

PUBLIC UTILITIES COMMISSION

505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3298

FILED

10/29/21
10:07 AM

October 29, 2021

**Agenda ID #20019
Quasi-Legislative**

TO PARTIES OF RECORD IN RULEMAKING 12-12-011:

This is the proposed decision of Commissioner Shiroma. Until and unless the Commission hears the item and votes to approve it, the proposed decision has no legal effect. This item may be heard, at the earliest, at the Commission's December 2, 2021 Business Meeting. To confirm when the item will be heard, please see the Business Meeting agenda, which is posted on the Commission's website 10 days before each Business Meeting.

Parties of record may file comments on the proposed decision as provided in Rule 14.3 of the Commission's Rules of Practice and Procedure.

/s/ ANNE E. SIMON

Anne E. Simon

Chief Administrative Law Judge

AES:mph

Attachment

Decision PROPOSED DECISION OF COMMISSIONER SHIROMA
(Mailed 10/29/2021)

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

**DECISION ADOPTING THE SETTLEMENT AGREEMENT BETWEEN THE
CONSUMER PROTECTION AND ENFORCEMENT DIVISION, UBER
TECHNOLOGIES, INC., AND THE RAPE, ABUSE & INCEST NATIONAL
NETWORK, INC.**

TABLE OF CONTENTS

Title	Page
DECISION ADOPTING THE SETTLEMENT AGREEMENT BETWEEN THE CONSUMER PROTECTION AND ENFORCEMENT DIVISION, UBER TECHNOLOGIES, INC., AND THE RAPE, ABUSE & INCEST NATIONAL NETWORK, INC.....	1
Summary	2
1. Background.....	2
1.1. Factual Background.....	2
2. Procedural Background.....	4
2.1. The December 19, 2019 Ruling	4
2.2. Uber’s Motion for Reconsideration.....	5
2.2.1. Assigned ALJ’s Ruling on Uber’s Motion for Reconsideration	7
2.2.2. Uber’s Response to the December 19, 2019 Ruling	8
2.2.3. 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.....	9
2.2.4. 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.....	10
2.2.5. Motion for Stay	10
2.2.6. Assigned Administrative Law Judge Order to Show Cause.....	11
2.2.7. The Evidentiary Hearing	11
2.2.8. The Presiding Officer’s Decision.....	11
2.2.9. Uber’s Appeal and Settlement Negotiations	12
2.2.10. The Settlement Agreement	13
3. Discussion: The Standards for Approval of a Settlement Agreement	16
3.1. The Rule 12.1 Standard.....	16
3.2. The Standard if All Parties Support the Settlement Agreement	16
3.3. The Standard if the Settlement Agreement Includes a Penalty or Fine	17
3.3.1. The Severity of the Offense.....	17
3.3.2. Conduct of the Utility	18
3.3.3. Financial Resources of the Utility	19
3.3.4. Totality of the Circumstances.....	19
3.3.5. The Role of Precedent in Setting the Fine or Penalty	20
4. Application of the Settlement Agreement Approval Standards to the Facts .	20
4.1. The Settlement Agreement is Reasonable in Light of the Whole Record .	20
4.2. The Settlement Agreement is Consistent with the Law	21
4.3. The Settlement Agreement is in the Public Interest	22

- 4.3.1. The Settlement Agreement Recognizes the Commission’s Broad Safety and Regulatory Authority 23
- 4.3.2. The Settlement Agreement Provides a Pathway for Compliance with the December 19, 2019 Ruling 25
- 4.3.3. The \$9,150,000.00 Payment is in the Public Interest 26
- 4.3.4. The Settlement Agreement Promotes Greater Transparency into the TNC Industry 28
- 4.3.5. The Settlement Agreement Adds Additional Protections for Victims of Sexual Violence 29
- 4.3.6. The Settlement Agreement Protects Claims of Employee Privacy 30
- 4.3.7. The Settlement Agreement Commands the Unanimous Support of the Parties 31
- 5. The Sponsoring Parties are Fairly Reflective of the Affected Interests 31
- 6. The Settlement Agreement does not Contravene Statutory Provisions or Prior Commission Decisions..... 32
 - 6.1. The Settlement Agreement Conveys Sufficient Information to Permit the Commission to Discharge its Regulatory Function 32
- 7. The Settlement Agreement’s Penalty Payment is Consistent with Commission Standards for Determining the Amount of a Penalty 33
 - 7.1. Severity of the Offense 33
 - 7.1.1. Conduct of the Utility 33
 - 7.1.2. Financial Resources of the Utility 34
 - 7.1.3. Totality of the Circumstances..... 34
 - 7.1.4. The Role of Precedent in Setting the Fine or Penalty 34
- 8. Conclusion 35
- 9. Comments on Proposed Decision..... 36
- 10. Assignment of Proceeding 36
- Findings of Fact..... 36
- Conclusions of Law 37
- ORDER..... 38

Attachment A

**DECISION ADOPTING THE SETTLEMENT AGREEMENT BETWEEN THE
CONSUMER PROTECTION AND ENFORCEMENT DIVISION, UBER
TECHNOLOGIES, INC., AND THE RAPE, ABUSE & INCEST NATIONAL
NETWORK, INC.**

Summary

This decision adopts the Settlement Agreement between the Commission's Consumer Protection and Enforcement Division, Uber Technologies, Inc. (Uber), and the Rape, Abuse & Incest National Network, Inc., which resolves the order to show cause track of this proceeding as to whether Uber should be fined, penalized, or subject to other regulatory sanctions for refusing to provide information regarding sexual assaults and sexual harassments arising from Uber's passenger services. The Presiding Officer's Decision Imposing Penalties Against Uber Technologies, Inc. for violation the Assigned Administrative Law Judge's December 19, 2019 and January 27, 2020 Rulings Requiring Information Regarding Sexual Assault and Sexual Harassment Claims, and Uber's Appeal therefrom, are both moot and are withdrawn.

This proceeding remains open.

1. Background

1.1. Factual Background

The Commission began to assert jurisdiction over Transportation Network Companies ("TNCs") service in 2011-2012, which led to the Commission initiating Rulemaking ("R.") 12-12-011. With the adoption of Decision (D.)13-09-045, the Commission established TNC regulations, rules, and reporting requirements with which each TNC, including Uber Technologies, Inc. (Uber), must comply. This proceeding has remained open, and its scope has expanded in light of the ever-changing TNC business model. The Commission, as part of its regulatory and oversight authority, has sought data from each TNC as to its

transportation services to ensure that these services are being provided safely and equitably.

