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13 **UNITED STATES DISTRICT COURT**
14 **NORTHERN DISTRICT OF CALIFORNIA**
15

16
17 BYRON MCKNIGHT, JULIAN MENA, TODD
18 SCHREIBER, NATE COOLIDGE, and ERNESTO
MEJIA, individually and on behalf of all others
19 similarly situated,

20 Plaintiffs,

21 v.

22 UBER TECHNOLOGIES, INC., a Delaware
23 Corporation, RAISIER, LLC, a Delaware Limited
Liability Company,

24 Defendants.
25
26
27

Case No.: 3:14-cv-05615-JST

**PLAINTIFFS' NOTICE OF MOTION AND
MOTION FOR ATTORNEYS' FEES AND
EXPENSES AND FOR CLASS
REPRESENTATIVE SERVICE AWARDS;
MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT THEREOF**

Hon. Jon S. Tigar, Presiding

Date: February 8, 2018

Time: 2:00 P.M.

Location: Courtroom 9 - 19th Floor, 450 Golden
Gate Avenue, San Francisco, CA 94102

[Filed concurrently with the Declarations of
Tina Wolfson, Mike Arias, Nick Coulson, Byron
McKnight, Julian Mena, Todd Schreiber, Nate
Coolidge, and Ernesto Mejia]

NOTICE OF MOTION

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that, on February 8, 2018 at 2:00 p.m., in Courtroom 9 of the above-captioned Court before the Honorable Jon S. Tigar, Plaintiffs Byron McKnight, Julian Mena, Todd Schreiber, Nate Coolidge, and Ernesto Mejia, (collectively, “Plaintiffs”) will and hereby do move for an Order awarding: (a) a service award of \$500 to each Plaintiff; and (b) Class Counsel’s attorneys’ fees in the amount of \$8.125 million, totaling 25% of the \$32.5 million Settlement Fund, and reimbursement of litigation expenses in the amount of \$39,312.83.

Plaintiffs respectfully request that the Court grant this motion because: (a) the service awards are modest and justified in light of Plaintiffs’ commitment to the case; (b) the requested attorneys’ fees are fair and reasonable because Class Counsel were able to achieve an extraordinary result through a settlement that provides a remedy to all class members nationwide in a case that faced extremely high risks if litigation continued, in that Uber was likely to prevail in its motion to compel individual arbitration either at the trial or appellate level, as demonstrated by the resolution of that issue in other ongoing cases against Uber; (c) Class Counsel expended extensive and longstanding efforts to create a non-reversionary Settlement Fund of \$32.5 million; (d) the requested fees comport with Ninth Circuit case law developed in similar common fund litigation; and (e) the expenses for which reimbursement is sought were reasonable and necessarily incurred in connection with the prosecution of this action.

This motion is based upon this Notice of Motion and Motion, the Memorandum of Points and Authorities; the Declarations of all Plaintiffs, and the concurrently filed Declarations of Robert Ahdoot (“Ahdoot Decl.”), Mike Arias (“Arias Decl.”), and Nick Coulson (“Coulson Decl.”); the Class Action Settlement and Release (the “Settlement”) previously filed with the Court (Dkt. 125), and all papers filed in support thereof; the argument of counsel; all papers and records on file in this matter; and such other matters as the Court may consider.

///

///

AHDOOT & WOLFSON, PC

Dated: December 7, 2017

By: /s/ Robert Ahdoot
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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Four law firms who represent the Plaintiff Class request that the Court award a total of \$8.125
4 million in attorney fees. The requested fees amount to 25% of the \$32.5 million non-reversionary
5 Settlement Fund,¹ and represent a 4.28 multiplier on the collective lodestar of \$1,896,480.

6 At the 25% benchmark, the requested fees are fair and reasonable because Class Counsel were
7 able to achieve an excellent Settlement that provides monetary relief to all class members, as well as
8 important injunctive relief. Had the case continued in litigation, Uber's arbitration policy and class
9 action waiver likely would have prevented any class members from proceeding in court, or as a class
10 action, effectively eliminating the possibility of any comparable result. Because the case could perish,
11 as was the result in several other concurrent cases involving Uber's arbitration clauses, Class
12 Counsel's achievement on behalf of the class here is extraordinary.

13 In contrast to zero, which is what Class members well might receive had the case continued in
14 litigation, Defendants will pay \$32.5 million into a non-reversionary Settlement Fund to be distributed
15 to the entire nationwide Class of 22.4 million riders. As explained in Plaintiffs' Motion for
16 Preliminary Approval, the Settlement amounts to at least 6.9% of the maximum theoretical recovery at
17 trial—a reasonable percentage standing alone—but a much higher percentage taking into account
18 Defendants' safety-related costs, some or all of which would be accounted for in, and reduce the
19 amount of, any damage award, ignoring for the moment the very real risks entailed by continued
20 litigation. (Dkt. 127 at 20-21.)

21 The Settlement also requires that Defendants refrain from making allegedly misleading
22 statements about the safety of their service, and no longer charge a "Safe Rides Fee." (Dkt. 125, ¶ 54.)
23 The Settlement substantially remedies the objectionable conduct on which Plaintiffs' claims are
24 premised. In addition, the automatic distribution of the cash benefits through the Uber application
25 platform confers an additional \$1.68 million-worth of benefits to the Class. In light of the dire risks in
26

27 _____
28 ¹ Unless defined otherwise, capitalized terms used herein have the meaning ascribed to them in the Amended Settlement Agreement. (Dkt. 125.)

1 this litigation, Counsel achieved an excellent settlement for the class and the requested fees, consistent
2 with the Ninth Circuit benchmark, are fair and reasonable.

3 The Court has discretion to award Class Counsel fees as “a percentage of [the] common fund”
4 resulting from their efforts, and Class Counsel respectfully request such an award here. *In re*
5 *Volkswagen “Clean Diesel” Mktg., Sales Practices, & Prods. Liab. Litig.*, No. 2672 CRB (JSC), 2017
6 WL 1047834, at *1 (N.D. Cal. Mar. 17, 2017); *see also Laffitte v. Robert Half Int’l Inc.*, 1 Cal. 5th
7 480, 489-90 (2016) (“The lodestar method has been . . . criticized for discouraging early settlement
8 and consuming too large an amount of judicial resources in its application.”). All the factors
9 considered by Ninth Circuit courts taking the percentage approach support the requested award,
10 including the results achieved, the risk of litigation, Class Counsel’s requisite skill, the quality of Class
11 Counsel’s work, the contingent nature of their representation, and awards made in comparable cases.

12 Although not required in a non-reversionary common fund context, a lodestar cross-check
13 further supports the fee request here. *See, e.g., id.* at 506 (“[T]rial courts have discretion to conduct a
14 lodestar cross-check on a percentage fee . . . ; they also retain the discretion to forgo a lodestar cross-
15 check and use other means to evaluate the reasonableness of a requested percentage fee.”). Class
16 Counsel’s efforts over the course of nearly three years—much if not most of which was conducted
17 outside of Court and not reflected in the Court’s docket—were extensive and exhaustive, totaling
18 some 2,835 hours. As further elaborated below, Counsel’s efforts included, summarily:

- 19 • A thorough and exhaustive pre-filing investigation of all factual and legal issues
20 surrounding Defendants’ representations, marketing, business practices, and promotional
21 efforts, across all available platforms, including dozens of witness and expert interviews;
- 22 • After the two original two cases (this action and *Mena v. Uber Techs., Inc.*, No. 3:15-
23 00064) were independently filed, respective Plaintiffs’ counsel negotiated a way to proceed
24 forward in a collaborative manner rather than wasting the Court’s resources on
25 management of competing, separate cases and contested lead counsel applications;
- 26 • Preparation of two original Complaints, an Amended Complaint, the Consolidated
27 Amended Complaint (“CAC”), as well as fully researching and briefing two complex
28 motions to compel arbitration filed by Uber;

