UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF NEW YORK

THE TAXIS FOR ALL CAMPAIGN, a nonprofit organization, DR. SIMI LINTON, an individual, UNITED SPINAL ASSOCIATION, a nonprofit organization, 504 DEMOCRATIC CLUB, a nonprofit organization, DISABLED IN ACTION, a nonprofit organization,

Plaintiffs,

-against-

NEW YORK CITY TAXI AND LIMOUSINE COMMISSION, a charter mandated agency, MEERA JOSHI, in her official capacity as chairman and commissioner of the New York City Taxi and Limousine Commission, THE CITY OF NEW YORK, and BILL DE BLASIO, in his official capacity as Mayor of the City of New York,

Defendants.

No. 11-cv-0237 (GBD)

MEMORANDUM OF LAW IN OPPOSITION TO DEFENDANTS' CROSS-MOTION FOR PARTIAL RELIEF AND IN FURTHER SUPPORT OF PLAINTIFFS' MOTION TO ENFORCE CLASS SETTLEMENT STIPULATION AND AMENDED CLASS SETTLEMENT STIPULATION

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page(s)

Cases

I. PRELIMINARY STATEMENT

This Court should not permit Defendants to undo and avoid their obligations under a historic court-ordered settlement agreement granting wheelchair users in New York City greater access to yellow taxis. This Court, therefore, must deny Defendants' Cross-Motion to be Partially Relieved from the Amended Class Settlement Stipulation and grant Plaintiffs' Motion to Enforce the Amended Class Settlement Stipulation in its entirety.

With regard to Defendants' Cross-Motion, they simply fail to meet the high burden of showing extraordinary circumstances to be relieved from a court-ordered agreement, which *Defendants agreed to* just less than three years ago, while they were fully aware of the issues they now raise in their motion. While Defendants attempt to downplay their requested relief as a "narrow" and "partial" relief from the Amended Class Settlement Stipulation, they are requesting to be relieved from the most important and central aspect of the Class Settlement Stipulation and the Amended Class Settlement Stipulation – namely, to require no less than 50% of yellow taxi medallions in New York City to be wheelchair accessible. This Court should deny such an extraordinary and drastic request in this civil rights case. In fact, Defendants fail to provide any factual or legal support to be relieved of their settlement agreement obligations. Defendants bargained for this agreement in exchange for Plaintiffs dismissing their claims against Defendants and this Court should hold Defendants accountable for their bargain, especially considering the strong public policy of enforcing settlement agreements entered into between sophisticated parties and that this is a civil rights case.

The Court should similarly reject Defendants' attempt to cast an impossibility argument. Not only do Defendants fail to actually demonstrate that it is objectively impossible to make 50% or more of the yellow taxis accessible, but Defendants have the power to amend the TLC rules to do so. Indeed, Defendants agreed in the court ordered settlement that "[t]o the extent

amendments to the TLC Rules are required or deemed useful to accomplish either of these obligations, Defendants will act promptly as possible to propose such amendments . . . ." Dkt. 300-003. Defendants failed to act promptly, or at all, despite the fact that Defendants' own 2022 "Taxi Strategic Plan" states that the goal for the TLC "should be a 100% accessible Taxi fleet." *See* Declaration of Shin Hahn ("Hahn Decl."), Ex. 1.

Defendants' arguments about the increase in For-Hire-Vehicles ("FHVs") are a red herring and do not in any way excuse Defendants' obligation or ability to comply with the Amended Class Settlement Stipulation. The Court-ordered settlement obligations relate to the unique, iconic yellow medallion taxis, not FHVs. The availability of FHVs are irrelevant, and do not absolve Defendants of their obligation to meet the 50% wheelchair accessibility requirement that they agreed to in order to settle this action.

In addition, Defendants' own statistics and records show that the number of yellow taxis has been increasing again despite the use of FHVs, so Defendants' arguments based on a decrease of yellow taxi medallions hold no water in any event. Finally, the TLC governs FHVs as well as yellow taxis and could have taken any number of steps to fulfill its obligation to make at least 50% of the yellow taxis accessible.

In response to Plaintiffs' Motion to Enforce, Defendants argue that Plaintiffs have not alleged harm, which is a frivolous argument for multiple reasons. First, Plaintiffs and the Class negotiated and compromised their right to seek a greater percentage of accessible taxis, agreeing on at least 50% of yellow taxis being wheelchair accessible. *See, e.g.,* Dkt. 234 at ¶ 4 (wherein the Court noted that the settlement avoided additional costs, delay, and unknowns for both sides, while resolving the matter in a "just and fair way for all Parties."). By refusing to perform under the Amended Class Settlement Stipulation, Plaintiffs and the Class have been denied the benefit

of the bargain and that alone constitutes harm. Second, a lesser percentage of yellow taxis being wheelchair accessible constitutes harm to Plaintiffs and the Class members. It does not matter if there are accessible FHVs. Any number of yellow taxis not being accessible is an added harm to Plaintiffs and Class members, as discussed in further detail in Plaintiffs' declarations. Third, this lawsuit was brought under the Americans with Disabilities Act and courts presume that civil rights violations constitute irreparable harm. Fourth, as explained in Plaintiffs' declarations, for people with disabilities, FHVs are not an adequate alternative for yellow taxis. FHVs cannot be hailed on the street, they lack the advantages of taxi stands at transit hubs, they can be significantly more expensive, and many people with disabilities do not have access to smartphones and/or are unable to use smartphone applications because of their disabilities. Plaintiffs have demonstrated significant harm due to Defendants' breach of the Amended Class Settlement Stipulation and the Court must order specific performance.

