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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

DOUGLAS O'CONNOR, THOMAS COLOPY, MATTHEW MANAHAN, and ELIE GURFINKEL, individually and on behalf of all others similarly situated,

Plaintiff,

v.

UBER TECHNOLOGIES, INC.,

Defendant.

CASE NO. CV 13-03826-EMC

NOTICE OF MOTION AND MOTION FOR PRELIMINARY APPROVAL AND MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT THEREOF

Hon. Edward M. Chen

Hearing: June 2, 2016
Time: 1:30 p.m.
Courtroom: 5
Judge: Judge Edward Chen

HAKAN YUCESOY, ABDI MAHAMMED, MOKHTAR TALHA, BRIAN MORRIS, and PEDRO SANCHEZ, individually and on behalf of all others similarly situated,

Plaintiffs,

v.

UBER TECHNOLOGIES, INC. and TRAVIS KALANICK,

Defendants.

CASE NO. 3:15-CV-00262-EMC

Hon. Edward M. Chen

Hearing: June 2, 2016
Time: 1:30 p.m.
Courtroom: 5
Judge: Judge Edward Chen

NOTICE OF MOTION AND MOTION

TO DEFENDANTS AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE THAT on June 2, 2016, at 1:30 p.m., in Courtroom 5 of this Court, located at 450 Golden Gate Avenue, 17th Floor, San Francisco, California, Plaintiffs Thomas Colopy, Matthew Manahan, and Elie Gurfinkel, individually and on behalf of all others similarly situated, will, and hereby do, move the Court pursuant to Federal Rule of Civil Procedure 23 and 29 U.S.C. § 216(b) for an order:

(1) Preliminarily approving the Settlement Agreement between Defendant Uber Technologies Inc. and Plaintiffs, dated April 20, 2016 (attached as Exhibit 6 to the Declaration of Shannon Liss-Riordan, filed herewith), on the grounds that its terms are sufficiently fair, reasonable, and adequate for notice to be issued to the class;

(2) Certifying the proposed settlement class for settlement purposes only, pursuant to Federal Rule of Civil Procedure 23(c);

(3) Certifying the proposed settlement class for settlement purposes only, pursuant to 29 U.S.C. § 216(b);

(4) Approving the form and content of the proposed class notice and notice plan (attached as Exhibits 7 through 9 to the Declaration of Shannon Liss-Riordan);

(5) Appointing Lichten & Liss-Riordan, P.C. to represent the class as class counsel;

(6) Appointing Garden City Group as Settlement Administrator;

(7) Scheduling a hearing regarding final approval of the proposed settlement, Class Counsel's request for attorneys' fees and costs, and enhancement payments to the named Plaintiffs;

(8) Removing all trial-related deadlines and hearings from the calendar; and

(9) Granting such other and further relief as may be appropriate.

This Motion is based on this Notice of Motion and Motion; the Memorandum of Points and Authorities below; the Declaration of Shannon Liss-Riordan filed concurrently herewith; all supporting exhibits filed herewith; all other pleadings and papers filed in this action; and any argument or evidence that may be presented at or prior to the hearing in this matter.

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I. INTRODUCTION

Pursuant to Federal Rule of Procedure Rule 23, Plaintiffs move this court for an order preliminarily approving a proposed class action settlement agreement entered into by Plaintiffs and Defendant Uber Technologies, Inc. The Settlement follows almost three years of extremely active and highly contested litigation and was achieved with the assistance of Mediator Mark Rudy who oversaw three separate mediation sessions. The Settlement Agreement is attached as Exhibit 6 to the Declaration of Shannon Liss-Riordan (filed herewith).

The Agreement has two primary components: a non-reversionary payment in the amount of $100,000,000 (with $84,000,000 of that amount guaranteed, and payment of the remaining $16,000,000 contingent on a future increase of Uber's valuation, as set forth below) as well as forward-looking non-monetary relief. The forward-looking non-monetary component of the settlement is significant and includes numerous changes to Uber's business practices, which will provide drivers with greater transparency, a way to seek redress from Uber, and greater bargaining power in the event of future disputes. Specifically, Uber will only be able to deactivate drivers from the Uber platform for sufficient cause, and drivers will be provided with at least two warnings prior to many types of deactivations, a written explanation of the reasons for *any* deactivation, and an appeals process overseen by fellow drivers for certain types of deactivations. Should a driver not be satisfied with the result of the appeals process, the driver may arbitrate her claim at Uber's expense (and Uber will also pay all arbitration fees for arbitrations of certain other disputes as well, including claims stemming from an alleged employment relationship with Uber). In addition, Uber will fund and facilitate the creation of a Driver Association, comprised of elected driver leaders who can create a dialogue for further programmatic relief that comes from the drivers themselves; Uber has agreed to meet quarterly with the elected leaders of this association to discuss and, in good faith, try to address driver concerns. Finally, Uber will make good faith efforts to clarify its messaging with respect to tipping, specifically the fact that a tip (while not required or expected) is *not* included in the fare. Together, these non-monetary changes provide drivers real and practical relief with respect to deactivation, tipping, and other issues they face every day, as well as a mechanism through which they can seek to create further change by way of the Driver Association.

The Settlement satisfies the standard for preliminary approval—it is undoubtedly within the range of possible approval to justify sending notice to class members and scheduling final approval proceedings. See In re Tableware Antitrust Litig., 484 F. Supp. 2d 1078, 1079 (N.D. Cal. 2007).

Thus, the Court should (1) grant preliminary approval of the Settlement, (2) certify an expanded Settlement Class for settlement purposes only, (3) approve the manner and forms of notice, (4) appoint Lichten & Liss-Riordan, P.C. to represent the class as class counsel; (5) appoint Garden City Group as Settlement Administrator, (6) establish a timetable for final approval, and (7) remove all trial-related deadlines and hearings from the calendar.[1]

II. BACKGROUND

This case was filed on August 16, 2013, on behalf of individuals who have used the Uber software application as drivers, alleging that drivers have been misclassified as independent contractors and thereby denied reimbursement of their necessary business expenses under Cal. Labor Code § 2802. Plaintiffs also brought a claim under Cal. Labor Code § 351 (enforceable through the California Unfair Competition Law, Cal. Bus. & Prof. Code § 17200 *et seq*. ("UCL")), alleging that Uber has advertised to its customers that a gratuity is included in the fare, but Uber does not remit any such gratuity to the drivers. Dkt. 1.

A. Litigation History

Since the O'Connor case was filed, the parties have engaged in exhaustive discovery and extensive motion practice, as exemplified by the more than 500 entries on the court docket in this case. The parties have taken depositions of ten witnesses; Plaintiffs have deposed two Uber managers, two Rule 30(b)(6) witnesses, and Uber's Senior Vice-President of Global Operations Ryan

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[1] The Settlement will also apply to Massachusetts drivers covered by the related case of Yucesoy et al. v. Uber Technologies, Inc., et al., Civ. A. No. 3:15-00262-EMC (N.D. Cal.), as well as the drivers who were excluded from the certified class in O'Connor (and whose claims are asserted in Colopy et al. v. Uber Technologies, Inc., CGC-16-549696 (San Francisco Sup. Ct.)). Furthermore, because the putative employment relationship between Uber and drivers is an essential predicate issue for many of the claims at issue in O'Connor and Yucesoy, the Settlement provides that it will release all other wage and hour claims that have been asserted against Uber in California and Massachusetts. Accordingly, Plaintiffs are filing amended complaints together with this motion, which includes those additional wage and hour claims. See Exs A and B to the Settlement Agreement (filed as Exhibit 6 to the Liss-Riordan Decl.)

Graves, while Defendants have deposed five named plaintiffs (including one who was dismissed from the case following the Court's Order limiting the class to California drivers, see Dkt. 136). See Liss-Riordan Decl. at ¶¶ 3-4. Plaintiffs have propounded and Uber has responded to thirty-six separate Requests For Production and thirty-six Interrogatories, while the named Plaintiffs have collectively responded to 290 Requests For Production, 180 Interrogatories, and 71 Requests for Admission since the start of the case. Id. at ¶ 2. To date, the parties have collectively produced more than 36,000 pages of documents in discovery. Id.

The parties have presented five separate joint discovery letters to Magistrate Judge Ryu and have participated in four discovery hearings, and Judge Ryu has issued three separate substantive decisions on discovery-related issues. Id. at ¶ 5. Counsel have met and conferred countless times regarding discovery (recently on an almost daily basis) and were in the midst of preparing additional letter briefs on trial-related discovery disputes just prior to reaching this agreement. Id. at ¶ 6.

In addition to engaging in this discovery, Plaintiffs' counsel has been in near-constant contact with class members in this case, since the case's inception. More than 2,000 class members have been in touch with Plaintiffs' counsel's firm about the case. Id. at ¶ 5. Plaintiffs' lead counsel has personally been in email contact with class members on a daily (and often hourly) basis. She has been assisted in these communications by associate attorneys and a team of paralegal staff (currently four paralegals, two of whom have been engaged primarily in assisting with class communications for this case). Id.

In addition to this in-depth discovery and case investigation, the parties have engaged in aggressive motion practice regarding class certification issues and the substantive merits of Plaintiffs' claims. There have been 23 substantive motions filed in this case (not to mention more than sixty administrative motions), and the Court has issued 25 substantive rulings (comprising 287 pages of legal opinion). Id. at ¶ 7. The Court has held 18 hearings (totaling more than 23 hours of court time). Id. The Court has ruled on Uber's Motion to Dismiss and its subsequent Motion for Judgment on the Pleadings (which it granted in part and denied in part). See Dkt. 58, 136. The Court also ruled on Uber's Motion for Summary Judgment on employee status (which it denied, see Dkt. 251), Uber's Partial Motion for Summary Judgment on Plaintiffs' Gratuities Claim (which it denied, see Dkt. 499),

and Plaintiffs' Motion for Class Certification (which it mostly granted in two separate orders and after months of supplemental briefing and additional hearings, see Dkt. 342, 395).[2] In addition, Plaintiffs have challenged Uber's roll-out of arbitration agreements to putative class members on two occasions and have extensively briefed and argued a variety of other issues, including whether to amend Private Attorneys General Act ("PAGA") claims into this action, the form of class notice, whether the matter should be stayed pending Uber's appeals, and the contours of the trial in this matter.[3] A trial on both liability and damages is currently scheduled to begin approximately ten weeks from now on June 20, 2016, and the parties have also already expended tremendous effort in trial preparation. See Liss-Riordan Decl. at ¶ 8.

Moreover, there are currently no fewer than five separate appeals of this Court's Orders in this case pending before the Ninth Circuit, including a cross-appeal by Plaintiffs, most of which are fully briefed or almost fully briefed. See Ninth Circ. Appeal Nos. 14-16078, 15-17420, 15-17532, 16-15000, and 16-15595.[4] The appeal of this Court's initial Order for Class Notice (as well as the Court's initial order invalidating Uber's 2013 and 2014 arbitration agreements in the related Mohamed matter) are both scheduled for oral argument on June 16, 2016, just a few days before the

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[2] Likewise, the Yucesoy case has been hotly contested, and Uber has filed four separate Motions to Dismiss as well as two Motions to Compel arbitration of several of the named plaintiffs, all of which Plaintiffs have vigorously opposed. See Dkt. 6, 36, 109, 149, 62, 94. At the time of the Settlement, Plaintiffs had noticed two depositions, but the parties had yet to begin discovery in earnest.

[3] See, e.g., Dkt. 4, 15, 405 (three Motions for Protective Order regarding class communications, all of which were fully briefed by both sides), Dkt. 427, 432, 501, 503 (briefing regarding PAGA claims), Dkt. 434, 453 (submissions regarding class notice) 411, 439, 506 (three Motions to Stay, briefed by both sides).

[4] Appeal No. 14-16078 concerns this Court's Orders requiring that Uber re-issue its 2013 arbitration agreement with corrective notice that were issued earlier in the litigation. See Dkt. 60, 99. Appeal No. 15-17420 concerns the Court's December 9 and 10, 2015 Orders expanding the certified class and refusing to compel arbitration on the basis that Uber's 2014 arbitration agreement is unenforceable as to all drivers (Dkt. 395, 400). Appeal No. 15-17532 and Cross-Appeal No. 16-15000 address the Court's December 23, 2015 Order stemming from Uber's roll-out of its 2015 arbitration agreement, in which the Court enjoined Uber from distributing further arbitration agreements to the certified class in this case and allowed further agreements to be sent to putative class members with corrective notice (Dkt. 435). Finally, Appeal No. 16-15595 arises from Uber's newly granted Rule 23(f) Petition and will address the Court's Supplemental Class Certification Ruling. Dkt. 395.

trial is set to begin. See Liss-Riordan Decl. at ¶ 18. Additionally, the Ninth Circuit has recently granted review of the Court's Supplemental Class Certification Order pursuant to Rule 23(f), and briefing is set to begin in July. Id. at ¶ 17.

