

SUPREME COURT OF THE STATE OF NEW YORK
APPELLATE DIVISION, FIRST DEPARTMENT

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BLACK CAR ASSISTANCE CORPORATION	:
LIVERY ROUND TABLE, INC., DIAL 7 CAR &	:
LIMOUSINE SERVICE, INC., DIAL CAR, INC.,	:
ELITE LIMOUSINE PLUS, INC., FAST	:
OPERATING CORP. DBA CARMEL CAR AND	:
LIMOUSINE SERVICE, INTA-BORO ACRES,	:
INC., LOVE CORPORATE CAR INC., ROYAL	:
DISPATCH SERVICES, INC., VITAL	:
TRANSPORTATION, INC., ARTHUR HARRIS,	:
and ALEXANDER REYF,	:
	New York County
	:
Petitioners-Appellants,	:
	Index No. 100327/13
	:
For Judgment Pursuant to CPLR Article 78	:
	:
- against -	:
	:
THE CITY OF NEW YORK; MICHAEL R.	:
BLOOMBERG, in his official capacity as Mayor of	:
New York City; the NEW YORK CITY TAXI	:
AND LIMOUSINE COMMISSION, a charter-	:
mandated agency; and DAVID YASSKY, in his	:
official capacity as Chairman and Commissioner of	:
the New York City Taxi and Limousine	:
Commission,	:
	:
	:
Respondents-Respondents.	:
	X

AFFIDAVIT OF JAY BREGMAN
IN SUPPORT OF HAILO'S MOTION TO INTERVENE AND IN OPPOSITION
TO PETITIONERS' MOTION FOR A PRELIMINARY INJUNCTION

[illegible]

Jay Bregman, being duly sworn, deposes and says:

1. My name is Jay Bregman. I am the Chief Executive Officer and co-founder of Hailo.

2. Hailo is the largest e-hail application in the world. E-hail applications are like “taxi magnets”—they let you hail cabs with a tap on your smartphone. We started Hailo to address two fundamental inefficiencies in the taxi market: (1) drivers waste nearly half of their shifts without a passenger, desperately cruising for fares;¹ and (2) passengers stand on street corners unable to see that taxis are nearby, but out of their line of sight. Hailo is a matchmaker. It uses smartphone technology to overcome these problems, empowering passengers and drivers with more control over their lives and livelihoods.

3. Every four seconds, a licensed taxi driver somewhere in the world accepts a Hailo e-hail. Hailo solves the “line of sight” problem: no longer must a passenger wait on a corner while available cabs circulate just one avenue over, each searching for the other. With every match, Hailo chips away at the millions of dollars lost by drivers and hours wasted by passengers due to market inefficiency. In other words, Hailo is the natural extension and supplement to the arm flail, the doorman’s whistle, and lights outside hotels.

¹ According to the Taxi and Limousine Commission (“TLC”), New York City’s yellow taxi drivers spend upwards of 40 percent of their working shifts without a fare. (Kaplan Aff., Ex. A (Chhabra Aff. ¶ 10).)

4. Hailo was co-founded by two other entrepreneurs and three London taxi drivers. In less than eighteen months, since our London launch in November of 2011, Hailo's network has grown to over 30,000 drivers across ten cities—London, Dublin, Toronto, Chicago, Boston, Washington, D.C., Tokyo, Madrid, Barcelona, and New York City. Hailo has carried over five million passengers in London, Dublin, Toronto, Chicago, and Boston since our launch and we facilitate millions of dollars in transactions every week. In all cities in which it operates, Hailo works closely with municipal authorities to ensure that its e-hail app complies with all relevant laws and regulations.

5. Hailo works because we provide passengers with an additional quick, safe, and cost-effective transportation option, with an average of just two minutes from tap to taxi, while conferring on taxi drivers the ability to make 30 percent more per shift by connecting them to new passengers when they would otherwise have been searching for fares. Hailo's network provides them with opportunities for additional fares as well as free access to a range of tools designed by taxi drivers for taxi drivers. These tools, including real-time traffic and demand alerts, GPS navigation, and social networking functions, make their shifts more productive.

