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February 13, 2024

The Honorable Lina Khan  
Chair  
Federal Trade Commission  
600 Pennsylvania Avenue, NW  
Washington, DC 20580

The Honorable Gary Gensler  
Chair  
U.S. Securities and Exchange Commission  
100 F Street, NE  
Washington, DC 20549

Dear Chair Khan and Chair Gensler:

I write to request that your agencies act to protect consumers and investors from the outrageous conduct of the data broker Near Intelligence, Inc. (“Near”), which has recklessly harmed the public and investors. Near is a scandal-plagued location data broker, which sells personal information revealing where Americans have been, and consequently, the sensitive places they have visited.

In April 2021, India-based Near acquired UberMedia, a United States-based location data broker, instantly making the company a major player in the market for Americans’ location data. In March 2023, Near became a publicly traded company, listed on NASDAQ, through a merger with KludeIn I Acquisition Corp., a special purpose acquisition company (SPAC). The year following the merger has been disastrous for the company. In October 2023, Near’s board placed its President, Chief Executive Officer, and Chief Financial Officer on administrative leave, soon after which, the Director of the Board also resigned. In November, the board fired both the President and Chief Executive Officer for cause, citing financial mismanagement and fraud.

In December 2023, the company announced it was filing for Chapter 11 bankruptcy and had entered into an agreement to sell its business. On January 8, 2024, the company was delisted by NASDAQ.

My office began to investigate Near in May 2023, after an investigation by the Wall Street Journal revealed that an anti-abortion organization used location data from Near to target anti-abortion messaging and ads to people who had visited reproductive health clinics. According to the Wall Street Journal, The Veritas Society, a nonprofit established by Wisconsin Right to Life, hired the advertising agency Recrue Media to place the ads. The ad campaign reportedly ran from November 2019 through the summer of 2022, after the Supreme Court issued its decision in *Dobbs v. Jackson Women’s Health Organization*, permitting states to criminalize abortion.

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My staff spoke with Steven Bogue, the Co-Founder and Managing Principal of Recrue Media on May 19, 2023, who revealed that to target these ads, his employees used Near's website to draw a line around the building and parking lot of each targeted facility. On May 26, 2023, my staff spoke with Near's Chief Privacy Officer, Jay Angelo, who confirmed that, until the summer of 2022, the company did not have any technical controls in place to prevent its customers targeting people who visited sensitive facilities, such as reproductive health clinics.

On a web page that has since been taken down, but was saved by the Internet Archive, The Veritas Society stated that in 2020 in Wisconsin alone, it delivered 14.3 million ads to people who visited abortion clinics, and "served ads to those devices across the women's social pages, Facebook, Instagram and Snapchat." The scale of this invasive surveillance-enabled ad campaign remains unknown, however, Mr. Bogue told my staff that the company used Near to target ads to people who had visited 600 Planned Parenthood locations in the lower 48 states.

Near was the subject of a second Wall Street Journal investigation in October 2023, this time focused on the company's sale of location data to the U.S. government. That news story reported that Near sold location data to defense contractors, which then resold it to several U.S. Defense Department and intelligence agencies. My staff spoke with Mr. Angelo, Near's Chief Privacy Officer again, on October 18, 2023, who confirmed that the company had for three years sold location data to the defense contractor AELIUS Exploitation Technologies ("AELIUS"). Mr. Angelo revealed that after joining Near in June of 2022, he conducted a review of the company's practices and discovered that the company was facilitating the sale of location data to the U.S. government that had been obtained without user consent. Mr. Angelo revealed that although the company's contract with AELIUS permitted it to resell data and explicitly referenced the use of data for national security related purposes, Near had for years published statements on its website stating that the company did not sell data to, as Mr. Angelo described it, "defense or governments." Mr. Angelo indicated that the misleading statements were removed from Near's website shortly after he concluded his review of the company's operations.

In a November 3, 2023, follow-up email from Near's attorney, the company told my staff that until June of 2023, the location data it sold about Americans included data that came from two online advertising exchanges, OpenX and Smaato. Advertising exchanges provide thousands of companies with real-time data about internet users' browsing activities, which can include location data, so that potential advertisers can identify users of interest, and then bid on the opportunity to show them an ad. The October 2023 Wall Street Journal story indicated that after receiving a request for comment, the advertising exchanges "cut Near off for violations of their terms of service" and the firms indicated "that their data is meant to help target ads, not for other purposes." In the October 18, 2023, call with my staff, Mr. Angelo revealed that while he had put a stop to the company's sale of data about Europeans, which is subject to Europe's strong privacy law, the company was still selling location data about Americans. He also confirmed that the data it sold about Americans was obtained without consent, which is generally the case with data from advertising exchanges. Mr. Angelo's statement was consistent with the Wall Street Journal's reporting about the company's practices.

