engaged Rate 4. Trial Tr. 241-44.

79. In addition, Royter admitted that there was no showing of any deliberate act of overcharge. Royter testified as to information contained in various charts prepared, Royter admitted, for purposes of the prosecution, but he also admitted he had no evidence

that Mr. Carniol intentionally overcharged anyone. The computer spreadsheet evidence he related as a data analyst was incapable, Royter conceded, of making that showing:

ROYTER: Again, just to, again, reiterate my role here in this spreadsheet. I was given a data set, a set of filters to run on it, which is what I've done as a data analyst.

Q: Okay, so given your role, you're not really alleging personally that Mr. Carniol ever overcharged anyone, is that correct?

ROYTER: Well, based on this information, we are alleging.

Q: No, no, who is we?

ROYTER: TLC. I work for TLC.

Q: But you say you have a limited role. Based on your knowledge and your role, can you say that Mr. Carniol ever deliberately overcharged anybody?

ROYTER: I cannot say that. Trial Tr. 309-310.³

80. Nor did the TLC present any witness who could say that Mr. Carniol deliberately overcharged anyone—only that he pressed Rate 4 on certain trips, a tiny minority of the trips Mr. Carniol completed during the time covered by the petition.

81. Mr. Carniol, for his part, conceded he may have inadvertently engaged Rate 4 from time to time. It also may have been engaged by a meter malfunction.

82. When Rate 4 is engaged, the process cannot be reversed. There is no way

³ The ALJ acknowledged there was no allegation that the alleged overcharges fit a pattern. But then he averred: “The most likely explanation for the respondent’s selective misuse of Rate 4 is that he only overcharged when he thought that he could get away with it. The meter displays the rate in use and many regular riders have a good idea of what the fare should be for a routine trip (Trial Tr. 517). Thus, it appears that respondent activated Rate 4 only when passengers were inattentive or uninformed.” ALJ Dec. at 14. This statement by the ALJ is pure conjecture as there was no evidence—nor was there any allegation—of what Mr. Carniol “thought he could get away with.” While the ALJ cited “three” instances in the early morning of January 1, actually just two such instances were specified in the charging Petition. More to the point, two of the overcharges that were alleged in the petition were between 7 and 8 PM. The other was just after 11 PM, and there was no evidence in any instance that any of the passengers were “inattentive or uninformed.”

for a driver to revert to Rate 1.

83. Whenever he noticed a mistake, he always corrected it. His trial testimony as to this point was undisputed. And he vehemently denied overcharging a single passenger.

The ALJ's Recommendation; The Chairman's Ruling

84. By a report and recommendation decision dated June 24, 2011, the ALJ rejected Mr. Carniol's legal defenses, concluded he was guilty of the charges, and recommended revocation of Mr. Carniol's license and the imposition of an \$850 fine. When he issued his recommendation, OATH ALJ Casey indicated that Mr. Carniol could respond to it by a letter to Chairman Yassky. Mr. Carniol, through counsel, did comment.

85. By a letter ruling dated August 15, 2011, the TLC chairman accepted the ALJ's recommendation without analysis, affirmed the fine and revoked Mr. Carniol's license. The letter ruling mentioned no possibility of appeal within the agency.

The TLC Penalty Scheme

86. In his case, Mr. Aka faces a potential fine of \$3,000 or more (if he accepts a settlement) or revocation of his taxi driver's license if he is found guilty of the alleged offense.

87. On information and belief, the sum total of Mr. Aka's alleged overcharges are less than \$200.

88. Mr. Carniol faced a fine of \$9,000 (had he agreed to settle). Ultimately his taxi driver's license was revoked.

89. The sum total of Mr. Carniol's alleged overcharges in the five cases named in particular in the OATH petition was less than \$25. The sum total of the alleged 90 overcharges was \$358.

90. The actual and potential penalties in TLC overcharge cases bear no

relation to the amount overcharged. The potential fines exceed the amount overcharged by at least a factor of 15. The potential revocation penalty is even more serious.

91. None of the money paid in fines will be returned to alleged overcharge victims.

92. The TLC's penalty scheme is punitive, in the nature of a forfeiture and is not compensatory in nature.

CLASS ALLEGATIONS

93. Plaintiff brings this class action pursuant to Article 9 of the New York Civil Practice Law and Rules on behalf of all taxi drivers who have been charged by the TLC with wrongdoing on the basis of GPS search evidence.

94. The class is so numerous that joinder of all members is impractical. The TLC has maintained that as many as 21,819 taxi drivers have committed Rate 4 overcharge violations and it has sent letters of allegation demanding settlement to at least 2000 drivers.

95. There are questions of law and fact common to the class that predominate over questions affecting only individual members, including but not limited to whether the TLC's use of evidence gathered by GPS search is lawful and constitutional.

96. The claims of the class representative are typical of the claims of the class members and, by pursuing their own interests, the class representatives will advance the interests of the absent class members. Each class member has been charged with and/or convicted of Rate 4 overcharges.

97. The class representatives will fairly and adequately protect the interests of the class. There are no conflicts of interest between the class representatives and the absent class members, and the class representatives will vigorously prosecute this action on behalf of the class.

98. A class action is superior to other available methods for the fair and

efficient adjudication of this controversy.

99. Defendants have consistently acted and refused to act in ways generally applicable to the class. Thus, declaratory and equitable relief with respect to the class as a whole is appropriate.

CLAIM FOR RELIEF

100. The installation and use of a GPS device to track a persons' location in an automobile constitutes a search under the Fourth Amendment. Defendants never had probable cause and never obtained a search warrant to track the defendants by GPS. Defendants' use of GPS devices to track plaintiffs' locations he Fourth and Fourteenth amendments to the Constitution.

101. By implementing, promulgating, enforcing and/or effectuating a policy, practice and custom pursuant to which taxi drivers may be tracked with GPS devices and technology, defendants have deprived and will continue to deprive each and every plaintiff and members of the plaintiff class of rights, remedies, privileges and immunities guaranteed to every citizen of the United States, in violation of 42 U.S.C. § 1983, and of rights guaranteed by the Fourth, Fifth and Fourteenth Amendments of the United States Constitution. All defendants have acted under pretense and color of state law, in their individual and official capacities, and within the scope of their employment. Said acts by said defendants were beyond the scope of their jurisdiction, without authority of law, and in abuse of their powers, and said defendants acted willfully, knowingly, and with the specific intent to deprive plaintiffs of their constitutional rights secured by 42 U.S.C. § 1983, and by the Fourth, Fifth and Fourteenth amendments to the United States Constitution. Defendants have conspired among themselves to do so (taking numerous overt steps in furtherance thereof), and failed to prevent one another from doing so.

102. Defendants' actions were deliberate, reckless and indifferent to plaintiffs' constitutional rights.

RELIEF REQUESTED

WHEREFORE, plaintiffs ask this Court:

- a. To issue an order declaring that the use of GPS technology to track plaintiffs is a search under the Fourth Amendment as well as under New York law;
- b. To issue an order declaring this search, when conducted without a warrant, violates the Constitution;
- c. To issue an order that the TLC restore Mr. Carniol's taxi driver's license;
- d. To issue an order certifying this action as a class action;
- e. To require defendants to pay incidental and consequential damages;
- f. To require defendants to pay punitive damages;
- g. To require defendants to pay attorneys' fees pursuant to 42 U.S.C. § 1988;
- h. To require defendants to pay attorneys fees and costs; and
- i. To grant such other and further relief as this Court shall find just and proper.

Dated: New York, New York
February 1, 2012

/s/
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