

1 Patrick N. Keegan, Esq. (SBN 167698)  
pkeegan@keeganbaker.com  
2 James M. Treglio, Esq. (SBN 228077)  
jtreglio@keeganbaker.com  
3 KEEGAN & BAKER, LLP  
6156 Innovation Way  
4 Carlsbad, CA 92009  
Tel: (760) 929-9303  
5 Fax: (760) 929-9260

6 Attorney for Plaintiff Douglas O'Connor

7 MAYER BROWN LLP  
JOHN P. ZAIMES (SBN 91933)  
8 jzaimes@mayerbrown.com  
RUTH ZADIKANY (SBN 260288)  
9 rzadikany@mayerbrown.com  
350 South Grand Avenue, 25th Floor  
10 Los Angeles, California 90071-1503  
11 Telephone: (213) 229-9500  
12 Facsimile: (213) 625-0248

13 MAYER BROWN LLP  
ARCHIS A. PARASHARAMI (pro hac vice )  
14 aparasharami@mayerbrown.com  
1999 K Street, N.W.  
15 Washington, District of Columbia 20006  
16 Telephone: (202) 263-3000  
Facsimile: (202) 263-3300

17 Attorneys for Defendant  
18 LYFT, INC.

19 **UNITED STATES DISTRICT COURT**

20 **NORTHERN DISTRICT OF CALIFORNIA - OAKLAND**

22 DOUGLAS O'CONNOR, individually and on  
23 behalf of all other persons similarly situated,

24 Plaintiffs,

25 vs.

26 LYFT, INC., a Delaware corporation; and  
27 DOES 1 through 20, inclusive,

28 Defendants.

Case No. 4:16-cv-00351-JSW

**STIPULATED PROTECTIVE ORDER**

Honorable Jeffrey S. White

1     **1.     PURPOSES AND LIMITATIONS**

2             Disclosure and discovery activity in this action are likely to involve production of  
3 confidential, proprietary, trade secret, or private information for which special protection from  
4 public disclosure and from use for any purpose other than prosecuting and defending this  
5 litigation may be warranted. Accordingly, the parties to this action, Plaintiff Douglas O'Connor  
6 and Defendant Lyft, Inc., hereby stipulate to and petition the Court to enter the following  
7 Stipulated Protective Order, as required by the Magistrate Judge's June 28, 2016 Order. The  
8 parties acknowledge that this Order does not confer blanket protections on all disclosures or  
9 responses to discovery and that the protection it affords from public disclosure and use extends  
10 only to the limited information or items that are entitled to confidential treatment under the  
11 applicable legal principles. The parties further acknowledge, as set forth in Section 13.3, below,  
12 that this Stipulated Protective Order does not entitle them to file confidential information under  
13 seal; Civil Local Rule 79-5 sets forth the procedures that must be followed and the standards that  
14 will be applied when a party seeks permission from the Court to file material under seal.

15     **2.     DEFINITIONS**

16             2.1     Challenging Party: A Party or Non-Party that challenges the designation of  
17 information or items under this Order.

18             2.2     "CONFIDENTIAL" Information or Items: Confidential or proprietary technical,  
19 scientific, financial, market, trade secret or business information which is not generally known or  
20 publicly available and which the Designating Party would not normally reveal to third parties or  
21 would cause third parties to maintain in confidence, or information, the present disclosure of  
22 which would, in the good-faith judgment of the Designating Party, be detrimental to the  
23 Designating Party in the conduct of its business.

24             2.3     Counsel (without qualifier): Outside Counsel of Record and In-House Counsel (as  
25 well as their support staff).

26             2.4     Designating Party: A Party or Non-Party that designates information or items that  
27 it produces in disclosures or in responses to discovery as "CONFIDENTIAL," "HIGHLY  
28

1 CONFIDENTIAL – ATTORNEYS’ EYES ONLY” or “HIGHLY CONFIDENTIAL – SOURCE  
2 CODE.”

3 2.5 Disclosure or Discovery Material: All items or information, regardless of the  
4 medium or manner in which it is generated, stored, or maintained (including, among other things,  
5 testimony, transcripts, and tangible things), that are produced or generated in disclosures or  
6 responses to discovery in this matter.

7 2.6 Expert: A person with specialized knowledge or experience in a matter pertinent to  
8 the litigation who (1) has been retained by a Party or its counsel to serve as an expert witness or  
9 as a consultant in this action, (2) is not a past or current employee of a Party, (3) is not a past or  
10 current employee of a Party’s competitor and was not, and currently is not, engaged by any such  
11 competitor, and (4) at the time of retention, is not anticipated to become an employee of a Party  
12 or business competitor of a Party or to be engaged by such a competitor

13 2.7 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” Information or  
14 Items: Extremely sensitive “CONFIDENTIAL” Information or Items, disclosure of which to  
15 another Party or Non-Party would create a substantial risk of serious harm that could not be  
16 avoided by less restrictive means.

17 2.8 “HIGHLY CONFIDENTIAL – SOURCE CODE” Information or Items:  
18 Extremely sensitive “Confidential Information or Items” representing computer code and  
19 associated comments and revision histories, formulas, engineering specifications, or schematics  
20 that define or otherwise describe in detail the algorithms or structure of software or hardware  
21 designs, disclosure of which to another Party or Non-Party would create a substantial risk of  
22 serious harm that could not be avoided by less restrictive means.

23 2.9 In-House Counsel: Attorneys who are employees of a party to this action. In-  
24 House Counsel does not include Outside Counsel of Record or any other outside counsel.

25 2.10 Inadvertent Production Material: Disclosure or Discovery Material that is subject  
26 to a claim of attorney-client privilege, attorney work product protection, or any other applicable  
27 protection from discovery that is inadvertently produced or disclosed in this action.  
28

1           2.11 Non-Party: Any natural person, partnership, corporation, association, or other legal  
2 entity not named as a Party to this action.