Accordingly, for the reasons set forth above and below, the Court should deny Defendants' Cross-Motion for Partial Relief and grant Plaintiffs' Motion to Enforce the Class Settlement Stipulation and the Amended Class Settlement Stipulation.

II. ARGUMENT

A. Defendants Fail to Meet Their Burden to Be Relieved from the Amended Class Settlement Stipulation

Defendants seek to be relieved from their primary contractual obligation under the Amended Class Settlement Stipulation – their obligation to ensure that at least 50% or more of yellow taxi medallions are accessible. Defendants, however, fail to demonstrate any legal or factual support to request such extraordinary relief from the Court.

"A settlement agreement is a contract that is interpreted according to general principles of contract law." *Powell v. Omnicom, BBDO/PHD*, 497 F.3d 124, 128 (2d Cir. 2007). "Once

entered into, the contract is binding and conclusive." *Id*. "When a party makes a deliberate, strategic choice to settle, a court cannot relieve him of that [] choice simply because his assessment of the consequences was incorrect." *Id*. (citing *U.S. v. Bank of N.Y.*, 14 F.3d 756, 759 (2d Cir. 1994)). Just as defendant did in *U.S. v. Bank of N.Y.*, here, Defendants "made a conscious and informed choice of litigation strategy and cannot in hindsight seek extraordinary relief" to be relieved from its settlement obligations. *Bank of N.Y.*, 14 F.3d at 759.

Defendants argue that they should be relieved from the Amended Class Settlement Stipulation because they "no longer believe it can meet the goal of requiring more private medallion owners to continue to provide taxi service – accessible or otherwise." Mem. In Opp. at 15. Defendants downplay this request as "narrow relief" and contend they remain committed to "increased accessibility options and maintaining the requirements in the settlement stipulation . . . that 50% of all new taxi vehicles coming into service be wheelchair accessible." *Id*.

However, the obligation to create a taxi fleet in which at least 50% the fleet is wheelchair accessible ***was the main and central agreement*** in the Class Settlement Stipulation and the Amended Class Settlement Stipulation. Plaintiffs and Class members would not have entered into the Class Settlement Stipulation and the Amended Class Settlement Stipulation without this agreement to require that at least 50% of the yellow taxi medallions be wheelchair accessible. Weisman Decl. ¶ 6; Rappaport Decl. ¶ 5. Indeed, when the parties entered into the Class Settlement Stipulation in 2014, the parties' press release specifically emphasized in the heading that "[o]ne out of every two medallion taxicabs will be wheelchair accessible by 2020." Dkt. 300-4. The press release stated that the parties "announced today that they have reached a historic settlement agreement to phase-in wheelchair accessible yellow medallion taxicabs so that fifty percent (50%) will be accessible to men, women, and children who use wheelchairs and

scooters by 2020." *Id*. The agreement for 50% or more of the total number of yellow taxi medallions to be wheelchair accessible was the crux and most important aspect of the Class Settlement Stipulation. This Court agreed that it is "simply the right thing to do." Dkt. 300-1. Defendants cannot now characterize its request to be relieved from the central aspect of the Class Settlement Stipulation as mere "narrow relief."

Not surprisingly, Defendants fail to cite any legal authority that supports their request to be relieved from the Amended Class Settlement Stipulation. Defendants cite to *Rochester Laborers' Pension, Welfare-S.U.B., Annuity & Apprentice & Training Funds v. Massa Constr*., No. 07-cv-6171-CJS, 2013 WL 1681777 (W.D.N.Y. Apr. 17, 2013) to support their argument that they should be relieved from the settlement stipulation due to "circumstances beyond the control of the parties." Mem. In Opp. at 14. However, in *Rochester Laborers' Pension*, the court found that the defense of legal impossibility was *inapplicable* and, like here, that defendants "have presented no evidence or law to support their position that . . . renders performance of a contract impossible." *Id*. at *5. Simply, *Rochester Laborers' Pension* supports Plaintiffs here.

