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

19 NATIONAL FEDERATION OF THE
20 BLIND, NATIONAL FEDERATION OF
THE BLIND OF CALIFORNIA,
21 MICHAEL KELLY, MICHAEL
HINGSON, and MICHAEL PEDERSEN,

22 Plaintiffs,

23 v.

24 UBER TECHNOLOGIES, INC.,

25 Defendant.
26
27
28

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

**NOTICE OF MOTION AND MOTION;
MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
PLAINTIFFS' UNOPPOSED MOTION
FOR FINAL APPROVAL OF
SETTLEMENT**

Judge: Hon. Magistrate Nathanael Cousins

Date: December 1, 2016

Time: 1:00pm

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

Trial Date: None Set

3:14-cv-04086-NC

TABLE OF CONTENTS

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Page

NOTICE OF MOTION AND MOTION 1

MEMORANDUM OF POINTS AND AUTHORITIES 2

INTRODUCTION 2

STATEMENT OF FACTS 3

 A. Procedural Background 3

 B. The Settlement 6

 C. Notice Has Been Provided to the Class 9

 D. No Class Members Have Objected to the Settlement. 10

ARGUMENT 11

I. LEGAL STANDARD FOR SETTLEMENT OF A CLASS ACTION 11

II. FINAL APPROVAL OF THE SETTLEMENT IS PROPER 12

 A. The Benefits to the Class are Significant in Light of the
Strength of the Plaintiffs’ Case and the Risk, Expense,
Complexity, and Likely Duration of Future Litigation 12

 B. The Settlement is Fair, Adequate, and Reasonable in Light of
the Discovery Completed and the Stage of the Proceedings 13

 C. Experienced Class Counsel Endorse the Settlement. 14

 D. No Class Members Objected to the Settlement 15_Toc464743227

 E. The Settlement Is the Product of Good Faith, Arms-Length
Negotiations 15

CONCLUSION 16

TABLE OF AUTHORITIES

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Page

CASES

Chun-Hoon v. McKee Foods Corp.,
716 F. Supp. 2d 848 (N.D. Cal. 2010)..... 13, 16

Hanlon v. Chrysler Corp.,
150 F.3d 1011(9th Cir. 1998)..... 11

In re Bluetooth Headset Products Liability Litigation,
654 F.3d 935 (9th Cir. 2011)..... 12, 15

In re Mego Financial Corporation Securities Litigation,
213 F.3d 454 (9th Cir. 2000)..... 13

In re Omnivision Technologies, Inc.,
559 F. Supp. 2d 1036 (N.D. Cal. 2008)..... 11, 15

In re Pacific Enterprises Securities Litigation,
47 F.3d 373 (9th Cir. 1995) 14

Lane v. Facebook, Inc.,
696 F.3d 811 (9th Cir. 2012) 11

Satchell v. Federal Express Corp.,
No. C 03 2878 SI, 2007 WL 1114010 (N.D. Cal. Apr. 13, 2007) 16

STATUTES

Americans with Disabilities Act,
42 U.S.C. § 12101 *et seq.* 3, 15

California Unruh Civil Rights Act,
Cal. Civ. Code § 51 3

California Disabled Persons Act,
Cal. Civ. Code § 54 3

Class Action Fairness Act of 2005,
28 U.S.C. § 1715. 10

RULES

Fed. R. Civ. P. 23(e) 11, 12, 16

1
2
3
4
5
6
7
8
9
10
11
12
13
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NOTICE OF MOTION AND MOTION

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that on December 1, 2016, at 1:00 p.m., or as soon thereafter as the matter may be heard, Plaintiffs the National Federation of the Blind, the National Federation of the Blind of California, Michael Kelly, Michael Pedersen, and Michael Hingson, on behalf of themselves and a class of those similarly situated, move the Court for final approval of the proposed class settlement agreement (“Settlement”) submitted herewith and incorporated herein by reference in the above-captioned matter. Defendant Uber Technologies, Inc. does not oppose this Motion.


Plaintiffs respectfully request that the Court enter the attached proposed order (1) finding the proposed Settlement’s terms and conditions are fair, adequate, and reasonable; and (2) approving the Settlement.

