

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

JOHN CAPRIOLE, et al.,

Plaintiffs,

v.

UBER TECHNOLOGIES, INC., et al.,

Defendants.

Case No. [20-cv-02211-EMC](#)

**ORDER GRANTING DEFENDANTS'
MOTION TO COMPEL
ARBITRATION AND DENYING
PLAINTIFFS' MOTION FOR
PRELIMINARY INJUNCTION**

Docket Nos. 42, 67

I. INTRODUCTION

John Capriole (“Mr. Capriole”), Martin El Koussa (“Mr. El Koussa”), and Vladimir Leonidas (“Mr. Leonidas”) (collectively “Plaintiffs”) bring this class action to compel Uber Technologies, Inc. (“Uber”) to comply with Massachusetts labor laws and to classify Uber drivers as employees. Uber and Dara Khosrowshahi (“Mr. Khosrowshahi), the President and CEO of Uber, are named as Defendants. Plaintiffs assert that, as a result of Uber’s alleged misclassification of drivers, they have been forced to bear the expenses of their employment, been denied Massachusetts minimum wage for hours worked, been deprived of overtime pay, and—as is particularly relevant to their current motion—been denied paid sick leave. This case was originally filed in federal court in Massachusetts but was transferred to the Northern District of California pursuant to a forum selection clause in Uber’s driver agreement. In September 2019, Plaintiffs filed a motion for a preliminary injunction in Massachusetts, but that motion was denied and is currently on appeal before the First Circuit. Plaintiffs subsequently filed a new Emergency Motion for Preliminary Injunction, which is now pending before this Court. Defendants in turn have filed a Motion to Compel Arbitration.

II. BACKGROUND

A. Factual Background

Mr. Capriole is a resident of Haverhill, Massachusetts. *See* Second Amended Complaint (“SAC”) ¶ 7, Docket No. 77. He has worked there as an Uber driver since April 2016. *Id.* ¶¶ 7, 35. Mr. El Koussa is a resident of Boston Massachusetts. *Id.* ¶ 8. He has worked there as an Uber driver since July 2014. *Id.* Mr. Leonidas is a resident of Braintree, Massachusetts. *Id.* ¶ 9. He has worked there as an Uber driver since May 2016. *Id.* Uber is a corporation with its headquarters in San Francisco. *Id.* ¶¶ 11, 15. Mr. Khosrowshahi is the President and Chief Executive Officer of Uber; Plaintiffs assert that he is “responsible for Uber’s pay practices and employment policies.” *Id.* ¶ 12. (Together, Uber and Mr. Khosrowshahi are referred to as “Defendants.”)

Plaintiffs bring this class action on behalf of all “individuals who have worked as Uber drivers in Massachusetts who have not released all of their claims against Uber.” SAC ¶ 10. As noted above, they contend that “Uber has misclassified its drivers, including Plaintiffs John Capriole, Martin El Koussa, and Vladimir Leonidas as independent contractors when they should be classified under Massachusetts law . . . as employees.” *Id.* ¶ 2. Because Uber drivers are not classified as employees, they are required “to pay business expenses (including but not limited to the cost of maintaining their vehicles, gas, insurance, phone and data expense, and other costs),” they are not guaranteed minimum wage or overtime premiums, and they do not receive paid sick leave, as would otherwise be required under Massachusetts law. *Id.* ¶ 2. Massachusetts requires employers to provide “a minimum of one hour of earned sick time for every thirty hours worked by an employee . . . but employees shall not be entitled to use accrued earned sick time until the 90th calendar day following commencement of their employment.” MASS. GEN. LAWS. ch. 149, § 148C; *see also* SAC ¶ 2. Employees may earn and use up to forty hours of paid sick time per calendar year. MASS. GEN. LAWS. ch. 149, § 148C.

Plaintiffs contend that because drivers are not classified as employees, many of them “struggle to support themselves” and, as a result, “feel the need to continue working . . . even if

of the “worldwide crisis” generated by COVID-19, Uber’s employee-classification and sick-leave policies are exacerbating a life-threatening global emergency. *Id.* ¶ 4. Without the option of paid sick leave, Uber drivers who cannot afford to make a different choice “will continue working and risking exposing hundreds of riders who enter their car[s] on a weekly basis to this deadly disease.” *Id.* ¶ 5. Such actions wholly contravene the advice of public health officials, who have “advised that anyone who feels ill should stay home and not go to work.” *Id.* ¶ 4. Thus, Plaintiffs contend that Uber’s policies “creat[e] an immediate danger, not only to Uber drivers, but to the general public as well.” *Id.* ¶ 5.

B. Arbitration Agreement

In moving to compel arbitration, Uber cites two arbitration agreements, which are contained in Uber’s 2015 Technology Services Agreement (“2015 Agreement”) and the 2020 Platform Services Agreement (“2020 Agreement”). *See* Reply in Support of Motion to Compel Arbitration at 1, Docket No. 83. It appears that Mr. El Koussa and Mr. Leonidas “agreed to individual arbitration in the 2020 Platform Access Agreement . . . and did not opt out.”¹ *Id.* Mr. Capriole, however, agreed to both the 2015 and the 2020 Agreement, but opted out of the 2020 Agreement. *See* Motion to Compel Arbitration (“MTC”) at 4, Docket No. 67 (citing Exh. 7 to Declaration of Brad Rosenthal (“Rosenthal Decl.”), Docket No. 69-7). Uber contends that, because Mr. Capriole did not originally opt out of the 2015 Agreement, he remains bound to arbitrate his claims because of a provision of the 2020 Agreement which informs any drivers opting out of that agreement that they remain bound by any existing arbitration agreement to which they are a party with Uber. *See* MTC at 5. Uber’s contention is discussed in greater detail below. *See* Section III.B.1.

