

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. _____

Date Purchased: September 20, 2021

SUMMONS

TO THE ABOVE-NAMED DEFENDANT:

American Arbitration Association, Inc.
c/o Corporation Service Company
80 State Street, Albany, NY 12207-2543

YOU ARE HEREBY SUMMONED to answer the Complaint in this action and to serve a copy of your answer on the Plaintiffs' attorney within 20 days after the service of this summons, exclusive of the day of service (or within 30 days after the service is complete if this summons is not personally delivered to you within the State of New York); and in case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded in the Complaint.

Pursuant to NY CPLR §§ 503(c) and 509, Plaintiffs designate as the place of trial New York County, because Defendant American Arbitration Association, Inc. is a domestic corporation with its principal office located in this County.

Dated: New York, New York
September 20, 2021

Respectfully submitted,



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**DECLARATORY JUDGMENT
COMPLAINT**

Plaintiffs Uber Technologies, Inc. and Uber USA, LLC (“Uber”), by and through their undersigned attorneys at Kaplan Hecker & Fink LLP, allege as follows:

INTRODUCTION

1. This declaratory judgment action arises out of the extraordinary demand from the American Arbitration Association (“AAA”) that Uber pay the AAA almost \$100 million—with more than \$10 million due in just a matter of weeks—or forever forfeit its arbitral and contractual rights. The AAA, a non-profit arbitration service provider, casts this astronomical sum as purported administrative fees and costs. But the AAA’s own conduct and correspondence—to say nothing of common sense—belie that assertion. In fact, it is a ransom orchestrated by politically-motivated lawyers, who are manipulating the arbitral process to prop up baseless claims of “reverse discrimination,” in an effort to punish Uber for supporting the Black community in the wake of George Floyd’s murder. And the AAA is unfortunately and unnecessarily playing along, in contravention of its own rules, not to mention basic principles. Nothing in the parties’ agreement, equity, or controlling law supports the AAA’s exorbitant demand, and it should be declared unlawful and invalid.

2. To be clear, this lawsuit has nothing to do with the merits of any underlying arbitral dispute. Uber wants the arbitrations before the AAA to go forward and looks forward to defending

those arbitrations on the merits. And Uber, of course, has no issue complying with its commitment to cover the costs of those proceedings. Indeed, Uber has already paid millions of dollars of reduced filing fees, as well as certain initial administrative fees, and has sought the Court's approval to place the invoiced amount of \$10,879,400 in escrow as a show of its good faith. Rather, Uber simply seeks to ensure that the amount it is required to pay reflects the AAA's actual costs, as required by the parties' agreement, equity, and controlling law.

3. Following the murder of George Floyd in 2020, Uber Technologies, Inc. ("Uber") implemented a program to support Black-owned restaurants on its Uber Eats platform: while the restaurants themselves continued to be compensated in the same way, Uber Eats temporarily waived its own delivery fees for certain food orders that its customers placed at Black-owned restaurants. While many appreciated this program, one opportunistic law firm, Consovoy McCarthy PLLC, did not. It sought out and acquired clients—tens of thousands of them—and filed boilerplate, single-sentence arbitration demands against Uber, asserting a type of "reverse discrimination" claim. The scheme was clear. Armed with a newly-enacted California statute imposing severe sanctions for any non-payment of arbitral administrative fees once invoiced, the lawyers filed more than 31,000 nearly identical arbitral demands, with the aim that the AAA would invoice—and Uber would be subject to being forced to pay—millions of dollars in administrative fees and arbitrator costs.

4. The AAA had every right not to play along with this extortionate scheme; indeed, it was contractually and legally required not to do so. As a non-profit, tax-exempt organization expressly committed to cost-efficiency, the AAA is required to charge fees that are commensurate to its actual costs. It has represented as such time and again, and has included that commitment in documents that are part of a binding agreement between itself and the arbitral parties that pay for

its services, such as Uber. The same documents explicitly provide that the AAA has discretion with respect to its fees and commit the AAA to exercising that discretion in order to ensure that its fees are reasonable and tied to actual costs. For that very reason, the AAA exercised its discretion to unilaterally reduce its filing fees by 72% for these arbitrations (and Uber then paid those amounts in full).

5. But unfortunately, when the claimants' lawyers balked at any further fee reduction in an obvious effort to ramp up the pressure, the AAA changed tack. Now, the AAA says that it has no choice but to calculate its case management and arbitrator fees by simply multiplying its ordinary fee schedules by as many arbitration demands as the claimants' lawyers manage to file. The AAA has thus confirmed its intent to charge Uber, at a minimum, more than \$91 million in administrative and arbitrator fees—a figure that represents more than 75% of the AAA's *entire operating revenue* of \$118 million for the year 2020.

6. In correspondence between the parties, the AAA has taken the absurd position that the sum of \$91 million reflects the actual expense of its administrative services and arbitrator compensation. As the AAA tells it, it and its arbitrators will incur the same costs on these 31,000+ nearly identical arbitration demands as they would as if those 31,000 demands were wholly unrelated to each other. When pressed to defend that assertion, however, the AAA has been unable and unwilling to do so. It refused to even speak with Uber on the issue, and categorically rejected Uber's request that it share any information supporting its predicted costs and expenses. And to be clear, the AAA's claim that it will actually incur \$91 million in fees and costs is indefensible. Administering the adjudication of 31,000 nearly identical arbitral demands is exponentially cheaper than adjudicating 31,000 wholly unrelated demands, as detailed in this Complaint. That is clear as a matter of common sense, and is only underscored by the fact that the

AAA admitted that it has at most about 750 neutral arbitrators in the State of California who could possibly hear these cases, and then later made clear that it actually has far fewer than even that. Even beyond the obvious efficiencies in the AAA's administrative work, surely those arbitrators will find efficiencies in handling the (on average) forty or more cases assigned to each of them, to say nothing of the desire to avoid inconsistent results and proceed sensibly across the entire group.

7. Despite all of that, the AAA has made it clear that unless Uber pays the invoiced amounts, in full and on time, Uber will lose its right to arbitrate. In fact, the AAA has gone so far as to demand unreasonably that Uber not even voice a protest. On an initial "batch" of 477 arbitrations, the AAA explicitly told Uber that if it paid its invoices but did so "under protest," the AAA would "close" the arbitrations. Faced with that menacing threat, Uber paid the AAA's first invoice of case management fees, in the amount of \$667,800, without any stated protest. Now the AAA has transmitted its latest invoice, however, in the amount of **\$10,879,400**, representing purported "case management" fees for a second batch of 7,771 arbitrations (the "Invoice"). The Invoice demands payment of that entire sum in a mere thirty days, even though the AAA's pace with the first batch suggests that it will be many months before the AAA incurs any real costs in connection with the second batch. What's more, the Invoice commits the AAA ultimately to charge Uber more than \$91 million total in patently excessive fees, and Uber can no longer abide being forced into paying such unreasonable sums, especially where Uber is forced to remain silent about its contractual rights as a prerequisite to maintaining its arbitral rights. Uber therefore brings this action to declare the Invoice and any subsequent similar invoicing unlawful and invalid, and to have the AAA account for its actual costs and expenses on these matters. Invoicing Uber for

\$91 million runs afoul of the parties' contract, the implied covenant of good faith and fair dealing, principles of equity, and California statutory law, as set forth below.

PARTIES

8. Plaintiff Uber Technologies, Inc. is a corporation organized and existing under the laws of Delaware, which maintains its principal place of business in California.

9. Plaintiff Uber USA, LLC is a wholly owned subsidiary of Uber Technologies, Inc, which maintains its principal place of business in California.

10. Defendant American Arbitration Association, Inc. is a domestic not-for-profit corporation, located at 120 Broadway, 21st Floor, New York, NY 10271.

JURISDICTION AND VENUE

11. This Court has personal jurisdiction over the AAA pursuant to C.P.L.R. § 301 because the AAA is incorporated in New York.

12. Venue is proper in New York County pursuant to C.P.L.R. § 503(c) because the AAA is a domestic corporation with its principal office located in this County.

13. This declaratory judgment action arises out of business dealings and the amount in controversy exceeds \$500,000, exclusive of punitive damages, interest, costs, disbursements, and counsel fees. *See* 22 N.Y.C.R.R. § 202.70.

FACTS

I. THE AAA AND ITS ADMINISTRATION OF ARBITRAL DISPUTES

A. Background on the AAA and its Arbitral Services

14. Unlike other arbitral service providers—such as Judicial Arbitration and Mediation Services, Inc., (“JAMS”), for example—the AAA is a non-profit, tax-exempt organization. It was founded in 1926 as “a not-for-profit, public service organization committed to the resolution of

disputes through the use of arbitration, mediation and other voluntary procedures.”¹ The AAA describes its role as follows: “to provide a forum where disputes can be resolved, to provide rosters of qualified arbitrators, mediators and other dispute resolution professionals, and to apply our rules that govern the conduct of those proceedings.”² Thus, the AAA operates as “a purely administrative agency”³ whose “role is only administrative,”⁴ its goal being “to keep cases moving in a fair and impartial process until completion.”⁵ The AAA also describes itself as “a neutral, independent, and private not-for-profit organization.”⁶ Since its founding, the AAA has administered more than six million arbitral cases, more than any other private provider of alternative dispute resolution.⁷

15. This case concerns the administrative fees and arbitrator costs that the AAA charges to arbitral parties. Presumably, because the AAA pays their arbitrators for their services, the AAA derives the substantial majority of its operating revenue from administrative fees. For example, in 2020, 98.2%—or \$116,246,000 of \$118,340,000—of the AAA’s total operating revenue came

¹ AAA, *Questions and Answers About Consumer Arbitration as Administered by the American Arbitration Association* at 1, https://www.adr.org/sites/default/files/document_repository/AAA_Consumer_Rules_QandA.pdf (last visited Sep. 16, 2021).

² Form 900: Return of Organization Exempt From Income Tax, § 4b (2019) <https://projects.propublica.org/nonprofits/organizations/130429745/202013049349300741/full> (last visited Sep. 16, 2021) (AAA Form 900 for tax year 2019).

³ AAA, *Questions and Answers About Consumer Arbitration as Administered by the American Arbitration Association* at 1, https://www.adr.org/sites/default/files/document_repository/AAA_Consumer_Rules_QandA.pdf (last visited Sep. 16, 2021).

⁴ AAA, *Consumer Arbitration Rules* at 6 (2020), <https://www.adr.org/sites/default/files/Consumer%20Rules.pdf> (last visited Sep. 16, 2021).

⁵ AAA, *Questions and Answers About Consumer Arbitration as Administered by the American Arbitration Association* at 1, https://www.adr.org/sites/default/files/document_repository/AAA_Consumer_Rules_QandA.pdf (last visited Sep. 16, 2021).

