KEKER, VAN NEST & PETERS LLP
RACHAEL E. MENY - # 178514
rmeny@keker.com
BENJAMIN BERKOWITZ - # 244441
bberkowitz@keker.com
RYAN K. WONG - # 267189
rwong@keker.com
ERIN E. MEYER - # 274244
emeyer@keker.com
JULIA L. ALLEN - # 286097
jallen@keker.com
DONNA ZAMORA-STEVENS - # 318525
dzamora-stevens@keker.com
TAYLOR L. REEVES - # 319729
treeves@keker.com
MELISSA L. CORNELL - # 323307
mcornell@keker.com
633 Battery Street
San Francisco, CA 94111-1809
Telephone: 415 391 5400
Facsimile: 415 397 7188

Attorneys for Defendant
MAPLEBEAR INC. dba INSTACART

FILED
Superior Court of California
County of San Francisco
OCT 22 2020
CLERK OF THE COURT
BY: _____ Deputy Clerk

SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF SAN FRANCISCO

BRENDON MCDONNELL, individually, and on behalf of other individuals similarly situated,

Plaintiff,

v.

MAPLEBEAR INC. dba INSTACART, and DOES 1-100, inclusive,

Defendants.

Case No. CGC-20-585037

~~[PROPOSED]~~ ORDER GRANTING DEFENDANT MAPLEBEAR INC. DBA INSTACART'S MOTION TO COMPEL ARBITRATION AND TO STAY

Date: October 22, 2020
Time: 9:30 a.m.
Dept.: Department 302
Judge: Hon. Ethan P. Schulman

Date Filed: June 25, 2020

Trial Date: Not yet set

Having considered Defendant Maplebear Inc. dba Instacart's ("Instacart") Motion to Compel Arbitration and to Stay, and for good cause appearing, the Court ORDERS that the Defendant's Motion is GRANTED.

It is undisputed that Plaintiff assented to Instacart's Independent Contractor Agreement ("IAC"), which contains an arbitration agreement and waives Plaintiff's right to bring class claims. (Yu Decl., Ex. A, ¶ 9.) Both parties agree in the IAC that "Instacart's business and your Services involve commerce under the Federal Arbitration Act," and that "this Agreement shall be governed by the Federal Arbitration Act (9 U.S.C. §§ 1 et seq.) even in the event Instacart and/or you are otherwise exempted from the FAA. Any disputes or claims in this regard shall be resolved exclusively by an arbitrator. In the event, but only in the event, there is a final determination by a court of competent jurisdiction that the FAA does not apply, the state law governing arbitrations in the state in which you provide the majority of your Services shall apply." (*Id.*)

First, assuming that the issue is properly before the Court, Plaintiff is not exempt from the Federal Arbitration Act under the Section 1 exemption for "workers engaged in foreign or interstate commerce." (9 U.S.C. 1.) Courts have repeatedly rejected Plaintiff's argument. (See *In re Grice* (9th Cir. 2020) 974 F.3d 950, 956-958 [district court's decision that rideshare drivers who pick up and drop off passengers at airports do not fall within section 1 exemption was not clearly erroneous as a matter of law]; *Rittmann v. Amazon.com, Inc.* (9th Cir. 2020) 971 F.3d 904, 915-916 ["[T]he Amazon package [deliverers] carry . . . goods that remain in the stream of interstate commerce until they are delivered. AmFlex delivery providers are thus transportation workers engaged in the movement of interstate commerce . . . Amazon packages do not 'come to rest,' at Amazon warehouses, and thus the interstate transactions do not conclude at those warehouses. The packages are not held at warehouses for later sales to local retailers; they are simply part of a process by which a delivery provider transfers the packages to a different vehicle for the last mile of the packages' interstate journeys . . . delivery services like Postmates or Doordash are . . . distinguishable . . . local food delivery drivers are not 'engaged in the interstate transport of goods' because the prepared meals from local restaurants are not a type of good that

are indisputably part of the stream of commerce."]; *Magana v. DoorDash, Inc.* (N.D. Cal. 2018) 343 F.Supp.3d 891, 899 ["Plaintiff alleges that he has worked as a delivery driver for DoorDash . . . He does not allege that he ever crossed state lines as part of his work. As such, there is no allegation that he engaged in interstate commerce under the definition of the narrowly-construed term . . . Plaintiff argues that DoorDash drivers are involved in the flow of interstate commerce because they facilitate the transportation of goods that originated across state lines . . . But plaintiff does not allege that he either moved or supervised movement of goods across state lines."].) Because the exemption does not apply, the FAA controls, and as Plaintiff concedes, the class action waiver therefore is enforceable. (*Iskanian v. CLS Transportation Los Angeles, LLC* (2014) 59 Cal.4th 348.)