3           2.12 Outside Counsel of Record: Attorneys who are not employees of a party to this  
4 action but are retained to represent or advise a party to this action and have appeared in this action  
5 on behalf of that party or are employed by a law firm which has appeared on behalf of that party.

6           2.13 Party: Any party to this action, including all of its officers, directors, employees,  
7 consultants, retained Experts, and Outside Counsel of Record (and their support staffs).

8           2.14 Producing Party: A Party or Non-Party that produces Disclosure or Discovery  
9 Material in this action.

10          2.15 Professional Vendors: Persons or entities that provide litigation support services  
11 (e.g., photocopying, videotaping, translating, preparing exhibits or demonstrations, and  
12 organizing, storing, or retrieving data in any form or medium) and their employees and  
13 subcontractors.

14          2.16 Protected Material: Any Disclosure or Discovery Material that is designated as  
15 “CONFIDENTIAL,” “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY,” or  
16 “HIGHLY CONFIDENTIAL – SOURCE CODE.”

17          2.17 Receiving Party: A Party that receives Disclosure or Discovery Material from a  
18 Producing Party.

19 **3. SCOPE**

20          The protections conferred by this Stipulation and Order cover not only Protected Material  
21 (as defined above), but also (1) any information copied or extracted from Protected Material; (2)  
22 all copies, excerpts, summaries, or compilations of Protected Material; and (3) any testimony,  
23 conversations, or presentations by Parties or their Counsel that might reveal Protected Material.  
24 However, the protections conferred by this Stipulation and Order do not cover the following  
25 information: (a) any information that is in the public domain at the time of disclosure to a  
26 Receiving Party or becomes part of the public domain after its disclosure to a Receiving Party as  
27 a result of publication not involving a violation of this Order, including becoming part of the  
28 public record through trial or otherwise; and (b) any information known to the Receiving Party

1 prior to the disclosure or obtained by the Receiving Party in a lawful manner via a lawful source  
2 who obtained the information lawfully and under no obligation of confidentiality to the  
3 Designating Party. Any use of Protected Material at trial shall be governed by a separate  
4 agreement or order.

5 **4. DURATION**

6 Even after final disposition of this litigation, the confidentiality obligations imposed by  
7 this Order shall remain in effect until a Designating Party agrees otherwise in writing or a court  
8 order otherwise directs. Final disposition shall be deemed to be the later of (1) dismissal of all  
9 claims and defenses in this action, with or without prejudice; and (2) final judgment herein after  
10 the completion and exhaustion of all appeals, rehearings, remands, trials, or reviews of this action,  
11 including the time limits for filing any motions or applications for extension of time pursuant to  
12 applicable law. After the final disposition of this action, this Court will retain jurisdiction to  
13 enforce the terms of this Order.

14 **5. DESIGNATING PROTECTED MATERIAL**

15 5.1 Exercise of Restraint and Care in Designating Material for Protection.

16 Each Party or Non-Party that designates information or items for protection under this  
17 Order must take care to limit any such designation to specific material that qualifies under the  
18 appropriate standards. To the extent it is practical to do so, the Designating Party must designate  
19 for protection only those parts of material, documents, items, or oral or written communications  
20 that qualify – so that other portions of the material, documents, items, or communications for  
21 which protection is not warranted are not swept unjustifiably within the ambit of this Order.

22 Mass, indiscriminate, or routinized designations are prohibited. The Parties must not  
23 make designations that are shown to be clearly unjustified or that have been made for an improper  
24 purpose (e.g., to unnecessarily encumber or retard the case development process or to impose  
25 unnecessary expenses and burdens on other parties).

26 If it comes to a Designating Party's attention that information or items that it designated  
27 for protection do not qualify for protection at all or do not qualify for the level of protection  
28

1 initially asserted, that Designating Party must promptly notify all other Parties that it is  
2 withdrawing the mistaken designation.

3         5.2     Manner and Timing of Designations. Except as otherwise provided in this Order  
4 (see, e.g., second paragraph of section 5.2(a) below), or as otherwise stipulated or ordered,  
5 Disclosure or Discovery Material that qualifies for protection under this Order must be clearly so  
6 designated before the material is disclosed or produced.

7             Designation in conformity with this Order requires:

8             (a)     for information in documentary form (e.g., paper or electronic documents,  
9 but excluding transcripts of depositions or other pretrial or trial proceedings), that the Producing  
10 Party affix the legend “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’  
11 EYES ONLY” or “HIGHLY CONFIDENTIAL – SOURCE CODE” to each page that contains  
12 protected material. If only a portion or portions of the material on a page qualifies for protection  
13 and to the extent possible, the Producing Party also must clearly identify the protected portion(s)  
14 (e.g., by making appropriate markings in the margins).

15             A Party or Non-Party that makes original documents or materials available for inspection  
16 need not designate them for protection until after the inspecting Party has indicated which  
17 material it would like copied and produced. During the inspection and before the designation, all  
18 of the material made available for inspection shall be deemed “HIGHLY CONFIDENTIAL –  
19 ATTORNEYS’ EYES ONLY.” After the inspecting Party has identified the documents it wants  
20 copied and produced, the Producing Party must determine which documents, or portions thereof,  
21 qualify for protection under this Order. Then, before producing the specified documents, the  
22 Producing Party must affix the appropriate legend (“CONFIDENTIAL” or “HIGHLY  
23 CONFIDENTIAL – ATTORNEYS’ EYES ONLY” or “HIGHLY CONFIDENTIAL – SOURCE  
24 CODE”) to each page that contains Protected Material. If only a portion or portions of the  
25 material on a page qualifies for protection, the Producing Party also must clearly identify the  
26 protected portion(s) (e.g., by making appropriate markings in the margins). For documents  
27 produced electronically in a format that includes separate pagination, to the extent practicable, the  
28 Designating Party must affix the legend “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL –

1 ATTORNEYS' EYES ONLY" or "HIGHLY CONFIDENTIAL – SOURCE CODE" to each  
2 electronic page of such documents that contains Protected Material. For documents produced in a  
3 format which does not lend itself to separate pagination, confidentiality shall be designated in a  
4 reasonable manner.

