

1 MARY-LEE SMITH – Cal. Bar No. 239086
JULIA MARKS – Cal. Bar No. 300544
2 DISABILITY RIGHTS ADVOCATES
2001 Center Street, Fourth Floor
3 Berkeley, California 94704-1204
Telephone: (510) 665-8644
4 Facsimile: (510) 665-8511
TTY: (510) 665-8716
5 Email: msmith@dralegal.org

6 TIMOTHY ELDER – Cal. Bar No. 277152
TRE LEGAL PRACTICE
7 4226 Castanos Street
Fremont, California 94536
8 Telephone: (410) 415-3493
Facsimile: (888) 718-0617
9 Email: telder@trelegal.com

10 MICHAEL W. BIEN – Cal. Bar No. 096891
MICHAEL S. NUNEZ – Cal. Bar No. 280535
11 ROSEN BIEN GALVAN & GRUNFELD LLP
50 Fremont Street, 19th Floor
12 San Francisco, California 94105-2235
Telephone: (415) 433-6830
13 Facsimile: (415) 433-7104
Email: mbien@rbgg.com
14 mnunez@rbgg.com

15 Attorneys for Plaintiffs

16
17 UNITED STATES DISTRICT COURT
18 NORTHERN DISTRICT OF CALIFORNIA, SAN JOSE DIVISION
19

20 NATIONAL FEDERATION OF THE
BLIND, NATIONAL FEDERATION OF
21 THE BLIND OF CALIFORNIA,
MICHAEL KELLY, MICHAEL
22 HINGSON, and MICHAEL PEDERSON,

23 Plaintiffs,

24 v.

25 UBER TECHNOLOGIES, INC.,

26 Defendant.
27
28

Case No. 3:14-cv-04086-NC

**DECLARATION OF DANIEL
GOLDSTEIN IN SUPPORT OF
PLAINTIFFS' MOTION FOR FEES
AND COSTS**

Judge: Hon. Magistrate Nathanael
Cousins

Date: November 10, 2016

Time: 10:00 AM

Crtrm.: D, 450 Golden Gate avenue, San
Francisco, CA 94102

1 I, Daniel Goldstein, declare,

2 1. I make this Declaration of my own personal knowledge and, if called to
3 testify, I could and would testify competently to the matters stated herein.

4 2. I am a member in good standing of the bars of the Maryland Court of
5 Appeals, the United States District Court for the District of Maryland, and the Supreme
6 Court of the United States, the United States Courts of Appeal for the District of
7 Columbia, Second, Fourth, Fifth, Sixth, Eighth, Ninth, and Tenth Circuits as well as the
8 United States Court of Federal Claims.

9 3. I am generally familiar with this litigation, an action to challenge
10 discriminatory treatment that blind persons with service animals encounter when
11 attempting to use transportation arranged through the Uber mobile software application
12 (“Uber rider app”). I understand that the parties have proposed a class settlement on behalf
13 of a national class of blind and low-vision persons who travel with service animals and
14 who have used, attempted to use, or been deterred from using transportation arranged
15 through the Uber rider app.

16 **My Background and Professional Experience**

17 4. I have been a partner at the firm of Brown, Goldstein & Levy, LLP (“BGL”),
18 a Baltimore law firm, since its founding in 1984. BGL is widely considered to be
19 Maryland’s leading public interest and civil rights firm. BGL is a private plaintiff’s law
20 firm, with extensive practice in the areas of disability civil rights (including both
21 employment discrimination and access to public entities and public accommodations), race
22 discrimination, gender discrimination, wage and hour violations, and actions brought on
23 behalf of consumers under both state and federal law. We have represented plaintiffs in
24 class action litigation in state and federal courts nationwide. A substantial portion of our
25 class action cases are civil rights and disability rights class actions in federal court. BGL
26 has been honored as Maryland’s “Pro Bono Firm of the Year” and received the
27 “Outstanding Achievement Award in the Field of Fair Housing” from the Washington
28 Lawyers’ Committee for Civil Rights.

