

**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.

**JOINT DISCOVERY PLAN AND JOINT SCHEDULING REPORT
PURSUANT TO LOCAL RULE 16.1(B)**

Plaintiff Jose Mejia (“Plaintiff”) and Defendant Uber Technologies, Inc. (“Uber” or “Defendant”) (collectively, the “Parties”) pursuant to Local Rule 16.1(b) and this Court’s Order Requiring Scheduling Report (ECF No. 9), file this Joint Scheduling Report and Joint Discovery Plan and, addressing discovery and other pretrial issues. .

**I. REPORT OF THE PARTIES’ CONFERENCE AND PROPOSED TIME
LIMITS PURSUANT TO LOCAL RULE 16.1(b)(2):**

Plaintiff’s Statement:

Plaintiff has sued Uber on behalf of a purported class of similarly situated persons, on a single-count Complaint pursuant to Florida Statute 790.251, also known as the “Preservation and Protection of the Right to Keep and Bear Arms in Motor Vehicles Act of 2008” (the “Statute”).

The Statute:

...is intended to codify the long-standing legislative policy of the state [of Florida] that **individual citizens have a constitutional right** to keep and bear arms, that they have a **constitutional right** to possess and keep legally owned firearms within their motor vehicles for self-defense and other lawful purposes, and that **these rights are not abrogated by virtue of a citizen becoming a customer, employee, or invitee of a business entity.**

Fla. Stat. 790.251(3) (emphases added).

The Statute also prohibits any public or private employer from conditioning employment on whether an employee or prospective employee has a lawful weapons permit.

It is Plaintiff's assertion that Uber's written policy of an across-the-board prohibition of its drivers in the United States to lawfully conceal-carry any firearms, and its record of terminating drivers who are found to conceal-carry not only violates Plaintiff's constitutional right to bear arms as defined under the Second Amendment of the Constitution of the United States of America, but in particular flies in the face of the Statute itself, a clear Florida law that codifies said right vis a vis Floridians with concealed-carry licenses who are on the roads working and/or driving to work, and who park in their employer's parking lots.

It is Plaintiff's assertion that not only are his constitutional rights under threat and jeopardy by a privately held company which has taken the position in the past that its drivers are nothing more than "independent contractors," but the constitutional rights of his fellow Floridians are, as well. If Uber's policies are allowed to stand, then it is Plaintiff's assertion that not only are his rights under the Second Amendment, and the Statute, not worth the papers they are printed on, but all of our citizens' constitutional rights, regardless of from whence they spring, are under threat of extinction. Uber's policies may become a roadmap for all other private industries to mimic and follow suit.

Defendant's Statement:

Uber disputes Plaintiff's allegations in their entirety.

Further, Uber disputes that this Court is the appropriate forum for this action and has filed a Motion to Compel Arbitration and Stay All Proceedings (“Motion to Compel”) (ECF No. 11) and Motion to Stay Proceedings Pending Determination of the Motion to Compel (“Motion to Stay”) (ECF No. 13).

Uber has filed this joint scheduling report as the Court has so ordered (ECF No. 9, 14), and, in so doing, does not waive its right to compel arbitration and to stay this matter. Courts in this District have upheld the same or identical arbitration provision contained in the Agreement. *See Richmond v. Uber Techs., Inc.*, No. 1:16-cv-23267-DPG, 2017 WL 416123 (S.D. Fla. July 29, 2016); *Lamour v. Uber Techs., Inc.*, No. 1:16-21449-CIV-MARTINEZ-GOODMAN, 2017 WL 878712 (S.D. Fla. Mar. 1, 2017); *Rimel v. Uber Techs., Inc. et al.*, No. 6:15-cv-2191, 2017 WL 1191384 (M.D. Fla. Aug. 4, 2016).

As noted in the Parties’ Stipulation of Stay Pending Arbitration Briefing, (ECF No. 11), the Parties have agreed that the Motion to Stay should be granted and that it may not necessary for this Court to enter a Scheduling Order.

Even in the unlikely event this Court were to deny the Motion to Compel, 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); *Baron v. Best Buy Co.*, 79 F. Supp. 3d 1350 (S.D. Fla. 1999).

