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* Motions for admission *pro hac vice* concurrently filed

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF OREGON

PORTLAND DIVISION

SPEED'S AUTO SERVICES GROUP, INC.
d/b/a Towncar.com, an Oregon Corporation, and
FIESTA ENTERPRISES, LLC
d/b/a Fiesta Limousine, an Oregon Limited
Liability Company,

Case No.:

COMPLAINT
Civil Rights Action
(42 U.S.C. § 1983)

PLAINTIFFS,

v.

**CITY OF PORTLAND, OREGON,
CITY OF PORTLAND REVENUE BUREAU,
PRIVATE FOR-HIRE TRANSPORTATION
BOARD OF REVIEW, and THOMAS W. LANNOM,**
in his official capacity as Revenue Bureau Director,

DEFENDANTS.

INTRODUCTION

1. This civil rights lawsuit seeks to vindicate the right of Portland's limousine and sedan operators to pursue an honest living free from unreasonable government restrictions.

2. Defendants City of Portland, Oregon, the City's Revenue Bureau, and its Private For-Hire Transportation Board of Review have imposed three arbitrary and irrational regulations on limousine and sedan operators in an effort to restrict competition in Portland's transportation market for the sole benefit of Portland's taxicab companies.

3. The City has imposed two minimum fares. The first requires all limousine and sedan businesses to charge at least \$50 for trips between downtown Portland and the airport or the Amtrak station and the second requires them to charge at least 35% more than the prevailing taxicab rate for routes elsewhere in the city.

4. In addition to the minimum fare requirements, the City also requires limousine and sedan operators to wait at least 60 minutes between the time a customer requests service and the time the customer is picked up.

5. These restrictions address no legitimate health or safety concerns; rather, they exist only to protect taxicabs from competition by limousines and sedans.

6. Plaintiffs Speed’s Auto Services Group, Inc. d/b/a Towncar.com and Fiesta Enterprises, LLC d/b/a Fiesta Limousine are both small, locally-owned limousine and sedan businesses.

7. Defendants have targeted Plaintiffs for strict enforcement of the City’s minimum fares. Defendants’ actions severely limit Plaintiffs’ ability to market and promote their services with online discounts, threatening the economic viability of Plaintiffs’ businesses and depriving Portland’s consumers of affordable limousine and sedan service.

8. Defendants’ actions deny Plaintiffs their economic liberty—the right to pursue their chosen occupation free from unreasonable government restrictions—in violation of the Fourteenth Amendment to the United States Constitution.

JURISDICTION AND VENUE

9. This Court has jurisdiction pursuant to 28 U.S.C. §§ 1331, 1343, 2201-2202 and 42 U.S.C. § 1983.

10. Venue lies in this Court pursuant to 28 U.S.C. § 1391(b).

PARTIES

11. Plaintiff Speed’s Auto Services Group, Inc. d/b/a Towncar.com (“Towncar.com”) is a sedan company headquartered in Portland, Oregon and incorporated under the laws of the State of Oregon. Towncar.com uses sedans and sport-utility vehicles (SUVs) to transport customers in and around Portland.

12. Plaintiff Fiesta Enterprises, LLC d/b/a Fiesta Limousine (“Fiesta”) is a limousine and sedan company headquartered in Hillsboro, Oregon and formed under the laws of the State of Oregon. Fiesta uses a single sedan to transport customers in and around Portland.

13. Defendant City of Portland (“City”) is a political subdivision of the State of Oregon, located in Multnomah County.

14. Defendant City of Portland Revenue Bureau (“Bureau”) is part of the City’s Office of Management and Finance. The Bureau issues permits to for-hire transportation businesses and enforces the City’s transportation policies.

15. Defendant Thomas W. Lannom is the Director of the Bureau. Mr. Lannom directs the Bureau’s Regulatory Division, which is responsible for enforcing limousine and sedan regulations, enforcing taxicab regulations, and ensuring equity among for-hire transportation services. Mr. Lannom is sued in his official capacity.

16. Defendant Private For-Hire Transportation Board of Review (“Board”) advises the Bureau on for-hire transportation policy matters. In addition to its advisory role, the Board has the authority to adopt or reject administrative rules proposed by the Director of the Bureau.

FACTUAL ALLEGATIONS

Portland’s Minimum Fares and 60-Minute Wait Time

17. Portland’s City Council and its Private For-Hire Transportation Board of Review have adopted comprehensive regulations covering taxicabs, pedicabs, shuttles, limousines, and sedans, among other for-hire vehicle services.

