UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

LUCIA GRECO,

Plaintiff,

vs.

UBER TECHNOLOGIES, INC., ET AL.,

Defendants.

CASE NO. 4:20-cv-02698-YGR

ORDER DENYING DEFENDANTS' MOTION TO COMPEL ARBITRATION

Re: Dkt. No. 14

Plaintiff Lucia Greco brings this action for violation of the Americans with Disabilities Act ("ADA") and the California Unruh Act against defendants Uber Technologies, Inc., Raisier LLC, and Rasier-CA LLC (collectively, "Uber"). (Dkt. No. 1 ("Compl.") ¶¶ 55-76.) Now before the Court is Uber's motion to compel arbitration pursuant to the Federal Arbitration Act ("FAA"). (Dkt. No. 14 ("MTC.").) Having carefully considered the pleadings and the papers and exhibits submitted, the Court **DENIES** Uber's motion to compel.[1]

I. BACKGROUND

Ms. Greco is visually impaired and uses a guide dog. (Dkt. No. 30-2 ("Greco Decl.") ¶ 3.) In 2013, Ms. Greco signed up for Uber—a ride sharing service that allows users to request rides from drivers. (*Id.* ¶ 7; Dkt No. 17 ("Barajas Decl.") ¶ 2.) Upon signup, Ms. Greco agreed to "Terms and Conditions" that included the provision that "any dispute, claim or controversy arising out of or relating to this Agreement . . . or the use of the Service or Application . . . will be settled by binding arbitration." (Barajas Decl. ¶¶ 6-13; Dkt. No. 17-5 ("2012 Terms and Conditions") at 9; Greco Decl. ¶ 7.) The agreement specified that such "arbitration will be administered by the American Arbitration Association ('AAA') in accordance with the Commercial Arbitration Rules

[1] Pursuant to Federal Rule of Civil Procedure 78(b) and Civil Local Rule 7-1(b), the Court

and the Supplementary Procedures for Consumer Related Disputes." (2012 Terms and Conditions at 9.) It also permitted Uber to change the terms and conditions, stating that continued use of the application and service indicates consent to those rules. (*Id*. at 2.)

In 2016, Uber updated its terms and conditions, reiterating that Ms. Greco and Uber agreed to arbitrate "any dispute" arising from Ms. Greco's "access to or use of the Services" and further specifying that the arbitrator shall have "exclusive authority to resolve any disputes relating to . . . any defense to arbitration," such as "waiver, delay, latches or estoppel." (Barajas Decl. ¶¶ 14-15; Dkt. No. 17-6 ("2016 Terms and Conditions") at 2; Greco Decl. ¶ 8.)

On March 27, 2020, Ms. Greco filed a demand for arbitration with the AAA. (Compl. ¶ 52; Dkt. No. 18-1 ("Arbitration Demand").) Ms. Greco alleged—as she does in the complaint—that Uber drivers repeatedly cancelled rides after learning of Ms. Greco's guide dog, leaving her stranded, late, and humiliated. (Arbitration Demand at 1.) Ms. Greco also alleged that Uber failed to train and supervise its drivers and is liable for the resulting discrimination. (*Id.* at 2.) The demand was served on Uber on April 21, 2020. (Dkt. No. 18 ("Jackson Decl.") ¶ 4.)

However, prior to service, the AAA sent a letter stating that Uber "failed to comply with the AAA's policies regarding consumer claims" prior to the filing of the arbitration, so the AAA "must decline to administer this claim and any other claim between [Uber] and its consumers." (Dkt. No. 1-1 ("AAA Letter") at 1.) The letter stated that the AAA "administratively closed our file," and that pursuant to Consumer Rule R-1(d), "either party may choose to submit its dispute to the appropriate court for resolution." (*Id*.) It further advised Uber that if it wishes for the AAA to "consider accepting consumer disputes going forward," it must register its clause on Consumer Clause Registry. (*Id*. at 2.)

Upon receiving the letter, Uber contacted AAA by phone and learned that it had failed to pay fees in two unrelated matters pending before the AAA. (Jackson Decl. ¶ 6.) Uber then paid those fees, and AAA reinstated Uber to the consumer arbitration registry on April 30, 2020. (*Id.* ¶ 9.) When Uber requested that AAA reopen Ms. Greco's case, AAA sent a letter reiterating that "AAA declined to administer the matter and closed its file" and that "[b]ecause this case was

matter." (*Id.* ¶ 10; Dkt. No. 18-4 ("AAA Second Letter") at 1.) However, the letter also stated that "the AAA will abide by any court order directing the manner in which the previously closed case should or should not proceed" and that if "Claimant wishes to refile the case," "the AAA would administer this case." (AAA Second Letter at 1.) Otherwise, it stated that "the case will remain closed as stated" previously. (*Id.*)

Uber contacted Ms. Greco to request that she refile the arbitration. (Jackson Decl. ¶ 11.) Ms. Greco declined and filed the instant action. (*Id.*)

II. LEGAL STANDARD

Under the FAA, "[a] party aggrieved by the alleged failure, neglect or refusal of another to arbitrate under a written agreement for arbitration" may "petition any United States district court . . . for an order directing that such arbitration proceed in the manner provided for in such agreement." 9 U.S.C. § 4. The court's role in addressing a question of arbitrability generally is "limited to determining (1) whether a valid agreement to arbitrate exists, and if it does, (2) whether the agreement encompasses the dispute at issue." *Chiron Corp. v. Ortho Diagnostic Sys. Inc.*, 207 F.3d 1126, 1130 (9th Cir. 2000). If the court finds that both of these requirements are met, the FAA requires it to enforce the provision in accordance with its terms. *Id.* In addition, the court must stay civil proceedings where the issues are asserted "until such arbitration has been had," unless the party seeking the stay is in default. 9 U.S.C. § 3.

