SHANNON LISS-RIORDAN, (SBN 310719)
ADELAIDE PAGANO, *pro hac vice*
LICHTEN & LISS-RIORDAN, P.C.
729 Boylston Street, Suite 2000
Boston, MA 02116
Telephone: (617) 994-5800
Facsimile: (617) 994-5801
sliss@llrlaw.com
apagano@llrlaw.com

Attorneys for Plaintiffs

**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,

Plaintiffs,

v.

UBER TECHNOLOGIES, INC.,

Defendant.

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. 13-3826-EMC,
Case No. 15-00262-EMC

**NOTICE OF MOTION AND MOTION AND MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF PLAINTIFFS' MOTION FOR ATTORNEYS' FEES, COSTS, EXPENSES, AND INCENTIVE AWARDS**

Hon. Edward M. Chen

Hearing: July 18, 2019
Time: 1:30 p.m.
Courtroom: 5

**TO DEFENDANT AND ITS ATTORNEYS OF RECORD:**

**PLEASE TAKE NOTICE** that on Thursday, July 18, 2019, at 1:30 p.m., or as soon thereafter as the matter can be heard before the Honorable Edward M. Chen, in Courtroom 5, 17th Floor, U.S. District Court, Northern District of California, located at 450 Golden Gate Avenue, San Francisco, CA, 94102, Plaintiffs will and hereby do move the Court pursuant to Federal Rule of Civil Procedure 23 for an Order granting Plaintiffs' request for attorneys' fees and costs and class representative service awards.

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; the Declarations of Elie Gurfinkel, Matthew Manahan, Pedro Sanchez, Mokhtar Talha, Aaron Dulles, and Antonio Oliveira 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 the hearing in this matter.

**TABLE OF CONTENTS**

## TABLE OF AUTHORITIES

**Cases**

**Other Authorities**

## I. INTRODUCTION

Plaintiffs hereby request Court approval of this application for attorneys' fees, costs, and class representative service awards. As described in their preliminary approval motion, Plaintiffs are seeking $5 million in attorneys' fees and costs, which is consistent with the Ninth Circuit's "benchmark" award of 25% of the common fund. As discussed herein and in the Declarations submitted herewith, this fee request is more than justified by the cutting-edge nature of this case, the skill and creativity used in litigating the issues, the case law made here that has assisted and will assist other workers challenging their misclassification as independent contractors, the unusually high risk taken on by filing the case, and the significant monetary and non-monetary relief obtained for Settlement Class Members.

Plaintiffs further request $7,500 service awards for Plaintiffs Gurfinkel, Manahan, Talha, and Sanchez, and $5,000 service awards for Plaintiffs Dulles and Oliveira for their work in representing the class in this litigation. These awards are reasonable and well within the range of approved incentive payments in class action litigation. Indeed, merely associating their names with such high-profile lawsuits created a tremendous risk of being blackballed in the "gig economy" industry and beyond. When searching for their names on the internet, potential employers will likely find reference to the O'Connor and Yucesoy cases. The requested awards are also reasonable given Plaintiffs' participation in discovery (including full day depositions and multiple rounds of written discovery for Plaintiffs Gurfinkel and Manahan).

## II. LEGAL STANDARD

In a class action settlement, the court may award reasonable attorney's fees and nontaxable costs that are authorized by law or by the parties' agreement. Fed. R. Civ. P. 23(h). Courts have the power to award reasonable attorneys' fees and costs where, as here, a litigant proceeding in a representative capacity secures a "substantial benefit" for a class of persons. See e.g., Hendricks v. Starkist Co., 2016 WL 5462423, at *10 (N.D. Cal., 2016) citing Serrano v. Priest, 20 Cal. 3d 25, 38 (1977). Where "a settlement produces a common fund for the benefit of the entire class, courts have discretion to employ either the lodestar method or the percentage-of-the-fund method." In re

Bluetooth Headset Products Liab. Litig., 654 F.3d 935, 944 (9th Cir. 2011); see also Hendricks, 2016 WL 546523, at *10, citing Wershba v. Apple Comput., Inc., 91 Cal. App. 4th 224, 254 (2001). The California Supreme Court has endorsed the use of the percentage method of awarding attorneys' fees, citing the method's relative ease of calculation, alignment of incentives between counsel and the class, a better approximation of market conditions in a contingency case, and the encouragement it provides counsel to seek an early settlement and avoid unnecessarily prolonging the litigation. Laffitte v. Robert Half Intern. Inc., 376 P.3d 672, 686 (Cal. 2016) (approving attorneys' fee award in the amount of one-third of gross settlement); see also Russell v. EF International Language Schools, Inc., 2016 WL 6304628, at *9 (Cal. App. 2 Dist., Oct. 27, 2016) (affirming one-third fee award over objection and noting that "[s]ome appellate courts have questioned whether the percentage-of-the-benefit method is a valid justification for an award of attorneys' fees in a class action settlement. Our Supreme Court recently resolved the issue.") (internal citation omitted).

The vast majority of Ninth Circuit and other federal courts are in accord. See Aichele v. City of Los Angeles, 2015 WL 5286028, *5 (C.D. Cal. Sept. 9, 2015) ("Many courts and commentators have recognized that the percentage of the available fund analysis is the preferred approach in class action fee requests because it more closely aligns the interests of the counsel and the class, *i.e.*, class counsel directly benefit from increasing the size of the class fund and working in the most efficient manner."); see also Knight v. Red Door Salons, Inc., 2009 WL 248367, at *5 (N.D. Cal. 2009) ("use of the percentage method in common fund cases appears to be dominant") citing Vizcaino v. Microsoft Corp., 290 F.3d 1043, 1047 (9th Cir.2002); In re Activision Sec. Litig., 723 F. Supp. 1373, 1374–77 (N.D. Cal. 1989) (collecting authority and describing benefits of the percentage method over the lodestar method); Morales v. Conopco, Inc., 2016 WL 6094504, at *7 (E.D. Cal. 2016) ("Because of the ease of calculation and the pervasive use of the percentage-of- recovery method in common fund cases, the court thus adopts this method."). As the Supreme Court has explained, courts favor the percentage-of-the-fund approach of awarding fees from a common fund because "[j]urisdiction over the fund involved in the litigation allows a Court to prevent . . . inequity by assessing attorney's fees against the entire fund, thus spreading fees proportionately among those

benefited by the suit." See Boeing Co. v. Van Gemert, 444 U.S. 472, 478 (1980) (citations omitted); Blum v. Stenson, 465 U.S 886, 900 n.16 (1984).[1]

Here, this case is not one that settled easily and early on, but rather, is a case in which Plaintiffs' counsel "has invested significant time or resources" over the course of nearly six years. In re Thirteen Appeals, 56 F.3d at 307. Plaintiffs doggedly litigated this case and were able to achieve a settlement for the class notwithstanding significant setbacks along the way, including a reversal of the Court's class certification Orders by the Ninth Circuit Court of Appeals and increasingly difficult case law from the Supreme Court regarding the use of arbitration agreements and class action waivers. See O'Connor v. Uber Techs., Inc., 904 F.3d 1087 (9th Cir. 2018); Epic Sys. Corp. v. Lewis, 138 S. Ct. 1612, 200 L. Ed. 2d 889 (2018). Moreover, Plaintiffs' counsel faced an extremely well-funded opponent, and an expertly staffed opposing counsel in Gibson Dunn (and previously Morgan Lewis), both top defense firms with large teams of litigators who devoted many hours to these cases.