Defendants also cite *Central Valley Concrete Corp. v. Montgomery Ward & Co*., 34 A.D.2d 860 (3d Dep't 1970), which is similarly unavailing. In *Central Valley*, plaintiffs entered into a stipulation agreeing to discontinue a separate action against defendant if defendant's subcontractor failed to recover against defendant. The appellate court affirmed the special term's denial of summary judgment since the stipulation "did not contemplate a dismissal of the action without a determination on the merits" and when there was some "ambiguity as to the exact meaning and intent of the stipulation." *Id*. at 861. Here, the Class Settlement Stipulation and the Amended Class Settlement Stipulation did not contemplate relieving Defendants of their

obligation due to changes in the taxi industry. Nor are there any ambiguities as to the meaning and intent of the Class Settlement Stipulation and the Amended Class Settlement Stipulation.

While it is unclear as to which legal basis Defendants are relying upon to be relieved from a court-ordered Class Settlement Stipulation and Amended Class Settlement Stipulation, to the extent the Court may consider Rule 60(b)(6), Defendants still cannot meet their burden under that rule. Rule 60(b) provides, in relevant part, that:

> "On motion and just terms, the court may relieve a party or its legal representative from a final judgment, order, or proceeding for the following reasons: (1) mistake, inadvertence, surprise, or excusable neglect; (2) newly discovered evidence that, with reasonable diligence, could not have been discovered in time to move for a new trial under 59(b); (3) fraud, misrepresentation, or misconduct by an opposing party; (4) the judgment is void; (5) the judgment has been satisfied, released or discharged; it is based on an earlier judgment that has been reversed or vacated, or applying it prospectively is no longer equitable; or (6) any other reason that justifies relief."

However, "[t]he broad power granted by Rule 60(b)(6) is not for the purpose of relieving a party from free, calculated and deliberate choices he has made." *In re AL & LP Realty Co*., 164 B.R. 231, 234 (Bankr. S.D.N.Y. 1994). While Defendants attempt to characterize the expansion of the FHV industry as an extraordinary circumstance, Defendants entered into the Amended Class Settlement Stipulation *on March 31, 2021,* when they were more than aware of the increase of FHVs and decrease of yellow taxi medallions in New York City due to the COVID-10 pandemic. In fact, Defendants admit that the same issues Defendants now contend make their performance under the Amended Class Settlement Stipulation impracticable existed when they were negotiating that agreement. *See* Dkt. 303, Goldberg-Cahn Decl., at ¶ 7 ("In the course of those discussions, it was reiterated that the impacts of the pandemic on taxi ridership, members of trips in taxis, and the medallion taxi industry overall, were not fully known."). "A failure to properly estimate the loss or gain from entering a settlement agreement is not an extraordinary

circumstance that justifies relief under Rule 60(b)(6)." *Bank of N.Y.*, 14 F.3d at 760. The parties "[e]ach bore the risks of litigation equally." *Id*. at 760.

Accordingly, the Court should find that Defendants have failed to meet their burden to be relieved from the Court-ordered Class Settlement Stipulation and the Amended Class Settlement Stipulation and deny Defendants' Cross-Motion for Partial Relief from the Amended Class Stipulation.

B. Defendants Fail to Demonstrate Impossibility

In response to Plaintiffs' Motion to Enforce and in support of their Cross-Motion for Partial Relief from the Amended Class Settlement Stipulation, Defendants invoke the doctrine of impossibility as a defense to their breach of contract. Defendants fail to demonstrate that the defense of impossibility applies here for the reasons set forth below.

1. Defendants' Impossibility Argument Fails as a Matter of Law, Because They Do Not Actually Argue That Achieving 50% Accessibility is Impossible

The impossibility defense to contract performance must be applied narrowly, "due in part to judicial recognition that the purpose of contract law is to allocate risks that might affect performance and that performance should be excused only in extreme circumstances." *Medallion Bank v. Greek Star Taxi Inc.*, 2023 N.Y. Slip Op. 33415, 2003 WL 6444605, at *7 (N.Y. Sup. Ct. Oct. 3, 2023) (quoting *Kel Kim Corp. v. Central Markets, Inc.*, 70 N.Y.2d 900, 902 (1987)). Impossibility is a defense to a breach of contract action "only when . . . performance [is rendered] *objectively impossible* . . . by an unanticipated event that could not have been foreseen or guarded against in the contract." *Kel Kim Corp*, 70 N.Y.2d at 902 (emphasis added); *see also Lantino v. Clay LLC,* 1:18-cv-12247 (SDA), 2020 WL 2239957, at *3 (S.D.N.Y. May 8, 2020) ("financial difficulties arising out of the COVID-19 pandemic" does not excuse performance under pre-COVID settlement agreement) (citing *Kel Kim,* 70 N.Y.2d at 902); *407*

E. 61st Garage, Inc. v. Savoy Fifth Ave. Corp., 23 N.Y.2d 275, 281 (1968) ("[T]he excuse of impossibility of performance is limited to the destruction of the means of performance by an act of God, vis major, or by law."). "[W]here impossibility or difficulty of performance is occasioned only by financial difficulty or economic hardship, even to the extent of insolvency or bankruptcy, performance of a contract is not excused." *Siemens Energy, Inc. v. Petroleos de Venezuela, S.A.*, 82 F.4th 144, 153-54 (2d Cir. 2023) (citing *407 E. 61st Garage, Inc. v. Savoy Fifth Ave. Corp.*, 23 N.Y.2d 275, 281-82 (1968)).

