

EXHIBIT A

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

SUPERIOR COURT

C. A. NO. _____

 STEPHEN LEVINE, on behalf
 of himself and all others similarly situated,

Plaintiff,

v.

GRUBHUB HOLDINGS, INC. and
GRUBHUB, INC.,

Defendants.

E-FILED 8/11/2021

PO

CLASS ACTION COMPLAINT

1. This case is brought on behalf of individuals who have worked as independent contractor delivery drivers for GrubHub Holdings Inc. and GrubHub Inc. (collectively, "GrubHub") in the Commonwealth of Massachusetts. GrubHub is a delivery service that provides delivery drivers who can be scheduled and dispatched through a mobile phone application or through its website and who will deliver food and other goods from restaurants and stores to customers at their homes and businesses.

2. As described further below, GrubHub has misclassified certain delivery drivers as independent contractors when they are actually employees, in violation of Mass. Gen. L. c. 149 § 148B. In so doing, GrubHub has violated Mass. Gen. L. c. 149 § 148 by failing to reimburse these drivers' necessary business expenses such as gas and car maintenance and Mass. Gen. L. c. 151 §§ 1, 7 by failing to pay these drivers the Massachusetts minimum wage after accounting for drivers' expenses and excluding

their tips (as GrubHub is not entitled to take the tip credit against the minimum wage). GrubHub has also failed to provide its independent contractor drivers with paid sick leave at a rate of at least one hour for every thirty hours worked in violation of the Massachusetts Earned Sick Time Law, Mass. Gen. L. c. 149 § 148C.

3. GrubHub's agreement with its drivers contains a mandatory arbitration provision, purporting to require drivers to arbitrate any disputes they have with GrubHub, including disputes related to their classification as independent contractors.

4. Plaintiff contends that this arbitration agreement is not enforceable, as he is a transportation worker exempt from arbitration under the Federal Arbitration Act ("FAA"), 9 U.S.C. § 1, and the agreement is unenforceable under Massachusetts law because it contains a class action waiver that violates Massachusetts public policy. See Archer v. GrubHub, Inc., No. 1984CV03277-BLS1 (Mass. Super. Ct. Jan. 11, 2021) (finding GrubHub delivery drivers exempt from arbitration under FAA); see also Waitthaka v. Amazon.com Inc., 966 F.3d 10 (1st Cir. 2020) (refusing to enforce arbitration agreement for Amazon delivery drivers).

PARTIES

5. Plaintiff Stephen Levine is an adult resident of Lynn, Massachusetts. He has worked as a GrubHub independent contractor delivery driver in the Boston, Massachusetts, area and the North Shore since approximately January 2021.

6. Defendant GrubHub Holdings Inc. is a Delaware corporation with its principal place of business in Chicago, Illinois. Defendant does business in Massachusetts, including in Boston.

7. Defendant GrubHub Inc. is a Delaware corporation with its principal place of business in Chicago, Illinois. Defendant does business in Massachusetts, including in Boston. GrubHub Inc. is the parent corporation of Defendant GrubHub Holdings Inc.

8. Collectively, Defendants shall be referred to as “GrubHub.”

STATEMENT OF FACTS

9. GrubHub is a food delivery service, which provides delivery services in cities throughout the country via an on-demand dispatch system. GrubHub offers customers the ability to request a driver on a mobile phone application, who will go to the restaurant and pick up their food or to the store and pick up their merchandise, then deliver it to the customer at their home or business.

10. GrubHub’s website homepage advertises that “GrubHub is the nation’s leading online and mobile food ordering company dedicated to connecting hungry diners with local takeout restaurants.”

11. In Massachusetts, GrubHub classifies certain of its delivery drivers as employees and certain other drivers as independent contractors. Under Massachusetts law, all GrubHub drivers should be classified as employees.

12. All GrubHub delivery drivers perform services within GrubHub’s usual course of business, delivery of food and other goods. The drivers’ services are fully integrated into GrubHub’s business.

13. Additionally, GrubHub drivers are not typically engaged in their own food delivery business. When making deliveries to GrubHub customers, they wear the “hat” of GrubHub.

14. In addition, GrubHub maintains the right of control over the drivers’

performance of their jobs and exercises detailed control over them.

15. GrubHub unilaterally sets the pay scheme and rate of pay for the drivers' services and changes the rate of pay in its sole discretion.

16. GrubHub communicates directly with customer and follow up with drivers if the customer complains that the food was not delivered or that the delivery otherwise failed to meet their expectations. Based on any customer feedback, GrubHub may suspend or terminate drivers.

17. GrubHub directs the delivery drivers' work in detail, instructing drivers where to report for their shifts, how to dress, and where to go to pick up or await deliveries. Drivers are required to follow requirements imposed on them by GrubHub regarding handling of the food and timeliness of deliveries. GrubHub retains the right to terminate the drivers at will.

18. GrubHub drivers typically work on scheduled shifts (such as blocks of time lasting between one and four hours). While drivers are on shift, they must stay within an area assigned by GrubHub and must remain available to accept delivery assignments.

19. During their shifts, drivers are frequently contacted by dispatchers who instruct them on what they need to be doing and where they need to be. If the drivers did not follow the dispatchers' instructions, they will not receive job assignments, or their shifts will be cancelled. The drivers also risk termination if they do not adhere to the dispatchers' instructions.

20. During their shifts, drivers are typically assigned at least one and sometimes as many as four delivery jobs per hour. Delivery assignments can typically take between thirty minutes and an hour and a half to complete.

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