- 1 • Extensive post-filing investigation and discovery, which included review of thousands of
2 documents, ten interviews of Uber personnel, numerous interviews of additional witnesses,
3 and consultation with experts;
- 4 • Reviewing filings in and researching factual and legal issues implicated by numerous other
5 proceedings against Uber that were relevant to this matter, including *California v. Uber*
6 *Techs., Inc.*, No. CGC-14-543120 (S.F. Sup. Ct.), *Cordas v. Uber Techs., Inc.*, No. 16-CV-
7 04065-RS (N.D. Cal.), *Cullinane v. Uber Techs., Inc.*, No. CV 14-14750-DPW (D. Mass.),
8 *Cubria v. Uber Techs, Inc.*, No. A-16-CA-544-SS (W.D. Tex.), *Greater Houston*
9 *Transportation Co. v. Uber Techs., Inc.*, No. 14-941 (S.D. Tex.), *In re Uber FCRA Litig.*,
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11 cv-01257-JST (N.D. Cal.) (“*L.A. Taxi*”), *Lavitman v. Uber Techs., Inc.*, No. 2012-04490
12 (Mass.), *Metter v. Uber Techs., Inc.*, No. 16-CV-06652-RS (N.D. Cal.), No. 17-16027 (9th
13 Cir.), *Meyer v. Kalanick*, Nos. 15 Civ. 9796 (S.D.N.Y.), 16-2750-cv (2d Cir.), *O’Connor v.*
14 *Uber Techs., Inc.*, No. 3:13-cv-03826-EMC (N.D. Cal.), *Price v. Uber Techs., Inc.*, No.
15 BC554512 (L.A. Sup. Ct.), and *Sabatino v. Uber Techs., Inc.*, No. 15-cv-00363 (N.D.
16 Cal.);
- 17 • Before reaching the final Settlement, Class Counsel engaged in settlement negotiations
18 spanning almost two years with an ever-changing backdrop of facts and law, attended six
19 full days of mediation with two private mediators and a settlement conference with Chief
20 Magistrate Judge Joseph C. Spero, and conducted numerous in-person and telephonic
21 meetings between counsel; and
- 22 • Counsel memorialized the original and amended Settlements and prepared all related
23 documents. While such documentation is always work intensive and time consuming,
24 these particular Defendants had very strong viewpoints on every detail of the process, and
25 every minutiae of the settlement was extensively negotiated and hard fought.

26 In addition, Class Counsel will need to spend significant additional time on this matter before it
27 concludes, none of which is included in the lodestar to date. Class Counsel will be required to:
28 oversee and assist with administration of the Settlement and distribution of the Settlement fund; brief,

1 research, and argue final approval; ensure that Defendants comply with the injunctive relief aspects of
 2 the Settlement; respond to objections; and may be required to litigate this matter on appeal before the
 3 Ninth Circuit, should the Court overrule objections to the Settlement, and those objectors appeal.

4 Based solely on fees incurred to date, the requested fee results in a lodestar cross-check
 5 multiplier of 4.28, which is within the range of multipliers approved in the Ninth Circuit, and is
 6 supported here given the complexity of the issues involved, the contingent nature of the representation,
 7 and the other factors considered by courts undertaking this approach.

8 Finally, Counsel's request is supported by Class Members' reaction so far to the Settlement
 9 and to the requested fees. Although the deadlines to submit an opt-out request, objection, or Payment
 10 Election Form have not yet passed, more than ten weeks have passed since commencement of the
 11 dissemination of notice, which informed recipients that the present request would be filed for up to
 12 25% of the total Settlement Fund. In that time, as of December 1, 2017, 80,060 Payment Election
 13 Forms have been submitted, only 29 people opted for exclusion, and 1 person submitted an objection.²
 14 The total number of exclusions and the single objection represent 0.0001% of the Class, a strikingly
 15 low number. Thus, the Class overwhelmingly supports the Settlement, including the requested fee
 16 award.

17 **II. BACKGROUND**³

18 **A. Class Counsel Expended, and Will Continue to Expend, Considerable Time and** 19 **Resources in Reaching the Settlement**

20 **1. Class Counsel Engaged in Extensive Pre-Filing Investigation**

21 Before initiating the Actions, Counsel for Plaintiffs conducted extensive research regarding
 22 Defendants' representations, promotional efforts, marketing, and articles across different types of media,
 23 business practices, and users' experience across all the different platforms on which the Uber application
 24

25 ² Objections will be addressed when Plaintiffs file their Motion for Final Approval of Class Action
 26 Settlement, which is due on January 25, 2018. The final numbers of submitted Payment Election
 27 Forms, opt-outs, and objections also will be reported at that time.

28 ³ Although the Northern District's Procedural Guidance for Class Action Settlements discourages a
 statement of background facts in motions for attorney fees, and suggests reliance on the background
 section in a final approval motion, Plaintiffs have not yet filed such a motion, and this background
 section bears directly on Class Counsel's request in this Motion.

1 is available. Counsel investigated facts and the applicable law and standards relating to background
2 checks and commercial transportation service safety, and researched and analyzed the merits of any
3 potential causes of action and defenses. (Ahdoot Decl., ¶ 2.) Class Counsel continued these efforts after
4 filing the Actions and before entering into the 2016 Stipulated Settlement and the 2017 Amended
5 Settlement. (*Id.*)

6 Plaintiffs' investigation also included a detailed inspection and testing of Defendants' ride share
7 App across various operating system platforms; consultations with experts; interviews of witnesses,
8 drivers, and putative class members; and extensive factual and legal research regarding the many
9 iterations of Uber's arbitration policy, the sufficiency of the claims, and the appropriateness of class
10 certification. (*Id.*, ¶ 4.)

11 **2. Class Counsel Negotiated a Cooperative Way to Consolidate and Move the** 12 **Two Separate Cases Forward Together, in an Economic Fashion**

13 ***The Original Complaints.*** In December 2014, Counsel for Plaintiffs Philliben⁴ and McKnight
14 prepared and filed a nationwide class action, No. 3:14-cv-05615 ("*McKnight*"), asserting causes of
15 action for violations of California's False Advertising Law ("FAL"), Cal. Bus. & Prof. Code § 17500 *et*
16 *seq.*, and Unfair Competition Law ("UCL"), Cal. Bus. & Prof. Code §§ 17200 *et seq.*, and alleging, *inter*
17 *alia*, misrepresentations and omissions regarding Defendants' "Safe Rides Fee," safety measures,
18 alleged expenditures, and driver background checks. (*McKnight*, Dkt. 1). And in January 2015,
19 Counsel for Andrea Pappey filed a nationwide (or in the alternative California, Illinois, and
20 Massachusetts) class action, No. 3:15- cv-00064 ("*Mena*"). Counsel later amended this complaint to
21 join Plaintiffs Mena, Schreiber, Coolidge, and Mejia as class representatives, while Andrea Pappey
22 withdrew. The *Mena* complaint alleged breach of implied contract; violations of California's
23 Consumers Legal Remedies Act ("CLRA"), Cal. Civ. Code §§ 1750 *et seq.*; and violations of the UCL,
24 FAL, and the Illinois Consumer Fraud Act, 815 ILCS 502/2, *et seq.* ("ICFA") in connection with alleged
25 misrepresentations and omissions regarding Defendants' Safe Rides Fee, safety measures, alleged

26
27 ⁴ In May 2017, Counsel for Byron McKnight filed a Stipulation of Partial Dismissal of Matthew
28 Philliben dismissing all claims related to Matthew Philliben without prejudice. This matter is now
referred to as *McKnight, et al. v. Uber Technologies, Inc., et al.* (*McKnight*, Dkt. 121.)

1 expenditures, and driver background checks. (*Mena* Dkt. 28.)

2 Rather than wasting the Court's resources on management of competing, separate cases and
3 contested lead counsel applications, Counsel filed a joint stipulation to relate *Mena* and *McKnight* in
4 February 2015, which the Court granted. (*McKnight*, Dkt. No. 23; *Mena*, Dkt. No. 19.) Defendants then
5 filed an Administrative Motion To Determine Whether Cases Should Be Related seeking to relate *Mena*
6 and *McKnight* to the *L.A. Taxi* action. (*McKnight*, Dkt. Nos. 34 to 35.) The Court granted Defendants'
7 Administrative Motion in May 2015. (*McKnight*, Dkt. No. 36.)

