

**AFFIDAVIT OF CARL E. PERSON, PETITIONER, IN SUPPORT OF MOTION,  
SWORN TO NOVEMBER 12, 2015 [437 - 440]**

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**SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK**

**In the Matter of the Application of**  
**CARL E. PERSON,**  
**Petitioner,**  
**For a Judgment under Article 78 of the CPLR,**  
**-against-**  
**NEW YORK CITY DEPARTMENT OF**  
**TRANSPORTATION,**  
**Respondent.**

**Index No.**  
**100484/15**  
**AFFIDAVIT OF**  
**CARL E. PERSON**

**STATE OF NEW YORK     )**  
**: ss.:**  
**COUNTY OF NEW YORK    )**

Carl E. Person, being duly sworn, deposes and says:

1. I am the Petition in the above-captioned Article 78 proceeding, am fully familiar with the facts stated herein, and make this affidavit in support of my motion under CPLR 2221(d) for reargument and 2221(e) to renew Respondent's motion to dismiss, and under CPLR 3025(b) for leave to amend my Petition.
2. A copy of the Court decision dated October 15, 2015 and filed October 29, 2015 (the "Decision") is annexed hereto as **Exhibit A**.
3. A copy of the proposed Amended Petition is annexed hereto as **Exhibit B**.
4. A copy of the proposed Amended Petition with all changes indicated is annexed hereto as **Exhibit C**.

**Petitioner's Injury Provides Standing,  
which Was Alleged in Initial Petition**

5. The Decision at pp. 3-4 states that Petitioner has alleged no environmental injury, but this determination was in error. Allegations in ¶¶ 20-J and 20-V of the Petition were sufficient to conclude the more specific allegations sought to be included in ¶¶ 11A and 11B of the proposed Amended Petition, as follows:

11A. Person's primary injury results from his activities as a motorist in New York County. Because of the Respondent's alleged activities, Person spends approximately 5 extra hours per week waiting in his car or in a taxicab (or about 250 hours per year), hours that would not have been lost but for the activities of the Respondent. These lost hours could have been devoted to personal pursuits of a non-economic nature, but were taken from Person by reason of the activities of the Respondent. Person estimates that he loses an average of about 2 hours per week (100 hours per year) as a passenger in taxis in New York County and about 3 hours per week (about 150 hours per year) as a motorist in New York County. Other persons in New York County who walk, ride bicycles, take buses (with fast lanes), or don't go outdoors for whatever reason do not lose their personal hours by reason of the Respondent's activities. Because Person is in a non-moving or slow-moving vehicle for these hours, he cannot spend that time with his family, going to movies, telephoning his friends, doing internet research, walking on the sidewalk, shopping in stores, reading a book, looking at television or any of the other things that individuals do when not driving a car.

11B. Person's primary injury as aforesaid motorist also results from his personal exclusion while a motorist from the road space (i.e., bike lanes) provided for use of bicyclists, as to which motorists are generally excluded. Assuming there are 500 miles of bike lanes in New York County (estimated from map at <http://www.nycbikemaps.com/maps/manhattan-bike-map/>), each lane approximately 5 to 6 feet wide, created by removing a lane of vehicular traffic (see p. 38, <http://home.nyc.gov/html/dcp/pdf/bike/design.pdf>). Five hundred miles (5,280 feet x 500 = 2,640,000 feet) x 5.5 feet (average of 5 and 6 feet) = 14,520,000 square feet in Manhattan taken away from Person and other motorists and turned over to bicyclists for their use, to the exclusion of Person and other motorists.

6. Paragraph 20-J and 20-V provide in relevant part:

J. Motorists, their passengers and users of green and yellow taxicabs and black-car limousines are spending substantially more of their valuable time getting from one place to another in Manhattan \* \* \*

V. Causing damages to individuals \* \* \* including (i) the loss of valuable time caused by transportation delays \* \* \* (v) denial of use of public property put to illegal private use by Respondent;

7. Paragraphs 11A and 11B in the proposed Amended Petition (Exhibit B hereto) were already reflected in the initial Petition, in ¶¶ 20-J and 20-V demonstrate that Petitioner sufficiently alleged his standing to sue.

8. In order to make this clear, Petitioner is now moving to amend his Petition to add ¶¶ 11A and 11B, with a minimum number of additional changes (mainly ¶¶ 11C and 11D, a calculation of the amount of square footage and acreage involved in the New York County bike lanes - 333.33 acres) and a few additions elsewhere, as seen in Exhibit C hereto.

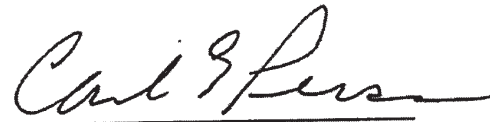
#### **CPLR 2221(d) Motion to Reargue**

9. Under CPLR 2221(d), for reargument of the Respondent's motion to dismiss (the "Respondent's Motion"), Petitioner claims that the following facts and arguments were overlooked by the Court in its Decision:

**Fact/Argument#1:** That ¶¶20-J and 20-V of the Petition, to the extent quoted in ¶ 6 above, mean in substance the same as ¶¶ 11A and 11B in the proposed Amended Petition (Exhibit C).

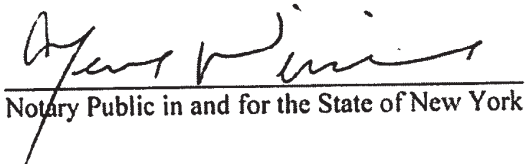
**Motion to Amend Petition  
under CPLR 3025(b)**

If the Petitioner's motion for reargument is not granted, the Petitioner seeks leave under CPLR 3025(b) to amend his Petition, to plead Petitioner's standing with greater specificity (in proposed ¶¶ 11A and 11B) and other related changes as shown in Exhibit C.



Carl E. Person

Subscribed and sworn to before me  
this 12th day of November, 2015.

  
Notary Public in and for the State of New York

ARLENE WILLIAMS  
Notary Public, State of New York  
No. 01W6218900  
Qualified in Queens County  
Commission Expires March 15, 2016 *fb*

**EXHIBIT A TO PERSON AFFIDAVIT -  
DECISION AND JUDGMENT OF THE HONORABLE ALEXANDER W. HUNTER, JR.,  
DATED OCTOBER 15, 2015, AND ENTERED OCTOBER 29, 2015  
(REPRODUCED HEREIN AT PP. 9-13)**

EXHIBIT B TO PERSON AFFIDAVIT -  
PROPOSED VERIFIED AMENDED ARTICLE 78 PETITION,  
DATED NOVEMBER 12, 2015 [442 - 464]

SEQR\_PropAmendPetition\_111115.doc

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK

In the Matter of the Application of  
CARL E. PERSON,  
  
Petitioner,  
  
For a Judgment under Article 78 of the CPLR,  
  
-against-  
  
NEW YORK CITY DEPARTMENT OF  
TRANSPORTATION,  
  
Respondent.

Index No.  
  
100484/15  
  
(Proposed)  
VERIFIED  
AMENDED  
ARTICLE 78  
PETITION

Petitioner, Carl E. Person, *pro se* ("Petitioner"), as and for his Verified Amended  
Petition in the above-captioned special proceeding, respectfully alleges as to his own conduct,  
and upon information and belief as to the conduct of others and matters of public record, as  
follows:

**PRELIMINARY STATEMENT**

1. On April 22, 2007, NYC Mayor Michael Bloomberg announced his transportation  
plan for NYC including a congestion pricing program, and 15 other proposed transportation  
initiatives included increased use of cycling, increased traffic violation enforcement, to enable  
NYC to apply for federal funding. Bloomberg, as one of the world's richest persons, was able to  
obtain whatever approvals he needed for his plan from the City Council and community groups,  
and the traffic-related changes at issue were dictated by Bloomberg without compliance with  
state and federal laws protecting the environment.

2. Janette Sadik-Khan ("Sadik-Khan") worked in Mayor David Dinkins Office for Transportation in 2007 and implemented the DOT's policy for expanding bicycle lanes and bicycle usage in NYC. Upon assuming office as Mayor, Michael Bloomberg appointed Sadik-Khan as DOT Commissioner, and in 2008 the DOT under Sadik-Khan released the DOT's strategic plan for NYC streets, described by the DOT (at <http://www.nyc.gov/html/dot/html/about/stratplan.shtml> ), as follows:

#### **SUSTAINABLE STREETS**

In the Spring of 2008, DOT released Sustainable Streets, the agency's strategic plan. The plan laid out, for the first time ever, a clear and detailed transportation policy for New York City—one that promised a new direction. DOT is delivering on the promises of its plan, and is moving forward on every one of the 164 actions committed to in Sustainable Streets. This annual update of the plan reports on that progress, and serves as a focal point for meeting targets and sustaining momentum across all of our Agency's programs. It also sets forth new goals that have emerged during the past year, ranging from development of an internal DOT car-sharing system to further reduce DOT's fleet, parking needs and miles driven, to issuing a request for proposals to establish a large scale public bicycle system in New York, similar to those in Paris and other cities.

