

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK**

GORDON FLOWERS, *et al.* on Behalf of
Himself and Others Similarly Situated,

Plaintiffs,

-against-

UNITED PARCEL SERVICE, INC.,

Defendant.

No. 24-cv-07086 (ENV) (JAM)

**DEFENDANT’S REPLY BRIEF IN SUPPORT OF RENEWED MOTION TO
COMPEL ARBITRATION AND TO DISMISS THE AMENDED COMPLAINT**

Dated: New York, New York
June 22, 2026

TABLE OF CONTENTS

INTRODUCTION 1

ARGUMENT 2

I. THE ARBITRATING PLAINTIFFS CANNOT AVOID THEIR BINDING
AGREEMENT TO ARBITRATE. 2

A. Plaintiffs’ Threadbare Allegations of Coercion Are Insufficient to Avoid
the Arbitrating Plaintiffs’ Agreement to Arbitrate..... 3

B. The Scope of the Arbitration Provision Is Enforceable. 5

II. PLAINTIFFS’ CLAIMS ARE INDEPENDENTLY PREEMPTED BY TWO
FEDERAL LAWS. 8

A. The FAAAA Provides No Carveout for Plaintiffs’ Claims. 9

B. Plaintiffs Fail to Allege Any Conduct Unrelated to UPS Services..... 12

C. The Relief That Plaintiffs Seek Would Have a Significant Impact on
UPS’s Delivery Operations..... 15

D. The Carmack Amendment Preempts Claims Like Plaintiffs’ That Arise
from Transportation and Delivery of Goods..... 17

CONCLUSION..... 18

TABLE OF AUTHORITIES

	Page(s)
Cases	
<i>Abadi v. Am. Airlines, Inc.</i> , No. 23-CV-4033, 2024 WL 1346437 (S.D.N.Y. Mar. 29, 2024).....	13
<i>Abdu-Brisson v. Delta Airlines, Inc.</i> , 128 F.3d 77 (2d Cir. 1997).....	10
<i>Adler v. Lehman Bros. Holdings Inc. (In re Lehman Bros. Holdings Inc.)</i> , 855 F.3d 459 (2d Cir. 2017).....	4
<i>Azzil Granite Materials, LLC v. Canadian Pac. Ry. Corp.</i> , No. 20-CV-2381, 2023 WL 3346765 (E.D.N.Y. May 10, 2023), <i>aff'd sub</i> <i>nom.</i> , <i>Azzil Granite Materials, LLC v. Canadian Pac. Ry. Co.</i> , No. 23-833, 2024 WL 1827289 (2d Cir. Apr. 26, 2024)	17
<i>Brown v. Coca-Cola Enters., Inc.</i> , No. 08-CV-3231 (JFB)(ETB), 2009 WL 1146441 (E.D.N.Y. Apr. 28, 2009).....	8
<i>Buck v. Am. Airlines, Inc.</i> , 476 F.3d 29 (1st Cir. 2007).....	15
<i>Buckeye Check Cashing, Inc. v. Cardegna</i> , 546 U.S. 440 (2006).....	3
<i>California Trucking Ass’n v. Su</i> , 903 F.3d 953, 961 (9th Cir. 2018)	16
<i>Collins & Aikman Prods. Co. v. Bldg. Sys., Inc.</i> , 58 F.3d 16 (2d Cir. 1995).....	6
<i>Desardouin v. United Parcel Serv., Inc.</i> , 285 F. Supp. 2d 153 (D. Conn. 2003).....	9, 10
<i>Doricent v. Am. Airlines, Inc.</i> , No. 91-12084Y, 1993 WL 437670 (D. Mass. Oct. 19, 1993)	11
<i>EagleMed LLC v. Cox</i> , 868 F.3d 893 (10th Cir. 2017)	15
<i>Gilbert v. Indeed, Inc.</i> , 513 F. Supp. 3d 374 (S.D.N.Y. 2021).....	8
<i>Hart v. Canadian Imperial Bank of Com.</i> , 43 F. Supp. 2d 395 (S.D.N.Y. 1999).....	4, 5

<i>Headstream Techs., LLC v. FedEx Corp.</i> , No. 22-1410, 2023 WL 1434054 (6th Cir. Feb. 1, 2023)	15
<i>Holl v. United Parcel Serv., Inc.</i> , No. 16-CV-05856-HSG, 2017 WL 11520143 (N.D. Cal. Sept. 18, 2017), <i>aff'd</i> , 925 F.3d 1076 (9th Cir. 2019).....	8
<i>Jamieson v. Sec. Am., Inc.</i> , No. 19 CV 1817 (VB), 2019 WL 6977126 (S.D.N.Y. Dec. 20, 2019).....	7
<i>JLM Indus., Inc. v. Stolt-Nielsen SA</i> , 387 F.3d 163 (2d Cir. 2004).....	7
<i>Kim v. Evergreen Adult Day Care in NY Inc.</i> , No. 22CV548(AMD)(CLP), 2024 WL 989909 (E.D.N.Y. Mar. 6, 2024)	7
<i>LaRosa v. United Parcel Serv., Inc.</i> , 23 F. Supp. 2d 136 (D. Mass. 1998)	10
<i>Mahant v. Lehman Bros.</i> , No. 99 CIV. 4421 MBM, 2000 WL 1738399 (S.D.N.Y. Nov. 22, 2000)	4
<i>Makhzoomi v. Sw. Airlines Co.</i> , 419 F. Supp. 3d 1136 (N.D. Cal. 2019)	10
<i>Mass. Delivery Ass’n v. Coakley</i> , 769 F.3d 11 (1st Cir. 2014).....	11
<i>Mejia v. United Parcel Serv., Inc.</i> , No. 2:24-cv-00246, 2024 WL 3510927 (D. Utah July 23, 2024).....	7
<i>Moise v. Fam. Dollar Stores of N.Y., Inc.</i> , No. 16-CV-6314, 2017 WL 2378193 (S.D.N.Y. June 1, 2017)	5
<i>Morales v. Trans World Airlines, Inc.</i> , 504 U.S. 374 (1992).....	9
<i>Nat’l Union Fire Ins. Co. of Pittsburgh, PA v. Las Vegas Pro. Football Ltd. P’ship</i> , No. 09 CIV. 7490 (PKC), 2010 WL 286634 (S.D.N.Y. Jan. 15, 2010), <i>aff’d</i> <i>sub nom.</i> , 409 F. App’x 401 (2d Cir. 2010).....	4
<i>Pool Deals, LLC v. United Parcel Serv., Inc.</i> , 454 F. Supp. 3d 208 (W.D.N.Y. 2020)	7
<i>RDK NY Inc. v. City of New York</i> , No. 21-CV-1529, 2023 WL 348467 (E.D.N.Y. Jan. 20, 2023)	17

