

PUBLIC UTILITIES COMMISSION505 VAN NESS AVENUE
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TO PARTIES OF RECORD IN RULEMAKING 12-12-011:

This proceeding was filed on December 20, 2012, and is assigned to Commissioner Genevieve Shiroma and Administrative Law Judge (ALJ) Robert M. Mason III. This is the decision of the Presiding Officer, ALJ Mason.

Any party to this quasi-legislative proceeding may file and serve an Appeal of the Presiding Officer's Decision within 30 days of the date of issuance (i.e., the date of mailing) of this decision. In addition, any Commissioner may request review of the Presiding Officer's Decision by filing and serving a Request for Review within 30 days of the date of issuance.

Appeals and Requests for Review must set forth specifically the grounds on which the appellant or requestor believes the Presiding Officer's Decision to be unlawful or erroneous. The purpose of an Appeal or Request for Review is to alert the Commission to a potential error, so that the error may be corrected expeditiously by the Commission. Vague assertions as to the record or the law, without citation, may be accorded little weight.

Appeals and Requests for Review must be served on all parties and accompanied by a certificate of service. Any party may file and serve a Response to an Appeal or Request for Review no later than 15 days after the date the Appeal or Request for Review was filed. In cases of multiple Appeals or Requests for Review, the Response may be to all such filings and may be filed 15 days after the last such Appeal or Request for Review was filed. Replies to Responses are not permitted. (See, generally, Rule 14.4 of the Commission's Rules of Practice and Procedure at www.cpuc.ca.gov.)

If no Appeal or Request for Review is filed within 30 days of the date of issuance of the Presiding Officer's Decision, the decision shall become the decision of the Commission. In this event, the Commission will designate a decision number and advise the parties by letter that the Presiding Officer's Decision has become the Commission's decision.

/s/ ANNE E. SIMON

Anne E. Simon

Chief Administrative Law Judge

AES:lil

Attachment

ALJ/POD-RIM/li1

Decision **PRESIDING OFFICER'S DECISION OF ALJ MASON**
(Mailed 12/14/2020)

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

(See Appendix C for a list of appearances)

**PRESIDING OFFICER'S DECISION IMPOSING PENALTIES
AGAINST UBER TECHNOLOGIES, INC. FOR VIOLATING THE ASSIGNED
ADMINISTRATIVE LAW JUDGE'S DECEMBER 19, 2019 AND
JANUARY 27, 2020 RULINGS REQUIRING INFORMATION
REGARDING SEXUAL ASSAULT AND
SEXUAL HARASSMENT CLAIMS**

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**PRESIDING OFFICER'S DECISION IMPOSING PENALTIES
AGAINST UBER TECHNOLOGIES, INC. FOR VIOLATING THE ASSIGNED
ADMINISTRATIVE LAW JUDGE'S DECEMBER 19, 2019 AND
JANUARY 27, 2020 RULINGS REQUIRING INFORMATION
REGARDING SEXUAL ASSAULT AND
SEXUAL HARASSMENT CLAIMS**

Summary

This Presiding Officer's Decision finds that Uber Technologies, Inc. (Uber) refused, without any legitimate legal or factual grounds, to comply with the Assigned Administrative Law Judge's Rulings dated December 19, 2019 and January 27, 2020 which required Uber to provide information regarding sexual assault and sexual harassment claims arising out of Uber's California transportation network company passenger services, and to provide information regarding the authorship of Uber's *US Safety Report*. As a result of this defiance of the Commission's regulatory authority, Uber has violated Rule 1.1 of the Commission's Rules of Practice and Procedure (Rules), as well as Public Utilities Code Sections 5378(a) and (b), and 5415, and shall be penalized in the amount of \$59,085,000.00. Uber's permits to operate as a Transportation Network Company and a Charter-party Carrier shall be suspended if Uber fails to perform all of the following tasks by the deadline imposed: (1) pay the penalty amount in full; (2) comply with the Assigned Administrative Law Judge's Rulings dated December 19, 2019 and January 27, 2020 in the manner described herein within 30 days from the date this decision is issued; and (3) work with Commission staff in the Consumer Protection and Enforcement Division, Transportation Enforcement Branch to develop a code or numbering system to substantially comply with the ALJ ruling as a substitute for the actual names and other personally identifiable information requested in order to allow the Commission to conduct its regulatory functions.

This proceeding remains open.

1. Background

1.1. Factual Background

On December 20, 2012, the Commission opened Rulemaking (R.) 12-12-011 to determine the extent and the manner it would assert jurisdiction over and regulate newly formed transportation providers known as Transportation Network Companies (TNCs), a subset of Charter-party Carriers (TCP), who provide transportation service to the public for a fee by connecting consumers to their partner drivers through the use of GPS-enabled smartphone applications.¹ Throughout the years that R.12-12-011 has remained open, the Commission has issued numerous decisions that adopted regulations to cover TNC operations, and imposed reporting requirements with the goal of ensuring that TNCs provided a safe and reasonable mode of transportation to the riding public.

Pursuant to their regulatory and safety authority, Commission staff has investigated complaints against TNC drivers, particularly those that alleged that drivers have behaved in a manner that has endangered the TNC passenger and other members of the driving and riding public. As complaints against TNC drivers concerning sexual harassment, misconduct, and assault were brought to the Commission's attention, the scope of this proceeding was expanded so the Commission could best determine how TNCs were investigating TNC driver-related sexual assaults and sexual harassment, and what additional regulations and reporting requirements should be adopted.

On December 5, 2019, Uber Technologies, Inc. (Uber), which operates as both a TNC and a TCP, released its *US Safety Report* which detailed mainly motor

¹ See Pub. Util. Code § 5431(c).

vehicle fatalities, fatal physical assaults, and sexual assault and sexual harassment claims that occurred in 2017 and 2018.² The total number of sexual assault and sexual harassment claims for 2017 and 2018 was 5,981. Uber has asserted that the *US Safety Report* is not the subject of any decisions, to date, in this proceeding, and is, therefore, not relevant.³ However, the fact remains that the *US Safety Report* raises concerns about the safety of passengers who avail themselves of Uber's TNC operations. The safety of all TNC operations is an issue inherent to this proceeding, making the *US Safety Report* a relevant area of inquiry by the assigned Commissioner and assigned Administrative Law Judges (ALJs).

1.2. Procedural Background

1.2.1. The December 19, 2019 Ruling

Consistent with the Commission's authority to investigate sexual assault and sexual harassment complaints in order to promote optimal rider safety, on December 19, 2019, the assigned ALJ issued a *Ruling (December 19, 2019 Ruling)* which ordered Uber to file and serve the *US Safety Report* and to answer questions regarding sexual assault and sexual harassment claims relevant to Uber's California transportation operations.⁴ The first set of questions dealt with the drafting of the *US Safety Report*:

1. Identify (*i.e.* provide the persons full name, job title, contact information, and job responsibilities) all persons employed by Uber who drafted any part of the Safety Report.
2. If more than one person wrote the Safety Report, identify which portions of the Safety Report each person drafted.

² CPUC-18.

³ *Verified Statement*, at 30 (CPUC-13).

⁴ CPUC-1.

3. Identify all consultants, independent contractors, and/or third parties who drafted any part of the Safety Report.
4. Identify all persons who approved the final version of the Safety Report for public dissemination.

The second set of questions dealt with the sexual assault and sexual harassment claims:

1. For each incident of sexual assault and sexual misconduct that occurred in California in 2017, 2018, and 2019.
 - a. State the date, time, and place of each incident.
 - b. Give a detailed description of the circumstances of each incident.
 - c. Identify (*i.e.* provide the person's full name and contact information) each witness to each incident.
 - d. Identify (*i.e.* provide the person's full name, job title, contact information, and job responsibilities) each person to whom each incident was reported.

Uber was given until January 30, 2020 to file and serve answers to the questions and to file and produce the *US Safety Report*. Parties could file and serve responses to Uber's answers by February 20, 2020.

On January 10, 2020, Uber filed a copy of its *US Safety Report* along with a *Motion for Reconsideration of the December 19, 2019 Ruling*.⁵

1.2.2. Uber's Motion for Reconsideration

In its *Motion for Reconsideration*, Uber raised four major points:

- Uber objects to having to “*publicly* identify and provide (emphasis from Uber)” specific details on every incident of sexual assault in a rulemaking.⁶

⁵ *Motion for Reconsideration* (CPUC-2).

⁶ *Id.*, at 1.

- The December 19, 2019 Ruling fails to acknowledge that the data is extremely sensitive, and Uber alleges that untrained individuals will attempt to conduct sexual assault investigations.⁷
- The December 19, 2019 Ruling singles out Uber whereas it should be directed at the entire industry.⁸
- Ordering Uber to file and serve the US Safety Report that is already public is unnecessary.⁹

Uber provided the following arguments in support of its four major reasons for not providing the sexual assault and sexual harassment information required by the *December 19, 2019 Ruling*: First, there is no stated legitimate regulatory purpose for demanding specific incident information in the proceeding.¹⁰ The California Public Utilities Commission (Commission or CPUC) is not a law enforcement agency that investigates or has experience in sexual assaults.¹¹

Second, for a variety of reasons, Uber argues that there should not be public disclosure of, and stakeholder comments on, sexual assaults or information on those who performed the investigations since:

- Victims can be the witnesses and public disclosure may put them in danger and be traumatic for the survivors.¹²
- It is contrary to Penal Code § 293(a) and (b) which requires law enforcement agencies to document in writing that a victim making a report of a sexual offence may request that their name not become a matter of public record.¹³

⁷ *Id.*, at 2.

⁸ *Id.*

⁹ *Id.*

¹⁰ *Id.*, at 4.

¹¹ *Id.*

¹² *Id.*, at 5.

¹³ *Id.*

- Uber may not have a complete accounting of the incident (e.g., only one side of the story).¹⁴
- Public disclosure may discourage other victims from coming forward.¹⁵
- The *US Safety Report* does not “assess or take any position on whether any reported incidents actually occurred, in whole or part.” The safety report may include incidents where the attacker may not have committed any sexual assault as reported.¹⁶

Uber also asserts that individuals working on the *US Safety Report* and on Uber’s Safety Team have “a reasonable expectation of privacy, and that no regulatory purpose would be achieved by publicly disclosing the identities of these persons.”¹⁷

Third, in Uber’s view, any additional Commission staff investigation contravenes victim’s rights and may cause additional trauma to survivors. The names would be given to Commission staff without the victim’s consent. Some of the victims did not file the report of sexual assaults and confronting an unwilling or unsuspecting victim with past trauma may exacerbate that trauma.¹⁸ As an example, Penal Code § 13823.95(b)(1) states that victims who seek an examination in connection with a sexual assault shall not be required to or agree to participate in the criminal justice system.¹⁹

Finally, there is no guarantee of confidentiality of this sensitive data.²⁰

¹⁴ *Id.*, at 6.

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ *Id.*, at 7.

¹⁸ *Id.*, at 8.

¹⁹ *Id.*

²⁰ *Id.*, at 10.

1.2.3. Assigned ALJ's Ruling on Uber's Motion for Reconsideration

On January 27, 2020, the assigned ALJ denied Uber's *Motion for Reconsideration*.²¹ The *January 27, 2020 Ruling* stated that Uber could have raised its confidentiality concerns by filing a motion for leave pursuant to Rule 11.4 but, inexplicably, chose not to pursue this option. Nonetheless, as a means of accommodating Uber's concerns regarding the sensitivity and potential confidentiality of some of the information sought by the *December 19, 2019 Ruling*, the *January 27, 2020 Ruling* ordered Uber to file under seal the following information:

- The date, time, and location of each assault. (Question 2.4.1.)
- A description of the circumstances of each assault. (Question 2.4.2.)
- The name and contact information for each witness. (Question 2.4.3.)
- The name and contact information of each person to whom the assault was reported. (Question 2.4.4.)

That way, the names and circumstances surrounding the alleged victims of sexual assaults and sexual harassment that occurred in connection with an Uber-facilitated trip in California would remain confidential. As for the balance of the information sought by the *December 19, 2019 Ruling*, Uber was ordered to file and serve that information publicly.

1.2.4. Uber's Response to the December 19, 2019 Ruling

On January 30, 2020, Uber filed its *Response to the December 19, 2019, ALJ Ruling Ordering Uber Technologies, Inc. to File and Serve its US Safety Report (Response)*. In its *Response*, Uber stated it received 1,243 reports of sexual assault

²¹ CPUC-3.

and sexual harassment within California,²² meaning that California accounted for 21 percent of the 5,981 sexual assault and sexual harassment complaints reported to Uber in 2017-2018 and included in the *US Safety Report*. Uber also objected to a number of the questions and instead filed a second *Motion for Reconsideration* that raised many of the same arguments that it raised in its first *Motion for Reconsideration*, along with a *Motion for Ruling Staying Certain Requirements of the December 19, 2019 ALJ Ruling Ordering Uber Technologies, Inc. to File and Serve its US Safety Report (Motion for Stay)*.

1.2.5. Uber Refused to Answer Questions 1.1., 1.2., 1.4., 2.4.1., 2.4.2., 2.4.3., and 2.4.4. of the December 19, 2019 Ruling

- a. The identity of the persons involved in drafting and approving the US Safety Report (Questions 1.1., 1.2., and 1.4.)

Uber objected to these questions on the grounds that “employees have a reasonable expectation of privacy to not have their names and contact information shared on an almost 300 person service list.”²³ Uber also objected on the grounds that the Commission “has failed to even attempt to articulate a regulatory purpose by publicly disclosing and having stakeholders comment on their names, titles, contact information, and how these employees performed their jobs related to the drafting of the Safety Report.”²⁴

- b. Data on Sexual Assault and Sexual Harassment Complaints (Questions 2.4.1., 2.4.2., 2.4.3., and 2.4.4.)

Uber objected to providing specific data on the witnesses, including the identity of victims, date, time, and location of each incident, a detailed

²² *Uber’s Response*, at 5 (CPUC-4).

²³ *Id.*, at 2.

²⁴ *Id.*

description of the circumstances of each incident, each witness to each incident, and the persons at Uber or elsewhere to whom each incident was reported. Uber asserted, as it did in its first *Motion for Reconsideration*, that public disclosure of this information would be “unconscionable” as it would “further violate people who have already been victimized.”²⁵ Uber further asserts that identifying witnesses would put the victims “in additional danger from their attackers, invites public scrutiny into potentially traumatic and serious episodes for these victims, and would result in ruinous consequences to recovering survivors.”²⁶ The balance of Uber’s objections are a repetition of the objections raised in its first *Motion for Reconsideration*.

1.2.6. Uber Refused to Submit the Information Responsive to Questions 2.4.1., 2.4.2., 2.4.3., and 2.4.4. Under Seal as Required by the January 27, 2020 Ruling

In response to Uber’s claim that the public disclosure of information regarding sexual assaults and sexual harassments may have harmful consequences for the alleged victims, the January 27, 2020 Ruling instructed Uber to file its responses to Questions 2.4.1., 2.4.2., 2.4.3., and 2.4.4. under seal. Uber refused to follow this order and avail itself of a process that the Commission has utilized for decades to protect alleged confidential information.

1.2.7. Motion for Stay

Uber filed a *Motion for Stay* having to comply with the *December 19, 2019 Ruling’s* questions on the details of the sexual assaults and witness identities, and the identities of the persons that worked and approved *US Safety Report*.²⁷ Uber

²⁵ *Id.*, at 6.

²⁶ *Id.*

²⁷ CPUC-5.

stated that it meets the four-part test for a stay that the Commission established in Decision (D.) 07-08-034.

1.2.8. Assigned ALJ Order to Show Cause

On July 27, 2020, one of the assigned ALJs (Robert M. Mason III) issued an Order to Show Cause (OSC) which directed Uber to file a verified statement on August 21, 2020, and to appear at an evidentiary hearing on September 1, 2020 to show cause why it should not be fined, penalized, and/or subject to other regulatory sanctions for failing to comply with the *December 19, 2019* and *January 27, 2020 Rulings*.²⁸ Uber complied with the filing deadline for the *Verified Statement*.²⁹

1.2.9. The Evidentiary Hearing, the Exhibits, and Submission

The evidentiary hearing on the OSC was conducted via Webex on September 1, 2020. assigned Commissioner Shiroma appeared and participated in the hearing.³⁰ Appearing for Uber were Uber's counsel (Messrs. Vidhya Prabhakaran and Robert Maguire) and Uber's witness, Ms. Tracey Breeden, who

²⁸ CPUC-7. Because of some procedural issues that Uber raised in its *Motion for Reassignment*, on August 20, 2020, the Assigned Commissioner issued her *Order to Show Cause* which, among other things, assigned ALJ Mason as the Presiding Officer for purposes of holding the September 1, 2020 evidentiary hearing and resolving the issues attendant to Uber's failure to comply with the *December 19, 2019* and *January 27, 2020 Rulings*. (CPUC-11.)

²⁹ CPUC-13. Prior to compliance with the verified statement deadline, Uber filed a *Motion Requesting Alternative Dispute Resolution, Notice and Clarification of the July 27, 2020 Ruling, and Postponement of the Procedural Schedule*. (CPUC-10.) The assigned ALJ provided a response to this Motion on August 20, 2020 which refused to delay the procedural schedule and advised that alternative dispute resolution would be discussed at the September 1, 2020 evidentiary hearing. (CPUC-12.)

³⁰ The hearing was transcribed by a court reporter. The Reporters' Transcript is referred to as "RT."

is Uber's Head of Safety and Gender-Based Violence Operations.

Mr. Prabhakaran also served as a witness for Uber.

