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Cabbies Duped by Uber Given Second Chance

By ROSE BOUBOUSHIAN

The maker of a taxi-service smartphone app likely forced non-English-speaking drivers to drop their rights to accuse the company of withholding their tips, a federal judge ruled.

In a putative class action, taxi drivers Douglas O'Connor and Thomas Colopy claim that Uber Technologies discourages riders from tipping by falsely stating that gratuity is included in the fare.

Through the San Francisco startup's "on demand" smartphone application, customers may request rides from the driver nearest them. And while ads say the fare includes the tip, drivers do not get the full amount, the plaintiffs say.

The California plaintiffs seek to represent Uber drivers in all states but Massachusetts, where a similar suit was filed in state court last year, along with another in Illinois.

While the state court suits were pending, Uber informed drivers on July 22, 2013, that in order to keep using the cellphone app, they would have to approve new licensing agreements.

One agreement contained an arbitration provision, of which users were given 30 days to opt out by sending a letter via hand delivery or overnight mail to Uber's counsel.

Less than a week after the California drivers sued Uber on Aug. 16, 2013, they filed an emergency motion for protective order to strike arbitration clauses or alternatively provide notice of the class action and more time to opt out.

On Thursday, U.S. District Judge Edward Chen in San Francisco dismissed as defendants Uber's president and vice president, but refused to dismiss the non-Californian plaintiffs.

In a separate ruling filed the next day, Chen found that there is "a distinct possibility" that Uber hoped its new arbitration provision would block the pending class actions.

"The risk of interfering with the pending class action and the need for a limitation on communication with the class that adversely affects their rights is palpable," Chen wrote.

The class action waivers "were shrouded under the confusing title 'How Arbitration Proceedings Are Conducted,'" the judge later added. "Despite the title's innocuous wording, only a single paragraph is devoted to discussing the what and how-to of arbitration."

Because the arbitration clause was not conspicuous or presented as a standalone agreement, "Uber drivers likely did not know the consequences of assenting to the licensing agreement," Chen wrote. "Many likely were not aware they were losing the right to participate in this or any other lawsuit. Indeed, Uber drivers have no meaningful way of learning of the current lawsuit since there has been no class notice. Although Uber characterizes some of its drivers as large, sophisticated 'transportation companies,' they do not dispute plaintiffs' factual contention that many, if not the majority of Uber drivers are smaller outfits run by immigrants for whom English is not their native language."

Uber's "extremely onerous" opt-out method "goes beyond simply ensuring receipt," the ruling states.

In addition, the opt-out clause is "ensconced in the penultimate paragraph of a 14-page agreement presented to Uber drivers electronically in a mobile phone application interface," Chen wrote. "In sum, it is an inconspicuous clause in an inconspicuous provision of the licensing agreement to which drivers were required to assent in order to continue operating under Uber."

The judge declined, however, to rule on the claim that the arbitration provision is unconscionable - and therefore unenforceable - under California law.

The court ordered the parties to meet within seven days to discuss corrective notices, and gave them an extra week to submit their respective proposals.

Uber cannot issue current or prospective drivers any new licensing agreement with class action waivers until the court sends out revised notices and procedures, Chen concluded.