This Motion is based on this Notice of Motion, the Memorandum of Points and Authorities filed herewith, the supporting Declaration of Julia Marks, 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: October 27, 2016

Respectfully submitted,

DISABILITY RIGHTS ADVOCATES

By: 

Mary-Lee K. Smith

Attorneys for Plaintiffs

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MEMORANDUM OF POINTS AND AUTHORITIES

INTRODUCTION

The proposed class settlement agreement (“Settlement”) in this case will dramatically improve access to Uber’s transportation services for blind and visually-impaired people nationwide who travel with service animals. Uber provides efficient, convenient, and affordable transportation to consumers around the country, but passengers with guide dogs have faced denials of service and discrimination by drivers on the platform. The changes embodied in this Settlement will ensure that drivers in this important and growing sector of the transportation ecosystem will provide equal, non-discriminatory service to people traveling with service animals.

Plaintiffs the National Federation of the Blind (“NFB”), the National Federation of the Blind of California (“NFB-CA”), Michael Kelly, Michael Pedersen, and Michael Hingson, on behalf of themselves and a class of those similarly situated (collectively, “Plaintiffs”) and Defendant Uber Technologies, Inc. (“Uber”) (collectively, “Parties”) came to this Settlement after protracted negotiations and exchange of information through the General Order 56 process.

The Settlement requires a comprehensive set of changes to Uber’s policies and practices. Uber will use multiple channels to inform drivers about their obligation to transport disabled individuals with service animals, will require drivers to affirm their understanding of this obligation and agree to comply, will implement a strict removal policy for drivers who discriminate, will improve complaint response and customer service, and will modify other policies that affect individuals with service animals, such as cleaning fees. Uber agrees to collect data related to alleged discrimination against service animal users, to provide the data to a third-party monitor, and to pay NFB to send blind users out as testers to ensure that discrimination on the Uber platform is decreasing.

On July 13, 2016, this Court conditionally certified the proposed class and preliminarily approved the proposed Settlement. Dkt. No. 112. The Parties distributed

1 notice to the class in accordance with the Court’s preliminary approval order. No persons
2 have objected to the Settlement.

3 In light of these facts and as discussed below, Plaintiffs respectfully request that the
4 Court find the Settlement to be fair, adequate, and reasonable, and grant final approval.
5 Uber does not oppose this motion.

6 **STATEMENT OF FACTS**

7 **A. Procedural Background**

8 Plaintiffs brought this case against Uber seeking relief for alleged repeated denials
9 of service in the Uber transportation network to blind passengers traveling with guide
10 dogs. Dkt. No. 1. Plaintiffs alleged violations of the Americans with Disabilities Act, 42
11 U.S.C. § 12101 *et seq.* (“ADA”), the California Unruh Civil Rights Act, Cal. Civ. Code §§
12 51 & 52, and the California Disabled Persons Act, Cal. Civ. Code §§ 54-54.3.

13 The lawsuit was filed September 9, 2014 by NFB-CA, on behalf of its members,
14 and Michael Hingson, who is blind and travels with a guide dog, and who alleges that he
15 was deterred from using the Uber network because of the frequent discriminatory denials
16 of service to which individuals like him are subject. Dkt. No. 1. Plaintiffs amended their
17 complaint in November 2014 to add two additional Plaintiffs, Michael Kelly and Michael
18 Pedersen, both of whom alleged that they were denied service by transportation providers
19 on the Uber platform because they were blind and traveling with service animals. Dkt. No.
20 17. NFB, on behalf of its members participated in settlement negotiations and joined as an
21 additional Plaintiff in April 2016. Dkt. Nos. 84, 113. NFB, along with its California
22 affiliate NFB-CA, is an association of blind individuals that works to promote vocational,
23 cultural, and social advancement and to achieve the integration of blind people into society
24 on an equal basis with sighted people. Many NFB and NFB-CA members travel with
25 service animals and have either used Uber transportation and were allegedly denied service
26 or were deterred from using Uber transportation because of their knowledge of the alleged
27 recurrent discrimination.

28

1 Uber is a company that connects passengers who seek transportation (“Riders”) to
2 independent transportation providers (“Drivers”) via a smartphone application (“Uber
3 Rider App”). Uber connects Riders and Drivers in many metropolitan areas around the
4 United States, and provides an affordable and convenient way to procure transportation.

5 Plaintiffs sought injunctive relief that would require Uber to take the steps
6 necessary to ensure that Drivers do not refuse to transport blind individuals with service
7 animals, in violation of the ADA and California state law. Dkt. No. 17, ¶ 123. Plaintiffs
8 also sought damages for the alleged discrimination experienced by Mr. Hingson, Mr.
9 Pedersen, and Mr. Kelly. Dkt. No. 17, ¶ 125.

