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YINTAO YU

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE CITY AND COUNTY OF SAN FRANCISCO

YINTAO YU, an individual,

Plaintiff,

v.

BYTEDANCE, INC., a Delaware Corporation; SHUYI (SELENE) GAO, an individual; and DOES 1 through 20, inclusive,

Defendants.

Case No. CGC-23-606246

FIRST AMENDED COMPLAINT FOR PUBLIC INJUNCTION & RETALIATION

JURY TRIAL DEMANDED

Plaintiff YINTAO YU, hereby complains and submits the allegations below against Defendants BYTEDANCE, INC., SHUYI GAO, and DOES 1 THROUGH 20. Plaintiff seeks a public injunction in accordance with the *McGill* Rule (*McGill v. Citibank, N.A.*, 2 Cal. 5th 945 (2017)). Mr. Yu also seeks damages, restitution and injunctive relief. Mr. Yu will donate a substantial portion of any monetary proceeds to causes that vindicate Asian American civil rights.

I. NATURE OF THE CASE

1. This case arises out of Plaintiff Yintao "Roger" Yu's employment with Defendant BYTEDANCE, INC., his observation and reporting of illegal conduct, and consequent retaliatory termination.

II. PARTIES

2. Plaintiff Yintao "Roger" Yu was the head of engineering of the U.S. offices of Defendant ByteDance, Inc. from approximately August 2017 until his termination in November 2018. Bytedance gives employees numerical rankings to signify their seniority. As head of engineering, Mr. Yu was given the level "4-2," with fewer than 20 employees in the entire company having a higher designation. ByteDance employs well over 100,000 individuals today. Mr. Yu is a resident of California.

3. Upon information and belief, Defendant ByteDance, Inc. is a Delaware corporation, whose principal place of business is San Francisco County, California. The majority of the Company's executive and administrative functions are performed in California.

4. Defendant Shuyi (Selene) Gao was the head of Human Resources for ByteDance, Inc. Gao lives in and is a citizen of California.

5. The true names and capacities of Defendants named herein as Does 1 through 20, whether individual, corporate, associate or otherwise, and the true involvement of Defendants sued herein as Does 1 through 20, are unknown to Plaintiff who therefore sues said Defendants by such fictitious names. Plaintiff will amend this Complaint to show the true names, capacities, and involvement of Does 1 through 20 when ascertained. Plaintiff is informed and believes and thereon alleges that each of the Defendants designated as a "Doe" is responsible in some manner

for the events and happenings referred to herein, and that Plaintiff's injuries and damages as hereinafter set forth were proximately caused by said Defendants.

6. Plaintiff is informed and believes and thereon alleges that each of the Defendants sued herein is or was the agent, employee, partner and/or representative of one or more of the remaining Defendants, and each of them was at all times acting within the purpose and scope of such agency and employment. Plaintiff is further informed and believes that each of the Defendants herein gave consent to, ratified and authorized the acts alleged herein to each of the remaining Defendants.

III. JURISDICTION AND VENUE

7. Venue is proper in this judicial district pursuant to Cal. Civ. Proc. Code § 395(a) and Cal. Gov't Code § 12965. Defendant ByteDance, Inc. is registered for business tax certificate with the Office of the Treasurer and Tax Collector, City and County of San Francisco. Defendant ByteDance, Inc. resides in and transacts business in the County of San Francisco, and is within the jurisdiction of this Court for the purposes of service of process.

IV. FACTS COMMON TO ALL CAUSES OF ACTION

A. Mr. Yu Is Hired by Defendant ByteDance.

8. Plaintiff Yu was hired by Defendant ByteDance, Inc. ("ByteDance" or "Defendant") on or around June 7, 2017, and began working in August 2017. In addition to his base salary and the option to purchase 220,000 shares of ByteDance stock, Mr. Yu's employment agreement also entitled him to $600,000, to be "paid within 30 days since the offer was signed," for the IP from his company Tank Exchange.

