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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

Uber Technologies, Inc.; Uber USA, LLC,

Plaintiffs,

v.

American Arbitration Association, Inc.

Defendant.

Index No. _____

PLAINTIFFS' MEMORANDUM OF LAW IN SUPPORT OF THEIR MOTION FOR A PRELIMINARY INJUNCTION

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TABLE OF CONTENTS

Page

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TABLE OF AUTHORITIES

Page(s)

Cases

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Statutes

Other Authorities

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Plaintiffs Uber Technologies, Inc. and Uber USA, LLC ("Uber"), by and through their undersigned attorneys at Kaplan Hecker & Fink LLP, respectfully submit this memorandum of law in support of their motion for a preliminary injunction pursuant to CPLR 6301.

PRELIMINARY STATEMENT

On September 14, the American Arbitration Association, Inc. ("AAA") issued an invoice confirming that it intends to charge Uber nearly $100 million in patently excessive arbitration fees in a slew of materially identical arbitrations. As alleged in Uber's declaratory judgment complaint, the AAA's exorbitant demand breaches its contracts with Uber, violates the implied covenant of good faith and fair dealing, would amount to unjust enrichment, and constitutes unfair competition. It is also the crux of a scheme hatched by opportunistic lawyers who engineered the copycat claims in the first place. And by design, it puts Uber to an urgent and impossible choice, presenting a textbook example of a threat of irreparable injury:

- If Uber refuses to pay the AAA (or fails to pay on time), it will lose the right to arbitrate and face significant sanctions under a new California statute, including default on the merits;
- If Uber pays under protest, the AAA has made clear that it will close these files and potentially others, depriving Uber of its right to arbitrate; and
- If Uber pays without protest and the arbitrations proceed, the AAA will likely invoke the doctrine of arbitral immunity to try to preclude recovery later.

Accordingly, Uber brings this motion to preserve the status quo while its claims are adjudicated.

The arbitrations at issue stem from Uber's policy, announced last summer in the midst of unprecedented nationwide protests over the murder in Minneapolis of George Floyd, to waive its delivery fees on orders placed through its Uber Eats platform with independent, Black-owned restaurants. In response, a law firm recruited more than 30,000 Uber customers to file boilerplate individual arbitration demands with the AAA—the arbitrator of disputes between Uber and its

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customers—each asserting materially identical allegations of so-called "reverse race discrimination" based on Uber's announcement, and each seeking statutory damages.

Under the parties' contractual agreements governing the arbitrations, the AAA is required to exercise its discretion to ensure that its fees are tied to its actual costs, which are obviously substantially reduced in this context. In recognition of that fact, the AAA unilaterally reduced its filing fee for these matters by 72%. But inexplicably, in assessing its case management and arbitrator fees, the AAA has blindly multiplied its run-of-the-mill fee schedule into the stratosphere without regard for its actual costs, resulting in a $100 million figure just shy of its *entire revenue* for last year for all of its cases.

To date, Uber has paid more than $5 million pursuant to the AAA's invoices. Part of that amount is the reduced filing fees for all of the arbitration demands. The rest, however, is *non-reduced* case management fees for the initial batch of several hundred arbitrations, which Uber was forced to pay under threat of forfeiting its legal rights. More specifically, when Uber said that it intended to pay that invoice "under protest," the AAA responded by saying that it would "close the case files" if Uber did so, sending the claims for these demands (and who knows how many others) to court. Moreover, under a newly-enacted California statute, Uber is required to timely pay whatever amount the AAA invoices or it will lose the right to compel arbitration and face additional sanctions ranging from fines to default on the merits.

Most recently, the AAA invoiced Uber for nearly $11 million for case management fees for the second batch of arbitrations, with a due date of October 14, 2021. That invoiced amount, like the one before it, is unlawful. And absent preliminary relief, Uber is put to a choice in which it forfeits substantial rights no matter what path it takes. Accordingly, Uber brings this motion for a preliminary injunction that will preserve the status quo by: (a) enjoining the AAA from issuing

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any additional invoices; (b) prohibiting the AAA from closing any open arbitrations; and (c) extending the invoiced deadline in the event that Uber's claims cannot be adjudicated before then. Uber clearly satisfies the requirements for preliminary relief.

First, Uber has a strong likelihood of success on the merits. By accepting the 30,000-plus arbitration demands, the AAA entered into contracts for each of them. In those contracts, the AAA agreed to charge fees *only as necessary* to cover the AAA's actual costs of providing arbitration services, and to exercise its discretion to ensure that those fees are reasonable. Further, principles of equity and California's Unfair Competition Law require the AAA to comply with these representations and its own rules, rather than to exact a windfall. Thus, the AAA's demand that Uber pay fees that far exceed its actual, reasonable costs should be and likely will be declared unlawful.

Second, Uber faces irreparable injury absent preliminary injunctive relief. If Uber refuses (or fails) to pay the unlawful fees within thirty days of the invoice deadline, under a new California statute, *see* Cal. Civ. Proc. Code § 1281.97(a), it will lose the right to compel arbitration and will face significant additional sanctions, including default on the merits, not to mention reputational harm. If Uber pays under protest, reserving its right to challenge the fees, the AAA will close the arbitrations, and potentially others, sending all such disputes into court. And, if Uber pays without protest or reservation, the AAA will likely argue that the payment amounted to waiver or acquiescence, and it will almost certainly attempt to invoke the doctrine of arbitral immunity to defeat any claim once it has appointed arbitrators and the arbitrations get underway. *See, e.g.*, *Stasz v. Schwab*, 121 Cal. App. 4th 420, 430 (2004).

Third, the balance of equities favors preliminary injunctive relief here. An injunction preserving the status quo will protect Uber's interests and those of the public in facilitating

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arbitration, without prejudicing the AAA's interests. Moreover, for the avoidance of doubt and in a show of good faith, Uber has proposed to place the Invoice amount in escrow, so there is no question it will pay whatever amount the court determines is appropriate. Uber has no desire to undermine or delay these arbitrations; it seeks only to pay the reasonable fees it contracted to pay.

For all of these reasons, the Court should enjoin the AAA from issuing any further invoices and from closing any open arbitration files, and should either extend the Invoice deadline or accelerate adjudication of Uber's claims to resolution before that deadline.

