BEFORE THE PUBLIC UTILITIES COMMISSION OF THE

STATE OF CALIFORNIA

Order Instituting Rulemaking on Regulations Relating to Passenger Carriers, Ridesharing, And New On-Line-Enabled Transportation Services	R.12-12-011 (Filed December 20, 2012)

JOINT RESPONSE OF THE SAN FRANCISCO MUNICIPAL TRANSPORTATION AGENCY AND SAN FRANCISCO COUNTY TRANSPORTATION AUTHORITY TO MOTIONS OF UBER TECHNOLOGIES, INC., LYFT, INC., NOMAD TRANSIT, LLC'S, AND HOPSKIPDRIVE, INC. FOR CONFIDENTIAL TREATMENT OF CERTAIN DATA IN THEIR 2023 ANNUAL REPORTS

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Dated: July 3, 2023

Pursuant to California Public Utilities Commission ("Commission" or "CPUC") Rule of Practice and Procedure 11.4(b), the San Francisco Municipal Transportation Agency ("SFMTA") and the San Francisco County Transportation Authority ("SFCTA") (together "San Francisco" or the "City and County") submit this joint response ("Response") to the: (1) Motion of Lyft, Inc. ("Lyft") for Confidential Treatment of Certain Data in Its 2023 Annual Report ("Lyft's 2023 Motion"), (2) Motion of Uber Technologies, Inc. ("Uber") for Confidential Treatment of Certain Types of Data and Information Requested in the Annual Report 2023 ("Uber's 2023 Motion"), (3) Motion of Nomad Transit, LLC's ("Nomad") for Confidential Treatment of Portions of Its 2023 Annual TNC Report ("Nomad's 2023 Motion"), and (4) Motion of HopSkipDrive, Inc. ("HSD") for Confidential Treatment of Certain Types of Data and Information Requested in the Annual Report 2023, ("HSD's 2023 Motion"),[1] all filed on June 21, 2023 (collectively, the "2023 Motions").

I.   INTRODUCTION

In Decision ("D.") 20-03-014 issued on March 16, 2020, the Commission overturned D. 13-09-045's footnote 42 and removed the presumption of confidentiality which concealed Transportation Network Company's ("TNC's") annual reports from the public, establishing the annual reports as public records subject to disclosure under the California Public Records Act ("CPRA").[2] For years, footnote 42 obscured from the general public and from other public entities essential information about the use, delivery, and impacts of TNC services. The Commission has now rejected numerous attempts by the TNCs to block disclosure of data and other information regarding their operations in the state from public disclosure.[3]

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[1] We collectively reference Lyft, Uber, Nomad, and HopSkipDrive as "the TNCs."

[2] D.20-03-014, at 11-12 ("Since records received by a state regulatory agency from regulated entities relate to the agency's conduct of the people's regulatory business, the CPRA definition of public records includes records received by, as well as generated by, the agency.")

[3] *See* Ruling on Uber's and Lyft's Motion for Confidential Treatment of Certain Information in Their 2020 Annual Reports, issued on December 21, 2020 ("2020 Ruling"); Ruling on the Motions of Uber, Lyft, HSD, and Nomad Nomad for Confidential Treatment of Portions of Their 2021 Annual Transportation Network Company ("TNC") Reports, issued on November 24, 2021 ("2021 Ruling"); Decision 21-06-023 ("D. 21-06-023") Modifying Decision 20-03-014 and Denying Rehearing of Decision, As Modified on June 4, 2021 ("Order Modifying Decision 20-03-014"); Decision Denying Appeal of Lyft Re: Ruling Denying, In Part, Motions by Uber and Lyft for Confidential Treatment of Certain Information in Their 2020 Annual Reports, issued on May 6, 2022 ("Decision Denying Lyft's Appeal"); Order Modifying Decision 22-05-003 and Denying Rehearing of the Decision, as Modified, filed on February 24, 2023 ("Decision Denying Rehearing of Lyft's Appeal").

In the 2020 and 2021 Rulings, the Administrative Law Judge ("ALJ") granted the TNC's motions as to a small subset of data which necessitated confidential treatment, but denied the motions as to the balance of geolocation and trip data for which the TNCs sought confidential treatment (collectively "Trip Data").[4] The current TNC motions largely present the same arguments the Commission has previously rejected, and they present no persuasive new evidence to support a different outcome. We urge the Commission to reject the TNC's motions to the extent the TNC's are seeking confidential treatment of data submitted to the Commission beyond that which the ALJ approved such treatment for in the 2020 and 2021 Rulings.

II. DISCUSSION

A. Only Those Data Categories Granted Confidential Treatment in the 2020 and 2021 Rulings Should Be Protected from Disclosure.

In the 2020 and 2021 Rulings, the ALJ granted confidential treatment to a discrete subset of data categories required to be submitted in the TNC's Annual Reports. These data categories include:

- Latitude and longitude information in all data categories.

- Driver information in all data categories: drivers' names, type of driver identification, license state of issuance, license number, expiration date, description of allegation, definition, type and description of alleged sexual assault or sexual harassment, and vehicle VIN.