9. Within the first 30 days of receiving the offer letter, Mr. Yu spoke with ByteDance's hiring manager and in-house counsel. They told Mr. Yu that ByteDance had concerns about paying him the $600,000 purchase price for Tank Exchange's intellectual property without assurances that he would remain with ByteDance for the long term. ByteDance's representatives encouraged him to sign a multi-year term employment agreement to ensure his continued employment at ByteDance. Ultimately, the parties agreed upon a 2-year term agreement that was binding on both parties and which superseded the "at will" provision

contained in his earlier agreement. On a visit to Beijing, Mr. Yu signed the employment contract. ByteDance's representatives told him that he would receive a copy of this agreement, but it was never shared with him. Under the terms of the supplemental employment agreement, the employment relationship was set to last until August 2019, unless Mr. Yu was terminated "for cause."

B. Mr. Yu Discovers Defendant ByteDance's Practice of Scraping User Content From Its Competitors for Its Own Profit.

10. Shortly after beginning his employment, Mr. Yu became aware that ByteDance had for years engaged in a worldwide scheme (including in California) to steal and profit from the content of others. The effort involved the use of software purposely unleashed to systematically strip user content from competitor's websites — chiefly, Instagram and Snapchat — and populate its own video services with these videos in an effort to make its own services appear more popular to end users. These actions were taken without the permission of the content creators and represented an unlawful effort to gain an edge against entrenched online video hosting websites.

11. Specifically, ByteDance developed software that would scrape content posted by end users on competitors' websites without permission, and upon information and belief, in violation of the competitors' terms of use. ByteDance would then post the misappropriated content on its own websites via fake social media accounts to attract greater engagement with those accounts, and by extension, ByteDance's websites.

12. The content ByteDance scraped from its competitors had been posted by users of those competitors' websites. ByteDance's software used to scrape the users' content did not ask the users for their permission.

C. Mr. Yu Reports His Concerns About ByteDance's Unlawful Activity to His Manager.

13. Upon learning of this program, Mr. Yu was troubled by ByteDance's efforts to skirt legal and ethical lines, not to mention the tremendous liability that content scraping of this magnitude could create for the company. It was his understanding that taking material from competitors' websites without the creator's permission violated the law. Mr. Yu raised these

concerns with Wenjia Zhu, formerly Senior VP of Engineering and current Global TikTok R&D Chief at ByteDance, numerous times, as early as October 2017 and again in February and March 2018. Mr. Zhu is and was in charge of the TikTok algorithm. Mr. Zhu reported directly to ByteDance's CEO Yiming Zhang. When informed of Mr. Yu's concerns with the program, Mr. Zhu was dismissive of them, remarking that it was not a big deal.

14. At the same time, however, Mr. Zhu asked Mr. Yu to hide the illegal program, especially to ByteDance employees in the United States, because, according to Mr. Zhu, the United States has stricter intellectual property laws and has class actions. Thus, it seemed to Mr. Yu from Mr. Zhu's responses that, while Mr. Zhu felt comfortable proceeding with the scheme, he also believed it was illegal in the United States.

15. After Mr. Yu reported his concerns to Mr. Zhu, the scraping activity continued unabated. Worried that his concerns had not been addressed, Mr. Yu told U.S.-based colleagues that he had reported the illegal activities to the higher executive team, but that nothing had changed to that point.

16. Mr. Yu learned that this program was vital to ByteDance's ceaseless efforts to attract users to its social media platforms. By scraping the content from its competitor's sites, ByteDance sought to lure participation away from competitors towards its websites. Such participation can raise numerous real world risks, which have played out in the context of ByteDance.

17. For example, with increased participation, ByteDance has served as a useful propaganda tool for the Chinese Communist Party ("CCP"). In one instance, Mr. Yu observed that ByteDance promoted content that expressed hatred for Japan. In another instance, Mr. Yu observed that ByteDance demoted content that expressed support for the protests in Hong Kong ("Umbrella Revolution"), while it promoted content that expressed criticisms of the protests in Hong Kong. Such nationalistic content served to both increase engagement on ByteDance's websites and to promote support of the CCP. More generally, Mr. Yu observed that ByteDance has been responsive to the CCP's requests to share information, and even to elevate or remove content at the request of the CCP.

18. ByteDance is similarly positioned to exploit nationalistic sentiments in other countries like the United States as well, since it collects data from its users in those countries – data which Mr. Yu observed it makes accessible to the CCP via a backdoor channel.

