IN THE CIRCUIT COURT OF THE
FIFTEENTH JUDICIAL CIRCUIT IN AND FOR
PALM BEACH COUNTY, FLORIDA

TERESA BROOKES,

Plaintiff, CASE NO: 50-2019-CA-004782-XXXX-MB

vs.

LYFT, INC., LYFT FLORIDA, INC.,
THE HERTZ CORPORATION, and
WILKY ILET,

Defendants.
_____/

DEFENDANT LYFT'S REPLY IN IN SUPPORT OF ITS MOTION FOR PARTIAL SUMMARY JUDGMENT AS TO PLAINTIFF'S PRODUCTS LIABILITY CLAIMS

Defendant, Lyft, Inc. d/b/a Lyft Florida, Inc. ("Lyft"), hereby files this reply in support of its Motion for Partial Summary Judgment as to Plaintiff's Products Liability Claims, Dkt. No. 333 (the "Motion"), and in response to Plaintiff's opposition thereto, Dkt. No. 394 (the "Opposition").

INTRODUCTION

Plaintiff's Opposition acknowledges that the threshold issue raised in Lyft's Motion—whether the Lyft digital application (the "Lyft App") is a service, and thus outside the scope of products liability law, or a product—"is a legal question for the Court." Opp. at 11. But Plaintiff fails to cite any legal authority or evidence supporting her position that the Lyft App is a product. That is because Plaintiff's position is not only unsupported and unprecedented, it is contrary to both Florida statutory and common law and recent decisions rejecting identical products liability claims after finding that transportation network company ("TNC") apps are services, not products.

First, the Opposition ignores the plain language of the TNC Statute, which squarely addresses this exact issue and defines the Lyft App as an "online-enabled technology application

service." Fla. Stat. § 627.748(1)(a) (emphasis added). Plaintiff cannot explain why or how this clear and explicit legislatively mandated designation of the Lyft App as a "service" can simply be disregarded. It cannot be, and that statutory definition by itself forecloses Plaintiff's claim.

Second, the Opposition likewise overlooks the definitive holdings in two recent California decisions cited by Lyft dismissing analogous products liability claims because TNC Apps are services, not products. *See Polanco v. Lyft, Inc., et al.*, No. 30-2019-01065850 (May 18, 2021 Cal. Super. Ct.), Minute Order at 1-2 (the "App is a service, not a product."); *Doe v. Uber Technologies, Inc., et al.*, No. 19-CV-11874 (Nov. 30, 2020 Cal. Super. Ct.) at 11 ("the Uber App is not a product"). Despite Lyft raising both of these decisions in a Notice of Supplemental Authority nearly a year ago, Dkt. No. 372, Plaintiff failed to even mention, much less distinguish, them in the Opposition. Two weeks later, Plaintiff filed a supplemental response attempting to address these directly-on-point cases, Dkt. No. 397, but offered no meaningful distinction, because they are indistinguishable.

Third, Plaintiff concedes that the evidence is undisputed that Lyft does not profit from the sale of the Lyft App in commerce—a prerequisite for any products liability claim—because the Lyft App is downloadable for free and Lyft receives a fee for *services* provided through the App.

Fourth, Plaintiff fails to identify any evidence that the Lyft App is defective. Plaintiff acknowledges that her own expert testified that the Lyft App fully complies with the TNC Statute and other Florida statutes regulating distracted driving and that ***it can be used safely as designed***. Despite this, Plaintiff's theory of defect is that Lyft somehow "controls" drivers through the Lyft App simply by facilitating notifications from potential riders, as if drivers were mindless marionettes with no free will to drive safely. Not only does that defy common sense, it also improperly imports a vicarious liability concept ("control") into a products liability cause of action.

Lyft (the company)'s relationship with drivers is irrelevant to how the Lyft App works for purposes of product liability. And Plaintiff identifies no court that has found a product defective because of how the manufacturer interacts with its users.

Regardless, Plaintiff's "control" theory is directly foreclosed by the TNC Statute: "**A TNC is not deemed to own, *control*, operate, direct, or manage . . . TNC drivers that connect to its digital network**." Fla. Stat. § 627.748(1)(e) (emphasis added). This clear statutory pronouncement is binding, dispositive, and evinces unambiguous legislative intent to prevent this type of claim against TNCs. Plaintiff, and her expert, cannot contravene black-letter law to suggest the contrary.