<i>RDK NY Inc. v. City of New York</i> , No. 21-cv-01529, 2024 WL 4333704 (E.D.N.Y. Sept. 28, 2024)	11
<i>Rockwell v. United Parcel Serv., Inc.</i> , No. 2:99-cv-57, 1999 WL 33100089 (D. Vt. July 7, 1999).....	10, 14, 16, 17
<i>Rombom v. United Air Lines, Inc.</i> , 867 F. Supp. 214 (S.D.N.Y. 1994)	12, 14
<i>Rowe v. N.H. Motor Transp. Ass’n</i> , 552 U.S. 364 (2008).....	9
<i>Smith v. Comair, Inc.</i> , 134 F.3d 254 (4th Cir. 1998)	12
<i>Smith v. United Parcel Serv.</i> , 296 F.3d 1244 (11th Cir. 2002)	15, 18
<i>Stadulis v. JetBlue Airways Corp.</i> , No. CV-23-3695, 2023 WL 8437280 (D.N.J. Dec. 5, 2023).....	15
<i>Travel All Over the World, Inc. v. Kingdom of Saudi Arabia</i> , 73 F.3d 1423 (7th Cir. 1996)	9, 13, 14, 15, 16
<i>Trinidad v. Am. Airlines, Inc.</i> , 932 F. Supp. 521 (S.D.N.Y. 1996)	12, 14
<i>UPS World Wide Forwarding, Inc. v. Kenan</i> , No. 1:18-cv-06046-MKB-JO, ECF No. 11 (E.D.N.Y. Nov. 14, 2018)	8
<i>VKK Corp. v. Nat’l Football League</i> , 244 F.3d 114 (2d Cir. 2001).....	4
<i>Wexler v. AT & T Corp.</i> , 211 F. Supp. 3d 500 (E.D.N.Y. 2016)	6

INTRODUCTION

Plaintiffs cannot overcome the fact that their claims directly stem from and impact UPS's delivery services. As a result, three Plaintiffs' claims are subject to arbitration given their agreements to arbitrate any disputes "arising out of or related to the provision of services by UPS," and all Plaintiffs' claims are barred under the FAAAA¹ and the Carmack Amendment preemption. Plaintiffs suggest their claims *must* proceed before this Court because they allege discrimination. Not so. Regardless of how Plaintiffs have styled their claims, this Court can and should (1) enforce valid agreements to arbitrate and (2) uphold the FAAAA and the Carmack Amendment's broad preemption provisions prohibiting claims, like here, that indisputably relate to a carrier's core transportation service—delivery.

Plaintiffs never dispute that Gordon Flowers, Madeline Brown, and Aminat Fakunle (the "Arbitrating Plaintiffs") enrolled in UPS My Choice—an optional service that provides more flexibility and control over package deliveries. And Plaintiffs do not dispute the enrollment process or terms of the arbitration agreement described in UPS's Motion. In other words, there is no question that an arbitration agreement exists. Instead, Plaintiffs argue that the Arbitrating Plaintiffs enrolled in UPS My Choice under purportedly "coercive" conditions. But enrollment is free and completely optional, as demonstrated by the fact that most of the Plaintiffs in this case did not feel compelled to participate in this service despite receiving packages the same way as the Arbitrating Plaintiffs. Nor can Plaintiffs evade their arbitration obligations by arguing that the arbitration clause is overbroad. Courts routinely enforce similar arbitration provisions covering "any controversy or claim," including against claims for discrimination.

¹ Defined terms have the same meaning as in UPS's Memorandum of Law in Support of its Renewed Motion to Compel Arbitration and to Dismiss the Amended Complaint (the "Motion").

Plaintiffs also cannot circumvent preemption by two federal laws: the FAAAA and the Carmack Amendment. Despite Plaintiffs' position that discrimination claims categorically fall outside the FAAAA's broad preemptive reach, the FAAAA has no such carveout. Indeed, courts have granted motions to dismiss discrimination claims on FAAAA preemption grounds. As for Plaintiffs' argument that their claims address "outrageous" and "unreasonable" conduct, Plaintiffs fail to challenge *any* conduct separate from UPS's provisions of transportation services, let alone conduct that courts have found sufficiently "outrageous" to avoid preemption. Plaintiffs never dispute that UPS considers operational factors like driver safety in deciding how it delivers to specific locations, including to Park and Fox Hill Apartments. Plaintiffs also cannot avoid FAAAA preemption by attempting to downplay the effects of the sweeping relief they seek. Declaring the way UPS delivers to Park and Fox Hill Apartments unlawful, enjoining UPS from choosing how it delivers there, and ordering UPS to provide different delivery services would undoubtedly impact how UPS delivers packages.

