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.
_____/

UBER TECHNOLOGIES, INC.' MOTION TO STAY PROCEEDINGS PENDING DETERMINATION OF MOTION TO COMPEL AND ACCOMPANYING MEMORANDUM OF LAW IN SUPPORT

Defendant, Uber Technologies, Inc. ("Uber"), pursuant to the Court's inherent authority, moves for the entry of an Order staying this proceeding pending the resolution of its Motion to Compel Arbitration and Staying all Court Proceedings ("Motion to Compel") **[ECF. No. 11].**

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

MEMORANDUM OF LAW

I. INTRODUCTION

As fully explained in Uber's Motion to Compel, Jose Mejia ("Plaintiff") expressly agreed to arbitrate his disputes against Uber, and, therefore, has improperly filed action against Uber in this Court. Specifically, Plaintiff entered into a Technology Services Agreement with Raiser-DC, LLC ("Riaser-DC"), Uber's wholly owned subsidiary (the "Raiser Agreement"), in which

Uber is an intended third-party beneficiary.[1] The Raiser Agreement contains a valid and enforceable arbitration provision, wherein 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"). As is clear under the Arbitration Provision, Plaintiff agreed that: (1) 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; and (2) any claim that he may ever raise against Uber would be resolved on an individual basis, thus precluding him from bringing or participating in any class, collective or representative action.

Despite that several federal courts—including courts in the Southern District of Florida—have upheld Uber's identical (or nearly identical) Arbitration Provision, Plaintiff has wrongly filed action against Uber in this Court. *See Richemond v. Uber Techs., Inc.*, Case No. 1:16-cv-23267-DPG, 2017 BL 26757 (S.D. Fla. July 29, 2016) (Order granting Uber's Motion to Compel Arbitration); *Lamour v. Uber Techs., Inc.*, Case 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); *Rimel v. Uber Techs., Inc. et al.*, Case 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); *Accord Sena v. Uber Techs..*, No. CV-15-02418, 2016 WL 1376445, (D. Az. April 7, 2016); *Varon v. Uber Techs., Inc.*, 15-cv-03650, 2016 WL 1752835 (D. Md. May 3, 2016); *Suarez v. Uber Techs., Inc.*, 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). Consequently, Uber filed its Motion to Compel Arbitration.

[1] The Raiser Agreement is attached in full to Declaration of Michael Colman as **Exhibit 4.**

It would be inconsistent with Plaintiff's contractual agreement to arbitrate, and a misuse of the resources of the parties and this Court, for the parties to engage in further litigation while the Court resolves Uber's Motion to Compel. *See e.g., Rimel v. Uber Technologies, Inc.*, 6:15-cv-02191-CEM-KRS: ECF 56 (M.D. Fla. July 6, 2016) (staying deadline for class certification motions pending disposition of Uber's motion to compel arbitration). Uber, therefore, respectfully requests that this Court enter an Order staying all court proceedings pending the Court's determination of Uber's Motion to Compel.

II. ARGUMENT

A. This Court Has Inherent Authority to Stay Proceedings to Prevent the Parties from Expending Unnecessary Resources When Uber's Motion To Compel Arbitration May Dispose Of The Case

This Court is empowered to stay its own proceedings for purposes of conserving judicial resources and efficiently handling duplicative actions. *Velarde v. HSBC Private Bank Int'l*, No. 13-22031-CIV, 2013 WL 5534305, at *7 (S.D. Fla. Oct. 7, 2013) (citations omitted); *see also In re Braga*, 789 F.Supp.2d 1294, 1307 (S.D. Fla. 2011). Further, federal trial courts have broad discretion to stay a matter until preliminary questions that may dispose of the case are resolved. *See, e.g., Latell v. Triano*, No. 2:13-CV-565-FTM-29CM, 2014 WL 5822663, at *2 (M.D. Fla. Feb. 28, 2014) ("Because there are pending motions challenging personal jurisdiction, standing, and the legal sufficiency of the amended complaint, the Court will stay discovery for a period of 90 days. Delaying discovery until the Court rules on whether it has jurisdiction and Plaintiff has stated a viable cause of action will cause Plaintiff little harm."); *Hesterly v. Royal Caribbean Cruises, Ltd.*, No. 06-22862-CIV, 2008 WL 516495, at *1 (S.D. Fla. Feb. 25, 2008) (proceedings stayed pending resolution of the jurisdictional challenges and completion of preliminary jurisdictional discovery).

Indeed, even after an initial ruling denying a motion to compel arbitration, proceedings must be stayed upon a non-frivolous appeal of that decision. *Blinco v. Green Tree Servicing, LLC*, 366 F.3d 1249, 1251 (11th Cir. 2004); *Espinoza v. Galardi S. Enters., Inc.*, No. 14-21244-CIV, 2016 WL 482090, at *1--2 (S.D. Fla. Feb. 5, 2016).

