

APPENDIX

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NOT RECOMMENDED FOR PUBLICATION

No. 25-1744

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT**FILED**
Mar 6, 2026
KELLY L. STEPHENS, Clerk

CAROL ANN MCBRATNIE,

Plaintiff-Appellant,

v.

AMAZON.COM, INC.,

Defendant-Appellee.

)
)
)
)
) ON APPEAL FROM THE UNITED
) STATES DISTRICT COURT FOR
) THE EASTERN DISTRICT OF
) MICHIGAN
)**ORDER**

Before: NORRIS, BLOOMEKATZ, and HERMANDORFER, Circuit Judges.

This matter is before the court upon a motion to dismiss for lack of jurisdiction.

After being terminated from her contract as an Amazon Flex Delivery Partner, Carol Ann McBratnie filed a breach of contract action and Fair Labor Standards Act against Amazon.com, Inc. Amazon moved to compel arbitration. McBratnie moved for a preliminary injunction, requesting immediate reinstatement and back pay with interest. On July 22, 2025, the district court granted the motion to compel arbitration, denied McBratnie's motion for a preliminary injunction, and stayed the case pending the results of the arbitration. The district court also denied a motion for reconsideration. McBratnie filed a timely notice of appeal from the July 22, 2025, order.

Following the filing of McBratnie's appellant brief, Amazon moves to dismiss the appeal for lack of jurisdiction. Amazon argues that the order compelling arbitration and staying the case is a non-appealable interlocutory order. It notes that, although the district court also denied McBratnie's motion for a preliminary injunction—which is immediately appealable under 28 U.S.C. § 1292—McBratnie's brief did not challenge that denial. McBratnie responded to the

motion to dismiss and has moved the court to take judicial notice of certain facts relating to the arbitration process.

Ordinarily, we have jurisdiction only over appeals from final decisions of a district court. 28 U.S.C. § 1291. The Federal Arbitration Act (FAA), however, gives us interlocutory jurisdiction over a narrow set of arbitration-related decisions. *See United States ex rel. Dorsa v. Miraca Life Scis., Inc.*, 983 F.3d 885, 887-88 (6th Cir. 2020) (citing 9 U.S.C. § 16); *see also Coinbase, Inc. v. Bielski*, 599 U.S. 736, 740 (2023). Under the FAA, a party may take an interlocutory appeal when a district court denies a party's motion to compel arbitration. *Coinbase*, 599 U.S. at 740. But while the Act provides for immediate appeals of orders denying motions to compel arbitration, it does not provide for immediate review of orders *granting* motions to compel arbitration. *Id.* As a result, the portion of the district court's July 22, 2025, order that granted Amazon's motion to compel arbitration is not appealable at this time. Nor is the district court's decision to stay the proceedings immediately appealable, whether under the FAA or otherwise. *See Preferred Care of Del., Inc. v. Est. of Hopkins ex rel. Hopkins*, 845 F.3d 765, 768-69 (6th Cir. 2017) (also rejecting 28 U.S.C. § 1292 as a basis for appeal); *cf. United States v. Contents of Accounts*, 629 F.3d 601, 605 (6th Cir. 2011).

Our jurisdiction to review the appealed-from order is therefore limited to the district court's denial of McBratnie's motion for a preliminary injunction. *See* 28 U.S.C. § 1292(a)(1). Yet, as Amazon has pointed out, McBratnie's opening appellate brief makes clear that she is not pursuing an appeal of that aspect of the district court's decision. McBratnie's appellant brief makes no arguments relating to the propriety of that denial. Neither does her response to Amazon's motion to dismiss for lack of jurisdiction. Rather, her response primarily argues the merits of her contract claims and alleges judicial bias. To the extent that she discusses the interlocutory nature of her appeal, she argues that the district court's order is "void" and that "[a] void order is a final decision" and that this court has jurisdiction because the district court failed to comply with Supreme Court precedent. McBratnie's only reference to the preliminary injunction points out that she not only requested injunctive relief but also requested certain pretrial hearings. Because "issues adverted to in a perfunctory manner, unaccompanied by some effort at developed argumentation, are

No. 25-1744

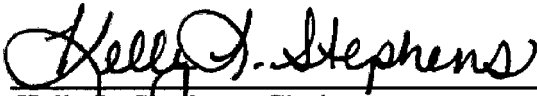
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deemed waived,” *McPherson v. Kelsey*, 125 F.3d 989, 995 (6th Cir.1997), we conclude that McBratnie has waived her right to appellate review of any challenge to the denial of her preliminary injunction. And since that is the only challenge over which this Court presently has jurisdiction, affirmance is warranted.

For the foregoing reasons, Amazon’s motion to dismiss is **GRANTED in PART**. The appeal is **DISMISSED in PART** to the extent that it seeks review over the district court’s grant of Amazon’s motion to compel arbitration and accompanying stay of proceedings. The district court’s decision is otherwise **AFFIRMED**. McBratnie’s motion to take judicial notice is **DENIED as MOOT**.

ENTERED BY ORDER OF THE COURT


Kelly L. Stephens, Clerk

United States Court of Appeals for the Sixth Circuit

U.S. Mail Notice of Docket Activity

The following transaction was filed on 03/06/2026.

Case Name: Carol McBratnie v. Amazon.com, Inc.

Case Number: 25-1744

Docket Text:

ORDER filed IT IS ORDERED that the motion to dismiss is GRANTED in PART. The appeal is DISMISSED in PART to the extent that it seeks review over the district court's grant of Amazon's motion to compel arbitration and accompanying stay of proceedings [7442215-2]. The district court's decision is otherwise AFFIRMED. McBratnie's motion to take judicial notice is DENIED as MOOT [7448660-2], AFFIRMED; Alan E. Norris, Rachel Bloomekatz and Whitney D. Hermandorfer, Circuit Judges.

The following document(s) are associated with this transaction:

Document Description: Order

Notice will be sent to:

Ms. Carol Ann McBratnie
1130 Larkmoor Boulevard
Berkley, MI 48072

A copy of this notice will be issued to:

Ms. Kinikia D. Essix
Mr. Michael E. Kenneally

5a

No. 25-1744

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

FILED
Apr 29, 2026
KELLY L. STEPHENS, Clerk

CAROL ANN MCBRATNIE,

Plaintiff-Appellant,

v.

AMAZON.COM, INC.,

Defendant-Appellee.

ORDER

BEFORE: NORRIS, BLOOMEKATZ, and HERMANDORFER, Circuit Judges.

The court received a petition for rehearing en banc. The original panel has reviewed the petition for rehearing and concludes that the issues raised in the petition were fully considered upon the original submission and decision of the case. The petition then was circulated to the full court.* No judge has requested a vote on the suggestion for rehearing en banc.

Therefore, the petition is denied.

ENTERED BY ORDER OF THE COURT

Kelly L. Stephens
Kelly L. Stephens, Clerk

* Judges Thapar and Bush are recused in this case.

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**UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT**

Kelly L. Stephens
Clerk

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Filed: April 29, 2026

Ms. Carol Ann McBratnie
1130 Larkmoor Boulevard
Berkley, MI 48072

Re: Case No. 25-1744
Carol McBratnie v. Amazon.com, Inc.
Originating Case No. 2:24-cv-12914

Dear Ms. McBratnie,

The Court issued the enclosed Order today in this case.

Sincerely yours,

s/Kelly Stephens
En Banc Coordinator: Beverly
Direct Dial No. 513-564-7077

cc: Mr. Michael E. Kenneally

Enclosure

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

CAROL ANN MCBRATNIE,

Plaintiff,

Case No. 24-cv-12914

Hon. Matthew F. Leitman

v.

AMAZON.COM, INC.,

Defendant.

**ORDER (1) OVERRULING PLAINTIFF'S OBJECTIONS TO REPORT
AND RECOMMENDATION AND ORDER (ECF Nos. 41),
(2) ADOPTING RECOMMENDED DISPOSITION OF REPORT AND
RECOMMENDATION (ECF No. 37), (3) GRANTING DEFENDANT'S
MOTION TO COMPEL ARBITRATION (ECF No. 25), AND (4) DENYING
PLAINTIFF'S MOTION FOR PRELIMINARY INJUNCTION (ECF No. 19)**

Plaintiff Carol Ann McBratnie is a former Amazon Flex Delivery Partner with Defendant Amazon.com, Inc. ("Amazon"). In that role, McBratnie delivered packages for Amazon pursuant to a written agreement between the parties. In 2024, Amazon informed McBratnie that she was no longer eligible to participate in the Amazon Flex program. McBratnie says that her termination from the Flex program was wrongful. In this action, she brings several claims against Amazon arising out of her termination. (*See* Am. Compl., ECF No. 9.)

Now before the Court are two motions: (1) Amazon's motion to compel arbitration pursuant to an arbitration agreement in the parties' contract (*see* Mot.,

ECF No. 25) and (2) McBratnie's motion for a preliminary injunction (*see* Mot., ECF No. 19). On May 20, 2025, the assigned Magistrate Judge issued a report and recommendation in which he recommended that the Court grant Amazon's motion and deny McBratnie's motion (the "R&R"). (*See* R&R, ECF No. 37.) That same day, the Magistrate Judge also issued a separate order denying several other non-dispositive motions that McBratnie had filed. (*See* Order, ECF No. 38.) McBratnie has now filed objections to both the R&R and the Magistrate Judge's separate May 20 order. (*See* Obj., ECF No. 41.)

The Court has carefully reviewed McBratnie's objections, and for the reasons explained below, the Court **OVERRULES** them. The Court will therefore **ADOPT** the recommended disposition of the R&R, **DENY** McBratnie's motion for a preliminary injunction, and **GRANT** Amazon's motion to compel arbitration.

I

A

The Magistrate Judge described the factual background of this dispute in detail in the R&R. (*See* R&R, ECF No. 37, PageID.1061-1065.) In brief, in order to deliver all of the packages that its customers purchase on a daily basis, Amazon "allows individual independent contractors to 'enroll in the Amazon Flex program' as 'Delivery Partners' to make local customer deliveries on behalf of Amazon." (*Id.*, PageID.1061-1062, quoting Decl. of Nick Jones, Director of Amazon Flex

Americas, at ¶¶ 3, 6, ECF No. 25-1, PageID.656-657.) In September 2018, McBratnie agreed to become such a Delivery Partner. (*See* Jones Decl. at ¶ 23, ECF No. 25-1, PageID.661.) When she did so, she agreed to certain “terms of service” that governed her relationship with Amazon. (*See id.* at ¶ 22, PageID.661.) Amazon updated these “terms of service” several times during McBratnie’s tenure as a Delivery Partner. (*See id.*) The operative “terms of service” were issued on December 29, 2022 (the “Contract”). (*See id.* at ¶ 35, PageID.664. *See also* Contract, ECF No. 25-7.)

The Contract provided, among other things, that McBratnie would deliver packages for Amazon using her own vehicle and, in exchange, Amazon would “pay [her] fees in the amounts indicated in the Amazon Flex app.” (Contract, ECF No. 25-7, PageID.728.) The parties also agreed in the Contract to arbitrate claims against one another.¹ For example, on the first page of the Contract, the Contract provided, in bold and all capital letters, that **“YOU AND AMAZON AGREE TO RESOLVE DISPUTES BETWEEN YOU AND AMAZON ON AN INDIVIDUAL BASIS THROUGH FINAL AND BINDING ARBITRATION. YOU AND AMAZON WAIVE THE RIGHT TO PURSUE THE RESOLUTION OF ANY SUCH DISPUTE IN A COURT AND WAIVE THE RIGHT TO A TRIAL BY JURY.”**

¹ When McBratnie first joined the Amazon Flex program, she had the right to “opt-out” of the obligation to arbitrate her claims with Amazon, but she chose not to exercise that right. (*See* Jones Decl. at ¶¶ 23, 27, ECF No. 25-1, PageID.661, 663.)

(*Id.*, PageID.727.) The Contract also included a detailed arbitration provision. In relevant part, that arbitration agreement provided that:

THE PARTIES WILL RESOLVE BY FINAL AND BINDING ARBITRATION, RATHER THAN IN COURT OR TRIAL BY JURY, ANY DISPUTE OR CLAIM, WHETHER BASED ON CONTRACT, COMMON LAW, OR STATUTE, ARISING OUT OF OR RELATING IN ANY WAY TO THIS AGREEMENT, INCLUDING TERMINATION OF THIS AGREEMENT, TO YOUR PARTICIPATION IN THE PROGRAM, OR TO YOUR PERFORMANCE OF SERVICES. TO THE EXTENT PERMITTED BY LAW, THE PRECEDING SENTENCE APPLIES TO ANY DISPUTE OR CLAIM THAT OTHERWISE COULD BE ASSERTED BEFORE A GOVERNMENT ADMINISTRATIVE AGENCY.

[...]

Notwithstanding any provision in the AAA rules, the parties agree that a court of law must resolve any dispute concerning the validity and enforceability of the Agreement as a whole, the applicability of any exemption to the Federal Arbitration Act, and the validity, enforceability or interpretation of the provisions in subsections b) through i) of this Section 11. The arbitrator must resolve all other disputes, including the arbitrability of claims pursuant to such other provisions.

[...]

The interpretation and enforcement of this Agreement is governed by the law of the state of Delaware without regard to its conflict of laws principles, except for Section 11 of this Agreement, which is governed by the Federal Arbitration Act and applicable federal law. If, for any reason, the Federal Arbitration Act is held by a court of competent jurisdiction not to apply to Section 11 of this

Agreement, the law of the state of Delaware and the Delaware Uniform Arbitration Act, 10 Del. C. § 5701 et seq. will govern Section 11 of this Agreement, including without limitation the common law of contracts of such state in the event that any statute could be interpreted as limiting the right of Amazon or you to arbitrate disputes pursuant to Section 11 of this Agreement. Nothing in this choice of law provision shall preclude the application of Delaware law to compel arbitration if a court of competent jurisdiction is unable to determine the application of the Federal Arbitration Act without discovery.

(*Id.*, PageID.732-734.)

On October 26, 2024, Amazon “notified [McBratnie] that she was no longer eligible to deliver with Amazon Flex because she repeatedly violated the [Contract] by not attempting to deliver all packages in her block, selecting inaccurate reason codes . . . about why packages were undeliverable, and frequently contacting driver support for delivery exemptions.” (R&R, ECF No. 37, PageID.1065, citing Notice of Terms of Service Termination, ECF No. 9-2, PageID.92.)

B

McBratnie filed this action against Amazon on November 1, 2024. (*See* Compl., ECF No. 1.) In McBratnie’s Amended Complaint, she alleges that Amazon breached the Contract in several ways and that Amazon violated the Fair Labor Standards Act. (*See* Am. Compl. at ¶¶ 11, 81, 173, ECF No. 9, PageID.50, 62-63, 77.) She further claims that notwithstanding the arbitration provision in the Contract, Amazon may not compel her to arbitrate her claims because the claims are

exempt from arbitration under what is known as the “Section One Exemption” to the Federal Arbitration Act (the “FAA”). (*See id.*, at ¶ 16, PageID.50-51, citing 9 U.S.C. § 1, PageID.50-51.) The Section One Exemption provides that the FAA “shall [not] apply to contracts of employment of seamen, railroad employees, or any other class of workers engaged in foreign or interstate commerce.” 9 U.S.C. § 1.

