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LYFT, INC.

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

SAN FRANCISCO DIVISION

SASHA ANTMAN, individually and on behalf of all others similarly situated,

Plaintiffs,

v.

UBER TECHNOLOGIES, INC.; and DOES 1–50,

Defendant.

Case No. 3:15-cv-01175-LB

NON-PARTY LYFT, INC.'S NOTICE OF MOTION AND MOTION FOR A PROTECTIVE ORDER; MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT THEREOF

Date: March 24, 2016
Time: 9:30 a.m.
Dept.: Courtroom C – 15th Floor
Judge: Hon. Laurel Beeler

Date Filed: March 12, 2015

Date Complaint Dismissed: October 19, 2015

TO ALL PARTIES AND THEIR COUNSEL OF RECORD:

PLEASE TAKE NOTICE, that on March 24, 2016, at 9:30 a.m., in Courtroom C (15th Floor) at 450 Golden Gate Avenue, San Francisco, CA 94102, non-party Lyft, Inc. ("Lyft") will and hereby does move this Court for a protective order under Federal Rule of Civil Procedure 26(c) precluding enforcement of Uber's pending subpoenas—including those to X,[1] Google, Comcast, Facebook, Microsoft, and JP Morgan Chase—and prohibiting Uber from seeking further discovery from or about X or Lyft.

Lyft also respectfully requests that any pending discovery disputes or matters related to these subpoenas be assessed in conjunction with, or after, the Court's consideration of this motion.

In accordance with Rule 26(c), Lyft hereby certifies that its counsel has—on several occasions—attempted to meet and confer with Uber's counsel in a good-faith effort to resolve this dispute. Each time, Uber refused.

Lyft's Motion is based on this Notice of Motion, the accompanying Memorandum of Points and Authorities, the Declaration of Rachael E. Meny in support thereof, and the accompany exhibits, together with all pleadings on file in this matter, any oral argument of counsel, and any other matter that may be submitted at the hearing.

Dated: February 18, 2016

KEKER & VAN NEST LLP

By: */s/ Rachael E. Meny*
RACHAEL E. MENY
JENNIFER A. HUBER
NICHOLAS D. MARAIS
THOMAS E. GORMAN

Attorneys for Non-Party
LYFT, INC.

[1] In accordance with this Court's prior orders and practice, Lyft refers to its non-party employee as "X." *See, e.g.*, Dkt. 73 (Dec. 23, 2015 Order).

MEMORANDUM OF POINTS AND AUTHORITIES

Uber is abusing this Court's discovery power to harass a third party, X, and to uncover internal, confidential, trade-secret information about Lyft—X's employer and Uber's chief competitor. The Court must put a stop to Uber's unbounded discovery campaign, which now includes at least ***eleven*** third-party subpoenas targeting information from X and Lyft.

The basic facts of this case are relatively straightforward: In September 2014, Uber realized that it had left a confidential "security key" lying around, publicly available, for six months.[2] Uber then waited another six months before informing its drivers of an "unauthorized access" of its database, at which time it assured them that the "files that were accessed contained ***only*** the[ir] name[s] and drivers' license number[s]…."[3] Uber would go on to repeat that claim ***at least 38 times***—to the press, to its drivers, to this Court, and to the California and New York Attorneys General.[4] And when Uber was sued by Mr. Antman, that was the key defense on which Uber successfully moved to dismiss his complaint: Uber argued that the plaintiff had not alleged—and "could not possibly allege"—any harm because "the ***only*** information exposed in the breach was names and drivers' license numbers…." Dkt. 24 (Mot. to Dismiss) at 11:5–8.