Finally, Plaintiffs' narrow reading of the Carmack Amendment runs counter to case law holding that the Carmack Amendment broadly preempts claims arising from *any* failure in connection with transportation or delivery of goods. Because Plaintiffs allege that UPS fails to provide adequate delivery services, their claims fall squarely within that category.

For the reasons set forth below and in UPS's opening brief, the Arbitrating Plaintiffs' claims should be compelled to arbitration, and the Amended Complaint should be dismissed in its entirety on preemption grounds.

ARGUMENT

I. THE ARBITRATING PLAINTIFFS CANNOT AVOID THEIR BINDING AGREEMENT TO ARBITRATE.

Plaintiffs do not deny that the Arbitrating Plaintiffs enrolled in UPS My Choice, that the

UPS My Choice Terms incorporate the UPS Tariff/Terms and its arbitration provision by reference, and that the arbitration provision explicitly states that “any controversy or claim . . . arising out of or related to the provision of services by UPS” is subject to arbitration. (*See generally* Opp’n.) In fact, they concede that “[b]y selecting to use the UPS My Choice service, participants must opt into a broad arbitration clause.” (*Id.* at 6.) This is more than enough for the Court to enforce the Arbitrating Plaintiffs’ agreements to arbitrate their claims with UPS. But in an attempt to avoid arbitration, Plaintiffs argue that: (1) perhaps the Arbitrating Plaintiffs were “coerc[ed]” into using My Choice because UPS does not deliver directly to their apartments; and (2) the arbitration provision is overbroad. (*Id.* at 20–23.) Both arguments fail.

A. Plaintiffs’ Threadbare Allegations of Coercion Are Insufficient to Avoid the Arbitrating Plaintiffs’ Agreement to Arbitrate.

Plaintiffs make no effort to support their contention that the Arbitrating Plaintiffs chose to enroll in UPS My Choice under “coercive” conditions. (*Id.* at 20.) As detailed in the King Declaration, “[m]embership in UPS My Choice is optional and enrollment is free, unless the member elects to enroll in a premium membership.” (*See* King Decl. ¶ 4.) In other words, no one is obligated to enroll in the service. Yet Plaintiffs insinuate coercion because allegedly “[f]or residents of Park Hill and Fox Hill, joining UPS My Choice is a means to remedy prejudice from a discriminatory delivery practice caused by UPS.” (Opp’n at 20.) Tellingly, this argument is unsupported by any statements from Plaintiffs, let alone an Arbitrating Plaintiff. (*See generally* Opp’n.)

Plaintiffs’ challenge only supports why the Arbitrating Plaintiffs’ dispute should be resolved in arbitration. It is well-settled law that “a challenge to the validity of the contract as a whole, and not specifically to the arbitration clause, must go to the arbitrator.” *Buckeye Check Cashing, Inc. v. Cardegna*, 546 U.S. 440, 449 (2006). Unless one “specifically challenge[s] the

validity of the arbitration provisions, or argue[s] that those provisions were the product of fraud, duress or some other impropriety . . . the issue of the contract’s validity is an issue for the arbitrators to decide.” *Nat’l Union Fire Ins. Co. of Pittsburgh, PA v. Las Vegas Pro. Football Ltd. P’ship*, No. 09 CIV. 7490 (PKC), 2010 WL 286634, at *3 (S.D.N.Y. Jan. 15, 2010), *aff’d sub nom.*, 409 F. App’x 401 (2d Cir. 2010).

Here, Plaintiffs never argue that the Arbitrating Plaintiffs entered into the arbitration provision itself through coercion or duress. Rather, they speculate that the Arbitrating Plaintiffs may have been “coerc[ed]” into enrolling in UPS My Choice—and thereby entering into the UPS My Choice Terms *as a whole*—because of the way they received packages. (See Opp’n at 20.) Plaintiffs’ enforceability argument is therefore for the arbitrator to decide. See *Mahant v. Lehman Bros.*, No. 99 CIV. 4421 MBM, 2000 WL 1738399, at *2 (S.D.N.Y. Nov. 22, 2000) (duress claim must be resolved by arbitrator where “all of plaintiff’s allegations supporting her duress claim relate to the enforcement of the employment application generally—not the enforcement of the arbitration provision alone”).

Even if the Court addresses the merits of Plaintiffs’ enforceability argument, there is no coercion. The defense of coercion or economic duress is “reserved for extreme and extraordinary cases.” *Adler v. Lehman Bros. Holdings Inc. (In re Lehman Bros. Holdings Inc.)*, 855 F.3d 459, 477 (2d Cir. 2017) (citation omitted). To establish coercion or duress, a plaintiff must show “(1) a threat, (2) which was unlawfully made, and (3) caused involuntary acceptance of contract terms, (4) because the circumstances permitted no other alternative.” *Hart v. Canadian Imperial Bank of Com.*, 43 F. Supp. 2d 395, 399 (S.D.N.Y. 1999) (citation omitted). And “the person claiming duress must act promptly to repudiate the contract or release or he will be deemed to have waived his right to do so.” *VKK Corp. v. Nat’l Football League*, 244 F.3d

114, 122 (2d Cir. 2001) (citation omitted).

None of those conditions exist here. Plaintiffs fail to allege any unlawful threat that induced the Arbitrating Plaintiffs into registering for UPS My Choice. *See Hart*, 43 F. Supp. 2d at 400 (no coercion or duress where plaintiff “has failed to allege any threat that induced him to sign”). Nor can it be said that the Arbitrating Plaintiffs had “no other alternative” but to enroll in UPS My Choice, which offers a free membership and is completely optional. (King Decl. ¶ 4; *see* Opp’n at 6, 20 (conceding that UPS My Choice is a “supplemental” service that “individuals can use”).) Indeed, five of the eight Plaintiffs did *not* enroll in UPS My Choice—despite receiving packages the same way as the Arbitrating Plaintiffs.

