**UNITED STATES DISTRICT COURT**
**SOUTHERN DISTRICT OF FLORIDA**

**FORT LAUDERDALE DIVISION**

**Case No. 0:17-cv-61617-BB**

JOSE MEJIA, individually and on
Behalf of all others similarly situated,

Plaintiff,

vs.

UBER TECHNOLOGIES, INC., a
Delaware corporation

Defendant.
_____/

**DEFENDANT'S MOTION TO COMPEL ARBITRATION**
**AND STAY ALL COURT PROCEEDINGS**
**AND ACCOMPANYING MEMORANDUM OF LAW IN SUPPORT**

Defendant, Uber Technologies, Inc. ("Uber"), pursuant to the Federal Arbitration Act, moves this Court to enter an Order (1) compelling Representative Plaintiff, Jose Mejia ("Plaintiff"), to file his demand in arbitration, as required by the binding arbitration provision to which he agreed; (2) staying all court proceedings while the parties proceed in arbitration; and (3) and striking all the class action allegations.

This motion should be granted for the reasons set forth in the accompanying memorandum of law in support.

## MEMORANDUM OF LAW

## I. INTRODUCTION

On March 5, 2016, Plaintiff Jose Mejia entered into a Technology Services Agreement with Rasier-DC, LLC ("Rasier-DC"), Uber's wholly owned subsidiary (the "Rasier Agreement" or "Agreement"). *See* Declaration of Michael Colman ("Colman Decl.") attached hereto as **Exhibit A,** ¶ 10. The Rasier Agreement contains a valid and enforceable arbitration provision, through which Plaintiff agreed to resolve any and all disputes arising out of or related to his relationship with Uber in arbitration (with limited exceptions not applicable here) ("the Arbitration Provision") pursuant to the Federal Arbitration Act ("FAA"). Uber is designated as an intended third-party beneficiary for the Arbitration Provision.

In executing this Agreement, Plaintiff also agreed that any disputes arising out of or relating to interpretation of the Arbitration Provision, including its enforceability and other issues relating to arbitrability, will be determined by the arbitrator. Plaintiff further agreed to resolve any claim he may ever have against Uber on an individual basis, thus precluding him from bringing or participating in any class, collective, or representative action such as the one he purports to bring here.

Despite the binding Arbitration Provision and class action waiver, Plaintiff filed this action purporting to sue on behalf of a class of drivers who use the Uber App in Florida, based upon a Florida statute designed to allow certain individuals to keep weapons secured in their vehicles in parking lots. However, his claim falls squarely within the Arbitration Provision. Indeed, Federal courts across the country, including this District, repeatedly have upheld and enforced Uber's identical (or nearly identical) Arbitration Provision and class action waiver. *See Richemond v. Uber Techs., Inc.,* No. 1:16-cv-23267-DPG, 2017 WL 416123 (S.D. Fla. July 29,

2016) (Order granting Uber's Motion to Compel Arbitration attached hereto as **Exhibit B**); *Lamour v. Uber Techs., Inc.*, No. 1:16-21449-CIV-MARTINEZ-GOODMAN, 2017 WL 878712 (S.D. Fla. Mar. 1, 2017) (Corrected Report and Recommendations on Defendant's *Renewed* Motion to Compel Arbitration and Strike Class/Collective Action Allegations and Court Order adopting same, attached hereto as Composite **Exhibit C**); *Rimel v. Uber Techs., Inc. et al.*, No. 6:15-cv-2191, 2017 WL 1191384 (M.D. Fla. Aug. 4, 2016) (Magistrate's Report & Recommendation granting Uber's Motion to Compel Arbitration and Court Order adopting same, attached hereto as Composite **Exhibit D**). *Accord Sena v. Uber Techs., Inc.*, No. CV-15-02418, 2016 WL 1376445 (D. Az. April 7, 2016); *Varon v. Uber Techs., Inc.*, No. 15-cv-03650, 2016 WL 1752835 (D. Md. May 3, 2016); *Suarez v. Uber Techs., Inc.*, No. 16-cv-00166, 2016 WL 2348706 (M.D. Fla. May 4, 2016); *Bruster v. Uber Techs., Inc.*, 15-cv-2653, 2016 WL 2962403 (N.D. Ohio May 23, 2016).