The FAA reflects both a "liberal federal policy favoring arbitration" and the "fundamental principle that arbitration is a matter of contract." *AT & T Mobility LLC v. Concepcion*, 563 U.S. 333, 339 (2011) (citations omitted); *see Mortensen v. Bresnan Commuc'ns, LLC*, 722 F.3d 1151, 1157 (9th Cir. 2013) ("The [FAA] . . . has been interpreted to embody 'a liberal federal policy favoring arbitration.'") (citing *Moses H. Cone Mem'l Hosp. v. Mercury Constr. Corp.*, 460 U.S. 1, 24 (1983)). The FAA "leaves no place for the exercise of discretion by a district court, but instead mandates that district courts *shall* direct the parties to proceed to arbitration on issues as which the arbitration agreement has been signed." *Dean Witter Reynolds, Inc. v. Byrd*, 470 U.S. 213, 218 (1985) (emphasis in original).

III. ANALYSIS

The parties do not dispute that they have a valid contract to arbitrate. They also do not dispute that the issues raised in this litigation fall within the scope of that contract. However, Ms. Greco argues that arbitration has already "been had" in accordance with the terms of the contract, so there is no "failure, neglect, or refusal" to arbitrate sufficient to compel arbitration, nor any basis to stay the litigation. 9 U.S.C. §§ 3, 4.

Section 4 of the FAA provides that:

> A party aggrieved by the alleged failure, neglect, or refusal of another to arbitrate under a written agreement for arbitration may petition any United States district court . . . for an order directing that such arbitration proceed in the manner provided for in such agreement. . . . . The court shall hear the parties, and upon being satisfied that the making of the agreement for arbitration or the failure to comply therewith is not in issue, the court shall make an order directing the parties to proceed to arbitration in accordance with the terms of the agreement . . . . If the making of the arbitration agreement or the failure, neglect, or refusal to perform the same be in issue, the court shall proceed summarily to the trial thereof.

9 U.S.C. § 4.

In *Lifescan, Inc. v. Premier Diabetic Services, Inc.*, 363 F.3d 1010 (9th Cir. 2004), the court considered "failure, neglect, or refusal of another to arbitrate" based on failure to pay fees. The parties initially proceeded with arbitration, but before the final hearings, one party became unable to pay its share of the arbitrators' fees. *Id.* at 1011. AAA offered the other party the option of advancing the required fees, but that party refused, and the arbitration was terminated. *Id*. The paying party then successfully petitioned a district court to compel arbitration, including by forcing the non-paying party to pay fees, and to hold that failure to do so constituted "failure, neglect, or refusal" to arbitrate under 9 U.S.C. § 4. *Id*. The Ninth Circuit reversed.

Acknowledging that arbitration is a creature of contract law, the court looked to the parties' agreement, which stated that all disputes "shall be settled by binding arbitration" in accordance with "then-current rules of the American Arbitration Association." *Id*. at 1012. The AAA rules, in turn, vested the arbitrators with discretion to allocate expenses and require fees to be paid in advance. *Id*. Since the AAA rules allowed the arbitrators to condition arbitration on

pre-payment of fees, "there was no 'failure, neglect, or refusal' by [the non-paying party] to arbitrate" and "the arbitration has proceeded pursuant to the parties' agreement and the rules they incorporated." *Id*. at 1013. Accordingly, there was "no basis for an order . . . compelling arbitration." *Id*.

The holding in *Lifescan* was confirmed in *Tillman v. Tillman*, 825 F.3d 1069 (9th Cir. 2016) on a slightly different procedural posture. Section 3 of the FAA requires a court to stay proceedings "until [] arbitration has been had in accordance with the terms of the agreement." 9 U.S.C. § 3. Addressing the meaning of "has been had," the court found that parties whose arbitration was terminated due to non-payment of fees "had" arbitration in accordance with the terms. *Tillman*, 825 F.3d at 1073. Similar to *Lifescan*, the arbitration agreement "explicitly incorporated the AAA's rules" and those rules allowed the arbitrator to terminate proceedings without a decision on the merits. *Id*. Since "[a]ll of these steps were followed," the arbitration "had 'been had' pursuant to the agreement." *Id*. at 1075. Ultimately, the court concluded that "parties have the right under the FAA to choose the rules under which their arbitration will be conducted," and since parties "chose rules that allowed the arbitrator to terminate their arbitration in the event of nonpayment," such termination satisfies the parties' agreement. *Id*. at 1076. Moreover, and tellingly for this case, the court reversed the district court's dismissal of the case and ordered it to adjudicate the claims on the merits. *Id*. at 1076.

Lifescan, as confirmed by *Tillman*, resolves the current dispute. Like the parties in those cases, Uber and Ms. Greco had contracted to resolve their disputes in accordance with AAA rules. Those rules require businesses to pay certain fees and state that "AAA will decline to administer consumer arbitrations . . . if the business declines to pay the . . . fees." (Dkt. No. 30-1 ("Cabalo Decl.") Ex. A at 16, 32.) Once AAA declines to arbitrate, the rules provide that "either party may choose to submit its dispute to the appropriate court for resolution." (*Id*. at 10.) *Uber expressly agreed to be bound by these rules*. It cannot now complain of their enforcement. In this case, it is not Ms. Greco that seeks to escape the agreement, but Uber itself, by asking the Court to overturn the AAA rules and force the case back to arbitration. The Court declines to do so.

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