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7
8 **UNITED STATES DISTRICT COURT**
9 **NORTHERN DISTRICT OF CALIFORNIA**

10
11 CHRISTOPHER JAMES, et al., individually
12 and on behalf of all others similarly situated,
Plaintiffs,

13 v.

14 UBER TECHNOLOGIES, INC.,
15 Defendant.

CASE NO. 19-cv-06462-EMC

**NOTICE OF MOTION AND MOTION FOR
PRELIMINARY APPROVAL OF
SETTLEMENT; MEMORANDUM OF
POINTS AND AUTHORITIES IN SUPPORT
THEREOF**

Hearing Date: March 24, 2022

Hearing Time: 1:30 pm

Courtroom: 5

Judge: Judge Edward Chen

NOTICE OF MOTION AND MOTION

TO DEFENDANTS AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE THAT on March 24, 2022, at 1:30 p.m., in Courtroom 5 of this Court, located at 450 Golden Gate Avenue, 17th Floor, San Francisco, California, Plaintiffs Christopher James, Spencer Verhines, and Kent Hassell, individually and on behalf of all others similarly situated, will, and hereby do, move the Court pursuant to Federal Rule of Civil Procedure 23 and 29 U.S.C. § 216(b) for an order:

- (1) Preliminarily approving the Settlement Agreement between Defendant Uber Technologies, Inc. and Plaintiffs (attached as Exhibit 1 to the Declaration of Shannon Liss-Riordan, filed concurrently herewith), on the grounds that its terms are sufficiently fair, reasonable, and adequate for notice to be issued to the settlement class;
- (2) Certifying the proposed settlement class for settlement purposes only, pursuant to Federal Rule of Civil Procedure 23(c);
- (3) Approving the form and content of the proposed class notice and notice plan (Exhibits B, D, F & G to the Settlement Agreement);
- (4) Appointing Lichten & Liss-Riordan, P.C. to represent the settlement class as class counsel;
- (5) Appointing Simpluris as Settlement Administrator;
- (6) Scheduling a hearing regarding final approval of the proposed settlement, Class Counsel's request for attorneys' fees and costs, and enhancement payments to the Named Plaintiffs; and
- (7) Granting such other and further relief as may be appropriate.

This Motion is based on this Notice of Motion and Motion; the Memorandum of Points and Authorities below; the Declaration of Shannon Liss-Riordan filed concurrently herewith; all supporting exhibits filed herewith; all other pleadings and papers filed in this action; and any argument or evidence that may be presented at or prior to the hearing in this matter.

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I. INTRODUCTION

Pursuant to Federal Rule of Procedure Rule 23, Plaintiffs Christopher James, Spencer Verhines, and Kent Hassell (“Plaintiffs”) move this Court for an order preliminarily approving a proposed class action settlement agreement entered into by Plaintiffs and Defendant Uber Technologies, Inc. (“Defendant” or “Uber”).¹ The Settlement follows more than two years of extremely active and highly contested litigation and was achieved with the assistance of Mediator Martin Scheinman, who oversaw a mediation session and continued ongoing discussions after the mediation session for several weeks. The Settlement Agreement is attached as Exhibit 1 to the Declaration of Shannon Liss-Riordan (filed herewith) (“Liss-Riordan Decl.”).

This Court previously considered and approved a \$20 million settlement on behalf of roughly 15,000 California and Massachusetts drivers who were not bound by Uber’s arbitration clause. O’Connor v. Uber Techs., Inc., No. 13-CV-03826-EMC, 2019 WL 4394401, at *6 (N.D. Cal. Sept. 13, 2019), aff’d, 2019 WL 7602362 (9th Cir. Dec. 20, 2019). This settlement covers a much smaller class of roughly 1,322 California Uber drivers who have continued to opt out of Uber’s arbitration clause with each new contract. The class period picks up where the O’Connor class settlement left off on February 28, 2019, and it goes up to the date of Proposition 22’s enactment, December 17, 2020, for Uber drivers who transported passengers.² Thus, it also covers a much shorter period of time than the O’Connor settlement: 22 months, as compared to the O’Connor settlement which covered a class period of 114

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¹ Kent Hassell filed a separate action on behalf of Uber Eats drivers who opted out of arbitration, Hassell v. Uber Technologies Inc., Case No. 4:20-cv-04062-PJH (N.D. Cal.). There is substantial overlap between the classes of drivers who drove on the Uber Driver App (covered by the James case) and the Uber Eats App (covered by the Hassell case), and the claims are substantively identical. This proposed settlement will cover both Uber passenger drivers and Uber Eats drivers. Plaintiffs seek to add Mr. Hassell to this case for settlement purposes, and this proposed settlement will resolve this action and the pending Hassell case, which the Parties will seek to stay pending settlement approval here.

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² Drivers who drove exclusively for Uber EATS and were not part of the earlier O’Connor settlement will release claims from March 18, 2016 through October 7, 2021. These drivers comprise less than 10% of the overall Settlement Class. See Liss-Riordan Decl. at ¶ 9.

1 months. For this much smaller class and shorter time period, Plaintiffs have secured a recovery for these
2 drivers of \$8.43 million.

3 Thus, this settlement amount (which is non-reversionary) will provide class members with higher
4 settlement amounts (on a per mile basis) than those already approved as fair and adequate by this Court
5 in O'Connor.³ Although this settlement (once again) does not resolve the question of whether Uber
6 drivers are employees under California law, it is nonetheless of significant value to class members.
7 Given the passage of Proposition 22, the import of that determination has been blunted, as it is unclear
8 whether the answer to the question of whether Uber can satisfy the ABC test will determine drivers'
9 status going forward. Furthermore, this settlement provides an immediate benefit for these drivers and
10 achieves a significant award for members of the class. This Court and others have recognized that a
11 settlement of misclassification claims like this one need not resolve the ultimate misclassification
12 question. See O'Connor v. Uber Techs., Inc., 201 F. Supp. 3d 1110, 1132 (N.D. Cal. 2016) (indicating
13 that this Court likely would have approved the 2016 settlement were it not for the PAGA portion of the
14 settlement, notwithstanding the fact that it did not declare drivers to be employees going forward)⁴; see
15 also Cotter v. Lyft, Inc., 176 F. Supp. 3d 930, 936-37 (N.D. Cal. 2016) (approving class settlement that
16 did not resolve the classification question and expressly rejecting argument that settlement should not be
17 approved because it did not reclassify drivers as employees). The agreement submitted here is eminently
18 fair, adequate, and reasonable and should be approved by this Court.

19 The settlement satisfies the standard for preliminary approval—it is undoubtedly within the
20 range of possible approval to justify sending notice to settlement class members and scheduling final
21

22 ³ In the past, courts have approved settlements for amounts in the range of 15 to 20% of
23 reimbursement expenses. See, e.g., Cotter v. Lyft, Inc., 193 F.Supp.3d 1030, 1039 (N.D. Cal. 2016)
24 (approving class action settlement of Lyft drivers' misclassification claims that provided 17% recovery
25 on drivers' expense reimbursement claim); Marciano v. DoorDash Inc., CGC-15-548102 (Kahn, J.) (Cal.
26 Sup. Ct. July 12, 2018) (approving settlement of between 21% and 31% of the estimated value of the
most valuable expense reimbursement claim depending on whether contingency was triggered). Here,
the figure is 100% of the estimated value of the vehicle and telephone expense reimbursement claim.

27 ⁴ Notably, there has been no PAGA claim raised in this case, and this settlement contains no
28 release of PAGA claims.

1 approval proceedings; moreover, Plaintiffs submit that the proposed settlement (which is higher than the
2 2019 settlement approved by this Court) is likely to earn final approval. See Fed. R. Civ. P. 23 (e); In re
3 Tableware Antitrust Litig., 484 F. Supp. 2d 1078, 1079 (N.D. Cal. 2007). Thus, the Court should: (1)
4 grant preliminary approval of the settlement; (2) certify, for settlement purposes only, a settlement class
5 of Uber drivers in California who are not bound by an arbitration clause; (3) approve the manner and
6 forms of notice; (4) appoint Lichten & Liss-Riordan, P.C. to represent the settlement class as class
7 counsel; (5) appoint Simpluris as Settlement Administrator; and (6) schedule a hearing for final approval
8 in June 2022.

9 **II. BACKGROUND**

10 **A. Litigation History**

11 On October 8, 2019, Plaintiff Thomas Colopy filed a class action complaint in this case, alleging
12 that Uber drivers were misclassified as independent contractors under California law, and, as a result of
13 their misclassification, drivers were owed expense reimbursement, minimum wage, overtime, and had
14 not received itemized wage statements as required by California law. See Dkt. 1. The case was intended
15 to bring claims that post-dated the prior settlement of misclassification and wage claims on behalf of
16 California Uber drivers not bound by Uber's arbitration agreement in O'Connor v. Uber, Civ. A. No. 13-
17 3826-EMC (N.D. Cal.). That settlement resolved claims on behalf of drivers not bound to arbitrate with
18 Uber from the start of Uber's operations in California until February 28, 2019. O'Connor v. Uber Techs.,
19 Inc., 2019 WL 4394401, at *1 (N.D. Cal. Sept. 13, 2019), aff'd, 2019 WL 7602362 (9th Cir. Dec. 20,
20 2019).

