Lewis T. LeClair (SBN 77036)
lleclair@mckoolsmith.com
MCKOOL SMITH, P.C.
300 Crescent Court, Suite 1500
Dallas, Texas 75201
Telephone: (214) 978-4000
Facsimile: (214) 978-4044

Kirk D. Dillman (SBN 110486)
kdillman@mckoolsmithhennigan.com
MCKOOL SMITH HENNIGAN, P.C.
300 South Grand Avenue, Suite 2900
Los Angeles, California 90071
Telephone: (213) 694-1200
Facsimile: (213) 694-1234

Judith A. Zahid (SBN 215418)
jzahid@zelle.com
ZELLE LLP
44 Montgomery Street, Suite 3400
San Francisco, California 94104
Telephone: (415) 693-0700
Facsimile: (415) 693-0770

James R. Martin (SBN 173329)
jmartin@zelle.com
ZELLE LLP
1775 Pennsylvania Ave. NW, Suite 375
Washington, D.C. 2006
Telephone: (202) 899-4100
Facsimile: (612) 336-9100

Attorneys for Plaintiff, SC Innovations, Inc.

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

SAN FRANCISCO DIVISION

SC INNOVATIONS, INC.,

Plaintiff,

v.

UBER TECHNOLOGIES, INC., RASIER, LLC, RASIER-CA, LLC, RASIER-PA, LLC, RASIER-DC, LLC, RASIER-NY, LLC, AND UBER USA, LLC,

Defendants.

Case No. 3:18-cv-07440-JCS

SECOND AMENDED COMPLAINT

DEMAND FOR JURY TRIAL

NATURE OF ACTION

1. Through an array of anticompetitive acts, Uber Technologies, Inc. ("Uber") has stifled competition in the market for ride-hailing applications. Those anticompetitive actions drove Sidecar Technologies, Inc. ("Sidecar"), a maverick, innovator, and one of Uber's most significant competitors, out of business. Uber is now a monopolist, which has harmed both Sidecar and the consumers who previously benefitted from the competitive pressure Sidecar placed on Uber.

2. The ride-hailing market is a two-sided market. Uber can exercise its monopoly power by controlling both the prices it charges to consumers (riders), and the prices it pays to drivers. In other words, Uber has both monopoly power over the customer side of the market and monopsony power over the driver side of the market. Both sides of the two-sided market are subject to substantial network effects—the more riders Uber has, the more drivers it is able to attract, and the increased driver availability attracts even more riders. These network effects raise substantial barriers to entry and obstacles for other competitors to compete effectively against Uber, allowing Uber to exercise monopoly power. Uber exploited these barriers to entry with a "winner takes all" strategy it has pursued since its inception of predatorily pricing below its costs. Because of the unique nature of platforms such as this one that furnishes connections between two groups, Uber was able through its "winner takes all" strategy to capture the overwhelming power over the market while enjoying the protections afforded by the barriers to entry.

3. Uber's predatory pricing strategy has significantly weakened competition in the ride-hailing applications market by eliminating or substantially weakening its competitors. Uber is able to recoup its losses on its ride-hailing application business by charging supra-competitive prices, above the level that would prevail in a market in which Uber faced strong competition. Uber's predatory pricing strategy is consistent with Uber's stated business strategy as understood by its more sophisticated investors. As explained in an article predating Uber's IPO presciently titled: "Uber is Basically Promising Investors it will become a Monopoly":

> The other thing to note is that a big part of why Uber is unprofitable is that it pays drivers too much and charges too little for fares. Under the status quo, there's no way for it [to] grow into profitability simply by claiming a bigger market share. All of which gets us back to the question of why investors keep throwing gobs of money at the

> company. The simple story about how it's just better than its rivals doesn't scan. Something else is going on. The point about Uber's fares being too low for it to make enough money is telling. Most likely, Uber is making a long-game effort to price out all its rivals. "[Uber's] IPO documents show that it plans to keep spending heavily to win market share, even if it continues to rack up multi-billion dollar annual losses," the *Financial Times* reported. "It amounts to a forceful reminder of the company's founding mantra that ride-hailing is a business with strong network effects and a winner-takes-most, if not all, market.[1]"

4. Such a strategy would be unprofitable unless Uber knew it could recoup its losses from below-margin pricing in a market in which it was able to set supra-competitive prices due to substantially reduced competition. Uber's anticompetitive conduct has resulted in significant harm to consumers through long-term higher prices, lower quality, reduced innovation, reduced control over personal information and privacy, and reduced choice. This case is designed to compensate Sidecar for the damages caused by Uber, bring an end to Uber's anticompetitive practices, and prevent future anticompetitive acts so that consumers can once again enjoy the lasting benefits of lower prices, higher quality, more innovation, improved data and personal information privacy protections, and greater options.

5. In 2009, Uber launched its ride-hailing smartphone app. Uber's app allowed consumers to use their smartphones to arrange on-demand transportation in "black cars" and limousines driven by licensed chauffeurs. Uber viewed any app-based ride hailing as its exclusive domain, and was determined to do whatever was necessary to stamp out any threatening innovation related to its business.

