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**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

Rulemaking 12-12-011  
(Filed December 20, 2012)

**REPLY COMMENTS OF RASIER-CA, LLC  
ON ASSIGNED COMMISSIONER'S RULING INVITING/INSTRUCTING PARTY  
COMMENTS ON BACKGROUND CHECKS OF PROSPECTIVE  
TRANSPORTATION NETWORK COMPANY DRIVERS**

**[PUBLIC VERSION]**

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## I. INTRODUCTION

There are limited public safety benefits to requiring fingerprint-based background checks because of the documented incompleteness and inaccuracies of the databases used for these checks.<sup>1</sup> Fingerprint-based background checks cannot be depended on to reliably determine who should be allowed to be a TNC driver.<sup>2</sup> The fingerprinting system relies on databases that fail to capture records of some types of arrests and has only incomplete records for others. These flaws in the fingerprinting reports generate both *overinclusive* results, creating discriminatory impacts on minority communities, and *underinclusive* results, allowing applicants with disqualifying criminal records to pass a fingerprint check. Taken together, there is no guarantee that an applicant's criminal history will be accurately reflected in a fingerprint-based background check.

By contrast, TNCs have shown that a comprehensive third-party background check, like that performed by Checkr, Inc. ("Checkr"), effectively screens applicants.<sup>3</sup> Rather than attempting to cure incomplete arrest records through a "genuine effort" as required for the California Department of Justice ("CA DOJ"), accredited third-party screeners utilized by TNCs deploy a nationwide network of representatives to pull actual courthouse records, the best source of conviction records.

Fingerprint-based background checks have negative economic and policy implications -- not the least of which is a documented discriminatory impact on minority applicants. Imposing a burdensome and outdated screening requirement would stifle innovation and progress without any appreciable safety gain. Moreover, fingerprint-based checks would add significant expense and barriers to entry for TNC driver-applicants as well as a heavy administrative burden to the CA DOJ and the California Public Utilities Commission ("Commission") that would be tasked with managing hundreds of thousands -- if not millions -- of checks each year.

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<sup>1</sup> Opening Comments were submitted by CalChamber of Commerce, CALinnovates.org ("CALinnovates"); Engine; Lyft, Inc. ("Lyft"); The Greenlining Institute ("Greenlining"); The Internet Association ("Internet Association"); HopSkipDrive; the National Association of Professional Background Screeners ("NAPBS"); San Francisco International Airport and San Francisco Metropolitan Transportation Agency ("SFO/SFMTA"); San Francisco Taxi Workers Alliance ("SFTWA"); The Technology Network ("TechNet").

<sup>2</sup> See NAPBS Opening Comments, at 1; Lyft Opening Comments, at 14-15; Greenlining Opening Comments, at 3-6; Engine Comments, at 4; TechNet Comments, at 5.

<sup>3</sup> See NAPBS Comments, at 1; Lyft Opening Comments, at 19; Greenlining Opening Comments, at 3-6; Engine Comments, at 4; Technet Comments, at 5; Lyft Opening Comments, at 4, 16-19; Rasier-CA Opening Comments, at 6-12.

As the Commission has noted, its “goal in this Rulemaking is to strike the proper balance between safety and innovation, so that regulation provides a safety net that the public can rely on for its protection while new businesses innovate and use technology to better the lives of Californians.”<sup>4</sup> The background checks currently conducted on behalf of Rasier-CA, LLC (“Rasier-CA”) are safe and comprehensive. Rasier-CA and its third-party screener, Checkr, have screened more than <<Begin Confidential>> ██████████ <<End Confidential>> applicants since 2014, resulting in millions of safe rides for Californians.<sup>5</sup> The Commission should reaffirm the background check requirements established in D.13-09-045.

## **II. THE FINGERPRINT-BASED BACKGROUND CHECK PROCESS IS FUNDAMENTALLY FLAWED IN ITS DESIGN, ALLOWING INDIVIDUALS WITH DISQUALIFYING CRIMINAL RECORDS TO PASS A FINGERPRINT-BASED CHECK**

Misconceptions around the accuracy of fingerprint-based background checks create a false sense of security.<sup>6</sup> An applicant’s disqualifying criminal history may not be reported when the databases (1) contain no records of the criminal activity, or (2) contain partial records that are suppressed when final disposition information is not available.

### **A. Databases Relied on by Fingerprint-Based Background Checks are Missing Records of Disqualifying Crimes.**

Lyft correctly highlights that the fingerprint databases may entirely fail to include disqualifying crimes.<sup>7</sup> The FBI database is heavily dependent on states to both maintain their criminal repositories and transmit this information to the FBI.<sup>8</sup> In some cases, fingerprints taken by local agencies are never uploaded into the FBI’s database. In other cases, there is a delay between the time of incident and when the fingerprints are uploaded. In either situation, crimes that should be included in the database are not. In Pennsylvania in 2014, for example, more than a dozen counties were missing the corresponding fingerprints for at least 20% of the state’s

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<sup>4</sup> D.13-09-045 at 62.