Further, the Arbitrating Plaintiffs enrolled in UPS My Choice in November 2019, May 2020, and June 2020—more than four years before initiating this lawsuit in October 2024. (King Decl. ¶¶ 12, 20–21; Shah Decl. ¶¶ 6–8.) Plaintiffs never claim that the Arbitrating Plaintiffs repudiated the UPS My Choice Terms during that period. Instead, they have maintained their UPS My Choice memberships for several years, which undermines any argument that they enrolled in the service under coercion or duress. *Id.*; *see Moise v. Fam. Dollar Stores of N.Y., Inc.*, No. 16-CV-6314, 2017 WL 2378193, at *4 (S.D.N.Y. June 1, 2017) (no coercion where plaintiff “signed the arbitration agreement in September 2013, but continued working at Family Dollar until June 2016,” “does not claim that he repudiated the Agreement at any point during this period,” and “offered no explanation for remaining silent for nearly three years”) (internal citation omitted).

B. The Scope of the Arbitration Provision Is Enforceable.

The scope of the UPS arbitration provision is clear: It applies to “any controversy or claim . . . arising out of or related to the provision of services by UPS.” (King Decl. ¶ 35.) Such language is “the paradigm of a broad clause” and creates a “presumption of arbitrability.”

Collins & Aikman Prods. Co. v. Bldg. Sys., Inc., 58 F.3d 16, 20, 23 (2d Cir. 1995). That presumption in favor of arbitration is further supported by how Plaintiffs describe their own claims. According to Plaintiffs, their entire case is based on challenging the delivery “service” that UPS provides at Park and Fox Hill Apartments. (*E.g.*, (Am. Compl. ¶ 1) (alleging that UPS “does not provide the same *service* to” Plaintiffs’ apartment buildings); (*id.* ¶ 29) (alleging “UPS does not provide comparable *service* to Park Hill and Fox Hill residents”); (*id.* ¶ 63) (alleging “Class members are denied the full benefit of UPS’s *shipping services*”) (emphasis added).) That is, Plaintiffs’ case is a “controversy or claim . . . arising out of or related to the provision of services by UPS” and subject to arbitration. (King Decl. ¶ 35.)

Plaintiffs resist this conclusion by arguing that the arbitration provision is “overbroad.” (Opp’n at 20–23.) But Plaintiffs’ sole case citation in support of this point is easily distinguished. In *Wexler v. AT & T Corp.*, Judge Block denied a motion to compel arbitration where the arbitration clause read: “AT & T and you agree to arbitrate all disputes and claims between us.” 211 F. Supp. 3d 500, 501, 505 (E.D.N.Y. 2016). The Court reasoned that the arbitration clause was “not limited to disputes concerning its service agreement,” which could lead to “absurd results” if the clause was read to govern “literally every possible dispute.” *Id.* at 502–04 (explaining that, under a literal reading of the overly broad clause, the plaintiff would be forced to arbitrate even if she was “hit by [defendant’s] delivery van” or “tripped over a dangerous condition in [defendant’s] store”).

Here, by contrast, the arbitration provision in the UPS Tariff/Terms is limited to claims arising from or relating to UPS’s services. Rather than cover “literally every possible dispute” between UPS My Choice members and UPS, the arbitration clause applies to disputes “arising out of or related to the provision of *services* by UPS.” (King Decl. ¶ 35 (emphasis added).)

Courts do not hesitate in enforcing similar arbitration agreements arising from a company's services, including this exact UPS arbitration provision. *See Mejia v. United Parcel Serv., Inc.*, No. 2:24-cv-00246, 2024 WL 3510927, at *2 (D. Utah July 23, 2024) (enforcing an arbitration provision with UPS for claim "arising out of or related to the provision of services by UPS"); *Pool Deals, LLC v. United Parcel Serv., Inc.*, 454 F. Supp. 3d 208, 215 (W.D.N.Y. 2020) (same).

Plaintiffs further argue that their claims are immune from arbitration because UPS has not "identif[ied] any part of its My Choice agreement that would be breached by" the UPS delivery policy. (Opp'n at 23.) This argument misses the point. "[W]here the arbitration clause at issue is a broad one," like the one here, "it is presumptively applicable to disputes involving matters going beyond the interpretation or enforcement of particular provisions of the contract which contains the arbitration clause." *JLM Indus., Inc. v. Stolt-Nielsen SA*, 387 F.3d 163, 172 (2d Cir. 2004) (internal quotation marks and brackets omitted).

In other words, the arbitration provision is not limited to disputes relating to the function of UPS My Choice—it broadly covers "any controversy or claim . . . arising out of or related to the provision of services by UPS." *See Kim v. Evergreen Adult Day Care in NY Inc.*, No. 22CV548(AMD)(CLP), 2024 WL 989909, at *6 (E.D.N.Y. Mar. 6, 2024) (NYSHRL and NYCHRL claims fell within arbitration clause even though "[t]he Agreements do not specify that . . . discrimination claims are subject to arbitration"); *Jamieson v. Sec. Am., Inc.*, No. 19 CV 1817 (VB), 2019 WL 6977126, at *7 (S.D.N.Y. Dec. 20, 2019) (compelling arbitration as to "collateral" claims that go "beyond the interpretation and particular provisions of the contracts containing the arbitration provisions").