19. Mr. Yu saw the backdoor channel in the code, which allows certain high level persons to access user data, no matter where the data is located, even if hosted by a U.S. company with servers located in the U.S. Chinese law requires the company to grant access to user data to the Chinese government. The company was aware that if the Chinese government's backdoor was removed from the international/U.S. version of the app, the Chinese government would, it feared, ban the company's valuable Chinese-version apps. While the international/U.S. version of TikTok may be the most valuable in the company, the Chinese version of TikTok ("Douyin") and other apps exclusively for China also are valuable. The company is vulnerable to the threat to shut down all the Chinese apps for failure to comply with the CCP's directives.

20. At some point after expressing his concerns to U.S.-based employees regarding the scraping program, Mr. Yu noticed that ByteDance had modified the illegal content scraping program. At a minimum it continued to scrape content from U.S-based users, including California based users, when they are abroad. Mr. Yu observed that the individual who modified the program's application to U.S. accounts was a software engineer in China under the report chain of Mr. Zhu.

D. Mr. Yu Discovered ByteDance Uses Bots to Artificially Inflate Its User Engagement Metrics That Would Violate the Law.

21. At or around the same time he discovered ByteDance's program to systematically scrape content from its competitors' websites, Mr. Yu learned that ByteDance also systematically created fabricated users to exaggerate its metrics, including its key engagement metrics. Potential investors considering investing in social media platforms heavily rely on such key metrics when making investment decisions.

22. ByteDance programmed the fabricated users to "like" and "follow" real user accounts. The fake "likes", "follows" and similar fabrications would trigger push notifications to real users that would entice the users back to ByteDance's applications, thereby boosting many

engagement metrics including user retention rate, which is one of the key metrics relied on by potential investors.

23. Mr. Yu observed that the fabricated user accounts had a substantial impact on retaining real world users. Thus, the program served ByteDance's commercial interests, while at the same time serving to provide the CCP, through its backdoor and influence at ByteDance, with a larger and more engaged audience for propaganda.

E. Mr. Yu Reports to His Manager ByteDance's Fraudulent Scheme to Inflate Its Key Engagement Metrics.

24. Mr. Yu reported and raised concerns regarding ByteDance's use of fabricated users to Mr. Zhu numerous times from October 2017 and into 2018. Mr. Yu expressed concerns regarding the legal consequences of relying on such practices to inflate data that would be passed on to potential investors and lenders. Specifically, Mr. Yu was concerned that providing the false data to investors and lenders would implicate the company with fraudulent conduct. While Mr. Zhu acknowledged the practice of creating fabricated users, he simply noted that the practice was helpful to boosting ByteDance's engagement metrics. The practice of fabricating users continued.

F. ByteDance Discriminates Against Employees on Necessary Medical Leave.

25. In addition, on or around December 2017, Mr. Yu learned of efforts to terminate a U.S. based employee, Witness A, who suffered from depression. Witness A, who had demonstrably strong performance, had recently requested time off to address her medical condition. Although Witness A's direct manager, Peiyu "Peggie" Li, was satisfied with her performance and had recently given Witness A a score of "Meets Expectation" on her latest performance review, her skip level manager, Ying Zhi, was not as accommodating. Without Ms. Li's knowledge, Ms. Zhi had Witness A's performance score lowered to "Improvement Needed," and had informed HR to fire Witness A upon the formal release of the ratings. Upon learning of this change, Mr. Yu confronted Ms. Zhi, who admitted that she had made the change because she did not like Witness A taking time off work to address her depression and that she viewed her as a "burden" she "wanted to get rid of." Ms. Zhi told him that due to Witness A's medical condition, her "cost of management was too high." It is Mr. Yu's understanding that terminating Witness A

if she received a rating of "meets expectations" or above would violate ByteDance policy, which is why Ms. Zhi had intervened to lower her score. Mr. Yu was shocked by Ms. Zhi's admission and requested that she reconsider. However, Ms. Zhi responded that she "won't even consider keeping [Witness A]. Her cost of management is way too high." Following this conversation, Mr. Yu complained to Wei "Ronnie" Hua, ByteDance's Global Head of HR, about the legality of Ms. Zhi's actions. On information and belief Defendant Shuyi (Selene) Gao jointly developed the strategy to mask the illegal motivation and plan for terminating Witness A's employment.