Pursuant to their regulatory and safety authority, Commission staff, in the Consumer Protection and Enforcement Division, sought information regarding complaints against TNC drivers, particularly those that alleged 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 determine how TNCs were investigating TNC driver-related sexual assaults and sexual harassment, and what additional regulations and reporting requirements, if any, should be adopted.

On December 5, 2019, Uber, which operates as both a TNC and a Charter-party Carrier (TCP), released its *US Safety Report* which primarily detailed motor vehicle fatalities, fatal physical assaults, and sexual assault and sexual harassment claims that occurred in 2017 and 2018.¹ 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* has not been referenced in any decisions, to date, in the instant proceeding and is therefore, not relevant.² 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

¹ The *US Safety Report* was introduced into evidence at the Order to Show Cause evidentiary hearing and identified as CPUC-18.

² *Verified Statement*, at 30.

relevant area of inquiry by the assigned Commissioner and assigned Administrative Law Judges (ALJs).

2. Procedural Background

2.1. The December 19, 2019 Ruling

Consistent with the Commission's authority regulate TNCs 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* in the instant proceeding and to answer questions regarding sexual assault and sexual harassment claims relevant to Uber's California transportation operations. 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.
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*.³

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.⁴
- 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.⁵
- The December 19, 2019 Ruling singles out Uber whereas it should be directed at the entire industry.⁶
- Ordering Uber to file and serve the US Safety Report that is already public is unnecessary.⁷

³ *Motion for Reconsideration*.

⁴ *Id.*, at 1.

⁵ *Id.*, at 2.

⁶ *Id.*

⁷ *Id.*

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.⁸ The California Public Utilities Commission (Commission or CPUC) is not a law enforcement agency that investigates or has experience in sexual assaults.⁹

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.¹⁰
- 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.¹¹
- Uber may not have a complete accounting of the incident (*e.g.*, only one side of the story).¹²
- Public disclosure may discourage other victims from coming forward.¹³
- 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

⁸ *Id.*, at 4.

⁹ *Id.*

¹⁰ *Id.*, at 5.

¹¹ *Id.*

¹² *Id.*, at 6.

¹³ *Id.*

where the attacker may not have committed any sexual assault as reported.¹⁴

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."¹⁵

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.¹⁶ 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.¹⁷

Finally, Uber claims there is no guarantee that the Commission will maintain the confidentiality of this sensitive data.¹⁸

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

On January 27, 2020, the assigned ALJ denied Uber's *Motion for Reconsideration*.¹⁹ 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

¹⁴ *Id.*

¹⁵ *Id.*, at 7.

¹⁶ *Id.*, at 8.

¹⁷ *Id.*

¹⁸ *Id.*, at 10.

¹⁹ *Id.*

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.)

Filing under seal ensures that 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.

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

On January 30, 2020, Uber filed its *Response* to the *December 19, 2019 Ruling*. In its *Response*, Uber stated it received 1,243 reports of sexual assault and sexual harassment within California,²⁰ 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*. In its *Response* 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*

²⁰ *Response*, at 5.

Requirements of the December 19, 2019 ALJ Ruling Ordering Uber Technologies, Inc. to File and Serve its US Safety Report (Motion for Stay).

2.2.3. 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

Questions 1.1., 1.2., and 1.4. requested that Uber provide:

- 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.”²¹ 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.”²²

Questions 2.4.1., 2.4.2., 2.4.3., and 2.4.4. requested that Uber provide:

- b. Data on Sexual Assault and Sexual Harassment Complaints

Uber objected to providing specific data on the witnesses, including the identity of victims, date, time, and location of each incident, a detailed 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 had done so in its first *Motion for Reconsideration* and that public disclosure of this information would be “unconscionable” as it would “further violate people who

²¹ *Id.*, at 2.

²² *Id.*

have already been victimized.”²³ Uber further asserted 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.”²⁴ The balance of Uber’s objections are a repetition of the objections raised in its first *Motion for Reconsideration*.

2.2.4. 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.

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

²³ *Id.*, at 6.

²⁴ *Id.*

2.2.6. Assigned Administrative Law Judge Order to Show Cause

On July 27, 2020, the Assigned Administrative Law Judge (ALJ) (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*.²⁵ Uber complied with the filing deadline for the *Verified Statement*.²⁶

2.2.7. The Evidentiary Hearing

The OSC hearing was conducted *via* Webex on September 1, 2020. Assigned Commissioner Shiroma appeared and participated in the hearing. Appearing for Uber were Uber's counsel (Messrs. Vidhya Prabhakaran and Robert Maguire) and Uber's witness, Ms. Tracey Breeden, who is Uber's Head of Safety and Gender-Based Violence Operations. Mr. Prabhakaran also served as a witness for Uber.

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

2.2.8. The Presiding Officer's Decision

On December 14, 2020, the Judge Mason issued his *Presiding Officer's Decision (POD)* which found that Uber refused, without any legitimate legal or

²⁵ 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*.

²⁶ 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*. 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.

factual grounds, to comply with his *December 19, 2019* and *January 27, 2020* Rulings. As a result of this defiance of the Commission's regulatory authority, the *Presiding Officer's Decision* concluded that Uber 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 should be penalized in the amount of \$59,085,000.00. The *Presiding Officer's Decision* recommended that Uber's permits to operate as a TNC and a TCP be suspended if Uber failed 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 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 assigned 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.

2.2.9. Uber's Appeal and Settlement Negotiations

On January 13, 2021, Uber filed its *Appeal of the Presiding Officer's Decision Imposing Penalties Against Uber Technologies, Inc.*²⁷ As part of its Appeal, Uber renewed its request to participate in some form of alternative dispute resolution to resolve the issues raised in the *Presiding Officer's Decision* and *Uber's Appeal*.

On February 22, 2021, the assigned ALJ granted Uber's *Motion Requesting ADR*. In his *ADR Ruling*, the assigned ALJ identified the following topics to be addressed:

²⁷ Two days prior, The Rape, Abuse & Incest National Network (RAINN) also filed an *Appeal from the Presiding Officer's Decision*.

