

Uber Plans to Appeal Driver Class Certification

By Aicha Ahardane, LL.M. Candidate 2016 | October 5, 2015

The U.S District Court for the Northern District of California set up a high-stakes legal battle for Uber that might erode the [unicorn's \\$50 billion valuation](#).

In his September 1 decision, Judge Edward M. Chen granted class-action status to a lawsuit brought by two Uber drivers seeking reclassification as employees to obtain reimbursement for expenses and tips. He ordered that the suit applies to all drivers in California who didn't waive their right to the class action.

Despite the fact that Judge Chen had previously approved the arbitration clause stated in Uber's drivers contracts in [O'Connor v. Uber Technologies, Inc.](#), he recently denied Uber's motion to compel arbitration finding the arbitration clauses entered into with Uber drivers to be unenforceable.

The court ruled that the arbitration clause was unenforceable due to its contradictory provisions. One clause states that a private arbitrator must determine whether any disputes between the company and its drivers should be resolved using arbitration, while another provision provided that a judge must make such determinations. Given such inconsistency, Judge Chen found the arbitration clauses were not "clear and unmistakable." In the alternative, Judge Chen also found the arbitration clauses were unconscionable.

Uber will appeal its loss in federal court, hinging its case on a U.S. Supreme Court decision¹ that ruled that most arbitration agreements that waive class actions are enforceable. Uber has continually said that it is a technology platform connecting drivers to passengers and not a taxi service that hires drivers directly. If the company loses the class action suit, Uber may have to compensate its drivers like common employees, which would mean new costs like health insurance, workers' compensation and reimbursing expenses such as fuel and car repairs.

According to the plaintiffs' lawyer, Shannon Liss-Riordan, Uber's attempt to shield itself from class actions through forced arbitration is a "sneaky tactic." She's leading a wave of litigation that threatens to undermine the "[sharing economy](#)" business model of other companies such as Postmates. According to her, companies that use apps to match customers with services are denying their workers "basic protections by mislabeling them as independent contractors instead of employees."

¹ American Express Co. v. Italian Colors Restaurant, No. 12-133 (June 20, 2013)

The ruling could have far-reaching consequences for Uber’s business model and other startups that rely on independent contractors. The host of similar suits taking place across the country has forced many startups to become proactive in changing their business models. Luxe Valet, an urban car-parking service, intends to convert hundreds of parking attendants into employees and begin covering various expenses.