

Brent E. Pelton, Esq.
PELTON & ASSOCIATES, PC
111 Broadway, Suite 901
New York, New York 10006
(Phone) (212) 385-9700; (Fax)(212) 385-0800
pelton@peltonlaw.com
Attorney for Plaintiff

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF QUEENS

**SAMIR TALBI, individually and on behalf of all others
similarly situated,**

Plaintiffs,

-against-

**BOULEVARD TAXI LEASING, INC., MIKE
MELLIS BROKERAGE, INC., MICHAEL MELLIS,
SOTIRAKIS CORITSIDIS and JOHN DOES #1-10,**

Defendants.

**CLASS ACTION
COMPLAINT**

1577-11

Plaintiff, through his attorney, complaining of Defendants allege as follows:

NATURE OF THE ACTION

1. Plaintiff Samir Talbi ("Talbi" or the "Plaintiff") on behalf of himself and all other persons similarly situated in the above entitled action seek to recover from Boulevard Taxi Leasing, Inc. ("Boulevard Taxi"), Mike Mellis Brokerage, Inc. ("Mellis Brokerage" and together with Boulevard Taxi, the "Corporate Defendants"), Michael Mellis ("Mellis"), Sotirakis Coritsidis ("Coritsidis") and JOHN DOES #1-10 (collectively with Mellis and Coritsidis, the "Individual Defendants" and collectively with the Corporate Defendants, the "Defendants") damages for the violation of, inter alia, New York City Taxi and Limousine Commission ("TLC") rules and local

laws, that they are entitled to under common law theories of (1) breach of contract, (2) unjust enrichment and (3) quantum meruit.

PARTIES

2. Plaintiff Talbi was, at all relevant times, an adult individual residing in Astoria, Queens County, New York.

3. Upon information and belief, Defendant Boulevard Taxi Leasing, Inc. is a New York corporation operating from a headquarters at 3256 49th Street, Astoria, New York 11103-1403.

4. Upon information and belief, Defendant Mike Mellis Brokerage, Inc. is a New York corporation operating from a headquarters at 3256 49th Street, Astoria, New York 11103-1403.

5. Upon information and belief, Defendant Michael Mellis is an officer, director and/or managing agent of the Corporate Defendants whose address is unknown at this time, and he participated in the day-to-day operations of the Corporate Defendants and acted intentionally and maliciously, and he is jointly and severally liable with the Corporate Defendants.

6. Upon information and belief, Defendant Sotirakis Coritsidis is an officer, director and/or managing agent of the Corporate Defendants, whose address is unknown at this time, and he participated in the day-to-day operations of the Corporate Defendants and acted intentionally and maliciously, and he is jointly and severally liable with the Corporate Defendants.

7. Upon information and belief, John Does #1-10 represent the officers, directors and/or managing agents of the Corporate Defendants, whose identities are unknown at this time and who participated in the day-to-day operations of the Corporate Defendants and acted intentionally and maliciously and are jointly and severally liable with the Corporate Defendants.

JURISDICTION AND VENUE

8. This Court has personal jurisdiction over Defendant Boulevard Taxi pursuant to CPLR Sec. 301 because the Defendant is domiciled within the state.

9. Venue is proper in this county pursuant to CPLR Sec. 503 because Plaintiff resides in this county and some or all of the acts giving rise to the claims occurred in this county.

CLASS ALLEGATIONS

10. Plaintiff sues on this own behalf and on behalf of a class of persons under NY CPLR Sec. 901, et seq.

11. Plaintiff brings his common law claims on behalf of all persons who leased taxicabs from Defendants at any time from January 20, 2005 to the entry of judgment in this case (the "NY Class Period") who were charged in excess of the TLC standard lease caps, in violation of, inter alia, the TLC rules and local laws (the "NY Class").

12. The persons in the NY Class identified above are so numerous that joinder of all members is impracticable. Although the precise number of such persons is unknown, and the facts on which the calculation of that number are presently within the sole control of the Defendants, upon information and belief, there are in excess of one hundred twenty-five (125) members of the NY Class during the Class Period.

13. The claims of Plaintiff are typical of the claims of the NY Class.

14. Common issues of fact and law arising out of Defendants' overcharging for taxi leases to all NY Class members predominate over any individual issues.

