

THE **RECORD**ER

Judge Orders Uber to Change ADR Clause

By: Marisa Kendall – May 1, 2014

SAN FRANCISCO — U.S. District Judge Edward Chen has ordered Uber to change the wording of an arbitration clause in its agreement with drivers—and this time he really means it.

In an order issued Thursday, the San Francisco federal judge agreed with plaintiffs lawyers that Uber's use of an arbitration agreement was meant to limit drivers' participation in several pending class actions over tips and expenses.

The company must inform new drivers of the class action and how their rights would be affected by agreeing to arbitration, Chen held. In addition, Chen ordered Uber Technologies Inc. to provide reasonable opt-out avenues to some existing drivers and to the new drivers it continues to sign up.

"Lest there be any doubt," Chen wrote, "Uber must comply with the order."

The 16-page ruling had a feel of *deja vu*. In December, Chen imposed similar directives on Uber, after deeming the arbitration clause potentially misleading and coercive.

Uber challenged Chen's ruling insofar as it impacted new Uber drivers who, the company claimed, would not be covered by the suits filed prior to their arrival. Chen allowed Uber to state its case earlier this month, but ultimately was not swayed.

"The court has authority to regulate communications which jeopardize the fairness of the litigation even if those communications are made to future and potential putative class members," Chen wrote.

Uber, a car service that links drivers and riders through a smartphone app, has been accused of withholding tips customers believed drivers were receiving and failing to reimburse drivers for expenses. The company inserted an arbitration clause into its driver agreement in July, before plaintiffs filed their case in San Francisco federal court, but after plaintiffs filed similar suits in Massachusetts and Illinois.

Chen's ruling was cheered by plaintiffs attorney Shannon Liss-Riordan, of Lichten & Liss-Riordan in Boston. "This is what we were looking for in this battle," she said.

Uber's lead defense attorney, Robert Hendricks, a partner with Morgan, Lewis & Bockius in San Francisco, did not immediately respond to an emailed request for comment Thursday.

Chen had asked both Uber and plaintiffs lawyers to propose a revised arbitration clause for new Uber drivers, as well as a corrective notice to be issued to drivers who already signed an arbitration agreement. He took issue with the submissions from both sides.

Uber's proposal was found lacking because it provided no opt-out mechanism, thereby forcing drivers to consent to arbitration or forgo use of the rideshare app. "Conditioning use of its app on accepting the arbitration provision is clearly an attempt to discourage participation in the class action," Chen wrote.

Uber's new proposed arbitration agreement is even more restrictive than the original, which required drivers to mail a notice to Uber's general counsel to opt out. Drivers opted in by swiping a button on their cellphone.

But Chen also took issue with plaintiffs' proposal, which, he wrote, "tends more to urge participation than provide impartial information."