On February 12, 2025, Amazon filed a motion to compel arbitration. (*See* Mot., ECF No. 25.) In that motion, Amazon acknowledged McBratnie’s argument that her claims were covered by the Section One Exemption, but Amazon said that the Court did not need to reach that argument because the Contract allowed Amazon to compel McBratnie to arbitrate her claims under *either* the FAA *or* Delaware law. (*See id.*, PageID.630.) And Amazon explained that unlike the FAA, Delaware law does not have a “carveout for . . . transportation workers.” (*Id.*, PageID.631.) Thus, Amazon asserted, because the Court could compel arbitration under Delaware law “even if [McBratnie’s arbitration agreement was] exempt from the FAA,” “the Court ha[d] a straightforward path to compel arbitration without having to decide whether [McBratnie’s] agreement [was] exempt from the FAA.” (*Id.*, PageID.631, 643.)

McBratnie opposed Amazon’s motion. In her response, she argued that she could not be compelled to arbitrate because (1) her claims were covered by the Section One Exemption and (2) Delaware arbitration law did not apply. (Resp., ECF No. 26, PageID.753.)

McBratnie also offered an additional argument. She contended that it was the duty of the Court to “determine” certain “pre-arbitration matters” before turning to the question of whether she could be compelled to arbitrate under the arbitration agreement in the Contract. (*Id.*, PageID.755.) One of those matters was the “validity of the contract itself.” (*Id.*) And she said that in reviewing the “validity of the contract,” the Court had to determine whether “the contract was illusory on [Amazon’s] part from the start,” whether her contract with Amazon was “unconscionab[le],” and whether Amazon’s “material Breach(es) of Contract” meant that McBratnie was “no longer subject to anything in the contract” (including her obligation to arbitrate her claims). (*Id.*, PageID.757-758.)

McBratnie also filed several motions of her own including a motion for a preliminary injunction (*see* Mot., ECF No. 19), a motion for expedited briefing (*see* Mot., ECF No. 18), a motion for a more definite statement (*see* Mot., ECF No. 24), and a motion to stay Amazon’s motion to compel arbitration (*see* Mot., ECF No. 31).

C

On May 20, 2025, the assigned Magistrate Judge issued an order that denied McBratnie’s motions for expedited briefing, for a more definite statement, and to stay Amazon’s arbitration motion. (*See* Order, ECF No. 38.)

That same day, he issued the R&R. (*See* R&R, ECF No. 37.) In the R&R, the Magistrate Judge recommended that the Court grant Amazon’s motion to compel arbitration and deny McBratnie’s motion for a preliminary injunction. (*See id.*) The Magistrate Judge first turned to whether Amazon had a right to compel arbitration under the FAA. He recognized that the answer to that question turned on whether the Contract was exempt from the FAA under the Section One Exemption. (*See id.*, PageID.1068.) He explained that while “[t]he Sixth Circuit has yet to address whether Section One of the FAA exempts local delivery services that are contracted by Amazon or similar online retailers,” “[s]ome courts in this district have . . . found that the Section One exemption [does] appl[y] to local delivery services contracted by Amazon.” (*Id.*, PageID.1068-1069.) Ultimately, the Magistrate Judge concluded that the Court “need not resolve the Section One exemption issue here in the first instance because, even if the exemption applied to McBratnie as an Amazon Delivery Partner and she could not be compelled to arbitrate *under the FAA*, she would still be subject to arbitration *under state law*.” (*Id.*, PageID.1070; emphasis in original.) He therefore recommended that the Court grant Amazon’s motion and compel arbitration under Delaware law. (*See id.*, PageID.1070-1076.)

The Magistrate Judge also addressed McBratnie’s argument that the Court, rather than the arbitrator, should decide the pre-arbitration matters – including the “validity of the contract” – identified by McBratnie. He rejected that argument. He

concluded that the arbitrator had to decide whether “the contract as a whole [was] ‘unconscionable’ or ‘illusory’” (*Id.*, PageID.1075.) As support for that conclusion, he cited the Supreme Court’s decision in *Rent-A-Ctr., W., Inc. v. Jackson*, 561 U.S. 63 (2010). In *Rent-A-Ctr.*, the Supreme Court “consider[ed] whether, under the [FAA], a district court may decide a claim that an arbitration agreement is unconscionable, where the agreement explicitly assign[ed] that decision to the arbitrator.” *Id.* at 65. The Supreme Court held that a district court may not decide the unconscionability question under those circumstances and that, instead, the question must be decided by the arbitrator.² *See id.* at 71–72.

Finally, because the Magistrate Judge concluded that Amazon was entitled to compel arbitration under state law, the Magistrate Judge recommended that the Court deny McBratnie’s injunction motion. (*See id.*, PageID.1077 n.7.)

On June 10, 2025, McBratnie filed timely objections to the R&R and the Magistrate Judge’s separate order denying her non-dispositive motions. (*See* Obj., ECF No. 41.) The Court discusses the objections in detail below.

II

When a party objects to portions of a Magistrate Judge’s report and recommendation, the Court reviews those portions *de novo*. *See* Fed. R. Civ. P.

² The court in *Rent-A-Ctr.* did acknowledge that in the narrow circumstance where a party attacks a delegation provision itself, a court, and not an arbitrator, must resolve that challenge. *See Rent-A-Ctr.*, 561 U.S. at 71.

72(b)(3); *Lyons v. Comm'r of Soc. Sec.*, 351 F.Supp.2d 659, 661 (E.D. Mich. 2004).

The Court has no duty to conduct an independent review of the portions of the R&R to which a party does not object. *See Thomas v. Arn*, 474 U.S. 140, 149 (1985).

A district court need not conduct a *de novo* review of non-dispositive rulings issued by a Magistrate Judge. Instead, objections to a Magistrate Judge's ruling on a non-dispositive motion are reviewed under Federal Rule of Civil Procedure 72(a). That rule provides that a district judge "must consider timely objections and modify or set aside any part of the [Magistrate Judge's] order that is clearly erroneous or is contrary to law." Fed. R. Civ. P. 72(a). "A finding is 'clearly erroneous' when although there is evidence to support it, the reviewing court on the entire evidence is left with the definite and firm conviction that a mistake has been committed." *Koetje v. Norton*, No. 13-12739, 2014 WL 2005021, at *1 (E.D. Mich. May 16, 2014) (quoting *United States v. United States Gypsum Co.*, 333 U.S. 364, 398 (1948)). "Rule 72(a) provides considerable deference to the determinations of the magistrate judges." *Id.* "This standard does not empower a reviewing court to reverse the magistrate judge's finding because it would have decided the matter differently." *LaFountain v. Martin*, No. 07-cv-76, 2010 WL 1416864, at *1 (W.D. Mich. Apr. 2, 2010).

III

The Court begins with McBratnie's objections to the R&R. The objections are somewhat difficult to follow, but the Court has done its best to review and respond to the objections separately below.

A

McBratnie first argues that the Magistrate Judge erred when he failed to "resolve any dispute concerning the validity and enforceability of the [Contract] as a whole" before deciding whether Amazon had the right to compel arbitration. (Obj., ECF No. 41, PageID.1095, 1100.) The Court agrees in part.

McBratnie is correct that under the arbitration provision in the Contract, a court, rather than an arbitrator, must resolve threshold disputes concerning the validity of the Contract. Indeed, the Contract specifically assigns to "a court of law" the task of "resolv[ing] any dispute concerning the validity and enforceability of the Agreement as a whole." (Contract, ECF No. 25-7, PageID.733.) Stated another way, that task is expressly carved out from the delegation provision. Thus, the Contract is consistent with the general rule that "[a] court addressing a motion to compel arbitration . . . must first determine whether there exists an enforceable agreement to arbitrate." *Brayman v. KeyPoint Gov't Sols., Inc.*, 83 F.4th 823, 832 (10th Cir. 2023). For all of these reasons, the Court, not the arbitrator, must resolve McBratnie's challenges to the validity of the parties' Contract.

The decision cited in the R&R, *Rent-A-Ctr.*, is not to the contrary. The terms of the arbitration provision in that case were materially different than the arbitration agreement in this case. As noted above, the arbitration provision in *Rent-A-Ctr.* contained a delegation provision that broadly delegated all threshold matters – including challenges to the validity of the parties’ agreement – to the arbitrator. *See Rent-A-Ctr.*, 561 U.S. at 68–70. And it was the breadth of that delegation provision that led the Supreme Court to conclude that the arbitrator had to resolve the challenge to the validity of the contract as a whole. *See id.* at 71–72. In sharp contrast to the broad delegation provision in *Rent-A-Ctr.*, the arbitration provision here expressly carved out from the delegation to the arbitrator all matters concerning the validity of the Contract. Given that key difference, *Rent-A-Ctr.* does not control here.

But while the Court agrees with McBratnie that the Court, not the arbitrator, must address her challenges to the validity of the Contract, for the reasons explained below, the Court disagrees with McBratnie’s contention that the Contract is invalid and/or unenforceable.

McBratnie first argues that her contract with Amazon is illusory. She has failed to make that showing. A contract is illusory when, among other things, it is not “supported by consideration” or lacks “mutuality of obligation.” *Schell Bros., LLC v. Pickard*, No. 2022-0642, 2023 WL 2581711, at *4 (Del. Ch. Mar. 21, 2023).³

³ The terms of the Contract include a choice-of-law provision that states that “[t]he

Here, the Contract was supported by consideration and mutual promises by both parties. At a minimum, the Contract obligated Amazon to pay her for her services as a Delivery Partner. (*See* Contract, ECF No. 25-7, PageID.728.) As Amazon correctly argued, McBratnie “gained multiple rights under the [Contract], including . . . fees for the performed services.” (Amazon Reply, ECF No. 29, PageID.872.) Because the Contract required Amazon to pay McBratnie, it was not illusory. Indeed, McBratnie’s own position in this action underscores that the Contract was not illusory. She accuses Amazon of *breaching* the Contract, and she would have no basis to make such an accusation if the Contract were illusory.

Second, McBratnie also contends that the Contract is unconscionable. She has failed to make that showing. As one Delaware federal court has explained:

Under Delaware law, a contract is unconscionable “if one of the parties lacks meaningful choice and the contract terms unreasonably favor one party over the other.” *Wells v. Merit Life Ins. Co.*, 671 F. Supp. 2d 570, 574 (D. Del. 2009). “Courts have generally recognized that the doctrine of unconscionability requires both procedural and substantive elements.” *Maxwell v. Cellco P’ship*, C.A. No. 19-152-RGA, 2019 WL 5587313, at *7 (D. Del. Oct. 30, 2019) (citation omitted). Moreover, “[s]uperior bargaining power alone without the element of unreasonableness does not permit a finding of unconscionability or unfairness. The traditional test is this: a contract is unconscionable if it is ‘such as no man in his senses and not under delusion would make on the one hand, and as no honest or fair man

interpretation and enforcement of this Agreement is governed by the law of the state of Delaware without regard to its conflict of laws principles.” (Contract, ECF No. 25-7, PageID.734.)

would accept, on the other.’ *Gonzalez v. Citigroup, C.A.*
No. CIV.09-017-SLR, 2009 WL 2340678, at *2 (D. Del.
July 30, 2009).

Dizon v. J.P. Morgan Chase, 660 F.Supp.3d 268, 272–73 (D. Del. 2023). McBratnie has not persuaded the Court that she lacked a “meaningful choice” before entering into the Contract. Nor has she shown that the Contract was so one-sided and beneficial to Amazon that “no man in his senses and not under delusion” would agree to the terms of the Contract and become an Amazon Flex Delivery Partner. Thus, the Court cannot conclude that the Contract is unconscionable.

In sum, while McBratnie has shown in her first objection that the Court, rather than the arbitrator, should determine whether the parties’ Contract is valid and/or enforceable,⁴ she has not persuaded the Court that the Contract is invalid. Thus, she may not avoid arbitration on that basis. Accordingly, the Court **OVERRULES** McBratnie’s first objection.

⁴ While McBratnie’s arguments that the Contract is illusory and/or unconscionable are true challenges to the validity of the Contract that must be decided by the Court, some of the other matters that she labels as validity challenges are not such challenges and must be decided by the arbitrator. For instance, she seems to suggest that the question of whether Amazon committed a first material breach of the Contract is one that concerns the validity of the agreement, but it does not. The only true validity challenges that McBratnie brings are her claims that the Contract is illusory and/or unconscionable.

B

McBratnie next objects that the Magistrate Judge erred when he declined to determine whether Amazon could compel her to arbitrate under the FAA and, instead, moved directly to the question of whether Amazon could compel arbitration under Delaware law. (*See* Obj., ECF No. 41, PageID.1100-1101.) McBratnie insists that the Contract required the Magistrate Judge to first determine whether she was exempt from arbitration under the Section One Exemption – and thus whether Amazon had any right to compel arbitration under the FAA – before turning to the question of whether Amazon could compel arbitration under Delaware law. (*See id.*)

The Court concludes that McBratnie is not entitled to relief based upon this objection because the objection does not show that the disposition recommended by the Magistrate Judge – entry of an order compelling arbitration – was erroneous. And it was not. Irrespective of whether McBratnie could be compelled to arbitrate under the FAA, for the reasons explained by the Magistrate Judge, she may be compelled to arbitrate under Delaware law. She has not shown otherwise. For instance, she has not cited any case where a court has held that it was error to compel arbitration under these circumstances. Moreover, other courts have held that where, as here, (1) the question of whether the Section One Exemption applies may be a difficult one, (2) state law provides an alternative basis for compelling arbitration, and (3) it is clear that arbitration should be compelled under state law, a court may

compel arbitration under state law without resolving the difficult question of whether the Section One Exemption applies. *See Harper v. Amazon.com Servs., Inc.*, 12 F.4th 287, 294 (3d Cir. 2021) (“Assume, Amazon argues, that the § 1 exemption [to the FAA] applies. If so, the parties might still have an enforceable agreement to arbitrate under state law. And if that is so, then why not answer that question of law before turning to discovery, mindful that fact-finding can always come later if necessary? We agree and hold this question must be resolved before turning to discovery [on the issue of whether Amazon could compel arbitration under the FAA].”). *See also id.* at 296 (explaining that requiring court to determine first whether FAA applied would “almost certainly [lead to a] burdensome set of factual disputes and [would] open[] the door to the delays, costs, and uncertainty an enforceable arbitration clause seeks to avoid”)⁵; *Melikyan v. Amazon.com, Inc.*, No. CV 21-8715, 2023 WL 4505065, at *1 (C.D. Cal. July 5, 2023) (holding that it did not need to determine whether Amazon could compel arbitration under the FAA “because state law [was] also applicable to the arbitration agreement,” “address[ing] only Amazon’s state law contention,” and compelling arbitration under state law). The Court finds these authorities persuasive.

⁵ On remand, the district court in *Harper* held that Amazon could compel arbitration under state law. *See Harper v. Amazon.com Servs., Inc.*, No. 19-21735, 2022 WL 17751465, at *7 (D.N.J. Dec. 19, 2022).

For all of these reasons, McBratnie's objection that the Magistrate Judge erred by failing to resolve the question of whether arbitration could be compelled under the FAA before turning to state law is **OVERRULED**.

C

McBratnie next objects that the Magistrate Judge "misquoted" portions of the Contract. (Obj., ECF No. 41, PageID.1102-1103.) But the error McBratnie identifies appears to be a mere typographical error, and, in any event, it was not germane to the Magistrate Judge's conclusion that Amazon could compel arbitration under Delaware law. This objection is therefore **OVERRULED**.

