UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

LEVON ALEKSANIAN, *individually, on behalf of all others similarly situated, and as Class Representative*, ET AL.,	:	**1:19-cv-10308 (ALC)**
Plaintiffs,	:	**ORDER & OPINION**
-against-	:	
UBER TECHNOLOGIES INC., ET AL.,	:	
Defendants.	:	

ANDREW L. CARTER, JR., United States District Judge:

Plaintiffs Levon Aleksanian, Sonam Lama, and Harjit Khatra (collectively, "Named Plaintiffs") bring this action individually, and on behalf of all others similarly situated (the "Putative Class"), and as class representatives (collectively, "Plaintiffs"), against Defendants Uber Technologies Inc., Uber Logistik, LLC and Uber USA LLC (collectively, "Uber" or "Defendants") asserting claims for breach of contract. Currently pending before the Court are Uber's motion to compel arbitration pursuant to the Federal Arbitration Act ("FAA") and Plaintiffs' motion for discovery in connection with Uber's motion to compel arbitration. For the reasons discussed below, Plaintiffs' motion for discovery is **DENIED** and Defendants' motion to compel arbitration is **GRANTED**. [1]

PROCEDURAL HISTORY

Plaintiffs commenced this action on November 6, 2019. ECF No. 1 ("Compl."). On May 1, 2020, Defendants filed a motion to compel arbitration pursuant to the FAA. ECF No. 19

[1] On March 2, 2021, Plaintiffs submitted a pre-motion conference letter in connection with a motion to amend their complaint to assert NYLL claims. ECF No. 57. On March 4, 2021, Defendants responded to Plaintiffs' letter. ECF No. 59. Plaintiffs' requests for a conference and leave to file a motion to amend their complaint are **DENIED**. As

("Defs.' Mot."). Plaintiffs opposed Defendants' motion to compel arbitration on July 3, 2020, ECF No. 35 ("Pls.' Opp."), and Defendants replied on July 31, 2020, ECF No. 38 ("Defs.' Reply"). On July 30, 2020, Plaintiffs filed a letter motion for leave to file a sur-reply or in the alternative supplement their opposition to Defendants' motion to compel arbitration, which this Court granted on August 6, 2020. ECF Nos. 37, 40. Plaintiffs filed a supplemental memorandum of law in opposition to Defendants' motion to compel arbitration on August 12, 2020. ECF No. 42. On September 8, 2020, Defendants filed a notice of supplemental authority in connection with their motion to compel arbitration. ECF No. 46.

The Court held a telephone status conference on August 18, 2020 wherein it ordered the parties to brief a motion for limited discovery in connection with Defendants' motion to compel arbitration. Aug. 18, 2020 Minute Order. Plaintiffs filed their motion for discovery on September 1, 2020, ECF No. 43 ("Pls.' Mot."), Defendants opposed the motion on September 15, 2020, ECF No. 47 ("Defs.' Opp."), and Plaintiffs filed a reply on September 22, 2020, ECF No. 48 ("Pls.' Reply"). On February 5, 2021, Plaintiffs filed a letter motion for leave to file supplemental authority relevant to both motions before the Court, ECF No. 49, which this Court granted on February 8, 2021, ECF No. 50. Plaintiffs filed the supplemental authority on February 9, 2021. ECF No. 51. On February 11, 2021, Defendants filed a letter motion for leave to file notice of supplemental authority in support of their motion to compel arbitration, ECF No. 52, which this Court granted on February 12, 2021, ECF No. 53. Defendants filed the supplemental

will be discussed in the opinion below, Plaintiff is required to arbitrate claims arising out of the Agreement, including NYLL claims. Thus, any amendment to the complaint would be futile. *See Oguejiofo v. Open Text Corp.*, No. 09-cv-1278, 2010 WL 1904022, at *3 (S.D.N.Y. May 10, 2010) ("Since the arbitration clause applies to this dispute, the court lacks subject matter jurisdiction over [plaintiff's] claim and any amendment by [plaintiff] would be futile."); *see also Kutluca v. PQ New York Inc.*, 266 F. Supp. 3d 691, 704-705 (S.D.N.Y. 2017). The Clerk of Court is directed to terminate ECF No. 57.

authority on February 16, 2021. ECF No. 54.[2] Both motions currently before the Court are deemed fully briefed. After careful consideration, Plaintiffs' motion for discovery is **DENIED** and Defendants' motion to compel arbitration is **GRANTED**.

