



Uber Reaches \$1.3M Deal In Drivers' Collective FLSA Action

By Linda Chiem | October 16, 2018

Uber Technologies Inc. will pay \$1.3 million to settle Fair Labor Standards Act claims from more than 5,000 drivers who aren't bound by arbitration agreements and alleged the ride-hailing giant misclassified them as independent contractors instead of employees, according to a North Carolina federal court filing Tuesday.

Attorneys for plaintiff Michael Hood and the more than 5,000 drivers who opted out of arbitration agreements with Uber and joined the wage-and-hour collective action in North Carolina filed a motion seeking the court's approval of an approximately \$1.3 million deal that would end the two-year-old misclassification dispute.

According to Tuesday's filing, about \$734,294 of the settlement fund will be paid to plaintiffs who opted into the litigation and \$5,000 will compensate Hood for the services he rendered on behalf of the FLSA collective. In addition, \$434,750 will be paid in attorneys' fees, \$90,205 will go toward litigation expenses and \$40,000 will be paid to Garden City Group, the settlement administrator, according to the filing.

The plaintiffs explained in the motion that the parties zealously litigated this action at every stage, including going through a 90-day opt-in process during which more than 5,000 drivers from across the country joined the

case and analyzing extensive data that Uber produced for each of those drivers, so that they could calculate damages under a variety of scenarios.

“They negotiated before an experienced wage-and-hour mediator and conducted further private, arm’s-length discussions after mediation,” the drivers said in the motion. “Only then did the parties finally come to a fair and reasonable settlement, which appropriately balances the risks and costs of continuing to litigate against the likely benefits to plaintiffs.”

If the deal is approved by U.S. District Judge Catherine C. Eagles, it would close out litigation from drivers seeking compensation for “wait time,” or the time drivers were logged onto the Uber app and available to receive ride requests.

Based on the data they crunched, the drivers’ attorneys calculated that the likely damages ceiling in this action, had they moved forward, could have approached approximately \$3.37 million — if wait time were deemed compensable, according to the filing.

Notably, that number defines wait time as all the time drivers were logged onto the Uber app and available to receive ride requests — including time when they were also logged onto the apps of defendants’ ride-hailing competitors, taking naps, eating, running personal errands, etc..

However, if either the court or a jury found that this “wait time” is not compensable, the maximum damages for the entire collective would likely be less than \$100,000, the filing said.

So, given the risks of continuing with litigation, a \$1.3 million settlement is substantial, the drivers said.

Hood initially filed suit in July 2016, with an amended complaint filed in October 2016, alleging that periods of driver inactivity are unpredictable, and drivers have to be in a position to respond to ride requests quickly or risk being fired. As a result, the plaintiffs said, drivers have to be close to

their vehicles while logged on to the app and in their work clothes so they can be ready to respond to a ride request immediately.

Hood moved for conditional certification of the drivers collective in February 2017, saying that although Uber has significant control of the manner and means of the plaintiffs' provision of transportation services, the company still requires them to sign "transportation services agreements" that classify them as independent contractors instead of employees, according to court documents. Through that arrangement, the plaintiffs said, Uber deprives drivers of minimum wages, overtime and other benefits that they are entitled to under the FLSA.

Judge Eagles in July 2017 conditionally certified an FLSA collective of individuals who work, or have worked, as an Uber driver anywhere in the United States and who have also opted out of arbitration.

An attorney for the plaintiffs said he had no comment Tuesday. Counsel and press representatives for Uber were not immediately available for comment Tuesday.

The plaintiffs are represented by Paul B. Maslo of Napoli Shkolnik PLLC, Paul R. Dickinson Jr. of DeMayo Law Offices LLP and Brittany S. Weiner of Imbesi Law PC.

Uber is represented by Jerry H. Walters Jr. of Littler Mendelson PC.

The case is Michael Hood v. Uber Technologies Inc. et al., case number 1:16-cv-00998, in the U.S. District Court for the Middle District of North Carolina.

--Additional reporting by Adam Lidgett. Editing by Michael