One of the principle advantages of the percentage approach for awarding fees in class action litigation is the fact that it is result-oriented, thereby promoting the more efficient use of attorney time and resources, rather than encouraging attorneys to prolong litigation in order to inflate their recoverable hours. See Thirteen Appeals, 56 F.3d at 307 ("[U]sing the [percentage of fund] method . . . enhances efficiency, or, put in the reverse, using the lodestar method in such a case encourages inefficiency. Under the latter approach, attorneys not only have a monetary incentive to spend as many hours as possible (and bill for them) but also face a strong disincentive to early settlement"); see also Vizcaino, 290 F.3d at1050, n. 5 ("The lodestar method is merely a cross-check on the reasonableness of a percentage figure, and it is widely recognized that the lodestar method creates incentives for counsel to expend more hours than may be necessary on litigating a case so as to recover a reasonable fee, since the lodestar method does not reward early settlement"). Similarly, the

[1] See also In re Thirteen Appeals Arising Out of the San Juan Dupont Plaza Hotel Fire Litig., 56 F.3d 295 (1st Cir. 1995); Swedish Hospital Corp. v. Shalala, 1 F.3d 1261, 1271 (D.C.Cir.1993) ("a percentage of the fund method is the appropriate mechanism for determining the attorney fees award in common fund cases"); Camden I Condominium Association v. Dunkle, 946 F.2d 768, 774 (11th Cir.1991) ("we believe that the percentage of the fund approach is the better reasoned in a common fund case").

percentage method better approximates the workings of the marketplace by ensuring that attorneys receive compensation for the true value of their services and skills. Thirteen Appeals, 56 F.3d at 307 ("Another point is worth making: because the [percentage of fund] technique is result-oriented rather than process-oriented, it better approximates the workings of the marketplace. . . . the market pays for the result achieved") (quoting In re Continental Ill. Sec. Litig., 962 F.2d 566, 572 (7th Cir. 1992); see also Fleury v. Richemont N. Am., Inc., 2009 WL 1010514, *3 (N.D. Cal. Apr. 14, 2009) (Chen, J.) ("Contingent fees that may far exceed the market value of the services if rendered on a non-contingent basis are accepted in the legal profession as a legitimate way of assuring competent representation for plaintiffs who could not afford to pay on an hourly basis regardless whether they win or lose.... [i]f this 'bonus' methodology did not exist, very few lawyers could take on the representation of a class client given the investment of substantial time, effort, and money, especially in light of the risks of recovering nothing.") (internal citation omitted).

Here, counsel have litigated this case for six years and have achieved significant benefits for Settlement Class Members. Notably, in comparison, counsel have spent just as long or longer litigating many other cases on behalf of workers at considerable expense and without any compensation for it. Liss-Riordan Decl. at ¶¶ 13-14. Unsuccessful cases demonstrate why the percentage approach is essential to plaintiff-side firms that engage in contingency practice on behalf of low-wage workers: for every successful case, there are always others that will be vigorously pursued for years only to result in no recovery for the class or counsel. Id. Plaintiff-side contingency practice on behalf of low wage workers, who cannot afford to pay out-of-pocket for counsel, is made possible by a system by which counsel can obtain contingency fee awards for those cases that are successful. Id.

For these reasons, and given the precedent in this Circuit of approving a 25% benchmark recovery for attorneys' fees in class action cases like this one[2], should the settlement be approved, the Court should approve the requested fee recovery in this case as well.

[2] See Barbosa v. Cargill Meat Sols. Corp., 297 F.R.D. 431, 448 (E.D. Cal. 2013) ("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").

## III. DISCUSSION

### A. Counsel's Fee Request is Fair and Reasonable and In Line With the Ninth Circuit's 25% Benchmark

In the Ninth Circuit, a fee award of 25% of the total recovery is the benchmark percentage fee award. Vizcaino, 290 F.3d at 1050. This percentage may be adjusted depending on analysis of certain relevant factors (discussed infra). Federal courts applying California law on a motion for fees have used this 25% benchmark as a starting point in evaluating a request for attorneys' fees. See Hendricks, 2016 WL 546523, at *10 citing Schiller v. David's Bridal, Inc., 2012 WL 2117001, at *17 (E.D. Cal. June 11, 2012); see also In re Consumer Privacy Cases, 175 Cal. App. 4th 545, 558 n.13 (2009) (recognizing that most fee awards in California are based on percentage calculations ranging from 25% to 33%). Here, Plaintiffs' request for a fee award of $5 million of the $20 million settlement fund is precisely in line with the 25% benchmark, which supports approval of the fee request.

### B. Other Factors Support Plaintiffs' Request for Fees

Typically, courts will consider various factors to determine whether an upward (or, less often, a downward) adjustment from the 25% benchmark is warranted. Specifically, the Ninth Circuit has identified the following factors that affect the Court's assessment of an appropriate fee:

> (1) whether counsel achieved exceptional results; (2) the degree of risk assumed by counsel; (3) whether counsel's performance generated benefits beyond the cash settlement fund; (4) whether the fee lies above or below the market rate; and (5) the length of time counsel represented the class on a contingency basis. Additional factors may include (6) counsel's experience and skill, (7) the complexity of the issues, (8) the reaction of the class, and (9) a comparison with counsel's loadstar.

In re Nuvelo, Inc. Sec. Litig., 2011 WL 2650592, at *1 (N.D. Cal. July 6, 2011) (citing Vizcaino, 290 F.3d at 1048-1051).

As set forth below, these factors support the requested fee award in this case.

#### i. Counsel Has Achieved Exceptional Results.

"Ninth Circuit precedent requires courts to award class counsel fees based on the total benefits being made available to class members," including the benefits of non-monetary relief. Brawner v. Bank of Am. Nat'l Ass'n, 2016 WL 161295, at *5 (N.D. Cal. Jan. 14, 2016); Vizcaino,

290 F.3d at 1049 ("Incidental or non-monetary benefits conferred by the litigation are a relevant circumstance" in assessing the results achieved by a settlement); Taylor v. Meadowbrook Meat Company, Inc., 2016 WL 4916955, at *5 (N.D. Cal., 2016) ("When determining the value of a settlement, courts consider the monetary and non-monetary benefits that the settlement confers."); Willner v. Manpower Inc., 2015 WL 3863625, at *7 (N.D. Cal. June 22, 2015) (a change in policy, even if it cannot be specifically valued, must factor into courts' analysis of the degree of success achieved by a settlement).

Here, Plaintiffs' counsel has achieved "exceptional results." Although the class was decertified by the Ninth Circuit, so that Plaintiffs could only recover in this case for a small portion of the original class, Plaintiffs have now achieved a significant monetary settlement of the claims for the settlement class members, which they estimate constitutes approximately 37% of the potential damages for all the claims that have been litigated in this case. See Dkt. 915 (Plf's Mot. for Prelim. Approval) at pp. 26-27.[3] Plaintiffs estimate that the net payment to settlement class members who submit claims and who drove a significant amount (25,000 miles) would be more than double the amount they would have received from the proposed 2016 settlement, with average payments of $2,206, which is many times higher than settlements of similar claims. Id. at 27-29. In sum, the settlement will provide thousands of dollars each to those drivers with the strongest claims and the most at stake in the litigation. Plaintiffs' counsel has also obtained programmatic non-monetary relief that is valuable to the class and will improve working conditions for Uber drivers going forward. Specifically, Uber will no longer deactivate drivers for low acceptance rates, will provide greater clarity and advance warning regarding driver deactivations, and will allow a formal appeal process for certain deactivations as well as increased access to quality courses for drivers so that they can become eligible for reactivation. See Dkt. 916-1 at Ex. 1 (Settlement Agreement) at ¶ 127. Taken together, these changes will give drivers more job security and a greater ability to get reinstated if they are terminated. Accordingly, this factor weighs in favor of Plaintiffs' request.

[3] As Plaintiffs noted in their Motion, the percentage recovery is greater, approximately 75% of the potential damages, if the IRS variable rate (rather than the IRS fixed rate) were used, as Uber has urged in this case. See Dkt. 916 (Liss-Riordan Decl. in support Preliminary Approval) at ⁋ 43.

**ii. The Degree of Risk in This Litigation Was High.**

Second, the risk undertaken by Plaintiffs' counsel in taking on this case was significant. There are many litigation risks inherent in pursuing a class action case like this one. Class certification, arbitration provisions, a decision on the merits, and potential appeals are all issues that can result in no recovery whatsoever to class members or class counsel. In this case, Plaintiffs faced complicated issues regarding arbitration provisions that were ultimately resolved against the class at the Ninth Circuit, resulting in decertification of the class and a dramatic winnowing of those drivers who would be eligible to participate in any future certified class. This appeal also caused significant delays in the litigation, and Plaintiffs were facing the prospect of re-briefing class certification on behalf of a diminished class, after which they would still need to face the risk of proceeding on the merits of their claims.