When this Court dismissed Mr. Antman's case, it recognized that, if true, Uber's repeated representations would make it impossible for the plaintiff to establish standing. Dkt. 44 at 17–18 ("Mr. Antman specifies disclosure only of his name and drivers' license information. … [T]his is

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[2] This is by no means an isolated incident for Uber. *See, e.g.*, Andrew Hawkins, ***Uber doxxed one of its drivers***, The Verge (Jan. 25, 2016), http://www.theverge.com/2016/1/25/10827996/uber-driver-personal-data-mistake-glitch ("The personal information of a Florida woman who drives for Uber, including her social security and tax identification numbers, were mistakenly sent to an unspecified number of other drivers as the result of a software glitch, [Uber] told The Verge…."); Charlie Osborne, ***Uber fined $20K in data breach, 'god view' probe***, CNET (Jan. 7, 2016), http://www.cnet.com/news/uber-fined-20k-in-surveillance-data-breach-probe/ (discussing the New York Attorney General's "14-month probe into data protection practices and the use of a 'god view' rider-tracking system at the ride-hailing app maker"); Sam Biddle, ***Uber Data Breach Exposes Licenses and IRS Documents for Nearly a Thousand Drivers***, Gawker.com (Oct. 13, 2015), http://gawker.com/uber-data-breach-exposes-licenses-and-irs-documents-for-1736336324 ("It appears at least 179 pages of documents for drivers from Washington to Virginia were inadvertently exposed, just months after Uber showed its privacy weakness by hosting a large database of user information on a public GitHub page.").

[3] Declaration of Rachael E. Meny ISO Lyft's Motion for Protective Order ("Meny Decl."), Ex. A (Katherine Tassi, *Uber Statement*, Uber.com (Feb. 27, 2015) ("Uber Statement") https://newsroom.uber.com/uber-statement).

[4] For more, *see infra* at notes 17–23 and associated text.

1 insufficient….”). So the Court encouraged Uber to share with the plaintiff whatever evidence
2 Uber must already have gathered to support its claims:

3 4 5
> I just wanted to encourage … you to try to talk ***with each other***… — if there were an initial ***exchange*** of discovery that you could do … — because your investigation is what it is, and I'm sure it's been robust…. [O]ne of the things that I thought from the news orders and it did seem that there were alternative ways that Uber has potentially ***had*** to investigate the subscriber ID….[5]

6 What this Court suggested was an informal exchange of discovery between the parties,
7 over a six-week period, so that Uber could explain how it knew what it had previously told the
8 public, state-law-enforcement authorities, and this Court. But what Uber saw was an opportunity
9 to wrest control of this (dismissed) case, string the plaintiff along for as long as it needed, and
10 issue a swath of subpoenas seeking confidential, internal information about its chief competitor.
11 Indeed, despite ***winning*** a motion to dismiss that would end this action back in October, Uber has
12 now allowed (if not encouraged) the plaintiff to extend the Court's November 16 amendment
13 deadline three times. *See generally* Dkts. 46, 63, 92. And when X pushed back on Uber's
14 discovery requests as inappropriate given the lack of a viable complaint, Uber backpedaled on its
15 previous commitments—suddenly claiming that it might not know what was taken in its own data
16 breach after all.[6]

17 In the meantime, Uber appears not to have produced a ***single*** document to plaintiff's
18 counsel, even though the plaintiff served discovery requests back in October.[7] Instead, Uber has
19 used this dismissed case to issue its own subpoenas—at least ***eleven*** so far—that seek
20 confidential, internal, and trade-secret information about Lyft and one of its employees.[8] Even if
21 these subpoenas were focused on Uber's data breach, they would be irrelevant to the plaintiff's
22 standing problem because, as Uber has so often explained, Uber already knows what was taken.
23

24 [5] Meny Decl., Ex. B (Hearing Tr. (Oct. 8, 2015)) at 12:2–13:2 (emphases added).

25 26 27 [6] In other forums, Uber has stuck to its original story. More than six weeks after telling this Court that Uber was no longer "in a position to know what information was taken," *see* Dkt. 59 at 6:10 (citing Dkt. No. 50-2 at 7 n.9), Uber "assured" the New York Attorney General that "most [of its drivers'] personal information" had been deleted and that Uber's hacker accessed only "driver's license numbers capable of being matched to driver names…." Meny Decl., Ex. C (Assurance of Discontinuance between Uber and Office of the New York Attorney General) at ¶ 13.

28 [7] Declaration of X's Counsel at ¶ 3.

[8] Declaration of X's Counsel at ¶ 5.

