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16 UNITED STATES DISTRICT COURT
 17 NORTHERN DISTRICT OF CALIFORNIA
 18 SAN FRANCISCO DIVISION

19 WAYMO LLC,
 20 Plaintiff,
 21 v.
 22 UBER TECHNOLOGIES, INC.,
 OTTOMOTTO LLC; OTTO TRUCKING LLC,
 23 Defendants.
 24

Case No. 3:17-cv-00939-WHA

**DEFENDANTS' UBER
 TECHNOLOGIES, INC.,
 OTTOMOTTO LLC, AND OTTO
 TRUCKING LLC'S OPPOSITION TO
 PLAINTIFF WAYMO LLC'S
 MOTION FOR PRELIMINARY
 INJUNCTION**

Date: May 3, 2017
 Time: 7:30 a.m.
 Ctrm: 8, 19th Floor
 Judge: The Honorable William H. Alsup

Trial Date: October 2, 2017

28 REDACTED VERSION OF DOCUMENT SUBMITTED UNDER SEAL

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INTRODUCTION

1
2 Uber¹ has been a visionary in the transportation industry since 2009, effectively creating
3 the concept of ride-sharing and pioneering other innovative solutions in transportation. Since late
4 2014, Uber has been one of the companies leading the charge in self-driving technology,
5 investing hundreds of millions of dollars in unique technology and hiring the best and brightest in
6 the field. Uber created a revolution in the ride-sharing space through hard work, creativity, and
7 pride in its own innovation. It is this same philosophy and drive that Uber is now applying to its
8 work on self-driving vehicles.

9 Waymo's² preliminary injunction motion is a misfire. Both of its central premises—that
10 former Waymo employees brought thousands of confidential Waymo documents to Uber to build
11 a copycat LiDAR and that Uber's LiDAR closely mimics Waymo's single-lens design—are
12 demonstrably false. A search of Uber's computers has not yielded any of the 14,000 files Waymo
13 alleges that Uber misappropriated. Uber made sure to have policies and practices in place to
14 prevent misappropriation, and these measures have worked.

15 The self-proclaimed innovation of Waymo's LiDAR is its *single-lens design*, touted by
16 Waymo as a "game-changer." Uber's LiDAR design is fundamentally different; it is, instead, a
17 *four-lens design*, with two lenses for transmitting laser light and two for receiving it. This fact
18 alone demonstrates the misguided nature of Waymo's request for "extraordinary and drastic
19 relief." Waymo took one Uber schematic (inadvertently sent to a Waymo employee) and made
20 several assumptions based on that one document to conclude that Uber's LiDAR used a
21 single-lens design. Waymo could not be more wrong, and Uber's design could not be more
22 different. And no wonder—Uber's LiDAR was developed by a different team, using a different
23 beam pattern, and leveraging different know-how.

24 And this is not the only fundamental difference between the two designs. Uber's design
25 uses two optical cavities, compared to just one cavity in Waymo's unit. Importantly, Uber began
26 developing its LiDAR design *before* it hired Anthony Levandowski. Waymo cannot show that

27
28 ¹ "Uber" refers to Uber Technologies, Inc., Ottomotto LLC, and Otto Trucking LLC.

² "Waymo" refers to Waymo LLC, Google Inc., and Alphabet Inc.

1 Uber misappropriated Waymo’s trade secrets or infringed Waymo’s patents. A cursory
2 inspection of Uber’s LiDAR and Waymo’s allegations fall like a house of cards.

3 And there is more: Waymo has been sitting on the information that underpins its
4 allegations of downloads of Waymo documents since October, but filed suit only in February and
5 filed this motion only in March. Waymo’s delay militates strongly against granting an injunction.
6 Moreover, there is no commercial urgency—Uber’s LiDAR is still in development, and [REDACTED]

7 [REDACTED]
8 To be sure, Uber finds itself in a complicated situation: it is unambiguously developing
9 its own technology independent of Waymo, but its employee Mr. Levandowski is accused of
10 downloading 14,000 files from Waymo before he joined Uber. Uber is blocked at this stage from
11 providing an explanation against that accusation because Mr. Levandowski has asserted his Fifth
12 Amendment constitutional rights. Faced with Mr. Levandowski’s assertion of his constitutional
13 privileges, the Court has stated that it is considering entering an injunction. Such an injunction is
14 not necessary against Uber because there is no evidence that any downloaded files ever made it
15 onto Uber’s systems. Even if the Court disagrees as to the need for some injunction, given the
16 current facts—and more to come after Uber conducts further searches, and Waymo deposes Uber
17 employees who can attest to never seeing, much less using, Waymo files at Uber—the Court
18 should not enjoin Uber’s independent research on important new technology.

19 The Court also should not draw an adverse inference that Uber engaged in wrongdoing
20 with respect to trade secrets by virtue of Mr. Levandowski’s assertion of his rights. Whether to
21 draw an adverse inference is a question that must be examined on a “case-by-case basis under the
22 microscope of the circumstances of that particular civil litigation.”³ It is not permissible to draw
23 an adverse inference unless there is “independent evidence of the fact about which” an individual
24 declines to testify.⁴ The record here shows that no independent evidence of the alleged use of
25 trade secrets exists. On the contrary, the record shows that Uber never possessed—and never
26 used—any information Mr. Levandowski allegedly took from Waymo.

27 _____
28 ³ *Nationwide Life Ins. Co. v. Richards*, 541 F.3d 903, 912 (9th Cir. 2008).

⁴ *Id.*

1 Finally, there is the other side of the equation—the harm to Uber and to the public—if
 2 Waymo’s motion is granted. To hinder Uber’s continued progress in its independent
 3 development of an in-house LiDAR that is fundamentally different than Waymo’s, when Uber
 4 has not used any of Waymo’s trade secrets, would impede Uber’s efforts to remain a viable
 5 business, stifle the talent and ingenuity that are the primary drivers of this emerging industry, and
 6 risk delaying the implementation of technology that could prevent car accidents. Ultimately, that
 7 would be harmful to the public. When all factors are considered, the scales of justice tilt heavily
 8 in favor of denying this motion.

9 FACTS

10 **I. UBER IS THE LEADER IN THE RIDE-SHARING INDUSTRY**

11 Uber is the pioneer and recognized leader in the urban transportation business. It has the
 12 world’s largest ride-sharing network, serving more than 55 million monthly active riders in
 13 574 cities. (Chang Decl. ¶ 4.)⁵ Founded in 2009, Uber revolutionized transportation when it
 14 introduced its groundbreaking smartphone app. (*Id.*) What started as an app to request premium
 15 black cars in a few metropolitan areas is now changing the logistical fabric of cities around the
 16 world. (*Id.*) With the push of a button, riders can now reliably get an affordable ride across
 17 town.⁶ Uber has also made carpooling a reality, helping to reduce congestion and pollution. (*Id.*)

18 Seeking to further its mission to deliver safe, accessible, and reliable transportation to the
 19 world, Uber has built one of the strongest autonomous vehicle engineering groups in the industry,
 20 leveraging the experience that comes from running ridesharing services in hundreds of cities and
 21 the data and intelligence that comes from doing 1.2 billion miles on the road every month. (*Id.*)

22 **II. UBER INDEPENDENTLY DEVELOPED ITS OWN LIDAR TECHNOLOGY**

23 In February 2015, Uber began building its autonomous vehicle engineering group by
 24 partnering with Carnegie Mellon University and establishing its Advanced Technologies Center
 25 (“ATC”) in Pittsburgh, Pennsylvania. Uber hired Scott Boehmke to research and develop
 26 autonomous vehicle technology. (Boehmke Decl. ¶ 2.) Mr. Boehmke was never employed by

27 _____
 28 ⁵(Chang Decl. Ex. 2, <https://www.uber.com/our-story/>.)

⁶(Chang Decl. Ex. 3 <https://newsroom.uber.com/rethinking-transportation.>)

1 Waymo. (*Id.*) Mr. Boehmke began meeting with LiDAR sensor manufacturers in early 2015.
2 (*Id.* ¶ 4.) On April 17, 2015, Mr. Boehmke prepared his first analysis of the field of view and
3 beam spacing requirements for autonomous vehicles. (*Id.*) He quickly recognized that the
4 vertical field of view and resolution requirements for a LiDAR were heavily dependent on the
5 speed of the vehicle. (*Id.* ¶ 6.) As a result, he concluded that it might be necessary to adjust the
6 angular spacing in the vertical dimension based on the speed of the vehicle. (*Id.*)

7 In October 2015, Mr. Boehmke reviewed various LiDAR sensors, including [REDACTED]
8 which could be customized to create a [REDACTED], in which the
9 laser diodes that [REDACTED]. (*Id.* ¶ 8.) By
10 November 2015, Mr. Boehmke had also decided to use separate lenses for the transmit and
11 receive paths. (*Id.* ¶ 12.)

12 By late 2015, Uber had decided to develop a customized LiDAR in partnership with
13 [REDACTED]—long before Uber’s acquisition of Mr. Levandowski’s company. (*Id.* ¶ 9.) Between
14 November 2015 and March 2016, Mr. Boehmke worked on developing a custom beam pattern for
15 a LiDAR suited for Uber’s automotive use. (*Id.*) In March 2016, Uber’s ATC entered into a
16 contract with [REDACTED], which Uber
17 would combine into a “dual stack” LiDAR to provide 64-channel resolution, based on Uber’s
18 custom beam pattern. (*Id.*) [REDACTED], but during that time,
19 Mr. Boehmke experimented with the positioning and orientation of lasers on as few boards as
20 possible for an in-house LiDAR, to simplify alignment and calibration. (*Id.* ¶¶ 11, 13.)

21 In August 2016, Uber acquired Ottomotto, a company co-founded by Anthony
22 Levandowski, which originally focused on self-driving trucks. Uber acquired Ottomotto for its
23 expert personnel, not trade secrets; in fact, all Ottomotto employees signed offer letters and
24 attestations swearing that they would not bring any other company’s trade secrets to Uber or use
25 them in connection with their Uber work. To be clear, Uber never had possession of or used any
26 of Waymo’s trade secrets or the 14,000 files that Waymo alleges Mr. Levandowski downloaded.

27 After Uber’s acquisition of Ottomotto, its existing ATC team merged with Ottomotto’s
28 team to form the Advanced Technologies Group (“ATG”). A few months prior, Ottomotto had

1 acquired Tyto LiDAR, LLC (“Tyto”), a startup dedicated to developing remote sensing
2 technologies for the geospatial industry. The Tyto team, which included James Haslim, who was
3 never employed by Waymo, became part of Uber’s self-driving car team. (Haslim Decl. ¶¶ 2-3.)

4 The newly minted ATG team at Uber decided to revisit the dual 32-channel diode-based
5 LiDAR concept that Mr. Boehmke had worked on in late 2015 and early 2016, for its in-house
6 mid-range LiDAR solution. (Boehmke Decl. ¶ 16.) This project was code-named “Fuji,” after
7 Mount Fuji. (Haslim Decl. ¶ 5.) On November 4, 2016, Mr. Boehmke provided Mr. Haslim and
8 his team with a custom beam pattern for Fuji, based on Mr. Boehmke’s earlier work. (Boehmke
9 Decl. ¶ 18; Haslim Decl. ¶ 18.)

10 During this development, Mr. Haslim and his team decided to use two cavities for Fuji, to
11 allow two laser diodes—one from each cavity—to fire simultaneously. (Haslim Decl. ¶ 8.) The
12 team first attempted to place all 32 laser diodes on a single transmit board. (*Id.* ¶ 11.) Through
13 trial and error, they realized that [REDACTED]

14 [REDACTED]
15 [REDACTED]
16 [REDACTED]

17 [REDACTED] The position and orientation of the diodes on the transmit boards in Fuji were based on the
18 custom beam spacing and angles provided by Mr. Boehmke. (*Id.* ¶ 18.) The Fuji design was
19 largely the result of the collaboration between Mr. Boehmke and Mr. Haslim and their teams—
20 neither of whom ever worked for Waymo. (Boehmke Decl. ¶ 2; Haslim Decl. ¶ 3.)

21 Although Uber is developing its own LiDAR, [REDACTED]
22 [REDACTED]. Every single self-driving car that Uber has put on the road to
23 date uses commercially available LiDAR sensors from third parties. (Haslim Decl. ¶ 21.)

24 **III. UBER’S FUJI LIDAR IS SUBSTANTIALLY DIFFERENT FROM WAYMO’S**
25 **[REDACTED] LIDAR**

26 The Fuji LiDAR system that Mr. Haslim and Mr. Boehmke developed is dramatically
27 different from Waymo’s [REDACTED] LiDAR in numerous respects, beginning with the fact that [REDACTED] is
28 a monostatic system (single transmit/receive lens) while Fuji is a dual bistatic system (two

1 LiDAR cavities, each with separate transmit and receive lenses, for a total of four lenses). The
 2 chart below highlights some of the major differences between the systems (details are provided in
 3 the expert declarations of Dr. McManamon and Dr. Leiby):

Comparison of Systems	
LiDAR	Fuji LiDAR
<p>4 [REDACTED]</p> <p>5 [REDACTED]</p> <p>6 [REDACTED]</p> <p>7 [REDACTED]</p> <p>8 [REDACTED]</p> <p>9 [REDACTED]</p> <p>10 [REDACTED]</p> <p>11 [REDACTED]</p> <p>12 [REDACTED]</p> <p>13 [REDACTED]</p> <p>14 [REDACTED]</p> <p>15 [REDACTED]</p> <p>16 [REDACTED]</p> <p>17 [REDACTED]</p> <p>18 [REDACTED]</p>	<p>4 [REDACTED]</p> <p>5 [REDACTED]</p> <p>6 [REDACTED]</p> <p>7 [REDACTED]</p> <p>8 [REDACTED]</p> <p>9 [REDACTED]</p> <p>10 [REDACTED]</p> <p>11 [REDACTED]</p> <p>12 [REDACTED]</p> <p>13 [REDACTED]</p> <p>14 [REDACTED]</p> <p>15 [REDACTED]</p> <p>16 [REDACTED]</p> <p>17 [REDACTED]</p> <p>18 [REDACTED]</p>
<p>19 Single lens aperture: Single shared</p> <p>20 lens for transmitted and received light.</p> <p>21 Single cavity: Overlapping transmit</p> <p>22 and receive paths in single cavity.</p> <p>23 [REDACTED]</p> <p>24 [REDACTED]</p> <p>25 [REDACTED]</p> <p>26 [REDACTED]</p> <p>27 [REDACTED]</p>	<p>19 Four lens apertures: Separate lenses for each</p> <p>20 of 2 transmit paths and 2 receive paths.</p> <p>21 Two cavities: Separate medium-range and long-</p> <p>22 range cavities, each with separate transmit and</p> <p>23 receive paths.</p> <p>24 [REDACTED]</p> <p>25 [REDACTED]</p> <p>26 [REDACTED]</p> <p>27 [REDACTED]</p>

ARGUMENT

I. LEGAL STANDARD

A preliminary injunction is “an extraordinary and drastic remedy, one that should not be granted unless the movant, *by a clear showing*, carries the burden of persuasion.”⁷ To establish a right to a preliminary injunction, a plaintiff must demonstrate that: (1) it is likely to succeed on the merits; (2) it is likely to suffer irreparable harm absent preliminary relief; (3) the balance of equities tips in its favor; and (4) the injunction is in the public interest.⁸

“[A] plaintiff must prove each element of the preliminary injunction test to prevail at the district court.”⁹ “[T]he absence of an adequate showing on any one factor may suffice, on balance, to justify the denial of the injunction.”¹⁰ Likewise, the Ninth Circuit recognizes that Waymo must establish each of the four *Winter* factors to prevail on its motion for injunctive relief.¹¹ A preliminary injunction is improper if the movant fails to establish likelihood of success on the merits or likelihood of irreparable harm.¹² Here, Waymo fails on both counts.