Plaintiff's argument that his work is distinguishable from Postmates or Doordash and more akin to AmFlex drivers is unpersuasive. Plaintiff argues that "Instacart does not offer the purchase of prepared meals." (Plf.'s Opp., 8:27.) However, that assertion contradicts Plaintiff's complaint. "Instacart Inc. offers local delivery of restaurant-prepared meals, groceries[,] and other goods." (Compl. ¶ 10.) Moreover, Plaintiff's distinction between the delivery of raw goods and prepared meals is unsupported by any authority or by the underlying rationale for the transportation worker exemption. *Rittmann's* focus was on whether the stream of commerce is broken by the process ending at one location, there a warehouse. (*See* 971 F.3d at 915-16.) Here, the stream of commerce concludes at the local grocery stores, shops, etc. that Plaintiff then picks up from and delivers the goods locally. Plaintiff's request for discovery on this issue is denied.

Second, Plaintiff's causes of action under the Unfair Competition Law ("UCL") and public nuisance law are subject to arbitration. The Court rejects Instacart's first argument, that the arbitrator must decide whether the claim is arbitrable. Before referring a dispute to an arbitrator, the court determines whether a valid arbitration agreement exists. (See 9 U.S.C. § 2.) Arbitration agreements, "[l]ike other contracts . . . may be invalidated by 'generally applicable contract defenses, such as fraud, duress, or unconscionability.'" (*Rent-A-Center, West, Inc. v. Jackson* (2010) 561 U.S. 63, 68.) Under California law, a generally acceptable contract defense is that a "law established for a public reason cannot be contravened by a private agreement...." (*McGill v.*

Citibank, N.A. (2017) 2 Cal.5th 945, 962.) Thus, "a provision in any contract . . . that purports to waive, in all fora, the statutory right to seek public injunctive relief under the UCL, the CLRA, or the false advertising law is invalid and unenforceable under California law." (*Id.* at 962.)

Instacart's argument that the claims are arbitrable because they seek private, not public relief, is dispositive. Public injunctive relief must "by and large benefit[] the general public and … the plaintiff, if at all, only incidentally and/or as a member of the general public." (*McGill v. Citibank,* (2017) 2 Cal.5th 945, 955 (internal citations and quotations omitted).) Private injunctive relief, by contrast, "primarily resolves a private dispute between the parties and rectifies individual wrongs, and … benefit[s] the public, if at all, only incidentally." (*Id.*) "Relief that has the primary purpose or effect of redressing or preventing injury to an individual plaintiff—or a group of individuals similarly situated to the plaintiff—does not constitute public injunctive relief." (*Id.*) In contrast to the false advertising and deceptive practices claims involved in *McGill*, Plaintiffs' claims under the UCL and public nuisance law for relief as to classification and health and safety measures is one seeking private rather than public injunctive relief. (*See Rogers v. Lyft, Inc.*, 2020 WL 2532527 (Cal. Super.) [UCL claim based on alleged misclassification sought private rather than public injunctive relief]; *Capriole v. Uber Technologies, Inc.* (N.D. Cal., May 14, 2020, No. 20-CV-02211-EMC) 2020 WL 2563276, at *11 ["The Court understands plaintiffs' argument that the classification error committed by Uber has enormous public consequences, including the potential impact upon public health. But thus far no court has held that such indirect consequences . . . render this suit one for public injunction."].)

Third, Defendant's request for discovery as to ADR's neutrality is denied. Plaintiff does not show that his discovery request would lead to any relevant information. "ADR [is a] well-known and reputable provider…." (*Farrar v. Direct Commerce, Inc.* (2017) 9 Cal.App.5th 1257, 1268–69.)

IT IS SO ORDERED.

Dated: Oct. 22, 2020

Honorable Ethan P. Schulman
JUDGE OF THE SUPERIOR COURT