



CONSUMER ATTORNEYS OF CALIFORNIA

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August 19, 2013

Commissioner Michael Peevey
California Public Utilities Commission
505 Van Ness Avenue
San Francisco, CA 94102

RE: CAOC Comments on Proposed Regulation for Network Companies (TNCs)

Dear Commissioner Peevey:

The Consumer Attorneys of California (CAOC) hereby submits the following comments regarding the Proposed Decision of Commissioner Peevey in Rulemaking 12-12-011 (hereinafter "Decision") concerning rules and regulations for Transportation Network Companies (TNCs). CAOC is a statewide association of over 3000 lawyers who represent individuals harmed by the unlawful conduct and negligence of others. CAOC strives to promote consumer safety not only through vigorous advocacy on behalf of those who are injured, but, also through participating in the development and implementation of prophylactic safety measures through the legislative and regulatory processes. Rulemaking, such as that being undertaken by the CPUC through its regulatory function, is an essential component of the administration of justice. Regulation alone, without an effective enforcement mechanism is impotent; therefore, CAOC is firmly committed to providing access to justice and dispute resolution through the civil justice system and the constitutional right to resolution of disputes through trial by jury. Thus, CAOC provides the following comments in an effort to protect those who are affected by TNC services including TNC drivers, passengers, and the general public who may be injured by the operation of such services.

At the outset CAOC wishes to indicate that it supports innovation and the benefits that innovation can bring to consumers including reduction in the costs of transportation, congestion and carbon emissions that are occasioned by public/quasi public transportation systems. However, CAOC cautions that "innovation" cannot be used to weaken consumer safety protections or as a foil for unsuspecting citizens being robbed of their constitutional rights to seek redress for their injuries and losses through the judicial system and the right to a trial by a jury of their peers.

Legislative Department

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Several TNCs have publicly proclaimed that regulation will create a “barrier to entry” for TNCs into the transportation services space thereby preventing them from offering lower cost alternatives to other established transportation services such as taxis. If requiring that vehicles be safe and fit, drivers be trained and screened, insurance be procured and provided for, and unsuspecting consumers and the public at large be afforded their due process rights, then the barrier to entry serves an important purpose, i.e., barring unsafe and unscrupulous actors from the marketplace. Creating appropriate barriers to protect the public is the role of government through its regulatory bodies such as the PUC.

CAOC’s members bring a unique perspective to the regulation of TNCs through their detailed understanding of the law and legacy of representing individuals (plaintiffs) who have suffered transportation related injuries as the result of operator negligence. Since 1872 California has recognized that those who transport or carry persons in exchange for compensation (“common carriers”) owe those who they carry a higher degree of care than ordinary citizens who do not receive compensation for transporting others. This elevated standard of care advances the public policies of providing consumer safety and confidence in a private transportation infrastructure which is essential to the smooth operation of an organized society. By maintaining an elevated standard of care, passengers, and the public at large, benefit from safe and professional transportation services. This heightened duty fosters not only a greater diligence amongst drivers who wish to avoid liability, it creates an incentive to improve the quality of the transportation fleet by mandating that this highest degree of care be extended to the provision of well maintained vehicles and trained professional drivers. Additionally, and of equal importance, application of this legal principal allows for the providers of transportation services to incorporate into their rates those costs associated with the training of personnel, maintenance of the fleet, and purchase of insurance to compensate those injured or killed by transportation providers. This distribution of the risks and costs associated with transportation services amongst all users assures that the often severe burdens caused by injury or death do not fall solely upon the injured, who may not have adequate insurance for a catastrophic event, or, in the alternative, upon the public in general who otherwise may be compelled to provide for the needs of the injured at taxpayer’s expense.

A careful review of TNC operation to-date, including many of the points referenced below (most being excerpts taken right from the terms and conditions which they force users to accept) shows that TNCs consider the costs associated with safety and accountability a barrier to entry and they, unlike other regulated entities, seek to maintain a cost advantage through exemption from the safety requirements which other transportation providers are required to meet. So, while CAOC encourages innovation and economy, it encourages a broad and deliberate perspective aimed at ensuring consumer protection.

Transportation services have constantly been evolving in California from the horse, to the stage coach, train, trolley, automobile, and plane. Methods for obtaining those services have evolved as well through letter, telegraph, phone and now internet, cell phone and “apps.” One thing has remained, and should continue to remain, constant: consumer protection through a heightened degree of care imposed upon those who transport persons in exchange for compensation. As detailed below, the law in this area, pertaining to what is commonly referred to as common carrier duty/liability, has, while evolving through the courts to acknowledge the new methods of conveyance, remained resolute: those who transport people in exchange for compensation owe those people the highest degree of care.