⁶ AAA, *Consumer Arbitration Rules* at 7 (2020), <https://www.adr.org/sites/default/files/Consumer%20Rules.pdf> (last visited Sep. 16, 2021).

⁷ AAA, *2020 Annual Report & Financial Statements* at 4, https://www.adr.org/sites/default/files/document_repository/AAA_2020_AnnualReport_and_Financial_Statements.pdf (last visited Sep. 16, 2021).

from administrative fees alone.⁸ The amount of the fees invoiced by the AAA—and the party responsible for paying those fees—generally depends on the type of claim being pursued (*e.g.*, commercial vs. construction) as well as the type of arbitration that the parties request (*i.e.*, a documents-only “desk” arbitration vs. an arbitration with a hearing). Nevertheless, parties are free to agree to alternative fee allocations amongst themselves, and they frequently do so.

16. As a general matter, there are three categories of sequential administrative fees that the AAA charges: (i) filing fees; (ii) case management fees; and (iii) hearing fees. In addition, the AAA calculates, invoices, and collects arbitrator compensation from the arbitral parties and then provides it to the arbitrator.

17. The AAA’s general fee schedule for consumer arbitrations is as follows:⁹

Party	Desk/Documents-Only Arbitration	In-Person, Virtual or Telephonic Hearing Arbitration
Individual	Single Consumer Case Filing Fee: \$200 Multiple Consumer Case Filing Fee: \$100 or \$50 per case depending on tier \$0 if Case Filed by Business	Single Consumer Case Filing Fee: \$200 Multiple Consumer Case Filing Fee: \$100 or \$50 per case depending on tier \$0 if Case Filed by Business
Business	Single Consumer Case Filing Fee: \$300 for 1 or \$425 for 3 arbitrators is due once the individual claimant meets the filing requirements; \$500 for 1 arbitrator or \$625 for 3 arbitrators if Case Filed by Business is due at the time the arbitration is filed. Multiple Consumer Case Filing Fee: \$300, \$225, \$150, or \$75 per case depending on tier, due once the individual claimant meets the filing requirements; Business must pay both the Individual’s Filing Fee and Business’s Filing Fee if the case is filed by Business, due at the time the arbitration is filed. Case Management Fee: \$1,400 for 1 arbitrator or \$1,775 for 3 arbitrators will be assessed and must be paid prior to the arbitrator appointment process. Arbitrator Compensation: \$1,500 per case*	Single Consumer Filing Fee: \$300 for 1 or \$425 for 3 arbitrators is due once the individual claimant meets the filing requirements; \$500 for 1 arbitrator or \$625 for 3 arbitrators if Case Filed by Business is due at the time the arbitration is filed. Multiple Consumer Case Filing Fee: \$300, \$225, \$150, or \$75 per case depending on tier, due once the individual claimant meets the filing requirements; Business must pay both the Individual’s Filing Fee and Business’s Filing Fee if the case is filed by Business, due at the time the arbitration is filed. Case Management Fee: \$1,400 for 1 arbitrator or \$1,775 for 3 arbitrators will be assessed and must be paid prior to the arbitrator appointment process. Hearing Fee: \$500 Arbitrator Compensation: \$2,500 per day of hearing* per arbitrator
	<p>*A Desk/Documents-Only Case will not exceed document submissions of more than 100 pages in total and 7 total hours of time for the arbitrator to review the submissions and render the Award.</p> <p>Beyond 100 pages and 7 hours of time, the business will be responsible for additional arbitrator compensation at a rate of \$300 per hour. Arbitrator compensation is not subject to reallocation by the arbitrator(s) except as may be required by applicable law or upon the arbitrator’s determination that a claim or counterclaim was filed for purposes of harassment or is patently frivolous.</p>	<p>*The arbitrator compensation encompasses one preliminary conference, one day of in-person, virtual or telephonic hearing, and one final award. For cases with additional procedures, such as multiple telephone conferences, motion practice, post-hearing briefing, interim or partial awards, awards containing findings of fact and conclusions of law, or other processes not provided for in the Rules, the business will be responsible for additional arbitrator compensation. Arbitrator compensation is not subject to reallocation by the arbitrator(s) except as may be required by applicable law or upon the arbitrator’s determination that a claim or counterclaim was filed for purposes of harassment or is patently frivolous.</p>

⁸ See *id.* at 23.

⁹ AAA, *Consumer Arbitration Rules* at 33-34 (2020), <https://www.adr.org/sites/default/files/Consumer-Rules-Web.pdf> (last visited Sep. 16, 2021).

18. The AAA refers to the arbitral parties that use its services as “customers”¹⁰ and it forms contractual relationships with each of them. Although there is not typically a single written document governing the entirety of the relationship between the AAA and its repeat customers, the parties to an arbitration form a discrete binding contract with the AAA once the AAA agrees to accept a claimant’s demand, agrees to proceed with the administration of the claim, and accepts the requisite filing fees. Specifically, by accepting the parties’ offer to have the AAA administer a discrete dispute, accepting consideration in the form of filing fees, and undertaking associated duties and making certain performance promises in exchange, the AAA enters into a binding contract with each of the arbitral parties.

19. The AAA’s Consumer Arbitration Rules, which apply to consumer arbitrations and are typically incorporated into consumer arbitration agreements, outline not just the consideration the AAA receives (its fees), but also the duties that the AAA agrees to undertake in exchange for those fees. Specifically, Rule 13 provides that the “AAA’s administrative *duties* are set forth in the parties’ arbitration agreement and in these Rules,” and Rule 1(b) notes that the “authority and duties of the AAA are prescribed in the agreement of the parties and in these Rules and may be carried out through such of the AAA’s representatives as it may direct.”¹¹

¹⁰ See generally AAA, *2019 Annual Report & Financial Statements*, https://www.adr.org/sites/default/files/document_repository/AAA_AnnualReport_2019.pdf (last visited Sep. 16, 2021); AAA, *2020 Annual Report & Financial Statements*, https://www.adr.org/sites/default/files/document_repository/AAA_2020_AnnualReport_and_Financial_Statements.pdf (last visited Sep. 16, 2021); *Our Mission: Putting the Public, the Process, and the Parties First*, AAA, <https://www.adr.org/mission1> (“Because it is the most experienced arbitral organization, the AAA is able to innovate credibly. Listening to its customers over the years, it has developed flexible options”) (last visited Sep. 16, 2021); AAA, *AAA Arbitrator Select: Innovative, cost-effective access to the AAA’s distinguished and experienced Roster of Arbitrators*, https://www.adr.org/sites/default/files/document_repository/Arb%20Select_0.pdf (referring to “Arbitrator Select, “a service alternative for customers who want only a list of arbitrators tailored to their case”) (last visited Sep. 16, 2021). Indeed, AAA has a customer service hotline. See *Contact Us*, AAA, <https://www.adr.org/ContactUs> (last visited Sep. 16, 2021).

¹¹ AAA, *Consumer Arbitration Rules* at 10, 17 (2020), <https://www.adr.org/sites/default/files/Consumer-Rules-Web.pdf> (emphasis added) (last visited Sep. 16, 2021).

20. The AAA has repeatedly and expressly acknowledged that it enters into contractual agreements with its customers. For example, in other arbitrations, where parties have failed to pay the AAA's administrative fees, the AAA has sought relief in court on a breach of contract theory, including in this court. *See, e.g., American Arbitration Ass'n, Inc. v. Robert E. Derecktor, Inc.*, No. 656818/2020 (Sup. Ct. N.Y. Cnty. filed Dec. 8, 2020) (suing corporation for non-payment of fees for services under a breach of contract theory, alleging that "Defendant owed Plaintiff a contractual duty pursuant to express and implied contracts").

21. Further, the AAA has also expressly acknowledged that it undertakes contractual obligations to the arbitral parties that pay for its services. Indeed, beginning in at least January 1, 2019, the AAA began treating for accounting purposes the fees it receives for its services specifically as revenue derived from contracts with its customers. Its choice to do so was consistent with FASB Accounting Standards Update No. 2014-09, Topic 606 ("ASU 2014-09"), which governs GAAP accounting associated with "Revenue from Contracts with Customers."¹² Specifically, rather than having to book funds as revenue at the time it is paid under a contract, ASU 2014-09 allows an entity to book such proceeds as "deferred revenue" and treat the funds as if they were received at the time the contractual performance is subsequently completed. As relevant here, ASU 2014-09 allows the AAA to book the administrative fees it receives at the end of an arbitration—*i.e.*, when it has completed its contractual obligations—rather than when it collects its fees at the onset of the arbitral process.

¹² AAA, *2019 Annual Report & Financial Statements* at 45, https://www.adr.org/sites/default/files/document_repository/AAA_AnnualReport_2019.pdf (last visited Sep. 16, 2021).

22. In 2020, the AAA used this accounting method to treat \$55,315,000 of its fees as “deferred revenue” (it reported \$35,465,000 of such deferred revenue for 2019).¹³ Moreover, in its 2020 financial disclosures describing this accounting strategy, the AAA outlined in detail how contracts are formed in connection with the arbitrations that it administers:

Although the Association does not typically enter into legal contracts with customers, the acceptance of a demand for arbitration under any of the Association’s fee schedules, or agreement to provide services, is considered a contract with customers for purposes of applying the revenue recognition guidance note[] in [ASU 2014-09]. Payment terms vary by the type of services offered. The standard payment terms generally align with the timing of the services performed and do not include a financing component. The Association recognizes revenue when a performance obligation is satisfied by delivering the promised services to a customer, in an amount that reflects the consideration that the Association expects to receive in exchange for those services.

A performance obligation is a promise in a contract to deliver a distinct service to the customer. At contract inception, the Association assesses the services promised and identifies each distinct performance obligation. The transaction price is allocated to each distinct performance obligation based upon the relative benefit derived by the customer from the completion of each obligation.¹⁴

23. Indeed, in its latest Form 990—a publicly-filed form that non-profit organizations such as the AAA are required to file with the IRS to maintain their tax-exempt status—the AAA reported a “prior period adjustment” for the year 2018 of \$24,524,366 in connection with its adoption of No. 2014-09.¹⁵ As it reported to the IRS:

¹³ AAA, *2020 Annual Report & Financial Statements* at 26, https://www.adr.org/sites/default/files/document_repository/AAA_2020_AnnualReport_and_Financial_Statements.pdf (last visited Sep. 16, 2021).

¹⁴ *Id.* at 25 (alteration added).

¹⁵ Form 990, Return of Organization Exempt From Income Tax at 12, 72 https://projects.propublica.org/nonprofits/display_990/130429745/02_2021_prefixes_11-13%2F130429745_201912_990_2021022217741522 (last visited Sep. 16, 2021).

