

**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 RESPONSE TO ORDER TO SHOW CAUSE AND MOTION REQUESTING
THE COURT TO SELECT THE MEDIATION DATE FOR THIS CASE**

Plaintiff Jose Mejia (“Plaintiff”) and Defendant Uber Technologies, Inc. (“Uber” or “Defendant”) (collectively, the “Parties”) pursuant this Court’s Order to Show Cause (ECF No. 27), file this Joint Response, and state as follows:

1. Plaintiff’s Statement:

- There is no stay in this case, and a trial schedule has been issued by the Court. Trial is currently set for next year. [D.E. 19].
- Plaintiff and Plaintiff’s counsel have grasped the law and the facts of this case, and are ready, willing and able to mediate in January 2018, and do not need another 9 months to “critically investigate and evaluate Plaintiff’s putative class action claims before participating in mediation” (see Defendant’s Statement, *infra*).

- Upon this Court's Order of November 1, 2017, undersigned Plaintiff's counsel reached out to Uber's counsel to schedule mediation and circulated dates in January 2018. Those dates were summarily rejected, on the basis of them being too early.
- Plaintiff seeks to have the mediation set for **January 23, 24 or 25, 2018**, and Defendant's counsel has stated that they and the Defendant are available on any of those dates for mediation. *See* email chain, attached as **Exhibit A**.
- In the interest of judicial economy and a quick resolution to this very simple and straightforward case (*see* Complaint, D.E. 1), Plaintiff respectfully requests that this Court set the mediation for this case for one of the aforementioned dates in January.¹ Defendant Uber should be able to assess the legal merits of this case and resolve this matter at a January mediation, if it wishes, without exhausting the discovery process. Although Plaintiff and Plaintiff's counsel appreciate Defendant's concern for the parties' time and financial resources (*see infra*), given that the parties have such severely disparate said resources, a good, fair, class-wide settlement early on would be the MOST efficient and judicious use of everyone's resources—including Plaintiff's.
- A joint proposed Order is attached for the Court's review and entry as **Exhibit B**, with the date left blank (for the Court's setting). All parties are available for both the January and the August dates proposed in this Joint Response.
- Plaintiff believes that Defendant's position to compel arbitration in this case is meritless (*see* D.E. 20, 21, 22).

¹ If a stay were entered in this case at some future time, then all pending activity would likewise be stayed. However, there is NO such stay in place at this time and Plaintiff does not wish to litigate as though there were one in place.

2. Defendant's Statement:

Uber submits that mediation should be set later in this putative class action litigation at the end of the mediation schedule, in August 2018, especially due to the pending motion to compel arbitration. The deadline to mediate is **August 29, 2018**. This is consistent with the **parties' suggested mediation deadline of August 2018**. DE 16. Yet, Plaintiff nonetheless insists on a mediation in January 2018, **seven months earlier than the time he had agreed to as a deadline**.

To this end, Uber has confirmed that the Clerk-appointed mediator David Litcher is available for mediation on August 14, 15 and 16 of 2018. Plaintiff's counsel represents that Plaintiff is also available on these dates.

A later mediation date makes sense for many reasons.

First, Uber has a pending Motion to Compel Arbitration and Stay all Proceedings ("Motion to Compel") (ECF No. 11), which should be decided before the parties participate in mediation. As outlined in Uber's Motion to Compel, Judges in this District have enforced the same arbitration provision as contained in the agreement Plaintiff entered into when he signed up to use the Uber App. *See Richemond 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). Mediation should be postponed until later in this litigation to allow sufficient time for this Court to decide the motion to compel arbitration. It would be inconsistent with Plaintiff's contractual agreement to arbitrate, and a misuse of the Court's and the parties' resources for the parties to engage in further litigation while the Court resolves Uber's Motion to Compel. *See e.g., Rimel*, 2017 WL 1191384

(staying deadline for class certification motions pending disposition of Uber's motion to compel arbitration).

In fact, Uber moved to stay this action pending a determination of the arbitration motion. DE 13. Plaintiff **has agreed** that that motion should be granted. DE 16. Agreeing to stay merits discovery while at the same time pushing for an early mediation is irreconcilable and will result in an unworkable situation.

Second, if for whatever reason, the arbitration motion is denied, Uber will appeal that ruling. The Eleventh Circuit has required all proceedings at the trial court level be stayed pending an appeal of an order denying a motion to compel arbitration. 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); *see also 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). Given that three judges in this District have enforced effectively the same clause, *see supra*, no appeal by Uber, if one is necessary, would be frivolous.

Third, if this case does not end up in arbitration (and it should) and the case is not stayed pending any adverse ruling on the arbitration motion (and it must be), Uber will require sufficient time to critically investigate and evaluate Plaintiff's putative class action claims before participating in mediation. Successful mediation requires preparation. When the parties are prepared and the mediator is prepared, the likelihood of a negotiated resolution increases substantially. That is certainly true in a putative class action. While Plaintiff contends that the issues are simple and that he and his counsel are ready to settle a state-wide class action with little or no discovery, Uber is not prepared to do so. Holding mediation in January 2018 will not

provide Uber sufficient time to prepare for mediation after resolution of the arbitration issues.

Accordingly, holding mediation in January will be wasteful of the parties' time and financial resources. In short, even if Plaintiff and his counsel are to be believed that they need little or no preparation prior mediation, Uber will not be able to engage in mediation meaningfully without such preparation and thus the mediation likely will not be successful.

Dated: November 6, 2017

Respectfully Submitted:

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