Because Plaintiff's claims indisputably are subject to arbitration, this Court should enter an Order compelling Plaintiff to file his demand in arbitration and it should stay all court proceedings while the parties proceed in arbitration. The Court also should strike all class allegations.

## II. FACTUAL BACKGROUND

### A. THE PARTIES' AGREEMENT TO ARBITRATE

#### 1. The Uber App and Rasier Agreement

Uber is a technology company that offers an innovative smartphone application to connect riders looking for transportation to independent providers seeking these riders. *See* Colman Decl. ¶ 3. Uber provides this technology through its smartphone application (the "Uber App"), which allows riders and transportation providers to connect based on their respective

locations. *Id.* Any independent transportation provider, such as Plaintiff, who wishes to use the Uber App product to connect with riders, first must enter into the Rasier Agreement. *Id.* ¶ 7.

In order to enter into the Rasier Agreement and gain access to the Uber product, a transportation provider first must log in to the Uber App using a unique username (the transportation provider's email address) and password selected by the transportation provider to create an Uber account. *Id.* ¶ 8. The transportation provider personally selects the unique username and password at the time the provider signs up to use the Uber App, and the transportation provider's account can be accessed only by inputting that unique username and password. *Id.*

When a new transportation provider logs on to the Uber App after the provider has finished activating the provider's account, the provider is given the opportunity to review the Rasier Agreement by clicking a hyperlink presented on the screen within the Uber App. *Id.* ¶ 9. At the top of this screen, the App states the following: "TO GO ONLINE, YOU MUST REVIEW ALL THE DOCUMENTS BELOW AND AGREE TO THE CONTRACTS BELOW." *Id.*

Plaintiff entered into the Rasier Agreement on March 5, 2016. *Id.* For the December 11, 2015 version of the Rasier Agreement that Plaintiff accepted, the hyperlink was entitled "Rasier Agreement December 10, 2015." *Id.* Clicking the link opens the Rasier Agreement, which Plaintiff could review beginning to end on the screen by scrolling through. *Id.* Transportation providers are free to spend as much time as they wish reviewing the Rasier Agreement on their smartphone prior to entering into the Agreement. *Id.* To advance past the screen containing the link to the document, the transportation provider must click "YES, I AGREE" to the Rasier Agreement. *Id.* ¶ 10. Directly above "YES I AGREE," the App states the following: "By

clicking below, you represent that you have reviewed all the documents above and that you agree to all the contracts above." *Id.* In other words, by clicking "YES I AGREE," the provider, such as Plaintiff, represents and warrants that the provider has read the relevant documents and has agreed to all of them. A true and correct copy of the "YES, I AGREE" screenshot is attached to the Colman Decl. as Exhibit 1 thereto.

After clicking "YES, I AGREE," the transportation provider is prompted to confirm acceptance a *second* time. *Id.* ¶ 11. On the second screen, the App states the following: "PLEASE CONFIRM THAT YOU HAVE REVIEWED ALL THE DOCUMENTS AND AGREE TO ALL THE NEW CONTRACTS." *Id.* A true and correct copy of the confirmation screenshot is attached to the Colman Decl. as Exhibit 2 thereto.

After clicking "YES, I AGREE" a second time, transportation providers are able to access the Uber App, and the Agreement is automatically and immediately sent to their Driver Portal (described below), where the provider can access the Agreement to review at their leisure any time, either online or by printing a hard copy. *Id.* ¶ 12.

