

IN THE DISTRICT COURT OF LANCASTER COUNTY, NEBRASKA

**M'MOUPIENTILA "MARC" N'DA and
DIGNITY NON-EMERGENCY MEDICAL
TRANSPORTATION, INC.,**

Plaintiffs,

v.

**MIKE HYBL, in his official capacity as
Executive Director of the Nebraska Public
Service Commission; MARY RIDDER, in her
official capacity as Chair of the Nebraska
Public Service Commission; ROD JOHNSON,
in his official capacity as Vice-Chair of the
Nebraska Public Service Commission; TIM
SCHRAM, in his official capacity as
Commissioner on the Nebraska Public Service
Commission; CRYSTAL RHOADES, in her
official capacity as Commissioner on the
Nebraska Public Service Commission; DAN
WATERMEIER in his official capacity as
Commissioner on the Nebraska Public Service
Commission; NEBRASKA PUBLIC SERVICE
COMMISSION; DANNETTE R. SMITH, in
her official capacity as Chief Executive Officer
of the Nebraska Department of Health and
Human Services; and NEBRASKA
DEPARTMENT OF HEALTH AND HUMAN
SERVICES,**

Defendants.

Case No. CI _____

**COMPLAINT FOR DECLARATORY
AND INJUNCTIVE RELIEF**

Plaintiffs M'Moupiéntila “Marc” N'Da and Dignity Non-Emergency Medical Transportation, Inc., by and through undersigned counsel, hereby sue the Defendants, and in support state and allege as follows:

INTRODUCTION

1. This constitutional challenge seeks declaratory and injunctive relief to vindicate Plaintiffs’ rights under the Nebraska Constitution. Plaintiffs seek to operate a safe and reliable non-emergency medical transportation company, and the Nebraska Public Service Commission (the “PSC”) has found Plaintiffs fit to do so. However, because Plaintiffs did not prove that “public convenience and necessity” “required” more competition, Plaintiffs’ application was denied.

2. Plaintiffs did not appeal the PSC’s determination, and Plaintiffs agree that the PSC followed the relevant Nebraska statutes and regulations. Instead, Plaintiffs are seeking prospective relief that the “public convenience and necessity” requirement violates the Nebraska Constitution. If Plaintiffs prevail, they will reapply for authorization to operate a non-emergency medical transportation company, which they will likely receive, considering that the PSC has already found that Plaintiffs meet all the other requirements.

3. Plaintiffs are not challenging the entirety of the non-emergency medical transportation regulatory system. Nor are Plaintiffs challenging the health and safety rules related to non-emergency medical transportation. Plaintiffs are merely challenging the unconstitutional trade barrier created by the “public convenience and necessity” requirement found in two specific subsections: Nebraska Revised Statute §§ 75-311(1)(b) and 75-311(3) (collectively the “Cartel Rule”).

JURISDICTION AND VENUE

4. At all times pertinent to this action, the majority of the acts complained of have occurred in, or are occurring in, Lancaster County, Nebraska.

5. This action arises under Article I, § 3 (due process of law), Article I, § 16 (special privileges or immunities), and Article III, § 18 (local or special laws prohibited) of the Nebraska Constitution.

6. This Court has jurisdiction over Plaintiffs' claims and may grant the declaratory relief requested under the Uniform Declaratory Judgments Act, Nebraska Revised Statute §§ 25-21,149 to 25-21,164, and may grant the injunctive relief requested under Nebraska Revised Statute §§ 25-1062 to 25-1080.

7. Venue lies in this Court under Nebraska Revised Statute § 25-403.01.

8. The Attorney General is being served in addition to the parties under Nebraska Revised Statute § 25-21,159.

PARTIES

9. Plaintiff M'Moupietila "Marc" N'Da ("N'Da") is a citizen and resident of Douglas County, Nebraska. He is over 18 years old and is within the jurisdiction of this Court.

10. Plaintiff Dignity Non-Emergency Medical Transportation, Inc. ("Dignity") is a Nebraska corporation with its principal office in Douglas County, and but for the regulatory barrier challenged in this lawsuit, would be operating in both Lancaster and Douglas Counties. Plaintiff N'Da is Plaintiff Dignity's owner and president.

11. Defendant Mike Hybl is sued in his official capacity as the Executive Director of Defendant Nebraska Public Service Commission.

12. Defendant Mary Ridder is sued in her official capacity as the Chair of Defendant Nebraska Public Service Commission.

13. Defendant Rod Johnson is sued in his official capacity as the Vice-Chair of Defendant Nebraska Public Service Commission.

