

NO. 15-16178, 15-16181, 15-16250

**IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

ABDUL KADIR MOHAMED, et al.,
Plaintiff-Appellees,

v.

UBER TECHNOLOGIES, INC. et al.,
Defendant-Appellant

No. 15-16178, 15-16181, 15-16250

No. C-14-5200, C-14-5241-EMC

N. Dist. Cal., San Francisco

Hon. Edward M. Chen presiding

**MOTION TO INTERVENE AND TO STAY APPEAL OF RELATED CASE,
APPEAL NO. 15-16178, 15-16181, 15-16250,
BY DOUGLAS O’CONNOR, ET AL. AND HAKAN YUCESoy, ET AL.**

Shannon Liss-Riordan
Adelaide Pagano
LICHTEN & LISS-RIORDAN, P.C.
729 Boylston Street, Suite 2000
Boston, MA 02114
(617) 994-5800

*Counsel for Prospective Intervenors Douglas
O’Connor, et al. and Hakan Yucesoy, et al.*

Plaintiffs-Appellees O'Connor et al (a certified class of Uber drivers in California¹) and Yucesoy et al (a putative class of Uber drivers in Massachusetts) (collectively, "Plaintiffs") respectfully move this Court to permit them to intervene in the instant appeal, Abdul Mohamed v. Uber Technologies, Inc., et al., Ninth Cir. Appeal No. 15-16178² ("the Mohamed appeal"), and request that this Court stay the pending appeal in this case and postpone the upcoming argument scheduled for June 16, 2016.³ In support of their Motion to Intervene, Plaintiffs state that the Mohamed case presents issues that are intertwined with the O'Connor and Yucesoy cases (related to the validity of Uber's 2013 and 2014 arbitration clauses)

¹ Plaintiffs' counsel no longer represent Douglas O'Connor himself, although Mr. O'Connor was not certified as a lead plaintiff in the class action case bearing his name (and he was included in a category of putative class members who were excluded from the class). However, because the case still bears his name, Plaintiffs continue to refer to that case (and the class their counsel represents) as the O'Connor case and class.

² This case has been consolidated with Mohamed v. Uber Technologies, Inc., et al., Ninth Cir. Appeal No. 15-16250, and Gillette v. Uber Technologies Inc. et al., Ninth Cir. Appeal No. 15-16181. For simplicity's sake Plaintiffs refer to these consolidated appeals as "the Mohamed appeal."

³ On May 17, 2016, this Court granted a stay of Appeal No. 14-16078 pending in the O'Connor case. See Dkt. 72. However, this appeal is listed on the schedule of cases to be argued on June 16, 2016. Because of the stay, this appears to be an administrative error, and Plaintiffs request that the Court remove the O'Connor appeal from the schedule for that date.

and that the interests of justice and judicial efficiency favor allowing them to intervene here and move for a stay.⁴

Plaintiffs in the O'Connor and Yucesoy cases have reached a proposed class action settlement with Uber, and the plaintiffs' motion for preliminary approval was recently heard before the District Court on June 2, 2016, and is now pending. See O'Connor, Civ. A. No. 13-3826 (N.D. Cal.), Dkt. 518, Dkt. 680. Because of the interrelationship between the related Mohamed appeal and the O'Connor and Yucesoy cases, and in light of the posture of the O'Connor and Yucesoy cases, justice would be served by temporarily delaying the argument in the Mohamed appeal, at least until the District Court rules on the O'Connor Plaintiffs' Motion for Preliminary Approval and, if the Court determines that any revisions might need to

⁴ This Court has recognized that “[b]y allowing parties with a *practical* interest in the outcome of a particular case to intervene, we often prevent or simplify future litigation involving related issues; at the same time, we allow an additional interested party to express its views before the court.” United States v. City of Los Angeles, Cal., 288 F.3d 391, 398 (9th Cir. 2002) (emphasis in original). Although the Federal Rules of Civil Procedure only apply to the district courts, Rule 24 provides guidance to the appellate courts in deciding whether to allow new parties to enter a case. California Credit Union League v. City of Anaheim, 190 F.3d 997, 998-99 (9th Cir. 1990). Fed. R. Civ. P. 24 reflects a flexible policy of allowing intervention when it is in the interest of justice and judicial efficiency. See In re Benny, 791 F.2d 712, 721 (9th Cir. 1986) (“Courts generally construe Rule 24 liberally in favor of potential intervenors”); Greene v. United States, 996 F.2d 973, 979 (9th Cir. 1993) (Reinhardt, dissenting) (noting that amendments to Rule 24 “broadened the rule to allow more applicants to claim the right to intervene”). As set forth further herein, the O'Connor and Yucesoy plaintiffs have a clear interest in this appeal that may not be adequately represented by the parties in this case, as their prospective settlement efforts could be hampered by allowing this appeal to go forward.

be made to the settlement in order to obtain preliminary approval, the parties determine whether further settlement negotiations are necessary or feasible.

