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24 **UNITED STATES DISTRICT COURT**
25 **NORTHERN DISTRICT OF CALIFORNIA**
26 **SAN FRANCISCO DIVISION**

27 TERRELL ABERNATHY, et al.,)
28) Case No. 3:19-cv-07545
)
)
29 *Petitioners,*) **PETITION FOR ORDER**
) **COMPELLING ARBITRATION**
)
30 vs.)
)
31 DOORDASH, INC.,)
32)
33)
34 *Respondent.*)
35)
36)
37)
38)

1 Petitioners file this Petition for an Order compelling Respondent DoorDash, Inc. to
2 arbitration as follows:

3 **NATURE OF THE PETITION**

4 1. Petitioners are 2,236 DoorDash couriers (“Dashers”) who are attempting to arbitrate
5 individual claims against DoorDash for misclassifying them as independent contractors instead of
6 employees. Petitioners contend that in misclassifying them, DoorDash has violated the Fair Labor
7 Standards Act, 29 U.S.C. §§ 206, 207, and related California state and local laws.

8 2. In order to begin making deliveries for DoorDash, each Petitioner was required to
9 sign a contract that contained a sweeping “Mutual Arbitration Provision.” No Petitioner recalls
10 opting out of that arbitration provision.

11 3. The Mutual Arbitration Provision requires that the parties arbitrate any dispute
12 regarding a Dasher’s classification as an independent contractor. The provision also requires that
13 arbitration be administered by the American Arbitration Association (“AAA”) under AAA’s
14 Commercial Rules. Those Rules, in turn, authorize AAA to require that each party pay filing fees
15 before AAA will empanel an arbitrator and proceed with the parties’ arbitration. DoorDash’s
16 arbitration provision expressly requires that DoorDash pay a portion of the fees and costs necessary
17 to commence arbitration.

18 4. On August 26, 2019, in accordance with the parties’ agreement, counsel for
19 Petitioners served an individual demand for arbitration on DoorDash and AAA on behalf of each
20 Petitioner. Each Petitioner promptly satisfied his or her filing-fee obligation.

21 5. AAA determined that each Petitioner’s demand for arbitration met the requirements
22 under AAA’s rules to proceed with arbitration. Thus, pursuant to its rules, AAA imposed successive
23 deadlines of October 14, 2019, October 28, 2019, and November 7, 2019 for DoorDash to pay its
24 share of the filing fees necessary to commence each Petitioner’s arbitration and empanel an
25 arbitrator.

26 6. DoorDash refused to comply with AAA’s deadlines. It did not pay the filing fees
27 necessary for a single Petitioner to proceed with arbitration.

28 7. On November 8, 2019, AAA terminated Petitioners’ arbitrations due to DoorDash’s

1 refusal to satisfy its filing fee obligations.

2 8. Petitioners have filed this Petition to require DoorDash to abide by the arbitration
3 agreement it drafted.

4 **PARTIES**

5 9. Petitioners are Dashers who have made deliveries for DoorDash in California.
6 Details for each Petitioner are listed in Exhibit A.

7 10. Respondent DoorDash, Inc. is a Delaware corporation headquartered at 901 Market
8 Street, Sixth Floor, San Francisco, California 94103.

9 **JURISDICTION AND VENUE**

10 11. This Court has jurisdiction over this action pursuant to 9 U.S.C. § 4 and 28 U.S.C.
11 §§ 1331 and 1367 because the underlying controversy involves claims arising under federal law.

12 12. This Court has personal jurisdiction over DoorDash because DoorDash has its
13 headquarters and principal place of business in California.

14 13. Venue is proper in this district (San Francisco Division) pursuant to 9 U.S.C. § 4
15 and 28 U.S.C. § 1391(b) because DoorDash is headquartered and conducts business in San
16 Francisco County, and many of the acts and omissions complained of occurred in San Francisco
17 County.

18 **INTRADISTRICT ASSIGNMENT**

19 14. This action is properly assigned to the San Francisco Division of this District,
20 pursuant to Civil Local Rule 3-2(c) and (d), because a substantial part of the events or omissions
21 that give rise to the claim occurred in San Francisco County, which is served by the San Francisco
22 Division.

23 **BACKGROUND**

24 15. DoorDash is an on-demand delivery service through which customers may order
25 food and other items from participating merchants for delivery. DoorDash pays Dashers to make
26 those deliveries.

27 16. Petitioners are Dashers whom DoorDash has misclassified as independent
28 contractors rather than employees, in violation of federal, state, and local law.

1 17. DoorDash executed an agreement with each Petitioner requiring that DoorDash and
2 the Petitioner individually arbitrate any claim arising from the agreement, including a claim that
3 the Petitioner has been misclassified. *See, e.g.*, Ex. B (DoorDash’s 2019 Independent Contractor
4 Agreement). The agreement further requires that the arbitration be administered by AAA under its
5 Commercial Arbitration Rules. *See id.*

6 18. Under the Commercial Rules, “[t]he arbitrator shall interpret and apply the[] rules
7 insofar as they relate to the arbitrator’s powers and duties.” Commercial Rule 8. Where no
8 arbitrator is yet available, or where a rule does not involve the “arbitrator’s powers and duties,” the
9 rules “shall be interpreted and applied by the AAA.” *Id.*¹

10 19. Commercial Rule 56 further authorizes AAA to “require the parties to deposit in
11 advance of any hearings such sums of money as it deems necessary to cover the expense of the
12 arbitration, including the arbitrator’s fee.” Commercial Rule 56.

13 20. The Commercial Rules also state that AAA’s Employment Fee Schedule applies
14 where, as here, workers bring claims asserting that they were misclassified as independent
15 contractors. *Id.* at 2 n.*. And the Employment Fee Schedule states that “[t]he employer or
16 company’s share of filing fees is due as soon as the employee or individual meets his or her filing
17 requirements.” Employment Fee Schedule at 2.²

18 21. DoorDash has enforced its broad arbitration agreement to preclude couriers from
19 filing misclassification claims against it in court. *See, e.g., Magana v. DoorDash, Inc.*, 343 F. Supp.
20 3d 891 (N.D. Cal. 2018) (compelling a Dasher to arbitrate misclassification claims); *Mckay v.*
21 *DoorDash, Inc.*, No. 19-cv-04289-MMC, 2019 WL 5536199 (N.D. Cal. Oct. 25, 2019) (same).

22 22. On August 26, 2019, in accordance with the parties’ agreement, counsel for
23 Petitioners served an individual demand for arbitration on DoorDash and AAA on behalf of each
24 Petitioner. Each Petitioner promptly satisfied his or her filing-fee obligation.

25 23. AAA then determined that each Petitioner’s arbitration demand satisfied AAA’s
26 filing requirements.

27 ¹ Available at https://www.adr.org/sites/default/files/CommercialRules_Web_FINAL_1.pdf.

28 ² Available at https://www.adr.org/sites/default/files/Employment_Fee_Schedule1Nov19.pdf.

1 24. Applying its Commercial Rules and Employment Fee Schedule, AAA imposed a
2 deadline of October 14, 2019 for DoorDash to pay the filing fees it owed for AAA to empanel
3 arbitrators and proceed with Petitioners' arbitrations.

4 25. DoorDash sought an extension of that deadline, which AAA granted, to October 28,
5 2019.

6 26. DoorDash did not pay the filing fees it owed on October 28 because, it argued, each
7 Petitioner's demand was "insufficient to launch arbitration under the DoorDash Independent
8 Contractor Agreement, as well as AAA's own rules."

9 27. AAA rejected that argument and made "an administrative determination that the
10 minimum filing requirements have been met by [Petitioners]." AAA thus set a final deadline of
11 November 7, 2019 for DoorDash to pay the filing fees it owed.

12 28. DoorDash refused to comply with that deadline. It did not pay the fees for an
13 arbitrator to be empaneled for a single Petitioner's arbitration.

14 29. On November 8, 2019, AAA "administratively closed" Petitioners' files because
15 DoorDash "failed to submit the previously requested filing fees for [Petitioners'] individual
16 matters."

17 **CONCLUSION**

18 30. Each Petitioner and DoorDash entered into an agreement requiring them to arbitrate
19 the issue of whether that Petitioner is an independent contractor or an employee.

20 31. DoorDash breached that agreement because it refused to comply with AAA's
21 administrative determinations regarding the filing fees it must pay under the agreement—fees AAA
22 requires before it will empanel arbitrators and begin Petitioners' arbitrations.

23 32. Until DoorDash complies with AAA's administrative determinations, Petitioners'
24 arbitrations cannot commence. Petitioners are in limbo: Their arbitration agreements prevent them
25 from bringing their claims in court, but DoorDash refuses to arbitrate their claims under the terms
26 of the arbitration agreement.

27 33. Accordingly, this Court should compel DoorDash to arbitrate under 9 U.S.C. § 4.
28

PRAYER FOR RELIEF

WHEREFORE, Petitioners respectfully request that this Court:

34. Enter an Order requiring that DoorDash arbitrate each Petitioner’s claims under the Mutual Arbitration Provision, including by paying the arbitration fees and costs AAA determines are necessary to empanel arbitrators and proceed with arbitrations.

Dated: November 15, 2019

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that I shall cause the foregoing document to be served on DoorDash, Inc. at its registered agent for service of process, Registered Agent Solutions, Inc. 1220 S. Street, Suite 150, Sacramento, CA 95811, on or around November 18, 2019.

Dated: November 15, 2019

/s/ Keith A. Custis

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24 **UNITED STATES DISTRICT COURT**
25 **NORTHERN DISTRICT OF CALIFORNIA**
26 **SAN FRANCISCO DIVISION**

27 TERRELL ABERNATHY, et al.,

28 *Petitioners,*

vs.

DOORDASH, INC.,

Respondent.

) Case No. 3:19-cv-07545

) **MOTION TO COMPEL ARBITRATION**

) **Hearing:**

) **Date:** December 20, 2019

) **Time:** 9:00 a.m.

) **Judge:** Hon. Maxine M. Chesney

1 **TO ALL PARTIES AND THEIR COUNSEL OF RECORD:**

2 **PLEASE TAKE NOTICE** that on December 20, 2019 at 9:00 a.m., or as soon thereafter
3 as the matter may be heard, Petitioners will and hereby do move this Court, pursuant to Section 4
4 of the Federal Arbitration Act (“FAA”), 9 U.S.C. § 4, for an order compelling Respondent
5 DoorDash, Inc. to arbitrate Petitioners’ underlying misclassification claims.¹

6 Each Petitioner and DoorDash entered into an agreement requiring them to arbitrate the
7 issue of whether that Petitioner is an independent contractor or a DoorDash employee. Pursuant to
8 that agreement, each Petitioner filed an individual demand for arbitration seeking to litigate that
9 Petitioner’s classification before the American Arbitration Association (“AAA”), the organization
10 that the parties’ agreement states must administer the arbitration. DoorDash has failed to comply
11 with the parties’ agreement because it has refused to comply with AAA’s administrative
12 determinations regarding the filing fees DoorDash must pay under the agreement and AAA’s
13 rules—fees AAA requires before it will empanel arbitrators and begin Petitioners’ arbitrations.
14 Accordingly, DoorDash has “fail[ed], neglect[ed], or refus[ed] . . . to arbitrate under a written
15 agreement for arbitration.” 9 U.S.C. § 4. Pursuant to the FAA, this Court should “direct[] that such
16 arbitration proceed in the manner provided for in [the parties’] agreement.” *Id.*

17 This motion is based on this notice of motion, the attached memorandum of points and
18 authorities, the declaration of Ashley Keller, all records on file with this Court, and such other and
19 further oral and written arguments as may be presented at, or prior to, the hearing on this matter.
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26 ¹ Petitioners have designated this case as related to *Mckay v. DoorDash, Inc.*, No. 3:19-cv-04289-
27 MMC (N.D. Cal.), before Judge Maxine M. Chesney, and will file in *Mckay* an administrative
28 motion to consider whether the two cases are related. If Judge Chesney declines to designate the
cases as related, Petitioners will re-notice this motion according to the assigned judge’s standing
orders and calendar.

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Dated: November 15, 2019

Respectfully submitted,

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28

TABLE OF CONTENTS

I. INTRODUCTION 1

II. BACKGROUND 3

 A. DoorDash Requires Dashers to Sign an Agreement Containing a Broad Arbitration Clause..... 3

 B. Petitioners Filed Individual Arbitration Demands that AAA Determined Met the Initial Filing Requirements. 5

 C. DoorDash Failed to Pay the Filing Fees Required by AAA to Empanel Arbitrators, and has Refused to Proceed With Any Petitioner’s Arbitration. 6

III. STATEMENT OF ISSUES TO BE DECIDED (L.R. 7-4) 8

IV. ARGUMENT 8

 A. The Parties Entered into a Valid Arbitration Agreement that Covers the Present Disputes..... 9

 B. DoorDash Has Breached the Mutual Arbitration Provision by Refusing to Arbitrate Petitioners’ Claims..... 10

 C. This Court Should Enforce the Arbitration Agreement and Compel DoorDash to Arbitrate..... 16

V. CONCLUSION..... 19

TABLE OF AUTHORITIES

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
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28

CASES	PAGE(s)
<i>Allemeir v. Zyppah, Inc.</i> , No. 18-7437-PA, 2018 WL 6038340 (C.D. Cal. Sept. 21, 2018).....	17, 19
<i>AT&T Mobility LLC v. Concepcion</i> , 563 U.S. 333 (2011).....	8
<i>Bridgeport Mgmt., Inc. v. Lake Mathews Mineral Props., Ltd.</i> , No. 14-cv-00070-JST, 2014 WL 953831 (N.D. Cal. Mar. 6, 2014).....	9
<i>Brown v. Dillard’s, Inc.</i> , 430 F.3d 1004 (9th Cir. 2005)	15
<i>Bushley v. Credit Suisse First Boston</i> , 360 F.3d 1149 (9th Cir. 2004)	2, 16
<i>Chiron Corp. v. Ortho Diagnostic Sys., Inc.</i> , 207 F.3d 1126 (9th Cir. 2000)	9, 16
<i>Cinel v. Barna</i> , 206 Cal. App. 4th 1383 (2012)	14
<i>Dealer Computer Servs., Inc. v. Old Colony Motors, Inc.</i> , 588 F.3d 884 (5th Cir. 2009)	15
<i>Duffens v. Valenti</i> , 161 Cal. App. 4th 434 (2008)	8
<i>Edwards v. DoorDash, Inc.</i> , No. H–16–2255, 2017 WL 5514302 (S.D. Tex. Oct. 18, 2017).....	15
<i>Fordjour v. Washington Mut. Bank</i> , No. 07-cv-1446-MMC (PR), 2008 WL 295092 (N.D. Cal. Feb. 1, 2008)	16
<i>Halloran v. Davis</i> , No. 2:12-cv-01011-CBM, 2013 WL 12153551 (C.D. Cal. Aug. 15, 2013).....	17, 19
<i>Healy v. RBC Dain Rauscher</i> , No. C 04-4873MMC, 2005 WL 387140 (N.D. Cal. Feb. 17, 2005).....	17
<i>Henry Schein, Inc. v. Archer & White Sales, Inc.</i> , 139 S. Ct. 524 (2019).....	9, 10, 11
<i>Howsam v. Dean Witter Reynolds, Inc.</i> , 537 U.S. 79 (2002).....	9

1	CASES (cont.)	PAGE(s)
2	<i>Lifescan, Inc. v. Premier Diabetic Services, Inc.</i> ,	
3	363 F.3d 1010 (9th Cir. 2004)	3, 13, 14
4	<i>Mohamed v. Uber Techs., Inc.</i> ,	
5	848 F.3d 1201 (9th Cir. 2016)	10
6	<i>Pre-Paid Legal Servs. v. Cahill</i> ,	
7	786 F.3d 1287 (10th Cir. 2015)	14, 15
8	<i>Rent-A-Center, W., Inc. v. Jackson</i> ,	
9	561 U.S. 63 (2010).....	12
10	<i>Sink v. Aden Enterprises, Inc.</i> ,	
11	352 F.3d 1197 (9th Cir. 2003)	15
12	<i>Unite Here Int’l Union v. Shingle Spring Band of Miwok Indians</i> ,	
13	No. 2:16-cv-00384-TLN-EFB, 2016 WL 4041255 (E.D. Cal. July 25, 2016).....	9
14	<i>Volt Info. Scis., Inc. v. Bd. of Trustees of Leland Stanford Junior Univ.</i> ,	
15	489 U.S. 468 (1989).....	17
16	<i>Williams v. Tully</i> ,	
17	No. C-02-05687-MMC, 2005 WL 645943 (N.D. Cal. Mar. 18, 2005)	14, 15
18	STATUTES	
19	9 U.S.C. § 4.....	8, 9, 16
20	9 U.S.C. § 1.....	2, 3
21	RULES	
22	American Arbitration Association Commercial Arbitration Rules	
23	Rule R-1(a).....	4, 5
24	Rule R-2.....	4, 12
25	Rule R-56.....	4, 6, 10, 12
26	Rule R-7.....	4
27	Rule R-8.....	4
28	OTHER AUTHORITIES	
	Order Granting Mot. Compel Arbitration, <i>Adams v. Postmates Inc.</i> ,	
	No. 4:19-cv-03042-SBA, Dkt. No. 253 (N.D. Cal. Oct. 22, 2019)	<i>passim</i>
	DoorDash’s Mot. Compel Arbitration, <i>Magana v. DoorDash, Inc.</i> ,	
	No. 4:18-cv-03395-PJH, Dkt. No. 18 (N.D. Cal. July 12, 2018).....	2, 3, 5

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OTHER AUTHORITIES (cont.)	PAGE(s)
DoorDash’s Mot. Compel Arbitration, <i>McKay v. DoorDash, Inc.</i> , No. 3:19-cv-04289-MMC, Dkt. No. 26 (N.D. Cal. Aug. 12, 2019)	2
S.B. 707, S. Judiciary Comm., 2019–2020 Reg. Sess. (Cal. 2019)	18

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Petitioners are 2,236 couriers who work for DoorDash, Inc.—an on-demand delivery
4 service. DoorDash pays Petitioners and other couriers (referred to by DoorDash as “Dashers”) to
5 deliver its customers’ orders. Together with other Dashers, Petitioners are DoorDash’s core
6 workforce. Yet despite Petitioners’ importance to DoorDash, DoorDash does not treat Petitioners
7 as employees. Instead, DoorDash misclassifies them as independent contractors—unlawfully
8 depriving them of a minimum wage, overtime pay, and other protections required by federal, state,
9 and local law.

10 For years, DoorDash has required its Dashers to sign an “Independent Contractor
11 Agreement” (“ICA”) that contains a sweeping “Mutual Arbitration Provision.” The Mutual
12 Arbitration Provision requires Petitioners and DoorDash to resolve any wage-and-hour claims, as
13 well as any threshold disputes about how to apply the Mutual Arbitration Provision, in arbitration
14 administered by the American Arbitration Association (“AAA”) under its Commercial Rules. The
15 Mutual Arbitration Provision prohibits Dashers from joining together to bring class proceedings
16 against DoorDash in court or in arbitration.

17 In August 2019, each Petitioner filed an individual demand for arbitration against
18 DoorDash with AAA to recover backpay and related penalties he or she is owed for DoorDash’s
19 violations. AAA made an administrative determination that each Petitioner had met his or her
20 filing requirements and that, in order for arbitration to occur, DoorDash was required to pay its
21 share of the filing fees. DoorDash refused to comply with AAA’s administrative determination,
22 causing AAA to close Petitioners’ arbitrations. Petitioners seek an order from this Court requiring
23 DoorDash to comply with the Mutual Arbitration Provision and arbitrate their claims.

24 DoorDash has repeatedly enforced its Mutual Arbitration Provision to prevent Dashers
25 from litigating misclassification claims in court. In doing so, DoorDash has affirmed (i) that the
26 arbitration agreement between DoorDash and its Dashers is “valid and enforceable under the
27 Federal Arbitration Act (‘FAA’) and covers all of the claims” Petitioners have asserted, and
28

1 (ii) that “[t]he Supreme Court repeatedly has held that arbitration agreements requiring
2 individualized arbitration must be enforced” according to their terms. DoorDash’s Mot. Compel
3 Arbitration at 1, *McKay v. DoorDash, Inc.*, No. 3:19-cv-04289-MMC, Dkt. No. 26 (N.D. Cal. Aug.
4 12, 2019), Keller Decl., Ex. N; *see also* DoorDash’s Mot. Compel Arbitration at 16–19, *Magana*
5 *v. DoorDash, Inc.*, No. 4:18-cv-03395-PJH, Dkt. No. 18 (N.D. Cal. July 12, 2018), Keller Decl.,
6 Ex. O. Moreover, DoorDash paid its filing fees and proceeded with arbitration for 250 Dashers
7 represented by Petitioners’ counsel. But now that DoorDash faces claims from more than a handful
8 of Dashers, it is unwilling to abide by its own agreement. Instead of complying with the arbitration
9 clause it has used to prevent class actions, *see Magana*, 343 F. Supp. 3d 891 (N.D. Cal. 2018),
10 DoorDash has refused to abide by the administrative determinations of its chosen arbitral body,
11 thereby preventing AAA from empaneling an individual arbitrator for even a single Petitioner’s
12 arbitration. This motion asks the Court to require DoorDash to honor the contract it drafted and
13 has wielded as a club against any Dasher who has attempted to vindicate his or her rights in court.

14 Petitioners’ right to relief flows from two indisputable premises:

15 *First*, the Mutual Arbitration Provision requires DoorDash to arbitrate Petitioners’ claims
16 and any threshold arguments about whether to arbitrate those claims. The provision requires
17 arbitration of “any and all claims” between Dashers and DoorDash “arising out of or relating to
18 the [ICA]” and each Dashers’ “classification as an independent contractor.” ICA § XI.1, Decl. of
19 Ashley Keller (“Keller Decl.”), Ex. A. There should be no dispute that Petitioners’
20 misclassification claims fall within the scope of the arbitration clause. And even if there were such
21 a dispute, DoorDash’s Mutual Arbitration Provision reserves that question for the arbitrator. *See*
22 *id.* § XI.3 (“All . . . disputes with respect to whether this Mutual Arbitration Provision is . . .
23 applicable . . . shall be determined exclusively by an arbitrator, and not by any court.”).

24 *Second*, DoorDash has breached its contractual obligation to commence arbitration.
25 Petitioners satisfied their filing obligations, including their filing-fee requirements. AAA, which
26 the arbitration clause states shall administer Petitioners’ demands for arbitration, imposed
27 deadlines of October 14, October 28, and November 7, 2019 for DoorDash to pay its share of the
28

1 filing fees. Without those fees, AAA will not empanel arbitrators to conduct Petitioners’
2 individual arbitrations. On November 8, 2019, AAA terminated each Petitioner’s arbitration due
3 to DoorDash’s failure to pay the required fees.

4 DoorDash has no excuse for refusing to comply with AAA’s administrative
5 determinations. Although DoorDash has vaguely and falsely asserted that Petitioners’ demands
6 for arbitration have “deficiencies,” AAA rejected that assertion. The Mutual Arbitration Provision
7 expressly incorporates AAA rules, which in turn authorize AAA to make binding administrative
8 determinations for the assessment of filing fees. And controlling precedent makes clear that courts
9 cannot second-guess AAA’s determinations. *See Lifescan, Inc. v. Premier Diabetic Servs., Inc.*,
10 363 F.3d 1010, 1011–13 (9th Cir. 2004).

11 DoorDash has violated AAA’s requirements and breached its contractual obligation to
12 arbitrate Petitioners’ claims. Pursuant to the Federal Arbitration Act (“FAA”), this Court should
13 grant Petitioners’ motion, enforce the Mutual Arbitration Provision as written, and order DoorDash
14 to comply with AAA’s administrative determinations so Petitioners’ arbitrations can begin.

15 II. BACKGROUND

16 A. DoorDash Requires Dashers to Sign an Agreement Containing a Broad Arbitration 17 Clause.

18 Since at least 2014, DoorDash has required Dashers to sign a contract containing a “Mutual
19 Arbitration Provision” before making any delivery for the company. *See Magana*, 343 F. Supp.
20 3d at 895. The arbitration clause provides that DoorDash and each Dasher “mutually agree to this
21 arbitration agreement,” and that the Mutual Arbitration Provision “shall apply to any and all claims
22 arising out of or relating to this Agreement, CONTRACTOR’s classification as an independent
23 contractor, . . . and all other aspects of CONTRACTOR’s relationship with DOORDASH, past,
24 present or future, whether arising under federal, state or local statutory and/or common law.” ICA
25 § XI.1. The arbitration must be individual; the parties cannot seek class, collective, or other
26 representative proceedings. *See id.* § XI.3 (providing that the parties “waive their right to have
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1 any dispute or claim brought, heard or arbitrated as, or to participate in, a class action, collective
2 action and/or representative action.”). Each Petitioner signed that contract.

3 If the parties dispute the enforceability of the arbitration provision or how that provision
4 should be applied, that dispute must itself be decided by an arbitrator. *See id.* § XI.3 (“All other
5 disputes with respect to whether this Mutual Arbitration Provision is unenforceable,
6 unconscionable, applicable, valid, void or voidable shall be determined exclusively by an
7 arbitrator, and not by any court.”). The only exception to this broad delegation clause is that a
8 court may decide whether the “Arbitration Class Action Waiver is unenforceable, unconscionable,
9 void or voidable.” *Id.*

10 The arbitration clause also provides that each Petitioner’s arbitration “shall be governed by
11 the [AAA’s] Commercial Arbitration Rules.” *Id.* § XI.5. Consistent with the delegation clause in
12 DoorDash’s arbitration agreement, the AAA Commercial Rules state that the arbitrator will resolve
13 “any objections with respect to the existence, scope, or validity of the arbitration agreement or to
14 the arbitrability of any claim or counterclaim.” Commercial Rule 7.

15 By designating the Commercial Arbitration Rules to govern disputes, DoorDash and
16 Dashers are “deemed to have made th[o]se rules a part of their arbitration agreement.” Commercial
17 Rule 1(a).¹ The Commercial Rules also state that “[w]hen parties agree to arbitrate under [the
18 Commercial Rules] . . . they thereby authorize the AAA to administer the arbitration.” Commercial
19 Rule 2. Once an arbitrator is appointed, “[t]he arbitrator shall interpret and apply the[] rules insofar
20 as they relate to the arbitrator’s powers and duties.” Commercial Rule 8. But before an arbitrator
21 has been appointed, or where a rule does not involve the “arbitrator’s powers and duties,” the rules
22 “shall be interpreted and applied by the AAA.” *Id.* AAA is authorized to “require the parties to
23 deposit in advance of any hearings such sums of money as it deems necessary to cover the expense
24 of the arbitration, including the arbitrator’s fee.” Commercial Rule 56 (emphasis added).

25 The Commercial Rules specify the fee schedule for Petitioners’ arbitrations. AAA’s
26 Employment Fee Schedule applies where, as here, workers bring claims asserting they were

27 _____
28 ¹ Available at https://www.adr.org/sites/default/files/CommercialRules_Web_FINAL_1.pdf.

1 misclassified as independent contractors. Commercial Rule 1 at*. The Employment Fee Schedule
2 in effect when Petitioners filed their demands capped an individual’s filing fee at \$300 and
3 imposed a \$1,900 filing fee on companies responding to arbitration demands. Employment Fee
4 Schedule at 1.² The Employment Fee Schedule further provides that “[t]he employer or company’s
5 share of filing fees is due as soon as the employee or individual meets his or her filing
6 requirements.” *Id.* at 2.

7 DoorDash has repeatedly relied on its Mutual Arbitration Provision to force Dashers’
8 misclassification claims to arbitration, thereby eliminating their ability to litigate in court. *See*
9 DoorDash’s Mot. Compel Arbitration at 14, *Mckay* (citing cases for the proposition that “[c]ourts
10 examining DoorDash’s Arbitration Agreement have compelled arbitration of claims based on
11 plaintiffs’ independent-contractor status and all claims for damages”); DoorDash’s Mot. Compel
12 Arbitration at 20, *Magana* (arguing that under “binding United States Supreme Court precedent,
13 the parties’ agreement not to pursue class claims is valid and must be enforced,” so “Plaintiff
14 should be compelled to arbitrate his claims on an individual basis pursuant to the terms of the”
15 arbitration clause). In doing so, DoorDash has explained that “[e]very court to examine
16 DoorDash’s [arbitration agreement] has found that it is governed by the FAA, and courts regularly
17 compel contractors like Plaintiff to individualized arbitration.” DoorDash’s Mot. to Compel
18 Arbitration at 1, *Mckay*.

19 **B. Petitioners Filed Individual Arbitration Demands that AAA Determined Met the**
20 **Initial Filing Requirements.**

21 Petitioners’ arbitration demands are not the first demands for arbitration brought by
22 Petitioners’ counsel on behalf of Dashers. On July 2, 2019, Petitioners’ counsel filed demands for
23 arbitration on behalf of 250 Dashers. *See* Decl. of Ashley Keller (“Keller Decl.”) ¶ 6. Like all of
24 Petitioners’ demands, each of the 250 demands was submitted on AAA’s official demand form,
25 contained each claimant’s individual information, described each claimant’s individual claims, and

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27 ² Available at https://www.adr.org/sites/default/files/Employment_Fee_Schedule1Nov19.pdf.
28 AAA has since updated its Employment Fee Schedule, but the current filing rules apply only to
demands for arbitration filed on or after November 1, 2019.

1 requested individual relief. *See id.*, Ex. C. After it determined that each claimant’s demand met
2 AAA’s filing requirements, AAA invoiced DoorDash for its share of the filing fees. *See id.* ¶ 7.
3 On July 29, DoorDash requested a two-week extension of its deadline to pay filing fees so that it
4 could review each “arbitration demand, analyze its compliance with DoorDash’s arbitration
5 agreement, and research company records to try to identify the 250 claimants who are purportedly
6 asserting claims.” *Id.*, Ex. D. After completing that process, DoorDash did not raise any objection
7 to AAA’s administrative determination that each claimant had met his or her filing requirements,
8 and it paid the fees necessary for AAA to empanel arbitrators. *See id.* ¶ 9.

9 On August 26, 2019, Petitioners’ counsel filed demands for arbitration on behalf of each
10 Petitioner. Like the 250 arbitration demands served before them, each Petitioner’s demand was
11 submitted on AAA’s official demand form, contained each Petitioner’s individual information,
12 described each Petitioner’s individual claims, and requested individual relief. *See id.* ¶ 10, Ex. F.
13 Petitioners promptly satisfied their filing-fee obligations. *Id.* ¶ 11. And as with the 250 previously
14 filed demands, AAA determined that each Petitioner’s demand met AAA’s filing requirements.
15 *See Keller Decl.* ¶¶ 12, 17.

16 **C. DoorDash Failed to Pay the Filing Fees Required by AAA to Empanel Arbitrators,**
17 **and Has Refused to Proceed with Any Petitioner’s Arbitration.**

18 Once AAA determined that each Petitioner’s demand complied with AAA’s rules and that
19 each Petitioner had met his or her filing fee requirements, it confirmed that DoorDash was
20 obligated to pay its corresponding share of filing fees so that AAA could empanel arbitrators. *See*
21 *Keller Decl.* ¶ 12; ICA § XI.5.c; Commercial Rule 56; Employment Fee Schedule at 2. On
22 September 23, 2019, AAA imposed a deadline of October 14, 2019 for DoorDash to pay the fees
23 it owed. *Keller Decl.* ¶ 12. AAA then extended the deadline by two weeks, to October 28, 2019,
24 at DoorDash’s request, so that DoorDash could “review” Petitioners’ demands and “research
25 company records” to identify Petitioners. *Id.* ¶¶ 13–14.