B. Mediation History

The parties attempted mediation early in the case with mediator Jeff Ross to no avail. Id. at 10. Two years later, the parties launched mediation efforts again with a second mediator, Mark Rudy. Id. at 11-12. The parties met with Mr. Rudy on March 10, 2016, April 1, 2016, and April 8, 2016, and thereafter finalized a written Memorandum of Understanding on April 15, 2016. Id. at ¶ 12.

As set forth further below, the Settlement includes significant monetary relief as well as non-monetary terms that will produce substantial benefit for class members. While relishing the prospect of trial in this matter, Plaintiffs decided to accept this substantial settlement based upon a thorough analysis of the benefits and risks of proceeding to trial, including risks posed by the Ninth Circuit's imminent review of this Court's orders regarding the enforceability of Uber's arbitration clauses and class certification, and the risk posed by the possibility of an adverse decision by the jury.

C. The Proposed Settlement

The monetary component of the Settlement provides for a non-reversionary Settlement Fund in the amount of $100,000,000, of which a payment of $84,000,000 is guaranteed and an additional $16,000,000 is contingent on an Initial Public Offering (IPO) of Uber yielding an average valuation of at least 1 ½ times Uber's most recent valuation over a 90-day period at any point within 365 days from the closing of the IPO, or if a Change in Control of Uber within three years of the date of final settlement approval yields a valuation of at least 1 ½ times Uber's most recent valuation. See Exhibit 6 to Liss-Riordan Decl. ("Settlement Agreement") at ¶ 124, 58.[5]

[5] The parties intend to designate $8.7 million of the of the net settlement amount (after deducting Plaintiffs' attorneys' fees and other fees enumerated in the parties' settlement agreement) as wages. This tax classification is not meant to be any admission or acknowledgment that Plaintiffs are employees who receive wages, but rather is based on the nature of the Plaintiffs' allegations. See Getty v. Comm'r of Internal Revenue, 913 F.2d 1486, 1490 (9th Cir. 1990) ("Whether a claim is resolved through litigation or settlement, the nature of the underlying action determines the tax

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This Settlement Fund, less costs of claims administration, attorneys' fees and costs, and class representative enhancements ("Net Settlement Fund"), will be distributed to Class Members pursuant to a plan of allocation summarized here and described in more detail in the Declaration of Shannon Liss-Riordan. See Liss-Riordan Decl. at ¶¶ 87-89, Exh. 1. This allocation is based on a formula that reflects the proportionate value of class members' claims, considering the following factors: (1) whether they drove in California or Massachusetts; (2) if they drove in California, whether they are a member of the certified class in *O'Connor*; (3) whether they opted out of Uber's arbitration clause; and (4) the number of miles drivers have transported Uber passengers (*i.e.*, "on trip" mileage). See Exh. 6 to Liss-Riordan Decl. at ¶ 144. The formula divides the allocation between California and Massachusetts drivers pursuant to Plaintiffs' calculations of the relative values of the claims of these settlement classes, with ½ credit given for the Massachusetts drivers' reimbursement claim (as compared to the California drivers' claim).[6] With respect to the settlement funds allocated to California drivers and Massachusetts drivers, the formula distributes payments based upon the amount of miles driven with a passenger in the car.[7] For California drivers, the formula allocates double weight for drivers who are members of the certified class (as compared to drivers who were excluded from the class), in recognition of the stronger claims of these drivers on the reimbursement claim, as well as the much greater likelihood of these claims being pursued, given that they had been included in a certified class. Id.; Liss-Riordan Decl. at ¶ 87. The formula also allocates double weight for drivers who opted out of Uber's 2013 and 2014 arbitration clauses (reflecting their greater

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consequences of the resolution of the claim.") (internal citations and quotations omitted); see also 26 C.F.R. § 31.3401(a)-1(a)(2).

[6] The net total allocation for the Massachusetts class (after fees and expenses) is $6.6 million if the contingency is triggered and $5.5 million if the contingency is not triggered.

[7] As discussed at the last conference, there were serious practical difficulties involved in calculating the number of miles drivers drove to pick up passengers. Uber does not keep that data, Plaintiffs faced a challenge in how to establish those miles, and Uber intended to argue that they were not recoverable because Plaintiffs would have difficulty proving such mileage was incurred "in direct consequence of the . . . discharge of [their] duties" on *Uber's* behalf. Richie v. Blue Shield of Cal., 2014 WL 6982943, at *16 (N.D. Cal. Dec. 9, 2014) (Chen, J.). Moreover, the Court suggested that Plaintiffs may simply choose not to include those miles in their damages analysis.

chance of remaining in the class in this case, should the Court's rulings holding Uber's arbitration clauses invalid be overturned on appeal). Id.

In addition, $1,000,000 will be set aside for the Private Attorneys General Act claim, of which $750,000 will be paid to the State of California, and $250,000 will be included in the gross settlement fund for California drivers, pursuant to the formula described above.[8] See Exh. 6 to Liss-Riordan Decl. at ¶ 89.

The Settlement provides that notice will be distributed to class members via email, with follow-up mailed notice for those class members for whom email is returned as undeliverable. Id. at ¶¶ 156-57. Settlement payments will be made by direct payment via an electronic transfer of funds if possible, or by check if necessary or by request. Id. at ¶¶ 140-143. In order to obtain a payment, class members will be able to make a claim electronically, or send in a simple form, through which they can provide their electronic payment information or request to receive a payment by check). Id.; Exh. C ("Claim Form"). Approximately one month prior to the Final Approval hearing, a reminder email will be sent to class members who have not yet submitted claims. Id. at ¶ 147, 161. The Administrator will also make additional efforts to locate and encourage the filing of later claims by

[8] There is no requirement that a PAGA allocation be proportional to the value of a PAGA claim, as many courts have approved settlement agreements that provide for less than the one percent allocation to PAGA penalties made here (75 percent of which goes to the LWDA), notwithstanding the potential value of the PAGA claim. Hopson v. Hanesbrands Inc., 2009 WL 928133, *9 (N.D. Cal. Apr. 3, 2009) (approving total PAGA allocation that was .49% of $408,420.32 gross settlement; Moore v. PetSmart, Inc., 2015 WL 5439000, *8 (N.D. Cal. Aug. 4, 2015) (approving total PAGA allocation that was .5% of $10,000,000 gross settlement); Lusby v. Gamestop Inc., 297 F.R.D. 400, 407 (N.D. Cal. 2013) (approving total PAGA allocation that was .67% of $750,000 gross settlement), final approval granted, Lusby v. GameStop Inc., 2015 WL 1501095, *2 (N.D. Cal. Mar. 31, 2015). In fact, this Court conditionally granted final settlement approval under such circumstances just last week. See Alexander v. Fedex Ground Package Sys., 2016 WL 1427358, *2 n.5 (N.D. Cal. Apr. 12, 2016) (conditionally approving PAGA allocation that was 0.7% of $173 million net settlement amount). Moreover, a significant number of courts have approved PAGA allocations that are simply $10,000 or less—far less than the $1 *million* PAGA settlement here. Chu v. Wells Fargo Investments, LLC, 2011 WL 672645, *1 (N.D. Cal. Feb. 16, 2011) (approving PAGA settlement payment of $7,500 to the LWDA out of $6.9 million common-fund settlement); Franco v. Ruiz Food Products, Inc., 2012 WL 5941801, *13 (E.D. Cal. Nov. 27, 2012) (approving PAGA settlement payment of $7,500 to the LWDA out of $2.5 million common-fund settlement); Schiller v. David's Bridal, Inc., 2012 WL 2117001, *14 (E.D. Cal. June 11, 2012) (approving PAGA settlement payment of $7,500 to the LWDA out of $518,245 common-fund settlement).

class members who have not yet submitted claims whose settlement shares are likely to be greater than $200 (for instance, by mailing notice in addition to emailing notice). Id.

Following the initial distribution, the Settlement Administrator will make reasonable, good faith efforts to distribute payments to Class Members whose shares are more than $200 who have not successfully received payment (either because their electronic payment information is invalid or they did not cash the check sent to them). Id. at ¶¶ 146, 152. After 180 days, there will be a second distribution of all unclaimed funds to those class members who did submit claims and whose residual shares would be at least approximately $50. Id. at ¶ 152. If, following the second distribution, there are any remaining funds that have not been able to be distributed (*i.e.*, for whom the electronic payment information is invalid and the administrator is not able, with reasonable attempts, to locate the class member to obtain updated information, or checks continue to remain uncashed), such funds will be distributed to the parties' agreed-upon *cy pres* beneficiary, the Legal Aid Society-Employment Law Center (for any remaining unclaimed funds out of the California settlement pool) and Greater Boston Legal Services (for any remaining unclaimed funds out of the Massachusetts settlement pool). Id. This settlement is non-reversionary, meaning that no funds from the settlement, including unclaimed funds, will revert to Uber; the full amount of the Net Settlement Fund, other than a small portion that may go to *cy pres*, will be paid to class members. Id.[9]

In addition to monetary compensation, Uber has also agreed as part of this settlement to implement the following forward-looking changes to its business practices in California and Massachusetts:

(1) Uber will institute a "Comprehensive Deactivation Policy," which provides that drivers may only be deactivated for "sufficient cause" and will not be deactivated at will. Drivers will be given at least two warnings prior to any deactivation (except for reasons of safety, fraud, discrimination, or illegal conduct), and will be given a reason for any deactivation in writing.

[9] The contingency payment of $16,000,000 may not be triggered until after the final distribution of the initial $84,000,000. Upon its triggering (if it is triggered), this sum will be distributed (less attorneys' fees and costs of administration) to drivers pursuant to the formula described above.

Furthermore, Uber will publish its deactivation guidelines so that drivers have more transparency regarding the exact contours of Uber's rules and policies regarding deactivations. A low acceptance rate will not be grounds for deactivation. This limitation on Uber's ability to deactivate Drivers at will, and corresponding agreement to deactivate Drivers only when there is sufficient cause (with drivers being provided with an explanation for deactivation) provides a significant protection to drivers that they do not currently have. See Exh. 6 to Liss-Riordan Decl. at ¶ 135.

(2) Drivers who are deactivated for certain specified reasons, or threatened with deactivation for those reasons, will have the opportunity to appeal their deactivations to a Driver Appeal Panel, which includes fellow drivers. Id.

(3) Drivers deactivated for certain specified reasons will also be given the opportunity to take a course and get reactivated, and Uber will work to provide lower cost opportunities to take this course. Id.

(4) Except for deactivations based on safety issues, discrimination, and fraud or illegal conduct, drivers may pursue arbitration to challenge their deactivation, and Uber will pay for the arbitration fees. Id. The arbitrator in such matters would be required to determine if the deactivation was for sufficient cause. Indeed, this provision provides a benefit that few employees even receive (as most employment relationships are at will) and mimics the protection that is typically only available to unionized employees working under a collective bargaining agreement.[10] Id.

(5) Uber will also pay the arbitration fees for any challenges brought by drivers against Uber in which drivers allege an employment relationship. Id.

(6) Uber will institute an internal escalation process for disputes regarding the payment of specific fares in California and Massachusetts, so that drivers would not be required to resort

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[10] As Uber's current contract requires arbitration cost-splitting between drivers and Uber (except as required by law), this agreement by Uber to pay arbitration fees will provide drivers with a more realistic opportunity to challenge their deactivation, or threat of deactivation, without having to argue as to whether they can be required to split these arbitration costs. See Liss-Riordan Declaration, at ¶¶ 93-95, for discussion of this benefit.

immediately to arbitration of such disputes if they are not able to resolve these issues quickly with Uber customer service representatives. Id.

(7) Uber will provide additional information to drivers about their star ratings and their rankings relative to other drivers and will provide more clarity about what customer ratings thresholds a driver must maintain in order to increase clarity and transparency for drivers. Id.

(8) Uber will fund and facilitate the creation of a "Driver Association" in California and Massachusetts, through which drivers will have the opportunity to elect driver leaders who will meet quarterly with Uber management. Uber has agreed to meet with, and work in good faith with the Association's leaders, to address issues of concern facing drivers. Id.

(9) Finally, as part of this Settlement, Uber has agreed to make good faith efforts to clarify its messaging regarding tipping, clarifying on its website and in communications with drivers and riders that tips are not included on Uber's platforms (with the exception of UberTAXI) and that tipping is neither expected nor required. Moreover, Uber has confirmed that its policies do not prohibit a driver from putting up signs or requesting a tip. And under this agreement, Uber will not have the ability to deactivate drivers at will in California and Massachusetts. Thus, there would be no prohibition on drivers posting in their cars a small sign stating that "tips are not included, they are not expected, but they would be appreciated."[11] Id.

In exchange for these monetary and non-monetary concessions, drivers in California or Massachusetts will release all wage and hour claims that have been brought against Uber in these two states. Id. at § VII. Except for the named plaintiffs, the release does not provide for release of claims unrelated to the core misclassification allegation, *e.g.* claims for discrimination, wrongful termination, personal injury, etc.

