

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

United States District Court
Northern District of California

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

MATIAS MALIG, AS TRUSTEE FOR
THE MALIG FAMILY TRUST,

Plaintiff,

v.

LYFT, INC., et al.,

Defendants.

Case No. 19-cv-02690-HSG

**ORDER DENYING MOTION FOR
JUDGMENT ON THE PLEADINGS
AND DENYING ADMINISTRATIVE
MOTIONS TO SEAL**

Re: Dkt. No. 152, 169, 172

Pending before the Court is Defendants’ motion for judgment on the pleadings. *See* Dkt. No. 152 (“Mot.”); Dkt. No. 159 (“Opp.”); Dkt. No. 170 (“Reply”).¹ Also pending are the parties’ associated administrative motions to file under seal. Dkt. Nos. 169, 172. The Court **DENIES** the motion for judgment on the pleadings and **DENIES** the motions to seal.

I. BACKGROUND

On April 16, 2021, Plaintiff Rick Keiner filed the operative consolidated complaint against Defendant Lyft Inc. (“Lyft”), Logan Green, Co-Founder, Chief Executive Officer, and Director on Lyft’s board of directors (the “Board”), John Zimmer, Co-Founder, President and Vice Chairman of the Board, Brian Roberts, Chief Financial Officer, Prashant (Sean) Aggarwal, Chairman of the Board, Board Members Ben Horowitz, Valerie Jarrett, David Lawee, Hiroshi Mikitani, Ann Miura-Ko, and Mary Agnes (Maggie) Wilderotter (“Individual Defendants,” and collectively with Lyft, “Defendants”).² *See* Dkt. No. 74 (“CCAC”).

¹ The Court finds this matter appropriate for disposition without oral argument and the matter is deemed submitted. *See* Civil L.R. 7-1(b).

² On October 14, 2020, the parties stipulated to the voluntary dismissal of Former Board Member Jonathan Christodoro. “who resigned from the Board prior to signing Lyft’s registration

1 Lyft is a rideshare company that “sought to revolutionize transportation by launching its
2 peer-to-peer marketplace for on-demand ridesharing.” CCAC at ¶ 4. Lyft registered its issuance
3 of common stock “under the Securities Act of 1933, as amended, pursuant to Lyft’s registration
4 statement on Form S-1 (File No. 333-229996) declared effective on March 28, 2019.” *Id.* at ¶ 3.
5 Lyft offered 32.5 million shares to the public through an initial public offering (“IPO”) at a price
6 of \$72.00 per share, generating total proceeds of \$2.34 billion. *Id.* at ¶ 5. According to Plaintiff,
7 Lyft made representations in the IPO Registration Statement and Prospectus filed in connection
8 with the IPO that “were materially misleading, omitted information necessary in order to make the
9 statements not misleading, and omitted material facts required to be stated therein.” *Id.* ¶ 6.

10 On May 14, 2020, Defendants moved to dismiss Plaintiff’s consolidated amended class
11 action complaint. Dkt. No. 78. On September 8, 2020, the Court granted in part and denied in
12 part Defendants’ motion. Dkt. No. 96. Following the hearing on Plaintiff’s motion for class
13 certification, Defendants moved for judgment on the pleadings as to a subset of Plaintiff’s sexual
14 assault allegations. Dkt. No. 152.

15 **II. REQUESTS FOR JUDICIAL NOTICE**

16 **A. Legal Standard**

17 In *Khoja v. Orexigen Therapeutics*, the Ninth Circuit clarified the judicial notice rule and
18 incorporation by reference doctrine. *See* 899 F.3d 988 (9th Cir. 2018). Under Federal Rule of
19 Evidence 201, a court may take judicial notice of a fact “not subject to reasonable dispute because
20 it ... can be accurately and readily determined from sources whose accuracy cannot reasonably be
21 questioned.” Fed. R. Evid. 201(b)(2). Accordingly, a court may take “judicial notice of matters of
22 public record,” but “cannot take judicial notice of disputed facts contained in such public records.”
23 *Khoja*, 899 F.3d at 999 (citation and quotations omitted). The Ninth Circuit has clarified that if a
24 court takes judicial notice of a document, it must specify what facts it judicially noticed from the
25 document. *Id.* at 999. Further, “[j]ust because the document itself is susceptible to judicial notice
26 does not mean that every assertion of fact within that document is judicially noticeable for its
27 truth.” *Id.* As an example, the Ninth Circuit held that for a transcript of a conference call, the