26 Despite that extension, rather than comply with AAA’s order and proceed with Petitioners’
27 arbitrations, as it had done with the comparable demands previously filed by 250 Dashers,
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1 DoorDash refused to arbitrate Petitioners' claims. Instead, on the night its filing fees were due,
2 DoorDash sent an email to AAA stating that it would not pay the fees because it had identified
3 "significant deficiencies with claimants' filings." *Id.*, Ex. I. DoorDash did not describe any of the
4 purported "deficiencies." *See id.* Nor did it identify a single Petitioner who it could not locate in
5 its records. *See id.* Paradoxically, in the same email, DoorDash referred to the "hundreds of
6 pending AAA arbitrations in which the company is presently engaged" as evidence that "the
7 company is ready and willing to engage in individual arbitration with any independent contractor
8 who has non-frivolous claims and follows the proper procedures for initiating arbitration." *Id.*
9 Among those "hundreds of pending arbitrations" are the demands previously filed by Petitioners'
10 counsel on behalf of 250 Dashers. And each Petitioner's demand was filed on the same AAA
11 demand form, included the same categories of information, and was filed in the same manner as
12 those 250 demands. *See id.*, Exs. C, F.

13 Petitioners' counsel responded the next day, noting that Petitioners' demands are
14 comparable to demands that DoorDash has acknowledged present "non-frivolous claims and
15 follow the proper procedures for initiating arbitration." *Id.*, Ex. J. Because DoorDash failed to
16 describe, or even to hint at, the supposed "significant deficiencies" in Petitioners' demands,
17 Petitioners suggested that AAA schedule an administrative call to discuss DoorDash's purported
18 objections. *Id.*

19 AAA went even further, however, and rejected DoorDash's objections that same day,
20 stating it had made "an administrative determination that the minimum filing requirements have
21 been met by Claimants." *Id.*, Ex. K. AAA provided one more opportunity for DoorDash to meet
22 its filing fee requirements, stating unambiguously that "[DoorDash's] fees remain due by
23 November 7, 2019." *Id.* DoorDash nevertheless refused to pay the filing fees it owed. On
24 November 8, 2019, AAA emailed DoorDash and Petitioners' counsel and confirmed that
25 DoorDash had failed to pay the fees necessary to empanel arbitrators and, "accordingly, [AAA]
26 ha[d] administratively closed [Petitioners'] files." Keller Decl., Ex. L.

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1 **III. STATEMENT OF ISSUES TO BE DECIDED (L.R. 7-4)**

2 Whether the Court should compel DoorDash to adhere to the arbitration provisions in its
3 arbitration agreement and comply with AAA’s administrative determinations regarding the
4 requirements for commencing Petitioners’ arbitrations.

5 **IV. ARGUMENT**

6 This is a straightforward motion to enforce a contract. Under the FAA, courts should
7 “place arbitration agreements on an equal footing with other contracts . . . and enforce them
8 according to their terms.” *AT&T Mobility LLC v. Concepcion*, 563 U.S. 333, 339 (2011). As part
9 of that mandate, the FAA codifies the right of a party to specific performance of an arbitration
10 agreement: “a party aggrieved by the alleged failure, neglect, or refusal of another to arbitrate
11 under a written agreement for arbitration may petition any United States district court . . . for an
12 order directing that such arbitration proceed in the manner provided for in such agreement.” 9
13 U.S.C. § 4; *see also Duffens v. Valenti*, 161 Cal. App. 4th 434, 443 (2008) (“A motion to compel
14 arbitration is, in essence, a request for specific performance of a contractual agreement.”).

15 Petitioners and DoorDash have entered into valid agreements to arbitrate Petitioners’
16 claims. Those agreements call for administration by AAA under AAA’s Commercial Rules. And
17 the agreements further make clear that any arguments about how to apply the arbitration
18 agreements may be decided only by the arbitrator—which of course requires the parties to meet
19 AAA’s administrative requirements so that an arbitrator can be appointed.

20 Petitioners did everything required of them to commence arbitration under the Mutual
21 Arbitration Provision and AAA’s Rules. AAA made an administrative determination that
22 Petitioners had met all their requirements. AAA further determined that DoorDash was obligated
23 under AAA’s Rules to pay its share of the filing fees so Petitioners’ arbitrations could commence.
24 But even though DoorDash has repeatedly enforced its Mutual Arbitration Provision and its
25 delegation clause to avoid facing claims in court, DoorDash now refuses to commence arbitration
26 “in the manner provided for in [its] agreement.” 9 U.S.C. § 4. DoorDash has offered no
27 explanation for refusing to proceed with arbitration other than unspecified “deficiencies” with
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1 Petitioners' demands. Under the delegation clause in DoorDash's agreement, however, arguments
2 about those purported "deficiencies" may be resolved only by AAA and the arbitrator, not this
3 Court. Such arguments provide no basis for this Court to decline to compel arbitration.

4 DoorDash's actions make clear that it does not actually support the right of a meaningful
5 number of Dashers to pursue arbitration; rather, it is willing to comply with the Mutual Arbitration
6 Provision it drafted only so long as a small number of Dashers invoke it. That is not a choice
7 DoorDash's contract allows it to make. DoorDash has refused to arbitrate as required by its
8 agreement. The FAA therefore requires that DoorDash be ordered to participate in arbitration as
9 administered by AAA under the AAA Commercial Rules.

10 **A. The Parties Entered into a Valid Arbitration Agreement That Covers the Present**
11 **Disputes.**

12 In deciding whether to compel arbitration, courts generally analyze two "gateway" issues:
13 (1) whether the parties have entered into a valid arbitration agreement, and (2) whether the
14 agreement covers the dispute. *See Howsam v. Dean Witter Reynolds, Inc.*, 537 U.S. 79, 83–84
15 (2002).³ Where, as here, the parties have delegated questions regarding the interpretation,
16 enforceability, or scope of an arbitration clause to an arbitrator, the court need only determine that
17 the parties have entered into a valid arbitration agreement. *See Henry Schein, Inc. v. Archer &*
18 *White Sales, Inc.*, 139 S. Ct. 524, 530 (2019). And where the parties have entered into a valid
19 arbitration agreement, "the [FAA] requires the court to enforce the arbitration agreement in
20 accordance with its terms." *Chiron Corp. v. Ortho Diagnostic Sys., Inc.*, 207 F.3d 1126, 1130 (9th
21 Cir. 2000). That is the case here.

22 There is no question that the parties entered into a valid arbitration agreement. *See*
23 *generally* Keller Decl., Ex. A. Each Petitioner agreed to DoorDash's sweeping arbitration

24 ³ Petitioners can institute a court action by petitioning to compel arbitration, which they have done
25 here. *See, e.g., Unite Here Int'l Union v. Shingle Spring Band of Miwok Indians*, No. 2:16-cv-
26 00384-TLN-EFB, 2016 WL 4041255, at *3 (E.D. Cal. July 25, 2016) ("[T]he Ninth Circuit and
27 district courts in this circuit routinely treat petitions to compel arbitration as capable of instituting
28 a court action."); *Bridgeport Mgmt., Inc. v. Lake Mathews Mineral Props., Ltd.*, No. 14-cv-00070-
JST, 2014 WL 953831, at *3 (N.D. Cal. Mar. 6, 2014) (permitting the petitioner to institute suit
by filing a petition to compel arbitration); Order Granting Mot. Compel at 5, *Adams v. Postmates*
Inc., No. 4:19-cv-03042-SBA, Dkt. No. 253 (N.D. Cal. Oct. 22, 2019) (same).

1 provision. *Id.* ¶ 5. And the Ninth Circuit has held that arbitration provisions similar to those at
2 issue here are enforceable. *See Mohamed v. Uber Techs., Inc.*, 848 F.3d 1201, 1211 (9th Cir.
3 2016).

4 It is likewise clear that the arbitration agreement covers the parties' disputes. As a
5 threshold matter, the fact that the parties have entered into a valid arbitration agreement is
6 sufficient by itself to compel arbitration, because DoorDash's agreement delegates to the arbitrator
7 any question regarding the application of the arbitration agreement. *See id.* § XI.3 ("All other
8 disputes with respect to whether this Mutual Arbitration Provision is unenforceable,
9 unconscionable, applicable, valid, void or voidable shall be determined exclusively by an
10 arbitrator, and not by any court."). The delegation clause thus dictates that any dispute about
11 whether or how the arbitration agreement between DoorDash and Petitioners applies to Petitioners'
12 claims must itself be resolved in arbitration. *See Schein*, 139 S. Ct. at 530 ("Just as a court may
13 not decide a merits question that the parties have delegated to an arbitrator, a court may not decide
14 an arbitrability question that the parties have delegated to an arbitrator.").

15 Regardless, there also is no question that the arbitration agreement covers the present
16 dispute: "any and all claims arising out of or relating to" the ICA shall be subject to binding
17 arbitration. ICA § XI.1. Petitioners demand arbitration because DoorDash has misclassified them
18 as independent contractors. The arbitration agreement explicitly identifies a dispute over a
19 Dashers' "classification as an independent contractor" as one that must be arbitrated. *Id.* § XI.1.

20 **B. DoorDash Has Breached the Mutual Arbitration Provision by Refusing to Arbitrate**
21 **Petitioners' Claims.**

22 AAA made an administrative determination that Petitioners met their filing requirements.
23 *See Keller Decl.* ¶¶ 12, 17. It further exercised its administrative authority to "require the parties
24 to deposit in advance of any hearings such sums of money as it deems necessary to cover the
25 expense of the arbitration, including the arbitrator's fee." Commercial Rule 56. Specifically, it
26 required that DoorDash pay filing fees according to the Employment Arbitration Fee Schedule so
27 that it could empanel arbitrators to oversee Petitioners' individual arbitrations. *See Keller Decl.*,
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1 Ex. G. It imposed three successive deadlines for DoorDash to pay those fees and rejected
2 DoorDash’s argument that Petitioners’ demands were somehow deficient. *See id.* ¶¶ 12, 14, 17.
3 DoorDash refused to comply with all three deadlines, forcing AAA to terminate Petitioners’
4 arbitrations. *See id.*, Ex. L. There can be no dispute that DoorDash has refused to arbitrate with
5 Petitioners.

6 DoorDash cannot in this Court attempt to excuse its refusal to arbitrate with Petitioners.
7 Under the agreement’s delegation clause, any arguments about Petitioners’ compliance with the
8 Mutual Arbitration Provision cannot be decided by this Court and must instead be submitted to an
9 arbitrator. *See Schein*, 139 S. Ct. at 530 (“Just as a court may not decide a merits question that the
10 parties have delegated to an arbitrator, a court may not decide an arbitrability question that the
11 parties have delegated to an arbitrator.”). DoorDash’s arguments provide no basis for refusing to
12 proceed to arbitration. To the contrary, they simply constitute an additional, threshold dispute that
13 DoorDash is obligated to arbitrate.

14 The only explanation DoorDash has offered for refusing to arbitrate with Petitioners is the
15 vague assertion that Petitioners “demands [were] insufficient to launch arbitration under the
16 DoorDash Independent Contractor Agreement, as well as AAA’s own rules.” Keller Decl., Ex. I.
17 But again, under the delegation clause, any arguments about how to apply the requirements of the
18 “Independent Contractor Agreement” must themselves be submitted to an arbitrator. Therefore,
19 DoorDash must proceed to arbitration, where it can raise its as-yet-unexplained argument.

20 DoorDash has argued this very point in this district. As DoorDash wrote:

21 Before reaching . . . gateway issues, however, a court must first examine the
22 agreement to determine whether the parties agreed to commit threshold questions
23 of arbitrability to the arbitrator. *See Rent-A-Center, W., Inc. v. Jackson*, 561 U.S.
24 63, 70 (2010) (“An agreement to arbitrate a gateway issue is simply an additional
25 antecedent agreement the party seeking arbitration asks the court to enforce....”). If
the parties have “clearly and unmistakably” agreed to delegate questions of
arbitrability to the arbitrator, then the arbitrator must decide the threshold issues.

26 DoorDash’s Motion to Compel Arbitration at 9, *Mckay*. DoorDash should know full well that any
27 arguments about “gateway issues” are not an excuse to refuse to arbitrate those issues under the
28 Mutual Arbitration Provision’s delegation clause. Before DoorDash can raise its meritless

1 arguments that Petitioners failed to comply with threshold requirements to arbitrate, it first must
2 comply with its own “antecedent agreement” to submit those arguments to an arbitrator. *Rent-A-*
3 *Center*, 561 U.S. at 70.

4 Likewise, DoorDash cannot justify its refusal to arbitrate by attempting to dispute AAA’s
5 filing-fee determinations. Under AAA’s rules, which the parties expressly incorporated into their
6 agreement, AAA has the exclusive authority to interpret those rules, subject to review in some
7 instances by an arbitrator. As noted, “[w]hen parties agree to arbitrate under [AAA rules,]” they
8 “thereby authorize the AAA administer the arbitration,” Commercial Rule 2. And where no
9 arbitrator is yet available, the rules “shall be interpreted and applied by the AAA.” *Id.* The rules
10 clearly authorize AAA to require a business to submit filing fees in order to appoint an arbitrator.
11 Commercial Rule 56. That is precisely what AAA did here. And under the plain terms of the
12 parties’ contract, AAA’s administrative determination cannot be second-guessed in court.

13 Where a party disagrees with AAA’s administrative determinations, it may be able to
14 submit that disagreement to the arbitrator once he or she is appointed. What it cannot do, however,
15 is ignore the AAA determination and prevent an arbitral appointment in the first place. An
16 unbroken line of cases confirms this conclusion, as exemplified by a recent decision in this district
17 that involved comparable demands and legal issues, the same procedural posture, and the same
18 law firms involved in this matter for Petitioners and DoorDash. In *Adams v. Postmates Inc.*, No.
19 4:19-cv-03042-SBA (N.D. Cal. Oct. 22, 2019), thousands of Postmates couriers moved to compel
20 arbitration against Postmates after the company refused to pay the filing fees necessary to proceed
21 with individual arbitrations. Like the ICA here, the Postmates “Fleet Agreement” provided that
22 arbitration would be administered by AAA under the AAA Commercial Rules. Order at 3, *Adams*,
23 Dkt. No. 253, Keller Decl., Ex. M. And like the Mutual Arbitration Provision here, the Postmates
24 arbitration agreement contained a broad delegation clause. *Id.* Postmates argued that it should not
25 have to proceed with the couriers’ demands for arbitration for a variety of reasons, including that
26 the couriers had filed insufficiently detailed demands and were improperly using individual filing
27 fees to pressure Postmates into a settlement. *Id.* at 11–12.

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1 The court rejected Postmates’s arguments and ordered Postmates to submit the couriers’
2 claims—and any arguments about the arbitrability of those claims—to individual arbitration. In
3 doing so, the court confirmed that the delegation clause “clearly and unmistakably confers the
4 arbitrator with the authority to resolve issues concerning arbitrability.” *Id.* at 11. Accordingly,
5 the court held that “whether Petitioners’ demands comport with the requirements of the Mutual
6 Arbitration Provision . . . is within the arbitrator’s exclusive authority.” *Id.* at 12. Because all of
7 Postmates’s objections were delegated to the arbitrator, the court held that “the parties are
8 obligated to arbitrate Petitioners’ misclassification claims and are hereby ordered to do so.” *Id.* at
9 13. On the question of filing fees, the court noted that “[t]he Fleet Agreement specifies that the
10 AAA Commercial Arbitration Rules shall govern any arbitration between the parties,” and that the
11 parties must therefore comply with AAA’s “provisions regarding the payment of arbitration fees.”
12 *Id.* at 12.

13 *Adams* relied on controlling precedent holding that, where an arbitration agreement
14 designates a specific organization to administer the arbitration, delegates threshold issues to the
15 arbitrator, and expressly incorporates that organization’s rules, a court should enforce the
16 organization’s determinations regarding how arbitration should proceed. For example, in *Lifescan*,
17 the parties in a business-vs.-business arbitration disputed their respective fee obligations after the
18 respondent (Premier) claimed it was unable to pay its share of the fees. *See id.*, 363 F.3d at 1011.
19 AAA resolved the dispute by asking the claimant (Lifescan) to advance Premier’s fees, but
20 Lifescan refused, prompting AAA to suspend the arbitration. *See id.* at 1012 (“Although the
21 arbitrators originally requested an equal deposit from the parties, they changed their order when
22 Premier informed them that it could not afford to pay.”). Lifescan filed a petition asking the court
23 to override AAA’s determination to shift costs to Lifescan and to order Premier to pay the
24 outstanding fees. *See id.*

25 The Ninth Circuit refused to second-guess AAA’s administrative determination. *See id.* at
26 1013. The court first concluded that because the parties’ agreement selected AAA to administer
27 the arbitration, it “incorporated the AAA rules.” *Id.* at 1012. The court further noted that those
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1 rules give AAA discretion to require the parties to pay fees “necessary to cover the expense of the
2 arbitration.” *Id.* Once AAA had exercised its discretion by directing Lifescan to advance its share
3 of the fees in order for arbitration to continue, the district court was bound by that determination:
4 “The agreement between [the petitioner] and [the respondent] is not silent because it incorporates
5 the rules of the AAA, which do cover the apportionment of fees: They leave it up to the arbitrators.”
6 *Id.* at 1013.

7 Although *Lifescan* involved a request by a claimant to disregard AAA’s filing-fee decision,
8 the underlying principle applies with equal force to a respondent: where an arbitration agreement
9 incorporates AAA’s rules, both parties must abide by AAA’s administrative determinations. *Id.*
10 at 1012. Here, AAA understandably did not require Petitioners—who are bringing minimum-
11 wage claims against a multi-billion-dollar company—to pay DoorDash’s filing fees. Instead,
12 AAA has consistently ordered DoorDash to pay its share of the filing fees under the Employment
13 Fee Schedule. *Lifescan* makes clear that AAA’s administrative filing-fee determination is non-
14 reviewable, and this Court should enforce that determination.

15 Numerous cases are in accord. *See, e.g., Pre-Paid Legal Servs. v. Cahill*, 786 F.3d 1287,
16 1297 (10th Cir. 2015) (holding that a party defaulted on its arbitration agreement when AAA
17 terminated the arbitration due to the party’s nonpayment, because “the AAA did not ask [the non-
18 breaching party] to advance [the breaching party’s] fees”); *Williams v. Tully*, No. C-02-05687-
19 MMC, 2005 WL 645943, at *7 (N.D. Cal. Mar. 18, 2005) (“[T]he AAA . . . ha[s] the authority,
20 under the AAA Rules, to require [parties] to pay certain of the estimated arbitration fees in
21 advance, and to terminate the arbitration when [they] fail[] to do so.”); *Cinel v. Barna*, 206 Cal.
22 App. 4th 1383, 1390 (2012) (holding that the petitioner had waived his right to compel arbitration,
23 even though he had paid his share of the arbitration filing fees, because “[t]he [arbitration] panel,
24 under the authority of the AAA rules, ordered the parties to split the fees of the nonpaying parties;
25 when the paying parties refused to do so, the arbitration was terminated”); *cf. Dealer Computer*
26 *Servs., Inc. v. Old Colony Motors, Inc.*, 588 F.3d 884, 888 (5th Cir. 2009) (holding that the
27 respondent had not refused to arbitrate through its failure to pay fees, because AAA had shifted
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1 the respondent’s fees to the petitioner; the petitioner’s “remedy [lay] with the arbitrators”). As the
2 court in *Williams* explained in deferring to AAA’s fee determinations, “[o]nce it is determined . . .
3 that the parties are obligated to submit the subject matter of a dispute to arbitration, ‘procedural’
4 questions which grow out of the dispute and bear on its final disposition should be left to the
5 arbitrator.” *Id.* at *5. And where a party refuses to pay filing fees imposed by the arbitral forum
6 required under its arbitration agreement, it has breached that agreement. *See, e.g., Pre-Paid Legal*
7 *Servs.*, 786 F.3d at 1294 (“Mr. Cahill breached the arbitration agreement by failing to pay his fees
8 in accordance with AAA rules.”); *Brown v. Dillard’s, Inc.*, 430 F.3d 1004, 1009-10 (9th Cir. 2005)
9 (holding that “Dillard’s clearly breached the arbitration agreement” by failing to pay its “share of
10 the filing fee”); *Sink v. Aden Enterprises, Inc.*, 352 F.3d 1197, 1201 (9th Cir. 2003) (“Aden’s
11 failure to pay required costs of arbitration was a material breach of its obligations in connection
12 with the arbitration.”).

13 To be sure, DoorDash is entitled to disagree with Petitioners’ reading of the Mutual
14 Arbitration Provision; and it was similarly free to make whatever arguments it wished to AAA
15 regarding the allocation of arbitration filing fees. But under the plain terms of the delegation clause
16 and controlling precedent, DoorDash now must respect AAA’s binding determinations. And
17 DoorDash can hardly complain that it is required to arbitrate the question of whether it must
18 arbitrate with Petitioners, as DoorDash has argued for years that its delegation clause requires
19 precisely that result. *See, e.g., Edwards v. DoorDash, Inc.*, No. H-16-2255, 2017 WL 5514302,
20 at *12 (S.D. Tex. Oct. 18, 2017) (requiring the plaintiffs to arbitrate the question of whether they
21 must arbitrate their claims against DoorDash); DoorDash’s Motion to Compel Arbitration at 9,
22 *Mckay*.

23 DoorDash also cannot be heard to complain that the cost of proceeding with individual
24 arbitrations is high. As the court in *Adams* explained:

25 Postmates expends considerable energy accusing Petitioners of using the cost of the
26 arbitration process as a means of coercing Postmates into settling their claims
27 expeditiously. However, under the Fleet Agreement drafted by Postmates which
28 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

1 what they did. Since the Fleet Agreement bars class actions, each demand must be
2 submitted on an individual basis. Thus, the possibility that Postmates may now be
3 required to submit a sizeable arbitration fee in response to each individual
4 arbitration demand is a direct result of the mandatory arbitration clause and class
5 action waiver that Postmates has imposed upon each of its couriers.

6 Order at 7 n.2, *Adams*. Here, too, under the agreement DoorDash drafted, each Petitioner had no
7 option other than to submit his or her misclassification claims in the form of an individual
8 arbitration demand, which is precisely what each Petitioner did. And here, too, DoorDash cannot
9 complain about the costs that are the direct—and entirely foreseeable—consequence of requiring
10 each courier to bring claims individually in a forum that charges separate filing fees for each
11 arbitration.

12 DoorDash can offer no valid basis for refusing to arbitrate under the plain terms of its
13 Mutual Arbitration Provision. Therefore, it has breached its agreement to arbitrate.

14 **C. This Court Should Enforce the Arbitration Agreement and Compel DoorDash to**
15 **Arbitrate.**

16 Because DoorDash and each Petitioner entered into a valid arbitration agreement covering
17 that Petitioner’s underlying wage-and-hour claims, and because DoorDash has breached that
18 agreement, this Court’s role is clear: It should “enforce the arbitration agreement in accordance
19 with its terms,” *Chiron*, 207 F.3d at 1130, and issue an “order directing that such arbitration
20 proceed in the manner provided for in such agreement,” 9 U.S.C. § 4. Moreover, “[t]he terms of
21 the FAA do not allow a district court to exercise its discretion when faced with such a request;
22 rather, the court is required to direct the parties to proceed to arbitration on issues as to which an
23 arbitration agreement has been signed.” *Fordjour v. Washington Mut. Bank*, No. 07-cv-1446-
24 MMC (PR), 2008 WL 295092, at *1 (N.D. Cal. Feb. 1, 2008) (citing *Chiron*, 207 F.3d at 1130).

25 The FAA further mandates that a motion to compel be decided on an expedited basis,
26 reflecting “Congress’s intent ‘to move the parties to an arbitrable dispute out of court and into
27 arbitration as quickly and easily as possible.’” *Bushley v. Credit Suisse First Boston*, 360 F.3d
28 1149, 1153 (9th Cir. 2004) (quoting *Sink*, 352 F.3d at 1200); *Healy v. RBC Dain Rauscher*, No. C
04-4873MMC, 2005 WL 387140, at *2 (N.D. Cal. Feb. 17, 2005) (“If the district court finds that

1 the parties entered into a valid and enforceable agreement to arbitrate their dispute, ‘the court shall
2 make an order summarily directing the parties to proceed with the arbitration in accordance with
3 the terms thereof.’”) (quoting 9 U.S.C. § 4).

4 Where, as here, a party has refused to comply with AAA’s administrative determinations
5 requiring the party to submit fees to commence arbitration, the proper remedy is for the court to
6 order the party to comply with those determinations. *Allemeir v. Zyppah, Inc.*, No. 18-7437-PA,
7 2018 WL 6038340, at *1 (C.D. Cal. Sept. 21, 2018), is on all fours with this case. The petitioner
8 in *Allemeir* filed a demand for arbitration with AAA against his former employer, and AAA
9 determined that he had satisfied his filing requirements. *Allemeir*, No. 18-7437-PA, 2018 WL
10 6038340, at *1 (C.D. Cal. Sept. 21, 2018). Pursuant to its rules, AAA then ordered the employer
11 to pay its share of the filing fees. *See id.* But rather than proceed with the petitioner’s arbitration,
12 the employer repeatedly disregarded AAA’s requests that the employer pay its share of the filing
13 fees. *Id.* at *1–2. AAA ultimately closed the petitioner’s arbitration due to the employer’s
14 nonpayment, prompting the petitioner to file a motion to compel arbitration. *Id.* The district court
15 granted the motion, concluding that the employer had failed to arbitrate under the FAA because it
16 had “repeatedly refus[ed] to pay its portion of the filing fee as determined by the AAA.” *Id.* at
17 *3–4. The court ordered the employer to proceed with the petitioner’s arbitration, as required by
18 the FAA and the parties’ agreement, by “pay[ing] any fees that the AAA allocate[d] to it and . . .
19 comply[ing] with any other requirements that the AAA impose[d].” *Id.* at *4; *see also Halloran*
20 *v. Davis*, No. 2:12-cv-01011-CBM, 2013 WL 12153551, at *3 (C.D. Cal. Aug. 15, 2013) (ordering
21 the parties to “submit their claims to arbitration and pay arbitration fees and costs as required by
22 the rules and procedures of the AAA”).

23 This remedy is also consistent with state contract law, which governs arbitration
24 agreements (and is not preempted by the FAA) where, as here, the law furthers rather than
25 undermines enforcement of agreements to arbitrate. *See Volt Info. Scis., Inc. v. Bd. of Trustees of*
26 *Leland Stanford Junior Univ.*, 489 U.S. 468, 477, (1989) (“The FAA contains no express pre-
27 emptive provision, nor does it reflect a congressional intent to occupy the entire field of
28

1 arbitration.”). The California Legislature recently enacted a statute to codify the law governing
2 remedies for a breach of arbitration agreement. *See* S.B. 707, 2019–2020 Reg. Sess. (Cal. 2019).⁴
3 As codified by Senate Bill 707, and consistent with traditional contract law more generally,
4 California law allows a party to an arbitration agreement to require specific performance of a
5 breaching party, including an order that the breaching party pay the fees necessary to proceed with
6 arbitration. *Id.*⁵ Tellingly, the impetus for Senate Bill 707 was the exact tactic DoorDash engaged
7 in here. As explained in a hearing before the bill’s passage: “Some employers have been refusing
8 to pay fees and costs required to initiate arbitration, effectively placing their employees in
9 procedural limbo. This bill is intended to affirm that these practices constitute material breach of
10 an employment or consumer arbitration agreement and provide procedures for employees or
11 consumers to pursue in order to have their claims heard in the event of such a breach.” Arbitration
12 Agreements: Enforcement: Hearing on S.B. 707 Before the S. Judiciary Comm., 2019–2020 Reg.
13 Sess. (Cal. 2019) (Executive Summary).⁶

14 DoorDash breached its contractual obligations by refusing to comply with AAA’s
15 administrative determinations regarding the necessary fees to commence arbitrations. The Mutual
16 Arbitration Provision that DoorDash drafted states that AAA will administer the arbitration under
17 its rules. Exercising its authority under those rules, AAA determined the fees DoorDash was
18 required to pay before arbitrators would be empaneled for Petitioners’ individual arbitrations.
19 DoorDash refused to pay those fees, prompting AAA to halt Petitioners’ arbitrations. This Court
20 should remedy DoorDash’s breach by ordering it to comply with AAA’s determinations in order
21 to proceed with arbitration. *See Allemeir*, 2018 WL 6038340, at *4; *Halloran*, 2013 WL
22 12153551, at *3.

23 _____
24 ⁴ Available at http://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=201920200SB707.

25 ⁵ Although Senate Bill 707 does not take effect until January 1, 2020, the Bill nonetheless confirms
26 that, under existing law, “a company’s failure to pay arbitration fees pursuant to a mandatory
arbitration provision constitutes a breach of the arbitration agreement,” Section 1(f), which a court
can remedy by ordering specific performance.

27 ⁶ Available at http://leginfo.legislature.ca.gov/faces/billAnalysisClient.xhtml?bill_id=201920200SB707.
28

V. CONCLUSION

For the foregoing reasons, Petitioners' motion to compel arbitration should be granted. This Court should require DoorDash to arbitrate each Petitioner's claims under the Mutual Arbitration Provision, including by paying the arbitration fees and costs that AAA determines are necessary to empanel arbitrators and proceed with arbitrations.

Dated: November 15, 2019

Respectfully submitted,

/s/ Keith A. Custis

Keith A. Custis (#218818)

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Attorneys for Petitioners

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CERTIFICATE OF SERVICE

I certify that I shall cause the foregoing document to be served on DoorDash Inc. at its registered agent for service of process, Registered Agent Solutions, Inc. 1220 S. Street, Suite 150, Sacramento, CA 95811, on or around November 18, 2019.

Dated: November 15, 2019

/s/ Keith A. Custis

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17 *Attorneys for Petitioners*

18 **UNITED STATES DISTRICT COURT
19 NORTHERN DISTRICT OF CALIFORNIA
20 SAN FRANCISCO DIVISION**

21	TERRELL ABERNATHY, et al.,)	Case No. 3:19-cv-07545
22)	
23	<i>Petitioners,</i>)	DECLARATION OF ASHLEY KELLER
24)	IN SUPPORT OF PETITIONERS'
25)	MOTION TO COMPEL ARBITRATION
26	vs.)	
27	DOORDASH, INC.,)	Hearing:
28)	Date: December 20, 2019
)	Time: 9:00 a.m.
)	Judge: Hon. Maxine M. Chesney
	<i>Respondent.</i>)	
)	
)	

DECLARATION OF ASHLEY KELLER

I, Ashley Keller, declare based on personal knowledge as follows:

1. I am a Partner at Keller Lenkner LLC, counsel for Petitioners in this matter.

2. I have personal knowledge of the facts stated herein, and if called upon as a witness, I could and would testify competently thereto.

3. This declaration is submitted in support of Petitioners’ Motion to Compel Arbitration.

4. DoorDash requires every courier (“Dasher”) to sign an agreement containing an arbitration provision before that Dasher may begin making deliveries for DoorDash. Attached as Exhibit A is a true and correct copy of that agreement.

5. Each Petitioner has signed a declaration stating that he or she has worked as a DoorDash courier and does not recall opting out of the arbitration provision. Attached as Exhibit B is a true and correct copy of one Petitioner’s declaration.¹

6. On July 2, 2019, Keller Lenkner filed demands for individual arbitration with AAA and DoorDash on behalf of 250 Dashers. Attached as Exhibit C is a true and correct copy of one of those demands.

7. AAA determined that those 250 claimants met their filing requirements, and it imposed a deadline of August 6, 2019 for DoorDash to pay its share of the filing fees necessary to empanel arbitrators and proceed with the 250 individual arbitrations.

8. On July 29, 2019, DoorDash requested a two-week extension of AAA’s payment deadline so it could review each “arbitration demand, analyze its compliance with DoorDash’s arbitration agreement, and research company records to try to identify the 250 claimants who are purportedly asserting claims.” Attached as Exhibit D is a true and correct copy of that email.