10 Uber moved to dismiss Plaintiffs’ complaint, arguing that Plaintiffs lacked standing
11 and that Uber vehicles were not places of public accommodation under the ADA. Dkt. No.
12 9. Plaintiffs amended their complaint, and Uber again moved to dismiss. Dkt. Nos. 17, 25.
13 On April 17, 2015, the Court denied Uber’s motion to dismiss on all grounds. Dkt. No. 37.

14 Plaintiffs undertook significant factual investigation and received information from
15 the Defendant through the General Order 56 process. Following the motion to dismiss, the
16 Parties exchanged initial disclosures on May 1, 2015, and Plaintiffs supplemented their
17 disclosures on July 14, 2015. Declaration of Julia Marks in Support of Plaintiffs’
18 Unopposed Motion for Final Approval of Settlement (“Marks Decl.”) ¶ 6. The Parties met
19 to review Uber’s App, website for Drivers, and system for bringing new Drivers onto the
20 platform on May 8, 2015, and Uber provided additional information on its policies and
21 practices during settlement negotiations. Marks Decl. ¶¶ 7, 8. Plaintiffs propounded
22 discovery requests and noticed depositions, but postponed depositions because of the
23 promising progress of settlement negotiations. Marks Decl. ¶ 9. Plaintiffs’ counsel
24 collected stories and documents from more than 80 blind individuals, throughout the
25 country, who reported denials of service by Drivers while traveling with their guide dogs.
26 Marks Decl. ¶ 4.

27 The Parties engaged in extensive thorough, informed, arm’s-length negotiations.
28

1 The Parties held settlement discussions on May 8, 2015 and on June 18, 2015. Marks Decl.
2 ¶ 7. On August 10, 2015, the Parties participated in mediation with Hon. Jamie Jacobs-
3 May (ret.) at JAMS. Marks Decl. ¶ 8. Plaintiffs provided Defendant with a written
4 settlement proposal based on progress at the mediation. The Parties exchanged redlines of
5 the settlement agreement and engaged in additional discussion of settlement terms during
6 the fall of 2015. Marks Decl. ¶ 10.

7 The Parties came to an agreement on the key terms of the Settlement in January
8 2016. Marks Decl. ¶ 12. The Parties agreed that the Settlement would be most effective as
9 a class settlement, to ensure that the policy improvements would be consistent across
10 Uber’s national markets and that individuals with service animals across the country would
11 gain relief from the alleged discrimination. The Parties agreed upon and sought conditional
12 certification for a settlement class (“Class”) of “all blind or visually disabled individuals
13 nationwide who travel with the assistance of Service Animals and who have used,
14 attempted to use, or been deterred from attempting to use transportation arranged through
15 the Uber Rider App.” Settlement, attached to Marks Decl. as Exh. A, at § 1.

16 The Parties filed their Joint Motion for Preliminary Approval of Class Settlement
17 and Related Motions on April 29, 2016. Dkt. No. 84. In response to concerns the Court
18 raised regarding the scope of the release, the Parties modified the Settlement release
19 language in Section 14.A to clarify the released entities, and agreed to modified notice
20 requirements and deadlines. Dkt. No. 111. The parties also submitted supplemental
21 briefing about the scope of released claims. Dkt. No. 101. The Court granted leave to file a
22 second amended complaint to include class allegations, granted preliminary approval of
23 the Settlement, and conditionally certified the Class on July 13, 2016. Dkt. No. 112.

24 The Plaintiffs and the Class are represented by Disability Rights Advocates
25 (“DRA”), Rosen Bien Galvan & Grunfeld (“Rosen Bien”), and TRE Legal Practice (“TRE
26 Legal”) (collectively, “Class Counsel”).