Thus, when a party to a contract makes "a promise, that party must perform or respond in damages for its failure, even when unforeseen circumstances make performance burdensome." *Kel Kim,* 70 N.Y.2d at 902; *Valenti v. Going Grain, Inc.*, 159 A.D.3d 645, 645 (1st Dep't 2018) (performance not excused based on financial difficulty or economic hardship); *Siemens Energy, Inc.*, 82 F. 4th at 154 (affirming district court's finding that defendant failed to demonstrate that "it took virtually every action within its power to perform its duties under the contract" and that performance "was objectively impossible."); *Urban Archaeology Ltd. v. 207 E. 57th Street LLC*, 68 A.D.3d 562 (1st Dep't 2009) (impossibility occasioned by financial hardship (due to downturn in economy) does not excuse performance of a contract).

While Defendants argue that they have been unable to abide by their obligation to make at least 50% of the yellow taxis accessible, they do not, and cannot, argue that it is objectively impossible to do so. To the contrary, in their January 19, 2024 letter to Class Counsel, counsel for Defendants acknowledge that it is possible to reach the 50% accessibility requirement, but Defendants have decided not to perform. Dkt. 300-10 at 3 ("[R]ather than negotiating an extension of time for Defendants to come into compliance with ***a requirement that no longer appears to serve the purpose for which it was intended*** — which ***may or may not be achieved***

... Defendants request a meet and confer to discuss their anticipated motion to be relieved from the Settlement Agreement and Amended Agreement.") (emphasis added). Defendants also argue in their Opposition that they "***no longer believe*** it can meet the goal of requiring more private medallion owners to continue to provide taxi service – accessible or otherwise." Mem. In Opp. at 15 (emphasis added). These are far from statements of impossibility.

In addition, Defendants could have and still can take numerous steps to come into compliance. For example, they could have passed legislation to accelerate the conversion to wheelchair accessible vehicles. Indeed, Defendants agreed to make amendments to the TLC Rules to accomplish their obligation to meet the 50% accessibility rate. In the Amended Class Settlement Stipulation, Section III paragraph 3 explicitly states that "[t]o the extent amendments to the TLC Rules are required or deemed useful to accomplish either of these obligations, Defendants will act promptly as possible to propose such amendments for consideration by the TLC Commissioners." Dkt. 300-003. Defendants have not made any proposals for amendments to the TLC rules, in violation of the Amended Class Settlement Stipulation. There simply is no reason why Defendants could not have amended the TLC Rules to accelerate the conversion of wheelchair accessible vehicles. *See Siemens Energy, Inc.*, 82 F.4th at 154 ("To establish the defense of impossibility … [defendant] must therefore show 'that it took virtually every action within its power to perform its duties under the contract,' and that, despite those efforts, performance was 'objectively impossible.'"). Defendants also could have limited the number of FHVs which would make yellow taxis more attractive to drive, or they could have imposed the 50% accessibility requirements on FHV vehicles.

Notably, courts have rejected arguments similar to those raised by Defendants. In *Yancey v. LH Hosp. LLC*, No. 16 CIV. 1855, 2019 WL 1274731 (S.D.N.Y. Mar. 20, 2019), the Court

rejected defendants' argument that installing an ADA-accessible ramp pursuant to a consent stipulation was impossible because it would be difficult and costly. The Court held that defendants "were at liberty to bargain so as to impose, in the Stipulation, cost limitations on any remedial measures. Having chosen not to insist on a term making the remedial obligation contingent on cost, defendants are now bound by the contract into which they entered and which they asked the Court to approve." *Id.* at *5.

Similarly, here, Defendants could have sought to include provisions that relieved them from performance in the event of a downturn in demand for taxi medallions (setting aside for the moment that Defendants are themselves the cause of any such downturn, as discussed below). In that case, Plaintiffs might have sought a greater accessibility percentage, an expedited compliance timeline, some other *quid pro quo*, or opted not to settle at all. If the case had proceeded, the merits of various remedies would have been probed. These revisionist "what ifs" are precisely why revisiting settlement terms ten years later should not be permitted. Defendants chose to settle based on the information they had at that time. They must be held to that election.

In *35 E. 75th Street Corp. v. Christian Louboutin L.L.C.*, No. 154883/2020, 2020 WL 7315470 (N.Y. Sup. Ct. Dec. 9, 2020), defendant sought release from its rent obligations under the frustration of purpose and impossibility doctrines, contending that when it signed its lease in 2013 "no one could have predicted there would be an infectious disease that would shut down the vast majority of businesses." *Id.* at *1. The court rejected defendant's arguments and granted plaintiff's motion for summary judgment. With regard to defendant's frustration of purpose argument, the court stated the following:

> [M]arket changes happen all the time. Sometimes businesses become more desirable (such as the stores near the newly-completed Second Avenue subway stops) and other times less so (such as the value of taxi medallions with the rise of ride-share apps). But

> unforeseen economic forces, even the horrendous effects of a deadly virus, do not automatically permit the Court to simply rip up a contract signed between two sophisticated parties.

