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REDACTED VERSION OF DOCUMENT(S) SOUGHT TO BE SEALED

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

BYRON MCKNIGHT, JULIAN MENA, TODD SCHREIBER, NATE COOLIDGE, and ERNESTO MEJIA, individually and on behalf of all others similarly situated,

Plaintiffs,

v.

UBER TECHNOLOGIES, INC., a Delaware Corporation, RASIER, LLC, a Delaware Limited Liability Company,

Defendants.

Case No.: 4:14-cv-05615-JST

PLAINTIFFS' NOTICE OF RENEWED MOTION AND RENEWED MOTION FOR ATTORNEYS' FEES AND EXPENSES AND FOR CONSIDERATION OF EXPERT TESTIMONY IN SUPPORT THEREOF UNDER 28 U.S.C § 1712(d); MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT THEREOF

Hon, Jon S. Tigar, Presiding

Date: May 6, 2020
Time: 2:00 P.M.
Location: Courtroom 6 - 2nd Floor
1301 Clay Street, Oakland, CA 94612

[Filed concurrently with Declarations of Robert Ahdoot, Jane E. Cloninger, Nick Coulson, Leslie E. Schafer, and Brian Young]

NOTICE OF MOTION

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that, on May 6, 2020 at 2:00 p.m., in Courtroom 6 of the above-captioned Court before the Honorable Jon S. Tigar, Plaintiffs Byron McKnight, Julian Mena, Todd Schreiber, Nate Coolidge, and Ernesto Mejia, (collectively, "Plaintiffs") will and hereby do move for an Order: (a) awarding Class Counsel's attorneys' fees in the amount of $8.125 million, and reimbursement of litigation expenses in the amount of $37,582.75 (which excludes the $3,200.63 already awarded by the Court); and (b) allowing expert testimony in support of such award under 28 U.S.C. § 1712(d).

This motion is based upon this Notice of Motion and Motion, the Memorandum of Points and Authorities; the concurrently filed Declarations of Robert Ahdoot, Jane E. Cloninger, Nicholas A. Coulson, Leslie E. Schafer, and Brian Young; the Class Action Settlement and Release (the "Settlement") previously filed with the Court (Dkt. 125), and all papers filed in support thereof; the argument of counsel; all papers and records on file in this matter; and such other matters as the Court may consider.

Dated: March 12, 2020

AHDOOT & WOLFSON, PC

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

In response to the Court's August 13, 2019 Order Granting Final Approval and Granting in Part and Denying in Part Plaintiffs' Motion for Attorney's Fees, Costs, and Incentive Awards. (Dkt. 189 (the "Final Approval Order")), Plaintiffs respectfully submit this Renewed Motion for Fees and Expenses and for Consideration of Expert Testimony in Support Thereof under 28 U.S.C § 1712(d), after months of meeting and conferring with Uber to obtain the necessary data to allow Plaintiffs' experts to compile and submit their reports. The Settlement that the Court finally approved cannot proceed, by its terms, without an award of attorneys' fees because the amount of the "Settlement Fund Balance" to be distributed to Class Members depends, in part, on the amount of Attorneys' Fees and Expenses awarded by the Court. (Dkt. 125, Amended Settlement at ¶¶ 38, 58.)

In order to resolve this obstacle and allow the Settlement's benefits to be realized by Class Members, Plaintiffs urge the Court to issue an award of fees in the amount of $8.125 million, the same amount requested in the original Motion, after considering Plaintiffs' expert testimony and applying CAFA. (Dkt. 140.) Although Plaintiffs respectfully disagree with the Court's conclusion that the sums paid to Class Members' Uber Rider Accounts under the Settlement are "coupon-like" (Dkt. 189 at 5) for many reasons (*see* § III.A, *infra*), this Renewed Motion demonstrates that applying CAFA's requirements regarding coupon settlements, in consideration of the expert testimony, supports the same award.

First, the requested amount is supported by the lodestar-multiplier approach, based on the value of the injunctive relief alone, regardless of any (coupon-like or not) payments to the Class. *See* 28 U.S.C. § 1712(b)(1). Class Counsel's lodestar is $1,961,905.00. (Ahdoot Decl., ¶ 86 & Ex. B.) The Settlement's injunctive relief, which prevents Uber from collecting the safe rides fee or making certain other safety-related claims, is worth over $471 million to Class Members, based on the revenues Uber generated from that fee prior to its discontinuance, but conservatively is valued at $56 million by Plaintiff's expert, Dr. Leslie E. Schafer. (Schafer Decl. ¶¶ 12, 16-22.) In light of this valuable injunctive relief (alone, irrespective of any other value of the Settlement), the risks Class Counsel undertook in the

litigation, the complexity of the issues, and the experience, reputation, and ability of Class Counsel, the requested multiplier of 4.1 is readily justified.

Expert testimony regarding the value of the Settlement's payments to Class Members' Uber accounts — the feature that the Court concluded was coupon-like — further supports the award, in accordance with 28 U.S.C. § 1712(d). Relying on expert Jane Cloninger's prediction that there likely will be an 85.9% success rate for cash payments to the credit cards and other forms of payment held by Class Members who do not use the Settlement Share during the year that it will be available in their Uber Rider Accounts (Cloninger Decl. ¶ 29), Dr. Schafer concludes that the payments to Class Members' Uber Rider Accounts have a total Redeemed Credit Value of $[redacted] million (Schafer Decl. ¶¶ 13, 23-39). When the value of the Settlement's other monetary components is added to this figure (including the attorney fees and litigation expenses requested in this Renewed Motion, the value of Class Members' cash elections, the notice and administration costs, and the incentive awards already awarded by the Court), this measure of the Settlement's value rises to $31.13 million. (*See* § III.C.1, *infra*.) The requested fee award is 26% of this monetary value. (The requested fee award is less than 10% of the combined value of the Settlement's injunctive relief ($56 million) and monetary relief ($31 million), which total $87 million.)

As the record in this case demonstrates, directly paying Class Members' payment cards is expensive — especially given the large number of Class Members — and is estimated to cost Uber $.07 per transaction. (Dkt. 128, 6/1/17 Ahdoot Decl. ¶ 71.) The Settlement's distribution plan provides the best alternative to get as much money to as many Class Members as possible. Plaintiffs' counsel worked and negotiated tirelessly to find a way to deliver the Settlement's monetary relief to Class Members in a practical and economical way instead of to their "next best friend." *Cf. Lane v. Facebook, Inc.*, 696 F.3d 811, 825 (9th Cir. 2012) (approving *cy pres* only settlement where "it would be 'burdensome' and inefficient to pay the $6.5 million in *cy pres* funds that remain after costs directly to the [3.6 million] class [members] because each class member's recovery under a direct distribution would be *de minimis*."). Those efforts should be rewarded, and not penalized solely because the Court found the mechanism used to deliver that monetary relief to be "coupon-like."

With respect to costs, Class Counsel submit additional documentation supporting their requested costs in accordance with the Final Approval Order, in the accompanying declarations of Robert Ahdoot and Nicholas Coulson.

Class Counsel respectfully request that the Court grant this motion and award Class Counsel their requested attorneys' fees in the amount of $8.125 million, and additional reimbursement of litigation expenses in the amount of $37,582.75 (which excludes the $3,200.63 already awarded by the Court).