<sup>5</sup> Rasier-CA’s Opening Comments, Attachment C (Confidential Version).

<sup>6</sup> *See, e.g.*, Lyft Opening Comments, at 16.

<sup>7</sup> Lyft Opening Comments, at 10-12.

<sup>8</sup> *See* NAPBS Comments, at 1 (“reliance on police and courts to report records can lead to a large number of incomplete or entirely missing files”). About 20 states, excluding California, participate in the National Fingerprint File (“NFF”) program, which allows the FBI to directly pull criminal records from the state databases. *See* <https://www.fbi.gov/file-repository/nff-benefits-flyer.pdf/view>.

criminal records.<sup>9</sup> In Washington state, thousands of criminal records are missing from the state database because of a failure to collect fingerprints during the arrest process.<sup>10</sup> Similarly, Ohio's background check system is missing criminal records for thousands of individuals.<sup>11</sup> These examples alone highlight that the risk is significant that an individual with a disqualifying criminal record will not appear in the fingerprint databases.

**B. Disqualifying Crimes May be Excluded From a Criminal Record if the Fingerprint Database Does Not Contain or Cannot Match Final Disposition Information**

Incomplete state and FBI databases can allow individuals with disqualifying records to successfully pass a fingerprint-based background check if disposition records are excluded or cannot be matched.<sup>12</sup> As SFO/SFMTA points out, “[b]ecause CA DOJ is prohibited from reporting an arrest without a corresponding disposition, a fingerprint-based background check alone . . . could result in some otherwise ineligible TNC drivers being approved to drive.”<sup>13</sup>

The lack of final disposition information (such as actual convictions) is significant for both the FBI and the CA DOJ databases. The U.S. Attorney General estimated that about 50% of the FBI's criminal database lacks final disposition information.<sup>14</sup> In 2012, 10 states reported that 50% or fewer of their arrest records included final dispositions.<sup>15</sup> In California, a NCJRS 2010 survey of state criminal history repositories revealed that only 57% of arrests in the California repository had information about final dispositions, and only 42% of felony charges had information about final dispositions.<sup>16</sup> According to one CA DOJ official, final outcomes are missing for about 7.7 million of the 16.4 million arrest records entered into state computers

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<sup>9</sup> Jeffrey Benzing, *Pennsylvania Police Fail to Fingerprint Thousands of Suspect Criminals*, Public Source (Jun. 29, 2014), <http://publicsource.org/investigations/pennsylvania-police-fail-fingerprint-thousands-of-suspected-criminals#.V64UQ5MrJ0I>.

<sup>10</sup> Jennifer Sullivan, *State Database Missing Some Criminal Information Used in Background Checks*, Seattle Times (Jun. 15, 2015), <http://www.seattletimes.com/seattle-news/crime/state-database-missing-some-criminal-information-used-in-background-checks/>.

<sup>11</sup> Randy Ludlow, *State Background-Check System Flawed and Unreliable*, Dispatch (Apr. 23, 2015), [http://www.dispatch.com/content/stories/local/2015/04/23/criminal\\_background\\_checks.html](http://www.dispatch.com/content/stories/local/2015/04/23/criminal_background_checks.html).

<sup>12</sup> Lyft Opening Comments, at 14-15; SFO/SFMTA Opening Comments, at 13.

<sup>13</sup> SFO/SFMTA Opening Comments, at 13; *see also* Lyft Opening Comments, at 4.

<sup>14</sup> U.S. Dept. of Justice, Office of the Attorney General, *The Attorney General's Report on Criminal History Background Checks* (June 2006) at 3, [http://www.justice.gov/olp/ag\\_bgchecks\\_report.pdf](http://www.justice.gov/olp/ag_bgchecks_report.pdf).

<sup>15</sup> *Id.* at 18 (citing U.S. Dep't of Justice, Bureau of Justice Statistics, *Survey of State Criminal History Information Systems* (Washington, D.C.: 2006). U.S. Dep't of Justice, Bureau of Justice Statistics, *Survey of State Criminal History Information Systems*, 2012, (Washington, D.C., Jan. 2014)).

<sup>16</sup> History Information Systems, 2010, Table 1, <https://www.ncjrs.gov/pdffiles1/bjs/grants/237253.pdf>.

over the last decade.<sup>17</sup> The failure of states to update records to reflect final disposition information is significant. Even when diligent technicians are able to investigate, there is a significant likelihood that arrest records are suppressed when the final disposition cannot be confirmed -- leading to instances in which applicants are reported as not having a disqualifying criminal record, when in fact they do.

