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**UNITED STATES DISTRICT COURT  
 NORTHERN DISTRICT OF CALIFORNIA  
 SAN FRANCISCO DIVISION**

VALERIA HERMOSILLO CHAVEZ,  
 ERIK ESPARZA, JAMAR SMITH, and  
 ANTHONY SIMONEAU, and 7,267 OTHER  
 INDIVIDUALS.

Petitioners,

v.

UBER TECHNOLOGIES, INC.; and  
 UBER USA, LLC,

Respondents.

Case Number: 3:21-cv-09577

**PETITION FOR AN ORDER  
 COMPELLING ARBITRATION**

Petitioners file this Petition for an Order Compelling Arbitration (“Petition”) against Respondents Uber USA, LLC, and Uber Technologies, Inc. (collectively, “Uber”), as follows:

**NATURE OF THE PETITION**

1. Petitioners are 7,271 customers of the Uber service Uber Eats.

2. During the second half of 2020, Uber adopted and maintained a race-based, differential pricing scheme on Uber Eats whereby Uber did not charge its customers a delivery fee when they ordered from businesses identified as Black-owned, while at the same time penalizing its customers who ordered from non-Black-owned businesses by imposing delivery fees on them.

3. This overtly race-based policy of disparate treatment conferred causes of action on many of Uber’s customers under the Civil Rights Act of 1866, 42 U.S.C. §1981, and California’s Unruh Civil Rights Act, Cal. Civ. Code §§51-52. *See, e.g., Angelucci v. Century Supper Club*, 41 Cal. 4th 160, 175 (2007) (barring “price differential[s]” based on protected status).

4. Uber’s arbitration agreement bars its customers from court and also bars them from proceeding on a class or collective basis.

5. Petitioners and more than 20,000 other individual consumers (“Claimants”) thus brought their discrimination claims against Uber in the only way Uber permits them; each filed an individual demand with the American Arbitration Association (“AAA”) in his or her own name and advancing only his or her own claims under Section 1981 and Unruh. Claimants filed those demands starting in October 2020.

6. AAA determined that all Claimants had satisfied their initial filing obligations and assessed Uber for filing fees that it owed under the Agreement.

7. After paying the filing fees, Uber objected to proceeding with the arbitrations on an individual basis—even though its arbitration agreement mandates individual arbitration.

8. Instead, Uber sought to impose collective-action procedures on the individual arbitrations—one of the very things Uber’s arbitration agreement bars its customers from doing.

9. Relatedly, Uber urged AAA to depart from its published fee schedule, claiming that the collective procedures it sought warranted a reduction in the case-management fees and arbitrator fees that Uber had agreed to in its arbitration agreement.

1           10.     On April 2, 2021, AAA advised Claimants and Uber that it would divide the  
2 claimants into five batches—a first batch of 477 claimants followed by three 7,771-claimant  
3 batches and one 7,770-claimant batch. AAA further advised the parties that it would invoice Uber  
4 for the case management fees at AAA’s long-posted rates—promptly for the first batch of 477 and  
5 then for the second batch after completing appointment of most of the arbitrators for the first batch.

6           11.     At AAA’s long-posted rates, that would amount to \$667,800 in case management  
7 fees for the first batch (477 cases x \$1,400/case) and \$10,879,400 in case management fees for the  
8 second batch (7,771 cases x \$1,400/case).

9           12.     On May 13, 2021, Uber paid the case-management fees for the first batch, and those  
10 477 cases proceeded into individual arbitration.

11           13.     On September 14, 2021, when arbitrators had been confirmed for nearly all of the  
12 first 477 cases, AAA issued Uber an invoice and requested payment of the Case Management fees  
13 for the second batch of 7,771 cases in the amount of \$10,879,000.

14           14.     AAA’s invoice specifically noted that “[a]s these arbitrations are subject to  
15 California Code of Civil Procedure 1281.97 and 1281.98, payment must be received within 60  
16 days of the date of this letter. The AAA will not grant any extensions to this payment deadline.”

17           15.     On September 20, 2021, Uber fled arbitration for New York state court, filing suit  
18 against AAA seeking a preliminary injunction to renege on its promise to pay AAA’s long-posted  
19 fees.

20           16.     Several Claimants sought to intervene in the New York action to protect their rights.  
21 Uber objected, and intervention was denied. Plaintiffs are thus not a party to the New York  
22 proceedings.

23           17.     In the New York action, Uber sought a preliminary injunction that would, among  
24 other things, prohibit AAA from requiring the payment of its invoice to proceed with the  
25 arbitrations.