II. THE SETTLEMENT'S MONETARY AND NON-MONETARY BENEFITS

This case challenged the legality of Uber's Safe Ride Fee, which ranged from $1 to $2.50, and averaged $1.14. (Dkt. 128, Ahdoot Decl. ¶¶ 46, 48.) The Court previously certified a Settlement Class, consisting of "of '[a]ll persons who, from January 1, 2013 to January 31, 2016, used the Uber App or website to obtain service from one of the Uber Ride Services with a Safe Rides Fee in the United States or its territories,'" and found no reason to alter its certification ruling at Final Approval. (Dkt. 189 at 7, 2.)

A. The Settlement's Substantial Monetary Benefits.

Under the terms of the Settlement, Defendants agree to pay $32.5 million to create a non-reversionary Settlement Fund that will be used for payments to Class Members, less the costs of notice and settlement administration, any Court-approved Service Awards, and Court-approved Attorneys' Fees and Expenses. (Dkt. 125, Am. Stip. ¶¶ 52, 55.) The Settlement Fund Balance will be distributed to the Class Members on a *pro-rata* basis based on total number of eligible rides they took during the Class Period. Class members had the option to elect cash payments by submitting a Payment Election Form. Class Members who did not choose cash, or who did not submit a Payment Election Form, will receive their Settlement Shares as payments to their Uber Rider Accounts, which automatically will be applied to their next Uber ride or food delivery ("Uber Rideshare Services"). (*Id.* ¶¶ 6, 55-73.) If a particular Class Member does not use his or her Settlement Share during the one-year period that it is available in his or her Uber Rider Account, Uber will attempt to make a payment in the amount of the full Settlement Share to the Class Member's form of payment on file with Uber. (*Id.* ¶¶ 74-79.) Any

Residual Funds will be distributed as a *cy pres* award to the National Consumer Law Center, a non-profit organization. (*Id.* ¶ 80.)

1. Millions of Class Members Will Receive Substantially More than the Average $1.07 Settlement Share.

Class Counsel estimated that the Settlement Fund presents an average Settlement Share of approximately $1.07 per Class Member based on a Class size of approximately 22 million Members, which is significant in relation to the average initial Safe Rides Fee of $1.14 charged by Defendants. (Dkt. 127, Mtn. for Prelim. App. at 6-7.) However, this $1.07 figure is only an average and, if distribution proceeds as planned, and Class Counsel are awarded the full amounts sought in this motion, over 4.8 million Class Members will receive more than $1.07 each, and approximately 244,000 will receive more than $10 each, with the largest individual award amounting to $135.40. (Young Decl. ¶ 8.) The following table provides more detail on the amount of individual awards under these same assumptions:

Safe Rides	Total Class Members	Total Safe Rides	Average Award
1-5	12,207,340	26,678,419	$0.35
6-10	3,034,912	23,306,706	$0.59
11-15	1,564,640	20,008,379	$0.84
16-20	980,608	17,494,428	$1.08
21-30	1,190,655	29,779,951	$1.45
31-40	712,648	25,037,292	$1.94
41-50	478,506	21,627,787	$2.43
51-100	1,093,214	77,028,844	$3.90
101-200	563,307	77,712,846	$7.58
201-300	146,522	35,363,777	$12.48
301-500	74,262	27,720,003	$19.84
501+	21,471	14,060,240	$48.46

(Young Decl. ¶ 9.)

2. Every Attempt Will Be Made to Get the Money Into Class Members' Pockets.

The Settlement provides Class Members with multiple opportunities to receive their Settlement Share:

- First, Class Members were provided an opportunity to elect payment of their Settlement Share via PayPal, eCheck, or to their Uber Ride Account (Dkt. 125 (Amended Stipulation), ¶¶ 63-64; Young Decl. ¶¶ 4-7);
- Second, for Class Members who did not submit a Payment Election Form, or who submitted a Payment Election Form requesting that payment be made to their Uber Rider Account, will have their Settlement Share paid to that account (Dkt. 125, ¶ 68);
- Third, as there is no requirement for a Class Member to utilize Uber services to receive payment, a reminder email will be sent to any Class Member who did not submit a Payment Election Form and did not use the Settlement Share within a year after it was paid to their Uber Ride Account, to ensure that their payment source information is correct and up to date before Uber directs payment to such payment sources (Id. ¶ 88);
- Fourth, following the reminder email, if the Settlement Share in the Uber Ride Account still is not used, it will be paid to the Class Members' default payment method on file with Uber (e.*g.*, a credit card). (*Id*. ¶ 68.)

The use of Uber's application to distribute the majority of the Settlement's cash payments saves significant costs that would be required if that process were skipped, and instead Uber simply made an immediate attempt to credit each Class Member's payment account on file with Uber. The Settlement Administrator declared that direct payment to such accounts will cost approximately $0.75 per transaction and, given the size of the Settlement Class, this figure would balloon were it not for the Settlement's use of payments to Uber Rider Accounts prior to direct payments to Class Members' payment accounts. (Dkt. 125-9, Am. Stip. Ex. I ¶ 38.) Notably, close to one quarter of those Class Members who submitted Payment Election Forms chose to receive their payment through their Uber Rider Account, underscoring the utility of this form of payment in the context of the Uber app. (Dkt. 164, Azari Decl. ¶ 40.)

The only funds that will be distributed to the Settlement's *cy pres* recipient, the National Consumer Law Center, will be Settlement Shares that the Settlement Administrator and Uber are unable to distribute in one of the three different methods described above, over the course of a year.

The Settlement's structure is well-designed to deliver its monetary value to Class Members — no mean feat, given the relatively small dollar value of the Safe Rides Fee at issue (and, consequently, the Settlement Shares that Class Members will receive under the Settlement). Where such small per-person amounts are concerned, a *cy pres*-only settlement likely could be approved. *See Lane*, 696 F.3d at 825. But rather than accept a *cy pres*-only settlement, Class Counsel exhausted all known avenues to distribute the Fund to the Class Members and negotiated the Settlement's distribution plan, which they believe is the optimal way to deliver the Fund to the Class Members.

As explained in detail below, plaintiff's expert Leslie E. Schafer, Ph.D, values the payments to Class Members' Uber Rider Accounts at $[redacted] million, which results in a total monetary value of $31 Million when combined with the costs of notice and administration, attorney fees and costs (assuming those are granted at full requested amount), the value of Class Members' cash elections, and incentive awards to the class representatives.

B. Defendants Will Change Their Practices

In addition to monetary relief for Class Members, the Settlement's injunctive relief ensures that Defendants will not again charge any such Safe Rides Fee. (Dkt. 125 at 19 ¶ 54(a).) Defendants further are prohibited from making a variety of representations to the effect that their background checks are the "best available" or the "safest," and from making representations such as that they provide the "safest transportation option" or the "safest ride on the road." (*Id.* ¶ 54(d)-(e).) Defendants cannot represent that they screen against arrests when they actually screen against convictions, they cannot make broad representations that they screen against specific offenses without explaining the applicable disqualification criteria, and they must identify the time period covered by background checks in advertising regarding them. (*Id.* ¶ 54(b)-(c).) The Settlement thus addresses substantially all of the objectionable conduct alleged in the CAC, despite Defendants' denial of liability, and despite Uber's arbitration agreement purporting to bar any class action.

Over the approximately two years Defendants charged the Safe Rides Fee, they collected $470,706,387 in revenue from that fee. (Dkt. 128, Ahdoot Decl. ¶ 46.) This litigation ended that extremely valuable (and, allegedly, misleading) practice. The injunctive relief arguably presents over $471 million in value since Defendant ceased charging that fee after this case was filed in 2014. (*Id.* ¶ 48.) However, Plaintiffs provide the expert declaration of Leslie E. Schafer, Ph.D., who uses a more conservative methodology to value the Settlement's injunctive relief at approximately $56 million. (Schafer Decl. ¶¶ 12, 16-22.)