The Association has adopted FASB ASU 2014-09, revenue from contracts with customers (Topic 606). The Association has adopted ASU 2014-09 on January 1, 2019 using the retrospective method of transition for all contracts that are not complete as of the date of the initial application. The Association's revenue for reporting periods ended after December 31, 2018 are presented under the new guidance, while financial results for prior periods will continue to be reported in accordance with the prior guidance and the Association's historical accounting policy. The adoption of this pronouncement has resulted in some revenue being recognized upon the completion of services during later stages of cases rather than being recognized immediately upon billing.¹⁶

B. As a Non-Profit, the AAA Commits Itself to Economic Efficiency and Represents That It Will Charge Fees Flexibly and Only to Compensate It for the Cost of Its Services

24. The AAA consistently promotes the economical nature of its services and represents that its speed and cost-efficiency are its biggest differentiators and value propositions. It states that “[r]esolving disputes in fair and efficient ways so people and organizations move on and get back to the highest, best use of their time and talents is important, *and it is our job.*”¹⁷ As the AAA describes it, arbitration is “faster and more cost effective than litigation,”¹⁸ and “is usually faster and cheaper than going to court.”¹⁹ It repeatedly advertises—on its website, in its annual reports, in its mission and vision statements, in its statement of ethical principles, and in its social media posts—that it “is dedicated to fair, effective, *efficient and economical methods of dispute resolution.*”²⁰ Indeed, the AAA specifically represents that its rules, “[w]hen used in conjunction

¹⁶ *Id.* at 72.

¹⁷ AAA, *2020 Annual Report & Financial Statements* at 4, https://www.adr.org/sites/default/files/document_repository/AAA_2020_AnnualReport_and_Financial_Statements.pdf (last visited Sep. 16, 2021) (emphasis added).

¹⁸ *Arbitration*, AAA, <https://www.adr.org/Arbitration> (last visited Sep. 16, 2021).

¹⁹ AAA, *Consumer Arbitration Rules* at 6 (2020), <https://www.adr.org/sites/default/files/Consumer-Rules-Web.pdf> (last visited Sep. 16, 2021).

²⁰ AAA, *2019 Annual Report & Financial Statements* at 2, https://www.adr.org/sites/default/files/document_repository/AAA_AnnualReport_2019.pdf (emphasis added) (last

with our panelists and AAA-administered case management, . . . provide cost-effective and tangible value to users across a wide variety of industries and cases.”²¹

25. The AAA has codified these principles into its governing rules. The AAA’s Consumer Arbitration Rules note that “[a]rbitration is usually faster and cheaper than going to court,” and provide that, “[a]s a not-for-profit organization, the AAA charges fees to compensate it for the cost of providing administrative services.”²² Further, the Consumer Arbitration Rules themselves note that they “were drafted and designed to be consistent with the minimum due process principles of the *Consumer Due Process Protocol*”²³ (the “Protocol”), which the AAA notes governs and “applies to all possible conflicts from small claims to complex disputes” and constitutes the “clear benchmarks for conflict resolution processes involving consumers.”²⁴ The Protocol identifies the AAA’s efficiency and cost-effectiveness at every turn. For one, each component of the Protocol reflects its Principle #1, which provides that “[a]ll parties are entitled to a fundamentally-fair ADR process,” and that, “[a]s embodiments of fundamental fairness, these Principles should be observed in structuring ADR Programs.”²⁵ The Protocol’s Principle #6,

visited Sep. 16, 2021); AAA, 2020 Annual Report & Financial Statements at 2, https://www.adr.org/sites/default/files/document_repository/AAA_2020_AnnualReport_and_Financial_Statements.pdf (same) (last visited Sep. 16, 2021); American Arbitration, @ADRorg, TWITTER, <https://twitter.com/adrorg?lang=en> (same) (last visited Sep. 16, 2021)

²¹ *Rules, Forms & Fees*, AAA, <https://www.adr.org/Rules> (last visited Sep. 16, 2021).

²² AAA, Consumer Arbitration Rules at 6-7, 13 (2020), <https://www.adr.org/sites/default/files/Consumer-Rules-Web.pdf> (emphasis added) (last visited Sep. 16, 2021). It is also consistent with the AAA’s reporting to the IRS via its Form 990 that its relevant “revenue-producing activities . . . are all executed in support of . . . ‘administering procedures for the resolution of disputes.’” Form 990, Return of Organization Exempt From Income Tax at 69, https://projects.propublica.org/nonprofits/display_990/130429745/02_2021_prefixes_11-13%2F130429745_201912_990_2021022217741522 (last visited Sep. 16, 2021).

²³ AAA, *Consumer Arbitration Rules* at 6 (2020), <https://www.adr.org/sites/default/files/Consumer-Rules-Web.pdf> (last visited Sep. 16, 2021).

²⁴ AAA, *Consumer Due Process Protocol: Statement of Principles* at 5, [https://www.adr.org/sites/default/files/document_repository/Consumer%20Due%20Process%20Protocol%20\(1\).pdf](https://www.adr.org/sites/default/files/document_repository/Consumer%20Due%20Process%20Protocol%20(1).pdf) (last visited Sep. 16, 2021).

²⁵ *Id.* at 1.

entitled “Reasonable Cost,” then provides that “[i]n the interest of ensuring fair and independent Neutrals, *the making of fee arrangements and the payment of fees should be administered in a rational, equitable and consistent basis.*”²⁶ And through the Protocol, the AAA commits to conducting arbitral proceedings “within a reasonable time, without undue delay,” cognizant of the fact that a “primary impetus for conflict resolution outside the court system is the potential for relatively speedy and efficient resolution of disputes.”²⁷ All of this is consistent with the Protocol’s stated focus on the AAA being “of significant value in making dispute resolution quicker, less costly, and more satisfying.”²⁸

26. All of this was reiterated again in the AAA’s correspondence with Uber in this matter, where the AAA said that “[a]s a not-for-profit, neutral administrative dispute resolution provider, the AAA charges fees to compensate it for the costs of providing administrative services.”²⁹

27. Importantly, the AAA also codifies into its governing rules its wide discretion and flexibility with respect to its fees, consistent with its representation that it has “*transparent standard and flexible fee schedules.*”³⁰ Specifically, the Consumer Arbitration Rules fee schedule states that “with regard to all AAA administrative fees, *the AAA retains the discretion to interpret and apply this fee schedule to a particular case or cases.*”³¹

²⁶ *Id.* at 2, 17 (emphasis added).

²⁷ *Id.* at 2, 22.

²⁸ *Id.* at 4.

²⁹ See Letter from Cathe Stewart, Assistant Vice President, AAA, to Bryan Weir, Consovoy McCarthy Park, PLLC, and Ross Bricker, Jenner & Block LLP (May 5, 2021).

³⁰ *Arbitration*, AAA, <https://www.adr.org/Arbitration> (last visited Sep. 16, 2021).

³¹ AAA, *Employment/Workplace Fee Schedule* at 3 (2020), https://www.adr.org/sites/default/files/Employment_Fee_Schedule.pdf (emphasis added) (last visited Sep. 16, 2021)

28. The AAA also builds such flexibility and contextualization directly into its Protocol, which “recogniz[es] that a process appropriate in one context may be inappropriate in another.”³² The AAA Protocol thus “embodies flexible standards which permit consideration of specific circumstances.”³³ And those flexibility and fairness considerations apply expressly to the AAA’s invoicing of fees. AAA’s National Consumer Disputes Advisory Committee—which provides the AAA’s official commentary on the Protocol—provides the following context in explaining the rationale for Principle 6:

Due to 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. In determining what is reasonable, consideration should be given to the nature of the conflict* (including the size of monetary claims, if any), and the nature of goods or services provided.³⁴

C. The AAA’s Amended Rules and Fee Schedule Reducing Filing Fees for “Multiple Consumer Case Filings”

29. The AAA has recently revised its published fee schedule to account for a growing phenomenon: the simultaneous filing of huge numbers of nearly identical individual arbitration demands against the same company by the same law firm.³⁵ The AAA generally identifies these as “multiple consumer case filings,” which it defines as a set of arbitral demands that meet the following three criteria: (i) “Twenty-five [25] or more similar claims for arbitration or mediation are filed;” (ii) “Claims are against or on behalf of the same party or parties”; and (iii) “Counsel for

³² AAA, *Consumer Due Process Protocol: Statement of Principles* at 5, [https://www.adr.org/sites/default/files/document_repository/Consumer%20Due%20Process%20Protocol%20\(1\).pdf](https://www.adr.org/sites/default/files/document_repository/Consumer%20Due%20Process%20Protocol%20(1).pdf) (last visited Sep. 16, 2021).

³³ *Id.* at 5.

³⁴ *Id.* at 18 (emphasis added).

³⁵ See, e.g., David Horton, *The Arbitration Rules: Procedural Rulemaking by Arbitration Providers*, 105 Minn. L. Rev. 619, 672-74 (2020) (describing new tactic by plaintiffs’ lawyers that has been used against Uber, AT&T, Chipotle, DoorDash, Sallie Mae, and others).

the parties is consistent or coordinated across all cases.”³⁶ The multiple consumer case filing fee schedule applies when the AAA “determines in its sole discretion that [those three] conditions are met.”³⁷ Multiple consumer case filings have become immensely popular. Indeed, in 2020, multiple consumer case filings constituted the substantial majority of consumer claims presented to the AAA, accounting for 63,747 of the 68,337 consumer cases filed.³⁸

30. The AAA adopted its revised multiple consumer case filing fees in light of the basic fact that multiple consumer case filings do not realistically require the AAA to individually administer each such arbitration, and accordingly provide significant cost savings. The AAA recognized this explicitly in its 2020 Annual Report, where it addressed the efficiencies created by multiple consumer case filings and how those efficiencies directly result in less costs being incurred by the organization. Specifically, with reference to similar rules the AAA adopted in the Employment context:

Managing hundreds of simultaneous demands for arbitration against a single employer is no small task. Starting in 2018, but mostly in 2019, nearly 400 workers filed demands against their former employer for arbitration administered by the AAA-ICDR. Claimants were eager for resolution but, at seven to 14 hearing days per case, the schedule would be both lengthy and dense with overlapping proceedings.

That was pre-pandemic. Once in-person hearings became untenable, the challenges only mounted. The AAA-ICDR and the parties devised a strategy balancing claimants’ desire for resolution against the logistical concerns of the employer. The flexibility of the Employer Arbitration Rules made that possible.

³⁶ AAA, *Employment/Workplace Fee Schedule* at 3 (2020), https://www.adr.org/sites/default/files/Employment_Fee_Schedule.pdf (emphasis added) (last visited Sep. 16, 2021).