1 5. I have considerable experience in Americans with Disabilities Act (“ADA”)
2 and disability-related litigation. In thirty years of representing the National Federation of
3 the Blind (“NFB”), I have (1) negotiated a settlement with HR Block wherein HR Block
4 agreed to make its website, online tax preparation products, and mobile applications fully
5 accessible to blind taxpayers; (2) secured preliminary injunctive relief to enable blind
6 applicants to the California Bar to take the multi-state bar examination using screen access
7 software; (3) negotiated a settlement with Target on behalf of a class of blind Californians
8 over the inaccessibility of the retailer’s website, www.target.com, that required making
9 and maintaining that site as accessible to the blind and secured a \$6 million damage award
10 on behalf of the class; (4) negotiated a settlement of litigation with AOL to make AOL
11 accessible to the blind; (5) reached agreements with Amazon, eBay, Ticketmaster,
12 Travelocity and LSAC to make their respective websites accessible to the blind;
13 (6) negotiated settlements with Diebold, Inc., to manufacture, sell, and deploy audio
14 accessible ATMs, and with Chevy Chase Bank to make its entire fleet of ATMs voice
15 guided; (7) at the request of the Vermont Commission on Human Rights, I assisted it in
16 securing agreements from the larger banks with Vermont branches to make all of their
17 ATMs accessible; (8) negotiated a settlement of a suit on behalf of the NFB, a class of
18 blind plaintiffs and the Commonwealth of Massachusetts against Cardtronics Corporation,
19 the largest deployer of ATMs in the world, to make its domestic fleet of more than 25,000
20 ATMs accessible to the blind; (9) secured accessible voting machines for the blind for the
21 State of Maryland and for Volusia County, Florida; (10) secured an agreement on behalf of
22 the NFB, together with the Commonwealth of Massachusetts, with Apple, Inc. to make
23 iTunesU accessible to the blind; (11) settled litigation against Arizona State University
24 requiring it to cease using the Kindle or other e-book readers until the e-book reader was
25 accessible, (12) negotiated a settlement with Scribd to ensure that its entire library of
26 digital texts are accessible to the blind; (13) successfully negotiated with Nassau
27 Community College to admit a blind nursing student and litigation on behalf of a blind
28 mother in Georgia and a blind custodial grandmother in Alabama to secure their rights as

1 parents in the face of assertions that blindness disabled them from that role; and
2 (14) negotiated an agreement with Pursuant Health, Inc. to make its self-service healthcare
3 kiosks accessible to blind consumers.

4 6. I am a member of the American Bar Association's Commission on Disability
5 Rights. In 2016, the NFB honored me with its Kenneth Jernigan Award, an award given to
6 someone who has made a significant contribution to the blindness community. In 2011,
7 the American Bar Association recognized me with its Paul G. Hearne Award for
8 achievements in disability rights law.

9 **NFB Is A Key Advocate In The Organized Disability Rights Community**

10 7. The National Federation of the Blind is the Nation's oldest and largest
11 organization of blind persons. The NFB works to advance the right of blind persons to
12 participate in all aspects of society on a basis of equality. NFB works to advance this
13 mission through training, education, research and development, policy advocacy, and legal
14 advocacy. NFB's legal strategy to advance disability law in a manner that benefits the
15 blind parallels that of other leading organizations in other civil rights movements such as
16 the NAACP Legal Defense Fund. NFB's legal strategy focuses on advancing the rights of
17 blind persons in several key areas of life including education, employment, transportation,
18 access to technology and digital information, and healthcare. Ensuring equal rights in
19 these areas of law is essential to ensure that blind persons may live full, enriching, and
20 productive lives.

21
22 **My Familiarity With Class Counsel**

23 8. I have long been familiar with Class Counsel, and I am impressed with their
24 work on behalf of persons with disabilities. I have litigated several cases with Disability
25 Rights Advocates and Laurence Paradis in particular as co-counsel, including *National*
26 *Federation of the Blind v. Scribd, Inc.*, 2:14-cv-162 (D. Vt.), *Enyart v. National*
27 *Conference of Bar Examiners, Inc.*, 3:09-cv-05191-CRB (N.D. Cal.), and *National*
28 *Federation of the Blind v. Target Corp.*, C 06-1802 MHP (N.D. Cal.). I have also been

1 long impressed with Rosen Bien Galvan & Grunfeld LLP and its work on behalf of
2 inmates with disabilities and other persons with disabilities. I am aware that the attorneys
3 at both Disability Rights Advocates and Rosen Bien Galvan & Grunfeld possess a high
4 degree of skill and expertise in advocating on behalf of persons with disabilities.
5 Furthermore, I worked with and have reviewed work product from Attorney Timothy
6 Elder when he was employed at BGL and as I have co-counseled with him on other
7 matters. I found Mr. Elder's work to be comparable to work performed by attorneys at
8 BGL and at DRA, and I am likewise impressed with his skills and expertise in advocating
9 for people with disabilities.

