

UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA  
OAKLAND DIVISION

JAMAL ADAMS, et al.

Petitioners,

vs.

POSTMATES, INC.,

Respondent.

Case No: 19-3042 SBA

**ORDER GRANTING IN PART  
AND DENYING IN PART  
PETITIONERS' MOTION TO  
COMPEL ARBITRATION AND  
RESPONDENT'S CROSS-MOTION  
TO COMPEL ARBITRATION AND  
STAY PROCEEDINGS**

Dkt. 4, 228

Petitioners are 5,257 individuals who work as “couriers” (i.e., delivery drivers) for Respondent Postmates, Inc. (“Postmates”), which operates a food delivery platform and app. Couriers are governed by Postmates’ Fleet Agreement, which classifies them as independent contractors. The agreement also contains both a mandatory arbitration clause and class action waiver. In accordance with arbitration clause, Petitioners have submitted arbitration demands to the designated arbitrator, alleging that they have been misclassified as independent contractors, in violation of the Fair Labor Standards Act (“FSLA”), 29 U.S.C. §§ 206, 207. However, Postmates has refused to tender its share of the arbitration fees to the arbitrator, claiming that the demands are tantamount to a de facto class action in violation of the class action waiver. As such, no arbitrations have yet commenced.

The parties are presently before the Court on Petitioners’ Motion to Compel Arbitration and Postmates’ Cross-Motion to Compel Arbitration and Stay Proceedings pursuant to the Federal Arbitration Act (“FAA”), 9 U.S.C. §§ 3, 4. Both parties seek to compel arbitration but with the imposition of additional conditions. Petitioners request an order compelling Postmates to tender its share of the arbitration fees to the arbitrator so that the arbitrations may proceed. Postmates seeks an order compelling Petitioners to refile their respective arbitration demands in a manner that, inter alia, includes more details and to proceed before the arbitrator in an “individual” manner. Having read and considered the

papers filed in connection with this matter and being fully informed, the Court GRANTS both motions insofar as they seek an order compelling arbitration and DENIES them in all other respects. The Court, in its discretion, find this matter suitable for resolution without oral argument. See Fed. R. Civ. P. 78(b); N.D. Cal. Civ. L.R. 7-1(b).

## **I. BACKGROUND**

### **A. FACTUAL SUMMARY**

Postmates operates an online and mobile platform and app to facilitate food deliveries from restaurants and other sources. Campbell Decl. in Supp. of Resp't's Opp'n ¶ 2, Dkt. 112-3. Through the Postmates app, customers can order food from participating merchants, which, in turn, is delivered by couriers compensated by Postmates. Petition ¶ 14, Dkt. 1. Individuals who sign up with Postmates to become couriers are required to execute a Fleet Agreement, which classifies couriers as independent contractors, not employees of Postmates. Id. As will be discussed below, the agreement also contains various other provisions intended to govern Postmates and the courier's relationship and their respective rights and obligations arising out of that relationship. Id. ¶ 16; Keller Decl. in Supp. of Mot. to Compel Arb. Ex. B ("Fleet Agt." or "2018 Fleet Agt.") § 1, Dkt. 5-2.<sup>1</sup>

#### **1. Mutual Arbitration Provision**

The Fleet Agreement contains a Mutual Arbitration Provision, pursuant to which "[t]he Parties mutually agree to resolve any disputes between them exclusively through final and binding arbitration instead of filing a lawsuit in court." Fleet Agt. § 10A. With certain specified exceptions not relevant here, any arbitration is governed by the American Commercial Arbitration Association ("AAA") Rules. Id. § 10B.vi, 10B.viii.

To initiate an arbitration, the claimant must submit to Postmates a demand for arbitration which sets forth: (1) the name and address of the Party seeking arbitration; (2) a

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<sup>1</sup> There are two relevant versions of this agreement, both of which contain a Mutual Arbitration Provision. The first agreement, effective May 11, 2018 (the "2018 Agreement"), was updated, effective April 3, 2019 (the "2019 Agreement"). See Keller Decl. in Supp. of Mot. to Compel Arb. Exs. B & C. Unless otherwise noted, the pinpoint citations to the Fleet Agreement set forth in this Order are to the 2018 Fleet Agreement.

1 statement of the legal and factual basis of the claim; and (3) a description of the remedy  
2 sought. Id. § 10B.i. Pursuant to the Class Action Waiver and Representative Action  
3 Waiver (collectively “Waivers”) section of the Mutual Arbitration Provision, claimants are  
4 barred from bringing or participating in a class, collective or representative action; rather,  
5 the claimant agrees that the dispute “will be resolved in individual arbitration.” Id. § 10B.i  
6 & 10B.ii.

7 The arbitration provision includes a delegation clause, which specifies that the  
8 arbitrator has the exclusive authority to determine arbitrability, except as to matters  
9 pertaining to the enforceability of the Waivers. Id. § 10A.ii, 10B.iv. The delegation clause  
10 states:

11 Only an arbitrator, and not any federal, state, or local court or  
12 agency, shall have the exclusive authority to resolve any dispute  
13 relating to the interpretation, applicability, enforceability, or  
14 formation of this Mutual Arbitration Provision, including  
15 without limitation any dispute concerning arbitrability.  
16 However, as stated in Section 10B.iv below, the preceding  
17 clause shall not apply to any dispute relating to or arising out of  
18 the Class Action Waiver and Representative Action Waiver,  
19 which must proceed in a court of competent jurisdiction and  
20 cannot be heard or arbitrated by an arbitrator.