8 **3. Class Counsel Briefed Two Separate Arbitration Motions, and Prepared the CAC**

9 ***The Arbitration Motions.*** In early 2015, Defendants filed a Joint Motion to Stay Proceedings
10 Pending Arbitration in *McKnight*, and a short time later Defendants filed a similar motion in *Mena*.
11 (*McKnight* Dkt. 25-29, 38-40; *Mena* Dkt. 31-36, 39-41.) Counsel for Plaintiffs briefed two separate
12 responses to Defendants' motions to stay (*McKnight*, Dkt. No. 37; *Mena*, Dkt. 37-38, 42, 45, 46), and
13 counsel for *McKnight* prepared a Statement of Recent Decision with respect to Defendants' motion
14 (*McKnight*, Dkt. No. 47.) (Ahdoot Decl., ¶ 14.) Counsel for the *Mena* plaintiffs prepared an Objection
15 to and Motion To Strike Reply Evidence Re Defendant's Motion To Stay Proceedings Pending
16 Arbitration, or in the Alternative, Request for a Surreply (*Mena*, Dkt. No. 42), and the Court granted the
17 *Mena* plaintiffs leave to file a Surreply. The Court continued the hearing on Defendant's Motion to Stay
18 and in June 2015, Counsel for the *Mena* plaintiffs filed a Surreply In Opposition To Defendant's Motion
19 To Stay Proceedings Pending Arbitration. (*Mena*, Dkt. No. 45.) Counsel for the *Mena* plaintiffs also
20 filed a Statement of Recent Decision In Support of Plaintiffs' Opposition To Defendant's Motion To
21 Stay Proceedings Pending Arbitration. (*Mena*, Dkt. 46.)

22 Counsel participated in preparing a Stipulation and Proposed Order For A Temporary Stay
23 Pending Mediation (*Mena*, Dkt. 48; *McKnight*, Dkt. 48), as well as a Stipulation and Protective Order
24 (*Mena*, Dkt. 49; *McKnight*, Dkt. 50), which was entered by the Court on August 3, 2015 (*Mena*, Dkt. 51;
25 *McKnight*, Dkt. 52). These motions were vacated after the 2016 Settlement. (*McKnight*, Dkt. 87.)

26 ***The CAC.*** Counsel for Plaintiffs then prepared and filed a CAC asserting causes of action for
27 Breach of Implied Contract; violations of California's CLRA, UCL, and FAL; and violation of the
28 ICFA, premised on Defendants' alleged misrepresentations and omissions regarding their "Safe Rides

1 Fee,” their safety measures, and the nature and character of their background checks. Plaintiffs
2 advanced these claims on behalf of a putative nationwide class, or in the alternative, California, Illinois,
3 and Massachusetts classes of consumers. (*McKnight*, Dkt. 67.)

4 **4. Class Counsel Obtained and Reviewed Extensive Information from Defendants**

5 Plaintiffs submitted comprehensive requests for information regarding their allegations and
6 Defendants’ anticipated defenses, and Defendants provided thousands responsive documents and sworn
7 responses. In addition to documents responsive to Plaintiffs’ requests, Defendants also provided
8 discovery from the *LA Taxi* litigation, including documents, deposition transcripts, and expert reports.

9 During the investigative phase, Counsel for Plaintiffs submitted comprehensive requests for
10 information regarding their allegations and Defendants’ anticipated defenses, and Defendants provided
11 thousands of pages of responsive documents and sworn responses. Plaintiffs thoroughly analyzed and
12 evaluated all information provided, including documents bearing on Defendants’ background checks,
13 alleged safety expenditures, the Safe Rides Fee and resulting revenues, and Defendants’ representations,
14 advertising, and marketing regarding safety. (*Id.* ¶ 18.)

15 Plaintiffs’ investigation also included a detailed inspection and testing of Defendants’ ride
16 share App across various operating system platforms; consultations with experts; interviews of
17 witnesses, drivers, and putative class members; the evaluation of documents and information related to
18 other litigation against Defendants; as well as extensive factual and legal research regarding
19 arbitration, the sufficiency of the claims, and the appropriateness of class certification. (*Id.* ¶ 4.)

20 Plaintiffs conducted ten extensive interviews of key witnesses over the course of three days at
21 Uber’s offices and other locations in San Francisco. Counsel interviewed current and former high level
22 Uber employees with direct knowledge of facts at issue in the Actions, including safety representations,
23 safety measures, alleged safety expenditures, details regarding the Safe Rides Fee, user databases, and
24 other relevant areas of Uber’s operations. (*Id.* ¶ 5.) After the Denial Order, Plaintiffs’ investigation
25 continued, and Plaintiffs sought and received updated information as well as thousands of pages of
26 additional documents, deposition transcripts, and expert reports from related cases. (*Id.* ¶¶ 19-20.)

27 The parties’ exchange of information and documents continued even after the Court’s August
28 2016 Order denying Plaintiffs Motion for Preliminary Approval of the prior settlement. Through this

1 process, Defendants provided and updated information including thousands of pages of additional
 2 documents, as well as deposition transcripts and expert reports from *LA Taxi* litigation, for Class
 3 Counsel's review. (*Id.*, ¶¶ 21-22.) In addition to the sheer volume of discovery reviewed by Class
 4 Counsel, it is worth noting that every step of the discovery process came with hard fought negotiations
 5 by the parties' Counsel. (*Id.*, ¶ 23.)

6 **5. Class Counsel Monitored Related Litigation, and Continue to Do So**

7 This litigation has required Class Counsel continuously to monitor and evaluate filings in, and
 8 research factual and legal issues implicated by, numerous other proceedings against Uber. These
 9 matters include: *California v. Uber Techs., Inc.*, No. CGC-14-543120 (S.F. Sup. Ct.) (alleging, *inter*
 10 *alia*, false safety representations); *Cordas v. Uber Techs., Inc.*, No. 16-CV-04065-RS (N.D. Cal.)
 11 (alleging false statements by Uber and addressing enforceability of its arbitration provisions);
 12 *Cullinane v. Uber Techs., Inc.*, No. CV 14-14750-DPW (D. Mass.) (same); *Cubria v. Uber Techs, Inc.*,
 13 No. A-16-CA-544-SS (W.D. Tex.) (same); *Greater Houston Transportation Co. v. Uber Techs., Inc.*,
 14 No. 14-941 (S.D. Tex.) (alleging, *inter alia*, false safety representations); *In re Uber FCRA Litig.*, No.
 15 C-14-5200 EMC (N.D. Cal.) (addressing enforceability of Uber's driver arbitration agreements); *L.A.*
 16 *Taxi Cooperative, Inc. v. Uber Techs., Inc.*, No. 15-cv-01257-JST (N.D. Cal.) (alleging, in related
 17 action, false safety representations), *Lavitman v. Uber Techs., Inc.*, No. 2012-04490 (Mass.)
 18 (addressing arbitration-related issues of contract formation involving Defendants' app in forum
 19 selection context); *Metter v. Uber Techs., Inc.*, No. 16-CV-06652-RS (N.D. Cal.), No. 17-16027 (9th
 20 Cir.) (alleging false statements by Uber and addressing enforceability of its arbitration provisions);
 21 *Meyer v. Kalanick*, Nos. 15 Civ. 9796 (S.D.N.Y.), 16-2750-cv (2d Cir.) (addressing enforceability of
 22 Uber's rider arbitration agreement); *O'Connor v. Uber Techs., Inc.*, No. 3:13-cv-03826-EMC (N.D.
 23 Cal.) (addressing enforceability of Uber's driver arbitration agreements); *Price v. Uber Techs., Inc.*,
 24 No. BC554512 (L.A. Sup. Ct.) (concerning allegations and issues similar to those raised by *O'Connor*,
 25 in state court proceedings); *Sabatino v. Uber Techs., Inc.*, No. 15-cv-00363 (N.D. Cal.) (alleging, *inter*
 26 *alia*, false safety representations).