II. WAYMO IS UNLIKELY TO SUCCEED ON THE MERITS OF ITS TRADE SECRET MISAPPROPRIATION, PATENT INFRINGEMENT, AND UNFAIR BUSINESS PRACTICES CLAIMS

A. Waymo Is Not Likely to Prevail on Its Trade Secrets Claims.

Waymo alleges that Defendants misappropriated its proprietary and confidential information in violation of the California Uniform Trade Secrets Act (“CUTSA”) and the federal Defend Trade Secrets Act (“DTSA”). In order to demonstrate a likelihood of success on its trade secret claim under CUTSA or DTSA, a plaintiff must show both: (1) the existence of a trade secret and (2) misappropriation of the trade secret.¹³ Waymo cannot.

To establish misappropriation, a plaintiff must establish “[d]isclosure or use of a trade

⁷ *Mazurek v. Armstrong*, 520 U.S. 968, 972 (1997) (emphasis in the original).

⁸ *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008); *Am. Trucking Ass’ns, Inc. v. City of Los Angeles*, 559 F.3d 1046, 1054 (9th Cir. 2009).

⁹ *Trebro Mfg., Inc. v. Firefly Equip., LLC*, 748 F.3d 1159, 1166 (Fed. Cir. 2014).

¹⁰ *Chrysler Motors Corp. v. Auto Body Panels of Ohio, Inc.*, 908 F.2d 951, 953 (Fed. Cir. 1990).

¹¹ *All. for the Wild Rockies v. Cottrell*, 632 F.3d 1127, 1135 (9th Cir. 2011).

¹² *Jack Guttman, Inc. v. Kopycake Enters., Inc.*, 302 F.3d 1352, 1356 (Fed. Cir. 2002).

¹³ *Acculmage Diagnostics Corp. v. Terarecon, Inc.*, 260 F. Supp. 2d 941, 950 (N.D. Cal. 2003); *see also* 18 U.S.C. § 1836.

1 secret of another without express or implied consent” or “[a]cquisition of a trade secret of another
2 by a person who knows or has reason to know that the trade secret was acquired by improper
3 means.”¹⁴ The standards are identical under the DTSA.¹⁵ Moreover, under both the CUTSA and
4 DTSA, independent derivation is a complete defense to alleged trade-secret misappropriation.¹⁶

5 Waymo contends it obtained proof of the alleged misappropriation when it received a
6 December 13, 2016 email with a drawing of an Uber printed circuit board. As demonstrated
7 below, that email contains no such proof.¹⁷ Rather, it reflects Uber’s independently developed
8 design, and any similarities between the two systems are drawn from concepts that are publicly
9 known or from techniques within the toolkit of one of skill in the art.

10 **1. Defendants Did Not Improperly Acquire Any Alleged Confidential**
11 **Information.**

12 There is no evidence that Uber acquired—improperly or otherwise—the alleged trade
13 secrets. First and foremost, *Uber and its employees have never used any alleged confidential*
14 *Waymo files from Mr. Levandowski or anyone else* in the development of its LiDAR systems.
15 Indeed, Waymo’s witnesses testified that [REDACTED]

16 [REDACTED]
17 [REDACTED]
18 [REDACTED]

19 Forensic analysis confirms that none of Waymo’s documents crossed over to Uber.
20 (Faulkner Decl. ¶ 7.) Uber conducted 86 custodial interviews of former Waymo employees,
21 which established that none of these employees was aware of any Waymo confidential
22 information on Uber’s computer systems. Uber then conducted a search of all Uber-issued
23 laptops belonging to former Waymo employees. (*Id.* ¶¶ 4-6.) In all, 106.5 terabytes of data were
24

25 ¹⁴ Cal. Civ. Code § 3426.1(b).

26 ¹⁵ See 18 U.S.C. § 1839(5); 18 U.S.C. § 1839(6).

27 ¹⁶ Cal. Civ. Code § 3426.1(a) (“Reverse engineering or independent derivation alone shall not
28 be considered improper means.”); see also 18 U.S.C. § 1839(6).

¹⁷ This email cannot be the smoking gun Waymo claims it is, because the assumptions Waymo
draws from it are false. For instance, Waymo repeatedly argues that the architecture of the board
necessitates a single-lens design, which Uber does not use.

1 imaged. (*Id.* ¶ 4.) Uber searched data belonging to Messrs. Levandowski, Kshirsagar, and
2 Raduta, as well as that of seven other former Waymo employees who worked on Chauffeur or
3 LiDAR sensors, for the approximately 14,000 filenames and hash values identified by Waymo as
4 corresponding to allegedly downloaded files, as well as the filenames included in Waymo’s
5 preliminary injunction papers. (*Id.* ¶ 5.) In addition, Uber used search terms derived from
6 Waymo’s preliminary injunction papers. (*Id.* ¶ 6.) These searches did not reveal any confidential
7 Waymo material on Uber’s systems. (*Id.* ¶ 7.) Moreover, Uber took strict precautions to ensure
8 that no trade secrets belonging to a former employer would be brought to or used at Uber.
9 (Morgan Decl. ¶¶ 5-6.) On these facts, Waymo is unable to meet its burden of showing that Uber
10 improperly acquired Waymo’s trade secrets.

11 Waymo tries to raise an inference of improper use by claiming that the employees
12 downloaded files during the course of their employment at Waymo, but this is not an out-of-
13 bounds practice for Waymo or Google employees. Indeed, the fact that Messrs. Levandowski,
14 Kshirsagar, and Raduta had legitimate access to Waymo’s confidential information before their
15 separation is insufficient to establish that they improperly acquired that information.¹⁸

16 Mr. Kshirsagar, for example, explained that every single one of the files he accessed was
17 done for legitimate purposes relating to his employment at Waymo.¹⁹ Specifically,
18 Mr. Kshirsagar accessed two of the files at issue *on his Waymo-issued laptop* in order to prepare
19 a transition memorandum for several of his successors. (Kshirsagar Decl. ¶¶ 10-11.) He prepared
20 the memorandum at the direction of Tim Willis, ironically the very person who now accuses him
21 of accessing the files improperly. (Kshirsagar Decl. ¶ 10.) The documents are referenced in the
22 transition memorandum itself. (*Id.*) Mr. Kshirsagar accessed an additional file *on his Waymo-*
23

24 ¹⁸ See *Cent. Valley Gen. Hosp. v. Smith*, 162 Cal. App. 4th 501, 528–29 (2008) (mere
25 possession of a trade secret does not constitute misappropriation); see also *FLIR Sys., Inc. v.*
Parrish, 174 Cal. App. 4th 1270, 1279 (2009) (“Mere possession of trade secrets by a departing
26 employee is not enough for an injunction.”).

27 ¹⁹ *Sunbelt Rentals, Inc. v. Victor*, No. C 13-4240 SBA, 2014 WL 492364, at *7 (N.D. Cal.
28 Feb. 5, 2014) (holding that “simple fact that [former employee] emailed himself . . . proprietary
information” for the purpose of “ensuring that [former employer] properly paid him for all
commissions owed,” “without more, does not show misappropriation” and did not warrant
preliminary injunction).

1 *issued laptop* for general educational purposes in the course of his work at Waymo. (*Id.* ¶ 13.)
2 Mr. Kshirsagar then returned his Waymo laptop to the Waymo IT department when he left, and
3 did not take it or the files with him. (Kshirsagar Decl. ¶¶ 11, 13 & Ex. 1.) Mr. Kshirsagar
4 accessed two additional files on his Waymo-issued laptop that he then emailed to his personal
5 mobile device to review them offline *while he was still at Waymo* for the purpose of fulfilling his
6 duties to Waymo—a practice that Mr. Willis himself admits he engages in on occasion—and
7 never once accessed those files after he left his employment at Waymo. (*See* Kshirsagar Decl.
8 ¶¶ 12-13; Chang Decl. Ex. 4, Willis Dep. 46:10–17.)

9 Moreover, while Waymo makes much of the 14,000 files that Mr. Levandowski allegedly
10 downloaded, Waymo admits that this represents the entire Waymo SVN repository,
11 demonstrating that Mr. Levandowski did not “pick and choose” which files to download. Waymo
12 further admits that [REDACTED]

13 [REDACTED]
14 [REDACTED]
15 [REDACTED]
16 [REDACTED]
17 [REDACTED]

18 Finally, Mr. Radu Raduta is only accused of [REDACTED]. (Willis
19 Decl. ¶ 10, ECF No. 24-16.) Like with Mr. Kshirsagar, what Waymo failed to tell the Court is
20 that [REDACTED]

21 [REDACTED]. (*See* Chang Decl. Ex. 5, Brown Dep. 39:11–19; 41:15–42:5.) None of those files were
22 located on Mr. Raduta’s Uber-issued devices. (Faulkner Decl. ¶ 7.) Moreover, the [REDACTED]
23 [REDACTED] (Willis Decl. Exs. G–I, ECF Nos. 24-23,
24 24-24, 24-25.) As this Court noted, there is no showing that these documents comprise trade
25 secrets at all. (CMC Hr’g Tr. 7, Mar. 29, 2017, ECF No. 131.)

26 [REDACTED]
27 *Not a trade secret.* In its motion, Waymo alleges that the [REDACTED]
28 [REDACTED] is a trade secret that “has not been disclosed to the public” and that Uber’s design,

1 as reflected in the December 13, 2016 email, contains such spacing and orientation. (Mot. 11.)
 2 The concept of [REDACTED], however, is expressly recited
 3 in Velodyne’s U.S. Patent No. 8,767,190 (the “’190 patent”), titled “High Definition LiDAR
 4 System.” The ’190 patent discloses that the density of laser diodes within a curved pattern around
 5 a central axis (i.e., a “fan pattern”) can be varied to achieve greater resolution at longer distances.
 6 (’190 patent at 5:56-57.) The patent states: “The density of emitter/detector pairs populated
 7 along the vertical FOV is **intentionally variable**.” (’190 patent at 6:45-46.) The patent further
 8 explains: “For some uses increased density is desirable to facilitate seeing objects at further
 9 distances and with more vertical resolution.” (*Id.* at 6:54-56.) [REDACTED]
 10 [REDACTED]
 11 [REDACTED]. Because the concept of [REDACTED] is
 12 in the public domain, Waymo cannot claim it as a trade secret.²⁰

13 ***No misappropriation due to independent derivation.*** Waymo has failed to demonstrate
 14 that the [REDACTED] is a trade secret, but even if it was
 15 shown to be a trade secret, Uber independently developed the [REDACTED]
 16 [REDACTED] on its Fuji system, based on the [REDACTED]
 17 that Scott Boehmke developed, using parameters and calculations that he began developing in
 18 December 2015—before Mr. Levandowski had even left Waymo and before Uber’s acquisition of
 19 Otto.²¹ As Waymo’s Mr. Droz testified during deposition, [REDACTED]
 20 [REDACTED]
 21 [REDACTED] (Chang Decl. Ex. 7, Droz
 22 Dep. 107:3-108:10.) Moreover, the [REDACTED] on Uber’s Fuji transmit boards
 23 are not the same as those in Waymo’s [REDACTED] boards. If Uber had copied Waymo’s design, the
 24

25 ²⁰ *Bladeroom Grp. Ltd. v. Facebook, Inc.*, No. 5:15-cv-01370-EJD, 2015 WL 8028294, at *4
 26 (N.D. Cal. Dec. 7, 2015) (“[i]t is well established that the disclosure of a trade secret in a patent
 27 places the information comprising the secret into the public domain.”); *On-Line Techs., Inc. v.*
 28 *Bodenseewerk Perkin-Elmer, GMBH*, 386 F.3d 1133, 1141 (Fed. Cir. 2004) (“After a patent has
 issued, the information contained within it is ordinarily regarded as public and not subject to
 protection as a trade secret.”)

²¹ Cal. Civ. Code § 3426.1(a); 18 U.S.C. § 1839(6) (independent derivation defense).

1 [REDACTED]—the result of painstaking, iterative testing and simulation—should
 2 be the same, but they are not. For these reasons, each of which independently negates Waymo’s
 3 trade secret claim, Waymo cannot show that it is likely to succeed on the merits of this claim.

4 [REDACTED]
 5 *Not a trade secret due to prior public knowledge and use.* Waymo also alleges that [REDACTED]
 6 [REDACTED]

7 [REDACTED] is a trade secret. (Mot. 11, 15.) Waymo’s [REDACTED] arrangement is one of a limited
 8 number of workable configurations for the transmit block of any 64-laser LiDAR system that a
 9 designer would evaluate in light of well-known design considerations, particularly the desire to
 10 reduce the size, cost, and complexity of the system. A “general approach” that is “dictated by
 11 well known principles of physics” is not protectable under accepted trade secret doctrine because
 12 such principles are not “secret”—they are instead “general engineering principles in the public
 13 domain and part of the intellectual equipment of technical employees.”²²

14 *No misappropriation due to no use.* Notwithstanding the obviousness of the
 15 configuration, and unlike Waymo’s [REDACTED], Uber’s Fuji system does not contain a [REDACTED]
 16 transmit stack. Rather, the Fuji system comprises two separate LiDAR cavities, [REDACTED]
 17 [REDACTED]
 18 [REDACTED]
 19 [REDACTED]. Because there is no evidence of
 20 use of the [REDACTED] transmit stack in Fuji, a preliminary injunction is improper.²³

21 Additionally, the [REDACTED] is different in the Fuji
 22 system from that of [REDACTED]. The 64 diodes in the [REDACTED] system are distributed in
 23 the following pattern: [REDACTED]. Waymo claims that positioning the [REDACTED]
 24 [REDACTED] is a trade secret. As noted, the [REDACTED] of the Fuji system are
 25 independent transmit blocks and do not constitute a [REDACTED]. However, considered
 26

27 ²² *Winston Research Corp. v. Minnesota Min. & Mfg. Co.*, 350 F.2d 134, 139 (9th Cir. 1965).