- Accidents and incidents: the parties involved in the incident, any party found liable in an arbitration proceeding, information concerning any criminal proceeding if the record has been sealed by the court, amounts paid by the TNC's insurance, driver's insurance, or by any other source.[5]

All of the TNCs seek continued confidentiality for these data categories, and San Francisco does not contest continued confidentiality for these categories.[6] However, despite the Commission's repeated

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[4] *Id.*

[5] 2021 Ruling, at 1-2.

[6] To be clear, San Francisco supports continued confidentiality for those data categories which the ALJ approved such treatment for in the 2020 and 2021 Rulings, but retain our position that the Commission should make data that's been deemed confidential available to local entities that agree to treat the disclosed material as confidential under Government Code § 6254.5(e) (now § 7925.501(5)). San Francisco reaffirms and incorporate the comments previously filed by the San Francisco City Attorney's Office ("SF CAO"), the San Francisco International Airport ("SFO"), and SFMTA, on July 17, 2017, and July 31, 2017, which describe compliance with the CPRA, and the Commission's ability to share confidential information with local entities pursuant to

denial of confidential treatment for the remaining Trip Data, only Uber (with the exception of

arguments related to newly requested Driver Pay data) limits themselves to requesting continued

confidentiality for the above data categories. In so limiting their motion, Uber makes the following

statement:

> Uber recognizes the Commission's shift away from broad designations of confidentiality and
> toward 'California's policy that public agencies conduct their business with the utmost
> transparency.' Uber supports the Commission's interest in this regard and is not attempting to
> rehash previously decided motions. Rather, Uber brings this motion for the limited purpose of
> asserting valid claims over . . . a narrow set of data that has previously been ruled confidential
> by the Commission….[7]

As was the case in their 2022 motions for confidential treatment,[8] the other TNCs, and in particular

Lyft, continue to submit motions which press confidentiality arguments that have been exhaustively

considered by the Commission and repeatedly denied.[9] As stated in our Response to Lyft's

Application for Rehearing of D. 22-05-003, San Francisco believes that the continued assertion of

these arguments is "a prime example of the behavior the Commission cautioned it would view with

suspicion when it issued D.20-03-014."[10] San Francisco urges the other TNCs to move away from the

"broad-brush style confidentiality claims" the Commission has warned against.[11]

Additionally, as we argued in our Response to the TNCs 2022 Motions for Confidential

Treatment,[12] to lessen the burden on the parties, San Francisco encourages the Commission to

establish a briefing process for these annual motions for confidential treatment that provides an

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Government Code § 6254(e) (now § 7925.501(5)). *See* Opening Comments of the SF CAO on Phase III.B
Scoping Memo and Ruling of Assigned Commissioner on Track 3 – TNC Data, filed July 17, 2017, at 3-4, 6, 9;
Reply Comments of SF CAO on Phase III.B Scoping Memo and Ruling, filed July 31, 2017, at 4; Opening
Comments of the SFO and SFMTA on the Phase III.B Scoping Memo and Ruling, filed July 17, 2017 at 12, 16;
Reply Comments of SFO and SFMTA on the Phase III.B Scoping Memo and Ruling, filed July 31, 2017 at 6.
San Francisco notes that Autonomous Vehicle operational safety analysis may call for public access to be
separately analyzed in the Autonomous Vehicle context.

[7] Uber's 2023 Motion, at 2.

[8] The motions submitted by the TNCs for confidential treatment over data in the 2022 Annual Reports are yet to
be ruled on.

[9] *See Supra* fn. 3.

[10] Response of the City and County to Lyft's Application for Rehearing of the Decision Denying Their Appeal,
filed May 23, 2022, at 3; *see also* D.20-03-014, at 30.

[11] D.20-03-014, at 30.

[12] Response of SFMTA, SFCTA, and SFO to Motions of Uber, Lyft, Nomad, and HSD for Confidential
Treatment of Certain Data in their 2022 Annual Reports, filed on July 1, 2022, at 4.

opportunity for more fulsome consideration and input from the non-TNC parties to this proceeding.

Notably, the TNCs have a full year to craft their annual confidentiality motions, but the non-TNC

parties to this proceeding have only 10 days to consider those motions and develop a response under

Rule 11.4(b). Given the public's strong and recognized interests in accessing the Trip Data, as well as

the public's constitutional right to access information concerning the conduct of the people's

business,[13] San Francisco urges the Commission to establish a longer response window.

