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January 13, 2017

VIA ECF

Catherine O'Hagan Wolfe
Clerk of Court
U.S. Court of Appeals for the Second Circuit
Thurgood Marshall United States Courthouse
40 Foley Square
New York, New York 10007

Re: *Meyer v. Uber Technologies, Inc.*, Nos. 16-2750, -2752

Dear Ms. Wolfe:

Plaintiff-Appellee submits this response to Defendants-Appellants' Rule 28(j) letter citing *Cordas v. Uber Technologies, Inc.*, No. 3:16-cv-04065-RS, Dkt. 36 (N.D. Cal. Jan. 5, 2017).

Cordas does not follow "prevailing precedent from this Court," Appellants' Ltr. at 2, and does not even purport to do so. It does not rely upon any cases from this Court, and it does not apply this Court's seminal case of *Specht v. Netscape Communications Corp.*, 306 F.3d 17, 35 (2d Cir. 2002) (holding that contract formation requires (1) reasonably conspicuous notice and (2) unambiguous manifestation of assent).

Nor did *Cordas* consider this Court's decision in *Nicosia v. Amazon.com, Inc.*, 834 F.3d 220 (2d Cir. 2016).[1] In *Nicosia*, this Court held that mutual assent

[1] Neither the *Cordas* plaintiff nor Uber cited the *Nicosia* decision to the *Cordas* court. Remarkably, Uber relied on the overruled district court opinion in *Nicosia v. Amazon.com*, 84 F. Supp. 3d 142 (E.D.N.Y. 2015), without disclosing that this Court had vacated that decision. *See Cordas*, Uber Mem. at 12, Dkt. 27 (Nov. 18,

via an online screen is a question of fact, *see id.* at 232, and then, applying *Specht*, vacated an order compelling arbitration because "reasonable minds could disagree on the reasonableness of notice" presented by the screen at issue, *id*. at 236, 238.

Nicosia's holding that conspicuous notice and assent are factual questions is especially relevant because (i) unlike *Cordas*, which considered a motion to compel at the district court level, this Court reviews the district court's findings for clear error (*see* Appellee's Br. at 33-37) and (ii) *Cordas* considered an entirely different fact pattern and registration screen. For example, whereas the key language here appeared "in considerably smaller font" than other words on the screen, and was not "prominently displayed" (SPA12, 23); in *Cordas*, the key language on the screen was the same size as other text, and stood out in white type on black.

Cordas is inapposite and does not support reversal here.

Respectfully yours,

s/ Jeffrey A. Wadsworth

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cc: All counsel of record (via ECF)

2016). Uber also did not disclose to the *Cordas* court that it lost its motion to compel before Judge Rakoff in this case.