3. On February 12, 2003, London established a "Congestion Charge", which today is 11.5 Pounds or (at the conversion rate of \$1.50/Pound), a charge of \$17.75 for the privilege of entering into and driving in the Congestion Area (i.e., Central London). Even before his 3rd term of NYC Mayor was completed, Bloomberg was engaged in shifting his business focus to London, with his new European Headquarters in London (a city block named by Bloomberg "Bloomberg Plaza") to open in 2016, where Bloomberg will be able to live and work in a city having congestion pricing, a form of regressive taxation benefiting Bloomberg.

4. On April 22, 2007, Mayor Bloomberg announced his long-term plan for NYC with 127 separate initiatives (called "PlaNYC"), including a dramatic acceleration of NYC's

1,800-mile bike lane master plan and implementation of congestion pricing, a system that would charge drivers a fee for entering the Manhattan commercial business district during peak hours.

5. On August 14, 2007, the U.S. Department of Transportation ("DOT" or "Respondent") awarded from the Urban Partnership Program \$354 million to NYC, including \$10.4 million for launching NYC's congestion pricing program and \$2 million for research.

6. Various politicians expressed skepticism about the congestion pricing plan, including the environmental effects on neighborhoods bordering the congestion zone, the lack of state control and imposition of a regressive tax on commuters.

7. On January 31, 2008, the New York City Traffic Congestion Mitigation Commission approved a plan for congestion pricing, but the plan was rejected by the NYS Assembly on April 7, 2008, and NYC lost its eligibility to receive \$354 million in federal assistance for traffic congestion relief and mass transit improvements, for possible reasons including an unwillingness and failure to participate in preparing and filing an environmental impact statement under federal law.

8. In spite of these setbacks, then Mayor Bloomberg and the DOT decided to create additional congestion in New York County (and elsewhere in NYC), rather than to ease claimed existing traffic congestion, by a series of traffic-related activities having a coordinated, cumulative, anticipated and desired effect, as described in ¶ 15 below.

9. NYC is already one of the most expensive cities in the United States for residents and businesses, and increased traffic congestion is putting NYC into a worse position for creating and maintaining employment and small-business opportunities.



10. NYC has never prepared or published an estimate of the costs and losses to its residents and businesses resulting or expected to result from the DOT's Congestion-Pricing Activities (described in ¶ 15 below).

10A. The effect of these activities has been to create more congestion in New York County, together with many other injurious effect to the environment in New York County and beyond, which needs to be described in an environmental impact statement. Inasmuch as the environmental impact statement will be prepared after a substantial part of the planned activities have taken place, and their effect can be determined, the environmental impact statement will have even greater importance for New York County and surrounding area.

#### **PARTIES TO THE SPECIAL PROCEEDING**

11. Petitioner, Carl E. Person, is a citizen and resident of New York City, residing in New York, New York, with offices at 225 E. 36th Street - Suite 3A, New York, NY 10016-3664. Person operates a motor vehicle in the County of New York from time to time, and has been damaged by the traffic congestion being created by the Respondent through its activities in violation of law.

11A. Person's primary injury results from his activities as a motorist in New York County. Because of the Respondent's alleged activities, Person spends approximately 5 extra hours per week waiting in his car or in a taxicab (or about 250 hours per year), hours that would not have been lost but for the activities of the Respondent. These lost hours could have been devoted to personal pursuits of a non-economic nature, but were taken from Person by reason of the activities of the Respondent. Person estimates that he loses an average of about 2 hours per week (100 hours per year) as a passenger in taxis in New York County and about 3 hours per

week (about 150 hours per year) as a motorist in New York County. Other persons in New York County who walk, ride bicycles, take buses (with fast lanes), or don't go outdoors for whatever reason do not lose their personal hours by reason of the Respondent's activities. Because Person is in a non-moving or slow-moving vehicle for these hours, he cannot spend that time with his family, going to movies, telephoning his friends, doing internet research, walking on the sidewalk, shopping in stores, reading a book, looking at television or any of the other things that individuals do when not driving a car.

11B. Person's primary injury as aforesaid motorist also results from his personal exclusion while a motorist from the road space (i.e., bike lanes) provided for use of bicyclists, as to which motorists are generally excluded. Assuming there are 500 miles of bike lanes in New York County (estimated from map at <http://www.nycbikemaps.com/maps/manhattan-bike-map/>), each lane approximately 5 to 6 feet wide, created by removing a lane of vehicular traffic (see p. 38, <http://home.nyc.gov/html/dcp/pdf/bike/design.pdf>). Five hundred miles (5,280 feet x 500 = 2,640,000 feet) x 5.5 feet (average of 5 and 6 feet) = 14,520,000 square feet in Manhattan taken away from Person and other motorists and turned over to bicyclists for their use, to the exclusion of Person and other motorists.

11C. The overall costs (personal as well as monetary) to the various categories of individuals, businesses, agencies and others in New York County were never estimated and published, but appear to be of monumental proportions that could cause NYC to go into bankruptcy through its intentional interference with the economics of millions of persons through the alleged activities of Respondent. Everyone involved has a right to know the cost of the Respondent's activities, but Respondent has failed to calculate or provide any estimate by its failure to prepare and file an environmental impact statement.

11C. Respondent could have created bike lanes without causing injury to Person and others similarly situated by building them in public parks throughout the 5 Boroughs and providing reimbursement (at the time of bike rental) for use of public transportation to go to and from the parks. An environmental impact statement would have forced Respondent to consider this obvious alternative, but Respondent avoided this by refusing to prepare and file an environmental impact statement.

11D. Respondent's activities have caused a substantial deterioration in the condition of the streets in New York County by failure to repair to the extent repairs were taking place prior to Respondent's entry into the bike-lane and traffic-congestion business, which deterioration in street conditions add to the congestion problem, as every motorist in New York County has experienced.

12. Respondent, New York City Department of Transportation ("DOT" or "Respondent"), has its main office at 55 Water Street, New York, NY 10041 and is the NYC agency in charge of creating additional congestion in New York County and the other counties in NYC for the purposes of (a) qualifying for federal grants relating to congestion and congestion pricing; (b) raising revenues for NYC by placing tolls (or increasing tolls) for use of bridges and tunnels leading to Manhattan; (c) raising revenues by additional ticketing for violation of rules, regulations and laws supposedly enacted to try to reduce traffic congestion; and (d) raising additional taxes through use of fines rather than direct taxation.

### JURISDICTION AND VENUE

13. This Court also has jurisdiction pursuant to CPLR §§ 7801-7806, to review the actions by bodies or officers who have failed to perform a duty enjoined upon them by law.

14. Venue in the County of New York is proper pursuant to CPLR §§ 504(3), 506(b) and 503(a) as: (i) claims are asserted against an agency of NYC and the claims arose in New York County; (ii) claims are asserted against an agency of NYC with its principal offices in New York County; and (iii) the petitioner resides in New York County.

### STATEMENT OF FACTS

15. In a series of related and coordinated activities of the DOT commenced by Mayor Bloomberg and continued by his successor, Mayor Bill de Blasio (hereinafter, the "Congestion-Creating Activities"), the Respondent DOT has:

A. Placed "floating parking spaces" in what had been moving traffic lanes on various avenues in New York County including 8th Avenue and 9th Avenue, reducing the number of available lanes for moving traffic;

B. Placed bicycle lanes on or alongside sidewalks, thereby eliminating such space for pedestrians and parking, and resulting in moving some of the eliminated parking spaces into a lane being used up to such time for moving traffic;

C. Closed roads in congested areas to enable individuals to sit at chairs and tables in the middle of the street (called "Pedestrian Plazas") and watch vehicle traffic try to move around the protected area;

D. Placed concrete islands and planting trees where vehicle traffic used to flow on various avenues in New York County, including 8th and 9th Avenues;

E. Reduced the maximum speed for vehicles in NYC to 25 miles per hour (from 30 miles per hour) effective November 7, 2014, a law enacted by the NYC Council;

F. In January, 2015, changed the timed lights on various one-way avenues in New York County so that vehicles had to stop every 3-8 blocks and were no longer able to travel at a constant speed without stopping;

G. Granted space on sidewalks and streets for many hundreds of bicycle parking stations for more than an estimated 10,000 bicycles instead of requiring the licensee to rent traditional retail store space for storing, renting and returning the bicycles;

H. Based the bicycle plan upon arrangements made in a city having an area of few square miles (where a cyclist could go from any point to any other point - about 1-2 miles - in 5-10 minutes) without considering the differences for NYC having an area of 305 square miles;

I. Intended to have bicycles replace cars and taxicabs as transportation for large numbers of persons between their homes and jobs, even though the average distance for most employed individuals is an estimated 15 miles between home and job (75 minutes of bicycling at the rate of 1 mile per 5 minutes) and not a workable plan unless the DOT intended to encourage individuals to get jobs closer to home, or move closer to their jobs;

J. Placed bicycle stations in front of stores and public facilities (such as the Main United States Post Office at 32-33rd Street and 8th Avenue), causing substantial interference with existing use of the stores and post office;

K. Placed cameras at intersections for purpose of issuing tickets to drivers who fail to make it through the intersection quickly enough because of traffic congestion or otherwise;

L. Undertook the foregoing congestion-creating activities in New York County while knowing that construction permits are going to be closing down various traffic lanes for extended periods;

M. Facilitated the addition of more than 10,000 bicycles on the busiest of New York County's most congested avenues and streets, thereby adding to the congestion problem; and

N. Filed separate environmental impact Type II letters falsely claiming that various activities above as individual, unrelated matters, are not Type I activities requiring the preparation and filing of an environmental impact statement under McKinney's ECL § 8-0109.