27 **6. Class Counsel Engaged in Extensive Settlement Negotiations, and Documented and** 28 **Briefed Approval of the Original and Amended Settlement Agreements**

1 After the arbitration motions were fully briefed, the parties began a series of arms' length
2 settlement negotiations, which ultimately included six separate days of mediation, a settlement
3 conference before Chief Magistrate Judge Joseph C. Spero, and numerous face-to-face and telephonic
4 meetings between counsel and with two mediators, the Honorable Carl J. West (Ret.) of JAMS and
5 Robert J. Kaplan, Esq. of Judicate West. The settlement discussions began nearly two years ago, and it
6 was only through Class Counsel's extraordinary efforts that the parties finally came to an agreement.

7 The first round of mediation consisted of three full days with Judge West, and included several
8 additional face-to-face and telephonic meetings between counsel and with Judge West. (Ahdoot Decl.,
9 ¶¶ 24-25.) The Parties filed two Joint Stipulations and Proposed Orders Updating the Court on
10 Settlement Discussions and Requesting Extension of Temporary Stay Pending Further Mediation.
11 (*Mena*, Dkt. 56; *McKnight*, Dkt. 57.)

12 After the third full day of mediation and another month of continued settlement discussions
13 directly and through Judge West, the parties were able to report to the Court that they had reached a
14 settlement in principle in December 2015. Counsel filed a Stipulation and Proposed Order Updating
15 the Court on the Parties' Settlement in Principle and Requesting that Arbitration Hearing Be Vacated.
16 (*McKnight*, Dkt. 63.) After reaching a settlement in principle, the parties commenced memorializing
17 the full Settlement, which generated numerous additional rounds of comprehensive and spirited
18 negotiations. The parties extensively negotiated each specific aspect of the Stipulation, including each
19 of its nine exhibits.

20 Class Counsel crafted, negotiated, and meticulously refined the final notice program and each
21 document comprising the notice (the Long Form Notice, Summary Notice, and Banner Ads for certain
22 Internet advertising), with the assistance of a class action notice expert, to ensure that the information
23 disseminated to Class Members is clear and concise. Counsel filed a Stipulation of Settlement
24 (*McKnight*, Dkt. 74, "First Stipulation"), and a motion for preliminary approval of the First Stipulation
25 (*McKnight*, Dkt. 75-3, "2016 Settlement") with the Court in February 2016. In August 2016, the Court
26 issued an Order Denying Motion For Preliminary Approval of Class Action Settlement. (*McKnight*,
27 Dkt. 98) ("Denial Order".)

28 After the Denial Order, the parties recommenced settlement negotiations and exchanged more

1 information. (Ahdoot Decl., ¶ 41.) The Parties agreed on a new mediator, Robert J. Kaplan, Esq. of
2 Judicate West, to assist in these negotiations, and Counsel attended another three (3) in-person
3 mediations. Counsel for the Parties also met in-person and conducted numerous telephonic discussions
4 and negotiations both among themselves and with the new mediator. Class Counsel also attended a
5 settlement conference with Chief Magistrate Judge Spero to address class allocation issues. (*Id.*, ¶¶ 41-
6 43.) After the settlement conference with Judge Spero, the Parties continued negotiating and drafting
7 the terms of the amended stipulation of settlement—negotiations that continued throughout March 2017,
8 all of April 2017 and all of May 2017. Throughout this entire period the negotiations were extensive and
9 contentious. (*Id.*, ¶ 44.)

10 The Parties reached an amended settlement in principle in February 2017. (*Id.*, ¶ 45.) Class
11 Counsel then worked to update the First Stipulation and its respective exhibits and declarations, and
12 agreed to an Amended Stipulation of Settlement (“Amended Stipulation”) in May 2017. (*Id.*) As with
13 the First Stipulation, counsel negotiated and refined the Amended Stipulation to reflect the revised class
14 definition and other changes to the First Stipulation, often debating the finest of minutiae. Finally, in
15 August 2017, after six full days of mediation sessions, months of negotiation and deliberation, a
16 settlement conference before Magistrate Spero, and dozens of conference calls and telephonic and in-
17 person meetings, the Court approved the Parties’ Amended Stipulation. (Dkt. 136.)

18 **7. Class Counsel’s Work Will Continue Following Resolution of This Motion**

19 Class Counsel will need to spend significant additional time on this matter before it concludes,
20 which is not included in the lodestar to date. The Settlement’s cost-saving distribution mechanism
21 requires Class Counsel’s involvement following the Effective Date. (*See, e.g.*, Dkt. 125 (Am. Stip.)
22 ¶¶ 61, 66, 68-72, 78, 80.) Class Counsel will have to brief, research, and argue final approval, which
23 are due January 25, 2018. (Dkt. 136 at 15.) Class Counsel will have to respond to objections, which
24 may well require litigation of an appeal before the Ninth Circuit, should this Court overrule such
25 objections.

26 Class Counsel also will have to ensure that Defendants comply with the Settlement’s Injunctive
27 Relief provisions. (Dkt. 125 ¶ 54.) For instance, recent filings by the District Attorneys of San
28 Francisco and Los Angeles in *California v. Uber Techs., Inc.*, No. CGC-14-543120 (S.F. Sup. Ct.),

1 assert that Defendants are failing to comply with a safety-related injunction in that case by representing
 2 that it has a “zero tolerance” policy concerning drivers’ alcohol and drug use, while “turning a blind eye
 3 to complaints of intoxicated drivers.” *Id.* (App. for Order Compelling Prod. of Info. & for OSC re
 4 Sanctions, filed 12/6/17). Class Counsel similarly will have to monitor Defendants’ compliance with the
 5 Settlement’s Injunctive Relief in this case.

6 **B. Class Counsel Achieved a Strong Result for the Class**

7 As a result of Class Counsel’s efforts, the Plaintiffs settled for \$32.5 million in monetary relief to
 8 be distributed to Class Members with no reversion to Defendants. The Settlement Fund presents an
 9 average settlement share of approximately \$1.07 per Class Member based on a Class size of 22.4 million
 10 Members. (Dkt. 127 at 6-7.) This share is significant in relation to the initial Safe Rides Fee of \$1.14
 11 charged by Defendants. And the Settlement Fund represents a significant proportion of the maximum
 12 possible recovery through continued litigation and trial. (*Id.* at 20-21.)

13 In addition, the Settlement prohibits Defendants from making allegedly misleading statements
 14 such as “safest ride on the road,” “industry-leading,” and others. (Dkt. 125 (Am. Stip.) at ¶ 58.)
 15 Defendants also no longer can charge a “Safe Rides Fee.” (*Id.*) The Settlement thus addresses
 16 substantially all of the objectionable conduct alleged in the CAC.

17 Finally, distribution of the cash benefits through the Uber application platform confers an
 18 additional \$1.69 million-worth of benefits to the Class. (Dkt. 125-9 (Am. Stip. Ex. I) at ¶ 38.)

19
 20 **III. ARGUMENT**

21 **A. The Predominant Method for Determining Attorneys’ Fees in Class Action Cases**
 22 **that Create a Common Fund Is the Percentage Approach**

23 The Supreme Court has recognized that “a litigant or a lawyer who recovers a common fund for
 24 the benefit of persons other than himself or his client is entitled to a reasonable attorney’s fee from the
 25 fund as a whole.” *Boeing Co. v. Van Gemert*, 444 U.S. 472, 478 (1980); *see also, e.g., Stetson v.*
 26 *Grissom*, 821 F.3d 1157, 1165 (9th Cir. 2016) (“In the absence of a contractual or statutory basis for
 27 awarding fees, the district court may award reasonable fees as a matter of federal common law when
 28 class counsel has recovered a ‘common fund.’”). In deciding whether the requested fee amount is

1 appropriate, the Court’s role is to determine whether such amount is “fundamentally ‘fair, adequate, and
2 reasonable.’” *Staton v. Boeing Co.*, 327 F.3d 938, 963 (9th Cir. 2003) (quoting Fed. R. Civ. Proc.
3 23(e)).