A. Likelihood of Settlement.

Uber views Plaintiff's allegations as wholly unfounded and without any evidentiary support. Further, as stated above, Uber believes Plaintiff's claims are subject to binding arbitration.

Plaintiff, for his part, sees Uber's policies as an alarming overreach by private entities to further eviscerate what little constitutional rights we may have left. Plaintiff also disagrees with Uber regarding the applicability of binding arbitration to this case. The Parties do agree that arbitration is a threshold issue, however, before this case proceeds further.

Settlement is therefore unlikely at this time, but the Parties will attempt in good faith to resolve this matter and will notify the Court if they do so.

Should the court deny Uber's motions, the parties agree to hold a conference and select a mediator on or before **May 1, 2018**. The parties have agreed on a mediation deadline of **August 3, 2018**.

B. Likelihood of Appearance of Additional Parties:

It is unlikely that additional parties will be added to this litigation.

Proposed Time Limits to:

(i) **Join Parties and Amend Pleadings:**

- 1) The Parties agree that additional Parties, if any, shall be joined no later than **February 3, 2018**.
- 2) The Parties agree that all pleadings that have to be amended shall be amended no later than **February 17, 2018**.

(ii) **To File and Hear Motions**

1) Preliminary motions directed to the complaint

- a) Defendant's response to the Class Action Complaint shall be due within **fourteen (14) days** of any order from the Court denying Defendant's Motion to Compel.
- b) Briefings on said response shall proceed as provided for in Local Rule 7.1.
- c) Defendant's motion to stay discovery was filed on September 9, 2017, and was stipulated to in the Parties' Stipulation of Stay Pending Arbitration Briefing, (ECF No. 11).

2) Class Certification Briefing:

- a) Plaintiff's Motion for Class Certification shall be filed by no later than:

May 19, 2018 (Defendant's position (class certification motions typically are filed earlier in the case); or

December 31, 2018 (Plaintiff's position).

- b) Defendant's response shall be due by"

July 4, 2018 (Defendant's position)

February 1, 2019 (Plaintiff's position).

- c) Plaintiff shall file his reply by:

July 25, 2018 (Defendant's position)

February 20, 2019 (Plaintiff's position).

3) Filing and Hearing of Other Motions:

- a) The Parties agree that all dispositive pretrial motions and memoranda of law shall be filed and served no later than **May 1, 2019**.
- b) All motions *in limine* shall be filed and served in accordance with Local Rule 16.1(J).

(iii) **Discovery Plan (please see organizational chart attached as “Exhibit A” showing Defendant’s and Plaintiff’s proposals).**

Defendant’s Proposal:

The Defendant wishes that discovery should be conducted in three phases: Class discovery, Merits discovery, and Expert discovery. The parties agree that some discovery will be intertwined as it may relate to more than one of the aforementioned phases and each will use its best efforts to comply with its discovery obligations in good faith. However, if experts are utilized on class certification issues, it will be governed as set forth below.

- 1) Disclosures required by Fed. R. Civ. P. 26(a)(1).** The Parties hereby stipulate and agree that the initial disclosures set forth in Fed. R. Civ. P. 26(a)(1) will be made on or before **December 2, 2017**.
 - a) **Class discovery.** This phase of discovery will be completed on or before **April 18, 2018**.
 - b) **Merits Discovery.** This phase of discovery will be completed on or before **November 1, 2018**.
 - c) **Expert Discovery.**

1. Plaintiff's initial expert report(s), if any, on class certification issues is due on or before **February 1, 2018**. Defendant's rebuttal expert report(s) on class certification issues are due on or before **April 3, 2018**. Plaintiff's reply expert report, if any, on class certification issues is due on or before **June 1, 2018**.
 2. The Expert Report(s) of the party bearing the burden of proof on the issue on the merits to which any such report relates shall be served by **July 3, 2018**.
 3. Rebuttal Reports from either party on the merits shall be served on or before **August 16, 2018**.
 4. Expert Discovery shall conclude on or before **September 16, 2018**.
- d) **Whether changes should be made in limitations on discovery under the federal and local rules.** The Parties agree that no changes should be made in the limitations on discovery under the federal or local rules at this time. The parties reserve the right to request this Court to extend such deadlines should it become necessary to do so.

