

Calif. Judge Pauses Five Uber Suits As 9th Circ. Ponders

By **Braden Campbell**

Law360, New York (November 22, 2016, 7:37 PM EST) -- A California federal judge on Monday paused five suits alleging Uber violated various state and federal laws while the Ninth Circuit decides whether three arbitration agreements block many Uber drivers from arguing these suits as class actions.

U.S. District Judge Edward M. Chen paused the suits at least until a Feb. 2 case management conference, and potentially much longer, citing issues he and Uber's attorneys raised at a recent hearing on the legal quandaries posed by two Uber appeals.

At issue before the appeals court is whether to upset two Judge Chen decisions that certified a class of about 240,000 Massachusetts and California drivers who claim they were misclassified as independent contractors and unfairly denied tips, and whether to review en banc a September panel decision that most of the drivers suing Uber in another suit over background checks must arbitrate their claims individually.

The stay covers the two federal misclassification suits, a California state wage suit, a suit challenging Uber's background check policies, and a fifth suit alleging Uber violated federal labor laws by abruptly pulling operations in Austin, Texas, and leaving thousands of drivers there without income.

Lichten & Liss-Riordan PC's Shannon Liss-Riordan, the lead attorney in the misclassification suits, urged Judge Chen not to stay the suits in a Nov. 18 hearing. Liss-Riordan argued there are several legal questions ripe for trial even with the class questions up at the air, and that there are thousands of drivers not bound by the arbitration issue whose claims can be resolved.

Gibson, Dunn & Crutcher LLP's Theodore J. Boutros, representing Uber, argued that the district court lacks jurisdiction to mint a new class and consider its claims with the appeals court ongoing, and that deciding on legal issues with so many class questions still unsettled risks drivers opting in or out depending on how things go. Judge Chen sided with Boutros, saying at the hearing that "to ask this court to venture forth and actually have a mini trial, a full trial, certification, frankly, doesn't make a lot of sense."

Monday's stay order also directs the parties to update the court next week on developments in a California state case against Uber currently in settlement negotiations. Judge Chen also said at the hearing that there's "a very good chance" he will ask for briefings from Uber and the drivers on the issues driving the stay at the Feb. 2 conference.

Liss-Riordan told Law360 on Tuesday she will continue to press for a trial despite the stay.

"We believe this case needs to get tried," she wrote in an email.

The stay order is the latest twist in tumultuous, yearslong litigation over Uber's business model.

Uber's efforts to put these labor challenges behind it suffered a setback in August, when Judge Chen **rejected a proposed \$100 million class action settlement** with the drivers behind the

misclassification suits on the grounds the deal was too favorable to Uber. But the company won a victory the following month when the Ninth Circuit ruled Uber's 2013 and 2014 arbitration agreements blocked the drivers behind the background checks suit from suing as a class. Attorneys told Law360 at the time the ruling **boded poorly** for the drivers behind the misclassification suit.

A representative for Uber said the company was pleased with the stay order and looks forwarding to resolving the appeals.

The misclassification drivers are represented by Shannon Liss-Riordan , Adelaide Pagano and Matthew D. Carlson of Lichten & Liss-Riordan PC.

--Additional reporting by Linda Chiem and Kat Greene. Editing by Breda Lund.