

1 STEPHEN G. LARSON (SBN 145225)
 2 *slarson@larsonobrienlaw.com*
 3 PAUL A. RIGALI (SBN 262948)
 4 *prigali@larsonobrienlaw.com*
 5 R.C. HARLAN (SBN 234279)
 6 *rcharlan@larsonobrienlaw.com*
 7 LARSON O'BRIEN LLP
 8 555 South Flower Street, Suite 4400
 9 Los Angeles, CA 90071
 10 Telephone: 213.436.4888
 11 Facsimile: 213.623.2000

12 Attorneys for Petitioners
 13 MARCIANO ABADILLA, et al.

14 UNITED STATES DISTRICT COURT
 15 NORTHERN DISTRICT OF CALIFORNIA
 16 WESTERN DIVISION

17 MARCIANO ABADILLA, et al.,
 18 Petitioners,
 19 v.
 20 UBER TECHNOLOGIES, INC.,
 21 Respondent.

Case No. 3:18-cv-7343

**PETITION FOR ORDER
 COMPELLING ARBITRATION**

1 Petitioners file this Petition for an Order Compelling Arbitration (“Petition”)
2 against Respondent Uber Technologies, Inc. (“Uber”), as follows:

3 **NATURE OF THE PETITION**

4 1. Petitioners—12,501 Uber drivers—bring this petition to enforce the
5 arbitration provisions included in their services agreements with Uber. Petitioners’
6 names and locations are attached to this Petition as Exhibit A.

7 2. Beginning on August 18, 2018, Petitioners began filing their individual
8 arbitration demands against Uber. Petitioners seek to arbitrate their individual
9 claims against Uber for misclassifying Petitioners as independent contractors.
10 Among their causes of action, Petitioners’ asserts claims for violation of the Fair
11 Labor Standards Act, 29 U.S.C. §§ 206, 207.

12 3. As of November 13, 2018, 12,501 demands have been filed with
13 JAMS. Of those 12,501 demands, in only 296 has Uber paid the initiating filing
14 fees necessary for an arbitration to commence. Out of those matters, only 47 have
15 appointed arbitrators, and out of those 47, in only *six* instances has Uber paid the
16 retainer fee of the arbitrator to allow the arbitration to move forward.

17 4. Accordingly, Petitioners have filed this Petition to enforce the
18 arbitration provision contained in Uber’s services agreement that all Drivers must
19 sign. It has been more than three-and-a-half months since the first Petitioners
20 served their individual arbitration demands, yet Uber has refused to pay the
21 necessary fees to commence and administer arbitration in all but a handful of cases.
22 For the vast majority of demands, Uber’s refusal to pay any fees means the
23 arbitrations cannot even commence, let alone proceed to a preliminary hearing. At
24 the rate at which Uber is paying the initial arbitration fees, it would take
25 approximately 10 years before the last Petitioner’s arbitration even commenced.

26 ///

27 ///

28 ///

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
27
28

JURISDICTION

5. This Court has jurisdiction over this action pursuant to 9 U.S.C. § 4 and 28 U.S.C. §§ 1331, 1367. Venue exists under 9 U.S.C. § 4 and 28 U.S.C. § 1391(b).

INTRADISTRICT ASSIGNMENT

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

RELEVANT FACTS

A. Petitioners File Arbitration Demands Pursuant To Their Services Agreements with Uber

7. Petitioners have set in motion individual arbitrations just as Uber has long insisted are required by its agreements. In light of this, Petitioners served 12,501 individual arbitration demands on Uber, as follows:

- August 13, 2018 – 400 individual demands
- September 5, 2018 – 1,046 individual demands
- September 18, 2018 – 2,194 individual demands
- September 28, 2018 – 1,285 individual demands
- October 8, 2018 – 1,834 individual demands
- October 15, 2018 – 1,215 individual demands
- October 22, 2018 – 998 individual demands
- October 30, 2018 – 1,191 individual demands
- November 6, 2018 – 1,030 individual demands
- November 13, 2018 – 1,346 individual demands

8. All Petitioner have asserted claims for failure to pay minimum wage and overtime under the Fair Labor and Standards Act, 29 U.S.C. §§ 206, 207. In addition, Petitioners assert various state law causes of action that include the

1 following:

2 California Claimants:

- 3 • Failure to pay minimum wage under California Labor Code §§
4 1182.12, 1194, 1194.1, 1197, 1198 & Industrial Welfare
5 Commission Wage Order 9-2001
- 6 • Failure to pay overtime under Labor Code § 510 & Wage Order
7 9-2001
- 8 • Failure to provide an itemized wage statement under Labor
9 Code § 226
- 10 • Failure to provide paid sick time under Labor Code § 246
- 11 • Failure to conduct background checks in compliance with
12 California Civil Code §§ 1786.1-1786.60
- 13 • Violation of California Business & Professions Code § 17200
- 14 • Violation of the various local ordinances as shown to be
15 applicable as a result of a claimant working 2 hours in a given
16 workweek within the relevant municipality

