SUPERIOR COURT OF CALIFORNIA

COUNTY OF SAN FRANCISCO

DEPARTMENT 304

COORDINATION PROCEEDING
SPECIAL TITLE [RULE 3.550]

UBER TECHNOLOGIES WAGE AND HOUR CASES

THIS ORDER RELATES TO:

People of the State of California v. Uber Technologies, Inc., et al., No. CGC-20-584402 (San Francisco Super. Ct.)

Garcia-Brower v. Uber Technologies, Inc., et al., No. RG20070281 (Alameda County Super. Ct.)

Garcia-Brower v. Lyft, Inc., et al., No. RG20070283 (Alameda County Super. Ct.)

Case No. CJC-21-005179
JUDICIAL COUNCIL COORDINATION PROCEEDING NO. 5179

ORDER DENYING DEFENDANTS' MOTIONS TO COMPEL ARBITRATION OF THE PEOPLE'S AND LABOR COMMISSIONER'S CASES

Defendants' motions to compel arbitration of the People's and the Labor Commissioner's cases and to stay, and Defendants' alternative motions to strike, came on for hearing before the Court on August 26, 2022. All parties appeared through their counsel of record. The matter was reported. For the following reasons, the Court denies Defendants' motions in their entirety.

PROCEDURAL BACKGROUND

In these coordinated actions, Plaintiffs allege that Uber and Lyft misclassified passenger drivers and/or food delivery drivers as independent contractors under the "ABC" worker-classification test established by Assembly Bill No. 5 (A.B. 5), which took effect on January 1, 2020. This order concerns three of the actions brought by governmental plaintiffs: one brought by the People of the State of California (the People), represented by the Attorney General and the City Attorneys of San Francisco, Los Angeles, and San Diego; and two separate enforcement actions brought by the Labor Commissioner through the Division of Labor Standards and Enforcement (DLSE).[1] Those actions seek injunctive relief, restitution, and penalties under the Private Attorneys General Act of 2004, Lab. Code § 2698 *et seq.* (PAGA), the Labor Code, and the Unfair Competition Law, Bus. & Prof. Code § 17200 *et seq.* (UCL).

Defendants Uber and Lyft filed motions to compel arbitration in each of the cases before they were included in this coordinated proceeding. Lyft also filed an alternative motion seeking to strike Plaintiffs' requests for restitution, arguing that even if Plaintiffs may not be compelled to arbitrate under agreements to which they are not parties, it nevertheless would be improper for the government to seek such "driver-specific relief" because it is arbitrable as between Defendants and their drivers, as well as an alternative motion to stay. In their motions, Defendants generally argue that although the People and the Commissioner are not parties to Defendants' arbitration agreements with their drivers, Plaintiffs' claims arise out of those agreements, and the restitutionary relief they seek will be paid directly to the drivers. Thus, both Defendants' motions to compel arbitration in the People's case are limited to the People's claim for restitution under the UCL, which Defendants characterize as "individualized" relief. Defendants moved to compel arbitration of the Labor Commissioner's separate enforcement actions or, in the alternative, to strike on the same grounds.

Defendants have now renewed those motions here. The People and the Labor Commissioner oppose the motions.

By stipulation and order filed July 6, 2022, the Court permitted extensive supplemental briefing on

[1] The DLSE is a division within the California Department of Industrial Relations, which in turn is a department within the California Labor and Workforce Development Agency ("LWDA"). This Order uses the terms "DLSE" and the "Labor Commissioner" interchangeably.

the motions to address the U.S. Supreme Court's decision in *Viking River Cruises v. Moriana* (2022) 142 S.Ct. 1906, as well as other recent authority.

DISCUSSION

I. Controlling Precedent Mandates Denial of Defendants' Motions To Compel The People and The Commissioner To Arbitrate Their Claims Under Private Arbitration Agreements To Which They Are Not Parties.

Although the parties have spilled a great deal of ink addressing the issues presented by these motions, they are readily resolved. It is undisputed that neither the People nor the Commissioner is a party to any of the arbitration agreements with Defendants' drivers that serve as the basis for Defendants' motions. Further, the People and the Commissioner act as public prosecutors when they pursue litigation to enforce the UCL and the Labor Code, and each is independently empowered to seek civil penalties, injunctive relief, and other remedies to vindicate the public interest. As such, they are independent of Defendants' drivers, and cannot be bound by Defendants' private arbitration agreements with those persons. Under controlling authority, Defendants' motions must be denied. (*E.E.O.C. v. Waffle House, Inc.* (2002) 534 U.S. 279; *Department of Fair Employment and Housing v. Cisco Systems, Inc.* (Aug. 5, 2022) 2022 WL 3136003; *People v. Maplebear Inc.* (July 28, 2022) 81 Cal.App.5th 923, 2022 WL 2981169.)

