

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

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

TSI USA LLC,
Plaintiff,
v.
UBER TECHNOLOGIES, INC.,
Defendant.

Case No. [17-cv-03536-HSG](#)

ORDER GRANTING MOTION TO DISMISS

Re: Dkt. No. 90

United States District Court
Northern District of California

Pending before the Court is Defendant Uber Technologies, Inc.’s motion to dismiss. See Dkt. No. 90. The Court finds this matter appropriate for disposition without oral argument and the matter is deemed submitted. See Civil L.R. 7-1(b). On September 25, 2018, the Court granted in part and denied in part Defendant’s motion to dismiss. See Dkt. No. 68. Plaintiff TSI USA LLC subsequently filed its amended complaint, see Dkt. No. 89 (“SAC”), which Defendant contends does not remedy the deficiencies that the Court previously identified, see Dkt. No. 90. Because Plaintiff neither opposed the motion to dismiss nor amended its complaint as directed, the Court **GRANTS** Defendant’s motion to dismiss.

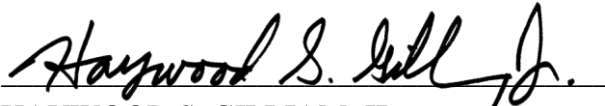
As an initial matter, Plaintiff failed to oppose or otherwise respond to Defendant’s motion to dismiss by the May 30, 2019, deadline. The Court, therefore, issued an order to show cause why Defendant’s pending motion to dismiss should not be granted. See Dkt. No. 94. In response, Plaintiff acknowledged that it was not opposing the motion. See Dkt. No. 95. On top of this concession, the Court agrees with Defendant that Plaintiff’s fraud and defamation claims, as well as its prayer for attorneys’ fees and exemplary damages, are still insufficiently pled. First, Plaintiff has not alleged any additional facts to support its fraudulent inducement claim. Instead, Plaintiff cites the same correspondence, sent after the parties entered into the contract, which does

1 not establish that Defendant made any false or misleading statements at the time the parties were
2 entering into the contract. See SAC ¶¶ 10, 13, 25, 62–71. Second, Plaintiff has still not alleged
3 with any degree of specificity the substance or context of the allegedly defamatory statements in
4 support of its commercial disparagement claim. See id. ¶¶ 50–51, 74–75. The Court remains
5 unable to determine whether the alleged statements are actionable statements of fact or
6 inactionable statements of opinion. Lastly, Plaintiff has not identified any applicable statute or
7 agreement that would allow for an award of attorneys’ fees or exemplary damages.

8 Accordingly, the Court **GRANTS** the motion to dismiss without leave to amend. The
9 Court further **SETS** a case management conference for October 8, 2019, at 2:00 p.m. Plaintiff is
10 **DIRECTED** to have retained local counsel by then. See Civil L.R. 11-3(a)(3). The parties should
11 be prepared to discuss the next steps in this case, including an anticipated schedule.

12 **IT IS SO ORDERED.**

13 Dated: September 17, 2019

14 
15 HAYWOOD S. GILLIAM, JR.
16 United States District Judge

17
18
19
20
21
22
23
24
25
26
27
28