27
28

1 **B. The Settlement**

2 The Settlement will provide relief to Plaintiffs through implementation of the
3 following terms.¹

4 1. Enhanced Dissemination of Information to Drivers

5 Under the Settlement, Uber will require that all Drivers confirm that they
6 understand their obligation to provide equal service to disabled Riders with service
7 animals. Uber will require all Drivers to navigate through an interactive pop-up
8 notification in the mobile application that Drivers use to receive ride requests (“Driver
9 App”). The pop-up will provide information about service animals and the obligation to
10 provide equal service. Drivers will have to accurately answer a series of questions
11 regarding Uber’s service animal policies and affirm their willingness to transport Riders
12 with service animals. If Drivers fail to complete these screens, Uber will block them from
13 the Driver App, so that they cannot provide service on the platform. Settlement § 4.B.
14 Uber will also send quarterly emails to Drivers reminding them of their obligation to
15 transport Riders with service animals, and will update the Driver licensing agreement to
16 explain the obligation. *Id.*

17 Uber will also add a statement confirming that new Drivers agree to transport
18 passengers with service animals and a link to the Service Animal Policy to its online
19 Driver sign-up process. Settlement § 4.A.

20 2. Changes to Enforcement Practices

21 To enhance Drivers’ compliance with their legal and contractual obligations, Uber
22 will improve its enforcement policies for violations of its service animal policy. Under the
23 Settlement, Uber will block a Driver from the platform if the Driver knowingly refuses to
24 transport a Rider because of a service animal. Uber will review every report of a ride

25
26 ¹ A detailed summary of the Settlement is included in the Parties’ Joint Motion for
27 Preliminary Approval of Class Settlement and Related Motions. Dkt. No. 84, pp. 9-14.

1 denial based on the presence of a service animal to determine whether the Driver involved
2 violated the policy. Settlement § 5.A. If Uber determines that a Driver knowingly denied
3 service to a Rider with a service animal because of that service animal, Uber will
4 permanently block that Driver from the platform. If Uber concludes that a Driver did not
5 knowingly deny service to a Rider with a service animal because of that service animal,
6 but Uber receives more than one complaint alleging denial because of a service animal,
7 Uber will permanently block that Driver from the platform, without further inquiry.

8 Settlement § 5.A.

9 3. Complaint Processing and Response

10 Uber will also make it easier for Riders to report denials of service and other service
11 animal issues through the Uber Rider App and from the home page of the Uber website.

12 Settlement § 5.B. Uber will respond to complaints about service animal discrimination in a
13 timely manner and will provide customers with information about Uber's investigation and
14 whether the Driver involved in the incident was permanently blocked from the platform.

15 Settlement § 5.B. Uber will also reverse any charges related to the incident, and will
16 provide a Rider an account credit if a Driver is removed from the platform as a result of the
17 Rider's complaint. Settlement § 5.B.

18 4. Revisions to Uber's Service Animal Policy

19 Uber will revise its written service animal policy to reflect its enhanced
20 enforcement policy, improved complaint processing and response policies and procedures,
21 and updates to its cleaning fee policy. Settlement § 1. Uber will also adopt a guidance
22 document to assist Uber employees in assessing allegations of discrimination. Settlement §
23 5.A.

24 5. Compliance, Data Collection, and Testing

25 Uber will collect data regarding service animal denials to facilitate monitoring,
26 assessment of the policy, and practice improvements required by the Settlement. Uber
27 agrees to maintain a national database with information about all alleged incidents of
28

1 discrimination against Riders with service animals. This data includes Rider and Driver
2 name and contact information, location, date, and account information for alleged denials
3 of service, complaints, and numerical ratings. Settlement § 6.A. Class Counsel and a third-
4 party monitor will review the data for the term of the Settlement, which is three and a half
5 years with the possibility of extension. Settlement § 6.B. Additionally, NFB and NFB-CA
6 will send blind individuals with service animals to use the Uber service to test whether
7 Drivers are complying with their obligations to provide equal access. Settlement § 6.C.

8 6. Monitoring, Opportunity to Request Additional Policy Changes, and
9 Dispute Resolution

10 The Settlement includes a number of provisions to ensure that Uber is making the
11 changes required by the Settlement and that the updated policies and practices are
12 effectively reducing discrimination on the platform. First, a third-party monitor will review
13 data and complaints and will report to Class Counsel on a yearly basis. If the monitor
14 concludes that the policies and practices are not sufficiently ameliorating discrimination on
15 the platform, the monitor can recommend additional changes. Settlement § 8.A. Further,
16 Plaintiffs may request additional changes if there is good cause to believe further
17 modifications are necessary; such modifications cannot lessen the benefits or protections
18 for members of the Class. Settlement § 8.B. The Settlement establishes a dispute resolution
19 procedure in the event that the Parties disagree on the need for additional modifications or
20 other issues in implementing the Settlement. Settlement § 10.