- How to provide to the Commission information about the authorship of Uber’s US Safety Report (Questions 1.1., 1.2., and 1.4. from the December 19, 2019 Ruling) in a manner that best protects the claims of employee privacy;
- How to provide to the Commission information about sexual assaults and sexual harassment (Questions 2.4.1., 2.4.2., 2.4.3., and 2.4.4. from the December 19, 2019 Ruling) in a manner that best protects the claims of privacy of personally identifiable information;
- What monetary amount, if any, Uber should pay as part of a joint settlement; and
- What other regulatory sanctions, if any, should be imposed on Uber.

The assigned ALJ also invited RAINN to participate in the ADR process.

On March 8, 2021, Assistant Chief ALJ Kimberly Kim and ALJ Charles Ferguson were assigned as mediators for this ADR and CPED was directed to participate in the ADR, along with its counsel. From March through July 2021, CPED, Uber, and RAINN (the Parties) participated in what they termed “a non-stop marathon of negotiation,” assisted by the mediators. Ultimately the Parties reached the instant Settlement Agreement resolving the issues outlined by the assigned ALJ in the *ADR Ruling*.

2.2.10. The Settlement Agreement

On July 15, 2021, CPED, Uber, and RAINN filed a *Joint Motion for Adoption of a Settlement Agreement*, a copy of which is attached to this decision as Attachment A. The salient terms of the Settlement Agreement are summarized below:

- A. Uber acknowledges and affirms:
- (1) The Commission has broad authority to protect public safety and specifically to regulate charter-

party carriers like Uber pursuant to the Public Utilities Code;²⁸

- (2) Uber must “maintain the respect due to the Commission, members of the Commission and its Administrative Law Judges” pursuant to Rule 1.1;²⁹ and,
 - (3) Uber shall abide by Public Utilities Code section 314(a) with respect to the examination of its agents and employees.³⁰
- B. Uber agrees to pay \$150,000.00 (One Hundred and Fifty Thousand Dollars) (the “Settlement Fine Payment”).³¹
- C. Uber agrees to deposit with the Commission \$9,000,000.00 (Nine Million Dollars) in funding to support safety initiatives directly promoting the public interests at the heart of the R.12-12-011 (the “Safety Settlement Funds”) which includes:
- (1) Contribution of \$5,000,000.00 (Five Million Dollars) of the Safety Settlement Funds to the California Victim’s Compensation Fund for the compensation of victims of sexual violence and violence; and
 - (2) Allocation of the remaining \$4,000,000.00 (Four Million Dollars) of the Safety Settlement Funds to support the goals of R.12-12-011 and Commission efforts to address physical and sexual violence in the passenger carrier industry, including by (a) an industry-wide evaluation, informed or conducted by industry experts, of the California TNC industry’s existing protocols and practices for classifying and reporting violence, including sexual violence, (b) the development and recommendation of industry-wide best practices, informed or conducted by industry

²⁸ Settlement Agreement, Exhibit A, Recitals and Stipulated Facts, term A.

²⁹ Settlement Agreement, Exhibit A, Recitals and Stipulated Facts, term C.

³⁰ Settlement Agreement, Exhibit A, Recitals and Stipulated Facts, term D.

³¹ Settlement Agreement, Exhibit A, Agreement, term E.1.

experts, for receiving, reporting, and responding to complaints of violence, including sexual violence, and (c) industry-wide education, outreach, and training on all forms of violence, including sexual violence, for the passenger carrier industry, including TNCs.³²

- D. Uber agrees to produce data that fully resolves the data needs with respect to 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 consistent with the format, process, and production timeframe agreed to under Agreement Sections A and B.³³
- E. Uber, CPED and RAINN agree to a forward-looking framework for Uber's provision of upcoming Safety Report data, and a further commitment regarding future comprehensive TNC industry data collection regarding sexual violence;³⁴
- F. Uber and CPED agree to file a joint motion in R.12-12-011 no later than 30 days after the Commission's adoption of the Agreement requesting that the Commission require all TNCs to release public versions of previously filed TNC annual reports kept confidential by the Commission pursuant to D.13-09-045, footnote 42 and follow the requirements of General Order ("G.O.") 66-D to keep any portion of those previously filed TNC annual reports confidential.³⁵
- G. Uber agrees to submit to CPED a public version of the data from the 2014 to 2020 Annual Reports and may redact portions of the data that it seeks to keep

³² Settlement Agreement, Exhibit A, Agreement, term E.4.

³³ Settlement Agreement, Exhibit A, Agreement, term A.1-A.3.

³⁴ Settlement Agreement, Exhibit A, Agreement, section C.

³⁵ Settlement Agreement, Exhibit A, Agreement, term D.1.

confidential and submit a claim of confidentiality in accordance with the G.O. 66-D process.³⁶

3. Discussion: The Standards for Approval of a Settlement Agreement

3.1. The Rule 12.1 Standard

The standard of review for settlement agreements is set forth in the Commission's Rules of Practice and Procedure, Rule 12.1(d), which states as follows: "The Commission will not approve settlements, whether contested or uncontested, unless the settlement is (1) reasonable in light of the whole record, (2) consistent with law, and (3) in the public interest." The proponents of a settlement have the burden of demonstrating that the settlement satisfies Rule 12.1(d).

3.2. The Standard if All Parties Support the Settlement Agreement

In addition, if the moving parties assert that a settlement agreement is supported by all parties, then the Commission must confirm:

- That the settlement commends the unanimous sponsorship of all active parties to the proceeding;
- That the sponsoring parties are fairly reflective of the affected interests; and
- That no term of the settlement contravenes statutory provisions or prior Commission decisions; and
- That the settlement conveys to the Commission sufficient information to permit us to discharge our future regulatory obligations with respect to the parties and their interests.³⁷

³⁶ Settlement Agreement, Exhibit A, Agreement, term D.2.

³⁷ Decision 92-12-019; 46 CPUC 2d 538, 552; and Decision 90-08-068, at 37.

