

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

FORT LAUDERDALE DIVISION

CASE NO. 17-cv-61617-BB

JOSE MEJIA, an individual, on behalf
of himself and all others similarly
situated,

Plaintiff,

vs.

UBER TECHNOLOGIES, INC., a
Delaware corporation,

Defendant.

**UNOPPOSED MOTION FOR EXTENSION OF TIME
TO RESPOND TO DEFENDANT'S MOTION TO COMPEL ARBITRATION**

Plaintiff Jose Mejia ("Mr. Mejia" or "Plaintiff"), on behalf of himself, an individual, and all others similarly situated, by and through undersigned counsel, hereby respectfully moves for an extension of time to respond to Defendant Uber Technologies, Inc.'s ("Uber's") Motion to Compel Arbitration and Stay All Court Proceedings and Accompanying Memorandum of Law In Support ("Motion to Compel Arbitration") [D.E. 11] and in support thereof, states as follows:

THE UNDERLYING CASE

1. This case arises out of Uber’s written policy prohibiting its drivers from carrying any firearms.¹ Unfortunately, not only does this policy violate the Second Amendment to the United States Constitution,² it brazenly flies in the face of a Florida statute, the Preservation and Protection of the Right to Keep and Bear Arms in Motor Vehicles Act of 2008 (the “Act”), which states that the legislative intent of the Florida state legislature is thus:

(3) LEGISLATIVE INTENT; FINDINGS.—This act is intended to codify the long-standing legislative policy of the state 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**. It is the finding of the Legislature that **a citizen’s lawful possession, transportation, and secure keeping of firearms and ammunition within his or her motor vehicle is essential to the exercise of the fundamental constitutional right to keep and bear arms and the constitutional right of self-defense**. The Legislature finds that protecting and preserving these rights is **essential to the exercise of freedom and individual responsibility**. The Legislature further finds that **no citizen can or should be required to waive or abrogate his or her right to possess and securely keep firearms and ammunition locked within his or her motor vehicle by virtue of becoming a customer, employee, or invitee of any employer or business establishment within the state**, unless specifically required by state or federal law.

See Fla. Stat. 790.251(3) (emphasis added).

2. It is entirely unclear, given these laws, how such a policy of Uber can be allowed to stand

¹ As far as Mr. Mejia knows, Uber is not disputing the allegation that it does indeed have this prohibition in place. See Uber Firearms Prohibition Policy, at <https://www.uber.com/legal/policies/firearms-prohibition-policy/en/> which states that “...Uber prohibits riders and drivers from carrying firearms of any kind in a vehicle while using our app.* Anyone who violates this policy may lose access to Uber.” (last accessed October 2, 2017).

² The Second Amendment to the United States Constitution, which protects the right of the people to keep and bear arms, was adopted on December 15, 1791, as part of the first ten amendments contained in our Bill of Rights. The Amendment, as ratified by the 13 original sovereign states and authenticated by Thomas Jefferson, then Secretary of State, says: **A well regulated militia being necessary to the security of a free state, the right of the people to keep and bear arms shall not be infringed.** (emphasis added).

ARBITRATIONS IN GENERAL

3. Nonetheless, Uber is taking the position that its Firearms Prohibition Policy is entirely legal and proper, and is attempting to exercise its right to defend itself against Mr. Mejia not in court of law, but in a private arbitration proceeding.

4. As this Court well knows, arbitration is a privately-run vehicle where for-profit “arbitrators” sell their adjudicating services to the parties in dispute at hourly rates. None are actual sitting judges, appointed by the people or their elected representatives; most are private attorneys or retired jurists. See, for example, the American Arbitration Association’s (“AAA”) fee schedule, which states that a “Neutral Arbitrator’s Compensation” for “Arbitrators serving on a case with an in-person or telephonic hearing will receive compensation at a rate of **\$1,500 per day.**” https://www.adr.org/sites/default/files/Consumer%20Fee%20Schedule_0.pdf (emphasis in original). This rate is a minimum; the fee schedule, *supra*, further states that the AAA “reserves the right to raise the daily or per-case arbitrator compensation rate.” This rate can also get tripled, if the arbitration is before a panel of three arbitrators, each of whom is billing at his or her hourly rate for the time spent hearing and judging the case.