### **DOT'S ACTIVITIES ARE PART OF A SINGLE PLAN**

16. The DOT's activities about which the Petition complains are important components of an overall plan to create additional traffic congestion in NYC to such an extent that the goal of congestion pricing will be accepted by voters and by the New York State Legislature, thereby enabling NYC to raise additional revenues of approximately \$2 billion per year in additional tolls without a direct increase in taxation.

17. Although these activities are part of an overall plan, they have not been treated together when NYC has made its token efforts to comply with state law requiring the preparation and filing by the DOT as lead agency for an environmental impact statement under McKinney's Environmental Conservation Law, § 8-0109, or under federal law requiring an Environmental Impact Statement for projects receiving federal funding.

### **EFFECT OF RESPONDENT'S ACTIVITIES**

18. Predictably, as intended and anticipated by the DOT, its Congested-Related Activities have resulted in increased congestion in New York County and Mayor de Blasio

announced, on February 19, 2015 his willingness to review a new congestion pricing proposal (to impose tolls on NYC's four free East River bridges) if he is unable to obtain funding for the supposedly "cash-starved" Metropolitan Transportation Authority from Albany leaders.

19. There is a substantial threat to impose \$2,000,000 per business day or \$520,000,000 per year in added costs on motorists driving in and out of Manhattan, caused by the DOT's Congestion-Pricing Activities. [This assumes 100,000 vehicles per business day charged \$20 to enter NYC times 260.]

20. These activities have had the following effect in New York County:

A. Converting 9th Avenue from being the fastest road downtown to the slowest;

B. Reducing the number of moving vehicle lanes from a maximum of 5 to a maximum of 3 on 8th, 9th and other avenues;

C. Reducing the present maximum of 3 vehicle lanes to 2, 1 or none when a delivery truck stops in a moving lane to make a delivery, or a cab stops in a moving lane to receive or discharge a passenger, or vehicles making a right or left turn wait in line in a moving lane before being able to make its turn; or in the event of a vehicle accident; or when an emergency vehicle, tow truck, police car or ticketing scooter stop in one of the 3 moving lanes to conduct its business;

D. Snow plows are unable to plow the bike lane and cement plaza, which become unusable by bikes and pedestrians and make it more dangerous for them when forced to use the 3 moving lanes;

E. Persons seeking to hail a cab at intersections (where most hailing tends to take place because of greater probability) are forced to do so in competition for lane use with turning vehicles or by use of a moving lane, creating additional risk for these persons;

F. Pedestrians crossing a street have greater risk because they now have to worry about looking for 2-way bicycle traffic between the sidewalk and cement plaza before coming to the moving lanes and then checking the moving lanes to see if any vehicles are approaching;

G. The inability of cars to stop and park beside the curb and the reduction in overall number of parking spaces has caused substantial losses in sales for retail stores who previously were making sales to drivers and passengers who took advantage of short-term parking meters; the floating parking has no meters and is substantially longer in average use, with less turnover and fewer retail sales;

H. Cab drivers are spending substantially more time in reduced-fare waiting, with the result of a decline in average weekly revenue;

I. Cab drivers are getting lower gas mileage from their cabs and spending substantially more in gasoline each week; at 500,000 trips per day for all yellow cabs averaging 2.6 miles, or 1,300,000 miles per day, assuming 20% delay due to NYC-created congestion and 20 miles per gallon average, yellow cabs use 650,000 gallons of gas per day of which 130,000 gallons is attributable to created congestion, for a total of 474 million unnecessary gallons per year at an annual cost of \$1.5 billion (including oil) and \$3 billion per year when including yellow cabs, green cabs, Uber and other black cars and livery services. This figure necessarily includes driving outside of Manhattan.

J. Motorists, their passengers and users of green and yellow taxicabs and black-car limousines are spending substantially more of their valuable time (for personal or economic use, as the motorist would have chosen) getting from one place to another in Manhattan at a cost of approximately \$6 billion per year, assuming the income-producing value of the rider's time is \$50/hour. Assuming a total of 1,000,000 trips each day for all types of cabs and 2 passengers per



trip, and 10 minutes of created congestion delay per trip, the lost-time cost per year is \$6,083,333,333 (1,000,000 x 2 x 365 x \$50)/6;

K. Unnecessary use of 474 million gallons of gas per year, causes unnecessary emission of about 11,376,000,000 pounds of carbon dioxide and other global-warming gases (474,000,000 x 24 lbs). This formula is taken from:

Our personal vehicles are a major cause of global warming. Collectively, cars and trucks account for nearly one-fifth of *all* U.S. emissions, emitting around 24 pounds of carbon dioxide and other global-warming gases for every gallon of gas. About 5 pounds comes from the extraction, production, and delivery of the fuel, while the great bulk of heat-trapping emissions—more than 19 pounds per gallon—comes right out of a car's tailpipe. [Source: [http://www.ucsusa.org/our-work/clean-vehicles/car-emissions-and-global-warming#.VPxth\\_nF9nM](http://www.ucsusa.org/our-work/clean-vehicles/car-emissions-and-global-warming#.VPxth_nF9nM) ]

L. Retail stores in Manhattan are losing sales and profits because of the elimination of curb parking to create bike lanes; by the decrease in nearby ("floating") parking spaces occupying a former active traffic lane, by congestion delays which make it less likely for customers to make purchases when they are waiting in a cab; by increased ticketing which makes motorists less likely to look for short-term parking when a \$100 ticket and towing could be the result;

M. Additional fines for violation of additional restrictions on parking and moving vehicles, amounting to an estimated \$3,000,000;

N. Elimination of the space used for public access to the main United States Post Office (on 8th Avenue, between 32nd and 33rd Streets) and the mail boxes placed outside for use by drivers without having to leave their vehicles;

O. Mail truck are now required to stop in active traffic lanes to empty mail boxes, thereby causing additional congestion;

P. Additional ticketing of vehicles and their drivers by reason of NYC's illegal quota system for issuing tickets (according to NYC Latino police officers who filed a federal class action on 3/2/15 alleging "Promotion or job security in the New York City Police Department depends on the number of arrests made or tickets issued...").

Q. Construction permits issued for Manhattan construction will cause lengthy reductions in the available moving traffic lanes, adding to existing congestion.

R. Congestion pricing and the costs of willfully created congestion will increase prices to consumers and lower their standard of living, which will have an adverse impact on local businesses and tax revenues of NYC, as well.

S. Using cameras and data processing to achieve near 100% enforcement of violations of traffic laws will have adverse consequences such as the shifting of vehicular traffic to residential streets not yet having any installed cameras; a reduced need for police officers who now account for about 25% of driver and vehicle ticketing; increase in transportation expense for drivers in NYC amounting to several \$ billion per year (and as much as \$2 billion per year if 30,000 cameras are ultimately installed and issue 1,000 tickets per day with an average return of a little less than \$200/ticket), further impoverishing New Yorkers and local small businesses and driving residents, small businesses and jobs out of NYC.

T. Creating conditions where severe injuries and death have occurred as to some cyclists and an ever-present risk of injury or death to most cyclists;

U. In 2012, drivers injured 3,817 cyclists — the highest total in any of the years 2008-2012. Source: <http://www.streetsblog.org/2014/10/29/nyc-pedestrian-and-cyclist-traffic-injuries-hit-five-year-high-in-2013/>

V. Causing damages to individuals and businesses and additional costs for insurers, medical facilities and providers of social services including (i) the loss of valuable time caused by transportation delays which, for the Petitioner, is \$400/hour, whether such time would have been used for personal/non-economic pursuits or for economic pursuits; (ii) injuries caused by unnecessary emission of pollutants into the air causing an adverse physical and sometimes mental condition for individuals; (iii) increased transportation costs resulting from delays, additional gas, oil and repairs, increased insurance; (iv) increased parking costs; (v) denial of use of public property (amounting to 14,000,000 square feet in New York County) put to illegal private use for bikers by Respondent; (vi) subjecting Petitioner and other motorists to increased hazard while driving, and other risks to pedestrians; (vii) increased insurance costs associated with increased risks.

21. Although the DOT was aware of these adverse consequences to the environment, and actually intended the consequence with actual or knowledgeable intent, the DOT failed to treat its planned activities as a Type I action requiring the creation and filing of an Environmental Impact Statement under McKinney's ECL § 8-0109 and instead filed a series of individual statements for components of the overall plan claiming that the activity described was not a Type I action and did not meet the 25% threshold requirement, including the following filings:

A. Type II Memo filings for redesign of five Manhattan avenues filed between May 2012 and April 2013, as follows (1) CEQR Number 12DOT036M, 8th Avenue Complete Street Design 34th Street to Columbus Circle; (2) 12DOT037M, 9th Avenue Complete Street Design (West 33rd Street to West 59th Street); (3) 13DOT001M, 2nd Avenue Complete Street Design

(East 100th to East 125th Streets); (4) 13DOT017M, First Avenue Complete Street Design from East 72nd to East 96th Streets, Manhattan, and (5) 13DOT026M, Columbus Avenue Complete Street Design (West 59th to West 77th Streets and West 110th to West 96th Streets), Manhattan.

