

**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE
STATE OF CALIFORNIA**

Order Instituting Rulemaking on Regulations
Relating to Passenger Carriers, Ridesharing,
And New Online-Enabled Transportation
Services

R.12-12-011

**OPENING COMMENTS OF SAN FRANCISCO INTERNATIONAL AIRPORT
AND SAN FRANCISCO MUNICIPAL TRANSPORTATION AGENCY
TO ASSIGNED COMMISSIONER'S RULING INVITING/INSTRUCTING
PARTY COMMENTS ON BACKGROUND CHECKS OF PROSPECTIVE
TRANSPORTATION NETWORK COMPANY DRIVERS**

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INTRODUCTION

The City has long urged the Commission to require TNC drivers to undergo fingerprint-based criminal history background checks just as San Francisco taxi drivers do. Unlike Social Security numbers, fingerprints cannot be forged or stolen. The TNCs have consistently argued against requiring their drivers to undergo fingerprint-based background checks, asserting they are less accurate than background checks based on Social Security numbers, are more expensive, take too long to get accurate results, and have a disparate impact on disadvantaged drivers, particularly people of color.

Despite these arguments, Uber drivers in New York City – approximately 35,000 individuals – have all undergone fingerprint-based background checks as a condition of receiving the license required to operate in that city.¹ New York requires the same criminal background check standard for every class of drivers who transport members of the public for compensation, including taxi drivers, limousine drivers, and TNC drivers. We believe the Commission should do the same.

However, we also recognize the shortcomings of using only one background check method. Neither fingerprint-based criminal history records nor those based on names and Social Security numbers are always complete. We therefore urge the Commission to adopt a hybrid solution, employing both fingerprint-based and name-based criminal history information.

¹ See <http://www.nyc.gov/html/tlc/html/industry/drivers.shtml>, and <http://money.cnn.com/2016/of/11/news/companies/uber-new-york-city-union/>

COMMENTS

The following Comments address questions 1-15 in Section A of the Assigned Commissioner’s Ruling. Because the balance of questions in the Ruling are directed specifically to TNCs, we do not address them here.

1. What are the specifics of a fingerprint-based background check performed through the California Department of Justice (CA DOJ), and what are the comparable specifics of the process currently used by the TNCs?

According to its website regarding fingerprint background checks, the CA DOJ maintains a statewide criminal record repository made up of records of arrest and prosecution, referred to by CA DOJ as “RAP sheets.” These records are submitted to the CA DOJ by sheriffs, police departments, district attorney offices and the courts. Fingerprints are taken by certified technicians using Live Scan technology.²

Penal Code § 11105(b) requires the CA DOJ to provide criminal history information to 25 different public agencies and persons when that information is required to fulfill employment, certification, or licensing duties. The procedures for disclosing state and federal criminal history information are addressed in 11 C.C.R. §§721-724. Collectively, these regulations prohibit the CA DOJ from disclosing arrest information unless the record includes disposition information.³ When the CA DOJ database does not contain disposition information, CA DOJ is required to query the arresting agency, the prosecuting agency, the court and local probation agency, or any other criminal justice agency that might possess the missing information. After such efforts are exhausted and the CA DOJ still cannot obtain the corresponding disposition information for an arrest,

² See <https://oag.ca.gov/fingerprints>.

³ “Disposition information” is the sentencing or other final settlement of a criminal case. See, Black’s Law Dictionary.

the disposition information is deemed unavailable and the CA DOJ “shall suppress that arrest information and provide the authorized agency with a response that no criminal history exists.”⁴ CA DOJ’s website states that when there are no fingerprints that match an individual with a criminal history, the process typically takes 48-72 hours.⁵ If matching fingerprints are found, the procedures in 11 C.C.R. §§721-724 are followed, which can “take an indeterminate amount of time.”⁶ All other information, if any, must be disclosed.⁷ The CA DOJ must also maintain an audit trail of its efforts to obtain missing arrest disposition information.⁸

An exception to non-disclosure of arrests without corresponding disposition information requirement is found in Penal Code § 11105(p)(2)(B), which requires disclosure of every arrest for an offense for which the applicant is currently awaiting trial. Finally, RAP sheets are confidential. Under California law, they are available only to authorized public agencies.⁹

With respect to Uber’s process for screening applicants, in July 2015, Uber’s chief security officer Joe Sullivan posted on Uber’s website that before individuals can drive for Uber, they must provide their full name, date of birth, Social Security number, driver’s license number, a copy of their driver’s license, vehicle registration, insurance and proof of a completed vehicle inspection.¹⁰ According to its website, in California, Uber uses the firm Checkr to perform the background checks currently required by the

⁴ See 11 C.C.R. § 723.