³⁷ *Id.*

³⁸ AAA, 2020 Annual Report & Financial Statements at 7, https://www.adr.org/sites/default/files/document_repository/AAA_2020_AnnualReport_and_Financial_Statements.pdf (last visited Sep. 15, 2021).

It may be hard to envision an advocate presenting evidence to multiple tribunals simultaneously. However, with so much common evidence and no physical hearing room, it was not much different from a virtual hearing before a single arbitrator or tribunal, and reduced the total number of hearing days devoted to individual claims. . . .

In this case, restrictions on in-person gatherings collided with increased interest in multiple filings in employment disputes. Even so, over the last four months of the year, one-quarter of the cases against this employer had been resolved. Under the original process, that much progress could have taken more than a year. The popularity of multiple filings also led to innovations from Information Services and Intake teams, who deployed systems for managing the sheer volume. The AAA-ICDR can now recommend a variety of best practices for disputes involving multiple filings, even where in-person hearings would be possible.³⁹

31. The revised multiple consumer case filing fees thus reflect the reduced costs the AAA incurs in administering thousands of nearly identical arbitral claims. Specifically, the filing fee for multiple consumer case filings starts at \$300 for businesses and \$100 for individuals for the first 500 cases and drops sequentially ultimately to just \$75 per case for the business and \$50 for the claimant⁴⁰:

	First 500 Cases	Cases 501 to 1,500	Cases 1,501 to 3,000	Cases 3,001 and beyond
Individual filing fee per case	\$100	\$50	\$50	\$50
Business filing fee per case	\$300	\$225	\$150	\$75

32. Again, even within the confines of the reduced fees for multiple consumer case filings, the AAA retains exclusive and broad discretion to revise those fees downward even further where appropriate. As the revised rules provide: the “AAA, in its sole discretion, may consider an

³⁹ *Id.*

⁴⁰ AAA, *Consumer Arbitration Rules* at 36, <https://www.adr.org/sites/default/files/Consumer-Rules-Web.pdf> (last visited Sep. 16, 2021).

alternate payment process for multiple case filings,” and that as “[w]ith regard to all AAA administrative fees, the AAA retains the discretion to interpret and apply this fee schedule to a particular case or cases.”⁴¹

33. The AAA also recently released its *Supplementary Rules for Multiple Case Filings* (“Supplementary Rules”), which were made effective August 1, 2021.⁴² The AAA “developed [the Supplementary Rules] to streamline the administration of large volume filings involving the same party, parties, and party representative(s) for disputes where the . . . *Consumer Fee Schedule* appl[ies].”⁴³ The Supplementary Rules expressly reaffirm the AAA’s commitment “to provide parties and their representatives with an efficient and economical path toward the resolution of multiple individual disputes.”⁴⁴

34. The principal and most pertinent addition provided by the Supplementary Rules is the establishment of rules pertaining to a “Process Arbitrator.” The role of the Process Arbitrator is to serve as a neutral adjudicator of administrative disputes that may arise between the parties to a multiple consumer case filing and the AAA prior to appointment of what the Supplementary Rules refer to as the “Merits Arbitrator.” Pursuant to the Supplemental Rules, the AAA retains the sole discretion to appoint a Process Arbitrator where the parties have a disagreement “with the AAA’s initial determination as to any administrative issue(s).”⁴⁵ Indeed, the AAA may submit to a Process Arbitrator “any . . . administrative issue arising out of the nature of the Multiple Case

⁴¹ AAA, *Employment/Workplace Fee Schedule* at 3 (2020), https://www.adr.org/sites/default/files/Employment_Fee_Schedule.pdf (last visited Sep. 16, 2021).

⁴² AAA, *Supplemental Rules for Multiple Case Filings* at 1 (Aug. 1, 2021), https://www.adr.org/sites/default/files/Supplementary_Rules_MultipleCase_Filings.pdf (last visited Sep. 16, 2021).

⁴³ *Id.* at 3.

⁴⁴ *Id.*

⁴⁵ *Id.* at 6.

Filings.”⁴⁶ The Supplementary Rules make clear that “[r]ulings by the Process Arbitrator will be final and binding upon the parties and Merits Arbitrator(s).”⁴⁷

35. On information and belief, although no Process Arbitrator has been appointed here, the AAA crafted and released the Supplementary Rules at least in part as a direct response to the administrative disputes that have arisen in connection with the arbitration filings at issue in this case (and outlined in detail in this Complaint). And the unilateral creation of a Process Arbitrator mechanism only underscores both the AAA’s control over the process and the obvious efficiencies inherent in administering a large set of nearly identical arbitrations.

II. CALIFORNIA ENACTS SB 707

36. In October 2019, California enacted Senate Bill 707, which imposes sanctions on certain arbitral parties that draft an applicable arbitration provision and then subsequently refuse to pay arbitration fees. Specifically, Cal. Civ. Proc. §§ 1281.97-99 provides that a drafting party that fails to pay arbitral administration fees or costs that are imposed by “the rules of [an] arbitration administrator,” such as the AAA, within 30 days of the administrator’s “due date” is deemed “in material breach of the arbitration agreement, is in default of the arbitration, and waives its right to compel arbitration.” Moreover, the statute allows for the arbitrator or a court to impose further severe sanctions to the party in material breach under its terms, including but not limited to (i) entry of default judgment on the underlying claim, (ii) monetary sanctions, and (iii) orders of contempt.

37. The bill had a clear focus: to deter companies that draft mandatory arbitration provisions from strategically and purposefully prohibiting the adjudication of arbitral claims by

⁴⁶ *Id.*

⁴⁷ *Id.* at 7.

failing to pay arbitral administrative fees. Its legislative history identified this anti-arbitral-stonewalling purpose. The bill was designed “to protect employees and consumers by ensuring that the party that drafts the arbitration agreement cannot delay adjudication of a dispute by refusing to participate in, or pay for, arbitration.”⁴⁸ Indeed, the bill was designed to provide claimants “with procedural options and remedies . . . when a company stalls or obstructs the arbitration proceeding by refusing to pay the required fees.”⁴⁹

38. As set forth below, that is not at all what Uber seeks to do (by this action or otherwise). To the contrary, Uber is ready—indeed eager—to defend its fee-waiver policy on the merits. Uber seeks only to set a reasonable fee concomitant with the AAA’s actual costs and expenses, consistent with the parties’ agreement, the AAA’s own representations and pronouncements, and applicable law.

III. UBER’S RELATIONSHIP WITH THE AAA

39. In electing to do business with the AAA, Uber was motivated by the organization’s focus on efficiency and cost, in addition to its wide geographic reach. Consequently, and as set forth below, Uber elected to make the AAA its arbitral service provider and secured for itself a spot on the AAA’s Consumer Clause Registry.

40. As set forth above, the AAA provides for the administration of consumer arbitrations through its Consumer Arbitration Rules. Pursuant to Rule 1, “[w]hen parties have provided for the AAA’s rules or AAA administration as part of their consumer agreement, they shall be deemed to have agreed that the application of the AAA’s rules and AAA administration

⁴⁸ SB 707, Synopsis at 5 (Cal. Assemb. Comm. on Judiciary June 14, 2019), https://leginfo.legislature.ca.gov/faces/billAnalysisClient.xhtml?bill_id=201920200SB707 (last visited Sep. 16, 2019).

⁴⁹ SB 707, Third Reading at 6 (Cal. Senate Judiciary Comm. May 21, 2019), https://leginfo.legislature.ca.gov/faces/billAnalysisClient.xhtml?bill_id=201920200SB707 (last visited Sep. 16, 2021).

of the consumer arbitration shall be an essential term of their consumer agreement.”⁵⁰ Rule 1 further defines “a consumer agreement as an agreement between an individual consumer and a business where the business has a standardized, systematic application of arbitration clauses with customers and where the terms and conditions of the purchase of standardized, consumable goods or services are non-negotiable or primarily non-negotiable in most or all of its terms, conditions, features, or choices.”⁵¹

41. The AAA’s Consumer Clause Registry was “created to provide more access to information about the AAA’s consumer arbitration services.”⁵² Specifically, the Consumer Clause Registry lists businesses for which “the AAA has reviewed their consumer arbitration clause and will administer their consumer arbitrations.”⁵³ The Registry is governed by Rule R-12 of the Consumer Rules, which creates a process for the AAA to review and approve of businesses’ consumer arbitration provisions. *First*, businesses intending to provide for the application of the AAA’s consumer rules in their consumer agreements should (i) notify AAA of the existence of the contract at least 30 days before it goes into effect; and (ii) provide the AAA a copy of the arbitration agreement. *Second*, upon receipt of the agreement, the AAA will review it for compliance with the AAA’s Consumer Due Process Protocol and the Consumer Arbitration Rules. *Third*, “[a]fter the AAA reviews the submitted consumer clause, receives the annual consumer registry fee, and determines it will administer consumer-related disputes filed pursuant to the

⁵⁰ AAA, *Consumer Arbitration Rules* at 9 (2020), <https://www.adr.org/sites/default/files/Consumer-Rules-Web.pdf> (last visited Sep. 16, 2021).

⁵¹ *Id.*

⁵² *Consumer Arbitration Fact Sheet*, AAA, <https://go.adr.org/consumer-arbitration> (last visited Sep. 16, 2021).

⁵³ *Consumer Clause Registry*, AAA, https://apps.adr.org/ClauseRegistryUI/faces/org/adr/extapps/clauseregistry/view/pages/clauseRegistry.jspx;jsessionid=fRTz50zDfLUCVeMfLdZjXHk1AYoEwD2vY5RiO5My-YL3WBO4q3OK!1205122341?_ga=2.36603367.698040894.1631798777-1065159358.1631798777 (last visited Sep. 17, 2021).

consumer clause, the business will be included on the publicly-accessible Consumer Clause Registry.”⁵⁴

42. In November 2016, Uber submitted a proposed consumer arbitration clause for the AAA’s review pursuant to Rule R-12. Uber elected to submit its consumer arbitration clause for inclusion on the AAA’s Consumer Clause Registry in light of the AAA’s representations, including its agreement to apply the Consumer Arbitration Rules and the Protocol to consumer disputes, and understood those to constitute the terms of any contracts that would arise upon acceptance by the AAA of any arbitration demand.

43. On December 22, 2016, the AAA responded to Uber’s submission, noting that it was “prepared to administer consumer-related disputes filed pursuant to this clause” if Uber was willing to have those disputes “administered in accordance with the Consumer Rules and the Protocol.” Uber agreed and thereafter published its Terms of Use containing the new approved consumer arbitration provision. As relevant to this matter, that arbitration provision, in pertinent part, provides as follows:

You and Uber agree that any dispute, claim or controversy arising out of or related to (a) these Terms or the existence, breach, termination enforcement, interpretation or validity thereof, or (b) your access to or use of the Services at any time, whether before or after the date you agreed to the Terms, will be settled by binding arbitration between you and Uber, and not in a court of law. . . .