Finally, Plaintiffs wrongly suggest that discrimination claims are categorically exempt from arbitration. (Opp'n at 20–22.) But "[i]t is well settled that statutory discrimination claims

can be the subject of an arbitration clause.” *Brown v. Coca-Cola Enters., Inc.*, No. 08-CV-3231 (JFB)(ETB), 2009 WL 1146441, at *6 n.2 (E.D.N.Y. Apr. 28, 2009) (collecting cases); *see also Gilbert v. Indeed, Inc.*, 513 F. Supp. 3d 374, 396 (S.D.N.Y. 2021) (observing that “Congress did not intend that discrimination claims be exempted from the FAA”). Plaintiffs’ claims fall squarely within the binding arbitration provision, regardless of how they have styled them. *See Kim*, 2024 WL 989909, at *5 (“In determining whether a particular claim falls within the scope of the parties’ arbitration agreement, [courts] focus on the factual allegations of the complaint rather than the legal causes of action asserted.”) (quoting *Genesco, Inc. v. T. Kakiuchi & Co., Ltd.*, 815 F.2d 840, 846 (2d Cir. 1987)) (alteration in original).

Accordingly, because Plaintiffs’ claims arise from and are related to the services that UPS provides, the Arbitrating Plaintiffs cannot avoid their binding agreement to arbitrate.²

II. PLAINTIFFS’ CLAIMS ARE INDEPENDENTLY PREEMPTED BY TWO FEDERAL LAWS.

Regardless of whether the Court compels arbitration as to the Arbitrating Plaintiffs, the FAAAA and the Carmack Amendment preempt all of the Plaintiffs’ claims. (*See* Mot. at 19–28.) That Plaintiffs have styled their claims as ones for discrimination does not remove them from the broad preemptive scope of either federal law. (*Id.*)

² Plaintiffs appear to have abandoned the argument from their initial opposition brief that UPS should provide arbitration discovery. (*See* ECF No. 22-7 at 20–21.) To be sure, no discovery is needed to compel the Arbitrating Plaintiffs to arbitration. UPS has provided two sworn declarations containing information regarding the Arbitrating Plaintiffs’ enrollment in UPS My Choice (including the names, user IDs, addresses, and enrollment dates associated with their accounts), the applicable user interfaces when the Arbitrating Plaintiffs enrolled, and their acceptance of the UPS My Choice Terms. (*See generally* King Decl.; Shah Decl.) Courts routinely grant motions to compel arbitration based on similar supporting information. *See Holl v. United Parcel Serv., Inc.*, No. 16-CV-05856-HSG, 2017 WL 11520143, at *1 (N.D. Cal. Sept. 18, 2017) (granting motion to compel arbitration with UPS My Choice user, without ordering additional discovery, based on screenshots in declarations), *aff’d*, 925 F.3d 1076 (9th Cir. 2019); Preliminary Injunction Order, *UPS World Wide Forwarding, Inc. v. Kenan*, No. 1:18-cv-06046-MKB-JO, ECF No. 11 (E.D.N.Y. Nov. 14, 2018) (granting motion to compel arbitration based on a UPS declaration).

A. The FAAAA Provides No Carveout for Plaintiffs' Claims.

Plaintiffs do not dispute the clear authority holding that state-law claims “having a connection with or reference to [a carrier’s] ‘rates, routes, or services’ are pre-empted.” *Morales v. Trans World Airlines, Inc.*, 504 U.S. 374, 384 (1992); *Rowe v. N.H. Motor Transp. Ass’n*, 552 U.S. 364, 370 (2008). Plaintiffs primarily argue that their claims cannot be preempted because they allege discrimination. (Opp’n at 10–14.) But the FAAAA does not carve out any category of claims from its preemptive scope. *See Travel All Over the World, Inc. v. Kingdom of Saudi Arabia*, 73 F.3d 1423, 1433 (7th Cir. 1996) (“*Morales* does not permit us to develop broad rules concerning whether certain types of common-law claims are preempted by the ADA.”).

The primary case Plaintiffs rely on, *Desardouin v. United Parcel Service, Inc.*, only reinforces that it is the **conduct** challenged—not the **claim** alleged—that determines whether preemption applies. (Opp’n at 11–12); 285 F. Supp. 2d 153, 155–57 (D. Conn. 2003). In *Desardouin*, a store owner sued UPS for racial discrimination and intentional infliction of emotional distress after a UPS driver allegedly withheld deliveries and accused the store owner—in front of his customers—of not having enough money to pay for merchandise. 285 F. Supp. 2d at 155–57. Allegedly, the driver further remarked to the owner in front of his customers: “UPS does not like you.” *Id.* at 157. The District of Connecticut found that although the facts alleged “may relate tangentially” to UPS’s services, “[t]o the extent Desardouin’s claims for infliction of emotional distress do not ‘relate’ to [UPS]’s services and thus do not have a significant impact on these services, his state law claims are not preempted by the FAAAA.” *Id.* at 164. But the Court did not completely close the door on finding the claims preempted, ruling that “to the extent some of the factual allegations could be construed as relating to services provided by [t]he defendant, and discovery evidences that possibility, the court invites the parties to revisit the FAAAA preemption question at summary judgment.” *Id.*

Desardouin is distinct for several reasons and even supports UPS's argument here. Plaintiff there challenged the conduct of a single UPS driver who allegedly humiliated the shop owner in front of his customers, which the Court found to be conduct only "tangentially" related to UPS's services. *Id.* at 155–57, 164. By contrast, Plaintiffs here challenge the systematic delivery method to more than 1,400 apartments. (Am. Compl. ¶¶ 29–30.) Thus, while the conduct challenged in *Desardouin* "tangentially" related to UPS's services, the conduct that Plaintiffs challenge here directly relates to UPS's core service of package delivery. *See Rockwell v. United Parcel Serv., Inc.*, No. 2:99-cv-57, 1999 WL 33100089, at *2 (D. Vt. July 7, 1999) (finding the FAAAA preempted claims involving UPS delivery protocol because they "go to the heart of the services that UPS provides") (internal punctuation omitted) (citation omitted).