14. Tim Schram is sued in his official capacity as a Commissioner on Defendant Nebraska Public Service Commission.

15. Crystal Rhoades is sued in her official capacity as a Commissioner on Defendant Nebraska Public Service Commission.

16. Dan Watermeier is sued in his official capacity as a Commissioner on Defendant Nebraska Public Service Commission.

17. Defendant Nebraska Public Service Commission (“PSC”) is an executive body established under Article IV, § 20 of the Nebraska Constitution. Its headquarters are located in Lancaster County. Defendant PSC has authority over or enforces some of the statutes and regulations challenged in this lawsuit.

18. Defendant Dannette R. Smith is sued in her official capacity as Chief Executive Officer for Defendant Nebraska Department of Health and Human Services.

19. Defendant Nebraska Department of Health and Human Services (“DHHS”) is a department of the State of Nebraska established under Nebraska Revised Statute § 81-601. Its headquarters are located in Lancaster County. Defendant DHHS has authority over or enforces some of the statutes and regulations challenged in this lawsuit.

STATEMENT OF FACTS

Plaintiffs Marc N'Da and Dignity Non-Emergency Medical Transportation, Inc.

20. Plaintiff N'Da is fit, willing, and able to provide non-emergency medical transportation in Nebraska, and but for the barrier to competition (the “Cartel Rule”) found in Nebraska Revised Statute § 75-311(1)(b) and § 75-311(3), he would already be providing that service.

21. Plaintiff N'Da is a political refugee from the African nation of Togo. He was granted asylum in the United States and became a citizen of this nation. He came to this country in 2002 with \$60.00 in his pocket and has since formed—and now runs—businesses that employ more than 250 Nebraskans in well-paying jobs.

22. Plaintiff N'Da earned multiple degrees including Masters of Science in Clinical Psychology and Public Administration, and a Doctorate in Business Administration.

23. Plaintiff N'Da teaches psychology and math at the college level.

24. In 2015, Plaintiff N'Da formed a Nebraska company named Dignity Home Care, Inc., which provides the elderly and disabled with care in the privacy of their own home.

25. Plaintiff N'Da also formed and now operates the Nebraska companies Dignity Care Group, Inc. and Dignity Home Hospice, Inc.

26. Plaintiff N'Da's companies were formed to honor his late mother who he believes died, in part, because of poor home care. The name “Dignity” is a commitment to how we must treat those most vulnerable.

27. Plaintiff N'Da and his companies provide care for well over one hundred elderly and disabled Nebraskans.

28. Plaintiff N'Da, through Dignity Home Care, Inc. and Dignity Care Group, Inc., already provides non-medical transportation to clients. This includes taking them to the grocery store and on other errands.

29. Plaintiff N'Da and his companies cannot, however, lawfully provide non-emergency medical transportation.

30. This means that Plaintiff N'Da and his companies cannot drive the elderly or disabled to the pharmacy, as Nebraska law considers that to be non-emergency medical transportation.

31. This means that Plaintiff N'Da and his companies cannot drive the elderly or disabled to a doctor's office for a routine checkup, as Nebraska law considers that to be non-emergency medical transportation.

32. Plaintiff N'Da and the employees of Dignity Home Care and Dignity Care Group regularly drive some of the companies' clients to Wal-Mart in Lancaster County.

33. It does not violate Nebraska law for Plaintiff N'Da and the employees of Dignity Home Care and Dignity Care Group to drive clients to Wal-Mart for the purpose of buying groceries.

34. Driving clients to Wal-Mart for the purpose of buying groceries is non-medical transportation under Nebraska law.

35. Plaintiff N'Da and the employees of Dignity Home Care and Dignity Care Group cannot drive the companies' clients to Wal-Mart for the purpose of visiting the pharmacy contained within that same Wal-Mart.

36. Because visits to the pharmacy are considered non-emergency medical transportation under Nebraska law, it is illegal for Plaintiff N'Da, Dignity Home Care, Dignity

Care Group, or its employees to drive clients to Wal-Mart in Lancaster County for the purpose of visiting the pharmacy.

37. Plaintiff N'Da and his companies can drive clients to a grocery store but not to a pharmacy attached to that same grocery store.

38. This is an arbitrary classification.

39. This is an unreasonable classification.

40. For years, Plaintiff N'Da observed that his companies' clients were ill-served by the existing non-emergency medical transportation companies.

41. Patients who were forced to rely on the existing non-emergency medical transportation companies often missed appointments or were stuck at doctors' offices for hours waiting for a driver.

42. In order to provide better service, Plaintiff N'Da formed Dignity Non-Emergency Medical Transportation, Inc. (Plaintiff "Dignity") in 2017.

43. Plaintiffs took the appropriate steps to obtain vehicles that are well-equipped to transport the elderly and disabled, including one specifically outfitted to transport individuals in wheelchairs.