As stated by the court in *Hamoudeh v. UnitedHealth Group, Inc*., No. 16-cv-790, 2016 WL 2894870, at *1 (E.D.N.Y. May 17, 2016):

> Permitting Plaintiffs to seek certification of a collective action at this time would be putting the cart before the horse: Plaintiffs may only move for certification on behalf of similarly situated parties if they have standing to bring this lawsuit; whether Plaintiffs have standing, however, hinges on the outcome of the motion to compel arbitration. *See Dixon v. NBCUniversal Media LLC*, 947 F. Supp. 2d 390, 406 (S.D.N.Y. 2013) (denying a motion for conditional certification as moot after finding named plaintiff's claims to be subject to arbitration, because such a plaintiff "lacks any potential interest in prosecuting this action in this Court on behalf of others") (citing *Genesis Healthcare Corp. v. Symczyk*, 133 S. Ct. 1523, 1529 (dismissing entire action after the named plaintiff's individual claim was satisfied and became moot, notwithstanding collective-action allegations in complaint, because the named plaintiff "lacked any personal interest in representing others in this action")) (emphasis added).

See also Gorea v. Gillette Co., No. 05-2425 MP, 2005 WL 2373440, at *1 (W.D. Tenn. Sept. 26, 2005) (staying proceedings and explaining that "[a]ny prejudice to [plaintiffs] resulting from a stay would be minimal, whereas without a stay, the burden on [defendant] of having to respond to the complaint and motion for class certification, as well as having to potentially engage in limited discovery on class certification issues, would be significant. Moreover, the court would have to use judicial resources in making rulings on the motion for class certification and related class discovery disputes in a case over which it might ultimately lose jurisdiction.").

B. The Policies Underlying The FAA Weigh Strongly In Favor Of Staying Litigation Proceedings

The policies underlying the Federal Arbitration Act ("FAA"), 9 U.S.C. §§ 1 *et seq*., also support staying this litigation pending a ruling on Uber's Motion to Compel. As the Supreme Court explained in *Moses H. Cone Mem'l Hosp. v. Mercury Constr. Corp.*, 460 U.S. 1, 22 (1983), it was "Congress' clear intent, in the Arbitration Act, to move the parties to an arbitrable dispute out of court and into arbitration as quickly and easily as possible." The FAA provides two parallel devices for enforcing an arbitration agreement: a stay of litigation in any case raising a dispute referable to arbitration, 9 U.S.C. § 3, and an affirmative order to engage in arbitration, 9 U.S.C. § 4.

Here, Plaintiff attempts to saddle Uber with the burden of expending resources on continued litigation when the policies underlying the FAA militate resoundingly against litigating the dispute in court rather than in arbitration. Because the case at bar is "referable to arbitration" (9 U.S.C. § 3), extensive proceedings in this Court are unwarranted. *Realsec, Inc. v. Andeantrade, S.A.*, No. 15-20958-CIV, 2015 WL 7573868, at *2 (S.D. Fla. Nov. 24, 2015) ("A prime objective of an agreement to arbitrate is to achieve 'streamlined proceedings and expeditious results.'") (citing *Preston v. Ferrer*, 552 U.S. 346, 357-58 (2008) (citing *Mitsubishi Motors Corp. v. Soler Chrysler--Plymouth, Inc.*, 473 U.S. 614, 633 (1985)); and *Crawford v. Saks & Co.*, No. CV-H-14-3665, 2016 WL 3090781, *9 (S.D. Tex. June 2, 2016) (summarizing authorities holding that conditional certification of FLSA claims is not appropriate where an agreement to arbitrate exists).

C. A Stay Will Not Prejudice Plaintiff, But Uber Will Suffer Prejudice By Being Forced To Litigate Plaintiff's Arbitrable Claims

A stay of this litigation while the Court addresses Uber's Motion to Compel will not prejudice Plaintiff. To the contrary, it is more efficient for Plaintiff to await a ruling on this threshold issue because, if the case is sent to arbitration (as expected), much of the pending proceedings will be rendered moot.

On the other hand, Uber will be prejudiced if it is required to engage in costly and time-consuming proceedings prior to resolution of the arbitration issue presented in its Motion to Compel. Requiring Uber to expend potentially unnecessary time, effort, and expense litigating an issue that could (and likely will) become moot is the definition of prejudice. As the Eleventh Circuit held in *Blinco*, proceeding with litigation when the parties agreed to arbitrate is contrary to the policy behind the FAA:

> By providing a party who seeks arbitration with swift access to appellate review, Congress acknowledged that ***one of the principal benefits of arbitration, avoiding the high costs and time involved in judicial dispute resolution, is lost if the case proceeds in both judicial and arbitral forums***. If the court of appeals reverses and orders the dispute arbitrated, then the costs of the litigation in the district court incurred during appellate review have been wasted and the parties must begin again in arbitration.

Blinco, 366 F.3d at 1251 (emphasis added).

III. CONCLUSION

For all of the foregoing reasons, Uber respectfully submits that there is good cause for a stay of these proceedings pending disposition of Uber's Motion to Compel Arbitration.

CERTIFICATE OF COUNSEL

Pursuant to S.D. Fla. L. R. 7.1(A)(3), on September 18, 2017, Uber's counsel has made a good faith attempt to communicate with Plaintiff's counsel regarding the relief requested herein. In doing so, Uber's counsel provided Plaintiff's counsel with a copy of Plaintiff's arbitration agreement and notified Plaintiff's counsel that federal courts that have found the agreement enforceable. To date, Plaintiff's counsel has neither denied that Plaintiff agreed to arbitrate his claims nor, as yet, suggested any other factual or legal basis to challenge enforcement of the arbitration agreement. Plaintiff's counsel also has not advised whether Plaintiff opposes the relief sought herein.

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