UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
CIVIL MINUTES—GENERAL

Case No.	**CV 20-5044-DMG (AFMx)**	Date	February 23, 2021
Title	***Justin Sanchez, et al. v. Los Angeles Department of Transportation, et al.***	Page	1 of 9

Present: The Honorable DOLLY M. GEE, UNITED STATES DISTRICT JUDGE

KANE TIEN	NOT REPORTED
Deputy Clerk	Court Reporter
Attorneys Present for Plaintiff(s) None Present	Attorneys Present for Defendant(s) None Present

Proceedings: IN CHAMBERS—ORDER RE DEFENDANTS' MOTION TO DISMISS [18]

Before the Court is the motion to dismiss ("MTD") brought by Defendants the City of Los Angeles and the Los Angeles Department of Transportation ("LADOT" and together, "the City"). [Doc. # 18.] The motion is fully briefed. [Doc. ## 23, 25.] For the reasons set forth below, the Court **GRANTS** the MTD.

I.
FACTUAL AND PROCEDURAL BACKGROUND

In late 2017, the streets of Los Angeles saw an "invasion" of motorized electric scooters. Compl. ¶ 1 [Doc. # 1]. Dispatched by technology companies, the scooters are designed to be rented by smartphone-equipped consumers for individual rides. The scooters are "dockless," meaning that when the trip is over, the rider simply leaves the scooter on the street or sidewalk where the trip ends. Another consumer who comes along can then rent it again. *Id.* at ¶¶ 1, 17. The scooters are outfitted with GPS trackers, which broadcast their locations to the proprietors and are used to track rides and charge consumers accordingly. *Id.* at ¶ 17.

Faced with this sudden and enormous disruption to the streetscape, the City began to regulate the industry. On September 28, 2018, the City Council passed an ordinance allowing scooter companies to apply for a permit to operate in the City, which requires that they comply with LADOT rules and regulations. *Id.* at ¶ 19; Def's Request for Judicial Notice ("RJN"), Ex. A ("Ordinance") [Doc. # 19-1].[1] The ordinance emphasizes the need for regulations "to prevent shared mobility devices from being illegally placed or parked on a sidewalk or on a public right-

[1] The Court **GRANTS** the City's RJN as to the Ordinance, both as a municipal ordinance that is not subject to reasonable dispute and as a document incorporated by reference in the Complaint. *See Tollis, Inc. v. Cty. of San Diego*, 505 F.3d 935, 938 n.1 (9th Cir. 2007); *Knievel v. ESPN*, 393 F.3d 1068, 1076 (9th Cir. 2005). To the extent any documents attached to the RJN are not discussed herein, the Court **DENIES as moot** the RJN as to those documents because it need not consider them in reaching its conclusions.

of-way[,] . . . to accommodate a shared mobility device user's ability to travel safely[, and] . . . to create an enforceable framework for managing shared mobility services," among others. Ordinance at 2.[2] The Ordinance also notes the need for data collection "to ensure safe and equitable access, maintenance and operations, to determine proper fleet size in various locations within the City, and to fine tune and update the current rules and regulations in real time to ensure compliance with local and state laws, including the development of data programs to aid in enforcement, and to prevent the accumulation of devices on sidewalks or other public rights-of-way." *Id.* at 2-3.

One regulation requires scooter operating companies to hand over historical vehicle location and trip data to LADOT. Known as the Mobility Data Specification ("MDS"), the program compiles spatial and temporal data on each scooter's location as well as the start and end points and times of each ride, and the route the scooter takes. Compl. ¶¶ 3, 25. The data is accurate to within "a few dozen feet" of the precise location of the scooter. *Id.* at ¶ 30. The data is anonymous, and does not include any information directly linking the scooter or the trip to the individual rider. *Id.* at ¶ 26.

The purpose of MDS is to "actively manage private mobility providers and the public right-of-way." *Id.* at ¶ 23 (quoting "Mobility Data Specification: Information Briefing," Los Angeles Department of Transportation, https://ladot.io/wp-content/uploads/2018/12/Whatis-MDS-Cities.pdf, Oct. 31, 2018).