28 ²³ *Bayer Corp. v. Roche Molecular Sys., Inc.*, 72 F. Supp. 2d 1111 (N.D. Cal. 1999) (denying preliminary injunction where plaintiff failed to demonstrate “specific evidence of actual use”).

1 together, the distribution of diodes across Fuji's transmit PCBs is: [REDACTED] (Haslim
2 Decl. ¶ 13.)

3 ***No misappropriation due to independent development.*** Not only does Fuji not use a
4 [REDACTED], its [REDACTED] design in each of two cavities was independently
5 developed. As described previously, Mr. Haslim's team decided to use [REDACTED] in
6 each of Fuji's two cavities after realizing, through trial and error, that neither a [REDACTED]
7 [REDACTED]
8 [REDACTED]
9 [REDACTED], as it was the most symmetric way of
10 distributing [REDACTED]. (*Id.*) Because Uber's Fuji design is fundamentally
11 different from Waymo's design and because Uber independently developed its two-cavity, [REDACTED]
12 [REDACTED] design, Waymo cannot prevail on its trade secret claim.

13 [REDACTED]
14 ***No misappropriation due to independent development and no use.*** Waymo alleges that
15 the design of Uber's Fuji transmit PCB was adapted from design files for Waymo's [REDACTED]
16 [REDACTED]. This allegation is based on a comparison of Waymo's [REDACTED] to a
17 machine drawing of what is purportedly an Otto PCB that Waymo inadvertently received by
18 email from the vendor [REDACTED]. A comparison of the PCBs and a review of the Fuji
19 development history make clear that the Fuji PCB was not adapted from the Waymo design.
20 (Lebby Decl. ¶ 61.)

21 First, as explained above, Fuji's transmit PCBs and its [REDACTED] for the
22 transmit block were independently developed by Uber engineers who had no connection with the
23 allegedly misappropriated Waymo confidential documents.

24 Second, an inspection of the two PCBs side-by-side reveals numerous design differences,
25 including: (1) different shape and curvature along the curved edge of the PCBs; (2) different
26 [REDACTED] of the laser diodes; (3) different arrangement of the components behind the
27 diodes; (4) different components and layouts on the side of the PCBs nearest the flat edge; and
28 (5) different arrangement of holes in the PCBs. (Lebby Decl. ¶ 61.)

1 Third, because the Fuji system has a [REDACTED]
 2 [REDACTED], the precise positioning and angles of the diodes on the transmit PCBs are different. (*Id.*
 3 ¶ 62.) Fuji's [REDACTED]
 4 [REDACTED]. (*Id.*) By contrast, the
 5 [REDACTED] design has a [REDACTED]. (*Id.*) These differences in vertical
 6 FOV dictated a different design for the Fuji transmit PCBs.

7 [REDACTED]
 8 ***Not a trade secret due to prior public knowledge and use.*** Waymo alleges that the
 9 concept of [REDACTED] is a trade secret.
 10 (Mot. 11, 14.) The [REDACTED] is
 11 a known design choice in the fabrication of laser diode systems and has been disclosed in the
 12 public technical literature. For example, a textbook on the subject of semiconductor lasers
 13 illustrates [REDACTED] and notes the technical concerns associated
 14 with each: “Overhang and underhang characterize the alignment between the diode laser die . . .
 15 and the mounting substrate. The consequence of overhang and underhang is ineffective heat
 16 conduction and blockage of light transmission, respectively.”²⁴ In addition, a 2007 dissertation
 17 on laser diode systems describes a system in which laser diodes are deliberately [REDACTED]
 18 [REDACTED], in order to avoid obstruction of the laser light—the
 19 very goal that Waymo aims to achieve with its alleged trade secret.²⁵ Thus, Waymo cannot claim
 20 the [REDACTED] as a trade secret.²⁶

21 [REDACTED]
 22 ***No misappropriation due to no use.*** Waymo claims as a trade secret the concept of [REDACTED]
 23 [REDACTED]
 24 [REDACTED] (Mot. 11, 15-16.) Uber's Fuji transmit board, however, does not use [REDACTED]

25 _____
 26 ²⁴ (LebbyDecl. Ex. 4, Xingsheng Liu et al., *Packaging of High Power Semiconductor Lasers*
 27 224 (2015).)

27 ²⁵ (Lebby Decl. Ex. 5, Christian Scholz, *Thermal & Mech. Optimisation of Diode Laser Bar*
 28 *Packaging* 28 (2007) (emphasis added).)

28 ²⁶ *Winston Research Corp.*, 350 F.2d at 139 (“general engineering principles in the public
 domain and part of the intellectual equipment of technical employees” are not trade secrets).

1 [REDACTED]. Rather, it uses fiducial reference marks that are printed
 2 on the circuit board—a common technique in the fabrication of printed circuit boards and
 3 mounting of optical components on a circuit board. (Haslim Decl. ¶ 14.) Waymo’s witness
 4 Mr. Droz emphasized that [REDACTED]
 5 [REDACTED]—something that Uber does not use the guide
 6 holes for.

7 *Not a trade secret due to public disclosure.* Moreover, the use of [REDACTED] for these
 8 purposes is not a protectable trade secret. The concept of [REDACTED]
 9 [REDACTED] is as simple and as general as a Tinker Toy,
 10 and such general concepts dictated by basic scientific principles cannot be trade secrets. In fact,
 11 the concept of using [REDACTED] in the LiDAR context has been known to
 12 the public since the 1970s, as conceded by Waymo’s witness [REDACTED]

13 [REDACTED] For example, a patent filed in 1976 describes a “means suitable for
 14 aligning and mounting a printed circuit board (PCB)” that involves mounting a “PCB [that] is
 15 provided with holes spaced apart to receive the supporting member pins” on top of a supporting
 16 member in which the “pins are spaced apart along a datum line or center line to which the PCB is
 17 to be aligned.”²⁷ Similarly, a German patent application filed in 1980 described how “[p]rinted
 18 circuit boards that are stacked and compacted into multi-layer circuit boards require to be
 19 accurately aligned,” and the use of “bored holes” that “all the holes will have an exact relative
 20 position to one another.”²⁸

21 Similarly, [REDACTED] is a well-known concept in the
 22 field. For example, U.S. Patent No. 4,432,037, with a priority date of December 2, 1980, entitled
 23 “Multi-layer printed circuit board and method for determining the actual position of internally
 24 located terminal areas,” describes a “fitting or alignment system” that consists of “location holes
 25 which fix a reference point and a reference line from which the position determination of the
 26

27 _____
 28 ²⁷ (Lebby Decl. Ex. 6, U.S. Patent No. 4,244,109 at 1:8-9, 1:65-68.)

²⁸ (Lebby Decl. Ex. 7, German Pat. App. No. DE 3031103, Abstract.)

1 conductive patterns on the individual sheets [of printed circuit board layer] takes place.”²⁹ In this
 2 known solution, the “conductive patterns of the individual inner layers” are “disposed on a
 3 nominally known position relative to the location system.” (See ’037 patent, Fig. 1, location
 4 holes 7 and 8.) Because the [REDACTED]
 5 [REDACTED] was well-known to the public long before Waymo’s LiDAR systems were developed,
 6 Waymo cannot claim [REDACTED] as a trade secret.

7 **B. Waymo Is Not Likely to Prevail On Its Patent Claims.**

8 To establish a likelihood of success on the merits of its patent infringement claims,
 9 Waymo bears the burden of showing that it will likely prove at trial that the accused devices
 10 infringe upon the patents.³⁰ Here, because Uber has shown that it does not infringe the ’922 and
 11 ’464 patents, a preliminary injunction should not be granted.

12 **1. Uber’s Fuji Design Does Not Infringe the ’922 Patent.**

13 Claim 1³¹ of the ’922 patent requires “an optical configuration that uses a *common lens* to
 14 both transmit and receive light beams, rather than using separate lenses for transmission and
 15 receipt.” (Mot. 16; Kintz Decl. ¶ 65, ECF No. 24-26.) Waymo characterizes the ’922 patent as
 16 disclosing a “fundamental single-lens architecture.” (Mot. 5.)

17 Based on the layout of the laser diodes on Fuji’s PCB, Waymo assumes that Fuji must be
 18 using a common-lens system. (Kintz Decl. ¶¶ 65-74.) Waymo is wrong. In contrast to the ’922
 19 patent and Waymo’s [REDACTED] design, Uber’s Fuji design does not use a single, common lens for both
 20 the transmit beam and receive beam. (Haslim Decl. ¶¶ 7, 9.) Rather, Fuji uses one lens for the
 21 outbound transmit beam and a separate lens for the inbound receive beam. (McManamon Decl.
 22 ¶¶ 78-81, 86.) Because Fuji uses two separate lenses for the transmit and receive beam, it does
 23 not infringe claim 1 of the ’922 patent.

24 Fuji also does not infringe claim 1 because it is missing other limitations required by the
 25 claim. For example, claim 1 requires “an interior space that includes . . . a transmit path, and a

26 ²⁹ ’037 patent at 1:52-60.

27 ³⁰ *Titan Tire Corp. v. Case New Holland, Inc.*, 566 F.3d 1372, 1376 (Fed. Cir. 2009).

28 ³¹ Claim 13 of the ’922 patent depends from claim 1, and Uber’s Fuji design does not infringe
 claim 13 for the same reasons it does not infringe claim 1.

1 receive path.” Fuji does not have one interior space that contains both the transmit and receive
 2 path. Rather, each cavity of Fuji has two compartments—one interior space for the transmit path
 3 and a separate interior space for the receive path. (*Id.* ¶¶ 78-83; Haslim Decl. ¶ 9.) Further, Fuji
 4 does not use a “reflective surface” for the receive path – the light received from the lens is
 5 focused directly onto the receive board.

6 2. Uber’s Fuji Design Does Not Infringe the ’464 Patent.

7 The ’464 patent is a continuation of the ’922 patent and shares a common specification
 8 and figures. Like the ’922 patent, claim 1³² of the ’464 patent requires “a common lens for both
 9 transmit and receive beams” and “an interior space that includes . . . a transmit path, and a receive
 10 path.” For the same reasons as stated above, Fuji does not satisfy these limitations and thus does
 11 not infringe claim 1 of the ’464 patent. (McManamon Decl. ¶¶ 95-96, 99-100.)

12 In addition, claim 1 of the ’464 patent also requires that “the transmit path at least partially
 13 overlaps the receive path in the interior space between the transmit block and the receive block.”
 14 The Fuji design, however, contains a separate compartment for the transmit path and the receive
 15 path. Thus, the transmit and receive paths never overlap or intersect. (*Id.* ¶ 97; Haslim Decl.
 16 ¶ 9.)

17 III. WAYMO HAS FAILED TO SHOW IRREPARABLE INJURY.

18 Waymo is not entitled to the extraordinary remedy it seeks because it has not and cannot
 19 demonstrate that without a preliminary injunction it will suffer irreparable harm in the five months
 20 between the Court’s hearing on its motion and the scheduled trial. Waymo delayed filing suit for
 21 roughly that same amount of time, and thus any alleged harm is not immediate.

22 The Supreme Court has held “that plaintiffs seeking preliminary relief [must] demonstrate
 23 that irreparable injury is *likely* in the absence of an injunction.”³³ To show this, Waymo must
 24 establish that the threatened injury is immediate, significant, and concrete or non-speculative.³⁴

25
 26 ³² Claim 14 of the ’464 patent depends from claim 1, and Uber’s Fuji design does not infringe
 27 claim 14 for the same reasons it does not infringe claim 1.

³³ *Winter v. Nat. Def. Council, Inc.*, 555 U.S. 7, 22 (2008) (emphasis in original).

28 ³⁴ See *Friends of the Wild Swan v. Weber*, 767 F.3d 936, 946 (9th Cir. 2014) (immediate);
Caribbean Marine Servs. Co. v. Baldrige, 844 F.2d 668, 674 (9th Cir. 1988) (non-speculative);

1 Waymo has not satisfied this heavy burden. Rather, Waymo relies on: (1) a presumption
 2 of irreparable harm that both the Supreme Court and the Ninth Circuit have rejected;
 3 (2) speculative harm about market impact in a currently nonexistent market, in which [REDACTED]
 4 [REDACTED]; (3) an
 5 ambiguous statement in a Nevada DMV filing; and (4) conjectural concerns about public
 6 disclosure. Waymo’s arguments do not meet its burden of demonstrating that the allegedly
 7 threatened injury is likely, immediate, significant, and non-speculative. And Waymo’s claim of
 8 irreparable harm is fatally undermined by its lengthy delay in filing for relief almost one year
 9 after it became suspicious of the alleged conduct by Defendants.

10 **A. There is No Presumption of Irreparable Harm.**

11 Waymo broadly proclaims that “continued use of another party’s trade secrets generally
 12 creates irreparable harm” and that a “similar analysis applies to Defendants’ patent infringement.”
 13 (Mot. 20–22.) But the Supreme Court flatly rejected such a presumption in *eBay Inc. v.*
 14 *MercExchange, L.L.C.*,³⁵ where the Court held that it was error to assume that a permanent
 15 injunction should issue if patent infringement and validity were shown; instead, the plaintiff must
 16 satisfy the four-factor test. This holding has been extended to preliminary injunctions.³⁶

17 Following *eBay*, the Ninth Circuit held that any “presumption of irreparable harm” in
 18 copyright cases is likewise “dead,”³⁷ and that the presumption is also “foreclose[d]” in trademark
 19 cases.³⁸ Consistent with this precedent, federal courts within and outside the Ninth Circuit have
 20 easily rejected the presumption in trade secret cases as well.³⁹ The cases Waymo cites to the

21 *Dep’t of Parks & Recreation v. Bazaar Del Mundo Inc.*, 448 F.3d 1118, 1123–24 (9th Cir. 2006)
 22 (significant).

23 ³⁵ 547 U.S. 388, 391–94 (2006).

24 ³⁶ *Flexible Lifeline Sys., Inc. v. Precision Lift, Inc.*, 654 F.3d 989, 996 (9th Cir. 2011).

25 ³⁷ *Id.* at 995.

26 ³⁸ *Herb Reed Enters., LLC v. Fla. Entm’t Mgmt., Inc.*, 736 F.3d 1239, 1249 (9th Cir. 2013).