6. In 2012, Sidecar debuted its own ride-hailing app. Unlike Uber's app, which only connected passengers to professional drivers, Sidecar's app could be used by passengers to arrange rides with drivers who were using their personal cars, pioneering a new concept called "ridesharing."

7. Sidecar's app was the first to offer many popular features that since have become commonplace in ride-hailing apps today. For example, Sidecar's app was the first to provide

---

[1] Spross, *Uber is Basically Promising Investors it will become a Monopoly* (The Week, April 15, 2019)

passengers with estimated fares and trip durations before booking their trip. It also was the first ride-hailing app capable of scheduling carpool rides between strangers heading in the same direction, which could dramatically lower costs for passengers using that feature. In addition, the Sidecar App provided an easy means of ensuring price-competition by private drivers, to the benefit of customers. It allowed those private drivers to set their own proposed fare rates, competing with one another.

8. In response to such competitive ride-sharing offerings from Sidecar and others, Uber extended its offerings in the ride-hailing market by launching its own "UberX" ridesharing service in 2013, as an addition to its "Uber Black" limousine service. At the time, Uber was growing in rides and revenue at a staggering pace. In 2013 alone, Uber was the dominant ridesharing platform in the United States and was estimated to have grown at a rate of 364%. In addition, Uber was enormously capitalized, the result of Uber's pitch to its investors of its "winner-take-all" strategy, with the ability to outlast its competitors in the ride-hailing market in a bruising price war. To be clear, neither growth nor financial strength, nor price cuts, are in and of themselves anti-competitive. Indeed, price cutting can be entirely pro-competitive. But, when a company with a substantial and growing share of rides is intent on eliminating competition and uses predatory, below-cost price cuts as a means of wielding its enormous financial strength to eliminate competition, that conduct plainly contravenes the Sherman Act and injures competition. With the launch of its UberX service, Uber became hell-bent on stifling competition from competing ride-hailing apps, including Sidecar. But rather than compete on the merits, Uber engaged in a campaign of anticompetitive tactics, orchestrated by its senior executives, a campaign designed to impair Sidecar and other competing ride-hailing apps from serving as a check on Uber's quest for a monopoly. Sidecar's superior functionality proved to be no match for Uber's anticompetitive actions, and as a result, Sidecar went out of business in December 2015.

9. There is no dispute that Uber has and continues to price below cost, however cost may be measured. Uber's CEO has publicly admitted in security filings that Uber intentionally prices its rides in certain markets below the costs paid to drivers for the ride. Thus, Uber has admittedly engaged in classic predatory pricing. This case is far removed from the case of a traditional manufacturing business, where a market entrant may have excess capacity in early market

McKool Smith Hennigan, P.C.
Los Angeles, CA

penetration and thus may be pricing below some measures of cost during growth that it plans to fill out its excess capacity. Here, Uber could *never* grow its way to profitability with its pricing below the variable cost of each individual ride. Uber heavily subsidized payments to drivers, and at the same time, it subsidized the fares it charged to passengers. As a result of these subsidies, the average price paid by a passenger was well below Uber's average variable cost for completing a transaction on its platform. A cursory look at Uber's financials shows the results of this predatory conduct: Uber has lost billions of dollars, but as it expected, it has not outrun its ability to attract equity and financing because in the unusual economic world of platforms with significant network effects, the long run will eventually financially reward Uber's platform for its elimination of competition.

10. Uber's most senior officers, directors, and executives specifically planned for this subsidized pricing strategy to foreclose competition. Uber intentionally sustained near-term losses that were designed to drive Sidecar and other competing ride-hailing apps out of the market while Uber acquired a dominant market position. When the market finally tipped in Uber's favor and Uber could leverage network effects to insulate itself from meaningful competition, it planned to raise prices to consumers and reduce compensation to drivers. By imposing higher prices on consumers and reducing driver compensation while it was protected by the substantial barriers to entry created by network effects, Uber planned to recoup the losses it had incurred while pushing out its rivals. This practice will have significant negative effects on consumers in the form of long-run higher prices, lower quality, reduced innovation, reduced control over personal information and privacy, and fewer options.

11. Uber's plan has now reached the second act. Initially, even after Uber successfully eliminated Sidecar from the market in late 2015, Uber continued to price below cost in an ongoing effort to weaken the only remaining significant US competitor, Lyft. This contributed to continuing losses for both entities. The two-sided nature of the ride-hailing market provided Uber with the incentive and ability to engage in predation on both sides of the market: (i) paying initially high prices to drivers (mostly in the form of incentives), with reduced payments later as Uber moves to the recoupment phase, and (ii) charging low prices to customers early, and higher prices during the

McKool Smith Hennigan, P.C.
Los Angeles, CA

DOCKET ALARM

Explore Litigation Insights

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

Real-Time Litigation Alerts

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

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

Advanced Docket Research

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

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

Analytics At Your Fingertips

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

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

API

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

LAW FIRMS

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

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

FINANCIAL INSTITUTIONS

Litigation and bankruptcy checks for companies and debtors.

E-DISCOVERY AND LEGAL VENDORS

Sync your system to PACER to automate legal marketing.

WHAT WILL YOU BUILD? | sales@docketalarm.com | 1-866-77-FASTCASE

fastcase®
Smarter legal research.