**2. Plaintiff's Acceptance of the Rasier Agreement**

On or about February 29, 2016, Plaintiff signed up to use the Uber App product to connect with riders to provide transportation services. *Id.* ¶ 14. As noted above, on March 5, 2016, he accepted, through the Uber App, the December 11, 2015 Rasier Agreement. *Id.* A true and correct copy of the December 11, 2015 Rasier Agreement accepted by Plaintiff is attached to the Colman Decl. as Exhibit 4 thereto.

Uber received an electronic receipt that Plaintiff accepted the Rasier Agreement. *Id.* ¶ 15. A true and correct copy of that receipt is attached to the Colman Decl. as Exhibit 5 thereto. This receipt only could have been generated by someone using Plaintiff's unique username and

password and hitting "YES, I AGREE" twice when prompted by the Uber App. *Id.* The date and time (UTC) shown on the receipt indicates when Plaintiff clicked "YES, I AGREE." *Id.*

Plaintiff admits in his Complaint that, since March 2016, he has utilized the Uber App (which he describes as being an "Uber driver") to offer and provide transportation services to riders in Miami-Dade, Broward, and Palm Beach Counties. Compl. ¶ 6. As noted above, a transportation provider such as Plaintiff cannot use Uber's product unless that provider agrees to the Rasier Agreement. Colman Decl. ¶¶ 10-12.

**3. The Arbitration Provision**

The Arbitration Provision to the Rasier Agreement broadly requires transportation providers, if they do not opt out, to arbitrate all disputes (with certain exceptions not relevant here) arising out of or related to the agreement or their relationship with Uber. *See* Colman Decl., Exhibit 4. The Arbitration Provision, in relevant part, reads as follows:

> This Arbitration Provision is governed by the Federal Arbitration Act, 9 U.S.C. § 1 et seq. (the "FAA") and evidences a transaction involving interstate commerce. This Arbitration Provision applies to any dispute arising out of or related to this Agreement or termination of the Agreement and survives after the Agreement terminates. . . .
>
> **Except as it otherwise provides, this Arbitration Provision is intended to apply to the resolution of disputes that otherwise would be resolved in a court of law or before a forum other than arbitration, with the exception of proceedings that must be exhausted under applicable law before pursuing a claim in a court of law or in any forum other than arbitration Except as it otherwise provides, this Arbitration Provision requires all such disputes to be resolved only by an arbitrator through final and binding arbitration on an individual basis only and not by way of court or jury trial, or by way of class, collective, or representative action.**

*Id.* (boldface in original).

The Arbitration Provision also requires that all threshold issues, including arbitrability, are to be decided by the arbitrator, not in court:

> Except as provided in Section 15.3(v) below, regarding the Class Action Waiver, such disputes include without limitation disputes arising out of or relating to interpretation or application of this Arbitration Provision, including the enforceability, revocability or validity of the Arbitration Provision or any portion of the Arbitration Provision. All such matters shall be decided by an Arbitrator and not by a court or judge. . . .

*Id.*

The scope of the Arbitration Provision covers all claims arising of or related to the transportation provider's relationship to Uber, and undeniably includes the one asserted by Plaintiff in this action:

> Except as it otherwise provides, **this Arbitration Provision also applies, without limitation, to all disputes between You and the Company or Uber**, as well as all disputes between You and the Company's or Uber's fiduciaries, administrators, affiliates, subsidiaries, parents, and assigns of any of them, including but not limited **to any disputes arising out of or related to this Agreement and disputes arising out of related to your relationship with the Company, including termination of the relationship**. This Arbitration Provision also applies, without limitation, to disputes regarding any city, county, state or federal wage-hour law, trade secrets, unfair competition, compensation, breaks and rest periods, expense reimbursement, termination, harassment and claims arising under the Uniform Trade Secrets Act, Civil Rights Act of 1964, Americans With Disabilities Act, Age Discrimination in Employment Act, Family Medical Leave Act, Fair Labor Standards Act, Employee Retirement Income Security Act (except for individual claims for employee benefits under any benefit plan sponsored by the Company and covered by the Employee Retirement Income Security Act of 1974 or funded by insurance), Genetic Information Non-Discrimination Act, and **state statutes, if any, addressing the same or similar subject matters, and all other similar federal and state statutory and common law claims.**
>
> This Agreement is intended to require arbitration of every claim or dispute that lawfully can be arbitrated, except for those claims and disputes which by the terms of this Agreement are expressly excluded from the Arbitration Provision.