21 7. Monetary Payments

22 NFB and the individual names Plaintiffs will receive monetary compensation under
23 the Settlement. NFB will receive a total of \$225,000 over the term of the agreement. The
24 payments are intended to support the testing program. Settlement § 11. Mr. Hingson, Mr.
25 Pedersen, and Mr. Kelly will receive \$45,000 in total, to apportion among themselves, as
26 compensation for the discrimination they experienced on the Uber platform.

27 The Parties did not settle the amount of attorneys' fees, costs, and expenses to
28 which Plaintiffs were entitled. Plaintiffs filed their Motion for Reasonable Attorneys' Fees

1 and Costs on September 19, 2016. Dkt. No. 119.

2 **C. Notice Has Been Provided to the Class**

3 The Parties have provided notice to the Class by complying with the notice
4 requirements specified in the Joint Amended Proposed Order Granting Approval to File
5 Plaintiffs' Second Amended Complaint, Preliminary Approval to Class Settlement,
6 Certifying Settlement Class, Authorizing Distribution of Notice, and Setting Fairness
7 Hearing, Dkt. No. 109, as incorporated into the Court's Order Granting Motions to Amend
8 the Complaint, Conditionally Certify Class, and Preliminary Approval of Class Action
9 Settlement, Dkt. No. 112. The Court approved the Parties' proposed notice ("Notice"),
10 which is attached to the Declaration of Laurence Paradis in Support of the Joint Motion for
11 Preliminary Approval of Class Settlement and Related Motions as exhibit 3, Dkt. No. 85.3.

12 Class Counsel posted the Notice, in a screen-reader accessible format, on the
13 websites of DRA, Rosen Bien, and TRE Legal on or before August 3, 2016. Marks Decl.
14 ¶¶ 22-24. Class Counsel emailed the Notice to all individuals who had contacted Class
15 Counsel to report discrimination on July 23, 2016. Marks Decl. ¶ 21. The American
16 Council of the Blind ("ACB") and NFB, the two largest organizations of blind persons in
17 the United States, distributed the Notice via email to its listservs before August 3, 2016.
18 Marks Decl. ¶¶ 25, 26. The guide-dog users groups of ACB and NFB, Guide Dog Users
19 International and National Association of Guide Dog Users, respectively, also distributed
20 the Notice via email to its listservs before August 3, 2016. Marks Decl. ¶¶ 25-28.
21 Kurtzman Carson Consultants LLC ("KCC"), a settlement administrator, published the
22 notice in the September issue of *The Forum*, the Braille magazine of the American Council
23 of the Blind, and the August/September issue of *The Monitor*, the Braille magazine of the
24 National Federation of the Blind. Marks Decl. ¶¶ 29, 30. KCC maintained a settlement
25 website through the notice period, from August 3, 2016 through October 13, 2016,
26 containing the full Settlement, Notice, and the Court's Order Granting Preliminary
27 Approval (Dkt. 112). Marks Decl. ¶¶ 14-16.

28

1 The Parties stipulated to a modified version of the Notice (“Modified Notice”),
 2 which the Court approved on August 5, 2016, to change the contact person at DRA. Dkt.
 3 No. 116. Class Counsel posted the Modified Notice on the DRA, RBGG, and TRE Legal
 4 websites and the settlement website.² Marks Decl. ¶¶ 22-24. Class Counsel also posted
 5 their Notice of Motion and Motion, Memorandum of Points and Authorities in Support of
 6 Plaintiff’s Motion for Fees and Costs, and declarations in support, Dkt. Nos. 119, 119-1 –
 7 119-9, 123, 123-1 – 123-4, on the settlement website on September 21, 2016. Marks Decl.
 8 ¶ 19. In October, 2016, Class Counsel updated their respective websites and the settlement
 9 website to reflect the new date for the hearing on final approval and the fee motion of
 10 December 1, 2016. Marks Decl. ¶¶ 22-24. Class Counsel also emailed individuals who had
 11 contacted Class Counsel to report discrimination to notify them of the new hearing date.
 12 Marks Decl. ¶ 31.

13 Defendant published a blog posting with a link to the Notice on its Newsroom
 14 webpage on August 22, 2016. Declaration of Emily O’Connor In Support of Plaintiffs’
 15 Motion for Final Approval (“O’Connor Decl.”) ¶ 3. KCC served the Notice of Class
 16 Action Settlement Pursuant to the Class Action Fairness Act of 2005 in accordance with 28
 17 U.S.C. § 1715. O’Connor Decl. ¶ 2.