To understand the danger posed by these TNCs, one needs to understand the consumer protections that are currently provided to users of common carriers such as taxis, busses, limousines and other regulated carriers. Lyft, Sidecare and other “ridesharing” TNCs have carefully studied the law pertaining to common carriers and have sought, through their “terms of service,” and the predictable behavior of consumers of computer “apps” to press “accept” without thoroughly reading and understanding the contractual provisions, to exempt themselves, and the vehicles that they coordinate/provide, from these careful consumer protections.

THE PUC SHOULD DECLARE TNCs COMMON CARRIERS.

In 1872 California enacted legislation stating that “[e]veryone who offers to the public to carry persons, property, or messages, excepting only telegraphic messages, is a common carrier of whatever he [she] thus offers to carry.” (Cal.Civ.Code § 2168.) “A carrier of persons for reward must use the utmost care and diligence for their safe carriage, must provide everything necessary for that purpose, and must exercise to that end a reasonable degree of skill.” (Cal.Civ.Code § 2100.) As part of this requirement to provide the highest degree of care is the requirement that “[a] carrier of persons for reward is bound to provide vehicles safe and fit for the purposes to which they are put, and is not excused for default in this respect by any degree of care.” These are crucial consumer protections that provide confidence in the transportation infrastructure and recognize that transportation providers who receive payment owe a higher degree of care than those who merely “share a ride.”

“There are two general types of “legal duty.” The first is the duty of a person to use ordinary care in activities from which harm might reasonably be anticipated. The second is an affirmative duty where the person occupies a particular relationship to others. In the first situation, a person is not liable unless he or she is actively careless. In the second, a person may be liable for failure to act affirmatively to prevent harm. As construed by the courts, Civil Code section 2100 elevates the duty of a common carrier to its passengers to the higher, affirmative duty.” (*Ingham v. Luxor Cab Co.* (2001) 93 Cal.App.4th 1045, 1050-105.)

The California Supreme Court has ruled that “common carriers bind themselves to carry safely those whom they take into their vehicles, and owe both a duty of utmost care and the vigilance of a very cautious person towards their passengers. Such carriers are responsible for any, even the slightest, negligence and are required to do all that human care, vigilance, and foresight reasonably can do under all the circumstances.” (*Acosta v. Southern Cal. Rapid Transit Dist.* (1970) 2 Cal.3d 19, 27.

Instead of embracing their responsibilities to provide safe and accountable transportation services, these TNC providers seek to exploit the provisions of Cal.Civ.Code § 2174 which states that “the obligations of a common carrier cannot be limited by general notice on his part, but may be limited by special contract.” These TNCs, therefore, have sought to create such “special contracts” through their portals which require users click on the “accept” button and therefore agree to the “terms of service” applicable to their “platform.” These provisions, which will be unread by the vast majority of users, state, for example in Sidecar’s Terms of Service, **“Passenger expressly acknowledges that Sidecar is solely a ridesharing exchange, and not a common carrier, transportation, dispatch, limousine, taxicab, or travel service.”** Lyft states, in capital letters; **“LYFT DOES NOT PROVIDE TRANSPORTATION SERVICES, AND LYFT IS NOT A TRANSPORTATION CARRIER.”** Therefore, to ensure that these TNCs do not evade the common carrier duties, essential to public safety, **CAOC requests that the PUC amend the language (or include new language), currently contained within Section 3.2 (Discussion),** at p. 32, reading “In our view the Commission believes that TNCs do not meet the rideshare exemption and actually are for-hire transportation services” to be a more affirmative pronouncement of the TNCs’ status as a common carrier and, therefore, **to read “The Commission has determined that TNCs are common carriers as that term is defined in California Civil Code Section 2128 and, therefore owe consumers the duties which all common carriers must provide to their patrons.”** This affirmation of vital public policy is consistent with well established judicial precedent created by the California Supreme Court (citing with approval the United States Supreme Court) in *Franklin v. Southern Pac. Co.* (1928) 203 Cal. 680, 688, wherein the Court stated; “This court has consistently held the law to be that it is against public policy to permit a common carrier to limit its common-law liability by contracting for exemption from the consequences of its own negligence or that of its servants’

TNCs SEEK TO AVOID RESPONSIBILITY FOR PROVIDING/ASSURING VEHICLES ARE SAFE FOR THEIR INTENDED PURPOSE.

