

United States District Court
Northern District of California

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

SCOTT CRAWFORD, et al.,
Plaintiffs,
v.
UBER TECHNOLOGIES, INC., et al.,
Defendants.

Case No. [17-cv-02664-RS](#)

**ORDER DENYING IN PART AND
GRANTING IN PART MOTION FOR
JUDGMENT ON THE PLEADINGS**

I. INTRODUCTION

Scott Crawford and Jarvis Jernigan bring this action against Uber Technologies, Inc. (Uber) and its subsidiary Raiser, LLC for failure to make reasonable accommodations under federal and California state disability law. After answering the complaint, Uber moved for judgment on the pleadings, arguing that plaintiffs lack standing to bring their claims, the relevant ADA provisions do not apply to Uber, and the relevant California state law provisions cannot regulate conduct that occurs solely outside of California. Pursuant to Civil Local Rule 7-1(b), the motion is suitable for disposition without oral argument. For the reasons set forth below, the motion is denied as to plaintiffs’ federal claims, but granted as to their California state law claims.

II. BACKGROUND

Uber operates a ride-for-hire service that utilizes a mobile phone app to connect riders with drivers who have signed up with the app. Uber app users can request and pay for a ride or other service through their credit card linked Uber account. On occasion, Uber offers short-term

1 promotions that allow app users to order special sale items by clicking on an icon that appears in
2 the user’s app for the duration of the promotion. When the promotion is over, the special icon
3 disappears and the app returns to its usual appearance.

4 The Uber app offers users services that vary from locality to locality. In some cities, such
5 as Portland, San Francisco, Los Angeles, and Washington, D.C., the app displays an icon called
6 “Uber Access.” When a user taps on the icon, one of two options appear, “UberASSIST” or
7 “UberWAV.” UberASSIST connects app users with specially trained drivers who will assist riders
8 into vehicles and can accommodate folding wheelchairs, walkers, and scooters. UberWAV offers
9 app users the option to call a wheelchair accessible vehicle. Neither of these options is available
10 to Uber app users in Jackson.

11 Crawford and Jernigan are persons with disabilities who live in Jackson, Mississippi, and
12 its surrounding suburbs. Both plaintiffs have multiple sclerosis and use wheelchairs for mobility.
13 Because neither can drive, Crawford and Jernigan rely on buses, taxis, and other services to get
14 around the Jackson metro area. One service they cannot utilize is Uber’s ride-sharing service,
15 which allows mobile phone app users to call a car to get from one place to another. Because the
16 Uber app in Jackson does not provide an option for riders to call a wheelchair-accessible vehicle,
17 Crawford and Jernigan are unable to use the service. Accordingly, plaintiffs allege, Uber has
18 violated its obligations under the Americans with Disabilities Act (“ADA”), the California
19 Disabled Persons Act (“CDPA”), and the California Unfair Competition law (“UCL”).

20 Crawford and Jernigan have never downloaded the Uber app because they are aware that
21 their electric wheelchairs cannot fit into a standard car. If Uber were to offer ride services that
22 could accommodate electric wheelchairs, Crawford and Jernigan would use the Uber app. Because
23 Uber could add a mechanism for connecting riders to wheelchair accessible vehicles but does not
24 do so in Jackson, Crawford and Jernigan assert that Uber prevents drivers with such vehicles from
25 offering those services to disabled persons. Crawford and Jernigan seek declaratory and injunctive
26 relief under Title III of the ADA, 42 U.S.C. § 12181 *et seq.*, the CDPA, Cal. Civ. Code § 54.1 *et*
27 *seq.*, and the UCL, Cal. Bus. & Prof. Code § 17200 *et seq.*

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III. LEGAL STANDARD

Federal Rule of Civil Procedure 12(c) provides that “[a]fter the pleadings are closed—but early enough not to delay trial—a party may move for judgment on the pleadings.” A motion for judgment on the pleadings is “functionally identical” to a Rule 12(b)(6) motion to dismiss for failure to state a claim. *See Dworkin v. Hustler Magazine, Inc.*, 867 F.2d 1188, 1192 (9th Cir. 1989). “Judgment on the pleadings is properly granted when there is no material fact in dispute, and the moving party is entitled to judgment as a matter of law.” *Fleming v. Picard*, 581 F.3d 922, 925 (9th Cir. 2009). When deciding a 12(c) motion, all material allegations in the complaint are accepted as true and construed in the light most favorable to the non-moving party. *Turner v. Cook*, 362 F.3d 1219, 1225 (9th Cir. 2004).