Moreover, as with virtually all work handled by Plaintiffs' counsel's firm, counsel accepted this case on a fully contingent arrangement, with no payment up front, and have borne the expenses, costs, and risks associated with litigating this case. Plaintiffs' attorneys who accept cases on contingency often spend years litigating cases (typically while incurring significant out-of-pocket expenses for experts, transcripts, document production, and so forth), without receiving any ongoing payment for their work. Sometimes fees and expenses are recovered; other times, nothing is recovered. Hightower v. JPMorgan Chase Bank, N.A., 2015 WL 9664959, at *11 (C.D. Cal. 2015) (approving 30% fee request in part because "the risk of no recovery for Plaintiffs, as well as for Class Counsel, if they continued to litigate, were very real"); Bellinghausen v. Tractor Supply Co., 306 F.R.D. 245, 261 (N.D. Cal. 2015) (noting that "when counsel takes cases on a contingency fee basis, and litigation is protracted, the risk of non-payment after years of litigation justifies a significant fee award"); In re Nuvelo, Inc. Sec. Litig., 2011 WL 2650592, at *2 (N.D. Cal. July 6, 2011) ("It is an established practice to reward attorneys who assume representation on a contingent basis with an enhanced fee to compensate them for the risk that they might be paid nothing at all"); Kanawi v. Bechtel Corp., 2011 WL 782244, *2 (N.D. Cal. Mar. 1, 2011) (noting that "[s]uch a practice encourages the legal profession to assume such a risk and promotes competent representation for

plaintiffs who could not otherwise hire an attorney"); Parkinson v. Hyundai Motor Am., 796 F. Supp. 2d 1160, 1166 (C.D. Cal. 2010) ("The most important factor is the risk of nonpayment, which was significant in this contingency class action"); Garner v. State Farm Mut. Auto. Ins. Co., 2010 WL 1687829, *2 (N.D. Cal. Apr. 22, 2010) ("Class Counsel prosecuted this case on a purely contingent basis, agreeing to advance all necessary expenses, knowing that they would only receive a fee if there were a recovery"); Hensley v. Eckerhart, 461 U.S. 424, 448 (1983) (noting that "[a]ttorneys who take cases on contingency, thus deferring payment of their fees until the case has ended and taking upon themselves the risk that they will receive no payment at all, generally receive far more in winning cases than they would if they charged an hourly rate").

By permitting clients to obtain attorneys without having to pay hourly fees, this system provides critical access to the courts for people who otherwise would be unable to find competent counsel to represent them. That access is particularly important for the effective enforcement of public protection statutes, such as the wage laws at issue here. Thus, "private suits provide a significant supplement to the limited resources available to [government enforcement agencies] for enforcing [public protection] laws and deterring violations." Reiter v. Sonotone Corp., 442 U.S. 330, 344 (1979) (addressing anti-trust laws). This factor, therefore, supports Plaintiffs' request.

**iii. Counsel's Efforts Have Generated Substantial Benefits Beyond the Cash Settlement Fund**

As to the third factor, Plaintiffs' counsel's efforts here have "generated benefits beyond the cash settlement fund" in the form of substantial non-monetary relief. Vizcaino, 290 F.3d at 1049 ("Incidental or non-monetary benefits conferred by the litigation are a relevant circumstance"). Specifically, Uber has now agreed to make the following changes:

1) Low acceptance rates will no longer be grounds for account deactivation.

2) Uber will maintain a comprehensive policy online in an easily accessible and easily-understood format and will provide advance warning before a driver's user account is deactivated for reasons other than safety issues, physical altercations, discrimination, fraud, sexual misconduct, harassment, or illegal conduct (excluded matters).

3) Uber will institute a formal appeal process (that will be voluntary for drivers) for deactivation decisions for drivers, except in certain circumstances (*e.g.*, among others, where deactivation

relates to or arises from low star ratings, safety issues, criminal activity, physical altercation, sexual misconduct, fraud, discrimination, harassment and background checks).

4) Uber will maintain quality courses for drivers whose user accounts are deactivated, except in certain excluded matters set forth above, and will work with third-party providers to help lower the cost of these courses for drivers. Completion of one of these courses will make the driver eligible for consideration for reactivation.

See Dkt. 916-1 at Ex. 1 (Settlement Agreement) at ¶ 127.

Moreover, Plaintiffs' counsel's zealous advocacy in this case has raised significant public attention to the issue of the use of independent contractors in the entire on-demand "gig economy", not just with Uber, which has led to a flurry of litigation against other such companies and action on the part of government actors as well. While Plaintiffs' counsel cannot take credit for all of these developments, she is widely noted for having been the one to have brought this issue to the fore and highlighting the issue in public discourse throughout California and the nation. See Exs. A through G to Liss-Riordan Decl. Further, Plaintiffs' counsel's early success in defeating Uber's Motion for Summary Judgment has helped to pave the way for further litigation and reform in the gig economy that may well benefit many hundreds of thousands of workers (even beyond Uber drivers).

**iv. The Requested Percentage of the Fund of 25% Is In Line With Or Below The Market Rate**

The requested percentage of 25% lies at or below the market rate. Barbosa, 297 F.R.D. at 448 ("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"). Indeed, "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%"); see also 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); Fernandez v. Victoria Secret Stores, LLC, 2008 WL 8150856, *2 (C.D. Cal. July 21, 2008) (awarding 34% of common fund in attorneys' fees in wage and hour class action settlement of $10 million); Lusby v. GameStop Inc., 2015 WL 1501095, *9 (N.D. Cal. Mar. 31, 2015) (finding a one-third fee award appropriate); Barnes v. The Equinox Grp., Inc., 2013 WL 3988804, *4 (N.D. Cal.

Aug. 2, 2013) (awarding one-third of gross settlement).[4] Thus, because here Plaintiffs are only requesting 25% of the fund, this factor also weighs in favor of preliminarily approving Plaintiffs' requested fee award.

**v. Counsel Has Spent Six Years Representing the Class On a Contingent Basis.**

Fifth, Plaintiffs' counsel have represented the class on a contingency basis for almost six years. During the past six years, "Class Counsel had to turn down opportunities to work on other cases in order to devote the appropriate amount of time, resources, and energy necessary to handle this complex and demanding matter, further supporting the requested fee award here." Garner, 2010 WL 1687829, at *2. Indeed, as the judge overseeing these cases, the Court has the best possible insight into the rigor and aggressive motion practice that has taken place, including briefing multiple motions to dismiss, motions for summary judgment, motions for class certification, motions to stay, motions for protective order, and numerous appeals at the Ninth Circuit. The Court is well aware of the tremendous amount of time and focus that Plaintiffs' counsel has devoted to this litigation. Thus, the amount of time spent on this contingent matter also cuts in favor of the Court's preliminary approval of the requested fee.

**vi. Class Counsel Is Highly Experienced and Skilled**

Prosecuting class actions requires an "extraordinary commitment of time, resources, and energy from Class Counsel," and, many times, settlements "simply [are not] possible but for the commitment and skill of Class Counsel." Garner v. State Farm Mut. Auto. Ins. Co., 2010 WL 1687829, at *2 (N.D. Cal. 2010). This is particularly so where a "case was wholly without precedent,

[4] See also In Re: Lithotripsy Antitrust Litigation, No. 98 C 8394, 2000 U.S. Dist. LEXIS 8143 *6-7 (N.D. Ill. June 12, 2000) (noting that 33.3% of the fund plus expenses is well within the generally accepted range of the attorneys fee awards in class-action lawsuits); Fernandez v. Victoria Secret Stores, LLC, 2008 WL 8150856 (C.D.Cal.2008) (awarding 34% in attorneys' fees from $10 million settlement fund in wage and hour class action settlement); In re: Medical X-Ray Film Antitrust Litigation, 1998 U.S. Dist. LEXIS 14888, *21 (E.D.N.Y. Aug. 7, 1998) (awarding a fee of $13 million out of approximately $40 million common fund, which represented one-third of the settlement); In re Crazy Eddie Securities Litig., 824 F. Supp. 320, 325-26 (E.D.N.Y. 1993) (awarding 34% of a $42 million settlement fund); City National Bank v. American Com. Financial Corp., 657 F. Supp. 817 (W.D.N.C. 1987); In re Franklin Nat'l Bank, [1980 Transfer Binder] Fed. Sec. L. Rep. (CCH) &97,571 (E.D.N.Y. 1980) (34% of settlement fund); Hwang v. Smith Corona Corp., B.89-450 (D. Conn. Mar. 12, 1992) (awarding one-third of $24 million fund).

raised numerous novel and complex issues of both law and fact, and required a considerable effort from Class Counsel simply to be in a position to file suit, let alone to litigate this case successfully." Id.