18 **D. No Class Members Have Objected to the Settlement**

19 No class members have filed objections to the Settlement. Marks Decl. ¶ 32. The
 20 final day for class members to file objections was October 13, 2016. Dkt. No. 112.
 21
 22

23 ² Plaintiffs did not send updated versions of the notice to the email listservs. However,
 24 Class members could effectively reach Class Counsel by relying on either the original or
 25 the modified notice. The only modification to the notice was updating the contact person at
 26 DRA from attorney Laurence Paradis to attorney Julia Marks. Marks Decl. ¶ 17. DRA’s
 27 phone number and address did not change, and staff at DRA was instructed to forward any
 28 calls or correspondence regarding this case to Ms. Marks. Marks Decl. ¶ 17.

1 **ARGUMENT**

2 **I. LEGAL STANDARD FOR SETTLEMENT OF A CLASS ACTION**

3 Pursuant to Federal Rule of Civil Procedure 23(e), the claims of a certified class
4 may be settled only with a court’s approval. If a proposed settlement will bind class
5 members, “the court may approve it only after a hearing and on finding that it is fair,
6 reasonable, and adequate.” Fed. R. Civ. P. 23(e)(2). When settlement takes place prior to
7 formal class certification, the Court should engage in a more probing inquiry into the
8 fairness of the settlement. *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1026 (9th Cir. 1998).

9 A district court’s role in reviewing the substance of the settlement is solely to
10 ensure that it is “fair, adequate, and free from collusion.” *Lane v. Facebook, Inc.*, 696 F.3d
11 811, 819 (9th Cir. 2012) (citing *Hanlon*). The district court should consider the settlement
12 as a whole, rather than looking at each separate part, to determine whether the settlement is
13 fair. *Id.* at 818-19. Further, “the question whether a settlement is fundamentally fair within
14 the meaning of Rule 23(e) is different from the question whether the settlement is perfect.”
15 *Id.* Courts should give deference to the private consensual decision of the parties. *Hanlon*,
16 150 F.3d at 1027. “[T]he court must also be mindful of the Ninth Circuit’s policy favoring
17 settlement, particularly in class action law suits.” *In re Omnivision Techs., Inc.*, 559 F.
18 Supp. 2d 1036, 1041 (N.D. Cal. 2008).

19 In assessing whether a proposed settlement is fair, adequate, and reasonable, courts
20 consider a collection of factors:

21 “the strength of the plaintiffs’ case; the risk, expense, complexity, and
22 likely duration of further litigation; the risk of maintaining class action
23 status throughout the trial; the amount offered in settlement; the extent of
24 discovery completed and the stage of the proceedings; the experience and
25 views of counsel; the presence of a governmental participant; and the
26 reaction of the class members to the proposed settlement.” *Hanlon*, 150
27 F.3d at 1026.

28 Additionally, when the Settlement occurs prior to formal class certification, the
Court must determine whether the settlement was a product of collusion or other conflicts

1 of interest. *In re Bluetooth Headset Prods. Liab. Litig.*, 654 F.3d 935, 946-47 (9th Cir.
2 2011).

3 **II. FINAL APPROVAL OF THE SETTLEMENT IS PROPER**

4 Plaintiffs assert, and the Defendant does not contest, that each of the *Hanlon* factors
5 supports final approval of the proposed Settlement pursuant to Rule 23(e).

6 **A. The Benefits to the Class are Significant in Light of the Strength of the** 7 **Plaintiffs' Case and the Risk, Expense, Complexity, and Likely Duration** 8 **of Future Litigation.**

8 The first four *Hanlon* factors weigh in favor of a finding that the Settlement is fair,
9 reasonable, and adequate.

10 The Settlement provides significant benefits to the Class. As detailed above, the
11 Settlement requires comprehensive, nationwide changes to Uber's policies, practices, and
12 procedures to ensure that blind persons traveling with service animals receive equal, non-
13 discriminatory treatment on the Uber platform. Uber will clarify its service animal policy
14 and make clear to Drivers that the company does not tolerate discrimination against guide
15 dog users on its platform. The Settlement requires thorough dissemination of information
16 to Drivers about the obligation to transport people traveling with service animals, and
17 implements strict Driver contract termination policies that will deter drivers from denying
18 rides to blind people with service animals. Under the Settlement, Class members will be
19 able to report discrimination more easily and will receive timely and thorough responses
20 upon submitting complaints. The Settlement includes additional protections that benefit the
21 Class, including limitations on the imposition of cleaning fees and policies for reimbursing
22 cancellation fees. The Settlement's provisions regarding data reporting, testing, and
23 monitoring will ensure that Uber implements these changes and that the changes
24 sufficiently remedy discrimination in the Uber network.