6. For classes of passengers that may be deterred from seeking cabs on street corners, Hailo offers notable benefits, enabling them to e-hail cabs from the safety of their homes or from inside a bar or restaurant late at night. Drivers report to us that women traveling alone account for a significant portion of all nighttime e-hails. They inform us that women appreciate the visibility of the driver's name and license plate number—provided by Hailo to ensure accountability—and that the ability to hail a cab from indoors reassures them that they will reach their destination safely.

7. Following the brief respite from legal uncertainty that attended Justice Huff's decision on April 23, 2013, I immediately flew from London to New York City to support the preparations for Hailo's long-awaited launch. To test our software in anticipation of our debut in New York City, Hailo began a closed, invitation-only Beta test of its e-hail app on April 26, 2013, with over 5,000 drivers and 8,500 invited passengers. So far, driver and passenger feedback has been overwhelmingly positive. For example, one passenger commented "I LOVE the service, I used it 3 times this weekend." Ex. A (Hailo Beta Passenger Experience).² Another said, "Love it!" (*Id.*) Yet another said, "Everything worked smoothly. I think Hailo will be a big success in NYC." (*Id.*) Still another said, "HAILO is awesome." (*Id.*) And, "Loved my 1st trip! On time, efficient and the driver was great. I'm sold." (*Id.*) Would-be passengers were so excited about the dawn of e-hail technology in New York City that they took to Twitter to request early access to Hailo's service. The public's demand for more transportation options was feverish, making the Beta one of the most talked about "trending" topics over the entire New York City Twitter network. A true and correct copy of Hailo Beta Passenger Experience is attached hereto as Exhibit A.

8. I was born in New York City and now reside here. I am excited to bring the benefits and convenience of Hailo's proven technology to thousands of drivers and millions of passengers in the city I call home. New Yorkers don't like to miss out. I hope that, despite the wait, the successful adoption of e-hailing here will restore New York City's reputation for fostering innovation in its world-class transportation system.

² Exhibits to this Affidavit of Jay Bregman in Support of Hailo's Motion to Intervene and in Opposition to Petitioners' Motion for a Preliminary Injunction are referred to as "Ex. ____." True and correct copies of these exhibits are attached hereto.

We seek leave to join this action because we believe that e-hailing services like Hailo belong in New York City, and Petitioners unfairly seek to deny passengers and drivers access to this beneficial new technology currently used in so many other cities worldwide. As a New Yorker, I find the prospect of the City's public and drivers being denied access to e-hailing an unfathomable disservice to the people of New York.

Petitioners' Inaccurate Claims About E-Hailing

9. I have read the Affirmation of Randy Mastro in Support of Petitioners-Appellants' Motion for Interim Stay and Preliminary Injunction Pending a Decision on the Merits and for Preference, dated May 1, 2013. I wish to briefly respond to the numerous factual errors and distortions therein.

10. Competition with black cars and livery services. Petitioners' primary claim of injury is that e-hailing will be so popular with passengers that it will lead to the financial ruin of the black car and livery service industry. Petitioners predict a "seismic shift," with "25 to 45 percent of such fares shifting from black and livery cars to yellow taxis." (Kaplan Aff., Ex. S (Mastro Aff. I) ¶ 10.) The supposed harm to the black cars is not alleged to arise from any foul play on Hailo's part, but rather from fair and open competition fostered by the new technology. E-hail apps elevate all. It appears that the "injury" of which Petitioners complain—which, as noted below, is not borne out by Hailo's experience in other markets—is alleged to arise precisely because of the tremendous public benefits of Hailo's e-hail app.

11. Petitioners' own expert admits that many of the public benefits created by Hailo will come at no loss to private hire services. (Kaplan Aff., Ex. Z (Miller Aff.) at B.4 (noting that e-hail apps will generate some "truly new fares," or "incremental fares," from passengers who "in the absence of the new technology, use public transit or walk").)

Their allegations of harm are wholly speculative, and what Petitioners are really asking the Court to do is completely wipe out our business—with all its attendant benefits to drivers, passengers, and the general public—even though many of our passengers simply will not patronize Petitioners in our absence.