[11] If some passengers are unhappy with the signs (or their interactions with drivers regarding tips) and that leads to poor ratings, then given that low ratings are still a basis for deactivation, drivers may still suffer potential repercussions for having such signs in their cars. But, under this agreement, there would be nothing directly prohibiting drivers from having such signs.

While the agreement does not require Uber to reclassify drivers as employees, it will provide significant benefits and added protections to drivers that they do not currently have, require significant changes to Uber's business practices, and provide substantial monetary relief, which will be proportional to the strength of class members' potential claims. See Liss-Riordan Decl. at ¶¶ 87-96.

III. THE LEGAL STANDARD

Federal Rule of Civil Procedure 23(e) provides that any compromise of a class action must receive Court approval. "Approval under 23(e) involves a two-step process in which the Court first determines whether a proposed class action settlement deserves preliminary approval and then, after notice is given to class members, whether final approval is warranted." Nat'l Rural Telecomms. Coop. v. DIRECTV, Inc., 221 F.R.D. 523, 525 (C.D. Cal. 2004) citing Manual for Complex Litig., Third, § 30.41 (1995)). A court should grant preliminary approval if the parties' settlement "appears to be the product of serious, informed, non-collusive negotiations, has no obvious deficiencies, does not improperly grant preferential treatment to class representatives or segments of the class, and falls within the range of possible approval." In re Tableware Antitrust Litig., 484 F.Supp.2d 1078, 1079 (N.D. Cal. 2007). "Closer scrutiny is reserved for the final approval hearing." Harris v. Vector Mktg. Corp., 2011 WL 1627973, *7 (N.D. Cal. Apr. 29, 2011). Moreover, "a presumption of fairness arises where: (1) counsel is experienced in similar litigation; (2) settlement was reached through arm's length negotiations; (3) investigation and discovery are sufficient to allow counsel and the court to act intelligently." In re Heritage Bond Litig., 2005 WL 1594403, *2 (C.D. Cal. June 10, 2005). "In deciding whether to approve a proposed settlement, the Ninth Circuit has a 'strong judicial policy that favors settlements, particularly where complex class action litigation is concerned.'" In re Heritage Bond Litig., 2005 WL 1594403, *2 (C.D. Cal. June 10, 2005) (citing Class Plaintiffs v. City of Seattle, 955 F.2d 1268, 1276 (9th Cir. 1992)). "Generally, the district court's review of a class action settlement is 'extremely limited.'" Harris, 2011 WL 1627973, *7 (citing Hanlon v. Chrysler Corp., 150 F.3d 1011, 1026 (9th Cir.1998)). "The Court considers the settlement as a whole, rather than its components, and lacks the authority to delete, modify or substitute certain provision." Id. (internal citation omitted).

IV. DISCUSSION

A. Certification Of The Settlement Class is Appropriate.

The Court must confirm the propriety of the settlement class by determining "if it meets the four prerequisites identified in Federal Rule of Civil Procedure 23(a) and additionally fits within one of the three subdivisions of Federal Rule of Civil Procedure 23(b)." Alberto v. GMRI, Inc., 252 F.R.D. 652, 659 (E.D. Cal. 2008). Here, this Court has already found that the requirements for class certification have been met with respect to the bulk of the drivers who will form a part of the settlement class, and the Court has already certified Plaintiffs' claims under California Labor Code §§ 2802 and 351, including the predicate issue of misclassification. See Dkt. 342, 395. Plaintiffs now ask that the Court certify an expanded settlement class pursuant to Fed. R. Civ. P. 23(a) and 23(b)(3) that includes: "All Drivers who have used Uber to accept at least one request in California or Massachusetts during the Settlement Class Period," *i.e.*, from January 1, 2009, to the date of preliminary settlement approval.

1. Requirements of Fed. R. Civ. P. 23(a)

Rule 23(a) requires that the Plaintiffs demonstrate: "(1) numerosity of plaintiffs; (2) common questions of law or fact predominate; (3) the named plaintiff's claims and defenses are typical; and (4) the named plaintiff can adequately protect the interests of the class." Barbosa v. Cargill Meat Sols. Corp., 297 F.R.D. 431, 441 (E.D. Cal. 2013). Here, all criteria are met.

a. Numerosity

A plaintiff will satisfy the numerosity requirement if "the class is so large that joinder of all members is impracticable." Hanlon v. Chrysler Corp., 150 F.3d 1011, 1019 (9th Cir.1998). "Although the requirement is not tied to any fixed numerical threshold, courts have routinely found the numerosity requirement satisfied when the class comprises 40 or more members." Villalpando v. Exel Direct, Inc., 303 F.R.D. 588, 605-06 (N.D. Ca. 2014). Here, the total class of all California and Massachusetts drivers who use Uber and have given at least one ride is approximately 385,000 drivers. See Liss-Riordan Decl. at ¶ 38, n. 3. Thus, the numerosity requirement is easily satisfied.

b. Commonality

Courts have found that "[t]he existence of shared legal issues with divergent factual predicates

is sufficient, [to satisfy commonality under Rule 23] as is a common core of salient facts coupled with disparate legal remedies within the class." Smith v. Cardinal Logistics Mgmt. Corp., 2008 WL 4156364, *5 (N.D. Cal. Sept. 5, 2008). The "commonality requirement has been 'construed permissively,' and its requirements deemed minimal." Estrella v. Freedom Fin'l Network, 2010 U.S. Dist. LEXIS 61236 (N.D. Cal. 2010) (quoting Hanlon v. Chrysler Corp., 150 F.3d 1011, 1019-1020 (9th Cir. 1998)). Here, all class members share the key question of whether they have been improperly classified as independent contractors and also share common questions of law with respect to their substantive claims. This Court has already recognized as much in certifying a class in this case. See Dkt. 342, 395.

Moreover, courts routinely alter or expand previously-certified classes for purposes of certifying a settlement class. See, e.g., Spann v. J.C. Penney Corp., 2016 WL 297399, *7 (C.D. Cal. Jan. 25, 2016) (adding additional time period to the court's previously certified class definition for purposes of settlement).[12] Here, the Court should do the same by permitting Plaintiffs to include in the settlement class those drivers who were previously excluded from the Court's class certification order because they drove through third-party companies or under corporate names. Indeed, had this case not resolved, Plaintiffs ultimately could have appealed the Court's decision to exclude such drivers from the O'Connor class. Further, because of this Court's decision to exclude a subset of California drivers from the O'Connor class, Plaintiffs' counsel filed a related case in state court in

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[12] See also In re TRS Recovery Servs., Inc. & Telecheck Servs., Inc., Fair Debt Collection Practices Act (FDCPA) Litig., 2016 WL 543137, *2 (D. Me. Feb. 10, 2016) (certifying a settlement class that has been "merged and expanded by agreement" to cover not only the previously certified class of Maine residents, but also residents nationwide); Velez v. Novartis Pharm. Corp., 2010 WL 4877852, *1 (S.D.N.Y. Nov. 30, 2010) (expanding initial certified class period from five years to eight years for purposes of certifying settlement class); Connie Arnold, et al. v. United Artists Theatre Circuit, Inc., et al., No. C–93–0079–THE (N.D. Cal.1996), Dkt. 433 (granting the parties' motion to expand the previously certified class to include a larger settlement class of persons with mobility impairments nationwide); Hahn v. Massage Envy Franchising LLC, 2015 WL 2164981, *1 (S.D. Cal. Mar. 6, 2015) (granting preliminary approval of class action settlement that expanded the certified class to encompass former and current members of Defendant's clinics or spas nationwide, rather than only former members in California); McCrary v. Elations Co., LLC., 2016 WL 769703, *2 (C.D. Cal. Feb. 25, 2016) (granting final approval of settlement agreement that applied to an expanded class encompassing all persons who purchased Elations from May 28, 2009 through the date of the preliminary approval order at a California retail location, for personal use and not for resale).

order to cover their claims, Colopy v. Uber Technologies, Inc., C.A. No. CGC-16-549696 (San Francisco Sup. Ct.), and so with this settlement, that case will be resolved as well.

Importantly, this Court's rationale for excluding from the O'Connor class incorporated Uber partners and drivers who did not contract with and/or were not paid directly by Uber does not apply for settlement purposes. Previously, the Court excluded such drivers from the certified O'Connor class due to "possible predominance problems" at trial; specifically, the Court believed that a jury could not manageably decide the employment status question for all drivers in California in a single trial. Dkt. 342, at 41–45. But, as the U.S. Supreme Court has made clear, a district court "[c]onfronted with a request for settlement-only class certification . . . need not inquire whether the case, if tried, would present intractable management problems . . . for the proposal is that there be no trial." Amchem Prods., Inc. v. Windsow, 521 U.S. 591, 620 (1997). Thus, because manageability is of no concern for a settlement class, an enlarged settlement class—including the drivers previously excluded from the O'Connor trial class—is appropriate.[13]

In any event, Plaintiffs submit that a difference in one single Borello factor in California's multi-factor test for employee status should not defeat certification of this expanded settlement class because class certification does not require absolute uniformity on every single Borello factor, particularly where the most salient factors (like the right of control) are common to all drivers. See Ayala, 59 Cal. 4th at 539-40; Dalton v. Lee Publications, Inc., 270 F.R.D. 555, 562-63 (S.D. Cal. 2010) (court noted that some secondary Borello factors may be "less susceptible to common proof" than others but weighed the relative importance of the factors and certified the class because "the primary factor, the right to control, is also susceptible to common proof"); Norris-Wilson v. Delta-T Grp., Inc., 270 F.R.D. 596, 608 (S.D. Cal. 2010) (in certifying class, noting that class members "do vary in a multitude of ways" but finding that "[a]t best, [these variations] touch on just three of the

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[13] In addition to resolving the claims of drivers expressly excluded from the O'Connor class, the parties' settlement also resolves all claims of California and Massachusetts drivers up through the date of preliminary settlement approval (not the date of class certification) and resolves the claims of drivers who use Uber platforms that are not specifically at issue in O'Connor. As discussed above in note 12, the Court may permit a release for an expanded class in order to effectuate this settlement.

seven secondary factors articulated in Borello" while "the remaining secondary factors are more than likely susceptible to common proof").

Moreover, Plaintiffs contend that, were this Court to adhere to the rationale in its previous class certification order, the Court may certify a separate settlement subclass consisting of drivers who the Court previously excluded from the certified O'Connor class. Thus, although the Court excluded some of the drivers that form part of the Settlement Class on the basis that the 'independent business' factor might vary for these drivers, any differences on this Borello factor should not prevent certification of this expanded settlement class (or additional subclasses).[14]

This Court should also include all Massachusetts drivers in the settlement class for substantially similar reasons. Under the Commonwealth's strict liability "ABC" statute, the burden of proving independent contractor status shifts to the defendant, after plaintiffs have proven that they perform a service for defendant. See Mass. Gen. L. c. 149 §148B; Somers v. Converged Access, Inc., 454 Mass. 582, 590-91 (2009). Here, Plaintiffs submit that because all drivers perform the same services (i.e. transporting Uber passengers), a liability determination can easily be made on a class-wide basis. Indeed, Massachusetts courts have routinely certified classes of workers challenging their classification as independent contractors. See, e.g., Martins v. 3PD, Inc., 2013 WL 1320454, *9 (D. Mass. Mar. 28, 2013); Awuah v. Coverall North America, Inc., C.A. No. 07-cv-10287 (D. Mass. Sept. 27, 2011); Chaves v. King Arthur's Lounge, Inc., C.A. No. 07-2505 (Mass. Super. July 31, 2009); De Giovanni v. Jani-King Int'l, Inc., 262 F.R.D. 71, 87-88 (D. Mass. 2009).[15]

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[14] Plaintiffs have accounted for the differences in the relative strength of these drivers' claims in their allocation formula, but the ultimate question of employee status as well as the substantive wage violations are common to all the drivers. As such, the commonality requirement has been satisfied.

[15] In addition to requesting that the Court expand the membership in the class for purposes of settlement, Plaintiffs also request that, in the interests of effectuating this settlement and settling all claims arising out of or related to Uber's alleged misclassification of drivers, the Court expand the class certification to cover other wage and hour claims that have been brought against Uber in California and Massachusetts. The parties' settlement releases these claims and many of those claims, like the California Labor Code Section 351 and 2802 claims in O'Connor, and the Massachusetts Wage Act claim in Yucesoy, are predicated on allegations of employment misclassification. In the Liss-Riordan Declaration, Plaintiffs explain why they did not ascribe these other claims to have any significant value, beyond the value of the claims that Plaintiffs had pursued in these cases. See Liss-Riordan Decl. at ¶¶ 48-78.