The Commission favors the settlement of disputes.³⁸ This policy supports many goals, including reducing the expense of litigation, conserving scarce Commission resources, and allowing parties to reduce the risk that litigation will produce unacceptable results.³⁹ The policy favoring settlements weighs against the Commission's alteration/modification of uncontested settlements such as the one before us here.⁴⁰ As long as a settlement is reasonable in light of the whole record, consistent with the law, and in the public interest, it should normally be adopted without alteration.⁴¹

3.3. The Standard if the Settlement Agreement Includes a Penalty or Fine

As noted above, part of the Settlement Agreement requires Uber to pay a fine of \$150,000. The Commission must analyze the settlement amount in order to determine the reasonableness of the fine. We will examine the Commission's general criteria and elements for establishing the amount of a fine as set forth in Decision (D.) 98-12-075 (84 CPUC2d 155, 188-90):

3.3.1. The Severity of the Offense

A fine amount should be proportionate to the severity of the offense. To determine the severity of the offense, the Commission considers the following factors:

- 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

³⁸ Decision 07-05-060, at 6.

³⁹ *Id.* Slip Op, at 6.

⁴⁰ *Id.*

⁴¹ Decision 06-06-014, at 12.

the violation, and (ii) the unlawful benefits gained by the public utility. Generally, 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.⁴²

3.3.2. Conduct of the Utility

The size of a fine should reflect the conduct of the utility. As such, the Commission considers the following factors:

- The utility's actions to prevent a violation: Utilities are expected to take reasonable steps to comply with applicable laws and regulations. A utility's past record of compliance may be considered in assessing a penalty.
- The utility's actions to detect a violation: Utilities are expected to diligently monitor their activities. Deliberate, as opposed to inadvertent wrongdoing, is 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 utility's actions to disclose and rectify a violation: Utilities are expected to promptly bring a violation to the Commission's attention. What constitutes "prompt" will depend on circumstances. Steps taken by a utility to

⁴² 1998 Cal. PUC LEXIS 1016, at 71-73.

promptly and cooperatively report and correct violations may be considered in assessing any penalty.⁴³

3.3.3. Financial Resources of the Utility

The size of a fine should reflect the financial resources of the utility. When assessing the financial resources of the utility, the Commission considers the following factors:

- 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 utility 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 utility's financial resources.⁴⁴

3.3.4. Totality of the Circumstances

The fine should be tailored to the unique facts of each case. When assessing the unique facts of each case, the Commission considers the following factors:

- 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.
- The public interest: In all cases, the harm will be evaluated from the perspective of the public interest.⁴⁵

⁴³ *Id.*, at 73-75.

⁴⁴ *Id.*, at 75-76.

⁴⁵ *Id.*, at 76.

3.3.5. The Role of Precedent in Setting the Fine or Penalty

Any decision that imposes a fine or penalty should address previous decisions that involve reasonably comparable factual circumstances and explain any substantial differences in outcomes.⁴⁶

4. Application of the Settlement Agreement Approval Standards to the Facts

4.1. The Settlement Agreement is Reasonable in Light of the Whole Record

A proposed settlement is reasonable in light of the whole record if, among other things, it saves the Commission significant expenses and use of its resources, when compared to the risk, expense, complexity, and likely duration of further proceedings, while still protecting the public interest.⁴⁷ Generally, the parties' evaluation should carry material weight in the Commission's review of a settlement.⁴⁸

The Commission agrees with the Parties' assessment that without a settlement, this matter would have continued a protracted and expensive litigation path. As set forth above, in the background section of this decision, Uber filed multiple motions that sought to impede the Commission's efforts to secure compliance with the *December 19, 2019 Ruling*. Prior to the *Presiding Officer's Decision* being issued, Uber raised several legal arguments in contesting the Commission's authority to require a TNC to provide information, even if provided under seal, regarding sexual assaults and sexual harassment complaints arising out of a TNC's passenger transportation service. RAINN also

⁴⁶ *Id.*, at 77.

⁴⁷ *In re Southern California Gas Co.* (1999) D.00-09-034, 2000 Cal. PUC LEXIS 694, at 29.

⁴⁸ *Id.*, at 31.

raised similar arguments and questioned the Commission's capability in handling the sensitive nature of these assault and harassment claims, especially if Commission staff were to reach out to the alleged victims to follow up on their claims.

After the *Presiding Officer's Decision* was issued, Uber filed its *Appeal*, arguing that the process leading up to the Presiding Officer's Decision violated due process, and that the penalty violated the excessive fines clause of the Eighth Amendment, privacy (*e.g.*, the potential re-traumatizing of victims of sexual assault, whether victims will be disincentivized in reporting their assaults), and jurisdictional issues (*e.g.*, whether the Commission is the appropriate agency to receive sexual assault and sexual harassment information), as well as whether the penalty contravened relevant Commission precedent. Uber has raised Constitutional and other legal challenges to the Presiding Officer's Decision that, if fully litigated, could take years for the courts to resolve. The Settlement Agreement resolves the issues in a manner that enables the Commission to carry out its regulatory responsibilities and avoids the delay and expense of protracted litigation. For all concerned, the Settlement Agreement is reasonable in light of the record as a whole as it will bring this chapter of the TNC proceeding to a close.

4.2. The Settlement Agreement is Consistent with the Law

The Parties assert, and the Commission agrees, that there is no known statutory provision or prior Commission decision that would be contravened by adopting the Settlement Agreement. The Commission has approved and adopted settlement agreements involving TNCs where, as here, the matter of a TNC's duty to comply with the Commission's regulatory authority has been

raised, and the adversaries have been cooperative in the settlement negotiation process.⁴⁹ Additionally, and under similar circumstances, the Commission has adopted settlement agreements in other situations where the settlement resolved the issues raised in the scope of an OSC in an expeditious manner.⁵⁰ Finally, the Settlement Agreement is consistent with other proceedings where a TCP has been charged with violations of Pub. Util. Code § 5381, among other statutes⁵¹.

In sum, the Commission finds that there is sufficient analogous law to conclude that the Settlement Agreement is consistent with Commission law.

4.3. The Settlement Agreement is in the Public Interest

The Parties have set forth several reasons to support their position that the Settlement Agreement is in the public interest. The Commission has reviewed each of these reasons and, for the reasons that follow, agrees with the Parties and

⁴⁹ (See Decision 18-11-006 [*Decision Adopting the Settlement Agreement, as Amended, Between Rasier-CA, LLC and the Consumer Protection and Enforcement Division Regarding Zero Tolerance Rules in Safety Requirement D of Decision 13-09-045*]; and Decision 15-07-012 [*Decision Approving the Settlement Agreement between the Commission's Safety and Enforcement Division and Lyft, Inc. (Lyft) Regarding Lyft's Compliance with D.13-09-045's Reporting Requirements*].)