5 (b) for testimony given in deposition or in other pretrial or trial proceedings,  
6 that the Designating Party identify on the record, before the close of the deposition, hearing, or  
7 other proceeding, all protected testimony. When it is impractical to identify separately each  
8 portion of testimony that is entitled to protection and it appears that different portions of the  
9 testimony may qualify for protection, the Designating Party may invoke on the record (before the  
10 deposition, hearing, or other proceeding is concluded) a right to have up to 21 days to identify the  
11 specific portions of the testimony as to which protection is sought and to specify the level of  
12 protection being asserted. Only those portions of the testimony that are appropriately designated  
13 for protection within the 21 days shall be covered by the provisions of this Stipulated Protective  
14 Order. Alternatively, a Designating Party may specify, at the deposition or up to 21 days  
15 afterwards if that period is properly invoked, that the entire transcript shall be treated as  
16 "CONFIDENTIAL," "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY," or  
17 "HIGHLY CONFIDENTIAL – SOURCE CODE."

18 **Parties shall give the other parties notice if they reasonably expect a deposition,**  
19 **hearing or other proceeding to include Protected Material so that the other parties can**  
20 **ensure that only authorized individuals who have signed the "Acknowledgment and**  
21 **Agreement to Be Bound" (Exhibit A) are present at those proceedings.** Parties shall act with  
22 caution at court hearings and conferences so as not to disclose Protected Material publicly  
23 without providing an opportunity for the Designating Party to be heard concerning, as  
24 appropriate, sealing the courtroom, sealing the transcript, or other relief. For court hearings and  
25 conferences, a Party shall provide at least 48 hours' notice to the Designating Party before  
26 discussing, displaying, submitting as evidence, or otherwise entering into the record any Protected  
27 Material produced by the other Party. Notwithstanding the foregoing sentence, this advance-  
28 notice requirement shall not apply in circumstances where the Party could not have reasonably

1 anticipated so using Protected Material at the court hearing or conference. The Designating Party  
2 may move to seal the Protected Material or for other relief either in writing or orally, either before  
3 or during the court hearing or conference. **The use of a document as an exhibit at a deposition**  
4 **shall not in any way affect its designation as “CONFIDENTIAL,” “HIGHLY**  
5 **CONFIDENTIAL – ATTORNEYS’ EYES ONLY,” or “HIGHLY CONFIDENTIAL –**  
6 **SOURCE CODE.”**

7 **Transcripts containing Protected Material shall have an obvious legend on the title**  
8 **page that the transcript contains Protected Material, and the title page shall be followed by**  
9 **a list of all pages (including line numbers as appropriate) that have been designated as**  
10 **Protected Material and the level of protection being asserted by the Designating Party. The**  
11 **Designating Party shall inform the court reporter of these requirements. Any transcript**  
12 **that is prepared before the expiration of a 21-day period for designation shall be treated**  
13 **during that period as if it had been designated “HIGHLY CONFIDENTIAL –**  
14 **ATTORNEYS’ EYES ONLY” in its entirety unless otherwise agreed. After the expiration**  
15 **of that period, the transcript shall be treated only as actually designated.**

16 (c) for information produced in some form other than documentary and for any  
17 other tangible items, that the Producing Party affix in a prominent place on the exterior of the  
18 container or containers in which the information or item is stored the legend “CONFIDENTIAL”  
19 or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” or “HIGHLY  
20 CONFIDENTIAL – SOURCE CODE.” If only a portion or portions of the information or item  
21 warrant protection, the Producing Party, to the extent practicable, shall identify the protected  
22 portion(s) and specify the level of protection being asserted.

23 5.3 **Inadvertent Failures to Designate.** An inadvertent failure to designate qualified  
24 information or items does not waive the Designating Party’s right to timely secure protection  
25 under this Order for such material.

26 In the event that any document, material, or testimony that is subject to a  
27 “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” or  
28 “HIGHLY CONFIDENTIAL – SOURCE CODE” designation is inadvertently produced without



1 such designation, the Producing Party that inadvertently produced the document shall give written  
2 notice of such inadvertent production, together with a further copy of the subject document,  
3 material, or testimony designated as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL –  
4 ATTORNEYS’ EYES ONLY” or “HIGHLY CONFIDENTIAL – SOURCE CODE” (the  
5 “Inadvertent Production Notice”). Upon receipt of such Inadvertent Production Notice, the Party  
6 that received the inadvertently produced document, material, or testimony shall promptly destroy  
7 the inadvertently produced document, material, or testimony and all copies thereof, or return such  
8 together with all copies of such documents, material, or testimony to counsel for the Producing  
9 Party and shall retain only the “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL –  
10 ATTORNEYS’ EYES ONLY” or “HIGHLY CONFIDENTIAL – SOURCE CODE” designated  
11 documents, material, or testimony. Should the Receiving Party choose to destroy such  
12 inadvertently produced document, material, or testimony, the Receiving Party shall notify the  
13 Producing Party in writing of such destruction within 14 days of receipt of written notice of the  
14 inadvertent production. This provision is not intended to apply to any inadvertent production of  
15 any document, material, or testimony protected by attorney-client or work product privileges.

16 **6. CHALLENGING CONFIDENTIALITY DESIGNATIONS**

17 6.1 Timing of Challenges. Any Party or Non-Party with standing to do so may  
18 challenge a designation of confidentiality at any time. Unless a prompt challenge to a  
19 Designating Party’s confidentiality designation is necessary to avoid foreseeable, substantial  
20 unfairness, unnecessary economic burdens, or a significant disruption or delay of the litigation, a  
21 Party does not waive its right to challenge a confidentiality designation by electing not to mount a  
22 challenge promptly after the original designation is disclosed.