21 On January 3, 2020, Plaintiffs Thomas Colopy, Christopher James, and Spencer Verhines filed a
22 First Amended Complaint asserting the same claims. See Dkt. 33. On April 16, 2020, Plaintiffs filed an
23 amended consolidated complaint, with only Christopher James and Spencer Verhines serving as named
24 plaintiffs and adding allegations regarding Uber's failure to provide paid sick leave during the
25

1 pandemic. See Dkt. 47.⁵ Meanwhile, on June 18, 2020, Plaintiff Kent Hassell filed a class action
 2 complaint in the United States District Court for the Northern District of California asserting similar
 3 claims against Uber on behalf of himself and a proposed class of Uber Eats drivers who opted out of
 4 arbitration. See Hassell, Civ. A. No. 4:20-cv-04062-PJH, Dkt. 1. There, the Parties litigated Uber’s two
 5 hotly contested Motions to Dismiss, see Hassell v. Uber Techs., Inc., 2020 WL 7173218 (N.D. Cal. Dec.
 6 7, 2020); Hassell v. Uber Techs., Inc., 2021 WL 2531076, at *14 (N.D. Cal. June 21, 2021), and
 7 Plaintiffs filed an Amended Complaint in January 2021. See Hassell, Civ. A. No. 4:20-cv-04062-PJH,
 8 Dkt. 33.

9 The parties in this case engaged in extensive discovery. Plaintiffs propounded multiple sets of
 10 written discovery (totaling more than 50 requests) and received and reviewed more than 19,550 pages of
 11 documents produced by Uber. See Liss-Riordan Decl. at ¶ 3. Uber likewise propounded multiple sets of
 12 written discovery (totaling more than 180 requests) and reviewed nearly 1,500 pages of documents
 13 produced by the two Named Plaintiffs, Verhines and James. Id. Uber deposed Christopher James and
 14 Spencer Verhines, and Plaintiffs deposed a Rule 30(b)(6) witness from Uber. The parties engaged in a
 15 protracted meet and confer process regarding various discovery disputes and planned to engage in more
 16 discovery. Id.

17 The parties also briefed and argued a Motion to Dismiss filed by Uber and multiple Motions for
 18 Preliminary Injunction filed by Plaintiffs. Id. at ¶ 4.⁶ Thereafter, the parties briefed and argued class
 19 certification. Id. at ¶ 6. On January 26, 2021, the Court issued an order certifying a class of “Uber
 20 drivers who drove for Uber in the State of California between February 28, 2019 and December 16,
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 23 ⁵ On March 12, 2020, Plaintiff Spencer Verhines filed a separate complaint in California state
 24 court, which was subsequently removed to this court and captioned Verhines v. Uber Techs. Inc., Civ.
 25 A. No. 3:20-cv-01886 (N.D. Cal.). This complaint focused on Uber’s failure to provide paid sick leave
 during the pandemic. This case was consolidated with this case as part of the amended consolidated
 complaint. See Liss-Riordan Decl. at ¶ 2, n. 1.

26 ⁶ That injunction motion ultimately ended in a settlement of Plaintiffs’ claims for pandemic-
 27 related sick pay for 2020, which provided substantial relief to a number of California Uber drivers. See
 28 id. The amount of relief paid under that settlement is not included in the settlement value quoted here.

1 2020, and who opted out of Uber’s arbitration agreement,” on their misclassification claims and on their
2 claims for expense reimbursement pay statements, but not on their claims for minimum wage, overtime,
3 and paid sick leave. See Dkt. 143. Uber filed a petition for review to the Ninth Circuit Court of Appeals
4 pursuant to Fed. R. Civ. P. 23(f), which Plaintiffs opposed. See James v. Uber, Ninth Cir. No. 21-80006,
5 Dkt. No. 1, Dkt. No. 2. That petition was subsequently denied. James v. Uber, Ninth Cir. No. 21-80006,
6 Dkt. No. 4 (9th Cir. April 13, 2021).

7
8 The parties moved on to briefing summary judgment. See Liss-Riordan Decl. at ¶ 7. On August
9 12, 2021, Plaintiffs filed a motion for summary judgment against Uber “on its affirmative defense that
10 the certified class members are properly classified as independent contractors.” See Dkt. 174. Uber
11 requested and was granted an extension of time to file its response, and the parties were scheduled to
12 complete briefing and argue summary judgment before the Court on February 3, 2022. See Liss-Riordan
13 Decl. at ¶ 7.

14 Prior to this settlement being reached, the parties engaged in extensive negotiations before Judge
15 Spero (spanning nine mediation sessions and many hours) in connection with the Verhines sick pay
16 case, ultimately resulting in Uber’s rollout of a program to provide certain benefits to drivers during the
17 pandemic.⁷ Id. at ¶ 5. Plaintiffs’ counsel received no attorneys’ fees in connection with negotiating this
18 extremely hard-fought settlement and performed extensive work to make sure Uber followed through on
19 its commitment and to make sure drivers were able to easily access the benefits she obtained for them
20 through that negotiation. Id.

21 The parties mediated the remaining claims in the case in October 2021, pursuant to the Court’s
22 order. See Liss-Riordan Decl. at ¶ 8. The parties met virtually with professional mediator Martin
23 Scheinman on October 4, 2021. Id. Following that session and extensive further discussions following
24

25 ⁷ These negotiations resulted in a financial assistance program for individuals who used Uber’s
26 Apps in the state of California to drive for at least 20 hours each workweek for any non-consecutive
27 eight workweeks between November 4, 2019, and March 2, 2020, and who drove at least 360 hours
28 across the 52 workweeks preceding March 2, 2020. Drivers meeting these criteria were eligible for up
to \$360 (24 hours of leave at \$15/hour) to allow them to self-quarantine during the pandemic.

1
2 the mediation, the parties ultimately agreed to settle the misclassification and related wage-and-hour
3 claims of California Uber drivers who are not bound by Uber’s arbitration clause for \$8,435,800. Id.

4 **B. The Proposed Settlement**

5 The Settlement provides for a non-reversionary Settlement Fund in the amount of \$8,435,800.
6 See Ex. 1 (Settlement Agreement) at ¶ 75. This Settlement Fund, less costs of claims administration
7 (totaling an estimated \$29,000), requested attorneys’ fees (totaling one quarter of the settlement, or
8 \$2,108,950), and settlement class representative enhancements (totaling \$30,000), will be distributed to
9 class members pursuant to a plan of allocation summarized here. Id. at ¶¶ 98, 105, 106. This allocation
10 to settlement class members is based on the number of miles drivers have driven to pick up passengers
11 who placed ride requests using the Uber App and number of miles drivers have driven transporting those
12 passengers, as well as the number of miles these drivers have driven to pick up food orders and delivery
13 food to customers. Id. at ¶¶ 61, 110-11.

14 The parties have selected Simpluris to administer the settlement.⁸ Liss-Riordan Decl. at ¶¶13-14.
15 The parties had previously engaged Simpluris to serve as the notice administrator in sending the class
16 notice in this case. Id. Plaintiffs’ counsel has also worked with Simpluris in many cases over the last
17 several years, including several other large settlements in other similar cases. Id.⁹ Simpluris has
18 managed the class notice process in these cases with diligence and care. Id.

19 The settlement provides that notice will be distributed to settlement class members via email and
20 text message, with follow-up mailed notice for those settlement class members for whom email is
21 returned as undeliverable. See Ex. 1 to Liss-Riordan Decl. (“Settlement Agreement”) at ¶¶ 122, 123.
22 Settlement payments will be mailed by check to settlement class members who submit claims to
23

24 ⁸ Plaintiffs obtained proposals from two other prospective administrators (using the same methods
25 of notice and claims payment). Liss-Riordan Decl. at ¶ 13.

26 ⁹ Both Plaintiffs’ counsel and defense counsel have worked with Simpluris in recent years,
27 including on similar gig economy settlements for companies such as Caviar, Postmates, and DoorDash,
28 and they believe this administrator will offer excellent service in carrying out notice and distribution
duties and conscientiously tracking down class members and responding to their inquiries.

1 participate in the settlement (or by digital payment such as Venmo, Zelle, or Paypal for those settlement
2 class members who elect this option). Id. at ¶¶ 109, 126. In order to obtain a payment, settlement class
3 members will be able to make a claim electronically or send in a simple form. Id.; Ex. B to the
4 Settlement Agreement (Claim Form). At least four reminder emails will be sent to settlement class
5 members who have not yet submitted claims via email before the final approval hearing in addition to
6 one reminder via text message (and the parties may agree on further reminder notices, if warranted). Id.
7 at ¶¶ 114; 127. The Settlement Administrator will make particular additional efforts to locate and
8 encourage the filing of later claims by settlement class members who have not yet submitted claims
9 whose settlement shares are likely to be greater than \$200 (for instance, by mailing notice or placing
10 phone calls in addition to emailing notice). Id.