The 8th Avenue filing stated:

NYCDOT is proposing a complete street redesign of Eighth Avenue from West 34th Street to Columbus Circle in Manhattan Community District 4. The redesign segment of Eighth Avenue has been identified a High Crash Corridor. In addition, Eighth Avenue between West 34th and West 52nd Streets is within the Midtown West Senior Area. The proposed redesign will allow for safer pedestrian crossings, improve access and circulation for cyclists, and improve safety for all street users. The project includes narrowing of travel lanes, installing landscaped safety refuge islands, floating parking and a bicycle path with separated mixing zones. A complete street design was previously implemented on 8th Ave from Bank to 34th Streets. Installation of this complete street will alleviate left turn conflicts, allow for safer pedestrian crossings and improve access and circulation for cyclists. The project is expected to be completed in 2012.

B. Type II Memo filing on 4/2/12 for NYC Bikeshare Program, 12DOT016Y, stating

DOT is negotiating a contract with Alta Bicycle Share, Inc. ("Alta") to create a self-service bicycle sharing program ("bikeshare") in portions of the boroughs of Manhattan (south of 79th Street and river to river) and northwest Brooklyn. Bikeshare will be a network of approximately 10,000 public-use bicycles docked at 600 automated stations and available 24 hours a day, 365 days a year. Users may take a bicycle from any station and return it to any other station in the system, which creates a new transportation option for short, one-way trips for commuting, running errands, or visiting tourist attractions.

with a 4/2/12 filing of a document entitled "Negative Declaration", stating

Based on the review of the project information contained in an Environmental Assessment Statement (EAS) dated February 17, 2012, DOT has determined that the proposed action would not have a significant adverse impact on the environment.

\* \* \*

#### Reasons Supporting this Determination

The above determination is based on an EAS dated February 17, 2012 and incorporated by reference herein, which makes the following conclusions regarding the proposed project:

1. Bikeshare station locations will be selected based on the results of an extensive community outreach process by DOT, in coordination with NYCBS, as well as in compliance with Bikeshare Siting Guidelines developed by DOT; and
2. No other significant effects upon the environment that would require the preparation of a Draft Environmental Impact Statement are foreseeable.

- C. Type II Memo filing on 3/21/14 for CityRack Bike Rack Program, 14DOT043Y,

stating:

DOT is proposing to install approximately 5,000 new bicycle racks over the next three years at various locations throughout the City. The action is concurrent with the overall expansion of the bicycle network with a goal to reduce congestion and improve air quality through the provision of bicycle parking facilities at priority locations such as commercial areas, transit stops, parks, and schools. Since 1996, approximately over 19,000 bicycle racks have been installed. The proposed sites for the new bike racks have been carefully chosen in such a way as to avoid reducing clear sidewalk space to less than eight feet or to less than half the total sidewalk width when fully occupied by bicycles. Community Boards are notified and given the opportunity to comment 30 days before the installation of a CityRack.

- D. Type II Memo filing on 7/3/14 for Installation of Pedestrian Safety Islands on 4th

Avenue between East 10th and East 12th Streets, 14DOT046M, stating:

DOT is proposing to install five pedestrian safety islands (attached) on 4th Avenue between East 10th and East 12th Streets in the Nolita section of Manhattan Community Board 2. The

modification will shorten the crossing distance on 4th Avenue from 71 feet to 50 feet as a result of the recent installation of a parking protected bicycle path. The action resulted in minor signal timing modifications at 4th Avenue at 10th, 11th, 12th and 13th Streets to reduce pedestrian wait time. The proposal, which is supported by Community Board 2, will maintain the existing number of moving lanes and will provide for a safe pedestrian crossing and enhance safety and operations for all street users (i.e., pedestrians, motorists, bicyclists and transit users). The Build year is 2015.

22. Upon information and belief, the filings described in the preceding paragraph and its subparagraphs A-D are the only filings that were made by the DOT or any agency of NYC relating to the Congestion-Creating Activities described in the sub-paragraphs under ¶ 15 above.

23. The adverse, congestion effect of such activities is felt upon all 508.38 miles of streets and avenues in Manhattan (with a total of 6,718 blocks) [source: p. 3 of <http://www.fcny.org/cmgp/streets/pages/2001PDF/Report/DFMN.pdf> ].

24. The Congestion-Creating Activities as a whole and various combinations of the various components were required under McKinney's ECL § 8-0109 and 6 NYCRR Part 617.4 to create and file an Environmental Impact Statement, under one or more of the following bases:

(6) activities, other than the construction of residential facilities, that meet or exceed any of the following thresholds; or the expansion of existing nonresidential facilities by more than 50 percent of any of the following thresholds:

(i) a project or action that involves the physical alteration of 10 acres;

(iii) parking for 1,000 vehicles;

(11) any Unlisted action that exceeds a Type I threshold established by an involved agency pursuant to section 617.14 of this Part.

25. The number of acres of street and sidewalk involved in the Congestion-Creating Activities and the number of parking spaces involved substantial exceeds 10 acres and 1,000 vehicles. 10,420,000 square feet of bike lanes in New York County amounts to 333.33 acres (10,420,000/43560) which is 33 times the 10-acre minimum.

26. None of the 37 paragraphs under 6 NYCRR Part 617.5 provides any basis for Type II exemption for the Congestion-Creating Activities as a whole or for various component combinations.

### **DAMAGES**

27. Petitioner has been damaged by the alleged activities of the Respondent in various ways including but not limited to the primary injuries alleged in ¶¶ 11A and 11B above, together with the following:

A. The loss of Petitioner's valuable professional time (and the option to use all or any part of such time for non-economic pursuits) caused by transportation delays, at the rate of \$400/hour for an estimated 100 hours per year;

B. Injuries caused by unnecessary emission of pollutants into the air causing an adverse physical and sometimes mental condition not obvious for an extended period of time but injurious nevertheless;

C. Increased transportation costs resulting from delays, additional gas, oil and repairs, and increased automobile insurance;

D. Increased parking costs;

E. Denial to Petitioner as a motorist of use of 14.4 million square feet of public property (i.e., parts of the sidewalks and streets in New York County) put to illegal private use for the benefit of bikers and CitiBikes by Respondent;

F. Subjecting Petitioner to increased hazard while driving, and other risks while Petitioner is a pedestrian and if he should ever become a cyclist;

G. Increased insurance costs associated with various increased risks (in addition to "C" above.

### **RELIEF SOUGHT**

28. Petitioner is entitled to and seeks an order and judgment providing the following relief:

1. Declaring that all changes in traffic lanes, pedestrian plazas, pedestrian safety areas, bicycle lanes, bicycle stations, floating parking, cameras at photo-enforced intersections, reduction in maximum vehicle speed, 2015 changes in timed light on 1-way avenues, contracts to implement such changes, plans for imposing congestion-related tolls on NYC bridges and tunnels and the Department of Transportation policy, and rules and regulations concerning traffic congestion relating to the County of New York (hereinafter, the "DOT Plan") are in violation of McKinney's Environmental Conservation Law (ECL) § 8-0109 for failure to prepare and file an Environmental Impact Statement for a Type I activity which, as part of an overall plan, "may have a significant effect on the environment" and are, as a result, invalid.

2. Directing and compelling Respondent and its officers and employees immediately to undo as quickly as possible all changes already made or now being implemented under the DOT Plan and after such changes are undone to prepare and file an Environmental Impact



Statement dealing with all changes sought for the County of New York as a combination of related changes of Type I which may have a significant effect on the environment.

3. Enjoining Respondent and its officers and employees from receiving or making payments under any existing contracts relating to the DOT Plan and from executing, entering into or renewing any contracts relating to the DOT Plan.

4. Requiring the Department of Transportation to commence a lawsuit against such individual or individuals who are responsible for the violation of ECL § 8-0109 to recover the costs incurred in the activities in violation of said law and the costs of restoring New York County to the condition it enjoyed prior to the violations of law.

5. Granting such other, further or different relief as the Court deems just and proper.

29. No prior application has been made by Petitioner for this or any similar relief (other than the Petition to which this is an amendment).

#### **PRAYER**

**WHEREFORE**, the Petitioner prays the Court for an order and judgment for the following relief against the Respondent:

1. Declaring that all changes in traffic lanes, pedestrian plazas, pedestrian safety areas, bicycle lanes, bicycle stations, floating parking, cameras at photo-enforced intersections, reduction in maximum vehicle speed, 2015 changes in timed light on 1-way avenues, contracts to implement such changes, plans for imposing congestion-related tolls on NYC bridges and tunnels and the Department of Transportation policy, and rules and regulations concerning traffic congestion relating to the County of New York (the "DOT Plan") are in violation of McKinney's Environmental Conservation Law (ECL) § 8-0109 for failure to prepare and file an

Environmental Impact Statement for a Type I activity which, as part of an overall plan, "may have a significant effect on the environment" and are, as a result, invalid.