Plaintiffs Justin Sanchez and Eric Alejo ride dockless rental scooters in Los Angeles, including to "make trips from their homes to work, friends, businesses, and places of leisure." *Id.* at ¶ 8. On June 8, 2020, they sued the City, claiming that MDS violates their rights under the Fourth Amendment of the United States Constitution; Article I, Section 13 of the California Constitution; and the California Electronic Communications Privacy Act ("CalECPA"), Cal. Penal Code § 1546 *et seq*. *See id.*

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[2] All page references herein are to page numbers inserted by the CM/ECF system.

II.
LEGAL STANDARD

Pursuant to Federal Rule of Civil Procedure 12(b)(6), a defendant may seek to dismiss a complaint for failure to state a claim upon which relief can be granted. To survive a Rule 12(b)(6) motion, a complaint must articulate "enough facts to state a claim to relief that is plausible on its face." *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007). Although a pleading need not contain "detailed factual allegations," it must contain "more than labels and conclusions" or "a formulaic recitation of the elements of a cause of action." *Id*. at 555 (citing *Papasan v. Allain*, 478 U.S. 265, 286 (1986)). "A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). In evaluating the sufficiency of a complaint, courts must accept all factual allegations as true. *Id.* (citing *Twombly*, 550 U.S. at 555). Legal conclusions, in contrast, are not entitled to the assumption of truth. *Id.*

IV.
DISCUSSION

A. Constitutional Claims

The Fourth Amendment to the United States Constitution prohibits "unreasonable searches and seizures."[3] The government violates the Fourth Amendment when it (a) conducts a search (b) that is unreasonable. *See Florida v. Jimeno*, 500 U.S. 248, 250 (1991) ("The Fourth Amendment does not proscribe all state-initiated searches and seizures; it merely proscribes those which are unreasonable.").

1. MDS is not a search

A search occurs within the meaning of the Fourth Amendment when "the government violates a subjective expectation of privacy that society recognizes as reasonable." *Kyllo v.*

[3] Article I, Section 13 of the California Constitution also prohibits "unreasonable searches and seizures" and incorporates the same legal standards as the Fourth Amendment, so the Court discusses the two claims together. *See Sanchez v. County of San Diego*, 464 F.3d 916, 928–29 (9th Cir. 2006) ("[T]he right to be free from unreasonable searches under [Article I, Section 13] parallels the Fourth Amendment inquiry.").

United States, 533 U.S. 27, 33 (2001) (citing *Katz v. United States*, 389 U.S. 347, 360 (1967) (Harlan, J., concurring)).[4]

Especially relevant here are two recent, landmark Supreme Court cases: *United States v. Jones*, 565 U.S. 400 (2012), and *Carpenter v. United States*, 138 S. Ct. 2206 (2018). In *Jones*, five justices held that a GPS tracker attached to a person's privately owned car and monitoring its movements for 28 straight days impinged on a reasonable expectation of privacy because "GPS monitoring generates a precise, comprehensive record of a person's public movements that reflects a wealth of detail about her familial, political, professional, religious, and sexual associations." 565 U.S. at 415 (Sotomayor, J., concurring); *id.* at 430 ("[S]ociety's expectation has been that law enforcement agents and others would not—and indeed, in the main, simply could not—secretly monitor and catalogue every single movement of an individual's car for a very long period.") (Alito, J., concurring).

In *Carpenter*, the Court held that collecting historical cell site location information ("CSLI") violated a reasonable expectation of privacy because "[m]apping a cell phone's location over the course of 127 days provides an all-encompassing record of the holder's whereabouts." 138 S. Ct. at 2217. Significantly, the collection of CSLI constituted a search even though the data was obtained from a third party—the network carrier—because of "the unique nature of cell phone records." *Id.*