Following the presentation of witnesses and argument, Uber moved for the admission of its exhibits that had been identified and exchanged in advance of the hearing. The Presiding Officer granted Uber's request and its exhibit list is attached hereto as Appendix A (UBER 1-12).

The Presiding Officer then moved his exhibits into evidence that had been identified in advance of the hearing. The Presiding Officer's exhibit list is attached hereto as Appendix B (CPUC -1-18).

The matter was deemed submitted as of September 1, 2020.

2. Jurisdiction and Preliminary Matters

As this decision will explain in greater detail, the Commission has expansive authority over the entities that are subject to the Commission's regulatory jurisdiction to ensure, paramount in this authority is the protection of public safety. Despite Uber's protestations to the contrary, this public safety authority extends to requiring Uber to provide the information regarding the sexual assaults and sexual harassment claims that are the subject of the *December 19, 2019* and *January 27, 2020 Rulings*.

2.1. Burden of Proof

In an OSC proceeding or in an OSC track of a proceeding, where the Commission has set forth allegations and a prima facie case based on record evidence, the Respondent has the burden of showing why the Commission should not take the proposed legal action.³¹ That is the case in this OSC

³¹ D.19-12-041, at 13. *See also* OII & OSC Re: Long Distance Direct, Inc., (I.99-06-037). June 24, 1999 at 3; *see also* RT Vol. 1, 5: 14-28; D.16-12-003, at 81-91 (wherein the Commission established a prima facie case for a penalty without opening a separate OII or OSC, and placed the burden

Footnote continued on next page.

proceeding as the existing record is undisputed that (1) the assigned ALJ issued rulings requiring Uber to answer questions and to provide some of the answers under seal; (2) Uber has the information responsive to these questions and has the ability to comply with the assigned ALJ's rulings; (3) Uber has refused to comply with the assigned ALJ's rulings and has, instead, interposed a series of objections and motions to excuse its duty of compliance.

As such, Uber bears the burden of proving by the preponderance of the evidence standard why it should not be sanctioned for refusing to comply with the *December 19, 2019* and *January 27, 2020 Rulings*.

2.2. Rules for Statutory Interpretation

Since this decision will interpret a variety of statutes that have been identified in either the *OSC Ruling* or in Uber's *Verified Statement* and will apply that interpretation to resolve the legal issues that are in dispute, it will be necessary to set forth the rules for statutory interpretation that this decision must follow. The California Supreme Court has adopted a three-part test: first, we must examine the plain language of the statute in their context and give the words their usual and ordinary meaning.³² Second, if the language permits more than one reasonable interpretation, the Commission may consider other aids

on the utility in a subsequent penalty phase of that proceeding to show why it should not be penalized), and March 28, 2017 ALJ Ruling in that same proceeding (addressing prima facie case in D.16-12-003 and the utility's burden of proof); D.15-04-008 (wherein the Commission had denied a motion to initiate a separate OII or OSC proceeding regarding a utility's alleged violation of Rule 1.1, by February 21, 2014 ALJ Ruling opened the OSC based on a preponderance of the record evidence, and ordered the utility to show why it should not be sanctioned); and D.13-12-053 (wherein at the OSC hearing, PG&E presented its Lead Counsel and other witnesses to demonstrate why it should not be sanctioned.)

³² *Beal Bank, SSB v. Arter & Hadden, LLP* (2007) 42 Cal.4th 503, 507; and *Bernard v. City of Oakland* (2012) 202 Cal.App.4th 1553, 1560-1561.

such as the statute's purpose, legislative history, and public policy.³³ Third, if these external aids fail to provide clear meaning, then the final step is to apply a construction that leads to the more reasonable result, bearing in mind the apparent purpose behind the legislation. In doing so, the Commission must avoid a construction that would lead to an unreasonable, impractical, or arbitrary result.³⁴

3. Issues Before the Commission

The assigned ALJ's July 27, 2020 OSC and the assigned Commissioner's August 20, 2020 OSC identified the following issues for Uber to address in both its verified statement and at the September 1, 2020 Evidentiary Hearing:

1. Whether Uber's refusal to answer Questions 1.1., 1.2., 1.4., 2.4.1., 2.4.2., 2.4.3., and 2.4.4. violated the *December 19, 2019 Ruling*.
2. Whether Uber's refusal to file alleged confidential information under seal violated the *January 27, 2020 Ruling*.
3. Whether Uber's refusal to answer Questions 1.1., 1.2., 1.4., 2.4.1., 2.4.2., 2.4.3., and 2.4.4. of the *December 19, 2019 Ruling*, violated Rule 1.1 of the Commission's Rules of Practice and Procedure.
4. Whether Uber's refusal to file alleged confidential information under seal as required by the *January 27, 2020 Ruling*, violated Rule 1.1 of the Commission's Rules of Practice and Procedure.
5. Whether Uber's refusal to answer Questions 1.1., 1.2., 1.4., 2.4.1., 2.4.2., 2.4.3., and 2.4.4. of the *December 19, 2019 Ruling*, should subject Uber to any penalties, fines, or other regulatory sanctions (e.g. permit suspension or revocation) pursuant to Pub. Util. Code §§ 701, 5378(a), and 5378(b).

³³ *Ailanto Properties, Inc. v. City of Half Moon Bay* (2006) 142 Cal.App.4th 572, 582-583.

³⁴ D.12-05-035, quoting from *Imperial Merchant Services, Inc. v. Hunt* (2009) 47 Cal.4th 381, 387-388. See also *People v. Canty* (2004) 32 Cal.4th 1266, 1276; *Lungren v. Deukmejian* (1988) 45 Cal.3d 727, 735; and *California Manufacturers Ass'n v. Public Utilities Commission* (1979) 24 Cal.3d 836, 844.

6. Whether Uber's refusal to file alleged confidential information under seal as required by the January 27, 2020 Ruling, should subject Uber to any penalties, fines, or other regulatory sanctions (e.g. permit suspension or revocation) pursuant to Pub. Util. Code §§ 701, 5378(a), and 5378(b).
7. Whether Uber's refusal to answer Questions 1.1., 1.2., 1.4., 2.4.1., 2.4.2., 2.4.3., and 2.4.4. of the December 19, 2019 Ruling, should be considered a continuing offense or multiple continuous offenses pursuant to Pub. Util. Code § 5415.
8. Whether Uber's refusal to file alleged confidential information under seal as required by the January 27, 2020 Ruling, should be considered a continuing offense or multiple continuous offenses pursuant to Pub. Util. Code § 5415.
9. Whether Uber's Motion for Stay excuses compliance with the December 19, 2019 Ruling and/or the January 27, 2020 Ruling.
10. Whether Uber's second *Motion for Reconsideration* excuses compliance with the *December 19, 2019 Ruling* and/or the *January 27, 2020 Ruling*.

4. The Commission's Authority and Jurisdiction

4.1. The Commission has Expansive Regulatory Authority Over the Transportation Services Subject to its Jurisdiction

The Commission is a state agency of constitutional origin³⁵ that possesses broad authority to supervise and regulate every public utility in California.³⁶ Pursuant to Pub. Util. Code § 701, the Commission has the power to “do all things, whether specifically designated in [the Public Utilities Act] or in addition thereto which are necessary and convenient in the exercise of such power and jurisdiction.” This power includes setting, rates, establishing rules, holding

³⁵ Cal. Const., art. XII, §§ 1-6.

³⁶ *Uber Technologies Pricing Cases* (2020) 46 Cal.App.5th 963, 970; *PG&E Corp v. Public Utilities Commission* (2004) 118 Cal.App.4th 1174, 1195, fn. 17; and *Wise v. Pacific Gas & Electric Co.* (1999) 77 Cal.App.4th 287, 300.

hearings, awarding reparations, and establishing its own procedures.³⁷ The Commission's authority has been liberally construed by the courts, who have recognized that the Commission is a unique government entity that possesses administrative, legislative, and judicial powers.³⁸

The Commission has long recognized that it is of paramount importance that all industries subject to its jurisdiction provide safe and reliable service to the California consumers:

- The CPUC works diligently to ensure that regulated services are delivered in a safe, reliable manner.
- The CPUC's Safety and Enforcement Division has safety oversight in a number of industries, including: Electric, Natural Gas, Telecommunications, Railroads, Rail Crossings, Rail Transit, and Passenger Carriers (Limousines, Charter Buses, Ferries, and Transportation Network Companies such as Uber, Lyft, etc.).³⁹

While Uber acknowledges the Commission's authority and duty in principle and "applauds and recognizes the Commission's commitment to and focus on safety,"⁴⁰ it has simultaneously inserted a series of specious legal roadblocks to frustrate the Commission's ability to gather information that would allow the Commission to determine if Uber's TNC operations are being conducted safely in light of the numerous sexual assault and sexual harassment claims that Uber documented in its *US Safety Report* and in its *January 30, 2020 Response*.

Beyond being inconsistent with its acknowledgment of the Commission's regulatory authority over safety, Uber's effort to frustrate Commission oversight

³⁷ *San Diego Gas & Electric Co. v. Superior Court* (1996) 13 Cal.4th 893, 915.

³⁸ *Goncharov v. Uber Technologies, Inc.* (2018) 19 Cal.App.5th 1157, 1168.

³⁹ <https://www.cpuc.ca.gov/safety/>.

⁴⁰ *Verified Statement*, at 38 (CPUC-13).

of the particulars of sexual assault and sexual harassment claims is also troubling given Uber's professed desire to provide the safest transportation services. In *Rosen v. Uber Technologies, Inc.* (N.D. Cal.: 2016) 164 F.Supp.3d 1165, the Court quoted from Lane Kasselmann, Uber's Head of Communications – North America, regarding Uber's commitment to safety:

Uber works hard to ensure that we are connecting riders with the safest rides on the road. The current efforts we are undertaking to protect riders, drivers and cities are just beginning.

We'll continue innovating, refining, and working diligently to ensure we're doing everything we can to make Uber the safest experience on the road.⁴¹

Certainly, protecting passengers from sexual assault and sexual harassment claims would be within the scope of Uber's safety efforts. Thus, it stands to reason that the Commission would want to explore Uber's safety commitment, especially with respect to how Uber investigates and resolves sexual assault and sexual harassment claims made against drivers operating on the Uber platform. Uber should welcome an inquiry from the Commission rather than construct a phalanx of factual and legal obstacles to block the Commission's efforts.

This decision also rejects Uber's reluctance to provide the required information under seal regarding sexual assault and sexual harassment claims because it allegedly does not know how the Commission will use this information. Ever since the Commission asserted jurisdiction over the TNC industry, it has required TNCs to provide data concerning their operations. For example, D.13-09-045 and D.16-04-041 require each TNC, using the

⁴¹ 164 F.Supp.3d at 1168.

Commission's developed template, to submit annual reports covering their operations from September 1, through August 31 of each year and must include, at a minimum: accidents, incidents, assaults, and harassments.⁴² The Commission requires this information so that it can satisfy two regulatory objectives that serve the public interest: (1) confirm that TNC passenger services are being provided safely, in conformity with the Commission's requirements, and in a non-discriminatory manner; and (2) utilize the data to either refine existing regulatory requirements or implement new reporting categories in order to obtain the broadest understanding of the TNC business model. As Uber has been submitting its annual reports since 2014, this decision finds it difficult to accept Uber's claim that it does not know why the Commission would want information concerning sexual assault and sexual harassment claims.

4.2. The Commission has the Authority to Require TNCs to Provide Information to the Commission Regarding Their Transportation Services Which Would Include Sexual Assault and Sexual Harassment Claims

The Commission adopted TNC rules and reporting requirements in September 2013.⁴³ In order to ensure this service was being provided safely and in a nondiscriminatory manner, each TNC is required to, among other things, submit an annual report to the Commission with granular information regarding the number of requested rides, when and where rides are requested and

⁴² Other data fields concern accessibility (reports and complaints), miles and hours traveled, driver training, law enforcement citations, off-platform solicitations, aggregated requests accepted and rejected, requests accepted and rejected, suspended drivers, total violations and incidents, and zero tolerance.

⁴³ Decision (D.) 13-09-045.

accepted, and where rides were terminated.⁴⁴ TNCs are also required to provide proof of insurance, submit vehicles for inspection, and to report on their investigation and resolution of zero-tolerance complaints.⁴⁵

Approximately one year after the Commission issued D.13-09-045, the Legislature codified the Commission's jurisdiction over the TNC industry with the passage of Assembly Bill 2293, effective January 1, 2015, which resulted in the creation of Pub. Util. Code § 5430, *et seq.* Of note is Pub. Util. Code § 5441, which states:

The Legislature does not intend, and nothing in this article shall be construed, to prohibit the commission from exercising its rulemaking authority in a manner consistent with this article, or to prohibit enforcement activities related to transportation network companies.

As TNC operations continued to evolve and expand, the Commission has broadened the scope of this proceeding to obtain the most up to date and expansive information about the TNCs' operations so that it could modify existing, or adopt new, regulations to keep up with the seemingly ever changing TNC business model.

In keeping with those expanded operations, on October 25, 2019, the assigned Commissioner issued her *Amended Phase III.C. Scoping Memo and Ruling*, wherein she stated her intent to, among other things, obtain information regarding sexual assault and sexual harassments claims filed with TNCs: "Should the Commission expand the zero-tolerance policy of D.13-09-045 to include all incidents that involve a TNC, such as sexual assault and sexual

⁴⁴ *Id.*

⁴⁵ *Id.*

harassment by driver, or passengers [.]”⁴⁶ Thus, contrary to Uber’s claim that it has been unfairly singled out by being made the subject of the December 19, 2019 and January 27, 2020 Rulings,⁴⁷ the Commission is exploring issue of sexual assault and sexual harassment in the TNC industry as a whole.

The Commission’s duty to ensure the safety of regulated services in the transportation sector is grounded in a series of legislative directives. The first can be found at Pub. Util. Code § 5352 which requires that the Commission “promote carrier and public safety through its safety enforcement regulations.”⁴⁸ Next, there is Pub. Util. Code § 5381, which authorizes the Commission to regulate TCPs, which includes TNCs such as Uber, in the broadest possible manner consistent with the law:

To the extent that such is not inconsistent with the provisions of this chapter, the commission may supervise and regulate every charter-party carrier of passengers in the State *and may do all things, whether specifically designated in this part, or in addition thereto, which are*

⁴⁶ *Amended Phase III.C. Scoping Memo and Ruling*, at 7-8.

⁴⁷ *Verified Statement*, at 9 (CPUC-13).

⁴⁸ The full text is as follows:

(a) The use of the public highways for the transportation of passengers for compensation is a business affected with a public interest. It is the purpose of this chapter to preserve for the public full benefit and use of public highways consistent with the needs of commerce without unnecessary congestion or wear and tear upon the highways; to secure to the people adequate and dependable transportation by carriers operating upon the highways; to secure full and unrestricted flow of traffic by motor carriers over the highways which will adequately meet reasonable public demands by providing for the regulation of all transportation agencies with respect to accident indemnity so that adequate and dependable service by all necessary transportation agencies shall be maintained and the full use of the highways preserved to the public; *and to promote carrier and public safety through its safety enforcement regulations.* (Bold and italics added.)

necessary and convenient in the exercise of such power and jurisdiction. (Bold and italics added.)

In order to confirm that the mandate has been satisfied, the Commission may require, based on, at a minimum, its plenary authority under Pub. Util Code §§ 701, 5352, and 5381, that TCPs and TNCs provide information regarding their services, including complaints that have been made, to determine if the TNCs services are being provided safely.⁴⁹

These broad grants of authority are complemented by Pub. Util. Code § 425, which provides that the Commission may “inspect and examine any books, accounts, records, memoranda, documents, papers and correspondence kept or required to be kept by any carrier [including charter-party carriers]....”⁵⁰ Such investigative authority is also found in the Commission’s General Order (GO) 157-E, which confirms the Commission’s ability to inspect charter-party carrier records:

The duly authorized representatives of this Commission shall have the right at all times and shall be allowed to enter into any vehicle or facility or to have access to and to inspect any computer or electronic device used by any

⁴⁹ This broad grant of authority undercuts Uber’s attempt to rely on D.15-08-032 to argue that the Commission must have a specific statutory authorization to obtain personal information about alleged sexual assault and sexual harassment victims. (*Verified Statement*, at 20 [CPUC-13].) In D.15-08-032, the Commission found the San Francisco Municipal Transportation Agency in contempt for refusing to comply with a *subpoena duces tecum* for information involving a fatal incident in which a bus driver struck and killed a pedestrian. Since Pub. Util. Code § 315 required the Commission to investigate rail transit accidents within California and to make recommendations to the Legislature for improving rail safety, the SFMTA was legally bound to comply with the *subpoena duces tecum* even if to do so resulted in the disclosure of a driver’s personally identifiable information. But as it is already in the Commission’s power to obtain personal information about alleged sexual assault and sexual harassment victims, the Commission does not need an expressed legislative authorization as it would be redundant.

⁵⁰ See also Pub. Util. Code § 5389.

charter-party carrier for retention and production of any waybills and/or other documents or forms required by General Order 157-E for the purpose of inspecting the accounts, books, papers, and documents and for ascertaining whether or not these rules are being complied with and observed. Every owner, operator, or driver of any vehicle shall afford the duly authorized representatives of this Commission all reasonable opportunity and facilities to make such an inspection.

The authority to investigate and gather information is also accorded to Commission staff pursuant to Pub. Util. Code § 5389(a):

The commission, each commissioner, and each officer and person employed by the commission may, at any time have access to the land, buildings, or equipment of a charter party carrier of passengers used in connection with the operation of its business and may inspect the accounts, books, papers, and documents of the carrier.