In other situations, final dispositions are uploaded to the fingerprint databases but are not linked to an arrest record.<sup>18</sup> As a result, these arrest records lack disposition information. For example, if an individual was not fingerprinted when he or she was arrested, then the state record of arrests and prosecution (known as a “rap sheet”) will not flag the arrest and subsequent disposition (e.g., conviction or dismissal). A NCJRS 2010 survey of state criminal history repositories revealed that, of final disposition information that was reported, 33% of the dispositions could not be linked to a specific arrest record at all.<sup>19</sup>

Further, as Lyft explained, at times fingerprints cannot be matched due to the unreliability of scanned prints. When fingerprints cannot be accurately matched, individuals with criminal records can successfully pass a fingerprint-based check.<sup>20</sup> Despite advances in technology, including Live Scan systems, fingerprint scans remain subject to common errors and distortion. In the past, errors in prints were caused by variances with the ink-and-paper technique, which subsequently had to be scanned and converted into a digital database. Today, Live Scan prints continue to suffer from distortionary effects, now caused by pressure differences when prints are collected. Even with advances in technology, pressure-induced distortions “carry at least 20% distortion.”<sup>21</sup> As a result of these distortions, a person’s print used for the background check will not trigger a match in the fingerprint database, even if that database contains a record of a disqualifying crime for that person.

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<sup>17</sup> Jack Dolan, *California Criminal Database Poorly Maintained*, L.A. Times (July 17, 2011), <http://articles.latimes.com/2011/jul/17/local/la-me-crime-data-20110717>.

<sup>18</sup> Bureau of Justice Statistics, *Survey of State Criminal History Information Systems, 2014* (Dec. 2015), <https://www.ncjrs.gov/pdffiles1/bjs/grants/249799.pdf>, Table 8a.

<sup>19</sup> U.S. Dept. of Justice, Office of Justice Programs, Bureau of Justice Statistics, *Survey of State Criminal History Information Systems, 2010*, Table 7, <https://www.ncjrs.gov/pdffiles1/bjs/grants/237253.pdf>.

<sup>20</sup> Lyft Opening Comments, at 15.

<sup>21</sup> *Id.*

### **C. The Process of Compiling FBI Fingerprinting Records Results in Inaccurate Criminal History Reports**

Each step in the fingerprinting process results in inaccuracies. Flaws in the 50 unique state fingerprinting databases and the varying types of rap sheets are compounded when reported to the federal database. While some states have implemented case tracking systems to better link arrests to dispositions, “they do not necessarily provide the basis for reliably associating particular dispositions with particular charges and counts within a particular case.”<sup>22</sup> Moreover, there is no uniformity in the content of state records -- some offenses are reported in some states, while others are not.<sup>23</sup> Added to that is the lack of uniformity in the format of the reports themselves, leading to confusion in reading rap sheets, even for seasoned criminal justice personnel.<sup>24</sup> This is problematic even when California technicians make a “genuine effort” to close the gaps in the FBI report, as California law requires them to do. Thus, even assuming that none of the flaws described above result in inaccuracies -- fingerprints are not distorted, both arrest information and disposition information are entered into the database, and that information is properly linked -- there is still no guarantee that an FBI report can be appropriately interpreted and an accurate decision made.

### **III. RASIER-CA’S PROFESSIONAL BACKGROUND SCREENER’S PROCESS SEARCHES PRIMARY AND CURRENT CRIMINAL RECORDS, RATHER THAN ATTEMPTING TO CURE AN INACCURATE DATABASE**

Checkr’s background check process has safely screened over a million driver applicants in California, leading to millions of completed trips. Checkr, the professional background screener that Rasier-CA uses, relies on a “nationwide network of court researchers to directly check the primary source of criminal records in each identified jurisdiction – court houses – and use those search results to compile complete criminal history reports.”<sup>25</sup>

The Checkr process is designed to provide a comprehensive picture of the background history of each applicant, contrary to SFTWA’s assertions.<sup>26</sup> Checkr reviews numerous sources,

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<sup>22</sup> Bureau of Justice Statistics, *Use and Management of Criminal History Record Information: A Comprehensive Report, 2001 Update* (Dec. 2001), <http://www.bjs.gov/content/pub/pdf/umchri01.pdf>, at 40.

<sup>23</sup> *Id.* at 41.

<sup>24</sup> *Id.* at 42.