10 **The Settlement In This Case Is An Exceptional Victory For The Blind Community**

11 9. Through my work with the blind community, I have learned that Uber has
12 become a critical transportation option for blind persons. Public transportation options are
13 limited in many regions, and traveling on public transportation is sometimes not an option
14 due to service outages and travelers' time constraints. Furthermore, Uber's mobile
15 software application, which allows riders to contact drivers directly, view receipts
16 compatible with screen access technology, and automatically charges riders' credit cards,
17 can provide a much more streamlined and accessible transportation experience compared
18 with other similar options such as taxis.

19 10. I am aware that Uber drivers have refused to transport blind riders with
20 service animals.

21 11. I have reviewed the proposed settlement in *National Federation of the Blind*
22 *v. Uber Technologies, Inc.*, and it is an exceptional and unprecedented victory for blind
23 persons and others who use service animals across the nation. This settlement includes
24 likely the most significant, geographically broad, and comprehensive commitment from a
25 demand-responsive transportation provider to ensure access for riders with service
26 animals. The settlement not only ensures reliable access for blind persons and others with
27 service animals to Uber's transportation services, but through this improved access, it will
28 enhance the ability of these individuals to participate in their communities and integrate

1 into society more generally.

2 12. The settlement will require Uber to revise its service animal policy to clarify
3 that no exceptions exist for allergies or religious objections to Uber drivers' contractual
4 and legal obligation to transport riders with service animals, will require that all drivers
5 agree to transport riders with service animals consistent with drivers' legal obligation as a
6 condition of continued access to the Uber platform, will adopt enhanced enforcement
7 practices, terminating contractual relationships with drivers who refuse to transport riders
8 with service animals, will offer an accessible and streamlined complaint process for riders
9 with service animals to report service animal discrimination, and will require Uber to
10 collect and report data concerning service animal discrimination to Class Counsel and a
11 third-party monitor. These are policies, practices, and procedures that will apply to all of
12 Uber's services nationwide.

13 13. The significance of the national scope of the settlement cannot be overstated.
14 The settlement agreement enables Class Counsel to monitor Uber's compliance with the
15 settlement across the country and to enforce the Agreement based on discrimination
16 against blind individuals with guide dogs anywhere in the United States. In contrast,
17 before Uber and other similar services, it was not possible to negotiate a single settlement
18 to improve access to demand-responsive transportation nationwide. Blind individuals with
19 guide dogs and other service animal users fought for access to taxi services one locality at
20 a time because most taxi companies were local businesses serving only a single city or
21 metropolitan area. Advocacy to secure reliable access to taxis for blind individuals with
22 guide dogs in one metropolitan area did little to help blind individuals with guide dogs
23 across the rest of the country.

24 14. In addition, the settlement will require Uber to report back to riders who
25 submit service animal complaints concerning the outcome of Uber's investigation of those
26 complaints and what enforcement actions it takes with respect to the involved drivers.
27 Informing riders with disabilities about the outcome of their complaints is seemingly
28 minor, but it is in fact a rare and significant recognition by a large corporation of the

1 dignity and value of customers with disabilities. Through my advocacy on behalf of the
2 NFB and blind individuals, I have observed that both public and private entities too often
3 brush aside concerns raised by persons with disabilities as low-priority niche issues.