You acknowledge and agree that you and Uber are each waiving the right to a trial by jury or to participate as a plaintiff or class member in any purported class action or representative proceeding. Unless both you and Uber otherwise agree in writing, any arbitration will be conducted only on an individual basis and not in a class, collective, consolidated, or representative proceeding. . . .

The arbitration will be administered by the American Arbitration Association (“AAA”) in accordance with the AAA’s Consumer Arbitration Rules and the Supplementary Procedures for Consumer

⁵⁴ AAA, *Consumer Arbitration Rules* at 16 (2020), <https://www.adr.org/sites/default/files/Consumer-Rules-Web.pdf> (last visited Sep. 16, 2021).

Related Disputes (the “AAA Rules”) then in effect, except as modified by this Arbitration Agreement. The AAA Rules are available at www.adr.org or by calling the AAA at 1-800-778-7879.

...

Unless you and Uber otherwise agree, the arbitration will be conducted in the county where you reside. If your claim does not exceed \$10,000, then the arbitration will be conducted solely on the basis of documents you and Uber submit to the Arbitrator, unless you request a hearing or the Arbitrator determines that a hearing is necessary. If your claim exceeds \$10,000, your right to a hearing will be determined by the AAA rules. Subject to the AAA rules, the Arbitrator will have the discretion to direct a reasonable exchange of information by the parties, consistent with the expedited nature of the arbitration. . . .

Your responsibility to pay any AAA filing, administrative and arbitrator fees will be solely as set forth in the AAA rules. However, if your claim for damages does not exceed \$75,000, Uber will pay all such fees, unless the Arbitrator finds that either the substance of your claim or the relief sought in your Demand for Arbitration was frivolous or was brought for an improper purpose (as measured by the standards set forth in Federal Rules of Civil Procedure 11(b)).

IV. CONSOVOY MCCARTHY PLLC FILES 31,619 NEARLY IDENTICAL DEMANDS AGAINST UBER

44. In June 2020, following the death of George Floyd at the hands of Derek Chauvin, then an officer with the Minneapolis Police Department and now a convicted murderer, Uber publicly announced its support for the millions of Americans calling for systemic change. It adopted measures to further promote diversity within the company, donated to criminal justice organizations, and launched certain initiatives offering support to the Black community. One such initiative was implemented through Uber Eats, a platform allowing customers to order and pay for food from area restaurants, and to have it delivered to them for a location-specific delivery fee. More specifically, in the aftermath of the Floyd murder, Uber Eats announced that it would temporarily waive its delivery fee for orders placed at certain qualifying Black-owned restaurants. As the company announced: “We are committed to supporting the Black community. As a starting point, we will use Uber Eats to promote Black-owned restaurants while making it easier for you

to support them, with no delivery fees for the remainder of the year.”⁵⁵ Other companies providing similar online food ordering services also instituted programs around this time to waive delivery fees for restaurant orders at Black-owned restaurants.⁵⁶

45. Although the Uber Eats’ fee waiver program was generally well-received, reaction to it was definitely not uniform. Senator Ted Cruz, for example, cried “race discrimination” and called for litigation, tweeting that Uber would “lose EVERY ONE of the lawsuits that are about to be filed.”⁵⁷

46. As if right on cue, the law firm of Consovoy McCarthy PLLC (the “Consovoy Firm”) stepped forward. The Consovoy Firm is a well-known foe of affirmative action policies throughout the country, and was the firm that recently challenged Harvard University’s admissions policies.⁵⁸

47. Thus, following Uber’s launch of the Uber Eats fee waiver program, attorneys at the Consovoy Firm began searching for claimants who might challenge the lawfulness of Uber Eats’ fee waiver. According to the Consovoy Firm, Uber Eats’ support of the Black community

⁵⁵ John Bowden, *Uber Eats waives fees for black-owned restaurants*, THE HILL (June 10, 2020), <https://thehill.com/policy/technology/502192-uber-eats-waives-fees-for-black-owned-restaurants> (last visited Sep. 16, 2021).

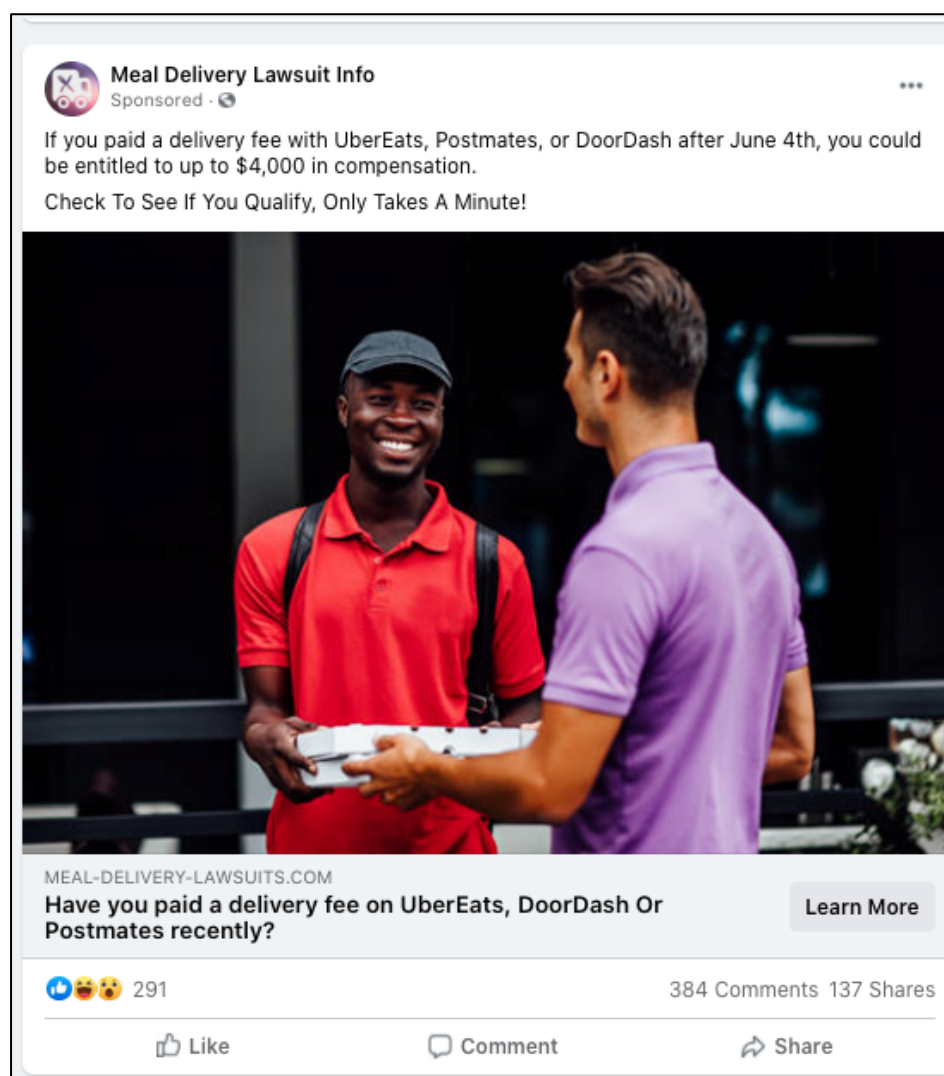
⁵⁶ See DoorDash, *Introducing New Initiatives to Support Black-owned Businesses on DoorDash and Caviar* (July 8, 2020), <https://doordash.news/2020/07/08/introducing-new-initiatives-to-support-black-owned-businesses-on-doordash-and-caviar/> (last visited Sep. 16, 2021); Postmates, *Support Black-Owned Restaurants* (June 4, 2020), <https://milled.com/postmates/we-stand-with-black-owned-businesses-QbKRk3XIKaLwowEu> (last visited Sep. 16, 2021).

⁵⁷ 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).

⁵⁸ 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* “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 University of Texas’ race-conscious admissions program operated unconstitutionally).

by waiving certain of its own delivery fees for orders placed at Black-owned restaurants constituted unlawful race discrimination (or “reverse discrimination”), based on which certain of Uber Eats’ customers had standing to sue.

48. To reach potential clients, the Consovoy Firm purchased sponsored online advertising space, and told Uber Eats users that anyone who had paid a delivery fee after June 4, 2020 could be entitled to up to \$4,000 in statutory damages. For example, the Consovoy Firm put up the following Facebook advertisement:



49. Presumably, this social media ad campaign by the Consovoy Firm served its intended purpose. Over the next six weeks, the Consovoy Firm filed **31,619** substantively identical individual demands for arbitration with the AAA against Uber on behalf of purported clients.⁵⁹ In their demands for arbitration, each claimant explained their dispute nearly identically:

Uber Eats is violating the Unruh Civil Rights Act, Cal. Civ. Code §§5t-52, and 42 U.S.C. § 1981 by charging discriminatory delivery fees based on race (of the business owner). Uber Eats charged Claimant discriminatory fees and presented Claimant with discriminatory terms. Claimant seeks compensatory, punitive and statutory damages of \$4,000/violation (UCRA).

50. Each demand sought \$4,000 per each supposed violation, and most claimants asserted multiple violations.

51. An exemplar demand is as follows:

⁵⁹ Letter from Cathe Stewart, Assistant Vice President, AAA, to Bryan Weir, Consovoy McCarthy Park, PLLC, and Ross Bricker, Jenner & Block LLP (Dec. 16, 2020).



AMERICAN ARBITRATION ASSOCIATION®

DEMAND FOR ARBITRATION
CONSUMER ARBITRATION RULES

CM Ref 7762156

Complete this form to start arbitration under an arbitration agreement in a contract.

