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UNITED STATES DISTRICT COURT

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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

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

**NOTICE OF MOTION AND MOTION;
MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
PLAINTIFFS' MOTION FOR FEES
AND COSTS**

Judge: Hon. Magistrate Nathanael
Cousins

Date: November 10, 2016

Time: 10:00 a.m.

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

Trial Date: None Set

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NOTICE OF MOTION AND MOTION

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that on November 10, 2016, at 10:00 a.m., or as soon thereafter as the matter may be heard, Plaintiffs will and hereby do move the Court for an Order awarding Plaintiffs’ counsel their reasonable attorneys’ fees and expenses in this case.

In this Motion Plaintiffs’ counsel seek an award of fees based on a merits lodestar of \$1,589,574. Plaintiffs request that this lodestar be adjusted upward by a multiplier of 2.0 based on the California law entitlement to an upward enhancement based on excellent results obtained, and a very high level of contingent risk. Plaintiffs’ counsel also seek an award of expenses in the amount of \$13,447.14. Plaintiffs’ counsel further seeks an award of fees for preparation of this Motion in the amount of \$87,938.

This Motion is based on this Notice of Motion, the Memorandum of Points and Authorities filed herewith, the supporting Declarations of Michael W. Bien, Timothy R. Elder, Mary Lee Kimber-Smith, Richard Pearl, Daniel Goldstein, Daniel S. Mason, Curtis L. Decker, Kirk Adams, the exhibits thereto, the pleadings and orders on file in this matter, and any oral argument or evidence permitted at any hearings on this motion.

DATED: September 19, 2016

Respectfully submitted,

ROSEN BIEN GALVAN & GRUNFELD LLP

By: /s/Michael W. Bien
Michael W. Bien

Attorneys for Plaintiffs

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MEMORANDUM OF POINTS AND AUTHORITIES

INTRODUCTION

After over two years of litigation and negotiations, Uber users who use service animals have achieved all of their litigation objectives and more. Thanks to this settlement, blind persons and others who rely on service animals to function independently in the world now have nationwide access to what is so far the most important new transportation innovation of the 21st Century—door-to-door car service that is available on-demand, 24 hours a day, seven days a week.

The National Federation of the Blind (“NFB”) reached out to leading disability rights litigators to develop a strategy to achieve access to an entirely new industry, with entirely new challenges. Basic principles, such as whether disability laws even applied to ride-sharing services, were themselves in question. The defendant, Uber, is known to fight hard against litigation like this, using the nation’s most aggressive defense firms. This case was no exception.

Where, as here, litigants prevail in enforcing important civil rights, the Congress of the United States and the California Legislature have determined that litigants should be fully compensated for their attorney’s fees and litigation expenses, using the same rates and billing standards that apply in the private legal marketplace. Those principles include enhanced compensation in exceptional cases such as this one.

With this motion, Plaintiffs’ counsel have fully documented and justified the professional hours that were necessary to prevail in this case. Plaintiffs’ counsel has also fully justified the multiplier enhancement sought here, of 2.0, that is twice the lodestar for merits work. This application should be granted in its entirety.

STATEMENT OF ISSUES TO BE DECIDED (L.R. 7-4(3))

- 1. Whether Plaintiffs’ counsel should be fully compensated at their reasonable market rates for the hours necessary to prevail in this litigation.
- 2. Whether federal and California law regarding lodestar enhancement require

1 an upward adjustment in the form of a 2.0 multiplier.

2 **STATEMENT OF FACTS & PROCEDURAL BACKGROUND (L.R. 7-4(4))**

3 The Plaintiffs and the conditionally certified Class are represented by Disability
4 Rights Advocates (“DRA”), Timothy Elder of the TRE Legal Practice (“TRE Legal”), and
5 Rosen Bien Galvan & Grunfeld, LLP (“RBGG”), collectively referred to as “Plaintiffs’
6 Counsel.”

7 The fees claimed here are for the work necessary to develop Plaintiffs’ claims,
8 secure a favorable ruling from this Court on Defendants’ dispositive motions, advance
9 discovery to trial, and achieve a national resolution that remedies statutory violations of the
10 civil rights of every person with a disability who uses the Uber transportation platform
11 while traveling with a service animal in the United States.¹ After two and a half years of
12 litigation, several settlement conferences and a JAMS mediation session, Plaintiffs settled
13 all of their claims with Defendants.

14 The National Federation of the Blind (“NFB”), a nonprofit corporation, is the
15 nation’s oldest and largest association of blind persons, with over 50,000 members spread
16 through local chapters and affiliates in all fifty states, the District of Columbia, and Puerto
17 Rico. The National Federation of the Blind of California (“NFB-CA”) is an association of
18 blind Californians and is the California State affiliate of the NFB. The mission of NFB
19 and NFB-CA is to promote the vocational, cultural, and social advancement of the blind
20 and to achieve the integration of the blind into society on a basis of equality with the
21 sighted.

22 Plaintiffs Michael Pedersen and Michael Kelly are blind Uber riders who allege that
23 Uber’s drivers refused to transport them because of their guide dogs. Plaintiff Michael
24 _____

25 ¹ The Declaration of Timothy R. Elder in Support of Plaintiffs’ Motion for Attorneys’ Fees
26 and Expenses (“Elder Decl.”), filed herewith, ¶¶ 22-73, provides a detailed description of
27 the work performed by Plaintiffs’ counsel in advancing this case.

1 Hingson is a blind person who alleges that he is deterred from relying on Uber for
2 transportation because he is aware that many Uber drivers have refused to transport
3 passengers with guide dogs.

4 Defendant Uber Technologies Inc. (“Uber”) is a company that offers a smart phone
5 application (“Uber Rider App”) that connects individuals looking for transportation
6 (“riders”) with independent transportation providers looking for passengers (“driver
7 partners” or “drivers”). Joint Mtn. for Preliminary Approval of Class Settlement &
8 Related Mtns. 5-6, Dkt. No. 84. Transportation arranged through the Uber Rider App is
9 available in over 150 metropolitan areas across most states. *Id.* at 5.

