

**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., Raiser LLC, and Raiser-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

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

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

9 On March 27, 2020, Ms. Greco filed a demand for arbitration with the AAA. (Compl. ¶
10 52; Dkt. No. 18-1 (“Arbitration Demand”).) Ms. Greco alleged—as she does in the complaint—
11 that Uber drivers repeatedly cancelled rides after learning of Ms. Greco’s guide dog, leaving her
12 stranded, late, and humiliated. (Arbitration Demand at 1.) Ms. Greco also alleged that Uber failed
13 to train and supervise its drivers and is liable for the resulting discrimination. (*Id.* at 2.) The
14 demand was served on Uber on April 21, 2020. (Dkt. No. 18 (“Jackson Decl.”) ¶ 4.)

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

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

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

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

8 II. LEGAL STANDARD

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

19 The FAA reflects both a “liberal federal policy favoring arbitration” and the “fundamental
20 principle that arbitration is a matter of contract.” *AT & T Mobility LLC v. Concepcion*, 563 U.S.
21 333, 339 (2011) (citations omitted); *see Mortensen v. Bresnan Commuc'ns, LLC*, 722 F.3d 1151,
22 1157 (9th Cir. 2013) (“The [FAA] . . . has been interpreted to embody ‘a liberal federal policy
23 favoring arbitration.’”) (citing *Moses H. Cone Mem'l Hosp. v. Mercury Constr. Corp.*, 460 U.S. 1,
24 24 (1983)). The FAA “leaves no place for the exercise of discretion by a district court, but instead
25 mandates that district courts *shall* direct the parties to proceed to arbitration on issues as which the
26 arbitration agreement has been signed.” *Dean Witter Reynolds, Inc. v. Byrd*, 470 U.S. 213, 218
27 (1985) (emphasis in original).

1 **III. ANALYSIS**

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

7 Section 4 of the FAA provides that:

8
9 A party aggrieved by the alleged failure, neglect, or refusal of another
10 to arbitrate under a written agreement for arbitration may petition any
11 United States district court . . . for an order directing that such
12 arbitration proceed in the manner provided for in such agreement. . .
13 . . . The court shall hear the parties, and upon being satisfied that the
14 making of the agreement for arbitration or the failure to comply
15 therewith is not in issue, the court shall make an order directing the
16 parties to proceed to arbitration in accordance with the terms of the
17 agreement If the making of the arbitration agreement or the
18 failure, neglect, or refusal to perform the same be in issue, the court
19 shall proceed summarily to the trial thereof.

20 9 U.S.C. § 4.

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

29 Acknowledging that arbitration is a creature of contract law, the court looked to the
30 parties’ agreement, which stated that all disputes “shall be settled by binding arbitration” in
31 accordance with “then-current rules of the American Arbitration Association.” *Id.* at 1012. The
32 AAA rules, in turn, vested the arbitrators with discretion to allocate expenses and require fees to

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

5 The holding in *Lifescan* was confirmed in *Tillman v. Tillman*, 825 F.3d 1069 (9th Cir.
6 2016) on a slightly different procedural posture. Section 3 of the FAA requires a court to stay
7 proceedings “until [] arbitration has been had in accordance with the terms of the agreement.” 9
8 U.S.C. § 3. Addressing the meaning of “has been had,” the court found that parties whose
9 arbitration was terminated due to non-payment of fees “had” arbitration in accordance with the
10 terms. *Tillman*, 825 F.3d at 1073. Similar to *Lifescan*, the arbitration agreement “explicitly
11 incorporated the AAA’s rules” and those rules allowed the arbitrator to terminate proceedings
12 without a decision on the merits. *Id.* Since “[a]ll of these steps were followed,” the arbitration
13 “had ‘been had’ pursuant to the agreement.” *Id.* at 1075. Ultimately, the court concluded that
14 “parties have the right under the FAA to choose the rules under which their arbitration will be
15 conducted,” and since parties “chose rules that allowed the arbitrator to terminate their arbitration
16 in the event of nonpayment,” such termination satisfies the parties’ agreement. *Id.* at 1076.
17 Moreover, and tellingly for this case, the court reversed the district court’s dismissal of the case
18 and ordered it to adjudicate the claims on the merits. *Id.* at 1076.

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

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.