17 Illinois Claimants:

- 18 • Failure to pay minimum wage under 820 ILCS 105/1 et seq.
- 19 • Failure to pay overtime under Ill. Admin. Code tit. 56, §
20 210.430
- 21 • Violation of various local ordinances as shown to be applicable
22 as a result of a claimant working the requisite hours within the
23 relevant municipality

24 Massachusetts Claimants:

- 25 • Failure to pay minimum wage under M.G.L c. 151
- 26 • Failure to pay overtime under M.G.L c. 151
- 27 • Failure to provide paid sick time under M.G.L c. 149 § 148C

28

1 New Jersey Claimants:

- 2 • Failure to pay minimum wage under N.J.S.A. § 34:11-56a et
3 seq.
4 • Failure to pay overtime under N.J.S.A. § 34:11-56a4 and
5 N.J.A.C. § 12:56-6.1
6 • Failure to provide a statement of wages under N.J.A.C. § 12:56-
7 4.1
8 • Violation of various local ordinances as shown to be applicable
9 as a result of a claimant working 80 hours per year within the
10 relevant municipality

11 New York Claimants:

- 12 • Failure to pay minimum wage under New York Consolidated
13 Laws, Labor Law (“NYLL”) §§ 652, 663, and Part 142 of Title
14 12 of the Official Compilation of Codes, Rules, and Regulations
15 of the state of New York (“Miscellaneous Wage Order”), § 142-
16 2.1
17 • Failure to pay overtime under Miscellaneous Wage Order § 142-
18 2.2
19 • Failure to provide “spread of hours” pay under NYLL §§ 265
20 • Failure to provide proper wage statements under NYLL §§
21 195(1), 195(3), 198

22 **B. The Arbitration Provisions**

23 9. Petitioners’ disputes with Uber arise out of one of two agreements: (1)
24 the Raiser, LLC Technology Services Agreement; or (2) the Portier, LLC
25 Technology Services Agreement. Both agreements contain an extensive arbitration
26 provision, located in § 15.3 of each agreement. Both arbitration provisions allow
27 drivers to opt out of arbitration. Petitioners elected not to invoke the opt-out
28 provision.

1 10. The two agreements are nearly identical. For example, each agreement
2 requires Petitioners to arbitrate “all disputes between you and the Company or Uber
3 ... including but not limited to any disputes arising out of or related to this
4 Agreement and disputes arising out of or related to your relationship with the
5 Company or Uber.”

6 11. In fact, under each agreement, the arbitration provision “applies to
7 disputes regarding any city, county, state or federal wage-hour law ... and claims
8 arising under the ... Fair Labor Standards Act ... and state statutes, if any,
9 addressing the same or similar subject matters, and all other similar federal, state
10 and/or local statutory and common law claims.”

11 12. Petitioners’ allegations in their demands for arbitration regarding their
12 employment misclassification fall within the scope of these provisions.

13 13. Both arbitration provisions state—in a section titled “Paying For The
14 Arbitration”—that Petitioners “will not be required to bear any type of fee or
15 expense that [they] would not be required to bear if [they] had filed the action in a
16 court of law. Any disputes in that regard will be resolved by the Arbitrator as soon
17 as practicable after the Arbitrator is selected, and Company shall bear all of the
18 Arbitrator’s and arbitration fees until such time as the Arbitrator resolves any such
19 dispute.” (Id. at § 15.3(vi).) This is consistent with the two provisions’ delegation
20 of questions of arbitrability to the arbitrator; each provision dictates that “disputes
21 arising out of or relating to the interpretation, application, enforceability,
22 revocability or validity of this Arbitration Provision, or any portion of the
23 Arbitration Provision” are to be decided by the arbitrator.

24 **C. Uber Has Refused To Commence The Arbitrations**

25 14. In defending the validity of its arbitration provisions and promoting
26 arbitration as a viable alternative to the courts, Uber represented to the Ninth
27 Circuit that it “has offered to pay the arbitration fees” to plaintiffs who had asserted
28 employment-based claims.

1 15. Four days after the first Petitioners served their demands, their counsel
2 attempted to reach an agreement with Uber on an alternative process to administer
3 the arbitrations. Petitioners proposed a bellwether process, in which Uber and
4 Petitioners' counsel would select nine bellwether arbitrations, with mediation to
5 follow.

6 16. Two-and-a-half weeks later, Uber declined a bellwether process,
7 proposing instead four individual arbitrations and no mediation. That proposal was
8 unworkable for Petitioners, who then elected to pursue their arbitrations through the
9 JAMS procedure set forth in the arbitration provision.

10 17. Pursuant to JAMS's procedure, Uber's payment of the filing fee
11 triggers the commencement of the arbitration. To date, Uber has paid the filing fee
12 in only 296 arbitrations.