⁵ See <https://oag.ca.gov/fingerprints>.

⁶ *Id.*

⁷ See 11 C.C.R. § 723(b)(c).

⁸ See 11 C.C.R. § 724.

⁹ See Penal Code § 11105(b) and <https://oag.ca.gov/fingerprints/security>

¹⁰ See “Kalamazoo shooting: Here’s how Uber does its background checks,” Los Angeles Times, 2/22/16; <http://www.latimes.com/business/technology/>.

Commission. Checkr runs the applicant's name, address, and Social Security number against the National Sex Offender public website and other databases.¹¹

Although Checkr's website states that it can check numerous databases, including ID verification, county criminal records, sex offender registry, national criminal records, federal criminal records, and driving records, it is unclear which specific databases it accesses.¹² If a criminal record is identified, Checkr then sends someone to review it in person at the relevant courthouse or pulls the record digitally.¹³ However, neither Checkr nor Uber can assert that they obtain the complete criminal history information for any applicant, particularly for instances when the applicant uses an alias, false name, or illegally obtained valid Social Security number, because private companies cannot access either the CA DOJ database or the FBI criminal database.¹⁴

Lyft's criminal background checks in California are done by Sterling Talent Solutions and include national and county-level databases, and when necessary, local courthouse record checks.¹⁵ According to its website, Sterling Talent Solutions uses proprietary screening methods to search county, state and federal criminal records and the U.S. Department of Justice Sex Offender Registry.¹⁶

a. Which databases does each form of background check use, and what are the pros and cons of each database, such as frequency of updates, the time

¹¹ See *Id.*

¹² See <https://checkr.com/>

¹³ See "Kalamazoo shooting: Here's how Uber does its background checks," Los Angeles Times, 2/22/16; <http://www.latimes.com/business/technology/>.

¹⁴ Checkr's website recommends that employers run a state criminal records check in addition to the criminal background check performed by the company.

¹⁵ See <http://get.lyft.com/ca-state-law/>

¹⁶ See <http://www.sterlingtalentsolutions.com/Need/Criminal-Record-Checks>.

between a conviction and when it posts to the background check service provider's database(s), reliance on local law enforcement, and false positives?

As the repository for statewide criminal records, the CA DOJ receives all arrest and disposition information from sheriffs, police and probation departments, district attorneys and courts, and maintains its own fingerprint database. Where national criminal histories are required, CA DOJ forwards fingerprint images to the FBI, which looks for matches in the national criminal history database.¹⁷ The state criminal history data base includes the individual's name, date of birth, physical description, fingerprints, photographs, dates of arrest, arresting agencies and booking numbers, charges, dispositions, and similar data about the person.¹⁸ We know of no statewide requirement regarding timely reporting by sheriffs, police and probation departments, district attorneys and courts to provide the CA DOJ with arrest and disposition information.

As discussed throughout these comments, with the exception of arrest for which the defendant is awaiting trial, CA DOJ is prohibited by law from disclosing an arrest record on a RAP sheet unless it includes a disposition. This prevents potential employers or licensing agencies from excluding individuals from employment or licensing/permitting simply because there is a record of an arrest.

According to its website, "Checkr accesses multiple data sources, including national criminal databases with millions of records, courthouses across all 3,200 counties in the United States, state sex offender registries, the Federal Court PACER system, and state Department of Motor Vehicles"; however, it is unclear which specific

¹⁷ See <https://oag.ca.gov/fingerprints>

¹⁸ See Penal Code § 11105(a).

databases it accesses because they are not identified.¹⁹ Similarly, Lyft uses Sterling Talent Solutions, which purports to have electronic access to criminal files in “more than 2,200 jurisdictions across the U.S.,” and performs motor vehicle records checks and Social Security number traces. Neither Checkr nor Sterling Talent Solutions are authorized by Penal Code § 11105 to access either the CA DOJ database or the FBI’s criminal database for records regarding TNC driver applicants.