1 may not take judicial notice of a fact mentioned in the transcript, because the substance “is subject
2 to varying interpretations, and there is a reasonable dispute as to what the [document] establishes.”
3 *Id.* at 999–1000.

4 Separately, the incorporation by reference doctrine is a judicially-created doctrine that
5 allows a court to consider certain documents as though they were part of the complaint itself. *Id.*
6 at 1002. This is to prevent plaintiffs from cherry-picking certain portions of documents that
7 support their claims, while omitting portions that weaken their claims. *Id.* Incorporation by
8 reference is appropriate “if the plaintiff refers extensively to the document or the document forms
9 the basis of plaintiff’s claim.” *Khoja*, 899 F.3d at 1002. However, “the mere mention of the
10 existence of a document is insufficient to incorporate the contents” of a document. *Id.* at 1002.
11 And while a court “may assume [an incorporated document’s] contents are true for purposes of a
12 motion to dismiss ... it is improper to assume the truth of an incorporated document if such
13 assumptions only serve to dispute facts stated in a well-pleaded complaint.” *Id.*

14 **B. Analysis**

15 Defendants request that the Court take judicial notice of or consider incorporated by
16 reference the following three documents:

- 17 • Lyft’s Form S-1 Registration Statement (Ex. 1);
- 18 • an April 9, 2019 *San Francisco Chronicle* news article titled “Uber, Lyft safety in
19 spotlight after student’s slaying” (Ex. 2); and
- 20 • a January 5, 2017 *Business Insider* article titled “Lyft tripled its rides in 2016” (Ex.
21 3).

22 Dkt. No. 153 (“RJN”); Dkt. No. 152-1 (“Smith Decl.”), Exs. 1–3. Plaintiff generally argues that
23 Defendants’ requests are improper, but raises a specific objection only as to Exhibit 3. *Opp.* at 6.

24 The Court previously found Exhibit 1 incorporated by reference because it formed the
25 basis of Plaintiff’s claim. For the same reason, the Court **GRANTS** the motion as to Exhibit 1 and
26 will again consider Lyft’s Form S-1 Registration Statement for the purpose of determining what
27 was disclosed to the market. Defendants argue that Plaintiff’s complaint also relies on Exhibit 2

1 *San Francisco Chronicle* news article. RJN at 2–3. The Court agrees. Because “the plaintiff
 2 refers extensively to the document [and] the document forms the basis of the plaintiff’s claim,” the
 3 Court **GRANTS** the motion as to Exhibit 2, finding this document incorporated by reference.
 4 *Khoja*, 899 F.3d at 1002 (quoting *United States v. Ritchie*, 342 F.3d 903, 907 (9th Cir. 2003)). As
 5 to Exhibit 3, the Court agrees with Plaintiff that Defendants offer it for the truth of its contents.
 6 Defendants argue that the *Business Insider* article is “relevant to the amount of sexual assaults that
 7 occurred on the platform as compared to overall rides.” RJN at 4. The Court thus **DENIES** the
 8 motion as to Exhibit 3.

9 Defendants’ briefing otherwise discusses matters outside of the pleadings, such as
 10 Plaintiff’s discovery responses. *See* Mot. at 7 & n.1. Defendants contend that they attach such
 11 documents “for the purpose of giving the Court sufficient context to understand why Defendants
 12 are raising this issue at this juncture.” *See id.* In opposing the motion, Plaintiff also references
 13 evidence obtained through discovery, as well as emails between counsel. *See, e.g.*, Opp. at 16, 19
 14 n.14. Notwithstanding these tactics, the parties appear to understand that the Court is limited to
 15 the pleadings and matters properly incorporated by reference or subject to judicial notice. The
 16 parties’ extensive references to extraneous matters underscore the essential purposelessness of
 17 another pleadings motion seven months after the Court ruled that Plaintiffs’ surviving claims
 18 implicate disputed factual issues.