III. ANALYSIS

Although Plaintiffs respectfully disagree with the Court's conclusion that the Settlement is coupon-like, they submit that the Court can award the requested attorney fees under CAFA provisions governing coupon settlements, which provide:

> **(a) Contingent Fees in Coupon Settlements.** If a proposed settlement in a class action provides for a recovery of coupons to a class member, the portion of any attorney's fee award to class counsel that is attributable to the award of the coupons shall be based on the value to class members of the coupons that are redeemed.
>
> **(b) Other Attorney's Fee Awards in Coupon Settlements.**
>
> **(1) In general.** If a proposed settlement in a class action provides for a recovery of coupons to class members, and a portion of the recovery of the coupons is not used to determine the attorney's fee to be paid to class counsel, any attorney's fee award shall be based upon the amount of time class counsel reasonably expended working on the action.
>
> **(2) Court approval.** Any attorney's fee under this subsection shall be subject to approval by the court and shall include an appropriate attorney's fee, if any, for obtaining equitable relief, including an injunction, if applicable. Nothing in this subsection shall be construed to prohibit application of a lodestar with a multiplier method of determining attorney's fees.
>
> **(c) Attorney's Fee Awards Calculated on a Mixed Basis in Coupon Settlements.** If a proposed settlement in a class action provides for an award of coupons to class members and also provides for equitable relief, including injunctive relief
>
> **(1)** that portion of the attorney's fee to be paid to class counsel that is based upon a portion of the recovery of the coupons shall be calculated in accordance with subsection (a); and

> **(2)** that portion of the attorney's fee to be paid to class counsel that is not based upon a portion of the recovery of the coupons shall be calculated in accordance with subsection (b).
>
> **(d) Settlement Valuation Expertise.** In a class action involving the awarding of coupons, the court may, in its discretion upon the motion of a party, receive expert testimony from a witness qualified to provide information on the actual value to the class members of the coupons that are redeemed.

28 U.S.C. § 1712.

When a district court awards "fees based on the value of [an] entire settlement [that includes coupon relief], and not solely on the basis of injunctive relief," then the Ninth Circuit has interpreted § 1712(d) as requiring the Court to:

> perform two separate calculations to fully compensate class counsel. First, under subsection (a), the court must determine a reasonable contingency fee based on the actual redemption value of the coupons awarded.[] Second, under subsection (b), the court must determine a reasonable lodestar amount to compensate class counsel for any non-coupon relief obtained.[] This lodestar amount can be further adjusted upwards or downwards using an appropriate multiplier. § 1712(b)(2). In the end, the total amount of fees awarded under subsection (c) will be the sum of the amounts calculated under subsections (a) and (b).

In re HP Inkjet Printer Litig., 716 F.3d 1173, 1184-85 (9th Cir. 2013).

Plaintiffs submit that the value of injunctive relief and the value of the account credits that the Court has deemed to be coupon-like are each sufficient, separately and on their own, to justify the requested award of fees. But CAFA and the Ninth Circuit allow the Court to combine these two values, each supported by expert testimony, to fully compensate counsel for their efforts.

As explained in detail below, the Court can award the requested fees based solely on the value of injunctive relief, conservatively valued by Dr. Schafer at $56 million, by applying a warranted multiplier of 4.14 to Class Counsel's lodestar. Separately, the Court can rely on Dr. Schafer's testimony valuing the payments to Class Members' Uber Rider Accounts, which are followed by an attempt to directly pay those Class Members' payment accounts on file with Uber if they do not use the payments via their Rider Accounts within one year, at $[redacted] million — the "redemption" value of the "coupon-like" aspect of the Settlement under CAFA. This approach results in a total monetary value of $31 Million (when combined with notice and administration costs, incentive awards, the value of Class Members' cash elections, and the requested attorney fees and costs); the requested fees amount to 26%

of this total monetary value of the Settlement, which includes the "redemption value" (or, as Dr. Schafer refers to it, the Redeemed Credit Value) of the payments to Uber Rider Accounts that the Court found coupon-like.

Thus, the approach outlined by the Ninth Circuit in *HP Inkjet* supports an award twice as large as that requested here. Indeed, the requested fee of $8.125 million is less than 10% of the total Settlement value, when the value of the Settlement's injunctive and monetary relief (which includes the Redeemed Credit Value) are combined to yield a total of $87 million.

A. Plaintiffs Respectfully Disagree that CAFA's Coupon Provisions Should Apply.

In the Final Approval Order, the Court reasoned that "[w]hether the settlement is a coupon settlement is a close call," but "conclude[d] that the settlement is sufficiently coupon-like to warrant application of 28 U.S.C. § 1712," part of the Class Action Fairness Act ("CAFA"). (Dkt. 189 at 5-6.) Applying the "heightened level of scrutiny" required under § 1712, the Court nonetheless approved the Settlement as fair, reasonable, and adequate, concluding that "the settlement meets any heightened requirements imposed by CAFA." (*Id.* at 6, 10.)

Plaintiffs respectfully disagree with the Court's conclusion that the Settlement is coupon-like, especially because there is no requirement for Class Members to utilize Uber services to receive their Settlement Shares. Rather, all that is required is that Class Members elect cash payment via an electronic Payment Election Form or, alternatively, have a useable payment method on file in the event they do not order a ride or delivery from Uber during the year that Settlement Shares are available in that fashion.

CAFA "does not define the ambiguous term 'coupon' within the statute." *In re Online DVD-Rental Antitrust Litig.*, 779 F.3d 934, 950 (9th Cir. 2015). As this Court recognized in its Final Approval Order, the monetary relief conveyed under the present Settlement, in many ways, is totally unlike any coupons contemplated by CAFA. All Class Members had the option of selecting direct payment. (Dkt. 189 at 5.) In addition, if Class Members do not use the payments to their Uber Rider Accounts in the 12 months those sums are available in that fashion, Uber will make a direct payment to the payment accounts on file with Uber. (Dkt. 125, SA ¶ 68.) That no portion of the money paid to Class Members

will revert to Uber is another factor differentiating these payments from coupons. *See, e.g.*, *Roes 1-2 v. SFBSC Mgmt., LLC*, 944 F.3d 1035, 1052 (9th Cir. 2019).

Unlike true coupons, the payments to Class Members' Uber accounts, and then to their payment accounts, do not require Class Members to utilize Uber services or to take any action in order to get the monetary benefit they present. Plaintiffs' counsel has not found any case concluding that a class settlement constituted a CAFA coupon settlement where the settlement included a non-reversionary fund exceeding the amount of requested attorney fees by the margin that the non-reversionary Settlement Fund in this case ($32.5 million) exceeds the requested Attorneys' Fees ($8.125 million). *Cf.* Senate Report, S. Rep. No. 109–14 at 16-17 (citing class settlements such as that in *Ramsey v. Nestle Waters N. Am., Inc. d/b/a Poland Spring Water Co.*, No. 03 CHK 817, (Kane County, Ill., 2003), where attorney fee awards were disproportionately large in comparison to non-reversionary *cy pres* awards); *In re Easysaver Rewards Litig.*, 906 F.3d 747, 753 (9th Cir. 2018) (reversing fee award under coupon settlement featuring "a $12.5 million fund from which Defendants would pay up to $8.7 million in attorney's fees").