2. Directing and compelling Respondent and its officers and employees immediately to undo as quickly as possible all changes already made or now being implemented under the DOT Plan and after such changes are undone to prepare and file an Environmental Impact Statement dealing with all changes sought for the County of New York as a combination of related changes of Type I which may have a significant effect on the environment.


3. Enjoining Respondent and its officers and employees from receiving or making payments under any existing contracts relating to the DOT Plan and from executing, entering into or renewing any contracts relating to the DOT Plan.

4. Requiring the Department of Transportation to commence a lawsuit against such individual or individuals who are responsible for the violation of ECL § 8-0109 to recover the costs incurred in the activities in violation of said law and the costs of restoring New York County to the condition it enjoyed prior to the violations of law.

5. Granting such other, further or different relief as the Court deems just and proper.

6. Petitioner's costs of this action.

**Dated:** New York, New York  
November 12, 2015



**Carl E. Person**

**Petitioner, Pro Se**

**225 E. 36th St. - Suite 3A**

**New York NY 10016-3664**

**Tel: 212-307-4444**

**Fax: 212-307-0247**

**email: carlpers2@gmail.com**

VERIFICATION

STATE OF NEW YORK )

: ss.:

COUNTY OF NEW YORK)


CARL E. PERSON, being duly sworn, deposes and says:

That I have read the foregoing Verified Amended Petition (the "Verified Amended Petition") and know the contents thereof; that the same is true to the best of my knowledge and belief except as to the matters therein stated to be alleged upon information and belief, and as to those matters I believe them to be true. I further state that the grounds of my knowledge and belief as to all matters in the Verified Amended Petition are based upon a review of original documents, experience, research into the filings by the NYC Department of Transportation and other NYC agencies relating to price congestion, parking, avenue improvements and cameras.



Carl E. Person

Subscribed and sworn to before me  
this 12th day of November, 2015.

  
Notary Public in and for the State of New York

ARLENE WILLIAMS  
Notary Public, State of New York  
No. 01W6218900  
Qualified in Queens County  
Commission Expires March 15, 2018

Index No. 100484/15

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK

In the Matter of the Application of

CARL E. PERSON,

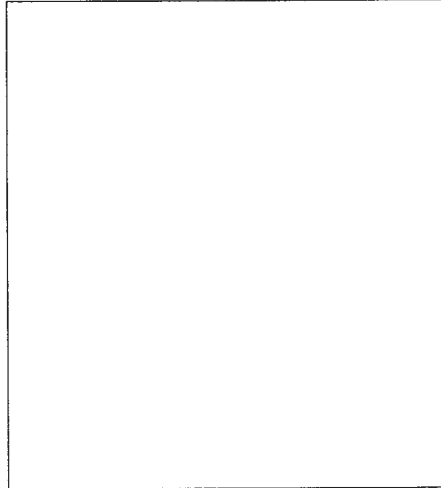
Petitioner,

For a Judgment under Article 78 of the CPLR,

-against-

NEW YORK CITY DEPARTMENT OF  
TRANSPORTATION,

Respondent.



Signature (Rule 130-1.1-a)

\_\_\_\_\_  
Carl E. Person, Esq.

*(Proposed)*  
**VERIFIED AMENDED ARTICLE 78 PETITION**

Carl E. Person  
*Petitioner, Pro Se*  
225 E. 36th St. - Suite 3A  
New York NY 10016-3664  
Tel: 212-307-4444  
Fax: 212-307-0247  
email: carlpers2@gmail.com

EXHIBIT C TO PERSON AFFIDAVIT -  
REDLINED PROPOSED VERIFIED AMENDED ARTICLE 78 PETITION,  
DATED NOVEMBER 12, 2015 [465 - 489]

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SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK

In the Matter of the Application of

CARL E. PERSON,

Petitioner,

For a Judgment under Article 78 of the CPLR,

-against-

NEW YORK CITY DEPARTMENT OF  
TRANSPORTATION,

Respondent.

Index No.

100484/15

(Proposed)  
**VERIFIED**  
**AMENDED**  
**ARTICLE 78**  
**PETITION**

Petitioner, Carl E. Person, *pro se* ("Petitioner"), as and for his Verified Amended Petition in the above-captioned special proceeding, respectfully alleges as to his own conduct, and upon information and belief as to the conduct of others and matters of public record, as follows:

**PRELIMINARY STATEMENT**

1. On April 22, 2007, NYC Mayor Michael Bloomberg announced his transportation plan for NYC including a congestion pricing program, and 15 other proposed transportation initiatives included increased use of cycling, increased traffic violation enforcement, to enable NYC to apply for federal funding. Bloomberg, as one of the world's richest persons, was able to obtain whatever approvals he needed for his plan from the City Council and community groups, and the traffic-related changes at issue were dictated by Bloomberg without compliance with state and federal laws protecting the environment.

2. Janette Sadik-Khan ("Sadik-Khan") worked in Mayor David Dinkins Office for Transportation in 2007 and implemented the DOT's policy for expanding bicycle lanes and bicycle usage in NYC. Upon assuming office as Mayor, Michael Bloomberg appointed Sadik-Khan as DOT Commissioner, and in 2008 the DOT under Sadik-Khan released the DOT's strategic plan for NYC streets, described by the DOT (at <http://www.nyc.gov/html/dot/html/about/stratplan.shtml> ), as follows:

### **SUSTAINABLE STREETS**

In the Spring of 2008, DOT released Sustainable Streets, the agency's strategic plan. The plan laid out, for the first time ever, a clear and detailed transportation policy for New York City—one that promised a new direction. DOT is delivering on the promises of its plan, and is moving forward on every one of the 164 actions committed to in Sustainable Streets. This annual update of the plan reports on that progress, and serves as a focal point for meeting targets and sustaining momentum across all of our Agency's programs. It also sets forth new goals that have emerged during the past year, ranging from development of an internal DOT car-sharing system to further reduce DOT's fleet, parking needs and miles driven, to issuing a request for proposals to establish a large scale public bicycle system in New York, similar to those in Paris and other cities.

3. On February 12, 2003, London established a "Congestion Charge", which today is 11.5 Pounds or (at the conversion rate of \$1.50/Pound), a charge of \$17.75 for the privilege of entering into and driving in the Congestion Area (i.e., Central London). Even before his 3rd term of NYC Mayor was completed, Bloomberg was engaged in shifting his business focus to London, with his new European Headquarters in London (a city block named by Bloomberg "Bloomberg Plaza") to open in 2016, where Bloomberg will be able to live and work in a city having congestion pricing, a form of regressive taxation benefiting Bloomberg.

4. On April 22, 2007, Mayor Bloomberg announced his long-term plan for NYC with 127 separate initiatives (called "PlaNYC"), including a dramatic acceleration of NYC's

1,800-mile bike lane master plan and implementation of congestion pricing, a system that would charge drivers a fee for entering the Manhattan commercial business district during peak hours.

5. On August 14, 2007, the U.S. Department of Transportation ("DOT" or "Respondent") awarded from the Urban Partnership Program \$354 million to NYC, including \$10.4 million for launching NYC's congestion pricing program and \$2 million for research.

6. Various politicians expressed skepticism about the congestion pricing plan, including the environmental effects on neighborhoods bordering the congestion zone, the lack of state control and imposition of a regressive tax on commuters.

7. On January 31, 2008, the New York City Traffic Congestion Mitigation Commission approved a plan for congestion pricing, but the plan was rejected by the NYS Assembly on April 7, 2008, and NYC lost its eligibility to receive \$354 million in federal assistance for traffic congestion relief and mass transit improvements, for possible reasons including an unwillingness and failure to participate in preparing and filing an environmental impact statement under federal law.

8. In spite of these setbacks, then Mayor Bloomberg and the DOT decided to create additional congestion in New York County (and elsewhere in NYC), rather than to ease claimed existing traffic congestion, by a series of traffic-related activities having a coordinated, cumulative, anticipated and desired effect, as described in ¶ 15 below.

9. NYC is already one of the most expensive cities in the United States for residents and businesses, and increased traffic congestion is putting NYC into a worse position for creating and maintaining employment and small-business opportunities.

10. NYC has never prepared or published an estimate of the costs and losses to its residents and businesses resulting or expected to result from the DOT's Congestion-Pricing Activities (described in ¶ 15 below).

10A. The effect of these activities has been to create more congestion in New York County, together with many other injurious effect to the environment in New York County and beyond, which needs to be described in an environmental impact statement. Inasmuch as the environmental impact statement will be prepared after a substantial part of the planned activities have taken place, and their effect can be determined, the environmental impact statement will have even greater importance for New York County and surrounding area.

#### **PARTIES TO THE SPECIAL PROCEEDING**

11. Petitioner, Carl E. Person, is a citizen and resident of New York City, residing in New York, New York, with offices at 225 E. 36th Street - Suite 3A, New York, NY 10016-3664. Person operates a motor vehicle in the County of New York from time to time, and has been damaged by the traffic congestion being created by the Respondent through its activities in violation of law.