The California State Legislature is currently considering a bill requiring TNCs or third parties to conduct local and national criminal background checks using “a multistate and multijurisdictional criminal records locator or similar commercial nationwide database with validation.”²⁰ The bill would not require driver applicants to provide fingerprints. The analysis of AB 1289 notes that there are varying regulations related to criminal background checks for taxis, TNCs and limousines, and that the CPUC is currently soliciting comments on whether fingerprinting should be required.²¹

The analysis succinctly lays out the pros and cons of biometric-based background checks, such as fingerprint-based checks, and those based on an applicant’s Social Security number [emphasis added]:

While no one background check system is completely full-proof, *a combination of name and social security checks with a biometric identifier, such as a fingerprint, would ensure the greatest level of accuracy, and therefore, the best protection of public safety and fairness to potential drivers.* ... Moreover, the Senate Committee on Public Safety noted in its analysis: “Historically, this Committee [Public Safety] has not passed bills providing for background checks that are not fingerprint based. Name based checks are not as reliable as similar names exist and there is not (sic) check on the information.” However, fingerprinting requires applicants to visit a police station or other channeling office in order to provide fingerprints that can be used to search in federal, state, and local law enforcement databases. The TNCs argue that such delay in hiring drivers could jeopardize their

¹⁹ See <https://checkr.com/resources/faq/>.

²⁰ See AB 1289

²¹ See http://leginfo.legislature.ca.gov/faces/billAnalysisClient.xhtml?bill_id=201520160AB1289.

business model which relies on signing-up drivers fairly instantaneously via a phone application.²²

The analysis also notes that the CA DOJ process prevents the release of arrest records without dispositions, but that “non-fingerprint checks do not utilize the DOJ database, which as a result, do not stop a TNC from receiving an arrest record where an arrest record should not be used against a person.”²³

- b. Provide a chart that lists each county in California and the databases that the respective background check service provider checks for each county, including the following information for each database, as applicable:**
- i. The source of the data, the name of the database used, and a brief description of the data included in the database**
 - ii. The date range of the oldest data and the most recent data included**
 - iii. How often the information is updated.**
 - iv. How the background check service provider checks the databases (by name, social security number, fingerprints, etc.).**
 - v. A list of the counties for which no data is available.**

The City lacks the information regarding which databases are used by the background check services providers used by TNCs.

- c. How does the existing TNC criminal background check process specifically verify that the identity of a driver applicant is the same as purported by the applicant?**

The City lacks sufficient information regarding TNC practice to respond to this question.

- d. How does the existing TNC criminal background check process account for drivers who submit aliases or false SSNs?**

²² See *id.*, at 5.

²³ See *id.* at 6.

The City lacks sufficient information regarding TNC practice to respond to this question.

e. Compare timelines between the process conducted by TNCs today and a fingerprint-based background check performed through CA DOJ.

The City lacks sufficient information regarding the services used by TNCs to compare the timelines.

f. Under the process used by TNCs today, what empirical evidence exists, if any, that driver applicants will be approved despite having a disqualifying criminal record due to a failure to transmit this criminal record to/from the relevant database?

TNC background checks are particularly susceptible to error when individuals use aliases to pass the background checks. For example, one Houston driver cleared by Uber background check provider Hirease had 24 alias names, 5 listed birth dates, 10 listed social security numbers, and an active warrant for arrest.²⁴

Unlike commercially available databases, criminal records in government databases have unique numerical identifiers associated with a unique biometric identifier, such as a fingerprint. As alleged by the District Attorneys of Los Angeles and San Francisco in an unfair business practices lawsuit (“the DA Lawsuit”), “[t]hese numerical identifiers allow for the tracking of individuals who use aliases or who, for other reasons, have criminal records associated with different names, different addresses, or different Social Security numbers. The use of a numerical identifier associated with a unique biometric identifier enables database searches to capture all criminal history of the subject even if the subject gives untruthful or inaccurate identification information.”²⁵

²⁴ <http://www.chron.com/news/transportation/article/How-Uber-driver-eluded-background-check-process-6186467.php>

²⁵ See Appendix A, People v. Uber Technologies, et al., First Amended Complaint, at 19.