11 Plaintiffs' counsel anticipates a claim rate of at least 50% for this settlement, based on counsel's
12 experience in other similar settlements. These settlements include other cases which used a similar
13 notice and distribution process to that included here: O'Connor, No. 13-CV-03826-EMC, 2019 WL
14 4394401, at *3 (claim rate of 67.3% of the fund claimed); Groves v. Maplebear Inc. dba Instacart,
15 BC695401 (L.A. Sup. Ct.) (final settlement approval granted on September 2, 2020) (claim rate of 59%
16 of the fund claimed in settlement involving California Instacart drivers); Marciano v. DoorDash, Case
17 No. CGC-15-548101 (Cal. Sup. Ct. July 12, 2018) (claim rate of 46% of the fund claimed in settlement
18 involving California DoorDash delivery drivers); Cotter v. Lyft, 3:13-cv-04065-VC (N.D. Cal.) (claim
19 rate of 64%); Singer v. Postmates, 4:15-cv-01284-JSW (N.D. Cal.) (claim rate of 48%). See Liss-
20 Riordan Decl. at ¶ 12. Plaintiffs' counsel believe that these cases provide a useful proxy for this case
21 because they also involved misclassification claims against other companies that Plaintiffs contend
22 utilize a similar business model to Uber, and the settlement class here is made up of individuals who
23 Plaintiffs believe fit a similar profile. Id. These cases utilized a similar notice and claims process,
24 allowing individuals to submit claims via an online portal or by paper. Id. Those settlements included
25 similar follow-up reminders to those that would be used in this case. Plaintiffs will work closely with the
26 Settlement Administrator to ensure appropriate and repeated reminders are sent to ensure that as many
27 settlement class members as possible may be located and encouraged to submit claims.

1 Following the initial distribution of funds, the Settlement Administrator will make reasonable,
2 good faith efforts to remind settlement class members whose shares are more than \$200 but who have
3 not cashed their checks to do so, and it will work with settlement class members to reissue checks as
4 needed. Ex. 1 (Settlement Agreement) at ¶ 113. After an estimated 180 days, there will be a second
5 distribution of all uncashed checks (and any remaining portion of a dispute fund that has not been used)
6 to those settlement class members who did submit claims and cashed their checks and whose residual
7 shares would be at least \$100. *Id.* at ¶ 119, 143. If, following the second distribution, there are any
8 remaining funds that have not been distributed, such funds will be distributed to the parties' agreed-upon
9 *cy pres* beneficiary, Legal Aid at Work. *Id.* This settlement is non-reversionary, meaning that no funds
10 from the settlement, including unclaimed funds, will revert to Uber; the full amount of the net settlement
11 fund, other than a small portion that may go to *cy pres*, will be paid to settlement class members. *Id.*

12 In exchange for their settlement share, settlement class members will release all wage-and-hour
13 claims that have been brought against Uber, as described in the Settlement Agreement. *Id.* at ¶ 78.
14 Except for the named plaintiffs, the release does not provide for release of claims unrelated to the core
15 misclassification allegation, *e.g.*, claims for discrimination, wrongful termination, personal injury, etc.
16 *Id.* at ¶¶ 78, 56.

17 **III. THE LEGAL STANDARD**

18 Federal Rule of Civil Procedure 23 (e) provides that any compromise of a class action must
19 receive Court approval. "Approval under 23(e) involves a two-step process in which the Court first
20 determines whether a proposed class action settlement deserves preliminary approval and then, after
21 notice is given to class members, whether final approval is warranted." Nat'l Rural Telecomms. Coop. v.
22 DIRECTV, Inc., 221 F.R.D. 523, 525 (C.D. Cal. 2004) citing Manual for Complex Litig., Third, § 30.41
23 (1995). Pursuant to Rule 23, preliminary approval of proposed class action settlement is appropriate
24 where the parties make a "showing that the court will likely be able to: (i) approve the proposal under
25 Rule 23(e)(2); and (ii) certify the class for purposes of judgment on the proposal." Fed. R. Civ. P. 23
26 (e)(1). As set forth infra, Part IV(A), the settlement class will likely be certified. Moreover, as set forth
27 further infra, Part IV(B), all of the requirements of Rule 23(e)(2) have been met as well. Specifically, the
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1 class representatives and class counsel have adequately represented the class, the proposed settlement
2 was negotiated at arm's length, the relief is more than adequate given the costs, risks, and delay of
3 further litigation and the contours of the proposed settlement, and the proposal treats all members of the
4 Settlement Class equitably relative to one another. Fed. R. Civ. P. 23(e)(2); see also In re Tableware
5 Antitrust Litig., 484 F.Supp.2d 1078, 1079 (N.D. Cal. 2007) (a court should grant preliminary approval
6 if the parties' settlement "appears to be the product of serious, informed, non-collusive negotiations, has
7 no obvious deficiencies, does not improperly grant preferential treatment to class representatives or
8 segments of the class, and falls within the range of possible approval."); Deaver v. Compass Bank, 2015
9 WL 4999953, *4 (N.D. Cal. Aug. 21, 2015). "Moreover, "a presumption of fairness arises where: (1)
10 counsel is experienced in similar litigation; (2) settlement was reached through arm's length
11 negotiations; (3) investigation and discovery are sufficient to allow counsel and the court to act
12 intelligently." In re Heritage Bond Litig., 2005 WL 1594403, *2 (C.D. Cal. June 10, 2005).

13 "In deciding whether to approve a proposed settlement, the Ninth Circuit has a 'strong judicial
14 policy that favors settlements, particularly where complex class action litigation is concerned.'" Id. at *2
15 (citing Class Plaintiffs v. City of Seattle, 955 F.2d 1268, 1276 (9th Cir. 1992)). "Generally, the district
16 court's review of a class action settlement is 'extremely limited.'" Harris, 2011 WL 1627973, *7 (citing
17 Hanlon v. Chrysler Corp., 150 F.3d 1011, 1026 (9th Cir.1998)). "The Court considers the settlement as a
18 whole, rather than its components, and lacks the authority to delete, modify or substitute certain
19 provision." Id. (internal citation omitted).¹⁰

20 IV. DISCUSSION

21 A. Certification of the Settlement Class is Appropriate

22 The Court must confirm the propriety of the settlement class by determining "if it meets the four
23 prerequisites identified in Federal Rule of Civil Procedure 23(a) and additionally fits within one of the
24 three subdivisions of Federal Rule of Civil Procedure 23 (b)." Alberto v. GMRI, Inc., 252 F.R.D. 652,
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26 ¹⁰ Pursuant to the Class Action Fairness Act (CAFA), 28 U.S.C. § 1715, Defendant Uber will send
27 CAFA notices within 10 (ten) days of the filing of this Motion for Preliminary Approval to the
28 appropriate federal and state officials.

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2 659 (E.D. Cal. 2008). Here, this Court has already found that the requirements for class certification
3 have been met and has already certified Plaintiffs' claims under California Labor Code §§ 2802 and
4 226(a), including the predicate issue of misclassification. James v. Uber Techs. Inc., 338 F.R.D. 123,
5 140 (N.D. Cal. 2021). Because the proposed settlement class now includes only those individuals who
6 are already part of the certified class in this case, the Court's prior conclusion that a class was
7 appropriate supports class certification here for purposes of this settlement. Thus, Plaintiffs now ask that
8 the Court certify, for settlement purposes, a class consisting of "all Drivers who have used the Uber
9 Rides App in California to transport passengers between February 28, 2019 and December 16, 2020, or
10 who used the Uber EATS App in California to deliver items or food between March 18, 2016 and
11 October 7, 2021, and who validly opted out of Uber's arbitration agreement." Ex. 1 (Settlement
12 Agreement) at ¶ 76.

13 **1. Requirements of Fed. R. Civ. P. 23(a)**

14 Rule 23(a) requires that the Plaintiffs demonstrate: "(1) numerosity of plaintiffs; (2) common
15 questions of law or fact predominate; (3) the named plaintiff's claims and defenses are typical; and (4)
16 the named plaintiff can adequately protect the interests of the class." Barbosa v. Cargill Meat Sols.
17 Corp., 297 F.R.D. 431, 441 (E.D. Cal. 2013). Here, as this Court already determined in its Class
18 Certification Order, all criteria are met.

19 **a. Numerosity**

20 A plaintiff will satisfy the numerosity requirement if "the class is so large that joinder of all
21 members is impracticable." Hanlon v. Chrysler Corp., 150 F.3d 1011, 1019 (9th Cir.1998). "Although
22 the requirement is not tied to any fixed numerical threshold, courts have routinely found the numerosity
23 requirement satisfied when the class comprises 40 or more members." Villalpando v. Exel Direct, Inc.,
24 303 F.R.D. 588, 605-06 (N.D. Ca. 2014). Here, the total settlement class consists of approximately
25 1,322 Uber drivers. See Liss-Riordan Decl. at ¶ 9. Thus, the numerosity requirement is easily satisfied.

26 **b. Commonality**

27 Courts have found that "[t]he existence of shared legal issues with divergent factual predicates is
28 sufficient, [to satisfy commonality under Rule 23] as is a common core of salient facts coupled with

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2 disparate legal remedies within the class.” Smith v. Cardinal Logistics Mgmt. Corp., 2008 WL
3 4156364, *5 (N.D. Cal. Sept. 5, 2008). The “commonality requirement has been ‘construed
4 permissively,’ and its requirements deemed minimal.” Estrella v. Freedom Fin’l Network, 2010 U.S.
5 Dist. LEXIS 61236 (N.D. Cal. 2010) (quoting Hanlon v. Chrysler Corp., 150 F.3d 1011, 1019-1020 (9th
6 Cir. 1998)). Here, all settlement class members share the key question of whether they have been
7 improperly classified as independent contractors and also share common questions of law with respect to
8 their substantive claims. This Court has already recognized as much in certifying a class in this case.
9 James v. Uber Techs. Inc., 338 F.R.D. 123, 132, 139-40 (N.D. Cal. 2021).