27 ³⁹ *GSI Tech., Inc. v. United Memories, Inc.*, No. C 13-1081 PSG, 2013 WL 12172990, at *11
 28 (N.D. Cal. Aug. 21, 2013) (“misappropriation of proprietary information alone does not create a
 presumption of irreparable harm”); *V’Guara Inc. v. Dec*, 925 F. Supp. 2d 1120, 1126 (D. Nev.
 2013) (“In light of [*Flexible Lifeline*], the Court declines to rely on such a presumption” in a
 trade-secret case.); *Precision Automation, Inc. v. Tech. Servs., Inc.*, No. 07-CV-707-AS, 2007 WL
 4480739, at *7 (D. Or. Dec. 14, 2007) (refusing to apply presumption in case involving both trade
 secrets and patents); *Kahala Franchising LLC v. Kim*, No. CV 13-02933-MWF (FFMx),
 2013 WL 12086126, at *2 (C.D. Cal. July 10, 2013) (same); *Se. X-Ray, Inc. v. Spears*, 929 F.

1 contrary are inapposite (Mot. 20), because they either predate the Supreme Court’s decision in
2 *eBay* or predate *Flexible Lifeline* or rely on precedent that does.⁴⁰

3 **B. Waymo Relies Solely on Speculative and Unsupported Harm.**

4 Waymo contends it will suffer irreparable harm if Uber is allowed to use Waymo’s
5 intellectual property to gain a “critical edge” in the race “to become the first to offer a full suite of
6 commercial self-driving services.” (Mot. 20–21.) But there is no evidence that Uber has
7 commercialized this technology, or even that [REDACTED]

8 [REDACTED]. Waymo merely speculates that this *may* happen. Such
9 speculative injury is precisely the type of irreparable harm that this Circuit has flatly rejected as a
10 basis for granting provisional relief.⁴¹

11 **Harm not imminent.** Contrary to Waymo’s assertions that Uber’s “deploy[ment]” of its
12 LiDAR technology in a “product launch” is “imminent” (Mot. 12), [REDACTED]
13 [REDACTED]. (Haslim
14 Decl. ¶ 22.) To date, Uber has never installed a LiDAR of its own design on a vehicle; instead, it
15 uses commercially available technology from third parties, such as Velodyne, in all of its cars that
16 are currently on the road. (*Id.* ¶ 21.) There simply is no risk that [REDACTED]
17 [REDACTED]

18 To support its claim of immediate harm, Waymo relies only on a September 2016 Nevada
19 DMV filing,⁴² in which Otto stated that it had “developed in-house and/or currently deployed” a
20 custom LiDAR system. Otto trucks deployed in Nevada, however, did not have any LiDAR on
21 them at all, much less LiDAR developed in-house, as shown by pictures taken of an Otto truck

22
23 Supp. 2d 867, 872 (W.D. Ark. 2013) (applying four-factor analysis to trade-secret claims,
“making no presumptions as to irreparable harm.”).

24 ⁴⁰ *Pixon Imaging, Inc. v. Empower Techs. Corp.*, No. 11-CV-1093-JM (MDD), 2011 WL
3739529, at *6 n.7 (S.D. Cal. Aug. 24, 2011), relies on precedent that predates *eBay* and
25 was issued only two days after *Flexible Lifeline*. The other, *Advanced Instructional Systems, Inc.*
v. Competentum USA, Ltd., No. 1:15CV858, 2015 WL 7575925, at *4 (M.D.N.C. Nov. 25, 2015),
26 fails to cite *eBay* altogether, instead relying on two district court cases from the 1990s.

⁴¹ *In re Excel Innovations, Inc.*, 502 F.3d 1086, 1098 (9th Cir. 2007).

27 ⁴² The language was imprecise and ambiguous given the term “and/or.” Uber subsequently
clarified this regulatory filing, explaining that “Otto has been developing its own LiDAR systems,
28 but **has not yet** deployed an ‘[i]n-house custom built 64-laser’ in its autonomous vehicles.”
(Chang Decl. Ex. 8.) (emphasis added).

1 during its test runs. The cases in Waymo’s motion can be distinguished on this basis—they
 2 involved well-established markets.⁴³ (Mot. 21.) Accordingly, Waymo cannot establish
 3 irreparable harm based on an unfounded concern over imminent commercialization.⁴⁴

4 ***No threat of disclosure of Waymo’s trade secrets.*** Waymo also argues that it will suffer
 5 irreparable harm because the absence of an injunction will “result in further **disclosure**” of its
 6 trade secrets. (Mot. 21.) (emphasis in original) This also is unsupported speculation. First,
 7 without any citation to evidence, Waymo claims that “Defendants have already begun making
 8 regulatory filings that reference Waymo’s trade secrets.” (Mot. 21.) That is false. To the extent
 9 Waymo is relying on the September 2016 Nevada DMV filing, that filing does not disclose any
 10 trade secrets, as it is publicly known that [REDACTED]
 11 [REDACTED]. (E.g., Droz Dep. 19:3-11 [REDACTED]
 12 [REDACTED] Waymo’s claim that unspecified *future* regulatory
 13 filings will contain Waymo’s trade secrets is the hallmark of speculation without evidence.
 14 Second, Waymo asserts that Defendants’ so-called “disrespectful” behavior leaves “little doubt
 15 that Defendants would not hesitate to throw Waymo’s trade secrets open to the general public”
 16 should it suit them. (Mot. 21.) This is attorney argument and nothing more.⁴⁵

17 ***Money damages are adequate.*** Finally, Waymo does not argue that money damages are
 18 inadequate to compensate it for any injury.⁴⁶ Indeed, “[e]conomic damages are not traditionally
 19 considered irreparable because the injury can later be remedied by a damage award.”⁴⁷ Waymo
 20 makes no attempt to explain why money damages would be inadequate to remedy any
 21 competitive injury. And courts have held that a decrease in market share and profits, such as that

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 23 ⁴³ *Lamb-Weston, Inc. v. McCain Foods, Ltd.*, 941 F.2d 970 (9th Cir. 1991), involved the
 French-fries market and *Netlist Inc. v. Diablo Techs. Inc.*, No. 13-CV-05962-YGR, 2015 WL
 153724 (N.D. Cal. Jan. 12, 2015), involved computer-server memory market.

24 ⁴⁴ *Zodiac Pool Sys., Inc. v. Aquastar Pool Prods., Inc.*, No. 13cv343-GPC (WMC), 2013 WL
 690616, at *5 (S.D. Cal. Feb. 22, 2013) (holding no irreparable harm where product will not be
 25 sold imminently).

26 ⁴⁵ Tellingly, Waymo never even attempts to argue that it could win a preliminary injunction
 based on threatened, rather than actual, misappropriation.

27 ⁴⁶ *Stanley v. Univ. of S. Cal.*, 13 F.3d 1313, 1320 (9th Cir. 1994) (holding that where
 monetary damages can compensate plaintiff, preliminary injunction is not justified).

28 ⁴⁷ *Delphon Indus. LLC v. Int’l Test Sols., Inc.* No. 11-CV-1338-PSG, 2011 WL 4915792, at
 *3 (N.D. Cal. Oct. 17, 2011).

1 which Waymo fears, can be compensated monetarily.⁴⁸

2 **C. Waymo’s Delay in Filing This Action Refutes the Alleged Irreparable Harm.**

3 Waymo’s claim of irreparable harm is fatally undermined by its delay in filing for relief.
4 A “long delay before seeking a preliminary injunction implies a lack of urgency and irreparable
5 harm.”⁴⁹ An unreasonable delay can be a matter of months.⁵⁰ Indeed, in multiple cases, Google
6 itself has argued that even a four or five-month delay undermines a claim of irreparable harm.⁵¹

7 In this inquiry, the proper focus is on the point in time when plaintiff was “aware, or
8 should have been aware” of the alleged wrongdoing.⁵² When a plaintiff suspects wrongdoing, the
9 clock has already started ticking.⁵³ Here, that clock began to tick *a year ago*, if not earlier.

10 Waymo’s [REDACTED]

11 [REDACTED] (Chang Decl. Ex. 5, Brown Dep. 11:2–4, 11:20–12:8.) [REDACTED]

12 [REDACTED]
13 [REDACTED]
14 [REDACTED] (Chang Decl. Ex. 5, Brown Dep. 47:23–49:4; Brown Decl. ¶ 22, ECF No. 24-2.) By
15 August 2016, the departure of certain engineers had raised additional “suspicion[,]” (Mot. 9), and
16 Uber’s acquisition of Mr. Levandowski’s startup allegedly caused “grave concern.” (Compl.
17 ¶ 57, ECF No. 1.) By no later than October 2016—*five months before Waymo filed its motion*—

18 Waymo claims [REDACTED]

19 [REDACTED]
20 (Chang Decl. Ex. 5, Brown Dep. 31:21–32:21.) The same month, Waymo filed claims against

21 _____
22 ⁴⁸ *Hologic, Inc. v. Senorx, Inc.*, No. C-08-00133 RMW, 2008 WL 1860035, at *16–17 (N.D. Cal. Apr. 25, 2008).

23 ⁴⁹ *Oakland Tribune, Inc. v. Chronicle Publ’g Co.*, 762 F.2d 1374, 1377 (9th Cir. 1985).

24 ⁵⁰ *Larsen v. City of San Carlos*, No. 14-CV-04731-JD, 2014 WL 5473515, at *3 (N.D. Cal. Oct. 28, 2014) (three months); *Hiramanek v. Clark*, No. C-13-0228 EMC, 2013 WL 5082640, at *1 (N.D. Cal. Sept. 13, 2013) (one month).

25 ⁵¹ *Perfect 10, Inc. v. Google Inc.*, Google’s Opposition to Perfect 10’s Motion for Preliminary
26 Injunction, 2005 WL 4705034, at *23 (C.D. Cal. Sept. 30, 2005); *see also Garcia v. Google, Inc.*,
786 F.3d 733, 746 (9th Cir. 2015) (en banc); *Hanginout, Inc. v. Google, Inc.*, 54 F. Supp. 3d
1109, 1132–33 (S.D. Cal. 2014).

27 ⁵² *Kwan Software Eng’g, Inc. v. Foray Techs., LLC*, No. C 12-03762 SI, 2013 WL 244999,
at *8 (N.D. Cal. Jan. 22, 2013), *aff’d*, 551 F. App’x 298 (9th Cir. 2013).

28 ⁵³ *See Blackmon v. Tobias*, No. C 11-2853 SBA, 2011 WL 2445963, at *4 (N.D. Cal. June 16, 2011).

1 Mr. Levandowski in arbitration. (Gonzalez Decl. ISO Mot. to Compel Arbitration, Ex. 1, ECF
 2 No. 114-7.) Thus, the existence of the downloading Waymo alleges cannot be the basis for
 3 seeking emergency relief. Waymo waited five months after learning of that downloading before
 4 seeking relief.

5 Waymo attempts to gloss over its delay by emphasizing a December 2016 email that
 6 allegedly contained “proof” of misappropriation and infringement in the form of images of a
 7 single Uber LiDAR circuit board. (Mot. 10.) But this email does not materially change what
 8 Waymo already concluded: Mr. Levandowski had allegedly exported files to a personal device
 9 that was not issued by Waymo, and he went to work for a competitor. Moreover, the December
 10 2016 email does not show that any alleged harm to Waymo is in any way “immediate.” It merely
 11 shows that Uber is working on a LiDAR system that Waymo (incorrectly) believes is similar to
 12 its LiDAR. That fact is vigorously disputed, but there is no dispute that Waymo has presented
 13 zero evidence that Uber is about to deploy an in-house-developed LiDAR system in the
 14 immediate future.⁵⁴

15 **IV. THE BALANCE OF HARDSHIPS STRONGLY DISFAVORS AN INJUNCTION.**

16 Even when a party, unlike Waymo here, has demonstrated likelihood of success of the
 17 merits, this Court has held that the “party must also show that the balance of hardships tip sharply
 18 in its favor in order to prevail on its motion for a preliminary injunction.”⁵⁵ Where, as here,
 19 Waymo has neither shown likelihood of success on the merits nor irreparable harm, the burden is
 20 even greater. Waymo has not met this burden.

21 Just as there is no presumption of irreparable harm, there is also no presumption of
 22 hardship simply because this is a case concerning intellectual property.⁵⁶ As discussed above,
 23 there is no cognizable irreparable harm that Waymo would experience between now and the date

24 _____
 25 ⁵⁴ Waymo also points again to the September 2016 Nevada DMV filing. (Compl. ¶ 61.) The
 26 assertion that this generic and equivocal regulatory filing somehow constituted the “final piece of
 27 the puzzle” is simply implausible.

28 ⁵⁵ *Bayer Corp. v. Roche Molecular Sys., Inc.*, 72 F. Supp. 2d 1111, 1120 (N.D. Cal. 1999)
 (Alsup, J.).

⁵⁶ *Mitigation Techs., Inc. v. Pennartz*, No. ED CV 14-01954-AB (SPx), 2015 WL 12656936,
 at *8 (C.D. Cal. Mar. 13, 2015); *Leatt Corp. v. Innovative Safety Tech., LLC*, No. 09-CV-1301-
 IEG (POR), 2010 WL 1526382, at *11 (S.D. Cal. Apr. 15, 2010).

1 of trial that an injunction would forestall. Contrary to Waymo’s contention, it would not be
 2 “forced ‘to compete against its own patented invention,’” (Mot. 24), because [REDACTED]

3 [REDACTED]
 4 (Haslim Decl. ¶ 22.).

5 On the other hand, the burden in the intervening months on Uber would be substantial.
 6 First, Waymo overreaches in the scope of its requested injunction. As this Court noted twice in
 7 recent hearings, in the more than one hundred alleged “trade secrets” that Waymo seeks to enjoin
 8 Defendants from using (along with “any colorable variation”), Waymo overreaches and attempts
 9 to claim trade secret protection over clearly unprotectable material, such as commonplace
 10 knowledge about vendors and suppliers, techniques that are dictated by physics, and information
 11 disclosed in the prior art. By effectively prohibiting Defendants from using such technology and
 12 techniques, the injunction should would unfairly undermine and burden Defendants’ independent
 13 LiDAR development, which was built without any of Waymo’s trade secrets, and on which Uber
 14 has spent thousands of man-hours. (Haslim Decl. ¶ 20.) It would also limit the work of about 25
 15 employees. (Haslim Decl. ¶ 5.) Waymo admits that this outcome would be improper: “Waymo
 16 is not seeking to enjoin Defendants from pursuing self-driving car projects *in toto*.” (Mot. 23.)