Also unlike true coupons, this Settlement's payments are unlikely to "facilitate a sale to a purchaser who would not otherwise purchase a product at a higher price." *True v. Am. Honda Motor Co.*, 749 F. Supp. 2d 1052, 1075 (C.D. Cal. 2010). Rather, these sums will reduce the cost of an Uber ride or food delivery to Class Members who tend to use Uber's services regularly, regardless of the existence of these or any other credits to their Uber Rider Accounts.

Class Members are not required to "hand over more of their own money before they can take advantage of" the payments to their rider accounts, nor are the payments valid only "for select products or services." *In re Online DVD*, 779 F.3d at 951; *In re Easysaver Rewards Litig.*, 906 F.3d at 755 (quoting same).[1] Rather, Class members will automatically receive the benefit of these funds when they

[1] Indeed, as the chart in Section II.A.1, *supra*, demonstrates, many Class members' Settlement Share will be enough to afford a whole Uber ride or food delivery, further demonstrating how unlike true coupons are the present Settlement's payments to rider accounts (which in any event will be followed by direct payment to Class members' payment accounts). *See In re Online DVD*, 779 F.3d at 952 (reasoning that gift cards offered to class members were not coupons because, *inter alia*, their $12 amount was enough "to purchase an entire product as opposed to simply reducing the purchase price").

take their next ride with, or order food from, Uber—which they otherwise would do, regardless of the Settlement, and which transactions will be cheaper, or completely free (depending on the respective member's Settlement Share and the amount of the Uber transaction) as a result of this Settlement. And, again, if they do not use those funds while they are in Class Members' Uber Rider Accounts within one year, Uber will directly credit Class members' payment accounts in the amount of their Settlement Share. (Dkt. 125, SA ¶¶ 74-79.) Class Counsel have not found any cases holding that such a bookend structure — providing for cash election upfront, and then ensuring cash payment for credits not used on the back end — constituted a coupon settlement.

The Settlement's distribution method is the best available to get the most money to the most Class Members. Most Class Members who did not choose cash are expected to automatically realize the value of the payment to their Uber Rider Accounts when they take their next ride with Uber, without any additional effort, given that [redacted]% used Uber in the 12 months preceding preliminary approval of the Settlement, and approximately [redacted]% used Uber in a more recent 12-month period. (Ahdoot Decl. ¶ 58.) A comparable figure can be expected to use Uber in the 12 months following the Settlement's Effective Date, when Settlement Shares will be available in Uber Rider Accounts. (Schafer Decl. ¶ 37(d).) This avoids the approximate cost of $0.07 per-payment that Uber would incur in immediately issuing payment to a rider's default payment method on file with Uber (Dkt. 128 ¶ 71), or the $0.75 per payment that it would cost the Settlement Administrator to accomplish the same thing (Dkt. 125-9 ¶ 38).

Despite the costs entailed with direct payment to Class Members' payment accounts, if Class Members do not use the payments while in their Uber Rider Accounts by taking a ride with, or ordering food from, Uber, then Uber will attempt to issue such payments to Class Members' payment accounts at the end of the 12-month period, after a reminder email is sent reminding Class Members to ensure that their form of payment is current. (Dkt. 125 ¶ 68.) As Plaintiffs' expert Jane Cloninger opines, over 85% of these payments are expected to be successful. (Cloninger Decl. ¶ 29.)

Although Class Counsel believe, for these reasons, that the present Settlement is not sufficiently coupon-like to require application of CAFA's coupon provisions, nonetheless, as explained in the following sections, CAFA allows for the award of attorney fees requested here. Class Counsel respectfully request that the Court make a fee determination at the earliest practicable time so that the

Settlement Fund can be distributed to Class Members. For the reasons set forth below, the Court may do so without reconsidering its prior approval of the Settlement, and without any modification of the Settlement in any way that might trigger Uber's ability to declare it void. (Dkt. 125, ¶ 129.) Class Counsel's requested fee award is reasonable, whether judged against the value of the injunctive relief or the actual value of the payments to Class Members' Uber Rider Accounts, separately, or the combined value of the two.

B. The Requested Fee Is Reasonable Based on the Lodestar-Multiplier Approach Alone, Which Is Triggered by Injunctive Relief Conservatively Valued at $56 Million.

While Plaintiffs disagree that the present Settlement is sufficiently "coupon-like" to qualify as a CAFA coupon settlement, even accepting this conclusion, the Court may award Class Counsel their requested fee based on the value of the Settlement's injunctive relief alone, regardless of the sums paid to Class Members. The Court may award fees using the lodestar approach, given that the injunctive relief provided by the Settlement here is extremely valuable and, standing alone, is more than enough to justify the requested fee award. *See* 28 U.S.C. § 1712(b); *In re HP Inkjet Printer Litig.*, 716 F.3d at 1183 & n.12. That is, even if "a portion of the recovery of the coupons is not used to determine the attorney's fee," the requested fee award, based on the lodestar, is "appropriate" in light of the value presented to Class Members by the Settlement's injunctive relief. *Id.* (quoting 28 U.S.C. § 1712(b)). Put yet another way, the requested fee is reasonable even if no portion of it is "attributable to" the "coupon" component (in this case, the sums paid to Class Member's Uber Rider Accounts that, if not used while in those Accounts, will be followed by direct payments to Class Members' financial accounts on file with Uber). *In re HP Inkjet Printer Litig.*, 716 F.3d at 1187-87.

CAFA explicitly allows for "an appropriate attorney's fee . . . for obtaining equitable relief, including an injunction, if applicable." 28 U.SC. § 1712(b)(2); *see also id.* § 1712(c). While the Ninth Circuit has recognized that, "because of the difficulties of valuing injunctive relief and the concomitant dangers of inflated fees, 'parties *ordinarily* may not include an estimated value of undifferentiated injunctive relief in the amount of an actual or putative common fund for purposes of determining an award of attorneys' fees,'" Plaintiffs' expert, Dr. Leslie Schafer, demonstrates that this case presents "'the unusual instance where the value to individual class members of benefits deriving from injunctive

relief can be accurately ascertained.'" *Roes 1-2*, 944 F.3d at 1055-56 (quoting *Staton v. Boeing*, 327 F.3d 938, 946, 974 (9th Cir. 2003)). Furthermore, the present case is distinguishable from that before the Ninth Circuit when it first made these comments in *Staton*, because CAFA expressly allows for an award of attorneys' fees for "for obtaining equitable relief, including an injunction."

Given CAFA's ambiguous nature, and its failure to define what constitutes a "'coupon' within the statue," courts look to the statute's legislative history for what guidance it provides. *In re Online DVD*, 779 F.3d at 950 (citing S. Rep. No. 109–14 (2005)); *see also, e.g.*, *In re Easysaver Rewards Litig.*, 906 F.3d at 755 (relying on same legislative history). As CAFA's legislative history demonstrates, "nothing in" 28 U.S.C. § 1712(b), which governs settlements including coupons and equitable relief (Dkt. 189 at 11), "should be construed to prohibit using the 'lodestar with multiplier' method of calculating attorney's fees." Senate Report, S. Rep. No. 109–14 at 30. And any fee based on the value of injunctive relief "should be based on the time spent by class counsel on the case." *Id.* at 31; *see also Chambers v. Whirlpool Corp.*, 214 F. Supp. 3d 877, 895 (C.D. Cal. 2016) ("Where, as here, the settlement includes both coupon relief and monetary relief, CAFA authorizes the court to calculate attorney's fees utilizing the lodestar method. *See* 28 U.S.C. § 1712(b).");[2] *Fleury v. Richemont N. Am., Inc.*, No. C-05-4525 EMC, 2008 WL 3287154, *3 (N.D. Cal. Aug. 6, 2008) ("CAFA allows for use of the lodestar method.").