*Id.* (emphasis added).

The Arbitration Provision further provides that Plaintiff must pursue any claims in arbitration on an individual basis:

> **You and the Company agree to resolve any dispute that is in arbitration on an individual basis only, not on a class, collective action, or representative basis ("Class Action Waiver"). The Arbitrator shall have no authority to consider or resolve any**

> **claim or issue any relief on any basis other than an individual basis. The Arbitrator shall have no authority to consider or resolve any claim or issue any relief on a class, collective, or representative basis.**

*Id.* (boldface in original). This provision continues that the Class Action Waiver provision is to be enforced by a court. *Id.*

**4. The Ability to Opt-Out of Arbitration**

After accepting the Agreement, a provider has the opportunity to opt out of the Arbitration Provision, if the transportation provider so desires, within thirty days, by notifying Uber by mail, overnight delivery, hand delivery or email. Colman Decl. ¶ 17. Disclosure of the Arbitration Provision, and the ability to opt-out, is prominently featured at the very beginning of the Agreement, in bold capital letters, and in greater detail in Section 15 of the Agreement. Colman Decl., Exhibit 4. The language is written in a clear and concise manner, and is intended to be easily accessed and understood by everyone:

> **Your Right To Opt Out Of Arbitration**
>
> **Arbitration is not a mandatory condition of your contractual relationship with the Company. If you do not want to be subject to this Arbitration Provision, you may opt out of this Arbitration Provision by notifying the Company in writing of your desire to opt out of this Arbitration Provision, either by (1) sending, within 30 days of the date this Agreement is executed by you, electronic mail to optout@uber.com, stating your name and intent to opt out of the Arbitration Provision or (2) by sending a letter by U.S. Mail, or by any nationally recognized delivery service (e.g, UPS, Federal Express, etc.), or by hand delivery to:**
>
> **Legal**
> **Rasier, LLC**
> **1455 Market St., Ste. 400**
> **San Francisco CA 94103**
>
> **In order to be effective, the letter under option (2) must clearly indicate your intent to opt out of this Arbitration Provision, and must be dated and signed. The envelope containing the signed letter must be received (if delivered by hand) or post-marked within 30 days of the date this Agreement is executed by you. Your writing opting out of this Arbitration Provision, whether sent by (1) or (2), will be filed with a copy**

> **of this Agreement and maintained by the Company. Should you not opt out of this Arbitration Provision within the 30-day period, you and the Company shall be bound by the terms of this Arbitration Provision. You have the right to consult with counsel of your choice concerning this Arbitration Provision. You understand that you will not be subject to retaliation if you exercise your right to assert claims or opt-out of coverage under this Arbitration Provision**

*Id.*

Plaintiff did not opt out of the December 11, 2015 Rasier Agreement within thirty days of his acceptance of that agreement. Colman Decl. ¶ 17.

**5. Access to the Driver Portal**

All transportation providers who sign up to use the Uber App are given access to an online "Driver Portal," which includes access to the applicable contracts (including the Rasier Agreement) entered into by any given transportation provider via a conspicuous hyperlink. *Id.* ¶12. The Driver Portal is accessible online to transportation providers at all times, via computer, tablet, smartphone, or similar device. *Id.* A true and correct copy of a screenshot of Plaintiff's Driver Portal showing links to the contracts that he entered into, including the Rasier Agreement, is attached to the Colman Decl. as Exhibit 3.

