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.

PLAINTIFF'S RESPONSE IN OPPOSITION TO DEFENDANT'S MOTION FOR PROTECTIVE ORDER AND TO STAY ALL DISCOVERY PROCEEDINGS

Plaintiff, JOSE MEJIA ("Plaintiff" or "Mejia"), by and through his undersigned attorneys, on behalf of himself and all those similarly situated, hereby files his response in opposition to Defendant's Motion for Protective Order and to Stay all Discovery Proceedings Pursuant to Parties' Agreement Pending Determination of Motion to Compel Arbitration [D.E. 31] ("Second Motion for Stay").

MEMORANDUM OF LAW AND FACTS

A. Procedural History of the Case

On September 20, 2017, Defendant filed a Motion to Stay Proceedings ("First Motion to Stay") [D.E. 13] and also moved to compel arbitration [D.E. 11] ("Motion to Compel Arbitration"). On September 28, 2017, after meeting and conferring, Plaintiff agreed with

Defendant to stay this litigation for a limited time – up and until the Court ruled on Defendant's Motion to Compel Arbitration ("Stipulation") [D.E. 15].

HOWEVER, it is important to note the following has occurred in this case: On September 5, 2017, the Court issued an Order Requiring a Scheduling Report. Since then, Plaintiff had diligently attempted to confer with Defendants regarding the parties' Rule 16 conference, and to submit a trial stipulation as directed. Despite the September 5 Order, Defendant refused to confer with Plaintiff, confidently taking the position that Defendant's arbitration clause moots any further litigation activity in this case. *See* e-mail from Mr. White, attached hereto as **Exhibit A** ("In any event, your client signed a binding, mandatory arbitration agreement which we will be enforcing. As such we will be objection [sic] to participating in any Rule 16 conference as inconsistent with the arbitration clause.").

Defendant's unilateral position stymied Plaintiffs in his attempts to meet the September 5 Order's directives to jointly submit a trial schedule by September 22, 2017, and is the likely cause of this Court's September 26, 2017 *sua sponte* Order directing the parties to submit a joint scheduling report by September 29, 2017—with which the parties complied [D.E. 16].

B. <u>Plaintiff Vigorously Opposes Defendant's Motion to Compel Arbitration</u>

Despite Defendant's posture suggesting that arbitration is inevitable in all of its litigation with its drivers, that cannot be further from the actual case law as applied to this instant matter. As discussed in Plaintiff's opposition in detail, a virtually unreadable, electronic "arbitration clause" is not enough to strip an individual of his or her fundamental constitutional rights—as is the case here. *See* D.E. 20, 21, 22. This case is unique in that it involves fundamental, Constitutional rights—a paramount issue that Defendant skirts.

As a result, Defendant's desire for a stay pending ruling on its Motion to Compel Arbitration, although agreed to initially by Plaintiff prior to the entry of a trial order by this

Court, is not necessarily an efficient result, given that Plaintiff's position is that arbitration would be unenforceable in this case in any event.

C. The Stipulation for Stay is Mooted by the Trial Order, and Defendant's Second Motion for Stay is Nothing More than a Repeat Attempt to Circumnavigate the Trial Order and to Unreasonably Delay this Case

Defendant repeatedly mentions that the parties agreed to a stay. This is true—at a past point in time. At this juncture, however, it is Plaintiff's position that any such stipulation is mooted by the Court's entry of a trial calendar. The Court did *not* enter the Stipulation. The Court did *not* grant Defendant's Motion to Stay. What this Court has done, is:

- Issued 6 Orders, 2 *sua sponte* [D.E. 9, 14, 18, 26, 27, and 29].
- Set this case on a trial calendar. *See* Order Setting Trial and Pre-Trial Schedule, Requiring Mediation, and Referring Certain Matters to Magistrate Judge ("Trial Order"). [D.E. 19].
- Ordered the parties to a scheduled mediation [D.E. 29].

To Plaintiff, it is abundantly clear that the dates in the Trial Order should be followed, the Stipulation submitted by the parties is mooted, and there is no ambiguity in the Court's directives to the parties. As such, to diligently comply with the April 20, 2018 and August 14, 2018 class and fact discovery deadlines, Plaintiff has served requests for production, responses to which are due today from Defendant.