Here, as set forth in more detail in the Declaration of Shannon Liss-Riordan filed herewith at ¶¶ 2-11, the proposed settlement class is represented by highly experienced counsel who focus on wage-hour class actions, with a particular specialty in cases involving independent contractor misclassification, tips, and arbitration clauses. Plaintiffs' counsel, Attorney Liss-Riordan, has been widely recognized as one of the leading plaintiffs' lawyers nationally for her work on behalf of employees (particularly low-wage workers) in wage and hour litigation, and her firm is well known as one of the preeminent employee-side firms engaged nationwide in this area of practice. Attorney Liss-Riordan has prosecuted many dozens of such cases, including successful jury verdicts, appeals, and class certification proceedings.

As described in her Declaration, Attorney Liss-Riordan has been featured by many major publications for her accomplishments representing low wage workers in a variety of industries.[5] Each year since 2008, she has been selected for inclusion in Best Lawyers in America (Chambers), and her firm has been consistently been ranked in recent years in the top tier for its practice area. The 2013 edition referred to her as "*the reigning plaintiffs' champion*", and the 2015 edition said she is "*probably the best known wage class action lawyer on the plaintiff side in this area, if not the entire country*". Liss-Riordan Decl. at ¶ 6, Ex. O to Liss-Riordan Decl.[6] See also Ex. A to Liss-Riordan

[5] These publications include San Francisco Magazine (Exhibit A to Liss-Riordan Declaration), the Los Angeles Times (Exhibit B), the Wall Street Journal (Exhibit C), the ABA Journal (Exhibit D), the Recorder (Exhibit E), Mother Jones (Exhibit F), Politico (Exhibit G) the Boston Globe (Exhibits H, I, and J), Commonwealth Magazine (Exhibit K), and Massachusetts Lawyers Weekly (Exhibits L and M). See Liss-Riordan Decl. at ¶ 5.

[6] Each year since 2008, she has been listed by the Boston Globe Magazine as one of "Boston's Best Lawyers." She has been named a "Super Lawyer" by Boston Magazine each year since 2005. She was named one of ten "Lawyers of the Year" by Massachusetts Lawyers Weekly in 2002 (in her fourth year of practice). In 2009, she was included on "The Power List", Massachusetts Lawyers Weekly's "roster of the state's most influential attorneys" (which described her as a "[t]enacious class-action plaintiffs' lawyer [who] strikes fear in big-firm employment attorneys throughout Boston with her multi-million- dollar victories on behalf of strippers, waiters, skycaps and other non-exempt employees."). Liss-Riordan Decl. at ¶ 7.

Decl. ("Liss-Riordan has achieved a kind of celebrity unseen in the legal world since Ralph Nader sued General Motors"); Ex. G to Liss-Riordan Decl. (named as one of Politico's "Top 50 thinkers, doers and visionaries transforming American politics in 2016" for her work challenging the use of contractors in the so-called "gig economy"). She is a frequent invited speaker at local and national seminars on various topics regarding employment law, class actions, and wage and hour litigation, with a particular focus on issues concerning arbitration and class actions. See Liss-Riordan Decl. at ¶ 4.

Significantly, Attorney Liss-Riordan has been a leader and pioneer in the field of independent contractor misclassification over the last decade. She has obtained significant first-of-their-kind victories in cases challenging independent contractor misclassification in a variety of industries, including the cleaning industry[7], the adult entertainment industry[8], the at-home call center industry[9], and

[7] See, e.g., Vazquez v. Jan-Pro Franchising Int'l, Inc., No. 17-16096, 2019 WL 1945001 (9th Cir. May 2, 2019); Awuah et al. v. Coverall North America, Inc., 707 F. Supp. 2d 80 (D. Mass. 2010) (holding cleaning worker "franchisees" to have been misclassified as independent contractors), and Awuah et al. v. Coverall North America, Inc., 460 Mass. 484, 497-99 (2011) (Mass. Supreme Judicial Court established the damages awardable for the misclassification, including refunds of "franchise fees"); De Giovanni et al. v. Jani-King International, Inc. et al., C.A. No. 07-10066-MLW (D. Mass. June 6, 2012) (also holding cleaning worker "franchisees" to have been misclassified as independent contractors); Depianti et al v. Jan-Pro Franchising International, Inc., 465 Mass. 607 (2013) (holding that national company could not evade liability for independent contractor misclassification by virtue of it not having direct contracts with the workers); DeSouza, et al. v. The Soloman Partnership, Inc. d/b/a All-Pro Cleaning Systems, et al., No. 14-P-1728 (Mass. App. Ct. Nov. 2, 2015) (affirming confirmation of arbitration award that held that cleaning worker "franchisees" were likely misclassified and could pursue arbitration on a class basis).

[8] See, e.g., Chaves v. King Arthur's Lounge, Inc., Suffolk Civ. A. No. 07-2505 (Mass. Super. Jul. 30, 2009) (granting plaintiffs' motion for summary judgment, finding exotic dancers to have been misclassified as independent contractors); Cruz v. Manlo Enterprises, Inc. d/b/a/ Mario's Showplace, Worcester Civ. A. 10-1931 (Mass. Super. June 9, 2011) (same); Monteiro v. PJD Entertainment of Worcester, Inc., d/b/a/ Centerfolds ("Centerfolds"), 29 Mass.L.Rptr. 203 (Worcester Super. Ct. Nov. 23, 2011) (same); Cruz v. Dartmouth Clubs, Inc. d/b/a King's Inn ("King's Inn"), Bristol Civ. A. No. 10-1042 (Mass. Super. Aug. 16, 2012) (same); Cusick v. The 15 Lagrange Street Corp. d/b/a The Glass Slipper, Suffolk Civ. A. No. 10-4127 (Mass. Super. Aug. 8, 2013) (same); D'Antuono v. C&G of Groton, Inc., AAA No. 11-160-02069-11 (June 17, 2013) (arbitration award finding exotic dancers to have been misclassified and awarding damages under the FLSA). Indeed, it was Attorney Liss-Riordan's groundbreaking success in Chaves v. King Arthur's Lounge, Inc. that appears to have ignited the recent firestorm of cases across the country challenging the misclassification of exotic dancers as independent contractors, and may have led to a significant shift in the industry to having exotic dancers paid as employees. See "Stripped by the Boss", Boston Globe (Editorial, Aug. 12, 2009) (Exhibit J to Liss-Riordan Decl.).

has been involved in litigation challenging the misclassification of delivery drivers.[10] In addition to her work challenging independent contractor misclassification, Attorney Liss-Riordan has also obtained ground-breaking victories in other areas of wage and hour and employment law, including vindicating the rights of tipped employees (which was a major part of this case as well)[11], and has been successful in numerous trial and appeals[12] regarding significant issues of law, all on behalf of low-wage workers. Liss-Riordan Decl. at ¶¶ 9-11.

Thus, Plaintiffs' counsel's skill and extensive experience in this particular area of law also well justify the fee award in this case.

---

*(Cont'd from previous page)*

[9] See Pendergraft v. Arise Virtual Solutions, Inc., AAA No. 71-160-00563-13 (Feb. 4, 2015); Abdul-Haqq. Arise Virtual Solutions, Inc., AAA No. 32-160-00496-13 (April 15, 2015), available at: Steele v. Arise Virtual Solutions, Inc., Civ. A. No. 13-cv-62823 (S.D. Fl.), Dkts. 58-4 and 58-5.

[10] See, e.g., Schwann v. FedEx Ground Package Sys., Inc., 2013 WL 3353776 (D. Mass. July 3, 2013) (granting plaintiffs' motion for summary judgment, holding FedEx drivers to have been misclassified as independent contractors), rev'd in part on preemption grounds and remanded, 813 F.3d 429 (1st Cir. 2016).

[11] For profiles of Attorney Liss-Riordan's work on behalf of tipped employees, see Exhibit H to Liss-Riordan Decl. (Boston Globe, front page, Apr. 29, 2008, "Skycaps and waiters find a legal champion"), and Exhibit N to Liss-Riordan Decl. (Lawyers and Settlements, Apr. 9, 2008, "Attorney Shannon Liss-Riordan: Challenging Corporate Power and Tips Abuse").