Fifth, if this conclusion were not already cemented, the 2020 Amendment to the TNC Statute confirms it. That amendment explicitly precludes *any* liability for Lyft "by reason of owning, operating, or maintaining the digital network" for harm caused by TNC drivers using Lyft's digital network. Fla. Stat. § 627.748(18)(a). Plaintiff argues the 2020 Amendment only covers "vicarious liability" based solely on its statutory heading, and that it cannot apply retroactively to the 2019 accident in this case. Opp. at 19-24. But the text of the 2020 Amendment sweeps more broadly than its title, and merely confirms what was already apparent in the 2017 version of the statute—the Florida legislature did not intend to subject TNCs to products liability claims for doing exactly what the TNC Statute permits.

Finally, Plaintiff acknowledges that she had no relationship with Lyft and fails to offer any meaningful distinction to the well-established case law in Florida and around the country finding no duty as a matter of law under these circumstances.

At bottom, accepting Plaintiff's arguments in this case would convert every run-of-the-mill car accident case into a summary judgment-proof, complex products liability action merely because a TNC is involved. This would contravene the Florida Legislature's intent in the TNC Statute and

uniform, nationwide jurisprudence—including both well-established tenets of Florida products liability law and recent decisions expressly finding TNC Apps to be services and not products.

Lyft's Motion should be granted as to Plaintiff's Products Liability Claims, Counts VI - VIII.

ARGUMENT

I. The Lyft App Is a Service, Not a Product.

Plaintiff does not dispute Lyft's argument that, if the Lyft App is a service, rather than a product, Plaintiff's Products Liability Claims all fail as a matter of law. But Plaintiff's position that the Lyft App is, in fact, a product, cannot be reconciled with the plain language of the TNC Statute, recent case law on this precise issue finding that TNC Apps are services rather than products, Plaintiff's own allegations, or the undisputed evidence in this case.

A. Plaintiff Ignores the Plain Language of the TNC Statute Defining the Lyft App as a Service, as Well as Her Own Allegations and the Undisputed Evidence.

Plaintiff erroneously argues that the TNC Statute—enacted by the Florida legislature to comprehensively regulate all TNCs operating in Florida, such as Lyft—"does not state that Lyft's application is a service." Opp. at 11. But that is exactly what the TNC Statute says: a TNC is defined as "an entity operating in this state pursuant to this section using a digital network to connect a rider to a TNC driver, who provides prearranged rides," and a "digital network" is defined as an "online-enabled ***technology application service***, website, or system offered or used by a [TNC] which enables the prearrangement of rides with [TNC] drivers." Fla. Stat. § 627.748(1)(a), (e) (emphasis added). This language is simply irreconcilable with Plaintiff's position that the Lyft App is a product, and the Opposition makes no attempt to reconcile it other than arguing that interpreting "application service" to mean "application service" would "not [be] a reasonable reading of the statute." Opp. at 11. That position is inconsistent with the fundamental tenet of statutory interpretation: "If the language of the statute is clear, the statute is given its plain

meaning, and the court does not look behind the statute's plain language" for a different result. *State v. Maisonet-Maldonado*, 308 So.3d 63, 68 (Fla. 2020) (citation omitted).

Plaintiff next argues that "Plaintiff's claims do not arise from the service Lyft provides through its application (connecting drivers with riders)." *Id.* But this is flatly contradicted by Plaintiff's own allegations. In pleading her Products Liability Claims in the operative Amended Complaint, Plaintiff alleges that:

- "at all times relevant to this suit [Lyft was] engaged in the business of providing transportation ***services*** to potential Customers with smartphones";
- Lyft "promoted distracted driving by requiring Lyft drivers to respond to Customers' requests for driving ***services*** in a limited period of time," and
- "The Lyft application was unreasonably dangerous because, as designed, the application requires Drivers, including ILET, to repeatedly take their eyes off the roadway while driving in order to search for customers requesting transportation ***services*** and respond to requests for transportation ***services***."

Am. Compl. ¶¶ 40, 45(d), 53(j), 58 (emphases added). Plaintiff's claims arise from the service Lyft provides through the Lyft App, and Plaintiff's disavowal of her own allegations both telling and improper at this stage.[1] *See e.g., S. Motor Co. of Dade Cty. v. Doktorczyk*, 957 So. 2d 1215, 1218 (Fla. 3d DCA 2007) ("A claim is, of course, limited by the allegations in the complaint.") (citing *Arky, Freed, Stearns, Watson, Greer, Weaver & Harris, P.A. v. Bowmar Instrument Corp*., 537 So. 2d 561, 563 (Fla. 1988)).