26. Ultimately, following Mr. Yu's reporting of the incident to HR, the company decided not to terminate Witness A. However, Ms. Zhi's manager, Nan Zhang (aka Kelly Zhang), was unhappy with Mr. Yu's decision to intercede on Witness A's behalf, particularly given the fact he did not even work in her department. Mr. Yu was later informed that several of Ms. Zhang's direct reports viewed his actions complaining about illegal conduct as problematic and as a challenge to Ms. Zhang's leadership and authority. Ms. Zhang later became the general manager of ByteDance's entire video - "IES" division — the department in which Mr. Yu worked — and was in a position to retaliate against Mr. Yu for his actions. Ms. Zhang is now the chief executive officer of ByteDance China. She is responsible for overseeing the operations and management of the company's China portfolio, including the video-sharing platform Douyin (Chinese version of TikTok), the news aggregator Toutiao, and many other apps.

G. CCP Control of ByteDance, a Culture of Lawlessness Within ByteDance, and Retaliation.

27. As a member of the executive team, Mr. Yu had visibility into the company's decisions, and he was concerned about the company's compliance with U.S. laws. It was known within the company that the CCP (the "Government") had a special office or unit in the company, which was sometimes referred to as the "Committee." While the Government office or Committee did not "work for" the company, it played a significant role. The Committee (1) guided how the company advanced core Communist values; and (2) regulated and monitored the company. For the Chinese version of the apps, the Committee possessed a "death switch" that could turn off the apps entirely.

28. The Committee maintained supreme access to all the company data, even data stored in the United States. Any engineer in Beijing could access U.S. user data located in the U.S. After receiving criticism about access from abroad, individual engineers in China were restricted from accessing U.S. user data, but the Committee continued to have access.

29. Listening to the TikTok CEO's Congressional testimony in March, 2023, Mr. Yu was struck by the misdirection by the CEO. The location of the servers doesn't protect U.S. data: what matters is whether the backdoor has been closed.

30. During his employment, Mr. Yu felt qualms about Government control over ByteDance and TikTok. In addition to the presence of the Committee inside the company, the top executives all reported to the CEO who reported, directly or indirectly, to the CCP.

31. While employed, Mr. Yu observed that to address criticisms about CCP control of the company, the company moved its engineers from Beijing to locations outside the country, such as Singapore. However, there was no substantive change, as the engineering duties were performed by the same persons, simply from outside of the geographic bounds of China.

32. In addition, Mr. Yu observed a culture of lawlessness within the company. This ByteDance culture focused on growth at all costs. The attitude was to violate the law first, continue to grow, and pay fines later. Legal compliance and ethics were lesser considerations or even obstacles to overcome. Among the examples of this culture are the following:

a. Mr. Yu observed one senior executive bristle at the critique that TikTok's algorithm is like "digital cocaine," while acknowledging that time spent on the platform is the ultimate goal, and in fact the only thing the company cares about.

b. During a trip to ByteDance's California offices, ByteDance's CEO, Yiming Zhang, expressly requested US-based employees to scrape content from YouTube and BuzzFeed to use as content on TopBuzz, ByteDance's International/U.S. version of news aggregator app Toutiao. This was in furtherance of ByteDance's goal of making TopBuzz as successful as Toutiao, ByteDance's flagship news aggregator app for Chinese users. This goal was pursued by employing the same unlawful and unethical tactics that

contributed to Toutiao's success, which conduct had resulted in numerous lawsuits in China.

c. In 2017, Mr. Yu learned that the CEO of ByteDance, Yiming Zhang, facilitated bribes to Lu Wei who, at the time, served as the deputy head of the Propaganda Department of the CCP and was the head of the Cyberspace Administration of China ("CAC"), which regulates Internet-related matters and is one of the most powerful agencies in China. In 2015, Lu Wei had been named by Time magazine as one of the world's 100 most influential people. This bribe ensured that ByteDance would receive protection and support from Lu Wei and the CAC. It also provided ByteDance a competitive advantage in China. For example, Lu Wei protected ByteDance from accusations that ByteDance scraped online news articles from its competitors without their permission and posted the scraped articles to its own news aggregator app, Toutiao. Lu Wei also warned other Chinese companies words to the effect of, "do not mess with ByteDance;" "work with and cooperate with ByteDance" because "I like ByteDance;" "ByteDance is supported by my agency the CAC." Lu Wei was arrested around early 2018. Soon after Lu Wei was arrested, the Chinese Government permanently banned one of ByteDance's major apps ("NeiHan DuanZi") and fined the company. In 2019, it was reported that Lu Wei had been convicted by a Chinese court for bribery and sentenced to 14 years in prison.