The DA Lawsuit provides detailed descriptions of Uber drivers who had previous criminal convictions that Uber’s background check firm either missed, or convictions Uber knew about but decided to approve the drivers anyway.²⁶ Uber settled that case for \$25 million.²⁷

The investigation firms retained by Lyft and Uber check sex offender status using the National Sex Offender *Public* Website (NSOPW). But as described in the DA Lawsuit, publically available websites do not include all registered sex offenders. Specifically, they do not include individuals convicted of (1) child pornography where the victims are between the ages of 16 and 18, (2) sexual exploitation of a child, (3) employment of a minor for sexual exploitation, (4) misdemeanor child molestation, (5) felony sexual battery, and (6) sexual offenses against a grandchild, child, stepchild or sibling not involving penetration.²⁸ In California, people convicted of crimes against minors may apply for an exemption from California’s “Megan’s Law” sex offender registry, and more than 30,000 registered sex offenders have applied for and received that exemption.²⁹

The DA Lawsuit provides 25 examples of TNC drivers who passed Uber’s background check but who nevertheless had criminal convictions or were driving on suspended licenses. Two of these include individuals, identified as “Uber Driver #2” and “Uber Driver #3,” with previous criminal convictions involving lewd acts against a child and sexual exploitation of children. *Together, these two drivers provided 8,870 rides to*

²⁶ See *id.*, at p. 27-37.

²⁷ See <http://sfdistrictattorney.org/san-francisco-and-los-angeles-district-attorneys-announce-25-million-settlement-with-uber>

²⁸ See Appendix A, DA Lawsuit, at 24.

²⁹ See *id.*

unaccompanied minors while driving for Uber. In the case of Uber Driver #2, Uber's background check company did not pick up that the individual was a registered sex offender because he applied for and was granted an exemption from being identified in the Megan's Law registry. Uber Driver #3, whose crimes were committed in Wyoming, was also not detected by Uber's background check firm because it does not have access to government databases.³⁰

Other examples covered in the DA Lawsuit include people with previous convictions for identity fraud, kidnapping and numerous individuals with serious offenses related to driving.

In other contexts, name-based checks have not been reliable. A 1999 study conducted by the National Task Force to the U.S. Attorney General found that FBI fingerprint-based background checks were highly preferable to FBI name-based checks.³¹ In a study of over 90,000 Florida employment applicants, 11.7% of the applicants who were determined to have fingerprint-verified criminal history records were indicated by name checks as not having criminal records (false negatives), and 5.5% of applicants who were determined not to have fingerprint-verified criminal history records were inaccurately indicated by name checks as having criminal records (false positives). Consistent with the DA Lawsuit, the report states that false negatives occur when name checks fail to find the criminal records of individuals who provide inaccurate identification information either at the time of arrest or when applying for a job, and that

³⁰ See Appendix A, DA Lawsuit, at 27-28.

³¹ See "Interstate Identification Index Name Check Efficacy: Report of the National Task Force to the U.S. Attorney General," July 1999, NCJ-179358, at 6; <http://www.bjs.gov/content/pub/pdf/iiince.pdf>.

false positives occur when individuals are erroneously associated with criminal records that actually relate to other individuals with similar names and other identifiers.

g. Under the fingerprint-based CA DOJ process, what empirical evidence exists of the same risk set out in (f)?

As discussed in response to Question 1, above, the CA DOJ is prohibited from disclosing arrest information unless the record includes disposition information. Where the CA DOJ database does not include disposition information, CA DOJ is required under 11 C.C.R. §§721-724 to query the arresting agency, the prosecuting agency, the court and local probation agency, or any other criminal justice agency that might possess the missing information. If those efforts are exhausted, the disposition information is deemed unavailable and the CA DOJ is required to report that “no criminal history information exists.”³² The CA DOJ also searches the FBI database and the same disclosure prohibition applies when arrest information has no corresponding disposition information.³³

The FBI database integrates criminal history records, including arrest information and corresponding disposition information submitted by state, local, and federal criminal justice agencies. Each state has a criminal records repository responsible for the collection and maintenance of criminal history records submitted by law enforcement agencies in its state. The state record repositories are the primary source of criminal history records maintained at the FBI.³⁴

³² See 11 C.C.R. §723(b) and (c).