9. After completing that process, DoorDash did not raise any objection to AAA’s administrative determination that each claimant had met his or her filing requirements, and it paid

¹ To save judicial resources, Keller Lenkner has not filed each Petitioner’s signed declaration. If the Court wishes to review additional declarations, Keller Lenkner will provide as many as the Court deems necessary.

1 the fees necessary for AAA to empanel arbitrators.

2 10. On August 26, 2019, Keller Lenkner filed a demand for individual arbitration with
3 AAA and DoorDash on behalf of each Petitioner, 2,236 demands in total. Attached as Exhibit E is
4 a true and correct copy of the email accompanying Petitioners' arbitration demands. And attached
5 as Exhibit F is one Petitioner's arbitration demand.

6 11. Petitioners' promptly satisfied their filing-fee obligations.

7 12. On September 23, 2019, AAA sent an email to DoorDash's counsel (i) confirming
8 that each Petitioner's demand met AAA's filing requirements, and (ii) setting October 14, 2019, as
9 the deadline for DoorDash to pay the filing fees necessary to empanel arbitrators and commence
10 Petitioners' arbitrations. Attached as Exhibit G is a true and correct copy of that email.

11 13. On October 7, 2019, DoorDash requested a 30-day extension of AAA's payment
12 deadline so it could review each "arbitration demand, analyze its compliance with DoorDash's
13 arbitration agreement, and research company records to try to identify the [Petitioners] who are
14 purportedly asserting claims." Attached as Exhibit H is a true and correct copy of that email.

15 14. AAA granted DoorDash an extension to October 28, 2019.

16 15. On the evening of October 28, 2019, DoorDash sent an email to AAA stating that it
17 would not pay the filing fees that AAA had determined were necessary to proceed with Petitioners'
18 arbitrations because there supposedly were "significant deficiencies with the claimants' filings,
19 rendering the demands insufficient to launch arbitration under the DoorDash Independent
20 Contractor Agreement, as well as AAA's own rules."² Attached as Exhibit I is a true and correct
21 copy of that email.

22 16. On October 29, 2019, Keller Lenkner emailed DoorDash's outside counsel and
23 AAA, noted that Petitioners' demands were comparable to the 250 demands DoorDash had
24 previously acknowledged were non-frivolous, and requested that AAA schedule an administrative
25 call to discuss DoorDash's objections further. Attached as Exhibit J is a true and correct copy of
26 that email.

27 _____
28 ² That email also notes that DoorDash is refusing to pay filing fees for an additional 4,000 Dashers who are not Petitioners in this action.

1 17. That same day, AAA sent an email to the parties rejecting DoorDash’s objection.
2 AAA stated that it had made “an administrative determination that the minimum filing requirements
3 have been met by [Petitioners].” It provided a final deadline of November 7, 2019 for DoorDash
4 to pay the filing fees required to empanel arbitrators for Petitioners’ arbitrations. And it stated that
5 if the fees were not paid by that deadline, “the AAA will decline to administer these cases and the
6 files will be closed.” Attached as Exhibit K is a true and correct copy of that email.

7 18. DoorDash did not pay the filing fees necessary to proceed with a single Petitioner’s
8 arbitration.

9 19. On November 8, 2019, AAA sent an email to the parties’ counsel (i) confirming that
10 DoorDash had failed to pay the fees required to proceed with Petitioners’ arbitrations, and
11 (ii) stating that AAA had “administratively closed [Petitioners’] files” due to DoorDash’s lack of
12 payment. Attached as Exhibit L is a true and correct copy of AAA’s November 8, 2019 email.

13 20. DoorDash’s counsel has never suggested to me that DoorDash believes its
14 arbitration agreements are unenforceable, nor has counsel identified a single Petitioner whom
15 counsel believes is not subject to a valid arbitration agreement with DoorDash.

16 21. Each Petitioner has signed an engagement letter with Keller Lenkner authorizing
17 Keller Lenkner to represent the Petitioner in his or her dispute with DoorDash.

18 22. Keller Lenkner is committed to litigating Petitioners’ claims to a successful
19 conclusion and is prepared to invest substantial resources in Petitioners’ cases. Keller Lenkner has
20 built the infrastructure necessary to litigate Petitioners claims simultaneously. And the firm has
21 entered into a co-counsel relationship with Quinn Emanuel Urquhart & Sullivan LLP, a premier
22 litigation firm with more than 800 attorneys, to arbitrate all arbitrations brought by Keller Lenkner
23 clients against DoorDash. Although Keller Lenkner is under no obligation to inform DoorDash of
24 its litigation strategy, it is fully capable of pursuing, and will pursue, each Petitioner’s claims in
25 individual arbitration. Our firm has devoted its resources to representing Petitioners—and will
26 continue to do so—because it believes in the merits of their claims.

27 23. Attached as Exhibit M is a true and correct copy of the order compelling arbitration
28 in *Adams v. Postmates Inc.*, No. 4:19-cv-03042-SBA (N.D. Cal. Oct. 22, 2019).

1 24. Attached as Exhibit N is a true and correct copy of DoorDash’s Motion to Compel
2 Arbitration in *Mckay v. DoorDash, Inc.*, No. 3:19-cv-04289-MMC (N.D. Cal. Aug. 12, 2019).

3 25. Attached as Exhibit O is a true and correct copy of DoorDash’s Motion to Compel
4 Arbitration in *Magana v. DoorDash, Inc.*, No. 4:18-cv-03395-PJH (N.D. Cal. July 12, 2018).

5

6 I affirm that the foregoing is true under penalty of perjury under the laws of the United States.

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8 Signed on November 15, 2019 in Chicago, Illinois

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/s/ Ashley Keller
Ashley Keller

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CERTIFICATE OF SERVICE

I certify that I shall cause the foregoing document to be served on DoorDash Inc. at its registered agent for service of process, Registered Agent Solutions, Inc. 1220 S. Street, Suite 150, Sacramento, CA 95811, on or around November 18, 2019.

Dated: November 15, 2019

/s/ Keith A. Custis _____

Exhibit

A

INDEPENDENT CONTRACTOR AGREEMENT

This Agreement ("Agreement") is made and entered into by and between you, the undersigned contractor ("CONTRACTOR"), an independent contractor engaged in the business of performing the delivery services contemplated by this Agreement, and DoorDash, Inc. ("DOORDASH" or "COMPANY"). CONTRACTOR may enter this Agreement either as an individual or as a corporate entity. This Agreement will become effective on the date it is accepted regardless of whether you are eligible to, or ever do, perform any Contracted Services.

IMPORTANT: PLEASE REVIEW THIS AGREEMENT CAREFULLY. IN PARTICULAR, PLEASE REVIEW THE MUTUAL ARBITRATION PROVISION IN SECTION XI, AS IT REQUIRES THE PARTIES (UNLESS YOU OPT OUT OF ARBITRATION AS PROVIDED BELOW) TO RESOLVE DISPUTES ON AN INDIVIDUAL BASIS, TO THE FULLEST EXTENT PERMITTED BY LAW, THROUGH FINAL AND BINDING ARBITRATION. BY ACCEPTING THIS AGREEMENT, YOU ACKNOWLEDGE THAT YOU HAVE READ AND UNDERSTOOD ALL OF THE TERMS, INCLUDING SECTION XI, AND HAVE TAKEN THE TIME AND SOUGHT ANY ASSISTANCE NEEDED TO COMPREHEND THE CONSEQUENCES OF ACCEPTING THIS AGREEMENT.

THE PARTIES

DOORDASH is a company that provides an online marketplace connection using web-based technology that connects contractors, restaurants and/or other businesses, and consumers ("DOORDASH platform" or "platform"). DOORDASH's software permits registered users to place orders for food and/or other goods from various restaurants and businesses. Once such orders are made, DOORDASH software notifies contractors that a delivery opportunity is available and the DOORDASH software facilitates completion of the delivery. DOORDASH is not a restaurant, food delivery service, or food preparation business.

CONTRACTOR is an independent provider of delivery services, authorized to conduct the delivery services contemplated by this Agreement in the geographic location(s) in which CONTRACTOR operates. CONTRACTOR possesses all equipment and personnel necessary to perform the delivery services contemplated by this Agreement in accordance with applicable laws. CONTRACTOR desires to enter into this Agreement for the right to receive delivery opportunities made available through DOORDASH'S platform. CONTRACTOR understands and expressly agrees that he/she is not an employee of DOORDASH or any restaurant, other business or consumer and that he/she is providing delivery services on behalf of him/herself and his/her business, not on behalf of DOORDASH. CONTRACTOR understands (i) he/she is free to select those times he/she wishes to be available on the platform to receive delivery opportunities; (ii) he/she is free to accept or reject the opportunities transmitted through the DOORDASH platform by consumers, and can make such decisions to maximize his/her opportunity to profit; and (iii) he/she has the sole right to control the manner in which deliveries are performed and the means by which those deliveries are completed.

In consideration of the above, as well as the mutual promises described herein, DOORDASH and CONTRACTOR (collectively "the parties") agree as follows:

I. PURPOSE OF THE AGREEMENT

1. This Agreement governs the relationship between DOORDASH and CONTRACTOR, and establishes the parties' respective rights and obligations. In exchange for the promises contained in this Agreement, CONTRACTOR shall have the right and obligation to perform the "Contracted Services" as defined herein. However, nothing in this Agreement requires CONTRACTOR to perform any particular volume of Contracted Services during the term of this Agreement, and nothing in this Agreement shall guarantee CONTRACTOR any particular volume of business for any particular time period.
2. CONTRACTOR shall have no obligation to accept or perform any particular "Delivery Opportunity" (as that term is defined herein) offered by DOORDASH. However, once a Delivery Opportunity is accepted,

CONTRACTOR shall be contractually bound to complete the Contracted Services in accordance with all consumer specifications and the terms laid out in this Agreement,

II. CONTRACTOR'S OPERATIONS

1. CONTRACTOR represents that he/she operates an independently established enterprise that provides delivery services, and that he/she satisfies all legal requirements necessary to perform the services contemplated by this Agreement. As an independent contractor/enterprise, CONTRACTOR shall be solely responsible for determining how to operate his/her business and how to perform the Contracted Services.
2. CONTRACTOR agrees to fully perform the Contracted Services in a timely, efficient, safe, and lawful manner. DOORDASH shall have no right to, and shall not, control the manner, method or means CONTRACTOR uses to perform the Contracted Services. Instead, CONTRACTOR shall be solely responsible for determining the most effective, efficient, and safe manner to perform the Contracted Services, including determining the manner of pickup, delivery, and route selection.
3. As an independent business enterprise, CONTRACTOR retains the right to perform services (whether delivery services or other services) for others and to hold him/herself out to the general public as a separately established business. The parties recognize that they are or may be engaged in similar arrangements with others and nothing in this Agreement shall prevent CONTRACTOR or DOORDASH from doing business with others. DOORDASH does not have the right to restrict CONTRACTOR from performing services for other businesses, customers or consumers at any time, even if such business directly competes with DOORDASH, and even during the time CONTRACTOR is logged into the DOORDASH platform. CONTRACTOR's right to compete with DOORDASH, or perform services for business that compete with DOORDASH, will survive even after termination of this Agreement.
4. CONTRACTOR is not required to purchase, lease, or rent any products, equipment or services from DOORDASH as a condition of doing business with DOORDASH or entering into this Agreement.
5. CONTRACTOR agrees to immediately notify DOORDASH in writing at www.doordash.com/help/ if CONTRACTOR's right to control the manner or method he/she uses to perform services differs from the terms contemplated in this Section.

III. CONTRACTED SERVICES

1. From time to time, the DOORDASH platform will notify CONTRACTOR of the opportunity to complete deliveries from restaurants or other businesses to consumers in accordance with orders placed by consumers through the DOORDASH platform (each of these is referred to as a "Delivery Opportunity"). For each Delivery Opportunity accepted by CONTRACTOR ("Contracted Service"), CONTRACTOR agrees to retrieve the orders from restaurants or other businesses, ensure the order was accurately filled, and deliver the order to consumers in a safe and timely fashion. CONTRACTOR understands and agrees that the parameters of each Contracted Service are established by the consumer, not DOORDASH, and represent the end result desired, not the means by which CONTRACTOR is to accomplish the result. CONTRACTOR has the right to cancel, from time to time, a Contracted Service when, in the exercise of CONTRACTOR's reasonable discretion and business judgment, it is appropriate to do so. Notwithstanding the foregoing, CONTRACTOR agrees to maintain both a customer rating and a completion rate found here (<http://doordash.squarespace.com/local-markets>) as of the date this Agreement becomes effective. Failure to satisfy this obligation constitutes a material breach of this Agreement, and DOORDASH shall have the right to terminate this Agreement and/or deactivate CONTRACTOR'S account.
2. CONTRACTOR acknowledges that DOORDASH has discretion as to which, if any, Delivery Opportunity to offer, just as CONTRACTOR has the discretion whether and to what extent to accept any Delivery Opportunity.
3. CONTRACTOR acknowledges that CONTRACTOR is engaged in CONTRACTOR's own business, separate and apart from DOORDASH'S business, which is to provide an online marketplace connection using web-based technology that connects contractors, restaurants and/or other businesses, and consumers.

4. CONTRACTOR authorizes DOORDASH, during the course of a Contracted Service, to communicate with CONTRACTOR, consumer, and/or restaurant or other business to assist CONTRACTOR, to the extent permitted by CONTRACTOR, in facilitating deliveries. However, under no circumstances shall DOORDASH be authorized to control the manner or means by which CONTRACTOR performs delivery services. This includes, but is not limited to, the following:
 - DOORDASH does not require any specific type, or quality, of CONTRACTOR's choice of transportation.
 - CONTRACTOR does not have a supervisor or any individual at DOORDASH to whom they report.
 - CONTRACTOR is not required to use any signage or other designation of DOORDASH on his or her vehicle or person at any point in their use of the platform to perform the Contracted Services.
 - DOORDASH has no control over CONTRACTOR's personal appearance
 - CONTRACTOR does not receive regular performance evaluations by DOORDASH
5. CONTRACTOR may use whatever payment method he/she chooses to purchase items to be delivered to consumers, including, but not limited to CONTRACTOR's personal credit or debit card, cash or a prepaid card. CONTRACTOR may use, for CONTRACTOR's convenience, the prepaid card solely for purchasing items to be delivered to consumers. If CONTRACTOR chooses to use his/her personal credit or debit card or cash, CONTRACTOR shall invoice DOORDASH on a weekly basis and DOORDASH agrees to pay all invoices within 10 days of receipt.
6. In the event CONTRACTOR fails to fully perform any Contracted Service (a "Service Failure") due to CONTRACTOR's action or omission, CONTRACTOR shall forfeit all or part of the agreed upon fee for that service. If CONTRACTOR disputes responsibility for a Service Failure, the dispute shall be resolved pursuant to the "Payment Disputes" provision below.
7. CONTRACTOR agrees to immediately notify DOORDASH in writing by submitting a Support inquiry through <https://help.doordash.com/consumers/s/contactsupport> if CONTRACTOR's services or scope of work differ in any way from what is contemplated in this Section.

IV. RELATIONSHIP OF PARTIES

1. The parties acknowledge and agree that this Agreement is between two co-equal, independent business enterprises that are separately owned and operated. The parties intend this Agreement to create the relationship of principal and independent contractor and not that of employer and employee. The parties are not employees, agents, joint venturers, or partners of each other for any purpose. Neither party shall have the right to bind the other by contract or otherwise except as specifically provided in this Agreement.
2. DOORDASH shall not have the right to, and shall not, control the manner or the method of accomplishing Contracted Services to be performed by CONTRACTOR. The parties acknowledge and agree that those provisions of the Agreement reserving ultimate authority in DOORDASH have been inserted solely for the safety of consumers and other CONTRACTORS using the DOORDASH platform or to achieve compliance with federal, state, or local laws, regulations, and interpretations thereof.
3. DOORDASH shall report all payments made to CONTRACTOR on a calendar year basis using an appropriate IRS Form 1099, if the volume of payments to CONTRACTOR qualify. CONTRACTOR agrees to report all such payments and any cash gratuities to the appropriate federal, state and local taxing authorities.

V. PAYMENT FOR SERVICES

1. Unless notified otherwise by DOORDASH in writing or except as provided herein, CONTRACTOR will receive payment per accurate Contracted Service completed in an amount consistent with the publicly provided pay model, which you can view here (<http://doordash.squarespace.com/local-markets>). From time to time, DOORDASH may offer opportunities for CONTRACTOR to earn more money for performing Contracted Services at specified times or in specified locations. Nothing prevents the parties from negotiating a different rate of pay, and CONTRACTOR is free to accept or deny any such opportunities to earn different rates of pay.
2. DOORDASH's online credit card software may permit consumers to add a gratuity to be paid to CONTRACTOR, and consumers can also pay a gratuity to CONTRACTOR in cash. CONTRACTOR shall retain

100% of any gratuity paid by the consumer, whether by cash or credit card. DOORDASH acknowledges it has no right to interfere with the amount of gratuity given by the consumer to the CONTRACTOR.

3. DOORDASH will process payments made by consumers and transmit to CONTRACTOR. Payments for all deliveries completed in a given week will be transferred via direct deposit on no less than a weekly basis unless it notifies CONTRACTOR otherwise in writing.
4. Notwithstanding the terms of Section V(1) – (3), fulfillment orders placed directly with merchants rather than through the App or doordash.com ("Fulfillment Orders") may be subject to a different payment model. The current pay schedules offered for Fulfillment Orders in the relevant markets are reflected here (<https://doordash.squarespace.com/doordash-drive/>). Nothing prevents the parties from negotiating a different rate of pay for a Fulfillment Order, and the CONTRACTOR is free to accept or reject Fulfillment Order opportunities. As with all Delivery Opportunities, CONTRACTOR shall retain 100% of any gratuity paid by the consumer for a Fulfillment Order. DoorDash's software may not always include an option to add gratuity for Fulfillment Orders; however, consumers can pay a gratuity to CONTRACTOR in cash.
5. From time to time, DOORDASH may offer various Dasher promotions or referral programs. CONTRACTOR agrees that he or she will not manipulate or abuse the referral programs or Dasher promotions by, among other things: (a) tampering with the location feature on his or her mobile phone; (b) collecting incentive or promotional pay when not eligible to receive such pay under relevant policies; or, (c) creating multiple Dasher or consumer accounts. CONTRACTOR understands that engaging in this type of manipulation or abuse constitutes a material breach of this Agreement and may lead to deactivation of his or her account.

VI. PAYMENT DISPUTES

1. CONTRACTOR's Failure: In the event there is a Service Failure, CONTRACTOR shall not be entitled to payment as described above (as determined in DOORDASH's reasonable discretion). Any withholding of payment shall be based upon proof provided by the consumer, restaurant or other business, CONTRACTOR, and any other party with information relevant to the dispute. DOORDASH shall make the initial determination as to whether a Service Failure was the result of CONTRACTOR's action/omission. CONTRACTOR shall have the right to challenge DOORDASH's determination through any legal means contemplated by this Agreement; however, CONTRACTOR shall notify DOORDASH in writing at www.doordash.com/help/ of the challenge and provide DOORDASH the opportunity to resolve the dispute. CONTRACTOR should include any documents or other information in support of his/her challenge.
2. DOORDASH's Failure: In the event DOORDASH fails to remit payment in a timely or accurate manner, CONTRACTOR shall have the right to seek proper payment by any legal means contemplated by this Agreement and, should CONTRACTOR prevail, shall be entitled to recover reasonable costs incurred in pursuing proper payment, provided, however, CONTRACTOR shall first inform DOORDASH in writing at www.doordash.com/help/ of the failure and provide a reasonable opportunity to cure it.

EQUIPMENT AND EXPENSES

1. CONTRACTOR represents that he/she has or can lawfully acquire all equipment, including vehicles and food hot bags ("Equipment") necessary for performing contracted services, and CONTRACTOR is solely responsible for ensuring that the vehicle used conforms to all vehicle laws pertaining to safety, equipment, inspection, and operational capability.
2. CONTRACTOR agrees that he/she is responsible for all costs and expenses arising from CONTRACTOR's performance of Contracted Services, including, but not limited to, costs related to CONTRACTOR's Personnel (defined below) and Equipment. Except as otherwise required by law, CONTRACTOR assumes all risk of damage or loss to its Equipment.

VIII. PERSONNEL

1. In order to perform any Contracted Services, CONTRACTOR must, for the safety of consumers on the DOORDASH platform, pass a background check administered by a third-party vendor, subject to

CONTRACTOR's lawful consent. CONTRACTOR is not required to perform any Contracted Services personally, but may, to the extent permitted by law and subject to the terms of this Agreement, hire or engage others (as employees or subcontractors of CONTRACTOR) to perform all or some of the Contracted Services, provided any such employees or subcontractors meet all the requirements applicable to CONTRACTOR including, but not limited to, the background check requirements that CONTRACTOR must meet in order to perform Contracted Services. To the extent CONTRACTOR furnishes his/her own employees or subcontractors (collectively "Personnel"), CONTRACTOR shall be solely responsible for the direction and control of the Personnel it uses to perform all Contracted Services.

2. **CONTRACTOR assumes full and sole responsibility for the payment of all amounts due to his/her Personnel for work performed in relation to this Agreement, including all wages, benefits and expenses, if any, and for all required state and federal income tax withholdings, unemployment insurance contributions, and social security taxes as to CONTRACTOR and all Personnel employed by CONTRACTOR in the performance of Contracted Services under this Agreement. DOORDASH shall have no responsibility for any wages, benefits, expenses, or other payments due CONTRACTOR's Personnel, nor for income tax withholding, social security, unemployment insurance contributions, or other payroll taxes relating to CONTRACTOR or his/her Personnel. Neither CONTRACTOR nor his/her Personnel shall receive any wages, including vacation pay or holiday pay, from DOORDASH, nor shall they participate in or receive any other benefits, if any, available to DOORDASH's employees.**
3. **Unless mandated by law, DOORDASH shall have no authority to withhold state or federal income taxes, social security taxes, unemployment insurance taxes/contributions, or any other local, state or federal tax on behalf of CONTRACTOR or his/her Personnel.**
4. CONTRACTOR and his/her Personnel shall not be required to wear a uniform or other clothing of any type bearing DOORDASH's name or logo.
5. If CONTRACTOR uses the services of any Personnel to perform the Contracted Services, CONTRACTOR's Personnel must satisfy and comply with all of the terms of this Agreement, which CONTRACTOR must make enforceable by written agreement between CONTRACTOR and such Personnel. A copy of such written agreement must be provided to DOORDASH at least 7 days in advance of such Personnel performing the Contracted Services. The parties acknowledge that the sole purpose of this requirement is to ensure CONTRACTOR's compliance with the terms of this Agreement.

IX. INSURANCE

1. CONTRACTOR agrees, as a condition of doing business with DOORDASH, that during the term of this Agreement, CONTRACTOR will maintain current insurance, in amounts and of types required by law to provide the Contracted Services, at his/her own expense. CONTRACTOR acknowledges that failure to secure or maintain satisfactory insurance coverage shall be deemed a material breach of this Agreement and shall result in the termination of the Agreement and the loss of CONTRACTOR's right to receive Delivery Opportunities.
2. **NOTIFICATION OF COVERAGE:** CONTRACTOR agrees to deliver to DOORDASH, upon request, current certificates of insurance as proof of coverage. CONTRACTOR agrees to provide updated certificates each time CONTRACTOR purchases, renews, or alters CONTRACTOR's insurance coverage. CONTRACTOR agrees to give DOORDASH at least thirty (30) days' prior written notice before cancellation of any insurance policy required by this Agreement.
3. **WORKERS' COMPENSATION/OCCUPATIONAL ACCIDENT INSURANCE:** CONTRACTOR agrees that CONTRACTOR will not be eligible for workers' compensation benefits through DOORDASH, and instead, will be responsible for providing CONTRACTOR's own workers' compensation insurance or occupational accident insurance, if permitted by law.

X. INDEMNITY

1. DOORDASH agrees to indemnify, protect and hold harmless CONTRACTOR from any and all claims, demands, damages, suits, losses, liabilities and causes of action arising directly from DOORDASH's actions arranging and offering the Contracted Services to CONTRACTOR.
2. CONTRACTOR agrees to indemnify, protect and hold harmless DOORDASH, including all parent, subsidiary and/or affiliated companies, as well as its and their past and present successors, assigns, officers, owners, directors, agents, representatives, attorneys, and employees, from any and all claims, demands, damages, suits, losses, liabilities and causes of action arising directly or indirectly from, as a result of or in connection with, the actions of CONTRACTOR and/or his/her Personnel arising from the performance of delivery services under this Agreement, including personal injury or death to any person (including to CONTRACTOR and/or his/her Personnel), as well as any liability arising from CONTRACTOR's failure to comply with the terms of this Agreement. CONTRACTOR's obligations hereunder shall include the cost of defense, including attorneys' fees, as well as the payment of any final judgment rendered against or settlement agreed upon by DOORDASH or its parent, subsidiary and/or affiliated companies.
3. CONTRACTOR agrees to indemnify, protect and hold harmless DOORDASH, including all parent, subsidiary, and/or affiliated companies, as well as its and their past and present successors, assigns, officers, owners, directors, agents, representatives, attorneys, and employees, from any and all tax liabilities and responsibilities for payment of all federal, state and local taxes, including, but not limited to all payroll taxes, self-employment taxes, workers compensation premiums, and any contributions imposed or required under federal, state and local laws, with respect to CONTRACTOR and CONTRACTOR's Personnel.
4. CONTRACTOR shall be responsible for, indemnify and hold harmless DOORDASH, including all parent, subsidiary, and/or affiliated companies, as well as its and their past and present successors, assigns, officers, owners, directors, agents, representatives, attorneys, and employees, from all costs of CONTRACTOR's business, including, but not limited to, the expense and responsibility for any and all applicable insurance, local, state or federal licenses, permits, taxes, and assessments of any and all regulatory agencies, boards or municipalities.

XI. MUTUAL ARBITRATION PROVISION

1. CONTRACTOR and DOORDASH mutually agree to this arbitration agreement, which is governed by the Federal Arbitration Act (9 U.S.C. §§ 1-16) ("FAA") and shall apply to any and all claims arising out of or relating to this Agreement, CONTRACTOR's classification as an independent contractor, CONTRACTOR's provision of Contracted Services to consumers, the payments received by CONTRACTOR for providing services to consumers, the termination of this Agreement, and all other aspects of CONTRACTOR's relationship with DOORDASH, past, present or future, whether arising under federal, state or local statutory and/or common law, including without limitation harassment, discrimination or retaliation claims and claims arising under or related to the Civil Rights Act of 1964 (or its state or local equivalents), Americans With Disabilities Act (or its state or local equivalents), Age Discrimination in Employment Act (or its state or local equivalents), Family Medical Leave Act (or its state or local equivalents), Federal Credit Reporting Act (or its state or local equivalents), Telephone Consumer Protection Act (or its state or local equivalents), or Fair Labor Standards Act (or its state or local equivalents), state and local wage and hour laws, state and local statutes or regulations addressing the same or similar subject matters, and all other federal, state or local claims arising out of or relating to CONTRACTOR's relationship or the termination of that relationship with DOORDASH. The parties expressly agree that this Agreement shall be governed by the FAA even in the event CONTRACTOR and/or DOORDASH are otherwise exempted from the FAA. Any disputes in this regard shall be resolved exclusively by an arbitrator. In the event, but only in the event, the arbitrator determines the FAA does not apply, the state law governing arbitration agreements in the state in which the CONTRACTOR operates shall apply.
2. If either CONTRACTOR or DOORDASH wishes to initiate arbitration, the initiating party must notify the other party in writing via certified mail, return receipt requested, or hand delivery within the applicable statute of

limitations period. This demand for arbitration must include (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. Any demand for arbitration by CONTRACTOR must be delivered to General Counsel, 901 Market Street, 6th Floor, San Francisco, California 94103.

3. Arbitration Class Action Waiver. CONTRACTOR and DOORDASH mutually agree that by entering into this agreement to arbitrate, both waive their right to have any dispute or claim brought, heard or arbitrated as, or to participate in, a class action, collective action and/or representative action—including but not limited to actions brought pursuant to the Private Attorney General Act (“PAGA”), California Labor Code section 2699 et seq., and any request seeking a public injunction—and an arbitrator shall not have any authority to hear or arbitrate any class, collective or representative action, or to award relief to anyone but the individual in arbitration (“Arbitration Class Action Waiver”). Notwithstanding any other clause contained in this Agreement or the AAA Rules, as defined below, any claim that all or part of this Arbitration Class Action Waiver is unenforceable, unconscionable, void or voidable may be determined only by a court of competent jurisdiction and not by an arbitrator. In any case in which (1) the dispute is filed as a class, collective, or representative action and (2) there is a final judicial determination that all or part of the Arbitration Class Action Waiver is unenforceable, the class, collective and/or representative action to that extent must be litigated in a civil court of competent jurisdiction, but the portion of the Arbitration Class Action Waiver that is enforceable shall be enforced in arbitration. Notwithstanding any other clause contained in this Agreement or the AAA Rules, as defined below, any claim that all or part of this Arbitration Class Action Waiver is unenforceable, unconscionable, void or voidable may be determined only by a court of competent jurisdiction and not by an arbitrator. All other disputes with respect to whether this Mutual Arbitration Provision is unenforceable, unconscionable, applicable, valid, void or voidable shall be determined exclusively by an arbitrator, and not by any court.
4. CONTRACTOR agrees and acknowledges that entering into this arbitration agreement does not change CONTRACTOR's status as an independent contractor in fact and in law, that CONTRACTOR is not an employee of DOORDASH or its customers and that any disputes in this regard shall be subject to arbitration as provided in this agreement.
5. Any arbitration shall be governed by the American Arbitration Association Commercial Arbitration Rules (“AAA Rules”), except as follows:
 - a. The arbitration shall be heard by one arbitrator selected in accordance with the AAA Rules. The Arbitrator shall be an attorney with experience in the law underlying the dispute.
 - b. If the parties cannot otherwise agree on a location for the arbitration, the arbitration shall take place within 45 miles of CONTRACTOR's residence as of the effective date of this Agreement.
 - c. Unless applicable law provides otherwise, in the event that DOORDASH and CONTRACTOR have agreed to this Mutual Arbitration Provision, DOORDASH and CONTRACTOR shall equally share filing fees and other similar and usual administrative costs, as are common to both court and administrative proceedings. DOORDASH shall pay any costs uniquely associated with arbitration, such as payment of the costs of AAA and the Arbitrator, as well as room rental.
 - d. The Arbitrator may issue orders (including subpoenas to third parties) allowing the parties to conduct discovery sufficient to allow each party to prepare that party's claims and/or defenses, taking into consideration that arbitration is designed to be a speedy and efficient method for resolving disputes.
 - e. Except as provided in the Arbitration Class Action Waiver, the Arbitrator may award all remedies to which a party is entitled under applicable law and which would otherwise be available in a court of law, but shall not be empowered to award any remedies that would not have been available in a court of law for the claims presented in arbitration. The Arbitrator shall apply the state or federal substantive law, or both, as is applicable.
 - f. The Arbitrator may hear motions to dismiss and/or motions for summary judgment and will apply the standards of the Federal Rules of Civil Procedure governing such motions.
 - g. The Arbitrator's decision or award shall be in writing with findings of fact and conclusions of law.