Of significance is the fact that neither Pub. Util. Code §§ 425, 5352, 5381, 5389(a), nor GO 157-E, § 6.02, contain a subject matter limitation on the Commission's exercise of its safety authority or investigative powers. Instead, the only expressed qualifier on the Commission's exercise of its authority is that it be exercised in a manner consistent with the regulatory authority provided by the Pub. Util. Code: "To the extent that such is not inconsistent with the provisions of this chapter." Nor is there any known California statutory scheme or appellate authority that would prevent the Commission from making such inquiries into alleged TNC related sexual assaults and sexual harassment.

The same holds true for the authorities that Uber cited in its *Verified Statement*. None of the cited authorities have asserted that the Commission

would be preempted or estopped from conducting its own inquiry into alleged sexual assaults and harassments based on the authority granted to it by the Legislature. When directly asked, counsel for Uber could not identify any law or decision that would restrict the Commission's exercise of its regulatory authority into this subject matter other than to claim the Commission is not law enforcement.⁵¹ While Uber's counsel claimed at the Evidentiary Hearing that there were additional precedents that he could pull,⁵² this decision does not consider them as they were not cited in Uber's *Verified Statement*, which is where Uber was required to set forth all facts, arguments, and law for the Commission to consider. Arguments raised for the first time at a hearing are frowned upon by the courts and may be disregarded,⁵³ and this decision sees no reason to deviate from that well-established body of legal authority.

The fact that the Commission has broad authority to inquire into TNC passenger operations, especially where there is a compelling need to promote passenger and driver safety, makes this situation consistent with *Hill v. NCAA* (1994) 7 Cal.4th 1, which Uber cites repeatedly in its *Verified Statement*. (*Id.*, at 15, fn. 27; 16, fns. 29-31; 18, fn. 35; 19, fn. 38; and 21, fns. 42-45.) There the Court found that the NCAA's compulsory urinalysis was reasonably calculated to further its interests in enforcing a ban on the ingestion of specified substances in order to secure fair competition and the health and safety of athletes

⁵¹ RT at 545:20-28; 546:1-27; 552:6-11.

⁵² RT at 549:4-7.

⁵³ See *Actions v. Uber Techs.* (2018) Cal. Super. LEXIS 1913 (appeal docketed, No. A154694 [First App. Dist., Div. One]), citing *New Plumbing Contractors, Inc. v. Nationwide Mut. Ins. Co.* (1992) 7 Cal. App. 4th 1088, 1098 (argument made for the first time at argument not considered); and *Animal Prot. & Rescue League v. City of San Diego* (2015) 237 Cal. App.4th 99, 107, fn. 5 ("It is well established that we need not consider claims raised for the first time at oral argument."). See, also, *Palp, Inc. v. Williamsburg National Ins. Co.* (2011) 200 Cal.App.4th 282, 291, fn. 2 (same).

participating in its programs, which outweighed the prospective athletes' privacy claims. (7 Cal.4th at 110-111.) Thus, both the Commission and the NCAA have compelling interests that require compliance, notwithstanding the competing privacy claims.

In addition to propounding data requests, the Commission's staff have also investigated complaints against TNC drivers, particularly those that alleged that drivers behaved in a manner that endangered the TNC passenger and other members of the driving and riding public. These investigations have been conducted in close coordination with law enforcement and have required Commission investigation staff to cross reference facts and data gathered with law enforcement. The Commission has engaged in such law enforcement activities since it began its regulation of the transportation services subject to the Commission's jurisdiction. For example, a Commission Press Release from November 9, 2009,⁵⁴ highlighted the Commission's collaboration with law enforcement of which this decision quotes three examples:

- The Press Release San Diego International Airport Vehicle Inspection – July 7, 2009 – CPUC staff along with San Diego Landside Operations and the California Highway Patrol (CHP) Motor Carrier Specialist Unit participated in a surprise joint agencies shuttle and limousine inspection at the Airport.
- Limousine Sting Operation at SFO Airport, San Francisco – August 3 and 7, 2009 - CPUC staff participated in two undercover limousine operations with SFO Airport Police, Ground Transportation Enforcement Unit in an effort to catch unlicensed carriers and deter illegal solicitation activity at SFO. CPUC staff acted as decoys under the watchful eyes of SFO police officers on foot-patrol.

⁵⁴ CPUC Joins with Law Enforcement on Strike Team to Enforce Safety Compliance of Passenger Carriers at Major Airports and Other Areas of Interests.

- San Jose Mineta International Airport – September 23, 2009 – CPUC staff along with the CHP, Santa Clara Weights and Measures Division, Employment Development Department, San Jose Police Department, and San Jose Airport Landside Operations, conducted a surprise passenger carrier inspection.

And a subsequent press release from July 20, 2015 detailed the Commission’s collaborative efforts with law enforcement regarding Uber and Lyft TNC vehicles:

- **Oakland International Airport Inspection, May 28, 2015:** CPUC staff participated in a joint enforcement operation hosted by Oakland International Airport Ground Transportation, the CHP, the Alameda Sheriff’s Office, and various law enforcement agencies, including the Union City Police Department, the Pleasanton Police Department, and the University of California, Berkeley Police Department. Approximately 196 vehicles were inspected; 29 observation reports were issued for various violations, such as permit expired, permit revoked, no workers’ compensation insurance, and vehicle not on equipment list; three misdemeanor reports issued for suspended or revoked permits; and 14 carriers were required to obtain workers’ compensation insurance. In addition, 52 observation reports were issued for Transportation Network Companies (43 to Uber and nine for Lyft) for operating at the airport without airport authority.

Thus, despite Uber’s attempt to draw a distinction between the Commission and law enforcement agencies, especially those agencies tasked with investigating crimes of a sexual nature, the fact remains that the Commission does possess law enforcement authority over the entities and persons subject to the Commission’s jurisdiction. This is true even, as Uber points out, the Commission has stated on prior occasions that it is not a court with criminal jurisdiction.⁵⁵

⁵⁵ *Verified Statement*, at 32, fn. 67 (CPUC-13).

Finally, we question the applicability of Uber's preemption argument as it appears to run contrary to the concept of concurrent jurisdiction of different government entities over the same subject matter. In other proceedings with a different factual predicate, Uber has made similarly unsuccessful preemption arguments in the Commission's favor to prevent actions against by other government entities. For example, in *City and County of San Francisco v. Uber Technologies, Inc.* (2019) 36 Cal.App.5th 66, Uber endeavored to stop compliance with administrative subpoenas from the San Francisco City Attorney concerning Uber drivers violating city laws by claiming that San Francisco "may not interfere in any way with the CPUC's oversight of TNCs."⁵⁶ In rejecting Uber's preemption argument, the Court quoted from the California Supreme Court's decision in *People ex. Rel. Orloff v. Pacific Bell*⁵⁷ and observed that more than one government entity can sometimes have jurisdiction to enforce consumer protection laws as it would be difficult for one government agency to accomplish that task:

For example, in *Orloff, supra*, 31 Cal.4th at p. 1156, the California Supreme Court point out that "[e]nforcement of the vast array of consumer protection laws to which public utilities are subject is a task that would be difficult to accomplish by a single regulatory agency, and the applicable statutes clearly contemplate that other public law enforcement officials, in addition to the [C]PUC, must be involved in the effort to enforce such laws.⁵⁸

⁵⁶ 36 Cal.App.5th at 81.

⁵⁷ (2003) 31 Cal.4th 1132.

⁵⁸ 36 Cal.App.5th at 81; also citing to *Pegastaff v. Pacific Gas & Electric Co.* (2015) 239 Cal.App.4th 1303, 1318 and *Wilson v. Southern California Edison Co.* (2015) 234 Ca.App.4th 123, 157-158.

Uber appears to want to have it both ways; when it is to Uber's advantage to assert the Commission's exclusive authority over it in order to preempt regulatory action by other government agencies, Uber has no compunctions against doing so as a shield. Yet here, Uber attempts to use the preemption argument as a sword to stop the Commission from executing its legislatively mandated powers to investigate claims that are within the Commission's jurisdictional scope.

Taken collectively, the mandates and authorities discussed above clearly encompass the request for information set forth in the *December 19, 2019* and *January 27, 2020 Rulings* regarding the sexual assault and sexual harassment complaints made by TNC passengers to Uber that occurred in the course of Uber's transportation service, and Uber has failed to cite any authority that expressly prohibits the Commission from carrying out that function.

4.3. The Commission's Enforcement Authority

As set forth, *infra*, the Commission possess the power to impose sanctions, penalties, and other regulatory remedies to ensure compliance with Commission rules, orders, decisions, rulings, and other statutory obligations. In *Pacific Gas & Electric Co. v. Public Utilities Commission* (2015) 237 Cal.App.4th 812, the Court explained that Commission executes this enforcement authority pursuant to the state's police power:

While civil penalties may have a punitive or deterrent aspect, their primary purpose is to secure obedience to statutes and regulation imposed to assure important policy objectives....It is well accepted that a state may impose reasonable penalties as a means of securing obedience to statutes validly enacted under the policy power....Without questions, the PUC operates pursuant to the state's police power.

Thus, it is not necessary for there to be an express grant of authority from the Penal Code for the Commission to exercise its police powers to investigate claims that are within the scope of the Commission's regulatory authority.

5. Uber Violated the December 19, 2019 and January 27, 2020 Rulings

Uber does not claim that it lacked the ability to answer Questions 1.1., 1.2., 1.4., 2.4.1., 2.4.2., 2.4.3., and 2.4.4. in the *December 19, 2019 Ruling*. Instead, Uber states that:

it deliberately did not fully answer the questions...because to do so would be an incurable violation of the rights of sexual assault victims and the privacy rights of riders, drivers, and Uber employees, as Uber has explained repeatedly in various motions, including pending motions with the Commission.⁵⁹

In essence, Uber has is arguing that the mere presence of its second *Motion for Reconsideration* and *Motion for Stay* would constitute sufficient legal grounds for not complying with an outstanding ruling issued by one of the assigned ALJs to this TNC proceeding. Uber acknowledges that it is taking a gamble when it admits "that a Commission order or decision that is not stayed must be obeyed regardless of whether legal challenges are pending, [but] it is unclear whether an ALJ Ruling cannot be automatically stayed regardless of pending legal challenge."⁶⁰

⁵⁹ *Verified Statement*, at 11 (CPUC-13).

⁶⁰ *Id.*, at 36 (CPUC-13), which cites to D.19-08-040, *mimeo* at 49. *See also* Pub. Util. Code § 1735 which states: "An application for rehearing shall not excuse any corporation or person from complying with and obeying any order or decision, or any requirement of any order or decision of the commission theretofore made, or operate in any manner to stay or postpone the enforcement thereof, except in such cases and upon such terms as the commission by order directs."

To be clear, Uber does not get to unilaterally decide which rulings it will comply with regardless of whether there are outstanding motions related to the subject matter of the rulings. The presence of a pending motion does not excuse its obligation to comply with rulings directed at it in an open proceeding in which it is a party. Pursuant to Rule 9.1, ALJs have expansive powers in its proceedings which would include the power to issue rulings to which parties must comply:

The Administrative Law Judge may administer oaths; issue subpoenas; receive evidence; hold appropriate conferences before or during hearings; rule upon all objections or motions which do not involve final determination of proceedings; receive offers of proof; hear argument; and fix the time for the filing of briefs. The Administrative Law Judge may take such other action as may be necessary and appropriate to the discharge of his duties, consistent with the statutory or other authorities under which the Commission functions and with the rules and policies of the Commission.

As presiding officers, ALJs also have the power to resolve discovery matters and to impose sanctions for discovery abuses. As this Commission recognized, to hold otherwise would mean that “material evidence would remain undisclosed” or there could be “unconscionable delay[s] as parties seek relief from the Commission.”⁶¹

Moreover, Rule 1.1 requires that anyone appearing before the Commission must respect the authority of the Commission’s ALJs. If any regulated entity or person possessed the discretion to decide if it would comply with an ALJ’s

⁶¹ D.79 CPUC2d 343, citing to *Re Alternative Regulatory Frameworks for Local Exchange Carriers* (1994) 55 CPUC2d 672.

ruling, the Commission's ability to function as a regulatory agency with the necessary ability to gather information to help resolve open proceeding would grind to a halt. Thus, when Rules 1.1 and 9.1 are read together, the law is clear that parties must respect the authority of ALJs, and comply not only with the orders and decision from the Commission, but also the rulings from an ALJ.

In sum, this decision rejects Uber's assertion that it is "unclear" if an ALJ ruling is automatically stayed. The applicable Commission Rules of Practice and Procedure and direction from the Commission make it clear that a party such as Uber remains duty bound to comply with an ALJ ruling notwithstanding the presence of Uber's *Motion for Stay* and *Motion for Reconsideration*. Uber's failure to comply with that duty leads to the conclusion that it violated both the *December 19, 2019* and *January 27, 2020 Rulings*.

6. Uber's Refusal to Comply with the ALJ Rulings of December 19, 2019 and January 27, 2020 Violated Rule 1.1, as well as the Regulatory and Investigative Provisions of the Public Utilities Code

6.1. Rule 1.1 and Pub. Util. Code § 5378

Any party appearing before the Commission is obligated to comply with Rule 1.1 of the Commission's Rules of Practice and Procedure which states:

Any person who signs a pleading or brief, enters an appearance, offers testimony at a hearing, or transacts business with the Commission, by such act represents that he or she is authorized to do so and agrees to comply with the laws of this State; to maintain the respect due to the Commission, members of the Commission and its Administrative Law Judges; and never to mislead the Commission or its staff by an artifice or false statement of fact or law.

The Commission has determined that a person subject to the Commission's jurisdiction can violate Rule 1.1 without the Commission having to find that the person intended to disobey a Commission rule, order, or decision. Instead, in D.01-08-019, the Commission ruled that intent to violate Rule 1.1 was not a prerequisite but that "the question of intent to deceive merely goes to the question of how much weight to assign to any penalty that may be assessed. The lack of direct intent to deceive does not necessarily, however, avoid a Rule 1 violation." As the Commission later explained in D.13-12-053, where there has been a "lack of candor, withholding of information, or failure to correct information or respond fully to data requests," the Commission can and has found a Rule 1.1 violation.⁶² Thus, Uber's claims that it "acted in good faith, and has been forthcoming, candid, and transparent with the Commission about its concerns with divulging the requested information"⁶³ is irrelevant as its conduct can still amount to a Rule 1.1 violation.

Application of Uber's actions to the plain language of Rule 1.1 and the case law that has interpreted it demonstrates that Uber violated Rule 1.1 in three ways:

First, Uber has withheld information from the Commission. By refusing to provide information regarding sexual assaults and sexual harassment claims that

⁶² *Final Decision Imposing Sanctions for Violation of Rule 1.1 of the Commission's Rules of Practice and Procedure* at 21. This standard was recently affirmed in *Pacific Gas and Electric Company v. Public Utilities Commission* (2015) 237 Cal.App.4th 812, 848. See also D.09-04-009 at 32, Finding Of Fact 24 (Utility was "subject to a fine for its violations, including noncompliance with Rule 1.1, even if the violations were inadvertent..."); D.01-08-019 at 21 Conclusion Of Law 2 ("The actions of Sprint PCS in not disclosing relevant information concerning NXX codes in its possession in the Culver City and Inglewood rate centers caused the Commission staff to be misled, and thereby constitutes a violation of Rule 1."); and D.94-11-018, (1994) 57 CPUC 2d, at 204 ("A violation of Rule 1 can result from a reckless or grossly negligent act.").

⁶³ *Verified Statement*, at 5 (CPUC-13).

were the subject of the *December 19, 2019* and *January 27, 2020 Rulings*, and by refusing to provide information regarding the drafting and authorship of the *US Safety Report*, Uber has withheld information from the Commission. The information in question is significant as it relates to various claims against Uber's drivers for sexual assaults and sexual harassment over a three-year period. As the Commission is tasked with ensuring that TNC passenger rides are safe, the Commission needs the information to investigate how Uber investigated and resolved the claims, and ascertain what corrective actions have been taken to safeguard against such allegations in the future.⁶⁴

Second, Uber has failed to give the respect due to the assigned ALJ. Persons appearing before the Commission are required to respect and comply with the authority of the Commission, Commission staff, and the Commission's ALJs, especially when the assigned ALJ has issued a ruling in an open proceeding. By failing to comply with the *December 19, 2019* and *January 27, 2020 Rulings*, Uber has failed to respect the authority of the assigned ALJ provided by

⁶⁴ For the same reason, this decision rejects Uber's assertion that the withholding information standard for a Rule 1.1 violation is applied in very limited and particular circumstances. Uber suggests this standard only applies where a utility had knowledge of an error in information it provided, which it knew the Commission had relied upon, and which it did not correct. (*Verified Statement*, at 28 and fn. 58, citing to D.13-12-053 and D.92-07-084.) While the two decisions cited are instances where a utility had knowledge of an error that it did not correct, neither decision held that this would be the only factual scenario where the withholding information standard would be applied to find a Rule 1.1 violation. That is because any Rule 1.1 violation will be based on a consideration of the particular facts surrounding the regulated entity's conduct and a determination if those facts should give rise to a violation. In fact, the Commission found that Uber's subsidiary, Rasier-CA, LLC, violated Rule 1.1 when it withheld information from the Commission that was required to be included in its Annual Report. (D.16-01-014, at 60-61, Conclusions of Law 3 and 4, modified by D.19-08-040. *See also* D.15-08-032, at 62, Conclusion of Law 11 ["The SFMTA violated Rule 1.1 by disobeying the subpoena *duces tecum* form April 9, 2013 to June 4, 2014."].)

