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Uber Hits Back At Proposed Class Action Over Driver Fares

By **Linda Chiem**

Law360, New York (June 20, 2017, 4:04 PM EDT) -- Uber slammed a proposed class action alleging it breached its contract with drivers by stiffing them on fares with its so-called upfront pricing model, telling a California federal judge Monday that the plaintiff has misread the agreement and doesn't have a valid case.

Uber Technologies Inc. filed a motion to dismiss North Carolina driver Martin Dulberg's proposed class action alleging that drivers have been shortchanged on fares — a percentage of which they're promised in their driver agreements with the company — after Uber switched to a so-called upfront pricing model in the fall of 2016.

"Plaintiff's claims rest on a misreading of the agreement," Uber said. "The contract itself is before this court, and its written terms provide no support for plaintiff's contentions. Adopting plaintiff's interpretation would alter the bargain that the parties actually made."

Under that upfront pricing model, the ride-hailing giant charges passengers a fare before their ride even begins, but Uber bases that fare on an aggressive and often inflated projection of the distance and time involved in a particular ride, Dulberg alleged. The driver is entitled to a set percentage of the fare as laid out in the driver agreements, but Uber pays based on a calculation of the distance and time actually driven, which can often be less than what the customer actually paid, allowing Uber to pocket the difference, according to Dulberg's complaint.

Uber insists that Dulberg's suit should be dismissed for failure to state a claim because his breach of contract allegations don't square with the actual provisions in his contract, according to the motion to dismiss.

"Contrary to the mischaracterization of the agreement set forth in the complaint, the agreement itself does not base driver payments on 'whatever money passengers pay' or get 'charged' (whether 'upfront' or at the 'end of the ride')," Uber says. "Plaintiff's contention — that the 'fare' assessed to riders, or paid by riders (whether upfront or otherwise), constitutes the 'fare' owed to drivers — is irreconcilable with the contract's actual terms."

Uber also said its statement about upfront pricing is a promotional statement addressed to riders who use the service, not to drivers. Furthermore, it does not discuss what portion of the upfront price will be paid to drivers, and it describes some components for calculating the upfront price, or "fare," that differ from the fare calculation that produces the fare found in the agreement.

Dulberg, a Raleigh, North Carolina, resident who has been an UberX driver since May 2014 and an Uber Select driver since February 2015, launched the proposed class action in February, claiming Uber drivers are promised that they will be able to retain 80 percent of the fare charged to passengers for UberX rides but in fact retain a smaller percentage of the fare.

"Defendants, by charging a greater fare to riders than the calculation used to determine payment to drivers, have deprived plaintiff and the class members of the full benefits they are entitled to under the parties' agreements," Dulberg alleged in the complaint.

Dulberg's attorney, Paul B. Maslo of Napoli Shkolnik PLLC, said Tuesday that the plaintiff will respond in an upcoming opposition brief.

Dulberg is represented by Paul B. Maslo and Andrew Dressel of Napoli Shkolnik PLLC.

Uber is represented by Jonathan R. Bass, Susan K. Jamison, Clifford E. Yin and Sean P.J. Coyle of Coblenz Patch Duffy & Bass LLP.

The case is Dulberg v. Uber Technologies Inc., case number 3:17-cv-00850, in the U.S. District Court for the Northern District of California.

--Editing by Sara Ziegler.

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