**B. PLAINTIFF'S COMPLAINT**

Plaintiff has sued Uber on behalf of a purported class on a single-count Complaint pursuant to Florida Statute 790.251 (the "Act"), a statute requiring businesses to allow statutorily defined persons holding a lawful weapons permit to keep a weapon secured in their locked vehicle in the business's parking lot. Plaintiff alleges that he is a statutorily defined "employee" of Uber (the statute defines "employees" as including independent contractors). Compl. ¶ 21. As noted above, by signing the Rasier Agreement (and declining to opt-out of the Arbitration Provision), Plaintiff committed to arbitrate all disputes with Uber arising out of and relating to

his relationship with Uber, including any state statutory claims. Therefore, Plaintiff's Complaint undeniably falls within the scope of the Arbitration Provision.

## III. ARGUMENT

### A. PLAINTIFF'S CLAIMS ARE SUBJECT TO ARBITRATION, PER THE FAA

Enforceability of an arbitration agreement in federal court is generally governed by the FAA. *See, e.g., Caley v. Gulfstream Aerospace Corp.* 428 F. 3d 1359 (11th Cir. 2005). "It is now basic hornbook law that the [FAA] . . . reflects both a liberal federal policy favoring arbitration and the fundamental principle that arbitration is a matter of contract." *Jones v. Waffle House, Inc.*, 866 F.3d 1257, 1263-64 (11th Cir. 2017) (citations omitted). The FAA gives arbitration agreements the same force and effect as other contracts under state law and preempts any state law to the extent that it imposes a greater burden on a party seeking to enforce an arbitration agreement. *Caley*, 428 F.3d at 1367-68. Accordingly, "any doubts concerning the scope of arbitrable issues should be resolved in favor of arbitration, whether the problem at hand is the construction of the contract language itself or the allegation of waiver, delay, or a like defense to arbitrability. *Jones*, 866 F.3d at 1265; *see also Ruby–Collins, Inc. v. City of Huntsville, Ala.*, 748 F.2d 573, 576 (11th Cir. 1984) ("federal policy requires that we construe arbitration clauses generously, resolving all doubts in favor of arbitration").

Thus, "[t]he FAA requires a court to either stay or dismiss a lawsuit and to compel arbitration upon a showing that (a) the plaintiff entered into a written arbitration agreement that is enforceable "under ordinary state-law" contract principles, and (b) the claims before the Court fall within the scope of that agreement." *Lambert v. Austin Ind.*, 544 F.3d 1192, 1195 (11th Cir. 2008). As set forth below, the parties to this action entered into an enforceable arbitration

agreement under Florida law and all of the claims asserted in this action fall directly within the scope of that agreement to arbitrate.

**1. The Arbitration Provision Delegates the Threshold Determination Regarding Arbitrability of Plaintiff's Claims to the Arbitrator**

In the first instance, the parties may agree to arbitrate gateway questions of arbitrability, including the enforceability, scope, applicability, and interpretation of the arbitration agreement. *Jones*, 866 F.3d at 1264, citing to landmark case *Rent-a-Center, W., Inc. v. Jackson*, 560 U.S. 63, 68-69 (2010) ("[a]n agreement to arbitrate a gateway issue is simply an additional antecedent agreement the party seeking arbitration asks the court to enforce, and the FAA operates on this additional arbitration agreement just as it does on any other"). The arbitrator, rather than the court, must address the threshold question of arbitrability if the parties so agreed. *See Jones*, 866 F.3d at 1264 (explaining that an antecedent agreement known as a "delegation provision" is enforceable and affirming that "[w]hen an arbitration agreement contains a delegation provision – committing to the arbitrator the threshold determination of whether the agreement to arbitrate is enforceable – the courts only retain jurisdiction to review a challenge of that specific provision").

Here, the Arbitration Provision clearly and unmistakably provides that "disputes arising out of or relating to interpretation or application of this Arbitration Provision, ***including the enforceability, revocability or validity of the Arbitration Provision*** or any portion of the Arbitration Provision" shall be decided by an arbitrator, not a court. *See* Colman Decl., Exhibit 4 (emphasis added). Therefore, any question as to the validity of the Arbitration Provision and whether it applies to this dispute, has been delegated to, and must be decided by, the arbitrator in the first instance. *See American Express Co. v. Italian Colors Rest.*, 133 S. Ct. 2304, 2309

(2013) (noting that the text of the FAA "reflects the overarching principle that arbitration is a matter of contract" and "courts must rigorously enforce arbitration agreements according to his terms, including terms that specify with whom the parties choose to arbitrate his disputes").