12. In the end, Petitioners' theories of doom and gloom are disproved by the experience of London, where e-hailing is enormously popular and a majority of all taxis use an e-hail app. Petitioners' own expert agrees that London is a "large city with the regulatory system closest to New York." (*Id.* at 3.) Indeed, London is a global super-city with 23,000 licensed cab drivers and a regulatory structure similar in scale and sophistication to New York's. However, rather than cite any economic evidence from London, Dr. Miller offers a single quote to the effect that Hailo's users "enjoy seeing Addison Lee taking a kicking." (*Id.*) But the reality is that Addison Lee—the largest "minicab" company in London (minicabs being the equivalent of livery cars in New York)—is not taking a "kicking." It remains London's largest livery and black car firm and transports 10 million passengers per year for an estimated valuation of £300 million. *See* Ex. B (Caroline Davies, *Addison Lee Sells Majority Stake to US Firm Carlyle Group*, *The Guardian*, Apr. 19, 2013). Further undermining Petitioners' unfounded assertions about the harms wrought by e-hailing is the managing director of Addison Lee's admission less than two weeks ago that "[t]here's no evidence to suggest [Hailo] has taken any of our work away," in spite of the fact that half of all London cab drivers are members of Hailo. *See* Ex. C (Rosamund Urwin, *Addison Lee's new petrolhead boss and his battle for our roads*, *The Standard*, May 3, 2013). And when Addison Lee recently sold a stake in its enterprise to the Carlyle Group, the private equity fund confirmed its positive assessment of Addison Lee's future, issuing a press release that lauded Addison

Lee for being “a strong business and brand with great potential.” *See* Ex. D (Press Release, The Carlyle Group, The Carlyle Group Invests in Addison Lee, the private hire and transport services provider (Apr. 19, 2013)).

13. Service refusals. Petitioners allege that the use of e-hail apps will lead to unjustified service refusals by taxi drivers. (Kaplan Aff., Ex. S (Mastro Aff. I) ¶¶ 6–7, 10, 27.) They claim, for example, that “the problem of taxi drivers illegally passing over riders and discriminatorily refusing hails—particularly for reasons of race and geographic discrimination—continues to plague the taxi industry.” (*Id.* ¶ 27; *see also id.* ¶ 89 (claiming that Pilot Program “overrides protections against pervasive race and destination discrimination”)); (*Id.* ¶ 97 (claiming that Pilot Program “will facilitate immediate discrimination against racial and ethnic minorities”).)

14. It is simply not plausible that Hailo, or any other app approved under the Pilot Program, could encourage discriminatory service refusals. Hailo’s app communicates no information to the driver about the passenger other than the cross streets of the desired pick-up location. Hailo does not disclose the passenger’s race or ethnicity, and only reveals the destination (which the passenger may elect not to provide to Hailo in the first place) when a passenger is already in the cab. This contrasts starkly with traditional hails, which generally allow the driver to observe the passenger before accepting the hail—or ask for their destination and drive away without a trace.

15. In particular, Petitioners assert that e-hails “facilitate ride refusal discrimination, based on the location from which the ‘e-hail’ originates (for example, a driver on the Upper East Side who decides not to accept an e-hail from Harlem).” (*Id.* ¶ 7.) There is nothing new about communicating the passenger’s pick-up location to a driver. Indeed, the passenger’s location is the single piece of information required by any

hired vehicle. As Hailo only discloses the approximate pickup location, *e.g.*, cross street and distance from driver's current location, it is even less likely to engender refusals than any hired vehicle or traditional hail. When Petitioners' bases receive a request for ride arrangements, they receive more information than a driver using Hailo—the passenger's complete location and likely their full name. As such, Hailo cannot be said to “facilitate” discrimination and may in fact help eradicate it.

16. Even without e-hailing, taxi drivers may discriminate based on the location from which the hail originates with impunity. No TLC rule or regulation requires taxi drivers to cruise all parts of the City equally looking for fares. To take the example posed by Petitioners, the empty taxi on the Upper East Side may currently avoid passengers in Harlem simply by not driving there, making it impossible that they will pick up any passengers in Harlem. But if the hypothetical Harlem passenger enlists the assistance of Hailo, she broadcasts her availability as a potential passenger to cab drivers who may find the prospect of her fare alluring. If a taxi driver on the Upper East Side wishes to discriminate in the way Petitioners suggest, a prohibition on e-hailing actually leaves a passenger in Harlem worse off. Our experience is that drivers who use Hailo will spend more time cruising in areas outside the central business district, precisely because they learn through experience that passengers will use e-hailing to help get access to taxis in these areas.

