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15 Attorneys for Plaintiffs

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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,

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v.

25

UBER TECHNOLOGIES, INC.,

26

Defendant.

27

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

**DECLARATION OF TIMOTHY R.  
ELDER 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

28

Trial Date: None Set

1 I, Timothy R. Elder, hereby declare:

2 1. I am an attorney at law licensed and duly admitted to practice before all the  
3 courts of the States of California and Maryland, all U.S. District Courts in those states and  
4 the Eighth Circuit Court of Appeals. I am the Principal Attorney of TRE Legal Practice,  
5 one of the three firms listed as counsel of record on this case. I worked continuously on  
6 every phase of this case since it began and shared responsibility for making all major  
7 decisions along with co-counsel. If called as a witness I could and would competently  
8 testify to the following based upon personal knowledge. I make this declaration in support  
9 of Plaintiffs' Motion For Fees and Costs.

10 **Plaintiffs' Counsel Have Extensive Experience In Disability Access Class Action**  
11 **Litigation and the Work Distribution Was Reasonable and Necessary**

12 2. The combined resources and experience of Disability Rights Advocates  
13 ("DRA"), TRE Legal Practice ("TRE Legal") and Rosen Bien Galvan & Grunfeld LLP  
14 ("RBGG") (collectively, "Plaintiffs' Counsel") produced the synergistic capacity to  
15 prosecute this case and to properly represent the plaintiff class. Each firm committed  
16 needed resources and unique strengths to reach the remarkably comprehensive settlement  
17 terms. Combined, the three firms representing Plaintiffs' Counsel brought an  
18 extraordinary amount of experience and expertise in impact litigation on behalf of classes  
19 of people with disabilities. *See also* Declarations of Mary-Lee Kimber Smith and Michael  
20 Bien in Support of Plaintiffs Motion for Attorneys' Fees and Expenses, filed herewith, and  
21 Declaration of Laurence Paradis in support of Joint Motion for Preliminary Approval of  
22 Class Settlement and Related Motions, Dkt. No. 85.

23 3. Plaintiffs' Counsel are nationally recognized for their excellence in civil  
24 rights, disability law and complex class action litigation. The combined connections of  
25 each firm to the members of the blindness community and the notable organizations of  
26 blind people ensured that the broadest interest of the community was represented and that  
27 the litigation was based upon full participation of actual class members at each stage of the  
28 case.

1           4.       As the principal attorney at TRE Legal, I shared responsibility for this case  
2 with DRA through the entirety of the litigation and with RBGG once it entered its  
3 appearance. I was responsible alongside lead co-counsel Laurence Paradis of DRA and  
4 Michael Bien of RBGG for all major litigation decisions made by the larger Plaintiffs'  
5 Counsel team. Collectively, we decided upon staffing levels as appropriate for each phase  
6 of the litigation based on several factors. We assigned tasks to specific attorneys based on  
7 their skills and experience. To illustrate, client and witness communications involving the  
8 National Federation of the Blind ("NFB") and its key members were handled by TRE  
9 Legal; tasks involving our trial expert were handled by DRA; and development of the  
10 settlement compliance monitoring provisions and assistance with drafting briefs, discovery  
11 and other settlement documents were handled by RBGG. Such tasking enabled Plaintiffs'  
12 Counsel to take advantage of each firm's unique strengths. This resulted in greater  
13 efficiencies and the benefits of lessons learned and previous work product. Again, by way  
14 of example, TRE Legal provided greater efficiency when communicating with clients and  
15 portions of the class because of its previous relationship as regular counsel to NFB; DRA  
16 brought its extensive history of working with experts in ADA Title III policy cases; and  
17 RBGG brought an insightful understanding of compliance monitoring during class  
18 settlement negotiations because of its experience with monitoring complex prison reform  
19 settlements. Whenever possible, this same sort of tasking based on specialty and  
20 experience was used to efficiently divide up work assignments.

21           5.       Tasks were also delegated when factoring for the hourly rate of available  
22 timekeepers. For example, time-consuming tasks involving the drafting of discovery  
23 requests were often assigned to Julia Marks of Disability Rights Advocates as the most  
24 junior qualified timekeeper and then carried over to Michael Nunez, the next lowest cost  
25 timekeeper as Ms. Marks's schedule made her unavailable or as demands dictated.

26           6.       To further illustrate efficient delegation of tasks, this case resulted in an  
27 unusually high number of intakes that needed review. Once news of the litigation spread  
28 through national news media and the membership networks of NFB, our offices combined



1 Mr. Paradis and DRA have achieved over the last several decades. A list enumerating  
 2 these accomplishments is more fully outlined in the Declaration of Mary-Lee Kimber  
 3 Smith in Support of Plaintiffs' Motion for Attorneys' Fees and Expenses, filed herewith,  
 4 and the Declaration of Laurence Paradis in Support of Joint Motion for Preliminary  
 5 Approval of Class Settlement and Related Motions, Dkt. No. 85.

6 9. From the beginning of this case, Mr. Paradis primarily provided the lead  
 7 supervisory role. As reflected by the table below, Mr. Paradis kept his hours to a  
 8 reasonably small percentage of the total time for each stage of the case as compared to the  
 9 less senior litigators, Ms. Marks, Mr. Nunez and Mr. Elder.

<b>Phase of Litigation</b>	<b>Percentage of Total Claimed Hours Incurred by Mr. Paradis</b>
1. Initial Investigation and Case Development	17.9%
2. Pre-litigation Negotiations	36.6%
3. Complaint and FAC	9.4%
4. Pleading Litigation	11.0%
5. Settlement Negotiations	20.5%
6. Preparation for Trial	16.7%
7. Approval of Settlement	17.4%
8. Fee Petition	0.0%

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 21 10. NFB regularly partnered with DRA through Mr. Paradis's leadership on  
 22 important issues of first impression. The application of disability access laws to the  
 23 innovative business model of Uber Technologies, which represents a more general shift to  
 24 the so-called "sharing economy," is one such important issue of first impression. Blind  
 25 people can greatly benefit from technology-based services because digital technology often  
 26 can empower a blind person to independently enjoy and use the service through the use of  
 27 assistive technology such as screen readers and refreshable Braille devices that pair with a  
 28 mobile device. Because of the potential gains that technology-based services represent for

1 blind people, it was critical that Uber, and the technology-enhanced transportation services  
 2 that it provides, be accessible to blind riders with service animals. Such a service, if  
 3 accessible, would represent a significant improvement to the traditional taxi services and  
 4 other forms of transportation where information about the trip and the transaction has not  
 5 yet been digitized in a way that provides independent access to information for blind  
 6 people. With Uber, blind people have access to all the details of their trip via their  
 7 accessible mobile devices. This is not so in a traditional taxi service where information is  
 8 communicated through paper receipts or physical signage and emblems.

9 11. DRA's proven track record on such important issues and its demonstrated  
 10 commitment to the values of NFB made DRA an indispensable part of the Plaintiffs'  
 11 Counsel team. In addition, DRA's employment of Michael Nunez, a blind attorney, made  
 12 it desirable for NFB to partner with DRA, which has typically employed at least one  
 13 exceptional blind attorney to work on its cases affecting the blind.

14 12. At the inception of this case, claims were limited to individual plaintiffs  
 15 within California and included only the California affiliate of NFB. At that time, only  
 16 DRA and TRE Legal were representing the then-existing Plaintiffs. DRA was important  
 17 because it had the ability to advance a disproportionate 75% share of all costs in  
 18 comparison to the smaller firm of TRE Legal and had the additional staff that would be  
 19 required if the matter were to be litigated in federal court.