⁵⁰ (See Decision 94-11-018 (1994) Cal PUC LEXIS 1090 at *153 [Decision approved and adopted the proposed settlement agreement that "address[ed] the issues raised in the OSC of the Echo Summit site, and also resolve[d] potential issues concerning" other sites]; and Decision 07-03-048 at 4 [Decision approved and adopted proposed settlement agreement that resolved issues raised in an investigation "quickly and fairly"].)

⁵¹ (See Decision 06-04-039 (Wine & Roses Limousine was charged with operating without proper workers' compensation insurance coverage in violation of Pub. Util. Code § 5378.1, among other violations. A fine of \$5,000 per violation was stayed, in part, to provide a greater incentive for compliance and cooperation.); Decision 04-12-037 (The Ultimate Limousine failed to enroll drivers in the California Department of Motor Vehicles (DMV) Pull Notice Program in violation of Pub. Util. Code § 5381, among other violations. Settlement in the amount of \$20,000 was reached, payable in installments. The Commission took into account the size of the business and the need for deterrence in setting the amount.); and Decision 03-10-079 (Tour Designs failed to enroll drivers in the DMV Pull Notice Program and was fined \$10,200 plus the cost of the investigation into the offenses.)

concludes that, collectively, they support the conclusion that the Settlement Agreement is in the public interest.

4.3.1. The Settlement Agreement Recognizes the Commission's Broad Safety and Regulatory Authority

Uber acknowledges the Commission's broad safety and regulatory authority over TNCs. (Settlement Agreement, Recitals and Stipulated Facts, term A.) This acknowledgement is then broken down into sub terms: 1.) the Commission's broad authority to protect public safety and to regulate charterparty carrier like Uber pursuant to the Public Utilities Code; 2.) Uber's duty under Rule 1.1. to maintain the respect due to the Commission, its members, and its Administrative Law Judges; and 3.) Uber's duty to abide by Pub. Util. Code § 314(a) with respect to the examination of its agents and employees.

The Commission finds that each of these sub terms helps to resolve the dispute leading up to this Settlement Agreement and, hopefully, provides the necessary groundwork for eliminating Uber's challenges to the Commission's regulatory authority in the future. The Commission's authority to regulate Uber and other TNCs is based on Public Utilities Code §§ 701, 5381, 5352, and 5441. 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 harassment by driver, or passengers [.]"⁵²

By acknowledging the Commission's authority and Uber's duty to comply with that authority, the Commission will be able to carry out its regulatory duties in an expeditious fashion. Moreover, Commission access to information regarding sexual assault and sexual harassment claims (including requests for the examination of Uber employees) will permit the Commission to gain access to relevant information that will inform the development of corrective measures and/or designed to prevent such occurrences in the future. By providing the Commission with this information, the Commission will be able to fulfill its statutory duty to ensure that each TNC's transportation service is provided as safely as possible to the riding public.

⁵² *Amended Phase III.C. Scoping Memo and Ruling*, at 7-8.

4.3.2. The Settlement Agreement Provides a Pathway for Compliance with the December 19, 2019 Ruling

Uber agrees to provide its remaining responses to the *December 19, 2019 Ruling* consistent with the format, process, and production timeframe agreed to under the Settlement Agreement. Section A of the Settlement Agreement (Timeline and Confidentiality of Uber's Responses) provides that within 30 days of the Commission's adoption of the Settlement Agreement, Uber will submit full responses to Questions 1.1., 1.2., 1.4., 2.4.1., and 2.4.4. under seal, with a copy to CPED. (Settlement Agreement, Section A.1.) Within 30 days of receiving Uber's response, CPED may request additional data referenced in Question 2.4.2. for up to 15% of the incidents included in the Question 2.4.1. dataset. (Settlement Agreement, Section A.2.) Failure by Uber to produce data in a timely manner will be a violation of the terms of the Settlement Agreement and the Commission order adopting the Settlement Agreement. (Settlement Agreement, Section A.3.) The Settlement Agreement also specifies the format and other particulars by which Uber will provide its responses to the *December 19, 2019 Ruling*. (Settlement Agreement, Section B. [Data Terms].) By agreeing to these terms, Uber will comply with the *December 19, 2019 Ruling*, which is essential to the efficient operation of Commission's regulatory authority.

The Settlement Agreement also provides a protocol for future sexual assault and sexual harassment data requests. First, within 60 days of the Commission's adoption of this Settlement Agreement, Uber agrees to ensure that, for any incident of sexual assault or sexual misconduct occurring thereafter, Uber will offer witnesses involved in such incidents an opportunity to opt-in in writing to consent to be contacted by the Commission. (Settlement Agreement, Section C.1. [Future Data Requests].) CPED agrees to notify Uber before it

contacts any such witnesses and agrees to allow Uber a reasonable period of time to coordinate with organizations, such as RAINN, on any anticipated contact of witnesses. (*Id.*) Second, CPED agrees that future data requests for comprehensive Safety Report datasets or comprehensive datasets associated with sexual violence will be issued broadly to the TNC industry. (*Id.*, Section C.2.) Third, the Settlement Agreement provides a production protocol if Uber issues future Safety Reports. (*Id.*, Section C.3.) Fourth, if Uber makes a confidentiality claim pursuant to G.O. 66-D, Uber will provide a public version of the submission. (*Id.*, Section C.4.)

On the whole, the various components discussed above convince the Commission that the Settlement Agreement contains sufficient provisions for Uber to comply with the *December 19, 2019 Ruling* and with future requests that might be made for sexual assaults and sexual harassment information arising out of Uber's TNC passenger transport services.