CAOC is concerned with TNC’s efforts to exempt themselves from the obligation to assure that the vehicles they provide/coordinate as a part of TNC services are safe and fit for their intended purposes and properly maintained so as to reduce the risk of accident or injury. Common Carriers, by law, warrant that their

vehicles are safe and fit for their intended purposes. This is often referred to as the warranty of merchantability and fitness for a particular [intended] use/purpose.

For example, Lyft's terms of service state that it requires only that a car be year 2000 or newer. They expressly state; "We, Our subsidiaries, officers, directors, employees and our suppliers provide the Lyft Platform and the Services on an "as is" basis and without any warranty or condition, express, implied or statutory." They say "Our subsidiaries, officers, directors, employees and our suppliers specifically disclaim any implied warranties of title, merchantability, fitness for a particular purpose and non-infringement."

Lyft takes no responsibility for the safety of its vehicle fleet, instead stating that it relies upon the representation of the driver that "Driver owns, or has the legal right to operate, the vehicle such Driver uses when accepting Riders, and such vehicle is in good operating condition and meets the industry safety standards and all applicable statutory and state department of motor vehicle requirements for a vehicle of its kind." Remarkably, later in its terms of service, Lyft states:

"Lyft does not offer transportation services and Lyft is not a transportation company. We are not involved in the actual transportation provided by Drivers to Riders. As a result, we have no control over the quality or safety of the transportation that occurs as a result of the Service; nor do we have any control over the truth or accuracy of the of Participants' information listed on the Lyft Platform."

Sidecar's terms of service states:

". . . Driver is not an employee or contractor of Sidecar, and [] Driver bears sole responsibility for the condition of Driver's vehicle."

"Sidecar has taken commercially reasonable steps to collect information from its Drivers, including proof of automobile registration and insurance, and has used commercially reasonable efforts to conduct Driver background checks. This, however, is not to be deemed a warranty or guarantee, either express or implied, for the safety of a ride, the reliability of a Driver, a ride or the Driver's vehicle, or for anything else, and Sidecar expressly disclaims all warranties as to its Drivers and Passengers. You should take all reasonable steps in determining whether to accept a ride from Driver or give a ride to a Passenger.

THE SERVICE IS PROVIDED ON AN "AS IS" AND AS AVAILABLE" BASIS. USE OF THE SERVICE IS AT YOUR OWN RISK TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, THE SERVICE IS PROVIDED WITHOUT WARRANTIES OF ANY KIND, WHETHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR NON-INFRINGEMENT."

CAOC requests that the CPUC declare and require that TNCs have an obligation as a common carrier to maintain their vehicles pursuant to California Civil Code § 2101.

THE PUC SHOULD DECLARE THAT TNCs ARE ENGAGED IN ACTIVITIES AFFECTING THE PUBLIC INTEREST AND DECLARE THE EXCULPATORY CLAUSES CONTAINED IN THEIR TERMS OF SERVICE ARE AGAINST PUBLIC POLICY.

TNCs, through the contract language in their “app.” attempt to self-define themselves out from under common carrier obligations, and seek to immunize themselves from any liability, by inserting arcane contractual waivers for personal injury or death, whether it be to a passenger paying for the service, or a member of the public injured by a Driver. Municipal transportation entities, jitneys, taxis and limousines provide services to the public without secretly depriving them their rights through the use of their “platform.” TNCs should not be allowed to use their seemingly innocuous “platform” to take advantage of unsuspecting consumers who more often than not, simply do not read the voluminous “terms of service” which accompany today’s e-commerce platforms before clicking “accept.” This is especially true in situations such as this where the TNCs, such as Lyft, proclaim that: they are “your friend with a car;” “we go the extra mile for safety;” they provide “background and DMV record checks (screening “for criminal offenses and driving incidents);” “\$1,000,000 excess liability insurance (“this first-of-its kind solution offers peace of mind for both Drivers and passengers”), and “vehicle inspections.” Consumers have only so much visual “real estate” with which to read voluminous contract language on their smart phones where these apps are downloaded and where the terms of service are accepted. The PUC must protect the public and intervene to prevent this unknowing waiver of consumer/passenger rights by exercising its police/regulatory powers to declare that the public interest is negatively affected by such conduct, that it is in direct contradiction to established public policy and, therefore, void as a matter of law.