4 Where a class settlement results in the creation of common benefits, district courts may use
5 either—or both—the “percentage-of-the-fund” or the “lodestar-multiplier” method to determine a
6 reasonable fee. *E.g.*, *Vizcaino v. Microsoft Corp.*, 290 F.3d 1043, 1047 (9th Cir. 2002). “Despite
7 [courts’] discretion, use of the percentage method in common fund cases appears to be dominant.” *In re*
8 *Omnivision Techs., Inc.*, 559 F. Supp. 2d 1036, 1046 (N.D. Cal. 2008); *see also, e.g.*, *Vizcaino*, 290 F.3d
9 at 1050-51 (“Calculation of the lodestar, which measures the lawyers’ investment of time in the
10 litigation, provides a check on the reasonableness of the percentage award”); *Six Mexican Workers v.*
11 *Ariz. Citrus Growers*, 904 F.2d 1301, 1311 (9th Cir. 1994) (affirming percentage award).

12 “The percentage method ‘is easy to calculate; it establishes reasonable expectations on the part of
13 plaintiffs’ attorneys as to their expected recovery; and it encourages early settlement, which avoids
14 protracted litigation.’” *Laffitte v. Robert Half Int’l Inc.*, 1 Cal. 5th 480, 503 (2016)) (citation omitted).
15 Here, the requested fee is fair, reasonable, and adequate under either the percentage-of-fund or the
16 lodestar-multiplier approach.

17 **1. The Requested Fee Amount Is Reasonable Under the Percentage-of-Fund**
18 **Method**

19 Under the percentage approach, class counsels’ fees are calculated as a percentage of the
20 common benefits generated through their efforts. In the Ninth Circuit, the “benchmark” percentage is
21 25%. *E.g.*, *Vizcaino*, 290 F.3d at 1048-50; *In re Online DVD-Rental Antitrust Litig.*, 779 F.3d 934,
22 949 (9th Cir. 2015).

23 Here, Class Counsel’s efforts generated a non-reversionary common fund of \$32.5 million for
24 the benefit of the Class, as well as injunctive relief against Uber involving its use of the term “Safety
25 Fee” and other representations regarding safety and driver background checks. And the automatic
26 distribution of the cash benefits through the Uber application platform confers an additional benefit of
27 \$1.69 million. Class Counsel seeks an award of \$8.125 million in attorneys’ fees and \$39,312.83 in
28 costs—an award warranted under either the percentage or lodestar-multiplier approaches, given the

1 value of the work performed, the difficulty and risks presented, and the results achieved.

2 **2. The *Vizcaino* Factors Support the Award Requested**

3 In determining the appropriateness of a fee award, the Ninth Circuit directs courts to consider:
4 “(1) the results achieved; (2) the risk of litigation; (3) the skill required and the quality of work; (4) the
5 contingent nature of the fee and the financial burden carried by the plaintiffs; and (5) awards made in
6 similar cases.” *In re Omnivision Techs., Inc.*, 559 F. Supp. 2d at 1046 (citing *Vizcaino*, 290 F.3d at
7 1048-1050). A court may also consider the volume of work performed, counsel’s skill and experience,
8 the complexity of the issues faced, and the reaction of the class. *See, e.g., In re Heritage Bond Litig.*,
9 02-ML-1475 DT, 2005 WL 1594403, at *18-23 (C.D. Cal. June 10, 2005).

10 a. Class Counsel Achieved an Excellent Recovery for Plaintiffs

11 The results obtained for the Class are the most important factor in determining the appropriate
12 fee award. *See Hensley v. Eckerhart*, 461 U.S. 424, 436 (1983); *Vizcaino*, 290 F.3d at 1049; *In re*
13 *Omnivision*, 559 F. Supp. 2d at 1046; *see also* Federal Judicial Center, Manual for Complex Litigation,
14 § 27.71, p. 336 (4th ed. 2004) (the “fundamental focus is on the result actually achieved for class
15 members”).

16 Here, Class Counsel obtained a Settlement that confers a substantial benefit to the Class,
17 especially in light of the many risks involved in the action. The Class receives a \$32.5 million payment
18 with no reversion to Defendants. The Settlement amount presents an average settlement share of
19 approximately \$1.07 per Class Member based on a Class size of 22.4 million Members. (Dkt. 127 at 6-
20 7.) This share is significant in relation to the initial Safe Rides Fee of \$1.14.

21 Class Counsel also achieved substantial non-monetary benefits for the Class. The Ninth Circuit
22 and other courts have repeatedly held that where, as here, class counsel achieves significant non-
23 monetary benefits, the court “should consider the value of [such] relief as a relevant circumstance in
24 determining what percentage of the common fund class counsel should receive as attorneys’ fees.”
25 *Staton*, 327 F.3d at 974; *see also, e.g., Vizcaino*, 290 F.3d at 1049 (affirming enhanced fee award where
26 “the court found that counsel’s performance generated benefits beyond the cash settlement fund”);
27 *Linney v. Cellular Alaska P’ship*, No. C-96-3008 DLJ, 1997 WL 450064, at *7 (N.D. Cal. July 18,
28 1997) (granting fee award of 1/3 of common fund where settlement provided additional non-monetary

1 relief).

2 Under the terms of the Settlement, in addition to the non-reversionary cash settlement amount,
3 Uber will be enjoined from charging “Safe Rides Fees” and to refrain from using allegedly misleading
4 statements like “safest ride on the road” and “industry-leading” when describing their safety measures in
5 commercial advertising. (Dkt. 125, ¶ 54.) These important settlement benefits further support the fees
6 requested.

7 b. Plaintiffs Faced Significant Risks in this Litigation

8 Risk is an important factor in determining a fair fee award. *In re Omnivision Techs., Inc.*, 559 F.
9 Supp. 2d at 1047 (“The risk that further litigation might result in Plaintiffs not recovering at all,
10 particularly a case involving complicated legal issues, is a significant factor in the award of fees”)
11 (citing *Vizcaino*, 290 F.3d at 1048).

12 On the merits, Defendants raised issues regarding limited viewership, lack of materiality, lack of
13 falsity, and as in any litigation, Plaintiffs faced a risk that any of these defenses might succeed. (Dkt.
14 127 at 14-17.) Plaintiffs also faced uncertainty with respect to obtaining and maintaining class
15 certification. (*Id.* at 18-20.)

16 Critically, the Class faced the very real possibility that Defendants’ arbitration agreements and
17 class action waivers would be found valid and enforceable—if not by this Court then by the Ninth
18 Circuit—in which case “immediately, a large portion of the class would be excluded from this litigation,
19 and would be forced to arbitrate their claims individually.” *In re Uber FCRA Litig.*, No. 14-cv-05200-
20 EMC, 2017 WL 2806698, * 6 (N.D. Cal. June 29, 2017); *see also O’Connor v. Uber Techs., Inc.*, 201 F.
21 Supp. 3d 1110, 1123 (N.D. Cal. 2016) (“A finding that . . . the arbitration clause[] is valid and
22 enforceable would substantially change the scope and course of Plaintiffs’ case, as it would likely
23 require the vast majority of the class to go to arbitration . . . , thus jeopardizing the scope and potential
24 viability of the class action at bar. Plaintiffs face a considerable risk that they will not proceed as a class
25 action in any court . . .”).

26 Indeed, the same arbitration clauses that Defendants inserted into the terms and conditions
27 governing use of their app, and sought to enforce against Plaintiffs in this case, have since been enforced
28 by a number of courts. *See Meyer v. Kalanick*, 868 F.3d 66 (2d Cir. 2017); *Cordas v. Uber Techs., Inc.*,

1 228 F. Supp. 3d 985 (N.D. Cal. 2017); *Cubria v. Uber Techs., Inc.*, 242 F. Supp. 3d 541 (2017);
 2 *Cullinane v. Uber Techs., Inc.*, No. CV 14-14750-DPW, 2016 WL 3751652, at *7 (D. Mass. July 11,
 3 2016).⁵

4 While Plaintiffs believe they could overcome these challenges, any of these defenses, if
 5 successful, could end the case entirely and result in the Class members receiving nothing at all.
 6 Moreover, even if Plaintiffs could overcome all of these challenges, the Settlement allows class
 7 members to receive benefits promptly, without significant delays that continued litigation would entail,
 8 both in this Court and, if Plaintiffs were to prevail at trial, on an inevitable appeal.