11A. Person's primary injury results from his activities as a motorist in New York County. Because of the Respondent's alleged activities, Person spends approximately 5 extra hours per week waiting in his car or in a taxicab (or about 250 hours per year), hours that would not have been lost but for the activities of the Respondent. These lost hours could have been devoted to personal pursuits of a non-economic nature, but were taken from Person by reason of the activities of the Respondent. Person estimates that he loses an average of about 2 hours per week (100 hours per year) as a passenger in taxis in New York County and about 3 hours per



week (about 150 hours per year) as a motorist in New York County. Other persons in New York County who walk, ride bicycles, take buses (with fast lanes), or don't go outdoors for whatever reason do not lose their personal hours by reason of the Respondent's activities. Because Person is in a non-moving or slow-moving vehicle for these hours, he cannot spend that time with his family, going to movies, telephoning his friends, doing internet research, walking on the sidewalk, shopping in stores, reading a book, looking at television or any of the other things that individuals do when not driving a car.

11B. Person's primary injury as aforesaid motorist also results from his personal exclusion while a motorist from the road space (i.e., bike lanes) provided for use of bicyclists, as to which motorists are generally excluded. Assuming there are 500 miles of bike lanes in New York County (estimated from map at <http://www.nycbikemaps.com/maps/manhattan-bike-map/>), each lane approximately 5 to 6 feet wide, created by removing a lane of vehicular traffic (see p. 38, <http://home.nyc.gov/html/dcp/pdf/bike/design.pdf>). Five hundred miles (5,280 feet x 500 = 2,640,000 feet) x 5.5 feet (average of 5 and 6 feet) = 14,520,000 square feet in Manhattan taken away from Person and other motorists and turned over to bicyclists for their use, to the exclusion of Person and other motorists.

11C. The overall costs (personal as well as monetary) to the various categories of individuals, businesses, agencies and others in New York County were never estimated and published, but appear to be of monumental proportions that could cause NYC to go into bankruptcy through its intentional interference with the economics of millions of persons through the alleged activities of Respondent. Everyone involved has a right to know the cost of the Respondent's activities, but Respondent has failed to calculate or provide any estimate by its failure to prepare and file an environmental impact statement.

11C. Respondent could have created bike lanes without causing injury to Person and others similarly situated by building them in public parks throughout the 5 Boroughs and providing reimbursement (at the time of bike rental) for use of public transportation to go to and from the parks. An environmental impact statement would have forced Respondent to consider this obvious alternative, but Respondent avoided this by refusing to prepare and file an environmental impact statement.

11D. Respondent's activities have caused a substantial deterioration in the condition of the streets in New York County by failure to repair to the extent repairs were taking place prior to Respondent's entry into the bike-lane and traffic-congestion business, which deterioration in street conditions add to the congestion problem, as every motorist in New York County has experienced.

12. Respondent, New York City Department of Transportation ("DOT" or "Respondent"), has its main office at 55 Water Street, New York, NY 10041 and is the NYC agency in charge of creating additional congestion in New York County and the other counties in NYC for the purposes of (a) qualifying for federal grants relating to congestion and congestion pricing; (b) raising revenues for NYC by placing tolls (or increasing tolls) for use of bridges and tunnels leading to Manhattan; (c) raising revenues by additional ticketing for violation of rules, regulations and laws supposedly enacted to try to reduce traffic congestion; and (d) raising additional taxes through use of fines rather than direct taxation.

### JURISDICTION AND VENUE

13. This Court also has jurisdiction pursuant to CPLR §§ 7801-7806, to review the actions by bodies or officers who have failed to perform a duty enjoined upon them by law.

14. Venue in the County of New York is proper pursuant to CPLR §§ 504(3), 506(b) and 503(a) as: (i) claims are asserted against an agency of NYC and the claims arose in New York County; (ii) claims are asserted against an agency of NYC with its principal offices in New York County; and (iii) the petitioner resides in New York County.

### STATEMENT OF FACTS

15. In a series of related and coordinated activities of the DOT commenced by Mayor Bloomberg and continued by his successor, Mayor Bill de Blasio (hereinafter, the "Congestion-Creating Activities"), the Respondent DOT has:

A. Placed "floating parking spaces" in what had been moving traffic lanes on various avenues in New York County including 8th Avenue and 9th Avenue, reducing the number of available lanes for moving traffic;

B. Placed bicycle lanes on or alongside sidewalks, thereby eliminating such space for pedestrians and parking, and resulting in moving some of the eliminated parking spaces into a lane being used up to such time for moving traffic;

C. Closed roads in congested areas to enable individuals to sit at chairs and tables in the middle of the street (called "Pedestrian Plazas") and watch vehicle traffic try to move around the protected area;

D. Placed concrete islands and planting trees where vehicle traffic used to flow on various avenues in New York County, including 8th and 9th Avenues;

E. Reduced the maximum speed for vehicles in NYC to 25 miles per hour (from 30 miles per hour) effective November 7, 2014, a law enacted by the NYC Council;

F. In January, 2015, changed the timed lights on various one-way avenues in New York County so that vehicles had to stop every 3-8 blocks and were no longer able to travel at a constant speed without stopping;

G. Granted space on sidewalks and streets for many hundreds of bicycle parking stations for more than an estimated 10,000 bicycles instead of requiring the licensee to rent traditional retail store space for storing, renting and returning the bicycles;

H. Based the bicycle plan upon arrangements made in a city having an area of few square miles (where a cyclist could go from any point to any other point - about 1-2 miles - in 5-10 minutes) without considering the differences for NYC having an area of 305 square miles;

I. Intended to have bicycles replace cars and taxicabs as transportation for large numbers of persons between their homes and jobs, even though the average distance for most employed individuals is an estimated 15 miles between home and job (75 minutes of bicycling at the rate of 1 mile per 5 minutes) and not a workable plan unless the DOT intended to encourage individuals to get jobs closer to home, or move closer to their jobs;

J. Placed bicycle stations in front of stores and public facilities (such as the Main United States Post Office at 32-33rd Street and 8th Avenue), causing substantial interference with existing use of the stores and post office;

K. Placed cameras at intersections for purpose of issuing tickets to drivers who fail to make it through the intersection quickly enough because of traffic congestion or otherwise;

L. Undertook the foregoing congestion-creating activities in New York County while knowing that construction permits are going to be closing down various traffic lanes for extended periods;

M. Facilitated the addition of more than 10,000 bicycles on the busiest of New York County's most congested avenues and streets, thereby adding to the congestion problem; and

N. Filed separate environmental impact Type II letters falsely claiming that various activities above as individual, unrelated matters, are not Type I activities requiring the preparation and filing of an environmental impact statement under McKinney's ECL § 8-0109.

### **DOT'S ACTIVITIES ARE PART OF A SINGLE PLAN**

16. The DOT's activities about which the Petition complains are important components of an overall plan to create additional traffic congestion in NYC to such an extent that the goal of congestion pricing will be accepted by voters and by the New York State Legislature, thereby enabling NYC to raise additional revenues of approximately \$2 billion per year in additional tolls without a direct increase in taxation.

17. Although these activities are part of an overall plan, they have not been treated together when NYC has made its token efforts to comply with state law requiring the preparation and filing by the DOT as lead agency for an environmental impact statement under McKinney's Environmental Conservation Law, § 8-0109, or under federal law requiring an Environmental Impact Statement for projects receiving federal funding.

### **EFFECT OF RESPONDENT'S ACTIVITIES**

18. Predictably, as intended and anticipated by the DOT, its Congested-Related Activities have resulted in increased congestion in New York County and Mayor de Blasio

announced, on February 19, 2015 his willingness to review a new congestion pricing proposal (to impose tolls on NYC's four free East River bridges) if he is unable to obtain funding for the supposedly "cash-starved" Metropolitan Transportation Authority from Albany leaders.

19. There is a substantial threat to impose \$2,000,000 per business day or \$520,000,000 per year in added costs on motorists driving in and out of Manhattan, caused by the DOT's Congestion-Pricing Activities. [This assumes 100,000 vehicles per business day charged \$20 to enter NYC times 260.]

20. These activities have had the following effect in New York County:

A. Converting 9th Avenue from being the fastest road downtown to the slowest;

B. Reducing the number of moving vehicle lanes from a maximum of 5 to a maximum of 3 on 8th, 9th and other avenues;

C. Reducing the present maximum of 3 vehicle lanes to 2, 1 or none when a delivery truck stops in a moving lane to make a delivery, or a cab stops in a moving lane to receive or discharge a passenger, or vehicles making a right or left turn wait in line in a moving lane before being able to make its turn; or in the event of a vehicle accident; or when an emergency vehicle, tow truck, police car or ticketing scooter stop in one of the 3 moving lanes to conduct its business;

D. Snow plows are unable to plow the bike lane and cement plaza, which become unusable by bikes and pedestrians and make it more dangerous for them when forced to use the 3 moving lanes;

E. Persons seeking to hail a cab at intersections (where most hailing tends to take place because of greater probability) are forced to do so in competition for lane use with turning vehicles or by use of a moving lane, creating additional risk for these persons;

F. Pedestrians crossing a street have greater risk because they now have to worry about looking for 2-way bicycle traffic between the sidewalk and cement plaza before coming to the moving lanes and then checking the moving lanes to see if any vehicles are approaching;

G. The inability of cars to stop and park beside the curb and the reduction in overall number of parking spaces has caused substantial losses in sales for retail stores who previously were making sales to drivers and passengers who took advantage of short-term parking meters; the floating parking has no meters and is substantially longer in average use, with less turnover and fewer retail sales;

H. Cab drivers are spending substantially more time in reduced-fare waiting, with the result of a decline in average weekly revenue;

I. Cab drivers are getting lower gas mileage from their cabs and spending substantially more in gasoline each week; at 500,000 trips per day for all yellow cabs averaging 2.6 miles, or 1,300,000 miles per day, assuming 20% delay due to NYC-created congestion and 20 miles per gallon average, yellow cabs use 650,000 gallons of gas per day of which 130,000 gallons is attributable to created congestion, for a total of 474 million unnecessary gallons per year at an annual cost of \$1.5 billion (including oil) and \$3 billion per year when including yellow cabs, green cabs, Uber and other black cars and livery services. This figure necessarily includes driving outside of Manhattan.