10 Phases Of The Litigation

11 A. Pre-Litigation

12 In April 2014, DRA and TRE Legal began to investigate complaints that Uber
13 drivers were refusing to transport blind riders with service animals. Declaration of
14 Timothy Elder ¶¶ 24-25 (“Elder Decl.”). They conducted outreach to NFB-CA members
15 and other segments of the blind community to evaluate the scope of the problem, factual
16 research to understand Uber’s operations, and legal research concerning their potential
17 claims and Uber’s possible defenses. *Id.* ¶¶ 25-29. As the attorneys with the lowest billing
18 rates, Michael Nunez and Timothy Elder performed all of the outreach and legal research.
19 *Id.* ¶ 27; Declaration of Mary-Lee Smith ¶¶ 16, 40 (“Smith Decl.”). A vast majority of the
20 factual research was assigned to paralegal Rachel Smith. Elder Decl. ¶ 29; Smith Decl.
21 ¶ 40.

22 DRA sent an opening letter to Uber on June 3, 2014 identifying the discriminatory
23 treatment and proposing collaborating to devise improvements to Uber’s services to
24 resolve the problem. Elder Decl. ¶ 31. At this time, DRA and TRE Legal also began to
25 interview NFB-CA members to identify appropriate individual plaintiffs to prepare to file
26
27
28

1 the case if Uber was unwilling to negotiate. *Id.* ¶¶ 27-29. The parties met in July 2014 to
 2 discuss Plaintiffs’ concerns. *Id.* ¶ 33. Plaintiffs proposed entering structured negotiations²
 3 to resolve Plaintiffs’ claims without litigation. *Id.* On August 8, 2014, Uber informed
 4 Plaintiffs that Uber was unwilling to enter structured negotiations. *Id.* ¶ 34.

5 With no alternative to litigation, Plaintiffs drafted and filed their complaint on
 6 September 9, 2014. *Id.* ¶¶ 29, 36. After filing, Plaintiffs’ counsel continued to speak with
 7 blind individuals with guide dogs who had experienced denials of service to gather
 8 evidence for the case. *Id.* ¶¶ 37-38. Uber filed a motion to dismiss on October 22, 2014.
 9 Dkt. No. 9. Plaintiffs analyzed this motion, and filed a First Amended Complaint adding
 10 individual plaintiffs and factual allegations in response. Dkt. No. 17.

11 **B. Uber’s Unsuccessful Motion to Dismiss**

12 Uber then renewed its Motion to Dismiss. Dkt. No. 25. It argued that Uber is not
 13 subject to the public accommodations provisions of the Americans with Disabilities Act
 14 (“ADA”) because neither Uber’s mobile app nor its website are places of public
 15 accommodation, and it does not own, lease, or operate vehicles providing transportation.
 16 *Id.* at 24-27. At that time, no Court had addressed whether a “ride sharing” service like
 17 Uber is a place of public accommodation under the ADA. Declaration of Daniel F.
 18 Goldstein ¶ 16 (“Goldstein Decl.”); Smith Decl. ¶ 5.

19 Uber’s motion also raised issues of first impression in the Ninth Circuit concerning
 20 standing. Relying on precedent outside this circuit, Uber contended that NFB-CA lacked
 21 _____

22 ² “Structured negotiations” refers to an alternative dispute resolution process that has been
 23 used successfully in other disability access cases over the past 20 years, particularly those
 24 involving access to new technologies. *See* Feingold, L., *Structured Negotiation, A*
 25 *Winning Alternative to Lawsuits* (ABA 2016). In structured negotiations, the parties agree
 26 to a set of deadlines and ground-rules for resolving the dispute without filing a lawsuit.
 27 The “structure” refers to the set of deadlines and ground-rules that keep the process
 28 moving in the absence of the case management deadlines that would apply if a lawsuit
 were filed. *Id.* at 59-67.

1 associational standing because some of its members had agreed to Terms of Service
2 requiring that they arbitrate claims. *Id.* at 8-12. Uber also asserted that Mr. Hingson
3 lacked standing under the deterrence doctrine because he had not experienced or directly
4 observed the service animal discrimination at issue. *Id.* at 14-20.

5 The U.S. Department of Justice filed a Statement of Interest, arguing that ADA
6 provisions applicable to private transportation providers cover most transportation
7 provided by private entities, and that these provisions apply independent of whether the
8 ADA's public accommodations requirements apply. Dkt. No. 29.

9 The Court denied Uber's motion. *Nat'l Fed'n of the Blind v. Uber Techs., Inc.*, 103
10 F. Supp. 3d 1073, 1076 (N.D. Cal. 2015), Dkt. No. 37. It held that Uber may be subject to
11 the ADA's public accommodations provisions as a travel service, and that NFB-CA had
12 associational standing even where some members had agreed to arbitrate claims. *Id.* at
13 1079, 1083-84. It also held that Mr. Hingson had standing where he had not experienced
14 or observed discriminatory treatment but had learned of it from others. *Id.* at 1080-81.

15 C. Dual Tracks Toward Trial or Settlement

16 After the Court denied Uber's motion to dismiss, Plaintiffs began settlement talks
17 with Uber. Elder Decl. ¶¶ 47-48. Between April and August 10, 2015, Plaintiffs first
18 complied with General Order 56, preparing initial disclosures and conducting the required
19 Joint Inspection and review, in-person settlement meeting, and mediation. *Id.* ¶¶ 47-50.
20 During this process, Plaintiffs investigated the functionality of Uber's driver app and rider
21 app, the back-end operation and capability of Uber's platform, and Uber's relationship
22 with drivers to understand how best to craft an appropriate remedy. *Id.* ¶¶ 48-49.
23 Plaintiffs sent Uber a proposed written settlement agreement on September 1, 2015. *Id.*
24 ¶ 51. Uber did not provide Plaintiffs a written counterproposal until November 24, 2015.
25 *Id.* ¶ 60.

