OATH Taxi & Limousine Tribunal
A Division of the Office of Administrative Trials and Hearings

33 Beaver Street, 19th Floor
New York, NY 10004

# NOTICE OF DECISION

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| TAXI AND LIMOUSINE COMMISSION<br><br>Petitioner<br><br>-against-<br><br>WEITER LLC.<br><br>27-55 JACKSON AVENUE, LIC, NY 11101<br><br>Respondent | **Summons Number:** FC0000332<br>**License Number:** B02617<br>**Decision Date:** 01/06/2015<br>**Hearing Officer:** Ann Macadangdang<br>**Respondent Representative:** Seema Gupta<br>**Petitioner Representative:** Sherry Cohen | **Summary Disposition:** GUILTY<br>**Points (Total):** 0<br>**Suspension/ Revocation:** Suspension until compliance<br>**Compliance:**<br>**Total Fine Amount:** 200 |

| Charge Code | Decision Code | Penalty Amount | Points |
|---|---|---|---|
| 59B-13(J)(1) | Closed, Guilty at Hearing | $200 | 0 |

**Hearing Officer Findings:**

The Respondent is guilty.

This is a consolidated decision for summonses FC0000332, FC0000333, FC0000334, FC0000335, and FC0000336. The audio record for this proceeding can be found under summons FC0000332.

Appearing on behalf of the Respondents Weiter LLC, Hinter LLC, Schmecken LLC, Danach-NY, LLC, Unter LLC (collectively, "Respondents") are Orin Snyder and Seema Gupta from the firm Gibson, Dunn & Crutcher LLP. Mr. Snyder clarified on the record that Respondents are bases, which are all owned by Uber.

Appearing on behalf of the Commission, Assistant Commissioner Sherry Cohen and Assistant General Counsel, Ryan Wanttaja.

Also present at the hearing were Policy Associate for Respondents (Nicole Benincasa) as well as representatives from the Taxi and Limousine Commission ("TLC" or "the Commission").

**Ann Macadangdang**
**Hearing Officer**

Respondents pled not guilty to the alleged violation of Rule 59 B-13(j)(1).

The parties previously stipulated that all five summonses allege the same violation and facts. (See decision dated 11/21/2014). The summonses allege that according to TLC records, on 10/9/2014 the Commission issued Respondents directives ordering Respondents to provide electronic trip record information for all trips dispatched through Respondents' bases, which occurred between April 1, 2014 and September 20, 2014. Per Commission records, Respondents failed to do so.

The Commission relied on evidence in the form of a Directives dated October 9, 2014 (the "Directives.") (see Petitioner's Exhibit Nos. 1-5), Certifications of Services for the Directives dated November 19, 2014, (see Petitioner's Exhibit Nos. 6-10), and an email with an attachment from Uber's Josh Mohrer dated October 24, 2014 (see Petitioner's Exhibit No. 11).
The Commission argued that out of sixteen bases that were sent similar directives, Respondents refused to comply with the Directives citing to "an individuals' reasonable expectation of privacy" and calling the requests "unprecedented." (see Petitioner's Exhibit No. 11).

Ms. Cohen stated that the rule, which the TLC seeks to invoke is longstanding and the practice is necessary to ensure adequate protection and public safety.

Respondents do not dispute that the bases have failed to comply with the Directives. They argue instead that the breadth and scope of information sought in the Directives render the requests unconstitutional. Mr. Snyder argued that the information, which the TLC seeks is confidential, proprietary and protected as trade secrets. Respondents seek dismissal of the summonses because according to Respondents' counsel, Uber does not have a duty to produce documents in response to an unconstitutional Directive, which is violation of the Fourth Amendment.

The Respondents' arguments are rejected and the penalties of $200 per base and suspension until compliance are imposed.

The Rule requires that "A Licensee must truthfully answer all questions and comply with all communications, directives, and summonses from the Commission or its representatives."

I credit the documentary evidence submitted by the TLC, which was not disputed, refuted, or objected to by the Respondents.