#### 20 **TRE Legal Practice**

21 13. As the founder of TRE Legal Practice, a large part of my career has been  
 22 dedicated to complex, high-risk, impact litigation and class actions in federal courts  
 23 throughout the United States, usually involving novel issues around access for blind and  
 24 otherwise disabled people. I have been co-lead or trial counsel in several major cases  
 25 including, among others: *Faraj v. Marriott Int'l, Inc.*, 13-cv-00300 BEN-KSC (S.D. Cal.)  
 26 (employment class action on behalf of blind call center workers regarding inaccessible  
 27 software); *Reazuddin v. Montgomery Cnty, Maryland*, 11-cv-00951 DKC (D. Md. ) (nine-  
 28 day jury trial for employment discrimination based on inaccessible government call center

1 software ultimately finding in favor of my blind client); and numerous other matters  
2 across the nation that advance the rights of blind and disabled persons to integrate into  
3 society through the use of accessible technology.

4 14. Upon graduating magna cum laude from the University of California  
5 Hastings College of the Law in 2010, I was associated at the law firm of Brown, Goldstein  
6 & Levy, LLP (“BGL”), where I worked exclusively on complex disability rights cases.  
7 While at BGL, I litigated alongside my present co-counsel in this matter, Disability Rights  
8 Advocates, including *Enyart v. Nat’l Conf. of Bar Examiners, Inc.*, 630 F.3d 1153 (9th Cir.  
9 2011) (holding that blind examinees may take standardized tests using assistive technology  
10 as opposed to human readers).

11 15. I left BGL in 2011 to establish my own specialty firm, TRE Legal Practice,  
12 which is presently located in the San Francisco Bay Area. TRE Legal specializes in issues  
13 related to the intersection of technology and disability access and most legal matters  
14 affecting blind persons. Even after founding TRE Legal Practice I continued to co-counsel  
15 alongside DRA on complex disability rights cases, including *Nat’l Fed. of the Blind v.*  
16 *RideCharge, Inc.*, 14-cv-2490 JFW (C.D. Cal.) (challenging access to touchscreen  
17 payment systems), which resulted in the development of accessible touchscreen payment  
18 systems for blind taxi riders via a private settlement.

19 16. Prior to working with DRA on the present Uber matter, I had successfully  
20 negotiated accessibility agreements with other popular business establishments that were  
21 relying upon a mobile app to deliver services, including agreements with Square (mobile  
22 payments) and SideCar (ridesharing service based in San Francisco that competed with  
23 Uber and Lyft). The agreement with SideCar is available at  
24 [http://www.trelegal.com/posts/sidecar-ridesharing-service-commits-to-mobile-app-](http://www.trelegal.com/posts/sidecar-ridesharing-service-commits-to-mobile-app-accessibility-for-the-blind/)  
25 [accessibility-for-the-blind/](http://www.trelegal.com/posts/sidecar-ridesharing-service-commits-to-mobile-app-accessibility-for-the-blind/).

26 17. TRE Legal played an important role in the prosecution of this case because  
27 of its relationship to the National Federation of the Blind. NFB is a national membership  
28 organization of over 50,000 people throughout the United States. The elected leadership

1 of NFB is blind. The organization is regularly recognized as the leading representative on  
2 issues affecting blind people by the U.S. Congress, every level of government, the courts  
3 and private industry. TRE Legal is one of a handful of firms that serve as external counsel  
4 to the National Federation of the Blind in important civil rights cases throughout the  
5 nation. In that role TRE Legal regularly co-counsels with an elite network of firms across  
6 the United States known for quality disability rights work, including the San Francisco Bay  
7 Area firms of Legal Aid Society Employment Law Center, Disability Rights Advocates,  
8 and Rosen Bien Galvan & Grunfeld.

9       18. As counsel to the National Federation of the Blind, I have extensive  
10 knowledge of the structure and politics of the organization, including its hierarchy of  
11 leadership and various media channels. I regularly work within the broad network of the  
12 National Federation of the Blind to advance advocacy efforts that require grassroots  
13 participation and input from a large number of blind people. I regularly find that even  
14 when an access barrier exists and blind people are encountering it, there are large numbers  
15 of blind people in the network who do not affirmatively report their experiences to outside  
16 attorneys. Often, empathetically asking groups in the network about their experiences is  
17 required to determine the true scope of a problem or the extent that discrimination may be  
18 affecting people. Further, for a technology-based case such as this one, social media  
19 played a critical role where many of the affected individuals were only publically reporting  
20 denials on Facebook and Twitter without reaching out to any particular firm or entity. This  
21 required me to engage the existing social media channels for both the formal and informal  
22 networking centers within NFB. These channels were used at every phase of the litigation  
23 whether it was investigating the experiences of denials or ensuring class notice and  
24 answering questions about the settlement.

25       19. Plaintiffs' Counsel depended on TRE Legal's relationship and experience  
26 with NFB and its network of membership when initially deciding on a co-counseling team.  
27 I used my relationship and knowledge of NFB's networks at all phases of this case to  
28 ensure a final result that reflected meaningful participation from the blind community.

**Rosen Bien Galvan & Grunfeld LLP**

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2           20.     On April 10, 2015, attorney Michael Nunez resigned from DRA to accept an  
3 associate attorney position at the firm of Rosen Bien Galvan & Grunfeld. Shortly  
4 thereafter, I learned that DRA attorney Aaron Zisser, who was providing back-up support,  
5 would be leaving DRA soon. I discussed the consequences of these departures with  
6 Laurence Paradis from DRA. Mr. Paradis and I agreed that it would not be efficient to  
7 replace Mr. Nunez with another DRA attorney of similar skill who lacked any  
8 understanding of the case background. At that time, Plaintiffs' Counsel had prevailed over  
9 Uber's Motion to Dismiss. We anticipated that the discovery and preparation required to  
10 take this case to trial would require additional staffing given the DRA staff departures.  
11 Mr. Paradis and I agreed that it would be most efficient to keep Mr. Nunez on the  
12 Plaintiffs' Counsel team given his intimate understanding of the case and service animal  
13 issues.

14           21.     Further, Mr. Paradis and I agreed that the nationally renowned experience of  
15 RBGG managing partner, Michael Bien, would be advantageous as we pursued parallel  
16 tracks for trial preparation and settlement. We were concerned about the increasing  
17 complexity of the case given Uber's unfolding litigation with its drivers, *O'Connor v.*  
18 *Uber Technologies Inc.*, Case No. 13-cv-03826 EMC (alleging Uber drivers are  
19 employees). Mr. Bien has unmatched experience with complex trial litigation involving  
20 people with disabilities and complicated issues of remedial policy. *See also* Declaration of  
21 Michael Bien in Support of Plaintiffs Motion for Attorneys' Fees and Expenses, filed  
22 herewith. We believed Mr. Bien would be needed as the litigation moved forward.  
23 Mr. Bien provided a primarily advisory role to our team and supervised less experienced  
24 attorneys. As reflected by the table below, Mr. Bien kept his hours to a reasonably small  
25 percentage of the total time for the relevant stages of the case.