D

McBratnie next raises several objections related to a purported unwritten contract that she says existed between herself and Amazon. (*See id.*, PageID.1110-1121.) These objections are difficult to follow, but McBratnie appears to argue that (1) she and Amazon were parties to an "unwritten employment contract" that was separate and apart from the written agreement that she had with Amazon, (2) under that "second unwritten employment contract" the parties did not "agree to arbitrate" the claims McBratnie raises in this action, and (3) therefore the Magistrate Judge erred when he compelled McBratnie to arbitrate those claims. (*Id.*)

McBratnie has not persuaded the Court that such a second, unwritten contract exists. More importantly, even if such an unwritten contract did exist, McBratnie

has not shown that she could avoid arbitration. Indeed, the arbitration agreement in the Contract applies to “*any* dispute or claim, whether based on contract, common law, or statute, arising out of or relating in any way to [the parties’] agreement, including termination of [the] Agreement, to your participation in the [Amazon Flex] Program, or to your performance of Services.” (Contract, ECF No. 25-7, PageID.732; emphasis added.) And it appears that all of McBratnie’s claims relate to or arise out of her “participation” in the Amazon Flex program. Moreover, McBratnie agreed that the arbitrator would decide questions regarding the scope of the arbitration agreement, and thus whether a particular claim was arbitrable. (*See id.*, PageID.733.) Thus, the question of whether certain claims are arbitrable must be decided by the arbitrator in the first instance. This objection is therefore **OVERRULED.**

E

McBratnie also raises several objections that relate to the merits of her claims against Amazon. For example, she argues that “[a] key issue in the resol[ution] of this case is to determine if Amazon misclassified workers as contractors when they were really employees.” (Obj., ECF No. 41, PageID.1117.) Likewise, McBratnie insists that “[t]he Magistrate’s [R&R] failed to determine the fact as to proper worker classification of Flex Drivers” and “did not identify if McBratnie’s refusal to work

after the agreed upon end time of the delivery block was outside of the scope requirements agreed to for services provided.” (*Id.*, PageID.1119.)

These objections are not relevant to the recommendation that the Magistrate Judge made in the R&R. In the R&R, the Magistrate Judge recommended only that the Court compel McBratnie to arbitrate her claims against Amazon. He did not make any recommendation with respect to the merits of those claims. Thus, because these objections do not address the legal basis for the Magistrate Judge’s recommendation, they are **OVERRULED**.

IV

Finally, the Court turns to McBratnie argument that the Magistrate Judge erred when he denied her motion for a more definite statement. (*See id.*, PageID.1098-1099.) McBratnie argues that Amazon failed to disclose all of its corporate subsidiaries under Rule 7.1 of the Federal Rules of Civil Procedure, and she says she needed that information to determine if the Magistrate Judge and/or the Court had any “conflict of interest” that may have required recusal. (*Id.*) This objection is **OVERRULED** for several reasons.

First, McBratnie has not persuaded the Court that Amazon failed to comply with Rule 7.1. That rule requires a non-governmental party to “identif[y] any parent corporation and any publicly held corporation owning 10% or more of its stock” or “state[] that there is no such corporation.” Fed. R. Civ. P. 7.1(a)(1). In addition, in

diversity cases, parties must “file a disclosure statement” that “name[s]--and identif[ies] the citizenship of--every individual or entity whose citizenship is attributed to that party[.]” Fed. R. Civ. P. 7.1(a)(2). Amazon complied with those requirements in a Notice that it filed on February 11, 2025. (*See* Notice, ECF No. 23.) And while McBratnie says that Amazon also needed to provide a full list of its subsidiaries, she has not identified any provision of Rule 7.1 that requires a party to disclose that information.

Second, McBratnie’s motion for a more definite statement contained no reasoning or legal analysis. It simply said that McBratnie found Amazon’s disclosure notice “insufficient.” (Mot., ECF No. 24, PageID.617.) It did not identify any provision of Rule 7.1 that Amazon purportedly violated, nor did it cite any case law interpreting that rule or make any argument as to how Amazon violated the rule. To the extent that McBratnie raises additional arguments in her objections that she did not present to the Magistrate Judge in the first instance, those arguments are waived. *See Murr v. United States*, 200 F.3d 895, 902 n.1 (6th Cir. 2000) (“Courts have held that while the Magistrate Judge Act . . . permits *de novo* review by the district court if timely objections are filed, absent compelling reasons, it does not allow parties to raise at the district court stage new arguments or issues that were not presented to the magistrate.”).

V

For all of the reasons explained above, McBratnie's objections to the R&R and to the Magistrate Judge's May 20, 2025, order denying her non-dispositive motions are **OVERRULED**. The recommended disposition of the R&R is **ADOPTED**, Amazon's motion to compel arbitration (ECF No. 25) is **GRANTED**, and McBratnie's motion for a preliminary injunction (ECF No. 19) is **DENIED**.

This case is now **STAYED** pending the results of the parties' arbitration.

IT IS SO ORDERED.

s/Matthew F. Leitman
MATTHEW F. LEITMAN
UNITED STATES DISTRICT JUDGE

Dated: July 22, 2025

I hereby certify that a copy of the foregoing document was served upon the parties and/or counsel of record on July 22, 2025, by electronic means and/or ordinary mail.

s/Holly A. Ryan
Case Manager
(313) 234-5126

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

CAROL ANN MCBRATNIE,

Plaintiff,

Case No. 24-cv-12914

Hon. Matthew F. Leitman

v.

AMAZON.COM, INC.,

Defendant.

ORDER DENYING PLAINTIFF'S
MOTION FOR RECONSIDERATION (ECF No. 50)

Plaintiff Carol Ann McBratnie is a former Amazon Flex Delivery Partner with Defendant Amazon.com, Inc. ("Amazon"). In this action, McBratnie brought several claims against Amazon arising out of her termination from the Flex Delivery Partner program. (*See* Am. Compl., ECF No. 9.) Amazon thereafter moved to compel arbitration, and McBratnie moved for a preliminary injunction. (*See* Mots., ECF Nos. 19, 25.)

On July 22, 2025, the Court issued an order in which it granted Amazon's motion to compel arbitration and denied McBratnie's motion for an injunction. (*See* Order, ECF No. 49.) On August 5, 2025, McBratnie filed a motion for reconsideration. (*See* Mot., ECF No. 50.) The Court has carefully reviewed that motion, and McBratnie has not persuaded the Court that it erred in its resolution of

the parties' motions. Accordingly, McBratnie's motion for reconsideration (ECF No. 50) is **DENIED**.

IT IS SO ORDERED.

s/Matthew F. Leitman
MATTHEW F. LEITMAN
UNITED STATES DISTRICT JUDGE

Dated: August 11, 2025

I hereby certify that a copy of the foregoing document was served upon the parties and/or counsel of record on August 11, 2025, by electronic means and/or ordinary mail.

s/Holly A. Ryan
Case Manager
(313) 234-5126

EXHIBIT F

AMAZON FLEX

INDEPENDENT CONTRACTOR TERMS OF SERVICE

Welcome to the Amazon Flex program (the "**Program**"). These Terms of Service (this "**Agreement**"), including the Program Policies, attached at Exhibit A, govern the transportation, delivery and related services contemplated by this Agreement (the "**Services**") and constitute a binding agreement between Amazon Logistics, Inc. ("**Amazon**") and you. Any reference to this Agreement includes the Program Policies. If there is a conflict between the Program Policies and any other section of this Agreement, the Program Policies prevail.

YOU AND AMAZON AGREE TO RESOLVE DISPUTES BETWEEN YOU AND AMAZON ON AN INDIVIDUAL BASIS THROUGH FINAL AND BINDING ARBITRATION. YOU AND AMAZON WAIVE THE RIGHT TO PURSUE THE RESOLUTION OF ANY SUCH DISPUTE IN A COURT AND WAIVE THE RIGHT TO A TRIAL BY JURY. If you previously opted-out of the dispute resolution provision in a prior version of the Terms of Service, then, to fullest extent permitted by law, you revoke, subject to the exclusions in Section 13, your prior decision to opt out and you agree to individual, binding arbitration by clicking "I agree and accept" in the box below or by providing any Services after the Effective Date.

This Agreement updates and replaces any version of the Terms of Service you previously accepted. This Agreement takes effect on the earlier of the date on which you click "I agree and accept" in the box below or, if you accepted a prior version of the Terms of Service and continue to use the Amazon Flex app, 14 calendar days after Amazon made this Agreement available in the "Legal Information" section of the Amazon Flex app or sent you notice of it to your email address ("**Effective Date**").

1. The Services.

a) You agree to provide the Services in a safe and competent manner in accordance with the level of professional care that would be observed by a prudent person rendering similar services and subject to the Service Standards described in the Program Policies. Failure to comply with the Service Standards will constitute a breach of this Agreement.

b) This Agreement requires no minimum amount or frequency of Services. A "Delivery Block" is the block of time, scheduled to begin and end as specified in the Amazon Flex app, for delivering the parcels, packages, totes, bags or other deliverables tendered to you by Amazon or its designees, or otherwise made available to you for pick-up ("**Deliverables**"). Unless you cancel a scheduled Delivery Block as permitted under the Program Policies, you will arrive on-time to deliver the assigned Deliverables during the Delivery Block.

2. Independent Contractor Relationship.

This Agreement creates an independent contractor relationship, not an employment relationship. As such, you agree that this Agreement is not a contract of employment, does not involve

conditions of employment, and is not evidence of an employment relationship. As an independent contractor of Amazon you are not required to purchase or rent any products, equipment or services from Amazon as a condition of entering into this Agreement. Nothing in this Agreement will create any partnership, joint venture, agency, franchise, or employment relationship between you and Amazon. As an independent contractor, you will not be considered as having the status of an employee of Amazon for any purpose, including federal, state, and local tax purposes, and you will not be required or entitled to participate in any employee benefit or other plans or arrangements in which employees of Amazon and its affiliates may participate. You are solely responsible for all taxes applicable to you, including, but not limited to, income and social security taxes. Amazon will not withhold taxes from fees paid to you, including taxes for unemployment insurance or workers' compensation benefits. You have no authority to bind Amazon, and you will not make any representation identifying yourself as an employee of Amazon or make any representations to any person or entity that you have any authority to bind Amazon as an employee, partner, or otherwise. This Agreement applies while you are actively performing the Services. "Actively performing the Services" means that you are loading or unloading Deliverables, actively delivering Deliverables, waiting to receive more Deliverables during a Delivery Block, or actively and directly on your way back to the delivery station with undeliverable or damaged Deliverables. You will not be engaged to provide Services between the time you are no longer actively performing the Services in connection with one Delivery Block and before the start of any subsequent Delivery Block.

3. Service Fees.

In consideration of providing Services in accordance with this Agreement and for providing your Vehicle, Amazon will pay you fees in the amounts indicated in the Amazon Flex app at the time of acceptance, or as otherwise agreed between you and Amazon from time to time ("Service Fees"). The Service Fees, unless otherwise expressly provided in this Agreement, will be your only fee for performing the Services. Unless otherwise indicated by Amazon, the Service Fees are intended to cover all amounts incurred by you for providing your Vehicle and the Services under this Agreement, including any expenses you may incur (such as costs of fuel, taxes, registration fees, permits of all types, and any other assessment, citation, fine, or fee imposed or assessed against your Vehicle or you by any applicable governmental authority or otherwise related to your equipment and its use). You understand that Amazon would offer lower Service Fees if Amazon had to pay separately for your expenses. Amazon will pay Service Fees to you no later than 15 days after completion of the Services. Depending on the location in which the Services are provided and the product or business to which the Services relate, Amazon's customers may be able to provide a tip in connection with the fulfillment of their orders and Amazon will pass through any tips payable to you.

4. Representations, Warranties, and Covenants.

You represent and warrant to Amazon that you have all legal capacity and authority to enter into, and perform your obligations under, this Agreement. You agree, at all times, to: (a) comply with all laws, rules, and regulations pertaining to the Services, including all laws, rules, and regulations applicable to (i) transportation, safety and insurance related to the performance of Services, (ii) health and safety of customers and the Deliverables and (iii) anti-bribery and anti-corruption; (b)

hold and maintain, throughout your participation in the Program, all licenses, permits, and other authorizations necessary for you to perform the Services (including, if applicable, driver's license, vehicle registration, and automobile insurance), which you will provide to Amazon upon request; (c) notify Amazon immediately after becoming aware that any license, permit, or authorization required for you to perform the Services has expired, been lost or suspended; (d) provide complete and accurate responses to all questions related to the background screening, including questions on prior convictions; (e) notify Amazon immediately if you need to change or update your answers to any questions posed during the background screening process, including if you have any new convictions; (f) notify Amazon immediately of any event or circumstance that impairs the safety of or delays delivery of Deliverables; (g) comply with Amazon's Supply Chain Standards posted at <http://www.amazon.com/gp/help/customer/display.html?ie=UTF8&nodeId=200885140> and Amazon's safety policies related to Amazon's premises and Deliverables (collectively, "Amazon Safety Requirements"), and permit, as requested by Amazon from time to time, Amazon or its designee to audit your compliance with any Amazon Safety Requirements; (h) not violate or infringe any third party's rights in proprietary or confidential information in performing the Services; (i) provide a photo of yourself during onboarding according to Amazon's instructions and comply with identity verification processes while on Amazon property or providing Services; and (j) not create any lien on Amazon property or assets, including any Deliverables, and waive all rights to any lien. Throughout the term of this Agreement, you will provide Amazon with any forms, documents, or certifications as may be required for Amazon to verify representations and warranties you made in this Agreement or your compliance with any provision of this Agreement.

5. Equipment Used to Perform the Services.

a) You agree that, as part of managing your own business, you will provide and maintain a mobile device compatible with the Amazon Flex app, any vehicle identified by you within the Amazon Flex app ("Vehicle"), any bicycle or other non-motorized mode of transportation used to provide the Services, and any other equipment that you choose to use or that you need in order to provide the Services. Your identification of any Vehicle within the Amazon Flex app will be considered an acknowledgement of and receipt for equipment, as required by applicable law.

b) You agree that while actively performing the Services, your Vehicle is under an exclusive lease as defined under Federal Motor Carrier Safety Administration ("FMCSA") section 49 C.F.R. Part 376.12(c)(1), which requires exclusive possession, control and use by Amazon of both the Services and your Vehicle during that time. For clarity, exclusive possession, control and use of your Vehicle by Amazon does not mean that you cede physical control or ownership of your Vehicle and the requirements of the FMCSA regulations do not affect your status as an independent contractor (49 C.F.R. 376.12(c)(4)).

6. Term and Deactivation.

a) This Agreement is effective as of the Effective Date and will continue to be in effect until you or Amazon terminates this Agreement.

b) You may terminate this Agreement at any time and for any reason by giving Amazon a notice of termination in accordance with Section 14 below. You will not be eligible to participate in the Program for 12 months following the date of the termination notice.

c) Amazon may terminate this Agreement for the following reasons ("for cause") by giving you a notice of termination in accordance with Section 14 below: (i) for failure to meet any of the Service Standards, (ii) for failing or refusing a background check or identity verification check, or for providing false or incomplete information any time before or after the Effective Date, (iii) for material violation of the Program Policies or any other policy provided to you by Amazon, (iv) for material breach of this Agreement, (v) if your Amazon.com account is deactivated; (vi) for misuse of the Amazon Flex app, including incidents of fraud or theft or (vii) for other commercially reasonable cause. You may appeal a for cause termination of this Agreement by sending an email notice to Amazon in the manner specified by Amazon within 10 days of receiving the contract termination notice.

d) If you have been inactive for more than 180 days, Amazon may deactivate your account. If your account is deactivated for inactivity, you may apply to re-enroll in the Program.

e) If you opt out of receiving electronic communication (as defined in Section 14 below), your account will be deactivated. Subject to other provisions of this Agreement, you will be able to reactivate your account by notifying Amazon that you agree to receive electronic communication from Amazon.

f) Amazon may cease providing any Licensed Materials (as defined in Section 10 below) and terminate this Agreement for cause immediately without any notice if you violate any of the terms related to the Licensed Materials in which case any licenses granted to you by Amazon will terminate immediately, without any notice.

g) If either you or Amazon terminate this Agreement, you must uninstall the Amazon Flex application on your device.

