

1 THEODORE J. BOUTROUS JR., SBN 132099
tboutrous@gibsondunn.com
2 DANIEL G. SWANSON, SBN 116556
dswanson@gibsondunn.com
3 GIBSON, DUNN & CRUTCHER LLP
333 South Grand Avenue
4 Los Angeles, CA 90071-3197
Telephone: 213.229.7000
5 Facsimile: 213.229.7520

6 CYNTHIA E. RICHMAN, SBN 492089
crichman@gibsondunn.com
7 GIBSON, DUNN & CRUTCHER LLP
1050 Connecticut Avenue, N.W.
8 Washington, DC 11101
Telephone: 202.955.8500
9 Facsimile: 202.467.0539

10 Attorneys for Uber Technologies, Inc, Rasier LLC,
Rasier-CA LLC, Rasier-PA LLC, Rasier-DC LLC,
11 Rasier-NY LLC, Uber-USA LLC

12 UNITED STATES DISTRICT COURT
13 NORTHERN DISTRICT OF CALIFORNIA
14 SAN FRANCISCO DIVISION

15 SC Innovations, Inc.,

16 Plaintiff,

17 v.

18 Uber Technologies, Inc; Rasier LLC; Rasier-
CA LLC; Rasier-PA LLC; Rasier-DC LLC;
19 Rasier-NY LLC; Uber-USA LLC,

20 Defendants.

CASE NO. 3:18-CV-07440-JCS

**DEFENDANTS' MOTION TO DISMISS
SECOND AMENDED COMPLAINT**

Hearing:

Date: April 3, 2020
Time: 9:30 a.m.
Place: Courtroom G, 450 Golden Gate
Avenue, San Francisco, CA
Judge: Honorable Joseph C. Spero

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that on April 3, 2020, before the Honorable Joseph C. Spero, in Courtroom G of the United States District Court, Northern District of California, located at 450 Golden Gate Avenue, San Francisco, CA 94102, Defendants Uber Technologies, Inc; Rasier LLC; Rasier-CA LLC; Rasier-PA LLC; Rasier-DC LLC; Rasier-NY LLC; and Uber-USA LLC (“Defendants” or “Uber”) will and hereby do move this Court to dismiss, with prejudice, the claims brought by Plaintiff SC Innovations Inc. (“SCI”) pursuant to Federal Rule of Civil Procedure 12(b)(6).

This Court dismissed all claims asserted in SCI’s First Amended Complaint (“FAC,” dkt. 60). Order Granting Mot. to Dismiss [First] Am. Compl. (“Order,” dkt. 71). This Court found that, as a matter of law, Plaintiff’s factual allegations did not support a conclusion that Uber violated the Sherman Act § 2. *Id.* Specifically, this Court found that SCI did not allege (1) market power or (2) a cognizable probability of recoupment, and gave SCI the opportunity to amend its complaint to cure these defects. *Id.* at 12-16. This Court dismissed SCI’s claim under California’s Unfair Practices Act (“UPA”) with prejudice. *Id.* at 18-21.

SCI’s Second Amended Complaint (“SAC,” dkt. 73) offers no new allegations to correct the deficiencies that condemned its FAC. Defendants’ motion to dismiss is based on the grounds that the SAC fails to state any claim upon which relief can be granted because (1) the Sherman Act § 2 claims fail to plead the possession (or a dangerous probability) of monopoly power; (2) the predatory pricing claims under Section 2 fail to allege the requisite elements of predatory pricing (exclusion of competition, dangerous probability of recoupment); (3) the “tortious interference” claims under Section 2 are conclusory and lack any factual support, plead no injury to competition, and are based on lawful and justified conduct; and (4) the applicable statutes of limitations bar SCI’s claims in whole or in part. SCI’s UPA claim should be stricken since the SAC repleads it after it was dismissed with prejudice.

This motion is based on this Notice of Motion and Motion, the concurrently filed Memorandum of Points and Authorities, the pleadings and papers on file, and the argument received by the Court.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

THEODORE J. BOUTROUS JR.
DANIEL G. SWANSON
CYNTHIA E. RICHMAN
GIBSON, DUNN & CRUTCHER LLP

By: /s/ Daniel G. Swanson

Attorneys for Uber Technologies, Inc, Rasier LLC,
Rasier-CA LLC, Rasier-PA LLC, Rasier-DC LLC,
Rasier-NY LLC, Uber-USA LLC

TABLE OF CONTENTS

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

	<u>Page</u>
I. INTRODUCTION	1
II. SCI’s REVISED ALLEGATIONS	1
III. LEGAL STANDARD	2
IV. SCI FAILS TO PLEAD A CLAIM UNDER SHERMAN ACT § 2	2
A. SCI Fails To Plead Market Power	3
1. SCI’s New “Price Discrimination” Theory of Market Power Fails as a Matter of Law	4
2. SCI Fails As a Matter of Law To Plead That Uber Has The Unilateral Power To Raise Overall Prices in a Two-Sided Transaction Market	5
3. SCI Again Relies On An Impermissible Oligopoly Theory	8
B. SCI Fails to Plead a Cognizable Probability of Recoupment	10
C. SCI Fails to Plead an Antitrust Claim for Alleged Tortious Interference	12
D. SCI’s Unfair Practices Act Claim Should Be Stricken	15
V. CONCLUSION	15

TABLE OF AUTHORITIES

Page(s)

Cases

1

2

3

4 *A.A. Poultry Farms, Inc. v. Rose Acre Farms, Inc.*,

5 881 F. 2d 1396 (7th Cir. 1989).....12

6 *Am. Prof'l Testing Serv., Inc. v. Harcourt Brace Jovanovich Legal & Prof'l Publ'ns,*

7 *Inc.*,

8 108 F.3d 1147 (9th Cir. 1997).....13, 15

9 *Bell Atl. Corp. v. Twombly*,

10 550 U.S. 544 (2007)2

11 *Brooke Grp., Ltd. v. Brown & Williamson Tobacco Corp.*,

12 509 U.S. 209 (1993).....5, 13

13 *Copperweld Corp. v. Ind. Tube Corp.*,

14 467 U.S. 752 (1984).....13

15 *GMA Cover Corp. v. Saab Barracuda LLC*,

16 2012 WL 642739 (E.D. Mich. Feb. 8, 2012)10

17 *Harrison Aire, Inc. v. Aerostar Int'l, Inc.*,

18 423 F.3d 374 (3d Cir. 2005).....3

19 *Hunt-Wesson Foods, Inc. v. Ragu Foods, Inc.*,

20 627 F.2d 919 (9th Cir. 1980).....3

21 *Illinois Tool Works Inc. v. Independent Ink, Inc.*,

22 547 US 28 (2006).....5

23 *Indiana Grocery, Inc. v. Super Valu Stores, Inc.*,

24 864 F.2d 1409 (7th Cir. 1989).....8, 11, 12

25 *Kendall v. Visa U.S.A., Inc.*,

26 518 F.3d 1042 (9th Cir. 2008).....14

27 *Kolon Indus. v. E.I. DuPont de Nemours & Co.*,

28 748 F.3d 160 (4th Cir. 2014).....5

Malden Transp. v. Uber Techs.,

321 F. Supp. 3d 174 (D. Mass. 2018)15

Matsushita Elec. Indus. Co. v. Zenith Radio Corp.,

475 U.S. 574 (1986).....10

Metro Mobile CTS, Inc. v. NewVector Communications, Inc.,

892 F.2d 62 (9th Cir. 1989).....3, 4

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.