Here, the Settlement's injunctive relief presents great value to Class Members. Over the approximately two years that Defendant charged the Safe Rides Fee, it collected $470,706,387 in revenue from that fee. (Dkt. 128, Ahdoot Decl. ¶ 46.) Thus, the Settlement's injunctive relief arguably is worth over $470 million, given that Defendant ceased charging that fee as a result of this litigation,

[2] In the Final Approval Order, the Court distinguished *Chambers* "because it involved an award of monetary relief entirely separate from, and in addition to, the award of coupons." (Dkt. 189 at 11 n.2.) First, as this Court recognized in its Final Approval Order, the present Settlement is not a typical coupon settlement, but rather features a distribution plan that, in part, the Court found "coupon-like." (Dkt. 189 at 5.) The direct payments to Class Members' payment cards that will be made under the terms of the present Settlement if the funds are not used while in Uber Rider Accounts render this Settlement fundamentally different from typical coupon settlements, in which class members receive nothing without an additional purchase and expenditure of money that otherwise may not occur; this direct payment makes *Chambers*' reasoning particularly apt here, as the present Settlement features valuable injunctive relief *and* direct payments to class members, in addition to the payments to Uber Rider Accounts that the Court deemed "coupon-like." (*Id.*)

and Class Members no longer are charged any such fee. (*Id.* ¶ 48.) In the interest of presenting the Court with a more conservative valuation, however, Plaintiffs' expert, Leslie E. Schafer, Ph.D., uses more conservative methodology to value the Settlement's injunctive relief at approximately $56 million.[3] (Schafer Decl. ¶ 12.) Dr. Schafer arrives at this valuation by carefully assessing Class Members' "'willingness to pay' for safety" (*id.* ¶ 17), which is assessable during the Class Period thanks to survey evidence from 2016 (*id.* ¶ 19 & Ex. 3).

1. Class Counsel's Requested Fee Is Justified Under the Lodestar-Multiplier Approach.

Under the lodestar method, "the district court 'multiplies a reasonable number of hours by a reasonable hourly rate.'" *Stetson v. Grissom*, 821 F.3d 1157, 1166 (9th Cir. 2016) (quoting *Fischel v. Equitable Life Assurance Soc'y*, 307 F.3d 997, 1006 (9th Cir. 2002)). The lodestar amount may then be adjusted by a risk multiplier, and/or "a multiplier that reflects 'a host of "reasonableness" factors.'" *Stetson*, 821 F.3d at 1166 (quoting *In re Bluetooth Headset Prods. Liab. Litig.*, 654 F.3d 935, 941–42 (9th Cir. 2011)).

As explained in more detail in the earlier Motion for Attorneys' Fees and Expenses and for Class Representative Service Awards (Dkt. 140, hereinafter the "Original Fee Motion"), and in the Final Approval Motion (Dkt. 162), Class Counsel's efforts included, summarily:[4]

- A thorough and exhaustive pre-filing investigation of all factual and legal issues surrounding Defendants' representations, marketing, business practices, and promotional efforts, across all available platforms, including dozens of witness and expert interviews;

[3] The requested fee award amounts to less than 15% of this conservative value of the Settlement's injunctive relief. Although Class Counsel here seek an award of the requested fee under the lodestar approach, in light of CAFA's requirements for coupon settlements, it is worth noting that the requested fee award is well below the Ninth Circuit's "benchmark" percentage for reasonable attorney fees in common fund cases amounting to 25% of such common funds. *E.g.*, *Vizcaino v. Microsoft Corp.*, 290 F.3d 1043, 1048-50 (9th Cir. 2002); *In re Online DVD-Rental Antitrust Litig.*, 779 F.3d at 949. Such an analysis is warranted under the Ninth Circuit's command that the Court consider whether any lodestar-multiplier aware is "appropriate" in light of "the value of the equitable or injunctive relief obtained for the class." *In re HP Inkjet Printer Litig.*, 716 F.3d at 1183 n.12.

[4] Recognizing that the Northern District's Procedural Guidance for Class Action Settlements discourages a statement of background facts in motions for attorney fees, and suggests reliance on the background section in a final approval motion, Plaintiffs respectfully direct the Court to their Original Fee Motion and Final Approval Motion for more fulsome descriptions of this action's procedural history and of Class Counsel's work that was required to achieve the Settlement.

- After the two original two cases (this action and *Mena v. Uber Techs., Inc.*, No. 3:15-cv-00064) were independently filed, respective Plaintiffs' counsel negotiated a way to proceed forward in a collaborative manner rather than wasting the Court's resources on management of competing, separate cases and contested lead counsel applications;
- Preparation of two original Complaints, an Amended Complaint, the Consolidated Amended Complaint ("CAC"), as well as fully researching and briefing two complex motions to compel arbitration filed by Uber;
- Extensive post-filing investigation and discovery, which included review of thousands of documents, ten interviews of Uber personnel, numerous interviews of additional witnesses, and consultation with experts;
- Reviewing filings in and researching factual and legal issues implicated by numerous other proceedings against Uber that were relevant to this matter, including *California v. Uber Techs., Inc.*, No. CGC-14-543120 (S.F. Sup. Ct.), *Cordas v. Uber Techs., Inc.*, No. 16-CV-04065-RS (N.D. Cal.), *Cullinane v. Uber Techs., Inc.*, No. CV 14-14750-DPW (D. Mass.), *Cubria v. Uber Techs, Inc.*, No. A-16-CA-544-SS (W.D. Tex.), *Greater Houston Transportation Co. v. Uber Techs., Inc.*, No. 14-941 (S.D. Tex.), *In re Uber FCRA Litig.*, No. C-14-5200 EMC (N.D. Cal.), *L.A. Taxi Cooperative, Inc. v. Uber Techs., Inc.*, No. 15-cv-01257-JST (N.D. Cal.), *Lavitman v. Uber Techs., Inc.*, No. 2012-04490 (Mass.), *Metter v. Uber Techs., Inc.*, No. 16-CV-06652-RS (N.D. Cal.), No. 17-16027 (9th Cir.), *Meyer v. Kalanick*, Nos. 15 Civ. 9796 (S.D.N.Y.), 16-2750-cv (2d Cir.), *O'Connor v. Uber Techs., Inc.*, No. 3:13-cv-03826-EMC (N.D. Cal.), *Price v. Uber Techs., Inc.*, No. BC554512 (L.A. Sup. Ct.), and *Sabatino v. Uber Techs., Inc.*, No. 15-cv-00363 (N.D. Cal.);
- Before reaching the final Settlement, Class Counsel engaged in settlement negotiations spanning almost two years with an ever-changing backdrop of facts and law, attended six full days of mediation with two private mediators and a settlement conference with Chief Magistrate Judge Joseph C. Spero, and conducted numerous in-person and telephonic meetings between counsel;

- Counsel memorialized the original and amended Settlements and prepared all related documents, which as explained in the original Fee Motion was particularly difficult in this case, and required negotiation over every minutiae of the Settlement; and
- Class Counsel researched and briefed the preliminary and final approval motions (Dkts. 127, 162), Plaintiffs' Response to the eight objections to the Settlement (Dkt. 161), and the Original Fee Motion (Dkt. 140).

In addition, given the Court's denial of the Original Fee Motion in the Final Approval Order, Class Counsel were required to gather additional information from Uber (which required extensive meet and confer efforts), retain and work with multiple experts, and research and draft the present Renewed Attorney Fee Motion. (Ahdoot Decl. ¶ 57.) However, Class Counsel do not base the present fee request on any such fee-related work. (*Id*. ¶¶ 77, 82; Coulson Decl. ¶ 4.)