7. Availability of the Services.

Amazon makes no promises or representations in this Agreement as to the amount of business that you can expect at any time. You can accept or reject any opportunity offered by Amazon. Nothing in this Agreement will prohibit you from providing Services or using your Vehicle on behalf of any other person or entity, including competitors of Amazon, except while you are actively performing the Services. Amazon may also engage the services of other companies and individuals that may perform the same or similar services as those provided by you under this Agreement.

8. Limitation of Liability.

Amazon will not be liable for damages of any kind, including direct damages, loss of goodwill, lost opportunities or profits, anticipated amount of business, expenditures, investments, leases, or commitments made by you in connection with the Program or otherwise. Except for your indemnity obligations under Section 9 below and any liability arising out of your breach of the

section of the Program Policies entitled "Confidentiality and Personal Information," and except as indicated below, NEITHER PARTY WILL BE LIABLE UNDER ANY CIRCUMSTANCES FOR DIRECT, CONSEQUENTIAL, SPECIAL, PUNITIVE, INCIDENTAL, OR INDIRECT DAMAGES OF ANY KIND, HOWEVER CAUSED AND UNDER ANY THEORY OF LIABILITY, WHETHER RELATED TO THIS AGREEMENT, LICENSED MATERIALS, THE PROGRAM OR THE SERVICES, AND WHETHER IN CONTRACT, STRICT LIABILITY OR TORT (INCLUDING NEGLIGENCE OR OTHERWISE) EVEN IF AMAZON HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGE. Nothing in this Agreement will limit or exclude either party's liability for any matter or individual remedy that may not be limited or excluded by applicable laws, rules, or regulations.

9. Indemnification.

a) You will defend, indemnify, and hold harmless Amazon and its affiliates and successors, and each of their respective directors, officers, and employees (each an "Indemnified Party" and, collectively, the "Indemnified Parties") from any third-party allegation or claim based on, or any loss, damage, settlement, cost, expense, and any other liability (including reasonable attorneys' fees and expenses) arising out of or in connection with, (a) your negligence, strict liability, or misconduct, (b) a breach of this Agreement by you, (c) any action or inaction by you (including any and all loss or damage to personal property or bodily harm (including death) relating to or arising out of any such action or inaction), or (d) any allegation or claim that you failed to comply with applicable laws, rules, or regulations.

b) Your duty to defend is independent of your duty to indemnify. You will use counsel reasonably satisfactory to the Indemnified Parties to defend each indemnified claim, and the Indemnified Parties will cooperate (at your expense) with you in the defense. If at any time the Indemnified Parties determine that they may be adversely affected by any indemnified claim, the Indemnified Parties may assume control of the defense of the claim. You will not consent to the entry of any judgment or enter into any settlement relating to an indemnified claim without the Indemnified Parties' prior written consent.

10. Licensed Materials.

As used in this Agreement, "Licensed Materials" means any software, application, website, content, or other information made available to you (whether standalone, for use on devices owned by you or Amazon, or otherwise) by Amazon or its affiliates in connection with the Program, together with any related manuals and other documentation. Amazon grants to you, during the term of this Agreement, a limited, non-exclusive, non-transferable, non-sublicensable, revocable license to use the Licensed Materials solely for the purpose of performing the Services and participating in the Program and as permitted under this Agreement. For additional rights and obligations regarding the Licensed Materials see the Program Policies.

11. Dispute Resolution, Submission to Arbitration.

By clicking "I agree and accept" in the box below or by providing any Service after the Effective Date, you agree to each of the following terms:

a) THE PARTIES WILL RESOLVE BY FINAL AND BINDING ARBITRATION, RATHER THAN IN COURT OR TRIAL BY JURY, ANY DISPUTE OR CLAIM, WHETHER BASED ON CONTRACT, COMMON LAW, OR STATUTE, ARISING OUT OF OR RELATING IN ANY WAY TO THIS AGREEMENT, INCLUDING TERMINATION OF THIS AGREEMENT, TO YOUR PARTICIPATION IN THE PROGRAM, OR TO YOUR PERFORMANCE OF SERVICES. TO THE EXTENT PERMITTED BY LAW, THE PRECEDING SENTENCE APPLIES TO ANY DISPUTE OR CLAIM THAT OTHERWISE COULD BE ASSERTED BEFORE A GOVERNMENT ADMINISTRATIVE AGENCY.

b) TO THE EXTENT PERMITTED BY LAW, THE PARTIES AGREE THAT ANY DISPUTE RESOLUTION PROCEEDINGS WILL BE CONDUCTED ONLY ON AN INDIVIDUAL BASIS AND NOT ON A CLASS OR COLLECTIVE BASIS.

c) TO THE EXTENT PERMITTED BY LAW, THE PARTIES FURTHER AGREE THAT NO DISPUTE RESOLUTION PROCEEDING WILL BE CONDUCTED ON A REPRESENTATIVE BASIS.

d) TO THE EXTENT PERMITTED BY LAW, THE PARTIES WAIVE ANY RIGHT TO PARTICIPATE IN OR RECEIVE ANY RELIEF FROM ANY NON-INDIVIDUAL PROCEEDING REFERENCED ABOVE AND THIS AGREEMENT DOES NOT PROVIDE FOR, AND THE PARTIES DO NOT CONSENT TO, ARBITRATION ON A CLASS OR COLLECTIVE OR REPRESENTATIVE BASIS.

e) NO ARBITRATOR SELECTED TO ARBITRATE ANY DISPUTE BETWEEN THE PARTIES IS AUTHORIZED TO ARBITRATE ANY DISPUTE ON A CLASS, COLLECTIVE OR REPRESENTATIVE BASIS. FURTHER, NO ARBITRATOR IS AUTHORIZED TO CONSOLIDATE CLAIMS OF MORE THAN ONE INDIVIDUAL UNLESS ALL PARTIES EXPRESSLY AGREE IN WRITING TO ANY SUCH CONSOLIDATION.

f) THIS AGREEMENT SHALL NOT BE INTERPRETED AS REQUIRING EITHER PARTY TO ARBITRATE DISPUTES ON A CLASS, COLLECTIVE OR REPRESENTATIVE BASIS, EVEN IF A COURT OR ARBITRATOR INVALIDATES OR MODIFIES OR DECLINES TO ENFORCE THIS AGREEMENT IN WHOLE OR IN PART.

g) AN AWARD IN ARBITRATION SHALL DETERMINE THE RIGHTS AND OBLIGATIONS BETWEEN THE NAMED PARTIES ONLY, AND ONLY IN RESPECT OF THE CLAIMS IN SUCH ARBITRATION, AND SHALL NOT HAVE ANY BEARING ON THE RIGHTS AND OBLIGATIONS OF ANY OTHER PERSON OR ON THE RESOLUTION OF ANY OTHER DISPUTE, OR HAVE PRECLUSIVE EFFECT AS TO ISSUES OR CLAIMS IN ANY OTHER DISPUTE.

h) You and Amazon agree that, at least 30 days before commencing an action pursuant to this Agreement that in any way relates to this Agreement or to the Services, the aggrieved party will provide the other party a notice of the aggrieved party's claims and at least 30 days in which to cure an alleged breach of this Agreement or other alleged act or omission, if the same is reasonably

capable of being cured. Notice shall be provided as set forth in Section 14 of this Agreement. The applicable statute of limitations shall be tolled for 30 days following the provision of such notice.

i) A party demanding arbitration under this Agreement must file the demand with the American Arbitration Association (the "AAA") and deliver the demand to the other party by hand or by first-class mail within the applicable statute of limitations. The demand for arbitration must be in writing and include (1) the name and address of the party seeking arbitration, (2) a statement of the legal and factual basis of each claim, (3) a description of the remedy sought (4) the amount in controversy, and (5) the claimant's handwritten or electronic signature. Any demand for arbitration by you must be served on Amazon's registered agent, Corporation Service Company, at 300 Deschutes Way SW, Suite 304, Tumwater, WA 98051. The arbitration will be conducted by the AAA under its **Commercial Arbitration Rules and Mediation Procedures** in effect at the time of filing the demand for arbitration, provided that none of the AAA's expedited procedures will apply to the arbitration unless you and Amazon mutually agree in writing, after the demand has been filed, to the application of such procedure. The AAA's rules are available at www.adr.org. If the AAA's rules are inconsistent with this Agreement, this Agreement will govern. Payment of all filing, administration, and arbitrator fees will be governed by the AAA's rules, except that if you initiate the arbitration, you will pay for only the first US \$200 of the total AAA filing fee. For example, if the AAA filing fee is US \$180, you will be responsible for paying the entire AAA filing fee in that instance. But, if the AAA filing fee is US \$570 you will be responsible for paying US \$200 and Amazon will pay the difference (US \$370 in this instance). Amazon also will pay all other costs and expenses unique to arbitration, including the arbitrator's fees. Any finding that a claim or counterclaim violates the standards set forth in Federal Rule of Civil Procedure 11 shall entitle the other party to recover their attorneys' fees, costs, and expenses associated with defending against the claim or counterclaim. The arbitration will take place at a mutually-convenient location within 45 miles from the last location in which you provided Services, or at another mutually-convenient location, or at any location ordered by a court with personal jurisdiction over you and Amazon.

j) Notwithstanding any provision in the AAA rules, the parties agree that a court of law must resolve any dispute concerning the validity and enforceability of the Agreement as a whole, the applicability of any exemption to the Federal Arbitration Act, and the validity, enforceability or interpretation of the provisions in subsections b) through i) of this Section 11. The arbitrator must resolve all other disputes, including all other disputes about the arbitrability of claims pursuant to such other provisions. If any portion of the class, collective or representative action waiver is found to be void or unenforceable, then the portion of the waiver found void or unenforceable shall be severed from this Agreement, and all other parts and provisions shall remain in full force and effect. In such a case, the claim or claims (or portion of claims) found to be able to proceed on a class, collective or representative action basis shall proceed in a court of competent jurisdiction, and not in arbitration. In no event shall a court or arbitrator order arbitration on a class, collective or representative basis. Any claims or claim in court shall be stayed until the arbitration is concluded, unless such stay is contrary to applicable law.

k) The parties agree that all claims for public injunctive relief shall not be arbitrated, but rather litigated in court, and all claims for private injunctive relief must be arbitrated on an individual

basis. A court, not an arbitrator, shall decide whether a claim is for public or private injunctive relief.

l) If you assert a claim against Amazon that is not subject to individual arbitration pursuant to this Section 11, and there is pending or later filed any claim against Amazon asserted by you or on your behalf that is subject to individual arbitration, then you agree and consent that any claim not subject to individual arbitration must be stayed until the resolution of such other claim in arbitration, unless such stay is contrary to applicable law.

m) A judgment upon the final award rendered by the arbitrator may be entered by any court having jurisdiction thereof. However, in any arbitration award issued in an arbitration conducted in accordance with this arbitration provision, the arbitrator shall specify a reasonable time within which the final award shall be satisfied, and no party may seek to confirm the award until the time specified for satisfaction has expired. If the final award is satisfied during the specified time, no party shall seek to confirm the award.

n) Nothing in this Section 11 shall be construed to prohibit settlements on a class-wide, collective, and/or representative basis.

12. Governing Law.

The interpretation and enforcement of this Agreement is governed by the law of the state of Delaware without regard to its conflict of laws principles, except for Section 11 of this Agreement, which is governed by the Federal Arbitration Act and applicable federal law. If, for any reason, the Federal Arbitration Act is held by a court of competent jurisdiction not to apply to Section 11 of this Agreement, the law of the state of Delaware and the Delaware Uniform Arbitration Act, 10 Del. C. § 5701 et seq. will govern Section 11 of this Agreement, including without limitation the common law of contracts of such state in the event that any statute could be interpreted as limiting the right of Amazon or you to arbitrate disputes pursuant to Section 11 of this Agreement. Nothing in this choice of law provision shall preclude the application of Delaware law to compel arbitration if a court of competent jurisdiction is unable to determine the application of the Federal Arbitration Act without discovery.

13. Modifications.

Amazon may modify this Agreement, including the Program Policies, at any time by providing notice to you through the Amazon Flex app or otherwise providing notice to you. You are responsible for reviewing this Agreement regularly to stay informed of any modifications. If you continue to perform the Services or access Licensed Materials (except for accessing the Amazon Flex app for the purpose of considering whether to agree to modifications of the Terms of Service) after the effective date of any modification to this Agreement, you agree to be bound by such modifications. However, (i) any modification to Service Fees will be provided to you in writing or through the Amazon Flex app before you accept and complete any Delivery Block(s) to which such modifications apply; (ii) any modifications to Section 11 will not apply to claims or disputes filed by you on or before the Effective Date; and (iii) if you previously opted-out of the dispute resolution provision in a prior version of the Terms of Service, any modifications to Section 11

that eliminate your right to opt out of the dispute resolution provision will not affect any right you may have to participate in a court action previously filed on your own behalf or as a member of a putative or certified class, collective or representative action that was filed on or before, and was pending on, the Effective Date.

14. Notice; Electronic/Mobile Communications.

Amazon will communicate with you via phone, text message, email, or push notifications sent via the Amazon Flex app (each such communication, "electronic communication") in connection with your participation in the Program. By downloading the Amazon Flex app, providing us with your mobile number, and agreeing to this Agreement, you are providing us with written consent to receive push notifications and automated text messages from Amazon in connection with the Program. To stop receiving push notifications, you may adjust the settings on your phone or delete the Amazon Flex app. You will not be able to participate in the Program if you adjust the settings or delete the Amazon Flex app. To stop receiving text messages from Amazon, reply STOP to any message. You consent to Amazon communicating with you concerning the Program via any or all of these means and you are responsible for printing, storing, and maintaining your own records of any such agreements, notices, disclosures or other communications. Standard messaging and data rates may apply. It is your responsibility to keep your email address and phone number current by updating the information you provided to Amazon. Terminating this Agreement will stop all electronic communication. If you want to terminate this Agreement, you can provide a notice of termination to Amazon by sending a message to the following email address: amazonflex-support@amazon.com. If you want to provide notice under this Agreement, other than the notice of termination, you can provide such notice by sending a message to the following email address: amazonflex-support@amazon.com.

15. Documents.

You may obtain an e-mailed copy of this Agreement by e-mailing a request to amazonflex-support@amazon.com. This Agreement will be accessible to you at any time in the Amazon Flex app.

16. Entire Agreement and Severability; Additional Terms; Survival.

a) This Agreement constitutes the complete and final agreement of the parties pertaining to the Services and supersedes and replaces the parties' prior agreements, understandings, representations, and discussions (whether written or oral) relating to the Services. If any provision of this Agreement is determined to be unenforceable, the parties intend that this Agreement be enforced as if the unenforceable provisions were not present and that any partially valid and enforceable provisions be enforced to the fullest extent permissible under applicable law. A party does not waive any right under any provision of this Agreement, including Program Policies, by failing to insist on compliance with, or by failing to exercise any right under, the applicable provision. Any waivers granted under this Agreement are effective only if recorded in a writing signed by the party granting such waiver. The section headings of this Agreement, including Program Policies, are for convenience only and have no interpretive value.

b) You will not assign, subcontract, or delegate any of your rights or obligations under this Agreement, or your Program Account, without Amazon's prior written consent. Any attempt by you to assign, subcontract, or delegate in violation of this Agreement will be null and void.

c) The following sections of this Agreement, along with any other provisions that by their nature should survive termination of this Agreement, will survive any termination or expiration of this Agreement: Independent Contractor Relationship; Service Fees; Representations, Warranties and Covenants; Term and Termination; Indemnification; Limitation of Liability; Dispute Resolution, Submission to Arbitration, Governing Law; and the following sections of the Program Policies: Confidentiality and Personal Information; Taxes; and Miscellaneous.