Rule 9.1⁶⁵ and has, instead, elected to roll the dice on the hoped for success of its *Motion for Stay* and second *Motion for Reconsideration*.

Third, Uber has failed to comply with the laws of this state. Under the plain meaning rule for statutory interpretation, compliance “with the laws of this State” would include the laws set forth above regarding the duty to respect and comply with a ruling issued by an ALJ in an open proceeding to which the ALJ is assigned. In addition, Uber’s failure to comply amounts to a violation of the requirement in Pub. Util. Code § 5378(a)(2) that a TCP not violate “any order, decision, rule, regulation, direction, demand, or requirement established by the commission pursuant to this chapter.” Under the plain meaning rule, the *December 19, 2019* and *January 27, 2020 Rulings* fit within Pub. Util. Code § 5378(a)(2)’s usage of the words “direction, demand, or requirement.”⁶⁶

6.2. The Regulatory and Investigative Provisions

As set forth above, the Commission has expansive regulatory jurisdiction over TNCs such as Uber (Pub. Util. Code §§ 701, 5430, *et seq*, and 5381), must exercise that jurisdiction to ensure transportation services are provided in a safe manner (5352). It also possesses investigative powers that allow the Commission, Commission staff, and ALJs to obtain information about a TNC’s operations (Pub. Util. Code §§ 425 and 5389(a), GO 157, section 6.02, Rule 9.1.) Uber’s refusal to comply with the *December 19, 2019* and *January 27, 2020 Rulings*

⁶⁵ “The Administrative Law Judge may take such other action as may be necessary and appropriate to the discharge of his duties[.]”

⁶⁶ Because this decision has found multiple violations of Rule 1.1, it is not necessary to address Ubers claims that it has been transparent and candid with its responses, did not mislead the Commission, and did not engage in gross negligence or recklessness. (*Verified Statement*, at 27-30 [CPUC-13].)

has interfered with the Commission's ability to regulate and investigate an entity over whom the Commission has jurisdiction.

6.3. The Commission's Power to Enforce Compliance with its Jurisdictional Authority Provisions

The Commission has sweeping authority to enforce compliance with its regulatory and investigative authority. First, pursuant to Pub. Util. Code § 5378(a), the Commission has the power to cancel, revoke, or suspend a TCP's operational authority, which would include a TNC's, for violating the provisions of the Public Utilities Code or any directive from the Commission:

- (a) The commission may cancel, revoke, or suspend any operating permit or certificate issued pursuant to this chapter upon any of the following grounds:
 - (1) The violation of any of the provisions of this chapter, or of any operating permit or certificate issued thereunder.
 - (2) The violation of any order, decision, rule, regulation, direction, demand, or requirement established by the commission pursuant to this chapter.⁶⁷

Second, pursuant to Pub. Util. Code § 5378(b), a TCP, which would include a TNC such as Uber, can be fined up to \$7,500 for a violation of the provisions set forth in Pub. Util. Code § 5378(a):

- (b) The commission may levy a civil penalty of up to seven thousand five hundred dollars (\$7,500) upon the holder of an operating permit or certificate issued pursuant to this chapter, for any of the grounds specified in subdivision (a), as an alternative to canceling, revoking, or suspending the permit or certificate. The commission may also levy

⁶⁷ There are additional provisions in Pub. Util. Code § 5378(a) that are not set forth in this decision as subparts (1) and (2), quoted above, appear to be the most germane to the facts of this proceeding.

interest upon the civil penalty, which shall be calculated as of the date on which the civil penalty is unpaid and delinquent. The commission shall deposit at least monthly all civil penalties and interest collected pursuant to this section into the General Fund.

We focus on this provision in determining the penalty amount since, as Uber points out in its *Verified Statement*, D.19-08-040, which modified D.16-01-014, found that “section 5378(b) is the most appropriate basis” for imposing penalties on a TCP in an OSC.⁶⁸ In so finding, D.19-08-040 deleted D.16-01-014’s discussion and findings concerning the Pub. Util. Code §§ 2107 and 5411 penalty provisions for public utilities. While D.19-08-040’s deletion might suggest that the Commission does not believe that Uber is a public utility, such an inference may not be drawn from the Commission’s actions.

7. Uber’s Defenses are Factually and Legally Insufficient to Excuse its Violations

7.1. Pub. Util Code § 5437 Does not Preclude the Commission from Obtaining Information About Individual Sexual Assault Victims and Incidents, TNC Riders, or Drivers

Uber cites Pub. Util. Code § 5437⁶⁹ in support of its argument that the Commission is not entitled to information about individual sexual assault victims and incidents, or TNC riders or drivers.⁷⁰ Uber argues that prohibition against disclosing “personally identifiable information of a TNC passenger would cover the scope of the information required by the *December 19, 2019* and *January 27, 2020 Rulings*.

⁶⁸ *Verified Statement*, at 32 (CPUC-13).

⁶⁹ Pub. Util. Code § 5437 was enacted by Assembly Bill 2293, as part of a package of statutes that codified the Commission’s jurisdiction over TNCs.

⁷⁰ *Verified Statement*, at 12-13 (CPUC-13).

Yet an analysis of the statute's plain meaning undermines Uber's position and, in fact, supports the Commission's right to access this information. Pub.

Util. Code § 5437 states:

A transportation network company shall not disclose to a third party any personally identifiable information of a transportation network company passenger unless one of the following applies:

- (1) The customer knowingly consents.
- (2) Pursuant to a legal obligation.
- (3) The disclosure is to the commission in order to investigate a complaint filed with the commission against a transportation network company or a participating driver and the commission treats the information under confidentiality protections.

The first sentence prohibits a TNC from disclosing personally identifiable information of a TNC passenger to "a third party" unless one of the three conditions is met. Uber argues that "third party" includes the Commission but cites no law or legislative sources to support that construction or explain why the statute uses both "third party" in the beginning and "commission" in subpart (3). Notwithstanding that statutory anomaly, Uber argues that it makes sense to include the Commission within the definition of "third party" because that would be consistent with subpart (3) that says the "disclosure is to the commission."⁷¹ Thus, as Uber reads § 5437, a TNC shall not disclose to a third party (*e.g.* the Commission) unless the disclosure is to the Commission in order to investigate a complaint filed with the Commission.

But if this decision accepts Uber's plain-meaning construction of third party to include the Commission to be correct, then the rest of Pub. Util. Code

⁷¹ RT, 545:5-10.

§ 5437 must be read together in context to determine if the statute, read as a whole, supports Uber's position.⁷² Subpart (2) provides that a TNC shall not disclose to a third party (the Commission) unless "pursuant to a legal obligation." While this phrase is not defined, its plain meaning is clearly discernable. California Civil Code § 1427 defines an obligation as "a legal duty, by which a person is bound to do or not to do a certain thing." Such a reading is consistent with *Black's Law Dictionary's* definition of legal obligation as the legal duty to either perform or not perform an act, the failure of which can be enforced in a legal proceeding.⁷³ Similarly, the *Stanford Encyclopedia of Philosophy* refers to a legal obligation as the "legal requirements with which law's subjects are bound to conform. An obligatory act or omission is something the law renders non-optional."⁷⁴ These statutory, legal, and philosophical definitions of legal obligation are all consistent with the language provided by Pub. Util. Code § 5378(a)(2): "an order, decision, rule, regulation, direction, demand, or requirement established by the commission," which is expansive enough to include an ALJ ruling such as the *December 19, 2019* and *January 27, 2020 Rulings*. Carrying Uber's suggestion that third party includes the Commission means that a TNC shall not disclose personally identifiable information of TNC passengers to the Commission unless pursuant to a legal obligation (e.g., an ALJ ruling).

Uber has tried to anticipate this construction of subpart (2) of Pub. Util. Code § 5437 by arguing that to include ALJ rulings as part of the legal obligation

⁷² *Uber Technologies Pricing Cases, supra*, 46 Cal.App.5th at 973, citing to *Bernard v. City of Oakland* (2012) 202 Cal.App.4th 1553, 1560-1561.

⁷³ See *Black's Law Dictionary* (11th ed.).

⁷⁴ Green, Leslie, "Legal Obligation and Authority", *The Stanford Encyclopedia of Philosophy* (Winter 2012 Edition), Edward N. Zalta (ed.), <https://plato.stanford.edu/entries/legal-obligation/>.

language in subpart (2) would obviate the purpose of subpart (3) which requires disclosure of personally identifiable information of TNC passengers to the Commission in order to investigate a complaint.⁷⁵ But Uber fails to appreciate the distinction between legal obligations in subpart (2) which can include an ALJ's rulings, and subpart (3) which deals with complaints against a TNC or a TNC driver that the Commission must investigate. These complaints are informal (as opposed to the Commission's formal complaint process) and the process is set forth on the Commission's website:

TNC, Limo, Shuttle, or Bus Complaint

If you have a complaint about a private "passenger carrier" such as a TNC, limousine, transportation network company (TNC), airport shuttle, or charter bus company, and talking directly with the carrier does not resolve the problem, you can file a complaint with the CPUC.

To file a complaint, please do the following:

- Print a copy of the [Passenger Carrier Complaint Form](#) (PDF) and fill it out ([en Español](#))
- Attach legible copies of any supporting documents, such as receipts
- Mail the form and supporting documents to:

CPUC Complaint Intake Unit - Transportation
Enforcement Section
Safety and Enforcement Division
505 Van Ness Avenue
San Francisco, CA 94102-3298

If you would like us to mail you a copy of the complaint form, you can call us at 1-800-894-9444, or you can email us at

⁷⁵ *Verified Statement*, at 13, fn. 24 (CPUC-13).

ciu_intake@cpuc.ca.gov. We would also be happy to answer any questions you have about the complaints process.

For more information on how the CPUC can help you resolve issues, please see [Filing a Complaint](#).

For more information about passenger carriers, please see [Limos, Shuttles, and Buses consumer information](#).⁷⁶

TNC passengers can take advantage of this informal complaint process in which the complaint is forwarded to the Commission's Transportation Enforcement Section for investigation and processing. As part of the staff's investigation, it is necessary to obtain some personally identifiable information to assist in evaluating the complaint's validity and determining the most appropriate means for resolution, with the understanding that staff would treat the personally identifiable information under confidentiality protections. As these three subparts are written with the disjunctive qualifier (*i.e.* "unless one of the following applies"), the duty to keep personally identifiable information confidential only applies to subpart (3).⁷⁷ Had the Legislature intended the confidentiality protection to apply to all three subparts of Pub. Util Code § 5437, it certainly would have done so.⁷⁸ Thus, since the complaints contemplated by

⁷⁶ <https://www.cpuc.ca.gov/carriercomplaint/>.

⁷⁷ Such as result is also dictated by the rule of the immediate precedent, as explained in *Board of Port Commrs. v. Williams* (1937) 9 Cal.2d 381, 389:

The rule of construction that 'relative and qualifying words, phrases and clauses are to be applied to the words or phrases immediately preceding and are not to be construed as extending to or including others more remote' (59 C.J. 985, note 82) is applicable here, and has been applied in other California cases. (*See Los Angeles County v. Graves*, 210 Cal. 21, 26 [290 P. 444]; *Hopkins v. Anderson*, 218 Cal. 62, 65 [21 PaCal.2d 560].)

⁷⁸ Of course, such an interpretation does not prevent the Commission on its own motion, or in response to a motion and for good cause shown, from electing to treat personally identifiable information as confidential.

subpart (3) are distinct from the legal obligations contemplated by subpart (2), reading subpart (2) to include ALJ rulings does not, as Uber claims, obviate subpart (3) of Pub. Util. Code § 5437.⁷⁹

7.2. The Penal Code Provisions Do Not Preempt the Commission’s Ability to Obtain Information About Sexual Assault and Sexual Harassment Claims Arising Out of Uber’s TNC Passenger Services

Uber cites to a series of California Penal Code statutes for the proposition that as the Commission is not a law enforcement agency trained to handle and investigate individual sexual assault report, it is not authorized to prosecute any criminal behavior that the Commission determines occurs following such an investigation.⁸⁰ We disagree. The plain language of these statutes does not support the conclusion that the Commission is without authority to investigate such claims as part of its jurisdiction over TNCs.

- Penal Code §§ 13898(a) and 13898.1

Penal Code § 13898(a) states:

(a) Each county may establish and implement an interagency sexual assault response team (SART) program for the purpose of providing a forum for interagency cooperation and coordination, to assess and make recommendations for the improvement in the local sexual assault intervention system, and to facilitate improved communication and working relationships to effectively address the problem of sexual assault in California.

Uber reads this statute to mean that the authority to investigate individual sexual assault reports and to prosecute criminal behavior has been placed with other

⁷⁹ In reaching this conclusion regarding Pub. Util. Code § 5437, we need not, for now, consider the alternative interpretation that “third party” does not include the Commission.

⁸⁰ *Verified Statement*, at 14 (CPUC-13).

government agencies and investigators at the county level with “specially trained law enforcement staff dedicated to the investigation of such complaints.”⁸¹ Yet there is nothing in 13898(a) to suggest that it was meant to exclude the Commission from investigating sexual assaults and sexual harassment claims arising out of a TNC’s passenger services.

Nor is Uber’s position supported by its reliance on Penal Code § 13898.1. This section lists the public and private agencies that “may participate” in the SART. In Uber’s view, the fact that the Commission is not listed is dispositive that the Commission cannot have any involvement in the investigation of sexual assault and sexual harassment claims arising out of TNC passenger services.⁸² Yet, there is nothing in the statute to suggest that if a government entity or private agency is not listed in Section 13898.1 that it is preempted from investigating sexual assault and sexual harassment claims that arise within the scope of the Commission’s regulatory authority. Instead, Section 13898.1 lists the other agencies who “may participate” with counties in SART.

This decision finds support for this conclusion when we look to the goals of SART, which are found in Penal Code § 13898.2:

The program established pursuant to this chapter shall have the following objectives:

- (a) Review of local sexual assault intervention undertaken by all disciplines to promote effective intervention and best practices.
- (b) Assessment of relevant trends, including drug-facilitated sexual assault, the incidence of predatory date rape, and human sex trafficking.

⁸¹ *Id.*

⁸² *Id.*

- (c) Evaluation of the cost-effectiveness and feasibility of a per capita funding model for local sexual assault forensic examination teams to achieve stability for this component of the SART program.
- (d) Evaluation of the effectiveness of individual agency and interagency protocols and systems by conducting case reviews of cases involving sexual assault.
- (e) Plan and implement effective prevention strategies and collaborate with other agencies and educational institutions to address sexual assault perpetrated by strangers, sexual assault perpetrated by persons known to the victim, including, but not limited to, a friend, family member, or general acquaintance of the victim, predatory date rape, risks associated with binge alcohol drinking, and drug-facilitated sexual assault.

The plain meaning of these statutes is that they are designed to facilitate better practices at the local level with county agencies and their public and private partners to develop best practices for deal with sexual assaults. However, the statutes taken individually or as a whole, do not state that a government agency such as the Commission that is not mentioned in either Section 13898(a) or Section 13898.1 is excluded from conducting an investigation into claims of sexual assault and sexual harassment arising out of TNC passenger services.

- Penal Code § 13823.95(b)

As further claimed proof that the Commission's *December 19, 2019* and *January 27, 2020 Rulings* would frustrate a victim's desire to remain anonymous and not participate in the prosecution of a victim's assailant, Uber cites Penal Code § 13823.95(b). This code section states:

- (b) Any victim of a sexual assault who seeks a medical evidentiary examination, as that term is used in Section 13823.93, shall be provided with a medical

evidentiary examination. A victim of a sexual assault shall not be required to participate or to agree to participate in the criminal justice system, either prior to the examination or at any other time.

Uber's reliance on this code section is unpersuasive. Compliance with the *December 19, 2019* and *January 27, 2020 Rulings* does not violate a victim's right not to participate in an adversarial criminal process. Even if a Commission staff investigation could be analogized to such a process, the victim is not required to speak to Commission staff if staff felt that after discussing a victim's claim with Uber that a further interview with the victim might be warranted. In both situations, the victim has the right to decide if she/he will talk with Commission staff or participate in a criminal prosecution. As for the claimed need for anonymity, as we discuss *infra*, Uber could provide a code or some other signifier rather than a victim's name. This would allow Commission staff a way to conduct a follow up investigation with Uber without the disclosure of the victim's name.

We reject Uber's argument that the Commission is not a law enforcement agency. As noted above, the Commission functions through the police powers of the state, works collaboratively with other law enforcement agencies, and can enforce compliance with its laws, rulings, orders, decisions, statutes, and directives. In addition, the Commission's designated staff have the power to function as a peace officer and can both arrest persons and serve search warrants.

Pursuant to Penal Code § 830.11:

(a) The following persons are not peace officers but may exercise the powers of arrest of a peace officer as specified in Section 836 and the power to serve warrants as specified in Sections 1523 and 1530 during the course and within the scope of their employment, if they receive a course in the

exercise of those powers pursuant to Section 832. The authority and powers of the persons designated under this section extend to any place in the state:

(5) A person employed as an investigator or investigator supervisor by the Public Utilities Commission, who is designated by the commission's executive director and approved by the commission, provided that the person's primary duty is the enforcement of the law as that duty is set forth in Section 308.5 of the Public Utilities Code.

