

Nos. 15-17532, 15-17533, 15-17534, 16-15000, 16-15001, 16-15035

IN THE
United States Court of Appeals for the Ninth Circuit

DOUGLAS O'CONNOR, <i>et al.</i> , Plaintiffs-Appellees v. UBER TECHNOLOGIES, INC., Defendant-Appellant.	Nos. 15-17532, 16-15000 No. C-13-3826 EMC N. Dist. Cal., San Francisco Hon. Edward M. Chen presiding
ABDUL KADIR MOHAMED, <i>et al.</i> , Plaintiffs-Appellees v. UBER TECHNOLOGIES, INC., <i>et al.</i> , Defendant-Appellant.	Nos. 15-17533, 16-15035 No. C-14-5200 EMC N. Dist. Cal., San Francisco Hon. Edward M. Chen presiding
HAKAN YUCESOY, <i>et al.</i> , Plaintiffs-Appellees v. UBER TECHNOLOGIES, INC., Defendant-Appellant.	Nos. 15-17534, 16-15001 No. C-15-262 EMC N. Dist. Cal., San Francisco Hon. Edward M. Chen presiding

MOTION TO CALENDAR ORAL ARGUMENT

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These consolidated cross-appeals arise out of a series of district court orders entered in three related cases—(1) *O'Connor v. Uber Techs., Inc.*, No. CV-13-03826 EMC (N.D. Cal.); (2) *Yucesoy v. Uber Techs., Inc.*, No. CV-15-00262 EMC (N.D. Cal.); and (3) *In re Uber FCRA Litigation*, No. CV-14-05200 EMC (N.D. Cal.) (“*Mohamed*”)—in which the district court, purportedly exercising its authority under Federal Rule of Civil Procedure 23(d), enjoined Defendant-Appellant Uber Technologies, Inc. (“Uber”) from promulgating and enforcing an arbitration agreement with drivers who use the Uber smartphone application.

Pursuant to the expedited briefing and hearing schedule governing preliminary injunction appeals, *see* Circuit Rule 3-3, the parties to these appeals filed their first three cross-briefs on appeal and the Court preliminarily set an oral argument calendar date for August 2016. *See O'Connor v. Uber Techs., Inc.*, Nos. 15-17532 and 16-15000, Dkt. 17, 22, 25, 43. On April 14, 2016, the *Mohamed* plaintiffs—but not the *O'Connor* and *Yucesoy* plaintiffs—also filed their final cross-appeal reply brief, thereby completing briefing in that appeal. *Id.*, Dkt. 48.

In March and April 2016, the *O'Connor* and *Yucesoy* parties participated in a series of mediation sessions, which culminated in a settlement agreement that was intended to resolve those actions. On April 21, 2016, the plaintiffs in those cases filed a motion for preliminary settlement approval in the district court and the

parties submitted a letter with this Court, requesting that “briefing in these [appeals] be suspended but that the cases remain active on the Court’s docket until the settlement agreement is approved by the district court.” *O’Connor*, Nos. 15-17532 and 16-15000, Dkt. 52. On April 25, 2016, this Court stayed all of the consolidated cross-appeals (including the *Mohamed* appeals) until July 25, 2016, and then subsequently extended that stay until October 12, 2016. *Id.*, Dkt. 53, 58.

On August 18, 2016, the district court denied the *O’Connor* and *Yucesoy* plaintiffs’ motion for preliminary settlement approval. Although the district court denied preliminary approval of the parties’ settlement agreement, the parties jointly requested one final “brief extension of the existing stay until October 12, 2016, and request[ed] that [the *O’Connor* and *Yucesoy* plaintiffs’] fourth brief on cross-appeal be due October 12, 2016.” *O’Connor*, Nos. 15-17532 and 16-15000, Dkt. 59. On September 15, 2016, the Court granted the parties’ request and extended the existing stay until October 12, 2016. *Id.*, Dkt. 60.

Since that time, the parties have not requested any further stays of these consolidated cross-appeals, nor has this Court granted any such stays. Although the *O’Connor* and *Yucesoy* plaintiffs’ fourth brief on cross-appeal was due October 12, 2016, they did not file a fourth brief on cross-appeal. Accordingly, briefing in all of these consolidated cross-appeals is now complete and the parties are awaiting a new oral argument date.

Respectfully, Uber requests that this Court schedule oral argument as expeditiously as possible, both because the district court has now denied preliminary settlement approval and because these appeals are preliminary injunction appeals, to which expedited briefing and hearing rules apply. *See* Circuit Rule 3-3. Moreover, the *O'Connor* plaintiffs are now expressly relying on the Rule 23(d) orders that are under review here as a basis to try to *expand* the class definition in the *O'Connor* case, in order to include drivers who have accepted the latest iteration of the parties' arbitration agreement. *See O'Connor v. Uber Techs., Inc.*, No. CV-13-03826 EMC, Dkt. 757 at 1–2 & n.2 (N.D. Cal.). Therefore, Uber submits that it is important—now, more than ever—that this Court calendar oral argument and promptly resolve the issues implicated in this appeal.

Dated: November 16, 2016

Respectfully submitted,

/s/ Theodore J. Boutrous, Jr.

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STATEMENT OF RELATED CASES

Pursuant to Ninth Circuit Rule 28-2.6, Defendant-Appellant Uber Technologies, Inc. (“Uber”) hereby states that Uber is aware of the following related cases: (1) *O’Connor v. Uber Techs., Inc.*, No. 14-16078, District Court No. 3:13-cv-03826-EMC; (2) *Mohamed v. Uber Techs., Inc.*, No. 15-16178, District Court No. 3:14-cv-05200-EMC; (3) *Gillette v. Uber Techs., Inc.*, No. 15-16181, District Court No. 3:14-cv-05241-EMC; (4) *Gillette v. Uber Techs., Inc.*, No. 15-16250, District Court No. 3:14-cv-05241-EMC; (5) *O’Connor v. Uber Techs., Inc.*, No. 15-17420, District Court No. 3:13-cv-03826-EMC; (6) *Yucesoy v. Uber Techs., Inc.*, No. 15-17422, District Court No. 3:15-cv-00262-EMC; (7) *Del Rio v. Uber Techs., Inc.*, No. 15-17475, District Court No. 3:15-cv-03667-EMC; (8) *O’Connor v. Uber Techs., Inc.*, No. 16-15595, District Court No. 3:13-cv-03826-EMC.

CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the appellate CM/ECF system on November 16, 2016.

I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system.

Dated: November 16, 2016

 /s/ Theodore J. Boutrous, Jr.