In Uber’s 2015 Technology Services Agreement, Section 15.3 sets forth the terms of the company’s Arbitration Provision:

IMPORTANT: This Arbitration Provision will require you to resolve any claim that you may have against the Company or Uber

¹ Presumably, based on when they began driving. Mr. El Koussa and Mr. Leonidas also agreed to

on an individual basis, except as provided below, pursuant to the terms of the Agreement unless you choose to opt out of the Arbitration Provision. Except as provided below, this provision will preclude you from bringing any class, collective, or representative action (other than actions under the Private Attorneys General Act of 2004 (“PAGA”)), California Labor Code § 2698 *et seq.* (“PAGA”) against the Company or Uber, and also precludes you from participating in or recovering relief under any current or future class, collective, or representative (non-PAGA) action brought against the Company or Uber by someone else.

This Arbitration Provision is governed by the Federal Arbitration Act, 9 U.S.C. § 1 *et seq.* (the “FAA”) and evidences a transaction involving interstate commerce. This Arbitration Provision applies to any dispute arising out of or related to this Agreement or termination of the Agreement and survives after the Agreement terminates.

...

Except as it otherwise provides, this Arbitration Provision is intended to apply to the resolution of disputes that otherwise would be resolved in a court of law or before any forum other than arbitration, with the exception of proceedings that must be exhausted under applicable law before pursuing a claim in a court of law or in any forum other than arbitration. Except as it otherwise provides, this Arbitration Provision requires all such disputes to be resolved only by an arbitrator through final and binding arbitration on an individual basis only and not by way of court or jury trial, or by way of class, collective, or representative action.

Except as provided in Section 15.3(v), below, regarding the Class Action Waiver, such disputes include without limitation disputes arising out of or relating to interpretation or application of this Arbitration Provision, including the enforceability, revocability or validity of the Arbitration Provision or any portion of the Arbitration Provision. All such matters shall be decided by an Arbitrator and not by a court or judge. However, as set forth below, the preceding sentences shall not apply to disputes relating to the interpretation or application of the Class Action Waiver or PAGA Waiver below, including their enforceability, revocability or validity.

...

You and the Company agree to resolve any dispute that is in arbitration on an individual basis only, and not on a class, collective action, or representative basis (“Class Action Waiver”). The Arbitrator shall have no authority to consider or resolve any claim or issue any relief on any basis other than an individual basis. The Arbitrator shall have no authority to consider or resolve any claim or issue any relief on a class, collective, or representative basis. Notwithstanding any other provision of this Agreement, the Arbitration Provision or the JAMS Streamlined Arbitration Rules & Procedures, disputes regarding the enforceability, revocability or validity of the Class Action Waiver

not by an arbitrator. In any case in which (1) the dispute is filed as a class, collective, or representative action and (2) there is a final judicial determination that all or part of the Class Action Waiver [is] unenforceable, the class, collective, and/or representative action to that extent must be litigated in a civil court of competent jurisdiction, but the portion of the Class Action Waiver that is enforceable shall be enforced in arbitration.

...

Arbitration is not a mandatory condition of your contractual relationship with the Company. If you do not want to be subject to this Arbitration Provision, you may opt out of this Arbitration Provision by notifying the Company in writing of your desire to opt out of this Arbitration Provision, either by (1) sending, within 30 days of the date this Agreement is executed by you, electronic mail to optout@uber.com, stating your name and intent to opt out of the Arbitration Provision or (2) by sending a letter by U.S. Mail, or by any nationally recognized delivery service (e.g., UPS, Federal Express, etc.), or by hand delivery to:

**Legal
Rasier, LLC
1455 Market St., Ste. 400
San Francisco CA 94103**

2015 Agreement, Docket No. 69-1 (emphasis and formatting in the original).

C. Procedural Background

Mr. Capriole filed a class action complaint in the U.S. District Court for the District of Massachusetts on September 12, 2019. *See* Docket No. 1. (Mr. Capriole was the sole Plaintiff named in the original complaint.) On September 19, 2019, he filed a Motion for Preliminary Injunction, seeking essentially the same relief sought in the current motion for a preliminary injunction: an injunction prohibiting Uber from “classifying its drivers in Massachusetts as ‘independent contractors’” and an order directing “Uber to classify its drivers as employees and comply with Massachusetts wage laws.” *See* Docket No. 4 at 11–12. Uber filed a Motion to Compel Arbitration and to Stay Proceedings (pending arbitration). *See* Docket No. 10. It also filed a Motion to Transfer [the] Case to [the] Northern District of California on October 17, 2019. *See* Docket No. 12.

On March 12, 2020, while the previously filed motions were still pending, Mr. Capriole

Explore Litigation Insights

Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

Real-Time Litigation Alerts



Keep your litigation team up-to-date with **real-time alerts** and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

Advanced Docket Research



With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

Analytics At Your Fingertips



Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

LAW FIRMS

Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

FINANCIAL INSTITUTIONS

Litigation and bankruptcy checks for companies and debtors.

E-DISCOVERY AND LEGAL VENDORS

Sync your system to PACER to automate legal marketing.