UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF FLORIDA
Miami Division

Case Number: 15-20356-CIV-MARTINEZ-GOODMAN

MIADECO CORP., et al.,

Plaintiffs,

vs.

UBER TECHNOLOGIES, INC., *et al.*,

Defendants.
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ORDER ON MOTIONS TO DISMISS

THIS CAUSE came before the Court upon Defendant Lyft, Inc.'s ("Defendant Lyft") Motion to Dismiss Plaintiffs' Second Amended Class Action Complaint ("Lyft's Motion") [ECF No. 127] and Motion of Defendants Uber Technologies, Inc. and Rasier, LLC (collectively "Defendant Uber") to Dismiss Plaintiffs' Second Amended Complaint ("Uber's Motion," and together with Lyft's Motion, the "Motions") [ECF No. 128]. The Court has considered the Motions, the responses [ECF Nos. 136 & 137], the replies [ECF Nos. 142 & 143], the Notice of Supplemental Authority [ECF No. 144], and the pertinent portions of the record, and is otherwise fully advised in the premises. For the reasons set forth below, the Second Amended Class Action Complaint is dismissed with leave to amend as stated herein.

I. Background[1]

Plaintiffs and the putative class hold regular for-hire licenses that were created and regulated by Chapter 31 of the Miami-Dade County Code of Ordinances ("MDCCO"). Such

[1] The following factual allegations drawn from the Second Amended Class Action Complaint are accepted as true for purposes of the Motions. *See Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009).

licenses authorize them to provide transportation services in exchange for compensation in Miami-Dade County. Defendants operate separate transportation network companies that provide transportation services in Miami-Dade County and elsewhere in the United States through smartphone applications that permit consumers to summon, arrange, and pay for transportation services electronically via their mobile phone.

In their Second Amended Class Action Complaint, Plaintiffs allege the following: (a) Defendant Uber violated the Lanham Act[2] by making safety misrepresentations (Count I); (b) Defendant Lyft violated the Lanham Act by making safety misrepresentations (Count II); (c) Defendant Uber violated the Lanham Act by making legal compliance misrepresentations (Count III); (d) Defendant Lyft violated the Lanham Act by making legal compliance misrepresentations (Count IV); (e) Defendant Uber engaged in common law unfair competition by making safety misrepresentations (Count V); (f) Defendant Lyft engaged in common law unfair competition by making safety misrepresentations (Count VI); (g) Defendant Uber engaged in common law unfair competition by making legal compliance misrepresentations (Count VII); (h) Defendant Lyft engaged in common law unfair competition by making legal compliance misrepresentations (Count VIII); (i) Defendant Uber violated the Sherman Act[3] (Count IX); and (j) Defendant Uber violated Florida's Antitrust Act[4] (Count X).

Defendant Lyft moves to dismiss the claims against it, because (a) Plaintiffs' Lanham Act allegations are deficient; and (b) Plaintiffs' unfair competition allegations do not state a claim. Defendant Uber asserts that the claims against it should be dismissed, because (a) Plaintiffs' claims are based on Defendant Uber's alleged violation of Chapter 31 of the MDCCO; (b) the Complaint fails to allege facts showing that Defendant Uber has caused any injury to any named

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[2] 15 U.S.C. § 1125(a)(1)(B).
[3] 15 U.S.C. § 2.
[4] Fla. Stat. § 542.19.

Plaintiff; (c) all of Plaintiffs' claims fail because they do not allege a viable injury; (d) Defendant Uber made no misrepresentations about legal compliance or safety; and (e) the Sherman Act claim and Florida antirust claim are defective.

II. Discussion

A. Legal Standard

Federal Rule of Civil Procedure 8(a) provides that a plaintiff's pleading "must contain ... a short and plain statement of the claim showing that the pleader is entitled to relief." The Supreme Court has instructed that a plaintiff must submit "more than an unadorned, the-defendant-unlawfully-harmed-me accusation." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). "To survive a motion to dismiss, a complaint must contain sufficient factual matter, accepted as true, to state a claim to relief that is plausible on its face." *Id.* "A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Id.* "[T]he tenet that a court must accept as true all of the allegations contained in a complaint is inapplicable to legal conclusions. Threadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice." *Id.*

B. Defendant Uber's Alleged Safety Misrepresentations (Counts I and V)

Plaintiffs argue that Defendant Uber made safety misrepresentations that violated the Lanham Act (Count I) and Florida's unfair competition law (Count V).[5] Section 43(a) of the Lanham Act provides:

> (1) Any person who, on or in connection with any goods or services, or any container for goods, uses in commerce any word, term, name, symbol, or device, or any combination thereof, or any false designation of origin, false or misleading description of fact,

[5] Plaintiffs predicate their unfair competition claim in Count V on the same alleged misrepresentations on which they premise their Lanham Act claim in Count I.