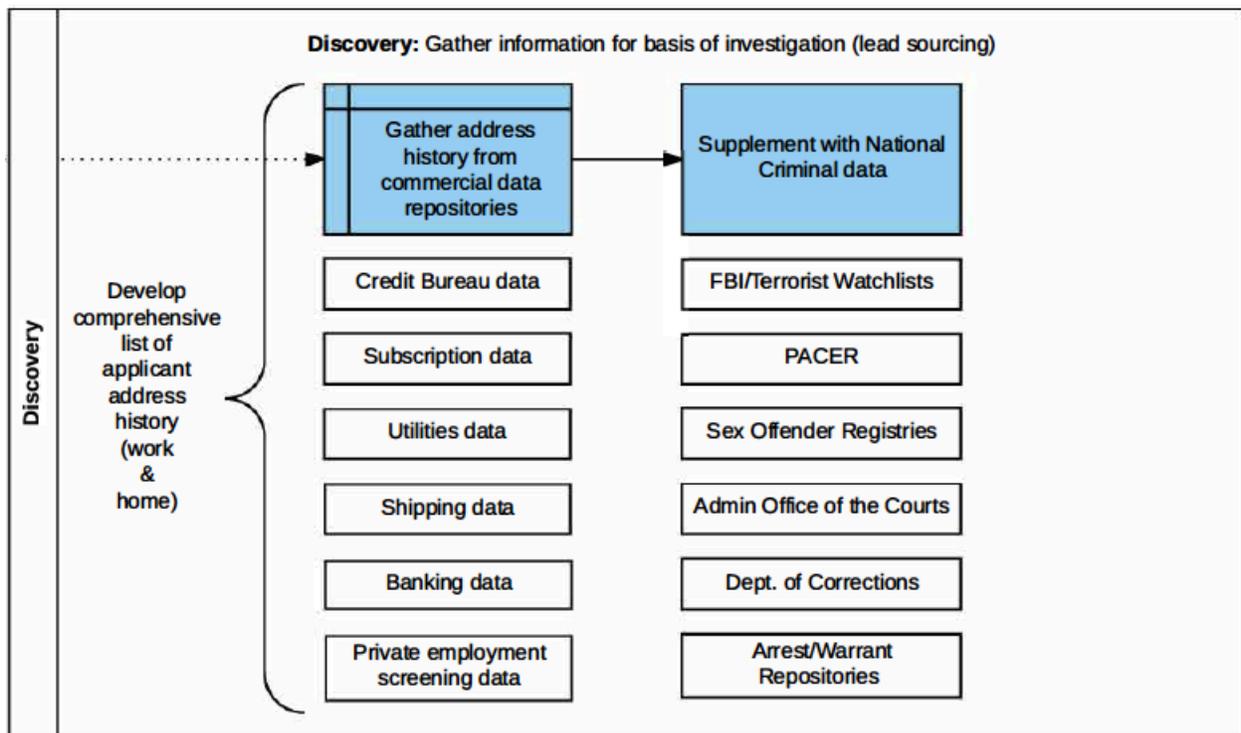
<sup>25</sup> NAPBS Opening Comments, at 2.

<sup>26</sup> *See* SFTWA Opening Comments, at 4-5.

including proprietary databases and government databases, and cross-checks the applicant’s name and identification information. Checkr is then able to use that information to determine whether that applicant has a criminal history at the primary source of information.

**Figure 1** below shows the background history collection process for creating the list of addresses.

**Figure 1**



To better understand Checkr’s methodology, consider the life events of a hypothetical TNC driver-applicant named Jane Doe, who has lived in four counties in two states over the last seven years:

- Address 1, Washington state: Jane applies for a credit card and pays her utility bill.
- Address 2, Washington state: Jane changes the address on her credit card statements. Her new landlord runs a credit check. Jane purchases a mobile phone plan.

- Address 3, California: Jane has her mail forwarded by the U.S. Postal Service, opens a bank account, and her new employer runs a private background check.
- Address 4, California: Jane purchases a home. Her banking and credit information is again scrutinized, and she purchases two magazine subscriptions.

With each transaction, Jane leaves a footprint of her address history at that location. As illustrated in Fig. 1 above, Checkr has designed its process to capture these transactions through its review of commercial data repositories that include credit bureau data, subscription data, utilities data, shipping data, banking data, and private employment screening data. This hypothetical is simplified; in reality, applicants like Jane enter into *multiple* transactions at each address they have lived.

Checkr supplements its record of Jane’s address history by running her name through national criminal data to collect information on arrests, warrants, and criminal charges. This includes a commercial criminal data repository, which Checkr refers to as its “National Criminal” database. Checkr also reviews a number of terrorist and other caution lists for Jane’s name, including the FBI’s Most Wanted Lists, Interpol Most Wanted Lists, and the Office of Foreign Assets Control Specially Designated Nationals and Blocked Persons List.<sup>27</sup> Checkr also searches the Dru Sjodin National Sex Offender Public Website, maintained by the United States Department of Justice, as well as state sex offender registries. Checkr also reviews the federal court system’s PACER database for Jane’s name. **Table 1** below provides further details on these sources.