18. Plaintiffs’ suit challenges only three of the over 50 regulations that apply to for-hire vehicle services. In particular, Plaintiffs challenge regulations that require limousine and sedan services, and no other for-hire transportation services, to:

- a. charge a minimum of \$50 for all trips between downtown Portland and the airport and/or the Amtrak station (Portland City Code § 16.40.480(A); Portland

For-Hire Administrative Rule 16.40.480-01; Portland ARB-LIC-8.35) (“\$50 minimum fare”);

- b. charge at least 35% more than the prevailing taxicab fare for the same route elsewhere in the City (Portland City Code § 16.40.480(C)) (“35% minimum fare”); and
- c. wait at least 60 minutes between the time a customer contracts for services and the time the customer is picked up (Portland City Code § 16.40.460(A); Portland For-Hire Administrative Rule 16.40.460-01; Portland ARB-LIC-8.33) (“60-minute wait time”).

19. The \$50 minimum fare was adopted by the Board in December 2009, after the City Council passed an ordinance in May 2009 requiring the Board to set a minimum fare for service between the airport and downtown Portland’s “Fareless Square” and/or the Amtrak station (in either direction).

20. The 35% minimum fare was adopted by the City Council in May 2009.

21. The 60-minute wait time was adopted by the Board in December 2009, when it defined the word “prearranged” (as it is used in Portland City Code § 16.40.460) to require limousines and sedans to wait at least one hour before their services will be considered “prearranged” by the Board.

22. Each of these three restrictions was designed to and serves only to protect taxicab companies from competition.

23. On information and belief, Portland’s taxicab companies complained to the City about the negative impact that affordable, prompt limousine and sedan services have on the profits of taxicab companies and they supported each of the three challenged restrictions.

24. Each of these challenged restrictions was designed to guarantee a certain amount of revenue to taxicab companies at the expense of limousine and sedan services.

25. Defendants' \$50 minimum fare and 35% minimum fare (collectively "minimum fares") serve to artificially inflate the cost of limousine and sedan service in Portland while doing nothing to increase the safety of those services or protect consumers.

26. On information and belief, Defendants have no evidence that the minimum fares address any legitimate health, safety, or consumer-protection concerns.

27. The minimum fares do nothing to protect consumers or promote public health and safety.

28. Defendants' 60-minute wait time prevents limousines and sedans from providing prompt service while doing nothing to increase the safety of those services or protect consumers.

29. On information and belief, Defendants possess no evidence that the 60-minute wait time addresses any legitimate health, safety, or consumer-protection concerns.

30. The 60-minute wait time does nothing to protect consumers or promote public health and safety.

Plaintiff Towncar.com

31. Towncar.com operates sedans and SUVs for-hire in the City of Portland and holds a valid company permit and valid vehicle permits to do so. These permits ensure the safety of Towncar.com's vehicles and employees on the road.

32. Towncar.com's parent company—Plaintiff Speed's Auto Services Group, Inc.—has been in the sedan business for six years. The company currently has 10 sedans and SUVs in service, all of which are operated by Towncar.com employees.

33. Towncar.com employs 14 drivers and has one additional employee working in dispatch and administrative roles. Its drivers are not independent contractors.

34. Towncar.com provides sedan service throughout the City and its surrounding areas. Customers use an online reservation service or call a dispatch number to request service. After waiting the requisite hour, a Towncar.com employee picks the customer up in a luxury vehicle of the style requested by the customer. Company drivers are always dressed professionally and endeavor to provide high-end transportation services tailored to their customer's needs.

35. Towncar.com's rates vary based on the vehicle chosen, the pickup location, and the drop-off location. Its lowest regular fare for a trip within Portland is approximately \$45.

36. To promote its services to new customers, on September 20, 2011, Towncar.com offered a deal on Groupon.com for "\$32 for One-Way Chauffeur Services." The deal was valid for up to 30 miles of travel or \$90 in value. The company sold 636 of these deals the first morning of the promotion.

37. That same day, Mr. Frank Dufay, Regulatory Program Administrator for the Bureau, wrote a letter to Towncar.com stating that its Groupon.com promotion violated Portland City Code § 16.40.480(C) because the \$32 fare is "substantially less than the \$75 or more a taxi ride would cost for that same distance."