- h. The Arbitrator may issue orders to protect the confidentiality of proprietary information, trade secrets, or other sensitive information. Subject to the discretion of the Arbitrator or agreement of the parties, any person having a direct interest in the arbitration may attend the arbitration hearing. The Arbitrator may exclude any non-party from any part of the hearing.
- i. Either CONTRACTOR or DOORDASH may apply to a court of competent jurisdiction for temporary or preliminary injunctive relief on the ground that without such relief the arbitration provided in this paragraph may be rendered ineffectual.
6. Nothing in this Mutual Arbitration Provision prevents you from making a report to or filing a claim or charge with the Equal Employment Opportunity Commission, U.S. Department of Labor, U.S. Securities and Exchange Commission, National Labor Relations Board, or Office of Federal Contract Compliance Programs. Nothing in this Mutual Arbitration Provision prevents the investigation by a government agency of any report, claim or charge otherwise covered by this Mutual Arbitration Provision. This Mutual Arbitration Provision also does not prevent federal administrative agencies from adjudicating claims and awarding remedies based on those claims, even if the claims would otherwise be covered by this Mutual Arbitration Provision. Nothing in this Mutual Arbitration Provision prevents or excuses a party from satisfying any conditions precedent and/or exhausting administrative remedies under applicable law before bringing a claim in arbitration. DOORDASH will not retaliate against CONTRACTOR for filing a claim with an administrative agency or for exercising rights (individually or in concert with others) under Section 7 of the National Labor Relations Act. Disputes between the parties that may not be subject to predispute arbitration agreement, including as provided by an Act of Congress or lawful, enforceable Executive Order, are excluded from the coverage of this Mutual Arbitration Provision.
7. The AAA Rules may be found at www.adr.org or by searching for "AAA Commercial Arbitration Rules" using a service such as www.google.com or www.bing.com or by asking DOORDASH's General Counsel to provide a copy.
8. **CONTRACTOR's Right to Opt Out of Arbitration Provision.** Arbitration is not a mandatory condition of CONTRACTOR's contractual relationship with DOORDASH, and therefore CONTRACTOR may submit a statement notifying DOORDASH that CONTRACTOR wishes to opt out and not be subject to this **MUTUAL ARBITRATION PROVISION**. In order to opt out, CONTRACTOR must notify DOORDASH in writing of CONTRACTOR's intention to opt out by sending a letter, by First Class Mail, to DoorDash, Inc., 901 Market Street, Suite 600, San Francisco, CA, 94131. Any attempt to opt out by email will be ineffective. The letter must state CONTRACTOR's intention to opt out. In order to be effective, CONTRACTOR's opt out letter must be postmarked within 30 days of the effective date of this Agreement. The letter must be signed by CONTRACTOR himself/herself, and not by any agent or representative of CONTRACTOR. The letter may opt out, at most, only one CONTRACTOR, and letters that purport to opt out multiple CONTRACTORS will not be effective as to any. No CONTRACTOR (or his or her agent or representative) may effectuate an opt out on behalf of other CONTRACTORS. If CONTRACTOR opts out as provided in this paragraph, CONTRACTOR will not be subject to any adverse action from DOORDASH as a consequence of that decision and he/she may pursue available legal remedies without regard to this Mutual Arbitration Provision. If CONTRACTOR does not opt out within 30 days of the effective date of this Agreement, CONTRACTOR and DOORDASH shall be deemed to have agreed to this Mutual Arbitration Provision. CONTRACTOR has the right to consult with counsel of CONTRACTOR's choice concerning this Mutual Arbitration Provision (or any other provision of this Agreement).
9. This Mutual Arbitration Provision is the full and complete agreement relating to the formal resolution of disputes covered by this Mutual Arbitration Provision. In the event any portion of this Mutual Arbitration Provision is deemed unenforceable, the remainder of this Mutual Arbitration Provision will be enforceable. The award issued by the Arbitrator may be entered in any court of competent jurisdiction.

XII. LITIGATION CLASS ACTION WAIVER

1. To the extent allowed by applicable law, separate and apart from the Mutual Arbitration Provision found in Section XI, CONTRACTOR agrees that any proceeding to litigate in court any dispute arising out of or relating to this Agreement, whether because CONTRACTOR opted out of the Arbitration Provision or any other reason, will be conducted solely on an individual basis, and CONTRACTOR agrees not to seek to have any controversy, claim or dispute heard as a class action, a representative action, a collective action, a private attorney-general action, or in any proceeding in which CONTRACTOR acts or proposes to act in a representative capacity ("Litigation Class Action Waiver"). CONTRACTOR further agrees that no proceeding will be joined, consolidated, or combined with another proceeding, without the prior written consent of all parties to any such proceeding. If a court of competent jurisdiction determines that all or part of this Litigation Class Action Waiver is unenforceable, unconscionable, void or voidable, the remainder of this Agreement shall remain in full force and effect.

XIII. TERMINATION OF AGREEMENT

1. CONTRACTOR may terminate this Agreement upon seven (7) days written notice. DOORDASH may terminate this Agreement and deactivate CONTRACTOR'S Dasher account only for the reasons set forth in the DOORDASH Deactivation Policy (<http://www.doordash.com/deactivationpolicy>), or for a material breach of this Agreement. Notwithstanding any other provision in this Agreement, DoorDash reserves the right to modify the Deactivation Policy if, in DoorDash's good faith and reasonable discretion, it is necessary to do so for the safe and/or effective operation of the DoorDash platform. DOORDASH shall provide notice of any such changes to CONTRACTOR via e-mail. Changes to the Deactivation Policy shall be effective and binding on the parties upon CONTRACTOR's continued use of the DOORDASH platform following DOORDASH's e-mail notice of such modifications. Nothing will prevent CONTRACTOR from attempting to negotiate an exemption from any modification to the Deactivation Policy.
2. CONTRACTOR's and DOORDASH's obligations and rights arising under the Mutual Arbitration Provision of this Agreement shall survive termination of this Agreement. Notwithstanding any other provision in this Agreement, the Deactivation Policy is subject to change; such changes shall be effective and binding on the parties upon DOORDASH'S provision of notice to CONTRACTOR via e-mail.

XIV. ENTIRE AGREEMENT, TRANSFERABILITY, AND WAIVER

1. This Agreement shall constitute the entire agreement and understanding between the parties with respect to the subject matter of this Agreement and shall not be modified, altered, changed or amended in any respect, unless in writing and signed by both parties. Before accepting any modifications, alterations, changes or amendments, CONTRACTOR shall have the right to discuss any proposed changes with DOORDASH and consider whether to continue his/her contractual relationship with DOORDASH. This Agreement supersedes any prior contract between the parties. To the extent DOORDASH's consumer facing Terms and Conditions Agreement (or updated consumer facing Terms and Conditions Agreement, if applicable) is inconsistent or conflicts with this Agreement, this Agreement controls. However, the decision to opt-out of the Mutual Arbitration Provision in this Agreement does not affect the enforceability of any arbitration agreement in the consumer facing Terms and Conditions Agreement to which Contractor may be bound (and vice versa). This Agreement may not be assigned by either party without written consent of the other and shall be binding upon the parties hereto, including their heirs and successors, provided, however, that DOORDASH may assign its rights and obligations under this Agreement to an affiliate of DOORDASH or any successor(s) to its business and/or purchaser of substantially all of its stock or assets. References in this Agreement to DOORDASH shall be deemed to include such successor(s).
2. The failure of DOORDASH or CONTRACTOR in any instance to insist upon a strict performance of the terms of this Agreement or to exercise any option herein, shall not be construed as a waiver or relinquishment of such term or option and such term or option shall continue in full force and effect.

XV. MISCELLANEOUS

1. CAPTIONS: Captions appearing in this Agreement are for convenience only and do not in any way limit, amplify, modify, or otherwise affect the terms and provisions of this Agreement.
2. SEVERABILITY Clause: Except as specifically provided in Section XI, if any part of this Agreement is declared unlawful or unenforceable, the remainder of this Agreement shall remain in full force and effect.
3. GOVERNING LAW: Except for the Mutual Arbitration Provision above, which is governed by the Federal Arbitration Act, the choice of law for interpretation of this Agreement, and the right of the parties hereunder, as well as substantive interpretation of claims asserted pursuant to Section XI, shall be the rules of law of the state in which CONTRACTOR performs the majority of the services covered by this Agreement.
4. NOTICE AND OPPORTUNITY TO CURE: CONTRACTOR agrees to notify DOORDASH in writing at <https://www.doordash.com/help/> (<https://www.doordash.com/help/>) of any breach or perceived breach of this Agreement, of any claim arising out of or related to this Agreement, or of any claim that CONTRACTOR's services or scope of work differ in any way from what is contemplated in this Agreement, including but not limited to the terms in Sections II (Contractor's Operations) and III (Contractor's Services), or if the relationship of the parties differs from the terms contemplated in Section IV (Relationship of Parties).
5. PRIVACY POLICY: CONTRACTOR represents and warrants that he or she has reviewed and understands DOORDASH'S Dasher Privacy Statement, which can be found here (<http://www.doordash.com/dasherprivacypolicy>). By using the Dasher Services, you consent to all actions taken by DOORDASH with respect to your information in accordance with the Dasher Privacy Statement.

/s/Cody Aughney

Cody Aughney, authorized representative for DoorDash, Inc.

[About \(/about/\)](#) •
 [Blog \(http://blog.doordash.com\)](http://blog.doordash.com) •
 [Careers \(/careers/\)](#) •
 [Terms \(/terms/\)](#) •
 [Privacy \(/privacy/\)](#) •
 [Accessibility \(/accessibility/\)](#) •
 [Delivery Locations \(/food-delivery/\)](#) •
 [Help & Support \(/support/\)](#) •
 [Become a Merchant \(/merchant/apply/\)](#) •
 [Become a Dasher \(/driver/apply/\)](#)

 (<http://twitter.com/doordash>)
  (<http://facebook.com/doordash>)
  (<http://instagram.com/doordash>)

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Exhibit

B

This declaration is an important document that will allow us to establish that you have retained Keller Lenkner LLC and Troxel Law, LLP to represent you in bring claims against DoorDash. Please read carefully to affirm that the following is correct and then initial and sign to confirm that you affirm these facts under penalty of perjury.

Witness Statement of Terrell Abernathy

I, Terrell Abernathy, provide the following witness statement:

1. I am over 18 years of age.
2. I have personal knowledge of the facts in this witness statement. And my testimony on examination under oath about these facts would be the same as this witness statement.
3. I currently reside at:


Street Address: [REDACTED]

City: Carson

State: California

Zip: 90746

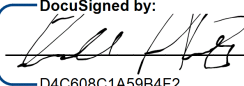
4. I have worked for DoorDash for approximately 5 months.
5. I have retained Keller Lenkner LLC to pursue claims against DoorDash on my behalf.
6. I do not recall opting out of arbitration.

^{DS}
 I affirm that these facts are true under penalty of perjury under the law of the United States.

Date 8/6/2019

Signature _____

DocuSigned by:


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Exhibit

C

**EMPLOYMENT ARBITRATION RULES
DEMAND FOR ARBITRATION**

To ensure your demand is processed promptly, please include a copy of the Arbitration Agreement, Plan or Contract.

Mediation: If you would like the AAA to contact the other parties and attempt to arrange mediation, please check this box .

Parties (Claimant)

Name of Claimant: Laura Roach (KL Tracking No. 5518542)

Address: [REDACTED]

City: Sacramento

State: California

Zip Code: 95842

Phone No.: [REDACTED]

Fax No.:

Email Address [REDACTED]

Representative's Name (if known): Ashley Keller

Firm (if applicable): Keller Lenkner LLC

Representative's Address: 150 N. Riverside Plaza, Suite 4270

City: Chicago

State: Illinois

Zip Code: 60606

Phone No.: 3127415222

Fax No.:

Email Address: ack@kellerlenkner.com

Parties (Respondent)

Name of Respondent: DoorDash, Inc.

Address: 901 Market Street, 6th Floor

City: San Francisco

State: California

Zip Code: 94103

Phone No.: 8559731040

Fax No.:

Email Address:

Representative's Name (if known): Joshua S. Lipshutz

Firm (if applicable): Gibson, Dunn & Crutcher LLP

Representative's Address: 1050 Connecticut Avenue, N.W.

City: Washington

State: DC

Zip Code: 20036

Phone No.: 2029558217

Fax No.: 2025309614

Email Address: jlipshutz@gibsondunn.com

Claim: What was/is the employee/worker's annual wage range? Less than \$100,000 \$100,000-\$250,000 Over \$250,000

Note: This question is required by California law.

Amount of Claim: Claimant declines to specify the amount in controversy at this time, as the information needed to calculate damages is exclusively within DoorDash's control.

Claim involves: Statutorily Protected Rights Non-Statutorily Protected Rights



EMPLOYMENT ARBITRATION RULES
DEMAND FOR ARBITRATION

In detail, please describe the nature of each claim. You may attach additional pages if necessary:

Claimant has been a courier for DoorDash. DoorDash has exercised significant control over Claimant, including by determining which deliveries it has offered Claimant and how much it has paid Claimant for each delivery. Because DoorDash sets the material terms of its couriers' conduct, Claimant has not used managerial skill to increase profits. Claimant, along with other couriers, has made up DoorDash's core workforce; Claimant is integral to DoorDash's business. While working for DoorDash, Claimant has not operated a transportation-based business independent of DoorDash. DoorDash has thus misclassified Claimant as an independent contractor instead of an employee. Claimant seeks all available relief under the following provisions, as showing to be applicable following discovery of information exclusively within the control of Respondent: 29 U.S.C. §§ 206, 207 (Minimum Wage & Overtime); California Labor Code, Wage Order No. 9 (Minimum Wage & Overtime); Applicable Municipal Codes (Minimum Wage, Overtime, Sick Time & Notice Violations); California Labor Code § 226 (Wage Statement and Records Access); and Cal. Bus. & Prof. Code § 17200 (Unfair and Unlawful Business Practices).

Other Relief Sought: Attorneys Fees Interest Arbitration Costs Punitive/ Exemplary

Other: declaratory relief; appropriate individual equitable relief; damages; penalties; and restitution

Please describe the qualifications for arbitrator(s) to hear this dispute:

Claimant requests that the arbitrator "be an attorney with experience in the law underlying the dispute." § XI.5.a.

Hearing: Estimated time needed for hearings overall: 6 hours

Hearing Locale: Claimant requests a hearing location within 45 miles of Claimant's residence. § XI.5.b.

(check one) Requested by Claimant Locale provision included in the contract

Filing Fee requirement or \$300 (max amount per AAA) – Claimant will satisfy the \$300 filing fee requirement.

Filing by Company: \$2,200 single arbitrator \$2,800 three arbitrator panel

Notice: To begin proceedings, **please send a copy of this Demand and the Arbitration Agreement, along with filing fee as provided for in the Rules**, to: American Arbitration Association, Case Filing Services, 1101 Laurel Oak Road, Suite 100, Voorhees, NJ 08043. Send the original Demand to the Respondent.

Signature (may be signed by a representative):

Date:

July 2, 2019

Pursuant to Section 1284.3 of the California Code of Civil Procedure, consumers with a gross monthly income of less than 300% of the federal poverty guidelines are entitled to a waiver of arbitration fees and costs, exclusive of arbitrator fees. This law applies to all consumer agreements subject to the California Arbitration Act, and to all consumer arbitrations conducted in California. Only those disputes arising out of employer plans are included in the consumer definition. If you believe that you meet these requirements, you must submit to the AAA a declaration under oath regarding your monthly income and the number of persons in your household. Please contact the AAA's Western Case Management Center at 1-800-778-7879. If you have any questions regarding the waiver of administrative fees, AAA Case Filing Services can be reached at 877-495-4185. Please visit our website at www.adr.org if you would like to file this case online. AAA Customer Service can be reached at 800-778-7879.

Exhibit

D

From: [Holecek, Michael](#)
To: [AAA Heather Santo](#); [Ashley Keller](#); [Warren Postman](#); [Travis Lenkner](#); [Lipshutz, Joshua S.](#)
Subject: RE: 250 Individuals v. DoorDash, Inc.
Date: Monday, July 29, 2019 11:53:21 AM
Attachments: [image002.png](#)

Dear Ms. Santo,

On behalf of DoorDash, I write to request a two-week extension on the August 6 filing-fee deadline stated in your email. We request the extension because we need more time to review the arbitration demand, analyze its compliance with DoorDash's arbitration agreement, and research company records to try to identify the 250 claimants who are purportedly asserting claims. We appreciate your consideration regarding this request.

Sincerely,

Michael J. Holecek

GIBSON DUNN

Gibson, Dunn & Crutcher LLP
333 South Grand Avenue, Los Angeles, CA 90071-3197
Tel +1 213.229.7018 • Fax +1 213.229.6018
MHolecek@gibsondunn.com • www.gibsondunn.com

Exhibit

E

From: [Ashley Keller](#)
To: [Holecek, Michael](#); [Lipshutz, Joshua S.](#)
Cc: [Warren Postman](#); [Sean Duddy](#); [Marquel Reddish](#)
Subject: 2,250 Individuals v. DoorDash, Inc.
Date: Monday, August 26, 2019 10:18:13 AM

Michael and Josh,

Keller Lenkner has filed individual demands for arbitration on behalf of 2,250 Claimants against your client, DoorDash, Inc.

Based on your agreement to accept electronic service on behalf of DoorDash, copies of Claimants' individual arbitration demands may be found [here](#) (password to follow under separate cover).

Regards,

Ashley

Ashley C. Keller
Partner

Keller | Lenkner

150 N. Riverside Plaza, Suite 4270 | Chicago, IL 60606
[312.741.5222](#) | [Website](#) | [Email](#)

Exhibit

F



EMPLOYMENT ARBITRATION RULES
DEMAND FOR ARBITRATION

To ensure your demand is processed promptly, please include a copy of the Arbitration Agreement, Plan or Contract.

Mediation: If you would like the AAA to contact the other parties and attempt to arrange mediation, please check this box .

Parties (Claimant)

Name of Claimant: Terrell Abernathy (KL Tracking No. 5836799)

Address: [REDACTED]

City: Carson State: California Zip Code: 90746

Phone No.: [REDACTED] Fax No.:

Email Address: [REDACTED]

Representative's Name (if known): Ashley Keller

Firm (if applicable): Keller Lenkner LLC

Representative's Address: 150 N. Riverside Plaza, Suite 4270

City: Chicago State: Illinois Zip Code: 60606

Phone No.: 3127415222 Fax No.:

Email Address: ack@kellerlenkner.com

Parties (Respondent)

Name of Respondent: DoorDash, Inc.

Address: 901 Market Street, 6th Floor

City: San Francisco State: California Zip Code: 94103

Phone No.: 8559731040 Fax No.:

Email Address:

Representative's Name (if known): Joshua S. Lipshutz

Firm (if applicable): Gibson, Dunn & Crutcher LLP

Representative's Address: 1050 Connecticut Avenue, N.W.

City: Washington State: DC Zip Code: 20036

Phone No.: 2029558217 Fax No.: 2025309614

Email Address: jlipshutz@gibsondunn.com

Claim: What was/is the employee/worker's annual wage range? Less than \$100,000 \$100,000-\$250,000 Over \$250,000
Note: This question is required by California law.

Amount of Claim: Claimant declines to specify the amount in controversy at this time, as the information needed to calculate damages is exclusively within DoorDash's control.

Claim involves: Statutorily Protected Rights Non-Statutorily Protected Rights



EMPLOYMENT ARBITRATION RULES
DEMAND FOR ARBITRATION

In detail, please describe the nature of each claim. You may attach additional pages if necessary:

Claimant has been a courier for DoorDash. DoorDash has exercised significant control over Claimant, including by determining which deliveries it has offered Claimant and how much it has paid Claimant for each delivery. Because DoorDash sets the material terms of its couriers' conduct, Claimant has not used managerial skill to increase profits. Claimant, along with other couriers, has made up DoorDash's core workforce; Claimant is integral to DoorDash's business. While working for DoorDash, Claimant has not operated a transportation-based business independent of DoorDash. DoorDash has thus misclassified Claimant as an independent contractor instead of an employee. Claimant seeks all available relief under the following provisions, as showing to be applicable following discovery of information exclusively within the control of Respondent: 29 U.S.C. §§ 206, 207 (Minimum Wage & Overtime); California Labor Code, Wage Order No. 9 (Minimum Wage & Overtime); Applicable Municipal Codes (Minimum Wage, Overtime, Sick Time & Notice Violations); California Labor Code § 226 (Wage Statement and Records Access); and Cal. Bus. & Prof. Code § 17200 (Unfair and Unlawful Business Practices).

Other Relief Sought: Attorneys Fees Interest Arbitration Costs Punitive/ Exemplary
 Other: declaratory relief; appropriate individual equitable relief, damages; penalties; and restitution

Please describe the qualifications for arbitrator(s) to hear this dispute:

Claimant requests that the arbitrator "be an attorney with experience in the law underlying the dispute." § XI.5.a.

Hearing: Estimated time needed for hearings overall: 6 hours

Hearing Locale: Claimant request a hearing location within 45 miles of Claimant's residence. § XI.5.b.

(check one) Requested by Claimant Locale provision included in the contract

Filing Fee requirement or \$300 (max amount per AAA) – Claimant will satisfy the \$300 filing fee requirement.

Filing by Company: \$2,200 single arbitrator \$2,800 three arbitrator panel

Notice: To begin proceedings, please send a copy of this Demand and the Arbitration Agreement, along with filing fee as provided for in the Rules, to: American Arbitration Association, Case Filing Services, 1101 Laurel Oak Road, Suite 100, Voorhees, NJ 08043. Send the original Demand to the Respondent.

Signature (may be signed by a representative):

Date:

August 26, 2019

Pursuant to Section 1284.3 of the California Code of Civil Procedure, consumers with a gross monthly income of less than 300% of the federal poverty guidelines are entitled to a waiver of arbitration fees and costs, exclusive of arbitrator fees. This law applies to all consumer agreements subject to the California Arbitration Act, and to all consumer arbitrations conducted in California. Only those disputes arising out of employer plans are included in the consumer definition. If you believe that you meet these requirements, you must submit to the AAA a declaration under oath regarding your monthly income and the number of persons in your household. Please contact the AAA's Western Case Management Center at 1-800-778-7879. If you have any questions regarding the waiver of administrative fees, AAA Case Filing Services can be reached at 877-495-4185. Please visit our website at www.adr.org if you would like to file this case online. AAA Customer Service can be reached at 800-778-7879.

Exhibit G

From: [AAA Tacy Zysk](#)
To: [Ashley Keller](#); [Warren Postman](#); [Sean Duddy](#); [Marquel Reddish](#); [Lipshutz Joshua S.](#); [Holecek Michael](#)
Cc: [AAA Heather Santo](#); [AAA Tacy Zysk](#)
Subject: 2,250 Individuals v. DoorDash, Inc.
Date: Monday, September 23, 2019 1:26:26 PM
Attachments: [image2c0ec7.PNG](#)
[image8f075e.JPG](#)
[Wire Transfer Information.pdf](#)

Dear Counsel,

This will acknowledge receipt on August 26, 2019 of 2,250 individual Demands for Arbitration alleging claims against DoorDash, Inc. Upon review of the documents, the AAA's Commercial Arbitration Rules and Mediation Procedures and the Employment/Workplace Fee Schedule shall apply to these disputes. We have assigned AAA Case # 01-19-0002-8045 to these matters. Please note all individual arbitrations will be assigned their own case numbers upon receipt of Respondent's portion of filing fees.

Pursuant to the Employment/Workplace Fee Schedule a filing fee of \$300.00 is due from the individuals when claims are filed, unless the agreement provides that the individual pay less. A fee of \$1,900.00 per case is due from the company, unless the agreement provides that the company pay more.

Claimants have met their filing fee requirements. Accordingly, we request that the company pay its share of the fees in the amount of \$4,275,000.00 (\$1,900.00 for 2,250 cases) on or before October 14, 2019.

Payment may be submitted via check, wire transfer or credit card. Attached are the AAA Wire Transfer instructions. If paying by check, please reference the above case number, and mail your payment to:

Attention: Larry Allston
American Arbitration Association
13727 Noel Road, Suite 700
Dallas, TX 75240

If you wish to pay by credit card, please contact me directly and I will provide an AAA Paylink.

Please note: no answering statement or counterclaim is due at this time. The AAA will notify the parties of the response deadlines when all fees have been received.

Should you have any questions, please do not hesitate to contact me.

Sincerely,

Tacy

AAA Tacy Zysk
Manager of ADR Services

American Arbitration Association

T: 401 431 4711 E: TacyZysk@adr.org
1301 Atwood Ave, Suite 211N, Johnston, RI 02919
adr.org | icdr.org | aaamediation.org

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Exhibit

H

From: [Holecek Michael](#)
To: [AAA Tacy Zysk](#); [Ashley Keller](#); [Warren Postman](#); [Sean Duddy](#); [Marquel Reddish](#); [Lipshutz Joshua S.](#)
Cc: [AAA Heather Santo](#)
Subject: RE: 2,250 Individuals v. DoorDash, Inc.
Date: Monday, October 7, 2019 12:35:43 PM
Attachments: [image002.png](#)
[image004.jpg](#)

Dear Ms. Zysk and Ms. Santo,

On behalf of DoorDash, I write to request a 30-day extension on the October 14, 2019, filing-fee deadline AAA has set for the matter of *2,250 Individuals v. DoorDash, Inc.* We request the extension because we need more time to review the arbitration demand, analyze its compliance with DoorDash's arbitration agreement, and research company records to try to identify the 2,250 claimants who are purportedly asserting claims. In the past, AAA has extended the filing-fee deadlines to provide DoorDash sufficient time to identify claimants and obtain the necessary approvals for large payments. Here, both the number of claimants and the amount of the filing-fee demand—2,250 and \$4,275,000.00—are much larger than before, and require additional time. Thank you for your consideration.

Michael J. Holecek

GIBSON DUNN

Gibson, Dunn & Crutcher LLP
333 South Grand Avenue, Los Angeles, CA 90071-3197
Tel +1 213.229.7018 • Fax +1 213.229.6018
MHolecek@gibsondunn.com • www.gibsondunn.com

Exhibit

I

From: [Holecek Michael](#)
To: [AAA Heather Santo](#); [Warren Postman](#); [Sean Duddy](#); [Ashley Keller](#); [Justin Griffin](#); [Lipshutz Joshua S.](#)
Cc: [AAA Tacy Zysk](#)
Subject: RE: 4,000 Individuals v. DoorDash, Inc.
Date: Monday, October 28, 2019 6:31:27 PM
Attachments: [image002.png](#)
[image004.jpg](#)

Dear Ms. Santo and Ms. Zysk,

We have completed our analysis of the most recent 6,250 arbitration demands filed by Keller Lenkner. See *2,250 Individuals v. DoorDash, Inc.* and *4,000 Individuals v. DoorDash, Inc.* We have determined that there are significant deficiencies with the claimants' filings, rendering the demands insufficient to launch arbitration under the DoorDash Independent Contractor Agreement, as well as AAA's own rules. As a result, DoorDash is under no obligation to, and will not at this time, tender to AAA the nearly \$12 million in administrative fees that have been requested.

As you are aware from DoorDash's past actions, including the hundreds of pending AAA arbitrations in which the company is presently engaged, the company is ready and willing to engage in individual arbitration with any independent contractor who has non-frivolous claims and follows the proper procedures for initiating arbitration. But requiring DoorDash to pay almost \$12 million in filing fees for deficient arbitration demands constitutes an excessive and unreasonable hardship.

We are happy to discuss these matters further with you if helpful.

Thank you,

Michael J. Holecek

GIBSON DUNN

Gibson, Dunn & Crutcher LLP
333 South Grand Avenue, Los Angeles, CA 90071-3197
Tel +1 213.229.7018 • Fax +1 213.229.6018
MHolecek@gibsondunn.com • www.gibsondunn.com

Exhibit

J

From: [Warren Postman](#)
To: [AAA Heather Santo](#); [Holecek Michael](#); [Sean Duddy](#); [Ashley Keller](#); [Justin Griffin](#); [Lipshutz Joshua S.](#)
Cc: [AAA Tacy Zysk](#)
Subject: RE: 4,000 Individuals v. DoorDash, Inc.
Date: Tuesday, October 29, 2019 12:10:43 PM
Attachments: [image005.png](#)
[image009.jpg](#)
[image012.png](#)
[image014.jpg](#)

Ms. Santo,

It is difficult to provide substantive comments since DoorDash has not identified the supposed deficiencies it claims prevent it from moving forward.

Mr. Holecek points to “hundreds of pending AAA arbitrations in which the company is presently engaged” as examples of DoorDash’s willingness to “engage in individual arbitration with any independent contractor who has non-frivolous claims and follows the proper procedures for initiating arbitration.”

But the most recent individual demands, which Mr. Holecek describes as “deficient,” are on the same AAA demand form, include the same categories of information, and were filed in the same manner as the 250 demands DoorDash previously treated as presenting “non-frivolous claims and follow[ing] the proper procedures for initiating arbitration.”

Mr. Holecek does not identify anything different about the most recent demands or explain what “significant deficiencies” its believes exist.

Per Mr. Holecek’s offer, we request that AAA set an administrative call this week so the parties can “discuss these matters further.” Counsel for Claimants will make ourselves available at AAA’s convenience any time this week.

Sincerely,

Warren D. Postman

Partner

Keller | Lenkner

1300 I Street, N.W., Suite 400E | Washington, D.C. 20005

[202.749.8334](tel:202.749.8334) | [Website](#) | [Email](#)

Exhibit

K

From: [AAA Heather Santo](#)
To: [Warren Postman](#); [Holecek, Michael](#); [Sean Duddy](#); [Ashley Keller](#); [Justin Griffin](#); [Lipshutz, Joshua S.](#)
Cc: [AAA Tacy Zysk](#)
Subject: RE: 4,000 Individuals v. DoorDash, Inc.
Date: Tuesday, October 29, 2019 2:48:35 PM
Attachments: [image001.png](#)
[image002.jpg](#)
[image003.png](#)
[image004.jpg](#)
[imaged395e4.PNG](#)
[imagedf0dbf.JPG](#)

Dear Counsel,

This will acknowledge receipt of Claimants' below email. AAA's filing requirements are specified under Rule 4 of the Commercial Arbitration Rules. We have made an administrative determination that the minimum filing requirements have been met by Claimants. If Respondent has a specific question regarding information provided, or not provided, by Claimants, please advise in writing by October 31, 2019.

We hope the parties can discuss the filing requirements and come to a mutual agreement, but if AAA needs to convene an administrative call to assist with that discussion we will do so. This request must be made no later than October 31, 2019.

Absent party agreement or new information regarding the filing of these cases, Respondent's fees remain due by November 7, 2019. If there is not an agreement by the parties and fees are not paid, the AAA will decline to administer these cases and the files will be closed.

Please do not hesitate to contact me should you have any questions.

Sincerely,

Heather Santo

Heather Santo

American Arbitration Association

1301 Atwood Ave, Suite 211N, Johnston, RI 02919

T: 401 431 4703 F: 401 435 6529 E: heathersanto@adr.org

adr.org | icdr.org | aaamediation.org

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Exhibit

L

From: [AAA Heather Santo](#)
To: [Warren Postman](#); [Holecek Michael](#); [Sean Duddy](#); [Ashley Keller](#); [Justin Griffin](#); [Lipshutz Joshua S.](#)
Cc: [AAA Tacy Zysk](#)
Subject: RE: 4,000 Individuals v. DoorDash, Inc.
Date: Friday, November 8, 2019 10:45:49 AM
Attachments: [image001.png](#)
[image002.jpg](#)
[image003.png](#)
[image004.jpg](#)
[image005.png](#)
[image006.jpg](#)
[image05b409.PNG](#)
[image64b32.JPG](#)

Dear Counsel:

Respondent has failed to submit the previously requested filing fees for the 6,250 individual matters; accordingly, we have administratively closed our files. Claimants filing fees will be refunded under separate cover.

Please do not hesitate to contact me, should you have any questions.

