IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

FITZGERALD HINSON, **Plaintiff,** **v.** **LYFT, INC.,** **Defendant.**	**CIVIL ACTION FILE** **NO. 1:20-CV-2209-MHC**

ORDER

This case comes before the Court on Defendant Lyft, Inc. ("Lyft")'s Motion to Compel Arbitration and to Stay Litigation ("Mot. to Compel") [Doc. 16] pursuant to the Federal Arbitration Act ("FAA"), 9 U.S.C. §§ 1-16.

I. BACKGROUND

Lyft owns and operates a ridesharing service that has employed hundreds of drivers in the state of Georgia. Compl. [Doc. 1] ¶ 8; see also Decl. of Neil Shah in Supp. of Lyft's Mot. to Compel (Sept. 17, 2020) ("Shah Decl.") [Doc. 16-2] ¶ 3 (stating that Lyft is a "mobile-based ridesharing marketplace platform" that connects riders seeking a destination with drivers willing to drive them to those destinations). To access Lyft's services, both riders and drivers (known as "users")

must create a registered profile, which requires that the user "consent to the Terms of Service Agreement, and supply information such as the individual's first and last name, email address, and phone number." Shah Decl. ¶ 4. Drivers also must agree to an additional "driver addendum." Id. ¶ 5. Lyft periodically updates its Terms of Service Agreement, and in doing so requires all users to re-consent to the updated document in order to continue using Lyft's services. Id. ¶ 6. For example, after a new update, a driver with a registered profile cannot offer a ride unless he accepts the newly updated Terms of Services Agreement. Id. ¶ 9. Two such updates occurred on August 26, 2019, and November 27, 2019. Id. ¶¶ 7, 10.

Plaintiff Fitzgerald Hinson ("Hinson") alleges that he has been a driver for Lyft since 2019. Compl. ¶¶ 7, 20. According to Lyft's business records, Hinson first agreed to Lyft's Terms of Service on July 23, 2016, and he accepted them again on August 26, 2019, on October 19, 2019, and finally on November 24, 2019. Shah Decl. ¶ 16. Hinson accepted the November 27, 2019, updated Terms of Service on June 9, 2020. Id. ¶ 17. He accepted the Terms of Service several more times throughout 2020, most recently on August 7, 2020. Id.

A. The Lyft Terms of Service Agreement

Lyft's November 27, 2019, Terms of Service Agreement includes a disclaimer on the first page that states:

> PLEASE BE ADVISED: THIS AGREEMENT CONTAINS PROVISIONS THAT GOVERN HOW CLAIMS BETWEEN YOU AND LYFT CAN BE BROUGHT (SEE SECTION 17 BELOW). THESE PROVISIONS WILL, WITH LIMITED EXCEPTION, REQUIRE YOU TO SUBMIT CLAIMS YOU HAVE AGAINST LYFT TO BINDING AND FINAL ARBITRATION ON AN INDIVIDUAL BASIS, NOT AS A PLAINTIFF OR CLASSMEMBER IN ANY CLASS, GROUP OR REPRESENTATIVEACTION OR PROCEEDING. AS A DRIVER OR DRIVER APPLICANT, YOU HAVE AN OPPORTUNITY TO OPT OUT OF ARBITRATION WITH RESPECT TO CERTAIN CLAIMS AS PROVIDED IN SECTION 17.

Lyft Terms of Service (Nov. 27, 2019) ("Nov. Terms of Service") [Doc. 16-2 at 11-53] at 1. Section 17, titled "Dispute Resolution and Arbitration Agreement" (the "Arbitration Agreement") provides that the user and Lyft "mutually agree" "to resolve any dispute by arbitration," and that the agreement to arbitrate is governed by the FAA. Id. § 17(a). The Arbitration Agreement applies to "all Claims," which is defined to include "any dispute, claim or controversy . . . arising out of or relating to," in relevant part, (1) "any city, county, state or federal wage-hour law . . . ," (2) "compensation, break and rest periods, [and] expense reimbursement . . .", and (3) "any claims arising under the . . . Fair Labor Standards Act." Id. Moreover, the Arbitration Agreement provides that "[a]ll disputes concerning the arbitrability of a Claim (including disputes about the scope, applicability,

enforceability, revocability or validity of the Arbitration Agreement) shall be decided by the arbitrator, as expressly provided below."[1] Id.

