

414 F.Supp.3d 1246
United States District Court, N.D. California,
Oakland Division.

Jamal ADAMS, et al., Petitioners,
v.
POSTMATES, INC., Respondent.

Case No: 19-3042 SBA
|
Signed 10/22/2019

Synopsis

Background: Delivery drivers for operator of online and mobile platform for food delivery submitted arbitration demands alleging misclassification as independent contractors, in violation of Fair Labor Standards Act (FLSA), and operator refused to tender its share of arbitration filing fees, alleging that the demands were tantamount to a de facto class action in violation of class action waiver and representative action waiver in arbitration provision of fleet agreements between drivers and operator. Drivers filed motion to compel arbitration, and operator filed cross-motion to compel arbitration and stay proceedings.

Holdings: The District Court, [Saundra Brown Armstrong](#), Senior District Judge, held that:

[1] it was for the arbitrator, rather than the court, to address operator's assertion that drivers' arbitration demands an improper attempt to arbitrate on classwide basis, and

[2] procedural condition precedent, concerning payment of arbitration fees, was for arbitrator to decide.

Arbitration compelled; other relief denied.

Procedural Posture(s): Motion to Compel Arbitration.

West Headnotes (11)

[1] **Alternative Dispute Resolution** Constitutional and statutory provisions and rules of court
Commerce Arbitration

The Federal Arbitration Act (FAA) governs the enforcement of arbitration agreements involving interstate commerce. 9 U.S.C.A. § 2.

[2] **Alternative Dispute Resolution** Existence and validity of agreement

Alternative Dispute Resolution Arbitrability of dispute

Under the Federal Arbitration Act (FAA), on a motion to compel arbitration, the district court's role is limited to determining: (1) whether a valid agreement to arbitrate exists and, if it does, (2) whether the agreement encompasses the dispute at issue. 9 U.S.C.A. § 4.

[3] **Alternative Dispute Resolution** Arbitrability of dispute

Through a delegation clause in an arbitration agreement, parties may delegate gateway questions of arbitrability to an arbitrator.

[3 Cases that cite this headnote](#)
[More cases on this issue](#)

[4] **Alternative Dispute Resolution** Arbitrability of dispute

To effectively delegate to an arbitrator gateway questions of arbitrability, the parties to an arbitration agreement must do so clearly and unmistakably.

[3 Cases that cite this headnote](#)
[More cases on this issue](#)

[5] **Federal Courts** Alternative dispute resolution

Under the Federal Arbitration Act (FAA), a court interpreting an arbitration clause applies state law principles of contract interpretation. 9 U.S.C.A. § 1 et seq.

[6] **Contracts** Construction as a whole

Under California law, the meaning of a contract must be derived from reading the whole of the

contract, with individual provisions interpreted together, in order to give effect to all provisions and to avoid rendering some meaningless. *Cal. Civ. Code* § 1641.

[1 Case that cites this headnote](#)

[7] Contracts 🔑 [Language of Instrument](#)

Under California's plain meaning rule, courts give the words of a contract their usual and ordinary meaning.

[8] Contracts 🔑 [Construction as a whole](#)
Contracts 🔑 [Extrinsic circumstances](#)

Under California law, contract terms must be interpreted as a whole and in context, rather than in isolation.

[More cases on this issue](#)

[9] Contracts 🔑 [Construction as a whole](#)

Under California law, when interpreting a contract, courts strive to interpret the parties' agreement to give effect to all of the contract's terms, and to avoid interpretations that render any portion superfluous, void, or inexplicable.

[1 Case that cites this headnote](#)

[10] Alternative Dispute Resolution 🔑 [Arbitrability of dispute](#)

It was for the arbitrator, rather than the court on cross-motions to compel arbitration, to address assertion by operator of online and mobile platform for food delivery, that arbitration demands of delivery drivers, alleging misclassification of drivers as independent contractors in violation of Fair Labor Standards Act (FLSA), were an improper attempt to arbitrate on classwide basis, in violation of class action waiver and representative action waiver in arbitration provision of fleet agreements between drivers and operator; arbitration provision delegated to arbitrator the exclusive authority to resolve any dispute concerning arbitrability, with an exception only for claims

that class action and representative action waivers were unenforceable, unconscionable, void, or voidable, and operator's assertion did not encompass that exception. Fair Labor Standards Act of 1938 §§ 6, 7, 29 U.S.C.A. §§ 206, 207.