[12] See Liss-Riordan Decl. at ⁋ 10, filed herewith, describing victories in Vazquez v. Jan-Pro Franchising Int'l, Inc., No. 17-16096, 2019 WL 1945001 (9th Cir. May 2, 2019); Haitayan v. 7-Eleven, Inc., No. 18-55462 (9th Cir. 2019); Maplebear dba Instacart v. Busick, No. A151677 26 Cal.App.5th 394 (2018); Khanal v. San Francisco Hilton, Inc., No. 15-15493 (9th Cir. 2017); Williams v. Jani–King, 837 F.3d 314 (3d Cir. 2016); Marzuq v. Cadete Enterprises, Inc., 2015 U.S. App. LEXIS 21301 (1st Cir. 2015); Travers v. Flight Systems & Services, 2015 U.S. App. LEXIS 21671 (1st Cir. 2015); Villon v. Marriott., Hawaii Supreme Court No. 11-747 (July 15, 2013); Depianti v. Jan-Pro Franchising International, Inc., 465 Mass. 607 (2013); Taylor v. Eastern Connection Operating, Inc., 465 Mass. 191 (2013); Matamoros v. Starbucks Corp., 699 F.3d 129 (1st Cir. 2012); Awuah v. Coverall North America, Inc., 460 Mass. 484 (2011); DiFiore v. American Airlines, Inc., 454 Mass. 486 (2009), rev'd on federal preemption grounds, 646 F.3d 81 (1st Cir. 2011), cert. denied, 132 S. Ct. 761 (2011); Skirchak v. Dynamics Research Corporation, 508 F.3d 49 (1st Cir. 2007); Gasior v. Massachusetts General Hospital, 446 Mass. 645 (2006); Smith v. Winter Place LLC d/b/a Locke-Ober Co., Inc., 447 Mass. 363 (2006); Dahill v. Boston Police Department, 434 Mass. 233 (2001); Cooney v. Compass Group Foodservice, et al., 69 Mass. App. Ct. 632 (2007); King v. City of Boston, 71 Mass. App. Ct. 460 (2008).

**vii. The Issues In This Case Are Both Novel and Extremely Complex**

Seventh, the complexity of the issues presented by this case also well justifies approval of the requested fee in this case. Here, counsel filed a case on the cutting edge of the law – one that raised numerous novel and complex issues of both law and fact. At the time it was filed, it was the first case to present the question of whether workers in the so-called "gig economy" are misclassified as independent contractors. Plaintiffs succeeded in defeating two motions for summary judgment by Uber -- both on the misclassification issue and on their gratuities claim under Cal. Lab. Code § 351, see Dkt. 251, 499 -- each of which presented novel legal questions. In addition to litigating the merits of drivers' misclassification claims in a novel and emerging industry, Plaintiffs' counsel has had to contend with complicated and cutting-edge issues regarding arbitration law and class certification. Indeed, counsel has litigated numerous substantive motions filed in this case and argued at 24 hearings in this case (totaling more than 30 hours of court time), not counting the time spent related to the proposed 2016 settlement. See Dkt. 918 at ¶ 5. Given the novelty and complexity of the issues in this case, the fee requested in this case is well warranted.

**viii. The Reaction of the Class**

"It is established that the absence of a large number of objections to a proposed class action settlement raises a strong presumption that the terms of a proposed class settlement action are favorable to the class members." Nat'l Rural Telecomms. Coop. v. DIRECTV, Inc., 221 F.R.D. 523, 528–29 (C.D.Cal.2004). Plaintiffs' counsel submits that the reaction of the class to the settlement (and to the efforts of counsel on their behalf) has been positive so far, which is supported by the fact that no objections have been filed to date.[13]

[13] The class notice informed Class Members that counsel intended to request 25% of the gross Settlement Fund in fees and $40,000 in incentive payments for the named plaintiffs. See Dkt. No. 928-2 at ¶ 15. In addition, this motion for fees is being filed thirty-five days before the final approval hearing and posted on the settlement website so that Class Members will have an opportunity to comment or object to it. See In re Mercury Interactive Corp. Securities Litigation, 618 F.3d 988 (9th Cir. 2010).

**ix. The Lodestar Cross-Check Confirms That Plaintiffs' Request Is Reasonable**

The lodestar cross-check in this case supports Plaintiffs' requested fees. As set forth further below, the lodestar cross-check in this case shows that Plaintiffs' fees were approximately $6 million, and their expenses came to approximately $311,000. These fees and costs are only likely to climb as Plaintiffs continue to work on finalizing this settlement and overseeing its execution should it be approved by the Court. Courts frequently approve settlements with large multipliers[14], and here, the multiplier would effectively be negative. As such, the lodestar multiplier strongly supports the reasonableness of the requested fees of $5 million. Moreover, this Court has supervised this litigation and is in the best position to understand the amount and quality of work that has been put into this case by Plaintiffs' counsel. See Wilcox v. City of Reno, 42 F.3d 550, 555 (9th Cir. 1994) ("The district court is in the best position to ascribe a reasonable value to the lawyering it has witnessed and the results that lawyering has achieved"); Brinskele v. United States, 2014 WL 4832263, *2 (N.D. Cal. May 22, 2014) report and recommendation adopted, 2014 WL 4826153 (N.D. Cal. Sept. 29, 2014) ("Based upon the court's familiarity with this litigation and counsel's work, the court is able to

[14] See Vizcaino, 290 F.3d at 1051, n. 6 (affirming district court's percentage-based fee award that represented multiplier of 3.65 and noting that "most" multipliers in common fund cases range from 1.0 to 4.0); McKenzie v. Federal Exp. Corp., 2012 WL 2930201 at *10 (C.D. Cal. July 2, 2012) (in wage and hour action, approving percentage-based fee award that represented multiplier of 3.2); Morgret v. Applus Technologies, Inc., 2015 WL 3466389, at *17 (E.D.Cal.,2015) (in wage and hour action, approving percentage-based fee award that represented multiplier of 3.9); Buccellato v. AT & T Operations, Inc., No. 10 Civ. 463, 2011 WL 3348055, at *2 (N.D. Cal. Jun. 30, 2011) (in wage and hour action, approving percentage-based fee award that represented multiplier of 4.3); Wershba v. Apple Computer, Inc., 110 Cal.Rptr.2d 145, 170 (Cal. App. 6 Dist. 2001) ("Multipliers can range from 2 to 4 or even higher."); See Johnson v. Brennan, 2011 WL 4357376, at *20 (S.D.N.Y. 2011) (in wage and hour action, noting that "[c]ourts regularly award lodestar multipliers from two to six times lodestar"); Beckman v. KeyBank, N.A., 293 F.R.D. 467, 481–82 (S.D.N.Y. 2013) (in wage and hour action, approving of 6.3 multiplier in lodestar cross-check analysis); citing Ramirez v. Lovin' Oven Catering Suffolk, Inc., No. 11 Civ. 520, 2012 WL 651640, at *4 (S.D.N.Y. Feb. 24, 2012) (in wage and hour action, approving of 6.8 multiplier in lodestar cross-check analysis); Davis v. J.P. Morgan Chase & Co., 827 F.Supp.2d 172, 184–86 (W.D.N.Y.2011) (in wage and hour action, approving of 5.3 multiplier in lodestar cross-check analysis); see also Zeltser v. Merrill Lynch & Co., Inc., 2014 WL 4816134, at *10 (S.D.N.Y.,2014) (in wage and hour action, approving of 5.1 multiplier in lodestar cross-check analysis and noting "[w]hile this multiplier is near the higher end of the range of multipliers that courts have allowed, this should not result in penalizing Plaintiffs' counsel for achieving an early settlement, particular where, as here, the settlement amount is substantial."); Maley v. Del Global Techs. Corp., 186 F.Supp.2d 358, 371 (S.D.N.Y.2002) ("modest multiplier" of 4.65 in wage and hour class action was "fair and reasonable").

assess the reasonableness of the hours claimed by counsel…").