15. A class action is superior to other available methods for the fair and efficient adjudication of the controversy—particularly in the context of the instant litigation where

individual plaintiffs lack the financial resources to vigorously prosecute a lawsuit in federal court against corporate defendants.

16. The claims of the Plaintiff are typical of those of the NY Class members because the Defendants have acted or refused to act on grounds generally applicable to all members of the Class, thereby making appropriate final injunctive relief or corresponding declaratory relief with respect to the class as a whole.

17. Plaintiff has committed himself to pursuing this action and has retained competent counsel experienced in employment law and class action litigation.

18. Plaintiff will fairly and adequately represent and protect the interests of the NY Class members. Plaintiff understands that, as class representative, he assumes a fiduciary responsibility to the NY Class members to represent their interests fairly and adequately, and that they must consider the interests of the NY Class members just as they would represent and consider their own interests, and that they may not favor their own interests over those of the NY Class members. Plaintiff recognizes that any resolution of a class action lawsuit, including any settlement or dismissal thereof, must be in the best interests of the NY Class members. Plaintiff understands that in order to provide adequate representation, he must remain informed of litigation developments and he understands that he may be called upon to testify in depositions and at trial.

19. Plaintiff has the same interests in this matter as all other members of the NY Class and Plaintiff's claims are typical of the NY Class.

20. There are questions of law and fact common to the NY Class which predominate over any questions solely affecting the individual members of the NY Class, including but not

limited to:

- a. whether the Defendants breached the implied at law provision of the executory contracts formed each time the Plaintiff and the NY Class members agreed to pay and paid lease fees to drive vehicles owned, managed or operated by the defendants by charging unlawful lease rates;
- b. whether the Defendants violated the TLC rules and local laws by overcharging Plaintiff and NY Class members for their lease fees, and by failing to reimburse them for being overcharged from January 19, 2005 through the present;
- c. whether the Defendants failed to reimburse Plaintiffs and members of the NY Class members for all business expenses;
- d. whether the Defendants required Plaintiff and the NY Class members to lease cars seven (7) days a week but refused to allow Plaintiff and the NY Class to pay the lower weekly lease rate;
- e. whether the Defendants overcharged by requiring the Plaintiff and the NY Class members to pay for days in which they did not work;
- f. whether the Defendants are liable for all damages claimed hereunder, including but not limited to compensatory, interest, costs and disbursements and attorneys' fees; and
- g. whether the Defendants should be enjoined from such violations of the TLC rules and local laws in the future.

STATEMENT OF THE FACTS

21. There are approximately 50,000 medallion taxicab drivers licensed through the TLC who compete for jobs as drivers of the approximately 13,000 medallion taxicabs in New York City. The nature of the work that taxicab drivers perform exempts these workers from the protections of the Fair Labor Standards Act ("FLSA") and other state wage and hour laws. Consequently, taxicab drivers frequently work very long hours for pay that can be less than half of the minimum wage and are not provided with benefits.

22. According to the Department of Labor, driving a taxicab is among the most dangerous jobs in the country. In a report issued in 2000, the agency stated a taxi driver was 60 times more likely than other U.S. workers to be killed on the job. The New York Committee on Occupational Safety and Health reports that taxi drivers face a level of on-the-job assaults second only to those directed at police and private security guards.

23. More than 90 percent of the drivers of New York City's medallion taxicabs are immigrants from South Asia, Africa, and the Caribbean. Most of these workers are new to the United States and many have been unaware of their rights and reluctant to speak up for themselves to improve their working conditions.

24. Throughout all times relevant herein, the Defendants herein have provided duly medallioned and licensed taxicabs for hire by shift to Plaintiff and the class he represents in return for a lease fee set by the TLC. The Corporate Defendant and other taxicab garages and brokerage companies enjoy a monopoly on lawful cab service and, as such, taxicabs must bear a medallion issued by the City of New York in controlled numbers. Plaintiff and the members of the NY Class must, therefore, pay the lease fee to the possessor of a medallion from the City as a condition of practicing their trade.