38. Mr. Dufay informed Towncar.com that it would be assessed a penalty of \$635,500 unless it canceled the promotion and refunded all of the money paid by the Groupon.com purchasers. Mr. Dufay also advised Towncar.com that, should it fail to cancel its promotion and go forward with the discounted fares, its company and vehicle permits would be suspended.

39. Towncar.com canceled its Groupon.com promotion and refunded all of the money paid by its Groupon.com customers.

40. Towncar.com wants to offer fares less than \$50 for trips from downtown Portland to Portland International Airport and for trips from the airport to downtown.

41. Towncar.com wants to offer promotional fares elsewhere in Portland for less than 35% more than the prevailing taxicab rates for the same route.

42. Towncar.com would like to offer these fares to market its services to and attract new customers. If Towncar.com is prevented from offering special discounts and promotions online, it will be unable to reward loyal customers and it will lose an effective means of promoting its services to new customers.

43. Towncar.com also wants to provide prompt service to customers who prearrange its services, but who need to be picked up in less than 60 minutes. If it continues to be prohibited from providing immediate service to customers, Towncar.com will be unable to offer the flexibility that its customers demand and it will be unable to meet unfilled demand in the transportation market.

44. Towncar.com has lost potential customers, and it will continue to lose potential customers, as a result of Defendants' one-hour wait time.

45. Some of Towncar.com's existing customers are inconvenienced by Defendants' one-hour wait time, and as a result, the company has lost the goodwill of those customers.

Plaintiff Fiesta Limousine

46. Fiesta operates a single sedan in the City of Portland and it holds a valid company permit and a valid vehicle permit to do so.

47. Fiesta is a two-man operation in which co-owners Tom White and Ron Simmons perform the sedan driving, dispatching, and administrative roles themselves. Fiesta does not have employees. It sometimes uses independent contractors to supplement service.

48. Fiesta's rates vary based on a customer's point of origin and drop-off point. Its lowest, regular fare for trips to the airport is \$50.

49. To promote and market its services and attract new customers, on October 20, 2011, Fiesta offered a deal on Groupon.com for transportation to the airport for \$32 from specific zip codes (excluding most of downtown Portland). It sold 260 of these deals the first morning of the promotion.

50. Shortly thereafter, Mr. Frank Dufay contacted Fiesta and informed it that the promotion violated Portland City Code 16.40.480(C) because the promotional fare was less than \$50 and was less than the rate that would be charged by a taxicab for the same route.

51. Mr. Dufay informed Fiesta it would be assessed a penalty of \$259,500 unless it canceled the promotion and refunded all of the money paid by the Groupon.com purchasers. Mr. Dufay also advised Fiesta that, should it fail to cancel its promotion and go forward with the discounted fares, Fiesta's company and vehicle permits would be suspended.

52. On information and belief, a city employee also contacted Groupon.com directly and demanded that it cancel Fiesta's deal.

53. Fiesta canceled its Groupon.com promotion and refunded all of the money paid by its Groupon.com customers.

54. Fiesta wants to offer fares less than \$50 for trips to Portland International Airport from downtown Portland and trips from the airport to downtown Portland.

55. Fiesta wants to offer promotional fares elsewhere in Portland for less than 35% more than the prevailing taxicab rates for the same route.

56. Fiesta would like to offer these fares to market its services to and attract new customers. If Fiesta is prevented from offering special discounts and promotions online, it will be unable to reward loyal customers and it will lose an effective means of promoting its services to new customers.

57. Fiesta also wants to provide prompt service to customers who prearrange its services, but who need to be picked up in less than 60 minutes. If it continues to be prohibited from providing immediate service to customers, Fiesta will be unable to offer the flexibility that its customers demand and it will be unable to meet unfilled demand in the transportation market.

58. Fiesta has lost potential customers, and it will continue to lose potential customers, as a result of Defendants' one-hour wait time.

59. Some of Fiesta's existing customers are inconvenienced by Defendants' one-hour wait time, and as a result, the company has lost the goodwill of those customers.

INJURY TO PLAINTIFFS

60. All preceding allegations are incorporated herein as if set forth in full.

61. The challenged limousine and sedan regulations prevent Plaintiffs from offering prompt, efficient, and affordable service to their customers.

62. As a direct result of these unconstitutional restrictions on their economic liberty, Plaintiffs have lost and are continuing to lose business income and customer goodwill.

63. Defendants' minimum fares prohibit Plaintiffs from offering affordable limousine and sedan services in and around Portland.

