IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS, EASTERN DIVISION

VUGO, INC., DONALD DEANS, DENISE JONES, GLOUSTER BROOKS, and PATRICIA PAGE, Plaintiffs, and MURRAY MEENTS, individually, and on behalf of all others similarly situated, Plaintiff-Intervenor, v. CITY OF CHICAGO, an Illinois municipal corporation Defendant.	)	Case No. 17-cv-864 Judge Elaine E. Bucklo

THE CITY'S MOTION TO (1) DISMISS PLAINTIFFS' AND PLAINTIFF-INTERVENOR'S COMPLAINTS AND (2) CONTINUE THE DATE FOR FILING OF THE PARTIES' RULE 26 MEETING REPORT

Defendant City of Chicago ("City"), by its counsel, Edward N. Siskel, Corporation Counsel for the City of Chicago, hereby respectfully moves, first, to dismiss pursuant to Federal Rules of Civil Procedure 12(b)(1) and 12(b)(6) the Amended Complaint of Plaintiffs Vugo, Inc., Donald Deans, Denise Jones, Glouster Brooks, and Patricia Page and the Drivers' Complaint in Intervention of Plaintiff-Intervenor Murray Meents (together, the "Complaints"), and second, to continue the date for filing the parties' Rule 26 Meeting Report until after the City's motion to dismiss is resolved. Plaintiffs (which hencefore includes Plaintiff-Intervenor Meents) do not object to the request to continue the date for filing the parties' Rule 26 Meeting Report. In support of its motion, the City states as follows:

1. Plaintiffs are participants in the ridesharing industry that raise claims under the federal and Illinois Constitutions against a City of Chicago ("City") ordinance prohibiting commercial advertising on the exterior and interior of ridesharing vehicles. See Municipal Code of Chicago ("MCC") 9-115-130 (the "Ordinance").

2. On February 2, 2017, Plaintiff Vugo, Inc. ("Vugo") filed its original complaint. Dkt. No. 1.

3. On February 28, 2017, Plaintiff-Intervenor Meents filed a motion to intervene in this matter. Dkt. No. 12.

4. On March 20, 2017, Plaintiff Vugo filed its Amended Complaint, which added as Plaintiffs Brooks, Deans, Jones, and Page. Dkt. No. 15.

5. On April 25, 2017, the Court granted Plaintiff-Intervenor Meents's motion to intervene. Dkt. Nos. 22-23. On that date, the Court also ordered the parties' to file a Rule 26 Meeting Report by May 23, 2017 and set a date for a scheduling conference on May 26, 2017. Dkt. No. 22.

6. The Complaints contain the same two counts: Count I alleges that the Ordinance violates free speech protections of the federal and Illinois Constitutions, and Count II alleges violations of the Equal Protection Clauses of the federal and Illinois Constitutions. Plaintiffs' claims fail and should be dismissed pursuant to Federal Rules of Civil Procedure 12(b)(1) and 12(b)(6).

7. On a Rule 12(b)(1) motion, the plaintiff bears the burden of proving that subject matter jurisdiction is proper and must allege facts sufficient to establish that the jurisdiction exists. Silha v. ACT, Inc., 807 F.3d 169, 173-74 (7th Cir. 2015). A necessary element for the Court to have jurisdiction is "that a litigant have 'standing' to challenge the action sought to be

adjudicated in the lawsuit." Valley Forge Christian Coll. v. Ams. United for Separation of Church & State, Inc., 454 U.S. 464, 471 (1982).

8. To survive a motion to dismiss pursuant to Rule 12(b)(6), "a complaint must contain sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009) (quotation omitted). Although well-pleaded factual allegations are presumed true for purposes of a motion to dismiss, legal conclusions and conclusory allegations that merely recite a claim's elements are not presumed true. Munson v. Gaetz, 673 F.3d 630, 632-33 (7th Cir. 2012).

9. Because the Ordinance only restricts commercial speech, Plaintiffs' free speech claims in Count I are evaluated under the test set forth in Central Hudson Gas & Electric Corp. v. Public Service Commission of New York, 447 U.S. 557 (1980). Under that test, commercial speech receives less protection than other speech, and a government regulation is lawful so long as the regulation directly advances a substantial governmental interest and burdens no more speech than necessary to further that interest.

10. Here, the City's restriction on advertising in and on ridesharing vehicles directly advances the City's substantial interests in traffic safety, aesthetics, and passenger comfort by reducing visual clutter that can be distracting to other drivers or pedestrians and intrusive to passengers. In addition, the restriction burdens no more commercial speech than necessary because it applies precisely to locations where allowing commercial advertising would thwart these interests. Accordingly, Count I fails to state a valid claim and should be dismissed.

11. Moreover, the challenge in Count I to the Ordinance's restriction on interior advertising fails for the separate reason that Plaintiffs lack standing: None of the Plaintiffs allege that they themselves generate any commercial advertising content that they wish to show inside

ridesharing vehicles, and the Ordinance therefore does not injure them by preventing them from engaging in commercial expression inside vehicles.

12. Finally, Plaintiffs' equal protection claim in Count II, which is governed by the more deferential rational basis standard, fails as a matter of law because the City has rational justifications for restricting advertisements in and on ridesharing vehicles, but not taxis or private vehicles.

13. The City also requests that the Court continue the date for the parties' filing of a Rule 26 Meeting Report until after the City's motion to dismiss is resolved.

14. As the Court is aware, to submit a Rule 26 Meeting Report, the parties would be required to prepare a detailed plan on matters that include pretrial scheduling, expected written and oral discovery, and settlement possibilities.

15. If the Court grants the City's motion to dismiss in its entirety, there will be no need to provide a Rule 26 Meeting Report, and even if the City's motion is granted in part, the scope of this litigation (and therefore, the scheduling expectations reflected in a Rule 26 Meeting Report) would be significantly altered.

16. Accordingly, the City submits that it would serve the parties' and Court's interests in efficiency to first address the City's motion to dismiss before proceeding with the Rule 26 Meeting Report and scheduling conference.

17. Counsel for Plaintiff Vugo, Brooks, Deans, Jones, and Page and counsel for Plaintiff-Intervenor Meents have informed counsel for the City that they do not object to the continuance of the Rule 26 Meeting Report filing date until after the City's motion to dismiss is resolved.

WHEREFORE, for the foregoing reasons, and those in the City's Memorandum in Support, which the City incorporates as if set forth fully herein, the City respectfully requests that the Court dismiss the Complaints with prejudice, continue the date for the parties' filing of a Rule 26 Meeting Report, and grant the City such further relief as this Court deems just and appropriate.

Date: May 19, 2017

Respectfully submitted,

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By: /s/ David M. Baron

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