B. **The TNCs Have Not Met Their Burden of Demonstrating That Information Contained in Their Annual Reports Should Be Protected from Public Disclosure.**

D. 20-03-014 states that TNC Annual Reports should *not* be presumed to be confidential and

requires that TNCs specify the basis for confidential treatment under an applicable provision of the

CPRA.[14] The Commission requires that a TNC "must specify the basis for the Commission to provide

confidential treatment with specific citation to an applicable provision of the California Public Records

Act. A citation or general marking of confidentiality, such as General Order-66 and/or Pub. Util. Code

§ 583 without additional justification is insufficient to meet the burden of proof."[15] A TNC which cites

the public interest balancing test, Government Code, § 6255(a),[16] as the basis for withholding a

document from public release "must demonstrate with granular specificity on the facts of the particular

information why the public interest served by not disclosing the record clearly outweighs the public

interest served by disclosure of the record. A private economic interest is an inadequate interest to

claim in lieu of a public interest."[17]

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[13] Cal. Const. art. I, § 3; *See e.g.* Decision Denying Lyft Appeal, at 72-74; the 2020 Ruling, at 19-21, fn.37, citing comments from the City and County's Opening Comments on Proposed Decision Re: Data Confidentiality Issues (February 27, 2020), at p. 3, citing to the City and County's Opening Comments to Phase III.C Scoping Memo and Ruling of Assigned Commissioner (December 3, 2019), at 8-13; and Reply Comments to Phase III.C Scoping Memo and Ruling of Assigned Commissioner (December 20, 2019), at 2-7.

[14] D.20-03-014, at 2-3, 37.

[15] *Id.*, at 28-29.

[16] Re-codified at Government Code § 7922.000.

[17] *Id.*, at 29.

The TNCs have failed to satisfy their burden of demonstrating that information contained in their Annual Reports for which they request confidential treatment should be protected from public disclosure under one or more exemptions to the CPRA, and largely regurgitate the same arguments made in their 2020, 2021, and 2022 motions which have been addressed by San Francisco in our prior responses, by the ALJ in their 2020 and 2021 Rulings, and by the Commission.[18]

C. Disclosure of the Trip Data Does Not Constitute an Unwarranted Invasion of Personal Privacy

1. The Whittington and Sun Declaration Fails to Establish a Privacy Risk of the TNC Annual Report Trip Data.

Lyft relies heavily on an expert declaration from Dr. Jan Whittington and Dr. Feiyang Sun.[19] The Declaration argues, in short, that records in TNC Trip Data are unique based on a combination of attributes, and that anonymized data in one database can be cross-referenced with another to re-identify data in the first database. The Declaration is both misleading and fails on its logic. It is misleading because it repeatedly conflates the concepts of "re-identification" with record-uniqueness. It fails on the logic because it only demonstrates record uniqueness, not any actual re-identification risk.

a. The Declaration misleadingly conflates re-identification with record-uniqueness.

The Declaration describes the concept of "re-identification" as "the process by which anonymized personal data is matched with its true owner"[20] and that "re-identifiability occurs when one presumably anonymized dataset is joined with existing available data to re-identify persons."[21] But subsequently, repeatedly "re-identification" is used to mean k-anonymity,[22] which is a measure of

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[18] *See supra* footnote 3.

[19] Declaration of Drs. Whittington and Sun in Support of Lyft's Opening Comments on the Ruling, filed on June 15, 2023 ("Whittington and Sun Declaration").

[20] Whittington and Sun Declaration, at 9.

[21] *Id.*, at 10.

[22] For example, a database of trips by origin and destination is 2-anonymous if each origin-destination combination has at least 2 records.

how unique a record is within a database based on a combination of its attributes, *not* the association

of anonymized data with an actual individual. For example, the Whittington and Sun Declaration

states that, "analysis from Montjoye et al. (2013) demonstrates that with just four randomly selected

spatiotemporal data points, 95% of persons could be re-identified from travel data, and with as few as

two points, more than 50% of persons could be re-identified"[23] and then quotes from the Montjoye

study:

> Four randomly chosen points are enough to uniquely characterize 95% of the users ($\varepsilon > .95$),
> whereas two randomly chosen points still uniquely characterize more than 50% of the users ($\varepsilon > .5$). This shows that mobility traces are highly unique and can therefore be re-identified using
> little outside information. (Montjoye et al. 2013).[24]

The quote from the study clearly demonstrates only record uniqueness and leaves actual re-

identification as completely hypothetical. But the Whittington and Sun Declaration repeats this

misleading sleight-of-hand, referring again to the same study, "[t]he idea that more than 50% of

persons could be re-identified on the basis of two randomly selected travel data points… is of direct

concern for the privacy consequences of disclosing trip data."[25]

The Whittington and Sun Declaration then presents the experts' own analysis perpetuating this

misdirection. First, they present Dr. Sun's analysis of the 2017 Puget Sound Regional Survey, again

directly conflating the concepts of re-identification and record-uniqueness:

> 42% percent of the travelers can be re-identified by one trip origin or destination
> point aggregated at the census block group level and the one-hour time interval,
> which confirms the previous findings that mobility traces are highly unique.
> (Sun 2021)[26]

The preceding quote is from Dr. Sun's Ph.D. dissertation, which is not publicly available. In

their official report to U.S. Department of Transportation, however, Drs. Whittington and Sun admit,

"[w]hile the traces alone may not be enough to re-identify people and reveal sensitive information,

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[23] Whittington and Sun Declaration, at 15.

[24] *Ibid.*

[25] *Id.*, at 16.

[26] *Id.,* at 17.

they can be used to link or match the data to other datasets."[27] While the 2017 Puget Sound Regional Travel Survey contains person and household level information that might conceivably link to other datasets, the public TNC Trip Data at issue does not. The source material cited in the Declaration makes clear that record uniqueness is not equivalent to re-identification, but the Declaration itself blurs these lines, creating a false impression of equivalence.