Sincerely,

Heather Santo

Heather Santo

American Arbitration Association

1301 Atwood Ave, Suite 211N, Johnston, RI 02919

T: 401 431 4703 F: 401 435 6529 E: heathersanto@adr.org
adr.org | icdr.org | aaamediation.org

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Exhibit

M

1 UNITED STATES DISTRICT COURT
2 FOR THE NORTHERN DISTRICT OF CALIFORNIA
3 OAKLAND DIVISION

4 JAMAL ADAMS, et al.
5 Petitioners,
6 vs.
7 POSTMATES, INC.,
8 Respondent.

Case No: 19-3042 SBA

**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

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

21 The parties are presently before the Court on Petitioners’ Motion to Compel
22 Arbitration and Postmates’ Cross-Motion to Compel Arbitration and Stay Proceedings
23 pursuant to the Federal Arbitration Act (“FAA”), 9 U.S.C. §§ 3, 4. Both parties seek to
24 compel arbitration but with the imposition of additional conditions. Petitioners request an
25 order compelling Postmates to tender its share of the arbitration fees to the arbitrator so that
26 the arbitrations may proceed. Postmates seeks an order compelling Petitioners to refile
27 their respective arbitration demands in a manner that, inter alia, includes more details and to
28 proceed before the arbitrator in an “individual” manner. Having read and considered the

1 papers filed in connection with this matter and being fully informed, the Court GRANTS
2 both motions insofar as they seek an order compelling arbitration and DENIES them in all
3 other respects. The Court, in its discretion, find this matter suitable for resolution without
4 oral argument. See Fed. R. Civ. P. 78(b); N.D. Cal. Civ. L.R. 7-1(b).

5 **I. BACKGROUND**

6 **A. FACTUAL SUMMARY**

7 Postmates operates an online and mobile platform and app to facilitate food
8 deliveries from restaurants and other sources. Campbell Decl. in Supp. of Resp’t’s Opp’n
9 ¶ 2, Dkt. 112-3. Through the Postmates app, customers can order food from participating
10 merchants, which, in turn, is delivered by couriers compensated by Postmates. Petition
11 ¶ 14, Dkt. 1. Individuals who sign up with Postmates to become couriers are required to
12 execute a Fleet Agreement, which classifies couriers as independent contractors, not
13 employees of Postmates. Id. As will be discussed below, the agreement also contains
14 various other provisions intended to govern Postmates and the courier’s relationship and
15 their respective rights and obligations arising out of that relationship. Id. ¶ 16; Keller Decl.
16 in Supp. of Mot. to Compel Arb. Ex. B (“Fleet Agt.” or “2018 Fleet Agt.”) § 1, Dkt. 5-2.¹

17 **1. Mutual Arbitration Provision**

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

23 To initiate an arbitration, the claimant must submit to Postmates a demand for
24 arbitration which sets forth: (1) the name and address of the Party seeking arbitration; (2) a
25

26 ¹ There are two relevant versions of this agreement, both of which contain a Mutual
27 Arbitration Provision. The first agreement, effective May 11, 2018 (the “2018
28 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.

1 statement of the legal and factual basis of the claim; and (3) a description of the remedy
2 sought. Id. § 10B.i. Pursuant to the Class Action Waiver and Representative Action
3 Waiver (collectively “Waivers”) section of the Mutual Arbitration Provision, claimants are
4 barred from bringing or participating in a class, collective or representative action; rather,
5 the claimant agrees that the dispute “will be resolved in individual arbitration.” Id. § 10B.i
6 & 10B.ii.

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

11 Only an arbitrator, and not any federal, state, or local court or
12 agency, shall have the exclusive authority to resolve any dispute
13 relating to the interpretation, applicability, enforceability, or
14 formation of this Mutual Arbitration Provision, including
15 without limitation any dispute concerning arbitrability.
16 However, as stated in Section 10B.iv below, the preceding
17 clause shall not apply to any dispute relating to or arising out of
18 the Class Action Waiver and Representative Action Waiver,
19 which must proceed in a court of competent jurisdiction and
20 cannot be heard or arbitrated by an arbitrator.

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

24 Notwithstanding any other clause contained in this Agreement,
25 this Mutual Arbitration Provision, or the American Arbitration
26 Association Commercial Arbitration Rules (“AAA Rules”), any
27 claim that all or part of this Class Action Waiver and/or
28 Representative Action Waiver is unenforceable,
unenforceable, 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 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

1 initiate arbitration proceedings. Evangelis Decl. in Supp. of Resp't's Cross-Mot. ¶¶ 7, Dkt.
2 228-1. The AAA, however, indicated that the arbitrations would move forward and that
3 payment of the filing fees was expected. Id. Though maintaining that Petitioners had not
4 properly commenced arbitration, Postmates contacted Counsel to discuss scheduling a
5 mediation (instead of arbitration). Id. Counsel was agreeable to mediation, provided it
6 were to take place by May 31, 2019. Id. The parties were unable to schedule a mediation
7 by that deadline, however. Id.

8 On May 31, 2019, the deadline for Postmates' payment of fees, the AAA contacted
9 Postmates for its position on whether the AAA could properly assess fees against Postmates
10 in light of Petitioners' arbitration demands. Id. ¶ 10. Postmates responded that, in its view,
11 no arbitration proceedings or corresponding obligation to pay arbitration fees had been
12 triggered on the ground that Petitioners' arbitration demands were improper. Id. Ex. E.

13 B. PROCEDURAL HISTORY

14 On June 3, 2019, Petitioners filed their Petition to Compel Arbitration in this Court
15 under the FAA. Dkt. 1. The Petition alleges Postmates has yet to pay any part of the
16 arbitration filing fees owed, and that absent such payment, the AAA will not commence the
17 arbitrations. Petition ¶¶ 24-25. As relief, Petitioner seeks to compel arbitration along with
18 an order specifying that (1) "Postmates shall pay all arbitration filing fees due for
19 Petitioners' pending demands for arbitration within 14 days of this Court's Order" and
20 (2) that "Postmates shall pay future AAA invoices related to Petitioners' arbitrations within
21 14 days of receipt." Id. ¶ 29.

22 In support of its Petition, Petitioners have filed a Motion to Compel Arbitration.
23 Dkt. 2. In response, Postmates filed an opposition and a separate Cross-Motion to Compel
24 Arbitration ("Cross-Motion"). Dkt. 112, 228. In its Cross-Motion, Postmates agrees that
25 Petitioners' wage and hour claims are subject to and should be resolved by arbitration.
26 However, Postmates contends that the manner in which Petitioners submitted their
27 arbitration demands is tantamount to a de facto class action, which is barred under the Class
28 Action Waiver. Thus, Postmates asserts that the Court should compel arbitration and "enter

1 an order: (1) requiring each Petitioner to refile his or her demand as an individual
2 arbitration demand that sets forth the facts and legal theories of relief applicable to the
3 particular Petitioner; and (2) requiring each Petitioner, after refileing, to proceed to
4 arbitration on an individual basis....” Cross-Mot. at 15, Dkt. 228. The motions are fully
5 briefed and are ripe for adjudication.

6 **II. LEGAL STANDARD**

7 The FAA governs the enforcement of arbitration agreements involving interstate
8 commerce. 9 U.S.C. § 2. The Act “mandates that district courts shall direct parties to
9 proceed to arbitration on issues as to which an arbitration agreement has been signed.”
10 Dean Witter Reynolds, Inc. v. Byrd, 470 U.S. 213, 218 (1985) (emphasis in original);
11 9 U.S.C. § 4. Thus, on a motion to compel arbitration, the district court’s role is limited to
12 determining “(1) whether a valid agreement to arbitrate exists and, if it does, (2) whether
13 the agreement encompasses the dispute at issue.” Kilgore v. KeyBank Nat’l Ass’n, 673
14 F.3d 947, 955-56 (9th Cir. 2012) (citing Chiron Corp. v. Ortho Diagnostic Sys., Inc., 207
15 F.3d 1126, 1130 (9th Cir. 2000)). If these factors are met, the court must enforce the
16 arbitration agreement in accordance with its precise terms. Id.

17 Where a district court determines that a dispute is subject to arbitration under a
18 written agreement, the court “shall on application of one of the parties stay the trial of the
19 action until such arbitration has been had in accordance with the terms of the agreement,
20 providing the applicant for the stay is not in default in proceeding with such arbitration.”
21 9 U.S.C. § 3; Leicht v. Bateman Eichler, Hill Richards, Inc., 848 F.2d 130, 133 (9th Cir.
22 1988) (noting that the FAA “requires that the court stay judicial proceedings until the
23 matter has been arbitrated according to the terms of the arbitration agreement”).

24 **III. DISCUSSION**

25 The parties agree that the Mandatory Arbitration Provision is valid and that
26 Petitioners’ misclassification claims must be resolved through arbitration. According to
27 Petitioners, the principal impediment to moving forward with the arbitrations is Postmates’
28 refusal to pay its share of the arbitration fees. Postmates counters that no fees are due

1 because Petitioners have yet to properly submit their demands. As support, Postmates
2 points to the arbitration clause, which requires a courier to resolve any disputes “on an
3 individual basis” through final and binding arbitration. According to Postmates, Petitioners
4 failed to comport with that requirement, instead submitting a single document “setting forth
5 the grievances in generic terms that were not specific to any particular individual,” along
6 with a spreadsheet listing the names of the claimants to whom the allegations applied.
7 Resp’t’s Cross-Mot. at 6, Dkt. 228. Postmates argues that by presenting their claims to the
8 arbitrator in that manner, Petitioners are attempting to proceed with the arbitration on a de
9 facto classwide or class action basis in violation of the Class Action Waiver. Id. at 10.²

10 **A. SCOPE OF THE COURT’S INQUIRY**

11 The threshold issue presented by Postmates’ Cross-Motion is whether this Court—or
12 the arbitrator—is the appropriate venue to resolve whether Petitioners properly initiated
13 arbitration proceedings in accordance with the Mandatory Arbitration Provision. The
14 starting point for resolving this issue requires the Court to examine the delegation clause in
15 the arbitration agreement at issue. See Rent-A-Ctr., W., Inc. v. Jackson, 561 U.S. 63, 68
16 (2010). Through such a clause, parties may delegate “gateway” questions of arbitrability to
17 an arbitrator. See Henry Schein, Inc. v. Archer & White Sales, Inc., 139 S. Ct. 524, 527,
18 529 (2019). To effectively delegate such questions, the parties must do so “clearly and
19 unmistakably.” Id. at 527.

20 The Fleet Agreement clearly and unmistakably confers the arbitrator with the
21 authority to resolve issues concerning arbitrability. See Fleet Agt. § 10a.ii (“Only an
22

23 _____
24 ² Throughout its various briefs, Postmates expends considerable energy accusing
25 Petitioners of using the cost of the arbitration process as a means of coercing Postmates into
26 settling their claims expeditiously. However, under the Fleet Agreement drafted by
27 Postmates which its couriers are required to sign, Petitioners had no option other than to
28 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.

1 arbitrator ... shall have the exclusive authority to resolve ... any dispute concerning
2 arbitrability.”³ The only matters excepted from the delegation clause are certain disputes
3 regarding the Class Action Waiver and Representative Action Waiver. See id. § 10a.ii,
4 10B.iv. Section 10a.11 states, in relevant part:

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

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

14 Notwithstanding any other clause contained in this Agreement,
15 this Mutual Arbitration Provision, or the American Arbitration
16 Association Commercial Arbitration Rules (“AAA Rules”), any
17 claim that all or part of this Class Action Waiver and/or
18 Representative Action Waiver is unenforceable,
19 unconscionable, void, or voidable shall be determined only by a
20 court of competent jurisdiction and not by an arbitrator....

21 Id. § 10B.iv (emphasis added).

22 The parties disagree regarding the scope of the exception to the delegation clause.
23 Petitioners take the position that, pursuant to Section 10B.iv, the exception to the delegation
24 clause is limited to challenges that the Class Action or Representative Action Waiver “is
25 unenforceable, unconscionable, void, or voidable”—and contends that no such claim has
26 been made. Opp’n to Cross-Mot. at 3. In response, Postmates, relying on Section 10A.ii,
27 asserts that the exception more broadly encompasses “any dispute relating to or arising out
28

25 ³ The Mutual Arbitration Clause also incorporates the AAA rules, which further
26 supports the conclusion that the arbitrator determines arbitrability. See Brennan v. Opus
27 Bank, 796 F.3d 1125, 1130 (9th Cir. 2015) (holding that the incorporation by reference the
28 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”).

1 of the Class Action Waiver and Representative Action Waiver.” Reply at 4 (emphasis
2 added). In other words, Postmates’ position is that Sections 10A.ii and 10B.iv together
3 provide two independent exceptions to the delegation clause in cases involving: (1) “any
4 dispute relating to or arising out of the Class Action Waiver and Representative Action
5 Waiver”; and (2) any claim that the aforementioned Waivers are unenforceable,
6 unconscionable, void, or voidable. Resp’t’s Reply in Supp. of Cross-Mot. at 4-5, Dkt. 238.
7 Postmates contends that the question of whether Petitioners are improperly pursuing a de
8 facto class action falls within the “any dispute” exception. For reasons that follow,
9 however, the Court concurs with Petitioners’ interpretation of the delegation clause and
10 finds Postmates’ interpretation of the clause untenable.

11 A court interpreting an arbitration clause applies state law principles of contract
12 interpretation. Volt Info. Scis., Inc. v. Bd. of Trustees of Leland Stanford Junior Univ., 489
13 U.S. 468, 475 (1989). Under California law, “the meaning of a contract must be derived
14 from reading the whole of the contract, with individual provisions interpreted together, in
15 order to give effect to all provisions and to avoid rendering some meaningless.” Zalkind v.
16 Ceradyne, Inc., 194 Cal. App. 4th 1010, 1027 (2011); Cal. Civ. Code § 1641 (“The whole
17 of a contract is to be taken together, so as to give effect to every part, if reasonably
18 practicable, each clause helping to interpret the other.”). “Under the plain meaning rule,
19 courts give the words of the contract ... their usual and ordinary meaning.” Valencia v.
20 Smyth, 185 Cal. App. 4th 153, 162 (2010). “Contract terms must be interpreted as a whole
21 and in context, rather than in isolation.” Elijahjuan v. Superior Court, 210 Cal. App. 4th
22 15, 28 (2012). “[W]hen interpreting a contract, [courts] strive to interpret the parties’
23 agreement to give effect to all of a contract’s terms, and to avoid interpretations that render
24 any portion superfluous, void or inexplicable.” Brandwein v. Butler, 218 Cal. App. 4th
25 1485, 1507 (2013).

26 Applying the foregoing principles, the Court finds that the exception to the
27 delegation clause is limited specifically to challenges to the enforceability of the Class
28 Action and Representative Action Waivers—and not more generally to “any dispute”

1 concerning the waivers, as Postmates contends. This conclusion is supported by the plain
2 language and structure of the exception to the delegation clause, which begins, “as stated in
3 Section 10B.iv below, the preceding clause [conferring the arbitrator with the authority to
4 determine arbitrability] shall not apply to any dispute relating to or arising out of the Class
5 Action Waiver and Representative Action Waiver” Fleet Agt. § 10A.ii (emphasis
6 added). By prefacing the exception with “as stated in Section 10B.iv below,” the maxims
7 of contract interpretation require the Court to construe “any dispute” in tandem with the
8 provisions of Section 10B.iv. See Zalkind, 194 Cal. App. 4th at 1027.

9 As noted, Section 10B.iv explicitly limits the delegation clause exception to “any
10 claim that all or part of this Class Action Waiver and/or Representative Action Waiver is
11 unenforceable, unconscionable, void, or voidable.” Fleet Agt. § 10B.iv (emphasis added).
12 Postmates’ contention that Sections 10A.ii and 10B.iv together provide two independent
13 exceptions to the delegation clause is unconvincing. Construing the “any dispute”
14 language as a separate exception would impermissibly render the more specific provisions
15 in Section 10B.iv superfluous, since “any dispute” would always include a claim that the
16 Waivers are unenforceable. See Hemphill v. Wright Family, LLC, 234 Cal. App. 4th 911,
17 915 (2015) (noting that contracts cannot be construed in a manner that render any provision
18 “nugatory, inoperative or meaningless”). Moreover, to the extent there is any inconsistency
19 in terms of whether the exception applies to “any dispute” as opposed to the enforceability
20 of the class action waiver, the more specific limitation set forth in Section 10B.iv controls
21 the more general statement in Section 10A.ii. See S. Cal. Gas Co. v. City of Santa Ana,
22 336 F.3d 885, 891 (9th Cir. 2003) (noting that it is “[a] standard rule of contract
23 interpretation ... that when provisions are inconsistent, specific terms control over general
24 ones.”) (emphasis added).

25 In sum, the Court finds that the Fleet Agreement delegates to the arbitrator the
26 exclusive authority to resolve any dispute concerning arbitrability. The only exception to
27 that delegation is for any claim that the Class Action Waiver and/or Representative Action
28 Waiver is “unenforceable, unconscionable, void, or voidable.” Fleet Agt. § 10B.iv

1 (emphasis added). No party in this action has made any claim that either Waiver is
2 unenforceable, unconscionable, void, or voidable. As such, the argument made by
3 Postmates—i.e., that Petitioners’ arbitration claims, in the form presented to the arbitrators,
4 improperly constitute an attempt to arbitrate on a classwide basis—is not within the
5 purview of this Court and must instead be decided by the arbitrator. Henry Schein, 139 S.
6 Ct. at 529 (“When the parties’ contract delegates the arbitrability question to an arbitrator, a
7 court may not override the contract. In those circumstances, a court possesses no power to
8 decide the arbitrability issue.”).

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

1 **B. RELIEF SOUGHT**

2 **1. Postmates' Request**

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

14 **2. Petitioners' Request**

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

24 Upon reviewing the record and relevant authorities, the Court declines to enter an
25 order compelling Postmates to pay outstanding and future arbitration fees. The Fleet
26 Agreement specifies that the AAA Commercial Arbitration Rules shall govern any
27 arbitration between the parties. Fleet Agt. § 10B.vi, viii. Those Rules include provisions
28 regarding the payment of arbitration fees, see AAA Comm. Arb. Rules, Rule R-53

1 (Administrative Fees), id. R-56 (Deposits), as well the available remedies for non-payment,
2 see id. R-57. In view of those provisions and the fact that they have been incorporated into
3 the Fleet Agreement, the Court concludes that the payment of arbitration fees, including
4 related expenses, is a procedural condition precedent to be decided by the arbitrator. Dealer
5 Computer Servs., Inc. v. Old Colony Motors, Inc., 588 F.3d 884, 887 (5th Cir. 2009)
6 (“Payment of fees is a procedural condition precedent that the trial court should not
7 review.”); accord JPD, Inc. v. Chronimed Holdings, Inc., 539 F.3d 388, 392 (6th Cir.
8 2008); see also Lifescan, Inc. v. Premier Diabetic Servs., Inc., 363 F.3d 1010, 1012-13 (9th
9 Cir. 2004) (holding that the AAA Commercial Arbitration Rules confer the arbitrator with
10 discretion regarding the payment of arbitration fees). For these reasons, the Court denies
11 Petitioners’ request for an order directing Postmates to tender payment of outstanding and
12 future arbitration fees.

13 **IV. CONCLUSION**


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

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

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IT IS SO ORDERED.

Dated: 10/22/19


SAUNDRA BROWN ARMSTRONG
Senior United States District Judge

Exhibit

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17 UNITED STATES DISTRICT COURT
18 NORTHERN DISTRICT OF CALIFORNIA
19 SAN FRANCISCO DIVISION

20 RAYMOND MCKAY,
21 Plaintiff,
22 v.
23 DOORDASH, INC.,
24 Defendant.

CASE NO. 3:19-cv-04289-MMC

**DEFENDANT’S NOTICE OF MOTION AND
MOTION TO COMPEL ARBITRATION
AND STAY PROCEEDINGS**

*[Declarations of Stanley Tang, Cody Aughney,
and Joshua Lipshutz and [Proposed] Order filed
concurrently herewith]*

Action Filed: July 26, 2019

Hearing Date: October 25, 2019
Hearing Time: 9:00 a.m.
Hearing Place: Courtroom 7 – 19th Floor
Hon. Maxine M. Chesney

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE THAT on October 25, 2019, at 9:00 a.m., or as soon as the matter may be heard before the Honorable Maxine M. Chesney of the United States District Court for the Northern District of California in the San Francisco Courthouse, Courtroom 7, 19th Floor, 450 Golden Gate Avenue, San Francisco, California 94102, Defendant DoorDash, Inc. will and does move this Court for an order compelling arbitration on an individual basis of the claims of Plaintiff Raymond Mckay and staying this action. This motion is brought on the grounds that Plaintiff’s claims against DoorDash are subject to a valid and enforceable arbitration agreement that requires Plaintiff to arbitrate those claims on an individual basis. *See* 9 U.S.C. §§ 3–4.

DoorDash also requests a stay of proceedings (including briefing on Plaintiff’s Motion for Partial Summary Judgment) pending resolution of DoorDash’s Motion to Compel Arbitration.

DoorDash’s motion is based on this Notice of Motion and Motion, the accompanying Memorandum of Points and Authorities, the concurrently filed Declarations of Stanley Tang, Cody Aughney, and Joshua Lipshutz, any other matters of which the Court may take judicial notice, other documents on file in this action, and any oral argument of counsel.

Dated: August 12, 2019

GIBSON, DUNN & CRUTCHER LLP

By: /s/ Joshua Lipshutz
Joshua Lipshutz

Attorneys for Defendant DOORDASH, INC.

TABLE OF CONTENTS

Page

I. INTRODUCTION 1

II. STATEMENT OF RELEVANT FACTS 2

 A. DoorDash’s Platform Connects Customers, Restaurants, And Delivery Contractors 2

 B. Plaintiff Signs Up For A DoorDash Account In April 2019 2

 C. Plaintiff Attempts To Opt Out Of The ICA’s Arbitration Agreement After The Expiration Of The 30-Day Period To Do So 4

 D. Notwithstanding His Agreement To Individually Arbitrate Disputes, Plaintiff Files This Lawsuit And Moves For Partial Summary Judgment Before Serving His Complaint 5

III. PLAINTIFF SHOULD BE COMPELLED TO ARBITRATE HIS CLAIMS ON AN INDIVIDUAL BASIS 5

 A. The Arbitration Agreement Is Governed By The Federal Arbitration Act 6

 B. The Arbitration Agreement Is Valid And Must Be Enforced 8

 1. The Delegation Clause In The Arbitration Agreement Is Valid And Enforceable 9

 2. The Gateway Issues Under The FAA Have Been Satisfied 11

 C. The Arbitration Class Action Waiver Is Valid And Enforceable 14

 D. At Minimum, This Action Should Be Stayed Pending Arbitration Of Plaintiff’s Individual Claims 15

IV. CONCLUSION 16

TABLE OF AUTHORITIES

Page(s)

Cases

1

2

3

4 *Allied-Bruce Terminix Cos. v. Dobson*,

5 513 U.S. 265 (1995).....7

6 *Am. Express Corp. v. Italian Colors Rest.*,

7 570 U.S. 228 (2013).....1

8 *Armstrong v. Michaels Stores, Inc.*,

9 2018 WL 6505997 (N.D. Cal. Dec. 11, 2018).....15

10 *AT&T Mobility LLC v. Concepcion*,

11 563 U.S. 333 (2011).....1, 6, 14

12 *Bonner v. Mich. Logistics Inc.*,

13 250 F. Supp. 3d 388 (D. Ariz. 2017).....11

14 *Bradford v. Flagship Facility Servs. Inc.*,

15 2017 WL 3130072 (N.D. Cal. July 24, 2017).....11

16 *Brennan v. Opus Bank*,

17 796 F.3d 1125 (9th Cir. 2015).....9

18 *Burks v. Autonomy, Inc.*,

19 2012 WL 13005954 (S.D. Fla. May 15, 2012)8

20 *Caccavelli v. Jetro Holdings, LLC*,

21 2019 WL 499767 (E.D.N.Y. Feb. 8, 2019).....1, 15

22 *Castro v. Macy’s, Inc.*,

23 2017 WL 344978 (N.D. Cal. Jan. 24, 2017)11

24 *Circuit City Stores, Inc. v. Ahmed*,

25 283 F.3d 1198 (9th Cir. 2002).....10, 11

26 *Citizens Bank v. Alafabco, Inc.*,

27 539 U.S. 52 (2003).....7, 8

28 *DIRECTV, Inc. v. Imburgia*,

136 S. Ct. 463 (2015).....7

Div. of Labor Law Enforc. v. Transpacific Transp.,

69 Cal. App. 3d 268 (1977).....12

DoorDash, Inc. v. Marciano

(Santa Clara Super. Ct. Mar. 21, 2016).....6

Edwards v. DoorDash, Inc.,

2016 WL 7852532 (S.D. Tex. Dec. 8, 2016,)6, 14

Edwards v. DoorDash, Inc.,

2017 WL 5514302 (S.D. Tex. Oct. 18, 2017).....6, 14

1 *EEOC v. Waffle House, Inc.*,
534 U.S. 279 (2002).....13

2

3 *Epic Sys. Corp. v. Lewis*,
138 S. Ct. 1612 (2018).....1, 6, 7, 12, 14

4 *Ericksen, Arbuthnot, McCarthy, Kearney & Walsh Inc. v. 100 Oak Street*,
35 Cal. 3d 312 (1983)9

5

6 *Erwin v. Citibank, N.A.*,
2017 WL 1047575 (S.D. Cal. Mar. 20, 2017)10

7 *Farran v. DoorDash, Inc.*
(O.C. Super. Ct. Mar. 7, 2019).....1, 6, 14

8

9 *First Options of Chi., Inc. v. Kaplan*,
514 U.S. 938 (1995).....11

10 *Fisher v. San Pedro Peninsula Hosp.*,
214 Cal. App. 3d 590 (1989).....5

11

12 *Gaffers v. Kelly Servs., Inc.*,
900 F.3d 293 (6th Cir. 2018).....1, 15

13 *Gutierrez v. Jolt Delivery, LLC*,
2018 WL 6118581 (C.D. Cal. Aug. 7, 2018).....1, 15

14

15 *Heidrich v. PennyMac Fin. Servs. Inc.*,
2018 WL 3388458 (E.D. Cal. July 11, 2018)1, 15

16 *Henry Schein, Inc. v. Archer & White Sales, Inc.*,
139 S. Ct. 524 (2019).....9

17

18 *Horenstein v. Mortg. Mkt., Inc.*,
9 F. App'x 618 (9th Cir. 2001)15

19 *Howsam v. Dean Witter Reynolds, Inc.*,
537 U.S. 79 (2002).....9

20

21 *Jacobson v. Snap-on Tools Co.*,
2015 WL 8293164 (N.D. Cal. Dec. 9, 2015).....16

22 *Khalatian v. Prime Time Shuttle, Inc.*,
237 Cal. App. 4th 651 (2015).....8

23

24 *Kilgore v. KeyBank, Nat'l Ass'n*,
718 F.3d 1052 (9th Cir. 2013).....10, 11

25 *Levin v. Caviar, Inc.*,
146 F. Supp. 3d 1146 (N.D. Cal. 2015)12

26

27 *Long v. Provide Commerce, Inc.*,
245 Cal. App. 4th 855 (2016).....12

28 *Lyons v. DoorDash, Inc.*
(C.D. Cal. May 19, 2017).....6

1 *Magana v. DoorDash, Inc.*,
 343 F. Supp. 3d 891 (N.D. Cal. 2018) 1, 6, 14, 15

2

3 *Manard v. Knology, Inc.*,
 2010 WL 2528320 (M.D. Ga. June 18, 2010) 8

4 *Marciano v. DoorDash, Inc.*
 (S.F. Super. Ct., Dec. 7, 2018) 6

5

6 *Marin Storage & Trucking, Inc. v. Benco Contracting & Eng’g, Inc.*,
 89 Cal. App. 4th 1042 (2001) 12

7 *Marko v. DoorDash, Inc.*
 (L.A. Super. Ct. May 29, 2018) 1, 6, 14

8

9 *Mastrobuono v. Shearson Lehman Hutton*,
 514 U.S. 52 (1995) 7, 14

10 *Metalclad Corp. v. Ventana Envtl. Organizational P’ship*,
 109 Cal. App. 4th 1705 (2003) 11

11

12 *Meyer v. Uber Techs., Inc.*,
 868 F.3d 66 (2d Cir. 2017) 12

13 *Mohamed v. Uber Techs., Inc.*,
 848 F.3d 1201 (9th Cir. 2016) 9, 10, 11

14

15 *Montes v. San Joaquin Cmty. Hosp.*,
 2014 WL 334912 (E.D. Cal. Jan. 29, 2014) 7

16 *Moses H. Cone Mem’l Hosp. v. Mercury Constr. Corp.*,
 460 U.S. 1 (1983) 7, 9

17

18 *Mundi v. Union Sec. Life Ins. Co.*,
 2007 WL 2385069 (E.D. Cal. Aug. 17, 2007) 16

19 *Posephny v. AMN Healthcare Inc.*,
 2019 WL 452036 (N.D. Cal. Feb. 5, 2019) 10

20

21 *Prasad v. Pinnacle Prop. Mgmt. Servs., LLC*,
 2018 WL 4586960 (N.D. Cal. Sept. 25, 2018) 16

22 *Rent-A-Center, W., Inc. v. Jackson*,
 561 U.S. 63 (2010) 9

23

24 *Rodriguez v. Am. Techs., Inc.*,
 136 Cal. App. 4th 1110 (2006) 7

25 *Rosenthal v. Great W. Fin. Sec. Corp.*,
 14 Cal. 4th 394 (1996) 11

26

27 *Scott v. Yoho*,
 248 Cal. App. 4th 392 (2016) 8

28 *Silva v. Darden Restaurants, Inc.*,
 2018 WL 3533364 (C.D. Cal. July 20, 2018) 1, 15

1 *Spikener v. Noble Food Grp., Inc.*,
 2018 WL 4677680 (N.D. Cal. Sept. 27, 2018) 11

2

3 *Stewart v. Preston Pipeline Inc.*,
 134 Cal. App. 4th 1565 (2005)..... 12

4 *Stiener v. Apple Comput., Inc.*,
 2007 WL 4219388 (N.D. Cal. Nov. 29, 2007)..... 16

5

6 *Strotz v. Dean Witter Reynolds, Inc.*,
 223 Cal. App. 3d 208 (1990)..... 13

7 *Swift v. Zynga Game Network, Inc.*,
 805 F. Supp. 2d 904 (N.D. Cal. 2011) 12

8

9 *Tompkins v. 23andMe, Inc.*,
 2014 WL 2903752 (N.D. Cal. June 25, 2014) 12

10 *United Steelworkers v. Warrior & Gulf Navigation Co.*,
 363 U.S. 574 (1960)..... 11, 13

11

12 *Valencia v. Smyth*,
 185 Cal. App. 4th 153 (2010)..... 7

13 *Villalpando v. Exel Direct Inc.*,
 2015 WL 5179486 (N.D. Cal. Sept. 3, 2015) 5

14

15 *Voll v. HCL Techs. Ltd.*,
 2019 WL 144863 (N.D. Cal. Jan. 9, 2019) 11

16 *Volt Info. Scis. v. Bd. of Trustees of Leland Stanford Junior Univ.*,
 489 U.S. 468 (1989)..... 14

17

18 *Wagner v. Stratton Oakmont, Inc.*,
 83 F.3d 1046 (9th Cir. 1996)..... 13

19 **Statutes**

20 9 U.S.C. § 2 6

21 9 U.S.C. § 3 1, 15

22 9 U.S.C. § 4 8

23 29 U.S.C. § 201 1

24 29 U.S.C. § 216(b) 5, 15

25 Cal. Civ. Code § 1550 11, 12

26 Cal. Civ. Code § 1556 12

27 Cal. Civ. Code § 1565 12

28

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Rules

Fed. R. Civ. P. 56(d) 5

I. INTRODUCTION

1
2 Plaintiff Raymond McKay claims that Defendant DoorDash, Inc. has misclassified all of its
3 delivery providers across the United States as independent contractors, and he purports to bring this
4 lawsuit as a collective action under the Fair Labor Standards Act, 29 U.S.C. § 201 *et seq.* (“FLSA”).
5 DoorDash disputes the merits of Plaintiff’s claims, but as a threshold matter, Plaintiff cannot litigate
6 these claims in this Court because he agreed to arbitrate any claims against DoorDash on an individual
7 basis.