25. Defendants are engaged in the taxi driving industry in that they operate a fleet of approximately seventy (70) taxis in the greater New York City area.

26. Plaintiff is a taxi driver duly licensed by the TLC.

27. Plaintiff leased a taxicab from Defendants at their 49th Street Taxi Garage location from on or about 2005 until on or about November, 2010.

28. Prior to approximately 2008, Plaintiff leased a taxicab from Defendants on a weekly basis.¹ On or around 2008, at approximately the same time when Defendants upgraded their facilities and replaced their fleet of taxicabs with new vehicles, Defendants required Plaintiff and the class members to lease the taxicabs on a daily basis.

29. On or around 2008, Defendants required Plaintiff to lease the taxicab seven (7) days each week, without permitting Plaintiff to take a day off. Plaintiff was required to pay the daily lease rate to Defendants to lease the taxicab even on days when Plaintiff did not drive the taxicab.

30. Upon information and belief, Defendants similarly required members of the NY Class to lease taxicabs seven (7) days per week, notwithstanding the fact that members of the class would frequently not drive all seven days. Members of the class were also charged a daily lease rate for each of the seven (7) days, when they should have been charged the lower TLC-regulated weekly rate because Defendants required Plaintiff and the members of the class to lease the taxicabs even on days they were not driving.

31. Defendants also required Plaintiff and members of the NY Class to lease the taxicabs on holidays, such as Thanksgiving and Christmas, despite the fact that Plaintiff and members of the class did not drive on those days.

¹ The TLC rules set "lease caps" for the maximum amount a medallion can be leased to a driver on a daily and/or weekly basis.

32. Defendants sometimes charged plaintiff double the daily rate for not working on a holiday.

33. From on or about March 2009, Defendants charged plaintiff approximately \$116 for the night shift on Mondays, approximately \$121 for the night shift on Tuesdays, approximately \$130 for the night shift on Wednesdays, approximately \$138 for the night shift on Thursdays, approximately \$141 for the night shift on Fridays, approximately \$141 for the night shift on Saturdays and approximately \$107 for the night shift on Sundays, for a weekly total of \$894.² The standard lease cap set by the TLC during this time period is \$666 per week.³

34. Defendants intentionally overcharged Plaintiff a daily lease rate well in excess of the lease cap established by the TLC.

35. Defendants intentionally overcharged Plaintiff and the NY Class for the use of hybrid vehicles.

36. On or about February 2010, Defendants fired Plaintiff for a period of three months after Plaintiff requested that he pay the weekly rate because Defendants forced him to lease the car seven (7) days per week.

37. Upon information and belief, Defendants hung a sign up in the garage displaying the unlawfully high daily rates and, similarly overcharged their other taxicab lessees in violation of the TLC rules and local laws.

² TLC Rules §1-78 – *Limitations on Standard Lease Rates Charged to Drivers*, sets forth the Standard Lease Cap and additional charges that a medallion owner can charge to a driver for the lease of the medallion and taxicab. The Standard Lease Cap for a medallion and vehicle for one twelve-hour shift shall not exceed: \$115, for the night shift on Sunday, Monday and Tuesday; \$120, for the night shift on Wednesday; \$129, for the night shift on Thursday, Friday and Saturday.

³ TLC Rules §1-78 (2).

38. Defendants also charged Plaintiff and members of the NY Class for damage to taxicabs incurred on the job. Upon information and belief, Defendants maintained insurance for such vehicle damage yet charged the drivers for the damage.

39. Plaintiff was forced to pay \$500 for damage to a taxicab incurred after his boss, Defendant Michael Mellis, the owner of Boulevard Taxi Leasing, Inc., required Plaintiff to drive during a snowstorm.

40. Defendants maintained a practice of requiring their drivers, including Plaintiff and members of the NY Class, to tip the dispatchers in order to obtain a vehicle at the beginning of their shift, in violation of TLC regulations.

41. If Plaintiff and members of the NY Class did not tip the dispatcher, the dispatcher may not give a car to the driver.

**FIRST CAUSE OF ACTION
(Breach of Contract)**

42. Plaintiff, on behalf of himself and the members of the NY Class, repeats, realleges and incorporates by reference the foregoing allegations as if set forth fully and again herein.

