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7 UNITED STATES DISTRICT COURT  
8 FOR THE NORTHERN DISTRICT OF CALIFORNIA  
9 OAKLAND DIVISION  
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11 JAMAL ADAMS, et al.

12 Petitioners,

13 vs.

14 POSTMATES, INC.,

15 Respondent.  
16

Case No: 19-3042 SBA

**ORDER DENYING POSTMATES'  
MOTION TO STAY PENDING  
APPEAL**

Dkt. 261

17 This matter is presently before the Court on Respondent Postmates, Inc.'s  
18 ("Postmates") Motion to Stay Order Granting in Part and Denying in Part Cross-Motions  
19 Pending Appeal ("Motion to Stay"). Dkt. 261. Having read and considered the papers filed  
20 in connection with this matter and being fully informed, the Court hereby DENIES the  
21 Motion to Stay for the reasons set forth below.<sup>1</sup>

22 **I. BACKGROUND**

23 Petitioners are 5,257 individuals who work as "couriers" (i.e., delivery drivers) for  
24 Postmates, an entity that operates a food delivery platform and mobile app. To work for  
25 Postmates, all couriers must sign Postmates' Fleet Agreement, which classifies them as  
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28 <sup>1</sup> The Court, in its discretion, finds this matter suitable for resolution without oral  
argument. See Fed. R. Civ. P. 78(b); N.D. Cal. Civ. L.R. 7-1(b).

1 independent contractors, not employees. The agreement contains a Mutual Arbitration  
2 Provision, which requires that all disputes between couriers and Postmates be resolved  
3 “through final and binding arbitration instead of filing a lawsuit in court.” Fleet Agt.  
4 § 10A.<sup>2</sup> To initiate an arbitration, either party to the Fleet Agreement must notify the other  
5 party by certified mail or by hand delivery of the arbitration demand. The demand must  
6 include: “(1) the name and address of the Party seeking arbitration, (2) a statement of the  
7 legal and factual basis of the claim, and (3) a description of the remedy sought.” Id.  
8 § 10B.i.

9 Within the Mutual Arbitration Provision are a Class Action Waiver and  
10 Representative Action Waiver. See id. § 10B.ii (Class Action Waiver); id. § 10B.iii  
11 (Representative Action Waiver). The Class Action Waiver bars couriers from bringing  
12 “any dispute or claim ... as a class and/or collective action” or “participat[ing] in any class  
13 and/or collective action....” Id. § 10B.ii. The Representative Action Waiver similarly bars  
14 couriers from bringing “any dispute or claim ... as a representative action, ... including but  
15 not limited to, claims brought under any state’s Private Attorneys General Act (PAGA)....”  
16 Id. § 10B.iii.<sup>3</sup> The net effect of these waivers is that any courier with a legal claim against  
17 Postmates is limited to filing an individual arbitration demand with the designated  
18 arbitrator, the American Arbitration Association (“AAA”).

19 In March and April 2019, Petitioners tendered a total of 5,274 individual arbitration  
20 demands to the AAA, alleging that they have been misclassified as independent contractors,  
21 in violation of the Fair Labor Standards Act, 29 U.S.C. §§ 206, 207. Petitioners’  
22 submission of these demands triggered Postmates’ obligation to tender its share of  
23 arbitration filing fees, approximately in the sum of \$10 million. Postmates refused to pay  
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25 <sup>2</sup> Both the 2018 and 2019 versions of the Fleet Agreement are relevant to this action  
26 and contain the same Mutual Arbitration Provision and Class Action Waiver, albeit in  
27 different sections. For simplicity, citations in this Order are to the 2018 Agreement. See  
28 Keller Decl. Ex. C, Dkt. 5-3.

<sup>3</sup> Unless otherwise indicated, further reference to the “Class Action Waiver” shall  
encompass both the Class Action Waiver and the Representative Action Waiver.

1 any fees, claiming that the arbitration demands were insufficient under the terms of the  
2 Mutual Arbitration Provision and therefore the arbitrations had not been properly  
3 commenced. The AAA disagreed and continued to demand payment of the fees.

4 On June 3, 2019, Petitioners filed a Petition to Compel Arbitration in this Court  
5 pursuant to the Federal Arbitration Act, 9 U.S.C. § 3, 4. Dkt. 1. Thereafter, the parties  
6 filed cross-motions to compel arbitration. Dkt. 4, 228. Petitioners and Postmates both  
7 agreed that the Mutual Arbitration Provision is valid and binding and moved for an order  
8 compelling arbitration. Each side also requested that the order include specific, additional  
9 conditions. Petitioners requested that the Court direct Postmates to tender its share of the  
10 arbitration fees to the arbitrator so that the arbitrations may proceed. Postmates countered  
11 that it is not yet obligated to tender its share of the filing fees on the ground that the  
12 arbitration demands are “generic” and lack the specific information articulated in the  
13 Mutual Arbitration Provision. Thus, Postmates asserted that the Court should compel  
14 arbitration and “enter an order: (1) requiring each Petitioner to refile his or her demand as  
15 an individual arbitration demand that sets forth the facts and legal theories of relief  
16 applicable to the particular Petitioner; and (2) requiring each Petitioner, after refileing, to  
17 proceed to arbitration on an individual basis....” Dkt. 228 at 20.