9 c. Successfully Prosecuting This Matter Required Significant Skill and Effort on the
 10 Part of Class Counsel

11 The “prosecution and management of a complex national class action requires unique legal skills
 12 and abilities” that are to be considered when determining a reasonable fee. *In re Omnivision Techs.,*
 13 *Inc.*, 559 F. Supp. 2d at 1047 (citation omitted); *see also Vizcaino*, 290 F.3d at 1048 (reasoning that the
 14 complexity of the issues involved and skill and effort displayed by class counsel are among the relevant
 15 factors for determining the proper fee under the percentage approach).

16 Class Counsel in this matter are experienced litigators who have successfully prosecuted and
 17 resolved numerous large consumer class actions and other complex matters, including cases regarding
 18 unfair business practice claims and false advertising claims. (Ahdoot Decl., ¶¶ 50-64, Ex A; Arias
 19 Decl.; Coulson Decl.) Class Counsel’s skill and relevant experience were critical to achieving the
 20 Settlement here.

21 As addressed more fully below and in counsels’ supporting declarations, investigating,
 22 prosecuting, and settling this matter required considerable commitment of time and resources by Class
 23 Counsel. (*See infra* § III.B.2.) Moreover, the caliber of opposing counsel—another important factor in
 24

25 ⁵ In *Metter v. Uber Techs., Inc.*, No. 16-CV-06652-RS, 2017 WL 1374579, *3 (N.D. Cal. Apr. 17,
 26 2017), Judge Seeborg denied Uber’s arbitration motion on the basis that plaintiff raised an issue of fact
 27 as to whether, when used with his phone’s operating system, “a pop-up keypad enabling Metter to
 28 enter his credit card information blocked the terms of service alert” that otherwise would have
 hyperlinked to the terms of service containing the arbitration provision. Plaintiffs applaud this
 decision, but it currently is on appeal (9th Cir. Case No. 17-16027), and the Ninth Circuit has yet to
 affirm.

1 assessing the quality of Class Counsel’s work—supports the requested award, given that Plaintiffs faced
 2 some of the best firms in the country with the virtually unlimited resources at their disposal. *See*
 3 *Vizcaino*, 142 F. Supp. at 1303; *In re King Res. Co. Sec. Litig.*, 420 F. Supp. 610, 634 (D. Colo. 1976);
 4 *Arenson v. Board of Trade*, 372 F. Supp. 1349, 1354 (N.D. Ill. 1974).

5 d. Class Counsel Assumed Considerable Risk Litigating on an Entirely Contingent
 6 Basis

7 The Ninth Circuit has confirmed that a fair fee award must include consideration of the
 8 contingent nature of the fee. *See, e.g., Vizcaino*, 290 F.3d at 1050. Courts long have recognized that the
 9 public interest is served by rewarding attorneys who assume representation on a contingent basis with an
 10 enhanced fee to compensate them for the risk that they might be paid nothing at all for their work. *See,*
 11 *e.g., In re Wash. Pub. Power Supply Sys. Sec. Litig.*, 19 F.3d 1291, 1299 (9th Cir. 1994) (“Contingent
 12 fees that may far exceed the market value of the services if rendered on a non-contingent basis are
 13 accepted in the legal profession as a legitimate way of assuring competent representation for plaintiffs
 14 who could not afford to pay on an hourly basis regardless whether they win or lose.”); *Vizcaino*, 290
 15 F.3d at 1051 (observing courts reward successful class counsel in contingency cases “by paying them a
 16 premium over their normal hourly rates”). This factor deserves particular weight under the unique
 17 circumstances of this matter.

18 If Class Counsel had been able to negotiate a fee directly with Class Members, a 25% contingent
 19 fee would have been eminently reasonable, if not low, for a case this complex, risky, and difficult.
 20 Given the prospective risks and difficulties, it would have been quite reasonable for Class Members to
 21 retain counsel at *no cost to them* unless counsel succeeded, in which case counsel would be entitled to
 22 25% of the total of any fund recovered (after counsel’s expenses). This is especially true given the
 23 willingness of Class Counsel’s law firms to advance more than 2,835 hours of time and \$39,312.83 in
 24 costs, with no hope of recovering those funds unless the case was successful.

25 Class Counsel prosecuted this matter on a purely contingent basis, agreeing to advance all
 26 necessary expenses and agreeing that they would only receive a fee if there was a recovery. (Ahdoot
 27 Decl., ¶ 66.) Indeed, Class Counsel received no compensation at all during nearly three years of
 28 litigating this case on behalf of the Class. (*Id.*) Class Counsel’s “substantial outlay,” and the risk that

1 none of it would be recovered, further supports the award of the requested fees here. *In re Omnivision*
 2 *Techs., Inc.*, 559 F. Supp. 2d at 1047.

3 e. Fees Awarded in Comparable Cases Exceed Those Requested Here

4 Comparing the requested fees to awards in similar cases highlights the reasonableness of this
 5 application. “[I]n most common fund cases, the award exceeds” the 25% benchmark that guides Class
 6 Counsel’s request here. *Knight v. Red Door Salons, Inc.*, No. 08–01520 SC, 2009 WL 248367, at *6
 7 (N.D. Cal. Feb. 2, 2009). “Empirical studies show that, regardless of whether the percentage method or
 8 the lodestar method is used, fee awards in class actions average around one-third of the recovery.”

9 *Romero v. Producers Dairy Foods, Inc.*, No. 1:05-cv-0484-DLB, 2007 WL 3492841, at *4 (E.D. Cal.
 10 Nov. 14, 2007) (quoting 4 Newberg and Conte, *Newberg on Class Actions* § 14.6 (4th ed. 2007).

11 “Under the percentage method, California has recognized that most fee awards are 33 percent.” *Smith*
 12 *v. CRST Van Expedited, Inc.*, No. 10-CV-1116-IEG (WMC), 2013 WL 163293, at *5 (S.D. Cal. 2013).

13 And federal courts in the Ninth Circuit routinely follow California’s approach, awarding percentage
 14 recoveries in excess of the 25% benchmark. *See, e.g., In re Pac. Enters. Secs. Litig.*, 47 F.3d 373, 379

15 (9th Cir. 1995) (affirming 33% award); *Williams v. MGM-Pathe Comms. Co.*, 129 F.3d 1026, 1027

16 (9th Cir. 1997) (same); *Syed v. M-I, L.L.C.*, No. 1:12-cv-1718-DAD-MJS, 2017 WL 3190341, at *8

17 (E.D. Cal. July 27, 2017) (awarding one-third of \$7 million common fund); *Dearaujo v. Regis Corp.*,

18 No. 2:14-cv-01408-KJM-DB2017, WL 3116626, at *13 (E.D. Cal. July 21, 2017) (awarding one-third
 19 of common fund); *Bennett v. SimplexGrinnell LP*, No. 11-cv-1854-JST, Dkt. No. 278, at 11 (N.D. Cal.

20 Sept. 3, 2015) (awarding 38.8% of common fund); *Lee v. JPMorgan Chase & Co.*, Case No. 13-cv-

21 511-JLS, 2015 WL 12711659, at *8-9 (C.D. Cal. Apr. 28, 2015) (awarding one-third of common

22 fund); *Boyd v. Bank of Am. Corp.*, No. SACV 13–0561–DOC (JPRx), 2014 WL 6473804, at *10-11

23 (C.D. Cal. Nov. 18, 2014) (same); *Burden v. Select Quote Ins. Servs.*, No. C 10-5966 LB, 2013 WL

24 3988771, at *5 (N.D. Cal. Aug. 2, 2013) (same); *Barbosa v. Cargill Meat Solutions Corp.*, 297 F.R.D.