Plaintiff argues that her allegations should be disregarded because they "were made early in the case, before plaintiff had the full opportunity to conduct discovery." Opp. at 13. But, if that

[1] Indeed, in a recent copycat lawsuit in this Circuit in which the plaintiff copied and pasted the allegations from this case, identical products liability claims were dismissed on April 22, 2022 by Judge Joseph Curley for failure to adequately allege a product. *See Baxter-Armentrout, v. Lyft, Inc., et al.*, No. 50-2021-CA-013917-XXXX-MB. While Judge Curley granted the plaintiff leave to amend, Plaintiff's allegations here are fixed and Plaintiff can point to no evidence in the record that the Lyft App is a product.

were true, Plaintiff was required to amend her complaint well before now. Further, Plaintiff fails to explain why that matters, because she cannot point the Court to any evidence in the record supporting her assertion that the Lyft App is a product. Indeed, Plaintiff's own expert Mary Cummings confirmed that TNCs are statutorily defined as a "service." Mot. Ex. 8 at 128:6-9 ("Q. Do you see how the digital network offered by transportation network companies like Lyft is defined as a service, right? A. Yes."). Lyft's corporate representative Brandon Souba confirmed the service offered by Lyft at his deposition. Mot. Ex. 1 at 49:13-15. Even Plaintiff's counsel confirmed that Lyft offers a service through the Lyft App at Mr. Souba's deposition. Ex. 1 at 51:18-20 ("I am limiting this deposition to its services where Lyft connects passengers, or riders, with drivers."). Finally, Lyft's "Terms of Service," as the name suggests, confirm that Lyft offers a service. *See* Mot. Ex. 4 at Ex. A ¶ 1 ("The Lyft Platform[:] . . . the driving services provided by Drivers to Riders that are matched through the Platform shall be referred to collectively as the 'Services'"). The TNC Statute, Plaintiff's expert, her own allegations, and the undisputed, uniform evidence all confirm that the Lyft App is a service, not a product, and summary judgment should be granted for this reason alone.

B. Plaintiff Cannot Distinguish Recent Decisions Holding that TNC Apps Are Services.

In the Opposition, Plaintiff failed to mention, much less distinguish, the recent California decisions cited in Lyft's June 14, 2021 Notice of Supplemental Authority, Dkt. 372 ("Supp. Auth."), granting motions to dismiss products liability claims after finding that TNC Apps are services, not products: *Polanco v. Lyft, Inc., et al.*, No. 30-2019-01065850 (May 18, 2021 Cal. Super. Ct.) and *Doe v. Uber Technologies, Inc., et al.*, No. 19-CV-11874 (Nov. 30, 2020 Cal. Super. Ct.).

In *Polanco*, the court dismissed a products liability claim alleging that the Uber App distracted a driver, finding that "products liability does not extend to services" and that "the Uber

App is a service, not a product." *See* Supp. Auth. Ex. 2, Minute Order at 1-2. The court explained:

> Based on the allegations in [Plaintiff's complaint], the Uber App does not fit within the definition of a "product" since it is not a "tangible good" or "physical object." As Defendants note, [Plaintiff] describes the Uber App as a "computer-based technology platform that matches drivers with passengers in real time." This allegation itself indicates the Uber App is a service, not a product.

Id. at 2 (citations omitted). Similarly, in *Doe v. Uber Technologies, Inc., et al.*, No. 19-CV-11874 (Nov. 30, 2020 Cal. Super. Ct.), the court held that "the Uber App is not a product," finding that the plaintiffs' own allegations confirmed this conclusion. Supp. Auth. Ex. 3 at 11; *id.* at 12 ("By plaintiffs' own allegations, the Uber App was used to gain a service: a ride.").

After ignoring these authorities in her Opposition, Plaintiff filed a supplemental response to address them two weeks later. Dkt. 397. But Plaintiff's supplemental response essentially asks the Court to continue ignoring these decisions, as she offers no principled basis for distinguishing them. Plaintiff argues only that *Polanco* and *Doe* are "factually distinguishable," *id.* at 1, and turn on a "definition of 'product' contained in the Restatement (Third) of Torts that Florida does not follow." *Id.* But Plaintiff does not, and cannot, back up either assertion.

The allegations and TNC applications at issue in *Doe* and *Polanco* are indistinguishable from those in this case. *Compare Doe*, at 12 ("The Uber Defendants provide transportation services to the public for compensation through its network of drivers using an online-enabled smartphone application (the 'Uber App product') to connect passengers with drivers."), *with* Am. Compl. ¶ 40 ("[Lyft was] engaged in the business of providing transportation services to potential Customers with smartphones"); *id.* ¶ 15 ("the 'Lyft' mobile application ('app') [] allows potential customers/passengers ("Customers") with smartphones to submit a request for a Lyft driver . . . . to provide transportation to customers.").