Phase of Litigation	% of Total Claimed Phase Hours Incurred by Mr. Bien
5. Settlement Negotiations	9.3%
6. Preparation for Trial	4.0%
7. Approval of Settlement	8.8%
8. Fee Petition	0.0%

### General Case Background And Work Through Final Approval

22. As fully explained below, this case can be described in eight distinct phases, a few of which overlap in time. Those phases are as follows:

- (1) Initial Investigation and Case Development: April 1, 2014 – September 8, 2014, involved speaking with intakes as we investigated the scope of the problem, researching facts about Uber, its business model and terms of service, identifying appropriate plaintiffs, selecting claims, and drafting the complaint.
- (2) Pre-litigation Negotiations: Jun 3, 2014 – August 8, 2014, involved sending a demand letter to Uber and meeting with Uber to discuss structured negotiations as an alternative to litigation.
- (3) Complaint and FAC: September 9, 2014 – November 12, 2014, involved filing the initial complaint, reacting to Uber’s responsive pleading and filing an amended complaint.
- (4) Pleading Litigation: November 13, 2014 – April 17, 2015, involved researching and briefing an opposition to Uber’s Motion to Dismiss and arguing at the motion hearing.

1 (5) Settlement Negotiations: April 18, 2015 – April 29, 2016, involved a labor-  
2 intensive and prolonged process of complying with the Northern District’s  
3 General Order 56 procedures, engaging in a JAMS mediation, drafting  
4 various drafts of a settlement agreement, negotiating with Uber over various  
5 points, shifting course after the parties agreed to pursue a nationwide class  
6 settlement, redrafting various terms, specifying addendum to the settlement  
7 agreement, and drafting all the preliminary approval papers, declarations and  
8 class notice.

9 (6) Preparation for Trial: April 18, 2015 – April 29, 2016, involved extensive  
10 work producing written discovery, meeting and conferring with Uber while  
11 settlement negotiations were pending, engaging an expert witness in  
12 industrial relations, and generally preparing the case for an aggressive trial  
13 schedule.

14 (7) Approval of Settlement: April 30, 2016 – September 9, 2016, involved  
15 preparing for and attending the preliminary approval hearing, complying  
16 with the Court’s notice orders and responding to questions from the class.

17 (8) Fee Petition: July 20, 2016 – September 9, 2016, involved reviewing over  
18 5000 time records, exerting billing judgment discounts, composing  
19 supporting declarations, negotiating with Uber and briefing the instant  
20 motion.

21 23. The intensity of the work in each phase above fluctuated, but there was a  
22 steady demand of work through each phase of the case. The average number of  
23 professional hours per week that were required for each phase up through September 9,  
24 2016 are indicated in the following table below.

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Duration Weeks	Average Hours Per Week	Litigation Phase
23	12	1. Investigation and Case Development
9	4	2. Pre-litigation Negotiations
9	30	3. Complaint and First Amended Complaint
22	29	4. Pleadings Litigation
54	18	5. Settlement Negotiations
54	17	6. Trial Preparation
19	17	7. Settlement Approval Process
7	32	8. Fees and Costs Application

**PHASE 1: Plaintiffs' Counsel Extensively Investigate Uber's Business Model and Discriminatory Practices Before Filing the Complaint**

24. In early April 2014, I spoke with Michael Nunez and his supervisor at the time, Laurence Paradis. We spoke about complaints that DRA had received from blind riders who were alleging that they were being denied service from certain Uber drivers. At that time I was already investigating the accessibility of Uber's mobile app for blind riders who were experiencing difficulties using the app with screen reader software. When I researched the service animal issue in response to my conversation with Laurence Paradis and Michael Nunez, I discovered that an alarmingly large number of NFB members appeared to be having problems with denials based on the presence of their guide dogs. Worse yet, as Uber had been growing in popularity, the number of complaints on social media and community email lists appeared to be increasing. Because the service animal issue seemed to be of most urgent concern, I refocused my investigation of Uber to the precise issue of access for riders with service animals.

25. DRA and I then worked to formalize our investigation and to perform outreach to the blindness community through the NFB. We hoped to gain a more precise understanding of the scope of the problem. We circulated an announcement of our

1 investigation and received an extremely strong response of intakes. It became clear that  
2 many people with service animals were having difficulty with drivers refusing to provide  
3 service. Often, the drivers were blatantly informing passengers that they did not have any  
4 obligation to allow animals in their personal vehicles.

5         26. At this point, Plaintiffs' Counsel also needed to thoroughly investigate  
6 Uber's business model and the enforceability of its user terms and conditions with respect  
7 to compelling claims in arbitration. We believed Uber was going to assert such a defense.  
8 This investigation required us to identify those riders that were not bound by arbitration  
9 and research and select those claims and legal theories that were most likely to prevail in  
10 spite of Uber's anticipated defenses.

11         27. Plaintiffs' Counsel also needed to interview various individuals from our  
12 intakes to determine who would best represent the NFB and the community at large given  
13 our factual allegations. Because this case was a matter of first impression and Uber was  
14 becoming an important source of transportation for blind travelers, it was critical that our  
15 eventual plaintiffs be able to articulately convey their experiences to a fact finder in a  
16 compelling manner. Any trial verdict would set the tone for many other sharing economy  
17 businesses and all the other ridesharing services. We anticipated that the case was very  
18 likely to go to trial given the uncertainty of the legal claims and Uber's then reputation for  
19 resisting regulation under traditional legal frameworks. I personally spoke with several  
20 members of the NFB and some on our intake list who presented relevant facts. Michael  
21 Nunez also communicated with several of our intakes as we determined who our lead  
22 plaintiffs should be. We also developed protocols for paralegals to receive intakes and  
23 follow up with attorney contacts. We developed a documentation system and a common  
24 shared database between TRE Legal and DRA to efficiently streamline the large number of  
25 intakes we were receiving.

26         28. As part of the intake process, Plaintiffs' Counsel needed to review significant  
27 amounts of email correspondence between blind riders and Uber customer support staff.  
28 We began cataloguing these responses from Uber, looking for patterns, trying to determine

1 which customer support responses were reflective of Uber's policies and which might be  
2 anomalous because of insufficient training for customer service staff.

3 29. Our investigation overlapped with our efforts to persuade Uber to resolve the  
4 dispute without litigation. The investigation continued up until the time we drafted and  
5 eventually filed our complaint on September 9, 2014. Whenever possible, factual research  
6 was performed by DRA's paralegal, Rachel Smith. With respect to legal research,  
7 Plaintiffs' Counsel needed to research the legal bases for Plaintiffs' claims and prepare the  
8 Complaint so that it would be ready to file in the event Defendants were unwilling to reach  
9 an agreement regarding a structured framework for resolving Plaintiffs' claims.

10 30. The professional hours claimed for work completed in phase 1 are contained  
11 in the table below and exclude time keepers whose time has been entirely removed under  
12 billing judgment reductions:

13 **Table 1, Phase 1**

<b>Initial Investigation and Case Development</b>		<b>Start</b>	<b>End</b>
		<b>4/1/14</b>	<b>9/8/14</b>
<b>Class</b>	<b>Name</b>	<b>Actual Hours</b>	<b>After Billing Judgment</b>
Partner/Director	Paradis, Larry	45.9	45.9
Attorney	Elder, Timothy	71.7	69.6
	Nunez, Michael	111.3	103.9
Paralegal	Smith, Rachel	50.3	37.5
<b>Total</b>		<b>279.2</b>	<b>256.9</b>

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23 **PHASE 2: Plaintiffs' Counsel Try to Resolve the Dispute Without Litigation**

24 31. In the midst of Plaintiffs' Counsel's phase 1 investigation, we determined  
25 that we had a sufficient basis to communicate the legal and factual issues to Uber in hopes  
26 of resolving our concerns without litigation. Plaintiffs' Counsel sent Uber a demand letter  
27 on June 3, 2014. The letter described the Plaintiffs and a summary of their experiences.  
28