While there are some clear similarities between *Jones* and *Carpenter* and this case—the vehicle location data, the third-party carrier—there are also important distinctions. Most apparent is the fact that here the MDS data is anonymous. Obviously, a person does not have a reasonable expectation of privacy over information that cannot even be connected to her. Plaintiffs allege, however, that location data can be readily de-anonymized. Compl. ¶¶ 26-28. They back up this assertion by citing to academic studies. *See id.* at ¶ 28 n. 4 ("[I]n a dataset where the location of an individual is specified hourly, and with a spatial resolution equal to that given by the carrier's antennas, four spatio-temporal points are enough to uniquely identify 95% of the individuals.") (quoting Yves-Alexandre de Montjoye, et al., *Unique in the Crowd: The privacy bounds of human mobility*, 3 Nature Scientific Reports 1376 (2013), http://www.nature.com/articles/srep01376). The allegation is not purely conclusory and rises to the level of plausibility, so the Court must accept it as true at this stage.

The MDS data is not merely anonymous, however. It is linked only to the scooter, which is *shared* and by its nature used by a person only for the duration of a single ride. Each ride is

[4] A search also occurs when the government trespasses onto private property for the purpose of obtaining information, *United States v. Jones*, 565 U.S. 400, 404-05 (2012), which does not apply here.

disassociated from other rides the user may have purchased. De-anonymizing one location data point would therefore reveal only a sole trip that a person took from point A to point B, along with the route that she took. The *Jones* Court made clear that "relatively short-term monitoring of a person's movements on public streets accords with expectations of privacy that our society has recognized as reasonable." 565 U.S. at 430 (Alito, J., concurring). Only when the location tracking is so pervasive that it "catalogue[s] every single movement of an individual's car for a very long period" does it become a search. *Id.* In order for MDS to be a search, the City must be able to not only de-anonymize one trip, but also identify and compile *all* the trips that Plaintiffs took on scooters, from all the various providers they allege to have used, despite the fact that they are completely untethered from each other within the data set.[5]

Even if Plaintiffs could adequately allege the feasibility of this data disaggregation,[6] their claim would still be barred as a matter of law by the "third-party doctrine," under which "a person has no legitimate expectation of privacy in information he voluntarily turns over to third parties." *Carpenter*, 138 S. Ct. at 2216 (quoting *Smith v. Maryland*, 442 U.S. 735, 743-44 (1979)). Here, scooter users knowingly and voluntarily provide their location to the scooter company while riding and when they start and stop their trip—GPS tracking of the scooters is fundamental to how the service works.[7] *See* Compl. ¶ 18.

In *Carpenter*, the Supreme Court carved out an exception to the third-party doctrine for cell phone location data. *Id.* at 2217. The *Carpenter* Court emphasized, however, that its holding was "a narrow one." *Id.* at 2220. The Court held that CSLI is different in kind from the

[5] This also assumes that Plaintiffs use rental scooter services for transportation to the same degree as the Supreme Court imagined one uses a privately-owned car, which is far from a foregone conclusion.

[6] It is worth noting that even if it were possible to create such a comprehensive record of an individual's movements from the MDS data, it would likely be an enormously resource- and/or time-intensive project. Plaintiffs tacitly acknowledge this, suggesting that the only impediment to the City de-anonymizing the data is "merely time." Opp. at 15. But time is not irrelevant to the Fourth Amendment analysis. Critical to the holding in *Jones* was that the GPS tracking was relatively cheap and easy, and therefore meaningfully different from traditional surveillance. *Id.* at 429 ("In the precomputer age, the greatest protections of privacy were neither constitutional nor statutory, but practical."); *see also Carpenter*, 138 S. Ct. at 2217-18 ("[C]ell phone tracking is remarkably easy, cheap, and efficient compared to traditional investigative tools.").

[7] For this discussion, the Court does not rely on the companies' privacy policies, of which the City requests that the Court take judicial notice. *See* RJN, Ex. M, N, and O. The privacy policies are not incorporated by reference in the Complaint and their authenticity is subject to dispute, so the Court **DENIES** the RJN as to these documents. Nonetheless, it is clear from the allegations in the Complaint that consumers know (or reasonably should know) that the scooter company tracks their location while they ride—otherwise, the company would not know where to locate a scooter at the end point of a ride or how much to charge for the ride, and the next customer would not be able to locate the scooter via the app.

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