Pub. Util. Code § 308.5, which is referenced above, states:

Persons employed as investigators and investigator supervisors by the commission, who are designated by the commission's executive director and approved by the commission, have the authority of peace officers, as specified in paragraph (5) of subdivision (a) of Section 830.11 of the Penal Code, while engaged in exercising the powers granted to or performing the duties imposed upon them in investigating the laws, orders, or regulations administered by the commission or commencing directly or indirectly any criminal prosecution arising from any investigation conducted under these laws. All persons herein referred to shall be deemed to be acting within the scope of employment with respect to all acts and matters set forth in this section.

When these specific powers provided in Penal Code § 830.11 and Pub. Util. Code § 308.5 are combined with the powers vested in the Commission, this decision concludes that the Commission has greater law enforcement powers than Uber might have suspected when it tried to distinguish the Commission's ability to deal with sexual assault and sexual harassment claims with other law enforcement agencies.

7.3. Uber's Claim of Invasion of Passenger and Driver Privacy is Premature

Uber expends considerable effort in arguing that victims of sexual assault have a right to privacy under Article I of the California Constitution, and that various protections are in Penal Code §§ 293 (a) and (b) and 13823.95(b)(1) to safeguard that privacy.⁸³ In addition, Uber proffers the testimony of Tracey Breeden, and refers to and appends letters from various victim support agencies (Rape, Abuse & Incest National Network [RAINN], The California Coalition Against Sexual Assault, The Pennsylvania Coalition Against Rape and NSVRC, and the National Network to End Domestic Violence) to demonstrate that the disclosure of victim information and circumstance of their sexual assaults would violate those privacy rights and traumatize the victims a second time.⁸⁴

This decision does not question that a person who has been subjected to a sexual assault or sexual harassment has been victimized and is, therefore, entitled to the privacy and protections that have been embedded into California statutes and case law.⁸⁵ But Uber is wrong when it argues that compliance with the *December 19, 2019* and *January 27, 2020 Rulings* will violate a sexual assault

⁸³ *Verified Statement*, at 15-20 (CPUC-13).

⁸⁴ *Id.*, at 8, 10-12, Appendix A (Declaration of Ebony Tucker, Executive Director for RALIANCE); and UBER-1, 3, 5, 8, 9, 10, 11, and 12.

⁸⁵ It is an unresolved question whether all alleged victims desire the same degree of privacy and anonymity protection. Uber's witness, Tracey Breeden, testified that some of the alleged victims discussed their experiences on a social media page such as Facebook, which anyone can access with a Facebook account. (RT, 530:13-18.) And that is how Uber learned of some of the claimed victim's accounts through the monitoring of their social media pages. (*Id.*) This decision points out this disparity of privacy expectations to note that some alleged victims might be more willing than others to discuss their experiences with Commission staff if the investigation progresses to the point where staff might believe that an interview with the alleged victim would be beneficial. Of course, Commission staff need not contact the person directly as they can instruct Uber to reach out as an intermediary to determine if the alleged victim wishes to discuss her/his experience.

victim's privacy that California law is designed to protect. This decision does not require the *public* disclosure of such information that could potentially traumatize the victims a second time. Instead, when read together, the *December 19, 2019* and *January 27, 2020 Rulings* require only that the information regarding sexual assaults and sexual harassment be submitted to the Commission under seal. As such, Uber's concern that compliance with the *December 19, 2019* and *January 27, 2020 Rulings* will violate a victim's privacy is premature. Nonetheless, as set forth in Ordering Paragraph 3 of this decision, Uber shall work with the Commission's staff in the Consumer Protection and Enforcement Division, Transportation Enforcement Branch and Transportation Licensing and Analysis Branch, to develop a code or numbering system as a substitute for the actual names and other personally identifiable information requested by Questions 2.4.2., 2.4.3., and 2.4.4.

That Uber's privacy argument is premature is also demonstrated by the fact that Commission staff can conduct a follow up investigation without contacting the sexual assault and sexual harassment victims. Once the required information is received, Commission staff, who have experience interacting with the TNCs for the past seven years, can use that knowledgeable and experience to follow up with Uber concerning aspects of the sexual assault and sexual harassment claims. For example, staff can contact Uber directly to:

- Ensure Uber is conducting good faith investigations. Staff can follow up with the Uber by selecting specimen claims to determine:
 - if a complete and knowledgeable investigation conducted?
 - How was the investigation conducted?
 - What was the determination as to whether an assault or harassment occurred?

- What was the ultimate outcome of the investigation? For example,
 - Was the claim denied, deemed truthful and compensation was paid to the victim)?
 - Did Uber communicate the outcome of the investigation with the alleged victim?
 - What discipline was imposed on the TNC driver assailant?
 - Was the alleged victim satisfied with how Uber conducted the investigation and with the outcome? If not, has the alleged victim pursued further legal or administrative action?
- What steps has Uber undertaken to train its TNC drivers before and after an alleged incident?
 - Was sexual assault and harassment training provided to the TNC driver before the incident?
 - How have the sexual assault and harassment training practices been updated since the incident?

All the foregoing inquiries can be carried out without Commission staff needing to contact the alleged victims. Instead, these tasks can be accomplished either in writing through data requests or video conferences and telephone calls with Uber's designated representatives. Thus, Uber's concern that Commission staff may not be experienced in conducting an interview with an alleged victim with the proper sensitivity and training is premature.

This is not the first time that Uber has made questionable prematurity arguments to obstruct a legally sanctioned government inquiry into Uber's operations. In *City of County of San Francisco v. Uber Technologies, Inc., supra*, Uber sought to avoid complying with the City Attorney's administrative subpoenas by conjecturing that what the City might do in the future with the subject information might conflict with the Commission's jurisdiction over TNCs. In rejecting Uber's preemption argument, the Court stated:

Uber is “way too early” with its contention that the administrative subpoenas are “a collateral attack on something that the [C]PUC has asserted jurisdiction over.”Here, the City is far from seeking a finding of liability against Uber – it is at the preliminary investigatory stage in in which it seeks to determine if any violations of state or local law have occurred and, if so, whether it has jurisdiction to seek redress for any such violations. (36 Cal.App.5th at 78.)

Like the City’s administrative subpoena process, the Commission is at the preliminary stage of gathering information regarding the sexual assault and sexual harassment claims, so its concerns over invading victim privacy, like Uber’s concerns over the City’s infringement on the Commission’s authority, are similarly premature.

This decision also rejects Uber’s concern that even if the personal identifiable information from alleged sexual assault and sexual harassment victims is provided to the Commission under seal, an impermissible invasion of privacy will still occur.⁸⁶ First, as discussed above, Uber is incorrect as a matter of law that Pub. Util. Code § 5437 prohibits Uber from disclosing personally identifiable TNC customer information to the Commission. In fact, just the opposite is true when to do so follows a legal obligation such as the *December 19, 2019* and *January 27, 2020 Rulings*.⁸⁷ Second, it is irrelevant whether alleged victims of sexual assault have given Uber permission to divulge their identities and incident reports to the Commission. The language of Pub. Util. Code § 5437

⁸⁶ *Verified Statement*, at 19 and 24-26 (CPUC-13).

⁸⁷ Uber’s obligation to provide personal information and its ability to do so under seal distinguish the current situation from the fact pattern in *Susan S. v. Israels* (1997) 55 Cal.App.4th 1290, in which plaintiff sued for invasion of her constitutional right to privacy against a defense attorney who, without authorization, read and disseminated plaintiff’s confidential mental health records.

trumps that lack of permission when Uber must provide the information in response to a legal obligation. Since the law has already determined the importance of the Commission receiving personally identifiable information arising out of TNC passenger operations, this decision rejects the argument that the confidential disclosure of sexual assault victim and incident information at this early stage of the Commission's investigation would still be a significant violation of victims' privacy. Third, the notion that a confidential disclosure of sexual assault victim and incident information would "harm the Commission's sexual assault prevention efforts more than it would help it" is an argument that lacks both factual and logical support. Uber premises this argument on the unproven assertion that Commission staff might immediately try to conduct follow up investigations directly with the victims. But as this decision has explained, the investigative process is at the information gathering stage, wherein the Commission staff can first follow up with Uber, rather than the victim herself/himself, if staff determines that additional information about a particular claim is warranted.

7.4. The Commission Has the Ability to Protect the Information Uber Has Been Ordered to File Under Seal

The Commission has mechanisms in place to protect the privacy of personally identifiable information. Since requiring the TNCs to provide annual TNC data, the Commission has maintained separate cyber security, encryption, and data security policies. In storing TNC data, the Commission follows California Department of Technology templates, which are in conformity with the requirements for all state agencies. In addition, the Commission's encryption protocol conforms with the Federal National Institute of Standards and Technology directive entitled *Standards of Security Categorization of Federal*

*Information and Information Systems.*⁸⁸ Uber does not suggest that any of these information protection measures are inadequate.

There is also a penalty provision in place to discourage Commission employees from breaching the confidentiality that has been accorded classes of information provided to the Commission. Pursuant to Pub. Util. Code § 583:

No information furnished to the commission by a public utility, or any business which is a subsidiary or affiliate of a public utility, or a corporation which holds a controlling interest in a public utility, except those matters specifically required to be open to public inspection by this part, shall be open to public inspection or made public except on order of the commission, or by the commission or a commissioner in the course of a hearing or proceeding. Any present or former officer or employee of the commission who divulges any such information is guilty of a misdemeanor.

The prospect of criminal liability in Section 583 provides a powerful incentive against a current or former Commission employee from disclosing confidential information.

In view of these safeguards, Uber's argument that filing confidential information under seal is not adequate protection from public disclosure is not well founded. Uber cites to the 2017 report entitled the *California Public Utilities Commission Internal Audit Records and Document Management Audit Report* wherein Uber claims the audit report found "deficiencies in the Commission's record management and shortcomings in staff understanding of their responsibilities when dealing with confidential information."⁸⁹ Yet Uber has failed to demonstrate that the audit report found any incidents where TNC information

⁸⁸ FIPS PUB 199.

⁸⁹ *Verified Statement*, at 25 (CPUC-13).

submitted under seal had been publicly disclosed. Nor did Uber know if the recommendations contained in the audit report had been implemented to improve the handling of confidential information.⁹⁰ Tellingly, TNC Annual Reports have been treated with automatic confidentiality protection since the Commission issued D.13-09-045⁹¹ until the presumption of Annual Report confidentiality was reversed, yet Uber does not allege that the Annual Report information has been disclosed in violation of that confidentiality presumption.⁹² In sum, Uber's argument that witness and incident information under seal does not cure its privacy concerns is not well founded.

In contrast, Uber's own track record of protecting confidential TNC driver and passenger personal information from disclosure has been less than stellar. On November 21, 2017, Uber CEO, Dara Khosrowshahi, revealed that in late 2016, two individuals outside of Uber inappropriately accessed user data stored on a third-party cloud-based service that Uber used and downloaded the names and driver's license number of around 600,000 drivers in the United States, and personal information (*i.e.* names, e-mail addresses, and mobile numbers) of 57 million Uber users.⁹³ Despite this data breach, Uber, which is not a reporting agency for sexual assault and sexual harassment claims unless they fit within a

⁹⁰ RT, 553:14-23.

⁹¹ D.13-09-045, fn. 42.

⁹² Uber's one example of the disclosure of non TNC confidential information is an insufficient reason not to require Uber to file the sexual assault and sexual harassment information under seal. Uber refers to an incident from 2012 in which a Commission staff person accidentally disclosed confidential intrastate revenue figures of telecommunication carriers operating in California. (*Verified Statement*, at 26, fn. 53 [CPUC-13].) While the disclosure was indeed unfortunate, it provides no justification for not complying with the *December 19, 2019* and *January 27, 2020 Rulings* as Uber is required to comply as a matter of law. In fact, Uber is still complying with the Annual Report filing requirements notwithstanding this incident from 2012.

⁹³ <https://www.uber.com/newsroom/2016-data-incident/>.

designated reporting category,⁹⁴ is still collecting and storing this information consistently for the last four years. In sum, Uber is not in the best position to challenge the Commission's ability to protect the personally identifiable information of TNC passengers from accidental or purposeful disclosure.

7.5. The Names and Contact Information of the Authors of Certain Uber Employees Are Not Automatically Entitled to Confidentiality

Uber objected to providing the names, job titles, contact information and responsibilities of every Uber employee to whom incidents were reported, as well as every Uber employee and contractor involved in the drafting and approval of the *US Safety Report*.⁹⁵ Uber premised its objection on the basis that the *December 19, 2019 Ruling* was contrary to Commission policy, and did not articulate a regulatory purpose that would justify invading the privacy of Uber employees and expose them to potential harm.⁹⁶ This decision rejects Uber's argument as factually baseless, speculative, and undermined by the testimony of Uber's own witness.

7.5.1. Uber Employee Information

While Uber claims that the Commission "regularly and routinely" requires the entities under its jurisdiction to redact personally identifiable information regarding the entities' employees when providing that information to the Commission, the law that it cites does not establish Uber's claim.⁹⁷ The

⁹⁴ RT, 539:1-9.

⁹⁵ *Verified Statement*, at 22, referencing Questions 1.1., 1.2., 1.3., 1.4., and 2.4.4. from the *December 19, 2019 Ruling* (CPUC-13).

⁹⁶ *Id.*

⁹⁷ *Id.*

three examples that Uber provides GO 77-M Compensation Reports⁹⁸ and Root Cause Analysis Reports that redacted individual employee names, team and individual contributor names, and individual term members in incident review) are simply that examples. Uber does not cite any law that says in all instances where the Commission exercise its investigative authority that the responding entity may redact the very employee information sought by the request.

In fact, upon closer scrutiny, these examples undercut Uber's efforts not to provide the employee information sought by the *December 19, 2019 Ruling*.

Uber's first example is GO 77-M, wherein the Commission ordered that electric and gas public utilities with gross annual operating revenues of \$1 billion or more must submit the names of any officers and employee who received a base salary of \$250,000 or more per annum, and other employees who received a base salary of \$125,000 or more per annum.⁹⁹ The purpose for this requirement was for the Commission to be able to confirm that the compensated person was a utility employee, and what the employee's role is at the utility.

But because of concerns for identity theft, the Commission permitted the utilities to file a confidential version with the Commission that contained the employee information and a public version that redacted employee names:

In addition, GO 77-M incorporates a provision adopted in D.04-08-055 and D.05-04-030, which issued in

⁹⁸ According to GO 77-M, electric and gas public utilities with gross annual operating revenues of \$1 billion or more must submit the names of any officers and employee who received a base salary of \$250,000 or more per annum, and other employees who received a base salary of \$125,000 or more per annum. The purpose for this requirement was for the Commission to be able to confirm that the compensated person was a utility employee, and what the employee's role is at the utility. Because of concerns for identity theft, each utility subject to GO 77-M was required a confidential version pursuant to Pub. Util. Code § 583, and a public version which redacted the employee names.

⁹⁹ D.06-12-029, which amended GO 77-L and adopted GO 77-M to apply to the major utilities and their holding companies.

Rulemaking 03-08-019, the Commission's last review of this general order but which was not made part of the general order's formal text. The provision authorizes a utility to annually report names of highly compensated individuals in conditional access reports as long as any utility that chooses this option also files a report for public inspection from which the individual names have been redacted. The public version is available for review by members of the public without qualification.¹⁰⁰

In compliance with GO 77-M, the major utilities did provide confidential and redacted versions of their employee compensation reports with the Commission.¹⁰¹

In contrast, Uber does not wish to provide the Commission with its employee information under any circumstances. Uber argues that such a disclosure will have a chilling effect on its ability to attract and retain qualified workers:

Uber will also be harmed by the disclosure since its ability to recruit and retain employees will be harmed if rank-and-file employees risk public disclosure of their personal information by virtue of working on future Safety Reports or on Uber's Safety Team. Finding qualified and caring individuals to assist with the important work associated with the Safety Report and on Uber's Safety Team is difficult and these individuals should not be faced with the possibility of public scrutiny and disclosure.¹⁰²

It is difficult to assess the veracity of such a hearsay claim since Uber does not provide any supporting documentation. As such, we give little weight to the argument that providing employee information to the Commission would result

¹⁰⁰ *Id.*, at 31.

¹⁰¹ See UBER-4 for examples of the redacted versions.

¹⁰² *Motion for Reconsideration*, at 12 (CPUC-6).

in such public scrutiny that current employees may quit, and potential employees won't accept Uber's employment offers.¹⁰³

Uber's reliance on the redactions found in the root cause analysis documents from PG&E is equally unpersuasive.¹⁰⁴ First, a root cause analysis is an investigative tool where one attempts to do discern the causes of a catastrophic event and what corrective steps can be taken to prevent the recurrence of such an event. In making the redactions, PG&E relied on Pub. Util. Code § 583 and GO 66-C which, at the time, gave a regulated entity the power to redact and claim that certain classes of information were confidential. Nevertheless, PG&E provided both a confidential version (with the names of employees included) and a redacted version of its root cause analyses (with employee names redacted) to the Commission. Thus, the root cause analysis documents do not provide Uber with a predicate basis to withhold employee information from the Commission, which is what Uber has done by refusing to comply with the *December 19, 2019 Ruling*.

Moreover, GO 66-C has been replaced by General 66-D, which requires that a party claiming confidentiality must bring a motion and establish with granularity that the information proposed for redaction is in fact entitled to confidential treatment.¹⁰⁵ In other words, rather than rely on documents that were generated at a time where a party claiming confidentiality could do so

¹⁰³ It is true that the Commission is not bound by the technical rules of evidence. (Rule 13.6(a).) Still the evidence to be relied upon to prove a material, especially if it is hearsay, must be supported by some other substantial evidence to support the finding. (*See TURN v. Public Utilities Commission* (2014) 223 Cal.App.4th 945, 960.)