25 431, 454 (E.D. Cal. 2013) (same); *Franco v. Ruiz Food Prods., Inc.*, No. 1:10-cv-02354-SKO, 2012

26 WL 5941801, at *25 (E.D. Cal. Nov. 27, 2012) (same); *Garcia v. Gordon Trucking, Inc.*, No. 1:10-cv-

27 324-AWI-SKO, 2012 WL 5364575, at *11 (E.D. Cal. Oct. 31, 2012) (same); *Singer v. Becton*

28 *Dickinson Co*, No. 08-CV-821-IEG (BLM), 2010 WL 2196104, at *8 (S.D. Cal. June 1, 2010)

1 (awarding 33% and citing two prior, similar Southern District awards); *Stuart v. Radioshack Corp.*,
 2 No. C-07-4499 EMC, 2010 WL 3155645, at *8 (N.D. Cal. Aug. 9, 2010) (awarding one-third of
 3 common fund); *Fernandez v. Victoria's Secret Stores, LLC*, No. CV 06-04149 MMM, 2008 WL
 4 8150856, at *16 (C.D. Cal. July 21, 2008) (awarding 34% of common fund); *Aguilar v. Wawona*
 5 *Frozen Foods*, No. 1:15-cv-00093-DAD-EPG, 2017 WL 117789 (E.D. Cal. Jan. 11, 2017) (awarding
 6 33% of fund); *Emmons v. Quest Diagnostics Clinical Labs, Inc.*, No. 1:13-cv-00474-DAD-BAM,
 7 2017 WL 749018 (E.D. Cal. Feb. 24, 2017) (awarding 33% of common fund); *Wren v. RGIS Inventory*
 8 *Specialists*, No. No. C-06-05778 JCS, 2011 WL 1230826, at *27-28 (N.D. Cal. Apr. 1, 2011)
 9 (awarding 42% of \$27 million fund).

10 Fee awards in comparable cases supports the requested fee here.

11 f. The Reaction of the Class to Date Is Overwhelmingly Positive

12 The deadline for class members to exclude themselves is January 8, 2018. The Class Notice
 13 informs class members that Class Counsel will seek a fee that, subject to Court approval, could amount
 14 to 25% of the Settlement Fund, and the Settlement Website makes the full Settlement Agreement
 15 available for Class Members' review. (Dkt. 125-5 at § 19.) As of December 1, 2017, only 29 persons
 16 have opted for exclusion, and just one objection has been submitted. These numbers stand in stark
 17 contrast to the more than 20 million mailings sent and 80,060 Payment Election Forms that have already
 18 been submitted. (Ahdoot Dec., ¶ 101.)

19 **B. A Lodestar Cross-Check Confirms the Reasonableness of the Requested Fees**

20 Application of the lodestar method as a cross-check—or even as a preliminary method of
 21 calculating fees—confirms the reasonableness of the fees requested. The accompanying declarations set
 22 forth the hours of work and billing rates used to calculate the lodestars here. As described in those
 23 declarations, Plaintiffs' counsel and their staff have devoted a total of approximately 2,835 hours to this
 24 litigation, and have a total adjusted lodestar to date of \$1,896,480. (Ahdoot Decl., ¶ 73.) All of this
 25 time was reasonable and necessary for the prosecution of this action. Class Counsel took meaningful
 26 steps to ensure the efficiency of their work. (Ahdoot Decl., ¶¶ 51-52.) And, as explained further below,
 27 these amounts do not include the additional time that Class Counsel will have to spend going forward,
 28 which are likely to exceed the norm in such cases, given the Settlement's cost-saving plan of

1 distribution.

2 **1. Class Counsel’s Hourly Rates Are Reasonable**

3 In assessing the reasonableness of an attorney’s hourly rate, courts consider whether the claimed
4 rate is “in line with those prevailing in the community for similar services by lawyers of reasonably
5 comparable skill, experience and reputation.” *Blum v. Stenson*, 465 U.S. 886, 895-96 n. 11 (1984).
6 Courts apply each biller’s current rates for all hours of work performed, regardless of when the work
7 was performed, as a means of compensating for the delay in payment. *In re Wash. Pub. Power*, 19 F.3d
8 at 1305.

9 Class Counsel here are experienced, highly regarded members of the bar. They have brought to
10 this case extensive experience in the area of consumer class actions and complex litigation. (Ahdoot
11 Decl., ¶¶ 50-63, Ex. A.) Class Counsel’s customary rates are in line with prevailing rates in this District,
12 have been approved by courts in this District and other courts and/or are paid by hourly-paying clients of
13 the firms. (*Id.*, ¶¶ 89-96, Exs. C & D.)

14 **2. The Number of Hours Class Counsel Worked Is Reasonable**

15 The number of hours that Class Counsel have billed is reasonable. *See Caudle v. Bristow*
16 *Optical Co.*, 224 F.3d 1014, 1028 (9th Cir. 2000) (counsel entitled to recover for all hours reasonably
17 expended).

18 Here, Class Counsel maintained contemporaneous, detailed time records billed in 1/10-hour
19 increments. (Ahdoot Decl. ¶ 67; Arias Decl.; Coulson Decl.) Class Counsel have categorized their
20 time entries in accordance with the Uniform Task-Based Management System (“UTBMS”), to
21 summarize the work performed and allow for a meaningful analysis by the Court. The below chart sets
22 forth Plaintiffs’ Counsel’s time and fees under each general UTBMS code. A more detailed
23 breakdown by UTBMS subcategory may be found in the Ahdoot Declaration at Paragraphs 73-88.

UTBMS Code	UTBMS Description	Time Sought	% of Total Fees
L100	Case Assessment, Development and Administration	63.5	2.2%
L110	Fact Investigation/Development	176.9	6.2%
L120	Analysis/Strategy	113.0	4.0%
L160	Settlement/Non-Binding ADR	1,073.8	37.9%
L190	Other Case Assessment, Development and Administration	109.5	3.9%
L210	Pleadings	108.8	3.8%
L230	Court Mandated Conferences	21.7	0.8%
L250	Other Written Motions and Submissions	256.9	9.1%
L260	Class Action Certification and Notice	194.2	6.9%
L300	Discovery	420.1	14.8%
L310	Written Discovery	104.5	3.7%
L320	Document Production	149.9	5.3%
L460	Post-Trial Motions and Submissions	37.9	1.3%
L500	Appeal	4.3	0.2%
Total		2835	100%

The UTBMS categorization demonstrates that the amount of time spent by Class Counsel was both reasonable and proportionate to the needs of the case (a detailed description of the tasks performed by Class Counsel is set forth in the Ahdoot Decl.).

3. The Multiplier Is Justified Given the Results Obtained, the Complexity of the Issues, and the Contingent Nature of the Representation

Under the lodestar-multiplier method, courts may adjust the raw lodestar amount based upon consideration of many of the same factors considered in the percentage-of-fund analysis, such as (1) the results obtained; (2) whether the fee is fixed or contingent; (3) the complexity of the issues involved; (4) the preclusion of other employment due to acceptance of the case; and (5) the experience, reputation, and ability of the attorneys. *See Kerr v. Screen Extras Guild, Inc.*, 526 F.2d 67, 70 (9th Cir. 1975). “The district court *must* apply a risk multiplier to the lodestar “when (1) attorneys take a case with the expectation they will receive a risk enhancement if they prevail, (2) their hourly rate does not reflect that

1 risk, and (3) there is evidence the case was risky.”” *Stetson*, 821 F.3d at 1166 (“Failure to apply a risk
 2 multiplier in cases that meet these criteria is an abuse of discretion.”) (italics in original) (quoting
 3 *Stanger v. China Elec. Motor, Inc.*, 812 F.3d 734, 741 (9th Cir.2016), and *Fischel v. Equitable Life*
 4 *Assurance Soc’y*, 307 F.3d 997, 1008 (9th Cir. 2002)); *In re Wash. Pub. Power*, 19 F.3d at 1300 (“[I]f
 5 this “bonus” methodology did not exist, very few lawyers could take on the representation of a class
 6 client given the investment of substantial time, effort, and money, especially in light of the risks of
 7 recovering nothing.’ . . . [C]ourts have routinely enhanced the lodestar to reflect the risk of non-payment
 8 in common fund cases.”) (citation omitted).