23 6.2 Meet and Confer. The Challenging Party shall initiate the dispute resolution  
24 process by providing written notice of each designation it is challenging and describing the basis  
25 for each challenge. To avoid ambiguity as to whether a challenge has been made, the written  
26 notice must recite that the challenge to confidentiality is being made in accordance with this  
27 specific paragraph of the Protective Order. The parties shall attempt to resolve each challenge in  
28 good faith and must begin the process by conferring directly within 7 days of the date of service

1 of notice. In conferring, the Challenging Party must explain the basis for its belief that the  
2 confidentiality designation was not proper and must give the Designating Party an opportunity to  
3 review the designated material, to reconsider the circumstances, and, if no change in designation  
4 is offered, to explain the basis for the chosen designation. A Challenging Party may proceed to  
5 the next stage of the challenge process only if it has engaged in this meet and confer process first  
6 or establishes that the Designating Party is unwilling to participate in the meet and confer process  
7 in a timely manner.

8         6.3 Judicial Intervention. If the Parties cannot resolve a challenge without court  
9 intervention, the Challenging Party shall file and serve a motion challenging confidentiality under  
10 Civil Local Rule 7 (and in compliance with Civil Local Rule 79-5, if applicable) within 21 days  
11 of the initial notice of challenge or within 14 days of the parties agreeing that the meet and confer  
12 process will not resolve their dispute, whichever is later. In addition, the Challenging Party may  
13 file a motion challenging a confidentiality designation at any time if there is good cause for doing  
14 so, including a challenge to the designation of a deposition transcript or any portions thereof.  
15 Any motion brought pursuant to this provision must be accompanied by a competent declaration  
16 affirming that the movant has complied with the meet and confer requirements imposed by the  
17 preceding paragraph.

18         The burden of persuasion in any such challenge proceeding shall be on the Designating  
19 Party. Frivolous challenges, and those made for an improper purpose (e.g., to harass or impose  
20 unnecessary expenses and burdens on other parties) may expose the Party to sanctions. All  
21 parties shall continue to afford the material in question the level of protection to which it is  
22 entitled under the Producing Party's designation until the Court rules on the challenge.

23 **7. ACCESS TO AND USE OF PROTECTED MATERIAL**

24         7.1 Basic Principles. A Receiving Party may use Protected Material that is disclosed  
25 or produced by another Party or by a Non-Party only in connection with this case and only for  
26 prosecuting, defending, or attempting to settle this litigation. Such Protected Material may be  
27 disclosed only to the categories of persons and under the conditions described in this Order.  
28

1 When the litigation has been terminated, a Receiving Party must comply with the provisions of  
2 section 15 below (FINAL DISPOSITION).

3 Protected Material must be stored and maintained by a Receiving Party at a location and  
4 in a secure manner that ensures that access is limited to the persons authorized under this Order.

5 7.2 Disclosure of “CONFIDENTIAL” Information or Items. Unless otherwise  
6 ordered by the court or permitted in writing by the Designating Party, a Receiving Party may  
7 disclose any information or item designated “CONFIDENTIAL” only, and as applicable, to:

8 (a) the Receiving Party’s Outside Counsel of Record in this action, as well as  
9 employees of said Outside Counsel of Record to whom it is reasonably necessary to disclose the  
10 information for this litigation;

11 (b) the officers, directors, and employees (including In-House Counsel) of the  
12 Receiving Party to whom disclosure is reasonably necessary for this litigation and who have  
13 signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

14 (c) an Expert of the Receiving Party to whom disclosure is reasonably  
15 necessary for this litigation and who has signed the “Acknowledgment and Agreement to Be  
16 Bound” (Exhibit A);

17 (d) the Court and its personnel;

18 (e) court reporters and their staff, professional jury or trial consultants, and  
19 Professional Vendors to whom disclosure is reasonably necessary for this litigation and who have  
20 signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

21 (f) during their depositions, witnesses in the action to whom disclosure is  
22 reasonably necessary and who have signed the “Acknowledgment and Agreement to Be Bound”  
23 (Exhibit A), unless otherwise agreed by the Designating Party or ordered by the Court. Pages of  
24 transcribed deposition testimony or exhibits to depositions that reveal Protected Material must be  
25 separately bound by the court reporter and may not be disclosed to anyone except as permitted  
26 under this Stipulated Protective Order; and

27 (g) the author or recipient of a document containing the information or a  
28 custodian or other person who otherwise possessed or knew the information.

1           7.3    Disclosure of “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” and  
2 “HIGHLY CONFIDENTIAL – SOURCE CODE” Information or Items. Unless otherwise  
3 ordered by the Court or permitted in writing by the Designating Party, a Receiving Party may  
4 disclose any information or item designated “HIGHLY CONFIDENTIAL – ATTORNEYS’  
5 EYES ONLY” or “HIGHLY CONFIDENTIAL – SOURCE CODE” only to:

6                   (a)    the Receiving Party’s Outside Counsel of Record in this action, as well as  
7 employees of said Outside Counsel of Record to whom it is reasonably necessary to disclose the  
8 information for this litigation and who have signed the “Acknowledgment and Agreement to Be  
9 Bound” that is attached hereto as Exhibit A. The Parties agree that “HIGHLY CONFIDENTIAL  
10 – ATTORNEYS’ EYES ONLY” and “HIGHLY CONFIDENTIAL – SOURCE CODE”  
11 information or items shall not be disclosed to the named plaintiffs in this action or any of the  
12 putative class members;

13                   (b)    an Expert of the Receiving Party to whom disclosure is reasonably  
14 necessary for this litigation and who has signed the “Acknowledgment and Agreement to Be  
15 Bound” (Exhibit A);

16                   (c)    the Receiving Party’s In-House Counsel and the paralegal, clerical,  
17 secretarial, or e-Discovery employees who work for In-House Counsel to whom disclosure is  
18 reasonably necessary for this litigation;

19                   (d)    the Court and its personnel;

20                   (e)    court reporters and their staff, professional jury or trial consultants, and  
21 Professional Vendors to whom disclosure is reasonably necessary for this litigation and who have  
22 signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A); and

23                   (f)    the author or recipient of a document containing the information or a  
24 custodian or other person who otherwise possessed or knew the information.