Here, even though the Respondents raise serious objections on the grounds of privacy concerns and challenge the constitutionality of the Directives in general, they fail to submit evidence, which supports their defense. In fact, Respondents did not call any witnesses or introduce any documents, which tend to raise an inference that the information sought is confidential or proprietary. For example, Respondents suggest that Uber would lose its competitive advantage if they were to disclose the information such as For Hire License numbers for its Drivers. However, Ms. Cohen pointed out that this information is readily available to the public. Though Respondents argue that the proprietary nature of this information is grounded in the fact that the Uber trains and selectively retains elite drivers for the Company, this argument is rejected. The Commission is not seeking every business document from Respondents and certainly nothing related to its training and retention process. Therefore, the argument fails on relevancy grounds. In addition, Respondents undermined their own position by asserting that they have complied with the production of trip records in the past. Respondents' past production of trip records seriously undercuts any

**Ann Macadangdang**
**Hearing Officer**

present argument that this same information should be protected from disclosure as a trade secret. Moreover, no evidence or testimony was offered by the Respondents in support of their defenses.

Persuasive authority exists, which substantiates the imposition of penalties in these matters. Recently, in El-Nahal v. Yassky, 993 F.Supp.2d 460 (S.D.N.Y. 2014), Judge Katherine B. Forrest dispensed of similar arguments of constitutionality in a case where plaintiffs argued that the TLC violated the Fourth Amendment of the Constitution when it relied on T-PEP data (inclusive of GPS records) in administrative proceedings finding that the Commission "did not conduct a search in collecting that data; and if, arguendo, defendants did conduct a search, that search was reasonable." Similarly, I find that the Commission has articulated a reasonable and legitimate reason for issuing the Directives as the information assists in the regulation of this industry. See Carniol v. Yassky, 42 Misc.3d 199 (Sup. Ct. N.Y. Co. 2013)(the governments interest in generating information to improve service to passengers is "both legitimate and substantial.") I do not find that the facts of N.Y. v. Burger, a case noted by the Respondents, supports their request for dismissal. In that case, which dealt with the N.Y.P.D., the Court found that inspections of commercial entities are permitted in certain circumstances. I find that Commission acted with valid authority in issuing the Directives.

I find that the request itself is not overly broad as the Commission has limited its request to a finite period of time and only to information relating to the date of trip, time of trip, pick up location, and license numbers. (See Petitioner's Exhibits No. 1-5). In a conclusory manner, Respondents raise concerns of what type of information will the TLC seek next. This argument is rejected as speculative. I have no evidence before me to conclude that compliance with the Directives will lead to more invasive requests in the future. Like the information gathered in the Carniol case, the information is limited to data gathered while the driver is on duty. I find that these individuals have a diminished expectation of privacy when performing its duties in a regulated industry. (See Carniol)

Again, Respondents offered no evidence in support of their defenses. Though Respondents sought to submit legal memoranda, I rejected the request because of the duplicative and cumulative nature. Respondents were advised that they were free to raise any legal argument or cite to any authority on the record. A copy of their brief will be returned to them with the decision. It has not been considered. Similarly the affirmation by Nicole Benincasa, a witness who was present, will be returned. Respondents were free to conduct a direct examination of Ms. Benincasa, but chose not to pursue this option. Instead they rested on the arguments articulated on the record.

Based on the foregoing, I find that the Commission met its burden to prove a violation by a preponderance of the evidence.

**Ann Macadangdang**
**Hearing Officer**

## RESPONDENT INSTRUCTIONS / PAYMENT PROCEDURES

### I. PAYMENT PROCEDURES

Your failure to pay the fine listed on page 1 of this decision within 30 days of the Decision Date WILL RESULT in the suspension of your TLC license. The TLC may also take further action against you in the future.