1. Which party is sending in the filing documents? (check one) <input checked="" type="checkbox"/> Consumer <input type="checkbox"/> Business		
2. Briefly explain the dispute: UberEats is violating the Unruh Civil Rights Act, Cal. Civ. Code §§51-52, and 42 U.S.C. §1981 by charging discriminatory delivery fees based on race (of the business owner). UberEats charged Claimant discriminatory fees and presented Claimant with discriminatory terms. Claimant seeks compensatory, punitive and statutory damages of \$4,000/violation (UCRA).		
3. Specify the amount of money in dispute, if any: \$ 12,000		
4. State any other relief you are seeking: X Attorney Fees X Interest X Arbitration Costs X Other; explain: permanent injunction in favor of claimant		
5. Identify the requested city and state for the hearing if an in-person hearing is held: City: Crestline State: CA		
6. Please provide contact information for both the Consumer and the Business. Attach additional sheets or forms as needed.		
Consumer:		
Name: [REDACTED]		
Address: [REDACTED]		
City: Crestline	State: CA	Zip Code:
Telephone:	Fax: [REDACTED]	
Email Address: [REDACTED]		
Consumer's Representative (if known):		
Name: Bryan Weir		
Firm: Consovoy McCarthy PLLC		
Address: 1600 Wilson Boulevard Suite 700		
City: Arlington	State: Virginia	Zip Code: 22209
Telephone: +1 703 243 9423	Fax:	
Email Address: ubereats@consovoymccarthy.com		
Business:		
Name: Uber USA, LLC and Uber Technologies, Inc.		
Address: 1445 Market St.		
City: San Francisco	State: California	Zip Code: 94103
Telephone: +1 866 576 1039	Fax:	
Email Address:		

American Arbitration Association, Case Filing Services, 1101 Laurel Oak Road, Suite 100, Voorhees, NJ 08043
<https://www.adr.org> | AAA Customer Service 1-800-778-7879

52. Filings flowed in as follows:

1. October 26, 2020 – 3,516 demands filed
2. October 28, 2020 – 5,515 demands filed
3. November 2, 2020 – 8,972 demands filed
4. November 6, 2020 – 3,472 demands filed

5. November 13, 2020 – 2,014 demands filed
6. November 21, 2020 – 1,508 demands filed
7. November 24, 2020 – 2,073 demands filed
8. December 3, 2020 – 3,258 demands filed
9. December 4, 2020 – 1,286 demands filed
10. December 7, 2020 – 4 demands filed
11. December 9, 2020 – 1 demand filed⁶⁰

V. THE AAA’S ADMINISTRATION OF THE DISPUTES AND ITS COMMITMENT TO INVOICE UBER NEARLY \$100 MILLION IN FEES AND COSTS

A. The AAA Accepts the Demands and Invoices Uber Initial Filing Fees Pursuant to the Multiple Consumer Case Filings Schedule

53. On December 16, 2020, the AAA noted in writing that of the 31,619 individual consumer demands filed by the Consovoy Firm, “the AAA confirms there are 31,573 cases where the Claimant has met their filing requirements.”⁶¹ The AAA thus accepted those claimants’ demands for arbitration.

54. Having accepted the claimants’ demands for arbitration, the AAA said that it would begin invoicing Uber for its filing fees. And having determined in its sole discretion that the three applicable criteria were satisfied, the AAA said that it would be applying its filing fee schedule applicable to multiple consumer case filings. The AAA thus reported that Uber’s share of the filing fee would be \$2,742,975 and that the claimants’ share in the aggregate would be \$1,603,650.⁶² However, because Uber had agreed through its Terms of Use to pay all of the

⁶⁰ Letter from Cathe Stewart, Assistant Vice President, AAA, to Bryan Weir, Consovoy McCarthy Park, PLLC, and Ross Bricker, Jenner & Block LLP (Dec. 16, 2020).

⁶¹ *Id.* Of the 31,619 demands initially filed, 11 of them were withdrawn by claimants and another 35 were identified as duplicates, leaving 31,573 demands.

⁶² *See id.*

arbitration fees, the AAA said that it was invoicing Uber for the entire amount, \$4,346,625. The AAA thus effectively invoiced Uber a filing fee of approximately \$138 per claim, despite the fact that the rules applicable to claims other than multiple consumer case filings would have called for \$500 in total filing fees as to each claim, for a total of \$15,786,500. The AAA thus exercised its discretion to invoice Uber 72% less than its usual filing fees due solely to the fact that it was a multiple consumer case filing.

55. The AAA set a “final due date” of January 4, 2021 for Uber to pay the filing fees associated with the 21,475 demands filed between October 26, 2020 and November 6, 2020 and a “final due date” of February 4, 2021 to pay the filing fees associated with the remaining 10,144 demands filed between November 13, 2020 and December 9, 2020.⁶³ Further, the AAA had previously reported to Uber that “some of these arbitrations are subject to California Code of Civil Procedure 1281.97 and 1281.98,” and thus it “will not grant any extensions to [its] payment deadline[s].”⁶⁴ Consequently, under the terms of Cal. Civ. Code § 1281.97, if Uber did not pay the AAA’s filing fee invoices in their entirety by February 3, 2021 and March 6, 2021, respectively, it would be deemed in material breach of its arbitration agreements with the claimants and would be potentially subject to the stiff sanctions imposed by Sections 1281.97 and 1281.99.

56. In light of these constraints, on December 24, 2020, Uber paid the filing fees for each of the 31,573 demands without objection, totaling \$4,346,625. Having accepted Uber’s filing fees, and having agreed to administer the claimants’ arbitration demands, the AAA formed a

⁶³ Letter from Cathe Stewart, Assistant Vice President, AAA, to Bryan Weir, Consovoy McCarthy Park, PLLC, and Ross Bricker, Jenner & Block LLP (Dec. 16, 2020).

⁶⁴ Letter from Cathe Stewart, Assistant Vice President, AAA, to Bryan Weir, Consovoy McCarthy Park, PLLC and Rosemary Barajas, Uber Technologies, Inc. (Nov. 10, 2020).

binding contractual relationship with Uber to administer the arbitrations consistent with its own rules, protocols, and the parties' reasonable expectations at the time of contracting.

B. The AAA at First Proposes a Sensible and Streamlined “Bellwether” Process, but then Backtracks and Claims that Individualized Adjudication of Each and Every Demand is Required

57. On February 12, 2021, following Uber's payment of the initial filing fees, the AAA convened an administrative conference call between Uber and representatives from the Consovoy Firm. A central focus of this meeting was how the AAA was going to establish a workable process to administer the adjudication of the claimants' 31,573 extant demands.

58. Unsurprisingly, the AAA at first suggested that the arbitration demands filed by the Consovoy Firm required a process and structure that promotes the practical efficiencies necessary to resolve the claims on some reasonable and efficient basis. One sensible approach that the AAA subsequently proposed was a bellwether process, whereby a small selection of cases would be used to resolve common issues of law and fact and the findings from those cases would then be applied to the remaining demands. This approach would be particularly sensible in this context given that the success or failure of each of the claimants' claims will require the resolution of at least one identical legal question: did Uber Eats' waiver of its own delivery fee for orders from Black-owned restaurants amount to unlawful race discrimination under the Unruh Act or 42 U.S.C. § 1981 for which a customer has standing to sue?

59. Despite initially proposing this efficient process, the AAA reversed course and abandoned the idea when the Consovoy Firm expressed opposition to it, as the AAA revealed on a subsequent March 10, 2021 administrative conference call. Despite its earlier representations, it now took the position that without agreement from the Consovoy Firm it would not impose any alterations to an individualized arbitration process. Specifically, the AAA noted that “absent party agreement on how to proceed, we will administer the cases pursuant to the Consumer Arbitration

Rules,” and that, in its view, administering the cases pursuant to the Consumer Arbitration Rules meant that the AAA could not alter the process to anything other than wholesale individualized adjudication of each of the then extant 31,560 demands.⁶⁵

60. Nevertheless, it soon became apparent that the AAA was not capable of administering such an overwhelming number of separate arbitrations in the ordinary course. Indeed, the AAA acknowledged as much at the March 10, 2021 conference, where it stated that it does not have sufficient resources or an adequate number of available arbitrators to commence and complete at one time all of the 31,560 arbitrations. Consequently, as outlined initially in a March 31, 2021 letter and as amended in an April 2, 2021 letter, the AAA unilaterally crafted a process by which it would group the claims into 5 “batches”—the first being 477 cases and the remaining either 7,771 or 7,770 cases each—and assign them in equal numbers to the 750 arbitrators (at most) that the AAA did have available.⁶⁶

AAA’s Proposed Process	
Batch 1	477 Cases
Batch 2	7,771 Cases
Batch 3	7,771 Cases
Batch 4	7,771 Cases
Batch 5	7,770 Cases

61. As set forth below, despite the practical constraints making individualized arbitration in the usual course impossible, the AAA adopted an “ostrich policy,” ignoring these practical realities when it came time to invoice Uber its fees and arbitrator compensation.

⁶⁵ Letter from Cathe Stewart, Assistant Vice President, AAA, to Bryan Weir, Consovoy McCarthy Park, PLLC, and Ross Bricker, Jennifer & Block LLP (Mar. 31, 2021). Following the February 12, 2021 conference, another 13 claimants withdrew their arbitral demands, bringing the total to 31, 560.

⁶⁶ Letter from Cathe Stewart, Assistant Vice President, AAA, to Bryan Weir, Consovoy McCarthy Park, PLLC, and Ross Bricker, Jennifer & Block LLP (Apr. 2, 2021).

C. The AAA Announces That It Will Invoice Uber Full Case Management and Arbitrator Fees—for a *Minimum* of \$91,561,500—on the Unsupportable Ground That Its Process Would Entail No Cost Savings

62. Despite the AAA's adoption of a process whereby the arbitrations were divided into batches, and over Uber's consistent objection, the AAA demanded that Uber pay case management fees and arbitrator costs as if the 31,573 claims were wholly unrelated and were being administered separately and in the usual course. In the AAA's view, despite placing buckets of claims into batches and assigning dozens of them to each of its limited set of 750 arbitrators, it will somehow incur all of the same costs as if the 31,573 arbitrations each began immediately and on an individual basis, *i.e.*, in front of 31,573 arbitrators. At \$1,400 for each case management fee, and \$1,500 at the very least for each arbitrator deposit, the AAA was committing to invoice Uber a *minimum* of **\$91,561,500** (the "Minimum Demanded Invoice Amount").

63. The AAA defended its intention to invoice the Minimum Demanded Invoice Amount on the ground that, despite the process it had crafted, it would still incur all of its usual costs and the arbitrators would earn their usual compensation. Stated differently, the AAA claimed that it would somehow incur **\$44,202,000** in costs in administering these disputes, and that its 750 arbitrators will fully earn at least **\$47,359,500** (and potentially *much* more), for adjudicating a few dozen nearly identical disputes each. These representations were not accurate. The process imposed by the AAA would undoubtedly reduce the costs incurred by the AAA as well as the time commitment required by each arbitrator (and therefore their earned compensation). As Uber said in writing to the AAA, its "proposed fees both: (a) far exceed AAA's anticipated underlying case management costs and (b) ignore the cost and time efficiencies that will be realized through assignment of multiple claimant demands to each selected arbitrator."⁶⁷

⁶⁷ Letter from Ross Bricker, Jenner & Block LLP to Cathe Stewart, Assistant Vice President, AAA (Apr. 15, 2021).

1. The AAA's Administrative Costs and Expenses

64. The AAA has claimed that it will incur the same amount of costs and expenses in administering the 31,560 at-issue demands as it would administering 31,560 unrelated demands.