[3 Cases that cite this headnote](#)

[More cases on this issue](#)

[11] Alternative Dispute Resolution 🔑 [Conditions precedent to arbitration; procedural arbitrability](#)

Payment of arbitration fees by operator of online and mobile platform for food delivery, including related expenses, was a procedural condition precedent, to be decided by the arbitrator, not the court, on cross-motions to compel arbitration under the Federal Arbitration Act (FAA), in dispute between operator and delivery drivers, who alleged that they had been misclassified as independent contractors, in violation of Fair Labor Standards Act (FLSA). 9 U.S.C.A. § 1 et seq.; Fair Labor Standards Act of 1938 §§ 6, 7, 29 U.S.C.A. §§ 206, 207.

[2 Cases that cite this headnote](#)

[More cases on this issue](#)

Attorneys and Law Firms

*1247 Ashley Conrad Keller, Travis D. Lenkner, Marquel P. Reddish, Keller Lenkner LLC, Chicago, IL, Warren D. Postman, Keller Lenkner LLC, Washington, DC, Keith Custis, Custis Law, P.C., Los Angeles, CA, for Petitioners.

Theane Evangelis, Gibson, Dunn & Crutcher LLP, Los Angeles, CA, for Respondent.

ORDER GRANTING IN PART AND DENYING IN PART PETITIONERS' MOTION TO COMPEL ARBITRATION AND RESPONDENT'S CROSS-MOTION TO COMPEL ARBITRATION AND STAY PROCEEDINGS

Dkt. 4, 228

SAUNDRA BROWN ARMSTRONG, Senior United States District Judge

*1248 Petitioners are 5,257 individuals who work as “couriers” (i.e., delivery drivers) for Respondent Postmates, Inc. (“Postmates”), which operates a food delivery platform and app. Couriers are governed by Postmates’ Fleet Agreement, which classifies them as independent contractors. The agreement also contains both a mandatory arbitration clause and class action waiver. In accordance with arbitration clause, Petitioners have submitted arbitration demands to the designated arbitrator, alleging that they have been misclassified as independent contractors, in violation of the Fair Labor Standards Act (“FSLA”), 29 U.S.C. §§ 206, 207. However, Postmates has refused to tender its share of the arbitration fees to the arbitrator, claiming that the demands are tantamount to a de facto class action in violation of the class action waiver. As such, no arbitrations have yet commenced.

The parties are presently before the Court on Petitioners’ Motion to Compel Arbitration and Postmates’ Cross-Motion to Compel Arbitration and Stay Proceedings pursuant to the Federal Arbitration Act (“FAA”), 9 U.S.C. §§ 3, 4. Both parties seek to compel arbitration but with the imposition of additional conditions. Petitioners request an order compelling Postmates to tender its share of the arbitration fees to the arbitrator so that the arbitrations may proceed. Postmates seeks an order compelling Petitioners to refile their respective arbitration demands in a manner that, inter alia, includes more details and to proceed before the arbitrator in an “individual” manner. Having read and considered the papers filed in connection with this matter and being fully informed, the Court GRANTS both motions insofar as they seek an order compelling arbitration and DENIES them in all other respects. The Court, in its discretion, find this matter suitable for resolution without oral argument. See Fed. R. Civ. P. 78(b); N.D. Cal. Civ. L.R. 7-1(b).