5. As this Court and Uber’s attorney Mr. Edward Mullins also know very well,³ these high-end hourly rates are generally split by the parties. In other words, for the privilege of

³ See legal profile of Edward Mullins, Esq., counsel for Uber, which states: “He also serves as arbitrator and mediator, and is a fellow of the Chartered Institute of Commercial Arbitrators and is a member of the commercial panel of arbitrators for the American Arbitration Association. He has served as arbitration counsel and trial counsel in international and trial disputes throughout the country.” <https://www.reedsmith.com/en/professionals/m/mullins-edward-m> (last accessed October 2, 2017). Mr. Mullins also volunteered the information that he was an arbitrator on a meet-and-confer call on September 27, 2017.

having his case heard by an arbitrator, a litigant like Mr. Mejia, a part-time Uber driver, would presumably be paying \$750.00 A DAY to a private arbitrator.

6. Arbitration proceedings are NOT necessarily open to the public, unlike court hearings and trials. For example, Rule 25 of the AAA says:

R-25. Attendance at Hearings

The arbitrator and the AAA shall **maintain the privacy of the hearings** unless the law provides to the contrary. Any person having a direct interest in the arbitration is entitled to attend hearings. The arbitrator shall otherwise have the power to require the exclusion of any witness, other than a party or other essential person, during the testimony of any other witness. **It shall be discretionary with the arbitrator to determine the propriety of the attendance of any other person.**

See page 21 of <https://www.adr.org/sites/default/files/Commercial%20Rules.pdf> (emphasis added) (last accessed October 2, 2017).

7. In the instant case, should it be arbitrated under Rule 25 of the AAA, Mr. Mejia would be entitled to attend his arbitration hearing, as a person “having a direct interest in the arbitration.”⁴ However, it is not clear if anyone else would be permitted to attend these hearings, and undersigned counsel would hazard a guess that Uber would oppose opening up any arbitration proceedings to the public.⁵

THE IMPORTANCE OF THE ISSUES AT STAKE

8. The conflict that has bubbled up at this early stage of the instant litigation is one that can be stated thusly: where do we draw the line in the push-pull between constitutional rights, the power and scope of state laws, and access to our judicial system on one hand, versus

⁴ Plaintiff and Plaintiff’s counsel appreciate the AAA’s grace in recognizing that there would be something not quite kosher, to put it mildly, about ruling on Mr. Mejia’s case while simultaneously barring his attendance. It is unclear, in an age where our rights and the laws that codify them are under attack, how long even this AAA right of the party’s attendance is going to last.

⁵ For an illuminating look at how the corporate defense bar views with great favor the confidential, private, closed-door nature of arbitrations, see “The Confidentiality of Arbitration Proceedings,” written by two Jones Day attorneys Samuel Estreicher and Steven C. Bennett. http://www.jonesday.com/files/Publication/3c7c5ff7-ec4a-4b01-979a-6960d29c663f/Presentation/PublicationAttachment/58f159e4-8b12-4012-9532-241147d2b4c9/EstreicherBennett_NYLJ_081308.pdf (last accessed October 2, 2017).

the right and freedom of private parties to contract to enter into agreements to have their disputes ruled upon by an adjudicator of their own choosing (in this case, arbitration) on the other?

9. In a meet-and-confer with Uber's counsel, attorneys for both sides agreed that this is a threshold issue that needs to be resolved before the parties, and the Court, delve into the merits of the underlying case.

10. Plaintiff's counsel would also submit that this threshold issue is one of great public importance, that may have ramifications that go far beyond this one case involving an individual's stand to protect his constitutional and statutory right to lawfully carry a gun against the encroachment of private enterprise. The issue of Uber's attempt to enforce arbitration has little to do with the exact underlying rights at stake, and it is not difficult to see that this threshold issue can just as easily encompass disputes over a person's rights to, and scope of, freedom of speech (Amendment I), security against unreasonable searches and seizures (Amendment IV), or myriad other rights.

11. In other words, this is not simply a "gun case." It is a case at heart about a person's security in his constitutional and statutorily-given rights.