1 Attached as Exhibit C is a true and correct copy of that letter. In the letter, Plaintiffs set  
2 out a legal analysis of the federal and state claims. We also enumerated a list of needed  
3 policy changes and requested a specific proposal to resolve the identified policy  
4 deficiencies by July 8, 2014. Specifically, Plaintiffs' Counsel sought the following:

- 5 • A plan to adopt and enforce policies and procedures that would minimize  
6 discrimination against blind individuals with service animals, including the  
7 following:
- 8 • Mandatory specific training, developed through collaboration with the NFB  
9 of California, for all drivers concerning legal access requirements related to  
10 service dogs;
- 11 • An accessible method within Uber's smart phone applications by which  
12 blind individuals with service dogs can immediately and efficiently report  
13 instances where Uber drivers refuse to transport them;
- 14 • A specific plan to investigate each complaint of denial of service submitted  
15 by blind guide dog users;
- 16 • A specific plan to report back to complainants and the NFB of California the  
17 outcome of each investigation concerning refusal to transport blind  
18 individuals with service dogs, including the name of the driver under  
19 investigation and whether Uber has disciplined or permanently severed  
20 relations with that driver;
- 21 • Specific procedures that Uber will implement to discipline drivers who  
22 refuse to transport service dogs;
- 23 • A specific plan to monitor Uber drivers' compliance with disability access  
24 laws, such as by partnering with blind individuals with service dogs who  
25 would use Uber for the primary purpose of evaluating whether Uber drivers  
26 are providing service to blind individuals with service dogs;
- 27 • Specific procedures that Uber will implement to permanently remove Uber  
28 drivers who refuse on more than one occasion to transport blind individuals

1 with service dogs; and

- 2 • A specific and reasonable timeline for adopting the procedures outlined  
3 above.

4 32. Plaintiffs' Counsel did not receive any such proposal for policy changes by  
5 July 8, 2014.

6 33. Plaintiffs' Counsel met with Uber in July 2014 to talk about alternatives to  
7 litigation. At that meeting, Plaintiffs' Counsel proposed that the parties enter into  
8 structured negotiations as an alternative to litigation. Structured negotiations refers to a  
9 process by which the parties enter into a private contract to toll statutes of limitations, to  
10 bind the parties from filing suit during the negotiation period, and to agree to the  
11 entitlement to reasonable attorney fees if an actual change in policy is reached as a result  
12 of the negotiations. The benefit of structured negotiations can be that the parties' attorneys  
13 spend more time collaborating over a remedy rather than spending immense resources on  
14 the time-consuming procedures of formal discovery, motions practice and trial in addition  
15 to all the work required to negotiate a settlement. If structured negotiations are successful,  
16 a settlement agreement involving policy and practice changes is reached with far less  
17 attorney time on both sides.

18 34. Plaintiffs' Counsel received a letter from Uber dated August 8, 2014 that  
19 declined our offer to enter into a structured negotiations process.

20 35. The professional hours claimed for work completed in phase 2 are contained  
21 in the table below and exclude time keepers whose time has been entirely removed under  
22 billing judgment reductions:

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**Table 2, Phase 2**

Pre-litigation Negotiations		Start	End
		6/3/14	8/8/14
Class	Name	Actual Hours	After Billing Judgment
Partner/Director	Paradis, Larry	10.5	10.5
Attorney	Elder, Timothy	10.5	10.5
	Nunez, Michael	7.7	7.7
<b>Total</b>		28.7	28.7

**PHASE 3: Plaintiffs’ Counsel File and Amend the Complaint**

36. On September 9, 2014, Plaintiffs’ Counsel filed the initial Complaint against Uber on behalf of the California affiliate of the National Federation of the Blind and one of its individual members, Michael Hingson. *See* Complaint, Dkt. No. 1. The Complaint alleged that Uber was denying equal access to riders with service animals under the theories that it operates as a public accommodation and provides transportation service under Title III of the Americans with Disabilities Act, 42 U.S.C. §§ 12182 & 12184. Plaintiffs likewise alleged that Uber had violated the California Unruh Civil Rights Act, Cal. Civ. Code §§ 51 & 52, and the California Disabled Persons Act, Cal. Civ. Code §§ 54-54.3. In addition, Plaintiffs identified over seven other individuals who, like Plaintiffs, were experiencing multiple denials by Uber drivers. The Complaint sought five core policy changes:

- (1) Provide an accessible method for blind individuals with service dogs to immediately and efficiently report instances where Uber drivers refuse to transport them on the basis of disability;
- (2) Establish a procedure for quickly investigating complaints and informing such blind persons of the outcome of their complaints;

- 1 (3) Provide mandatory periodic training to Uber drivers concerning legal access
- 2 requirements applicable to service animals and explain to drivers the
- 3 consequences for failing to comply with these legal obligations;
- 4 (4) Meaningfully discipline drivers who deny access to blind riders with service
- 5 animals and permanently terminate drivers who violate service animal
- 6 policies on more than one occasion; and
- 7 (5) Randomly deploy blind testers who use guide dogs to proactively identify–
- 8 for retraining or termination–drivers who refuse to transport individuals with
- 9 disabilities because of the presence of their service animals.

10 37. Plaintiffs' Counsel arranged for a related press release and media coverage of

11 the initial filing of the Complaint. Media coverage was important to our case. Plaintiffs'

12 Counsel needed to hear from witnesses that were not connected to the organized blindness

13 community through NFB's regular communication channels. We anticipated that news of

14 our filing and ongoing investigation would prompt additional witnesses to respond with

15 important factual evidence. Further, our case was being developed, in part, on statistical

16 data, which required that we accurately identify as many denied riders with service animals

17 as possible. We were successful in obtaining news media coverage in major stories across

18 the nation. Attached as Exhibit D is a collection of such media coverage.

19 38. In response to news coverage of our case filing, the amount of our intakes

20 noticeably increased. Plaintiffs' Counsel adjusted our intake process to ensure we were

21 collecting sufficient information to prepare for trial. We developed a system for

22 summarizing the information we obtained through intake so that it could be quickly

23 reviewed for key factual patterns that were representative of common experiences. In

24 addition, we began more precisely tracking denials based upon geographic regions and

25 driver identities.

26 39. On October 22, 2014, Uber filed its initial Motion to Dismiss, Dkt. No. 9,

27 attacking Plaintiffs' standing and the applicability of the Americans with Disabilities Act

28 and related state laws to Uber's business model.



1 novel and complex issues. In sum, it offered several grounds for dismissing the case based  
2 on the lack of standing of the Plaintiffs and that Uber's service does not constitute a public  
3 accommodation under the Americans with Disabilities Act and related state law.

4 43. Uber's motion required Plaintiffs' Counsel to expend significant time  
5 researching the complex individual, associational and organizational standing issues  
6 presented. Extensive research was also performed on Uber's substantive applicability  
7 arguments to the extent it had not already been done.

8 44. Plaintiffs' Counsel divided up the work on our opposition briefing in the  
9 most efficient manner possible. Mr. Nunez and Ms. Marks, as lower cost timekeepers,  
10 took on the more time-consuming task of researching and drafting the brief; and I focused  
11 my attention on the oral argument at the hearing. Ordinarily, such an important hearing  
12 would be handled by DRA's former Executive Director, Laurence Paradis. However,  
13 Plaintiffs' Counsel felt that I had sufficient experience and background knowledge to argue  
14 the motion and that this would be a more efficient use of time given my lower hourly rate  
15 as compared to Mr. Paradis. In addition, while Mr. Nunez and Ms. Marks were working  
16 on our brief, I took responsibility for communicating with the U.S. Department of Justice  
17 ("DOJ") and submitting materials upon its request. The DOJ ultimately submitted its  
18 Statement of Interest, Dkt. No. 29, regarding the important issues of first impression  
19 represented by the applicability of the Americans with Disabilities Act to a ridesharing  
20 service such as Uber.