25 Although Plaintiffs maintain that they have a strong case, pursuing litigation instead
26 of Settlement would carry significant risk, expense, and complexity. Had the Parties not
27 achieved settlement, the Parties would likely have been engaged in protracted and
28

1 contentious litigation. Discovery for the litigation would be lengthy and costly: Plaintiffs
2 had already retained an expert and noticed numerous depositions, and discovery disputes
3 were pending at the time of settlement. The Parties would also likely engage in complex
4 law and motion practice. For instance, since Plaintiffs had originally filed this case as an
5 action on behalf of individuals and an organization in California, to achieve the scope of
6 relief that Plaintiffs negotiated in the Settlement, Plaintiffs would have needed to seek
7 leave to file an amended complaint and to move for class certification of a nation-wide
8 class. The Settlement avoids the risk and delay of protracted litigation, while providing
9 significant benefit to the Class.

10 **B. The Settlement is Fair, Adequate, and Reasonable in Light of the**
11 **Discovery Completed and the Stage of the Proceedings.**

12 The Parties had a strong grasp of the merits of their case before reaching agreement
13 on the Settlement. When class counsel, as in this case, “possess a sufficient understanding
14 of the issues involved and the strengths and weaknesses of the case,” this factor weighs in
15 favor of settlement approval. *See Chun-Hoon v. McKee Foods Corp.*, 716 F. Supp. 2d 848,
16 852 (N.D. Cal. 2010).

17 Although the Parties had not completed formal discovery or depositions, Class
18 Counsel conducted significant factual and legal research and the Parties exchanged
19 information prior to settlement through the General Order 56 process. “[I]n the context of
20 class action settlements, formal discovery is not a necessary ticket to the bargaining table
21 where the parties have sufficient information to make an informed decision about
22 settlement.” *In re Mego Fin. Corp. Sec. Litig.*, 213 F.3d 454, 459 (9th Cir. 2000), as
23 amended (June 19, 2000) (internal quotations omitted). Much of Plaintiffs’ case rested on
24 affirmative evidence of discriminatory treatment, which Class Counsel collected by
25 speaking with over 80 individuals while investigating and litigating the case. Marks. Decl.
26 ¶ 4. Class Counsel reviewed correspondence between Uber and individuals who alleged
27 discrimination, Uber’s publicly posted policies, and driver message boards. Marks. Decl. ¶
28 4. During the General Order 56 process, Uber shared additional information about internal

1 policies and practices that assisted Plaintiffs in determining proper relief to end the alleged
2 discrimination. These investigations and exchanges provided the Parties with sufficient
3 facts to make an informed decision about settlement.

4 The Parties were further able to assess their relative positions prior to the Settlement
5 because they commenced settlement negotiations after the Court had ruled on Defendant's
6 motion to dismiss.

7 **C. Experienced Class Counsel Endorse the Settlement.**

8 Class Counsel in this case brings extensive experience with class action litigation,
9 settlement, and disability rights law. Disability Rights Advocates' practice focuses
10 exclusively on disability rights litigation, primarily consisting of class actions and
11 representative impact actions, and includes litigation, negotiations, and creating and
12 monitoring complex policy-based settlement agreements. Declaration of Laurence Paradis
13 in Support of Joint Motion for Preliminary Approval of Class Settlement and Related
14 Motions ("Paradis Decl."), Dkt. No. 85, ¶¶ 8, 9. Rosen Bien similarly brings significant
15 experience with complex litigation and settlement implementation and monitoring. Paradis
16 Decl. ¶¶ 11-13. TRE Legal specializes in disability rights litigation as well. Paradis Decl. ¶
17 14. Class Counsel brought this experience to bear on developing strategy, assessing the
18 viability of Plaintiffs' claims and pursuit of a class action, and negotiating and drafting the
19 Settlement in this case.