Instead, Defendant has *yet again* filed for another stay, again citing the (now mooted) Stipulation. As pointed out by Plaintiff,[1] the Court has already ruled on the Stipulation—a Trial

[1] Undersigned counsel had a telephonic meet-and-confer with Ms. Hannah Sorcic, counsel for Defendant, on November 28, 2017. During the call, Ms. Sorcic suggested that all counsel jointly call the court and request to have the *magistrate judge* assigned to this matter resolve the pending stay issue. Ms. Beck explained that as far as Plaintiff was concerned, there is no pending "stay" issue, the trial order is clear and unambiguous, and believed that such an action by the parties would be improper. Upon termination of the call, Defendant thereafter filed its Second Motion for Stay.

Order has been entered, and Defendant's re-submission of a mooted stipulation is prejudicing Plaintiff's efforts to litigate this case. Furthermore, despite Defendant's position that their Motion to Stay will be granted, Plaintiff cannot be expected to operate under the assumption that it will be granted and ignore the trial schedule set by the Court.

D. Whether a Stay Should be Entered in This Case is Squarely Within the Court's Discretion, and Has Already Been Ruled Upon

Defendant's position seems to be that the Court *will* stay the case, and therefore the parties are free to disregard the Court's deadlines. This is in direct contradiction to the Federal Rules of Civil Procedure, which provide that only the Court can modify schedules issued through a scheduling order, and then only with good cause. Fed. R. Civ. P. 16(b)(4); *Goode v. Celebrity Cruises, Inc.*, 16-24131-CIV, 2017 WL 4347133, at *3 (S.D. Fla. Sept. 29, 2017) (parties cannot modify a trial schedule without court permission).

It is also undisputed that this Court, and not Defendant, has the power and discretion to stay, or propel this case on a trial calendar. In *Mesa v. Pennsylvania Higher Educ. Assistance*, 16-24577-CIV, 2017 WL 3438914, at *2 (S.D. Fla. Aug. 10, 2017), this District acknowledged the broad discretion of the trial court in managing its docket, citing: *Clinton v. Jones*, 520 U.S. 681, 706 (1997) (the court "has broad discretion to stay proceedings as an incident to its power to control its own docket"); *Chrysler Int'l Corp. v. Chemaly*, 280 F.3d 1358, 1360 (11th Cir. 2002) ("At the outset, we stress the broad discretion district courts have in managing their cases."); *Johnson v. Bd. of Regents of Univ. of Georgia*, 263 F.3d 1234, 1269 (11th Cir. 2001) ("[W]e accord district courts broad discretion over the management of pre-trial activities, including discovery and scheduling."); *Patterson v. United States Postal Serv.*, 901 F.2d 927, 929 (11th Cir. 1990) ("[m]atters pertaining to discovery are committed to the sound discretion of the district court.").

The local rules of this Court are clear on this point: "…the parties are required to comply with any pretrial orders by the Court and the requirements of this Local Rule including, but not limited to, orders setting pretrial conferences and establishing deadlines by which the parties' counsel must meet, prepare and submit pretrial stipulations, complete discovery, exchange reports of expert witnesses, and submit memoranda of law and proposed jury instructions." L.R. of S.D. of FL. 16(b)(6).

Plaintiff believes this is a frivolous motion which amounts to little more than a motion for reconsideration of the trial schedule set by this Court or perhaps more aptly, a motion to modify the trial schedule. Defendants have filed a motion to stay, sought our approval (which we agreed to at the time) to file a joint stipulation for stay, and now have filed motion for protective order pursuant to a stay that does not exist.

CONCLUSION

For the foregoing reasons, the Court should deny Defendant's Second Motion for Stay.

DATED: December 26, 2017

RESPECTFULLY SUBMITTED,

/s/ Elizabeth Lee Beck
By: Elizabeth Lee Beck

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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 26th of December 2017.

By: /s/ Elizabeth Lee Beck
Elizabeth Lee Beck