¹⁰⁴ UBER- 6 and 7.

¹⁰⁵ *See* Section 3.3 (Submission is a Formal Proceeding). GO 66-D was adopted in D.17-09-023.

under a more relaxed process, Uber should have filed a motion for confidential treatment pursuant to the procedures set forth in GO 66-D.

Second, Uber's reasons for failing to comply with GO 66-D are unconvincing. (*Motion for Reconsideration*, at 2, fn. 3 [CPUC-6]) This decision has debunked and dismissed Uber's assertion that the Commission is not a law enforcement agency and, as such, not entitled to sexual assault and sexual harassment information arising from TNC passenger services. Uber next claims that motions to file under seal are done in conjunction with and at the time of providing the confidential information. But Uber cites no law that says it could not have filed the motion in advance of the deadline. In fact, Uber's first *Motion for Reconsideration* of the *December 19, 2019 Ruling* was filed on January 10, 2020, 20 days *before* the response to the *December 19, 2019 Ruling* was due. (CPUC-3.) There is simply no reason why Uber did not file a motion for confidential treatment in advance of the deadline. Finally, Uber's claim that it did not file a motion because there was no guarantee that the motion would be granted is sophistry. The Commission's proceedings would grind to halt if parties chose not to comply with the Commission's directives unless forearmed with the promise of success.

Third, unlike the redacted employee information from the root cause analysis reports, the Commission will want Uber employee information so the Commission's staff can follow up with the appropriate Uber employees who received reports of sexual assault and sexual harassment so they can investigate how complaints were processed, investigated, and resolved. The clear need for employee information, so the Commission can fulfill its investigative authority over a regulated entity, distinguishes the instant proceeding from the case law Uber has referenced in its *Verified Statement*. In *Planned Parenthood Golden Gate v.*

Superior Court (2000) 83 Cal.App.4th 347, there was a challenge to a discovery order that required Planned Parenthood to disclose, pursuant to a protective order, the names, residential addresses, and telephone numbers of staff and volunteers with knowledge of issues relevant to the litigation. In reversing the discovery order, the Court found that it infringed on two fundamental privacy rights: (1) the vital relationship between freedom to associate and the privacy of one's associations; and (2) the right to privacy of one's home.¹⁰⁶ The Court then balanced those rights against the fact that, if disclosed, staff and volunteers could well face unique and very real threats not just to their privacy, but to their safety and well-being if personal information about them is disclosed.¹⁰⁷ In contrast to the potential infringement on fundamental rights to privacy with the implication of the loss of personal safety, Real Parties In Interest could not articulate why they needed the information other than to claim it would promote truth in litigation. The Court found that this professed need did not outweigh well documented the privacy concerns of Planned Parenthood's staff and volunteers.

Morales v. Superior Court (1979) 99 Cal.App.3d 283 is of even less assistance to Uber's defense. Uber cites to *Morales* in support of its argument that the Commission should pose questions about sexual assault and sexual harassment to all TNCs that the Commission regulates, and not intrude on individual victim's rights and Uber's right to equal protection. Yet Uber reads too much into *Morales*. There, Petitioner sought to avoid answering interrogatories that asked for the names, addresses, or telephone numbers of individuals with whom defendant claims to have had extramarital affairs. As the right to privacy to

¹⁰⁶ 83 Cal.App.4th at 358.

¹⁰⁷ *Id.*, at 361.

one's sexual affairs is guaranteed by the California Constitution, the government bore the burden of demonstrating the justification for disclosure. While the Court found that the inquiries could lead to the discovery of potentially admissible evidence or be helpful in preparation for trial, the discovery order should have been drawn more narrowly to provide information about any extramarital affairs without giving the names, addresses, or phone numbers. As *Morales* was not a case involving a government entity tasked with investigating alleged crimes arising out a regulated business' services, the Commission's interest in obtaining this information is greater than the litigants in *Morales*.

Nor is this decision assured by Uber's unsubstantiated claim that it has a dedicated team that is "responsible for responding to all of the Commission's requests and this team has a demonstrated record of arranging for employees most knowledgeable about areas of the Commission's interest to present that information."¹⁰⁸ Even if this assertion was true, the fact remains that Uber has steadfastly maintained that the Commission is not entitled to this employee information and has refused to produce the information. There is no indication that Uber will ever comply with the *December 19, 2019* and *January 27, 2020 Rulings* short of a decision from the Commission that imposes substantial sanctions and threatens to suspend Uber's operating authority in California.

7.5.2. Uber Employees Who Worked on the US Safety Report

Uber own witness's testimony undermines its claim of calamitous occurrences if the participants in drafting the *US Report* are disclosed. At the September 1, 2020 Evidentiary Hearing, Uber's counsel asked Ms. Breeden about her role in preparing the *US Report*:

¹⁰⁸ *Verified Statement*, at 23 (CPUC-13).

Q. [by Robert Maguire, counsel for Uber] And, Ms. Breeden, you're familiar With US Safety Report that Commissioner Shiroma has mention that Uber published on December 5, 2019"

A. Yes. I am familiar with it.

Q. [W]hat was your role with the Safety Report?

A. My role was, I was involved in the initial discussions around doing the Safety Report early on. When the actual Safety Report was being drafted, my role was, basically, reviewing information as well as making suggestions on specific initiatives that I or my team drove or were involved in.

For example, in, you know, if you look at the initiative, if you read the Safety Report, so the things around sexual assault standards, approaches, customer support training, the Uber re dedicated hotline, driver education in the space of sexual assault misconduct and sexual assault prevention. Those type of things where my team was involved or I was particularly involved in just making sure that that information that was being placed in the report was accurate.¹⁰⁹

This disclosure is responsive to Question 1.1 from the *December 19, 2019 Ruling* as Ms. Breeden identified herself as someone who, along with her team, reviewed the *US Safety Report* for accuracy, and provided input into content of the *US Safety Report*. Ms. Breeden explained her role freely without any apparent concerns about the consequences flowing from this revelation. The Evidentiary Hearing where this testimony was received was not a closed hearing. It was noticed on the Commission's hearing calendar and access was provided to the public via Webex and a Verizon public telephone line for listening access. Uber has not moved to treat the hearing as confidential or to have the transcript sealed. It is difficult to fathom how making similar disclosures regarding the other authors and contributors to the *US Safety Report* will harm those individuals such as the other members of Ms. Breeden's team. In sum, Uber has

¹⁰⁹ RT, at 513:13-17; 21-28; 514:1-13.

failed to carry its burden of proving that any harm will befall the employees who worked on the *US Safety Report* if their names and job titles, like Ms. Breeden's, are disclosed.

7.6. Uber's Motions for Stay and for Reconsideration Do Not Excuse Compliance with the December 19, 2019 and January 27, 2020 Rulings

Uber elected not to comply fully with the *December 19, 2019* and *January 27, 2020 Rulings*, and, instead, on January 30, 2020, filed its *Motion for Stay* and a second *Motion for Reconsideration*.¹¹⁰ This election was made even though Uber's counsel was unsure if such motions stayed compliance.¹¹¹ Similarly, this decision has not found any authority to suggest that either such motion places the duty to comply with an assigned ALJ's ruling on hold.

In fact, such a result would be contrary to Uber's duty to comply with Pub. Util. Code § 5378(a)(2)'s requirement that it not violate any order, decision, rule, regulation, direction, demand, or requirement of the Commission or face suspension of its operating authority, and be subject to a civil penalty pursuant to Pub. Util. Code § 5378(b). The Commission's ability to enforce compliance would be stymied if these motions could freeze any duty to comply pending their resolution. Thus, this decision concludes that Uber's duty to comply with the *December 19, 2019* and *January 27, 2020 Rulings* was not stayed by these pending motions.

Nevertheless, to have a complete resolution of the issues that Uber has presented, this decision also addresses the merits of the motions.

¹¹⁰ CPUC-6 and 7.

¹¹¹ RT, at 555:20-28. *See also Verified Statement*, at 36 (CPUC-13).

7.6.1. Motion for Stay

Uber stated that it meets the four-part test for a stay that the Commission established in Decision 07-08-034:

- Uber will likely prevail in its *Motion for Reconsideration* due to the merits of its arguments;
- Sexual assault victims, Uber employees, and the public interest will suffer irreparable harm without the stay;
- “[T]he balance of harms strongly favors the granting the stay pending the full Commission review for the Motion of Reconsideration;” and
- Finally, there are other relevant factors in favor of a stay, including Uber’s being singled out when the Commission did not make similar request to the other TNCs.

This decision rejects each of Uber’s arguments. First, Uber is not likely to prevail on the merits of its second *Motion for Reconsideration* because the Commission has the authority to investigate and to require Uber to respond to its questions regarding sexual assaults and sexual harassments, and to its questions regarding the preparation of the *US Safety Report*. Second, sexual assault victims and the public interest will not suffer irreparable harm as their information will be submitted under seal and the Commission has protections in place to protect the confidentiality of such information. As for the Uber employees, Uber has failed to meet its burden of proving that they will suffer irreparable harm if their names and job titles are publicly revealed. In fact, Uber did just that with one of its employees at the Evidentiary Hearing on September 1, 2020. Third, the balance of harms does not favor granting a stay as Uber has failed to establish any harm if it complies with the *December 19, 2019* and *January 27, 2020 Rulings*. There will be greater harm to the Commission’s regulatory, investigative, and enforcement authorities if a stay were to be granted. Fourth, Uber has not been

singled out as a punishment. Uber was the only TNC to publish a report on sexual assaults and sexual harassment arising from its TNC passenger services. Uber cannot expect that the Commission, with unquestioned authority over Uber, will not follow up and gather information about the incidents that occurred in California, and find out how Uber investigated and resolved those incidents.

As such, Uber's *Motion for Stay* is denied.

7.6.2. Motion for Reconsideration

Although Uber has labeled this pleading a *Motion for Reconsideration*, it states that its true purpose is to seek an interlocutory appeal of the *January 27, 2020 Ruling*.¹¹² Given its hybrid nature, this decision will address both forms of relief that the *Motion* seeks.

If this *Motion* is treated as a traditional motion for reconsideration, it must be denied as it fails to meet the necessary criteria for relief. A reconsideration motion requires the moving party to establish, by way of affidavit, new or different facts, circumstances, or law from those that existed at the time the initial motion was denied.¹¹³ Uber's Motion for Reconsideration fails to meet this legal

¹¹² CPUC-6 ("Uber takes this unusual step of filing this interlocutory appeal[.]")

¹¹³ Although a motion for reconsideration is not set forth in the Commission's Rules of Practice and Procedure, we find guidance in California Code of Civil Procedure § 1008(b):

A party who originally made an application for an order which was refused in whole or part, or granted conditionally or on terms, may make a subsequent application for the same order upon new or different facts, circumstances, or law, in which case it shall be shown by affidavit what application was made before, when and to what judge, what order or decisions were made, and what new or different facts, circumstances, or law are claimed to be shown.

The moving party must also provide a satisfactory explanation why it did not present the new or different information earlier. (*California Correctional Peace Officers Assn. v. Virga* (2010) 181 Cal.App.4th 30, 45-46 & fns. 14-15.)

standard in that it is rearguing claims that were previously denied rather than setting forth any new facts, circumstances, or law.

We next address Uber's request for an interlocutory appeal. Preliminarily, this decision notes that "it is well established that interlocutory appeals of presiding officer's rulings on procedural and evidentiary matters are disfavored by the Commission."¹¹⁴ As the Commission's preference is to deal with decisions the dispose of proceedings in their entirety and on the merits, consideration of an interlocutory appeal is the "rare exception rather than the rule."¹¹⁵

Interlocutory appeals are a type of extraordinary writ (e.g., mandamus or prohibition) that are designed to compel or prevent conduct in a lower court that affects a party's fundamental rights.¹¹⁶ Courts may entertain interlocutory appeals for a variety of circumstances, and the closest factual scenario to the present situation is where the failure to overturn a ruling would result in a misuse of the discovery process.¹¹⁷

Notwithstanding the preference against resolving proceedings in a piecemeal fashion, this decision finds that Uber's second *Motion for Reconsideration* fails to establish that the assigned ALJ misused the Commission's

¹¹⁴ R.92-03-050, *Assigned Commission's Ruling Denying Motion for Reconsideration of Administrative Judge's Ruling*, at 4.

¹¹⁵ (1994) 55 CUC 2d 672, 676: "Parties who contemplate appealing a ruling in [a] proceeding with which they are dissatisfied should recognize that we frown on such a practice, and view this kind of decision as the rare exception rather than the rule." (See also D.87070 [81 CPUC 389, 390]; and D.90-02-048, at 4.)

¹¹⁶ See Winslow Christian, "Interlocutory Review in California – Practical Justice Unguided by Standards," *Law and Contemporary Problems*, Vol 47: No. 3, Summer 1984: 112-116.

¹¹⁷ See, e.g., *Henry Mayo Newhall Memorial Hospital v. Superior Court* (1978) 81 Cal.App.3d 626 (party improperly ordered to further answer interrogatories); and *American Mutual Liability Insurance Co. v. Superior Court* (1974) 38 Cal.App.3d 579, 596-598 (discovery order required disclosure of documents arguably protected by attorney-client and work product privilege claims).

investigatory powers when he issued the *December 19, 2019* and *January 27, 2020 Rulings*. Frist, this decision establishes that there is a legitimate regulatory purpose for requiring Uber to provide information about the alleged sexual assaults and sexual harassment claims. The law that is cited in this decision is not new, so Uber and its counsel, who are well versed in Commission law and regulations, should have been aware, prior to filing the *Motion for Reconsideration*, of the Commission's expansive regulatory authority to promote passenger safety in the TNC industry, and that authority is not constrained by any subject matter restrictions, or the Penal Code, in conducting its investigations into TNC operations.

Second, the Commission has the means to protect that information regarding sexual assaults and sexual harassment, which the assigned ALJ ordered be filed under seal. Uber has not demonstrated that the Commission's current measures are insufficient to protect each alleged victim's personally identifiable information. As such, the invasion of privacy concern is premature as the Commission is in the information gathering stage and can reach out to Uber in the event a follow up investigation is warranted on a particular claim(s). If, at some future date, Commission staff might believe an interview with an alleged victim is warranted, staff can have Uber reach out to an alleged victim to determine if he/she wishes to speak with Commission staff about the incident.

Third, Uber's claim that the public disclosure of the names and job titles of its employees who worked on the *US Safety Report* will subject them to harm is factually unsupported. The Commission will not give any weight to arguments

that lack the necessary factual support as they are not evidence,¹¹⁸ and its position is aligned with the direction from our California Supreme Court.¹¹⁹

Fourth, this decision rejects Uber's request that the Commission issue a ruling with questions regarding sexual assaults and sexual harassments that all TNCs must answer. The issue of sexual assaults and sexual harassments is within the scope of the instant proceeding so the Commission leaves it up to the discretion of the assigned Commissioner and the co assigned ALJs to determine what questions to ask the TNCs as a group.

8. The Penalty

8.1. Which Public Utility Code Section to Use to Calculate the Penalty?

As noted above in Section 6.3, this decision will use Pub. Util. Code § 5378 since the Commission determined in D.19-08-040 that this was the "most appropriate basis." Pub. Util. Code § 5378(b) provides for the issuance of a penalty of up to \$7,500 plus interest calculated on the date the penalty is unpaid and delinquent.

¹¹⁸ Pursuant to Evidence Code § 140, "Evidence" means testimony, writings, material objects, or other things presented to the senses that are offered to prove the existence or nonexistence of a fact. In determining if a fact has been established by the preponderance of the evidence, we consider all evidence introduced in the record that is both material and probative. (*See McCormick on Evidence* § 184 (John W. Strong *et al* eds, 1999).) Evidence is considered probative if it has the tendency to establish the proposition that it is offered to prove, and material when it helps prove or disprove a proposition that that is in issue. (*Id.*) "It is undeniable that the argument of counsel does not constitute evidence." (*Beagle v. Vasold* (1966) 65 Cal.2d 170, 176.) As such, arguments by Uber's counsel presented at the hearing or in its written verified statement that are unsupported by probative and material evidence shall not be considered.

¹¹⁹ *See Williams v. Superior Court* (2017) 3 Cal.5th 531, 541 and 549 (in a wage and our violation suit in which plaintiff sought the identity and contact information for fellow California employees, the California Supreme Court stated that the burden of justifying an objection to discovery rests with the party resisting the interrogatories, who must supply supporting evidence to justify the objection).

8.1.1. The December 19, 2019 Ruling

- Questions regarding the *US Safety Report* (1.1., 1.2., 1.4.)

Uber refused to answer these questions regarding the authorship and approval of the *US Safety Report*. This amounts to a penalty of \$7,500 per offense, which is the maximum per offense amount.

But Uber's conduct is also a continuing offense as contemplated by Pub. Util. Code § 5415. This section states as follows:

Every violation of the provisions of this chapter or of any order, decision, decree, rule, direction, demand, or requirement of the commission by any corporation or person is a separate and distinct offense, and in case of a continuing violation each day's continuance thereof is a separate and distinct offense.

Uber's offense has been continuing since January 30, 2020, the day Uber's response to the *December 19, 2019 Ruling* was due. The Commission elects to impose the maximum daily penalty of \$7,500 penalty for every day for the past 10 months (February 1, 2020 to November 30, 2020 which totals 303 days) and amounts to a penalty of \$2,272,500.00 per offense. Thus, the total penalty for refusing to answer questions 1.1 (four separate offenses [the question required the identity of the persons full name, job title, contact information, and job responsibilities]), 1.2 (one offense), and 1.4 (one offense) is \$13,635,000.00 (\$2,272,500.00 times 6).