10 **c. Typicality**

11 “Typicality is a permissive standard, and only requires that the named plaintiffs’ claims are
12 ‘reasonably coextensive’ with those of the class.” Dalton v. Lee Publications, Inc., 270 F.R.D. 555, 560
13 (S.D. Cal. 2010). Thus, “[i]n examining this condition, courts consider whether the injury allegedly
14 suffered by the named plaintiffs and the rest of the class resulted from the same alleged common
15 practice.” Id. (internal quotation omitted). Here, as the Court recognized in its prior class certification
16 order, there are no factual differences between Plaintiffs’ claims and those of the settlement class
17 members; all drivers allegedly have suffered the same misclassification and resulting wage and hour
18 violations. James, 338 F.R.D. at 132-33.

19 **d. Adequacy**

20 “Resolution of two questions determines legal adequacy: (1) do the named plaintiffs and their
21 counsel have any conflicts of interest with other class members, and (2) will the named plaintiffs and
22 their counsel prosecute the action vigorously on behalf of the class?” Hanlon, 150 F.3d at 1020. Here,
23 the Court has already determined that class counsel will adequately represent the certified class and that
24 named plaintiffs Christopher James and Spencer Verhines would adequately represent the interests of
25 the class in certifying them as lead plaintiffs for the certified class. James, 338 F.R.D. at 132-33.

26 **2. Requirements of Fed. R. Civ. P. 23(b)**

27 Rule 23(b)(3) requires the Court to find that: (1) “the questions of law or fact common to class
28 members predominate over any questions affecting only individual members,” and (2) “a class action is

1 superior to other available methods for fairly and efficiently adjudicating the controversy.” Fed. R. Civ.
2 P. 23(b)(3). Some of the factors that are part of the Rule 23(b)(3) analysis are rendered irrelevant in the
3 settlement context, such as “the likely difficulties in managing a class action.” Vasquez v. Coast Valley
4 Roofing, Inc., 266 F.R.D. 482, 488 (E.D. Cal. 2010) (noting that this factor is “essentially irrelevant” in
5 “the context of settlement”); see also Alberto v. GMRI, Inc., 252 F.R.D. 652, 664 (E.D. Cal. 2008);
6 Spann v. J.C. Penney Corp., 2016 WL 297399, *3 (C.D. Cal. Jan. 25, 2016) (“[C]ourts need not consider
7 the Rule 23(b)(3) considerations regarding manageability of the class action, as settlement obviates the
8 need for a manageable trial.”).

9 Here, this Court has already determined that common questions predominate, both with respect
10 to drivers’ status under the ABC test and the underlying substantive expense reimbursement and pay
11 statement claims. Specifically, the Court found that both Prongs A and B of the conjunctive “ABC” test
12 for employee status were capable of determination on a class-wide basis for all drivers, and because
13 either prong could prove dispositive here, class certification was appropriate. James, 338 F.R.D. at 136-
14 139. The Ninth Circuit denied Uber’s Rule 23(f) Petition, seeking review of this conclusion. See James
15 v. Uber, Ninth Cir. No. 21-80006, Dkt. No. 4 (9th Cir. April 13, 2021).

16 As this Court already recognized in its class certification order, these misclassification claims
17 predominate, and a class action to resolve them is superior than individual actions. Further, it has been
18 well-recognized that “[w]here recovery on an individual basis would be dwarfed by the cost of litigating
19 on an individual basis, this factor weighs in favor of class certification.” Noll v. eBay, Inc., 309 F.R.D.
20 593, 604 (N.D. Cal. 2015).

21 **B. The Court Should Preliminarily Approve the Settlement**

22 Under Fed. R. Civ. P. 23(e)(2), the Court must consider whether:

23 (A) the class representatives and class counsel have adequately represented the class;

24 (B) the proposal was negotiated at arm’s length;

25 (C) the relief provided for the class is adequate, taking into account:

26 (i) the costs, risks, and delay of trial and appeal;

1 (ii) the effectiveness of any proposed method of distributing relief to the class, including
2 the method of processing class-member claims;

3 (iii) the terms of any proposed award of attorney's fees, including timing of payment; and

4 (iv) any agreement required to be identified under Rule 23(e)(3); and

5 (D) the proposal treats class members equitably relative to each other.

6
7 See Fed. R. Civ. P. 23(e)(2). “In the notes accompanying these amendments, the Advisory Committee
8 acknowledged that ‘[c]ourts have generated lists of factors’ to determine the fairness, reasonableness,
9 and adequacy of a settlement” such that “adding these specific factors to Rule 23(e)(2) was not designed
10 ‘to displace any factor, but rather to focus the court and the lawyers on the core concerns of procedure
11 and substance that should guide the decision whether to approve the proposal.’” Hefler v. Wells Fargo
12 & Co., 2018 WL 6619983, at *4 (N.D. Cal. Dec. 18, 2018). Courts in the Ninth Circuit have typically
13 found preliminary approval of a settlement and notice to the class is appropriate if it: (1) falls within the
14 range of possible approval; (2) is the product of serious, informed, non-collusive negotiations, (3) has no
15 obvious deficiencies; and (4) does not improperly grant preferential treatment to class representatives or
16 segments of the class. Deaver v. Compass Bank, 2015 WL 4999953, *4 (N.D. Cal. Aug. 21, 2015).
17 Here, both under the factors enumerated in Rule 23(e)(2) and the factors traditionally considered by the
18 Ninth Circuit, the proposed settlement clearly warrants preliminary approval.

19 **1. The Settlement is the Product of Informed, Non-Collusive Negotiation**

20 Under Fed. R. Civ. P. 23(e)(2)(A)-(B), “[t]he Court must consider whether ‘the class
21 representatives and class counsel have adequately represented the class’ and whether ‘the proposal was
22 negotiated at arm’s length’, [which] [] the Advisory Committee notes suggest, [] are ‘matters that might
23 be described as procedural concerns, looking to the conduct of the litigation and of the negotiations
24 leading up to the proposed settlement.’” Hefler, 2018 WL 6619983, at *6. Courts in this Circuit have
25 likewise found that for the parties “to have brokered a fair settlement, they must have been armed with
26 sufficient information about the case to have been able to reasonably assess its strengths and value.”
27 Acosta v. Trans Union, LLC, 243 F.R.D. 377, 396 (C.D. Cal. 2007). Thus, adequate discovery and the
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2 use of an experienced mediator support a finding that settlement negotiations were both informed and
3 non-collusive. See Villegas v. J.P. Morgan Chase & Co., 2012 WL 5878390, *6 (N.D. Cal. Nov. 21,
4 2012); Deaver, 2015 WL 4999953, *7; Satchell v. Fed. Express Corp., 2007 WL 1114010, *4 (N.D. Cal.
5 Apr. 13, 2007) (“The assistance of an experienced mediator in the settlement process confirms that the
6 settlement is non-collusive”).

7 Here, “[b]y the time the settlement was reached, the litigation had proceeded to a point in which
8 both plaintiffs and defendants had a clear view of the strengths and weaknesses of their cases.” Vasquez
9 v. Coast Valley Roofing, Inc., 266 F.R.D. 482, 489 (E.D. Cal. 2010) (internal citations omitted). The
10 parties exchanged extensive discovery prior to conducting a mediation, and they received data that
11 allowed them to value the claims at issue in this case. See Liss-Riordan Decl. at ¶¶ 3, 22. Likewise, the
12 parties have litigated the merits of their claims very extensively; Plaintiffs had filed their Motion for
13 Summary Judgment and Uber was preparing its response. Id. at ¶ 7. The parties also litigated class
14 certification, both before this Court and in briefing Uber’s Rule 23(f) petition to the Ninth Circuit Court
15 of Appeals. Id. at ¶ 6. The parties met on October 4, 2021, with professional mediator Martin
16 Scheinman and continued these discussions well beyond that mediation session. Id. at ¶ 8. In these
17 negotiations, Class counsel was informed by her prior experience negotiating the O’Connor settlement
18 and many other gig economy settlements. See Liss-Riordan Decl. at ¶ 22. The settlement the parties
19 have reached was the result of thorough and passionate negotiations by experienced counsel familiar
20 with the applicable law, class action litigation, and the facts of this case. See Nielson v. The Sports
21 Authority, 2013 WL 3957764, *4–5 (N.D. Cal. July 29, 2013) (“[T]he settlement resulted from non-
22 collusive negotiations, i.e., a mediation before Mark Rudy, a respected employment attorney and
23 mediator.”); Barcia v. Contain-A-Way, Inc., 2009 WL 587844, *1 (S.D. Cal. Mar. 6, 2009) (granting
24 final settlement approval and finding that Mark Rudy is a “nationally recognized labor mediator”);
25 Zolkos v. Scriptfleet, Inc., 2014 WL 7011819, *2 (N.D. Ill. Dec. 12, 2014) (“Two experienced class
26 action employment mediators, [including] Mark Rudy . . . assisted the Parties with the settlement
27 negotiations and presided over two full-day mediations. This reinforces the non-collusive nature of the
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1 settlement.”). Thus, the parties had ample information, expert guidance from an experienced mediator,
2 and intimate familiarity with the strengths and weaknesses of the case.