43. Plaintiff and members of the NY Class formed a binding executory contractual agreement each shift they worked for Defendants in which they agreed to pay all lease fees in exchange for use during a specified period of the Defendants' properly licensed and maintained taxicabs. Said series of daily agreements has implied-by-law a provisions that each party to the agreement will comply with the law including, inter alia, charging only those lease fees which are lawfully allowed.

44. By charging lease fees in excess of those lawfully allowed by the TLC rules and regulations, Defendants have breached the implied-at-law provision that only lawful lease fees will be charged.

45. Defendants breached the agreement with Plaintiff and members of the NY Class by, among other things, charging more than the TLC maximum lease cap, charging drivers for days on which they did not drive the taxicabs, overcharging drivers for hybrid vehicles, allowing dispatchers to demand tips in order for the drivers to obtain a taxicab, charging for damage and repairs to the taxicabs, failing to provide a signed lease agreement to the drivers and failing to provide a detailed receipt for the lease of the taxicabs.

46. Plaintiffs are entitled to rescission of the unlawful portions of the executory agreements which were formed each time they drove taxicabs owned or controlled by the Defendants and restitution of that portion of the lease fee which was unlawfully collected, to wit, that daily amount in excess of the lease fees permitted by law at the time. Said amount, consisting of the difference between the maximum lease cap permitted by the TLC and the daily average charged is owed as damages in the form of restitution for each shift driven by each driver during the applicable statutory period.

**SECOND CAUSE OF ACTION
(Unjust Enrichment)**

47. Plaintiff, on behalf of himself and the members of the NY Class, repeats, realleges and incorporates by reference the foregoing allegations as if set forth fully and again herein.

48. As a taxi garage, Defendants are obligated to comply with the TLC rules and regulations governing taxi leasing in New York City. As such, Defendants are required to charge lease rates of not more than the maximum lease cap, as set by the TLC.

6. Defendants failed to comply with the TLC rules and regulations by charging Plaintiffs and the members of the NY Class more than the maximum lease cap.

7. As a result, Defendants have been unjustly enriched at the expense of Plaintiffs and the members of the Class, and Plaintiffs and the members of the NY Class are entitled to recover from Defendants their unpaid compensation, interest, reasonable attorneys' fees, and costs and disbursements of the action.

**THIRD CAUSE OF ACTION
(Quantum Meruit)**

8. Plaintiff, on behalf of himself and the members of the NY Class, repeats, realleges and incorporates by reference the foregoing allegations as if set forth fully and again herein.

9. Plaintiff and the members of the NY Class provided valuable labor to Defendants, and Defendants have failed to fully compensate Plaintiffs and the members of the NY Class for their labor due to the overcharging for the lease of the taxicabs.

10. As a result, Plaintiff and the members of the NY Class have been damaged, and are entitled to recover from defendants their unpaid compensation, interest, reasonable attorneys' fees and costs and disbursements of the action.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff on behalf of himself and the members of the NY Class, respectfully requests that this Court grant the following relief:

- (a) Certification of this action as a class action pursuant to NY CPLR Sec. 901, et seq. on behalf of the members of the NY Class and appointing Plaintiff and his counsel to represent the Class;
- (b) An award of monetary damages for all overcharges suffered by Plaintiff and the NY Class;
- (c) An award of prejudgment and post judgment interest;
- (d) An award of punitive damages to punish Defendants for their willful violation of the law;
- (e) An injunction against the Defendants and its officers, agents, successors, employees, representatives and any and all persons acting in concert with Defendants, as provided by law, from engaging in each of the unlawful practices, policies and patterns set forth herein;
- (f) An award of costs and expenses of this action together with reasonable attorneys' and expert fees; and
- (g) Such other and further relief as this Court deems just and proper.

DEMAND FOR TRIAL BY JURY

Plaintiff hereby demands a trial by jury on all questions of fact raised by the Complaint.

Dated: New York, New York
January 20, 2011

PELTON & ASSOCIATES PC

Brent E. Pelton

Brent E. Pelton (BP-1055)
Attorney for Plaintiff
111 Broadway, Suite 901
New York, New York 10006
(212) 385-9700
pelton@peltonlaw.com