21 45. After the March 3, 2015, hearing on Uber's Motion to Dismiss, Plaintiffs'  
22 Counsel followed up on various tasks related to the hearing and anticipated ruling from the  
23 Court. We were asked to explain the Court's bench comments and the hearing  
24 proceedings to the Plaintiffs, media, and other interested members of the blindness  
25 community. Then, on April 17, 2015, the Court published its written Order, Dkt. No. 37,  
26 denying Uber's Motion to Dismiss in its entirety.



1 the parties agreed on September 28, 2015 to pursue resolution of the claims on a national  
2 class basis rather than on an individual plaintiff basis, and Uber expected Plaintiffs'  
3 Counsel to do most of the work required for the preliminary approval filing.

4 48. With respect to the General Order 56 first subphase (226.2 claimed hours  
5 incurred April 2015 – August 10, 2015), Plaintiffs' Counsel heavily researched and  
6 investigated Uber's business practices. Plaintiffs' Counsel felt that we could not craft an  
7 effective remedy with any certainty unless we first understood how Uber's inner practices  
8 were functioning. Plaintiffs' Counsel would need this informal discovery to either enter  
9 into a settlement or move for an injunction. Plaintiffs' Counsel invested significant time to  
10 draft questions for Uber, research Uber's published documents, review Uber's disclosures,  
11 and pick apart the inner workings of the Uber system. In essence, Plaintiffs' Counsel had  
12 to intimately understand all of Uber's policies and practices that might in any way touch  
13 upon a passenger with a service animal. Further, Plaintiffs' Counsel had to discover any  
14 policy or practice that touched upon how Uber onboarded, educated, and terminated its  
15 drivers. Uber uses complex back-end systems for its riders and drivers. While the app  
16 might appear simple to the customer, making this elegant solution for customers on the  
17 front end takes a lot of complex interactions on the back-end of the technology. It took  
18 significant work to understand this complex system. On May 8 and June 18, 2015,  
19 Plaintiffs' Counsel attended joint inspection meetings with Uber representatives and its  
20 engineering and operations staff.

21 49. Plaintiffs' Counsel further had to compare the information we were receiving  
22 from Uber against the evidence we were gathering through our intakes and research. At  
23 several points we were required to clarify some discrepancy between Uber's representation  
24 of a particular practice and documentation from our clients and witnesses that tended to  
25 conflict with Uber's representations. Additionally, we researched driver statements about  
26 their understanding of service animal requirements on driver message boards and social  
27 media, to understand discrepancies between rider experiences and Uber's policies and  
28 practices. Moreover, Uber's business model is constantly evolving. We had to update our

1 file several times during this process based on changes Uber was making to its services in  
2 the market during the litigation.

3         50. On August 10, 2015, Plaintiffs attended a JAMS mediation with Uber.  
4 Though the case did not settle during the mediation, the parties came to a meeting of the  
5 minds on key terms and considered creative ways that a solution to the dispute might be  
6 reached.

7         51. With respect to the settlement agreement drafting second subphase (50.7  
8 claimed hours incurred August 11 – September 28, 2015), Plaintiffs' Counsel were  
9 responsible for composing the first written draft proposal to Uber. I was tasked with  
10 composing the first version of the document. Because this case is one of first impression,  
11 there was no template or good example of a previous settlement that I could use as a  
12 model. Essentially, I wrote the entire first draft from scratch based on notes from the  
13 JAMS mediation, and outlines and thoughts from conferring with co-counsel. After I  
14 completed the first draft, it went through extensive revisions and editing based on the  
15 expertise of DRA and RBGG. We adjusted certain proposed terms and items based on the  
16 issues spotted by various members of the Plaintiffs' Counsel team. Plaintiffs' Counsel sent  
17 Uber a first proposed settlement draft by email dated September 1, 2015. The parties  
18 spoke several times up through September 28, 2015, discussing various terms while  
19 Plaintiffs waited for Uber to provide edits to the settlement draft agreement. It was on  
20 September 28, 2015 when Uber agreed to pursue resolution of the dispute on a class-wide  
21 basis.

22         52. With respect to the settlement preliminary approval third subphase (632.7  
23 claimed hours incurred September 29, 2015 – April 29, 2016), Plaintiffs' Counsel  
24 continued to negotiate and exchange drafts of the settlement with Defendants and had to  
25 research several topics regarding the viability of a class settlement and release. We were  
26 required to consider Uber's litigation and proposed settlement agreements with its drivers,  
27 the influence of Uber's terms and conditions on the class, and several other topics related  
28 to this issue of first impression.

1           53. While the parties reached an agreement on key terms of the settlement in  
2 January, 2016, the finishing of the settlement agreement also required extensive work,  
3 including on the settlement addenda, which specified the formal policy statements and  
4 communications to drivers that are core to the settlement. Plaintiffs' Counsel provided  
5 Defendants the opportunity to draft some of these addenda, which required a detailed  
6 understanding of Uber's app and systems, but Defendants ultimately left the drafting to  
7 Plaintiffs' Counsel.

8           54. Plaintiffs' Counsel had to draft the Second Amended Complaint to allow for  
9 nationwide class allegations. Further, we educated our clients on the duties of the class  
10 representative and worked with the National Federation of the Blind to step in as a  
11 representative for the national interests of blind people. Prior to the class-wide aspect of  
12 the settlement, only the California affiliate of NFB was involved. Plaintiffs' Counsel  
13 drafted the Joint Motion for Preliminary Approval of Class Settlement, developed the  
14 Class Notice plan, and drafted the Proposed Order, all while continuing to negotiate terms  
15 in the settlement agreement up through the final filing of the settlement on April 29, 2016.

16           55. The settlement that Plaintiffs obtained is truly remarkable. It is the most  
17 comprehensive and thorough settlement agreement that I have ever negotiated. Plaintiffs  
18 quite literally obtained all the injunctive relief they were seeking in one form or another.  
19 The provisions of the settlement agreement address and even go beyond every policy  
20 change Plaintiffs sought in their demand letter and the Complaint for blind people. Most  
21 of the policies adopted by the settlement will apply to all riders with service animals, not  
22 just to blind riders with service animals.

23           56. The professional hours claimed for work completed in phase 5 are contained  
24 in the table below and exclude time keepers whose time has been entirely removed under  
25 billing judgment reductions:

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**Table 5, Phase 5**

<b>Settlement Negotiations</b>		<b>Start</b>	<b>End</b>
		<b>4/18/15</b>	<b>4/29/16</b>
<b>Class</b>	<b>Name</b>	<b>Actual Hours</b>	<b>After Billing Judgment</b>
Partner/Director	Bien, Michael	86.5	84.9
	Paradis, Larry	189.9	186.1
Attorney	Elder, Timothy	172.9	172.9
	Marks, Julia	225.6	183.9
	Nunez, Michael	273.7	264.7
Paralegal	Ruiz, Kyle	18.9	17.1
<b>Total</b>		<b>967.5</b>	<b>909.6</b>

**PHASE 6: Plaintiffs' Counsel Prepare for Trial**

57. The second largest amount of Plaintiffs' Counsel's hours (787.5 of the total 3,085.1 claimed hours for merits work) were expended on discovery and preparation for trial while settlement negotiations were underway. By Order dated July 30, 2015, Dkt. No. 51, the Court immediately opened fact discovery and instructed the parties not to delay in propounding discovery requests. The Court then set the trial date for April 18, 2016 by Order dated August 13, 2015, Dkt. No. 53. While Plaintiffs were investing time towards settlement in August 2015, we were also following the Court's instructions to begin drafting discovery requests and creating a general discovery plan.