BACKGROUND

A. Uber selects the AAA as its arbitration provider based upon its cost-efficiency representations and arbitration rules

Uber has used the AAA as its arbitral service provider for disputes between Uber and its customers since at least 2016, when the AAA confirmed it was "prepared to administer consumer-related disputes filed pursuant to" Uber's arbitration clause "in accordance with the Association's Consumer Arbitration Rules … and the Consumer Due Process Protocol…." Ex. A, Dec. 22, 2016 Ltr., at 1.[1] Uber's Terms of Use specifically provide for arbitration "administered by the American Arbitration Association … in accordance with the AAA's Consumer Arbitration Rules and the Supplementary Procedures for Consumer Related Disputes." Ex. B, Uber Terms of Use § 2.[2]

Throughout this period, the AAA has made and continues to make representations about the services it will provide and the fees it will charge. Those representations are included in the AAA's promotional materials, as well as its Consumer Arbitration Rules ("Rules") and Consumer

[1] All citations to "Ex." are to the exhibits attached to the accompanying Affirmation of John C. Quinn.

[2] Exhibit B is a copy of Uber's U.S. Terms of Use as last modified on July 15, 2020, which was the version in effect when the arbitration demands at issue began to be filed. Uber amended its Terms of Use on November 17, 2020, after which certain additional demands were filed, and again thereafter, but the provisions pertinent here are materially identical. Uber also amended its arbitration provision thereafter, but the arbitration claimants, through their counsel, rejected those terms and Uber does not rely on them here.

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Due Process Protocol Statement of Principles ("Protocol"), which govern the consumer arbitrations at issue and are incorporated into the contracts pursuant to which the AAA has agreed to provide services. *See* Ex. A, Dec. 22, 2016 Ltr., at 1; Ex. B, Uber Terms of Use § 2.

More specifically, the AAA has long billed itself as a "not-for-profit organization" that "charges fees to compensate it for the cost of providing administrative services." Ex. C, AAA Consumer Arbitration Rules, at 13, R-4. In addition, the AAA promotes the efficient and cost-effective nature of the services it provides. For instance, the AAA says that it is "dedicated to fair, effective, efficient and economical methods of dispute resolution," Ex. D, AAA 2020 Annual Report & Financial Statements, at 2, and that arbitration under its administration is "faster and more cost effective than litigation," Ex. E, AAA Website, "Arbitration," at 1. The AAA also claims that its consumer arbitration process, in particular, has "significant value in making dispute resolution quicker, less costly, and more satisfying." Ex. F, AAA Consumer Due Process Protocol, at 4; *see generally* Compl. ¶¶ 26-30.

Consistent with these representations, the AAA promises flexibility in its fee arrangements. The AAA has committed itself to the Principle of "Reasonable Cost," requiring that "the making of fee arrangements and payment of fees should be administered on a rational, equitable and consistent basis by the Independent ADR Institution." Ex. F, AAA Consumer Due Process Protocol, at 2, Principle 6. This Principle recognizes that given the "wide range of transactions and the equally broad spectrum of conflict in the Consumer arena, *it is inappropriate to mandate bright-line rules* regarding ADR costs." *Id.* at 18, Reporter's Comments (emphasis added). Rather, in assessing what is "reasonable," the AAA must give due consideration to "the nature of the conflict (including the size of monetary claims, if any), and the nature of goods or services provided." *Id.* Accordingly, in its standard fee schedule, the AAA makes clear that it has

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"discretion" to assess alternative payment processes specifically for multiple case filings, like those here. Ex. C, AAA Consumer Arbitration Rules, at 36.

B. Uber adopts a policy to promote support for independent, Black-owned restaurants and is met with 30,000 individual arbitration demands

In June of last year, in the wake of the murder by a policeman of George Floyd in Minnesota, Uber publicly announced its support for protesters and the Black community. *See* Affidavit of Randall Haimovici ("Haimovici Aff.") ¶ 4. In addition to donating to criminal justice organizations and adopting measures to further promote diversity in its ranks, Uber implemented a policy on its meal delivery platform, Uber Eats, to waive delivery fees to customers for orders from independent, Black-owned restaurants. *Id.* While many applauded those efforts, some vehemently opposed them, calling for litigation. For instance, Texas Senator Ted Cruz predicted that Uber would "lose EVERY ONE of the lawsuits that are about to be filed" based on what he viewed as "explicit race-based discrimination."[3]

Consovoy McCarthy PLLC (the "Consovoy Firm") picked up that baton and ran with it, putting up advertisements on social media looking for users who might be drawn to the prospect of statutory damages.[4] For instance, an ad on Facebook, shown below, informed readers that if they had paid a delivery fee on Uber Eats they could be entitled to up to $4,000:

[3] Valerie Richardson, *Ted Cruz: Uber Eats' no-fee policy for black-owned restaurants violates civil rights laws*, THE WASHINGTON TIMES (June 10, 2020), https://www.washingtontimes.com/news/2020/jun/10/ted-cruz-uber-eats-no-fee-policy-black-owned-resta/ (last visited Sep. 16, 2021).

[4] The Consovoy Firm is a well-known foe of affirmative action policies throughout the country. *See* Petition for Writ of Certiorari, *President & Fellows of Harvard Coll.*, No. 20-1199, at 3 (arguing that the Supreme Court's decision upholding affirmative action in *Grutter v. Bollinger*, 539 U.S. 306 (2003), "improperly afford[ed] broad deference to university administrators to pursue a diversity interest that is far from compelling. … [U]niversities have used *Grutter* as a license to engage in outright racial balancing."); *see also* Compl., *Students for Fair Admissions, Inc. v. Yale Univ.*, No. 21 Civ. 241 (D. Conn. Feb. 25, 2021), ECF 1 (Consovoy Firm's similar challenge to Yale's affirmative action policy); Brief for Petitioner, *Fisher v. Univ. of Texas at Austin*, 136 S. Ct. 2198 (2016) (No. 14-981), 2015 WL 5261568 (Consovoy Firm arguing that University of Texas's race-conscious admissions program is unconstitutional).

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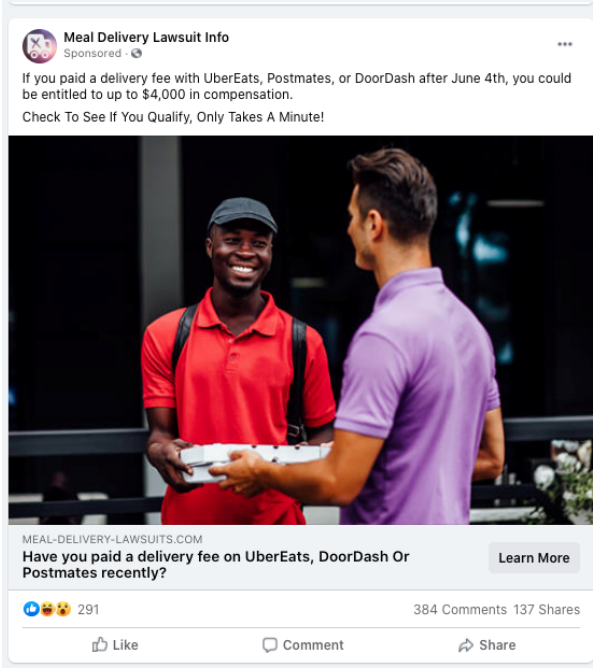

Over the following weeks, the firm proceeded to file more than 30,000 materially identical arbitration demands. Each form demand included a short description of the nature of the allegations—that Uber's policy violated California's Unruh Civil Rights Act and 42 U.S.C. § 1981—and a demand for statutory damages. *See, e.g.*, Ex. G, Demand, attached as Addendum.

