

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

SC INNOVATIONS, INC.,

Plaintiff,

v.

UBER TECHNOLOGIES, INC., et al.,

Defendants.

Case No. 18-cv-07440-JCS

**ORDER REGARDING MOTION TO  
DISMISS SECOND AMENDED  
COMPLAINT**

Re: Dkt. No. 76

**I. INTRODUCTION**

Plaintiff SC Innovations, Inc. (“Sidecar”) is a defunct “transportation network company” that offered services matching passengers with drivers for on-demand transportation, also known as “ride-hailing,” through a smartphone app. Sidecar claims that it was driven out of business by Defendants, Uber Technologies, Inc. and a number of its subsidiaries (collectively, “Uber”).<sup>1</sup> The Court previously dismissed Sidecar’s first amended complaint with leave to amend its Sherman Act claim, and with prejudice as to its claim under California’s Unfair Practices Act. Sidecar filed a second amended complaint, and Uber now moves once again to dismiss. The Court held a public hearing by videoconference on April 24, 2020. For the reasons discussed below, Uber’s motion is DENIED, except as to the Unfair Practices Act claim previously dismissed with prejudice, which is STRICKEN from the second amended complaint.<sup>2</sup>

A case management conference will occur on July 31, 2020 at 2:00 PM. The parties shall file a joint case management statement no later than July 24, 2020.

<sup>1</sup> The remaining defendants are Rasier, LLC; Rasier-CA, LLC; Rasier-PA, LLC; Rasier-DC, LLC; Rasier-NY, LLC; and Uber USA, LLC. The parties do not suggest that there is any distinction among the various defendants relevant to the present motion.

<sup>2</sup> The parties have consented to the jurisdiction of the undersigned magistrate judge for all

## II. BACKGROUND

### A. Procedural History and Previous Order

Sidecar filed this action on December 11, 2018. On May 2, 2019, the Court granted a motion to disqualify Sidecar's previous counsel based on a conflict of interest. *See* Order Re Mot. to Disqualify Counsel (dkt. 41).<sup>3</sup> Uber moved to dismiss Sidecar's initial complaint on July 10, 2019 (dkt. 57), Sidecar elected to file its first amended complaint (dkt. 60) rather than oppose the motion, and the Court denied that first motion to dismiss as moot on September 25, 2019 (dkt. 63). On January 21, 2020, the Court granted Uber's motion to dismiss the first amended complaint, dismissing Sidecar's Sherman Act claims with leave to amend and its Unfair Practices Act claim with prejudice. *See generally* Order Granting Mot. to Dismiss Am. Compl. ("Order re FAC," dkt. 71).<sup>4</sup>

The Court held that Sidecar's allegation of a relevant market—app-based ride-hailing services, excluding taxis—was sufficiently plausible to survive a motion to dismiss. *Id.* at 10–11. The Court also rejected suggestions by Uber that Sidecar had not alleged below-cost pricing, *id.* at 12, as well as arguments that Uber's delayed entry to the non-limousine ride-hailing market and asserted pro-competitive purposes were sufficient for dismissal at the pleading stage, *id.* at 16–18. The Court nevertheless dismissed Sidecar's Sherman Act claims for failure to provide sufficient allegations of market power, particularly its failure to allege "that Uber has the power to raise market prices above competitive levels simply by reducing its own output, or that Lyft"—allegedly Uber's only remaining competitor—"could not respond to such a reduction by increasing its own output." *Id.* at 12–14. Absent such allegations, the Court held that Sidecar alleged no more than a "disciplined oligopoly," which the Ninth Circuit has held insufficient to state a claim for either monopolization or attempted monopolization, due to "a gap in the Sherman Act that allows oligopolies to slip past its prohibitions," in *Rebel Oil v. Atlantic Richfield Co.*, 51

<sup>3</sup> *SC Innovations, Inc. v. Uber Techs., Inc.*, No. 18-cv-07440-JCS, 2019 WL 1959493 (N.D. Cal. May 2, 2019).

<sup>4</sup> *SC Innovations, Inc. v. Uber Techs., Inc.*, No. 18-cv-07440-JCS, \_\_\_ F. Supp. 3d \_\_\_, 2020 WL 353543 (N.D. Cal. Jan. 21, 2020). Citations herein to the Court's previous order refer to page

1 F.3d 1421 (9th Cir. 1995). *See* Order re FAC at 12–16.

2 The Court dismissed Sidecar’s Unfair Practices Act claim with prejudice, holding that  
3 Uber fell within an exemption from that statute for products and services for which rates are set  
4 under the jurisdiction of the California Public Utilities Commission (“CPUC”), following a line of  
5 cases construing that exemption as based on the scope of the CPUC’s authority, not based on  
6 whether the CPUC had in fact acted to set rates for a particular product or service. *Id.* at 18–21.

7 **B. Allegations of the Second Amended Complaint**

8 Because a plaintiff’s factual allegations are generally taken as true in resolving a motion  
9 under Rule 12(b)(6), this section summarizes the allegations of Sidecar’s second amended  
10 complaint as if true. Nothing in this order should be construed as resolving any issue of fact that  
11 might be disputed at a later stage of the case. Moreover, this summary is intended only as  
12 background to the issues in dispute in the present motion, and is not a comprehensive recitation of  
13 Sidecar’s allegations.