Id. at *2.

With regard to the impossibility defense, the court held that "the subject matter of the contract – the physical location of the retail store – was still intact and defendant was permitted to sell its products. The issue is that it cannot sell enough to pay the rent. That does not implicate the impossibility doctrine." *Id.* at *3.

Here, yellow taxis still exist and complete many trips every day. While market changes do happen and do not substantiate a claim of impossibility, Defendants here are on even weaker ground having precipitated the market changes they rest their impossibility claim upon, as discussed in Section B.3 below.

2. Defendants' Impossibility Argument Fails as a Matter of Fact

Defendants' argument appears to be that they "can only reach the 50% accessibility requirement if individuals or corporate entities want to continue to operate their medallions to provide taxi service." Mem. In Opp. at 12. One might infer from this statement that *no one* wants to operate their medallions to provide taxi service. But Defendants' own assertions elsewhere in their brief demonstrate that this is far from the case.

While Defendants claim that yellow taxis are a "declining market where demand is at a record low," Mem. In Opp. at 13, the immediately preceding paragraph asserts that while 7,364 medallions were in storage in April 2020 during the pandemic, "there are currently 3,828 . . . medallions in storage," implying that the number of medallions in storage is decreasing.

Moreover, during the parties' August 23, 2023 meet and confer, Defendants presented the following figures for number of taxis completing at least one trip in the month:

• May 2013: 13,334

- May 2019: 11,689
- May 2020: 2,609
- May 2023: 8,317

Dkt. 303-1 at 3. The trend of the data presented by Defendants clearly indicates that yellow taxis are rebounding from lows during COVID-19 and approaching pre-COVID 2019 levels. This data suggests that yellow taxis were operating at 62% of May 2013 levels and 71% of May 2019 levels in May 2023, at the tail end of a global pandemic. At bottom, while Defendants' data may imply that yellow taxis are doing less business than they have at points in history, it also shows that they are not only very much still in business, but on the rise.

3. Defendants' Claim of Impossibility is Not Made in Good Faith Because Defendants Caused the Problems About Which They Now Complain

"Volitional unwillingness, as distinguished from good faith inability, to meet contractual obligations furnishes neither a ground for cancellation of the contract nor a defense against its specific performance." *Meisels v. 1295 Union Equities Corp.*, 761 N.Y.S.2d 48, 48 (2003). The reality here is that everything now known to Defendants regarding the effects of the FHV industry and COVID-19 on yellow taxis was known to them when they executed the Amended Class Settlement Stipulation on April 1, 2021. One thing they did not know at that time is that conditions for yellow taxis would improve, with 8,317 yellow taxis completing at least one trip per month by May 2023 according to Defendants, nearly 71% of pre-pandemic levels. Dkt. 303-1 at 3. Defendants cannot now claim in good faith that the effects of the FHV industry and COVID-19 render performance impossible when they did not do so three years ago at the height of the pandemic.

The same is true for Defendants' claim that the state of the yellow taxi industry is so poor that it is impossible for them to comply. If Defendants were not prepared to declare performance

of their obligations impossible in April 2021, they cannot now do so in good faith when conditions in the yellow taxi industry have remained steady by some of Defendants' metrics and improved by others. Defendants claim that recent data shows taxi trips have remained "quite static." Mem. In Opp. at 11-12. Not "dropped precipitously to near-zero" – quite static. This does not evince "the destruction of the subject matter of the contract or the means of performance [that] makes performance objectively impossible." *Kel Kim*, 70 N.Y.2d at 902.

Finally, and perhaps most significantly, even if the data showed that yellow taxis had completely disappeared in the wake of the rise of FHVs, that outcome would have been foreseeable to at least one party: the TLC. That is because the TLC is responsible for issuing licenses to FHV drivers. *See* Hahn Decl. Ex. 2 ("All New York City drivers must have a TLC Driver's License issued by the Taxi and Limousine Commission (TLC)."); *see also* Hahn Decl. Ex. 3 ("New York City drivers using Uber's Driver app are required to have a TLC Driver License and an account to drive with Uber in NYC."). The TLC is, and has always been, in a position to limit issuance of licenses to FHV drivers or pursue countless other solutions that would have avoided Defendants' so-called "impossibility." The TLC is not a passive victim subject to the unstoppable rise of Uber and Lyft. They ushered it in, licensed their drivers, and undoubtedly received any associated fees without protest. Defendants cannot in good faith claim impossibility based on conditions ***they themselves have created***.