Plaintiffs' reliance on employment discrimination cases is similarly misplaced. In *Abdu-Brisson v. Delta Airlines, Inc.*, pilots brought employment discrimination claims concerning seniority rights, medical benefits, and salaries. 128 F.3d 77, 80 (2d Cir. 1997). Likewise, in *LaRosa v. United Parcel Serv., Inc.*, a former UPS employee alleged handicap discrimination arising from his termination. 23 F. Supp. 2d 136, 139 (D. Mass. 1998). In both cases, the challenged conduct concerned internal employment decisions unrelated to the carrier's provision of delivery services, routes, or prices. That is not the case here where Plaintiffs directly challenge how UPS delivers packages to over 1,400 units and seek to alter those delivery practices. (*See* Mot. at 23–24.)

Plaintiffs also cite inapposite case law from outside the Second Circuit involving airlines allegedly discriminating against passengers by removing them from flights. In *Makhzoomi v. Sw. Airlines Co.*, the Northern District of California considered claims that airline staff removed a passenger from a plane because he was speaking Arabic on the phone. 419 F. Supp. 3d 1136,

1141 (N.D. Cal. 2019). Likewise, in *Dorcent v. Am. Airlines, Inc.*, the District of Massachusetts considered claims that a flight crew yelled racial epithets at a passenger and removed him from a flight. No. CIV. A. 91-12084Y, 1993 WL 437670, at *1–2 (D. Mass. Oct. 19, 1993). In both of these cases, the plaintiffs asserted individualized discrimination based on the action of specific airline employees—in contrast to the alleged “discrimination” here, which focuses on how UPS as a company delivers packages to Plaintiffs’ apartment complexes. (Mot. at 23–24.)

Finally, Plaintiffs’ argument that application of FAAAA preemption in this case would prevent all disparate impact discrimination claims against UPS is a red herring. (Opp’n at 13–14.) UPS never contends that carriers are categorically exempt from anti-discrimination laws or free to engage in discriminatory conduct. The “relevant inquiry” for FAAAA preemption is case-specific, asking “whether enforcement of the plaintiff’s claims would impose some obligation on [the defendant] with respect to conduct that, when properly undertaken, is a service.” *RDK NY Inc. v. City of New York*, No. 21-cv-01529, 2024 WL 4333704, at *11 (E.D.N.Y. Sept. 28, 2024) (alteration in original). If the label attached to a claim determined whether preemption applied, any plaintiff could avoid Congress’s preemptive mandate by simply casting their challenge to a carrier’s service as discrimination. *See Mass. Delivery Ass’n v. Coakley*, 769 F.3d 11, 20 (1st Cir. 2014) (declining to categorically exempt all state labor laws from preemption because “[t]he court must engage with the real and logical effects of the state statute, rather than simply assigning it a label”). Of course, dismissal here would not leave Plaintiffs without general protection from discrimination. It simply recognizes that state-law claims seeking to dictate a carrier’s delivery practices must yield where Congress has determined that carrier services should be governed exclusively by federal law. (Mot. at 20–21.)

Accordingly, Plaintiffs’ claims fall squarely within the broad preemptive reach of the

FAAAA.³

B. Plaintiffs Fail to Allege Any Conduct Unrelated to UPS Services.

Plaintiffs next try to avoid FAAAA preemption by arguing that they challenge “outrageous” or “unreasonable” conduct totally unrelated to UPS’s services. (Opp’n at 14–16.) According to Plaintiffs, the conduct at issue is “outrageous” and “unreasonable” because for three decades UPS has “required residents of Park Hill and Fox Hill . . . to wait outside to pick up their shipments from a UPS truck rather than having the full benefit of the at-home delivery service residents have paid for.” (Opp’n at 14.) But these allegations fall far short of the “outrageous” or “unreasonable” conduct that courts have found sufficiently unrelated to service to avoid preemption.

Courts have acknowledged limited circumstances where actions “stemming from outrageous conduct” may avoid preemption under the ADA, and by analogy the FAAAA, “if the conduct too tenuously relates or is unnecessary to” a carrier or airline’s services. *See Smith v. Comair, Inc.*, 134 F.3d 254, 259 (4th Cir. 1998); *see also Rombom v. United Air Lines, Inc.*, 867 F. Supp. 214, 222 (S.D.N.Y. 1994) (acknowledging that ADA preemption does not apply to “outrageous conduct that goes beyond the scope of normal aircraft operations,” but service “provided in a manner that falls within a spectrum of reasonable conduct” weighs “in favor of preemption”). Examples of the extreme conduct that courts have found to avoid preemption include an airline having a passenger arrested out of spite, *Rombom*, 867 F. Supp. at 224, a passenger suffering serious personal injuries during a flight, *Trinidad v. Am. Airlines, Inc.*, 932 F. Supp. 521, 526 (S.D.N.Y. 1996), and an airline defaming a travel agency to its own clients,

³ Contrary to what Plaintiffs state in their Opposition, UPS never “suggests”—and expressly denies—that it provides “inferior” or “discriminatory” service to any consumers. (Opp’n at 12 n.2.)

Travel All Over the World, 73 F.3d at 1433. Plaintiffs fail to allege any similar conduct here and rely only on UPS’s alleged delivery practices to try to establish their claims.