(Cont'd on next page)

c. Typicality

"Typicality is a permissive standard, and only requires that the named plaintiffs claims' are 'reasonably coextensive' with those of the class." Dalton v. Lee Publications, Inc., 270 F.R.D. 555, 560 (S.D. Cal. 2010). Thus, "[i]n examining this condition, courts consider whether the injury allegedly suffered by the named plaintiffs and the rest of the class resulted from the same alleged common practice." Id. (internal quotation omitted). Here, if this Court adheres to its prior class certification orders, there can be no factual differences between Plaintiffs' claims and those of the putative Settlement Class Members; all drivers allegedly have suffered the same misclassification and resulting wage and hour violations. Indeed, the claims of the Settlement Class Members are identical with respect to Uber's uniform policy of classifying all drivers as independent contractors. See Norris-Wilson v. Delta-T Grp., Inc., 270 F.R.D. 596, 605 (S.D. Cal. 2010) (noting that "[t]he injuries alleged—a denial of various benefits—and the alleged source of those injuries—a sinister classification by an employer attempting to evade its obligations under labor laws—are the same for all members of the putative class" such that "[t]he typicality requirement is therefore satisfied").

d. Adequacy

"Resolution of two questions determines legal adequacy: (1) do the named plaintiffs and their counsel have any conflicts of interest with other class members, and (2) will the named plaintiffs and their counsel prosecute the action vigorously on behalf of the class?" Hanlon, 150 F.3d at 1020. Here, the Court has already determined that class counsel will adequately represent the certified class and that named plaintiffs Matthew Manahan and Elie Gurfinkel will adequately represent the interests

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With respect to federal claims brought under the federal Fair Labor Standards Act, 29 U.S.C. §201, *et seq.*, the parties recognize that these claims may only be released on an opt-in basis, by those class members who submit claims to participate in the settlement (while all other claims may be released on an opt-out basis, pursuant to Fed.R.Civ.P. 23). See Tijero v. Aaron Bros., Inc., 2013 WL 60464, *8 (N.D. Cal. Jan. 2, 2013) ("in a collective action under the FLSA, only those claimants who affirmatively opt-in by providing a written consent are bound by the results of the action."); La Parne v. Monex Deposit Co., 2010 WL 4916606, *3 (C.D. Cal.2010) ("only class members who affirmatively 'opt-in' to the Settlement should be bound by the Settlement's release of FLSA liability"). Courts have approved such settlements that include FLSA claims, provided that the release of the FLSA claims will only apply to class members who affirmatively opt in to claim their settlement share (as is the case here). Id.

of the class. See Dkt. 342 at 17-25. Moreover, the only reason the Court did not approve named plaintiff Thomas Colopy as a class representative was due to its determination that drivers like Colopy who drove through third-party transportation companies might differ with respect to one of the Borello factors and *not* because it deemed Plaintiff Colopy in any way inadequate to represent the interests of his fellow drivers.[16]

2. Requirements of Fed. R. Civ. P. 23(b).

Rule 23(b)(3) requires the Court to find that: (1) "the questions of law or fact common to class members predominate over any questions affecting only individual members," and (2) "a class action is superior to other available methods for fairly and efficiently adjudicating the controversy." Fed.R.Civ.P. 23(b)(3). Some of the factors that are part of the Rule 23(b)(3) analysis are rendered irrelevant in the settlement context, such as "the likely difficulties in managing a class action." Vasquez v. Coast Valley Roofing, Inc., 266 F.R.D. 482, 488 (E.D. Cal. 2010) (noting that this factor is "essentially irrelevant" in "the context of settlement"); see also Alberto v. GMRI, Inc., 252 F.R.D. 652, 664 (E.D. Cal. 2008); Spann v. J.C. Penney Corp., 2016 WL 297399, *3 (C.D. Cal. Jan. 25, 2016) ("[C]ourts need not consider the Rule 23(b)(3) considerations regarding manageability of the class action, as settlement obviates the need for a manageable trial.").

Here, this Court has already determined that Uber's independent contractor defense could be resolved on a classwide basis under the common law Borello test because each of the Borello factors could be assessed with common proof with respect to most of the drivers who are part of the settlement class. Dkt. 342. Likewise, the Court has already determined that Plaintiffs claims under

[16] Similarly, although the Court has not yet had occasion to consider the adequacy of the Massachusetts named plaintiffs, Plaintiffs note that these Plaintiffs have no conflicts of interest with the class and seek the same relief as the rest of the class. In addition, although Plaintiffs chose not to offer Douglas O'Connor as a lead plaintiff in their class certification motion, Mr. O'Connor, like the other named plaintiffs, participated in discovery, was deposed, actively consulted with Plaintiffs' counsel regarding the prosecution of this case, and withstood the vast international publicity of having this case referred to with his name. Plaintiffs thus submit he should be permitted to obtain a service payment for his efforts, along with the other named plaintiffs in this case.

Cal. Labor Code §§ 2802 and 351 are capable of class-wide determination and that common issues predominate with respect to these claims.[17]

In addition, class-wide treatment is superior. "Where recovery on an individual basis would be dwarfed by the cost of litigating on an individual basis, this factor weighs in favor of class certification." Noll v. eBay, Inc., 309 F.R.D. 593, 604 (N.D. Cal. 2015). Here, class members' individual claims are not large enough for most drivers to realistically retain independent counsel and bring these claims individually. Moreover, individual drivers have less leverage in negotiations. This Court has already recognized the superiority of class treatment in certifying a class in this case. See Dkt. 342 at 64-65. Thus, Plaintiffs submit that many of the same considerations the Court relied upon previously weigh in favor of certifying a settlement class here.

For purposes of effectuating this settlement, Plaintiffs also seek, pursuant to 29 U.S.C. §216(b), certification of claims for unpaid minimum wage and overtime on behalf of all California and Massachusetts drivers. The standard for certification under § 216(b) is very lenient and "[t]he requisite showing of similarity of claims under the FLSA is considerably less stringent than the requisite showing under Rule 23." Lewis v. Wells Fargo Co., 669 F. Supp. 2d 1124, 1127 (N.D. Cal. 2009). Consistent with "the FLSA's broad remedial purposes," Boucher v. Shaw, 572 F.3d 1087, 1090 (9th Cir. 2009), Plaintiffs need only show that the workers for whom they seek certification were subject to a single decision, policy, or plan that violated the law. Villarreal v. Caremark LLC, 2014 WL 7184014, *2 (D. Ariz. Dec. 17, 2014). Here, Plaintiffs challenge a common policy

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[17] The same is true for the additional wage and hour claims that will be covered by the settlement release, which are equally subject to class-wide determination as they all stem from uniform policies of Uber. See, e.g., Tokoshima v. Pep BoysManny Moe & Jack of California, 2014 WL 1677979, *6 (N.D. Cal. Apr. 28, 2014) ("Plaintiffs' minimum wage claim rises and falls on the legality of a common, company-wide policy."); Boyd v. Bank of Am. Corp., 300 F.R.D. 431, 440 (C.D. Cal. 2014) (overtime class and wage statement claims appropriate for class treatment); Sotelo v. MediaNews Grp., Inc., 207 Cal. App. 4th 639, 654 (2012) ("A class ... may establish liability by proving a uniform policy or practice by the employer that has the effect on the group of making it likely that group members will [] miss rest/meal breaks."); Norris-Wilson v. Delta-T Grp., Inc., 270 F.R.D. 596, 611 (S.D. Cal. 2010) (waiting time claims appropriate for class treatment); Kamar v. Radio Shack Corp., 254 F.R.D. 387, 400 (C.D. Cal. 2008) aff'd sub nom. Kamar v. RadioShack Corp., 375 F. App'x 734 (9th Cir. 2010) (reporting time claim appropriate for class treatment); Moore v. Ulta Salon, Cosmetics & Fragrance, Inc., 2015 WL 7422597, at *31 (C.D. Cal. Nov. 16, 2015) (section 1174 claim appropriate for class treatment); Alonzo v. Maximus, Inc., 275 F.R.D. 513 (C.D. Cal. 2011) (UCL claims predicated on Labor Code violations appropriate for class treatment).

whereby Uber classifies all its drivers as independent contractors and have brought claims that, as independent contractors, they have not received overtime pay for hours beyond forty in a work week and have not been guaranteed minimum wage for all hours worked.[18]

Therefore, in order to effectuate this settlement, the Court should also certify claims under the FLSA, 29 U.S.C. § 216(b), for all drivers who have used Uber in California and Massachusetts, as has routinely been certified in this type of action.

B. The Court Should Preliminarily Approve The Settlement

Preliminary approval of a settlement and notice to the class is appropriate if it (1) falls within the range of possible approval; (2) is the product of serious, informed, noncollusive negotiations, (3) has no obvious deficiencies; and (4) does not improperly grant preferential treatment to class representatives or segments of the class. Deaver v. Compass Bank, 2015 WL 4999953, *4 (N.D. Cal. Aug. 21, 2015). "When determining the value of a settlement, courts consider both the monetary and nonmonetary benefits that the settlement confers." Miller v. Ghirardelli Chocolate Co., 2015 WL 758094, *5 (N.D. Cal. Feb. 20, 2015).

1. The Settlement Falls Within the Range of Possible Approval

"To evaluate the range of possible approval criterion, which focuses on substantive fairness

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[18] Courts have frequently certified collective actions under § 216(b) based on similar claims of misclassification and resulting wage violations. See, e.g., Flores v. Velocity Exp., Inc., 2013 WL 2468362, *6-7 (N.D. Cal. June 7, 2013) (granting FLSA conditional certification "on behalf of a proposed class of delivery drivers employed by Velocity who Plaintiffs allege were misclassified as independent contractors" and suffered wage violations as a result); Zaborowski v. MHN Gov't Servs., Inc., 2013 WL 1787154, *1 (N.D. Cal. Apr. 25, 2013) (granting FLSA conditional certification to counselors "alleging that [defendant] misclassified them as independent contractors, [and as] exempt from overtime payment"); Guifu Li v. A Perfect Franchise, Inc., 2011 WL 4635198, *6 (N.D. Cal. Oct. 5, 2011) (granting FLSA certification for allegedly misclassified massage therapists); Harris v. Vector Mktg. Corp., 716 F. Supp. 2d 835, 840-41 (N.D. Cal. 2010) (granting FLSA certification for sales representatives alleging they were misclassified as independent contractors); Labrie v. UPS Supply Chain Solutions, Inc., 2009 WL 723599, *6 (N.D. Cal. Mar. 18, 2009) (granting FLSA certification for similarly situated delivery drivers alleging "that [defendant] has misclassified plaintiffs as 'independent contractors' and, in doing so, has unlawfully deprived plaintiffs of the rights and protections guaranteed by the FLSA"); Scovil v. FedEx Ground Package Sys., Inc., 811 F. Supp. 2d 516, 520 (D. Me. 2011) (granting FLSA certification of collective action of misclassified FedEx drivers); Scantland v. Jeffry Knight, Inc., Civ. A. No. 8:09-cv-1958 (M.D. Fl. Sept. 30, 2010) (granting FLSA certification to cable installers alleging they were misclassified as independent contractors); Bogor v. Am. Pony Exp., Inc., 2010 WL 1962465, *2 (D. Ariz. May 17, 2010) (granting FLSA certification where defendant allegedly "misclassified its Airport Drivers as independent contractors and failed to pay them the wages owed under the FLSA").

and adequacy, courts primarily consider plaintiff's expected recovery balanced against the value of the settlement offer." Deaver v. Compass Bank, 2015 WL 4999953, *9 (N.D. Cal. Aug. 21, 2015). A careful risk/benefit analysis must inform Counsel's valuation of a class's claims. Lundell v. Dell, Inc., 2006 WL 3507938, *3 (N.D. Cal. Dec. 5, 2006).

a. Risks of Further Litigation

A "relevant factor" that courts must consider in contemplating a potential settlement is "the risk of continued litigation balanced against the certainty and immediacy of recovery from the Settlement." Vasquez v. Coast Valley Roofing, Inc., 266 F.R.D. 482, 489 (E.D. Cal. 2010). Thus, courts "consider the vagaries of litigation and compare the significance of immediate recovery by way of the compromise to the mere possibility of relief in the future, after protracted and expensive litigation." Id. (citing Oppenlander v. Standard Oil Co. (Ind.), 64 F.R.D. 597, 624 (D.Colo.1974)). Here, there are two major and substantial risks that counsel had to consider:

First, Plaintiffs were cognizant of the risk of the Ninth Circuit overturning the Court's Supplemental Class Certification Order. This risk was emphasized by the Ninth Circuit's recent decision to grant Uber's Petition for Review pursuant to Rule 23(f) (although it had denied Rule 23(f) review with respect to the Court's original Class Certification Order). See Appeal No. 16-15595.[19] Were the Supplemental Class Certification Order to be overturned, the class size would have diminished from more than 240,000 drivers to approximately 8,000 drivers or less (depending on the Ninth Circuit's rationale). See Liss-Riordan Decl. at ¶ 15. Moreover, by granting the Rule 23(f) petition, the Ninth Circuit agreed to review the Court's decision to certify Plaintiffs' claim under Cal. Labor Code § 2802, the driving force behind this case and the most significant source of damages. Id. at ¶ 16.