J. Motorists, their passengers and users of green and yellow taxicabs and black-car limousines are spending substantially more of their valuable time (for personal or economic use, as the motorist would have chosen) getting from one place to another in Manhattan at a cost of approximately \$6 billion per year, assuming the income-producing value of the rider's time is \$50/hour. Assuming a total of 1,000,000 trips each day for all types of cabs and 2 passengers per

trip, and 10 minutes of created congestion delay per trip, the lost-time cost per year is \$6,083,333,333 (1,000,000 x 2 x 365 x \$50)/6;

K. Unnecessary use of 474 million gallons of gas per year, causes unnecessary emission of about 11,376,000,000 pounds of carbon dioxide and other global-warming gases (474,000,000 x 24 lbs). This formula is taken from:

Our personal vehicles are a major cause of global warming. Collectively, cars and trucks account for nearly one-fifth of *all* U.S. emissions, emitting around 24 pounds of carbon dioxide and other global-warming gases for every gallon of gas. About 5 pounds comes from the extraction, production, and delivery of the fuel, while the great bulk of heat-trapping emissions—more than 19 pounds per gallon—comes right out of a car's tailpipe. [Source: [http://www.ucsusa.org/our-work/clean-vehicles/car-emissions-and-global-warming#.VPxth\\_nF9nM](http://www.ucsusa.org/our-work/clean-vehicles/car-emissions-and-global-warming#.VPxth_nF9nM) ]

L. Retail stores in Manhattan are losing sales and profits because of the elimination of curb parking to create bike lanes; by the decrease in nearby ("floating") parking spaces occupying a former active traffic lane, by congestion delays which make it less likely for customers to make purchases when they are waiting in a cab; by increased ticketing which makes motorists less likely to look for short-term parking when a \$100 ticket and towing could be the result;

M. Additional fines for violation of additional restrictions on parking and moving vehicles, amounting to an estimated \$3,000,000;

N. Elimination of the space used for public access to the main United States Post Office (on 8th Avenue, between 32nd and 33rd Streets) and the mail boxes placed outside for use by drivers without having to leave their vehicles;

O. Mail truck are now required to stop in active traffic lanes to empty mail boxes, thereby causing additional congestion;



P. Additional ticketing of vehicles and their drivers by reason of NYC's illegal quota system for issuing tickets (according to NYC Latino police officers who filed a federal class action on 3/2/15 alleging "Promotion or job security in the New York City Police Department depends on the number of arrests made or tickets issued...").

Q. Construction permits issued for Manhattan construction will cause lengthy reductions in the available moving traffic lanes, adding to existing congestion.

R. Congestion pricing and the costs of willfully created congestion will increase prices to consumers and lower their standard of living, which will have an adverse impact on local businesses and tax revenues of NYC, as well.

S. Using cameras and data processing to achieve near 100% enforcement of violations of traffic laws will have adverse consequences such as the shifting of vehicular traffic to residential streets not yet having any installed cameras; a reduced need for police officers who now account for about 25% of driver and vehicle ticketing; increase in transportation expense for drivers in NYC amounting to several \$ billion per year (and as much as \$2 billion per year if 30,000 cameras are ultimately installed and issue 1,000 tickets per day with an average return of a little less than \$200/ticket), further impoverishing New Yorkers and local small businesses and driving residents, small businesses and jobs out of NYC.

T. Creating conditions where severe injuries and death have occurred as to some cyclists and an ever-present risk of injury or death to most cyclists;

U. In 2012, drivers injured 3,817 cyclists — the highest total in any of the years 2008-2012. Source: <http://www.streetsblog.org/2014/10/29/nyc-pedestrian-and-cyclist-traffic-injuries-hit-five-year-high-in-2013/>

V. Causing damages to individuals and businesses and additional costs for insurers, medical facilities and providers of social services including (i) the loss of valuable time caused by transportation delays which, for the Petitioner, is \$400/hour, whether such time would have been used for personal/non-economic pursuits or for economic pursuits; (ii) injuries caused by unnecessary emission of pollutants into the air causing an adverse physical and sometimes mental condition for individuals; (iii) increased transportation costs resulting from delays, additional gas, oil and repairs, increased insurance; (iv) increased parking costs; (v) denial of use of public property (amounting to 14,000,000 square feet in New York County) put to illegal private use for bikers by Respondent; (vi) subjecting Petitioner and other motorists to increased hazard while driving, and other risks to pedestrians; (vii) increased insurance costs associated with increased risks.

21. Although the DOT was aware of these adverse consequences to the environment, and actually intended the consequence with actual or knowledgeable intent, the DOT failed to treat its planned activities as a Type I action requiring the creation and filing of an Environmental Impact Statement under McKinney's ECL § 8-0109 and instead filed a series of individual statements for components of the overall plan claiming that the activity described was not a Type I action and did not meet the 25% threshold requirement, including the following filings:

A. Type II Memo filings for redesign of five Manhattan avenues filed between May 2012 and April 2013, as follows (1) CEQR Number 12DOT036M, 8th Avenue Complete Street Design 34th Street to Columbus Circle; (2) 12DOT037M, 9th Avenue Complete Street Design (West 33rd Street to West 59th Street); (3) 13DOT001M, 2nd Avenue Complete Street Design

(East 100th to East 125th Streets); (4) 13DOT017M, First Avenue Complete Street Design from East 72nd to East 96th Streets, Manhattan, and (5) 13DOT026M, Columbus Avenue Complete Street Design (West 59th to West 77th Streets and West 110th to West 96th Streets), Manhattan.

The 8th Avenue filing stated:

NYCDOT is proposing a complete street redesign of Eighth Avenue from West 34th Street to Columbus Circle in Manhattan Community District 4. The redesign segment of Eighth Avenue has been identified a High Crash Corridor. In addition, Eighth Avenue between West 34th and West 52nd Streets is within the Midtown West Senior Area. The proposed redesign will allow for safer pedestrian crossings, improve access and circulation for cyclists, and improve safety for all street users. The project includes narrowing of travel lanes, installing landscaped safety refuge islands, floating parking and a bicycle path with separated mixing zones. A complete street design was previously implemented on 8th Ave from Bank to 34th Streets. Installation of this complete street will alleviate left turn conflicts, allow for safer pedestrian crossings and improve access and circulation for cyclists. The project is expected to be completed in 2012.

B. Type II Memo filing on 4/2/12 for NYC Bikeshare Program, 12DOT016Y, stating

DOT is negotiating a contract with Alta Bicycle Share, Inc. (“Alta”) to create a self-service bicycle sharing program (“bikeshare”) in portions of the boroughs of Manhattan (south of 79th Street and river to river) and northwest Brooklyn. Bikeshare will be a network of approximately 10,000 public-use bicycles docked at 600 automated stations and available 24 hours a day, 365 days a year . Users may take a bicycle from any station and return it to any other station in the system, which creates a new transportation option for short, one-way trips for commuting, running errands, or visiting tourist attractions.

with a 4/2/12 filing of a document entitled "Negative Declaration", stating

Based on the review of the project information contained in an Environmental Assessment Statement (EAS) dated February 17, 2012, DOT has determined that the proposed action would not have a significant adverse impact on the environment.

\* \* \*

#### Reasons Supporting this Determination

The above determination is based on an EAS dated February 17, 2012 and incorporated by reference herein, which makes the following conclusions regarding the proposed project:

1. Bikeshare station locations will be selected based on the results of an extensive community outreach process by DOT, in coordination with NYCBS, as well as in compliance with Bikeshare Siting Guidelines developed by DOT; and
2. No other significant effects upon the environment that would require the preparation of a Draft Environmental Impact Statement are foreseeable.

- C. Type II Memo filing on 3/21/14 for CityRack Bike Rack Program, 14DOT043Y,

stating:

DOT is proposing to install approximately 5,000 new bicycle racks over the next three years at various locations throughout the City. The action is concurrent with the overall expansion of the bicycle network with a goal to reduce congestion and improve air quality through the provision of bicycle parking facilities at priority locations such as commercial areas, transit stops, parks, and schools. Since 1996, approximately over 19,000 bicycle racks have been installed. The proposed sites for the new bike racks have been carefully chosen in such a way as to avoid reducing clear sidewalk space to less than eight feet or to less than half the total sidewalk width when fully occupied by bicycles. Community Boards are notified and given the opportunity to comment 30 days before the installation of a CityRack.