³³ See *id.*

³⁴ See Appendix B, The Attorney General’s Report on Criminal History Background Checks Department of Justice, June 2006, at 13 (“Attorney General’s Report”).

According to a 2015 GAO Report on criminal history records, the FBI's Next Generation Identification System ("NGI"), formerly known as the Integrated Automated Fingerprint Identification System, is the FBI record repository that states use to search for matching fingerprints.³⁵ But it is not a complete national database of all criminal history records in the United States.³⁶ In a June 2006 Attorney General's Report on Criminal History Background Checks ("the Attorney General's Report"), the United States Attorney General reported that many state records were not included in the FBI database or had not been updated, often because not all state criminal records or fingerprints meet the standards for inclusion in the database.³⁷

The February 2015 GAO Report indicates there has been some improvement in state reporting of final dispositions to the NGI System, and that digitally recorded fingerprints that are electronically transmitted from police departments to state agencies were a factor in improving coordination of records. Still, the GAO Report observes that as of 2012, only 20 states reported final dispositions most of the time (76-100%); 13 states reported final dispositions between 51% and 75% of the time; and the remaining 17 states either did not respond to reporting requests, or responded that final dispositions were recorded in 50% or fewer cases.³⁸

To the extent that the FBI database is incomplete, fingerprint-based TNC checks could be inaccurate since the CA DOJ database does not contain information on crimes committed outside the state of California.³⁹ However, the Attorney General's report

³⁵ See Appendix C, GAO Report, at 6.

³⁶ See Appendix B, Attorney General's Report, at 16-17.

³⁷ See *id.* at 16-17.

³⁸ See Appendix C, GAO Report, at 19.

³⁹ See <https://oag.ca.gov/fingerprints>

emphasizes that the FBI database, while far from complete, is still the most comprehensive single source of criminal history information in the United States.⁴⁰

Because CA DOJ is prohibited from reporting an arrest without a corresponding disposition, a fingerprint-based background check alone – without supplemental information provided through a name and Social Security number records check – could result in some otherwise ineligible TNC drivers being approved to drive. A well-resourced commercial background investigation firm may have the ability to locate records that the CA DOJ cannot. For example, Checkr, the firm currently used by Uber in California, sends an investigator to review court records in person.⁴¹

2. Describe any alternative background check methods aside from fingerprinting and social security number (SSN) tracking that establish a driver’s identity.

The City lacks sufficient information to respond to this question.

3. What empirical evidence demonstrates the effectiveness or ineffectiveness of fingerprint-based background checks and SSN-based background checks to establish applicant identity and produce a lawful, accurate record of the applicant’s criminal history?

See responses to 1(f) and 1(g).

4. Should individuals who apply to drive for more than one TNC be required to undergo multiple background checks?

If commercial background investigation firms use a uniform set of databases, we know of no public safety reason that driver-applicants should be required to undergo multiple background checks.

⁴⁰ See Appendix B, Attorney General’s Report, at 17.

⁴¹ See “Details on Safety at Uber,” <https://newsroom.uber.com/details-on-safety/>

a. What is the feasibility of driver applicants submitting a single background check to work for multiple TNCs?

We know of no legal basis preventing the Commission from requiring TNCs and/or the commercial background check firms retained by TNCs to use the same set of databases for a name and Social Security number-based criminal history check which, combined with a fingerprint-based background check would address public safety concerns.

5. Who should bear the costs of a fingerprint-based background check?

The TNCs should determine how these costs are borne. The TNCs could require driver-applicants to pay the fee for the Live Scan service provider, which can be obtained in San Francisco for as little as \$14.99, and the TNCs could then cover whatever additional costs remain.

6. Are Live Scan sites readily accessible to potential drivers in urban and rural areas of California?

Yes. The CA DOJ websites lists Live Scan sites in every county in the State.⁴²

7. What are the criteria beyond those set forth by the Commission in Decision 13-09-045, if any, for a TNC to reject an applicant to become a TNC driver based on the information contained in their background check?

a. Are potential drivers notified if they failed their background check?