> **b.** **Record uniqueness is trivial and does not establish a re-identification risk.**

Then the Declaration presents analysis of record-uniqueness within Lyft's TNC Trip Data:

> Our analysis of Lyft's Trip Data shows the percentage of trips that are unique and therefore easily used to re-identify travelers by combining three data fields: passenger pickup location, passenger drop off location, and pickup timestamp. The locations of passenger pickup and drop off (origins and destinations) are aggregated at the census block, census tract, and ZIP code levels.[28]

We do not dispute that a combination of attributes can uniquely identify records within the TNC Trip Data. This does not reveal any personal information. In fact, it is trivial to identify a unique record in a database; databases commonly include an index specifically for this purpose. For example, any record in a database may be uniquely identified by its row number. It is entirely different to uniquely identify a record within a database than to identify *a person* from data in the database. Consider the following example in Table 1. In this case, there are only two records each with five attributes including an index. Any field (index, origin zipcode, destination zipcode, origin departure time, destination arrival time) can individually, or in combination, uniquely identify each record. But none of this information alone or in combination with other sources allows someone to associate either record with a real person.

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[27] *Privacy Risk Evaluation of Human Mobility Data for Urban Transportation Planning. Final Project Report* (July 2022)*.* Jan Whittington and Feiyang Sun University of Washington; <https://digital.lib.washington.edu/researchworks/bitstream/handle/1773/49487/Whittington%20Privacy%20Risk%20Evaluation%20PacTrans%20Final.pdf?sequence=1&isAllowed=y>

[28] Whittington and Sun Declaration, at 20.

Table 1: Example of Uniquely Identifiable Records in a Database that do not Implicate Personal Information

Index	Origin zipcode	Destination zipcode	Origin departure time	Destination arrival time
0	94118	94110	09:35:07	9:54:59
1	94606	94501	12:20:20	12:44:31

In Lyft's *Opening Comments of Lyft, Inc. On Assigned Commissioner's Ruling Reopening the Record for Further Comments Regarding the Disclosure of TNC Annual Reports from 2014-2019 On Whether the Timestamp Data for each TNC Trip Should be Aggregated*, they cite a study by Gramaglia and Fiore that articulates this clearly:

> Uniqueness does not implies [sic] identifiability, since the sole knowledge of a unique subscriber trajectory cannot disclose the subscriber's identity. Building that correspondence requires instead sensible side information and cross-data base analyses similar to those carried out on medical or Netflix records. To date, there has been no actual demonstration of subscriber re-identification from mobile traffic datasets using such techniques – and our study does not change that situation.[29]

c. **The evidence presented in the Declaration supports the Commission's confidentiality designations as to the 2020 and 2021 TNC Annual Reports, but does not support further expansion of data suppression.**

The Whittington and Sun Declaration claims that TNC Trip Data could be cross-referenced to other sources to create a re-identification risk. It does this by providing examples of data items that might conceivably be cross-referenceable to other data sources. However, due in part to the nature of the TNC Trip Data, and in part to the confidentiality designations made by the Commission, the public TNC Trip Data wholly lacks the features that create re-identifiability risks in these sources.

The Whittington and Sun Declaration states, "re-identifiability is possible when unique combinations of attributes in a dataset, such as birth date and zip code, allow one dataset to be joined together with other datasets that contain PII…",[30] and "date of birth, education, marital status, employment, and personal interest generated through people's Internet browsing history,"[31] and, "…

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[29] *On the anonymizability of mobile traffic datasets* (April 14, 2015). Marco Gramaglia and Margo Fiore. <https://arxiv.org/pdf/1501.00100.pdf>

[30] Whittington and Sun Declaration, at 10.

[31] *Id.*, at 12.

the combination of one's home and place of work or school."[32] Of all these attributes, the only one present in TNC Trip Data is zip code. Crucially, the zip codes pertain to trip origins and destinations, not home, work, or school locations which might conceivably be associated with a person.

The Whittington and Sun Declaration states dispositively that, "[p]eople can be re-identified from Trip Data,"[33] but provides no evidence that TNC Trip Data, or data substantially similar to trip data, has ever been used to re-identify an individual. In fact, they provide no examples whatsoever of re-identification of any individual.

d. The Declaration identifies one and only one example pertaining to TNC Trip Data.

In its only example pertaining to TNC Trip Data, the Whittington and Sun Declaration introduces a stalker-like hypothetical:

> … if a traveler entering or exiting a Lyft ride is caught by a closed-circuit television (CCTV) or by a photo uploaded online, the traveler can be easily (with greater than 90% probability) found in the Lyft Trip Data by cross-referencing the time, location, and vehicle information of the trip with the time and location of the CCTV footage or the geolocation tag of the photo.[34]

This hypothetical pre-supposes that, based on an image alone, a motivated adversary is able to find this image, and knows or could identify the location, the person in question, and the time the image was captured. Even if all these suppositions are granted, virtually no new information is added by matching this image to TNC Trip Data that is not known through the image alone. If the suppositions are granted, the adversary already knows the identity of the person in question, and the origin and location of a Lyft trip that person took. When the public TNC Trip Data is published a year or more after the trip occurred, the adversary could learn the aggregate destination geography and other attributes of this trip and precious little else. Because TNC Trip Data contains no passenger IDs or any means to link together multiple trips by any passenger, the story ends there. This example illustrates that even with a high degree of effort on the part of a determined adversary, and significant

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[32] *Id.*, at 13.