3 2. **The Relief Provided for the Settlement Class Is Fair and Adequate**

4 “Rule 23(e)(2)(C) and (D) set forth factors for conducting a ‘substantive’ review of the terms of
5 the proposed settlement.” Hefler, 2018 WL 6619983 , at *7 (citing Fed. R. Civ. P. 23(e)(2)(C)-(D)
6 advisory committee's note to 2018 amendment). “In determining whether ‘the relief provided for the
7 class is adequate,’ the Court must consider ‘(i) the costs, risks, and delay of trial and appeal; (ii) the
8 effectiveness of any proposed method of distributing relief to the class, including the method of
9 processing class-member claims; (iii) the terms of any proposed award of attorney’s fees, including
10 timing of payment; and (iv) any agreement required to be identified under Rule 23(e)(3).” *Id.* (citing
11 Rule 23(e)(2)). Similarly, courts in the Ninth Circuit have evaluated “the range of possible approval
12 criterion, which focuses on substantive fairness and adequacy, [] primarily [by] consider[ing] plaintiff’s
13 expected recovery balanced against the value of the settlement offer.” Deaver v. Compass Bank, 2015
14 WL 4999953, *9 (N.D. Cal. Aug. 21, 2015).

15 a. **Risks of Further Litigation**

16 A “relevant factor” that courts must consider in contemplating a potential settlement is “the risk
17 of continued litigation balanced against the certainty and immediacy of recovery from the Settlement.”
18 Vasquez, 266 F.R.D. at 489. Thus, courts “consider the vagaries of litigation and compare the
19 significance of immediate recovery by way of the compromise to the mere possibility of relief in the
20 future, after protracted and expensive litigation.” *Id.* (citing Oppenlander v. Standard Oil Co. (Ind.), 64
21 F.R.D. 597, 624 (D.Colo.1974)). Here, Plaintiffs recognized the delay that was sure to transpire in going
22 forward. Plaintiffs were extremely confident in their ability to prove that Plaintiffs were Uber’s
23 employees under the “ABC” test, particularly in light of the decision in People v. Uber Techs., Inc., 56
24 Cal. App. 5th 266, 270 Cal. Rptr. 3d 290 (2020), as modified on denial of reh'g (Nov. 20, 2020), review
25 denied (Feb. 10, 2021). However, Uber was likely to argue that People v. Uber was only a decision
26 reviewing the grant of an injunction and did not decide the ultimate question. Furthermore, even if
27 Plaintiffs succeeded in proving that Uber could not satisfy all three parts of the ABC test, Uber would
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2 certainly appeal any decision against it, resulting in lengthy delays for the class. See Liss-Riordan Decl.
3 at ¶ 20. Even putting aside the further delay, there remains uncertainty as to whether the ABC test
4 would apply to the expense reimbursement claim prior to the enactment of AB5 in January 2020 (which
5 broadened Dynamex's holding to unambiguously include all Labor Code claims). Compare Johnson v.
6 VCG-IS, LLC, Case No. 30-2015-00802813, Ruling on Motion in Limine (Super. Ct. Cal. July 18,
7 2018) at *4-5 (holding that Dynamex applies to a variety of Labor Code claims, including expense
8 reimbursement claims under Cal. Lab. Code §2802); with Garcia v. Border Transp. Group, LLC, 28 Cal.
9 App. 5th 558 (2018) (stating that Dynamex would not apply to “non-wage order” claims under the
10 Labor Code, which the Court stated would include expense reimbursement claims); Karl v. Zimmer
11 Biomet Holdings Inc., 2018 WL 5809428 *3 (N.D. Cal. Nov. 6, 2018) (summarily concluding that
12 expense reimbursement claim does not arise under the Wage Orders and thus Dynamex would not
13 apply). Were Dynamex not to apply to the expense reimbursement claim for a portion of the class
14 period, Plaintiffs recognized that, under the multi-factor Borello test (which the California Supreme
15 Court recognized in Dynamex has led to uncertainty regarding the employee status question), there is a
16 serious risk that a unanimous jury would not find Uber drivers to be employees for purposes of the
17 expense reimbursement claim, pre-AB5. As this Court has explained, “numerous [Borello] factors point
18 in opposing directions” on the issue of employment classification, such that the employment
19 misclassification test “does not yield an unambiguous result.” O'Connor v. Uber Techs., Inc., 82 F.
20 Supp. 3d 1133, 1153 (N.D. Cal. 2015).

21 Plaintiffs also recognized that Uber planned to contend that, even if Plaintiffs prevailed on
22 liability, the IRS mileage reimbursement rate was not the proper measure of reimbursement damages.
23 Uber would have advocated for the use of the IRS variable rate, rather than the fixed rate, which could
24 have reduced the reimbursement damages by more than 50%. See Liss-Riordan Decl. at ¶¶ 19, 28-29, n.
25 3.

26 In sum, after carefully considering these risks and the potential benefits of proceeding further
27 with this case, Plaintiffs concluded that the significant monetary relief obtained here for the drivers not
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1 covered by Uber’s arbitration clause – providing 100% of the drivers calculated expense reimbursement
2 damages (both for mileage and phone expenses) -- is in the best interests of the settlement class.

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4 **b. Benefit to Drivers**

5 Plaintiffs have analyzed the potential monetary value of their claims if they were to succeed in
6 proving their misclassification and reimbursement claims. As described above, the settlement awards
7 Plaintiffs significant monetary benefit. See Liss-Riordan Declaration at ¶¶ 24-54. In view of the
8 ongoing legal issues and uncertainties that Plaintiffs continued to face, discussed above and in the Liss-
9 Riordan Declaration at ¶¶ 18-20, there can be no doubt that this is an excellent result for the class.

10 **3. The Settlement Has No Obvious Deficiencies**

11 A court should also consider possible deficiencies in a settlement including an overly broad
12 release of claims, an insufficient timeframe for notice, an inadequate form of payment, an unrelated *cy*
13 *pres* designee, or an unreasonable request for attorneys’ fees, among other things. See Custom LED,
14 LLC v. eBay, Inc, 2013 WL 6114379, *7-8 (N.D. Cal. Nov. 20, 2013); Deaver, 2015 WL 4999953, *7.
15 Here, settlement class members will release only wage-and-hour claims, such as those that could arise
16 from their alleged misclassification as independent contractors, and will not release claims for
17 discrimination, wrongful termination, personal injury, or pay issues not related to misclassification. See
18 Ex. 1 (Settlement Agreement) at ¶ 78. The timeframe for notice is adequate, and settlement class
19 members will be given ample opportunity to submit claims. Id. at ¶¶ 35, 88. Likewise, the distribution
20 will compensate drivers fairly, as discussed above. No unclaimed funds will revert to Uber; rather they
21 will be redistributed amongst settlement class members, and, if necessary, given to the *cy pres*
22 designees.

23 Further, the attorneys’ fee provision is fair and does not give rise to any deficiency. Plaintiffs’
24 counsel intends to apply for fees not to exceed 25% of the gross settlement fund (totaling just over \$2
25 million). See Liss-Riordan Decl. at ¶ 16. The settlement is not contingent upon the Court approving
26 counsel’s application. “The typical range of acceptable attorneys’ fees in the Ninth Circuit is 20 percent
27 to 33.3 percent of the total settlement value, with 25 percent considered a benchmark percentage.”
28 Barbosa v. Cargill Meat Sols. Corp., 297 F.R.D. 431, 448 (E.D. Cal. 2013). However, “in most common

1 fund cases, the award exceeds that benchmark percentage.” Id.; In re Activision Sec. Litig., 723 F. Supp.
 2 1373, 1377 (N.D.Cal.1989) (“nearly all common fund awards range around 30%”). Thus, here, a 25%
 3 fee is eminently reasonable.¹¹ Further, Plaintiffs negotiated a meaningful settlement of the sick leave
 4 claim earlier in the case that did not include any attorneys’ fees whatsoever. For all of these reasons, the
 5 settlement has no obvious deficiencies and should be preliminarily approved.