44. Plaintiffs took the appropriate steps to obtain insurance for this new business.

45. Plaintiffs arranged to contingently hire Nebraskans ready, willing, and able to work for this new business and who could safely provide non-emergency medical transportation to the elderly and disabled.

46. Plaintiffs applied for the necessary authorizations from Defendants.

47. Defendants found Plaintiffs to be qualified to operate their non-emergency medical transportation business under Nebraska Revised Statute § 75-311(1)(a).

48. Nonetheless, Defendants rejected Plaintiffs' application because of the law challenged by this lawsuit.

49. As a result, Plaintiffs are not operating their non-emergency medical transportation business.

50. Plaintiffs are not challenging the health and safety requirements related to driver standards under Nebraska Rules and Regulations Title 474, Chapter 5, § 018.

51. Plaintiffs are able to satisfy the health and safety requirements related to driver standards under Nebraska Rules and Regulations Title 474, Chapter 5, § 018.

52. Plaintiffs are not challenging the health and safety requirements related to driver background checks under Nebraska Rules and Regulations Title 474, Chapter 5, § 018.

53. Plaintiffs can satisfy the health and safety requirements related to driver background checks under Nebraska Rules and Regulations Title 474, Chapter 5, § 018.

54. Plaintiffs are not challenging the insurance requirements under Nebraska Revised Statute § 75-307.

55. Plaintiffs can satisfy the insurance requirements under Nebraska Revised Statute § 75-307.

56. Plaintiffs are not challenging any of the rules and regulations related to safety promulgated by Defendant PSC under Nebraska Revised Statute Chapter 75, Article 3(e).

57. Plaintiffs are not challenging any health and safety regulations.

58. Plaintiffs are challenging only the Cartel Rule.

59. But for the law challenged in this lawsuit, Plaintiffs would be operating their non-emergency medical transportation business.

60. If the law challenged in this lawsuit were ruled unconstitutional or repealed, Plaintiffs would reapply for authorization to operate their non-emergency medical transportation business.

61. Defendants have already found Plaintiffs fit to operate their non-emergency medical transportation business.

62. There is no reason why Plaintiffs would become unfit in the future.

63. There is no reason why Plaintiffs would be unable to comply with all of the requirements other than the Cartel Rule in the future.

64. If the law challenged in this lawsuit were ruled unconstitutional or repealed, and Plaintiffs subsequently reapplied for authorization to operate their non-emergency medical transportation business, Plaintiffs would likely be approved.

The Cartel Rule Protects the Existing Companies from Competition

65. The sole reason Plaintiffs are not currently operating their non-emergency medical transportation business is the barrier to competition (the “Cartel Rule”) found in Nebraska Revised Statute § 75-311(1)(b) and § 75-311(3).

66. Defendants also promulgate laws and regulations related to non-emergency medical transportation other than the Cartel Rule. These are found in Nebraska Revised Statute §§ 75-301 to 75-322 and Nebraska Rules and Regulations Title 474, Chapter 5, § 018.

67. Plaintiffs are challenging only the Cartel Rule.

68. For a business to be lawfully allowed to provide non-emergency medical transportation service to the vast majority of potential customers, the business must obtain the status of a common carrier with an HHS designation.

69. Defendant DHHS is the governmental body that requires non-emergency medical transportation providers to first obtain the status of a common carrier with an HHS designation before they can operate.

70. In order to obtain the status of a common carrier with an HHS designation, the applicant must overcome the Cartel Rule.

71. The Cartel Rule states that it is not sufficient for a non-emergency medical transportation applicant to be fit to perform the service. Instead, to comply with the Cartel Rule, the applicant must also prove that public convenience and necessity “require” new competition.

72. Even if there is unmet demand, applicants will still fail to overcome the Cartel Rule if any of the existing non-emergency medical transportation companies could possibly expand in the future to meet the demand.

73. Although all of the Defendants oversee or enforce some aspect of the Cartel Rule and related regulations, the final determination as to whether an applicant has proven that public convenience and necessity require new competition is made by Defendant PSC.

74. Defendant PSC is the governmental body responsible for authorizing and regulating transportation providers.

75. Defendant PSC’s determination as to whether public convenience and necessity require new competition is based in substantial part on whether the existing non-emergency medical transportation companies object to the application.

76. The existing non-emergency medical transportation companies typically object to applications from new potential competitors.

77. Nebraska Revised Statute § 75-310 requires applicants to provide notice to the existing non-emergency medical transportation companies in order to ensure that any existing

non-emergency medical transportation provider that wants to object to the application is able to do so.

78. Pursuant to Nebraska Revised Statute § 75-310, if none of the existing non-emergency medical transportation companies object, then the Cartel Rule is waived.

79. Pursuant to Nebraska Revised Statute § 75-310, if none of the existing non-emergency medical transportation companies object, then Defendant PSC can grant the application without a hearing.