[33] *Ibid.*

[34] *Id.*, at 29.

passage of time due to the release schedules of public TNC Annual Reports, a determined adversary stands to gain nothing of any clear value.

e. **Public Agencies are equipped to receive and use TNC Trip Data, and have effectively done so, contrary to the Declaration's claim.**

The Whittington and Sun Declaration claims, "… public agencies are not accustomed to receiving and using Trip Data, and would not likely use it in its raw form."[35] Lyft claims that, "no evidence has been presented that fraud or injustice would result from preservation of Lyft's trade secret property rights in its Trip Data."[36] In April 2023, the SFCTA published TNCs 2020: A Profile of Ride-hailing in California, a detailed analysis of the 2020 public TNC Annual Reports, including its trip data.[37] The report found, among other things, that:

- Inconsistent and incomplete data reporting means Annual Reports filed by Uber and Lyft do not provide a clear accounting of ride-hailing activity and impacts. This means it is not possible to determine even basic facts such as the number of trips that occurred.

- Uber and Lyft trips are highly concentrated in the urban areas of San Francisco, Los Angeles and San Diego counties, and San Francisco has 500 times more trips per square mile than the rest of the state.

- Lyft reports three times more total public safety incidents per trip than Uber, and 30 times more assaults and harassments per trip. But the rates suggest the companies may be reporting public safety incidents differently, pointing to the need for increased review by regulators.

- Uber and Lyft drivers may violate legal drive-time limits, with 1.3 million driver-days exceeding California's 10-hour drive time for drivers providing passenger transportation. Due to limitations in the Annual Report data requirements, this report cannot confirm that such drive-time violations have occurred.

- Lyft's incomplete reports prevent environmental oversight. Uber produced an estimated 494,000 metric tons of CO_2 in 2020.

- Half of wheelchair-accessible trip requests statewide go unfulfilled, and Uber provides 16 times as many wheelchair-accessible trips as Lyft.[38]

This report demonstrates both that public agencies are equipped to make effective use of TNC Trip Data, and that concealment of this data can conceal fraud or constitute an injustice. For example,

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[35] *Id.*, at 31.

[36] Lyft's 2023 Motion, at 3.

[37] *TNCs 2020: A Profile of Ride-Hailing in California* (April 25, 2020). SFCTA. <https://www.sfcta.org/projects/tncs-2020-profile-ride-hailing-california>

[38] *Ibid.*

TNCs 2020 identifies possible regulatory compliance issues, and possible extent of legal drive-time violations. It also identifies two-weeks' worth of missing data from Uber's trip data.[39]

2. *Carpenter* and *Sander* Remain Inapplicable

Lyft continues to cite to *Carpenter v. U.S.* (2018) 138 S.Ct. 2206 and *Sander v. Superior Court* (2018) 26 Cal.App. 5th 651. The Commission has distinguished these cases numerous times.[40] As explained above, since the Whittington and Sun Declaration does not establish that the Trip Data can be used to reidentify individuals, Lyft has provided no new evidence that the privacy implications of collecting data directly linked to an individual (*Carpenter*) or to a discrete group of individuals (*Sander*) are in any way applicable to disclosure of the Trip Data.

D. Disclosure of the Trip Data Does Not Implicate a TNC's Possessory or Privacy Interests under the Fourth Amendment.

Lyft continues to argue that disclosure of Trip Data would constitute an unwarranted invasion of Lyft's right of privacy in the data under the Fourth Amendment, relying again on *Patel v. City of Los Angeles*.[41] But Lyft again confuses Fourth Amendment issues that may be attendant to *collection* of data in the first instance, with *disclosure* of data to the public when collection of data poses no Fourth Amendment concerns, as is the case here.[42] It's not disputed that the Commission has the authority to collect the Trip Data. The Commission most recently spoke to this point in D.23-02-041, the Decision Denying Rehearing of Lyft's Appeal of the 2020 Ruling, and D.22-05-003, the Decision Denying Lyft's Appeal. In rejecting Lyft's claims based on *Patel* in D.23-02-041, the Commission explained that the "[Fourth] Amendment's protections against unreasonable searches and seizures do not extend to public disclosure of records collected therefrom."[43] As the Commission states in D.22-05-003:

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[39] *TNCs 2020: A Profile of Ride-Hailing in California, Chapter 2: Reporting Compliance & Integrity* (April 25, 2020). <https://tncs2020.sfcta.org/ch2_compliance/>

[40] *See Id.*

[41] Lyft's 2023 Motion, at 50.