But Uber's discovery is not focused on the data breach; it is directed at (and targets information about) an employee of its main competitor, Lyft; Uber's discovery is sweeping in scope and time and seeks information far beyond the alleged May 12, 2014 data breach (or this litigation); and Uber seeks unrestricted access to X's computers, emails, and chat messages (including confidential Lyft information). And to avoid having to explain its invasive efforts, Uber has flatly refused to meet and confer with Lyft in any way on its discovery requests—despite explicitly seeking Lyft's confidential material.[9]

Uber's recalcitrance—and its efforts to use this lawsuit to further its own interests—have left Lyft with no choice but to file this motion. Lyft now respectfully moves this Court for a protective order to put an end to Uber's abusive attempts to harass X and Lyft, and respectfully requests that this Court wait to address any related "discovery letter briefs" until after Lyft has been heard.

I. LEGAL STANDARDS

Lyft moves to challenge Uber's pending discovery because it improperly seeks Lyft's confidential, proprietary, and trade-secret information. As the Northern District's model protective order makes clear, non-parties are entitled to challenge "discovery requests" that target their information—irrespective of whom the subpoena is directed to. *See* Meny Decl., Ex. D (Standard N.D. Cal. Protective Order) at § 9(c) ("If the Non-Party timely seeks a protective order, the Receiving Party shall not produce any information in its possession or control that is subject to the confidentiality agreement with the Non-Party before a determination by the court."); *see also* Dkt. 88 at § 9(c).

Lyft's rights flow from Rule 26(c)(1), which "provides that the court may, for good cause, issue an order to protect a party or person from 'undue burden;' the court's ability to issue such an order is not limited to circumstances in which the burdened party is the party 'from whom

[9] *See* Meny Decl., Exs. F–G. Because Uber has refused to talk to us, we may not know the full scope of Uber's efforts to hound X or Lyft. But no matter whom Uber has subpoenaed, Lyft hereby objects to any pending Uber subpoenas that seek information about X and Lyft. Lyft also requests that Uber be required to disclose the full extent of such discovery to Lyft, so that Lyft may properly protect its information. *Cf.* Dkt. 91 at 9:23–10:1 (ordering Uber to "notify Subscriber before it serves any more third-party discovery asking for … information about Subscriber").

discovery is sought.'" *Blotzer v. L-3 Commc'ns Corp.*, 287 F.R.D. 507, 510 (D. Ariz. 2012); *see also California Sportfishing Prot. Alliance v. Chico Scrap Metal, Inc.*, 299 F.R.D. 638, 643 (E.D. Cal. 2014) (noting that third parties have standing to quash subpoenas, irrespective of the recipient, where they have "claims of privilege relating to the documents being sought"); *Wilson v. O'Brien*, No. 07 C 3994, 2010 WL 1418401, at *2 (N.D. Ill. Apr. 6, 2010) (noting that the "general rule" that "only the recipient of a subpoena has standing to move to quash" is "subject to exception if the subpoena infringes upon the legitimate interests of a movant whether or not that movant is the recipient of the subpoena"); *Catskill Dev., L.L.C. v. Park Place Entm't Corp.*, 206 F.R.D. 78, 93 (S.D.N.Y. 2002) (holding that a non-subpoenaed third-party has standing to challenge a subpoena seeking the production of the non-subpoenaed person's banking records).

II. FACTUAL BACKGROUND

On October 8, 2015, at the hearing on Uber's motion to dismiss, the Court told the parties that it was "contemplat[ing] an order where I say 'Look, I think [Uber is] right. No standing. Leave to Amend." Meny Decl., Ex. B (Hearing Tr. (Oct. 8, 2015)) at 7:18–21. Presumably because Uber had so assuredly argued that the plaintiff could not establish standing, the Court "encouraged" Uber and the plaintiff to "exchange" information informally—that is, to share among themselves what information Uber had already gathered about its data breach through its "robust" investigation.