Plaintiff's Proposal:

The Plaintiff wishes that discovery should be conducted in two phases: Class & Merits (fact) discovery, and Expert discovery. Because all the Class members' data is presumably electronic, and due to the across-the-board written policy of Defendant that comprises the nature of this dispute, Plaintiff does not believe an extensive/involved class action discovery phase or motion practice is necessary for a proper adjudication of this case, and a general fact discovery period would be efficient. Furthermore, it is Plaintiff's contention that Defendant's 3-phase discovery proposal needlessly increases litigation costs for the parties (for example, by requiring multiple depositions of the same individual based on merits' or class'-based questions).

The parties agree that some discovery will be intertwined as it may relate to more than one of the aforementioned phases and each will use its best efforts to comply with its discovery obligations in good faith. However, if experts are utilized on class certification issues, it will be governed as set forth below.

1) **Disclosures required by Fed. R. Civ. P. 26(a)(1).** The Parties hereby stipulate and agree that the initial disclosures set forth in Fed. R. Civ. P. 26(a)(1) will be made on or before **December 2, 2017.**

e) **Fact discovery.** This phase of discovery will be completed on or before **August 1, 2018.**

f) **Expert Discovery.**

5. Plaintiff's initial expert report(s), if any, is due on or before **September 1, 2018.** Defendant's rebuttal expert report(s) are due on or before **October 1,**

2018. Plaintiff's reply expert report, if any, is due on or before **October 20, 2018.**

6. Expert Discovery shall conclude on or before **November 30, 2018.**

g) **Whether changes should be made in limitations on discovery under the federal and local rules.** The Parties agree that no changes should be made in the limitations on discovery under the federal or local rules at this time. The parties reserve the right to request this Court to extend such deadlines should it become necessary to do so.

D. Proposals for the formulation and simplification of issues, including the elimination of frivolous claims or defenses, and the number and timing of motions for summary judgment or partial summary judgment. The Parties will work in good faith to eliminate the presence of any frivolous issues. The parties propose that all motions for summary judgment or partial summary judgment shall be filed by **May 1, 2019.**

E. The necessity or desirability of amendments to the pleadings. The Parties agree that it is premature to address the issue of amendments to the pleadings as Uber has not responded the Complaint because it has a pending Motion to Compel and Motion to Stay, and discovery has not yet commenced. The Parties shall work in good faith to ensure that any necessary amendments are made in due course and in accordance with any rulings from the Court.

- F. The possibility of obtaining admissions of fact and of documents, electronically stored information or things which will avoid unnecessary proof, stipulations regarding authenticity of documents, electronically stored information or things, and the need for advance rulings from the Court on admissibility of evidence.** The Parties will endeavor to determine issues of fact to which there is no dispute and report same to the Court. Further, the Parties, in good faith, will attempt to stipulate as to the authenticity and admissibility of documents in both paper and electronic format.
- G. Suggestions for the avoidance of unnecessary proof and of cumulative evidence.** The Parties will attempt to review and eliminate duplicative documents and discovery in an effort to streamline this matter. The Parties anticipate that they will enter an ESI protocol later in this action, if necessary.
- H. Suggestions on the advisability of referring matters to a Magistrate Judge or master.** The Parties do not agree that any pre-trial matters may be referred to a Magistrate Judge.
- I. A preliminary estimate of the time required for trial.** The Parties anticipate seven to ten days for trial.
- J. Requested date or dates for conferences before trial, a final pretrial conference and trial.**
- (i) The parties agree that a final pre-trial conference be held on **August 1, 2019**, and a trial be held in the **fourth quarter of 2019**.

(ii) Plaintiff has requested a trial by jury, as is his right. Defendant opposes Plaintiff's entitlement to a trial by jury in this case as the Parties agreed to binding arbitration.

K. Any other information that might be helpful to the Court in setting the case for status or pretrial conference. The Parties do not believe that any other information would be helpful to the Court at this time.

Dated: September 29, 2017

Respectfully Submitted:

By: /s/ Beverly Virues
Beverly Virues

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