Assuming this motion is granted, and the Settlement proceeds by its terms, Class Counsel's work will not be over. Rather, Class Counsel will be required to oversee and assist with administration of the Settlement and distribution of the Settlement fund, ensure that Defendants comply with the injunctive relief aspects of the Settlement, prepare and file with the Court a post-distribution accounting in accordance with the Northern District's Procedural Guidance for Class Action Settlements, and may be required to litigate this matter on appeal before the Ninth Circuit, should any objectors appeal.

Based solely on fees incurred to date on matters other than the present or original fee request, the requested fee results in a lodestar cross-check multiplier of 4.14, which is within the range of multipliers approved in the Ninth Circuit, and is supported here given the complexity of the issues involved, the contingent nature of the representation, and the other factors considered by courts undertaking this approach.

The accompanying declarations set forth the hours of work and billing rates used to calculate the lodestars here. As described in those declarations, Plaintiffs' counsel and their staff have devoted a total of approximately 2,923.8 hours to this litigation, excluding work performed in connection with this or the prior motion for attorneys' fees, and have a total adjusted lodestar to date of $1,961,905.00. (Ahdoot Decl., ¶ 86 & Ex. B; Dkt. 142, prior Coulson Decl.; Dkt. 148, Arias Decl.) All of this time was reasonable and necessary for the prosecution of this action. Class Counsel took meaningful steps to

ensure the efficiency of their work. (Ahdoot Decl., ¶¶ 62-63.) And, as mentioned above, these amounts do not include the additional time that Class Counsel will have to spend going forward, which are likely to exceed the norm in such cases given the Settlement's cost-saving plan of distribution, nor do these amounts include any fee-related time.

2. Class Counsel's Hourly Rates Are Reasonable.

In assessing the reasonableness of an attorney's hourly rate, courts consider whether the claimed rate is "in line with those prevailing in the community for similar services by lawyers of reasonably comparable skill, experience and reputation." *Blum v. Stenson*, 465 U.S. 886, 895-96 n. 11 (1984). Courts apply each biller's current rates for all hours of work performed, regardless of when the work was performed, as a means of compensating for the delay in payment. *In re Wash. Pub. Power Supply Sys. Sec. Litig.*, 19 F.3d 1291, 1305 (9th Cir. 1994); *see also Stetson*, 821 F.3d at 1166 ("The lodestar should be computed either using an hourly rate that reflects the prevailing rate as of the date of the fee request, to compensate class counsel for delays in payment inherent in contingency-fee cases, or using historical rates and compensating for delays with a prime-rate enhancement.").

Class Counsel here are experienced, highly regarded members of the bar. They have brought to this case extensive experience in the area of consumer class actions and complex litigation. (Ahdoot Decl., ¶¶ 61-76 & Ex. A.) Class Counsel's customary rates are in line with prevailing rates in this District, have been approved by courts in this District and other courts and/or are paid by hourly-paying clients of the firms. (*Id.*, ¶¶ 102-09 & Exs. C-H.)

3. The Number of Hours Class Counsel Worked Is Reasonable.

"By and large, the court should defer to the winning lawyer's professional judgment as to how much time he was required to spend on the case; after all, he won, and might not have, had he been more of a slacker." *Moreno v. City of Sacramento*, 534 F.3d 1106, 1112 (9th Cir. 2008) (quoted in *Chaudhry v. City of L.A.*, 751 F.3d 1096, 1111 (9th Cir. 2017)). "An attorney's sworn testimony that, in fact, it took the time claimed '. . . is evidence of considerable weight on the issue of the time required.'" *Blackwell v. Foley*, 724 F. Supp. 2d 1068, 1081 (N.D. Cal. 2010) (citation omitted); *see also Caudle v. Bristow Optical Co.*, 224 F.3d 1014, 1028 (9th Cir. 2000) (counsel entitled to recover for all hours reasonably expended).

Here, Class Counsel maintained contemporaneous, detailed time records billed in 1/10-hour increments. (Ahdoot Decl. ¶ 80; Dkt. 148, Arias Decl. ¶ 15; Dkt. 142, Coulson Decl. ¶ 19.) Class Counsel have categorized their time entries in accordance with the Uniform Task-Based Management System ("UTBMS"), to summarize the work performed and allow for a meaningful analysis by the Court. The below chart sets forth Plaintiffs' Counsel's time and fees under each general UTBMS code. A more detailed breakdown by UTBMS subcategory may be found in the Ahdoot Declaration at Paragraphs 86-101 & Ex. B.

UTBMS Code	**UTBMS Description**	**Time Sought**	**% of Total Fees**
L100	Case Assessment, Development and Administration	63.5	2.2%
L110	Fact Investigation/Development	176.9	6.1%
L120	Analysis/Strategy	113.0	3.9%
L160	Settlement/Non-Binding ADR	1,199.9	41.0%
L190	Other Case Assessment, Development and Administration	109.5	3.7%
L210	Pleadings	108.8	3.7%
L230	Court Mandated Conferences	22.3	0.8%
L250	Other Written Motions and Submissions	256.9	8.8%
L260	Class Action Certification and Notice	194.2	6.6%
L300	Discovery	420.1	14.4%
L310	Written Discovery	104.5	3.6%
L320	Document Production	149.9	5.1%
L460	Post-Trial Motions and Submissions	0.0	0.0%
L500	Appeal	4.3	0.1%
Total		2,923.8	100%

(Ahdoot Decl. ¶ 87.)

4. <u>The Multiplier Is Justified Given the Results Obtained, the Complexity of the Issues, and the Contingent Nature of the Representation.</u>

Again, the Legislature made clear that, "nothing in [28 U.S.C. § 1712(b)] should be construed to prohibit using the 'lodestar with multiplier' method of calculating attorney's fees." Senate Report, S.

Rep. No. 109–14 at 30; *see also In re HP Inkjet Printer Litig.*, 716 F.3d at 1183 ("Section 1712(b)(2) further confirms that a court may, in its discretion, apply an appropriate multiplier to any lodestar amount it awards under subsection (b)(1) for obtaining non-coupon relief."). Under the lodestar-multiplier method, courts may adjust the raw lodestar amount based upon consideration of many of the same factors considered in the percentage-of-fund analysis, such as (1) the results obtained; (2) whether the fee is fixed or contingent; (3) the complexity of the issues involved; (4) the preclusion of other employment due to acceptance of the case; and (5) the experience, reputation, and ability of the attorneys. *See Kerr v. Screen Extras Guild, Inc.*, 526 F.2d 67, 70 (9th Cir. 1975). "'The district court *must* apply a risk multiplier to the lodestar "when (1) attorneys take a case with the expectation they will receive a risk enhancement if they prevail, (2) their hourly rate does not reflect that risk, and (3) there is evidence the case was risky."'" *Stetson*, 821 F.3d at 1166 ("'Failure to apply a risk multiplier in cases that meet these criteria is an abuse of discretion.'") (italics in original) (quoting *Stanger v. China Elec. Motor, Inc.*, 812 F.3d 734, 741 (9th Cir. 2016), and *Fischel v. Equitable Life Assurance Soc'y*, 307 F.3d 997, 1008 (9th Cir. 2002)); *In re Wash. Pub. Power*, 19 F.3d at 1300 ("'[I]f this "bonus" methodology did not exist, very few lawyers could take on the representation of a class client given the investment of substantial time, effort, and money, especially in light of the risks of recovering nothing.' . . . [C]ourts have routinely enhanced the lodestar to reflect the risk of non-payment in common fund cases.") (citation omitted).