Maplebear is indistinguishable. There, the San Diego City Attorney brought an enforcement action on behalf of the People against Maplebear dba Instacart. The People alleged that Instacart unlawfully misclassified its employees (referred to as "Shoppers") as independent contractors, and asserted one cause of action under the UCL alleging Instacart's misclassification of workers was unlawful under the Labor Code and an unfair business practice. In the complaint's prayer for relief, the People sought civil penalties authorized by the UCL, injunctive relief requiring Instacart to properly classify its employees, and restitution to the misclassified employees for unpaid wages, overtime, and rest breaks, missed meals, and reimbursement for expenses necessary to perform the work. (2022 WL 2981169 at *2.)[2] In response, "Instacart filed a motion to compel a portion of the People's case—the prayers for

[2] Defendants attempt to distinguish *Maplebear* on the ground that it focused "primarily" on the injunctive

injunctive relief and restitution—to arbitration based on its agreements with Shoppers." (*Id.* (footnote omitted).) The trial court denied the motion, concluding Instacart had not met its burden to show the existence of a valid agreement to arbitrate between it and the People. (*Id.* at *3.) On appeal, Instacart asserted that "its agreements with Shoppers required the court to compel arbitration of the claims here because the City of San Diego's lawsuit is brought primarily to effectuate the rights of the Shoppers, whom Instacart characterizes as the real parties in interest." (*Id.*)

The Court of Appeal disagreed and affirmed the trial court's order denying the motion to compel arbitration. As the court noted, Instacart conceded that the City was not a signatory to its arbitration agreements with Shoppers. (*Id.* at *4.) Instacart argued, however, that "the City is bound by the agreements because it is, in effect, representing, or seeking to validate the individual employment law rights of, the Shoppers," who it asserted were the real parties in interest in the case. (*Id.*) As a result, Instacart argued that "the City's injunctive relief and restitution claims here are private claims of the Shoppers that must be compelled to arbitration." (*Id.*) The court disagreed. As it explained, "[t]he People are not deputized by the UCL to vindicate the individual rights of Instacart's Shoppers. Rather, the City of San Diego is acting in its own law enforcement capacity 'to seek civil penalties for Labor Code violations traditionally prosecuted by the state.'" (*Id.* at *6, quoting *Iskanian v. CLS Transportation Los Angeles, LLC* (2014) 59 Cal.4th 348, 388.) In light of that independent authority, the court squarely rejected Instacart's contention that the Shoppers were the "real parties in interest" in the case: "Contrary to Instacart's assertion, the Shoppers are not the real party in interest in this case, the People are." (*Id.* (footnote omitted).)

The court followed *E.E.O.C. v. Waffle House, Inc.* (2002) 534 U.S. 279, which it found to be "the relevant binding authority." (*Id.*)[3] In *Waffle House*, the High Court held that an agreement between an employer and an employee to arbitrate employment-related disputes does not bar the EEOC from pursuing victim-specific judicial relief, such as backpay, reinstatement and damages, in an enforcement

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relief claim. However, nothing in the holding of that case turned on the "primary" relief sought by the People, nor would such a test be workable in practice. Significantly, the court there specifically rejected Instacart's request to compel only "a portion of the People's case" to arbitration—precisely the relief Defendants seek here.

[3] In view of that language, Defendants' insistence that *Waffle House* is "irrelevant" is unavailing.

action alleging that the employer violated federal law, the Americans with Disabilities Act. The Court of Appeals had attempted to draw the same distinction that Defendants urge here between injunctive and victim-specific relief, ruling that the EEOC is barred from obtaining the latter. (*Id.* at 290.) The Supreme Court reversed, holding "whenever the EEOC chooses from among the many charges filed each year to bring an enforcement action in a particular case, the agency may be seeking to vindicate a public interest, not simply provide make-whole relief for the employee, *even when it pursues entirely victim-specific relief.*" (*Id.* at 295 (emphasis added.)) That an employee has signed a mandatory arbitration agreement does not limit the remedies available to the EEOC or "authorize the courts to balance the competing policies of the ADA and the FAA or to second-guess the agency's judgment concerning which of the remedies authorized by law that it shall seek in any given case." (*Id.* at 297.)