14 Uber launched its smartphone app in 2009, offering a service for passengers to arrange for  
15 transportation in limousines driven by licensed chauffeurs. 2d Am. Compl. (“SAC,” dkt. 73) ¶¶ 5,  
16 42. Sidecar launched its own ride-hailing app in 2012, allowing passengers to hail drivers who  
17 used their own personal vehicles, and pioneering a number of features including estimated fares  
18 before booking and carpool rides for multiple passengers traveling in the same direction. *Id.* ¶¶ 6–  
19 7, 43, 45–47. Lyft—which is now Uber’s only remaining competitor in the ride-hailing market—  
20 introduced a similar service the same year. *Id.* ¶ 44. Sidecar’s app also allowed drivers to set their  
21 own proposed fares and compete against one another. *Id.* ¶ 7. Over the course of its existence,  
22 Sidecar operated in San Francisco, Austin, Los Angeles, Chicago, Philadelphia, New York,  
23 Seattle, San Diego, San Jose, Boston, and Washington, DC, obtaining market share of between  
24 10% and 15% in some of those cities. *Id.* ¶¶ 50–51. Uber, which at the time was rapidly growing,  
25 accumulating significant investment capital, and becoming the dominant ride-hailing platform in  
26 the United States, debuted its “UberX” product in 2013, following Sidecar’s lead in allowing  
27 drivers to use their personal, non-limousine vehicles, and directly competing with Sidecar and

all of the same cities as Sidecar by mid-2014, *id.* ¶ 113, and now has a market share of between 60% and 75% in each of those cities, *id.* ¶¶ 133–43.

Ride-hailing apps allow participating passengers to request rides and drivers to accept those requests. *See id.* ¶¶ 32–34. The passenger pays a fare for the ride, of which a portion is retained by the ride-hailing company and the balance is paid to the driver. *Id.* ¶ 39. Sidecar alleges that Uber has, since its inception, consistently set its prices below cost in an effort to achieve a “winner takes all” outcome due to the ride-hailing market’s barriers to entry—in particular, network effects caused by passengers preferring a platform with a large supply of drivers and drivers preferring a platform with a large supply of passengers, because a larger supply of both means drivers will make more money by spending less time waiting for passengers and passengers will obtain a more convenient service if they do not need to wait as long for rides. *See id.* ¶¶ 2–3, 69–74. The market also includes other barriers and economies of scale, including the benefits to customers of knowing they will be able to use the same app in multiple cities, and the benefits to the ride-sharing company of collecting data on how large numbers of customers and drivers use the service. *Id.* ¶¶ 78–80.

Uber has engaged in predatory pricing on each of the two “sides” of the ride-hailing market, offering above-market incentive payments to drivers, and offering below-market fares to passengers. *Id.* ¶¶ 11, 96. Uber has in at least some circumstances priced its rides below the costs that it pays drivers, and has lost billions of dollars in the process. *Id.* ¶¶ 9, 102. According to Sidecar, Uber’s strategy is premised on the goal of establishing a monopoly and reaping the reward of supracompetitive monopolist pricing in order to recoup early losses. *Id.* ¶ 4. Uber would recoup the losses it has accrued by lowering payments to drivers and raising fares for passengers. *Id.* ¶ 11.

Uber has also engaged in what Sidecar characterizes as price discrimination, initially by using “surge pricing” to set higher prices at times of high demand, and later by using “dynamic pricing” to set different prices for different users based on factors including the users’ perceived price sensitivity and ability to pay. *Id.* ¶¶ 84–85.

In addition to Uber’s pricing strategies, Sidecar contends that Uber has sought to

1 monopolize the ride-hailing market by interfering with its competitors Lyft and Sidecar, engaging  
2 in “clandestine campaigns”—with names like “Project Hell” and “SLOG”—to either submit  
3 fraudulent requests for rides on competitors’ platforms and cancel before the drivers arrived, or  
4 have Uber representative request rides in order to start a conversation with Sidecar and Lyft  
5 drivers and convince them to work exclusively for Uber. *Id.* ¶ 13. Those tactics violated  
6 Sidecar’s terms of service and increased wait times for both drivers and passengers to obtain  
7 legitimate rides, causing them to become frustrated with Sidecar. *Id.* ¶¶ 14, 116–17. As a result of  
8 network effects, reduced numbers of passengers and drivers created a vicious cycle of declining  
9 usage. *Id.* ¶ 118. Unable to compete with Uber’s predatory pricing, Sidecar exited the ride-  
10 hailing market in December of 2015. *Id.* ¶¶ 8, 123.

11 Uber has begun to increase its prices since Sidecar ceased operations, including in the  
12 particular geographic markets where Sidecar formerly competed. *Id.* ¶¶ 103–04. Uber has also  
13 reduced payments to drivers by increasing the “commission” percentage of each fare that it keeps  
14 for itself in cities including San Francisco, San Diego, and New York, and “effective”  
15 commissions have risen in other cities due to booking fees and other charges. *Id.* ¶¶ 105–07, 109.  
16 Uber’s ride-hailing business became profitable by at least one measure (“positive EBITDA”) in  
17 2018. *Id.* ¶ 109.

18 Lyft’s ability to act as a check on unilateral supply constriction and price increases by Uber  
19 is of particular importance to the parties’ arguments on the present motion. Sidecar’s allegations  
20 relevant to that issue include the following:

21 . . . In addition, because of the network effects resulting from Uber’s  
22 size and dominance on both the customer and driver side, and because  
23 of and because of [sic] Uber’s discriminatory pricing, Lyft is unable  
24 to respond effectively or to increase its own share of rides as a  
25 restraint on Uber’s pricing. Further, Lyft’s current status as a public  
26 company requires it to recoup its own massive losses through higher  
27 prices. Thus, Lyft has not been willing, even if it were able to do so,  
28 to respond to Uber’s price discrimination strategy by expanding its  
output or seizing significant additional market share through price  
competition. Uber now is able to impose its will on both passengers  
and drivers in the form of higher, supra-competitive prices. Indeed,  
drivers are now receiving reduced compensation; and passengers  
must endure discriminatory pricing tactics, such as surge pricing, and  
more recently, “dynamic pricing.” Uber has begun to reap supra-



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