25           7.4    Procedures for Approving or Objecting to Disclosure of “HIGHLY  
26 CONFIDENTIAL – ATTORNEYS’ EYES ONLY” OR “HIGHLY CONFIDENTIAL –  
27 SOURCE CODE” Information or Items to Experts.

1 (a) Unless otherwise ordered by the Court or agreed to in writing by the  
2 Designating Party, a Party that seeks to disclose to an Expert (as defined in this Order) any  
3 information or item that has been designated HIGHLY CONFIDENTIAL – ATTORNEYS’  
4 EYES ONLY” or “HIGHLY CONFIDENTIAL – SOURCE CODE” pursuant to paragraph 7.3(c)  
5 first must make a written request to the Designating Party that (1) indicates that the information  
6 that the Receiving Party seeks permission to disclose to the Expert is designated “HIGHLY  
7 CONFIDENTIAL – ATTORNEYS’ EYES ONLY” and/or “HIGHLY CONFIDENTIAL –  
8 SOURCE CODE”, (2) sets forth the full name of the Expert and the city and state of his or her  
9 primary residence, (3) attaches a copy of the Expert’s current resume, (4) identifies the Expert’s  
10 current employer(s), (5) identifies each person or entity from whom the Expert has received  
11 compensation or funding for work in his or her areas of expertise or to whom the expert has  
12 provided professional services, including in connection with a litigation, at any time during the  
13 preceding five years and the party to the litigation for whom such work was done, (6) identifies  
14 (by name and number of the case, filing date, and location of court) any litigation in connection  
15 with which the Expert has offered expert testimony, including through a declaration, report, or  
16 testimony at a deposition or trial, during the preceding five years, and (7) identifies any patents or  
17 patent applications in which the Expert is identified as an inventor or applicant, is involved in  
18 prosecuting or maintaining, or has any pecuniary interest. With regard to the information sought  
19 through part (5) of this disclosure, if the Expert believes any of this information is subject to a  
20 confidentiality obligation to a third party, then the Expert should provide whatever information  
21 the expert believes can be disclosed, without violating any confidentiality agreements, and the  
22 Party seeking to disclose to the Expert shall be available to meet and confer with the Designating  
23 Party regarding any such engagement. A Party that makes a request and provides the information  
24 specified in the preceding respective paragraphs may disclose the subject Protected Material to  
25 the identified Expert unless, within 10 days of delivering the request, the Party receives a written  
26 objection from the Designating Party. Any such objection must set forth in detail the grounds on  
27 which it is based.  
28

1 (b) A Party that receives a timely written objection must meet and confer with  
2 the Designating Party to try to resolve the matter by agreement within seven days of the written  
3 objection. If no agreement is reached, the Party seeking to make the disclosure to the Expert must  
4 file a motion as provided in Civil Local Rule 7 (and in compliance with Civil Local Rule 79-5, if  
5 applicable) seeking permission from the Court to do so. Any such motion must describe the  
6 circumstances with specificity, set forth in detail the reasons why the disclosure to the Expert is  
7 reasonably necessary, assess the risk of harm that the disclosure would entail, and suggest any  
8 additional means that could be used to reduce that risk. In addition, any such motion must be  
9 accompanied by a competent declaration describing the parties' efforts to resolve the matter by  
10 agreement (i.e., the extent and the content of the meet and confer discussions) and setting forth  
11 the reasons advanced by the Designating Party for its refusal to approve the disclosure.

12 In any such proceeding, the Party opposing disclosure to the Expert shall bear the burden  
13 of proving that the risk of harm that the disclosure would entail (under the safeguards proposed)  
14 outweighs the Receiving Party's need to disclose the Protected Material to its Expert.

15 Notwithstanding the foregoing provisions, Disclosure or Discovery Material may be  
16 provided to an Expert only to the extent necessary for such Expert to prepare a written opinion, to  
17 prepare to testify, or to assist counsel or the Parties, provided that such Expert is using said  
18 Disclosure or Discovery Material solely in connection with this litigation, and further provided  
19 that such Expert has previously executed an undertaking in the form attached hereto as Exhibit A,  
20 agreeing in writing to be bound by the terms and conditions of this Stipulated Protective Order,  
21 consenting to the jurisdiction of this Court for purposes of enforcement of the terms of this  
22 Stipulated Protective Order, and agreeing not to disclose or use any Disclosure or Discovery  
23 Material for purposes other than those permitted hereunder.

24 7.5 Custody of Executed Copies of "Acknowledgment and Agreement to Be Bound"  
25 (Exhibit A) and Providing Copies to other party. Outside Counsel for the Party that obtains the  
26 signed copy of an "Acknowledgment and Agreement to Be Bound" (Exhibit A) required under  
27 this Protective Order, shall retain the original executed copy for one year following the final  
28 termination of this action, including any appeals, and shall make them available to other Parties

1 upon good faith request. All such executed copies of Exhibit A shall themselves be treated as  
2 CONFIDENTIAL information.

3 **8. SOURCE CODE**

4 8.1 To the extent production of source code becomes necessary in this case, a  
5 Producing Party may designate source code as “HIGHLY CONFIDENTIAL - SOURCE CODE”  
6 if it comprises or includes confidential, proprietary or trade secret source code.