In addition to the Ninth Circuit's recent grant of Rule 23(f) review of the Supplemental Class Certification Order, this Court's rulings holding Uber's arbitration clauses to be unenforceable are the

[19] In granting the Rule 23(f) petition, the Ninth Circuit cited Chamberlan v. Ford Motor Co., 402 F.3d 952 (9th Cir. 2005), which states that Rule 23(f) review is a "rare occurrence" that is warranted only when a class certification order "is manifestly erroneous" or "presents an unsettled and fundamental issue of law relating to class actions." Id. at 959.

subject of numerous pending appeals at the Ninth Circuit. One of these appeals is scheduled for argument in a mere two months' time, just before the start of trial, on June 16, 2016. See Ninth Circuit Appeal Nos. 14-16078, 15-16178. An adverse decision reversing this Court's rulings regarding the enforceability of Uber's arbitration clauses could destroy the certified class in this case, making recovery unfeasible for the vast majority of class members. Moreover, Uber made clear that, should this case not resolve, and should the Ninth Circuit panel affirm the Court's rulings regarding class certification and enforceability of the arbitration clauses, the company would continue to aggressively appeal these rulings by seeking *en banc* review and even *certiorari* from the U.S. Supreme Court. See Liss-Riordan Decl. at ¶ 19. The uncertainty created by these appeals was a serious factor that Plaintiffs took into close consideration. Likewise, the risk presented by Uber's continued pursuit of efforts to enforce its arbitration clauses cannot be understated; if the Ninth Circuit were to hold that Uber's arbitration agreements are enforceable,[20] the class would be diminished to include at most a few thousand drivers who either opted out of the arbitration clause or whose work for Uber preceded the initial roll-out of the arbitration clause.[21]

Second, Plaintiffs recognized the risk posed by proceeding to trial with a jury being asked to decide the employee status question. See Liss-Riordan Decl. at ¶ 20. Throughout this litigation, Plaintiffs have maintained that the employee status question is a legal question for the Court to decide. Id. at ¶ 22. However, the Court has rejected these arguments and held that the ultimate issue of employment status would be given to a jury to decide.[22] Plaintiffs recognized additional risks they

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[20] Another federal court recently held Uber's arbitration clause to be enforceable. See Sena v. Uber Techs., Inc., 2016 WL 1376445, *3–8 (D. Ariz. Apr. 7, 2016).

[21] Given that the vast majority of Uber's operations have taken place since the roll-out of its 2014 arbitration clause, a class limited to the drivers who had accepted the 2013 clause, or whose work preceded both clauses would comprise a tiny minority of the certified class. See Dkt. 492 at 3, 5, n. 5 (explaining that drivers covered by the class certified on September 1, 2015, represent only 3% of the entire class in this case).

[22] In similar litigation against FedEx, in one of the only independent contractor misclassification cases ever to go to trial, a jury held FedEx drivers to be independent contractors. Anfinson v. FedEx Ground Package System, Inc., 2009 WL 2173106 (Wa. Sup. Ct.), rev'd, 159 Wash. App. 35 (2010), aff'd, 174 Wash.2d 851 (2012).

faced in proceeding on this issue before a jury, particularly given Uber's popularity in the San Francisco Bay area.[23]

Moreover, Plaintiffs recognized they faced the risk that a unanimous jury would not find that all drivers in the certified class are employees, a prerequisite to both of Plaintiffs' claims in O'Connor. As this Court has explained, "numerous [Borello] factors point in opposing directions" on the issue of employment classification, such that the employment misclassification test "does not yield an unambiguous result." Dkt. 251 at 26–27.

Plaintiffs also recognized that Uber planned to contend that, even if Plaintiffs prevailed on liability, the IRS mileage reimbursement rate was not the proper measure of reimbursement damages. Uber would have advocated for the use of the IRS variable rate, rather than the fixed rate, which could have reduced the reimbursement damages by at least 60%. See Liss-Riordan Decl. at ¶¶ 33-35. With respect to their tips claim, Plaintiffs also recognized the risk that, given conflicting messages that Uber has disseminated regarding whether a tip is included in the fare, a jury might not find that a tip was indeed included. Id. at ¶ 45. And even if the jury found that a tip was included, it is uncertain what amount of tip the jury may have found was included.[24] Id.

For all of these reasons, Plaintiffs determined that the settlement they were able to negotiate – which provides quite substantial monetary relief, as well as significant non-monetary terms – was in the best interests of the class. Although this settlement does not result in a reclassification of Uber drivers as employees, courts—including this one—have routinely approved settlements of misclassification cases that do not result in reclassification. See, e.g., Alexander v. Fedex Ground Package Sys., Inc., 2016 WL 1427358, *1 (N.D. Cal. Apr. 12, 2016); Cotter v. Lyft, Inc., 2016 WL 1394236, *5-6 (N.D. Cal. Apr. 7, 2016) (rejecting objection to settlement on the ground that drivers

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[23] In addition, the Court's recent decision not to allow Plaintiffs' request for a special verdict form setting forth the jury's decision with respect to each Borello factor, see Dkt. 498 at 45, would have made it very difficult for Plaintiffs to have appealed an adverse verdict, even if the jury had engaged in improper weighing of the factors. See Liss-Riordan Decl. at ¶ 23.

[24] Plaintiffs used 20% in their damages calculations, but Uber was prepared to argue that, even if Plaintiffs succeeded on this claim, its research demonstrates that 16% is a more usual tip left for taxicab drivers and, if liability were established, damages could not exceed that amount. See Liss-Riordan Decl. at ¶ 45.

would not be reclassified); Harris v. Vector Mktg. Corp., EMC, 2012 WL 381202 (N.D. Cal. Feb. 6, 2012); Smith v. Cardinal Logistics Mgmt. Corp., 2011 WL 3667462, *1 (N.D. Cal. Aug. 22, 2011).

In sum, after carefully considering these risks and the potential benefits of going to trial, Plaintiffs concluded that the significant monetary relief obtained here, as well as the non-monetary changes that Uber has agreed to as part of this settlement, are in the best interests of the class.[25]

b. Benefit to Drivers

Plaintiffs submit that, despite the substantial monetary component of this Settlement, some of the most valuable aspects of this Settlement may well be the non-monetary components, discussed above. These terms provide practical and on-going benefits to class members, and strongly support preliminary approval. Vizcaino v. Microsoft Corp., 290 F.3d 1043, 1049 (9th Cir. 2002) ("Incidental or non-monetary benefits conferred by the litigation are a relevant circumstance."); Singer v. Becton Dickinson & Co., 2010 WL 2196104, *5 (S.D. Cal. June 1, 2010) (holding that non-monetary benefits to the class members weighed in favor of granting final approval of the settlement).

"[I]t is well-settled law that a cash settlement amounting to only a fraction of the potential recovery does not per se render the settlement inadequate or unfair." Villegas, 2012 WL 5878390, *6 (approving gross settlement of "approximately fifteen percent (15%) of the potential recovery against

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[25] Plaintiffs note that additional risks exist for Massachusetts drivers, given that there is not yet a certified class in the Yucesoy case. And although Plaintiffs expected to be able to prove that drivers are Uber's employees under Massachusetts law, litigation is always uncertain. See, e.g., Sebago v. Boston Cab Dispatch, 471 Mass. 321 (2015) (holding that taxi drivers were not misclassified by taxi companies as independent contractors under Massachusetts law, despite Superior Court and Appeals Court's rulings that plaintiffs were likely to succeed on the merits of that claim). More significantly, because there is not an express expense reimbursement statute in Massachusetts analogous to Cal. Labor Code § 2802, Plaintiffs' recovery for expenses in Massachusetts is much less certain. See Schwann v. FedEx Ground Package Sys., Inc., 2014 WL 496882, *3 (D. Mass. Feb. 7, 2014) (in Massachusetts, "the question of whether business expenses and deductions borne by employees are recoverable under the Wage Act is unsettled under state law.") (certifying this question to the Massachusetts Supreme Judicial Court). Thus, drivers in Massachusetts face additional hurdles before recovering on these claims. Likewise, a reversal of this Court's rulings regarding Uber's arbitration agreements in any one of the numerous pending Ninth Circuit appeals would be equally disastrous for Massachusetts drivers.

With respect to the California drivers who were excluded from the class in this case, they of course risked the possibility that their claims could not be pursued at all on a classwide basis, even in the more recent case filed in state court by Thomas Colopy on their behalf, based upon this Court's class certification decision.

Defendants").[26] Here, Plaintiffs have analyzed the potential monetary value of their claims if they were to succeed in proving their misclassification, reimbursement, and gratuities law claims. Based on extensive data provided by Uber, as described in more detail in the Liss-Riordan Declaration, Plaintiffs have calculated the following potential damages they might have obtained in a verdict against Uber (rounded to the nearest million):

	Car Reimb. (IRS fixed)	Car. Reimb. (IRS variable)	Phones	Tips	Total (IRS fixed/variable)
California class	[redacted]	[redacted]	25	[redacted]	[redacted]
California non-class	[redacted]	[redacted]		[redacted]	[redacted]
Massachusetts	[redacted]	[redacted]	5	[redacted]	[redacted]

Thus, considering the total potential damages, had Plaintiffs prevailed in both cases on a classwide basis (*and* prevailed on a classwide basis for the drivers who were *excluded* from the class, *and* prevailed in convincing the jury that 20% was the amount of gratuity included), and giving equal weighting to all claims, the total potential monetary settlement payment in this case ($100 million) constitutes approximately [redacted]% of the potential damages using the IRS fixed rate of reimbursement

[26] Other courts have approved settlements accounting for much lower percentages of the total possible recovery. See, e.g., Hopson v. Hanesbrands Inc., 2009 WL 928133, *8 (N.D. Cal. Apr. 3, 2009) ("The settlement … represents less than two percent of that amount," but "may be justifiable … given … significant defenses that increase the risks of litigation."); In re Toys R Us–Del., Inc.–Fair & Accurate Credit Transactions Act (FACTA) Litig., 295 F.R.D. 438, 453–54 (C.D. Cal.2014) (granting final approval of a settlement providing for payment reflecting 3% of possible recovery ($391.5 million settlement with exposure up to $13.05 billion)); Reed v. 1–800 Contacts, Inc., 2014 WL 29011, *6 (S.D.Cal. Jan. 2, 2014) (granting final approval where settlement represented 1.7% of possible recovery (net settlement fund of $8,288,719.16, resolving claims worth potentially $499,420,000)); In re LDK Solar Sec. Litig., 2010 WL 3001384, *2 (N.D.Cal. July 29, 2010) (granting final approval where settlement was 5% of estimated damages); In re Linerboard Antitrust Litig., 296 F.Supp.2d 568, 581 & n.5 (E.D.Pa.2003) (gathering cases where courts approved settlements achieving single-digit percentages of potential recoveries); Laguna v. Coverall N. Am., Inc., 2012 WL 607622, *1-2 (S.D. Cal. Feb. 23, 2012) (approving settlement where class received nominal amount of damages and attorneys' fees exceeded class recovery by a factor of more than 16), 753 F.3d 918 (9th Cir. 2014), but see 772 F.3d 608 (9th Cir. 2014) (opinion vacated due to settlement agreement).

(which is $[redacted]), or [redacted]% of the potential damages using the IRS variable rate (which is $[redacted]—under either rate of reimbursement, drivers' recovery is substantial and meaningful.[27]

By ascribing the relative weighting of likelihood of success that Plaintiffs gave to each category of drivers (i.e. double-weighting for California class members, as compared to those excluded from the *O'Connor* class, and double-weighting for California drivers, as compared to Massachusetts drivers), the potential weighted damages are as follows:

	Car Reimb. (IRS fixed)	Car. Reimb. (IRS variable)	Phones	Tips	Total (IRS fixed/variable)
California class	[redacted]	[redacted]	25	[redacted]	[redacted]
California non-class	[redacted]	[redacted]		[redacted]	[redacted]
Massachusetts	[redacted]	[redacted]	3	[redacted]	[redacted]

Thus, considering the total potential damages, had Plaintiffs prevailed in both cases on a classwide basis (*and* prevailed on a classwide basis for the drivers who were *excluded* from the class, *and* prevailed in convincing the jury that 20% was the amount of gratuity included), and giving the relative one-half weighting that Plaintiffs ascribed for the claims of the drivers excluded from the O'Connor class and the Massachusetts drivers, the total potential monetary settlement payment in this case ($100 million) constitutes approximately [redacted]% of the weighted potential damages using the IRS fixed rate of reimbursement (which is [redacted]), or [redacted]% of the weighted potential damages using the IRS variable rate (which is [redacted]). Again, under either rate of reimbursement, drivers' recovery is substantial and meaningful.[28]

In view of the many legal issues and uncertainties that faced Plaintiffs—including Uber's appeal of the Court's rulings regarding arbitration clauses, Uber's challenge to the Court's class certification orders, the chances of drivers who were *excluded* from the class ultimately being able to pursue claims somehow on a classwide basis, the likelihood of success of the Massachusetts drivers

[27] Should the contingency not kick in, i.e., if the monetary value of the Settlement is [redacted], these percentages would be [redacted] and [redacted].