> or false or misleading representation of fact, which ... (B) in commercial advertising or promotion, misrepresents the nature, characteristics, qualities, or geographic origin of his or her or another person's goods, services, or commercial activities, shall be liable in a civil action by any person who believes that he or she is or is likely to be damaged by such act.

15 U.S.C. § 1125(a).

To succeed on a false advertising claim under § 43(a)(1)(B) of the Lanham Act, a plaintiff must establish that (1) the advertisements of the opposing party were false or misleading; (2) the advertisements deceived, or had the capacity to deceive, consumers; (3) the deception had a material effect on purchasing decisions; (4) the misrepresented product or service affects interstate commerce; and (5) the movant has been—or is likely to be—injured as a result of the false advertising. *See Johnson & Johnson Vision Care, Inc. v. 1–800 Contacts, Inc.*, 299 F.3d 1242, 1247 (11th Cir.2002).

Plaintiffs argue that each of the following statements is an actionable misrepresentation under the Lanham Act. *See Greater Houston Transportation Co. v. Uber Techs., Inc.*, 155 F. Supp. 3d 670 (S.D. Tex. 2015). First, Plaintiffs allege that Lane Kasselman ("Kasselman"), Defendant Uber's Head of North American Communications, made the following statement in a blog post:

> All Uber ridesharing and livery partners must go through a rigorous background check. The three-step screening we've developed across the United States, which includes county, federal and multi-state checks, has set a new standard . . . We apply this comprehensive and new industry standard consistently across all Uber products, including UberX.
>
> Screening for safe drivers is just the beginning of our safety efforts. Our process includes prospective and regular checks of drivers' motor vehicle records to ensure ongoing safe driving.
> Unlike the taxi industry, our background checking process and standards are consistent across the United States and often more rigorous than what is required to become a taxi driver.

[ECF No. 124-6]. Plaintiffs allege that a prior version of the blog post stated, in part, that "[a]ll Uber ridesharing and livery partners must go through a rigorous background check that leads the industry."

Next, Plaintiffs allege that Defendant Uber's Senior Communications Associate, Central North America, Lauren Altmin, issued a statement to NBC's Detroit affiliate which stated, in part, as follows:

> What I can tell you is that Uber takes passenger safety very seriously. We work every day to connect riders with the safest rides on the road and go above and beyond local requirements in every city we operate. Uber only partners with drivers who pass an industry-leading screening that includes a criminal background check at the county, federal, and multistate level going back as far as the law allows. We also conduct ongoing reviews of drivers' motor vehicle records during their time as an Uber partner . . . for more information on what makes Uber the safest rides on the road, please see our website . . .

[ECF No. 124-7].

Plaintiffs further allege that an article entitled "Faulty Background Checks May Put UberX Passengers at Risk, Report Says" quotes Defendant Uber's Kasselman as saying:

> Uber's industry-leading background checks help connect consumers with the safest ride on the road . . . Our driver-partner background checks are more thorough than those of taxis in most cities and include county, state and federal screens going back seven years. We continue to improve and are always working hard to tighten our policies and processes to ensure that Uber remains the safest transportation option available.

[ECF No. 124-8].

Plaintiffs moreover allege that in an NBCBayArea.com news report, Defendant Uber's Kasselman is quoted: "We're confident that every ride on the Uber platform is safer than a taxi." [ECF No. 124-9].

Plaintiffs additionally allege that contrary to Defendant Uber's public assertions that it uses an "industry-leading" background check, and that riding with a Defendant Uber driver is "safer than a taxi," Defendant Uber's public assertions concerning the quality of its driver background screening are false.