18 In its cross-motion, Postmates argued that by submitting allegedly “generic”  
19 arbitration demands with the arbitrator, Petitioners are attempting to proceed with a de facto  
20 classwide arbitration, in contravention to the Class Action Waiver. Dkt. 228 at 10, 11, 15.  
21 To that end, Postmates argued that this Court, as opposed to the arbitrator, must “determine  
22 the threshold issue of whether the parties have agreed to arbitrate on a de facto classwide  
23 basis.” *Id.* at 15. The Court rejected Postmates’ contention, finding that the Mutual  
24 Arbitration Provision contained a delegation clause that vests the arbitrator with the  
25 exclusive authority to decide “gateway” questions of arbitrability. Fleet Agt. § 10A.ii. The  
26 delegation clause states, in relevant part:

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1           ii. Only an arbitrator, and not any federal, state, or local  
2 court or agency, shall have the exclusive authority to  
3 resolve any dispute relating to the interpretation,  
4 applicability, enforceability, or formation of this Mutual  
5 Arbitration Provision, including without limitation any  
6 dispute concerning arbitrability. However, as stated in  
7 Section 10B.iv below, the preceding clause shall not  
8 apply to any dispute relating to or arising out of the Class  
9 Action Waiver and Representative Action Waiver, which  
10 must proceed in a court of competent jurisdiction and  
11 cannot be heard or arbitrated by an arbitrator.

12 Fleet Agt. § 10A.ii (emphasis added).

13           Relying on the second sentence of the delegation clause quoted above, Postmates  
14 argued that any issues pertaining to the Class Action Waiver, including whether Petitioners  
15 were attempting to arbitrate on a classwide basis, are excluded from the scope of the  
16 delegation clause—meaning that the Court must decide the issue. To support its position,  
17 Postmates argued that Sections 10A.ii and 10B.iv in tandem create two independent  
18 exceptions to the delegation clause applicable to: (1) any claim “relating to or arising out  
19 of” the Class Action Waiver; and (2) any claim that the Class Action Waiver is  
20 “unenforceable, unconscionable, void or voidable.” Dkt. 253 at 9. The Court rejected  
21 Postmates’ interpretation of the Fleet Agreement. Applying well settled rules of contract  
22 interpretation, the Court concluded that Section 10A.ii expressly incorporates Section  
23 10B.iv, which only excludes claims that the Class Action Waiver is unenforceable,  
24 unconscionable, void or voidable from the scope of the delegation clause. Id. at 10. Since  
25 there is no claim by Petitioners that the Class Action Waiver is unenforceable,  
26 unconscionable, void or voidable, the Court concluded that the carve out was inapplicable.

27           Alternatively, the Court found that even if Postmates’ construction of the Fleet  
28 Agreement were correct, the outcome of the cross-motions would be the same. Id. at 11.  
As noted, Postmates’ position is that no arbitration filing fees are due because Petitioners’  
individual arbitration demands fail to provide the requisite information specified by the  
Mutual Arbitration Provision. Id. In Postmates’ view, Petitioners’ omission of such  
information demonstrates that they are attempting to arbitrate their claims on a de facto  
classwide basis. Id. But the Court found that Petitioners’ purported motivations for

submitting allegedly generalized claims are inapposite. Rather, at its core, the salient issue raised by Postmates is whether Petitioners' arbitration demands comport with the Mutual Arbitration Provision. Under the terms of the Fleet Agreement, any dispute regarding a claimant's compliance with the Mutual Arbitration Provision is reserved exclusively for the arbitrator. Order at 11 (citing Fleet Agt. § 10A.ii).

The Court ultimately granted the parties' motions to compel arbitration but denied their respective requests for the imposition of additional conditions. As to the issue of whether Petitioners' arbitration demands complied with the terms of the Mutual Arbitration Provision, the Court ruled that issue was for the arbitrator to decide. Dissatisfied with the Court's ruling, Postmates has appealed the Court's ruling and filed the instant motion to stay the Court's Order compelling arbitration.<sup>4</sup>

## II. LEGAL STANDARD

A stay is "an exercise of judicial discretion, and the propriety of its issue is dependent upon the circumstances of the particular case." Nken v. Holder, 556 U.S. 418, 433 (2009) (internal quotation marks and alterations omitted). There is no right to a stay; rather, it is "an exercise of judicial discretion" that "is dependent upon the circumstances of the particular case." Id. (internal quotations marks and citation omitted). The party seeking a stay bears the burden of demonstrating that a stay is warranted. City and Cty. of S.F. v. USCIS, 944 F.3d 773, 789 (9th Cir. 2019).

In deciding whether to grant a stay pending appellate proceedings, the court considers four factors: "(1) whether the stay applicant has made a strong showing that he is likely to succeed on the merits; (2) whether the applicant will be irreparably injured absent

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<sup>4</sup> On the day the Court's issued its ruling, Petitioner's counsel refiled 5,255 demands and requested the AAA to invoice Postmates for its share of the arbitration fees, which Postmates has not yet paid in full. However, the parties have agreed to commence proceedings on 50 of the demands, for which Postmates claims it has paid its share of the filing fees. Separately, the Court notes that, subsequent to the Court's Order compelling arbitration, Petitioners sought, and the Court issued, an Order to Show Cause directing Postmates to show cause why it should not be held in contempt for refusing to proceed with the arbitrations. Dkt. 258. The Court will address that matter in a separate Order.

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