Class Counsel request a fee of $8.125 million, which represents a multiplier of 4.14 on the total lodestar of $1,961,905.00 incurred by Plaintiffs' counsel in this litigation. (Ahdoot Decl., ¶ 86 & Ex. B.) Such a multiplier is within the range of multipliers that the courts in the Ninth Circuit and elsewhere regularly approve. *See, e.g.*, *Vizcaino v. Microsoft Corp.*, 290 F.3d 1043, 1051 & Appendix (9th Cir. 2002) (approving multiplier of 3.65 and citing cases with multipliers as high as 19.6); *In re Volkswagen "Clean Diesel" Mktg., Sales Practices, & Prods. Liab. Litig.*, MDL No. 2672 CRB, 2017 WL 1047834, at *5 (N.D. Cal. 2017) (Breyer, J.) ("'Multipliers in the 3-4 range are common in lodestar awards for lengthy and complex class action litigation.'") (quoting *Van Vranken v. Atlantic Richfield Co.*, 901 F. Supp. 294, 298-99 (N.D. Cal. 1995)); *In re Nasdaq Market-Makers Antitrust Litig.*, 187 F.R.D. 465, 489 (S.D.N.Y. 1998) ("In recent years multipliers of between 3 and 4.5 have become common") (citation

omitted); *Maley v. Del Global Techs. Corp.*, 186 F. Supp. 2d 358, 371 (S.D.N.Y. 2002) (holding "modest" multiplier of 4.65 "fair and reasonable"); *Craft v. County of San Bernardino,* 624 F. Supp. 2d 1113, 1125 (C.D. Cal. 2008) (upholding 25% of the fund award resulting in a multiplier of approximately 5.2, and citing cases in support); *Wershba v. Apple Computer,* 91 Cal. App. 4th 224, 255 (2001) ("Multipliers can range from 2 to 4 or even higher.").

For example, in *Gutierrez v. Wells Fargo Bank, N.A.*, No. C 07-05923 WHA, 2015 WL 2438274 (N.D. Cal. May 21, 2015), a UCL class action resulting in a $203 million judgment, Judge Alsup applied a 5.5 multiplier to lead counsel's lodestar, based on "the fine results achieved on behalf of the class, the risk of non-payment [lead counsel] accepted, the superior quality of their efforts, and the delay in payment." *Id.* at *7. Similarly, in *Craft,* 624 F. Supp. 2d at 1125, the Central District, citing a multitude of cases from across the country, upheld a common fund award that equated to a lodestar multiplier of 5.2.

Given the extensive effort required of Class Counsel to get to this point and present the Settlement's excellent benefits to the Class, in the face of the risks presented, the complexity of the issues this litigation entailed, and the risk of no recovery in light of Defendants' arbitration motions and other defenses, both a "results multiplier" and a "risk multiplier" are well warranted. *In re Wash. Pub. Power*, 19 F.3d at 1301-03; *see also, e.g.*, *Gutierrez*, 2015 WL 2438274, at *5 ("Even though some of class counsel's claimed billing rates appear extraordinary . . . counsel waited patiently for payment for several years."); *Stetson*, 821 F.3d at 1166 (holding courts "'*must* apply a risk multiplier to the lodestar "when . . . the case was risky."). (*See also* Dkt. 162, Motion for Final Approval at 11-13 (explaining the risks of continued litigation).)

C. The Requested Fee Is Reasonable as a Contingency Percentage (26%) of the Total Value of Monetary Payments ($31 Million) Alone, Which Includes the Expert Valuation of the Payments to Uber Rider Accounts that the Court Deemed Coupon-Like, Separate and Apart from the Value of Injunctive Relief.

CAFA allows the Court to "receive expert testimony from a witness qualified to provide information on the actual value to the class members of the coupons that are redeemed." 28 U.S.C. § 1712(d); *see also In re HP Inkjet Printer Litig.*, 716 F.3d at 1180 n.8 ("[S]ubsection (d) allows the district court to receive expert testimony relevant to calculating the redemption value of the coupons, as

required by § 1712(a)."); *Redman v. RadioShack Corp.*, 768 F.3d 622, 634 (7th Cir. 2014) ("[A] witness [under § 1712(d)] could be asked to estimate the likely value of the coupons to the class members before the redemption period expires, and such evidence might provide a more efficient method of compensating the class members and winding up the litigation than waiting months or years for the redemption period to expire and then revising the settlement by giving the class members more or less, or class counsel more or less."); *In re Mexico Money Transfer Litig.*, 267 F.3d 743, 748 (7th Cir. 2001) (accepting expert testimony concerning the value of coupons to class members and affirming lower court's approval of class settlement); *True*, 749 F. Supp. 2d at 1078 (denying final approval because, "[a]ccording to Plaintiffs' own expert, [a coupon-like] discount [offered under the settlement at issue] will only be redeemed by 14% of the class, leaving 86% of the class with nothing more than a DVD of little value").

1. Dr. Schafer Calculates a Redeemed Credit Value of $[redacted] Million, Resulting in a Total Monetary Value of $31.13 Million, Exclusive of the Value Presented by the Settlement's Injunctive Relief.

In her concurrently filed expert declaration, Dr. Schafer explains how she values the payments to Class Members' rider accounts at $[redacted] million. (Schafer Decl. ¶¶ 13, 23-39.) This "Redeemed Credit Value" is based on a Settlement Fund Balance of $23,844,716.62, after deducting a (presently hypothetical) award of attorney fees and expenses, incentive awards, and administration expenses from the full Settlement Fund of $32.5 million. (Schafer Decl. ¶ 10.) Dr. Schafer deducts from this Settlement Fund Balance the total Settlement Shares that will be paid to Class Members who submitted a Payment Election Form electing a cash payment rather than distribution through their Uber Rider Account, to arrive at a total potential Settlement Share Credit of $23,761,313.27. (*Id.* ¶ 32.)

Dr. Schafer accounts for those Class Members who have closed their accounts, and for the number of Class Members to whom Uber's attempt to make a direct payment after one year (if the payments are not used while in the Uber Rider Accounts) may be unsuccessful. (Schafer Decl. ¶¶ 34-39 & Exs. 4-5.) Dr. Schafer expects that approximately [redacted]% of the funds distributed to Class Members through Uber Rider Accounts will be used by Class Members during the one-year period that the money is in those accounts. (*Id.* ¶ 37.) Then, based on Ms. Cloninger's analysis, Dr. Schafer reasons that approximately 85% of the payments to those Class Members who did not use the money while in

their Uber Rider Accounts will be successful. (*Id.* ¶¶ 38; Cloninger Decl. ¶¶ 27-29.) Ultimately, Dr. Schafer expects the *cy pres* award to amount to approximately $[redacted], and that the rest of the money will successfully be delivered to Class Members through the Settlement's distribution plan. (Schafer Decl. ¶¶ 29, 35-39 & Ex. 5.)

In other words, Dr. Schafer expects over 94% of the Settlement's monetary benefits to be realized by Class Members (based on Dr. Schafer's Settlement Fund Balance of $23,844,716.62). This is not surprising, given the extensive efforts that will be made to ensure that Class Members get their money under the Settlement, including Uber's effort to pay Class Members' payment cards on file with Uber directly if the payments to their Uber Rider Accounts are not used within one year.