Likewise, the California definitions of "product" and "service" relied on in *Polanco* and *Doe* are indistinguishable from the definitions of "product" and "service" under Florida law, which

is why Plaintiff fails to back up her assertion that the Restatement Third is any different from the Restatement Second in this regard. *Compare Doe*, at 12 ("a product is tangible personal property distributed commercially for use or consumption.'"), *with* Definition of product, 6 Fla. Prac., Personal Injury & Wrongful Death Actions § 13:2 (2021-2022 ed.) ("a product for purposes of a products liability action [is a] 'tangible personal property distributed commercially for use or consumption'"); *compare Doe*, at 11 ("Services, even when provided commercially, are not products."), *with* Definition of product, 6 Fla. Prac., Personal Injury & Wrongful Death Actions § 13:2 (2021-2022 ed.) ("Services are not products even when they are provided commercially" and "a products liability action may not be maintained against someone who performs [a] service.").

Likewise, Plaintiff attempts to draw irrelevant distinctions with the Florida cases cited by Lyft, Mot. at 7-9, but acknowledges that they all confirm that products liability claims are inapplicable to service providers. Opp. at 8-9. In reality, these cases are identical to the California decisions cited in *Doe* and *Polanco*, and stand for the proposition that even where, unlike here, a "product" *is* involved, no products liability claim will lie where the defendant's "predominant purpose" is providing a service. *Compare Polanco*, Minute Order at 1 ("'Courts have also declined to apply strict liability where the transaction's service aspect predominates and any product sale is merely incidental to the provision of the service.'" (quoting *Pierson v. Sharp*, 216 Cal. App. 3d 340, 345 (1989)), *with Porter v. Rosenberg*, 650 So. 2d 79, 80 (Fla. 4th DCA 1995) (physician's implantation of allegedly defective breast implant was a service, outside of products liability law, because the "predominant purpose" was to provide a service); *Lalonde v. Royal Caribbean Cruises, Ltd.*, No. 1:18-cv-20809, 2019 WL 144129, *2 (S.D. Fla. Jan. 9, 2019) (cruise ship "selling a service package to Plaintiff which included the right to access" an allegedly defective

product outside of products liability law). Even if there were any doubt about whether the Lyft App, itself, is a service or product, it is undisputed based on the plain language of the TNC Statute and Plaintiff's own allegations that Lyft's "predominant purpose" is to provide a service through the Lyft App. *See, e.g.*, *Polanco*, Minute Order at 2 ("the predominant purpose of the Uber App is the service of matching drivers with passengers."); *Doe*, at 12 ("By plaintiff's own allegations, the Uber App was used to gain a service: a ride.").

Finally, unable to distinguish the directly-on-point decisions in *Polanco* or *Doe* finding TNC Apps to be services or explain why this Court should reach a different result under Florida law other than arguing, in conclusory fashion, that California products liability law is different, Plaintiff does an about face and relies on a *different* California decision, *Hardin v. PDX, Inc.*, 173 Cal. Rptr. 3d 397 (Cal. Ct. App. 2014). But *Hardin* offers no guidance whatsoever on whether TNC digital applications can be considered products. *See* Opp. at 8. In *Hardin*, the defendant sold a software program to pharmacies that the plaintiff alleged was defective because it produced "drug monographs that automatically omitted warnings of serious risks," leading the plaintiffs to take a drug they otherwise would not have taken. 173 Cal. Rptr. 3d at 407. A software program sold in commerce to pharmacies that produces allegedly defective drug warning information has no bearing on the question of whether a free digital application that provides a statutorily-defined "service" can be considered a product. *Doe* and *Polanco* considered that precise question after the *Hardin* decision and answered it in the negative. This Court should too.

Equally important, the *Hardin* case was decided at the motion to dismiss stage, and the court did not find that the software program at issue was a product, rather than a service, as a matter of law. Rather, the court noted that the defendant had failed to even address that argument in its motion to dismiss, and that the case accordingly should be allowed to proceed to discovery.

173 Cal. Rptr. 3d at 407 ("[Defendant] has not argued, let alone shown, that [plaintiff] cannot prevail under that theory. Maybe so, but at this early juncture we cannot so conclude.").