C. The AAA accepts the demands and flip flops on fees, under pressure from the claimants' lawyers

The AAA accepted all but a handful of the demands and sent out invoices for the filing fees, which Uber had agreed to pay in its Terms of Use with Uber users. From the outset, the AAA recognized that its standard filing fees for distinct, individual arbitrations would not be appropriate under the circumstances. Instead, it applied a recently-adopted fee schedule for "multiple consumer case filings," Ex. H, Dec. 16, 2020 Ltr., at 2, which reduces filing fees in light of efficiencies that result where there are "[t]wenty-five … or more similar claims for arbitration," "against or on behalf of the same party or parties," and "[c]ounsel for the parties is consistent or

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coordinated across all cases," Ex. C, AAA Consumer Arbitration Rules, at 35.[5] Pursuant to its fee schedule for multiple consumer case filings, the AAA invoiced Uber $4,346,625, or approximately $138 per demand. *See* Ex. H, Dec. 16, 2020 Ltr., at 2. That represented a 72% reduction from the $500 per demand that would otherwise have been applicable under the AAA's standard fee schedule for individual, "single consumer" arbitrations. *See id.*

Importantly, in issuing its invoices for these filing fees, the AAA made clear that it would "not grant any extensions to [its] payment deadline[s]," because "some of these arbitrations are subject to California Code of Civil Procedure 1281.97 and 1281.98," a new law passed in October 2019. Ex. J, Nov. 10, 2020 Ltr., at 1. Under that law, in consumer arbitrations like these, "if the fees or costs required to continue the arbitration proceeding are not paid within 30 days after the due date, the drafting party … waives its right to compel the … consumer to proceed with … arbitration…." Cal. Code Civ. Proc. § 1281.98(a). In addition, if the fees are not paid by the statutory deadline, the consumer "may unilaterally elect" to proceed in court and seek to recover all attorneys' fees and costs associated with the arbitration, and the court is required to order the drafting party to pay for all "reasonable expenses, including attorney's fees and costs, incurred by the … consumer as a result of the material breach." *Id.* § 1281.98(b); Cal. Code Civ. Proc. § 1281.99(a). Finally, the court may impose a host of drastic sanctions, including an order precluding the drafting party from conducting discovery, striking its pleadings, holding the drafting party in contempt, or even entering default judgment. *Id.* § 1281.99(b).

[5] In further recognition of these efficiencies, the AAA recently released its Supplementary Rules for Multiple Case Filings, effective August 1, 2021, which are "intended to provide parties and their representatives with an efficient and economical path toward the resolution of" multiple consumer case filings. Ex. I, AAA, Supplementary Rules for Multiple Case Filings at 3. Among other things, the Supplementary Rules provide for the appointment of a single "process arbitrator" to handle all "administrative issues arising out of the nature of Multiple Case Filings." *Id.* at 6. Even so, the Supplementary Rules do not further reduce the AAA's fees.

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Uber paid the reduced filing fees on December 24, 2020, resulting in the commencement of the arbitrations. *See* Haimovici Aff. ¶ 6; *see also* Ex. C, AAA Consumer Arbitration Rules, at 11-12, R-2. Consistent with its reduction of the filing fees, and in apparent recognition of the materially identical nature of the claims, the AAA proposed that the parties use bellwether proceedings to resolve common issues of fact and law in a handful of select cases, and then apply those findings to the remaining demands. Ex. K, Feb. 25, 2021 Ltr., at 1. In an illuminating if unsurprising turn, the Consovoy Firm refused. In fact, it made clear that claimants would not agree to *any process* other than individual arbitrations for each of its boilerplate demands, Haimovici Aff. ¶ 10—no doubt recognizing that the AAA would then be more likely to charge its standard fees for each of the 31,573 arbitrations and that, under the new California law, Uber would need to immediately pay those amounts, face significant legal consequences, or capitulate to a windfall settlement.

The Consovoy Firm's intransigence worked. Following its refusal to agree to any streamlined process, the AAA reversed course, taking the position that "absent party agreement on how to proceed," it was required to administer the arbitrations individually. Ex. L, Mar. 31, 2021 Ltr., at 2. Moreover, according to the AAA, that meant Uber would be required to pay the standard case management (and arbitrator deposit) fees, according to the fee schedule that would apply as if the AAA were actually simultaneously administering more than 30,000 unique, individual demands. *Id.* at 2-3. That will total ***at least*** $91,561,500, not including the roughly $4 million in filing fees Uber has already paid.[6]

In the same breath, the AAA conceded that it had "no more than 750 arbitrators available for appointments," given that they had to be California neutrals under the arbitration clause. It

[6] $91 million reflects $1,400 for each arbitration's case management fee and $1,500 for each arbitrator deposit (a conservative estimate as the amount could reach $2,500). Ex. C, AAA Consumer Arbitration Rules, at 35-37.

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also unilaterally imposed on the parties an alternative process, dividing the cases "into 5 batches," with each neutral adjudicating multiple claims. *Id.* at 3; *see also* Ex. M, Apr. 23, 2021 Ltr., at 3 (AAA stating it "plan[s] to equally assign cases among the pool of available arbitrators"). But even as it adjusted the process, including the assignment of arbitrators, as a result of the reality before it, the AAA made no concomitant adjustment to fees.

The AAA proceeded to demand payment of the case management fees for the initial batch of 477 non-California cases, totaling $667,800. Uber, eager to arbitrate, said that it would pay the fees, but would "do so under protest and without waiver of its objections regarding AAA's calculation of those fees." Ex. N, May 5, 2021 Ltr., at 1. In response, the AAA declared that "if payment is made under protest, the AAA will return such fees and administratively close the case files." *Id.* In other words, the AAA made it clear that, as the arbitration provider under Uber's Terms of Use, it would strip Uber of its right to arbitrate unless Uber not only paid the invoiced amounts, but voiced no challenge to them. Faced with this threat, Uber paid the $667,800 invoice on time, "reserv[ing] all rights under law"—not to the fees it was being forced to pay, but as to "any future AAA invoice(s)." Ex. O, May 13, 2021 Ltr., at 1.