[42] The Commission extensively considered the application of the Fourth Amendment in the TNC data collection context in the Modified Presiding Officer's Decision Finding Raiser-CA, LLC, in Contempt, in Violation of Rule 1.1 of the Commission's Rules of Practice and Procedure, and that Rasier-CA, LLC's, License to Operate Should be Suspended for Failure to Comply with Commission Decision 13-09-045, issued on January 15, 2016, at 42-46.

[43] Decision Denying Lyft's Appeal, at 32.

What *Patel* did not address, and what the Commission is addressing in this decision, is whether a party has met its burden of proving that certain information that must be submitted as part of the Annual Report is exempt from public disclosure. As such, the facts and issue before the Commission are distinguishable from *Patel*, *Airbnb New York*, and *Airbnb Boston*. Unlike the positions New York and Boston advocated in those two decisions, the Commission is not stating that Lyft or any other TNC lacks the right to assert an expectation of privacy regarding TNC data collected and reported at the Commission's behest. Instead, what the Commission held since it ended the presumption of confidentiality for TNC Annual Reports is that the TNC asserting a claim of confidentiality or other privilege must establish that claim with the requisite granularity.[44]

Here, Lyft has presented no new compelling reasons why the Commission's prior analysis regarding *Patel* should be altered. The ALJ should reject these arguments consistent with prior rulings.

E.   Nomad's Privacy Arguments Remain Speculative.

In the 2021 Ruling, the ALJ found that the concern "over re-identification and loss of privacy" based on Nomad's small scale of service raised by Nomad's declarant, Saar Golde, were speculative.[45] Nomad continues to emphasize their small scale to assert the type of speculative and broad-brush confidentiality claims the Commission has rejected and warned against.[46] In their 2023 Motion, as in their 2022 Motion, Nomad presents no compelling evidence that Trip Data can be used to identify an individual. Instead, they attempt to scare the Commission with statistics like, "between April 1, 2023 and June 1, 2023, 70% of the census blocks appearing in our data had only a single rider who ever took a trip from there – on any day in that two-month period."[47] But the fact that only one person took a trip from a census block during a two-month period provides no information about who that person is. Nomad uses these scare tactics to ask the Commission to treat the time portion of datetime fields as confidential, but Nomad doesn't explain how a pickup time, reported more than a full year after a trip takes place, creates a privacy risk.[48] Moreover, date and time data are necessary in measuring the

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[44] Decision Denying Rehearing of Lyft's Appeal, at 22; *see also* D. 23-02-041, at ordering paragraph 2.

[45] 2021 Ruling, at 86.

[46] Nomad's 2023 Motion, at 4, 9; D.20-03-014, at 30.

[47] Nomad's 2023 Motion, at 10; Saar Golde Declaration in Support of Nomad's Motion for Confidential Treatment ("Golde Declaration"), at ¶ 11.

[48] Nomad's 2023 Motion, at 12-13.

impact of TNC services.[49] In sum, Nomad has failed to establish that the trip data at issue implicates any privacy interests, and their arguments should be rejected.

F.   **HSD's Policy and Balancing Test Arguments Do Not Support a Departure from Prior Rulings.**

HSD continues to argue that public policy reasons for disclosure of TNC Trip Data that apply to larger TNCs should not apply to them because of its size and clientele. These arguments were already considered and rejected by the ALJ in the 2021 Ruling.[50] HSD continues to fail to clearly establish why non-disclosure serves the public interest when the de-identification and spatial aggregation of their passenger trip data is just as effective at protecting user privacy for their clients as it is for the passengers of other TNCs. HSD also continues to advance arguments based on the Family Educational Rights and Privacy Act, which the 2021 Ruling already rejected.[51]

Similarly, HSD again argues that their size and limited and targeted customer base make disclosure of their Trip Data "*de minimis*" and not "meaningful to fulfilling the stated public interest reasons" identified by the Commission.[52] San Francisco disagrees. The 2021 Ruling provided excellent reasoning for why the size of HopSkipDrive (and any other smaller TNC) has no bearing on the strong public interest in accessing that TNC's trip data:

> While its operation may be small compared to Uber and Lyft, the fact remains that HopSkipDrive is putting vehicles on the road to further its customer's transportation interests. HopSkipDrive's trip data, even though it may be small [sic] than Uber and Lyft's trip data, nonetheless provides interested government entities with the best overall illustration of the number of TNC passenger rides are being provided by the TNC industry as a whole.[53]

The Commission should reject HSD's current argument for this same reason.

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[49] *See supra*, fn. 10; *see also* Opening Comments of the City and County on the Proposed Decision Denying Lyft's Appeal of the 2020 Confidentiality Ruling filed on April 21, 2022, at 2-3 (citing the necessity of trip data for measuring "the impact of TNC services on the environment, infrastructure, traffic patterns, and the overall quiet enjoyment of [of] cities and counties.")

[50] 2021 Ruling, at 68-69.

[51] *Id.,* at 89.

[52] HSD's 2023 Motion, at 12.

[53] 2021 Ruling, at 69.