17. Knowing and Voluntary Agreement.

You acknowledge and agree that you are entering into this Agreement voluntarily and without any duress or undue influence by Amazon or anyone else. Further, you confirm that you carefully read this Agreement, asked any questions needed for you to understand this Agreement, and you fully understand the terms, consequences, and binding effect of this Agreement, including that you are waiving the right to go to court, to a jury trial and to proceed on a class, collective or representative basis. Finally, you agree that you have had an opportunity to seek the advice of an attorney before agreeing to and accepting this Agreement and that you have done so or you knowingly and voluntarily decided not to seek such advice.

EXHIBIT A

AMAZON FLEX PROGRAM POLICIES

I. Welcome To Amazon Flex.

Welcome to Amazon Flex, an innovative new service offering you the opportunity to deliver packages to Amazon customers. Amazon is excited to welcome you to the Amazon Flex program and hope that you enjoy being your own boss and running your own business by using the Amazon Flex app.

II. Program Requirements.

A. In order to participate in the Program, you must:

1. Pass a background check and, if applicable, a motor vehicle record check in accordance with Amazon's standards;
2. Be at least 21 years of age;
3. Be legally qualified to work in each jurisdiction in which you provide Services;
4. Have the ability to effectively operate the Amazon Flex app and communicate with customers; and
5. Install the Amazon Flex app on your smartphone.

B. In performing Services, you may use:

1. Non-motorized transportation (e.g., walking, cycling);
2. Following Vehicles:
 - o a private passenger vehicle,
 - o a cargo van (not to exceed 10,000 lbs. in gross vehicle weight rating),
 - o a light truck (not to exceed 10,000 lbs. in gross vehicle weight rating); or
3. Public Transportation.

If you are required to advise Amazon of the mode of delivery that you intend to use to deliver specified Deliverables, you agree to use only that mode of delivery to deliver those Deliverables.

C. If you operate any Vehicle in connection with your performance of Services, you must:

1. Have a current valid driver's license,
2. If applicable, maintain current Vehicle registration,
3. Maintain current automobile insurance coverage required by applicable laws, rules, and regulations to operate such Vehicle; and
4. Be legally authorized and fit to operate such Vehicle.
5. Upon request, you will provide Amazon with proof that these requirements have been satisfied.
6. All Vehicles must be registered and must have passed all applicable local, state and federal standards for safety and environmental compliance.

7. You are not permitted to carry weapons while performing Services, except to the extent local applicable law places restrictions on this policy.
8. You will not provide Services if you are currently an Amazon employee and you will cease providing Services if you become an Amazon employee (not-applicable to Amazon employees working in California).

III. Service Standards.

A. As an independent contractor, you agree to provide results—the timely and effective delivery of undamaged parcels, bags, totes or other items to the customers' and Amazon's satisfaction--subject to the following standards ("Service Standards"):

1) Safety

i. Failure to comply with health, safety, & other applicable laws. Amazon requires you to comply with all traffic (including observing speed limit laws and distracted driving laws), health, safety, and other laws applicable to Deliverables or Services. Violation of traffic, health, safety, and other laws applicable to Deliverables or Services will make you ineligible to participate in the Program. The "Safety Reminder" video available in the "Videos" section of the Amazon Flex app contains important information for your safety and awareness. You agree and confirm that you will not provide the Services unless and until (a) you have viewed and fully understood the contents of this video, or (b) you have received hazardous materials training in the past three years that satisfies the Hazardous Materials Regulations (49 CFR 172.704), and you have, or can obtain upon your request, records confirming the same; provided that (b) does not apply in California.

2) Reliability

i. Arriving on time for or timely forfeiting Delivery Blocks. As with any vendor of services, Amazon expects that you a) be ready to timely provide Services for any confirmed Delivery Block or b) if you elect to do so, forfeit a Delivery Block with sufficient notice (i.e. at least 45 minutes before the start of such Delivery Block). Please note that if you schedule a Delivery Block close to its start time, you will still be expected to arrive on- time for that Delivery Block. If you repeatedly arrive late or forfeit Delivery Blocks late, you will no longer be eligible to participate in the Program. ii. Availability to provide the Services. Once you arrive at the correct pick-up location, unless directed otherwise by Amazon you must remain at that location (or in the local area, as instructed) until Amazon or its designees tender Deliverables to you. If you do not receive any Deliverables by the end of the Delivery Block, you are free to leave at the end of the Delivery Block and will still be paid in full.

3) Delivery Quality

i. Late Deliveries. Amazon expects that you deliver Deliverables to the customers on time. The app will specify the delivery window(s) during which the customer expects particular Deliverables to be delivered. If you repeatedly deliver Deliverables late, you will no longer be eligible to participate in the Program.

ii. Deliverables marked as delivered that the customer does not receive. If you deliver a Deliverable, Amazon expects that the customer will be able to find it. If customers repeatedly report that they cannot find Deliverables you marked as delivered, you will no longer be eligible to participate in the Program.

iii. Delivery not attempted or undeliverable Deliverables not returned to Amazon timely. Amazon expects that you will deliver all the Deliverables you pick up. In an instance where delivery is not possible, you are expected to return all Deliverables to the Amazon delivery station, unless otherwise directed by Amazon. If you repeatedly do not attempt to deliver all the Deliverables you pick up or you do not return the undeliverable packages to a location specified by Amazon, you will no longer be eligible to participate in the Program.

4) Customer Service

i. Rude or inappropriate behavior. Amazon expects you to behave respectfully and professionally when interacting with its customers, station operators, merchants and other delivery partners while providing the Services. If customers, station operators, merchants or other delivery partners repeatedly report disrespectful, rude, inappropriate, unprofessional, dangerous or threatening conduct, you will no longer be eligible to participate in the Program. Additionally, a single violation, depending on the seriousness of the infraction, can make you ineligible to participate in the Program.

ii. Failure to follow delivery instructions. Amazon expects you to follow customer delivery instructions as reflected in the app as long as the customer instructions are reasonable and do not conflict with health, safety and other applicable laws. Amazon expects you to perform the Services consistent with industry standards, including with respect to health and safety, always checking recipient IDs when delivering alcohol and collecting a signature when instructed to do so in the app. If you repeatedly disregard the instructions, you will no longer be eligible to participate in the Program.

iii. As an independent contractor, subject only to this Agreement, it is for you to decide the means and manner in which to provide the Services and achieve the results that you have agreed to provide. Therefore, in performing Services, you are free to map out your own routes, sequence your deliveries and in every other way control the means and manner in which you deliver Deliverables.

5) Workplace Harassment Policy

In order to participate in the Program you must comply with the Workplace Harassment Policy (see Policy below).

IV. Program Account.

A. Amazon will use information provided by you to create or maintain your user account for the Program ("Program Account"). You will only operate one Program Account and not register another Program Account if Amazon disables your Program Account. You will provide accurate,

current, and complete information as part of your contracting process and to update your information as necessary so that it remains accurate, current, and complete at all times.

B. You will not permit any other person to access your Program Account or the Licensed Materials, including the Amazon Flex App, or to perform any Services using your identity or log-in credentials. You will not access any other person's Program Account or Licensed Materials, including the Amazon Flex App, or perform any Services using any other person's identity or log-in credentials. You will keep secure and confidential any password required to access your Program Account or Amazon Flex App or any identification that Amazon provides to you in connection with the Program or Amazon Flex App and you agree to accept responsibility for all activities that occur under your Program Account and associated password.

V. Insurance.

A. If you operate any motor vehicle(s) in connection with your performance of the Services, you will maintain, at your expense, personal automobile insurance coverage required by applicable laws, rules, and regulations to operate such vehicle(s). You will provide proof of such insurance coverage to Amazon, upon request. You will notify Amazon if your insurance coverage is cancelled. Your personal automobile insurance policy may not cover commercial activity. As an independent contractor, it is your responsibility to understand the terms of your personal insurance coverage and to contact your personal insurance company if you have any questions.

B. Where allowed or required by state and federal regulations, Amazon maintains, pursuant to FMCSA regulations, a commercial automobile insurance policy ("Amazon Insurance Coverage") that is intended to provide third-party bodily injury and property damage coverage, uninsured/underinsured motorist coverage, and comprehensive/collision coverage contingent on your personal insurance policy coverage, while actively performing the Services, in each case subject to Amazon Insurance Coverage deductibles and coverage limitations. If you maintain commercial automobile insurance coverage applicable to your operation of a Vehicle, your provider will provide primary coverage for you at all times, including while you are actively performing the Services and Amazon Insurance Coverage will be, only in those geographies where state and federal regulations allow or require it, excess over your commercial automobile insurance. The above description of Amazon Insurance Coverage is a summary only, and the actual terms of the Amazon Insurance Policy may vary by geographic area and are governed by the Amazon Insurance Policy documents. If there is a conflict between the above description and the actual terms of the Amazon Insurance Policy, the actual terms of the Amazon Insurance Policy will dictate coverage. You will notify Amazon immediately of any accident or other on-road incident that occurs while you are actively performing the Services and you will cooperate with Amazon and the applicable insurance company in the investigation of such accident or on-road incident. Amazon Insurance Coverage will in no way affect your indemnity obligations to Amazon as provided for in the Agreement. Amazon Insurance Coverage limits are available upon request.

VI. Privacy.

A. Amazon receives and stores any information you enter on our website and mobile applications, while providing Services or participating in the Program, and through other interactions and

communications you have with us, our mobile application or our website. Any of the Licensed Materials may provide Amazon with data about your use of such Licensed Materials, your geo-location and related tracking data, including your location, movements, speed at which you are traveling, and other personally identifiable information. Amazon may use any such information and share such information with third parties in connection with the Program or other products or services, including Services, offered by Amazon or its affiliates. By submitting information to Amazon during the contracting process or while providing Services and using any Licensed Materials, you expressly (i) consent to Amazon collecting, using and sharing the above described data and information and (ii) waive and release Amazon from any and all claims, causes of action, liability or damages arising out of or in any way related to Amazon's use of such data and information. To the extent required by applicable law, you may have the right to request access to or delete your personal information. If you wish to do any of these things, please contact transportation-privacy@amazon.com.

B. Amazon may obtain information about you, including your motor vehicle record and results of your background check. You authorize Amazon and its applicable service provider(s) to, from time to time, (i) perform a background check on you and (ii) obtain your motor vehicle record. Based on a review by Amazon or its service provider of the results of your background check and motor vehicle record, Amazon may immediately terminate this Agreement.

C. Subject to applicable laws, Amazon may release any collected data and information, including personally identifiable information, when Amazon believes such release is appropriate or necessary to (i) comply with the law; (ii) enforce or apply this Agreement, including Program Policies; (iii) protect the rights, property, security or safety of Amazon, its affiliates, Amazon's customers, or others; (iv) detect, prevent or otherwise address fraud, security or technical issues; or (v) prevent or stop activity which Amazon considers to be, or to pose a risk of becoming, illegal, unethical, or legally actionable. Amazon may also receive information you shared with third parties, provided that such party has obtained necessary permissions to share the information with Amazon.

D. When you download or use apps created by Amazon or its affiliates, Amazon will receive information about your location, and your mobile device, including a unique identifier for your device. Most mobile devices provide you with information about these permissions. You have the right to choose whether or not to allow Amazon to receive this information. However, our ability to receive this information is an important part of the performance of Services, so if you choose to deny Amazon access to this information, this could affect the availability and functionality of the Amazon Flex App and your participation in the Program.

E. As a condition of delivering Amazon packages using the Amazon delivery application, you consent to allow Amazon to verify your identity and share your photo with Amazon customers for identification purposes from time to time. Amazon may derive from your photo a facial scan or similar biometric identifier ("Biometric Information"), and collect, store, and use Biometric Information from your submitted photos (including your photos Amazon already has on file).

driver's license, or government-issued ID. You also agree to Amazon's Photo Use and Biometric Information Retention Policy, which can be found below:

Photos Use and Biometric Information Retention Policy

Amazon uses your submitted photos (including your photos that we already have on file), driver's license, or government-issued ID for identification purposes. This can include making sure it's you who is doing the delivery and using your photo to identify you to customers and Amazon personnel. The photo is also used on your in-app ID card. Amazon will retain your photos while you use the Amazon delivery application and thereafter for so long as permitted by law or until you request that Amazon delete your photo. You may request deletion of your photo by contacting support, but deleting your photo will block your access to the Amazon delivery application until you replace it and it is checked for validity.

Amazon requires that users of the Amazon delivery application provide a photo for identification purposes. Amazon may derive from your photo a facial scan or similar biometric identifier, ("Biometric Information"). This policy governs our retention of users' Biometric Information. Amazon retains a user's Biometric Information for up to 30 days after it is generated. Thereafter, Amazon will promptly delete the Biometric Information. Note that this means Amazon may need to retain your Biometric Information after you stop using the Amazon delivery application for purposes of ongoing fraud detection and investigation.

VII. Licensed Materials; Devices.

A. You may not (i) incorporate any portion of the Licensed Materials into your own works or compile any portion of it in combination with your own works, transfer it, in whole or in part, for use with another service, or sell, rent, distribute, copy, modify, adapt, translate, reverse engineer, decompile, or disassemble, or make derivative works based on, or manipulate the Licensed Materials or any part of the Licensed Materials or otherwise sublicense or assign any rights to the Licensed Materials in whole or in part, (ii) cause or launch any programs or scripts for the purpose of surveying, manipulating or data mining any portion of the Licensed Materials or impairing or unduly affecting the operation or functionality of any aspect of the Licensed Materials; or (iii) attempt to gain unauthorized access to any portion of the Licensed Materials, including through scripts or third party applications.

B. Additional third party terms contained within or distributed with certain Licensed Materials may apply to the Licensed Materials (or software incorporated with the Licensed Materials) and will govern the use of such software in the event of a conflict with this Agreement ("Third Party Software"). Such Third Party Software license terms will apply to the corresponding Third Party Software in lieu of this Agreement. For more information on Third Party Software, refer to the Additional Terms in the Amazon Flex app, which can be accessed via Home > Account > View Legal Information > Additional Terms.

C. All rights not expressly granted to you in this Agreement are reserved and retained by Amazon or other content providers. You may not frame or utilize framing techniques to enclose any trademark, logo, or other proprietary information (including images, text, page layout, or form) of

Amazon without express written consent. You may not use any meta tags or any other "hidden text" utilizing Amazon's name or trademarks without the express written consent of Amazon. You may use the Licensed Materials only as permitted by law.

D. You will not attempt to participate or participate in the Program, or provide any Services, for the purpose of gathering information regarding the Program (including any Licensed Materials) or Amazon's processes, building or operating a competitive service or a service that uses similar ideas, features, or functions as the Program (including any Licensed Materials), or copying any idea, feature, or function of the Program (including any Licensed Materials).

E. When you use the Licensed Materials, you may also be using the services of one or more third parties, such as a wireless carrier or a mobile platform provider. Your use of these third party services may be subject to the separate policies, terms of use, and fees of these third parties.

F. Amazon may offer automatic or manual updates to the Licensed Materials at any time and without notice to you.

G. You must comply with all export and re-export restrictions and regulations of the Department of Commerce and other United States agencies and authorities that may apply to the Licensed Materials and agree not to transfer, or encourage, assist, or authorize the transfer of Licensed Materials to a prohibited country or otherwise in violation of any applicable restrictions or regulations.