I. BACKGROUND

A. FACTUAL SUMMARY

Postmates operates an online and mobile platform and app to facilitate food deliveries from restaurants and other sources. Campbell Decl. in Supp. of Resp’t’s Opp’n ¶ 2, Dkt. 112-3. Through the Postmates app, customers can order food from participating merchants, which, in turn, is delivered by couriers compensated by Postmates. Petition ¶ 14, Dkt. 1. Individuals who sign up with Postmates to become

couriers are required to execute a Fleet Agreement, which classifies couriers as independent contractors, not employees of Postmates. *Id.* As will be discussed below, the agreement also contains various other provisions intended to govern Postmates and the courier’s relationship and their respective rights and obligations arising out of that relationship. *Id.* ¶ 16; Keller Decl. in Supp. of Mot. to Compel Arb. Ex. B (“Fleet Agt.” or “2018 Fleet Agt.”) § 1, Dkt. 5-2.¹

*1249 1. Mutual Arbitration Provision

The Fleet Agreement contains a Mutual Arbitration Provision, pursuant to which “[t]he Parties mutually agree to resolve any disputes between them exclusively through final and binding arbitration instead of filing a lawsuit in court.” Fleet Agt. § 10A. With certain specified exceptions not relevant here, any arbitration is governed by the American Commercial Arbitration Association (“AAA”) Rules. *Id.* § 10B.vi, 10B.viii.

To initiate an arbitration, the claimant must submit to Postmates a demand for arbitration which sets forth: (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.* § 10B.i. Pursuant to the Class Action Waiver and Representative Action Waiver (collectively “Waivers”) section of the Mutual Arbitration Provision, claimants are barred from bringing or participating in a class, collective or representative action; rather, the claimant agrees that the dispute “will be resolved in individual arbitration.” *Id.* § 10B.i & 10B.ii.

The arbitration provision includes a delegation clause, which specifies that the arbitrator has the exclusive authority to determine arbitrability, except as to matters pertaining to the enforceability of the Waivers. *Id.* § 10A.ii, 10B.iv. The delegation clause states:

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, including without limitation any dispute concerning arbitrability.

However, as stated in Section 10B.iv below, the preceding clause shall not apply to any dispute relating to or arising out of the Class Action Waiver and Representative Action Waiver, which must proceed in a court of competent jurisdiction and cannot be heard or arbitrated by an arbitrator.

Fleet Agt. § 10A.ii, Campbell Decl. Ex. C (emphasis added). The exception for disputes “relating to or arising out of the Class Action Waiver and Representative Action Waiver” is explained in Section 10b.iv, which 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. § 10B.iv (emphasis added).

2. Arbitration Demands

On March 6, 2019, counsel for Petitioners (“Counsel”) informed Postmates that they represented more than 3,000 couriers in California and Illinois who intended to initiate individual arbitrations against Postmates. Keller Decl. ¶ 4, Dkt. 5. Counsel’s letter posited that if they were to *1250 proceed with arbitration, Postmates’ share of the filing fee would exceed \$20 million. Id. Ex. A. Given that cost, Counsel indicated that they were open to an “alternative process” to

resolve Petitioners’ claims. Id. Postmates responded that it would retain outside counsel to handle the matter. Id. ¶ 5.

At the time Counsel began communicating with Postmates in March 2019, couriers were governed by the 2018 Fleet Agreement, under which Postmates was responsible for payment of all arbitration filing fees. Beginning in April 2019, after becoming aware of Petitioners’ anticipated claims, Postmates issued the 2019 Fleet Agreement and began requiring couriers to split the cost of arbitration equally with Postmates. Id. ¶¶ 7-8. Couriers logging into the Postmates app to make deliveries were required to agree to the new terms set forth in the 2019 Fleet Agreement. Id. ¶ 8.

Despite further discussions, Counsel and Postmates were unable to negotiate an alternative to arbitration. Id. ¶ 11. As a result, Counsel, on behalf of Petitioners, filed 4,925 individual arbitration demands with the AAA on April 22, 2019, and another 349 demands on May 13, 2019, for a total of 5,274 individual arbitration demands. Id. ¶ 12. In response, the AAA invoiced Petitioners for their share of the filing fees necessary to commence arbitration proceedings with respect to the demands filed on April 22, 2019. Id. ¶ 14. The AAA granted fee waivers to eligible claimants; the remaining claimants paid their portion of the fees in the amount of \$99,600. Id.