Specifically, the AAA has asserted as follows:

[W]e will be providing the administrative services we would normally provide to a single case on each case between the parties, including appointing an arbitrator, handling any arbitrator disclosures, scheduling preliminary and evidentiary hearings, handling arbitrator billing and payments, providing administrative support to the arbitrator throughout the process, transmitting orders and awards and handling post award and case closing procedures. Providing these services as we would on any individual cases warrants the normal AAA administrative fee billing.⁶⁸

65. The AAA's statement that it will incur the same costs as it would in the ordinary course is false. Several fairly obvious examples demonstrate the cost savings inherent in the AAA's proposed process.

66. The AAA has consistently communicated to Uber and the Consovoy Firm collectively across the 31,573 cases, referring in its subject lines to the single supposed matter of *Individual Consumers vs. Uber USA, LLC and Uber Technologies, Inc.* and providing its communications in a single email to Uber's counsel and the Consovoy Firm. Were these 31,573 arbitral matters unrelated to each other, however, the AAA would have instead compiled 31,573 different letters that it would have then transmitted via 31,573 different e-mail messages to 31,573 different recipient groups, entailing substantially more cost, both in time and resources.

67. Apart from the communication-related costs saved by administratively grouping these claims together in batches, the AAA will also incur significant cost savings by appointing

⁶⁸ Letter from Cathe Stewart, Assistant Vice President, AAA, to Bryan Weir, Consovoy McCarthy Park, PLLC, and Ross Bricker, Jenner & Block LLP (Apr. 23, 2021).

the 31,573 claims to the relatively small number of available arbitrators. As noted above, the AAA has stated that in total it has just 750 arbitrators in the State of California who could possibly handle these arbitrations, and has recently indicated that a number of arbitrators have declined appointment and, as a result, the AAA is likely to end up appointing substantially less than that. But even if there were 750 arbitrators total, that would amount to an average of about 40 arbitrations per arbitrator. And while the AAA appears to assume that each arbitrator will convene separate preliminary and potentially evidentiary hearings across each of the more than 40 cases to which they will be assigned, requiring individualized administrative work by AAA as to each hearing, that is highly unlikely and would be massively inefficient, for the arbitrators themselves first and foremost.

68. Likewise, selecting, monitoring, and paying at most 750 individuals that are adjudicating dozens of identical cases will be far less costly than having to carry on those activities for 31,573 people.

69. Similarly, transmitting arbitral orders will be much less costly than the AAA suggests because each of the 31,573 claimants share the same representative—the Consovoy Firm—and awards can be directed to them in the first instance.

70. These are just several of the ways in which the AAA’s administrative costs have been and will continue to be significantly reduced in this mass arbitration context, and there is no reason to believe these cost savings would not similarly continue throughout the entirety of these arbitrations in almost every facet of the AAA’s administration.

71. In light of these obvious cost reductions, Uber sought information from the AAA that might explain its charges so that Uber could try to make sense of the astronomical amount that the AAA intended to charge. In particular, Uber asked the AAA to “provide information regarding

AAA's staffing and costs; overhead and direct costs AAA anticipates incurring in the administration of claimants' demands; and any other cost information that is relevant to AAA's work in administering these matters."⁶⁹

72. The AAA declined to provide Uber any of its requested information, which is all in the AAA's exclusive possession and control. Moreover, the AAA even stated that it "will not participate in a call to discuss the AAA administrative fees and arbitrator compensation beyond what is set forth in Costs of Arbitration of the Consumer Arbitration Rules."⁷⁰ Uber thus has no basis to understand how—and no reason to believe that—the AAA could possibly incur \$44,202,000 in costs in administering these disputes. (For context, in 2020, the AAA incurred \$94,735,000 in expenses in administering *all* of its hundreds-of-thousands of arbitral matters.)

2. Arbitrator Compensation

73. Similar to its representations regarding its administrative fees, the AAA has taken the position that its at most 750 arbitrators should earn the same compensation as they would were these 31,560 distinct arbitrations. Specifically, the AAA has stated that:

Arbitrators will . . . be resolving cases individually on their own merits. A documents-only process or hearing related to the individual case will be provided. And individual awards will be issued based on the specific facts for each individual case. As such, the published arbitrator compensation is also appropriate.⁷¹

74. But whether or not each of the cases will be decided "on their own merits" is of no moment. What matters is the fact that it is simply implausible that an arbitrator hearing a group

⁶⁹ Letter from Ross Bricker, Jenner & Block LLP to Cathe Stewart, Assistant Vice President, AAA (Apr. 15, 2021).

⁷⁰ Letter from Cathe Stewart, Assistant Vice President, AAA, to Bryan Weir, Consovoy McCarthy Park, PLLC and Ross Bricker, Jenner & Block LLP (May 5, 2021).

⁷¹ *See id.*

of dozens of identical cases will earn the same compensation as if they were separate and individual arbitrations.

75. Under either of the two methods of arbitrator compensation that the AAA applies, the AAA pays arbitrators in relation to the time that they actually spend working on cases. For “desk/documents-only” arbitrations, arbitrators receive \$1,500 for each 7-hour case, and an additional \$300 per hour after that. For arbitrations with a hearing, the arbitrator is paid \$2,500 for each day of hearing.⁷²

76. The AAA’s position that each arbitrator should earn full fees for each case is thus unreasonable. It is simply not plausible that a single arbitrator hearing dozens of cases—which address many identical fact questions and *precisely* identical legal ones—would expend nearly the same amount of time as if those dozens of arbitrations addressed wholly different fact and legal questions. As Uber pointed out, the “AAA has proposed to charge arbitrator fees on a per-case basis (\$1,500 per case) as if each arbitration will proceed independently, . . . [b]ut that certainly will not be the case given that each demand is largely the same and the need for AAA’s arbitrators to proceed as expeditiously as possible. AAA must exercise its discretion to set arbitrator fees on a *per-arbitrator basis* rather than a *per-claim* basis to reflect the reality that each arbitrator will be handling multiple, near identical claims.”⁷³

77. Yet again, several obvious examples prove the point. As noted, the legal question as to each case will be precisely the same, and thus rather than having to research discrete issues across forty cases raising distinct and complicated issues, each arbitrator will need to conduct just one round of legal research. Further, that arbitrator will then have to draft just one written

⁷² See *supra* ¶ 18.

⁷³ Letter from Ross Bricker, Jenner & Block, LLP, to Cathe Stewart, Assistant Vice President, AAA (Apr. 15, 2021).

resolution of that legal question and apply it to each of the more than 40 claims before them. Indeed, it would be ridiculous to conclude otherwise, *i.e.*, that a single arbitrator addressing the same legal issue will resolve it differently—and through a separate and distinct process—across forty-plus identical cases.

78. Further, it is almost certain to be the case that most if not all submissions from each of the parties will be combined and/or mostly identical. Although each arbitrator will have on average around 40 cases, each of the 31,560 claimants are represented by the same counsel, and Uber is represented by the same counsel across those 31,560 claims. It is fanciful to suggest that one law firm will draft meaningfully different papers across 31,560 different claims. As such, there is almost no probability that the arbitrators will spend any more meaningful time on the 40-plus arbitrations than they would on just one (or at most a small handful).

79. The parties simply did not agree that the AAA would blindly apply the terms of its fee schedule no matter how the arbitrations are actually administered. Rather, the parties agreed—and the AAA repeatedly represented—that the AAA would charge fees associated with its actual costs. It is sure to be the case that the arbitrators will meaningfully group together these arbitrations such that the overall time they will spend on them will be drastically less than had they been truly resolving 40-plus separate arbitrations.

D. The AAA Refuses to Alter Its Fee or Cost Structure, Invoices the First Installment of the Minimum Demanded Invoice Amount, and Demands Uber Waive All Objections Thereto as a Condition to Continuing the Arbitrations

80. In light of the above, following the AAA's announcement that it would invoice the Minimum Demanded Invoice Amount, Uber pleaded with the AAA that it "must reconsider its proposed approach to both categories of charges, and exercise its discretion to 'consider an

alternative payment process for multiple case filings.”⁷⁴ The AAA rejected Uber’s objections, and demanded the Minimum Demanded Invoice Amount, on the ground that “absent party agreement, the AAA cannot impose the changes requested by the Respondent.” The AAA has never explained why it believes that the Consovoy Firm’s consent is needed to alter the fees or arbitrator costs that it invoices to Uber. No rule requires such consent; to the contrary, the AAA’s applicable rules vest the AAA with the sole discretion to alter its fees and arbitrator compensation. The AAA has also declined to appoint a Process Arbitrator for the arbitrations, pursuant to the Supplementary Rules, even though it maintains “sole discretion” to do so.⁷⁵

81. Nevertheless, on April 2, 2021, the AAA invoiced Uber the first installment of the Minimum Demanded Invoice Amount, which demanded \$667,800, purportedly representing a \$1,400 case management fee for the first batch of 477 cases. The AAA set a due date of April 30, 2021 (which it subsequently extended to May 14, 2021). Having rejected Uber’s repeated objections to its application of fees, Uber was left with no choice (in light of the new California law) but to pay those fees in full while reserving its right to subsequently challenge them as improper in the appropriate forum. Specifically, Uber stated to the AAA in an April 28, 2021 letter that it “intends to pay AAA’s invoice for case management fees related to the first batch of 477 claims (\$677,800), *but will do so under protest and without waiver of its objections* regarding AAA’s calculation of those fees.”⁷⁶ However, on May 5, 2021, the AAA stated in no uncertain terms that it would not accept Uber’s payment if it were made “under protest.”⁷⁷ It provided that

⁷⁴ *Id.* at 1 (quoting AAA Consumer Arbitration Rules, (i)(b)).

⁷⁵ AAA, *Supplemental Rules for Multiple Case Filings* at 6 (Aug. 1, 2021), https://www.adr.org/sites/default/files/Supplementary_Rules_MultipleCase_Filings.pdf (last visited Sep. 16, 2021).

⁷⁶ Letter from Ross Bricker, Jenner & Block, to Cathe Stewart, Assistant Vice President, AAA (Apr. 28, 2021) (emphasis added).

⁷⁷ Letter from Cathe Stewart, Assistant Vice President, AAA, to Bryan Weir, Consovoy McCarthy Park, PLLC, and Ross Bricker, Jenner & Block LLP (May 5, 2021).

the “AAA does not accept payments of administrative fees and/or arbitrator compensation under protest,” and if Uber’s “payment is made under protest, the AAA will return such fees and administratively close the case files.”