In the days and weeks that followed, Uber—a ***defendant*** who won its motion to dismiss—began pursuing broad-ranging, burdensome discovery directed not at the plaintiff, but at a Lyft employee.[10] (Plaintiff Antman has not propounded any subpoenas to or about X.)[11] Clearly, Uber saw an opportunity to exploit this case for its own purposes and proceeded to do so. Uber's actions are both without precedent and characteristically brazen.[12] In the past four months

[10] Notably, Uber started issuing subpoenas in *Antman* just two weeks after this Court stayed Uber's discovery efforts in *Uber Technologies, Inc. v. Doe,* 15-cv-00908-LB.

[11] Declaration of X's Counsel at ¶ 4.

[12] *See, e.g.*, Sage Lazzaro, "*Uber's 10 Worst Actions*" Observer (Feb. 16, 2016), http://observer.com/2016/02/ubers-10-worst-actions-threats-lies-sexism-shady-business-deals/ (reporting that Uber "[s]abotaged Lyft by ordering thousands of fake rides" and "[s]ecretly tried to torpedo Lyft's fundraising"); Matt Haber, "*Does Using Uber Make You a Bad Person?*" GQ (Nov. 29, 2015), http://www.gq.com/story/uber-make-you-bad-person (reporting that Uber "sought to destroy its chief rival Lyft using fake customer requests and cancellations").

(without a viable complaint on file and having contended that a viable complaint can never be filed), Uber has issued at least ***eleven*** third-party subpoenas, many of which target confidential, internal Lyft information[13]—including:

- An inspection of "any and all" electronic devices "used by" X—including any laptop computers, desktop computers, tablets, or storage devices X used during the course of Lyft business—which would give Uber unrestricted access to internal Lyft emails, documents, and presentations;
- Any communications between X and other Lyft employees "relating to Uber";
- Any "Google search ... history" "relating to Uber"; and
- Copies of competitive intelligence information Lyft has gathered about Uber or documents Lyft has downloaded from Uber's ***public*** websites.[14]

Because this discovery does—indeed, is designed to—target internal, proprietary, and confidential Lyft information, X sought to include Lyft in X's meet-and-confer discussions with Uber's counsel. Uber rebuffed those efforts out of hand: Uber flatly refused to engage in any discussions with Lyft, claiming that Lyft was a non-party and that Uber was not authorized by this Court to discuss its own subpoenas with Lyft.[15] In other words, Uber wants broad swathes of Lyft's confidential information, which it believes it can get by subpoenaing Lyft's employee, but it refuses even to discuss those efforts with Lyft. *But see* Standing Order for United States Magistrate Judge Laurel Beeler, ¶ 4 ("[A]s required by the federal rules and local rules, the parties [to a discovery dispute] must meet and confer to try to resolve their disagreements.").

As of this week, Uber continues to insist that X produce ***all*** information sought through Uber's subpoena to X, even though Uber's pending requests are wholly irrelevant to this litigation and instead seek confidential and internal information about Lyft.[16] Tellingly, Uber has continued its demands that X turn over Lyft's information even after X submitted a sworn

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[13] Declaration of X's Counsel at ¶¶ 5–6.

[14] *See, e.g.*, Meny Decl, Ex. E (Uber Subpoena to X) at Requests No. 3, 12–14.

[15] Meny Decl., Ex. G (Dec. 10, 2015 email from Rajagopalan to Huber) ("We will not engage any further with Lyft, a non-party, about matters that have been sealed and are subject to a protective order."); *see also* Meny Decl., Ex. F (Dec. 9, 2015 email from Rajagopalan to Huber) ("We are not at liberty to enter into discussions that are not authorized by the court."). It is Lyft's understanding that Uber has met and conferred with X, who is—although Uber appears to have forgotten this—also a "non-party."

[16] Declaration of X's Counsel at ¶ 6.

1 declaration, under threat of perjury, disclaiming any personal knowledge about (***i***) the May 12,
2 2014 data breach, (***ii***) what Uber data (if any) was taken, or by whom, or (***iii***) any other facts that
3 could help Mr. Antman establish standing. Meny Decl., ¶ 11 (explaining that X has sworn, under
4 penalty of perjury, that X has no knowledge or information about Uber's data breach).