33. This and other illegal conduct shocked Mr. Yu. He was surprised by the brazenly unlawful conduct within the company, which was euphemistically excused as "entrepreneurship." Mr. Yu was upset by the company's disregard for, *inter alia*, California's laws and practices.

H. In Retaliation for Disclosing ByteDance's Wrongful Conduct, ByteDance Unlawfully Discharges Mr. Yu.

34. On or around March 2018, in consultation with his doctor, Mr. Yu was required to take his own medical leave for approximately seven months. On July 18, 2018, Mr. Yu mailed three letters to various supervisors at ByteDance notifying them that, upon consultation with his doctor, he expected to be able to return to work on September 11, 2018. ByteDance claims to

have mailed Mr. Yu a notice of termination on July 26, 2018, purportedly due to a reduction in force. ByteDance also claims that on July 27, ByteDance e-mailed Mr. Yu a copy of the termination notice. Mr. Yu never received any of these purported notices and ByteDance never called him to notify him of his termination, even though the company acknowledges receiving his requests to return to work.

35. In October 2018, Mr. Yu was finally cleared to return to work by his doctor. However, upon returning to the office for the first time, he was told he did not "need to come to work now" and that the company "will contact you later." Mr. Yu remained on ByteDance's payroll through November 2018 and the first tranche of equity under his stock option award from the company should have vested on August 30, 2017, though ByteDance never vested these shares.

36. In November 2018, the company retaliated against Mr. Yu by terminating him.

V. TOLLING

37. On July 25, 2019, Plaintiff filed a complaint of discrimination with California's Department of Fair Employment and Housing ("DFEH"), pursuant to the California Fair Employment and Housing Act ("FEHA"), Cal. Gov't Code §12900 *et seq.*

38. Pursuant to the Emergency Rules Related to COVID-19, Emergency Rule 9(a), the statute of limitations on Plaintiff's claims was tolled an additional 178 days, until January 19, 2021.

39. The Parties have entered into a series of Tolling Agreements, whereby the statute of limitations for Plaintiff's claims was tolled through and including November 17, 2022.

40. On May 1, 2023, Plaintiff filed his complaint for damages and injunctive relief against Defendants.

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VI. CLAIMS

FIRST CAUSE OF ACTION

Public Injunction
Unfair Business Practices – Cal. Bus. & Prof. Code §§ 17200, 17203)
(Against Defendant ByteDance, Inc.)

41. Plaintiff re-alleges and incorporates herein by reference each and every allegation of the preceding paragraphs as though fully set forth herein, and alleges as follows:

42. California's Unfair Competition Law ("UCL"), Cal. Bus. & Prof. Code § 17200, *et seq.*, prohibits any unlawful, unfair *or* fraudulent business practices. Under the UCL, any person who engages, has engaged, or purposes to engage in unfair competition may be enjoined.

43. By scraping the content belonging to individuals who reside in California, including social media content that Plaintiff posted on his own Instagram profile, and by subsequently posting that content on Defendant's websites without the content creators' consent, Defendant engaged in unlawful, unfair, or fraudulent business practices. Plaintiff is entitled to a public injunction to stop Defendant from scraping social media content belonging to residents of California.

44. ByteDance also engaged in unlawful, unfair, or fraudulent conduct by systematically creating fabricated users to "like" and "follow" real user accounts, including Plaintiff's TikTok account, triggering push notifications that would entice users back to ByteDances' apps. By doing this, ByteDance artificially exaggerated key engagement metrics, which potential investors consider when investing in social media platforms.

45. Defendant's violations of the UCL continue to this day. As a direct and proximate result of Defendant's violation of the UCL, Plaintiff has suffered actual damage.

46. Unless restrained and enjoined, Defendant will continue to engage in the unlawful, unfair and fraudulent conduct described herein.

47. Pursuant to Cal. Bus. & Prof. Code § 17203, Plaintiff seeks an order of this Court enjoining Defendants from continuing to engage, use, or employ the unlawful, unfair, and fraudulent practice of scraping content produced by individuals residing in California from its competitors' websites and posting that content on Defendant's websites without the consent of the

owners of that content. ByteDance also should be enjoined from fabricating users and from using fabricated user accounts to create fake engagement and push notifications.