The *Maplebear* court found *Waffle House* to be squarely on point. (81 Cal.App.5th at *6.) As it explained,

> Like the EEOC in *Waffle House*, the City is indisputably not a party to any arbitration agreement with Instacart. No individual shopper has control over this litigation and the City did not need any individual Shopper's consent to bring the action. Like the EEOC, the City is in command of the process and controls both the litigation strategy and disposition of any recovery obtained for the employees. Just like the statutory authorization that gives the EEOC authority to pursue discrimination cases against employers, even where parallel private statutory claims may also lie, the UCL provides the City of San Diego with the same type of independent authority to assert UCL claims, including claims to enjoin unlawful and unfair business practices and obtain restitution for those who have been harmed by those practices.
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> Further, as the trial court found, the City's claims for civil penalties and injunctive relief seek to vindicate public harms. That the complaint also includes victim-specific restitution does not make the case private in nature. Rather, as *Waffle House* held, a government enforcement action that includes monetary relief for the victims of the unlawful activity advances a public purpose because while punitive damages benefit the individual employee, they also serve an obvious public function in deterring future violations.
>
> In addition, California courts have consistently held that the primary interest of law enforcement actions under the UCL is protecting the public, not private interests.

(*Id.* at *7-*8 (cleaned up).)

Maplebear also rejected Instacart's reliance on the *Broughton-Cruz* rule, which Lyft raised at the hearing. In *Maplebear*, Instacart argued that "the People's UCL claims for restitution, employee reclassification, and an injunction requiring Instacart to comply with the Labor Code are private in nature,

and any benefits to the public from that relief are merely incidental, and therefore the claims are arbitrable." (*Id.* at *9 (cleaned up).) The court found that "the premise of this argument is flawed because it is based on rules that apply where the plaintiff entered an arbitration agreement with the defendant and the relief sought is private. The *Broughton-Cruz* rule—which precludes arbitration of injunctive relief claims that benefit the public and requires arbitration of claims seeking restitution and injunctive relief which primarily benefits the individual plaintiff—do[es] not apply here, where there is no agreement between the parties to arbitrate and the case is a law enforcement action brought for public benefit." (*Id.* (footnote omitted).

Finally, for the same fundamental reason, the court rejected Instacart's claim that the trial court's order must be reversed "because it creates a new exception to the FAA for law enforcement actions," characterizing its framing of the issue as erroneous. "As discussed, the FAA requires courts to enforce arbitration agreements. . . . The FAA does not require courts to expand the contours of the agreement to compel non-parties, here the government, to arbitration." (*Id.* at *9.)

Even more recently, in *Department of Fair Employment and Housing v. Cisco Systems, Inc.* (Aug. 5, 2022) 2022 WL 3136003, the Sixth District Court of Appeal reached precisely the same result, holding that the Department of Fair Employment and Housing cannot be compelled to arbitrate an employment discrimination lawsuit when the affected employee agreed to resolve disputes with the employer through arbitration because the Department did not agree to do so. Just as in *Maplebear*, the court emphasized that "[a]s the public arm of the enforcement procedure, the Department acts independently when it sues for FEHA violations." (*Id.* at *3 (footnote omitted).) "The ability to decide whether to file an action and the ability to pursue relief separate from what can be obtained by an employee confirm that the Department operates as an independent party in an enforcement lawsuit," not merely as the employee's "proxy." (*Id.*, citing *Waffle House*, 534 U.S. at 291.) Even if the employee is a "real party in interest" because the Department seeks at least some remedies for the employee, "it does not undermine or conflict with the Department having an independent interest in FEHA enforcement." (*Id.*) In short,

> The Department acts independently when it exercises the power to sue for FEHA violations. As an independent party, the Department cannot be compelled to arbitrate under an agreement it has not entered.