Here, discovery has long since closed, and it is Plaintiff's burden at summary judgment to come forward with evidence or authority establishing that the Lyft App is a product. *See, e.g.*, *Plaza v. Fisher Dev., Inc.*, 971 So. 2d 918, 924 (Fla. 3d DCA 2007) ("In viewing the summary judgment evidence on this point, it appears to us that [plaintiff] has not come forward with sufficient evidence to demonstrate that [defendant] sold a product, rather than sold services.") (internal quotation marks and citation omitted); *Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986) (summary judgment is mandated where a party "fails to make a showing sufficient to establish the existence of an element essential to that party's case, and on which that party will bear the burden of proof at trial"). Plaintiff quibbles with Lyft's reliance on the TNC Statute, Plaintiff's own allegations, Plaintiff's own expert's testimony, and the testimony of Lyft's corporate representative, but makes no showing of her own that the Lyft App is a product. None. This mandates summary judgment. *See Polanco*, Minute Order at 2 ("Although in her Opposition [plaintiff] refers to the Uber App as a 'product,' she fails to demonstrate how it falls within any definition of a product and does not cite to any cases that support her contention that the Uber App is properly classified as a product.").

II. Plaintiff Concedes that Lyft Does Not Profit from the Sale of the Lyft App.

Plaintiff acknowledges that, to be liable under any products liability theory, a defendant must "profit from [a product's] distribution to the public." Opp. at 12. Plaintiff further concedes that "Lyft does not charge the driver in the traditional sense of a purchase or sale to download the application." *Id.* at 11. Plaintiff argues that Lyft "profits" through the Lyft App, but admits that Lyft does so through fees derived from the ***service*** it provides through the Lyft App—*i.e.*, when

"a Lyft driver and rider connect through the Lyft [A]pp and a fare is collected," ***not*** through distribution of the App itself. *Id*. at 12. This is dispositive, and also mutually inconsistent with Plaintiff's assertion that her claims have nothing to do with "the service Lyft provides (connecting drivers to riders)." *Id.* at 8.

Plaintiff cites an Alabama decision, *First Nat'l Bank of Mobile v. Cessna Aircraft Co.*, standing for the principle that a "seller" of a product can be liable even without a "technical sale" as long as the seller places a product in the "stream of commerce," such as by giving away a "free sample." Opp. at 12 (citing 365 So. 2d 966, 967 (Ala. 1978)). But the rationale behind that decision is that a sample is given away as part of the ultimate commercial "marketing cycle," *i.e.*, designed to ultimately lead to sales for that exact product. *Id.* Similarly, Plaintiff relies on cases involving "lessors in a commercial lease transaction, who did not technically sell the product but were within the product's distributive chain and profiting from the sale or distribution of the product." Opp. at 12 (citing *Samuel Friedland Fam. Enterprises v. Amoroso*, 630 So. 2d 1067, 1071 (Fla. 1994)). The Lyft App is never intended to be sold, and Lyft does not "profit from the sale or distribution of the product." *Id.* The evidence is undisputed that Lyft only profits from the service the Lyft App facilitates between third parties: drivers and riders. In other words, even if the Lyft App were downloaded by a million people, Lyft would not make a cent unless and until users took advantage of the "technology application service, offered . . . by [Lyft] which enables the prearrangement of rides with [TNC] drivers." Fla. Stat. § 627.748(1)(a). Service providers such as Lyft simply cannot be liable under products liability theories, warranting summary judgment. *See* Mot. at 7-8.

III. There Is No Evidence the Lyft App Is Defective or Unreasonably Dangerous.

Even if the Lyft App could be considered a product sold for profit, Plaintiff offers no

meaningful response to the testimony of her own "distraction" expert, Dr. Mary Cummings, that the Lyft App (1) can be used safely as designed ("I agree that the Lyft app can be used safely"); (2) is fully compliant with the TNC Statute, enacted by the legislature to safely regulate TNCs; and (3) is fully compliant with Florida's "Texting While Driving Law." *Compare* Mot. at 12-16; *with* Opp. at 13-19. Faced with this undisputed record, Plaintiff can point to no evidence that the Lyft App is defective or unreasonably dangerous, which requires a showing that there is a danger in the Lyft App "beyond that which would be contemplated by the ordinary consumer" with "knowledge common to the community." *Savage v. Jacobson Mfg. Co.*, 396 So. 2d 731, 732 (Fla. 2d DCA 1981).

Indeed, Plaintiff implicitly admits she has abandoned the theory of defect pled in the Amended Complaint—that the Lyft App was defective merely because it allowed drivers to receive ride requests while driving—as that arrangement was expressly contemplated by the TNC Statute and the evidence is undisputed that drivers are free to ignore ride requests while driving or only accept them when able to safely do so. *See* Mot. at 12-16; Opp. at 13 (acknowledging that plaintiff's theory of defect now goes beyond "the allegations in plaintiff's complaint").