26 Meanwhile, the Court set a trial for April 2016 and an abbreviated discovery
27 schedule, indicating that it would subsequently "inquire into the diligence of propounding
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1 and responding to discovery,” Dkt. No. 53, 56, so Plaintiffs began to prepare for trial.
2 Elder Decl. ¶¶ 57-60. While Plaintiffs awaited Defendants’ initial written response to their
3 settlement proposal, Plaintiffs served requests for production of documents,
4 interrogatories, requests for admission, deposition notices, and a request for inspection. *Id.*
5 ¶ 61. In November 2016, Plaintiffs also investigated and retained an expert in industrial
6 organizations. *Id.* To avoid expense, Plaintiffs agreed to Defendants’ requests to delay
7 some discovery as the settlement negotiations progressed through the end of 2015. *Id.*
8 ¶¶ 60, 62.

9 The parties reached an agreement on key terms of the settlement in January 2016.
10 *Id.* ¶ 53. Plaintiffs then revised the draft settlement, drafted addendums to the settlement,
11 drafted a second amended complaint to add class allegations, and drafted the motion for
12 preliminary approval and supporting papers, while continuing to negotiate additional
13 details of the settlement. *Id.* ¶¶ 53-54. Plaintiffs also continued to prepare for trial until the
14 parties finalized the settlement because, although the parties requested to vacate the trial
15 schedule on January 22, 2016, Dkt. No. 70, the Court did not vacate the trial schedule until
16 after the parties filed the motion for preliminary approval. Elder Decl. ¶ 63; Dkt. No. 91.
17 It was reasonable and necessary for Plaintiffs to continue preparing for trial between
18 January and April 2016. Elder Decl. ¶ 63. Plaintiffs’ counsel needed to ensure that
19 lingering discovery disputes did not languish, but were pushed forward in the meet and
20 confer process so that Plaintiffs would not be prejudiced in the event that settlement broke
21 down in the face of the looming June 2016 trial date. *Id.*

22 **D. Class Settlement**

23 The Settlement provides for significant injunctive relief that will modify Uber’s
24 policies, practices, and procedures to ensure that blind riders with service animals receive
25 reliable access to transportation arranged through the Uber rider mobile application. To
26 ensure that the changes are real and not just changes in written policies, the Settlement
27 requires that Uber communicate the new service animal policy to drivers, and that Uber
28

1 enforce it with termination from the mobile application when drivers violate it. The
 2 Settlement has a comprehensive complaint resolution process for users, as well as robust
 3 testing and monitoring provisions, and provisions to modify the remedy as necessary.
 4 Details of the Settlement's benefits for the class are discussed in the Joint Motion for
 5 Preliminary Approval, Docket No. 84, at pages 8-14.

6 **E. Reasonable Fees and Costs**

7 Rather than incorporate a fee amount within the settlement, the parties agreed that
 8 Plaintiffs would move for an award of reasonable fees and costs and Defendant would
 9 retain the right to contest the amount sought, but not the entitlement to an award.
 10 Settlement Agreement, § 11-C, Dkt. No. 85-1.

11 After billing judgment reductions, from April 2014 through mid-September 2016,
 12 Plaintiffs' counsel has expended over 3200 compensable professional hours, amounting to
 13 approximately \$1.68 million in fees. Elder Decl., Exhs. A, B. During the same period,
 14 Plaintiffs' counsel incurred \$13,447.14 in expenses. *See id.* ¶ 86, Exh. I.

15 **ARGUMENT**

16 **I. PLAINTIFFS' COUNSEL ARE ENTITLED TO ATTORNEYS' FEES AND**
 17 **EXPENSES UNDER THE TERMS OF THE SETTLEMENT AND FEDERAL**
AND STATE LAW

18 Plaintiffs are entitled to fees and costs under the ADA. 42 U.S.C. § 12205. "[A]
 19 prevailing plaintiff [under statutes with fee-shifting provisions] should ordinarily recover
 20 an attorney's fee unless special circumstances would render such an award unjust."
 21 *Hensley v. Eckerhart*, 461 U.S. 424, 429 (1983) (internal quotations and citations omitted).
 22 "A plaintiff 'prevails' when he or she enters into a legally enforceable settlement
 23 agreement against the defendant." *Barrios v. Cal. Interscholastic Fed'n*, 277 F.3d 1128,
 24 1134 (9th Cir. 2002); *see also Richard S. v. Dep't of Developmental Servs. of State of Cal.*,
 25 317 F.3d 1080, 1088 (9th Cir. 2003).

26 Plaintiffs are also independently entitled to fees and costs under state law. Cal. Civ.
 27 Code § 52(a) (Unruh Act); Cal. Civ. Code § 54.3(a) (DPA). Awarding attorneys' fees to

1 parties that prevail on claims brought under these laws is mandatory. *Engel v.*
 2 *Worthington*, 60 Cal. App. 4th 628, 632-35 (1997) (Unruh Act); *Moralez v. Whole Foods*
 3 *Mkt., Inc.*, No. C 12-01072 CRB, 2013 WL 3967639, at *2 (N.D. Cal. July 31, 2013)
 4 (Unruh Act and DPA). Obtaining damages in a court enforceable settlement agreement is
 5 sufficient to establish prevailing party status under these laws. *Blackwell v. Foley*, 724 F.
 6 Supp. 2d 1068, 1074 (N.D. Cal. 2010); *Moralez*, 2013 WL 3967639 at *2 (explaining that
 7 fee award mandatory in case where Unruh Act and DPA claims settled). Courts apply the
 8 lodestar method to calculate a reasonable fee under these statutes. *K.M. ex rel. Bright v.*
 9 *Tustin Unified Sch. Dist.*, 78 F. Supp. 3d 1289, 1297 (C.D. Cal. 2015) (Unruh Act); *Muniz*
 10 *v. United Parcel Serv., Inc.*, 738 F.3d 214, 222 (9th Cir. 2013) (“[i]n general, California
 11 courts ... utilize the lodestar ... approach to determine a proper fee award ... in a civil
 12 rights law suit.”). In addition, California law permits courts to award a multiplier to
 13 augment the lodestar in certain cases. *Ketchum v. Moses*, 24 Cal. 4th 1122, 1132 (2001).

14 Here, Defendant agreed that Plaintiffs are entitled to an award of reasonable fees
 15 and costs. Settlement Agreement, § 11-C, Dkt. No. 85.1 (Uber “agrees not to dispute the
 16 entitlement to reasonable Attorneys’ Fees”). The only question, then, is what amount
 17 should be awarded. For the reasons discussed below, Plaintiffs should be awarded the full
 18 amount of their requested lodestar plus a multiplier of 2.0.