6 **4. The Settlement Does Not Unfairly Grant Preferential Treatment to Any**
 7 **Settlement Class Members**

8 “Consistent with Rule 23’s instruction to consider whether ‘the proposal treats class members
 9 equitably relative to each other,’ Fed. R. Civ. P. 23(e)(2)(C)(i), the Court considers whether the
 10 Settlement ‘improperly grant[s] preferential treatment to class representatives or segments of the class.’”
 11 Hefler, 2018 WL 6619983, at *8 (citing In re Tableware Antitrust Litig., 484 F. Supp. 2d 1078, 1079
 12 (N.D. Cal. 2007). “[T]o the extent feasible, the plan should provide class members who suffered greater
 13 harm and who have stronger claims a larger share of the distributable settlement amount.” Hendricks v.
 14 StarKist Co., 2015 WL 4498083, *7 (N.D. Cal. July 23, 2015) (citing cases). However, “courts
 15 recognize that an allocation formula need only have a reasonable, rational basis, particularly if
 16 recommended by experienced and competent counsel.” Id. citing Vinh Nguyen v. Radiant Pharm.
 17 Corp., 2014 WL 1802293, *5 (C.D. Cal. May 6, 2014). Here, the settlement will result in payment of a
 18 fair and reasonable award to settlement class members, particularly in light of the litigation risks. Here,

19 _____
 20 ¹¹ Moreover, this percentage fee recovery is a lower percentage than many fee awards in other
 21 California federal district courts. See, e.g., Hernandez v. Dutton Ranch Corp., No. 19-CV-00817-EMC,
 22 2021 WL 5053476, at *6 (N.D. Cal. Sept. 10, 2021) (“District courts within this circuit, including this
 23 Court, routinely award attorneys’ fees that are one-third of the total settlement fund.”); Benitez v. W.
 24 Milling, LLC, No. 1:18-CV-01484-SKO, 2020 WL 3412725, at *9 (E.D. Cal. June 22, 2020) (approving
 25 one-third fee award) (collecting cases); Vasquez, 266 F.R.D. at 492 (E.D. Cal. 2010) (collecting recent
 26 wage and hour cases in which counsel received fee awards in the range of 30% to 33.3% of the common
 27 fund); Lusby v. GameStop Inc., 2015 WL 1501095, *9 (N.D. Cal. Mar. 31, 2015) (finding a one-third
 28 fee award appropriate because to the results achieved, the risk of litigation, the skill required and the
 quality of work, and the contingent nature of the fee and the financial burden carried by the plaintiffs);
Barnes v. The Equinox Grp., Inc., 2013 WL 3988804, *4 (N.D. Cal. Aug. 2, 2013) (awarding one-third
 of gross settlement in fees and costs because counsel assumed substantial risk and litigated on a
 contingency fee-basis).

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2 settlement class members will receive settlement shares based on the number of miles they drove to pick
3 up passengers (or food items) and transported passengers (or items) using the Uber application (as
4 calculated by Uber’s mileage data).

5 Likewise, the proposed enhancements for the named plaintiffs in this settlement are eminently
6 reasonable. Plaintiffs will request enhancements of \$10,000 for each of the three named plaintiffs who
7 have brought this case. See Liss-Riordan Decl. at ¶ 17. Plaintiffs James and Verhines were each
8 deposed and responded to extensive discovery and have been closely involved with the negotiations for
9 this exceptional settlement. Likewise, Plaintiff Kent Hassell has provided extremely detailed records and
10 documents related to his work for Uber (as reflected by the level of detail required by the court in the
11 amended complaint in that cases) and has worked with counsel to prepare filings in the Hassell matter
12 and has likewise been extensively involved in negotiations leading up to this settlement.

13 The requested amounts are in line with many awards in other cases in the federal district courts
14 in California. See, e.g., Covillo v. Specialtys Cafe, 2014 WL 954516, *8 (N.D. Cal. Mar. 6, 2014)
15 (awarding \$8,000 to class representatives from \$2,000,000 fund); Van Vranken v. Atl. Richfield Co.,
16 901 F. Supp. 294, 300 (N.D. Cal. 1995) (awarding \$50,000 to named plaintiff out of \$76 million
17 settlement fund); Chu v. Wells Fargo Investments, LLC, 2011 WL 672645, *2 (N.D. Cal. Feb. 16, 2011)
18 (awarding \$10,000 incentive awards to two named plaintiffs).

19 Particularly given that the named plaintiffs have placed their names in the public eye as part of
20 this high-profile litigation, these modest incentive payments are more than reasonable. See Van
21 Vranken, 901 F. Supp. at 299 (noting that in evaluating incentive awards, courts may consider “the
22 notoriety and personal difficulties encountered by the class representative” and “the amount of time and
23 effort spent by the class representative” among other factors); see also Bellinghausen v. Tractor Supply
24 Co., 306 F.R.D. 245, 267 (N.D. Cal. 2015) (“Incentive awards are particularly appropriate in wage-and-
25 hour actions where plaintiffs undertake a significant “reputational risk” by bringing suit against their
26 former employers”).

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V. CONCLUSION

For the foregoing reasons, Plaintiffs' Motion for Preliminary Approval should be granted. The Court should allow the Settlement Administrator to proceed with the issuance of notice and should schedule the case for a final settlement approval hearing in June 2022.

Date: February 17, 2022

Respectfully submitted,

CHRISTOPHER JAMES, SPENCER VERHINES, and
KENT HASSELL, individually and on behalf of all others
similarly situated,

By their attorneys,

/s/ Shannon Liss-Riordan

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing document was served by electronic filing on February 17, 2022, on all counsel of record.

/s/ Shannon Liss-Riordan
Shannon Liss-Riordan, Esq.

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1 UNITED STATES DISTRICT COURT
2 NORTHERN DISTRICT OF CALIFORNIA
3

4 CHRISTOPHER JAMES, et al., individually
5 and on behalf of all others similarly situated,
6 Plaintiffs,

7 v.

8 UBER TECHNOLOGIES, INC.,
9 Defendant.

CASE NO. 19-cv-06462-EMC

**[PROPOSED] ORDER GRANTING
MOTION FOR PRELIMINARY APPROVAL
OF SETTLEMENT; APPROVAL OF CLASS
NOTICE AND NOTICE PLAN; AND
SETTING OF SCHEDULE FOR FAIRNESS
HEARING**

10 Having reviewed Plaintiffs' Motion for Preliminary Approval of Class Action Settlement,
11 Approval of Class Action Notice Plan, and Leave to File Amended Complaint for Settlement; and the
12 Memoranda of Points and Authorities in support thereof; the Declaration of Shannon Liss-Riordan;
13 the proposed Settlement Agreement; the proposed Notice of Class Action Settlement; and the
14 arguments of counsel, along with the files and records in these cases, and in recognition of the
15 Court's duty to make a preliminary determination as to the reasonableness of any proposed class
16 action settlement, and if preliminarily determined to be reasonable, to ensure proper notice is
17 provided to class members in accordance with due process requirements, and to conduct a final
18 approval hearing as to the good faith, fairness, adequacy and reasonableness of any proposed
19 settlement, THE COURT HEREBY MAKES THE FOLLOWING DETERMINATIONS AND
20 ORDERS:

- 21 1. Defined Terms. For purposes of this Order, except as otherwise indicated herein, the
22 Court adopts and incorporates the definitions contained in the Settlement Agreement.
- 23 2. Stay of the Action. Pending the Fairness Hearing, all proceedings in the above-
24 captioned Action, other than proceedings necessary to carry out or enforce the terms and conditions
25 of the Settlement Agreement and this Order, are hereby stayed.
- 26 3. Amended Complaint for Settlement. The Court GRANTS Plaintiffs leave to file the
27 proposed Amended Complaint for Settlement attached as Exhibits A to the Settlement Agreement.
28

1 4. Provisional Class Certification for Settlement Purposes Only. The Court provisionally
2 finds, for settlement purposes only and conditioned upon the entry of this Order, that the prerequisites
3 for a class action under Rule 23 of the Federal Rules of Civil Procedure have been satisfied in that:
4 (i) the Settlement Classes certified herein numbers at least one thousand persons, and joinder of all
5 such persons would be impracticable; (ii) there are questions of law and fact that are common to the
6 Settlement Classes, and those questions of law and fact common to the Settlement Class predominate
7 over any questions affecting any individual Settlement Class Member; (iii) the claims of the Named
8 Plaintiffs are typical of the claims of the Classes they seek to represent for purposes of settlement;
9 (iv) a class action on behalf of the Settlement Classes is superior to other available means of
10 adjudicating this dispute; and (v) as set forth below, Named Plaintiffs and Class Counsel are adequate
11 representatives of the Settlement Classes. Uber retains all rights to assert that the Action may not be
12 certified as class action, other than for settlement purposes.

13 The Court also concludes that, because the Action is being settled rather than litigated, the
14 Court need not consider manageability issues that might be presented by the trial of class actions
15 involving the issues in these cases. *See Amchem Prods., Inc. v. Windsor*, 521 U.S. 591, 620 (1997).

16 5. Settlement Classes Definition. For settlement purposes only, this Court hereby
17 certifies as a class under Rule 23 of the Federal Rules of Civil Procedure, and a collective action
18 pursuant to 29 U.S.C. § 216(b), a Settlement Class consisting of all Drivers in California who have
19 used the Uber Rides App at any time since February 28, 2019, up to and including December 16,
20 2020, and who have timely opted out of arbitration. The Court also certifies as a class under Rule 23
21 of the Federal Rules of Civil Procedure, and a collective action pursuant to 29 U.S.C. § 216(b), a
22 Settlement Class consisting of all Deliverers in California who have used the Uber EATS App at any
23 time since March 18, 2016, up to an including October 7, 2021, and who have timely opted out of
24 arbitration. Excluded from the Settlement Classes are: (i) all Persons who are directors, officers, and
25 agents of Uber or its subsidiaries and affiliated companies or are designated by Uber as employees of
26 Uber or its subsidiaries and affiliated companies; (ii) Persons who timely and properly exclude
27 themselves from the Settlement Classes as provided in this Settlement Agreement; and (iii) the Court,
28 the Court's immediate family, and Court staff.

1 6. Class Representatives and Class Counsel. Named Plaintiffs Christopher James,
2 Spencer Verhines, and Kent Hassell are designated as representatives of the provisionally certified
3 Settlement Classes. The Court preliminarily finds that they are similarly situated to absent Settlement
4 Class Members and therefore typical of the Settlement Classes, and that they will be adequate class
5 representatives. Shannon Liss-Riordan and Anne Kramer of the law firm of Lichten & Liss-Riordan,
6 P.C., whom the Court finds are experienced and adequate counsel for purposes of these settlement
7 approval proceedings, are hereby designated as Class Counsel.