BACKGROUND[3]

Uber is a "vendor of transportation services" who contracts with drivers that operate Black Car vehicles affiliated with bases owned by Uber and licensed by the New York City Taxi Limousine Commission. Compl. ¶¶ 47-52. The Uber smartphone application ("Uber app") allows riders to request these drivers through Uber's "centralized dispatch network." *Id*. ¶ 51. Named Plaintiffs are "present and former drivers who contracted with Uber to drive Black Cars as part of Uber's New York City fleet and who did not opt out of arbitration." *Id*. ¶ 2.

A. Agreement and Arbitration Provision

Named Plaintiffs are parties to a Software License Agreement ("SLA") and/or Technology Services Agreement ("TSA") (collectively, the "Agreement").[4] As relevant here, the Agreement has a notice on the first page that it contains an Arbitration Provision:

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[2] On March 2, 2021, Plaintiffs filed a letter motion for leave to file additional supplemental authority relevant to both motions before the Court. ECF No. 58. This request is **GRANTED**. The Court has considered this authority in the below decision and Plaintiff need not file it separately. The Clerk of Court is directed to terminate ECF No. 58.

[3] The following background is drawn from Plaintiffs' complaint ("Compl."), ECF No. 1, and the agreements between the parties containing the arbitration provisions at issue. While these agreements are not included or attached to Plaintiffs' complaint, "[a] complaint is deemed to include . . . materials incorporated in it by reference, and documents that, although not incorporated by reference, are 'integral' to the complaint." *Sira v. Morton*, 380 F.3d 57, 67 (2d Cir. 2004) (internal citations omitted). Plaintiffs reference these agreements in their complaint several times. *See, e.g.*, Compl. ¶¶ 91, 97-101, 106-113. While Plaintiffs do not cite to or attach these agreements to their complaint, these agreements are "integral" to the complaint. *See Perry v. N.Y. Law Sch.*, No. 03-cv-9221, 2004 WL 1698622, at *2 n.3 (S.D.N.Y. July 28, 2004) (citing *Schnall v. Marine Midland Bank*, 225 F.3d 263, 266 (2d Cir. 2000)) (finding arbitration agreement integral to the complaint on a motion to compel arbitration).

[4] Named Plaintiffs allege that they are parties to multiple agreements, including the SLA and TSA. Plaintiff Aleksanian accepted Uber's **Software License (and Online Services) Agreement** dated June 21, 2014. Gordon Decl., Ex. A ("SLA"); *see also* Compl. ¶ 24. Plaintiffs Lama and Khatra last accepted the **UBER USA, LLC Technology Services Agreement** dated December 11, 2015. Gordon Decl., Ex. D ("TSA"); *see also* Compl. ¶¶ 31, 40. In addition to these agreements, Plaintiffs allege that Mr. Aleksanian accepted agreements dated November 10, 2014 and April 3, 2015 (Gordon Decl., Ex. C), Compl. ¶ 24; Plaintiff Lama accepted an agreement dated April 3, 2015, *id.* ¶ 31; and Plaintiff Khatra accepted agreements dated July 2013, June 2014, November 10, 2014 and April 3, 2015, *id.* ¶ 40. Plaintiffs have noted some differences between the agreements; however, it appears that the agreements are substantially similar in regard to the relevant provisions for the purposes of this opinion.