Dr. Schafer further explains how, given the large number of Class Members and the sums at issue, the amount of attorneys' fees that the Court ultimately awards will have a relatively small impact on the individual Settlement Shares that Class Members will receive: "[F]or every 10% reduction in the amount of the requested Attorneys' Fees, the total Redeemed Credit Value would increase by approximately 3.4%." (*Id.* ¶ 14; *see also id.* ¶¶ 40-44 & Exs. 8-16.)

It is important to note that the costs of administration and litigation expenses, while they reduce the amount of money otherwise available to Class Members, present a separate, distinct value to class members that is not accounted for in this figure, but for which no such recovery would be possible. *See In re Online DVD-Rental Antitrust Litig.*, 779 F.3d at 953 ("The district court did not err in calculating the attorneys' fees award by calculating it as a percentage of the total settlement fund, including notice and administrative costs, and litigation expenses. . . ."); *In re Anthem, Inc. Data Breach Litig.*, No. 15-MD-02617-LHK, 2018 WL 3960068 at *8 (N.D. Cal. Aug. 17, 2018) ("[T]he Ninth Circuit has repeatedly held that district courts do not abuse their discretion by including the costs of providing notice to the class (or other administrative costs and litigation expenses) as part of the percentage fund valuation."). Nor does Dr. Schafer's Redeemed Credit Value of $[redacted] million include amounts to be paid to Class Members who requested to be paid in cash (via PayPal or eCheck) through submission of a Payment Election Form. (Schafer Decl. ¶¶ 13, 23; *see also* Young Decl. ¶¶ 5-7 (summarizing Class Members' submissions of Payment Election Forms).)

Adding attorney fees, administration expenses, litigation expenses, incentive awards, and the value of Class Members' cash elections to Dr. Schafer's valuation results in a total monetary value of **$31.13 million.** ([redacted]).

2. The Requested Fee Is Reasonable Based Solely on Dr. Schafer's Redeemed Credit Value of $[redacted] Million, which Results in a Total Monetary Value of $31.13 Million.

"If a settlement gives coupon and equitable relief and the district court sets attorneys' fees based on the value of the entire settlement, *and not solely on the basis of injunctive relief*, then the district court must use the value of the coupons redeemed when determining the value of the coupons part of the settlement." *In re HP Inkjet Printer Litig.*, 716 F.3d at 1184 (emphasis added). Dr. Schafer's opinion provides expert testimony projecting "the actual value to the class members of the coupons that are redeemed," in accordance with 28 U.S.C. § 1712(d). *See also In re HP Inkjet Printer Litig.*, 716 F.3d at 1180 n.8 (recognizing that § 1712(d) allows for expert testimony "'on the actual value to the class members of the coupons that are redeemed,'" but noting that because no such testimony was received in that case, "§ 1712(d) plays little role in our analysis").

Again, when a district court awards "fees based on the value of the entire settlement, and not solely on the basis of injunctive relief"—then the Ninth Circuit has interpreted § 1712(d) as requiring two calculations: (a) first the Court "determine[s] a reasonable contingency fee based on the actual redemption value of the coupons awarded"; then (b) "determine[s] a reasonable lodestar amount to compensate class counsel for any non-coupon relief obtained," which can be "adjusted upwards or downwards using an appropriate multiplier"; and (c) adds these amounts together to "to fully compensate class counsel." *In re HP Inkjet Printer Litig.*, 716 F.3d at 1184-85.

[5] Young Decl. ¶ 5.

[6] Young Decl. ¶ 7.

Here, as demonstrated in Section III.B, above, the lodestar-multiplier approach suggests that the requested fee is reasonable based on the value of the Settlement's injunctive relief, alone, justifying the full fee request under just the second of the calculations described by the Ninth Circuit. In addition, however, as explained above, Dr. Schafer's Redeemed Credit Value, when combined with the attorney fees and administration costs required to realize that value, results in a total monetary Settlement value of $31.13 million. Although this total monetary value is less than the Settlement Fund of $32.5 million (Amended Settlement ¶ 37), the requested fee award of $8.125 million is substantially less than a 1/3 contingency fee of this total settlement value, and represents approximately 26% of the whole — very close to the 25% benchmark. Thus, the two-calculation approach described in *In re HP Inkjet Printer Litig.*, while not necessary here given the value of the Settlement's injunctive relief, supports a fee award substantially larger than that requested in the present motion.

D. Adding the Value of the Settlement's Injunctive Relief ($56 million) to Its Monetary Relief Based on the Redeemed Credit Value ($31 million) Demonstrates that the Requested Fee Is Less than 10% of the Total Settlement Value ($87 million), and Is Reasonable.

As explained in the preceding section, adding the value of attorney fees, administration expenses, litigation expenses, incentive awards, and Class Members' cash elections to Dr. Schafer's Redeemed Credit Value results in a total settlement value, not including any sums attributable to the Settlement's injunctive relief, of $31.13 million. If Dr. Schafer's valuation of the Settlement's injunctive relief ($56.01 million) also is taken into account, the total settlement value rises to $87.14 million, demonstrating that the requested fee of $8.125 million amounts to less than 10% of the Settlement's total value to Class Members. The low ratio of this fee in relation to the Settlement's value to Class Members supports the reasonableness of the request, which is far below the Ninth Circuit's 25% benchmark under the percentage-of-fund approach. *E.g.*, *Vizcaino*, 290 F.3d at 1048-50; *In re Online DVD-Rental Antitrust Litig.*, 779 F.3d at 949.

E. Class Counsel Are Entitled to Reimbursement of Their Reasonable Litigation Expenses.

Class Counsel submit additional documentation supporting their request for reimbursement of litigation expenses incurred on this matter, in response to the Court's request, in the Final Approval Order, for such "additional documentation" in this "renewed motion for attorney's fees." (Dkt. 189 at

12.) In that Order, the Court approved the accounting transaction report previously provided by Arias Sanguinetti Wang & Torrijos, LLP (*id.*), and now the other Class Counsel firms submit similar reports explaining their expenses in similar detail. (Coulson Decl.; Ahdoot Decl. at ¶¶ 110-14 & Ex. I.)

Under well-settled law, Class Counsel are entitled to reimbursement of the expenses they reasonably incurred investigating and prosecuting this matter. *See Staton*, 327 F.3d at 974; *In re Media Vision Tech. Sec. Litig.*, 913 F. Supp. 1362, 1366 (N.D. Cal. 1995) (citing *Mills v. Electric Auto-Lite Co.*, 396 U.S. 375, 291-92 (1970)). To date, Class Counsel have collectively incurred $40,783.38 in unreimbursed litigation costs (including the $3,200 already awarded by the Court in its Final Approval Order).

The amount of expenses has increased since the Original Fee Motion, but the significant expenses attributable to expert fees in connection with this motion are not included in the present request. (Ahdoot Decl. ¶ 77.) All the expenses for which Class Counsel seek reimbursement were reasonably necessary for the continued prosecution and resolution of this litigation, and were incurred by Class Counsel for the benefit of the class members with no guarantee that they would be reimbursed. They are reasonable in amount, and supported by detailed transaction reports. Class Counsel respectfully request that the Court reimburse these expenses in full.

IV. CONCLUSION

For all the foregoing reasons, Plaintiffs and Class Counsel respectfully request that the Court enter an Order awarding Class Counsel attorneys' fees in the amount of $8.125 million, plus reimbursement of litigation costs in the total amount of $40,783.38 (which figure includes the $3,200 already awarded by the Court in its Final Approval Order).

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Respectfully submitted,

AHDOOT & WOLFSON, PC

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