The AAA then proceeded to take more than four months to assign arbitrators for the initial batch of 477 demands. But when Uber suggested that the AAA split the next batch of 7,771 arbitrations up based upon when arbitrators were actually assigned, rather than invoicing it for the entire batch at once, the AAA flatly refused. On September 14, 2021, the AAA issued an invoice to Uber for $10,879,400 (the "Invoice"), reflecting fees for case management fees for the next batch of 7,771 arbitrations. The Invoice has a due date of October 14, 2021. Ex. P, Sept. 14, 2021 Ltr., at 3. The AAA stated that the arbitrations are subject to the California law and that payment

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therefore "must be received within 60 days of the date of this letter," and it "will not grant any extensions." *Id.* at 1.

D. Uber commences this action to declare the Invoice unlawful

Uber has filed a declaratory judgment complaint contemporaneously with the instant motion, seeking to declare the Invoice unlawful in contravention of the parties' agreement, equity, and applicable law. More specifically, Uber asserts claims for declaratory relief that the AAA's Invoice constitutes a breach of its express and implied contractual obligations, amounts to unjust enrichment that would entitle Uber to restitution, and runs afoul of California's Unfair Competition Law. Compl., Counts I-IV. Uber also seeks an accounting. *Id.*, Count V. By this motion, Uber seeks to preserve the status quo so that those claims can be heard.

ARGUMENT

The Court should grant Uber's motion and enter an order pursuant to CPLR 6301 to preserve the status quo by preliminarily enjoining the AAA from issuing further invoices or from closing arbitration files, and extending the Invoice deadline if Uber's claims cannot be adjudicated before the Invoice is due. Uber is likely to succeed on the merits; it faces the threat of irreparable harm absent an injunction, including loss of the right to arbitration, sanctions including the possibility of default on the underlying merits, and forfeiture of recovery of unlawful fees paid over to the AAA; and the equities favor immediate relief. *See, e.g.*, *Vector Media, LLC v. Go New York Tours Inc.*, 187 A.D.3d 531, 531 (1st Dep't 2020) (citation omitted).

A. Uber is likely to succeed on the merits

To establish a likelihood of success on the merits, Uber need only make a "prima facie showing of a reasonable probability of success"; "actual proof … should be left to a full hearing on the merits." *Barbes Rest. Inc. v. ASRR Suzer 218, LLC*, 140 A.D.3d 430, 431 (1st Dep't 2016). Where "denial of injunctive relief would render the final judgment ineffectual, the degree of proof

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required to establish the element of likelihood of success on the merits should be accordingly reduced." *Ma v. Lien*, 198 A.D.2d 186, 187 (1st Dep't 1993). Moreover, where a movant asserts multiple claims, it need establish only a likelihood of success on a single claim to merit relief. *See, e.g.*, *Girls Club of Am., Inc. v. Boys Club of Am., Inc.*, 683 F. Supp. 50, 52 (S.D.N.Y.), *aff'd*, 858 F.2d 148 (2d Cir. 1998); *Sylmark Holdings Ltd. v. Silicone Zone Int'l Ltd.*, 5 Misc. 3d 285, 295 (Sup. Ct. N.Y. Cnty. 2004). Here, however, Uber is likely to prevail on all of its claims.[7]

As an initial matter, Uber is entitled to relief under California's Declaratory Judgment Act, Cal. Civ. Proc. § 1060. That statute permits Uber to seek a declaration as to its rights under the parties' contracts and "with respect to another." *Id.* Here, there is an actual controversy between Uber and the AAA concerning the AAA's obligation to charge reasonable fees that are tied to its actual costs, which is not speculative or hypothetical. The AAA has already charged Uber unreasonable fees, invoiced Uber such fees again, and made clear its intent to continue to do so.

[7] Uber's request for a preliminary injunction is governed by New York law. CPLR 6301; *WebMD Health Corp. v. Martin*, 12 Misc. 3d 1180(A), 2006 WL 1892261, at *5 (Sup. Ct. N.Y. Cnty. 2006) (holding New York law, as law of forum state, governed evidentiary standard for preliminary injunction). Uber's underlying claims are governed by California law because California has the greater interest in determining whether the AAA's conduct is lawful. With respect to Uber's contract claims, California has the most significant relationship with the parties' contract. *See, e.g.*, *Zurich Ins. Co. v. Shearson Lehman Hutton, Inc.*, 84 N.Y.2d 309, 317-18 (1994) (describing factors under New York's "most significant relationship" test). Two of the three parties to each contract are California residents: Uber, which has its principal place of business in the state, Compl. ¶ 9, and all but 484 of the 30,000-plus arbitration claimants, Ex. L, Mar. 31, 2021 Ltr., at 3. Moreover, the contracts relate to arbitrations that are governed by California law, Ex. B Uber Terms of Use § 7, and involve claims asserted under California (and federal) law, Ex. G, Demand; the place of performance is California, where the arbitrations will be administered by California neutrals, Ex. B, Uber Terms of Use § 2; and, while the AAA is a New York corporation, it accepted the demands, as the final step necessary to form the contracts, from its Western Case Management Center in California, Ex. H, Dec. 16, 2020 Ltr., at 2. The same analysis applies to Uber's claim for breach of the implied covenant of good faith and fair dealing, *see, e.g.*, *Com. & Indus. Ins. Co. v. U.S. Bank Nat'l Ass'n*, 2008 WL 4178474, at *4 (S.D.N.Y. Sept. 3, 2008); and its unjust enrichment claim, which is predicated upon the AAA's improper attempt to extract excess fees for the services it provides under the parties' contracts and thus sounds in contract, *see, e.g.*, *Gerloff v. Hostetter Schneider Realty*, 2014 WL 1099814, at *9 (S.D.N.Y. Mar. 20, 2014). Finally, under New York's "interest analysis," California law governs Uber's statutory claim for unfair competition. *See Volt Sys. Dev. Corp. v. Raytheon Co.*, 155 A.D.2d 309, 309-10 (1st Dep't 1989) (applying to consumer protection law analysis). The regulated conducted at issue (the improper extraction of fees) was undertaken from the AAA's Western Case Management Center in California, and the resulting injury to Uber occurred at its principal place of business in California. *See, e.g.*, *Bergeron v. Philip Morris, Inc.*, 100 F. Supp. 2d 164, 169-70 (E.D.N.Y. 2000) (applying conduct-regulating analysis to consumer protection laws). This action is properly brought in New York because the AAA is at home in this State.