64. The minimum fares increase customers' costs for exactly the same services. Customers have to pay more for limousine and sedan service than Plaintiffs would otherwise willingly charge and, at the same time, customers have to pay more for taxicab service than the market would otherwise allow.

65. Plaintiffs have lost hundreds of new customers as a direct result of Defendants' minimum fares.

66. Plaintiffs have lost substantial income as a direct result of Defendants' enforcement of the minimum fares.

67. The minimum fares have cost Plaintiffs the goodwill for both existing and potential customers.

68. The 60-minute wait time has cost Plaintiffs the goodwill of both existing and potential customers.

69. Defendants may revoke, restrict, or refuse to renew Plaintiffs' company and vehicle permits if Plaintiffs fail to or refuse to comply with Defendants' unconstitutional minimum fares and 60-minute wait time.

70. Defendants' unconstitutional regulations do not address any health, safety, or consumer protection concerns nor are they rationally related to any legitimate governmental interest. Rather, they exist only to shield taxicab companies from Plaintiffs' honest competition.

71. Defendants do not require other for-hire transportation services, including taxicabs, to charge a minimum fare; rather, the minimum fares apply exclusively to limousines, sedans, and luxury SUVs.

72. But for Defendants' unconstitutional regulations, Plaintiffs could legally charge their customers less than \$50 for trips between downtown Portland and Portland International Airport, could legally charge their customers less than 35% more than the prevailing taxicab rates for routes elsewhere in Portland, and could legally pick up customers who prearranged service less than 60 minutes in advance.

73. As a direct result of Defendants' unconstitutional regulations, Plaintiffs are injured irreparably by the deprivation of their right to equal protection of the laws, deprivation of their substantive due process right to earn an honest living free from unreasonable government interference, and deprivation of the privileges and immunities of citizenship.

74. If Plaintiffs must comply with Defendants' unconstitutional regulations, they will continue to lose income, the ability to market and promote their businesses to new customers, and the goodwill of both existing and potential customers.

CAUSES OF ACTION

75. Plaintiffs bring this civil rights lawsuit pursuant to the Fourteenth Amendment to the United States Constitution; the Civil Rights Act of 1871, 42 U.S.C. § 1983; and the Declaratory Judgment Act, 28 U.S.C. §§ 2201-2202.

FIRST CAUSE OF ACTION (EQUAL PROTECTION OF LAW)

76. All preceding allegations are incorporated herein as if set forth in full.

77. The Equal Protection Clause of the Fourteenth Amendment to the U.S. Constitution protects every American's right to equal protection of the law.

78. Under the Equal Protection Clause, when government restricts a person's economic liberty, its exemptions for other persons and businesses must be rationally related to a legitimate governmental purpose.

79. The \$50 minimum fare violates Plaintiffs' right to equal protection of law under the Fourteenth Amendment to the U.S. Constitution and 42 U.S.C. § 1983 on its face and as-applied, to the extent Defendants prohibit Plaintiffs from charging their customers less than \$50 for their services between downtown Portland and the airport, while at the same time exempting taxicabs and other private for-hire transportation vehicles from this minimum fare.

80. The 35% minimum fare violates Plaintiffs' right to equal protection of law under the Fourteenth Amendment to the U.S. Constitution and 42 U.S.C. § 1983 on its face and as-applied, to the extent Defendants prohibit Plaintiffs from charging their customers less than 35% more than the prevailing taxicab rates for the same route, while exempting taxicabs and other private for-hire transportation vehicles from comparable minimum fares.

81. The 60-minute wait time violates Plaintiffs' right to equal protection of law under the Fourteenth Amendment to the U.S. Constitution and 42 U.S.C. § 1983 on its face and as-applied, to the extent Defendants prohibit Plaintiffs from transporting customers who prearrange service less than one hour in advance, while at the same time exempting taxicabs and other private for-hire transportation vehicles from this minimum wait time.

82. Any legitimate rationale for the \$50 minimum fare, the 35% minimum fare, and the 60-minute wait time is rendered irrational by virtue of the exemptions for other private for-hire transportation vehicles.

83. Protecting taxicab businesses from competition at the expense of Plaintiffs' businesses and their customers is not a valid exercise of Defendants' police power to protect consumers and the public health and safety.

84. Unless Defendants are enjoined from committing the above-described violations of the Fourteenth Amendment, Plaintiffs will continue to suffer great and irreparable harm.