This Court has examined and consistently upheld Uber's delegation provision as binding and enforceable. *See Lamour* 2017 WL 878712 at *13 (upholding Uber's delegation clause as "clear and unmistakable"); *Richemond*, 2017 WL 416123 at *3 (upholding same delegation provision and finding "clear and unmistakable evidence" that plaintiff "agreed to arbitrate arbitrability); and *Rimel* 2017 WL 1191384 at *3 (reiterating that delegation provisions are valid and severable from the underlying agreement to arbitrate. *See* Exhibits B, C and D.

**2. Plaintiff Entered Into An Enforceable Agreement to Arbitrate.**

The only issue before this Court is whether the parties entered into an agreement with an arbitration clause. *Lamour*, 2017 WL 878712 at *7.

Though federal courts apply state contract law in determining the existence of an agreement to arbitrate, "federal policy *favoring* arbitration is taken into consideration even in applying ordinary state law." *Caley*, 428 F. 3d at 1368 (emphasis added, citation omitted). And, in any event, Florida likewise favors arbitration as a matter of public policy. *KFC Nat'l Mgmt. Co. v. Beauregard*, 739 So. 2d 630, 631 (Fla. 5th DCA 1999).

Here, the parties voluntarily entered into a written mutual agreement to arbitrate any disputes, as evidenced by Plaintiff's acceptance of the Rasier Agreement and his failure to exercise his subsequent opportunity to timely opt-out of the arbitration provision. This is more than sufficient to establish Plaintiff's acceptance of the Arbitration Agreement. *See Dorward v. Macy's Inc.*, No. 2:10–cv–669–FTM–29DNF, 2011 WL 2893118, *11 (M.D. Fla. July 20, 2011) (plaintiff's signature on a new hire acknowledgment form, which referred to a brochure

containing the arbitration agreement, was sufficient to show the plaintiff assented to the arbitration agreement and "[p]laintiff's alleged ignorance of the contents of [the brochure] ha[d] no bearing on her duty to arbitrate according to its terms"); *Sultanem v. Bright House Networks, L.L.C.*, No. 8:12–cv–1739–T–24, 2012 WL 4711963, *2 (M.D. Fla. Oct.3, 2012) (plaintiff's denial of receipt of arbitration agreement alone not sufficient to create issue of fact as to existence of arbitration agreement where plaintiff signed work orders acknowledging agreement containing arbitration clause); *Jones*, 866 F.3d at 1266 (plaintiff was given at least three hours on his first date of work to read and sign his employment paperwork, including an arbitration agreement). Courts, including courts in this District, have overwhelmingly enforced such agreements. *See, e.g.*, *Lamour*, 2017 WL 878712 at *5; *Rimel*, 2017 WL 1991384 at *1.

Moreover, Disclosure of the Arbitration Provision, and the ability to opt-out, was prominently featured at the very beginning of the Agreement, in bold capital letters. The Arbitration Provision advised Plaintiff that it covered all claims arising out of or related to Plaintiff's relationship to Uber, and required Plaintiff must pursue any claims in arbitration on an individual basis. Colman Decl., Exhibit 4. Regarding Plaintiff's ability to opt out, the Agreement expressly advised, "[i]f you do not want to be subject to this Arbitration Provision, you may opt out …. by notifying [Uber] in writing … within 30 days of the date this Agreement is executed by you . . . ." *Id.* Plaintiff failed to do so.

Plaintiff clearly and unmistakably assented to be bound by the terms of the Arbitration Provision, and, accordingly, has no grounds to argue the Arbitration Provision is not enforceable under Florida contract law or otherwise.