4.3.3. The \$9,150,000.00 Payment is in the Public Interest

For several reasons, Uber's payment of \$9,150,000 is in the public interest. First, \$5,000,000.00 will be donated to the California Victim's Compensation Fund to compensate victims of sexual violence. (Settlement Agreement, Section E.3. [California Victim's Compensation Fund].) Second, \$4,000,000.00 will be used for (1) an industry-wide evaluation of the California TNC industry's existing protocols and practices for classifying and reporting violence, including sexual violence; (2) the development and recommendation of industry-wide best practices for receiving, reporting, and responding to complaints of violence, including sexual violence; and (3) industry-wide education, outreach, and training on all forms of violence, including sexual violence, for the passenger

carrier industry, including TNCs. (Settlement Agreement, Section E.4. [Support for Commission Efforts to Address Physical and Sexual Violence in the Passenger Carrier Industry].) Third, Uber agrees to pay settlement fine in the amount of \$150,000.00. (Settlement Agreement, Section E.1. [Settlement Fine Payment].) The Commission sees the value and linkage between the \$9,000,000.00 payment and the benefits this payment can have in compensating victims of sexual assault and sexual harassment, and in helping the TNC industry develop best training and investigative practices.

We recognize that a case could be made that a larger settlement fine should be imposed for Uber's refusal to respond to the *December 19, 2019 Ruling*, even by filing a response under seal. Nevertheless, in view of the totality of the circumstances, the Commission accepts the fine amount in the proposed settlement. The Parties have engaged in many months of protracted settlement negotiations where all parties gain advantages and give concessions with the objective of reaching an agreement that is mutually agreeable to all participants. Thus, the reasonableness of the \$150,000.00 fine amount must be considered as part of the larger context of the total monies paid under this Settlement Agreement, and the additional \$9,000,000.00 is not an insignificant amount. We will not modify the monetary element of the Settlement Agreement for fear that the many months of bargaining and acceptances that resulted in this Settlement Agreement will become unraveled.

In sum, the Commission finds that the \$9,150,000.00 payment is reasonable under the totality of the circumstances.

4.3.4. The Settlement Agreement Promotes Greater Transparency into the TNC Industry

The Settlement Agreement includes provisions that we find will promote greater public understanding of the TNC's operations. First, no later than 60 days after the Commission adopts this Settlement Agreement, Uber has agreed to provide CPED with a public version of the data underlying its 2014 to 2020 Annual Reports. (Settlement Agreement, Section D.2. [Provision of Public Version of Previous Annual Reports].) Second, no later than 30 days after the Commission adopts this Settlement Agreement, Uber and CPED commit to filing a joint motion in this proceeding to request that the Commission require all TNCs to release public versions of all previously filed TNC Annual Reports, which had been kept confidential by virtue of footnote 42 in D.13-09-045. (Settlement Agreement, Section D.1. [Motion to Waive Confidentiality of Prior Annual Reports].) Third, CPED agrees to issue future data requests for comprehensive safety report datasets associated with sexual assaults and sexual harassment broadly to the TNC industry as a whole, though this settlement term in no way impacts CPED's inherent enforcement discretion. (Settlement Agreement, Section C.2. [TNC-Wide Data Requests].)

Since opening this Rulemaking, the public has expressed a continued interest in learning more about TNCs based on the data in the Annual Reports that each TNC must provide to the Commission. By gaining access to the data, the public can gain greater insights into understanding both how TNCs operate, whether they operate in a safe and non-discriminatory manner, and the societal and environmental impact of TNC operations.

The Commission finds that for all the foregoing reasons the settlement terms further this public interest in transparency. The Settlement Agreement's

intention to take steps to make such information public will help achieve the laudable goal of promoting transparency into TNC passenger transport services.

4.3.5. The Settlement Agreement Adds Additional Protections for Victims of Sexual Violence

It is important to stress that prior to the Settlement Agreement being executed, the Commission has consistently maintained measures to protect the confidentiality of data submitted to the Commission that contains private 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*.⁵³

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.

⁵³ FIPS PUB 199.

The prospect of criminal liability in Section 583 provides a powerful incentive against a current or former Commission employee disclosing confidential information. Thus, with the foregoing measures, the Commission is capable of protecting the privacy interests of a sexual violence victim from the public disclosure of their personally identifiable information.

The Settlement Agreement adds a supplemental layer of protection for these victims. First, Uber will anonymize Safety Report incident data it provides to the Commission, removing victim and witness personally identifiable information. (Settlement Agreement, Section B. [Data Terms].) Second, Uber shall offer witnesses an opportunity to provide written consent to be contacted by the Commission if the Commission believes such contact would be necessary to further the Commission's regulatory safety goals. (Settlement Agreement, Section C.1. [Future Data Requests].) Witnesses will be able to withdraw their consent at any time. (*Id.*)

By including these provisions, the Commission finds that the Settlement Agreement is taking an extra measure of protection to safeguard victims of sexual violence.

4.3.6. The Settlement Agreement Protects Claims of Employee Privacy

One of the more contentious issues was whether Uber would have to answer Questions identifying the identity of Uber employees who worked on the *Safety Report* or received reports of sexual assault and sexual harassment. (Questions 1.1., 1.2., 1.4, and 2.4.) Uber objected to providing this information, arguing that the Commission previously recognized that employee information may be entitled to protection and should not be disclosed publicly absent a

compelling reason.⁵⁴ With the Settlement Agreement, Uber will be able to provide the employee information responsive to Questions 1.1., 1.2., 1.4. and 2.4. under seal.

Submittal of responses to Questions 1.1., 1.2., 1.4., and 2.4. under seal will bring the dispute over employee information to an end so that the Commission can resume its follow up investigation with Uber staff and understand how the sexual assault and sexual harassment claims were investigated and resolved, as well as understand what measures are in place to prevent such claims from occurring in the first instance.

4.3.7. The Settlement Agreement Commands the Unanimous Support of the Parties

Uber, CPED, and RAINN are the only three parties to this adjudicatory track of this proceeding and are signatories to this Settlement Agreement.⁵⁵ The Parties assent that the Settlement Agreement has their unanimous support.⁵⁶

5. The Sponsoring Parties are Fairly Reflective of the Affected Interests

CPED advisory staff represents the Commission's regulatory interests by overseeing the TNCs' preparation of Annual Reports and assuring that all required information is provided. CPED is responsible for ensuring that any missing information is provided, that reports are prepared for the Commission's and the public's edification, and that CPED assist assigned Administrative Law Judges if enforcement measures are necessary to ensure complete compliance with data requests.

⁵⁴ *Joint Motion*, at 15, and footnote 28.

⁵⁵ *Joint Motion* at 1. Settlement Agreement at 1.