80. When any of the existing non-emergency medical transportation companies object, Defendant PSC holds a hearing on the application.

81. When no existing non-emergency medical transportation companies object, Defendant PSC does not hold a hearing on the application.

82. When no existing non-emergency medical transportation companies object, Defendant PSC typically grants the application.

83. When the existing non-emergency medical transportation companies do object, Defendant PSC typically does not grant the application.

84. Defendant PSC effectively affords the existing non-emergency medical transportation companies the power to determine whether Defendant PSC will hold a hearing on any given application.

85. Defendant PSC allows the existing non-emergency medical transportation companies to participate in the hearing.

86. Defendant PSC allows the existing non-emergency medical transportation companies to conduct discovery in connection with a hearing.

87. Defendant PSC allows the existing non-emergency medical transportation companies' attorneys to cross-examine applicants.

88. Defendant PSC allows the existing non-emergency medical transportation companies to assert that an applicant's entry into the market would harm their business.

89. Defendant PSC allows the existing non-emergency medical transportation companies to assert that an applicant's entry will harm their business without offering evidence.

90. Defendant PSC credits the existing non-emergency medical transportation companies' assertion that an applicant's entry into the market would harm their business even when the existing companies offer no evidence to support that assertion.

91. Defendant PSC affords existing non-emergency medical transportation companies a *de facto* veto over new applications.

92. Defendant PSC's application of the Cartel Rule effectively affords the existing non-emergency medical transportation companies the ability to determine whether new companies are allowed to compete with them.

Plaintiffs N'Da and Dignity Non-Emergency Medical Transportation, Inc.'s Application Was Denied Because of the Cartel Rule

93. On or about August 17, 2017, Plaintiffs filed an application with Defendant PSC to be designated as a common carrier with an HHS designation.

94. Pursuant to Nebraska Revised Statutes § 75-310, the existing non-emergency medical transportation companies were notified of Plaintiffs' application and intent to compete with them.

95. One of Defendant PSC's employees informed Plaintiffs that if no existing non-emergency medical transportation company protested Plaintiffs' application, then it would be granted.

96. If none of the existing non-emergency medical transportation companies object, Defendant PSC typically grants the application.

97. Defendant PSC's employee also informed Plaintiffs that it was likely that some of the existing non-emergency medical transportation companies would object.

98. Existing non-emergency medical transportation companies typically object to applications from new companies.

99. Defendant PSC's employee's prediction regarding objections was accurate.

100. Existing non-emergency medical transportation companies objected to Plaintiffs' application.

101. Plaintiff N'Da contacted Defendant PSC and asked for guidance.

102. Defendant PSC's employee suggested that Plaintiffs negotiate with the existing non-emergency medical transportation companies in order to obtain permission from the existing companies to compete with them.

103. Plaintiffs refused to negotiate with the existing non-emergency medical transportation companies out of principle.

104. After standing up to political corruption in his native land of Togo and consequently becoming a political refugee, Plaintiff N'Da was unwilling to succumb to abuse of power in his adopted homeland.

105. Plaintiff N'Da does not believe that the existing non-emergency medical transportation companies should be allowed to keep him from competing.

106. The existing non-emergency medical transportation companies refused to withdraw their objections to Plaintiffs' application.

107. Consequently, Defendant PSC held a hearing on Plaintiffs' application on or about February 20, 2018.

108. The hearing included testimony and evidence from Plaintiffs and from the objecting non-emergency medical transportation companies.

109. Defendant PSC issued its written decision (the "Decision") on or about April 24, 2018.

110. A true and correct copy of Defendant PSC's Decision is attached hereto as Exhibit "A."

111. In its Decision, Defendant PSC found that Plaintiff N'Da is fit to enter the market.

112. Plaintiff N'Da is fit to enter the market.

113. In its Decision, Defendant PSC found that Plaintiff N'Da is willing to enter the market.

114. Plaintiff N'Da is willing to enter the market.

115. In its Decision, Defendant PSC found that, other than the Cartel Rule (which the PSC refers to as the public convenience and necessity requirement), Plaintiff N'Da would be able to enter the market.

116. Other than the Cartel Rule, Plaintiff N'Da would be able to enter the market.

117. In its Decision, Defendant PSC found that Plaintiff N'Da has significant business experience.

118. Plaintiff N'Da has significant business experience.

119. In its Decision, Defendant PSC found that Plaintiff N'Da has several relevant advanced degrees.

120. Plaintiff N'Da has several relevant advanced degrees.

121. In its Decision, Defendant PSC found that Plaintiff N'Da has a reasonable plan for entering the market.

122. Plaintiff N'Da has a reasonable plan for entering the market.

123. In its Decision, Defendant PSC found that Plaintiffs met all requirements to enter the market other than the Cartel Rule.