**Table 1**

Source	Description
<b>Social Trace</b>	Commercial databases collecting: <ul style="list-style-type: none"> <li>● Credit bureau data</li> <li>● Subscription data</li> <li>● Utilities data</li> <li>● Shipping data</li> <li>● Banking data</li> </ul> Data is purchased by the commercial data repositories from entities that collect names and address and other personally identifying information.

<sup>27</sup> Rasier-CA’s Opening Comments, Attachment A.

<p><b>Multi-State, Multi-Jurisdictional Criminal Records Search, Including Inmate Records and Warrant Records</b></p>	<p>This search consists of over 1,700 distinct criminal data repositories. Over 1,000 of these databases are updated within 24 hours of record creation and updates. This search is used to identify potential records and addresses where an individual has recorded contact with law enforcement.</p> <p>The specific databases searched in the National Criminal Search include:</p> <ul style="list-style-type: none"> <li>• <b>973 County or City Courthouse Databases</b> - Felony, misdemeanor, traffic, infraction, and ordinance violation case information.</li> <li>• <b>390 Warrant Databases.</b> These data sources include information on wanted individuals.</li> <li>• <b>323 Arrest and Booking Databases</b> - Information on inmates and arrestees booked at State, County and City jails, prisons, and holding facilities.</li> <li>• <b>75 Department of Correction and Rehabilitation Databases</b> - Department of Corrections and Rehabilitation information on individuals sentenced to serve time, or who were under the supervision of the DOC, as well as absconder and fugitive information.</li> <li>• <b>51 State-Specific Proprietary Criminal Data sources</b> - Millions of aggregated criminal records from historical county criminal, state and federal search requests, as well as historical records contributed by select local, regional and national criminal research providers.</li> <li>• <b>141 State and Tribal Sex Offender Registries</b> - Information on registered sex offenders.</li> <li>• <b>42 Administrative Office of the Courts Databases</b> - Information from the central support entities for State and Federal Judiciaries. These data sources contain felony and misdemeanor case information and dispositions.</li> </ul>
<p><b>U.S. Department of Justice Dru Sjodin National Sex Offender Public Website</b></p>	<p>National search site with direct access to the most up-to-date information as provided by each jurisdiction of sex offender databases of all fifty states, the District of Columbia, five U.S. territories, and over one hundred Native American tribes. Maintained by the U.S. Department of Justice.</p>
<p><b>National and International Caution Lists</b></p>	<p>Collection of caution lists from major sanctioning bodies, financial regulators, and law enforcement agencies. including FBI's Most Wanted, the Interpol Most Wanted, the U.S. Drug Enforcement Administration Most Wanted, and the Office of Foreign Assets Control Specially Designated Nationals and Blocked Persons list.</p>

<b>Public Access to Court Electronic Records (“PACER”) database</b>	Electronic public access service maintained by the judiciary. Users search case and docket information from federal appellate, district, and bankruptcy courts, and the PACER Case Locator.
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Checkr utilizes these modern search techniques to yield a comprehensive view of Jane’s background and history to provide a list of leads. Checkr then goes to the county courthouses correlated to these leads to search for criminal records. As Lyft and Rasier-CA point out, such professional background check screeners send representatives to review the actual courthouse records. These records are the primary source data for criminal convictions.

Based on its review of the county courthouse records, Checkr provides Rasier-CA with a criminal history report for Jane. Rasier-CA representatives review Jane’s report individually, applying disqualifying criteria set by the Commission and Rasier-CA, and determine whether Jane can partner with Rasier-CA. Unlike the CA DOJ fingerprint-based check, this process primarily relies on source documents for its final review, rather than demonstrably incomplete and inaccurate databases.

#### **IV. THE COSTS OF ADDING FINGERPRINT-BASED CHECKS ARE NOT OUTWEIGHED BY ANY SIGNIFICANT PUBLIC SAFETY INCREASE**

Adding a fingerprint-based background check in addition to the professional background check conducted by Rasier-CA<sup>28</sup> is inefficient and does not improve public safety. No party has put forth any evidence that proves that the CA DOJ’s records are more comprehensive than Rasier CA/Checkr’s results. By contrast, numerous reports from the federal government and other research groups have outlined the clear flaws in the FBI and CA DOJ fingerprint-based background check process.<sup>29</sup> No party has refuted these factual studies. Rather than providing a meaningful safety benefit, adopting such a requirement would delay qualified workers from economic opportunities with TNCs, disproportionately impact minority communities, hurt local economies, and impose a heavy burden on the state.

<sup>28</sup> See SFO/SFMTA Opening Comments, at 1 (suggesting the Commission “adopt a hybrid solution, employing both fingerprint-based and name-based criminal history information” for TNC drivers).

<sup>29</sup> See NAPBS Opening Comments, at 1; Greenlining Opening Comments, at 3-6; Engine Opening Comments, at 4; TechNet Opening Comments, at 5.