Defendants' volitional unwillingness to perform their obligations, as opposed to a good faith inability, is also apparent from their own words. In their January 19, 2024 letter to Class Counsel, counsel for Defendants stated:

> [R]ather than negotiating an extension of time for Defendants to come into compliance with ***a requirement that no longer appears to serve the purpose for which it was intended*** — which ***may or may not be achieved*** considering the overall decline in the number

> of taxi medallions in operation — in accordance with Section 7.1.2. of the Settlement Agreement, Defendants request a meet and confer to discuss their anticipated motion to be relieved from the Settlement Agreement and Amended Agreement.

Dkt. 300-10 at 3 (emphasis added). The truth is, Defendants have subjectively and unilaterally determined their performance under a court-ordered settlement agreement no longer serves their purpose, so they want out. This does not support a good faith argument of impossibility. Nor does Defendants' statement that performance "may or may not be achieved," which similarly indicates volitional unwillingness rather than good faith inability. In sum, Defendants' statements regarding medallion issuance, storage, and industry changes do not support a coherent and definitive case of objective impossibility and exhibit why courts rarely credit this defense and favor the finality of contracts between sophisticated parties.

Court-ordered settlement agreements are to be rarely set aside in the absence of fraud, collusion, mistake, or such other factors as would undo a contract, none of which exist here. *See Heimuller v. Amoco Oil Co.*, 459 N.Y.S.2d 868, 871 (1983). The defense of impossibility is to be applied narrowly and only in extreme circumstances not present here. Defendants' attempt to demonstrate that their ability to perform their contractual obligations is impossible falls far short of the high bar set for this defense to a breach of contract claim for the reasons set forth above, not the least of which is their ushering in the rise of FHVs that has purportedly rendered their performance impossible. Finally, their arguments for impossibility are not made in good faith.

Accordingly, the Court should reject Defendants' Cross-Motion to vacate their obligations due to impossibility and grant Plaintiff's Motion to Enforce the Parties' court-ordered Class Settlement Stipulation and the Amended Class Settlement Stipulation.

C. This Court Should Enforce The Amended Class Settlement Stipulation

1. Defendants' Argument That Plaintiffs Have Failed to Allege Harm Caused By Defendants' Breach is Frivolous

Defendants do not dispute that they have breached the explicit terms of the Amended Class Settlement Agreement. Defendants' only response to the Plaintiffs' Motion to Enforce (other than Defendants Cross-Motion to be relieved from their contractual obligations) is to argue that Plaintiffs fail to demonstrate harm caused by Defendants' breach of the Court-ordered Settlement Agreement. Defendants' argument that Plaintiffs and the Class are not harmed by Defendants' failure to make at least 50% of the yellow medallion taxis wheelchair accessible is meritless for at least five reasons.

First, in entering into the Class Settlement Stipulation and Amended Class Settlement Stipulation, Plaintiffs and the Class Members compromised and surrendered their rights in the lawsuit. *See, e.g.,* Dkt. 234 at ¶ 4 (wherein the Court noted that the settlement avoided additional costs, delay, and unknowns for both sides, while resolving the matter in a "just and fair way for all Parties."). Plaintiffs and the Class Members could have continued to pursue 100% wheelchair accessibility for the yellow taxi fleet. However, in reliance on Defendants' commitment to honoring their obligations, Plaintiffs accepted a 50% accessibility rate in the interest of settling this important civil rights dispute. Weisman Decl. ¶ 6; Rappaport Decl. ¶ 5; Ryan Decl. ¶ 7. Plaintiffs' forfeiture of the right to seek 100% accessibility satisfies the damage element of the breach of contract claim. *See, e.g., Kokkonen v. Guardian Life Ins. Co. of Am.,* 511 U.S. 375, 381 (1994) (finding that plaintiff's action to enforce a settlement agreement "involves a claim for breach of a contract, part of the consideration for which was dismissal of an earlier federal suit."); *see also Mefer S.A.R.L. of Paris, France v. Naviagaro Maritime Corp.*, 533 F. Supp. 337,

347 (S.D.N.Y. 1982) (holding that damages recoverable for breach of a settlement agreement consist of the foreseeable losses incurred as a consequence of the breach).

Second, Plaintiffs and the Class and all residents and visitors to New York City who use wheelchairs are harmed by the fact that, as a result of Defendants' breach of their obligation, 50% of the yellow taxis, or every other yellow taxi, is not accessible. Weisman Decl. ¶ 8; Rappaport Decl. ¶ 22. 30% or 40% is not 50%. The Court must presume harm by Defendants' breach alone. *See Merrill Lynch & Co., Inc. v. Allegheny Energy, Inc.,* 500 F.3d 171, 185 (2d Cir. 2007) ("A party injured by breach of contract is entitled to be placed in the position it would have occupied had the contract been fulfilled according to its terms."). To the extent Defendants argue that they have substantially performed, "the doctrine of substantial performance has no application to this dispute, where the [agreement] is free of all ambiguity in setting the deadline that plaintiff concededly did not honor." *Oppenheimer & Co. v. Oppenheim, Appel, Dixon & Co*., 86 N.Y.2d 685, 689, 636 N.Y.S.2d 734, 737 (1995).