Now, Plaintiff advances what she refers to as a "gamification" theory of defect, arguing that "the Lyft application habituates drivers to glance at the phone to look for visual signals." Opp. at 14. Plaintiff relies exclusively on Dr. Cummings for this theory, citing to her speculative testimony that the "the gamification in the apps causes an almost hypnotic response," essentially turning drivers into mindless zombies and every phone into a defective product. Opp. Ex. 9 at 163:7-20. There is no cognizable evidence in the record supporting such a theory. Dr. Cummings *did not even download the Lyft App*, much less conduct any testing or studies on the "visual signals" it emits or whether it "habituates drivers." *Id.* at 126:4-19. Dr. Cummings based her

opinion on a *single* article she Googled that did not even address driver distraction. *Id.* at 164:4-10. She candidly admitted that, in addition to her failure to test or study the Lyft App, she is "*not aware of a peer reviewed article that has specifically studied rideshare notification messages and their relation to driver distraction*." *Id.* at 164:4-10.

Given these admissions, when pressed for the factual and scientific underpinnings of her theory, Dr. Cummings admitted she was simply relying on Defendant Ilet's testimony that "things popped up on his phone all the time" and that therefore it was "***very possible*** within a reasonable degree of scientific certainty that Mr. Ilet . . . had a prolonged, involuntary glance at that stimuli." *Id.* at 98:12-99:2 (emphasis added). Such speculation masquerading as science is patently inadmissible.

Plaintiff attempts to give Dr. Cummings's theory a veneer of factual grounding by pointing to studies that "mobile applications interacting with human systems are supposed to be designed to cause a driver to look down for, at most, 2 seconds." Opp. at 15. But, because Dr. Cummings did not even download or study the Lyft App, she could not say how long any of the hypothetical "visual stimuli" she complains of could have distracted any driver. Opp. Ex. 9 at 123:21-24 ("Q. What evidence are you relying on that a glance at any pop-up or notification on the Lyft app requires more than two seconds? A You're right. I don't have that evidence."). Instead, Plaintiff tries to shift the onus to Lyft, arguing "Critically, Lyft does not know how long its drivers look at its application." Opp. at 15. But this would turn Plaintiff's burden of coming forward with evidence of a defect on its head. *See, e.g.*, *Farias v. Mr. Heater, Inc.*, 757 F. Supp. 2d 1284, 1293 (S.D. Fla. 2010) ("The burden to show that a defective design exists is on the plaintiff. . . . ").

Plaintiff also attempts to make an alternative design argument entirely detached from this accident that relies on Plaintiff's belief that Uber may currently have "voice cueing commands."

Opp. at 14. This unsupported suggestion is irrelevant, as "[a]n action is not maintainable in products liability merely because the design used was not the safest possible." *Husky Indus., Inc. v. Black*, 434 So. 2d 988, 991 (Fla. 4th DCA 1983). And again, Dr. Cummings's testimony in this regard is wholly speculative, as she did not study *either* the Lyft App or the Uber App, much less either App's voice command capability, whether such capability would reduce distraction, and if voice command capability had anything to do with this accident. She merely posited off the cuff that "I think now that Uber has voice commands, I think Uber is probably safer on that front than Lyft." Opp. Ex. 9 at 138:4-9. Moreover, the single, non-peer reviewed article Dr. Cummings relied on for her "gamification" theory addressed both Uber and Lyft, *id.* at 163:7-13, so if such a source could even be credited to draw sweeping generalizations about TNC Apps' potential to "hypnotize" drivers—and again, it should not, for obvious reasons—those generalizations would apply throughout the TNC industry.

There is simply no evidentiary or scientific basis for Plaintiff's new "gamification" theory of defect. Dr. Cummings's testimony in one breath that she "love[s] Lyft" and that the Lyft App can be safely used as designed—such as when she safely sent *hundreds* of ride requests to drivers through the Lyft App without "hypnotiz[ing]" them, *id.* at 136:13-137:18 ("I do not think that I am endangering people")—but then in the next breath that the Lyft App was "gamified" based on such notifications "popping up" and on a single article she Googled, is the definition of unprincipled, speculative testimony that is entitled to no weight at summary judgment.[2] There is

[2] Moreover, as noted in Lyft's motion for summary judgment for lack of proximate causation, the evidence is undisputed that nothing "popped up" on Ilet's phone at the time of the accident at issue. The Court agreed with that assessment of the evidence, but denied the motion, largely based on a finding that Lyft exercised "control" over Ilet. *See* Order at 6-7. Respectfully, a finding of "control" related to vicarious liability—not product liability—and it cannot be squared with the clear mandate of the TNC Statute that a "TNC is not deemed to own, control, operate, direct, or

no evidence the Lyft App is defective, and summary judgment should be granted for this independent reason.