> **PLEASE REVIEW THE ARBITRATION PROVISION SET FORTH BELOW IN SECTION 14.3 CAREFULLY, AS IT WILL REQUIRE YOU TO RESOLVE DISPUTES WITH UBER ON AN INDIVIDUAL BASIS THROUGH FINAL AND BINDING ARBITRATION UNLESS YOU CHOOSE TO OPT OUT OF THE ARBITRATION PROVISION. . . IF YOU DO NOT WISH TO BE SUBJECT TO ARBITRATION, YOU MAY OPT OUT OF THE ARBITRATION PROVISION BY FOLLOWING THE INSTRUCTIONS PROVIDED IN SECTION 14.3 BELOW.**

SLA at 1; *see also* TSA at 1.[5] The Arbitration Provision provides:

> **Except as it otherwise provides, this Arbitration Provision is intended to apply to the resolution of disputes that otherwise would be resolved in a court of law or before a forum other than arbitration. This Arbitration Provision requires all such disputes to be resolved only by an arbitrator through final and binding arbitration on an individual basis only and not by way of court or jury trial, or by way of class, collective or representative action.**
>
> Such disputes include without limitation disputes arising out of or relating to interpretation or application of this Arbitration Provision, including the enforceability, revocability or validity of the Arbitration Provision or any portion of the Arbitration Provision. All such matters shall be decided by an Arbitrator and not by a court or judge.
>
> Except as it otherwise provides, this Arbitration Provision also applies, without limitation, to disputes arising out of or related to this Agreement and disputes arising out of or related to Your relationship with Uber, including termination of the relationship.

SLA § 14.3; *see also* TSA § 15.3.

Named Plaintiffs admit that they are parties to the Agreements and that they did not opt out of the Arbitration Provision. Compl. ¶¶ 24, 31, 40.

B. Alleged Interstate Commerce

Plaintiffs allege that they were "expected to and regularly did transport passengers across state lines while working as [] Uber driver[s]," *id.* ¶¶ 25, 32, 41; *see also id.* ¶¶ 88-89 ("All Named Plaintiffs and Putative Class members were required to perform interstate trips . . . [and] did in fact perform interstate trips."), and that:

[5] The TSA is substantially the same as the SLA in regard to the provisions related to arbitration, with some minor differences not relevant here.

- "4.36% of the trips Aleksanian performed for Uber involved transporting a passenger across state lines. These interstate trips accounted for 10.12% of the total sales volume of Uber trips provided by Mr. Aleksanian," *id.* ¶ 27;

- "During [an] eight-week period from January 4, 2016 to February 22, 2016, 7.55% of the number of trips Lama performed for Uber involved transporting passengers across state lines. During the same time period, these interstate trips accounted for 19.78% of the total stated cost of rides Lama provided," *id.* ¶¶ 35-36;

- "[O]n information and belief, given [Khatra's] long history with Uber, his percentage of interstate trips is similar to other Named Plaintiffs and the putative class as a whole," *id.* ¶ 43.

Plaintiffs also allege that "Uber's New York City business model is structured to provide not only transportation within New York City and New York State, but interstate transportation as well" and that "Uber's policies contemplate the regular performance of interstate transportation work by its drivers." *Id.* ¶ 76. In support of these allegations, Plaintiffs cite to multiple Uber policies and actions including:

- The imposition of a $20 surcharge on all trips between NYC and New Jersey, *id.* ¶ 77;

- The advertising of flat rates for trips between Manhattan and Newark International Airport, *id.* ¶ 78;

- Policies stating that trips originating in New York City may last as long as four hours; more specifically that passengers may choose any destination within four hours of their pick-up location, and thus New York City-based Uber drivers may be dispatched to locations in New Jersey, Connecticut, Pennsylvania, Rhode Island, Massachusetts, Vermont, Delaware, or Maryland, *id.* ¶¶ 80-82;

- The maintenance of a "deactivation policy that stated that drivers' accounts could be permanently deactivated for excessive cancellation rates," making it so that "no driver had the option to exclude performing interstate trips," since it was not possible to determine the passenger's destination until after the passenger had entered the vehicle, and refusal to accept rides after learning of the passenger's destination counted as cancellations, *id.* ¶¶ 83-85;

- "The Uber app is programmed to anticipate interstate trips and makes pricing adjustments when it recognizes an interstate trip," *id.* ¶ 86.

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