Finally, Plaintiffs allege that Defendant Uber charged certain customers a "Safe Rides Fee," which appeared on receipts. Next to such language on the receipts was a hyperlink that, if clicked, lead to a statement that the fee was used to support, among other things, Defendant Uber's "continued efforts to ensure the safest possible platform for Uber riders and drivers, including an industry-leading background check process, regular motor vehicle checks, driver safety education, development of safety features in the app, and insurance." Plaintiffs allege that in October 2014 Defendant Uber changed the words "industry-leading to "a Federal, state, and local background check" and changed the words "and insurance" to "and more." Plaintiff argues that Defendant Uber thus still publicly claimed that the Safe Rides Fee "supports continued efforts to ensure the safest possible platform for Uber riders and drivers …"

Defendant Uber moves to dismiss Counts I and V, because it asserts that the alleged safety representations are non-actionable "puffery." *See Mfg. Research Corp. v. Greenlee Tool Co.*, 693 F.2d 1037, 1040 (11th Cir. 1982) ("Puffing generally refers to an expression of opinion not made as a representation of fact."); *XYZ Two Way Radio Serv., Inc. v. Uber Techs., Inc.*, No. 15-CV-3015(FB)(CLP), 2016 WL 5854224, at *3 (E.D.N.Y. Oct. 6, 2016). The Court in *XYZ* held that each of the aforementioned representations was non-actionable puffery. *Id.* Additionally, Defendant Uber asserts that several of the aforementioned safety representations are not actionable commercial speech, because they were made in the news media and are protected under the First Amendment. *See Boule v. Hutton*, 328 F.3d 84, 91 (2d Cir. 2003). The

Court agrees with Defendant Uber's analysis that each of these statements is non-actionable. As a result, Counts I and V[6] are dismissed with prejudice.

C. Defendant Lyft's Alleged Safety Misrepresentations (Counts II and VI)

Plaintiffs argue that Defendant Lyft made safety misrepresentations that violated the Lanham Act (Count II) and Florida's unfair competition law (Count VI).[7] First, Plaintiffs allege that an article entitled "Uber's System for Screening Drivers Draws Scrutiny," quotes Defendant Lyft representative Erin Simpson ("Simpson") as saying Defendant Lyft's background checks "far exceed what's required for taxis and limos in nearly every municipality across the country." [ECF No. 124-11].

Next, Plaintiffs allege that in an article entitled "Rider Safety: The Real Achilles Heel for Uber and Lyft?," Simpson states that Defendant Lyft has "pioneered strict safety screening criteria that far exceed what's required for taxis and limos in nearly every municipality across the country." [ECF No. 124-12].

Finally, Plaintiffs allege that Defendant Lyft has also represented that its background check process screens out drivers with any history of violent crimes, sexual offenses, theft, property damage, felonies, or drug related offenses when, upon information and belief, the background check process Defendant Lyft utilizes only provides them information for limited duration and without assurance that the Defendant Lyft driver has never been convicted of these offenses.

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[6] Plaintiffs' unfair competition claim in Count V fails for the same reasons the Lanham Act claim in Count I fails. *See Ameritox, Ltd. v. Millennium Labs., Inc.*, No. 8:11-CV-775-T-24-TBM, 2012 WL 33155, at *5 (M.D. Fla. Jan. 6, 2012) ("Because Ameritox bases its common law unfair competition claim on the theory of false advertising, the Court has evaluated Ameritox's [claim] through the lens of the Lanham Act, and . . . [because] Ameritox failed to state a plausible claim under the Lanham Act, its unfair competition claim is likewise insufficiently pled.").

[7] Plaintiffs predicate their unfair competition claim in Count VI on the same alleged misrepresentations on which they premise their Lanham Act claim in Count II.

Defendant Lyft moves to dismiss Counts II and VI, because it asserts that the alleged safety representations are non-actionable. It states that the first two representations are made to the news media and are not actionable commercial speech. *See Boule*, 328 F.3d at 91. With respect to the third representation, Defendant Lyft argues that Plaintiffs fail to give them fair notice, because Plaintiffs fail to provide sufficient factual allegations regarding this alleged representation. The Court agrees with Defendant Lyft's analysis. As a result, Counts II and VI[8] are dismissed. Plaintiffs are given leave to amend this claim with respect to the third representation, in order to give them the opportunity to provide sufficient factual allegations.