IV. The 2020 Amendment Confirms that the Products Liability Claims Are Barred.

Plaintiff argues that because Section 18 of the 2020 TNC Amendment is titled "Vicarious liability," it does not apply to the Products Liability Claims. Opp. at 20-24. But the text of Section 18 sweeps much more broadly than its title, providing in pertinent part that a "TNC is not liable under general law by reason of owning, operating, or maintaining the digital network accessed by a TNC driver . . . for harm to persons or property which results or arises out of the use . . . of a motor vehicle operating as a TNC vehicle while the driver is logged on to the digital network" if certain factors are met, as they undisputedly are here. Fla. Stat. § 627.748(18)(a)(1). Plaintiff's Products Liability Claims all arise from Ilet's use of a TNC vehicle while logged in to Lyft's digital network. Unless Lyft is "operating . . . the digital network," no notifications come through the Lyft App (which, as noted above, is why the Lyft App is a service, not a product). The heading of Section 18 does not limit the plain language of the body of that Section, which forecloses Plaintiff's claims. *See Brooks v. Brooks*, 164 So. 3d 162, 164 (Fla. 2d DCA 2015) ("'[T]he title of a statute and the heading of a section cannot limit the plain meaning of the text.'") (quoting *Bhd. of R.R. Trainmen v. Balt. & Ohio R.R. Co.*, 331 U.S. 519, 528-29 (1947)).

Plaintiff further argues that the 2020 Amendment does not apply because it is a substantive rather than a remedial amendment. Opp. at 19-21. Plaintiff acknowledges that a substantive amendment requires a change in a "vested right," but argues only that the amendment changed "vicarious liability" rights. *Id.* Plaintiff does not, and cannot, explain how she had a vested right to bring products liability claims against Lyft that the 2020 Amendment altered. That is because

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manage. . . TNC drivers." Fla. Stat. § 627.748(1)(e). That mandate also precludes Plaintiff's speculative "gamification" theory of defect.

there was no such right in the original 2017 TNC Statute, and the 2020 Amendment merely confirms that.

In the original TNC Statute, the Florida Legislature took great pains to define TNCs as service providers, define TNC drivers as independent contractors over whom TNCs exercised no control, but also to create a detailed insurance structure permitting those injured by TNC drivers to significantly recover upon proof of mere negligence against TNC drivers. Fla. Stat. § 627.748(7) (mandating significant insurance coverage). That streamlined design was intended to facilitate streamlined litigation and recovery for TNC auto accidents like this one. Accepting Plaintiff's position that every run-of-the-mill car accident case can be turned into a complex product liability action merely because a TNC is involved would be antithetical to both the 2017 and 2020 versions of the TNC Statute, and would undermine the Florida Legislature's intent in carefully crafting the TNC Statute to foreclose that result with its precise statutory definitions and comprehensive insurance scheme. *See, e.g.*, *Florida Dept. of Environmental Protection v. ContractPoint Florida Parks, LLC*, 986 So. 2d 1260, 1266 (Fla. 2008) ("[T]o discern legislative intent, courts must consider the statute as a whole, including the evil to be corrected.").

The 2020 Amendment provides further confirmation that Plaintiff's Products Liability Claims fail as a matter of law.

V. Lyft Owed No Duty to Plaintiff.

Plaintiff concedes that Lyft had no relationship with Plaintiff. Opp. at 24-29. Plaintiff's argument is that no such relationship is necessary to impose a duty on Lyft—even for the actions of a third party, Ilet, using the Lyft App—citing *West v. Caterpillar Tractor Co.*, 336 So. 2d 80 (Fla. 1976). But that decision is a strict liability case; Lyft's duty arguments are directed solely to Plaintiff's negligence-based products liability claims, which require "the existence of a

relationship between individuals which imposes upon one the legal obligation to conform to a standard of reasonable conduct so as to protect the other from foreseeable and unreasonable risks of harm." *Fla. Power & Light Co. v. Lively*, 465 So. 2d 1270, 1273 (Fla. 3d DCA 1985); *see also Surloff v. Regions Bank*, 179 So. 3d 472, 477 (Fla. 4th DCA 2015) ("[W]e hold that the bank had no duty to appellant since no special relationship existed . . ."); *McCray v. Myers*, 614 So. 2d 587, 590 (Fla. 1st DCA 1993) (similar); *see also K.M. ex rel. D.M. v. Publix Super Markets, Inc.*, 895 So. 2d 1114, 1117 (Fla. 4th 2005) (requiring the existence of a "special relationship" because "Florida courts have long been loath to impose liability based on a defendant's failure to control the conduct of a third party") (internal quotation marks omitted).