19 **III. ADMINISTRATIVE MOTIONS TO SEAL**

20 **A. Legal Standard**

21 Courts generally apply a “compelling reasons” standard when considering motions to seal
 22 documents. *Pintos v. Pac. Creditors Ass’n*, 605 F.3d 665, 678 (9th Cir. 2010) (quoting *Kamakana*
 23 *v. City & Cty. of Honolulu*, 447 F.3d 1172, 1178 (9th Cir. 2006)). “This standard derives from the
 24 common law right ‘to inspect and copy public records and documents, including judicial records
 25 and documents.’ ” *Id.* (quoting *Kamakana*, 447 F.3d at 1178). “[A] strong presumption in favor
 26 of access is the starting point.” *Kamakana*, 447 F.3d at 1178 (quotations omitted). To overcome
 27 this strong presumption, the party seeking to seal a judicial record attached to a dispositive motion

1 general history of access and the public policies favoring disclosure, such as the public interest in
2 understanding the judicial process” and “significant public events.” *Id.* at 1178–79 (quotations
3 omitted).

4 Records attached to nondispositive motions must meet the lower “good cause” standard
5 of Rule 26(c) of the Federal Rules of Civil Procedure, as such records “are often unrelated, or only
6 tangentially related, to the underlying cause of action.” *Id.* at 1179–80 (quotation omitted). This
7 requires a “particularized showing” that “specific prejudice or harm will result” if the information
8 is disclosed. *Phillips ex rel. Estates of Byrd v. Gen. Motors Corp.*, 307 F.3d 1206, 1210–11 (9th
9 Cir. 2002); *see also* Fed. R. Civ. P. 26(c). “Broad allegations of harm, unsubstantiated by specific
10 examples of articulated reasoning” will not suffice. *Beckman Indus., Inc. v. Int’l Ins. Co.*, 966
11 F.2d 470, 476 (9th Cir. 1992) (quotation omitted).

12 **B. Analysis**

13 Because the motion for judgment on the pleadings is more than tangentially related to the
14 underlying action, the Court applies the “compelling reasons” standard in evaluating the motions
15 to seal. Plaintiff moves to seal the portions of opposition and Declaration of Jeffrey C. Block
16 Declaration, Dkt. No. 159-1, that reference the parties’ joint letter brief and a related exhibit filed
17 at docket number 157. Dkt. No. 172. Defendants also seek to seal portions of their reply
18 referencing the joint letter brief. Dkt. No. 169.

19 Defendants’ justifications in its supporting declaration and in its own motion largely
20 overlap. Defendants note that the Court previously sealed the joint letter brief and Exhibit E to the
21 joint letter brief. Dkt. No. 164 (“Smith Decl.”) ¶ 7; Dkt. No. 169 at 2. That the Court granted the
22 motion to seal the underlying documents in the context of a discovery dispute is not dispositive
23 here. The Court is also unpersuaded by Defendants’ argument that granting the request “would
24 permit the Lyft Defendants to maintain the confidentiality of the information that Lyft Defendants
25 have designated as CONFIDENTIAL or HIGHLY CONFIDENTIAL.” *See* Smith Decl. ¶ 5. A
26 designation of confidentiality is not sufficient to establish that a document is sealable. *See* Civ. L.
27 R. 79-5(d)(1)(A).

Explore Litigation Insights

Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

Real-Time Litigation Alerts



Keep your litigation team up-to-date with **real-time alerts** and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

Advanced Docket Research



With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

Analytics At Your Fingertips



Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

LAW FIRMS

Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

FINANCIAL INSTITUTIONS

Litigation and bankruptcy checks for companies and debtors.

E-DISCOVERY AND LEGAL VENDORS

Sync your system to PACER to automate legal marketing.