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Thus, declaratory relief will "operate[] prospectively, and not merely for the redress of past wrongs." *Osseous Techs. of Am., Inc. v. DiscoveryOrtho Partners LLC*, 191 Cal. App. 4th 357, 367 (2010).

Uber is entitled to a declaration invalidating the Invoice on four grounds.

1. Breach of contract – express and implied

To establish a breach of contract under California law, Uber must demonstrate "(1) the contract, (2) plaintiff's performance or excuse for nonperformance, (3) defendant's breach, and (4) the resulting damages to plaintiff." *Coles v. Glaser*, 2 Cal. App. 5th 384, 391 (2016). As set forth below, each of these elements is satisfied here.

First, there are express contracts, "stated in words," between Uber, the AAA, and each arbitration claimant. *Moen v. Regents of the Univ. of Cal.*, 25 Cal. App. 5th 845, 854 (2018). More specifically, each demand submitted by the arbitration claimants to the AAA pursuant to Uber's Terms of Use and the AAA's Rules constituted an offer for the AAA to enter into a contract with that claimant and Uber to administer the arbitration. The AAA accepted those offers by confirming receipt in accordance with its filing requirements and then demanding and accepting payment of the filing fees. Ex. H, Dec. 16, 2020 Ltr. Indeed, where a party to a commenced arbitration has failed to pay fees due, the AAA itself has sought relief on a breach of contract theory. *See, e.g.*, Ex. Q, *American Arbitration Ass'n, Inc. v. Robert E. Derekctor, Inc.*, No. 656818/2020 (Sup. Ct. N.Y. Cnty.), NYSCEF Doc. No. 1 ¶¶ 2-10 (asserting breach of contractual duties for non-payment of fees for services). Consistently, the AAA has also recognized that the fees it receives from the administration of arbitrations are "Revenue from Contracts with Customers" for purposes of financial reporting, reasoning: "[T]he acceptance of a demand for arbitration under any of the Associations' fee schedules, or agreement or provide services, is considered a contract with

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customers for purposes of applying revenue recognition guidance," which gives rise to "a promise in a contract to deliver distinct service to the customer." Ex. R, AAA 2019 Annual Report & Financial Statements, at 7-8. These express contracts are also supported by consideration, namely, Uber's payment of fees and the AAA's provision of services in return.

Alternatively, there are implied contracts between Uber, the AAA, and each claimant "manifested by conduct," namely, "obligations arising from a mutual agreement and intent to promise … not expressed in words," under the "totality of the circumstances." *Moen*, 25 Cal. App. 5th at 855. Pursuant to the parties' manifested mutual understandings, upon acceptance of the demands, the AAA was obligated and proceeded to provide arbitration services pursuant to the terms of the governing Rules and Protocol, and Uber and the arbitration claimants proceeded to participate in each arbitration administered by the AAA. *See, e.g.*, *Kalfin v. Kalfin*, 2013 WL 5621149, at *12 (Cal. Ct. App. Oct. 15, 2013) ("Conduct will create a contract if the conduct of both parties is intentional and each knows, or has reason to know, that the other party will interpret the conduct as an agreement to enter into a contract."). Moreover, the AAA has stated that it will continue to administer the arbitrations and charge fees in accordance with its Rules—services and fees which, as noted, the AAA has recognized arise from contracts with its customers.

Second, Uber has performed its contractual obligations that have arisen to date, among other things, by abiding by the Rules and Protocol that govern the arbitrations, including timely paying the arbitration fees invoiced by the AAA. Haimovici Aff. ¶ 9.

Third, the Invoice effects a breach of the AAA's obligations under the parties' contracts, including the AAA's express obligations to act "[a]s a not-for-profit organization" and "charge[] fees to compensate it for the cost of providing administrative services"; "mak[e] … fee arrangements and payment of fees … on a rational, equitable and consistent basis" by assessing

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"reasonable" fees in light of "the nature of the conflict (including the size of monetary claims, if any)"; provide a "fundamentally-fair ADR process" for "[a]ll parties"; and "mak[e] dispute resolution … less costly…." Ex. C, Consumer Arbitration Rules, at 13, R-4; Ex. F, Consumer Due Process Protocol at 4, Principle 1, Principle 6 & Reporter's Comments. Each of these Rules and Principles is incorporated into the parties' contracts governing the arbitrations. *See* Ex. A, Dec. 22, 2016 Ltr., at 1 (confirming to Uber that the AAA was "prepared to administer consumer-related disputes … in accordance with the Association's Consumer Arbitration Rules … and the Consumer Due Process Protocol"); Ex. C, Consumer Arbitration Rules, at 17, R-13 ("The AAA's administrative duties are set forth in the parties' arbitration agreement and in these Rules.").

Simply put, by demanding that Uber pay $100 million to administer more than 30,000 materially identical arbitrations that raise the same basic facts and same basic legal theories and seek the same statutory damages, the AAA is breaching its obligation to charge fees only as necessary to cover its costs as a not-for-profit organization, and to ensure that its fees are "reasonable." The unreasonableness of the Invoice here is obvious. Indeed, the Invoice demands immediate payment in full of $10.8 million in case management fees for the second batch of 7,771 arbitrations, even though it took more than four months to even assign arbitrators for the first batch of 477. These demands for payment are plainly not tied to the AAA's incurring any actual costs.

Further, the Invoice cements the AAA's intent to charge Uber nearly $100 million in fees in connection with these arbitrations. Yet in 2020, the AAA received *total revenues* of $118.3 million for every single arbitration it administered across every group (totaling in the hundreds of thousands), and its Consumer Group alone administered 4,590 single case filings and 63,747 multiple case filings. Ex. D, AAA 2020 Annual Report & Financial Statements, at 5, 13. The AAA now claims that in order to cover its costs for administering 30,000 materially identical

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arbitrations, it requires nearly as much in fees as it received last year for every single arbitration it administered across every group. That simply cannot be rational, equitable, fair, or lawful.[8]

In fact, the AAA has already conceded that its costs here are reduced given efficiencies in the "multiple consumer filing" context. That is why the AAA lowered its filing fees by 72%. And yet the AAA refuses to reduce its case management and arbitrator fees at all. Tellingly, the AAA has not claimed that those fees are somehow immune to the obvious efficiencies in this context. Nor could it. Commonality in questions of law and fact, as exist here, indisputably result in cost savings. *See* Compl. ¶¶ 61-77. To take just a couple of examples: to date, including in the Invoice itself, the AAA has consistently communicated with counsel to the parties in combined correspondence referring collectively to all matters, *see, e.g.*, Ex. P, Sept. 14, 2021 Ltr.; and there are clear efficiencies inherent in appointing, paying, and coordinating with (at most) 750 rather than 31,000 arbitrators.[9] What's more, the arbitrators themselves will almost certainly proceed in a streamlined manner, at the very least across each arbitrator's assigned subset of the 31,000 cases. And there is every reason to expect that the appointed arbitrators will look for efficiencies—and aim to avoid inconsistent reasoning and outcomes—across the entire group. Moreover, the parties' submissions are likely to be substantially identical, given that the legal issues in each arbitration are fundamentally the same.[10] The cost savings in these copycat arbitrations are obvious and clear.

