SHANNON LISS-RIORDAN (SBN 310719)
(sliss@llrlaw.com)
ANNE KRAMER, SBN 315131
(akramer@llrlaw.com)
LICHTEN & LISS-RIORDAN, P.C.
729 Boylston Street, Suite 2000
Boston, MA 02116
Telephone: (617) 994-5800
Facsimile: (617) 994-5801

Attorneys for Plaintiff Thomas Liu,
on behalf of himself and all others
similarly situated

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

THOMAS LIU, individually and on behalf of all others similarly situated, Plaintiff, v. UBER TECHNOLOGIES, INC., Defendant	Case No. 20-cv-07499 **HON. VINCE CHHABRIA** **THIRD AMENDED CLASS ACTION COMPLAINT** 1. TITLE VII OF THE CIVIL RIGHTS ACT OF 1964, 42 U.S.C. § 2000E, ET. SEQ. 2. CAL. GOV'T CODE § 12940 ET. SEQ.

I.   <u>INTRODUCTION</u>

1.   This class action case is brought by Plaintiff Thomas Liu against Defendant Uber Technologies, Inc. ("Uber"), alleging that Uber has violated federal and state law by discriminating against minority drivers through use of its "star rating system," in which Uber passengers are asked to evaluate drivers on a one to five scale after each ride, and which is used by Uber to determine which drivers get terminated (or "deactivated", in Uber's language). Uber's use of this system to determine driver terminations constitutes race discrimination, as it is widely recognized that customer evaluations of workers are frequently racially biased. Indeed, Uber itself has recognized the racial bias of its own customers. Uber's use of this customer rating system to decide employment terminations constitutes disparate impact discrimination against non-white drivers.[1]

2.   Plaintiff brings Count I of this action on behalf of himself and similarly situated Uber drivers across the country who have been subject to Uber's discriminatory use of its star rating system to terminate drivers. This claim is brought under Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e, *et seq*.

3.   Plaintiff brings Count II of this action on behalf of himself and similarly situated Uber drivers in California who have been subject to Uber's discriminatory use of its star rating system to terminate drivers. This claim is brought under Cal. Gov't Code § 12940.

II.   <u>PARTIES</u>

4.   Plaintiff Thomas Liu resides in San Diego, California, and worked for Uber in California as a driver prior to his deactivation in October 2015.

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[1]   Plaintiff's claim that Uber's use of this customer rating system constitutes intentional disparate treatment discrimination as well was dismissed by the Court's Order of July 30, 2021 (Dkt. 41). Plaintiff has therefore omitted this claim in this Second Amended Complaint but does not, by doing so, waive this claim. The Court indicated in its order that the claim may be allowed to be added back in after discovery, <u>id.</u> at 4. Plaintiff also reserves the right to pursue this claim if necessary on appeal.

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5.   Defendant Uber Technologies, Inc. ("Uber") is a headquartered in San Francisco, California.

III.   JURISDICTION AND VENUE

6.   This Court has general federal question jurisdiction over this matter pursuant to 28 U.S.C. § 1331, as this case arises under federal law, namely, Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e, *et seq*.

7.   This Court has supplemental jurisdiction under 28 U.S.C. § 1367 over Plaintiff's state law claim because the federal and state claims raised here derive from a common nucleus of operative facts.

8.   The Northern District of California is a proper venue for this action pursuant to 28 U.S.C. § 1391(b)(1) because Defendant Uber Technologies, Inc. is headquartered in San Francisco, California. Furthermore, Uber engages in business activities in and throughout the State of California, including San Francisco.

IV.   STATEMENT OF FACTS

9.   Uber is a San Francisco-based transportation service, which engages drivers across the country to transport riders.

10.   Uber offers customers the ability to order rides via a mobile phone application, which its drivers then carry out.

11.   In order to evaluate its drivers, Uber uses a passenger rating system, in which passengers are asked to rate their driver on a one to five scale after each ride. Uber calls this rating system its "star rating system."

