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Phone: +1 646 783 7100 | Fax: +1 646 783 7161 | customerservice@law360.com

Uber Drivers Score Tentative OK On \$395K Fair Pay Deal

By **Linda Chiem**

Law360 (July 23, 2019, 6:01 PM EDT) -- A California federal judge has tentatively approved an increased \$395,000 settlement in a class action alleging Uber denied drivers their fair share of riders' payments, saying the deal is still on the low end, but fair.

U.S. District Judge William Alsup on Monday granted preliminary approval to the deal, which was bumped up from \$345,000, between lead plaintiff Martin Dulberg and Uber Technologies Inc. to end breach of contract claims from thousands of drivers. The drivers had alleged the company's pay structure stiffed them, and they had opted out of arbitration.

Judge Alsup required one more change before he signs off on the deal for good: The parties must send the class notices by first-class mail instead of email, where they would be more likely to be marked as spam or junk mail, he ordered.

The tentative approval on the revised deal comes more than two months after Judge Alsup rejected the parties' earlier **\$345,000 settlement**, saying it was "**dangerously inadequate**." Judge Alsup refused to sign off on the previous deal because it would **release** some class members' claims for 1 cent and result in approximately 1,300 checks being sent to class members for amounts less than the combined cost of postage and administrative mailing costs, according to his May 7 order.

The revamped deal made three notable changes, according to Judge Alsup. Each class member will receive at least \$20 from the settlement, and any class members who were set to receive more than \$20 based on their driving histories will still receive the same amount they were to get under the previous deal, according to the order.

Additionally, Dulberg's attorneys at Napoli Shkolnik PLLC agreed to cap their request for attorneys fees at 25% of the net settlement amount, down from the nearly 30% they had previously requested.

Finally, Uber agreed to cover the administrative costs for sending the revised class notice to class members via first-class mail, ensuring that those expenses wouldn't come out of the settlement fund, Judge Alsup said.

Judge Alsup didn't immediately grant Dulberg's request for a \$5,000 service award for taking on the role of lead plaintiff, saying that will be decided at the final approval hearing after class members get their chance to weigh in. However, the judge said "it will be hard to justify giving the named plaintiff any bonus for having 'won' such a low-end recovery."

He also indicated in Monday's order that the drivers' claims weren't really strong enough to merit a bigger settlement.

"This is still a low-end recovery for the class," Judge Alsup said. "Evidently, this is because the case itself has turned out to be a low-end theory. It might be better for the average class member to roll the dice and see if they could hit big with a jury rather than accept a mere 20 or so dollars."

"But even a 'hit' would not push the average award into three figures now that we see how little the

case was built on,” the judge added. “It is hard to justify the burden on the jury to try this case. For this reason, at least enough has been provided to warrant preliminary approval and an opportunity for comment from the class members.”

Dulberg **kicked off** the litigation in early 2017, alleging that Uber shortchanged drivers 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.

Under the 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. Judge Alsup certified the class in February 2018.

Counsel and representatives for the parties were not immediately available for comment Tuesday.

Dulberg and the class are represented by Danielle J. Marlow and Salvatore C. Badala of Napoli Shkolnik PLLC.

Uber is represented by Randall W. Edwards, Matthew D. Powers, Damali A. Taylor and Adam M. Kaplan of O’Melveny & Myers 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 Jill Coffey.