[28] Should the contingency not kick in, these percentages would be [redacted] and [redacted].

recovering for expense reimbursement, and the likelihood of the California drivers prevailing before a jury on their claim that they were misclassified under California law—Plaintiffs submit that this is an excellent monetary result.[29]

Further, as shown in the Liss-Riordan Declaration, Plaintiffs estimate that the *average* estimated payment to California class members who drove in the highest category of miles (more than 25,000 miles) will be just under $2,000. See Liss-Riordan Decl. at ¶¶ 88-89, Exh. 1. Those drivers who fall into that category and who opted out of the 2013 or 2014 arbitration clauses will have their settlement shares doubled, so that the average payment for such drivers would be close to $4,000. Id. Moreover, these figures all assume that 100% of the class submits a claim to receive a payment from the settlement. Since it is likely that many drivers with less of an interest in this action (*e.g.*, drivers who have driven the fewest number of miles) will not submit a claim (despite the simple method for doing so electronically), these numbers could increase greatly, by double if not more. Id. Thus, if 50% of the settlement funds were claimed, a California class member who drove in the highest category of miles and opted out of the arbitration clause may receive *on average* close to $8,000 from the settlement fund.

Moreover, courts have recognized the value of obtaining relatively prompt settlements and the benefits to class members of receiving payments sooner rather than later, where litigation could extend for years on end, thus significantly delaying any payments to class members. "A court may consider the vagaries of litigation and compare the significance of immediate recovery by way of the compromise to the mere possibility of relief in the future, after protracted and expensive litigation." Vasquez v. Coast Valley Roofing, Inc., 266 F.R.D. 482, 489 (E.D. Cal. 2010) (internal citation omitted); see also Barbosa v. Cargill Meat Sols. Corp., 297 F.R.D. 431, 446 (E.D. Cal. 2013) (noting

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[29] Indeed, in Alexander v. FedEx Ground Package Sys., 2016 WL 1427358, *2 n.5 (N.D. Cal. Apr. 12, 2016), where this Court recently granted final approval to a settlement achieved after more than 10 years of litigation, and in a case where the plaintiffs *won liability* on appeal with a ruling that drivers were employees *as a matter of law* (yet no reclassification occurred as a result of the settlement) (and the case did not raise issues regarding arbitration clauses), the ultimate settlement reached accounted for approximately 40% of the class members' actual damages. By comparison, Plaintiffs submit that the potential settlement percentages here ranging from [redacted] to [redacted] of actual potential damages are an excellent result.

that "there were significant risks in continued litigation and no guarantee of recovery" whereas "[t]he settlement [] provides Class Members with another significant benefit that they would not receive if the case proceeded—certain and prompt relief"); California v. eBay, Inc., 2015 WL 5168666, *4 (N.D. Cal. Sept. 3, 2015) ("Since a negotiated resolution provides for a certain recovery in the face of uncertainty in litigation, this factor weighs in favor of settlement"); Oppenlander v. Standard Oil Co., 64 F.R.D. 597, 624 (D.Colo.1974) ("It has been held proper to take the bird in hand instead of a prospective flock in the bush.").

Thus, based on the risks outlined above, Part III. B(1)(a), and in view of the substantial non-monetary benefits of the settlement, Plaintiffs believe these are fair and adequate sums to compensate class members.

2. The Settlement is the Product of Informed, Non-Collusive Negotiation

For the parties "to have brokered a fair settlement, they must have been armed with sufficient information about the case to have been able to reasonably assess its strengths and value." Acosta v. Trans Union, LLC, 243 F.R.D. 377, 396 (C.D. Cal. 2007). Thus, adequate discovery and the use of an experienced mediator support a finding that settlement negotiations were both informed and non-collusive. See Villegas v. J.P. Morgan Chase & Co., 2012 WL 5878390, *6 (N.D. Cal. Nov. 21, 2012); Deaver, 2015 WL 4999953, *7; Satchell v. Fed. Express Corp., 2007 WL 1114010, *4 (N.D. Cal. Apr. 13, 2007) ("The assistance of an experienced mediator in the settlement process confirms that the settlement is non-collusive").

Here, "[b]y the time the settlement was reached, the litigation had proceeded to a point in which both plaintiffs and defendants had a clear view of the strengths and weaknesses of their cases." Vasquez v. Coast Valley Roofing, Inc., 266 F.R.D. 482, 489 (E.D. Cal. 2010) (internal citations omitted). The parties exchanged extensive discovery prior to conducting a mediation, including detailed damages discovery. See Liss-Riordan Decl. at ¶¶ 2, 25. Likewise, the parties have litigated the merits of their claims through a motion to dismiss, a motion for judgment on the pleadings, and two motions for summary judgment, and both sides have undertaken detailed analyses of their respective cases in preparation for imminent trial. Id. at ¶ 26. The parties also met on three separate occasions with a highly experienced and renowned mediator, Mark Rudy, and the settlement they

have reached was the result of thorough and passionate negotiations by experienced counsel familiar with the applicable law, class action litigation, and the facts of this case. Id. at ¶¶ 12, 27. See Nielson v. The Sports Authority, 2013 WL 3957764, *4–5 (N.D. Cal. July 29, 2013) ("[T]he settlement resulted from non-collusive negotiations, i.e., a mediation before Mark Rudy, a respected employment attorney and mediator."); Barcia v. Contain-A-Way, Inc., 2009 WL 587844, *1 (S.D. Cal. Mar. 6, 2009) (granting final settlement approval and finding that Mark Rudy is a "nationally recognized labor mediator"); Zolkos v. Scriptfleet, Inc., 2014 WL 7011819, *2 (N.D. Ill. Dec. 12, 2014) ("Two experienced class action employment mediators, [including] Mark Rudy . . . assisted the Parties with the settlement negotiations and presided over two full-day mediations. This reinforces the non-collusive nature of the settlement."). Thus, the parties had ample information, expert guidance from an experienced mediator, and intimate familiarity with the strengths and weaknesses of their respective cases.

3. The Settlement Has No Obvious Deficiencies

A Court should also consider possible deficiencies in a settlement including an overly broad release of claims, an insufficient timeframe for notice, an inadequate form of payment, an unrelated *cy pres* designee, or an unreasonable request for attorneys' fees, among other things. See Custom LED, LLC v. eBay, Inc, 2013 WL 6114379, *7-8 (N.D. Cal. Nov. 20, 2013); Deaver, 2015 WL 4999953, *7. Here, class members will release only wage and hour claims, such as those that could arise from their alleged misclassification as independent contractors, and will not release claims for discrimination, wrongful termination, or personal injury. See Exh. 6 to Liss-Riordan Decl. at § VII. The timeframe for notice is adequate, and class members will be given ample opportunity to submit claims, even up until the final distribution of unclaimed funds (which will occur approximately 180 days after the initial distribution). Id. at ¶ 152. Likewise, the distribution will compensate drivers fairly, as discussed above. No unclaimed funds will revert to Uber; rather they will be redistributed amongst class members, and, if necessary, given to the *cy pres* designees.

Likewise, the attorneys' fee provision is fair and does not give rise to any deficiency. Plaintiffs' Counsel intends to apply for fees and costs not to exceed 25% of the gross settlement fund (totaling $21 million and up to $25 million if the contingency is triggered). Id. at ¶ 134. The

settlement is not contingent upon the Court approving Counsel's application, and Counsel's costs are folded in to the 25% figure and are not separately recoverable. "The typical range of acceptable attorneys' fees in the Ninth Circuit is 20 percent to 33.3 percent of the total settlement value, with 25 percent considered a benchmark percentage." Barbosa v. Cargill Meat Sols. Corp., 297 F.R.D. 431, 448 (E.D. Cal. 2013). However, "in most common fund cases, the award exceeds that benchmark percentage." Id.; In re Activision Sec. Litig., 723 F.Supp. 1373, 1377 (N.D.Cal.1989) ("nearly all common fund awards range around 30%"). Thus, here, a 25% fee is eminently reasonable, particularly given the novelty and complexity of litigating the first "sharing economy" independent contractor misclassification case in the nation, one that has gained international attention and has set an example for other litigation, and has been closely watched by companies across the country and the world, who have been faced with the choice of whether to classify their workers as employees or independent contractors. Moreover, this percentage fee recovery is a lower percentage than many recent fee awards in California district courts. See, e.g., Vasquez v. Coast Valley Roofing, Inc., 266 F.R.D. 482, 492 (E.D. Cal. 2010) (collecting recent wage and hour cases in which counsel received fee awards in the range of 33.3% to 30% of the common fund); Lusby v. GameStop Inc., 2015 WL 1501095, *9 (N.D. Cal. Mar. 31, 2015) (finding a one-third fee award appropriate because to the results achieved, the risk of litigation, the skill required and the quality of work, and the contingent nature of the fee and the financial burden carried by the plaintiffs); Barnes v. The Equinox Grp., Inc., 2013 WL 3988804, *4 (N.D. Cal. Aug. 2, 2013) (awarding one-third of gross settlement in fees and costs because counsel assumed substantial risk and litigated on a contingency fee-basis).

4. The Settlement Does Not Unfairly Grant Preferential Treatment to Any Class Members

"Under this factor, the Court examines whether the Settlement provides preferential treatment to any class member." Deaver, 2015 WL 4999953, *8. "[T]o the extent feasible, the plan should provide class members who suffered greater harm and who have stronger claims a larger share of the distributable settlement amount." Hendricks v. StarKist Co., 2015 WL 4498083, *7 (N.D. Cal. July 23, 2015) (citing cases). However, "courts recognize that an allocation formula need only have a reasonable, rational basis, particularly if recommended by experienced and competent counsel." Id.

citing Vinh Nguyen v. Radient Pharm. Corp., 2014 WL 1802293, *5 (C.D. Cal. May 6, 2014). Here, the settlement will result in payment of a fair and reasonable award to class members, particularly in light of the litigation risks. Here, class members will receive settlement shares based on the number of miles they transported passengers using the Uber application (as calculated by Uber's mileage data), as well as other factors Plaintiffs considered relevant to the relative value of their claims. Drivers who are members of the certified class in O'Connor will be given greater weight than those drivers who drove through third-party transportation companies or under corporate names (and thus were excluded from the class) or who are putative class members in the Yucesoy case (which has yet to reach class certification and which brings claims under Massachusetts law). This allocation makes sense and properly accounts for differences in the posture of the two cases as well as the likelihood of success of the drivers if they were to have to go forward litigating their claims.

Likewise, the agreed upon enhancements for the various named plaintiffs are eminently reasonable. The agreement provides for enhancements of $7,500 for the named plaintiffs in this case (Gurfinkel, Manahan, Colopy, and O'Connor) (all of whom were deposed, responded to extensive discovery requests, and kept in close communication with Plaintiffs' counsel)[30], as well as lesser enhancements of $5,000 for the Massachusetts named plaintiffs (Yucesoy, Mahammed, Sanchez, Talha, and Morris), and enhancements of $2,500 for the two NLRB complainants (Catherine London and John Billington), who will withdraw their NLRB charges as part of this settlement. In addition Plaintiffs have also included additional enhancements of $500 for those drivers who provided declarations in support of Plaintiffs' arguments in this case.[31] Those enhancements recognize that

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[30] The agreement also provides for an enhancement of $5,000 for Plaintiff David Khan who was earlier a class representative in the O'Connor case for UberTaxi drivers (who were later excluded from the O'Connor action, but have now been included in the Settlement Class),

[31] Courts, including many courts in this Circuit, have awarded incentive payments to class members who assisted with the case, either by signing declarations or participating in discovery, or by otherwise assisting Plaintiffs' counsel. Thus, Plaintiffs believe that modest incentive payments are appropriate for those drivers who provided declarations that assisted Plaintiffs' case, as well as to the two NLRB claimants who filed charges that they are withdrawing as part of this settlement. See Hightower v. JPMorgan Chase Bank, N.A., 2015 WL 9664959, *2, 12-13 (C.D. Cal. Aug. 4, 2015) (approving incentive payments of "(1) $10,000 for each of the Lead Plaintiffs; (2) $7,500 for each of the Additional Named Plaintiffs; (3) $1,000 for each class member who was deposed in connection with declarations they filed in support of Plaintiffs' Motion for Class Certification; and (4) $500 for