Third, this is a civil rights lawsuit brought under the Americans with Disabilities Act of 1990, 42 U.S.C. § 12131 *et seq.* The fact that people with disabilities now have less access to yellow taxis than what the parties agreed upon and the Court ordered not only constitutes prima facie harm, but irreparable harm should be presumed. Courts presume that a violation of a civil rights statute is an irreparable harm. *See Silver Sage Partners, Ltd. v. City of Desert Hot Springs,* 251 F.3d 814, 827 (9th Cir. 2001) ("[W]here a defendant has violated a civil rights statute, we will presume that the plaintiff has suffered irreparable injury from the fact of the defendant's violation."); *see also Gresham v. Windrush Partners, Ltd.,* 730 F.2d 1417, 1423 (11th Cir. 1984) ("[I]rreparable injury may be presumed from the fact of discrimination and violations of fair housing statutes."); *Huntington Comm., Inc. v. Town of Huntington,* 316 F.3d

357, 365, n. 4 (2d Cir.2003) ("At least one court of appeals has held that irreparable harm will be presumed from a showing of likely success on the merits under the FHA.") (internal citations omitted). *See also Hounddog Prods., L.L.C. v. Empire Film Grp., Inc.,* 826 F. Supp. 2d 619, 632 (S.D.N.Y. 2011) ("Harm might be irremediable, or irreparable, for many reasons, including that a loss is difficult to replace or difficult to measure, or that it is a loss that one should not be expected to suffer.").

Fourth, as set forth in detail in the Declarations of Plaintiffs, the unavailability of wheelchair accessible yellow taxis causes harm to members of the disability community. Defendants' failure to abide by their obligation to make at least every other yellow taxi accessible (by reaching the minimum agreed to 50% wheelchair accessibility rate) means that there are fewer accessible yellow taxis on the road. As a result, there are fewer chances for people with mobility disabilities to be able to hail a yellow taxi. Ryan Decl. ¶¶ 9,10, 18; Weisman Decl. ¶ 8. These problems are compounded when the accessible yellow taxis are taken, such as when it is raining or there is a popular event somewhere in town. Weisman Decl. ¶ 11; Rappaport Decl. ¶ 9. In addition, now that people can use Uber to call for a yellow taxi, there will be even fewer taxis available to hail on the street.

Finally, the harm referenced in Plaintiffs' moving papers is the same harm that Plaintiffs have suffered by Defendants' breach of the Amended Class Settlement Stipulation. While Defendants contend Plaintiffs cited to "five very dated declarations that were filed in this action back in 2011 and 2014," the harm discussed then is still relevant and applicable here. Less accessible taxis (i.e., less than 50% of the total number of yellow taxis) means that it is more likely that a person with a mobility disability will be unable to hail one, which results in the same harm that Plaintiffs and Class members suffered when they commenced this action.

Accordingly, this Court should reject Defendants' argument that Plaintiffs failed to demonstrate harm and grant Plaintiffs' Motion to Enforce the Court-ordered Settlement Agreement.

2. Defendants' Arguments About FHVs Fail

Defendants attempt to excuse their breach and argue that Plaintiffs have not been harmed by Defendants' failure to make at least 50% of the yellow taxis accessible because people with disabilities could use an app to request an FHV. However, Defendants' arguments about the FHV industry are a red herring. The Class Settlement Stipulation and the Amended Class Settlement Stipulation regarded the unique, iconic yellow taxis. The availability of FHVs are irrelevant, and do not absolve Defendants of their obligation to meet the 50% wheelchair accessibility requirement set forth in the Settlement Stipulations.

FHVs are also distinct and different from yellow taxis. FHVs are not available for street hail, which is a critical difference between FHVs and yellow taxis that can be hailed on the street without a smartphone. The number of FHVs has no impact whatsoever on the number of accessible yellow taxis on the street that a person with a disability can hail without a smartphone.

Defendants' arguments also improperly (and in an example of Defendants' ableist arguments) assume that everyone has access to smartphones and is able to manipulate rideshare apps. Many people with disabilities cannot afford smartphones. Ryan Decl., ¶ 19. Additionally, some disabilities impair an individual's dexterity and ability to use a smartphone or rideshare app. *Id*.; Rappaport Decl., ¶ 13. Other individuals with disabilities might find smartphone apps confusing or are otherwise unable to learn to use them. Ryan Decl., ¶ 19.

In addition, wheelchair accessible FHVs are not as readily available for Plaintiffs as yellow taxis at New York City's airports or high-volume terminals such as Penn Station. Ryan Decl., ¶¶ 15, 16. Indeed, yellow taxis are available curbside at airports and train stations, but

getting to designated areas for FHV pickups often entails a longer distance and more chaotic and potentially dangerous pickup among other traffic. Ryan Decl., ¶ 15. Because of these challenges for the disability community, it is vitally important that these high-trafficked venues have available the volume of Authorized Medallion yellow taxis mandated under the Class Settlement Stipulation and Amended Class Settlement Stipulation.