4 15. The settlement will also permit the parties to negotiate additional changes to
5 Uber's policies, practices, and procedures if necessary to effectuate the purpose of the
6 settlement. This provision is critical for several reasons. First, it is common knowledge
7 that Uber's transportation services are ever evolving, and this provision will allow the
8 parties to adapt policies, practices, and procedures to fit new services and changes to
9 services that Uber may make. Furthermore, drivers staunchly opposed to transporting
10 riders with service animals may adapt their discriminatory tactics in some yet unforeseen
11 way to avoid transporting riders with service animals and to evade penalty, and this
12 provision will enable the parties to adapt Uber's policies and practices to combat those
13 new tactics.

14 **Success In This Case Hinged On Resolution Of Several Novel Legal Issues**

15 16. The settlement is also impressive because success was by no means
16 guaranteed. The case presented many issues of first impression. For example, Uber
17 argued in its motion to dismiss that it was not subject to the public accommodations
18 provisions of the ADA because it operated a technology platform and neither its mobile
19 app nor its website were places of public accommodation. To my knowledge, at the time
20 Plaintiffs briefed the motion to dismiss in December 2014, no Court had ever addressed
21 whether a transportation network company like Uber in the so-called sharing economy is a
22 place of public accommodation within the meaning of Title III of the ADA. As discussed
23 below, the motion to dismiss also raised and the Court resolved in Plaintiffs' favor
24 significant issues of first impression within the Ninth Circuit concerning associational
25 standing and deterrence standing.

26 17. The Plaintiffs secured a key victory concerning standing for associational
27 plaintiffs that will benefit plaintiffs in other civil rights litigation against other businesses
28 that condition access to services on agreeing to resolve claims through mandatory

1 arbitration. In deciding Plaintiffs' motion to dismiss, the Court held that the National
2 Federation of the Blind of California possessed associational standing to pursue its ADA,
3 Unruh Act, and Disabled Persons Act claims where some of its members had executed
4 contracts that purported to require resolution of disputes through mandatory arbitration.
5 This was an issue of first impression in the Ninth Circuit, and Plaintiffs successfully
6 distinguished their case from precedent in other circuits holding that associations lacked
7 standing where some of their members were subject to mandatory arbitration. Many
8 businesses, including sharing economy businesses, condition access to services on
9 customers first agreeing to resolve their claims arising from use of their services through
10 mandatory arbitration, and NFB and other associations will now be able to rely on this
11 order to secure associational standing in cases challenging disability rights and civil rights
12 violations committed by such businesses.

13 18. The Court's holding concerning deterrence standing is another excellent
14 victory that will benefit other plaintiffs in disability rights litigation, particularly in
15 litigation against sharing economy businesses and other demand-responsive transportation
16 services. Plaintiffs succeeded in extending the doctrine of deterrence standing to apply to
17 individual plaintiffs who had not themselves experienced or directly observed
18 discrimination but who had been informed of widespread discrimination against other
19 similarly situated persons. Uber and many other sharing economy businesses rely on
20 individuals designated as independent contractors who receive little or no training to
21 provide services. As a result, whether a customer with a disability will encounter
22 discrimination when attempting to use one of these services on a particular occasion is
23 impossible to predict, even if in the aggregate many similarly situated persons with
24 disabilities encounter similar discriminatory treatment. Unpredictable individual instances
25 of discrimination accompanying a clear systemic pattern of discrimination has also
26 occurred in the taxi industry. The Court's holding here will enable the organized disability
27 community to more easily mount challenges to such discrimination in future cases.

28 19. I expect that these key legal victories will prove increasingly important over

1 time as the sharing economy continues to grow and as other businesses increasingly
2 condition use of their services on agreement to resolve legal claims through mandatory
3 arbitration.

4 **Plaintiffs' Claimed Hours**

5 20. I reviewed the charts summarizing the hours that Plaintiffs' Counsel devoted
6 to prosecuting this action up through July 31, 2016. The 3,071.1 hours for work performed
7 up through July 31, 2016 for which Plaintiffs seek compensation are well within the
8 number of hours that I would expect Plaintiffs' Counsel to devote to simultaneously
9 prosecuting an action of this nature while negotiating a detailed class settlement agreement
10 that provides nationwide relief as was done here.

11
12 I declare under penalty of perjury under the laws of the United States of America
13 that the foregoing is true and correct.

14 Executed this 14th day of September, 2016, at Baltimore, Maryland.

15
16
17 By: 
18 Daniel Goldstein