19 **II. THE SUBSTANTIAL EFFORT EXPENDED BY PLAINTIFFS’ COUNSEL**
 20 **ON THIS COMPLEX CASE WARRANTS THE REQUESTED LODESTAR**

21 Under federal and California law, the calculation of the award is performed using
 22 the lodestar method, i.e., the number of hours reasonably expended multiplied by the
 23 reasonable hourly rate. *Morales v. City of San Rafael*, 96 F.3d 359, 363 (9th Cir. 1996)
 24 (noting that “[t]he lodestar determination has emerged as the predominate element of the
 25 analysis in determining a reasonable attorney’s fee award”) (internal quotation marks and
 26 citation omitted); *PLCM Group, Inc. v. Drexler*, 22 Cal. 4th 1084, 1095 (2000), *as*
 27 *modified* (June 2, 2000) (“the fee setting inquiry in California ordinarily begins with the

1 ‘lodestar’”). “In setting a reasonable attorney’s fee, the district court should make specific
2 findings as to the rate and hours it has determined to be reasonable.” *Gracie v. Gracie*,
3 217 F.3d 1060, 1070 (9th Cir. 2000) (quotation omitted).

4 With this application and its supporting declarations, Plaintiffs’ counsel have more
5 than met their burden of demonstrating that the hours are reasonable and that the rates
6 requested are in line with those prevailing in the community for similar services. *Jordan v.*
7 *Multnomah Cty.*, 815 F.2d 1258, 1263 (9th Cir. 1987).

8 **A. The Time Spent Was Reasonable and Plaintiffs’ Counsel Have**
9 **Exercised Appropriate Billing Judgment Reductions**

10 The time Plaintiffs’ attorneys expended on this case over the previous two and a
11 half years was appropriate given the intensity and nature of the litigation and settlement
12 negotiations. After billing judgment reductions of 394.4 hours representing approximately
13 11% of the total billable hours, Plaintiffs’ lodestar for merits work performed through
14 September 9, 2016 is \$1,589,574, representing compensation for 3,085.1 hours of work
15 invested in this case. Elder Decl. ¶ 84 Exhs. A, B.

16 The claimed hours are reasonable for a case of this magnitude and complexity.
17 Goldstein Decl. ¶ 20; Bien Decl. ¶¶ 10, 15, 16; Elder Decl. ¶¶ 22-73; Smith Decl. ¶¶ 23-
18 25. The work included extensive pre-filing investigations, defeating Uber’s Motion to
19 Dismiss on several grounds, exhausting the Northern District’s General Order 56
20 disclosure and joint inspection procedures, attending a JAMS mediation, drafting a
21 proposed settlement, drafting and serving all needed discovery requests while settlement
22 talks were underway, preparing for trial, preparing the preliminary approval papers and
23 processing a steady flow of intake complaints from potential witnesses through the entire
24 process. Elder. Decl. ¶¶ 26-29, 42-45, 47-54, 60-64. Plaintiffs’ counsel performed the
25 work needed to fully protect Plaintiffs’ interests as this case proceeded on dual tracks
26 toward trial and settlement. Elder Decl. ¶¶ 60-63; Smith Decl. ¶¶ 30, 42; Bien Decl. ¶ 18.

27 Plaintiffs’ counsel regularly divided up their labor on the case to minimize
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1 duplication of effort. Elder Decl. ¶ 4; Bien Decl. ¶ 18; Smith Decl. ¶ 30. DRA led
2 prosecution of the case, bringing to bear extensive experience in litigating precedent-
3 setting disability rights class actions. Elder Decl. ¶¶ 8-9; Smith Decl. ¶¶ 11, 18-19.
4 Timothy Elder led coordinating all interactions involving the National Federation of the
5 Blind and its key members and various interested groups, and drafting the settlement
6 agreement and the memorandum of points and authorities supporting the instant fee
7 motion. Elder Decl. ¶¶ 4, 17, 19, 51, 71. RBGG also played a critical role, crafting the
8 monitoring and reporting components of the settlement, drafting the mediation brief,
9 drafting the motion for preliminary approval and supporting papers, drafting addendums to
10 the settlement agreement, drafting supporting papers for and finalizing this motion,
11 drafting and revising written discovery papers, and handling other discovery tasks and
12 aspects of settlement negotiations. Elder Decl. ¶ 4; Bien Decl. ¶¶ 15-16. Attorneys
13 Nunez, Elder, and Marks, counsel with the lowest rates, performed nearly all of the legal
14 research, drafting, and day-to-day management of the case, and accordingly billed the
15 overwhelming majority of time claimed. Bien Decl. ¶ 16; Smith Decl. ¶ 35; Elder Decl.
16 ¶¶ 5, 73. Whenever possible and appropriate, tasks were performed by paralegals. Smith
17 Decl. ¶¶ 30, 40; Bien Decl. ¶ 17.

18 Such co-counsel arrangements are commonly used to prosecute important public
19 interest cases. Nonprofits such as DRA regularly co-counsel with private firms to expand
20 their impact, increase litigation resources, and spread the risk of taking on precedent-
21 setting cases. Smith Decl. ¶ 28. By dividing tasks among the firms, class counsel
22 minimized duplication of effort, ensured that resources necessary for the successful
23 prosecution of this case were available throughout the litigation, and leveraged each firm's
24 relative strengths and efficiencies. Elder Decl. ¶¶ 2-21.