In the meantime, on May 10, 2019, the AAA informed Postmates that it had until May 31, 2019, to pay its share of the filing fees with respect to the 4,925 demands submitted on April 22, 2019, which was \$1,900 per claimant (approximately \$9.36 million in aggregate). Keller Decl. ¶ 16. Postmates refused to pay any fees, claiming that the individual arbitration demands were insufficient under the terms of the Fleet Agreement to initiate arbitration proceedings. Evangelis Decl. in Supp. of Resp’t’s Cross-Mot. ¶¶ 7, Dkt. 228-1. The AAA, however, indicated that the arbitrations would move forward and that payment of the filing fees was expected. Id. Though maintaining that Petitioners had not properly commenced arbitration, Postmates contacted Counsel to discuss scheduling a mediation (instead of arbitration). Id. Counsel was agreeable to mediation, provided it were to take place by May 31, 2019. Id. The parties were unable to schedule a mediation by that deadline, however. Id.

On May 31, 2019, the deadline for Postmates’ payment of fees, the AAA contacted Postmates for its position on whether the AAA could properly assess fees against Postmates in light of Petitioners’ arbitration demands. Id. ¶ 10. Postmates

responded that, in its view, no arbitration proceedings or corresponding obligation to pay arbitration fees had been triggered on the ground that Petitioners' arbitration demands were improper. *Id.* Ex. E.

B. PROCEDURAL HISTORY

On June 3, 2019, Petitioners filed their Petition to Compel Arbitration in this Court under the FAA. Dkt. 1. The Petition alleges Postmates has yet to pay any part of the arbitration filing fees owed, and that absent such payment, the AAA will not commence the arbitrations. Petition ¶¶ 24-25. As relief, Petitioner seeks to compel arbitration along with an order specifying that (1) “Postmates shall pay all arbitration filing fees due for Petitioners' pending demands for arbitration within 14 days of this Court's Order” and (2) that “Postmates shall pay future AAA invoices related *1251 to Petitioners' arbitrations within 14 days of receipt.” *Id.* ¶ 29.

In support of its Petition, Petitioners have filed a Motion to Compel Arbitration. Dkt. 2. In response, Postmates filed an opposition and a separate Cross-Motion to Compel Arbitration (“Cross-Motion”). Dkt. 112, 228. In its Cross-Motion, Postmates agrees that Petitioners' wage and hour claims are subject to and should be resolved by arbitration. However, Postmates contends that the manner in which Petitioners submitted their arbitration demands is tantamount to a de facto class action, which is barred under the Class Action Waiver. Thus, Postmates asserts that the Court should compel arbitration and “enter an order: (1) requiring each Petitioner to refile his or her demand as an individual arbitration demand that sets forth the facts and legal theories of relief applicable to the particular Petitioner; and (2) requiring each Petitioner, after refile, to proceed to arbitration on an individual basis....” Cross-Mot. at 15, Dkt. 228. The motions are fully briefed and are ripe for adjudication.

II. LEGAL STANDARD

[1] [2] The FAA governs the enforcement of arbitration agreements involving interstate commerce. 9 U.S.C. § 2. The Act “mandates that district courts shall direct parties to proceed to arbitration on issues as to which an arbitration agreement has been signed.” *Dean Witter Reynolds, Inc. v. Byrd*, 470 U.S. 213, 218, 105 S.Ct. 1238, 84 L.Ed.2d 158 (1985) (emphasis in original); 9 U.S.C. § 4. Thus, on a motion to compel arbitration, the district court's role is limited to determining “(1) whether a valid agreement to arbitrate exists and, if it does, (2) whether the agreement encompasses the

dispute at issue.” *Kilgore v. KeyBank Nat'l Ass'n*, 673 F.3d 947, 955-56 (9th Cir. 2012) (citing *Chiron Corp. v. Ortho Diagnostic Sys., Inc.*, 207 F.3d 1126, 1130 (9th Cir. 2000)). If these factors are met, the court must enforce the arbitration agreement in accordance with its precise terms. *Id.*

Where a district court determines that a dispute is subject to arbitration under a written agreement, the court “shall on application of one of the parties stay the trial of the action until such arbitration has been had in accordance with the terms of the agreement, providing the applicant for the stay is not in default in proceeding with such arbitration.” 9 U.S.C. § 3; *Leicht v. Bateman Eichler, Hill Richards, Inc.*, 848 F.2d 130, 133 (9th Cir. 1988) (noting that the FAA “requires that the court stay judicial proceedings until the matter has been arbitrated according to the terms of the arbitration agreement”).