21 Fleet Agt. § 10A.ii, Campbell Decl. Ex. C (emphasis added). The exception for disputes  
22 “relating to or arising out of the Class Action Waiver and Representative Action Waiver” is  
23 explained in Section 10b.iv, which states:

24 Notwithstanding any other clause contained in this Agreement,  
25 this Mutual Arbitration Provision, or the American Arbitration  
26 Association Commercial Arbitration Rules (“AAA Rules”), any  
27 claim that all or part of this Class Action Waiver and/or  
28 Representative Action Waiver is unenforceable,  
unconscionable, void, or voidable shall be determined only by a  
court of competent jurisdiction and not by an arbitrator. As  
stated above, all other disputes regarding interpretation,  
applicability, enforceability, or formation of this Mutual  
Arbitration Provision shall be determined exclusively by an  
arbitrator.

Id. § 10B.iv (emphasis added).

## 2. Arbitration Demands

On March 6, 2019, counsel for Petitioners (“Counsel”) informed Postmates that they represented more than 3,000 couriers in California and Illinois who intended to initiate individual arbitrations against Postmates. Keller Decl. ¶ 4, Dkt. 5. Counsel’s letter posited that if they were to proceed with arbitration, Postmates’ share of the filing fee would exceed \$20 million. Id. Ex. A. Given that cost, Counsel indicated that they were open to an “alternative process” to resolve Petitioners’ claims. Id. Postmates responded that it would retain outside counsel to handle the matter. Id. ¶ 5.

At the time Counsel began communicating with Postmates in March 2019, couriers were governed by the 2018 Fleet Agreement, under which Postmates was responsible for payment of all arbitration filing fees. Beginning in April 2019, after becoming aware of Petitioners’ anticipated claims, Postmates issued the 2019 Fleet Agreement and began requiring couriers to split the cost of arbitration equally with Postmates. Id. ¶¶ 7-8. Couriers logging into the Postmates app to make deliveries were required to agree to the new terms set forth in the 2019 Fleet Agreement. Id. ¶ 8.

Despite further discussions, Counsel and Postmates were unable to negotiate an alternative to arbitration. Id. ¶ 11. As a result, Counsel, on behalf of Petitioners, filed 4,925 individual arbitration demands with the AAA on April 22, 2019, and another 349 demands on May 13, 2019, for a total of 5,274 individual arbitration demands. Id. ¶ 12. In response, the AAA invoiced Petitioners for their share of the filing fees necessary to commence arbitration proceedings with respect to the demands filed on April 22, 2019. Id. ¶ 14. The AAA granted fee waivers to eligible claimants; the remaining claimants paid their portion of the fees in the amount of \$99,600. Id.

In the meantime, on May 10, 2019, the AAA informed Postmates that it had until May 31, 2019, to pay its share of the filing fees with respect to the 4,925 demands submitted on April 22, 2019, which was \$1,900 per claimant (approximately \$9.36 million in aggregate). Keller Decl. ¶ 16. Postmates refused to pay any fees, claiming that the individual arbitration demands were insufficient under the terms of the Fleet Agreement to

1 initiate arbitration proceedings. Evangelis Decl. in Supp. of Resp't's Cross-Mot. ¶¶ 7, Dkt.  
2 228-1. The AAA, however, indicated that the arbitrations would move forward and that  
3 payment of the filing fees was expected. Id. Though maintaining that Petitioners had not  
4 properly commenced arbitration, Postmates contacted Counsel to discuss scheduling a  
5 mediation (instead of arbitration). Id. Counsel was agreeable to mediation, provided it  
6 were to take place by May 31, 2019. Id. The parties were unable to schedule a mediation  
7 by that deadline, however. Id.

8 On May 31, 2019, the deadline for Postmates' payment of fees, the AAA contacted  
9 Postmates for its position on whether the AAA could properly assess fees against Postmates  
10 in light of Petitioners' arbitration demands. Id. ¶ 10. Postmates responded that, in its view,  
11 no arbitration proceedings or corresponding obligation to pay arbitration fees had been  
12 triggered on the ground that Petitioners' arbitration demands were improper. Id. Ex. E.

### 13 **B. PROCEDURAL HISTORY**

14 On June 3, 2019, Petitioners filed their Petition to Compel Arbitration in this Court  
15 under the FAA. Dkt. 1. The Petition alleges Postmates has yet to pay any part of the  
16 arbitration filing fees owed, and that absent such payment, the AAA will not commence the  
17 arbitrations. Petition ¶¶ 24-25. As relief, Petitioner seeks to compel arbitration along with  
18 an order specifying that (1) "Postmates shall pay all arbitration filing fees due for  
19 Petitioners' pending demands for arbitration within 14 days of this Court's Order" and  
20 (2) that "Postmates shall pay future AAA invoices related to Petitioners' arbitrations within  
21 14 days of receipt." Id. ¶ 29.

22 In support of its Petition, Petitioners have filed a Motion to Compel Arbitration.  
23 Dkt. 2. In response, Postmates filed an opposition and a separate Cross-Motion to Compel  
24 Arbitration ("Cross-Motion"). Dkt. 112, 228. In its Cross-Motion, Postmates agrees that  
25 Petitioners' wage and hour claims are subject to and should be resolved by arbitration.  
26 However, Postmates contends that the manner in which Petitioners submitted their  
27 arbitration demands is tantamount to a de facto class action, which is barred under the Class  
28 Action Waiver. Thus, Postmates asserts that the Court should compel arbitration and "enter

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