As the Federal Trade Commission (FTC) made clear in its recent case against X-Mode Social, Inc., data brokers may only sell location data about Americans that has been obtained with informed consent. If the data is to be sold to government contractors for national security purposes, that must be disclosed to consumers. The Americans whose data Near sold had not consented to its sale, and had not been told that it would be sold to government contractors for national security purposes. Moreover, Near made explicit public representations to consumers that were deceptive. As described above, Mr. Angelo told my staff that after learning of the company's multi-year sale of data to a defense contractor, the company removed statements from the company's website that stated it did not sell data to defense or governments. Near has also repeatedly misrepresented its business practices with regard to user consent. The S-4 form the company filed with the SEC on February 3, 2023, as part of its SPAC merger claims that "Near ensures that its data providers obtain necessary consent from the end users to be shared with Near" and that "Near is confident it is materially compliant with all applicable global regulations governing its acquisition of consumer data streams."

The former executives that led Near during the period in which it engaged in these egregious violations of Americans' privacy are now under criminal investigation, according to a statement made by the company's lawyer during a December 11, 2023, bankruptcy hearing. But prosecuting those individuals for engaging in financial fraud will not address Near's corporate abuses, which harmed both the public and investors, nor protect consumers from further harm caused by the use of their data that was illegally collected, stored and sold by Near.

Chair Khan, I urge the FTC to intervene in Near's bankruptcy proceedings to ensure that all location and device data held by Near about Americans is promptly destroyed and is not sold off, including to another data broker. The FTC took similar action in 2010, to protect from sale data about subscribers to XY, a defunct gay youth-oriented magazine. Given the sensitivity of the ill-gotten data sold by Near, the FTC must act to protect consumers from further harm.

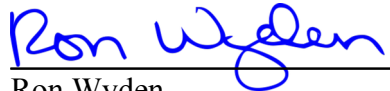
Near has already revealed that the company is being investigated by the U.S. Securities and Exchange Commission (SEC). During a bankruptcy hearing on December 11, 2023, the company's lawyer revealed the existence of "preexisting investigation with the SEC relating to a data breach that occurred in France." While Near's bankruptcy counsel did not provide any additional details at that hearing, Near's Chief Privacy Officer, Mr. Angelo, told my staff in a call on October 18, 2023, that France's privacy regulator contacted the company after the Wall Street Journal exposed the company's sale of data to the U.S. government. That same Wall Street Journal story quoted an internal company email from Mr. Angelo describing the transfer of European data a "massive illegal data dump," and that the U.S. government "gets our illegal EU data twice per day."

Chair Gensler, I urge the SEC to broaden its investigation and determine whether Near's misleading statements to investors regarding my investigation of the company constitute securities fraud. Near was one of four data brokers to receive a letter from House Democrats in July of 2022, in the wake of the Supreme Court's Dobbs decision. Near's first disclosure of that

Congressional investigation appeared in the company's first amended preliminary proxy statement, form S-4, which was filed with the SEC on September 9, 2022. The company noted in that filing that it had "not received any additional requests for information from Congress since our reply" to the July 2022 letter. That statement also appeared in the company's S-1 registration form, which was initially filed with the SEC on April 12, 2023, and in revised versions filed on May 10 and May 31. That statement also appeared in the company's August 14, 2023, 10-Q filing covering the quarterly period ending June 30, 2023. But in fact, my office first contacted Near's Chief Privacy Officer by email on May 19, 2023, my staff spoke with him virtually on May 26, 2023, and during that call, requested additional information, which the company's outside counsel provided by email on June 2, 2023. My staff sent further follow-up questions to Near's counsel by email that same day, and Near's counsel provided answers by email on June 8, 2023. As such, Near's repeated statements to investors regarding the lack of Congressional requests for information after 2022 were, in light of the circumstances under which they were made, misleading. I am concerned that this repeated misleading claim and Near's statements to investors regarding users consenting to the sharing and sale of their data may be violations of federal securities laws.

Thank you for your attention to this important matter. If you have any questions about this request, please contact Chris Soghoian in my office.

Sincerely,

  
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Ron Wyden  
United States Senator