17 For example, one of the “trade secrets” that Waymo seeks to enjoin Uber from using is the

18 [REDACTED]
 19 (Jaffe Decl. Ex. 1, ¶ 93, ECF No. 25-7.) This Court has already noted that Waymo’s argument

20 that [REDACTED] (CMC Hr’g Tr. 7, Mar. 29, 2017, ECF No. 131

21 (“[S]ome of the things in your motion are bogus. You’ve got things in there like [REDACTED]
 22 as trade secrets. Come on. It undermines the whole thing.”). In other words, the injunction that

23 Waymo seeks could theoretically prevent Uber from even [REDACTED]

24 [REDACTED]
 25 [REDACTED]
 26 [REDACTED] (Chang Decl.

27 Ex. 4, Willis Dep. 87:22–88:12.) Barring such contact would be potentially devastating to Uber’s

28 legitimate efforts to compete, and flies in the face of the requirement that any injunction must be

1 “no more burdensome to the defendant than necessary to provide complete relief to the plaintiffs”
2 and “tailored to remedy the specific harm alleged.”⁵⁷

3 Second, Waymo incorrectly assumes that Uber could easily continue developing
4 self-driving cars by acquiring LiDAR technology from third-party vendors. Existing vendors of
5 LiDAR technology cannot keep up with demand for the quantities needed for testing, much less
6 for commercial use. (Boehmke Decl. ¶¶ 11, 15, 16.) In fact, the impetus for Defendants to
7 develop an in-house customized LiDAR was, in part, due to the difficulty in obtaining LiDAR
8 sensors in sufficient quantities from commercial sources. ██████████, Uber’s primary supplier for
9 the cars currently on the road, cannot meet the demand for its LiDARs. (Haslim Decl. ¶ 21.) The
10 fact that there is “no readily available substitute” also tilts the balance of hardships in Defendants’
11 favor.⁵⁸

12 **V. THE PUBLIC INTEREST DISFAVORS AN INJUNCTION**

13 Waymo acknowledges—as it must—that the public has a strong interest in promoting
14 “competition and consumer choice” in the development and creation of a self-driving car
15 marketplace. (Mot. 25.) As this Court has held, the best way to promote that public interest is by
16 encouraging fair and vigorous competition in the use of ideas in this developing industry.⁵⁹

17 Uber has been a visionary and a pioneer in the transportation industry, essentially creating
18 the concept of ride-sharing, offering economic opportunities for hundreds of thousands of drivers,
19 and pioneering other innovative solutions in transportation. In that vein, Uber is competing
20 vigorously but fairly to eliminate the number one cause of car accidents—human error.
21 Especially where there is no risk of an imminent commercialization or deployment of the
22 disputed technology, the public interest weighs against any injunction.

23 The only public interest that Waymo argues would be furthered by a preliminary
24

25 ⁵⁷ *McCormack v. Hiedeman*, 694 F.3d 1004, 1019 (9th Cir. 2012).

26 ⁵⁸ *Advanced Rotorcraft Tech., Inc. v. L-3 Commc’ns Corp.*, No. C 06-06470 WHA, 2007 WL
437682, at *9 (N.D. Cal. Feb. 6, 2007).

27 ⁵⁹ *Yamashita v. Wilbur-Ellis Co.*, No. C 06-01690 WHA, 2006 WL 1320470, at *8 (N.D. Cal.
May 15, 2006); *Lear, Inc. v. Adkins*, 395 U.S. 653, 670 (1969) (“[T]he equities of the licensor do
28 not weigh very heavily when they are balanced against the important public interest in permitting
full and free competition in the use of ideas which are in reality a part of the public domain.”).

1 injunction is “vindicating both trade secret and patent rights.” (Mot. 24.) But Uber has not
 2 impinged on Waymo’s trade secret and patent rights. Rather, Uber developed—and continues to
 3 develop—its own technology without the use of any of Waymo’s trade secrets and without
 4 infringing Waymo’s patents. (*Supra* at 3:23-6:28; 8:11-15:4.) Moreover, many of Waymo’s
 5 claimed “trade secrets” are known in the prior art, have been publicly disclosed, or are dictated by
 6 the laws of physics.⁶⁰ The public’s interest is not served by an injunction preventing infringement
 7 that Waymo “has not shown has [occurred] or is likely to occur.”⁶¹

8 Moreover, as this Court has held, while there exists a public interest in protecting rights
 9 secured by valid patents, the public interest may be better served by purchasers “having access to
 10 competitive products, being able to determine which products better suit their needs, and
 11 receiving reduced prices due to the availability of competing products.”⁶² This is especially true
 12 here, where the overreaching scope of Waymo’s requested injunction would severely slow
 13 development of a competing LiDAR system, as it would even capture activity that builds on
 14 public material and prior art. (*Supra* at 10:25-11:10; 12:3-11; 14:6-18; 15:5-16:4; 23:3-24:9.)

15 Finally, California has a strong public policy in favor of employee mobility and free
 16 competition.⁶³ This is particularly important where talent and ingenuity is the primary resource
 17 that drives competition in the creation of a new industry. Waymo has presented no evidence that
 18 Mr. Levandowski—or anyone else at Uber—ever used the allegedly downloaded files. In the
 19 absence of such evidence, Waymo must argue that its technology for building autonomous cars
 20 might somehow be inevitably disclosed to Uber by virtue of talented individuals going to work
 21 there. But California has definitively rejected the “inevitable disclosure” doctrine.⁶⁴

22 CONCLUSION

23 For these reasons, Waymo’s Motion for a Preliminary Injunction should be denied.

24 _____
 25 ⁶⁰ See declarations of Paul McManamon and Michael Leppy.

26 ⁶¹ *Sunbelt Rentals, Inc.*, 2014 WL 492364, at *11.

27 ⁶² *Yamashita*, 2006 WL 1320470, at *8.

28 ⁶³ *Edwards v. Arthur Andersen LLP*, 44 Cal. 4th 937, 946 (2008); CAL. BUS. & PROF. CODE §§ 16600-16601 (recognizing California’s “settled legislative policy in favor of open competition and employee mobility”).

⁶⁴ *Whyte v. Schlage Lock Co.*, 101 Cal. App. 4th 1443, 1463 (2002) (“Lest there be any doubt about our holding, our rejection of the inevitable disclosure doctrine is complete.”).

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Dated: April 7, 2017

MORRISON & FOERSTER LLP

By: /s/ Arturo J. González
ARTURO J. GONZÁLEZ

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16 UNITED STATES DISTRICT COURT
 17 NORTHERN DISTRICT OF CALIFORNIA
 18 SAN FRANCISCO DIVISION

19 WAYMO LLC,
 20 Plaintiff,
 21 v.
 22 UBER TECHNOLOGIES, INC.,
 OTTOMOTTO LLC; OTTO TRUCKING LLC,
 23 Defendants.
 24

Case No. 3:17-cv-00939-WHA

**DECLARATION OF RHIAN
 MORGAN IN SUPPORT OF
 DEFENDANTS' OPPOSITION TO
 PLAINTIFF'S MOTION FOR
 PRELIMINARY INJUNCTION**

Date: May 3, 2017
 Time: 7:30 a.m.
 Ctrm: 8
 Judge: Honorable William Alsup

Trial Date: October 2, 2017

1 I, Rhian Morgan, declare as follows:

2 1. I have been an employee of Uber Technologies, Inc. (“Uber”) since August 24,
3 2016, and prior to that I served as HR Lead at Ottomotto LLC (“Otto”). I make this declaration in
4 support of Defendants’ Opposition to Plaintiff’s Motion for a Preliminary Injunction and have
5 personal knowledge of the facts stated herein.

6 2. Prior to Otto, I had worked in human resources, recruitment, and staffing for
7 almost six years. From May 2015 to January 2016, I worked as a Mobile Delivery Specialist at
8 consultative technology staffing firm K2 Partnering Solutions. From May 2011 to May 2015, I
9 worked in HR and as a recruiter at ID Business Solutions.

10 3. I starting working at Otto in approximately January 2016. At that time, I was
11 involved in matters related to payroll, benefits, and office space set up.

12 4. I was the first employee at Otto. In my role as HR Lead, I have been responsible
13 for all aspects of human resources at Otto, including recruitment, hiring, on-boarding of new
14 employees, and implementing Otto’s related company policies. As part of my responsibilities, I
15 also maintain employee personnel files, including the forms that document recruiting and hiring
16 processes at Otto.

17 5. Since the formation of the company, Otto has taken measures against an
18 employee’s retention of confidential information from a former employer starting from the offer
19 process. The offer letter provided by Otto explicitly prohibits an offeree from bringing any
20 confidential information from his or her former employer:

21 Company does not want you to, and hereby directs that you must
22 not, bring to Company, or otherwise use in connection with
23 performing any services on behalf of the Company, any intellectual
24 property rights or other proprietary or confidential material or
25 information of any former employer or other third party.

26 6. The offer letter requires an offeree to represent and warrant that he or she will not
27 bring any confidential information from his or her former employer to Otto:

28 Accordingly, by signing this Offer Letter you represent and warrant
that you will not bring to Company, or otherwise use in connection
with performing any services on behalf of the Company, any
intellectual property rights or other proprietary or confidential
material or information of any former employer or other party.

1 7. Attached as Exhibit A is a true and correct copy of an exemplar offer letter from
2 Otto.

3 8. I am aware that, since the formation of the company in January 2016, Otto has
4 made slight modifications to its offer letter. I have reviewed each version of the offer letter
5 template, and each version contains the same language quoted above.

6 9. During the onboarding process for Otto, it was my normal business practice to
7 provide an oral overview of the contents of the offer letter—including the prohibition against and
8 representation and warranty regarding former employer information—with each new hire.

9 10. In the same period as signing the offer letter, a new Otto employee was also
10 required to complete and execute an Employee Invention Assignment and Confidentiality
11 Agreement (“EIACA”). Each Otto employee made the following representations in his or her
12 EIACA:

13 I represent that my performance of all the terms of this Agreement
14 and my duties as an employee of the Company will not breach any
15 invention assignment, proprietary information, confidentiality, non-
16 competition, or other agreement with any former employer or other
17 party. I represent that I will not bring with me to the Company or
18 use in the performance of my duties for the Company any
19 documents or materials or intangibles of my own or of a former
20 employer or third party that are not generally available for use by
21 the public or have not been legally transferred to the Company.

18 11. Attached as Exhibit B is a true and correct copy of an exemplar EIACA from Otto.

19 12. During the onboarding process for Otto, it was my normal business practice to
20 provide an oral overview of the contents of the EIACA—including the representations that the
21 employee has not breached any of his or her agreements with any former employer—with each
22 new hire.

23 13. In approximately April 2016, Otto undertook the additional measure against
24 breach of former employment agreements by issuing an employee attestation where each
25 employee certified and declaration that he or she had not committed any of the following acts:

- 26 • fraud in connection with me becoming employed by
27 Ottomotto;
- 28 • willful, intentional or deliberate conduct that constitutes or
 directly leads or contributes to the infringement (direct or

1 indirect) or misappropriation of any patents, copyrights,
2 trademarks or trade secrets of my prior employer including,
3 without limitation, taking removing and/or copying
4 software, product plans, or invention disclosures, in
5 electronic or tangible form that are owned by my prior
6 employer;

- 7 • willful and/or intentional breach by me of any fiduciary duty
8 or duty of loyalty to my prior employer; and/or
- 9 • willful and/or intentional breach by me of any lawful and
10 enforceable non-solicitation, non-competition,
11 confidentiality or other similarly restrictive covenant or
12 agreement between me and my prior employer.

13 14. Attached as Exhibit C is a true and correct copy of an exemplar attestation.

14 15. I supervised the distribution and return of these executed attestations in
15 approximately April 2016. Each employee who worked at Otto at that time executed an
16 attestation.

17 16. Subsequent new hires executed the attestation during the onboarding process for
18 Otto. It was my normal business practice to provide an oral overview of the contents of the
19 attestation—including the representations that the employee has not breached any of his or her
20 agreements with any former employer—with each new hire.

21 17. Otto also provided instruction to employees regarding how to respond to outreach
22 by candidates from their former employers to whom they had non-solicitation obligations. I am
23 aware that certain Otto employees who had management roles with their previous employers,
24 including Anthony Levandowski, received such instruction. If such a communication was
25 received, Otto employees were to indicate they are screening themselves from the recruiting
26 process with that candidate and that the candidate can apply for employment at Otto by contacting
27 me.

28 18. As part of that screening from the recruiting process, it was Otto's company policy
that individuals could not conduct interviews of any candidate from their former employers.

19 19. In my role as HR Lead, I oversaw the recruiting process and managed other
20 recruiters employed at Otto. It was my normal business practice to repeatedly instruct all
21 recruiters at Otto that they were prohibited from reaching out to any current Google employee.

1 20. Another part of my role as HR Lead was to request referrals of potential
2 candidates from current Otto employees. It was my normal business practice to state explicitly in
3 those requests that Otto employees who had left Google within the past year could not provide
4 any names of candidates who are active Google employees.

5 21. I am aware that Otto was acquired by Uber Technologies, Inc. ("Uber") in August
6 2016.

7 22. Effective August 24, 2016, all Otto employees became Uber employees.

8 23. After the acquisition, the Otto onboarding process transitioned from using the
9 aforementioned documentation from Otto—the offer letter, EIACA, and employee attestation—to
10 using the standard onboarding documentation used by Uber. I understand that the standard
11 onboarding documentation used by Uber reflects the same prohibitions against retention of
12 confidential information from any former employer and solicitation of employees from a former
13 employer.

14 24. I have reviewed the employee personnel files that I maintain in my role as HR
15 Lead, and those records indicate that Radu Raduta joined Otto on July 29, 2016 and left on
16 November 4, 2016.

17 25. The work computer Radu Raduta used while employed at Otto was preserved after
18 he left. That computer was submitted to a third party for collection and analysis related to this
19 litigation.


20 26. I have never worked for Google. I have never used any Google or Waymo
21 information during my tenure at Otto or Uber and before this lawsuit, I had never heard of the
22 14,000 files allegedly downloaded by Anthony Levandowski. I have never seen any evidence of
23 any use of Google or Waymo information during my tenure at Otto and Uber.

24

25 I declare under penalty of perjury that the foregoing is true and correct. Executed this 7
26 day of April, 2017, at San Francisco, California.

27

28


Rhian Morgan

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16 UNITED STATES DISTRICT COURT
17 NORTHERN DISTRICT OF CALIFORNIA
18 SAN FRANCISCO DIVISION

19 WAYMO LLC,
20 Plaintiff,
21 v.
22 UBER TECHNOLOGIES, INC.,
23 OTTOMOTTO LLC; OTTO TRUCKING LLC,
24 Defendants.

Case No. 3:17-cv-00939-WHA

**DECLARATION OF DAVID MEALL
IN SUPPORT OF DEFENDANTS'
OPPOSITION TO PLAINTIFF'S
MOTION FOR PRELIMINARY
INJUNCTION**

Date: May 3, 2017
Time: 7:30 a.m.
Ctrm: 8
Judge: Honorable William Alsup

Trial Date: October 2, 2017

1 I, David Meall, declare as follows:

2 1. I have been an employee of Uber Technologies, Inc. (“Uber”) since November 4,
3 2013. I make this declaration in support of Defendants’ Opposition to Plaintiff’s Motion for a
4 Preliminary Injunction and have personal knowledge of the facts stated herein.

