SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

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THE PEOPLE OF THE STATE OF NEW YORK,
by ERIC T. SCHNEIDERMAN, Attorney General of the State of New York; BENJAMIN M. LAWSKY, Superintendent of Financial Services of the State of New York,

Plaintiffs,

- against -

LYFT, INC.,

Defendant.

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Index No. _______

IAS Part ________
Justice ________

# MEMORANDUM OF LAW IN SUPPORT OF MOTION FOR TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION

ERIC T. SCHNEIDERMAN
Attorney General of the State of New York
Attorney for Plaintiffs
120 Broadway
New York, NY 10271
(212) 416-8296

Of Counsel:
KARLA G. SANCHEZ
Executive Deputy Attorney General
JANE M. AZIA
Bureau Chief
MELVIN L. GOLDBERG
Assistant Attorney General
SIMON BRANDLER
Senior Advisor and Special Counsel
Office of the Attorney General

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# MEMORANDUM OF LAW IN SUPPORT OF MOTION FOR TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION

Plaintiffs seek an order to temporarily restrain and preliminarily enjoin defendant, Lyft, Inc. ("Lyft"), from operating an unlicensed for-hire livery service and insurance business in New York State, in violation of state and local laws that protect the health, safety, and financial well-being of New York residents.

## PRELIMINARY STATEMENT

As it has done in every other city in which it operates, defendant has simply waltzed into New York and set up shop while defying every law passed whose very purpose is to protect the People of the State of New York. Despite being warned and told to cease and desist by three separate regulatory and enforcement agencies, defendant has thumbed its nose at the law and continued with its plan to launch in what could become its largest market. Defendant runs what is at core a for-hire livery or taxi service. The only meaningful difference is that instead of

hailing a taxi from the corner, passengers can request a taxi using an app on their smartphone. However, Lyft, which is not itself licensed to do business in New York, uses drivers not commercially licensed, vehicles not licensed for commercial purposes, and vehicles not commercially insured. Lyft believes that because it markets its service through a smartphone application ("app") and calls its fares "donations" it is above the law. Despite the well-established, long-standing public policy behind licensing and insurance, it attempts to substitute its own judgment for that of the legislature, and forges ahead.

## STATEMENT OF FACTS

Lyft portrays itself as an innovative 21st century technology business. In reality, Lyft uses a smartphone app to run a traditional 20th century for-hire livery service, arranging rides for passengers on non-fixed routes in exchange for compensation.

Instead of a human dispatcher, the matches prospective passengers seeking rides with nearby drivers who happen to be nearby. Passengers request a car through the app. When a Lyft driver accepts the requested pickup, the passenger informs the driver of his or her destination. The driver then retrieves the passenger and takes him to his destination. The app calculates a fare based on the distance traveled and other fees. Lyft deducts the passenger's payment from a credit card kept on file, generally taking 20% plus certain fees.

Lyft controls and manages virtually every aspect of the transportation services provided to Lyft passengers. Lyft manages the app. Lyft screens and approves all drivers before they can drive for Lyft. The company inspects all vehicles, sets all pricing, calculates fares, mandates permissible methods of payment, and dictates all work rules, including working hours.

Lyft does not require drivers to hold commercial for-hire licenses, carry commercial

insurance, or comply with local licensing rules. Nor does Lyft clearly disclose the possible repercussions of violating these laws, up to and including criminal liability.

On April 24, 2014, Lyft began operating in Buffalo and Rochester, New York. Lyft separately solicits and sells three excess line group insurance policies to its New York drivers. All three are written by James River Insurance Company ("James River"), an insurer domiciled in Ohio. Neither Lyft nor James River is licensed or authorized to do insurance business in New York.

Lyft advertises the insurance policies, which purport to provide coverage beyond the driver's personal automobile insurance, on several pages of its website, claiming the "policy is available in all 50 states in the U.S."

Lyft does not inform its drivers that they are required by New York law to maintain commercial automobile insurance or file a corporate surety bond. Although Lyft solicits and sells three James River insurance policies, Lyft does not share copies of the policies with Lyft drivers. Lyft drivers seeking additional information about the insurance policies that Lyft supplies to an online certificate of insurance for the excess liability policy. Lyft requires its drivers to purchase the policies as a condition of driving for the company. The insurance is funded with a portion of the payments and fees passengers pay to the driver.