7 8.2 Protected Material designated as “HIGHLY CONFIDENTIAL – SOURCE CODE”  
8 shall be subject to all of the protections afforded to “HIGHLY CONFIDENTIAL – ATTORNEYS’  
9 EYES ONLY” information, and may be disclosed only to the individuals to whom “HIGHLY  
10 CONFIDENTIAL – ATTORNEYS’ EYES ONLY” information may be disclosed.

11 8.3 Protected Material designated as “HIGHLY CONFIDENTIAL – SOURCE CODE”  
12 shall be subject to all of the protections afforded to “HIGHLY CONFIDENTIAL – ATTORNEYS’  
13 EYES ONLY” information, and may be disclosed only to the individuals to whom “HIGHLY  
14 CONFIDENTIAL – ATTORNEYS’ EYES ONLY” information may be disclosed.

15 8.4 Any source code produced in discovery shall be made available for inspection, in a  
16 format allowing it to be reasonably reviewed. In the event the relevant source code is produced in  
17 a format other than a paper format, the following applies: The computer containing source code  
18 will be made available upon reasonable notice to the Producing Party, which shall not be less than  
19 7 days in advance of the requested inspection. The source code shall be made available for  
20 inspection on a secured computer in a secured room without Internet access or network access to  
21 other computers, and the Receiving Party shall not copy, remove, or otherwise transfer any portion  
22 of the source code onto any recordable media or recordable device. The Receiving Party shall not  
23 bring a cellular telephone, laptop computer, or any recordable media or recordable device into the  
24 source code room. The Producing Party shall provide a backup secured computer within two  
25 business days in the event that the primary secured computer fails or otherwise suffers technical  
26 problems impeding the inspection. The Receiving Party may request that software tools for  
27 viewing and searching source code be installed on the secured computer. The Receiving Party  
28 must provide the Producing Party with the CD or DVD containing the agreed upon software

1 tool(s) at least four business days in advance of the inspection. The tools may not allow the source  
2 code to be compiled. The Receiving Party's counsel or experts shall be entitled to take notes  
3 relating to the source code but may not copy any portion of the source code into the notes. The  
4 Producing Party may visually monitor the activities of the Receiving Party's representatives during  
5 any source code review, but only to ensure that there is no unauthorized recording, copying, or  
6 transmission of the source code. All persons viewing Source Code shall sign on each day they  
7 view Source Code a log that will includes the names of persons who enter the secured room to  
8 view the Source Code and when they enter and depart.

9       8.5 The Receiving Party may request paper copies of limited portions of source code  
10 that are reasonably necessary to attach to filings, pleadings, expert reports, or other papers, or for  
11 use as an exhibit at deposition or trial. The Producing Party shall provide all such source code  
12 within 5 business days on non-copyable paper including bates numbers and the label "HIGHLY  
13 CONFIDENTIAL - SOURCE CODE." The Producing Party may challenge the amount of source  
14 code requested in hard copy form pursuant to the dispute resolution procedure and timeframes set  
15 forth in Paragraph 6 whereby the Producing Party is the "Challenging Party" and the Receiving  
16 Party is the "Designating Party" for purposes of dispute resolution. In no case may the  
17 Receiving Party request more than 5 consecutive pages, or an aggregate of more than 50 pages, of  
18 Source Code during the duration of the case without prior written approval of the Producing  
19 Party.

20       8.6 The Receiving Party shall maintain a record of any individual who has inspected  
21 any portion of the source code in electronic or paper form. The Receiving Party shall provide a  
22 copy of this record to the Producing Party upon Court order. The Receiving Party shall maintain  
23 all paper copies of any printed portions of the source code in a secured, locked area. The  
24 Receiving Party shall not create any electronic or other images of the paper copies and shall not  
25 convert any of the information contained in the paper copies into any electronic format. The  
26 Receiving Party shall only make additional paper copies if such additional copies are (1)  
27 necessary to prepare court filings, pleadings, or other papers (including a testifying expert's  
28 expert report), (2) necessary for deposition, or (3) otherwise necessary for the preparation of its



1 case. Any paper copies used during a deposition shall be retrieved by the Producing Party at the  
2 end of each day and must not be given to or left with a court reporter or any other unauthorized  
3 individual

4 **9. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN**  
5 **OTHER LITIGATION.** If a Party is served with a subpoena or a court order issued in other  
6 litigation that compels disclosure of any information or items designated in this action as  
7 “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” or  
8 “HIGHLY CONFIDENTIAL – SOURCE CODE” that Party must:

9 (a) promptly notify in writing the Designating Party. Such notification shall  
10 include a copy of the subpoena or court order;

11 (b) promptly notify in writing the party who caused the subpoena or order to  
12 issue in the other litigation that some or all of the material covered by the subpoena or order is  
13 subject to this Protective Order. Such notification shall include a copy of this Stipulated  
14 Protective Order; and

15 (c) cooperate with respect to all reasonable procedures sought to be pursued by  
16 the Designating Party whose Protected Material may be affected.

17 If the Designating Party timely seeks a protective order, the Party served with the  
18 subpoena or court order shall not produce any information designated in this action as  
19 “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” or  
20 “HIGHLY CONFIDENTIAL – SOURCE CODE” before a determination by the court from  
21 which the subpoena or order issued, unless the Party has obtained the Designating Party’s  
22 permission. The Designating Party shall bear the burden and expense of seeking protection in  
23 that court of its confidential material – and nothing in these provisions should be construed as  
24 authorizing or encouraging a Receiving Party in this action to disobey a lawful directive from  
25 another court.

26 The provisions set forth herein are not intended to, and do not, restrict in any way the procedures  
27 set forth in Federal Rule of Civil Procedure 45(d)(3) or (f).