In finding that Uber's refusal constitutes a continuing offense, this decision rejects Uber's attempt to rely on D.18-10-020.¹²⁰ That decision arose out of a fatal accident on the Bay Area Rapid Transit District (BART) Line on October 19, 2013, and there was a dispute between BART and the Commission's Safety

¹²⁰ *Verified Statement*, at 35 (CPUC-13).

Enforcement Division (SED) regarding who was responsible for the delay in SED issuing its Final Report. While SED claimed the delay was due to its request for an in-cab video tape being refused, there was no evidence to substantiate that the request was refused. In contrast, BART claimed, unpersuasively, that its nearly 20 months delay to complete its Final Report was, in part, a result of SED not asking for it. In view of the record, it is not surprising that the Commission determined that out of fairness and for purposes of the fine calculation, BART's two year delay in submitting an adequate investigation report was tolled and otherwise excused as SED did not file its Final Report until March of 2016.

Accordingly, this decision rejects Uber's attempt to blame its failure to comply on the Commission. While Uber claims that the Commission's delay in ruling on the *Motion for Stay* and second *Motion for Reconsideration* was an occurrence out of Uber's control, the fact remains that Uber was under an obligation pursuant to Pub. Util. Code § 5378 and Rule 1.1 to comply with the ALJ's rulings. There is no law that excuses compliance with an ALJ ruling simply because the responding party has filed a motion to be excused from its obligation under the motion. Moreover, the first *Motion for Reconsideration* had already been denied so it is unreasonable for Uber to think it would stand a better chance with its second *Motion for Reconsideration* since both motions raised the same arguments for relief.

- Questions regarding Sexual Assault and Sexual Harassments (2.4.1., 2.4.2., 2.4.3., and 2.4.4.)

Using the same penalty amount of \$2,272,500.00 per offense, the total penalty for refusing to answer questions 2.4.1 (three separate offenses [the question asked for the date, time, and place of each incident]), 2.4.2 (one offense), 2.4.3 (two separate offenses [the question asked for each person's full name and

contact information for each witness]), and 2.4.4 (four separate offenses [the question asked for each person’s full name, job title, contact information, and job responsibilities]) is \$22,725,000.00 (\$2,272,500.00 times 10 offenses). In the following chart, we set forth the penalty calculations for Uber’s violation of the *December 19, 2019 Ruling*:

Violation of December 19, 2019 Ruling

Question	Number of times Uber refused to answer the question	Penalty for each refusal	Total daily penalty	Number days of continuing offense	Total penalty Per question
1.1	4	\$7,500	\$30,000	303 (February 1, 2020 to November 30, 2020)	\$9,090,000.00 (\$30,000 times 303)
1.2	1	\$7,500	\$7,500	303	\$2,272,500.00
1.4	1	\$7,500	\$7,500	303	\$2,272,500.00
2.4.1	3	\$7,500	\$22,500	303	\$6,817,500.00
2.4.2	1	\$7,500	\$7,500	303	\$2,272,500.00
2.4.3	2	\$7,500	\$15,000	303	\$4,545,000.00
2.4.4	4	\$7,500	\$30,000	303	\$9,090,000.00
TOTAL					\$36,360,000.00

8.1.2. The January 27, 2020 Ruling

As Uber refused to provide the information regarding sexual assaults and sexual harassments under seal as required by the *January 27, 2020 Ruling*, this decision imposes an additional penalty as follows: the refusal to provide information under seal required for questions 2.4.1, 2.4.2, 2.4.3, and 2.4.4. As this is a continuing offense, this decision uses the same \$7,500 daily fine per offense. Using the same number of offenses (10) and the same continuing offense time

(303 days), the penalty for violating the *January 27, 2020 Ruling* amounts to \$22,725,000.00.

The following chart breaks down the penalty:

Violation of January 27, 2020 Ruling

Question	Number of times Uber refused to answer the question	Penalty for each refusal	Total daily penalty	Number of days of continuing offense	Total penalty
Uber was instructed to file its responses to questions 2.4.1 to 2.4.4 under seal	10	\$7,500	\$75,000	303	\$22,725,000.00

Thus, the total penalty this decision imposes (not including interest) is \$59,085,000.00 (\$36,360,000.00 plus \$22,725,000.00).

If Uber fails to pay this amount within 30 days after this decision is issued, this decision directs the Commission’s Transportation Licensing Section to suspend Uber’s TNC and TCP operating authority until such time as the penalty plus interest are paid in full.

- Is Uber a Public Utility?

In utilizing the maximum \$7,500 amount per offense provided by Pub. Util. Code § 5378, this decision stresses that it is an unresolved question at the Commission whether Uber should be deemed a public utility and, therefore, subject to the higher daily penalty of \$100,000 provided by Pub. Util. Code § 2107. This is because Uber’s tactics and admissions in litigation outside of the

Commission call into question the sincerity of Uber’s assertion that it is not a public utility.¹²¹

Recently, Uber has been sued in a series of price fixing lawsuits alleging violation of the California Unfair Practices Act’s prohibition against selling a product at a price that is designed to injure competitors or destroy competition.¹²² In response, Uber has raised the defense that pursuant to Bus. & Prof. Code § 17024(1),¹²³ the Unfair Practices Act does not apply to any service for which rates are established by the Commission and sold or furnished by any *public utility corporation*. (See *Uber Technology Pricing Cases*, *supra*, 46 Cal.App.5th at 973-978; and *Actions v. Uber Techs.*, *supra*, 2018 Cal. Super. LEXIS 1913 *3-4.)¹²⁴ Uber has raised this same defense in federal court litigation and

¹²¹ Uber relies on D.97-07-063, which stated that TCPs such as Uber are not public utilities, plus the fact that the Legislature created separate penalty provisions for TCPs with the passage of the Passenger Charter-party Carriers’ Act. (*Verified Statement*, at 31-32 [CPUC-13].) This decision has no quarrel with the Commission’s decision from 1997 and with the Legislature’s action. But what this decision stresses is that these actions were taken before there was a TNC industry, whose transportation services are so pervasive to be of the scope contemplated by Article XII, section 3 of the California Constitution, compared to the more traditional TCP operation which is much smaller in scale.

¹²² Bus. & Prof. Code § 17043.

¹²³ Bus. & Prof. Code § 17024(1) states that:

“Nothing in this chapter applies:

(1) To any service, article or product for which rates are established under the jurisdiction of the Public Utilities Commission of this State and sold or furnished by any public utility corporation, or installation and repair services rendered in connection with any services, articles or products.”

¹²⁴ As the Court observed in *Uber Technology Pricing Cases*, a public utility corporation “is an entity that operates a system for the transportation of people. (*Hladek v. City of Merced* (1977) 69 Cal.App.3d 585, 590; see *Pub. Util. Code* § 216, subd. (a)(1) [Public utility includes every common carrier..., where the service is performed for, or the commodity is delivered to, the public or any portion thereof.]; *id.*, § 211 [A common carrier means every person and corporation providing transportation for compensation to or for the public or any portion thereof.]” (46 Cal.App.5th at 974, fn. 7.) Thus, while *Pub. Util. Code* § 2107 uses the term “public

Footnote continued on next page.

three courts have concluded that the exemption applies because Uber is a public utility corporation. (*See SC Innovations, Inc. v. Uber Technologies, Inc.* (N.D. Cal. 2020) 2020 WL 353543, * 11-12; *Diva Limousine, Ltd. v. Uber Techs., Inc.* (N.D. Cal. 2019) 392 F.Supp.3d 1074, 1086 [“The broader interpretation of § 17024 is supported by the fact that the statutory scheme allows the CPUC to consider anti-competitive concerns when regulating public utility corporations like Uber.”]; and *Desoto Cab. Co., v. Uber Technologies, Inc.* (N.D. Cal. 2018) 2018 WL 10247483, *10-11 [“The section (1) exception, therefore, applies if Uber is a public utility. Flywheel is judicially estopped from arguing that Uber is not a public utility because Flywheel has conceded as much in prior judicial proceedings. (citation omitted) Therefore, the section 17024(1) exception precludes Flywheel from bring[ing] a UPA claim against Uber.”])

In making this conclusion, the courts were not faced with a contested legal matter. To the contrary, the courts have observed that the parties stipulated to Uber’s status as a public utility corporation. (*See, e.g., Uber Technology Pricing Cases, supra*, 46 Cal.App.5th at 968 [“The parties agree Uber is a public utility corporation for purposes of section 17024, as the term applies to a privately-owned corporation that provides public utility services, such as transportation.”]; and *Diva, supra*, 392 F.Supp.3d at 1085, fn. 3: [“The parties are in accord that Uber is a public utility corporation within the meaning of § 17024(1).”])

In sum, this decision leaves it for the Commission to decide at a later time if Uber’s shifting tactics on the question of whether it is a public utility corporation should give rise to judicial estoppel (*i.e.* an equitable doctrine that

utility” and Business & Professions Code § 17024 (1) uses the term “public utilities corporation,” the two terms appear to be synonymous.

precludes a party from gaining an advantage by asserting one position, and then later seeking an advantage by taking a clearly inconsistent position) and prevent Uber from taking seemingly diametrically opposed legal positions before the Commission in the future.¹²⁵

8.2. Criteria for the Assessment of the Penalty's Size

D.98-12-075 provides guidance on the application of fines.¹²⁶ Two general factors are considered in setting fines: (1) the severity of the offense and (2) the conduct of the entity. In addition, the Commission considers the financial resources of the entity, the totality of the circumstances in furtherance of the public interest, and the role of precedent.¹²⁷ This decision discusses the specific criteria and determine below their applicability to Uber's conduct.

Criterion 1: Severity of the Offense

In D.98-12-075, the Commission held that the size of a fine should be proportionate to the severity of the offense. To determine the severity of the offense, the Commission stated that it would consider the following factors.¹²⁸

- Physical harm: The most severe violations are those that cause physical harm to people or property, with violations that threatened such harm closely following.
- Economic harm: The severity of a violation increases with (i) the level of costs imposed upon the victims of the violation, and (ii) the unlawful benefits gained by the public utility. Generally,

¹²⁵ See *Milton H. Green Archives v. Marilyn Monroe LLC* (9th Cir. 2012) 692 F.3d 983, 1000, citing to *Hamilton v. State Farm Fire & Casualty Co.* (9th Cir. 2001) 270 F.3d 778, 782.

¹²⁶ D.98-12-075 indicates that the principles therein distill the essence of numerous Commission decisions concerning penalties in a wide range of cases, and the Commission expects to look to these principles as precedent in determining the level of penalty in a full range of Commission enforcement proceedings. (*Mimeo* at 34-35.)

¹²⁷ D.98-12-075, *mimeo*, at 34-39.

¹²⁸ 1998 Cal. PUC LEXIS 1016 at 71-73.

the greater of these two amounts will be used in setting the fine. The fact that economic harm may be hard to quantify does not diminish the severity of the offense or the need for sanctions.

- Harm to the Regulatory Process: A high level of severity will be accorded to violations of statutory or Commission directives, including violations of reporting or compliance requirements.
- The number and scope of the violations: A single violation is less severe than multiple offenses. A widespread violation that affects a large number of consumers is a more severe offense than one that is limited in scope.

Uber's violation of Rule 1.1 and Pub. Util. Code § 5378 harmed the regulatory process by refusing to produce the required information to the Commission which, in turn, frustrates the Commission's ability to investigate Uber's handling of sexual assault and sexual harassment complaints. As this Commission stated in D.98-12-075, "such compliance is absolutely necessary to the proper functioning of the regulatory process. For this reason, disregarding a statutory or Commission directive, regardless of the effects on the public, will be accorded a high level of severity."¹²⁹

Criterion 2: Conduct of the Penalized Entity

In D.98-12-075, the Commission held that the size of a fine should reflect the penalized entity's conduct. When assessing the conduct, the Commission stated that it would consider the following factors:¹³⁰

- The Entity's Actions to Prevent a Violation: Entities are expected to take reasonable steps to ensure compliance with applicable laws and regulations. The entity's past record of compliance may be considered in assessing any penalty.

¹²⁹ 84 CPUC2d 155, 188; *See also* Resolution ALJ-277 Affirming Citation No. ALJ-274 2012-01-001 Issued to Pacific Gas and Electric Company for Violations of General Order 112-E at 8 (April 20, 2012).

¹³⁰ 1998 Cal. PUC LEXIS 1016 at 73-75.

- The Entity's Actions to Detect a Violation: Entities are expected to diligently monitor their activities. Deliberate, as opposed to inadvertent wrongdoing, will be considered an aggravating factor. The level and extent of management's involvement in, or tolerance of, the offense will be considered in determining the amount of any penalty.
- The Entity's Actions to Disclose and Rectify a Violation: Entities are expected to promptly bring a violation to the Commission's attention. What constitutes "prompt" will depend on circumstances. Steps taken by an entity to promptly and cooperatively report and correct violations may be considered in assessing any penalty.

Here, Uber had the ability all along to comply with the *December 19, 2019* and *January 27, 2020 Rulings* yet refused to do so by interposing a series of factually and legally unsupported arguments and objections.

Criterion 3: Financial Resources of the Entity

In D.98-12-075, the Commission held that the size of a fine should reflect the financial resources of the entity. When assessing the financial resources of the entity, the Commission stated that it would consider the following factors:¹³¹

- Need for Deterrence: Fines should be set at a level that deters future violations. Effective deterrence requires that the Commission recognize the financial resources of the entity in setting a fine.
- Constitutional Limitations on Excessive Fines: The Commission will adjust the size of fines to achieve the objective of deterrence, without becoming excessive, based on each entity's financial resources.

Uber has the financial wherewithal to pay a substantial fine. In looking at the number of rides provided in California and the corresponding revenue

¹³¹ 1998 Cal. PUC LEXIS 1016 at 75-76.

accounted in the Public Utilities Commission Transportation Reimbursement Account Revenue Detail, Uber's California revenues exceed \$1 billion.

But in reaching the conclusion that Uber is able to pay the penalty this decision imposes, we can consider Uber's total revenues, not just those from California.¹³² Based on its filings with the Securities and Exchange Commission (SEC),¹³³ and information found on its website,¹³⁴ Uber's earnings and revenues are significant enough to pay the penalty determined by this decision:

2017: -\$2,642,000,000 earnings, \$7,203,000,000 adjusted net revenue, \$7,932,000,000 total revenue.

2018: -\$1,847,000,000 earnings, \$10,297,000,000 adjusted net revenue, \$11,270,000,000 total revenue.

¹³² See e.g. D.04-12-058, *Order Modifying and Denying Rehearing of Decision (D.) 04-09-062* at 18 ("The record in this proceeding also reflected that Cingular reported corporate revenues of \$14.746 billion for year-end 2002, that Cingular had approximately 22 million customers at that time, and that Cingular's three million California customers constituted 14% of Cingular's customer base, and likely 14% of Cingular's revenues as well."); Decision 02-12-059, *Opinion Finding Violations and Imposing Sanctions* at 56 ("Thus, an approximate \$38 million fine is reasonable in this case when Qwest had total revenues for the year 2000 of \$11 billion, and its California residential long distance revenue for 2000 was about \$92 million.); and Decision 04-09-023 *Opinion Authorizing Transfer of Control and Imposing a Fine* at 10, fn. 12 ("The Commission has previously considered the finances of utility parent companies, affiliates, and other non-regulated entities when setting fines, provided that such information is cognate, and germane to the fine. D.04-04-017, *mimeo.*, at 9; D.04-04-016, *mimeo.*, at 19; D.03-08-058, *mimeo.*, at 12; and D.03-05-033, *mimeo.*, at 10.").

¹³³ See Uber Annual Reports and Quarterly Reports <https://investor.uber.com/financials/default.aspx>. From there, you can see SEC filings and Reports and Presentations for Investors.

¹³⁴ See Form 10-K and 10-Q : <https://www.sec.gov/cgi-bin/browse-edgar?action=getcompany&CIK=0001543151&type=&dateb=&owner=include&start=0&count=40>. Every U.S. publicly traded company must file with the SEC, a 10-Q and a 10-K. A 10-Q is filed three times a year and the financial statements are not audited but include a balance sheet, income statement, and a cash flow statement. The 10-K is filed annually and includes 10-Q required financial statements and additional information. Financial statements provided in a 10-K are audited by an independent accountant, and the Chief Financial Officer and Chief Executive Officer must certify the accuracy of the 10-K in accordance with the Sarbanes-Oxley Act of 2002 (Pub. L. 107-204; 116 Stat. 745).

2019: -\$2,725,000,000 earnings, \$12,897,000,000 adjusted net revenue, \$14,147,000,000 total revenue.¹³⁵

2020: \$33,000,000 earnings first quarter, \$3,543,000,000 total revenue in the first quarter. \$3,543,000,000 total revenue in the first quarter. -\$345,000,000 earnings in second quarter, \$2,241,000,000 total revenue in the second quarter.¹³⁶

What the information shows is that Uber is a billion-dollar business that can easily afford to pay the \$59,085,000.00 penalty. Even during a pandemic where ridership has undoubtedly declined, Uber's audited and certified revenues are substantial enough that the penalty amount imposed by this decision does not run afoul of the constitutional limitation against excessive fines.