(*Id.* at *5.) The court also noted that its reasoning was consistent with decisions by the Ninth Circuit Court of Appeals and other states declining to require administrative enforcement agencies to arbitrate without their consent. (*Id.*; see also *Crestwood Behaviorial Health, Inc. v. Lacy* (2021) 70 Cal.App.5th 560, 581-585 [recognizing, following *Waffle House*, that Labor Commissioner has independent statutory authority to investigate and obtain victim-specific relief under the Labor Code and to protect the public interest, regardless of whether the individual employee's claim has been compelled to arbitration].)

These cases constitute binding precedent and are dispositive of Defendants' motions.[4] Here, precisely as in these cases, it is undisputed that the People and the Commissioner are not parties to Defendants' private arbitration agreements with their drivers. Further, both the People and the Commissioner have independent statutory authority to file suit to enforce the UCL and the Labor Code, which furthers the public interests in those statutory schemes. It follows that they may not be compelled to arbitrate their claims under agreements they did not enter, regardless of whether they are seeking relief that will redound to the drivers' benefit.

Defendants criticize these cases as incorrectly decided, although they correctly recognize they are binding on this Court. Their efforts to distinguish or avoid them are unpersuasive. Only one warrants brief discussion here.

Defendants argue that arbitration is compelled by the FAA and *Viking River*. But both *Maplebear* and *DFEH* squarely rejected that argument. After the Court of Appeal issued its original opinion in *Maplebear*, it granted rehearing and vacated that opinion to consider *Viking River*. After doing so, however, it reissued its original opinion essentially unchanged, adding a footnote explaining that "[b]ecause this case does not concern PAGA claims and because the City of San Diego is not a party to Instacart's arbitration agreement with its Shoppers, *Viking River* has no impact on this appeal." (81 Cal.App.5th *6 at fn. 4.) Similarly, the DFEH court made clear that *Viking River* "reaffirmed, consistent

[4] Uber's reliance on a decision by another department of this Court in *People v. Doordash, Inc.*, No. CGC-20-584789, is improper. Trial court orders have no precedential value. (*Bolanos v. Superior Court* (2008) 169 Cal.App.4th 744, 761.) In any event, that ruling addressed a different issue: whether the People were barred by res judicata from seeking restitution under the UCL on behalf of drivers who had entered into a class action settlement releasing the same claims. It did not involve a motion to compel arbitration, nor did it hold that the People may be bound by private arbitration agreements to which they are not parties.

with what we say here, that arbitration is a matter of consent and a party cannot be compelled to arbitrate absent a contractual basis for concluding the party agreed to do so." (2022 WL 3136003, at *4; see *Viking River*, 142 S.Ct. at 1923 ["The most basic corollary of the principle that arbitration is a matter of consent is that a party can be forced to arbitrate only those issues it specifically has agreed to submit to arbitration. This means that parties cannot be coerced into arbitrating a claim, issue, or dispute absent an affirmative contractual basis for concluding that the party *agreed* to do so." (cleaned up; emphasis original)].) The same conclusion follows inescapably here.

Finally, Defendants make the alternative argument that the People and the Labor Commissioner may be required to arbitrate their restitution claims under the equitable estoppel doctrine. "Generally speaking, one must be a party to an arbitration agreement to be bound by it or invoke it. The strong public policy in favor of arbitration does not extend to those who are not parties to an arbitration agreement, and a party cannot be compelled to arbitrate a dispute that he has not agreed to resolve by arbitration." (*Westra v. Marcus & Millichap Real Estate Investment Brokerage Co., Inc.* (2005) 129 Cal.App.4th 759, 763 (cleaned up).) "However, both California and federal courts have recognized limited exceptions to this rule, allowing nonsignatories to an agreement containing an arbitration clause to compel arbitration of, or be compelled to arbitrate, a dispute arising within the scope of that agreement." (*DMS Services, LLC v. Superior Court* (2012) 205 Cal.App.4th 1346, 1352-1353.)

Under the equitable estoppel doctrine, as summarized in Defendants' authorities, "a nonsignatory defendant may invoke an arbitration clause to compel a signatory plaintiff to arbitrate its claims when the cause of action against the nonsignatory are intimately founded in and intertwined with the underlying contract obligations." (*Alliance Title Co., Inc. v. Boucher* (2005) 127 Cal.App.4th 262, 271 (cleaned up); see also, e.g., *JSM Tuscany, LLC v. Superior Court* (193 Cal.App.4th 1222, 1237 [same].) The instant motions present the obverse situation: Defendants, who are signatories of the arbitration agreements with their drivers, are seeking to compel the People and the Labor Commissioner, *nonsignatory* strangers to those agreements, to arbitrate their claims. (See, e.g., *Jensen v. U-Haul Co. of California* (2017) 18 Cal.App.5th 295, 307 [criticizing moving defendant for conflating "two separate and distinct issues" of whether a signatory plaintiff's claims sufficiently relate to or arise from a contract as to fall within the