IV. DISCUSSION

A. Standing

The United States Constitution restricts federal judicial power to the adjudication of “cases” or “controversies.” U.S. Const. art. III, § 2, cl. 1. Plaintiffs seeking to adjudicate their grievances in federal court must first demonstrate that they have standing to sue—“an essential and unchanging part of the case-or-controversy requirement of Article III.” *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560 (1992). To establish standing, a plaintiff must show (1) he or she has suffered or is threatened with an injury that is both “concrete and particularized,” and “actual or imminent, not conjectural or hypothetical;” (2) there is a causal link between the injury and the conduct of which the plaintiff complains—that is, the injury is “fairly traceable” to the challenged conduct; and (3) the injury is “likely” to be “redressed by a favorable decision.” *Bates v. United Parcel Serv., Inc.*, 511 F.3d 974, 985 (9th Cir. 2007) (quoting *Lujan*, 504 U.S. at 560–61).

“The Supreme Court has instructed us to take a broad view of constitutional standing in civil rights cases, especially where, as under the ADA, private enforcement suits ‘are the primary method of obtaining compliance with the Act.’ ” *Doran v. 7-Eleven, Inc.*, 524 F.3d 1034, 1039 (9th Cir. 2008) (quoting *Trafficante v. Metro. Life Ins. Co.*, 409 U.S. 205, 209 (1972)). The ADA provides that a plaintiff is entitled to bring an action to correct both barriers he actually

1 encountered and those he was deterred from encountering. 42 U.S.C. § 12188(a)(1). A person with
2 a disability is not required to “engage in a futile gesture if such person has actual notice that a
3 person or organization covered by this subchapter does not intend to comply with its provisions.”
4 *Id.*

5 “For purposes of ruling on a motion to dismiss for want of standing, both the trial and
6 reviewing courts must accept as true all material allegations of the complaint, and must construe
7 the complaint in favor of the complaining party.” *Warth v. Seldin*, 422 U.S. 490, 501 (1975). “At
8 the pleading stage, general factual allegations of injury resulting from the defendant's conduct may
9 suffice” to establish a concrete injury. *Defenders of Wildlife*, 504 U.S. at 561. In addition, the
10 plausibility determinations as required by “*Twombly* and *Iqbal* are ill-suited to application in the
11 constitutional standing context” because “ ‘[t]he jurisdictional question of standing precedes, and
12 does not require, analysis of the merits.’ ” *Maya v. Centex Corp.*, 658 F.3d 1060, 1068 (9th Cir.
13 2011) (quoting *Equity Lifestyle Props., Inc. v. Cnty. of San Luis Obispo*, 548 F.3d 1184, 1189 n.10
14 (9th Cir. 2008)).

15 Uber argues that Crawford and Jernigan lack standing to seek injunctive relief because
16 they cannot establish injury in fact or that their requested remedy will redress that injury.
17 According to Uber, plaintiffs’ alleged injury—being denied access to Uber’s service—is
18 insufficiently concrete because they have never downloaded the Uber app and do not plausibly
19 allege that they were deterred from doing so. This argument is unpersuasive. As Uber
20 acknowledges, under Ninth Circuit precedent, plaintiffs suing under Title III are not required to
21 engage in a “futile gesture” in order to show actual injury under the ADA. *See Pickern v. Holiday*
22 *Quality Foods Inc.*, 293 F.3d 1133, 1136-37 (9th Cir. 2002). In *Civil Rights Education &*
23 *Enforcement Center v. Hospitality Properties Trust*, 867 F.3d 1093 (9th Cir. 2017), the Ninth
24 Circuit explicitly rejected the requirement that ADA plaintiffs “personally encounter” barriers in
25 order to have standing. 867 F.3d at 1099. Plaintiffs who had telephoned hotels to inquire about
26 transportation services available to disabled guests sufficiently alleged that they were deterred
27 from patronizing those establishments until barriers to access were removed. *See id.* (It is the

1 drivers. *See Glanton ex. Rel. ALCOA Prescription Drug Plan v. AdvancePCS Inc.*, 465 F.3d 1123,
2 1125 (9th Cir. 2006).