The City lacks sufficient knowledge to respond to this question.

i. If so, how much detail are they provided about the reasons for their rejection?

ii. If so, are drivers able to appeal the rejection?

⁴² See <https://oag.ca.gov/fingerprints/locations>

b. What are the criteria, if any, for waiving or disregarding a normally-disqualifying criminal record?

The City lacks sufficient knowledge to respond to this question.

i. Is there a process for an applicant to request a waiver under these criteria?

ii. In what form (website, individual e-mail, meeting, etc.) is the process communicated to the applicant?

8. Do fingerprint-background checks return results on arrests and/or final dispositions (e.g., convictions)?

With the exception of arrests for which an individual is currently awaiting trial, only arrests with corresponding convictions are released by the CA DOJ database. See response to Question 1, above. The FBI database may include arrests without corresponding dispositions. However, because California law prohibits reporting on arrests without dispositions, an arrest in another state that lacks a disposition would not be included in a CA DOJ report.⁴³

a. If arrests are returned without corresponding final dispositions in background check results, can they be relied upon to reject a driver?

No. California law prohibits agencies and private corporations from using any record of arrest that did not result in a conviction as a factor in determining any condition of employment. *See* Cal. Labor Code § 432.7(a); *see also Gregory v. Litton Sys. Inc.*, 316 F. Supp. 401, 403 (C.D. Cal. 1970) (“[I]nformation concerning a prospective employee’s record of arrests without convictions, is irrelevant to his suitability or qualification for employment.”), *modified on other grounds*, 472 F.2d 631 (9th Cir. 1972). Although we understand that TNCs view drivers as “partners” rather than “employees,” we believe this prohibition should apply equally to their partners.

⁴³ *See* 11 C.C.R. § 723.

The U.S. Equal Employment Opportunity Commission similarly prohibits the disclosure of an arrest record, standing alone, to deny an employment opportunity.⁴⁴

b. If arrests may be relied upon to reject drivers, who bears the burden to demonstrate that an arrest did not lead to a conviction?

As discussed above, California law specifically prohibits private corporations from using any record of arrest that did not result in a conviction as a factor in determining any condition of employment. Although we understand the TNCs view drivers as “partners” or independent contractors, we believe the same rule would apply. However, we understand that tracking down dispositions is one of the services provided by firms as such as Checkr. Assuming that is the case, TNCs have already undertaken that burden.

9. Would requiring fingerprint-based background checks have a disparate impact on minority communities such as African-Americans or Latinos who are seeking to become TNC drivers? If so, explain your response and provide any available statistical data on the rate that African-Americans, Latinos, Whites and Asians are rejected due to fingerprint based background checks.

To the extent that fingerprint-based background checks or commercial background checks report incomplete information such as arrests with no dispositions, and to the extent that an employer relies on such information in making an employment decision, criminal background checks may have a disparate impact on minority communities.

It has long been documented that racial minority groups including African-Americans are arrested at substantially higher rates than white individuals.⁴⁵ Thus, any

⁴⁴ See “Enforcement Guidance on the Consideration of Arrest and Conviction Records in Employment Decisions Under Title VII of the Civil Rights Act of 1964, *as amended*, 42 U.S.C. § 2000e *et seq.*,” Apr. 25, 2012, at 12.

⁴⁵ See, e.g., *Gregory v. Litton Sys. Inc.*, 316 F. Supp. 401, 403 (C.D. Cal. 1970).

policy that disqualifies prospective employees on the sole basis of an arrest record would likely have a disparate impact on minority communities.⁴⁶

The National Employment Law Project (NELP) asserts that minority communities are more heavily disadvantaged by the incompleteness of the FBI database, which would be used in a fingerprint-based background check process. NELP argues that because the FBI database is missing final disposition information for a large percentage of records, African-Americans are at a disadvantage in the background check process due to their relatively high arrest rate.⁴⁷ But this is not an issue in California because CA DOJ is prohibited from disclosing arrest information from its own database *or* the FBI database without corresponding disposition information.⁴⁸ California Labor Code § 432.7(a) similarly prohibits employers from using information of an arrest that did not lead to a conviction as a factor in making employment decisions. Although we understand the TNCs view their drivers as independent contractors, not employees, we believe that applying the same rule to TNCs would mitigate any disparate impact. *See* Responses to Questions 8 and 8(a).