H. You will notify Amazon immediately after becoming aware that any device on which any Licensed Materials are installed has been lost, stolen, or misplaced. If Amazon provides you with any device or other equipment in connection with the Program and such device or other equipment (or any part of it) is lost, stolen, unreturned, damaged, sold, transferred, or encumbered without the express prior written consent of Amazon, you will promptly pay Amazon the full replacement cost of such device or other equipment, together with any incidental costs that are incurred by Amazon to replace the same.

I. AMAZON LICENSES THE LICENSED MATERIALS TO YOU "AS IS" AND MAKES NO WARRANTIES OF ANY KIND REGARDING THE LICENSED MATERIALS. TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, AMAZON EXPRESSLY DISCLAIMS ALL WARRANTIES, WHETHER EXPRESS OR IMPLIED, INCLUDING WARRANTIES OF MERCHANTABILITY, NONINFRINGEMENT, TITLE, OR FITNESS FOR A PARTICULAR PURPOSE. AMAZON DOES NOT WARRANT THAT THE LICENSED MATERIALS WILL MEET YOUR REQUIREMENTS OR WILL OPERATE UNINTERRUPTED, ERROR FREE, OR PROVIDE ACCURATE, COMPLETE, OR UP-TO-DATE INFORMATION. AMAZON WILL NOT BE RESPONSIBLE FOR ANY LOSS, DAMAGE, OR CLAIM CAUSED BY OR ATTRIBUTABLE TO ANY DEFECT OR DEFICIENCY IN ANY LICENSED MATERIALS.

J. If you provide any suggestions, comments, ideas, improvements, or other feedback relating to the Program, Program Policies or the Licensed Materials to Amazon, you assign to Amazon all right, title and interest in and to the same and will provide any assistance Amazon may require to

document, perfect, and maintain these rights, and Amazon will be free to use, disclose, reproduce, modify, license, transfer, and otherwise distribute and exploit any of the foregoing.

K. All content included in or made available through Licensed Materials or the Program such as text, graphics, logos, button icons, images, audio clips, digital downloads, data compilations, and software is the property of Amazon or its content suppliers and protected by United States and international copyright laws. The compilation of all content included in or made available through any Licensed Materials or the Program is the exclusive property of Amazon and protected by U.S. and international copyright laws.

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VIII. Confidentiality and Personal Information.

A. You will use all personally identifiable information (i) concerning Amazon's customers, including names and addresses and (ii) provided to you or learned by you during performance of Services (collectively, "Personal Information"), solely for the purpose of providing Services using the Amazon Flex app and will not contact Amazon's customers using Personal Information for any reason unless directly related to providing Services. You will comply with all instructions Amazon provides in respect of the processing of Personal Information, and you will maintain appropriate security measures to prevent unauthorized use or disclosure of Personal Information and will keep confidential and not share Personal Information with any third party unless expressly permitted under this Agreement. You will return all Personal Information to Amazon promptly following a request from Amazon. As between you and Amazon, all Personal Information is and will remain the exclusive property of Amazon, and you will not disclose, share, transfer, rent, barter, trade, or sell Personal Information and will not develop lists of or aggregate Personal Information. For the avoidance of doubt, the contents of Deliverables tendered by Amazon to you are Personal Information.

B. If you are required by any governmental authority to disclose the contents of any Deliverable, you will promptly notify Amazon of such requirement. Amazon will not provide any Personal Information in connection with any disputes or claims between you and Amazon's customers, nor will any Amazon customers be contacted or called to testify, by either you or Amazon, in connection with any dispute or claim between you and Amazon.

C. Without the prior written authorization by a Vice President of Amazon, you will not use any trade name, trademark, service mark, trade dress, logo or commercial symbol, or any other proprietary rights of Amazon or any of its affiliates in any manner (including use in any client list, press release, advertisement, or other promotional material).

IX. Taxes.

Each party will be responsible, as required under applicable law, for identifying and paying all taxes and other governmental fees and charges (and any penalties, interest, and other additions thereto) that are imposed on that party upon or with respect to the transactions and payments under this Agreement. Amazon may deduct or withhold any taxes that Amazon may be legally obligated to deduct or withhold from any amounts payable to you under this Agreement, and payment to you as reduced by such deductions or withholdings will constitute full payment and settlement to you of amounts payable under this Agreement. Throughout the term of this Agreement, you will provide Amazon with any forms, documents, or certifications as may be required for Amazon to satisfy any information reporting or withholding tax obligations with respect to any payments under this Agreement.

X. Amazon Flex Rewards

Participation in the Amazon Flex Rewards Program (the "Rewards Program") is subject to this Agreement as well as the Amazon Flex "Rewards Terms" set forth at <https://flex.amazon.com/amazonflexrewards/terms>, as updated by Amazon from time to time. Please read the Rewards Terms carefully. By accessing or participating in the Rewards Program, you agree to be bound by the terms of the Rewards Program and all terms incorporated therein by reference, including terms regarding dispute resolution and a class action waiver. If you do not agree to the Rewards Program Terms, do not access or participate in the Rewards Program.

Amazon Flex Workplace Harassment Policy

At Amazon, we believe that all workers should be treated with respect and dignity. Therefore, we will not tolerate inappropriate conduct, including discrimination or harassment based on sex. The conduct outlined in this policy is unacceptable and, in many cases, also prohibited by law. This policy applies to all Delivery Partners, as well as to the conduct by others involved in our business, such as employees, subcontractors, consultants, clients, customers, or vendors.

Sexual Harassment

Sexual harassment generally consists of unwelcome sexual advances, requests for sexual favors, or other verbal, non-verbal, or physical conduct of a sexual nature when (1) submission to or rejection of such conduct is the basis for work decisions affecting a prospective or active Delivery Partner; or (2) such conduct has the purpose or effect of creating a sexually offensive, hostile, or intimidating work environment that interferes with an individual's ability to perform their work. Examples of sexual harassment include, but are not limited to:

- Physical touching or assault, or impeding or blocking movements;
- Unwelcome or unwanted physical contact or sexual advances;
- Requests or demands for sexual favors in exchange for favorable or preferential treatment;
- Sexual jokes or use of sexually explicit language;

- Leering, gestures, or displaying sexually suggestive objects, pictures, cartoons, or posters;
- Derogatory comments, epithets, slurs, or jokes;
- Graphic comments or sexually degrading words; and
- Suggestive or obscene messages or invitations.

Responding to Inappropriate Conduct or Possible Incidents of Harassment

All Delivery Partners, as well as Amazon employees, are responsible for ensuring that our environment is free from offensive behavior and harassment. All Delivery Partners must avoid any conduct that may be perceived as offensive and/or harassing.

Delivery Partners: Delivery Partners who observe or experience conduct they believe may be inappropriate or harassing by anyone, including other Delivery Partners, Amazon employees, customers, or visitors, may report the conduct to Amazon by using the "Emergency Help" button in the Amazon Flex app. or by contacting our Last Mile Emergency Team at (844) 311-0406.

Amazon Employees: Employees who observe or experience conduct they believe may be inappropriate or harassing should contact his or her manager, or to any member of management at Amazon, or to Human Resources.

Customers: Customers should report such incidents by contacting the Customer Service Line.

It is important that Delivery Partners, employees, and customers feel comfortable reporting such incidents; therefore, no retaliation of any kind will be permitted or tolerated against Delivery Partners, employees, or customers for making a good faith report of suspected harassment. Anyone who believes they have been retaliated against for making a good faith complaint should contact the Last Mile Emergency Team at (844) 311-0406.

Amazon will promptly, fairly, and thoroughly investigate any reports of harassment or inappropriate conduct. To the extent possible, the privacy of those involved in any investigation will be protected against disclosure and remain confidential, except as necessary to conduct the investigation. Prompt, corrective action will be taken when appropriate. This action may include temporary suspension or termination of the Delivery Partner's contract with Amazon, or appropriate action against an Amazon employee or customer who engages in prohibited conduct. False complaints of harassment, discrimination, or retaliation that are not made in good faith may be the subject of similar appropriate disciplinary action.

LII > U.S. Code > Title 9 > CHAPTER 1 > § 1

Quick search by citation:

Title Section

9 U.S. Code § 1 - "Maritime transactions" and "commerce" defined; exceptions to operation of title

[U.S. Code](#) [Notes](#)

"Maritime transactions", as herein defined, means charter parties, bills of lading of water carriers, agreements relating to wharfage, supplies furnished vessels or repairs to vessels, collisions, or any other matters in foreign commerce which, if the subject of controversy, would be embraced within admiralty jurisdiction; "commerce", as herein defined, means commerce among the several States or with foreign nations, or in any Territory of the United States or in the District of Columbia, or between any such Territory and another, or between any such Territory and any State or foreign nation, or between the District of Columbia and any State or Territory or foreign nation, but nothing herein contained shall apply to contracts of employment of seamen, railroad employees, or any other class of workers engaged in foreign or interstate commerce.

(July 30, 1947, ch. 392, 61 Stat. 670.)

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LII > U.S. Code > Title 9 > CHAPTER 1 > § 2

Quick search by citation:

Title Section

9 U.S. Code § 2 - Validity, irrevocability, and enforcement of agreements to arbitrate

[U.S. Code](#) [Notes](#)

A written provision in any maritime transaction or a contract evidencing a transaction involving commerce to settle by arbitration a controversy thereafter arising out of such contract or transaction, or the refusal to perform the whole or any part thereof, or an agreement in writing to submit to arbitration an existing controversy arising out of such a contract, transaction, or refusal, shall be valid, irrevocable, and enforceable, save upon such grounds as exist at law or in equity for the revocation of any contract or as otherwise provided in chapter 4.

(July 30, 1947, ch. 392, 61 Stat. 670; Pub. L. 117-90, § 2(b)(1)(A), Mar. 3, 2022, 136 Stat. 27.)

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Quick search by citation:

Title Section

9 U.S. Code § 3 - Stay of proceedings where issue therein referable to arbitration

[U.S. Code](#) [Notes](#)

If any suit or proceeding 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, upon being satisfied that the issue involved in such suit or proceeding is referable to arbitration under such an agreement, 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, providing the applicant for the stay is not in default in proceeding with such arbitration.

(July 30, 1947, ch. 392, 61 Stat. 670.)

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Title Section

9 U.S. Code § 4 - Failure to arbitrate under agreement; petition to United States court having jurisdiction for order to compel arbitration; notice and service thereof; hearing and determination

U.S. Code Notes

A party aggrieved by the alleged failure, neglect, or refusal of another to arbitrate under a written agreement for arbitration may petition any United States district court which, save for such agreement, would have jurisdiction under title 28, in a civil action or in admiralty of the subject matter of a suit arising out of the controversy between the parties, for an order directing that such arbitration proceed in the manner provided for in such agreement. Five days' notice in writing of such application shall be served upon the party in default. Service thereof shall be made in the manner provided by the Federal Rules of Civil Procedure. The court shall hear the parties, and upon being satisfied that the making of the agreement for arbitration or the failure to comply therewith is not in issue, the court shall make an order directing the parties to proceed to arbitration in accordance with the terms of the agreement. The hearing and proceedings, under such agreement, shall be within the district in which the petition for an order directing such arbitration is filed. If the making of the arbitration agreement or the failure, neglect, or refusal to perform the same be in issue, the court shall proceed summarily to the trial thereof. If no jury trial be demanded by the party alleged to be in default, or if the matter in dispute is within admiralty jurisdiction, the court shall hear and determine such issue. Where such an issue is raised, the party alleged to be in default may, except in cases of admiralty, on or before the return day of the notice of application, demand a jury trial of such issue, and upon such demand the court shall make an order referring the issue or issues to a jury in the manner provided by the Federal Rules of Civil Procedure, or may specially call a jury for that purpose. If the jury find that no agreement in writing for arbitration was made or that there is no default in proceeding thereunder, the proceeding shall be dismissed. If the jury find that an agreement for arbitration was made in writing and that there is a default in proceeding thereunder, the court shall make an order summarily directing the parties to proceed with the arbitration in accordance with the terms thereof.

(July 30, 1947, ch. 392, 61 Stat. 671; Sept. 3, 1954, ch. 1263, § 19, 68 Stat. 1233.)

Part IV
Special Proceedings

Chapter 57
Uniform Arbitration Act

§ 5701. Effect of arbitration agreement.

A written agreement to submit to arbitration any controversy existing at or arising after the effective date of the agreement is valid, enforceable and irrevocable, save upon such grounds as exist at law or in equity for the revocation of any contract, without regard to the justiciable character of the controversy, and confers jurisdiction on the Chancery Court of the State to enforce it and to enter judgment on an award. In determining any matter arising under this chapter, the Court shall not consider whether the claim with respect to which arbitration is sought is tenable, or otherwise pass upon the merits of the dispute. This chapter also applies to arbitration agreements between employers and employees or between their respective representatives, except as otherwise provided in § 5725 of this title.

(10 Del. C. 1953, § 5701; 58 Del. Laws, c. 382, § 2.)

§ 5702. Jurisdiction; applications; venue; statutes of limitations.

(a) *Jurisdiction of the Court; applications to the Court.* — The term “Court” means the Court of Chancery of this State, except where otherwise specifically provided. The making of an agreement described in § 5701 of this title specifically referencing the Delaware Uniform Arbitration Act [§ 5701 et seq. of this title] and the parties’ desire to have it apply to their agreement confers jurisdiction on the Court to enforce the agreement under this chapter and to enter judgment on an award thereunder, except as provided in § 5718 of this title. Action shall be commenced by an initial complaint and shall be heard in the manner and upon the notice provided by law or rule of court on any civil action. Notice of an initial complaint shall be served in the manner provided by law for the service of summons in an action.

(b) *Venue.* — An initial complaint shall be made to the Court with the Register in Chancery in and for the county in which the agreement provides the arbitration hearing shall be held or, if the hearing has been held, in the county in which it was held. Otherwise the complaint shall be filed with the Register in Chancery in the county where the adverse party resides or has a place of business or, if the adverse party has no residence or place of business in this State, to the Register in and for any county. All subsequent pleadings or applications for an order made under this chapter shall be filed in the Court hearing the initial complaint unless the Court otherwise directs.

(c) *Court of Chancery jurisdiction over arbitration-related disputes in cases not governed by the Delaware Uniform Arbitration Act.* — Unless an arbitration agreement complies with the standard set forth in subsection (a) of this section for the applicability of the Delaware Uniform Arbitration Act, any application to the Court of Chancery to enjoin or stay an arbitration, obtain an order requiring arbitration, or to vacate or enforce an arbitrator’s award shall be decided by the Court of Chancery in conformity with the Federal Arbitration Act [9 U.S.C. § 1 et seq.], and such general principles of law and equity as are not inconsistent with that Act. In such cases, the other provisions of this Delaware Uniform Arbitration Act are without standing and cases shall be adjudicated in accordance with the Court of Chancery’s Rules of Procedure.

(d) *Jurisdiction of the Court of Common Pleas.* — Notwithstanding anything to the contrary in this Chapter 57 of this title, the term “Court” in this chapter shall refer to the Court of Common Pleas with respect to all actions arising from an arbitration agreement in or relating to a contract to provide consumer credit, and the making of such an agreement to arbitrate issues arising from the extension of consumer credit shall confer jurisdiction on the Court of Common Pleas, and not the Court of Chancery, to enforce the agreement and to enter judgment on an award. Any action brought under this Chapter 57 of this title relating to an agreement to arbitrate issues arising from the extension of consumer credit filed in the Court of Chancery shall not therefore be dismissed, but shall be transferred to the Court of Common Pleas for resolution there as though filed originally in that Court.