26           18.     In its filings, AAA repeatedly noted that it had no authority to alter the invoice and  
27 that the arbitration of the next 7,771 cases could not proceed unless the September 14 invoice was  
28 paid.

1           19.     AAA also noted that California law required the invoice to be paid within 30 days  
2 of its due date, which would be October 14, 2021.

3           20.     The New York trial court rejected Uber's request for a preliminary injunction,  
4 determining that Uber was unlikely to succeed on the merits of its challenges and could not  
5 demonstrate irreparable harm from the requirement that it pay AAA's invoice in full.

6           21.     The invoice's due date of October 14, 2021 passed without payment.

7           22.     Uber appealed that order to the New York Appellate Division and sought interim  
8 relief that would allow it to avoid paying the pending invoice.

9           23.     On October 20, 2021, though the invoice due date had passed, the New York  
10 Appellate Division entered an interim order purporting to "extend[] the time for payment of the  
11 October 14th invoice until a determination by the full bench." The Appellate Division further  
12 ordered that Uber "pay[] to AAA \$700,000 to cover the cost of arbitrator appointment."

13           24.     Subsequent to that order, Uber tendered \$700,000 to AAA, which accepted the  
14 payment on October 22. In confirming receipt, AAA informed the parties that "Uber's payment of  
15 \$700,000 covers the Case Management Fees for 500 cases (\$1,400 per case). Therefore, at this  
16 time the AAA will proceed with the further administration of 500 cases."

17           25.     On December 2, 2021, the New York Appellate Division entered another order  
18 purporting to extend the October 14, 2021 invoice deadline "on the condition that [Uber] perfect  
19 the appeal for the March 2022 Term of this Court and upon the condition imposed by the Interim  
20 Order of a Justice of this Court dated October 20, 2021."

21           26.     As of October 14, AAA had not received payment for the other 7,271 cases in the  
22 second batch and thus has not proceeded with those arbitrations.

23           27.     Uber's ongoing attempts to avoid payment of the invoice thus have deprived  
24 Claimants of the ability to proceed with their arbitrations under the very terms that Uber itself  
25 selected and imposed on them.

26           28.     Federal courts (including this one) have rejected similar attempts to evade arbitral  
27 fees and seek to resolve arbitral fee disputes in court instead of in arbitration. *See, e.g., Adams v.*  
28 *Postmates, Inc.*, 414 F. Supp. 3d 1246 (N.D. Cal. 2019), *aff'd*, 823 F. App'x 535 (9th Cir. 2020).

1           29.     Indeed, courts have enjoined parties to an arbitration agreement from pursuing  
2 actions in other jurisdictions, like Uber has here.

3           30.     AAA's invoiced fees are subject to both Cal. Civ. Pro. §1281.97 and §1281.98. Cal.  
4 Civ. Pro. §1281.98(a) provides that a party who drafts a consumer arbitration agreement and then  
5 fails to pay "fees or costs required to continue the arbitration proceeding ... is in material breach  
6 of the arbitration agreement [and] is in default of the arbitration."

7           31.     Cal. Civ. Pro. §1281.98(b)(3) further provides that when "the drafting party  
8 materially breaches the arbitration agreement and is in default under subdivision (a)," the  
9 consumer may "[p]etition the court for an order compelling the drafting party to pay all arbitration  
10 fees that the drafting party is obligated to pay under the arbitration agreement or the rules of the  
11 arbitration company."

12           32.     Petitioners therefore file this Petition to compel Uber to arbitrate the 7,271 cases  
13 filed by Petitioners under the terms of Uber's arbitration agreement and AAA Consumer Rules,  
14 and to pay the fees required for that arbitration to proceed.

15           33.     Petitioners also request injunctive relief requiring Uber to withdraw the pending  
16 action in New York state court and cease any other efforts to avoid arbitration.

### 17                               **PARTIES**

18           34.     Petitioners are 7,271 Uber Eats customers who have filed individual consumer  
19 demands for arbitration against Uber with the AAA. Attached is a list of all Petitioners.

20           35.     Uber Technologies, Inc., is a Delaware corporation headquartered in San Francisco,  
21 California.

22           36.     Uber USA, LLC, is a Delaware limited liability company whose principal place of  
23 business is in San Francisco, California.

### 24                               **JURISDICTION AND VENUE**

25           37.     This Court has subject-matter jurisdiction over this action pursuant to 28 U.S.C.  
26 §§1331 and 1367 because the underlying controversy involves claims arising under federal law  
27 and state-law claims that arise from the same nucleus of operative facts as the federal claims.  
28

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