25 **B. Defense Choices By Uber Made This a Time Consuming Case.**

26 Much of the time incurred by Plaintiffs' counsel could have been avoided but for
27 Defendant's choices at several key junctures. First, Uber chose to rebuff Plaintiffs' initial
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1 offer to enter into settlement negotiations without the expense of litigation. Elder Decl.
2 ¶ 34. Second, Uber chose to renew its unsuccessful motion to dismiss even after Plaintiffs
3 amended their Complaint to add additional parties and allegations that would make Uber's
4 motion very unlikely to prevail. *Id.* ¶ 42. Third, Uber delayed for over 84 days on
5 exchanging settlement drafts even while the court was admonishing the parties not to delay
6 in advancing discovery towards a rapidly approaching trial date. *Id.* ¶ 60. Finally, Uber
7 declined to draft any settlement documents, relying on Plaintiffs' counsel to draft
8 settlement and class preliminary approval papers. *Id.* ¶ 53. Uber could have chosen
9 differently to avoid expenditure of the Court and Plaintiffs' counsel's time as the phases
10 listed above were escalating. Whatever the reasons behind Uber's choices, it cannot now
11 object to the reasonableness of compensating for the time it caused to be spent.

12 **C. Plaintiffs' Achieved All of Their Litigation Objectives.**

13 Plaintiffs' counsel's effort is further justified given that Plaintiffs obtained
14 everything they sought through the litigation. In Plaintiffs' opening letter, they sought a
15 number of specific policy changes from Uber:

- 16 1. Mandatory specific training, developed through collaboration with the NFB
17 of California, for all drivers concerning legal access requirements related to service dogs;
- 18 2. An accessible method within Uber's smart phone applications by which
19 blind individuals with service dogs can immediately and efficiently report instances where
20 Uber drivers refuse to transport them;
- 21 3. A specific plan to investigate each complaint of denial of service submitted
22 by blind guide dog users;
- 23 4. A specific plan to report back to complainants and the NFB of California the
24 outcome of each investigation concerning refusal to transport blind individuals with
25 service dogs, including the name of the driver under investigation and whether Uber has
26 disciplined or permanently severed relations with that driver;
- 27 5. Specific procedures that Uber will implement to discipline drivers who

1 refuse to transport service dogs;

2 6. A specific plan to monitor Uber drivers' compliance with disability access
3 laws, such as by partnering with blind individuals with service dogs who would use Uber
4 for the primary purpose of evaluating whether Uber drivers are providing service to blind
5 individuals with service dogs; and

6 7. Procedures that Uber will implement to permanently remove Uber drivers
7 who refuse on more than one occasion to transport blind individuals with service dogs.
8 Elder Decl. ¶ 31; Joint Mtn. for Preliminary Approval, Docket No. 84, at pages 8-14.

9 Plaintiffs negotiated for and secured much broader and more comprehensive relief
10 than they initially demanded after Plaintiffs identified further needed changes through their
11 ongoing investigation and settlement negotiations. Elder Decl. ¶ 55. For example,
12 Plaintiffs initially demanded relief for only blind service dog users, but the settlement will
13 benefit all service animal users nationwide. Declaration of Curtis L. Decker ¶¶ 6-15
14 (“Decker Decl.”). The settlement also requires that Uber terminate drivers on a first
15 offense where it is clear that the driver knew or should have known about the service
16 animal, Settlement Agreement, Dkt. No. 85.1, § 5-A(1), and Uber will no longer
17 automatically block pairing specific drivers and riders unless the rider requests it. *Id.* § 5-
18 B(7). Plaintiffs did not seek relief in the complaint for all service animal users, a one-
19 violation termination policy, or an end to automatic pair blocking in their initial demand,
20 yet Plaintiffs obtained this and other additional forms of relief.

21 **D. Class Counsel Have Provided Well-Documented, Detailed Records.**

22 Plaintiffs' counsel maintained contemporaneous time records showing discrete
23 entries describing each item of work performed and recorded by tenths of an hour. Elder
24 Decl. ¶ 81; Smith Decl. ¶¶ 32, 34; Bien Decl. ¶ 19. These records, supported by sworn
25 declarations, are the type of evidence relied upon by federal courts in hundreds of fees
26 decisions. *See, e.g., Perkins v. Mobile Housing Bd.*, 847 F.2d 735, 738 (11th Cir. 1988)
27 (“Sworn testimony that, in fact, it took the time claimed is evidence of considerable weight
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1 on the issue of the time required in the usual case....”). These records reflect the novel
 2 issues involved, importance of the issues presented, necessary communications with class
 3 members, risk of loss, and far-reaching implications of the case.

4 **E. Plaintiffs’ Counsel Are Entitled to Reasonable Fees for Litigating This**
 5 **Fee Application.**

6 Plaintiffs are also entitled to the fees incurred in preparing and litigating this fee
 7 motion. *Thompson v. Gomez*, 45 F.3d 1365, 1366 (9th Cir. 1995); *Serrano v. Unruh*, 32
 8 Cal. 3d 621, 644 (1982); *Graham v. DaimlerChrysler Corp.*, 34 Cal. 4th 553, 580 (2004),
 9 *as modified* (Jan. 12, 2005) (“it is well established that plaintiffs and their attorneys may
 10 recover attorney fees for fee-related matters”). Plaintiffs’ counsel have spent 242 hours to
 11 prepare this application, but have written down all but 183.7 of those hours, leaving a fees-
 12 for-fees claim of \$87,938 to prepare this application through September 9, 2016. No
 13 multiplier is sought for this fees work.

14 **F. The Rates Requested by Plaintiffs’ Counsel Are Reasonable Given**
 15 **Evidence of the Market Rate for Comparable Attorneys in the San**
 16 **Francisco Bay Area.**

17 “Reasonable fees are ... to be calculated according to the prevailing market rates in
 18 the relevant community.” *Davis v. City and Cty. of San Francisco*, 976 F.2d 1536, 1545-
 19 46 (9th Cir. 1992), *vacated in part on other grounds*, 984 F.2d 345 (9th Cir. 1993)
 20 (internal quotations omitted). The reasonableness of market rates is determined by
 21 reference to the rates of “lawyers of reasonably comparable skill, experience, and
 22 reputation” in the relevant community. *Id.* The “relevant community” is the forum district
 23 for the action in which fees are sought. *Davis v. Mason Cty.*, 927 F.2d 1473, 1488 (9th
 24 Cir. 1991), *cert. denied*, 502 U.S. 899.

25 Under both federal and state law, when a prevailing plaintiff has incurred attorney’s
 26 fees over a number of years without payment, the proper rate to use in calculating the
 27 lodestar is the current rate at the time of the award. *Perdue v Kenny A.*, 559 U.S. 542

(2010); *Graham*, 34 Cal. 4th at 583; *Blackwell*, 724 F. Supp. 2d at 1078.