The California Supreme Court has recognized that “. . . . [A] contract of exculpation involves an institution suitable for, and a subject of, public regulation. (See Health & Saf.Code, ss 1400-1421, 32000-32508.) [T]he integrated and specialized society of today, structured upon mutual dependency, cannot rigidly narrow the concept of the public interest. From the observance of simple standards of due care in the driving of a car to the performance of the high standards of hospital practice, the individual citizen must be completely dependent upon the responsibility of others. The fabric of this pattern is so closely woven that the snarling of a single thread affects the whole. (*Tunkl v. Regents of University of Cal.* (1963) 60 Cal.2d 92, 101-104.)

Section 2174 of the California Civil Code sets forth the critical public policy against common carriers contracting away the rights of consumers and their responsibilities to provide vehicles and personnel that meet the duty of common carriers. Section 2174 states that “[t]he obligations of a common carrier cannot be limited by general notice on his part, but may be limited by special contract.” What this means is that common carriers cannot simply place a waiver on a sign in their vehicle but, instead, they would have to demonstrate that they had an executed contract with a passenger/user wherein the express terms of the waiver would be stated and

acknowledged by a form of acceptance. Knowing this the TNCs lawyers have, through their “terms of service,” created language expressly designed to exempt them from providing all but the most minimal level of care and safety crafting a complete release of any and all liability for any harm, including death, which results from the use of their services.

Although Civil Code Section 2174 would, on first glance, make it appear that any efforts of common carriers to avoid responsibility would be unlawful, the TNC’s lawyers are obviously aware that the Civil Code contains an exception which states that a common carrier, “by special contract,” may limit its liability but not for gross negligence. (Cal.Civ.Code§ 2175.) Section 2175 states only that “[a] common carrier cannot be exonerated, by any agreement made in anticipation thereof, from liability for the gross negligence, fraud, or willful wrong of himself or his servants.” As demonstrated by the language below, taken directly from the terms of service of Lyft and Sidecar (representative of the industry), they seek, unbeknownst to the average consumer, to obtain the exculpatory benefits of Section 2175 and, thereby, release themselves from all but the very worst of harms caused not only by their own conduct, but the conduct of their employees and Drivers as well.

What the TNCs seek to do is to turn hundreds of years of passenger protection on its head and, instead of providing the highest degree of care, they seek to owe no degree of care or, the lowest degree of care allowed under the law. This would mean that they have no liability for the negligent killing of a passenger or pedestrian: a standard below that of the ordinary driver. The insurance contracts which the PUC seeks to mandate could, therefore, be limited by contract to only cover this most egregious level of negligence. This cannot be countenanced by the PUC.

Here are shocking excerpts from the electronic agreements which the principal “ridesharing” services, Lyft and Sidecar, seek to use to stealthily contract out of any obligation to provide safety and accountability.

The Terms of Service of Lyft state (capitals in original, bold emphasis added):

“LYFT HAS NO CONTROL OVER THE IDENTITY OR ACTIONS OF THE RIDERS AND DRIVERS, AND LYFT REQUESTS THAT USERS EXERCISE CAUTION AND GOOD JUDGMENT WHEN USING THE SERVICES. DRIVERS AND RIDERS USE THE SERVICES AT THEIR OWN RISK.

WE WILL NOT BE LIABLE FOR ANY DAMAGES, DIRECT, INDIRECT, INCIDENTAL AND/OR CONSEQUENTIAL, ARISING OUT OF THE USE OF LYFT OR THE SERVICES, INCLUDING, WITHOUT LIMITATION, TO DAMAGES ARISING OUT OF COMMUNICATING AND/OR MEETING WITH OTHER PARTICIPANTS OF LYFT OR THE SERVICES, OR INTRODUCED TO YOU VIA LYFT OR THE SERVICES. SUCH DAMAGES INCLUDE, **WITHOUT LIMITATION, PHYSICAL DAMAGES, BODILY INJURY, DEATH AND OR EMOTIONAL DISTRESS AND DISCOMFORT.** NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED HEREIN, OUR LIABILITY, AND THE LIABILITY OF OUR SUBSIDIARIES,

OFFICERS, DIRECTORS, EMPLOYEES, AND SUPPLIERS, TO YOU OR ANY THIRD PARTIES IN ANY CIRCUMSTANCE IS LIMITED TO \$100.