10. For TNCs that currently use it, if a fingerprint-based background check turns up potentially disqualifying information about a TNC driver applicant, does the TNC conduct a further review of the applicant to determine if there are some mitigating factors or other information that should be taken into account before deciding to accept/reject an applicant? If so, describe that process.

The City lacks sufficient knowledge to respond to this question.

⁴⁶ *See id.*

⁴⁷ *See* Madeline Neighly and Maurice Ensellem, “Wanted: Accurate FBI Background Checks for Employment,” National Employment Law Project, July 2013, at 3.

⁴⁸ *See* 11 C.C.R. § 723.

11. If a SSN-based background check turns up potentially disqualifying information about a TNC driver applicant, does the TNC conduct a further review of the applicant to determine if there are some mitigating factors or other information that should be taken into account before deciding to accept/reject an applicant? If so, describe that process.

The City lacks sufficient information to respond to this question.

12. Where a taxi company or licensed Transportation Charter Party (TCP) or Passenger Stage Corporation (PSC) has hiring practices in place that are responsive to Questions 7-11, please describe.

The City is not familiar with the hiring practices of taxi companies, TCP or PSC operators.

13. Would subjecting all prospective TNC drivers to a fingerprint-based background check violate any state statute, federal statute, decisional law, policy, order, rule, or directive? If so identify every such state statute, federal statute, decisional law, policy, order, rule, or directive and explain how a fingerprint-based background check would result in a violation.

It does not appear that subjecting prospective TNC drivers to a fingerprint-based background check would violate any state or federal statute, decisional law, policy, order, rule, or directive.

14. What would be the benefit(s), if any, in requiring all prospective TNC drivers to undergo a fingerprint-based background check?

Requiring fingerprint-based background checks would bar driver-applicants who have a conviction for any disqualifying offenses. A fingerprint-based background check would also find driver-applicants with criminal records who use multiple aliases and/or fraudulent Social Security numbers, which may conceal a disqualifying conviction. Relying on commercial background investigators alone may not alert TNCs that driver-applicants have been convicted of identity theft. For example, Uber Drivers # 9 and # 10 in the DA Lawsuit both had criminal convictions for identity theft, which the Los Angeles and San Francisco District Attorneys believe were not detected by Uber's

commercial background investigator because that firm does not have access to government criminal history databases.⁴⁹

15. Does the Commission have the authority to review records collected by a third party office other than the CA DOJ? Public Utilities Code Section 308.5 allows designated peace officers the right to see Department of Justice state summary criminal history information. Does this authority extend to third party collected criminal background checks?

It does not appear that Public Utilities Code § 308.5 gives limited purpose peace officers assigned to investigate consumer complaint and/or railway safety the authority to receive RAP sheets from the CA DOJ for prospective TNC drivers. But the Commission already has the authority to receive these records through Penal Code § 11105, which provides as follows [emphasis added]:

(b) The Attorney General shall furnish state summary criminal history information to any of the following, if needed in the course of their duties, provided that when information is furnished to assist an agency, officer, or official of state or local government, *a public utility*, or any other entity, in fulfilling employment, certification, or licensing duties, Chapter 1321 of the Statutes of 1974 and Section 432.7 of the Labor Code shall apply:

10) Any agency, officer, or official of the state if the criminal history information is required to implement a statute or regulation that expressly refers to specific criminal conduct applicable to the subject person of the state summary criminal history information, and contains requirements or exclusions, or both, expressly based upon that specified criminal conduct. The agency, officer, or official of the state authorized by this paragraph to receive state summary criminal history information may also transmit fingerprint images and related information to the Department of Justice to be transmitted to the Federal Bureau of Investigation.

If the Commission were to adopt a regulation requiring TNC driver applicants to submit to a fingerprint-based criminal history background check, under Cal. Penal Code § 11105(b)(10), the Commission – not a TNC or its commercial background investigator –

⁴⁹ See Appendix A, DA Lawsuit, at 31.