[8] While the AAA does not appear to provide total numbers, it reported 23,652 Employment Division filings (3,434 single case filings and 20,309 multiple case filings), and 357,435 no-fault automobile insurance case filings and 2,498 Supplemental Underinsured/Uninsured Motorists filings with its New York State Insurance Division. Ex. D, AAA 2020 Annual Report & Financial Statements, at 11, 15. That does not reflect filings for its Commercial, Construction, Labor, or Election Divisions. *See. id.* at 11-12 (not disclosing numbers).

[9] The AAA has already indicated that a number of arbitrators have declined appointments and that, as a result, it has fewer than 750 arbitrators available. Ex. L, Mar. 31, 2021 Ltr. at 3.

[10] Finally, if the AAA would agree to application of the AAA's new Supplementary Rules, administrative issues would be handled by a single process arbitrator. Ex. I, Supplementary Rules, at 6, Rule MC-6(c), (d).

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Fourth, the AAA's breach unquestionably damages Uber. Already, Uber has been forced to pay $667,800 in case management fees for the initial batch of 477 cases, or $1,400 per demand. Had the AAA applied the same 72% reduction that it applied to filing fees, Uber would have paid roughly $187,000 instead. The Invoice makes clear that the AAA intends to continue to charge Uber tens of millions of dollars more in fees for the remaining arbitrations. Uber is thus likely to succeed on its claim for breach of an express or implied contract.

Finally, even if the contract terms required Uber to pay effectively whatever amounts the AAA invoices (and they do not), Uber's performance should *still* be excused on impracticability grounds because it "can only be done at an excessive or unreasonable cost." *See, e.g.*, *Habitat Tr. for Wildlife, Inc. v. City of Rancho Cucamonga*, 175 Cal. App. 4th 1306, 1336 (2009). Indeed, the "difference in cost is so great … and has the effect … of making performance impracticable" that Uber should be excused from paying according to the purported contract terms. *City of Vernon v. City of Los Angeles*, 45 Cal. 2d 710, 720 (1955).

2. Breach of the implied covenant of good faith and fair dealing

Uber is also likely to succeed on its claim that the Invoice is in breach of the AAA's implied duty of good faith and fair dealing, which California law implies as a "*supplement* to the express contractual covenants, to prevent a contracting party from engaging in conduct which (while not technically transgressing the express covenant) frustrates the other party's rights to the benefits of the contract." *McClain v. Octagon Plaza, LLC*, 159 Cal. App. 4th 784, 806 (2008) (cleaned up, emphasis in original).[11] In other words, under California law, even where an agreement contains *no* express constraints on a party's ability to set fees or prices, a party is not then "free to charge

[11] The elements of a claim for breach of the implied duty of good faith and fair dealing are materially the same as one for breach of contract, with the implied duty substituting for any express one. *See, e.g.*, *Horak v. South Shores Development Corp.*, 2013 WL 1316556, at *8 (Cal. Ct. App. Apr. 2, 2013) (citation omitted).

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whatever prices it chooses, however unreasonable," but rather is limited, based upon "all of the relevant surrounding facts and circumstances," to charging "so much money as the object of the contract is reasonably worth." *Grayson Eng'g v. Arnaiz Development Co., Inc.*, 2010 WL 2622934, at *3 (Cal. Ct. App. June 30, 2010) (citing Cal. Civ. Code § 1611); *see also Chen. v PayPal, Inc.*, 61 Cal. App. 5th 559, 571 (2021) ("sole discretion" provision required exercise in good faith). Here, the Invoice constitutes a classic breach of this implied covenant because the AAA refuses to set fees in line with its actual costs, which are indisputably lower in this context, and to ensure that its costs are reasonable and efficient. Instead, the Invoice frustrates Uber's right to receive a fair and reasonably priced dispute resolution process, under circumstances in which Uber would face serious consequences unless it pays whatever the AAA demands.

3. Unjust enrichment (or restitution)

Uber has also made a prima facie case that the Invoice would effect an unjust enrichment, which requires a showing of "receipt of a benefit and unjust retention of the benefit at the expense of another." *Prakashpalan v. Engstrom, Lipscomb & Lack*, 223 Cal. App. 4th 1105, 1132 (2014). Separate and apart from its contractual obligations, by charging exorbitant fees that far exceed the value of the services it is providing, the AAA seeks to unjustly enrich itself and obtain a benefit at Uber's expense. *See, e.g.*, *Hirsch v. Bank of America*, 107 Cal. App. 4th 708, 722 (2003) (unjustified charging and retention of excessive fees gave rise to claim). Moreover, if the Invoice is not declared unlawful, those benefits would be conferred by Uber on the AAA, not voluntarily, but due to the AAA's coercion and its demand to pay fees without protest, on pain of Uber's loss of the right to compel arbitration and other possible sanctions under the California statute. *See, e.g.*, *Dinosaur Development, Inc. v. White*, 216 Cal. App. 3d 1310, 1316 (1989).

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4. Unfair Competition Law

Uber also is likely to succeed on its claim that the Invoice is in violation of California's Unfair Competition Law ("UCL"), Cal. Bus & Prof. Code § 17200 *et seq.* That statute broadly prohibits "any unlawful, unfair or fraudulent business act or practice." *Id.* § 17200. The Invoice constitutes a violation of both the "unlawful" and "unfair" prongs.

Under the "unlawful" prong, Uber need only establish that the AAA has "engaged in a business practice forbidden by law," including "court-made." *Saunders v. Superior Court*, 27 Cal. App. 4th 832, 838-39 (1994); *see also Cmty. Assisting Recovery, Inc. v. Aegis Sec. Ins. Co.*, 92 Cal. App. 4th 886, 891 (2001) ("including case law"). Here, that prong is satisfied by the breach of the AAA's common-law duties set forth above. *See, e.g.*, *Nestle USA, Inc. v. Crest Foods, Inc.*, 2017 WL 3267665, at *19 (C.D. Cal. July 28, 2017) (breach of the implied duty of good faith and fair dealing). *See generally Cortez v. Global Ground Support, LLC*, 2009 WL 4282076, at *2-3 (N.D. Cal. Nov. 25, 2009) ("unlawful" prong covers "common law torts").