5 **III. ARGUMENT**

6 The ***first*** sign that something is amiss in this case is that Uber's antics are entirely without
7 precedent. Lyft has not found a single reported case in which a *defendant* has won a motion to
8 dismiss and then proceeded to stall dismissal of the case to conduct its own discovery. From time
9 to time, courts allow *plaintiffs* to conduct what is essentially pre-suit discovery—but not
10 defendants. (From this Court's December 2, 2015 Order, it appears that Uber claimed that
11 *Godoy v. County of Sonoma* was an example of a case where both "parties" were told to "proceed
12 with discovery." Dkt. 59 at 5:17–21. That's wrong. Judge Orrick gave the *plaintiffs* leave to
13 further investigate their allegations—and, even then, he only authorized discovery about the role
14 the "defendants played in the alleged conduct." *See, e.g.*, *Godoy v. Cty. of Sonoma*, No. 15-CV-
15 00883-WHO, 2015 WL 4881348, at *1 (N.D. Cal. Aug. 14, 2015) ("[P]laintiffs are entitled to
16 discovery…."); *id.* at *3 ("[P]laintiffs will be afforded the opportunity to take discovery….").)

17 That distinction makes good sense: while it might sometimes be beneficial to allow a
18 plaintiff to conduct early discovery to shore up her complaint or satisfy her Rule 11 obligations,
19 the defendant has no such needs. Indeed, on a Rule 12(b) motion, defendants have no choice but
20 to take the pleadings as true—so nothing that a defendant would learn from early discovery would
21 help his Rule 12(b) cause. Uber's suggestion that it is conducting this discovery on the *plaintiff*'s
22 behalf is implausible (Uber successfully moved to dismiss this case), hollow (Uber has not shared
23 any documents with the plaintiff), and undermined by the fact the Uber's discovery doesn't target
24 the only issue that matters for the plaintiff's jurisdictional hurdle.

25 Which leads to the ***second*** major concern: Uber's discovery efforts are entirely irrelevant
26 to this case. If it is true—as Uber has sworn time and again—that nothing was taken but its
27 drivers' names and license numbers, what more could Uber possibly learn in discovery that would
28 improve its defenses? And Uber has now made that promise over ***three dozen*** times:

- "In late 2014, we identified a one-time access of an Uber database by an unauthorized third party. A small percentage of current and former Uber driver partner ***names and driver's license numbers*** were contained in the database."[17]

- In May 2014, John Doe downloaded "Uber database files containing confidential and propriety information from Uber's protected computers, namely, ***the names and driver's license numbers*** of a limited number of Uber partner-drivers."[18]

- "Nowhere does Plaintiff attempt to describe how an identity thief could use a ***simple name and driver's license number, without more***, to apply for a credit card or commit any of the other potential frauds listed in the Amended Complaint."[19]

- "The accessed files 'contained ***only the name and driver's license number*** of some driver partners. This incident did ***not*** involve, nor does Plaintiff allege, any disclosure of Social Security numbers, credit or debit card numbers, bank account information, email addresses, passwords, physical addresses, or phone numbers.'"[20]

- "After an ***extensive*** investigation, Uber determined that there had been a one-time access of the Uber database by an unauthorized third party, that the unauthorized access had impacted ***only*** a small percentage of drivers using the Uber app, [and] that the accessed files 'contained ***only the name and driver's license numbers*** of some driver partners….'"[21]

In fact, Uber has now committed to that representation no fewer than 38 times[22]—and not only to this Court. It recently made the same promise to the New York Attorney General in a signed settlement agreement that can be voided if Uber's representations were inaccurate:

> Uber represented that its investigation revealed a use of the access ID on or around May 12, 2014, by someone associated with an IP address that Uber could not

[17] Meny Decl., Ex. A (Uber Statement) (emphasis added). Uber previously submitted this statement to the Court and highlighted this very sentence. *See* Dkt. 24-1 at Ex. A.

[18] Dkt. 24 (Uber Mot. to Dismiss) at 1:7–10 (emphasis added).

[19] *Id.* at 2:6–8 (emphasis added); *see also id.* at 8:7–8 (describing the "name[s] and driver's license number[s] as "the ***only*** information potentially compromised in the alleged data breach") (emphasis added).