There is also an economic impediment to Plaintiffs' use of transportation apps such as Uber and Lyft. The rideshare app base prices are generally more expensive than the base price for a yellow taxi. Ryan Decl. ¶ 20; Rappaport Decl., ¶ 12. Moreover, yellow taxis do not have surcharges, whereas rideshare apps do. Ryan Decl. ¶ 20; Rappaport Decl., ¶ 12. The congestion pricing surcharge is also lower for yellow taxis than it is for FHVs. Ryan Decl. ¶ 20. For example, because a yellow taxi was unavailable, one wheelchair user was forced to pay $128 for an Uber trip from the Museum of Modern Art in Manhattan to her home in Bay Ridge, Brooklyn. *Id*. This type of FHV pricing becomes cost prohibitive and can endanger members of the disability community who rely on traditional yellow taxis for a more affordable method of getting home and to other important locations.

In sum, Defendants' arguments about the FHV industry are a red herring and, in any event, FHVs are not a substitute for yellow taxis.

3. Plaintiffs Have Sufficiently Demonstrated the Need for Specific Performance

Contrary to Defendants' argument, Plaintiffs have sufficiently demonstrated the need for Defendants' specific performance as a remedy for their breach of contract. Specific performance is an equitable remedy that, instead of awarding money damages to the prevailing party, requires the breaching party to perform under the contract. *See BT Triple Crown Merger Co., Inc. v. Citigroup Global Mkts., Inc.*, 19 Misc. 3d 1129(A), 2008 WL 1970900, at *8 (N.Y. Sup. Ct. May 7, 2008). This is particularly the case where money damages are an inappropriate remedy for a

party's breach of contract. *See BT Triple Crown Merger Co., Inc.*, 2008 WL 1970900, at *8 ("[s]pecific performance is appropriate . . . when the subject matter of the particular contract is unique and has no established market value.").

Under New York law, "[s]pecific performance of a contract 'requires proof that (1) a valid contract exists between the parties, (2) the plaintiff has substantially performed its part of the contract, and (3) plaintiff and defendant are each able to continue performing their parts of the agreement." *Blue Citi, LLC v. 5Barz Int'l Inc.*, 16-CV-9027, 2017 WL 11568966, at *6 (S.D.N.Y. Aug. 28, 2017) (quoting *Nemer Jeep-Eagle, Inc. v. Jeep Eagle Sales Corp.*, 992 F.2d 430, 433 (2d Cir. 1993)). Specific performance under New York law also requires a party to show "equitable factors in its favor, for example, the lack of an adequate remedy at law." *Nemer Jeep-Eagle, Inc.*, 992 F.2d at 433. "A party seeking specific performance need not prove that legal remedies are nonexistent, but rather that remedies at law are incomplete and inadequate to accomplish substantial justice." *Blue Citi, LLC*, 2017 WL 11568966, at *6.

Here, the first two factors of the specific performance/damages analysis are easily satisfied, because Defendants admit that the Class Settlement Stipulation and the Amended Class Settlement Stipulation are valid and binding contracts. There is also no dispute that Plaintiffs have performed their portion of the Class Settlement Stipulation and Amended Class Settlement Stipulation by releasing their claims. To the extent that Defendants have failed to meet their contractual obligation to make at least 50% of the yellow taxis wheelchair accessible, Plaintiffs and the Class lack an adequate remedy at law. No amount of money damages awarded can cure Defendants' failure to meet their 50% accessibility requirement. The value of being able to hail and use an accessible yellow taxi cannot be reduced to a common economic measure. Accordingly, specific performance is appropriate.

III. CONCLUSION

For the foregoing reasons, Plaintiffs respectfully request that the Court issue an order: (i) denying Defendants' cross-motion for relief from the Amended Class Settlement Stipulation; (ii) enforcing and directing Defendants to specifically perform under the Class Settlement Stipulation and the Amended Class Settlement Stipulation; (iii) granting Plaintiffs attorneys' fees and costs in bringing this motion; and (iv) granting such other and further relief as the Court deems just and proper.

Dated: New York, New York
March 20, 2024

Respectfully submitted,

SHEPPARD, MULLIN, RICHTER & HAMPTON LLP

By: /s/ Daniel L. Brown
Daniel L. Brown
Shin Hahn
Paul Garrity
Damani C. Sims
Christopher Bosch
30 Rockefeller Plaza
New York, New York 10112
Telephone: (212) 634-3095
dbrown@sheppardmullin.com
shahn@sheppardmullin.com
dsims@sheppardmullin.com
cbosch@sheppardmullin.com
pgarrity@sheppardmullin.com

DISABILITY RIGHTS ADVOCATES

By: /s/ Stuart Seaborn
Stuart Seaborn
2001 Center Street, 3rd Floor
Berkeley, California 94704
Telephone: (510) 665-8644
sseaborn@dralegal.org

Chloe Holzman
655 Third Avenue, 14th Floor
New York, New York 10017
Telephone: (212) 644-8644
cholzman@dralegal.org

Attorneys for Plaintiffs