**A. There is No Evidence that Supplementing Rasier-CA/Checkr’s Check with Fingerprint-Based Checks Would Meaningfully Improve Safety**

SFO/SFMTA is correct that national criminal databases are imperfect,<sup>30</sup> but wrongly concludes that requiring both a fingerprint-based check and name-based check is somehow more thorough.<sup>31</sup> SFO/SFMTA’s argument incorrectly conflates the CA DOJ’s final report with Checkr’s initial list of leads, and lacks any factual evidence to support the speculative safety benefits.

Checkr’s process does not stop with a search of multi-jurisdictional criminal databases. Instead, Checkr uses those databases to create a list of leads based on a comprehensive background search of counties where an individual has lived or had other interactions with law enforcement, as explained in Section III, above. Checkr then uses this list of addresses to search the primary source records: the county courthouses.

Checkr is also governed by the “maximum possible accuracy” standard imposed on it by the FCRA.<sup>32</sup> Under this standard, Checkr is legally required to be technically accurate, while not misleading or incomplete.<sup>33</sup> In comparison, the CA DOJ technicians are required to put forth a “genuine effort” to cure FBI rap sheets that are clearly missing final disposition information.<sup>34</sup> But even with these efforts, pending lawsuits demonstrate that the CA DOJ criminal background reports can remain incomplete and inaccurate.<sup>35</sup> Although the CA DOJ is required to maintain an audit trail of its efforts,<sup>36</sup> this record is only required when the CA DOJ technician does *not* report a record of arrest because of missing final disposition information.<sup>37</sup> Checkr, by contrast, maintains a transparent and detailed research trail for every applicant, including the convictions included in the report, which is available for applicants seeking clarification.

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<sup>30</sup> SFO/SFMTA Opening Comments, at 1.

<sup>31</sup> *Id.* at 6.

<sup>32</sup> See 15 U.S.C. § 1681e.

<sup>33</sup> See *Koropoulos v. Credit Bureau, Inc.*, 734 F.2d 37, 40 (D.C. Cir. 1984).

<sup>34</sup> See Fingerprint Background Checks, State of Cali. Dept. of Justice Office of the Att’y General, <https://oag.ca.gov/fingerprints> (hereinafter “CA DOJ Website”); Cal. Penal Code §11105; *Central Valley Ch. 7th Step Found., Inc. v. Younger*, 214 Cal. App. 3d 151 (1989).

<sup>35</sup> See Third Am. Compl. at 17-18, *Doe v. Harris*, (Super. Ct. of Alameda Cnty, No. RG12652576) (Sept. 1, 2015) (citing to evidence of the CA DOJ’s procedures and resulting rap sheets).

<sup>36</sup> SFO/SFMTA Opening Comments, at 3 (citing 11 C.C.R. § 724).

<sup>37</sup> 11 C.C.R. § 724 (“For each arrest on a subject’s record for which the Department is *unable* to obtain a corresponding disposition...” (emphasis added)).

## **B. Fingerprint-Based Background Checks Impose Additional Burdens and Costs on the State and on Californians Looking For Work**

Implementing fingerprint-based background checks will create significant costs and numerous negative policy implications. The modest perceived benefits do not outweigh these legitimate concerns, outlined below.

- *Barriers to Economic Opportunities* - A LiveScan fingerprint check is time-consuming and expensive, and is not quickly accessible in all communities.<sup>38</sup> Should California require the drivers to bear these costs, the price and corresponding delays would discourage participation among populations of limited means as well as part-time drivers.<sup>39</sup>
- *Disparate Impact on Minority Applicants* - As numerous parties, including Lyft, CALinnovates, Greenlining, SFO/SFMTA, Engine and TechNet, have shown,<sup>40</sup> fingerprint-based background checks often rely on incomplete arrest records that result in the wrongful denial of work opportunities for minority applicants, who are often arrested at disproportionate rates.
- *Administrative Burden* - Burdening the CA DOJ and the adjudicating state agency with more than <<Begin Confidential>> [REDACTED] <<End Confidential>> anticipated fingerprint applications in 2016 for Rasier-CA alone will overwhelm already resource-constrained agencies.<sup>41</sup> According to the CA DOJ website, the CA DOJ currently processes 2 million state applications for fingerprint reports.<sup>42</sup> The Commission will then be faced with the task of adjudicating TNC applicants - a population which is only expected to grow. Further, the Commission would be legally obligated to comply with the state and federal procedural requirements in attempting to use fingerprint-based

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<sup>38</sup> TechNet Opening Comments, at 6 (stating that fingerprinting can cost up to \$95 in California).

<sup>39</sup> *Id.*

<sup>40</sup> Lyft Opening Comments, at 32-34; Greenlining Opening Comments, at 9-12, SFO/SFMTA Opening Comments, at 16-17, Engine Opening Comments, at 3-4; TechNet Opening Comments, at 4-5; *see also* The Attorney General's Report on Criminal History Background Checks, *U.S. Department of Justice, Office of the Attorney General* at 3, 6 (June 2006).