The Office of the Attorney General ("OAG") and the Department of Financial Services ("DFS") attempted to explore ways that Lyft might be able to operate responsibly and legally in New York. Yet during this process, and in the face of specific representations from Lyft that no New York City launch was imminent, on July 7, 2014, plaintiffs learned that Lyft would launch its service in Brooklyn and Queens on July 11, 2014.

On July 8, 2014, DFS issued a cease-and-desist letter to Lyft directing the company to halt its operations in the state. Separately, the New York City Taxi and Limousine Commission issued an industry advisory notifying consumers and drivers, among other things, that "Lyft is unauthorized in New York City," that consumers "should not get into a vehicle without a TLC license" and that "drivers who sign-up with Lyft are at risk of losing their vehicles to TLC enforcement action, as well as being subject to fines of up to $2,000 upon conviction for unlicensed activity."

In a meeting on July 9, 2014, Plaintiffs together urged Lyft to postpone its expansion by two weeks to provide additional time to discuss how they might cooperate to change Lyft's business model to bring it into compliance with the law. In a letter dated July 10, 2014, however, Lyft refused OAG and DFS's offer to work out a non-litigated solution. Meanwhile, it represented to potential drivers it had "been given the green light to conduct business legally."

## ARGUMENT

### THE COURT SHOULD GRANT A TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION ENJOINING DEFENDANT LYFT FROM OPERATING ITS UNLAWFUL LIVERY SERVICE IN VIOLATION OF STATE AND LOCAL LAW

### A. The Court has the Authority to Grant a Preliminary Injunction and Restraining Order

Plaintiffs seek a temporary restraining order and preliminary injunction prohibiting defendant Lyft from launching operations in New York City and continuing to operate in Buffalo and Rochester in violation of state and municipal laws. The statutes under which plaintiffs bring this action each authorize such relief. Executive Law § 63(12) authorizes the Attorney General to obtain injunctive relief on behalf of the people of the state of New York whenever and person engages in "repeated . . . or persistent fraud or illegality in the carrying on, conducting or transaction of business." Incident to its authority to issue permanent injunctive relief, this Court has the broad equitable authority to grant any ancillary relief necessary to accomplish complete justice. *See, e.g., People of the State of New York v. Apple Health and Sports Clubs, Ltd.*, 80 N.Y.2d 803 (1992).

In addition to the authority under Executive Law § 63(12), General Business Law ("GBL") § 349(b) authorizes the Attorney General to bring an action for injunctive and other relief on behalf of the people of the state of New York when any person engages in deceptive practices in the state and provides that "in any such preliminary relief may be granted under article sixty-three of the civil practice law and rules." Business Corporation Law § 1303 authorizes the Attorney General to bring an action to restrain a foreign corporation from doing in this state without authority any business for the doing of which it is required to be authorized in

this state.

Financial Services Law ("FSL") § 309 further provides that the Superintendent may maintain and prosecute an action against any person subject to the financial services law, the insurance law or the banking law for the purpose of obtaining an injunction restraining any acts in violation of these laws. FSL §309 expressly provides that in any such action, the court may grant an injunction if it finds that a defendant is threatening or is likely to do any act in violation of these laws that will cause irreparable injury to the interests of the people of New York and that the court "may on motion and affidavits grant a preliminary injunction and interlocutory injunction, upon such terms as may be just."

**B. Plaintiffs Meets the Standard for Granting a Preliminary Injunctive Relief**

The traditional three prong test for the issuance of a temporary restraining order or preliminary injunction consists of the following: (i) a likelihood of success on the merits, (ii) irreparable injury and (iii) a balance of the equities in plaintiffs' favor. *Albini v. Solork Assoc.*, 37 A.D.2d 835 (2d Dept. 1971). Unlike private litigants, however, the Attorney General need not prove irreparable injury because such injury is presumed in a statutory enforcement action under Executive Law §§ 63(12) and GBL § 349. *People v. Apple Health & Sports Club, Ltd. Inc.*, 174 A.D.2d 438, 439 (1st Dep't 1991), *aff'd*, 80 N.Y.2d 803 (1992); *People v. P.U. Travel, Inc.* 2003 N.Y. Misc. LEXIS 2010 *7-8, (Sup. Ct. N.Y. Cnty 2003). Nevertheless, as set forth below, plaintiffs meet each of the traditional prongs for preliminary relief.