B. Procedural History

On May 22, 2020, Hinson filed his Complaint on behalf of himself and other current or former drivers for Lyft, based on Lyft's alleged violations of the Fair Labor Standards Act ("FLSA"), 29 U.S.C. § 201 et seq. See Compl. ¶ 1. Hinson alleges that Lyft has been classifying its drivers improperly as "independent contractors" instead of "employees," and thereby avoiding its obligations to pay drivers expense reimbursements, minimum wages, overtime pay, and other benefits. Id. ¶¶ 1-5. Hinson alleges that the drivers are not independent contractors because, among other reasons, they lack the discretion and autonomy that independent contractors have. Id. ¶ 2, 20-115. In the single count of the Complaint, Hinson alleges that Lyft has engaged in a pattern and practice of violating the FLSA with respect to him and all similarly situated Lyft drivers who have performed services for Lyft from May 22, 2017, until the present, by failing

[1] The Arbitration Agreement within the November Terms of Service contains a list of five limited exceptions to the Arbitration Agreement that are not relevant here. See Nov. Terms of Service § 17(g); Mot. to Compel at 6 n. 2.

to pay overtime wages and failing to record all of the time said drivers have worked for Lyft. Id. ¶ 116-31.

On September 25, 2020, Lyft filed its Motion to Compel asking the Court to compel Hinson to arbitrate his claim against Lyft on an individual basis in accordance with the Arbitration Agreement. Mot. to Compel. Anticipating that Hinson would attempt to invoke the exemption for "transportation workers" in § 1 of the FAA, 9 U.S.C. § 1, Lyft contends that the exemption does not apply to Lyft rideshare drivers because they predominantly provide local services, transport passengers rather than goods, and are not engaged in interstate commerce. Lyft's Mem. of Law in Supp. of Mot. to Compel ("Lyft's Mem.") [Doc. 16-1] at 1-4, 8-22. Hinson responds by asserting that § 1 of the FAA does apply because he is a transportation worker engaged in interstate commerce even if most of his rides are intrastate in nature. Pl.'s Resp. to Def.'s Mot. to Compel ("Pl.'s Opp'n") [Doc. 24] at 2-5. Hinson also contends that the § 1 exemption applies to the transportation of passengers as well as goods. Id. at 5-6. Finally, Hinson argues that if the FAA does not apply to him, then the Arbitration Agreement is unenforceable. Id. at 6-9.

II. LEGAL STANDARD

The FAA "reflects the fundamental principle that arbitration is a matter of contract." Id. Section 2 of the FAA provides:

> A written provision in . . . a contract evidencing a transaction involving commerce to settle by arbitration a controversy thereafter arising out of such contract . . . shall be valid, irrevocable, and enforceable, save upon such grounds as exist at law or in equity for the revocation of any contract.

9 U.S.C. § 2. "The FAA thereby places arbitration agreements on an equal footing with other contracts, and requires courts to enforce them according to their terms." Rent-A-Center, W., Inc. v. Jackson, 561 U.S. 63, 67 (2010) (citations omitted).

There is an "emphatic federal policy in favor of arbitral dispute resolution," and courts are to construe "any doubts concerning the scope of arbitrable issues . . . in favor of arbitration." Cordoba v. DIRECTV, LLC, 801 F. App'x 723, 725 (11th Cir. 2020) (quoting Mitsubishi Motors Corp. v. Soler Chrysler-Plymouth, Inc., 473 U.S. 614, 626, 631 (1985)); see also Bazemore v. Jefferson Capital Sys., LLC, 827 F.3d 1325, 1329 (11th Cir. 2016) (same). The FAA "provisions manifest a liberal federal policy favoring arbitration agreements." Gilmer v. Interstate/Johnson Lane Corp., 500 U.S. 20, 25 (1991) (quotation omitted); see also Shearson/Am. Express, Inc. v. McMahon, 482 U.S. 220, 226 (1987) (holding that the FAA's "federal policy favoring arbitration" requires that courts "rigorously enforce agreements to arbitrate."). Therefore, "questions of arbitrability must be addressed with a healthy regard for the federal policy favoring arbitration" and "any doubts concerning the

scope of arbitrable issues should be resolved in favor of arbitration." Moses H. Cone Mem'l Hosp. v. Mercury Constr. Corp., 460 U.S. 1, 24 (1983).