124. Plaintiffs met all requirements to enter the market other than the Cartel Rule.

125. Defendant PSC denied Plaintiffs' application solely on the grounds that Plaintiffs had not proven that "public convenience and necessity" "required" more competition.

126. Plaintiffs did not prove that public convenience and necessity required more competition.

127. As a result of Defendant PSC's denial of Plaintiffs' application, Plaintiffs are legally barred from providing non-emergency medical transportation services.

128. If Nebraska Revised Statute §§ 75-311(1)(b) and 75-311(3) did not exist, Plaintiffs' application would have been granted.

The Cartel Rule Harms the Public

129. The Cartel Rule protects the existing non-emergency medical transportation companies from competition.

130. Defendant PSC Commissioner Crystal Rhoades dissented from the Decision.

131. In her dissent, Defendant Rhoades stated that the current system has resulted in "numerous complaints."

132. The current system has resulted in numerous complaints.

133. In her dissent, Defendant Rhoades stated that the complaints included "service and billing problems."

134. The complaints included service problems.

135. The complaints included billing problems.

136. The current system results in service problems.

137. The current system results in billing problems.

138. In its Decision, Defendant PSC acknowledged that one of the existing non-emergency medical transportation companies keeps all of its 46 or 47 drivers working on a part-time basis, even though the non-emergency medical transportation company admitted that its drivers would prefer to work full-time.

139. The Cartel Rule restricts job creation.

140. The Cartel Rule reduces the number of available full-time jobs.

141. In its Decision, Defendant PSC acknowledged that at least one of the existing non-emergency medical transportation companies eliminated its wheelchair-accessible van because it was less profitable.

142. Plaintiff N'Da specifically arranged for a wheelchair-accessible van and intended to offer that service to the elderly and disabled.

143. Because of Defendant PSC's denial of Plaintiffs' application, there is one less wheelchair-accessible van available to serve the elderly and disabled.

144. The Cartel Rule reduces the number of wheelchair-accessible vans available to serve the elderly and disabled.

145. Protecting the existing non-emergency medical transportation companies from competition hurts patients, the elderly, and the disabled.

146. The Cartel Rule restricts innovation.

147. The Cartel Rule disincentivizes the improvement of the services provided.

148. But for the Cartel Rule, the quality of service would improve.

149. But for the Cartel Rule, fewer customers would be left stranded.

150. But for the Cartel Rule, fewer customers would experience unreasonable wait times.

151. But for the Cartel Rule, the number of complaints would decrease.

152. Every day the Cartel Rule continues to exist and be enforced, the public suffers irreparable harm.

The Cartel Rule Is Unrelated to any Legitimate Governmental Interest

153. The Cartel Rule does not advance any legitimate governmental interest.

154. Defendants possess no evidence that the Cartel Rule advances a legitimate governmental interest.

155. Nebraska's statutes, rules, and regulations include numerous health and safety provisions.

156. If the Cartel Rule did not exist, all of those health and safety provisions would still continue to exist.

157. Defendants possess no evidence that Plaintiffs could not meet any of the health and safety protections found in Nebraska's statutes, rules, and regulations.

158. Defendants possess no evidence that Plaintiffs would fail to meet any of the health and safety protections found in Nebraska's statutes, rules, and regulations.

159. Nebraska's statutes, rules, and regulations include numerous requirements for transportation providers.

160. Other than the Cartel Rule, Plaintiffs are not challenging any of the requirements for transportation providers found in Nebraska's statutes, rules, and regulations.

161. The Cartel Rule does not promote or protect public health, safety, or welfare.
162. Defendants possess no evidence that the Cartel Rule promotes or protects public health, safety, or welfare.
163. The Cartel Rule creates a monopoly, oligopoly, or cartel.
164. The Cartel Rule erects a trade barrier.
165. The Cartel Rule stifles competition.
166. The Cartel Rule stifles innovation.
167. The Cartel Rule is irrational.
168. The Cartel Rule is unreasonable.
169. The Cartel Rule is arbitrary.
170. The Cartel Rule creates an arbitrary classification.
171. The Cartel Rule creates an unreasonable classification.
172. The Cartel Rule bestows economic favors on a preferred group or class.
173. The Cartel Rule creates a permanently closed class.
174. The Cartel Rule is not related to any legitimate government interest.
175. By applying the Cartel Rule, Defendants arbitrarily protect established companies from competition at the public's expense.

The Cartel Rule Continues to Harm Plaintiffs N'Da and Dignity Non-Emergency Medical Transportation, Inc.

176. But for the Cartel Rule, Plaintiffs would currently be providing non-emergency medical transportation services.
177. If the Cartel Rule were repealed or invalidated, Plaintiffs would immediately reapply for authorization to enter the market.