D. Defendant Uber's Alleged Legal Compliance Misrepresentations (Counts III and VII)

Plaintiffs argue that Defendant Uber made legal compliance misrepresentations that violated the Lanham Act (Count III) and Florida's unfair competition law (Count VII).[9] Plaintiffs allege that during the time after Defendant Uber began providing transportation network services in Miami-Dade County and before the MDCCO was amended to minimally regulate Defendants, Defendant Uber told consumers, "The specifics vary depending on what local governments allow, but within each city we operate, we aim to go above and beyond local requirements to ensure your comfort and security – what we're doing in the US is an example of our standards around the world." [ECF No. 124-1]. Plaintiffs state that Defendant Uber's representation regarding its compliance with the MDCCO is not true.

Defendant Uber moves to dismiss Counts III and VII, because it asserts that the legal compliance representation is not actionable. Defendant Uber asserts that the statement is not a representation of fact that it is subject to or complying with anything, but rather is a statement of

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[8] Plaintiffs' unfair competition claim in Count VI fails for the same reasons the Lanham Act claim in Count II fails. *See Ameritox*, 2012 WL 33155, at *5.

[9] Plaintiffs predicate their unfair competition claim in Count VII on the same alleged misrepresentations on which they premise their Lanham Act claim in Count III.

aspiration or belief. As a result, such statement is not actionable. *See XYZ,* 2016 WL 5854224, at *3 (statements couched in aspirational terms—"committed to," "aim to," "believe deeply"—cannot be proven true or false). Moreover, Defendant Uber states that the claim is an improper attempt to enforce the former version of Chapter 31 of the MDCCO. *See Checker CAB Philadelphia, Inc. v. Uber Techs., Inc.*, No. CV 14-7265, 2016 WL 950934, at *6 (E.D. Pa. Mar. 7, 2016). The Court agrees with Defendant Uber's analysis that the aforementioned statement is not actionable. As a result, Counts III and VII[10] are dismissed with prejudice.

E. Defendant Lyft's Alleged Legal Compliance Misrepresentations (Counts IV and VIII)

Plaintiffs argue that Defendant Lyft made legal compliance misrepresentations that violated the Lanham Act (Count IV) and Florida's unfair competition law (Count VIII).[11] Plaintiffs allege that during the time after Defendant Lyft began providing transportation network services in Miami-Dade County and before the MDCCO was amended to minimally regulate Defendants in Miami-Dade County, Defendant Lyft's terms of service stated that its drivers had "all appropriate licenses, approvals, and authority to provide transportation to third parties in all jurisdictions in which such [d]river uses the [s]ervices." [ECF No. 124-2].

Defendant Lyft moves to dismiss Counts IV and VIII, because it argues that the alleged legal compliance representation is not actionable, since it is an improper attempt to enforce the former version of Chapter 31 of the MDCCO. *See Checker CAB*, 2016 WL 950934, at *6. The Court agrees with Defendant Lyft. As a result, Counts IV and VIII[12] are dismissed with prejudice.

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[10] Plaintiffs' unfair competition claim in Count VII fails for the same reasons the Lanham Act claim in Count III fails. *See Ameritox,* 2012 WL 33155, at *5.

[11] Plaintiffs predicate their unfair competition claim in Count VIII on the same alleged misrepresentations on which they premise their Lanham Act claim in Count IV.

[12] Plaintiffs' unfair competition claim in Count VIII fails for the same reasons the Lanham Act claim in Count IV fails. *See Ameritox,* 2012 WL 33155, at *5.

F. Sherman Act and Florida's Antitrust Act Claims

Plaintiffs argue that Defendant Uber violated both the Sherman Act (Count IX) and Florida's Antitrust Act (Count X)[13] by conspiring with its drivers to acquire a monopoly in the for-hire transportation industry in Miami-Dade County to foreclose competition and destroy its competitors. Plaintiffs allege the existence of an agreement between Defendant Uber and its driver-partners to engage in predatory and anticompetitive conduct to acquire a monopoly in the in the Miami-Dade County for-hire transportation market.