3 Once again, Uber’s arguments are unpersuasive. Whether drivers exercise the degree of
4 independence described by Uber is a question of fact that cannot be determined on the pleadings
5 alone. For example, if further factual development demonstrates that drivers must satisfy certain
6 requirements in order to sign up on the Uber app, or that drivers must conduct rides in a manner
7 prescribed by Uber, that would undercut Uber’s view that injunctive relief is entirely dependent on
8 drivers’ choices. For example, on the present record there is no reason to believe that Uber could
9 not institute possession of a WAV as a prerequisite for drivers who wish to provide rides through
10 the app. Such a modification to Uber’s policies would arguably redress plaintiffs’ alleged injury.
11 Nor is it possible to determine conclusively that there are *no other* reasonable modification options
12 available that would enable Uber to meet the requirements of the ADA. Plaintiffs request
13 “injunctive relief to require Defendants to bring their transportation service into compliance and
14 remain in compliance with state and federal anti-discrimination statutes.” Compl. at 18. Uber
15 points to no authority indicating that plaintiffs are required to allege the precise means of redress
16 at the pleading stage. Here, plaintiffs plausibly state a claim for relief that is not beyond the power
17 of the Court to address. Accordingly, Uber’s motion for judgment on the pleadings for lack of
18 standing is denied.

19 **B. Applicability of the ADA**

20 Should plaintiffs have standing to assert their claims, Uber argues that judgment on the
21 pleadings is warranted on the grounds that Uber is not a covered entity under 42 U.S.C. § 12184.¹
22 This section, Uber reasons, is inapplicable because Uber is not an entity “primarily engaged in the
23 business of transporting people.” 42 C.F.R. § 37.29. Uber views itself as a technology company
24 that is engaged in the business of facilitating networking between drivers and riders. Because Uber
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26 ¹ Although Uber also asserts that it is not a covered entity under Section 12182, plaintiffs deny
27 asserting a claim under that section and will be held to that representation. Thus, Uber’s arguments
28 on that point need not be addressed.

1 Uber cannot defeat ADA liability on the grounds that it is not a covered entity.

2 Nonetheless, Uber insists that plaintiffs cannot proceed under the ADA because Section
3 12184 does not require private entities providing taxi service to furnish WAV service or acquire
4 WAV vehicles. Focusing on Sections 12184(b)(3) and (b)(5), Uber rejects plaintiffs’ assertion that
5 a covered entity has only two choices: purchase accessible vehicles or provide equivalent service.
6 On the contrary, an entity may maintain a fleet of exclusively non-accessible vehicles without
7 violating the ADA. Uber’s fixation on whether WAVs are specifically required by statute is
8 unavailing in light of the broad language of the ADA. A covered entity under Section 12184 is
9 subject not just to the narrow requirements associated with the purchase of new vehicles, but the
10 statute’s broader anti-discrimination mandate. Included in that mandate is an affirmative
11 obligation to make reasonable accommodations, to provide auxiliary aides and services, and
12 remove barriers to access. *See* 42 U.S.C. § 12184(b)(2). Uber could very well be required to
13 provide WAV service through some mechanism in order to comply with the anti-discrimination
14 provisions of Section 12184(b)(2). Whether providing WAV service will “fundamentally alter” the
15 nature of Uber’s business is a question of fact that cannot be resolved on the pleadings. Therefore,
16 Uber’s motion for judgment on the pleadings as to plaintiffs’ ADA claims is denied.