III. DISCUSSION

The parties agree that the Mandatory Arbitration Provision is valid and that Petitioners' misclassification claims must be resolved through arbitration. According to Petitioners, the principal impediment to moving forward with the arbitrations is Postmates' refusal to pay its share of the arbitration fees. Postmates counters that no fees are due because Petitioners have yet to properly submit their demands. As support, Postmates points to the arbitration clause, which requires a courier to resolve any disputes “on an individual basis” through final and binding arbitration. According to Postmates, Petitioners failed to comport with that requirement, instead submitting a single document “setting forth the grievances in generic terms that were not specific to any particular individual,” along with a spreadsheet listing the names of the claimants to whom the allegations applied. Resp't's Cross-Mot. at 6, Dkt. 228. Postmates argues that by presenting their claims to the arbitrator in *1252 that manner, Petitioners are attempting to proceed with the arbitration on a de facto classwide or class action basis in violation of the Class Action Waiver. *Id.* at 10.²

A. SCOPE OF THE COURT'S INQUIRY

[3] [4] The threshold issue presented by Postmates' Cross-Motion is whether this Court—or the arbitrator—is the appropriate venue to resolve whether Petitioners properly initiated arbitration proceedings in accordance with the Mandatory Arbitration Provision. The starting point for resolving this issue requires the Court to examine the

delegation clause in the arbitration agreement at issue. See [Rent-A-Ctr., W., Inc. v. Jackson](#), 561 U.S. 63, 68, 130 S.Ct. 2772, 177 L.Ed.2d 403 (2010). Through such a clause, parties may delegate “gateway” questions of arbitrability to an arbitrator. See [Henry Schein, Inc. v. Archer & White Sales, Inc.](#), — U.S. —, 139 S. Ct. 524, 527, 529, 202 L.Ed.2d 480 (2019). To effectively delegate such questions, the parties must do so “clearly and unmistakably.” [Id.](#) at 527.

The Fleet Agreement clearly and unmistakably confers the arbitrator with the authority to resolve issues concerning arbitrability. See Fleet Agt. § 10a.ii (“Only an arbitrator ... shall have the exclusive authority to resolve ... any dispute concerning arbitrability.”).³ The only matters excepted from the delegation clause are certain disputes regarding the Class Action Waiver and Representative Action Waiver. See [id.](#) § 10a.ii, 10B.iv. Section 10a.11 states, in relevant part:

However, as stated in Section 10B.iv below, the preceding clause [conferring the arbitrator with the authority to determine arbitrability] shall not apply to any dispute relating to or arising out of the Class Action Waiver and Representative Action Waiver, which must proceed in a court of competent jurisdiction and cannot be heard or arbitrated by an arbitrator.

Fleet Agt. § 10A.ii, Campbell Decl. Ex. C (emphasis added). The exception for disputes “relating to or arising out of the Class Action Waiver and Representative Action Waiver” is explained in Section 10b.iv, which 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, *1253 void, or voidable shall be determined only by a court of

competent jurisdiction and not by an arbitrator....

[Id.](#) § 10B.iv (emphasis added).

The parties disagree regarding the scope of the exception to the delegation clause. Petitioners take the position that, pursuant to Section 10B.iv, the exception to the delegation clause is limited to challenges that the Class Action or Representative Action Waiver “is unenforceable, unconscionable, void, or voidable”—and contends that no such claim has been made. Opp’n to Cross-Mot. at 3. In response, Postmates, relying on Section 10A.ii, asserts that the exception more broadly encompasses “any dispute relating to or arising out of the Class Action Waiver and Representative Action Waiver.” Reply at 4 (emphasis added). In other words, Postmates’ position is that Sections 10A.ii and 10B.iv together provide two independent exceptions to the delegation clause in cases involving: (1) “any dispute relating to or arising out of the Class Action Waiver and Representative Action Waiver”; and (2) any claim that the aforementioned Waivers are unenforceable, unconscionable, void, or voidable. Resp’t’s Reply in Supp. of Cross-Mot. at 4-5, Dkt. 238. Postmates contends that the question of whether Petitioners are improperly pursuing a de facto class action falls within the “any dispute” exception. For reasons that follow, however, the Court concurs with Petitioners’ interpretation of the delegation clause and finds Postmates’ interpretation of the clause untenable.