28

1 **10. A NON-PARTY’S PROTECTED MATERIAL SOUGHT TO BE PRODUCED IN**  
2 **THIS LITIGATION**

3 10.1 The terms of this Order are applicable to information produced by a Non-Party in  
4 this action and designated as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL –  
5 ATTORNEYS’ EYES ONLY” or “HIGHLY CONFIDENTIAL – SOURCE CODE.” Such  
6 information produced by Non-Parties in connection with this litigation is protected by the  
7 remedies and relief provided by this Order. Nothing in these provisions should be construed as  
8 prohibiting a Non-Party from seeking additional protections.

9 10.2 In the event that a Party is required, by a valid discovery request, to produce a  
10 Non-Party’s confidential information in its possession, and the Party is subject to an agreement  
11 with the Non-Party not to produce the Non-Party’s confidential information, then the Party shall:

12 (a) promptly notify in writing the Requesting Party and the Non-Party that  
13 some or all of the information requested is subject to a confidentiality agreement with a Non-  
14 Party;

15 (b) promptly provide the Non-Party with a copy of the Stipulated Protective  
16 Order in this litigation, the relevant discovery request(s), and a reasonably specific description of  
17 the information requested; and

18 (c) make the information requested available for inspection by the Non-Party.

19 10.3 If the Non-Party fails to object or seek a protective order from this court within 21  
20 days of receiving the notice and accompanying information, the Receiving Party may produce the  
21 Non-Party’s confidential information responsive to the discovery request. If the Non-Party timely  
22 seeks a protective order, the Receiving Party shall not produce any information in its possession  
23 or control that is subject to the confidentiality agreement with the Non-Party before a  
24 determination by the court. Absent a court order to the contrary, the Non-Party shall bear the  
25 burden and expense of seeking protection in this court of its Protected Material.

26 **11. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL**

27 If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed Protected  
28 Material to any person or in any circumstance not authorized under this Stipulated Protective

1 Order, the Receiving Party must immediately (a) notify in writing the Designating Party of the  
2 unauthorized disclosures, (b) use its best efforts to retrieve all unauthorized copies of the  
3 Protected Material, (c) inform the person or persons to whom unauthorized disclosures were  
4 made of all the terms of this Order, and (d) request such person or persons to execute the  
5 “Acknowledgment and Agreement to Be Bound” that is attached hereto as Exhibit A.  
6 Notwithstanding the foregoing, nothing in this paragraph shall be construed as to limit a  
7 Designating Party’s rights or remedies relating to the unauthorized disclosure of its Protected  
8 Material, or any injury resulting therefrom.

9 **12. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE**  
10 **PROTECTED MATERIAL**

11 12.1 Pursuant to Federal Rule of Evidence 502(d), in the event that Inadvertent  
12 Production Material is produced or disclosed, such inadvertent production or disclosure shall in  
13 no way prejudice or otherwise constitute a waiver of, or estoppel as to, any claim of attorney-  
14 client privilege, attorney work product protection, or other applicable protection in this case or  
15 any other federal or state proceeding, provided that the Producing Party shall notify the Receiving  
16 Party in writing of such protection or privilege promptly after the Producing Party discovers such  
17 materials have been inadvertently produced.

18 12.2 If a claim of inadvertent production is made, pursuant to this Stipulated Protective  
19 Order, with respect to Discovery Material then in the custody of another Party, that Party shall: (i)  
20 refrain from any further examination or disclosure of the claimed Inadvertent Production  
21 Material; (ii) promptly make a good-faith effort to return the claimed Inadvertent Production  
22 Material and all copies thereof (including summaries and excerpts) to counsel for the Producing  
23 Party, or destroy all such claimed Inadvertent Production Material (including summaries and  
24 excerpts) and certify in writing to that fact; and (iii) not disclose or use the claimed Inadvertent  
25 Production Material for any purpose until further order of the Court expressly authorizing such  
26 use.

27 12.3 A Party may move the Court for an order compelling production of the Inadvertent  
28 Production Material on the ground that it is not, in fact, privileged or protected. The motion shall

1 be filed under seal and shall not assert as a ground for entering such an order the fact or  
2 circumstance of the inadvertent production. Any effort to file under seal pursuant to this  
3 paragraph must comply with Civil Local Rule 79-5. The Producing Party retains the burden of  
4 establishing the privileged or protected nature of any inadvertently disclosed or produced  
5 information. While such a motion is pending, the Inadvertent Production Material at issue shall  
6 be treated in accordance with Paragraph 12.2 above.

7 If a Party, in reviewing Disclosure or Discovery Material it has received from any other  
8 Party or any non-Party, finds anything the reviewing Party believes in good faith may be  
9 Inadvertent Production Material, the reviewing Party shall: (i) refrain from any further  
10 examination or disclosure of the potentially Inadvertent Production Material; (ii) promptly identify  
11 the material in question to the Producing Party (by document number or other equally precise  
12 description); and (iii) give the Producing Party seven (7) days to respond as to whether the  
13 Producing Party will make a claim of inadvertent production. If the Producing Party makes such a  
14 claim, the provisions of Paragraphs 12.1-12.2 above shall apply.

15 **13. MISCELLANEOUS**

16 13.1 Right to Further Relief. Nothing in this Order abridges the right of any person to  
17 seek its modification by the Court in the future.

18 13.2 Right to Assert Other Objections. By stipulating to the entry of this Protective  
19 Order, no Party waives any right it otherwise would have to object to disclosing or producing any  
20 information or item on any ground not addressed in this Stipulated Protective Order. Similarly,  
21 no Party waives any right to object on any ground to use in evidence of any of the material  
22 covered by this Protective Order.