8 7. Preliminary Settlement Approval. Upon preliminary review, the Court finds that the
9 Settlement Agreement, together with all its Exhibits, and the settlement it incorporates, appears fair,
10 reasonable and adequate, and appears to be within the range of reasonableness of a settlement which
11 could ultimately be given final approval by this Court. *See generally* Fed. R. Civ. P. 23; Manual for
12 Complex Litigation (Fourth) § 21.632 (2004). Accordingly, the Settlement Agreement is
13 preliminarily approved and is sufficient to warrant sending notice to the Class.

14 It further appears to the Court, on a preliminary basis, that the settlement is fair and
15 reasonable to Settlement Class Members when balanced against the probable outcome of further
16 litigation, liability and damages issues, and the potential appeal of any rulings. Significant discovery,
17 investigation, research, and litigation has been conducted such that counsel for the Parties at this time
18 are able to reasonably evaluate their respective positions. The settlement terms confer substantial
19 benefits upon the Settlement Classes, particularly in light of the damages that Plaintiffs and their
20 counsel believe are potentially recoverable or provable at trial, without the costs, uncertainties,
21 delays, and other risks associated with continued litigation, trial, and/or appeal. It also appears that
22 the proposed settlement has been reached as the result of intensive, informed, and non-collusive
23 negotiations between the Parties, as the Parties reached a settlement as a result of extensive arm's-
24 length negotiations that occurred through a virtual mediation session with respected mediator, Martin
25 Scheinman, who is experienced in mediating class action disputes.

26 Based on the Court's review of the papers submitted in support of preliminary approval, and
27 the Court's familiarity with the issues in the case, the Court concludes that the proposed Settlement
28

1 Agreement has no obvious defects and is within the range of possible settlement approval such that
2 notice to the Settlement Classes is appropriate.

3 8. Jurisdiction. The Court has subject-matter jurisdiction over the Action pursuant to 28
4 U.S.C. § 1332, and personal jurisdiction over the Parties before it. Additionally, venue is proper in
5 this District pursuant to 28 U.S.C. § 1391.

6 9. Fairness Hearing. A Fairness Hearing shall be held before this Court before the
7 undersigned, Hon. Edward M. Chen, on June __, 2022, at 1:30 p.m., in Courtroom 5 of the above-
8 entitled court, located at 450 Golden Gate Avenue, San Francisco, CA 94102, to determine whether
9 the settlement of the Action pursuant to the terms and conditions of the Settlement Agreement should
10 be approved as fair, reasonable, and adequate, and finally approved pursuant to Rule 23(e) of the
11 Federal Rules of Civil Procedure. The Court will rule on Class Counsel’s application for an award of
12 attorneys’ fees, costs, and expenses and incentive awards for Plaintiffs (the “Fee and Service
13 Application”) at that time.

14 Papers in support of final approval of the Settlement Agreement and Fee and Service
15 Application shall be filed with the Court according to the schedule set forth in the Settlement
16 Agreement. The Fairness Hearing may be postponed, adjourned, or continued by order of the Court
17 without further notice to the Settlement Classes. After the Fairness Hearing, the Court may enter a
18 Final Approval Order and Final Judgment in accordance with the Settlement Agreement that will
19 adjudicate the rights of the Settlement Class Members (as defined in the Settlement Agreement) with
20 respect to the claims being settled.

21 Class Counsel shall file their Fee and Service Application at least thirty-five (35) days before
22 the Exclusion/Objection Deadline. Class Counsel shall file their papers in support of final approval
23 of the Settlement Agreement at least thirty-five (35) days before the Fairness Hearing. Objections to
24 the Settlement Agreement or the Fee and Service Application shall be submitted to the Court on or
25 before the Exclusion/Objection Deadline, and any opposition to the Motion for Final Approval shall
26 be filed with the Court at least twenty-one (21) days before the Fairness Hearing. Papers in response
27 to objections to the Settlement Agreement or the Fee and Service Application shall be filed with the
28 Court on or before fourteen (14) days before the Fairness Hearing.

1 10. Administration. In consultation with and with the approval of Uber, Class Counsel is
2 hereby authorized to establish the means necessary to administer the proposed settlement and
3 implement the claim process, in accordance with the terms of the Settlement Agreement.

4 11. Class Notice. The form and content of the proposed Long Form Notice, Summary
5 Notice, and Text Message Notice attached as Exhibits D, F, and G respectively, to the Settlement
6 Agreement, and the notice methodology described in the Settlement Agreement are hereby approved.
7 Pursuant to the Settlement Agreement, the Court appoints Simpluris to be the Settlement
8 Administrator to help implement the terms of the Settlement Agreement.

9 (a) Notice Date. As soon as possible after the entry of this Order, but not later than
10 twenty-one (21) days after the entry of this Order, the Settlement Administrator shall provide notice
11 to the Settlement Classes pursuant to the terms of the Settlement Agreement, in accordance with the
12 notice program set forth in the Settlement Agreement. The Parties shall coordinate with the
13 Settlement Administrator to provide notice to the Settlement Classes pursuant to terms therein.

14 (b) Findings Concerning Notice. The Court finds that the Settlement is fair and
15 reasonable such that the Long Form Notice and Summary Notice should be provided pursuant to the
16 Settlement Agreement and this Order. The Notice fairly, plainly, accurately, and reasonably informs
17 Settlement Class Members of, and allows Settlement Class Members a full and fair opportunity to
18 consider, among other things: (i) the nature of the action; (ii) the identities of Class Counsel; (iii) the
19 terms and provisions of the proposed Settlement; (iv) the relief to which the members of each class
20 will be entitled, including detailed summaries of the programmatic relief and claims process; (v) the
21 process by which Settlement Class Members may make a claim for monetary relief if the settlement
22 is approved; (vi) how administrative costs, attorneys' fees, and potential service payments will be
23 handled; (vii) the procedures and deadlines for submitting objections, and/or requests for exclusion;
24 and (viii) the date, time, and place of the fairness hearing.

25 (c) The Court finds that the form, content and method of disseminating notice to the
26 Settlement Classes as described in the Settlement Agreement and in this Order: (i) complies with
27 Rule 23(c)(2) of the Federal Rules of Civil Procedure as it is the best practicable notice under the
28 circumstances, and is reasonably calculated, under all the circumstances, to apprise the members of

1 the Settlement Classes of the pendency of this Action, the terms of the Settlement, and their right to
2 object to the settlement or exclude themselves from the Settlement Classes; (ii) complies with Rule
3 23(e) and as it is reasonably calculated, under the circumstances, to apprise the Settlement Class
4 Members of the pendency of the Action, the terms of the proposed settlement, and their rights under
5 the proposed settlement, including, but not limited to, their right to object to or exclude themselves
6 from the proposed Settlement and other rights under the terms of the Settlement Agreement;
7 (iii) constitute due, adequate, and sufficient notice to all Settlement Class Members and other persons
8 entitled to receive notice; and (iv) meets all applicable requirements of law, including, but not limited
9 to, 28 U.S.C. § 1715, Fed. R. Civ. P. 23(c) and (e), and the Due Process Clause(s) of the United
10 States Constitution. The Court further finds that all of the notices are written in simple terminology,
11 are readily understandable by Settlement Class Members, and comply with the Federal Judicial
12 Center's illustrative class action notices.

13 12. Deadline to Submit Claim Forms. Settlement Class Members will have sixty (60) days
14 from the date of the Notice Date to submit their Claim Forms, which is due, adequate, and sufficient
15 time.

16 13. Exclusion from Class. Any Settlement Class Member who wishes to be excluded from
17 the Settlement Classes must send to the Settlement Administrator by U.S. Mail a personally signed
18 letter including the: (i) Settlement Class Member's name, address, and telephone number; (ii) a clear
19 and unequivocal statement that the Settlement Class Member wishes to be excluded from the
20 Settlement Classes; and (iii) and the signature of the Settlement Class Member or the Legally
21 Authorized Representative of the Settlement Class Member. If the request for exclusion is emailed, it
22 must be sent from the Settlement Class Member's account used to sign up to use the Uber platform
23 and the Settlement Class Member's typed name will suffice as a signature. "Mass" or "class" opt-
24 outs are not permitted. Any request for exclusion or opt out must be postmarked or emailed on or
25 before sixty (60) days after the Notice Date ("the Exclusion/Objection Deadline"). The date of the
26 postmark shall be the exclusive means used to determine whether a request for exclusion has been
27 timely submitted.

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1 The Settlement Administrator shall forward copies of any written requests for exclusion to
2 Class Counsel and Uber's Counsel, and shall, before the Fairness Hearing, submit an affidavit to the
3 Court attesting to the accuracy of the list.

4 If the proposed Settlement is finally approved, any potential Settlement Class Member who
5 has not submitted a timely written request for exclusion from the Class on or before sixty (60) days
6 after the Notice Date, shall be bound by all terms of the Settlement Agreement and the Final Order
7 and Final Judgment, regardless of whether they have requested exclusion from the Settlement, even if
8 the potential Settlement Class Member previously initiated or subsequently initiates any litigation
9 against any or all of the Released Parties relating to Released Claims. All persons or entities who
10 properly exclude themselves from the Settlement Classes shall not be Settlement Class Members and
11 shall relinquish their rights or benefits under the Settlement Agreement, should it be approved, and
12 may not file an objection to the Settlement.