However, the FAA exempts from its coverage "contracts of employment of seamen, railroad employees, or any other class of workers engaged in foreign or interstate commerce." 9 U.S.C. § 1. The Supreme Court has held that § 1's residual clause—"any other class of workers engaged in foreign or interstate commerce"—applies only to "contracts of employment of transportation workers." See Circuit City Stores, Inc. v. Adams, 532 U.S. 105, 118-19 (2001) (resolving a circuit split over whether § 1 applied to all employment contracts engaged in interstate commerce or only to contracts involving transportation workers engaged in interstate commerce). The Supreme Court also has stated that "a court should decide for itself whether § 1's 'contracts of employment' exclusion applies before ordering arbitration." New Prime Inc. v. Oliveira, 139 S. Ct. 532, 537 (2019).

"A plaintiff challenging the enforcement of an arbitration agreement bears the burden to establish, by substantial evidence, any defense to the enforcement of the agreement." Inetianbor v. CashCall, Inc., 923 F. Supp. 2d 1358, 1362 (S.D. Fla. 2013) (citing Bess v. Check Express, 294 F.3d 1298, 1306-07 (11th Cir. 2002)).

III. DISCUSSION[2]

There is no dispute that the Arbitration Agreement requires a Lyft rideshare driver to arbitrate all FLSA claims, including the one brought by Hinson in this case. The principle question for the Court to decide is whether Hinson and the class of Lyft drivers he seeks to represent are members of a "class of workers engaged in . . . interstate commerce" such that they would be classified as transportation workers that are exempt from the FAA's arbitration provisions under § 1's residual clause. Lyft seeks to compel Hinson to arbitrate his claim on an individual basis, arguing that the § 1 exemption for transportation workers does not apply to Hinson or the class of Lyft drivers to which he belongs. See Mot. to Compel. Specifically, Lyft contends that Lyft drivers are not "engaged" in interstate commerce within the meaning of § 1.[3]

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[2] Because this Court finds that the putative class of Lyft drivers are not engaged in interstate commerce, it need not address Lyft's contention that § 1 does not apply to transportation workers who transport passengers instead of goods. The Court assumes for purposes of this opinion that it does. See Rogers v. Lyft, Inc., 452 F. Supp. 3d 904 (N.D. Cal. 2020) ("The ships and trains that transport passengers are staffed by seamen and railroad workers, just like the ones who transport goods.").

[3] Lyft categorizes the class as "all rideshare drivers within the United States—or, at a minimum, all of the drivers using the Lyft Platform within the United States." Mot. to Compel at 11. Hinson does not explicitly challenge this characterization of the class in his response to the Motion to Compel, but he refers to himself and his class as the more specific, "Lyft drivers." Pl.'s Opp'n at 2-3. Since it does not

The Supreme Court in Circuit City conducted a thorough textual and historical analysis of the phrase "engaged in commerce" for the purpose of interpreting § 1's exclusion to mean that only transportation workers were covered by the language of the statute. Circuit City, 532 U.S. at 115-18. In Circuit City, the Supreme Court concluded that the plain meaning of the phrase "engaged in commerce," as used in the residual clause, is narrower than other, more comprehensive jurisdictional phrases as "affecting commerce" and "involving commerce," especially because it is preceded by two very specific categories of workers: seamen and railroad workers. Id. at 117-18. The Supreme Court has not, however, opined on whether "transportation workers" includes rideshare drivers.[4]

In a § 1 exemption case not involving rideshare drivers, the United States Court of Appeals for the Eleventh Circuit limited the application of § 1 to transportation workers that "actually engage in the transportation of goods in interstate commerce" and are also "employed in the transportation industry." Hill

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appear that Lyft takes issue with this characterization, the Court will consider the class as "Lyft drivers."