**1. Likelihood of Success**

Plaintiffs have demonstrated a likelihood of success on the merits under the Executive Law § 63(12), GBL § 349 and FSL § 309. As set forth in the complaint and affidavits and other evidence annexed to the Goldberg and Feigenbaum Affirmations, defendant is engaged in a

commercial livery business in New York State without the required vehicle and driver licenses and in violation of the state insurance and other laws. In particular, Lyft is violating the following state and local laws:[1]

Vehicle and Traffic Law ("VTL") § 370.1: VTL § 370.1 prohibits any person, firm or entity from carrying or transporting passengers for hire in a motor vehicle on the streets or highways of New York state unless that person, firm or entity has filed with the New York Department of Motor Vehicles a corporate surety bond or a policy of insurance, approved as to form by the superintendent of financial services in a company authorized to do an insurance business in the state, approved by the superintendent as to solvency and responsibility. Defendant repeatedly and persistently violates VTL § 370.1 by utilizing drivers who do not have the insurance coverage required under the law and by failing to disclose to its drivers that such insurance coverage is required. Complaint ¶¶ 13, 39-40, 78-82; Aff. of Neal Schoen, Deputy Commissioner and Legal Counsel for DMV ("Schoen Aff."), Ex. 6 to Goldberg Aff.

VTL § 501.2(v): VTL § 501.2(v) prohibits any person from carrying or transporting passengers for hire in a motor vehicle on the streets or highways of New York state unless that person has a Class E driver's license issued by the New York Department of Motor Vehicles. Defendant repeatedly and persistently violates VTL § 501.2.(v) by utilizing drivers who do not have a Class E driver's license as required under the law and by failing to disclose to its drivers that such a license is required. Complaint ¶¶ 14, 39-40, 83-87; Schoen Aff., Ex. 6 to Goldberg

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1 The repeated or persistent violation of any federal, state or local law or regulation constitutes "illegality" within the meaning of § 63(12). *See, e.g., State v. Princess Prestige*, 42 N.Y.2d at 106 (repeated violation of the Home Solicitation Act. P.P.L. Art. 10-A); *People v. Am. Motor Club, Inc.*, 179 A.D.2d 277 (1st Dep't 1992) (violations of Insurance Law); *State v. Winter*, 121 A.D.2d 287 (1st Dep't 1986) (violations of the Code of Rent Stabilization Association of New York City); *State v. Manhattan Transit Co.*, N.Y.L.J., 2/11/77, p. 5, col. 1 (Sup. Ct. N.Y. Co.) (violation of New York City pollution law).

Aff.

Business Corporation Law ("BCL") § 1301: BCL § 1301 prohibits foreign corporations from doing business in the State of New York until they have received authorization to do so from the New York Department of State. In fact, defendant has been operating a business in New York since April 24, 2014 without the required authorization. Complaint ¶¶ 37, 88-91; Ex. 7 to Goldberg Aff.

Insurance Law § 2102: Insurance Law § 2102 prohibits any person from acting as an insurance producer without a license by soliciting, negotiating, or selling an insurance policy to New York drivers in violation of Insurance Law § 2102. Defendant has been acting as an insurance producer without a license by soliciting, negotiating and selling the three James River insurance policies described above to New York drivers. Complaint ¶¶ 17, 42-53, 92-96,141-144; Feigenbaum Aff. ¶ ¶ 52-55.

Insurance Law § 2117: Insurance Law § 2117 prohibits any person, firm or entity from acting as an insurance producer for an insurer that is not license or authorized to do an insurance business in New York or otherwise aiding such insurer in doing an insurance business in this state. Defendant has been acting as an insurance producer by soliciting, negotiating and selling insurance policies to New York drivers. In violation of Insurance Law § 2117, the insurance policies for which defendant acts as an insurance producer are not approved in New York and are underwritten by James River, an insurer that is not licensed or authorized to do an insurance business in New York. Defendant has further violated Insurance Law § 2117 by facilitating James River's coverage of its drivers, thereby aiding an unauthorized insurer in doing an insurance business in New York. Defendant collects information concerning accidents from its

drivers and provides that information to James River to aid in its claims processing. Complaint ¶¶ 17, 42-53, 96-100, 144-147; Feigenbaum Aff. ¶¶ 56-57..