**SECOND CAUSE OF ACTION
(SUBSTANTIVE DUE PROCESS)**

85. All preceding allegations are incorporated herein as if set forth in full.

86. The Due Process Clause of the Fourteenth Amendment to the U.S. Constitution protects every American's right to pursue legitimate occupations, subject only to regulations that are rationally related to a legitimate government purpose.

87. The \$50 minimum fare violates Plaintiffs' right to due process of law under the Fourteenth Amendment to the U.S. Constitution and 42 U.S.C. § 1983 on its face and as-applied, to the extent Defendants prohibit Plaintiffs from charging their customers less than \$50 for their services between downtown Portland and the airport.

88. The 35% minimum fare violates Plaintiffs' right to due process of law under the Fourteenth Amendment to the U.S. Constitution and 42 U.S.C. § 1983 on its face and as-applied, to the extent Defendants prohibit Plaintiffs from charging their customers less than 35% more than the prevailing taxicab rates for the same route.

89. The 60-minute wait time violates Plaintiffs' right to due process of law under the Fourteenth Amendment to the U.S. Constitution and 42 U.S.C. § 1983 on its face and as-applied, to the extent Defendants prohibit Plaintiffs from picking up a customer who prearranges service less than one hour in advance.

90. Protecting taxicab businesses from competition at the expense of Plaintiffs' businesses and their customers is not a valid exercise of Defendants' police power to protect consumers and the public health and safety.

91. Unless Defendants are enjoined from committing the above-described violations of the Fourteenth Amendment, Plaintiffs will continue to suffer great and irreparable harm.

**THIRD CAUSE OF ACTION
(PRIVILEGES OR IMMUNITIES)**

92. All preceding allegations are incorporated herein as if set forth in full.

93. The \$50 minimum fare violates Plaintiffs' privileges or immunities of citizenship under the Fourteenth Amendment to the U.S. Constitution and 42 U.S.C. § 1983 on its face and as-applied, to the extent Defendants prohibit Plaintiffs from charging their customers less than \$50 for trips between downtown Portland and the airport.

94. The 35% minimum fare violates Plaintiffs' privileges or immunities of citizenship under the Fourteenth Amendment to the U.S. Constitution and 42 U.S.C. § 1983 on its face and as-applied, to the extent Defendants prohibit Plaintiffs from charging their customers less than 35% more than the prevailing taxicab rates for the same route.

95. The 60-minute minimum wait time violates Plaintiffs' privileges or immunities of citizenship under the Fourteenth Amendment to the U.S. Constitution and 42 U.S.C. § 1983 on its face and as-applied, to the extent Defendants prohibit Plaintiffs from picking up a customer who prearranges service less than one hour in advance.

96. Protecting taxicab businesses from competition at the expense of Plaintiffs' businesses and their customers is not a valid exercise of Defendants' police power to protect consumers and the public health and safety.

97. Unless Defendants are enjoined from committing the above-described violations of the Fourteenth Amendment, Plaintiffs will continue to suffer great and irreparable harm.

PRAYER FOR RELIEF

98. Therefore, Plaintiffs respectfully request the following relief:

A. A declaratory judgment that Portland City Code § 16.40.480(A), Portland For-Hire Administrative Rule 16.40.480-01, and Portland ARB-LIC-8.35 are unconstitutional both on their face and as-applied to Plaintiffs, to the extent they require a \$50 minimum fare for the provision of limousine and executive sedan services between downtown Portland and the airport and/or the Amtrak station;

B. A declaratory judgment that Portland City Code §16.40.480(C) is unconstitutional both on its face and as-applied to Plaintiffs, to the extent it requires limousine and executive sedans to charge rates at least 35% higher than the prevailing taxicab rate for the same route;

C. A declaratory judgment that Portland City Code § 16.40.460(A), Portland For-Hire Administrative Rule 16.40.460-01, and Portland ARB-LIC-8.33 are unconstitutional both on their face and as-applied to Plaintiffs, to the extent that they define “prearranged” to require limousines and executive sedans to wait at least 60 minutes between the time a customer contracts for services and the time the customer is picked up;

D. A permanent injunction prohibiting Defendants and their agents from enforcing the \$50 minimum fare, the 35% minimum fare, and the 60-minute wait time and any administrative rules and regulations promulgated thereunder;

E. An award of nominal damages in the amount of \$1;

F. An award of attorneys’ fees, costs, and expenses; and

G. Any other legal or equitable relief to which Plaintiffs may show themselves entitled.

RESPECTFULLY SUBMITTED this 26th day of April, 2012.

By: _____

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