[4] In New Prime, the Supreme Court also settled another aspect of § 1's exemption for transportation workers by expanding the phrase "contracts of employment," to include "agreements that require independent contractors to perform work." 139 S. Ct. at 539. The parties do not dispute this application of the exemption to Hinson's suit based on the independent contractor-employee distinction.

v. Rent-A-Center, Inc., 398 F.3d 1286, 1289-90 (11th Cir. 2005) (declining to apply the § 1 exemption based on the finding that the plaintiff's "interstate transportation activity" was only "incidental to [his] employment" as an account manager for a furniture and appliance rental business); compare Martins v. Flower Foods, Inc., 463 F. Supp. 3d 1290, 1298 (M.D. Fla. 2020) (finding that the § 1 exemption applied where the plaintiffs worked for distributors of a bakery company, delivered the company's products to retailers in Florida, and at least a portion of the goods delivered were produced out-of-state). Like the Supreme Court, the Eleventh Circuit has not yet opined on the more specific question of whether rideshare drivers as a class are "employed in the transportation industry" and who "actually engage in the transportation of goods in interstate commerce."

In determining whether the § 1 exemption applies, courts have considered "not whether the individual worker actually engaged in interstate commerce, but whether the class of workers to which the complaining worker belonged engaged in interstate commerce." Wallace v. Grubhub Holdings, Inc., 970 F.3d 798, 800 (7th Cir. 2020) (quoting Bacashihua v. U.S. Postal Serv., 859 F.2d 402, 405 (6th Cir. 1988)). Hinson contends that he and other Lyft drivers transport passengers "within the flow of interstate commerce" because "they pick up or drop off a passenger at an airport as the first or last leg of a larger 'interstate' journey" and

there is no requirement that transportation of persons be entirely interstate to come within the § 1 exemption. Pl.'s Opp'n at 2-4.

Lyft contends that its services are offered and regulated on a localized level such that it is a part of *intra*state commerce rather than *inter*state commerce. Mot. to Compel at 13-14. According to Lyft, drivers are only approved to drive in one "coverage area," which may extend to multiple cities within the same state but does not extend to multiple states. Id. (citing Lyft Help Center, Coverage Areas, https://help.lyft.com/hc/en-us/articles/115012927607-Coverage-Areas (last visited Jan. 28, 2021)). Lyft argues that any trips that are out-of-state are incidental, and that only 1.97% of rides on the Lyft platform in the United States during the time period from May 22, 2017, to August 31, 2020, and 2.03% of such rides during the time period from June 1, 2019, to August 31, 2020, involved crossing state lines. Id. at 12 & n.4 (citing Decl. of Ian Muir in Supp. of Lyft's Mot. to Compel (Sept. 24, 2020) [Doc. 16-4] ¶¶ 5-6). In response, Hinson does not dispute any of these statistics or that out-of-state trips are incidental to the services provided by Lyft drivers, and relies on cases that did not concern rideshare services where courts have found occasional interstate trips sufficient to qualify for the § 1 exemption. Pl.'s Opp'n at 3-5.

This Court has reviewed the recent decisions that have considered whether rideshare drivers for companies like Lyft and Uber fall with the § 1 residual clause exemption for transportation workers engaged in interstate commerce and finds the reasoning of those courts that have decided to the contrary to be persuasive. For example, in In re Grice, 974 F.3d 950 (9th Cir. 2020), the plaintiff was an Uber driver based in Alabama who provided rideshare services to and from international airports and never crossed state lines even though his passengers traveled interstate. The Ninth Circuit distinguished those cases in which delivery drivers are engaged in interstate commerce by virtue of their employers' business (even though they themselves do not physically cross state lines) with rideshare drivers who affiliate with companies who are not in the general business of offering interstate transportation to passengers but whose drivers frequently pick up and drop off passengers at airports. Id. at 956-57. The Ninth Circuit declined to vacate the district court's decision which held that the § 1 exemption did not apply because Grice was not part of a class of workers engaged in interstate commerce despite the fact that he made trips to and from airports to pick up and drop off passengers; "Grice's employment is more like the local taxicab service that the Supreme Court held to be 'not an integral part of interstate transportation' in [United States v.] Yellow Cab[, 332 U.S. 218 (1947)]." Id. at 958.