17. Additionally, Petitioners claim that “if the taxi driver sees another e-hail request come in over the system, he can cancel the first e-hail and accept the second one instead.” (*Id.* ¶ 65 n.17.) This is categorically false. Hailo's app does not offer a second e-hail to a driver who has already accepted or is currently responding to an e-hail. And it is in Hailo's business interest to take driver cancellations very seriously. As a result, we

have a compliance procedure in place that could ultimately see drivers disconnected from the Hailo network if they fail to pick up passengers without good reason. Hailo has a fairly rigorous interpretation of what constitutes “good reason”—mechanical problems would suffice, but ride refusals based on passenger demographics certainly would not. E-hailing keeps drivers honest because they know they cannot discriminate without leaving footprints, and Hailo employs drivers to vest them with a stake in our network and ensure that everyone plays by the rules.

18. Radio cabs and corporate incentives. I am familiar with Petitioners’ refrain that e-hails will reincarnate the evils of taxi radios from the 1980s, which apparently caused taxi drivers to shun street hails for radio calls. (*Id.* ¶¶ 14–25.) The fallacy of Petitioners argument is to attribute this behavior to the radios, rather than the enormous incentives paid by corporations with radio accounts. In some cases, these incentive payments were nearly twenty inflation-adjusted dollars for *each* pickup. Hailo does not offer comparable payments to drivers; and frankly, we can’t afford it. Petitioners’ explanation of the problem of radio taxis and service refusals is telling: “[T]he radios unofficially gave drivers the ability to pick and choose their passengers. If a taxi driver illegally skipped over or refused a ride to an individual for race, age, or destination reasons and was reported, the driver could claim that he was passing over the potential rider because he had just received a radio call.” (*Id.* ¶ 18.) E-hail apps give drivers no such deniability. The exact time and location of an e-hail, and whether and when a driver accepted it, are automatically recorded by the e-hail app. Far from aiding service refusals, e-hail apps may be their end.

19. Street hail availability. Petitioners predict that drivers will shun street hails in favor of e-hails. (*Id.* ¶¶ 10, 87, 88 n.28.) These claims are unfounded and

contradicted by Hailo's experience across millions of journeys in every city in which we operate. Drivers incur both out-of-pocket and opportunity costs by accepting e-hails. In New York City, drivers may not turn on the meter until a passenger is in the vehicle. *See* 35 R.C.N.Y. § 54.26(b)(1). In addition, Hailo's policy is that drivers must wait for two-and-a-half minutes before leaving. Drivers are therefore not compensated for each block that they travel empty after accepting an e-hail or the time spent waiting for the passenger to enter the vehicle.

20. Hailo supplements, but does not supplant, traditional street hails. Hailo's model is to distribute a small number of incremental hails across a very large number of drivers. Even though half of London's 23,000 taxi drivers are Hailo members, each driver accepts on average less than two e-hails per day. These e-hails are predominantly accepted during slow periods when, in all likelihood, drivers would otherwise have been cruising empty, wasting time and increasing emissions. In short, Hailo makes more cabs available without putting more cabs on the street.

21. Distracted driving. Hailo is safe and does not distract drivers. Despite carrying over five million passengers across some thirty-thousand drivers, Hailo maintains a *zero-incident* safety record. Since its very first driver, Hailo has provided free cradles and chargers to drivers, and the app is designed to limit interactions when the vehicle is in motion. Petitioners' argument regarding distracted driving is belied by the fact that their own drivers are permitted even more freedom to use apps when driving than are drivers subject to Pilot Program regulations. *See* 35 R.C.N.Y. §§ 54.03(c)(17)(3) (Street Hail Livery), 55.03(u)(3) (for-hire drivers). Tens of thousands of black car and livery drivers are using and interacting with smartphones on the streets of New York City today—and have been for years—and yet the harms Petitioners purport to fear have *never*

materialized.³ This is because using a smartphone app in accordance with TLC regulations is as safe as turning on the air conditioner or the radio while driving.

Irreparable Injury to Hailo

22. Petitioners gave no notice to Hailo that they would be seeking an interim stay and a temporary restraining order from this Court. Nor did we learn of Petitioners' application before the Order had been granted on May 1, 2013.