58. On September 1, 2015, Plaintiffs' Counsel informed Uber that we needed to hear back from them soon on any settlement counter proposals because we would have to serve discovery requests shortly to comply with the Court's scheduling order and the approaching April 2016 trial date. A true and correct copy of that email is attached as Exhibit E. Then again, on September 22, 2015, Plaintiffs' Counsel again wrote to Uber

1 and reminded it of the urgency of moving settlement progress along. A true and accurate  
2 copy of that email is attached as Exhibit F.

3 59. On September 24, 2015, the Court set a Scheduling Order, Dkt. No. 56, and  
4 established deadlines for a close of fact discovery on January 8, 2016, expert reports  
5 February 5, 2016, close of expert discovery February 19, 2016, dispositive motions March  
6 9, 2016, pretrial conference April 6, 2016, and trial April 18, 2016. The Court further set a  
7 Case Management Conference for November 4, 2015 and admonished the parties that it  
8 would inquire into the diligence of propounding and responding to discovery.

9 60. Though the parties communicated with each other by email and telephone on  
10 various terms in the settlement after September 1, 2015, Plaintiffs' Counsel did not receive  
11 a full written counter-proposal draft from Uber until November 24, 2015, 84 days from the  
12 date we initially sent our full written proposal. Because of this significant delay, Plaintiffs'  
13 Counsel was required to engage in significant discovery activities to prepare the case for  
14 trial while we were working on a parallel track towards settlement. Plaintiffs' Counsel  
15 suspended discovery as long as possible to give Uber a chance to settle the case. However,  
16 in order to comply with the Court's set scheduling order deadlines on this very complex  
17 case, Plaintiffs had to rapidly engage for trial. While Uber was suggesting it wanted to  
18 settle, it was not providing enforceable commitments or quickly responding to our  
19 proposals. To delay in any way after the Court's September 24, 2015 Order would have  
20 been prejudicial to Plaintiffs' rights and contrary to the Court's express instructions.

21 61. On October 1, 2015, Plaintiffs served sets of Requests for Admissions,  
22 Requests for Production of Documents, and Interrogatories on Uber. On October 15,  
23 2015, Plaintiffs served a 30(b)(6) deposition notice on Uber. Beginning in November  
24 2015, Plaintiffs' Counsel retained an expert in industrial relations to testify at trial. Also,  
25 in November 2015, we met and conferred with Uber on several developing discovery  
26 disputes. On November 4, 2015, Plaintiffs served deposition notices for six fact witnesses  
27 employed by Uber. On November 19, 2015, pursuant to stipulation, the Court approved a  
28 protective order for production of documents. On November 20, 2015, Plaintiffs served a

1 Request for Inspection. On November 23, 2015, Plaintiffs served a second set of request  
2 for production of documents. On November 25, 2015, Plaintiffs' served a final round of  
3 discovery in consultation with our expert witness: a second 30(b)(6) deposition notice, a  
4 second set of Interrogatories, and a third set of Requests for Production of Documents.

5 62. On November 24, 2015, Plaintiffs finally received a written settlement  
6 counter-proposal from Uber. Unfortunately, while it represented progress, there were still  
7 issues preventing settlement. Because Plaintiffs' Counsel observed settlement progress,  
8 we agreed to multiple postponements of scheduled depositions and to extend the  
9 scheduling order deadlines by Stipulation of December 15, 2015, Dkt. No. 64, as a good  
10 faith effort to avoid unnecessary discovery while the parties negotiated terms. The Court  
11 granted this extension, Dkt. No. 64. The parties continued to negotiate in good faith.

12 63. On January 22, 2016, the parties jointly moved to vacate the trial schedule,  
13 Dkt. No. 70; they informed the Court that they had reached a settlement; and they  
14 confirmed an intent to file for preliminary approval of the settlement on a class-wide basis.  
15 The Court, by Order of January 22, 2016, Dkt. No. 71, vacated discovery deadlines and  
16 continued the trial to June 2016. Approximately 52.5 hours are claimed in the preparation  
17 for trial category between January 22, 2016 and April 29, 2016. These hours were  
18 incurred in receiving new complaints from blind persons who had attempted to use Uber,  
19 and ensuring that we continued to develop facts regarding these recent incidents. In  
20 addition, some time was spent in ensuring that lingering discovery disputes did not go  
21 unattended to, but instead were handled through a timely meet-and-confer process. It was  
22 prudent and necessary for us to expend this reasonable number of trial preparation hours  
23 after January 22, 2016 so that we would not be prejudiced if the settlement broke down  
24 during negotiations over the final documents and the approval process.

25 64. On April 29, 2016, the parties jointly filed for preliminary approval of a  
26 nationwide class settlement and stipulated to vacate the trial schedule dates.

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65. The professional hours claimed for work completed in phase 6 are contained in the table below and exclude time keepers whose time has been entirely removed under billing judgment reductions:

**Table 6, Phase 6**

Preparation for Trial		Start	End
		4/18/15	4/29/16
Class	Name	Actual Hours	After Billing Judgment
Partner/Director	Bien, Michael	33.3	31.4
	Paradis, Larry	132.6	131.8
Attorney	Elder, Timothy	96.7	93.0
	Marks, Julia	250.7	223.4
	Nunez, Michael	226.4	197.6
Paralegal	Gonzales, Greg	110.3	58.3
	Oghabian, Layla	32.1	26.6
	Smith, Rachel	32.0	25.4
<b>Total</b>		914.1	787.5

**PHASE 7: Plaintiffs' Counsel Work Towards Final Approval of Nation-Wide Class Settlement**

66. After the parties filed the Joint Motion for Preliminary Approval of Class Settlement on April 29, 2016, Plaintiffs' Counsel had to respond to inquiries from the community, the press and the Department of Justice regarding the terms of the proposed settlement. We also prepared for the preliminary approval hearing and researched several issues that were likely to arise at the hearing.

67. On June 16, 2016, the Court heard argument on the parties' Joint Motion for Preliminary Approval of Class Settlement. Michael Nunez argued that motion because he drafted the Motion for Preliminary Approval and was already highly familiar with the

1 issues likely to arise at the preliminary approval hearing. At the hearing, the Court asked  
2 for additional briefing to answer questions that it had about the settlement. Plaintiffs’  
3 Counsel filed its Supplemental Brief, Dkt. No. 101, on June 23, 2016. By Order of July  
4 13, 2016, Dkt. No. 112, the Court granted leave to amend the Complaint, conditionally  
5 certified the class and preliminarily approved the settlement. The Court further ordered the  
6 parties to distribute Notice to the class. Plaintiffs’ Counsel expended time ensuring that  
7 the Notice was disseminated as the Court instructed. Plaintiffs’ Counsel anticipates the  
8 need for further work in preparing for the Final Approval Hearing, set for November 10,  
9 2016. We anticipate that we will incur an additional \$40,000 in fees as we prepare for and  
10 attend that hearing.