Criterion 4: The Totality of the Circumstances in Furtherance of the Public Interest

In D.98-12-075, the Commission held that a fine should be tailored to the unique facts of each case. When assessing the unique facts of each case, the Commission stated that it would consider the following factors:¹³⁷

- **The Degree of Wrongdoing:** The Commission will review facts that tend to mitigate the degree of wrongdoing as well as facts that exacerbate the wrongdoing.

¹³⁵ Here is a link for Uber's 10-K (which includes 2017-2019 revenues):

<https://d18rn0p25nwr6d.cloudfront.net/CIK-0001543151/f272e038-1c89-456c-acf8-cea0cffe544d.pdf>.

¹³⁶ Here is a link for Uber's first quarter 10-Q for 2020:

<https://d18rn0p25nwr6d.cloudfront.net/CIK-0001543151/d2c00a1e-2075-43c7-8a83-bc53015fdbbb.pdf>.

Here is a link for Uber's second quarter 10-Q for 2020:

<https://d18rn0p25nwr6d.cloudfront.net/CIK-0001543151/6be7ca8c-d5b0-44b5-96ea-7322b601fa82.pdf>.

¹³⁷ 1998 Cal. PUC LEXIS 1016, 76.

- **The Public Interest:** In all cases, the harm will be evaluated from the perspective of the public interest.

There are no facts to mitigate the degree of Uber's wrongdoing. While Uber claims that it did not comply with the *December 19, 2019* and *January 27, 2020 Rulings* in order to protect the interests of the sexual assault and harassment victims, as well as the rights of its employees, neither of these grounds provided Uber with a legal justification for refusing to comply with the assigned ALJ's rulings. Uber's conduct has exacerbated its wrongdoing because its refusal to comply has become a series of offenses that have continued unabated for six months.

Uber's conduct has also resulted in harm to the public's interest in relying on safe TNC passenger service. By refusing to provide the ordered information, Uber has thwarted the Commission's ability to ensure that the services provided by the entities subject to its jurisdiction are safe. Without giving the Commission access to the information regarding the sexual assault and sexual harassment claims, the Commission is not in a position to investigate these claims with Uber and determine if Uber needs to implement additional measures to protect its passengers and drivers.

Criteria 5: The Role of Precedent

In D.98-12-075, the Commission held that any decision that imposes a fine or penalty should: (1) address previous decisions that involve reasonably comparable factual circumstances, and (2) explain any substantial differences in outcome.¹³⁸

¹³⁸ 1998 Cal. PUC LEXIS 1016, 77.

This decision first looks at prior Commission precedent that imposed a fine or penalty based on the finding of a continuing offense. These cases demonstrate that the Commission is well within its authority to impose a continuing violation penalty against Uber based on these past decisions:

- *PG&E, San Bruno*, D.15-04-024, at 77-79 (PG&E engaged in 2425 violations, some of which occurred over a number of years, meaning that the range of potential penalties went from a low of \$9.2 billion to a high of \$254 billion. The Commission arrived at a total penalty and forbearances of \$1.6 billion, of which \$300 million represented the fine that would be paid to the General Fund.)
- *PG&E, Gas Explosion at Rancho Cordova*, D.11-11-001, at 40-42, and Ordering Paragraph 4 (PG&E faced a potential continuing penalty of \$97 million, which the Commission calculated as follows: violations of both Pub. Util. Code § 451 and GO 112-E in each of the five instances set forth in the OII at 9-10; continuing violations from September 21, 2006 to December 24, 2008 for the use of the unmarked pipe in Rancho Cordova; continuing violations from November 9, 2006 to December 24, 2008 for failing to discover the defective Rancho Cordova repair as a result of being notified of the use of defective pipe used in Elk Grove; continuing violations from September 21, 2006 to December 24, 2008 for failing to develop and implement effective gas emergency plans; and \$80,000 in penalties for failing to safeguard life and property and failing to administer drug and alcohol tests on December 24, 2008. In light of this potential exposure, the decision rejected the proposed stipulated penalty of \$26 million and imposed a \$38 million penalty subject to agreement by the parties.)
- *Rasier-CA, TNC Services*, D.16-01-014, at 82-83, and Ordering Paragraph 1 (Rasier's failure to comply with D.13-09-045's reporting requirements for TNCs regarding accessibility requests, service by zip code, and driver problems were separate continuing offenses commencing in September of 2014. At \$5,000 per day per offense, the calculated fine totaled \$7,350,000.00. The decision imposed another \$276,000.00 for the 138 days past the

reporting deadline for Rasier to comply with Reporting Requirement J.)

- *Cingular Investigation*, D.04-09-062 at 62 (“Section 2108 provides, in relevant part, that ‘in case of a continuing violation each day’s continuance thereof shall be a separate and distinct offense. Both violations constitute continuing offenses during the relevant time periods. Considering the record as a whole, we find that the penalty for each violation should be calculated on a daily basis.”); and Conclusion of Law (COL) 4 (“[F]or the violations of law for the period January 1, 2000 to April 30, 2002 (849 days), Cingular should pay a penalty of \$10,000 per day, or \$8,490,000.”)
- *Qwest*, D.02-10-059 at 43, n. 43 (“Qwest is liable for a fine of \$500 to \$20,000 for every violation of the Public Utilities Code or a Commission decision. Pub. Util. Code § 2108 provides that every violation is a separate and distinct offense, and in case of a continuing violation each day’s continuance constitutes a separate and distinct offense.”)
- *Southern California Edison Company’s (SCE’s) Performance-Based Ratemaking OIL*, D.08-09-038 at 111 (“Finally, a fine of \$30 million is reasonable when viewed as an ongoing violation that should be subject to a daily penalty, as recommended by CPSD and used by the Commission in the case that was upheld in *Pacific Bell Wireless, LLC v. Pub. Util. Comm’n*. If SCE’s violations are viewed as daily violations that continued for seven years, then a \$30 million dollar fine equates to a daily penalty of just less than \$12,000 (\$30 million/7 years/365 days).”)

An additional precedent this decision considers are past Commission decisions where a fine or penalty was imposed based on the revenues or equity of both a company’s national revenues and its California revenues:

- D.04-12-058, Order Modifying and Denying Rehearing of Decision (D.) 04-09-062 at 18 (“The record in this proceeding also reflected that Cingular reported corporate revenues of \$14.746 billion for year-end 2002, that Cingular had approximately 22 million customers at that time, and that

Cingular's three million California customers constituted 14% of Cingular's customer base, and likely 14% of Cingular's revenues as well.")

- D.02-12-059, Opinion Finding Violations and Imposing Sanctions at 56 ("Thus, an approximate \$38 million fine is reasonable in this case when Qwest had total revenues for the year 2000 of \$11 billion, and its California residential long distance revenue for 2000 was about \$92 million.")

The penalty amount of \$59,085,000.00 is consistent with the foregoing precedents. There is ample legal authority for imposing a high penalty based on the presence of a continuing offense or offenses. But it is not necessary to impose the full penalty amount for the continuing offenses if the Commission determines that a smaller penalty amount will serve as a sufficient deterrent against such conduct occurring in the future. Finally, in examining the revenues of both Uber's California and national operations, the penalty this decision adopts is within Uber's ability to pay and, therefore, will not cripple its TNC passenger services.

9. Conclusion

Contrary to Uber's assertion, the assigned ALJ did not punish Uber for publishing its *US Safety Report* or single Uber out for disparate treatment. Uber was the first TNC to publish such a document concerning sexual assault and sexual harassment claims arising out of its TNC passenger services. With that publication, it became incumbent upon the Commission to conduct an inquiry and gather information about these claims that are the subject of the *US Safety Report*. Uber cannot trumpet the existence of such a document but decline to provide the Commission with the facts surrounding the claims and the authorship of said document. The Commission would be remiss in its regulatory responsibilities if it had failed to conduct a follow-up inquiry. Rather than

casting itself in the role of a victim of regulatory overreach, it is Uber who is playing the part of the obstructionist who has prevented the Commission from carrying out its regulatory, investigative, and enforcement duties. The Commission cannot, and will not, allow Uber to engage in such conduct with impunity.

10. Assignment of Proceeding

Genevieve Shiroma is the assigned Commissioner and Robert M. Mason III is one of the co-assigned Administrative Law Judges in this proceeding.

Findings of Fact

1. On December 20, 2012, the Commission opened Rulemaking 12-12-011 to determine the extent and the manner it would assert jurisdiction over and regulate newly formed transportation providers known as Transportation Network Companies (TNCs).

2. On December 5, 2019, Uber Technologies, Inc. (Uber), which operates in California as a TNC and as a TCP, released its *US Safety Report* which detailed mainly motor vehicle fatalities, fatal physical assaults, and sexual assault and sexual harassment claims that occurred in 2017 and 2018.

3. The *US Safety Report* raises concerns about the safety of passengers who avail themselves of Uber's TNC operations.

4. The safety of all TNC operations is an issue inherent to this proceeding, making the *US Safety Report* a relevant area of inquiry by the assigned Commissioner and assigned ALJs.

5. Uber refused to answer questions 1.1., 1.2., 1.4., 2.4.1., 2.4.2., 2.4.3., and 2.4.4. from the December 19, 2019 Ruling.

6. Uber refused to submit the information responsive to Questions 2.4.1., 2.4.2., 2.4.3., and 2.4.4. under seal as required by the January 27, 2020 Ruling.

7. Uber has the information in its possession to answer questions 1.1., 1.2., 1.4., 2.4.1., 2.4.2., 2.4.3., and 2.4.4., from the December 19, 2019 Ruling.

8. Uber called one of the contributing authors of the *US Safety Report*, Tracey Breeden, to testify during the September 1, 2020 Evidentiary Hearing.

9. The September 1, 2020 Evidentiary Hearing was open to the public via telephone bridge.

10. Uber did not raise any concerns about Ms. Breeden's identity or testimony being available to the public during the September 1, 2020 Evidentiary Hearing.

11. Uber is a thriving business with billions of dollars in annual revenues. Its California revenues exceed \$1 billion. Uber's national earnings and revenues from 2017 through the second quarter of 2020 are as follows:

2017: -\$2,642,000,000 earnings, \$7,203,000,000 adjusted net revenue, \$7,932,000,000 total revenue.

2018: -\$1,847,000,000 earnings, \$10,297,000,000 adjusted net revenue, \$11,270,000,000 total revenue.

2019: -\$2,725,000,000 earnings, \$12,897,000,000 adjusted net revenue, \$14,147,000,000 total revenue.

2020: \$33,000,000 earnings first quarter, \$3,543,000,000 total revenue in the first quarter. \$3,543,000,000 total revenue in the first quarter. -\$345,000,000 earnings in second quarter, \$2,241,000,000 total revenue in the second quarter.

Conclusions of Law

1. It is reasonable to conclude that Uber's refusal to answer Questions 1.1., 1.2., 1.4., 2.4.1., 2.4.2., 2.4.3., and 2.4.4. violated the *December 19, 2019 Ruling*.

2. It is reasonable to conclude that Uber's refusal to file its responses to Questions 2.4.1., 2.4.2., 2.4.3., and 2.4.4. under seal violated the *January 27, 2020 Ruling*.

3. It is reasonable to conclude that Uber's refusal to answer Questions 1.1., 1.2., 1.4., 2.4.1., 2.4.2., 2.4.3., and 2.4.4. of the *December 19, 2019 Ruling*, violated Rule 1.1 of the Commission's Rules of Practice and Procedure.

4. It is reasonable to conclude that Uber's refusal to file its responses to Questions 2.4.1., 2.4.2., 2.4.3., and 2.4.4. under seal as required by the *January 27, 2020 Ruling*, violated Rule 1.1 of the Commission's Rules of Practice and Procedure.

5. It is reasonable to conclude that Uber's refusal to answer Questions 1.1., 1.2., 1.4., 2.4.1., 2.4.2., 2.4.3., and 2.4.4. of the *December 19, 2019 Ruling*, should subject Uber to any penalties, fines, or other regulatory sanctions (e.g. permit suspension or revocation) pursuant to Pub. Util. Code §§ 701, 5378(a), and 5378(b).

6. It is reasonable to conclude that Uber's refusal to file its responses to Questions 2.4.1., 2.4.2., 2.4.3., and 2.4.4. under seal as required by the *January 27, 2020 Ruling*, should subject Uber to any penalties, fines, or other regulatory sanctions (e.g. permit suspension or revocation) pursuant to Pub. Util. Code §§ 701, 5378(a), and 5378(b).

7. It is reasonable to conclude that Uber's refusal to file alleged confidential information under seal as required by the *January 27, 2020 Ruling*, should be considered a continuing offense or multiple continuous offenses pursuant to Pub. Util. Code § 5415.

8. It is reasonable to conclude that Uber's refusal to answer Questions 2.4.1., 2.4.2., 2.4.3., and 2.4.4. from the *December 19, 2019 Ruling* should be considered a continuing offense or multiple continuous offenses pursuant to Pub. Util. Code § 5415.

9. It is reasonable to conclude that Uber's second *Motion for Reconsideration* does not excuse compliance with the *December 19, 2019 Ruling* and/or the *January 27, 2020 Ruling*.

10. It is reasonable to conclude that Pub. Util Code § 5437 does not preclude the Commission from obtaining information about individual sexual assault victims and incidents, TNC riders, or drivers.

11. It is reasonable to conclude that neither Penal Code §§ 13898(a), 13898.1, nor 13823.95(b) preempt the Commission's ability to obtain information about sexual assault and sexual harassment claims arising out of Uber's TNC passenger services.

12. It is reasonable to conclude that Uber's claim the Commission is attempting to invade the privacy of its passengers and drivers is premature.

13. It reasonable to conclude that the names and contact information of the Uber employees who worked on the *US Safety Report* are not automatically entitled to confidentiality.

14. It is reasonable to conclude that Uber's conduct satisfies the criteria for the assessment of a penalty.

15. It is reasonable to conclude that Uber's violation of Rule 1.1 and Pub. Util. Code § 5378 harmed the Commission's regulatory process.

16. It is reasonable to conclude that Uber had the ability to comply with the *December 19, 2019* and *January 27, 2020 Rulings* yet refused to do so by interposing factually and legally unsupported arguments and objections.

17. It is reasonable to conclude that Uber's violations of Rule 1.1 and Pub. Util. Code § 5378 should result in the imposition of a penalty in the amount of \$59,085,000.00.

18. It is reasonable to conclude that Uber has the financial resources to pay a \$59,085,000.00 penalty.

19. It is reasonable to conclude that Uber's authority to operate as a TNC and as a TCP should be suspended if Uber fails to pay the \$59,085,000.00 penalty by the deadline set forth in Ordering Paragraph 1.

20. It is reasonable to conclude that Uber's authority to operate as a TNC and as a TCP should be suspended if Uber fails to answer Questions 1.1., 1.2., 1.4., 2.4.1., 2.4.2., 2.4.3., and 2.4.4. from the *December 19, 2019 Ruling* by the deadline set forth in Ordering Paragraph 3.

21. It is reasonable to conclude that Uber's authority to operate as a TNC and as a TCP should be suspended if Uber fails to file its answers to Questions 2.4.1., 2.4.2., 2.4.3., and 2.4.4 under seal as required by the *January 27, 2020 Ruling* by the deadline set forth in Ordering Paragraph 3. It is also reasonable to order Uber to work with the Commission's staff in the Consumer Protection and Enforcement Division, Transportation Enforcement Branch and Transportation Licensing and Analysis Branch, to develop a code or numbering system as a substitute for the actual names and other personally identifiable information requested by Questions 2.4.2., 2.4.3., and 2.4.4.

O R D E R

IT IS ORDERED that:

1. Uber Technologies, Inc. (Uber) shall pay a penalty in the amount of \$59,085,000.00, by check or money order payable to the California Public Utilities Commission (Commission) and mailed or delivered to the Commission's Fiscal Office at 505 Van Ness Avenue, Room 3000, San Francisco, CA 94102, within 30 days from the date that this decision is issued. Uber shall write on the face of

the check or money order “For deposit to the General Fund pursuant to Decision _____.”.

2. All money received by the California Public Utilities Commission’s Fiscal Office pursuant to Ordering Paragraph 1 shall be deposited or transferred to the State of California General Fund.

3. Uber Technologies, Inc. (Uber) shall answer Questions 1.1., 1.2., 1.4., 2.4.1., 2.4.2., 2.4.3., and 2.4.4. from the *December 19, 2019 Ruling* within 30 days from the date that this decision is issued. Uber shall also file its answers to Questions 2.4.1., 2.4.2., 2.4.3., and 2.4.4. under seal as required by the *January 27, 2020 Ruling* within 30 days from the date that this decision is issued. Uber shall work with the Commission’s staff in the Consumer Protection and Enforcement Division, Transportation Enforcement Branch and Transportation Licensing and Analysis Branch, to develop a code or numbering system as a substitute for the actual names and other personally identifiable information requested by Questions 2.4.2., 2.4.3., and 2.4.4.

4. If Uber Technologies, Inc. (Uber) fails to pay the penalty, or fails to answer the questions 1.1., 1.2., 1.4., 2.4.1., 2.4.2., 2.4.3., and 2.4.4. from the *December 19, 2019 Ruling*, or fails to file its answers to Questions 2.4.1., 2.4.2., 2.4.3., and 2.4.4. under seal as required by the *January 27, 2020 Ruling* within 30 days from the date that this decision is issued, Uber’s licenses to operate as a Transportation Network Company and as a Charter-party Carrier shall be suspended. The suspension shall remain in effect until Uber has paid the penalty plus any interest that has accrued, and has complied with the *December 19, 2019* and *January 27, 2020 Rulings*.

5. Rulemaking 12-12-011 remains open.

This order is effective today.

Dated _____, at San Francisco, California.