Plaintiff offers no basis for distinguishing these Florida authorities. Instead, Plaintiff relies primarily on a Georgia decision, *Maynard v. Snapchat, Inc.*, No. S21G0555, 2022 WL 779733 (Ga. Mar. 15, 2022), decided at the motion to dismiss stage and premised on unique allegations that have no bearing on this case. There, the plaintiff was struck by a driver "speeding at 100 miles per hour" using Snapchat's "Speed filter" application as part of a "game" to see how fast users of the application could go. *Id.* at *9. The plaintiff alleged not only that Snapchat knew that its application encouraged drivers to attempt to reach such speeds and was causing car crashes, but that Snapchat "purposefully designed its product to encourage" such dangerous use. *Id.* at *8. Although the trial court and court of appeals rejected the existence of any duty, the Georgia Supreme Court reversed, finding that plaintiff "may be able to introduce evidence" supporting these allegations of purposeful encouragement and knowledge of harm to third parties. *Id.* at *6. The court noted that the possibility of such evidence distinguished *Maynard* from the cases across the country rejecting device distraction theories where an accident was "'caused by the driver's inattention.'" *Id.* at *10 (citing, *e.g.*, *Durkee v. Geologic Solutions, Inc.*, 502 Fed. Appx. 326 (4th

Cir. 2013)). Discovery is complete in this case, and there is no evidence that Lyft knew that the Lyft App was being used dangerously and injuring third parties, much less encouraged such use, that could give rise to an unprecedented relationship between Lyft and third parties such as Plaintiff.

Lacking such evidence, Plaintiff's only attempt to distinguish this case from the myriad cases rejecting the imposition of duty in analogous device distraction cases, *see* Mot. at 21-23, is, again, that Lyft "controlled" drivers such as Ilet through the Lyft App. Opp. at 28. As explained above, that conclusion is both irrelevant in a products liability suit and barred as a matter of law by the TNC Statute, which expressly provides, without condition, that TNCs do not "control" drivers. Fla. Stat. § 627.748(1)(e). Plaintiff argues that here, unlike in device distraction cases finding that the ultimate duty to drive safely rests with the driver, there is a "business connection" between the Lyft App and Ilet, citing this Court's decision on Lyft's motion for summary judgment for lack of proximate causation. Opp. at 27-28. Respectfully, that distinction is irrelevant, and has been rejected as a sufficient basis for extending a duty to the defendant for harm caused by a driver absent any relationship between the defendant and a third party. *See McCray*, 614 So. 2d at 590 (no duty despite landowner profiting from drivers looking at an allegedly distracting billboard); *Durkee*, 502 F. App'x at 326 (no duty despite business connection between driver and trucking company requiring driver to use "in cab texting system" with a "design that required the driver to divert his eyes from the road to view an incoming text from the dispatcher. . . and permitted the receipt of texts while the vehicle was moving.").

Plaintiff's negligence-based Products Liability Claims fail for this additional reason.

CONCLUSION

For these reasons, and those set out in the Motion, the Motion should be granted.

Dated: April 22, 2022

Respectfully submitted,

By: */s/ James E. Gillenwater*

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on April 22, 2022, a true copy of the foregoing was served by e-Filing with the Clerk of Court and via Florida e-Filing Portal to the following:

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EXHIBIT 1

drivers with passengers; is that correct?

A I just want to be clear. You're saying "Lyft is in the business." It implies that that's all that we do. I'm just clearly -- or I want to make clear that I articulate that one of the services that Lyft offers is the ability for riders to connect with drivers.

Q So we're here regarding a motor vehicle-pedestrian collision which occurred on January 4, 2019 in which a driver who was using the Lyft driving app struck a pedestrian, and so I am asking questions in the context of a Lyft driver.

I understand that Lyft provides other services. For example, they have a bike or scooter service and they have other services that they provide with respect to food delivery and things of that nature. I am limiting this deposition to its service where Lyft connects passengers, or riders, with drivers. So I just want to make it clear that you can answer in the context of that situation; okay?

I'm not --

A Sure. I just want to --

Q -- asking about the scooter or the food