**a. Counsel's Hours Worked are Reasonable**

Plaintiffs have submitted contemporaneous time records for the associate attorneys and local counsel who have worked on this case, as well as declarations attesting to the estimated number of hours that the firm's paralegal staff and lead counsel Shannon Liss-Riordan have spent on this litigation,[15] as well as a list of out-of-pocket costs incurred by Plaintiffs' counsel's firm in the prosecution of this case. See Declaration of Shannon Liss-Riordan (filed in support of this Memorandum) and attachments thereto. The following shows a summary of the hours worked by attorneys and staff on this case and the costs:

| **Attorney** | **Hours** | **Rate** | **Fees** |
|---|---|---|---|
| Shannon Liss-Riordan | 4,500 | $850 | $3,825,000 |
| Adelaide Pagano | 1,683 | $350 | $ 589,000 |
| Anne Kramer | 380 | $300 | $ 114,000 |
| Ben Weber | 223 | $450 | $ 100,350 |
| Sara Smolik | 36 | $450 | $ 16,200 |
| Olena Savytska | 55 | $300 | $ 16,500 |

[15] Plaintiffs note that Attorney Liss-Riordan (as well as the firm's paralegal staff) have not kept contemporaneous billing records. See Declaration of Shannon Liss-Riordan at ¶¶ 16-17, n. 3 (explaining that she has focused her energies on litigating and has not kept records of her time, but that she has spent a substantial proportion of the last three years to this litigation, as this Court is well aware). Courts in this Circuit have awarded fees based upon reasonable estimates of time spent, even without contemporaneous records. See Brinskele, 2014 WL 4832263, *2 ("Based upon the court's familiarity with this litigation and counsel's work, the court is able to assess the reasonableness of the hours claimed by counsel without the need to inspect contemporaneous time records."); see also Kilopass Tech., Inc. v. Sidense Corp., 82 F. Supp. 3d 1154, 1169 (N.D. Cal. 2015) ("[T]he party seeking fees need not provide comprehensive documentation to prevail"); Rodgers v. Claim Jumper Rest., LLC, 2015 WL 1886708, *10 (N.D. Cal. Apr. 24, 2015) ("Plaintiff's counsel is not required to record in great detail how each minute of his time was expended" and can instead "meet his burden of justifying his fees by simply listing his hours and "identifying the general subject matter of his time expenditures"); In re Rossco Holdings, Inc., 2014 WL 2611385, *8 (C.D. Cal. May 30, 2014) ("In California, an attorney need not submit contemporaneous time records in order to recover attorney fees"); Cotton v. City of Eureka, Cal., 889 F. Supp. 2d 1154, 1177 (N.D. Cal. 2012) ("The lack of contemporaneous records does not justify an automatic reduction in the hours claimed, but such hours should be credited only if reasonable under the circumstances and supported by other evidence such as testimony or secondary documentation"); Ackerman v. W. Elec. Co., 643 F. Supp. 836, 863-64 (N.D. Cal. 1986), aff'd, 860 F.2d 1514 (9th Cir. 1988) (noting that "the Ninth Circuit requires only that the affidavits be sufficient to enable the court to consider all the factors necessary to determine a reasonable attorney's fee award …California law is in accord with the Ninth Circuit view."); Slimfold Mfg. Co. v. Kinkead Indus., Inc., 932 F.2d 1453, 1459 (Fed.Cir.1991) ("[A] district court itself has experience in determining what are reasonable hours and reasonable fees, and should rely on that experience and knowledge if the documentation is considered inadequate").

| | | | |
|---|---|---|---|
| Matthew Carlson | 215 | $450 | $ 96,750 |
| Michael Freedman | 57 | $450 | $ 25,650 |
| Monique Olivier | 29 | $700 | $ 20,300 |
| Law Clerks | 43 | $275 | $ 11,825 |
| Paralegal Staff | 5,000 | $225 | $1,125,000 |
| **TOTAL:** | | | **$ 5,940,625** |

Counsel's time spent on this case can be generally divided into several categories of activity, all of which is recoverable under well-established case law:

- Pre-litigation investigation: see, e.g., Sierra Club v. U.S. E.P.A., 625 F. Supp. 2d 863, 870 (N.D. Cal. 2007); see also Lema v. Comfort Inn Merced, 2014 WL 1577042 (E.D. Cal. Apr. 17, 2014) (approving of pre-litigation work "reasonably necessary to secure information, evaluate Plaintiff's case, and prepare the complaint for filing");

- Legal research and drafting: See Santiago v. Equable Ascent Fin., 2013 WL 3498079, at *6 (N.D. Cal. July 12, 2013);

- Propounding and responding to discovery: *See, e.g.*, Yeager v. Bowlin, 2010 WL 2303273, at *7 (E.D. Cal. June 7, 2010) aff'd, 495F. App'x 780 (9th Cir. 2012) (drafting discovery); Gauchat-Hargis v. Forest River, Inc., 2013 WL 4828594, at *4 (E.D. Cal. Sept. 9, 2013) (responding to discovery);

- Depositions: E.g., Garcia v. Resurgent Capital Services, L.P., 2012 WL 3778852, at *6 (N.D. Cal. 2012);

- Communication between co-counsel: E.g., Defenbaugh v. JBC & Associates, Inc., 2004 WL 1874978 (N.D. Cal. Aug. 10, 2004);

- Communication with opposing counsel: E.g., Hernandez v. Erin Capital Mgmt., LLC, 2011 WL 4595802, at *3 (C.D. Cal. Oct. 3, 2011);

- Settlement conferences: E.g., Lota by Lota v. Home Depot U.S.A., Inc., 2013 WL 6870006, at *10 (N.D. Cal. Dec. 31, 2013);

- Court appearances: E.g., Alvarado v. FedEx Corp., 2011 WL 4708133, at *28 (N.D. Cal. 2011);

- Settlement administration: E.g., Wren v. RGIS Inventory Specialists, 2011 WL 1230826, at *30 (N.D. Cal. 2011).

"By and large, the [district] court should defer to the winning lawyer's professional judgment as to how much time he was required to spend on the case." Chaudhry v. City of Los Angeles, 751 F.3d 1096, 1111 (9th Cir.), cert. denied sub nom. City of Los Angeles, Cal. v. Chaudhry, 135 S. Ct. 295, (2014); see also Rodriguez v. Cty. of Los Angeles, 96 F. Supp. 3d 1012, 1023-24 (C.D. Cal. 2014) ("Courts generally accept the reasonableness of hours supported by declarations of counsel."); Horsford v. Bd. of Trustees of Cal. State Univ., 132 Cal.App.4th 359, 396 (2005) ("[T]he verified time statements of the attorneys, as officers of the court, are entitled to credence in the absence of a clear indication the records are erroneous."). Likewise, courts should not second-guess staffing decisions or attempt to micro-manage a law firm's practices in assessing the reasonableness of a fee request. See Moreno v. City of Sacramento, 534 F.3d 1106, 1115 (9th Cir. 2008) ("The court may permissibly look to the hourly rates charged by comparable attorneys for similar work, but may not attempt to impose its own judgment regarding the best way to operate a law firm, nor to determine if different staffing decisions might have led to different fee requests"); Moralez v. Whole Foods Mkt., Inc., 2013 WL 3967639, *4 (N.D. Cal. July 31, 2013) ("The Court is reluctant to second-guess the staffing decisions of Plaintiff's counsel").

Because this case has been efficiently litigated, there is no need for the Court to comb through records of numerous attorneys and staff to eliminate duplicative billing, nor could there be a reasonable argument that this case was overstaffed. Notably, collaboration and coordination of efforts is *not* the same as impermissible double billing. Sierra Club, 625 F. Supp. 2d at 868. This is specifically so with respect to work on, for example, legal research or a motion where attorneys may be given discrete tasks, Garcia v. Resurgent Capital Servs., L.P., 2012 WL 3778852, at *7 (N.D. Cal. Aug. 30, 2012), or where there is reason for multiple persons to attend depositions or court hearings. Rodriguez v. Barrita, Inc., 2014 WL 2967925, at *6 (N.D. Cal. July 1, 2014). Indeed, it would be uncommon for a single attorney to litigate a complex class action. Additionally, as noted above, Plaintiffs' estimates do not take into account work finalizing these papers and time that will be spent finishing the administration of the settlement.

Because the requested hours are eminently reasonable given the duration and intensity of this litigation, and the excellent result obtained, Plaintiffs' counsel submits that they support the requested attorneys' fees.