[20] *Id.* at 3:13–17 (citing Uber's own press release) (emphasis added); *see also id.* at 4:22–28 (explaining that Plaintiff "does not specify what 'other personal information'"—beyond names and driver's license numbers—"the Amended Complaint's vague assertion refers to," and claiming that plaintiff ***could not*** do so "consistent with Rule 11") (emphasis added).

[21] *Id.* at 3:23–4:5 (emphasis added); *see also* Dkt. 31 (Uber Reply ISO Mot. to Dismiss) at 1:2–5 (Plaintiff "cannot allege any actual, non-speculative injury" because the data breach "involved the exposure of ***nothing more*** than the names and drivers' license numbers.") (emphasis added).

[22] See Meny Decl., Ex. H (collecting 38 distinct representations by Uber that said that its data breach involved ***only*** names and drivers' license numbers).

1 2 3 4

> readily attribute to authorized Uber personnel, to access a stored, ***"pruned" copy of an Uber database*** located on servers of Uber's third-party cloud storage provider. Although ***Uber had deleted most personal information*** and "salted and hashed" passwords within the file before it was stored, ***the file contained driver's license numbers capable of being matched to driver names stored elsewhere within the file.***

5 Meny Decl., Ex. C (Assurance of Discontinuance between Uber and the Office of the New York 6 Attorney General) (emphases added). And Uber committed to this same claim in data-breach 7 notifications that it sent to the California and New York Attorneys General and to 50,000 of its 8 drivers.[23] Under state law, those notifications were ***required*** to "include, at a minimum ... [a] list 9 of the types of personal information that were or are reasonably believed to have been the subject 10 of a breach." Cal. Civ. Code § 1798.82(d)(2)(B); *see also* N.Y. Gen. Bus. Law § 899-aa(7); *id.* at 11 § 899-aa(8). If Uber's "hacker" accessed personal information that would give Mr. Antman 12 standing—like financial information or social-security numbers—then Uber was legally required 13 to say so.

14 The Court's October 8, 2015 suggestion that the ***parties*** should exchange discovery on the 15 standing issue was a smart and simple compromise that flowed from Uber's assurances. Uber 16 must have had evidence to support its claims that all it lost were its drivers' names and license 17 numbers, and an informal "exchange" of that information might assist the plaintiff in assessing 18 his case. But instead of sharing its own information with the plaintiff—as the Court proposed and 19 Rule 26 counsels—Uber has opted to reinterpret the Court's suggestion and use this litigation to 20 seek discovery into Lyft, its employee, and its business. *See* Fed. R. Civ. P. 26(b)(2)(C) ("[T]he 21 court must limit the frequency or extent of discovery otherwise allowed … if it determines that: 22 (i) the discovery sought … can be obtained from some other source that is more convenient, less 23 burdensome, or less expensive."); *see also Nidec Corp. v. Victor Co. of Japan*, 249 F.R.D. 575, 24 577 (N.D. Cal. 2007) ("There is simply no reason to burden nonparties when the documents 25 sought are in possession of the party defendant.").

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27 28

[23] See, e.g., Meny Decl., Ex. I (Uber's Multistate Notice to Drivers, as submitted to and published by the California Attorney General) ("I'm writing to let you know that one of Uber's databases was accessed by an unauthorized third party and that as an Uber driver partner ***your name and driver's license number*** was contained in the database.") (emphasis added).

The ***third*** red flag is that Uber's discovery efforts belie any claim that it is simply trying to uncover the alleged "hacker." For one thing, Uber is vigorously pursuing one Lyft employee—X—despite having been told that neither X nor Lyft has any knowledge about Uber's May 12, 2014 data breach, and having now received X's sworn declaration that X had nothing to do with Uber's data breach, knows nothing about what happened, and has no information about what was taken. Meny Decl., ¶¶ 10–11.