LYFT HAS NO RESPONSIBILITY WHATSOEVER FOR THE ACTIONS OR CONDUCT OF DRIVERS OR RIDERS.

Driver will be solely responsible for any and all liability which results from or is alleged as a result of the operation of the vehicle such Driver uses to transport Riders, including, but not limited to personal injuries, death and property damages.

You waive California Civil Code Section 1542, which says: "A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which, if known by him must have materially affected his settlement with the debtor."

Similarly Sidecar states in its "terms of service" (capital lettering as is in original terms):

"In no event will Sidecar be responsible for any damages (including personal injury, death, property damage, lost time or wages, etc.) resulting from or related to a ride facilitated by the Service, or for resolving any disputes between you and another user. You hereby agree that your use of the Service is at your sole risk.

SIDECAR DOES NOT WARRANT, ENDORSE, GUARANTEE, OR ASSUME RESPONSIBILITY FOR ANY RIDE YOU REQUEST OR PROVIDE THROUGH THE SIDECAR SERVICE INCLUDING TO YOUR VEHICLE, PERSONAL INJURY, UP TO AND INCLUDING DEATH, THAT OCCURS AS A RESULT OF THE RIDE OR YOUR USE OF THE SERVICE.

TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT SHALL SIDECAR, ITS AFFILIATES, AGENTS, DIRECTORS, EMPLOYEES, SUPPLIERS OR LICENSORS BE LIABLE FOR ANY DIRECT, INDIRECT, PUNITIVE, INCIDENTAL, SPECIAL, CONSEQUENTIAL OR EXEMPLARY DAMAGES,

IN NO EVENT SHALL SIDECAR, ITS AFFILIATES, AGENTS, DIRECTORS, EMPLOYEES, SUPPLIERS, OR LICENSORS BE LIABLE TO YOU FOR ANY CLAIMS, PROCEEDINGS, LIABILITIES, OBLIGATIONS, DAMAGES, LOSSES OR COSTS IN AN AMOUNT EXCEEDING THE AMOUNT PAID TO YOU BY SIDECAR HEREUNDER OR \$1,000.00, WHICHEVER IS GREATER.

THIS LIMITATION OF LIABILITY SECTION APPLIES WHETHER THE ALLEGED LIABILITY IS BASED ON CONTRACT, TORT, NEGLIGENCE, STRICT LIABILITY, OR ANY OTHER BASIS, EVEN IF SIDECAR HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGE. THE FOREGOING LIMITATION OF LIABILITY SHALL APPLY TO THE FULLEST EXTENT PERMITTED BY LAW IN THE APPLICABLE JURISDICTION."

These provisions reveal the questionable nature of the public statements made by these companies to the effect that they screen their drivers and/or inspect the vehicles for safety. Under their desired interpretation of their contract provisions, should they simply be negligent in failing to check the criminal background of one of their drivers, assuming instead that it had been done, and that driver turned out to be a rapist or murderer who repeated his/her criminal conduct, they could claim that they were merely negligent in

failing to have conducted the background check because it was not conduct that constituted gross negligence, fraud, or willful wrong, and, therefore their contract creates a waiver against liability. This is a real and apparent danger posed by the use of the electronic platform with its blanket waiver affected solely through a simple, unassuming “click to accept” button. Clearly, the seemingly innocuous “rideshare” agreement, with its exculpatory and immunizing language does not promote health and/or safety. To the contrary, it creates what is referred to as a “moral hazard,” an incentive to do little, or nothing, to guard against injury or death.

As the California Supreme Court has held:

While obviously no public policy opposes private, voluntary transactions in which one party, for a consideration, agrees to shoulder a risk which the law would otherwise have placed upon the other party, the above circumstances pose a different situation. In this situation the releasing party does not really acquiesce voluntarily in the contractual shifting of the risk, nor can we be reasonably certain that he receives an adequate consideration for the transfer. Since the service is one which each member of the public, presently or potentially, may find essential to him, he faces, despite his economic inability to do so, the prospect of a compulsory assumption of the risk of another's negligence. The public policy of this state has been, in substance, to posit the risk of negligence upon the actor; in instances in which this policy has been abandoned, it has generally been to allow or require that the risk shift to another party better or equally able to bear it, not to shift the risk to the weak bargainer. (*Tunkl v. Regents of University of Cal.* (1963) 60 Cal.2d 92, 101)

The California Court of Appeals has acknowledged the danger of these types of exculpatory contracts recognizing their fundamental unfairness ruling that: “in connection with the court's observation that in standardized contracts between parties of unequal bargaining strength, the courts of California ‘have long been disinclined to effectuate clauses of limitation of liability which are unclear, unexpected, inconspicuous or unconscionable’ citing, among other examples, exclusionary clauses in freight bills. (*Muelder v. Western Greyhound Lines* (1970) 8 Cal.App.3d 319, 334.)