The Invoice also violates the UCL's "unfair" prong, under either of the two tests that the California courts have applied. Indeed, California courts have long recognized that excessive charges can amount to unfair business practices. *See, e.g.*, *Byler v. Deluxe Corp.*, 222 F. Supp. 3d 885, 891, 899-900 (S.D. Cal. 2016) (unfair business practice where company charged excessive fees for shipping that were unrelated to the actual costs incurred); *People v. Dollar Rent-A-Car Systems, Inc.*, 211 Cal. App. 3d 119, 130 (1989) (same where "unreasonable" for customers to believe they were "liable for a sum considerably in excess of defendants' actual repair costs or rental charges").

First, whatever the "utility of [the AAA's] conduct" in charging excessive fees, it is outweighed by "the harm to [Uber]," not to mention other businesses that will have to pay exorbitant fees to receive their bargained-for right to arbitrate materially identical consumer claims

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like the ones at issue. *Motors, Inc. v. Times Mirror Co.*, 102 Cal. App. 3d 735, 740 (1980). *Second*, the injury to consumers of arbitration services like Uber is "substantial" and not "outweighed by any countervailing benefits to consumers"—which the AAA has never identified—and it is not an injury that Uber could "reasonably have avoided." *Davis v. Ford Motor Credit Co. LLC*, 179 Cal. App. 4th 581, 597 (2009). Rather, Uber understood under the contract terms that the AAA would exercise its explicit discretion to charge reasonable fees to cover its costs in providing administrative services. Under either of these tests, the AAA cannot—and has not even tried to—justify the imposition of almost $100 million in exorbitant fees that are untethered to its actual costs and contrary to its own admission that its costs are, as common sense dictates, substantially reduced when it is dealing with thousands of boilerplate demands asserting the same claims.

B. Uber will suffer irreparable harm absent an injunction

Uber has also established that it will suffer irreparable harm unless the Court enjoins the AAA from closing open arbitration files and issuing additional invoices. That is true no matter what course of action Uber takes, as discussed below.

1. Uber refuses to pay and loses its right to arbitrate

If Uber refuses to pay the AAA's unreasonable invoices, it will lose its right to compel arbitration under the California statute, which *requires* a finding that the drafting party (here, Uber) is in default of the arbitration and therefore "waives its right to compel the … consumer to proceed with arbitration…." Cal. Civ. Proc. § 1281.98(a). That alone gives rise to irreparable harm.

In *Finastra USA Corp. v. Zepecki*, for instance, an employer sought a temporary restraining order to enjoin a former employee from participating in a hearing before the California labor agency and to enforce an agreement to arbitrate. 2018 WL 1989508, at *1 (N.D. Cal. Mar. 9, 2018). The court granted the motion, reasoning that the employer would "face irreparable harm by being forced to forego its arbitration rights for the DLSE hearing," including "the procedural

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requirements that go along with it" that "will likely extend the process longer than that of binding arbitration. Essentially, Finastra will lose its bargained for right. This is an irreparable harm." *Id.* at *5; *see also Bailey Shipping Ltd. v. Am. Bureau of Shipping*, 2013 WL 5312540, at *16 (S.D.N.Y. Sept. 23, 2013) (same, collecting cases). By agreeing with the arbitration claimants to arbitration, Uber obtained a "contractual right … to have claims addressed in a particular forum" that is, "at least ideally, speedy, efficient, and simpler than litigation in the courts or before agencies." *Olde Discount Corp. v. Tupman*, 1 F.3d 202, 213 (3d Cir. 1993), *cert. denied*, 510 U.S. 1065 (1994). The immediate and real possibility that Uber could lose that right for good with respect to tens of thousands of claims (and potentially others) warrants preliminary relief.

Even worse, if Uber refuses to pay, the California statute authorizes courts to grant further sanctions that could hobble and even eliminate Uber's defenses on the merits. Those include an order precluding Uber from conducting discovery, striking its pleadings, or entering default judgment. Cal. Civ. Proc. § 1281.99(b). Any one of these sanctions would separately give rise to irreparable harm. *See, e.g.*, *Melhado v. Catsimatidis*, 182 A.D.2d 576, 577 (1st Dep't 1992) (loss of "opportunity to participate meaningfully in pretrial discovery proceedings" amounted to irreparable harm) (citation omitted); *Dupree v. Scottsdale Ins. Co.*, 96 A.D.3d 546, 546 (1st Dep't 2012) (insured's loss of payment of legal defense costs "constitutes a direct, immediate and irreparable injury"); *Dow Agrosciences, LLC v. Bates*, 2003 WL 22660741, at *30-31 (N.D. Tex. Oct. 14, 2003) (mere re-litigation of issue would "irreparably injure" plaintiff) (citations omitted).

In effect, Uber would be held liable to tens of thousands of claimants for unlawful race discrimination based on what would be, in many if not the vast majority of cases, one-sided or even summary legal proceedings. Because damages would not be readily ascertainable, and in any event would not make Uber whole for the reputational and other harms it would suffer,

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immediate relief is appropriate. *See, e.g.*, 67A N.Y. Jur. 2d Injunctions § 18 (preliminary injunction proper "where damages alone would not provide an adequate remedy, or where any damages sustained would be speculative or not capable of measurement, or difficult or complex to determine"); *IHG Mgmt. (Maryland) LLC v. W. 44th St. Hotel LLC*, 163 A.D.3d 413, 414 (1st Dep't 2018) ("loss of goodwill and injury to [company's] reputation" was irreparable harm).

2. Uber pays under protest and the AAA closes the files

Second, if Uber pays the Invoice but does so only under protest, the AAA has already made clear that it will "return such fees and administratively close the case files." Ex. N, May 5, 2021 Ltr., at 1. The AAA's conduct in other matters leaves little doubt that it will follow through on that threat—and could potentially close other files as well. For example, in *Greco v. Uber Technologies, Inc.*, the AAA refused to administer an arbitration between Uber and one of its users based on an *inadvertent* failure to pay in wholly unrelated matters. *See* 2020 WL 5628966, at *2 (N.D. Cal. Sept. 3, 2020), *appeal filed*. Thus, much like refusing to pay at all, payment under protest would likely cause Uber to lose its right to arbitrate, which constitutes irreparable injury warranting a preliminary injunction. *See, e.g.*, *Finastra*, 2018 WL 1989508, at *5.