⁵⁶ *Joint Motion*, at 20.

At the other end of the interest spectrum are the TNCs. The Commission has permitted TNCs to operate in California provided that they comply with the regulatory and reporting requirements, and that they comply with rulings from the assigned Administrative Law Judge if additional information is required.

Finally, RAINN is the representative experienced in understanding and representing the rights of sexual violence victims.

Thus, CPED, Uber, and RAINN represent the affected interests that are covered by this Settlement Agreement.

6. The Settlement Agreement does not Contravene Statutory Provisions or Prior Commission Decisions

As noted above in Section 3.2 of this decision, there is no known statutory provision or prior Commission decision that would be contravened by adopting the Settlement Agreement.

6.1. The Settlement Agreement Conveys Sufficient Information to Permit the Commission to Discharge its Regulatory Function

As part of the Settlement Agreement, the Parties have adopted protocols to enable Uber to comply with the *December 19, 2019 Ruling*, and for CPED to follow up with Uber in the event additional information or clarification is needed. The Settlement Agreement has established clear timetables for data responses and production, and for future actions that are designed to promote greater transparency in the TNC operations.

The Commission finds that the Settlement Agreement conveys sufficient information to permit the Commission to discharge its regulatory function.

7. The Settlement Agreement's Penalty Payment is Consistent with Commission Standards for Determining the Amount of a Penalty

7.1. Severity of the Offense

The Commission must examine if the violations resulted in physical, economic, or regulatory harm. Here, the Parties agree that the harm in question was to the Commission's regulatory authority so a fine should be imposed. Here, the fine of \$150,000.00, while not large compared to other penalties imposed on Uber, is part of a larger payment package of \$9,150,000.00. On the whole, the Commission finds that this settlement is sufficiently large enough to penalize Uber for the severity of its offense *i.e.*, the failure to comply with the *December 19, 2019 Ruling*.

Moreover, the size of the fine should also be affected by any mitigating factors. The Commission finds those mitigating circumstances are present. Since the Parties have worked diligently to reach this Settlement Agreement, Uber should receive some benefit for working cooperatively with CPED staff rather than forcing the Commission to expend monies litigating the allegations in what could have turned into a protracted proceeding and caused further harm to the regulatory process.

7.1.1. Conduct of the Utility

The Commission must take into account Uber's conduct to prevent a violation, the actions it took to detect a violation, as well as its actions to disclose and rectify a violation. Once the assigned ALJ brought the problem of noncompliance with the *December 19, 2019 Ruling* to Uber's attention, Uber has made various overtures to participate in mediation to work out a protocol to comply with the *December 19, 2019 Ruling* while protecting the privacy interests of sexual violence victims and Uber's employees. Given Uber's cooperative

efforts in the mediation process, the Commission concludes that the financial settlement agreed to is consistent with Commission standards in determining the size of the fine.

7.1.2. Financial Resources of the Utility

In assessing a fine, the Commission is mindful that the level should be set at an amount that deters future violations but is not so large as to run afoul of the federal constitutional prohibitions against excessive fines. The Commission has determined that a settlement of \$9,150,000.00 is sufficiently large to deter future violations of assigned Administrative Law Judge rulings and, since Uber has agreed to pay this amount, the payment will not constitute an excessive fine.

7.1.3. Totality of the Circumstances

The Commission must consider Uber's conduct in relation to the wrongdoing (*i.e.* did Uber mitigate or exacerbate the wrongdoing) and the impact of the wrongdoing on the public interest. Here, once the problem of Uber's failure to comply with the *December 19, 2019 Ruling* came to light and the OSC was issued, Uber has worked cooperatively with CPED and RAINN in the mediation process to take steps to rectify the problem and to develop a go-forward path to ensure compliance. In addition, Uber and CPED's shared common goal to improve transparency in TNC operations will have a positive impact on the public interest.

In sum, the totality of circumstances weighs in favor of the Commission's adoption of the penalty amount.

7.1.4. The Role of Precedent in Setting the Fine or Penalty

Previously, at Section 3.2 of this decision, the Commission reviewed precedent involving penalties and settlements regarding other transportation

providers. We do believe that the size of the fine is appropriate as it is part of a significant settlement amount that Uber has agreed to pay.

8. Conclusion

The Commission appreciates the effort when parties with disparate and contentious factual and legal positions can reach a settlement. In this instance, the Settlement Agreement advances two important policy goals that the Commission wishes to underscore.

First, Uber's acknowledgement of the Commission's broad authority to protect the public safety by regulating charter-party carriers, like Uber, pursuant to the Public Utilities Code is a refreshing departure from Uber's previous legal positions. When Uber first appeared before the Commission, it claimed to be a software company that provides an IP-enabled information service through a smartphone App and therefore exempt from the Commission's jurisdiction and subject to the 1996 Federal Telecommunications Act.⁵⁷ The Commission appreciates that Uber has abandoned such arguments and has publicly agreed to comport itself in a manner that recognizes and respects the Commission's duty to regulate TNC operations and to gather information about those operations for the public good.

Second, Uber has publicly agreed to conduct itself in a manner consistent with Rule 1.1 and will "maintain the respect due to the Commission, members of the Commission and its Administrative Law Judges." This Settlement Agreement represents a welcome change to Uber's prior conduct wherein it questioned the authority of the assigned ALJ to ask for information regarding sexual assault and sexual harassment claims, including asking the assigned ALJ

⁵⁷ *Uber's Opening Comments* (January 28, 2013), at 5 and 10.

to justify why the Commission needed the information before Uber would decide whether it would comply.

9. Comments on Proposed Decision

The proposed decision in this matter was mailed to the parties in accordance with Pub. Util. Code § 311, and comments were allowed under Rule 14.3 of the Commission's Rules of Practice and Procedure. Comments were filed on _____, 2018, by the following parties _____.

10. Assignment of Proceeding

Genevieve Shiroma is the assigned Commissioner and Robert M. Mason III and Debbie Chiv are the assigned Administrative Law Judges in this proceeding. Robert M. Mason III served as the Presiding Officer.

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, 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. During the Hearing, Uber renewed its request for mediation.

10. On February 21, 2021, the presiding officer granted Uber's request for mediation. CPED, Uber, and RAINN (the Parties) engaged in mediation which involved extensive efforts over approximately three months (April to June 2021).