As an initial matter, it can hardly be said that UPS’s delivery method is “outrageous” or “unreasonable” when deliveries are within the scope of UPS’s normal operations and nothing in the UPS Tariff/Terms guarantees *home* delivery services. (See King Decl. Exs. B–C.) The UPS Tariff/Terms broadly defines “Delivery” to include various methods of delivery, including “to an alternate address or location” and to UPS Access Points—businesses owned by third parties or locations where recipients can pick up packages during set hours. (See King Decl. Ex. B. § 2, Ex. C § 2.) In other words, UPS expressly advises consumers that it might deliver packages to locations other than individuals’ residences, or arrange for pickup during limited hours, as it does at Park and Fox Hill Apartments. (See *id.*)

Further, contrary to Plaintiffs’ suggestion, framing their claims as discrimination does not make the challenged conduct unrelated to UPS’s services. In *Abadi v. American Airlines, Inc.*, the Southern District of New York found that discrimination claims arising from airline mask requirements were preempted because the allegations “in no way rise to the level of ‘outrageous conduct’ that would allow [Plaintiff] to escape preemption.” No. 23-CV-4033, 2024 WL 1346437, at *38 (S.D.N.Y. Mar. 29, 2024) (alteration in original). The Court emphasized that the plaintiff there never alleged “invidious discrimination”—that is, that the airlines applied their mask mandate to the plaintiff “because of, not merely in spite of, its adverse effects upon him as a person with a disability.” *Id.* (internal quotation marks omitted).

Likewise here, Plaintiffs do not allege that UPS singled them out or intentionally discriminated against them “because of” race. As Plaintiffs acknowledge, safety incidents involving UPS drivers contributed to the delivery policy at Park and Fox Hill Apartments,

including one assault where a female driver was “beaten with a stick and urinated on,” and another where a driver was “beaten, stripped, tied up and left on the roof of a building while his truck was stolen and burned with all the parcels inside.”⁴ UPS considers the safety of its drivers—in addition to other operational factors described in the Motion—in deciding how it delivers packages to any location. (Mot. at 3.) Accordingly, rather than allege “invidious discrimination,” Plaintiffs rely on a “disparate impact” theory based on the way UPS delivers packages to them compared to other sites—despite UPS applying the same operational factors at Park and Fox Hill Apartments as it does everywhere else it delivers. (*Id.*; Opp’n at 2, 7, 13; Am. Compl. ¶ 93.)

Finally, Plaintiffs argue that “UPS’s policy is unnecessary to the provision of services” because “[r]acial discrimination has nothing to do with the provision of services by a carrier.” (Opp’n at 15.) To be clear, race does not factor into UPS’s operational decisions regarding the delivery method at a particular location. But Plaintiffs’ own case theory demonstrates that the policy is tied to and therefore necessary to the delivery service UPS provides. Plaintiffs never allege conduct separate from UPS’s delivery operations (such as false arrest, discriminatory remarks, or personal injury). See *Rombom*, 867 F. Supp. at 224; *Trinidad*, 932 F. Supp. at 526; *Travel All Over the World*, 73 F.3d at 1433. Rather, they allege that UPS’s delivery policy at Park and Fox Hill Apartments is *itself* discriminatory. (See Am. Compl. ¶ 6) (pleading that “UPS’s Non-Delivery Policy discriminates against and adversely impacts the residents of Park Hill and Fox Hill”). Thus, regardless of how Plaintiffs have styled their claims, the conduct they challenge is the way UPS delivers packages—which “go[es] to the heart of the services that UPS provides.” *Rockwell*, 1999 WL 33100089, at *2 (internal punctuation omitted).

⁴ Jillian Jonas, *Unpackaging a Lack of Service: UPS Delivers to Public Housing*, City Limits (Sept. 18, 2006), <https://citylimits.org/unpackaging-a-lack-of-serviceups-delivers-to-public-housing/>.

Accordingly, because Plaintiffs fail to challenge any “outrageous” conduct distinct from UPS’s package delivery services, Plaintiffs cannot avoid FAAAAA preemption.⁵

C. The Relief That Plaintiffs Seek Would Have a Significant Impact on UPS’s Delivery Operations.

Plaintiffs’ claims are also independently preempted because granting the relief they seek would have a significant effect on UPS. According to Plaintiffs, dictating UPS’s delivery policy “would have no significant impact on UPS’s functioning” as a “massive company” because Park and Fox Hill Apartments “represent an infinitesimally small percentage of its economic reality.” (Opp’n at 16–17.) Not so. In determining whether FAAAAA preemption applies, courts weigh two considerations: whether the claim “relates to [] rates, routes, or services, either by expressly referring to them *or* by having a significant economic effect upon them.” *Travel All Over the World*, 73 F.3d at 1432 (internal quotation marks omitted) (emphasis added); *see also Buck v. Am. Airlines, Inc.*, 476 F.3d 29, 34–35 (1st Cir. 2007) (“[T]he ADA preempts both laws that explicitly refer to an airline’s prices *and* those that have a significant effect upon prices.”) (emphasis added). In other words, “the court only needs to decide whether a particular state law or claim has a ‘forbidden significant economic effect on [] rates, routes, or services’ when the state law at issue does not ‘expressly refer to [] rates, routes or services’ itself.” *EagleMed LLC v. Cox*, 868 F.3d 893, 902 (10th Cir. 2017) (citing *Travel All Over the World*, 73 F.3d at 1433).

As set forth above and more fully in the Motion, Plaintiffs’ claims expressly “relate to” UPS’s services by challenging the way UPS delivers packages. (Mot. at 19–25.) That alone

⁵ *See also Headstream Techs., LLC v. FedEx Corp.*, No. 22-1410, 2023 WL 1434054, at *3 (6th Cir. Feb. 1, 2023) (finding claim for misrepresentation about misdelivered package was not “so intentionally malicious as to be outrageous or outside the scope of FedEx’s operations” to avoid ADA preemption); *Stadulis v. JetBlue Airways Corp.*, No. CV-23-3695, 2023 WL 8437280, at *5 (D.N.J. Dec. 5, 2023) (finding discrimination claim against airline mask mandates preempted because they “pertain to JetBlue’s policies that implicate” boarding procedures and transportation of passengers, which “relate directly to the airline’s services”).

requires preemption without further inquiry. *Travel All Over the World*, 73 F.3d at 1432.