13 14. Objections and Appearances. Settlement Class Members may object to the terms
14 contained in the Settlement Agreement, the certification of the Settlement Classes, the entry of the
15 Final Approval Order and Final Judgment, the amount of fees requested by Class Counsel, and/or the
16 amount of the incentive awards requested by the representative Plaintiffs and other individuals, by
17 submitting or filing a written objection with the Court by mailing them to the Class Action Clerk,
18 United States District Court for the Northern District of California, 450 Golden Gate Avenue, 17th
19 Floor, San Francisco, CA, 94102, or by filing them in person at any location of the United States
20 District Court for the Northern District of California. Settlement Class Members who fail to submit
21 or file with the Court timely written objections in the manner specified in the Settlement Agreement,
22 the Long Form Notice, and the Summary Notice shall be deemed to have waived all objections and
23 shall be foreclosed from making any objection (whether by appeal or otherwise) to the Settlement.

24 To be timely, the objection must be postmarked or filed with the Court no later than the
25 Exclusion/Objection Deadline. The date of the postmark on the return mailing envelope shall be the
26 exclusive means used to determine whether the objection has been timely submitted. The objection
27 must contain at least the following: (i) the objector's full name, address, telephone, and signature;
28 (ii) a clear reference to the Action; (iii) a statement of the specific legal and factual bases for each

1 objection argument; and (iv) a statement whether the objecting person or entity intends to appear at
2 the Fairness Hearing, either in person or through counsel, and, if through counsel, a statement
3 identifying that counsel by name, bar number, address, and telephone number. “Mass” or “class”
4 objections are not permitted. All objections shall be signed by the objecting Settlement Class
5 Member (or his Legally Authorized Representative), even if the Settlement Class Member is
6 represented by counsel.

7 Any party to this case, including Settlement Class Members, may appear at the Fairness
8 Hearing in person or by counsel, and may be heard to the extent allowed by the Court, in support of
9 or in opposition to, the Court's determination of the good faith, fairness, reasonableness, and
10 adequacy of the proposed Settlement, the requested attorneys' fees and litigation expenses, the
11 requested class representative enhancement award, and/or the Order of Final Approval and Judgment
12 regarding such Settlement, provided however, that no person, except Class Counsel and Defense
13 Counsel, shall be heard in opposition to such matters unless such person has complied with the
14 conditions set forth in the Notice of Class Action Settlement.

15 15. Preliminary Injunction. Pending final determination of whether the proposed
16 settlement should be approved, all Named Plaintiffs and Settlement Class Members and their
17 representatives, or any of them, who do not timely and properly exclude themselves from the
18 Settlement Classes are barred and enjoined from directly, indirectly, derivatively, in a representative
19 capacity, or in any other capacity, filing, commencing, prosecuting, maintaining, intervening in,
20 participating in, conducting, or continuing any action in any forum (state or federal) as individual
21 actions, class members, putative class members, or otherwise against the Released Parties (as that
22 term is defined in the Settlement Agreement) in any court or tribunal asserting any of the Released
23 Claims (as that term is defined in the Settlement Agreement), and/or from receiving any benefits
24 from any lawsuit, administrative or regulatory proceeding, or order in any jurisdiction, based on or
25 relating to the Released Claims. In addition, all such persons are hereby barred and enjoined from
26 filing, commencing, or prosecuting a lawsuit against Uber (or against any of its related parties,
27 parents, subsidiaries, or affiliates) as a class action, a separate class, or group for purposes of
28 pursuing a putative class action (including by seeking to amend a pending complaint to include class

1 allegations or by seeking class certification in a pending action in any jurisdiction) on behalf of
2 Settlement Class Members who do not timely exclude themselves from the Settlement Classes,
3 arising out of, based on or relating to the Released Claims. Pursuant to 28 U.S.C. §§ 1651(a) and
4 2283, the Court finds that issuance of this preliminary injunction is necessary and appropriate in aid
5 of the Court's continuing jurisdiction and authority over this Action.

6 16. Summary of Deadlines. In summary, the deadlines set by this Order are as follows:

7 (a) The Long Form Notice shall be disseminated within twenty-one (21) days after the
8 entry of this Order;

9 (b) The Summary Notice shall be disseminated within twenty-one (21) days after the
10 entry of this Order;

11 (c) Motion in support of the Final Approval of the Settlement shall be filed on or
12 before thirty-five (35) days before the Fairness Hearing;

13 (d) Class Counsel shall file their Fee Application on or before thirty-five (35) days
14 before the Exclusion/Objection Deadline and it shall be posted on the settlement website;

15 (e) Settlement Class members who desire to be excluded shall submit requests for
16 exclusion postmarked (or the equivalent for e-mail) no later than sixty (60) days after the Notice Date;

17 (f) All written objections to the Settlement Agreement and the Fee and Service
18 Application and written notices of the objecting class member's intention to appear at the Fairness
19 Hearing shall be filed with the Court and postmarked and mailed to the Settlement Administrator no
20 later than the Exclusion/Objection Deadline;

21 (g) Any opposition to the Motion in support of the Final Approval of the Settlement
22 shall be filed with the Court on or before twenty-one (21) days before the Fairness Hearing;

23 (h) All documents in support of final approval of the Settlement Agreement, and in
24 response to objections to the Settlement Agreement or the Fee and Service Application, shall be filed
25 with the Court on or before fourteen (14) days before the Fairness Hearing; and

26 (i) The Fairness Hearing shall be held on June __, 2022, at 1:30 p.m. These deadlines
27 may be extended by order of the Court, for good cause shown, without further notice to the
28 Settlement Classes. Settlement Class Members may check the settlement website

1 (www.jamesvuber.com) regularly for updates and further details regarding extensions of these
2 deadlines.

3 17. Termination of Settlement. In the event the Court does not grant final approval to the
4 settlement, or for any reason the parties fail to obtain a Final Approval Order and Final Judgment as
5 contemplated in the Settlement Agreement, or the Settlement Agreement is terminated pursuant to its
6 terms for any reason, or the Effective Date does not occur for any reason, then the following shall
7 apply:

8 (a) All orders and findings entered in connection with the Settlement Agreement shall
9 become null and void and have no force and effect whatsoever, shall not be used or referred to for
10 any purposes whatsoever, and shall not be admissible or discoverable in this or any other proceeding;

11 (b) The provisional certification of the Settlement Classes pursuant to this Order shall
12 be vacated automatically, and the Action shall proceed as though the Settlement Classes had never
13 been certified pursuant to this Settlement Agreement and such findings had never been made;

14 (c) Nothing contained in this Order is, or may be construed as, a presumption,
15 concession or admission by or against Uber or Named Plaintiffs of any default, liability or
16 wrongdoing as to any facts or claims alleged or asserted in the Action, or in any actions or
17 proceedings, whether civil, criminal or administrative, including, but not limited to, factual or legal
18 matters relating to any effort to certify the Actions as class actions;

19 (d) Nothing in this Order or pertaining to the Settlement Agreement, including any of
20 the documents or statements generated or received pursuant to the claims administration process,
21 shall be used as evidence in any further proceeding in this case, including, but not limited to, motions
22 or proceedings seeking treatment of the cases as class actions; and

23 (e) All of the Court's prior Orders having nothing whatsoever to do with the
24 Settlement shall, subject to this Order, remain in force and effect.

25 18. Use of Order. This Order shall be of no force or effect if the settlement does not
26 become final, and shall not be construed or used as an admission, concession, or declaration by or
27 against Uber of any fault, wrongdoing, breach, or liability in this Action or in any other lawsuit. Nor
28 shall this Order be construed or used as an admission, concession, or declaration by or against Named

1 Plaintiffs or the other Settlement Class Members that their claims lack merit or that the relief
2 requested is inappropriate, improper, or unavailable, or as a waiver by any party of any defenses or
3 claims he, she, or it may have in this Action or in any other lawsuit.

4 19. Class Counsel and Defense Counsel are hereby authorized to use all reasonable
5 procedures in connection with approval and administration of the Settlement that are not materially
6 inconsistent with this Order or the Settlement Agreement, including making, without further approval
7 of the Court, minor changes to the form or content of the Long Form Notice, Summary Notice, and
8 other exhibits that they jointly agree are reasonable or necessary.

9 20. Retaining Jurisdiction. This Court shall maintain continuing jurisdiction over these
10 settlement proceedings to assure the effectuation thereof for the benefit of the Settlement Classes, and
11 for any other necessary purpose.

12 21. Extension of Deadlines. Upon application of the Parties and good cause shown, the
13 deadlines set forth in this Order may be extended by order of the Court, without further notice to the
14 Settlement Classes. Settlement Class Members may check the settlement website
15 (www.jamesvuber.com) regularly for updates and further details regarding extensions of these
16 deadlines.

17 In the event that the Effective Date does not occur, certification shall be automatically vacated
18 and this Preliminary Approval, and all other orders entered and releases delivered in connection
19 herewith, shall be vacated and shall become null and void.

20
21 **IT IS SO ORDERED.**

22
23 Dated: _____, 2022

24 The Honorable Edward M. Chen
25 United States District Judge
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