8 The Supreme Court repeatedly has held that arbitration agreements requiring individualized
9 arbitration must be enforced. *See Epic Sys. Corp. v. Lewis*, 138 S. Ct. 1612, 1619 (2018); *Am. Express*
10 *Corp. v. Italian Colors Rest.*, 570 U.S. 228, 238–39 (2013); *AT&T Mobility LLC v. Concepcion*, 563
11 U.S. 333, 352 (2011). The parties’ Arbitration Agreement here, including its individualized-arbitration
12 requirement, is valid and enforceable under the Federal Arbitration Act (“FAA”), and covers all of the
13 claims Plaintiff alleges in this action. Every court to examine DoorDash’s Independent Contractor
14 Agreement (“ICA”) has found that it is governed by the FAA, and courts regularly compel contractors
15 like Plaintiff to individualized arbitration. Indeed, in October 2018, this Court (the Honorable Phyllis
16 Hamilton) granted DoorDash’s motion to compel individualized arbitration based on a materially
17 identical arbitration agreement. *Magana v. DoorDash, Inc.*, 343 F. Supp. 3d 891 (N.D. Cal. 2018); *see*
18 *also Farran v. DoorDash, Inc.* (O.C. Super. Ct. Mar. 7, 2019) (Lipshutz Decl. Ex. A) (granting
19 DoorDash’s motion to compel arbitration of putative class action); *Marko v. DoorDash, Inc.* (L.A.
20 Super. Ct. May 29, 2018) (Lipshutz Decl. Ex. D) (same).

21 Many courts have recognized that collective-action waivers like the one in DoorDash’s ICA
22 must be enforced under the Supreme Court’s *Epic Systems* decision. *See, e.g., Gaffers v. Kelly Servs.,*
23 *Inc.*, 900 F.3d 293, 296 (6th Cir. 2018); *Silva v. Darden Restaurants, Inc.*, 2018 WL 3533364, at *5
24 (C.D. Cal. July 20, 2018); *Heidrich v. PennyMac Fin. Servs. Inc.*, 2018 WL 3388458, at *3–4 (E.D.
25 Cal. July 11, 2018); *Gutierrez v. Jolt Delivery, LLC*, 2018 WL 6118581, at *5 (C.D. Cal. Aug. 7, 2018);
26 *Caccavelli v. Jetro Holdings, LLC*, 2019 WL 499767, at *4 (E.D.N.Y. Feb. 8, 2019).

27 That same result should follow here. DoorDash respectfully requests that the Court compel
28 Plaintiff to arbitrate his claims on an individual basis and stay this action. *See* 9 U.S.C. § 3 (“If any

1 suit ... be brought in any of the courts of the United States upon any issue referable to arbitration under
 2 an agreement in writing for such arbitration, the court in which such suit is pending ... *shall* on
 3 application of one of the parties stay the trial of the action until such arbitration has been had in
 4 accordance with the terms of the agreement”) (emphasis added).

5 DoorDash also requests that the Court stay this action in its entirety until it resolves DoorDash’s
 6 motion. Given the parties’ arbitration agreement, Plaintiff should not be permitted to drag DoorDash
 7 into the merits of the dispute until the Court determines the proper forum for the dispute.

8 II. STATEMENT OF RELEVANT FACTS

9 A. DoorDash’s Platform Connects Customers, Restaurants, And Delivery Contractors

10 DoorDash is a technology company headquartered in San Francisco, California that facilitates
 11 food delivery through its online platform. Tang Decl. ¶ 4. The platform connects customers, a broad
 12 array of restaurants, and independent-contractor delivery providers (“contractors”). *Id.* Customers can
 13 access the platform via the DoorDash website or a mobile application (“DoorDash app”) on a
 14 smartphone. *Id.* Contractors typically receive delivery opportunities via the DoorDash app on their
 15 smartphone or other mobile device. *Id.*

16 B. Plaintiff Signs Up For A DoorDash Account In April 2019

17 On April 1, 2019, Plaintiff agreed to DoorDash’s Independent Contractor Agreement when he
 18 signed up to create an account with the DoorDash platform. Tang Decl. ¶ 5. To sign up for an account
 19 with the DoorDash platform, Plaintiff had to enter his email address, phone number, and zip code, and
 20 click “Get Started.” *Id.* ¶ 8, Ex. B. Immediately above the “Sign Up” button, Plaintiff was informed
 21 that “By clicking ‘Sign Up’ below, I agree to the **Independent Contractor Agreement** and have read
 22 the **Dasher Privacy Policy.**” *Id.* The words “Independent Contractor Agreement” and “Dasher
 23 Privacy Policy” were highlighted in blue text and hyperlinked to the ICA and Dasher Privacy Policy
 24 so that the user could review those documents before indicating his or her agreement to them. *Id.*

25 On April 1, 2019, Plaintiff entered his email, phone number and zip code into the DoorDash
 26 sign-up screens and clicked the “Sign Up” button. *Id.* ¶¶ 5–10. Accordingly, Plaintiff agreed to
 27 DoorDash’s ICA, which contained a mutual arbitration provision providing that the parties will
 28 arbitrate any disputes, including those relating to the ICA or their relationship.

1 The following language appeared in bold, capitalized text in the second paragraph of the first
2 page of the ICA to put the user on notice of the existence of the Arbitration Agreement:

3 **IMPORTANT: PLEASE REVIEW THIS AGREEMENT CAREFULLY. IN**
4 **PARTICULAR, PLEASE REVIEW THE MUTUAL ARBITRATION**
5 **PROVISION IN SECTION XI, AS IT REQUIRES THE PARTIES (UNLESS**
6 **YOU OPT OUT OF ARBITRATION AS PROVIDED BELOW) TO RESOLVE**
7 **DISPUTES ON AN INDIVIDUAL BASIS, TO THE FULLEST EXTENT**
8 **PERMITTED BY LAW, THROUGH FINAL AND BINDING ARBITRATION.**
9 **BY ACCEPTING THIS AGREEMENT, YOU ACKNOWLEDGE THAT YOU**
10 **HAVE READ AND UNDERSTOOD ALL OF THE TERMS, INCLUDING**
11 **SECTION XI, AND HAVE TAKEN THE TIME AND SOUGHT ANY**
12 **ASSISTANCE NEEDED TO COMPREHEND THE CONSEQUENCES OF**
13 **ACCEPTING THIS AGREEMENT.**

14 *Id.* Ex. A at p. 1.

15 Section XI of the ICA is entitled “MUTUAL ARBITRATION PROVISION.” *Id.* § XI. Under
16 that section, “CONTRACTOR and DOORDASH mutually agree[d]” to resolve any disputes between
17 them exclusively through final and binding arbitration instead of filing a lawsuit in court, including
18 “any and all claims arising out of or relating to this Agreement[or] CONTRACTOR’s classification
19 as an independent contractor.” *Id.* § XI.1. The ICA’s Arbitration Agreement contains a delegation
20 clause providing that the arbitrator will decide all issues of arbitrability, except for the validity of the
21 Arbitration Class Action Waiver. *Id.*

22 The Arbitration Agreement also contains numerous consumer-friendly provisions designed to
23 make the arbitration cost-effective, efficient, and fair for both parties. For example, the Arbitration
24 Agreement invokes the well-established American Arbitration Association (“AAA”) rules for the
25 proceeding and provides a hyperlink to those rules. *Id.* §§ XI.5, XI.7. The Arbitration Agreement also
26 allows Plaintiff to demand that the arbitration take place within 45 miles of his residence, discovery is
27 permitted, and “the Arbitrator may award all remedies to which a party is entitled under applicable law
28 and which would otherwise be available in a court of law” *Id.* § XI.5.

Although the ICA has an Arbitration Agreement, DoorDash does not force it on its contractors.
The second paragraph of the ICA referenced this opt-out right in bold, capitalized text. *Id.* at p. 1.
Similarly, Section XI.8 of the ICA explained this opt-out right in bold font:

**CONTRACTOR’s Right to Opt Out of Arbitration Provision. Arbitration is not
a mandatory condition of CONTRACTOR’s contractual relationship with**

1 **DOORDASH, and therefore CONTRACTOR may submit a statement notifying**
 2 **DOORDASH that CONTRACTOR wishes to opt out and not be subject to this**
 3 **MUTUAL ARBITRATION PROVISION.** In order to opt out, CONTRACTOR must
 4 notify DOORDASH in writing of CONTRACTOR’s intention to opt out by sending a
 5 letter, by First Class Mail, to DoorDash, Inc., 901 Market Street, Suite 600, San
 6 Francisco, CA, 94131. Any attempt to opt out by email will be ineffective. The letter
 7 must state CONTRACTOR’s intention to opt out. In order to be effective,
 8 CONTRACTOR’s opt out letter must be postmarked within 30 days of the effective
 9 date of this Agreement. The letter must be signed by CONTRACTOR himself/herself,
 10 and not by any agent or representative of CONTRACTOR. The letter may opt out, at
 11 most, only one CONTRACTOR, and letters that purport to opt out multiple
 12 CONTRACTORS will not be effective as to any. No CONTRACTOR (or his or her
 13 agent or representative) may effectuate an opt out on behalf of other CONTRACTORS.
 14 If CONTRACTOR opts out as provided in this paragraph, CONTRACTOR will not be
 15 subject to any adverse action from DOORDASH as a consequence of that decision and
 16 he/she may pursue available legal remedies without regard to this Mutual Arbitration
 17 Provision. If CONTRACTOR does not opt out within 30 days of the effective date of
 18 this Agreement, CONTRACTOR and DOORDASH shall be deemed to have agreed to
 19 this Mutual Arbitration Provision. CONTRACTOR has the right to consult with
 20 counsel of CONTRACTOR’s choice concerning this Mutual Arbitration Provision (or
 21 any other provision of this Agreement.

22 Ex. A, § XI.8 (emphasis in original).

23 Under the terms of the ICA, therefore, Plaintiff was required to postmark any letter attempting
 24 to opt out of the Arbitration Agreement by May 1, 2019. *See id.*¹

25 **C. Plaintiff Attempts To Opt Out Of The ICA’s Arbitration Agreement After The**
 26 **Expiration Of The 30-Day Period To Do So**

27 Plaintiff alleges that he sent a letter to DoorDash expressing his desire to opt out of the
 28 Arbitration Agreement on July 11, 2019. Compl. ¶ 49; Mckay Decl. ¶ 9 (Dkt. 4-2). But Plaintiff’s
 attempted opt-out was ineffective under the terms of the ICA because it was not sent within 30 days of
 Plaintiff accepting the ICA on April 1, 2019. *See* Tang Decl. Ex. A, § XI.8; Tang Decl. ¶ 12.

¹ The ICA also contains a separate, stand-alone Litigation Class Action Waiver, which is not part of the Arbitration Agreement. The Litigation Class Action Waiver states that “any proceeding to litigate in court ... will be conducted solely on an individual basis, and CONTRACTOR agrees not to seek to have any controversy, claim or dispute heard as a class action, a representative action, a collective action, a private attorney-general action, or in any proceeding in which CONTRACTOR acts or proposes to act in a representative capacity (‘Litigation Class Action Waiver’).” Tang Decl. Ex. A, § XII. In the event that the Court finds that any part of Plaintiff’s claims must be litigated under the ICA (it should not), DoorDash preserves all arguments, including that the Litigation Class Action Waiver is valid and enforceable and prevents Plaintiff from litigating in court on a class, collective, or representative basis.

1 **D. Notwithstanding His Agreement To Individually Arbitrate Disputes, Plaintiff Files This**
 2 **Lawsuit And Moves For Partial Summary Judgment Before Serving His Complaint**

3 Despite agreeing to arbitrate his disputes with DoorDash, Plaintiff filed this lawsuit against
 4 DoorDash on July 26, 2019. Plaintiff alleges that he and all other contractors who completed deliveries
 5 using the DoorDash platform are misclassified as independent contractors, and that DoorDash is liable
 6 for: (1) violation of the FLSA; (2) failure to pay minimum wage; (3) failure to provide wage
 7 statements; and (4) unlawful and/or unfair business practices. Compl. ¶¶ 54–66. Plaintiff brings this
 8 action “[t]ogether with other DoorDash couriers” across the nation. *Id.* ¶ 2; 29 U.S.C. § 216(b) (FLSA
 9 claims are brought “for and on behalf of [Plaintiff] ... and other employees similarly situated”).²

10 Also on July 26, 2019—before DoorDash was served with the complaint—Plaintiff moved for
 11 partial summary judgment on the issue of classification. *See* Dkt. 4. The Court *sua sponte* denied
 12 Plaintiff’s motion without prejudice and warned Plaintiff that he would have only one opportunity to
 13 seek summary judgment, *see* Dkt. 22, but Plaintiff re-filed his motion days later, *see* Dkt. 27.³

14 **III. PLAINTIFF SHOULD BE COMPELLED TO ARBITRATE**
 15 **HIS CLAIMS ON AN INDIVIDUAL BASIS**

16 The FAA controls the parties’ arbitration agreement, and imposes a heavy burden on Plaintiff
 17 to avoid arbitration. Here, the parties’ agreement delegates to the arbitrator the two primary “gateway”
 18 issues—whether there is a valid arbitration agreement and whether it covers this dispute. In any event,
 19 as described below, both gateway issues are easily satisfied here. The only gateway issue reserved for
 20 the Court is whether Plaintiff’s Arbitration Class Action Waiver is enforceable. As explained below,

21
 22
 23 ² Also in July 2019, Plaintiff’s counsel filed an arbitration demand against DoorDash on behalf of
 24 250 delivery providers based on the same underlying allegation of misclassification. Lipshutz Decl.
 ¶ 8. Plaintiff’s counsel, therefore, recognizes the validity of DoorDash’s Arbitration Agreement.

25 ³ Plaintiff’s Motion for Partial Summary Judgment is inappropriate for multiple reasons. First, this
 26 case should never have been filed in his Court because Plaintiff agreed to arbitrate his disputes with
 27 DoorDash on an individual basis. Second, DoorDash cannot be forced to oppose summary
 28 judgment on the central issue of misclassification *within days of being served with the complaint*
 and without conducting any necessary discovery. *See* Fed. R. Civ. P. 56(d). Third, Plaintiff
 improperly moved for summary judgment on an affirmative defense that DoorDash has yet to plead
 because it has not yet answered the complaint. *See Fisher v. San Pedro Peninsula Hosp.*, 214 Cal.
 App. 3d 590, 608 n.6 (1989) (“Whether [Plaintiff] is an independent contractor is an affirmative
 defense.”); *Villalpando v. Exel Direct Inc.*, 2015 WL 5179486, at *9 (N.D. Cal. Sept. 3, 2015).

1 the Supreme Court’s recent decision in *Epic Systems* confirms that the Arbitration Class Action Waiver
2 is enforceable.

3 Numerous courts have enforced DoorDash’s arbitration agreement and compelled
4 contractors—like Plaintiff—to arbitrate their claims on an individual basis. *See Magana*, 343 F. Supp.
5 3d at 899–900 (compelling arbitration); *Farran* (Lipshutz Decl. Ex. A) (compelling arbitration);
6 *Marciano v. DoorDash, Inc.* (S.F. Super. Ct., Dec. 7, 2018) (Lipshutz Decl. Ex. C) (staying
7 proceedings); *Marko* (Lipshutz Decl. Ex. D) (compelling arbitration); *Edwards v. DoorDash, Inc.*,
8 2017 WL 5514302, at *13 (S.D. Tex. Oct. 18, 2017), *report and rec. adopted*, 2017 WL 5514707 (S.D.
9 Tex. Nov. 16, 2017) (compelling arbitration); *Edwards v. DoorDash, Inc.*, 2016 WL 7852532, at *14
10 (S.D. Tex. Dec. 8, 2016.), *report and rec. adopted*, 2017 WL 244862 (S.D. Tex. Jan. 19, 2017)
11 (compelling arbitration after severing two provisions which are not in the ICA), *aff’d*, 888 F.3d 738
12 (5th Cir. 2018); *DoorDash, Inc. v. Marciano* (Santa Clara Super. Ct. Mar. 21, 2016) (Lipshutz Decl.
13 Ex. E) (compelling arbitration of complaint filed before California Division of Labor Standards
14 Enforcement); *Lyons v. DoorDash, Inc.* (C.D. Cal. May 19, 2017) (Lipshutz Decl. Ex. F). Indeed, in
15 *Lyons*, the plaintiff stipulated to arbitration upon reviewing DoorDash’s motion to compel. *Id.* Plaintiff
16 can offer the Court no reason to adopt an aberrant result here.

17 This case involves substantially similar parties, factual allegations, legal theories, and
18 contractual arbitration provisions as *Magana*, *Farran*, and the rest of these cases. As explained below,
19 this Court should compel Plaintiff to arbitration on an individual basis and dismiss the action.

20 **A. The Arbitration Agreement Is Governed By The Federal Arbitration Act**

21 Courts unanimously have concluded that the FAA governs DoorDash’s ICA. *Magana*, 343 F.
22 Supp. 3d at 899; *Farran* (Lipshutz Decl. Ex. A), at 1; *Marko* (Lipshutz Decl. Ex. D), at 2; *Edwards*,
23 2017 WL 5514302, at *13; *Marciano* (Lipshutz Decl. Ex. E), at 4.

24 All of these cases correctly applied the FAA, which declares a “liberal federal policy” favoring
25 the enforcement of arbitration agreements. *Concepcion*, 563 U.S. at 346; *Epic Sys.*, 138 S. Ct. at 1621.
26 Section 2 of the FAA provides: “A written provision in any ... contract evidencing a transaction
27 involving commerce to settle by arbitration a controversy thereafter arising ... *shall be valid,*
28 *irrevocable, and enforceable, save upon such grounds as exist at law or in equity for the revocation of*

1 any contract.” 9 U.S.C. § 2 (emphasis added). If an agreement is governed by the FAA, courts must
2 effectuate Congress’ intent “to move the parties to an arbitrable dispute out of court and into arbitration
3 as quickly and easily as possible.” *Moses H. Cone Mem’l Hosp. v. Mercury Constr. Corp.*, 460 U.S.
4 1, 22 (1983).

5 Here, the Arbitration Agreement is governed by the FAA for two independent reasons. **First**,
6 the Agreement expressly states that it is governed by the FAA (Tang Decl. Ex. A, § XI.1), which is
7 sufficient to bring it within the purview of the FAA. See *Mastrobuono v. Shearson Lehman Hutton*,
8 514 U.S. 52, 63–64 (1995); *DIRECTV, Inc. v. Imburgia*, 136 S. Ct. 463, 468–71 (2015). The FAA
9 governs contracts—even absent evidence of an effect on interstate commerce—if the parties so agree.
10 See *Montes v. San Joaquin Cmty. Hosp.*, 2014 WL 334912, at *5 (E.D. Cal. Jan. 29, 2014) (courts
11 honor parties’ contractual agreement to be bound by the FAA) (citing *Valencia v. Smyth*, 185 Cal. App.
12 4th 153, 179 (2010) (where no party alleged that the contract affected interstate commerce, “the
13 language of the Agreement ... dictates the applicable law”)); *Rodriguez v. Am. Techs., Inc.*, 136 Cal.
14 App. 4th 1110, 1116, 1121 (2006).

15 The ICA contains two choice-of-law provisions that invoke the FAA. Tang Decl. Ex. A, § XI.1
16 (“This arbitration agreement is governed by the Federal Arbitration Act (9 U.S.C. §§ 1–16”); *id.*
17 § XIV.3 (“[T]he Mutual Arbitration Provision ... is governed by the Federal Arbitration Act.”). Courts
18 must “enforce arbitration agreements according to their terms.” *Epic Sys.*, 138 S. Ct. at 1619; *see also*
19 *Mastrobuono*, 514 U.S. at 62–64 (construing choice-of-law provision in favor of arbitration). And the
20 terms of the ICA are clear: “The parties expressly agree that this [ICA] shall be governed by the FAA.”
21 Tang Decl. Ex. A, § XI.1.

22 **Second**, the FAA applies because the Agreement “affect[s] commerce.” See *Allied-Bruce*
23 *Terminix Cos. v. Dobson*, 513 U.S. 265, 273–74, 281 (1995) (FAA’s requirement that an agreement
24 “involv[e] commerce” is “broad and is indeed the functional equivalent of ‘affecting’” commerce,
25 “even if the parties did not contemplate an interstate commerce connection”). The phrase “involving
26 commerce” is “functional[ly] equivalent” to the phrase “affecting commerce,” which “normally signals
27 Congress’ intent to exercise its Commerce Clause powers to the full.” *Id.* at 273. This is so “even if
28 the parties did not contemplate an interstate commerce connection.” *Id.* at 281; *see also Citizens Bank*

1 *v. Alafabco, Inc.*, 539 U.S. 52, 56 (2003) (“[T]he FAA encompasses a wider range of transactions than
2 those actually ‘in commerce’—that is, ‘within the flow of interstate commerce’”). For the FAA to
3 apply, a party need not “show[] any specific effect upon interstate commerce,” as long as “in the
4 aggregate the economic activity in question would represent a general practice ... subject to federal
5 control.” *Alafabco*, 539 U.S. at 56–57.

6 Courts regularly apply the FAA where, as here, a contract involves transactions and
7 communications over email and the Internet. *See Manard v. Knology, Inc.*, 2010 WL 2528320, at *3
8 (M.D. Ga. June 18, 2010) (FAA governed contract for Internet services); *Burks v. Autonomy, Inc.*, 2012
9 WL 13005954, at *3 (S.D. Fla. May 15, 2012) (FAA governed contract with “software company
10 dealing in Internet content management solutions with clients across the United States”); *Scott v. Yoho*,
11 248 Cal. App. 4th 392, 402 (2016) (FAA governed contract when doctor engaged in Internet advertising
12 and communication with out-of-state patients by telephone, mail and email); *Khalatian v. Prime Time*
13 *Shuttle, Inc.*, 237 Cal. App. 4th 651, 658 (2015) (FAA governed contract of shuttle driver who drove
14 only in California where defendant’s customers made reservations and paid for rides over Internet).

15 DoorDash “is a technology startup ... that facilitates food delivery through its online platform,”
16 and its “platform connects customers, a broad array of restaurants, and [contractors]. Customers can
17 access the platform via the DoorDash website or a mobile application on a smartphone. Contractors
18 typically receive delivery opportunities via the DoorDash app on their smartphone or other mobile
19 device.” Tang Decl. ¶ 4; *see also* Aughney Decl. ¶¶ 4–8 (explaining interstate nature of DoorDash’s
20 business). Further, Plaintiff expressly “acknowledge[d]” that DoorDash’s “business ... is to provide
21 an online marketplace connection using web-based technology that connects contractors, restaurants
22 and/or other businesses, and consumers.” Tang Decl. Ex. A § III.3. Indeed, Plaintiff also agreed to
23 “immediately notify” DoorDash if he disagreed with this characterization of DoorDash’s business. *Id.*
24 § III.3. He did not do so.

25 **B. The Arbitration Agreement Is Valid And Must Be Enforced**

26 Consistent with the principle that arbitration is a matter of contract, the FAA requires courts to
27 compel arbitration “in accordance with the terms of the agreement” upon the motion of a party to the
28 agreement. 9 U.S.C. § 4. In determining whether to compel arbitration under the FAA, courts generally

1 look at two “gateway” issues: (1) whether there is a valid agreement to arbitrate between the parties;
2 and (2) whether the agreement covers the dispute. *See Howsam v. Dean Witter Reynolds, Inc.*, 537
3 U.S. 79, 83–84 (2002). If there is any doubt as to the proper interpretation of the agreement on any
4 issue related to arbitrability, the FAA “establishes that ... [it] should be resolved *in favor of arbitration*,
5 whether the problem at hand is the construction of the contract language itself or an allegation of
6 waiver, delay, or a like defense of arbitrability.” *Moses H. Cone*, 460 U.S. at 24–25 (emphasis added);
7 *see also Ericksen, Arbuthnot, McCarthy, Kearney & Walsh Inc. v. 100 Oak Street*, 35 Cal. 3d 312, 320
8 (1983) (citing *Moses H. Cone* for same).

9 1. The Delegation Clause In The Arbitration Agreement Is Valid And Enforceable

10 Before reaching these gateway issues, however, a court must first examine the agreement to
11 determine whether the parties agreed to commit threshold questions of arbitrability to the arbitrator.
12 *See Rent-A-Center, W., Inc. v. Jackson*, 561 U.S. 63, 70 (2010) (“An agreement to arbitrate a gateway
13 issue is simply an additional antecedent agreement the party seeking arbitration asks the court to
14 enforce ...”). If the parties have “clearly and unmistakably” agreed to delegate questions of
15 arbitrability to the arbitrator, then the arbitrator must decide the threshold issues. *Howsam*, 537 U.S.
16 at 83; *Henry Schein, Inc. v. Archer & White Sales, Inc.*, 139 S. Ct. 524, 529 (2019) (courts may not
17 override delegation clauses); *see also Mohamed v. Uber Techs., Inc.*, 848 F.3d 1201, 1208–09 (9th Cir.
18 2016) (clear and unmistakable delegation clauses must be enforced under binding Supreme Court
19 precedent); *Brennan v. Opus Bank*, 796 F.3d 1125, 1132 (9th Cir. 2015) (clearly and unmistakably
20 delegated arbitrability issues to arbitrator).

21 Here, the Arbitration Agreement clearly and unmistakably provides that, except for questions
22 regarding the enforceability of the Arbitration Class Action Waiver, “[a]ll other disputes with respect
23 to whether this Mutual Arbitration Provision is unenforceable, unconscionable, applicable, valid, void
24 or voidable *shall be determined exclusively by an arbitrator*, and not by any court.” Tang Decl. Ex. A,
25 § XI.3 (emphasis added). Moreover, the Arbitration Agreement expressly incorporates the AAA
26 Commercial Arbitration Rules (“AAA Rules”). *Id.* at XI.5. Rule 7 of the AAA Rules provides: “The
27 arbitrator shall have the power to rule on his or her own jurisdiction, including any objections with
28 respect to the existence, scope, or validity of the arbitration agreement or to the arbitrability of any

1 claim[.]” Lipshutz Decl. Ex. B at R.7(a). The express incorporation of the AAA Rules therefore
2 constitutes further clear and unmistakable evidence of the parties’ intent to arbitrate the threshold issue
3 of arbitrability. *See Brennan*, 796 F.3d at 1130–31 (“[I]ncorporation of the AAA rules constitutes clear
4 and unmistakable evidence that contracting parties agree to arbitrate arbitrability”). The Court should
5 enforce this clear and unmistakable agreement and decide only the issue of the enforceability of the
6 Arbitration Class Action Waiver. *See Mohamed*, 848 F.3d at 1209 (enforcing delegation clause that
7 carved out challenges to class, collective and representative waivers).

8 While it is generally Plaintiff’s burden to prove that an agreement is unconscionable, DoorDash
9 notes that courts have repeatedly held that if an arbitration agreement provides an opportunity to opt
10 out, it is not adhesive and there can be no procedural unconscionability. *See Mohamed*, 848 F.3d at
11 1211; *Circuit City Stores, Inc. v. Ahmed*, 283 F.3d 1198, 1199 (9th Cir. 2002); *Kilgore v. KeyBank*,
12 *Nat’l Ass’n*, 718 F.3d 1052, 1059 (9th Cir. 2013) (en banc). Courts have therefore upheld delegation
13 clauses found in voluntary arbitration agreements on the ground that they are not unconscionable. *See*
14 *Mohamed*, 848 F.3d at 1211 (upholding delegation clause found in arbitration agreement that provided
15 right to opt out).

16 Here, DoorDash conspicuously notified Plaintiff of his right to opt out of the Arbitration
17 Agreement on the very first page of the ICA, as well as in a standalone section in the Arbitration
18 Agreement with the bolded title, “**CONTRACTOR’S Right to Opt Out of Arbitration Provision.**”
19 Tang Decl. Ex. A, § XI.8. The Arbitration Agreement states that: (1) “[a]rbitration is not a mandatory
20 condition of [Plaintiff’s] contractual relationship with DOORDASH”; and (2) Plaintiff would “not be
21 subject to any adverse action from DOORDASH” if he opted out. *Id.* Plaintiff had 30 days to notify
22 DoorDash of his desire to opt out, but failed to do so. Tang Decl. ¶ 12; *see Posephny v. AMN*
23 *Healthcare Inc.*, 2019 WL 452036, at *7 (N.D. Cal. Feb. 5, 2019) (compelling arbitration when
24 plaintiffs’ attempted opt-out was untimely).

25 To the extent Plaintiff claims that his untimely opt-out was effective, that too is an issue for the
26 arbitrator to decide. *See* Tang Decl. Ex. A, § XI.3 (“an arbitrator, and not ... any court” shall determine
27 all disputes with respect to Mutual Arbitration Provision’s enforceability, applicability, and validity);
28 *Erwin v. Citibank, N.A.*, 2017 WL 1047575, at *4–5 (S.D. Cal. Mar. 20, 2017) (disputes over validity

1 of opt-outs go to arbitrator where—as here—parties delegated issues of arbitrability to the arbitrator).

2 The arbitrator will find DoorDash’s arbitration agreement (including its opt-out procedure) to
3 be enforceable and that Plaintiff failed to opt out within the proscribed time period. Courts regularly
4 enforce mail-only opt-out procedures like the one contained in DoorDash’s ICA. *See, e.g., Spikener*
5 *v. Noble Food Grp., Inc.*, 2018 WL 4677680, at *2 (N.D. Cal. Sept. 27, 2018) (compelling arbitration
6 when plaintiff failed to mail a signed letter requesting to opt out within 30 days); *Bonner v. Mich.*
7 *Logistics Inc.*, 250 F. Supp. 3d 388, 399–400 (D. Ariz. 2017) (same); *Castro v. Macy’s, Inc.*, 2017 WL
8 344978, at *2–3 (N.D. Cal. Jan. 24, 2017) (same); *see also Voll v. HCL Techs. Ltd.*, 2019 WL 144863,
9 at *2 (N.D. Cal. Jan. 9, 2019) (compelling arbitration when plaintiff failed to request and complete the
10 required opt-out form); *Bradford v. Flagship Facility Servs. Inc.*, 2017 WL 3130072, at *6 (N.D. Cal.
11 July 24, 2017) (compelling arbitration when plaintiff failed to return required opt-out form to human
12 resources department within 30 days). This meaningful opportunity to opt out renders the agreement
13 voluntary and precludes any finding of procedural unconscionability. *See Mohamed*, 848 F.3d at 1211;
14 *Circuit City Stores*, 283 F.3d at 1199; *Kilgore*, 718 F.3d at 1059.

15 2. The Gateway Issues Under The FAA Have Been Satisfied

16 Even if the Court were to find that it, and not an arbitrator, should determine arbitrability despite
17 the delegation clause (it should not), the Court should compel Plaintiff’s claims to individual arbitration
18 because both of the “gateway” issues under the FAA have been met here.

19 a. A Valid Agreement To Arbitrate Exists

20 “[A]rbitration is a matter of contract” *United Steelworkers v. Warrior & Gulf Navigation*
21 *Co.*, 363 U.S. 574, 582 (1960). Ordinary state law principles governing the formation of contracts are
22 therefore used to determine whether the parties agreed to arbitrate. *See First Options of Chi., Inc.*
23 *v. Kaplan*, 514 U.S. 938, 944 (1995); *Metalclad Corp. v. Ventana Envil. Organizational P’ship*, 109
24 Cal. App. 4th 1705, 1712 (2003). The moving party’s burden is light in this regard. DoorDash need
25 only show, by a preponderance of the evidence, that an agreement to arbitrate exists. *See Rosenthal*
26 *v. Great W. Fin. Sec. Corp.*, 14 Cal. 4th 394, 413 (1996).

27 Under California law, a valid contract exists when (1) the parties are capable of contracting,
28 and there is (2) a lawful object, (3) mutual consent, and (4) sufficient cause or consideration. Cal.