DRA, TRE Legal, and RBGG are located in the San Francisco Bay Area, so the reasonableness of rates charged should be determined by reference to rates currently charged by San Francisco Bay Area attorneys with commensurate skill, experience, and reputation. Each of these firms works at the cutting edge of the law where they must establish new precedents as often as they rely on old ones. Elder Decl. ¶¶ 8, 13, 15-16; Smith Decl. ¶¶ 11, 13-14, 18-21; Bien Decl. ¶¶ 10-11, 13, 24-26. The relevant comparable marketplace analysis for civil rights fee awards looks not to the specific subject matter area, such as civil rights law or disabilities law, but rather to the levels of skill and complexity required in the litigation. *Prison Legal News v. Schwarzenegger*, 608 F.3d 446, 455 (9th Cir. 2010).

The market rates established here are presented in Table 1 below.

Table 1, Rates

Class	Name	Graduation Year	Rate
Partner/Director	Michael Bien	1980	\$900
	Laurence Paradis	1985	\$895
	Ernest Galvan	1997	\$740
Attorney	Timothy Elder	2010	\$475
	Michael Nunez	2011	\$460
	Julia Marks	2014	\$355
Paralegal	Greg Gonzalez	N/A	\$275
	Layla Oghabian	N/A	\$275
	Kyle Ruiz	N/A	\$275
	Rachel Smith	N/A	\$275

Plaintiffs have presented evidence through declarations that these rates are in line

1 with prevailing rates in the relevant marketplace. Outside declarants, Mr. Pearl and
2 Mr. Mason, attest that the requested rates are well within the range of rates for attorneys in
3 the San Francisco Bay Area of comparable skill, qualifications, reputation, and experience
4 paid hourly in non-contingent cases. Mason Decl. ¶ 12; Pearl Decl. ¶¶ 10-12. The lead
5 attorneys on the case, Michael Bien and Mary-Lee Smith, also testify that they track rates
6 as part of their regular responsibilities, and that the rates set forth here are well within the
7 range of rates prevailing in the market. Smith Decl. ¶ 36; Bien Decl. ¶ 8.

8 Mr. Pearl provides detailed evidence of law firm rates in the relevant marketplace.
9 Pearl Decl. ¶¶ 13-17, Exhs. B-F. Mr. Pearl provides his own survey of rates at Paragraphs
10 13-17 of his declaration, as well as other publicly available surveys at Exhibits B through
11 F. Mr. Pearl testifies that the rates sought here by Plaintiffs “are far *lower* than many of
12 the rates charged by the listed firms.” Pearl Decl. ¶ 15. The attorneys at the Partner/
13 Director level, Paradis, Bien and Galvan, the requested rates range from \$740 for Galvan
14 to \$900 for Bien. The rates for persons at similar experience levels in the body of the Pearl
15 Declaration range from a \$625 to \$920 for professionals at or near Galvan’s level of
16 experience, and between \$700 and \$1,175 for professionals at or near Bien’s and Paradis’s
17 level of experience. Pearl Decl. ¶¶ 13-17.

18 The rates in the Pearl Declaration for professionals at or near the level of experience
19 of Nunez and Elder range between \$400 and \$725. The rates sought here for Nunez and
20 Elder, \$460 and \$475, respectively, are at the low end of this range. For professionals
21 comparable to Marks, the rates in the Pearl Declaration range between \$325 and \$515,
22 again putting the \$355 rate sought here at the low end of the range. The paralegal rate of
23 \$275 sought here is also well within the range documented by Pearl.

24 Other fee awards support the reasonableness of these rates. DRA and RBGG have
25 regularly been awarded rates based on the rates charged by the major Bay Area law firms
26 that handle complex litigation. Smith Decl. ¶ 37, Exhibits D-H; Bien Decl. ¶ 24. Timothy
27 Elder of TRE Legal Practice has also been awarded a rate in the Northern District on par

1 with DRA and his work and qualifications are comparable to attorneys at DRA and RBGG
 2 with similar years of experience. Elder Decl. ¶ 80, Exhibit A; Smith Decl. ¶ 37; Bien
 3 Decl. ¶ 36; Pearl Decl. ¶ 12; Mason Decl. ¶ 11; Goldstein Decl. ¶ 8.

4 **III. A MULTIPLIER TO ENHANCE THE REQUESTED LODESTAR IS**
 5 **REQUIRED TO FULLY COMPENSATE PLAINTIFFS' COUNSEL**

6 The Court, in appropriate cases, may adjust the presumptively reasonable lodestar
 7 figure. *Graham*, 34 Cal. 4th at 579; *see also Perdue*, 559 U.S. at 554. When a plaintiff
 8 prevails on both federal and state claims, the court may look to California law on what
 9 factors to consider when awarding a lodestar enhancement multiplier. *Mangold v. Cal.*
 10 *Pub. Utils. Comm'n*, 67 F.3d 1470, 1478 (9th Cir. 1995); *Nat'l Fed'n of the Blind v. Target*
 11 *Corp.*, Case No. 06-01802 MHP, 2009 WL 2390261, at *6 (N.D. Cal. Aug. 3, 2009)
 12 (“When a party prevails under both federal and state law, the district court may apply the
 13 more generous provisions of state law in calculating a fee award, such as including a
 14 multiplier for contingent fee risk.”).