23. Petitioners have stressed the importance of halting the Pilot Program before "E-Hail Providers have invested heavily in reliance on it." (Kaplan Aff., Ex. S (Mastro Aff. I) at ¶ 75 n.23.) However, Hailo has *already* invested heavily in reliance on the Pilot Program. Hailo has invested more than \$4.7 million in connection with its launch in New York City, of which \$1 million is directly attributable to Hailo's efforts to participate in the Pilot Program. Hailo also continues to incur unsustainable losses as a result of overhead from our New York operations—in excess of \$18,000 per day—every day the Pilot Program remains enjoined. In reliance on the prospect of a New York launch and the opportunity to participate in the Pilot Program, we have hired operational staff, software developers, and third-party auditors to ensure compliance, usability, and security, for our local office. The senior management team has devoted much of its attention to paving the way for a successful launch in New York, limiting the vigilance with which it can create opportunities for Hailo in other urban markets. As a result of this Court's interim stay, we estimate that our net operating costs have increased by

³ Justice Huff acknowledged this inconsistency in her opinion below: "Petitioners complain that taxi drivers' use of the 'one touch' e-hail system will distract them and cause accidents, but neglect to point out that their own drivers are permitted to use such devices already, in addition to phones and two-way radios." (See Kaplan Aff., Ex. J (Decision) at 7.)

\$9,000 per day.⁴ None of these figures takes into account the revenue we lose as a result of our inability to participate in the Pilot Program, which we estimate to be in excess of \$25,000 over May 2013, increasing thereafter.

24. Hailo has already sustained substantial losses as a result of the twenty-day interim stay issued by this Court, which has strained Hailo's reputation and goodwill. Since this Court's Order became public, the rate at which drivers accept Hailo's e-hails has halved. It is apparent that many taxi drivers are wary of using e-hail applications without the express endorsement of the TLC, which is now tied to the fate of the Pilot Program. It goes without saying that Hailo, even if not actually enjoined, cannot operate unless a sufficient number of drivers participate.

25. But these losses are insignificant compared to the consequences that an open-ended preliminary injunction would have. If this Court enjoins the Pilot Program while it considers the appeal, Hailo will no longer be able reassure its drivers, passengers, and investors that the disruptive effect of this litigation will quickly pass. Unfortunately, under that scenario, there is a reasonable probability that Hailo will be forced to leave New York City before this Court decides the merits of this action. Based on Hailo's experience in its other cities around the world, and our market analyses in New York City, and those of our investors, Hailo estimates that the potential New York City taxi e-hailing market is worth hundreds of millions dollars. In addition, the follow-on opportunities to sell new products to our users and leverage our success in New York City into other cities potentially increase the value of our participation in the Pilot Program to more than one billion dollars. However, this litigation may prevent Hailo

⁴ These figures do not include projected increased legal costs as a result of this action.

from ever operating in New York City. Even if this Court eventually upholds the Pilot Program, Hailo may never again be able to rebuild the trust lost with drivers and passengers while an injunction is in effect. Furthermore, it will be difficult for Hailo to persuade investors that the black and livery car companies, or entrenched interest groups, will not again use the judicial system to disrupt our business. Conservatively, we estimate that our damages from the preliminary injunction would be \$100 million, depending on how long the preliminary injunction remains in force.

26. Data from our New York City Beta test clearly demonstrates the passenger and driver appetite for Hailo. I have personally experienced the magic of e-hailing in New York City and it feels just like it did in London before usage exploded and came to redefine how to get around the city. But e-hailing is built on trust. The temporary restraining order and the repeated false starts caused by Petitioners in their attempt to forestall the advent of e-hailing in New York City threatens the future viability of all e-hailing services. Passengers are impressionable and unforgiving of service disruptions and drivers are equally wearied by the prolonged legal limbo.

27. Many of Hailo's key employees have deferred compensation agreements, which make part of their compensation contingent on the clarity of the situation in New York City. Hailo cannot retain its highly qualified staff forever in the face of an adverse court order with no clear end in sight. Hailo is aware of similar challenges facing competing e-hail apps seeking to enter the New York City market.