178. Defendant PSC has already found that Plaintiffs are fit, willing, and able to enter the market.

179. Defendant PSC has already found that, but for the Cartel Rule, Plaintiffs would be allowed to enter the market.

180. If the Cartel Rule were rescinded or invalidated, and Plaintiffs subsequently reapplied, Plaintiffs' reapplication would be granted.

181. Plaintiffs possess no evidence in support of their application that they did not possess at the time of their first application.

182. The relevant facts have not changed in the time since Defendant PSC's Decision.

183. Defendant PSC followed Nebraska law when it applied the Cartel Rule in its Decision.

184. Plaintiffs do not contend that Defendant PSC failed to apply the Cartel Rule pursuant to Nebraska's statutes when Defendant PSC denied Plaintiffs' application.

185. Plaintiffs did not appeal Defendant PSC's Decision, and the time to do so has elapsed.

186. Defendants continue to enforce the Cartel Rule.

187. Plaintiffs initially applied August 18, 2017 and were denied on April 24, 2018.

188. Plaintiffs application took more than eight months.

189. Plaintiffs spent tens of thousands of dollars throughout the course of their application.

190. If Plaintiffs were to reapply, the Cartel Rule would still allow existing companies to veto Plaintiffs' entry into the market.

191. It would therefore be futile for Plaintiffs to reapply while the Cartel Rule continues to be enforced.

192. Plaintiff N'Da is still qualified, fit, and willing to enter the market in the absence of the Cartel Rule.

193. Plaintiffs are still prepared to hire qualified Nebraskans to provide non-emergency medical transportation in the absence of the Cartel Rule.

194. Plaintiffs are still prepared to purchase appropriately equipped, and wheelchair-accessible, vans in the absence of the Cartel Rule.

195. Every day the Cartel Rule remains in effect, Plaintiffs suffer irreparable harm.

196. The Cartel Rule violates Plaintiffs' constitutional rights.

197. The Cartel Rule is facially unconstitutional.

198. The Cartel Rule is unconstitutional as applied to Plaintiffs.

**COUNT I – VIOLATION OF THE NEBRASKA CONSTITUTION'S PROHIBITION
AGAINST SPECIAL LEGISLATION**

199. Plaintiffs reassert and reallege paragraphs 1 through 198 as if fully stated herein.

200. Article III, § 18 of the Nebraska Constitution expressly states that the legislature shall not pass special laws “[g]ranting to any corporation, association, or individual any special or exclusive privileges, immunity, or franchise whatever.”

201. The Cartel Rule facially violates this provision in the Nebraska Constitution.

202. The Cartel Rule violates this provision in the Nebraska Constitution as applied to Plaintiffs.

203. Protecting a small group of existing companies from competition violates this provision in the Nebraska Constitution.

204. Allowing existing companies to veto new entrants into a market violates this provision in the Nebraska Constitution.

205. The Cartel Rule creates an arbitrary and unreasonable classification between the companies that have already been authorized to provide non-emergency medical transportation services and newer companies who seek to compete with them.

206. The Cartel Rule bestows economic favors on a preferred group or class.

207. The Cartel Rule creates a permanently closed class.

208. Protectionism is not a constitutionally legitimate basis for prohibiting Plaintiffs from operating a non-emergency medical transportation business in Nebraska.

209. The Cartel Rule violates Article III, § 18 of the Nebraska Constitution.

210. Plaintiffs seek declaratory relief regarding the validity of the Cartel Rule and the status of Plaintiffs' rights under Article III, § 18 of the Nebraska Constitution.

211. There is an active justiciable controversy justifying a declaratory judgment.

212. A declaratory judgment ruling that the Cartel Rule violates Article III, § 18 of the Nebraska Constitution would immediately resolve the active controversy between the parties over whether the Cartel Rule violates this provision in the Nebraska Constitution.

213. Plaintiffs have definitively asserted their legal right to operate a non-emergency medical transportation business in Nebraska, and Defendants have denied, and continue to deny, that right.

214. Defendants' violations of Article III, § 18 of the Nebraska Constitution have caused irreparable harm to Plaintiffs.

215. Defendants' violations of Article III, § 18 of the Nebraska Constitution are currently causing irreparable harm to Plaintiffs and will continue to do so on a daily basis until such time as the Cartel Rule is no longer enforced.

216. Unless Defendants are permanently enjoined from committing the above-described violations of the Nebraska Constitution, Plaintiffs and the general public will continue to suffer ongoing irreparable harm.

217. It is therefore in the public interest for permanent injunctive relief to be granted.

218. The Cartel Rule violates Plaintiffs' rights under Article III, § 18 of the Nebraska Constitution, and there is no adequate remedy at law.