<sup>41</sup> The CA DOJ already warns of indeterminate delays in its processes, CA DOJ Website; Rasier-CA Opening Comments, Attachment C (containing application numbers processed from January 1, 2016 through May 31, 2016).

<sup>42</sup> CA DOJ Website, <https://oag.ca.gov/fingerprints>.

background check information to make licensing decisions. These additional burdens must be carefully considered before adopting fingerprint-based checks for TNC drivers.

- *Security and Privacy Risks* - As TechNet notes, fingerprinting will necessitate additional investments from the state in network security -- or it could bear the burden of safeguarding this information against a breach.<sup>43</sup>
- *Reduction in Transportation Reliability* - The advent of TNCs has created additional transportation options for Californians.<sup>44</sup> As discussed above, the costs and delays in fingerprinting will discourage qualified applicants, negatively affecting the reliability and affordability of TNC service.
- *Negative Economic Effects* - Constricting the number of applicants who can drive with TNCs will stunt transportation options, entrepreneurial businesses, and local economies.<sup>45</sup> TNC services enable riders to split costs and reduce the number of cars needed to move people, and allow drivers to supplement their income.
- *Decrease in Safety* - Communities need reliable transportation to stay safe. A critical mass of TNC drivers available at all times, especially late at night after bars close, can deter people from resorting to driving themselves home intoxicated. The introduction of TNCs has led to a 3.6 - 5.6% reduction in DUI-related deaths in California.<sup>46</sup> Additionally, new technology has allowed TNCs to implement further safety innovations not always available in taxis, such as real-time GPS monitoring and tracking of trips and

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<sup>43</sup> TechNet Opening Comments, at 7 (noting that the federal Office of Personnel Management (“OPM”) last year suffered a security breach in which hackers obtained 5.6 million fingerprint records of federal employees, which is now costing the OPM \$133 million for identity theft protection for these individuals).

<sup>44</sup> *New Study Finds Uber Cheaper, Faster, More Reliable for Lower-Income Neighborhoods in LA*, <https://newsroom.uber.com/new-study-finds-uber-cheaper-faster-more-reliable-for-lower-income-neighborhoods-in-la/>; *Uber and Public Transit: Changing SoCal’s Car Culture*, <https://medium.com/uber-under-the-hood/uber-public-transit-changing-southern-californias-car-culture-540b2021091#.9h1tm0wnl>.

<sup>45</sup> CalChamber Opening Comments, at 3. CalChamber notes that traffic congestion costs our economy \$121 billion -- and 7 billion hours of lost time -- each year. In addition, 73% of consumers go out more frequently and/or stay out longer because of the availability of TNC rides, and 45% of TNC passengers spend more money at local businesses. In 2014, this amounted to an additional \$225 million in economic stimulus to communities throughout California.

<sup>46</sup> Brad N. Greenwood and Sunil Wattal, *Show Me the Way to Go Home: An Empirical Investigation of Ride Sharing and Alcohol Related Motor Vehicle Homicide*, Fox School of Business Research Paper No. 15-054 (January 29, 2015).

incidents. As TechNet points out, TNCs have earned the public trust;<sup>47</sup> the Commission should recognize that these benefits provide greater value than adding an outdated and inaccurate background check to the TNCs' comprehensive checks.

The Commission's original regulatory framework governing the TNC industry sought to protect public safety in a manner that allowed innovation to continue to flourish. This framework has proven to be successful. As TechNet states, TNC services now provide Californians hundreds of thousands of rides each day, offering Californians the opportunity to more efficiently use their millions of private vehicles, promote widespread carpooling opportunities with lower fares, reduce drunk driving, curb air and climate pollution, and create economic opportunities in communities across the state.<sup>48</sup> Thus, as CALinnovates concludes, it does not make sense to add an "onerous burden on a budding industry that is already ensuring the utmost security for their passengers through third party, private sector background checks and real-time driver-rating systems."<sup>49</sup>

## **V. THE COMMISSION SHOULD OBTAIN EXPLICIT LEGISLATIVE AUTHORITY TO RECEIVE FINGERPRINT BACKGROUND CHECK RESULTS**

The Legislature recently provided clear guidance on background check requirements for TNC drivers, and that guidance does not include compelled fingerprint-based background checks. On August 31, the Legislature passed Assembly Bill 1289 (Cooper) ("AB 1289"), which defines TNC driver background checks. AB 1289 requires that TNC applicant-drivers undergo a background check using "[a] multistate and multi-jurisdictional criminal records locator or other similar commercial nationwide database with validation."<sup>50</sup> As the Senate analysis makes clear, AB 1289 "does not include fingerprinting or other biometric requirements as part of a background check."<sup>51</sup> Consistent with its decision in AB 1289, the Legislature, in this same legislative session, rejected a bill that would have given TNCs the necessary statutory authority to conduct fingerprint-based background checks.<sup>52</sup> The Commission should follow the

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<sup>47</sup> TechNet Opening Comments, at 4.