28. Critical to Hailo's success are its seamless customer and driver experience. In every other city in which it operates, Hailo's app is fully "plug-and-play." In lay terms, this means that it does not require any integration with in-cab hardware for e-hailing and e-payment. A passenger "e-hails" by summoning a cab with a tap of their

smartphone screen, and “e-pays” by permitting Hailo to automatically transmit payment information through highly secure, tested technologies that meet or exceed industry standards. A passenger receives a receipt via email, complete with her drivers’ identifying information, by the time she steps onto the sidewalk. With e-payment, Hailo guarantees payments to drivers, even in the case of chargebacks or other fare disputes, by acting as the merchant of record and assuming the credit risk. E-payment eliminates the need for a cab to idle in traffic while a passenger fumbles for a credit card or the driver searches for change. E-payment is convenient, safe, and proven.

29. Hailo has applied to the TLC for a waiver from the Pilot Program’s requirement that an e-hail app integrate with the legacy in-cab hardware (“TPEP integration”). Ex. E (Memorandum of Understanding, Terms and Conditions for Taxi and Limousine Commission Authorization, §§ 3(g), 19(b)(5)). On May 1, 2013, at approximately 10:00 AM, while sitting next to me at a panel at TechCrunch’s Disrupt NY 2013, TLC Deputy Commissioner of Policy & Planning Ashwini Chhabra stated unequivocally that “in 60 days, you will be able to hail and pay for your ride from your smartphone.” This Court’s temporary restraining order was entered later that day, and the following day, the TLC announced that “TLC is also suspending review of any pending . . . applications for waiver of TPEP integration requirements under the E-Hail Pilot Program.” Ex. F (TLC Industry Notice No. 13-15 (May 2, 2013)).

30. Hailo’s full service app includes both e-hailing and e-payment. The impact of e-hailing, and the corresponding attractiveness of the service to passengers and drivers, is inextricably linked to the prospect of e-payment. Hailo’s bottom line ultimately depends on its passengers’ ability to hail a cab without consideration of how they will pay for the trip. Mega-vendors like Amazon.com and Apple’s iTunes know that

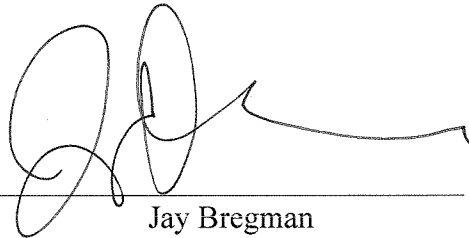
seamless payment options, available across platforms, are irresistible to consumers, and their successes are a testament to the appeals of e-payment.

31. Because of the interim stay, the TLC is no longer considering any applications for waiver of TPEP integration requirements while this litigation is pending. The inability to even continue negotiations on our request for a TPEP integration waiver threatens Hailo with irreparable injury. We are unable to obtain any clarity on whether we will ever be able to offer e-hail with e-payment in New York City, a prerequisite to delivering the “full experience” of e-hailing to New Yorkers, and to our achieving profitability. The TLC is also put in the unfortunate position of having to back off of its public commitment to e-payment in two months, which creates more confusion amongst drivers and the riding public.

32. The unprecedented challenges in New York City have forced Hailo to divert resources from other cities, delaying launches in Madrid, Barcelona, Tokyo, and Washington, D.C., compounding the out-of-pocket and opportunity costs imposed on Hailo by this Court’s May 1 order. We estimate that Hailo’s launches in Tokyo, Madrid, and Washington, D.C. have been delayed for two months each as a result of this litigation, and that Hailo’s launch in Barcelona has been postponed for three months. These costs are unsustainable and may result in the very result that Petitioners seek—prolonging uncertainty until start-ups like Hailo have no choice but to abandon the New York City market. Perhaps this is the true intention of the Petitioners’ claim in the first place.

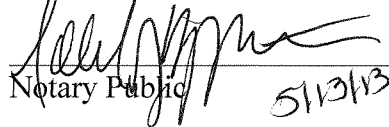
33. Ed Koch famously referred to New York as “where the future comes to audition.” Hailo agrees completely with this statement and its e-hail app only proves its wisdom. But the endless struggle to bring e-hailing to New York City is testing the truth

of this statement, and threatening the mantle of New York as a home for innovators and the new economy. All parties to this case understand that e-hail and e-payment are inevitable in New York and everywhere else. The future is on our streets now and the only question is whether it will be allowed to stay.



Jay Bregman

Sworn to before me this
13th day of May 2013



Notary Public 5/13/13

SARAH JOANNE McATEER
Notary Public, State of New York
No. 01MC6249705
Qualified in New York County
Commission Expires Oct. 11, 2015