SECOND CAUSE OF ACTION

Retaliation (Including, *Inter Alia*, Violation of Cal. Lab. Code § 1102.5)
(Against Defendant ByteDance, Inc.)

48. Plaintiff re-alleges and incorporates herein by reference each and every allegation of the preceding paragraphs as though fully set forth herein, and alleges as follows:

49. At all times relevant to this Complaint, Defendants have been subject to the requirements of Cal. Lab. Code § 1102.5, which applied to Plaintiff as an employee of Defendants.

50. Defendants violated Cal. Lab. Code § 1102.5 by abruptly terminating Plaintiff's employment in retaliation for his reporting and refusals to participate in activity that violated laws, rules, and regulations against invasion of privacy, misappropriation, anti-discrimination, anti-retaliation, among others.

51. In addition, at all times herein mentioned, FEHA, Cal. Gov't Code § 12940 *et seq.*, was in full force and effect and was fully binding upon Defendant. Cal. Gov't Code § 12940(a) prohibits an employer from discharging or discriminating against an employee because of a disability or because they are regarded as having a disability. Defendant retaliated against Plaintiff for disclosing information that he had reasonable cause to believe was unlawful to a person with authority over him, or another employee who had the authority to investigate, discover, or correct the violation or noncompliance. Additionally Defendant retaliated against Plaintiff for reporting discrimination and/or harassment and for refusing to participate in illegal activity.

52. As a direct, foreseeable, and proximate result of Defendant's unlawful actions, Plaintiff has suffered and continues to suffer substantial losses in earnings and other employment benefits and has incurred other economic losses, along with attorney's fees and litigation costs.

53. As a direct, foreseeable, and proximate result of Defendant's unlawful actions, Plaintiff has suffered emotional distress, humiliation, shame, anxiety, and embarrassment, all to Plaintiff's damage in an amount to be proven at the time of trial.

54. Defendant committed the acts herein despicably, maliciously, fraudulently, and oppressively, with the wrongful intention of injuring Plaintiff, from an improper and evil motive amounting to malice, and in conscious disregard of the rights and safety of Plaintiff and others. Plaintiff is thus entitled to recover punitive damages from Defendant in an amount according to proof.

THIRD CAUSE OF ACTION

Failure to Prevent Discrimination: Violation of Cal. Gov't Code § 12940(k)
(Against Defendant ByteDance, Inc.)

55. Plaintiff re-alleges and incorporates herein by reference each and every allegation of the preceding paragraphs as though fully set forth herein, and alleges as follows:

56. At all times herein mentioned, FEHA, Gov. Code, § 12940, *et seq.*, was in full force and effect and fully binding upon Defendants. Witness A was a member of a group protected by that statute in that he was an employee with a known medical condition and/or physical disability who made a request for a reasonable accommodation to treat her medical condition and/or disability.

57. Defendants violated Cal. Gov't Code § 12940(k) because Defendants failed to take all reasonable steps necessary to prevent discrimination from occurring. Among other things, Defendants failed to train and adequately supervise its employees in order to ensure that these employees were not violating FEHA in their treatment of other employees. Defendants also failed to prevent retaliation against Plaintiff for reporting discrimination against Witness A, an employee with a known medical condition who made a request for a reasonable accommodation.

58. As a direct, foreseeable, and proximate result of Defendants' unlawful actions, Plaintiff has suffered and continues to suffer substantial losses in earnings and other employment benefits, and has incurred other economic losses.

59. As a direct, foreseeable, and proximate result of Defendants' unlawful actions, Plaintiff has suffered emotional distress, humiliation, shame, anxiety, and embarrassment, all to Plaintiff's damage in an amount to be proven at the time of trial.

60. Defendants committed the acts herein despicably, maliciously, fraudulently, and oppressively, with the wrongful intention of injuring Plaintiff, from an improper and evil motive amounting to malice, and in conscious disregard of the rights and safety of Plaintiff and others. Plaintiff is thus entitled to recover punitive damages from Defendants in an amount according to proof.

FOURTH CAUSE OF ACTION

Retaliation in Violation of Cal. Gov't Code § 12940(h)
(Against Defendant ByteDance, Inc.)

61. Plaintiff re-alleges and incorporates herein by reference each and every allegation of the preceding paragraphs as though fully set forth herein, and alleges as follows:

62. Cal. Gov't Code§ 12940(h) makes it an unlawful employment practice for an employer to discriminate against any person because the person has opposed any practices forbidden under the FEHA, including discrimination on the basis of a disability.