Given this posture, a brief stay of the Mohamed appeal would serve the interests of justice and would not prejudice the parties in Mohamed. Given that the Mohamed case has been proceeding in the shadow of this appeal for the last year, a brief delay will not materially alter the parties' situation.⁵ Moreover, "in light of the strong judicial policy that favors settlements, particularly where complex class action litigation is concerned," Class Plaintiffs v. City of Seattle, 955 F.2d 1268, 1276 (9th Cir. 1992), it would be preferable for the Court to delay consideration of the Mohamed appeal rather than risk jeopardizing the proposed settlement in the O'Connor and Yucesoy cases, which was and continues to be the result of a very

⁵ Significantly, the parties to Mohamed have recently informed the District Court that they have settled their case. See Mohamed, Civ. A. No. 3:14-5200-EMC (N.D. Cal.), Dkt. 175. However, that settlement (which has not yet been filed or made public) contemplates that this appeal in their case will proceed, as the parties' notice to the District Court states that "some terms of the settlement agreement [are] contingent upon the outcome of Uber's pending appeals." Id. at 3. Plaintiffs here submit that such an agreement is not proper. Courts are not permitted to issue advisory decisions. Rhoades v. Avon Products, Inc., 504 F.3d 1151, 1157 (9th Cir. 2007) (noting that "federal courts must take care to ensure the presence of an actual case or controversy, such that the judgment does not become an unconstitutional advisory opinion"); State ex rel. Atl. Richfield Co. v. Dep't of Health & Env'tl. Scis. of State of Mont., 9 F.3d 1553 (9th Cir. 1993) ("We are not permitted to write advisory opinions to assist counsel in planning their litigation strategy"). The appeal in Mohamed should not proceed in the face of a settlement of that case, as well as in the face of the risk that the appeal could interfere with the settlement of the O'Connor and Yucesoy cases.

delicate balance struck by the parties after years of highly contentious litigation. It is very possible that further negotiation may be necessary for the parties to obtain approval and reach a final settlement of the O'Connor and Yucesoy cases. Should the District Court deny preliminary approval of the proposed agreement in its current form, the utility of further negotiations will have to be weighed by both sides; however, a decision or leaning one way or the other in the Mohamed appeal will undoubtedly complicate any further negotiations and could effectively prevent ultimate resolution of these cases.⁶ As such, Plaintiffs respectfully request that their Motion to Intervene and to Stay Proceedings be granted.

“A court may stay proceedings as part of its inherent power ‘to control the disposition of the causes on its docket with economy of time and effort for itself, for counsel, and for litigants.’” Pesticide Action Network N. Am. v. U.S. Env'tl. Prot. Agency, 2008 WL 5130405, *4 (N.D. Cal. Dec. 5, 2008) (quoting Landis v. North Am. Co., 299 U.S. 248, 254 (1936)). This power includes the Court’s authority to “enter a stay of an action before it, pending resolution of independent proceedings which bear upon the case.” Levy v. Certified Grocers of California, Ltd., 593 F.2d 857, 863 (9th Cir.1979). “In determining whether to stay an action,

⁶ The Mohamed appeal addresses the District Court’s decision to invalidate Uber’s 2013 and 2014 arbitration clauses. Although the District Court relied on somewhat different reasoning to invalidate these clauses in its rulings in the O'Connor and Yucesoy cases, this Court’s ruling or leaning in Mohamed could have a substantial impact on the parties’ positions in the O'Connor and Yucesoy cases.

courts must weigh competing interests that will be affected by the granting or refusal to grant a stay.” LG Elecs., Inc. v. Eastman Kodak Co., 2009 WL 1468703, *1 (S.D. Cal. May 26, 2009); see also CMAX, Inc. v. Hall, 300 F.2d 265, 268 (9th Cir. 1962) (noting that “the competing interests which will be affected by the granting or refusal to grant a stay must be weighed” including “possible damage which may result ... the hardship or inequity which a party may suffer in being required to go forward, and the orderly course of justice...”).