In 1928 the California Supreme Court, citing the United States Supreme Court, stated that “[t]his court has consistently held the law to be that it is against public policy to permit a common carrier to limit its common-law liability by contracting for exemption from the consequences of its own negligence or that of its servants” (*Franklin v. Southern Pac. Co.* (1928) 203 Cal. 680, 688.)

Clearly the operation and regulation of these TNCs are a matter affecting the public interest and, therefore, are deserving of regulation. The public interest is deemed to be affected by conduct when: “(1) It concerns a business of a type generally thought suitable for public regulation. (2) The party seeking exculpation is engaged in performing a service of great importance to the public, which is often a matter of practical necessity for some members of the public. (3) The party holds himself [herself] out as willing to

perform this service for any member of the public who seeks it, or at least any member coming within certain established standards. (4) As a result of the essential nature of the service, in the economic setting of the transaction, the party invoking exculpation possesses a decisive advantage of bargaining strength against any member of the public who seeks his services. (5) In exercising a superior bargaining power the party confronts the public with a standardized adhesion contract of exculpation, and makes no provision whereby a purchaser may pay additional fees and obtain protection against negligence. (6) Finally, as a result of the transaction, the person or property of the purchaser is placed under the control of the seller, subject to the risk of carelessness by the seller or his agents." (*Tunkl v. Regents of University of California, supra*, 60 Cal.2d at pp. 98–101.)

As demonstrated above, TNCs have, as a condition of the use of their services, a complete waiver of liability, and common carrier protections therefore CAOC requests that the **CPUC make a finding that TNCs are engaged in activities affecting the public interest and that they are precluded from contractually exempting themselves from the duties owed by a common carrier.**

AS WITH ELECTRONIC WAIVERS OF ACCOUNTABILITY, THE PUC SHOULD PROHIBIT THE TNCs FROM SEEKING TO AVOID ACCOUNTABILITY BY REQUIRING USERS TO WAIVE THEIR CONSTITUTIONAL RIGHT TO A JURY TRIAL.

In addition to their efforts to obtain waiver of liability from passengers, TNCs have inserted arbitration agreements into their terms of service, thereby requiring users to forgo their constitutional right to a jury trial if injured in any manner by TNCs and/or their drivers. This is true whether the harm is a privacy right violation, identity theft, stalking, or a vehicle related injury or death. CAOC is opposed to any insertion of pre-dispute arbitration provisions in consumer contracts. It is one thing if two businesses, equal in bargaining power and access to legal advice, agree as a matter of unique contract between them, wish to negotiate arbitration as part of their bargain for exchange. It is a wholly different, and inherently unfair, situation where an unsophisticated, unrepresented, user of a transportation service is forced to forgo their constitutional right to trial by jury on account of utilizing a specific type of paid-for transportation service.

Lyft's Terms of Service state:

"Resolution of Disputes and Legal Claims;

You and We agree that any legal disputes or claims between the Parties that cannot be resolved informally will be submitted to binding arbitration in California. The arbitration shall be conducted by the American Arbitration Association, or any other established ADR provider mutually agreed upon by the parties. Any judgment on the award rendered by the arbitrator may be entered in any court having jurisdiction thereof. You agree that in no event shall any claim, action or proceeding by You related in any way to the Lyft Platform and/or the Services

(including Your use of the Lyft Platform and/or the Services) be instituted more than three (3) years after the cause of action arose.”

Sidecar’s Terms of Service state:

In the unlikely event that Sidecar has not been able to resolve a dispute it has with you after attempting to do so informally, we each agree to resolve any claim, dispute, or controversy (excluding any Sidecar claims for injunctive or other equitable relief) arising out of or in connection with or relating to this Agreement, or the breach or alleged breach thereof (collectively, “Claims”), by binding arbitration by the American Arbitration Association (“AAA”) under the Commercial Arbitration Rules and Supplementary Procedures for Consumer Related Disputes then in effect for the AAA, except as provided herein. The arbitration will be conducted in Santa Clara County, California, unless you and Sidecar agree otherwise.”