G.   Trip Data is not a Trade Secret.

San Francisco agrees with the Commission's prior determinations that the anonymized and aggregated Trip Data at issue does not constitute a bona fide trade secret.[54]   The TNCs cite no new persuasive case law, nor do they submit any new compelling evidence, which would require the Commission to revisit their prior trade secret conclusions, and San Francisco has addressed many of the trade secret arguments advanced by the TNCs in their current motions in prior briefing.[55]   Notably, each of the TNCs continues to fail to establish the statutory elements of a trade secret under Civil Code § 3426.1(d): that the Trip Data is information that derives independent economic value from not being generally known and that the Trip Data is subject to reasonable efforts to maintain its secrecy. As to the former, the TNCs continue to rely on the same type of speculation that the ALJ found insufficient in the 2021 Ruling to argue that the Trip Data has independent economic value.[56]   The Commission should continue to properly find that the TNCs have failed to carry their burden of establishing that the Trip Data is a trade secret.

Even if any of the TNCs had established a trade secret interest in the Trip Data at issue, concealment of the Trip Data would amount to an injustice that would overcome that interest. As explained in the 2021 Ruling, "evidentiary privileges such as the trade secret privilege are incorporated into the CPRA as potential bases for an agency to assert the Gov. Code § 6254(k)[57] exemption," but "an assertion of the trade secret privilege by an entity that submits information to a governmental agency does not guarantee nondisclosure."[58] "A party asserting the trade secret privilege under Evidence Code § 1060 bears the burden of proving that the information it wishes to keep secret

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[54] *See* 2020 Ruling, at 17 ("…it does not appear that Moving Parties can satisfy their burden of demonstrating that a trade secret exemption applies to any of the categories of information that they wish to redact."); 2021 Ruling, at 54 ("Moving Parties have failed to carry their burden of establishing each of the three elements of a trade secret claim."); Decision Denying Lyft's Appeal, at 122, conclusion of law 3 ("It is reasonable to conclude that the trip data at issue does not meet the definition of a trade secret provided by Civil Code §§ 3426 through 3426.11."); *see also* Decision Denying Rehearing of Lyft Appeal, at 12-28.

[55] *See* the City and County's 2021 Response, at 4-5; the City and County's 2020 Response, at 7-8, 13-16; the City and County's 2021 Response to Nomad's Motion, at 4; Opening Comments of the City and County Regarding Release of 2014 to 2019 Annual TNC Reports, filed February 11, 2022, at 3.

[56] 2021 Ruling, at 35.

[57] Re-codified at Government Code § 7927.705.

[58] 2021 Ruling, at 55.

meets all elements in the Civ. Code § 3426.1(d) definition of a 'trade secret.'"[59] Under Evidence

Code § 1060, "the owner of a trade secret has a privilege to refuse to disclose the secret, and to prevent

another from disclosing it, if the allowance of the privilege will not tend to conceal fraud or otherwise

work injustice." The ALJ found in the 2021 Ruling "that concealing Moving Parties' alleged trade

secret protected trip data would work an injustice as there is a strong public interest in obtaining trip

data."[60] The Commission affirmed this finding as to Lyft in their Decision Denying Lyft's Appeal,[61]

and again in the Decision Denying Rehearing of Lyft's Appeal.[62]

1.   Lyft's 2023 Arguments do not Support a Finding of Trade Secret

Once again, Lyft has failed to show that the Trip Data at issue constitutes a trade secret.

Although the Commission has addressed and rejected Lyft's (and the other TNC's) trade secret claims

ad nauseum, elements of Lyft's trade secret arguments are worth addressing.

The declaration of Jeffrey Brandt, submitted with Lyft's 2023 Motion fails to establish that the

Trip Data has substantial economic value for the same reasons explained by the Commission in the

Decision Denying Lyft's Appeal.[63] Further, Lyft's attempts to play "gotcha" with statements made in

San Francisco's Opening Comments on Phase III.B Scoping Memo and Ruling filed in 2017 ("San

Francisco's 2017 Comments") in order to support a finding of economic value are unpersuasive and

fail as a matter of law.[64] Specifically, Lyft states that –

> the Commission itself attests in D.23-02-041 to the value of Lyft's data for traffic and
> infrastructure planning purposes, crediting San Francisco's statements that Lyft's Trip Data is
> "extremely valuable" and that without such data, it was "forced … to allocate hundreds of
> professional staff hours and tens of thousands of dollars to find alternative sources of data to
> inform its recent analysis of the impact of TNC service on traffic congestion in San
> Francisco.[65]

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[59] Decision Denying Lyft's Appeal, at 71-72.

[60] 2021 Ruling, at 56.

[61] Decision Denying Lyft's Appeal, at 72.

[62] Decision Denying Rehearing of Lyft's Appeal, at 24-28.

[63] Decision Denying Lyft's Appeal, at 57-66.

[64] Lyft's 2023 Motion, at 22.

[65] *Ibid*.