[5] [6] [7] [8] [9] A court interpreting an arbitration clause applies state law principles of contract interpretation. [Volt Info. Scis., Inc. v. Bd. of Trustees of Leland Stanford Junior Univ.](#), 489 U.S. 468, 475, 109 S.Ct. 1248, 103 L.Ed.2d 488 (1989). Under California law, “the meaning of a contract must be derived from reading the whole of the contract, with individual provisions interpreted together, in order to give effect to all provisions and to avoid rendering some meaningless.” [Zalkind v. Ceradyne, Inc.](#), 194 Cal. App. 4th 1010, 1027, 124 Cal.Rptr.3d 105 (2011); Cal. Civ. Code § 1641 (“The whole of a contract is to be taken together, so as to give effect to every part, if reasonably practicable, each clause helping to interpret the other.”). “Under the plain meaning rule, courts give the words of the contract ... their usual and ordinary meaning.” [Valencia v. Smyth](#), 185 Cal. App. 4th 153, 162, 110 Cal.Rptr.3d 180 (2010). “Contract terms must be interpreted as a whole and in context, rather than in isolation.” [Elijahjuan v. Superior Court](#), 210 Cal. App.

4th 15, 28, 147 Cal.Rptr.3d 857 (2012). “[W]hen interpreting a contract, [courts] strive to interpret the parties’ agreement to give effect to all of a contract’s terms, and to avoid interpretations that render any portion superfluous, void or inexplicable.” [Brandwein v. Butler](#), 218 Cal. App. 4th 1485, 1507, 161 Cal.Rptr.3d 728 (2013).

Applying the foregoing principles, the Court finds that the exception to the delegation clause is limited specifically to challenges to the enforceability of the Class Action and Representative Action Waivers—and not more generally to “any dispute” concerning the waivers, as Postmates contends. This conclusion is supported by the plain language and structure of the exception to the delegation clause, which begins, “as stated in Section 10B.iv below, the preceding clause [conferring the arbitrator with the authority to determine arbitrability] shall not apply to any dispute relating to or arising out of the Class Action Waiver and Representative Action Waiver” Fleet Agt. § 10A.ii (emphasis added). By prefacing the exception with “as stated in Section 10B.iv below,” the maxims of contract interpretation *1254 require the Court to construe “any dispute” in tandem with the provisions of Section 10B.iv. [See Zalkind](#), 194 Cal. App. 4th at 1027, 124 Cal.Rptr.3d 105.

As noted, Section 10B.iv explicitly limits the delegation clause exception to “any claim that all or part of this Class Action Waiver and/or Representative Action Waiver is unenforceable, unconscionable, void, or voidable.” Fleet Agt. § 10B.iv (emphasis added). Postmates’ contention that Sections 10A.ii and 10B.iv together provide two independent exceptions to the delegation clause is unconvincing. Construing the “any dispute” language as a separate exception would impermissibly render the more specific provisions in Section 10B.iv superfluous, since “any dispute” would always include a claim that the Waivers are unenforceable. [See Hemphill v. Wright Family, LLC](#), 234 Cal. App. 4th 911, 915, 184 Cal.Rptr.3d 326 (2015) (noting that contracts cannot be construed in a manner that render any provision “nugatory, inoperative or meaningless”). Moreover, to the extent there is any inconsistency in terms of whether the exception applies to “any dispute” as opposed to the enforceability of the class action waiver, the more specific limitation set forth in Section 10B.iv controls the more general statement in Section 10A.ii. [See S. Cal. Gas Co. v. City of Santa Ana](#), 336 F.3d 885, 891 (9th Cir. 2003) (noting that it is “[a] standard rule of contract interpretation ... that when provisions are inconsistent, specific terms control over general ones.”) (emphasis added).