In addition to Sidecar seeking to deprive its users of a public trial by jury, it seeks to further deter any enforcement by making an aggrieved party pay for the private adjudication of its claims (where the State pays for judges, court staff, etc through taxes) stating; “Each party will be responsible for paying any AAA filing, administrative and arbitrator fees in accordance with AAA rules. “

CAOC hereby requests that the CPUC prevent this injustice by stating **“TNCs are precluded from limiting or restricting user’s rights of access to public judicial determination of any disputes, and, specifically, trial by jury.”**

AS WITH ELECTRONIC WAIVERS OF ACCOUNTABILITY, THE PUC SHOULD PROHIBIT THE TNCs FROM SEEKING TO AVOID ACCOUNTABILITY BY WAIVER OF A RIGHT TO CLASS DETERMINATION OF APPROPRIATE ISSUES.

As with release of liability/accountability, and waiver of a right to trial by jury, TNC’s seek to preclude individuals who each have been harmed, or defrauded, in a substantially similar manner, from having a single determination of their individual, yet common, claims. CAOC seeks to preserve the right to class-wide determination of cases and controversies which meet the legislature’s prescription for class action status. Class actions allow groups of individuals, each harmed in a substantially similar way, often each being harmed in a small amount which would not economically justify the bringing of an individual action, to have a singular legal action determine the liability of the defendant. This promotes judicial economy by eliminating thousands of potential legal actions that would otherwise flood the courts each with an identical claim and defense. If a class action prohibition is allowed, this will effectively immunize unlawful conduct so long as the TNC employs a scheme which appropriates a small amount from each transaction (large in the aggregate) as the individual

taking will be such that legal action would never occur given the prohibitive costs. This is unprecedented in any other regulated utility.

Therefore CAOC requests that the Commission adopt in its rule language to the effect that the PUC recognizes that class action prohibitions by transportation providers are against public policy and, therefore, TNCs may not employ any restrictions to class-wide adjudication of matters deemed appropriate, by the legislature and/or courts, for such collective action.

CAOC ADVOCATES THAT THE PUC REQUIRE THAT TNCs COMPLY WITH TIME TESTED SAFETY REGULATIONS WHICH APPLY TO OTHER SIMILAR TRANSPORTATION SERVICES.

TNCs perform a similar service to taxis and other point to point pre-arranged transportation services and should be governed by the same regulations pertaining to training, maintenance, inspection and safety including, but not limited to the following:

- * TNC Drivers shall be residents of the United States, and of good moral character;
- * TNC Drivers shall be 21 years or older;
- * TNC Drivers shall be free of any disease, condition, infirmity, or addiction to the use of alcohol or any controlled substance, which might render the applicant unfit for the safe operation of a taxicab or any other motor vehicle for hire;
- * TNC Drivers shall be able to read and write the English language;
- * TNC Drivers shall be clean in dress and person;
- * TNC Drivers are prohibited from smoking in vehicles;
- * TNC operators in California must possess a current and valid California driver's License, which must have been valid for at least two years, and may only operate vehicles which are currently registered in the State of California and meet the California Vehicle Code requirements for vehicle maintenance including but not limited to smog certification, tread depth, lights, signals, breaks, seatbelts, window tinting, etc.;
- * Drivers shall confirm, prior to departing from a passenger pick-up, that the passenger is properly seat belted;
- * TNC Drivers are prohibited from transporting more occupants than their vehicle has seat belts for and, in no event, more than four passengers at any time;
- * TNC Drivers are prohibited from the use of cell phones, tablets, or other similar devices while driving for communication or business purposes (including communicating with any source in the position of a dispatcher or potential rider) while operating the vehicle other than "hands-free" operation as allowed by existing law;

*TNC Drivers are prohibited from using or sharing personal identifying information of riders for any purpose other than fulfillment of the specific transportation services which the passenger requested;

*TNC's shall provide for distinctive marking of the TNC vehicle at all times, when going to, from, or on a pre-arranged point to point transport;

* TNC Drivers shall, at the time of any police stop, or when involved in any accident or collision, whether the police respond or not, provide, in addition to the personal information required by the Vehicle Code, a clear and unambiguous statement that they were driving as a TNC Driver at the time of the accident or collision and provide the TNC Information Card identified below;

* TNC providers shall provide to each TNC Driver TNC Identification Cards, of a size no smaller than a business card, and a font no smaller than 10 point type, with the name and contract information (address, phone & email contact) of the employee or department of the TNC, responsible for handling any claim of injury to person or property. TNC Drivers shall, without request, furnish these cards to police or any involved or affected party in the event of any injury to person or property which they are aware of, or which is claimed.