5 2. Prior to Uber, I had worked in human resources, engagement, and talent
6 development for over 10 years. From September 2009 to October 2013, I worked as the Principal
7 Technical Recruiter for Talent Pulse. During that time, I also worked as a Recruiting Consultant
8 for Scopely (from September 2012 to June 2013), Hulu (from February 2012 to September 2012),
9 and Microsoft (from February 2011 to February 2012). From February 2007 to September 2009,
10 I worked as a Senior Technical Recruiter for iMatch Technical Services.

11 3. When I first joined Uber in November 2013, I worked as a Technical Recruiter for
12 Uber. Over the next three years, I was promoted to Senior Technical Recruiting Lead, then
13 Recruiting Manager, then Senior Recruiting Manager.

14 4. In approximately July 2016, I became the Senior Recruiting Manager supporting
15 Uber’s Advanced Technologies Group (ATG) in Pittsburgh, Pennsylvania. Since then, I have
16 been responsible for the aspects of human resources at ATG related to recruitment, hiring, and
17 on-boarding of new employees, and implementing ATG’s related company policies. As part of
18 my responsibilities, I also have access to employee personnel files, including the forms that
19 document recruiting and hiring processes at ATG.

20 5. All employees working in ATG are employees of Uber, and ATG applies the same
21 Uber measures against an employee’s retention of confidential information from a former
22 employer starting from the offer process. The offer letter requires an offeree to represent and
23 warrant that he or she will not bring any confidential information from his or her former employer
24 to Uber:

25 You represent and warrant to the Company that you are under no
26 obligations or commitments, whether contractual or otherwise, that
27 are inconsistent with your obligations under this Agreement. In
28 connection with your Employment, you shall not use or disclose
any trade secrets or other proprietary information or intellectual
property in which you or any other person has any right, title or
interest and your Employment will not infringe or violate the rights

1 of any other person. You represent and warrant to the Company
2 that you have returned all property and confidential information
belonging to any prior employer.

3 6. Attached as Exhibit A is a true and correct copy of an exemplar offer letter from
4 ATG.

5 7. A new ATG employee is also required to complete and execute a Confidential
6 Information and Invention Assignment Agreement (“CIIAA”). Each ATG employee makes the
7 following representations in his or her CIIAA:

8 I represent that my performance of all the terms of this Agreement
9 does not and will not breach any agreement I have entered into, or
will enter into, with any third party, including without limitation
10 any agreement to keep in confidence proprietary information or
materials acquired by me in confidence or in trust prior to or during
11 the Relationship. I will not disclose to the Company or use any
inventions, confidential or non-public proprietary information or
12 material belonging to any previous client, employer or any other
party. I will not induce the Company to use any inventions,
13 confidential or non-public proprietary information, or material
belonging to any previous client, employer or any other party. I
14 acknowledge and agree that I have listed on Exhibit A all
agreements (e.g., non-competition agreements, non-solicitation of
15 customers agreements, non-solicitation of employees agreements,
confidentiality agreements, inventions agreements, etc.), if any,
16 with a current or former client, employer, or any other person or
entity, that may restrict my ability to accept employment with the
17 Company or my ability to recruit or engage customers or service
providers on behalf of the Company, or otherwise relate to or
18 restrict my ability to perform my duties for the Company or any
obligation I may have to the Company. I agree not to enter into any
19 written or oral agreement that conflicts with the provisions of this
Agreement.

20 8. Attached as Exhibit B is a true and correct copy of an exemplar CIIAA from ATG.

21 9. I have never worked for Google. I have never used any Google or Waymo
22 information during my employment at Uber and before this lawsuit, I had never heard of the
23 14,000 files allegedly downloaded by Anthony Levandowski. I have never seen any evidence of
24 any use of Google or Waymo information during my employment at Uber.

25 I declare under penalty of perjury that the foregoing is true and correct. Executed this 7th
26 day of April, 2017, at Pittsburgh, Pennsylvania.

27 
28 David Meall

EXHIBIT A

Uber Technologies, Inc.

1455 Market Street, 4th Floor

San Francisco, CA 94103

Date

Name

RE: EMPLOYMENT AGREEMENT

Dear FirstName,

On behalf of Uber Technologies, Inc., a Delaware corporation (the "Company"), I am pleased to offer you the position of Title. Your employment by the Company shall be governed by the following terms and conditions (this "Agreement"):

1. **Duties and Scope of Employment.**

- a. **Position.** For the term of your employment under this Agreement (your "Employment"), the Company agrees to employ you in the position of Title or in such other position as the Company subsequently may assign to you. You will report to SupervisorsFullName, or to such other person as the Company subsequently may determine. You will be working out of the Company's office in Pittsburgh. You will perform the duties and have the responsibilities and authority customarily performed and held by an employee in your position or as otherwise may be assigned or delegated to you by your supervisor.
- b. **Obligations to the Company.** During your Employment, you shall devote your full business efforts and time to the Company. During your Employment, without express written

permission from the Chief Executive Officer or one of his direct reports, you shall not render services in any capacity to any other person or entity and shall not act as a sole proprietor or partner of any other person or entity or own more than five percent of the stock of any other corporation. Notwithstanding the foregoing, you may serve on corporate, civic or charitable boards or committees, deliver lectures, fulfill speaking engagements, teach at educational institutions, or manage personal investments without such advance written consent, provided that such activities do not individually or in the aggregate interfere with the performance of your duties under this Agreement. You shall comply with the Company's policies and rules, as they may be in effect from time to time during your Employment.

- c. **No Conflicting Obligations.** You represent and warrant to the Company that you are under no obligations or commitments, whether contractual or otherwise, that are inconsistent with your obligations under this Agreement. In connection with your Employment, you shall not use or disclose any trade secrets or other proprietary information or intellectual property in which you or any other person has any right, title or interest and your Employment will not infringe or violate the rights of any other person. You represent and warrant to the Company that you have returned all property and confidential information belonging to any prior employer.
- d. **Commencement Date.** You shall commence full-time Employment as soon as reasonably practicable and in no event later than **StartDate**.

2. **Cash and Incentive Compensation.**

- a. **Salary.** The Company shall pay you as compensation for your services an initial base salary at a gross annual rate of **\$Salary**. Such salary shall be payable in accordance with the Company's standard payroll procedures.
- b. **Performance Bonus.** As an Uber employee, you will be eligible to participate in Uber's annual performance bonus program, with your first bonus award (if any) prorated based

on your start date at Uber. Uber has a pay for performance culture and we compensate our top performers accordingly. Uber is a dynamic place and bonus awards under the bonus program may vary year to year based on a number of factors including company performance and manager discretion. For context, last year the target bonus value was \$XX for an individual in a comparable role/level and payout multiples were applied to reward high performance. For example, the top 15% of bonus-eligible employees received 3.5x or more of target. Please note that these figures reflect historical values and the bonus program is subject to change year over year. It is unlikely that any given person would receive the exact amounts shown above. Bonus amounts were delivered mostly in equity, vesting over three years. Uber does not guarantee that you will receive a bonus - the lowest 20% of performers should not expect to receive an award, and all awards are at the discretion of the Company.

c. **Expense Reimbursement.** Additionally, in order to assist you to move yourself and your household to Pittsburgh, Uber will reimburse you up to an amount that will not exceed \$XXXX to cover your actual relocation expenses ("Relocation Payment") incurred for the following items (if applicable):

- Packing, crating, moving and transporting your household goods and personal effects from your former home to your new home
- Storing and insuring household goods and personal effects
- Shipping your car and household pets to your new home
- Connecting or disconnecting utilities
- Transportation from your current home to Pittsburgh
- Other eligible expenses per Uber's global mobility guidelines

The relocation reimbursement payment shall be made to you net of all applicable withholding taxes and other applicable deductions in accordance with Uber's standard payroll practices. In

addition to the above, Uber ATG will pay for four (4) weeks temporary housing to assist with your relocation to Pittsburgh, PA.

- d. **Restricted Stock Units.** As soon as reasonably practicable after the date you commence full-time Employment, and subject to the approval of the Company's Board of Directors (the "Board"), the Company shall grant you **RSUs** restricted stock units ("RSUs") with respect to shares of the Company's Common Stock. The RSUs will be subject to both a time-based and a performance-based vesting condition as well as to other terms and conditions set forth in the Company's 2013 Stock Plan (the "Stock Plan") and in the Company's standard form of RSU Agreement. For further information about the vesting conditions applicable to the RSUs, please see the RSU Vesting Summary (attached hereto as Attachment C).
3. **Vacation/PTO and Employee Benefits.** During your Employment, you shall be eligible for paid vacation / paid time off, in accordance with the Company's vacation / paid time off policy, as it may be amended from time to time. During your Employment, you shall be eligible to participate in the employee benefit plans maintained by the Company and generally available to similarly situated employees of the Company, subject in each case to the generally applicable terms and conditions of the plan in question and to the determinations of any person or committee administering such plan.
4. **Business Expenses.** The Company will reimburse you for your necessary and reasonable business expenses incurred in connection with your duties hereunder upon presentation of an itemized account and appropriate supporting documentation, all in accordance with the Company's generally applicable policies.
5. **Termination.**
 - a. **Employment at Will.** Your Employment shall be "at will," meaning that either you or the Company shall be entitled to terminate your Employment at any time and for any reason,

with or without Cause. Any contrary representations that may have been made to you shall be superseded by this Agreement. This Agreement shall constitute the full and complete agreement between you and the Company on the "at-will" nature of your Employment, which may only be changed in an express written agreement signed by you (or your authorized representative) and a duly authorized officer of the Company.

- b. **Rights Upon Termination.** Except as expressly provided herein, upon the termination of your Employment, you shall only be entitled to the compensation and benefits earned and the reimbursements described in this Agreement for the period preceding the effective date of the termination.

6. **Pre-Employment Conditions.**

- a. **Confidentiality Agreement.** Your acceptance of this offer and commencement of employment with the Company is contingent upon the execution, and delivery to an officer of the Company, of the Company's Confidential Information and Invention Assignment Agreement, a copy of which is enclosed for your review and execution (the "Confidentiality Agreement"), prior to or on your Start Date.
- b. **Right to Work.** For purposes of federal immigration law, you will be required to provide to the Company documentary evidence of your identity and eligibility for employment in the United States. Such documentation must be provided to us within three (3) business days of your Start Date, or our employment relationship with you may be terminated. This offer may be rescinded if you are unable to begin work at Uber within a reasonable amount of time due to work eligibility issues or export control licensure requirements.
- c. **Alternative Dispute Resolution Agreement.** Your acceptance of this offer and commencement of employment with the Company is contingent upon the execution, and delivery to an officer of the Company, of the Alternative Dispute Resolution Agreement, a

copy of which is enclosed as Attachment B for your review and execution, prior to or on your Start Date.

7. **Compliance**

- a. **Restricted Parties Lists Verification.** This offer of employment and/or your continued employment with the Company is contingent upon verification that you and, if applicable, your affiliated entity/institution do not appear on any of the Restricted Parties Lists maintained by the U.S. Government that will prevent the Company from transacting (including but not limited to financial transactions) or engaging in certain type of activities with you, directly or indirectly.
- b. **Foreign National Employee - Export License Determination.** If an export control license is required in connection with your employment, this offer is further contingent upon receipt of the necessary export license and any similar government approvals by the Company's office where you are based. Your employment with the Company will commence following receipt of such export license and governmental approvals; and is conditioned upon your (a) maintaining your employment with the Company, and (b) continued compliance with all conditions and limitations imposed by such license. If for any reason such export license and governmental approvals cannot be obtained within a commercially reasonable time from your date of signature, this offer will automatically terminate and have no force and effect. Additionally, should an export license become necessary at any point following the commencement of your employment with the Company, no export-controlled information or materials will be released to you until such license and any similar government approvals are obtained. The Company is not obligated to apply for any export license or other government approval that may be required in connection with your employment, and the Company cannot guarantee that any such license or similar approvals will be granted, if sought.

8. **Successors.**

- a. **Company's Successors.** This Agreement shall be binding upon any successor (whether direct or indirect and whether by purchase, lease, merger, consolidation, liquidation or otherwise) to all or substantially all of the Company's business and/or assets. For all purposes under this Agreement, the term "Company" shall include any successor to the Company's business or assets that becomes bound by this Agreement.
- b. **Your Successors.** This Agreement and all of your rights hereunder shall inure to the benefit of, and be enforceable by, your personal or legal representatives, executors, administrators, successors, heirs, distributees, devisees and legatees.

9. **Miscellaneous Provisions.**

- a. **Notice.** Notices and all other communications contemplated by this Agreement shall be in writing and shall be deemed to have been duly given when personally delivered or when mailed by U.S. registered or certified mail, return receipt requested and postage prepaid. In your case, mailed notices shall be addressed to you at the home address that you most recently communicated to the Company in writing. In the case of the Company, mailed notices shall be addressed to its corporate headquarters, and all notices shall be directed to the attention of its Secretary.
- b. **Modifications and Waivers.** No provision of this Agreement shall be modified, waived or discharged unless the modification, waiver or discharge is agreed to in writing and signed by you and by an authorized officer of the Company (other than you). No waiver by either party of any breach of, or of compliance with, any condition or provision of this Agreement by the other party shall be considered a waiver of any other condition or provision or of the same condition or provision at another time.
- c. **Whole Agreement.** No other agreements, representations or understandings (whether oral or written and whether express or implied) which are not expressly set forth in this Agreement have been made or entered into by either party with respect to the subject

matter hereof. This Agreement, the Restricted Stock Units Agreement, the Confidentiality Agreement, and the Alternative Dispute Resolution Agreement contain the entire understanding of the parties with respect to the subject matter hereof.