1 Civ. Code § 1550; *see also Div. of Labor Law Enforc. v. Transpacific Transp.*, 69 Cal. App. 3d 268,
2 275 (1977). The Arbitration Agreement contained in the ICA meets all of these requirements. First,
3 there is no dispute that the parties are capable of contracting. *See* Cal. Civ. Code § 1556 (“All persons
4 are capable of contracting, except minors, persons of unsound mind, and persons deprived of civil
5 rights.”). Second, there is also no dispute that the Arbitration Agreement had a lawful purpose, *i.e.*,
6 the prompt and efficient resolution of disputes in arbitration. *See Stewart v. Preston Pipeline Inc.*, 134
7 Cal. App. 4th 1565, 1586 (2005) (finding arbitration provision had lawful purpose of resolving
8 litigation); *see also Epic Sys.*, 138 S. Ct. at 1621 (by enacting the FAA, “Congress directed courts to ...
9 treat arbitration agreements as ‘valid, irrevocable, and enforceable’”).

10 Third, there is mutual consent. Plaintiff affirmatively acknowledged his intent—after ample
11 opportunity for review—to be bound by the terms of the ICA, including the conspicuous Arbitration
12 Agreement contained therein. *See Marin Storage & Trucking, Inc. v. Benco Contracting & Eng’g,*
13 *Inc.*, 89 Cal. App. 4th 1042, 1049–50 (2001) (“Every contract requires mutual assent or consent (Cal.
14 Civ. Code §§ 1550, 1565), and ordinarily one who signs an instrument which on its face is a contract
15 is deemed to assent to all its terms.”). Plaintiff’s manifestation of his acceptance to the ICA by clicking
16 “Sign Up” confirmed his agreement. *See Meyer v. Uber Techs., Inc.*, 868 F.3d 66, 75–80 (2d Cir. 2017)
17 (vacating order denying motions to compel arbitration after holding that availability of a contract “only
18 by hyperlink does not preclude a determination of reasonable notice” and that the plaintiff
19 “unambiguously manifested his assent to [the contract] as a matter of California law”).⁴ In addition to
20 Plaintiff’s affirmative assent, DoorDash provided Plaintiff ample opportunity to review the ICA, and
21 30 days after accepting the ICA to opt out of the Arbitration Agreement. Tang Decl. Ex. A, § XI.8.

22
23
24 ⁴ *See also, e.g., Levin v. Caviar, Inc.*, 146 F. Supp. 3d 1146, 1157 (N.D. Cal. 2015) (compelling
25 arbitration and finding contract was formed when plaintiff clicked on a button to indicate assent to
26 an agreement whose terms were accessible by hyperlink); *Tompkins v. 23andMe, Inc.*, 2014 WL
27 2903752, at *8 (N.D. Cal. June 25, 2014) (holding that contract had been formed when plaintiff
28 “clicked a box or button that appeared near a hyperlink to the [contract] to indicate acceptance of
the [contract]”); *Swift v. Zynga Game Network, Inc.*, 805 F. Supp. 2d 904, 910–12 (N.D. Cal. 2011)
(compelling arbitration and finding video game user bound by Zynga’s terms of service because
she clicked the “accept” button immediately above a hyperlink which contained its terms); *Long*
v. Provide Commerce, Inc., 245 Cal. App. 4th 855, 862–63 (2016) (distinguishing a “browsewrap”
agreement seeking to bind plaintiff to Terms of Use agreement merely by visiting the website, from
an enforceable “clickwrap” agreement which requires an affirmative act of consent).

1 Plaintiff did not opt out of the Arbitration Agreement under the terms of the ICA (*id.* ¶ 13), further
2 evidencing his consent to be bound by its terms.

3 Finally, the Arbitration Agreement is supported by valid consideration: the parties' mutual
4 promises to arbitrate disputes. *See Strotz v. Dean Witter Reynolds, Inc.*, 223 Cal. App. 3d 208, 216
5 (1990), *overruled on other grounds by Rosenthal v. Great W. Fin. Secs. Corp.*, 14 Cal. 4th 394 (1996)
6 (“Where an agreement to arbitrate exists, the parties’ mutual promises to forego a judicial
7 determination and to arbitrate their disputes provide consideration for each other.”). All of the elements
8 for the valid formation of an agreement to arbitrate exist here.

9 **b. Plaintiff’s Claims Are Covered By The Arbitration Agreement**

10 “[A]bsent some ambiguity in the agreement ... it is the language of the contract that defines the
11 scope of disputes subject to arbitration.” *EEOC v. Waffle House, Inc.*, 534 U.S. 279, 289 (2002).
12 Courts must “interpret the contract by applying general state-law principles of contract interpretation,
13 while giving due regard to the federal policy in favor of arbitration by resolving ambiguities as to the
14 scope of arbitration in favor of arbitration.” *Wagner v. Stratton Oakmont, Inc.*, 83 F.3d 1046, 1049
15 (9th Cir. 1996); *see also United Steelworkers*, 363 U.S. at 582–83 (courts must conclude disputes are
16 covered “unless it may be said with positive assurance that the arbitration clause is not susceptible of
17 an interpretation that covers the asserted dispute. Doubts should be resolved in favor of coverage.”).

18 Here, there is no ambiguity in the agreement. Rather, the language of the Arbitration
19 Agreement makes clear that Plaintiff’s claims are subject to arbitration. Specifically, Plaintiff agreed
20 that the Arbitration Agreement would apply to:

21 any and all claims arising out of or relating to this Agreement, **CONTRACTOR’s**
22 **classification as an independent contractor**, CONTRACTOR’s provision of
23 Contracted Services to consumers, **the payments received by CONTRACTOR for**
24 **providing services to consumers**, the termination of this Agreement, and all other
25 aspects of CONTRACTOR’s relationship with DOORDASH, past, present or
26 future, whether arising under federal, state or local statutory and/or common law,
27 including without limitation . . . claims arising under or related to . . . **[the] Fair**
28 **Labor Standards Act (or its state or local equivalents)**, state and local wage and
hour laws, state and local statutes or regulations addressing the same or similar
subject matters, and all other federal, state or local claims arising out of or relating
to CONTRACTOR’s relationship or the termination of that relationship with
DOORDASH.

Tang Decl. Ex. A, § XI.1 (emphasis added). In his Complaint, Plaintiff claims he was misclassified as

1 an independent contractor, and alleges causes of action for failure to pay minimum wage, failure to
2 provide wage statements, unlawful and unfair business practices, and violation of the FLSA. All of
3 these claims fall squarely within the scope of the Arbitration Agreement.

4 Courts examining DoorDash’s Arbitration Agreement have compelled arbitration of claims
5 based on plaintiffs’ independent-contractor status and all claims for damages. *Magana*, 343 F. Supp.
6 3d at 899–900; *Farran* (Lipshutz Decl. Ex. A); *Marko* (Lipshutz Decl. Ex. D); *Edwards*, 2017 WL
7 5514302, at *13; *Edwards*, 2016 WL 7852532, at *14. That same result should follow here.

8 **C. The Arbitration Class Action Waiver Is Valid And Enforceable**

9 As noted above, under the delegation clause in the Arbitration Agreement, the parties agreed
10 that the Court would decide the question of the enforceability of the Arbitration Class Action Waiver.
11 Tang Decl. Ex. A, § XI.3. It is now well settled that class-action waivers in arbitration agreements
12 governed by the FAA are valid and enforceable. In *Magana*, for example, this Court enforced the
13 ICA’s class action waiver and compelled the plaintiff to arbitration on an individual basis. 343 F. Supp.
14 3d at 901. So did the *Farran* court. Lipshutz Decl. Ex. A, at 2 (“Plaintiff does not ... challenge the
15 class action waivers.... The Court notes that these waivers are permitted under the FAA.”). The *Marko*
16 court likewise enforced DoorDash’s class-action waiver, holding that the plaintiffs in that case “shall
17 arbitrate their independent contractor status and claims for damages on an individual basis, rather than
18 on a class basis.” Lipshutz Decl. Ex. D, at 2.

19 The Supreme Court has held that the “primary purpose” of the FAA is “ensuring that private
20 agreements to arbitrate are enforced *according to their terms*.” *Volt Info. Scis. v. Bd. of Trustees of*
21 *Leland Stanford Junior Univ.*, 489 U.S. 468, 479 (1989) (emphasis added); *see also Mastrobuono*, 514
22 U.S. at 53–54 (enforcement of arbitration agreements “according to their terms” is the “central
23 purpose” of the FAA); *Concepcion*, 563 U.S. at 344 (same). Most recently, the Supreme Court held
24 that this instruction by Congress to enforce arbitration agreements according to their terms “include[s]
25 terms providing for individualized proceedings.” *Epic Sys.*, 138 S. Ct. at 1619.

26 The Arbitration Class Action Waiver bars Plaintiff from arbitrating his FLSA claim on a
27 collective basis. Tang Decl. Ex. A, § XI.3 (parties agreed to individualized arbitration and waived
28 “class, collective, and representative” actions). The Ninth Circuit has long enforced contractual

1 arbitration of FLSA claims. *See Horenstein v. Mortg. Mkt., Inc.*, 9 F. App'x 618, 619 (9th Cir. 2001)
 2 (“[T]here is nothing in the text ... [or] in the legislative history[] indicating that Congress intended to
 3 preclude arbitration of FLSA claims.”). And, following *Epic Systems*, several courts have enforced
 4 collective-action waivers to preclude collective FLSA claims. *Gaffers*, 900 F.3d at 296 (“[B]ecause
 5 the FLSA does not ‘clearly and manifestly’ make arbitration agreements unenforceable, we hold that
 6 it does not displace the Arbitration Act’s requirement that we enforce the employees’ agreements as
 7 written.”); *Silva*, 2018 WL 3533364, at *5 (“In *Epic Systems* the Supreme Court held that prohibitions
 8 on class action are permissible in arbitration agreements, and so Plaintiff is unable to bring this [FLSA]
 9 collective action.”); *Heidrich*, 2018 WL 3388458, at *3–4 (recognizing that “neither the NLRA ... nor
 10 the FLSA displace the FAA or prohibit individualized arbitration proceedings” and compelling
 11 arbitration); *Gutierrez*, 2018 WL 6118581, at *5 (compelling arbitration of FLSA claim on individual
 12 basis); *Caccavelli*, 2019 WL 499767, at *4 (same); *see also* 29 U.S.C. § 216(b) (FLSA claims may be
 13 brought by “any one ... employee[]” and thus need not be collective).

14 Under binding Supreme Court precedent, the parties’ agreement not to pursue class, collective,
 15 or representative claims is valid and must be enforced. Plaintiff should be compelled to arbitrate his
 16 claims on an individual basis pursuant to the terms of the Arbitration Agreement, and these proceedings
 17 should be stayed. 9 U.S.C. § 3; *Magana*, 343 F. Supp. 3d at 902 (applying the FAA’s “plain language”
 18 and deciding to stay—rather than dismiss—case pending arbitration).

19 **D. At Minimum, This Action Should Be Stayed Pending Arbitration Of Plaintiff’s**
 20 **Individual Claims**

21 Even if the Court determines that the Arbitration Class Action Waiver is unenforceable (it
 22 should not), Plaintiff nevertheless must arbitrate his individual claims. Plaintiff’s second, third, and
 23 fourth causes of action seek purely individual relief and thus remain arbitrable regardless of the
 24 Arbitration Class Action Waiver’s enforceability. *See* Compl. ¶¶ 59–66. At minimum, therefore,
 25 Plaintiff should be compelled to arbitrate his individual claims while any non-arbitrable claim is stayed.
 26 *See, e.g., Gutierrez*, 2018 WL 6118581, at *5 (staying non-arbitrable claims pending arbitration of
 27 individual claims); *Armstrong v. Michaels Stores, Inc.*, 2018 WL 6505997, at *14 (N.D. Cal. Dec. 11,

1 2018) (same); *Prasad v. Pinnacle Prop. Mgmt. Servs., LLC*, 2018 WL 4586960, at *2 (N.D. Cal. Sept.
2 25, 2018); *Jacobson v. Snap-on Tools Co.*, 2015 WL 8293164, at *6 (N.D. Cal. Dec. 9, 2015) (same).

3 * * *

4 Finally, the Court should stay this case pending consideration of this motion because an order
5 granting DoorDash’s motion would moot Plaintiff’s pending Motion for Partial Summary Judgment.
6 DoorDash should not be forced to expend resources opposing a premature Motion for Partial Summary
7 Judgment when this case never should have been filed in this Court in the first place. *See, e.g., Stiener*
8 *v. Apple Comput., Inc.*, 2007 WL 4219388, at *1 (N.D. Cal. Nov. 29, 2007) (“In the interests of
9 conserving the resources of the parties, a short stay of the initial scheduling obligations and discovery
10 pending the determination of the motion to compel arbitration is therefore prudent.”); *Mundi v. Union*
11 *Sec. Life Ins. Co.*, 2007 WL 2385069, at *6 (E.D. Cal. Aug. 17, 2007) (“[T]he parties should not be
12 required to endure the expense of discovery that ultimately would not be allowed in arbitration.”).

13 **IV. CONCLUSION**

14 This Court should compel arbitration on an individual basis and stay this action.

15
16 Dated: August 12, 2019

GIBSON, DUNN & CRUTCHER LLP

17
18 By: /s/ Joshua Lipshutz
19 Joshua Lipshutz

20
21 Attorneys for Defendant DOORDASH, INC.
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PROOF OF SERVICE

I, Stephanie Balitzer, declare as follows:

I am employed in the County of Los Angeles, State of California; I am over the age of eighteen years and am not a party to this action; my business address is 333 South Grand Avenue, Los Angeles, California 90071, in said County and State. On August 12, 2019, I served the following document(s):

DEFENDANT’S MOTION TO COMPEL ARBITRATION AND STAY PROCEEDINGS

DECLARATION OF STANLEY TANG IN SUPPORT OF DEFENDANT’S MOTION TO COMPEL ARBITRATION AND STAY PROCEEDINGS

DECLARATION OF CODY AUGHNEY IN SUPPORT OF DEFENDANT’S MOTION TO COMPEL ARBITRATION AND STAY PROCEEDINGS

DECLARATION OF JOSHUA LIPSHUTZ IN SUPPORT OF DEFENDANT’S MOTION TO COMPEL ARBITRATION AND STAY PROCEEDINGS

[PROPOSED] ORDER GRANTING DEFENDANT’S MOTION TO COMPEL ARBITRATION AND STAY PROCEEDINGS

On the parties stated below, by the following means of service:

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BY ELECTRONIC TRANSFER TO THE CM/ECF SYSTEM: On this date, I electronically uploaded a true and correct copy in Adobe “pdf” format the above-listed document(s) to the United States District Court’s Case Management and Electronic Case Filing (CM/ECF) system. After the electronic filing of a document, service is deemed complete upon receipt of the Notice of Electronic Filing (“NEF”) by the registered CM/ECF users.

(FEDERAL) I declare under penalty of perjury that the foregoing is true and correct.

Executed on August 12, 2019

/s/ Stephanie Balitzer
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Exhibit O

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17 Attorneys for Defendant DOORDASH, INC.

18 UNITED STATES DISTRICT COURT
19 NORTHERN DISTRICT OF CALIFORNIA
20 OAKLAND DIVISION

21 MANUEL MAGANA, on behalf of himself
22 and all others similarly situated,

23 Plaintiff,

24 v.

25 DOORDASH, INC.,

26 Defendant.
27
28

CASE NO. 4:18-cv-03395-PJH

**DEFENDANT'S NOTICE OF MOTION AND
MOTION TO COMPEL ARBITRATION
AND STAY PROCEEDINGS;
MEMORANDUM OF POINTS AND
AUTHORITIES**

Hearing Date: September 12, 2018
Hearing Time: 9:00 a.m.
Hearing Place: Courtroom 3
Judge: Hon. Phyllis Hamilton

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE THAT on September 12, 2018, at 9:00 a.m., or as soon as the matter may be heard before the Honorable Phyllis Hamilton of the United States District Court for the Northern District of California in the Oakland Courthouse, Courtroom 3, Third Floor, 1301 Clay Street, Oakland, California 94612, Defendant DoorDash, Inc. will and does move this Court for an order compelling arbitration on an individual basis of the claims of Plaintiff Manuel Magana and staying proceedings. This motion is brought on the grounds that Plaintiff’s claims against DoorDash are subject to a valid and enforceable arbitration agreement that requires Plaintiff to arbitrate those claims on an individual basis. *See* 9 U.S.C. §§ 3–4.

DoorDash’s motion is based on this Notice of Motion and Motion, the accompanying Memorandum of Points and Authorities, the concurrently filed Declaration of Stanley Tang, the concurrently filed Declaration of Theane Evangelis, any other matters of which the Court may take judicial notice, other documents on file in this action, and any oral argument of counsel.

Dated: July 12, 2018

GIBSON, DUNN & CRUTCHER LLP

By: /s/ Theane Evangelis
Theane Evangelis

Attorneys for Defendant
DOORDASH, INC.

CONTENTS

1
2
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4
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6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

- I. INTRODUCTION 7
- II. STATEMENT OF RELEVANT FACTS 7
 - A. DoorDash’s Platform Connects Customers, Restaurants, And Delivery Contractors 7
 - B. The Parties’ Independent Contractor Agreement..... 8
 - C. Plaintiff Filed This Putative Class Action Lawsuit Against DoorDash Notwithstanding His Agreement To Individually Arbitrate Disputes 12
- III. PLAINTIFF SHOULD BE COMPELLED TO ARBITRATE HIS CLAIMS ON AN INDIVIDUAL BASIS..... 12
 - A. The Arbitration Agreement Is Governed By The Federal Arbitration Act..... 13
 - B. The Arbitration Agreement Is Valid And Must Be Enforced 14
 - 1. The Delegation Clause In The Arbitration Agreement Is Valid And Enforceable 14
 - 2. The Gateway Issues Under The FAA Have Been Satisfied..... 16
 - C. The Class Action Waiver Is Valid And Enforceable 19
- IV. CONCLUSION 20

TABLE OF AUTHORITIES

Page(s)

Cases

Allied-Bruce Terminix Cos. v. Dobson,
513 U.S. 265 (1995).....13

Am. Express Corp. v. Italian Colors Rest.,
570 U.S. 228 (2013).....7

AT&T Mobility LLC v. Concepcion,
563 U.S. 333 (2011).....7, 13, 20

Brennan v. Opus Bank,
796 F.3d 1125 (9th Cir. 2015).....14, 15

Buckeye Check Cashing, Inc. v. Cardegna,
546 U.S. 440 (2006).....13

Circuit City Stores, Inc. v. Ahmed,
283 F.3d 1198 (9th Cir. 2002).....15, 16

DIRECTV, Inc. v. Imurgia,
136 S. Ct. 463 (2015).....13

Div. of Labor Law Enforc. v. Transpacific Transp.,
69 Cal. App. 3d 268 (1977).....16

DoorDash, Inc. v. Marciano,
No. 2015-1-CV-287843 (Super. Ct. Santa Clara County Mar. 21, 2016).....19

Edwards v. DoorDash, Inc.
2016 WL 7852532, (S.D. Tex. Dec. 8, 2016, No. H-16-2255), *report and
recommendation adopted*, 2017 WL 244862 (S.D. Tex. Jan. 19, 2017), *aff'd*, 888
F.3d 738 (5th Cir. 2018).....19

Edwards v. DoorDash, Inc.,
2017 WL 5514302, (S.D. Tex. Oct. 18, 2017, No. 16-2255), *report and
recommendation adopted*, 2017 WL 5514707 (S.D. Tex. Nov. 16, 2017).....19

EEOC v. Waffle House, Inc.,
534 U.S. 279 (2002).....18

Epic Sys. Corp. v. Lewis,
584 U.S. Slip Op. (2018).....7, 13, 17, 20

Ericksen, Arbuthnot, McCarthy, Kearney & Walsh Inc. v. 100 Oak Street,
35 Cal. 3d 312 (1983)14

1 *First Options of Chi., Inc. v. Kaplan,*
 2 514 U.S. 938 (1995).....16

3 *Green Tree Fin. Corp. v. Randolph,*
 4 531 U.S. 79 (2000).....13

5 *Hall St. Assocs., L.L.C. v. Mattel, Inc.,*
 6 522 U.S. 576 (2008).....13

7 *Howsam v. Dean Witter Reynolds, Inc.,*
 8 537 U.S. 79 (2002).....14

9 *Kilgore v. KeyBank, Nat’l Ass’n,*
 10 718 F.3d 1052 (9th Cir. 2013).....15, 16

11 *Levin v. Caviar, Inc.,*
 12 146 F. Supp. 3d 1146 (N.D. Cal. 2015)17

13 *Long v. Provide Commerce, Inc.,*
 14 245 Cal. App. 4th 855 (2016)17

15 *Lyons v. DoorDash, Inc.,*
 16 No. 2:17-cv-01496 (C.D. Cal. May 19, 2017)19

17 *Marin Storage & Trucking, Inc. v. Benco Contracting & Eng’g, Inc.,*
 18 89 Cal. App. 4th 1042 (2001)17

19 *Marko v. DoorDash, Inc.*
 20 No. BC659841 (Super. Ct. L.A. County May 29, 2018)7, 18

21 *Mastrobuono v. Shearson Lehman Hutton,*
 22 514 U.S. 52 (1995).....13, 20

23 *Metalclad Corp. v. Ventana Envtl. Organizational P’ship,*
 24 109 Cal. App. 4th 1705 (2003)16

25 *Meyer v. Uber Techs., Inc.,*
 26 868 F.3d 66 (2d Cir. 2017).....17

27 *Mohamed v. Uber Techs., Inc.,*
 28 848 F.3d 1201 (9th Cir. 2016).....14, 15, 16

Moses H. Cone Mem’l Hosp. v. Mercury Constr. Corp.,
 460 U.S. 1 (1983).....13, 14

Perry v. Thomas,
 482 U.S. 483 (1987).....13

Preston v. Ferrer,
 552 U.S. 346 (2008).....13

1 *Rent-A-Center, W., Inc. v. Jackson*,
 2 561 U.S. 63 (2010).....14

3 *Rosenthal v. Great W. Fin. Sec. Corp.*,
 4 14 Cal. 4th 394 (1996)16

5 *Stewart v. Preston Pipeline Inc.*,
 6 134 Cal. App. 4th 1565 (2005)16

7 *Stolt-Nielsen S.A. v. AnimalFeeds Int’l Corp.*,
 8 559 U.S. 662 (2010).....20

9 *Strotz v. Dean Witter Reynolds, Inc.*,
 10 223 Cal. App. 3d 208 (1990), *overruled on other grounds by Rosenthal v. Great*
 11 *W. Fin. Secs. Corp.*, 14 Cal. 4th 394 (1996)17

12 *Swift v. Zynga Game Network, Inc.*,
 13 805 F. Supp. 2d 904 (N.D. Cal. 2011)17

14 *Tompkins v. 23andMe, Inc.*,
 15 2014 WL 2903752 (N.D. Cal. June 25, 2014)17

16 *United Steelworkers v. Warrior & Gulf Navigation Co.*,
 17 363 U.S. 574 (1960).....16, 18

18 *Volt Info. Scis. v. Bd. of Trustees of Leland Stanford Junior Univ.*,
 19 489 U.S. 468 (1989).....19

20 *Wagner v. Stratton Oakmont, Inc.*,
 21 83 F.3d 1046 (9th Cir. 1996).....18

22 **Statutes**

23 9 U.S.C. § 213

24 9 U.S.C. § 37, 20

25 9 U.S.C. § 4.....14

26 Cal. Civ. Code § 155016, 17

27 Cal. Civ. Code § 155616, 17

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I. INTRODUCTION

Plaintiff Manuel Magana’s Class Action Complaint against Defendant DoorDash, Inc., asserts wage and hour claims under the California Labor Code based on the alleged misclassification of putative class members as independent contractors. DoorDash disputes Plaintiff’s claims, but as a threshold matter, Plaintiff cannot litigate these claims in this Court or pursue class-wide relief because Plaintiff and DoorDash entered into an Arbitration Agreement that contains a class action waiver, and Plaintiff did not opt out of that agreement despite having the opportunity to do so.

The United States Supreme Court has repeatedly held that arbitration agreements containing class action waivers must be enforced. *See Epic Sys. Corp. v. Lewis*, 584 U.S. at ___, Slip Op. at 1–2 (2018); *Am. Express Corp. v. Italian Colors Rest.*, 570 U.S. 228, 238–39 (2013); *AT&T Mobility LLC v. Concepcion*, 563 U.S. 333, 352 (2011). The parties’ Arbitration Agreement here, including the class action waiver contained in it, is valid and enforceable under the FAA, and covers all of the claims alleged by Plaintiff in this action. Indeed, the Los Angeles Superior Court, examining the same Arbitration Agreement at issue here, recently granted DoorDash’s petition to compel arbitration of the same claims. *Marko v. DoorDash, Inc.*, No. BC659841 (Super. Ct. L.A. County May 29, 2018), Order Granting In Part Defendant DoorDash, Inc.’s Petition To Compel Arbitration, at p. 2 (attached as Ex. A to Declaration of Theane Evangelis (“Evangelis Decl.”)).

That same result should follow here. DoorDash respectfully requests that the Court compel Plaintiff to arbitrate his claims on an individual basis and stay proceedings in this Court pending arbitration. 9 U.S.C. § 3 (“If any suit . . . be brought in any of the courts of the United States upon any issue referable to arbitration under an agreement in writing for such arbitration, the court in which such suit is pending . . . *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”) (emphasis added).

II. STATEMENT OF RELEVANT FACTS

A. DoorDash’s Platform Connects Customers, Restaurants, And Delivery Contractors

DoorDash is a technology company headquartered in San Francisco, California that facilitates food delivery through its online platform. Declaration of Stanley Tang (“Tang Decl.”) ¶ 4. The platform connects customers, a broad array of restaurants, and independent contractor delivery

1 providers (“contractors”). *Id.* Customers can access the platform via the DoorDash website or a mobile
2 application (“DoorDash app”) on a smartphone. *Id.* Contractors typically receive delivery
3 opportunities via the DoorDash app on their smartphone or other mobile device. *Id.*

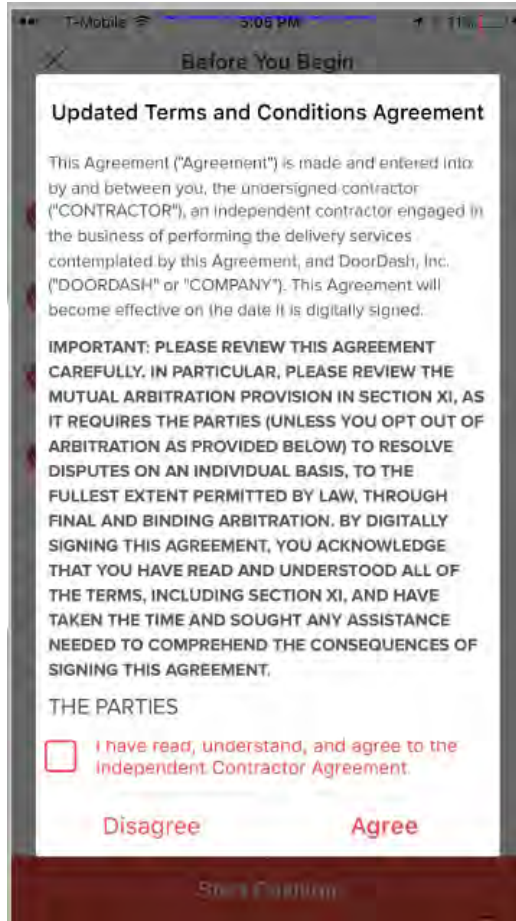
4 **B. The Parties’ Independent Contractor Agreement**

5 From the time DoorDash launched until approximately September 5, 2016, DoorDash entered
6 into hardcopy independent-contractor agreements with California-based contractors. Tang Decl. ¶ 6.
7 Pursuant to DoorDash’s ordinary business practices, Plaintiff signed the hardcopy independent-
8 contractor agreement on May 12, 2014, when he signed up to create a DoorDash account. *Id.*

9 On or around September 5, 2016, DoorDash began using electronic independent-contractor
10 agreements (“ICAs”) with contractors such as Plaintiff. Tang Decl. ¶ 8. Contractors who signed up
11 with DoorDash after September 5, 2016, could accept the electronic ICA as part of the sign-up process.
12 *Id.* Contractors like Plaintiff who were already signed up as of September 5, 2016, were given an
13 opportunity to accept the ICA when they logged into the DoorDash mobile app.¹ *Id.* Specifically,
14 when a contractor such as Plaintiff logged into the mobile app on or after September 5, 2016, using his
15 or her unique username and password for the first time after the electronic ICA went into place, the
16 contractor was prompted to review and accept the ICA. *Id.* The mobile app presented the ICA—which
17 included an arbitration agreement—to contractors through a “pop up” window on their mobile device
18 in the following format:

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28 ¹ Once the contractor accepted, the ICA then superseded the hardcopy independent contractor
agreement he or she had previously signed. Tang Decl. ¶ 8, Ex. A at XIII.1.

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Id., Ex. A. Notably, the first screen in the pop-up advised contractors, in bold and capitalized text, of the existence and importance of the arbitration agreement, as well as their right to opt out of that agreement.

After being presented with the pop-up, contractors could scroll through the ICA at their leisure by clicking on the bright red hyperlink to the complete text of the agreement. Tang Decl. ¶ 9. To continue beyond the ICA and begin receiving delivery opportunities, however, contractors had to manifest their consent to the ICA by: (1) checking the box indicating “I have read, understand, and agree to the Independent Contractor Agreement,” and (2) clicking “Agree.” *Id.* As explained below, arbitration was not mandatory, and the contractor could still receive delivery opportunities if he or she opted out of arbitration at the time of (or within 30 days of) accepting the ICA.

On September 6, 2016 at 7:20 a.m., Plaintiff electronically accepted the ICA when he signed into the DoorDash app and checked the box next to the text stating, “I have read, understand, and agree to the Independent Contractor Agreement,” and then clicked “Agree.” In addition to the electronic

1 record showing Plaintiff's acceptance of the ICA (Tang Decl. ¶ 10, Ex. B), the records of Plaintiff's
 2 deliveries on September 6, 2016, and thereafter confirm that Plaintiff accepted the ICA. As noted
 3 above, contractors are unable to receive delivery opportunities through the app without first accepting
 4 the ICA.

5 The following language appears in bold, capitalized text in the second paragraph of the first
 6 page of the ICA to put the user on notice of the existence of the Arbitration Agreement:

7 **IMPORTANT: PLEASE REVIEW THIS AGREEMENT CAREFULLY. IN**
 8 **PARTICULAR, PLEASE REVIEW THE MUTUAL ARBITRATION**
 9 **PROVISION IN SECTION XI, AS IT REQUIRES THE PARTIES (UNLESS**
 10 **YOU OPT OUT OF ARBITRATION AS PROVIDED BELOW) TO RESOLVE**
 11 **DISPUTES ON AN INDIVIDUAL BASIS, TO THE FULLEST EXTENT**
 12 **PERMITTED BY LAW, THROUGH FINAL AND BINDING ARBITRATION.**
 13 **BY ACCEPTING THIS AGREEMENT, YOU ACKNOWLEDGE THAT YOU**
 14 **HAVE READ AND UNDERSTOOD ALL OF THE TERMS, INCLUDING**
 15 **SECTION XI, AND HAVE TAKEN THE TIME AND SOUGHT ANY**
 16 **ASSISTANCE NEEDED TO COMPREHEND THE CONSEQUENCES OF**
 17 **ACCEPTING THIS AGREEMENT.**

18 *Id.* ¶ 8, Ex. A at p. 1.