* TNC providers shall provide for the creation and retention, by the TNC, of an electronic waybill, in the form of a record of all pick-up and drop-off information, including name of passenger, Driver, time of pickup and delivery and number of passengers. TNC is required, on demand by a proper authority, to surrender said waybill immediately. Said waybills must be maintained for a period of three years.

* TNC Vehicles must be no more than 5 years of age;

* All operating systems of TNC vehicles must be in good working order at all times;

* TNC vehicles must be inspected, with a documented multi-point safety inspection of all major operating systems that conforms to CHP inspection requirements of other common carriers providing similar point-to-point transportation service no less than quarterly. TNC Drivers are responsible for doing a inspection of the breaks, lights, signals, and other safety and operational systems at the beginning of each day in which their vehicle is in TNC service (using a form provided by the TNC, which they must keep in the vehicle during operation);

*TNC vehicles must have a periodic six month CHP break inspection;

*TNC providers shall participate in the DMV Pull Notice Program for all Drivers;

*TNC providers must obtain current contact information, including address, email and telephone, of all Drivers, and check each six months to make sure that they are up-to-date. TNC providers must confirm that the address provided by the Driver is that which is on the Driver's California Driver's License. The TNC Driver will not be permitted to operate the TNC unless and until their license and home addresses match. TNC provider shall make and keep a photocopy of the Driver's California driver's license. Should the Driver be involved in a

collision while in the scope and course of their activities as a TNC Driver, the TNC shall, upon request by an injured party, or their authorized representative, provide a copy of the Driver's license and the other contact information referenced in this section;

* TNC providers must demand and assure that they are listed as an additional named insured on any Driver's insurance policy to confirm that the Driver's carrier is aware that the Driver's vehicle is being used for TNC activities and to assure that should the Driver's insurance lapse the TNC is made aware;

*Any TNC that becomes aware that a Driver's insurance has lapsed or expired, or that the Driver's vehicle has become unregistered or is lacking in any safety equipment or maintenance, shall immediately notify the TNC Driver and shall suspend or terminate that Driver's ability to utilize all benefits of the TNC and shall assure that the TNC markings be returned and taken out of service from the TNC Driver's vehicle;

* TNC Drivers may not drive under the influence of drugs or alcohol and TNCs must adopt and enforce a zero tolerance policy relating to drug and alcohol use. This includes any medical marijuana consumption;

* Prior to placing a TNC Driver into operation, the TNC must certify that a TNC Driver must have completed a course of education of no less than 16 hours which shall consist of classes on the following subjects: crime prevention; vehicular safety; the geography of the area in which the TNC driver is to operate; TNC rules and regulations; the California Motor Vehicle Code; pedestrian safety; and any other subject that the PUC may determine is relevant to the public health and safety in the operation of taxicabs;

* Drivers shall immediately or as soon as possible/practical, inform TNC providers which they are operating under, of any accident or collision that involves any injury or damage to persons or property and TNC.

* TNC providers shall require, and ensure performance of, drug and alcohol testing of any Driver involved in an accident which causes injury to persons requiring hospitalization or damage to a vehicle which results in damage that prevents either the Driver's vehicle or any other vehicle from being driven away from the scene of any such collision or accident. Said testing should be performed as soon and p[ossible/practical, and in no event longer than 2 hours at an independent testing facility authorized and certified to preform drug and alcohol testing so as to satisfy the requirements of the Federal Motor Carrier Safety Act.

CONCLUSION

While TNCs are a novel transportation system, public safety regulations on common carriers go back to the 1800's. As these new transportation delivery systems continue to evolve, The PUC must continue to exercise its regulatory authority to promote consumer safety and confidence. CAOC shares that mission and requests that the PUC clearly declare that TNCs are common carriers. CAOC further requests that the court deem that TNCs engage in an activity which is a matter of public interest and, therefore, the PUC should prohibit any exculpatory or immunity clauses, preclude mandatory pre-dispute binding arbitration, allow class action

lawsuits where needed, and adopt the other consumer protection measures that CAOC suggests. If the PUC would benefit from future briefing or analysis, CAOC stands ready to provide whatever data the PUC needs to issue regulations that promote innovation without sacrificing safety. While there is value in technology it should not be used as a ruse to strip away invaluable constitutional protections nor to weaken public safety.

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