- d. **Withholding Taxes.** All payments made under this Agreement shall be subject to reduction to reflect taxes or other charges required to be withheld by law.
- e. **Choice of Law and Severability.** This Paragraph 9(e) ("Choice of Law and Severability") does not apply to Paragraph 9(f) ("Arbitration") or to the Alternative Dispute Resolution Agreement contained in Attachment B to this Agreement, and to the extent that this Paragraph 9(e) conflicts with Paragraph 9(f) or the Alternative Dispute Resolution Agreement, the provisions contained in Paragraph 9(f) and the Alternative Dispute Resolution Agreement control. Subject to the preceding sentence, this Agreement otherwise shall be interpreted in accordance with the laws of the State in which you work/last worked without giving effect to provisions governing the choice of law, and if any provision of this Agreement becomes or is deemed invalid, illegal or unenforceable in any applicable jurisdiction by reason of the scope, extent or duration of its coverage, then such provision shall be deemed amended to the minimum extent necessary to conform to applicable law so as to be valid and enforceable or, if such provision cannot be so amended without materially altering the intention of the parties, then such provision shall be stricken and the remainder of this Agreement shall continue in full force and effect. If any provision of this Agreement is rendered illegal by any present or future statute, law, ordinance or regulation (collectively, the "Law") then that provision shall be curtailed or limited only to the minimum extent necessary to bring the provision into compliance with the Law. All the other terms and provisions of this Agreement shall continue in full force and effect without impairment or limitation.

- f. **Arbitration.** Attachment B to this Agreement is an Alternative Dispute Resolution Agreement. This Alternative Dispute Resolution Agreement is governed by the Federal Arbitration Act (9 U.S.C. § 1 et seq.) and is incorporated by reference into and is part of this offer of employment. Therefore, before accepting this offer of employment, please read the Alternative Dispute Resolution Agreement carefully.
- g. **No Assignment.** This Agreement and all of your rights and obligations hereunder are personal to you and may not be transferred or assigned by you at any time. The Company may assign its rights under this Agreement to any entity that assumes the Company's obligations hereunder in connection with any sale or transfer of all or a substantial portion of the Company's assets to such entity.
- h. **Counterparts.** This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

[Signature Page Follows]

We are all delighted to be able to extend you this offer and look forward to working with you. Please understand that this offer is contingent upon successful completion of your background check investigation. To indicate your acceptance of the Company's offer, please sign and date this letter in the space provided below and return it to me, along with a signed and dated original copy of the Confidentiality Agreement and the Alternative Dispute Resolution Agreement. The Company requests that you begin work in this new position on or before **StartDate**. This offer must be accepted on or before **ExpirationDate**. Please indicate the date (either on or before the aforementioned date) on which you expect to begin work in the space provided below (the "Start Date").

Very truly yours,
Uber Technologies, Inc.



By:

Name: Anthony Levandowski
Title: Vice President, Engineering

ACCEPTED AND AGREED:

Candidate Name

Candidate Signature

Date

Anticipated Start Date:

Attachment A: Confidential Information and Invention Assignment Agreement

Attachment B: Alternative Dispute Resolution Agreement

Attachment C: RSU Vesting Summary

EXHIBIT B

UBER TECHNOLOGIES, INC.

**CONFIDENTIAL INFORMATION AND
INVENTION ASSIGNMENT AGREEMENT**

Employee Name: _____

Effective Date: _____

As a condition of my becoming employed (or my employment being continued) by Uber Technologies, Inc., a Delaware corporation, or any of its current or future subsidiaries, affiliates, successors or assigns (collectively, the “Company”), and in consideration of my employment with the Company and my receipt of the compensation now and hereafter paid to me by the Company, I agree to the following:

1. **Relationship.** This Agreement will apply to my employment relationship with the Company. If that relationship ends and the Company, within a year thereafter, either re-employs me or engages me as a consultant, I agree that this Agreement will also apply to such later employment or consulting relationship, unless the Company and I otherwise agree in writing. Any such employment or consulting relationship between the Company and me, whether commenced prior to, upon or after the date of this Agreement, is referred to herein as the “Relationship.”

2. **Duties.** I will perform for the Company such duties as may be designated by the Company from time to time or that are otherwise within the scope of the Relationship and not contrary to instructions from the Company. During the Relationship, except as set forth in my employment agreement, I will devote my entire best business efforts to the interests of the Company and will not engage in other employment or in any activities detrimental to the best interests of the Company without the prior written consent of the Company.

3. **Confidential Information.**

(a) **Protection of Information.** I agree, at all times during the term of the Relationship and thereafter, to hold in strictest confidence, and not to use, except for the benefit of the Company to the extent necessary to perform my obligations to the Company under the Relationship, and not to disclose to any person, firm, corporation or other entity, without written authorization from the Company in each instance, any Confidential Information (as defined below) that I obtain, access or create during the term of the Relationship, whether or not during working hours, until such Confidential Information becomes publicly and widely known and made generally available through no wrongful act of mine or of others who were under confidentiality obligations as to the item or items involved. I further agree not to make copies of such Confidential Information except as authorized by the Company.

(b) **Confidential Information.** I understand that “Confidential Information” means information and physical material not generally known or available outside the Company and information and physical material entrusted to the Company in confidence by third parties. Confidential Information includes, without limitation: (i) Company Inventions (as defined below); (ii) technical data, trade secrets, know-how, research, product or service ideas or plans,

software codes and designs, developments, inventions, laboratory notebooks, processes, formulas, techniques, biological materials, mask works, engineering designs and drawings, hardware configuration information, lists of, or information relating to, suppliers and customers (including, but not limited to, customers of the Company on whom I called or with whom I became acquainted during the Relationship), price lists, pricing methodologies, cost data, market share data, marketing plans, licenses, contract information, business plans, financial forecasts, historical financial data, budgets or other business information disclosed to me by the Company either directly or indirectly, whether in writing, electronically, orally, or by observation.

(c) **Third Party Information.** My agreements in this Section 3 are intended to be for the benefit of the Company and any third party that has entrusted information or physical material to the Company in confidence.

(d) **Other Rights.** This Agreement is intended to supplement, and not to supersede, any rights the Company may have in law or equity with respect to the protection of trade secrets or confidential or proprietary information.

4. **Ownership of Inventions.**

(a) **Inventions Retained and Licensed.** I have attached hereto, as Exhibit A, a complete list describing with particularity all Inventions (as defined below) that, as of the Effective Date, belong solely to me or belong to me jointly with others, and that relate in any way to any of the Company's proposed businesses, products or research and development, and which are not assigned to the Company hereunder; or, if no such list is attached, I represent that there are no such Inventions at the time of signing this Agreement.

(b) **Use or Incorporation of Inventions.** If in the course of the Relationship, I use or incorporate into a product, process or machine any Invention not covered by Section 4(d) of this Agreement in which I have an interest, I will promptly so inform the Company. Whether or not I give such notice, I hereby irrevocably grant to the Company a nonexclusive, fully paid-up, royalty-free, assumable, perpetual, worldwide license, with right to transfer and to sublicense, to practice and exploit such Invention and to make, have made, copy, modify, make derivative works of, use, sell, import, and otherwise distribute under all applicable intellectual property laws without restriction of any kind.

(c) **Inventions.** I understand that "Inventions" means discoveries, developments, concepts, designs, ideas, know how, improvements, inventions, trade secrets and/or original works of authorship, whether or not patentable, copyrightable or otherwise legally protectable. I understand this includes, but is not limited to, any new product, machine, article of manufacture, biological material, method, procedure, process, technique, use, equipment, device, apparatus, system, compound, formulation, composition of matter, design or configuration of any kind, or any improvement thereon. I understand that "Company Inventions" means any and all Inventions that I may solely or jointly author, discover, develop, conceive, or reduce to practice during the period of the Relationship, except as otherwise provided in Section 4(g) below.

(d) **Assignment of Company Inventions.** I agree that I will promptly make full written disclosure to the Company, will hold in trust for the sole right and benefit of the Company, and hereby assign to the Company, or its designee, all my right, title and interest throughout the world in and to any and all Company Inventions. I further acknowledge that all Company Inventions that are made by me (solely or jointly with others) within the scope of and during the period of the Relationship are “works made for hire” (to the greatest extent permitted by applicable law) and are compensated by my salary. I hereby waive and irrevocably quitclaim to the Company or its designee any and all claims, of any nature whatsoever, that I now have or may hereafter have for infringement of any and all Company Inventions.

(e) **Maintenance of Records.** I agree to keep and maintain adequate and current written records of all Company Inventions made by me (solely or jointly with others) during the term of the Relationship. The records may be in the form of notes, sketches, drawings, flow charts, electronic data or recordings, laboratory notebooks, or any other format. The records will be available to and remain the sole property of the Company at all times. I agree not to remove such records from the Company’s place of business except as expressly permitted by Company policy which may, from time to time, be revised at the sole election of the Company for the purpose of furthering the Company’s business. I agree to deliver all such records (including any copies thereof) to the Company at the time of termination of the Relationship as provided for in Sections 5 and 6.

(f) **Patent and Copyright Rights.** I agree to assist the Company, or its designee, at its expense, in every proper way to secure the Company’s, or its designee’s, rights in the Company Inventions and any copyrights, patents, trademarks, mask work rights, moral rights, or other intellectual property rights relating thereto in any and all countries, including the disclosure to the Company or its designee of all pertinent information and data with respect thereto, the execution of all applications, specifications, oaths, assignments, recordations, and all other instruments which the Company or its designee shall deem necessary in order to apply for, obtain, maintain and transfer such rights, or if not transferable, waive such rights, and in order to assign and convey to the Company or its designee, and any successors, assigns and nominees the sole and exclusive right, title and interest in and to such Company Inventions, and any copyrights, patents, mask work rights or other intellectual property rights relating thereto. I further agree that my obligation to execute or cause to be executed, when it is in my power to do so, any such instrument or papers shall continue during and at all times after the end of the Relationship and until the expiration of the last such intellectual property right to expire in any country of the world. I hereby irrevocably designate and appoint the Company and its duly authorized officers and agents as my agent and attorney-in-fact, to act for and in my behalf and stead to execute and file any such applications and to do all other lawfully permitted acts to further the application for, prosecution, issuance, maintenance or transfer of letters of patents, copyright, mask work and other registrations related to such Company Inventions. This power of attorney is coupled with an interest and shall not be affected by my subsequent incapacity.

(g) **Exception to Assignments.** I understand that the Company Inventions will not include, and the provisions of this Agreement requiring assignment of inventions to the Company do not apply to, any invention (1) which qualifies fully for exclusion under the provisions of applicable state law, if any, attached hereto as Exhibit B or (2) any invention developed or created in connection with my other company authorized employment, as forth in my Employment Agreement. In order to assist in the determination of which inventions qualify for such exclusion, I will advise the Company promptly in writing, during and after the term of the Relationship, of all Inventions solely or jointly conceived or developed or reduced to practice by me during the period of the Relationship.

5. **Company Property; Returning Company Documents.** I acknowledge and agree that I have no expectation of privacy with respect to the Company's telecommunications, networking or information processing systems (including, without limitation, files, e-mail messages, and voice messages) and that my activity and any files or messages on or using any of those systems may be monitored at any time without notice. I further agree that any property situated on the Company's premises and owned by the Company, including disks and other storage media, filing cabinets or other work areas, is subject to inspection by Company personnel at any time with or without notice. I agree that, at the time of termination of the Relationship, I will deliver to the Company (and will not keep in my possession, recreate or deliver to anyone else) any and all devices, records, data, notes, reports, proposals, lists, correspondence, specifications, drawings, blueprints, sketches, laboratory notebooks, materials, flow charts, equipment, other documents or property, or reproductions of any of the aforementioned items developed by me pursuant to the Relationship or otherwise belonging to the Company, its successors or assigns.

6. **Termination Certification.** In the event of the termination of the Relationship, I agree to sign and deliver the "Termination Certification" attached hereto as Exhibit C; however, my failure to sign and deliver the Termination Certification shall in no way diminish my continuing obligations under this Agreement.

7. **Notice to Third Parties.** I understand and agree that the Company may, with or without prior notice to me and during or after the term of the Relationship, notify third parties of my agreements and obligations under this Agreement.

8. **Solicitation of Employees, Consultants and Other Parties.** I agree that during the term of the Relationship, and for a period of twelve (12) months immediately following the termination of the Relationship for any reason, whether with or without cause, I shall not either directly or indirectly solicit, induce, recruit or encourage any of the Company's employees or consultants to terminate their relationship with the Company, or attempt to solicit, induce, recruit, encourage or take away employees or consultants of the Company, either for myself or for any other person or entity. Further, during the Relationship and at any time following the termination of the Relationship for any reason, whether with or without cause, I shall not use any Confidential Information of the Company to negatively influence any of the Company's clients or customers from purchasing Company products or services or to solicit or influence or attempt to influence any client, customer or other person either directly or indirectly, to direct any purchase of products and/or services to any person, firm, corporation, institution or other entity in competition with the business of the Company.

9. **At-Will Relationship.** I understand and acknowledge that, except as may be otherwise explicitly provided in a separate written agreement between the Company and me, my Relationship with the Company is and shall continue to be at-will, as defined under applicable law, meaning that either I or the Company may terminate the Relationship at any time for any reason or no reason, without further obligation or liability, other than those provisions of this Agreement that explicitly survive the termination of the Relationship.

10. **Representations and Covenants.**

(a) **Facilitation of Agreement.** I agree to execute promptly, both during and after the end of the Relationship, any proper oath, and to verify any proper document, required to carry out the terms of this Agreement, upon the Company's written request to do so.

(b) **No Conflicts.** I represent that my performance of all the terms of this Agreement does not and will not breach any agreement I have entered into, or will enter into, with any third party, including without limitation any agreement to keep in confidence proprietary information or materials acquired by me in confidence or in trust prior to or during the Relationship. I will not disclose to the Company or use any inventions, confidential or non-public proprietary information or material belonging to any previous client, employer or any other party. I will not induce the Company to use any inventions, confidential or non-public proprietary information, or material belonging to any previous client, employer or any other party. I acknowledge and agree that I have listed on Exhibit A all agreements (e.g., non-competition agreements, non-solicitation of customers agreements, non-solicitation of employees agreements, confidentiality agreements, inventions agreements, etc.), if any, with a current or former client, employer, or any other person or entity, that may restrict my ability to accept employment with the Company or my ability to recruit or engage customers or service providers on behalf of the Company, or otherwise relate to or restrict my ability to perform my duties for the Company or any obligation I may have to the Company. I agree not to enter into any written or oral agreement that conflicts with the provisions of this Agreement.

(c) **Voluntary Execution.** I certify and acknowledge that I have carefully read all of the provisions of this Agreement, that I understand and have voluntarily accepted such provisions, and that I will fully and faithfully comply with such provisions.

11. **General Provisions.**

(a) **Governing Law.** The validity, interpretation, construction and performance of this Agreement shall be governed by the laws of the State of California, without giving effect to the principles of conflict of laws.

(b) **Entire Agreement.** This Agreement sets forth the entire agreement and understanding between the Company and me relating to its subject matter and merges all prior discussions between us. No amendment to this Agreement will be effective unless in writing signed by both parties to this Agreement. The Company shall not be deemed hereby to have waived any rights or remedies it may have in law or equity, nor to have given any authorizations or waived any of its rights under this Agreement, unless, and only to the extent, it does so by a specific writing signed by a duly authorized officer of the Company, it being understood that,

even if I am an officer of the Company, I will not have authority to give any such authorizations or waivers for the Company under this Agreement without specific approval by the Board of Directors. Any subsequent change or changes in my duties, obligations, rights or compensation will not affect the validity or scope of this Agreement.