You may pay the fine in any of the following ways:

| In Person | By Mail | Online |
|---|---|---|
| Please see the cashier at the Tribunal location where you received this decision. | Send your certified check or money order made payable to the "NYC TLC" along with a copy of this decision to the following address. Please include your summons number and license number on your certified check or money order.<br><br>NYC Taxi and Limousine Commission<br>Attn: Cashier<br>33 Beaver Street, 19th Floor<br>New York, NY 10004 | Go to the following web address:<br><br>www1.nyc.gov/lars/ |

### II. DECISION ISSUED AFTER YOUR FAILURE TO APPEAR FOR A HEARING

If a Default decision was issued because you failed to appear for a hearing, you can challenge the decision by filing a Motion to Vacate form with the Taxi & Limousine Tribunal. If you pay the fine without filing a Motion to Vacate, you are considered to have admitted guilt.

### III. SUSPENSION INFORMATION

If the judge imposed a penalty that includes a suspension, you MUST surrender your TLC license immediately to TLC's Licensing and Standards Division. The Licensing and Standards Division is located at 32-02 Queens Boulevard, 2nd Floor, Long Island City, New York 11101-2332. If you do not surrender your license, the TLC may take further action against you in the future.

If your suspension is for a period of days (including, but not limited to, those imposed pursuant to Rule 35 RCNY §54-27 or §55-27, also known as the Persistent Violator rules, and/or any other suspensions allowable under TLC rules), your license will still be placed on suspension immediately, but the countdown of days will not begin until you surrender the license.

If your suspension is for compliance, your license will remain on suspension until you provide proof of compliance.

### IV. APPEAL INSTRUCTIONS

If you do not agree with the judge's finding of fact and conclusion of law, you must file an appeal in accordance with 48 RCNY §5-12. To file an appeal, please use the OATH Taxi & Limousine Tribunal Appeal Form which may be obtained from any of the OATH Taxi & Limousine Tribunal locations or by downloading a copy of the form from our website at www.nyc.gov/oath. Please mail your appeal to:

OATH Taxi & Limousine Tribunal
Attn: Appeals Unit
32-02 Queens Boulevard, 3rd Floor
Long Island City, NY 11101-2332

**CERTIFICATION OF MAILING**

I certify that I placed a Notice of Decision in an envelope with the respondent's last mailing address filed with the TLC showing through the envelope window. This address is listed on page 1. I also certify that I placed the envelope with First Class Mail postage in a US Postal Service receptacle on the date indicated next to my signature below.

X_____ _____
Authorized Signature Date

Only a party to a hearing may file an appeal. If you are a consumer complainant and disagree with the judge's decision, you do not have a right to appeal; however, TLC may appeal on your behalf if it determines that there is a ground for appeal. To notify the TLC that you disagree with the judge's decision, please call (212) 676-1046.

### V. QUESTIONS

All questions regarding this decision should be forwarded to the Taxi & Limousine Tribunal's call center at 1-844-OATH-NYC or (844) 628-4692.

## VI. RESULTS CODES

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| APF – | Appeals On File | CGI – | Closed, Guilty Inquest | MVD – | Motion to Vacate Denied |
| CCW – | Consumer Complaint Withdrawn | CGM – | Closed, Guilty Mail | ODG – | Open Default Guilty |
| CDF – | Closed, Dismissed Default | CGP – | Closed, Guilty Plea | OGD – | Open, Guilty Default |
| CDH – | Closed, Dismissed At Hearing | CMA – | Closed, Modified On Appeal | OGH – | Open, Guilty At Hearing |
| CDI – | Closed, Dismissed Inquest | COT – | Closed, Other | OGM – | Open, Guilty, Plea By Mail |
| CDR – | Closed, Dismissed Reversals - Appeals | CVD – | Closed, Void | OGP – | Open, Pled Guilty |
| CGA – | Closed, Guilty Appeals Affirmed | CWC – | Closed, Withdrawn Commission | OIG – | Open, Inquest |
| CGD – | Closed, Guilty Default | CWE – | Closed, Written In Error | OSH – | Open, Scheduled For Hearing |
| CGH – | Closed, Guilty Hearing | OAD – | Open, Adjourned | RAD – | Adjourned By Respondent |
| | | | | MVG - | Motion to Vacate Granted |

Name: _____

Address: _____

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Re: TLC License Number

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