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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

DOUGLAS O’CONNOR, *et al.*,

No. C-13-3826 EMC

Plaintiffs,

v.

**ORDER RE SUMMARY JUDGMENT
BRIEFING AND SCHEDULE**

UBER TECHNOLOGIES, INC., *et al.*,

(Docket No. 166)

Defendants.

_____ /

On October 8, 2014, Plaintiffs filed a request for clarification of this Court’s order amending the briefing schedule on Defendant’s motion for summary judgment. Docket No. 166. Plaintiffs indicate that they intend to file a motion for summary judgment as well, and request clarification as to whether both sides’ motions should be filed on November 21, 2014, or whether Plaintiffs should plan to file a cross-motion with their opposition to Uber’s motion.” *Id.* at 3. The Court provides the following guidance.

Plaintiffs will not be permitted to file a motion for summary judgment prior to class certification in this case. Federal Rule of Civil Procedure 23(c)(1) provides that “[a]t an early practicable time after a person sues or is sued as a class representative, the court must determine by order whether to certify the action as a class action.” Despite this language, the Ninth Circuit has held that “[u]nder the proper circumstances – where it is more practicable to do so and where the parties will not suffer significant prejudice – the district court has discretion to rule on a motion for summary judgment before it decides the certification issue.” *Wright v. Schock*, 742 F.2d 541, 543-44 (9th Cir. 1984). Courts have noted that when “early resolution of a motion for summary

1 judgment is likely to protect both the parties and the court from needless and costly litigation, it is
2 reasonable to consider such a motion before class certification.” *Khasin v. Hershey Company*, No.
3 5:12-CV-01862-EJD, 2014 WL 1779805, at *2 (N.D. Cal. May 5, 2014).

4 Defendant’s anticipated motion for summary judgment – if granted – would serve that
5 purpose. If the Court were to determine that Plaintiffs were not employees of Defendant, much (if
6 not all) of the case would be disposed of and the scope and course of class certification will be
7 substantially affected.¹ The same cannot be said about Plaintiff’s proposed motion for summary
8 judgment seeking a judgment that Uber’s drivers are employees.² Were the Court to grant such a
9 motion, while it may inform some aspect of class certification, it would not be as potentially
10 impactful as a grant of Defendant’s motion; it would still be necessary to go through the class
11 certification process as well as proceed to trial on any remaining factual issues regarding the nature,
12 scope, and effect of Uber’s representations regarding gratuities. Thus, there would be little or no
13 efficiency to be gained from ruling on such a motion before class certification.

14 Accordingly, for the foregoing reasons, the Court clarifies that *Defendant’s* motion for
15 summary judgment shall be filed by November 21, 2014, Plaintiff’s *opposition to that motion* shall
16 be filed by December 15, 2014, and Defendant’s reply in support of its motion shall be filed on
17 December 22, 2014. Defendant’s motion for summary judgment shall be heard on January 15, 2015,

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19 ¹ Of course, by filing their motion before the class certification motion, Defendant assumes
20 the risk that any order granting the motion would be res judicata only as to the named plaintiffs and
21 not the unnamed, uncertified class members. *See id.*; *see also Aguilera v. Pirelli Armstrong Tire*
22 *Corp.*, 223 F.3d 1010, 1013 n.1 (9th Cir. 2000) (“When a motion is maintained against an
uncertified class, only the named plaintiffs are affected by the ruling. There is no res judicata effect
as to unnamed members of the purported class.”).


23 ² During the July 10, 2014 case management conference in which the Court first scheduled
24 Defendant’s summary judgment motion prior to class certification, the Court made it clear that it
25 was deviating from the normal “class cert first” approach given the potentially dispositive nature of
26 Defendant’s proposed motion. *See, e.g.*, July 10, 2014 Hearing Transcript at 7:24-8:6 (“Ant it is true
27 that – at least in the normal course of things – you reserve the merits questions till after certification,
28 but I have in wage and hour cases where I thought there were significant legal questions . . .
somebody or a class rep is an employee or not is capable of resolution – potential resolution in
advance of class cert, sometimes it does make sense.”); *id.* at 11:16-20 (“But, you know, if even
under the right of control analysis in bringing what we’ll call collateral evidence of others, you’re
[Plaintiffs] short, then why go through the whole class cert exercise and expense if there isn’t an
employee relationship to start with?”). It did not indicate a desire to reverse the normal sequence of
the entire litigation.

1 at 1:30 p.m. Docket No. 154, at 1. Cross motions for summary judgment will not be permitted.
2 Plaintiffs may, of course, move for summary judgment following resolution of the class certification
3 question.

4 This order disposes of Docket No. 166.

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6 IT IS SO ORDERED.

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8 Dated: October 14, 2014

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11 EDWARD M. CHEN
12 United States District Judge
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