15 Under California law, the lodestar may be adjusted based on factors that include:
 16 “(1) the novelty and difficulty of the questions involved, (2) the skill displayed in
 17 presenting them, (3) the extent to which the nature of the litigation precluded other
 18 employment by the attorneys, (4) the contingent nature of the fee award.” *Ketchum*, 24
 19 Cal. 4th 1122, 1132. California courts often award multiplier enhancements in civil rights
 20 cases where one or more of these factors applies. *See, e.g., Target*, 2009 WL 2390261, at
 21 *9 (in action brought by class of blind persons challenging access barriers on commercial
 22 website, awarding 1.65 multiplier based on risk, skill of counsel, significance of result, and
 23 preclusion of other employment); *Lieber v. Macy's West, Inc.*, No. C 96–2955 (N.D. Cal.
 24 Dec. 18, 2000) (awarding a 1.75 multiplier based on risk and significance of relief in
 25 disability rights class action that challenged physical access barriers to retail store);
 26 *Chabner v. United of Omaha Life Ins. Co.*, No. C-95-0447 MHP, (N.D. Cal. Jul. 9, 2001)
 27 (in disability rights action challenging discrimination in provision of health insurance,

1 awarding 1.75 multiplier based on risk and preclusion of other employment); *Ctr. for*
2 *Biological Diversity v. Cty. of San Bernardino*, 185 Cal. App. 4th 866, 897 (2010)
3 (concluding in an environmental action that “[t]he 1.5 requested is not excessive ...;
4 multipliers can range from 2 to 4 or even higher”); *City of Oakland v. Oakland Raiders*,
5 203 Cal. App. 3d 78, 85–86 (1988) (affirming multiplier of 2.34 in eminent domain case).

6 As discussed below, awarding a 2.0 multiplier is appropriate here given the novel
7 and complex issues, the skill demonstrated and the exceptional results achieved, the
8 contingent nature of the fee award, and the preclusion of other employment. A 2.0
9 multiplier is well within the range of recently approved multipliers. *See, e.g., Laffite v.*
10 *Robert Half Int’l, Inc.*, 1 Cal. 5th 480 (2016) (affirming 2.13 multiplier in common fund
11 lodestar check in wage-and-hour class action); *Rodriguez v. Cty. of Los Angeles*, 96 F.
12 Supp. 3d 1012, 1025-26 (C.D. Cal. 2014) (applying *Mangold* in mixed federal-state law
13 case and awarding 2.0 multiplier based on risk and difficulty of case and counsel’s skill);
14 *In re High-Tech Employee Antitrust Litigation*, No. 11–CV–02509–LHK (N.D. Cal.
15 Sept. 2, 2015) (2.2 multiplier appropriate in common fund antitrust case against tech
16 companies); *Rose v. Bank of America Corp.*, Case No. 5:11-CV-02390 & 5:12-CV-04009-
17 EJD (N.D. Cal. Aug. 29, 2014) (2.59 multiplier granted in class action case under
18 Telecommunications Privacy Act); *Beckman v. KeyBank N.A.*, 293 F.R.D. 467, 482
19 (S.D.N.Y. 2013) (lodestar cross-check multiplier of 6.3 “near the higher end of the range
20 ... allowed” but appropriate in common fund case that achieved early settlement that was
21 substantial in FLSA case); *Buccellato v. AT&T Operations, Inc.*, No. C10–00463–LHK,
22 2011 WL 3348055, at *2 (N.D. Cal. June 30, 2011) (4.3 multiplier reasonable in FLSA
23 case that obtained “excellent and quick results”); *Tavares v. S-L Distribution Co., Inc.*,
24 No. 1:13-cv-1313, 2016 WL 1743268 (M.D. Penn. May 2, 2016) (lodestar multiplier check
25 supported by 2.29 multiplier in employee misclassification common fund case).

1 **A. The Novelty and Difficulty of This Case of First Impression Warrants a**
 2 **Multiplier.**

3 This case raised novel and complex legal issues. When Plaintiffs filed this case, no
 4 court had addressed whether the ADA or California disability laws applied to a
 5 “ridesharing” business like Uber leveraging independent contractors driving their own
 6 vehicles. Elder Decl. ¶ 42; Smith Decl., ¶ 5; Bien Decl. ¶ 30; Goldstein Decl. ¶¶ 16-18.
 7 The case also raised issues of first impression within the Ninth Circuit concerning
 8 standing: whether NFB-CA had associational standing where some members had agreed
 9 to arbitrate claims, and whether learning of discrimination experienced by similarly
 10 situated persons with disabilities was adequate notice for deterrence standing. Elder Decl.
 11 ¶ 42; Goldstein Decl. ¶¶ 17-18. Further underscoring the novelty and importance of this
 12 case, the U.S. Department of Justice filed a Statement of Interest addressing the
 13 applicability of ADA private transportation provider requirements. *See* Docket No. 29.

14 This Court has acknowledged the great significance of this lawsuit. Order Granting
 15 Mtn. to Am. Compl., Conditionally Certify Class, and Preliminary Approval of Class
 16 Action, Dkt. No. 112 (describing this as a “complex case” touching on “cutting-edge
 17 questions at the intersection of the sharing economy, equal access, and constitutional law”
 18 and raising “novel legal issues.”).

19 **B. The Quality of the Skill Displayed and the Extraordinary Results**
 20 **Warrant a Multiplier.**

21 Plaintiffs’ Counsel secured the best possible results. The settlement
 22 comprehensively addresses every aspect of Uber’s relationship with drivers and riders to
 23 ensure that riders with service animals receive consistent and reliable access to Uber
 24 transportation. Elder Decl. ¶ 55; Adams Decl. ¶¶ 10-15; Decker Decl. ¶¶ 10-15; Goldstein
 25 Decl. ¶¶ 11-15. It will govern Uber’s relationship with, and shape the behavior of,
 26 hundreds of thousands of drivers while accounting for their status as independent
 27 contractors. The settlement can even adapt as Uber’s services evolve, ensuring its

1 continued effectiveness. Goldstein Decl. ¶ 15; Decker Decl. ¶ 15; Adams Decl. ¶ 15. It
2 will improve access for thousands of blind class members, many of whom must arbitrate
3 claims and were thus unable to pursue such systemic relief. Such a significant result took
4 skill and commitment to the public interest by Plaintiffs' counsel.

5 Plaintiffs' counsel also obtained relief for thousands of people with disabilities
6 beyond the class. The relief obtained here is calibrated to ensure that every person with a
7 service animal nationwide will receive reliable access to the nation's largest door-to-door
8 transportation service. Adams Decl. ¶ 14; Goldstein Decl. ¶ 11; Decker Decl. ¶ 12. Most
9 policy changes adopted by the settlement are generally applicable to any person using a
10 service animal whether or not they are class members. Elder Decl. ¶ 55. This result
11 benefits people with disabilities while promoting judicial economy.