In Capriole v. Uber Techs., Inc., 460 F. Supp. 2d 919 (N.D. Cal. 2020), the plaintiffs were Uber drivers who, like Hinson, alleged they "sometimes cross state lines while transporting passengers and . . . frequently pick up and drop off passengers at airports, thereby placing themselves within the flow of interstate commerce." Id. at 929. Uber provided evidence that only 2.5% of all trips within a four-year period started and ended in different states, and only 10% of all trips in 2019 began or ended at an airport. Id. at 930. The district court held that the § 1 exemption did not apply:

> The statistics cited by Uber demonstrate that interstate rides given by Uber drivers in Massachusetts is not only incidental – they are rare. Uber drivers do not perform an integral role in a chain of interstate transportation. Uber drivers do not fall within the Section 1 exemption to the FAA because they are not "engaged in interstate commerce" within the meaning of that Section. Accordingly, the FAA applies to the arbitration agreements at issue here.

Id. at 932.

In Rogers, the district court granted Lyft's motion to compel arbitration, again finding that the § 1 exemption did not apply (and citing to the Eleventh Circuit's Hill decision):

> Lyft drivers, as a class, are not engaged in interstate commerce. Their work predominantly entails intrastate trips, an activity that undoubtedly affects interstate commerce but is not interstate commerce itself. Although we can safely assume that some drivers (especially those who live near state borders) regularly transport passengers across state lines, the company is in the general business of giving people rides, not the

> particular business of offering interstate transportation to passengers. Interstate trips that occur by happenstance of geography do not alter the intrastate transportation function performed by the class of workers. See Hill, 398 F.3d at 1290.

Rogers, 452 F. Supp. 3d at 916.

Hinson cites to a list of cases in support of his argument that even occasional trips are enough to establish that a transportation worker is engaged in interstate commerce, but these cases do not involve rideshare services like Lyft's. See Pl.'s Opp'n at 3-4. These cases include:

- Int'l Brotherhood Of Teamsters Local Union No. 50 v. Kienstra Precast, LLC, 702 F.3d 954 (7th Cir. 2012), where the employer was a trucking company which employed truckers who engaged in interstate transportation work. "The heart of his case is the Illini CBA, which, as shown above, is a contract of employment of interstate transportation because the workers made interstate deliveries for Illini Concrete." Id. at 958.
- Cent. States, Se. and Sw. Areas Pension Fund v. Cent. Cartage Co., 84 F.3d 988 (7th Cir. 1996), where the employer was a trucking company with a nationwide collective bargaining agreement that occasionally transported cartage across state lines nevertheless was engaged in

interstate commerce. "We hold that the workers of Central Cartage (covered in the collective bargaining agreement at issue between Central Cartage and the Pension Fund) therefore qualify as 'transportation workers.'" Id. at 993.

- Waithaka v. Amazon.com, Inc., 404 F. Supp. 3d 335, 343 (D. Mass. 2019), where delivery drivers for Amazon who may not cross state lines "are indispensable parts of Amazon's distribution system" which "of course, transports goods in interstate commerce."
- Palcko v. Airborne Express, Inc., 372 F.3d 588, 593-94 (3rd Cir. 2004), where the plaintiff was an employee of Airborne Express, "a package transportation and delivery company that engages in intrastate, interstate, and international shipping." Id. at 590.
- Harden v. Roadway Package Sys., Inc., 249 F.3d 1137 (9th Cir. 2001), where the plaintiff was employed as a driver for Roadway Package Systems, and contracted to provide "a small package information, transportation, and delivery service throughout the United States." Id. at 1139.
- Christie v. Loomis Armored US, Inc., No. 10-cv-02011-WJM-KMT, 2011 WL 6152979 (D. Colo. Dec. 9, 2011), where the employer was

"registered with the Department of Transportation and identifies itself as engaged in the business of interstate transport of currency." Id. at *3.

As the above list demonstrates, the cases cited by Hinson involve trucking and delivery drivers where the transportation workers belonged to a class of workers that was indisputably engaged in interstate commerce, even if the individual plaintiff traveled out-of-state only occasionally. As discussed above, Lyft is not a trucking or delivery service but a rideshare service that predominantly affects intrastate commerce.