- D. Type II Memo filing on 7/3/14 for Installation of Pedestrian Safety Islands on 4th

Avenue between East 10th and East 12th Streets, 14DOT046M, stating:

DOT is proposing to install five pedestrian safety islands (attached) on 4th Avenue between East 10th and East 12th Streets in the Nolita section of Manhattan Community Board 2. The

modification will shorten the crossing distance on 4th Avenue from 71 feet to 50 feet as a result of the recent installation of a parking protected bicycle path. The action resulted in minor signal timing modifications at 4th Avenue at 10th, 11th, 12th and 13th Streets to reduce pedestrian wait time. The proposal, which is supported by Community Board 2, will maintain the existing number of moving lanes and will provide for a safe pedestrian crossing and enhance safety and operations for all street users (i.e., pedestrians, motorists, bicyclists and transit users). The Build year is 2015.

22. Upon information and belief, the filings described in the preceding paragraph and its subparagraphs A-D are the only filings that were made by the DOT or any agency of NYC relating to the Congestion-Creating Activities described in the sub-paragraphs under ¶ 15 above.

23. The adverse, congestion effect of such activities is felt upon all 508.38 miles of streets and avenues in Manhattan (with a total of 6,718 blocks) [source: p. 3 of <http://www.fcny.org/cmgp/streets/pages/2001PDF/Report/DFMN.pdf>].

24. The Congestion-Creating Activities as a whole and various combinations of the various components were required under McKinney's ECL § 8-0109 and 6 NYCRR Part 617.4 to create and file an Environmental Impact Statement, under one or more of the following bases:

(6) activities, other than the construction of residential facilities, that meet or exceed any of the following thresholds; or the expansion of existing nonresidential facilities by more than 50 percent of any of the following thresholds:

(i) a project or action that involves the physical alteration of 10 acres;

(iii) parking for 1,000 vehicles;

(11) any Unlisted action that exceeds a Type I threshold established by an involved agency pursuant to section 617.14 of this Part.

25. The number of acres of street and sidewalk involved in the Congestion-Creating Activities and the number of parking spaces involved substantial exceeds 10 acres and 1,000 vehicles. 10,420,000 square feet of bike lanes in New York County amounts to 333.33 acres (10,420,000/43560) which is 33 times the 10-acre minimum.

26. None of the 37 paragraphs under 6 NYCRR Part 617.5 provides any basis for Type II exemption for the Congestion-Creating Activities as a whole or for various component combinations.

### DAMAGES

27. Petitioner has been damaged by the alleged activities of the Respondent in various ways including but not limited to the primary injuries alleged in ¶¶ 11A and 11B above, together with the following:

A. The loss of Petitioner's valuable professional time (and the option to use all or any part of such time for non-economic pursuits) caused by transportation delays, at the rate of \$400/hour for an estimated 100 hours per year;

B. Injuries caused by unnecessary emission of pollutants into the air causing an adverse physical and sometimes mental condition not obvious for an extended period of time but injurious nevertheless;

C. Increased transportation costs resulting from delays, additional gas, oil and repairs, and increased automobile insurance;

D. Increased parking costs;

E. Denial to Petitioner as a motorist of use of 14.4 million square feet of public property (i.e., parts of the sidewalks and streets in New York County) put to illegal private use for the benefit of bikers and CitiBikes by Respondent;

F. Subjecting Petitioner to increased hazard while driving, and other risks while Petitioner is a pedestrian and if he should ever become a cyclist;

G. Increased insurance costs associated with various increased risks (in addition to "C" above.

### **RELIEF SOUGHT**

28. Petitioner is entitled to and seeks an order and judgment providing the following relief:

1. Declaring that all changes in traffic lanes, pedestrian plazas, pedestrian safety areas, bicycle lanes, bicycle stations, floating parking, cameras at photo-enforced intersections, reduction in maximum vehicle speed, 2015 changes in timed light on 1-way avenues, contracts to implement such changes, plans for imposing congestion-related tolls on NYC bridges and tunnels and the Department of Transportation policy, and rules and regulations concerning traffic congestion relating to the County of New York (hereinafter, the "DOT Plan") are in violation of McKinney's Environmental Conservation Law (ECL) § 8-0109 for failure to prepare and file an Environmental Impact Statement for a Type I activity which, as part of an overall plan, "may have a significant effect on the environment" and are, as a result, invalid.

2. Directing and compelling Respondent and its officers and employees immediately to undo as quickly as possible all changes already made or now being implemented under the

DOT Plan and after such changes are undone to prepare and file an Environmental Impact Statement dealing with all changes sought for the County of New York as a combination of related changes of Type I which may have a significant effect on the environment.

3. Enjoining Respondent and its officers and employees from receiving or making payments under any existing contracts relating to the DOT Plan and from executing, entering into or renewing any contracts relating to the DOT Plan.

4. Requiring the Department of Transportation to commence a lawsuit against such individual or individuals who are responsible for the violation of ECL § 8-0109 to recover the costs incurred in the activities in violation of said law and the costs of restoring New York County to the condition it enjoyed prior to the violations of law.

5. Granting such other, further or different relief as the Court deems just and proper.

29. No prior application has been made by Petitioner for this or any similar relief (other than the Petition to which this is an amendment).

#### **PRAYER**

**WHEREFORE**, the Petitioner prays the Court for an order and judgment for the following relief against the Respondent:

1. Declaring that all changes in traffic lanes, pedestrian plazas, pedestrian safety areas, bicycle lanes, bicycle stations, floating parking, cameras at photo-enforced intersections, reduction in maximum vehicle speed, 2015 changes in timed light on 1-way avenues, contracts to implement such changes, plans for imposing congestion-related tolls on NYC bridges and tunnels and the Department of Transportation policy, and rules and regulations concerning traffic congestion relating to the County of New York (the "DOT Plan") are in violation of McKinney's Environmental Conservation Law (ECL) § 8-0109 for failure to prepare and file an



Environmental Impact Statement for a Type I activity which, as part of an overall plan, "may have a significant effect on the environment" and are, as a result, invalid.

2. Directing and compelling Respondent and its officers and employees immediately to undo as quickly as possible all changes already made or now being implemented under the DOT Plan and after such changes are undone to prepare and file an Environmental Impact Statement dealing with all changes sought for the County of New York as a combination of related changes of Type I which may have a significant effect on the environment.

3. Enjoining Respondent and its officers and employees from receiving or making payments under any existing contracts relating to the DOT Plan and from executing, entering into or renewing any contracts relating to the DOT Plan.

4. Requiring the Department of Transportation to commence a lawsuit against such individual or individuals who are responsible for the violation of ECL § 8-0109 to recover the costs incurred in the activities in violation of said law and the costs of restoring New York County to the condition it enjoyed prior to the violations of law.

5. Granting such other, further or different relief as the Court deems just and proper.

6. Petitioner's costs of this action.

**Dated:** New York, New York  
November 12~~March 18~~, 2015




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VERIFICATION

STATE OF NEW YORK )

: ss.:

COUNTY OF NEW YORK)

CARL E. PERSON, being duly sworn, deposes and says:

That I have read the foregoing Verified Amended Petition (the "Verified Amended Petition") and know the contents thereof; that the same is true to the best of my knowledge and belief except as to the matters therein stated to be alleged upon information and belief, and as to those matters I believe them to be true. I further state that the grounds of my knowledge and belief as to all matters in the Verified Amended Petition ~~Answer~~ are based upon a review of original documents, experience, research into the filings by the NYC Department of Transportation and other NYC agencies relating to price congestion, parking, avenue improvements and cameras.



Carl E. Person

Subscribed and sworn to before me  
this 12~~8~~th day of November~~March~~, 2015.

Notary Public in and for the State of New York

Index No. 100484/15

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK

In the Matter of the Application of

CARL E. PERSON,

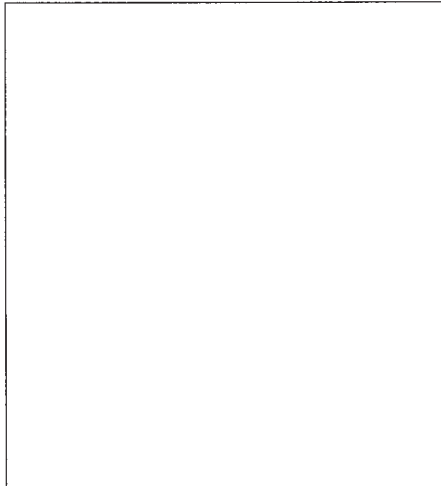
Petitioner,

For a Judgment under Article 78 of the CPLR,

-against-

NEW YORK CITY DEPARTMENT OF  
TRANSPORTATION,

Respondent.



Signature (Rule 130-1.1-a)

Carl E. Person, Esq.

**NOTICE OF PETITION AND VERIFIED AMENDED ARTICLE  
78 PETITION  
PURSUANT TO CPLR ARTICLE 78**

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