scope of the arbitration clause and "whether a *nonsignatory* plaintiff's claims are so dependent on and inextricably intertwined with the underlying contractual obligations of the agreement containing the arbitration clause that equity requires those claims to be arbitrated"].) For at least two reasons, even if the doctrine could properly be applied against a nonsignatory under certain narrow circumstances, this is not such a case.

First, as the People and the Labor Commissioner correctly observe, their claims under the UCL and the Labor Code are not founded in Defendants' contracts with their drivers. "The reason for this equitable rule is plain: One should not be permitted to rely on an agreement containing an arbitration clause for its claims, while at the same time repudiating the arbitration provision contained in the same contract." (*DMS Services, LLC*, 205 Cal.App.4th at 1354.) Merely "making reference to" an agreement with an arbitration clause is not enough. (*Goldman v. KPMG, LLP* (2009) 173 Cal.App.4th 209, 218.) Here, the People and the Labor Commissioner are "only seeking to enforce the UCL" and the Labor Code, and are "clearly not seeking to enforce or otherwise take advantage of any portion" of Defendants' contracts with their drivers"; indeed, they take the position that those contracts violate California law requiring Defendants to classify their drivers as employees. (*UFCW & Employers Benefit Trust v. Sutter Health* (2015) 241 Cal.App.4th 909, 929.) "The doctrine of equitable estoppel has no application." (*Id.*; see also *Stafford v. Rite Aid Corporation* (9th Cir. 2020) 998 F.3d 862, 866-867 [equitable estoppel did not require pharmacy customer who filed putative class action under UCL and CLRA alleging that pharmacy fraudulently inflated reported prices of prescription drugs to insurance companies to submit claims to arbitration under pharmacy's contracts with pharmacy benefits managers, where plaintiff was not seeking damages for breach of those contracts]; *Namisnak v. Uber Technologies, Inc.* (9th Cir. 2020) 971 F.3d 1088, 1095 [plaintiffs' claims under the ADA were fully viable without reference to Uber's Terms and Conditions, which contained arbitration clause, so equitable estoppel did not apply]; *Jensen*, 18 Cal.App.5th at 295 [affirming denial of motion to compel arbitration where "plaintiffs do not rely or depend on the terms of the rental agreement . . . in asserting their claims," which are "fully viable" without reference to the terms of that agreement].)

Second, it is long been the law in California that "neither the doctrine of estoppel nor any other

equitable principle may be invoked against a governmental body where it would operate to defeat the effective operation of a policy adopted to protect the public." (*Kajima/Ray Wilson v. Los Angeles County Metropolitan Transp. Authority* (2000) 23 Cal.4th 305, 316, quoting *San Diego County v. California Water & Tel. Co.* (1947) 30 Cal.2d 817, 826.) Here, applying the doctrine of equitable estoppel to preclude the People and the Labor Commissioner from litigating their unfair business practice and Labor Code claims would nullify the important public policies underlying the UCL and the Labor Code, and would effectively negate the controlling body of authority discussed above.

CONCLUSION

For the foregoing reasons, Defendants' motions to compel arbitration and to stay as to the People's and the Labor Commissioner's cases, and their alternative motions to strike, are denied.

IT IS SO ORDERED.

Dated: September 1, 2022

Ethan P. Schulman
Judge of the Superior Court

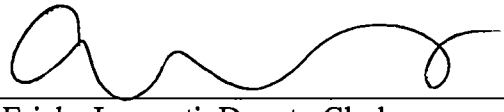
CERTIFICATE OF ELECTRONIC SERVICE
(CCP 1010.6(6) & CRC 2.251)

I, Ericka Larnauti, a Deputy Clerk of the Superior Court of the County of San Francisco, certify that I am not a party to the within action.

On September 1, 2022, I electronically served the attached document via File & ServeXpress on the recipients designated on the Transaction Receipt located on the File & ServeXpress website.

Dated: September 1, 2022

Mark Culkins, Interim Clerk

By: 

Ericka Larnauti, Deputy Clerk