[10] In sum, the Court finds that the Fleet Agreement delegates to the arbitrator the exclusive authority to resolve any dispute concerning arbitrability. The only exception to that delegation is for any claim that the Class Action Waiver and/or Representative Action Waiver is “unenforceable, unconscionable, void, or voidable.” Fleet Agt. § 10B.iv (emphasis added). No party in this action has made any claim that either Waiver is unenforceable, unconscionable, void, or voidable. As such, the argument made by Postmates—i.e., that Petitioners’ arbitration claims, in the form presented to the arbitrators, improperly constitute an attempt to arbitrate on a classwide basis—is not within the purview of this Court and must instead be decided by the arbitrator. [Henry Schein](#), 139 S. Ct. at 529 (“When the parties’ contract delegates the arbitrability question to an arbitrator, a court may not override the contract. In those circumstances, a court possesses no power to decide the arbitrability issue.”).

Finally, it bears noting that even if the Court were to construe the exception to the delegation clause in the manner urged by Postmates, the outcome of the instant motions would be the same. Despite Postmates’ assertions to the contrary, the matter of whether Petitioners are attempting to circumvent the Class Action Waiver is ultimately inapposite. As noted, the crux of Postmates’ position is that no arbitration fees are due because Petitioners allegedly failed to submit individual arbitration demands in accordance with the Mutual Arbitration Provision. In resolving that issue, it is unnecessary to resolve Petitioners’ purported motivations with respect to the Class Action Waiver. To the contrary, the salient issue is simply whether Petitioners’ demands comport with the requirements of the Mutual Arbitration Provision. That determination is within the arbitrator’s exclusive authority. [See](#) AAA Comm. Arb. Rules, Rule R-4(c) (“It is the responsibility of the filing party to ensure that any conditions precedent to the filing of a case are met prior to filing for an arbitration, as well as any time requirements associated with the filing. Any dispute regarding whether a condition precedent has been met may be raised to the arbitrator for *1255 determination.”); Fleet Agt. § 10A.ii (delegating to the arbitrator the exclusive authority to “resolve any dispute relating to the interpretation, applicability, enforceability, or formation of this Mutual Arbitration Provision”).

B. RELIEF SOUGHT

1. Postmates' Request

Postmates seeks an order directing each Petitioner to refile his or her demand as an individual arbitration demand containing additional factual information and legal authorities and to proceed on an “individual basis.” Cross-Mot at 2, 15. As discussed in the preceding section, it is within the arbitrator's exclusive authority to determine the sufficiency of Petitioners' arbitration demands and how the arbitration should be conducted. See AAA Comm. Arb. Rules, Rule R-4(c) (conferring the arbitrator with the authority to determine whether the conditions precedent have been satisfied) & Rule R-32 (conferring the arbitrator with discretion in conducting the proceedings). Therefore, the matter of whether Petitioners' arbitration demands comport with the Mandatory Arbitration Provision is for the arbitrator, not this Court, to decide. Postmates' request that the Court direct Petitioners to refile their demands and to proceed in a specific manner is denied.

2. Petitioners' Request

Petitioners seek an order requiring Postmates to (1) pay all arbitration filing fees due for Petitioners' pending demands for arbitration within 14 days of this Court's Order, and (2) pay future invoices related to Petitioners' arbitrations within 14 days of receipt of those invoices. Mot. to Compel at 14, Dkt. 2. Petitioners' request for the payment of fees and future invoices is predicated on Postmates' refusal to tender the requisite payment to the arbitrator. However, Petitioners' motion fails to cite any authority holding or suggesting that the Court has the authority to compel Postmates to pay the arbitrator's fee within a prescribed time-period or to pay future invoices related to the arbitrations. Postmates' response brief is equally unhelpful, as it is silent on the issue.