82. In light of the AAA’s threat to close the arbitrations—and the potential sanctions that might consequently have been imposed due to Cal. Civ. Proc. §§ 1281.97-99—Uber paid the \$677,800 invoice in full on May 13, 2021 without any stated objection or reservation of rights thereto. The sole reason that Uber did not reserve its rights to object to the April 2, 2021 invoice—and preserve its right to seek appropriate relief in connection with that invoice at the appropriate time—was the AAA’s position that it would terminate the arbitrations if Uber were to have done so. Nevertheless, in an abundance of caution, Uber did inform the AAA that it “reserves all rights under law and makes this payment without waiver of, or prejudice to, its right to object to any *future* AAA invoice(s).”⁷⁸

83. The AAA accepted Uber’s payment and represented that it had begun the arbitrator appointment process. The AAA also stated that “[a]fter most of the arbitrator appointments for the first 477 cases have been confirmed, we will request case management fees for the next batch of 7,771 cases,” and that “[o]nce most of the appointments in this batch are confirmed, we will invoice arbitrator compensation for this batch of cases.”⁷⁹

84. As of the time of this filing, the AAA has notified the parties that it has selected arbitrators for 472 of the 477 cases in Batch #1. It has assigned those 472 arbitrations to just 97 different arbitrators, meaning that each arbitrator has on average 4.9 cases. Further, in the very

⁷⁸ Letter from Ross Bricker, Jenner & Block, to Cathe Stewart, Assistant Vice President, AAA (May 13, 2021) (emphasis added).

⁷⁹ Letter from Cathe Stewart, Assistant Vice President, AAA, to Bryan Weir, Consovoy McCarthy Park, PLLC and Ross Bricker, Jenner & Block LLP (April 23, 2021).

early stages of these arbitrations, the efficiencies identified in this complaint have already been made manifest. For one, the arbitrators are (sensibly) coordinating communication and administrative matters collectively across each of their arbitrations (as has been the AAA). And certain claimants have even argued that the arbitrator in one matter should apply rulings made by an arbitrator in another.

85. As set forth above, the AAA's process for the appointment of arbitrators for the first batch of 477 cases has taken many months. Consequently, on September 3, 2021, Uber proposed that, in light of the slow pace of arbitrator appointments, and the fact that the AAA could not possibly adjudicate all of these matters at once, the AAA only invoice Uber for arbitral matters as they get assigned to arbitrators and are meaningfully addressed, rather than invoicing Uber all at once for 7,771 arbitrations that may not be addressed for months if not years.⁸⁰ The AAA categorically refused Uber's suggestion. And indeed, on September 14, 2021, the AAA issued the Invoice, which invoiced Uber **\$10,879,400** for case management fees for the next batch of 7,771 cases. As the AAA stated in a letter transmitting the Invoice:


As most of the arbitrator appointments for the first 477 cases have now been confirmed, the AAA requests payment of the Case Management Fees for 7,771 cases. \$10,879,400 is due from the Respondent on or before October 14, 2021, 30 days from the date of this letter. An invoice is attached, along with a list of cases for which payment is being requested. As these arbitrations are subject to California Code of Civil Procedure 1281.97 and 1281.98, payment must be received within 60 days of the date of this letter. The AAA will not grant any extensions to this payment deadline.

86. Thus, the Invoice demands payment of case management fees in full for the second batch of 7,771 arbitrations, even though it has taken the AAA more than four months—since Uber's May 13, 2021 payment of the initial case management fees—to assign arbitrators for even

⁸⁰ Letter from Ross Bricker, Jenner & Block, to Donna Martinez, Manager of ADR Services, AAA (Sept. 3, 2021).

477 arbitrations. At that rate, it would take the AAA 65 months even to assign arbitrators to the 7,771 arbitrations in the second batch. Put simply, in light of the way the first batch has played out, the AAA's insistence on receiving \$10.8 million in case management fees for the second batch, right now and all at once, confirms that its demands for fees are wholly untethered from incurring any actual costs.

87. In addition, as noted in its letter, the AAA transmitted to Uber not 7,771 individual invoices—as it would have done had these arbitrations been truly independent—but instead a one-page document with a single line-item noting that Uber owes it more than \$10 million in just four weeks. Further, again as stated in its letter, the Invoice made express reference to the fact these fees are subject to Sections 1281.97 and 1281.98 of the California Code of Civil Procedure:

 AMERICAN ARBITRATION ASSOCIATION*	INTERNATIONAL CENTRE FOR DISPUTE RESOLUTION*	13727 Noel Road Suite 700 Dallas TX 75240	Statement Date		Amount Due	
			9/14/2021		\$10,879,400	
			Case #			
			7,771 Individual Claimants vs. Uber			

Invoice

7,771 Individual Claimants vs. Uber
Uber Represented by: Jenner & Block, LLP

Date	Case Number	Description	Amount	Credits	Balance	Due Date
9/14/2021	01-20-0018-7155	Case Management Fees for 7,771 individual cases subject to CA CCP 1281.97 and 1281.98	\$10,879,400		\$10,879,400	10/14/2021

Remarks Please make check payable to the American Arbitration Association.

EIN # 13-0429745

Please notify me if you wish to pay online via e-check or credit card and I will provide instructions for submitting payment through our website. Although it is not recommended at this time, if you must send a physical check, please send via a delivery service to the address below with this invoice included.

American Arbitration Association
Attn: Finance
132727 Noel Road
Suite 700
Dallas, TX 75240

88. Uber brings this action to declare invalid the Invoice as well as any further invoicing of the Minimum Demanded Invoice Amount.

89. For the avoidance of doubt, Uber in no way seeks to forestall, delay, or otherwise hinder the arbitral process itself, which it hopes continues unabated throughout this action. Nor does Uber contend that it need not pay *any* fees. Uber simply seeks to uphold the parties' agreement that it is required to pay fees that are commercially reasonable, that are tied to the actual costs of the AAA's provision of services, and that are consistent with the AAA's Consumer Arbitration Rules, the Protocol, the parties' expectations, and fundamental fairness. Indeed, Uber has requested the Court's approval to place the Invoice amount in escrow, to ensure there is no

question that Uber is prepared to pay whatever amount the Court determines is appropriate, in accordance with the parties' agreement and applicable law.

CAUSES OF ACTION

COUNT I: Declaratory Judgment **Breach of Contract (Express and/or Implied)**

90. Uber incorporates by reference all preceding paragraphs and re-alleges them as if set forth fully herein.

91. There is an actual controversy between Uber and the AAA concerning the lawfulness of the Invoice, any further invoicing of the Minimum Demanded Invoice Amount, and the AAA's obligations to charge reasonable fees that are tied to its actual costs.

92. This controversy is neither speculative nor hypothetical. The AAA has already invoiced and collected from Uber unreasonable fees and it has stated its intent to do so again, repeatedly and imminently.

93. Uber and the AAA entered into contracts (either express or implied) when the AAA accepted Uber's filing fees for the at-issue arbitral demands and agreed to administer them.

94. These contracts are valid and enforceable agreements.

95. Through those agreements, in exchange for its fees, Uber and the AAA mutually understood that the AAA undertook the duty of administering the arbitrations in compliance with, *inter alia*, its Consumer Arbitration Rules and the Protocol.

96. The Commercial Arbitration Rules and the Protocol impose on the AAA a duty not to invoice Uber for unreasonable administrative fees that bear no relation to the AAA's actual costs and expenses.

97. The AAA has breached those agreements by invoicing Uber for fees and costs that are unreasonable and bear no relation to the AAA's actual costs and expenses. The AAA has

unequivocally stated that it will continue to invoice Uber for costs that are unreasonable and bear no relation to the AAA's actual costs and expenses.

98. The AAA's invoices of Uber are unconscionable.

99. Uber has complied with all material terms of its agreements with the AAA.

100. As a direct and proximate cause of the AAA's breaches of the agreements, Uber has suffered and will continue to suffer significant damages if the breaching conduct is not enjoined.

101. The AAA must specifically perform its obligations under the agreements and invoice Uber only for reasonable costs that bear a relation to its actual costs and expenses.

COUNT II: Declaratory Judgment
Breach of the Implied Covenant of Good Faith and Fair Dealing

102. Plaintiff incorporates by reference all preceding paragraphs and re-alleges them as if set forth fully herein.

103. As alleged above, Uber and the AAA entered into binding and valid contracts.

104. Uber has fulfilled its obligations under those contracts and has evinced its intention to continue fulfilling its obligations thereunder.

105. Any conditions precedent to AAA's performance under the agreements have occurred.

106. The AAA has unfairly interfered with Uber's rights to receive the benefits under those agreements by invoicing Uber a manifestly unfair amount for its services that is far beyond the value of those services.

107. As a direct and proximate cause of the AAA's interference with Uber's rights under the agreements, Uber has suffered and will continue to suffer significant damages if the unfair conduct is not enjoined.

COUNT III: Declaratory Judgment
Unjust Enrichment and Restitution

108. Uber incorporates by reference all preceding paragraphs and re-alleges them as if set forth fully herein.

109. The AAA's retention of its invoiced fees constitutes unjust enrichment and merits restitution because: (i) the AAA has received (and will continue to receive) a benefit in the form of administrative fees, (ii) it is unjust for the AAA to retain those fees because they far outweigh the value of the services they will provide in contravention of the parties' contract, mutual understanding and expectations, and commercial reasonableness; and (iii) the AAA's benefit is obtained directly at Uber's expense.

COUNT IV: Declaratory Judgment
Unfair Competition in Violation of Ca. Bus. & Prof. Code § 17200

110. Plaintiff incorporates by reference all preceding paragraphs and re-alleges them as if set forth fully herein.

111. California's Unfair Competition Law ("UCL") prohibits unfair competition in the form of "any unlawful, unfair or fraudulent business act or practice."

112. The AAA has breached the UCLs "unlawful prong" by breaching its common-law implied duty of good faith and fair dealing.

113. The AAA has breached the UCL's "unfair" prong by charging exorbitant fees to Uber that are untethered to its actual costs, and doing so aware of the drastic consequences of Uber's non-payment imposed by Cal. Civ. Proc. § 1281.87-89.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray that this Court enter a judgment awarding relief as follows:

A. A declaratory judgment that the Invoice is invalid and/or unlawful;

- B. A declaratory judgment that the AAA may not invoice Uber the Minimum Demanded Invoice Amount or any prorated portion thereof;
- C. A declaratory judgment that the AAA must invoice Uber in connection with the at-issue arbitral demands only commensurate with its reasonable costs, expenses, and arbitrator compensation;
- D. An accounting of the AAA's costs and expenses incurred in connection with the Invoice, and an accounting of the AAA's costs and expenses incurred and reasonably expected to be incurred with respect to any further invoicing of the Minimum Demanded Invoice Amount;
- E. Such other and further relief as this court may deem just and proper.

Dated: New York, New York
September 20, 2021

Respectfully submitted,



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