**COUNT II – VIOLATION OF THE NEBRASKA CONSTITUTION'S
GUARANTEE OF DUE PROCESS OF LAW**

219. Plaintiffs reassert and reallege paragraphs 1 through 198 as if fully stated herein.

220. Article I, § 3 of the Nebraska Constitution guarantees due process of law to Plaintiffs.

221. The rights protected by Article I, § 3's guarantee of due process of law include the rights to liberty and property.

222. The Cartel Rule facially violates the Nebraska Constitution's guarantee of due process of law.

223. The Cartel Rule violates the Nebraska Constitution's guarantee of due process of law as applied to Plaintiffs.

224. The Cartel Rule creates a monopoly.

225. The Cartel Rule creates a trade barrier.

226. The Cartel Rule allows the existing non-emergency medical transportation companies to control who the government allows to compete with them.

227. Because of the Cartel Rule, there is less competition than if the Cartel Rule did not exist.

228. Protectionism is not a constitutionally legitimate basis for prohibiting Plaintiffs from operating a non-emergency medical transportation company in Nebraska.

229. As the Cartel Rule appears to violate Article I, § 3 of the Nebraska Constitution, Plaintiffs seek declaratory relief regarding the validity of the Cartel Rule and the status of Plaintiffs' rights under Article I, § 3 of the Nebraska Constitution.

230. There is an active justiciable controversy justifying a declaratory judgment.

231. A declaratory judgment ruling that the Cartel Rule violates Article I, § 3 of the Nebraska Constitution would immediately resolve the active controversy between the parties over whether the Cartel Rule violates this provision in the Nebraska Constitution.

232. Plaintiffs have definitively asserted their legal right to operate a non-emergency medical transportation business in Nebraska, and Defendants have denied, and continue to deny, that right.

233. Defendants' violations of the Nebraska Constitution's guarantee of due process of law have caused irreparable harm to Plaintiffs.

234. Defendants' violations of the Nebraska Constitution's guarantee of due process of law will continue to cause daily irreparable harm to Plaintiffs until such time as the Cartel Rule is no longer enforced.

235. Unless Defendants are permanently enjoined from committing the above-described violations of the Nebraska Constitution, Plaintiffs and the general public will continue to suffer ongoing irreparable harm.

236. It is therefore in the public interest for permanent injunctive relief to be granted.

237. The Cartel rule violates Plaintiffs' guarantee of due process of law under Article I, § 3 of the Nebraska Constitution, and there is no adequate remedy at law.

**COUNT III – VIOLATION OF THE NEBRASKA CONSTITUTION'S
PROHIBITION ON SPECIAL PRIVILEGES OR IMMUNITIES**

238. Plaintiffs reassert and reallege paragraphs 1 through 198 as if fully stated herein.

239. Article I, § 16 of the Nebraska Constitution prohibits the irrevocable grant of special privileges or immunities.

240. The Cartel Rule facially violates Article I, § 16 of the Nebraska Constitution.

241. The Cartel Rule violates Article I, § 16 of the Nebraska Constitution as applied to Plaintiffs.

242. The Cartel Rule grants existing non-emergency medical transportation companies a governmental protection from competition.

243. The Cartel Rule grants existing non-emergency medical transportation companies the privilege to determine whom the government allows to compete with them.

244. But for the Cartel Rule, existing non-emergency medical transportation providers would not be legally permitted to bar Plaintiffs from competing with them.

245. Pursuant to the Cartel Rule, a new non-emergency medical transportation company applying for authorization from Defendant PSC is only required to prove one time that increased competition is "required" by "public convenience and necessity."

246. Once Defendant PSC finds that a new non-emergency medical transportation company is "required" by "public convenience and necessity," that new non-emergency medical transportation company is not required to again prove in the future that its authorization to compete is still "required" by "public convenience and necessity."

247. Defendant PSC has never revoked or rescinded a determination that competition from a non-emergency medical transportation company was “required” by “public convenience and necessity.”

248. A finding by Defendant PSC that competition from a non-emergency medical transportation company is “required” by “public convenience and necessity” is irrevocable.

249. Although an existing non-emergency medical transportation company could cease operations for other reasons, those possible reasons do not include Defendant PSC revoking or rescinding the determination that competition from that business was “required” by “public convenience and necessity.”

250. The Cartel Rule grants a special privilege or immunity to existing non-emergency medical transportation companies in violation of Article I, § 16 of the Nebraska Constitution.

251. The Cartel Rule grants the existing non-emergency medical transportation companies an oligopoly over providing non-emergency medical transportation in violation of Article I, § 16 of the Nebraska Constitution.

252. Protectionism is not a constitutionally legitimate basis for granting a special privilege or immunity under Article I, § 16 of the Nebraska Constitution.

