BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA

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Order Instituting Rulemaking on Regulations Relating to Passenger Carriers, Ridesharing, and New Online-Enabled Transportation Services.	Rulemaking 12-12-011 (Filed December 12, 2012)

RESPONSE OF THE SILICON VALLEY LEADERSHIP GROUP AND BAY AREA COUNCIL TO HOPSKIPDRIVE, INC., LYFT, INC., AND UBER TECHNOLOGIES, INC., MOTION FOR CLARIFICATION OF SECOND AMENDED PHASE III. C. SCOPING MEMO AND RULING OF ASSIGNED COMMISSIONER

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July 14, 2020

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I. Introduction

Pursuant to Rule 11.1 of the California Public Utilities Commission ("PUC") Rules of Practice and Procedure ("RPP" or "Rules"), Silicon Valley Leadership Group (SVLG) and Bay Area Council (BAC) submit the following motion for clarification on the June 9th, 2020 Second Amended Phase III. C. Scoping Memo and Ruling of Assigned Commissioner ("Scoping Memo").

By way of background, SVLG represents more than 360 of Silicon Valley's most respected employers, including leading Transportation Network Companies (TNCs) like Lyft and Uber. SVLG member companies collectively provide nearly one of every three private sector jobs in Silicon Valley and we have a long history of supporting policies that promote innovation, stronger economic growth, and improved transportation in California.

The Bay Area Council, founded in 1945, is the leading steward of the Bay Area, working to maintain the region as the global center of innovation. As a regional steward with a top policy priority of improving transportation throughout the Bay Area, the Bay Area Council is interested in promoting new technologies that can help more efficiently and effectively use our existing transportation systems. Further, the Bay Area Council seeks to ensure the Bay Area is a recipient of the innovative and economic benefits associated with this industry.

SVLG and BAC support the motion filed by Hopskipdrive Inc.; Lyft Inc; and Uber Technologies Inc. requesting that the Scoping Memo offer clarification that the presumption that drivers using TNC platforms are employees does not reflect any decision based on the application of AB 5. Without such a clarification, the CPUC could--without proper authority or process--unintentionally open the door to devastating economic impacts on drivers, riders, and TNC companies. This could cause significant harm to the innovative technology environment SVLG, BAC and our member companies have worked so hard to cultivate.

II. TNCs have yet to be properly classified as employers through the process and entities authorized under AB 5.

Under AB 5, TNCs are entitled to address through a judicial process any claim that they operate as hiring entities and to demonstrate that each condition of the ABC test has been satisfied; specifically, the California Attorney General and certain city attorneys may bring forward any concerns about employee classification as it relates to drivers on TNC platforms. As noted in the Scoping Memo, the considerable disagreement that exists around the applicability of AB 5 to TNCs is evident through matters being litigated in federal courts, and in a ballot measure that Californians will vote on in November 2020.

TNCs have consistently maintained that they are not hiring entities, but rather marketplace technology platforms where drivers can connect with riders. TNCs have not yet been established as hiring entities and even if they were, they are entitled to demonstrate that drivers are independent contractors. AB 5 does not permit any agency to simply make

assumptions regarding worker status. Until these matters are addressed through the proper channels, driver classification cannot be presumed to have been settled, nor should it be treated as such.

III. As a quasi-executive agency, the PUC lacks the authority to make a determination on whether or not TNCs function as employers under AB 5.

Any determination of AB 5's implications for TNC employment status should involve a thorough fact-finding process such as the one mentioned in the previous section. As a regulatory agency, the PUC's mandate does not include settling questions around TNC employment status, and particularly not ones that are so widely contested. Although the PUC's scope includes TNC compliance issues, it is ill-suited to consider or make judgments on issues of employer or employee status.

III. Driver Classification is outside the scope of this proceeding

Even if the Commission were tasked with deciding driver or TNC employment classification, such matters are outside the scope of this proceeding. The PUC directly acknowledged and confirmed this in Decision 13-09-045, stating that they would not "meddle into their business model by forcing TNCs to designate each driver an employee or contractor … our role is to protect public safety, not to dictate the business models of these companies."

A resolution on employment classification is clearly outside of the Scoping Memo's function, which is to issue recommendations to the full Commision--not to resolve a contested issue of substantive law. For the Commission to premise any further findings on this determination would be procedurally invalid. For that reason, it is critical that the Commission issue a clarification that the Scoping Memo does not presume TNC drivers to be employees.

IV. Without further clarification, the Scoping Memo's presumption that AB 5 applies to TNCs could have devastating effects on drivers, riders, and TNC companies.

Through the emergence of innovative TNC platforms, the ridesharing model has fundamentally altered the dynamic of the familiar employer-employee relationship. Innovative technology solutions such as these have gained massive popularity in California and spread around the globe. For many drivers, the ability to choose when and how often they work is central to not only the business model but to the reason they continue to use the platform. A recent survey found that 71% of Uber and Lyft drivers prefer to remain independent contractors.[1] The majority of TNC drivers are part-time and rely on the flexibility of these platforms to supplement their incomes from other jobs, accommodate family and other obligations, and control their hours to best align with their preferences and needs. The harm that would result from erroneously presuming TNC drivers to be employees based on AB 5 would likely include reduced driver income opportunities, a less efficient service, and higher fares and wait times for passengers. Clarification that AB 5's implications for TNCs are not being addressed or presumed in the Scoping Memo would prevent any unintended misinterpretation of such a controversial and consequential matter.

V. Conclusion

SVLG and BAC respectfully urges the Assigned Commissioner to provide clarification that the presumption in the Scoping Memo does not represent a decision that AB 5 applies to TNCs or drivers using their platforms. The employment classification of TNCs has not yet been settled through the process and entities authorized by AB 5, which does not include the PUC. SVLG and BAC share the PUC's goal of bettering the lives of all Californians through the proper implementation and regulation of transportation technologies. Allowing TNC employment classification to be decided through the legally-authorized judicial process protects Californians while continuing to encourage innovation and leadership in the transportation space.

[1] https://therideshareguy.com/california-sues-uber-and-lyft-for-misclassifying-workers/

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Respectfully submitted,

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