**b. Counsel's Hourly Rates are Reasonable**

In addition, the requested hourly rates set forth below are reasonable and should be approved. To determine a reasonable hourly rate, courts look to the rates for comparable legal services in the local community, in this case the Northern District of California. E.g., Gong- Chun v. Aetna Inc., 2012 WL 2872788, at *21 (E.D. Cal. July 12, 2012). Also relevant is a comparison of plaintiffs' counsel's asserted rates to defense counsel's rates charged to their clients. Real v. Cont'l Grp., Inc., 116 F.R.D. 211, 213 (N.D. Cal. 1986) (noting that "Defendant's counsel's hours and rates are relevant" to the determining the reasonableness of the hourly rate and hours requested by plaintiff's counsel in their fee petition). Attorneys' fees for highly specialized and sought after attorneys continue to rise, with hourly rates now reaching $2000 per hour at the highest levels.[16] Indeed, Uber's lead counsel, Theodore Boutrous has billed as much as $1,040 per hour to his clients in other recent cases.[17] See Real v. Cont'l Grp., Inc., 116 F.R.D. 211, 213 (N.D. Cal. 1986) (noting that "Defendant's counsel's hours and rates are relevant" to the determining the reasonableness of the hourly rate and hours requested by plaintiff's counsel in their fee petition); Riker v. Distillery, 2009 WL 2486196, *1 (E.D. Cal. Aug. 12, 2009) ("This court finds that defendants' billing records may be relevant to assist the court in determining the reasonableness of plaintiff's request for attorney's fees").

[16] See Aebra Coe, What Do The Highest-Paid Lawyers Make An Hour? Law360 (May 11, 2016), available at: http://www.law360.com/articles/794929/what-do-the-highest-paid-lawyers-make-an-hour.

[17] See Zoe Tillman, Inside Gibson Dunn's Billing Rates in Gay Marriage Case, The National Law Journal (Feb. 12, 2016), available at: http://m.nationallawjournal.com/?AspxAutoDetectCookieSupport=1#/article/id=1202749590936/Inside-Gibson-Dunns-Billing-Rates-in-Gay-Marriage-Case?back=DC&kw=Inside%20Gibson%20Dunn%27s%20Billing%20Rates%20in%20Gay%20Marriage%20

In light of the rate charged by Uber's lead counsel, the rate used for the lodestar analysis here for Attorney Liss-Riordan, $850 per hour, is eminently reasonable and should be approved. This rate is also well in line with, if not lower, than the rates that have been approved in this district for other top lawyers. See, e.g., Gutierrez v. Wells Fargo Bank, N.A., 2015 WL 2438274, *5 (N.D. Cal. May 21, 2015) (in consumer class action, finding reasonable rates for Bay Area attorneys of between $475-$975 for partners); Dimry v. Bert Bell/Pete Rozelle NFL Player Ret. Plan, No. 3:16-CV-01413-JD, 2018 WL 6726963, at *1 (N.D. Cal. Dec. 22, 2018) (approving the requested hourly rate of $900 for partner in ERISA case); Civil Rights Educ. & Enf't Ctr. v. Ashford Hosp. Tr., Inc., 2016 WL 1177950, at *5 (N.D. Cal. Mar. 22, 2016) (approving an hourly rate of $900 for highly experienced partner); Cotter v. Lyft Inc., 2017 WL 1033527 (N.D. Cal. Mar. 16, 2017) Order Granting Final Approval of Settlement Agreement (Dkt. No. 310) (approving hourly rate of $800 for Ms. Liss-Riordan several years ago); Nat'l Fed'n of the Blind of Cal. v. Uber Techs., Inc., No. 14–cv–4086–NC (N.D. Cal. Dec. 6, 2016) Order Granting Final Approval and Attorneys' Fees (Dkt. No. 139) (approving hourly rates of $900 and $895 for senior partners).[18]

Moreover, Ms. Liss-Riordan's work warrants this rate (if not higher) because of her exceptional qualifications. As noted above, and described further in her Declaration, Attorney Liss-Riordan has received substantial recognition over the years as a national expert on wage and hour litigation. She is especially well known for successfully representing low wage workers in scores of cases that include precedent-setting trials and appeal. Liss-Riordan Decl. at ¶¶ 8-12. In this case, Attorney Liss-Riordan, along with the other attorneys working with her and under her direction, were able to draw from the wealth of experience that she and her firm have developed over the last decades in the area of wage law, and her particular specialties: (1) independent contractor misclassification,

[18] See also Ridgeway v. Wal-Mart Stores Inc., 269 F. Supp. 3d 975, 984 (N.D. Cal. 2017) (approving rates above $800 per hour for five senior partners); Betancourt v. Advantage Human Resourcing, Inc., 2016 WL 344532, *8 (N.D. Cal. Jan. 28, 2016) (in employment law class action, court recently found "reasonable rates for partners range from $560 to $800"); In re Magsafe Apple Power Adapter Litig., 2015 WL 428105, *12 (N.D. Cal. Jan. 30, 2015) (in consumer class action, finding that "[i]n the Bay Area, reasonable hourly rates for partners range from $560 to $800"); Kearney v. Hyundai Motor Co., 2013 WL 3287996, at *6 (C.D. Cal. 2013) (approving hourly rates of $800 and $650 per hour for attorneys with more than twenty years of experience).

and (2) tipped employees. In analyzing the lodestar cross-check, Attorney Liss-Riordan's national prominence in this field, breadth of experience, and success in litigating employment misclassification cases in new and emerging industries well justifies an hourly rate of $850, if not higher.

With respect to the associates and staff who have worked on these cases, "[t]he reasonable hourly rate for computing the lodestar amount is based on the 'prevailing market rates in the relevant community.'" Betancourt, 2016 WL 344532, *8 (quoting Gonzalez v. City of Maywood, 729 F.3d 1196, 1205 (9th Cir. 2013). In Betancourt, the court noted (six years ago) that in the Northern District of California, "reasonable rates for partners range from $560 to $800, associates range from $285 to $510, and paralegals and litigation support staff range from $150 to $240." Id.
Thus, Plaintiffs have included in their lodestar calculation a rate of $350 for Adelaide Pagano, who was the primary associate who has worked on this litigation. She performed extensive research, briefing, and discovery over the course of five years working on this case, and as noted in Attorney Liss-Riordan's Declaration, her skills and ability are well beyond her years. See Liss-Riordan Decl. at ¶ 18. Thus, this rate is well warranted for the lodestar cross-check. See, e.g., Luna v. Universal City Studios, LLC, 2016 WL 10646310, at *9 (C.D. Cal. Sept. 13, 2016) (adopting hourly rate of $410 for associates with three to seven years' experience in wage-and-hour class action); Dmuchowsky v. Sky Chefs, Inc., 2019 WL 1934480, at *12 (N.D. Cal. May 1, 2019) (approving hourly rate of $400 for graduate of law school class of 2014); Nat'l Fed'n of the Blind of Cal. v. Uber Techs., Inc., No. 14–cv–4086–NC (N.D. Cal. Dec. 6, 2016) Order Granting Final Approval and Attorneys' Fees (Dkt. No. 139) (approving hourly rate of $355 for law school class of 2014); Dixon v. City of Oakland, 2014 WL 6951260, *7 (N.D. Cal. Dec. 8, 2014) (approving hourly rates in an individual civil rights case of $725 and $695 for partners and $325, $350, and $400 for associates with 2, 3, and 5 years of experience); Cuviello v. Feld Entm't, Inc., 2015 WL 154197, *2 (N.D. Cal. Jan. 12, 2015) (awarding fees of $325 per hour to an associate with 2 years' experience); San Francisco Baykeeper v. W. Bay Sanitary Dist., 2011 WL 6012936, *7 (N.D. Cal. Dec. 1, 2011) (Chen, J.) (awarding rate of $300 for attorney with 2 years' experience); Garcia v. Resurgent Capital Servs., L.P., 2012 WL 3778852, *4 (N.D. Cal. Aug. 30, 2012) (Chen, J.) (awarding $300 per hour to attorney with three years'

experience). Plaintiffs have also requested a rate of $300 for associates Olena Savytska, Anne Kramer, and Michael Turi, who each have several years of experience. See Liss-Riordan Decl. at ¶ 18.