11         68. The professional hours claimed for work completed in phase 7 are contained  
12 in the table below and exclude time keepers whose time has been entirely removed under  
13 billing judgment reductions:

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Table 7, Phase 7

Approval of Settlement		Start	End
		4/30/16	9/9/2016
Class	Name	Actual Hours	After Billing Judgment
Partner/Director	Bien, Michael	24.0	23.2
	Paradis, Larry	49.8	46.1
Attorney	Elder, Timothy	36.4	34.4
	Marks, Julia	70.6	59.4
	Nunez, Michael	61.9	54.1
Law Student	Monek Anderson, Eric	19.4	18.6
	Kim, Da Hae	14.3	3.7
Paralegal	Ruiz, Kyle	26.4	15.7
	Stilber, Karen	10.1	9.1
<b>Total</b>		312.9	264.3

**PHASE 8: Plaintiffs' Counsel Request An Award Of Reasonable Fees And Costs**

69. Plaintiffs' Counsel has expended time in preparing the instant Motion for Fees and Costs. Each firm reviewed its time entries and has made discretionary billing judgment reductions. Further, over 5000 time entries for all actual time recorded on this matter have been reviewed to compare time among the three firms. Additional billing judgment reductions have been made to account for any duplicative or unnecessary work in producing the instant Motion for Reasonable Attorneys' Fees and Costs.

70. Plaintiffs' Counsel tried to negotiate a stipulation with Uber on the amount of attorneys' fees and costs. We met and conferred on September 6, 2016. We were unable to resolve the matter.

71. Plaintiffs' Counsel has expended time in preparing the instant motion and gathering the supporting declarations and evidence. I prepared the first draft of the

1 Memorandum of Points and Authorities in support of the fee motion and this supporting  
2 declaration.

3 72. The professional hours claimed for work completed in phase 8 are contained  
4 in the table below and exclude time keepers whose time has been entirely removed under  
5 billing judgment reductions:

6 **Table 8, Phase 8**

Fee Petition		Start	End
		7/20/16	9/9/2016
Class	Name	Actual Hours	After Billing Judgment
Partner/Director	Galvan, Ernest	18.0	17.6
	Smith, Mary-Lee	7.9	7.3
Attorney	Elder, Timothy	118.6	89.8
	Marks, Julia	56.2	39.9
	Nunez, Michael	34.3	29.1
<b>Total</b>		235.0	183.7

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18 73. The total of all professional hours claimed for work completed in all eight  
19 phases is contained in the table below and, unlike the tables above for each phase, the  
20 following includes actual time for timekeepers who were removed entirely under billing  
21 judgment reductions:

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**Total Hours**

<b>Phase of Litigation</b>	<b>Actual Hours</b>	<b>After Billing Judgment</b>
1. Initial Investigation and Case Development	279.2	256.9
2. Pre-litigation Negotiations	34.1	28.7
3. Complaint and FAC	273.8	262.7
4. Pleading Litigation	641.1	575.4
5. Settlement Negotiations	996.8	909.6
6. Preparation for Trial	935.4	787.5
7. Approval of Settlement	319.1	264.3
<b>Total for Merits Work Phases 1-7</b>	<b>3479.5</b>	<b>3085.1</b>
8. Fee Petition Phase 8 (Not subject to Multiplier)	242.4	183.7
<b>Total for Merits and Fee Work</b>	<b>3721.9</b>	<b>3268.8</b>

**Plaintiffs' Counsel's Hourly Rates and Billing Practices**

74. TRE Legal's hourly rates are consistent with the rates charged by comparable attorneys and legal staff in the San Francisco Bay Area for work comparable to that performed in the instant case. My firm's billing practices are likewise comparable to those of other attorneys and legal staff in the San Francisco Bay Area market.

75. My practice subsists on both billable and contingent work. I balance my case load so that I spend roughly equal amounts of time each month on billable and contingent cases. I presently charge a market rate of \$475 per hour for work billed to my institutional clients that have the means to pay me on an hourly retainer. Kris Nelson, a paralegal at TRE Legal, is billed at a rate of \$275 per hour.

76. Of the contingent work I accept, I further balance my caseload to accept both low and high risk cases. Some of my cases are garden-variety disability discrimination cases. Most of these matters settle at some point with an hourly recovery that is often

1 higher than my billable hourly market rate; usually these cases settle without prolonged  
2 litigation. However, I also reserve time in my schedule to take on important legal issues of  
3 first impression that nonetheless result in great risk to the stability of my business on hopes  
4 of obtaining a fee enhancement to compensate for the risk. The present case against Uber  
5 is one such high risk contingency case of first impression that I accepted for the benefit of  
6 the law and the blind community. I regularly co-counsel with other private law firms for  
7 work on cases involving the National Federation of the Blind. Without the promise of an  
8 enhanced lodestar, I would likewise be unable to find quality law firms to co-counsel with  
9 on behalf of the National Federation of the Blind. Further, because of the demands of this  
10 litigation I have been unable to take on other low-risk disability discrimination matters and  
11 work on other billable projects. For example, I have an hourly case involving a blind  
12 federal employee that I have been unable to advance forward because of the time I've  
13 spent working on the Uber matter. Similarly, I've referred out several common ADA Title  
14 III contingent fee cases involving access to restaurants, private colleges, and amusement  
15 parks because I did not have the time to do the investigation and advance the claims while  
16 simultaneously working on the Uber matter.

17         77. Plaintiffs' Counsel spent nearly two-and-a-half years investigating and  
18 litigating to improve the availability of Uber's transportation services for disabled riders on  
19 a fully contingent basis, receiving no compensation for the duration of the action and  
20 fronting significant litigation expenses. The time and labor required for this case,  
21 committed on a contingent basis, precluded Plaintiffs' Counsel from productive work on  
22 other class-action and complex litigation cases. The enormous costs and complexity of  
23 this litigation could not have been borne by the individual members of the Plaintiff Class.

24         78. Plaintiffs' Counsel did not negotiate its fees and costs until all other relief for  
25 the Plaintiffs and the Plaintiff Class were preliminarily approved by the Court. Plaintiffs'  
26 Counsel has always subjugated the recovery of its own fees and costs to the benefit of the  
27 class. Plaintiffs' Counsel did so because we did not want the needed changes that we  
28

1 sought for our clients to be delayed in any way by negotiations over what Uber would  
2 willingly pay for attorneys' fees and costs as part of a total settlement package.

3 79. After Plaintiffs were successful in prevailing over Uber's Motion to Dismiss,  
4 Plaintiffs' Counsel were contacted by several law firms and attorneys that were  
5 considering whether to file similar copy-cat service animal claims against Uber in other  
6 jurisdictions. Plaintiffs' Counsel was successful in convincing advocates in Texas,  
7 Arizona, Washington and Massachusetts from filing their own cases in federal or state  
8 courts and wasting precious judicial resources and time that might be dedicated to other  
9 advocacy on behalf of disabled people. One of these law firms that we spoke with did end  
10 up filing their own case in Virginia after the parties here jointly filed for preliminary  
11 approval of the nationwide class settlement. However, the Virginia plaintiff acknowledged  
12 in her Complaint that any request for injunctive relief in Virginia would likely be moot if  
13 this Court were to grant final approval to the instant proposed nationwide class settlement.

14 80. My hourly rate in the Northern District has been found comparable to  
15 similarly-experienced attorneys at Disability Rights Advocates. *See Enyart v. Nat'l Conf.*  
16 *of Bar Examiners, Inc.*, Case No. 09-cv-05191 CRB, Dkt. No. 213 (N.D. Cal. May 15,  
17 2012) (Report and Recommendation re: Plaintiff's Motion for Award of Attorneys' Fees  
18 and Costs). Attached as Exhibit G is a true and accurate copy of the docketed Order from  
19 that matter where my hourly rate in the Northern District of California was found to be on  
20 par with that of attorneys at DRA with similar years of experience.

21 81. I keep contemporaneous and highly reliable time records of the amount of  
22 time spent on each activity related to the instant case.