For another, Uber's discovery here is staggeringly broad and untethered to the alleged May 12, 2014 data breach. For instance, Uber's subpoena to X demands: (1) any and all chat and text-message history that relates in any way to Uber; (2) any competitive intelligence Lyft has performed by downloading information or documents from Uber's public website; and (3) unfettered access to inspect any of X's electronic devices, many of which are Lyft property and contain valuable and proprietary trade-secret information about Lyft's operations. *See, e.g.*, Meny Decl., Ex. E (Uber Subpoena to X) at Requests No. 3, 12–14. In other words, "all" Uber wants is to know precisely where X travelled on Lyft business, whom X met with, the details of every conversation X had with his Lyft colleagues about Uber, and free rein to comb through X's personal and Lyft computers, tablets, and cell phones (and review the personal and confidential documents contained therein). To make matters worse, Uber demanded that X deliver Lyft's internal, confidential, and trade-secret information directly to Uber's front door. *See id.* at 10 (Instruction No. 3) (commanding delivery of X's documents to Uber's headquarters).

Uber's claim that its discovery is "narrowly tailored" is absurd. These requests violate the new Rule 26 directive that discovery must be "relevant to a[] party's claim[s] or defense[s]" and "***proportional*** to the needs of the case considering the importance of the issues at stake in the action, … the parties' relative access to relevant information, [and] the importance of the discovery in resolving the issues."[24] And Uber's discovery violates the letter and spirit of the

[24] Fed. R. Civ. P. 26(b)(1) (discovery must be "proportional to the needs of the case, considering the importance of the issues at stake in the action, the amount in controversy, the parties' relative access to relevant information, the parties' resources, the importance of the discovery in resolving the issues, and whether the burden or expense of the proposed discovery outweighs its likely benefit"). Although Uber has cited the new rule, it continues to rely on 10-year-old precedent to argue that the "the applicable standard is 'broad relevancy.'" *See, e.g.*, Dkt. 62 at 4:15–24.

parties' own protective order, which explicitly limits the parties to "discovery concerning … X's relationship to the data breach underlying this lawsuit." Dkt. 88 (Protective Order) at § 12.4(b).

Discovery in this case—even if it were appropriate at this stage—should be limited to Mr. Antman's allegations that (i) Uber failed to adequately protect its driver data and (ii) Uber failed to timely notify its drivers of Uber's data breach. *See, e.g.*, Dkt. 7 (FAC) at ¶ 8. Uber has already admitted that its own engineers left their security key on a public website for many months, so the *Antman* case—if it survives a motion to dismiss—will focus on why, and how, Uber's security key was publicly posted and why Uber did not notice or notify its drivers sooner. Nothing about those issues relates to Lyft or X; they relate to Uber's actions and Uber's knowledge. Uber's invasive and transparent discovery into X and Lyft would fail the Rule 26 test even if Uber and X were adversaries in the midst of full-scale discovery. They must fail here, where Mr. Antman's complaint has been dismissed, Uber is a defendant, and X is a non-party.

* * *

Uber's completely disproportionate discovery efforts have nothing to do with defending this litigation—indeed, it has already won a motion to dismiss and it is difficult to see how it could improve its position by allowing this lawsuit to drag on month after month. Uber is using this case, this plaintiff and this Court's subpoena power to conduct its own witch-hunt, to distract attention from its long and storied history of data breaches, to harass X, and to dig into its competitor's internal, confidential and trade-secret information.

Enough is enough.

Lyft respectfully requests that this Court rein Uber in, and that it grant Lyft's motion for a protective order preventing any further abusive and harassing discovery.

Courts are increasingly rejecting that position as they try to restrict precisely the sort of fishing expedition Uber is conducting here. *See, e.g.*, *O'Connor v. Uber Techs., Inc.*, No. 13-CV-03826-EMC(DMR), 2016 WL 107461, at *4 (N.D. Cal. Jan. 11, 2016) (quashing "Uber's ***wildly overbroad*** discovery requests" because they "fail Rule 26(b)'s proportionality requirements, given the lack of importance of the discovery to the resolution of the issues in the case" and the "enormous burden" that would flow from such discovery) (emphasis added).

1 Dated: February 18, 2016 KEKER & VAN NEST LLP
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3 By: */s/ Rachael E. Meny*
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4 JENNIFER A. HUBER
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6 Attorneys for Non-Party
LYFT, INC.
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