63. Plaintiff opposed and protested ByteDance's and Gao's discrimination against Witness A and attempts to eliminate her position. He made these complaints to HR and Witness A's managers.

64. In response to his complaints, ByteDance terminated his employment.

65. As a direct, foreseeable, and proximate result of Defendants' unlawful actions, Plaintiff has suffered and continues to suffer substantial losses in earnings and other employment benefits, and has incurred other economic losses.

66. As a direct, foreseeable, and proximate result of Defendants' unlawful actions, Plaintiff has suffered emotional distress, humiliation, shame, anxiety, and embarrassment, all to Plaintiff's damage in an amount to be proven at the time of trial.

67. Defendants committed the acts herein despicably, maliciously, fraudulently, and oppressively, with the wrongful intention of injuring Plaintiff, from an improper and evil motive

amounting to malice, and in conscious disregard of the rights and safety of Plaintiff and others. Plaintiff is thus entitled to recover punitive damages from Defendants in an amount according to proof.

FIFTH CAUSE OF ACTION

Breach of Contract
(Against Defendant ByteDance, Inc.)

68. Plaintiff re-alleges and incorporates herein by reference each and every allegation of the preceding paragraphs as though fully set forth herein, and alleges as follows:

69. On or around September 30, 2017, Plaintiff and Defendant ByteDance, Inc. entered into a written stock incentive plan, whereby Plaintiff was awarded 220,000 shares in Defendant vesting over a four-year period. Shortly thereafter, the Parties signed a two-year term supplemental employment agreement in order to ensure Plaintiff's continued employment at Defendant. The supplemental employment agreement lasted until August 2019, unless Mr. Yu was terminated "for cause."

70. Plaintiff completed all conditions necessary to satisfy his obligations under his operative employment agreement by continuing to work for Defendant until he was terminated without cause.

71. The first and second tranches of options under the incentive plan were set to vest on August 30, 2017 and 2018, respectively, though ByteDance never vested these shares. Defendant breached the contract by failing to award Plaintiff the options owed to him under the incentive plan and by terminating Plaintiff without cause.

72. Accordingly, Plaintiff is entitled to the compensation owed under the incentive plan, including the shares already vested at the time of his termination.

SIXTH CAUSE OF ACTION

Breach of the Covenant of Good Faith and Fair Dealing
(Against Defendant ByteDance, Inc.)

73. Plaintiff re-alleges and incorporates herein by reference each and every allegation of the preceding paragraphs as though fully set forth herein, and alleges as follows:

74. Plaintiff's employment agreement and stock incentive plan contained an implied-in-law covenant of good faith and fair dealing that neither party would do anything to injure the right of the other party to enjoy the actual benefits of those contracts.

75. Plaintiff performed all of the duties and obligations required of him by Defendant during his employment, including those duties and obligations that would entitle Plaintiff to receive the compensation described in the employment agreement and stock incentive plan.

76. Defendant breached the implied covenant when it took actions to prevent Plaintiff from earning their full compensation owed under these agreements.

77. Defendant's termination of Plaintiff was done in bad faith.

78. As a result of Defendant's bad faith and unfair dealing in performing the terms of the employment agreement and stock incentive plan, Defendant is liable for breaching the covenant of good faith and fair dealing inherent in those agreements.

79. Accordingly, Plaintiff is entitled to the compensation owed under the employment agreement and stock incentive plan, included continued stock option vesting for the term of the agreements, and the compensation he lost because Defendant unlawfully terminated these contracts.

SEVENTH CAUSE OF ACTION

Wrongful Termination in Violation of Public Policy (Against Defendant ByteDance, Inc.)

80. Plaintiff re-alleges and incorporates herein by reference each and every allegation of the preceding paragraphs as though fully set forth herein, and alleges as follows:

81. Plaintiff's employment was terminated by Defendant in violation of fundamental public policies of the State of California, including without limitation, the right to refrain from participating in unlawful conduct (or conduct reasonably believed to be unlawful).

82. The conduct detailed herein was wrongful and in violation of fundamental public policies of the State of California as reflected in laws that include, without limitation, the California Labor Code and Cal. Bus. & Prof. Code § 17200, *et seq.*, and the California Penal Code.