23 13.3 Filing Protected Material. Without written permission from the Designating Party  
24 or a Court order secured after appropriate notice to all interested persons, a Party may not file in  
25 the public record in this action any Protected Material. A Party that seeks to file under seal any  
26 Protected Material must comply with Civil Local Rule 79-5. Protected Material may only be  
27 filed under seal pursuant to a court order authorizing the sealing of the specific Protected Material  
28 at issue. Pursuant to Civil Local Rule 79-5, a sealing order will issue only upon a request

1 establishing that the Protected Material at issue is privileged, protectable as a trade secret, or  
2 otherwise entitled to protection under the law. If a Receiving Party's request to file Protected  
3 Material under seal pursuant to Civil Local Rule 79-5(d) is denied by the Court, then the  
4 Receiving Party may file the Protected Material in the public record pursuant to Civil Local Rule  
5 79-5(e) unless otherwise instructed by the court. If a Receiving Party believes that only a portion  
6 of Designated Material is Protected Material, the Receiving Party and Producing Party shall meet  
7 and confer in good faith concerning the redaction of only the Protected Material prior to filing  
8 with the Court.

9 13.4 Right to Seek Further Protection. Nothing in this Stipulated Protective Order shall  
10 be construed to preclude any Party from asserting in good faith that certain Protected Materials  
11 require additional protections. The Parties shall meet and confer to agree upon the terms of such  
12 additional protection.

13 13.5 Additional Signatories. Any Party or Non-Party to this Proceeding who has not  
14 executed this Stipulated Protective Order as of the time it is presented to the Court for signature  
15 may thereafter become a Party to this Stipulated Protective Order by its counsel's signing and  
16 dating a copy thereof and filing the same with the Court, and serving copies of such signed and  
17 dated copy upon the other Parties to this Stipulated Protective Order.

18 **14. PROSECUTION BAR.** Absent written consent from the Producing Party, any  
19 individual who receives access to "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY"  
20 or "HIGHLY CONFIDENTIAL – SOURCE CODE" information of the opposing party shall not  
21 be involved in the prosecution of patents or patent applications relating to the subject matter of  
22 the "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY" or "HIGHLY  
23 CONFIDENTIAL – SOURCE CODE" information he or she received before any foreign or  
24 domestic agency, including the United States Patent and Trademark Office ("the Patent Office").  
25 For purposes of this paragraph, "prosecution" includes directly or indirectly drafting, amending,  
26 advising, or otherwise affecting the scope or maintenance of patent claims. Prosecution includes,  
27 for example, original prosecution, reissue, and reexamination and other post-grant proceedings.  
28 To avoid any doubt, "prosecution" as used in this paragraph does not include representing a party

1 challenging a patent before a domestic or foreign agency (including, but not limited to, a reissue  
2 protest, ex parte reexamination or inter partes reexamination). This Prosecution Bar shall begin  
3 when access to “HIGHLY CONFIDENTIAL– ATTORNEYS’ EYES ONLY” or “HIGHLY  
4 CONFIDENTIAL – SOURCE CODE” information is first received by the affected individual and  
5 shall end two (2) years after final termination of this action.

6 **15. FINAL DISPOSITION.** Within 60 days after the final disposition of this action, as  
7 defined in paragraph 4, each Receiving Party must return all Protected Material to the Producing  
8 Party or destroy such material. As used in this subdivision, “all Protected Material” includes all  
9 copies, abstracts, compilations, summaries, and any other format reproducing or capturing any of  
10 the Protected Material. Whether the Protected Material is returned or destroyed, and upon request  
11 by the Producing party, the Receiving Party must submit a written certification to the Producing  
12 Party (and, if not the same person or entity, to the Designating Party) by the 60 day deadline that  
13 (1) identifies (by category, where appropriate) all the Protected Material that was returned or  
14 destroyed and (2) affirms that the Receiving Party has not retained any copies, abstracts,  
15 compilations, summaries or any other format reproducing or capturing any of the Protected  
16 Material. Notwithstanding this provision, Counsel are entitled to retain an archival copy of all  
17 pleadings, motion papers, trial, deposition, and hearing transcripts, legal memoranda,  
18 correspondence, deposition and trial exhibits, expert reports, attorney work product, and  
19 consultant and expert work product, even if such materials contain Protected Material. Any such  
20 archival copies that contain or constitute Protected Material remain subject to this Protective  
21 Order as set forth in Section 4 (DURATION).

22 Dated: June 28, 2016

KEEGAN & BAKER LLP

23  
24 By: /s/ James M. Treglio  
James M. Treglio

25  
26 Attorneys for Plaintiff  
DOUGLAS O’CONNOR

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

Dated: June 28, 2016

MAYER BROWN LLP

By: /s/Ruth Zadikany  
Ruth Zadikany

Attorneys for Defendant  
LYFT, INC.

Dated: June 29, 2016



1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

EXHIBIT A

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, \_\_\_\_\_ [print or type full name], of \_\_\_\_\_  
[print or type full address], declare under penalty of perjury that I have read in its entirety and understand the Stipulated Protective Order that was issued by the United States District Court for the Northern District of California on [date] in the case of O'Connor v. Lyft, Inc., Case No. 4:16-cv-00351-JSW. I agree to comply with and to be bound by all the terms of this Stipulated Protective Order and I understand and acknowledge that failure to so comply could expose me to sanctions and punishment in the nature of contempt. I solemnly promise that I will not disclose in any manner any information or item that is subject to this Stipulated Protective Order to any person or entity except in strict compliance with the provisions of this Order.

I further agree to submit to the jurisdiction of the United States District Court for the Northern District of California for the purpose of enforcing the terms of this Stipulated Protective Order, even if such enforcement proceedings occur after termination of this action.

I hereby appoint \_\_\_\_\_ [print or type full name] of \_\_\_\_\_ [print or type full address and telephone number] as my California agent for service of process in connection with this action or any proceedings related to enforcement of this Stipulated Protective Order.

Date: \_\_\_\_\_

City and State where sworn and signed: \_\_\_\_\_

Printed name: \_\_\_\_\_  
[printed name]

Signature: \_\_\_\_\_  
[signature]