PRECEDENTIAL

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT
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No. 18-1944

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ALI RAZAK; KENAN SABANI; KHALDOUN
CHERDOUD, INDIVIDUALLY AND ON BEHALF OF
ALL OTHERS SIMILARLY SITUATED,
Appellants

v.

UBER TECHNOLOGIES, INC.; GEGEN, LLC
_____

On Appeal from the United States District Court
for the Eastern District of Pennsylvania
(D.C. Civil No. 2-16-cv-00573)
District Judge: Hon. Michael M. Baylson
_____

Argued January 15, 2019
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Before: SMITH, *Chief Judge*, GREENAWAY, JR., and
PORTER, *Circuit Judges*.

(Opinion Filed: March 3, 2020)

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OPINION

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GREENAWAY, JR., *Circuit Judge*.

This case is an appeal from a grant of summary judgment on the question of whether drivers for UberBLACK are employees or independent contractors within the meaning of the Fair Labor Standards Act ("FLSA"), 29 U.S.C. §§ 201–219, and similar Pennsylvania state laws. For the following reasons, we will vacate the District Court's grant of summary judgment and remand for further proceedings.

I.   Facts[1]

Plaintiffs Ali Razak, Kenan Sabani, and Khaldoun Cherdoud[2] (collectively, "Plaintiffs") are Pennsylvania drivers who utilize Defendant Uber Technologies' ride-sharing mobile phone application ("Driver App"). Plaintiffs bring this action on behalf of a putative class of all persons who provide limousine

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[1] The facts recited in this section are undisputed except as otherwise noted.

[2] Plaintiffs argue that each Plaintiff should be viewed as an individual for FLSA analysis purposes. However, the FLSA analysis would remain the same regardless of whether Plaintiffs are treated collectively or individually. *See United States v. Cook*, 795 F.2d 987 (Fed. Cir. 1986). Additionally, Plaintiffs do not present significantly distinguishable facts, as all are self-incorporated drivers and have made similar choices regarding business opportunities within the UberBLACK platform.

services, now known as UberBLACK, through Defendant's Driver App in Philadelphia, Pennsylvania.[3] Plaintiffs bring individual and representative claims against Uber Technologies, Inc. and its wholly-owned subsidiary, Gegen, LLC, ("Gegen," and collectively, "Uber") for violations of the federal minimum wage and overtime requirements under the FLSA, the Pennsylvania Minimum Wage Act ("PMWA"), and the Pennsylvania Wage Payment and Collection Law ("WPCL").

Plaintiffs Razak, Sabani, and Cherdoud each own and operate independent transportation companies ("ITCs")[4] Luxe Limousine Services, Inc. ("Luxe"), Freemo Limo, LLC ("Freemo"), and Milano Limo, Inc. ("Milano"), respectively. In order for drivers to contract to drive for UberBLACK, they must form ITCs. Each ITC, in turn, enters into a Technology Services Agreement with Uber. The Technology Services Agreement includes a Software License and Online Services Agreement that allows UberBLACK drivers to utilize the

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[3] This case only pertains to UberBLACK drivers, and not drivers for other Uber platforms, such as UberX or UberPool. All references to "Uber drivers" only pertain to "UberBLACK drivers" in Philadelphia.

[4] ITCs are independent companies "in the business of providing transportation services." App. 385. Some ITCs are self-incorporated solo drivers, while others, like Plaintiffs' ITCs, are larger companies that work with additional drivers who utilize the Uber Driver App. Uber directly contracts with an ITC via their Technology Services Agreement.

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