20 The Ninth Circuit has recognized that parties that are represented by experienced
21 and competent counsel "are better positioned than courts to produce a settlement that fairly
22 reflects each party's expected outcome in litigation." *In re Pac. Enters. Sec. Litig.*, 47 F.3d
23 373, 378 (9th Cir. 1995). The significant experience of Class Counsel led to an effective
24 and comprehensive Settlement, and Class Counsel are well positioned to assess the
25 adequacy and efficacy of the Settlement. Class Counsel's endorsement of the Settlement
26 weighs in favor of a finding that it is fair, reasonable, and adequate.

27 Courts also consider whether government participants are involved in the
28

1 Settlement. The United States, which had submitted a Statement of Interest to clarify the
 2 scope of Title III coverage during the motion to dismiss phase, Dkt. No. 29, did not object
 3 to the settlement. Dkt. No. 97.

4 **D. No Class Members Objected to the Settlement.**

5 “[T]he absence of a large number of objections to a proposed class action settlement
 6 raises a strong presumption that the terms of a proposed class settlement action are
 7 favorable to the class members.” *In re Omnivision Techs., Inc.*, 559 F. Supp. 2d 1036,
 8 1043 (N.D. Cal. 2008) (quotation omitted). No class members submitted objections to the
 9 Settlement. Marks Decl. ¶ 32. Accordingly, this factor weighs in favor of the settlements.

10 **E. The Settlement Is the Product of Good Faith, Arms-Length
 11 Negotiations.**

12 The Parties engaged in protracted good faith, non-collusive, arms-length
 13 negotiations to reach settlement. The Parties began negotiations in May 2015 and
 14 continued negotiations through the end of April 2016. Marks Decl. ¶¶ 7, 8, 10, 12. The
 15 Parties held multiple in-person negotiations, and exchanged numerous redlines of the
 16 Settlement and the Settlement addenda, which include Uber’s formal written policy on
 17 service animals, internal guidance documents, driver education materials, and detailed
 18 plans for providing Riders with methods for reporting service animal issues. Marks Decl.
 19 ¶¶ 7, 8; Settlement Addenda 1-4. The Parties negotiated the policy, practice, and procedure
 20 changes that make up the class relief prior to negotiating damages for the individual named
 21 Plaintiffs and prior to unsuccessfully negotiating attorneys’ fees and costs. Marks Decl. ¶
 22 11.

23 The indicia of collusion are not present in this case. Signs of collusion include
 24 payment of excessive attorneys’ fees when compared with the scope of relief and reversion
 25 of fees to defendants. *See In re Bluetooth Headset Prods. Liab. Litig.*, 654 F.3d at 947.
 26 Since the Settlement does not provide damages to the class, and class members do not
 27 release their claims, there are no concerns about improper distribution or reversion of
 28 funds. Class Counsel has no guarantee of a significant fee recovery, as the Parties were

1 unable to reach agreement on attorneys’ fees. Marks Decl. ¶ 13. Rather, Defendant
2 indicated it would vigorously oppose Plaintiffs’ amount of requested fees and costs. Marks
3 Decl. ¶ 13.

4 Further, the Parties developed much of the framework for their Settlement with the
5 assistance of an experienced mediator, Hon. Jamie Jacobs-May (ret.). “The assistance of an
6 experienced mediator in the settlement process confirms that the settlement is non-
7 collusive.” *Satchell v. Fed. Express Corp.*, No. C 03 2878 SI, 2007 WL 1114010, at *4
8 (N.D. Cal. Apr. 13, 2007); *see also Chun-Hoon*, 716 F.Supp.2d at 852. The arms-length,
9 non-collusive negotiations, facilitated by an experienced mediator, weigh in favor of the
10 Court’s finding that the Settlement is fair, reasonable, and adequate.

11 **CONCLUSION**

12 The proposed Settlement will dramatically improve the treatment of Riders with
13 service animals in the Uber transportation network. This Settlement is a fair, reasonable,
14 and adequate resolution of the claims at issue. The Parties have provided adequate notice
15 to class members, and no class members objected to the Settlement. For the foregoing
16 reasons, Class Counsel respectfully request that, following the fairness hearing, the Court
17 enter an order granting final approval of the Settlement pursuant to Federal Rule of Civil
18 Procedure 23(e).

19
20 DATED: October 27, 2016

Respectfully submitted,

21 **DISABILITY RIGHTS ADVOCATES**

22
23 By: 

24 Mary-Lee K. Smith

25 Attorneys for Plaintiffs

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27
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