17 **C. State Law Protections for Out-of-State Plaintiffs**

18 With respect to plaintiffs’ state law claims, Uber asserts the CDPA does not protect
19 Mississippi plaintiffs whose alleged harm occurred outside of California. Crawford and Jernigan
20 disagree, arguing they were injured by the decisions that were made at Uber’s headquarters in
21 California.

22 California has a strong presumption against extraterritorial application of its laws. *North*
23 *Alaskan Salmon Co. v. Pillsbury*, 174 Cal. 1, 4 (1916). “The intention to make the act operative
24 with respect to occurrences outside the state will not be declared to exist unless such intention is
25 clearly expressed or reasonably to be inferred from the language of the act or from its purpose,
26 subject-matter, or history.” *Id.* (internal quotations omitted). The CDPA contains no language that
27 indicates its protections should be extended to individuals in other states, for injuries that took

1 place outside of California. *See Sousanis v. Northwest Airlines, Inc. et al.*, 2000 WL 34015861 at
2 7 (N.D. Cal. Mar. 3, 2000) (concluding that “[t]here is no reason to infer from the language or
3 purpose of Civil Code section 54.1 that it is meant to prohibit discrimination against individuals
4 outside of California.”). Indeed, because other states have their own disability rights laws, the
5 basic principles of federalism prevent the extension of the California protections to people who do
6 not live in California and have not suffered harm in the state.

7 Plaintiffs contend they were injured in California because the corporate decision to make
8 the Uber app inaccessible to Mississippi wheelchair users took place at Uber headquarters in San
9 Francisco. Although plaintiffs’ theory of liability supported denial of Uber’s motion to transfer
10 venue from its home jurisdiction to Mississippi, the mere existence of a corporate decision in
11 California that ultimately impacts an individual outside of California does not necessarily mean
12 the individual was “injured” in California. The crux of plaintiffs’ claim is that the Jackson,
13 Mississippi, version of Uber’s product is deficient as compared to the San Francisco, California,
14 version, which has accessible options. Thus, the alleged discrimination in this case occurred in
15 Mississippi, where Crawford and Jernigan claim they were denied access to Uber’s transportation
16 services. Plaintiffs fail to point to any evidence from the CDPA’s statutory language,
17 implementing regulations, or legislative history that supports the notion that plaintiffs who use or
18 desire to use Uber in another state may sue Uber under California’s disability law as long as the
19 alleged harm was in some way traceable back to Uber headquarters. Therefore, Uber’s motion for
20 judgment on the pleadings is granted with respect to plaintiffs’ CDPA claims.

21 Plaintiffs’ remaining state law claim under the UCL is predicated on their ADA claim,
22 which survives judgment on the pleadings. Yet as with the CDPA claim, plaintiffs cannot point to
23 any evidence showing that the UCL authorizes the regulation of business activities occurring
24 outside the state of California and affecting only non-California residents. *See Sullivan v. Oracle*
25 *Corp.*, 51 Cal. 4th 1191, 1207 (2011) (“Neither the language of the UCL nor its legislative history
26 provides any basis for concluding the Legislature intended the UCL to operate extraterritorially.”).
27 Because plaintiffs’ claims are rooted in Uber’s alleged denial of reasonable accommodation,

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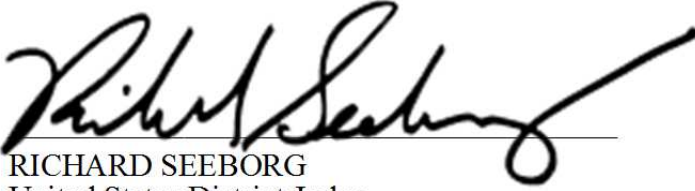
which took place in Mississippi, the challenged conduct is beyond the reach of the UCL.
Accordingly, Uber’s motion for judgment on the pleadings as to plaintiffs’ UCL claim is granted.

V. CONCLUSION

For the reasons explained above, Uber’s motion for judgment on the pleadings is denied as to plaintiffs’ ADA claims and granted as to their claims under the CDPA and the UCL.

IT IS SO ORDERED.

Dated: March 1, 2018



RICHARD SEEBORG
United States District Judge