Here, the balancing of interests favors a stay. The Mohamed parties will not be harmed or prejudiced by the requested stay, particularly given its brief duration (and given the fact that the Mohamed parties have resolved their case, see note 4). The District Court heard the O’Connor and Yucesoy Plaintiffs’ Motion for Preliminary Approval on June 2, 2016, see Dkt. 680, and is expected to rule on Plaintiffs’ Motion imminently. Plaintiffs are merely requesting a 60-day stay of proceedings from the date of the District Court’s Order on Preliminary Approval so as to facilitate any further settlement discussions or negotiations that might prove necessary and appropriate in the O’Connor and Yucesoy cases and to permit the parties time to digest the District Court’s ruling without also having to account for the effect of the Mohamed appeal. Given the brief duration of the requested stay, any possible harm to the Mohamed parties is minimal. However, the potential benefit of freezing the current status of Uber’s 2013 and 2014 arbitration

agreements and postponing resolution of that issue for a few months could prove substantial for the parties in O'Connor and Yucesoy as they attempt to finalize their settlement without interference from the potential impact of the Mohamed appeal on this related litigation.

Numerous courts have granted stays of related litigation pending settlement negotiations in another case so as to facilitate settlement. See, e.g., Jaffe v. Morgan Stanley DW, Inc., 2007 WL 163196, *2 (N.D. Cal. Jan 19, 2007) (granting two month stay “in light of the advanced stage of the settlement negotiations” in a parallel case and determining that these settlement negotiations should be allowed to play out); In re JPMorgan Chase LPI Hazard Litig., 2013 WL 3829271, *5 (N.D. Cal. July 23, 2013) (granting stay for 60 days pending approval of proposed settlement in a similar, overlapping case); Branca v. Iovate Health Scis. USA, Inc., 2013 WL 1344306, *1 (S.D. Cal. Apr. 2, 2013) (granting stay for 90 days where a preliminary settlement was awaiting court approval in similar action); Advanced Internal Techs., Inc. v. Google, Inc., 2006 WL 889477, *1 (N.D. Cal. Apr. 5, 2006) (granting motion to stay two consolidated class actions pending settlement negotiations in another related case); Packer v. Power Balance, LLC, 2011 WL 1099001 (D. N.J. Mar. 22, 2011) (granting stay pending consideration of a

comprehensive national settlement reached in a parallel class action).⁷ Here, the Court should do the same and should grant a brief stay of proceedings in the closely related Mohamed appeal. “[I]n light of the strong judicial policy that favors settlements, particularly where complex class action litigation is concerned,” a stay is warranted here. Linney v. Cellular Alaska P'ship, 151 F.3d 1234, 1238 (9th Cir. 1998).

CONCLUSION

The O'Connor and Yucesoy Plaintiffs respectfully request that their Motion to Stay the appeal in this case, Mohamed v. Uber Technologies, Inc., et al., Appeal Nos. No. 15-16178, 15-16181, 15-16250, be granted. Plaintiffs request that the Mohamed appeal be stayed until at least 60 days after the District Court rules on the Motion for Preliminary Approval of Class Action Settlement in the O'Connor and Yucesoy cases, so as to allow the parties in that litigation to engage in further negotiations if it proves necessary and feasible.

⁷ In many of these cases, the settlement in question had the potential to affect or possibly even moot the related case that was subject to the stay. The inverse is true here; while the proposed O'Connor and Yucesoy settlement would not moot the Mohamed appeal, the outcome of the Mohamed appeal could have a substantial impact on the parties' respective positions in the O'Connor and Yucesoy litigation. Given the advanced stage of the settlement proceedings in O'Connor and Yucesoy, it is in the interests of judicial economy as well as the “strong judicial policy favoring settlement,” Class Plaintiffs, 955 F.2d at 1276, to allow these settlement proceedings to play out before this Court proceeds with the Mohamed appeal.

Dated: June 7, 2016

Respectfully submitted,

DOUGLAS O'CONNOR, et al.,
HAKAN YUCESYOY, et al.,

By their attorneys,

/s/ Shannon Liss-Riordan
Shannon Liss-Riordan
Adelaide Pagano
LICHTEN & LISS-RIORDAN, P.C.
729 Boylston Street, Suite 2000
Boston, MA 02116
(617) 994-5800
sliss@llrlaw.com

CERTIFICATE OF SERVICE

I hereby certify that, on June 7, 2016, this document filed through the CM/ECF system will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (“NEF”).

/s/ Shannon Liss-Riordan
Shannon Liss-Riordan

Dated: June 7, 2016