Plaintiffs' claims are also preempted, however, under the alternative measure of whether they would have a "significant economic effect" on UPS's services. Through this lawsuit, Plaintiffs seek to override UPS's operational decisions and alter the way UPS delivers packages to more than 1,400 units across 11 buildings at Park and Fox Hill Apartments. (Am. Compl. at 19.) Granting this relief "would necessarily impact directly upon UPS's services," as well as the delivery routes for Park and Fox Hill Apartments. *Rockwell*, 1999 WL 33100089, at *3. While Plaintiffs speculate that granting their relief would be limited to their buildings, the operational reality is that the impact would be far greater—potentially requiring adjustments to this and other delivery routes, personnel requirements, and delivery hours—to account for the time and resources required to accommodate the operational change.

Plaintiffs further argue that "dismissing the claims does nothing to advance Congress's goal of removing economic barriers on common carriers' operations." (Opp'n at 17.) To the contrary, allowing Plaintiffs' claims to proceed would allow Plaintiffs to use state law claims to govern how carriers perform deliveries—directly contravening Congress's purpose in enacting the FAAAA, which was to prevent states from imposing their own requirements on carrier services and thereby subjecting carriers to a "patchwork" of state-law regulation. (Mot. at 20–21) (citing H.R. Conf. Rep. No. 103-677, at 87–88 (1994), reprinted in 1994 USCCAN 1715, 1759–60, 1780); *see also California Trucking Ass'n v. Su*, 903 F.3d 953, 961 (9th Cir. 2018) (the FAAAA's "'driving concern' was preventing States from replacing market forces with their own, varied commands, like telling carriers they had to provide services not yet offered in the marketplace") (citing *Dan's City Used Cars, Inc. v. Pelkey*, 569 U.S. 251, 263 (2013)).

Accordingly, because ordering UPS to deliver the way Plaintiffs prefer "would

fundamentally affect how UPS provides its service,” the FAAAA independently preempts Plaintiffs’ claims. *Rockwell*, 1999 WL 33100089, at *3.

D. The Carmack Amendment Preempts Claims Like Plaintiffs’ That Arise from Transportation and Delivery of Goods.

Plaintiffs likewise fail to escape preemption under the Carmack Amendment. According to Plaintiffs, the Carmack Amendment “has no application here” because its preemptive effect is limited to claims for lost or damaged goods. (Opp’n at 17–20.) Contrary to this assertion, preemption under the Carmack Amendment broadly embraces “a range of delivery issues,” including delay or refusal to deliver. *RDK NY Inc. v. City of New York*, No. 21-CV-1529, 2023 WL 348467, at *3 (E.D.N.Y. Jan. 20, 2023); *see also Smith v. United Parcel Serv.*, 296 F.3d 1244, 1246 (11th Cir. 2002) (“the Carmack Amendment preempts state law claims arising from failures in the transportation and delivery of goods”); *Azzil Granite Materials, LLC v. Canadian Pac. Ry. Corp.*, No. 20-CV-2381, 2023 WL 3346765, at *8 (E.D.N.Y. May 10, 2023), *aff’d sub nom.*, *Azzil Granite Materials, LLC v. Canadian Pac. Ry. Co.*, No. 23-833, 2024 WL 1827289 (2d Cir. Apr. 26, 2024) (“Courts have found both delay in delivery even without property loss or damage and the refusal to deliver to be the types of claims preempted by the Carmack Amendment.”) (citation omitted).

Nonetheless, Plaintiffs argue it would be “futil[e]” to preempt their claims under the Carmack Amendment because the statute itself requires a claim “to be based on the loss or damage to goods.” (Opp’n at 19–20.) Plaintiffs never engage with the statutory language to explain *how* it applies only when goods are physically lost or damaged. (*See id.*). In any event, courts have long rejected this narrow reading of the Carmack Amendment, holding that its preemptive scope “embraces *all losses* resulting from *any failure* to discharge a carrier’s duty as to any part of the agreed transportation,” including claims for package delivery methods. *See*,

e.g., Smith, 296 F.3d at 1247, 1249 (preempting claims that arise from “UPS’s failure to transport and deliver packages”) (citation omitted) (emphasis added). Plaintiffs repeatedly allege that UPS failed to provide the delivery service for which they paid, deprived them of the “full benefit” of delivery, and required them to retrieve packages from a centralized location rather than delivering them to their buildings—all of which directly concern UPS’s alleged “duty” to “transport and deliver packages.” (*E.g.*, Am. Compl. ¶¶ 38, 63, 66); *Smith*, 296 F.3d at 1249.

CONCLUSION

For the foregoing reasons, the Court should stay claims from the Arbitrating Plaintiffs pending arbitration and dismiss all claims from the remaining Plaintiffs as preempted.

Dated: New York, New York
June 22, 2026

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WORD COUNT CERTIFICATION

Pursuant to Rule 7.1(c) of the Local Rules of the United States District Court for the Southern and Eastern Districts of New York, I hereby certify that the above memorandum of law contains 5,721 words, exclusive of the caption, table of contents, table of authorities, signature block, and this certification.

Dated: June 22, 2026

By: /s/ Jessica Kaufman

Jessica Kaufman

CERTIFICATE OF SERVICE

Pursuant to Rule III.D. of Judge Vitaliano's Individual Motion Practice and Rules, and Judge Marutollo's Minute Order dated March 20, 2026, I hereby certify that on this 22nd day of June, 2026, I caused to be served a true and correct copy of the foregoing document to Plaintiffs' counsel of record via electronic mail, and filed the fully briefed motion via ECF.

/s/ Jessica Kaufman
Jessica Kaufman