For the more senior associates who have worked on this case, including Benjamin Weber, Sara Smolik, Matthew Carlson, and Michael Freedman, Plaintiffs have included a rate of $450[19] and $700 per hour for Monique Olivier, who originally worked as local counsel. See Bowerman v. Field Asset Servs., Inc., 2018 WL 5982436, at *2 (N.D. Cal. Nov. 14, 2018) (recently approving hourly rate of $700 for Monique Olivier). These rates are well justified based upon the ranges of rates that have been approved in this district. A brief discussion of these attorneys' experience is included in the Liss-Riordan Declaration at ¶ 18. Finally, Plaintiffs have included an hourly rate of $275 for work performed by student law clerks and $225 for their paralegal staff (comprised of paralegals Elizabeth Lopez-Beltrán, Sarah Mason, Erin O'Reilly, Phillip Acevedo, Mary Franco, and Rebecca Shuford see Liss-Riordan Decl. at ¶ 20, see also Dkt. 660-15, Dkt. 660-16, Dkt. 660-17). Similar hourly rates have been approved by other recent court decisions in this district for paralegal staff. See Betancourt, 2016 WL 344532, *8 (reasonable rates and paralegals and litigation support staff range from $150 to $240); see also In re Butler, 2015 WL 3658409, at *2 (noting that defense counsel's firm charged $260 per hour for paralegal work); Dixon v. City of Oakland, 2014 WL 6951260, *10 (N.D. Cal. Dec. 8, 2014) ("The court finds that a reasonable hourly rate for paralegals … is $200 per hour"); Zoom Elec., Inc.v. Int'l Bhd of Elec.Workers Local 595, 2013 WL 2297037, *4 (N.D. Cal. May 24, 2013) (quoting market rates of "between $180 and $225 per hour for law clerks and paralegals" and awarding those rates as of 2013); see also Villalpando, 3:12-cv-04137-JCS, Dkt. No. 344-1 at ¶ 74 (asserting up to $250 hourly rate for plaintiffs-side wage and hour paralegals).

[19] Similar rates have been approved in California federal courts for senior associates with similar experience levels. Minichino v. First California Realty, 2012 WL 6554401, *7 (N.D. Cal. Dec. 14, 2012) (Chen, J.) (approving hourly rates of $450–480 for attorney with nine years' experience); Californians for Disability Rights v. California Dept. of Transp., 2010 WL 8746910 (N.D. Cal. Dec.13, 2010) report and recommendation adopted sub nom. Californians for Disability Rights, Inc. v. California Dept. of Transp., 2011 WL 8180376 (N.D. Cal. Feb.2, 2011) (awarding $560 per hour in attorney fees to an attorney with nine years of experience); Armstrong v. Brown, 805 F.Supp.2d 918 (N.D.Cal.2011) (awarding $415 per hour in attorney fees to an attorney with nine years of experience).

**C. Plaintiffs' Request for Class Representative Service Enhancements is Reasonable**

Under both federal and California law, named plaintiffs are generally entitled to a service award for initiating the litigation on behalf of absent class members, taking time to prosecute the case, and incurring financial and personal risk. Wixon v. Wyndham Resort Dev. Corp., 2011 WL 3443650, *6 (N.D. Cal. Aug. 8, 2011) (An incentive award is designed to "compensate class representatives for work done on behalf of the class, to make up for financial or reputational risk undertaken in bringing the action, and, sometimes, to recognize their willingness to act as a private attorney general."). Numerous federal courts in California have noted that $5,000 incentive payments are "presumptively reasonable." See Noll v. eBay, Inc., 309 F.R.D. 593, 611 (N.D. Cal. 2015) ("In this district, $5,000 for each class representative is presumptively reasonable.") (citing cases). Others have awarded the same or higher payments, even where the payments represent a proportionally larger share of the overall settlement than is the case here. E.g., EK Vathana v. Everbank, 2016 WL 3951334, at *4 (N.D. Cal. July 20, 2016) (approving incentive award of $12,500 where lead plaintiff "has been an active participant in this litigation for the past seven years"); Lusby, 2015 WL 1501095, at *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); Rausch v. Hartford Financial Servs. Group, No. 01–CV–1529–BR, 2007 WL 671334, at *3 (D. Or. Feb.26, 2007) (approving $10,000 as a reasonable incentive award); Razilov v. Nationwide Mut. Ins. Co., 2006 WL 3312024, at *1 (D. Or. Nov.13, 2006) ("The Court also awards ... incentive awards in the amounts of $10,000 to class representative Ruslan Razilov…").

Here, Plaintiffs request awards of $7,500 for named plaintiffs Gurfinkel, Manahan, Talha, and Sanchez who have been a part of the O'Connor and Yucesoy cases for many years and have spent these long years assisting counsel in advancing the class's claims. Plaintiffs also seek $5,000 incentive awards for Plaintiffs Dulles and Oliveira who joined the case a year ago and have provided crucial support and strengthened the class claims on behalf of Massachusetts drivers who opted out of arbitration. These enhancement payments, totaling $40,000 out of a $20 million settlement fund, are warranted by their work on this case and the risk undertaken by them on behalf of the class. All six

named plaintiffs have had their names on the publicly-filed pleadings in this case. See, e.g., Dulles Decl. at ¶ 6. Given the inordinate attention this case has received, potential employers have seen, and undoubtedly will see, Plaintiffs' names associated with this litigation – a fact not helpful to Plaintiffs' potential employment prospects, particularly with "gig economy" companies. See Gurfinkel Decl. at ¶ 6; Manahan Decl. at ¶ 7; Talha Decl. at ¶ 6; Sanchez Decl. at ¶ 7; Dulles Decl. at ¶ 6, Oliveira Decl. at ¶ 6.

Furthermore, all of the plaintiffs have been active in helping to assist the attorneys in this case, provide documents and information, and spread the word about the case and Uber's arbitration clause among their fellow drivers. See Gurfinkel Decl. at ¶¶ 3-5; Manahan Decl. at ¶¶ 3-6; Talha Decl. at ¶¶ 4-5; Sanchez Decl. at ¶¶ 3-6; Dulles Decl. at ¶¶ 3-5, Oliveira Decl. at ¶¶ 3-5. Plaintiffs Gurfinkel and Manahan sat for full-day (extremely adversarial) depositions, which required them to travel from their homes, and they each responded to multiple rounds of document requests, interrogatories, and requests for admission. See Gurfinkel Decl. at ¶¶ 3-5; Manahan Decl. at ¶¶ 3, 5. Moreover, Gurfinkel, Manahan, Sanchez, and Talha have been involved with the litigation for many years, and their steadfast, unflagging support for the case and the class they represent has been laudable. Under these circumstances, the requested enhancements are reasonable, if not low.

Notably, the requested service enhancements, totaling $40,000, comprise less than half a percent of the overall settlement amount – just 0.2%. See, e.g., Monterrubio v. Best Buy Stores, L.P., 291 F.R.D. 443, 462 (E.D. Cal. 2013) (finding total incentive payment of .62% of settlement reasonable). Likewise, there is no "drastic disparity" in the size of each payment relative to the settlement shares of class members, some of whom will be receiving many thousands of dollars in their settlement payment. For these reasons, the requested service enhancements should be approved.

## IV. CONCLUSION

As set forth above, Plaintiffs' counsel has achieved an excellent result for the plaintiff class. After six years of dogged litigation, this case could have been delayed for many more years following the reversal of the Class Certification Orders, but instead, the class now stands to receive a substantial benefit in a matter of months. Plaintiffs have shown that they have worked diligently and efficiently on this case, and their requested fee of $5 million, which is line with the 25% benchmark in the Ninth

Circuit, results in a negative lodestar multiplier. Moreover, because of the significant task ahead of administering and enforcing this settlement, Plaintiffs' counsel will likely be devoting many additional hours to this litigation in the months and years to come. For all of these reasons, the Court should approve the requested fees.

Date: May 14, 2019

Respectfully submitted,

MATTHEW MANAHAN, ELIE GURFINKEL, MOHKTAR TALHA, PEDRO SANCHEZ, AARON DULLES, and ANTONIO OLIVEIRA, individually and on behalf of all others similarly situated,

By their attorneys,

*/s/ Shannon Liss-Riordan*

Shannon Liss-Riordan, SBN 310719
Adelaide Pagano, *pro hac vice*
LICHTEN & LISS-RIORDAN, P.C.
729 Boylston Street, Suite 2000
Boston, MA 02116
(617) 994-5800
Email: sliss@llrlaw.com; apagano@llrlaw.com

**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing document was served by electronic filing on May 14, 2019, on all counsel of record.

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