12 Plaintiffs achieved this outstanding relief only after securing a published order
13 favorably addressing several issues of first impression in this circuit and nationwide. It
14 construed the ADA's public accommodations provisions as applicable to "ride-sharing"
15 services, held associational standing is available even where some members must arbitrate
16 claims, and broadly construed deterrence standing for plaintiffs asserting federal and
17 California disability access claims. The decision represents the first time that a court has
18 addressed applicability of the ADA's public accommodations provisions to a "ride-
19 sharing" business specifically, or to the sharing economy more generally. Goldstein Decl.
20 ¶ 16. The decision opens the door to further challenges to disability discrimination in the
21 sharing economy and as other businesses move to condition use of services on agreements
22 to arbitrate claims. *Id.* ¶¶ 17-19.

23 **C. The Preclusion of Other Employment Warrants a Fee Multiplier.**

24 A multiplier is also appropriate here to account for lost employment opportunities.
25 The abbreviated pretrial schedule and the complex settlement negotiations here forced
26 counsel to devote substantial time and resources to this case at the expense of taking on
27 additional work. Elder Decl. ¶ 76-77; Smith Decl. ¶ 15; Bien Decl. ¶ 28. These demands

1 significantly diminished the time Plaintiffs’ counsel could have devoted to work for fee-
2 paying clients or other less risky contingent cases. *Id.*

3 **D. The Contingent Risk of the Recovery Warrants a Multiplier.**

4 Multipliers are awarded based in part on the contingent nature of the fee award. “A
5 contingent fee must be higher than a fee for the same legal services paid as they are
6 performed. The contingent fee compensates the lawyer not only for the legal services he
7 renders but for the loan of those services.” *Ketchum*, 24 Cal. 4th at 1132-33, (citations
8 omitted). Where cases concern enforcement of important federal rights, “but little or no
9 damages, such fee enhancements may make such cases economically feasible to competent
10 private attorneys.” *Id.* at 1133.

11 Here, Plaintiffs’ counsel devoted substantial resources to litigating and settling this
12 case, despite facing considerable contingency risk, further demonstrating that a multiplier
13 is appropriate. Elder Decl. ¶¶ 4, 76-77; Goldstein Decl. ¶¶ 16-18. Plaintiffs faced a real
14 risk that they would not prevail. When they filed suit, no court had addressed whether a
15 service like Uber was subject to federal and California disability access laws, and Plaintiffs
16 faced adverse extra-circuit precedent concerning associational standing. Goldstein Decl.
17 ¶¶ 16-18. In addition, as a multi-billion dollar company, Uber’s resources to aggressively
18 litigate dwarfed those of Plaintiffs.

19 **E. Even if the Multiplier Were Governed by Federal Law, A Multiplier
20 Would Still Be Necessary in this Case.**

21 In 2010, the United States Supreme Court dispelled almost two decades of doubt
22 regarding the availability of multipliers under federal law. *See Perdue*, 559 U.S. at 553-54
23 (holding that multipliers remain available under federal law “in those rare circumstances in
24 which the lodestar does not adequately take into account a factor that may properly be
25 considered in determining a reasonable fee.”). A multiplier remains available where
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1 necessary to achieve the objective of federal fee-shifting law to ensure that civil rights
 2 litigants can attract competent counsel.³ *Id.* at 554. Counsel contemplating complex
 3 engagements such as this one cannot undertake them without some reasonable expectation
 4 of additional compensation beyond market rates in the event of success; and Plaintiffs
 5 would be unable to find quality counsel without the hope of this enhanced compensation.
 6 *Bien Decl.* ¶ 29; *Elder Decl.* ¶ 76.

7 **IV. PLAINTIFFS' COUNSEL IS ENTITLED TO RECOVER EXPENSES**

8 Prevailing federal litigants are entitled to recover statutory costs under 28 U.S.C.
 9 § 1920, and all “out-of-pocket expenses that would normally be charged to a fee paying
 10 client.” *Harris v. Marhoefer*, 24 F.3d 16, 19 (9th Cir. 1994) (internal quotation marks and
 11 citations omitted); *Woods v. Carey*, 722 F.3d 1177, 1180, n.1 (9th Cir. 2013). The
 12 requested costs in ADA cases properly include expert witness fees. *Lovell v. Chandler*,
 13 303 F.3d 1039, 1058-59 (9th Cir. 2002).

14 Plaintiffs requested expenses are properly recoverable. The cost of retaining an
 15 expert witness was reasonable given the dual track towards trial and settlement and
 16 abbreviated discovery schedule. *Smith Decl.* ¶ 42, Exh. I. All other expenses are
 17 recoverable statutory costs and ordinary out-of-pocket expenses, such as legal research,
 18 travel, and copying. *Elder Decl.*, Exh. I. The expenses sought amount to \$13,447.14.

19 **V. POST-JUDGMENT INTEREST RUNS FROM THE DATE OF ENTITLEMENT TO A FEES AWARD.**

20 Fees and expenses awards receive post-judgment interest from the date the court
 21 determines entitlement to fees, even when the amount is not yet determined. *Friend v.*
 22 *Kolodziejczak*, 72 F.3d 1386 (9th Cir. 1995). Entitlement to a fees award was determined
 23 on July 13, 2016, when the Court granted preliminary approval of the settlement.
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25 ³ The Court here need not rely on federal law for determining a multiplier because the
 26 California law factors are sufficient to support the enhanced lodestar request. *See Target*,
 27 2009 WL 2390261, at *6.

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CONCLUSION

For the foregoing reasons, Plaintiffs’ Counsel respectfully requests that the Court enter an award prevailing party fees and costs for work performed through September 9, 2016 in the following amounts, plus interest running from July 13, 2016:

Category	Amount
Merits Lodestar, Hours x Rates	\$1,589,574
2.0 Multiplier Enhancement	\$1,589,574
Expenses	\$13,447.14
Fees-Related Lodestar	\$87,938
TOTAL	\$3,280,533.14

DATED: September 19, 2016

Respectfully submitted,

ROSEN BIEN GALVAN & GRUNFELD LLP

By: /s/Michael W. Bien
Michael W. Bien

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