Insurance Law § 2122: Insurance Law § 2122 prohibits anyone, through an advertisement or public announcement in the State of New York, from calling attention to an unauthorized insurer. Defendant advertises and otherwise calls attention to James River, an insurer that is not licensed or authorized to do an insurance business in New York in violation of Insurance Law § 2122. Defendant's violation of Insurance Law § 2122 is evidenced by its prominent advertisement of the insurance that Lyft sells to its drivers on several pages of Lyft's website. (, Lyft "Safety" webpage https://www.lyft.com/safety). Lyft also provides a link to a certificate of insurance issued by James River on Lyft's webpage. (Lyft webpage https://www.lyft.com/drive/help/article/1229170;https://s3.amazonaws.com/lyft-assets/help.lyft.com/assets/Lyft-Certificate-of-Liability-Insurance.pdf.) Complaint ¶¶ 17, 42-53, 102-106, 149-152; Feigenbaum Aff. ¶¶ 18, 27, 58 and Exs. E, F and K.

11 N.Y.C.R.R. § 153.8: 11 N.Y.C.R.R. § 153.8 prohibits any insurer from providing coverage in regard to a group or quasi-group program that requires the purchase of insurance as a condition of group membership or quasi-group participation or imposes any penalty upon a group member or quasi-group participant if insurance is not purchased. Defendant violates § 153(8) by requiring its drivers to purchase the James River insurance policies as a condition of membership in Lyft's program. Defendant collects the premiums for these policies by retaining twenty percent of the fares passengers pay drivers as well as $1.00 of each fare as a "Trust and Safety Fee" and then applying those funds, at least in part, to cover Lyft's James River insurance policies. Complaint ¶¶ 17, 42-53, 106-110, 152-156; Feigenbaum Aff. 16, 54, 59.

Chapter 437 of the City of Buffalo Code: Chapter 437 of the Buffalo Code requires all livery vehicle, which are defined as passenger vehicles which are used to transport passengers for hire, and livery vehicle drivers to be licensed by the City of Buffalo and limits the number of authorized livery vehicles to no more than 300. Chapter 437 also requires the annual inspection of such vehicles and the posting of fares in compliance with the Buffalo City ordinance. Lyft is violating Chapter 437 by using drivers and vehicles that are not licensed in accordance with Buffalo City law and that fail to comply with the other requirements imposed on Buffalo livery vehicles. Complaint ¶¶ 41, 111-115; Aff. of Timothy A. Ball., Corporation Counsel of the City of Buffalo, Ex. 8 to Goldberg Aff.

Chapter 108 of the Rochester Municipal Code: Chapter 108 of the Rochester Municipal Code requires all motor vehicles that are used to transport passengers for hire and all drivers of such vehicles to be licensed by the City of Rochester. Defendant has repeatedly and persistently violated Chapter 108 of the City of Rochester Municipal Code by failing to have the vehicles driven by its Lyft drivers and Lyft drivers licensed by Rochester as required by law. Complaint ¶¶ 41, 116-121; Affs of Brian Curran, Deputy Corporation Counsel for the City of Rochester, and Hazel Washington, City Clerk for the City of Rochester, annexed to Goldberg Aff. as Exs. 9 and 10.