83. Defendants' actions were willful and malicious and were committed with the wrongful intent to injure Plaintiff and in reckless disregard of Plaintiff's rights.

84. As a proximate result of Defendants' actions, Plaintiff has suffered and will continue to suffer damages that include his unvested stock options, loss of salary, bonuses, and other losses along with attorney's fees and litigation costs.

EIGHTH CAUSE OF ACTION

Unfair Business Practices – Cal. Bus. & Prof. Code §17200, *et seq.*
(Against All Defendants)

85. Plaintiff re-alleges and incorporates herein by reference each and every allegation of the preceding paragraphs as though fully set forth herein, and alleges as follows:

86. Cal. Bus. & Prof. Code § 17200 prohibits any unlawful, unfair *or* fraudulent business practices. By promising Plaintiff valuable equity and then firing him for an unlawful reason and taking back his unvested options, Defendants engaged in unlawful, unfair, and fraudulent business practices. Plaintiff is entitled to restitution of the ByteDance stock options that rightfully belong to him, but which Defendants deprived him of possessing.

NINTH CAUSE OF ACTION

Failure to Pay Wages, Including Failure to Pay All Wages Due Immediately Upon Termination
Cal. Lab. Code §§ 201, 202, 203, 588.1
(Against All Defendants)

87. Plaintiff re-alleges and incorporates herein by reference each and every allegation of the preceding paragraphs as though fully set forth herein, and alleges as follows:

88. Cal. Lab. Code § 201 provides that any discharged employee is entitled to all wages due at the time of discharge.

89. Where an employer willfully fails to pay discharged or quitting employees all wages due as required under the California Labor Code, the employer is liable to such employees under Cal. Lab. Code § 203 for waiting time penalties in the amount of one (1) day's compensation at the employees' regular rate of pay for each day the wages are withheld, up to thirty (30) days.

90. Cal. Lab. Code § 558.1 provides that any person acting on behalf of the employer, who violates, or causes to be violated Cal. Lab. Code § 203, *inter alia*, may be held liable as the employer for such violation. At all relevant times herein, Defendant Gao acted as a managing agent as defined by Cal. Civ. Code § 3294 over Defendants' failure to pay Plaintiff all wages owed as alleged herein after he was discharged. Defendant Gao therefore violated or caused Cal. Lab. Code § 203 to be violated.

91. During all relevant times, Defendants knowingly and willfully violated Cal. Lab. Code §§ 201 and 202 by failing to pay Plaintiff all wages owed as alleged herein after he was discharged. Defendants are therefore liable to Plaintiff for waiting time penalties as required by Cal. Lab. Code § 203.

92. Plaintiff respectfully requests that the Court award all waiting time penalties due and the relief requested below in the Prayer for Relief.

PRAYER FOR RELIEF

WHEREFORE, Mr. Yu prays for judgment against Defendants as follows:

1. A public injunction prohibiting ByteDance from continuing to engage, use, or employ the unlawful, unfair, and fraudulent practice of scraping content produced by individuals residing in California from its competitors' websites and posting that content on Defendant's websites without the consent of the owners of that content; and ByteDance also should be enjoined from fabricating users and from using fabricated user accounts to create fake engagement and push notifications.

2. For compensatory damages, including but not limited to, lost back pay (including, but not limited to, salary and bonus wages), equity, and fringe benefits and future lost earnings, equity, and fringe benefits, emotional distress, and legal interest, according to proof as allowed by law;

3. Liquidated damages as allowed by law;

4. For injunctive relief, including reinstatement and a prohibition on further discrimination or retaliation;

5. For punitive damages as allowed by law;

6. For an award to Plaintiff of costs of suit incurred herein and reasonable attorney's fees;

7. For prejudgment interest and post-judgment interest as allowed by law;

8. For an injunction to prevent future violations of Cal. Gov't Code § 12940;

9. For an injunction to prevent future violations of Cal. Bus. & Prof. Code § 17200; and

10. For an award of such other and further relief as the Court deems just and proper.

DEMAND FOR JURY TRIAL

Plaintiff hereby demands a trial by jury on all causes of action so triable.

DATED: May 12, 2023

Respectfully submitted,
NASSIRI & JUNG LLP

By: _____

Charles H. Jung
Attorneys for Plaintiff
YINTAO YU