12. Despite the importance of this case and the issues at stake, undersigned counsel is not aware of any other law firm in the entire state of Florida which has filed a similar law suit ("copycat" lawsuits, in class action parlance).

PLAINTIFFS' COUNSEL AND THE RELIEF THEY ARE SEEKING IN THE INSTANT MOTION

13. Mr. Mejia's attorneys, the law firm of Beck & Lee Trial Lawyers, is a two-partner law firm located in south Miami-Dade. The attorneys hired an associate this year.⁶ In addition to the three attorneys, Beck & Lee employs one para-professional.⁷

14. Mr. Jared H. Beck, on whom the bulk of the responsibility of responding to Uber's Motion to Compel will fall, is currently unavailable until the end of October 2017 to turn his full attention to this case, as he is currently writing an approximately 50,000-word book on an incredibly compressed time schedule.⁸

15. One of the benefits of this book-writing project is that the author royalty proceeds will assist undersigned attorneys to continue to take cases of great public importance, such as the instant case against Uber.⁹ As the Court and all parties may surmise, Plaintiff has hired his counsel on a contingency basis, as is S.O.P. in class actions – so there will be no income generated for undersigned counsel throughout the duration of this case, and quite possibly, even after its conclusion, unless they are successful in achieving a satisfactory result.

16. Therefore, undersigned counsel seeks an enlargement of time, up to and including November 30, 2017, to respond to Uber's Motion to Compel Arbitration, to allow Plaintiff's

⁶ Ms. Beverly Virues, U. Miami Law School, J.D. 2015. *See* http://www.beckandlee.com/professionals/beverly_virues.html

⁷ Plaintiff's co-counsel Mr. Antonino Hernandez is a solo practitioner in Miami. His mother's funeral was this past Saturday.

⁸ The publisher is Skyhorse Publishing, Inc. *See* <https://www.facebook.com/DNCfraudlawsuit/videos/858192937676849> starting at 1:45 (if the Court encounters problems viewing the video, we recommend using an alternative browser to Internet Explorer, such as Firefox or Google Chrome).

⁹ The Plaintiff, Mr. Mejia, is a prior client of Beck & Lee. Undersigned attorneys first represented Mr. Mejia in a police brutality case against the City of Hialeah. That case ended in a settlement. Mr. Mejia turned to Beck & Lee again for legal counsel when he disputed Uber's Firearms Prohibition Policy; Beck & Lee agreed to take his case, resulting in the instant class action lawsuit.

counsel adequate time after his book manuscript is completed, to research and fully and adequately brief the issues for the Court.

17. This motion is not made for purposes of delay. It will prejudice no one. Uber does not oppose said relief. Interests of justice support the granting of this motion.

WHEREFORE, Plaintiff Jose Mejia seeks an enlargement of time, up to and including November 30, 2017, to file his response to Defendant Uber Technologies, Inc.'s Motion to Compel Arbitration and Stay All Court Proceedings and Accompanying Memorandum of Law In Support. A proposed Order is attached as **Exhibit A**.

DATED: October 2, 2017

RESPECTFULLY SUBMITTED,

/s/ Elizabeth Lee Beck

By: Elizabeth Lee Beck

BECK & LEE TRIAL LAWYERS

JARED H. BECK

Florida Bar No. 20695

ELIZABETH LEE BECK

Florida Bar No. 20697

BEVERLY VIRUES

Florida Bar No. 123713

Corporate Park at Kendall

12485 SW 137th Ave., Suite 205

Miami, Florida 33186

Telephone: (305) 234-2060

Facsimile: (786) 664-3334

jared@beckandlee.com

elizabeth@beckandlee.com

beverly@beckandlee.com

ANTONINO G. HERNANDEZ, P.A.

ANTONINO G. HERNANDEZ

Florida Bar No. 164828

4 SE 1st St., 2nd Floor

Miami, Florida 33131

Telephone: (305) 282-3698

Facsimile: (786) 513-7748

hern8491@bellsouth.net

Attorneys for Plaintiff

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing instrument was e-filed with the Clerk of the Court using CM/ECF, this 2nd of October 2017.

By: /s/ Elizabeth Lee Beck
Elizabeth Lee Beck