12.   In order to continue working for Uber, drivers must maintain a minimum average star rating. The minimum star rating is set by Uber management. The minimum star rating has frequently been set very high, even close to a perfect a score.

13.   For instance, in order to be allowed to continue working for Uber, drivers in the San Diego area in 2015 were required to maintain a star rating of at least 4.6 on a scale of 1 to 5.

14.   In October 2015, Plaintiff Thomas Liu was deactivated by Uber because his average star rating fell below 4.6.

15.   Plaintiff Liu is Asian and from Hawaii and speaks with a slight accent. While driving for Uber, Plaintiff Liu noticed passengers appearing hostile to him, which appeared to him to be a result of racial discrimination. For example, he noticed riders cancelling ride requests after he had already accepted the ride and the rider was able to view his picture. He also experienced riders asking where he was from in an unfriendly way.

16.   Plaintiff may seek to drive for Uber again in the future.

17.   Plaintiff alleges that Uber's use of the passenger star rating system to determine terminations had a disparate impact on him, as well as other minority drivers across the United States.

18.   Uber has long known that relying on a system that depends on passenger evaluation of drivers is discriminatory, as Uber is aware that passengers frequently discriminate against Uber drivers. Indeed, in the past, before it allowed tipping on the app, Uber tried to justify its refusal to add a method for passengers to tip drivers through the app based upon its assertion that passengers discriminate against racial minorities, and Uber professed concern that allowing tipping would therefore discriminate against minority drivers in the wages they would receive. *See* Dan Adams, *Uber's argument against tipping: Riders have a racial bias*, The Boston Globe (April 27, 2016) *available at*

https://www.bostonglobe.com/business/2016/04/27/uber-resists-adding-tipping-its-app/BNEfLpo8dLcfC9czdcvtzI/story.html.[2]

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[2]   In support of its position, Uber relied upon a 2008 study by two Cornell University professors that found "that consumers of both races discriminate against black service providers by tipping them less…." Lynn, M., Sturman, M. C., Ganley, C., Adams, E., Douglas, M., &

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19.   In response to Uber's position that tipping could lead to disparate pay based on race, drivers also raised concerns that, under the same reasoning, "customer bias could affect their ratings in Uber's zero-to-five-star ranking system, which the company uses to identify, retrain, and sometimes 'deactivate' poor drivers." Adams, *Uber's argument against tipping: Riders have a racial bias*, supra.

20.   There have been other reports as well, over the years, highlighting concerns to Uber that its star rating systems is racially biased. *See* Joshua Brustein, *Uber Says Tips Are Bad for Black People. But What About Ratings Bias?,* Bloomberg, Apr. 28, 2016, https://www.bloomberg.com/news/articles/2016-04-28/uber-says-tips-are-bad-for-black-people-but-what-about-ratings-bias; *see also* Benjamin Hanrahan, Ning Ma & Chien Wen Tina Yuan, *The Roots of Bias on Uber*, College of Information Sciences and Technology at Pennsylvania State University, at Section 4.1.1 (reporting on driver comments regarding racial bias in the driver rating system).

21.   Indeed, it is well recognized in social science research that employers' reliance on customer evaluation systems often leads to discriminatory impact on racial minorities. This research includes a paper that "analyzes the Uber platform as a case study to explore how bias may creep into evaluations of drivers through consumer-sourced rating systems." Rosenblat, A., Levy, K., Barocas, S., & Hwang, T. (2016), *Discriminating Tastes: Customer Ratings as Vehicles for Bias*, Intelligence and Autonomy, *available at*: https://datasociety.net/pubs/ia/Discriminating_Tastes_Customer_Ratings_as_Vehicles_for_Bias.pdf. In the paper, the authors find that:

McNeil J. (2008), *Consumer racial discrimination in tipping: A replication and extension*, Cornell University, School of Hospitality Administration site: http://scholarship.sha.cornell.edu/articles/27.

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