253. Among the rights secured as a privilege or immunity by the Nebraska Constitution is the right to earn an honest living in the occupation of one’s choice free from unreasonable governmental interference.

254. The Cartel Rule prohibits Plaintiffs from earning an honest living providing non-emergency medical transportation because of the special privilege or immunity granted to the existing non-emergency medical transportation providers.

255. As the Cartel Rule appears to violate Article I, § 16 of the Nebraska Constitution, Plaintiffs seek declaratory relief regarding the validity of the Cartel Rule and the status of Plaintiffs' rights under Article I, § 16 of the Nebraska Constitution.

256. There is an active justiciable controversy justifying a declaratory judgment.

257. A declaratory judgment ruling that the Cartel Rule violates Article I, § 16 of the Nebraska Constitution would immediately resolve the active controversy between the parties over whether the Cartel Rule violates this provision in the Nebraska Constitution.

258. Plaintiffs have definitively asserted their legal right to operate a non-emergency medical transportation business in Nebraska, and Defendants have denied, and continue to deny, that right.

259. Defendants' violations of Article I, § 16 of the Nebraska Constitution have caused irreparable harm to Plaintiffs.

260. Defendants' violations of Article I, § 16 of the Nebraska Constitution will continue to cause daily irreparable harm to Plaintiffs until such time as the Cartel Rule is no longer enforced.

261. Unless Defendants are permanently enjoined from committing the above-described violations of the Nebraska Constitution, Plaintiffs and the general public will continue to suffer ongoing irreparable harm.

262. It is therefore in the public interest for permanent injunctive relief to be granted.

263. The Cartel rule violates Plaintiffs' rights under Article I, § 16 of the Nebraska Constitution, and there is no adequate remedy at law.

RELIEF SOUGHT

WHEREFORE, Plaintiffs M'Moupiéntila "Marc" N'Da and Dignity Non-Emergency Medical Transportation, Inc. respectfully request that this Court:

- A. Enter a declaratory judgment that the Cartel Rule violates the Nebraska Constitution's prohibition on special legislation (Neb. Const. Art. III, § 18);
- B. Enter a declaratory judgment that the Cartel Rule violates the Nebraska Constitution's guarantee of due process of law (Neb. Const. Art. I, § 3);
- C. Enter a declaratory judgment that the Cartel Rule violates the Nebraska Constitution's prohibition on granting special privileges or immunities (Neb. Const. Art. I, § 16);
- D. Enter an order permanently enjoining Defendants from enforcing the Cartel Rule in any manner;
- E. Enter an order permanently enjoining Defendants from enforcing the Cartel Rule as applied to Plaintiffs;
- F. Award Plaintiffs nominal damages in the amount of one dollar each;
- G. Award Plaintiffs their reasonable costs;
- H. Award Plaintiffs their reasonable attorneys' fees; and
- I. Award Plaintiffs any other relief as is appropriate under the circumstances.

Dated: April 22, 2020

Respectfully submitted,

By: /s/ Perry Pirsch
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* Applications for *Pro Hac Vice* to be filed

PRAECIPE FOR SUMMONS/PERSONAL SERVICE:

TO THE CLERK OF THE DISTRICT COURT OF LANCASTER COUNTY, NEBRASKA:

Please direct the Sheriff of Lancaster County, Nebraska, to serve a copy of the above-captioned Complaint upon Defendants and the Nebraska Attorney General:

1. Mike Hybl
Executive Director
Nebraska Public Service Commission
1200 N Street, Suite 300
Lincoln, NE 68508
2. Mary Ridder
Chair
Nebraska Public Service Commission
1200 N Street, Suite 300
Lincoln, NE 68508
3. Rod Johnson
Vice-Chair
Nebraska Public Service Commission
1200 N Street, Suite 300
Lincoln, NE 68508
4. Tim Schram
Commissioner
Nebraska Public Service Commission
1200 N Street, Suite 300
Lincoln, NE 68508
5. Crystal Rhoades
Commissioner
Nebraska Public Service Commission
1200 N Street, Suite 300
Lincoln, NE 68508
6. Dan Watermeier
Commissioner
Nebraska Public Service Commission
1200 N Street, Suite 300
Lincoln, NE 68508

7. Nebraska Public Service Commission
1200 N Street, Suite 300
Lincoln, NE 68508

8. Dannette R. Smith
Chief Executive Officer
Nebraska Department of Health and Human Services
301 Centennial Mall South
Lincoln, NE 68509

9. Nebraska Department of Health and Human Services
301 Centennial Mall South
Lincoln, NE 68509

10. Doug Peterson
Nebraska Attorney General
Office of the Attorney General
2115 State Capitol
Lincoln, NE 68509

Respectfully submitted,

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