19 Section XI of the ICA is entitled "MUTUAL ARBITRATION PROVISION." *Id.* § XI. Under
 20 that section, "CONTRACTOR and DOORDASH mutually agree to resolve any justiciable disputes
 21 between them exclusively through final and binding arbitration instead of filing a lawsuit in court." *Id.*

22 § XI.1. That provision provides as follows:

23 **CONTRACTOR and DOORDASH mutually agree to resolve any justiciable**
 24 **disputes between them exclusively through final and binding arbitration**
 25 **instead of filing a lawsuit in court. This arbitration agreement is governed by the**
 26 **Federal Arbitration Act (9 U.S.C. §§ 1–16) ("FAA") and shall apply to any and all**
 27 **claims arising out of or relating to this Agreement, CONTRACTOR's classification**
 28 **as an independent contractor, CONTRACTOR's provision of Contracted Services**
to consumers, the payments received by CONTRACTOR for providing services to
consumers, the termination of this Agreement and all other aspects of
CONTRACTOR's relationship with DOORDASH, past, present or future, whether
arising under federal, state or local statutory and/or common law, including without
limitation harassment, discrimination or retaliation claims and claims arising under
or related to the Civil Rights Act of 1964 (or its state or local equivalents),
Americans With Disabilities Act (or its state or local equivalents), Age
Discrimination in Employment Act (or its state or local equivalents), Family
Medical Leave Act (or its state or local equivalents), or Fair Labor Standards Act
(or its state or local equivalents), state and local wage and hour laws, state and local
statutes or regulations addressing the same or similar subject matters, and all other
federal, state or local claims arising out of or relating to CONTRACTOR's
relationship or the termination of that relationship with DOORDASH. The parties
expressly agree that this Agreement shall be governed by the FAA even in the event

1 CONTRACTOR and/or DOORDASH are otherwise exempted from the FAA. Any
2 disputes in this regard shall be resolved exclusively by an arbitrator. In the event,
3 but only in the event, the arbitrator determines the FAA does not apply, the state
law governing arbitration agreements in the state in which the CONTRACTOR
operates shall apply.

4 *Id.* § XI.1 (emphasis added).

5 The Arbitration Agreement also contains a class action waiver that provides that both Plaintiff
6 and DoorDash “waive their right to have any dispute or claim brought, heard or arbitrated as, or to
7 participate in, a class action, collective action, and/or representative action, and an arbitrator shall not
8 have any authority to hear or arbitrate any class, collective or representative action (“Class Action
9 Waiver”).” *Id.* § XI.3. Moreover, the parties agreed that “any claim that all or part of this Class Action
10 Waiver is unenforceable, unconscionable, void or voidable may be determined only by a court of
11 competent jurisdiction and not by an arbitrator.” *Id.*

12 Notably, the Arbitration Agreement contains a delegation clause providing that the arbitrator
13 will decide all issues of arbitrability: “All other disputes with respect to whether this Mutual
14 Arbitration Provision is unenforceable, unconscionable, applicable, valid, void or voidable shall be
15 determined exclusively by an arbitrator, and not by any court.” *Id.*

16 The Arbitration Agreement also contains numerous consumer-friendly provisions designed to
17 make the arbitration cost-effective, efficient, and fair for both parties. For example, the Arbitration
18 Agreement invokes the well-established American Arbitration Association (“AAA”) rules for the
19 proceeding and provides a hyperlink that facilitates accessing those rules. *Id.* §§ XI.5, XI.7. The
20 Arbitration Agreement also allows Plaintiff to demand that the arbitration take place within 45 miles
21 of his residence, DoorDash agrees to “pay all of the Arbitrator’s fees and costs,” discovery is permitted,
22 and “the Arbitrator may award all remedies to which a party is entitled under applicable law and which
23 would otherwise be available in a court of law” *Id.* § XI.5.

24 Although the ICA has an Arbitration Agreement, DoorDash does not force it on its contractors.
25 To the contrary, the ICA states in bold text that each contractor has a right to opt out of the arbitration
26 provision within 30 days of the effective date of the ICA. *Id.* § XI.8. The second paragraph of the ICA
27 references this opt-out right in bold, capitalized text. *Id.* at p. 1. Similarly, Section XI.8 of the ICA
28 explains this opt-out right in bold font:

1 **CONTRACTOR’s Right to Opt Out of Arbitration Provision.**
 2 **Arbitration is not a mandatory condition of CONTRACTOR’s**
 3 **contractual relationship with DOORDASH, and therefore**
 4 **CONTRACTOR may submit a statement notifying DOORDASH that**
 5 **CONTRACTOR wishes to opt out and not be subject to this MUTUAL**
 6 **ARBITRATION PROVISION.** In order to opt out, CONTRACTOR must
 7 notify DOORDASH of CONTRACTOR’s intention to opt out by sending an
 8 email to dasheroptout@doordash.com stating CONTRACTOR’s intention
 9 to opt out. In order to be effective, CONTRACTOR’s opt out notice must
 10 be provided within 30 days of the effective date of this Agreement. If
 11 CONTRACTOR opts out as provided in this paragraph, CONTRACTOR
 12 will not be subject to any adverse action from DOORDASH as a
 13 consequence of that decision and he/she may pursue available legal remedies
 14 without regard to this Mutual Arbitration Provision. If CONTRACTOR
 15 does not opt out within 30 days of the effective date of this Agreement,
 16 CONTRACTOR and DOORDASH shall be deemed to have agreed to this
 17 Mutual Arbitration Provision. CONTRACTOR has the right to consult with
 18 counsel of CONTRACTOR’s choice concerning this Mutual Arbitration
 19 Provision (or any other provision of this Agreement).

20 *Id.* § XI.8 (emphasis in original).

21 Although Plaintiff had the right to opt out of the ICA’s Arbitration Agreement, he did not. Tang
 22 Decl. ¶ 12. Plaintiff accepted the ICA on September 6, 2016 by checking the box indicating “I have
 23 read, understand, and agree to the Independent Contractor Agreement.” *Id.* ¶ 10, Ex. B. Plaintiff did
 24 not opt out of arbitration within 30 days of acceptance. *Id.* ¶ 12. Accordingly, under the terms of the
 25 ICA, Plaintiff and DoorDash agreed to arbitrate their disputes.

26 **C. Plaintiff Filed This Putative Class Action Lawsuit Against DoorDash Notwithstanding**
 27 **His Agreement To Individually Arbitrate Disputes**

28 On May 8, 2018, Plaintiff filed this lawsuit against DoorDash. Plaintiff’s complaint alleges
 29 that Plaintiff and other contractors who completed deliveries in California using the DoorDash platform
 30 are misclassified as independent contractors, and that DoorDash is liable for: (1) failure to reimburse
 31 business expenses; (2) failure to pay minimum wage; (3) willful misclassification; (4) failure to
 32 provide wage statements; and (5) unlawful and/or unfair business practices.

33 **III. PLAINTIFF SHOULD BE COMPELLED TO ARBITRATE**
 34 **HIS CLAIMS ON AN INDIVIDUAL BASIS**

35 The FAA controls the parties’ arbitration agreement, and imposes a heavy burden on Plaintiff
 36 to avoid arbitration. Here, the parties’ agreement delegates *to the arbitrator* the two primary
 37 “gateway” issues—whether there is a valid arbitration agreement and whether it covers this dispute.
 38 In any event, as described below, both gateway issues are easily satisfied here. The only gateway

1 issue reserved for the Court is whether Plaintiff’s class action waiver is enforceable. As explained
 2 below, the U.S. Supreme Court’s recent decision in *Epic Systems* confirms that the class action
 3 waiver is enforceable.

4 **A. The Arbitration Agreement Is Governed By The Federal Arbitration Act**

5 The FAA declares a “liberal federal policy” favoring the enforcement of arbitration agreements.
 6 *Concepcion*, 563 U.S. at 346; *Epic Sys.*, 584 U.S. at ___, Slip Op. at 5. Section 2 of the FAA provides:
 7 “A written provision in any . . . contract evidencing a transaction involving commerce to settle by
 8 arbitration a controversy thereafter arising . . . ***shall be valid, irrevocable, and enforceable***, save upon
 9 such grounds as exist at law or in equity for the revocation of any contract.” 9 U.S.C. § 2 (emphasis
 10 added).

11 The FAA was enacted to overcome longstanding judicial hostility to arbitration agreements.
 12 *See Hall St. Assocs., L.L.C. v. Mattel, Inc.*, 522 U.S. 576, 581 (2008); *Buckeye Check Cashing, Inc.*
 13 *v. Cardegna*, 546 U.S. 440, 443 (2006). It not only placed such agreements on equal footing with other
 14 contracts, but also established a federal policy in favor of arbitration agreements. *See Perry v. Thomas*,
 15 482 U.S. 483, 489 (1987); *Green Tree Fin. Corp. v. Randolph*, 531 U.S. 79, 89–90 (2000). The policy
 16 is so significant that “even claims arising under a statute designed to further important social policies
 17 may be arbitrated” *Green Tree*, 531 U.S. at 90. Moreover, the FAA preempts all conflicting state
 18 laws, which means states cannot create special exceptions to the enforcement of arbitration agreements
 19 governed by the FAA. *See Preston v. Ferrer*, 552 U.S. 346, 353 (2008) (“The FAA’s displacement of
 20 conflicting state law is ‘now well-established,’ and has been repeatedly affirmed” (citations omitted)).
 21 If an agreement is governed by the FAA, courts must effectuate the intent of Congress “to move the
 22 parties to an arbitrable dispute out of court and into arbitration as quickly and easily as possible.”
 23 *Moses H. Cone Mem’l Hosp. v. Mercury Constr. Corp.*, 460 U.S. 1, 22 (1983).

24 Here, the Arbitration Agreement is indisputably governed by the FAA. First, the Agreement
 25 expressly states that it is governed by the FAA (Tang Decl. ¶ 8, Ex. A at XI.1), which is sufficient to
 26 bring it within the purview of the FAA. *See Mastrobuono v. Shearson Lehman Hutton*, 514 U.S. 52,
 27 63–64 (1995); *DIRECTV, Inc. v. Imurgia*, 136 S. Ct. 463, 468–71 (2015). Second, the Agreement
 28 “affect[s] commerce.” *See Allied-Bruce Terminix Cos. v. Dobson*, 513 U.S. 265, 273–74, 281 (1995)

1 (FAA’s requirement that an agreement “involve[e] commerce” is “broad and is indeed the functional
2 equivalent of ‘affecting’” commerce, “even if the parties did not contemplate an interstate commerce
3 connection”). The FAA and related federal substantive law therefore govern the enforceability of the
4 Arbitration Agreement.

5 **B. The Arbitration Agreement Is Valid And Must Be Enforced**

6 Consistent with the principle that arbitration is a matter of contract, the FAA requires courts to
7 compel arbitration “in accordance with the terms of the agreement” upon the motion of a party to the
8 agreement. 9 U.S.C. § 4. In determining whether to compel arbitration under the FAA, courts generally
9 look at two “gateway” issues: (1) whether there is a valid agreement to arbitrate between the parties;
10 and (2) whether the agreement covers the dispute. *See Howsam v. Dean Witter Reynolds, Inc.*, 537
11 U.S. 79, 83–84 (2002). If there is any doubt as to the proper interpretation of the agreement on any
12 issue related to arbitrability, the FAA “establishes that . . . [it] should be resolved *in favor of*
13 *arbitration*, whether the problem at hand is the construction of the contract language itself or an
14 allegation of waiver, delay, or a like defense of arbitrability.” *Moses H. Cone*, 460 U.S. at 24–25
15 (emphasis added); *see also Ericksen, Arbuthnot, McCarthy, Kearney & Walsh Inc. v. 100 Oak Street*,
16 35 Cal. 3d 312, 320 (1983) (citing *Moses H. Cone* for same).

17 **1. The Delegation Clause In The Arbitration Agreement Is Valid And Enforceable**

18 Before reaching these gateway issues, however, a court must first examine the agreement to
19 determine whether the parties agreed to commit threshold questions of arbitrability to the arbitrator.
20 *See Rent-A-Center, W., Inc. v. Jackson*, 561 U.S. 63, 70 (2010) (“An agreement to arbitrate a gateway
21 issue is simply an additional antecedent agreement the party seeking arbitration asks the court to
22 enforce . . .”). If the parties have “clearly and unmistakably” agreed to delegate questions of
23 arbitrability to the arbitrator, then the arbitrator must decide the threshold issues. *Howsam*, 537 U.S.
24 at 83; *see also Mohamed v. Uber Techs., Inc.*, 848 F.3d 1201, 1208–09 (9th Cir. 2016) (holding that
25 clear and unmistakable delegation clauses must be enforced under binding Supreme Court precedent);
26 *Brennan v. Opus Bank*, 796 F.3d 1125, 1132 (9th Cir. 2015) (clearly and unmistakably delegated
27 arbitrability issues to arbitrator).

28

1 **a. The Delegation Clause Is Clear, Unmistakable, and Enforceable**

2 Here, the Arbitration Agreement clearly and unmistakably provides that, except for questions
 3 regarding the enforceability of the Class Action Waiver, “[a]ll other disputes with respect to whether
 4 this Mutual Arbitration Provision is unenforceable, unconscionable, applicable, valid, void or voidable
 5 *shall be determined exclusively by an arbitrator*, and not by any court.” Tang Decl. ¶ 8, Ex. A at XI.3
 6 (emphasis added). Moreover, the Arbitration Agreement expressly incorporates the AAA Commercial
 7 Arbitration Rules (“AAA Rules”). *Id.* at XI.5. Rule 7 of the AAA Rules provides: “The arbitrator
 8 shall have the power to rule on his or her own jurisdiction, including any objections with respect to the
 9 existence, scope, or validity of the arbitration agreement or to the arbitrability of any claim[.]”
 10 Evangelis Decl. Ex. D at R.7(a). The express incorporation of the AAA Rules therefore constitutes
 11 further clear and unmistakable evidence of the parties’ intent to arbitrate the threshold issue of
 12 arbitrability. *See Brennan*, 796 F.3d at 1130–31 (“[I]ncorporation of the AAA rules constitutes clear
 13 and unmistakable evidence that contracting parties agree to arbitrate arbitrability”). The Court should
 14 enforce this clear and unmistakable agreement and decide only the issue of the enforceability of the
 15 Class Action Waiver. *See Mohamed*, 848 F.3d at 1209 (enforcing delegation clause that carved out
 16 challenges to class, collective and representative waivers).

17 While it is generally Plaintiff’s burden to prove that an agreement is unconscionable, DoorDash
 18 notes that courts have repeatedly held that if an arbitration agreement provides an opportunity to opt
 19 out, it is not adhesive and there can be no procedural unconscionability. *See Mohamed*, 848 F.3d at
 20 1211; *Circuit City Stores, Inc. v. Ahmed*, 283 F.3d 1198, 1199 (9th Cir. 2002); *Kilgore v. KeyBank*,
 21 *Nat’l Ass’n*, 718 F.3d 1052, 1059 (9th Cir. 2013) (en banc). Courts have therefore upheld delegation
 22 clauses found in voluntary arbitration agreements on the ground that they are not unconscionable. *See*
 23 *Mohamed*, 848 F.3d at 1211 (upholding delegation clause found in arbitration agreement that provided
 24 right to opt out).

25 Here, DoorDash conspicuously notified Plaintiff of his right to opt out of the Arbitration
 26 Agreement on the very first page of the ICA, as well as in a standalone section in the Arbitration
 27 Agreement with the underlined and bolded title, “**CONTRACTOR’S Right to Opt Out of**
 28 **Arbitration Provision**.” Tang Decl. ¶ 8, Ex. A at XI.8. The Arbitration Agreement states that:

1 (1) arbitration is “not a mandatory condition of [Plaintiff’s] contractual relationship with
 2 DOORDASH”; and (2) Plaintiff would “not be subject to any adverse action from DOORDASH” if he
 3 opted out. *Id.* Plaintiff had 30 days to notify DoorDash of his desire to opt out, and could have easily
 4 done so by sending an email. *Id.* This meaningful opportunity to opt out renders the agreement
 5 voluntary and precludes any finding of procedural unconscionability. *See Mohamed*, 848 F.3d at 1211;
 6 *Circuit City Stores*, 283 F.3d at 1199; *Kilgore*, 718 F.3d at 1059. Plaintiff should be required to
 7 arbitrate the threshold issue of arbitrability.

8 **2. The Gateway Issues Under The FAA Have Been Satisfied**

9 Even if the Court were to find that it, and not an arbitrator, should determine arbitrability despite
 10 the delegation clause (it should not), the Court should compel Plaintiff’s claims to individual arbitration
 11 because both of the “gateway” issues under the FAA have been met here.

12 **a. A Valid Agreement To Arbitrate Exists**

13 “[A]rbitration is a matter of contract” *United Steelworkers v. Warrior & Gulf Navigation*
 14 *Co.*, 363 U.S. 574, 582 (1960). Ordinary state law principles governing the formation of contracts are
 15 therefore used to determine whether the parties agreed to arbitrate. *See First Options of Chi., Inc.*
 16 *v. Kaplan*, 514 U.S. 938, 944 (1995); *Metalclad Corp. v. Ventana Envl. Organizational P’ship*, 109
 17 Cal. App. 4th 1705, 1712 (2003). The moving party’s burden is light in this regard. DoorDash need
 18 only show, by a preponderance of the evidence, that an agreement to arbitrate exists. *See Rosenthal*
 19 *v. Great W. Fin. Sec. Corp.*, 14 Cal. 4th 394, 413 (1996).

20 Under California law, a valid contract exists when (1) the parties are capable of contracting,
 21 and there is (2) a lawful object, (3) mutual consent, and (4) sufficient cause or consideration. Cal.
 22 Civ. Code § 1550; *see also Div. of Labor Law Enforc. v. Transpacific Transp.*, 69 Cal. App. 3d 268,
 23 275 (1977). The Arbitration Agreement contained in the ICA meets all of these requirements. First,
 24 there is no dispute that the parties are capable of contracting. *See* Cal. Civ. Code § 1556 (“All persons
 25 are capable of contracting, except minors, persons of unsound mind, and persons deprived of civil
 26 rights.”). Second, there is also no dispute that the Arbitration Agreement had a lawful purpose, *i.e.*,
 27 the prompt and efficient resolution of disputes in arbitration. *See Stewart v. Preston Pipeline Inc.*, 134
 28 Cal. App. 4th 1565, 1586 (2005) (finding arbitration provision had lawful purpose of resolving

litigation); *see also Epic Sys.*, 584 U.S. at ___, Slip Op. at 5 (by enacting the FAA, “Congress directed courts to . . . treat arbitration agreements as ‘valid, irrevocable, and enforceable’”).

Third, there is mutual consent. Plaintiff affirmatively acknowledged his intent—after ample opportunity for review—to be bound by the terms of the ICA, including the conspicuous Arbitration Agreement contained therein. *See Marin Storage & Trucking, Inc. v. Benco Contracting & Eng’g, Inc.*, 89 Cal. App. 4th 1042, 1049–50 (2001) (“Every contract requires mutual assent or consent (Civ. Code, §§ 1550, 1565), and ordinarily one who signs an instrument which on its face is a contract is deemed to assent to all its terms.”). Plaintiff’s manifestation of his acceptance to the ICA by electronically checking a box and clicking a button confirms his agreement. *See Meyer v. Uber Techs., Inc.*, 868 F.3d 66, 75–80 (2d Cir. 2017) (vacating order denying motions to compel arbitration after holding that availability of a contract “only by hyperlink does not preclude a determination of reasonable notice” and that the plaintiff “unambiguously manifested his assent to [the contract] as a matter of California law”).² Moreover, in addition to Plaintiff’s affirmative assent, DoorDash provided Plaintiff ample opportunity to review the ICA, and 30 days after accepting the ICA to opt out of the Arbitration Agreement. Tang Decl. ¶ 8, Ex. A at XI.8. Plaintiff chose not to opt out of the Arbitration Agreement (*id.* ¶ 15), further evidencing his consent to be bound by its terms.

Finally, the Arbitration Agreement is supported by valid consideration: the parties’ mutual promises to arbitrate disputes. *See Strotz v. Dean Witter Reynolds, Inc.*, 223 Cal. App. 3d 208, 216 (1990), *overruled on other grounds by Rosenthal v. Great W. Fin. Secs. Corp.*, 14 Cal. 4th 394 (1996) (“Where an agreement to arbitrate exists, the parties’ mutual promises to forego a judicial determination and to arbitrate their disputes provide consideration for each other.”). All of the elements

² *See also, e.g., Levin v. Caviar, Inc.*, 146 F. Supp. 3d 1146, 1157 (N.D. Cal. 2015) (compelling arbitration and finding contract was formed when plaintiff clicked on a button to indicate assent to an agreement whose terms were accessible by hyperlink); *Tompkins v. 23andMe, Inc.*, 2014 WL 2903752, at *8 (N.D. Cal. June 25, 2014) (holding that valid contract had been formed when plaintiff “clicked a box or button that appeared near a hyperlink to the [contract] to indicate acceptance of the [contract]”); *Swift v. Zynga Game Network, Inc.*, 805 F. Supp. 2d 904, 910–12 (N.D. Cal. 2011) (compelling arbitration and finding videogame user bound by Zynga’s terms of service because she clicked the “accept” button immediate above a hyperlink which contained its terms); *Long v. Provide Commerce, Inc.*, 245 Cal. App. 4th 855, 862–63 (2016) (distinguishing a “browsewrap” agreement seeking to bind plaintiff to Terms of Use agreement merely by visiting the website, from an enforceable “clickwrap” agreement which requires an affirmative act of consent).

1 for the valid formation of an agreement to arbitrate exist here.

2 **b. Plaintiff's Claims Are Covered By The Arbitration Agreement**

3 “[A]bsent some ambiguity in the agreement . . . it is the language of the contract that defines
4 the scope of disputes subject to arbitration.” *EEOC v. Waffle House, Inc.*, 534 U.S. 279, 289 (2002).
5 Courts must “interpret the contract by applying general state-law principles of contract interpretation,
6 while giving due regard to the federal policy in favor of arbitration by resolving ambiguities as to the
7 scope of arbitration in favor of arbitration.” *Wagner v. Stratton Oakmont, Inc.*, 83 F.3d 1046, 1049
8 (9th Cir. 1996); *see also United Steelworkers*, 363 U.S. at 582–83 (courts must conclude disputes are
9 covered “unless it may be said with positive assurance that the arbitration clause is not susceptible of
10 an interpretation that covers the asserted dispute. Doubts should be resolved in favor of coverage.”).

11 Here, there is no ambiguity in the agreement. Rather, the language of the Arbitration
12 Agreement makes clear that Plaintiff’s claims are subject to arbitration. Specifically, Plaintiff agreed
13 that the Arbitration Agreement would apply to:

14 *any and all claims arising out of or relating to this Agreement, CONTRACTOR’s*
15 *classification as an independent contractor, CONTRACTOR’s provision of*
16 *Contracted Services to consumers, the payments received by CONTRACTOR for*
17 *providing services to consumers, the termination of this Agreement, and all other*
18 *aspects of CONTRACTOR’s relationship with DOORDASH, past, present or*
19 *future, whether arising under federal, state or local statutory and/or common law,*
20 *including without limitation . . . claims arising under or related to . . . [the] Fair*
Labor Standards Act (or its state or local equivalents), state and local wage and
hour laws, state and local statutes or regulations addressing the same or similar
subject matters, and all other federal, state or local claims arising out of or relating
to CONTRACTOR’s relationship or the termination of that relationship with
DOORDASH.

21 Tang Decl. ¶ 8, Ex. A at XI.1 (emphasis added). In his Complaint, Plaintiff claims he was misclassified
22 as an independent contractor, and alleges causes of action for failure to reimburse business expenses,
23 failure to pay minimum wage, willful misclassification, failure to provide pay statements, and unlawful
24 and unfair business practices. All of these claims fall squarely within the scope of the Arbitration
25 Agreement.

26 Examining the same Arbitration Agreement here, the Los Angeles Superior Court recently
27 granted DoorDash’s petition to compel arbitration of claims based on plaintiffs’ independent-contractor
28 status and all claims for damages. *Marko v. DoorDash, Inc.*, No. BC659841, Order Granting In Part

1 Defendant DoorDash, Inc.'s Petition To Compel Arbitration, at 2 (Super. Ct. L.A. County May 29,
2 2018) (Evangelis Decl., Ex. A.). That same result should follow here.

3 Indeed, in each instance that DoorDash has moved to compel arbitration in accord with its
4 arbitration agreement, the court has compelled arbitration. *See, e.g., Edwards v. DoorDash, Inc.*, 2017
5 WL 5514302, at *13 (S.D. Tex. Oct. 18, 2017, No. 16-2255), *report and recommendation adopted*,
6 2017 WL 5514707 (S.D. Tex. Nov. 16, 2017) (compelling independent contractors who agreed to the
7 DoorDash ICA to arbitrate); *Edwards v. DoorDash, Inc.* 2016 WL 7852532, at *14 (S.D. Tex. Dec. 8,
8 2016, No. H-16-2255), *report and recommendation adopted*, 2017 WL 244862 (S.D. Tex. Jan. 19,
9 2017) (enforcing DoorDash arbitration agreement after severing two provisions which are not in
10 Plaintiff's ICA), *aff'd*, 888 F.3d 738 (5th Cir. 2018); Evangelis Decl. Ex. B (Order re: Petition to
11 Compel Arbitration of DLSE Complaint and Stay DLSE Proceedings, *DoorDash, Inc. v. Marciano*,
12 No. 2015-1-CV-287843 (Super. Ct. Santa Clara County, Mar. 21, 2016) (enforcing DoorDash ICA and
13 ordering arbitration of complaint filed before California Division of Labor Standards Enforcement));
14 *see also* Evangelis Decl. Ex. C (Order Granting Joint Stip. Ordering Pl's Claims Into Arbitration and
15 Staying PAGA Claims, Dkt. 21, *Lyons v. DoorDash, Inc.*, No. 2:17-cv-01496 (C.D. Cal. May 19,
16 2017)). Indeed, in *Lyons*, the plaintiff stipulated to arbitration upon reviewing DoorDash's motion to
17 compel. *Id.* Plaintiff can offer the Court no reason to adopt an aberrant result here.

18 **C. The Class Action Waiver Is Valid And Enforceable**

19 As noted above, under the delegation clause in the Arbitration Agreement, the parties agreed
20 that the Court would decide the question of the enforceability of the Class Action Waiver. Tang Decl.
21 at ¶ 8, Ex. A at XI.3. It is now well settled that class action waivers in arbitration agreements governed
22 by the FAA are valid and enforceable. In *Marko* (p. 2), the Superior Court enforced the class-action
23 waiver in the same Arbitration Agreement, holding that the plaintiffs in that case "shall arbitrate their
24 independent contractor status and claims for damages on an individual basis, rather than on a class
25 basis." Evangelis Decl. Ex. A.

26 The United States Supreme Court has held that the "primary purpose" of the FAA is "ensuring
27 that private agreements to arbitrate are enforced *according to their terms.*" *Volt Info. Scis. v. Bd. of*
28 *Trustees of Leland Stanford Junior Univ.*, 489 U.S. 468, 479 (1989) (emphasis added); *see also*

1 *Mastrobuono*, 514 U.S. at 53–54 (enforcement of arbitration agreements “according to their terms” is
 2 the “central purpose” of the FAA); *Concepcion*, 563 U.S. at 344 (same). Most recently, the Supreme
 3 Court held that this instruction by Congress to enforce arbitration agreements according to their terms
 4 “include[s] terms providing for individualized proceedings.” *Epic Sys.*, 584 U.S. at ___, Slip Op. at 2.
 5 Specifically, in *Epic Systems*, the Supreme Court held that class action waivers in arbitration
 6 agreements governed by the FAA are enforceable. *Id.* The Court rejected the argument that class
 7 action waivers are unenforceable under the National Labor Relations Act. *Id.*

8 The United States Supreme Court has upheld class action waivers in arbitration agreements in
 9 several other cases. In *Concepcion*, the Court held that the FAA preempted the California Supreme
 10 Court’s rule restricting enforcement of class action waivers because it interfered with the fundamental
 11 attributes of arbitration and created a scheme inconsistent with the FAA. 563 U.S. at 352.³ Two years
 12 later, in *American Express*, the Supreme Court enforced a class action waiver in an arbitration
 13 agreement, noting that courts “must rigorously enforce” arbitration agreements according to their
 14 terms, including terms that “specify with whom [the parties] choose to arbitrate their disputes.” 570
 15 U.S. at 233.

16 Under binding United States Supreme Court precedent, the parties’ agreement not to pursue
 17 class claims is valid and must be enforced. Plaintiff should be compelled to arbitrate his claims on an
 18 individual basis pursuant to the terms of the Arbitration Agreement, and the proceedings in this Court
 19 should be stayed pending arbitration. 9 U.S.C. § 3.

20 IV. CONCLUSION

21 For the foregoing reasons, Defendant requests that this Court compel arbitration and stay
 22 proceedings.

23
 24
 25
 26 ³ The Supreme Court also explained that class arbitration was inconsistent with the fundamental
 27 attributes of arbitration. *Concepcion*, 563 U.S. at 346–48; *see also Stolt-Nielsen S.A.*
 28 *v. AnimalFeeds Int’l Corp.*, 559 U.S. 662, 684 (2010) (“a party may not be compelled under the
 FAA to submit to class arbitration unless there is a contractual basis for concluding that the party
 agreed to do so”). Here, the parties did not agree to class arbitration, and instead expressly
 prohibited arbitration of claims on a class, collective or representative basis. Tang Decl. ¶ 8, Ex.
 A at XI.3.

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Dated: July 12, 2018

GIBSON, DUNN & CRUTCHER LLP

By: /s/ Theane Evangelis
 Theane Evangelis

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

MANUEL MAGANA, on behalf of himself
and all others similarly situated,

Plaintiff,

v.

DOORDASH, INC.,

Defendants.

CASE NO. 4:18-cv-03395-PJH

PROOF OF SERVICE

Hearing Date: September 12, 2018
Hearing Time: 9:00 a.m.
Hearing Place: Courtroom 3
Judge: Hon. Phyllis Hamilton

Action Filed: May 8, 2018

PROOF OF SERVICE

I, Stephanie Balitzer, declare as follows:

I am employed in the County of Los Angeles, State of California; I am over the age of eighteen years and am not a party to this action; my business address is 333 South Grand Avenue, Los Angeles, California 90071, in said County and State. On July 12, 2018, I served the following document(s):

DEFENDANT’S NOTICE OF MOTION AND MOTION TO COMPEL ARBITRATION AND STAY PROCEEDINGS; MEMORANDUM OF POINTS AND AUTHORITIES;

DECLARATION OF THEANE EVANGELIS IN SUPPORT OF DEFENDANT DOORDASH, INC.’S MOTION TO COMPEL ARBITRATION AND STAY PROCEEDINGS;

DECLARATION OF STANLEY TANG IN SUPPORT OF DEFENDANT DOORDASH, INC.’S MOTION TO COMPEL ARBITRATION AND STAY PROCEEDINGS;

[PROPOSED] ORDER GRANTING DEFENDANT’S MOTION TO COMPEL ARBITRATION AND STAY PROCEEDINGS

On the parties stated below, by the following means of service:

Shannon Liss-Riordan
Lichten & Liss-Riordan, P.C.
729 Boylston St., Ste. 2000
Boston, MA 02116
Tel: 617 994-5800
Fax: 617 994-5801
sliss@llrlaw.com

BY ELECTRONIC TRANSFER TO THE CM/ECF SYSTEM: On this date, I electronically uploaded a true and correct copy in Adobe “pdf” format the above-listed document(s) to the United States District Court’s Case Management and Electronic Case Filing (CM/ECF) system. After the electronic filing of a document, service is deemed complete upon receipt of the Notice of Electronic Filing (“NEF”) by the registered CM/ECF users.

(FEDERAL) I declare under penalty of perjury that the foregoing is true and correct.

Executed on July 12, 2018

/s/ Stephanie Balitzer
Stephanie Balitzer