[11] Upon reviewing the record and relevant authorities, the Court declines to enter an order compelling Postmates to pay outstanding and future arbitration fees. The Fleet Agreement specifies that the AAA Commercial Arbitration Rules shall govern any arbitration between the parties. Fleet Agt. § 10B.vi, viii. Those Rules include provisions regarding the payment of arbitration fees, see AAA Comm. Arb. Rules, Rule R-53 (Administrative Fees), *id.* R-56 (Deposits), as well the available remedies for non-payment, see *id.*

R-57. In view of those provisions and the fact that they have been incorporated into the Fleet Agreement, the Court concludes that the payment of arbitration fees, including related expenses, is a procedural condition precedent to be decided by the arbitrator. Dealer Computer Servs., Inc. v. Old Colony Motors, Inc., 588 F.3d 884, 887 (5th Cir. 2009) (“Payment of fees is a procedural condition precedent that the trial court should not review.”); accord JPD, Inc. v. Chronimed Holdings, Inc., 539 F.3d 388, 392 (6th Cir. 2008); see also Lifescan, Inc. v. Premier Diabetic Servs., Inc., 363 F.3d 1010, 1012-13 (9th Cir. 2004) (holding that the AAA Commercial Arbitration Rules confer the arbitrator with discretion regarding the payment of arbitration fees). For these reasons, the Court denies Petitioners' request for an order directing Postmates to tender payment of outstanding and future arbitration fees.

IV. CONCLUSION

The Court finds that, pursuant to Section 4 of the FAA, the parties are obligated to arbitrate Petitioners' misclassification claims and are hereby ordered to do *1256 so. All other matters raised by the parties in this action, including their respective requests for an order directing Petitioners to refile their arbitration demands and Postmates to tender payment of the arbitration fees, are for the arbitrator to decide. The Court stays this action “until arbitration has been had in accordance with the terms of the [applicable Fleet Agreement].” See 9 U.S.C. § 3. Accordingly,

IT IS HEREBY ORDERED THAT Petitioner's Motion to Compel Arbitration and Postmates' Cross-Motion to Compel Arbitration and Stay Proceedings are GRANTED IN PART and DENIED IN PART. The Court GRANTS the motions insofar as they seek an order compelling arbitration in accordance with the Mandatory Arbitration Provision contained in the applicable Fleet Agreement. All other relief sought in the motions is DENIED. The instant action is STAYED as set forth above. The Clerk shall administratively close the action. Petitioners shall serve a copy of this Order on the arbitrator.

IT IS SO ORDERED.

All Citations

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Footnotes

- 1 There are two relevant versions of this agreement, both of which contain a Mutual Arbitration Provision. The first agreement, effective May 11, 2018 (the “2018 Agreement”), was updated, effective April 3, 2019 (the “2019 Agreement”). See Keller Decl. in Supp. of Mot. to Compel Arb. Exs. B & C. Unless otherwise noted, the pinpoint citations to the Fleet Agreement set forth in this Order are to the 2018 Fleet Agreement.
- 2 Throughout its various briefs, Postmates expends considerable energy accusing Petitioners of using the cost of the arbitration process as a means of coercing Postmates into settling their claims expeditiously. However, under the Fleet Agreement drafted by Postmates which its couriers are required to sign, Petitioners had no option other than to submit their misclassification claims in the form of an arbitration demand—which is precisely what they did. Since the Fleet Agreement bars class actions, each demand must be submitted on an individual basis. Thus, the possibility that Postmates may now be required to submit a sizeable arbitration fee in response to each individual arbitration demand is a direct result of the mandatory arbitration clause and class action waiver that Postmates has imposed upon each of its couriers.
- 3 The Mutual Arbitration Clause also incorporates the AAA rules, which further supports the conclusion that the arbitrator determines arbitrability. See [Brennan v. Opus Bank](#), 796 F.3d 1125, 1130 (9th Cir. 2015) (holding that the incorporation by reference the AAA's rules in a delegation clause “constitutes clear and unmistakable evidence that contracting parties agreed to arbitrate arbitrability,” as one of the AAA arbitration rules specifically provides that the “arbitrator shall have the power to rule on his or her own jurisdiction, including any objections with respect to the ... validity of the arbitration agreement”).