11. Parties entered into a Settlement Agreement on July 15, 2021. As part of the Settlement Agreement, Uber agreed to pay a \$150,000 fine and \$9 million in Safety Settlement funding.

Conclusions of Law

1. It is reasonable to conclude that all issues in this proceeding against Uber with respect to its refusal to comply with the *December 19, 2019* and *January 27, 2020 Rulings* are encompassed by, and resolved in the Settlement Agreement.

2. It is reasonable to conclude that the parties to the Settlement Agreement are all of the active parties in the adjudicative track of this proceeding.

3. It is reasonable to conclude that the Parties are fairly reflective of the affected interests.

4. It is reasonable to conclude that no term of the Settlement Agreement contravenes statutory provision or prior Commission decisions.

5. It is reasonable to conclude that the Settlement Agreement is reasonable in light of the record, is consistent with law, and is in the public interest and should be approved.

6. It is reasonable to conclude that the payment of \$9,150,000.00 should be approved as it satisfies the criteria for the imposition of penalties or fines set forth in D.98-12-075.

O R D E R

IT IS ORDERED that:

1. The Settlement Agreement between the Consumer Protection and Enforcement Division, Uber Technologies, Inc., and the Rape, Abuse & Incest National Network, Inc., attached hereto as Attachment A (the Joint Motion and Settlement Agreement), is approved. The provisions from the Settlement Agreement covering the timeline and confidentiality of Uber's responses, data terms, future data requests, and previously submitted annual reports, are incorporated into this Ordering Paragraph by reference.

2. Uber Technologies, Inc. (Uber) shall make one lump sum payment of \$150,000.00 by check, money order, or other form of payment acceptable to the Commission, 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 of the effective date of this decision. Uber shall write on the fact of the check or money order "For deposit to the General Fund pursuant to Decision_____."

3. Uber Technologies Inc. shall deposit with the Commission, within 30 days of the effective date of this decision, one lump sum payment of \$9,000,000.00

(Nine Million Dollars) in funding to support safety initiatives (the Safety Settlement Funds). The Commission's Fiscal Office will receive the \$9,000,000.00 payment, subject to the following conditions:

a. The Commission's Fiscal Office will create a Special Deposit Fund to receive the Safety Settlement Funds. If the Special Deposit Fund is not established within thirty days of Commission approval of this Agreement, Uber will deposit the \$9 million payment into a separate, temporary bank account administered by Uber, and provide Consumer Protection and Enforcement Division with documentation of the deposit into the account upon creation and current balance statements upon request.

b. The temporary bank account shall be a separate and dedicated account where the \$9 million payment will be deposited and subject to the following restrictions:

i. Uber shall restrict access to the funds in this account. Once deposited, funds shall only be disbursed for the purpose of transferring the total balance of the account into the Special Deposit Fund. The Director of the Consumer Protection and Enforcement Division shall provide authorization to Uber in a letter, or scanned electronic copy of a letter, authorizing Uber to direct the bank to transfer the funds to the Special Deposit Fund. The letter shall provide specific directions to complete the transfer.

c. The period of availability for these funds is 5 years from the establishment of the Special Deposit Fund, which may be extended upon approval by the Department of Finance.

d. The Special Deposit Fund shall accrue interest according to standard State practice. Accrued interest will be added to the total balance of funds distributed in accordance with this Agreement.

e. Disbursement of the Special Deposit Fund shall be directed by the Director of the Consumer Protection and Enforcement Division according to the funding designations in this Agreement.

f. If any of the funding designations set forth in this Agreement are unavailable for administrative or technical reasons, the Commission shall identify and redirect funds as appropriate and consistent with the stated objectives of this Agreement.

4. \$5,000,000.00 (Five Million Dollars) of the Safety Settlement Funds shall be transferred to the California Victim's Compensation Fund for the compensation of victims of sexual violence and violence. If the California Victim's Compensation Fund has a fund or can create a fund that provides compensation to victims of sexual violence and violence that occurred in the passenger carrier industry, the five-million-dollar transfer will be designated for that fund. Disbursement of these funds shall be prioritized and transferred as soon as reasonably practicable.

5. Up to \$1,000,000.00 (One Million Dollars) from the Safety Settlement Funds shall be used to pay for industry-wide education, outreach, and training on all forms of violence, including sexual violence, for the passenger carrier industry, including Transportation Network Companies. A portion of these funds may go towards immediate education, outreach, and training efforts and a portion may be reserved for education, outreach, and training efforts following the completion of Section E.4.b of the Settlement Agreement.

6. Up to \$3,000,000.00 (Three Million Dollars) from the Safety Settlement Funds shall be used for (1) an evaluation, informed or conducted by industry experts, of the California Transportation Network Company industry's existing protocols and practices for classifying and reporting violence, including sexual violence, and (2) the development and recommendation of industry-wide best practices, informed or conducted by industry experts, for receiving, reporting, and responding to complaints of violence, including sexual violence. The

specific tasks will be finalized in a Scope of Work and Request For Proposals by Consumer Protection and Enforcement Division after seeking input from interested parties and stakeholders.

7. The consultant(s) discussed in subparagraph above in Ordering Paragraph 6 shall be selected by a panel convened by the Consumer Protection and Enforcement Division (CPED) that will include a representative from each of CPED, Uber Technologies, Inc. and at least two other Transportation Network Companies.

8. Contract development, consultant selection, and contract implementation pursuant to the Settlement Agreement will be governed by and conform to California contracting rules and requirements.

9. Any residual funds, at the end of the period of availability, after any extensions, will be transferred to the California Victim's Compensation Fund.

10. The Commission's Director of the Consumer Protection and Enforcement Division is authorized to take any and all reasonable and necessary actions to effectuate and facilitate the successful implementation of Ordering Paragraphs 3, 4, 5, 6, 7, and 8 of this decision.

11. The *Presiding Officer's Decision Imposing Penalties Against Uber Technologies, Inc. for violation the Assigned Administrative Law Judge's December 19, 2019 and January 27, 2020 Ruling Requiring Information Regarding Sexual Assault and Sexual Harassment Claims*, and *Uber's Appeal* therefrom, are both moot and are herewith withdrawn.

12. Rulemaking 12-12-011 remains open.

This order is effective today.

Dated _____, at San Francisco, California.