

## Uber's Upfront Pricing May Violate Driver Agreements

By Jon Steingart

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- Uber uses different formulas for calculating customer's fare, driver's pay
- If proven, difference could constitute a breach of contract with drivers

Uber may improperly underpay drivers with a feature that gives customers an estimate of a trip's fare before they get underway, a federal judge in California ruled (*Dulberg v. Uber Techs., Inc.*, 2017 BL 265762, N.D. Cal., No. 3:17-cv-00850, 7/31/17).

The decision allows driver Martin Dulberg to move ahead with his claim that the company violates a provision in its driver agreement that requires it to use the same formula to calculate the amounts it charges customers and pays drivers. Drivers receive the balance of the fare that remains after Uber takes a percentage cut as its service fee.

Uber Technologies Inc. started using the upfront pricing model in 2016 because customers like having a fare estimate before committing to a ride, Bloomberg News reported in May. It previously used a system similar to a traditional taxi meter that charged an amount based on time and distance at the conclusion of the ride.

The company continues to use the more traditional calculation to pay drivers, Dulberg said. Uber charges customers the amount estimated upfront.

The upfront estimate uses a "very aggressive" calculation that consistently charges customers a higher fare than if the more traditional approach were used, Dulberg says in the complaint. Uber then underpays drivers because it determines their take as a percentage of the time and distance fare, which is usually lower, he said.

The driver agreement doesn't specify whether driver pay is based on an estimated or actual fare, so the company should use the same formula for drivers as it uses for customers, according to the complaint.

### Lawsuit Miscalculates Fare, Uber Says

The ride-hail company said it pockets the difference in an effort to move toward profitability, Bloomberg News reported. This doesn't violate Uber's agreement with drivers because Dulberg incorrectly factors amounts such as taxes and booking fees into his calculation, the company said in a motion to dismiss his complaint. Drivers aren't entitled to a percentage of those amounts because they aren't part of the fare, the company said in the motion.

That wasn't enough to convince Judge William Alsup of the U.S. District Court for the Northern District of California. Dulberg's claims, if proven, could constitute a breach of contract between Uber and drivers, Alsup wrote in a July 31 order denying Uber's motion.

Uber faces separate driver pay lawsuits over its upfront pricing in federal courts in New York and California.

"Because the upfront fare calculation always yields a higher amount, drivers have been getting the short end of the stick," Paul Maslo, a lawyer who represents Dulberg, said in a statement emailed to Bloomberg BNA July 31. "Today's ruling allows drivers to move forward with their case."

An Uber spokesperson declined to comment Aug. 1.

Maslo and Andrew Dressel of Napoli Shkolnik PLLC in New York City represent Dulberg.

Jonathan Bass, Susan Jamison, Clifford Yin, and Skye Langs with Coblenz Patch Duffy & Bass LLP in San Francisco represent Uber.

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