(c) **Severability.** If one or more of the provisions in this Agreement are deemed void or unenforceable to any extent in any context, such provisions shall nevertheless be enforced to the fullest extent allowed by law in that and other contexts, and the validity and force of the remainder of this Agreement shall not be affected.

(d) **Successors and Assigns.** This Agreement will be binding upon my heirs, executors, administrators and other legal representatives, and my successors and assigns, and will be for the benefit of the Company, its successors, and its assigns.

(e) **Remedies.** I acknowledge and agree that violation of this Agreement by me may cause the Company irreparable harm, and therefore agree that the Company will be entitled to seek extraordinary relief in court, including, but not limited to, temporary restraining orders, preliminary injunctions and permanent injunctions without the necessity of posting a bond or other security (or, where such a bond or security is required, I agree that a \$1,000 bond will be adequate), in addition to and without prejudice to any other rights or remedies that the Company may have for a breach of this Agreement.

(f) **ADVICE OF COUNSEL.** I ACKNOWLEDGE THAT, IN EXECUTING THIS AGREEMENT, I HAVE HAD THE OPPORTUNITY TO SEEK THE ADVICE OF INDEPENDENT LEGAL COUNSEL, AND I HAVE READ AND UNDERSTOOD ALL OF THE TERMS AND PROVISIONS OF THIS AGREEMENT. THIS AGREEMENT SHALL NOT BE CONSTRUED AGAINST ANY PARTY BY REASON OF THE DRAFTING OR PREPARATION HEREOF.

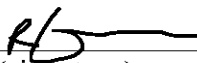
The parties have executed this Agreement on the respective dates set forth below, to be effective as of the Effective Date first above written.

COMPANY:

EMPLOYEE:

UBER TECHNOLOGIES, INC.

_____, an Individual

By:  _____
(signature)

(signature)

Name: Ryan Graves
Title: Vice President of Operations

Date: _____

Address: 1455 Market Street, 4th Floor
San Francisco, CA 94103

Address: _____

EXHIBIT A

**LIST OF PRIOR INVENTIONS
AND ORIGINAL WORKS OF AUTHORSHIP
EXCLUDED UNDER SECTION 4(a)**

<u>Title</u>	<u>Date</u>	<u>Identifying Number or Brief Description</u>
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No inventions, improvements, or original works of authorship

Inventions, improvements, or original works of authorship listed above

Additional sheets attached

Signature of Employee: _____

Print Name of Employee: _____

Date: _____

EXHIBIT B

Section 2870 of the California Labor Code is as follows:

(a) Any provision in an employment agreement which provides that an employee shall assign, or offer to assign, any of his or her rights in an invention to his or her employer shall not apply to an invention that the employee developed entirely on his or her own time without using the employer's equipment, supplies, facilities, or trade secret information except for those inventions that either:

(1) Relate at the time of conception or reduction to practice of the invention to the employer's business, or actual or demonstrably anticipated research or development of the employer; or

(2) Result from any work performed by the employee for the employer.

(b) To the extent a provision in an employment agreement purports to require an employee to assign an invention otherwise excluded from being required to be assigned under subdivision (a), the provision is against the public policy of this state and is unenforceable.

EXHIBIT C

TERMINATION CERTIFICATION

This is to certify that I do not have in my possession, nor have I failed to return, any devices, records, data, notes, reports, proposals, lists, correspondence, specifications, drawings, blueprints, sketches, laboratory notebooks, flow charts, materials, equipment, other documents or property, or copies or reproductions of any aforementioned items belonging to Uber Technologies, Inc., a Delaware corporation, its subsidiaries, affiliates, successors or assigns (collectively, the “Company”).

I further certify that I have complied with all the terms of the Company’s Confidential Information and Invention Assignment Agreement signed by me, including the reporting of any Inventions (as defined therein), conceived or made by me (solely or jointly with others) covered by that agreement.

I further agree that, in compliance with the Confidential Information and Invention Assignment Agreement, I will preserve as confidential all trade secrets, confidential knowledge, data or other proprietary information relating to products, processes, know-how, designs, formulas, developmental or experimental work, computer programs, data bases, other original works of authorship, customer lists, business plans, financial information or other subject matter pertaining to any business of the Company or any of its employees, clients, consultants or licensees.

I further agree that for twelve (12) months from the date of this Certification, I shall not either directly or indirectly solicit, induce, recruit or encourage any of the Company’s employees or consultants to terminate their relationship with the Company, or attempt to solicit, induce, recruit, encourage or take away employees or consultants of the Company, either for myself or for any other person or entity. Further, I shall not at any time use any Confidential Information of the Company to negatively influence any of the Company’s clients or customers from purchasing Company products or services or to solicit or influence or attempt to influence any client, customer or other person either directly or indirectly, to direct any purchase of products and/or services to any person, firm, corporation, institution or other entity in competition with the business of the Company.

Date: _____

(Employee’s Signature)

(Print Employee’s Name)

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 15 and OTTOMOTTO LLC

16 UNITED STATES DISTRICT COURT
 17 NORTHERN DISTRICT OF CALIFORNIA
 18 SAN FRANCISCO DIVISION

19 WAYMO LLC,
 20 Plaintiff,
 21 v.
 22 UBER TECHNOLOGIES, INC.,
 OTTOMOTTO LLC; OTTO TRUCKING LLC,
 23 Defendants.
 24

Case No. 3:17-cv-00939-WHA

**DECLARATION OF ASHEEM
 LINAVAL IN SUPPORT OF
 DEFENDANTS' OPPOSITION TO
 PLAINTIFF WAYMO LLC'S
 MOTION FOR PRELIMINARY
 INJUNCTION**

Date: May 3, 2017
 Time: 7:30 a.m.
 Ctrm: 8, 19th Floor
 Judge: The Honorable William Alsup

Trial Date: October 2, 2017

1 I, Asheem Linaval, declare as follows:

2 1. I am a hardware engineer at Uber Technologies, Inc. (“Uber”). I make this
3 declaration in support of Uber’s opposition to plaintiff’s motion for preliminary injunction. I
4 make this declaration based on personal knowledge and, if called as a witness, I would testify to
5 the facts listed below.

6 2. I work on electronics design and am responsible for circuit board designs at Uber.
7 I previously worked as an electrical engineer at OttoMotto LLC. Prior to joining Otto, I was an
8 Operations Associate working on Chauffeur for Adecco, which was a Google staffing agency. I
9 have worked on electronics design and hardware implementation for approximately seven years

10 3. I signed an offer letter when I joined 280 Systems, Inc., which became OttoMotto.
11 The letter included provisions regarding third-party intellectual property (“IP”) and confidential
12 information, instructing employees not to bring with them and use the IP and/or confidential
13 information of any other companies. My offer letter provided that “Company does not want you
14 to, and hereby directs that you must not, bring to Company, or otherwise use in connection with
15 performing any services on behalf of the Company, any intellectual property rights or other
16 proprietary or confidential material or information of any former employer or other third
17 party. Accordingly by signing this Offer Letter you represent and warrant that you will not bring
18 to Company, or otherwise use in connection with performing any services on behalf of the
19 Company, any intellectual property rights or other proprietary or confidential material or
20 information of any former employer or other party.” Attached as Exhibit A is a true and correct
21 copy of my signed offer letter.

22 4. I regularly use Altium, which is software for designing circuit boards, and am
23 familiar with the software package and the files it generates. I have used Altium for
24 approximately six years.

25 5. I also regularly use LTspice, which is a software simulation tool for circuitry, and
26 am familiar with the software package and the files it generates. I have used LT Spice for
27 approximately seven years.

28

1 6. I also regularly use SolidWorks, which is software used for mechanical CAD
2 (Computer Aided Design) and am familiar with the software package and the files it generates. I
3 have used SolidWorks for approximately one year.

4 7. I understand that certain Altium, LT Spice, and SolidWorks files from my Uber
5 computer were produced in this action because they match certain file names that Waymo has
6 provided for a search of Uber's files or they were MD5 hash matches for certain files Waymo
7 identified. I have reviewed the list of files produced from my Uber computer. Below I explain
8 these files and why the file name or hash matches do not establish that these files came from
9 Waymo, which they did not.

10 8. One category of files produced from my computer is Altium tutorial files.
11 Examples of these files are: 512KBits_I2C_EEPROM.Harness, Fabrication.OutJob,
12 Flash.Harness, and Top.SchDoc. These files came with the Altium software.

13 9. Another category of files produced from my computer is ODB++ output files.
14 These files are named attrlist, netlist, standard, matrix, feature and stephdr. These are standard
15 default file names, so it is unsurprising that there would be a file name match between my Altium
16 files and a Google user's Altium files.

17 10. Attrlist is an attributes file that contains generic design information. There is an
18 attrlist associated with each layer of a circuit board. The attributes described are generic and
19 generally reveal only that a particular layer exists. They are akin to metadata. Parameters of
20 these aspects of a printed circuit board, or "PCB," remain in the default setting for many projects.
21 If someone at Google also uses a default setting, then the attrlist output would be the same and
22 there would be identical content and a hash match.

23 11. Netlist is a file that describes connectivity between different components of a PCB.
24 I understand that there are no netlist files of mine that were hash matches for a Google file. This
25 makes sense because netlist contains unique design information.

26 12. Standard is the default font and a file named "standard" is generated as an output
27 of the ODB++. If someone at Google uses the default font, there would be a file name match.

28 13. Matrix is a file that has definitions of the physical order of the layers and the

1 relation of drill layers. I understand that there were only file name matches, and no hash matches,
2 on my matrix files. File name matches are expected because matrix is a default file name.

3 14. Feature is a file that describes the PCB layer features. I understand that there were
4 file name matches on my files for feature. File name matches are expected because feature is a
5 default file name. I understand that there are no feature files of mine that were hash matches for a
6 Google file. This makes sense because feature files contain unique design information.

7 15. Stephdr is a file that is generated as an output of the ODB++. I do not know what
8 the file contains.

9 16. Another category of documents is harness files. They identify the signals that are
10 assigned to the harness. Harnesses are basic and can be used for a wide variety of devices. They
11 can define very common groupings of signals. It is unsurprising that there would be file name or
12 even hash matches given the standard file name and the generic nature of the file.

13 17. Another category of files is PrjPcbStructure files. This is a standard filetype. The
14 file describes the hierarchy of the schematic documents in a project. Simple projects with
15 standard project file names may end up generating the same content; it's unsurprising that there
16 would be a handful of identical files and hash matches.

17 18. Another category is SVN generated files, which have a .svn-base file extension.
18 These files are copies of other files that have been renamed by the SVN application. These
19 matches are explained above. As an example, a file called
20 faf2356ddd659fa6a7832d67738db968810476f5.svn-base is a renamed copy of a Harness file
21 called ATC-PCB-0021_AD16488.Harness.

22 19. I understand that files on my computer containing .asc were file name matches.
23 These files came with the LTspice software.

24 20. I understand that the following files on my computer were file name matches:
25 pcb.sldprt, rotor.sldprt, and base.sldprt. These files are Solidworks example or sample files that
26 are shipped with the software.

27 21. I also understand that files named Amp.SchDoc, Apd.SchDoc, Laser.SchDoc,
28 Receiver.PcbDoc, Receiver.SchDocCAN.SchDoc, Ethernet.SchDoc, connector.PcbLib,

1 connector.SchLib, and connector.SchDoc were file name matches. These files use a standard
2 naming convention that includes a functional description of the file. These are commonly used
3 file names, and it is unsurprising that there are file name matches.

4 22. On a clean, previously unused Microsoft Windows virtual machine loaded with
5 Altium, LTSpice, I prepared three dummy projects and generated outputs to demonstrate that files
6 of the type found on my computer are routine Altium outputs. The first project is a very simple
7 hierarchical PCB project containing a few simple electrical components and two harness
8 declarations. The hierarchy is set up with top as the top level and other two schematics as sub-
9 schematics. There is very limited connectivity described within the schematics. From this, a
10 PCB document file was created, which displays a sample PCB layout. There is an output job file
11 with the suffix out job. That file is used to generate the ODB++ outputs, which also reside within
12 the project. This is simplest possible hierarchical schematic with harness declarations. The
13 second and third projects are nonhierarchical versions of the same project. Instead of two harness
14 declarations, I included one of each type. I provided the virtual machine containing the design
15 applications, and these dummy files to Stroz Friedberg so that it could determine whether the
16 outputs were hash or file name matches for the alleged Waymo trade secret files. The dummy
17 files have been labeled UBER00005478 to UBER00005733.

18 23. None of the documents that were produced from my computers originated at
19 Google or Waymo. To my knowledge, I did not bring any confidential or proprietary files from
20 Google or Waymo to Otto or Uber. I have never used any Google or Waymo information during
21 my employment at Uber and, before this lawsuit, I had never heard of the 14,000 files allegedly
22 downloaded by Anthony Levandowski. I have never seen any evidence of any use of Google or
23 Waymo information during my employment at Uber.

24 I declare under the penalty of perjury under the laws of the United States that the
25 foregoing is true and correct. Executed this 6th day of April, 2017, in San Francisco, California.



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Asheem Linaval

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

WAYMO LLC,

Plaintiff,

v.

UBER TECHNOLOGIES, INC.,
OTTOMOTTO LLC; OTTO TRUCKING LLC,

Defendants.

Case No. 3:17-cv-00939-WHA

**[PROPOSED] ORDER DENYING
PLAINTIFF WAYMO LLC'S
MOTION FOR PRELIMINARY
INJUNCTION**

Trial Date: October 2, 2017

1 Having considered all of the papers filed in connection with Plaintiff's Motion for
2 Preliminary Injunction (Dkt. No. 24), as well as the arguments presented by the parties at the
3 hearing on this motion, the Court finds the following:

- 4 • Plaintiff has failed to demonstrate a likelihood of success on the merits of its
5 patent and trade secret claims;
- 6 • Plaintiff has failed to demonstrate a likelihood of irreparable harm;
- 7 • The balance of the hardships favors denial of Plaintiff's motion;
- 8 • The public interest would best be served by a not issuing a preliminary injunction;
- 9 and
- 10 • Plaintiff has failed to carry its burden of establishing that it is entitled to the
11 provisional relief sought.

12 IT IS THEREFORE ORDERED that Plaintiff's Motion for Preliminary Injunction is
13 DENIED.

14
15 **IT IS SO ORDERED.**

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17 Dated: _____, 2017

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19 HONORABLE WILLIAM ALSUP
20 United States District Court Judge
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