**3. Plaintiff's Claims Fall Within The Scope of His Agreement To Arbitrate.**

Even if the parties had not expressly delegated the issue of arbitrability to the arbitrator, it is clear this dispute is subject to arbitration. *Hudson Global Res. Mgmt. v. Beck*, No. 805CV1446T27TBM, 2006 WL 1722353, 2006 U.S. Dist. LEXIS 40904, *3 (M.D. Fla. June 20, 2005). Plaintiff's claims are undoubtedly within his agreement to arbitrate "without limitation, . . . all disputes between You and the Business or Uber . . . including but not limited to any disputes arising out of or related to this Agreement and disputes arising out of or related to your relationship with the Company." *See* Colman Decl, Exhibit 4 The Agreement reiterates that it "is intended to require arbitration of every claim or dispute that lawfully can be arbitrated" unless specifically excluded from the Arbitration Provision. As noted above, Plaintiff purports to bring a state statutory claim as a statutorily defined "employee" and the Arbitration Provision specifically covers such claims. Plaintiff's claims fall within this definition and have not been expressly excluded from the arbitration requirement. Therefore, Plaintiff must bring his claims in the forum to which he agreed: arbitration.

### B. PLAINTIFF EXPRESSLY WAIVED HIS RIGHT TO BRING A CLASS ACTION AND THE CLASS ALLEGATIONS SHOULD BE STRICKEN

In addition to agreeing to arbitrate the substantive claims asserted in this action, Plaintiff expressly agreed not to bring class or collective claims as he has attempted to assert here. This waiver of class or collective actions in the Arbitration Provision is both valid and enforceable.[1]

The U.S. Supreme Court has expressly upheld the validity of such class and collective action waivers in arbitration agreements, recognizing that class and collective actions are

[1] "The Court can decide, in the first instance, whether the parties agreed to limit the parties to arbitration by their collective action/class action waiver because it relates to the enforcement of the terms of their agreement to arbitrate." *Italian Colors Rest.*, 133 S. Ct. at 2309 (courts determine terms of the parties' arbitration agreements including terms that specify with whom the parties choose to arbitrate their disputes)." *Lamour*, 2017 WL 878712 at *7.

inconsistent with arbitration's inherent benefits. *See Italian Colors Rest.*, 133 S. Ct. at 2309; *AT&T Mobility LLC v. Concepcion*, 131 S. Ct. 1740, 1748-1751 (2011) (finding that "the informality of arbitral proceedings is itself desirable, reducing the cost and increasing the speed of dispute resolution" and that class arbitration would sacrifice the principal advantage of arbitration and make the process "slower, more costly, and more likely to generate procedural morass"); *Stolt-Nielsen S.A. v. Anima/Feeds Int'l Corp.*, 130 S. Ct. 1758, 1775 (2010) ("a party may not be compelled under the FAA to submit to class arbitration unless there is a contractual basis for concluding that the party agreed to do so."); *see also McKenzie Check Advance of Fla., LLC v. Betts*, 112 So. 3d 1176 (Fla. 2013) (citing *Concepcion* and holding that, to the extent Florida state decisions have found class action waivers void against public policy, such holdings are preempted by the Federal Arbitration Act); and *Cruz v. Cingular Wireless, LLC*, 648 F.3d 1205, 1207 (11th Cir. 2011) (same).

Accordingly, the Eleventh Circuit and numerous other federal circuit courts have consistently upheld the applicability of arbitration agreements and their class/collective action waivers. *See, e.g., Walthour v. Chipio Windshield Repair, LLC*, 745 F.3d 1326, 1332 (11th Cir. 2014) (enforcing collective action waiver and stating, "[i]n every case the Supreme Court has considered involving a statutory right that does not explicitly preclude arbitration, it has upheld the application of the FAA."); *Caley*, 428 F.3d at 1378 (class action waiver in arbitration agreement was not unconscionable and reasoning that "prohibition of class actions and discovery limitations are consistent with the goals of 'simplicity, informality, and expedition.'"). *Accord Sutherland v. Ernest & Young LLP*, 726 F.3d 290, 296-97 (2d Cir. 2013); *Owen v. Bristol Care, Inc.*, 702 F.3d 1050, 1055 (8th Cir. 2013); *Vilches v. Traveler's Cos.*, 413 Fed. Appx. 487, 494 n.4 (3d Cir. 2011); *Horenstein v. Mort. Mkt., Inc.*, 9 Fed. Appx. 618, 619 (9th Cir. 2001); *Carter*