9 Class Counsel request a fee of \$8.125 million, which represents a multiplier of approximately
 10 4.28 on the total lodestar of \$1,896,480 incurred by Plaintiffs’ counsel in this litigation. (Ahdoot
 11 Decl., ¶ 73.) Such a multiplier is within the range of multipliers that the courts in the Ninth Circuit
 12 and elsewhere regularly approve. *See, e.g., Vizcaino*, 290 F.3d at 1051 & Appendix (approving
 13 multiplier of 3.65 and citing cases with multipliers as high as 19.6); *In re Volkswagen*, 2017 WL
 14 1047834, at *5 (Breyer, J.) (“Multipliers in the 3-4 range are common in lodestar awards for lengthy
 15 and complex class action litigation.”) (quoting *Van Vranken v. Atlantic Richfield Co.*, 901 F. Supp.
 16 294, 298-99 (N.D. Cal. 1995)); *In re Nasdaq Market-Makers Antitrust Litig.*, 187 F.R.D. 465, 489
 17 (S.D.N.Y. 1998) (“In recent years multipliers of between 3 and 4.5 have become common”) (citation
 18 omitted); *Maley v. Del Global Techs. Corp.*, 186 F. Supp. 2d 358, 371 (S.D.N.Y. 2002) (holding
 19 “modest” multiplier of 4.65 “fair and reasonable”); *Craft v. County of San Bernardino*, 624 F. Supp.
 20 2d 1113, 1125 (C.D. Cal. 2008) (upholding 25% of the fund award resulting in a multiplier of
 21 approximately 5.2, and citing cases in support); *Wershba v. Apple Computer*, 91 Cal. App. 4th 224,
 22 255 (2001) (“Multipliers can range from 2 to 4 or even higher.”).

23 For example, in *Gutierrez v. Wells Fargo Bank, N.A.*, No. C 07-05923 WHA, 2015 WL
 24 2438274 (N.D. Cal. May 21, 2015), a UCL class action resulting in a \$203 million judgment, Judge
 25 Alsup applied a 5.5 multiplier to lead counsel’s lodestar, based on “the fine results achieved on behalf
 26 of the class, the risk of non-payment [lead counsel] accepted, the superior quality of their efforts, and
 27 the delay in payment.” *Id.* at *7. Similarly, in *Craft*, 624 F. Supp. 2d at 1125, the Central District,
 28

1 citing a multitude of cases from across the country, upheld a common fund award that equated to a
2 lodestar multiplier of 5.2.

3 Given the extensive effort required of Class Counsel to get to this point and present the
4 Settlement's excellent benefits to the Class, in the face of the risks presented, the complexity of the
5 issues this litigation entailed, and the risk of no recovery in light of Defendants' arbitration motions and
6 other defenses, both a "results multiplier" and a "risk multiplier" are well warranted. *In re Wash. Pub.*
7 *Power*, 19 F.3d at 1301-03; *see also, e.g., Gutierrez*, 2015 WL 2438274, at *5 ("Even though some of
8 class counsel's claimed billing rates appear extraordinary . . . counsel waited patiently for payment for
9 several years."); *Stetson*, 821 F.3d at 1166 (holding courts "'must apply a risk multiplier to the lodestar
10 "when . . . the case was risky.").

11 Class Counsel's requested multiplier also is reasonable given that a 25% fee award will
12 compensate them not only the work already performed, but future work as well, as described above
13 (including their continuing obligation to the Class members to oversee the claims payment process). In
14 effect, this means that the final lodestar will be higher, and the 4.28 multiplier ultimately may be lower.
15 Together, all these factors support Class Counsel's request here.

16 **C. Class Counsel Are Entitled to Reimbursement of Their Reasonable Litigation**
17 **Expenses**

18 Under well-settled law, Class Counsel are entitled to reimbursement of the expenses they
19 reasonably incurred investigating and prosecuting this matter. *See Staton*, 327 F.3d at 974; *In re Media*
20 *Vision Tech. Sec. Litig.*, 913 F. Supp. 1362, 1366 (N.D. Cal. 1995) (citing *Mills v. Electric Auto-Lite*
21 *Co.*, 396 U.S. 375, 291-92 (1970)). To date, Class Counsel have collectively incurred \$39,312.83 in
22 unreimbursed litigation costs. This amount does not include significant internal and other additional
23 costs that Class Counsel incurred in this litigation but, in an exercise of discretion, do not seek to
24 recover. (Ahdoot Decl., ¶¶ 97-100.)

25 The expenses for which Class Counsel seek reimbursement were reasonably necessary for the
26 continued prosecution and resolution of this litigation, and were incurred by Class Counsel for the
27 benefit of the class members with no guarantee that they would be reimbursed. They are reasonable in
28 amount and the Court should approve their reimbursement.

1 **D. The Requested Service Awards for Plaintiffs Are Reasonable and Justified**

2 The Court should grant the modest service awards requested by Plaintiffs to compensate them for
3 the effort and risk entailed in pursuing this litigation, which has triggered important and positive changes
4 in Uber’s compliance with the law and has secured significant compensation for a large class of Uber
5 riders. “It is well-established in this circuit that named plaintiffs in a class action are eligible for
6 reasonable incentive payments, also known as service awards.” *Viceral v. Mistras Grp., Inc.*, No. 15-cv-
7 02198-EMC, 2017 WL 661352, at *4 (N.D. Cal. Feb. 17, 2017) (citation omitted). Service awards,
8 which are discretionary, “are intended to compensate class representatives for work done on behalf of
9 the class, to make up for financial or reputational risk undertaken in bringing the action, and, sometimes,
10 to recognize their willingness to act as a private attorney general.” *Rodriguez v. W. Publ’g Corp.*, 563
11 F.3d 948, 958-59 (9th Cir. 2009); *see also Van Vranken*, 901 F. Supp. at 299-300.

12 The requested service awards here are one-tenth of the “presumptively reasonable” \$5,000 figure
13 often cited in this district, and are more than justified by the time Plaintiffs spent on the case and the
14 value their efforts conferred on the Class. *Gould v. Rosetta Stone, Ltd.*, No: C 11-01283 SBA, 2013 WL
15 5402120, at *6-7 (N.D. Cal. Sept. 26, 2013); *Jacobs v. Cal. State Auto. Ass’n Inter-Ins. Bureau*, No. C
16 07-00362 MHP, 2009 WL 3562871, *5 (N.D. Cal. Oct. 27, 2009). Plaintiffs agreed to limit the amount
17 they would seek in recognition that, even at this low figure, their awards will be significantly greater
18 than other Class members’ recovery. However, the disparity is merited: In addition to lending their
19 names to these cases, and thus subjecting themselves to public attention, the named Plaintiffs here
20 remained engaged over the years that this action has been pending, and were essential to the success
21 achieved. Among other things, they provided information to Class Counsel, gathered documents,
22 reviewed pleadings, stayed updated about the litigation, and reviewed and approved the Stipulated
23 Settlement. (Coolidge Decl.; McKnight Decl.; Mejia Decl.; Mena Decl.; Schreiber Decl.) Their
24 commitment is notable given the modest size of their personal financial stakes in the matter. *See Van*
25 *Vranken*, 901 F. Supp. at 299 (“In exchange for his participation, [named plaintiff] will not receive great
26 personal benefit. He owns a moderately sized truck stop and his claim makes up only a tiny fraction of
27 the common fund.”).

1 **IV. CONCLUSION**

2 For all the foregoing reasons, Plaintiffs and Class Counsel respectfully request that the Court
3 enter an Order: (a) awarding Class Counsel attorneys' fees in the amount of \$8.125 million, plus
4 reimbursement of litigation costs in the amount of \$39,312.83; and (b) awarding the Plaintiffs service
5 awards in the amount of \$500 each for their efforts and commitment on behalf of the class members.

6
7 Dated: December 7, 2017

Respectfully submitted,

8 **AHDOOT & WOLFSON, PC**

9
10 /s/ Robert Ahdoot

11 Tina Wolfson
12 Robert Ahdoot
13 Theodore W. Maya
14 Attorneys for Plaintiffs and Interim Lead Counsel

15 Dated: December 7, 2017

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26 Dated: December 7, 2017

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