13 18. After the filing fee is paid, the parties appoint an arbitrator through a
14 strike process. Once that happens, JAMS invoices a retainer based on the
15 arbitrator's professional fees for anticipated preparation time.

16 19. In the first 47 arbitrations that commenced and completed the strike
17 process, it took Uber more than three months to pay the retainer for any of the
18 arbitrations. Even then, Uber has paid the initial retainer for preliminary hearing
19 activities for only *six* of the 47 arbitrations that have appointed arbitrators.

20 20. On November 13, 2018, Uber represented to Petitioners' counsel that
21 it would "imminently" pay the remaining retainers, but it did not pay them.

22 21. Uber knows that its failure to pay the filing fees has prevented the
23 arbitrations from commencing. Throughout this process, JAMS has repeatedly
24 advised Uber that JAMS is "missing the NON-REFUNDABLE filing fee of \$1,500
25 for each demand, made payable to JAMS." JAMS has also informed Uber that
26 "[u]ntil the Filing Fee is received we will be unable to proceed with the
27 administration of these matters."

28 ///

1 22. Thus, despite Uber’s proclamation that the “entire purpose of
2 arbitration is to provide an inexpensive and expeditious means of resolving
3 disputes,” its quest to resolve misclassification disputes in individual arbitration
4 instead of a class action in court, *and* its knowledge of the effect of the non-
5 payment of arbitration fees, only six of Petitioners’ demands are in a position to
6 proceed toward a hearing.

7 23. To date, Uber has paid the fees required to commence arbitration for
8 only 296 of the 12,501 individuals who have served arbitration demands. That
9 means that in approximately 98% of the arbitrations that have been filed, Uber has
10 not paid the necessary fees to commence arbitration. And of the 2% of demands
11 that have turned into commenced arbitrations, Uber has paid the initial retainers for
12 only 2% of those. In other words, Uber has paid initial retainers for only .05%—
13 one-twentieth of one percent—of the 12,501 Petitioners who have served arbitration
14 demands. Some Petitioners served their demands as early as August 13, 2018, and
15 have waited three-and-a-half months without *any* movement on their cases. (*See*
16 *Rigali Decl.*, ¶ 4.) At this rate, it will be approximately 10 years before all
17 Petitioners have even begun arbitration, and far longer before all Petitioners even
18 see a preliminary hearing.

19 24. Under 9 U.S.C. § 4, it is not in dispute that the parties entered an
20 arbitration agreement requiring them to arbitrate. It is also undisputed that Uber
21 has failed and refused to adhere to its obligation to arbitrate under the agreement.
22 Uber’s decision to not participate in more than 12,000 Petitioner arbitrations is
23 unjustified, frivolous, and done for improper purposes.

24 25. Accordingly, this Court should compel Uber to arbitrate under 9
25 U.S.C. § 4. Further, the Court should sanction Uber for its dilatory, bad faith
26 conduct under 28 U.S.C. § 1927 and the Court’s inherent power. *Cf. Int’l Union of*
27 *Petroleum and Indus. Workers v. Western Indus. Maintenance Inc.*, 707 F.2d 425
28 (9th Cir. 1983) (upholding sanctions for unjustified refusal to abide by arbitrator’s

1 award, including frivolous delay tactics); *Sheet Metal Workers’ Int’l Assoc. Local*
 2 *Union No. 359 v. Madison Indus., Inc. of Arizona*, 84 F.3d 1186, 1192 (9th Cir.
 3 1996) (upholding sanctions for flatly refusing to honor arbitration award); *Road*
 4 *Sprinkler Fitters Union No. 669, U.A, AFL-CIO v. Cosco Fire Protection, Inc.*, 363
 5 F. Supp. 2d 1220, 1226 (C.D. Cal. 2005) (awarding sanctions where defendants
 6 asserted a series of defenses indicating a bad-faith intent to delay arbitration).
 7 Under this established case law, an “award of fees is appropriate when a party
 8 frivolously or in bad faith refuses to submit a dispute to arbitration.” *Road*
 9 *Sprinkler Fitters*, 363 F. Supp. 2d at 1226 (citation omitted).

PRAYER FOR RELIEF

12 WHEREFORE, Petitioners respectfully request that the Court:

- 13 1. Enter an order compelling Uber to arbitrate Petitioners’ demands for
 14 arbitration, including engaging in arbitration proceedings by paying
 15 the filing fees, participating in the selection of the arbitrator, and
 16 paying the requisite retainer for the selected arbitrator.
- 17 2. Awarding Petitioners’ attorneys’ fees and costs; and
- 18 3. Awarding such other and further relief as the Court deems just and
 19 proper.

21 Dated: December 5, 2018

LARSON O’BRIEN, LLP

23 By: /s/ Stephen G. Larson
 24 STEPHEN G. LARSON
 25 PAUL A. RIGALI
 R.C. HARLAN

26 Attorneys for Petitioners
 27 MARCIANO ABADILLA, et al.