(10 Del. C. 1953, § 5702; 58 Del. Laws, c. 382, § 2; 70 Del. Laws, c. 186, § 1; 76 Del. Laws, c. 34, § 1; 77 Del. Laws, c. 8, §§ 2, 3.)

§ 5703. Proceedings to compel or enjoin arbitration; notice of intention to arbitrate.

(a) *Proceeding to compel arbitration.* — A party aggrieved by the failure of another to arbitrate may file a complaint for an order compelling arbitration. Where there is no substantial question whether a valid agreement to arbitrate in this State was made or complied with the Court shall order the parties to proceed with arbitration. Where any such question is raised it shall be tried forthwith in said Court. If an issue referable to arbitration under the alleged agreement is involved in an action or proceeding pending in the Court of Chancery in the State the application shall be made therein. If the application is granted, the order shall operate to stay the pending or any subsequent action, or so much of it as is referable to arbitration. Any action or proceeding in any other court of the State, involving an issue subject to arbitration, shall be stayed if an order for arbitration or a complaint or an application therefor has been made in the Court of Chancery under this chapter or, if the issue is severable, the stay may be with respect thereto only.

(b) *Application to enjoin arbitration.* — Subject to subsection (c) of this section, a party who has not participated in the arbitration and who has not been made or served with an application to compel arbitration may file its complaint with the Court seeking to enjoin arbitration on the ground that a valid agreement was not made or has not been complied with.

(c) *Notice of intention to arbitrate.* — A party must serve upon another party a notice of intention to arbitrate, specifying the agreement pursuant to which arbitration is sought and the name and address of the party serving the notice, or of an officer or agent thereof if such party is an association or corporation, and stating that unless the party served applies to enjoin the arbitration within 20 days after such service such party shall thereafter be precluded from objecting that a valid agreement was not made or has not been complied with. Such notice shall be served in the same manner as a summons or by registered or certified mail, return receipt requested. A complaint seeking to enjoin arbitration must be made by the party served within 20 days after service of the notice or the party shall be so precluded. Notice of the filing of such complaint shall be served in the same manner as a summons or by registered or certified mail, return receipt requested.

(10 Del. C. 1953, § 5703; 58 Del. Laws, c. 382, § 2; 70 Del. Laws, c. 186, § 1; 77 Del. Laws, c. 8, §§ 4-6.)

§ 5704. Appointment of arbitrators by Court.

If the arbitration agreement provides a method of appointment of arbitrators, this method shall be followed. In the absence thereof, or if the agreed method fails or for any reason cannot be followed, or when an arbitrator appointed fails or is unable to act and the arbitrator's successor has not been duly appointed, the Court on complaint or on application in an existing case of a party shall appoint 1 or more arbitrators. An arbitrator so appointed has all the powers of one specifically named in the agreement.

(10 Del. C. 1953, § 5704; 58 Del. Laws, c. 382, § 2; 70 Del. Laws, c. 186, § 1.)

§ 5705. Majority action by arbitrators.

The powers of the arbitrators shall be exercised by a majority unless otherwise provided by the agreement.

(10 Del. C. 1953, § 5705; 58 Del. Laws, c. 382, § 2.)

§ 5706. Hearing.

Unless otherwise provided by the agreement:

(1) The arbitrators shall appoint a time and place for the hearing and cause notification to the parties to be served personally or by registered or certified mail, return receipt requested, not less than 5 days before the hearing. Appearance at the hearing waives such notice. The arbitrators may adjourn the hearing from time to time as necessary and, on request of a party and for good cause, or upon their own motion may postpone the hearing to a time not later than the date fixed by the agreement for making the award unless the parties consent to a later date. The arbitrators may hear and determine the controversy upon the evidence produced notwithstanding the failure of a party duly notified to appear. The Court, on complaint or on application in an existing action, may direct the arbitrators to proceed promptly with the hearing and determination of the controversy.

(2) The parties are entitled to be heard, to present evidence material to the controversy and to cross-examine witnesses appearing at the hearing.

(3) The hearing shall be conducted by all the arbitrators but a majority may determine any question and render a final award. If, during the course of the hearing, an arbitrator for any reason ceases to act, the remaining arbitrator or arbitrators appointed to act as neutrals may continue with the hearing and determination of the controversy.

(10 Del. C. 1953, § 5706; 58 Del. Laws, c. 382, § 2.)

§ 5707. Representation by attorney.

A party has the right to be represented by an attorney, and may claim such right at any time at any proceeding or hearing under this chapter. A waiver thereof prior to the proceeding or hearing is ineffective. If a party is represented by an attorney, papers to be served on the party shall be served upon the party's attorney.

(10 Del. C. 1953, § 5707; 58 Del. Laws, c. 382, § 2; 70 Del. Laws, c. 186, § 1.)

§ 5708. Witnesses; subpoenas; depositions.

(a) The arbitrators may compel the attendance of witnesses and the production of books, records, contracts, papers, accounts, and all other documents and evidence, and shall have the power to administer oaths. An arbitrator and any attorney of record in any arbitration proceeding shall have the power to issue subpoenas in his or her own name. Subpoenas so issued shall be served by any sheriff, deputy sheriff, constable or other person, in the manner provided by law for the service and enforcement of subpoenas in a civil action and in accordance with the provisions of Chapter 21 of this title.

(b) On application of a party and for use as evidence, the arbitrators may permit a deposition to be taken, in the manner and upon the terms designated by the arbitrators, of a witness who cannot be subpoenaed or is unable to attend the hearing.

(c) All provisions of law compelling a person under subpoena to testify are applicable.

(d) Fees for attendance as a witness shall be in accordance with § 8903 of this title.

(10 Del. C. 1953, § 5708; 58 Del. Laws, c. 382, § 2; 70 Del. Laws, c. 186, § 1.)

§ 5709. Award generally.

(a) The award shall be in writing and signed by the arbitrators joining in the award. The arbitrators shall deliver a copy to each party personally or by registered or certified mail, return receipt requested, or as provided in the agreement.

(b) An award shall be made within the time fixed therefor by the agreement or, if not so fixed, within such time as the Court orders on complaint or application of a party in an existing case. The parties may extend the time in writing either before or after the expiration thereof. A party waives the objection that an award was not made within the time required unless the party notifies the arbitrators of such objection prior to the delivery of the award. The arbitrators shall deliver a copy of the award to each party in the manner provided in the agreement, or if no provision is so made, personally or by registered or certified mail, return receipt requested.

(10 Del. C. 1953, § 5709; 58 Del. Laws, c. 382, § 2; 70 Del. Laws, c. 186, § 1.)

§ 5710. Award by confession.

(a) *When available.* — An award by confession may be made for money due or to become due at any time before an award is otherwise made. The award shall be based upon a statement, verified by each party, containing an authorization to make the award, the sum of the award or the method of ascertaining it, and the facts constituting the liability.

(b) *Time of award.* — The award shall be made at any time within 3 months after the statement is verified and has been served upon the arbitrators or the agency or person or persons named by the parties to designate the arbitrators. Such service shall be made personally or by registered or certified mail, return receipt requested.

(c) *Persons or agency making award.* — The award may be made and entered on the judgment roll by the arbitrators or by the agency or person or persons named by the parties to designate the arbitrators.

(10 Del. C. 1953, § 5710; 58 Del. Laws, c. 382, § 2.)

§ 5711. Modification of award by arbitrators.

On written application of a party to the arbitrators within 20 days after delivery of the award to the applicant, or, if an application to the Court is pending under § 5713, 5714 or 5715 of this title, on submission to the arbitrators by the Court under such conditions as the Court may order, the arbitrators may modify or correct the award upon the grounds stated in § 5715(a)(1) and (3) of this title, or for the purpose of clarifying the award. Written notice of such application to the arbitrators shall be given forthwith to the opposing party, delivered personally or by registered or certified mail, return receipt requested, stating that the party must serve his or her objections thereto, if any, within 10 days from the date of the notice. The arbitrators shall dispose of any application made under this section in writing, signed and acknowledged by them, within 30 days after either written objection to modification has been served on them or the time for serving such objection has expired, whichever is earlier. The parties may in writing extend the time for such disposition either before or after its expiration. The award so modified or corrected by the arbitrators is subject to the provisions of §§ 5713, 5714 and 5715 of this title.

(10 Del. C. 1953, § 5711; 58 Del. Laws, c. 382, § 2; 70 Del. Laws, c. 186, § 1.)

§ 5712. Fees and expenses of arbitration.

Unless otherwise provided in the agreement to arbitrate, the arbitrators' expenses and fees, together with other expenses, not including counsel fees, incurred in the conduct of the arbitration, shall be paid as provided in the award. The Court, on complaint or on application in an existing case, may reduce or disallow any fee or expense which it finds excessive, or may allocate it as justice requires.

(10 Del. C. 1953, § 5712; 58 Del. Laws, c. 382, § 2.)

§ 5713. Confirmation of an award.

The Court shall confirm an award upon complaint or application of a party in an existing case made within 1 year after its delivery to the party, unless within the time limits hereinafter imposed grounds are urged for vacating or modifying or correcting the award, in which case the Court shall proceed as provided in §§ 5714 and 5715 of this title.

(10 Del. C. 1953, § 5713; 58 Del. Laws, c. 382, § 2; 70 Del. Laws, c. 186, § 1.)

§ 5714. Vacating an award.

(a) Upon complaint or application of a party in an existing case, the Court shall vacate an award where:

- (1) The award was procured by corruption, fraud or other undue means;
- (2) There was evident partiality by an arbitrator appointed as a neutral except where the award was by confession, or corruption in any of the arbitrators or misconduct prejudicing the rights of any party;
- (3) The arbitrators exceeded their powers, or so imperfectly executed them that a final and definite award upon the subject matter submitted was not made;
- (4) The arbitrators refused to postpone the hearing upon sufficient cause being shown therefor, or refused to hear evidence material to the controversy, or otherwise so conducted the hearing, contrary to the provisions of § 5706 of this title, or failed to follow the procedures set forth in this chapter, so as to prejudice substantially the rights of a party, unless the party applying to vacate the award continued with the arbitration with notice of the defect and without objection; or
- (5) There was no valid arbitration agreement, or the agreement to arbitrate had not been complied with, or the arbitrated claim was barred by limitation and the party applying to vacate the award did not participate in the arbitration hearing without raising the objection;

but the fact that the relief was such that it could not or would not be granted by a court of law or equity is not ground for vacating or refusing to confirm the award.

(b) An application under this section shall be made within 90 days after delivery of a copy of the award to the applicant, except that, if predicated upon corruption, fraud or other undue means, it shall be made within 90 days after such grounds are known or should have been known.

(c) In vacating the award on grounds other than stated in paragraph (a)(5) of this section, the Court may order a rehearing and determination of all or any of the issues, before new arbitrators chosen as provided in the agreement, or in the absence thereof, by the Court in accordance with § 5704 of this title, or, if the award is vacated on grounds set forth in paragraphs (a)(3) and (4) of this section, the Court may order a rehearing before the arbitrators who made the award or their successors appointed in accordance with § 5704 of this title. The time within which the agreement requires the award to be made is applicable to the rehearing and commences from the date of the order.

(d) If the application to vacate is denied and no motion to modify or correct the award is pending, the Court shall confirm the award.

(10 Del. C. 1953, § 5714; 58 Del. Laws, c. 382, § 2; 77 Del. Laws, c. 8, § 7.)

§ 5715. Modification or correction of award by Court.

(a) Upon complaint or on application in an existing case made within 90 days after delivery of a copy of the award to the applicant, the Court shall modify or correct the award where:

(1) There was an evident miscalculation of figures or an evident mistake in the description of any person, thing or property referred to in the award;

(2) The arbitrators have awarded upon a matter not submitted to them and the award may be corrected without affecting the merits of the decision upon the issues submitted; or,

(3) The award is imperfect in a matter of form, not affecting the merits of the controversy.

(b) If the application is granted, the Court shall modify and correct the award so as to effect its intent and shall confirm the award as so modified and corrected. Otherwise, the Court shall confirm the award as made.

(c) An application to modify or correct an award may be joined in the alternative with an application to vacate the award.

(10 Del. C. 1953, § 5715; 58 Del. Laws, c. 382, § 2.)

§ 5716. Judgment or decree on award.

Upon the granting of an order confirming, modifying or correcting an award, except in cases where the award is for money damages, a final judgment or decree shall be entered in conformity therewith and be enforced as any other judgment or decree. Costs of the application and of the proceedings subsequent thereto, and disbursements may be awarded by the Court.

(10 Del. C. 1953, § 5716; 58 Del. Laws, c. 382, § 2.)

§ 5717. Judgment roll; docketing with Register in Chancery.

(a) On entry of judgment or decree in cases other than an award for money damages, the Register shall prepare the judgment roll consisting, to the extent filed, of the following:

(1) The agreement and each written extension of the time within which to make the award;

(2) The award;

(3) A copy of the order confirming, modifying or correcting the award; and

(4) A copy of the final judgment or decree.

(b) The judgment or decree may be docketed as if rendered in an action.

(10 Del. C. 1953, § 5717; 58 Del. Laws, c. 382, § 2.)

§ 5718. Transfer of money damage award to Superior Court; lien on real estate.

(a) Upon the granting of an order confirming, modifying or correcting an award for money damages, a duly certified copy of the award and of the order confirming, modifying or correcting the award shall be filed with the prothonotary of the Superior Court in the county where the arbitration was conducted and the award made. The prothonotary shall enter in his or her judgment docket the names of the parties, the amount of the award, the time from which interest, if any, runs, and the amount of the costs, with the true date of such filing and entry. A confirmed award, so entered, shall constitute a judgment or decree on the docket with the same force and effect as if rendered in an action at law.

(b) Any confirmed award so transferred as authorized by subsection (a) of this section, shall, from that date, become and be a lien on all the real estate of the debtor in the county, in the same manner and as fully as judgments rendered in the Superior Court are liens, and may be executed and enforced in the same way as judgments of that Court.

(10 Del. C. 1953, § 5718; 58 Del. Laws, c. 382, § 2; 70 Del. Laws, c. 186, § 1.)

§ 5719. Appeals.

(a) Appeals may be taken from:

- (1) A final order denying a complaint seeking to compel arbitration made under § 5703(a) of this title;
 - (2) An order granting an application to enjoin arbitration made under § 5703(b) of this title;
 - (3) A final order confirming or denying confirmation of an award;
 - (4) A final order modifying or correcting an award;
 - (5) A final order vacating an award without directing a rehearing; or
 - (6) A final judgment or decree entered pursuant to the provisions of this chapter.
- (b) The appeal shall be taken in the manner and to the same extent as from orders or judgments in a civil action.
- (10 Del. C. 1953, § 5719; 58 Del. Laws, c. 382, § 2.)

§ 5720. Uniformity of interpretation.

This chapter shall be so construed as to effectuate its general purpose to make uniform the law of those states which enact it.

(10 Del. C. 1953, § 5720; 58 Del. Laws, c. 382, § 2.)

§ 5721. Short title.

This chapter may be cited as the "Delaware Uniform Arbitration Act."

(10 Del. C. 1953, § 5721; 58 Del. Laws, c. 382, § 2; 77 Del. Laws, c. 8, § 8.)

§ 5722. Death or incompetency of a party.

Where a party dies after making a written agreement to submit a controversy to arbitration, the proceedings may be begun or continued upon the application of, or upon notice to, the party's executor or administrator, or, where it relates to real property, the party's distributee or devisee who has succeeded to the party's interest in the real property. Where a committee of the property or of the person of a party to such an agreement is appointed, the proceedings may be continued upon the application of, or notice to, the committee. Upon the death or incompetency of a party, the Court may extend the time within which an application to confirm, vacate or modify the award or to stay arbitration must be made. Where a party has died since an award was delivered, the proceedings thereupon are the same as where a party dies after a judgment or decree has been rendered.

