

## GrubHub Faces Trial On Employee-Contractor Issue

Ben Hancock, The Recorder  
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SAN FRANCISCO — In the running legal controversy over what rights workers should have in the "gig economy," ride-hailing giants [Uber](#) and [Lyft](#) have grabbed many of the headlines—so far without any resolution [in court](#). But a sleeper case against the food delivery app GrubHub could be the one that finally puts the issue to the test.

On Thursday, U.S. Magistrate Judge Jacqueline Corley of the Northern District of California indicated she would let an individual employment case head toward trial in September against GrubHub on behalf of a former delivery driver named Raef Lawson. At a hearing, Corley noted that it could be something of a bellwether case for a long-percolating issue.

"There actually hasn't been a judgment yet ... on applying the new economy to, as Judge Chhabria would say, 'the square peg and the round hole,'" Corley said, referring to District Judge Vince Chhabria, who presided over a case against Lyft Inc. that [ultimately settled](#).

The underlying issue is whether workers for on-demand services enabled by smartphone apps qualify under the law as employees, or—as the bulk of gig-economy companies maintain—are independent contractors. The distinction affects whether their workers are entitled to minimum wage, reimbursement for expenses, rest breaks and other rights under federal and state labor law.

The GrubHub case started as a class action in state court in San Francisco, filed in 2015, but was removed to federal court. Last year, Corley ruled that the case could not move forward as a class action because Lawson had opted out of GrubHub's arbitration clause, and thus could not represent a class of food couriers who had failed to do so. But she also [denied a motion](#) to dismiss the case by GrubHub's lawyers at Gibson, Dunn & Crutcher.

On Thursday, Corley said in court that she would not grant a summary judgment motion against Lawson on the employee-contractor issue, while holding open that she might limit some of his expense reimbursement or overtime claims prior to trial.

Although the case is no longer a class action, it still represents a significant threat to GrubHub. That's because Lawson's lawyer, Boston-based attorney Shannon Liss-Riordan, is also pursuing claims under California's Private Attorneys General Act (PAGA), which can carry stiff statutory penalties for violations of the state's labor code.

Liss-Riordan is the same attorney who has been fighting driver battles against Uber Technologies Inc. and Lyft in courts across the country. While her \$27 million Lyft settlement was approved in June 2016, an \$84 million settlement she negotiated with Uber was [rejected last August](#)—in large part because the judge found she had failed to adequately value the PAGA claim against Uber.

GrubHub has argued that Lawson—who was ultimately booted off of the GrubHub app for failing to respond to delivery requests—could not be considered an employee as a matter of law because he was permitted to compete for other delivery services simultaneously, and he had a large amount of discretion over whether and where he worked.

Liss-Riordan, meanwhile, contends that the company still exerted a significant degree of control over Lawson, as an employer would. She is also pursuing a national class action against GrubHub in federal court in Chicago.

The bench trial in Corley's courtroom is set to begin Sept. 5.

*Contact the reporter at [bhancock@alm.com](mailto:bhancock@alm.com).*