(Cont'd on next page)

those declarations, which were filed on the docket in the case, were significant in assisting Plaintiffs' positions in this case, and these enhancements are fair compensation in recognition of these drivers' assistance, time spent, and the risk involved with putting their name forward publicly in support of the case. These amounts are in line with many awards in other cases in the federal district courts in California. See, e.g., Lusby, 2015 WL 1501095, *5 (awarding $7,500 to each of the four class representatives from $750,000 fund); Covillo v. Specialtys Cafe, 2014 WL 954516, *8 (N.D. Cal. Mar. 6, 2014) (awarding $8,000 to class representatives from $2,000,000 fund); Van Vranken v. Atl. Richfield Co., 901 F. Supp. 294, 300 (N.D. Cal. 1995) (awarding $50,000 to named plaintiff out of $76 million settlement fund); Chu v. Wells Fargo Investments, LLC, 2011 WL 672645, *2 (N.D. Cal. Feb. 16, 2011) (awarding $10,000 incentive awards to two named plaintiffs).[32]

Particularly given that the four O'Connor named plaintiffs have participated in extensive discovery in connection with this case, have placed their names in the public eye as part of this high-profile litigation, and have placed their livelihoods at risk by suing Uber (some even while continuing to drive), these modest incentive payments are more than reasonable. See Van Vranken, 901 F.Supp. at 299 (noting that in evaluating incentive awards, courts may consider "the notoriety and personal

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class members who submitted declarations in support of the same"); Fraser v. Asus Computer Int'l, 2013 WL 3595940, *2 (N.D. Cal. July 12, 2013) (approving modest incentive payments to named plaintiff and "three cooperating class members" who "produced documents to class counsel, discussed the amended complaint and settlement options with counsel and stood ready to be deposed"); Romero v. Producers Dairy Foods, Inc., 2007 WL 3492841, *4 (E.D. Cal. Nov. 14, 2007) (approving incentive awards to named plaintiffs and "to the class members actually deposed"); Fitzgerald v. City of Los Angeles, 2003 WL 25471424, *1 (C.D. Cal. Dec. 8, 2003) (approving distribution of $3,500 each to "the named class representative" and "a declarant for the damages class"); E.E.O.C. v. Wal-Mart Stores, Inc., 2011 WL 6400160, *6 (E.D. Ky. Dec. 20, 2011) (approving incentive awards to class members "based upon the level of assistance provided" to the EECO in prosecuting the case); Equal Rights Ctr. v. Washington Metro. Area Transit Auth., 573 F. Supp. 2d 205, 214, n. 10 (D.D.C. 2008) ("The incentive awards of $5,000 and $1,000 granted to named plaintiffs and deposed class members are not uncommon in class action litigation"); In re Tyson Foods, Inc., 2010 WL 1924012, *4 (D. Md. May 11, 2010) ("Class Counsel's request for incentive awards in the amount of $2,500 for each of the four named Plaintiffs and four other class members who were deposed is also reasonable. This payment compensates the Plaintiffs and class members for their contribution to the process of the litigation").

[32] Uber has informed Plaintiffs that Uber does not currently take a position as to the appropriateness of these incentive payments and reserves its right to object to these payments, if it later concludes that an objection is necessary.

difficulties encountered by the class representative" and "the amount of time and effort spent by the class representative" among other factors); see also Bellinghausen v. Tractor Supply Co., 306 F.R.D. 245, 267 (N.D. Cal. 2015) ("Incentive awards are particularly appropriate in wage-and-hour actions where plaintiffs undertake a significant "reputational risk" by bringing suit against their former employers").[33]

V. CONCLUSION

For the foregoing reasons, Plaintiffs' Motion for Preliminary Approval should be granted.

Date: April 21, 2016

Respectfully submitted,

DOUGLAS O'CONNOR, THOMAS COLOPY, MATTHEW MANAHAN, and ELIE GURFINKEL individually and on behalf of all others similarly situated,

By their attorneys,

/s/ Shannon Liss-Riordan

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[33] Likewise, the Massachusetts plaintiffs have provided extensive help to counsel in crafting the successive Complaints in the Yucesoy matter, providing detailed information regarding their wages and expenses, and by providing affidavits in support of Plaintiffs' various memoranda opposing the enforceability of Uber's arbitration agreements. Moreover, the NLRB claimants have undergone extensive and detailed interviews with NLRB attorneys and have provided information and documents in support of their NLRB charges. These actions are likewise deserving of recognition.

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing document was served by electronic filing on April 21, 2016, on all counsel of record.

/s/ Shannon Liss-Riordan
Shannon Liss-Riordan, Esq.

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

DOUGLAS O'CONNOR, et al., individually and on behalf of all others similarly situated,
Plaintiffs,

v.

UBER TECHNOLOGIES, INC.,
Defendant.

HAKAN YUCESOY, et al., individually and on behalf of all others similarly situated,
Plaintiffs,

v.

UBER TECHNOLOGIES, INC. and TRAVIS KALANICK,
Defendants.

CASE NO. 13-cv-03826-EMC
CASE NO. 15-cv-00262-EMC

[PROPOSED] ORDER GRANTING MOTION FOR PRELIMINARY APPROVAL OF SETTLEMENT; APPROVAL OF CLASS NOTICE AND NOTICE PLAN; AND SETTING OF SCHEDULE FOR FAIRNESS HEARING

Having reviewed Plaintiffs' Motions for (1) Preliminary Approval of Class Action Settlement, (2) Approval of Class Action Notice Plan, (3) Leave to File Amended Complaints for Settlement; and the Memoranda of Points and Authorities in support thereof; the Declaration of Shannon Liss-Riordan; the proposed Settlement Agreement; the proposed Notice of Class Action Settlement; and

the arguments of counsel, along with the files and records of this case, and in recognition of the Court's duty to make a preliminary determination as to the reasonableness of any proposed class action settlement, and if preliminarily determined to be reasonable, to ensure proper notice is provided to class members in accordance with due process requirements, and to conduct a final approval hearing as to the good faith, fairness, adequacy and reasonableness of any proposed settlement, THE COURT HEREBY MAKES THE FOLLOWING DETERMINATIONS AND ORDERS:

1. Defined Terms. For purposes of this Order, except as otherwise indicated herein, the Court adopts and incorporates the definitions contained in the Settlement Agreement.

2. Stay of the Actions. Pending the Fairness Hearing, all proceedings in the above-captioned Actions, other than proceedings necessary to carry out or enforce the terms and conditions of the Settlement Agreement and this Order, are hereby stayed.

3. Amended Complaints for Settlement. The Court GRANTS Plaintiffs leave to file the proposed Amended Complaints for Settlement attached as Exhibits A and B to the Settlement Agreement.

4. Provisional Class Certification for Settlement Purposes Only. The Court provisionally finds, for settlement purposes only and conditioned upon the entry of this Order, that the prerequisites for a class action under Rule 23 of the Federal Rules of Civil Procedure have been satisfied in that: (i) the Settlement Class certified herein numbers at least in the tens of thousands of persons, and joinder of all such persons would be impracticable, (ii) there are questions of law and fact that are common to the Settlement Class, and those questions of law and fact common to the Settlement Class predominate over any questions affecting any individual Settlement Class Member; (iii) the claims of the Named Plaintiffs are typical of the claims of the Class they seek to represent for purposes of settlement; (iv) a class action on behalf of the Settlement Class is superior to other available means of adjudicating this dispute; and (v) as set forth below, Named Plaintiffs and Class Counsel are adequate representatives of the Settlement Class. Uber retains all rights to assert that these Actions may not be certified as class actions, other than for settlement purposes.

The Court also concludes that, because these Actions are being settled rather than litigated, the Court need not consider manageability issues that might be presented by the trial of class actions involving the issues in these cases. *See Amchem Prods., Inc. v. Windsor*, 521 U.S. 591, 620 (1997).

5. Class Definition. For settlement purposes only this Court hereby certifies as a class under Rule 23 of the Federal Rules of Civil Procedure and a collective action pursuant to 29 U.S.C. § 216(b), a Settlement Class consisting of Drivers in California and Massachusetts who have used the Uber App at any time since August 16, 2009, up to and including the date of this order, _____, 2016. Excluded from the Settlement Class are (i) all persons who are directors, officers, and agents of Uber or its subsidiaries and affiliated companies or are designated by Uber as employees of Uber or its subsidiaries and affiliated companies; (ii) persons who timely and properly exclude themselves from the Settlement Class as provided in the Settlement Agreement; and (iii) the Court, the Court's immediate family, and Court staff.

6. Class Representatives and Class Counsel. Named Plaintiffs Douglas O'Connor, Thomas Colopy, Matthew Manahan, Elie Gurfinkel, David Khan, Hakan Yucesoy, Abdi Mahammed, Mokhtar Talha, Brian Morris, and Pedro Sanchez are designated as representatives of the provisionally certified Settlement Class. The Court preliminarily finds that they are similarly situated to absent Settlement Class Members and therefore typical of the Settlement Class, and that they will be adequate class representatives. Shannon Liss-Riordan, Adelaide Pagano, and Matthew Carlson of the law firm of Lichten & Liss-Riordan, P.C., whom the Court finds are experienced and adequate counsel for purposes of these settlement approval proceedings, are hereby designated as Class Counsel.

7. Preliminary Settlement Approval. Upon preliminary review, the Court finds that the Settlement Agreement, together with all its Exhibits, and the settlement it incorporates, appears fair, reasonable and adequate, and appears to be within the range of reasonableness of a settlement which could ultimately be given final approval by this Court. *See generally* Fed. R. Civ. P. 23; Manual for Complex Litigation (Fourth) § 21.632 (2004). Accordingly, the Settlement Agreement is preliminarily approved and is sufficient to warrant sending notice to the Class.

It further appears to the Court, on a preliminary basis, that the settlement is fair and reasonable to Settlement Class Members when balanced against the probable outcome of further litigation, liability and damages issues, and the potential appeal of any rulings. It further appears that significant discovery, investigation, research, and litigation has been conducted such that counsel for the Parties at this time are able to reasonably evaluate their respective positions. It further appears that the settlement terms, including but not limited to the monetary terms and non-monetary terms as set forth in the Settlement Agreement, confer substantial benefits upon the Settlement Class, particularly in light of the damages that Plaintiffs and their counsel believe are potentially recoverable or provable at trial, without the costs, uncertainties, delays, and other risks associated with continued litigation, trial, and/or appeal. It also appears that the proposed settlement has been reached as the result of intensive, informed, and non-collusive negotiations between the Parties, as the Parties reached a settlement as a result of extensive arm's-length negotiations that occurred over several separate, in-person mediation sessions with a respected mediator—Mark S. Rudy—who is experienced in adjudicating and mediating class action disputes.

Based on the Court's review of the papers submitted in support of preliminary approval, and the Court's familiarity with the issues in the case, the Court concludes that the proposed Settlement Agreement has no obvious defects and is within the range of possible settlement approval such that notice to the Settlement Class is appropriate.

8. Jurisdiction. The Court has subject-matter jurisdiction over the Action pursuant to 28 U.S.C. § 1332, and personal jurisdiction over the Parties before it. Additionally, venue is proper in this District pursuant to 28 U.S.C. § 1391.

9. Fairness Hearing. A Fairness Hearing shall be held before this Court before the undersigned, Hon. Edward M. Chen, on September 29, 2016 at 1:30 p.m., in Courtroom 5 of the above-entitled court, located at 450 Golden Gate Avenue, San Francisco, CA 94102, to determine whether the settlement of the Action pursuant to the terms and conditions of the Settlement Agreement should be approved as fair, reasonable, and adequate, and finally approved pursuant to Rule 23(e) of the Federal Rules of Civil Procedure. The Court will rule on Class Counsel's

application for an award of attorneys' fees, costs, and expenses and incentive awards for Plaintiffs (the "Fee and Service Application") at that time.

Papers in support of final approval of the Settlement Agreement and Fee and Service Application shall be filed with the Court according to the schedule set forth in the Settlement Agreement. The Fairness Hearing may be postponed, adjourned, or continued by order of the Court without further notice to the Settlement Class. After the Fairness Hearing, the Court may enter a Final Approval Order and Final Judgment in accordance with the Settlement Agreement that will adjudicate the rights of the Settlement Class Members (as defined in the Settlement Agreement) with respect to the claims being settled.

Class Counsel shall file their Fee and Service Application at least twenty-one (21) days before the Exclusion/Objection Deadline. Class Counsel shall file their papers in support of final approval of the Settlement Agreement at least thirty-five (35) days before the Fairness Hearing. Objections to the Settlement Agreement or the Fee and Service Application shall be filed with the Court on or before the Exclusion/Objection Deadline, and any opposition to the Motion for Final Approval shall be filed with the Court at least twenty-one (21) days before the Fairness Hearing. Papers in response to objections to the Settlement Agreement or the Fee and Service Application shall be filed with the Court on or before fourteen (14) days before the Fairness Hearing.

10. Administration. In consultation with and with the approval of Uber, Class Counsel is hereby authorized to establish the means necessary to administer the proposed settlement and implement the claim process, in accordance with the terms of the Settlement Agreement.

