



---

Portfolio Media, Inc. | 111 West 19th Street, 5th floor | New York, NY 10011 | www.law360.com  
Phone: +1 646 783 7100 | Fax: +1 646 783 7161 | customerservice@law360.com

---

## Uber Says Drivers Are Ignoring Contract In Pricing Suit

By **John Kennedy**

Law360, New York (July 12, 2017, 3:08 PM EDT) -- A proposed class action claiming Uber breached its contract with drivers by instituting an "upfront" pricing model that cuts into their earnings is only plausible if the California federal court ignores what the driver agreement actually says, the ride-hailing company said Friday.

In support of its **motion to dismiss** driver Martin Dulberg's case, Uber Technologies Inc. told the court that the driver agreement only deals with drivers' usage of Uber's app and Uber's obligations to its drivers, not the terms by which any other person, riders included, must abide. Dulberg has also conceded that Uber's contract with its drivers hasn't changed, so it can't now be in violation of its terms if it wasn't before, the company said.

"Plaintiff's contentions can only be deemed 'plausible' if the contract's actual language is ignored, the description of the upfront charge quoted in plaintiff's pleading is ignored, and if the court reads different definitions, obligations and prohibitions into the driver agreement," Uber said. "Doing any one of those things would be inappropriate, let alone all of them."

Dulberg **has claimed** that Uber's adoption of upfront pricing in the fall of 2016 has shortchanged drivers, who are promised a percentage of each fare in the driver agreement. The Dec. 11, 2015, version of the contract, which is at issue in the instant suit, shows that Uber has been taking more from each fare than it agreed to, he said.

Upfront pricing charges passengers before their ride begins, but Dulberg said that fare is based on an often-inflated projection of the distance and time involved in the requested ride.

Uber said Monday that the driver agreement makes no promises about what the company will or won't charge passengers for using the Uber app and doesn't say that all Uber-imposed charges belong to drivers. It argued that the contract only promises drivers will receive money paid for the fare, tolls and any applicable taxes and fees.

The fare, specifically, is the sum of a base rate and rates based on time and distance. It's not, as Dulberg has suggested, what's left when Uber's service fee and other driver-owed fees are subtracted from money paid by passengers, the company said.

Even if the fare calculation was simple subtraction, the new upfront price isn't the proper starting point because it contains far more than three components, Uber said. Thus, Dulberg's contention that the calculation components are the same is untenable and he's not entitled to whatever remains of the upfront charge after certain amounts are subtracted from a rider's payment, the company said.

Uber further said that Dulberg has admitted that the driver agreement, including the fare calculation, didn't change with the institution of upfront pricing and that the calculation doesn't violate his contract with the company. This alone should end Dulberg's suit, the company said.

"Uber's compliant method of fare calculation could not become non-compliant merely because it changed its rider pricing strategy," Uber said.

Dulberg's lawyers declined to comment Wednesday.

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

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

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

--Additional reporting by Linda Chiem. Editing by Kelly Duncan.

---

All Content © 2003-2018, Portfolio Media, Inc.