Defendant Uber responds that the Supreme Court has made clear that Plaintiffs must plead a plausible antitrust conspiracy, which requires Plaintiffs to plead the specifics of the conspiracy without relying upon conclusory allegations. *See Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 565 n.10 (2007). Defendant Uber asserts that Plaintiffs identify nothing more than conclusory allegations that Defendant Uber "engaged in a conspiracy" through unidentified agreements with unidentified drivers. Defendant Uber concludes that Plaintiffs fail to plead a plausible agreement to restrain trade under *Twombly*.

Additionally, Defendant Uber asserts that Plaintiffs' federal antitrust claim for attempted monopolization fails because Plaintiffs do not have antitrust standing. *See Philadelphia Taxi Ass'n, Inc. v. Uber Techs., Inc.*, No. CV 16-1207, 2016 WL 6525389 (E.D. Pa. Nov. 3, 2016). Defendant Uber notes that Plaintiffs allege harm to themselves, not harm to competition. The antitrust laws, however, are intended to "protect competition, not competitors." *Aquatherm Indus., Inc. v. Florida Power & Light Co.*, 145 F.3d 1258, 1262 (11th Cir. 1998). Because it is "inimical to the antitrust laws to award damages for losses stemming from continued

[13] Florida's Antitrust Act "closely track[s] the language of the Sherman Act and [is] analyzed under the same rules and case law." *Andrx Pharm., Inc. v. Elan Corp., PLC*, 421 F.3d 1227, 1233 n.5 (11th Cir. 2005). Plaintiffs' Florida Antitrust Act claim is based on the same allegations as its Sherman Act claim.

competition," a claimant's alleged harm does not qualify as antitrust injury unless it is attributable to "a competition-reducing aspect or effect of the defendant's behavior." *Atl. Richfield Co. v. USA Petroleum Co.*, 495 U.S. 328, 344 (1990).

Defendant Uber also states that Plaintiffs fail to allege facts showing any anticompetitive effect of any predatory pricing scheme. *See U.S. Anchor Mfg., Inc. v. Rule Indus., Inc.*, 7 F.3d 986, 1001 (11th Cir. 1993). Anticompetitive conduct requires alleged acts that have the effect of increasing price by decreasing output. *See Chicago Prof'l Sports Ltd. P'ship v. Nat'l Basketball Ass'n*, 95 F.3d 593, 597 (7th Cir. 1996). Defendant Uber concludes that the Complaint alleges that the use of the Uber App does not result in a decrease in output of for-hire transportation.

The Court finds that Counts IX and X fail to provide sufficient factual allegations to plead a plausible antitrust claim. Moreover, Counts IX and X fail to provide sufficient factual allegations to show an anticompetitive effect or to support Plaintiffs' antitrust standing. As a result, Counts IX and X are dismissed. Plaintiffs are given leave to amend to include sufficient factual allegations to support these claims.

III. Conclusion

After careful consideration, it is hereby:

ORDERED AND ADJUDGED that

1. Defendant Lyft, Inc.'s Motion to Dismiss Plaintiffs' Second Amended Class Action Complaint [ECF No. 127] is **GRANTED** in part as stated herein.

2. The Motion of Defendants Uber Technologies, Inc. and Rasier, LLC to Dismiss Plaintiffs' Second Amended Complaint [ECF No. 128] is **GRANTED** in part as stated herein.

3. Counts I, III, IV, V, VII, and VIII of the Second Amended Class Action Complaint are **DISMISSED with prejudice**.

4. Counts II, VI, IX, and X of the Second Amended Class Action Complaint are **DISMISSED without prejudice**.

5. Plaintiffs may have through and including **April 20, 2017** to file an amended complaint limited to the following: (a) the third alleged safety misrepresentation by Defendant Lyft in Counts II and VI; (b) the Sherman Act claim against Defendant Uber (Count IX); and (c) the Florida Antitrust Act claim against Defendant Uber (Count X).

6. This case is **CLOSED** for statistical purposes only. All pending motions are **DENIED as MOOT**. If Plaintiffs timely file an amended complaint, the Court will reopen this case.

DONE AND ORDERED in Chambers at Miami, Florida, this 30 day of March, 2017.

JOSE E. MARTINEZ
UNITED STATES DISTRICT JUDGE

Copies provided to:
Magistrate Judge Goodman
All Counsel of Record