11. Class Notice. The form and content of the proposed Long Form Notice and Summary Notice, attached as Exhibits E and G, respectively, to the Settlement Agreement, and the notice methodology described in the Settlement Agreement are hereby approved. Pursuant to the Settlement Agreement, the Court appoints Garden City Group to be the Settlement Administrator to help implement the terms of the Settlement Agreement.

(a) Notice Date. As soon as possible after the entry of this Order, but not later than fourteen (14) days after the entry of this Order, the Settlement Administrator shall provide notice to the Settlement Class pursuant to the terms of the Settlement Agreement, in accordance with the

notice program set forth in the Settlement Agreement. The Parties shall coordinate with the Settlement Administrator to provide notice to the Settlement Class pursuant to terms therein.

(b) Findings Concerning Notice. The Court finds that the Settlement is fair and reasonable such that the Long Form Notice and Summary Notice should be provided pursuant to the Settlement Agreement and this Order. The Notice fairly, plainly, accurately, and reasonably informs Settlement Class Members of, and allows Settlement Class Members a full and fair opportunity to consider, among other things: (i) the nature of the action; (ii) the identities of Class Counsel; (iii) the terms and provisions of the proposed Settlement; (iv) the relief to which the members of each class will be entitled, including detailed summaries of the programmatic relief and claims process; (v) the process by which Settlement Class Members may make a claim for monetary relief if the settlement is approved; (vi) how administrative costs, attorneys' fees, and potential service payments will be handled; (vii) the procedures and deadlines for submitting objections, and/or requests for exclusion; and (viii) the date, time, and place of the fairness hearing.

(c) The Court finds that the form, content and method of disseminating notice to the Settlement Class as described in the Settlement Agreement and in this Order: (i) complies with Rule 23(c)(2) of the Federal Rules of Civil Procedure as it is the best practicable notice under the circumstances, and is reasonably calculated, under all the circumstances, to apprise the members of the Settlement Class of the pendency of this Action, the terms of the Settlement, and their right to object to the settlement or exclude themselves from the Settlement Class; (ii) complies with Rule 23(e) and as it is reasonably calculated, under the circumstances, to apprise the Settlement Class Members of the pendency of the Action, the terms of the proposed settlement, and their rights under the proposed settlement, including, but not limited to, their right to object to or exclude themselves from the proposed Settlement and other rights under the terms of the Settlement Agreement; (iii) constitute due, adequate, and sufficient notice to all Settlement Class Members and other persons entitled to receive notice; and (iv) meets all applicable requirements of law, including, but not limited to, 28 U.S.C. § 1715, Fed. R. Civ. P. 23(c) and (e), and the Due Process Clause(s) of the United States Constitution. The Court further finds that all of the notices are written in simple terminology,

are readily understandable by Settlement Class Members, and comply with the Federal Judicial Center's illustrative class action notices.

12. Deadline to Submit Claim Forms. Settlement Class Members will have at least ninety (90) days from the date of the Notice Date, to submit their Claim Forms, which is due, adequate, and sufficient time.

13. Exclusion from Class. Any Settlement Class Member who wishes to be excluded from the Settlement Class must send to the Settlement Administrator by U.S. Mail a personally signed letter including the (i) Settlement Class Member's name, address, and telephone number; (ii) a clear and unequivocal statement that the Settlement Class Member wishes to be excluded from the Settlement Class and that the Settlement Class Member understands that he or she is still bound by the release of PAGA Claims upon the issuance of the Final Approval Order of the Settlement and Final Judgment; (iii) and the signature of the Settlement Class Member or the Legally Authorized Representative of the Settlement Class Member. "Mass" or "class" opt-outs are not permitted. Any request for exclusion or opt out must be postmarked on or before sixty (60) days after the Notice Date ("the Exclusion/Objection Deadline"). The date of the postmark shall be the exclusive means used to determine whether a request for exclusion has been timely submitted.

The Settlement Administrator shall forward copies of any written requests for exclusion to Class Counsel and Uber's Counsel, and shall, before the Fairness Hearing, submit an affidavit to the Court attesting to the accuracy of the list.

If the proposed Settlement is finally approved, any potential Settlement Class Member who has not submitted a timely written request for exclusion from the Class on or before sixty (60) days after the Notice Date, shall be bound by all terms of the Settlement Agreement and the Final Order and Final Judgment, regardless of whether they have requested exclusion from the Settlement, even if the potential Settlement Class Member previously initiated or subsequently initiates any litigation against any or all of the Released Parties relating to Released Claims. All persons or entities who properly exclude themselves from the Settlement Class shall not be Settlement Class Members and shall relinquish their rights or benefits under the Settlement Agreement, should it be approved, and may not file an objection to the Settlement.

14. Objections and Appearances. Settlement Class Members may object to the terms contained in the Settlement Agreement, the certification of the Settlement Class, the entry of the Final Approval Order and Final Judgment, the amount of fees requested by Class Counsel, and/or the amount of the incentive awards requested by the representative Plaintiffs and other individuals, by filing a written objection with the Court through the Court's Case Management/Electronic Case Files (CM/ECF) system (or through any other method in which the Court will accept filings, if any), and serving by U.S. Mail or e-mail the written objection upon the Settlement Administrator. Settlement Class Members who fail to file with the Court and serve upon the Settlement Administrator (as defined in the Settlement Agreement) timely written objections in the manner specified in the Settlement Agreement, the Long Form Notice, and the Summary Notice shall be deemed to have waived all objections and shall be foreclosed from making any objection (whether by appeal or otherwise) to the Settlement.

Any Settlement Class Member who intends to object to the fairness, reasonableness, and/or adequacy of the Settlement must, in addition to timely filing the written objection with the Court, provide to the Settlement Administrator (who shall forward it to Class Counsel and Defense Counsel) a timely statement of the objection, as set forth below.

To be timely, the objection must be postmarked and mailed to the Settlement Administrator, and filed with the Court, no later than the Exclusion/Objection Deadline. The date of the postmark on the return-mailing envelope shall be the exclusive means used to determine whether objection has been timely submitted. The objection must contain at least the following: (i) the objector's full name, address, telephone, and signature; (ii) a clear reference to the Action; (iii) a statement of the specific legal and factual basis for each objection argument; and (iv) a statement whether the objecting person or entity intends to appear at the Fairness Hearing, either in person or through counsel and, if through counsel, a statement identifying that counsel by name, bar number, address, and telephone number. "Mass" or "class" objections are not permitted. All objections shall be signed by the objecting Settlement Class Member (or his Legally Authorized Representative), even if the Settlement Class Member is represented by counsel.

Any party to this case, including Settlement Class Members, may appear at the Fairness Hearing in person or by counsel, and may be heard to the extent allowed by the Court, in support of or in opposition to, the Court's determination of the good faith, fairness, reasonableness, and adequacy of the proposed Settlement, the requested attorneys' fees and litigation expenses, the requested class representative enhancement award, and/or the Order of Final Approval and Judgment regarding such Settlement, provided however, that no person, except Class Counsel and Defense Counsel, shall be heard in opposition to such matters unless such person has complied with the conditions set forth in the Notice of Class Action Settlement.

15. Preliminary Injunction. Pending final determination of whether the proposed settlement should be approved, all Named Plaintiffs and Settlement Class Members and their representatives, or any of them, who do not timely and properly exclude themselves from the Settlement Class are barred and enjoined from directly, indirectly, derivatively, in a representative capacity, or in any other capacity, filing, commencing, prosecuting, maintaining, intervening in, participating in, conducting, or continuing any action in any forum (state or federal) as individual actions, class members, putative class members, or otherwise against the Released Parties (as that term is defined in the Settlement Agreement) in any court or tribunal asserting any of the Released Claims (as that term is defined in the Settlement Agreement), and/or from receiving any benefits from any lawsuit, administrative or regulatory proceeding, or order in any jurisdiction, based on or relating to the Released Claims. In addition, all such persons are hereby barred and enjoined from filing, commencing, or prosecuting a lawsuit against Uber (or against any of its related parties, parents, subsidiaries, or affiliates) as a class action, a separate class, or group for purposes of pursuing a putative class action (including by seeking to amend a pending complaint to include class allegations or by seeking class certification in a pending action in any jurisdiction) on behalf of Settlement Class Members who do not timely exclude themselves from the Settlement Class, arising out of, based on or relating to the Released Claims. Pursuant to 28 U.S.C. §§ 1651(a) and 2283, the Court finds that issuance of this preliminary injunction is necessary and appropriate in aid of the Court's continuing jurisdiction and authority over this Action.

16. Summary of Deadlines. In summary, the deadlines set by this Order are as follows:

(a) The Long Form Notice shall be disseminated within fourteen (14) days after the entry of this Order;

(b) The Summary Notice shall be disseminated within fourteen (14) days after the entry of this Order;

(c) Motion in support of the Final Approval of the Settlement shall be filed on or before thirty-five (35) days before the Fairness Hearing;

(d) Class Counsel shall file their Fee Application on or before twenty-one (21) days before the Exclusion/Objection Deadline;

(e) Settlement Class members who desire to be excluded shall submit requests for exclusion postmarked (or the equivalent for e-mail) no later than sixty (60) days after the Notice Date;

(f) All written objections to the Settlement Agreement and the Fee and Service Application and written notices of the objecting class member's intention to appear at the Fairness Hearing shall be filed with the Court and postmarked and mailed to the Settlement Administrator no later than the Exclusion/Objection Deadline;

(g) Any opposition to the Motion in support of the Final Approval of the Settlement shall be filed with the Court on or before twenty-one (21) days before the Fairness Hearing;

(h) All documents in support of final approval of the Settlement Agreement, and in response to objections to the Settlement Agreement or the Fee and Service Application, shall be filed with the Court on or before fourteen (14) days before the Fairness Hearing; and

(i) The Fairness Hearing shall be held on September 29, 2016, at 1:30 p.m. These deadlines may be extended by order of the Court, for good cause shown, without further notice to the Settlement Class. Settlement Class Members must check the settlement website (www._____.com) regularly for updates and further details regarding extensions of these deadlines.

17. Termination of Settlement. In the event the Court does not grant final approval to the settlement, or for any reason the parties fail to obtain a Final Approval Order and Final Judgment as contemplated in the Settlement Agreement, or the Settlement Agreement is terminated pursuant to its

terms for any reason or the Effective Date does not occur for any reason, then the following shall apply:

(a) All orders and findings entered in connection with the Settlement Agreement shall become null and void and have no force and effect whatsoever, shall not be used or referred to for any purposes whatsoever, and shall not be admissible or discoverable in this or any other proceeding;

(b) The provisional certification of the Settlement Class pursuant to this Order shall be vacated automatically, and the Action shall proceed as though the Settlement Class had never been certified pursuant to this Settlement Agreement and such findings had never been made;

(c) Nothing contained in this Order is, or may be construed as, a presumption, concession or admission by or against Uber or Named Plaintiffs of any default, liability or wrongdoing as to any facts or claims alleged or asserted in the Action, or in any actions or proceedings, whether civil, criminal or administrative, including, but not limited to, factual or legal matters relating to any effort to certify the Actions as class actions;

(d) Nothing in this Order or pertaining to the Settlement Agreement, including any of the documents or statements generated or received pursuant to the claims administration process, shall be used as evidence in any further proceeding in this case, including, but not limited to, motions or proceedings seeking treatment of the cases as class actions; and

(e) All of the Court's prior Orders having nothing whatsoever to do with the Settlement shall, subject to this Order, remain in force and effect.

18. Use of Order. This Order shall be of no force or effect if the settlement does not become final and shall not be construed or used as an admission, concession, or declaration by or against Uber of any fault, wrongdoing, breach, or liability. Nor shall this Order be construed or used as an admission, concession, or declaration by or against Named Plaintiffs or the other Settlement Class Members that their claims lack merit or that the relief requested is inappropriate, improper, or unavailable, or as a waiver by any party of any defenses or claims he, she, or it may have in this Action or in any other lawsuit.

19. Class Counsel and Defense Counsel are hereby authorized to use all reasonable procedures in connection with approval and administration of the Settlement that are not materially

inconsistent with this Order or the Settlement Agreement, including making, without further approval of the Court, minor changes to the form or content of the Long Form Notice, Summary Notice, and other exhibits that they jointly agree are reasonable or necessary.

20. Retaining Jurisdiction. This Court shall maintain continuing jurisdiction over these settlement proceedings to assure the effectuation thereof for the benefit of the Settlement Class, and for any other necessary purpose.

21. Extension of Deadlines. Upon application of the Parties and good cause shown, the deadlines set forth in this Order may be extended by order of the Court, without further notice to the Settlement Class. Settlement Class Members must check the settlement website (www._____.com) regularly for updates and further details regarding extensions of these deadlines.

In the event that the Effective Date does not occur, certification shall be automatically vacated and this Preliminary Approval, and all other orders entered and releases delivered in connection herewith, shall be vacated and shall become null and void.

IT IS SO ORDERED.

Dated: _____, 2016

_____

The Honorable Edward M. Chen
United States District Judge