Article 19 of the New York City Administrative Code: As set forth in section 19-501 of the New York City Administrative Code, New York City has determined that business of transporting passengers for hire by motor "is a vital and integral part of the transportation system of the city, and must therefore be supervised, regulated and controlled by the city." As

such, the City requires for-hire vehicles,[2] for-hire drivers, communications systems and base states to be licensed by the New York City Taxi and Limousine Commission ("TLC"). As such, the City has established a supervisory and regulatory system administered by the TLC to ensure the safety of passengers and drivers. This includes comprehensive licensing requirements for-hire vehicle drivers, for-hire vehicles, and for-hire base owners meet specific licensing requirements they transport such as, inter alia, passing periodic drug tests, being of good moral character, completing required Defensive Driving Courses, training, vehicle inspections, vehicle safety standards, and other required items for for-hire vehicles before licensure. It also includes legal compliance, operation, and vehicle requirements before a license can be renewed such as compliance with traffic laws, proper driver conduct (fraud, theft, willful acts of omission, threats, harassment, abuse, courtesy, etc.), passenger and driver safety, operation of vehicle, reasonable passenger requests, items required to be in the vehicle, etc. In fact, neither Lyft nor the drivers or vehicles used by Lyft drivers have obtained the required City licenses and are otherwise not in compliance with the various New York requirements intended to protect the health, safety, and financial well-being of the riding public and New York City residents. Complaint ¶¶ 56-60, 122-128, Aff. of Joanne Rausen, Director of Technology Programs for the New York City TLC, annexed as Ex. 5 to Goldberg Aff.

Fraudulent and Deceptive Business Practices and False Advertising in violation of Executive Law § 63(12) and GBL §§ 349 and 350: Through representations on its website, in social medial and elsewhere Lyft is also engaged in fraudulent and deceptive business practices, false advertising and misrepresentations about the operation and legality of its program. Thus,

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2 Administrative Code § 19-502 defines a for-hire vehicle as a "motor vehicle carrying passengers for hire in the city, with a seating capacity of twenty passengers or less, not including the driver, other than a taxicab, coach, wheelchair accessible van, commuter van or an authorized bus operating pursuant to applicable provisions of law."

for example, Lyft misrepresents i) that riders can "donate" whatever they choose for rides, when in fact Lyft drivers can choose not to give rides to consumers who pay less than the "suggested" fares; ii) that drivers do not to obtain special licenses for their vehicles and for themselves from cities where they operate in order to drive for hire vehicles; and iii) that drivers do not need a Class E New York State driver's license and commercial automobile insurance. Lyft further fails to disclose such material information as the fact that drivers may lose their personal automobile insurance if their carrier learns they are driving their vehicle for hire and that in jurisdictions such as New York City their vehicles are subject to seizure. Such material deceptions and omissions constitute fraudulent business practices in violation of Executive Law § 63(12)[3] and deceptive business practices and false advertising pursuant to GBL §§ 349 and 350 respectively.[4] Complaint ¶¶ 7-60, 73, 76, 129-136; Goldberg Aff. ¶12 and Ex. 3, 4 and 15.

**2. Irreparable Harm**

Although, as noted above, irreparable harm is generally not required in actions to enforce remedial statutes, such as Executive Law § 63(12), the temporary restraining order and preliminary relief sought here is, in fact, necessary to prevent irreparable harm to the public. Lyft is flagrantly flouting state and local laws designed to protect the public health and safety.

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3 Fraud under § 63(12) is broadly defined in the statute as "any device, scheme or artifice to defraud, any deception, misrepresentation, concealment, suppression, false promise or unconscionable contract provision." Consistent with this broad statutory definition of, courts have construed statutory fraud as going beyond common law fraud. Thus, proof of scienter or bad faith is not necessary. *See, e.g. People v. Federated Radio Corp.*, 244 N.Y. 33, 38-39 (1926); *State v. Colorado State Christian College*, 76 Misc.2d 50, 56 (Sup. Ct. N.Y. Co. 197); *Lefkowitz v. Bull Investment Group, Inc.*, 46 A.D.2d 25, 28 (3rd Dept. 1974); Matter of State v. Interstate Tractor Trailer Training, Inc., 66 Misc.2d 678, 682 (Sup. Ct. N.Y. Co. 1971); *State v. Bevis Industries, Inc.*, 63 Misc.2d 1088, 1090 (Sup. Ct. N.Y. Co. 1970).