(10 Del. C. 1953, § 5722; 58 Del. Laws, c. 382, § 2; 70 Del. Laws, c. 186, § 1.)

§ 5723. Arbitration of contracts of State and municipalities.

It shall be lawful to include in any contract hereinafter executed by or on behalf of the State, or any department or agency thereof or by or on behalf of any county, municipal corporation, or other division of the State, a provision that any matter in dispute arising under the said contract shall be submitted to arbitration in accordance with this chapter or such sections thereof as may be set forth in such contract, except as provided in § 5725 of this title.

(10 Del. C. 1953, § 5723; 58 Del. Laws, c. 382, § 2.)

§ 5724. Application of chapter to state and municipal contracts.

This chapter applies to any written contract to which the State or any agency or subdivision thereof, or any municipal corporation or political division of the State shall be a party, except as provided in § 5725 of this title.

(10 Del. C. 1953, § 5724; 58 Del. Laws, c. 382, § 2.)

§ 5725. Exclusion of collective bargaining labor contracts with public and private employers.

Notwithstanding anything contained in this chapter by word or inference to the contrary, this chapter shall not apply to labor contracts with either public or private employers where such contracts have been negotiated by, or the employees covered thereby are represented by, any labor organization or collective bargaining agent or representative.

(10 Del. C. 1953, § 5725; 58 Del. Laws, c. 382, § 2.)

LII > U.S. Code > Title 29 > CHAPTER 8 > § 218c

Quick search by citation:

Title

Section

29 U.S. Code § 218c - Protections for employees

U.S. Code Notes Authorities (CFR)

(a) PROHIBITION

No employer shall discharge or in any manner discriminate against any employee with respect to his or her compensation, terms, conditions, or other privileges of employment because the employee

(or an individual acting at the request of the employee) has—

(1) received a credit under section 36B of title 26 or a subsidy under section 18071 of title 42; ^[1]

(2) provided, caused to be provided, or is about to provide or cause to be provided to the employer, the Federal Government, or the attorney general of a State information relating to any violation of, or any act or omission the employee reasonably believes to be a violation of, any provision of this title ¹ (or an amendment made by this title); ¹

(3) testified or is about to testify in a proceeding concerning such violation;

(4) assisted or participated, or is about to assist or participate, in such a proceeding; or

(5) objected to, or refused to participate in, any activity, policy, practice, or assigned task that the employee (or other such person) reasonably believed to be in violation of any provision of this title ¹ (or amendment), or any order, rule, regulation, standard, or ban under this title ¹ (or amendment).

(b) COMPLAINT PROCEDURE

(1) IN GENERAL

An employee who believes that he or she has been discharged or otherwise discriminated against by any employer in violation of this section may seek relief in accordance with the procedures, notifications, burdens of proof, remedies, and statutes of limitation set forth in section 2087(b) of title 15.

(2) NO LIMITATION ON RIGHTS

Nothing in this section shall be deemed to diminish the rights, privileges, or remedies of any employee under any Federal or State law or under any collective bargaining agreement. The rights and

remedies in this section may not be waived by any agreement, policy, form, or condition of employment.

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(June 25, 1938, ch. 676, § 18C, as added Pub. L. 111-148, title I, § 1558, Mar. 23, 2010, 124 Stat. 261.)



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Section

15 U.S. Code § 2087 - Whistleblower protection

U.S. Code Authorities (CFR)

(a) No manufacturer, private labeler, distributor, or retailer,^[1] may discharge an employee or otherwise discriminate against an employee with respect to compensation, terms, conditions, or privileges of employment because the employee, whether at the employee's initiative

or in the ordinary course of the employee's duties (or any person acting pursuant to a request of the employee)—

(1) provided, caused to be provided, or is about to provide or cause to be provided to the employer, the Federal Government, or the attorney general of a State information relating to any violation of, or any act or omission the employee reasonably believes to be a violation of any provision of this chapter or any other Act enforced by the Commission, or any order, rule, regulation, standard, or ban under any such Acts;

(2) testified or is about to testify in a proceeding concerning such violation;

(3) assisted or participated or is about to assist or participate in such a proceeding; or

(4) objected to, or refused to participate in, any activity, policy, practice, or assigned task that the employee (or other such person) reasonably believed to be in violation of any provision of this chapter or any other Act enforced by the Commission, or any order, rule, regulation, standard, or ban under any such Acts.

(b)

(1) A person who believes that he or she has been discharged or otherwise discriminated against by any person in violation of subsection (a) may, not later than 180 days after the date on which such violation occurs, file (or have any person file on his or her behalf) a complaint with the Secretary of Labor alleging such discharge or discrimination and identifying the person responsible for such act. Upon receipt of such a complaint, the Secretary shall notify, in writing, the person named in the complaint of the filing of the complaint, of the allegations contained in the complaint, of the substance of evidence supporting the complaint, and of the opportunities that will be afforded to such person under paragraph (2).

(2)

(A) Not later than 60 days after the date of receipt of a complaint filed under paragraph (1) and after affording the complainant and the person named in the complaint an opportunity to submit to the Secretary a written response to the complaint and an opportunity to meet with a representative of the Secretary to present statements from witnesses, the Secretary shall initiate an investigation and determine whether there is reasonable cause to believe that the complaint has merit and notify, in writing, the complainant and the person alleged to have committed a violation of subsection (a) of the Secretary's findings. If the Secretary concludes that there is reasonable cause to believe that a violation of subsection (a) has occurred, the Secretary shall accompany the Secretary's findings with a preliminary order providing the relief prescribed by paragraph (3)(B). Not later than 30 days after the date of notification of findings under this paragraph, either the person alleged to have committed the violation or the complainant may file objections to the findings or preliminary order, or both, and request a hearing on the record. The filing of such objections shall not operate to stay any reinstatement remedy contained in the preliminary order. Any such hearing shall be conducted expeditiously. If a hearing is not requested in such 30-day period, the preliminary order shall be deemed a final order that is not subject to judicial review.

(B)

(i) The Secretary shall dismiss a complaint filed under this subsection and shall not conduct an investigation otherwise required under subparagraph (A) unless the complainant makes a prima facie showing that any behavior described in paragraphs (1) through (4) of subsection (a) was a contributing factor in the unfavorable personnel action alleged in the complaint.

(ii) Notwithstanding a finding by the Secretary that the complainant has made the showing required under clause (i), no investigation otherwise required under subparagraph (A) shall be conducted if the employer demonstrates, by clear and convincing evidence, that the employer would have taken the same unfavorable personnel action in the absence of that behavior.

(iii) The Secretary may determine that a violation of subsection (a) has occurred only if the complainant demonstrates that any behavior described in paragraphs (1) through (4) of subsection (a) was a contributing factor in the unfavorable personnel action alleged in the complaint.

(iv) Relief may not be ordered under subparagraph (A) if the employer demonstrates by clear and convincing evidence that the employer would have taken the same unfavorable personnel action in the absence of that behavior.

(3)

(A) Not later than 120 days after the date of conclusion of any hearing under paragraph (2), the Secretary shall issue a final order providing the relief prescribed by this paragraph or denying the complaint. At any time before issuance of a final order, a proceeding under this subsection may be terminated on the basis of a settlement agreement entered into by the Secretary, the complainant, and the person alleged to have committed the violation.

(B) If, in response to a complaint filed under paragraph (1), the Secretary determines that a violation of subsection (a) has occurred, the Secretary shall order the person who committed such violation—

(i) to take affirmative action to abate the violation;

(ii) to reinstate the complainant to his or her former position together with compensation (including back pay) and restore the terms, conditions, and privileges associated with his or her employment; and

(iii) to provide compensatory damages to the complainant.

If such an order is issued under this paragraph, the Secretary, at the request of the complainant, shall assess against the person against whom the order is issued a sum equal to the aggregate amount of all costs and expenses (including attorneys' and expert witness fees) reasonably incurred, as determined by the Secretary, by the complainant for, or in connection with, the bringing of the complaint upon which the order was issued.

(C) If the Secretary finds that a complaint under paragraph (1) is frivolous or has been brought in bad faith, the Secretary may award to the prevailing employer a reasonable attorneys' fee, not exceeding \$1,000, to be paid by the complainant.

(4) If the Secretary has not issued a final decision within 210 days after the filing of the complaint, or within 90 days after receiving a written determination, the complainant may bring an action at law or equity for *de novo* review in the appropriate district court of the United States with jurisdiction, which shall have jurisdiction over such an action without regard to the amount in controversy, and which action shall, at the request of either party to such action, be tried by the court with a jury. The proceedings shall be governed by the same legal burdens of proof specified in paragraph (2)(B). The court shall have jurisdiction to grant all relief necessary to make the employee whole, including injunctive relief and compensatory damages, including—

(A) reinstatement with the same seniority status that the employee would have had, but for the discharge or discrimination;

(B) the amount of back pay, with interest; and

(C) compensation for any special damages sustained as a result of the discharge or discrimination, including litigation costs, expert witness fees, and reasonable attorney's fees.

(5)

(A) Unless the complainant brings an action under paragraph (4), any person adversely affected or aggrieved by a final order issued under paragraph (3) may obtain review of the order in the United States Court of Appeals for the circuit in which the violation, with respect to which the order was issued, allegedly occurred or the circuit in which the complainant resided on the date of such violation. The petition for review must be filed not later than 60 days after the date of the issuance of the final order of the Secretary. Review shall conform to chapter 7 of title 5. The commencement of proceedings under this subparagraph shall not, unless ordered by the court, operate as a stay of the order.

(B) An order of the Secretary with respect to which review could have been obtained under subparagraph (A) shall not be subject to judicial review in any criminal or other civil proceeding.

(6) Whenever any person has failed to comply with an order issued under paragraph (3), the Secretary may file a civil action in the United States district court for the district in which the violation was found to occur, or in the United States district court for the District of Columbia, to enforce such order. In actions brought under this paragraph, the district courts shall have jurisdiction to grant all appropriate relief including, but not limited to, injunctive relief and compensatory damages.

(7)

(A) A person on whose behalf an order was issued under

paragraph (3) may commence a civil action against the person to whom such order was issued to require compliance with such order. The appropriate United States district court shall have jurisdiction, without regard to the amount in controversy or the citizenship of the parties, to enforce such order.

(B) The court, in issuing any final order under this paragraph, may award costs of litigation (including reasonable attorneys' and expert witness fees) to any party whenever the court determines such award is appropriate.

(c) Any nondiscretionary duty imposed by this section shall be enforceable in a mandamus proceeding brought under section 1361 of title 28.

(d) Subsection (a) shall not apply with respect to an employee of a manufacturer, private labeler, distributor, or retailer who, acting without direction from such manufacturer, private labeler, distributor, or retailer (or such person's agent), deliberately causes a violation of any requirement relating to any violation or alleged violation of any order, regulation, or consumer product safety standard under this chapter or any other law enforced by the Commission.

(Pub. L. 92-573, § 40, as added Pub. L. 110-314, title II, § 219(a), Aug. 14, 2008, 122 Stat. 3062.)

enforcing arbitration agreements. But unlike the FAA, Delaware law has no carveout for any transportation workers. So Plaintiff's agreement is enforceable even if it is exempt from the FAA. For this very reason, courts have compelled Amazon Flex Delivery Partners to arbitrate under the state law identified in their agreements without needing to resolve whether the agreement is exempt from the FAA. *See, e.g., Melikyan v. Amazon.com, Inc.*, No. 21-cv-8715, 2023 WL 4505065, at *3 (C.D. Cal. July 5, 2023); *Harper v. Amazon.com Servs. Inc. (Harper II)*, No. 19-cv-21735, 2022 WL 17751465, at *7 (D.N.J. Dec. 19, 2022). The Court can, and should, do likewise in this case.

Second, Plaintiff is not exempt from the FAA. Under binding Supreme Court and Sixth Circuit precedent, the FAA's exemption must be kept to a "narrow" scope. *Bissonnette v. LePage Bakeries Park St., LLC*, 601 U.S. 246, 256 (2024) (citation omitted); *Tillman Transp., LLC v. MI Bus. Inc.*, 95 F.4th 1057, 1062 (6th Cir. 2024). The exemption is therefore confined to classes of workers "actively engaged in transportation of those goods across borders via the channels of foreign or interstate commerce." *Sw. Airlines Co. v. Saxon*, 596 U.S. 450, 458 (2022) (citation and quotation marks omitted). Amazon Flex Delivery Partners, including Plaintiff, do not fit that description. Their activity is not transportation of goods across state or national borders, but the local delivery of goods, many of which are stocked within the same state at nearby Whole Foods Market locations or warehouses that support

same-day delivery for local customers. Plaintiff is not exempt from the FAA merely because the goods may have previously been transported by *other classes of workers* across state lines. *See, e.g., Pettie v. Amazon.com, Inc.*, No. CIVDS1908923, 2023 WL 4035015, at *1 (Cal. Super. Ct. May 25, 2023) (holding that Amazon Flex drivers are not exempt from the FAA under the Supreme Court's *Saxon* framework).

Thus, whether under state or federal law, the Court should compel Plaintiff to arbitrate as her agreement requires.

II. FACTUAL BACKGROUND

A. Amazon Flex and the Terms of Service

Amazon's affiliates sell products through a variety of channels, including the Amazon.com website, mobile applications, and retail locations like Whole Foods Market. *See* Declaration of Nick Jones ("Jones Decl."), ¶¶ 4-5, 12. Through a smartphone application-based program called Amazon Flex, individual independent contractor "Delivery Partners" can sign up to become eligible to perform delivery blocks. *Id.* ¶¶ 3, 6. Amazon Flex Delivery Partners use personal vehicles to make deliveries of groceries, food, and other goods to customers within their local area. *Id.* ¶¶ 6, 11-21.

To sign up with Amazon Flex, prospective Delivery Partners must download the Amazon Flex app on their phone, create an account, select a local area in which

accepted *Rittmann v. Amazon.com* and *Waithaka v. Amazon.com* as valid precedents, distinguishing that Bean was not a transportation worker, as the pharmaceuticals etc first come to rest at the warehouse before Bean performs home delivery.

- *Hamrick v. Partsfleet, LLC*, 1 F.4th 1337, 1349-51 (11th Cir. 2021) The 11th Circuit accepted *Rittmann v. Amazon.com* as valid precedent, but remanded the case for fact finding

Only the 4th and 8th Circuits have not weighed in on *Rittmann* and *Waithaka* as valid precedent. The 6th Circuit has not mentioned these precedents in any Circuit opinion, but this same US District Court for the Eastern District Of Michigan did in *Mckinnes v. ATX Inc, supra* has determined other Amazon van delivery drivers to be exempt.

Regarding the savings clauses, if the contract was illegal or illusory, but had an arbitration clause, is the Court going to refer this unenforceable contract to arbitration? If the contract was totally materially breached and abandoned by Amazon, is this court going to refer this unenforceable broken contract to arbitration in violation of *Metro Storage International LLC v. Harron*, C.A. No. 2018-0937-Jtl (Del. Ch. 2022), *Cate v. Michigan Coffee Co.*, 201 N.W. 477 (Mich. 1924) both citing the SCOTUS precedent in *Anvil Min. Co. v. Humble*, 153 U.S. 540, 552 (1894) which stated:

Whenever one party thereto is guilty of such a breach as is here attributed to the defendant, the other party is at liberty to treat the contract as broken and desist from any further effort on his part to perform; in other words, he may abandon it, and recover as damages the profits which he would have received through full performance. Such an abandonment is not technically a rescission of the contract, but is merely an acceptance of the situation which the wrongdoing of the other party has brought about.