*v. Countrywide Credit Indus. Inc.*, 362 F.3d 294, 298 (5th Cir. 2004); *Adkins v. Labor Ready, Inc.*, 303 F.3d 496, 503 (4th Cir. 2002).

Indeed, multiple federal district courts in Florida have specifically upheld the enforceability of Uber's own class/collective action waiver, similar or identical to the one at issue here. *See, e.g.*, *Suarez* 2016 WL 2348706 at *5 (enforcing the Uber arbitration provision) *aff'd*, 688 F. App'x 777 (11th Cir. 2017); *Richemond*, 2017 WL 416123 (same); *accord Rimel*, 2016 WL 6246812 (enforcing the Uber arbitration provision).

Because Plaintiff's claims are covered by the Arbitration Provision and no statute prohibits the Provision's enforcement, Plaintiff should be compelled to arbitrate his claims as he has agreed: on an individual basis.

### C. THIS COURT SHOULD STAY ALL COURT PROCEEDINGS UPON COMPELLING PLAINTIFF TO ARBITRATION

When a valid written agreement to arbitrate exists and covers the matter in dispute, the FAA commands federal courts to stay any ongoing judicial proceedings and compel arbitration. *Volt Info. Sciences, Inc. v. Bd. of Tr. of Leland Stanford Jr. Univ.*, 489 U.S. 468, 475-76, 109 S. Ct. 1248, 1253-54 (1989). Specifically, Section 3 of the FAA provides:

> 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.

*See* 9 U.S.C. § 3 (emphasis added).

A stay of arbitrable claims is mandatory: "By its terms, the Act leaves no place for the exercise of discretion by a district court, but instead mandates that district courts shall direct the

parties to proceed to arbitration on issues as to which an arbitration agreement has been signed." *Dean Witter Reynolds Inc. v. Byrd*, 470 U.S. 213, 218 (1985) (citing 9 U.S.C. §§ 3, 4); *see also Klay v. Pacificare Health Sys.*, 389 F.3d 1191, 1203-04 (11th Cir. 2004) ("For arbitrable issues, the language of Section 3 indicates that the stay is mandatory.")

Here, as fully explained above, Plaintiff entered into a valid and enforceable agreement to arbitrate disputes against Uber, and the disputes raised in this action fall squarely within that agreement. Accordingly, this Court should stay all proceedings in this Action upon compelling Plaintiff to arbitrate his claims.

## VI. CONCLUSION

WHEREFORE, Uber respectfully request this Honorable Court: (1) enter an Order compelling Plaintiff to bring his claim in arbitration, per the terms of the Agreement; (2) stay all Court proceedings and deadlines while this matter proceeds in arbitration; (3) strike the class allegations; (4) award Uber its costs and fees incurred in bringing this motion; and (5) award Uber any other relief this Court deems just and proper.

**CERTIFICATE OF COUNSEL**

Pursuant to S.D. Fla L.R. 7.1(A)(3), Uber's counsel has conferred with Plaintiff's counsel, Elizabeth Lee Beck, concerning the relief sought in this Motion. Plaintiff opposes the relief requested.

Dated: September 20, 2017

Respectfully Submitted:

UBER TECHNOLOGIES, INC.

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**CERTIFICATE OF SERVICE**

I hereby certify that on September 20, 2017, I electronically filed the foregoing document with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to counsel or parties of record.

/s/ *Brandon T. White*
Brandon T. White