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Law firm for Uber drivers in mass arbitration is bounced from federal court case

Alison Frankel

The plaintiffs' firm Keller Lenkner has insisted for months that Uber had an ulterior motive for trying to disqualify Keller Lenkner from representing livery companies in an unfair business practices class action in federal court in San Francisco. According to the plaintiffs' firm, Uber's strategy was not simply to bounce Keller Lenkner from the class action but to leverage a disqualification ruling against the firm in more than 10,000 individual arbitration cases in which Keller Lenkner represents drivers with wage-and-hour claims against Uber.

Keller Lenkner is the architect of the drivers' mass arbitration onslaught against Uber. So, according to the plaintiffs' firm, Uber would like nothing better than to erase Keller Lenkner as it figures out how to respond to thousands of costly arbitration demands.

We will now get to see if Keller Lenkner was right about Uber's ultimate strategy. On Wednesday night, U.S. District Judge Edward Chen of San Francisco granted Uber's motion to disqualify the plaintiffs' firm from the livery companies' class action. Judge Chen found that Keller Lenkner partner Warren Postman was privy to privileged and confidential Uber materials in his previous post at the U.S. Chamber of Commerce, where Postman worked alongside Uber in litigation opposing a Seattle ordinance that would have allowed drivers to bargain collectively with ride-sharing companies.

Uber was never Postman's client, Judge Chen acknowledged, and the issues in the Seattle ordinance litigation aren't the same as in the unfair business practices class action. But the judge concluded that Postman, as the Chamber's point person coordinating strategy with Uber, likely had access to Uber documents relevant to the class action, which claims that Uber enjoys an unfair advantage over ordinary limousine companies because it classifies drivers as independent contractors. Postman had a substantial relationship with Uber, Judge Chen concluded, so he and his firm are precluded from representing livery companies suing Uber in federal court.

But what about those thousands of Uber drivers with arbitration claims?

Keller Lenkner quite obviously anticipated that Uber's disqualification motion might have an effect on the drivers' individual arbitration cases. Last month, when 12,500 drivers went to court to compel Uber to pay initial filing fees to launch their arbitrations at JAMS, Keller Lenkner's name did not appear on their papers, which were signed by lawyers at Larson O'Brien. (Only from emails in an exhibit attached to the drivers' petition does it become clear that Keller Lenkner is driving the drivers' mass arbitration attack on Uber.) So as a preliminary matter, the drivers and their lawyers at Larson O'Brien can continue to litigate to force Uber to pay JAMS filing fees.

Assuming the drivers succeed in forcing Uber to launch their arbitrations, it's doubtful that Judge Chen has the power to disqualify Keller Lenkner from representing them in arbitration proceedings. The judge himself has expressed "serious questions" about his authority to bounce lawyers from arbitration cases outside of his courtroom. Judge Chen said ([2017 WL 3782101](#)) in a 2017 Uber disqualification case against a different law firm that the California Court of Appeals has suggested that judges' inherent authority doesn't extend beyond their courtroom doors.

It seems unlikely, in other words, that Uber can block Keller Lenkner from arbitrating for thousands of drivers with a single motion to Judge Chen. And it's not at all clear that Uber could disqualify the firm across thousands of arbitration proceedings without litigating the issue repeatedly. Remember, the point of Keller Lenkner's mass arbitration strategy is to turn Uber's own ban on classwide proceedings against the company, forcing Uber to bear the cost of filing fees and arbitration expenses in thousands of individual cases. Without a classwide arbitration proceeding, it seems unlikely that Uber can dispose of Keller Lenkner in just one motion.

Of course, the plaintiffs' firm may not want to expend the time and money relitigating its disqualification in case after case at JAMS. It could back out of individual arbitrations and simply take a referral fee, but that would cut into the upside from Keller Lenkner's mass arbitration play.

Judge Chen's ruling could also impact the firm's parallel mass arbitration against Lyft, which has sued Keller Lenkner over Postman's access to confidential documents when he worked on the Chamber's opposition to the Seattle collective bargaining ordinance. Unlike Uber, Lyft was not a party in litigation opposing the Seattle law but it nevertheless contends Postman is conflicted because that it worked closely with him behind the scenes. Judge Chen is overseeing Lyft's case.

A JAMS spokeswoman declined to comment. An Uber spokesperson declined to respond to my email request for comment on the implications of Judge Chen's disqualification order. A Keller Lenkner spokesman declined to provide a statement on the ruling.

--- Index References ---

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