

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA  
MIAMI DIVISION

CASE NO. 10-CIV-20718-COOKE/BANDSTRA

ALBERT SEGAL, and  
MARIANNA CHAPAROVA,

Plaintiffs,

- vs. -

AMAZON.COM, INC.,

Defendant.

**DEFENDANT AMAZON.COM, INC.'S MOTION TO PERMIT ITS CORPORATE  
REPRESENTATIVE TO ATTEND MEDIATION BY TELEPHONE**

Pursuant to Local Rule 16.2(e) and this Court's Order of Referral to Mediation, Defendant Amazon.com, Inc. ("Amazon") respectfully moves this Court to permit its corporate representative to attend mediation by telephone. In support, Amazon states as follows:

1. Pursuant to this Court's Scheduling Order and Order of Referral to Mediation [D.E. 31], the parties are required to participate in and appear at mediation. Mediation has been scheduled for February 15, 2011 in Coral Gables, Florida. [D.E. 34].

2. Local Rule 16.2(e) recognizes that certain circumstances will arise that allow a party representative to attend mediation by telephone. *See* L.R. 16.2(e); *see also Figueroa v. America's Servicing Company, et al.*, Case No. 09-CV-61350-Lenard/Turnoff (S.D.Fla Jan. 15, 2010) (D.E. 71) (granting Defendants' motion to permit their corporate representatives to appear at mediation by telephone under similar circumstances). Here, Amazon's corporate representative should be permitted to attend mediation by telephone for at least four reasons:

3. First, Amazon would be denied the benefit of its contractual bargain if its corporate representative is required to attend mediation in Florida. As discussed at length in Amazon's Motion to Dismiss [D.E. 26] ("Motion to Dismiss"), the written contract governing the entire relationship between the parties here (the "Participation Agreement") contains a mandatory forum selection clause requiring any dispute to be adjudicated in Washington State, and to be governed by Washington law. The forum selection clause is a material term of Amazon's Participation Agreement. *See* D.E. 26 (and cases cited therein). In its Motion to Dismiss, Amazon moved to dismiss or transfer this action based on that mandatory forum selection clause. Amazon also moved to dismiss each of Plaintiffs' seven causes of action for a variety of other reasons, including that the FDUTPA claim is barred by the choice of law provision in the Participation Agreement, and because the Participation Agreement expressly contemplates (and permits) the conduct about which Plaintiffs complain. Amazon's Motion to Dismiss is fully briefed, but the Court has not yet ruled on it.

4. If Amazon is forced to continue litigating this case in Florida, and to travel to and attend mediation in Florida, it would be denied the benefit of its bargain to resolve this dispute in Washington State. *See Carnival Cruise Lines, Inc. v. Shute*, 499 U.S. 585, 593 (1991) (enforcing forum selection clause and stressing the functional benefits to all parties offered by agreements such as the click-wrap agreement here); *Meier v. Midwest Recreational Clearinghouse, LLC*, 2010 WL 2738921 (E.D. Cal. July 12, 2010), at \*3 (discussing benefits to all parties of click-wrap agreements, and finding forum selection clause valid because, among other things, internet companies would be able to pass on to their customers the reduction in costs created by the forum selection clause). If Amazon is required to mediate this Florida-based case at all, it should

be spared the time and expense associated with travelling to Florida, and should be permitted to participate in the mediation by telephone.

5. Second, and relatedly, Amazon's corporate representative is based in Seattle, Washington. Traveling to and attending mediation across the country in Florida would necessarily require more than just one day out of her schedule, and would be costly – especially during February and compared to Plaintiffs' costs.

6. Third, this case is not yet ripe for a fruitful mediation. Amazon's Motion to Dismiss remains pending, and this case could be drastically different after the Court issues a ruling on that Motion. Moreover, significant factual issues remain unresolved, and important discovery has not yet been taken. Plaintiffs failed to appear altogether for their properly noticed depositions [*see* D.E. 40, 44], precluded Amazon from obtaining discovery from the witnesses on their witness list [*id.*], and refused to take the deposition of Amazon's corporate representative without an order specifically defining the scope of that deposition. In short, this case is not much farther along than it was when Plaintiffs filed their original Complaint, and the issues to be resolved at mediation are not yet defined. While Amazon is prepared to participate in settlement dialogue in good faith, it should not be required to spend significant resources to do so when the Plaintiffs have precluded discovery of the factual issues upon which negotiation would occur, and when the claims are likely to be significantly narrowed (or transferred away from this district altogether).

7. Fourth, and finally, mediation will likely be fruitless because Plaintiffs refuse to provide information necessary for mediation to be productive. In addition to Plaintiffs' failure to provide discovery in this case (discussed above), Plaintiffs refuse to provide any information whatsoever specific to their damages (despite Amazon's repeated requests), which has hampered

Amazon's ability to evaluate Plaintiffs' claims and determine how to approach mediation and settlement. Settlement dialogue cannot be fruitful without a specific, concrete, and quantifiable explanation for how the Plaintiffs have been injured. Plaintiffs have provided none to date, and Amazon should not be haled across the country to negotiate claims for which Plaintiffs refuse to provide such information.

WHEREFORE, for the reasons discussed above, Amazon respectfully requests the Court to permit its corporate representative to attend mediation by telephone in this case.

**LOCAL RULE 7.1(a)(3) CERTIFICATION**

Pursuant to Local Rule 7.1(a)(3), undersigned counsel for Amazon certifies that he has conferred with Plaintiffs in an effort to resolve the issues raised in this Motion, but the Plaintiffs would not agree to the relief sought.

Dated: January 18, 2011

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*Counsel for Defendant Amazon.com, Inc.*

**CERTIFICATE OF SERVICE**

I hereby certify that on January 18, 2011, I electronically filed the foregoing document with the Clerk of the Court using CM/ECF. I also certify that the foregoing document is being served this day on all counsel of record identified on the Service List in the manner specified, either via transmission of Notices of Electronic Filing generated by CM/ECF or in some other authorized manner for those counsel or parties who are not authorized to receive electronically Notices of Electronic Filing system:

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