23 82. Plaintiffs' Counsel submitted all time entries in this case for review by  
24 Ernest Galvan, a partner at RBGG. Mr. Galvan regularly reviews RBGG's time entries to  
25 perform billing judgment reductions to time entries that his firm submits in support of fee  
26 motions. Mr. Galvan has reviewed all the time entries for Plaintiffs' Counsel and has  
27 made reasonable billing judgments to eliminate excessive, duplicative, and unnecessary  
28 billing entries for each firm on top of the discretionary reductions first made by DRA or

1 TRE Legal. I have discussed with Mr. Galvan the billing judgment reductions he made to  
 2 the time entries in this case, and agree with his methodology and judgments. I agreed to  
 3 all of Mr. Galvan's proposed reductions for TRE Legal and believe it to be an appropriate  
 4 reduction in calculating the lodestar for Plaintiffs' Counsel and each respective firm.

5 83. The total number of claimed compensable hours incurred by TRE Legal for  
 6 merits-based work as of September 9, 2016 is 598.3, which produces a value of  
 7 \$284,192.50. The total number of claimed compensable hours incurred by TRE Legal in  
 8 working on the fee petition is 89.8, which has a value of \$42,655. The claimed lodestar  
 9 reflects reductions of 8.8 hours of merits-based time (valued at \$4,180) and 28.8 hours  
 10 (valued at \$13,680) of fee petition time under billing judgment reductions. The total  
 11 lodestar with billing judgment reductions for each phase of the litigation is contained in the  
 12 table below:

#### TRE Legal Practice Billing

TRE Legal Practice	Actual Hours	After Billing Judgment	Claimed Amount (\$475/hr)
1. Initial Investigation and Case Development	71.7	69.6	\$33,060.00
2. Pre-litigation Negotiations	10.5	10.5	\$4,987.50
3. Complaint and FAC	61.0	60.0	\$28,500.00
4. Pleading Litigation	157.9	157.9	\$75,002.50
5. Settlement Negotiations	172.9	172.9	\$82,127.50
6. Preparation for Trial	96.7	93.0	\$44,175.00
7. Approval of Settlement	36.4	34.4	\$16,340.00
<b>Total Merits-Based Lodestar</b>	<b>607.1</b>	<b>598.3</b>	<b>\$284,192.50</b>
Total Fee Petition Lodestar (Not Subject to Multiplier)	118.6	89.8	\$42,655

1           84. Attached as Exhibit A is a table showing a summary of the total hours  
2 expended on merits-based work through September 9, 2016, by all timekeepers from  
3 Plaintiffs' Counsel – DRA, RBGG and TRE Legal – before and after billing judgment  
4 reductions, as well as the total value of that time at market rates. Attached as Exhibit B is  
5 a table showing a similar comprehensive summary of the total hours expended on fee-  
6 based work by Plaintiffs' counsel through September 9, 2016. Before billing adjustment  
7 reductions, Plaintiffs' Counsel has expended over 3,700 professional hours, or over \$1.8  
8 million in merits and fee petition work during the period from April 1, 2014 through  
9 September 9, 2016. Plaintiffs' Counsel has written off a total of 453.1 hours, or  
10 approximately 12% of its billable hours. This amounts to a discount valued at \$187,528.50  
11 in billing judgment reductions to assure that we have accounted for any undue duplication  
12 of effort or inefficiency in both the merits and fee-based work. After these billing  
13 judgment reductions, Plaintiffs' Counsel claims 3085.1 hours of compensable time at a  
14 value of \$1,589,574 for all merits-based work invested in this case through September 9,  
15 2016 and 183.7 hours of compensable time at a value of \$87,938 for fee-based work in the  
16 same period. Attached as Exhibit H, are the complete time records for TRE Legal with  
17 minor redactions for privileged information. *See also* the declarations of Mary-Lee  
18 Kimber Smith and Michael Bien, filed herewith, for the complete time entries for DRA  
19 and RBGG, respectively.

20           85. The overlap of federal and state law issues in this case formed a common  
21 core of facts and litigation that cannot be efficiently untangled by Plaintiffs' Counsel.  
22 Plaintiffs' Counsel did not maintain separate billing numbers for each claim made by  
23 Plaintiffs' (i.e., one billing number for federal ADA claims, and another for California  
24 state law claims). Plaintiffs' Counsel challenged Uber's policies and practices pertaining  
25 to riders with service animals, and any work that could somehow be attributed to federal  
26 components would have nonetheless been required for other California state law claims.  
27 Had Plaintiffs solely claimed violations of California state law, and not their federal ADA  
28 claims, Plaintiffs' Counsel would have performed nearly identical work.

**Plaintiffs' Counsel's Reasonable and Necessary Costs and Expenses**

1  
2 86. Plaintiffs' Counsel fronted litigation expenses over the course of this case.  
3 Plaintiffs incurred costs and expenses of \$13,447.14 (\$11,200.84 for DRA, \$1,184.35 for  
4 RBGG, and \$1,061.95 for TRE Legal) for investigating and litigating this matter through  
5 September 9, 2016. Attached hereto as Exhibit I is a summary of all Plaintiffs' Counsel  
6 firms' costs and expenses. Attached hereto as Exhibit J is a true and accurate copy of a  
7 detailed list of all of TRE Legal's costs and expenses incurred through September 9, 2016.  
8 These financial outlays include but are not limited to expenses related to copying, court  
9 reports, expert consultants/witnesses, legal research, telephone calls, postage, service of  
10 process, and travel. I have reviewed the costs and expenses incurred by all Plaintiffs'  
11 Counsel firms, and believe each of the costs incurred was directly related and necessary to  
12 the prosecution of this case.

13 87. TRE Legal regularly charges clients for computer research, such as Westlaw,  
14 and travel. It would not be appropriate to include these costs in general overhead. Doing  
15 so would require a major increase in my firm's overall costs and billing rates when these  
16 costs are only required by some of my clients and/or only some of the time during their  
17 case. This billing practice is consistent with the billing practices of lawyers practicing in  
18 the Northern District of California. I can provide copies of receipts for all expenses  
19 incurred by TRE Legal if requested by the Court.

**CONCLUSION**

20  
21 88. Based on my previous experience and on negotiations in this case, Plaintiffs'  
22 Counsel negotiated an agreement with Uber to obtain the same comprehensive policy  
23 reforms and enforcement/monitoring protections that Plaintiffs would be entitled to  
24 pursuant to a total victory at trial to be affirmed on appeal. The work described in this  
25 declaration was essential to obtaining this superior result for Plaintiffs, which further  
26 benefits all disabled people who travel with service animals in the United States.

27 89. By limiting the calculation of Plaintiffs' Counsel's lodestar to work  
28 performed through September 9, 2016, Plaintiffs' lodestar does not capture all of the work

1 performed drafting this motion and supporting papers or the work needed for obtaining  
2 final approval of the class settlement, set for hearing on November 10, 2016. Plaintiffs'  
3 Counsel will need to expend additional time preparing a reply in support of this motion  
4 and preparing and presenting oral argument for the fees motion and the settlement  
5 approval motion. Plaintiffs will submit TRE Legal's time records for additional time  
6 devoted to fee recovery work either with Plaintiffs' reply in support of this motion, or with  
7 the first annual fees application in the process described in the Settlement Agreement at  
8 page 23 (Dkt. No. 85-1).

9 If called as a witness, I could and would competently testify from my personal  
10 knowledge to the facts stated herein.

11 I declare under penalty of perjury under the laws of the United States that the  
12 foregoing is true and correct, based on my personal knowledge, and that this declaration is  
13 executed at Fremont, California this 19<sup>th</sup> day of September, 2016.

14  
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Timothy R. Elder