The crux of this issue is not whether a certain proportion of a person's work is out-of-state, but rather, whether the *entire class* of workers to which the person belongs is a part of the stream of commerce such that it is engaged in interstate commerce. See Rogers, 452 F. Supp. 3d at 915-16 ("[T]he fact that some workers cross state lines in the course of their duties does not mean that the class of workers as a whole is engaged in interstate commerce."). The Court finds persuasive that Lyft drivers are only authorized to drive within a certain coverage area and that these coverage areas do not extend between states. It is clear that a Lyft driver's "work predominantly entails intrastate trips," and while this may affect or involve interstate commerce, Lyft drivers as a whole are not in "the

particular business of offering interstate transportation to passengers." Rogers, 452 F. Supp. 3d at 916-17 (quotation marks and citations omitted) (finding that Lyft drivers' "relationship to interstate transit is only casual and incidental," and "lack the requisite practical, economic continuity with interstate air or rail transportation").

The only case cited by Hinson where a motion to compel arbitration for a rideshare service was denied is Cunningham v. Lyft, Inc., 450 F. Supp. 3d 37 (D. Mass. 2020). The Cunningham court relied on a list of factors suggested by the Eighth Circuit in Lenz v. Yellow Transp., Inc., 431 F.3d 348, 351-52 (8th Cir. 2005), in considering whether a contract involves a worker engaged in interstate commerce. Id. at 46. The Massachusetts district court found that passengers traveling to and from Logan International Airport were in the "'continuity of movement' of a longer trip . . . similar to Amazon's last mile delivery driver engaged in interstate commerce" in Waithaka. Id. This Court finds this comparison unpersuasive. Lyft drivers are more like taxi drivers than last-mile delivery drivers of Amazon products, and taxi drivers have been found to have an "only casual and incidental" relationship to interstate transit. See Capriole, 460 F. Supp. 3d at 932 (comparing Uber drivers to the taxi drivers in United States v. Yellow Cab Co., 332 U.S. 218 (1947), overruled on other grounds by Copperweld

Corp. v. Indep. Tube Corp., 467 U.S. 752 (1984), and holding that Uber drivers do not perform an integral role in a chain of interstate transportation because their relationship to interstate transportation was "only casual and incidental"); see also Exec. Town & Country Servs., Inc. v. City of Atlanta, 789 F.2d 1523, 1525-26 (11th Cir. 1986) (citing and quoting Yellow Cab Co., 332 U.S. at 230-33) (holding that, outside of the context of the FAA, "taxicab service between airports and businesses and homes is not within the stream of commerce" and that the "typical taxicab service to and from an airport is only 'casual and incidental' to the taxicab's normal course of business"). But see Abel v. So. Shuttle Servs., Inc., 631 F.3d 1210, 1216-17 (11th Cir. 2011) (distinguishing shuttle drivers from taxi drivers because the airport shuttle bus company had a "practical continuity of movement" with the overall interstate journey based on its cooperation with internet travel companies and the fact that its customers were largely made up of people buying travel packages through these internet travel companies). "A taxicab does not transform into an integral part of interstate commerce if, within the scope of its normal course of independent local service, the passenger happens to be beginning or completing an interstate trip." Exec. Town & Country, 789 F.2d at 1526.

Thus, the Court finds that Lyft drivers are, as a class, not engaged in interstate commerce. Accordingly, they are not covered by the exemption in § 1 of the FAA for transportation workers and are subject to the Terms of Service Agreement agreed to in the course of using the Lyft platform, including the agreement to arbitrate any and all claims on an individual basis, including the FLSA claims in this case.

IV. CONCLUSION

For the foregoing reasons, it is hereby **ORDERED** that Defendant Lyft, Inc.'s Motion to Compel Arbitration and to Stay Litigation [Doc. 16] is **GRANTED**. It is further **ORDERED** that this action is **STAYED** and shall be **ADMINISTRATIVELY CLOSED** pending completion of arbitration pursuant to the terms of the Arbitration Agreement in this case. The parties shall notify the Court upon completion of arbitration, and either party shall have the right to move to reopen this case to resolve any remaining issues of contention.

IT IS SO ORDERED this 26th day of February, 2021.

Mark H. Cohen

MARK H. COHEN
United States District Judge