<sup>48</sup> TechNet Opening Comments, at 6.

<sup>49</sup> CalChamber Opening Comments, at 3.

<sup>50</sup> Assem. Bill 1289 (Cooper), 2015-2016 Reg. Sess., as enrolled.

<sup>51</sup> Sen. Rules Comm., Aug. 22, 2016 Third Reading Senate Floor Bill Analysis of Assem. Bill 1289, 2015-2016 Reg. Sess. (as Amended on Senate Floor on Aug. 19, 2016), at 7.

<sup>52</sup> Assem. Bill 2777 (Nazarian), 2015-2016 Reg. Sess.

Legislature’s deliberate decision to not compel fingerprint-based background checks of TNC drivers, and should reaffirm the background check processes outlined in D.13-09-045 and AB 1289.

In opening comments, several parties suggested that the Commission is currently authorized to conduct fingerprint-based background check results.<sup>53</sup> It is true that under Cal. Penal Code §11105(b)(10), a state agency is permitted to receive fingerprint-based background check information “to implement a statute or regulation . . .” However, the Commission itself has stated that it does “not have the specific authority required” under Cal. Penal Code §11105 to conduct fingerprint background check reviews. To avoid any doubt, the Commission should, if it attempts to require Commission-run fingerprint-based background checks of all TNC drivers, obtain explicit statutory authorization from the Legislature -- as it has in other circumstances.<sup>54</sup>

In addition, the Commission cannot conduct fingerprint-based checks because it does not employ, license, or certify TNC drivers. SFMTA argues the Commission should conduct these checks as SFMTA does with taxis.<sup>55</sup> But unlike the Commission, the SFMTA issues permits to the drivers directly.<sup>56</sup> Federal law allows for dissemination of fingerprint records to statutorily-authorized state agencies “for purposes of employment and licensing.” State agencies may “request criminal record information from the [CA] Department of Justice (DOJ) for a person who applies for a license, employment, or volunteer position.”<sup>57</sup> But the Commission licenses only the TNC.<sup>58</sup> Thus, unlike SFMTA, the Commission cannot itself conduct fingerprint-based checks against the federal database for TNC drivers.

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<sup>53</sup> SFO/SFMTA Opening Comments, at 19; SFTWA Opening Comments, at 11.

<sup>54</sup> For example, in 1999 the Legislature amended the Public Utilities Code provisions governing household goods carriers and electric service providers in order to require fingerprint-based background checks. *See* Rasier-CA Opening Comments, at 28.

<sup>55</sup> SFTWA Opening Comments, at 6.

<sup>56</sup> *See* S.F. Muni. Code § 1103.

<sup>57</sup> Application for Authorization Pursuant to State Statute (Public/Private Schools, Government Agencies, Federal Agencies, Financial Institutions, Public Utilities & All Other Applicant Agencies), California Dep’t of Justice, Bureau of Criminal Information & Analysis, at 1, [https://oag.ca.gov/sites/all/files/agweb/pdfs/fingerprints/forms/all\\_others.pdf](https://oag.ca.gov/sites/all/files/agweb/pdfs/fingerprints/forms/all_others.pdf).

<sup>58</sup> D.13-09-045, Decision Adopting Rules & Regulations to Protect Public Safety While Allowing New Entrants to the Transportation Industry, at 72 ¶ 3 (Sept. 19, 2013) (emphasis added). *See also id.* at 3 (reiterating “we require each TNC (*not the individual drivers*) to obtain a permit from the [Commission]....”) (emphasis added).

As Rasier-CA stated in opening comments, and as other parties agree, TNCs are not currently authorized to obtain fingerprint background check results.<sup>59</sup> Under Cal. Penal Code §11105(b)(13), private businesses like TNCs cannot receive fingerprint-based background check results unless “expressly authorized by statute[.]” Absent explicit statutory authorization, requiring TNCs to obtain such information would violate state law.

## **VI. CONCLUSION**

No party has shown that fingerprint-based background checks will provide any significant safety benefits compared to the processes outlined in D.13-09-045. Rather, any supposed benefits are far outweighed by the societal costs of imposing an outdated, burdensome system that will negatively affect qualified driver applicants, particularly those belonging to low-income or minority communities.

Respectfully submitted on this 12th day of September, 2016 in San Francisco, California.

NANCY CHUNG ALLRED  
LISA P. TSE  
ANNA UHLS

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/s/

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<sup>59</sup> Lyft Opening Comments, at 37; SFO/SFMTA Opening Comments, at 19-20; SFTWA Opening Comments, at 11.