3. Uber pays, the AAA appoints arbitrators, and the arbitrations proceed

Finally, if Uber pays without protest, and the arbitrations proceed, the AAA will likely argue that any effort to recover the unreasonable fees associated with those arbitrations through an action for damages in the future is precluded. As an initial matter, the AAA would likely argue—although Uber disagrees and reserves all rights—that Uber's failure to protest at the time of payment constitutes waiver or acquiescence.

More fundamentally, once arbitrators are appointed and the arbitrations are underway, the AAA will inevitably argue that any action to recover the unreasonable fees is barred by the doctrine

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of arbitral immunity. To be clear, this is true under a scenario in which Uber pays without protest, or in a scenario in which Uber pays under protest but the AAA does not carry out its threat to close the files. In either case, once arbitrators are appointed and the arbitrations proceed, under the doctrine of arbitral immunity, Uber faces a real risk of irreversibly losing its contractual rights with respect to the unreasonable fees.

Under that doctrine, arbitrators are immune "from court actions for their activities in arriving at their award," in order to avoid the "real possibility that their decisions will be governed more by the fear of [suits for civil liability] than by their own unfettered judgment as to the merits of the matter they must decide." *Stasz*, 121 Cal. App. 4th at 430-31. Arbitral immunity extends "to organizations that sponsor arbitrations, like the AAA," and some courts have even said that immunity extends to "billing for services," provided that the billing dispute is "within the scope of the arbitral process" and thus tied to the arbitrator's decision-making prerogative. *Id.* at 430-33, 439-40. On the other hand, arbitral immunity generally does not extend to actions that are outside the "scope of the arbitral process" and the manner in which the arbitrator "arriv[es] at their award," *id.* at 430, 432, lest the immunity designed to allow arbitrators to act fearlessly becomes a license for arbitrators or their sponsoring organizations to act unlawfully, *see, e.g.*, *Sacks v. Dietrich*, 663 F.3d 1065, 1069 (9th Cir. 2011) ("Of course, arbitral immunity does not extend to every act of an arbitrator"; "only to those acts taken by arbitrators within the scope of their duties and within their jurisdiction") (citation and quotation marks omitted); *Pfannenstiel v. Merrill Lynch, Pierce, Fenner & Smith*, 477 F.3d 1155, 1159 (10th Cir. 2007) ("[T]he doctrine of arbitral immunity does not protect arbitrators or their employing organizations from all claims asserted against them," but rather only those claims that "arise[] out of a decisional act").

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As a result, and critically here, courts have refused to apply arbitral immunity in disputes based on conduct that pre-dates and is thus distinct from the decision-making process, including disputes about the AAA's representations and promises about its services prior to the appointment of arbitrators. *See, e.g.*, *Hopper v. Am. Arbitration Ass'n, Inc.*, 708 F. App'x 373, 373 (9th Cir. 2017) (permitting false advertising claim challenging misleading advertisements as to arbitrator selection process); *Kaiser v. BMW of N. Am.*, 2013 WL 100218, at *5 (N.D. Cal. Jan. 7, 2013) (same). That is why Uber's claims for declaratory relief can—and must—be heard now. Uber's claims, which are predicated on the AAA's decision to charge excessive fees before arbitrators are even appointed, much less the arbitrations have proceeded, are "distinct and distant from the decisional act of an arbitrator." *Hopper*, 708 F. App'x at 373; *see also* Ex. L, Mar. 31, 2021 Ltr., at 3 (stating arbitrators will not be appointed until case management fees are paid). Uber's claims arise "before a formal arbitration relationship between parties to arbitration, *arbitrators*, and arbitration companies like AAA" has come into being. *Hopper*, 708 F. App'x at 373 (emphasis added). Uber's present claims therefore will not influence the decision-making process or "expose arbitrators' decisions to reprisals by dissatisfied litigants," and arbitral immunity therefore does not apply. *Id*. Indeed, it is for that reason that Uber pointedly does not challenge its payment of past invoices, which have resulted in the AAA proceeding with arbitrator selection and the start of the arbitral process for the first batch of 477 cases. *See supra* at 10-11.

In the absence of preliminary relief, however, the arbitral immunity calculus will become much more complicated. More specifically, if Uber pays the fees (with or without protest); the AAA appoints arbitrators and proceeds with the next batch of arbitrations; and Uber then sues to recover the unreasonable fees later, surely the AAA will rely on the payment of fees, selection of arbitrators, and progress of the arbitrations to argue that such a suit is precluded by arbitral

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immunity because it would interfere with the arbitrators' decision-making process. The significantly increased possibility that Uber would be precluded from recovering any excess fees it will have then paid gives rise to an immediate and real prospect of irreparable harm. *See, e.g.*, *Cal. Hosp. Ass'n v. Maxwell-Jolly*, 2011 WL 285866, at *2 (E.D. Cal. Jan. 28, 2011) (monetary injury that could otherwise be remedied by damages award gave rise to irreparable harm where immunity would bar recovery); *Ma*, 198 A.D.2d at 186 (irreparable harm where money necessary to cover damages award would be "unavailable for recovery"). By preserving the status quo, a preliminary injunction will properly preserve Uber's legal rights to challenge the AAA's breach of its obligations that are distinct from the arbitral decision-making process.

C. The public interest supports the issuance of a preliminary injunction

Uber has also established that the balance of equities supports an injunction because "the irreparable injury to be sustained … is more burdensome [to Uber] than the harm caused to [the AAA] through imposition of the injunction." *McLaughlin, Piven, Vogel, Inc. v. W.J. Nolan Co., Inc.*, 114 A.D.2d 165, 174 (2d Dep't 1986). Absent an injunction, Uber may lose its right to compel arbitration, contrary to the policies of New York and California, *see, e.g.*, *Moncharsh v. Heily & Blase*, 3 Cal. 4th 1, 9 (1992); *Westinghouse Elec. Corp. v. New York City Transit Auth.*, 82 N.Y.2d 47, 53 (1993). It may also suffer sanctions and lose the ability to recover the excessive, windfall fees it may have to pay to avoid the foregoing consequences. By contrast, the AAA will at most be delayed in receipt of payment for its services, which it can delay pending outcome of this action. Moreover, the AAA admits it lacks sufficient California neutrals to arbitrate all of the demands now and will need to defer most arbitrations. Finally, Uber has proposed to place the Invoice amount in escrow, ensuring that the AAA will receive whatever amount the Court deems appropriate. Thus, the likely harm to Uber far exceeds the potential harm to the AAA.

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CONCLUSION

For the foregoing reasons, the Court should grant Uber's motion for a preliminary injunction.

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