

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

AARON MCCLENON, et al.,

Petitioners,

v.

POSTMATES INC.,

Respondent.

Case No. 19-cv-06415

Judge Mary M. Rowland

MEMORANDUM OPINION AND ORDER

Petitioner couriers Aaron McClenon, et al. and Respondent Postmates, Inc., bring cross motions to compel arbitration and stay the litigation pending the outcome of arbitration [4] [18 & 20] under 9 U.S.C. § 4. For the following reasons, the parties' motions are granted in part and denied in part.

BACKGROUND

Petitioners are 200 Illinois couriers who work for Respondent Postmates Inc., an online food delivery platform. (Dkt. 6 at 1; 3). To work for Postmates, each courier must sign a "Fleet Agreement," which classifies them as independent contractors, not employees. (*Id.* at Appendix E § 7A).¹

The Fleet Agreement

The Fleet Agreement contains a Mutual Arbitration Provision stating that the parties "agree to resolve any disputes between them exclusively through final and

¹ Postmates updated its Fleet Agreement on April 3, 2019. Petitioners, however, stopped working for Postmates prior to that date. Petitioners are thus subject to and pursued arbitration under Postmates' 2018 Fleet Agreement which will be discussed herein. (Dkt. 6 at Keller Decl. ¶ 14).

binding arbitration instead of filing a lawsuit in court.” (*Id.* at § 11A). The Provision contains an express Class Action Waiver and Representative Action Waiver, which provides that “any and all disputes or claims between the parties will be resolved in individual arbitration” and that the parties “waive their right to have any dispute or claim brought, heard or arbitrated as a class and/or collective action” or “representative action.” (*Id.* at §§ 11Bii-iii).

The arbitration requirement applies to “any and all claims between the Parties, including but not limited to those arising out of or relating to this Agreement, the Contractor’s [courier’s] classification as an independent contractor, ... and all other aspects of the Contractor’s relationship with Postmates....” (*Id.* at § 11Ai). Pursuant to a delegation clause, the parties must also use arbitration for disputes regarding the Mutual Arbitration Provision itself (with a specified caveat):

Only an arbitrator, and not any federal, state, or local court or agency, shall have the exclusive authority to resolve any dispute relating to the interpretation, applicability, enforceability, or formation of this Mutual Arbitration Provision. However, as stated in Section 11B.IV below, the preceding clause shall not apply to the Class Action Waiver and Representative Action Waiver.

(*Id.* at § 11Aii). Section 11Biv states:

Notwithstanding any other clause contained in this Agreement, this Mutual Arbitration Provision, or the American Arbitration Association Commercial Arbitration Rules (“AAA Rules”), any claim that all or part of this Class Action Waiver and/or 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.*) (emphasis added).

To initiate arbitration, a courier must file a demand stating “(1) the name and address of the party seeking arbitration, (2) a statement of the legal and factual basis of the claim, and (3) a description of the remedy sought.” (*Id.* at § 11Bi). Arbitration is administered by the American Arbitration Association (“AAA”) under its Commercial Arbitration Rules and “Postmates shall pay the arbitrator’s and arbitration fees and costs, unless applicable law requires otherwise.” (*Id.* at §§ 11Biv; 11Bvi).

Petitioners’ Arbitration Demands

On March 6, 2019, Petitioners’ counsel informed Postmates that it represents more than 3,000 Postmates couriers in California and Illinois who claim Postmates has misclassified them as independent contractors. (*Id.* at Appendix A). Counsel represented that the couriers planned to “proceed with every arbitration simultaneously” which would “obligate Postmates to pay AAA more than \$20 million—” a number that “will continue to grow, as roughly 500 additional drivers engage our firm each week.” (*Id.*) Given this expense, counsel offered to discuss alternative processes for resolving the claims. (*Id.*) Despite attempts to resolve the matter in the following months, the parties were unable to come to a mutually agreeable solution. (Dkt. 6 at 5).

On April 22, 2019, Petitioners’ counsel filed an arbitration demand with AAA on behalf of 4,925 California Postmates couriers and on May 13, 2019, filed a demand on behalf of additional claimants, including the 200 Illinois Petitioners here. (Dkt. 17 at Exhibits B-E). Both demands were filed as a single document reciting the

claimants' grievances and an attached spreadsheet listing the individual claimants. (*Id.* at Evangelis Decl. ¶¶ 4-5). AAA determined that it would administer the arbitrations and assessed filing fees payable by Postmates under the Fleet Agreement. (Dkt. 6 at Keller Decl. ¶ 17).

On May 31, 2019, AAA contacted Postmates regarding its position on the assessed fees and arbitration demands. (*Id.* at ¶ 18). Postmates responded that in its view no arbitration proceedings had begun because the couriers' arbitration demands were improper under the Fleet Agreement. (*Id.* at Exhibit G). For example, Postmates argued that the demands had been filed as "one, mass arbitration demand" which "circumvents the Fleet Agreement's express requirement that all arbitrations must take place on an *individualized* basis." (*Id.*).

On June 7, 2019, AAA informed the parties that the couriers' demands were proper under AAA's rules and that if Postmates had an issue regarding the substance or manner of the demands, it could raise that issue with the appointed arbitrator. (*Id.* at Exhibit I). AAA further stated that it would decline to administer the couriers' claims unless Postmates paid \$11,022,400 in administrative filing fees by June 13, 2019. (*Id.*)

On June 10, Postmates reiterated its objection that the couriers "exploited AAA's rules by filing a collective demand" and requested that AAA allow Postmates to pay arbitration fees as cases are administered, rather than for all cases at once. (*Id.* at Exhibit J). In response, Petitioners' counsel re-filed individual demands for each courier using AAA's individual demand form. (*Id.* at Keller Decl. ¶ 24).

Postmates maintained that the demands, although served individually, were still deficient because they “continued to assert generic claims that were copied and pasted thousands of times” and did not recite the amount in controversy asserted by each courier. (Dkt. 17 at Evangelis Decl. ¶ 12). Postmates declined to pay AAA’s filing fees by June 13, 2019. (Dkt. 6 at Keller Decl. ¶ 25).

On June 17, 2019, AAA informed the parties that the couriers’ demands were sufficient to trigger arbitration, but that it would decline to administer the cases unless all fees were paid. (*Id.* at Exhibit M). AAA suggested that Postmates could pay an initial fee of \$300.00 per claimant while the parties further considered mediation or other options. (*Id.*) As neither party agreed to that solution, AAA closed the cases. (*Id.* at Exhibit P).

Petitioners Seek Court Intervention

On June 3, 2019, Petitioners’ filed a petition to compel arbitration in the Northern District of California on behalf of the California couriers. The California couriers moved to compel arbitration and for an order that Postmates pay arbitration filing fees. Postmates filed a cross-motion to compel arbitration requesting that petitioners refile their demands as individual arbitration demands and proceed to arbitration on an individual basis. The court granted the motions, but only insofar as they sought an order compelling arbitration. *Adams v. Postmates Inc.*, 414 F. Supp.

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