First, nowhere in the Decision Denying Rehearing of Lyft's Appeal does the Commission quote this language from San Francisco's Comments.[66] Instead, the Commission references a different portion of San Francisco's 2017 Comments as examples of public interests that would warrant disclosure *even if* the Trip Data were a trade secret.[67] Second, "the focus of the inquiry regarding the independent economic value" of trade secret is "'on whether the information is generally known to or readily ascertainable by business competitors or others to whom the information would have some economic value....'"[68] The "independent economic advantage element 'is a codification of the common law requirement that a trade secret reflect a 'competitive advantage.'"[69] San Francisco is not a TNC, and therefore not Lyft's competitor. Whether San Francisco, and the public at large, would benefit from the value of public policy being framed by "factual, real time data"[70] or would value from insight into the Commission's regulation of TNCs based on that data is irrelevant to whether the Trip Data has independent economic value for purposes of a trade secret claim.

2. Nomad Has Not Established that the Trip Data is a Trade Secret

As in their 2022 Motion, Nomad again argues that their "unique model . . . significantly alters the evaluation of the public interest that may exist with respect to the transparency of this data."[71] This is because, as Nomad argues, the company "already shares metrics and regular updates about its services in California with its partners," some of whom are public entities.[72] This argument completely misses the mark for two reasons. First, Nomad does not assert, nor can it, that their only clients are public entities and that they only operate within the geographic jurisdiction of the public entities that they have contracts with, and with whom they reportedly share data. In fact, the Golde

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[66] *See* Decision Denying Rehearing of Lyft's Appeal, at 27.

[67] *Id*. (The Commission stated that "Lyft selectively quotes to [San Francisco's] comments, which state more fully that access to the trip data is preferrable because the anecdotal information 'does not present an accurate depiction of conditions on the ground' whereas the trip data allows for 'public policy on factual, real time data… .'" (San Francisco Opening Comments on Phase III.B Scoping Memo and Ruling (July 17, 2017) at 4)).

[68] *Altavion, Inc. v. Konica Minolta Sys. Lab'y, Inc.*, 226 Cal. App. 4th 26, 62 (2014) quoting *Syngenta Crop Protection, Inc. v. Helliker*, 138 Cal.App.4th 1135, 1172 (2006).

[69] *Altavion*, at fn. 26 quoting Trade Secrets Practice in California, § 1.7 (now § 1.6).

[70] *Supra* fn. 62.

[71] Nomad's 2023 Motion, at 22.

[72] *Id*.; Golde Declaration, at ¶ 24.

Declaration submitted with Nomad's Motion explicitly states that Nomad has both public and private partners.[73] The Golde Declaration also states that Nomad provides rides to "employees…to and from office locations," and those employees are "likely to live in dispersed areas."[74] Nowhere does Mr. Golde state that these rides only take place within the geographic jurisdiction of a public entity they've partnered with – in fact, the statement implies just the opposite. Second, that Nomad shares metrics with their public and private partners has absolutely no bearing on the very real and important interests that municipalities throughout the state may have in evaluating the impact of Nomad's services within *their boundaries*. These are fatal flaws in Nomad's argument, and they should continue to be subject to the same injustice and public interest balancing test findings applied to the other TNCs.

H. San Francisco Supports the Commission's Collection and Disclosure of Driver Pay Data.

Uber, Nomad, and HSD all claim that newly required Driver Pay data should be exempt from public disclosure under Government Code Section 7927.705 as trade secrets. San Francisco supports the collection and public release of Driver Pay data. The arguments made by Uber, Nomad, and HSD to claim confidentiality over Driver Pay data closely mirror those made in Uber's 2020 Motion to argue for confidentiality over trip price and other product information.[75] The ALJ thoroughly considered and rejected those arguments in the 2020 Ruling.[76] San Francisco supports the same result for the Driver Pay category.

I. Vehicle Make, Vehicle Model, and Vehicle Year Should Not Be Redacted from the Assault and Harassment Report.

The Commission should reject Lyft's request for confidential treatment of vehicle make, model, and year. The Whittington and Sun Declaration, as discussed above, does not establish that the Trip Data can be used to reidentify rider and drivers, but merely that a combination of vehicle make, model, and year with other fields might be unique in a dataset. Lyft has not shown that this information contains any risk of identifying individuals. Moreover, disclosure of vehicle make,

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[73] Golde Declaration, at ¶ 22.

[74] Golde Declaration, at ¶ 9.

[75] Uber's 2020 Motion, at 17-23.

[76] *See* 2020 Ruling, at 17-20.

model, and year information is in the public interest, as demonstrated by SFCTA's TNCs 2020 report which uses this information to estimate CO_2 emissions.[77]

III. CONCLUSION

In conclusion, San Francisco urges the Commission to reject the TNC claims for confidential treatment of data submitted to the Commission beyond that which the ALJ approved such treatment for in the 2020 and 2021 Rulings because neither Lyft, Nomad, nor HSD have met their burden of demonstrating why such information should be withheld from public disclosure.

Dated: July 3, 2023   Respectfully submitted,

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On behalf of: THE SAN FRANCISCO MUNICIPAL
TRANSPORTATION AGENCY AND SAN
FRANCISCO COUNTY TRANSPORTATION
AUTHORITY

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[77] *TNCs 2020: A Profile of Ride-Hailing in California, Chapter 6: Environment* (April 25, 2020). SFCTA. <https://tncs2020.sfcta.org/ch6_environment/>