4 GBL § 349 declares unlawful "deceptive acts or practices in the conduct of any business, trade or commerce or in the furnishing of any service in this state." GBL § 350 similarly declares unlawful "false advertising in the conduct of any business, trade or commerce or in the furnishing of any service." The definition of deceptive practices under GBL § 349 and false advertising under GBL § 350 are given parallel construction to that of fraud under Executive law § 63(12). *See, e.g., Colorado State Christian Coll.,* 76 Misc. 2d at 54. Like Executive Law § 63(12), these statutes are "intended to be broadly applicable, extending far beyond the reach of common law fraud." State v. Feldman, 210 F. Supp. 2d 294, 301 (S.D.N.Y. 2002).

Lyft's failure to comply with licensing and other laws designed to ensure the safety of passengers, drivers and others and to effectively regulate municipal transportation systems is putting the entire public at risk. Its non-compliance with New York's Insurance and Financial Services Laws is also subject New York drivers and the New York private passenger automobile insurance market to intolerable risk, cost and uncertainty. *See* Rausen Aff. Ex. 5 to Goldberg Aff. Because Lyft provides only excess coverage and instructs its drivers that after an accident, they must first file a claim with their private insurance policy, Lyft is foisting risk that properly belongs in the commercial insurance market onto the private market, likely making private automobile insurance more expensive for all New Yorkers, particularly for no-fault insurance. Lyft is also exposing its drivers to the risk of being cancelled or non-renewed by their insurers because they are driving passengers for-hire in violation of the terms of their private policy. *See* Feigenbaum Aff. Ex. ¶¶ 4-6.

### 3. Balance of the Equities

The balance of the equities also favors the issuance of the preliminary injunction. In granting or withholding injunctive relief, courts must consider the welfare and interests of the general public. *International Ry. Co. v. Barone*, 246 A.D. 450 (4th Dept. 1935) (temporary restraining order properly granted against company operating a public transportation business without proper certificate). The fact that the laws being violated here were specifically designed to protect the public tips the equities in plaintiffs' favor. *McDonald v. North Shore Yacht Sales, Inc.*, 134 Misc.2d 910, 916-17 (Sup. Ct. Nassau Cty. 1987). "[T]he equities lie in favor of shutting down an illegal, unsafe, deceptive business, rather than in allowing said business to continue to operate (to defendants' presumed financial advantage)." *City of New York v Smart Apts. LLC*, 39 Misc. 3d 221, 233 (Sup. Ct. N.Y. Cty. 2013) (granting New York City a preliminary injunction against an illegal hotel operator). Where the government shows that a violation of law has occurred, "the public equities receive far greater weight" than any "private equities" appellants may have. *F.T.C. v. Warner Communications Inc.*, 742 F.2d 1156, 1165 (9th Cir. 1984).

Here there are no private equities in defendant's favor. Requiring defendant to operate in compliance with the law does not present an unreasonable burden. Defendant has no right to engage in unlicensed and other unlawful business activities that put the public at risk. Moreover, defendant ignored requests by state and local regulators to stop operating unlawfully and, in light of the numerous and substantial regulatory concerns, not to begin operating in New York City.

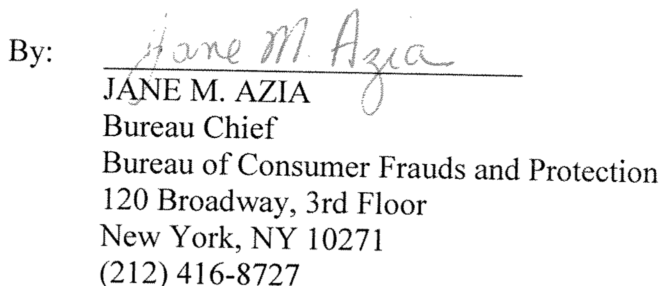
**CONCLUSION**

For the foregoing reasons, Plaintiffs' application for a temporary restraining order and preliminary injunction should be granted.

Dated: New York, NY
July 11, 2014

Respectfully submitted,

ERIC T. SCHNEIDERMAN
Attorney General of the State of New York
Attorney for Plaintiffs



By: ______________________
JANE M. AZIA
Bureau Chief
Bureau of Consumer Frauds and Protection
120 Broadway, 3rd Floor
New York, NY 10271
(212) 416-8727

Of Counsel

Karla G. Sanchez
Executive Deputy Attorney General

Melvin L. Goldberg
Assistant Attorney General

Simon Brandler
Senior Advisor and Special Counsel
Office of the Attorney General